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Presidential Documents

Title 3—

The President

Proclamation 6297 of May 20, 1991

National Foster Care Month, 1991

By the President of the United States of America

A Proclamation

No institution is more important to society than the family. Parents not only have primary responsibility for the physical care of their children, they also have the greatest influence in shaping their character. It is within the inimitable shelter of the family that children first learn the lessons of love and commitment, personal responsibility, and civic duty.

Tragically, some families are unable to provide a minimally acceptable level of care for their children, resulting in the need for temporary or even permanent alternative placement for them. Foster families are the resource used most frequently to provide the loving guardianship and guidance that these unfortunate children need and deserve.

Those Americans who open their hearts and their homes to foster children are making a significant difference in the lives of troubled children and families. Foster parents often provide temporary care and protection for children with complex needs—children who might be physically or mentally handicapped or suffering from physical or emotional abuse—while child welfare agencies work to help the biological family gain stability and strength. In some cases, foster parents may choose to adopt the youngsters in their care when a permanent home is needed.

National Foster Care Month gives all Americans an opportunity to reflect on the importance of strong families to the future of every child and to the future of our country. It reminds each of us—parents, public officials, religious and community leaders alike—of our responsibility to identify the forces that erode the strength of the family and to develop ways to overcome them. For example, the Department of Health and Human Services reports that many of the problems faced by foster children today stem directly from their parents' substance abuse. Thus, our observance of National Foster Care Month should renew our resolve to win the war against drugs.

This month also provides a special opportunity to recognize the dedication and generosity that foster families and professionals working in the field of foster care demonstrate throughout the year. In the United States more than 250,000 licensed foster families work together with social service providers, law enforcement officials, and others to assist troubled children and families. Their contributions to our communities and to our Nation are invaluable.

The Congress, by House Joint Resolution 154, has designated the month of May 1991 as "National Foster Care Month" and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the month of May 1991 as National Foster Care Month. I call upon all Americans to observe this month with appropriate ceremonies and activities.

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IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of May, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 91-12334
Filed 5-20-91; 4:05 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 91-067]

Pink Bollworm; Removal of Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the pink bollworm regulations by removing a portion of Desha County, Arkansas, from the list of suppressive areas, and by removing Arkansas from the list of States quarantined because of the pink bollworm. We have determined that the pink bollworm has been eradicated from Arkansas. The rule we are affirming removes unnecessary restrictions on the interstate movement of regulated articles.

EFFECTIVE DATE: June 21, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Sidney E. Cousins, Senior Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, room 644, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the Federal Register and effective March 6, 1991, (56 FR 9273-9274, Docket Number 91-015) we amended the pink bollworm regulations (7 CFR 301.52 *et seq.*) by removing a portion of Desha County, Arkansas, from the list of suppressive areas in § 301.52-2a, and by removing Arkansas from the list of States in § 301.52(a) quarantined because of the pink bollworm.

Comments on the interim rule were required to be received on or before May 6, 1991. We did not receive any comments. The facts presented in the interim rule still provide a basis for this rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This regulation affects the interstate movement of regulated articles from a portion of Desha County in Arkansas. There are nine cotton growers, processors, and seed producers within this area who will experience a modest economic benefit as a result of the interim rule, since they are no longer required to comply with the treatment and handling requirements contained in the pink bollworm regulations. We estimate that each of these entities will save approximately $100 per year in compliance costs. These entities comprise less than 1 percent of the total of similar enterprises operating in the State of Arkansas.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (See 7 CFR part 3015, subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Pink bollworm, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule amending 7 CFR 301.52(a) and 301.52-2a that was published at 56 FR 9273-9274 on March 6, 1991.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164-167; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 16th day of May, 1991.

Robert Melland,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-12162 Filed 5-21-91; 8:45 am]
BILLING CODE 3410-34-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 3, 103, 240, 274a, and 299

[INS No.: 1400-91; AG Order No. 1495-91]

Temporary Protected Status

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule implements new section 244A of the Immigration and Nationality Act (the Act), as added by section 302 of the Immigration Act of 1990 (IMMACT), Public Law 101-649, (November 29, 1990), and implements section 303 of IMMACT. The rule sets forth the procedures for applying for Temporary Protected Status (TPS) and provides, in accordance with the

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provisions of the Act and IMMACT, an opportunity for eligible individuals temporarily to remain in and to work in the United States, until the end of the period designated by the Attorney General. In addition to the procedures for applying for Temporary Protected Status (TPS), this rule also references those forms and fees that are required as a part of the application process. This rule also contains conforming amendments to other parts of Title 8 of the Code of Federal Regulations.

EFFECTIVE DATE: May 22, 1991.

FOR FURTHER INFORMATION CONTACT: Gerald S. Hurwitz, Counsel to the Executive Director, Executive Office for Immigration Review, suite 2400 Skyline Tower, 5107 Leesburg Pike, Falls Church, VA 22041, telephone number (703) 756–6470; Patricia B. Feeney, Assistant General Counsel, Immigration and Naturalization Service, 425 I Street, NW., room 7048, Washington, DC 20536, telephone number (202) 514–2895; or Terrance O'Reilly, TPS Coordinator, Immigration and Naturalization Service, 425 I Street, NW., room 7122, Washington, DC 20536, telephone number (202) 514–5309.

SUPPLEMENTARY INFORMATION: On January 7, 1991, an interim rule with request for comments was published in the **Federal Register** at 56 FR 618. The comment period expired on February 6, 1991. The Immigration and Naturalization Service (the Service) received over 1,000 comments, representing the views of alien advocacy organizations, state and Federal Government agencies, Members of Congress, attorneys and individuals. The Service believes that the widest range of opinions has been expressed and greatly appreciates these comments. Each comment has been considered and many commenters will see the effects of their comments in this rule.

Almost all of the commenters stated that the fees to be charged by the program should be reduced and that a "family cap" should be instituted so that the cost of the Program is not prohibitive for large families. Additionally, commenters requested that no fee be charged for re-registration. After review of the comments and fee structure, the Service will maintain the initial registration filing fee for *Alien Address Report Card*, Form I–104, at $75 for nationals of El Salvador but will institute a "family cap" of $225 and will not charge an additional fee for the re-registration process. The family cap will mean that only the first three members of a family who apply for TPS as nationals of El Salvador will be charged the fee. Unmarried children under the age of 21 will be considered part of the family. Applicants will be required to pay the appropriate fee for issuance and extension of employment authorization.

Commenters also complained that the waiver of fees for applications has not been uniformly applied by District Offices and suggested that the regulations be amended to provide guidance to officers. Commenters further suggested that the Service use the economic necessity guidelines in 8 CFR 274a.12(d). The Service is mindful of the fact that some applicants will be unable to pay the prescribed fees. The Service has the authority to waive fees, pursuant to 8 CFR 103.7(c), when an applicant is able to substantiate the inability to pay the prescribed fees. The Service will consider all requests to waive fees and will act favorably when an applicant meets the regulatory requirements. The Service will determine inability to pay using the Public Welfare, Poverty Guidelines as provided in Title 45, Code of Federal Regulations, part 1060.2, which are the same guidelines used in determining economic necessity under 8 CFR 274a.12(d).

One commenter stated that the definitions of felony and misdemeanor should be clarified to state that the crimes refer only to "final" convictions. The definitions cited in this rule are identical to those used in other parts of Service regulations and have not been the source of confusion. The Service will use the definition of conviction as found in 8 CFR 242.2(b). Additionally, the issue of what constitutes a final conviction has been addressed in judicial decisions and, therefore, it is not necessary for the regulations to be amended further.

A few commenters requested that the definition of *prima facie* be changed, deleting the phrase "if unrebutted" and inserting "on its face," because the current definition implies that the Service may delay TPS benefits in order to locate potential rebuttal evidence. The commenters believe that such action is only appropriate when making the ultimate determination of TPS eligibility. Making the change suggested would require the Service to accept the statements made by an applicant, even when the Service has evidence in its possession establishing that the applicant is ineligible for TPS. The Service must be able to use independent evidence, such as a criminal conviction, when making its determination. Therefore, the definition of *prima facie* has not been changed.

Commenters stated that the definition of brief, casual and innocent absence is too subjective. The Service believes the definition must be broad to allow for flexibility. To do otherwise would require the Service to establish a specific time limit, which may cause some applicants to be disadvantaged. Therefore, this portion of the regulation has not been changed.

One commenter suggested that the regulations include a definition of the term "armed conflict," based on the Geneva Convention. The statute gives the Attorney General the authority, in his discretion, to designate any foreign state to be eligible for the TPS program. The purpose of the regulation is to state the requirements for administering the TPS program, not to limit the authority of the Attorney General. Therefore, it is unnecessary to provide a definition as requested by the commenter.

Several commenters suggested that the Service delete references to a District Director having any discretion in the granting of TPS. The commenters believe that there is no discretion to deny TPS if an applicant establishes eligibility based on the requirements of the statute. Another commenter believes that certain language in §§ 240.42(a) and 240.43 of the regulations is misleading and implies that the District Director enjoys special discretionary powers independent of the statute. The Service believes the statute is clear that a decision to grant TPS benefits is a discretionary decision. The phrase "to the satisfaction of the district director," however, has been removed from the sections discussed by the commenter because it is redundant.

Commenters stated that the Service has the authority to issue regulations relating to the dates by which aliens must have arrived in the United States and that the regulations should be promulgated without cut-off dates for arrival. The Service disagrees and believes that section 244A(c)(1)(A)(i) of the Act requires aliens to be physically present in the United States by the effective date of the most recent designation of the state. The effective date of a designation will be determined by the Attorney General as provided in section 244A(b)(2)(A) of the Act. No change has been made to § 240.2(b) of the regulations.

One commenter suggested that waivers of grounds of ineligibility should always be granted on humanitarian grounds, unless the individual is also ineligible or excludable on a non-waivable ground. The Service believes that discretion should be exercised on a case-by-case basis. Adopting the commenter's suggestions would take discretion away from the Service. Another commenter stated that no separate waiver application should be required. Since a case-by-case determination must be made, an application is required. This is to the applicant's benefit since the application gives the applicant the opportunity to provide a detailed explanation of the reasons a waiver should be granted.

One commenter questioned at what point the Service would inform an applicant that he or she will need a waiver to obtain TPS. The Service will notify an applicant of the need for a waiver application when the determination is made that a waiver is necessary. This is a practical issue that does not need to be addressed in the regulations.

One commenter stated that the provisions of § 240.3(b) merely track the statute verbatim and, therefore, are virtually worthless. The commenter believes there is no guidance provided to such persons as applicants, attorneys, etc. The Service maintains that the regulation is sufficiently broad to allow for discretion to be used in a decision on a waiver. Further guidance would only serve to limit discretion, possibly to the detriment of an applicant.

Commenters stated that temporary treatment benefits should be issued immediately upon the completion of an application which, on its face, establishes the alien's eligibility. The Service agrees that temporary treatment benefits should be issued immediately after the applicant establishes his or her *prima facie* eligibility. As noted above, the Service must be able to make use of evidence that effectively rebuts the alien's claim to eligibility. Therefore, this portion of the rule has not been changed.

Commenters contended that the TPS program should be similar to the Extended Voluntary Departure (EVD) Program and should, therefore, not require an application process, i.e., should not have special forms, documents or fees. The commenters point to the fact that the statute deliberately uses the term "registration." The Service disagrees. The statute specifically requires the Attorney General to establish a procedure for registration. Nothing in the statute prohibits the use of any specific forms or documents. Additionally, section 244A(c)(1)(B), of the Act expressly permits the Attorney General to require payment of a registration fee and section 303 of IMMACT requires a fee for registraton for nationals of El Savador. Therefore, the Service has not changed this portion of the rule.

Commenters stated that the forms required by the regulations request some of the same information repeatedly, as well as information wholly unrelated to a determination of eligibility. Additionally, one commenter asserted that the registration process is overly burdensome and suggested that the Application for Employment Authorization, Form I–765, should be required only for those applicants wishing to work. The Service is in the process of revising and combining the required forms and will take commenters' suggestions during this process. Additionally, commenters should be aware that Form I–765 is used in connection with the computer system supporting the TPS Program and that the fee is used to offset the cost of the program. This necessitates the use of Form I–765 for all applicants. The fee for Form I–765 will be charged only for those aliens who are nationals of El Salvador, are between the ages of 14 and 65 (inclusive), and are requesting work authorization.

Commenters suggested that an alien from a country that is designated for TPS, who is also in deportation proceedings, should be given a notice of the TPS Program. The Service agrees with the commenters and has amended § 240.7(d) to reflect the requirement that an alien who is in proceedings and is a national of a country designated under the program will be given notice of the requirements and benefits of the program.

One commenter suggested that the regulations should clearly state that Qualified Designated Entities (QDES) and voluntary agencies (VOLAGS) are not accredited by the Board of Immigration Appeals under 8 CFR 292.1 and are not therefore permitted to represent TPS applicants during any examination by the Service. QDES and VOLAGS provide assistance to aliens in filling out the forms required by the program. In many instances, these organizations have close ties to the alien community and provide valuable services to the community. Without them, many aliens would not have the access needed to obtain the benefits to which they are entitled. The regulations concerning accredited representatives are very clear. Since many QDES and VOLAGS have accredited representatives on their staff, they would have the right to represent an applicant. Therefore, no addition has been made to this portion of the rule.

Commenters stated that the Service has no legal basis to bar representatives from participating directly in the examination of an alien seeking TPS benefits and should strike the sentence in § 240.8 precluding direct participation. Commenters argued that since the application process may result in the institution of deportation proceedings, it is important that representatives be allowed to participate in the interview. The Service disagrees that the applicant would be disadvantaged in any way by this portion of the regulations. Nothing in the regulations precludes an attorney from providing his or her client with representation. In interviewing the applicant, the Service has the right to expect that the applicant respond and to maintain control over the interview. This regulation balances the needs of the Service in the adjudicative process with those of the applicant and his or her representative, and it has not been changed.

One commenter suggested that the appearance of children under the age of 14 should be waived when the child is applying with a parent. Section 240.8 states that the appearance of the applicant may be required. Nothing in this section requires the appearance of children, unless it is requested by the District Director. It is unnecessary to change this portion of the regulations.

Commenters stated that, under § 240.9(a)(2)(i), employers are required to meet a higher standard than other individuals or organizations when providing documentation for the TPS applicant to establish proof of residence. The Service believes that a higher standard is required of an employer since this type of documentation is the most common type of document received and generally is the most reliable document an alien can submit. This regulation does not preclude the Service from accepting documents without the requisite attestation under penalty of perjury. Such documents will be evaluated individually and given appropriate weight. The Service intends to be very flexible with regard to the acceptance of documentation establishing an applicant's residence in the United States. The Service does agree with commenters that the requirement that an employer state his or her willingness to come forward and give testimony is unnecessary. The Service has the right to subpoena individuals and documents and would exercise that right if necessary to substantiate documentation submitted in support of an application. Therefore, the requirement that a letter from an employer state the employer's willingness to testify has been removed.

Commenters argued that the documentation requirements for evidence of identity and nationality are too onerous and should not require proof of unsuccessful efforts to obtain documents. Commenters pointed out that attempting to obtain the

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documentation or evidence of an unsuccessful effort may endanger a prospective registrant and can be extremely time consuming. The Service understands the comments but believes that since the cornerstone of the TPS provision is the applicant's nationality, the Service must have the flexibility to require whatever documentation is necessary to establish such nationality. The regulations provide this flexibility but do not require the submission of proof of unsuccessful efforts to obtain documents in every case. Where primary documentary evidence is unavailable, the Service will require a personal interview of the applicant and an affidavit attesting to unsuccessful efforts to obtain identity documents, explaining why the consular process is unavailable and affirming of his or her nationality. Other credible evidence may be submitted at the time of the interview. This portion of the rule has been modified to set forth the requirements of the application more clearly.

Commenters stated that the Service should be flexible in the types of documentation accepted to show nationality and that three additional types of documents should be added to the list of acceptable evidence: (1) An Order to Show Cause or other Service document alleging nationality; (2) any church record that indicates birthplace or nationality such as baptismal, marriage or divorce certificates; and (3) any other relevant document, affidavit or other credible evidence, including school records and correspondence. Nothing in the regulations precludes the submission of any type of credible document or affidavit. Specifically, the regulations allow for the submission of any "other credible evidence." The list provided in the regulations is not an exclusive one but is offered to provide guidance on the types of acceptable documentation. Additionally, the Service will examine its records in the adjudication of an application for TPS status and may use any documents in its possession in the determination of eligibility. The wording of the regulation already allows for the flexibility requested by commenters and has not been changed.

Commenters requested that § 240.9(a)(2) be amended to read "evidence * * * may consist of *any* of the following." As noted above, the Service intends to be flexible when accepting documents for this program and has amended the regulation as suggested by commenters to clarify that any evidence can be submitted and will be considered.

Commenters also suggested that there should be a presumption of continuous residence for those applicants with pending court proceedings or an asylum application before the Service. As noted above, the Service intends to be very flexible with regard to the type of documents it accepts and will examine its records in processing of a TPS application. The Service must be able to give whatever weight it deems appropriate to the documentation available and should not be required to make presumptions simply because the applicant is involved in proceedings or has submitted another type of application to the Service. The Service will consider these factors in its determination but should not be bound by the suggested constraint. Therefore, this additional requirement has not been added to the rule.

Commenters stated that § 240.9(c) is ambiguous and that any period of less than 30 days is an unreasonably short period of time to respond to a request for information or to show good cause for failure to appear for a scheduled interview. Although the Service generally provides 30 days to respond to such requests, there may be circumstances where a shorter time frame is appropriate. The Service must have the ability to control its work flow and must remain flexible when requiring an applicant to respond to a Service request. Therefore, the Service has not changed the language in § 240.9(c).

Commenters stated that the regulations should allow for a motion to reopen a TPS application denied on the basis of an untimely response or a failure to appear where good cause exists. Nothing in the regulations precludes the filing of a motion to reopen pursuant to 8 CFR 103.5. Since the provisions for such a motion are provided in another section of the regulations, changes to 8 CFR 240 are unnecessary.

Commenters contended that § 240.9(b) implies that affidavits will not suffice to meet the applicant's burden of proof and also argued that it makes no sense to list types of evidence sufficient to demonstrate eligibility but then to add a provision allowing the Service to dictate what must be submitted. Commenters suggested that the regulations be amended to clarify that clear, consistent and detailed written statements from applicants are sufficient to meet the applicant's burden. As previously stated, the Service intends to be flexible in considering all documents submitted, including written statements. However, the Service will require independent evidence of the applicant's eligibility apart from his or her own statements. The Service will accept all evidence submitted by an applicant and will weigh the totality of the evidence submitted when deciding a case. The Service agrees with the commenters that it is unnecessary to state that the applicant must provide proof of eligibility in the form requested by the Service and believes that 8 CFR 103.2(b) is controlling in regard to documentary requirements. Therefore, the last sentence of § 240.9(a)(3) has been deleted. The Service has also amended § 240.9 to clarify that documentation other than that listed in § 240.9(a)(1) can be submitted to establish eligibility for TPS.

Commenters stated that § 240.10(c), relating to the denial by the District Director, omits specific information regarding the form, fee, process and content of notices of appeal. Additionally, commenters stated that § 240.10(c) should be amended to state that denial decisions must be made by personal service and that the applicant has 30 days from the receipt of denial to submit a notice of appeal. The TPS application process is governed by the rules for any other application. Nothing in current regulations requires the Service to make denials of applications by personal service. Therefore, this additional requirement has not been included for TPS. The provisions of 8 CFR 103 are controlling concerning forms, fees and notices. Accordingly, the reference to a time limit to file an appeal has been removed from this regulation.

Commenters argued that the provisions in § 240.10(c) (1) and (2) should be deleted because section 244A(b)(5)(B) of the Act requires an administrative review of all denials. Additionally, commenters stated that TPS applicants must be given the opportunity to perfect an administrative appeal before being subject to deportation proceedings. The statute requires that an alien not be precluded from asserting protection in deportation proceedings. The Service believes an alien can be placed in deportation proceedings at any time. Administrative review of the decision in deportation proceedings is available by the Board of Immigration Appeals. Therefore, an alien has access to administrative review and this portion of the rule has not been changed.

Commenters stated that § 240.10(c) should be amended to require that the Service provide for both written and oral notice of appeal rights where the decision to deny TPS is made at a TPS interview. The language of the statute does not specify the manner for

providing notice. As a policy matter, the Service intends to notify applicants in writing as well as orally, when practical, but has not changed this regulation.

Commenters suggested that the provisions in §§ 240.10(c)(1), 240.10(d)(2) and 240.14(d), requiring the issuance of a charging document after denial of a TPS application, be deleted and that the institution of exclusion or deportation proceedings should not be based solely on the information obtained from the TPS application. The TPS program is not a Legalization Program. In that program, information from the application could be used only to adjudicate the application and prosecute for fraud. Congress did not provide this specific limitation of information obtained through the TPS Program. The Service, therefore, believes that the information provided on the application can be used to issue a charging document. This belief is affirmed by the provisions of section 303(d) of IMMACT, relating to El Salvadoran nationals. That section requires that an Order to Show Cause be issued at the time of the final registration under the TPS Program. It is, therefore, evident that the Service has the authority to institute proceedings upon the denial, withdrawal or expiration of TPS and, therefore the regulation has not been amended in this respect.

One commenter suggested that the regulations should clarify whether an appeal should be filed with the District Director having jurisdiction over the denied TPS applicant's current place of residence or with the District Director who denied the application. The Service agrees that the § 240.10(c) was unclear and has changed that section to indicate that the notice of appeal should be filed with the District Director who denied the application. Since the District Director who issued the denial has the administrative record and also has the responsibility for forwarding the record to the appeals unit, it would not be appropriate or expedient to appeal to a District Director at a different location.

Several individuals commented that § 240.10(f)(1) provides that the Employment Authorization Document (EAD) will be the only documentation evidencing TPS but that the Service does not issue EAD's to minor children or persons over 65. The Service intends to issue Form I–688B, Employment Authorization Document, to all those applicants granted employment authorization. This document will also serve as proof of alien registration. For children under 14 years of age, persons over 65 and those individuals not requesting employment authorization, the Service will issue Form I–94 as proof of alien registration and TPS. The regulation has been changed to clarify the Service's procedures.

Commenters also stated that § 240.10(f)(2) should be amended to provide for both written and oral notice of rights and responsibilities for those applicants granted TPS. The Service intends, as a matter of policy, to provide oral notification when practical.

Commenters stated that aliens granted TPS should be allowed to adjust status in the United States, regardless of how they entered the United States. While section 245(c)(2) of the Act, requiring maintenance of lawful status, has been made inapplicable to aliens granted TPS, there is no corresponding change in the requirements of section 245(a) of the Act. Section 245(a) provides that, in order to be eligible to adjust, the alien must have been "inspected and admitted or paroled into the United States". An alien who entered the United States without inspection cannot satisfy this requirement and, therefore, would not be eligible to adjust. The Service believes the regulations are clear on this point and will not be changed.

Commenters also suggested that the notices given to TPS applicants should specifically state the 30-day re-registration beginning and ending dates. The Service believes that the expiration date of the applicant's alien registration document will serve as ample reminder of the applicant's responsibilities to reregister. This is especially true since the applicant is required to carry this document with him or her at all times. Additionally, providing a notice with the expiration date, which would have to be handwritten, increases the chances of errors in the dates and confusion to the applicant. Therefore, the commenters' suggestion has not been adopted.

Commenters stated that the contents of the notice to applicants should be published in the **Federal Register**, giving the public an opportunity to comment. The notice to applicants is a straightforward statement of the applicant's rights and responsibilities as provided by the statute. Because of the nature of this notice, the Service believes it is not necessary to offer this notice for public comment. Additionally, this requirement would be administratively burdensome and may result in a delay in applicants receiving the required information.

Commenters also stated that the notice to applicants should include a note that the release from detention is a statutory benefit. The statute specifically provides that an alien provided TPS shall not be detained by the Attorney General on the basis of the alien's immigration status in the United States. This requirement does not preclude the Service from detaining an alien on grounds that make the alien ineligible for TPS. Including the notice suggested by commenters may cause confusion and imply additional rights not provided for by the statute.

One commenter requested that the notice to TPS applicants should include a statement that the withdrawal of TPS status "may result in the institution of exclusion or deportation proceedings" rather than "may result in the alien's deportation from the United States." Section 240.10(f)(4)(iii) of the regulation specifically provides for this notice. The suggested language of the commenter is not totally accurate, as, for example, where an alien is already in deportation or exclusion proceedings. Therefore, this portion of the rule has not been changed.

Commenters stated that a TPS applicant should be able to supplement an incomplete application prior to denial and that a notice of intent to deny should be issued prior to denial where the denial would be based on insufficient evidence. As a practical matter, the Service routinely gives an applicant additional time to provide documentation when a determination is made that the documentation can be obtained. This practice benefits both the applicant and the Service. The Service retains the right to make this determination. A notice of intent to deny is appropriate only to notify the applicant of derogatory information unknown to the applicant. The provisions of 8 CFR 103.2(b)(3)(i) are controlling in these instances. It is not necessary, therefore, to change the rule in this instance.

Commenters requested that the period for an alien to respond to a notice of withdrawal of status be increased from 15 to 30 days. The Service agrees with commenters and has amended § 240.14(b) accordingly.

One commenter objected to the provisions of § 240.14(d) that permit a charging document to constitute notice that an alien's status in the United States is subject to withdrawal. The commenter suggested that, if the purpose of the regulation is to allow the charging document alone, without further explanation, to be the notice of the Service's intent to withdraw TPS, a brief statement should be added to the charging document stating that, if the allegations are true, the alien is ineligible for TPS and his or her status is subject to withdrawal. An alien in

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exclusion or deportation proceedings, after an initial grant of TPS, is entitled to a *de novo* determination of eligibility for TPS. Because of the nature of the hearing, the Service believes it is not necessary to add additional statements. The immigration judge will review the alien's eligibility for benefits and will issue an order based on the findings after a hearing. That order would necessarily contain a discussion of the alien's eligibility. The Service has reviewed the section discussed by the commenter and determined that it is redundant with the provision in § 240.18 and has, therefore, deleted § 240.14(d).

Commenters suggested that the standards for granting advance parole should be liberal and further suggested that the standards should be the same as provided in the Service's Operating Instructions, 212.5(c), including allowing travel for any *bona fide* business or personal reason. Section 240.15 has been amended to remove the reference to § 212.5(e) which does not relate to advance parole. Language has been substituted to indicate that advance parole will be granted in the discretion of the District Director. This change will require the District Director to use the standards set forth in the Operating Instructions.

Commenters stated that the Service should cease requiring a Social Security number on any TPS application since aliens will be exposing themselves to possible criminal prosecution for use of false Social Security numbers. Additionally, commenters stated that the regulations should be amended to require that an agency receiving information provided by the applicant should have procedures to guarantee the confidentiality of the information, especially as it relates to employers, and that the information should not be disclosed to the government of the designated country. The Service requires the Social Security number for identification purposes and to corroborate documentation submitted with that number. Therefore, the Service will continue to request the number. While the Service will not routinely use the information on a TPS application to institute sanction actions against employers, the Service reserves the right to enforce the Act whenever it is in the public interest to do so. The Freedom of Information and Privacy Acts control the release of third party information. Therefore, it is not necessary to include the suggestions of commenters concerning the release of TPS information to other Federal agencies or to foreign governments.

One commenter stated that § 240.18 should be amended to provide that all waiver issues must be decided prior to the issuance of an Order to Show Cause (OSC). The Service believes that the alien's rights to a full adjudication of TPS eligibility are protected in the manner in which the regulations are currently constructed. Changing the regulations may cause a situation where the Service would be precluded from issuing an OSC where an alien has not filed a waiver. Therefore, the regulations have not been changed on this point.

One commenter stated that the provisions in § 240.18 (a) and (d) are unnecessarily complicated, with indirect references to other sections of the regulations. The Service agrees and has changed the regulation to provide for more clear references.

One commenter believed that § 240.46 should be amended so that emergency and extenuating circumstances beyond the control of the alien would constitute an additional ground for authorizing advance parole, not an additional condition required for parole. The Service disagrees and believes that section 303(c)(4) of IMMACT requires Salvadoran nationals to show emergency or extenuating circumstances before being granted the benefit of advance parole. This portion of the rule has not been changed.

One commenter stated that the regulations should provide a *de novo* determination by the Board of Immigration Appeals (BIA) of a TPS denial for those individuals in pending cases before the BIA since the aliens would not have the right to such a determination under the current regulations. An alien in proceedings before the BIA will have a *de novo* determination of a denial either by a remand from the BIA to the Immigration Judge or by the alien filing an appeal to the Administrative Appeals Unit (AAU). For example, an alien who has been found deportable on a charge which also makes him or her ineligible for TPS (i.e. criminal conviction) would have the case remanded to the Immigration Judge for a *de novo* determination of eligibility for TPS. Therefore, no original jurisdiction before the BIA is necessary.

Although no comments were received from the public on this point, section 240.47 is being amended to reflect that an alien can be placed in exclusion proceedings, in addition to deportation proceedings. This change is consistent with the definition of "charging document" which refers to both exclusion and deportation documents. The change will also ensure that there is no misunderstanding and that the regulation does not seem to convey the right of a deportation hearing to an alien who properly belongs in exclusion proceedings.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment pursuant to E.O. 12612.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The OMB control numbers for these collections are provided in 8 CFR 299.5, Display of control numbers.

List of Subjects

8 CFR Part 3

Administrative practice and procedure, Immigration, Organization and functions (Government agencies).

8 CFR Part 103

Administrative practice and procedure, Aliens, Authority delegations (Government agencies), Freedom of Information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 240

Administrative practice and procedure, Immigration.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 299

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending parts 3, 103, 274a, and 299 and creating a new part 240 which was published at 56 FR 618–624 on January 7, 1991 is adopted as final with the following changes:

PART 240—TEMPORARY PROTECTED STATUS FOR NATIONALS OF DESIGNATED STATES

1. The authority citation for part 240 continues to read as follows:

Authority: 8 U.S.C. 1103, 1254a, 1254a note.

§ 240.1 [Amended]

2. Section 240.1 is amended by adding in the definition of the term "Charging document" the phrase ", Form I–221S (Order to Show Cause, Notice of Hearing, and Warrant for Arrest of Alien)" immediately before the phrase "or Form I–122"; and by removing the definition of "Service".

§ 240.2 [Amended]

3. Section 240.2(a) is amended by adding the phrase ", as defined in section 101(a)(21) of the Act," after the phrase "Is a national".

§ 240.4 [Amended]

4. Section 240.4(a) is amended by adding the phrase ", as defined in section 240.1," after the phrase "two or more misdemeanors".

§ 240.5 [Amended]

5. Section 240.5(a) is amended by adding in the third sentence, the phrase ", if granted," after the phrase "Temporary treatment benefits" and by adding in that same sentence the phrase "or a waiver is sought" after the phrase "fee is paid".

§ 240.6 [Amended]

6. Section 240.6 is amended by removing in the second sentence the phrase "proper fee", adding in its place the phrase "the fee as provided in § 103.7 of this chapter," and by removing the period at the end of that sentence and adding the phrase ", except that the fee for Form I–765 will be charged only for those aliens who are nationals of El Salvador, and are between the ages of 14 and 65 (inclusive), and are requesting work authorization.".

7. Section 240.7(d) is amended by revising the first sentence and adding a new sentence immediately after the first to read as follows:

§ 240.7 Filing the application.

* * * * *

(d) If the alien has a pending deportation or exclusion proceeding before the immigration judge or Board of Immigration Appeals at the time a state is designated under section 244A(b) of the Act, the alien shall be given written notice concerning Temporary Protected Status. Such alien shall have the opportunity to submit an application for Temporary Protected Status to the district director under § 240.7(a) during the published registration period unless the basis of the charging document, if established, would render the alien ineligible for Temporary Protected Status under § 240.3(c) or 240.4. * * *

§ 240.8 [Amended]

8. Section 240.8 is amended by adding to the last sentence the phrase "the application ," after the phrase "shall consist of."

9. Section 240.9 is amended as follows:

a. In paragraph (a)(1) introductory text in the first sentence, by adding immediately before the period at the end of the sentence the phrase ", if available", and by adding after the first sentence three new sentences;

b. In paragraph (a)(2) introductory text by adding the phrase "any of" after the phrase "may consist of";

c. In paragraph (a)(2)(i) introductory text by removing, at the end of the third sentence, the phrase ", and shall state the employer's willingness to come forward and give testimony if requested by the Immigration and Naturalization Service";

d. In paragraph (a)(3) by removing the second sentence; and

e. In paragraph (c) by removing, in the first sentence, the term "constitute" and inserting the phrase "be deemed" to read as follows:

§ 240.9 Evidence.

(a) * * *

(1) * * * If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated state. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. * * *

* * * * *

10. Section 240.10 is amended by:

a. Adding in paragraph (c) in the first sentence, immediately following the phrase "to deny Temporary Protected Status" the phrase ", a waiver of grounds of inadmissibility,";

b. Removing in the second sentence of paragraph (c) the phrase ", within fifteen (15) days,";

c. Revising the third sentence of paragraph (c);

d. Removing the term "denied" and replacing it with the term "dismissed" in paragraph (d) introductory text;

e. Adding to the beginning of the sentence the phrase "If the appeal is dismissed by the AAU," and replacing the capital "T" in the word "The" with a lower case "t" in paragraph (d)(2);

f. Removing the phrase "Immigration Court" and replacing it with the phrase "Office of the Immigration Judge" in paragraph (d)(3);

g. Revising paragraphs (e)(1) introductory text and (f)(1) and introductory text in paragraph (f)(2);

h. Removing the phrase "while in" and adding in its place the word "under" in paragraph (f)(3);

i. Revising paragraph (f)(4)(ii);

j. Removing after the phrase "paragraphs (f)(4)(i)" the word "and" and by adding in its place the word "or", and by adding immediately following the phrase "including work authorization" the phrase "granted under this Program" in paragraph (f)(4)(iii) to read as follows:

§ 240.10 Decision by the District Director or Administrative Appeals Unit (AAU).

* * * * *

(c) * * * To exercise such right, the alien shall file a notice of appeal, Form I–290B, with the district director who issued the denial. * * *

* * * * *

(e) *Grant of temporary treatment benefits.*

(1) Temporary treatment benefits shall be evidenced by the issuance of an employment authorization document. The alien shall be given, in English and in the language of the designated state or a language that the alien understands, a notice of the registration requirements for Temporary Protected Status and a notice of the following benefits:

* * * * *

(f) *Grant of temporary protected status.*

(1) The decision to grant Temporary Protected Status shall be evidenced by the issuance of an alien registration document. For those aliens requesting employment authorization, the employment authorization document will act as alien registration.

(2) The alien shall be provided with a notice, in English and in the language of the designated state or a language that the alien understands, of the following benefits:

* * * * *

(4) * * *

(ii) The alien must register annually with the District Office having jurisdiction over the alien's place of residence; and

* * * * *

§ 240.11 [Amended]

11. Section 240.11 is amended by removing in the first sentence the word "to" after the phrase "If a charging document is served" and adding in its place the word "on".

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§ 240.12 [Amended]

12. Section 240.12(a) is amended by removing the phrase "for the foreign state involved" and adding the words "the state's" after the phrase "during the initial period of".

13. Section 240.14 is amended by:

a. Removing in paragraph (b)(1), in the first sentence, the phrase "in person or by mail to the alien's most recent address provided to the Service" and adding in its place the phrase "by personal service pursuant to § 103.5(a) of this chapter";

b. Removing in paragraph (b)(1) both references to "fifteen (15) days" and adding, in their place, references to "thirty (30) days";

c. Adding in paragraph (b)(3) a new sentence at the end of the paragraph; and

d. Removing paragraph (d) to read as follows:

§ 240.14 Withdrawal of Temporary Protected Status.

* * * * *

(b) * * *

(3) * * * Temporary Protected Status benefits will be extended during the pendency of an appeal.

* * * * *

§ 240.15 [Amended]

14. Section 240.15 is amended by:

a. Adding in paragraph (a) at the end of the third sentence the phrase "pursuant to the Service's advance parole provisions" and by removing the fourth sentence; and

b. Adding in paragraph (b) immediately following the phrase "prior to the alien's departure" the phrase "from the United States" and by adding immediately following the phrase "and or institution" the phrase "or recalendering".

15. Section 240.17 is amended by revising paragraphs (a) and (b) to read as follows:

§ 240.17 Annual registration.

(a) Aliens granted Temporary Protected Status must register annually with the District Office having jurisdiction over their place of residence. Such registration will apply to nationals of those countries designated or redesignated for more than one year by the Attorney General pursuant to section 244A(b) of the Act. Registration may be accomplished by mailing or submitting in person, depending on the practice in place at the District Office, completed Forms I–821 and I–765 within the thirty (30) day period prior to the anniversary of the grant of Temporary Protected Status (inclusive of such anniversary date). Form I–821 will be filed without fee. Form I–765 will be filed with fee only if the alien is requesting employment authorization. Completing the block on the I–821 attesting to the continued maintenance of the conditions of eligibility will generally preclude the need for supporting documents or evidence. The Service, however, reserves the right to request additional information and/or documentation on a case-by-case basis.

(b) Unless the Service determines otherwise, registration by mail shall suffice to meet the alien's registration requirements. However, as part of the registration process, an alien will generally have to appear in person in order to secure a renewal of employment authorization unless the Service determines that employment authorization will be extended in another fashion due to operational need. The Service may also request that an alien appear in person as part of the registration process. In such cases, failure to appear without good cause shall be deemed a failure to register under this chapter.

* * * * *

§ 240.18 [Amended]

16. Section 240.18 is amended by:

a. Removing in paragraph (a) the reference to "§ 240.10(c)(1)" and adding in its place the reference "§§ 240.3(c) and 240.4";

b. Adding in the fourth sentence of paragraph (a) a period "." after the phrase "subject to withdrawal" and removing, immediately thereafter the word "and" and capitalizing the word "a";

c. Adding in the last sentence of paragraph (a) immediately following the term "exclusion" the phrase "against an alien granted Temporary Protected Status";

d. Adding in the first sentence of paragraph (b) immediately after the term "document" the phrase "by the Service" and by adding in the same sentence immediately after the term "administrative" the phrase "adjudication or"; and

e. Removing in paragraph (d) the phrase "paragraph (a) of this section and whose Temporary Protected Status has been withdrawn" and adding in its place the phrase "§§240.3(c) and 240.4".

§ 240.41 [Amended]

17. Section 240.41 is amended by adding the phrase "not authorized by the Service (e.g., under advance parole)," after the words "Any departure," in the definition of the term *Continuously physically present.*

§ 240.42 [Amended]

18. Section 240.42(a) is amended by removing the phrase "to the satisfaction of the district director,".

§ 240.43 [Amended]

19. Section 240.43(a) is amended by removing the phrase "to the satisfaction of the district director".

20. Section 240.46 is revised to read as follows:

§ 240.46 Travel abroad.

Permission to travel abroad shall be granted under § 240.15 if the alien demonstrates to the satisfaction of the district director that emergency and extenuating circumstances beyond the control of the alien require the departure of the alien for a brief, temporary trip abroad.

21. Section 240.47 is amended by adding the phrase in the first sentence "exclusion or" after the phrase "establishes a date for" and revising paragraph (b) to read as follows:

§ 240.47 Departure at time of termination of designation.

* * * * *

(b) If an alien provided with a charging document under paragraph (a) of this section fails to appear at such exclusion or deportation proceedings, the alien may be ordered excluded or deported in absentia as provided for under section 236 or 242(b) of the Act.

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

21. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1201, 1304; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

22. Section 103.7(b)(1), Form I–104, is amended by revising the second sentence and by adding a third sentence at the end of the paragraph to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

Form I–104. * * * Each application shall be submitted with, for applicants who are nationals of El Salvador, a fee of seventy-five dollars ($75.00); for applicants who are nationals of another state, the fee, not to exceed fifty dollars ($50.00), determined in the Attorney General's designation of such other state. The maximum amount that will be charged a family (husband, wife, and any unmarried children under 21 years of age) applying for Temporary Protected Status as nationals of El Salvador shall be two hundred twenty-five dollars ($225.00).

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

23. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a, and 8 CFR part 2.

24. In section 274a.12, paragraph (a) is amended by adding a concluding sentence after paragraph (a)(12) to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

(a) * * *

Any alien within a class of aliens described in paragraphs (a)(3) through (a)(8), and (a)(10) through (a)(12) of this section, who seeks to be employed in the United States must apply to the Service for a document evidencing such employment authorization.

* * * * *

Dated: May 14, 1991.

Dick Thornburgh,

Attorney General.

[FR Doc. 91–12098 Filed 5–21–91; 8:45 am]

BILLING CODE 4410–10–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 101

Loans to State and Local Development Companies; Delegation of Authority

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: This rule increases the overall project size for which Certified Development Company debenture guarantees may be approved by certain SBA officers. Specifically, this rule increases the field offices' authority to approve projects from $2 million to $3 million, from $1.5 million to $2 million, and from $1 million to $1.5 million, respectively, depending upon the SBA official involved. This change will permit certain projects to be approved at SBA Field Offices, where adequate resources exist to conduct necessary reviews on a timely basis. In order to fully implement this change it is necessary to amend SBA's regulations pertaining to both business loans and development company loans.

EFFECTIVE DATE: May 22, 1991.

FOR FURTHER INFORMATION CONTACT: LeAnn M. Oliver, Deputy Director for Program Development, Office of Economic Development, (202) 205–6485, Small Business Administration, 409–3rd Street, SW., 8th Floor, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Prior to November 15, 1990, Section 502(2) of the Small Business Investment Act limited the amount of loans SBA could make to a local development company under that section to $750,000. Public Law 101–574 raised the limit in certain cases to $1,000,000. Such cases are designed to achieve specific policy goals including business district revitalization, expansion of exports, expansion of minority business development, rural development, enhanced economic competition, changes necessitated by Federal budget cutbacks, and business restructuring arising from Federally mandated standards affecting the environment or working health and safety.

Pursuant to section 503 of the Small Business Investment Act, certified development company debentures provide a percentage of the total project cost, typically the lesser of 40% or the maximum allowable dollar amount (13 CFR 108.503–9(a)(8)).

To meet the above needs it is necessary to amend SBA's regulations in 2 places: (1) Pertaining first to SBA's guaranteed loan authority under section 7(a)(13) of the Small Business Act, and; (2) SBA's development company program authorized under the Small Business Investment Act. The rule promulgated below increases the overall project size for which approval authority is delegated to certain SBA officers in the field from $2,000,000 to $3,000,000, from $1,500,000 to $2,000,000, and from $1,000,000 to $1,500,000 respectively. The share of the project cost funded by the Certified Development Company debenture that is guaranteed by SBA remains unchanged. The changes are being made to better facilitate the approval of development projects through appropriate use of SBA field personnel and resources.

Compliance with Executive Orders 12291 and 12612, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and the Paperwork Reduction Act, 44 U.S.C. Ch. 35.

For purpose of Executive Order 12291, SBA certifies that this rule is not a major rule because it merely defines Agency procedure.

For purpose of the Regulatory Flexibility Act, SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities for the same reason that this is not a major rule.

For purposes of the Paperwork Reduction Act, SBA certified that this rule contains no new recordkeeping or reporting requirements.

For purposes of Executive Order 12612, SBA certifies that this rule does not have federalism implications warranting the preparation of a Federalism Assessment.

SBA is publishing this rule governing agency organization, procedure and practice as a final rule without opportunity for public comment pursuant to 5 U.S.C. 553(b)(3)(A).

List of Subjects in 13 CFR Part 101

Authority delegations (Government agencies), Administrative practice and procedure, Organization and functions (Government agencies).

PART 101—[AMENDED]

Accordingly, part 101 of title 13, chapter 1 of the Code of Federal Regulations is hereby amended as follows:

1. The authority citation for part 101 continues to read as follows:

Authority: Secs. 4 and 5, Public Law 85–536, 72 Stat. 384 and 385 (15 U.S.C. 633 and 634, as amended); sec. 308, Public Law 85–699, 72 Stat. 694 (15 U.S.C. 687, as amended); sec. 5(b)(11), Public Law 93–386 (Aug. 23, 1974); and 5 U.S.C. 552.

2. Section 101.3–2 is amended by revising part I section C, paragraph 2, to read as follows:

§ 101.3–2 Delegation of authority to conduct program activities in field offices.

* * * * *

Section C: Section 7(a)(13) Loans Approval Authority

* * * * *

2. Loans to a Local Development Company (SBI Act): To approve or decline loans to a local development company not exceeding the following amounts (SBA share) for each small business concern being assisted, within the project cost limitations shown below:

Note: Project cost applies to the cumulative SBA assistance to a small business concern and its affiliates and not to the additional assistance on which the action is being taken.

a. Unlimited project cost:	
(1) Regional Administrator	$1,000,000
b. Overall project cost not exceeding $2,500,000:	
(2) ARA/F&I	1,000,000
(3) District Director	1,000,000
(4) Deputy District Director	1,000,000
(5) ADA/F&I	1,000,000
(6) Branch Manager	750,000
(7) Assistant Branch Manager/F&I, Corpus Christi B.O. only	750,000

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c. Overall project cost not exceeding $1,000,000:

(8) Chief, Financing D/O	1,000,000
(9) Financial/Management Assistant Officer, Minneapolis, MN D/O	750,000
(10) Assistant Branch Manager/F&I, Sacramento B.O.	750,000

3. Section 101.3–2 is further amended by revising part III to read as follows:

Part III—Other Financial and Guarantee Programs

Section A—Section 503/504 Debenture Guaranty Approval Authority (Small Business Investment Act)

1. Section 503/504 Certified Development Company Debenture Guaranty Approval Authority (SBA Act.) To approve or decline guarantees of section 503 or section 504 debentures issued by certified development companies not exceeding the following amount (SBA share) for each small business being assisted, within the project cost limitations shown below:

Note: Project cost as used in this part, means the sum of all financial assistance to the small business concern and its affiliates construction project under consideration, not just that portion on which the 503/504 debenture guarantee action is being taken.

a. Unlimited project cost:	
(1) Regional Administrator	$1,000,000
b. Overall project cost not exceeding $3,000,000:	
(2) ARA/F&I	1,000,000
(3) District Director	1,000,000
(4) Deputy District Director	1,000,000
(5) ADA/F&I	1,000,000
(6) Branch Managers	750,000
c. Overall project cost not exceeding $1,500,000:	
(1) Chief, Financing D/O	750,000
(2) Assistant Branch Managers/F&I	600,000

* * * * *

Catalog of Federal Domestic Assistance 59.036 Certified Development Company Loans (503 Loans); 59.041 Certified Development Company Loans (504 Loans).

Dated: April 17, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91–12075 Filed 5–21–91; 8:45 am]

BILLING CODE 8025–01–M

13 CFR Part 101

Administration

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is hereby changing its regulations to reflect the upgrading of the Buffalo office from a branch office to a district office and the Rochester office from a post-of-duty to a branch office. This action is being taken to enhance the SBA's ability to serve the upstate New York area.

EFFECTIVE DATE: This rule is effective June 21, 1991.

FOR FURTHER INFORMATION CONTACT: Doris Bywaters, Chief of Position Classification Branch, (202) 205–6795.

SUPPLEMENTARY INFORMATION: On January 25, 1990, a notice was published in the **Federal Register** upgrading the status of the SBA's Buffalo office from a branch office to a district office and the Rochester office from a post-of-duty to a branch office (55 FR 2570). This action was taken to enhance the SBA's ability to service the upstate New York area. Demand for SBA assistance in the Buffalo/Rochester area has grown as the area's commercial base has developed, and continued economic growth is expected to place greater demand upon SBA program delivery systems in the future. The geographic boundaries for these offices remained unchanged and there was no adverse impact on employees as a result of these changes. The regulations are being revised to reflect these changes.

Due to the fact that this final rule governs matters of agency organization, management and personnel and makes no substantive change to the current regulation, SBA is not required to determine if these changes constitute a major rule for purposes of Executive Order 12291, to determine if they have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to do a Federalism assessment pursuant to Executive Order 12612. Finally, SBA certifies that these changes will not impose an annual recordkeeping or reporting requirement on 10 or more persons under the Paperwork Reduction Act (44 U.S.C. ch. 35).

SBA is publishing this regulation governing agency organization, procedure and practice as a final rule without opportunity for public comment pursuant to 5 U.S.C. 553(b)(3)(A).

List of Subjects in 13 CFR Part 101

Administrative practice and procedure, Authority delegations (Government Agencies), Investigations, Organization and functions (Government Agencies), Reporting and recordkeeping requirements.

For the reasons set out in the preamble, part 101 of title 13, Code of Federal Regulations is amended as follows:

PART 101—ADMINISTRATION

1. The authority citation for part 101 continues to read as follows:

Authority: Secs. 4 and 5, Pub. L. 85–536, 72 Stat. 384 and 385 (15 U.S.C. 633 and 634, as amended); sec. 308, Pub. L. 85–699, 72 Stat. 694 (15 U.S.C. 687, as amended); sec. 5(b)(11), Pub. L. 93–386 (Aug. 23, 1974); and 5 U.S.C. 552.

§ 101.3–1 [Amended]

2. Section 101.3–1(b)(8) is amended by removing from the first sentence the term "branch office" and by adding the term "district office" in lieu thereof.

§ 101.3–1 [Amended]

3. Section 101.3–1(b)(11) is amended by removing from the first sentence the term "post-of-duty" and by adding the term "branch office" in lieu thereof.

Dated: May 2, 1991.

June M. Nichols,

(Acting) Deputy Administrator.

[FR Doc. 91–12076 Filed 5–21–91; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–NM–16–AD; Amendment 39–7010]

Airworthiness Directives; British Aerospace Viscount Model 810 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Viscount Model 810 series airplanes, which requires a one-time X-ray inspection to detect incorrectly machined door operating torque shaft coupling sleeves, and replacement, if necessary. This amendment is prompted by a report of the rear passenger entrance door upper locking claws failing to operate due to the complete fracture of the door operating torque shaft coupling sleeve plug end. This condition, if not corrected, could result in in-flight separation of an entrance or emergency door from the airplane and subsequent decompression of the passenger cabin.

EFFECTIVE DATE: July 1, 1991.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM–113; telephone (206) 227–2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to all British Aerospace Viscount Model 810 series airplanes, which requires a one-time X-ray inspection to detect incorrectly machined door operating torque shaft coupling sleeves, and replacement, if necessary, was published in the **Federal Register** on February 20, 1991 (56 FR 6818).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

Paragraph C. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternative methods of compliance.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator, nor increase the scope of the AD.

It is estimated that one airplane of U.S. registry will be affected by this AD, that it will take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $330.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91–11–12. British Aerospace: Amendment 39–7010. Docket No. 91–NM–16–AD.

Applicability: All Viscount Model 810 series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent in-flight separation of an entrance or emergency door from the airplane and subsequent decompression of the passenger cabin, accomplish the following:

A. Within 90 days after the effective date of this AD, perform a nondestructive testing (NDT) X-ray inspection of the forward passenger door, and of the rear entrance and rear emergency doors, for incorrectly machined door operating torque shaft coupling sleeves, in accordance with Viscount Preliminary Technical Leaflet (PTL) No. 194, Revision 1, dated December 1989.

B. If incorrectly machined door operating torque shaft coupling sleeves are found, prior to further flight, replace the sleeves with correctly machined serviceable parts in accordance with Viscount PTL No. 194, Revision 1, dated December 1989.

C. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment (39–7010, AD 91–11–12) becomes effective July 1, 1991.

Issued in Renton, Washington, on May 14, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–12090 Filed 5–21–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 90–NM–249–AD; Amendment 39–7008]

Airworthiness Directives; McDonnell Douglas Model DC–9–15F, –32F, –33F, and –34F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9 series airplanes, which requires a revision to the FAA-approved Airplane Flight Manual (AFM) to include a "Cargo Door Opens During Flight" procedure. This amendment is prompted by an incident in which the main cargo door inadvertently opened on takeoff. This condition, if not corrected, could result in loss of pressurization and controllability of the airplane.

EFFECTIVE DATE: July 1, 1991.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855

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Lakewood Boulevard, Long Beach, California 90846, Attention: Business Unit Manager, Technical Publications, C1-HCW (34-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Webre or Mr. Dick Edwards, Flight Test Branch, ANM-160L, FAA, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5373.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulation to include a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC-9 series airplanes, which requires a revision to the FAA-approved airplane flight manual (AFM) to include a "Cargo Door Opens During Flight" procedure, was published in the **Federal Register** on January 22, 1991 (56 FR 2148).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters were opposed to the requirement to retract the landing gear after takeoff when the cargo door opens. They contend that no flight test results/analyses have been conducted to support this procedure and that further disruption of airflow around the aircraft by changing gear configuration after takeoff is unnecessary. The FAA disagrees. While there is no flight test data available, interviews with several flight crews who experienced cargo door openings indicate that no increase in pilot workload was encountered when the gear was raised after takeoff. The requirement to raise the gear, however, does follow the natural reaction of the flight crew after takeoff. Reduced drag with the gear up provides better performance due to a cleaner configuration. Aircraft sideslip due to the open cargo door adds additional drag due to the sideloads on the gear/gear doors. Debris, resulting from the cargo door opening, could be ingested into the engine, further complicating the departure profile. The FAA does agree that after the takeoff profile is completed, however, no further configuration changes should be made until the aircraft is established on final approach; the final rule has been revised to clarify this procedure.

One commenter suggested a maximum bank angle of 10 degrees, rather than the proposed 20 degrees, for maneuvering the airplane after the cargo door opens. The FAA disagrees and considers that a 10 degree bank angle limit may be too conservative. The FAA has determined that, while turns to the left are more desirable than turns to the right, the maximum bank angles should be limited to 20 degrees. This limit provides added maneuvering capability, without allowing hazardous flight maneuvers.

One commenter suggested inserting a note in the proposed procedure that would inform the crew that loss of communications may result due to the full open position of the cargo door striking the upper VHF antenna. The FAA concurs and has revised the final rule to add an appropriate note in the procedures.

One commenter requested that the rule include additional procedures to be followed if a cargo door opens during climb, cruise, descent, and approach. The FAA agrees that, in order to address the actions necessary for the flight crew to follow during any flight regime, the addition of such procedures is appropriate. The final rule has been revised to include procedures for these scenarios. Additionally, the entire AFM revision has been formatted under the title of "Cargo Door Opens During Flight."

One commenter suggested that the procedure after takeoff state that the flaps must remain in the "takeoff position" until final approach, instead of specifying a certain position, since each operator uses various flap settings depending on the dispatch requirements. The FAA concurs and has changed the final rule format from requiring a specific takeoff flap setting to requiring takeoff flaps.

Paragraph B. of the final rule has been revised to specify the current procedures for submitting requests for approval of alternative methods of compliance.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase the rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 95 Model DC-9 series airplanes of the affected design in the worldwide fleet. It is estimated that 65 airplanes of U.S. registry will be affected by this AD, that it will take approximately one (1) manhour per airplane to accomplish the required AFM revision, and that the average labor cost will be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,575.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-11-16. McDonnell Douglas: Amendment 39-7008. Docket 90-NM-249-AD.

Applicability: Model DC-9-15F, -32F, -33F, and -34F series airplanes, certified in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent loss of control following the opening of the main deck cargo door, accomplish the following:

A. Within 30 days after the effective date of this AD, add the following procedure to the FAA-approved Airplane Flight Manual (AFM) Emergency Procedures. This may be accomplished by inserting a copy of this AD in the AFM.

CARGO DOOR OPENS DURING FLIGHT

	Series 15F	Series 32F, 33F, 34F
Main Cargo Door Opens After Takeoff:		
Directional Control	Maintain	Maintain.
Landing Gear	Up	Up.
Flaps	Takeoff	
Flaps/Slats		Takeoff.
Land as soon as practical.		

NOTE: The airplane yaw to the right may require almost full left rudder and aileron inputs to correct. Left turns may be more controllable than right turns. Return to the runway should be accomplished with coordinated turns using very little bank (less than 20 degrees), and with speed appropriate to the flap/slat position. Loss of communications may result if the cargo door strikes the upper VHF antenna (try another radio). Do not change configuration until final up for straight-in landing.

Main Cargo Door Opens During Climb, Cruise, Descent, or Approach:		
Directional control	Maintain	Maintain.
Rapid decompression/emergency descent.	Accomplish (if required).	Accomplish (if required).

NOTE: Do not exceed recommended structural damage airspeed during descent.

After level-off, slow to minimum maneuvering speed.

Land as soon as practical. Accomplish "on final approach" items.

Main Cargo Door Opens on Final Approach:		
Landing Gear	Down	Down.
Flaps	30°	
Flaps/Slats		25°/Ext.
IAS	Establish*	Establish*.

*Reduce to normal approach speed using normal wind additives.

NOTE: There may be indicated airspeed and altitude variations due to disturbed airflow across the static ports.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Operations Inspector who may concur or comment and then sent it to the Manager, Los Angeles ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Business Unit Manager, Technical Publications, C1-HCW (34-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment (39-7008, AD 91-11-10) becomes effective July 1, 1991.

Issued in Renton, Washington, on May 14, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-12089 Filed 5-21-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-11-AD; Amendment 39-7009]

Airworthiness Directives; Short Brothers, PLC, Model SD3-60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Short Brothers, PLC, Model SD3-60 series airplanes, which requires shortening the existing ground/air lever spool spindle in the engine power controls to allow the ground/air lever to reset at a lower power lever setting. This amendment is prompted by reports which indicated that, in certain conditions, it is possible to achieve take-off power prior to the ground/air lever resetting. This condition, if not corrected, could result in the pilot inadvertently selecting propeller pitch settings below the flight idle setting while in flight, thereby adversely affecting airplane controllability.

EFFECTIVE DATE: July 1, 1991.

ADDRESSES: The applicable service information may be obtained from Short Brothers, PLC, 2011 Crystal Drive, suite 713, Arlington, Virginia 22202-3719. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Short Brothers, PLC, Model SD3-60 series airplanes, which requires shortening the existing ground/air lever spool spindle in the engine power controls to allow the ground/air lever to reset at a lower power lever setting, was published in the **Federal Register** on February 25, 1991 (56 FR 7615).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

Paragraph B. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternative methods of compliance.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator, nor increase the scope of the AD.

It is estimated that 86 airplanes of U.S. registry will be affected by this AD, that it will take approximately 13 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. The estimated cost for required parts is negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $61,490.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

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responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-11-11. Short Brothers: Amendment 39-7009. Docket No. 91-NM-11-AD.

Applicability: Model SD3-60 series airplanes, equipped with PT6A-67R engines with Fuel Control Unit (FCU), Part Number (P/N) 3037319, certificated in any category.

Compliance: Required within 30 days after the effective date of this AD, unless previously accomplished.

To prevent the pilot from inadvertently selecting propeller pitch settings below the flight idle setting while in flight, thereby adversely affecting airplane controllability, accomplish the following:

A. Shorten the existing ground/air lever spool spindle P/N SD3-47-1130xA, in accordance with Shorts Service Bulletin SD360-76-11, dated October 1990.

Note: This service bulletin references Pratt and Whitney Service Bulletin No. 14017, Revision 1, dated August 16, 1989, for additional instructions.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Short Brothers, PLC, 2011 Crystal Drive, suite 713, Arlington, Virginia 22202-3719. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment (39-7009, AD 91-11-11) becomes effective July 1, 1991.

Issued in Renton, Washington, on May 14, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-12091 Filed 5-21-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 90-AWP-9]

Alteration of VOR Federal Airways V-208 and V-442; CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of Federal Airways V-208 and V-442 located in the State of California. This amendment will delete the airspace exclusion within the Turtle Military Operations Area (MOA). This action will increase the amount of navigable airspace available when the Turtle MOA is inactive. This action will improve traffic flow in this area while reducing the flying time of overflights and reducing controller workload.

EFFECTIVE DATE: 0901 u.t.c., July 25, 1991.

FOR FURTHER INFORMATION CONTACT: Alton D. Scott, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

History

On December 14, 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the descriptions of VOR Federal Airways V-208 and V-442 (55 FR 51431). This amendment will delete the airspace exclusion within the Turtle MOA. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes this amendment is the same as that proposed in the notice. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the descriptions of V-208 and V-442 located in the State of California. This amendment will delete the airspace exclusion within the Turtle MOA. During periods when the Turtle MOA is inactive, this route is virtually unusable and requires the issuance of preferential routes by controllers, which adds a substantial number of miles to the routes of aircraft overflying this area, thus increasing controller workload. The adjustment of this route is designed to alleviate congestion and compression of air traffic and to establish optimum use of the airspace.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V-208 [Amended]

By removing the words "excluding the airspace above 10,000 feet MSL between Twentynine Palms and Needles"

V-442 [Amended]

By removing the words "The airspace above 10,000 feet MSL between Parker and a point 45 miles northwest is excluded."

Issued in Washington, DC, on May 8, 1991.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 91-12088 Filed 5-21-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 630

[Docket No. 88N-0027]

Additional Standards for Viral Vaccines; Poliovirus Vaccine Live Oral

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing a suspension of the effective date on portions of its regulations governing the manufacture of Poliovirus Vaccine Live Oral (56 FR 21418, May 8, 1991). For most of the new provisions of the amended regulations published on May 8, 1991, the immediate effective date is suspended; those regulations are effective June 21, 1991.

DATES: Sections 630.13(a) and 630.19(f) (21 CFR 630.13(a) and 630.19(f)) were effective May 8, 1991. The effective date on all other new provisions appearing in the final rule of May 8, 1991 is suspended May 22, 1991; those regulations are effective June 21, 1991. Additional written comments by July 8, 1991.

ADDRESSES: Written comments on the final rules may be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Steven F. Falter, Center for Biologics Evaluation and Research (HFB-130), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-295-8188.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 8, 1991 (56 FR 21418), FDA published a final rule amending the regulations governing the manufacture of oral poliovirus vaccine. The amended regulations were issued with an immediate effective date under the provisions of 5 U.S.C. 553(d) and 21 CFR 10.40(c)(4), which provide for exceptions to the ordinary 30-day delayed effective date for good cause. The Commissioner of Food and Drugs found good cause for an immediate effective date because of the important public health interest in being certain that it is clear that the current vaccine supply meets the requirements of the regulations.

Concerns about the legality of the vaccine had been raised by a recent judicial decision involving certain provisions of the oral poliovirus vaccine regulations. Upon further review, it appears that a waiver of the 30-day delayed effective date is essential only with respect to new §§ 630.13(a) and 630.19(f). Therefore, the Commissioner is reaffirming the finding of good cause for an immediate effective date for §§ 630.13(a) and 630.19(f). It is very important that there be no question about the legality of the current supply of vaccine, which is critically important for the protection of the public health. The current vaccine supply in the United States consists of safe and effective vaccine. In order to be certain that it is clear that existing vaccine meets the requirements of the regulations, §§ 630.13(a) and 630.19(f) were effective on May 8, 1991.

The effective date on all other new provisions appearing in the final rule published on May 8, 1991 is suspended May 22, 1991; those regulations are effective June 21, 1991. The date by which additional written comments on the final rule published on May 8, 1991, may be submitted to the Dockets Management Branch (address above) remains July 8, 1991.

Dated: May 10, 1991.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 91-11946 Filed 5-21-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

Maryland Regulatory Program; Public Notice; Permitting; Fish and Wildlife; Inspection and Enforcement

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendments.

SUMMARY: OSM is announcing the approval, with one exception, of proposed amendments to the Maryland regulatory program (hereinafter referred to as the Maryland program) approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed changes revise certain definitions; revise certain permit application and review procedures; require the identification in the permit application of cultural and historic resources eligible for listing on the National Register of Historic Places; provide procedures for lands unsuitable petitions; require certain fish and wildlife protection measures; require that the Maryland Bureau of Mines (MDBOM) conduct partial inspections of inactive mines; provide public participation procedures for those adversely affected by surface mining operations; and finally, revise the procedures for enforcement conferences. The amendments are intended to revise the Maryland program to be consistent with the corresponding Federal requirements.

EFFECTIVE DATE: May 22, 1991.

FOR FURTHER INFORMATION CONTACT: James C. Blankenship, Jr., Director, Charleston Field Office, OSM, 603 Morris Street, Charleston, WV 25301; Telephone: (304) 347-7158.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program.
II. Submission of Amendments.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Maryland Program

On February 16, 1982, the Secretary of Interior approved the Maryland program. Information regarding general background on the Maryland program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Maryland program can

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be found in the February 18, 1982, **Federal Register** (47 FR 7214). Actions taken subsequent to the approval of the Maryland program are identified at 30 CFR 920.12, 30 CFR 920.15 and 30 CFR 920.16.

II. Submission of Amendments

By letter dated July 8, 1988, OSM sent to Maryland a list of deficiencies OSM had determined to be less effective than the Federal requirements for surface mining and reclamation operations (Administrative Number MD–351). After informal discussions with OSM on June 20, 1988, and December 27, 1988, the Maryland Department of Natural Resources, Bureau of Mines (MDBOM) submitted on March 27, 1989, proposed amendments to Maryland's approved program (Administrative Record Number MD–362).

The program amendments modify the following rules in the Code of Maryland Administrative Regulations (COMAR): 08.13.09.01, 08.13.09.02, 08.13.09.04, 08.13.09.05, 08.13.09.06, 08.13.09.10, 08.13.09.11, 08.13.09.26, and 08.13.09.40.

OSM announced receipt of the proposed amendments in the September 22, 1989, **Federal Register** (54 FR 39003), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendments. The comment period closed on October 23, 1989.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.17, are the Director's findings concerning the proposed amendments submitted on March 27, 1989. Any revisions not specifically discussed below are found to be no less stringent than SMCRA and no less effective than the Federal regulations. Revisions that are not discussed below contain language similar to the corresponding Federal rules, concern nonsubstantive wording changes, or revise cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

1. COMAR 08.13.09.01 General—Definitions

At paragraph B(22), Maryland proposes to revise the definition of "cumulative impact area" to mean the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and ground-water systems. Anticipated mining includes the entire projected lives through bond releases of: (a) the proposed operation, (b) existing operations, (c) any operation for which a permit application has been submitted, and (d) all operations for leased Federal coal. Since the proposed definition is identical to the Federal definition at 30 CFR 701.5, the Director finds it no less effective than the Federal rule.

2. COMAR 08.13.09.02 Permit Applications: General Requirements

(a) *Technical Analyses.* At paragraph D, Maryland is adding the requirement that technical analyses included in the mining permit application be planned by or under the direction of a professional qualified in the subject to be analyzed. As the proposed State amendment is identical to the Federal provision at 30 CFR 777.13(b), the Director finds it no less effective that its Federal counterpart.

(b) *Violation Information.* Maryland is revising paragraph I(11) to require that a mining permit application include each violation notice received by any subsidiary, affiliate, or persons controlled by or under common control with the applicant. Maryland submitted this change to correct a deficiency noted in OSM's letter of July 8, 1988. However, the Federal regulations on ownership and control at 30 CFR 778.14(c) were revised in 1989 and the requirement to list violation notices received by any subsidiary, affiliate, or persons controlled by or under the common control with the applicant was deleted (54 FR 8985, March 2, 1989). Maryland's proposed change does not degrade the effectiveness of the Maryland program. The Director finds the revised State rule no less effective than the corresponding Federal rule.

Maryland is also revising paragraph I(11) to require that the permit application contain violation information relating to administrative or judicial proceedings, the current status of any proceedings and of the notice, and actions taken to abate the violation. This change renders the State rule substantively identical to the corresponding Federal rule at 30 CFR 778.14(c) (3), (4) and (5). Therefore, the Director finds the revised State rule no less effective than the Federal rule.

(c) *Environmental Resource Description.* Maryland is revising paragraph K(2)(b) to require that the nature of cultural and historic resources eligible for listing on the National Register of Historic Places and known archeological features be described in the permit application. At paragraph K(1), which is not being amended, Maryland specifies that the description include those resources located within the proposed mine plan area and adjacent areas. The Federal rule at 30 CFR 779.12(b)(1) specifies that certain cultural and historic and archeological resources located within the proposed permit and adjacent areas be described. The Director finds that the revisions to paragraph K(2)(b) when read with paragraph K(1) render the revised State rule no less effective than its Federal counterpart.

Maryland is revising paragraph K(2)(l) to require that certain fish and wildlife resource information for the permit and adjacent area be described in the permit application. Site-specific resource information will be required when the permit or adjacent area is likely to contain: (a) listed or proposed endangered or threatened species of plants or animals listed under the Endangered Species Act of 1973, as amended; (b) eagles, migratory birds and other species identified as requiring special protection; and (c) habitats of unusually high value for fish and wildlife. As the revised State rule is substantively identical to the Federal rule at 30 CFR 780.16(a) (1) and (2), the Director finds it no less effective than its Federal counterpart.

(d) *Maps.* Maryland is revising paragraph L(1) to require that a permit application include at least one topographic quadrangle map scaled 500 feet to the inch which covers the permit area and identifies certain features. The Federal requirement at 30 CFR 777.14(a) specifies a topographic map of the permit area enlarged to a scale of 6,000 feet to the inch or larger. The Director finds the revised State rule no less effective than its Federal counterpart.

Maryland is revising paragraph L(1)(l) to require that the boundaries of any public park, forest or wildlife management area, and locations of any cultural or historic resources eligible for listing in the National Register of Historic Places be included in the permit map. As the revised State rule is substantively identical to the Federal rule at 30 CFR 779.24(i), the Director finds it no less effective than its Federal counterpart.

(e) *Pre-Application Investigation.* Maryland is revising paragraph N(1) to require that the permit applicant conduct a pre-application reconnaissance inspection of the proposed permit in accordance with COMAR section .03D to determine if prime farmland exists. As the revised State rule is substantively identical to the Federal rule at 30 CFR 785.17(b), the Director finds it no less effective than its Federal counterpart.

(f) *Description of Mining Operations.* Maryland is revising paragraph O(8) to require that the permit application

include a protection and enhancement plan for fish, wildlife and related environmental values. As the revised State rule is substantively identical to the Federal rule at 30 CFR 780.16(b), the Director finds it no less effective than its Federal counterpart.

3. COMAR 08.13.09.04 Permit Applications: Review Procedures

(a) *Submission of Application.* Maryland is revising paragraph A(2) to require that the permit applicant submit to the State a copy of the application for the National Pollutant Discharge Elimination System (NPDES) permit and any other required permits. Neither the Federal rule at 30 CFR 780.21 governing the hydrologic information to be included in a permit application nor section 507 of SMCRA makes this requirement. The Director finds the revised State rule to be not inconsistent with the requirements of SMCRA and the Federal regulations.

(b) *Initial Review.* Maryland is revising paragraph B(3) to require that the State properly notify the applicant and certain governmental agencies of receipt of an administratively complete application. The State is also required to issue by public newspaper notice of the opportunity to submit comments, objections, or request a hearing. The Federal rule at 30 CFR 773.13(a)(3) requires that upon receipt of an administratively complete application, the regulatory authority only has to properly notify certain governmental agencies. Maryland is also revising paragraph B(4) to require that the regulatory authority include in the public newspaper notice a notice to the governmental agencies of certain additional information beyond that required by 30 CFR 773.13(a)(3). On this basis, the Director finds the revised State rule no less effective than the Federal rule.

(c) *Newspaper Advertisement.* Maryland is revising paragraph C(2)(e) to require that in the newspaper advertisement, a permit applicant state that a hearing on the permit application may be requested. The current State rule provides for a public hearing on every application. As the revised State rule is substantively identical to the Federal rule at 30 CFR 773.13(a)(1)(iv), the Director finds it no less effective than its Federal counterpart.

(d) *Public Availability of Permit Applications.* Maryland is adding paragraph D(3) to provide for the submission of confidential information by the applicant and to specify the types of information that may be considered confidential. As the proposed State rule is substantively identical to the Federal rule at 30 CFR 773.13(d)(3), the Director finds it no less effective than its Federal counterpart.

(e) *Public Participation.* Maryland is revising paragraphs E (1) and (2) to clarify that the State receive, consider and process written requests for a hearing on permit applications in the same manner as written comments and objections. The revised State rule is substantively identical to the Federal rule at 30 CFR 773.13(c)(1)(iii) with respect to filing requirements. However, the Federal rule at 30 CFR 773.13(b)(3) does not require that requests for a hearing be subject to the same notification provisions as comments and objections. The Director finds the proposed State rule consistent with the corresponding Federal rules.

(f) *Inspections.* Maryland is revising paragraph F(1) to provide that any person who files a written request for a hearing may include a request for an on-site inspection. The provision authorizing any person who files a written comment or objection to request an inspection is deleted. As the proposed State rule is substantively identical to the Federal rule at 30 CFR 773.13(c)(2)(iii), the Director finds it no less effective than its Federal counterpart.

(g) *Review of Permit Applications.* Maryland is revising paragraph G(2) to clarify that the applicant for a permit or permit revision has the burden of establishing that his application complies with all requirements of the regulatory program. As the proposed State rule is identical to the Federal rule at 30 CFR 773.15(a)(2), the Director finds it no less effective than its Federal counterpart.

Maryland is revising paragraph G(4) to require that, if the State determines that the permit may be available under the regulatory program, it forward copies of the application to the agency responsible for issuing the NPDES permit, the Soil Conservation District, and the public representative members of the Land Reclamation Committee (LRC). The Federal rules do not have a comparable automatic forwarding provision for sending copies of permit applications to specific parties. At 30 CFR 773.13(a)(3), the Federal regulations require only that the regulatory authority issue written notification of a permit applicant's intention to mine to certain governmental agencies. This notification is already provided for in the Maryland program by paragraph B(3)(d). The Director finds the revised State rule no less effective than the Federal rules at 30 CFR 773.13.

Maryland is adding paragraph G(5) to require that the State schedule a site visit to the proposed permit area for the LRC during the permit review period. Before the site visit, the permit applicant is required to stake or flag the areas to be affected by the proposed mining operation. This visitation provision is in addition to the on-site inspection provision of paragraph F(1) discussed above. The permit application review provisions at 30 CFR 773.15 do not require the regulatory authority to visit the proposed permit areas. The Director finds that the State rule is not consistent with the provisions of 30 CFR 773.15.

(h) *Public Hearing.* Maryland is revising paragraph H(1) to require that the State schedule a joint hearing with the LRC if a request for a public hearing is received. The Federal rules at 30 CFR 773.13(c) pertaining to informal conferences do not contain this provision. The Director finds that the State rule is not inconsistent with the provisions of 30 CFR 773.13(c).

Maryland is revising paragraph H(2) to require that the State provide notice of a public hearing by: (a) notifying the applicant and any person who requested a hearing of the date, time and place of the hearing, and (b) publishing the date, time and location of the hearing in a newspaper of general circulation in the area of the proposed operation and in the "Maryland Register" subject to certain conditions and timeframes. As the proposed State rule is substantively identical to the Federal regulation at 30 CFR 773.13(c)(2)(ii), the Director finds it no less effective than its Federal counterpart.

Maryland is revising paragraph H(5) to authorize any party to a hearing to obtain, at his or her expense, a verbatim transcript of the proceeding. The Federal rule at 30 CFR 773.13(c)(2)(iv) provides that the record of a hearing shall be accessible to the parties of the conference. The Director finds the proposed State rule no less effective than its Federal counterpart.

(i) *Land Reclamation Committee.* Maryland is revising paragraph I(1) to permit the LRC to vote on a reclamation plan at a committee meeting.

The term "deny" is replaced with "reject" in describing the LRC's disapproval of a reclamation plan. The Federal rules at 30 CFR 773.15(c)(2) pertaining to permit application review neither contain counterparts nor conflict with these provisions. The Director finds that the revised State rule is not inconsistent with the provisions of 30 CFR 773.15(c)(2).

Maryland is revising paragraph I(2) to require that if a reclamation plan is rejected, the State transmit the reasons to the applicant including a statement

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that the plan may be revised and resubmitted. While the Federal regulations at 30 CFR 773.19 (a) and (b) pertaining to notification procedures require that the regulatory authority notify the applicant of the specific reasons a permit application is disapproved, there is no specific notification requirement for the disapproval of reclamation plans. The Director finds that the revised State rule not inconsistent with the general permit issuance provisions of the Federal regulations.

(j) *Decision.* Maryland is revising paragraph J(1) to require the State to complete its review of a permit application within 10 days of the LRC's decision on a reclamation plan. The revised State rule neither has a direct counterpart nor conflicts with the Federal rules at 30 CFR 773.15 pertaining to permit review. Therefore, the Director finds the revised State rule is not inconsistent with the provisions of 30 CFR 773.15.

(k) *Permit Approval.* Maryland is revising paragraph K(1) to require the State to notify an applicant in writing, by certified mail, of its decision to approve the permit application. The notice shall include certain required findings and specify a time limit within which the applicant must submit evidence of approval for applicable permits and licenses. The Federal rule at 30 CFR 772.19(b) requires only that the regulatory authority notify the applicant, in writing, if its decision. The Director finds that the additional specificity provided in the State rule is not inconsistent with the general notice provisions of the above cited Federal regulations.

Maryland is revising paragraph K(2) to require that the State send notice of its approval of the permit to any person who filed a written comment or objection or was a party to a hearing on a permit application. The notice must contain the terms and conditions of requesting an adjudicatory hearing. The parties for whom notice is required are identical to those prescribed by the Federal rule at 30 CFR 773.19(b)(1). The Federal rule does not require that the regulatory authority include in the notice a provision for requesting an adjudicatory hearing. However, at 30 CFR 775.11(a), any person with an interest which is or may be adversely affected may request a hearing on the reasons for the decision. Therefore, the Director finds that the revised State rule is no less effective than its Federal counterparts.

Maryland is revising paragraph K(4) to require that the State notify OSM within 10 days of permit issuance that a permit has been issued. The Federal rule at 30 CFR 773.19(b)(3) requires that the local OSM office be notified but does not specify a timeframe. The Director finds that the revised State rule is no less effective than its Federal counterpart.

(l) *Permit Denial.* Maryland is revising paragraph L(2) to require that the State notify certain parties within 10 days of its decision that a permit has been denied. The revised State rule is substantively identical to the Federal rule at 30 CFR 773.19(b) (1), (2) and (3). The Federal rule, however, applies the 10 day timeframe only to the notification of local governmental officials. No timeframe is specified with regard to notification of the other parties. The Director finds the revised State rule to be no less effective than its Federal counterpart.

4. COMAR 08.13.09.05 Permit Applications: Bureau Decision

(a) *Written Findings.* Maryland is revising paragraph A to specify that a permit not be approved unless the State makes certain findings. The revised findings include: (a) That the assessment of the probable cumulative impacts of coal mining in the cumulative impact area on the hydrological balance be made, and that the operations have been designed to prevent damage to the hydrologic balance outside the permit area; (b) that the applicant has demonstrated that any existing structure will comply with the requirements of COMAR regulation .20; (c) that the applicant has satisfied the applicable requirements of COMAR regulation .03 with respect to prime farmland; and (d) that the applicant has satisfied the applicable requirements for approval of long-term agricultural postmining land use in accordance with COMAR regulation .35A(4). The Director finds that, as the revised State rule is substantively identical to the Federal rule at 30 CFR 773.15(c) (5), (6), (8), and (9), it is no less effective than these Federal counterparts.

(b) *Permit Conditions.* Maryland is adding paragraphs D (9) and (10) to require that permits contain the following terms: (9) The permittee shall pay all reclamation fees as required by OSM, and (10) the permittee shall pay all fees and reclamation surcharges as required by Maryland's Natural Resources Article. The Federal rule at 30 CFR 773.17(g) includes, as a permit condition, that the operator shall pay the Federal reclamation fee. The Director finds paragraph D(9) to be no less effective than the Federal rule in prescribing, as a permit condition, the payment of the Federal reclamation fee. This paragraph is, however, not interpreted by OSM as in any way limiting the persons liable for payment of reclamation fees under 30 CFR part 870 *et seq.* Paragraph D(10) has no Federal counterpart and is found to be not inconsistent with the previously cited Federal regulations.

5. COMAR 08.13.09.08 Permit Review and Transfer of Permit Rights.

(a) *Permit Renewals.* Maryland is adding paragraph C(5)(d) to authorize the State to issue a permit renewal unless it finds in writing that the operator has not provided evidence of having liability insurance as required by COMAR regulation .16. As the revised State rule is substantively identical to the Federal rule at 30 CFR 774.15(c)(iv), the Director finds it no less effective than its Federal counterpart.

(b) *Transfer, Assignment or Sale of Permit Rights.* Maryland is adding paragraph D(1)(b)(iii) to require that an application for approval of the proposed transfer, assignment or sale of permit rights include a brief description of the proposed action requiring the State's approval. As the revised State rule is identical to the Federal rule at 30 CFR 774.17(b)(1)(ii), the Director finds it no less effective than its Federal counterpart.

Maryland is adding paragraph D(4)(a) to authorize the State to grant written approval for the transfer, assignment or sale of rights if it finds in writing that the applicant is eligible to receive a permit in accordance with COMAR regulations .04L (2) and (3), and .05A. As the revised State rule is substantively identical to the Federal rule at 30 CFR 774.17(d)(1), the Director finds it no less effective than its Federal counterpart.

Maryland is adding paragraph D(6) to require that the State notify the transferor, transferee, commentors and OSM of its findings and decision concerning a proposed transfer, assignment or sale of permit rights. As the revised State rule is substantively identical to the Federal rule at 30 CFR 774.17(e)(1), the Director finds it no less effective than its Federal counterpart.

Maryland is adding paragraph D(7) to require that the transferee immediately notify the State of the consummation of the assignment or sale of permit rights. The Federal rule at 30 CFR 774.17(e)(2) also requires that the successor notify the State of the consummation of the transfer of permit rights. In a letter dated November 21, 1990, Maryland clarified its procedures for assumption of a permit by transfer, sale, or assignment of permit rights (Administrative Record Number MD-483). Upon completion of its review of an application for transfer of permit rights, the State notifies the applicant of its decision. If the transfer is approved, the applicant is sent a transfer permit which must be signed by the applicant and returned to the State with the proper bond. The State signs the permit and the transfer permit is issued, thereby completing the transfer, sale, or assignment of permit rights. Because the transfer of the permit is consummated at the time the State issues the permit, no further notification is required. Therefore, the Director finds the revised State rule to be no less effective than the corresponding Federal rule.

6. COMAR 08.13.09.10 Areas Where Mining Is Prohibited or Limited

(a) *Definitions.* Maryland is revising paragraph A(4) to define "public building" as any structure that is owned or leased by a governmental agency and used principally for public business, meetings, or other group gatherings. As the revised definition is substantively identical to the Federal definition at 30 CFR 761.5, the Director finds it no less effective than its Federal counterpart.

(b) *Determination of Limits.* Maryland is revising paragraph C(2) to require that if the proposed operation is to be located on any lands where surface coal mining is prohibited, the State reject the application if the applicant has no valid existing rights for the area, or if the operation did not exist on August 3, 1977. As the revised State rule is substantively identical to the Federal rule at 30 CFR 761.12(b)(1), the Director finds it no less effective than its Federal counterpart.

Maryland is revising paragraph C(3) to require that, if the State is unable to determine whether the proposed operation is located on any lands where mining is prohibited, it request assistance from the appropriate governmental agency and notify that agency that it has 30 days to respond. Upon request, an additional 30 day extension may be granted. If no response is received, the State may make the necessary determination based upon available information. As the revised State rule is substantively identical to the Federal rule at 30 CFR 761.12(b)(2), the Director finds it no less effective than its Federal counterpart.

Maryland is revising paragraph C(4)(c) to require that for those mining operations to be conducted within 100 feet from the outside right-of-way line of any public road, the State make a written finding within 30 days after a public hearing or after any public comment period ends, if no hearing is held, as to whether the public and affected landowners will be protected from the proposed operation. Further, no mining will be allowed within 10 feet of the outside right-of-way line of a public road, nor will a public road be relocated or closed unless the State determines that the interests of the public and affected landowners will be protected. As the revised State rule is substantively identical to the Federal rule at 30 CFR 761.12(d)(4), the Director finds it no less effective than its Federal counterpart.

Maryland is revising paragraph C(5) to require that if the proposed mining operation is to be conducted within 300 feet from any occupied dwelling, the permit applicant submit with his application a written waiver from the owner of the dwelling stating that the owner and the signator had a legal right to deny mining and knowingly waived that right. Further, a subsequent purchaser is deemed to have record knowledge if the waiver has been properly filed or if the mining has proceeded to within the 300 feet limit prior to the date of purchase. As the revised State rule is substantively identical to the Federal rules at 30 CFR 761.12(e)(1) and (e)(3)(ii), the Director finds it no less effective than its Federal counterparts.

Maryland is revising paragraph C(7) to require that if the State determines that the proposed mining operation will adversely affect any public park or any publicly owned places included on the National Register of Historic Places, it transmit to the appropriate governmental agencies a copy of the applicable parts of the permit application with a request for the agency's approval or disapproval of the operation. The State must also notify the agency that it has 30 days to respond with a 30 day extension possible. Failure to respond will constitute approval of the permit. As the revised State rule is substantively identical to the Federal rule at 30 CFR 761.12(f)(1), the Director finds it no less effective than its Federal counterpart.

7. COMAR 08.13.09.11 Areas Unsuitable for Mining

(a) *Right to Petition.* Maryland is revising paragraph B to provide any person having an interest which is or might be adversely affected by a proposed mining operation the right to petition the State to have an area designated as unsuitable for surface coal mining operations, or to have an existing designation terminated. The petitioner must demonstrate how he or she meets an "injury in fact" test. As the revised State rule is substantively identical to the corresponding rule at 30 CFR 764.13(a), the Director finds it no less effective than its Federal counterpart.

(b) *Petition Information.* Maryland is revising paragraph C to authorize the State to determine what information must be provided by the petitioner to have an area designated as unsuitable for mining, or to terminate an existing designation. A petition for designation must include certain identifying information, a description of the potential adverse effects of the proposed operation, allegations of fact, and other supplementary information as required by the State. A petition for termination shall include certain identifying information, allegations of fact, and other supplementary information as required by the State. The revised State rule is substantively identical to the Federal rules at 30 CFR 764.13(b)(1) with respect to petitions for designation, 30 CFR 764.13(b)(2) with respect to allowing the Bureau to request the petitioner to provide other supplementary information which is readily available, and 30 CFR 764.13(c)(1) with respect to petitions for termination except that the State rule does not detail the bases upon which a designation might be terminated listed at (c)(1)(iv)(A)–(C). The revised State rule does, however, contain the general requirement also found at (c)(1)(iv) that the petition include specific allegations and supporting evidence as to the basis for which the designation was made which tend to establish that the designation should be terminated. On the understanding that the bases for terminating a designation would have to correspond to and directly negate the specific bases for which the original designation was made, the Director finds the revised State rule no less effective than the Federal rules.

(c) *Petition Processing Procedures.* Maryland is revising paragraph G(1) to allow the State 60 days from receipt of a petition to notify the petitioner of its completeness. The current State rules requires a 30 day response period. Maryland also defines "complete" to mean that information required by paragraphs C(1) or C(2), discussed above. The Federal rule at 30 CFR 764.15(a)(1) requires a 30 day response period. In the preamble to that rule (December 30, 1987, 52 FR 49322), OSM stated that the 30 day review period is not an administrative burden to States. Further, OSM agreed with commenters who felt allowing a 60 day review period would restrict the ability of a petitioner to protect eligible lands by allowing added time for a permit application to be deemed complete by the regulatory

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authority thereby allowing those lands included in the permit to be excluded from the petition area. For these reasons, the Director finds the revised State rule less effective than the Federal rule and he is not approving the revision.

Maryland is revising paragraph G(2) to authorize the State to return a petition to the petitioner if the State determines that the petitioner does not have an interest which is or may be adversely affected. As the revised State rule is substantively identical to portions of the Federal rule at 30 CFR 764.15(a)(3), the Director finds it no less effective than this Federal counterpart.

Maryland is revising paragraph G(4) to define a frivolous petition as one in which the allegations of harm lack serious merit. As this definition is identical to the Federal definition at 30 CFR 764.15(a)(3), the Director finds it no less effective than its Federal counterpart.

Maryland is revising paragraph G(5) to require that the State determine if a new petition for determination presents significant new allegations of facts with evidence which tends to establish the allegations. As the revised State rule is identical to the Federal rule at 30 CFR 764.15(a)(4), the Director finds it no less effective than its Federal counterpart.

Maryland is revising paragraph G(8) to require that the State meet certain notification requirements and make copies of the petition available to the public and to other interested parties promptly after a petition is received. As the revised State rule is substantively identical to the Federal rule at 30 CFR 764.15(b)(1), the Director finds it no less effective than its Federal counterpart.

Maryland is revising paragraph G(9) to require that promptly after a determination is made that a petition is complete, the State request submissions from the general public of relevant information by means of a newspaper advertisement. As the revised State rule is identical to the Federal rule at 30 CFR 764.15(b)(2), the Director finds it no less effective than its Federal counterpart.

Maryland is revising paragraph G(11) to require that the State maintain certain information at or near the area in which the petitioned area is located and make this information available to the public for inspection and copying. At a minimum, this information will include a copy of the petition. As the revised State rule is substantively identical to the Federal rule at 30 CFR 764.15(d), the Director finds it no less effective than its Federal counterpart.

Maryland is revising paragraph G(12) to authorize the State to subpoena witnesses if a public hearing is held on the petition. The hearing may be conducted with cross-examination of expert witnesses only and no person will bear the burden of proof or persuasion. A record of the hearing is required and will include all relevant parts of the data base and inventory system as well as public comments. As the revised State rule is substantively identical to the Federal rule at 30 CFR 764.17(a), the Director finds it no less effective than its Federal counterpart.

(d) *Petition Decision.* Maryland is revising paragraph H(2) to require that the State send its decision regarding the petition by certified mail to intervenors and by regular mail to all other persons involved in the proceeding. As the revised State rule is identical to the Federal rule at 30 CFR 764.19(b), the Director finds it no less effective than its Federal counterpart.

8. COMAR 08.13.09.26 Fish and Wildlife Protection

Maryland is revising paragraph A to require that any person conducting surface mining operations, to the extent possible, minimize disturbances and adverse impacts on fish, wildlife and related environmental values and achieve enhancement of such resources where practicable. As the revised State rule is substantively identical to the Federal rule at 30 CFR 816.97(a), the Director finds it no less effective than its Federal counterpart.

Maryland is revising paragraphs B, C and D to provide procedures for protecting endangered and threatened species and bald and golden eagles. Paragraph B is revised to prohibit any surface coal mining activity which is likely to jeopardize the continued existence of certain endangered or threatened species or which is likely to result in destruction or adverse modification of certain designated critical habitats or which would result in the unlawful taking of a bald or golden eagle, its nest, or eggs.

Paragraph C is revised to require that any person conducting mining operations who becomes aware of any State or Federally listed endangered or threatened species within the permit area, or designated critical habitats, or any golden or bald eagles nest, promptly notify the State.

Paragraph D is added to require that upon notification, the State consult with appropriate State and Federal fish and wildlife agencies to determine in what manner the operator may proceed.

As the revised State rules at paragraphs B, C and D are substantively identical to the Federal rules at 30 CFR 816.97 (b) and (c), the Director finds them no less effective than their Federal counterparts.

Maryland is adding paragraph E to clarify nothing provided in this chapter of the State regulations authorizes the taking of an endangered or threatened species or a bald or golden eagle, its nest or eggs in violation of the Endangered Species Act of 1973, as amended. As the revised State rule is identical to the Federal rule at 30 CFR 816.97(d), the Director finds it no less effective than its Federal counterpart.

Maryland is revising paragraph F to require that each person who conducts surface coal mining activities use the best technology available to: (a) Ensure that the design and construction of transmission facilities used for or incidental to the mining activities conform to certain published guidelines, and (b) design fences, overland conveyors, and other potential barriers to permit passage for large mammals, except where the State determines such requirements are unnecessary. As the revised State rule is substantively identical to the Federal rule at 30 CFR 816.97(e) (1) and (3), the Director finds it no less effective than its Federal counterpart.

Maryland is revising paragraph H to require that if cropland is to be the postmining land use and where appropriate for wildlife and crop-management practices, certain types of vegetation must be planted by the operator. As the revised State rule is substantively identical to the Federal rule at 30 CFR 816.97(h), the Director finds it no less effective than its Federal counterpart.

Maryland is adding paragraph J to require that the operator avoid disturbance to, enhance where practicable, restore or replace, wetlands, certain riparian vegetation, and habitats of unusually high value for fish and wildlife. As the revised State rule is substantively identical to the Federal rule at 30 CFR 816.97(f), the Director finds it no less effective than its Federal counterpart.

9. COMAR 08.13.09.40 Inspection and Enforcement

(a) *Inspections.* Maryland is revising paragraph B(1) to require that the State conduct an average of one partial inspection per month of each active surface mining and reclamation operation and conduct partial inspections of inactive operations as necessary. A partial inspection is defined as an on-site or aerial review for compliance with some of the permit conditions and regulatory program requirements. As the revised State rule is substantively identical to the Federal rule at 30 CFR 840.11(a), the Director finds it no less effective than its Federal counterpart.

Maryland is revising paragraph B(2) to require that the State conduct an average of at least one complete inspection per calendar quarter of each active or inactive surface mining and reclamation operation. A complete inspection is defined as an on-site compliance review of all permit conditions and regulatory program requirements. The Federal rule at 30 CFR 840.11(b) also requires that a complete inspection include the entire area disturbed or affected by the operation. Although paragraph (B)(2) does not expressly contain such an entire area provision, Maryland stated on February 6, 1990, that the (B)(2) provision requiring a complete review of all the Maryland program requirements incorporates a review of the areas disturbed or affected by the operation (Administrative Record No. MD–458–A). On this basis, the Director finds the revised State rule to be substantively identical to and therefore no less effective than its Federal counterpart.

Maryland is revising paragraph B(4) to require that aerial inspections be conducted so as to reasonably ensure the identification and documentation of conditions of each operation. As the revised State rule is identical to the Federal rule at 30 CFR 840.11(d)(1), the Director finds it no less effective than its Federal counterpart.

Maryland is revising paragraph B(5) to require that any potential violation observed during an aerial inspection be investigated on site within 3 days, provided that any indication of a condition constituting cause for issuance of a show cause order be investigated on site within 1 day. The on-site investigation is not to be considered an additional partial or complete investigation. As the revised State rule is substantively identical to the Federal rule at 30 CFR 840.11(d)(2), the Director finds it no less effective than its Federal counterpart.

Maryland is revising paragraph B(6) to change the term "Violation Notice or Order" to "notice of violation or cessation order." As the revised language is identical to the Federal language at 30 CFR part 840, the Director finds it no less effective than its Federal counterpart.

Maryland is revising paragraph B(7) to define an inactive surface mining and reclamation operation as one in which the State has received from the permittee written notice that a temporary cessation of mining activities has occurred as provided in COMAR section .05D; or that Reclamation Phase II has been completed. As the revised State rule is substantively identical to the Federal rule at 30 CFR 840.11(f) (1) and (2), the Director finds it no less effective than its Federal counterpart.

Maryland is revising paragraph B(8) to require that the State continue to inspect all surface mining and reclamation operations until Reclamation Phase III has been completed. The revised State rule neither has a direct counterpart nor conflicts with the general inspection rules at 30 CFR 840.11. The Director finds the revised State rule is not inconsistent with the above-cited Federal rules.

(b) *Availability of Records.* Maryland is revising paragraph D(1) to add the requirement that all enforcement information and conditions of permits be open to public inspection for at least 5 years after expiration of the period during which a surface mining and reclamation operation is active or is covered by any portion of a performance bond. As the revised State rule is substantively identical to the Federal rule at 30 CFR 840.14(b), the Director finds it no less effective than its Federal counterpart.

(c) *Public Participation.* Maryland is revising paragraph E(6) to provide notification procedures by which any person who is or may be adversely affected by a surface mining and reclamation or prospecting operation may notify the State Director of the Bureau of Mines, in writing, of any alleged failure on the part of the State to make adequate inspections of the operation. The Director is required to make a determination within 15 days of receipt of the notification and notify the complainant, in writing, of the determination. The Federal regulations contain no comparable provisions. 30 CFR 840.15 requires broadly that States provide for public participation in the enforcement of the State programs consistent with the Federal regulations. The Director finds the provisions of the revised State rule to be consistent with the general public participation provisions of this Federal rule.

(d) *Cessation Orders.* Maryland is revising paragraph G and subsequent sections to change the term "cease and desist order" to "cessation order." As the revised language is identical to the Federal language at 30 CFR parts 842, 843 and 845, the Director finds it no less effective than its Federal counterpart.

Maryland is revising paragraph G(1) to require the State to issue a cessation order if it is determined that an operation is not in compliance with the requirements of the regulatory program and the noncompliance creates an imminent danger to the health and safety of the public. The current State rule refers to "health or safety of the public" which is identical to the Federal rule at 30 CFR 843.11(a)(1)(ii). While the Federal rule provides for the issuance of a cessation order if either the health or safety of the public is threatened, the proposed State revision requires that both conditions exist prior to the initiation of enforcement action, thereby limiting the number of qualifying situations. By letter dated November 21, 1990, Maryland stated it will eliminate the proposed change prior to promulgating the amendments and retain the present language of "health or safety" (Administrative Record Number MD–483).

(e) *Service of Notices and Orders.* Maryland is revising paragraph H to permit service of a notice or order by mailing a copy by certified mail to the last address the permittee has filed, in writing, with the State. Service on a person conducting an unpermitted operation may also be effected by certified mail. The Federal rule at 30 CFR 843.14(a)(2) provides that services of a notice or order can be made by sending a copy by certified mail to the permittee. It does not specifically address mail service on a person conducting an unpermitted operation(s). The Director finds the Maryland revision not inconsistent with the Federal rule.

(f) *Informal Review.* Maryland is revising paragraph I(1) to require that an informal enforcement conference, if requested, be held within 30 days of receipt of request. While the Maryland rule and Federal rules at 30 CFR 845.15 provide for different time periods between the service of the notice or order, the requesting of an informal conference and the holding of the informal conference, the maximum amount of time allowed under both rules between the service of the notice or order and the holding of the requested conference is approximately the same. On this basis, the Director finds the revised State rule to be no less effective than its Federal counterpart.

Maryland is revising paragraph I(3) to change the phrase "automatically schedule" to "hold." As the revised language is identical to that of the Federal rule at 30 CFR 843.15(a), the Director finds it no less effective than its Federal counterpart.

Maryland is revising paragraph I(4) to require that the State notify the operator, in writing, that an enforcement conference will be held within 30 days of the service of the notice or order to cease mining. The notice must inform

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the operator that: (a) The conference will be deemed to be waived unless the operator notifies the State within 30 days after service that he will attend the conference, and (b) he shall be deemed to have consented to an extension of time for holding the conference if the notification is received by the State on or after the 21 day after service. As the revised State rule is substantively identical to the Federal rule at 30 CFR 843.15(b) (1), (2), and (3), the Director finds it no less effective than its Federal counterpart.

Maryland is revising paragraph I(7) to require that the State notify the operator and any person who filed a report which led to the notice or order, in writing, of its decision to affirm, modify, or vacate the notice or order. As the revised State rule is substantively identical to the Federal rule at 30 CFR 843.15(f), the Director finds it no less effective than its Federal counterpart.

Maryland is adding paragraph I(8) to require that the granting or waiver of an enforcement conference not affect the right of any person to formal review. As the proposed State rule is substantively identical to the corresponding Federal rule at 30 CFR 843.15(g), the Director finds it no less effective than its Federal counterpart.

Maryland is adding paragraph I(9) to require that the person conducting the conference determine whether or not the mine site should be viewed during the conference. As the revised State rule is substantively identical to the Federal rule at 30 CFR 843.15(h), the Director finds it no less effective than its Federal counterpart.

(g) *Formal Review.* Maryland is revising paragraph J(3) to specify the procedures for requesting temporary relief from a notice or order. The hearing officer is required to grant or deny the request as expeditiously as possible. As the revised State rule is substantively identical to 43 CFR 4.1265 and 4.1266(a), the Director finds it no less effective than these Federal rules.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the September 22, 1989, **Federal Register** ended on October 23, 1989. No public comments were received and the scheduled public hearing was not held as no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Maryland program. The Department of the Interior, Fish and Wildlife Service, and the Department of Labor, Mine Safety and Health Administration, concurred without comment.

V. Director's Decision

Based on the above findings, the Director is approving the program amendments submitted by Maryland on March 27, 1989.

The Federal rules at 30 CFR part 920 concerning the Maryland program are being amended to implement the Director's decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage states to conform their programs to the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that related to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et. seq.*). The EPA concurred without comment.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from the preparation of regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 7, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 920—MARYLAND

1. The authority citation for part 920 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 920.15, a new paragraph (k) is added to read as follows:

§ 920.15 Approval of amendments to State regulatory programs.

* * * * *

(k) The following amendments submitted to OSM on March 27, 1989, are approved as set forth in paragraph (k)(1) of this section effective May 22, 1991, with the exceptions identified in paragraph (k)(2) of this section.

(1) Revisions of the following rules of Code of Maryland Administrative Regulations:

08.13.09.01 General.
08.13.09.02 Permit Applications.
08.13.09.04 Permit Applications: Review Procedures.
08.13.09.05 Permit Applications: Bureau Decision.
08.13.09.08 Permit Review and Transfer of Rights.
08.13.09.10 Areas Where Mining is Prohibited or Limited.
08.13.09.11 Designation of Areas as Unsuitable for Mining (with the exception noted in paragraph (k)(2) of this section).
08.13.09.26 Fish and Wildlife Protection.
08.13.09.40 Inspection and Enforcement.

(2) The following rule of Code of Maryland Administrative Regulations is not being approved:

08.13.09.11G(1) Areas Unsuitable for Mining—to the extent that Maryland allows 60 days from the receipt of a petition to notify the petitioner of its completeness.

[FR Doc. 91-11993 Filed 5-21-91; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 507

Manufacture, Sale, Wear, and Quality Control of Heraldic Items

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: This rule revises the Department of the Army (Army Regulation 672–8) and Department of the Air Force policy (Air Force Regulation 900–7) governing the manufacture, sale, reproduction, possession, and wearing of military decorations, medals, badges, and insignia. This revision establishes responsibility for authorizing the incorporation of insignia designs in commercial articles; adds procedures for processing a request to use Army insignia in advertisement or promotional materials; clarifies insignia items that are controlled heraldic items; and defines the certification process for heraldic items. It also revises information currently contained in 32 CFR part 507. This revision has a direct effect on Department of the Army and Air Force personnel who design, procure from private industry and who wear military insignia.

EFFECTIVE DATE: May 22, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas B. Proffitt, Chief, Technical Division, Institute of Heraldry, Cameron Station, Building 15, Alexandria, VA 22304–5050, 202–274–6636.

SUPPLEMENTARY INFORMATION: The wear, manufacture, and sale of decorations, badges, and insignia is restricted by 18 U.S.C. 701 and 704. The Institute of Heraldry, U.S. Army has been designated to act in behalf of the Department of Defense, Department of the Army and Department of the Air Force in establishing regulations governing control in manufacture and quality.

Executive Order 12291

This final rule has been reviewed under Executive Order 12291 and the Secretary of the Army has classified this action as nonmajor. The effect of the final rule on the economy will be less than $100 million.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 and the Secretary of the Army has certified that this action does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule does not contain reporting or recordkeeping requirements subject to approval of the Office of Management and Budget under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

List of Subjects in 32 CFR Part 507

Military personnel, Decorations, Medals, Awards.

Accordingly, 32 CFR part 507 is revised to read as follows:

PART 507—MANUFACTURE OF DECORATIONS

Subpart A—Introduction

Sec.
507.1 Purpose
507.2 References.
507.3 Explanation of abbreviations and terms.
507.4 Responsibilities.
507.5 Statutory authority.

Subpart B—Manufacture and Sale of Decorations, Badges, and Insignia

507.6 Authority to manufacture.
507.7 Authority to sell.
507.8 Articles authorized for manufacture and sale.
507.9 Articles not authorized for manufacture or sale.
507.10 Incorporation of designs or likenesses of approved designs in commercial articles.
507.11 Reproduction of designs.
507.12 Possession and wearing.

Subpart C—Heraldic Quality Control System

507.13 General.
507.14 Controlled heraldic items.
507.15 Certification of heraldic items.
507.16 Violations and penalties.
507.17 Procurement and wear of heraldic items.
507.18 Processing complaints of alleged breach of policies.

Authority: 10 U.S.C. 3012, 18 U.S.C. 701, 18 U.S.C. 702

Subpart A—Introduction

§ 507.1 Purpose.

This part prescribes the Department of the Army and the Air Force policy governing the manufacture, sale, reproduction, possession, and wearing of military decorations, medals, badges, and insignia. It also establishes the Heraldic Item Quality Control System to improve the appearance of the Army and Air Force by controlling the quality of heraldic items purchased from commercial sources.

§ 507.2 References.

Related publications are listed in paragraphs (a) through (e) of this section. (A related publication is merely a source of additional information. The user does not have to read it to understand this part). Copies of referenced publications may be reviewed at any Army or Air Force Library or may be purchased from the National Technical Information Services, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

(a) AFR 35–10, Dress and Personal Appearance of Air Force Personnel.

(b) AR 360–5, Public Information.

(c) AR 670–1, Wear and Appearance of Army Uniforms and Insignia.

(d) AR 840–10, Heraldic Activities, Flags, Guidons, Streamers, Tabards and Automobile Plates.

(e) AFR 900–3, Department of the Air Force Seal, Organizational Emblems, Use and Display of Flags, Guidons, Streamers, and Automobile and Aircraft Plates.

§ 507.3 Explanation of abbreviations and terms.

(a) *Abbreviations.* (1) AFB—Air Force Base.

(2) DA—Department of the Army.

(3) DCSPER—Deputy Chief of Staff for Personnel.

(4) DPSC—Defense Personnel Support Center.

(5) DUI—distinctive unit insignia.

(6) ROTC—Reserve Officers' Training Corps.

(7) SSI—shoulder sleeve insignia.

(8) TIOH—The Institute of Heraldry.

(9) USAF—United States Air Force.

(b) *Terms*—(1) *Cartoon.* A drawing, six times actual size, showing placement of stitches, color of yarn and number of stitches.

(2) *Certificate of Authority to Manufacture.* A certificate assigning manufacturers a hallmark and authorizing manufacture of heraldic items.

(3) *Hallmark.* A distinguishing mark consisting of a letter and numbers assigned to certified manufacturers for use in identifying manufacturers of insignia.

(4) *Heraldic items.* All items worn on the uniform to indicate unit, skill, branch, award or identification and a design has been established by TIOH on an official drawing.

(5) *Letter of Agreement.* A form signed by manufacturers before certification, stating that the manufacturer agrees to produce heraldic items in accordance with specific requirements.

(6) *Letter of Authorization.* A letter issued by TIOH that authorizes the manufacture of a specific heraldic item after quality assurance inspection of a preproduction sample.

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(7) *Tools.* Hubs, dies, cartoons, and drawings used in the manufacture of heraldic items.

§ 507.4 Responsibilities.

(a) *Deputy Chief of Staff for Personnel (DCSPER), Army.* The SCSPER has staff responsibility for heraldic activities in the Army.

(b) *The Director, The Institute of Heraldry (TIOH).* The Director, TIOH, will—

(1) Monitor the overall operation of the Heraldic Control Program.

(2) Authorize the use of insignia designs in commercial items.

(3) Certify insignia manufacturers.

(4) Inspect the quality of heraldic items.

(c) *The Director, Headquarters, Air Force Military Personnel Center, Recognition Programs Branch (HQ, AFMPC/DPMASA), Randolph Air Force Base, Texas 78150–6001.* The Director has staff responsibility for heraldic activities in the Air Force.

(d) *Commander, Air Force Military Personnel Center.* The Commander, Air Force Military Personnel Center, Randolph Air Force Base, TX, is responsible for granting permission for the incorporation of certain Air Force designs in commercial items.

(e) *Commander, USAF Historical Research Center (USAFRC/RI).* The Commander, USAFRC/RI, Maxwell, AFB, AL, is responsible for granting permission for use of the Air Force seal, coat of arms, and crest.

(f) *Commanders.* Commanders are responsible for purchasing heraldic items that have been produced by manufacturers certified by TIOH. Commanders will ensure that only those heraldic items that are of quality and design covered in the specifications and that have been produced by certified manufacturers are worn by personnel under their command.

§ 507.5 Statutory authority.

(a) The wear, manufacture, and sale of military decorations, medals, badges, their components and appurtenances, or colorable imitations of them, are governed by section 704, title 18, United States Code (18 U.S.C. 704).

(b) The manufacture, sale, possession, and reproduction of badges, identification cards, insignia, or other designs, prescribed by the head of a U.S. department or agency, or colorable imitations of them, are governed by 18 U.S.C. 701.

(c) This part incorporates the statutory provisions

Subpart B—Manufacture and Sale of Decorations, Badges, and Insignia

§ 507.6 Authority to manufacture.

(a) A certificate of authority to manufacture heraldic articles may be granted by the Institute of Heraldry.

(1) Certificates of authority will be issued only to those manufacturers who have the manufacturing capability and who have agreed to manufacture heraldic items according to applicable specifications or purchase descriptions.

(2) The certificate of authority is valid only for the individual, firm, or corporation indicated.

(3) A hallmark will be assigned to each certified manufacturer. All insignia manufactured will bear the manufacturer's hallmark.

(b) A certificate of authority may be revoked or suspended under the procedures prescribed in subpart C of this part.

(c) Manufacturers will submit a preproduction sample to TIOH of each item under the Heraldic Quality Control Program before production. A letter of authorization to manufacture specific items will be issued to the manufacturer if the "sample" meets quality assurance standards.

(d) A list of certified manufacturers will be furnished to the Army and Air Force Exchange Service and, upon request, to Army and Air Force commanders.

§ 507.7 Authority to sell.

No certificate of authority is required to sell articles listed in § 507.8 of this part; however, sellers are responsible to sell only those articles that have been manufactured in conformance with Government specifications by certified manufacturers with the use of Government-loaned tools and that bear hallmarks assigned by TIOH.

§ 507.8 Articles authorized for manufacture and sale.

(a) The articles listed in paragraphs (a) (1) through (10) of this section are authorized for manufacture and sale when made in accordance with approved specifications or drawings.

(1) All authorized insignia (AR 670–1 and AFR 35–10).

(2) Appurtenances and devices for decorations, medals, and ribbons such as oak leaf clusters, service stars, arrowheads, V-devices, and clasps.

(3) Combat, special skill, and qualification badges and bars.

(4) Identification badges.

(5) Fourrageres and lanyards.

(6) Lapel buttons.

(7) Miniature replicas as decorations, service medals, and ribbons, except for the Medal of Honor.

(8) Replicas of decorations and service medals for grave markers. Replicas are to be at least twice the size prescribed for decorations and service medals.

(9) Service ribbons for decorations, service medals, and unit awards.

(10) Rosettes.

(b) Variations from the prescribed specifications for the items listed in paragraph (a) of this section are not permitted without prior approval, in writing, by TIOH.

§ 507.9 Articles not authorized for manufacture or sale.

The following articles are not authorized for manufacture and sale, except under contract with DPSC:

(a) Manufacture and/or sale of decorations and service medals other than miniatures.

(b) Service flags (prescribed in AR 840–10 or AFR 900–3).

(c) Service ribbon for the Medal of Honor.

(d) Articles for public sale that incorporate designs or likenesses of decorations, service medals, and service ribbons.

(e) Articles for public sale that incorporate designs or likenesses of designs of insignia listed in § 507.8 of this part, except when authorized by the Service concerned.

§ 507.10 Incorporation of designs or likenesses of approved designs in commercial articles.

The policy of the DA and the Department of the Air Force is to restrict the use of military designs for the needs or the benefit of personnel of their Services.

(a) Except as authorized in writing by the DA or the Department of the Air Force, as applicable, the manufacture of commercial articles incorporating designs or likenesses of official Army/Air Force heraldic items is prohibited. However, certain designs or likenesses of insignia such as badges or organizational insignia may be incorporated in articles manufactured for sale provided that permission has been granted as specified in paragraphs (a) (1) and (2) of this section.

(1) *Designs approved for use of the Army.* The Institute of Heraldry, Building 15, Cameron Station, Alexandria, VA 22304–5050, is responsible for granting permission for the incorporation of certain Army designs in articles manufactured for sale. Commanders of units authorized

an SSI or a DUI may authorize the reproduction of the SSI or DUI on commercial articles such as shirts, tie tacks, cups, or plaques. Such permission will be in writing. Authorization for incorporation of designs or likenesses in commercial items will be granted only to those manufacturers who agree to offer these items for sale only to Army and Air Force Exchange Service and outlets that sell primarily to military personnel and their dependents.

(2) *Designs approved for use of the Air Force.* Headquarters, Air Force Military Personnel Center, Recognition Programs Branch (HQ AFMPC/DPMASC), Randolph AFB, TX 78150–6001, is responsible for granting permission for the incorporation of certain Air Force designs for articles manufactured for sale. The Commander, Air Force Historical Research Center, AFHRC/RI, Maxwell AFB, AL 36112–6678, is responsible for granting permission for the incorporation of the coat of arms, crest, and seal when use is not specified in AFR 900–3, chapter 1. Use of organizational emblems will be in accordance with AFR 900–3, chapter 2. Such permission will be in writing. Authorization for incorporation of designs or likenesses in commercial items will be granted only to those manufacturers who agree to offer these items for sale only to the Army and Air Force Exchange Service, or to those outlets that sell primarily to military personnel and their dependents.

(b) In the case of the Honorable Service Lapel Button, a general exception is made to permit the incorporation of that design in articles manufactured for public sale provided that such articles are not suitable for wear as lapel buttons or pins.

§ 507.11 Reproduction of designs.

(a) The photographing, printing, or, in any manner making or executing any engraving, photograph, print, or impression in the likeness of any decoration, service medal, service ribbon, badge, lapel button, insignia, or other device, or the colorable imitation thereof, of a design prescribed by the Secretary of the Army or the Secretary of the Air Force for use by members of the Army or the Air Force is authorized provided that such reproduction does not bring discredit upon the military service and is not used to defraud or to misrepresent the identification or status of an individual, organization, society, or other group of persons.

(b) The use for advertising purposes of any engraving, photograph, print, or impression of the likeness of any DA or Department of the Air Force decoration, service medal, service ribbon, badge, lapel button, insignia, or other device (except the Honorable Service Lapel Button) is prohibited without prior approval, in writing, by the Secretary of the Army or the Secretary of the Air Force except when used to illustrate a particular article that is offered for sale. Request for use of Army insignia in advertisements or promotional materials will be processed through public affairs channels in accordance with AR 360–5, paragraph 3–37.

(c) The reproduction in any manner of the likeness of any identification card prescribed by DA or Department of the Air Force is prohibited without prior approval in writing by the Secretary of the Army or Secretary of the Air Force.

§ 507.12 Possession and wearing.

(a) The wearing of any decoration, service medal, badge, service ribbon, lapel button, or insignia prescribed or authorized by the DA and the Department of the Air Force by any person not properly authorized to wear such device, or the use of any decoration, service medal, badge, service ribbon, lapel button, or insignia to misrepresent the identification or status of the person by whom such is worn is prohibited. Any person who violates this provision is subject to punishment as prescribed in the statutes referred to in § 507.3 of this part.

(b) Mere possession by a person of any of the articles prescribed in § 507.8 of this part (except identification cards) is authorized provided that such possession is not used to defraud or misrepresent the identification or status of the individual concerned.

(c) Articles specified in § 507.8 of this part, or any distinctive parts including suspension ribbons and service ribbons) or colorable imitations thereof, will not be used by any organization, society, or other group of persons without prior approval in writing by the Secretary of the Army or the Secretary of the Air Force.

Subpart C—Heraldic Quality Control System

§ 507.13 General.

The heraldic quality control program provides a method of ensuring that insignia items are manufactured with tools and specifications provided by TIOH.

§ 507.14 Controlled heraldic items.

The articles listed in § 507.8 of this part are controlled heraldic items and will be manufactured in accordance with Government specifications using Government-furnished tools or cartoons. Tools and cartoons are not provided to manufacturers for the items in paragraphs (a) through (e) of this section. However, manufacture will be in accordance with the Government-furnished drawing.

(a) Shoulder loop insignia, ROTC, U.S. Army.

(b) Institutional SSI, ROTC, U.S. Army.

(c) Background trimming/flashes, U.S. Army.

(d) U.S. Air Force organizational emblems for other than major commands.

(e) Hand-embroidered bullion insignia.

§ 507.15 Certification of heraldic items.

A letter of certification to manufacture each heraldic item except those listed in § 507.14 (b) through (e) of this part will be provided to the manufacturer upon submission of a preproduction sample. Manufacture and sale of these items is not authorized until the manufacturer receives a certification letter from TIOH.

§ 507.16 Violations and penalties.

A certificate of authority to manufacture will be revoked by TIOH upon intentional violation by the holder thereof of any of the provisions of this regulation, or as a result of not complying with the agreement signed by the manufacturer in order to receive a certificate. Such violations are also subject to penalties prescribed in the Acts of Congress (§ 507.5 of this part). A repetition or continuation of violations after official notice thereof will be deemed prima facie evidence of intentional violation.

§ 507.17 Procurement and wear of heraldic items.

(a) The provisions of this part do not apply to contracts awarded by the Defense Personnel Support Center for manufacture and sale to the U.S. Government.

(b) All Army and Air Force service personnel who wear quality controlled heraldic items that were purchased from commercial sources will be responsible for ensuring that the item was produced by a certified manufacturer. Items manufactured by certified manufacturers will be identified by a hallmark and/or a certificate label certifying the item was produced in accordance with specifications.

(c) Commanders will ensure that only those heraldic items that are of quality and design covered in the specifications and that have been produced by certified manufacturers are worn by personnel under their command. Controlled heraldic items will be

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procured only from manufacturers certified by TIOH. Commanders procuring controlled heraldic items, when authorized by local procurement procedures, may forward a sample insignia to TIOH for quality assurance inspection if the commander feels the quality does not meet standards.

§ 507.18 Processing complaints of alleged breach of policies.

The Institute of Heraldry may revoke or suspend the certificate of authority to manufacture if there are breaches of quality control policies by the manufacturers. As used in this paragraph, the term quality control policies include the obligation of a manufacturer under his or her "Agreement to Manufacture," the quality control provisions of this part, and other applicable instructions provided by TIOH.

(a) *Initial processing.* (1) Complaints and reports of an alleged breach of quality control policies will be forwarded to the director, The Institute of Heraldry, Bldg. 15, Cameron Station, Alexandria, VA 22304–5050 (hereinafter referred to as Director).

(2) The Director may direct that an informal investigation of the complaint or report be conducted.

(3) If such investigation is initiated, it will be the duty of the investigator to ascertain the facts in an impartial manner. Upon conclusion of the investigation, the investigator will submit a report to the appointing authority containing a summarized record of the investigation together with such findings and recommendations as may be appropriate and warranted by the facts.

(4) The report of investigation will be forwarded to the Director for review. If it is determined that a possible breach of quality control policies has occurred, the Director will follow the procedures outlined in paragraphs (b) through (g) of this section.

(b) *Voluntary performance.* The Director will transmit a registered letter to the manufacturer advising of the detailed allegations of breach and requesting assurances of voluntary compliance with quality control policies. No further action is taken if the manufacturer voluntarily complies with the quality control policies; however, any further reoccurrence of the same breach will be considered refusal to perform.

(c) *Refusal to perform.* (1) If the manufacturer fails to reply within a reasonable time to the letter authorized by paragraph (b) of this section, or refuses to give adequate assurances that future performance will conform to quality control policies, or indicates by subsequent conduct that the breach is continuous or repetitive, or disputes the allegations of breach, the Director will direct that a public hearing be conducted on the allegations.

(2) A hearing examiner will be appointed by appropriate orders. The examiner may be either a commissioned officer or a civilian employee above the grade of GS–7.

(3) The specific written allegations, together with other pertinent material, will be transmitted to the hearing examiner for introduction as evidence at the hearing.

(4) Manufacturers may be suspended for failure to return a loaned tool without referral to a hearing specified above; however, the manufacturer will be advised, in writing, that tools are overdue and suspension will take effect if not returned within the specified time.

(d) *Notification to the manufacturer by examiner.* Within a 7-day period following the receipt by the examiner of the allegations and other pertinent material, the examiner will transmit a registered letter of notification to the manufacturer informing him or her of the following:

(1) Specific allegations.

(2) Directive of the Director requiring the holding of a public hearing on the allegations.

(3) Examiner's decision to hold the public hearing at a specific time, date, and place that will be not earlier than 30 days from the date of the letter of notification.

(4) Ultimate authority of the Director to suspend or revoke the certificate of authority should the record developed at the hearing so warrant.

(5) Right to—

(i) A full and fair public hearing.

(ii) Be represented by counsel at the hearing.

(iii) Request a change in the date, time, or place of the hearing for purposes of having reasonable time in which to prepare the case.

(iv) Submit evidence and present witnesses in his or her own behalf.

(v) Obtain, upon written request filed before the commencement of the hearing, at no cost, a verbatim transcript of the proceedings.

(e) *Public hearing by examiner.* (1) At the time, date, and place designated in accordance with paragraph (d)(3) of this section, the examiner will conduct the public hearing.

(i) A verbatim record of the proceeding will be maintained.

(ii) All previous material received by the examiner will be introduced into evidence and made part of the record.

(iii) The Government may be represented by counsel at the hearing.

(2) Subsequent to the conclusion of the hearing, the examiner will make specific findings on the record before him or her concerning each allegation.

(3) The complete record of the case will be forwarded to the Director.

(f) *Action by the Director.* (1) The Director will review the record of the hearing and either approve or disapprove the findings.

(2) Upon arrival of a finding of breach of quality control policies, the manufacturer will be so advised.

(3) After review of the findings, the certificate of authority may be revoked or suspended. If the certificate of authority is revoked or suspended, the Director will—

(i) Notify the manufacturer of the revocation or suspension.

(ii) Remove the manufacturer from the list of certified manufacturers.

(iii) Inform the Army and Air Force Exchange Service of the action.

(g) *Reinstatement of certificate of authority.* The Director may, upon receipt of adequate assurance that the manufacturer will comply with quality control policies, reinstate a certificate of authority that has been suspended or revoked.

Kenneth L. Denton,

Alternate Army Liaison Officer With the Federal Register.

[FR Doc. 91–11619 Filed 5–21–91; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–91–15]

Special Local Regulations for Marine Events; Blue Angels Airshow; Approaches to Annapolis Harbor, and Severn River, Annapolis, MD

AGENCY: Coast Guard, DOT.

ACTION: Final temporary rule.

SUMMARY: Special Local Regulations are being adopted for the Blue Angels airshow and practice sessions to be held on May 25, 26, and 27, 1991, over the Severn River and the approaches to Annapolis Harbor. The effect of these regulations will be to restrict general navigation in the regulated area for the safety of spectators and participants. These regulations are needed to provide for the safety of life, limb, and property on the navigable waters during the event.

EFFECTIVE DATES: The regulations are effective for the following periods: 1:30 p.m. to 7 p.m., May 25, 1991, 11:30 a.m. to 5 p.m., May 26, 1991, 12:30 p.m. to 5 p.m., May 27, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, (804) 398–6204.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Fifth Coast Guard District, and Lieutenant Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Background and Purpose

The U.S. Naval Academy submitted an application to hold the Blue Angels Airshow on May 25, 26, and 27, 1991. As part of the application, the Naval Academy requested that the Coast Guard provide control of spectator and commercial traffic within the regulated area.

Discussion of Proposed Regulations

The U.S. Naval Academy is sponsoring this event, which will consist of six high performance jet aircraft flying at low altitudes in various formations over the Severn River. Federal Aviation Administration regulations require closing the waterway to vessel traffic as a prerequisite to issuing a permit for this event. A meeting at the Naval Academy was held on April 18, 1991, and was attended by several organizations directly involved in the Airshow. The Federal Aviation Administration (FAA) meticulously reviewed all aspects of the Airshow for safety purposes and concluded that the regulated area used in past Airshows allowed small boats to approach to close to center point and the flight part of maneuvering aircraft. Therefore, the westward boundary of the regulated area was moved upriver from Horseshoe Point and Manresa Point to the U.S. route 50/301 fixed highway bridge (New Severn River Bridge) to ensure the safety of spectator craft. Accordingly, the Commander, Fifth Coast Guard District, is issuing these regulations to close a portion of the Severn River to vessel traffic during the airshow and practice sessions. Closure of the waterway for any extended period is not anticipated, and commercial traffic should not be severely disrupted.

Regulatory Evaluation

This final rule is not considered major under Executive Order 12291 and not significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this regulation is expected to be so minimal that a full regulatory evaluation is unnecessary. This regulation will only be in effect for several hours each day, and the impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small Entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since the impact of this regulation on non-participating small entities is expected to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b), that this regulation, will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

This final rule has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and been placed in the rulemaking docket.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–T0515 is added to read as follows:

§ 100.35–T0515 Approaches to Annapolis Harbor, and Severn River, Annapolis, Maryland.

(a) *Definitions*—(1) *Regulated area.* The approaches to Annapolis Harbor, and the Severn River, shore to shore, bounded on the southeast by a line drawn from the quick flashing privately maintained light on the U.S. naval Academy in position latitude 38°58'40.0" North, longitude 76°28'49.0" West, east to latitude 38°58'33.0" North, longitude 76°28'05.0" West, thence northeast to Carr Point, and bounded on the northwest by the U.S. route 50/301 fixed highway bridge (New Severn River Bridge) centerpoint at latitude 39°00'23.0" North, longitude 76°30'15.0" West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Baltimore.

(b) *Special local regulations.* (1) Except for vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area without the permission of the Patrol Commander.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately when directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Spectator vessels may anchor outside the regulated area specified in paragraph (a)(1) of this section, but may not block a navigable channel.

(c) *Effective periods.* The regulations are effective for the following periods: 1:30 p.m. to 7 p.m., May 25, 1991; 11:30 a.m. to 5 p.m., May 26, 1991; 12:30 p.m. to 5 p.m., May 27, 1991.

Dated: May 16, 1991.

P.A. Welling,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 91–12186 Filed 5–21–91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD5-91-014]

Drawbridge Operation Regulations; Kent Island Narrows, MD; Correction

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: The Coast Guard is correcting the temporary deviation from the regulations with request for comments document 91-014 regarding the operation of the Old Kent Island Narrows drawbridge published in the issue of Friday, May 3, 1991.

EFFECTIVE DATE: The temporary deviation as corrected is effective from May 1, 1991, through June 30, 1991. Comments must be received on or before June 15, 1991.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at 804-398-6222.

SUPPLEMENTARY INFORMATION: Section 117.561 of 33 CFR part 117 which was temporarily revised at 56 FR 20351, May 3, 1991 is corrected by revising paragraphs (a) through (c) on p. 20351 in the first and second columns and by adding introductory text to the section to read as follows: §§ 117.561 Kent Island Narrows.

The draw of the State Route 18 bridge, mile 1.0, Kent Island Narrows, operates as follows:

(a) From November 1 through April 30 the drawbridge shall open on signal from 6 a.m. to 6 p.m., but need not open at any other time.

(b) From May 1 through October 31 the drawbridge shall open on the hour for the passage of any waiting vessels from 7 a.m. to 9 p.m., and shall remain open for a period sufficient to allow passage of all waiting vessels. From 9 p.m. to 7 a.m., the drawbridge need not open.

(c) Shall open at any time with a one-hour advance notice for the passage of public vessels of the United States, state or local vessels on public safety missions or vessels in distress.

* * * * *

Dated: May 3, 1991.

H.B. Gehring,

Captain, U.S. Coast Guard Commander, Fifth Coast Guard District Acting.

[FR Doc. 91-12187 Filed 5-21-91; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD13 91-01]

Drawbridge Operation Regulations; Cowlitz River, WA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the City of Kelso, Washington the Coast Guard is changing the regulations governing the Allen Street Bridge across the Cowlitz River, mile 5.5, at Kelso, to provide that the draw need not be opened for the passage of vessels. This change is being made because no requests have been made to open the draw since at least 1983. This action will relieve the bridge owner of the burden of maintaining the machinery and having a person available to open the draw and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on: June 21, 1991.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch, (Telephone: (206) 553-5864).

SUPPLEMENTARY INFORMATION: On March 8, 1991, the Coast Guard published a proposed rule (56 FR 9916) concerning this change. The Commander, Thirteenth Coast Guard District also published the proposal as a Public Notice dated March 8, 1991. Interested parties were given until April 22, 1991 to submit comments.

Drafting Information

The drafters of this notice are: John E. Mikesell, project officer, and Lieutenant Deborah K. Schram, project attorney.

Discussion of Comments

Two comments were received in response to the proposed change. Both were from federal governmental agencies. Neither had any objection to the proposed action.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this action is expected to be so minimal that a full regulatory evaluation is unnecessary. Because of its present silted-in condition, the waterway is not being used for commercial navigation. When the waterway is restored, either through natural flushing or dredging, low profile tugs could easily pass under the bridge. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.1037 is revised to read as follows:

§ 117.1037 Cowlitz River.

(a) The draw of the Burlington Northern railroad bridge, mile 1.5, shall operate as follows:

(1) The draw shall open on signal if at least 24 hours notice is given.

(2) In the event of an emergency declared by the Cowlitz County Department of Emergency Services, the bridge shall be capable of opening upon two hours notice. Notification of emergencies and requests for openings during emergencies are initiated through the Cowlitz County Department of Emergency Services.

(3) The operating machinery of the draw shall be maintained in a serviceable condition and the draw shall be opened and closed at intervals frequent enough to make certain that the machinery is in proper order for satisfactory operation.

(4) During periods of fog or similar periods of reduced visibility, the drawtender, after acknowledging the signal to open, shall toll a bell continuously during the approach and passage of the vessel.

(b) The draw of the Allen Street Bridge, mile 5.5, need not open for the passage of vessels.

Dated: May 8, 1991.

J.E. Vorbach,

Rear Admiral, U.S. Coast Guard Commander, 13th Coast Guard District.

[FR Doc. 91-12185 Filed 5-21-91; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 2

RIN 2900-AF21

Delegation of Authority to Inspector General

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its information law regulations to delegate authority to the Inspector General to request records from other agencies under the provisions of the Privacy Act (5 U.S.C. 552a). The Privacy Act requires that the head of an agency authorize each and every request for law enforcement records from other agencies. This delegation of authority from the Secretary to the Inspector General allows these requests to be authorized by the Inspector General. The subsequent delegation of authority by the Inspector General to certain other employees within the Office of Inspector General ensures an efficient and timely processing of these requests, while ensuring an appropriate review and determination within the Office of Inspector General concerning the need for the records.

EFFECTIVE DATE: May 22, 1991.

FOR FURTHER INFORMATION CONTACT: Patricia Gormley, Counsel to the Inspector General, Office of Inspector General (50C), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-5640.

SUPPLEMENTARY INFORMATION: VA finds that advance publication for notice and public comment is not required. The regulatory amendment here involved is consistent with the Secretary's lawful ability to request records from other agencies under the provisions of the Privacy Act (5 U.S.C. 552a). This amendment merely reflects a general change in Departmental policy regarding who may request certain records, and neither imposes new obligations nor has a substantial impact on those individuals dealing with the Department. This amendment affects only existing Departmental procedures and practices and is not substantive in its effect. Thus, in accordance with the provisions of 38 CFR 1.12, advance publication in the **Federal Register** is not necessary. Accordingly, the amendment in the foregoing regulation is now published as final.

This final regulatory amendment does not meet the criteria for a major rule as that term is defined by Executive Order 12291, Federal Regulation. This regulatory amendment will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices and will not have any other significant adverse effects on the economy.

The Secretary hereby certifies that this regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), this regulation is therefore exempt from the regulatory analysis requirements of 5 U.S.C. 603 and 604. The reason for this certification is that the involved regulation applies only to delegations of authority specifying who can request certain records from other agencies under the provisions of the Privacy Act (5 U.S.C. 552a) and imposes no regulatory burden on small entities.

There are no applicable Catalog of Federal Domestic Assistance Numbers.

List of Subjects in 38 CFR Part 2

Authority delegation (Government agencies).

Approved: May 7, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

PART 2—[AMENDED]

38 CFR part 2, Delegation of Authority, is amended as follows:

1. In § 2.6, paragraph (g) and its authority citation are added to read as follows:

§ 2.6 Secretary's delegation of authority to certain officials (38 U.S.C. 212(a)).

* * * * *

(g) *Inspector General.* (1) The Secretary delegates to the Inspector General, the authority, as head of the Department of Veterans Affairs, to make written requests under the Privacy Act of 1974, 5 U.S.C. 552a(b)(7), for the transfer of records or copies of records maintained by other agencies which are necessary to carry out an authorized law enforcement activity of the Office of Inspector General. This delegation is made pursuant to 38 U.S.C. 212. The Inspector General may redelegate the foregoing authority within the Office of Inspector General, but the delegation may only be to an official of sufficient rank to ensure that the request for the records has been the subject of a high level evaluation of the need for the information.

(2) The Inspector General delegates the authority under the Inspector General Act of 1978, and redelegates the authority under paragraph (a) of this section, to request Privacy Act-protected records from Federal agencies pursuant to subsection (b)(7) of the Privacy Act to each of the following Office of Inspector General officials: (i) Deputy Inspector General, (ii) Assistant Inspector General for Investigations, (iii) Deputy Assistant Inspector General for Investigations, (iv) Chief of Operations, and (v) Special Agents in Charge of Field Offices of Investigations. These officials may not redelegate this authority.

(Authority: 5 U.S.C. 552(a))

[FR Doc. 91-12065 Filed 5-12-91; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL-3958-3]

National Emission Standards for Hazardous Air Pollutants; Radon Emissions From Phosphogypsum Stacks

AGENCY: Environmental Protection Agency.

ACTION: Notice of compliance waiver.

SUMMARY: Today EPA announces that it is issuing a compliance waiver under Clean Air Act 112(c)(1)(B)(ii) for subpart R of 40 CFR part 61 ("subpart R"), National Emission Standards for Radon Emissions from Phosphogypsum Stacks. This action extends the compliance waiver which was issued by the Administrator on March 22, 1990 (55 FR 13480, April 10, 1990), and previously extended on September 28, 1990 (55 FR 40834, October 5, 1990). The compliance waiver is presently in effect and authorizes distribution and use of phosphogypsum for agricultural purposes until June 1, 1991. Today's extension of that compliance waiver authorizes further distribution and use of phosphogypsum for agriculture purposes until October 1, 1991. Unless subpart R is modified pursuant to the pending reconsideration proceeding, all persons holding stocks of phosphogypsum on October 1, 1991 will be subject to the work practice requirements in subpart R.

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EFFECTIVE DATE: Effective June 1, 1991, this compliance waiver bars enforcement of the work practice requirements in subpart R of 40 CFR part 61 until October 1, 1991, for those persons holding stocks of phosphogypsum to distribute or to use for agricultural purposes.

FOR FURTHER INFORMATION CONTACT: Craig Conklin, Environmental Standards Branch, Criteria and Standards Division (ANR-460W), Office of Radiation Programs, Environmental Protection Agency, Washington, DC 20460, (703) 308-8755.

SUPPLEMENTARY INFORMATION:

A. Background

On October 31, 1989, EPA promulgated a final rule controlling radionuclide air emissions from several source categories, including phosphogypsum stacks (to be codified at 40 CFR part 61, subpart R). 54 FR 51653 (December 15, 1989). The standard limits emissions from phosphogypsum stacks to 20 pCi/m^2-s and requires disposal of phosphogypsum in stacks or mines, thereby precluding alternative uses of the material. EPA received petitions from several parties, including The Fertilizer Institute (TFI), Consolidated Minerals, Inc. (CMI), and U.S. Gypsum Co. (USG) to reconsider the portion of the phosphogypsum NESHAP which requires disposal into stacks or mines of all phosphogypsum. On March 22, 1990, EPA issued a notice of limited reconsideration of subpart R, a proposed rule which included several alternatives to modify or maintain subpart R, and a compliance waiver which waived the requirements of subpart R for those owners or operators engaged in the distribution or use of phosphogypsum for agricultural purposes during the 1990 growing season [not to extend beyond October 1, 1990). 55 FR 13480, April 10, 1990. The waiver was based in part upon a finding of the Administrator that the immediate prohibition of such use would cause great injury to many small farmers who rely upon phosphogypsum, that such activity would present no imminent endangerment to public health, and that it would be burdensome and impracticable to issue limited waivers to each affected owner or operator. In addition, it was issued in light of the scope of the simultaneously granted limited reconsideration of subpart R and in recognition that such waiver was necessary to allow time for implementation of alternative means of soil conditioning. This waiver was subsequently extended until June 1, 1991 on September 28, 1990. Today's action further extends the presently effective waiver until October 1, 1991.

EPA is presently evaluating approximately 200 comments on the proposed rule. EPA, in conjunction with researchers at the University of Georgia, is preparing a report on the radiological impact on soil that has been treated with phosphogypsum. Also, EPA's Office of Solid Waste is currently scheduled to make its final regulatory determination regarding whether phosphogypsum should be regulated as a hazardous waste under subtitle C of the Resource Conservation and Recovery Act on May 20, 1991. Finally, the EPA Office of Radiation Programs is scheduled to release a report on naturally occurring radioactive materials in May, 1991. Each of these events could have a direct affect on the outcome of the pending rulemaking. Accordingly, it is not practicable to conclude the pending rulemaking by June 1, 1991, the date that the original compliance waiver is scheduled to expire. However, EPA intends to take action concerning the pending rulemaking later this year.

B. Issuance of Compliance Waiver

Pursuant to the Agency's authority under section 112(c)(1)(B)(ii) of the Clean Air Act and 40 CFR 61.10-61.11, EPA hereby grants a waiver from compliance with the work practice requirements in subpart R of 40 CFR part 61 until October 1, 1991, for those persons holding stocks of phosphogypsum to distribute or to use for agricultural purposes. This action continues for the remainder of the 1991 use season the compliance waiver for subpart R issued by the Administrator on March 22, 1990, and subsequently extended on September 28, 1990. Today's action bars enforcement on subpart R until October 1, 1991 against all persons holding stocks of phosphogypsum to distribute or to use for agricultural purposes. Today's action does not bar or otherwise constrain enforcement of subpart R for persons holding stocks of phosphogypsum on October 1, 1991, regardless of whether or not the stocks in question were acquired for agricultural distribution or use.

As noted above, EPA will not be able to complete the pending rulemaking on reconsideration of subpart R until later this year. EPA considers it appropriate to extend the terms of the present compliance waiver while it is concluding its deliberations on this rulemaking. Permitting the compliance waiver to expire in the middle of the 1991 use season would result in unnecessary disruption and economic injury. Extension of the compliance waiver will also permit the orderly disposition of stocks of phosphogypsum which are currently in channels of trade or in the hands of agricultural users.

The Agency's decision to extend the compliance waiver until October 1, 1991 does not, and should by no means be construed to, indicate any Agency predisposition on the merits of the pending rulemaking on reconsideration of subpart R. EPA has not concluded its rulemaking and cannot advise the public whether agricultural uses of phosphogypsum will be allowed after expiration of this waiver. People with stocks of phosphogypsum after conclusion of the rulemaking may be subject to specific regulatory requirements.

Dated: May 16, 1991.

William K. Reilly,

Administrator.

[FR Doc. 91-12155 Filed 5-21-91; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 0F3861 /R1117; FRL-3925-8]

RIN 2070-AB78

Pesticide Tolerances for Imazethapyr

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes tolerances for residues of the herbicide imazethapyr, 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridine carboxylic acid, as its ammonium salt, and its metabolite, 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-(1-hydroxyethyl)-3-pyridine carboxylic acid both free and conjugated in or on peanuts and peanut hulls, both at 0.1 part per million (ppm). The regulation was requested by the American Cyanamid Co.

EFFECTIVE DATE: This regulation becomes effective May 22, 1991.

ADDRESSES: Written objections, identified by the document control number, [PP 0F3861/R1117], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division (H-7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1800.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of July 18, 1990 (55 FR 29267), which announced that the American Cyanamid Co., P.O. Box 400, Princeton, NJ 08540, had submitted pesticide petition (PP) 0F3861 to EPA proposing to amend 40 CFR part 180 by establishing a tolerance under section 408 of the Federal Food, Drug, and Cosmetic Act for residues of the herbicide imazethapyr, 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridine carboxylic acid, as its ammonium salt, and its metabolite, 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-(1-hydroxyethyl)-3-pyridine carboxylic acid both free and conjugated in or on peanuts and peanut hulls, both at 0.1 ppm.

There were no comments or requests for referral to an advisory committee received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data listed below were considered in support of the tolerances.

1. Several acute toxicology studies placing technical-grade imazethapyr in Toxicity Category III and IV.

2. An 18-month feeding/oncogenic study with mice fed dosages of 1, 150, 750, and 1,500 milligrams/kilogram/day (mg/kg/day) with no carcinogenic effects observed under the conditions of the study at dose levels up to and including 1,500 mg/kg/day (highest dose tested [HDT]) and a systemic no-observed-effect level (NOEL) of 750 mg/kg/day.

3. A 2-year feeding/oncogenic study in rats fed dosages of 0, 50, 250, and 500 mg/kg/day with no carcinogenic effects observed under the conditions of the study at dose levels up to and including 500 mg/kg/day (HDT) and a systemic NOEL of 500 mg/kg/day (HDT).

4. A 1-year feeding study in dogs fed dosage levels of 0, 25, 125, and 250 mg/kg/day with a NOEL of 25 mg/kg/day based on hemotological effects at 125 mg/kg/day in females.

5. A developmental toxicity study in rats fed dosage levels of 0, 125, 375, and 1,125 mg/kg/day, with a maternal toxicity NOEL of 375 mg/kg/day and a developmental toxicity NOEL of 1,125 mg/kg/day.

6. A developmental toxicity study in rabbits fed dosage levels of 0, 100, 300, and 1,000 mg/kg/day with a maternal toxicity NOEL of 300 mg/kg/day and a developmental toxicity NOEL of 1,000 mg/kg/day.

7. A two-generation reproduction study in rats fed dosage levels of 0, 50, 250, and 500 mg/kg/day with a NOEL for systemic and reproductive effects of 500 mg/kg/day.

8. A mutagenic test with *Salmonella typhimurium* (negative); an *in vitro* chromosomal aberration test in Chinese hamster ovary cells (positive without metabolic activation but at dose levels that were toxic to the cells and negative with metabolic activation); an *in vivo* chromosomal aberration test in rat bone marrow cells (negative); and an unscheduled DNA synthesis study in rat hepatocytes (negative).

Based on the NOEL of 25 mg/kg body weight (bwt)/day in the 1-year dog feeding study, and using a hundredfold uncertainty factor, the acceptable daily intake (ADI) for imazethapyr is calculated to be 0.25 mg/kg bwt/day. The theoretical maximum residue contribution (TMRC) is 0.000034 mg/kg bwt/day for existing tolerances for the overall U.S. population. The current action will increase the TMRC by .000008 mg/kg bwt/day (.003 percent of the ADI). These tolerances and previously established tolerances utilize a total of 0.017 (or < 1.0) percent of the ADI, for the overall U.S. population. For U.S. subgroup populations, nonnursing infants and children aged 1 to 6, the current action and previously established tolerances utilize, respectively, a total of .066 percent and 0.35 (or < 1.0) percent of the ADI, assuming that residue levels are at the established tolerances and that 100 percent of the crop is treated.

The nature of the residue is adequately understood. An adequate analytical method (gas chromatography with a thermionic nitrogen-phosphorous detector) is available for enforcement. No secondary residues are expected to occur in meat, milk, poultry, and eggs from this use.

Based on the information cited above, the Agency has determined that the establishment of the tolerances by amending 40 CFR part 180 will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections and/or a request for a hearing with the Hearing Clerk, at the address given above. The objections submitted must specify the provisions of the rgulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested and the requestor's contentions on each such issue. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 8, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By revising § 180.447, to read as follows:

§ 180.447 Imazethapyr, ammonium salt; tolerance for residues.

(a) Tolerances are established for residues of the herbicide imazethapyr, 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridine carboxylic acid, as the ammonium salt, in or on the following raw agricultural commodities:

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Commodity	Parts per million
Legume vegetables	0.1
Soybeans	0.1

(b) Tolerances are established for the sum of the residues of the herbicide imazethapyr, 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridine carboxylic acid, as its ammonium salt, and its metabolite, 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-(1-hydroxyethyl)-3-pyridine carboxylic acid both free and conjugated in or on the following commodities:

Commodity	Parts per million
Peanuts	0.1
Peanuts, hulls	0.1

[FR Doc. 91-11661 Filed 5-21-91; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 180

[PP 9F3814/R1107; FRL-3879-5]

Isomate-C (Pheromone Dispensers); Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the insect pheromone Isomate-C (Pheromone Dispensers) containing the active ingredients E,E-8,10-dodecenyl alcohol, dodecanol, and tetradecanol when used in or on all food and feed crops when formulated in polyethylene pheromone dispensers. This regulation eliminates the need to establish a maximum permissible level for residues of this biochemical pesticide. This request for an exemption from the requirement of a tolerance was requested by John W. Kennedy Consultants, Inc., acting as the registered U. S. agent for Biocontrol, Ltd., of Warwick, Queensland 4370, Australia.

EFFECTIVE DATE: This regulation becomes effective on May 22, 1991.

ADDRESSES: Written objections, identified with the docket control number [PP 9F3814/R1107], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM) 17, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2690).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of January 9, 1990 (55 FR 779), announcing receipt of pesticide petition 9F3814 from Biocontrol, Ltd., 148 Palermin St., Warwick, Queensland 4370, Australia (U.S. Agent: John W. Kennedy Consultants, Inc., American Bank Building, Suite 406, Laurel, MD 20707), proposing that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of the insect pheromone Isomate-C E,E-8,10-dodecenyl alcohol, dodecanol, and tetradecanol in or on all raw agricultural commodities (RAC's) when formulated in polyethylene pheromone dispensers.

No comments were received in response to this notice of filing.

This exemption is for codling moth (*Cydia pomonella*) pheromone which acts to control the codling moth by mating disruption.

The pheromone is a synthetic replica of the naturally occurring pheromone. This pheromone product is impregnated in a 6-inch flexible polyethylene tube which has an aluminum wire that runs along the length of the tube to allow the tube to be tied to the lateral branches of the trees.

The pheromone permeates the surrounding area giving off an olfactory stimulant which disrupts the mating pattern of the codling moth and diminishes its ability to reproduce, by reportedly causing a false trail in the orchard air so as to interrupt the reproductive cycle.

Isomate-C is selective for the codling moth. It appears to have no influence on other insects, which means that beneficial insects, such as those that prey on mites, are not affected.

The recommended application rates are: Two to four hundred dispensers per acre in mature orchards with a plant spacing of 30 by 30 ft. Normally two applications per season will suffice; the first application should be prior to the emergence of the moths (in late February), and the second application should be 90 days later, preferably in late May.

The data submitted in support of the petition and other relevant material have been evaluated. The toxicology data considered in support of the exemption from the requirements of a tolerance included: an acute oral LD_{50}, rat, with a no observed-effect level (NOEL) = > 5,000 mg/kg; acute dermal LD_{50}, rat, NOEL = > 2,000 mg/kg; primary dermal irritation, rabbit, P.I. score = 2.5, a mildly irritating agent and 3.3 moderate irritating; primary eye irritation, rabbit, waived based on the results of the primary dermal irritation study; and acute inhalation LC_{50} NOEL = 5.26 mg/l; dermal sensitization in the guinea pig following dermal exposure, none of the animals demonstrated irritation scores of 1 or greater. The Mutagenicity-Ames Test. Isomate-C was evaluated for the potential to cause gene mutations in two independently performed *Salmonella typhimurium* assays. Based on the results, the Agency has determined that the appropriate range of material doses were evaluated and that Isomate-C was not mutagenic in this test system. The data were classified as acceptable.

The exemption from the requirements for a tolerance on RAC's and registration of Isomate-C on a conditional basis is toxicologically supported.

1. It is a synthetic replica of the naturally occurring codling moth pheromone which already exists in nature.

2. The polyethylene synthetic tube used in the Isomate-C formulation is cleared for use in pesticides.

3. Isomate-C will be released at treatment sites at the rate of 75 mg of active ingredient at a constant rate over a 3-month interval. On average 8.4 mg of pheromone will be released per acre per day, or 0.21 mg of pheromone per dispenser per day. The dispensation is done through the walls of the polyethylene tubing. Because the product is encapsulated in plastic tubing, it is highly unlikely that humans or animals would be exposed to Isomate-C.

A lack of demonstrable toxicity and near non-existent potential for exposure to Isomate-C indicates that its use to aid in codling moth control would not result in hazards to public health.

Due to the small quantity of product being used, and its rather rapid dissipation into the environment, the acceptable daily intake and maximum permissible intake considerations are not relevant to this petition.

The data submitted or referenced in this petition and other relevant material have been evaluated. The toxicological data considered in support of the exemption from the requirements of a tolerance did not show any deleterious effects that would indicate a cause for concern from the use of this product.

Isomate-C is considered useful for the purpose for which the exemption from the requirements of a tolerance is sought. It is concluded that a tolerance for Isomate-C is not necessary to protect the public health. Therefore, 40 CFR Part 180 is amended as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-12), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels, or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Terms in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirement.

Dated: May 10, 1991.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended to read as follows:

PART 180—[AMENDED]

1. The authority section for part 180 continues to read as follows:

Authority: 21 U.S.C. 346(a) and 371.

2. By adding § 180.1103 to read as follows:

§ 180.1103 Isomate-C; exemption from the requirement of a tolerance.

The codling moth pheromone (Isomate-C) E,E-8,10-dodecenyl alcohol, dodecanol, tetradecanol is exempt from the requirements of a tolerance in or on all RAC's when formulated in polyethylene pheromone dispensers for use in orchards with encapsulated polyethylene tubing to control codling moth.

[FR Doc. 91-11662 Filed 5-21-91; 8:45 am]
BILLING CODE 6560-50-F

VOL 56 ISS 99 MY 22 1991 UMI

Proposed Rules

Federal Register
Vol. 56, No. 99
Wednesday, May 22, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 108

Loans to State and Local Development Companies; Miscellaneous Subjects

AGENCY: Small Business Administration (SBA).

ACTION: Notice of proposed rulemaking.

SUMMARY: SBA proposes to amend part 108 to (1) permit lease purchase arrangements for development projects; (2) substitute estimates instead of actual figures for the reporting of job opportunities during the first two years of a 503 company project; (3) provide for a minimum service charge (0.5%); (4) permit weighted blendings of maturities for multiple third party loans for 503 projects; and (5) clarify several existing regulations. This proposal, if adopted, would reflect recent developments in the subject programs more accurately than is now the case, and facilitate the operation of the programs and of the development companies.

DATES: Comments must be received on or before June 21, 1991.

ADDRESSES: Written comments may be sent to the Office of Economic Development, Small Business Administration, 409 3rd Street, SW., 8th Floor, Washington, DC. 20416.

FOR FURTHER INFORMATION CONTACT: LeAnn M. Oliver, Deputy Director for Program Development, Office of Economic Development, (202) 205–6485.

SUPPLEMENTARY INFORMATION: The proposed rule changes are designed to accomplish a variety of purposes. The first proposed change makes clear that unemployment caused by the relocation of small business operations is of concern not only in the State and local development company programs, but equally so in the section 503 and 504 programs. A certification in this regard is to be filed with the district office for the relocation area (§ 108.3(a)(1) and (c)).

The second proposed change provides a cross-reference from the selfdealing prohibition in all development company programs, to the special selfdealing provisions for the 503 program (§ 108.4(d)(3)(i)).

The next change adds lease purchase to the permissible forms of financing the acquisition of property for development projects. Under this form of lease the lessee acquires ownership of the leased property by means of the lease payments over the lease period (§ 108.8(e)).

Under the present regulation the achievement of job opportunities by a 503 company is measured by the average of job opportunities actually provided within 2 years after completion of a project. SBA proposes to base the average on estimated job opportunities until a project has been completed for two years; and thereafter to substitute the number of actual job opportunities provided (§ 108.503(c)). In order to facilitate monitoring of these achievements, 503 companies would be required to include in their annual reports relevant figures, computed in the manner described above. The reporting and record-keeping requirements herein set forth have been approved by the Office of Management and Budget under control number 3245–0074 (§ 108.503(d)).

SBA is concerned about the ability of 503 companies to cover their operating expenses and to service their portfolio adequately. Also, there is the possibility that a loan portfolio may be transferred from a 503 Company not in good standing to one that is in good standing. In that event the transferee company should be adequately compensated. We therefore propose a minimum periodic service charge of 0.5% of the outstanding balance of the 503 loan, while a charge in excess of 1.5% in rural areas, as defined, and of 1% in other areas will require SBA approval (§ 108.503–6(a)(3)).

The present regulation does not contemplate more than one loan as third-party financing of a given project, and requires minimum maturities for such loans. In actuality the third-party financing sometimes consists of more than one loan from the same or separate lenders. The proposed regulation therefore would treat multiple third-party loans as one, and allow for a blending of their maturities so that overall the desired maturity is achieved, while the component loans do not each reflect such maturity (§ 108.503–6(b)(1)).

Another amendment would make clear that the subordination of seller financing to the 503 loan is required only within the context of permanent financing, and not also for interim financing (§ 108.503–6(b)(2)).

The present regulation permits the assumption of a 503 loan by another small concern with SBA's approval. Experience has shown, however, that the limitation to assumption by a small concern is too narrow where a distress situation is involved. Since SBA approval is required in any event, a proposed amendment would permit assumptions by anyone acceptable to all parties and to SBA (§ 108.503–13(g)).

Finally, we propose to permit deferments of up to an aggregate of five years, even where the small concern is unable to bring its loan current within five years, by reamortizing the loan over the remaining maturity but no extension of the maturity is permitted. The present regulation requires that the small concern bring the loan current in five years. Experience has shown that greater flexibility in such work-out situations is desirable (§ 108.503–13(h)).

Compliance with Executive Orders 12291 and 12612, the Regulatory Flexibility Act and the Paperwork Reduction Act.

For purposes of Executive Order 12291, SBA has determined that this proposed rule is not a major one, since the total impact on the National economy cannot amount to $100 million. In this regard, the amendments to the Policy, Procedure and Operations sections are editorial and have no significant economic impact. We estimate that the leasehold-improvement and lease-purchase regulation would at most stimulate $7.5 million in additional projects. The job opportunity regulation and the related monitoring rule would merely change the computation method for program evaluation purposes without economic impact. The service charge regulation also would have little impact, as almost all certified development companies now charge at least 0.5% of the outstanding loan balance each year; the impact would be well below $50,000. The third-party financing proposal would not affect the overall maturity of such financings and is incapable of impacting the economy. The subordination requirement is a clarification of the present provision, without economic impact, as is the assumption provision. Lastly, the deferment provision, by permitting a stretch-out of more than 5 years, may have an impact of $2 million. Thus, the maximum total impact is less than $10 million.

For the purposes of Executive Order 12612, SBA certifies that this regulatory proposal does not have Federalism implications warranting the preparation of a Federalism Assessment.

For purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.*, SBA has determined that this proposed rule may have a significant economic impact on a substantial number of small entities. The following initial regulatory flexibility analysis is provided within the context of the review required under 5 U.S.C. 603:

These rules are proposed to update certain sections in conformity to legislative changes, to introduce the lease-purchase as an acceptable financing method, to improve the method by which the section 503 program participants are evaluated, and to introduce several clarifications deemed useful.

The legal bases for these rules are sections 5(b)(6) of the Small Business Act, 15 U.S.C.634(b)(6) and 308(c) of the Small Business Investment Act, 15 U.S.C. 687(c).

It is not possible to estimate the number of small entities to which these proposed rules may apply, but we estimate that they would affect less than 50% of the (approximately) 1400 development company loans annually except for the procedural rules which may affect most such loans, either at the development company or the borrower level.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this proposed rule does not impose any reporting or recordkeeping requirements not already approved by the Office of Management and Budget. There are no relevant Federal rules which might duplicate, overlap or conflict with these proposed rules. There are no significant alternatives to the proposed rules which would accomplish their objectives, while minimizing their already minimal impact on small entities.

List of Subjects in 13 CFR Part 108

Loan programs/business, Small business.

For the reasons set out above, part 108 of title 13, Code of Federal Regulations, is proposed to be amended as follows:

PART 108—LOANS TO STATE AND LOCAL DEVELOPMENT COMPANIES

1. The authority citation for part 108 continues to read as follows:

Authority. 15 U.S.C. 687(c), 695, 696, 697, 697a, 697b, 697c 102 Stat. 2989 (1988).

2. Section 108.3(a)(1) is revised to read as follows:

§ 108.3 Procedures for loan applications.

(a) *Relocation.* * * *

(1) In cases where the small business concern to be assisted by a development company is relocating its operations, said concern shall certify, at the time of filing an application with the development company for a section 502, 503 or 504 loan, or before disbursement by a State development company of the proceeds of a section 501 loan previously granted, that its relocation will not result in a substantial increase of unemployment in the area from which it is moving. Said certification shall be submitted by the development company to the SBA field office serving the area to which applicant is moving (see § 101.3–1 of this chapter), and within 30 days SBA shall notify the development company whether it may file a section 502, 503 or 504 loan application or disburse section 501 loan proceeds.

* * * * *

3. Section 108.4(d)(3)(i) is amended by adding at the end a parenthetical as follows:

§ 108.4 Operational requirements.

* * * * *

(d) *Prohibition of self-dealing.* * * *

(3) * * *

(i) * * * (See also § 108.503–3(g).)

4. Section 108.8(e) is revised to read as follows:

§ 108.8 Borrower requirements and prohibitions.

* * * * *

(e) *Third-party leases*—(1) *Leasehold improvements.* A development company may make a loan to acquire, construct or modify a plant on leased land owned by an unrelated lessor (i.e. other than under paragraph (d) of this section or under § 108.503–9(a)(9) of this part) to be leased to the borrower, if:

(i) The remaining term of the lease (including options to renew, exercisable exclusively by the lessee) equals or exceeds the greater of the useful life of such property or the term of the debenture; and,

(ii) Such loan is secured by a mortgage on such property sufficient to secure SBA's exposure; or

(iii) Sufficient other collateral is offered to protect SBA's exposure fully.

(2) *Lease-purchase.* A development company may make a loan to acquire, construct or modify a plant, owned by an unrelated lessor (i.e., other than under paragraph (d) of this section or under § 108.503–9(a)(9) of this part), to be leased to the borrower pursuant to a plan under which the aggregate lease payments pay for such property and the lessee has the option to acquire such property at the end of the lease for the outstanding balance, if any, plus a nominal amount (not to exceed one percent (%) of the agreed value of the plant at the inception of the lease), if:

(i) The term of the lease (including options to renew, exercisable exclusively by the lessee) equals the maturity of the related debenture; and

(ii) The development company loan is secured by a mortgage on such property sufficient to secure SBA's exposure; or

(iii) Sufficient other collateral is offered to protect SBA's exposure fully.

* * * * *

5. The last sentence of § 108.503(c) is revised to read as follows:

§ 108.503 Program objectives.

* * * * *

(c) *Job opportunity average*

* * * Such average shall be based on the estimated job opportunities to be provided pursuant to § 108.503(b)(1) for projects on which SBA has issued an Authorization and Debenture Guarantee, SBA Form 1248, until two years after the completion of such projects, at which time the actual job opportunities provided shall be substituted for the estimated job opportunities. The job opportunity average will be measured at the end of the 503 company's fiscal year and job opportunities associated with canceled Forms 1248 shall be eliminated from such average.

* * * * *

6. Section 108.503(d) is revised to read as follows:

§ 108.503 Program objectives.

* * * * *

(d) *Monitoring.* Each 503 company shall monitor the job opportunities provided by its 503 loans. Each 503 company shall report in its annual report the job opportunities actually provided or estimated to be provided by each project, as the case may be, computed in accordance with paragraph (c) of this section, and shall justify a dollar investment average in excess of that permitted by paragraph (c) of this section, setting forth measures to reduce such average (See § 108.503–3(f)(2)). Unless SBA permits otherwise in writing, the 503 company shall obtain, and have available in its records for

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SBA inspection, a certification from the small business concern(s) assisted, based on its (their) employment data or job opportunity estimates, computed in accordance with paragraph (c) of this section, which support the 503 company's job opportunity figures.

* * * * *

7. Section 108.503–6(a)(3) is revised to read as follows:

§ 108.503–6 Costs which may be charged to the small concern by the 503 company.

(a) *Charges and fees* * * *

(3) A periodic service charge of not less than one-half of one percent (0.5%) nor more than two percent (2%) per annum on the outstanding balance of the 503 loan measured at 5-year anniversary intervals: *Provided, however,* That a service charge in excess of one and one-half percent (1½%) in a rural area (see definition in § 108.2–55 FR 9111) and a service charge of one percent (1%) in other areas shall require the prior written approval of SBA, based on evidence of substantial need, satisfactory to SBA.

* * * * *

8. Section 108.503–8(b)(1) is amended by adding after the second sentence a new sentence to read as follows:

§ 108.503–8 Third-party financing.

* * * * *

(b) *Terms of third-party financing.* (1) * * * Where third-party financing includes more than one loan, the required maturity may be achieved by a weighted blending of the maturities of such loans, taking into account both the respective maturities and amounts of such loans. * * *

* * * * *

9. Section 108.503–8(b)(2) is revised to read as follows:

§ 108.503–8 Third party financing.

* * * * *

(b) * * *

(2) Where any part of the permanent financing of a project is supplied by the seller of property for such project, such financing shall be subordinate to the 503 loan.

* * * * *

10. Section 108.503–13(g) is revised to read as follows:

§ 108.503–13 Servicing loans and debentures.

* * * * *

(g) *Assumption of a 503 loan.* A 503 loan may be assumed by another person or concern with SBA's prior written approval, such approval not to be unreasonably withheld.

* * * * *

11. Section 108.503–13(h) is amended by revising the third sentence and adding a new sentence after the existing third sentence to read as follows:

§ 108.503–13 Servicing loans and debentures.

* * * * *

(h) *Deferments.* * * * Such deferment periods shall not exceed five years in the aggregate: *Provided,* That the final maturity of the loan may not be extended. If the small concern is unable to make payments sufficient to bring the loan current within five years, the loan may be reamortized over the remaining maturity but no balloon payments shall be permitted. * * *

* * * * *

(Catalog of Federal Domestic Assistance 59.036 Certified Development Company Loans (503 Loans); 59.041 Certified Development Company Loans (504 Loans))

Dated: April 24, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91–12078 Filed 5–21–91; 8:45 am]

BILLING CODE 8025–01–M

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13 CFR Part 121

Small Business Size Regulations; Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice of intent to waive the "Nonmanufacturer Rule" for multiple products.

SUMMARY: This notice advises the public that the Small Business Administration (SBA) is considering a waiver of the "Nonmanufacturer Rule" for the products listed below. These products are being considered for waiver of the Rule because our initial survey could not identify a small business supplying them to the Federal government. The effect of a waiver would be to allow an otherwise qualified regular dealer to supply the product of any domestic manufacturer on a Federal contract set aside for small business or awarded through the SBA 8(a) program.

PSC	Product line
5014	Tires, pneumatic, OPL–ZZ–T–381–4, Group 1–Passenger car, pursuit and high speed; Group 2, light truck tires; Group 3, medium and heavy truck
7025	Laser printers
3405	Hack saw blades
7025	Disk drives, computer

After performing an initial survey of these product lines, SBA proposes a waiver of the Nonmanufacturer Rule for each product line listed above. The basis for a waiver is that no small business manufacturer or processor is supplying the specific product line to the Federal Government. This notice is to solicit comments of additional information from interested parties.

DATES: Comments must be submitted on or before June 6, 1991. If granted, the waivers will be effective immediately upon publication of the Final Notice.

ADDRESS: Comments should be addressed to: Mr. Robert J. Moffitt, Chairman, Size Policy Board, Small Business Administration, 409 Third St., SW, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: James Fairbairn, Industrial Specialist, phone (202) 205–6485.

SUPPLEMENTARY INFORMATION: On November 15, 1988, Public Law 100–656 incorporated into the Small Business Act the existing SBA policy that recipients of contracts set aside for small business or the SBA 8(a) Program shall provide the products of small business manufacturers or processors. This requirement is commonly known as the "Nonmanufacturer Rule". The SBA regulations imposing this requirement are found in 13 CFR 121.906(b) and 121.1106(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors in the Federal market. A class of products is considered to be a particular Product and Service Code (PSC) under the Federal Procurement Data System or an SBA recognized product line within a PSC. To be considered in the Federal market, a small business must have been awarded a contract by the Federal government to supply that particular class of products within the past twelve months from the date of request for waiver. SBA has been requested to issue a waiver for each of the products listed above because of an apparent lack of any small business manufacturers or processors for them within the Federal market. SBA searched its Procurement Automated Source System (PASS) for small business manufacturers or processors that have sold to the Federal government. Because no small business manufacturers or processors were identified within the Federal market by the PASS search, we state by this notice to the public in the **Federal Register** our proposed intention to grant waivers for these products unless new information is found.

The SBA published a proposed notice to issue a waiver of the nonmanufacturer rule for mainframe computers on June 4, 1990 (55 FR 22790,

No. 107). That notice also notified the public that waivers were denied for all product lines of ADP product lines within several Product Service Codes. Among them were printers and disk drives. A recent re-survey of the Federal market failed to locate any active small business manufacturers or processors for these two classes of products.

This notice proposes to waive the Nonmanufacturer Rule for the subject product lines. The public is invited to submit comments or supply information which would identify any small business manufacturers or processors within these product lines.

Dated: May 7, 1991

Patricia Saiki,

Administrator.

[FR Doc. 91–12077 Filed 5–21–91; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM–57; Notice No. SC–91–5–NM]

Special Conditions: Fokker Model F27 Mark 500 Airplane; Lightning and High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Fokker Model F27 Mark 500 airplane modified by Flight Dynamics, Inc. This airplane is equipped with a high-technology digital avionics system, the Head-up Guidance System (HGS), that performs critical and essential functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of this system from the effects of lightning and high-intensity radiated fields (HIRF). This notice proposes additional safety standards which the Administrator considers necessary to ensure that the critical and essential functions that this system performs are maintained when the airplane is exposed to lightning and HIRF.

DATES: Comments must be received on or before July 8, 1991.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–57, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM–57. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Gene Vandermolen, FAA, Flight Test and Systems Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4046; telephone (206) 227–2135.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–57." The postcard will be date/time stamped and returned to the commenter.

Background

On December 12, 1990, Flight Dynamics, Inc., 16600 SW 72nd Ave., Portland, Oregon 97224, applied for a supplemental type certificate to modify a Fokker Model F27 Mark 500 airplane. The Fokker Model F27 Mark 500 is a two-crew, two-engine, turbopropeller airplane with a maximum takeoff weight of approximately 45,000 lbs. The proposed modification incorporates the installation of a Head-up Guidance System (HGS) for manually flown Category IIIa operations. The HGS originally installed in this airplane was certified for Category I and II operations. The HGS performs both critical and essential functions which may be vulnerable to lightning and high-intensity radiated fields external to the airplane.

Supplemental Type Certification Basis

Under the provisions of § 21.115, subpart C, of the FAR, Flight Dynamics, Inc. must show that the modified Fokker Model F27 Mark 500 meets the regulations incorporated by reference in Type Certificate No. 617, as specified in § 21.101(a), unless: (1) Otherwise specified by the Administrator; (2) compliance with later effective amendments is elected or required under §§ 21.101(a) or (b); or (3) special conditions are prescribed by the Administrator.

The regulations incorporated by reference in Type Certificate Data Sheet No. 617 for the Fokker Model F27 Mark 500 are: Part 4b of the Civil Air Regulations (CAR), as amended by Amendment 4b–1, Amendment 4b–2 (items 1 and 46), Amendment 4b–3 (items 21 through 33 and 39), Amendment 4b–7, and Amendment 4b–8 (items 9, 21, and 22). In addition, the certification basis includes certain portions of Special Regulation (SR) 422B and special conditions, none of which are pertinent to the present installation.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 4b plus applicable part 25 requirements) do not contain adequate or appropriate safety standards for the Model F27 Mark 500 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101.

Discussion

The existing lightning protection airworthiness certification requirements are insufficient to provide an acceptable level of safety with the new technology avionic systems. There are two regulations that specifically pertain to lightning protection; one for the airframe in general (§ 25.581), and the other for fuel system protection (§ 25.954). There are, however, no regulations that deal specifically with protection of electrical and electronic systems from lightning. The loss of a critical function of these systems due to lightning would prevent continued safe flight and landing of the airplane. Although the loss of an essential function would not prevent

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continued safe flight and landing, it would significantly impact the safety level of the airplane.

There is also no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are proposed for the Fokker Model F27 Mark 500 that would require that the HGS be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning and HIRF.

Lightning

To provide a means of compliance with the proposed special conditions, clarification of the threat definition for lightning is needed. The following "threat definition," based on FAA Advisory Circular 20-136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning, dated March 5, 1990, is proposed as a basis to use in demonstrating compliance with the proposed lightning protection special condition.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in Advisory Circular (AC) 20-53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analyses need to be conducted in order to obtain the resultant internal threat to the installed systems. The electronic systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. First Return Stroke: (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level.

2. Multiple Stroke Flash: (⅓ Component D). A lightning strike is often composed of a number of successive strokes, referred to as multiple strokes. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ⅓ magnitude of Component D (peak amplitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation.

3. Multiple Burst: (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause physical damage, it is possible that transients resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of short duration, low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is necessary that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes each, distributed over a period of 2 seconds. Each set of 20 strokes is made up of 20 repetitive Component H waveforms distributed within a period of one millisecond. The minimum time between individual Component H pulses within a burst is 10μs, the maximum is 50μs. The 24 bursts are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. The individual "Multiple Burst" Component H waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (⅓ Component D), and the "Multiple Burst" (Component H).

These components are defined by the following double exponential equation:

$$i(t) = I_0 (e^{-at} - e^{-bt})$$

where:

t = time in seconds,

i = current in amperes, and

	Severe strike (component A)	Restrike (component D)	Multiple stroke ⅓ component D)	Multiple burst (component H)
I_0, amp =	218,810	109,405	54,709	10,572
a, sec^{-1} =	11,354	22,708	22,708	187,191
b, sec^{-1} =	647,265	1,294,530	1,294,530	19,105,100

This equation produces the following characteristics:

I_{max} = and	200 KA	100 KA	50 KA	10 KA
$(di/dt)_{max}$ (amp/sec) =	1.4×10^{11} @t=0+sec	1.4×10^{11} @t=0+sec	0.7×10^{11} @t=0+sec	2.0×10^{10} @t=0+sec
di/dt, (amp/sec) =	1.0×10^{11} @t=.5μs	1.0×10^{11} @t=.25μs	0.5×10^{11} @t=.25μs	
Action Integral (amp^2 sec) =	2.0×10^6	0.25×10^6	$.0625 \times 10^6$	

High-Intensity Radiated Fields

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as the HGS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–500 KHz	80	80
500 KHz–2 MHz	80	80
2 MHz–30 MHz	200	200
30 MHz–100 MHz	33	33
100 MHz–200 MHz	33	33
200 MHz–400 MHz	150	33
400 MHz–1 GHz	8,300	2,000
1 GHz–2 GHz	9,000	1,500
2 GHz–4 GHz	17,000	1,200
4 GHz–6 GHz	14,500	500
6 GHz–8 GHz	4,000	666
8 GHz–12 GHz	9,000	2,000
12 GHz–20 GHz	4,000	500
20 GHz–40 GHz	4,000	1,000

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S. It will also be adopted by the European Joint Airworthiness Authorities.

Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the supplemental type certification basis for the modified Fokker Model F27 Mark 500 airplane:

1. Lightning Protection

a. Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

b. Each essential function of electrical or electronic systems or installations must be protected to ensure that the function can be recovered in a timely manner after the airplane has been exposed to lightning.

2. Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF)

Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to externally radiated electromagnetic energy.

3. The following definitions apply with respect to these special conditions:

Critical Function. Functions whose failure could contribute to or cause a failure condition that could prevent the continued safe flight and landing of the airplane.

Essential Functions. Functions whose failer could contribute to or cause a failure condition that could significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

Issued in Renton, Washington, on May 7, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-12094 Filed 5-21-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-95-AD]

Airworthiness Directives; Boeing Model 747-400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 747-400 series airplanes, which would require modification to the cargo compartment and engine fire detection and extinguishing systems. This proposal is prompted by reports of crossed wiring in the cargo compartment smoke detection system, and reports of crossed plumbing and wiring in the cargo compartment and engine fire extinguishing systems on Boeing airplanes of similar design. These conditions, if not corrected, could result in loss of the ability of the forward cargo compartment smoke detection system to generate a warning on the flight deck in the event of a cargo compartment fire, or loss of the ability to discharge fire extinguishing agent into the correct cargo compartment or to the correct engine in the event of a fire.

DATES: Comments must be received no later than July 15, 1991.

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ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-95-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Jon A. Regimbal, Seattle Aircraft Certification Office, Propulsion Branch, ANM-140S; telephone (206) 227-2687. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-95-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On May 1, 1989, the FAA issued AD 89-03-51, Amendment 39-6213 (54 FR 20118, May 10, 1989), to require inspections and/or functional checks for improperly installed plumbing and wiring in the cargo compartment and engine fire protection systems on various Boeing airplane models. The checks and inspections are also required to be performed following any maintenance action which could cause mis-plumbing or mis-wiring. That action was prompted by numerous reports of improperly installed plumbing or wiring on several different Boeing airplane models. This condition, if not corrected, could result in severe damage to the airplane in the event of a cargo compartment or engine fire. The inspection/check procedures required by AD 89-03-51 were considered to be interim action until final action was identified.

The Model 747-400 series airplanes had not been certified at the time that AD 89-03-51 was issued, and the cargo compartment and engine fire detection and extinguishing systems for this model were not included in the aforementioned AD action.

Since the issuance of AD 89-03-51, the FAA has determined that the crossed plumbing and wiring were caused by the close physical location of similar connections. A review of the Model 747-400 series airplane's cargo compartment and engine fire protection systems has revealed that there are several areas in these systems where the design does not preclude the crossing of plumbing or wiring connections during system maintenance.

The FAA has reviewed and approved Boeing Service Bulletin 747-26-2143, dated December 20, 1990, which describes the re-routing of cargo compartment fire extinguishing system plumbing and wiring to ensure that the connections will be re-installed correctly during system maintenance.

The FAA has also reviewed and approved Boeing Service Bulletin 747-26-2164, dated February 14, 1991, which describes the replacement of the existing engine fire control module on the flight deck overhead panel with a new module which has unique positional clocking for the engine discharge switches. This positional clocking is designed to prevent the inadvertent interchanging of the engine discharge switches during system maintenance.

The FAA has also reviewed and approved Boeing Service Bulletin 747-26-2168, dated March 28, 1991, which describes the installation of new connector brackets and wire bundles for portions of the cargo compartment smoke detection system. These changes will prevent incorrect connections between the cargo compartment smoke detectors during maintenance.

The crossed wiring and plumbing that has occurred on other Boeing airplane models having similar system designs is likely to exist or develop on airplanes of the Model 747-400 type design; therefore, an AD is proposed which would require the modification of the cargo compartment fire detection system and the cargo compartment and engine fire extinguishing systems in accordance with the service bulletins previously described.

There are approximately 101 Model 747-400 series airplanes of the affected design in the worldwide fleet. It is estimated that 18 airplanes of U.S. registry would be affected by this AD. For 16 of these airplanes, it is estimated that it would take approximately 185 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. The parts cost for each of these airplanes would be $11,263, bringing the total cost per airplane to $21,438. For the remaining two airplanes, it is estimated that it would take 37 manhours to accomplish the required actions, and that the average labor cost would be $55 per manhour. The parts cost for these airplanes would be $4,092, bringing the total cost per airplane to $6,127. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $355,262.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket No. 91-NM-95-AD.

Applicability: Model 747-400 series airplanes up to and including line position 839, certificated in any category.

Compliance: Required within the next 12 months after the effective date of this AD, unless previously accomplished.

To preclude cross connection of cargo compartment and engine fire protection wiring and plumbing during maintenance, accomplish the following:

(a) For airplanes identified in Boeing Service Bulletin 747-26-2143, dated December 20, 1990: Modify the cargo compartment fire extinguishing system plumbing and wiring in accordance with that service bulletin.

(b) For airplanes identified in Boeing Service Bulletin 747-26-2164, dated February 14, 1991: Modify the engine fire control module in accordance with that service bulletin.

(c) For airplanes identified in Boeing Service Bulletin 747-26-2168, dated March 28, 1991: Modify the cargo compartment smoke detection system wiring in accordance with that service bulletin.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO) FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on May 15, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-12093 Filed 5-21-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Permanent Regulatory Program; Revision of Administrative Rules and the Ohio Revised Code

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period on Revised Program Amendment Number 46 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment is intended to revise four Ohio administrative rules and one section of the Ohio Revised Code to be consistent with the corresponding Federal regulations regarding the extraction of coal incidental to the extraction of other minerals.

This notice sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on June 21, 1991. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on June 17, 1991. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on June 6, 1991.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Richard J. Seibel, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232, Telephone: (614) 866-0578.

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H-3, Columbus, Ohio 43224, Telephone (614) 265-6675.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 Federal Register (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

By letter dated February 7, 1990 (Administrative Record No. OH-1383), the Director of OSM notified the Ohio Department of Natural Resources, Division of Reclamation (Ohio) that OSM had recently promulgated new Federal regulations concerning exemptions for coal extraction incidental to the extraction of other minerals. The Director required Ohio to modify its regulatory program to remain consistent with the new Federal requirements.

By letter dated April 5, 1990 (Administrative Record No. OH-1384), Ohio responded with questions concerning the Director's February 7, 1990 letter. OSM provided responses to Ohio's questions by letter dated May 1, 1990 (Administrative Record No. OH-1385).

By letter dated May 31, 1990 (Administrative Record No. OH-1386), Ohio requested an extension until August 1, 1990 to submit an amendment to the Ohio program concerning incidental coal extraction. By letter dated August 2, 1990 (Administrative

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Record No. OH–1387), Ohio submitted additional questions concerning OSM's new regulations on incidental coal extraction. OSM responded to Ohio's second set of questions by letter dated September 6, 1990 (Administrative Record No. OH–1390).

By letter dated October 12, 1990 (Administrative Record No. OH–1393), Ohio submitted formal Program Amendment Number 46. The amendment proposed changes to three Ohio administrative rules and one section of the Ohio Revised Code regarding the extraction of coal incidental to the extraction of other minerals.

On October 31, 1990, OSM published a notice in the **Federal Register** (55 FR 45809) announcing receipt of Ohio's Program Amendment Number 46 and inviting public comment on its adequacy. The public comment period ended on November 30, 1990. The public hearing scheduled for November 26, 1990, was not held because no one requested an opportunity to testify.

By letter dated March 13, 1991 (Administrative Record No. OH–1478), OSM provided Ohio with its questions and comments about the proposed amendment. On April 4, 1991, representatives of Ohio and OSM discussed this letter in a telephone conversation (Administrative Record No. OH–1500).

By letter dated April 15, 1991 (Administrative Record No. OH–1507), Ohio provided its responses to OSM's March 13, 1991, letter and submitted Revised Program Amendment Number 46. In the revised amendment, Ohio reiterated many of the revisions proposed in the initial version of Program Amendment Number 46. OSM's **Federal Register** notice of October 31, 1990, discussed those revisions proposed by Ohio in the initial amendment. New substantive changes proposed by Ohio in the revised amendment are discussed briefly below. Numerous nonsubstantive changes are proposed throughout the revised rules to correct paragraph letter notations and to make other minor revisions.

1. Definition of Coal Mining Operation

Ohio is revising the definition of "coal mining operation" at Ohio Administrative Code (OAC) section 1501:13–1–02 paragraph (S)(1)(a) and Ohio Revised Code (ORC) section 1513.01 paragraph (G)(1)(a) to delete the phrase "during the year" and to delete language regarding the use of minerals extracted for fill material.

2. Requirements for Exemptions for Incidental Coal Extraction

Ohio is adding an unlettered introductory paragraph to OAC section 1501:13–4–16. This introductory paragraph discusses the purpose of the rule and the general nature of the restrictions on exemptions granted under the rule for extraction of coal incidental to the extraction of other minerals.

Ohio is revising the proposed definition of "mining area" at OAC section 1501:13–4–16 paragraph (B)(4) to delete the phrase "or a series of pits among which the geologic column is consistent."

Ohio is revising OAC section 1501:13–4–16 paragraph (J)(1) (formerly paragraph (E)(1)) to delete the phrase "within a reasonable period of time." Ohio will make information submitted to the Chief of the Ohio Department of Natural Resources, Division of Reclamation (the Chief) immediately available to the public in accordance with ORC section 149.43 paragraph (B) and OAC section 1501:13–1–10 paragraph (B).

Ohio is revising OAC section 1501:13–4–16 paragraph (G)(2)(a) (formerly paragraph (F)(2)(a)) to add the statement "A legally binding agreement for the future sale of other minerals is sufficient to demonstrate the above standard" in place of the statement "The operator must provide documentation of the claim to a future market for the other minerals to demonstrate the above standard." Ohio is also adding paragraph (G)(2)(a)(i) which states that "The request for exemption may be approved by the Chief conditioned upon receipt, prior to the commencement of mining, of a legally binding agreement for the future sale of other minerals."

Ohio is adding new paragraphs (K)(5) and (6) to OAC section 1501:13–4–16 to specify that annual reports submitted by exempted mine operators shall include projections for each mining area of the anticipated production of coal and of other minerals in the upcoming twelve-month period. The report shall be accompanied by documentation that a market will exist in the upcoming twelve-month period for each mineral other than coal on which the exemption is based. Ohio will consider a legally binding agreement for the future sale of other minerals to be sufficient documentation of a future market.

3. Revocation of an Exemption for Incidental Coal Extraction

Ohio is revising OAC section 1501:13–5–03 paragraph (C)(1) to add a statement that the Chief shall also immediately notify any person who submitted written comments, regarding a request for an exemption, of the Chief's decision to revoke or not to revoke the exemption.

Ohio is also revising OAC section 1501:13–5–03 paragraph (D) regarding direct enforcement. The revised paragraph contains expanded provisions for:

(1) Protection from enforcement of coal mining and reclamation standards for operators mining in accordance with an approved exemption;

(2) Enforcement against operators in violation of an approved exemption; and

(3) Operator responsibilities upon revocation of an exemption or denial of an exemption.

4. Access by Representatives of the Secretary of the Interior

Ohio is revising OAC section 1501:13–4–16 paragraph (H)(1) (formerly paragraph (G)(1)) to make the specified information available to representatives of the U.S. Secretary of the Interior.

Ohio is also revising OAC section 1501:13–14–01 paragraphs (H) (1) and (2) to specify that representatives of the U.S. Secretary of the Interior shall have the right to conduct inspections of operations claiming an exemption for incidental coal extraction, to have access to and to copy documents relevant to the exemption, and to gather physical and photographic evidence to document site conditions.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m. on June 6, 1991. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT**." All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "**ADDRESSES**." A written summary of each public meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 8, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 91–11996 Filed 5–21–91; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 935

Ohio Regulatory Program; Revision of Administrative Rule

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: By a letter dated April 3, 1991, Ohio withdrew an amendment to the Ohio regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) concerning excess spoil fills. OSM is announcing the suspension of formal processing of the amendment.

DATES: The proposed rule is withdrawn May 22, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232; (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 936.16.

II. Submission and Discussion of Amendment

On February 19, 1991 (Administrative Record No. OH–1461), OSM published a notice in the **Federal Register** (56 FR 6596) announcing receipt and soliciting public comment on the program amendment for excess spoil fills. The public comment period closed on March 21, 1991.

By a letter dated April 3, 1991 (Administrative Record No. OH–1502), Ohio notified OSM that it was withdrawing the proposed program amendment on excess spoil fills. Ohio stated that it will pursue the goals of the successful experimental practice on Peabody Coal Company Permit No. C–1393 through Federal rulemaking. The Director is announcing the withdrawal of the proposed program amendment and the suspension of the amendment by OSM.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 6, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 91–11997 Filed 5–21–91; 8:45 am]

BILLING CODE 4310–05–M

Office of Surfacing Mining Reclamation and Enforcement

30 CFR Part 946

Virginia Regulatory Program; Coal Surface Mining Reclamation Fund

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Virginia permanent regulatory program (hereinafter, the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to changes in Virginia's Coal Surface Mining Reclamation Fund (hereinafter, Pool Bond Fund or Fund). The goal of the amendment is to update the Virginia Coal Surface Mining Reclamation Regulations to make them consistent with recent statutory changes to the Code of Virginia.

This notice sets forth the times and locations that the Virginia program and proposed amendment to the program are available for public inspection, the comment period during which interested parties may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is required.

DATES: Written comments must be received on or before 4 p.m. on June 21, 1991. If requested, a public hearing on the proposed amendment will be held on June 17, 1991; requests to present testimony at the hearing must be received on or before 4 p.m. June 6, 1991.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to Mr. Robert A. Penn, Director, Big Stone Gap Field Office at the first address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Virginia program, proposed amendments and all written comments received in response to this notice will be available for review at the locations listed below during normal business hours Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendment by contacting the OSM Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Drawer 1216, Powell Valley Square Shopping Center, room 220, Route 23, Big Stone Gap, Virginia 24219, Telephone (703) 523–4303.

Virginia Division of Mined Land Reclamation, P.O. Drawer U, 622 Powell Avenue, Big Stone Gap, Virginia 24219, Telephone (703) 523–8100.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Telephone (703) 523–4303.

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SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Virginia program on December 15, 1981. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the December 15, 1981 **Federal Register** (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13, 946.15, and 946.16.

II. Discussion of Amendments

By letter dated May 1, 1991 (Administrative Record No. VA–795), Virginia submitted a proposed amendment to its program pursuant to SMCRA. The proposed amendment will update the Virginia Coal Surface Mining Reclamation Regulations for consistency with recent statutory changes to the Code of Virginia. The proposed changes are discussed briefly below.

Virginia proposes to amend section VR 480–03–19.801.11(a) to require all applicants to demonstrate a history of compliance of three consecutive years to qualify for participation in the Fund.

Virginia proposes to amend VR 480–03–19.801.12(a) to increase the entrance fee from $1,000 to $5,000 whenever the Fund balance falls below $1.75 million. This new rate applies until the Fund balance exceeds $2 million. This section also requires a permit renewal fee of $1,000.

Proposed changes to VR 480–03–19.801.12(b)(1–4) include increasing the minimum amount of bond that must be posted by the participants. The per-acre bond rates increase to $3,000 with a required minimum bond of $40,000 for underground operations and $100,000 for all other operations. The applicability of the new rates is determined by the status of a permit of July 1, 1991.

Virginia proposes to amend VR 480–03–19.801.12(g) to require any mining operation participating in the Fund that has been in temporary cessation for more than 6 months as of July 1, 1991, to post within 90 days, bond equal to the total estimated cost of reclamation for all portions of the permitted site which are in temporary cessation. This provision will become applicable to any site that is in temporary cessation for 6 months or longer after July 1, 1991.

Proposed VR 480–03–801.14(a) changes the trigger for paying reclamation taxes from $750,000 to any fund balances less than $1.75 million. The reclamation taxes are applicable until the Fund balance reaches $2 million (480–03–19.801.14(b)). The per ton tax rates found at VR 480–03–19.801.14(a)(1–3) have increased to four cents per clean ton of coal mined by surface methods, three cents per clean ton of coal mined by underground methods, and one and one-half cents per clean ton of coal processed or loaded at an associated facility.

Proposed VR 480–03–19.801.14(c) clarifies that the maximum reclamation tax per calender year is not applicable until one year after coal production commences on a new permit participating in the Fund.

Proposed VR 480–03–19.801.14(d)(1&2) increase the maximum reclamation tax rates for participants holding more than one type of permit. Surface mined coal processed by the permittee will be subject to a maximum reclamation tax of five and one-half cents per clean ton. Coal produced by underground operation and processed by the same permittee will be subject to a maximum reclamation tax of four and one-half cents per clean ton. However, coal processed by the permittee that originates from other permits is subject to a reclamation tax of one and one-half cents. These maximum tax rates apply only after fulfillment of the requirements of 480–03–19.801.14(e).

Virginia proposes to amend VR 480–03–19.801.15(a) to change the due date for reclamation tax reporting from the 15th day of the month to no later than 30 days after the end of each calendar quarter. Fee payments and the tax reporting requirements will be consistent.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Virginia satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Virginia program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the Big Stone Gap Field Office will not necessary be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by close of business on June 6, 1991. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a pubic hearing, may be held.

Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Big Stone Gap Field Office by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT"**. All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under **"ADDRESSES"**. A written summary of each public meeting will be made part of the Administrative Record.

List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, and Underground mining.

Dated: May 6, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 91–11998 Filed 5–21–91; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPTS–211022A; FRL–3890–2]

Polychlorinated Biphenyls; Denial of Citizen's Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of denial of petition.

SUMMARY: Pursuant to section 21 of the Toxic Substances Control Act (TSCA), Mr. David G. Walker, of Walker Chemists, has submitted a petition asking EPA to amend its regulations under 40 CFR 761.3 to exclude mono-, di-, and trichlorobiphenyls (except 2,4,4'-trichlorobiphenyl) from the definition of polychlorinated biphenyls (PCBs) regulated under section 6(e) of TSCA. EPA is denying the petition because Congress directed EPA through section 6(e) of TSCA to eliminate all PCBs from the environment. EPA has already addressed the issue of excluding lower chlorinated biphenyls in response to three other petitions. The present petitioner did not provide sufficient evidence to show that the chemicals in question would not present an unreasonable risk of injury to humans and the environment; the petitioner has failed to provide any evidence that there are no equally satisfactory substitutes for the uses identified in the petition; and EPA does not believe it is otherwise appropriate to exempt these lower chlorinated biphenyls from its regulations across the board.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Rm. EB–44, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, 202–554–1404, TDD: 202–554–0557.

SUPPLEMENTARY INFORMATION: PCBs are the only chemicals singled out by name for regulation in the Toxic Substances Control Act (TSCA). Section 6(e), 15 U.S.C. 2605(e), of that Act generally directed the EPA to promulgate regulations prohibiting the manufacture, use, processing, or distribution in commerce, with certain exceptions, of any PCB. EPA has authority to exclude, through rulemaking, the manufacture of PCBs from this prohibition if certain findings are made. To support any such rulemaking activity, EPA must find that there is a reasonable basis to conclude that the proposed activity involving an excluded chemical substance will not present an unreasonable risk. Under section 21 of TSCA, petitioners need to provide sufficient data to support the no unreasonable risk finding in their request to amend the PCB regulations.

In the remainder of this document, Unit I.A discusses the statutory and regulatory framework of section 21, Unit II discusses the history of the regulatory definition of PCBs, discusses and responds to the petitioner's claim of low risk, and discusses and responds to the petitioner's claims of benefits of the requested change, and Unit III summarizes the decision to deny the petition. Unit IV lists the material found in the public docket.

I. Background

A. Statutory and Regulatory Framework

Section 21 of TSCA provides that any person may petition the Administrator of EPA to initiate a proceeding for the issuance, amendment, or repeal of rules under section 4 (rules requiring chemical testing), section 6 (rules imposing substantive controls on chemicals), or section 8 (information-gathering rules). Section 21(b)(3) requires that EPA grant or deny a citizen's petition within 90 days of the filing of the petition (15 U.S.C. 2620(b)(3)). The petition must set forth the facts which establish the need for the relief requested. See the discussion in the **Federal Register** of November 13, 1985 (50 FR 46825), for guidance on preparing citizen's petitions under section 21 of TSCA.

If the Administrator grants a section 21 petition, the Agency must promptly commence an appropriate proceeding. If the Administrator denies the petition, the reasons for denial must be published in the **Federal Register**.

If EPA denies the petition, or fails to grant or deny the petition within 90 days of the filing date, the petitioner may commence a civil action in a Federal district court to compel the Agency to initiate the requested action. This suit must be filed within 60 days of the denial, or within 60 days of the expiration of the 90–day period if the Agency fails to grant or deny the petition within that period (15 U.S.C. 2620(b)(4)).

Section 21 does not specifically state the criteria under which EPA should decide whether to grant or deny a citizen's petition. However, there are standards under sections 4, 6, and 8 for issuing regulations, and there are standards imposed on the court for deciding whether to order EPA to initiate rulemaking in the event of a lawsuit filed by the petitioner after denial of a section 21 petition.

PCBs are the only chemical singled out by name for regulation in TSCA. Section 6(e) generally directed the EPA to promulgate regulations prohibiting the manufacture, use, processing, or distribution in commerce, with certain exceptions, of any PCB. EPA has authority to exempt, through rulemaking, the manufacture of PCBs from this prohibition if certain findings expressly provided in the statute are made. To support any such rulemaking activity, EPA must find that there is a reasonable basis to conclude that the proposed activity involving the PCB will not present an unreasonable risk and that good faith efforts have been made to develop substitutes for the PCB which do not present an unreasonable risk of injury to health or the environment.

Aside from the explicit statutory authority to exempt activities from the statutory prohibitions, EPA believes it also may, within its discretion, take other appropriate regulatory actions consistent with the Congress' purposes in implementing section 6(e).

B. Summary of the Petition

David G. Walker, of Walker Chemists, submitted a petition to EPA on February 6, 1991, under section 21 of TSCA, 15 U.S.C. 2620, asking that the definition of PCBs under 40 CFR 761.3 be amended to exclude mono-, di-, and trichlorobiphenyls (except for 2,4,4'-trichlorobiphenyl). A similar petition was submitted to EPA by Mr. Walker in March 1987 which EPA denied (52 FR 25068, July 2, 1987). The petitioner again seeks a change in the definition of PCBs so that Walker Chemists can manufacture, purify, and use monochlorobiphenyl (MCB) containing small amounts of di- and trichlorobiphenyls. The petitioner has stated that his product would not contain more than 50 parts per million (ppm) of tetrachloro- or higher chlorinated biphenyl compounds. The MCB would be used to make a new solvent, "Walker Solvent," for use in a new technology to separate carbon monoxide (CO), hydrogen sulfide (H_2S), and olefins from gases such as coal-produced gas and nitrogen.

The petitioner claims that this product/technology would bring about energy independence for the United States, the clean burning of coal to make electricity, the efficient manufacture of ethylene and propylene, the production of oil from Western oil shales, and increased efficiency in pig iron production.

The petitioner also claims that low health and ecological risks make mono-, di-, and trichlorobiphenyls (except 2,4,4'-trichlorobiphenyl) environmentally acceptable; that they are readily biodegradable by common bacteria in the environment; that they have a low order of toxicity to humans and other life forms; that they are not environmentally persistent; and that they would never have become regulated on their own use history and merits but were instead included by rulemaking with PCB compounds which do have the properties to merit regulation and ban.

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II. EPA Analysis of the Petition

In evaluating Walker's request to amend the definition of PCBs which was promulgated under TSCA section 6(e), EPA assessed Walker's petition in the context of the statutory standard discussed in Unit I.A for exempting PCBs from the section 6(e) prohibitions. EPA also considered whether it would be appropriate to otherwise exercise its discretion to exclude lower chlorinated biphenyls from the regulatory definition of PCBs.

A. History of the PCB Definition

In enacting section 6(e) of TSCA, Congress intended to eliminate the risks of injury to human health and the environment from all PCBs. There is no evidence to suggest that Congress did not intend to include all chlorinated biphenyls in its definition of polychlorinated biphenyls. Congress has not changed that definition over the years. EPA, consistent with this congressional intent, uses the all-inclusive term "polychlorinated biphenyls." The Agency is concerned with the risks inherent in all of the chlorinated biphenyls.

EPA recognizes that mono- and dichlorobiphenyls are less persistent and degrade more rapidly in some environments than do more highly chlorinated biphenyls and that mono- and dichlorobiphenyls are less persistent than trichlorobiphenyls. In its denial of the Dow Chemical Company's petition (Dow Petition) to change the definition of PCBs to exclude mono- and dichlorobiphenyls, published in the Federal Register of August 25, 1982 (47 FR 37259), EPA acknowledged the technical merits of Dow's claim about the relative risks of certain monochlorobiphenyls. However, the Agency decided not to change the definition to exclude monochlorobiphenyls because of the congressional intent to include all chlorinated biphenyls. The Agency addressed the request for relief in the Dow Petition in a subsequent rulemaking concerning PCBs produced as byproducts or impurities of various chemical processes. This change in definition is discussed in the final rule published in the Federal Register of July 10, 1984 (49 FR 28172). Under "PCB and PCBs," in 40 CFR 761.3, "inadvertently generated non-Aroclor PCBs" are defined "as the total PCBs calculated following division of the quantity of monochlorinated biphenyls by 50 and the dichlorinated biphenyls by 5," as referred to under the definition of "[e]xcluded manufacturing process" in the same section. While EPA discounted concentrations of mono- and dichlorobiphenyls where they are generated inadvertently as low level byproducts, the Agency decided not to discount trichlorobiphenyls, nor to exclude any chlorinated biphenyl from the general ban on the intentional manufacture of PCBs. The bases for these decisions were concern for toxicity and amount of PCBs that could potentially be released into the environment. Very small amounts of monochlorinated and dichlorinated biphenyls are generated and released into the environment when inadvertently generated as opposed to a process which intentionally generates PCBs as that proposed by the petitioner here.

B. Analysis of Petitioner's Claims

1. *Claimed Low Risks and Response.* EPA must consider all sources of PCBs and all environments where they will ultimately be found in judging the merits of the petition since the effect of the petition, if granted, would be to essentially deregulate the manufacture, processing, and distribution in commerce of all these lower chlorinated biphenyls. The petitioner claims that mono-, di-, and trichlorobiphenyls (except 2,4,4'-trichlorobiphenyl) are readily biodegradable and are not environmentally persistent. EPA has found that these PCBs sorb very strongly to soils and sediments and are quite immobile in those media. Also, they do not degrade rapidly under anaerobic conditions. Anaerobic conditions are common in wetlands, aquatic sediments, and some saturated terrestrial soils and when in those media, these PCB congeners will biodegrade very slowly and will be persistent. In addition, since these PCB congeners biodegrade slowly under aerobic conditions in oceans (the ultimate sink), they will tend to be persistent in this environmental compartment. The petitioner claims that ecological magnification is not an important risk when the substance is readily biodegradable. However, these PCB congeners will reside in sediments at the bottom of aquatic media under anaerobic conditions, and in oceans under aerobic conditions, will biodegrade slowly, and will be persistent. Bottom-feeding fish, as well as fish in the oceans, will bioconcentrate the PCBs. Predators feed on these species and bioaccumulate the PCBs, and in this way PCBs are transported up the food chain. Ecological magnification could, therefore, be large, and man and the environment would be potentially at risk. These findings are discussed in "Environmental Transport and Transformation of Polychlorinated Biphenyls" (December 1983), which is part of item (1) of the record listed under Unit IV. Even if there were no possibility of small amounts of low concentrations of these PCB congeners reaching other environments, their persistence in terrestrial soil and sediment because of anaerobic conditions poses a risk to humans and the environment.

The petitioner states that mono-, di-, and trichlorobiphenyls (except 2,4,4'-trichlorobiphenyl) have a low order of toxicity to humans and other life forms. The data presented by the petitioner supporting this conclusion deal exclusively with acute toxicity for mammals; they do not address toxicity data for aquatic organisms. Toxicity data for these PCB congeners have been collected in the document entitled "Environmental Risk and Hazard Assessments for Various Isomers of Polychlorinated Biphenyls (Monochlorobiphenyl through Hexachlorobiphenyl and Decachlorobiphenyl)" (April 1984), which is part of item (1) of the record in Unit IV. These data indicate that mono-, di-, and trichlorobiphenyls are highly toxic to aquatic organisms. Further, there are data indicating cause for concern for chronic toxicity of lower chlorinated biphenyls. Chronic toxicity data show variations among different Aroclors when administered to different species of mammals. For example, Aroclor 1254 which contains only very small amounts of mono-, di-, and trichlorobiphenyls is generally found to be more toxic to rabbits and mice than Aroclor 1242 which contains more of these congeners—over 46 percent mono-, di-, and trichlorobiphenyls. However, Aroclor 1242 has been shown to cause moderate hepatotoxicity and reproductive effects in laboratory animals. Aroclor 1248, which contains 2 percent dichlorobiphenyl and 18 percent trichlorobiphenyl, had no excessive mortality on Sprague-Dawley rats when they were given 100 parts per million (ppm) dietary levels for 65 weeks; however, rhesus monkeys fed diets containing 25, 5, and 2.5 ppm showed morbidity after 2 months and mortality after 18 or fewer months. These findings are discussed in item (1) of the record under Unit IV. These findings were presented to Mr. Walker in EPA's response to his 1987 petition (52 FR 25071, July 2, 1987). In the current petition, Mr. Walker fails to present sufficient new scientific data which adequately supports his assertion that there are no adverse health or ecological effects from exposure to the lower

chlorinated biphenyls. The hazard potential has not been addressed, no risk benefit analysis has been presented, and no test data were provided to show that mono-, di-, and trichlorinated biphenyls were tested and found to be non-toxic. See item (6) in Unit IV for further discussion. Due to the fact that the petitioner has not submitted this information, he has not provided an adequate basis for EPA to determine that excluding mono-, di-, and trichlorinated biphenyls from the definition of PCBs would not present an unreasonable risk. Accordingly, his petition is inadequate to support his request for an amendment.

2. *Claimed Benefits and Response.* Mr. Walker's current petition does not address EPA's previous findings regarding the claimed benefits of changing the definition of PCBs. In his 1987 petition, the petitioner claimed that five benefits would come from the granting of his petition. They all derive from the use of monochlorobiphenyl and a small percentage of dichlorobiphenyl, and a small amount of trichlorobiphenyl in the petitioner's process and do not address any benefits from a general deregulation of lower chlorinated biphenyls. According to that petition, the Walker separation solvents are indispensable in the technology to make Boudouard carbon, a mobile motor fuel, from coal; in the technology to use high sulfur coal to make electricity without high sulfur pollution; to manufacture ethylene and propylene in an efficient low-cost manner that would improve the United States petrochemical industry's world position in olefin manufacturing; to make oil and Boudouard carbon from Western oil shales and tar sands; and to cut the use of coke and increase the capacity of blast furnaces in the production of pig iron.

EPA reasserts that theoretically all of these outcomes of the use of mono-, di, and trichlorobiphenyls are useful. However, all of the benefits the petitioner mentioned are relative to the results of other existing processes that make comparable products without the use of any PCBs. For example, as the petitioner has previously stated, there are other methods of preventing sulfur pollution of the air in the production of electricity from coal. The petitioner claimed that his method/technology is considerably more effective and considerably less expensive. However, the petition did not contain any data which allow comparison of either the cost or technical feasibility of the proposed Walker technology. In fact, no experimental evidence was provided to show that Walker Solvents are necessary or have any advantages over other solvents which are not presently banned under TSCA. Insufficient experimental evidence was provided to prove that Walker Solvents form advantageous complexes with cuprous aluminum chloride catalysts. Mr. Walker has conducted no tests to demonstrate the claimed advantages of Walker Solvents. Further, no synthetic or analytical data or methods were submitted to show that the desired Walker Solvent compositions could be manufactured economically without producing significant amounts of prohibited PCBs. As mentioned previously, the current petition offers no new evidence which convince EPA to grant his requested action. Without any comparative data, EPA cannot find that the petition offers unique, cost-effective solutions to the energy and industrial problems the petitioner claims.

Changing the definition would allow the manufacture and use of lower chlorinated biphenyls which EPA finds unacceptable on the bases of available data. Further, excluding mono-, di-, and trichlorobiphenyls (except 2,4,4'-trichlorobiphenyl) from regulation by definition would have not only the consequence of allowing the petitioner to use the Walker Solvent/technology, but would also open the door for all other uses of these biphenyls. In addition, no evidence has been submitted that shows that processes involving these biphenyls, including the petitioner's, can guarantee no generation of yet higher chlorinations of biphenyls.

III. Decision

EPA has reviewed the petition and has concluded that the definition of PCBs should not be amended for the following reasons:

1. The petitioner has failed to provide the Agency with sufficient evidence (as discussed above) to show that mono-, di-, and trichlorobiphenyls (except 2,4,4'-trichlorobiphenyl) should be excluded from the definition of PCBs.

2. EPA determined at the time the PCB regulations (42 FR 26564, May 24, 1977 and 43 FR 24802, June 7, 1978) were promulgated that sufficient evidence existed to support including all PCBs within the definition; no new developments, discoveries, or data have been presented to the Agency to support amending that position.

3. Based on the information currently available to the Agency, EPA continues to believe that mono-, di-, and trichlorobiphenyls present unreasonable risks to humans and the environment, and there are alternative products and technology to those proposed by the petitioner.

4. For the reasons discussed above, EPA does not believe that it is otherwise appropriate to exclude all intentionally manufactured lower chlorinated biphenyls from EPA regulation. Accordingly, the petition is denied.

IV. Public Record

EPA has established a public record for this notice (docket control number OPTS–211022A). A public version of this record containing nonconfidential materials is available in the TSCA Public Docket Office for viewing and copying from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday except legal holidays. The TSCA Public Docket Office is located in Rm. NE–G004, 401 M St., SW., Washington, DC. The public record for this petition includes:

1. Record from "Polychlorinated Biphenyls: Denials of Citizen's Petition," published in the Federal Register of July 2, 1987 (52 FR 25068). Docket number OPTS–211022.

2. Record from "Polychlorinated Biphenyls (PCBs); Denial of Citizen's Petition," published in the Federal Register of August 25, 1982 (47 FR 37258). Docket number OPTS–211006.

3. Record from "Toxic Substances Control Act; Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Exclusions, Exemptions, and Use Authorizations," published in the Federal Register of July 10, 1984 (49 FR 28172). Docket number OPTS–62032A.

4. Mr. Walker's petition to the Environmental Protection Agency, dated February 6, 1991.

5. USEPA, Environmental Criteria and Assessment Office, Office of Health and Environmental Assessment. "Drinking Water Criteria Document for Polychlorinated Biphenyls (PCBs)." May 1987. ECAO–CIN–414.

6. USEPA, OPTS, HERD, Memorandum from Joseph A. Cotruvo (HERD) to Elizabeth F. Bryan (EED), "Walker Section 21 Petition to Redefine PCBs, HERD, WATS #3–150" (March 29, 1991).

7. Correspondence between EPA and Mr. Walker:

a. Response to Mr. Walker denying his petition dated July 31, 1987, to exclude mono-, di-, and trichlorinated biphenyls from the definition of PCBs. September 11, 1987.

b. Response to Mr. Walker denying his petition dated August 14, 1987, which requests an exemption to do research and development with monochlorinated biphenyl. September 28, 1987.

8. Parkinson, A. and Safe, S. Mammalian Biologic and Toxic Effects

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of PCBs. Environmental Toxin Series, Vol. 1, Springer-Verlag, Berlin, Heidelberg, 1987, pages 49–75.

9. Hansen, L.G. Environmental Toxicology of Polychlorinated Biphenyls. Environmental Toxin Series, Vol. 1, Springer-Verlag, Berlin, Heidelberg, 1987, pages 15–48.

10. Lilienthal, H., et al. Behavioral Effects of Pre- and Postnatal Exposure to a Mixture of Low Chlorinated PCBs in Rats. Fundamental and Applied Toxicology. 15, 457–467 (1990).

Dated: May 13, 1991.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[R Doc. 91–12013 Filed 5–21–91; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. PS–117, Notice 2]

Transportation of a Hazardous Liquid in Pipelines Operating at 20 Percent or Less of Specified Minimum Yield Strength

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of meeting.

SUMMARY: In Notice 1 of this proceeding, RSPA requested public comment on the need to regulate the safety of hazardous liquid pipelines operated at 20 percent or less of specified minimum yield strength (SMYS). Now the Associate Administrator for Pipeline Safety announces that he will invite representatives of industry and government who have expressed a strong interest in this proceeding to discuss relevant issues or questions raised by Notice 1. The meeting will be open to the public and a transcript of the meeting will be placed in the docket.

DATES: The meeting will be held on June 17, 1991, from 2 p.m. to 5 p.m.

ADDRESSES: The meeting will be held in the Russell Senate Office Building, Room 253, Delaware Avenue and Constitution Avenue, NE., Washington, DC. The transcript of the meeting will be available for inspection and copying in Room 8419, NASSIF Building, 400 Seventh Street, SW., Washington, DC 20590. (Office hours are 8:30 to 5 p.m., Monday through Friday, except public holidays.)

FOR FURTHER INFORMATION CONTACT: G. Joseph Wolf, (202) 366–4560.

SUPPLEMENTARY INFORMATION: The federal pipeline safety standards in part 195 governing the transportation of hazardous liquids by pipeline do not apply to pipelines operating at 20 percent or less of specified minimum yield strength of the pipe (§ 195.1(b)(3)). Following a serious accident involving one of these low-stress pipelines, RSPA published an advance notice of proposed rulemaking on the need to apply the part 195 regulations to these lines (Notice 1; 55 FR 45822; October 31, 1990).

The comments we received on Notice 1 show a divergence of opinion about the extent to which pipelines operated at 20 percent or less of SMYS should be regulated. To help clarify and narrow the issues involved, the Associate Administrator for Pipeline Safety will invite representatives of industry and government who have expressed a strong interest in this proceeding to meet to discuss Notice 1. The meeting will be conducted as a roundtable forum.

Anticipated participants will be representatives of the petroleum and chemical industries, including the American Petroleum Institute, the Association of Oil Pipelines, the Independent Liquid Terminals Association, and the Chemical Manufacturers Association. Other invitees will include the National Resources Defense Council and representatives of state agencies, including the National Association of Pipeline Safety Representatives. Also, Congressional staff having an interest in this rulemaking will be invited to participate in the meeting.

Anticipated items to be discussed at this meeting include, but are not limited to, the following:

—Description of pipelines affected.
—Operating characteristics of pipelines operated at 20 percent or less of SMYS.
—Description of the current oversight of affected pipelines unregulated by OPS.
—Other federal or state regulations applicable to affected pipelines.
—Accident history of affected pipelines.
—Cost to bring affected pipelines into compliance with part 195.
—Additional cost to operate pipelines in compliance with part 195.
—General comments.

Interested persons who do not receive an invitation to participate in the meeting may be seated or stand in the audience to the extent space is available. Such persons will have an opportunity to participate in the discussion only upon approval of the chair. Additional procedures for the conduct of the meeting may be established at the meeting.

(49 App. U.S.C. 2002; 49 CFR 1.53 and App. A to part 106)

Issued in Washington, DC, on May 17, 1991.

Richard L. Beam,

Acting Associate Administrator for Pipeline Safety.

[FR Doc. 91–12178 Filed 5–21–91; 8:45 am]

BILLING CODE 4910–60–M

Research and Special Programs Administration

49 CFR Part 195

[Docket No. PS–121; Notice 1]

RIN 2137–AB 46

Hydrostatic Testing of Certain Hazardous Liquid and Carbon Dioxide Pipelines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this notice RSPA proposes to extend hydrostatic testing or the alternative reduction in maximum operating pressure to all hazardous liquid steel pipelines where maximum operating pressure has not been established in accordance with the requirements of 49 CFR part 195. The proposal would establish an adequate margin of safety for all untested and all inadequately tested interstate hazardous liquid pipelines constructed prior to January 8, 1971, and intrastate hazardous liquid pipelines constructed prior to October 21, 1985. Accidents have occurred on these pipelines that might have been avoided had an adequate safety margin been established between the maximum operating pressure and a test pressure. Requiring an adequate margin of safety by hydrostatic testing or reduction in maximum operating pressure would minimize future failures on these currently untested or inadequately tested pipelines. Additionally, this notice proposes to extend the same requirements for an adequate margin of safety to carbon dioxide pipelines that are required for hazardous liquid pipelines. This is consistent with section 211 of the Pipeline Safety Reauthorization Act of 1988.

DATES: Interested persons are invited to submit written comments in duplicate by July 22, 1991. Late filed comments will be considered to the extent practicable. Interested persons should submit as part of their written comments all the material that is considered

relevant to any statement of fact or argument made.

ADDRESSES: Send comments to the Dockets Unit, room 8417, Office of Pipeline Safety (OPS), Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Identify the docket and notice numbers stated in the heading of this notice. All comments and materials cited in this document will be available in the docket for inspection and copying in room 8419 between 8 a.m. and 4 p.m. each working day. Non-Federal employee visitors are admitted to the DOT headquarters building through the southwest quadrant at Seventh and E Streets.

FOR FURTHER INFORMATION CONTACT: Albert C. Garnett, (202) 366–2036, regarding the subject matter of this notice, or Dockets Unit (202) 366–4453, for copies of this notice or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

Hydrostatic testing is a generally recognized method of demonstrating the integrity of newly constructed and existing pipelines. The purpose of the hydrostatic test required by the pipeline safety regulations is to ensure that the pipeline has the necessary strength to function as designed and is free of critical size imperfections (defects), which will cause the line to leak or rupture under service conditions. Those defects have their origin in manufacturing, or in conditions subsequently initiated during transportation of the pipe, or during construction or operation of the pipeline. Notwithstanding, the pipeline safety regulations do not permit hydrostatic testing to replace the nondestructive testing requirements for welds in subpart D of part 195.

If no failure occurs during the hydrostatic test, it shows that the pipeline contains no defects that are critical within the pressure range and duration of the test. Moreover, testing to a level above a pipeline's maximum operating pressure (MOP) establishes a proven margin of safety against future failures resulting from the growth of defects. Part 195, subpart E requires that the minimum pressure for testing a pipeline be 125 percent of the MOP. This 125 percent relationship of test pressure to MOP was initially established in the pipeline safety regulations for interstate pipelines effective January 8, 1971. The 125 percent relationship of test pressure to maximum operating pressure originated in the American Society of Mechanical Engineers Code B31.4 for "Liquid Petroleum Transportation Piping Systems" (1966 edition). Line pipe research reported by the American Gas Association/Battelle (Columbus) contained in "Study Of Feasibility Of Basing Natural Gas Pipeline Operating Pressure On Hydrostatic Test Pressure," page 3 (February 1968); "5th Symposium On Line Pipe Research," page M–25 (November 1974); and "7th Symposium on Line Pipe Research," page 15–3 (October 1988) demonstrated that a minimum relationship (margin of safety) of hydrostatic test pressure to MOP of 125 percent is adequate to protect against future failures. The permanence of the margin of safety depends on the properties of the pipe, the operating conditions, the maintenance procedures, the protective coatings, and the environmental conditions.

At the same time that the hydrostatic test verifies the integrity of the pipeline by causing critical defects to fail, it may cause subcritical size imperfections to grow. When such defect growth occurs, it may cause failures during subsequent hydrostatic testing cycles at lower pressures than previously attained. However, such failures, termed pressure reversals, are infrequent. Therefore, it should not be presumed that repeated hydrostatic testing and subsequent defect growth reduce the safety of the pipeline. Although defect growth leading to failure can occur during hydrostatic testing, research reported by Battelle (Columbus) in the January 7, 1985, edition of "Oil & Gas Journal," page 94, states that the pressure reversal phenomenon is not of great concern provided that the minimum margin of safety between test pressure and MOP required by the current regulations is maintained.

The origination of defects and their growth in service are a much greater concern than defect growth during hydrostatic testing. Because untested or inadequately tested pipelines may contain defects that have not been detected by hydrostatic testing, these pipelines are more vulnerable to defect growth in service than properly tested pipelines. The origination or growth of defects while a pipeline is in operation may be caused by corrosion, creep, fatigue and external damage and may result in a leak or rupture. Therefore, these untested or inadequately tested pipelines are also more vulnerable to failures in service.

Untested pipelines and pipelines tested to lower pressures than required by the regulations have no proven margin of safety or a lower margin of safety than pipelines tested in compliance with the current regulations.

Because the proven margin of safety is less for pipelines that have not been tested in compliance with § 195.302(c), there is a greater possibility, than for properly tested pipelines, that pre-existing defects that have not grown will be stressed to a level that will cause failure during certain permitted overpressuring of the pipeline. This potential for failure is prevalent in older pipelines made of electric resistance welded (ERW) pipe. Hydrostatic testing in compliance with § 195.302(c) will eliminate such defects from causing failure within the limits of the MOP (§ 195.406(a)) and of overpressure from surges or other variations (§ 195.406(b)).

Additionally, the regulations in part 195, subpart E require that each new steel pipeline system and each part of an existing steel pipeline system that is replaced or relocated (not including certain pipe movement under § 195.424) must be qualified for use by hydrostatic testing. Section 195.302(c) requires testing to at least 1.25 times the intended MOP for not less than 4 continuous hours, and if the pipeline is not visually inspected for leakage during test, further testing to at least 1.10 times MOP for at least an additional 4 continuous hours. These regulations became effective January 8, 1971 and September 8, 1980, for new interstate pipelines, and October 21, 1985, for new intrastate pipelines.

Except for the onshore highly volatile liquid (HVL) pipelines discussed below, part 195 does not require that the MOP of hazardous liquid pipelines constructed before the above effective dates (and not subsequently replaced or relocated) be based on a prior hydrostatic test. For these pipelines, there may be little or no proven margin of safety to offset potential defect growth in service.

On September 8, 1980, DOT published regulations requiring untested or inadequately tested onshore interstate HVL pipelines constructed before January 8, 1971, and in HVL service before September 8, 1980, to be either qualified by hydrostatic testing during a 5-year period concluding September 14, 1985, in accordance with § 195.302(c), or not operated at more than 80 percent of any documented prior hydrostatic test or highest operating pressure held for 4 or more continuous hours in accordance with § 195.406(a)(5). Reducing MOP to 80 percent or less of a prior documented test or operating pressure held for at least 4 continuous hours provides a minimum 25 percent safety margin between MOP and test pressure which is equivalent to the margin provided by hydrostatic testing under § 195.302(c)

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(Amendment 195–17; 45 FR 59161, September 8, 1980) (§ 195.302(b)).

A similar requirement to hydrostatically test or reduce the MOP of existing onshore intrastate HVL pipelines has been implemented during a 5-year period concluding April 22, 1990 (Amdt. 195–33; 50 FR 15895, April 23, 1985) (§ 195.302(b)).

Accident Record of HVL Pipelines

Of all the untested or inadequately tested hazardous liquid pipelines, DOT initially required testing or reduction in MOP of onshore HVL pipelines (§ 195.302(b)) because these pipelines posed higher risks of severe accidents than other pipelines due primarily to the nature of the product they transport. Operators were required to either reduce the MOP within 1 year following publication of the final rule or complete the hydrostatic testing within 5 years. During the 52-month period following the completion of the hydrostatic testing program for onshore interstate HAL pipelines, the reported accident data show a marked improvement in operational safety.

For the period from January 1, 1968 (the earliest data available) until the start of the test period on September 8, 1980, the average accident rate for onshore interstate HVL pipelines (tested, untested and inadequately tested) due to defective pipe, defective welds and corrosion was 10.9 a year. The mandatory test period concluded September 14, 1985, and for the subsequent period from September 15, 1985, through December 31, 1989, the average failure rate for this category of HVL interstate pipelines (now all assumed to be in compliance with § 195.302(b) by testing or reduction in MOP) due to the same causes was only 3.5 failures per year. Thus the statistics developed after the 5-year testing period show a 68 percent drop in the corresponding failure rate. OPS believes that such a dramatic drop after the required testing period represents the benefits of the rule requiring either hydrostatic testing or reduction in MOP to current requirements.

Need to Hydrostatically Test or Reduce the MOP of Other Hazardous Liquid Pipelines

In view of the positive results of the rule requiring hydrostatic testing or reduction of MOP of untested or inadequately tested onshore interstate HVL pipelines, OPS has examined the accident data available for non-HVL hazardous liquid pipelines. These include both interstate and intrastate, onshore and offshore pipelines carrying petroleum and petroleum products that are not HVL. Because the accident reporting requirements for intrastate hazardous liquid pipelines did not take effect until October 21, 1985, data for these pipelines are not available prior to that date.

OPS's statistics for the period October 21, 1985, through December 31, 1989, for all untested non-HVL steel pipelines show that 149 accidents were reported to have been caused by failed welds, failed pipe, and corrosion during this 4.2-year period. For accident reports submitted with incomplete hydrostatic test data (part H of DOT Form 7000–1), OPS assumes that a hydrostatic test meeting part 195 requirements had not been performed. It should be noted that a report of an accident on a non-HVL pipeline is only required where there is an explosion or unintentional fire, injuries or deaths, where the property damage exceeds $5,000, or where the spillage is 50 or more barrels of liquid. Therefore, the above statistics do not represent all the non-HVL accidents caused by defective pipe, defective welds and corrosion which occurred during this period, just those that met the minimum reporting requirements.

OPS has completed a technical report titled "Electric Resistance Weld Pipe Failures on Hazardous Liquid and Gas Transmission Pipelines" addressing the safety and reliability of electric resistance weld (ERW) pipe. The report indicates that there have been 172 failures on hazardous liquid pipelines during 1968–1988 involving longitudinal seam splits. About 98 percent of these failures were on pre-1970 ERW pipe. These were caused by seam defects, such as lack of fusion, low toughness, hook cracks, stitching, excessive hardness, and selective seam corrosion.

Because of the unique problem presented by ERW seams on many older pipelines, RSPA is proposing that ERW pipe manufactured prior to 1970 be given priority in scheduling hydrostatic tests that are conducted as a result of this rulemaking. Under this proposal, testing of pipelines known to have more than 50 percent by mileage of pre-1970 ERW pipe would have to be completed within 4.5 years after a final rule is published.

The following are accounts of a few significant reported accidents involving non-HVL pipelines that were not hydrostatically tested or not tested in the manner set forth in § 195.302(c):

On May 19, 1986, an 8-inch ERW interstate fuel oil pipeline, which was constructed in 1957, failed in Minnesota. The operator reported that the pipeline's operating pressure at the time of the failure was about 89 percent of the MOP. It was also reported that 628 barrels (26,376 gallons) of fuel oil were spilled, with 596 barrels (25,032 gallons) lost into the environment. The operator attributed the failure to a defect in an ERW longitudinal seam, and reported that the pipeline had not been qualified for service by a hydrostatic test.

On December 24, 1988, a 22-inch ERW interstate crude oil pipeline, which was constructed in 1949, ruptured in Maries (Vienna County), Missouri, leaving a 49'–5" opening in the longitudinal seam. The operator reported that the pressure at the location of the pipe failure at the time of the rupture was about 88 percent of the MOP and 91 percent of the maximum test pressure. It was also reported that 20,554 barrels (863,268 gallons) of crude oil were spilled from the rupture, with 9,054 barrels (380,268 gallons) lost into the environment. The operator attributed the pipe rupture to an operational error in switching to a connecting pipeline resulting in a pressure surge of about 88 percent of the MOP, which initiated the ERW seam split at a manufacturing defect known as a hook crack. Most of the crude oil flowed into a tributary of the Gasconade River, and much of that oil eventually flowed into the Missouri and Mississippi rivers. Although there were no deaths or injuries reported, the operator estimated property damage (including cost of unrecovered crude oil, damage to other parties, and cost of cleanup) to be approximately $14,000,000. It is to be noted that during the subsequent hydrostatic testing to establish an MOP according to current requirements of part 195, there have been numerous failures in the longitudinal seams of the ERW pipe.

On January 24, 1989, a 20-inch ERW interstate crude oil pipeline, which was constructed in 1948, ruptured in Winkler County, Texas, leaving a 13½-foot long opening in the longitudinal seam. The operator reported that the pipeline's operating pressure at the time of the rupture was about 96 percent of the reported MOP. It was also reported that 23,534 barrels (988,428 gallons) of crude oil were spilled from the rupture, with 17,685 barrels (742,770 gallons) lost into the environment. The operator attributed the rupture to a hook crack in the longitudinal seam, and reported that the pipeline had not been hydrostatically tested in the manner part 195 requires. Although there were no deaths or injuries reported, the operator estimated property damage (including cost of unrecovered crude oil, damage to other parties, and cost of cleanup) to be approximately $312,000. In this accident, the pipeline pumps reportedly were shut down in about 8 minutes, but crude oil continued to drain

from the rupture because approximately 19 miles of the pipeline were at a higher elevation. The pipeline will be operated at a reduced MOP until it is hydrostatically tested, after which a new MOP will be established at 80 percent of the hydrostatic test pressure.

In addition to the estimated damages reported by the operator, there may be other costs. The cost of environmental damage is not specifically required to be reported, and thus may not have been included in the estimates of property damage.

Furthermore, there is the potential for serious consequences to persons in the proximity of hazardous liquid pipeline failures. For example, on October 7, 1986, a failure occurred in a 14-inch non-HVL hazardous liquid interstate pipeline near King of Prussia, Pennsylvania. A spill of approximately 5,250 barrels (220,500 gallons) of gasoline resulted in evacuation of a major shopping center and closing a section of the Pennsylvania Turnpike. This failure was attributed to an improper welding procedure (probably exacerbated by bending stresses) on a repair sleeve that had been installed less than a month earlier. Fortunately, there were no deaths or injuries. However, the resulting evacuation, the closing of a major highway, and the reported unrecovered loss of 1,942 barrels (81,564 gallons) of gasoline into the environment, illustrate the potential harm that can occur from a failure in a non-HVL hazardous liquid pipeline.

The four pipeline failures discussed above that occurred within a 32-month time interval have resulted in the non-HVL spillage of 49,966 barrels (2,098,572 gallons) of which 29,277 barrels (1,229,634 gallons), or about 59 percent, were never recovered. Those significant spills occurred in four widely separated regions of the country and in the pipeline systems of four major operators. Thus, these failures were not confined to conditions occurring only in a limited geographic area or restricted to a specific pipeline system. Hazardous liquid spills of such magnitude have the potential to cause an accident of calamitous consequences to persons and property. Additionally, spillage of these large quantities of petroleum liquids can create major environmental problems for land surfaces and waterways.

Additional Benefits

Besides protecting against failures over the long term due to latent material and construction defects, hydrostatic testing of existing pipelines can have more immediate safety benefits. For example, flaws that may have occurred from excavation damage ("dig-ins") to in-service pipelines might be detected. In addition, some pipelines may have developed wall thinning from undetected corrosion during their years of service. For the 4.2-year period from October 21, 1985, through December 31, 1989, there were 116 failures reported to have been caused by corrosion in these untested or inadequately tested non-HVL pipelines. Similar corroded areas would be likely to rupture during hydrostatic testing, thus preventing potential in-service accidents. Moreover, OPS anticipates that when sections of pipeline are removed from service and prepared for hydrostatic testing, operators will use the opportunity to inspect the exposed pipe for evidence of deteriorated coating and external corrosion. Further, operators may perform other work to update their pipelines such as the replacement of obstructions to the passage of instrumented inspection devices ("smart pigs"). These opportunities for inspecting and updating those older pipelines will further contribute to their safe operations.

Extending the Existing Rule

For the foregoing reasons, RSPA is proposing to extend hydrostatic testing or reduction in MOP to all untested or inadequately tested steel pipelines where the MOP has not been established by the requirements of § 195.406(a). Operators electing to alternatively establish an MOP based on a previous hydrostatic test or a previous (not limited to the highest) operating pressure would be required to document that pressure by recording charts or logs made at the time the test or the operations were conducted, as was similarly required for onshore HVL pipelines in § 195.406(a)(5). The pipelines predominately affected by this notice are interstate non-HVL pipelines constructed before January 8, 1971, and intrastate non-HVL pipelines constructed before October 21, 1985, both onshore and offshore, that are subject to part 195.

This notice proposes to apply the minimum 25 percent margin of safety to untested or inadequately tested offshore HVL pipelines that were excluded from the hydrostatic test requirements of § 195.302(b) or the alternative reduction in MOP requirements of § 195.406(a)(5). Information from industry and Federal regulatory sources indicates that there are very few, if any, offshore pipelines covered by part 195 that transport HVL. Nonetheless, RSPA sees the need to close this regulatory gap by requiring the same minimum 25 percent margin of safety for older offshore HVL pipelines that is required for all other pipelines subject to part 195.

In response to section 211 of the Pipeline Safety Reauthorization Act of 1988 (Pub. L. 100–561; October 31, 1988) which requires the Secretary of Transportation to extend part 195 regulations to cover pipelines used in the transportation of carbon dioxide (CO_2), OPS issued a notice of proposed rulemaking entitled "Transportation of Carbon Dioxide by Pipeline" (Docket No. PS–112, Notice 1; 54 FR 41912; October 12, 1989). The period for public comment on that notice ended December 11, 1989. This notice proposes new or amended part 195 regulations for hydrostatic testing or alternative reduction in MOP to the CO_2 pipelines in Docket PS–112. The proposals in this notice are in addition to, and do not alter, the proposals made in Docket PS–112.

The regulations of part 195 currently apply to the pipeline transportation of hazardous liquids. A hazardous liquid defined by § 195.2 "means petroleum, petroleum products, or anhydrous ammonia" which are often categorized as HVL or non-HVL. Docket PS–112, draft final rule, amends the definitions in § 195.2 by the addition of "Carbon dioxide means a fluid consisting of more than 90 percent carbon dioxide molecules compressed to a supercritical state." Now, the regulations in this notice propose to revise part 195 to establish an adequate margin of safety for CO_2 pipelines in addition to certain hazardous liquid pipelines. At normal temperatures and atmospheric pressure, CO_2 is an odorless and colorless gas, not flammable, with a density 1.5 times the density of air. It will not support combustion nor will it sustain life if inhaled. As a gas, CO_2 is considered to be inert and does not easily react with other gases in the atmosphere. But, CO_2 chemically reacts with water to form carbonic acid which is corrosive to metals including steel pipe, valves and other pipeline components. Because of this chemical reaction, it is essential that a CO_2 pipeline be dried out completely after hydrostatic testing with water as a test medium. Although § 195.306 requires water as the test medium (with an exception for offshore pipelines under certain circumstances), Docket No. 112, (above), would revise § 195.306 to permit the alternative use of inert gas or CO_2 as a test medium under specified conditions.

Proposal

RSPA proposes to extend the current rule because hydrostatic testing is the only practicable means to protect the

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public and the environment from the effects of preventable accidents, based on proven technology and accident data as discussed above OPS has been following with increased interest, the development and use of in-line inspection tools to obtain diverse information on hazardous liquid pipelines. Advances in the state-of-the-art by various manufacturers have made significant improvements in the data gathering and recording capacities of "smart pigs" and the subsequent interpretation of that information. But, at this time, no "smart pigs" are available that will reliably detect longitudinally oriented defects, especially those in and near line pipe welds. OPS encourages the use of these inspection devices where the technology is able to provide continuously reliable information on specific conditions and properties of the underground pipe. However, OPS recognizes that hydrostatic testing to the requirement of part 195 is the currently proven method for demonstrating the integrity of newly constructed and existing pipelines

If these proposed rules are adopted, operators will have to complete extensive planning, scheduling, budgeting, and engineering work before beginning actual hydrostatic testing. In addition, field construction will be necessary to prepare pipeline sections for hydrostatic testing. At the conclusion of hydrostatic testing, a substantial amount of work may be necessary to return the tested pipeline sections to service. Also, test water will have to be disposed of in an environmentally acceptable manner, although this problem can be minimized by planning to reuse water in consecutive test sections. In recognition of the time needed to complete hydrostatic testing, the proposed rule provides a 7.5-year period for compliance. But, the testing of pipelines known to have more than 50 percent by mileage of pre-1970 ERW pipe would have to be completed within 4.5 years after a final rule is published. Moreover, to assure completion within 7.5 years, operators would be required to meet certain interim milestones for planning, scheduling, and completion of hydrostatic testing or reduction of MOP

This proposal would amend the hydrostatic test requirements of §§ 195.300 and 195.302 as set forth hereafter. Section 195.302(c), dealing with test pressure, would be separately set forth as a new § 195.303. Section 195.406(a)(5), dealing with maximum operating pressure, would be modified to include certain pipelines under the amended § 195.302.

In commenting on these proposals, operators are requested to (1) estimate their mileage of non-HVL pipelines, offshore HVL pipelines and CO ² pipelines (categorized as non-HVL, offshore HVL or CO ²) that are subject to or proposed to be subject to part 195 but have not been hydrostatically tested in the manner set forth in subpart E of part 195; (2) estimate the percentage of the mileage given in response to item (1) that would be brought into compliance by reduction of MOP instead of hydrostatic testing (3) estimate the percentage drop of MOP and effect on annual throughput; and (4) estimate percentage of mileage given in response to item (1) that would be tested in accordance with § 195.306, which discusses the test medium.

Paperwork Reduction Act

This rulemaking would extend the collection of information under the current § 195.310 which describes the records of each hydrostatic test which must be retained as long as the facility is in use. This proposal will be submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. chap. 35). Persons desiring to comment on these information collection requirements should submit their comments to the office of Regulatory Policy, Office of Management and Budget , 726 Jackson Place NW., Washington, DC 20503, Attention: Desk Officer, Research and Special Program Administration (RSPA). Persons submitting comments to OMB are also requested to submit a copy of their comments to OPS as indicated above under **ADDRESSES**.

Impact Assessment

The proposed rules are major under Executive order 12291. That order defines a major rule as one which has an annual effect on the economy of $100 million, a major increase in costs, or a significant adverse effect on the economy. The draft Economic Evaluation, a copy of which is in the docket, is based on available data and projected relevant costs and quantifiable benefits, shows net benefits resulting from the proposed rule. The agency's draft Economic Evaluation suggests that the benefits of hydrostatic testing exceed the associated costs. Comments are requested explaining why operators have not voluntarily tested pipelines never tested in accordance with current standards. Comments are also requested on the draft Economic Evaluation, in particular: (a) on the assumption of a 25 percent increase in benefits for non-reportable accidents; (b) on the cost of disposing testwater; (c) on the cost of environmental cleanup (i.e., cost per barrel); (d) on the cost of repairing blowouts; and (e) on whether those pipelines already tested have focused on pipelines with the most potential for leaking. These comments will be taken into consideration when preparing the final Regulatory Evaluation.

The proposal is "significant" as defined by the Department of Transportation Policies and procedures (44 FR 11034, February 26, 1979) because it involves a substantial change in regulations affecting existing hazardous liquid pipelines. Also, based on the facts available about the anticipated impact of this rulemaking action, I certify pursuant to section 605 of the Regulatory Flexibility Act that the action will not, if adopted as final, have a significant economic impact on a substantial number of small entities, because few, if any, small entities operate pipelines subject to part 195.

Federalism

OPS has analyzed this action in accordance with the principles and criteria contained in E.O. 12612 (52 FR 41685) and has determined that it does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 195

Hydrostatic testing, Maximum operating pressure, Carbon dioxide.

In consideration of the foregoing, RSPA proposes to amend title 49 of the Code of Federal Regulations part 195 to read as follows:

PART 195—[AMENDED]

1. The authority citation for part 195 continues to read as follows:

Authority: 49 App. U.S.C. 2002; and 49 CFR 1.53.

2. Section 195.300 would be revised to read as follows:

§ 195.300 Scope.

This subpart prescribes minimum requirements for hydrostatically testing steel pipelines. It does not apply to the movement of pipe under § 195.424.

3. Section 195.302 would be revised to read as follows:

§ 195.302 General requirements.

(a) Except for the alternative provided under paragraph (a)(6) of this section, each of the following pipelines must be hydrostatically tested without leakage under this subpart before being operated:

(1) An interstate hazardous liquid pipeline constructed on or after January 8, 1971.

(2) An intrastate hazardous liquid pipeline constructed on or after October 21, 1985.

(3) A carbon dioxide pipeline constructed on or after (insert date of publication of final rule).

(4) A pipeline system or component of a pipeline system that is relocated, replaced or otherwise changed.

(5) A pipeline previously used in service not subject to this part and qualified for use under § 195.5.

(6) An HVL pipeline where the operator reduced the maximum operating pressure under the requirements of § 195.406(a)(5) as in effect (insert one day prior to effective date of this final rule):

(i) An interstate onshore pipeline constructed before January 8, 1971, and in HVL service before September 8, 1980.

(ii) An intrastate onshore pipeline constructed before October 21, 1985, and in HVL service before April 23, 1985.

(b) The following non-HVL pipelines that were not hydrostatically tested under this subpart must be hydrostatically tested without leakage under this subpart or the operator may reduce maximum operating pressure under § 195.406(a)(5) in accordance with the compliance dates of paragraph (e) of this section:

(1) An interstate pipeline constructed before January 8, 1971.

(2) An intrastate pipeline constructed before October 21, 1985.

(c) The following HVL pipelines that were not hydrostatically tested under this subpart must be hydrostatically tested without leakage under this subpart or the operator may reduce maximum operating pressure under § 195.406(a)(5) in accordance with the compliance dates of paragraph (e) of this section:

(1) An interstate offshore pipeline constructed before January 8, 1971.

(2) An intrastate offshore pipeline constructed before October 21, 1985.

(d) A carbon dioxide pipeline constructed before the (insert publication date of final rule) that was not hydrostatically tested under this subpart must be hydrostatically tested without leakage under this subpart or the operator may reduce maximum operating pressure under § 195.406(a)(5) in accordance with the compliance dates of paragraph (e) of this section.

(e) The following compliance dates apply to pipelines under paragraphs (b), (c), and (d) of this section:

(1) Planning and scheduling of hydrostatic testing, or actual reduction in maximum operating pressure under § 195.406(a)(5), must be completed before (1 year after date of publication of final rule);

(2) Hydrostatic testing of each discrete (as identified by name, symbol or otherwise by the operator) pipeline for which it can be determined from existing records that electric resistance welded pipe manufactured prior to 1970 exceeds 50 percent by mileage of the pipeline must be completed before (4.5 years after date of publication of final rule); and

(3) Hydrostatic testing of pipelines other than those identified in subparagraph (2) of this paragraph must be completed before (7.5 years after date of publication of final rule) with at least 50 percent by mileage of the testing completed before (4.5 years after date of publication of final rule).

4. Section 195.302(c) would be redesignated as § 195.303 to read as follows:

§ 195.303 Test Pressure.

The test pressure for each hydrostatic test conducted under this subpart must be maintained throughout the part of the system being tested for at least 4 continuous hours at a pressure equal to 125 percent, or more, of the maximum operating pressure, and in the case of a pipeline that is not visually inspected for leakage during test, for at least an additional 4 continuous hours at a pressure equal to 110 percent, or more, of the maximum operating pressure.

5. Section 195.304(a) would be revised to read as follows:

§ 195.304 Testing of components.

(a) Each hydrostatic test under this subpart must test all pipe and attached fittings, including components, unless otherwise permitted by paragraph (b) of this section.

* * * * *

6. In § 195.406, the introductory text of paragraph (a) is republished without change, and paragraph (a)(5) would be revised to read as follows:

§ 195.406 Maximum operating pressure.

(a) Except for surge pressures and other variations from normal operations, no operator may operate a pipeline at a pressure that exceeds any of the following:

* * * * *

(5) For pipelines under § 195.302 (b), (c), and (d), 80 percent of a hydrostatic test pressure or alternatively 80 percent of an operating pressure to which the pipeline was subjected for 4 or more continuous hours that can be demonstrated by recording charts or logs made at the time the hydrostatic test or the alternative operations were conducted.

* * * * *

Issued in Washington, DC, on May 14, 1991.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety, Research and Special Programs Administration.

[FR Doc. 91-12168 Filed 5-21-91; 8:45 am]

BILLING CODE 4910-60-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1246 and 1248

[Docket No. 40436]

Revision to Railroads' Reporting Requirements

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rulemaking sets forth proposed changes to railroads' periodic report forms. The objective is to streamline and update the report forms to reduce reporting burden and require only frequently used disclosures.

DATES: Comments are due by June 21, 1991.

ADDRESSES: An original and fifteen copies, if possible, of comments should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: William F. Moss, III, (202) 275-7510, (TDD for hearing impaired (202) 275-1721).

SUPPLEMENTARY INFORMATION: The Commission is proposing to revise the reporting regulations and report forms for railroads in order to effect cost savings and to reduce reporting burden by an estimated 20,000 hours. Generally, Form R-1 will be reduced by eliminating certain schedules and combining others. Form C will no longer be required. Form QCS will be required annually instead of quarterly. We propose no specific changes to the report forms RE&I, CBS, or to FORMS A AND B. The following report forms are under review:

—Railroad Annual Report Form R-1 (Form R-1) (OMB 3120-0029)

—Quarterly Report Form RE&I (Form RE&I) (OMB 3120-0027)

—Quarterly Condensed Balance Sheet—Railroads (Form CBS) (OMB 3120-0063)

—Monthly Report of Number of Railroad Employees (Form C) (OMB 3120-0133)

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—Report of Railroad Employees, Service, and Compensation (Forms A and B) (OMB 3120–0074)
—Quarterly Report of Freight Commodity Statistics (Form QCS) (OMB 3120–0031)

The new Form R–1 will be used for the 1991 reporting year, required to be filed by March 31, 1992. All other revised forms listed here will be effective upon OMB approval for the 1991 reporting year.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 275–7428. [Assistance for the hearing impaired is available through TDD services (202) 275–1721.]

This revision will not have a significant economic impact on a substantial number of small entities and this decision will not significantly affect the quality of the human environment or the conservation of energy resources.

It is estimated that no additional burden hours per response are required to complete this collection of information. It is anticipated that the proposed changes would be beneficial to the railroad companies and to the Commission because implementation would result in an overall decrease of approximately 20,000 burden hours. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The information collection requirements contained in this proposal will be submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and 5 CFR part 1320. Respondents may direct comments concerning the paperwork burden and burden estimates to the OMB and ICC by addressing them to:

Office of Management & Budget, Office of Information and Regulatory Affairs, Desk Officer for ICC (Forms 3120–), Washington, DC 20503.

Interstate Commerce Commission, ATTN: Forms Clearance Officer, room 2203, Washington, DC 20423.

List of Subjects

49 CFR Part 1246

Railroad employees, Reporting and recordkeeping requirements.

49 CFR Part 1248

Freight, Railroads, Reporting and recordkeeping requirements, Statistics.

Decided: May 8, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald. Commissioners Simmons and McDonald dissented in part with separate expressions.

Sidney L. Strickland, Jr.,
Secretary.

For the reasons set forth in the preamble, title 49, chapter X, parts 1246 and 1248 are proposed to be amended as follows:

PART 1246—[REMOVED]

1. Part 1246 is proposed to be removed.

PART 1248—FREIGHT COMMODITY STATISTICS

2. The authority citation for part 1248, subpart A-Railroads, is proposed to be revised to read as follows:

Authority: 5 U.S.C. 553; 49 U.S.C. 10321 and 11145.

3. Section 1248.1 is proposed to be revised to read as follows:

§ 1248.1 Freight commodity statistics.

All Class I railroads shall compile and report freight commodity statistics on the basis of the commodity codes named in § 1248.101. Such reports shall be made in conformity with the provisions set forth in §§ 1248.2 through 1248.5, as supplemented by the instructions included in the appropriate report form to be supplied to the reporting railroads.

4. In § 1248.2 the introductory text of paragraph (a) is proposed to be revised to read as follows:

§ 1248.2 Items to be reported.

(a) The following items are required to be reported annually by Class I railroads:

* * * * *

5. In § 1248.3, the first sentence of paragraph (a) is proposed to be revised to read as follows:

§ 1248.3 Carload and L.C.L. traffic defined.

(a) Commodity codes 01 through 462 and 48, named in Section 1248.101, shall include only carload traffic. * * *

* * * * *

6. Section 1248.5 is proposed to be revised to read as follows:

§ 1248.5 Report forms and date of filing.

Class I railroads shall file annually the report of Freight Commodity Statistic (Form FCS) with the Office of Economics, Interstate Commerce Commission, Washington, DC 20423. This report shall be filed on or before February 28 of each year.

7. The authority citation for part 1248, Subpart B-Commodity Code, is proposed to be revised to read as follows:

Authority: 5 U.S.C. 553; 49 U.S.C. 10321 and 11145.

8. Section 1248.100 is proposed to be revised to read as follows:

§ 1248.100 Commodity classification designated.

Class I railroads shall file the report of Freight Commodity Statistics (Form FCS) based on the commodity codes as shown in Section 1248.101.

9. Section 1248.101 is proposed to be amended by adding the following commodity codes to the table:

§ 1248.101 Commodity codes required.

* * * * *

Code and Description	
* * * * *	
43	MAIL AND EXPRESS TRAFFIC.
* * * * *	
48	HAZARDOUS WASTES.

[FR Doc. 91–12143 Filed 5–21–91; 8:45 am]
BILLING CODE 7035–01–M

Notices

Federal Register
Vol. 56, No. 99
Wednesday, May 22, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Types and Quantities of Agricultural Commodities to be Made Available for Donation Overseas; Fiscal Year 1991

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This Notice sets forth the determination that a quantity of nonfat dry milk owned by the Commodity Credit Corporation may be made available for donation overseas under section 416(b) of the Agricultural Act of 1949, as amended, during fiscal year 1991, in addition to quantities of commodities previously determined to be available for such purpose.

FOR FURTHER INFORMATION CONTACT: Mary Chambliss, Director, Program Analysis Division, Office of the General Sales Manager, FAS, USDA (202) 447–3573.

SUPPLEMENTARY INFORMATION: It has previously been determined that a total of 2,200,000 metric tons of grains and 109,700 metric tons of butter and butter oil shall be made available for donation under section 416(b) during fiscal year 1991. This determination was published in the **Federal Register** on October 4, 1990. The purpose of this Notice is to inform the public that such previous determination is revised by adding 22,650 metric tons of nonfat dry milk.

Accordingly, a total of 2,200,000 metric tons of grains and 132,350 metric tons of dairy products shall be made available for donation overseas pursuant to section 416(b) during fiscal year 1991.

The kinds and quantities of commodities that shall be made available for donation are as follows:

Commodity	Quantity (Metric tons)
Grains and Oilseeds:	
Corn	1,500,000
Sorghum	700,000
Total	2,200,000
Dairy Products:	
Butter and Butter Oil	109,700
Nonfat Dry Milk	22,650
Total	132,350

Done at Washington, DC this 16th day of May 1991.

Edward Madigan,
Secretary of Agriculture.

[FR Doc. 91–12163 Filed 5–21–91; 8:45 am]
BILLING CODE 3410–10–M

Animal and Plant Health Inspection Service

[Docket No. 91–065]

Recipt of Permit Applications for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that two applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Analyst, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permits, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 844, Federal Building, 650 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Orgainisms and Products Altered to Produced Through Genetic Engineering Which are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interestate, or relasing into the environment) in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organism	Field test location
91–107–04	Calgene, Incorporated	04–17–91	Tomato plants genetically engineered to express a neomycin phospho-transferase II gene (NPT II) and a polygalac-turonase (PG) antisense gene, or a cytokinin biosynthetic gene.	California.
91–115–01	U.S. Department of Agriculture, Argicultural Research Service.	04–25–91	Tobacco plants genetically engineered to express the neomycin phospho-transferase II (NPT II) protein and the Beet Curly Top Virus (BCTV) capsid protein gene.	Washington.

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Done in Washington, DC, this 16 day of May 1991.

Robert Melland,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-12161 Filed 5-21-91; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Devil's Den Compartment, Placerville Ranger District, Eldorado National Forest; Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: After completion of a study on impacts from management activities that are proposed within the Devil's Den Compartment by the Eldorado National Forest, the Forest Service will prepare an environmental impact statement (EIS) for management of the resources within the compartment. The agency invites written comments and suggestions on the analysis. The agency also gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: The Eldorado National Forest held a public meeting in February 1990 and has continuously invited public comments. Further comments are requested by May 31, 1991.

ADDRESSES: Submit written comments and suggestions about the analysis to Robert A. Smart, Jr., Placerville Ranger District, Eldorado National Forest, 3491 Carson Court, Placerville, CA 95667.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and EIS should be directed to Debbie Gaynor, Project Leader, Placerville Ranger District, Eldorado National Forest, 3491 Carson Court, Placerville, CA 95667, phone 916-644-2324.

SUPPLEMENTARY INFORMATION: A range of alternatives for this compartment, located in the Strawberry Canyon area of the Placerville Ranger District, will be considered. One of these will be a no action alternative. Other alternatives will address resource management that include varying intensities of recreation development, timber harvest, wildlife management, archaeological surveys, watershed and fisheries improvement projects, and fuels treatment. Location and scope of activities will be described.

Public participation will be especially important at several points throughout the environmental analysis process. The Forest Service has been seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed actions. This input will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying the issues and determining the significant issues for consideration and analysis within the EIS.
2. Identifying the potential environmental, technical, and social impacts of the alternatives.
3. Determining potential cooperating agencies.
4. Identifying groups or individuals interested or affected by the decision.

The U.S. Fish and Wildlife Service and California Department of Fish and Game have participated to evaluate potential impacts on threatened and endangered species habitat.

The draft EIS will be filed with the Environmental Protection Agency (EPA) and become available for public review sometime after the study on impacts to the Compartment and its resources is completed. At that time, the EPA will publish a notice of availability of the draft EIS in the **Federal Register**.

The comment period on the draft EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. Comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed (see the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp.* v. NRDC, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stages may be waived if not raised until after completion of the final EIS, *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

After the comment period on the draft EIS ends, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. In the final EIS, the Forest Service is required to respond to the comments and responses received (40 CFR 1503.4). The responsible official will consider the comments; responses; environmental consequences discussed in the draft EIS; and applicable laws, regulations, and policies in making a decision. The responsible official will document the decision and reasons for the decision in the Record of Decision. The decision is subject to appeal pursuant to 36 CFR part 217.

Dated: May 9, 1991.

Robert A. Smart, Jr.,

District Ranger.

[FR Doc. 91-12045 Filed 5-21-91; 8:45 am]

BILLING CODE 3410-11-M

Trail System and Off-Rock Vehicle Management and Development, Ochoco National Forest and Crooked River National Grassland, Crook, Grant, Harney, and Wheeler Counties, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) for analysis of development and management of the Ochoco National Forest and Crooked River National Grassland trail system and off-road vehicle use. The proposed action includes:

(1) Develop trail and trailhead facilities Standards and Guidelines for all Forest and Grassland management allocations.

(2) Develop recreation objectives that address all user groups and acceptable intensity of use for all Forest and Grassland trails and trailhead facilities.

(3) Identify corridors for additional trails

(4) Designate off-road vehicle use and routes.

(5) Review and strengthen the Management Allocations Standards and Guidelines in the Forest and Grassland Land and Resource Management Plans that inadequately address off-road vehicle use.

The EIS will be both programmatic and site specific. Those components that are programmatic which require another decision will have a site specific environmental analysis conducted at a later date. This additional analysis may occur several years after the decision supported by this EIS.

Changes proposed to this EIS to the current Management Allocations Standards and Guidelines in the Forest and Grassland Land and Resource Management Plan will result in amendments to those Plans.

The purpose of the EIS will be to develop and evaluate a range of alternatives for these proposed actions. The alternatives will include a no action (no change) alternative. The proposed actions will be tiered to and in compliance with direction in the Ochoco National Forest and Crooked River National Grassland and Resource Management Plans (Forest Plan). In addition, the proposed off-road vehicle use shall be planned and implemented to protect land and other resources, promote public safety, and minimize conflicts with other uses of the National Forest Systems lands (36 CFR 219.21 (g) and 36 CFR 295—Use of Motor Vehicles Off Forest Development Roads).

The Forest Service invites written comments on the scope of this project. In addition, the Forest Service gives notice of this analysis so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope and implementation of this proposal must be received by June 30, 1991.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Thomas A. Schmidt, Forest Supervisor, Ochoco National Forest, P.O. Box 490, Prineville, OR 97754.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this EIS should be directed to Ollie Jones, Supervisor's Office, Ochoco National Forest, phone (503) 573-9549.

SUPPLEMENTARY INFORMATION: A need to address access and travel on the Ochoco National Forest and Crooked River National Grassland became apparent from public comments and appeals to the Record of Decision for the Forest and Grassland Land and Resource Management Plan Final Environmental Impact Statement. To address these comments and appeals, a interdisciplinary team was assembled. The interdisciplinary team devoted most of 1990 studying these comments and appeals.

Considerable public involvement identified and clarified access and travel issues. The Forest and Grassland held over 30 public meetings and received comments from over 40 individuals and user groups. The interdisciplinary team identified a need to provide a comprehensive, Forest and Grassland trail system analysis. The Forest Supervisor has decided to develop a programmatic Forest and Grassland Trails Environmental Impact Statement.

A tentative list of issues has been identified from the scoping for Forest and Grassland access and travel, and the appeals to the Forest and Grassland Land Management Plans. These tentative issues are:

1. What are the impacts from all the different kinds of recreational use upon the land and to the other recreation users?
2. How much recreation trail development can the resources on the Forest and Grassland handle without degrading the resources and recreational experience?
3. Which user groups are compatible for use of the same recreational facilities and which are not? Some user groups want to have their own designated single-use areas. Can seasonal-use restrictions for a recreational facility enable incompatible user groups to enjoy and use the same facilities?
4. What will be the effects of trail development and use upon the ability of the Forest Service to control wildfires, harvest timber, and administer grazing and special use permits?
5. Some user groups want sponsored events and have specific areas developed for their use: When and where is this type of use and development appropriate?
6. There is a need to maintain consistent and equitable control of recreational users to provide for user safety, and to prevent damage to adjacent landowners and forest resources.
7. Determine those areas of the Forest and Grassland that are restricted and available to recreational use.
8. Use signs to post regulations, restrictions, and sharing of information to educate and inform the public.

Public participation will be important during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, and other individuals or organizations who may be interested in or affected by the proposed actions. This information will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis process.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review around July, 1992. Copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. EPA will publish a notice of availability of the draft EIS in the **Federal Register**.

The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register**. It is very important that those interested in the management of the Ochoco National Forest participate at that time.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

The Forest Service believes it is important to give reviewers notice, at this early stage, of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978)). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts (*City of Angoon* v. *Hodel*, 803 f. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). In light of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS. To assist the Forest Service in identifying and considering issues and concerns on the proposed

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action, comments on the draft EIS should be as specific as possible.

The final EIS is scheduled to be completed around July 1993. In the final EIS, The Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal. Tom Schmidt, Forest Supervisor, Ochoco National Forest, is the responsible official. As the responsible official he will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulations (36 CFR part 217).

Dated: May 10, 1991.

Thomas A. Schmidt,

Forest Supervisor.

[FR Doc. 91-12097 Filed 5-21-91; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Economic Analysis, Commerce.

Title: Schedule of Expenditures for Property, Plant, and Equipment of U.S. Direct Investments Abroad.

Form Number: Agency-BE-133C; OMB-0608-0024.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 1,400 respondents; 3,780 reporting hours.

Average Hours per Respondent: 2.7 hours.

Needs and Uses: The survey collects data on actual and projected expenditures for property, plant, and equipment of majority-owned foreign affiliates of U.S. companies. Universe estimates are developed from the reported sample data. The data are needed to: (1) Monitor current and projected developments in international investment; and (2) assess the potential impact of proposed or newly implemented U.S. or foreign government policies affecting international investment, and, based upon this assessment, make informed policy decisions regarding U.S. direct investment abroad.

Affected public: Businesses or other for-profit institutions.

Frequency: Annually.

Respondent's obligation: Mandatory.

OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room H6622, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 17, 1991.

Edward Michals,

Department Clearance Officer, Office of Management and Organization.

[FR Doc. 91-12172 Filed 5-21-91; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Economic Analysis, Commerce.

Title: Followup Schedule of Expenditures for Property, Plant, and Equipment of U.S. Direct Investments Abroad.

Form Number: Agency—BE-133B; OMB—0608-0020.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 1,400 respondents; 3,780 reporting hours.

Average Hours per Response: 2.7 hours.

Needs and Uses: The survey collects data on projected expenditures for property, plant, and equipment of majority-owned foreign affiliates of U.S. companies. Universe estimates are developed from the reported sample data. The data are needed to: (1) Monitor current and projected developments in international investment; and (2) assess the potential impact of proposed or newly implemented U.S. or foreign government policies affecting international investment, and, based upon this assessment, make informed policy decisions regarding U.S. direct investment abroad.

Affected Public: Businesses or other for-profit institutions.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room H6622, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 17, 1991.

Edward Michals,

Department Clearance Officer, Office of Management and Organization.

[FR Doc. 91-12173 Filed 5-21-91; 8:45 am]

BILLING CODE 3510-CW-M

Foreign-Trade Zones Board

[Docket 31-89]

Foreign-Trade Zone 32—Miami, Florida Withdrawal of Request for Removal of Zone Restricted Merchandise

Notice is hereby given of the withdrawal of the request 6/7/89) on behalf of Philip Morris International, Inc., to enter for consumption certain zone-restricted status merchandise in Foreign-Trade Zone 32, Miami, Florida.

The case has been withdrawn due to changed circumstances, and FTZ Board Docket 31-89 is closed.

Dated: May 17, 1991.

John J. Da Ponte, Jr.,

Executive Secretary

[FR Doc. 91-12181 Filed 5-21-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-588-810]

Mechanical Transfer Presses From Japan; Termination in Part of Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Termination in Part of Antidumping Duty Administrative Reviews.

SUMMARY: On March 15, 1991, the Department of Commerce initiated

administrative reviews of the antidumping duty order on mechanical transfer presses from Japan. The Department has now determined to terminate in part these reviews.

EFFECTIVE DATE: May 22, 1991.

FOR FURTHER INFORMATION CONTACT: Helen M. Kramer or Linda D. Ludwig, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-3793.

SUPPLEMENTARY INFORMATION:

Background

On March 15, 1991, the Department of Commerce published a notice of initiation of administrative reviews of the antidumping duty order on mechanical transfer presses from Japan. This notice stated that we would review entries for exporters during the period from August 18, 1989, through January 31, 1991. The following exporters subsequently withdrew their requests for review:

Aida Engineering, Ltd.
Hitachi Zosen Corporation
Yamakawa Manufacturing Corporation of America

Accordingly, the Department has determined to terminate in part these reviews. This notice is in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and section 353.22(a)(5) of the Department's regulations (19 CFR 353.22(a)(5)).

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-12182 Filed 5-21-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-813]

Initiation of Antidumping Duty Investigation: Refined Antimony Trioxide From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the Department), we are initiating an antidumping duty investigation to determine whether imports of refined antimony trioxide from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of refined antimony trioxide from the PRC are materially injuring, or threaten material injury to, a U.S. industry. The ITC will make its preliminary determination on or before June 10, 1991. If that determination is affirmative, we will make a preliminary determination on or before October 2, 1991.

EFFECTIVE DATE: May 22, 1991.

FOR FURTHER INFORMATION CONTACT: Vincent Kane or Carole Showers, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-2815 or (202) 377-3217.

SUPPLEMENTARY INFORMATION:

The Petition

On April 25, 1991, we received a petition filed in proper form by the Coalition for Fair Trade in Antimony Trioxide and its individual members, Anzon, Inc. and Atochem North America, Inc. of Philadelphia, PA, Laurel Industries, Inc. of Cleveland, OH, U.S. Antimony Corporation of Thompson Falls, MT and U.S. Antimony Sales Corporation of Natick, MA. In compliance with the filing requirements of the Department's regulations (19 CFR 353.12), petitioners allege that imports of refined antimony trioxide from the PRC are being, or are likely to be sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, U.S. industry.

Petitioners have stated that they have standing to file the petition because they are interested parties, as defined under section 771(9)(C) of the Act, and because they have filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. Any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, who wishes to register support for, or opposition to, this petition, should file written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

United States Price and Foreign Market Value

Petitioners have calculated United States price (USP) based on two methods. The first uses an estimated average c.i.f. unit value of imports of the subject merchandise from the PRC, as reported in the U.S. Census Bureau statistics for July through December 1990, with deductions for ocean freight and insurance. The second method calculates USP based on documented c.i.f. Hong Kong price quotes from a Hong Kong distributor of the subject merchandise with a deduction for foreign inland freight.

Petitioners allege that the PRC is a nonmarket economy country within the meaning of section 777(c) of the Act. Accordingly, petitioners based foreign market value (FMV) on constructed value using one of the petitioning firm's factors of production for refined antimony trioxide. In valuing the factors of production, petitioners used Bolivia, a third country that produces a comparable product, and whose economy is market driven and which petitioners contend is comparable to the PRC.

Based on a comparison of USP and FMV, petitioners allege dumping margins ranging from 109.1 to 122.6 percent. We have accepted this comparison.

Initiation of Investigation

Under section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to the petitioner supporting the allegations.

We have examined the petition on refined antimony trioxide from the PRC and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of refined antimony trioxide from the PRC are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by October 2, 1991.

Pursuant to section 771(18) of the Act and based on prior investigations, the PRC is an NME. Parties will have the opportunity to comment on this issue and whether foreign market value should be based on prices or costs in the NME in the course of this investigation.

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The Department further presumes, based on the extent of central control in the NME, that a single antidumping duty margin is appropriate for all exporters. Only if NME exporters can demonstrate an absence of central government control with respect to the pricing of exports, both in law and in fact, will they be entitled to separate, company-specific margins. (See, Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China [56 FR 20588, May 6, 1991] for a discussion of the information the Department considers in this regard.)

In accordance with section 773(c), FMV in NME cases is based on NME producers' factors of production (valued in a market economy country). Absent evidence that the PRC government has selected which factories produce for the United States, for purposes of the investigation we intend to base FMV only on those factories in the PRC which produce refined antimony trioxide for export to the United States.

Scope of Investigation

The product covered by this investigation is refined antimony trioxide (also known as antimony oxide) from the PRC. Antimony trioxide is a crystalline powder of the chemical formula Sb_2O_3, as provided for in subheading 2825.80.00 of the *Harmonized Tariff Schedule of the United States* (HTS). The refined trioxide includes blends with organic or inorganic additives comprising up to and including 20 percent of the blend by volume or weight. Crude antimony trioxide (antimony trioxide having less than 98 percent Sb_2O_3) is excluded. The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information on the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

Preliminary Determination by ITC

The ITC will determine by June 10, 1991, whether there is a reasonable indication that imports of refined antimony trioxide from the PRC are materially injuring, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: May 15, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-12183 Filed 5-21-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-028]

Roller Chain, Other Than Bicycle, From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by the petitioner and seven respondents, the Department of Commerce has conducted an administrative review of the antidumping finding on roller chain, other than bicycle, from Japan. The review covers one firm, Pulton Chain Co., Ltd., including sales made through I&OC of Japan Co., Ltd., and the period April 1, 1985, through March 31, 1986. The review indicates the existence of dumping margins during this period. As a result of the review, the Department of Commerce has preliminarily determined to assess antidumping duties equal to the calculated differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 22, 1991.

FOR FURTHER INFORMATION CONTACT: Michael Diaz, Edward Haley, or Robert J. Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On October 22, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 42606) the final results of its last administrative review of the antidumping finding on roller chain, other than bicycle, from Japan (38 FR 9228, April 12, 1973). The American Chain Association, the petitioner, and seven respondents requested in accordance with 19 CFR 353.53a(a) (1985) that we conduct an administrative review. We published notices of initiation of the antidumping duty administrative review on May 20, 1986 (51 FR 18475), and October 3, 1986 (51 FR 35384). The Department has now conducted that administrative review with respect to one firm in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

Imported covered by this review are shipments of roller chain, other than bicycle, from Japan. The term "roller chain, other than bicycle," as used in this review includes chain, with or without attachments, whether or not plated or coated, and whether or not manufactured to American or British standards, which is used for power transmission and/or conveyance. Such chain consists of a series of alternately-assembled roller links and pin links in which the pins articulate inside the bushings and the rollers are free to turn on the bushings. Pins and bushings are press fit in their respective link plates. Chain may be single strand, having one row of roller links, or multiple strand, having more than one row of roller links. The center plates are located between the strands of roller links. Such chain may be either single or double pitch and may be used as power transmission or conveyor chain.

This review also covers leaf chain, which consists of a series of link plates alternately assembled with pins in such a way that the joint is free to articulate between adjoining pitches. This review further covers chain model numbers 25 and 35. Roller chain, other than bicycle, was classified under various provisions of the Tariff Schedules of the United States Annotated (TSUSA) from item numbers 652.1400 through 652.3800, and is currently classifiable under Harmonized Tariff System (HTS) item numbers 7315.11.00 through 7616.90.00. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The Department initiated a review covering seven manufacturers/exporters of roller chain to the United States and the period April 1, 1985, through March 31, 1986. Of these seven firms, the review of three companies has been deferred, the finding has been revoked with respct to one company, the review of another company has been terminated, and the review of I&OC of Japan Co., Ltd. (I&OC), has been

incorporated into the review of Pulton Chain Co., Ltd. (Pulton). We have deferred the review of Daido Kogyo Co., Ltd. (Daido), and Enuma Chain Manufacturing Co., Ltd. (Enuma), pending the final results of the review for April 1, 1986, through March 31, 1987, which could result in revocation of the finding in part for these two firms prior to this review. Sugiyama Chain Co., Ltd. (Sugiyama), is not included in this review because we are conducting all outstanding reviews of Sugiyama concurrently. The finding was revoked with respect to Tsubakimoto Chian Co., Ltd. (Tsubakimoto), effective September 1, 1983 (54 FR 33259, August 14, 1989), and the review of Nissan Motor Co., Ltd. (Nissan), was terminated May 7, 1991 (56 FR 21128).

This review covers one manufacturer/exporter of roller chain, other than bicycle, from Japan, Pulton (including sales made through I&OC), and the period April 1, 1985, through March 31, 1986.

United States Price

In calculating United States price, the Department used purchase price, as defined in section 772 of the Tariff Act, because all sales were made directly to unrelated parties prior to importation into the United States. Because Pulton knew at the time of sale to I&OC that the ultimate destination of the merchandise was the United States, we used purchase price for I&OC sales of merchandise produced by Pulton. Purchase price was based on packed, duty-paid, delivered prices to either I&OC or unrelated purchasers in the United States. Where applicable, we made adjustments for ocean freight, marine insurance, foreign and U.S. inland freight, and brokerage and handling changes. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value (FMV), the Department used home market price as defined in section 773 of the Tariff Act, when sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. For each such or similar model where there were insufficient sales in the home market, we then used sales to a third country as the basis for FMV. Where neither the home market nor any third country market had sufficient sales of such or similar merchandise, we calculated FMV on the basis of constructed value, in accordance with section 773(a)(2) of the Tariff Act.

Home market price was based on a packed, delivered price to unrelated purchasers in Japan. Sales to third countries were based on packed, delivered prices to unrelated purchasers in Canada, Ireland, Thailand, and the Republic of the Phillipines. We calculated constructed value at the sum of materials, fabrication costs, general expenses, and profit. The amount added for general expenses was actual general expenses because they were higher than the statutory minimum of 10 percent of the sum of materials and fabrication costs. Because actual profit was greater than the 8 percent of the sum of materials, fabrication, and general expenses, the Department used actual profit. Where applicable, we made deductions from FMV for inland and ocean freight, insurance, and brokerage and handling costs. We made adjustments for differences in packing and credit expenses. We added U.S. selling expenses, limited to the amount of third country selling commissions. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United Staes price to foreign market value, we preliminarily determine that a weighed-average margin of 1.79 perecent exists for the period April 1, 1985, through March 31, 1986, for Pulton Chain Co., Ltd., including sales made through I&OC.

Parties to the proceeding may request disclosure within five days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this preliminary notice or the first workday thereafter. Parties to the proceeding may submit prehearing briefs and/or written comments not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions for all companies directly to the Customs Service.

Given the fact that reviews for more recent periods have already been completed, the dumping margins determined in this preliminary notice will have no impact on the current cash deposit rates. As provided by section 751(a)(1) of the Tariff Act, the Customs Service shall continue to require a cash deposit for all merchandise produced or exported by Daido, Enuma, Sugiyama, Nissan, or Pulton of estimated antidumping duties based on the final rates published for each firm's most recent administrative review period.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a(a) of the Commerce Regulations (19 CFR 353.53a(a)) (1985).

Dated: May 15, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-12184 Filed 5-21-91; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

South Atlantic Fishery Management Council; Wreckfish Limited Entry Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold public hearings and provide a comment period to solicit public input on Amendment 5 to the Snapper-Grouper Fishery Management Plan (wreckfish limited entry).

DATES: Written comments on Amendment 5 must be received by June 20, 1991. All public hearings will be held from 7 to 10 p.m., and are scheduled as follows:

1. Monday, June 3, 1991, Wrightsville Beach, South Carolina.

2. Tuesday, June 4, 1991, Charleston, South Carolina.

3. Wednesday, June 5, 1991, Jacksonville Beach, Florida.

ADDRESSES: Comments should be addressed to Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407-4699.

The hearings will be held at the following locations:

1. Wrightsville Beach—Holiday Inn, 1706 N. Lumina Avenue, Wrightsville Beach, North Carolina

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2. Charleston—South Carolina Wildlife & Marine Resources Center, Fort Johnson Road, Charleston, South Carolina.

3. Jacksonville Beach—Holiday Inn Oceanfront, 1617 N. First Street, North Dunes Room, Jacksonville Beach, Florida.

FOR FURTHER INFORMATION CONTACT: Carrie Knight, Public Information Officer, South Atlantic Fishery Management Council, 803–571–4366.

SUPPLEMENTARY INFORMATION: The Council approved the following preferred options: (1) Establish an individual transferable quota (ITQ) system for wreckfish by dividing the annual total allowable catch (TAC) into individual quotas (individual allocations held by fishermen will be based upon the original allocation as subsequently modified by trading among fishermen) that fishermen may land anytime, except during a spawning closure, during the fishing year; (2) individual quotas will be of indefinite duration but may be revoked for either non-compliance or by Council amendment; (3) include those who can document wreckfish landings during the legal 1990 season and prior to September 24, 1990 (56 FR 39039), when the control date was published in the **Federal Register**; (4) divide 50 percent of TAC equally among eligible participants, with the remaining to be divided among those with documented landings from 1987 to 1990, based on percentage shares of total wreckfish landings during that time; (5) allow sale or lease of annual percentage share, and allow sale or lease of wreckfish pounds allocated for a given year; (6) initially allocate percentage shares to vessel owners; (7) require that individual quota or a major portion of it (51 percent or more) be used by a person or business owning it at least once in every 3-year period; (8) allocate future TACs, whether larger or smaller, based on annual percentage shares at the beginning of the fishing year; (9) allocate initial percentage share to an individual or business not to exceed 10 percent of the TAC; (10) require dealers handling wreckfish to be permitted and to purchase wreckfish only from permitted fishermen; (11) require both a permit and a percentage-share record to harvest wreckfish; (12) appoint an appeals board to handle complaints on eligibility and initial allocation; and (13) warrant strict penalties such as forfeiture of individual share for gross violations (for example, non-reporting and exceeding individual quota).

Dated: May 16, 1991.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–12066 Filed 5–21–91; 8:45 am]

BILLING CODE 3510–22–M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Licensing information may be obtained by writing to: National Technical Information Service, Center for Utilization of Federal Technology—Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151. All patent applications may be purchased, specifying the serial number listed below, by writing NTIS, 5285 Port Royal Road, Springfield, Virginia 22161 or by telephoning the NTIS Sales Desk at (703) 487–4650. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Patent Licensing Specialist, Center for the Utilization of Federal Technology.

Department of Agriculture

SN 7–330,547 (5,004,523) Delignification of Lignocellulosic Materials with Monoperoxysulfulate Acid

SN 7–519,196 (5,005,774) Rapid, Single Kernel Grain Characterization System

SN 7–525,016 (5,005,416) Insect Detection Using a Pitfall Probe Trap Having Vibration Detection

SN 7–531,680 (4,999,986) Fruit Decelerator

SN 7–641,837 System for Capturing, Pressing and Analyzing Entrained Solids Such as Cotton

SN 7–662,601 Green Leaf Volatiles as Inhibitors of Bark Beetle Aggregation Pheromones

SN 7–665,044 Anionically Dyeable Smoot-Dry Crosslinked Cellulose With Non-Reactive Glycol Ether Swelling Agents and Nitrogen Based Compounds

SN 7–679,849 Increasing Stability of Fruits, Vegetables or Fungi

Department of Health and Human Services

SN 7–277,708 (5,006,330) Evaluative Means for Detecting Inflammatory Reactivity

SN 7–278,821 (5,004,457) Tissue Transplantation System

SN 7–317,407 Metalloproteinase Peptides: Role In Diagnosis and Therapy

SN 7–415,710 (5,003,097) Method for the Sulfurization of Phosphorous Groups in Compounds

SN 7–417,769 Prolongation of Receptors on the Cell Surface (Increased Receptor Life Span For Treatment Of Adult-Onset Diabetes)

SN 7–478,081 Method for Detection of Human Immunodeficiency Virus and Cell Lines Useful Therefore

SN 7–488,460 Matrix Metalloproteinase Peptides: Role in Diagnosis and Therapy

SN 7–528,368 Method and Apparatus for Heating of Cryogenically Stored Organs

SN 7–545,077 Methods of Inducing Immune Response to AIDS Virus (Diagnosis and Treatment of Autoimmune Diseases)

SN 7–555,091 Improved Immunotherapeutic Method of Preventing or Treating Viral Respiratory Tract Disease

SN 7–559,029 Arg A Human Gene Related to But Distinct From abl Proto-Oncogene

SN 7–564,075 Cannabinoid Receptor (Clones Of The Cannabinoid Receptor and Cell Lines Expressing The Cloned Receptor)

SN 7–564,755 Cocaine Receptor Binding Ligands

SN 7–566,108 Lymphokine 154 (Novel Secreted Protein From Activated T Lymphocytes)

SN 7–572,633 Flavivirus Envelope Proteins With Increased Immunogenicity for Use in Immunization Against Virus Infection

SN 7–579,630 Synthesis and Purification of N-Bromoacetyl-3,3',5-Triiodothyronine (An Affinity Label for the Study of Thyroid Hormone Binding)

SN 7–582,065 A Protease Assay (For Detection of Retroviral Proteases and Evaluation of Antiviral Agents)

SN 7–586,079 A Method for Over-Expression and Rapid Purification of Biosynthetic Proteins

SN 7–586,085 Macrophage Stimulating Protein

SN 7–586,087 Method of Inhibiting Viral Production Using Antisense Oligonucleotides)

SN 7–588,998 Method of Electroporation Using Bipolar Oscillating Electric Fields

SN 7–589,837 In Vivo DMRI Method for Determining Cerebral Blood Flow and Volume Variation

SN 7–596,289 Mouse Monoclonal Antibodies (Reactive with Human Carcinomas)

SN 7–596,291 A Monoclonal Antibody (Against Ovarian Cancer)

SN 7–596,299 Vector with Multiple Target Response Elements Affecting Gene Expression (Inhibition of Viral Replication)

SN 7–599,491 Molecular Clones of HIV–1 and Uses Thereof (HIV–1(MN))

SN 7–605,788 Human Olfactory Neuron Cultures

SN 7–608,040 Vaccine Against Disease Caused By Human Type 3 Parainfluenze Virus

SN 7–623,690 Method of Treating Ocular Inflammatory Diseases (Using Phospholipase A2 Inhibiting Peptides)

SN 7–626,704 Isolation and Characterization of cDNAs Coding for the gamma B and gamma Subunits of the High-Affinity Receptor for Immunoglobulin E

SN 7–627,095 Duplex Cone Trap for Collection of Adult Mosquitoes

SN 7–642,340 Type-XLL Cross-Axis Synchronous Flow-Through Coil Planet Centrifuge

SN 7–648,876 Glandulin, A Low-Molecular Weight Antimicrobial Factor Derived From Nasal Secretions

SN 7–656,326 Rapid Exchange Imaging Chamber for Stop-Flow Microscopy

SN 7–661,005 Metal-Based Formulation With High Microbicidal Efficiency Valuable for Disinfection and Sterilization

SN 7–662,022 Methods and Pharmaceutical Compositions for Inhibiting Protease From Human Immunodeficiency Virus (With Copper and Metal Catalyzed Oxidation)

Department of Interior

SN 7–506,054 (5,003,144) Microwave Assisted Hard Rock Cutting

[FR Doc. 91–12111Filed 5–21–91; 8:45 am]

BILLING CODE 3510–04–M

Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States and certain foreign countries to practice the invention embodied in U.S. Patent Application Serial Number 7/127,214, "DNA Encoding IgE Receptor Sub-unit or Fragment" to Harvard University, having a place of business at Cambridge, Massachusetts. The patent rights in this invention have been jointly assigned to the United States of America and Harvard University.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The invention features a cDNA sequence encoding the -subunit of human mast cell IgE surface receptor and also covers a vector (plasmid or viral). The human IgE receptor subunit made according to this invention can be used in a variety of diagnostic and therapeutic application.

The availability of the invention for licensing was published in the **Federal Register** Vol. 55, No. 205, p. 42752 (1990). A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning 703/487–4650 or by writing to Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Girish C. Barua, Center for Utilization of Federal Technology, NTIS, Box 1423, Springfield, VA 22151. Properly filed competing applications received by the NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Patent Licensing Specialist, Center for Utilization of Federal Technology, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 91–12212 Filed 5–21–91; 8:45 am]

BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Bilateral Textile Consultations with the Arab Republic of Egypt

May 16, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: May 24, 1991.

FOR FURTHER INFORMATION CONTACT: Kim-Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On April 30, 1991, under the terms of the Bilateral Cotton Textile Agreement of January 16, 1990 between the Governments of the United States and the Arab Republic of Egypt, the United States Government requested consultations with the Government of the Arab Republic of Egypt with respect to cotton shop towels in Category 369–S.

The purpose of this notice is to advise the public that, pending agreement on a mutually satisfactory solution concerning Category 369–S, the Government of the United States has decided to control imports during the prorated period which began on April 30, 1991 and extends through December 31, 1991.

A summary market statement concerning Category 369–S follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 369–S, under the agreement with the Arab Republic of Egypt, or to comment on domestic production or availability of products included in Category 369–S, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

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Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 369–S. Should such a solution be reached in consultations with the Government of the Arab Republic of Egypt, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50750, published on December 10, 1990).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Egypt

Category 369–S—Cotton Shop Towels

April 1991

Import Situation and Conclusion

U.S. imports of cotton shop towels, Category 369–S, from Egypt reached 17,500,000 units (730,400 kilograms) in the year ending January 1991, six times the 2,787,500 units (113,735 kilograms) imported a year earlier. In the first month of 1991, Egypt shipped 2,500,000 units, five times their January 1990 level and nine percent above their total calendar year 1989 level. Egypt is the third largest supplier of cotton shop towels accounting for 10 percent of Category 369–S unit imports for the year ending January 1991. In the previous year, Egypt was ranked twelfth among the major suppliers, accounting for two percent of total cotton shop towel imports.

The sharp and substantial increase of Category 369–S imports from Egypt is causing a real risk of disruption in the U.S. market for cotton shop towels.

Import Penetration and Market Share

U.S. production of cotton shop towels dropped to 144,448 thousand units in 1990, 2.4 percent below the 1989 level and 12.4 percent below the 1988 level. In contrast, U.S. imports of cotton shop towels from all sources reached 160,336 thousand units in 1990, 50 percent above the 1988 level. Imports of cotton shop towels in January 1991 were 78 percent above the January 1990 level.

The U.S. producers' share of the cotton shop towel market dropped 14 percentage points, falling from 61 percent in 1988 to 47 percent in 1990. The ratio of imports to domestic production increased from 65 percent in 1988 to 111 percent in 1990.

Duty-Paid Value and U.S. Producers' Price

Category 369–S imports from Egypt entered under HTSUSA number 6307.10.2005—cotton shop towels. These shop towels entered the U.S. at duty-paid landed values below the U.S. producers' prices for comparable shop towels.

Committee for the Implementation of Textile Agreements

May 16, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton Textile Agreement of January 16, 1990, between the Governments of the United States and the Arab Republic of Egypt; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on May 24, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 369–S [1], produced or manufactured in Egypt and exported during the period beginning on April 30, 1991 and extending through December 31, 1991, in excess of 580,724 kilograms. [2]

Textile products in Category 369–S which have been exported to the United States prior to April 30, 1991 shall not be subject to the limit established in this directive.

Textile products in Category 369–S which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

[1] Category 369–S: only HTS number 6307.10.2005.

[2] The limit has not been adjusted to account for any imports exported after April 29, 1991.

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–12099 Filed 5–21–91; 8:45 am]

BILLING CODE 3510–DR–F–

COMMODITY FUTURES TRADING COMMISSION

Regulatory Coordination Advisory Committee Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, 10(a) and 41 section CFR 101–6.1015(b), that the Commodity Futures Trading Commissions Regulatory Coordination Advisory Committee will conduct a public meeting in the new Hearing Room at the Commission's Washington, DC headquarters located at level B–1, 2033 K Street, NW., Washington, DC 20581, on June 5, 1991, beginning at 1:30 p.m. and lasting until 5 p.m. The agenda will consist of:

Agenda

1. Report from Dennis Earle on clearance and settlement.

2. Report from the CFTC staff responding to recommendations of the Working Group on Managed Accounts.

a. Recommendations for streamlining risk disclosure statements.

(i) Institutional investor exemption;

(ii) Bifurcated disclosure;

(iii) Other recommendations.

b. Other pool-related issues, e.g., legal impediments to domestic pool participation in the over-the-counter markets; Investment Company Act and Investment Advisers Act issues.

3. Reports from the Working Group on Speculative Limits and from the Division of Economic Analysis.

4. Report from the Working Group on International Issues.

5. Follow-up on issues discussed at earlier Committee meetings.

6. Other issues for Committee consideration; timing of next meeting; other Committee business.

The purpose of this meeting is to solicit the views of the Committee on the agenda matters listed above. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of advising the Commission on ways to improve coordination and to facilitate cross market transactions, including cross border transactions. The purposes and objectives of the Advisory Committee are more fully set forth in the April 16, 1990 Charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, Chairman Wendy L. Gramm, is empowered to conduct the meeting in a fashion that will, in her judgment, facilitate the orderly of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: the Commodity Futures Trading Commission Regulatory Coordination Advisory Committee, c/o Ms. Kate Hathaway or Mr. Robert Zwirb, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should inform Ms. Hathaway or Mr. Zwirb in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC on May 16, 1991.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91–12223 Filed 5–21–91; 8:45 a.m.]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Fort Wingate Depot et al.; Closure and Realignment Availability of Environmental Impact Statement

AGENCY: Department of Defense, U.S. Army.

ACTION: Notice of availability of the draft environmental impact statement for the closures of Fort Wingate and Navajo Depot Activities, and realignment of Umatilla Depot Activity.

SUMMARY: This Draft Environmental Impact Statement (EIS) describes the impact of closures of the Fort Wingate Depot Activity, New Mexico, and Navajo Depot Activity, Arizona; and realignment of Umatilla Depot Activity, with transfer of their conventional ammunition missions to Hawthorne Army Ammunition Plant, Nevada. This document considers only those actions recommended in the December 1988 Report of the Secretary of Defense's Commission on Base Realignments and Closures and those related actions necessary to complete the recommendations. No alternatives to the Commission's recommendations are considered, in compliance with the Base Closure and Realignment Act of October 24, 1988 (Pub. L. 100–526). The major concerns described are the extent and level of contamination and socioeconomic impacts. No significant impacts of closure were found. The Army will prepare separate NEPA analyses to address the effects of construction at receiving installations and for Fort Wingate remediation, property excessing and specific reuse alternatives. Navajo Depot Activity will be transferred to the Arizona National Guard and Umatilla will remain open to support the chemical demilitarization program which is scheduled to be completed in 1999.

The public is encouraged to comment on the Draft EIS. Public notices requesting input will be issued. A copy of the Draft EIS may be obtained by contacting Mr. Arver Ferguson (817) 334–3246, or writing to Commander, U.S. Army Corps of Engineers, Fort Worth District, 819 Taylor Street, Fort Worth, Texas 76102–0300.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (I,L&E).

[FR Doc. 91–12135 Filed 5–21–91; 8:45 am]

BILLING CODE 3710–08–M

Jefferson Proving Ground, IN; Closure Availability of Environmental Impact Statement

AGENCY: Department of Defense, U.S. Army.

ACTION: Notice of Availability of the Draft Environmental Impact Statement for the closure of Jefferson Proving Ground (JPG).

SUMMARY: This Environmental Impact Statement (EIS) describes the impacts of closing the Jefferson Proving Ground, Indiana, with transfers of its activities to Yuma Proving Ground, Arizona. This document considers only those actions recommended in the December 1988 Report of the Secretary of Defense's Commission on Base Realignments and Closures and those related actions necessary to complete the recommendations. No alternatives to the Commission's recommendations are considered in compliance with the Base Closure and Realignment Act of October 24, 1988 (Public Law 100–526). The major concerns described are the extent and level of contamination and socioeconomic impacts. No significant environmental impacts of closure were found. The Army will prepare separate NEPA analyses to address the effects of construction at receiving installations and for JPG remediation, property excessing and specific reuse alternatives.

The public is encouraged to comment on the Draft EIS. Public notices requesting input will be issued. A copy of the Draft EIS may be obtained by contacting Mr. James M. Baker (502) 582–5774, or writing to Commander, U.S. Army Corps of Engineers, Louisville District, P.O. Box 59, Louisville, Kentucky 40201–0059.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I,L&E).

[FR Doc. 91–12134 Filed 5–21–91; 8:45 am]

BILLING CODE 3710–08–M

Lexington-Bluegrass Depot, KY; Closure Availability of Environmental Impact Statement

AGENCY: Department of Defense, U.S. Army.

ACTION: Notice of Availability of the Draft Environmental Impact Statement for the closure of the Lexington portion of the Lexington-Bluegrass Army Depot.

SUMMARY: This Environmental Impact Statement (EIS) describes the impacts of closure of the Lexington portion of the Lexington-Bluegrass Army Depot, Lexington, Kentucky, with transfers of the supply and materiel-readiness missions to Letterkenny Army Depot, Pennsylvania; the central test management mission to Redstone Arsenal, Alabama; and the communications-electronics mission to Tobyhanna Army Depot, Pennsylvania. This document considers only those actions recommended in the December 1988 Report of the Secretary of Defense's Commission on Base Realignments and Closures and those related actions necessary to complete the recommendations. No alternatives to the Commission's recommendations are considered, in compliance with the Base Closure and Realignment Act of October 24, 1988 (Pub. L. 100–526). No significant impacts of closure were found. The Army will prepare separate NEPA analyses to address the effects of construction at receiving installations and for the Lexington remediation, property excessing and specific reuse alternatives.

Execution of all or some of the decisions analyzed in the Draft EIS are subject to change based on the Defense Base Closure and Realignment Act of 1990. Specifically, the Secretary of Defense recommended to the newly formed Base Closure and Realignment Commission the following actions which

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affect gaining installations discussed in this document:

• Realign the Headquarters, Depot Systems Command (DESCOM) (including the Systems Integration and Management Activity) from Letterkenny Army Depot, Pennsylvania to Rock Island Arsenal, Illinois and merge it with the Armament, Munitions and Chemical Command (AMCCOM) to form the Industrial Operations Command (IOC). Relocate the Materiel Readiness Support Activity (MRSA) from Lexington-Bluegrass Army Depot, Kentucky to Redstone Arsenal, Alabama, along with the relocation of the Logistics Control Activity (LCA) from the Presidio of San Francisco, California, to Redstone Arsenal, Alabama.

• Relocate the tactical missile maintenance workload from Tobyhanna Army Depot, Pennsylvania, and several Navy and Air Force industrial facilities into Letterkenny Army Depot and realign the tactical vehicle and artillery maintenance workload from Letterkenny to Tooele Army Depot, Utah, and Red River Army Depot, Texas.

• Close Sacramento Army Depot. Transfer the ground communication electronic maintenance workload from Sacramento to Army Depot, California, to Tobyhanna Army Depot, Pennsylvania; Anniston Army Depot, Alabama; and Letterkenny Army Depot, Pennsylvania.

These recommendations, if approved, would be subject to additional environmental impact analyses and documentation.

The public is encouraged to comment on the Draft EIS. Public notices requesting input will be issued. A copy of the Draft EIS may be obtained by contacting Mr. William Haynes, (502) 582-6015, or writing to Commander, U.S. Army Corps of Engineers, Louisville District, P.O. Box 59, Louisville, Kentucky 40201-0059.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA (I, L&E).

[FR Doc. 91-12136 Filed 5-21-91; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates/Time of Meeting: 29-30 May 1991.

Time: 0900-1600 hours 29 May 1991, 0900-1500 hours 30 May 1991.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board Ad Hoc Subgroup on Tactical Space Systems will conduct a classified review of a technology demonstration. In addition to the technical review of issues, the panel will make preparations for their final report. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably interwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91-12205 Filed 5-21-91; 8:45 am]

BILLING CODE 3710-08-M

Marina Project, Ewa District, Oahu, HI; Environmental Import Statement (DEIS)

AGENCY: U.S. Army Corps of Engineers, Honolulu District, Pacific Ocean Division.

ACTION: Notice of Intent to prepare a DEIS for a regulatory permit action.

SUMMARY:

1. Background of Previous Actions. This project was initially proposed by MSM and Associates, Inc. in 1980 and was processed under File No. PODCO-O 1570-SD. The application was subsequently cancelled on 21 September 1987 because of the applicant's lack of progress in providing additional required information. The current application for substantially the same project was submitted by HASEKO (Hawaii), Inc., on November 20, 1989 and a Public Notice was issued on November 30, 1989. The ensuing permit process evaluated the project's impacts on beaches, whales, turtles, caprock, aquifer, water quality, surf sites, archaeological sites, and nearshore reef resources. The applicant undertook studies during this period to assess and quantify project impacts and evaluated several alternative marina alignments to minimize and mitigate these impacts.

The Corps conducted a public hearing on December 17, 1990 to obtain additional information and evidence to evaluate the benefits and detriments of the proposed work and to assist the District Engineer in making a decision on the permit application. After reviewing the studies and proposed mitigation plans submitted by the applicant and considering the views of the public as submitted in writing and at the hearing, the Corps has determined that and environment impact statement (EIS) should be prepared to assess the impacts of the proposal on the quality of the human environment.

2. Description of the Proposed Action. The proposed marina under evaluation in this application would be the major facility in the proposed 4,850-unit urban housing community. The marina would provide 1,600 boat slips in the approximately 140 acres of excavated waterways. The entrance channel to the marina would be 400 ft. wide, 3,000 ft. long and 20 ft. deep. Two rock jetties would be constructed along the entrance channel to protect the marina basin from waves and to prevent littoral drift from shoaling the channel. The jetties would be approximately 400 ft. long and have a crest elevation of approximately six to eight feet above mean lower low water (MLLW). Other infrastructure elements of the marina would include rock wave absorbers, floating and fixed docks, boat ramps and bridge crossings.

FOR FURTHER INFORMATION: Questions about the proposed action and DEIS can be answered by:

Ms. Ruby Mizue or Mr. Warren Kanai, Operations Division, Directorate of Construction-Operations, US Army Corps of Engineers, Fort Shafter, Hawaii 96858-5440, Phone: (808) 438-9258.

SUPPLEMENTARY INFORMATION:

1. Authority. The statutory authorities under which this application is being processed include: Section 10, Rivers and Harbors Act of 1899 (33 U.S.C. 403), Section 404 of the Clean Water Act (33 U.S.C. 1344), Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Previous Notice of Intent Publications. The previous permit application by MSM and Associates, Inc. resulted in the following NOI publications: **Federal Register** Vol. 45, No. 96, May 15, 1980; and **Federal Register** Vol. 49, No. 209, October 26, 1984.

3. Proposed Action. A total of about 5 million cubic yards (CY) of material would be excavated and dredged for the project, of which approximately 300,000 CY would be generated from the entrance channel. Blasting would likely

be required to facilitate the excavation and dredging. The marina basin would be excavated prior to opening it to the ocean so that suspended sediments would be confined to the excavation site. The applicant is considering the disposal of the 300,000 CY of dredged material from the channel at the Environmental Protection Agency-approved dredged material ocean dump site. This material would consist predominantly of sand, gravel, limestone and reef material, and other naturally occurring bottom material with particle sizes larger than silt. Suitable material excavated from the inland waterway would be used for project construction and grading work. Unsuitable material, including grubbed trees and vegetation, would be disposed at approved upland sites.

4. Reasonable Alternatives. a. Alternative Sites. The applicant prepared an Alternatives Analysis which indicates that the Ewa Marina site is the least environmentally adverse practicable location for the facility. This discussion will be presented in the DEIS.

b. Full scale development as proposed ("Applicant's preferred alternative").

c. Alternative configurations. Several channel positions and marina layouts were investigated by the applicant in efforts to minimize impacts on existing resources at the project site. These alternatives will be presented in the DEIS.

d. Reduced development.

e. "No-action" alternative. This alternative is one which results in no construction requiring a Corps permit. It may result from (1) alternative design plans, without the marina; or (2) no development alternatives, such as maintaining the existing land use, expanding agriculture, or enhancing open space or park uses.

Scoping

1. The public and affected federal, state and local agencies, and other interested private organizations and parties are invited to provide comments identifying specific concerns which should be addressed in the Draft Environmental Impact Statement (DEIS). Upon preparation of the DEIS, a public notice will be issued summarizing the facts of the case and announcing the availability of the DEIS. If a public hearing is requested, it will be held after completion of the DEIS. A public notice announcing the time, date, location and nature of the hearing would be issued at least 30 days prior to the hearing date.

2. The issues to be analyzed in the DEIS will include:

a. Impacts of the project on beaches and littoral processes.

b. Impacts of the project on marine flora and fauna, including threatened and endangered species.

c. Impacts of the project on wetlands and anchialine pools.

d. Impacts of the project on the caprock aquifer.

e. Impacts of the project on water quality.

f. Impacts of the project on historic, archaeological and paleontological resources.

g. Impacts of the project on air quality.

h. Effects of Navy and commercial aircraft noise on the proposed residential community.

i. Temporary construction impacts on air and water quality, disruption of the park and recreational uses in the area, and the effects of blasting noise on the adjacent community.

j. Impacts of the project on recreational activities in the area, including surfing, fishing, limu (seaweed gathering), swimming, jogging, and boating.

k. Susceptibility of the project location in the tsunami hazard zone.

l. Impacts of the project on surface water runoff and drainage.

m. Aesthetic considerations and socioeconomic impacts; impacts on public facilities such as transportation, utilities and services, as well as growth-related impacts including increased population, traffic and pollution.

n. Impacts on land use, including the loss of agricultural lands, and impacts of the project on the existing lifestyles of the affected region, the affected interests, and the locality, that are generated by construction of the marina.

o. Long-term maintenance dredging.

p. Cumulative impact analysis.

3. Consultation with the National Marine Fisheries Service has been initiated in accordance with section 7 of the Endangered Species Act. The review process under section 106 of the National Historic Preservation Act has also been initiated.

4. A scoping meeting for the proposed action is not presently scheduled. The public interest review for the permit application, the numerous resource and regulatory agency meetings conducted with the applicant, and the Corps' public hearing in December 1990 have identified the significant issues to be addressed in the DEIS.

5. It is estimated that the DEIS will be made available to the public in late 1991.

Dated: May 10, 1991.

Donald T. Wyss,

District Engineer.

[FR Doc. 91-12104 Filed 5-21-91; 8:45 am]

BILLING CODE 3710-EN-M

DEPARTMENT OF EDUCATION

Indian Nations At Risk Task Force; Meeting

AGENCY: Indian Nations At Risk Task Force, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Indian Nations At Risk Task Force. This notice also describes the functions of the Task Force. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is also intended to notify the general public of their opportunity to attend the meeting.

DATES AND TIMES: June 10, 1991 9 a.m. to 5 p.m., June 11, 1991 9 a.m. to 5 p.m.

ADDRESSES: Barnard Auditorium, room 1134, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Alan Ginsburg, Executive Director, Indian Nations At Risk Task Force, room 3127, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202-4244, Telephone: (202) 401-3132.

SUPPLEMENTARY INFORMATION: The Indians At Risk Task Force was established by the Secretary of Education on March 8, 1990. Its purpose is to advise and make recommendations to the Secretary of Education on the condition of education of American Indians/Alaska Natives of the United States. The meetings of the Task Force are open to the public. The agenda for this meeting will include: A discussion of the content and format of the final report, a review of the commissioned papers, and a discussion of the recommendations to be presented to the Secretary of Education.

Records are kept of the proceedings of the Task Force and are available for public inspection at the staff offices of the Task Force, from 9 a.m. to 4:30 p.m., on weekdays, excluding Federal holidays, room 4010, FOB-6, 400 Maryland Avenue SW., Washington, DC 20202-4244.

Dated: May 16, 1991.

Sally H. Christensen,

Acting Deputy Under Secretary for Planning, Budget and Evaluation, U.S. Department of Education.

[FR Doc. 91-12086 Filed 5-21-91; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER91-435-000, et al.]

D C Tie Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. D C Tie Inc.

[Docket No. ER91-435-000]

May 14, 1991.

Take notice that D C Tie Inc. (D C Tie), on May 10, 1991, tendered for filing a petition for a disclaimer of jurisdiction under section 201 of the Federal Power Act, for waivers and blanket approvals under various regulations of the Commission, and an order accepting its Rate Schedule 1, to be effective 60 days from and after May 10, 1991.

D C Tie intends to engage in electric power and energy transactions both as a broker and a marketer. In transactions where D C Tie does not take title to the electric power and/or energy, D C Tie will be limited to the role of a broker and charge a fee for its services. In transactions where D C Tie purchases power, including capacity and related services from electric utilities, qualifying facilities and independent power producers, and resells such power to other purchasers, D C Tie will be functioning as a marketer. In D C Tie's marketing transactions, D C Tie proposes to charge rates mutually agreed upon by the parties, subject to the rate being at or below the buyer's cost of alternative supply. All sales will be at arms-length, and no sales will be made to affiliated entities. D C Tie is not in the business of producing or transmitting electric power. D C Tie does not currently have or contemplate acquiring title to any electric power transmission or generation facilities.

Rate Schedule 1 provides for the sale of energy and capacity at agreed prices subject to a ceiling equal to the purchaser's alternative cost of electric power. Rate Schedule 1 also provides that no sales may be made to affiliates.

Comment date: May 31, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Minnesota Power & Light Company

[Docket No. ER91-434-000]

May 14, 1991.

Take notice that on May 10, 1991, Minnesota Power & Light Company (MP&L) tendered for filing a rate schedule for Firm Power Interchange Service provided by MP&L to other members of the Mid-Continent Area Power Pool (MAPP), pursuant to Service Schedule J of the MAPP Agreement.

MP&L requests waiver of the Commission's notice requirements and an effective date of May 1, 1991.

Copies of the filing have been served on MAPP, other members of MAPP, and on the state utility commissions in the MAPP region.

Comment date: May 31, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power & Light Company

[Docket No. ER91-436-000]

May 14, 1991.

Take notice that on May 10, 1991, Florida Power & Light Company (FPL), tendered for filing a document entitled Amendment Number Six to St. Lucie Delivery Service Agreement Between Florida Power & Light Company and the Florida Municipal Power Agency (FMPA).

FPL states that Amendment Number Six revises the designation of delivery points and allocation of the FMPA St. Lucie Nuclear Power Resources.

FPL requests that waiver of § 35.3 of the Commission's Regulations be granted and that the proposed Amendment Number Six be made effective June 1, 1991. FPL states that a copy of the filing was served on Florida Municipal Power Agency and Florida Public Service Commission.

Comment date: June 5, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Kansas Gas and Electric Company

[Docket No. ER91-433-000]

May 14, 1991.

Take notice that Kansas Gas and Electric Company (KG&E) on May 9, 1991, tendered for filing an application, pursuant to section 203 of the Federal Power Act for approval of Kansas City Power and Light Company's Letter of Intent, accepted by Kansas Gas and Electric Company on April 9, 1991. The Letter of Intent specifies voiding certain notices of both parties and continues the Lease Agreement throughout the operating life of the Wolfe Creek Generating Station.

The Letter of Intent is required to outline an agreement between the parties and amend certain provisions of the Lease Agreement.

Copies of this filing were served upon Kansas City Power and Light Company and the Kansas Corporation Commission.

Comment date: May 31, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. PacifiCorp Electric Operations

[Docket No. ER91-430-000]

May 14, 1991.

Take notice that PacifiCorp Electric Operations (PacifiCorp), on May 7, 1991, tendered for filing, in accordance with the Commission's Rules of Regulations, Fifth Revised Sheet No. 3.0 superseding Fourth Revised Sheet No. 30.0 (Index of Utilities Executing Service Agreements) of PacifiCorp's FERC Electric Tariff, Original Volume No. 5 (Tariff) and a Transmission Service Agreement (Service Agreement) between PacifiCorp and the City of Anaheim, California (Anaheim) dated April 11, 1991.

Under terms of the Service Agreement, PacifiCorp will provide firm transmission service for Anaheim under Service Schedules TS-1 and TS-4 of the Tariff.

PacifiCorp respectfully requests, pursuant to the Commission's Rules and Regulations, that a waiver of prior notice be granted and that an effective date of April 1, 1991 be assigned to the Service Agreement, this date being consistent with the effective date as provided in § 2.1 of the Service Agreement.

Copies of this filing were supplied to the City of Anaheim, the Public Utilities Commission of the State of California, the Public Utility Commission of Oregon, and the Utah Public Service Commission.

Comment date: May 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. PacifiCorp Electric Operations

[Docket No. ER91-346-000]

May 14, 1991.

Take notice that on May 8, 1991, PacifiCorp Electric Operations (PacifiCorp), tendered for filing an amendment to its filing for the Restated Power Sales Agreement with Nevada Power Company.

PacifiCorp renews its request, pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations, that a waiver of prior notice be granted and that the rate schedule become effective on July 20, 1990.

Copies of this amendment have been supplied to Nevada Power Company, the Public Service Commission of Nevada the Public Utility Commission of Oregon and the Utah Public Service Commission.

Comment date: May 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. PacifiCorp Electric Operations

[Docket No. ER91-32-0000]

May 14, 1991.

Take notice that on May 8, 1991, PacifiCorp Electric Operations (PacifiCorp), tendered for filing an amendment to its filing for the Long-Term Sales Agreement with the Arizona Power Pooling Association (APPA).

PacifiCorp renews its request, pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations, that a waiver of prior notice be granted and that the rate schedule become effective on May 1, 1991.

Copies of this filing amendment have been supplied to APPA, Arizona Electric Power Cooperative, Inc., City of Mesa, Arizona, Electrical District No. 2 of Pinal County, Arizona, the Public Utility Commission of Oregon and the Utah Public Services Commission.

Comment date: May 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

8. Jim. L. Peterson

[Docket No. ID-2601-000]

May 14, 1991.

Take notice that on May 6, 1991, Jim L. Peterson (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director, Central Power and Light Company.
Director, First City, Texas-Corpus Christi bank.

Comment date: June 5, 1991 in accordance with Standard Paragraph E at the end of this notice.

9. Pete Morales, Jr.

[Docket No. ID-2609-000]

May 14, 1991.

Take notice that on May 6, 1991, Pete Morales, Jr. (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director, Central Power and Light Company.
Director, Devine State Bank.

Comment date: June 5, 1991, in accordance with Standard Paragraph E at the end of this notice.

10. Glen D. Churchill

[Docket No. ID-2606-000]

May 14, 1991.

Take notice that on May 6, 1991, Glen D. Churchill (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director, President and Chief Executive Officer, West Texas Utilities Company.
Director, First National Bank of Abilene, Texas.

Comment date: June 5, 1991, in accordance with Standard Paragraph E at the end of this notice.

11. Robert R. Carey

[Docket No. ID-2604-000]

May 14, 1991.

Take notice that on May 6, 1991, Robert R. Carey (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director, President and Chief Executive Officer, Central Power and Light Company.
Director, Corpus Christi National Bank.

Comment date: June 5, 1991, in accordance with Standard Paragraph E at the end of this notice.

12. H. Lee Richards

[Docket No. ID-2603-000]

May 14, 1991.

Take notice that on May 6, 1991, H. Lee Richard, (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director, Central Power & Light Company.
Director, Harlingen National Bank.

Comment date: June 5, 1991, in accordance with Standard Paragraph E at the end of this notice.

13. Jack L. Phillips

[Docket No. ID-2599-000]

May 14, 1991.

Take notice that on May 6, 1991, Jack L. Phillips, (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director, Southwestern Electric Power Company.
Director, Texas Commerce Bank-Longview.

Comment date: June 5, 1991, in accordance with Standard Paragraph E at the end of this notice.

14. Mark J. Krawczyk

[Docket No. ID-2596-000]

May 14, 1991.

Take notice that on May 6, 1991, Mark J. Krawczyk (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Assistant Treasurer, Public Service Company of Oklahoma.
Director, Oklahoma Central Credit Union.

Comment date: June 5, 1991 in accordance with Standard Paragraph E at the end this notice.

15. John W. Turk, Jr.

[Docket No. ID-2597-000]

May 14, 1991.

Take notice that on May 6, 1991 John W. Turk, Jr., (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director, Southwestern Electric Power Company.
Director, Texas Commerce Bank-Longview.

Comment date: June 5, 1991, in accordance with Standard Paragraph E end of this notice.

16. William C. Peatross

[Docket No. ID-2598-000]

May 14, 1991.

Take notice that on May 6, 1991, William C. Peatross (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director, Southwestern Electric Power Company.
Director, Commercial National Bank.

Comment date: June 5, 1991, in accordance with standard Paragraph E at the of this notice.

17. William B. Ellis

[Docket No. ID-1704-003]

May 14, 1991.

Take notice that on May 6, 1991, William B. Ellis (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act of hold the following positions:

Chairman and Chief Executive Officer and Director, Connecticut Light and Power Company.
Chairman and Chief Executive Officer and Director, Western Massachusetts Electric Company.
Chairman and Chief Executive Officer and Director, Holyoke Water Power Company.
Chairman and Chief Executive Officer and Director, Holyoke Power and Electric Company.
Chairman and Chief Executive Officer and Director, Connecticut Yankee Atomic Power Company.
Director, Connecticut Mutual Life Insurance Company.

Comment date: June 5, 1991, in accordance with Standard Paragraph E at the end of this notice.

18. F.L. Stephens

[Docket No. ID-2602-000]

May 14, 1991.

Take notice that on May 6, 1991, F.L. Stephens, (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

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Director, West Texas Utilities Company.
Director, First National Bank of Lubbock.

Comment date: June 5, 1991, in accordance with Standard Paragraph E at the end of this notice.

19. Ruben M. Garcia

[Docket No. ID-2606-000]

May 14, 1991.

Take notice that on May 6, 1991, Ruben M. Garcia, (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director, Central Power and Light Company.
Director, South Texas National Bank.

Comment date: June 5, 1991, in accordance with Standard Paragraph E at the end of this notice.

20. James M. Parker

[Docket No. ID-2600-000]

May 14, 1991.

Take notice that on May 6, 1991, James M. Parker, (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director, West Texas Utilities Company.
Director, First Abilene Bankshares, Inc. and First National Bank of Abilene, Texas.

Comment date: June 5, 1991, in accordance with Standard Paragraph E at the end of this notice.

21. Joan T. Bok

[Docket No. ID-1821-003]

May 14, 1991.

Take notice that on May 9, 1991, Joan T. Bok, (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director, John Hancock Mutual Life Insurance Company.
Director, Massachusetts Electric Company.
Director, Narragansett Energy Resources Company.
Director, New England Electric Transmission Corporation.
Director, New England Hydro-Transmission Corporation.
Director, New England Hydro-Transmission Electric Company, Inc.
Vice Chairman & Director, New England Power Company.

Comment date: June 5, 1991, in accordance with Standard Paragraph E at the end of this notice.

22. Frederick E. Joyce

[Docket No. ID-2613-000]

May 14, 1991.

Take notice that on May 6, 1991, Frederick E. Joyce, (Applicant) tendered for filing under section 305(b) of the Federal Power Act to hold the following positions:

Director, Southwestern Electric Power Company.
Director, State First National Bank and State First Financial Corporation.

Comment date: June 5, 1991, in accordance with Standard Paragraph E at the end of this notice.

23. Jack E. Raulston

[Docket No. ID-2605-000]

May 14, 1991.

Take notice that on May 6, 1991, Jack E. Raulston, (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director, Public Service Company of Oklahoma.
Director Advisor, Security Bank and Trust Company.

Comment date: June 5, 1991, in accordance with Standard Paragraph E at the end of this notice.

24. Scrubgrass Generating Company L.P.

[Docket No. QF88-406-001]

May 14, 1991.

On May 10, 1991, Scrubgrass Generating Company L.P., (Applicant) tendered for filing an amendment to its filing in this docket.

The amendment provides additional information relating to management control of the partnership and compensation under the management services agreement.

Comment date: 21 days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

25. Joseph K. Tannehill

[Docket No. ID-2208-002]

May 15, 1991.

Take notice that on May 6, 1991, Joseph K. Tannehill (Applicant) tendered for filing an informational report for automatic authorization to hold the following interlocking positions under section 305(b) of the Federal Power Act:

Director, Gulf Power Company.
Director, Sun Commercial Bank.

Comment date: June 7, 1991, in accordance with Standard Paragraph E at the end of this notice.

26. William B. Turner

[Docket No. ID-2574-000]

May 15, 1991.

Take notice that on May 6, 1991, William B. Turner (Applicant) tendered for filing an informational report for automatic authorization to hold the following interlocking positions under section 305(b) of the Federal Power Act:

Director, and Chairman of the Compensation Committee of the Board of Directors, Georgia Power Company.
Director, and Chairman of the Executive Committee of the Board of Directors, Synovus Financial Corp.
Chairman of the Board of Directors, Columbus Bank and Trust Company.
Chairman of the Board of Directors and President, TB&C Bancshares, Inc.

Comment date: June 7, 1991, in accordance with Standard Paragraph E at the end of this notice.

27. Bernard A. Fox

[Docket No. ID-2008-002]

May 15, 1991.

Take notice that on May 6, 1991, Bernard A. Fox (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

President and Chief Operating Officer and Director, Connecticut Light and Power Company.
President and Chief Operating Officer and Director, Western Massachusetts Electric Company.
President and Chief Operating Officer and Director, Holyoke Water Power Company.
President and Chief Operating Officer and Director, Holyoke Power and Electric Company.
President and Chief Operating Officer and Director, Connecticut Yankee Atomic Power Company.
Director, Vermont Yankee Nuclear Power Corporation.
Director, Maine Yankee Atomic Power Company.
Director, Yankee Atomic Electric Company.
Director, The Connecticut National Bank.

Comment date: June 5, 1991, in accordance with Standard Paragraph E at the end of this notice.

28. Power Authority of the State of New York

v.

Long Island Lighting Company

[Docket No. EL91-32-000]

May 15, 1991.

Take notice that on May 10, 1991, the Power Authority of the State of New York (NYPA) tendered for filing a complaint against Long Island Lighting Company (LILCO). In its filing NYPA requests that LILCO be required to continue the service it is now rendering to NYPA pursuant to its FERC Schedule Nos. 32 and 34 for the annual period commencing June 1, 1991, and further that LILCO not be permitted to terminate those schedules as threatened, as of April 8, 1993.

Comment date: June 14, 1991, in accordance with Standard Paragraph E at the end of this notice.

29. National Electric Associates Limited Partnership

[Docket No. ER90-168-004]

May 15, 1991.

Take notice that on April 29, 1991, National Electric Associates Limited Partnership (NEA) filed certain information as required by Ordering Paragraph (L) of the Commission's March 20, 1990 order in this proceeding. 50 FERC 61,378 (1990). Copies of NEA's information filing are on file with the Commission and are available for public inspection.

30. Iowa Power Inc.

[Docket No. ER90-575-000]

May 15, 1991.

Take notice that on April 29, 1991, Iowa Power Inc. (Iowa Power) tendered for filing an Amendment to the Second Seasonal Diversity Agreement between Iowa Power and Central Iowa Power Cooperative (CIPCO) dated February 12, 1991.

Originally, on August 30, 1990, Iowa Power Inc., tendered for filing the Second Seasonal Diversity Exchange Agreement between Iowa Power and CIPCO dated April 30, 1990.

Iowa Power states that the Second Diversity Exchange Agreement is a negotiated Agreement for the exchange of 20 MW of power and energy on a seasonal basis, with Iowa Power providing to CIPCO 20 MW of capacity for the 1990 winter season and CIPCO providing to Iowa Power 20 MW for the 1990 summer season; and Iowa Power states that the Iowa State Utilities Board and CIPCO have been mailed copies of the Agreement.

Iowa Power requests an effective date of May 1, 1990, and therefore requests a waiver of the Commission's notice requirements.

Comment date: May 31, 1991, in accordance with Standard Paragraph E end of this notice.

31. American Electric Power Service Corp.

[Docket No. ER90-563-000]

May 15, 1991.

Take notice that on May 6, 1991, American Electric Power Service Corp. (AEP) tendered for filing its Compliance Refund Report in this docket pursuant to the Commission's letter order issued on April 24, 1991.

Comment date: May 31, 1991, in accordance with Standard Paragraph E at the end of this notice.

32. PSI Energy, Inc.

[Docket No. ER91-432-000]

May 15, 1991.

Take notice that on April 29, 1991, PSI Energy, Inc. (PSI) tendered for filing revised Service Schedule H, J, and K to the Interconnection Agreement between Louisville Gas and Electric Company and PSI.

Comment date: May 31, 1991, in accordance with Standard Paragraph E at the end of this notice.

33. Florida Power & Light Company

[Docket No. ER91-431-000]

May 15, 1991.

Take notice that Florida Power & Light Company on May 8, 1991, tendered for filing a document entitled Amendment Number One to the Restate and Revised Transmission Service Agreement Between Florida Power & Light Company and the Florida Municipal Power Agency (FMPA).

FPL states that under Amendment Number One, FPL and FMPA have agreed to amend the Restated and Revised Transmission Agreement such that FPL may provide transmission service for an additional FMPA resource in accordance with the provisions of the Restated and Revised Transmission Agreement.

FPL requests that waiver of the Commission's Regulations be granted and that the proposed Amendment Number One be made effective June 1, 1991. FPL states that a copy of the filing was served on the Florida Municipal Power Agency and the Florida Public Service Commission.

Comment date: May 31, 1991, in accordance with Standard Paragraph E end of this notice.

34. Tucson Electric Power Company

[Docket No. ER91-437-000]

May 15, 1991.

Take notice that on May 13, 1991, Tucson Electric Power Company (Tucson) tendered for filing an agreement entitled "1991 Short Term Power Sale Agreement Between Tucson Electric Power Company and Citizens Utilities Company."

The parties request an effective date of May 15, 1991, and therefore request waiver of the Commission's regulations regarding filing.

Tucson states that copies of this filing have been served upon all parties affected by this proceeding.

Comment date: May 31, 1991, in accordance with Standard Paragraph E at the end of this notice.

35. Montana Power Company

[Docket No. ER91-429-000]

May 15, 1991.

Take notice that on May 6, 1991, Montana Power Company (Montana) tendered for filing a revised Appendix 1 as required by Exhibit C for retail sales in accordance with the provisions of the Residential Purchase and Sale Agreement (Agreement) between Montana and the Bonneville Power Administration (BPA).

The Agreement was entered into pursuant to the Pacific Northwest Electric Power Planning and Conservation Act, Public Law 96-501. The Agreement provides for the exchange of electric power between Montana and BPA for the benefit of Montana's residential and farm customers.

Montana requests that the rate have an effective date of August 29, 1990, and, therefore, requests waiver of the Commission's notice requirements.

A copy of the filing was served upon BPA.

Comment date: May 31, 1991 in accordance with Standard Paragraph E at the end of this notice.

36. Robert W. Scherer

[Docket No. ID-1580-001]

May 15, 1991.

Take notice that on May 7, 1991, Robert W. Scherer (Applicant) tendered for filing an informational report for automatic authorization to hold the following interlocking positions under section 305(b) of the Federal Power Act:

Honorary Director, Georgia Power Company.
Director, SunTrust Banks, Inc.
Director, Trust Company of Georgia.
Director, Trust Company Bank.

Comment date: June 7, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

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Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12059 Filed 5-21-91; 8:45 am]

BILLING CODE 6717-01-M

Docket No. QF85-55-001; Docket No. QF85-148-004; and Docket No. QF86-808-003 [Docket No. QF85-55-001 et al.]

Modesto Energy Limited Partnership et al.; Application for Commission Recertification of Qualifying Status of Small Power Production Facilities

May 15, 1991.

In the matter of Modesto Energy Limited Partnership, A California Limited Partnership; Wadham Energy Limited Partnership, A California Limited Partnership; Exeter Energy Limited Partnership, A Connecticut Limited Partnership.

On May 15, 1991, the Modesto Energy Limited Partnership, a California Limited Partnership ("Modesto"), the Wadham Energy Limited Partnership, a California Limited Partnership ("Wadham"), and the Exeter Energy Limited Partnership, a Connecticut Limited Partnership ("Exeter"), all c/o The Oxford Energy Company of 3510 Unocal Place, Santa Rosa, California 95403, submitted for filing an application for recertification of three facilities as qualifying small power production facilities pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The Modesto facility is located in Westley, California. The primary fuel is waste tires. Wadham's facility is located in Colusa County, approximately five miles south of Williams, California, and is fueled by biomass in the form of rice hulls and rice straw. Exeter's facility is located in Sterling, Connecticut. The primary energy source will be waste tires.

The original application for the Exeter facility was filed on June 4, 1986, and was granted on August 20, 1986, *Exeter Energy Limited Partnership*, 36 FERC 62,208 (1986). On February 6, 1989, a Notice of Self-Certification was also filed (Docket No. QF86-808-001). An application for recertification was filed on May 11, 1989 and was granted on August 17, 1989, *Exeter Energy Limited Partnership*, 48 FERC 62,135 (1989).

The Wadham facility was previously certified by the Commission as a qualifying small power production facility on December 19, 1987, *Wadham Energy Limited Partnership*, 41 FERC 62,245 (1987), and was recertified by the Commission on February 6, 1990, *Wadham Energy Limited Partnership*, 50 FERC 62,075 (1990). In addition, a Notice of Self-Certification was filed on October 22, 1987.

Modesto's facility was certified by the Commission on January 18, 1985, *Modesto Energy Company*, 30 FERC 62,066 (1985). Recertification by the Commission is requested (i) for all three facilities with respect to changes pertaining to the Oxford Energy Company, and (ii) for Modesto and Exeter with respect to changes in the ownership of those partnerships.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed no later than May 30, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12058 Filed 5-21-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10810-000]

Greenbrier Electro-motive, Inc.; Availability of Environmental Assessment

May 15, 1991.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Kincaid Hydro Project located on the Greenbrier River in Greenbrier County, near Alderson, West Virginia, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the environmental impacts of the project and has concluded that approval of the project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12060 Filed 5-21-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1975-004]

Idaho Power Co.; Availability of Environmental Assessment

May 15, 1991.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application requesting authorization to construct an access road to the Bliss Dam Project on the Snake River in Elmore County, Idaho. The staff of OHL's Division of Project Compliance and Administration has prepared an Environmental Assessment (EA) for the proposed action. In the EA, the staff concludes that approval of the amendment of license would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, Room 3308, of the Commission's Offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12061 Filed 5-21-91; 8:45 am]

BILLING CODE 6717-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP91-1957-000, et al.]

El Paso Natural Gas Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. El Paso Natural Gas Co.

[Docket No. CP91-1957-000]

May 8, 1991.

Take notice that on May 6, 1991, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP91-1957-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Conoco Inc., an interruptible, under the blanket certificate issued in Docket No. CP88-433-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso states that, pursuant to an agreement dated September 21, 1990, under its Rate Schedule T-1, it proposes to transport up to 51,500 MMBtu per day equivalent of natural gas. El Paso indicates that it would transport 51,500 MMBtu on an average day and 18,797,500 MMBtu annually. El Paso further indicates that the gas would be transported from Rvarious, and would be redelivered in Colorado.

El Paso advises that service under § 284.223(a) commenced March 23, 1991, as reported in Docket No. ST91-8309.

Comment date: June 24, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. Transcontinental Gas Pipe Line Corp.

[Docket Nos. CP91-1941-000, CP91-1942-000]

May 8, 1991.

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction including the identify of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also states that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: June 24, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] average annual	Points of		Start up date, rate schedule	Related [2] dockets
				Receipt	Delivery		
CP91-1941-000 4/30/91	Transcontinental Gas Pipe Corporation, Post Office Box 1396, Houston, TX 77251	Hunt Petroleum Corporation.	15,000 15,000 5,475,000	Offshore TX	Offshore TX	IT, Interruptible, 3/22/91	CP88-328-000, ST91-7997-000
CP91-1942-000 4/30/91	Transcontinental Gas Pipe Corporation, Post Office Box 1396, Houston, TX 77251	CNG Producing Company.	60,000 60,000 21,900,000	Offshore LA	LA	IT, Interruptible, 3/22/91	Cp88-328-000, ST91-8227-000.

[1] Quantities are shown in Dt. unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

3. ANR Pipeline Co.

[Docket No. CP91-1943-000]

May 8, 1991.

Take notice that on May 1, 1991, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP91-1943-000 a request pursuant to §§ 157.205 and 157.208 of the Commission's Regulations for authorization to operate certain transmission facilities which have been constructed or acquired by ANR pursuant to section 311 of the Natural Gas Policy Act (NGPA), under ANR's blanket certificate issued in Docket No. CP82-480-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, ANR requests authorization to operate under the provisions of section 7 of the Natural Gas Act: (1) The existing 39.4 miles of 12-inch pipeline extending from the General Motors Corporation (GM) plant near Defiance, Ohio, to an interconnection with East Ohio Gas Company (East Ohio) near Maumee, Ohio; (2) the existing approximately five miles of 12-inch pipeline extending from ANR's Defiance, Ohio compressor station to an interconnection with the Maumee Lateral near Defiance, Ohio; and (3) various other proposed and existing interconnections as listed in the application.

ANR states that the subject facilities would be used to provide transportation service on an open access basis pursuant to subpart G (§ 284.221) of the Regulations. ANR estimates that the facilities would cost $6,580,910, which cost would be financed through internally generated funds. It is indicated that the subject acquired facilities were constructed by East Ohio on behalf of the owner, GM.

Comment date: June 24, 1991, in accordance with Standard Paragraph G at the end of this notice.

4. Equitable Resources Marketing Co.

[Docket No. CI89-361-004]

May 8, 1991.

Take notice that on April 29, 1991, Equitable Resources Marketing Company (Applicant) of 330 Grant Street, Suite 2900, Pittsburgh, Pennsylvania 15219 filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder to amend its limited-term blanket certificate with pregranted abandonment previously issued by the Commission in Docket No. CI89-361-002 to include authorization to make sales for resale in interstate commerce of natural gas acquired from any non-first sellers, including intrastate pipelines and local distribution companies, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: May 28, 1991, in accordance with Standard Paragraph J at the end of this notice.

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5. Texas Gas Transmission Corp.; Northern Natural Gas Co.

[Docket Nos. CP91-1954-000, CP91-1955-000, CP91-1956-000]

May 8, 1991.

Take notice that the above referenced companies (Applicants) filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: June 24, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] average, annual	Points of Receipt	Points of Delivery	Start up date, rate schedule	Related [3] dockets
CP91-1954-000 5-3-91	Texas Gas Transmission Corporation, 3800 Frederica Street, Owensboro, KY 42301.	ARCO Natural Gas Marketing, Inc.	230,000 20,000 7,300,000	LA, IN, KY, TX, TN, IL, AR, OH, Off LA, Off TX.	LA	3-20-91, IT	CP88-686-000, ST91-8015-000.
CP91-1955-000 5-3-91	Texas Gas Transmission Corporation, 3800 Frederica Street, Owensboro, KY 42301.	Coast Energy Group.	500,000 30,000 182,500,000	LA, IN, KY, TX, TN, IL, AR, OH, Off LA, Off TX.	LA	3-20-91, IT	CP86-686-000, ST91-8013-000.
CP91-1956-000 5-3-91	Northern Natural Gas Company, 1400 Smith St., P.O. Box 1188, Houston, TX 77251-1188.	Union Texas Products Corporation.	30,000 22,500 10,950,000	OK, TX, KS, NM, WI, IA, SD, MN, NE.	TX	4-17-91, IT-1	CP86-435-000, ST91-8347-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[3] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

6. Gulf States Gas Corp.; Gulf States Pipeline Corp.

[Docket Nos. CI91-77-000, CI91-78-000][3]

May 8, 1991.

Take notice that on April 30, 1991, Gulf States Gas Corporation of 1000 Louisiana, suite 4900, Houston, Texas 77002 and Gulf States Pipeline Corporation of 1324 N. Hearne Ave., suite 300, Shreveport, Louisiana 71107 (Applicants) each filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for blanket certificates with pregranted abandonment authorizing sales for resale in interstate commerce of imported natural gas, LNG, and gas purchased from non-first sellers, such as gas purchased pursuant to interstate pipeline discount sales (ISS) authority, and gas purchased from intrastate pipelines and local distribution companies, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Comment date: May 28, 1991, in accordance with Standard Paragraph J at the end of this notice.

[3] This notice does not provide for consolidation for hearing of the several matters covered herein.

7. Mid Louisiana Gas Co.; Tennessee Gas Pipeline Co.

[Docket Nos. CP91-1929-000, CP91-1930-000]

May 8, 1991.

Take notice that Mid Louisiana Gas Company, Five Post Oak Park, suite 800, Houston, Texas 77027, and Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP86-214-000 and Docket No. CP87-115-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: June 24, 1991, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points[1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-1929-000 (4-29-91)	Quintana Petroleum Corporation	5,000 5,000 2,920,000	OLA	LA	7-31-90, IT-1, Interruptible.	ST91-8278-000, 4-1-91.
CP91-1930-000 (4-29-91)	Interstate Gas Marketing, Inc. (Marketer)	10,000Dth 10,000Dth 1,200,000Dth	OLA, LA, TX	NY, OH, PA, WV	4-7-89, IT, Interruptible.	ST91-8325-000, 3-7-91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

8. Transcontinental Gas Pipe Line Corp.

[Docket No. CP91-1931-000]

May 8, 1991.

Take notice that on April 29, 1991, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP91-1931-000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act for permission and approval to abandon certain facilities and related service under the authorization issued in Docket No. CP82-426-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Transco states that it has abandoned firm transportation service under Rate Schedule X-219 to Northern Natural Gas Company (Northern) pursuant to Commission authorization issued on July 11, 1990 in Docket No. CP90-298-000. Transco further states that the dual 12-inch Northern Natural-Vinton Measurement and Regulating Station and 342 feet of 20- and 16-inch diameter pipeline in Vinton Field, Calcasieu Parish, Louisiana (collectively, the Northern-Vinton Delivery Point) remained after the abandonment of such service. Transco indicates that in late 1989, Northern removed all of its above-ground equipment in the area to prevent vandalism, thereby making Transco's Northern-Vinton Delivery Point the only facilities in the area. Transco states that its field personnel determined at that time that it was necessary to remove Transco's facilities immediately, also to prevent vandalism. Therefore, Transco proposes to abandon such facilities and suggests that an oath statement indicating Northern's consent to such abandonment is unnecessary.

Comment date: June 24, 1991, in accordance with Standard Paragraph G at the end of this notice.

9. Midwestern Gas Transmission Co.

[Docket No. CP91-1953-000]

May 8, 1991.

Take notice that on May 3, 1991, Midwestern Gas Transmission Company (Midwestern), P.O. Box 2511, Houston, Texas 77252, filed a prior notice request with the Commission in Docket No. CP91-1953-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to add two delivery points to its FERC Rate Schedule IT under the blanket certificate issued in Docket No. CP82-414-000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

Midwestern proposes to add its currently nonjurisdictional Huntingburg, Pike County, Indiana, and Shrewsburg, Davies County, Kentucky, delivery points for jurisdictional service under its FERC Rate Schedule IT. Midwestern states that the construction costs for these delivery points were paid by their respective shippers. Midwestern also states that its tariff does not prohibit the proposed change in service. The total natural gas quantities that Midwestern delivers for its FERC Rate Schedule IT customers would not exceed presently authorized quantities, nor would there be an impact on Midwestern's average or peak day deliveries.

Comment date: June 24, 1991, in accordance with Standard Paragraph G at the end of this notice.

10. Williston Basin Interstate Pipeline Co.

[Docket No. CP91-1915-000]

May 8, 1991.

Take notice that on April 25, 1991, Williston Basin Interstate Pipeline Company (Williston Basin), suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP91-1915-000 a request pursuant to §§ 157.205 and 157.213(b) of the Commission's Regulations under the Natural Gas Act for authorization to continue providing storage service for Quivira Gas Company (Quivira) under its blanket certificate issued in Docket No. CP89-1118-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williston Basin states that it has been providing interruptible storage service for Quivira pursuant to an August 15, 1989 service agreement for a total maximum aggregate storage inventory not to exceed the lesser of 28,000,000 Mcf or the amount of capacity which Williston Basin determines to be available from time to time. Williston Basin indicates that it requests authorization, pursuant to § 157.213(b) of the Commission's Regulations, to continue to provide storage service under its Rate Schedule S-3 for Quivira for up to one year beyond the two year period authorized by § 157.213(a).

Comment date: June 24, 1991, in accordance with Standard Paragraph G at the end of this notice.

11. Colorado Interstate Gas Co.; Transcontinental Gas Pipe Line Corp; Williston Basin Interstate Pipeline Co.

[Docket Nos. CP92-1958-000, CP91-1959-000, CP91-1960-000]

May 8, 1991.

Take notice that on May 6, 1991, Applicants filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued to Applicants pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[5]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached Appendix A. Applicants' addresses and transportation blanket certificates are shown in the attached Appendix B.

[5] These prior notice requests are not consolidated.

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Comment date: June 24, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Dth	Receipt points [1]	Delivery points	Contract date rate schedule, service type	Related docket, start up date
CP91-1958-000 (5-6-91)	Mountain Cement Company (End-user).	8,400 8,400 [2] 2,336,000	WY, CO	WY	3-1-91, TI-1, Interruptible.	ST91-7852-000, 3-15-91.
CP91-1959-000 (5-6-91)	Tropicana Products, Inc. (End-user).	20,000 10,000 3,650,000	Various	LA	7-20-90, IT, Interruptible.	ST91-8263-000, 9-18-90.
CP91-1960-000 (5-6-91)	Portage Energy, Inc. (Marketer).	73,000 73,000 26,645,000	MT, WY, ND	Various	2-27-91, IT-1, Interruptible.	ST91-8305-000, 3-22-91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2] CIG's quantities are in Mcf.

Applicant's address	Blanket docket
Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80944.	CP86-589, et al.
Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77251.	CP88-328-000.
Williston Basin Interstate Pipeline Company, Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501.	CP89-1118-000.

12. CATEX Energy Inc. (Successor-in-Interest to Catamount Natural Gas, Inc.

[Docket No. CP87-910-003]

May 8, 1991.

Take notice that on April 30, 1991, CATEX Energy Inc. (CATEX) of 470 Atlantic Ave., Boston, Massachusetts 02210 filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder requesting that the Commission redesignate the blanket certificate previously issued to Catamount Natural Gas, Inc., in the name of CATEX, and to amend that unlimited-term blanket certificate with pregranted abandonment previously issued by the Commission in Docket No. CI87-910-002 to include authorization to make sales for resale in interstate commerce of natural gas purchased from non-first sellers, such as intrastate pipelines and local distribution companies, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: May 28, 1991, in accordance with Standard Paragraph J at the end of the notice.

13. Sea Robin Pipeline Co.

[Docket No. CP91-1944-000]

May 8, 1991.

Take notice that on May 1, 1991, Sea Robin Pipeline Company (Sea Robin), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP91-1944-000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations for authorization to abandon sales lateral facilities consisting of a meter station and appurtenant piping and facilities installed for deliveries of natural gas to Southern Natural Gas Company (Southern), in Bayou Sale, Lafayette Parish, Louisiana, under Sea Robin's blanket certificate issued in Docket No. CP82-429-000, all as more fully detailed in the request which is on file with the Commission and open to public inspection.

It is stated that the facilities proposed for abandonment are located at the interconnection of the pipeline systems of Southern and United Gas Pipe Line Company (United) in Bayou Sale. It is explained that the facilities were constructed to measure gas sold to Southern by Sea Robin for redelivery to Southern by United under an exchange agreement between Southern, Sea Robin and United. It is further explained that both the construction and the exchange were authorized by the Commission in Docket No. CP69-305. It is asserted that the facilities would be sold at book value by Sea Robin to Southern following receipt of abandonment authorization by Sea Robin. Sea Robin states that the sales service to Southern was abandoned effective April 1, 1990, and that the facilities are no longer needed.

Comment date: June 24, 1991, in accordance with Standard Paragraph G at the end of this notice.

14. Transok, Inc.

[Docket No. CI91-79-000]

May 8, 1991.

Take notice that on April 30, 1991, Transok, Inc. (Applicant) of P.O. Box 3008, Tulsa, Oklahoma 74101 filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing sales for resale in interstate commerce of natural gas from any source (domestic or foreign) including LNG, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: May 28, 1991, in accordance with Standard Paragraph J at the end of the notice.

15. Tennessee Gas Pipeline Co.

[Docket Nos. CP91-1962-000,[4] CP91-1963-000]

May 9, 1991.

Take notice that on May 6, 1991, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP87-115-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the date of the gas transportation agreement between Tennessee and the respective shipper, the contract number of the gas transportation agreement, function of the shipper, i.e., marketer, intrastate pipeline, etc., the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket number and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Tennessee and is included in the attached appendix.

Tennessee alleges that it would provide the proposed service for each shipper under an executed gas transportation agreement and would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: June 24, 1991, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

Docket No. trans. agree. (Contract No.)	Shipper name	Shipper's function	Peak day,[1] average annual	Points of Receipt	Points of Delivery	Start up date, rate schedule, service type	Related [2] dockets
CP91-1962-000 3-18-91 (T-4259)	Fulton Cogeneration Associates.	End-user	12,500 12,500 4,562,500	NY	NY & PA	4-1-911, IT, Interruptible.	ST91-8537-000.
CP91-1963-000 1-14-91 (T-4203)	Energy Development Corporation.	Producer	500,000 500,000 182,500,000	Off. LA, LA, & TX	Existing Delivery Points.	3-29-91, IT, Interruptible	ST91-8433-000

[1] Quantities are shown in Dekatherms.
[2] The ST docket indicates that 120-day transportation service was initiated under Section 284.223(a) of the Commission's Regulations.

16. Northwest Pipeline Corp.

[Docket No. CP91-1965-000]

May 9, 1991.

Take notice that on May 6, 1990, Northwest Pipeline Corporation (Northwest), P.O. Box 58900, Salt Lake City, Utah 84158-0900, filed in Docket No. CP91-1965-000 a request pursuant to §§ 157.205, 157.211, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, and 157.216) to partially abandon its existing Coeur D'Alene West Meter Station metering facilities in Kootenai County, Idaho and to construct and operate upgraded metering facilities at the Coeur D'Alene West Meter Station in order to accommodate existing firm delivery obligations to Water Power Gas Company (Water Power), under the authorization issued in Docket No. CP82-433-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest asserts that the existing Coeur D'Alene West Meter Station, has a design delivery capacity of approximately 6,833 dekatherms per day at a delivery pressure of 150 psig, and that on several days this past winter, deliveries at the station actually exceeded the existing theoretical design capacity by up to ten percent. Northwest alleges that its currently authorized maximum daily delivery obligation (MDDO) for firm sales, transportation, and storage gas to Water Power at the Coeur D'Alene West Meter Station is 8,200 dekatherms per day at a minimum delivery pressure of 150 psig.

Northwest proposes to upgrade the existing inadequate facilities at the Coeur D'Alene West Meter Station by replacing the two old four-inch orifice meters with two new six-inch turbine meters.[7] This upgrading of the metering facilities would result in a maximum station design capacity of 11,200 dekatherms per day at 150 psig, sufficient to handle delivery requirements at the existing MDDO level and potential future increased requirements. It is alleged that since Northwest proposes to replace all the abandoned facilities by upgraded facilities at the Coeur D'Alene West Meter Station so no abandonment of service would occur. The total cost of upgrading the Coeur D'Alene West Meter Station is estimated to be approximately $43,060. Since this upgrade is required to replace inadequate equipment and to enable Northwest to deliver up to its current MDDO to Water Power, Northwest would not require any construction cost reimbursement from Water Power.

It is alleged that the upgrading of the Coeur D'Alene West Meter Station would be done within the site of the existing meter station and upon completion of the proposed construction, the site would be graded back to its present contours and regraveled.

Comment date: June 24, 1991, in accordance with Standard Paragraph G at the end of this notice.

[7] The facilities to be abandoned was certificated by order issued November 25, 1955, at Docket No. G-8934, 14 FPC 157.

17. Williams Natural Gas Co.

[Docket No. CP91-1952-000]

May 9, 1991.

Take notice that on May 2, 1991, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP91-1952-000 pursuant to § 157.205 and 157.212(a) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to reassign volumes of gas at existing points in Greene County, Missouri under the blanket certificate issued in Docket No. CP82-479-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG states that City Utilities has requested that WNG reassign volumes of gas at its various delivery points in order to provide gas to the James River power plant and turbines and the Southwest power plant and turbines, the Fulbright pump station, Southwest disposal plant and Old disposal plant. These locations were previously served under a direct sale agreement. No abandonment or change of facilities is anticipated.

Comment date: June 24, 1991, in accordance with Standard Paragraph G at the end of this notice.

18. ANR Pipeline Co.

[Docket No. CP91-1936-000]

May 9, 1991.

Take notice that on April 30, 1991, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP91-1936-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a portion of natural gas transportation service performed by ANR for Mid Louisiana Gas Company (MidLa), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR proposes to abandon the transportation of 3,000 Mcf per day of natural gas to MidLa under ANR's Rate Schedule X-141 to be effective May 1, 1991. ANR states that it transports up to 25,000 Mcf per day of natural gas,

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authorized in an order issued on April 17, 1984, in Docket No. CP83-532-000, from reserves MidLa purchases in Eugene Island Area Block 34, offshore Louisiana pursuant to a transportation agreement dated June 20, 1983. The onshore delivery points are an interconnection between ANR and MidLa in Franklin Parish, Louisiana and at a meter station in Tensas Parish, Louisiana, it is indicated.

ANR states that the term of service, commenced on June 5, 1984, under Rate Schedule X-141, is ten years from the date of initial delivery, and year to year thereafter unless canceled by either party by at least six month's written notice which may be made effective at the end of the initial ten years, or any year thereafter. ANR states that pursuant to an amendatory agreement dated April 26, 1991, ANR and MidLa have mutually agreed to reduce the entitlement from 25,000 Mcf to 22,000 Mcf of natural gas per day, to be effective May 1, 1991.

Comment date: May 30, 1991, in accordance with Standard Paragraph F at the end of the notice.

19. William Natural Gas Co.

[Docket No. CP91-1951-000]

May 10, 1991.

On May 2, 1991, Williams Natural Gas Company (WNG) filed in Docket No. CP91-1951-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the transportation of gas for direct sale to City Utilities of Springfield (City Utilities) at five locations in Greene County, Missouri, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Specifically WNG seeks authority to abandon the transportation of gas for direct sale to the James River Power Plant, the Southwest Power Plant, Southwest Disposal Plant, the Old Disposal Plant and the Fulbright Pump Station at the request of City Utilities. WNG states the City Utilities has requested that WNG remove these locations from a direct sale designation so that they may be added to City Utilities existing Rate F and PR(B) agreements.

Comment date: May 31, 1991, in accordance with Standard Paragraph F at the end of this notice.

20. National Fuel Gas Supply Corp.

[Docket Nos. CP91-1966-000,[a] CP91-1967-000, CP91-1968-000, CP91-1969-000, CP91-1970-000, CP91-1971-000, CP91-1972-000, CP91-1973-000, CP91-1974-000, CP91-1975-000]

May 13, 1991.

Take notice that on May 7, 1991, National Fuel Gas Supply Corporation (Applicant), filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for each shipper under an executed transportation agreement, and that the Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: June 27, 1991, in accordance with Standard Paragraph G at the end of this notice.

[a] These prior notice requests are not consolidated.

Docket No.	Applicant	Shipper name	Peak day,[1] average, annual	Points of Receipt	Points of Delivery	Start up date, rate schedule	Related [2] dockets
CP91-1966-000	National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, NY 14203.	Open Flow Gas Supply Corporation.	5,000 5,000 1,825,000	NY,PA	NY,PA	3-1-91, IT	CP89-1582-000, ST91-7948-000.
CP91-1967-000	National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, NY 14203.	Lenape Resources Corporation.	1,800 1,800 657,000	NY,PA	NY,PA	3-22-91, IT	CP89-1582-000, ST91-7949-000.
CP91-1968-000	National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, NY 14203.	Fuel Services Group, Inc.	500 500 182,500	NY,PA	NY,PA	3-1-91, IT	CP89-1582-000, ST91-7946-000.
CP91-1969-000	National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, NY 14203.	Endevco Oil & Gas Company.	50,000 50,000 18,250,000	NY,PA	NY,PA	3-31-91, IT	CP89-1582-000, ST91-8447-000.

Docket No.	Applicant	Shipper name	Peak day,[1] average, annual	Points of Receipt	Points of Delivery	Start up date, rate schedule	Related [2] dockets
CP91-1970-000	National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, NY 14203.	Wes Cana Energy Marketing, Inc.	50,000 50,000 18,250,000	NY,PA	NY,PA	3-5-91	CP89-1582-000, ST91-7931-000.
CP91-1971-000	National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, NY 14203.	Woodward Marketing, Inc.	20,000 20,000 7,300,000	NY,PA	NY,PA	3-14-91, IT	CP89-1582-000, ST91-7932-000.
CP91-1972-000	National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, NY 14203.	Integrated Gas Marketing.	2,000 2,000 730,000	NY,PA	NY,PA	3-22-91, IT	CP89-1582-000, ST91-7927-000.
CP91-1973-000	National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, NY 14203.	Phibro Energy, Inc.	250,000	250,000 91,250,000 NY,PA	NY,PA	3-20-91, IT	CP89-1582-000, ST91-7928-000.
CP91-1974-000	National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, NY 14203.	Vineyard Oil & Gas Company.	1,740 1,740 635,100	NY,PA	NY,PA	3-1-91, IT	CP89-1528-000, ST91-7957-000.
CP91-1975-000	National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, NY 14203.	Chevron USA, Inc.	200,000 200,000 73,000,000	NY,PA	NY,PA	3-8-91, IT	CP89-1528-000, ST91-7936-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

21. Transwestern Pipeline Co.

[Docket No. CP91-1964-000]

May 13, 1991.

Take notice that on May 7, 1991, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP91-1964-000 a request pursuant to §§ 157.205, 157.211, and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to install and operate a proposed meter run as a point of delivery of natural gas volumes under its blanket certificate issued in Docket No. CP82-534-000 pursuant to section 7 of the Natural Gas Act, and to transport natural gas to accommodate deliveries to Yates Petroleum Corporation under its blanket certificate issued in Docket No. CP88-133-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Comment date: June 27, 1991, in accordance with Standard Paragraph G at the end of this notice.

22. Florida Gas Transmission Co.

[Docket No. CP91-1961-000]

May 13, 1991.

Take notice that on May 6, 1991, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP91-1961-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to (1) construct and operate a new meter station and appurtenant facilities (the South Meter Station) to deliver gas to the City of Tallahassee (Tallahassee), an existing resale and transportation customer; and (2) realign the Maximum Daily Contract Quantities (MDCQ) between Tallahassee's authorized and proposed delivery points under Rate Schedule G, under the authorization issued in Docket No. CP82-553-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that Tallahassee is an LDC that will purchase gas from FGT for resale to serve Tallahassee and nearby communities upon completion of the Phase II expansion which was approved in the settlement agreement in Docket No. RP89-50-000, *et al.*, 51 FERC 61,309. FGT states that the proposed South Meter Station will be a jurisdictional facility necessary to accommodate natural gas deliveries pursuant to the existing Service Agreement under Rate Schedule G.

FGT states that in Docket No. CP96-704-000 requested authorization to expand its system which included a request to construct the North Meter Station. This docket along with others was consolidated with FGT's Section 4 rate case in Docket No. RP89-50-000, *et al.* The above referenced order approved, among other things, FGT's request to serve Tallahassee under Rate Schedules G and FTS-1 and to construct and operate the North Meter Station at the time of the in-service date of the Phase II facilities.

FGT requests authority to construct and operate the proposed South Meter Station at Mile Post 428.5 on its 30-inch mainline in Leon County, Florida. FGT further requests authorization to realign the currently effective certificated MDCQ within the existing Service Agreement under Rate Schedule G between the Norther Meter Station and

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the proposed South Meter Station, to accommodate natural gas deliveries to Tallahassee. It is stated that Tallahassee had requested that FGT construct the South Meter Station on FGT's 30-inch mainline on the south side of Tallahassee in order to accommodate future growth and provide flexibility in the receipt of the Rate Schedule G volumes. FGT avers that the South Meter Station will enable Tallahassee to receive gas into their system and serve the City of Tallahassee and nearby communities with only minor non-jurisdictional facilities required because of an existing 8-inch high pressure transmission line within close proximity to the proposed South Meter Station.

FGT states that Tallahassee will reimburse it for all costs directly and indirectly incurred by FGT for the installation of the meter station and appurtenant facilities. It is estimated that the costs of these facilities will be $376,485 inclusive of tax gross-up.

FGT further states that it has sufficient capacity to deliver the proposed daily and annual volumes without detriment or disadvantage to other FGT customers and will not impact FGT's peak day or annual deliveries.

Comment date: June 27, 1991, in accordance with Standard Paragraph G at the end of this notice.

23. Tennessee Gas Pipeline Co.

[Docket Nos. CP91-1985-000, CP91-1986-000, CP91-1987-000]

May 13, 1991.

Take Notice that Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252 (Applicant), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers, under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

Applicants state that each of the proposed services would be provided under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: June 27, 1991, in accordance with Standard Paragraph G at the end of this notice.

[9] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Dt	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-1985-000 (5-7-91)	Texas-Ohio Gas, Inc. (marketer).	60,000 60,000 21,900,000	Various	Various	12-18-91, IT, interruptible.	ST91-8536, 2-6-91.
CP91-1886-000 (5-7-91)	Ball-Incon Glass Packaging Corp. (end-user).	600 600 219,000	OTX	PA	4-21-89, FT-A, firm.	ST91-8539, 4-1-91.
CP91-1987-000 (5-7-91)	Clinton Gas Transmission, Inc. (marketer).	1000 1000 365,000	OTX	TN	4-2-91, IT, interruptible.	ST91-8538, 4-2-91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

24. Northern Natural Gas Co.; Columbia Gas Transmission Corp.

[Docket Nos. CP91-1993-000,[10] CP91-1999-000]

May 13, 1991.

Take notice that on May 8, 1991, Applicants filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the National Gas Act for authorization to transport natural gas on behalf of various shippers, under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

Applicants state that each of the proposed services would be provided under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: June 27, 1991, in accordance with Standard Paragraph G at the end of this notice.

[10] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] average, annual	Points of [2] Receipt	Points of [2] Delivery	Start up date, rate schedule	Related [3] dockets
CP91-1993-000 (5-8-91)	Northern Natural Gas Company, P.O. Box 1188, Houston, TX 77251-1188.	Eastex Hydrocarbons, Inc.	100,000 75,000 36,500,000	IA, KS, MN, NE, NM, OK, SD, TX, WI.	IA, KS, NM, OK, TX.	4-3-91, IT-1	CP86-435-000, ST91-8529-000.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] average, annual	Points of [2] Receipt	Points of [2] Delivery	Start up date, rate schedule	Related [3] dockets
CP91-1999-000 (5-8-91)	Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, WV 25325-1273.	Copeland Corporation.	1,200 960 438,000	KY, NY, OH, PA, WV.	OH	3-1-91, ITS	CP86-240-000, ST91-7861-000.

[1] Quantities are shown in MMBtu unless otherwise noted.
[2] Offshore Louisiana and Offshore Texas are shown as OLA and OTX.
[3] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

25. K N Energy, Inc.

[Docket No. CP91-1989-000]

May 13, 1991.

Take notice that on May 8, 1991, K N Energy, Inc. (K N), P.O. Box 281304, Lakewood, Colorado 80228, filed a request with the Commission in Docket No. CP91-1989-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate 15 sales taps for the delivery of natural gas to end-users under K N's blanket certificate issued in Docket No. CP83-140-000, *et al.*, pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

K N proposes to construct and operate the sales taps along its jurisdictional pipelines to deliver 748 Mcf of natural gas on peak days and 27,200 Mcf annually for irrigation, grain drying, and commercial purposes in Kansas and Nebraska.[11] K N states that its tariff does not prohibit the addition of new sales taps, nor would the additional sales taps have a significant impact on K N's peak day and annual deliveries.

Comment date: June 27, 1991, in accordance with Standard Paragraph G at the end of this notice.

[11] See Appendix.

APPENDIX

Customer	Location	Volumes (Mcf) Peak day	Volumes (Mcf) Annual	End-use
Paul Poesnecker	Holt County, NE	24	800	Irrigation.
Potter Family Partnership	Franklin County, NE	24	800	Irrigation.
First Farm Corp	Hamilton County, NE	180	4,000	Grain Drying.
First Farm Corp	Hamilton County, NE	110	3,600	Grain Drying.
Halford Cattle Co., Inc	Thomas County, KS	160	10,000	Commercial.
James Frerichs	Holt County, NE	26	800	Irrigation.
Al Dickman	Thomas County, KS	24	800	Irrigation.
Mike Thom	Kearney County, NE	26	800	Irrigation.
Alan Songster	Fillmore County, NE	27	800	Irrigation.
Gary Cederburg	Kearney County, NE	24	800	Irrigation.
Lush Family	Kearney County, NE	24	800	Irrigation.
Tom Hoefer	Antelope County, NE	24	800	Irrigation.
Harold Volzke	Seward County, NE	25	800	Irrigation.
Viola B. Jerrum	Seward County, NE	24	800	Irrigation.
Von Feldt Enterprise	Thomas County, KS	24	800	Irrigation.

26. Southern Natural Gas Co.

[Docket Nos. CP91-2000-000, CP91-2001-000]

May 13, 1991.

Take notice that on May 9, 1991, Southern Natural Gas Company (Applicant), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-316-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[12]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: June 27, 1991, in accordance with Standard Paragraph G at the end of this notice.

[12] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name	Peak day,[1] average, annual	Points of Receipt	Points of Delivery	Start up date, rate schedule	Related dockets [2]
CP91-2000-000 5-9-91	Yuma Gas Corporation	25,000 25,000 9,125,000	On TX, Off TX, On LA, Off LA, AL MS, GA.	GA	3-21-91, IT	ST91-8247-000.

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Docket No. (date filed)	Shipper name	Peak day,[1] average annual	Points of Receipt	Points of Delivery	Start up date, rate schedule	Related dockets [2]
CP91-2001-000 5-9-91	Graysville Municipal Gas	3,706 3,706 1,352,690	On TX, Off TX, On LA, Off LA, AL MS, GA	AL	3-24-91, FT	ST91-8245-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

27. National Fuel Gas Supply Corp.

[Docket Nos. CP91-1976-000, CP91-1977-000, CP91-1978-000, CP91-1979-000]

May 13, 1991.

Take notice that National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, New York 14203, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under its blanket certificate issued in Docket No. CP89-1582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[13]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: June 27, 1991, in accordance with Standard Paragraph G at the end of this notice.

[13] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-1976-000 (5-7-91)	Kogas, Inc	150,000 150,000 54,750,000	NY, PA	NY, PA	3-19-91, IT, interruptible.	ST91-7955, 3-21-91.
CP91-1977-000 (5-7-91)	Nortech Energy Corporation.	20,000 20,000 7,300,000	NY, PA	NY, PA	3-19-91, IT, interruptible.	ST91-8451, 3-31-91.
CP91-1978-000 (5-7-91)	TXG Marketing Corporation.	50,000 50,000 18,250,000	NY, PA	NY, PA	3-19-91, IT, interruptible.	ST91-7933, 3-19-91.
CP91-1979-000 (5-7-91)	Calex Energy, Inc	50,000 50,000 18,250,000	NY, PA	NY, PA	2-5-91, IT, interruptible.	ST91-7936, 3-6-91.

28. U-T Offshore System

[Docket No. CP91-1988-000]

May 13, 1991.

Take notice that on May 7, 1991, U-T Offshore System (U-TOS), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP91-1988-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Catex Energy Inc., a marketer, under the blanket certificate issued by the Commission's Order No. 509 corresponding to the rates, terms and conditions filed in Docket No. RP89-09-000, pursuant to section 7 of the natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

U-TOS states that, pursuant to an agreement dated March 29, 1991, under its Rate Schedule IT, it proposes to transport up to 200,000 Mcf per day of natural gas. U-TOS indicates that the gas would be transported from offshore Louisiana, and would be redelivered in Louisiana. U-TOS further indicates that it would transport 25,000 Mcf on an average day and 9,125,000 Mcf annually.

U-TOS advises that service under § 284.223(a) commenced April 1, 1991, as reported in Docket No. ST91-8224-000.

Comment date: June 27, 1991, in accordance with Standard Paragraph G at the end of this notice.

29. Texas Eastern Transmission Corp.

[Docket No. CP91-2020-000]

May 13, 1991.

Take notice that on May 10, 1991, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77251-1642, filed a request in Docket No. CP91-2020-000 pursuant to §§ 157.205 and 284.223 of the commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for Phillips Petroleum Company (Phillips), a producer, under the blanket certificate issued in Docket No. CP88-136-007, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Texas Eastern proposes to implement a service agreement dated February 1, 1990, as amended, providing for a maximum transportation volume of 1,452,080 dt equivalent of natural gas per day. It is indicated that Texas Eastern would receive the gas at specified points located onshore and offshore Louisiana, Texas, Alabama, Arkansas, Illinois, Indiana, Kentucky, Missouri, Mississippi, New Jersey, New York, Ohio, Pennsylvania, Tennessee, and West Virginia, and redeliver the gas, less applicable shrinkage, to specified delivery points on its system in Indiana, Louisiana, Mississippi, New Jersey, Ohio, Pennsylvania, and Texas. Texas Eastern estimates peak day and average day volumes of 1,452,080 dt equivalent of natural gas and annual volumes of 530,009,200 dt equivalent of natural gas. It is stated that Texas Eastern initiated a 120-day transportation service for Phillips on February 27, 1991, as reported in Docket No. ST91-7901-000.

Texas Eastern states that no new facilities would be required to implement the service and that it would change rates and abide by the terms and conditions of its Rate Schedule IT.

Comment date: June 27, 1991, in accordance with Standard Paragraph G at the end of this notice.

30. Algonquin Gas Transmission Co.

[Docket No. CP91-1983-000]

May 13, 1991.

Take notice that on May 7, 1991, Algonquin Gas Transmission Company (Applicant), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP91-1983-000 an application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing Applicant to construct and operate certain interstate pipeline facilities that will enable Applicant to transport natural gas on a firm basis for Milford Power Limited Partnership (Milford Power) under Applicant's blanket transportation certificate, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to construct and operate approximately 3.1 miles of 12-inch pipeline loop on Applicant's existing T-1 6-inch pipeline located in the southeastern Massachusetts towns of Bellingham, Hopedale, and Milford, and to establish a new delivery point near Milford, Massachusetts at a meter station to be constructed on property owned by Milford Power. Applicant estimates that the cost of the proposed facilities at $4,612,000. Applicant states that initial financing will be through revolving credit arrangements, short term loans and from funds on hand.

Applicant indicates that the requested facilities, along with certain facilities requested by Applicant in Docket No. CP91-1111-000, would be required in order to commence on or before November 1, 1992, firm, year round receipts and transportation of up to 28,900 MMBtu per day equivalent for Milford Power from Distigas of Massachusetts Corporation (DOMAC) at Everett, Massachusetts to the proposed delivery point near Milford, Massachusetts, for ultimate delivery by Commonwealth Gas Company (Commonwealth) to Milford Power's proposed 140 MW electric generating plant in Milford, Massachusetts. Applicant states that the transportation from Everett, Massachusetts to the proposed delivery point would be under the authority of Applicant's blanket transportation certificate and at its general applicable rates for firm transportation service, Rate Schedule AFT-1.

Applicant states that Milford Power has entered into a contract to purchase firm supply from DOMAC which is to be delivered by Applicant at a new interconnection to be established between Applicant and Commonwealth. Applicant further states that DOMAC has requested that Applicant construct facilities necessary to transport this and other natural gas on a firm basis from a receipt point at Everett, Massachusetts to various points of delivery to DOMAC's customers, including Milford Power.

Applicant indicates that it filed an application in Docket No. CP91-1111-000 on February 1, 1991, to construct certain facilities that would enable Applicant to receive and transport up to 90,000 MMBtu per day equivalent of gas from DOMAC at Everett, Massachusetts on a firm year round basis commencing in June 1992. Applicant futher indicates that the firm transportation for Milford Power depends in part upon the construction and operation of those proposed facilities.

Applicant proposes to establish a new delivery point near Milford, Massachusetts at a meter station to be constructed on property owned by Milford Power. Applicant indicates that the meter station would be constructed, operated, and maintained by Applicant. Applicant further indicates that the meter station would be owned and paid for by Milford Power. It is indicated that Commonwealth, the local distribution company serving the Milford, Massachusetts area, would construct, operate and maintain regulator and pressure protection facilities and gas heating facilities which would be owned by Milford Power downstream of the proposed meter station. Applicant states that Commonwealth would design, construct, operate, maintain and own certain of its own related facilities and provide further transportation of the DOMAC supply to Milford Power's plant.

Comment date: June 3, 1991, in accordance with Standard Paragraph F at the end of this notice.

31. National Fuel Gas Supply Corp.

[Docket Nos. CP91-1980-000, CP91-1981-000, CP91-1982-000]

May 13, 1991.

Take notice that National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, New York 14203, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP89-1582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[14]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment dcate: June 27, 1991, in accordance with Standard Paragraph G at the end of this notice.

[14] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Rate schedule, service type	Related ST docket, start up date
CP91-1980-000 (5-7-91)	Midcon Marketing Corp. (marketer).	300,000 300,000 109,500,000	NY, PA	NY, PA	IT, interruptible	ST91-7952 3-22-91
CP91-1981-000 (5-7-91)	CNG Producing Co	60,000 60,000 21,900,000	NY, PA	NY, PA	IT, interruptible	ST91-7935 3-8-91

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Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Rate schedule, service type	Related ST docket, start up date
CP91-1992-000 (5-7-91)	Access Energy Corp.	21,800 21,800 7,957,000	NY, PA	NY, PA	IT, Interruptible	ST91-7944 5-22-91

32. Viking Gas Transportation Co.; United Gas Pipe Line Co.; Natural Gas Pipeline Company of America

[Docket Nos. CP91-2003-000, CP91-2004-000, CP91-2005-000, CP91-2007-000, CP91-2008-000, CP91-2009-000, CP91-2010-000]

May 13, 1991.

Take notice that on May 9, 1991, Applicants filed in the above-referenced dockets prior notice requests to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued to Applicants pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[15]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix A. Applicants' addresses and transportation blanket certificates are shown in the attached appendix B.

Comments date: June 27, 1991, in accordance with Standard Paragraph G at the end of this notice.

[15] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2003-000 (5-9-91)	Triumph Gas Marketing Co. (marketer).	30,000 30,000 [1] 10,950,000	WI, MN, ND	WI, MN, ND	2-11-91, IT-2, interruptible.	ST91-8577-000 4-24-91
CP91-2004-000 (5-9-91)	Consolidated Fuel Corporation (marketer).	77,250 77,250 28,196,250	Various	Various	7-26-88,[2] ITS, interruptible.	ST91-8193-000 4-1-91
CP91-2005-000 (5-9-91)	Nerco Oil and Gas, Inc. (producer).	77,250 77,250 29,196,250	LA, MS	TX, LA, MS	5-24-88,[3] ITS, interruptible.	ST91-8524-000 3-15-91
CP91-2007-000 (5-9-91)	Rangeline Corporation (marketer).	100,000 80,000 21,900,000	Various	Various	2-7-91, ITS, interruptible.	ST91-7895-000 3-1-91
CP91-2008-000 (5-9-91)	PSI Gas Marketing, Inc. (marketer).	250,000 100,000 36,500,000	Various	Various	2-22-91, ITS, interruptible.	ST91-7893-000 3-1-91
CP91-2009-000 (5-9-91)	Enmark Gas Corp. (intrastate pipeline).	30,000 15,000	Various	Various	2-22-91, ITS, interruptible.	ST91-7894-000 3-1-91
CP91-2010-000 (5-9-91)	Trinity Pipeline, Inc. (marketer).	10,000 5,000 1,825,000	Various	Various	12-8-88,[4] ITS, interruptible.	ST91-7962-000 3-3-91

[1] Viking's quantities are in dekatherms.
[2] As amended February 22, 1991.
[3] As amended January 17, 1991.
[4] As amended May 18, 1989, and February 26, 1991.

Applicant's address	Blanket docket
Natural Gas Pipeline Company of America, 701 East 22nd Street, Lombard, Illinois 60148.	CP86-582-000
United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251-1478.	CP88-6-000
Viking Gas Transmission Company, P.O. Box 2511, Houston, Texas 77252.	CP90-273-000

33. Texas Gas Transmission Corp.

[Docket Nos. CP91-2015-000[16], CP91-2017-000, CP91-2018-000, CP91-2019-000]

May 14, 1991.

Take notice that on May 10, 1991, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky, 42301 filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under Texas Gas' blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Texas Gas and is included in the attached appendix.

Texas Gas also states that it would provide the service for each shipper under an executed transportation agreement, and that Texas Gas would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

[16] These prior notice requests are not consolidated.

Docket No.	Shipper name	Peak day,[1] average annual	Points of Receipt	Points of Delivery	Start up date, rate schedule	Related [2] dockets
CP91-2015-000	Tex/Con Gas Marketing Co	1,200 1,200 438,000	LA, IL, IN, AR, KY, OH, TX, TN, Off TX, Off LA.	KY	4-1-91, FT	ST91-8355-000.
CP91-2017-000	Seagull Marketing Services, Inc	20,000 5,000 1,825,000	Off TX	Off TX	3-30-91	ST91-8357-000.
CP91-2018-000	Polaris Pipeline Corporation	100,000 40,000 3,650,000	LA, TN, IN, IL, KY, AR, TX, OH, Off TX, Off LA.	KY, OH, IN	3-30-91, IT	ST91-8361-000.
CP91-2019-000	TXG Gas Marketing Company	500 500 182,500	LA, TN, IN, IL, KY, AR, TX, OH, Off TX, Off LA.	KY	4-1-91 FT	ST91-8354-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

34. Northern Natural Gas Co.

[Docket No. CP91-2002-000]

May 14, 1991.

Take notice that on May 9, 1991, Northern Natural Gas Company, 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP91-2002-000 an application pursuant to section 7(b) of the Natural Gas Act for an order granting permission and approval to partially abandon sales service provided to North Texas Gas Company, Inc. (NTGC), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that Northern and NTGC are parties to a service agreement dated September 20, 1982, which is on file with the Commission as Rate Schedule X-90 of Northern's FERC Gas Tariff, Original Volume No. 2. Northern further states that NTGC desires to reform its Rate Schedule X-90 agreement to reflect reduced entitlements from 150 Mcf per day to 4 Mcf per day during the months of November through March and from 150 Mcf per day to 2 Mcf per day from April through October.

Northern indicates that Northern and NTGC have amended the existing agreement, reflecting the decreased level of service requested by NTGC. It is further indicated that overrun volumes may also be made available, from time to time, by Northern to NTGC on a best efforts basis. Northern states that the new service levels would become effective on the date of the order approving the instant application.

Comment date: June 4, 1991, in accordance with Standard Paragraph F at the end of this notice.

35. Northern Natural Gas Co.

[Docket No. CP91-1992-000]

May 14, 1991.

Take notice that on May 8, 1991, Northern Natural Gas Company (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP91-1992-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing an increase in sales entitlement under its Rate Schedule GS-1 to Wisconsin Southern Gas Company, Incorporated (Wisconsin), all as more fully set forth in the application on file with the Commission and open to public inspection.

Northern proposes to increase the sales entitlement for Wisconsin under Rate Schedule GS-1 by 880 MMBtu of natural gas per day from 3,120 MMBtu per day to 4,000 MMBtu per day to serve a new manufacturing process to be implemented by the Minnesota Mining and Manufacturing Company in Prairie du Chien, Wisconsin. Northern states that Northern and Wisconsin have entered into a new GS-1 Service Agreement, dated April 8, 1991, (agreement) for the increased level of service for the increased sales entitlement, starting with the 1991-1992 winter heating season, for the community of Prairie du Chien to be serviced by Wisconsin under Northern's Rate Schedule GS-1. The agreement would become effective on November 1, 1991, or such date approved by the Commission, whichever is later, and would continue in effect through October 1, 1993, it is stated. Northern indicates that no new facilities would be required for the additional sales service.

Comment date: June 4, 1991, in accordance with Standard Paragraph F at the end of this notice.

36. Texas Eastern Transmission Corp.

[Docket No. CP91-2016-000]

May 14, 1991.

Take notice that on May 10, 1991, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77251-1642, filed a request in Docket No. CP91-2016-000 pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for Clajon Marketing, L.P. (Clajon), a marketer, under the blanket certificate issued in Docket No. CP88-136-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Texas Eastern proposes to implement a service agreement dated February 21, 1991, providing for a maximum transportation volume of 250,000 dt equivalent of natural gas per day. It is indicated that Texas Eastern would receive the gas at specified points located onshore and offshore Louisiana, Alabama, Arkansas, Illinois, Indiana, Kentucky, Missouri, Mississippi, New Jersey, New York, Ohio, Pennsylvania, Tennessee, Texas and West Virginia and redeliver the gas at a specified point located in Texas. Texas Eastern estimates peak day and average day volumes of 250,000 dt equivalent of natural gas and annual volumes of 91,250,000 dt equivalent of natural gas. It is stated that Texas Eastern initiated a

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120-day transportation service for Clajon on March 1, 1991, as reported in Docket No. St91-7961-000.

Texas Eastern states that no new facilities would be required to implement the service and that it would charge rates and abide by the terms and conditions of its Rate Schedule IT-1.

Comment date: June 28, 1991, in accordance with Standard Pargraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.206) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12064 Filed 5-21-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-460-007, et al.]

Pacific Gas Transmission Company, et al.; Natural Gas Certificate Filings

May 15, 1991.

Take notice that the following filings have been made with the Commission:

1. Pacific Gas Transmission Co.

[Docket No. CP89-460-007]

Take notice that on May 9, 1991 Pacific Gas Transmission Company ("PGT"), 160 Spear Street, San Francisco, California, 94105-1570, filed this Amendment to its Application in Docket No. CP89-460-000, as amended in Docket No. CP89-460-001, requesting a Certificate of Public Convenience and Necessity under section 7(c) of the Natural Gas Act, and part 157, subpart A of the Commission's Regulations, authorizing PGT to construct and operate an incremental looping of its existing pipeline facilities to enable it to provide firm and interruptible transportation service to the Pacific Northwest, and to the terminus of PGT's system at Malin, Oregon for ultimate delivery into California ("Expansion Project").

PGT states that the Commission determined that the Expansion Project, with modifications, is required by the public convenience and necessity, but directed PGT to conduct a new open season for the initial allocation of firm capacity. See "Preliminary Order on Nonenvironmental Issues," 54 FERC ¶ 61,035 (issued January 22, 1991). PGT states that it conducted the new open season from February 21 to March 22, 1991. As a result of the open season, PGT states that the Expansion Project is fully subscribed by a diverse group of utilities, producers, and marketers—including a limited number of new shippers who were not previously capacity holders on the Expansion Project.

PGT states that the purpose of this Amendment is to reflect the names of all the new open season shippers, their contract quantities, and related receipt and delivery points. PGT's new shipper list and contract quantities are as follows:

California	MMBtu/d
Kingsgate, B.C. to Malin, OR:	
CanWest Gas Supply USA Inc	27,429
Chevron U.S.A. Inc	31,348
City of Burbank	4,770
City of Glendale	4,034
City of Pasadena	4,034
Dekalb Energy Co	11,755
NATGAS U.S. Inc	58,777
Norcem Marketing Inc	47,022
North Canadian Marketing Corp	19,592
North Canadian Oils Ltd	39,185
Northern California Power Agency	5,486
Northridge Alberta Gas Sales Ltd	8,066
PanCanadian Petroleum, Ltd	40,338
Pancontinental Oil, Ltd	4,034
Paramount Resources U.S. Inc	19,592
Petro-Canada Hydrocarbons Inc	19,592
Sacramento Municipal Utility District	12,101
Salmon Resources Ltd	27,429
San Diego Gas & Electric Company	52,506
Southern California Edison Company	201,687
Suncor, Inc	40,361
Vector Energy Inc	16,707
Washington Energy Exploration, Inc	19,592
Total	715,439
Stanfield, OR to Malin, OR:	
CanWest Gas Supply USA Inc	35,000
BP Resources Canada Limited	10,250
CanWest Gas Supply Inc	16,515
Total	61,765

Pacific Northwest	Delivery point	Annual average MMBtu/d	Winter MMBtu/d	Winter MMBtu/d
From Kingsgate, B.C.				
The Washington Water Power Company	Bonners Ferry, ID	580	879	300
	Schweitzer, ID	1,414	1,627	1,000
	Sandpoint, ID	2,914	3,327	2,500
	Athol, ID	171	191	150
	Rathdrum, ID	561	871	250
	Spokane, WA-NPC	5,283	7,165	3,400
	Spokane, WA-WWP	26,275	36,549	20,000
	Mica, WA	2,621	3,241	2,000
	Spangle, WA	192	233	150
	Rosalia, WA	142	183	100
	St. John, WA	162	224	100
	Lacrosse, WA	92	133	50
Chevron U.S.A. Inc	Stanfield, OR	20,000	20,000	20,000
IGI Resources, Inc	Stanfield, OR	7,158	7,158	7,158
Northwest Natural Gas Co	Standield, OR	38,275	46,549	30,000
Washington Energy Exploration, Inc	Stanfield, OR	35,343	45,886	25,000
Cascade Natural Gas Corp	Madras, OR	166	331	0
	Prineville, OR	414	827	0
	Redmond, OR	331	662	0
	Bend, OR	2,066	4,137	0
	Stearns, OR	621	1,241	0
	Gilchrist, OR	124	248	0
CP National Corp	Klamath Falls, OR	3,310	6,620	0
Total		150,220	188,000	112,528

PGT notes that it previously requested authorization to make deliveries in the Pacific Northwest at Spokane, Washington; Wallula, Washington; Stanfield, Oregon; and Hermiston, Oregon, with the possibility of adding additional delivery points based on the need of specific customers. See Original Application at 6. Accordingly, PGT allowed the bidders in the new Open Season to tender bids to any existing delivery point on the PGT system.

Proposed Facilities and Capitol Costs

The proposed facilities as reflected in the American Application have not changed. As noted in the 1989 Amended Application, PGT estimated capital costs for the Expansion Project, a fourth quarter 1988 cost basis, at $635,050,000.

As set forth in Exhibit K of PGT's Amendment, the cost of these facilities giving effect to the escalation from 1988 to the proposed in-service date in 1993, as well as finance charges associated with the project's construction schedule, the construction cost becomes $808,600,000, the details are shown in Table K, of PGT's amendment filing. In addition to the information provided in Exhibit K, PGT agrees to substantiate this proposed adjustment, and any future adjustments for environmental mitigation, actual construction costs, and any other factors affecting capitol costs, through a subsequent compliance filing. See *Iroquois Gas Transmission System, L.P. et al.*, Order No. 357, 53 FERC ¶ 61,194 AT PP. 61,736-37 (1990).

Tariff Modifications

PGT's *pro forma* tariff as set forth in Exhibit P has been revised to represent the adjusted Expansion Project costs. PGT has provided alternative tariff sheets which reflect: (1) The rate design (100 percent reservation charge) and return on equity (14.0 percent) proposed by PGT in its 1989 Amended Application and request for rehearing of the January 22, 1991, Preliminary Determination now pending before the Commission, and (2) the rate design and return on equity approved by the Commission in that same Order.

Attachment B of PGT's March 25, 1991, filing included a complete copy of all the revised *pro forma* tariff sheets governing service on the PGT Expansion Project. Subsequently, PGT and the new open season shippers agreed to modify certain tariff provisions to more accurately reflect the rights and obligations of PGT and its shippers. These modified provisions (Paragraph 9—Gas Quality, and Paragraph 10—Commercial Operating Date) and a new provision (Paragraph 12—Reservation Charge Relief) (force majeure) are included in Exhibit P.

PGT states that it served by first class mail a copy of this Amendment on May 9, 1991, upon all parties to this proceeding.

Comment date: May 29, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Transwestern Pipeline Co.

[Docket No. CP91-2022-000]

Take notice that on May 13, 1991, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP91-202-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Mewbourne Oil Company, a producer of natural gas, under the blanket certificate issues in Docket No. CP88-133-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Transwestern states that, pursuant to an agreement dated September 20, 1990, under its Rate Schedule ITS-1, it proposes to transport up to 50,000 MMBtu per day equivalent of natural gas. Transwestern indicates that it would transport 37,500 MMBtu on an average day and 18,250,000 MMBtu annually. Transwestern further indicates that the gas would be transported from Arizona, New Mexico, Oklahoma, and Texas, and would be redelivered in Arizona, New Mexico, Oklahoma, and Texas.

Transwestern advises that service under § 284.223(a) commenced May 1, 1991, as reported in Docket No. ST91-8581.

Comment date: July 1, 1991, in accordance with Standard Paragraph G at the end of this notice.

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3. ANR Pipeline Co.

[Docket No. CP91-1990-000]

Take notice that on May 8, 1991, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP91-1990-000 a request pursuant to § 157.205 of the Commission's regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Shell Western E&P, Inc., a marketer, under the blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

ANR states that, pursuant to an agreement dated October 9, 1990, under its Rate Schedule ITS, it proposes to transport up to 15,000 Dth per day equivalent of natural gas. ANR indicates that the gas would be transported from Michigan, and would be redelivered in various points on its system. ANR further indicates that it would transport 15,000 Dth on an average day and 5,475,000 Dth annually.

ANR advises that service under § 284.223(a) commenced March 25, 1991, as reported in Docket No. ST91-8024.

Comment date: July 1, 1991, in accordance with Standard Paragraph G at the end of this notice.

4. Texas Eastern Transmission Corp; Mississippi River Transmission Corp.

[Docket Nos. CP91-2027-000,[1] CP-91-2028-000, CP91-2029-000, CP91-2031-000, CP91-2032-000]

Take notice that the above referenced companies (Applicants) filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under Section 284.223 of the Commission's Regulations, has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: July 1, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notices requests are not consolidated.

Docket No.[2] (date filed)	Applicant	Shipper name	Peak day[3] average annual	Points of[4] Receipt	Points of[4] Delivery	Start up date rate schedule	Related dockets
CP91-2027-000 (5-13-91)	Texas Eastern Transmission Corporation, 5400 Westheimer Court, Houston, Texas 77056-5310.	Tennessee Corporation.	200,000 200,000 73,000,000	OLA, LA, AL, AR, IL, IN, KY, MO, MS, NJ, NY, OH, PA, TN, TX, WV.	MX, TX, LA, MS, OH, AL.	03-02-91, IT-1	ST91-7962-000, CP88-136-000.
CP91-2028-000 (5-13-91)	Texas Eastern Transmission Corporation, 5400 Westheimer Court, Houston, Texas 77056-5310.	Public Electric and Gas Company.	200,000 200,000 73,000,000	OLA, LA, AL, AR, IL, IN, KY, MO, MS, NJ, NY, OH, PA, TN, TX, WV.	NJ	04-10-91, IT-1	ST91-8527-000, CP88-136-000.
CP91-2029-000 (5-13-91)	Texas Eastern Transmission Corporation, 5400 Westheimer Court, Houston, Texas 77056-5310.	Coast Energy Group, Inc.	35,000 35,000 12,775,000	OLA, LA, AL, AR, IL, IN, KY, MO, MS, NJ, NY, OH, PA, TN, TX, WV.	LA, TX, MS, OH, PA, WV, IN, NJ.	04-09-91, IT-1	ST91-8526-000, CP88-136-000.
CP91-2031-000 (5-13-91)	Mississippi River Transmission Corporation, 9900 Clayton Road, St. Louis, Missouri 63124.	The City of Potosi, Missouri.	350 334 122,000	AR, LA, OK, TX, IL	MO	04-01-91, FTS	ST91-8250-000, CP89-1121-000.
CP91-2032-000 (5-13-91)	Mississippi River Transmission Corporation, 9900 Clayton Road, St. Louis, Missouri 63124.	The City of Waterloo, Illinois.	300 299 109,000	AR, LA, OK, TX, IL	IL	04-01-91, FTS	ST91-8249-000, CP89-1121-000.

[2] Quantities are shown in MMBtu.
[3] Mexico is shown as MX.
[4] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.
[5] Quantities are shown in MMBtu.
[6] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

5. Mississippi River Transmission Corp.; Arkla Energy Resources, a division of Arkla, Inc.

[Docket Nos. CP91-2023-000, CP91-2024-000, CP91-2025-000, CP91-2026-000]

Take notice that on May 13, 1991, Mississippi River Transmission Corporation, 9900 Clayton Road, St. Louis, Missouri 63124, and Arkla Energy Resources, a division of Arkla, Inc., 525 Milam Street, Shreveport, Louisiana 71151, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to § § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued in Docket No. CP88-1121-000 and Docket No. CP88-820-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: July 1, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2023-000 (5-13-91)	The City of Bismarck, Missouri (LDC).	60 51 18,500	AR, LA, OK, TX, IL	MO	2-21-91, FTS, Firm	ST91-8251-000 4-1-91
CP91-2024-000 (5-13-91)	The City of Chester, Illinois (LDC).	300 274 100,000	AR, LA, OK, TX, IL	IL	2-21-91, FTS, Firm	ST91-8248-000 4-1-91
CP91-2025-000 (5-13-91)	The Village of Dupo, Illinois (LDC).	150 148 54,000	AR, LA, OK, TX, IL	IL	3-27-91, FTS, Firm	ST91-8252-000 4-1-91
CP91-2026-000 ST91-5512-000 (5-13-91)	Arkla Energy Marketing (marketer).	90,000 72,000 26,280,000	AGS Pool [1]	OK, TX	11-1-90,IT, Interruptible.	3-6-91

[1] Points of receipt are shown on AER's master listing for sources of gas supplied by Arkla General Supply Company under the transportation service agreement.

6. United Gas Pipe Line Co.

[Docket Nos. CP91-1994-000, CP91-1995-000, CP91-1996-000, CP91-1997-000, CP91-1998-000]

Take notice that on May 8, 1991, United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251-1478, filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth int he prior notice requests which are on file with the Commission and open to public inspection.[1]

A summary of each transaction service which includes the shippers identity, the peak day, average day and annual volumes, the receipt point(s), the delivery point(s), the applicable rate schedule, and the docket number and service commencement date of the 120-day automatic authorization under § 284.223 of the Commission's Regulations is provided in the attached appendix.

Comment date: July 1, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] average annual	Points of Receipt	Points of Delivery	Start up date rate schedule	Related [2] dockets
CP91-1994-000 (5-8-91)	United Gas Pipe Line Company.	Laser Marketing Company.	618,000 618,000 225,570,000	LA, MS, TX	AL, FL, LA, MS, TX	4-9-91, ITS	CP88-6-000, ST91-8381-000.
CP91-1995-000 (5-8-91)	United Gas Pipe Line Company.	Seagull Marketing Services, Inc.	515,000 515,000 187,975,000	AL, LA, MS, TX	AL, LA, MS, FL, TX	4-3-91, ITS	CP88-6-000, ST91-8276-000.
CP91-1996-000 (5-8-91)	United Gas Pipe Line Company.	Fina Natural Gas Company.	41,383 41,383 15,104,795	LA, MS, TX	LA, MS	4-15-91, FTS	CP88-6-000, ST91-8380-000.
CP91-1997-000 (5-8-91)	United Gas Pipe Line Company.	NGC Transportation, Inc.	5,150 5,150 1,879,750	LA	LA	4-2-91, ITS	CP88-6-000, ST91-8206-000.
CP91-1998-000 (5-8-91)	United Gas Pipe Line Company.	Mobile Natural Gas Company.	51,000 51,000 18,797,000	LA, TX	AL, KS, LA, MS	4-15-91, ITS	CP88-6-000, ST91-8379-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

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7. Texas Gas Transmission Corp.

[Docket No. CP91-1991-000]

Take notice that on May 8, 1991, Texas Gas Transmission Corporation (Texas Gas), Post Office Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP91-1991-000 an application pursuant to section 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity authorizing the increase in the daily contract demands of six sales customers and the operation under section 7 of the NGA of certain facilities constructed under section 311 of the Natural Gas Policy Act (NGPA), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas states that the six sales customers and the proposed increases in sales contract demand are as follows:

Name	Requested increase (MMBtu per day)
City of Olive Branch, Mississippi	3,995
City of Benton, Kentucky	3,814
City of Martin, Tennessee	1,024
Midwest Natural Gas Corp	1,222
Indiana Natural Gas Corp	995
Indiana Utilities Corp	1,000
Total increases	12,050

Texas Gas states that these proposed increases are necessary because of growth in these customers' current and anticipated residential and industrial gas loads. It is indicated that Texas Gas has sufficient capacity to serve the total proposed increase in sales contract demand for these six customers without the construction of any additional facilities and without detriment to any existing customers.

Texas Gas also requests authorization to operate a meter station known as the Nasville Station under the authority of section 7 of the NGA. It is stated that this station was installed under the authority of section 311 of the NGPA in order to deliver volumes of gas transported under that same authority for Indiana Natural gas Corporation (Indiana Natural). It is stated that Indiana Natural now wishes to not only receive transportation gas volumes from Texas Gas at that location, but also to receive sales gas volumes. Thus, Texas Gas requests authorization to make jurisdictional sales and/or deliver transportation gas volumes on a jurisdictional basis at the Nashville Station.

Comment date: June 5, 1991, in accordance with Standard Paragraph F at the end of this notice.

8. Williston Basin Interstate Pipeline Co.; Tennessee Gas Pipeline Co.

[Docket No. CP91-2011-000, CP91-2012-000]

Take notice that Williston Basin Interstate Pipeline Company (Williston Basin), suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, and Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed prior notice requests with the Commission in the above-referenced dockets pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to present natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP89-1118-000 and Docket No. CP87-115-000, respectively, pursuant to section 7 of the NGA, all as more fully set forth in the requests that are open to public inspection.[4]

Information applicable to each transaction, including the shipper's identity; the type of transportation service; the appropriate transportation rate schedule; the peak day, average day and annual volumes; the service initiation date; and related ST docket number of the 120-day transaction under § 284.223 of the Commission's Regulations, has been provided by Applicants, as summarized in the appendix.

Tennessee also states that it would construct and operate, pursuant to its blanket certificate issued in Docket No. CP82-413-000, a 4-inch tie-in valve in Hancock County, Mississippi, in order to deliver natural gas transported under its blanket certificate issued in Docket No. CP87-115-000 to Calgon Carbon Corporation (Calgon). Calgon would reimburse Tennessee $9,000 for the construction of the proposed tie-in valve.

Comment date: July 1, 1991, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Dth	Receipt points [1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up
CP91-2011-000 (5-9-91)	Rainbow Gas Company (marketer).	5,075 1,852,375	WY	WY	8-1-90, IT-1, Interruptible.	ST91-8427 4-1-90
CP91-2012-000 (5-10-91)	Calgon Carbon Corporation (End-user).	5,000 5,000 1,852,000	OLA	MS	5-2-91, IT-1, Interruptible.	

[1] Offshore Louisiana is shown as OLA.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12065 Filed 5-21-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-154-000]

Florida Gas Transportation Co.; Petition For Limited Waivers

May 15, 1991

Take notice that on May 13, 1991, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. RP91-154-000 a petition requesting authorization for waivers of Federal Energy Regulatory Commission ("Commission") policy, Commission regulations, and FGT's F.E.R.C. Gas Tariff to the extent necessary to allow FGT to add a delivery point under an existing Service Agreement for firm transportation service ("Service Agreement") between FGT and the City of Tallahassee ("COT"), while permitting COT to maintain its existing priority in FGT's first-come, first-served transportation queue.

FGT states that good cause exists for granting the requested waivers in that (i) FGT will continue to serve the same resale customer, COT, at the new delivery point, (ii) the new delivery point will be located in the same geographic location as an existing delivery point at which FGT is presently authorized to serve COT, and (iii) the new delivery point will not interfere with FGT's ability to render firm service to FGT's other customers.

Any person desiring to be heard or to protest said petition should on or before May 22, 1991 file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or protest in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with the Commission's rules.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12063 Filed 5-21-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. FA89-28-001]

System Energy Resources, Inc.; Filing

May 15, 1991.

Take notice that on February 15, 1991, System Energy Resources, Inc. tendered for filing its refund report in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before May 30, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12062 Filed 5-21-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 91-06-NG]

American Central Gas Companies, Inc.; Order Granting Blanket Authorization to Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to export natural gas to Mexico.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting American Central Gas Companies, Inc., blanket authorization to export to Mexico up to 146 Bcf of natural gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 16, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-12175 Filed 5-21-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 91-05-NG]

Northern Natural Gas Co.; Application To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on January 8, 1991, as supplemented on March 22, 1991, and April 1, 1991, of an application filed by Northern Natural Gas Company (Northern) to import from Canada up to 50,000 Mcf of natural gas per day (18,250 MMcf annually) on a firm basis from Western Gas Marketing Limited (WGM) commencing on the date of authorization through March 31, 1996. The gas would be imported at the international border near Emerson, Manitoba, Canada, using existing pipeline facilities. Northern would use the proposed imports for its system supply.

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The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed in Washington, DC, at the address listed below no later than 4:30 p.m., June 21, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Thomas Dukes, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–070, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9590.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0503.

SUPPLEMENTARY INFORMATION:

Northern, a Delaware corporation with its principal place of business in Houston, Texas, is an interstate natural gas pipeline company. Northern seeks authorization to import up to 50,000 Mcf of natural gas per day starting on the effective date of DOE's authorization and extending through March 31, 1996. The gas would be transported to Northern by TransCanada PipeLines Limited (TransCanada) and Great Lakes Gas Transmission (Great Lakes).

Northern entered into an agreement to purchase gas from WGM on November 1, 1990. Pending action on its application, Northern is currently effecting deliveries and receipts under the November 1, 1990, contract using an existing short term import authorization.

The price paid by Northern consists of transportation costs, fuel costs, and a per MMBtu charge, equal to Northern's weighted average cost of gas (WACOG) for supplies contracted to Northern from United States sources. The transportation charge consists of the firm transportation tolls on NOVA Corporation of Alberta, TransCanada, and Great Lakes. The WACOG fluctuates in accordance with changes in market conditions. In the 12 month period ending March 31, 1991, Northern's WACOG ranged from $1.21 to $1.92 per MMBtu for an annual average WACOG of $1.32 per MMBtu during the period. Northern stated that the delivered cost to the border during March 1991 was approximately $1.78 per MMBtu, consisting of a transportation charge of $0.44 per MMBtu and a WACOG of $1.32 per MMBtu.

The November 1, 1990, contract requires Northern to purchase a minimum annual volume of 6,000,000 Mcf. In Natural takes less than the minimum annual volume, it will pay a deficiency charge consisting of the amount of the deficiency times 25% of the WACOG. Northern may, at its sole discretion, reduce its minimum annual volume obligation due to loss of sales to its customers. The obligation for WGM to provide Northern up to 50,000 Mcf per day in gas supplies would be firm, but subject to best-efforts transportation in the event transportation capacity constraints occur on either TransCanada's or Great Lakes systems. In addition, Northern would be given credit toward its minimum purchase obligation where daily nominations are made and WGM fails to provide up to maximum allowable deliveries, even if such volumes are not ultimately purchased.

Northern states that it has negotiated competitive price terms with WGM and the need for the gas is demonstrated by its marketability and competitiveness. It also states that the gas supply is scarce, inasmuch WGM's parent, TransCanada, has nearly 19 Tcf in reserves dedicated by Alberta producers, in addition to the reliability of Canadian supplies in general. Finally, Northern states that since no new facilities will be required for the proposed imports, granting the application request will have no adverse environmental impacts.

The decision on the application for import authority will be made consistent with DOE's natural gas policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Other matters to be considered in making a public interest determination in a long-term import proposal such as this include the need for the gas and the security of the long-term supply. Parties that may oppose this application should comment in their responses on the issues of competitiveness as set forth in the policy guidelines. The application asserts that imports made under this requested arrangement would be competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Northern's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 16, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–12176 Filed 5–21–91; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 91–24–NG]

Seagull Marketing Services, Inc.; Application to Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import and export natural gas from and to Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on March 26, 1991, of an application filed by Seagull Marketing Services, Inc. (Seagull), requesting blanket authorization to import up to 150 Bcf and export up to 150 Bcf of natural gas from and to Canada over a two-year period. Seagull intends to use existing pipeline facilities in the United States and states that it will notify DOE of the date of first delivery and submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed in Washington, DC, at the address listed below, no later than 4:30 p.m., June 21, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Xavier Puslowski, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4768.

Diane J. Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, GC–14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Seagull, a Texas corporation with its principal place of business in Houston, Texas, is a wholly owned subsidiary of Seagull Energy Corporation. Under the blanket authority requested, Seagull intends to export and import U.S. and Canadian natural gas for spot and short-term sales, either for its own account or as agent for U.S. and Canadian purchasers and suppliers. Seagull asserts the terms of each transaction, including price and volume, would be negotiated in response to market conditions, and therefore would be consistent with section 3 of the Natural Gas Act.

Seagull was granted blanket authorization on December 30, 1988, by DOE/ERA Opinion and Order No. 292, 1 ERA ¶ 70,833, to import and export the same quantities of gas from and to Canada for a period of two years from the date of the first import or export. Seagull commenced export deliveries under this blanket certificate on April 1, 1989. During 1989, Seagull exported an aggregate quantity of 964,800 Mcf of gas to Canada from the U.S. Seagull engaged in no export or import activity during 1990. Order 292 expired on March 31, 1991.

The decision on the application for import/export authority will be made consistent with DOE's gas import policy guidelines and DOE Delegation Order Nos. 0204–111 and 0204–127. Under the policy guidelines, the competitiveness of an import in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing an export proposal, DOE examines domestic need for the gas and any other issue determined to be appropriate in a particular case. Parties that may oppose this application should comment in their responses on these matters. The applicant asserts the proposed import/export authority is consistent with these criteria and parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is

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necessary for a full and true of the facts.

If an additional procedure is scheduled, a notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Seagull's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on May 16, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-12177 Filed 5-21-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3958-2]

Agency Information Collective Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before June 21, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Certification and Training of Pesticide Applicators. (EPA ICR No.: 0155.03; OMB No.: 2070-0029). The ICR supports a proposed rule which would amend an existing regulation. The proposed rule was published in the Federal Register November 7, 1990, at (55 FR 46890). The estimated public burden for this action is detailed in the ICR document which is now available for public comment.

Abstract: In compliance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and to minimize the threat to human health and the environment, EPA classifies pesticides as being for general or for restricted use. Restricted-use pesticides can only be used by or under the supervision of a certified applicator. Individuals applying for or renewing certification as applicators of restricted-use pesticides must complete, and return to EPA, form 8500-17. Applicants for certification must establish their competency in pesticide use through completion of a training program. Certified commercial applicators and dealers of restricted-use pesticides are required to maintain records of use and sale of restricted-use pesticides. In addition, States, Indian tribes, and Federal agencies with EPA approved certification programs must submit an annual report of their sale and use of restricted-use pesticides. EPA uses the information to determine compliance with FIFRA, and, when necessary, as evidence in enforcement cases. This action will update the regulations governing the certification of pesticide applicators initially promulgated in 1974.

Burden Statement: The burden for this collection of information is estimated to average 9 minutes per response for reporting and 4.4 minutes per recordkeeper annually. This estimate includes the time needed to review instructions, gather the data needed, and review the collection of information.

Respondents: Private and commercial applicators, and dealers of restricted-use pesticides. States, Indian tribes, and Federal agencies.

Estimated No. of Respondents: 500,217 for reporting and 351,100 for recordkeeping.

Estimated No. of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 100,907 hours.

Frequency of Collection: Annually and on occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

May 16, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91-12154 Filed 5-21-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3958-1]

Science Advisory Board, Ecological Processes and Effective Committee; Open Meeting

Under Public Law 92-463, notice is hereby given that a meeting of the Ecological Processes and Effects Committee of the Science Advisory Board will be held on June 13-14, 1991 at the Holiday Inn Crowne Plaza 300 Army Navy Drive, Arlington, VA 22202.

The meeting will start at 9 a.m. on June 13, and will adjourn no later than 5 p.m. June 14, and is open to the public. The main purpose of this meeting is to plan the agenda for this committee for Fiscal Year 1992, to discuss comments on certain draft reports and to provide consultation to the Office of Water on the development of biological criteria for water quality.

An agenda for the meeting is available from Mrs. Frances Dolby, Staff Secretary, Science Advisory Board (A101F), U.S. Environmental Protection Agency, Washington, DC 20460 (202-382-2552). Members of the public desiring additional information should contact Dr. Edward S. Bender, Designated Federal Official, Ecological Processes and Effects Committee, by telephone at the number noted above or by mail to the Science Advisory Board (A101F), 401 M Street, SW., Washington, DC 20460 no later than June 1, 1991. Anyone wishing to make a presentation at the meeting should forward a written statement to Dr. Bender by June 1, 1991. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. Seating at the meeting will be on the first come basis.

Dated: May 16, 1991.

Donald Barnes,

Director, Science Advisory Board.

[FR Doc. 91-12153 Filed 5-21-91; 8:45 am]

BILLING CODE 6560-50-M

[OPP-100085; FRL-3886-8]

Radian Corp., Science Applications International Corp., Westat Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Radian Corp. and its subcontractors Science Applications International Corp. (SAIC) and Westat Inc. have been awarded a contract to perform work for the EPA Office of Water Regulations Standards, and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to Radian Corp. and its subcontractors SAIC and Westat Inc. consistent with the requirements of 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2). This transfer will enable Radian Corp. and its subcontractors SAIC and Westat Inc. to fulfill the obligations of the contract and this notice serves to notify affected persons.

DATES: Radian Corp. and its subcontractors SAIC and Westat Inc. will be given access to this information no sooner than May 27, 1991.

FOR FURTHER INFORMATION CONTACT: By mail: Clare Grubbs, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 212, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-4460.

SUPPLEMENTARY INFORMATION: Under Contract No. 68-C0-0081, Radian Corp. and its subcontractors SAIC and Westat Inc. will provide technical support to EPA's Office of Water Regulations Standards in the development of levels of technology to support: (1) Best Practicable Control Technology (BPT), (2) Best Available Technology (BAT), (3) New Source Performance Standards (NSPS), (4) Wastewater Pretreatment Standards for existing and new sources (PSES and PSNS), (5) Best Conventional Pollutant Control Technology (BCT), (6) supplemental regulations to control toxic pollutant discharges using Best Management Practices (BMP), (7) treatment technology, management practices, and techniques for reduction or control of solid waste generated, and (8) provide technical assistance and expert testimony for EPA in judicial review and administrative review related to the pesticide chemicals manufacturing and pesticide formulating/packaging industries.

The Office of Water Regulations Standards and the Office of Pesticide Programs have jointly determined that the contract herein described involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2), the contract with Radian Corp. and its subcontractors SAIC and Westat Inc., prohibits use of the information in any form to a third party without prior written approval from the Agency; and requires that each official and employee of the contractors sign an agreement to protect the information in accordance with the FIFRA Information Security Manual from unauthorized release. In addition, Radian Corp. and its subcontractors SAIC and Westat are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to these contractors until the above requirements have been fully satisfied.

Records of information provided to these contractors will be maintained by the Project Officer for this contract in the EPA Office of Water Regulations Standards. All information supplied to Radian Corp. and its subcontractors SAIC and Westat Inc. by EPA for use in connection with this contract will be returned to EPA when Radian Corp. and its subcontractors SAIC and Westat Inc. have completed their work.

Dated: May 7, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 91-11883 Filed 5-21-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Maryland Port Administration, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in §572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200515.

Title: Maryland Port Administration/ Puerto Rico Maritime Shipping Authority Terminal Agreement.

Parties:

Maryland Port Administration
Puerto Rico Maritime Shipping Authority (PRMSA).

Synopsis: The Agreement, filed May 13, 1991, provides for a 6-year lease of 20 acres at the Seagirt Marine Terminal to receive, ship, and store containers and related cargoes/equipment PRMSA guarantees to move a minimum of 25,000 total containers through the facility each lease-year and will receive container volume discount rates for land rental, dockage, wharfage and office space.

Agreement No. 224-200516.

Title: Port Authority of New York and New Jersey/Evergreen International (USA) Corporation Terminal Agreement.

Parties:

Port Authority of New York and New Jersey (Port).
Evergreen International (USA) Corporation (Evergreen).

Synopsis: The Agreement provides for: The Port to pay Evergreen $25 per import and $50 per export container with cargo loaded/unloaded from a vessel at the Port and shipped by rail to or from points more than 280 miles from the Port, subject to rail freight bills issued on or after January 1, 1991. The term of the Agreement will expire December 31, 1991.

Agreement No.: 224-200517.

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Title: South Carolina State Ports Authority Terminal Agreemnt.

Parties:

South Carolina State Ports Authority

Compania Sud Americana de Vapores (Granco)

Flota Mercante Granco-Lumbiana (Chilean).

Synopsis: The Agreement, filed May 15, 1991, provides Chilean-Granco container/chassis receiving and delivering services at reduced tariff rates as well as volume incentive wharfage rates. Chilean-Granco guarantees 50,000 short tons of cargo throughout and/or 26 vessel calls for each contact year of the Agreement's 3-year term.

Dated: May 17, 1991.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 91-12151 Filed 5-21-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 042991 AND 051091

Name of acquiring person, name of acquired person, name of acquired entity-	PMN No.	Date terminated
Ssangyong Cement Industrial Co., Ltd., Beazer PLC, RVC Venture Corp	91-0808	04/30/91
Provigo Inc., New Deal Market, Inc., New Deal Market, Inc	91-0818	04/30/91
VIAG AG, Royal Nedlloyd Group N.V., Union-Transport Corporation	91-0851	04/30/91
Bayernwerk AG, Royal Nedlloyd Group N.V., Union-Transport Corporation	91-0852	04/30/91
Oakwood Health Services Corporation, United Care, Inc., United Care, Inc	91-0785	05/01/91
Berwind Group Partners, ADT Limited, Electro Signal Lab, Inc	91-0807	05/01/91
VS&A Communications Partners, L. P., George N. Gillett, Jr., WOKR Partners	91-0856	05/01/91
Hanover Energy Inc., United Gas Holding Corporation, United Gas Holding Corporation	91-0789	05/02/91
The Promus Companies Incorporated, The Promus Companies Incorporated, Embassy/Shaw Syracuse Venture	91-0848	05/03/91
The Promus Companies Incorporated, CHS Syracuse Associates, Limited Partnership, Embassy/Shaw Syracuse Venture	91-0849	05/03/91
Southern Air Transport, Inc., Mesa Limited Partnership, SimuFlite Division of Bicoastal Corporation	91-0859	05/03/91
General Motors Corporation, Mr. Sharad Tak, ST Systems Corporation	91-0865	05/03/91
Newell Co., W. T. Rogers Company, W. T. Rogers Company	91-0877	05/03/91
H Group Holding, Inc., Ticketron Limited Partnership, Ticketron Limited Partnership	91-0845	05/06/91
Mr. Kok Thay Lim, The Leo Freedman Foundation U/D/T Dated January 6, 1989, Anaheim Plaza Resort Hotel	91-0826	05/06/91
Michael G. DeGroote, Republic Waste Industries, Inc., Republic Waste Industries, Inc	91-0822	05/07/91
Coda Energy, Inc., Mobil Corporation, Mobil Producing Texas & New Mexico Inc	91-0831	05/07/91
Bechtel Investments, Inc., Robert R. Onstead and Kay M. Onstead, Randall's Properties, Inc., Randall's	91-0858	05/07/91
W. W. Grainger, Inc., Irving A. Singer, Ball Industries, Inc	91-0878	05/07/91
Mr. Kenneth Thomson, The News Corporation Limited, HarperCollins Publishers Inc. and Scott, Foresman	91-0861	05/08/91
Service Corporation International, Arlington Corporation, Arlington Corporation	91-0843	05/09/91
The Prudential Insurance Company of America, The Johns Hopkins Health System Corporation, The Johns Hopkins Health Plan, Inc	91-0844	05/09/91
Haden MacLellan Holdings plc, David G. Smith and Grace B. Smith, Smith Engineering Co	91-0885	05/09/91
Cable TV Fund 14-A, Ltd., Glenn R. Jones, Jones Intercable, Inc	91-0903	05/10/91

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 91-12114 Filed 5-21-91; 8:45 am]

BILLING CODE 6750-01-M

[File No. 881 0134]

Connecticut Chiropractic Association; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, an association of approximately 350 chiropractors to cease and desist from prohibiting, regulating, or interfering with its members offering free services or services at discounted fees and from prohibiting, regulating, or interfering with its members' advertising.

DATES: Comments must be received on or before July 22, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Phoebe Morse, Boston Regional Office, Federal Trade Commission, 10 Causeway Street, Room 1184, Boston, Ma. 02222-1073, (617) 565-7240.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited.

Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Connecticut Chiropractic Association, a corporation, hereinafter sometimes referred to as "CCA" or "proposed respondent," and it now appearing that CCA is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between CCA, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. CCA is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, with its principal business office located at 28 Main Street, East Hartford, Connecticut 06118.

2. CCA admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. CCA waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify CCA, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by CCA that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to CCA, (1) issue its complaint corresponding in form and substance with the attached draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to CCA's address as stated in this agreement shall constitute service. CCA waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, CCA will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after the order becomes final.

Order

I

It is ordered that for the purposes of this order, the following definitions shall apply:

A. *CCA* means the Connecticut Chiropractic Association and its Executive Board, committees, officers, directors, agents, representatives, employees, successors, and assigns;

B. *Disciplinary action* means, but is not limited to, revocation or suspension of, or refusal to grant, membership, or the imposition of a reprimand, warning, probation, or any other penalty or condition;

C. *Person* means any natural person, corporation, partnership, unincorporated association, or other entity; and

D. *Regulating* means (1) adopting or maintaining any rule, regulation, interpretation, ethical ruling, policy, or course of conduct; (2) taking or threatening to take formal or informal disciplinary action; or (3) conducting investigations or inquiries.

II

It is further ordered that CCA, directly or indirectly, or through any corporate or other device, in connection with its activities in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, shall forthwith cease and desist from:

A. Prohibiting, regulating, or interfering with any of the following practices of its members:

1. Offering free services or services at discounted fees to consumers;

2. Advertising, including but not limited to:

(a) Advertising free services or services at discounted fees to consumers, including by use of coupons;

(b) Advertising that CCA considers to be "sensational," "undignified," or not in "good taste;" and

(c) Implying that they possess "unusual expertise," provided, however, that CCA may restrict members' claims of specialization, unless additional experience and educational requirements have been met that are approved by a recognized chiropractic accrediting agency.

B. Inducing, suggesting, urging, encouraging, or assisting any non-governmental person or organization to take any action that if taken by CCA would violate Part II.A. of this order.

Provided that nothing contained in this order shall prohibit CCA from adopting, maintaining, and enforcing reasonable ethical guidelines governing the conduct of its members with respect to representations, advertising, or other communications that CCA reasonably believes would be false or deceptive within the meaning of section 5 of the Federal Trade Commission Act.

III

It is further ordered that CCA shall:

A. Distribute by first-class mail hard copies of this order, the accompanying complaint, and an announcement in the form shown in appendix A to this order in the following manner:

(1) Within thirty (30) days after the date this order becomes final, to each CCA member; and

(2) For five (5) years after the date this order becomes final, to each applicant for membership in CCA within thirty (30) days after CCA receives such application;

B. Within ninety (90) days after the date this order becomes final, publish this order, the accompanying complaint,

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and an announcement in the form shown in appendix A to this order in The Connecticut Yankee (CCA's quarterly journal), or any successor publication, in the same size type normally used for articles that are published in The Connecticut Yankee or in that successor publication;

C. Within thirty (30) days after this order becomes final, remove from CCA's Ethical Code, Bylaws, and any other existing policy statement or guideline of CCA, any provision, interpretation, or policy statement that is inconsistent with part II of this order;

D. Within sixty (60) days after this order becomes final, publish and distribute to all members of CCA and to all personnel, agents, or representatives of CCA, revised versions of CCA's Ethical Code, Bylaws, and any other existing policy statement or guideline of CCA;

E. File with the Federal Trade Commission within one hundred and twenty (120) days after the date this order becomes final, one (1) year after the date this order becomes final, and at such other times as the Federal Trade Commission may by written notice to CCA request, a verified report in writing setting forth in detail the manner and form in which CCA has complied and is complying with this order;

F. For a period of five (5) years after the date this order becomes final, maintain and make available to the Federal Trade Commission staff for inspection and copying, upon reasonable notice, records adequate to describe in detail all action taken in connection with any activity covered by parts II and III of this order, including all written communications and all summaries of oral communications, and all disciplinary action; and

G. Notify the Federal Trade Commission at least thirty (30) days prior to any proposed changes in CCA, such as dissolution or reorganization resulting in the emergence of a successor corporation or association, or any other change in the corporation or association which may affect compliance obligations arising out of this order.

Appendix A

[Date]

Announcement

As you may be aware, the Connecticut Chiropractic Association ("CCA") has entered into a consent agreement with the Federal Trade Commission that became final on [Date]. The order issued pursuant to the consent agreement provides that CCA may not interfere if its members wish to engage in any of the following activities:

(1) Offering free services or services at discounted fees to consumers;

(2) Advertising free services or services at discounted fees to consumers, including by use of coupons;

(3) Advertising that CCA considers to be "sensational," "undignified," or not in "good taste"; and

(4) Implying that they possess "unusual expertise," provided, however, that CCA may restrict members' claims of specialization, unless additional experience and educational requirements have been met that are approved by a recognized chiropractic accrediting agency.

The order does not prevent CCA from formulating reasonable ethical guidelines prohibiting advertising or other communications that CCA reasonably believes would be false or deceptive within the meaning of section 5 of the Federal Trade Commission Act.

In particular, the agreement between CCA and the Federal Trade Commission means that as long as its members do not engage in falsehood or deception, CCA cannot prevent or discourage them from engaging in the practices listed above, among others.

For more specific information you should refer to the FTC order itself. A copy of the order is enclosed.

Keith Overland,

D.C. President, Connecticut Chiropractic Association.

Connecticut Chiropractic Association

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from the Connecticut Chiropractic Association ("CCA"). The agreement would settle charges by the Commission that the proposed respondent violated section 5 of the Federal Trade Commission Act by adopting and maintaining provisions in its Ethical Code that restricted competition among CCA members.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Complaint

A complaint has been prepared for issuance by the Commission along with the proposed order. The complaint alleges that CCA has acted as a combination of its members, or conspired with at least some of its members, to restrain competition among chiropractors in the State of Connecticut by prohibiting its members from offering free services and services at discounted fees and from disseminating truthful, nondeceptive information through advertising and other means.

The complaint states that CCA is subjected to the Commission's jurisdiction pursuant to section 5 of the Federal Trade Commission Act.

According to the complaint, CCA is a corporation formed and doing business pursuant to the laws of the State of Connecticut. It is a voluntary association of approximately 350 chiropractors, constituting approximately 86 percent of the chiropractors practicing in Connecticut. CCA is organized for the purpose of serving the interests of its members by associating them into a practical business organization and is engaged in substantial activities that further its members' precuniary interests. CCA members have been and are now in competition among themselves and with other chiropractors.

The complaint alleges that in furtherance of this combination or conspiracy, CCA has restrained competition among chiropractors in the State of Connecticut by adopting and maintaining provisions in its Ethical Code that prohibit members from:

(1) Offering free services or services at discounted fees to consumers;

(2) Advertising free or discounted services to consumers, including by use of coupons;

(3) Advertising that CCA considers to be "sensational," "undignified," and not in "good taste;" and

(4) Implying that they possess "unusual expertise" without meeting additional experience and educational requirements that a recognized chiropractic accrediting agency has approved.

The complaint also alleges that in furtherance of the combination or conspiracy, CCA coerced its members to comply with its Ethical Code by, among other things:

(1) Threatening members who violate the Ethical Code with expulsion from CCA;

(2) Threatening, in the CCA quarterly journal and at CCA meetings, members who advertise free or discounted services that CCA will attempt to influence health insurance companies to disallow or reduce reimbursements to their patients; and

(3) Threatening, in the CCA quarterly journal and at CCA meetings, members who violate the Ethical Code that CCA will report them to chiropractic malpractice insurance carriers.

According to the complaint, CCA's actions have restrained competition among chiropractors with respect to price, quality, and other terms of service. The complaint further alleges that the actions deprived consumers of truthful, nondeceptive information about the availability, price, and quality of chiropractic services, as well as the benefits of free and open competition among chiropractors.

The Proposed Consent Order

The proposed order would require CCA to cease and desist from prohibiting, regulating, or interfering with its members offering free services or services at discounted fees and its members' advertising, including (1) advertising free services or services at discounted fees, including by use of coupons; (2) advertising that CCA considers to be "sensational;" "undignified," or not "in good taste;" and (3) implying that they possess "unusual expertise," provided, however, that CCA may restrict members' claims of specialization, unless additional experience and educational requirements have been met that are approved by a recognized chiropractic accrediting agency. The order would also prohibit CCA from inducing, suggesting, urging, encouraging, or assisting others to take any of the actions prohibited by the order. Nothing in the order, however, prohibits CCA from adopting maintaining, and enforcing reasonable ethical guidelines that prohibit advertising or other communications that CCA reasonably believes would be false or deceptive within the meaning of section 5 of the Federal Trade Commission Act.

The proposed order would require CCA to distribute a copy of the order, accompanying complaint, and an explanatory announcement to its members and to each applicant for CCA membership for five years after the order becomes final. CCA would also have to publish those documents in the CCA quarterly journal. The proposed order would require CCA to remove from its Ethical Code, Bylaws, and any other existing CCA policy statement or guideline, any provision, interpretation, or policy statement that is inconsistent with the proposed order and distribute revised versions of those documents to its members, personnel, agents, and representatives. Finally, the proposed order would require CCA to file written compliance reports with the Commission, maintain and make available for Commission inspection certain documents, and give the Commission advance notice of any proposed changes in CCA such as dissolution or reorganization.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 91-12115 Filed 5-21-91; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Alcohol, Drug Abuse, and Mental Health Administration; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HM, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), of the statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (39 FR 1654, January 11, 1974, as amended most recently by 55 FR 38162-3, September 17, 1990) is amended to reflect changes within the National Institute of Mental Health (NIMH), ADAMHA. These changes involve adding a new function involving rural mental health research activities within the Division of Applied and Services Research, NIMH.

Section HM-B, Organization and Functions, Alcohol, Drug Abuse, and Mental Administration (HM) is amended as follows:

Under the heading *Division of Applied and Service Research (HMME),* following the semicolon after item (3)(g), delete all remaining words and add the following words: "(4) directs, plans, supports and conducts programs on research, research demonstrations, and resource development on special problems unique to those living in rural areas; and (5) serves as the PHS lead in planning for alcohol, drug abuse, and mental health services during national disasters."

Dated: May 13, 1991.

Frederick K. Goodwin,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 91-12067 Filed 5-21-91; 8:45 am]

BILLING CODE 4160-17-M

Social Security Administration

[Social Security Ruling SSR 91-3p]

Title II: Determining Entitlement to Disability Benefits for Months Prior to January 1991 for Widows, Widowers and Surviving Divorced Spouses Claims

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling 91-3p. The Ruling explains how the Social Security Administration will apply the 5-step sequential evaluation process and consider residual functional capacity in determining disability for widows, widowers, and surviving divorced spouses for months prior to January 1991.

EFFECTIVE DATE: May 22, 1991.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235 (301) 965-1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552 (a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings are based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating other cases.

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If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the Federal Register to that effect.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security—Survivor's Insurance; 93.806 Special Benefits for Disabled Coal Miners; 93.807 Supplemental Security Income.)

Dated: May 13, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Policy Interpretation Ruling

Title II: Determining Entitlement to Disability Benefits for Months Prior to January 1991 for Widows, Widowers and Surviving Divorced Spouses Claims

Purpose: To explain the processes to be used to determine entitlement to disability benefits for widows, widowers and surviving divorced spouses (hereafter referred to as widows) on the basis of the deceased spouse's earnings record under sections 202(e) and (f) and 223(d) of title II of the Social Security Act (the Act) for months prior to January 1991. Specifically, this Ruling describes how the Social Security Administration (SSA) will apply the sequential evaluation process and consider a widow's residual functional capacity in determining entitlement to benefits payable for months prior to January 1991.

Citations (authority): Section 223(d) of the Social Security Act; Regulations No. 4, subpart P, §§ 404.1511(b), 404.1520, 404.1525, 404.1526, 404.1545, 404.1546, 404.1572, 404.1577, and 404.1578.

Introduction: Section 5103 of the Omnibus Budget Reconciliation Act (OBRA) of 1989 (Pub. L. 101–508) made the standard for determining disability in widows' claims the same as the standard applied to other title II disability claims. This OBRA provision is effective for purposes of determining entitlement to disability benefits for widows for months after December 1990, based on applications filed on or after January 1, 1991, or pending on that date.

In order to be entitled to widow's benefits based on disability, the widow must also meet certain nondisability requirements in the statute; such as, the widow must be at least age 50 and less than age 60 and the disability must have begun not later than 7 years after either the insured died or the widow was last entitled to mother's or father's benefits. Prior to the enactment of OBRA, the Act provided a special standard for determining disability for widows. Section 223(d)(2)(B) specified that widow's benefits based on disability were to be awarded only when the widow's "impairment or impairments are of a level of severity which under regulations prescribed by the Secretary is deemed to be sufficient to preclude an individual from engaging in any gainful activity."

This special statutory standard is still applicable with respect to benefits payable for months prior to January 1991. The process used in determining disability for widows under the pre-OBRA standard is contained in 20 CFR 404.1577 and 404.1578 which state that only the claimant's physical and mental impairments are considered, and not the claimant's age, education, and work experience. Specifically, section 404.1578 provides that a widow will be found disabled if all the following conditions are met: (1) The claimant is not engaging in substantial gainful activity; (2) the claimant's impairment(s) meets the duration requirement; and (3) the claimant's "impairment(s) has specific clinical findings that are the same as those for any impairment in the Listing of Impairments in appendix 1 or are medically equivalent to those for any impairment shown there." Under SSA's interpretation of the regulations, the claimant's residual functional capacity has not been specifically considered in determining whether this test was satisfied. (Residual functional capacity is defined in 20 CFR 404.1545 as what the claimant can still do in a work setting despite the physical or mental limitations caused by his or her impairment(s).)

Since October 1989, seven United States Courts of Appeals have invalidated the pre-1991 process described above as being underinclusive in its evaluative criteria. These courts have held that the Act requires a consideration of functional limitations in determining entitlement to widow's benefits based on disability. A number of these decisions have further indicated that the regulations, as applicable with respect to benefits payable for months prior to January 1991, could allow for a consideration of functional limitations or residual functional capacity in widows' cases, but it is the Agency's interpretation of those regulations which is incorrect.

As a result of these court decisions, affecting widows in approximately two-thirds of the States, which found the pre-1991 approach to be underinclusive, SSA has reevaluated its interpretation of the regulations for determining entitlement to widow's disability benefits payable for months prior to January 1991. In response to this clear trend in the courts, this Ruling is being issued to provide a uniform national interpretation of the regulations for determining entitlement to widow's benefits payable for months prior to January 1991. This action to revise the way widow's benefits are decided is consistent with the legislative history of the Social Security Disability Benefits Reform Act of 1984. The Conference Report for that legislation states that, "The conferees reaffirm the congressional intent that the Secretary resolve policy conflicts promptly in order to achieve consistent uniform administration of the program. . . . It is clearly undesirable to have major differences in statutory interpretation between the Secretary and the courts remain unresolved for a protracted period of time." H.R. Rep. No. 98–1039, 98th Cong., 2 Sess. 37–38 (1984).

Under this Ruling, residual functional capacity assessments will be used in determining whether a widow is disabled in a manner similar to the manner in which residual functional capacity assessments are used in determining whether other adult claimants, including widows under the OBRA standard, are disabled. In view of the limited applicability of this Ruling (i.e., for widow's disability benefits payable for months prior to January 1991) and our interest in providing widows with the most expeditious and accurate determinations of their claims possible, the process discussed below is, to the extent possible, patterned after the existing disability determination process (i.e., the sequential evaluation process) to avoid the creation of entirely new and untested methodologies.

Policy Interpretation: The five-step sequential evaluation process described in 20 CFR 404.1520 will be applied when adjudicating a widow's claim for disability benefits. If application of this process results in a finding of disability at step three (meets or equals a listed impairment in appendix 1), the widow will be found entitled to benefits for all months (subject to the established onset date and any closed period determinations), including those before January 1991, in which the nondisability requirements for widow's benefits are satisfied. If the application of the five-step sequential evaluation process results in a finding that the widow is able to engage in substantial gainful activity at any step in the process, i.e., at step one (currently engaging in substantial gainful activity), step two (no severe impairment), step four (able to engage in past relevant work) or step five (able to engage in past relevant work) or step five (able to enagage in other work) for all or part of the period, the widow will be denied benefits for those months of potential entitlement

including those before January 1991, subject to any closed period determinations, because the widow is not disabled under either the pre-OBRA or OBRA standard. This denial for months prior to 1991 is appropriate because the pre-OBRA standard is clearly more restrictive than the OBRA standard: Inability to do any gainful activity as opposed to inability to engage in substantial gainful activity. By definition, a claimant who can engage in substantial gainful activity can also engage in any gainful activity.

If application of the five-step sequential evaluation process results, at step five, in a finding that the widow is unable to engage in substantial gainful activity, an additional determination will be needed regarding the widow's entitlement to disability benefits for months prior to January 1991, i.e., her abilty to engage in any gainful activity. SSA will make this additional determination utilizing the residual functional capacity assessment used in conjunction with steps four and five of the sequential evaluation process, but without considering age, education, and work experience.

If the residual functional capacity assessment shows that the widow does not retain the functional capacity to perform a range of work comparable to the full range of sedentary work, the widow will be found disabled and entitled to benefits for all months of potential entitlement prior to January 1991 (subject to the established onset date and any closed period determinations). To assess whether the range of work is comparable to the full range of sedentary work, SSA will use the guidelines for determining, by residual functional capacity, the person's remaining occupational base. The guidelines are discussed in Social Security Rulings 83–12, 83–14, and 85–15, which deal with exertional impairments, nonexertional impairments, and combinations of extertional and nonexertional impairments. If the widow retains the functional capacity to perform a range of work comparable to the full range of sedentary work or more, then the widow can only begin receiving benefits for months after December 1990 subject to any closed period determinations. Denial on this basis for months prior to January 1991 is consistent with the applicable statutory standard since a widow who is able to perform a range of work comparable to the full range of sedentary work is obviously functional capable of engaging in any gainful activity, i.e., the pre-OBRA standard.

Effective Date: This Ruling is effective on publication in the Federal Register, and applies to all claims pending administratively on or after the effective date with respect to the issue of entitlement to widow's disability benefits payable for months prior to January 1991. Of course, consistent with standard SSA operating procedures, any final court order requiring adjudication of a disabled widow's claim in a manner different from this Ruling will be followed by SSA. We will issue separate procedures, if necessary, detailing how to address any such court order. In addition, if a determination or decision was made between the date of the applicable Court of Appeals' decision which required a consideration of functional limitations in widows' cases in the First (*Cassas* v. *Secretary of Health and Human Services*, 893 F.2d. 454 (1st Cir. January 11, 1990)), Second (*Kier* v. *Sullivan*, 888 F.2d. 244 (2nd Cir. October 1989)), Third (*Finkelstein* v. *Sullivan*, 924 F.2d. 483 (3rd Cir. January 23, 1991)), Fourth (*Bennett* v. *Sullivan*, 917 F.2d. 157 (4th Cir. October 25, 1990)), Seventh (*Marcus* v. *Sullivan*, 926 F.2d. 604 (7th Cir. February 21, 1991)), Ninth (*Ruff* v. *Sullivan*, 907 F.2d. 915 (9th Cir. July 9, 1990)), or Tenth (*Davidson* v. *Secretary of Health and Human Services*, 912 F.2d. 1246 (10th Cir. August 29, 1990)) Circuit and the effective date of this Social Security Ruling, a claimant may request application of this Social Security Ruling to his or her claim if he or she first demonstrates that application of the Ruling could change the prior determination or decision. This additional applicablity is being provided to make this Ruling applicable to the extent to which the published Acquiescence Rulings for those decisions in the First, Second, and Ninth Circuits were applicable prior to their rescission and the extent to which Acquiescence Rulings for those decisions in the Third, Fourth, Seventh, and Tenth Circuits would have been applicable under 20 CFR 404.985 had they been published before the issuance of this national Ruling. Under 20 CFR 404.988 and 404.989, a change of legal interpretation or administrative ruling does not justify a finding of good cause required to reopen a final determination or decision more than 12 months after and within 4 years of the date of the notice of the intial determination.

[FR Doc. 91–12145 Filed 5–21–91; 8:45 am]

BILLING CODE 4190–29–M

Rescission of Social Security Acquiescence Ruling 90–6(1)

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Rescission of Social Security Acquiescence Ruling 90–6(1)—*Cassas* v. *Secretary of Health and Human Services*, 893 F.2d 454 (1st Cir. 1990), reh'g denied April 9, 1990.

SUMMARY: In accordance with 20 CFR 404.985(e) and 422.406(b)(2) published January 11, 1990 (55 FR 1012), the Commissioner of Social Security gives notice of the rescission of Social Security Acquiescence Ruling 90–6(1) (55 FR 38398).

EFFECTIVE DATE: May 22, 1991.

FOR FURTHER INFORMATION CONTACT: Bob Young, Litigation Staff, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (301) 965–1634.

SUPPLEMENTARY INFORMATION: A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations when the Government has decided not to seek further review of the case or is unsuccessful on further review.

As provided by 20 CFR 404.985(e) (3) and (4), a Social Security Acquiescence Ruling may be rescinded as obsolete, if a Federal law is enacted that removes the basis for the holding in the decision by a circuit court that was the subject of the Acquiescence Ruling, or if we subsequently clarify, modify or revoke the regulation or ruling that was the subject of the circuit court holding for which the Acquiescence Ruling was issued.

On September 18, 1990, we issued Acquiescence Ruling 90–6(1) (55 FR 38398) to reflect the holding in *Cassas* v. *Secretary of Health and Human Services*, 893 F. 2d 454 (1st Cir. 1990), reh'g denied April 9, 1990, that residual functional capacity must be considered in determining entitlement to widow's and widower's benefits based on disability. The Acquiescence Ruling applied solely to claims for widow's or widower's benefits based on disability.

Section 5103 of Public Law 101–508 changed the standard for widow's and widower's benefits based on disability to the same standard as used for wage earners and title XVI adult claimants. This change is effective with respect to benefits for months after December 1990 for which applications are filed on or after January 1, 1991, or are pending on such date. The enactment of this

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provision removes at least partially, the basis for the Circuit Court's holding in *Cassas*.

In addition, concurrent with the rescission of this Ruling, we are issuing Social Security Ruling 91-3p explaining how we will adjudicate claims for widow's and widower's benefits based on disability for months prior to January 1991. Because the Social Security Ruling provides a uniform national interpretation of the regulations under which we will use residual function capacity assessments in determining whether a widow or widower is disabled for months prior to 1991, we are rescinding the current Acquiescence Ruling.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security—Survivor's Insurance; 93.806—Special Benefits for Disabled Coal Miners; 93.807—Supplemental Security Income)

Dated: May 13, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

[FR Doc. 91-12147 Filed 5-21-91; 8:45 am]

BILLING CODE 4190-29-M

Rescission of Social Security Acquiescence

AGENCY: Social Security Administration, HHS.

ACTION: Notice of rescission of Social Security Acquiescence Ruling 90-5(2)—*Kier* v. *Sullivan*, 888 F.2d 244 (2d Cir. 1989), *reh'g denied*, January 22, 1990.

SUMMARY: In accordance with 20 CFR 404.985(e) and 422.406(b)(2) published January 11, 1990 (55 FR 1012), the Commissioner of Social Security gives notice of the rescission of Social Security Acquiescence Ruling 90-5(2) (55 FR 38400).

EFFECTIVE DATE: May 22, 1991.

FOR FURTHER INFORMATION CONTACT: Bob Young, Litigation Staff, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (301) 965-1634.

SUPPLEMENTARY INFORMATION: A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations when the Government has decided not to seek further review of the case or is unsuccessful on further review.

As provided by 20 CFR 404.985(e) (3) and (4), a Social Security Acquiescence Ruling may be rescinded as obsolete, if a Federal law is enacted that removes the basis for the holding in the decision by a circuit court that was the subject of the Acquiescence Ruling, or if we subsequently clarify, modify or revoke the regulation or ruling that was the subject of a circuit court holding for which the Acquiescence Ruling was issued.

On September 18, 1990, we issued Aquiescence Ruling 90-5(2) (55 FR 38400) to reflect the holding in *Kier* v. *Sullivan*, 888 F.2d 244 (2d Cir. 1989), *reh'g denied*, January 22, 1990, that residual functional capacity must be considered in determining entitlement to widow's and widower's benefits based on disability. The Acquiescence Ruling applied solely to claims for widow's or widower's benefits based on disability.

Section 5103 of Public Law 101-508 changed the standard for widow's and widower's benefits based on disability to the same standard as used for wage earners and title XVI adult claimants. This change is effective with respect to benefits for months after December 1990 for which applications are filed on or after January 1, 1991, or are pending on such date. The enactment of this provision removes, at least partially, the basis for the Circuit Court's holding in *Kier*.

In addition, concurrent with the rescission of this Ruling, we are issuing a Social Security Ruling 91-3p explaining how we will adjudicate claims for widow's and widower's benefits based on disability for months prior to January 1991. Because the Social Security Ruling provides a uniform national interpretation of the regulations under which we will use residual functional capacity assessments in determining whether a widow or widower is disabled for months prior to 1991, we are rescinding the current Acquiescence Ruling.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security—Survivor's Insurance; 93.806—Special Benefits for Disabled Coal Miners; 93.807—Supplemental Security Income.)

Dated: May 13, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

[FR Doc. 91-12146 Filed 5-21-91; 8:45 am]

BILLING CODE 4190-29-M

Rescission of Social Security Acquiescence

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Rescission of Social Security Acquiescence Ruling 90-7(9)—*Ruff* v. *Sullivan*, 907 F.2d 915 (9th Cir. 1990).

SUMMARY: In accordance with 20 CFR 404.985(e) and 422.406(b)(2) published January 11, 1990 (55 FR 1012), the Commissioner of Social Security gives notice of the rescission of Social Security Acquiescence Ruling 90-7(9) (55 FR 38402).

EFFECTIVE DATE: May 22, 1991.

FOR FURTHER INFORMATION CONTACT: Bob Young, Litigation Staff, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (301) 965-1634.

SUPPLEMENTARY INFORMATION: A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations when the Government has decided not to seek further review of the case or is unsuccessful on further review.

As provided by 20 CFR 404.985(e) (3) and (4), a Social Security Acquiescence Ruling may be rescinded as obsolete, if a Federal law is enacted that removes the basis for the holding in the decision by a circuit court that was the subject of the Acquiescence Ruling, or if we subsequently clarify, modify or revoke the regulation or ruling that was the subject of the circuit court holding for which the Acquiescence Ruling was issued.

On September 18, 1990, we issued Acquiescence Ruling 90-7(9) (55 FR 38402) to reflect the holding in *Ruff* v. *Sullivan*, 907 F.2d 915 (9th Cir. 1990), that residual functional capacity must be considered in determining entitlement to widow's and widower's benefits based on disability. The Acquiescence Ruling applied solely to claims for widow's or widower's benefits based on disability.

Section 5103 of Public Law 101-508 changed the standard for widow's and widower's benefits based on disability to the same standard as used for wage earners and title XVI adult claimants. This change is effective with respect to benefits for months after December 1990 for which applications are filed on or after January 1, 1991, or are pending on such date. The enactment of this provision removes, at least partially, the basis for the Circuit Court's holding in *Ruff*.

In addition, concurrent with the rescission of this Ruling, we are issuing Social Security Ruling 91-3p explaining how we will adjudicate claims for widow's and widower's benefits based on disability for months prior to January 1991. Because the Social Security Ruling provides a uniform national interpretation of the regulations under which we will use residual functional capacity assessments in determining whether a widow or widower is disabled for months prior to 1991, we are rescinding the current Acquiescence Ruling.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security—Survivor's Insurance; 93.806—Special Benefits for Disabled Coal Miners; 93.807—Supplemental Security Income.)

Dated: May 13, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

[FR Doc. 91-12148 Filed 5-21-91; 8:45 am]

BILLING CODE 4190-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-010-91-4212-13; A-20616]

Realty Action

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Exchange of public lands in Coconino County, Arizona.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

Gila & Salt River Meridian

T. 39 N., R. 7 E., sec. 7, lots 6 & 7, S½S½ (that portion between the wilderness boundary, U.S. Highway 89 A, Vermillion Cliffs Lodge, and Badger Creek Homeowners Association).

Containing 44.0 acres.

In exchange for a portion of these lands, the Federal Government will acquire a tract of non-Federal land in Coconino County from Tamarisk Enterprises, Inc., described as follows:

Gila & Salt River Meridian

A portion of T. 39 N., R. 7 E., sec. 7, N½SW¼SE¼.

Containing approximately 3.95 acres.

Disposal of the above described public land will be contingent upon termination of the C&MU Classification.

The purpose of the exchange is to acquire the non-Federal land to augment the historical and recreational potential of the bordering public lands. The exchange is consistent with the Bureau's planning for the lands involved. The management programs of the BLM and the public interest will be well served by making the exchange.

The value of the lands to be exchanged will be approximately equal, and the acreage will be adjusted or money will be used to equalize the values upon completion of the final appraisal of the lands.

The terms and conditions applicable to the exchange are:

(1) A right-of-way thereon for ditches and canals contracted by the authority of the United States, pursuant to the Act of August 30, 1890 (26 Stat. 391; U.S.C. 945).

(2) Patent will be subject to the existing power transmission line Right-of-Way AR-035054.

(3) Patent will be subject to all valid and existing rights.

(4) All minerals will be reserved to the United States.

The publication of this notice in the Federal Register will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant.

Detailed information concerning the exchange, including the environmental analysis, is available for review at the combined Resource Areas Office, 225 North Bluff, St. George, UT 84770.

For a period of 45 days, interested parties may submit comments to the District Manager, Arizona Strip District Office, Bureau of Land Management, 390 North 3050 East, St. George, UT 84770.

Dated: May 8, 1991.

G. William Lamb,

District Manager.

[FR Doc. 91-12113 Filed 5-21-91; 8:45 am]

BILLING CODE 4310-32-M

[AZ-020-00-4212-12; AZA-25124]

Public Land Exchange, Mohave County, AZ

AGENCY: Bureau of Land Management—Interior.

ACTION: Notice of realty action—exchange of public lands, Mohave County, Arizona.

SUMMARY: BLM proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership, and to acquire lands with valuable wildlife habitat, recreational and cultural values, and outstanding scenic qualities. All or part of the following described federal lands are being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Mohave County, Arizona

T. 16 N., R. 19 W.,
Sec. 18, N½ (portion);
T. 16 N., R. 20 W.,
Sec. 6, All;
Sec. 15, N½ (portion);
Sec. 17, N½ (portion);
Sec. 18, N½, N½S½ (portion).
T. 16½ N., R. 20 W.,
Sec. 30, All;
Sec. 32, All.
T. 16 N., R. 20½ W.,
Sec. 1, All;
Sec. 3, Lots 1-5, SE¼NE¼, E½SE¼;
Sec. 10, Lots 1-4, E½E½;
Sec. 11, E½, NW¼, N½SW¼, SE¼SW¼;
Sec. 12, All;
Sec. 13, N½S½ (portion), N½.
T. 16½ N., R. 20½ W.,
Sec. 22, Lots 1-5, SE¼NE¼, E½SE¼;
Sec. 23, All;
Sec. 25, All;
Sec. 26, All;
Sec. 27, Lots 1-4, E½E½;
Sec. 34, Lots 1-4, E½E½;
Sec. 35, All.

Containing 9732.12 acres, more or less.

In exchange for these lands, the United States will acquire the following described land from Antigua Development Corporation.

Gila and Salt River Meridian, Mohave County, Arizona

T. 21 N., R. 20 W.,
Sec. 11, N¼ (portion);
Sec. 11, W½SW¼ (portion).

Containing 133.99 acres, more or less.

Detailed information concerning this exchange can be obtained from the Kingman Resource Area Office.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), publiction of this Notice will segregate the affected public lands from appropriation under the public land laws, except exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect shall also exclude appropriation of the subject public land under the mining laws, subject to valid existing rights.

The segregation of the above described lands will terminate upon issuance of a document conveying such lands or upon publication in the Federal Register of a notice of termination of the segregation; or the expiration of two

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years from the date of publication, whichever occurs first.

For a period of forty-five (45) days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Elaine F. Marquis, Area Manager, Bureau of Land Management, Kingman Resource Area, 2475 Beverly Avenue, Kingman, Arizona 86401 (602) 757–3161.

Dated: May 9, 1991.

Henri R. Bisson,

District Manager.

[FR Doc. 91–12046 Filed 5–21–91; 8:45 am]

BILLING CODE 4310–32–M

[CO–930–4920–10–4669; COC–52206]

Proposed Withdrawal; Opportunity for Public Meeting, Colorado

May 10, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of Energy has requested withdrawal of public land near Maybell, Colorado, for 5 years. The land is proposed as a permanent disposal site for radioactive uranium mill tailings. If this site is designated for permanent disposal, administrative jurisdiction will be transferred to the Department of Energy for management. This notice will segregate the land from operation of the public land laws, including location and entry under the mining laws for up to 2 years. The land will continue to be open to mineral leasing.

DATES: Comments on this proposed withdrawal or request for a public meeting must be received on or before August 20, 1991.

ADDRESSES: Comments and meeting requests should be sent to the Colorado State Director, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, Bureau of Land Management, Colorado State Office, (303) 239–3706.

SUPPLEMENTARY INFORMATION: The Department of Energy has filed application to withdraw the following described public land from settlement, sale, location or entry under the public land laws, including the mining laws, subject to valid existing rights, pursuant to the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714:

Sixth Principal Meridian

Maybell Site

T. 7 N., R. 94 W.,
Sec. 19, lots 5 and 6, and W½NE¼, E½NW¼, NE¼SW¼, and NW¼SE¼.

The area described contains approximately 334.66 acres in Moffat County.

The purpose of this withdrawal is to segregate the land and provide protection until requirements are completed for a permanent transfer of administrative jurisdiction to the Department of Energy under the authority of the Uranium Mill Tailings Radiation Control Act of 1978; 92 Stat. 3021, 42 U.S.C. 7801, as amended.

Effective on the date of publication, these lands are segregated from all forms of appropriation under the public land laws, including the mining laws. The land remains open to mineral leasing subject to concurrence by the Department of Energy, the Nuclear Regulatory Commission, and the Department of the Interior. The lands will remain open to surface uses which are compatible with the project until the withdrawal is final.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with this proposed withdrawal. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with Bureau of Land Management Manual, section 2351.16B.

All persons who desire to submit comments, suggestions, or objections or who desire a public meeting for the purpose of being heard on this proposed action must submit a written request to the Colorado State Director within 90 days of the publication of this notice.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated from operation of the public land laws as specified above unless the application is denied or cancelled or the transfer of administrative jurisdiction takes place prior to that date.

The temporary segregation of this land in connection with the application shall not affect the administrative jurisdiction over the land and will not authorize any use of the land by the Department of Energy.

Robert S. Schmidt,

Chief, Branch of Realty Programs.

[FR Doc. 91–12102 Filed 5–21–91; 8:45 am]

BILLING CODE 4310–JB–M

Minerals Management Service

Outer Continental Shelf (OCS) Advisory Board—Scientific Committee (SC); Meeting

This Notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Public Law 92–463, 5 U.S.C. appendix I, and the Office of Management and Budget Circular A–63, Revised.

The SC of the OCS Advisory Board will meet on Wednesday, June 19, and Thursday, June 20, 1991, at the Barratt Inn (Best Western), 4616 Spenard Road, Anchorage, Alaska 99517–3299, telephone (907) 243–3131. Below is a description of meetings that will occur related to the SC:

The SC will meet in plenary session from 8 a.m. to 5 p.m. on Wednesday, June 19 and Thursday, June 20, 1991. The agenda will cover the following principal subjects (others may be added later):

- Committee business and resolutions.
- Environmental Studies Program Status Review.
- MMS Environmental Monitoring Studies Workshop.
- Means for communicating scientific information to different audiences.
- Discussion on Natural Resources Damage Assessment and access to scientific information.
- The role of the SC in reviewing environmental studies.

In conjunction with the SC meeting, the MMS will hold a Monitoring Studies Workshop from 8 a.m. to 5 p.m. on Tuesday, June 18, 1991. The agenda for the workshop will cover the following subjects:

- Accomplishments of completed marine environmental monitoring studies sponsored by the MMS.
- The MMS regional perspectives on marine environmental monitoring issues.
- Goals of future MMS marine environmental monitoring studies.
- National scale environmental monitoring programs conducted by other Federal Agencies.

Both meetings are open to the public. Approximately 30 visitors can be accommodated on a first-come-first-served basis at the SC plenary session.

All inquiries concerning the SC meeting should be addressed to Mr. John Goll, Chief, Environmental Policy and Programs Division. All inquiries concerning the Monitoring Studies Workshop should be addressed to Dr. Thomas Ahlfeld, Environmental Studies Branch.

Their address is the Minerals Management Service, Environmental Policy and Programs Division, Mail Stop 4310, 381 Elden Street, Herndon, Virginia 22070, telephone (703) 787–1717.

Dated: May 13, 1991.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 91–12103 Filed 5–21–91; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 9, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, PO Box 37127, Washington, DC 20013–7127. Written Comments should be submitted by June 6, 1991.

Carol D. Shull,

Chief of Registration, National Register.

LOUISIANA

Ascension Parish

Bocage, LA 942 S of Marchandville, Darrow vicinity, 91000705

Caddo Parish

Byrd C.E., High School, 3201 Line Ave., Shreveport, 91000704
Flesch House, 415 Sherwood Rd., Shreveport, 91000703
Long, Huey P., House, 2403 Laurel St., Shreveport, 91000701
Masonic Temple, 1805 Creswell St., Shreveport, 91000702
St. Mark's Episcopal Church, 875 Cotton St., Shreveport, 91000700

MONTANA

Custer County

Carriage House Historic District, Roughly bounded by Main, N. 9th, Palmer, N. 10th, Orr and N. 13th Sts. and Montana Ave., Miles City, 91000720

NEW YORK

Cayuga County

Cayuga County Courthouse and Clerk's Office, 152—154 Genesee St., Auburn, 91000721
US Post Office, Former, and Federal Counthouse, 151—157 Genesee St., Auburn, 91000722

PENNSYLVANIA

Montgomery County

Horsham Friends Meeting, Jct. of Meeting House and Easton Rds., Horsham, 91000723

TEXAS

Washington County

Burton Commercial Historic District (Burton MPS), Roughly bounded by Railroad, Live Oak, Brazos and Burton, including area S of Railroad between Washington and Texas Sts., Burton, 91000709
Burton Farmers Gin (Burton MPS), Main St. SE of Burton St., Buton, 91000712
Burton High School (Burton MPS), Jct. of Main St. and FM 390, Burton, 91000711
Hodde Drugstore (Burton MPS), Main St. SE of Burton St., Burton, 91000713
Kneip—Bredthauer House (Burton MPS), SE corner of Colorado and Cedar, Burton, 91000719
Laas, Dr. Charles, House (Burton MPS), NE corner of Live Oak and Colorado Sts., Burton, 91000717
Neumann, William, House (Burton MPS), Navasota St. W of Washington St., Burton, 91000710
Nienstedt, Herbert, House (Burton MPS), NE corner of Brazos and Washington Sts., Burton, 91000718
Nienstedt, William, House (Burton MPS), SE corner of Brazos and Texas Sts., Burton, 91000715
Sanders, William Edward, House (Burton MPS), Railroad St. SE of US 290, Burton, 91000716
Wehring Shoe Shop and Residence (Burton MPS), Main St. SE of Burton St., Burton, 91000714

WASHINGTON

Pierce County

Silver Creek Ranger Station (USDA Forest Service Buildings in Oregon and Washington Built by the CCC MPS), WA 410 on eastern border of Mt. Rainier National Park, Mt. Baker—Snoqualmie National Forest, Crystal Mountain vicinity, 91000707

Whatcom County

Koma Kulshan Ranger Station (USDA Forest Service Buildings in Oregon and Washington Built by the CCC MPS), Forest Rd. 11, W of Baker Lake, Mt. Baker National Forest, Concrete vicinity, 91000706
Wild Goose Pass Tree, Address Restricted, Glacier vicinity, 91000708

WISCONSIN

La Crosse County

Samuels' Cave, Address Restricted, Barre Mills vicinity, 880003275

[FR Doc. 91–12055 Filed 5–21–91; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development and Economic Cooperation; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the One Hundredth and Sixth Meeting of the Board for International Food and Agricultural Development and Economic Cooperation (BIFADEC) on June 19, 12:30 p.m. to 5 p.m. and June 20, 8:45 a.m. to 11:30 a.m.

The purposes of the Meeting are: (A) To hear and discuss A.I.D. reactions to the recommendations of the BIFADEC Task Force on Development Assistance and Cooperation; (B) to review the status of the new AID Initiatives—in the Environment, Democracy, Partnership for Business and Development, the Family and Development, Toward Strategic Management, and Evaluation—and consider what role U.S. colleges and universities might play; (C) to discuss the Foreign Assistance Act rewrite process; (D) and to consider how to enhance relationships with U.S. college and university alumni in the developing world.

The June 19, 1991, meeting will be held in the Department of State, Administrator's Conference Room, room 5951, State Department Building. The June 20, 1991, meeting will also be held in the Administrator's Conference Room, room 5951, State Department Building. Any interested person may attend and may present oral statements in accordance with procedures established by the Board and to the extent the time available for the meeting permits.

The Bureau for Diplomatic Security has implemented new procedures for being in the Department of State building. All persons, visitors and employees, are required to wear proper identification at all times while in the building. Please let the BIFAD Staff know (at tel. no. 663–2575) that you expect to attend the meeting and on which days. Provide your full name, name of employing company of organization, address and telephone number not later than Monday, June 17, 1991.

A BIFADEC Staff member will meet you at the Department of State entrance at 21st Street (and Virginia Avenue) with your visitor's pass.

Due to the strict security at the Department of State, (even though you

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are pre-cleared) visitors will be required to present a valid identification and photograph to the receptionist before they can be admitted to the building.

Curtis Jackson, Bureau of Science and Technology, Office of Research and University Relations, Agency for International Development is designated as AID Advisory Committee Representative at this Meeting. It is suggested that those desiring further information write to Dr. Jackson, in care of the Agency for International Development, room 309, SA–18, Washington, DC 20523, or telephone him on (703) 875–4005.

Dated: May 16, 1991.

Ralph H. Smuckler,

Executive Director, Agency Center for University Cooperation in Development.

[FR Doc. 91–12064 Filed 5–21–91; 8:45 am]

BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–324]

Certain Acid-Washed Denim Garments and Accessories; Receipt of Initial Determination Terminating Respondent on the Basis of Consent Order Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a consent order agreement: Bon Jour International, Ltd/. Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on May 13, 1991.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–252–1000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original 14 copies of all such comments must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC20436, no later than 10 days after publication of this notice in the **Federal Register.** Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone 202–253–1802.

Issued: May 13, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–12139 Filed 5–21–91; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–323]

Certain Monoclonal Antibodies Used for Therapeutically Treating Humans Having Gram Negative Bacterial Infections

Notice is hereby given that the prehearing conference in this matter will commence at 9 a.m. on June 17, 1991, in Courtroom C (room 217), U.S. International Trade Commission Building, 500 E St. SW, Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register.**

Issued: May 15, 1991.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 91–12141 Filed 5–12–91; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–303]

Certain Polymer Geogrid Products and Processes Therefor

Order

Having considered complainant's motions of May 10, 1991, *it is hereby ordered That:*

1. The briefing scheduled pursuant to the Commission's order of May 2, 1991, for May 16, 1991, and May 23, 1991, is suspended until ten (10) and seventeen (17) days, respectively, after the Commission rules on complainant's alternative motion to either terminate the investigation for mootness and vacate the initial determination or to withdraw the complaint and vacate the initial determination.

2. Complainant's motion to expedite the responses of the respondents and the Commission investigative attorney to complainant's May 10, 1991, motions is denied.

3. Commission action on complaint's May 10, 1991, alternative motion to terminate the investigation for mootness and vacate the initial determination or to withdraw its complaint and vacate the initial determination is deferred pending consideration of the responses of the respondents and the Commission investigative attorney.

4. The Secretary shall serve copies of this Order on each party of record to this investigation.

Issued: May 15, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–12140 Filed 5–12–91; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–514 (Preliminary)]

Shop Towels From Bangladesh

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Bangladesh of shop towels,[3] provided for in subheading 6307.10.20 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Acting Chairman Anne E. Brunsdale did not participate in this determination.

[3] For purposes of this investigation, shop towels are defined as absorbent industrial wiping cloths made from a loosely woven fabric. The fabric may be either 100 percent cotton or a blend of materials. Shop towels are primarily used for wiping machine parts and cleaning ink, grease, oil, or other unwanted substances from machinery or other items in industrial or commercial settings.

Background

On May 29, 1991, a petition was filed with the Commission and the Department of Commerce by counsel for Milliken & Co., LaGrange, GA, alleging that an industry in the United States is materially injured and is threatened with futher material injury by reason of LTFV imports of shop towels from Bangladesh. Accordingly, effective May 29, 1991, the Commission instituted preliminary antidumping investigation No. 731–TA–514 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 5, 1991 (56 FR 14121). The conference was held in Washington, DC, on April 19, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 13, 1991. The views of the Commission are contained in USITC Publication 2379 (May 1991), entitled "Shop Towels from Bangladesh: Determination of the Commission in Investigation No. 731–TA–514 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: May 15, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–12138 Filed 5–21–91; 8:45 am]

BILLING CODE 7020–02–M

S–051999 0053(03)(21–MAY–91–13:06:58)

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31856]

Georgetown Railroad, Co.—Acquisition & Operation Exemption—Belton Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts Georgetown Railroad Company (GRR) from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, to purchase and operate approximately 6.277 miles of rail line, adjacent real property, and certain rail assets of Belton Railroad Company, subject to standard labor protective conditions and an historic preservation condition. The exemption is related to the notice of exemption in Finance Docket No. 31857.

DATES: The exemption will be effective on May 29, 1991. Petitions to reopen must be filed by June 17, 1991.

ADDRESSES: Send pleadings referring to Finance Docket No. 31856 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Betty Jo Christian, Steptoe & Johnston, 1330 Connecticut Avenue, NW., Washington, DC 20036–1795.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275–1721].

Decided: May 15, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–12142 Filed 5–21–91; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Proposed Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Greater Greensburg Sewage Authority*, Civil Action No. 91–0761 (W.D. Pa.) is available to the public for review and comment. The proposed consent decree resolves litigation in this matter with respect to the Greater Greensburg Sewage Authority ("GGSA") which is alleged to have been in violation of applicable effluent limitations in its National Pollutant Discharge Elimination System permit issued pursuant to the Clean Water Act. 33 U.S.C. 1342. The terms of the proposed decree are summarized in this notice to facilitate public review, and a copy of the proposed decree is being made available at the Department of Justice in Washington, DC and at the Office of the United States Attorney in Pittsburgh, Pennsylvania at the addresses below. The public is invited to submit comments concerning the decree to the Department of Justice, at the address specified below.

The decree arose out of allegations that GGSA had on numerous occasions violated the applicable provisions of its permit pursuant to which it discharges pollutants into the navigable waters of the United States from its sewage treatment plant in Westmoreland County, Pennsylvania. The decree provides that GGSA will adopt a program to control wet and dry weather discharges and to bring its treatment facility into complete compliance with its permit and the Clean Water Act by December 31, 1991. The decree also provides for a civil penalty of $160,000.

The Department of Justice will receive comments relating to the proposed decree until 30 days from the date of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Greater Greensburg Sewage Authority*, DOJ Ref. No. 90–5–1–1–3194. The proposed consent decree may be examined at the office of the United States Attorney, Western District of Pennsylvania, 633 USPO and Courthouse, 7th Avenue and Grant Street, Pittsburgh, Pennsylvania 15219. Copies of the consent decree may also be examined and obtained in person at the Environmental Enforcement Section Document Center, 1333 "F" Street, NW., suite 600, Washington, DC 20004.

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(Telephone 202-347-7829). A copy of the consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $8.00 (25 cents per page reproduction costs) payable to "Consent Decree Library."

Richard B. Stewart,

Environment and Natural Resources Division.

[FR Doc. 91-12106 Filed 5-21-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on May 10, 1991 a proposed consent decree in *United States* v. *Harrison Contracting, Inc.* Civ. Action No. 89-M-24, was lodged with the United States District Court for the District of Colorado. The action was brought under sections 112 and 113(b) of the Clean Air Act, 42 U.S.C. 7412 and 7413(b), for violations of the National Emissions Standards for Hazardous Air Pollutants codified at 40 CFR part 61.

The parties to the consent decree are United States and Harrison Contracting, Inc. ("Harrison"). The proposed consent decree requires Harrison to pay civil penalties in the amount of $132,500.00, implement a future compliance program, and dismiss with prejudice Harrison's counterclaims against the United States.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. The proposed Consent Decree may be examined at the Office of the United States Attorney, 633 17th Street, Suite 1600, Denver, Colorado 80202 and at the Region VIII office of the United States Environmental Protection Agency, 999 18th Street, Denver, Colorado 80202. The proposed Consent Decree may also be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., Suite 600, Washington, DC 20004, (202) 347-7829. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $3.50 (25 cents per page reproduction costs) payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-12110 Filed 5-21-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and pursuant to section 122(d)(2) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9622(d)(2) ("CERCLA"), notice is hereby given that on May 9, 1991, a proposed Partial Consent Decree in *United States* v. *Intel Corporation and Raytheon Company* was lodged with the United States District Court for the Northern District of California. This Consent Decree provides for partial remediation of a groundwater contamination site in Mountain View, California (the "Site"), and reimbursement of past and future costs incurred by the United States in connection with the Site.

The Partial Consent Decree resolves the United States' claims against Intel and Raytheon for injunctive relief and cost recovery under sections 106 and 107 of CERCLA.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Intel Corporation and Raytheon Company*, DOJ Ref. No. 90-11-2-244.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California 94102, or at the Office of the Regional Counsel, Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA. 94103. The proposed Consent Decree may be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202-347-2072). A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclosed a check in the amount of $ 66.25 (25 cents per page reproduction costs) payable to Consent Decree Library.

Richard B. Steward,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-12109 Filed 5-21-91; 8:45 am]

BILLING CODE 4410-10-M

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States of America* v. *Morgan, et al.*, No. H-90-390 (PCD) (D. Conn.), has been lodged with the United States District court for the District of Connecticut.

The proposed consent decree concerns alleged violations of the Clean Water Act, 33 U.S.C. 1311, as a result of the discharge of fill material into approximately 15 acres of open water and freshwater wetlands located in Suffield, Hartford County, Connecticut, which constitute "waters of the United States." The consent decree requires the defendants, William D. Morgan, Jr., Charles G. Christie, and Winding Brook Turf Farm, Inc., a Connecticut corporation, to pay a $35,000 civil penalty, restore the wetlands, and agree to certain land use restrictions in the wetlands and adjoining uplands.

The Department of Justice will receive, for a period of thirty (30) days from the date of publication of this notice, written comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Attention: Charles R. Meyer, P.O. Box 23986, Washington, DC 20026-3986 and should refer to *United States* v. *Morgan, et al.*, DJ Reference No. 90-5-1-1-3481.

The consent decree may be examined at the Clerk's Office, United States District Court, U.S. Courthouse Room 224, 450 Main Street, Hartford, Connecticut 06103.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-12107 Filed 5-21-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Department Policy, 28 CFR 50.7, notice is hereby given that on April 4, 1991 a consent decree in *United States* v. *R & Y, Inc., et al.*, Civil Action No. A88-87 (D. Alaska) was lodged with the United States District Court for the District of Alaska.

The proposed consent decree concerns alleged violations of sections 301 and 404 of the Clean Water Act, 33 U.S.C. 1311 and 1344, as a result of the discharge of dredged and fill material into wetlands located in Tract B, and Lot 7 of 6800 Industrial Park Subdivision in Anchorage, Alaska. The Site of the violations is owned by R & Y, Inc., and Josef Ressel and is depicted by a map attached to the consent decree lodged with the Court. The fill materials consisted of soil and rock and were discharged into wetlands areas by the defendants without authorization from the U.S. Army Corps of Engineers, in accordance with 33 U.S.C. 1344.

The consent decree requires the defendants to remove all unauthorized fill material, and to restore the area to its original condition by specified grading and revegetation. The decree further requires R & Y, Inc., Josef Ressel, and Edward Young, jointly and severally, to pay a civil penalty of $7,500.00 within 30 days of entry of the consent decree.

The Department of Justice will receive until May 31, 1991, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Attention: Robert Lefevre, Trial Attorney, room 7204, 10th St. & Constitution Avenue, NW., Washington, DC 20530, and should refer to *United States* v. *R & Y, Inc., et al.*, Civil Action No. A88-97 (D. Alaska), DJ Reference No. 90-5-1-1-2842.

The consent decree may be examined at the Clerk's Office, United States District Court, 222 West Seventh Avenue, Anchorage, Alaska 99513-7564.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-12108 Filed 5-21-91; 8:45 am]

BILLING CODE 4410-01-M

Federal Bureau of Investigation

Meeting; Advisory Policy Board National Crime Information Center

The Advisory Policy Board of the National Crime Information Center (NCIC) will meet on June 5-6, 1991, from 9 a.m., until 5 p.m. at the College of Charleston Conference Center, 160 Calhoun Street, Charleston, South Carolina 29425.

The topics to be discussed will include the progress of NCIC 2000 Phase II, the progress of the Identification Division automation project, and other operational matters.

The meeting will be open to the public with approximately 20 seats available for seating on a first-come, first-served basis. Any member of the public may file a written statement with the Advisory Policy Board before or after the meeting. Anyone wishing to address a session on the meeting should notify the Advisory Committee Management Officer, Mr. William A. Bayse, FBI, at least 24 hours prior to the start of the session. The notification may be by mail, telegram, cable, or hand-delivered note. It should contain the name, corporate designation, along with a capsulized version of the statement and an outline of the material to be offered. A person will be allowed not more than 15 minutes to present a topic, except with the special approval of the Chairman of the Board.

Inquiries may be addressed to Mr. David F. Nemecek, Committee Management Liaison Officer, NCIC, Federal Bureau of Investigation, Washington, DC 20535, telephone number 202-324-2606.

Dated: May 10, 1991.

Kier T. Boyd,

Deputy Assistant Director, Technical Services Division, FBI.

[FR Doc. 91-12056 Filed 5-21-91; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Use of Alternative Dispute Resolution and Negotiated Rulemaking Procedures

AGENCY: Office of the Secretary, Labor.

ACTION: Request for comments on proposed Departmental policy.

SUMMARY: The Department is developing a policy to implement two important and recently enacted amendments to the Administrative Procedure Act. These are the Administrative Dispute Resolution Act (ADR) and the Negotiated Rulemaking Act (Neg-Reg). Both of these acts authorize and encourage agencies to use arbitration, mediation, negotiated rulemaking, and other consensual methods of dispute resolution.

Section 3(a) of the ADR requires the Department to adopt a policy as to how it intends to implement the statute in each of the following areas: (a) Formal and informal adjudications; (b) rulemakings; (c) enforcement actions; (d) issuing approvals and variances; (e) contract administration; (f) litigation brought against or by any part of the Department; and (g) other Departmental actions. The Department is seeking comments at this time so that the affected public may be involved at the outset in the development of procedures to implement both ADR and Neg-Reg in the Department of Labor.

DATES: Comments are due by July 22, 1991.

ADDRESSES: Send comments to Roland Droitsch, Deputy Assistant Secretary for Policy, U.S. Department of Labor, room S-2312, Francis Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone 202-523-6197.

FOR FURTHER INFORMATION CONTACT: Roland Droitsch, Deputy Assistant Secretary for Policy, U.S. Department of Labor. Telephone 202-523-6197.

SUPPLEMENTARY INFORMATION: In response to a requirement of the Administration Dispute Resolution Act, Public Law 101-552, the Department intends to develop a general policy which encourages greater use of alternative dispute resolution techniques whenever the parties involved agree to them and it is practical to do so in light of other statutory requirements. Among the alternative dispute resolution techniques mentioned in the law is the use of negotiated rulemaking under appropriate circumstances, the criteria for which are set forth in more detail in a separate enactment, the Negotiated Rulemaking Act, Public Law 101-648.

The scope of these two new statutes is broad. In enacting the ADR, Congress expressed concern that administrative proceedings have become too formal and lengthy, and asserted that alternative procedures may, in at least some instances, be faster, less contentious, and more economical. However, ADR techniques will not be appropriate in every situation; the statute indicates, for example, they should not be used for precedent setting cases, those where a formal record is essential, and those bearing on significant policy questions. Within such limitations, the Department plans to explore extensive use of ADR techniques, including whether any of its current procedures and rules need to be modified to allow for greater use of ADR.

In enacting the Neg-Reg statute, Congress indicated its concern that traditional rulemaking procedures may discourage affected parties from communicating openly with each other and with Federal agencies, and encourages them to assume extreme conflicting positions which often results in costs and time-consuming litigation. While agencies have been able to experiment with alternative techniques to avoid these consequences, the Neg-Reg Act amended the Administrative Procedure Act to clearly establish a process for negotiating a proposed rule.

The Department will develop its ADR policy with full consultation with the

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Administrative Conference of the United States and the Federal Mediation and Conciliation Service as required by section 3(a) of the ADR Act. To this end, the Department has already designated its ADR Specialist (the Assistant Secretary for Policy) to serve as liaison with those agencies and as coordinator of the Department's ADR implementation. A full survey of existing Departmental practices is planned.

Commenters are encouraged to provide specific comments that relate to activities of the Department; and most particularly, to bring to the attention of the Department any experience to date with ADR or Neg-Reg activities of the Department, areas of the Department's operations which might readily benefit from the use of such techniques, areas in such techniques should be limited or not used at all, or any other matter which they believe would be of interest to the Department as it develop its policy in these areas.

Signed at Washington, DC, this 17th day of May 1991.

Debra A. Bowland,

Acting Assistant Secretary for Policy.

[FR Doc. 91-12165 Filed 5-21-91; 8:45 am]

BILLING CODE 4510-23-M

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: June 12, 1991, 9:30 a.m.-12 noon, Rm. S-2217, FPBldg., Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. section 552(c)(1). The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For futher information, contact: Fernand Lavallee, Director, Trade Advisory Group, Phone: (202) 523-2752.

Signed at Washington, DC this 16th day of May, 1991.

Shellyn G. McCaffrey,

Deputy Under Secretary, International Affairs.

[FR Doc. 91-12166 Filed 5-21-91; 8:45 am]

BILLING CODE 4510-23-M

Employment and Training Administration

[TA-W-25,587]

CRL Components West Allis, WI; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 25, 1991 in response to a worker petition which was filed by the Allied Industrial Workers of America, Local 765, on March 25, 1991 on behalf of workers at CRL Components, West Allis, Wisconsin.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this care would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 15th day of May 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-12164 Filed 5-21-91; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 91-43]

NASA Advisory Council, Space Science and Applications Advisory Committee, Exploration Science Working Group; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Exploration Science Working Group.

DATES: June 4, 1991, 8:30 a.m. to 5 p.m.

ADDRESSES: The Technical and Administrative Services Corporation (TADCORPS), Capital Gallery Building, 600 Maryland Avenue SW., Suite 235, East Wing, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dr. Carl B. Pilcher, Code S, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1509).

SUPPLEMENTARY INFORMATION: The Exploration Science Working Group (EXSWG) reports to the Space Science and Applications Advisory Committee (SSAAC) and consults with the advises the NASA Office of Space Science and Applications (OSSA) on identifying and addressing science issues associated with human exploration missions to the Moon and Mars. The EXSWG will meet with representatives of the Exploration Outreach Synthesis Group to discuss interactions between EXSWG and the Synthesis Group and future EXSWG activities. The EXSWG is chaired by Dr. David C. Black and is composed of 19 members. The meeting will be open to the public up to the seating capacity of the room (approximately 50 people including members of the EXSWG). It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Type of Meeting: Open.

Agenda: Tuesday, June 4, 1991.

8:30 a.m.—Opening Remarks.

9 a.m.—Presentation and Examination of Exploration Outreach Synthesis Group Report.

3 p.m.—Writing and Review of EXSWG Conclusions on Exploration Outreach Synthesis Group Report.

5 p.m.—Adjourn.

Dated: May 16, 1991.

Danalee Green,

Director, Management Controls Office.

[FR Doc. 91-12160 Filed 5-21-91; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL COMMISSION ON SEVERELY DISTRESSED PUBLIC HOUSING

Meeting Announcement

AGENCY: The National Commission on Severely Distressed Public Housing.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Commission on Severely Distressed Public Housing announces a forthcoming meeting of the Commission.

DATES: June 2 & 3, 1991, 9 a.m. to 3:30 p.m.

ADDRESSES: Atlanta Housing Authority, 739 West Peachtree Street, NE., Atlanta, GA.

FOR FURTHER INFORMATION CONTACT: Carmelita Pratt, Administrative Officer, The National Commission on Severely Distressed Public Housing, 7th & D Street, SW., Washington, DC 20407 (202) 708-5702.

TYPE OF MEETING: Open.

AGENDA: Approval of Charter and Memorandum of Understanding, Discussion of Meeting Schedule, Approval of Budget and Staffing, Discussion of Goals of the Commission.

Due to scheduling difficulties, this notice could not be published 15 days prior to this meeting as required by Federal Advisory Committee Act.

Carmelita R. Pratt,

Administrative Officer.

[FR Doc. 91-12046 Filed 5-21-91; 8:45 am]

BILLING CODE 6820-07-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by June 21, 1991.

ADDRESSES: Send comments to Mr. Dan Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503 (202-395-7316). In addition, copies of such comments may be sent to Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202-682-5401).

FOR FURTHER INFORMATION CONTACT: Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202-682-5401); from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a revision of a currently approved collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: State and Regional Program FY 1992 Guidelines.

Frequency of Collection: Biennially; Triennially.

Respondents: State or local governments.

Use: The requested information is needed to enable the Endowment to determine whether applicants meet eligibility requirements and criteria, and to provide the Endowment with information on past performance of applicant agencies.

Estimated Number of Respondents: 22.

Average Burden Hours per Response: 12.

Total Estimated Burden: 264.

Anne C. Doyle,

Management Analyst, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 91-12067 Filed 5-21-91; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70-687]

Consideration of Amendment to Cintichem, Inc. License and Opportunity for Hearing; Cintichem, Inc.

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Special Nuclear Materials License No. SNM-639 issued to Cintichem, Inc. for the use of special nuclear material at its facility located in Tuxedo, New York.

The licensee requested the amendment in a letter dated April 17, 1991, which referenced a decommissioning plan, an environmental report and a radiological accident analysis that had previously been submitted to the Commission on October 19, 1990.

The amendment would authorize the licensee to perform decommissioning of the: (a) Laboratory/hot cell building (Building 2) and associated structures; (b) areas in the reactor building (Building 1) and associated structures subject to this license amendment; and (c) the waste storage building (Building 6) and associated structures, in accordance with the licensee's decommissioning plan.

Buildings 1, 2, and 6 contain radioactivity and radioactive components, and waste generated as a result of operation of Cintichem's reactor facility from 1961 thru 1990. On February 9, 1990, the licensee reported the identification of an unmonitored release of radioactively contaminated water from the reactor building to an on-site retention pond. It was determined that this release had resulted from the failure of part of a concrete wall in the gamma pit (the gamma pit is a water filled pool which is used for the temporary storage of radioactive materials). Cintichem voluntarily ceased operation of the reactor facility on February 9, 1990.

On February 12, 1990, the licensee informed the Commission that another concrete vessel on site (the hold-up tank, which is located in Building 1 and is used to allow the decay of short-lived isotopes in the reactor coolant), also apparently had developed a leak.

On February 13, 1990, the Commission issued an order requiring that the Cintichem facility remain shutdown until existing leaks at the facility were identified and repaired.

In a letter dated May 31, 1990, the Commission was informed that Cintichem had decided to decommission the reactor and radiochemical processing facilities and was preparing a decommissioning plan. On January 14, 1991, the Commission noticed in the Federal Register (56 FR 1422, Monday, January 14, 1991) that the Commission was considering the issuance of an Order authorizing Cintichem to dismantle the reactor facility, dispose of the waste and terminate License No. R-81 in accordance with the licensee's application dated October 19, 1990.

On April 17, 1991 the Commission received a request from the licensee to amend special nuclear materials license SNM-639 to decommission the facilities and areas associated with the activities carried out under this license.

Prior to issuance of the proposed amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended, and the Commission's regulations.

Because the facility holds two licenses issued by the Commission, it was determined that decommissioning activities pursuant to the termination of special nuclear material license SNM-639 were also subject to the requirements of 10 CFR Part 2 and any person whose interests might be affected by these proceedings must be given the opportunity to file a request for a hearing.

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of Subpart L, informal Hearing Procedures for Adjudications in Materials Licensing Proceedings, of the Commission's Rules of Practice for Domestic Licensing Proceedings in 10 CFR Part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205, a request for a

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hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** Notice. The request for hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

In addition to meeting other applicable requirements of 10 CFR part 2 of the Commission's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

a. The interest of the requestor in the proceeding;

b. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

c. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

d. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

Each request for a hearing must also be seved, by delivering it personally or by mail to:

1. The applicant, Cintichem, Inc. to the attention of Mr. J.J. McGovern, President/Plant Manager, P.O. Box 816, Tuxedo, New York 10987; and

2. The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Any hearing that is requested and granted will be held in accordance with the Commisison's Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings in 10 CFR part 2, subpart L.

For further details with respect to the proposed action, see the licensee's request for license amendment dated April 17, 1991, which is available for inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC.

Dated at Rockville, Maryland this 15th day of May, 1991.

For the Nuclear Regulatory Commission.

John H. Austin,

Chief, Decommissioning and Regulatory Issues Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 91-12152 Filed 5-21-91; 8:45 am]

BILLING CODE 7590-01-M

Combustion Engineering, Inc.; Correction to Notice of Receipt of Application for Design Certification

On May 8, 1991, the Nuclear Regulatory Commission published a Notice in the **Federal Register** concerning Combustion Engineering, Inc., Receipt of Application for Construction Permit and Facility Operating License (56 FR 21395); however, the title should have read: Combustion Engineering, Inc., Receipt of Application for Design Certification.

Dated at Rockville, Maryland this 15th day of May 1991.

For the Nuclear Regulatory Commission.

Charles L. Miller

Director, Standardization Project Directorate, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 91-12170 Field 5-21-91; 8:45 am]

BILLING CODE 7590-01-M

RESOLUTION TRUST CORPORATION

Disclosure of Asset-Related Information

AGENCY: Resolution Trust Corporation.

ACTION: Request for Comments.

SUMMARY: The Resolution Trust Corporation ("RTC") is soliciting comments from the public on certain issues regarding the disclosure of information related to the sale of assets owned or controlled by the RTC. Comments are solicited to assist RTC in the development of a policy statement regarding disclosure of such information.

DATES: Comments must be received by June 21, 1991.

ADDRESSES: Comments should be sent to Executive Secretary, Resolution Trust Corporation, 801 17th Street, NW., Washington, DC 20434.

FOR FURTHER INFORMATION CONTACT: John C. Binkley, Special Assistant to the Executive Secretary, at (202) 416-7450.

SUPPLEMENTARY INFORMATION:

Background

The RTC was established by Congress in August 1989 to contain, manage, and sell failed savings institutions, and to recover taxpayer funds through the management and sale of the institutions' assets. The law establishing RTC, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Pub. L. 101-73), requires, among other things, that RTC conduct its operations in a manner which maximizes the return from the sale of assets of failed institutions, yet which minimizes the impact of such transactions on local real estate and financial markets. The RTC also has certain responsibilities to keep the taxpayers and citizens informed of its activities, to the maximum extent practicable. RTC management is concerned that in an effort to provide maximum information about its activities, disclosure of certain information regarding its sales may adversely affect its ability to maximize recoveries, as the law requires. To assist in the development of a disclosure policy regarding asset-related information, the RTC is hereby seeking public comment on a number of relevant issues.

This solicitation of comments is not made in connection with the promulgation of a substantive rule or regulation, as provided for by the Administrative Procedure Act (5 U.S.C. 551 et seq.), but is made to assist the RTC in the development of a general policy statement regarding the voluntary release of information. Accordingly, if a policy is developed, it will not be determinative of the rights of the RTC, of the rights of requesters, or of the rights of submitters of information under the Freedom of Information Act (5 U.S.C. 552). Any policy statement adopted would constitute only a guide to the staff of the RTC and the public on the kinds of asset-related information that the RTC will generally decide to release. Such policy would also provide for the retention by the RTC of the discretion to withhold, at any time, information of the kind which had theretofore been routinely released, or to disclose, at any time, information which had theretofore been routinely withheld, as circumstances warrant.

All information submitted in response to this solicitation for comments will be reviewed unless the volume of information submitted would make review impractical. However, the RTC may or may not use such information as the basis for any policy which might subsequently be adopted.

Request for Comments

Although the RTC has not heretofore adopted a policy, it has made tentative determinations regarding the likelihood of disclosure of such information. It is presently anticipated that the RTC will routinely decide to disclose the following: the amount of money paid for any asset sold by the RTC, the lowest amount bid or offered for that asset, and the number of bids or offers received for the purchase of any asset offered for sale. It is presently anticipated that the RTC will rountinely decide to decline to disclose any amount bid or offered for the purchase of an asset that has been sold, other than the purchase price and the lowest bid or offer.

Considering the foregoing, the following issues are of particular importance and public comment is sought thereon:

1. Identities of Purchasers

(a) Should the identities of the purchasers of various assets offered for sale by the RTC be disclosed to the public? If so, why? If not, why not?

(b) Should the answer to 1(a) depend upon the particular type or category of asset sold? That is, would it make a difference—and why would there be a difference—depending upon whether the asset sold were:

(1) Loans,
(2) Real estate owned,
(3) Subsidiary corporations,
(4) Servicing agreements,
(5) Furniture, fixtures and equipment, or
(6) Securities.

2. Identities of Losing Bidders

(a) Should the identities of the losing bidders for various assets offered for sale by the RTC be disclosed to the public? If so, why? If not, why not?

(b) Should the answer to 2(a) depend upon the particular type or category of asset offered for sale? That is, would it make a difference—any why would there be a difference—depending upon whether the asset offered were:

(1) Loans,
(2) Real estate owned,
(3) Subsidiary corporations,
(4) Servicing agreements,
(5) Furniture, fixtures and equipment, or
(6) Securities.

3. Effect of Disclosure on Bids and Offers

(a) Do you believe that the disclosure of any of the information discussed above (i.e., the amount of the purchase price, the identity of the purchaser, the amounts of losing bids, the identities of losing bidders) would affect the number of parties submitting bids or making offers for assets? Would disclosure of any of this information affect the prices bid or offered?

(b) If you personally were a potential offeror for any of these types of assets, how would our determination on any of the issues outlined above affect your decision as to whether you would submit an offer, or the amount of your offer?

(c) Would your answer be different, depending upon the type of asset offered (loans, real estate owned, etc.)?

By order of the Board of Directors.

Dated at Washington, DC, this 7th day of May 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91-12038 Filed 5-21-91; 8:45 am]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

May 16, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Americus Trust for American Home Products Corp.
Prime Component, No Par Value (File No. 7-6826)
Americus Trust for American Telephone & Telegraph Co.
Prime Component Series 2, No Par Value (File No. 7-6827)
Americus Trust for Amoco Corp.
Prime Component, No Par Value (File No. 7-6828)
Americus Trust for Arco Chemical Co.
Prime Component, No Par Value (File No. 7-6829)
Americus Trust for Bristol-Myers Co.
Prime Component, No Par Value (File No. 7-6830)
Americus Trust for Chevron Corp.
Prime Component, No Par Value (File No. 7-6831)
Americus Trust for Coca Cola Co.
Prime Component, No Par Value (File No. 7-6832)
Americus Trust for DuPont (E.I.) De Nemours
Prime Component, No Par Value (File No. 7-6833)
Americus Trust for Ford Motors Co.
Prime Component, No Par Value (File No. 7-6834)
Americus Trust for General Electric
Prime Component, No Par Value (File No. 7-6835)
Americus Trust for General Motors Corp.
Prime Component, No Par Value (File No. 7-6836)
Americus Trust for GTE Corp.
Prime Component, No Par Value (File No. 7-6837)
Americus Trust for Hewlett-Packard
Prime Component, No Par Value (File No. 7-6838)
Americus Trust for Int'l Business Machines Co.
Prime Component, No Par Value (File No. 7-6839)
Americus Trust for Johnson & Johnson
Prime Component, No Par Value (File No. 7-6840)
Americus Trust for Merck & Co.
Prime Component, No Par Value (File No. 7-6841)
Americus Trust for Mobil Corp.
Prime Component, No Par Value (File No. 7-6842)
Americus Trust for Phillip Morris Companies
Prime Component, No Par Value (File No. 7-6843)
Americus Trust for Procter & Gamble Co.
Prime Component, No Par Value (File No. 7-6844)
Americus Trust for Sears, Roebuck & Co.
Prime Component, No Par Value (File No. 7-6845)
Americus Trust for Union Pacific Corp.
Prime Component, No Par Value (File No. 7-6846)
Americus Trust for Xerox Corp.
Prime Component, No Par Value (File No. 7-6847)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 6, 1991, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the appropriations if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-12066 Filed 5-21-91; 8:45 am]

BILLING CODE 8010-01-M

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[Release No. 34-29195; File No. SR-GSCC-91-01]

Self-Regulatory Organizations; Government Securities Clearing Corp.; Proposed Rule Change Relating to Conversion of Yield Trades to Priced Trades at Time of Comparison

May 15, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 2, 1991, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would make specific conforming changes to GSCC's rules that would allow GSCC to automatically convert yield trades into priced trades at the time of their comparison on a yield basis, based on an assumed coupon. This will: (1) allow such yield trades to be netted and novated (and marked-to-market)—in the same manner as are final money trades—as early as on the night after the trade is entered into (assuming that the trade is compared on a yield basis); and (2) eliminate the need for double submission of when-issued trades.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

New Treasury Note and Bond issues are actioned on a Yield-to-maturity basis, reflecting the rate of return realized if the security is held to maturity and if coupon interest payments are reinvested at such yield. Firms that trade notes and bonds in the secondary market on a when-issued basis during the time period from announcement to auction do so based on the then current market yield without knowledge of what the coupon actually will be. (During that period, such firms can use a standard Treasury Department conversion formula and an assumed coupon rate to derive the prices of trades that they have done in a security on a yield basis; this might be done, for example, for internal surveillance purposes in order to monitor the firm's credit exposure.) After the auction is completed and the coupon rate is established, each successful auction bidder is charged a price for the securities that it has bid on that is calculated so that the yield to maturity on the securities equals the yield that was bid.

Currently, when-issued trades submitted to GSCC are eligible for the net only if they have been compared by GSCC post-auction on a final price basis. GSCC is proposing the rule change in order to make available to netting members the protection and efficiencies provided by netting as soon as possible after the trading among such members in eligible securities commences.

Initially, only Treasury Notes and Bonds will be eligible for yield-to-price conversion. Data will continue to be accepted in yield format at any time prior to maturity date. Yield data will be converted and compared with data submitted on a price basis from auction date until maturity date.

GSCC will derive a standard yield-to-price conversion formula using the Treasury Department's Formulas. The coupon rate used prior to auction will be an assumed one that will be calculated based on a par-weighted average yield, adjusted down to the nearest ⅛th, derived using recent compared trade data. The assumed coupon rate will be recalculated daily, and will be revised automatically if a movement of ⅛th of a point or more occurs, or otherwise as deemed appropriate by GSCC. Of course, on an auction date, the price will be calculated based on the actual coupon.

The system value of a converted trade will be calculated pre-auction (for the purpose of calculating a member's forward mark allocation requirement) based on par value, the assumed coupon/price, and accrued interest (if applicable).

The calculation of the assumed price will take into account commission. Yield trades should be submitted with commission data; however, GSCC understands that certain firms may initially not be able to do so. In general, in order to avoid generating uncompared trades as the result of either a lack submission of a commission amount or a mistake in the submission of a commission amount, if the data submitted on a yield basis involving a trade between a broker member and a dealer member meet all of the criteria for comparison other than the information submitted regarding commission, and the dealer has submitted a commission amount that does not match the commission amount submitted by the broker, the trade will be compared based on the commission amount being equal to that submitted by the broker. Notwithstanding the above, a dealer member may specify criteria required for a valid comparisons to occur.

The comparisons by GSCC of a yield trade involving unmatched commission amounts—while evidencing a valid, binding, and enforceable contract between the member-parties to the trade to the same degree as if the commission amounts matched—will not constitute a final, binding determination on those firms as to the correct commission amount. Broker members will have an ongoing obligation to their dealer member counterparties to respond promptly to such dealers' commission difference inquiries, and to act in good faith to resolve all alleged differences.

Members' comparison output will contain appropriate indication that a trade has been converted from yield to price status. The fee to be charged to members for the conversion of data submitted on a yield basis to priced data will be determined by the Board in the near future.

Initially, members will be permitted to choose to not participate in the conversion process. Such members will have to continue to resubmit trade data post-auction on a final money basis. As regards participating Netting Members, forward net settlement positions comprised in whole or part of converted trades pre-auction will be included in the calculation of such members' required Clearing Fund deposits and forward mark allocation amounts, in the same manner as if data on the trade had been submitted post-auction on a priced basis. As regards non-participating Netting Members, GSCC will calculate on each business day during the pre-auction period their required Clearing Fund deposit and forward mark allocation amounts as if they were participating, and will, for the protection of other members, expressly reserve the right to collect Clearing Fund deposits and forward mark allocation monies from such members as if they were participating, if such members' margin requirements break certain pre-established parameters.

The proposed rule change would make available to netting members the protections and efficiencies provided by netting as soon as possible after the trading in the eligible securities commences. Thus, it is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not perceive that the proposed rules changes impact on, or impose a burden on, competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rules changes have not yet been solicited or received. GSCC will notify members of the rule filing, and will solicit comments, by an Important Notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding, or (ii) as to such period that the self-regulatory consents, the Commission will:

(A) By order approve such proposed rule change, or

B) Institute proceedings to determine whether the proposed rule change would be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW. Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principle office of GSCC. All submissions should refer to File No. SR-GSCC-91-01 and should be submitted by June 12, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-12072 Filed 5-21-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

May 16, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Duracell International, Inc.
Common Stock, $.01 Par Value (File No. 7-6815)
Manpower, Inc.
Common Stock, $.01 Par Value (File No. 7-6816)
Haemonetics Corporation
Common Stock, $.01 Par Value (File No. 7-6817)
Telefonos de Mexico S.A. De C.V.
American Depositary Shares representing 20 Series L Shares, No Par Value (File No. 7-6818)
Alafirst Bancshares, Inc.
Common Stock, $.01 Par Value (File No. 7-6819)
GBC Bancorp
Common Stock, No Par Value (File No. 7-6820)
Hanger Orthopedic Group, Inc.
Common Stock, $.01 Par Value (File No. 7-6821)
Home Oil Company Limited
Common Stock, No Par Value (File No. 7-6822)
Identix Incorporated
Common Stock, $.01 Par Value (File No. 7-6823)
Lifetime Products, Inc.
Common Stock, $.01 Par Value (File No. 7-6824)
Provena Foods, Inc.
Common Stock, No Par Value (File No. 7-6825)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 6, 1991, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-12069 Filed 5-21-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for hearing; Pacific Stock Exchange, Inc.

May 16, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following security:

Duracell International, Inc.
Common Stock, $.01 Par Value (File No. 7-6848)

This security is listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 6, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair

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and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-12070 Filed 5-21-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

May 16, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Patriot Premium Dividend Fund I
Common Stock, No Par Value (File No. 7-6810)

Patriot Select Dividend Trust
Common Stock, No Par Value (File No. 7-6811)

Van Kampen Merritt Intermediate Term High Income Fund
Common Stock, $0.01 Par Value (File No. 7-6812)

Telefonos de Mexico S.A.
American Depositary, No Par Value (File No. 7-6813)

Manpower Incorporated
Common Stock, $.01 Par Value (File No. 7-6814)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 6, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-12071 Filed 5-21-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29190; File No. SR-PHLX-91-06]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Filing of Proposed Rule Change Relating to Applicant Access-Regulation 5

Pursuant to section (b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 25, 1991, the Philadelphia Stock Exchange, Inc. ("PHLX" or "EXCHANGE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, pursuant to Rule 19b-4 of the Act, proposes to amend Regulation 5—Guest, enacted as a rule of order and decorum under PHLX Rule 60. The proposal contemplates awarding "Applicant" status to prospective members for whom an application for membership has been filed and for whom the personal background check has been completed, but whose membership will not become final until the subsequent three week posting period has been completed. Applicant status grants unescorted access to the trading floor of the Exchange by way of an Applicant Access Card for a period of twenty business days and also qualifies the Applicant to be issued an Applicant floor badge. After the twenty day period has expired, the access card is automatically terminated and the applicant must reapply to the chairman (or designee) of the Committee on Admissions for a new access card. A copy of proposed Regulation 5 is attached as Exhibit A.

II. Self-Regulatory Organization's Statements Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The PHLX proposes the addition of this regulation, as a Regulation of Order and Decorum under PHLX Rule 60, in order to ensure the integrity of its security system by requiring prospective members to comply with certain requirements before securing access to the trading floor. Specifically, under the present wording of Regulation 5, a prospective member, just as all visitors, must be signed in by either a member, associated person of a member or an Exchange official in order to access the trading floor, and then must be continuously accompanied by such person while on the floor. (See PHLX Rule 60, Regulations of Order and Decorum, Regulation 5—Guests.)

The PHLX proposes to add an additional provision to Regulation 5 pertaining specifically to a prospective member who is often a "visitor" for many days before membership is secured. In this regard, a prospective member shall be required to file an application with the Office of the Secretary, which will trigger certain clearance procedures by both the Secretary's Office as well as the Examinations Department to verify personal integrity and financial viability. These procedures normally require approximately ten business days to complete, during which time the prospective member remains in a "visitor" status, requiring signature for entry and accompaniment pursuant to Regulation 5. Once the clearance is completed, however, the applicant will be issued an Applicant Access Card and Badge, both identifying such person as an "APPLICANT". At this time, the applicant may access the floor and remain there without accompaniment. This access will continue for twenty business days, at which time the Applicant Access Card automatically expires and access is denied, returning the prospective member to a "visitor" status. This twenty day period corresponds to the time period normally required for the posting process for membership. If this process is not complete within 20 days, the applicant may reapply for access to the Chairman of the Admissions Committee, resulting in the reactivation of the Applicant Access Card and reissuance of the Applicant Badge.

In order to implement this procedure, the PHLX will charge a fee of $25.00 each for the Applicant Access Card and the Applicant Badge.

The Exchange's security will be increasingly fortified by the creation of this new class of access cards and floor badges. The PHLX believes that this procedure will reduce the amount of time that prospective members spend on the floor as "visitors". Thereby, accountability is increased because an application and preliminary clearance are required. Prospective members will favor seeking applicant status in order to gain access without having to arrange for a signature and escort from a member/associated person or Exchange official. These persons will be relieved from burden of continuously escorting prospective members, at least once such applicant status is achieved. Moreover, members on the floor, and more importantly, members of the Admissions Committee, will be able to identify applicants by their badge and observe them for purposes of a three week observation period generally imposed by the Committee in order to ensure that applicants are familiar with trading floor logistics, rules, procedures and practices. And finally, in the infrequent instance where an Applicant has been approved for floor membership status but then fails to secure a business purpose requiring presence on the floor (i.e. ROT, floor broker, specialist), the Admissions Committee will now be notified by way of the expired access card and will thus monitor the status of such persons and their applications.

The proposed rule change is consistent with the Act, and, in particular, with section 6(b)(5), which requires exchange rules to be designed to promote the mechanism of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the PHLX consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR-PHLX-91-06 and should be submitted by June 12, 1991.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 13, 1991.

Margaret H. McFarland,

Deputy Secretary.

Exhibit A—Text of Amended Regulation 5; New text italicized; deleted text bracketed

Regulation 5—VISITORS AND APPLICANTS [GUESTS]

Non-member *visitors* [guests] will be permitted on the trading floor at the discretion of the respective floor committee (Options, FCO or Floor Procedures). All *visitors* [guests] must be signed in by a member or Exchange official and accompanied at all times by a member, associated person of a member or an Exchange official. *As a visitor, the applicant must be escorted by a representative of a member firm at all times while on the trading floor, and failure to do so shall result in a violation of this regulation by such member firm.*

Once an applicant has filed an application with the Office of the Secretary, the applicant may be admitted as a visitor for ten business days, after which an application for an Applicant Access Card/Floor Badge must be submitted. Twenty-one days after the Access Card is issued, it will automatically expire; an applicant may apply to the Chairman of the Admissions Committee or his designee for a twenty-day extension.

1st Occurrence	Official Warning.
2nd Occurrence	$50.00.
3rd Occurrence	$100.00.
4th Occurrence	$200.00.
5th and Thereafter	Sanction Discretionary with Business Conduct Committee.

[FR Doc. 91-12073 Filed 5-21-91; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 18149; International Series Rel. No. 271; 812-7708]

Mutual Risk Management Ltd.; Notice of Application

May 15, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Mutual Risk Management Ltd. ("MRM").

RELEVANT 1940 ACT SECTIONS: MRM seeks an order under section 6(c) or alternatively, under section 3(b)(2).

SUMMARY OF APPLICATION: MRM seeks a conditional order under section 6(c) permitting it to offer and sell its equity securities in the United States without registering as an investment company under the 1940 Act. Alternatively, MRM seeks an order under section 3(b)(2) declaring that it is primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities.

FILING DATES: The application was filed on April 5, 1991 and amended on May 10, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by

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mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 6, 1991, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, c/o Richard E. O'Brien, Esq., Dunnington, Bartholow & Miller, 666 Third Avenue, New York, NY 10017.

FOR FURTHER INFORMATION CONTACT: C. Christopher Sprague, Senior Staff Attorney, at (202) 272–3035, or Max Berueffy, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. MRM was incorporated under the laws of Bermuda in 1977. MRM provides risk financing and insurance risk management services through its United States and foreign subsidiaries. MRM's principal business is its Insurance Profit Center ("IPC") program which is conducted primarily through Legion Insurance Company ("Legion") in the United States and wholly-owned insurance company subsidiaries of MRM in Bermuda and Barbados (the "IPC Companies").

2. All of the common stock of each IPC Company is owned by either of two wholly-owned subsidiaries of MRM, Mutual Holdings Ltd. or Mutual Holdings (U.S.) Ltd. (collectively, "Mutual Holdings"). Typically, a client (the "insured") enters into an agreement with Mutual Holdings pursuant to which the insured is issued a discrete series of Mutual Holdings preferred stock. Each series of such preferred stock pays dividends based on the performance of the insured's particular IPC program. At the conclusion of the IPC program, the series of preferred stock is redeemed.

3. Under the IPC program, Legion or an unaffiliated insurance company issues an insurance policy to the insured, and the insured pays the premium therefor. One of the IPC Companies then reinsures the portion of that policy representing the risk retained by the insured. The IPC Company receives the premium from the issuer of the original policy, invests the premium on behalf of the insured, and administers claims under the policy.

4. The IPC program allows MRM's clients to self-insure a portion of their risks. Clients thereby avoid pooling their risks with those of other insureds in the hope that their risk management costs will decrease. Participants in the IPC programs typically are corporations or professional or trade associations which would generate $750,000 or more in premiums annually under traditional insurance arrangements. Currently, there are approximately 200 holders of Mutual Holdings preferred stock, representing the current number of active IPC programs.

5. For its service in connection with the IPC programs, MRM receives (a) income from premiums on any insurance policy issued by Legion (b) brokerage commissions for arranging insurance and reinsurance (c) an annual administrative fee typically equal to 1% of the assets in each IPC program (d) fees for coordinating claims administration and (e) fees based upon the investment income returned to the insured through the Mutual Holdings preferred stock.

6. In addition to the IPC program, MRM receives income for designing and managing captive insurance companies, risk management consulting, and for insurance brokerage operations.

7. MRM's insurance company subsidiaries in Barbados and Bermuda are licensed and regulated as insurance companies by those countries. Bermuda insurance companies, for example, are governed by the Insurance Act, 1978, as amended by the Insurance Amendment Acts 1981, 1983 and 1985 (the "Bermuda Act") and related regulations. The Bermuda Act and the regulations impose solvency and liquidity standards and auditing and reporting requirements, and grant to the Bermuda Minister of Finance extensive powers to supervise, investigate and intervene in the affairs of insurance companies. Legion, MRM's United States subsidiary, is licensed in 47 states.

Applicant's Legal Analysis

1. MRM states that currently, it is excepted from the definition of an investment company by section 3(c)(1) of the 1940 Act because its outstanding securities are beneficially owned by not more than one hundred persons and it is not making and does not presently propose to make a public offering of its securities. However, MRM could no longer rely on section 3(c)(1) if it proposed to offer and sell its common stock to United States investors in order to facilitate the expansion of its United States operations and to strengthen its presence in the United States.

2. Section 6(c) of the 1940 Act authorizes the SEC to issue conditional or unconditional exemptions from any provision of the 1940 Act or rule thereunder if the exemption is "necessary or appropriate in the public interest" and is "consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the 1940 Act]". MRM submits that the application meets those requirements.

3. MRM seeks an order permitting it to offer and sell its common stock in the United States without registering as an investment company under the 1940 Act. Section 3(c)(3) of the 1940 Act provides an exception from the definition of investment company for any "insurance company." Section 3(c)(6) provides, among other things, that no company primarily engaged in the insurance company business through majority-owned subsidiaries shall be an investment company. Section 2(a)(17) provides that, when used in the 1940 Act, "insurance company" means a company organized as an insurance company and subject to supervision by the insurance commissioner or a similar official or agency of a State. Because many of the insurance companies owned by MRM are not subject to domestic insurance regulation, MRM does not come within the exceptions set out in sections 3(c)(3) and 3(c)(6), and thus could be deemed an "investment company" required to register under the 1940 Act in connection with the issuance of its equity securities in the United States.

4. The Commission has proposed amendments to rule 6c-9 under the 1940 Act. Investment Company Act Release No. 17682 (Aug. 17, 1990); 55 FR 34560 (Aug. 23, 1990). In its present form, Rule 6c-9 provides a conditional exemption from the 1940 Act that permits foreign banks and their finance subsidiaries to offer and sell debt securities and non-voting preferred stock without registering under the 1940 Act. The proposed amendments would, among other things, extend the exemption from registration under the 1940 Act to foreign insurance holding companies and foreign insurance companies offering or selling their securities in the United States. A foreign insurance holding company must come within the definition of "qualifying holding company" to rely on the proposed amended rule. Proposed amended rule 6c-9 defines a "qualifying holding company" as a company that is (a) organized or incorporated under the laws of a country other than the United States, or a political subdivision of a country other than the United States (b) primarily engaged in the banking or insurance businesses through wholly- or majority-owned foreign banks or foreign insurance companies and (c) not operated for the purpose of evading the provisions of the 1940 Act. MRM states that it comes within that definition. Moreover, MRM has agreed to comply with rule 6c-9 as it is proposed to be amended and as it may be reproposed, adopted, or amended in the future in connection with the issuance and sale of its equity securities in the United States.

5. Section 3(a)(3) of the 1940 Act defines an "investment company" as any issuer which "is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis." MRM believes that its ownership of investment securities may bring it within that definition.

6. MRM also requests, pursuant to section 3(b)(2), that the Commission find and issue an order declaring that it is primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities either directly, through majority-owned subsidiaries, or through controlled companies conducting similar types of businesses.

7. MRM states that, based on the standards set forth in Investment Company Act Rel. No. 10937 (Nov. 13, 1979), it is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities.

8. MRM represents that since its incorporation in 1977, it has devoted substantially all of its resources to the business of designing and implementing risk management programs and to insurance activities. Furthermore, MRM has consistently represented to both its clients and its shareholders that it is primarily engaged in risk management and insurance services. MRM's officers devote substantially all of their business time to developing and implementing MRM's risk management programs and other insurance-related businesses. Neither the directors nor the officers of MRM devote significant effort to investment activities. Finally, MRM states that it derives approximately 90% of its revenue from its risk management programs and from premiums earned on insurance policies. Less than 10% of MRM's revenue is derived from investment income.

9. MRM also states that it has no substantial economic interest in the securities held for its clients in connection with its risk management programs. MRM thus argues that such securities should not be deemed "investment securities." MRM also points out that its insurance subsidiaries hold bonds and notes only in connection with their insurance business.

Applicant's Condition

MRM agrees that if the requested order is granted under section 6(c), it will comply with proposed amended rule 6c-9 under the 1940 Act as it is currently proposed and as it may be reproposed, adopted or amended in the future.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–12137 Filed 5–21–91; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2503]

Louisiana; (With Contiguous Counties in Arkansas, Mississippi & Texas); Amendment #1; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with amendments dated May 9, 10, and 12, 1991, to the President's major disaster declaration of May 3, to include the parishes of Assumption, Bienville, Caddo, Catahoula, Franklin, Grant, Lafourche, Natchitoches, Rapides, St. Mary, St. Martin, Terrebonne, Webster, and Winn in the State of Louisiana as a disaster area as a result of damages caused by severe storms, tornadoes, and flooding beginning on April 27.

In addition, applications for economic injury loans from small businesses located in the contiguous parishes of Allen, Ascension, Avoyelles, Bossier, Concordia, DeSoto, Evangeline, Iberia, Iberville, Jefferson, Lafayette, Point Coupee, Red River, Sabine, St. James, St. Landry, St. John The Baptist, St. Charles, and Vernon in the State of Louisiana; the counties of Lafayette and Miller in the State of Arkansas; and the counties of Cass, Harrison, Marion, and Panola in the State of Texas may be filed until the specified date at the previously designated location.

All other information remains the same, i.e., the termination date for filing applications for physical damage is July 2, 1991, and for economic injury until the close of business on February 3, 1992.

The economic injury numbers are 729900 for Louisiana, 730100 for Arkansas, and 731800 for Texas.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 15, 1991.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91–12079 Filed 5–21–91; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2499]

Louisiana (With Contiguous Counties in Texas & Arkansas); Amendment #1; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with amendments dated May 9 and 10, 1991, to the President's major disaster declaration of April 23, to include the parishes of Catahoula, Claiborne, Morehouse, Natchitoches, and West Carroll in the State of Louisiana as a disaster area as a result of damages caused by severe storms and flooding beginning on April 12, 1991.

In addition, applications for economic injury loans from small businesses located in the contiguous parishes of Avoyelles, Caldwell, Concordia, East Carroll, Franklin, Grant, LaSalle, Ouachita, Rapides, Richland, Tensas, and Union in the State of Louisiana, and the counties of Ashley, Chicot, and Union in the State of Arkansas may be filed until the specified date at the previously designated location.

All other information remains the same, i.e., the termination date for filing applications for physical damage is June 22, 1991, and for economic injury until the close of business on January 23, 1992.

The economic injury numbers are 729900 for Louisiana and 730100 for Arkansas.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 15, 1991.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91–12080 Filed 5–21–91; 8:45 am]

BILLING CODE 8025–01–M

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[Declaration of Disaster Loan Area #2504]

Oklahoma (and Contiguous Counties in Kansas); Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on May 8, 1991, and an amendment thereto on May 10, 1991, I find that the Counties of Garfield, Noble, Osage, Pawnee, Rogers, and Washington in the State of Oklahoma constitute a disaster area as a result of damages caused by severe storms and tornadoes on April 26–27, 1991. Applications for loans for physical damage may be filed until the close of business on July 7, 1991, and for loans for economic injury until the close of business on February 10, 1992, at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous counties of Alfalfa, Craig, Creek, Grant, Kingfisher, Logan, Major, Mayes, Nowata, Payne, Tulsa, and Wagoner in the State of Oklahoma, and Montgomery County in the State of Kansas may be filed until the specified date at the above location.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

The interest rates are:

	Percent
For physical damage:	
Homeowners with Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	9.125
For economic injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 250412 and for economic injury the numbers are 731200 for Oklahoma and 730400 for Kansas.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 15, 1991.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91–12081 Filed 5–21–91; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2497

Texas; Amendment #2; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with an amendment dated May 8, 1991, to the President's major disaster declaration of April 12, to establish the incident period as April 5–6, 1991.

All other information remains the same, i.e., the termination date for filing applications for physical damage is June 11, 1991, and for economic injury until the close of business on January 13, 1992.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 15, 1991.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91–12082 Filed 5–21–91; 8:45 am]

BILLING CODE 8025–01–M

Region VI Advisory Council Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Albuquerque, will hold a public meeting at 8:45 a.m. on Wednesday, June 12, 1991, at the SBA Office, 625 Silver SW, Suite 320, Albuquerque, New Mexico, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Tom W. Dowell, District Director, U.S. Small Business Administration, 625 Silver SW, Suite 320, Albuquerque, New Mexico 87102, telephone (505) 766–1886 or FTS 474–1886.

Dated: May 15, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91–12083 Filed 5–21–91; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 1398]

Advisory Committee on Historical Diplomatic Documentation; Meeting

The Advisory Committee on Historical Diplomatic Documentation will meet on June 18, 1991, at 9:30 a.m. in Room 6800 of the Department of State.

The Advisory Committee advises the Bureau of Public Affairs, and in particular the Office of the Historian, concerning the preparation of the documentary series entitled Foreign Relations of the United States and other responsibilities of that Office.

In accordance with section 10(d) of the Advisory Committee Act (Pub. L. 92–463), it has been determined that discussions during the meeting will necessarily involve consideration of matters recognized as not subject to public disclosure under 5 U.S.C. 552b(c)(1). The meeting of the Advisory Committee will involve the examination and discussion of classified documents being considered for publication in the series Foreign Relations of the United States. The meeting will also involve the discussion of classified Department of State guidelines for declassification review and disclosure of Department records accessioned by the National Archives. These materials are properly classified and are specifically authorized under criteria established by Executive Order 12356 to be kept secret in the interests of national defense and foreign policy. The meeting will therefore be closed.

Questions concerning the meeting should be directed to William Z. Slany, Executive Secretary, Advisor Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC 20520, telephone (202) 663–1123.

Dated: May 13, 1991.

William Z. Slany,

Executive Secretary.

[FR Doc. 91–12047 Filed 5–21–91; 8:45 am]

BILLING CODE 4710–11–M

[Public Notice 1401]

Advisory Committee to the United States Section Inter-American Tropical Tuna Commission; Partially Closed Meeting

Notice of meeting published in 56 FR, May 14, 1991, Page 22191, is being amended due to a change in meeting location.

The Advisory Committee to the United States Section of the Inter-American Tropical Tuna Commission will meet on June 4, 1991, at the National Marine Fisheries Service Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, La Jolla, California. The morning session, open to the public, will be from 9:30 a.m. to 12 Noon. The afternoon session, closed to the public, will be from 1:30 p.m. to 5 p.m.

Requests for further information on the meeting should be directed to Mr. Brian S. Hallman, Deputy Director, Office of Fisheries Affairs (OES/OFA), room 5806, U.S. Department of State, Washington, DC 20520–7818. Mr. Hallman can be reached by telephone on (202) 647–2335.

May 15, 1991.

David A. Colson,

Deputy Assistant Secretary, Oceans and Fisheries Affairs.

[FR Doc. 91–12067 Filed 5–21–91; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Airspace Docket No. 90–AWA–13]

Proposed Establishment of Long Beach Airport Radar Service Area and Alteration of John Wayne Airport/Orange County Airport Radar Service Area; CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is proposing to establish an Airport Radar Service Area (ARSA) at Long Beach/Daugherty Field, CA and to alter the southwest confines of the John Wayne Airport/Orange County ARSA to accommodate the adjoining Long Beach ARSA. An informal airspace meeting has been scheduled to provide the opportunity to gather additional facts relevant to the aeronautical effects of the proposal and to provide interested persons an opportunity to discuss objections to the proposal. All comments received at this meeting will be considered prior to the issuance of a Final Rule.

TIME AND DATE: Thursday, August 8, 1991, 7 p.m.

Comments must be received on or before Friday, August 16, 1991.

PLACE: Theater, Building #6, Los Alamitos Armed Forces Reserve Center, End of Lexington Drive/South of Katella, Los Alamitos, CA.

ADDRESSES: Send or deliver comments in triplicate to: Federal Aviation Administration, Airspace Docket No. 90–AWA–13, Attention: Air Traffic Division, System Management Branch AWP–530, P.O. Box 92007 WPC, Los Angeles, CA 90009.

CONTACT PERSON FOR MORE INFORMATION: Mr. Bud Riebel, System Management Branch, AWP–531, telephone (213) 297–1180.

SUPPLEMENTARY INFORMATION:

Meeting Procedures

(a) The meeting will be informal in nature and will be conducted by a representative of the FAA Western-Pacific Region. Representatives from the FAA will present a formal briefing on the proposed ARSA design. All other participants will be given an opportunity to deliver comments or make a presentation.

(b) Any person wishing to make a presentation to the FAA Team will be asked to sign in and estimate the amount of time needed for such a presentation. This will permit the Team to allocate an appropriate amount of time to each presenter. The Team may allocate the time available for each presentation in order to accommodate all speakers. The meeting may be adjourned at any time if all persons present have had the opportunity to speak.

(c) Any person who wishes to present a position paper to the Team, pertinent to the topic of the Long Beach ARSA/Altered John Wayne/Orange County ARSA, may do so. Persons wishing to hand out pertinent position papers to the attendees should present three copies to the presiding officer. There should be additional copies of each handout available for other attendees.

(d) The meeting will not be formally recorded, however, informal tape recordings of presentations may be made to ensure that each respondent's comments are noted accurately. A summary of the comments at the meeting will be made available to all interested parties.

Materials relating to the proposed Long Beach ARSA/Altered John Wayne/Orange County ARSA will be accepted at the meeting. Every effort will be made to hear every request for presentation consistent with a reasonable closing time for the meeting. Written materials may also be submitted to the Team until August 16, 1991.

Agenda

Opening Remarks and Discussion of Meeting Procedures.
Briefing on Proposed Long Beach ARSA and altered John Wayne/Orange County ARSA.
Public Presentations.
Closing Comments.

Issued in Los Angeles, CA, on May 10, 1991.

Richard R. Lien,

Manager, Air Traffic Division, Western Pacific Region.

[FR Doc. 91–12092 Filed 5–21–91; 8:45 am]

BILLING CODE 4910–13–M

Proposed Establishment of the San Onofre Military Operations Area, Camp Pendleton, California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meetings.

SUMMARY: The FAA is proposing to establish a Military Operations Area (MOA) over Camp Pendleton's existing Restricted Area R–2533. This non-regulatory action will segregate non-hazardous military activity from Instrument Flight Rules (IFR) traffic and identify for Visual Flight Rules (VFR) traffic where these training activities exist.

Two informal airspace meetings have been scheduled to provide the opportunity to gather additional facts relevant to the aeronautical effects of the proposal, and provide interested persons an opportunity to make comments. All comments received from such meetings will be considered prior to the final proposal.

DATES: Meeting times and dates: 7 p.m. to 10 p.m. local, Tuesday, August 20, 1991 and Thursday August 22, 1991.

PLACE: August 20, 1991 (only), Los Alamitos Armed Forces Reserve Center, End of Lexington Drive/South of Katella, Los Alamitos, CA 90720–5001; August 22, 1991 (only), National University (Mission Valley Campus), Chamberline Hall, 4085 Camino Del Rio South, San Diego, CA 92108.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Bowman, Airspace Specialist, System Management Branch, AWP–530, Federal Aviation Administration, P.O. Box 92007, WWPC, Los Angeles, Ca 90009; telephone: (213) 297–0433.

Meeting Procedures

(a) The meetings will be informal in nature and will be conducted by the FAA Western-Pacific Region. Representatives from the FAA and from MCB Camp Pendleton will present formal briefings on the proposal. All other participants will be given an opportunity to make a presentation.

(b) Any person desiring to make a presentation to the Team will be asked to sign in prior to the start of the meeting. The Team will allocate the time

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available for each presentation in order to accommodate all speakers. Each meeting will end promptly at 10 p.m.

(c) Any person desiring to submit a position paper to the Team, pertinent to the airspace proposal, may do so in triplicate. These papers will be included in the study file.

(d) The meetings will not be formally recorded, however, the chairperson shall prepare a memorandum for the study file, listing attendees and a digest of the discussions held.

Agenda

Opening Remarks and Discussion of Meeting Procedures.
Presentation of the Airspace Proposal.
Presentation of the Affects to Air Traffic.
Public Presentations.
Closing Comments.

Issued in Los Angeles, California, on May 10, 1991.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 91-12096 Filed 5-21-91; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

Cooperative Agreement Announcement; Discretionary Cooperative Agreement to Support Research on Vehicle-Based Driver Status/Performance Monitoring

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Announcement of discretionary cooperative agreement to support research on vehicle-based driver status/performance monitoring.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces the discretionary cooperative agreement program to support research studies on vehicle-based driver performance monitoring, and solicits applications for projects under this program.

DATES: Applications must be received on or before July 8, 1991.

ADDRESSES: Applications must be submitted to Peter Schultz, Office of Contracts and Procurement (NAD-30), National Highway Traffic Safety Administration, 400 Seventh St., SW, room 5301, Washington, DC 20590; and must reference Solicitation Number DTNH22-91-Y-07266.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Peter Schultz, Office of Contracts and Procurements, at (202) 366-9561. Programmatic questions relating to this cooperative agreement program should be directed to Dr. Ronald R. Knipling, Office of Crash Avoidance Research (NRD-52), at (202) 366-4733.

SUPPLEMENTARY INFORMATION:

Background and Objectives

The National Highway Traffic Safety Administration is responsible for devising strategies to save lives and reduce injuries and property damage through the prevention and reduction in severity of motor vehicle crashes. The NHTSA Office of Crash Avoidance Research conducts and manages research intended to:

- Analyze driver-vehicle interaction.
- Identify specific vehicle designs, components, or parameters associated with driver performance errors and resulting crashes.
- Develop and evaluate vehicle-based crash avoidance countermeasure concepts and devices.

Driver performance monitoring systems are one class of vehicle-based crash avoidance countermeasures. The NHTSA Office of Crash Avoidance Research wishes to support the development of practical vehicle-based countermeasures designed to detect reduced performance of drivers due to drowsiness, fatigue, inattention, or other causes and to provide an appropriate warning signal to the reduced-performance driver and/or other drivers.

The present interest is in systems that detect reduced performance (e.g., symptomatic of drowsiness or fatigue) as opposed to reckless driving behavior and erratic performance. The most extreme manifestation of driver reduced performance is blackout ("asleep at the wheel"). Future NHTSA/OCAR research efforts will address the feasibility of detecting erratic driving performance (e.g., unsafe driving acts) and determining the appropriate and safe vehicle response to the detection of such driver performance. However, the currently-conceived experimentation will focus on reduced performance rather than erratic performance.

Compared to most other crash scenarios, the reduced driver performance crash is generally characterized by a relatively slow unfolding of the crash causal sequence. For example, the time between the initial loss of driver consciousness/control and impact is likely to be several seconds or more. In addition, there are likely to be prior brief episodes of loss of driver consciousness/control before the final performance failure that results in a crash. Thus, the reduced driver performance crash is probably more amenable than most other crash types to prevention through the use of appropriate detection and warning systems.

The number of crashes caused by reduced driver performance can be estimated from several studies and accident databases, although the problem is known to be significant. In one survey [1] of 1,500 drivers conducted in 1973, 69 percent of drivers indicated that they had experienced drowsiness while driving. Of these drivers, 10 percent had been involved in crashes involving drowsiness, while another 10 percent had been involved in near-crashes involving drowsiness. One finding of this survey was that 31 percent of the drivers who had experienced drowsiness were initially unaware of the onset of their drowsiness.

Based on statistics from the 1988 NHTSA General Estimates System (GES), it is estimated that 78,000 drivers are involved in crashes due to drowsiness, asleep-at-the-wheel, or fatigue. Thus, of the 1988 total of 6,877,000 crashes, about 1.1 percent involved a drowsy or fatigued driver. This estimate is probably conservative since the GES is based only on data coded on police crash reports that may not always capture such contributing factors.

The 1979 NHTSA-sponsored in-depth Tri-Level Study of the Causes of Traffic Accidents estimated that critical driver non-performance (i.e., blackout, dozing) was a direct cause of 2.1 percent of crashes. Like the GES estimate, the Tri-Level estimate is probably conservative.

Previous research has indicated the feasibility of a reduced driver performance detection system that could be used on Interstate and other divided highways where traffic density is low to moderate. For example, Dingus et al (1987)[2] reported one drowsiness discriminant analysis algorithm that correctly identified reduced-performance drivers in 28 of 38 trials (74 percent). The false alarm rate (non-drowsy driver identified as drowsy) was only 4 percent (6 of 142 trials). Driver performance monitoring systems might employ measures of driver performance,

[1] Tilley, D., Erwin C., and Gianturco, D., Drowsiness and driving: Preliminary report of a population survey. Society of Automotive Engineers, *International Automotive Engineering Congress*, Detroit, MI, Report No. 730121, 1973. [NOTE: Interested applicants are responsible for locating the research literature cited in this announcement; reprints are not available from NHTSA.]

[2] Dingus, T.A., Hardee, H.L. and Wierwille, W.W., Development of models for on-board detection of driver impairment. *Accid. Anal. & Prev., 18*, No.4, Pp. 271-283, 1987.

behavior, and psychophysiology such as steering wheel position and rotational velocity, accelerator position, yaw deviation, lateral acceleration, heart rate, seat movements, and one-hand-on-the-wheel frequency. Devices installed in vehicles may use the above measures to detect driver drowsiness and provide a warning signal to re-alert the driver or possibly to alert other drivers of the danger at hand.

Using driving simulators, Nissan Motor Company has developed a drowsy driver detection system [3] that works based on steering patterns. Drowsy driver steering patterns are characterized by more and longer-duration periods of non-steering and higher magnitude initial steering inputs following the non-steering interval. The referenced Nissan research report [3] did not cite quantitative effectiveness or potential operational benefits.

Additional research needs to be performed to enhance detection accuracy and to assess quantitatively the potential merits of equipping motor vehicles with a driver performance monitoring capability. The following performance elements should be integrated, as appropriate, into the proposed research effort:

1. Review academic and industry research performed to date on the problem of reduced driver performance as a causal or contributing factor in motor vehicle crashes.
2. Review the current state of all work on driver performance monitoring detection, including the physiological basis of fatigue/drowsiness (of various forms or types) and how it is manifested in human performance.
3. Select candidate measures of driver performance and/or psychophysiology, including those already demonstrated to be sensitive indicators.
4. Perform experiments directed at evolving better performance monitoring algorithms. The experimental apparatus used (e.g., research simulator) should have demonstrated validity for highway driving.
5. Using data from these experiments, derive and document enhanced detection algorithms and evaluate their accuracy.
6. Assemble experimental prototype equipment with the capability of performing the detection algorithms developed in Item 5 above and which can be installed in vehicles for field-testing purposes.
7. After consultation with NHTSA personnel, develop a plan for a small-scale controlled field test of prototype driver drowsiness detecting equipment using a representative vehicle fleet.
8. Report on research findings and lessons learned. Delineate outstanding R&D and implementation issues relevant to reduced performance detection. In addition, address similar issues that might be encountered in efforts to develop vehicle-based erratic driver performance detection systems.

[3] Iizuka, H., Yanagishima, T., Katsuoka, Y., Seno, T., The development of drowsiness warning devices. Tenth International Technical Conference on Experimental Safety Vehicles, July 1-4, 1985, Oxford, England.

NHTSA Involvement

NHTSA, Office of Crash Avoidance Research, will be involved in all activities undertaken as part of the cooperative agreement program. NHTSA will:

1. Provide, on an as-available basis, one professional staff person, to be designated as the Contracting Officer's Technical Representative (COTR), to participate in the planning and management of the cooperative agreement and coordinate activities between the organization and NHTSA.
2. Make available information and technical assistance from government sources, within available resources and as determined appropriate by the COTR. This shall include statistical analyses performed by the government of state and national accident databases that may be used to assess driver drowsiness problem size.
3. Provide liaison with other government agencies and organizations as appropriate; and
4. Stimulate the exchange of information and ideas between the cooperative agreement recipient and other interested parties both within and outside NHTSA.
5. Review and approve each phase of the work before the subsequent phase shall begin.

Period of Support

NHTSA plans to support the research efforts described in this notice through the award of at least one cooperative agreement. NHTSA reserves the right to make multiple awards depending on the merits of the applications received.

Contingent on the availability of funds and satisfactory performance, cooperative agreement(s) will be awarded to eligible organization(s) for project periods of up to three years. Projects shall be organized in one-year phases with NHTSA review and approval of each phase before work can begin on the subsequent phase. No cooperative agreement awarded as a result of this notice shall exceed $400,000 total.

Eligibility Requirements

To be eligible to participate in this cooperative agreement program, an applicant must be an educational institution or research organization. For-profit research organizations may apply; however, no profit factor shall be allowed.

Application Procedure

Each applicant must submit one original and two copies of its application package to: National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD-30), 400 Seventh St., SW., room 5301, Washington, DC 20590. Only complete application packages received on or before July 8, 1991 shall be considered. Submission of three additional copies will expedite processing, but is not required.

Application Contents

The application package must be submitted with OMB Standard Form 424 (Rev. 4-88, including 424A and 424B), with the required information filled in and the certified assurances included. While the Form 424-A deals with budget information, and section B identifies budget categories, the available space does not permit a level of detail which is sufficient for a meaningful evaluation of proposed costs. A supplemental sheet should be provided which presents a detailed breakdown of the proposed costs, as well as any costs which the applicant proposes to contribute in support of this effort.

Applicants shall include a program narrative statement which addresses the following:

1. A description of the research to be pursued which addresses:
   a. The objectives, goals, and anticipated outcomes of the proposed research effort;
   b. The relation of the proposed research to the traffic safety problem of reduced driver performance and/or existing or potential crash avoidance countermeasures;
   c. The equipment and measurement protocols to be used for the research;
   d. Sources and demographic characteristics of human subjects to be used;
   e. The procedures to be used for experimentation (including control and measurement of experimental variables), and statistical analysis and modeling;
   f. The approach and schedule to be used for presentation of research findings to the government and to the scientific community, and for

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government review and approval of individual phases of the project.

2. The proposed program director and other key personnel identified for participation in the proposed research effort, including a description of their qualifications and their respective organizational responsibilities.

3. A description of general and specialized driver-vehicle interaction research facilities and equipment currently available or to be obtained for use in the conduct of the proposed research effort.

4. A description of the applicant's previous experience or on-going research program that is related to this proposed research effort.

Application Review Process and Criteria

Initially, all applications will be reviewed to confirm that the applicant is an eligible recipient and to ensure that the application contains all the information required by the Application Contents section of this notice.

Each complete application from an eligible recipient will then be evaluated by a Technical Evaluation Committee. The applications will be evaluated using the following criteria:

1. The potential of the proposed research effort to make an innovative and/or significant contribution to:

- The basic understanding of driver performance and associated specific performance decrements.
- The measurement and algorithmic analysis of specific performance decrements associated with reduced driver performance.
- The development of instrumentation (including software) for a driver performance monitoring crash avoidance countermeasure.

2. The applicant's understanding of the purpose and unique problems presented by the research objectives of this cooperative agreement program as evidenced in the description of their proposed research effort.

3. The technical merit of the proposed research effort, including the feasibility of the approach, planned methodology, and anticipated results.

4. The adequacy of test facilities and equipment identified to accomplish the proposed research effort.

5. The adequacy of the organizational plan for accomplishing the proposed research effort, including the qualifications and experience of the research team, the various disciplines represented, and the relative level of effort proposed for professional, technical, and support staff.

Terms and Conditions of the Award

1. The protection of the rights and welfare of human subjects in NHTSA-sponsored experiments is established in NHTSA Orders 700-1 and 700-3. Any recipient must satisfy the requirements and guidelines of the NHTSA Orders 700 series prior to award of the cooperative agreement. A copy of the NHTSA Orders 700 series may be obtained from the information contact designated in this notice.

2. Prior to award, the recipient must comply with the certification requirements of 49 CFR part 29—Department of Transportation Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

3. Reporting Requirements:

a. *Written Research Reports:* The recipient shall submit semiannual research reports which shall be due 30 days after the reporting period, and a final research report within 90 days after the completion of the research effort. An original and three copies of each of these research reports shall be submitted to the COTR.

b. *Oral Briefings:* The recipient shall conduct semiannual oral presentations of research results for the COTR and other interested NHTSA personnel. For planning purposes, assume that these presentations will be conducted at the NHTSA Office of Crash Avoidance Research, Washington, DC. An original and three copies of briefing materials shall be submitted to the COTR.

4. During the effective period of the cooperative agreements(s) awarded as a result of this notice, the agreement(s) shall be subject to NHTSA's General Provisions for Assistance Agreements; the cost principles of OMB Circular A-21, A-122, or FAR 31.2, as applicable to the recipient, and the requirements of 49 CFR part 20 and part 29.

George L. Parker,

Associate Administrator for Research and Development.

[FR Doc. 91-12074 Filed 05-21-91; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA will conduct a public meeting (1) to exchange views on proposals submitted to the fourth session of the United Nations' Sub-Committee of Experts on the Transport of Dangerous Goods, and (2) to report the results of the Working Group meeting of the International Civil Aviation Organization's (ICAO) Dangerous Goods Panel (DGP).

DATES: June 25, 1991 at 9:30 a.m.

ADDRESSES: Room 4234, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, International Standards Coordinator, Office of Hazardous Materials Transportation, Department of Transportation, Washington, DC 20590; (202) 366-0656.

SUPPLEMENTARY INFORMATION: This meeting will be held in preparation for the fourth session of the Sub-Committee of Experts on the Transport of Dangerous Goods to be held July 1 to 12, 1991, in Geneva. During this meeting the U.S. position on proposals submitted to the fourth session of the Sub-Committee will be discussed. Topics to be covered include packaging and classification issues relating to explosives; performance packaging test requirements for non-bulk packagings; classification of specific dangerous goods; and other proposed amendments to the United Nations Recommendations on the Transport of Dangerous Goods.

A second purpose for the meeting will be to review the results of the Working Group meeting of the International Civil Aviation Organization's (ICAO) Dangerous Goods Panel (DGP) which met to prepare draft amendments to the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air. These draft amendments will be the basis for further discussions on amendments to the Technical Instructions by the thirteenth session of the Dangerous Goods Panel at a meeting in Montreal, Canada on October 15-25, 1991. If adopted, the amendments to the Technical Instructions will become effective on January 1, 1993. The draft amendments deal with virtually all aspects of dangerous goods transport, including listing and classification, packaging requirements, requirements for infectious substances (particularly diagnostic substances and biological products), requirements for gases, requirements for self-reactive substances and the use of portable tanks for transporting certain dangerous goods by aircraft.

The public is invited to attend without prior notification.

Documents

Copies of documents submitted to the fourth session of the UN Sub-Committee meeting and, when available, a copy of the ICAO working group report may be obtained from RSPA for a nominal fee. A listing of these documents is available on the Hazardous Materials Information Exchange (HMIX), RSPA's computer bulletin board. Documents may be ordered by filling out an on-line request form on the HMIX or by contacting RSPA's Dockets Unit (202-366-4453). For more information on the use of the HMIX system, contact the HMIX information center; 1-800-PLANFOR (782-6367); in Illinois, 1-800-367-9592; Monday through Friday, 8:30 a.m. to 5 p.m. Central time.

After the meeting, a summary of the public meeting will also be available from HMAC, Suite 250, 1110 Vermont Ave., NW., Washington, DC 20005; telephone number (202) 728-1460.

Issued in Washington, DC, on May 17, 1991.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 91-12167 Filed 5-21-91; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

May 16, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: None.
Type of Review: New collection.
Title: Survey to Verify Issuance of 1099's by County Human Services Agencies in Ohio.
Description: Section 6305 of the Technical Miscellaneous Revenue Act of 1988 provided for treating certain service providers as other than employees for employment tax purposes if several conditions were met. One of the conditions were that information returns be issued to service providers. The legislation requires Treasury to study compliance with issuing information returns.
Respondents: State or local governments.
Estimated Number of Respondents: 88.
Estimated Burden Hours Per Respondent: 2 hours.
Frequency of Response: Other (one-time survey).
Estimated Total Reporting Burden: 176 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91-12149 Filed 5-21-91; 8:45 am]

BILLING CODE 4830-01-M

Office of Thrift Supervision

Colonial Federal Savings Bank; Notice of Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Colonial Federal Savings Bank, Cranston, Rhode Island, on May 10, 1991.

Dated: May 15, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-12120 Filed 5-21-91; 8:45 am]

BILLING CODE 6720-01-M

[AC-24; OTS No. 4722]

First Federal Savings Bank, Campbellsville, KY; Final Action; Approval of Conversion Application

Notice is hereby given that on May 13, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of First Federal Savings Bank, Campbellsville, Kentucky for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and Area Director, Office of Thrift Supervision, 525 Vine Street, 7th Floor, Cincinnati, Ohio 45202.

Dated: May 14, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-12118 Filed 5-21-91; 8:45 am]

BILLING CODE 6720-01-M

First Federal Savings and Loan Assoc. of Creston, F.A.; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for First Federal Savings and Loan Association of Creston, F.A., Creston, Iowa, on May 10, 1991.

Dated: May 15, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-12121 Filed 5-21-91; 8:45 am]

BILLING CODE 6720-01-M

First Federal Savings and Loan Assoc. of Fargo, F.A.; Fargo, ND; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for First Federal Savings and Loan Association of Fargo, F.A., North Dakota, on May 10, 1991.

Dated: May 15, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-12122 Filed 5-21-91; 8:45 am]

BILLING CODE 6720-01-M

[AC-23; OTS No. 3021]

First Federal Savings Bank, Hendersonville, NC; Final Action; Approval of Conversion Application

Notice is hereby given that on May 13, 1991, the Office of the Chief Counsel, Office of the Thrift Supervision, acting pursuant to delegated authority, approved the application of First Federal Savings Bank, Hendersonville.

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North Carolina for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and Regional Director, Office of Thrift Supervision of Atlanta, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

Dated: May 14, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-12119 Filed 5-21-91; 8:45 am]

BILLING CODE 6720-01-M

[AC-26; OTS No. 2732]

First Federal Savings Bank of Kokomo, Kokomo, IN; Final Action; Approval of Conversion Application

Notice is hereby given that on May 14, 1991, the Office of the Chief Counsel, Office of the Thrift Supervision, acting pursuant to delegated authority, approved the application of First Federal Savings Bank of Kokomo, Kokomo, Indiana for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and Deputy Regional Director, Office of Thrift Supervision, 8250 Woodfield Crossing Blvd., Suite 305, Indianapolis, Indiana 46240.

Dated: May 15, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-12117 Filed 5-21-91; 8:45 am]

BILLING CODE 6720-01-M

[AC-27; OTS No. 3530]

First Federal Savings and Loan Association of New Smyrna, New Smyrna Beach, FL; Final Action; Approval of Conversion Application

Notice is hereby given that on May 14, 1991, the designee of the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him, approved the application of First Federal Savings and Loan Association of New Smyrna, New Smyrna Beach, Florida, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and Office of Thrift Supervision, Southeast Region, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

Dated: May 15, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-12116 Filed 5-21-91; 8:45 am]

BILLING CODE 6720-01-M

Office of Thrift Supervision

First Federal Savings Assoc. of Newton, Newton, KS; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for First Federal Savings Association of Newton, Newton, Kansas on May 10, 1991.

Dated: May 15, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-12123 Filed 5-21-91; 8:45 am]

BILLING CODE 6720-01-M

Guaranty Federal Savings Assoc.; Appointment of Conservator

Notice if hereby given that, pursuant to the authority contained in 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Guaranty Federal Savings Association, Warner Robins, Georgia on May 10, 1991.

Dated: May 15, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-12124 Filed 5-21-91; 8:45 am]

BILLING CODE 6720-01-M

Mercantile Federal Savings Bank; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Mercantile Federal Savings Bank, Southaven, Mississippi on April 19, 1991.

Dated: May 15, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-12125 Filed 5-21-91; 8:45 am]

BILLING CODE 6720-01-M

Vermilion Federal Savings Bank; Notice of Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Vermilion Federal Savings Bank, Abbeville, Louisiana, on May 10, 1991.

Dated: May 15, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-12126 Filed 5-21-91; 8:45 am]

BILLING CODE 6720-01-M

Capitol Federal Bank for Savings; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receivor for Capitol Federal Bank for Savings, Chicago, Illinois, OTS Number 1774, on May 10, 1991.

Dated: May 15, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-12130 Filed 5-21-91; 8:45 am]

BILLING CODE 6720-01-M

Colonial Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(C) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Colonial Bank, Cranston, Rhode Island (OTS No. 8404), on May 10, 1991.

Dated: May 15, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-12131 Filed 5-21-91; 8:45 am]

BILLING CODE 6720-01-M

First Bankers Trust and Savings Association, F.A.; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator for First Bankers Trust and Savings Association, F.A., Midland, Texas ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on May 10, 1991.

Dated: May 15, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-12144 Filed 5-21-91; 8:45 am]

BILLING CODE 6720-01-M

First Federal Savings and Loan Association of Creston; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First Federal Savings and Loan Association of Creston, Creston, Iowa, OTS No. 2557, on May 10, 1991.

Dated: May 15, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-12132 Filed 5-21-91; 8:45 am]

BILLING CODE 6720-01-M

First Federal Savings and Loan Association of Fargo; Fargo, ND; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First Federal Savings and Loan Association of Fargo, Fargo, North Dakota, OTS No. 1263, on May 10, 1991.

Dated: May 15, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-12127 Filed 5-21-91; 8:45 am]

BILLING CODE 6720-01-M

First Federal Savings Bank of Newton, Newton, KS; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First Federal Savings Bank of Newton, Newton, Kansas, OTS No. 5909, on May 10, 1991.

Dated: May 15, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-12129 Filed 5-21-91; 8:45 am]

BILLING CODE 6720-01-M

Guaranty Federal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Guaranty Federal Savings Bank, Warner Robins, Georgia, OTS No. 7852, on May 10, 1991.

Dated: May 15, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-12128 Filed 5-21-91; 8:45 am]

BILLING CODE 6720-01-M

Vermilion State Savings Bank, S.S.B.; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(C) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Vermilion State Savings Bank, S.S.B., Abbeville, Louisiana, OTS No. 7166, on May 10, 1991.

Dated: May 15, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-12133 Filed 5-21-91; 8:45 am]

BILLING CODE 6720-01-M

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Sunshine Act Meetings

Federal Register
Vol. 56, No. 99
Wednesday, May 22, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:03 a.m. on Friday, May 17, 1991, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to a certain financial institution.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Vice Chairman Andrew C. Hove, Jr., Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: May 17, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91-12320 Filed 5-20-91; 2:37 pm]

BILLING CODE 6714-01-M

RESOLUTION TRUST CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the following changes will be made to the open meeting agenda of the Resolution Trust Corporation Board of Directors scheduled to follow the adjournment of the FDIC open meeting beginning at 2:00 p.m. on Tuesday, May 21, 1991 in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC:

The following subject will be withdrawn from the agenda:

Memorandum re: Proposed policy regarding the payment of real estate taxes on RTC properties.

The following subject will be added to the agenda:

Memorandum re: Temporary rule change governing the Affordable Housing Disposition Program.

Requests for further information concerning the meeting may be directed to Mr. John M. Buckley, Jr., Executive Secretary of the Corporation, at 202–416–7282.

Dated: May 20, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91-12333 Filed 5-20-91; 3:59 pm]

BILLING CODE 6714-01-M

Corrections

Federal Register
Vol. 56, No. 99
Wednesday, May 22, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 910488-1088]

Snapper-Grouper Fishery of the South Atlantic

Correction

In rule document 91-9646, beginning on page 18742, in the issue of Wednesday, April 24, 1991, make the following correction:

On page 18743-18775, in the third column, in ammendatory instruction 3, in the second line "July 23" should read "July 18".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201 and 331

[Docket No. 90N-0309]

Drug Labeling; Sodium Labeling for Over-the-Counter Drugs; Proposed Amendment

Correction

In proposed rule document 91-9671 beginning on page 19222 in the issue of Thursday, April 25, 1991, make the following corrections:

1. On page 19222, in the first column, under **SUPPLEMENTARY INFORMATION**, in the fifth line, after "foods" insert "on" and remove "and".

2. On page 19223, in the second column, in the full first paragraph, in the sixth line and in the tenth line from the end, "46024" should read "46204".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. 91N-0063]

Immunology and Microbiology Devices; Revocation of the Exemption from Premarket Notification; Blood Culturing System Devices

Correction

In proposed rule document 91-9747 beginning on page 19333 in the issue of Friday, April 26, 1991, make the following correction:

On page 19334, in the third column, in the first full paragraph, in the second line, after "manufacturer" insert "or".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N-0072]

Superpharm Corp.; Withdrawal of Approval of Abbreviated New Drug Application for Ibuprofen Tablets

Correction

In notice document 91-10484 beginning on page 20433 in the issue of Friday, May 3, 1991, make the following correction:

On page 20433, in the third column, under **SUPPLEMENTARY INFORMATION**, in the sixth line, "70-798" should read "70-708".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Members on Public Advisory Committees in the Center for Drug Evaluation and Research

Correction

In notice document 91-10372 beginning on page 20229 in the issue of Thursday, May 2, 1991, make the following corrections:

1. On page 20229, in the third column, the subject heading is corrected to read as set forth above.

2. On page 20230, in the first column, under **SUMMARY**, in the eighth line, "met" should read "meet".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[OIS-012-N]

Medicare Program; Quarterly Listing of Program Issuances

Correction

In notice document 91-8705 beginning on page 15083, in the issue of Monday, April 15, 1991, make the following corrections:

In table II on page 15086:

1In Trans. No. 243, in the first line, insert "Outpatient" after "Guidelines,".

2In Trans. No. 311, in the fifth line, "Derror" should read "Error".

3Trans. No. 605 is inaccurate, after the second line, insert "Charges for Heart Acquisition Services"; the third line under Trans. No. 605 beginning with the word "Charges" is the first entry for Trans. No. 606.

BILLING CODE 1505-01-D

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federal register

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Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 30
Civil Money Penalties, Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 30

[Docket No. R-91-1499; FR-2734-F-02]

RIN 2501-AA90

Civil Money Penalties

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule implements sections 107, 108, 109, 110, 111, 134 and parts of sections 102, 103, 112, and 126 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989) ("Reform Act"). All of these sections authorize the Department of Housing and Urban Development (HUD) to impose civil money penalties for unlawful conduct in connection with a broad array of departmental programs. The purpose of the rule is to strengthen HUD's controls over the conduct of participants in its programs.

EFFECTIVE DATE: June 21, 1991.

FOR FURTHER INFORMATION CONTACT: With respect to general application and procedural aspects, contact Samuel B. Rothman, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500, telephone number (202) 708-4184; Telecommunications Devices for the Deaf (TDD) number (202) 708-3259. With respect to violations under § 30.315 contact John Garrity, Director, Urban Homesteading Program, Room 7158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone number (202) 708-0324; TDD number (202) 708-2565. With respect to violations under §§ 30.320, 30.325, 30.335 and 30.340, contact William G. Heyman, Director, Office of Lender Activities and Land Sales Registration, room 9146, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone number (202) 708-1824; TDD number (202) 708-4594. With respect to violations under § 30.330, contact Guy Wilson, Vice President, Office of Mortgage-backed Securities, room 6224, Government National Mortgage Association, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone number (202) 708-2772; TDD number (202) 708-3649. With respect to violations under §§ 30.300, 30.305 and 30.310, contact Arnold J. Haiman, Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone number (202) 708-3815; TDD number (202) 708-1112. (None of the listed telephone numbers is a toll-free number. However, TDD numbers may be reached through a toll-free relay number, 1-800-877-8339.)

SUPPLEMENTARY INFORMATION:

Introduction

This rule implements the Department of Housing and Urban Development Reform Act of 1989 in the following ways:

(a) As to section 102 of the Reform Act, this rule provides the procedural framework for imposing civil money penalties on applicants for HUD assistance who fail to make required disclosure to HUD in connection with their efforts to obtain assistance. Regulations (to be codified at 24 CFR part 12) specifying the proscribed conduct were published on March 14, 1991 (56 FR 11032).

(b) As to section 103, this rule provides the procedural framework for imposing civil money penalties on HUD employees who disclose information regarding the selection process in connection with applications for certain assistance prior to the availability of that information to the public. Proposed regulations (to be codified at 24 CFR part 4) specifying the proscribed conduct were published on November 23, 1990 (55 FR 48912). A final rule to implement section 103 was published on May 13, 1991.

(c) As to section 107, this rule provides the procedural framework for imposing civil money penalties on mortgagees and lenders involved in HUD programs. The rule also specifies the types of proscribed conduct for which lenders and mortgagees may be made subject to penalties.

(d) As to sections 108 and 109, this rule provides the procedural framework for imposing civil penalties upon owners of properties comprising five or more residential units (multifamily mortgagors) when those properties are subject to mortgages insured, co-insured, or held by the Secretary. Sections 108 and 109 apply to mortgagors of Federal Housing Administration (FHA) projects and to projects financed under section 202 of the Housing Act of 1959. The rule also specifies the types of proscribed conduct for which multifamily mortgagors may be subject to penalties.

(e) As to section 110, this rule provides the procedural framework for imposing civil money penalties on issuers and custodians who have been approved for participation in the programs of the Government National Mortgage Association (GNMA). The rule also specifies the types of proscribed conduct for which issuers and custodians may be subject to penalties.

(f) As to section 111, this rule provides the procedural framework for imposing civil money penalties on any person who violates the Interstate Land Sales Full Disclosure Act. Because the violations for which a person may be subject to penalties under the Land Sales Act pertain to any violation of the Land Sales Act, its regulations, or orders issued under the Land Sales Act, persons who are affected by this rule should refer to the Land Sales Act (15 U.S.C. 1702) and the relevant regulations at 24 CFR parts 1710, 1715 and 1720.

(g) As to section 112, this rule provides the procedural framework for imposing civil money penalties on persons who fail to make appropriate disclosures concerning expenditures to influence decisions of HUD officials. A proposed rule specifying proscribed conduct by such persons was published on June 1, 1990 (55 FR 22722). A final rule creating a new part 86 of title 24 of the Code of Federal Regulations and implementing section 112 was published on May 17, 1991.

(h) As to section 126, this rule provides the procedural framework for imposing civil money penalties on persons who improperly use or convey property that has been transferred to them under HUD's Urban Homestead Program pursuant to section 810 of the Housing and Community Development Act of 1974. The persons who may be subject to sanction for violating section 810 are states, units of general local government and public agencies and qualified community organizations designated by those local government units, and their transferees.

Although the Reform Act is silent with respect to public agencies and qualified community organizations designated by states, section 810 of the 1974 Act includes such entities in the Urban Homestead Program. The Department may seek a technical amendment to section 126 of the Reform Act that conforms it to the scope of section 810 of the 1974 Act. If that amendment should be enacted, the Department will make the corresponding regulatory change.

(i) As to section 134, this rule provides the procedural framework for imposing civil money penalties on any dealer or loan broker who makes, or causes a borrower to make, a false statement to the Secretary or to a financial institution in connection with an application for a property improvement loan or advance of credit under title I of the National Housing Act. The rule also specifies the types of proscribed conduct for which dealers and brokers may be subject to penalties.

Overview

Part 30 primarily comprises procedural rules. However, in cases where the Reform Act established civil money penalties in connection with existing programs, specifically authorizing penalties for conduct in large part already considered unlawful by HUD, practices violative of these existing programs are included in this rule. After a period of operation the Department may evaluate this arrangement to consider moving these substantive portions of the rule to the respective parts in the Code of Federal Regulations covering these programs.

By contrast, this rule is exclusively procedural with respect to the completely new sanctions created under the Reform Act. For example, the requirement that consultants and lobbyists now register and report to HUD is implemented in 24 CFR part 86; any conduct that might give rise to the imposition of a civil penalty upon a consultant or other person who attempts to influence an official HUD decision will appear only in the soon-to-be published part 86.

Summary of Subparts

The final rule is divided into five subparts (in contrast to the four subparts in the proposed rule; see 55 FR 37290, September 10, 1990). A new subpart has been added to describe a notice procedure prior to a recommendation requesting that a Complaint for a civil money penalty be filed. Subpart B contains this new text; the remaining subparts have been redesignated accordingly.

Subpart A is one of general application and includes the definitions to be used in this part. The number of defined terms is limited; the reason for this limitation is that other relevant terms are defined elsewhere in HUD regulations. This subpart also makes clear that a civil money penalty is not an exclusive sanction, and that, potentially, it can be a cumulative sanction. Thus, the Secretary, for example, may elect to pursue a civil penalty and a debarment, or a civil penalty and an injunction against a person who commits a violation under subpart D.

Subpart B contains provisions that were added to the rule in response to public comments. Before a HUD official may recommend to a civil money penalty panel (see discussion of subpart C) that it file a Complaint seeking a penalty, the official must first furnish the target of the proposed penalty with notice of the Department's intent to seek that sanction and permit a 30-day period for a response. This period may be used also for settlement negotiations.

Subpart C now contains the provisions creating the four civil money penalty panels that evaluate cases for which civil penalties may be imposed and decide whether or not to file a Complaint seeking penalties. All panels will be staffed by high-level officials, whose decisions must have been determined by majority vote (though provision is made for officers at the Assistant Secretary level to delegate their functions). The final rule also corrects the titles of certain HUD officials who comprise the membership of the Housing and the Departmental panels. The criteria for determining the amount of a penalty and the maximum amount of each penalty also are set forth in this subpart.

One panel will deal with FHA housing programs, property improvement loans and housing for the elderly and handicapped under section 202 of the Housing Act of 1959. This panel is known as the Housing Civil Penalties Panel (HCPP).

A second panel, known as the Government National Mortgage Association Civil Penalties Panel (GCPP), will evaluate cases for violations by issuers and custodians in the GNMA programs.

The third panel, known as the Departmental Civil Penalties Panel (DCPP), will hear cases that deal with alleged violations by employees who improperly disclose information regarding the selection of an applicant for assistance prior to the final selection of the applicant. (Generally, the type of assistance covered in this context is assistance for which there is competition among applicants.) This panel also will evaluate cases in which applicants for assistance have failed to make certain disclosures in connection with their applications. (As in the case of HUD employees, the type of assistance covered generally entails some competitive process.) Additionally, this panel will evaluate cases in which persons who have made expenditures to influence official HUD decisions have failed to register with the Department or failed to make certain reports to the Department. Finally, this panel will consider cases involving violations in the conveyance or use of properties made available under HUD's Urban Homesteading program.

The fourth panel is the Mortgage Review Board (the Board, or MRB). Its composition was established by section 142(c) of the Reform Act, which is implemented by 24 CFR part 25. (The Board's composition and voting requirements are found at § 25.4.) The Department has had a Mortgagee Review Board in operation under regulatory authority for several years. The major change that accompanied the statutory creation of the MRB is its new authority to seek civil money penalties. Since the Board and the Housing Civil Penalties Panel have concurrent jurisdiction in some areas, the Department has decided that where overlapping jurisdiction exists, the HCPP will act when only a civil money penalty is sought and that the MRB will act when both a civil money penalty and another administrative sanction which the Board is authorized to impose are sought.

Subpart D comprises a series of lists of violations which may subject the alleged violator to civil penalties. No penalty will be imposed for a violation alleged to have been committed before December 15, 1989, the effective date of the Reform Act. However, any history of offenses, including those that occurred before that date, may be used by a civil penalties panel in reaching its recommendation for the amount of a penalty. With respect to Reform Act section 102, dealing with accountability of applicants for assistance, and section 112, dealing with the registration of consultants, HUD will not seek to impose penalties until the effective date of the rule. The Reform Act specifies such an effective date for applicability of these sections. In the opposite direction, section 126 of the Reform Act authorizes the imposition of a civil money penalty for a violation related to a transfer of property after January 1, 1981. Comment was specifically invited to address this particular statutory authorization; none was received.

Normally, each separate event that gives rise to a violation will be treated as a separate violation. In the case of a continuing violation, each day will be considered a separate violation. Continuing violations will be determined on the basis of a case-by-case evaluation.

It is important to keep in mind that a violation, to be actionable, must have been a material violation, knowingly committed. The Department considers this standard to be the equivalent of gross negligence, i.e., wanton conduct or reckless disregard for required conduct or conduct from which intent may be inferred. Thus, the mere failure to perform an act or the improper performance of an act per se will not

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constitute a violation for purposes of this part.

Subpart E, comprising the procedural rules, remains divided into seven functional segments. The first segment is one of general applicability. It provides that the procedural rules apply not only to violations of programs authorized by the Reform Act but also to any other comparable statutory authority HUD might receive in the future, unless there is some other applicable specific statute or regulation. (After publication of this rule for comment, Congress passed an amendment to the Real Estate Settlement Procedures Act (RESPA) that authorizes the imposition of civil money penalties upon certain servicers of mortgage loans that fail to provide borrowers with status reports of their loan-related escrow accounts.) (See 12 U.S.C. 2609(d), as enacted by section 942 of the Cranston-Gonzalez National Affordable Housing Act, Pub. L. 101-625.) The general provisions also provide that civil penalties proceedings will be presided over by an administrative law judge (ALJ) and delineate the ALJ's authority. Among other provisions of this subpart are those governing representation of parties, requirements for form, filing and service of documents, and the procedure for obtaining, and the issuance of, subpoenas for all purposes.

The next functional segment deals with pleadings and motions. After a civil penalties panel has decided to propose a penalty, it must do so through the filing of a Complaint with the Office of Administrative Law Judges. The filing of such a Complaint is the initiation of formal proceedings, and directives as to serving the Complaint on the respondent, the respondent's Answer and other pre-hearing actions are prescribed.

Discovery is the subject of the next segment, which provides for depositions, written interrogatories, production of documents and other things, and admissions by parties. The rules prescribe the procedure for taking, using and objecting to the use of depositons or parts of depositions. Provision also is made for objecting to interrogatories and other discovery methods. Finally, this segment provides a method whereby a party may obtain relief for an opponent's failure to cooperate in discovery.

A discrete segment has been allotted to pre-hearing procedures. A pre-hearing statement may be ordered by the ALJ. Such a statement is roughly comparable to a pretrial order in Federal district court practice and will contain such information as (1) stipulated facts, (2) facts in dispute, (3) issues involved and (4) identification of witnesses and exhibits. A pre-hearing conference also may be ordered for the traditional purposes of simplifying and clarifying issues, amending pleadings, stipulating to authenticity of documents and exchanging proposed exhibits.

A separate segment is provided for hearings, which generally will be on the record with oral testimony. However, by agreement the parties may stipulate to a hearing on the written record if there are no material issues of law or fact. Common standards of admissibility in administrative proceedings are provided in the evidence section, relevance being the hallmark. "Preponderance of the evidence" is the standard of proof. Proceedings will be recorded and transcribed, and briefs may be submitted at the close of a hearing.

An extensive procedure is provided in the event that a respondent fails to answer a Complaint and a default judgment is entered against the respondent. If the respondent can demonstrate in a notice to the Secretary that extraordinary circumstances were the cause of the failure to answer, the Secretary may remand the matter to the ALJ with a direction that the respondent be permitted to file an answer.

After a hearing, the ALJ issues an initial decision. Any party is allowed 15 days after the decision is received to appeal to the Secretary. The secretary or his or her designee will review the notice of appeal and, within 30 days, will determine whether to hear the case in full. If the Secretary declines to hear the case, then the initial decision becomes final on the date the decision to decline is filed with the ALJ's docket clerk. If the secretary accepts the case for review, then the Secretary's decision after review becomes final on the date it is filed with the ALJ's docket clerk.

Within 20 days after the Secretary's final decision has been filed, a respondent may appeal that decision by filing a petition for review with the appropriate United States Court of Appeals. If the respondent receives an adverse ruling from the Court of Appeals or does not appeal an adverse ruling from the Secretary, the Secretary may collect from a recalcitrant respondent by seeking a judgment in the U.S. District Court and may ask for attorney fees and other expenses incurred in connection with that action. The validity of the Secretary's decision imposing the penalty is not subject to review by the district court. As an alternative method of collection, the Secretary may utilize administrative offset to the extent legal and feasible.

Discussion of Public Comments

Twelve persons submitted comments on the proposed rule. Of the comments received, five topics were the most discussed: (1) That there should be a pre-Complaint notice and negotiation period prior to the issuance of a Complaint for Civil Money Penalties; (2) that there should be coordination among the various HUD components that take enforcement actions; (3) that factors such as "intent," "causation" or "damage to HUD" should be a requisite to a decision to seek a civil money penalty; (4) that conduct prior to December 15, 1989 (the effective date of the Reform Act) be excluded from consideration in the penalty process; and (5) that mitigating factors be specified in the section dealing with criteria for determining the amount of the penalty to be sought. These matters are discussed in detail below, but the short response to those comments are: (1) That there will be a pre-Complaint notice and negotiation period; (2) that the Department will undertake coordination of enforcement actions to the extent feasible; (3) that "intent," "causation" or "damage to HUD" are irrelevant to the type of sanction embodied in a civil money penalty and will not be adopted; (4) that conduct prior to December 15, 1989 will be considered in the determination of the amount of penalty and, in fact, is statutorily mandated; and (5) that mitigating factors, whether or not specified, should be and will be considered in the process for determining whether to seek a penalty and the amount of a penalty to be sought.

Discussion of Definitions, Section 30.10

Comment. The definition of "knowing or knowingly" should be amended to include "constructive knowledge" and "willfulness." Gross negligence is too low a threshold for establishing a violation. A variation of the above stated that intent should be a requisite for the recognition of a violation.

Response. The Department does not find these comments to be persuasive. First, the rule defines "knowing or knowingly" using the same language as in the Reform Act. Second, the Department is unsure as to what is intended by the suggestion for "constructive knowledge," but in any event finds that constructive knowledge would be a lower threshold than that required by the statute, since constructive knowledge could be imputed to HUD participants by virtue of the publication of regulations and the availability of handbooks and other issuances of general release. In using gross negligence as an equivalent to the "knowing/knowingly" definition, the Department was seeking to aid participants in understanding what the definition means. That is, mere negligence will not trigger action by the Department. On the other hand, willfulness or intentional conduct would not only trigger such an action but would be evaluated within the context of a criminal proceeding as well as and administrative one. The definitional alternatives lie between negligence and intent. In other words, one element of establishing a violation can be ascertained when a person has actual knowledge of a requirement but refuses to comply with that requirement, or has some knowledge that a requirement exists but chooses not to obtain sufficient information about the requirement or obtains only selective information concerning the requirement; or chooses to take action without inquiring as to the existence of a requirement when a reasonable person would have done otherwise. In some cases intent may be inferred, depending on the degree of the violator's knowledge.

Comment. "Material or materially" should be defined in terms of an ultimate financial loss to HUD or the government.

Response. A civil money penalty is not intended to be compensatory, nor is it intended to be a criminal sanction. A civil money penalty is essentially a civil fine intended to dissuade the offending violator from engaging in unlawful conduct in the future. Therefore, ultimate financial loss is not a predicate for imposing a civil money penalty. Accordingly, the Department does not adopt the comment.

Comment. The definition of "loan broker" should be recited in the rule since the definition referred to has not been published.

Response. The comment is appropriate since there is no assurance that the definition will appear in another rule at the time this rule becomes effective. Accordingly, "loan broker" has been substantively defined in the rule.

Discussion of Civil Money Penalty Panels, Proposed Section 30.100 (Final Section 30.200)

In the final rule the provisions governing the civil money penalty panels are set forth in subpart C and are designated numerically as the 30.200 series. Subpart B will contain provisions for a pre-Complaint notice procedure, which is discussed below.

Comment. No provision has been made for coordinating civil money penalties with other sanctions.

Response. The Department will make its best effort to coordinate all administrative sanctions. Coordination is currently implemented with respect to participants in FHA and GNMA programs. The Department anticipates being able to coordinate feasibly any sanctions that deal with employees, applicants for assistance, and lobbyists and consultants because of the likelihood of the overlapping effects of the improper conduct and the fact that the Office of Ethics has oversight of those activites.

Comment. Who makes recommendations to the panels?

Response. The Department does not believe that it is feasible, necessary or appropriate that a published rule identify the office or officer who might make a recommendation to a panel. However, it is likely that the recommending office or officer will be known to the intended respondent simply because of earlier contact between the intended respondent and the HUD official regarding the alleged violations.

Comment: Panels should hold hearings, keep a formal record of their proceedings and issue written opinions.

Response. Except for the MRB, the penalty panels are not adjudicatory, and there is no need for them to hold hearings, to keep formal records or to issue written opinions. Their function is to assure that the various program offices within the Department have compiled a record that will support the filing of a Complaint proposing a penalty. Panels will be composed of ranking officials whose time devoted to panel duties will be severely taxed. They will be able to review the record in a case, but will not be in a position to hear testimony or adversary arguments.

Comment. Panels should be charged with the responsibility to determine "whether" to impose a penalty rather than to determine "the amount to be imposed."

Response. In fact, the panels will do so. A panel's ultimate responsibility is to dispose of a recommendation for a penalty before it by declining to go forward or to file a Complaint setting forth allegations of fact and requesting the imposition of a specified penalty. A respondent will have had an opportunity to dispute or to settle a charge prior to a panel's consideration of a recommendation and a further opportunity to contest the action before an administrative law judge if the case reaches that stage.

Comment. There should be a requirement that intended respondents be notified of any action before or at the time a recommendation to a panel is made and allow a period of time for negotiation and settlement. (Some persons referred to existing MRB pre-notice procedures.)

Response. The comment is accepted, and the provisions for such a requirement are set forth at Subpart B of the final rule. The Department agrees that informal and less expensive alternatives to adjudication are a preferred means for accomplishing enforcement objectives. The procedure embodied in the rule requires that a Department official who intends to recommend to a panel that a penalty be imposed shall provide notice to the respondent of the intention to refer the matter to a panel and to allow a 30-day period within which the respondent may negotiate a settlement of the alleged violation(s). The settlement section permits a comprehensive treatment and is intended to cover as broad a scope as is legal and feasible.

Discussion of the Name and Composition of Panels, Proposed Section 30.105 (Final Section 30.205)

Comment. The standard that panel redelegations not be made below the Office Director level that was proposed to apply to the Departmental Civil Penalties Panel should apply to all panels; the names of the panels' designees should be published; and the same panel members should be involved throughout a given case.

Response. The Department believes that applying the same standard regarding redelegation to all panels has merit and adopts that suggestion. However, the Department sees no useful purpose in publishing the names of designees. Although the Department will make every effort to assure that the same panel composition continues throughout the duration of a given case, it would be infeasible to impose that condition. The panels are not adjudicatory bodies. Normally, it is not contemplated that a panel will have more than a day or two to devote to a case. The panel will review a presentation made by a recommending official and decide whether the presentation warrants the filing of a Complaint. With the exception of settlement decisions, a panel's involvement, as a practical matter, is expected to end with the filing of a Complaint or its decision not to file.

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Discussion of Jurisdiction of Panels, Proposed Section 30.110 (Final Section 30.210)

Comment. The rule should provide for one panel to have exclusive jurisdiction in cases where an overlapping violation might be found. (This comment was based on the premise that if a violation of an FHA requirement was determined, that there likely would be a violation of a GNMA requirement.)

Response. First, it is not necessarily the case that an FHA violation also would constitute a GNMA violation. Second, although a lender might have violated both FHA and GNMA requirements, those requirements may involve different issues. The Department believes that alleged violations should be considered separately by the panel most familiar with the issues involved. For example, a mortgagee charged with misusing custodial funds as a GNMA issuer should appear before the GCPP, even though it also may be alleged that the same mortgagee assessed mortgagors improper fees after endorsement, which is an FHA violation. In any event, the Department believes the potential for a problem area is covered by the coordination of enforcement efforts between FHA and GNMA and the new pre-Complaint notice that will be afforded respondents. Should a double violation situation arise, a respondent may bring that to the Department's attention prior to the time one or more panels make a decision. If the matter should escape the attention of both parties, it may be brought before the administrative law judge (ALJ), who has the authority to consolidate cases (See § 30.405(b)). GNMA's view is that it generally will act on violations involving the operation of the GNMA program and not act on violations affecting the underlying mortgages and mortgage insurance programs.

Discussion of the Criteria for Determining the Amount of a Penalty, Proposed Section 30.115 (Final Section 30.215), and the Calculation of the Penalty, Proposed Section 30.120

Comment. Delete § 30.120 because it is unnecessary.

Response. Section 30.120 has been deleted and its substance merged into § 30.215, as needed.

Comment. Consideration of a violator's conduct prior to December 15, 1989, the effective date of the Act, was improper because it would be violative of the statutory provision limiting the Reform Act's sanctions to actions occurring after its adoption.

Response. Conduct prior to the effective date of the Reform Act may be considered in appropriate cases. The Reform Act directs the Secretary to consider various factors in determining the amount of a penalty, among which is "any history of prior offenses (*including offenses occurring before enactment of this section*)." (Emphasis added). See, for example, section 108(d)(3) of the Reform Act. Thus, although a sanction may not be sought for conduct preceding the Reform Act, that conduct may be factored into the penalty calculation in connection with offending conduct occurring after the effective date of the Reform Act.

Comment. "Intent" should be a factor for a panel to consider.

Response. As stated in the discussion on the definition of "knowing," there is no basis in the Reform Act to require "intent" as a requisite factor in the penalty calculation. However, a panel (or the ALJ) certainly may infer intentional conduct from a set of facts or circumstances, and such an inference is reasonably included in the factor, "[t]he gravity of the offense." (See § 30.215(b)(1).)

Comment. The guidelines that the Department will use in calculating the amount of the penalty should be published, either for comment or as a notice.

Response. The Department has not decided whether to publish guidelines regarding penalty calculations but will evaluate the desirability of doing so after some experience with the penalty process.

Comment. Specific factors to be considered in the determination of the amount of a penalty, most in the way of mitigation, should be added to the list of those published. Among the factors suggested were damage to HUD or the government, the use of other sanctions, the violating employee's rank or level of knowledge or both, the role of HUD staff interpretations of technical issues, and the extent of lender controls/self-governance/recognition and correction of the problem. One person suggested that detection of a violation and voluntary reporting to HUD should obviate any penalty.

Response. As to factors in mitigation, the Department agrees that they should be considered, despite the lack of a statutory mandate to do so. Indeed, consideration of mitigating factors is inherent in the decisional process. Toward that end, but given the panels' limited fact finding role, the Department believes that a recital of mitigating factors would be inappropriate. Rather, the Department is adding to this section two general factors that will enable the panels (or the ALJ) to give the fullest consideration to all aspects of the cases before them. Those factors are the "degree of culpability" and "such other matters as justice may require." See § 30.215(b)(8) and (9).

Discussion of the Amount of the Penalty, Proposed Section 30.125 (final Section 30.225).

Comment. There was an objection to the concept of continuing violations and a recommendation that notice of a violation should be provided to a charged party before a continuing violation may be considered.

Response. Continuing violations are recognized in the Reform Act. The new pre-Complaint notice procedure will cover all alleged violations and afford ample time for a charged party to rebut any type of alleged violation, including allegations with respect to its duration.

Comment. There should be a limit on the amount of penalty sought for multiple violations stemming from the same transaction.

Response. The rule adopts the statutory provisions with respect to the maximum amounts of penalties. Discretion (abuse of which is subject to legal sanction) exercised by the panels (or the ALJ) will govern the amount of a penalty when multiple violations are based on the same transaction.

Comment. With respect to multifamily mortgagor violations under proposed § 30.225(a), the penalty could be as high as a foreclosure loss and therefore would be excessive. Also, how would a cap be calculated if there is no foreclosure?

Response. The maximum amount of a penalty in certain cases might well be the amount of a foreclosure loss, exactly what the Act prescribes. It must be remembered, however, that for conduct to be actionable in the first place, the Department must have made an initial determination that the violation was material and knowingly committed.

The Department views the comments on proposed § 30.125 essentially as objections to the objectives of the Reform Act. The Act is intended as a vehicle for the deterrence of wrongdoing, a fact that many commenters seemed to have overlooked.

Discussion of Violations by Lenders and Mortgagees, Proposed Section 30.220 (final Section 30.320).

Comment. The second part of the violation in § 30.220(d), which prohibits a lender's or mortgagee's "(use of) escrow funds for any purpose other than that for which they were received or (the failure) to use escrow funds for the purposes for which they were received," enlarges the statutory prohibition and is thus improper. The rule should permit excess escrowed funds to be used for payment of late charges, interest, etc., that are permitted under the loan documents.

Response. The statutory prohibition recites only the first part of the violation, i.e., the improper use of escrow funds. However, the statute also directs the Secretary to issue regulations as the Secretary deems appropriate to implement the statute (§ 107(h) of the Reform Act). The second part of the regulatory language is simply a statement of omission rather than of commission and, in the Department's opinion, is a proper exercise of its implied authority. Overall, the prohibition is intended to proscribe any improper use of escrowed funds. If under the loan documents there is authorization for a lender to apply certain escrowed funds to late charges, delinquent interest, etc., then it reasonably may be said that such application is within the contemplated use of the funds.

Comment. The failure to maintain a minimum net worth, as set forth in § 30.220(g)(1), should not be sanctionable if it resulted from economic loss rather than from a voluntary transfer or distribution by the lender or mortgagee.

Response. The Department agrees that a failure to maintain the prescribed minimum net worth should not be sanctionable if the failure is attributable purely to economic loss. The Department has recognized legitimate economic loss as a basis for noncompliance with respect to other sanctions and will continue that policy with respect to civil money penalties. However, the provision in question is one that has been a requirement for lender qualification for several years, and the Department reserves the right to withdraw approval of a mortgagee or lender if its net worth is less than the required amount.

Comment. There are already late charges imposed for late payments and there should not be a further penalty, as set forth in § 30.220(1), unless there is no apparent effort to pay at all; three months or six months could be used as an illustrative period to gauge "no apparent effort."

Response. Existing late charges are intended to cover the additional costs of handling delinquent accounts or compensating the Department for out-of-pocket losses. Moreover, those charges are at a nominal rate. The civil money penalty is a sanction for misconduct. The purposes of the two charges are different, and the authority for them is different. The Department does not find the comment meritorious.

Comment. Some commenters recommended that the rule omit as violations those activities for which the Department has made exceptions to the generally prohibited conduct. Cited specifically in this regard was proposed § 30.220(m), regarding instructions as to signing loan documents in blank.

Response. Although the Department can understand the commenters' concern, the Department believes that exceptions to generally prohibited conduct that the Department recognizes or authorizes, would implicitly waive the requirement for compliance. Common sense supports this rationale. Nevertheless, the Department has amended the cited paragraph to exclude as a violation the signing of loan documents in blank when the Secretary has approved that practice.

Comment. One commenter asked what proposed § 30.220(r) meant? (That subsection makes sanctionable a lender's failure to fund loans that it originated.)

Response. The meaning of the language should be clear to lenders and mortgagees. It refers to a lender's failure to provide funds for a loan for which it solicited or accepted a loan application and for which a borrower has satisfied all conditions of the loan commitment.

Comment. With respect to the "catch-all" provision of § 30.220(s), a handbook violation should be charged only if the violator had actual knowledge of the handbook requirement; handbooks should be put through a rulemaking procedure; untimely distribution of handbooks or conflicts between handbooks and mortgagee letters can prejudice program participants.

Response. The Department has given considerable attention to the handbook violation issue, including the ramifications of 5 U.S.C. 552(a)(2)(ii) of the Administrative Procedure Act (APA). The Department has concluded that handbook violations should be treated the same as other violations and will leave the proposed language of the rule intact. The bases for the Department's conclusion are, first, that the statutory language, which the rule recites, is clear; second, that in enacting the statute Congress undertook a conscious decision with knowledge of APA requirements; third, that in furtherance of its decision Congress predicated the imposition of a penalty upon a violation's having been knowingly committed and defined "knowingly." Moreover, the Department maintains extensive mailing lists of program participants and distributes handbooks and other relevant issuances to them. To the extent that the Department might rely on an outdated handbook or one in conflict with other Departmental directives, the Department will have to assume the risk. The catch-all paragraph is now designated as § 30.320(u); paragraph (t) refers to violations of the Real Estate Settlement Procedures Act, the Equal Credit Opportunity Act and the Fair Housing Act.

Comments. Overall, proposed § 30.220 contains many violations that are "administrative" in nature and should be sanctionable only if a pattern of conduct can be established. An example cited was the failure of a lender to meet a certain requirement as a result of a computer error.

Response. Whether a violation might arise from an "administrative" activity, which the Department assumes to mean a nondiscretionary act, is not the crux of the matter. Administrative problems, left uncorrected, can result in serious consequences. In any event, the Department believes the commenter's concern is addressed by the requirements that a violation must be knowingly made and entail a material act to be actionable. Thus, a violation that would be attributable to a computer error is not likely to be acted upon unless the lender knew or should have known of the violation, did nothing to correct it, and the violation had a significant adverse impact.

Comment. The list of violations in this section is redundant in view of the fact that a violation of most of the Department's regulations could result in a penalty sanction.

Response. The list of violations in this section is redundant in the manner suggested by the commenter. The same comment can be made as to the Act, which lists but a few of many possible violations. The Department considered omitting the non-statutory items in view of the catch-all language in proposed § 30.220(s), but concluded that highlighting the conduct that it believed to be particularly egregious would be helpful to lenders and mortgagees. Therefore, redundancy notwithstanding, the Department has opted to retain a list of violations and has modified it by deleting one violation and adding others. Specifically, the failure to "timely report delinquent mortgagors to credit reporting agencies" has been deleted; the following violations have been listed at § 30.320(p)(3), (4) and (5) respectively: Failing to: "Timely submit proper notification of a change in mortgagor or mortgagee as required in 24 CFR 203.431; Timely submit proper notification of mortgage insurance

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termination as required in 24 CFR 203.318; Timely submit proper notification of a change in mortgage servicing as required in 24 CFR 203.502(.)" The Department also has modified § 30.320 to clarify that multifamily mortgagees are covered by this section to the extent that their conduct constitutes a violation of the section. See, for example, §§ 30.320 (n) and (s).

Discussion of Violations by Multifamily Mortgagors, Proposed Section 30.225 (final Section 30.325)

Comment. Proposed § 30.225(a) should be clarified; agreements that might be affected by this paragraph should be only those that are effective after the effective date of the Act; the cause of a mortgagor's failure to comply with its agreement must be considered by the Department in its deliberation whether to seek a penalty. (Proposed § 30.225(a) dealt with a mortgagor's breach of an agreement to use non-project funds for certain stated purposes as a condition of the Department's approval of a transfer of physical assets.)

Response. The final version of this paragraph has been arranged to make clear that the exculpatory condition relates to any of four listed undertakings, not just the fourth. Only agreements entered into after the effective date of the Act will be subject to this provision, and the rule has been changed to reflect this fact. As to the cause of a mortgagor's breach of an agreement described in this paragraph, the Department will consider a number of factors, among which might be the cause of the breach. However, the violation here arises from a mortgagor's having agreed to use non-project funds—usually in exchange for additional financial commitment by the Department. This provision will lend leverage to the Department to assure that mortgagors are sincere in making their commitments to use non-project funds for the purposes set forth in the rule.

Comment. The language of the last sentence of section 108(c)(1) of the Act should be added to § 30.225(b) of the proposed rule to avoid a mortgagor's being penalized for using surplus funds.

Response. Since the use of surplus funds is not a Regulatory Agreement violation upon which this paragraph is based, the addition does not appear necessary. Nevertheless, the Department has no objection to its inclusion and has included it in § 30.325(c).

Comment. The contract violation defense available for violations of proposed § 30.225(a) should apply to the Regulatory Agreement violations in proposed § 30.225(b). (This comment refers to paragraph (c) of proposed § 30.225, which precludes the imposition of a penalty if a material cause of a mortgagor's breach of a contract authorized under paragraph (a) resulted from the Department's failure to comply with the contract.)

Response. The Department disagrees. Although the statutory language regarding the exception is not crystal clear, the Department believes that the provisions of the rule are reasonable and reasonably based on the statute. It may be argued that the exculpatory language that refers to the Department's failure to comply with "existing agreements" means that the language applies only to agreements entered into prior to the effective date of the Act. That interpretation does not make sense if Departmental action may constitute a defense to a mortgagor that breaches its contract and that defense is to have uniform applicability. There would seem to be no basis for the defense to be available to agreements preceding the Act but not those entered into subsequent to the Act. In contrast to the agreements described in paragraph (a), for which the Department would be positioned to change its funding after having agreed to a flexible subsidy loan or a capital improvement loan, the Regulatory Agreement violations listed in paragraph (b) constitute actions for which it is unlikely that the Department's conduct would be a material contributing factor.

Comment. Penalties for Regulatory Agreement violations under proposed § 30.225(b) should apply only to Regulatory Agreements entered into after the effective date of the rule. Otherwise, the conditions under which a mortgagor entered into the Regulatory Agreement will be modified without the mortgagor's consent.

Response. The Department disagrees. Although the violations enumerated in this paragraph are virtually the same as those contained in the Regulatory Agreement, they have been elevated to law by virtue of the Reform Act. Thus, even absent the Regulatory Agreement, the proscribed conduct would be unlawful and subject to penalty.

Comment. "Willfulness" and "control" should be required criteria for sanctionable violations under proposed § 30.225(b); that is, there should be no liability upon a mortgagor for violations that are outside its control.

Response. The Department disagrees. In brief, the Act contains no indication that "willfulness" be a criterion for a violation that may be sanctioned by a penalty (though, as a practical matter, willfulness could be inferred from a knowing violation). "Willfulness" has been discussed in detail above in connection with the definition of "knowing" and "knowingly." Whether conduct that constitutes a violation is within the control of a mortgagor is a question of fact that must be considered at all levels of review or adjudication. Again, the definition of "knowing" would come into play, for knowledge of an event, or the absence of such knowledge, would bear on the control issue. In any event, the Department believes that it is unnecessary to include such a criterion because (1) it is subsumed in other criteria and (2) it is a factor that, with others, will be taken into consideration as a panel, or the ALJ, sees appropriate.

Comment. There should be a statement in proposed § 30.225(b)(5) that compliance with the Fair Housing Amendments of 1988 would not be inconsistent with this section.

Response. As stated in the preamble to the proposed rule, using the Fair Housing Act and proposed § 30.225(b)(4) as an example, the Department intends to harmonize enforcement of civil money penalties with other program objectives. To do otherwise would be self-defeating. The Department has added language at § 30.325(b)(4) that recognizes the efficacy of the Fair Housing Act and the Rehabilitation Act of 1973 with respect to the Secretary's approval of certain modifications made to residential units.

Comment. Include in proposed § 30.225(b)(10) the statutory language of section 108(c)(1)(J) that makes it mandatory on the Department to extend the time to file annual financial reports if the failure to file timely is due to events beyond the control of the mortgagor. The proposed language permits extensions upon approval by the Secretary but does not include the directive mentioned in the Act.

Response. The appropriate change has been made in the final rule.

Comment. The requirement for filing monthly occupancy reports as set forth in proposed § 30.225(b)(11) is an expansion of the statutory language. (This comment apparently relates to the definitional provision of the paragraph stating that "monthly occupancy reports" includes any report that contains information related to occupancy and not only bare occupancy data.)

Response. The Department disagrees with this comment. The proposed language is a reasonable exercise of the Department's authority to implement the statute. The Department may define terms that are not defined in the statute. Moreover, this very paragraph, as well as the statute, provides that it is a violation for a mortgagor to fail "to provide specific answers to questions * * * relative to income, assets * * * (or) the operation of the project."

Comment. Proposed § 30.225(b)(12) is either incomplete or unclear in that it should predicate a violation not only on the existence of adequate income to make loan and mortgage insurance premium payments but also on the adequacy of income to satisfy all other project obligations, thus enabling a mortgagor to select which project expenses should be met when there is insufficient income to meet all expenses.

Response. The Department finds some merit in this comment but does not believe a blanket exception is warranted. Modifying language has been added to § 30.325(b)(12) of the final rule.

Discussion of Violations by Issuers and Custodians, Proposed Section 30.230 (Final Section 30.330).

Comment. It should be made clear in proposed § 30.230(a)(1) that an issuer's failure to timely pass-through principal and interest, as well as unscheduled recoveries of principal, is not sanctionable if the failure was attributable to the issuer's not having received sufficient income.

Response. The Department recognizes that overall business conditions could affect an issuer's ability to make a pass-through or maintain adequate net worth (see next comment). However, that situation must be considered under proposed § 30.115 as a facet of "(t)he ability to pay the penalty" factor or the newly added "Such other matters as justice may require" factor.

Comment. The minimum net worth requirement of proposed § 30.230(a)(6) should be sanctionable only if the violation results from improper transfers or distributions.

Response. The Department's response is the same as given above regarding an issuer's ability to make pass-throughs. A similar matter is discussed above with respect to lenders and mortgagees under proposed § 30.220(g).

Comment. Proposed § 30.230(c)(2) is too burdensome because issuers cannot determine the imminence of a failure to comply with an agreement or condition of approval. "Impending failure" is too vague a term for reasonable guidance.

Response. The Department agrees that "impending failure" is too abstract a term upon which to base a penalty and has deleted it from the final rule.

Comment. Any charge of a handbook violation under proposed § 30.230(c)(3) should be made only after the respondent has been given notice of the violation and an opportunity to cure it.

Response. The Department agrees. As discussed elsewhere in the Preamble and as implemented in Subpart B of the final rule, there will be a 30-day period prior to the referral of a penalty recommendation to a panel within which time the alleged violations may be withdrawn, cured, or disposed of through a settlement.

Discussion of Continuing Violations, Proposed Section 30.245 (Final Section 30.345)

Comment. Substitute "shall" for "may" with respect to a panel's consideration of the severity of the violation in determining the amount of the penalty. Continuing violations should be confined to those specified by the statute.

Response. The final rule contains the mandatory language regarding consideration of the severity of the violation. However, the Department believes that the persons commenting on continuing violations have misread the statute. Although the statute does not refer to continuing violations in every section that deals with penalties, where continuing violations are mentioned, the context is limiting. That is, after reciting that the penalty authority applies only after the enactment of the section, the statute adds that a continuing violation may be penalized only with respect to that portion of the violative conduct that occurred after the date of enactment. Thus, the statute does not establish the criteria for a continuing violation but rather recognizes that certain types of conduct are more likely than others to give rise to a continuing violation. Nevertheless, the Department has decided at this time to limit this rule's recognition of continuing violations to those that are recognized in corresponding Reform Act provisions. See, for example, section 110(b)(2) of the Act.

Discussion of the Rule's Prospective Application, Proposed Section 30.250 (Final Section 30.350)

Comment. It is statutorily impermissible to allow evidence of violations that occurred prior to December 15, 1989 as a factor in the consideration of the amount of a penalty.

Response. The Department disagrees. As a matter of fact, the statute expressly directs HUD to consider such evidence. A representative statutory provision dealing with factors in determining amount of penalty states that "* * * consideration shall be given to such factors as the gravity of the offense, any history of prior offenses (*including offenses occurring before enactment of this section*), * * *." (emphasis added). See, for example, section 106(d)(3) of the Act. However, pre-enactment evidence may not be used for violations under proposed § 30.205 or § 30.210; therefore, proposed § 30.250(b) is amended accordingly.

Discussion of the Procedural Rules, Proposed Sections 30.300–30.910 (Final Sections 30.400–1010)

Comment. Proposed § 30.305, Administrative law judge. The penalty process should not involve administrative law judges because they are Department employees. Proposed § 30.305(d) should make clear that there is no penalty for failure to defend and that the only penalties are those proposed by a panel.

Response. The proposed section will be retained. Although administrative law judges are employees of the Department for certain organizational purposes, they are independent in all other respects. The decisional independence of administrative law judges is assured by the Administrative Procedure Act, 5 U.S.C. 551, et seq., which provides, among other things, that their appointment, classifications and pay are controlled by the Office of Personnel Management, that they are separated from other agency personnel, that they are removable only for good cause after hearing before the Merit Systems Protection Board, that they are assigned cases in rotation insofar as practicable and that they must make their decisions on the record. Although the Department believes that the language of proposed § 30.305(d) in context applies only to the penalties proposed by a panel, it has made a change to assure that result.

Comment. Proposed § 30.320, Compromise and settlement. This section should contain a 90-day pre-Complaint procedure for negotiation and settlement.

Response. The Department, as stated above in the discussion on civil money penalty panels, is adopting a pre-Complaint notice and negotiation period, though for 30, rather than 90, days.

Comment. Proposed § 30.335, Subpoenas. Respondents should not be required to pay witness fees and mileage for HUD employees, nor for the cost of document production.

Response. The Department's position is that each party, as in other litigation, should bear its own costs.

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Comment. Proposed § 30.410, Amendments and supplemental pleadings. HUD should not be able to amend its Complaint as a matter of right; if a Complaint were amended, a respondent should have an additional 15 days in which to respond.

Response. The provision permitting HUD to amend a Complaint as a matter of right applies only if the amendment is made before the respondent files an Answer to the original Complaint. This rule is used widely (see, for example, Federal Rules of Civil Procedure, Rule 15), and there is no harm to the respondent by the procedure. Certainly a respondent should have additional time to answer an amended Complaint. Although the Department believes that the additional time is implicit in the procedure, it has added a new paragraph to express that right (§ 30.505(c)).

Comment. Proposed § 30.510, Use of depositions and proposed § 30.515, Objections to use of depositions. The objections to the use of depositions recognized in proposed § 30.515 should be available to a successor in interest in a subsequent proceeding involving the same subject matter.

Response. The Department agrees and has made the appropriate change.

Comment. Proposed § 30.520, Written interrogatories. There is no basis for limiting the number of interrogatories to 30, and in any event the administrative law judge can deny the right to ask an excessive number of questions.

Response. The Department disagrees. The rationale for the 30-question limit is to preclude the use of interrogatories as an abuse of the discovery process and to curtail requests for irrelevant information or information of little probative value. A number of United States District Courts have adopted the 30-question limit in their local rules; it is even more justifiable for an ALJ tribunal, which is intended to effect an expeditious means of adjudication, to establish such a limit. Just as the ALJ could deny the right to ask an excessive number of questions, he can—and the rule so provides—order an exception to the 30-question limit.

Comment. Proposed § 30.700, Hearings. This section should expressly state that the hearing before an administrative law judge is a *de novo* hearing.

Response. The Department disagrees. Such a statement is unnecessary because the *de novo* nature of the hearing is inherent in the procedures. There is no prior hearing because the panels are not adjudicatory bodies.

Comment. Proposed § 30.810, Finality and Secretarial review. The period within which to request review of an administrative law judge's decision should be expanded from 15 days to 30.

Response. The Department believes that 15 days is sufficient time to file a notice of appeal. The administrative process is designed to be expeditious, and these cases are not anticipated to be so complex as to require an additional period of reflection before a decision is made whether to appeal.

Comment. Proposed § 30.900, Judicial review. The period within which to appeal a decision of the Secretary to a United States Court of Appeals should be expanded from 20 days to 30.

Response. The 20-day period is statutory. See, for example, Section 106(e)(1) of the Reform Act.

Comment. Proposed § 30.905, Collection of penalties. HUD may not ask for fees and expenses in connection with its collection efforts because that action would result in an increase in the statutorily authorized level of penalties.

Response. The Department disagrees. First, fees and expenses would be recoverable to reimburse the Department for the time and effort it spent in its collection action. The rationale for a penalty is completely different and has no bearing on compensating the Department for its administrative expenses. Second, a primary aim of the Reform Act is to preclude the Department from losing money. In fact, the Reform Act specifically authorizes recovery of "attorneys fees and other expenses." See, for example, section 107(e) of the Act. Even if the Reform Act had been silent in this regard, authority for the recovery of fees and expenses is found at 28 U.S.C. 2412 and at 31 U.S.C. 3717.

In addition, the Department made a clarifying amendment to § 30.815(a) to assure that everyone understands that a fee is likely to be charged for copies of hearing transcripts.

Findings and Certifications

There are no new information collection requirements contained in this rule. All referenced information collection requirements have been approved previously by the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. Specifically, the requirements of section 30.320(g)(1) are set forth in 24 CFR 203.1–203.7 (OMB Control No. 2502–0005); the requirements of section 30.320(o) are set forth in 24 CFR 203.365, 203.366 and 203.368 (OMB Control No. 2502–0347); the requirements of section 30–325(b)(8)–(11) are set forth in 24 CFR 207.19(f) (OMB Control No. 2502–0324); and the requirements of section 30.330(a)(7) and (c)(2) are set forth in the several GNMA Guaranty Agreements (OMB Control Nos. 2503–0014 and 2503–0008).

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule implements legislation authorizing HUD to impose civil money penalties on certain participants and establishes hearing procedures that are required to be followed before the imposition of the penalty. A penalty may be imposed only upon a knowing and material violation of specified HUD programs criteria which limits further the participants affected.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule does not have substantial, direct effects on States or their political subdivisions, or on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Though there is potential for some effect on States or their political subdivisions because of their participation in HUD programs, the effect is attributable to the authorizing legislation. The primary creation of this rule is a procedure for administrative review.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule applies to business relationships with HUD and the procedures that apply when persons in those relationships violate HUD requirements. It would have no impact on the family.

This rule was listed as Item No. 1231 in the Department's Semiannual Agenda of Regulations published on April 22, 1991 (56 FR 17360, 17373) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 30

Administrative practice and procedure, Civil money penalties, Reporting and recordkeeping requirements.

Accordingly, subtitle A of title 24 of the Code of Federal Regulations is amended by adding a new part 30, to read as follows:

PART 30—CIVIL MONEY PENALTIES: CERTAIN PROHIBITED CONDUCT

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30.5 Authority and delegation.
30.10 Definitions.
30.15 Cumulative remedy.

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30.100 Notice of intent to request civil money penalty.
30.105 Response to notice.
30.110 Settlements.

Subpart C—Civil Money Penalty Panels

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Defaults and Decisions

30.900 Default upon failure to file an Answer.
30.905 Initial decision.
30.910 Finality and Secretarial review.

Judicial Review and Collection of Civil Penalties

30.1000 Judicial review.
30.1005 Collection of penalties.
30.1010 Offset.

Authority: Sections 102, 103, 107–112, 126 and 134, Department of Housing and Urban Development Reform Act of 1989, Pub. L. 100–235 (approved December 15, 1989) (12 U.S.C. 1735f–14, 1735f–15, 1701q–1, 1723i, 15 U.S.C. 1717a, and 12 U.S.C. 1703, respectively); sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 30.1 Purpose and scope.

This part explains the structure of the enforcement apparatus for imposition of penalties which the Secretary of Housing and Urban Development is authorized to impose by the HUD Reform Act of 1989 (Pub. L. 101–235), and sets forth the procedures for the assessment of penalties. These procedures include administrative hearings and appeals, judicial review and collection of penalties. The procedural rules in subpart E of this part apply to all civil penalty proceedings initiated by the Department unless there are other specific regulations or statutes that govern such proceedings, e.g., 24 CFR part 28.

§ 30.5 Authority and delegation.

The Secretary's authority to impose civil penalties is delegated to the officers identified in subpart C, who may redelegate such authority except the authority to review decisions or orders of the Administrative Law Judge.

§ 30.10 Definitions.

Because this part is primarily procedural, terms not defined in this section shall have the meanings given them in relevant program regulations. In the case of new responsibilities and new terminology established by the Reform Act, comprehensive definitions will be found in 24 CFR part 4 (Prohibition of Advance Disclosure of Funding Decisions), part 12 (Accountability in the Provision of HUD Assistance), and part 86 (Requirements Governing the Lobbying of HUD Personnel).

Agent means any person who acts on behalf of another person and includes officers, directors, partners and trustees.

ALJ means an administrative law judge in HUD appointed pursuant to 5 U.S.C. 3105 or detailed to HUD pursuant to 5 U.S.C. 3344.

Dealer means a seller, contractor or supplier of goods or services having a direct or indirect financial interest in the transaction between the borrower and the lender, and who assists the borrower in preparing the credit application or otherwise assists the borrower in obtaining the loan from the lender.

Department or *HUD* means the Department of Housing and Urban Development.

Government means the United States Government.

Knowing or *Knowingly* means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under subpart C of this part or under 24 CFR parts 4, 12, or 86.

Loan broker means a loan correspondent, which is a financial institution approved by the Secretary to

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originate title I direct loans for sale or transfer to a sponsoring financial institution which holds a valid title I contract of insurance and is not under suspension.

Material or *Materially* means in some significant respect or to some significant degree.

Person means an individual, corporation, company, association, authority, firm, partnership, society, state, local government or agency thereof, or any other organization or group of people.

Respondent means any person alleged in a Complaint under § 30.500 to be liable for a civil money penalty.

Secretary means the Secretary of Housing and Urban Development.

§ 30.15 Cumulative remedy.

A civil money penalty may be imposed in addition to other administrative sanctions or any other civil remedy or criminal penalty.

Subpart B—Pre-Penalty Notice

§ 30.100 Notice of intent to request civil money penalty.

Whenever the Department intends to seek a civil money penalty the responsible program official, or his or her designee, shall issue a written notice to any person from whom the Department intends to seek the penalty. The Notice shall inform the person that the Department is considering seeking a civil money penalty, shall state the specific violations with which the person is charged, shall state the amount of the civil money penalty which will be recommended to the relevant civil money penalty panel, and shall offer the person the opportunity to reply in writing to the responsible program official within thirty days after receipt of the notice. The notice shall also provide the address to which the response shall be sent. If the person fails to reply during such time period, the responsible program official may refer the matter to the relevant civil money penalty panel without further notice to the person.

§ 30.105 Response to notice.

The person's response to the notice shall be in a format prescribed by the Secretary. The response shall include a summary, a statement of the facts surrounding the matter, an argument and a conclusion.

§ 30.110 Settlements.

(a) *In general.* The person receiving the Notice may enter into a settlement agreement with the Department through an authorized program official at any time before the matter is referred to the relevant civil money penalty panel for consideration.

(b) *Scope of settlement agreement.* Settlement agreements may include, but are not limited to, provisions for cessation of the alleged violation(s); correction or mitigation of the effects of any violation(s); repayment of sums of money wrongfully or incorrectly paid to the person by a third party, or by HUD; collection of money wrongfully or incorrectly paid by the person to itself or to a third party; indemnification of HUD/FHA for mortgage insurance claims on mortgages originated in violation of HUD/FHA requirements; modification of the proposed amount of the civil money penalty; agreement not to engage in certain activities. Failure of the person to comply with a settlement agreement shall be sufficient cause for immediate referral to the relevant civil money penalty panel or for any other action available administratively or at law or in equity.

Subpart C—Civil Money Penalty Panels

§ 30.200 Establishment of panels.

There are four panels whose purpose it is to review recommendations for and to propose civil money penalties. Three voting members of a panel shall constitute a quorum, except for the Mortgagee Review Board, for which four voting members are required.

§ 30.205 Name and composition.

(a) *Housing.* The Housing Civil Penalties Panel (HCPP) is composed of the Assistant Secretary for Housing as Chairman, the Deputy Assistant Secretary for Operations, the Deputy Assistant Secretary for Multifamily Housing Programs, the Deputy Assistant Secretary for Single Family Housing or their designees, and a designee of the General Counsel who serves in a non-voting, advisory capacity. When a case that involves an alleged violation of any of HUD's nondiscrimination requirements is brought before the HCPP, the HCPP shall include the Assistant Secretary for Fair Housing and Equal Opportunity, or his or her designee. In the absence of the Assistant Secretary for Housing, members shall serve as chairman in the order listed in this paragraph.

(b) *Government National Mortgage Association (GNMA).* The Government National Mortgage Association Civil Penalties Panel (GCPP) is composed of the President of GNMA as chairman, the Executive Vice President, the Vice President of Mortgage-Backed Securities, the Vice President of Asset Management, the Vice President of Finance, or their designees, and a designee of the General Counsel who serves in a non-voting, advisory capacity. The Chairman of the GCPP may appoint up to three additional GNMA officials to this panel to serve only in a non-voting, advisory capacity. In the absence of the President, members shall serve as chairman in the order listed in this paragraph.

(c) *Departmental.* The Departmental Civil Penalties Panel (DCPP) is composed of the Assistant Secretaries for Administration, for Community Planning and Development, for Fair Housing and Equal Opportunity, for Public and Indian Housing, for Housing, for Policy Development and Research, the President of the Government National Mortgage Association (GNMA), or their designees, and a designee of the General Counsel who serves in a non-voting, advisory capacity. The Secretary will appoint a chairman and a vice-chairman annually. The chairman and the vice-chairman will serve until their successors are appointed.

(d) *Mortgagees.* The Mortgagee Review Board (MRB) is composed of the members identified in 24 CFR part 25.

(e) *Designee qualification.* Each panel member's designee is a subordinate of the member and holds position not lower than that of Office Director or its equivalent.

§ 30.210 Jurisdiction of panels.

(a) *Housing Civil Penalties Panel (HCPP).* The HCPP proposes penalties in cases involving violations described in subpart D of this part by:

(1) Mortgagees approved under the National Housing Act and lenders holding contracts of insurance under title I of the National Housing Act, 12 U.S.C. 1702, et seq.

(2) Mortgagors of property that includes five or more living units and is subject to a mortgage insured, co-insured or held pursuant to the National Housing Act, 12 U.S.C. 1702, et seq.;

(3) Mortgagors of property that includes five or more living units and is subject to a mortgage pursuant to section 202 of the Housing Act of 1959, 12 U.S.C. 1701q;

(4) Any person under the Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1702, et seq; and

(5) Any dealer or loan broker that provides assistance to a borrower in obtaining a property improvement loan or advance of credit under title I, section 2 of the National Housing Act, 12 U.S.C. 1703.

(b) *Government National Mortgage Association Civil Penalties Panel (GCPP).* The GCPP proposes penalties in

cases involving violations described in subpart D of this part by an issuer or custodian approved under section 306(g) of the National Housing Act, 12 U.S.C. 1721(g).

(c) *Departmental Civil Penalties Panel (DCPP).* The DCPP proposes penalties in cases involving violations described in subpart D of this part by:

(1) Any applicant for assistance within the jurisdiction of the Department, as described in 24 CFR part 12;

(2) Any officer or employee of the Department, as described in 24 CFR part 4; and

(3) Any person who makes an expenditure to influence the decision of any officer or employee of the Department with respect to the award of, or change in, any financial assistance within the jurisdiction of the Department, as described in 24 CFR part 86; and

(4) Any state, unit of general local government, or its designated public agency or qualified community organization, or a transferee of property from any such entity under 12 U.S.C. 1706e with respect to the use or conveyance of such property.

(d) *Mortgagee Review Board (MRB).* The MRB proposes penalties in cases involving violations described in subpart D of this part by mortgagees approved under the National Housing Act and lenders holding contracts of insurance under title I of the National Housing Act, 12 U.S.C. 1702, et seq. However, the MRB will propose a penalty only when the proposal is made in conjunction with other administrative sanctions the MRB is authorized to impose.

§ 30.215 Criteria for determining penalty and amount thereof.

(a) In determining whether to propose a penalty for a violation under subpart D of the HCCP, the GCPP, the DCPP and the MRB shall consider all facts and arguments advanced by a proposed respondent to the official who recommended the penalty, unless the respondent requests otherwise.

(b) Each panel shall establish guidelines to be used in determining the amount of a penalty to be proposed. The guidelines shall include the following factors:

(1) The gravity of the offense;

(2) Any history of prior offenses, including those before the date of enactment of the Reform Act except as to § 30.210(c)(2), Public Law 101–235 (i.e., December 15, 1989);

(3) The ability to pay the penalty;

(4) The injury of the public;

(5) Any benefits received by the violator;

(6) The extent of potential benefit to other persons;

(7) Deterrence of future violations;

(8) The degree of the violator's culpability; and

(9) Such other matters as justice may require.

(10) With respect to a violation under § 30.315, the expenditures made by the violator in connection with any gross profit derived.

(c) In addition to the above factors, the HCPP shall also consider:

(1) Any injury to tenants;

(2) Any injury to lot owners.

§ 30.220 Amount of penalty.

The maximum amounts of penalties determined by the Secretary shall be:

(a) $10,000 for each violation of 24 CFR 12.34.

(b) $10,000 for each violation of 24 CFR 4.100.

(c) For a violation of § 30.315, an amount not to exceed the greater of two times the amount of the gross profit realized by the violator from any impermissible use or conveyance of property made available under section 810 of the Housing and Community Development Act of 1974, as amended, (12 U.S.C. 1706e), or the amount of section 810 funds used to reimburse HUD, the Veterans Administration (VA), the Resolution Trust Corporation (RTC) or the Farmers Home Loan Administration (FmHA) for the property. In the event of an unauthorized use of property still retained by the violator, the gross profit shall include the difference between the amount paid for the property by the violator and its current value as determined by an independent appraiser whose qualifications meet current HUD standards.

(d) $5,000 for each violation of § 30.320, except that the maximum penalty for all violations by any particular mortgagee or lender during any one-year period shall not exceed $1 million. Each violation shall constitute a separate violation with respect to each mortgage or loan application, subject to the aggregate penalty of $1 million.

(e) For a violation of § 30.325(a), an amount not in excess of the amount of the loss the Secretary would experience at a foreclosure sale, or a sale after foreclosure, of the property involved.

(f) $25,000 for a violation of § 30.325(b).

(g) $5,000 for each violation of § 30.330, except that the maximum penalty for all violations by a particular issuer or custodian during any one-year period shall not exceed $1 million. Each violation shall constitute a separate violation with respect to each pool of mortgages.

(h) $1,000 for each violation of § 30.335, except that the maximum penalty for all violations by a particular person during any one-year period shall not exceed $1 million. Each violation of the Interstate Land Sales Full Disclosure Act (Act), or any rule, regulation, or order issued under the Act, shall constitute a separate violation with respect to each sale or lease or offer to sell or lease.

(i) $5,000 for each violation of § 30.340, except that the maximum penalty shall not exceed $1 million for all violations by any dealer or loan broker during any one-year period. Each violation of a provision of § 30.340 shall constitute a separate violation with respect to each mortgage or loan application.

(j) $10,000 for each violation of 24 CFR 86.35, or the total amount received for any services performed for any applicant to which the violation relates, whichever is greater.

§ 30.225 Majority decision.

The decision by any panel to propose a civil money penalty must be supported by a majority vote, and each panel shall maintain a written record of its vote on each case it considers.

§ 30.230 Notice after determination.

If the HCPP, the GCPP, the DCPP, or the MRB determines to propose a penalty, it shall:

(a) Prepare, with the advice of counsel, a Complaint to be filed and served in accordance with §§ 30.500 and 30.425.

(b) In the case of a violation of § 30.320(e) or (f), or of § 30.330(b), also send written notice of its intention to the Attorney General.

Subpart D—Violations

§ 30.300 Applicant's failure to disclose information.

Pursuant to § 30.210(c)(1), the DCPP may propose a civil money penalty on any applicant for assistance, in accordance with 24 CFR 12.34(b).

§ 30.305 Improper disclosure by HUD employees.

Pursuant to § 30.210(c)(2), the DCPP may propose a civil money penalty on any officer or employee of the Department, in accordance with 24 CFR 4.110.

§ 30.310 Failure to register or report by consultants.

Pursuant to § 30.210(c)(3), the DCPP may propose a civil money penalty on

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any person, in accordance with 24 CFR 86.35.

§ 30.315 Urban Homestead violations.

Pursuant to § 30.210(c)(4), the DCPP may propose a civil money penalty on any person who knowingly and materially violates section 810 of the Housing and Community Development Act of 1974, as amended (12 U.S.C. 1706e), or the regulations at 24 CFR part 590, in the use or conveyance of property made available under the Urban Homestead Program.
Notwithstanding any other provision of this part, such penalties are authorized with respect to any property transferred for use under section 810 after January 1, 1981 to a state, a unit of general local government, or a public agency or qualified community organization designated by a unit of general local government, or a transferee of any such entity.

§ 30.320 Violations by mortgagees and lenders.

Pursuant to § 30.210(a)(1) and (d), the HCPP or the MRB may propose a civil money penalty on any mortgagee or lender who knowingly and materially:

(a) Transfers an insured mortgage to a mortgagee not approved by the Secretary;

(b) Transfers a title I insured loan to a person who does not hold a contract of insurance under title I of the National Housing Act;

(c) Fails, if a non-supervised mortgagee (as defined at 24 CFR 203.4):

(1) To segregate all escrow funds received from a mortgagor for ground rents, taxes, assessments and insurance premiums; or

(2) To deposit these funds in a special account with a depository whose accounts are insured by an agency of the Federal Government.

(d) Uses escrow funds for any purpose other than that for which they were received or fails to use escrow funds for the purposes for which they were received;

(e) Submits to the Secretary false information in connection with any insured mortgage or any loan covered by a contract of insurance under title I of the National Housing Act;

(f) Falsely certifies to the Secretary or submits to the Secretary a false certification by another person;

(g) Fails to comply with an agreement, certification or condition of approval in connection with:

(1) A mortgagee's or lender's application for approval by the Secretary; or

(2) A mortgagee's or lender's application to the Secretary for approval of a branch office.

(h) Hires an agent of a mortgagee or lender whose duties will involve, directly or indirectly, programs administered by the Secretary while the agent is under suspension or withdrawal by the Secretary; or retains an agent who continues to be involved, directly or indirectly, in programs administered by the Secretary while the agent is under suspension or withdrawal by the Secretary.

(i) Fails to comply with the requirements of 24 CFR 201.27(a) regarding approval and supervision of dealers;

(j) Approves a dealer that has been suspended, debarred or otherwise denied participation in the Department's programs;

(k) Makes a payment that is prohibited under 24 CFR 203.1(b);

(l) Fails to remit, or timely remit, mortgage insurance premiums, loan insurance charges, or late charges or interest penalties;

(m) Permits loan documents for an FHA insured loan to be signed in blank by its agents or any other party to the loan transaction unless expressly approved by the Secretary;

(n) Fails to follow the mortgage assignment procedures set forth at 24 CFR 203.850 through 203.664 or at 24 CFR 207.255 through 24 CFR 207.258b.

(o) Fails to timely submit documents that are complete and accurate in connection with a conveyance of property or a claim for insurance benefits, in accordance with 24 CFR 203.365, 203.366 or 203.368;

(p) Fails to:

(1) Process requests for formal release of liability under an FHA insured mortgage;

(2) Obtain a credit report, issued not more than 90 days prior to approval of a person as a borrower, as to the person's creditworthiness to assume an FHA insured mortgage; or

(3) Timely submit proper notification of a change in mortgagor or mortgagee as required by 24 CFR 203.431;

(4) Timely submit proper notification of mortgage insurance termination as required by 24 CFR 203.316;

(5) Timely submit proper notification of a change in mortgage servicing as required by 24 CFR 203.502; or

(6) Report all delinquent mortgages to the Department, as required by 24 CFR 203.332;

(q) Fails to service FHA insured mortgages, in accordance with the requirements of 24 CFR part 235, subparts A, B and C;

(r) Fails to fund loans that it originated;

(s) Fails to comply with the conditions relating to the assignment or pledge of mortgages as required by 24 CFR 207.261;

(t) Fails to comply with the provisions of the Real Estate Settlement Procedures Act, 12 U.S.C. 2601, et seq., the Equal Credit Opportunity Act, 15 U.S.C. 1691, et seq., or the Fair Housing Act, 42 U.S.C. 3601, et seq.;

(u) Violates any provision of Title I or Title II of the National Housing Act, or title X of that Act (as such title existed immediately before the effective date of the Department of Housing and Urban Development Reform Act of 1989 (i.e., December 15, 1989), or any implementing regulation or handbook that is issued under the Act.

§ 30.325 Violations by multifamily mortgagors.

(a) Pursuant to § 30.210(a) (2) or (3), the HCPP may propose a civil money penalty on any mortgagor of property that includes five or more living units and is subject to a mortgage insured, co-insured or held by the Secretary (a "project") who knowingly and materially fails to comply with its written agreement made after December 15, 1989, to use non-project funds to:

(1) Make payments due under the note and mortgage;

(2) Make payments to the reserve for replacement account;

(3) Restore the project to good physical condition; or

(4) Make payments satisfying other project liabilities; provided that the agreement was made as a condition for approval of a transfer of physical assets, a flexible subsidy loan, a capital improvement loan, a modification of mortgage terms or a workout agreement.

(b) The HCPP also may propose civil money penalties on any project mortgagor who knowingly and materially violates its regulatory agreement by:

(1) Conveying, transferring or encumbering any of the mortgaged property, or permitting the conveyance, transfer or encumbrance of such property, without the prior written approval of the Secretary;

(2) Assigning, transferring, disposing or encumbering of any personal property of the project, including rents, or paying out any funds, except for reasonable operating expenses and necessary repairs, without the prior written approval of the Secretary;

(3) Conveying, assigning or transferring of any beneficial interest in any trust holding title to the property, or

the interest of any general partner in a partnership owning the property or any right to manage or receive the rents and profits from the mortgaged property, without the prior written approval of the Secretary;

(4) Remodeling, adding to, reconstructing, or demolishing any part of the mortgaged property or subtracting from any real or personal property of the project, without the prior written approval of the Secretary;
(Modifications made pursuant to section 804 of the Fair Housing Act, 42 U.S.C. 3604, or section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, shall be regarded as having prior approval of the Secretary, because such modifications are required by law.)

(5) Requiring, as a condition of the occupancy or leasing of any unit in the project, any consideration or deposit in excess of the prepayment of the first month's rent, plus a security deposit in an amount not in excess of one month's rent, to guarantee the performance of the covenants of the lease;

(6) Not holding any funds collected as security deposits separate and apart from all other funds of the project in a trust account, the amount of which at all times equals or exceeds the aggregate of all outstanding obligations under the account;

(7) Paying for services, supplies, or materials which exceed $500 and substantially exceed the amount ordinarily paid for such services, supplies, or materials in the area where the services are rendered or the supplies or materials furnished;

(8) Failing to maintain at any time the mortgaged property, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents, and other related papers (including failure to keep copies of all written contracts or other instruments which affect the mortgaged property) in reasonable condition for proper audit and for examination and inspection at any reasonable time by the Secretary or any duly authorized agents of the Secretary;

(9) Failing to maintain the books and accounts of the operations of the mortgaged property and of the project in accordance with requirements prescribed by the Secretary;

(10) Failing to furnish the Secretary, by the expiration of the 60-day period beginning on the first day after the completion of each fiscal year, with a complete annual financial report based upon an examination of the books and records of the mortgagor prepared and certified to by an independent public accountant or a certified public accountant and certified to by an officer of the mortgagor, unless the Secretary has approved an extension of the 60-day period in writing, which extension shall be granted if the mortgagor demonstrates that failure to comply is due to events beyond its control;

(11) At the request of the Secretary, his employees, or attorneys, failing to furnish monthly occupancy reports or failing to provide specific answers to questions upon which information is sought relative to income, assets, liabilities, contracts, the operation and condition of the property, or the status of the mortgage. For this purpose, "monthly occupancy reports" includes any report that contains information related to occupancy, not only bare occupancy data. (For example, Form 93104 relating to monthly excess income is an occupancy report.)

(12) Failing to make promptly all payments due under the note and mortgage, including mortgage insurance premiums, tax and insurance escrow payments, accumulated excess funds, and payments to the reserve for replacement, when there is adequate project income available to make such payments and to pay ordinary project operating expenses (except that ordinary project operating expenses do not include amounts owed to identity of interest persons); or

(13) In the case of a project insured under section 202 of the Housing Act of 1959 (section 202 project), amending the articles of incorporation or bylaws, other than as permitted under the terms of the articles of incorporation as determined by the Secretary, without the prior written approval of the Secretary.

(c) The payout of surplus cash as provided for in the Regulatory Agreement shall not constitute a violation of this section.

(d) The Secretary may not impose a penalty on a mortgagor for violations of an agreement under paragraph (a) of this section if a material cause of the violation resulted from the failure of the Department, its agent or a public housing agency to comply with the agreement.

(The information collection requirements in paragraphs (b) (8), (9), (10), and (11) have been approved by the Office of Management and Budget under OMB Control No. 2502-0324.)

§ 30.330 Violations by issuers and custodians.

The GCPP, pursuant to § 30.210(b), may propose a civil money penalty on any issuer or custodian for a knowing and material violation as follows:

(a) Upon an issuer that:

(1) Fails to timely pass-through the entire amount of interest, scheduled principal, and unscheduled recoveries of principal due to security holders in accordance with the appropriate GNMA Guide;

(2) Fails to properly segregate the cash flow from the pooled mortgages by maintaining custodial accounts for principal and interest, taxes and other escrows, as well as late charges, assumption fees and any other fees or collections, in accordance with the appropriate GNMA Guide and guaranty agreement;

(3) Fails to deposit funds received from a mortgagor or borrower in a segregated account with a depository whose accounts are insured by an agency of the federal government;

(4) Improperly uses funds deposited for principal and interest pass-through or taxes and other escrows, as well as late charges, assumption fees, and any other fees or collections, for any purpose other than that for which they were received;

(5) Transfers servicing for a pool of mortgages:

(i) To an organization not approved as a GNMA issuer; or

(ii) In a transfer not approved by GNMA;

(6) Fails to maintain a minimum net worth in assets acceptable to GNMA, or fails to maintain a required amount in letters of credit if operating pursuant to GNMA approval with a letter of credit in lieu of adequate net worth;

(7) Fails to promptly notify GNMA in writing of any changes that materially affect business status. "Business status" means organizational structure or operating activities. A change in business status results from, among other events, merger, consolidation, divestiture, transfer of part or all of an issuer's business, change of name, voluntary or involuntary proceedings under title 11 of the United States Code or any state insolvency law, or the appointment for any purposes of a conservator, receiver, trustee or other transferee or assignee.

(8) Submits false information:

(i) In connection with any GNMA securities or pooled mortgages or loans; or

(ii) In connection with an issuer's or custodian's business status; or

(9) Hires, or retains in employment, an officer, director, principal, or employee whose duties involve, directly or indirectly, programs administered by GNMA while such person was under suspension or debarment by the Secretary.

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(10) Places a mortgage or loan in a GNMA pool that does not meet the eligibility requirements of the applicable GNMA Guide;

(11) Fails to timely buy-out an ineligible mortgage or loan from a GNMA pool;

(b) Upon a custodian that submits a false certification either on its own behalf or on behalf of another person.

(c) Upon an issuer or custodian that:

(1) Fails to comply with an agreement, certification, contract or condition of approval;

(2) Fails to notify GNMA of a failure to comply with an agreement, certification, contract, or condition of approval;

(3) Violates any provision of title III of the National Housing Act or any implementing regulations, or GNMA Handbook, Guide, or participant letter.

(The information collection requirements in paragraphs (a)(7) and (b)(2) have been approved by the Office of Management and Budget under OMB Control Nos. 2503–0014 and 2503–0008).

§ 30.335 Interstate Land Sales violations.

The HCPP, pursuant to § 30.210.(a)(4), may propose a civil money penalty on any person who knowingly and materially violates any provisions of the Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1701, et seq.; the rules and regulations set forth at 24 CFR parts 1710, 1715 and 1720, or any order issued thereunder. Any such violation is presumed to be material, but a respondent may overcome the presumption by presenting adequate rebuttable evidence.

§ 30.340 Violations by dealers or loan brokers in the origination of property improvement loans.

(a) The HCPP, pursuant to § 30.210(a)(5), with respect to a property improvement loan or advance of credit under title I of the National Housing Act (12 U.S.C. 1703) may propose a civil money penalty upon any dealer or loan broker who knowingly submits false information to the Secretary or to any financial institution that is a party to a title I contract of insurance with the Secretary.

(b) Violations of this section include, but are not limited to:

(1) Falsifying information on an application for dealer approval or reapproval submitted to a lender;

(2) Falsifying statements on a HUD credit application, improvement contract, note, security instrument, completion certificate or other loan document;

(3) Failing to sign a credit application if the dealer or loan broker assisted the borrower in completing the application;

(4) Falsely certifiying to a lender that the loan proceeds have been or will be spent on eligible improvements;

(5) Falsely certifying to a lender that the property improvements have been completed;

(6) Falsely certifying that a borrower has not been given or promised any cash payment, rebate, cash bonus, or anything of more than nominal value as an inducement to enter into a loan transaction;

(7) Making a false representation to a lender with respect to the creditworthiness of a borrower or the eligibility of the improvements for which a loan is sought.

§ 30.345 Continuing violations.

A violation once committed shall constitute a separate violation for each day the violation continues. However, a penalty panel shall take into consideration the severity of the violation in reaching its decision with respect to the amount of the penalty it proposes to assess. This section applies only in the case of a violation under §§ 30.320, 30.330, 30.335 or 30.340.

§ 30.350 Prospective application.

(a) Except as provided in paragraph (b) of this section, the Secretary may impose civil money penalties only for violations that occur after December 15, 1989. However, evidence of violations occurring before December 15, 1989 may be considered by the Secretary in determining the amount of the penalty to be imposed (see § 30.215(b)(2)).

(b) In the case of a violation of § 30.305 or § 30.310, the Secretary may impose a civil money penalty only after the effective date of this rule, and evidence of violations occurring before December 15, 1989 may not be considered by the Secretary in determining the amount of a penalty.

Subpart E—Procedural Rules

General Provisions

§ 30.400 Purpose and scope.

This subpart:

(a) Specifies rules of administrative procedure for imposing civil money penalties against persons who are alleged to have committed a violation under subpart D of this part;

(b) Specifies the hearing and appeal rights of persons subject to such penalties; and

(c) Applies to any civil money penalty proceeding undertaken by the Department that is not provided for elsewhere by statute or regulation.

§ 30.405 Administrative Law Judge (ALJ).

(a) *Designation.* Proceedings under this part shall be presided over by an ALJ appointed under 5 U.S.C. 3105 or detailed to HUD pursuant to 5 U.S.C. 3344. The presiding ALJ shall be designated by the Chief ALJ at HUD.

(b) *Authority.* The ALJ shall have all powers necessary to the conduct of fair and impartial hearings, including the authority:

(1) To conduct hearings in accordance with this part;

(2) To regulate the course of the hearing and the conduct of the parties and their counsel;

(3) To administer oaths and affirmations and examine witnesses;

(4) To issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(5) To rule on offers of proof and to receive evidence;

(6) To take depositions or have depositions taken when the ends of justice are served;

(7) Upon motion of a party, to take official notice of facts;

(8) To hold conferences for the settlement or simplification of the issues by consent of the parties.

(9) To dispose of motions, procedural requests, and similar matters.

(10) To make initial decisions, as described under § 30.905.

(11) To exercise such powers vested in the Secretary as are necessary and appropriate for the purpose of the hearing and conduct of the proceeding.

(c) *Party's failure to comply with order.* When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control or a request for admissions, the ALJ may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admissions, regard each matter about which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with the order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought;

(4) Strike any part of the pleadings or other submission of the party failing to comply with the request.

(d) *Party's failure to prosecute or defend.* If a party fails to prosecute or defend an action under this part, the ALJ may dismiss the action or may issue an initial decision imposing penalties, provided that the amount of the penalty

shall not exceed the amount requested in the Complaint.

(e) *Party's failure to file in a timely manner.* The ALJ may refuse to consider any motion, request, response, brief or other document which is not timely filed.

(f) *Disqualification.* If an ALJ finds that there is a basis for his or her disqualification in a proceeding, the ALJ shall withdraw from the proceeding. Withdrawal is accomplished by entering a notice in the record and by providing a copy of the notice to the Chief ALJ.

(g) *Motion for recusal; ruling.* If a party believes that the presiding ALJ should be disqualified for any reason, the party may file a motion to recuse with the ALJ. The motion shall be made timely and supported by an affidavit setting forth the alleged grounds for disqualification. The ALJ shall proceed no further in the case until he or she rules on the motion. If the ALJ denies the motion, he or she shall incorporate a written statement of the reasons for the denial in the record. The denial shall be appealable only in conjunction with an appeal of the initial decision.

(h) *Redesignation of ALJ.* For reasons of judicial efficiency, or if an ALJ is disqualified, or otherwise unavailable, the Chief ALJ shall designate another ALJ to preside over further proceedings.

§ 30.410 Ex parte communications.

(a) *In General.* An ex parte communication is any direct or indirect communication concerning the merits of a pending proceeding, made by a party in the absence of any other party, to the ALJ assigned to the proceeding and which was neither on the record nor on reasonable prior notice to all parties. Ex parte communications do not include communications made for the sole purpose of scheduling hearings, requesting extensions of time, requesting information on the status of cases, or requesting the issuance of subpoenas.

(b) *Prohibition.* Ex parte communications are prohibited.

(c) *Procedure upon receipt.* If the ALJ receives an ex parte communication that the ALJ knows or has reason to believe is prohibited, the ALJ shall promptly place the communication, or a written statement of the substance of the communication, in the record and shall furnish copies to all parties. Unauthorized communications shall not be taken into consideration in deciding any matter in issue. Any party making a prohibited ex parte communication may be required to show cause why that party's claim or interest in the proceeding should not be dismissed, denied, disregarded or otherwise adversely affected on account of the prohibited communication.

§ 30.415 Representation.

(a) *Representation of HUD.* HUD is represented by the General Counsel or his or her designee.

(b) *Representation of other parties.* Other parties may be represented as follows:

(1) Individuals may appear on their own behalf.

(2) A member of a partnership may represent the partnership.

(3) An officer of a corporation or association may represent the corporation or association.

(4) A trustee of a trust may represent the trust.

(5) An officer or employee of any governmental unit, agency or authority may represent that unit, agency or authority.

(6) An attorney admitted to practice before a Federal Court or the highest court in any State may represent a party. The attorney's representation that he or she is in good standing before any of these courts is sufficient evidence of the attorney's qualifications under this section, unless otherwise determined by the ALJ.

(c) *Notice of appearance.* Each attorney or other representative of a party shall file a notice of appearance. The notice shall indicate the party on whose behalf the appearance is made. Any individual acting in a representative capacity may be required by the ALJ to demonstrate authority to act in that capacity.

(d) *Withdrawal.* An attorney or other representative of a party shall file a written notice of intent 15 days in advance of withdrawal, unless the ALJ approves a lesser time period, before withdrawing from participation in the proceeding.

§ 30.420 Compromise and settlement.

(a) Parties may make offers of compromise or settlement at any time.

(b) The relevant civil penalties panel has the exclusive authority to compromise or settle a case under this part at any time before the date on which the ALJ issues an initial decision. A panel may delegate such authority to one or more individuals for the purpose of expediting settlement.

(c) The Secretary has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any judicial review under § 30.1000 or during the pendency of any action to collect penalties under § 30.1005.

(d) All information concerning settlement negotiations between the parties shall be privileged and shall not be disclosed prior to or during the hearing.

§ 30.425 Form, filing, and service.

(a) *Form of documents to be filed.* Documents to be filed under the rules in this part shall be dated and shall show the names of the parties, the docket number (except the original complaint), the title of the document, the address and telephone number of the signatory and the title of any signatory appearing in a representative capacity. The original shall be signed in ink. Documents shall be legible and shall not be more than 8½ inches wide and 11 inches long.

(b) *Filing of documents and other materials.*

(1) *Generally.* All documents and other materials relating to the proceeding shall be filed with the Chief Docket Clerk, Office of Administrative Law Judges, Department of Housing and Urban Development, at the address noted in the Complaint.

(2) *Copies.* Unless otherwise ordered by the ALJ, an executed original and one copy of each document (including exhibits and other materials) are to be filed. Copies need not be signed, but the name of the person signing the original shall be shown on each copy.

(3) *Methods and means.* Filing may be made by first-class mail or by other more expeditious methods of filing such as personal delivery, facsimile machine or electronic means; however, if filing is made by facsimile machine or electronic means, the following rules shall apply:

(i) Only documents of ten or fewer total pages will be accepted via facsimile machine transmittal or other electronic means.

(ii) Receipt of documents by facsimile machine or electronic means will not be acknowledged, except that the sender may request confirmation of receipt by calling the Chief Docket Clerk ((202) 755–2540).

(iii) The signed original shall be sent by first-class mail to the Chief Docket Clerk in accordance with paragraph (b)(1) of this section.

(c) *Service of documents.*

(1) *By parties.* Unless otherwise ordered by the ALJ, one copy of all documents filed with the ALJ shall be served upon all other parties of record by the persons filing them. Every document filed with the ALJ and required to be served upon all parties of record shall be accompanied by a certificate of service signed by (or on

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behalf of) the party making the service, stating that such service has been made.

(2) *By the Office of Administrative Law Judges.* The Office of Administrative Law Judges shall serve one copy of all orders, notices, decisions, rulings on motions, and similar documents which are issued by the ALJ upon each party in accordance with paragraph (c)(3) of this section. Every document served by the Office of Administrative Law Judges shall be accompanied by a certificate of service.

(3) *How service may be made.* Service may be made by first class mail or by other more expeditious methods of service such as personal delivery, facsimile machine or electronic means; provided that service by facsimile machine or electronic means is permissible only upon prior agreement between the parties to use such means.

(4) *Where service is to be made.* Service shall be made at the address of the party's counsel or representative or, if not represented, at the last known address of the residence or principal place of business of the party. After pleadings have been filed, the addresses shown on the pleadings shall be used for service, unless a party has been informed of the other party's change of address.

§ 30.430 Time computations.

(a) *In general.* In computing any period of time prescribed in these rules, the day from which the designated period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or Federal holiday. When the period of time prescribed is seven (7) days or less, intermediate Saturdays, Sundays, and Federal holidays shall be excluded in the computation.

(b) *Modification of time periods.* Except for time periods required by statute, the ALJ may enlarge or reduce any time period required under this subpart where necessary to avoid prejudicing the public interest or the rights of the parties.

(c) *Entry of orders.* In computing any time period involving the date of the issuance of an order or decision by an ALJ, the date of issuance is the date the order or decision is served by the Chief Docket Clerk.

(d) *Computation of time for delivery by mail.* (1) Documents are not filed until received by the Chief Docket Clerk. However, when documents are filed by mail, three days shall be added to the prescribed time period.

(2) Service is effected at the time of mailing.

(3) When a party has the right or is required to take an action within a prescribed period after the service of a document upon the party, and the document is served by first class mail, three (3) days shall be added to the designated period for response.

§ 30.435 Subpoenas.

(a) *Issuance.* Upon a written request of a party and where authorized by law, the Chief ALJ or the presiding ALJ may issue a subpoena requiring:

(1) The attendance of a witness to give testimony at a deposition;

(2) The attendance of a witness to testify at a hearing;

(3) The production of relevant documents or other tangible things.

(b) *Ex parte request.* Requests for subpoena may be made ex parte.

(c) *Time of request.* Requests for subpoenas in aid of discovery must be submitted not less than 10 days before the conclusion of discovery or 15 days before the date scheduled for the hearing. If a request for a subpoena in aid of discovery does not meet these time limits, or if a request for subpoena of a witness for testimony at a hearing is submitted three days or less before the hearing, the subpoena shall be issued at the discretion of the Chief ALJ or the presiding ALJ, as appropriate.

(d) *Service.* The party who obtains the subpoena shall serve it in accordance with § 30.425.

(e) *Witness fees and mileage.* A witness summoned by a subpoena issued under this section is entitled to the same witness and mileage fees as a witness in an action in United States District Court. Fees shall be paid by the party requesting the subpoena. A check for appropriate fees shall accompany the subpoena when served by any party other than the Department.

(f) *Motion to quash or modify subpoena.* Upon a motion by the person served with a subpoena or by a party made within five days after service of the subpoena (but in no event later than the date for compliance with the subpoena) the ALJ may:

(1) Quash or modify the subpoena if it is unreasonable and oppressive or for other good cause; or

(2) Condition denial of the motion upon the advancement, by the party on whose behalf the subpoena was issued, of the reasonable cost of producing subpoenaed documents or other tangible things.

Pleadings and Motions

§ 30.500 Complaint.

Action is initiated by the issuance of a Complaint prepared and signed by the chairman of the panel proposing the civil money penalty. The Complaint must be served on the respondent and filed with the Chief Docket Clerk, Office of Administrative Law Judges. The Complaint shall include:

(a) A short, plain statement of the facts upon which the panel has determined that civil money penalties should be imposed;

(b) The amount of the penalty to be imposed;

(c) The legal authority for imposing the penalty;

(d) The right to appeal the imposition of the penalty;

(e) The procedures to appeal the penalty;

(f) The consequences of failure to appeal the penalty; and

(g) The name, address, and telephone number of the representative of the Department.

§ 30.505 Answer.

(a) To appeal the imposition of a penalty, a respondent shall, within 15 days after receipt of the Complaint, file a written Answer with the Chief Docket Clerk, Office of Administrative Law Judges, Department of Housing and Urban Development, at the address noted in the Complaint.

(b) The Answer shall include:

(1) A statement that respondent admits, denies, or does not have, and is unable to obtain, sufficient information to admit or deny each allegation made in the Complaint. A statement of lack of information shall have the effect of a denial. Any allegation that is not denied shall be deemed to be admitted;

(2) A statement of each affirmative defense and a statement of facts supporting each affirmative defense; and

(3) A statement of all facts which respondent alleges serve to mitigate the amount of the penalty.

(c) If a Complaint is amended pursuant to § 30.510, the respondent shall have 15 days after receipt of the amended Complaint within which to file an Answer.

§ 30.510 Amendments and supplemental pleadings.

(a) *Amendments.*

(1) By right. HUD may amend its Complaint once as a matter of right prior to filing of the Answer.

(2) By leave. Upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties, the ALJ may allow amendments to pleadings upon motion of a party.

(3) Conformity to the evidence. When issues are not raised by the pleadings but are reasonably within their scope and have been tried by the express or implied consent of the parties, the issues shall be treated in all respects as if they had been raised in the pleadings, and amendments may be made as necessary to make the pleadings conform to the evidence.

(b) *Supplemental pleadings.* The ALJ may, upon reasonable notice, permit supplemental pleadings concerning transactions, occurrences or events that have happened or have been discovered since the date of the original pleading and which are relevant to any of the issues involved.

§ 30.515 Motions.

(a) Any application to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon and the facts alleged, and shall be filed with the ALJ and served on all other parties.

(b) Except for motions made at the pre-hearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within five business days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may order oral argument or any motion.

(e) The ALJ may not grant a written motion before the time for filing responses has expired, except:

(1) Upon consent of the parties;

(2) Following a hearing on the motion; or

(3) To allow additional time to submit or respond to an order, pleading or motion, but only upon a showing of good cause. However, the ALJ may overrule or deny the motion without awaiting a response.

§ 30.520 Summary judgment motion.

A party may request summary judgment in cases in which there are no disputes of material facts.

Discovery

§ 30.600 Discovery.

(a) *Methods of discovery.* Parties may obtain discovery by one or more of the following methods:

(1) Oral depositions;

(2) Written interrogatories;

(3) Requests for the production of documents or other things, or for entry upon land for inspection and other purposes; and

(4) Requests for admissions.

(b) *Scope and procedure.* The parties are encouraged to engage in voluntary discovery, which shall be conducted as expeditiously and inexpensively as practicable under the circumstances.

Unless otherwise ordered by the ALJ the parties may obtain discovery regarding any information, not privileged, which is relevant to the subject matter involved in the proceeding, including the existence, description, nature, custody, condition and location of documents or persons having knowledge of any discoverable matter. It is not grounds for objection that information sought will not be admissible if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Unless otherwise ordered by the ALJ or restricted by this section, the frequency or sequence of discovery is not limited.

(c) *No duty to supplement; exceptions.* (1) A party who responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information acquired after the response was made except:

(i) A person is under a duty to timely supplement responses with respect to any question directly addressed to:

(A) The identity or location of persons having knowledge of discoverable matters; or

(B) The identity of each person expected to be called as an expert witness at the hearing, the subject matter on which the expert witness is expected to testify, and the substance of the testimony.

(ii) A person is under a duty to timely amend a previous response if the person later obtains information upon the basis of which:

(A) The person knows the response was incorrect when made; or

(B) The person knows the response, though correct when made, is no longer true, and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(2) The parties by agreement or the ALJ by order may impose a duty to supplement responses.

§ 30.605 Depositions.

(a) *Notice.* Any party desiring to take a deposition shall give reasonable notice to the deponent and to all other parties of the time, date and place of deposition. Unless the party taking the deposition and the deponent agree otherwise, notice of the taking of the deposition shall be given not less than five days before the deposition is scheduled. The attendance of a deponent may be compelled by subpoena under § 30.435.

(b) *Organizational deponents.* If a person other than an individual is named as the deponent by the party seeking to take the deposition, the person so named shall designate one or more agents to testify on the organization's behalf.

(c) *Procedure.* Depositions may be taken before any person having the power to administer oaths or affirmations. Each person deposed shall be placed under oath or affirmation, and other parties shall have the right to cross-examine. Objections to questions or documents shall be brief, stating the grounds of objection relied upon. Evidence objected to shall be taken subject to the objections. The party seeking the deposition shall provide for the taking of a verbatim transcript of the deposition. A transcript shall be submitted to the deponent for examination and signature unless signature is waived at the conclusion of the deposition. If the deponent desires to make any change to the transcript, the deponent shall inform the person before whom the deposition was taken of those changes and the person before the deposition was taken shall incorporate the changes into the transcript prior to certifying its accuracy. If a deposition has not been signed and returned by the deponent within 30 days after its submission, the person before whom the deposition was taken shall sign it and state on the record the fact of the refusal or other reason why the deponent did not sign. Such a deposition may be used as fully as though signed.

(d) *Costs.* The party requesting the deposition shall bear all costs thereof, except the cost of transcripts for other parties.

§ 30.610 Use of depositions at hearings.

(a) *Unavailability of deponent.* Subject to appropriate rulings on such objections as were noted at the deposition or as might be valid when it is offered, a deposition, or any part thereof, may be offered in evidence against any party who was present or represented at the deposition or who had due notice thereof, if the ALJ finds:

(1) That the deponent is dead;

(2) That the deponent is out of the United States, or is located at such a distance that attendance is impractical, unless it appears that the deponent's absence was procured by the party offering the deposition;

(3) That the deponent is unable to attend or testify because of age, sickness, infirmity or imprisonment;

(4) That the party offering the deposition has been unable to procure the attendance of the deponent by subpoena; or

(5) That such exceptional circumstances exist as to make desirable, in the interest of justice and with due regard to the importance of

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presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

(b) *Impeachment.* Any deposition may be used by any party to contradict or impeach the testimony of the deponent as a witness.

(c) *Experts.* The deposition of an expert witness may be used by any party for any purpose, unless the ALJ rules that such use is unfair or a violation of due process.

(d) *Offer in part.* If only part of a deposition is offered in evidence, an adverse party may require the introduction of any part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

(e) *Substitution of parties.* Substitution of parties does not affect the right to use depositions previously taken. If a proceeding has been dismissed and another proceeding involving the same subject matter is later brought between the same parties or their representatives or successors in interest, all depositions lawfully taken in the former proceeding may be used in the later proceeding.

§ 30.615 Objections to use of depositions.

(a) Objection may be made at the hearing to receiving in evidence any deposition or part thereof for any reason that would require the exclusion of the evidence if the deponent were then present and testifying, except:

(1) Objection to any error or irregularity in the notice for taking a deposition is waived unless made prior to the beginning of the deposition;

(2) Objection to taking a deposition because of disqualification of the officer before whom it is taken is waived unless made before the beginning of the deposition or as soon thereafter as the disqualification becomes known or could have been discovered with reasonable diligence;

(3) Objection to any error or irregularity occurring at the deposition in the manner of taking the deposition, in the form of a question or an answer, in the oath or affirmation or in the conduct of parties, and objection to any error of any kind which might be obviated, removed or cured if promptly presented is waived unless timely made during the course of the deposition.

(b) The waivers of objection in paragraphs (a)(1)–(a)(3) of this section shall not apply to successors in interest who are involved in a subsequent proceeding.

§ 30.620 Written interrogatories.

(a) *Interrogatories to parties.* Any party may serve on any other party written interrogatories to be answered by the party served. If the party served is other than an individual, the interrogatories may be answered by any officer or agent, who shall furnish such information as may be available to the party. A party may serve not more than 30 written interrogatories, including subparts, on another party without an order of the ALJ.

(b) *Responses to interrogatories.* Each interrogatory shall be answered separately and fully in writing under oath or affirmation, unless the party objects to the interrogatory. If a party objects to an interrogatory, the response shall state the reasons for the objection in lieu of an answer. The answer and objections shall be signed by the person making them, except that objections may be signed by counsel for the party. The party upon whom the interrogatories were served shall serve a copy of the answers and objections upon all other parties within 15 days after service of the interrogatories. Objections to the form of interrogatories are waived unless served with a response.

§ 30.625 Production of documents and other things; entry on land for inspection and other purposes.

(a) *Request to produce or permit entry.* Any party may serve on any other party a written request to:

(1) Produce and permit the party making the request to inspect and copy any designated documents. The request shall identify the items to be inspected either individually or by category with reasonable particularity; or

(2) Permit entry upon designated land or access to other property in the possession or control of the party upon whom the request is served for any appropriate purpose.

(b) *Manner of inspecting.* The request shall specify a reasonable time, place and manner of making the inspection or performing the related acts.

(c) *Response to request.* Within 15 days after service of the request, the party whom the request was served shall serve a written response on the party submitting the request. The response shall state with regard to each item or category:

(1) That inspection and related activities will be permitted as requested; or

(2) That objection is made to the request in whole or in part. If any objection is made, the response must state the reason for the objection.

§ 30.630 Admissions.

(a) *Request for admissions.* A party may serve on any other party a written request for the admission of the authenticity of any document described in or attached to the request, or for the admission of the truth of any specified fact.

(b) *Response to request.*

(1) Each matter for which an admission is requested is admitted unless, within 15 days after service of the request, the party to whom the request was made serves on the requesting party:

(i) A written statement specifically denying the relevant matters for which an admission is requested;

(ii) A written statement setting forth in detail why the party cannot truthfully admit or deny the matters; or

(iii) Written objections to the request alleging that the matters are privileged or irrelevant, or that the request is otherwise improper.

(2) The party to whom the request was made may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that it has made a reasonable inquiry and that the information known or readily obtainable is insufficient to enable the party to admit or deny.

(c) *Sufficiency of response.* The party requesting admissions may move for a determination of the sufficiency of the answers or objections. Unless the ALJ finds that an objection is justified, the ALJ shall order that a response be served. If the ALJ determines that a response does not comply with the requirements of this section, the ALJ may order either that the matter is admitted or that an amended response be served.

(d) *Effect of admission.* Any matter admitted under this section is conclusively established unless, upon motion of the admitting party, the ALJ permits a withdrawal or amendment of the admission. An admission made under this section is made for the purposes of the pending proceeding only, is not an admission by the party for any other purpose, and may not be used against the party in any other proceeding.

(e) *Service of requests and responses.* Each request for admission and each response must be filed with the Chief Docket Clerk, Office of Administrative Law Judges and served in accordance with § 30.425.

§ 30.635 Protective orders.

Upon motion of any person from whom discovery is sought, the ALJ may make any Order which justice requires to protect the person from annoyance, embarrassment or oppression, or to prevent the unnecessary disclosure or publication of information contrary to the public interest and beyond the requirements of justice in the particular proceeding.

§ 30.640 Failure to cooperate in discovery.

(a) *Motion to compel discovery.* If a deponent fails to appear for deposition or fails to answer a question during examination, or if a party upon whom a request has been made under §§ 30.620 through 30.630 fails to respond adequately, objects to a request, or fails to permit inspection as requested, the discovering party may move for an order from the ALJ compelling an appearance, a response, or an inspection in accordance with the request, or for imposing sanctions under § 30.405.

(b) *Evasive or incomplete answers.* For the purposes of this section, an evasive or incomplete answer or response will be treated as a failure to answer or respond.

Pre-Hearing Procedures

§ 30.700 Pre-hearing statements.

(a) *In general.* Before the commencement of the hearing, the ALJ may direct parties to file pre-hearing statements.

(b) *Contents of statement.* The pre-hearing statement must state the name of the party or parties presenting the statement and, unless otherwise directed by the ALJ, briefly set forth the following:

(1) Issues involved in the proceeding;

(2) Facts stipulated by the parties and a statement that the parties have made a good faith effort to stipulate to the greatest extent possible;

(3) Facts in dispute;

(4) Identification of witnesses (together with a summary of the testimony expected) and exhibits to be presented at the hearing;

(5) A brief statement of applicable law;

(6) Conclusions to be drawn;

(7) Estimated time for hearing; and

(8) Such other information as may assist in the disposition of the proceeding.

§ 30.705 Pre-hearing conference.

(a) *In general.* Before the commencement or during the course of the hearing, the ALJ may direct the parties to participate in a conference to expedite the hearing.

(b) *Matters considered.* At the conference, the following matters may be considered:

(1) Simplification and clarification of the issues;

(2) Necessary amendments to the pleadings;

(3) Stipulations of fact and of the authenticity, accuracy, and admissibility of documents;

(4) Limitations on the number of witnesses;

(5) Negotiation, compromise, or settlement of issues;

(6) The exchange of proposed exhibits;

(7) Matters of which official notice will be requested;

(8) A schedule for the completion of actions discussed at the conference;

(9) Such other information as may assist in the disposition of the proceeding.

(c) *Conduct of conference.* The conference may be conducted by telephone, correspondence or personal attendance. Conferences, however, shall generally be conducted by conference calls, unless the ALJ determines that this method is impracticable. The ALJ shall give reasonable notice of the time, place and manner of the conference.

(d) *Record of conference.* Unless otherwise directed by the ALJ, the conference will not be stenographically recorded. The ALJ will reduce the actions taken at the conference to a written order or, if the conference takes place less than seven days before the beginning of the hearing, may make a statement on the record summarizing the actions taken at the conference.

Hearings

§ 30.800 The hearing.

(a) The ALJ shall conduct a hearing on the record in order to determine whether the respondent is liable for a civil penalty and, if so, in what amount, considering any aggravating or mitigating factors.

(b) Where there is no dispute of material facts, the parties may agree to submit the matter to the ALJ on the written record.

(c) Unless otherwise ordered by the ALJ, all hearing shall be open to the public.

§ 30.805 Location of the hearing.

The location of the hearing shall be fixed with due regard for the public interest and the convenience and necessity of the parties and their representatives.

§ 30.810 Evidence and standard of proof.

(a) *Evidence.* Every party shall have the right to present its case or defense by oral and documentary evidence unless otherwise limited by statute, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Irrelevant, privileged, or unduly repetitious evidence shall be excluded. Unless otherwise provided for in this part, the Federal Rules of Evidence shall provide guidance for the conduct of proceedings under this part.

(b) *Testimony under oath or affirmation.* All witnesses shall testify under oath or affirmation.

(c) *Objections.* Objections to the admission or exclusion of evidence shall be in short form, stating the grounds for objections. Rulings on objections shall be a part of the transcript. Failure to object to admission or exclusion of evidence or to any evidentiary ruling shall be considered a waiver of objection, but no exception to a ruling on an objection is necessary in order to preserve it for appeal.

(d) *Authenticity of documents.* Unless specifically challenged, all relevant documents shall be presumed authentic. An objection to the authenticity of a document shall not be sustained merely on the basis that it is not the original.

(e) *Stipulations.* The parties may stipulate as to any relevant matters of fact. Stipulations may be received in evidence at a hearing and when received shall be binding on the parties with respect to the matters stipulated.

(f) *Official notice.* All matters officially noticed by the ALJ shall appear on the record.

(g) *Burden of proof.* The burden of proof shall be upon the proponent of an action or an affirmative defense unless otherwise provided by statute.

(h) *Standard of Proof.* The standard of proof shall be preponderance of the evidence.

§ 30.815 The record.

(a) The hearing shall be recorded and transcribed. Transcripts may be obtained from the reporter responsible for transcribing the hearing for a fee set by the reporter.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the Secretary.

§ 30.820 Post-hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for filing post-hearing briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

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Defaults and Decisions

§ 30.900 Default upon failure to file an Answer.

(a) If the respondent does not file an Answer within the time prescribed in § 30.505, the ALJ shall issue a Default Judgment.

(b) The ALJ shall assume the facts alleged in the Complaint to be true, and if such facts establish liability under subpart D, the ALJ shall issue an initial decision imposing the amount of penalties stated in the Complaint.

(c) Except as otherwise provided in this section the respondent, by failing to file a timely answer, waives any right to further review of the penalties imposed under this part, and the initial decision shall become final and binding upon the parties 90 days after it is issued.

(d) If, before an initial decision becomes final, the respondent files a motion with the ALJ seeking to reopen on the grounds that extraordinary circumstances prevented the respondent from filing an Answer, the initial decision shall be stayed pending the ALJ's decision on the motion.

(e) If in the motion the respondent demonstrates extraordinary circumstances excusing the failure to file a timely Answer, the ALJ shall withdraw any initial decision made under paragraph (b) of this section and shall grant the respondent an opportunity to answer the Complaint.

(f) The respondent may appeal to the Secretary a decision denying a motion to reopen by filing a notice of appeal with the Secretary within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the Secretary decides the issue.

(g) If the respondent files a timely notice of appeal with the Secretary, the ALJ shall forward the record of the proceeding to the Secretary.

(h) The Secretary shall decide, based solely on the record forwarded by the ALJ, whether extraordinary circumstances excused the respondent's failure to file a timely Answer.

(i) If the Secretary decides that extraordinary circumstances excused the respondent's failure to file a timely Answer, the Secretary shall remand the case to the ALJ with instructions to grant the respondent an opportunity to answer.

(j) If the Secretary decides that the respondent's failure to file a timely Answer is not excused, the Secretary shall reinstate the initial decision of the ALJ, which becomes final and binding upon the parties upon the filing of the Secretary's written finding with the Chief Docket Clerk, Office of Administration Law Judges.

§ 30.905 Initial decision.

(a) The ALJ shall issue an initial decision based only on the record, which shall contain findings of fact, conclusions of law, and the amount of any penalties imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the allegations in the complaint violate any provision of subpart D; and

(2) If the person is liable for penalties, the appropriate amount of any such penalties, considering any mitigating or aggravating factors.

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall, at the same time, serve all parties with a statement describing the right of any respondent determined to be liable for a civil penalty to file a notice of appeal with the Secretary. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the Secretary, the initial decision shall constitute the final decision of the Department and shall be final and binding on the parties 90 days after it is issued by the ALJ.

§ 30.910 Finality and Secretarial review.

(a) The ALJ's initial decision shall be final unless the Secretary decides as a matter of discretion to review the findings of the ALJ.

(b) Any party may file, within 15 days after receipt of the initial decision, a notice of appeal to the Secretary seeking a review of that decision. A copy of the notice of appeal shall be served on the opposing party.

(c) The notice of appeal shall be accompanied by a statement of not more than 10 pages setting forth the specific findings of the ALJ which are being challenged and the factual and/or legal basis for such challenge.

(d) The opposing party may respond to the appeal. Such response may not exceed 10 pages and shall be filed with the Secretary within 10 days after receipt of the notice of appeal.

(e) The Secretary shall decide within 30 days after receipt of a notice of appeal whether to review or to decline review of the initial decision. The Secretary shall serve copies of his decision on all parties.

(f) The Secretary, after review, may affirm, modify, or reverse the initial decision. The Secretary's decision shall be issued within 90 days after the initial decision has been filed.

(g) If, after considering the notice of appeal, the Secretary declines review, the initial decision becomes final on the date the decision to decline is filed with the Chief Docket Clerk, Office of Administrative Law Judges. Any decision by the Secretary after review becomes final on the date it is filed with the Chief Docket Clerk.

Judicial Review and Collection of Civil Penalties

§ 30.1000 Judicial review.

(a) After having exhausted all administrative remedies, a person against whom the Secretary has imposed a civil money penalty under this part may obtain a review of the Secretary's final decision by filing a written petition with the appropriate United States Court of Appeals.

(b) The petition must be filed within 20 days after the Secretary's decision is filed with the Chief Docket Clerk, Office of Administrative Law Judges.

§ 30.1005 Collection of penalties.

(a) If any person fails to comply with the Secretary's final decision imposing a civil money penalty, the Secretary may request the Attorney General to bring an action in an appropriate United States district court to obtain a judgment against the person who has failed to comply with the Secretary's final decision, provided that the time for appeal of the Secretary's decision has expired.

(b) The validity and appropriateness of the Secretary's final decision imposing the civil penalty shall not be subject to review in the district court.

(c) The Secretary may obtain such other relief as may be available, including attorney fees and other expenses in connection with the action.

(d) Interest on and other charges for any unpaid penalty may be assessed in accordance with 31 U.S.C. 3717.

§ 30.1010 Offset.

In addition to any other rights as a creditor, the Secretary may seek to collect a civil money penalty through administrative offset.

Dated: April 23, 1991.

Jack Kemp,

Secretary.

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H.R. 2122/Pub. L. 102–45

Emergency Supplemental Persian Gulf Refugee Assistance Act of 1991. (May 17, 1991; 105 Stat. 247; 2 pages) Price: $1.00

S. 258/Pub. L. 102–46

To correct an error in the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990. (May 17, 1991; 105 Stat. 249; 1 page) Price: $1.00

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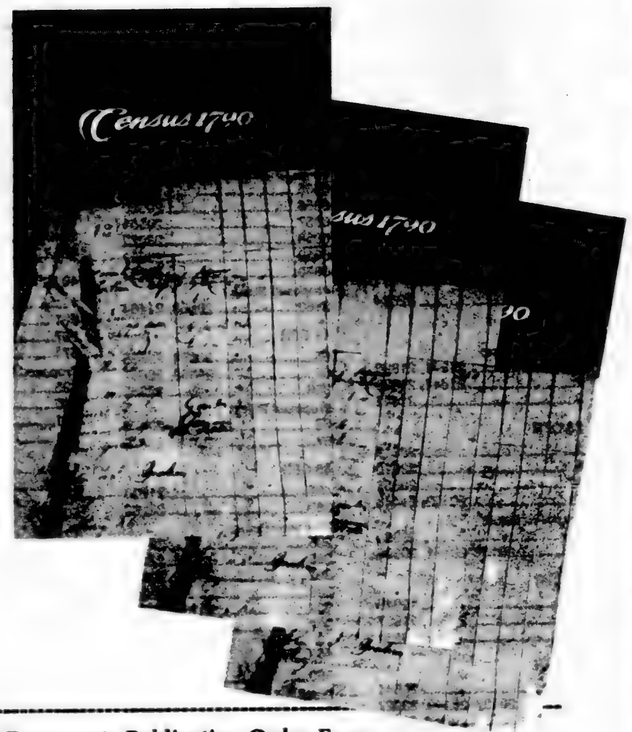

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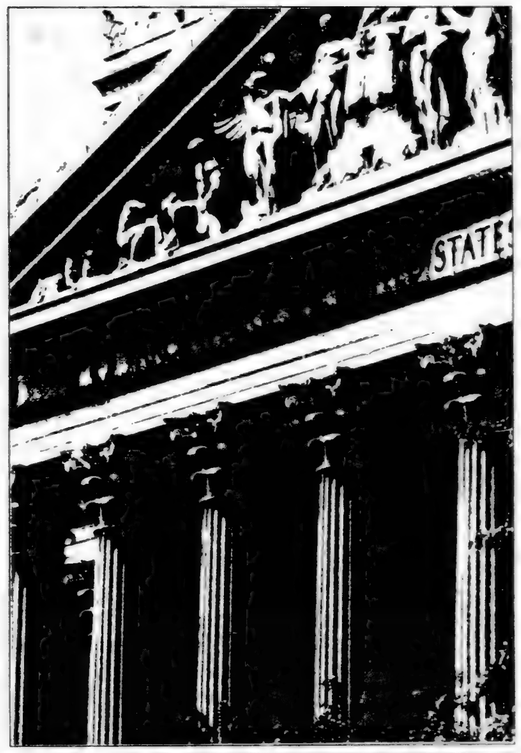

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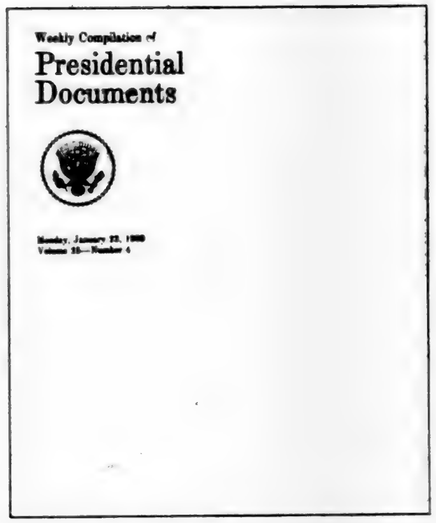

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73 (2 documents) 23662, 23663

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Federal Register
Vol. 56, No. 100
Thursday, May 23, 1991

Presidential Documents

Title 3—

The President

Proclamation 6298 of May 21, 1991

National Desert Storm Reservists Day, 1991

By the President of the United States of America

A Proclamation

On this occasion we gratefully salute the members of the National Guard and Reserve forces of the United States—dedicated and highly trained men and women who played a major role in the success of Operation Desert Shield/Desert Storm. Whether they served directly in the Persian Gulf or on military bases in the United States and elsewhere around the world, as members of our Nation's Total Force, these National Guardsmen and reservists made a vital contribution toward the liberation of Kuwait.

During the course of the war in the Persian Gulf, more than 228,000 members of the Ready Reserve were ordered to active duty. Thousands more volunteered in advance of being called to support the coalition effort. Members of the Army National Guard, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air National Guard, the Air Force Reserve, and the Coast Guard Reserve—these men and women were trained and ready to do their jobs. As they have done for all conflicts since colonial times, guardsmen and reservists responded quickly to the call. They promptly assumed a variety of combat missions such as armor, artillery, tactical fighter, tactical reconnaissance, and minesweeping. Their support missions included transportation, medical, airlift, service/supply, civil affairs, intelligence, military police, and communications.

When called to active duty, members of the Ready Reserve were suddenly required to leave behind their families and their careers. As we thank our Desert Storm reservists for the many sacrifices that they have made in behalf of our country, it is fitting that we also honor their loved ones. They too have shown the extraordinary degree of patriotism and courage that we have come to expect of the Nation's military families. National Guard and Reserve units worked in close cooperation with the Active Services to develop a broad-based family support network to assist these new military dependents.

The Nation's employers, educators, and other institutions throughout the private sector have provided strong support and assistance to their reservist employees and students who were called to duty on short notice. The National Committee for Employer Support of the Guard and Reserve, a 4,000-member network of business and civic leader volunteers, has put forth special efforts to help guardsmen and reservists, as well as their employers, to understand their job rights and responsibilities.

In recognition of their vital role in the liberation of Kuwait, the Congress, by Senate Joint Resolution 134, has designated May 22, 1991, as "National Desert Storm Reservists Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim May 22, 1991, as National Desert Storm Reservists Day. I call upon all Americans to observe this day with appropriate ceremonies and activities in honor of the courageous men and women of the United States Ready Reserve.

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IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of May, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 91-12453
Filed 5-21-91; 4:13 pm]
Billing code 3195-01-M

Presidential Documents

Executive Order 12761 of May 21, 1991

Establishment of the President's Environment and Conservation Challenge Awards

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish, in accordance with the goals and purposes of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), and the National Environmental Education Act, Public Law 101-619, 104 Stat. 3325 (1990), an awards program to raise environmental awareness and to recognize outstanding achievements in the United States and in its territories in the areas of conservation and environmental protection by both the public and private sectors, it is hereby ordered as follows:

Section 1. *Establishment.* The President's Environment and Conservation Challenge Awards program is established for the purposes of recognizing outstanding environmental achievements by U.S. citizens, enterprises, or programs; providing an incentive for environmental accomplishment; promoting cooperative partnerships between diverse groups working together to achieve common environmental goals; and identifying successful environmental programs that can be replicated.

Sec. 2. *Administration.* (a) The Council on Environmental Quality, with the assistance of the President's Commission on Environmental Quality, shall organize, manage, and administer the awards program, including the development of selection criteria, the nomination of eligible individuals to receive the award, and the selection of award recipients.

(b) Any expenses of the program shall be paid from funds available for the expenses of the Council on Environmental Quality.

Sec. 3. *Awards.* (a) Up to three awards in each of the following four categories shall be made annually to eligible individuals, organizations, groups, or entities:

(i) Quality Environmental Management Awards (incorporation of environmental concerns into management decisions and practices);

(ii) Partnership Awards (successful coalition building efforts);

(iii) Innovation Awards (innovative technology programs, products, or processes); and

(iv) Education and Communication Awards (education and information programs contributing to the development of an ethic fostering conservation and environmental protection).

(b) Presidential citations shall be given to eligible program finalists who demonstrate notable or unique achievements, but who are not selected to receive awards.

Sec. 4. *Eligibility.* Only residents of the United States and organizations, groups, or entities doing business in the United States are eligible to receive an award under this program. An award under this program shall be given only for achievements in the United States or its territories. Organizations, groups, or entities may be profit or nonprofit, public or private entities.

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Sec. 5. *Information System.* The Council on Environmental Quality shall establish and maintain a data bank with information about award nominees to catalogue and publicize model conservation or environmental protection programs which could be replicated.

THE WHITE HOUSE,
May 21, 1991.

[FR Doc. 91-12460
Filed 5-21-91; 4:34 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 56, No. 100
Thursday, May 23, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 941

[Docket No. R-91-1522; FR-2782-C-03]

RIN 2577-AA82

Public Housing Development—Technical Amendments; Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule; correction.

SUMMARY: On April 1, 1991 (56 FR 13281), the Department published in the **Federal Register**, a final rule that made certain technical changes to the regulations at 24 CFR part 941, which govern public housing development by public housing agencies. The preamble to the final rule advised that HUD-assisted public housing is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157), and that § 941.208(c) is amended to codify this statutory requirement. (*See* 56 FR 13281.) However, the text of § 941.208, as published in the April 1, 1991 final rule, failed to include reference to the Architectural Barriers Act. (*See* 56 FR 13282.) The purpose of this document is to correct § 941.208(c) to include reference to the Architectural Barriers Act.

FOR FURTHER INFORMATION CONTACT: Janice D. Rattley, Director, Office of Construction, Rehabilitation and Maintenance, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000, telephone (202) 708-1800, or (202) 708-0850 (TDD). These are not toll-free numbers.)

Accordingly, in FR Doc. 91-1522, published in the **Federal Register** on April 1, 1991, at 56 FR 13280, 24 CFR part 941 is amended by correcting § 941.208(c) to read as follows:

PART 941-PUBLIC HOUSING DEVELOPMENT

1. The authority citation for 24 CFR part 941 continues to read as follows:

Authority Secs. 4, 5, and 9 of the United States Housing Act of 1937 (42 U.S.C. 1437b, 1437c, and 1437g); Sec. 7(d), Department of Housing and Urban Deelopment Act (42 U.S.C. 3535(d)).

§ 941.208 [Corrected]

2. On page 13282, in the third column, § 941.208(c) is corrected to read as follows:

* * * * * * *

(c) *Accessibility requirements.* Participation in this program requires compliance with the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), Executive Order 11914, and title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (42 U.S.C. 3601-3620) (Fair Housing Act), relating to nondiscrimination against the handicapped, and all related rules, regulations and requirements.

* * * * * * *

Dated: May 16, 1991.

Grady J. Norris

Assistant General Counsel for Regulations

[FR Doc. 91-12221 Filed 5-22-91; 8:45 am]
BILLING CODE 4210-33-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 260

RIN 1010-AB67

Outer Continental Shelf Oil and Gas Leasing

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule, technical amendment.

SUMMARY: The Minerals Management Service (MMS) is amending its regulations at 30 CFR 260.110(b) regarding gas product valuation regulations to correct a technical error.

EFFECTIVE DATE: May 23, 1991.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, Minerals Management Service, Royalty Management Program, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 3910, Denver, Colorado 80225, (303) 231-3432 or (FTS) 326-3432.

SUPPLEMENTARY INFORMATION:

I. Final Rule Amendment

Revised final gas product valuation regulations were published in the **Federal Register** on January 15, 1988 (53 FR 1230). At the time the final regulations were published, MMS inadvertently failed to revise a citation in 30 CFR 260.110(b) that references § 206.150 of the old regulations. The citation to the corresponding provisions in the revised regulations should be to §§ 206.102, 206.152, and 206.153. The MMS is publishing this final rule amendment to correct this technical error.

II. Procedural Matters

Administrative Procedure Act

The change included in this rulemaking is a technical correction only and is not a substantive change. Accordingly, pursuant to 5 U.S.C. 553(b), it has been determined that it is unnecessary to issue proposed regulations before the issuance of this final regulation. For the same reason, it has been determined that in accordance with U.S.C. 553(d), there is good cause to make this regulation effective on the date of publication in the **Federal Register.**

Executive Order 12291 and Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Executive Order 12630

Because this rule is a technical correction only and is not a substantive change, the Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property

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rights. Thus, a Takings Implication Assessment need not be prepared pursuant to Executive Order 12630, "Government Action and Interference with Constitutionally Protected Property Rights."

Paperwork Reduction Act of 1980

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 [42 U.S.C. 4332(2)(C)] is not required.

List of Subjects in 30 CFR Part 260

Continental shelf, Government contracts, Mineral royalties, Oil and gas exploration, and Public lands—mineral resources.

Dated: April 23, 1991.

Barry Williamson,

Director, Minerals Management Service.

For the reasons set forth in the preamble, 30 CFR part 260 is amended to read as follows:

TITLE 30—MINERAL RESOURCES

CHAPTER II—MINERALS MANAGEMENT SERVICE, DEPARTMENT OF THE INTERIOR

SUBCHAPTER B—OFFSHORE

PART 260—OUTER CONTINENTAL SHELF OIL AND GAS LEASING

1. The authority citation for part 260 continues to read as follows:

Authority: Act of August 7, 1953, ch. 345, secs. 2 and 8, 67 Stat. 468 (43 U.S.C. 1331 and 1337), as amended by sec. 205, Pub. L. 95–372, 92 Stat. 462 and 629; secs. 302, 303 and 644.

2. In paragraph (b) of § 260.110, the citation "30 CFR 206.150" is removed and the citations "30 CFR 206.102, 206.152, and 206.153" are added in its place.

[FR Doc. 91–12255 Filed 5–22–91; 8:45 am]

BILLING CODE 4310–MR–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1228

[RIN 3095–AA04]

Procedures for Transfer of Records to Federal Records Centers

AGENCY: National Archives and Records Administration.

ACTION: Final rule; correction.

SUMMARY: In the final rule regarding procedures for transfer of records to Federal records centers published on April 5, 1991 at 56 FR 14025, the National Archives and Records Administration inadvertently omitted an alternative method of preparing the folder title list required by §1228.152(e)(2). This document corrects the paragraph to allow agencies to provide the folder title list in block 6F of the Standard Form 135 or to prepare a separate list on plain paper.

EFFECTIVE DATE: April 5, 1991.

FOR FURTHER INFORMATION CONTACT: Mary Ann Palmos or Nancy Allard at 200–501–5110 (FTS 241–5110).

PART 1228—DISPOSITION OF FEDERAL RECORDS

On page 14038 in the first column, the introductory text of paragraph (e)(2) of § 1228.152 is correctly revised to read as follows:

§ 1228.152 Procedures for Transfers to Federal records centers.

* * * * *

(e) * * *

(1) * * *

(2) Standard Forms 135 proposing the transfer of the following categories of records must contain, either in block 6F of the form or on attaced plain paper, a folder title list of the box contents or equivalent detailed records description, and each accession must be listed on a separate SF 135:

* * * * *

Dated: May 15, 1991.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 91–12273 Filed 5–22–91; 8:45 am]

BILLING CODE 7515–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[FRL–3957–8]

Utah; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of Utah has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Utah's application and has made a decision, subject to public review and comment, that Utah's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Utah's hazardous waste program revisions. Utah's application for program revision is available for public review and comment.

DATES: Final authorization for Utah shall be effective July 22, 1991, unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on Utah's program revision application must be received by the close of business June 22, 1991.

ADDRESSES: Copies of Utah's program revision application are available during regular business hours at the following addresses for inspection and copying: Bureau of Solid and Hazardous Waste, Utah Department of Health, 288 North 1460 West, Cannon Health Building, 4th Floor, Salt Lake City, Utah, 84116–0690; U.S. EPA Headquarters Library, PM 211A, 401 M Street SW., Washington, DC 20460, phone: (202) 382–5926; U.S. EPA Region VIII Library, 999 18th Street, suite 500, Denver, CO 80204–2405, phone (303) 293–1444. Written comments should be sent to: Marcella DeVargas, U.S. Environmental Protection Agency, 999 18th Street, suite 500, Denver, Colorado 80202–2405, phone (303) 293–1670.

FOR FURTHER INFORMATION CONTACT: J. William Gelse, Jr., Chief, RCRA Management Branch, U.S. EPA, 999 18th Street, suite 500, Denver, CO, phone (303) 293–7540.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or the "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260–266 and parts 124 and 270.

B. Utah

Utah initially received final authorization in October 1984. Utah received authorization for revisions to its program on March 7, 1989. On March 6, 1991, Utah submitted a program revision application for additional program approvals. Today, Utah is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Utah's application, and has made an immediate final decision that Utah's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Utah. The public may submit written comments on EPA's immediate final decision up until June 22, 1991. Copies of Utah's application for program revision are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

Approval of Utah's program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

In June 1989, Utah submitted a draft application for EPA review. The EPA comments on the draft application were addressed in the final application. Thus, the Utah program is only granted final authorization for those provisions specifically listed in Table 1.

Utah has not requested hazardous waste program authority on Indian lands. The Environmental Protection Agency retains all hazardous waste authority under RCRA which applies to Indian lands in Utah.

Today Utah is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3). Specific provisions which are included in the Utah program authorization revision sought today are listed in Table 1 below.

TABLE 1.—PROVISIONS

FEDERAL REGISTER Reference	State Equivalent [1]
1. TDI, DNT, and TDA Wastes, 50 FR 42936–42943, 10/23/85	R450–2–1.8, R450–2–1.9, R450–50–1J, R450–50–1K, R450–50–1L
2. Burning of Waste Fuel and Used Oil Fuel in Boilers and Industrial Furnaces, 50 FR 49164–49211.	R450–1–1.2, R450–2–1.4, R450–2–1.5, R450–8–15.1, R450–8–15.1, R450–7–22.1, R450–7–29, R450–7–30
3. Listing of Spent Solvents, 50 FR 53315–53320, 12/31/85	R450–2–1.8
4. Listing of EDB Wastes, 51 FR 5327–5331, 2/13/86	R450–2–1.8, R450–50–1J, R450–50–1K
5. Listing of Four Spent Solvents, 51 FR 6537–6542, 2/24/86	R450–2–1.8, R450–2–1.9, R450–50–1J, R450–50–1L
6. Generators of 100–1,000 kg Hazardous Waste, 51 FR 10146–10176, 3/24/86	R450–1, R450–2–1.4, R450–4–2, R450–5–9, R450–5–11, R450–4–3, R450–3–3.2
7. Financial Responsibility Requirements: Settlement Agreement, 51 FR 16442, 5/2/86.	R450–1, R450–8–7, R450–8–8, R450–7–14, R450–7–15, R450–3–3.2, R450–3–9, R450–3–20
8. Codification Rule, Technical Correction, 51 FR 19176, 5/28/86	R450–7–21
9. Listing of Spent Pickle Liquor (K062), 51 FR 19320–19322, 5/28/86	R450–2–1.8
10. Liability Coverage—Corporate Guarantee, 51 FR 25350–25356, 7/11/86	R450–8–8, R450–7–15
11. Standards for Hazardous Waste Storage and Treatment Tank Systems, 51 FR 25422–25486, 7/14/86.	R450–1, R450–2–1, R450–5–9, R450–8–2.8, R450–8–5.3, R450–8–7, R450–8–8, R450–8–10, R450–7–9.4 R450–7–9.6, R450–7–12.4, R450–7–15, R450–7–17, R450–3–3.2, R450–3.20
12. Corrections to Listing of Commercial Chemical Products and Appendix VIII Constituents, 51 FR 28296–28310, 8/6/86.	R450–2–1.9, R450–50–1L
13. Biennial Report Correction, 51 FR 28556, 8/8/86	R450–8–5.6, R450–7–12.6
14. Exports of Hazardous Waste, 51 FR 28664, 8/8/86	R450–2–1.4, R450–2–1.5, R450–5–5, R450–5–12, R450–5–13, R450–5–10.1, R450–50–1B, R450–4–3
15. Standards for Generators—Waste Minimization Certifications, 51 FR 35190, 10/1/86.	R450–50–1B
16. Listing of EBDC, 51 FR 37725, 10/24/86	R450–2–1.8, R450–50–1J, R450–50–1K
17. Land Disposal Restrictions, 51 FR 21010, 6/4/87	R450–2.1, R450–R450–5–1, R450–6–1.4, R450–8–1, R450–8–2.4, R450–8–5.3, R450–7–8.1, R450–7–9–4, R450–13, R450–12.4, R450–50–1P, –1Q, R450–3.3, R450–3–13, R450–3–9
18. Revised Manual SW–846, 51 FR 8072–8073, 3/16/87	R450–2–1.7, R450–3–1.2
19. Closure/Post-Closure Care for Interim Status Surface Impoundments, FR 8704, 3/19/87.	R450–7–18.6
20. Definition of Solid Waste: Technical Corrections, 52 FR 21306, 6/05/87	R450–2–1.9, R450–7–26
21. Amendments to Part B Information Requirements for Disposal Facilities, 52 FR 33986, 9/9/87.	R450–3–3.2
22. Identification and Listing of Hazardous Waste, 52 FR 26012, 7/10/87	R450–2–1.9
23. Liability Requirements for Hazardous Waste Facilities Corporate Guarantee, 52 FR 44314, 11/18/87.	R450–8–8, R450–7–15

[1] Rules referenced are to the Utah Solid and Hazardous Waste Rules. State Authorities: UCA 26–14–2, enacted 1981, amended 1987 and 1988, effective 7/1/87 and 4/25/88. UCA 26–14–5, enacted 1981, amended 1988, effective 4/25/88 and 9/20/88. UCA 26–14–6, enacted 1981, amended 1986, 1987, 1988, effective 7/1/87, 4/25/88, and 9/20/88.

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C. Decision

I conclude that Utah's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Utah is granted final authorization to operate its hazardous waste program as revised.

Utah now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitation of its revised program application and previously approved authorities. Utah also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under section 3008, 3013, and 7003 of RCRA.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the Provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Utah's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 272

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: May 13, 1991.

James J. Scherer,

Regional Administrator.

[FR Doc. 91-12157 Filed 5-22-91; 8:45am]

BILLING CODE 6560-50-M

40 CFR PART 372

[OPTS-400030A; FRL-3803-5]

Copper Phthalocyanine Pigments; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating a rule to delete Pigment Blue 15, Pigment Green 7, and Pigment Green 36 from reporting requirements under the category "copper compounds" from the list of toxic chemicals under section 313 of the Emergency Planning and Community Right-to-Know Act. The rule is based on EPA's conclusion that: (1) The copper ion cannot reasonably be anticipated to become available at a level which induces toxicity from any of these pigments and (2) there is no evidence that the three chemicals cause or can reasonably be anticipated to cause adverse human health or environmental effects as specified under section 313(d). By promulgating this rule, EPA is relieving facilities of their obligation to report in 1991 on releases of Pigment Blue 15, Pigment Green 7, or Pigment Green 36 that occurred in 1990, and on releases that will occur in future years.

DATES: This rule is effective June 24, 1991.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, Petitions Coordinator, Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Stop OS-120, 401 M St., SW., Washington, DC 20460, Toll free: 800-535-0202, In Washington, DC and Alaska: 202-479-2449.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

The deletion of three copper pigments from reporting requirements under the category "copper compounds" from the section 313 list of toxic chemicals is issued under section 313(d) and (e)(1) of the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986, also referred to as title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986 (Pub. L. 99-499).

B. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using toxic chemicals to report annually their environmental releases of such chemicals. Section 313 establishes an initial list of toxic chemicals that is composed of more than 300 chemicals and 20 chemical categories. Any person may petition EPA to add chemicals to or delete chemicals from the list.

EPA issued a statement of petition policy and guidance in the Federal Register of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for submitting petitions. EPA must respond to petitions within 180 days either by initiating a rulemaking or by publishing an explanation of why the petition has been denied.

II. Description of Petition

On June 1, 1988, EPA received a petition from The Dry Color Manufacturers' Association (DCMA) to exempt three phthalocyanine pigments from the reporting requirements under the list of toxic chemicals category "copper compounds." C.I. Pigment Blue 15, CAS No. 147-14-8; C.I. Pigment Green 7, CAS No. 1328-53-6; and C.I. Pigment Green 36, CAS No. 14302-13-7 are phthalocyanine pigments covalently bound to copper. Since the pigments are copper-containing compounds, they are reportable under section 313. After review of the submitted petition and additional information available to EPA, the Agency proposed to delete the three phthalocyanine pigments from reporting under the "copper compounds" category; the proposal was published in the Federal Register of May 15, 1989 (54 FR 20886). EPA concluded that the three phthalocyanine pigments cannot be reasonably anticipated to cause adverse health or environmental effects of concern to warrant continued release reporting under section 313. A detailed review of the toxicity and environmental effects of the three intact phthalocyanine pigments, along with an assessment of actual or potential exposure, is contained in the proposal.

Because DCMA's petition raised a number of important questions about how EPA should deal with petitions to delete individual members of listed chemical categories, the Agency also requested comment on approaches for addressing these issues and presented four alternatives. The public comment that was received as a result of the second request is addressed in a notice of policy and guidance on the metal compound categories that is published elsewhere in this issue of the Federal Register.

As stated in the above-mentioned notice of policy and guidance on the metal compound categories, the toxicity of a metal-containing compound that dissociates or reacts to generate the metal ion can be expressed as a function

of the toxicity induced by the intact species and the availability of the metal ion, where the degree of dissociation, bioaccumulation, and the level at which toxicity is induced by the metal ion must be considered. The effects induced by the metal ions described by the metal compound categories meet the criteria under section 313(d)(2). Thus, for petitions to exempt metal-containing compounds from the reporting requirements under section 313, EPA has decided to base its decisions on the evaluation of all chemical and biological processes that may lead to metal ion availability as well as on the toxicity exhibited by the intact species. These decisions will continue to be based on information provided by the petitioner, Agency documents, and available literature. The burden of proof that the metal compound does not generate the metal ion as a result of one or more transformation processes rests on the submitter. EPA will deny petitions for chemicals for which the metal ion availability cannot be properly evaluated. EPA will also deny petitions for chemicals that dissociate or react to generate the metal ion at a level which can reasonably be anticipated to cause adverse effects. If the metal compound does not dissociate or react to generate the metal ion at a level which can reasonably be anticipated to cause adverse effects, EPA will determine whether the effects which may be induced by the intact species meet the toxicity criteria of section 313(d)(2).

It should be noted that the above policy would result in a denial of DCMA's petition if it were received today because DCMA did not address, in the petition, all of the transformation processes which could lead to the availability of copper ion from the three copper pigments. Prior to adopting the above-stated policy, EPA carried out a technical review to assess the potential availability of copper ion from the three copper pigments and based its decision on the lack of toxicity exhibited by the intact species and the limited copper ion availability. EPA's technical review of the copper pigments, which is provided below, illustrates the type of analyses which must be conducted by petitioners to justify deletions of metal compounds from their respective categories.

III. Technical Review

In the proposed rule to exempt the copper pigments from the reporting requirements under the copper compounds category under EPCRA section 313, EPA stated that there was no indication from the available data that the (intact) copper pigments can reasonably be anticipated to cause acute, chronic, or environmental toxicity. The issue of copper ion availability from the three phthalocyanine pigments was not explicitly addressed in the proposed rule.

EPA is concerned with both the potential toxicity induced by intact metal compounds and with the toxicity induced by the metal ion. Although EPA was concerned with copper ion availability in its initial review, it did not consider all the transformation processes that may lead to metal ion availability. The Agency recently addressed the transformation processes that may generate copper ion from the copper phthalocyanine pigments. These include, but are not limited to: hydrolysis, photolysis, abiotic and biotic aerobic degradations, abiotic and biotic anaerobic degradations, bioavailability of the ion when the compounds are ingested or inhaled, and bioaccumulation. All readily available data including studies retrieved from literature searches and documents prepared by EPA were considered in EPA's assessment of the availability of copper ion from the copper phthalocyanine pigments.

1. *Copper ion.* Copper is recognized as an essential element. It is essential to a number of normal physiological processes including erythropoieses, connective tissue metabolism, bone development, and nervous system function. The National Academy of Sciences' recommended daily allowance (RDA) for adults is 2.0 to 3.0 milligrams (mg) copper/day. Copper is also used as a hematinic (to stimulate red blood cell production) in adults at a dose of 3.8 to 7.6 mg/day.

a. *Human health effects.* Copper poisoning has been demonstrated in animals and identified in humans. The liver is the main storage depot for copper, and hepatic damage is associated with the accumulation of high levels of copper. Hepatic toxicity is characterized by hepatocellular necrosis, regenerative activity, and cirrhosis. Kidney necrosis and elevated levels of serum copper occur only after the liver begins to accumulate high levels of copper. These elevated serum copper levels can progress to sudden hemolytic anemia and jaundice.

The types of neurological effects associated with copper poisoning can include demyelination and cerebral degeneration. These effects are thought to be related to defects in catecholamine metabolism. Alterations in brain neurotransmitter systems have been observed in rats following intraperitoneal injections of 2 milligrams/kilogram/day (mg/kg/day) for 21 days. Two groups are at an increased risk from copper exposure. Individuals with Wilson's disease, an inborn error in copper metabolism, are at a higher risk than the general population. The metabolic error in Wilson's disease allows copper to accumulate in the liver, brain, kidney, and cornea, causing hemolytic anemia, neurological abnormalities, and corneal opacity. In addition, individuals with glucose-6-phosphate dehydrogenase deficiencies may also be at greater risk of experiencing toxic effects from copper exposure.

Copper is classified in EPA's group D (insufficient data) for carcinogenic potential. Copper is generally negative in mutagenicity bioassays. Bioassays using oral copper were negative; subcutaneous injection of copper compounds has been reported to induce tumor formation in one sex and strain of mice.

EPA has proposed a maximum contaminant level (MCL) of 1.3 milligrams/liter (mg/L) (3.8 mg/day) copper.

b. *Ecological effects.* Copper is very toxic to aquatic life. It is sometimes used as a biocide to control undesirable aquatic plants. EPA has issued Water Quality Criteria for copper to protect aquatic life. The acute criteria in fresh water is 22 micrograms/liter (ug/L). The chronic criteria in fresh water is 5.2 ug/L. In salt water both the acute and chronic criteria are 1 ug/L.

2. *Availability of copper ion.* The three copper phthalocyanine pigments are extremely stable to chemically and biologically induced transformations.

a. *Thermal stability.* The three copper pigments are extremely stable thermally and only begin to show signs of decomposition at temperatures above 500 °C.

b. *Hydrolysis.* The three copper pigments have very low solubilities in water (estimates are 8×10^{-7} to 3×10^{-4} mg/L for Pigment Blue 15, 7×10^{-16} to 2×10^{-14} mg/L for Pigment Green 7, and less than 10^{-18} mg/L for Pigment Green 36) and do not dissociate or hydrolyze in water under environmental conditions. Hydrolysis of the three copper pigments also does not occur in basic and non-oxidizing acidic media.

c. *Photolysis.* Based on studies carried out to determine the light fastness of the three copper phthalocyanines, it appears that photolysis of these pigments with resultant release of copper ion will not occur.

d. *Abiotic oxidation.* Data indicate that under environmental conditions, abiotic oxidation of these copper

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pigments does not occur. More rigorous conditions are required to effect the oxidation of the copper phthalocyanines and subsequent release of copper ion. The pigments can be chemically oxidized to give phthalimides and copper nitrate by boiling in dilute nitric acid. Oxidation of the pigments can also occur by treatment with ceric sulfate in dilute sulfuric acid at 25 °C, or by reaction with potassium permanganate.

e. *Microbial transformations.* No data on the anaerobic or aerobic biodegradability of the copper pigments were found. However, based on their extremely low solubility in water, their large cross-sectional diameter, and with the exception of the halogens on Pigment Green 7 and Pigment Green 36, the lack of substituent groups associated with facile primary degradation, these pigments are expected to be very resistant to degradation processes.

f. *Bioavailability.* On the basis of molecular weight, extremely low solubility in water, and data from subchronic toxicity tests, the three phthalocyanine pigments are not expected to be appreciably absorbed by any route of exposure or metabolized to yield copper ion.

The lack of toxicity and minimal changes in tissue copper levels observed in 13–week oral studies of Pigment Blue 15 and Pigment Green 7 in rodents indicate that appreciable absorption and metabolism to yield copper ion had not occurred.

g. *Bioaccumulation.* Because copper ion does not appear to be available from the phthalocyanine pigments, bioaccumulation of copper ion is not a concern.

h. *Summary.* EPA believes that the availability of copper ion from the phthalocyanine pigments by hydrolysis, photolysis, aerobic and anaerobic transformations is negligible. Copper ion is not expected to be bioavailable from the copper pigments. The copper pigments are not expected to be appreciably absorbed by any route of exposure or metabolized to yield the copper ion. The levels at which copper ion exhibits toxicity far exceed the expected limited availability of copper ion from the phthalocyanine pigments which results in a low level of concern for these chemicals. There could be a slight risk to aquatic life in rare situations. The small, infrequent risk is best controlled by control programs under the Clean Water Act, not by a global reporting requirement.

IV. Comments on the Proposed Exemption of the Three Phthalocyanine Pigments

EPA received comments from more than 22 commenters on the proposed exemption of the three copper phthalocyanine pigments from the "copper category" and on the category issue itself. Eleven commenters were in favor of granting the exemption, two were in favor of denying the exemption, and the remaining comments were directed only to the category issue.

The New York City Department of Environmental Protection believes that EPA should not exempt the copper pigments from reporting requirements under the copper compounds category because "it does not appear that EPA considered the possibility that copper may be released from the pigments by the action of soil micro-organisms. . . . If the action of bacteria liberates copper into the environment, then the release of the copper pigments represents an environmental hazard." EPA believes that because of the factors specified above (unit III.2.E) microbial degradation of the copper pigments with resultant release of copper ion is highly unlikely.

Arts, Crafts and Theater Safety suggests that before "EPA approves DCMA's petition DCMA should document the degree" to which polychlorinated biphenyls (PCBs) and free copper inadvertently contaminate phthalocyanine pigments manufactured or imported into the United States. Pursuant to 40 CFR 761.30, phthalocyanine pigments that contain up to 50 ppm PCBs can be processed and distributed in commerce. Processing and distribution of phthalocyanine pigments that contain 50 ppm or greater of PCBs is permitted only for persons who are granted an exemption under section 6(e)(3)(B) of the Toxic Substances Control Act (TSCA). PCBs are only reportable under section 313 if they are present at a concentration of 0.1 percent, which is the *de minimis* concentration (40 CFR 372.38).

The copper compounds category is subject to the one percent *de minimis* concentration. Thus, mixtures that contain copper compounds (except the three copper phthalocyanine pigments) in excess of the *de minimis* concentration should be factored into threshold and release determinations. EPA does not believe that phthalocyanine pigments contaminated with other copper compounds, and/or PCBs should be treated differently than other mixtures. The presence of these impurities did not affect EPA's decision to delete the three copper pigments.

V. Rulemaking Record

The record supporting this rule is contained in docket number OPTS–400030A. All documents, including the index of the docket, are available to the public in the TSCA Public Docket Office from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located at EPA Headquarters, Room NE–G004, 401 M St., SW., Washington, DC 20460.

VI. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore, requires a Regulatory Impact Analysis. EPA has determined that this rule is not a "major rule" because it will not have an effect on the economy of $100 million or more.

This rule would decrease the impact of the section 313 reporting requirements on covered facilities and would result in cost-savings to industry, EPA, and States. Therefore, this is a minor rule under Executive Order 12291.

There are 6 major producers, 16 processors of the crude pigment to pigment grade, and 21 importers of Pigment Blue-15 at a total of 45 sites. There may be 1 producer, approximately 14 processors, and 12 importers of Pigment Green-7 at a total of 26 sites. There are approximately 5 processors and 4 importers of Pigment Green-36 at a total of 9 sites. EPA estimates the number of producers, processors, and importers that might be subject to reporting under the current threshold requirements to be no more than 80. The cost savings of exempting industry from reporting requirements for these three copper phthalocyanine pigments under the "copper category" are estimated at one million dollars, while the savings for EPA are estimated to be $25,000 (10–year present values using a 10 percent discount rate).

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, the Agency must conduct a small business analysis to determine whether a substantial number of small entities will be significantly affected. Because the rule results in cost savings to facilities, the Agency certifies that small entities will not be significantly affected by the rule.

C. Paperwork Reduction Act

This rule does not have any information collection requirements under the provisions of the Paperwork

Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 372

Chemicals, Community right-to-know, Environmental protection, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: May 15, 1991.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 372 is amended as follows:

1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

§ 372.65 [Amended]

2. In § 372.65(c) by adding the following language to the copper compounds listing "(except for C.I. Pigment Blue 15 (PB–15, CAS No. 147–14–8), C.I. Pigment Green 7 (PG–7, CAS No. 1328–53–6), and C.I. Pigment Green 36 (PG–36, CAS No. 14302–13–7)".

[FR Doc. 91–12292 Filed 5–22–91; 8:45 am]

BILLING CODE 6560–50–F

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 301–1, 301–3, 301–7, 301–10, 301–11, 301–12, 301–14, 302–1, 302–2, 302–3, 302–4, 302–5, 302–6, 302–11, and 302–12

[FTR Amendment 17]

RIN 3090–AE36

Federal Travel Regulation; Pre-Employment Interview Travel Expenses and Relocation Expenses of New Appointees

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This final rule implements provisions of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509, November 5, 1990) allowing, as a recruiting incentive, payment of pre-employment interview travel expenses to interviewees and the payment of certain relocation allowances to all new appointees.

EFFECTIVE DATE: The provisions of this final rule are effective February 14, 1991, and apply to all interviewees who perform travel on or after February 14, 1991, all new appointees appointed on or after February 14, 1991, and all student trainees who are assigned upon completion of college work on or after February 14, 1991.

FOR FURTHER INFORMATION CONTACT: Robert A. Clauson, Travel Management Division (FBT), Washington, DC 20406, telephone FTS 557–1253 or commercial (703) 557–1253.

SUPPLEMENTARY INFORMATION: Section 206 of the Federal Employees Pay Comparability Act of 1990 (FEPCA) (Pub. L. 101–509, November 5, 1990) amended title 5 of the United States Code by adding a new section 5706b, "Interview expenses", and modifying section 5723, "Travel and transportation expenses of new appointees and student trainees; manpower shortage positions."

Pre-employment Interview Travel Expenses

Section 206 of FEPCA authorizes the payment of pre-employment interview travel expenses. Prior to FEPCA, the payment of those expenses was limited to certain categories of employees established by Comptroller General decisions, or in the case of Senior Executive Service (SES) interviewees, by statute. FEPCA changes the prior practice by authorizing the payment of pre-employment interview travel expenses to all interviewees as determined necessary by the agency. This rule implements the new statutory provision. Part 301–1 has been divided into 3 subparts to clearly reflect that the payment of pre-employment interview travel expenses is discretionary with agencies, not an entitlement of prospective candidates for employment. Therefore, the General Services Administration (GSA) has developed a separate section related to pre-employment interview travel by an interviewee. The existing provisions of part 301–1 have been divided into subparts A and B without substantive change, and a new subpart C has been added to incorporate the new provisions. Subpart A contains general rules applicable throughout chapter 301. Subpart B encompasses general rules applicable solely to Government employees performing official travel. Subpart C adds the new provisions authorizing the payment of pre-employment interview travel expenses.

Relocation Expenses of New Appointees

Section 206 of FEPCA also expands the scope of new appointees who qualify for the payment of limited relocation allowances; i.e., travel expenses of the appointee, and transportation expenses of the immediate family and household goods. Prior to FEPCA, these limited allowances were payable only to new appointees to manpower shortage category positions, and to SES and certain Presidentially appointed positions. FEPCA extends the payment to all new appointees. It is important to note that the range of allowances payable to new appointees has not been changed, only the scope of individuals covered. This final rule reflects the change in the scope of individuals covered by amending part 302–1.

Prior to FEPCA, 41 CFR 302–1.10 contained the general rule prohibiting the payment of relocation allowances to new appointees. Section 302–1.11 stated the exception to the general rule. Since FEPCA has changed the general rule, and there is no longer any need for exceptions, § 302–1.10 has been modified to authorize payment of limited relocation allowances to all new appointees, and the § 302–1.11 exceptions to the general rule have been eliminated. For clarification, a definition of new appointees that encompasses all categories of appointees, including those covered under former § 302–1.11, has been added to the general definitions section (§ 302–1.4). This definition clarifies the meaning of the term "new appointee" which was previously defined by a cross reference to § 302–1.11.

Technical Correction

This rule also corrects an incorrect reference in § 301–7.1(b)(6) without any substantive change to the provision.

GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects

41 CFR Parts 301–1, 301–3, 301–7, 301–10, 301–11, 301–12, and 301–14

Interviewees, Travel, Travel allowances, Travel and transportation expenses.

41 CFR Parts 302–1, 302–2, 302–3, 302–4, 302–5, 302–6, 302–11, and 302–12

New appointees, Relocation allowances and entitlements, Transfers.

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For the reasons set out in the preamble, title 41, chapters 301 and 302 of the Code of Federal Regulations are amended as set forth below:

PART 301–1—APPLICABILITY AND GENERAL RULES

1. The authority citation for part 301–1 continues to read as follows:

Authority: 5 U.S.C. 5701–5709; 31 U.S.C. 1353; and E.O. 11609, July 22, 1971 (36 FR 13747).

§§ 301–1.4 through 301–1.8 [Redesignated as §§ 301–1.101 through 301–1.103]

2. Part 301–1 is amended by designating the existing §§ 301–1.1 through 301–1.3 as Subpart A—Authority, Applicability, and General Rules; redesignating §§ 301–1.4 through 301–1.6 as §§ 301–1.101 through 301–1.103 and adding new § 301–1.100, and designating §§ 301–1.100 through 301–1.103 as Subpart B—Official Government Business Travel; and by adding subpart C consisting of §§ 301–1.200 through 301–1.205 as set forth below. The table of contents of part 301–1 is revised to read as follows:

Subpart A—Authority, Applicability, and General Rules

Sec.
301–1.1 Authority.
301–1.2 Applicability.
301–1.3 General rules.

Subpart B—Official Government Business Travel

Sec.
301–1.100 Applicability.
301–1.101 Authorization of travel.
301–1.102 Guidelines for issuing travel authorizations.
301–1.103 Instructions/guidelines for travelers.

Subpart C—Pre-Employment Interview Travel

Sec.
301–1.200 Applicability.
301–1.201 Authorization of travel.
301–1.202 Responsibilities for pre-employment travel.
301–1.203 Allowable reimbursements.
301–1.204 Sources of funds.
301–1.205 Claims for reimbursement.

Subpart A—Authority, Applicability, and General Rules

3. Section 301–1.1 is revised to read as follows:

§ 301–1.1 Authority.

This chapter is issued under the authority of 5 U.S.C. 5701–5709, 40 U.S.C. 486(c), and 31 U.S.C. 1353.

4. Section 301–1.2 is amended by adding paragraph (d) to read as follows:

§ 301–1.2 Applicability.

* * * * *

(d) This chapter also applies to travel by individuals being considered for employment to and from pre-employment interviews determined necessary by an agency.

5. Section 301–1.3 is amended by redesignating paragraphs (c) (3) through (9) as (c) (4) through (10), and adding new paragraph (c)(3) as follows:

§ 301–1.3 General rules.

* * * * *

(c) * * *

(3) *Interviewee.* As used in this chapter, "interviewee" means an individual who is being considered for employment by an agency.

* * * * *

Subpart B—Official Government Business Travel

6. Section 301–1.100 is added to read as follows:

§ 301–1.100 Applicability.

This subpart applies to employees as defined in § 301–1.3(c)(2) who are traveling on official business.

§ 301–1.101 [Amended]

7. Newly designated § 301–1.101(b)(3) is amended by removing the reference "§ 301–1.5" and adding in its place the reference "§ 301–1.102".

8. Subpart C is added to read as follows:

Subpart C—Pre-Employment Interview Travel

§ 301–1.200 Applicability.

(a) *Individuals covered.* This subpart is applicable to interviewees as defined in § 301–1.3(c)(3).

(b) *Policy.* Unless otherwise stated, the allowances established in this subpart for interviewees are analogous to those available to Federal employees traveling on official Government business. However, an agency is not required to offer all allowances to each interviewee. (See § 301–1.203(a)(2).)

§ 301–1.201 Authorization of travel.

(a) *Authority for payment.* Agencies may pay allowable preemployment interview travel expenses (as defined in § 301–1.203) for individuals determined eligible under paragraph (b) of this section.

(b) *Eligibility determination.* Each agency shall establish criteria for determining which applicants will qualify for the payment of pre-employment interview travel expenses. The Office of Personnel Management has issued guidelines at 5 CFR part 572 for agencies to follow in making these personnel determinations.

§ 301–1.202 Responsibilities for pre-employment travel.

(a) *Agency responsibilities*—(1) *General rule.* Agencies shall adhere to the general travel authorization policies and practices contained in Subpart B of this part.

(2) *Limitations on type of authorization.* Pre-employment interview travel may be authorized only on a trip-by-trip basis. Limited or unlimited open authorizations shall not be used for pre-employment interview travel.

(3) *Responsibility of agencies to inform interviewees of Government travel policies.* Agencies shall communicate the Government travel rules and procedures to interviewees. Agencies should ensure the interviewee understands how travel reimbursements are calculated. Agencies also should provide assistance to the interviewee in the preparation of travel vouchers.

(4) *Limitations on the ability of agencies to authorize pre-employment travel expenses to defray unauthorized relocation expenses.* Agencies shall not authorize pre-employment interview travel expense reimbursement for the purpose of helping defray relocation expenses that are not allowable for a new appointee under § 302–1.10. For example, an agency may not pay pre-employment travel expenses under this subpart so that an interviewee/new appointee may look for a house at his/her prospective first duty station.

(b) *Interviewee responsibilities*—(1) *General rule.* The interviewee is expected to exercise the same care in incurring expenses that a prudent person would exercise if traveling on personal business.

(2) *Use of travel agencies.* Tickets should be provided by the interviewing agency. However, the interviewing agency may authorize the interviewee to obtain tickets directly from a travel management center under contract to the Government.

(3) *Use of contract carriers.* Interviewees of mandatory users of the Government's city pair contracts with airlines and Amtrak are bound by rules outlined in § 301–2.2 (c) and (d)(1)(ii)(A).

(4) *Interviewee's potential liability notice.* The interviewee is accountable for all transportation tickets and U.S. Government Transportation Requests (GTR's) issued for use in performing pre-employment interview travel. Agencies shall provide written instructions to the interviewee at the time an authorization is issued explaining agency

administrative procedures for controlling and accounting for passenger transportation documents. If the interview trip is cancelled or rescheduled after tickets (or GTR's) are issuec to the interviewee, the interviewee is liable for the value of the tickets issued until all ticket coupons have been used for pre-employment interview travel or all unused tickets or coupons have been properly accounted for on the travel voucher. A statement to this effect shall be incorporated on the travel authorization, or issued as a "Notice to Traveler" and attached to the ticket or GTR when issued to the interviewee. The interviewee and the interviewing agency shall be bound by the same rules that apply to employee travelers and agencies in § 301–3.5.

(5) *Billing information for ticket exchanges.* When an interviewee exchanges a ticket for one of lesser value, the carrier should issue a receipt or a ticket refund application and is required to make refund directly to the appropriate agency billing office. To facilitate this refund procedure, agencies shall provide interviewees with a "bill charges to" address by attaching a copy of the GTR or some other document containing this information to either the ticket or travel authorization as provided in 41 CFR 101–41.210–1.

§ 301–1.203 Allowable reimbursements.

(a) *Allowable expenses.* (1) An agency may pay to or on behalf of an interviewee the same travel expenses to which a Government employee traveling on official business would be entitled, with the exception of those expenses listed in paragraph (b) of this section. Allowable expenses are subject to the limitations applicable to a Government employee traveling on official business.

(2) An agency may pay all or a part of pre-employment travel expenses. However, an agency electing to pay only subsistence or only common carrier transportation costs must pay the full amount to which a Government employee would be entitled for those expenses authorized. Paying less than the full reimbursement for common carrier tickets could make the interviewee ineligible for Government discounts.

(b) *Unallowable expenses.* An agency shall not pay expenses for:

(1) Use of communication services as defined in Part 301–6 for purposes other than communication directly related to travel arrangements for the Government interview.

(2) Hire of a room as defined in § 301–9.1(b).

§ 301–1.204 Sources of funds.

(a) *Payment of travel expenses*—(1) *Transportation expenses by common carrier, other than local transportation.* Interviewee transportation by common carrier, other than local transportation, shall be paid for through the use of a GTR or a centrally billed account as provided in § 301–15.45. Common carrier transportation includes air, bus, and rail.

(2) *Other authorized expenses.* All other authorized expenses shall be paid for by the interviewee. The agency shall reimburse the interviewee for allowable travel expenses upon submission and approval of a travel voucher.

(b) *Unallowable sources*—(1) *Government issued individual employee charge cards.* Individual employee charge cards (see § 301–15.44) may not be used for pre-employment interview travel. However, centrally billed accounts (see § 301–15.45) may be used to pay the interviewee's allowable transportation expenses.

(2) *Travel advances.* An interviewee shall not be issued a travel advance.

(3) *Travelers checks.* Government contractor issued travelers checks (see § 301–15.46) may not be used for pre-employment interview travel.

§ 301–1.205 Claims for reimbursement.

(a) *Fraudulent claims.* A claim against the United States is forfeited if the claimant attempts to defraud the Government in connection therewith (28 U.S.C. 2514). In addition, there are two criminal provisions under which severe penalties may be imposed on a traveler who knowingly presents a false, fictitious, or fraudulent claim against the United States (18 U.S.C. 287 and 1001).

(b) *Maintenance of receipts and records.* All interviewees authorized to travel should keep a record of expenditures properly chargeable to the Government. Although receipt requirements vary with the method of reimbursement, it would be prudent for interviewees to retain all receipts until reimbursement claims are settled. The agency should alert the interviewee to such requirements.

(c) *Preparation and submission of travel vouchers.* (1) Interviewees are responsible for the preparation and submission of travel vouchers, although agencies should assist in this process. Travel voucher forms may be typed or handwritten in ink. Only the original travel voucher must be signed by the interviewee.

(2) Agencies are to prescribe the administrative procedures, consistent with those in § 301–11.4, for interviewees to follow in submitting travel vouchers.

(d) *Review of travel vouchers of interviewees.* Agencies shall review the travel vouchers of interviewees in the same manner as they review the travel vouchers of Government employees on official business travel as provided in part 301–11.

PART 301–3—USE OF COMMERCIAL TRANSPORTATION

9. The authority citation for part 301–3 continues to read as follows:

Authority: 5 U.S.C. 5701–5709; E.O. 11609, July 22, 1971 (36 FR 13747).

§ 301–3.5 [Amended]

10. Section 301–3.5(a)(2) is amended by removing the reference "§ 301–1.6(a)" and adding in its place the reference "§ 301–1.103(a)".

11. Section 301–3.5(b) is amended by removing the reference "§ 301–1.6" and adding in its place the reference "§ 301–1.103".

PART 301–7—PER DIEM ALLOWANCES

12. The authority citation for part 301–7 continues to read as follows:

Authority: 5 U.S.C. 5701–5709; E.O. 11609, July 22, 1971 (36 FR 13747).

§ 301–7.1 [Amended]

13. Section 301–7.1(b)(2) is amended by removing the reference "§ 301–1.3(c)(5)" and adding in its place the reference "§ 301–1.3(c)(6)".

14. Section 301–7.1(b)(6) is amended by removing the reference "paragraphs (b)(5) (i) and (ii)" and adding in its place the reference "paragraphs (b)(6) (i) and (ii)".

§ 301–7.5 [Amended]

15. Section 301–7.5(a) is amended by removing the reference "§ 301–1.3(c)(3)" and adding in its place the reference "§ 301–1.3(c)(4)".

PART 301–10—SOURCES OF FUNDS

16. The authority citation for part 301–10 continues to read as follows:

Authority: 5 U.S.C. 5701–5709; E.O. 11609, July 22, 1971 (36 FR 13747).

§ 301–10.2 [Amended]

17. Section 301–10.2(a)(3) is amended by removing the reference "§ 301–1.6(a)" and adding in its place the reference "§ 301–1.103(a)".

18. Section 301–10.2(b)(3) is amended by removing the reference "§ 301–1.6(b)" and adding in its place the reference "§ 301–1.103(b)", and by removing the reference "§ 301–1.6(b)" and adding in its place the reference "§ 301–1.103(b)".

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PART 301–11—CLAIMS FOR REIMBURSEMENT

19. The authority citation for part 301–11 continues to read as follows:

Authority: 5 U.S.C. 5701–5709; E.O. 11609, July 22, 1971 (36 FR 13747).

§ 301–11.5 [Amended]

20. Section 301–11.5(g) is amended by removing the reference "§ 301–1.5(c)" and adding in its place the reference "§ 301–1.102(c)".

§ 301–11.6 [Amended]

21. Section 301–11.6(b) is amended by removing the reference "§ 301–1.4" and adding in its place the reference "§ 301–1.101".

PART 301–12—EMERGENCY TRAVEL OF EMPLOYEE DUE TO ILLNESS OR INJURY ON A PERSONAL EMERGENCY SITUATION, WITHIN OR OUTSIDE CONUS

22. The authority citation for part 301–12 continues to read as follows:

Authority: 5 U.S.C 5701–5709; E.O. 11609, July 22, 1971 (36 FR 13747).

§ 301–12.4 [Amended]

23. Section 301–12.4(d) is amended by removing the reference "§ 302–1.4(e)" and adding in its place the reference "§ 302–1.4(f)".

PART 301–14—PAYMENT OF SUBSISTENCE AND TRANSPORTATION EXPENSES FOR THREATENED LAW ENFORCEMENT/INVESTIGATIVE EMPLOYEES

24. The authority citation for part 301–14 continues to read as follows:

Authority: 5 U.S.C. 5701–5709; E.O. 11609, July 22, 1971 (36 FR 13747).

§ 301–14.4 [Amended]

25. Section 301–14.4 is amended by removing the reference "§ 302–1.4(e)" and adding in its place the reference "§ 302–1.4(f)".

PART 302–1—APPLICABILITY, GENERAL RULES, AND ELIGIBILITY CONDITIONS

26. The authority citation for part 302–1 continues to read as follows:

Authority: 5 U.S.C. 5721–5734; 20 U.S.C. 905(a); E.O. 11609, July 22, 1971 (36 FR 13747).

27. The table of contents for subpart A is revised to read as follows:

Subpart A—New Appointees and Transferred Employees

Sec.

* * * * *

302–1.10 New Appointees.
302–1.11 [Reserved]

* * * * *

Subpart A—New appointees and Transferred Employees

28. Section 302–1.2 is amended by removing paragraph (a)(7), and revising paragraphs (a) (4) and (5) to read as follows:

§ 302–1.2 Applicability.

(a) * * *

(4) New appointees to any position.

(5) Student trainees assigned upon completion of college work to any position.

* * * * *

29. Section 302–1.3 is amended by removing paragraph (a)(3); redesignating paragraphs (a) (4) and (5) as paragraphs (a) (3) and (4); and revising paragraph (a)(2) to read as follows:

§ 302–1.3 General provisions.

(a) * * *

(2) New appointees, as defined in § 302–1.4(d), relocating from their place of actual residence at the time of appointment (or at the time following the most recent Presidential election, but before selection or appointment, in the case of individuals who have performed transition activities under Section 3 of the Presidential Transition Act of 1963 (3 U.S.C. 102 note) and who are appointed in the same fiscal year as the Presidential inauguration that immediately follows their transition activities) for permanent duty to official stations.

* * * * *

§ 302–1.3 [Amended]

30. Section 302–1.3(c) is amended by removing the reference "§ 302–1.11(b)" and adding in its place "§ 302–1.10(c)", and by removing the reference "§ 302–1.5" and adding in its place the reference "§ 302–1.102".

31. Section 302–1.3(d) is amended by removing the reference "§ 302–1.4(k)" and adding in its place the reference "§ 302–1.4(l)".

32. Section 302–1.4 is amended by redesignating paragraphs (d) through (k) as paragraphs (e) through (l), by revising paragraph (c), and adding new paragraph (d) to read as follows:

§ 302–1.4 Definitions.

* * * * *

(c) *Employee.* A civilian officer or employee of an *agency* as defined in paragraph (e) of this section. The term also includes new appointees as defined in paragraph (d) of this section.

(d) *New appointee. New appointee* includes any person newly appointed to Government service, including an individual who has performed transition activities under section 3 of the Presidential Transition Act of 1963 (3 U.S.C. 102 note) and who is appointed in the same fiscal year as the Presidential inauguration that immediately follows his/her transition activities. *New appointee* also includes an individual appointed after a break in service except that an employee separated as a result of reduction in force or transfer of function may be treated as a transferee instead of a new appointee under the conditions set out in § 302–1.9. In addition, for purposes of chapters 301–304 of this title 41, the term *new appointee* includes a student trainee who is assigned upon completion of college work.

* * * * *

33. Section 302–1.5 is amended by revising paragraph (a) to read as follows:

§ 302–1.5 Service agreements.

(a) *Transfers within the continental United States and appointments and assignments of new appointees and student trainees to any position within the United States.* In connection with the transfer of employees between official stations within the continental United States, expenses authorized under this chapter shall not be allowed until the employee selected for such transfer agrees in writing to remain in the service of the Government for 12 months following the effective date of the transfer, unless separated for reasons beyond his/her control that are acceptable to the agency concerned. In case of a violation of such an agreement, including failure to effect the transfer, any funds expended by the United States for expenses authorized under this chapter shall be recoverable from the individual concerned as a debt due the United States. Such an agreement also is required from new appointees and student trainees appointed or assigned to any position within the United States, as a condition of payment for travel, transportation, moving and/or storage of household goods, and allowances as provided in § 302–1.10. A signed agreement for 12 months' service shall be required for each permanent change of station.

* * * * *

§ 302–1.7 [Amended]

34. Section 302–1.7(b) is amended by removing the reference "§ 302–1.11" and adding in its place the reference "§ 302–1.10".

35. Section 302–1.10 is revised to read as follows:

§ 302–1.10 New appointees.

(a) *Coverage.* New appointees to any position are eligible for payment only of those travel and transportation expenses listed in paragraph (d) of this section in relocating to their first official station. New appointees include student trainees who are assigned upon completion of college work. New appointees include not only individuals when first appointed to Government service but also individuals appointed after a break in service except that employees separated as a result of reduction in force or transfer of function may be treated as transferees instead of new appointees under the conditions set forth in § 302–1.9.

(b) *Agency responsibility.* Because new appointees usually lack experience in Government procedures, each agency shall adopt special measures to provide full information to new appointees concerning the benefits which may be available to them for travel and transportation involved in reporting to their official stations. Special care shall be taken to inform appointees of the limitations on available benefits.

(c) *Procedural requirements—(1) Agreement.* No payment for otherwise allowable expenses or for an advance of funds shall be made unless the appointee or student trainee has signed the agreement appropriate in his/her case as provided in § 302–1.5.

(2) *Travel before appointment.* Authorized expenses may be paid even though the individual concerned has not been appointed at the time travel to the first official station is performed. For individuals who have performed Presidential transition activities, as described in § 302–1.3(a)(2), allowable travel and transportation may take place at any time following the most recent Presidential election. However, entitlement to such expenses does not vest by virtue of selection for the position or authorization for travel as provided in § 302–1.3(c) but vests only upon actual appointment of the individual concerned. However, nothing in this paragraph shall be construed to limit the provisions of part 301–1, subpart C, allowing the payment of pre-employment interview travel.

(3) *Prior payment.* A student trainee may not receive payments at the time of his/her assignment if the expenses of travel and transportation were paid at the time he/she was appointed as a student trainee.

(d) *Allowable expenses.* Items of expense listed in paragraphs (d) (1) through (6) of this section are payable under the conditions prescribed in this chapter governing the allowance in question. Note particularly that not all of the listed items will be applicable in each situation covered by this part.

(1) Travel expenses including per diem for the appointee or student trainee as set forth in § 302–2.1;

(2) Transportation for immediate family of appointee or student trainee as set forth in § 302–2.2(a);

(3) Mileage if privately owned vehicle is used in travel as set forth in § 302–2.3;

(4) Transportation and temporary storage of household goods as set forth in part 302–8;

(5) Nontemporary storage of household goods if appointed to an isolated location as set forth in § 302–9.1; and

(6) Transportation of mobile homes as set forth in Part 302–7.

(e) *Expenses not allowable.* Items of expense not listed in paragraph (d) of this section which are authorized for reimbursement in case of transfers under this chapter (e.g., per diem for family, cost of house-hunting trip, subsistence while occupying temporary quarters, a miscellaneous expense allowance, residence sale and purchase expenses, lease-breaking expenses, and relocation services) are not allowable to appointees and student trainees eligible under this section.

(f) *Alternate origin and destination.* The limit on travel and transportation expenses in each individual case is the cost of direct travel or transportation as allowable between the individual's place of residence at the time of selection or assignment (or in the case of individuals having performed Presidential transition activities, as described in § 302–1.3(a)(2), the place of residence at the time of relocation following the most recent Presidential election) and the official station to which he/she is appointed or assigned; however, travel and transportation may be from and/or to other locations if the new appointee or student trainee pays any excess cost involved in such alternate travel or transportation.

(g) *Advance of funds.* An advance of funds for expenses allowable under this section may be made to appointees and student trainees under the procedures prescribed in § 302–1.14(a) and the part of this regulation governing the allowance being considered.

§ 302–1.11 [Reserved]

36. Section 302–1.11 is removed and reserved.

§ 302–1.12 [Amended]

37. Section 302–1.12(f) is amended by removing the reference "§ 302–1.4(e)" and adding in its place the reference "§ 302–1.4(f)".

38. Section 302–1.12(g) is amended by removing the reference "§ 302–1.4(e)" and adding in its place the reference "§ 302–1.4(f)".

PART 302–2—ALLOWANCES FOR SUBSISTENCE AND TRANSPORTATION

39. The authority citation for part 302–2 continues to read as follows:

Authority: 5 U.S.C. 5721–5734; 20 U.S.C. 905(a); E.O. 11609, July 22, 1971 (36 FR 13747).

§ 302–2.1 [Amended]

40. Section 302–2.1 is amended by removing the phrase "(including those covered in § 302–1.11)".

§ 302–2.2 [Amended]

41. Section 302–2.2(c)(1) is amended by removing the phrase ", including those covered in § 302–1.11".

§ 302–2.3 [Amended]

42. Section 302–2.3(a) is amended by removing the phrase ", including those covered in § 302–1.11".

PART 302–3—ALLOWANCE FOR MISCELLANEOUS EXPENSES

43. The authority citation for part 302–3 continues to read as follows:

Authority: 5 U.S.C. 5721–5734; 20 U.S.C. 905(a); E.O. 11609, July 22, 1971 (36 FR 13747).

§ 302–3.2 [Amended]

44. Section 302–3.2(b) is amended by removing the phrase "including those covered under § 302–1.11,".

PART 302–4—TRAVEL TO SEEK RESIDENCE QUARTERS

45. The authority citation for part 302–4 continues to read as follows:

Authority: 5 U.S.C. 5721–5734; 20 U.S.C. 905(a); E.O. 11609, July 22, 1971 (36 FR 13747).

§ 302–4.3 [Amended]

46. Section 302–4.3(b) is amended by removing the phrase "covered under § 302–1.11".

PART 302–5—SUBSISTENCE WHILE OCCUPYING TEMPORARY QUARTERS

47. The authority citation for part 302–5 continues to read as follows:

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Authority: 5 U.S.C. 5721–5734; 20 U.S.C. 905(a); E.O. 11609, July 22, 1971 (36 FR 13747).

§ 302–5.2 [Amended]

48. Section 302–5.2(a) is amended by removing the reference "§ 302–1.4(e)" and adding in its place the reference "§ 302–1.4(f)".

PART 302–6—ALLOWANCE FOR EXPENSES INCURRED IN CONNECTION WITH RESIDENCE TRANSACTIONS

49. The authority citation for part 302–6 continues to read as follows:

Authority: 5 U.S.C. 5721–5734; 20 U.S.C. 905(a); E.O. 11609, July 22, 1971 (36 FR 13747).

§ 302–6.1 [Amended]

50. Section 302–6.1(b) is amended by removing the reference "§ 302–1.4(j)" and adding in its place the reference "§ 302–1.4(k)".

PART 302–11—RELOCATION INCOME TAX (RIT) ALLOWANCE

51. The authority citation for part 302–11 continues to read as follows:

Authority: 5 U.S.C. 5721–5734; 20 U.S.C. 905(a); E.O. 11609, July 22, 1971 (36 FR 13747); E.O. 12466, February 27, 1984 (49 FR 7349).

52. Section 302–11.2(a) is amended by removing the reference "§ 302–1.4(k)" and adding in its place the reference "§ 302–1.4(l)"; and § 302–11.2 is amended by revising paragraph (b)(1) to read as follows:

§ 302–11.2 Coverage.

* * * * *

(b) * * *

(1) New appointees;

* * * * *

53. Section 302–11.4 is amended by adding paragraph (g) to read as follows:

§ 302–11.4 Exclusions from coverage.

* * * * *

(g) Any tax liability resulting from the payment of recruitment, retention, or relocation bonuses authorized by the Office of Personnel Management pursuant to 5 U.S.C. 5753 and 5754, or any other provisions which allow relocation payments that are not reimbursements for travel, transportation, and other expenses incurred in relocation.

PART 302–12—USE OF RELOCATION SERVICE COMPANIES

54. The authority citation for part 302–12 continues to read as follows:

Authority: 5 U.S.C. 5721–5734; 20 U.S.C. 905(a E.O. 11609, July 22, 1971 (36 FR 13747); E.O. 12466, February 27, 1984 (49 FR 7349); E.O. 12522, June 24, 1985 (50 FR 26337).

§ 302–12.1 [Amended]

55. Section 302–12.1 is amended by removing the reference "§ 302–1.4(d)" and adding in its place the reference "§ 302–1.4(e)".

§ 302–12.4 [Amended]

56. Section 302–12.4(a)(1) is amended by removing the reference "§ 302–1.4(k)" and adding in its place the reference "§ 302–1.4(l)".

Dated: May 6, 1991.

Richard G. Austin,

Administrotor of General Services.

[FR Doc. 91–12252 Filed 5–22–91; 8:45 am]

BILLING CODE 6820–24–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 4515]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATE: The dates listed in the fourth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: Post Office Box 457, Lanham, Maryland 20706, Phone: (800) 638–7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street, SW., room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or a Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, FEMA, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of Eligible Communities.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community [1]	Current effective map date
New Eligibles—Emergency Program			
Kentucky: Fleming County, unincorporated areas	210335	Apr. 10, 1991	
Iowa: Ely, city of, Linn County	190440	Apr. 29, 1991	7–30–76
New Eligibles—Regular Program			
Idaho: Fremont County, unincorporated areas	160061	Apr. 10, 1991	3–18–91
Kentucky: Henderson County, unincorporated areas	210286	Apr. 10, 1991	2–6–91
Georgia:			
Bibb County,[1] unincorporated areas	130500	June 11, 1971, Emerg; Sept. 28, 1979, Reg	4–2–80
Macon,[1] city of, Bibb and Jones Counties	130011	June 11, 1971, Emerg; Sept. 28, 1979, Reg	4–2–80
Lowndes County, unincorporated areas	130469	Apr. 23, 1991	10–18–83
Reinstatements—Regular Program			
New York:			
Lincoln, town of, Madison County	360405	Sept. 10, 1975, Emerg; Sept. 4, 1985, Reg; Dec. 15, 1989, Susp; Apr. 4, 1991, Rein.	12–15–89
Solon, town of, Cortland County	361329	Feb. 2, 1976, Emerg; May 15, 1985, Reg; June 15, 1988, Susp; Apr. 8, 1991, Rein.	5–15–88
Pennsylvania:			
Union, township of, Bedford County	421352	Apr. 29, 1975, Emerg; Sept. 14, 1976, Susp; Feb. 22, 1984, Rein; June 1, 1989, Reg; June 1, 1989, Susp; Apr. 8, 1991, Rein.	6–1–85
Prompton, borough of, Wayne County	420866	June 25, 1975, Emerg; June 1, 1989, Reg; June 1, 1989, Susp; Apr. 10, 1991, Rein.	6–1–89
Manchester, township of, Wayne County	422166	Dec. 8, 1975, Emerg; Sept. 30, 1988, Reg; Sept. 30, 1988, Susp; Apr. 10, 1991, Rein.	9–30–88
South Creek, township of, Bedford County	421105	Oct. 15, 1975, Emerg; Sept. 5, 1990, Reg; Sept. 5, 1990, Susp; Apr. 10, 1991, Rein.	9–5–90
Cromwell, township of, Huntingdon County	421688	Apr. 29, 1976, Emerg; Dec. 4, 1985, Reg; Mar. 18, 1991, Susp; Apr. 22, 1991, Rein.	3–18–91
South Pymatuning, township of, Mercer County	421876	July 28, 1975, Emerg; Mar. 18, 1991, Reg; Mar. 18, 1991, Susp; Apr. 24, 1991, Rein.	3–18–91
North Carolina: Bryson City, town of, Swain County	370228	Mar. 25, 1975, Emerg; Dec. 4, 1984, Reg; Dec. 4, 1984, Susp; Apr. 10, 1991, Rein.	12–4–84
Maine: Jonesport, town of, Washington County	230138	Aug. 6, 1975, Emerg; May 3, 1990, Reg; May 3, 1990, Susp; Apr. 11, 1991, Rein.	5–3–90
Wisconsin: Sheboygan, city of, Sheboygan County	550430	Apr. 23, 1971, Emerg; May 15, 1977, Reg; Apr. 2, 1991, Susp; Apr. 2, 1991, Rein.	4–2–91
Ohio:			
Milan, village of, Erie County	390155	July 23, 1976, Emerg; Sept. 1, 1978, Reg; Apr. 2, 1990, Susp; Apr. 15, 1991, Rein.	9–1–78
Malvern,[2] village of, Carroll County	390052	May 14, 1975, Emerg; Apr. 2, 1990, Susp; May 15, 1991, Rein.	5–21–76
Vermont: Vergennes, city of, Addison County	500011	Mar. 25, 1975, Emerg; Sept. 18, 1986, Reg; June 18, 1990, Susp; Apr. 10, 1991, Rein.	9–18–86
Alabama: Paint Rock, town of, Jackson County	010214	July 30, 1975, Emerg; June 17, 1986, Reg; June 17, 1986, Susp; Apr. 12, 1991, Rein.	6–17–86
West Virginia: Grantsville, town of, Calhoun County	540021	Apr. 29, 1975, Emerg; Mar. 18, 1991, Reg; Mar. 18, 1991, Susp; Apr. 24, 1991, Rein.	3–18–91
Connecticut:			
Seymour, town of, New Haven County	090088	Dec. 18, 1974, Emerg; July 3, 1978, Reg; Apr. 16, 1991, Susp; Apr. 26, 1991, Rein.	4–16–91
Oxford, town of, New Haven County	090150	July 1, 1975, Emerg; Dec. 4, 1979, Reg; Mar. 18, 1991, Susp; Apr. 26, 1991, Rein.	3–18–91
Tennessee: Dyer County, unincorporated areas	470284	Feb. 18, 1975, Emerg; Mar. 1, 1982, Reg; Mar. 1, 1982, Susp; Apr. 30, 1991, Rein.	3–1–82
Region I—Regular Program Conversion			
New Jersey: Andover, township of, Sussex County	340527	Apr. 2, 2991, Suspension withdrawn	4–2–91
New York:			
Newport, village of, Herkimer County	360315	do	4–2–91
Walton, village of, Delaware County	360216	do	4–2–91
Woodhull, town of, Steuben County	360876	do	4–2–91
Region IV			
North Carolina:			
Bald Head Island, village of	370442	do	4–2–91
Caswell Beach, town of, Brunswick County	370391	do	4–2–91
Holden Beach, town of, Brunswick County	375352	do	4–2–91
Ocean Isle Beach, town of, Brunswick County	375357	do	4–2–91
South Carolina: Horry County, unincorporated areas	450104	do	4–2–91
Region V			
Ohio:			
Richland County, unincorporated areas	390476	Apr. 2, 1991	4–2–91
Ross County, unincorporated areas	390480	do	4–2–91
Region VI			
Texas:			
Allen, city of, Collin County	480131	do	4–2–91
Brewster County, unincorporated areas	480084	do	4–2–91
Lucas, city of, Collin County	481545	do	4–2–91
Plano, city of, Collin County	480140	do	4–2–91

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State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community [1]	Current effective map date
Region I			
Connecticut: Seymour, town of, New Haven County	090088	Apr. 16, 1991, Suspension withdrawn	4-16-91
Region III			
Pennsylvania:			
Brookville, borough of, Jefferson County	420510	do	4-16-91
Bullskin, township of, Fayette County	421622	do	4-16-91
Georges, township of, Fayette County	421626	do	4-16-91
Garman, township of, Fayette County	421627	do	4-16-91
North Union, township of, Fayette County	421633	do	4-16-91
South Union, township of, Fayette County	421637	do	4-16-91
Springfield, township of, Fayette County	421638	do	4-16-91
West Virginia:			
Boone County, unincorporated areas	540007	do	4-16-91
Glenville, city of, Gilmer County	540036	do	4-16-91
Madison, city of, Boone County	540006	do	4-16-91
Sand Fork, town of, Gilmer County	540037	do	4-16-91
Sophia, town of, Raleigh County	540174	do	4-16-91
Whitesville, town of, Boone County	540229	do	4-16-91
Region V			
Illinois: Wilmington, city of, Will County	170715	do	4-16-91
Region VI			
Arkansas: Jefferson County, unincorporated areas	050440	do	4-16-91
Minimal Conversion—Region V			
Michigan: Isabella, township of, Isabella County	260620	do	4-16-91

[1] Bibb County and the City of Macon, Georgia, originally joined the NFIP as one entity under the land use jurisdiction of the Macon-Bibb County Planning Commission. However, effective April 1, 1991, the two communities are eligible as seperate communities. The City of Macon will maintain community number *130017* as shown above. Bibb County's community number is *130500* (new). The map dated 4-2-90 will be used for both communities for floodplain management and insurance purposes.
[2] Emergency Program Reinstatement.
[3] Code for reading third column: Emerg.—Emergency, Reg.—Regular, Susp.—Suspension, Rein.—Reinstatement.

Issued: May 14, 1991.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91-12286 Filed 5-22-91; 8:45 am]

BILLING CODE 6718-21-M

44 CFR PART 64

[Docket No. FEMA 7514]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The third date (Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR part 59 et. seq.). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate (FIRM). The date of the FIRM if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance with the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of Eligible Communities.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community [1]	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region I—Regular Program Conversions				
Maine:				
Hancock, town of, Hancock County	230284	June 1, 1976, Emerg; June 3, 1991, Reg; June 3, 1991, Susp.	June 3, 1991	June 3, 1991.
Southwest Harbor, town of, Hancock County	230294	Jan. 13, 1976, Emerg; June 3, 1991, Reg; June 3, 1991, Susp.	June 3, 1991	Do.
Massachusetts: Auburn, town of, Worcester County	250292	Mar. 2, 1973, Emerg; June 1, 1978, Reg; June 3, 1991, Susp.	June 3, 1991	Do.
Vermont:				
Bradford, town of, Orange County	500059	Dec. 10, 1975, Emerg; June 3, 1991, Reg; June 3, 1991, Susp.	June 3, 1991	Do.
Bradford, village of, Orange County	500234	Mar. 19, 1976, Emerg; June 3, 1991, Reg; June 3, 1991, Susp.	June 3, 1991	Do.
Fairlee, town of, Orange County	500072	Apr. 17, 1975, Emerg; June 3, 1991, Reg; June 3, 1991, Susp.	June 3, 1991	Do.
Lemington, town of, Essex County	500212	July 1, 1975, Emerg; June 3, 1991, Reg; June 3, 1991, Susp.	June 3, 1991	Do.
Thetford, town of, Orange County	500075	Oct. 20, 1975, Emerg; June 3, 1991, Reg; June 3, 1991, Susp.	June 3, 1991	Do.
Region II				
Pennsylvania: Fairchance, borough of, Fayette County.	420463	Nov. 14, 1975, Emerg; Apr. 16, 1991, Reg; June 3, 1991, Susp.	June 3, 1991	Do.
West Virginia:				
Belmont, town of, Pleasants County	540253	Feb. 19, 1976, Emerg; June 3, 1991, Reg; June 3, 1991, Susp.	June 3, 1991	Do.
Pleasants County, unincorporated areas	540225	Dec. 24, 1975, Emerg; June 3, 1978, Reg; June 3, 1991, Susp.	June 3, 1991	Do.
St. Marys, city of, Pleasants County	540156	Apr. 18, 1975, Emerg; June 3, 1991, Reg; June 3, 1991, Susp.	June 3, 1991	Do.
Region IV				
North Carolina: Columbus County, unincorporated areas.	370305	July 6, 1979, Emerg; June 3, 1991, Reg; June 3, 1991, Susp.	June 3, 1991	Do.
South Carolina: Clarendon County, unincorporated areas.	450051	July 23, 1975, Emerg; June 3, 1991, Reg; June 3, 1991, Susp.	June 3, 1991	Do.
Region VI				
Arkansas: Portia, town of, Lawrence County	050121	May 5, 1975, Emerg; Aug. 31, 1982, Reg; June 3, 1991, Susp.	June 3, 1991	Do.
Region VII				
Kansas: Franklin County, unincorporated areas	200565	Oct. 18, 1978, Emerg; June 3, 1991, Reg; June 3, 1991, Susp.	June 3, 1991	Do.
Region X				
Idaho:				
Madison County, unincorporated areas	160217	Feb. 2, 1978, Emerg; June 3, 1991, Reg; June 3, 1991, Susp.	June 3, 1991	Do.
Rexburg, city of, Madison County	160098	June 18, 1975, Emerg; June 3, 1991, Reg; June 3, 1991, Susp.	June 3, 1991	Do.
Sugar City, city of, Madison County	160099	June 4, 1975, Emerg; June 3, 1991, Reg; June 3, 1991, Susp.	June 3, 1991	Do.
Region I				
Connecticut: Plainfield, town of, Windham County	090116	Feb. 20, 1975, Emerg; June 17, 1991, Reg; June 17, 1991, Susp.	June 17, 1991	June 17, 1991.

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State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community [1]	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Maine: Cranberry Isles, town of, Hancock County	230278	June 30, 1976, Emerg; June 17, 1991, Reg; June 17, 1991, Susp.	June 17, 1991	Do.
Massachusetts:				
Springfield, city of, Hampden County	250150	Feb. 9, 1973, Emerg; Feb. 1, 1980, Reg; June 17, 1991, Susp.	June 17, 1991	Do.
Topsfield, town of, Essex County	250106	Sept. 26, 1975, Emerg; June 4, 1980, Reg; June 17, 1991, Susp.	June 17, 1991	Do.
New Hampshire: Bridgewater, town of, Grafton County.	330046	Sept. 5, 1975, Emerg; June 17, 1991, Reg; June 17, 1991, Susp.	June 17, 1991	Do.
Vermont:				
Brunswick, town of, Essex County	500206	Aug. 7, 1975, Emerg; June 17, 1991, Reg; June 17, 1991, Susp.	June 17, 1991	Do.
Dummerston, town of, Windham County	500128	July 23, 1975, Emerg; June 17, 1991, Reg; June 17, 1991, Susp.	June 17, 1991	Do.
Guilkhall, town of, Essex County	500047	Sept. 11, 1975, Emerg; June 17, 1991, Reg; June 17, 1991, Susp.	June 17, 1991	Do.
Ryegate, town of, Caledonia County	500030	Feb. 26, 1975, Emerg; June 17, 1991, Reg; June 17, 1991, Susp.	June 17, 1991	Do.
Vermont: West Windsor, town of, Windsor County	500301	Mar. 11, 1976, Emerg; June 17, 1991, Reg; June 17, 1991, Susp.	June 17, 1991	Do.
Region IV				
Alabama:				
Blount County, unincorporated areas	010230	July 22, 1987, Emerg; June 17, 1991, Reg; June 17, 1991, Susp.	June 17, 1991	Do.
Cherokee County, unincorporated areas	010234	June 24, 1986, Emerg; June 17, 1991, Reg; June 17, 1991, Susp.	June 17, 1991	Do.
Florida:				
Caryville, town of, unincorporated areas	¶ 120321	July 9, 1975, Emerg; Feb. 4, 1988, Reg; June 17, 1991, Susp.	June 17, 1991	Do.
Vernon, city of, Washington County	120322	Sept. 26, 1975, Emerg; Jan. 1, 1987, Reg; June 17, 1991, Susp.	June 17, 1991	Do.
Washington County, unincorporated areas	120407	Sept. 29, 1975, Emerg; June 17, 1991, Reg; June 17, 1991, Susp.	June 17, 1991	Do.
Washington County, unincorporated areas	120322	Sept. 26, 1975, Emerg; Jan. 1, 1987, Reg; June 17, 1991, Susp.	June 17, 1991	Do.
North Carolina: Burke County, unincorporated areas.	370034	Jan. 15, 1974, Emerg; June 17, 1991, Reg; June 17, 1991, Susp.	June 17, 1991	Do.
Region IX				
California:				
Coalinga, city of, Fresno County	060045	Oct. 25, 1974, Emerg; Aug. 23, 1982, Reg; June 17, 1991, Susp.	June 17, 1991	Do.
Banning, city of, Riverside County	060246	May 19, 1975, Emerg; Oct. 17, 1978, Reg; June 17, 1991, Susp.	June 17, 1991	Do.

[1] Code for reading third column: Emerg.—Emergency, Reg.—Regular, Susp.—Suspension.

Issued: May 16, 1991.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91-12287 Filed 5-22-91; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-8; RM-7299]

Radio Broadcasting Services; Appomattox, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of LBS Broadcasting, Inc., licensee of Station WZST(FM), Channel 274B, Appomattox, Virginia, substitutes Channel 274C1 for Channel 274B at Appomattox, Virginia, and modifies its authorization to specify operation on the higher powered channel. See 56 FR 04785, February 6, 1991. Channel 274C1 can be allotted to Appomattox, Virginia, in compliance with the Commission's minimum distance separation requirements with a site restriction of 4 kilometers (2.5 miles) southeast to accommodate petitioner's desired transmitter site. The coordinates for Channel 274C1 are North Latitude 37-19-55 and West Longitude 78-47-45. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-8, adopted May 3, 1991, and released May 17, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center (202) 452-1422. 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the table of FM Allotments under Virginia, is amended by removing Channel 274B and adding Channel 274C1 at Appomattox.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-12195 Filed 5-22-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-282; RM-6630, RM-7002, RM-7003, RM-7004]

Radio Broadcasting Services; Whiting, DePere, Crandon, Algoma, Brillion, Mishicot, Ripon, Lomira, Sheboygan, and Oshkosh, Wi

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 244C2 for Channel 244A at Whiting, Wisconsin, and modifies the license of Station WYTE, Whiting, Wisconsin, to specify operation on Channel 244C2; substitutes Channel 240C3 for Channel 240A at DePere, Wisconsin, and modifies the license of Station WJLW, DePere, Wisconsin, to specify operation on Channel 240C3; substitutes Channel 244C3 for Channel 243A at Algoma, Wisconsin, and modifies the license of Station WOMA, Algoma, Wisconsin, to specify operation on Channel 244C3; substitutes Channel 245A for Channel 244A at Oshkosh, Wisconsin, and modifies the license for Station WUSW, Oshkosh, Wisconsin, to specify operation on Channel 245A; substitutes Channel 298A for Channel 242A at Brillion, Wisconsin, and modifies the construction permit of Station WEZR, Brillion, Wisconsin, to specify operation on Channel 298A; substitutes Channel 276A for Channel 244A at Crandon, Wisconsin; and substitutes Channel 234A for Channel 298A at Mishicot, Wisconsin. The reference coordinates for the Channel 244C2 allotment at Whiting, Wisconsin, are 44-38-41 and 89-51-11; for the Channel 240C3 allotment at DePere, Wisconsin, are 44-23-22 and 88-01-47; for the Channel 244C3 allotment at Algoma, Wisconsin, are 44-38-08 and 87-37-37; for the Channel 298A allotment at Brillion, Wisconsin, 44-12-23 and 88-05-20; for the Channel 276A allotment at Crandon, Wisconsin, 45-34-18 and 88-53-54; for the Channel 234A allotment at Mishicot, Wisconsin, 44-14-12 and 87-38-24. Canadian concurrence has been obtained for the channel substitutions at Crandon and Algoma, Wisconsin, because the reference coordinates are located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-282, adopted May 7, 1991, and released May 17, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Wisconsin by removing Channel 244A and adding Channel 244C2 at Whiting.

3. Section 73.202(b), the Table of FM Allotments, is amended under Wisconsin, by removing Channel 240A and adding Channel 240C3 at DePere.

4. Section 73.202(b), the Table of FM Allotments, is amended under Wisconsin by removing Channel 243A and adding Channel 244C3 at Algoma.

5. Section 73.202(b), the Table of FM Allotments, is amended under Wisconsin by removing Channel 242A and adding Channel 298A at Brillion.

6. Section 73.202(b), the Table of FM Allotments, is amended under Wisconsin by removing Channel 244A and adding Channel 245A at Oshkosh.

7. Section 73.202(b), the Table of FM Allotments, is amended under Wisconsin by removing Channel 298A and adding Channel 234A at Mishicot.

8. Section 73.202(b), the Table of FM Allotments, is amended under Wisconsin by removing Channel 244A and adding Channel 276A at Crandon.

Federal Communications Commission.

Andrew J. Rhodes,

Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-12194 Filed 5-22-91; 8:45 am]

BILLING CODE 6712-01-M

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Proposed Rules

Federal Register
Vol. 56, No. 100
Thursday, May 23, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 591

Cost-of-Living Allowances and Post Differentials (Nonforeign Areas)

AGENCY: Office of Personnel Management.

ACTION: Notice; extension of comment period.

SUMMARY: On February 26, 1991, the Office of Personnel Management (OPM) published an advance notice of proposed rulemaking (56 FR 7992), inviting comments on a report produced by Runzheimer International for OPM under contract. The report provided comparisons of living costs in the Washington, DC, area with selected nonforeign areas outside the 48 contiguous states.

This notice extends the comment period of the advance notice from May 28, 1991, to June 28, 1991. After OPM reviews and analyzes all of the comments received, OPM may propose rules, taking into consideration the comments received. These proposed rules would be published in the **Federal Register** for another 90-day comment period.

DATES: Comments must be received on or before June 28, 1991.

ADDRESSES: Send or deliver written comments to the Office of Personnel Management, Personnel Systems and Oversight Group, Wage Systems Division, 7H28, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Phyllis G. Foley (202) 606–2846.

List of Subjects in 5 CFR Part 591

Government employees, travel and transportation expenses, wages.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91–12256 Filed 5–22–91; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

Virginia Regulatory Program; Coal Surface Mining Reclamation Fund

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; Reopening and extension of comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of revisions to a previously proposed amendment to the Virginia permanent regulatory program (hereinafter, the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). By letter dated April 16, 1991 (Administrative Record No. VA–793), Virginia submitted additional information to both support and modify its proposed amendment dated October 1, 1990 (Administrative Record No. VA–766), which responded to two 30 CFR 732.17(f)(1) notifications (Administrative Record Nos. VA–743 and VA–749). The proposed amendment includes changes in Virginia's program relating to revegetation standards for success, siltation structures and impoundments, termination of jurisdiction, roads and support facilities, coal exploration, probable hydrologic consequences determinations, and permitting obligations relative to reclamation. Also included are changes to the regulations relative to the exemption for coal extraction incidental to the extraction of other minerals removed for purposes of commercial use or sale, and regulations concerning prime farmland and coal preparation plants that are not located within the permit area of a mine. Accordingly, OSM is reopening and extending the public comment period on Virginia's October 1, 1990, proposed amendment. OSM will consider the new information, the existing proposed amendment, and any previous comments when making a final decision on the proposed amendment.

This notice sets forth the times and locations that the Virginia program and proposed amendment to the program are available for public inspection, the comment period during which interested parties may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is required.

DATES: Written comments must be received on or before 4 p.m. on June 24, 1991. If requested, a public hearing on the proposed amendment will be held on June 17, 1991. Requests to present testimony at the hearing must be received on or before 4 p.m., June 7, 1991.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to Mr. Robert A. Penn, Director, Big Stone Gap Field Office at the first address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Virginia program, proposed amendments and all written comments received in response to this notice will be available for review at the locations listed below during normal business hours Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendment by contacting the OSM Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Drawer 1216, Powell Valley Square Shopping Center, room 220, Route 23, Big Stone Gap, Virginia 24219, Telephone (703) 523–4303.

Virginia Division of Mined Land Reclamation, P.O. Drawer U, 622 Powell Avenue, Big Stone Gap, Virginia 24219, Telephone (703) 523–8100.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A Penn, Director, Big Stone Gap Field Office, Telephone (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Virginia program on December 15, 1981. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the December 15, 1981, **Federal Register** (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13, 946.15, and 946.16.

II. Discussion of Amendments

By letter dated October 1, 1990 (Administrative Record No. VA–766), Virginia submitted a proposed amendment to its program pursuant to SMCRA. OSM announced in the October 31, 1990, **Federal Register** (55 FR 45811–45814) receipt of the amendment and invited public comment. By letter dated March 20, 1991 (Administrative Record No. VA–792), OSM notified Virginia of 25 items contained in the amendment that required either clarification or revision. By letter dated April 18, 1991 (Administrative Record No. VA–793), Virginia submitted clarifications and revisions to the proposed amendment as described below.

1. Termination of Jurisdiction

Virginia has requested that OSM defer action on the changes at VR 480–03–19.700.11(d) pending the outcome of the appeals court review of *National Wildlife Federation* v. *Lujan*, (D.D.C. August 30, 1990).

2. Roads and Support Facilities

a. VR 480–03–19.780.37(c) and 480–03–19.784.24(c) have been revised to clarify that an appropriate geotechnical report shall be required for engineering design standards other than those established in the Virginia rules, to ensure that necessary stability and performance of road systems are attained. This report is specifically referenced in VR 480–03–19.816/817.151(a) (5) and (b) relative to stability of cut slopes and embankments.

b. Virginia has issued a statement of clarification relative to VR 480–03–19.773.16(c)(12)(vi), however, no change to the regulation is proposed. Virginia has clarified that drainage systems for primary roads must be designed to safely pass the peak runoff from a 10 year, 6 hour or larger precipitation event.

c. Virginia has revised VR 480–03–19.816/817.152 to clarify that performance standards may be met for existing roads in place of design standards if certain conditions are met.

A statement of clarification is included with the submittal establishing that all existing roads that will be used as primary roads must have a minimum static safety factor of 1.3. Virginia has also clarified that existing roads used as primary roads are not exempt from the performance standards of VR 480–03–19.816/817.150 and 480–03–19.816/817.151.

d. Virginia has corrected the inconsistent numbering at VR 480–03–19.816/817.150(f). Virginia has also clarified that all roads retained as part of the approved post-mining land use must meet the performance standards for primary roads.

e. Virginia has clarified that VR 480–03–19.816/817.150(g) does not grant a broad general variance from design or performance standards. Virginia's program mandates the minimum performance standards, hence design standards, that a road must meet.

f. The original submittal contained an incorrect reference cite at VR 480–03–19.816.152. The corrected reference cite is VR 480–03–19.816.151.

g. Virginia has revised and renumbered VR 480–03–19.816/817.151 beginning with subsection (b). VR 480–03–19.816/817.151(b)(1) have been revised to specify that organic material shall be removed from the foundation of road embankments and shall not be placed in or beneath any embankment. Virginia also has clarified that road embankments must be constructed in uniform compacted layers to achieve a desired degree of compaction, thus placing a requirement on the moisture content of the material to be placed in the embankment.

3. Revegetation Standards for Success

a. Virginia has included a clarifying statement in its submittal explaining that it has consulted with and obtained the approval of the responsible State agencies for the minimum stocking and planting arrangements for trees and shrubs. The minimum stocking rates and planting arrangements were selected on a program wide basis. However, Virginia has reserved the right at VR 480–03–19.816/817.116(b)(3)(i) to allow a permit specific consultation and approval for minimum stocking and planting arrangements if needed.

b. Virginia has explained its reason for revising VR 480–03–19.816/817.116(b)(3)(v)(A) and deleting the requirement that tree, shrub, half-shrub stockings and the ground cover established on the revegetated area approximate the stocking and ground cover on the surrounding unmined area. Virginia's existing success standards were developed to include representative criteria of unmined lands and Virginia believes that it is redundant to leave this phrase in its rules.

c. Virginia has clarified that the titled and dated documents that it has submitted in support of VR 480–03–19.816/817.116(c)(3) will be the normal husbandry practices that will be allowed without restarting the bond liability period.

d. Virginia has included a statement clarifying that the average stocking rate for wildlife food-producing shrubs found at VR 480–03–19.816/817.116(b)(3)(iv)(C) and 816/817.116(b)(3)(v)(C) was selected after consultation with and the approval of the Virginia Department of Game and Inland Fisheries and the Department of Forestry.

e. Virginia has included a list of agencies providing recommendations regarding the stocking and ground cover composition, spacing, and planting arrangements found at VR 480–03–19.816/817.116(b)(3)(v)(A). The agencies include the Virginia Department of Forestry, the Department of Game and Inland Fisheries, the Virginia Tech Extension Service, and the USDA Soil and Conservation Service.

4. Siltation Structures and Impoundments

a. VR 480–03–19.816/817.46(c)(2)(i) have been revised to make it clear that single conduit spillways are restricted to ponds where failure would not be expected to cause loss of life or serious property damage. VR 480–03–19.816/817.49(a)(8)(i) have also been revised to address the use of single conduit spillways on impoundments. VR 480–03–19.816/817.46(c)(2) and VR 480–03–19.816/817.49(a)(8) have been revised to separate the standards for single open-channel spillways and single closed-circuit spillways.

b. VR 480–03–19.816/817.49(a)(9) have been revised to remove a reference to impoundment inspections by land surveyors.

c. VR 480–03–19.816/817.49(b)(7) have been revised to eliminate the spillway design storm criteria for permanent impoundments. Spillways will be designed based on the size of the impoundment and its hazard potential.

d. Virginia has included stability calculations to support the alternative design standards found at VR 480–03–19.816/817.49(a)(3)(ii).

5. Exemption for Coal Extraction Incidental to the Extraction of Other Minerals

a. VR 480–03–19.702.11(s)(2) has been revised to eliminate the phrase "Following incorporation of an exemption application approval process into a regulatory program * * *."

b. VR 480–03–19.702.5(a)(2) (i) and (ii) have been revised to reflect that this section will become applicable after the effective date of this rule.

c. VR 480–03–19.702.11(s)(1) has been revised to reflect that this section will

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become applicable after the effective date of this rule.

d. Virginia has corrected a typographical error at VR 480-03-19.702.17(d)(3).

6. Coal Preparation Plants not Located within the Permit Area of a Mine

a. Virginia has included a clarifying statement for VR 480-03-19.785.21 and 480-03-19.827.1. Virginia will not consider proximity as the decisive factor for determining if off-site preparation plants are regulated.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Virginia satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Virginia program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recomendations. Comments received after the time indicated under "DATES" or at locations other than the Big Stone Gap Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by close of business on June 7, 1991. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held.

Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Big Stone Gap Field Office by contacting the person listed under "FOR FURTHER INFORMATION CONTACT". All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under "ADDRESSES". A written summary of each public meeting will be made part of the Administrative Record.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, and Underground mining.

Dated: May 6, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 91-12311 Filed 5-22-91; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7-91-30]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the City of St. Petersburg Beach and the Florida Department of Transportation, the Coast Guard is considering a change to the regulations governing the Pinellas Bayway Structure "C" bridge, mile 114, at St. Petersburg Beach by permitting the number of openings to be limited during certain periods. This proposal is being made to accommodate periods of peak vehicular traffic. This action should accommodate the needs of vehicular traffic while still providing for the reasonable needs of navigation.

DATES: Comments must be received on or before July 8, 1991.

ADDRESSES: Comments should be mailed to Commander (oan) Seventh Coast Guard District, 909 SE 1st Avenue, Miami, FL 33131-3050. The comments and other materials referenced in this notice will be available for inspection and copying at Brickell Plaza Federal Building, room 406, 909 SE 1st Avenue, Miami, FL. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Ian MacCartney (305) 536-4103.

SUPPLEMENTARY INFORMATION: Interested parties are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Parties submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Parties desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope. The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Ian MacCartney, project officer, and Lt. Genelle Tanos, project attorney.

Discussion of Proposed Regulations

The Pinellas Bayway Structure "C" drawbridge presently opens on signal except that, on Saturdays, Sundays and holidays from 9 a.m. to 6 p.m., the draw need be opended only on the hour, quarter hour, half hour and three quarter hour. The City of St. Petersburg Beach and the Florida Department of Transportation have requested that the existing regulations be expanded to open on the hour, twenty minutes after the hour, and forty minutes after the hour between 7 a.m. and 7 p.m. daily. The Coast Guard tested a 15 minute schedule between 9 a.m. and 6 p.m. during weekdays from January 14, 1991 to March 15, 1991.

This schedule eliminated back-to-back openings and helped to reduce traffic delays, however the number of openings continued to heavily impact highway traffic. The Coast Guard is now testing a 20 minute opening schedule which appears to be improving the highway traffic flow without unreasonably impacting navigation.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the

Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the rule exempts tugs with tows. Since the economic impact of the proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 USC 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Paragraph (e) of § 117.287 is revised to read as follows:

117.287 Gulf Intracoastal Waterway

* * * * *

(e) The draw of the Pinellas Bayway, Structure "C" bridge, mile 114, at St. Petersburg Beach shall open on signal; except that from 7 a.m. to 7 p.m., the draw need open only on the hour, twenty minutes past the hour, and forty minutes past the hour.

* * * * *

Dated: May 13, 1991.

Robert E. Kramek,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 91-12274 Filed 5-24-91; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50583A; FRL-3876-1]

2-Chloro-N-methyl-N-substituted Acetamide and Mixed Alkylphenol Formaldehyde Polymer, Metal Salt; Proposed Modification of Significant New Use Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to modify significant new use rules (SNURs) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for two chemical substances based on receipt of additional data. The data indicate that the original terms of the SNURs for these substances should be modified.

DATES: Written comments must be submitted to EPA by June 24, 1991.

ADDRESSES: Since some comments may contain confidential business information (CBI), all comments must be sent in triplicate to: TSCA Document Receipt Office (TS-790), Office of Toxic Substances, Environmental Protection Agency, room E-105, 401 M St., SW., Washington, DC 20460. Comments should include the docket control number. The docket control number for each of the new chemical substances covered in this SNUR is OPTS-50583A, followed by the last four digits of the number of the CFR section covering that chemical substance. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Unit IV. of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, rm. EB-44, 401 M St., SW., Washington, DC 20460, telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: In the Federal Register of August 9, 1990 (55 FR 32406), EPA issued SNURs establishing significant new uses for metalated alkylphenol copolymer (P-87-723) and 2-chloro-*N*-methyl-*N*-substituted acetamide (P-84-393). Because of additional toxicity data EPA has received for these substances, EPA is proposing to modify these SNURs.

I. Rulemaking Record

The record for the rule which EPA is proposing to modify was established at OPTS-50583A. This record includes information considered by the Agency in developing this rule and includes the test data to which the Agency has responded with this proposal.

II. Background

EPA is proposing to modify the significant new use and recordkeeping requirements for the following chemical substances under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for each substance, including its premanufacture notice (PMN) number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the modification of the section 5(e) consent order for the substance and description of the actual modification to the section 5(e) order as well as the proposed modification to the SNUR, assessment of toxicity concern, recommended testing, and the CFR citation for the regulatory text section of this rule.

Further background information for each substance is contained in the rulemaking record referenced above in Unit I.

PMN Number P-84-393

Chemical name: (generic) 2-Chloro-*N*-methyl-*N*-substituted acetamide.
CAS Number: Not available.
Effective date of modification of section 5(e) consent order: December 3, 1986.
Basis for modification of section 5(e) consent order: The Consent Order was modified based on test data submitted under the terms of the Order. Based on the Agency's analysis of the submitted data, EPA finds that the substance does not cause liver toxicity as previously stated in the original Consent Order. In addition, EPA has concluded that potential inhalation exposures will not present an unreasonable risk of injury to health. Based on these findings EPA has modified the Consent Order and is proposing to modify the SNUR as follows:

(1) Requirements for respiratory protection have been eliminated.

(2) Requirements for label and MSDS language pertaining to respiratory equipment and exposure have been limited.

(3) The production volume limit and required toxicity testing in the Consent Order have been eliminated.
Toxicity concern: Based on toxicity test data on this substance, EPA concluded that the substance causes adverse kidney effects. Recommended testing: Data to establish a no-observed-effect level (NOEL) for kidney effects may be developed in a 90-day rat oral subchronic toxicity study.
CFR Citation: 40 CFR 721.224.

PMN Number P-87-723

Chemical name: (generic) Mixed alkylphenol formaldehyde polymer, metal salt.
CAS Number: Not available.
Effective date of modification of section 5(e) consent order: January 4, 1991.
Basis for modification of section 5(e) consent order: The Consent Order was modified based on test data submitted under the terms of the Order. Based on the Agency's analysis of the submitted data, EPA found that the toxicity

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associated with the PMN substance is eliminated after the PMN substance is subjected to secondary wastewater treatment. Based on these findings EPA has modified the Consent Order and is proposing to modify the SNUR as follows:

(1) The production volume limit and required toxicity testing in the Consent Order have been eliminated.

(2) The limit on the amount of the PMN substance released to water has been eliminated while the restriction that any of the PMN substance that is released to water must first be subjected to primary and secondary wastewater treatment was retained.

Toxicity concern: Based on acute ecotoxicity data on the PMN substance, the PMN substance may cause toxicity to aquatic organisms.

Recommended testing: The Agency believes that the results of a *Daphnia* chronic toxicity test (40 CFR 797.1330) and fish chronic toxicity test (40 CFR 797.1600) would help characterize possible chronic toxicity to aquatic organisms.

FR Citation: 40 CFR 721.1272.

III. Objectives and Rationale of Proposing Modification of the Rules –

During review of the PMNs submitted for the chemical substances that are the subject of this proposed modification, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health or environmental effects of the substances, and EPA identified the tests considered necessary to evaluate the risks of the substances. The basis for such findings is referenced in Unit II. of this preamble. Based on these findings, section 5(e) consent orders were negotiated with the PMN submitters and SNURs were promulgated. EPA reviewed the toxicity testing conducted by the PMN submitters for the substances and determined that the section 5(e) consent orders negotiated with the PMN submitters should be modified in light of the new data. The proposed modification of SNUR provisions for these substances designated herein is consistent with the modifications of the section 5(e) orders.

IV. Comments Containing Confidential Business Information

Any person who submits comments claimed as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a public version of the comments that EPA can place in the public file.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: May 14, 1991.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 will continue to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. In § 721.224 by revising paragraphs (a)(2)(i), (a)(2)(ii), (a)(2)(iii), and (b)(1) to read as follows:

§ 721.224 2-Chloro-N-methyl-N-substituted acetamide.

(a) * * *

(2) * * *

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(2), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(iv), (g)(2)(i), and (g)(2)(v). The provisions of § 721.72(d) requiring employees to be provided with information on the location and availability of a written hazard communication program and MSDSs do not apply when the written program and MSDSs are not required under § 721.72(a) and (c), respectively. The provision of § 721.72(g) requiring placement of specific information on an MSDS does not apply when an MSDS is not required under § 721.72(c).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(b) * * *

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (g) and (i).

* * * * * *

3. In § 721.1272 by revising paragraphs (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(2)(iv), and (b)(1) to read as follows and by deleting paragraph (b)(3):

§ 721.1272 Mixed alkylphenol formaldehyde polymer, metal salt.

(a) * * *

(2) * * *

(i) *Hazard communication program.* Requirements as specified in § 721.72 (b)(1)(i)(C), (b)(1)(ii), (b)(1)(iii), (b)(1)(iv), (b)(2), (c)(1), (f), (g)(3)(ii), (g)(4)(i), and (g)(5).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (industrial coating material).

(iii) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(3), (b)(1), (b)(3), (c)(1), and (c)(3).

(iv) *Release to water.* Requirements as specified in § 721.90 (a)(2), (b)(2), and (c)(2).

(b) * * *

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (k).

* * * * * *

[FR Doc. 91-12298 Filed 5-22-91; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 372

[OPTS-400040A; FRL-3838-7]

Barium Sulfate; Toxic Chemical Release Reporting; Community Right-To-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of Proposed Rule.

SUMMARY: EPA is withdrawing its proposed rule granting two petitions to exempt barium sulfate from the reporting requirements under the category "barium compounds" of the list of toxic chemicals under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). The withdrawal of the proposal is based on EPA's review of the availability of barium ion from barium sulfate and the potential for barium ion to induce toxicity. This review resulted in the conclusion that barium ion can become available from barium sulfate under anaerobic conditions.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, Petitions Coordinator, Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop OS-120, 401 M St., SW., Washington, DC 20460, Toll Free: 800-535-0202, In Washington, DC and Alaska: 202-479-2449.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

The proposed rule was issued under section 313(d) and (e)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (Pub. L. 99-499, "EPCRA"). EPCRA is also referred to as title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986.

B. Background

Section 313 of EPCRA requires certain facilities that manufacture, process, or otherwise use toxic chemicals to report annually their environmental releases of such chemicals. Section 313 establishes an initial list of toxic chemicals that is composed of more than 300 chemicals and chemical categories. Any person may petition the Agency to add chemicals to or delete chemicals from the list. EPA issued a statement of petition policy and guidance in the Federal Register of February 4, 1987 (52 FR 3479). This statement provides guidance regarding the recommended content and format for submitting petitions.

EPA must respond to petitions within 180 days by initiating a rulemaking or by issuing an explanation of why the petition is denied.

II. Description of Petitions

On August 7, 1989, EPA received a petition from the Petroleum Equipment Suppliers Association (PESA) to delete barium sulfate ($BaSO_4$) from the list of toxic chemicals. On September 18, 1989, EPA received another petition to delete barium sulfate from the Dry Color Manufacturers' Association (DCMA). The Agency decided to review both petitions simultaneously. Barium sulfate is subject to section 313 reporting requirements because it meets the definition of a barium compound. Both petitions are based on the contention that barium sulfate is not toxic and does not meet any of the statutory criteria under section 313(d)(2). EPA issued in the Federal Register of February 12, 1990 (55 FR 4879), a proposed rule granting the petitions to exempt barium sulfate from the reporting requirements under the category "barium compounds" on the list of toxic chemicals under section 313 of EPCRA. Comments were requested on the proposed rule. Specifically, EPA requested comment on the possible anaerobic degradation of barium sulfate.

After reviewing the information received during the public comment period and the appropriate references cited therein, EPA has concluded that the barium ion can reasonably be anticipated to become available as a result of the anaerobic degradation of barium sulfate.

Published elsewhere in this issue of the Federal Register is a notice of policy and guidance on the metal compound categories. As articulated in the notice of policy and guidance on the metal compound categories, the toxicity of a metal-containing compound that dissociates or reacts to generate the metal ion can be expressed as a function of the toxicity induced by the intact species and the availability of the metal ion, where the degree of dissociation, bioaccumulation, and the level at which toxicity is induced by the metal ion must be considered. The effects induced by each metal ion described by the metal compound categories meet the criteria under section 313(d)(2). Thus, for petitions to exempt metal-containing compounds from the reporting requirements under section 313, EPA has decided to base its decisions on the evaluation of all chemical and biological processes that may lead to metal ion availability as well as on the toxicity exhibited by the intact species. These decisions will continue to be based on information provided by the petitioner, Agency documents, and available literature. The burden of proof that the specific metal compound does not generate the metal ion as a result of one or more transformation processes rests on the petitioner. EPA will deny petitions for chemicals for which the metal ion availability cannot be properly characterized. EPA will also deny petitions for chemicals that dissociate or react to generate the metal ion at levels which can reasonably be anticipated to cause adverse effects. EPA will also determine whether effects which may be induced by the intact species meet the toxicity criteria of section 313(d)(2).

It should be noted that the above policy would result in a denial of the barium sulfate petitions if received today because the petitioners did not address, in their petitions, all of the transformation processes which could lead to the availability of barium ion from barium sulfate. Prior to instituting the above-stated policy, EPA carried out a technical review to assess the potential availability of barium ion from barium sulfate and based its decision to withdraw the proposal to grant the petitions on the basis of barium ion availability. EPA's technical review of barium sulfate, which is provided below, illustrates the type of analyses which must be conducted by petitioners to justify deletions of metal compounds from their respective categories.

III. EPA's Review of Barium Sulfate

In the proposed rule to delete barium sulfate from the EPCRA section 313 list of toxic substances, EPA provided information on the effects induced by exposure to barium sulfate and on the availability of barium ion from barium sulfate. Prior to the development of the metal category policy and guidance, the Agency took it upon itself to address the transformation processes that may generate barium ion from barium sulfate. Under the new policy, a petitioner would be expected to provide information on the potential availability of the metal ion for each transformation process. These include but are not limited to: hydrolysis, photolysis, abiotic and biotic aerobic degradations, abiotic and biotic anaerobic degradations, bioavailability of the ion when the compounds are ingested or inhaled, and bioaccumulation. EPA's review indicated that information was lacking on the possible anaerobic degradation of barium sulfate. Thus, the Agency requested public comment on the possible anaerobic degradation of barium sulfate. EPA has reviewed the information received during the public comment period and the appropriate references cited therein. EPA's technical review should serve as a guide to future petitioners.

A. Barium Sulfate Toxicity

Human and animal data show that barium sulfate is not highly toxic to humans or environmental species, largely because of the insolubility of barium sulfate in water, dilute acids, and alcohols. Barium sulfate is not expected to be absorbed through the skin and is expected to be only minimally absorbed through the lungs and gastrointestinal tract.

There are some case reports of impaction of the colon following oral ingestion of large doses of barium sulfate from its use as an x-ray contrast medium. Also, industrial exposure to barium sulfate dust produces a benign pulmonary reaction (baritosis) that is evidenced by characteristic radiographic changes. These changes consist of dense, discrete, small opacities that are barium sulfate particles themselves and not tissue lesions. These effects are without symptoms and without decrement in pulmonary function.

B. Barium Ion Toxicity

Barium ion is highly toxic. Since barium is rarely encountered by living organisms in elemental form, the toxicity of the ion is related to the solubility of a particular barium

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compound. Thus, soluble salts of barium such as barium chloride are highly toxic. Human fatalities have occurred from mistaken use of barium salt rodenticide (approximately 550 to 600 milligram (mg) of barium). Acute barium poisoning exerts a strong, prolonged stimulant action on all muscles, including cardiac and smooth muscle of the gastrointestinal tract and bladder. Barium is capable of causing nerve block and, in small or moderate doses, produces a transient increase in blood pressure by vasoconstriction. Because of barium's potential to cause increased blood pressure, EPA has established a reference dose (RfD) for barium of 0.07 milligram/kilogram of body weight/day (mg/kg/day).

C. Barium Ion Availability

Barium sulfate has very low solubility in water. One of the factors which contribute to this limited water solubility is the strong affinity of the barium ion for the sulfate ion. The limited solubility of barium sulfate in water coupled with the affinity that barium ion has for the sulfate ion results in low availability of barium ion in water.

Barium sulfate does not undergo photolysis, or abiotic or biotic oxidation to yield barium ion.

1. *Absorption and bioavailability.* Animal studies show that some barium ion is released from barium sulfate through solubilization of the compound in body fluids. The ion is then absorbed slowly into the animal system. This bioavailability has been observed following oral and inhalational exposure to and intramuscular injection and intratracheal instillation of barium sulfate. Following intratracheal instillation in rats, approximately 1.3 percent of the barium from a dose of 2.8 micrograms (ug) of barium sulfate was absorbed via solubilization.

For small doses of barium sulfate (5 ug/100 gram (g) body weight) administered orally to rats, there is little, if any, difference in the amount of barium absorbed when compared to the much more water soluble barium chloride. However, when massive doses of barium sulfate (60 to 400 g) were given orally to human subjects as a contrast medium for x-ray diagnoses, approximately 10 to 100 ug of barium above background were excreted in the urine in 24 hours.

2. *Solubilization of barium sulfate in soils.* In most well aerated, neutral pH soils, the amount of soluble barium will be controlled by the amount of available sulfate. Decreases in the electron potential and in the pH of the soil at or near saturation conditions will lead to increases in barium ion solubilization. Increases in dissolved salt concentrations may also result in increased solubilization of barium.

Deeley (1984) used an elutriate test and the Extraction Procedure Toxicity Test (EP Toxicity), which is intended to evaluate the potential of an industrial waste to release metal and organic constituents in a municipal landfill, to evaluate the potential for soluble barium leaching from impoundment drilling waste samples, which contain barium sulfate. Deeley also investigated the effects of pH and ionic strength changes on the availability of heavy metals in drilling wastes (Ref. 3). EP Toxicity values as high as 80 mg/l of barium were observed from sediment samples collected from offsite disposal pits. This value indicates that barium sulfate is being converted to a more soluble barium salt.

Freeman and Deuel (1984) measured redox potentials of soils, total soil barium, and the extractable amount of barium in native invader vegetative species on closed drilling waste pits in Louisiana and Mississippi. These plants were found to contain levels of barium ion as much as 4.6 times background (Ref. 6).

3. *Anaerobic degradation.* In anaerobic environments, dissolved sulfate can be depleted by microbial reduction to sulfide. Because barium does not form stable sulfide minerals in most natural waters, the conversion of sulfate to sulfide results in an increase in dissolved barium concentrations.

Deuel and Freeman (1989) have investigated the anaerobic degradation of barium sulfate in laboratory experiments using drilling waste solids. The solids were mixed with a clay soil and sucrose, then added to deionized water. The contents were mixed and incubated in an anaerobic/aerobic cycle in which conditions were changed every 2 weeks. Results after three cycles suggested that anaerobic conditions can result in significant conversion of barium sulfate to soluble barium (Ref. 4).

Campbell Wells Corporation/K. W. Brown and Associates, Inc. (1989), and Branch et al. (1990) have conducted research for the State of Louisiana Department of Natural Resources to determine the effects of soil-water environments on the solubility of barium ion from barium sulfate found in drilling muds. The materials used were untreated nonhazardous oil wastes (NOW), treated NOW-Gypsum (calcium sulfate dihydrate) Amendment (where NOW treatment consisted of soluble salt removal, gypsum application, and oil and grease degradation), and treated NOW-Oil and Grease Amendment (additional oil and grease in the form of oily NOW was added to the Gypsum Amendment to increase the oil and grease concentration to 6 percent). These materials were placed under aerated or flooded conditions. Results indicate that there is little evidence that sulfate reduction has occurred. Data also suggest that soluble barium remained at or below the detection limits of 0.5 mg/l in all treatments (Refs. 1 and 2).

Several problems in this study were identified. Large variances in redox measurements were observed which were attributed to leaks in the drain system and random microvariability of the systems. The most significant problem was the observation that the sulfate concentrations were at or above the gypsum saturation level in all the systems being studied. The amount of sulfate in the system would significantly shift equilibria such that barium sulfate would not dissociate to yield soluble barium ion under the common ion effect. The high sulfate levels found under strongly reducing conditions are unexpected, and further complicate interpretation of the study.

Deuel and Holiday (1990) conducted studies to evaluate the distribution of barium and other metals in drilling wastes relative to the point of discharge into waste pits. A representative drilling fluid from the Louisiana gulf coast area was selected. Composite samples were allowed to equilibrate 1 year prior to opening of the sealed containers for immediate analysis of soluble barium and redox potential. The authors concluded that after a year of equilibration, soluble barium concentrations were similar in magnitude to initial pit values.

The concentrations of sulfate present in the test systems were not given. If it is assumed that the levels are consistent with NOW described in similar studies, the sulfate levels would tend to prevent the solubilization of barium ion from barium sulfate by the common ion effect. No discussion of the fate of these wastes in low sulfate environments was provided.

The data on the anaerobic degradation of barium sulfate are conflicting. The studies cited above have been carried out in the context of NOW disposal. As a result, the materials used in the majority of the studies contain excess amounts of sulfate (from gypsum). Due to the counter ion effect, concentrations of sulfate above background may have counteracted the effects of the low redox conditions. Excess sulfate will drive the barium sulfate/barium ion - sulfate ion

equilibrium toward the formation of barium sulfate. In the study carried out by Deuel and Holiday (1990), sulfate levels were not given.

This discrepancy is problematic because the distribution of sulfidic sediments on a national level is presently unknown; however, it is believed that sulfate reduction in water saturated sediments will be far more the rule rather than the exception. Specifically, sulfate reduction is expected to occur in wetlands, in episodically flooded soils and in the sediments of the majority of lakes and rivers in the United States. Hence, the deposition of barium sulfate in anaerobic sediments may be expected to lead to an enhanced mobilization (and availability) of barium ion.

Because no data are available on the possible anaerobic degradation of barium sulfate under low sulfate conditions, EPA cannot properly quantify the availability of barium ion from barium sulfate. However, data do indicate that this transformation process can reasonably be anticipated to occur. Anaerobic degradation of barium sulfate which would generate soluble forms of barium may lead to increased levels of barium ion in surface waters and ground water.

D. Technical Summary

There is no evidence of cancer, developmental toxicity, reproductive toxicity, neurotoxicity, gene mutations, or chronic toxicity associated with exposure to barium sulfate.

Barium ion is not available from barium sulfate via abiotic and biotic aerobic transformations, or photolysis. Barium ion exhibits toxicity at levels which far exceeds its bioavailability from ingestion or inhalation of barium sulfate.

Data suggest that barium sulfate is solubilized to generate barium ion under anaerobic conditions. The extent of this degradation is unknown because the studies were carried out only under limited conditions. Decreases in the pH and increases in the chloride concentrations in soils also contribute to increases in soluble barium concentrations.

IV. Public Comment

EPA received 18 comments on the proposal to delete barium sulfate from the EPCRA section 313 list of toxic substances. The majority of the commenters believe that EPA should exempt barium sulfate from reporting requirements under the barium compounds category.

Four commenters, the American Petroleum Institute (API), Independent Petroleum Association of America (IPAA), Baroid Drilling Fluids, Inc., and K. W. Brown Associates, Inc., addressed EPA's request for comment on the possible anaerobic degradation of barium sulfate. API and IPAA state that their member companies' use of barium sulfate "has produced no evidence that the barium ion becomes available from anaerobic degradation of barium sulfate under field conditions." However, they did not provide any data to support this contention.

Baroid Drilling Fluids states that the "observed effect [anaerobic degradation of barium sulfate] was a laboratory phenomenon induced by the addition of sugar (sucrose) solution to produce a highly reducing environment. . . ." The commenter did not provide a reference to support its contention. The commenter later indicated that the study referred to is "Amendment to Louisiana Statewide Order 29-B Suggested Modifications for Barium Criteria. SPE/IADC," 1989, by L. E. Deuel, Jr. and B. D. Freeman.

Deuel and Freeman (1989) cite the observation of operators managing NOW materials in the field that higher levels of soluble barium are measured after dilution and incorporation into active soil than before treatment. Similar results were observed at commercial NOW treatment facilities. These observations suggest that some mechanism of barium solubilization was in operation under the conditions of treatment, storage, or disposal.

EPA agrees that sucrose is a readily biodegradable carbon source for bacteria in the medium that Deuel and Freeman used. The addition of sucrose would stimulate bacterial growth rates with a subsequent increase in metabolic activity and eventually with an increase in redox levels in a closed system. However, these processes would be expected to occur in any similar system to which a utilizable carbon source is added, albeit at a slower rate. In NOW the oil and grease component could serve as a carbon source.

K. W. Brown Associates, Inc. provided additional information on barium chemistry and the fate of barium in the natural environment. Although they provided information on the short-term effects of reduced conditions on barium sulfate, they concluded that this information indicates that "insufficient information exists to accurately characterize the fate of barite under long-term reduced conditions."

V. Explanation for the Withdrawal of the Proposal to Delete

EPA is issuing this notice to withdraw the proposal to delete barium sulfate from the barium compounds category on the section 313 list of toxic chemicals. This decision is based on the availability of the barium ion from barium sulfate and the potential of toxicity due to available barium ion. Limited data suggest that the barium ion can reasonably be anticipated to become available as a result of the anaerobic degradation of barium sulfate, although the extent of this degradation is unknown.

The barium sulfate delisting petitions were filed prior to EPA's notice of policy and guidance on metal compound categories. Petitions for the delisting of a member of a metal compound category filed subsequent to this notice will be denied unless the petitioner establishes that the metal ion will not be available at a level that can reasonably be anticipated to induce toxicity. In the case of barium sulfate, EPA performed the technical review that will be required of subsequent petitioners. As a result of this review, EPA has decided to deny these petitions for two reasons: (1) The evidence does not establish that the barium ion will not be available at a level that can reasonably be anticipated to induce toxicity; and (2) the evidence affirmatively establishes that the barium ion can reasonably be anticipated to become available through anaerobic degradation.

VI. References

(1) Branch, Robert T., Artiola, Janic, and Crawley, Walter W., "Determination of Soil Conditions that Adversely Affect the Solubility of Barium in Nonhazardous Oilfield Waste," Paper presented at the 65th Annual Technical Conference and Exhibition of the SPE, (1990), pp. 217–226.

(2) Campbell Wells Corporation, K. W. Brown and Associates, Inc., "Determination of Soil Conditions that Adversely Affect the Solubility in NOW," (1989), 22 pp.

(3) Deeley, G. M., "Chemical Speciation and Flyash Stabilization of Arsenic, Barium, Chromium and Lead in Drilling Fluid Wastes," Ph.D. Thesis, University of Oklahoma, Norman, Oklahoma (1984), 272 pp.

(4) Deuel, L. E., Freeman, B. D., "Amendment to the Louisiana Statewide Order 29-B Suggested Modifications for Barium Criteria, SPE/IADC," (1989), pp. 461–466.

(5) Deuel, L. E., Holiday, G. H., "Reserve Pit Drilling Wastes - Barium and Other Metal Distributions of Oil and Gas Field Wastes," Paper presented at the 65th Annual Technical Conference and Exhibition of the SPE, SPE 20712, (1990), pp. 937–941.

(6) Freeman, B. D., Deuel, L. E., Guidelines for Closing Drilling Waste Fluid Pits in Wetland and Upland Areas, Parts I, II, III, In 7th Annual Energy Sources Technology Conference and Exhibition, February 12–16, (1984), 62 pp.

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List of Subjects in 40 CFR Part 372

Chemicals, Community right-to-know, Environmental protection, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: May 15, 1991.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 91-12288 Filed 5-22-91; 8:45 am]

BILLING CODE 6560-50-F

Notices

Federal Register
Vol. 56, No. 100
Thursday, May 23, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Rulemaking; Working Group on Model Rules; Notice of Public Meetings

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92-463), notice is hereby given of meetings of the Committee on Rulemaking and the Working Group on Model Rules of the Administrative Conference of the United States.

Committee on Rulemaking

Date: Thursday, June 13, 1991.
Time: 10:00 a.m.
Location: Administrative Conference of the United States, 2120 L Street NW., suite 500, Washington, DC 20037 (Library, 5th floor).
Agenda: The committee will meet to discuss: (1) Professor Robert Anthony's study of non-rule rulemaking; and (2) the procedural rule exemption of the Administrative Procedure Act.
Contact: Kevin Jessar, 202-254-7020.

Working Group on Model Rules

Date: Friday, July 12, 1991.
Time: 12 noon.
Location: Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037 (Library, 5th floor).
Agenda: The committee will meet as part of an ongoing effort to develop model rules of practice and procedure which can be used by Federal agencies in formal adjudications.
Contact: Gary Edles, 202-254-7020.
Attendance at the committee meetings is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request. The contact persons' mailing address is: Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037. Telephone: 202-254-7020.

Dated: May 17, 1991.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 91-12253 Filed 5-22-91; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

May 17, 1991.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W, Administration Building, Washington, DC 20250, (202) 447-2118.

Revision

• Cooperative State Research Service.
Grant Application Kit, Addendum 1.
Forms CSRS-661, 662, 663 and 55 and AD-1047, 1048, 1049, 1050, and lobbying certification.
Annually.
Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies of employees; Non-profit institutions; 3,600 responses; 17,500 hours.
Melvin J. Schlattman, (202) 401-5058.

Emergency

• Agricultural Marketing Service.
Navel Oranges Grown in Arizona and Designated Parts of California.
Marketing Order No. 907.
Recordkeeping; On occasion; Weekly; Annually; Daily.
Farms; Businesses or other for-profit; Small businesses or organizations; 210,486.5 responses; 25,232 hours.
Maureen Pello, (202) 447-813.

• Agricultural Marketing Service.
Valencia Oranges Grown in Arizona and Designated parts of California.
Marketing Order No. 908.
Recordkeeping; On occasion; Weekly; Annually.
Farms; Businesses or other for-profit; 139,052 responses; 18,320 hours.
Maureen Pello, (202) 447-8139.

Donald E. Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 91-12288 Filed 5-22-91; 8:45 am]

BILLING CODE 3410-01-M

Citizens' Advisory Committee on Equal Opportunity

AGENCY: Office of Advocacy and Enterprise, USDA.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Citizens' Advisory Committee on Equal Opportunity. The meeting will be open to the public. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92-463).

DATES: June 20 and 21, 1991, 9 a.m.-5 p.m. on the 20th and 8:30 a.m.-4 p.m. on the 21st.

ADDRESSES: The meeting location is at the Farmers Home Administration, 1520 Market Street, St. Louis, Missouri 63013. Send written statements to Steven Chang, Office of Advocacy and Enterprise, U.S. Department of Agriculture, 14th and Independence Avenue, SW., room 103-W, Administration Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Steven Chang, (202) 447-7381.

SUPPLEMENTARY INFORMATION: The committee will investigate the interaction between USDA agencies and those who benefit from USDA programs, particularly as it relates to equal employment opportunity and affirmative employment.

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Dated: May 20, 1991.
Jo Ann C. Jenkins,
Director, Office of Advocacy and Enterprise.
[FR Doc. 91-12289 Filed 5-22-91; 8:45 am]
BILLING CODE 3410-34-M

Forest Service

Seed Orchard Pest Management Program in the Erambert and Black Creek Seed Orchards, National Forests in Mississippi, Perry and Forrest Counties, MS

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service, will prepare a draft and final environmental impact statement (EIS) on a proposed action to develop a pest management program at two Mississippi Seed Orchards: The Erambert Seed Orchard near New Augusta and the Black Creek Seed Orchard near Brooklyn. The Forest Service invites written comments on the scope of the analysis. In addition, the Forest Service gives notice of the environmental analysis and decisionmaking process that will occur on the proposed action so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis should be received in writing by June 24, 1991, to ensure timely consideration.

ADDRESSES: Send written comments to: Jerry Windham, USDA Forest Service, Erambert Seed Orchard, 368 Ashe Nursery Road, Brooklyn, MS 39425.

FOR FURTHER INFORMATION CONTACT: Jerry Windham, Erambert and Black Creek Orchard Manager, (601) 584-8488.

SUPPLEMENTARY INFORMATION: The Erambert and Black Creek Seed Orchards are managed for the production of longleaf, slash, shortleaf, and loblolly pine seed. The seed is used to produce seedlings for the National Forests in the Southern Coastal Plains; some of the seed is used in a tree improvement program to produce genetically superior trees. The primary objective of the orchards is to produce seed of high quality and sufficient quantity to meet Forest Service needs. Use of current pest management technology and products is necessary in order to achieve this goal.

The Forest Service will conduct an environmental analysis to determine what type of pest management program will be used at the Black Creek and Erambert Seed Orchards near New Augusta and Brooklyn, Mississippi, to produce seed for the National Forests in Mississippi, Florida, and Alabama. The pest management practices that will be analyzed include, but are not limited to, control of unwanted vegetation by mechanical and chemical methods; control of diseases using sanitation, biological control organisms, and fungicides; control of insect pests with biological and chemical insecticides, and use of sanitation; and control of animal pests through mechanical and preventative measures.

In preparing the environmental impact statement, the Forest Service will identify and consider a range of alternative pest management programs. One alternative will be the no action (continuation of the present pest management program). Another alternative will be a pest management program without the use of chemical pesticides. Other alternatives will be pest management programs comprised of various combinations of control methods.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7), which includes:

1. Defining the scope of the analysis and nature of the decision to be made.
2. Identifying the issues and determining the significant issues for consideration and analysis within the environmental impact statement.
3. Defining the proper make-up of the interdisciplinary team.
4. Exploring possible alternatives.
5. Identifying potential environmental effects.
6. Determining potential cooperating agencies.
7. Identifying groups or individuals interested or affected by the decision.

The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations interested in or affected by the proposed action.

Public participation will be solicited by notifying in person and/or by mail known interested and affected publics and key contacts of the scope of the analysis. In addition, news releases will be used to give the public general notice. Input from interested people and organizations will be used in preparation of the draft environmental impact statement.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by April 1992. At that time, EPA will publish a notice of availability of the draft environmental impact statement in the Federal Register.

The comment period on the draft environmental impact statement will be 45 days from the date the EPA's notice of availability appears in the Federal Register. It is very important that those interested in the proposed action participate at that time. To be most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

Following the comment period on the draft environmental impact statement, comments will be analyzed, considered, and responded to by the Forest Service in preparing the final environmental impact statement. The final environmental impact statement is scheduled to be completed by September 1992.

The responsible official will consider the comments and responses; environmental consequences discussed in the environmental impact statement; and applicable laws, regulations, and policies in making a decision regarding this proposal. The decision and reasons for the decision will be documented in the Record of Decision. That decision will be subject to appeal in accordance with 36 CFR 217.

Kenneth R. Johnson, Forest Supervisor, National Forests in Mississippi, is the responsible official.

Dated: May 16, 1991.
Kenneth R. Johnson,
Forest Supervisor.
[FR Doc. 91-12310 Filed 5-22-91; 8:45 am]
BILLING CODE 3410-11-M

Soil Conservation Service

Muddy Creek-Orderville Watershed, Kane County, UT

AGENCY: Soil Conservation Service, U.S. Department of Agriculture.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council of Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an enviornmental impact statement is not being prepared for the Muddy Creek-Orderville Watershed, Kane County, Utah.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Holt, State Conservation Service, PO Box 11350, Salt Lake City, Utah 84147, Com (801) 524-5050, FTS 588-5050. .

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Francis T. Holt, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for a watershed protection. Planned actions include pinyon-juniper chaining, brush clearing, and seeding. Conservation treatment elements of the resource management systems include grazing management systems, fencing, and spring developments.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Francis T. Holt. The FONSI has been sent to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until June 24, 1991.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding state and local clearinghouse review of federal and federally assisted programs and projects is applicable)

Dated: May 13, 1991.
Sherrie Rasmussen,
State Administrative Officer.
[FR Doc. 91-12202 Filed 5-22-91; 8:45 am]
BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

Agenda and Public Meeting of the Colorado Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Colorado Advisory Committee to the Commission will be held from 7 p.m. until 9 p.m. on Wednesday, June 19, 1991, at the Radisson Hotel, Colorado Room, 1550 Court Place, Denver, CO 80202. The purpose of this meeting is to discuss plans for future projects and to review procedures for a briefing forum on the employment of minorities and women in construction of the new Denver airport.

Persons desiring additional information should contact Committee Chairperson, Gwen Thomas, or William F. Muldrow, Director of the Rocky Mountain Regional Division (303) 844-6716 (TDD 303-844-6720). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 15, 1991.
Carol Lee Hurley,
Chief, Regional Programs Coordination Unit.
[FR Doc. 91-12203 Filed 5-22-91; 8:45 am]
BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Electronic Instrumentation Technical Advisory Committee; Closed Meeting

A meeting of the Electronic Instrumentation Technical Advisory Committee will be held June 18, 1991, 9 a.m., in the Herbert C. Hoover Building, room 1092, 14th Street & Pennsylvania Avenue NW., Washington, D.C. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to electronics and related equipment and technology. The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the notice of determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information, contact Lee Ann Carpenter on (202) 377-2583.

Dated: May 20, 1991.
Betty Anne Ferrell,
Director, Technical Advisory Unit.
[FR Doc. 91-12303 Filed 5-22-91; 8:45 am]
BILLING CODE 3510-DT-M

International Trade Administration

[A-588-703]

Certain Internal-Combustion, Industrial Forklift Trucks From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by four respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on certain internal-combustion, industrial forklift trucks from Japan. The review covers four manufacturers/exporters of the subject merchandise to the United

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States during the period November 24, 1987 through July 31, 1989. The review indicates the existence of dumping margins for the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the difference between the United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 23, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen Jacques, Mark Schwendler, Margaret Gooden, Marissa Rauch, Norbert Gannon or Linda Pasden, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–3793.

SUPPLEMENTARY INFORMATION:

Background

On June 9, 1989, the Department of Commerce (the Department) published a notice of "Opportunity to Request an Administrative Review" (54 FR 24728). Four respondents, Toyota Motor Corporation ("Toyota"), Nissan Motor Co., Ltd. ("Nissan"), Toyo Umpanki Co., Ltd. ("TCM"), and Mitsubishi Heavy Industries, Ltd. ("MHI"), requested an administrative review. We initiated the review on July 25, 1989 (54 FR 30915) covering the period November 24, 1987, through July 31, 1989. The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act). These are the first results of administrative review published since the antidumping duty order was issued on June 7, 1988 (53 FR 20882).

Scope of the Review

The products covered by this review are certain internal-combustion, industrial forklift trucks, with lifting capacity of 2,000 to 15,000 lbs. The products covered by this review are further described as follows: Assembled, not assembled, and less than complete, finished and not finished, operator-riding forklift trucks powered by gasoline, propane, or diesel fuel internal-combustion engines of off-the-highway types used in factories, warehouses, or transportation terminals for short-distance transport, towing, or handling of articles. Less than complete forklift trucks are defined as imports which include a frame, by itself or a frame assembled with one or more component parts. Component parts of the subject forklift trucks which are not assembled with a frame are not covered by this order. During the review period such merchandise was classifiable under item numbers 692.4025, 692.4030, and 692.4070 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under the Harmonized System (HS) item numbers 8427.20.00–0, 8427.90.00–0, and 8431.20.00–0. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers sales and entries by Toyota, Nissan, TCM, and MHI during the period November 24, 1987, through May 31, 1989.

Such or Similar Comparisons

For all respondent companies, pursuant to section 771(16)(C) of the Act, we established categories of "such or similar" merchandise on the basis of load (lifting) capacity of the forklift. Within these categories, we based our product comparisons on six primary characteristics, to which we assigned "points" indicating their relative importance. These characteristics and their point totals are as follows: Tire type, 6 points; upright style, 5 points; engine type, 4 points; transmission type, 3 points; maximum forklift height, 2 points; engine size, 1 point. Where there were no identical products sold in the home market, we selected the most similar product on the basis of the point totals resulting from the six characteristics listed above.

Data Changes Required for the Final Results of Review

This is a highly complex case which has required a unique reporting system in that the respondents have been responsible for completing the model match programs and conducting the below cost tests. This arrangement has required the Department to deviate from its standard policy of incorporating all additional changes to the computer programs in the preliminary results of review. The Department made certain changes where the data was available. Certain changes are to be made by the respondents. These changes are being submitted at the request of the Department due to unusual circumstances of this case. Detailed deficiency letters are being provided to the respondents. Within two weeks of the publication of this notice, respondents must submit a narrative description of how the changes are to be made. Petitioners may respond to these changes and the preliminary results of review within the 30 day comment period. If a hearing is requested, petitioners are to incorporate all comments in the case briefs. We will consolidate all changes for the final results of review. We have outlined below all of the changes requested thus far of each of the respondents.

Best Information Available

The Department has determined that the use of best information available is appropriate for MHI, in accordance wtih section 776(c) of the Act. MHI failed to report 75 percent of home market sales. The Department made repeated requests of MHI to provide sales of its related dealers to end users. MHI failed to provide these data or convincing evidence to support its claim that these data were not necessary as its home market sales to related dealers were at prices reflective of arm's-length transactions. Because MHI did not provide the cost of production data for transactions with end users, the Department was unable to conduct the below cost test necessary to determine if there were sufficient sales at or above the cost of production to form a basis for foreign market value. These omissions effectively preclude any meaningful analysis.

Furthermore, we determined that MHI neglected to report approximately 30 percent of its sales to the United States during the period. MHI was informed in the March 20, 1990 deficiency questionnaire that MHI was to report all of its sales to the United States during the review period. Therefore, our determination with respect to MHI will be based on the best information available. In this case, the Department used MHI's previous rate, the all other rate from the investigation.

United States Price

For those sales made directly to unrelated parties prior to importation into the United States, we based the United States price on purchase price, in accordance with section 772(b) of the Act. For sales made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation, we also used purchase price as a basis for determining United States price. For these sales, the Department determined that purchase price was the most appropriate indicator of United States price based on the following elements:

(1) The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related selling agent; (2) This was a customary commercial channel for sales of this merchandise between the parties involved; and, (3) The related selling agent located in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

Where all of the above elements are met, we regard the routine selling functions of the exporter as merely having been relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions are performed in the United States or abroad does not change the substance of the transactions or the functions themselves.

Where the sale to the first unrelated purchaser took place after importation into the United States, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act. The calculation of United States price for each respondent is detailed below.

A. Toyota

We calculated purchase price and ESP based on the packed, c & f, c.i.f., and delivered prices to unrelated customers in the United States. We made deductions from purchase price and ESP, where appropriate, for foreign inland freight, foreign inland insurance, export brokerage, ocean freight, marine insurance, import brokerage, U.S. duty, U.S. inland freight, and U.S. inland insurance, in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for discounts and rebates. We made further deductions from ESP, where appropriate, for credit expenses, warranties, advertising, service payments to dealers, and indirect selling expenses (which include inventory carrying costs, product liability insurance, advertising, and selling expenses), pursuant to sections 772(e)(1) and (2) of the Act. In accordance with 772(d)(1)(c) of the Act, we added to the United States price the amount of the consumption tax that would have been collected on the export sale had it been subject to the tax. We computed the tax by multiplying the transfer price by the tax rate. For purchase price sales, we multiplied the unit price, less foreign brokerage, foreign inland freight and insurance, and ocean freight by the tax rate. For ESP transactions involving further manufacturing prior to sale in the United States, we deducted all value added in the United States, pursuant to section 772(e)(3) of the Act.

Toyota calculated the credit expense on ESP transactions by offsetting the actual short-term rate of its related finance company with its intercorporate short-term rate. We disallowed the offset and recalculated Toyota's credit expense based on the actual short-term borrowing experience of its related finance company.

Toyota did not include in its calculations of inventory carrying costs on ESP transactions the average time period from date of the entry to the date of receipt in the warehouse in the United States. We recalculated inventory carrying costs to include an additional 10 to 13 days, based on information provided at verification.

Toyota claimed a deduction from ESP for commissions paid to dealers for the sale of forklifts to end-users. Since these commissions are tantamount to post-sale rebates, we treated them as direct selling expenses.

Toyota reimbursed dealers for labor and parts in the form of a rebate. We increased value added by the amount of this rebate granted to dealers. Also, Toyota incorrectly included some of its direct warranty expenses in indirect selling expenses. We recalculated the warranty expense and allocated it across all units sold. In calculating U.S. brokerage and handling and U.S. inland freight, Toyota inadvertently used the wrong amount in its allocation. We recalculated using the correct amount which was obtained at verification. Toyota allocated ocean freight on a per unit basis. We recalculated ocean freight and allocated the expense on the basis of weight. For the final results of review, this expense must be reported on a shipment-by-shipment basis.

We also made specific data entry changes to rebates and commissions as identified at verification. Certain other adjustments to price must be recalculated by Toyota prior to the final results. The recalculations are as follows: (1) Toyota needs to recalculate indirect selling expenses on a sales value basis by model after stripping out direct warrant expenses and ORS retrofit expenses. (2) Toyota needs to include the portion of selling expenses incurred by Toyoda Automatic Loom Ltd. on sales to the United States in indirect selling expenses. (3) Toyota records its co-op advertising expenses on a sale-by-sale basis by dealer; therefore, these expenses need to be reported in this manner. (4) Toyota needs to correct its calculation of occupancy expenses based on the proportion of space used for the value added operations. (5) Toyota must recalculate its non-operating expenses to eliminate offsets of income from other business ventures because there is no relationship between the income from other business ventures and the non-operating expenses for forklift trucks. (6) Toyota must reallocate a portion of profit and general administrative expenses to cover rebates we have included in the value added.

B. Nissan

We calculated ESP based on the packed, c.i.f. and delivered prices to unrelated customers in the United States. We made deductions from ESP, where appropriate, for foreign inland freight, foreign inland insurance, shipping charges, invoice preparation fees, ocean freight, marine insurance, U.S. duty, brokerage, and U.S. inland freight, in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for discounts and rebates. We recalculated packing to separate the cost of containerization and deducted it from ESP. We made further deductions from ESP, where appropriate, for credit expenses, technical services, warranties, advertising, service payments to dealers, and indirect selling expenses (which included inventory carrying costs, product liability insurance, advertising, and selling expenses), pursuant to sections 772 (e) (1) and (2) of the Act. In accordance with section 772(d)(1)(c) of the Act, we added to the United States price the amount of the consumption tax that would have been collected on the export sale had it been subject to the tax. We computed the tax by multiplying the unit price, less foreign inland freight, ocean freight and marine insurance, U.S. Customs fees, invoice preparation fees, drayage, U.S. inland-freight, containerization, and discounts, by the tax rate. For ESP transactions involving further manufacture prior to sale in the United States, we deducted all value added in the United States.

For the preliminary results, we used the credit expenses and credit revenue Nissan reported on installment sales. We verified Nissan's methodology and calculation, and they are reasonable.

For the final results of review, Nissan must recalculate the advertising expenses incurred in Japan on behalf of the sales to the United States. The factor used to allocate this expense was calculated incorrectly because it compared advertising expense by model in yen to total sales value for each model in U.S. dollars.

C. TCM

We calculated purchase price and ESP based on the packed, c.i.f. and delivered prices to unrelated customers in the United States. We made deductions from purchase price and ESP, where appropriate, for foreign inland freight, export brokerage, ocean freight, marine insurance, containerization, import brokerage, U.S. Customs fees, U.S.

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inland freight, and U.S. inland insurance, in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for discounts and rebates. In accordance with section 772(d)(1)(c) of the Act, we added to the United States price the amount of the consumption tax that would have been collected on the export sale had it been subject to the tax. We computed the tax by multiplying the transfer price by the tax rate. For purchase price sales, we multiplied the unit price, less foreign brokerage, foreign inland freight and insurance, and ocean freight by the tax rate. We made further deductions from ESP, where appropriate, for credit expenses, warranties, service payments to dealers, and indirect selling expenses (which includes inventory carrying costs, the markup of the Japanese trading companies and selling expenses), pursuant to sections 772(e) (1) and (2) of the Act.

For the preliminary results, we used the credit expenses and credit revenue TCM reported on installment sales. We verified TCM's methodology and calculation, and they are reasonable.

TCM calculated export brokerage and foreign inland freight based on a standard weight for each model. We recalculated these charges based on the actual shipment weight of each unit.

Certain other adjustments to price must be recalculated by TCM prior to the final results of review. TCM must recalculate containerization on a volume basis where the expense was calculated on a value basis and report this expense in yen. TCM must recalculate the indirect selling expense incurred in Japan on behalf of the sales to the United States because it derived an allocation ratio using two different currencies. TCM compared the indirect selling expense (in yen) to total sales value (in U.S. dollars) to derive the allocation ratio.

For ESP transactions involving further manufacture prior to sale in the United States, we deducted all value added in the United States, pursuant to section 772(e)(3) of the Act. TCM must reallocate the general and administrative expenses incurred in Japan on behalf of these sales to the United States as these amounts were derived in the same manner as indirect selling expenses.

TCM did not report approximately 1 percent of the sales to the U.S. during the period. For these unreported sales we used best information available ("BIA"). As BIA, we used the highest single margin found on TCM's U.S. sales.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value ("FMV") based on home market sales and, where appropriate, constructed value. The calculation of FMV for each respondent is detailed below.

A. Toyota

We calculated FMV based on the c & f and f.o.b. prices to unrelated and related customers in the home market. Where appropriate, we made deductions from the home market price for inland freight and for rebates. Since no packing costs were claimed on home market sales, we added U.S. packing to the home market price.

For comparisons involving purchase price sales, we made adjustments to the home market price, where appropriate, for differences in credit expenses, warranties, and advertising. We made a circumstance of sale adjustment to FMV in the amount of the difference in the consumption tax between the two markets in order to insure a tax-neutral margin. The consumption tax affected only those sales in the home market on or after April 1, 1989 (date of implementation of the tax). This was done by adding to home market price the equivalent of the tax added to U.S. price. For comparisons involving ESP transactions, we made deductions from the home market price, where appropriate, for credit expenses, warranties, and advertising. We made an adjustment to FMV for indirect selling expenses (which includes various incentives and selling expenses) in the home market to offset indirect selling expenses on ESP sales in the United States. We limited the indirect selling expense deduction on home market sales by the amount of the indirect selling expenses incurred in the United States in accordance with 19 CFR 353.15(c). We made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise.

Toyota's advertising expenses are overstated because they included incorrect amounts for reimbursements to dealers. At verification Toyota agreed to recalculate this expense.

B. Nissan

Petitioners alleged that Nissan's home market sales were made at less than the cost of production and that constructed value should be used to compute foreign market value. We determined that the allegation was sufficient and initiated a below cost investigation. For each load capacity category, we compared the home market prices, net of inland freight, discounts and rebates, plus credit revenue, to the cost of production which included materials, fabrication costs, and general expenses.

Where there were no, or insufficient sales of such or similar merchandise in each of the load capacity categories, at prices above the cost of production, we used constructed value as the basis for calculating foreign market value. Constructed value was based on the respondent's information. Since Nissan's general expenses were less than the statutory minimum of ten percent of the cost of materials and fabrication, we used the statutory minimum. Since Nissan's reported home market profit was less than eight percent of materials, fabrication, and general expenses, we used the statutory minimum of eight percent.

Where we found sufficient above-cost sales in the home market to form a basis for comparison, we calculated foreign market value based on delivered prices to unrelated and related customers (these sales were determined to be arm's-length transactions) in the home market. We made deductions from the home market price for inland freight, and, where appropriate, for incidental charges, and discounts and rebates. Since no packing costs were claimed on home market sales, we added U.S. packing to the home market price. We made further deductions from the home market price, where appropriate, for credit expenses, warranties, advertising, and technical services. We adjusted FMV for indirect selling expenses (which includes the various "rebates" which were disallowed as direct expenses, inventory carrying costs, advertising, and selling expenses) in the home market to offset indirect selling expenses on ESP sales in the United States. We limited the indirect selling expense deduction on home market sales by the amount of the indirect selling expenses incurred in the United States in accordance with 19 CFR 353.15(c). We made adjustments to the home market price for credit revenue and to account for differences in the physical characteristics of the merchandise.

For the preliminary results, we used the credit expenses and credit revenue Nissan reported on installment sales. We verified Nissan's methodology and calculation, and they are reasonable.

Nissan claimed deductions from the home market price for certain payments to dealers with respect to service vans, facility improvements, and dealers hiring new staff. We treated these deductions as indirect selling expenses.

Nissan further claimed a deduction for a promotion campaign which included increasing used truck sales, growth ratio in the number of units serviced, profit per employee, etc. We treated this as an indirect selling expense. We made a circumstance of sale adjustment to FMV in the amount of the difference in the consumption tax between the two markets in order to insure a tax-neutral margin. The consumption tax affected only those sales in the home market on or after April 1, 1989 (date of implementation of the tax). This was done by adding to home market price the equivalent of the tax added to U.S. price.

Nissan also claimed deductions to home market price for certain payments relating to the increase in revenue in the service centers and for dealer reimbursements for service staff salaries. Because these are not directly related to sales, we treated them as indirect selling expenses. We did not make an adjustment for a period award rebate because it included sales outside the review period.

We included Nissan's claimed inventory carrying costs in indirect selling expenses. However, Nissan incorrectly calculated this expense by randomly selecting one day from each month and computed the number of days between the completion date and the date the truck was sold. Nissan must recalculate this expense for each truck sold in the home market based on the number of days between production and shipment to the customer.

Constructed value was used only in comparisons involving ESP transactions. Thus, we made deductions from constructed value for direct and indirect selling expenses up to the amount of the indirect selling expenses incurred for the U.S. sale.

We disregarded two sales of cushion tire forklift trucks in the home market from the model match program because Nissan sold thousands of pneumatic tire forklift trucks in the home market during the period but only two sales of the cushion tire forklifts were sold during the period. Cushion tire forklifts are neither manufactured nor advertised by Nissan for sale in the home market. Design modifications were required in order for the cushion forklifts to be used in the home market. Nissan has reported that the actual production of the two cushion tire trucks was supervised by Nissan's export sales department. As a result, we determined that these sales were not in the ordinary course of trade.

C. TCM

Petitioners alleged TCM's home market sales were made at less than the cost of production and that constructed value should be used to compute FMV. We determined that the allegation was sufficient and initiated a cost investigation. For each load capacity category, we compared the home market prices, net of inland freight, discounts and rebates, to the cost of production which included materials, fabrication costs, and general expenses.

Where we found sufficient above-cost sales in the home market to form a basis for comparison, we calculated foreign market value based on delivered prices to unrelated and related customers (these sales were determined to be arm's-length transactions) in the home market. We made deductions from the home market price, where appropriate, for rebates. Since no packing costs were claimed on home market sales, we added U.S. packing. We also made a deduction for inland freight. However, because TCM allocated this expense on the basis of sales value by dealer to total freight charged to all dealers, TCM must reallocate this expense for each dealer based on shipment distance and weight of the truck.

For comparisons involving purchase price sales, we made additional adjustments to the home market price, where appropriate, for differences in credit expenses, credit revenue, and warranties. For comparisons involving ESP transactions, we made deductions from the home market price, where appropriate, for credit expenses, and warranties. We adjusted FMV for indirect selling expenses (which includes inventory carrying costs and selling expenses) in the home market to offset indirect selling expenses on ESP sales in the United States. The indirect selling expense deduction on home market sales was limited by the amount of the indirect selling expenses incurred in the United States in accordance with 19 CFR 353.15(c). We added packing expenses incurred in Japan for U.S. sales to FMV. We did not deduct the consumption taxes from home market prices because they were already deducted by TCM.

We made a circumstance of sale adjustment to FMV in the amount of the difference in the consumption tax between the two markets in order to insure a tax-neutral margin. The consumption tax affected only those sales in the home market on or after April 1, 1989 (date of implementation of the tax). This was done by adding to home market price the equivalent of the tax added to U.S. price. We made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise.

For the preliminary results, we used the credit expenses and credit revenue TCM reported on installment sales. We verified TCM's methodology and calculation, and they are reasonable.

Where there were no, or insufficient sales of such or similar merchandise in each of the load capacity categories, at prices above the cost of production, we used constructed value as the basis for calculating FMV. Constructed value was based on the respondent's information. Since TCM's general expenses were more than the statutory minimum of ten percent of the cost of materials and fabrication, we used the actual expenses. Since TCM's reported home market profit was less than eight percent of materials, fabrication, and general expenses, we used the statutory minimum.

Where constructed value was used in comparisons involving purchase price transactions, we adjusted for the differences in credit expenses, credit revenue, and warranty expenses. Where constructed value was used in comparisons involving ESP transactions, we deducted direct selling expenses and indirect selling expenses up to the amount of indirect selling expenses incurred on the U.S. sale.

Preliminary Results of Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist for the period November 24, 1987 through May 31, 1989:

Manufacturer	Margin (percent)
Toyota Motor Corporation	7.95
Nissan Motor Co., Ltd	12.00
Toyo Umpanki Co., Ltd	9.77
Mitsubishi Heavy Industries, Ltd	39.15

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Requests for an administrative protective order must be made no later than 5 days after the date of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first workday thereafter.

Case briefs and/or written comments from interested parties may be submitted not later than 30 days after

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the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this review for all shipments of the subject merchandise from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be that established in the final results of this review; for merchandise exported by manufacturers or exporters not covered in this review but covered in the final determination of sales at less than fair value (the originial investigation), the case deposit rate will continue to be the rate published in that final determination; (2) If the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review or the original investigation of sales at less than fair value, whichever is the most recent; (3) The cash deposit rate for all other exporters/producers shall be 12.00 percent for shipments of internal-combustion, industrial forklift trucks from Japan. This is the highest non-BIA rate for any firms included in this review. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice is in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: May 15, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-12248 Filed 5-22-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-028]

Roller Chain, Other Than Bicycle, From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by the petitioner and several respondents, the Department of Commerce has conducted an administrative review of the antidumping finding on roller chain, other than bicycle, from Japan. The review covers five firms, and the period April 1, 1986 through March 31, 1987. The review indicates the existence of dumping margins during this period. As a result of the review, the Department of Commerce has preliminarily determined to assess antidumping duties equal to the calculated differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 23, 1991.

FOR FURTHER INFORMATION CONTACT: Lisa Boykin, Edward Haley, or Robert J. Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On October 22, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 42606) the final results of its last administrative review of the antidumping finding on roller chain, other than bicycle, from Japan (38 FR 9226; April 12, 1973). The American Chain Association, the petitioner, and several respondents requested in accordance with 19 CFR 353.53a(a) (1985) that we conduct an administrative review. We published a notice of initiation of the antidumping duty administrative review on May 20, 1987 (52 FR 18937). The Department has now conducted that administrative review with respect to five firms in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

Imports covered by this review are shipments of roller chain, other than bicycle, from Japan. The term "roller chain, other than bicycle," as used in this review includes chain, with or without attachments, whether or not plated or coated, and whether or not manufactured to American or British standards, which is used for power transmission and/or conveyance. Such chain consists of a series of alternately-assembled roller links and pin links in which the pins articulate inside the bushings and the rollers are free to turn on the bushings. Pins and bushings are press fit in their respective link plates. Chain may be single strand, having one row of roller links, or multiple strand, having more than one row of roller links. The center plates are located between the strands of roller links. Such chain may be either single or double pitch and may be used as power transmission or conveyor chain.

This review also covers leaf chain, which consists of a series of link plates alternately assembled with pins in such a way that the joint is free to articulate between adjoining pitches. This review further covers chain model numbers 25 and 35. During the review period, roller chain, other than bicycle, was classified under various provisions of the Tariff Schedules of the United States Annotated (TSUSA) from item numbers 652.1400 through 652.3800, and is currently classifiable under Harmonized Tariff System (HTS) item numbers 7315.11.00 through 7616.90.00. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The Department initiated a review covering eleven manufacturers/exporters of roller chain to the United States and the period April 1, 1986, through March 31, 1987. Of these eleven firms, the review of three companies has been deferred, the finding has been revoked with respect to two companies, and the review of another company has been terminated. We are reviewing Daido Kogyo Co., Ltd., and Enuma Chain Manufacturing Co., Ltd., separately. Sugiyama Chain Co., Ltd. (Sugiyama), is not included in this review because we are conducting all outstanding reviews of Sugiyama concurrently. The finding was revoked with respect to Tsubakimoto Chain Co., Ltd. (Tsubakimoto), effective September 1, 1983 (54 FR 33259; August 14, 1989), and with respect to Honda Motor Co., Ltd. (Honda), effective October 8, 1982 (56 FR 16504; April 23, 1991). The review of Nissan Motor Co., Ltd. (Nissan), was terminated May 7, 1991 (56 FR 21128).

This review covers five manufacturers/exporters of roller chain, other than bicycle, from Japan, and the period April 1, 1986, through March 31, 1987. We have reviewed the sales of

Hitachi Metals Techno (Hitachi) and Izumi Chain Co., Ltd. (Izumi). We have used the best information available (BIA) for Takasago RK Excel Co., Ltd. (Takasago), Toyota Motor Co., Ltd. (Toyota), and Pulton Chain Co., Ltd. (Pulton), because Takasago and Toyota did not submit a computer tape, and Pulton provided a computer tape the Department could not use. As BIA the Department used the highest rate calculated for a responding firm in this review.

United States Price

In calculating United States price (USP), the Department used both purchase price and exporter's sales price (ESP), both as defined in section 772 of the Tariff Act. For those sales made directly to unrelated parties prior to importation into the United States we based USP on purchase price. Purchase price was based on packed, F.O.B. Japanese port, or C.I.F. duty-paid, delivered prices to unrelated purchasers in the United States. Where applicable, we made deductions for ocean freight, marine insurance, foreign and U.S. inland freight, brokerage and handling charges, discounts, and U.S. import duties. No other adjustments were claimed or allowed.

Where sales to the first unrelated purchaser occurred after importation into the United States, we based USP on exporter's sales price. We calculated ESP based on the packed, C.I.F. delivered price. Where applicable, we made deductions for ocean freight and insurance, brokerage and handling charges, U.S. import duties, foreign and U.S. inland freight, commissions, discounts, credit expenses, and indirect selling expenses. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value (FMV), the Department used home market price, as defined in section 773 of the Tariff Act, when sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. For each such or similar category where there were insufficient sales in the home market (Izumi only), and there were no sales to third countries, we then calculated FMV on the basis of constructed value (CV), in accordance with section 773(a)(2) of the Tariff Act.

Home market price was based on a packed, delivered price to unrelated purchasers in Japan. For Izumi we calculated CV as the sum of materials, fabrication costs, general expenses, and profit. The amounts added for general expenses and profit were the statutory minimums of 10 percent of the sum of materials and fabrication costs, and 8 percent of the sum of materials, fabrication costs, and general expenses, respectively. Where applicable, we made deductions from FMV for inland and ocean freight, insurance, brokerage and handling costs, and direct selling expenses. We made adjustments for differences in packing, credit expenses, commissions, differences in merchandise, and warranty expenses. We deducted indirect selling expenses, limited to the amount of U.S. commissions and indirect selling expenses. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following weighted-average margins exist for the period April 1, 1986, through March 31, 1987:

Manufacturer/exporter	Margin (percent)
Hitachi Metals Techno	3.70
Izumi Chain Co	5.72
Pulton Chain Co	5.72
Takasago RK Excel Co	5.72
Toyota Motor Co	5.72

Parties to the proceeding may request disclosure within five days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this preliminary notice or the first workday thereafter. Parties to the proceeding may submit prehearing briefs and/or written comments not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions for all companies directly to the Customs Service.

Given the fact that reviews for more recent periods have already been completed, the dumping margins determined in this preliminary notice will have no impact on the current cash deposit rates. As provided by section 751(a)(1) of the Tariff Act, the Customs Service shall continue to require a cash deposit for all merchandise produced or exported by Hitachi, Izumi, Pulton, Takasago, Toyota, Sugiyama, or Nissan, of estimated antidumping duties based on the final rates published for each firm's most recent administrative review period.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a(a) of the Commerce Regulations (19 CFR 353.53a(a)) (1985).

Dated: May 16, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-12304 Filed 5-22-91; 8:45 am]

BILLING CODE 3510-DS-M

Latin America/Caribbean Business Promotion Council; Notice of Re-establishment; Notice of Change of Name

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C., app. 2, and the General Services Administration (GSA) rule on Federal Advisory Committee Management, 41 CFR part 101-6, and after consultation with GSA, the Caribbean Basin Business Promotion Council under the new name "Latin America/Caribbean Business Development Council" was re-established on May 3, 1991 at the U.S. Department of Commerce.

The Committee will advise the Secretary, through the Deputy Assistant Secretary for the Western Hemisphere and the Ageny for International Development Administrator, through the Assistant Administrator for Latin America and the Caribbean, on ways to promote private sector investment and trade in Latin America and the Caribbean.

The Council will consist of twenty-eight members to be appointed by the Secretary. Twenty members will be high-level executives with manufacturing and relevant service sector experience in the region. Eight members will be representatives from U.S. Government agencies participating as nonvoting members.

The Council will function solely as an advisory body, and in compliance with

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provisions of the Federal Advisory Committee Act.

For further information, please contact Margaret A. Almazan, Latin America/Caribbean Business Development Center, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: 202-377-0841.

Dated: May 17, 1991.

Margaret A. Almazan,

International Trade Specialist, Latin America/Caribbean Business Development Center.

[FR Doc. 91-12312 Filed 5-22-91; 8:45 am]

BILLING CODE 3510-DR-M

[C-351-062]

Pig Iron From Brazil; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On February 11, 1991, Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on pig iron from Brazil for the period January 1, 1987 through December 31, 1987. We have now completed that review and determine the net subsidy to be zero or *de minimis* for seven firms and 1.85 percent *ad valorem* for all other firms.

EFFECTIVE DATE: May 23, 1991.

FOR FURTHER INFORMATION CONTACT: Christopher Beach or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On February 11, 1991, the Department of Commerce (the Department) published in the Federal Register (56 FR 5403) the preliminary results of its administrative review or the countervailing duty order on pig iron from Brazil (45 FR 23045). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of Brazilian pig iron of basic foundry, malleable, and low phosphorous grades. During the review period, such merchandise was classifiable under item number 608.1300 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under item numbers 7201.10.00, 7201.20.00, 7201.30.00 and 7206.10.00 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1987 through December 31, 1987 and twelve programs: (1) CACEX Preferential Working Capital Financing for Exports, (2) Income Tax Exemption for Export Earnings, (3) IPI Export Credit Premium, (4) BEFIEX and CIEX, (5) PROEX and PORSIM, (6) Preferential Financing for the Storage of Merchandise, (7) FST and EGF Financing, (8) Accelerated Depreciation for Brazilian-Made Capital Goods, (9) FINEX, (10) FUNPAR, (11) FINEP and (12) CIC-OPCRE 6-2-6 financing.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from Consider U.S.A., Inc., an importer.

Comment 1: Consider states that the exemption of export financing from the tax on financial transactions (the IOF tax) is not a subsidy. Consider claims that, in calculating the interest differential under the program for preferential working capital financing for exports, the exemption from the IOF tax for loans received under CACEX should not be considered. The IOF is an indirect tax on the financing used for the purchase of physically incorporated inputs. The non-excessive rebate of an indirect tax borne by exported merchandise is not a subsidy.

Department' Position: We addressed this issue in the last administrative review of this countervailing duty order, as well as in numerous administrative reviews of other countervailing duty orders on Brazilian products. See, *e.g., Certain Castor Oil Products from Brazil; Final Results of Administrative Review of Countervailing Duty Order* (September 8, 1983; 48 FR 40534). The Brazilian government has provided neither new evidence nor new arguments that convince us to reconsider our position on this issue.

Comment 2: Consider claims that the benefits derived from the income tax exemption for export earnings should be allocated over total revenue rather than export revenue. Under this program, a Brazilian exporter receives an exemption from income tax liabilities at the end of the fiscal year based upon the ratio of export to total revenue, provided that the firm has made an overall profit. Consider argues that, because the determining factor in a firm's eligibility for this benefit is its overall profitability for a given year, the benefit accrues to the operations of the whole firm and not just the exports.

Department's Position: We have considered and rejected this argument in numerous administrative reviews of other countervailing duty orders on Brazilian products. *See, e.g., Certain Scissors and Shears from Brazil; Final Results of Administrative Review of Countervailing Duty Order* (March 10, 1982; 47 FR 10286). We have stated that, when a firm must export to be eligible for benefits under a subsidy program and when the amount of the benefit received is tied directly or indirectly to the firm's level of exports, that program is an export subsidy. The fact that the firm as a whole must be profitable to benefit from this program does not detract from the program's basic function as an export subsidy. Therefore, the Department will continue to allocate the benefits under this program over export revenue instead of total revenue.

Final Results of Review

As a result of our review, we determine the new subsidy to be zero or *de minimis* for the seven firms listed below and 1.85 percent *ad valorem* for all other firms during the period January 1, 1987 through December 31, 1987:

(1) S.G. Comercio;
(2) Inbrasil;
(3) Amaral;
(4) Bondespachense;
(5) CBF;
(6) Cotra; and
(7) Foscalma

Therefore, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all entries of this merchandise from the seven firms listed above, and to assess countervailing duties of 1.85 percent of the f.o.b. invoice price on shipments from all other firms exported on or after January 1, 1987 and on or before December 31, 1987.

Because the only programs used by the respondents during the review period, the CACEX export financing and Income Tax Exemption programs, have been terminated by the Government of Brazil, the Department will instruct the Customs Service to waive cash deposits of estimated countervailing duties on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit waiver shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: May 16, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration

[FR Doc. 91-12305 Filed 5-22-91; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications

AGENCY: Minority Business Development Agency; Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under statutory authority (15 U.S.C. 1512) and Executive Order 11625 its Minority Business Development Center (MBDC) Program to operate an MBDC for approximately a three-year period, subject to availability of funds. The cost of performance for the first 12 months is estimated at $165,000 in Federal funds and a minimum of $29,118 in non-Federal contributions for the budget period of October 1, 1991 to September 30, 1992. Cost-sharing contributions may be in the form of cash contributions, client fees for services, in-kind contribution, or combinations thereof. The MBDC will operate in the Tulsa Standard Metropolitan Statistical Area (SMSA).

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for profit organizations, local and state governments, American Indian tribes, and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operations of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms, offer a full range of management and technical assistance, and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purposes of the Department for final processing and approval if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDC's shall be required to contribute at least 15% of the total project cost through non-Federal contributions. Client fees for billable management and technical assistance (M&TA) rendered must be charged by MBDCs. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

The MBDC may continue to operate after the initial competitive year for up to two (2) additional budget periods. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as a MBDC's satisfactory performance, the availability of funds and Agency priorities.

CLOSING DATE: The closing date for applications is July 5, 1991. Applicants should mail the completed application to the office specified in the project announcement. MBDA will accept only those applications (1) which are received by the closing date or (2) which show acceptable evidence of mailing on or before the closing date. Acceptable evidence consists of (1) a legible U.S. Postal Service postmark or (2) a legible mail or courier service receipt dated on or before July 5, 1991. Anticipated processing time of this award is 120 days.

Note: Please mail completed application to the following address: San Francisco Regional Office, 221 Main Street, room 1280, San Francisco, California 94105.

FOR APPLICATION KIT OR OTHER INFORMATION CONTACT: Dallas Regional Office, 1100 Commerce Street, room 7B23, Dallas, Texas 75242, Attn: Yvonne Guevara.

SUPPLEMENTARY INFORMATION: Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application and applicable regulations can be obtained through the Dallas Regional Office. A pre-bid conference will be held on June 13, 1991 in the U.S. Courthouse, Grand Jury Room 411, on 333 West 4th Street, Tulsa, Oklahoma at 9:30 a.m.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Notice: Applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department are made to pay the debt.

Notice: Section 319 of Public Law 101-121 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with specific contract, grant, or loan. A "Certification for Contracts, Grants, Loans, and Cooperative Agreements" and the SF-LLL "Disclosure of Lobbying Activities" (if applicable), is required.

Notice: Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

Notice: Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

Notice: A false statement on the application may be grounds for denial or termination for funds and grounds for possible punishment by a fine or imprisonment.

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Dated: May 16, 1991.
Victor Cassus,
Deputy Regional Director.
[FR Doc. 91-12238 Filed 5-22-91; 8:45 am]
BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Marine Mammals: Issuance of Permit; NMFS, Southeast Fisheries Science Center (P77#51)

On April 5, 1991, notice was published in the **Federal Register** (56 FR 14087) that an application had been filed by the Southeast Fisheries Science Center, National Marine Fisheries Service, 75 Virginia Beach Drive, Miami, Florida 33149, for a permit to take tissue samples via projectile biopsies from all cetacean species likely to be encountered during the Center-sponsored Gulf of Mexico marine mammal survey cruises. The samples will be taken from the following species of cetacean: saddleback dolphin (*Delphinus delphis*), pygmy killer whale (*Feresa attenuata*), short-finned pilot whale (*Globicephala macrorhynchus*), Risso's dolphin (*Grampus griseus*), Fraser's dolphin (*Lagenodelphis hosei*), killer whale (*Orcinus orca*), melon-headed whale (*Peponocephala electra*), false killer whale (*Pseudorca crassidens*), pan-tropical spotted dolphin (*Stenella attenuata*), short-snouted spinner dolphin (*S. clymene*), striped dolphin (*S. coeruleoalba*), Atlantic spotted dolphin (*S. frontalis*), long-snouted spinner dolphin (*S. longirostris*), rough-toothed dolphin (*Steno bredanesis*), bottlenose dolphin (*Tursiops truncatus*), pygmy sperm whale (*Kogia breviceps*), and dwarf sperm whale (*K. Simus*). The samples will be used for scientific study and shared with other researchers.

Notice is hereby given that on May 16, 1991, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit is based on a finding that the proposed taking is consistent with the purposes and policy of the Marine Mammal Protection Act. The Service has determined that this research satisfies the issuance criteria for scientific research permits. The taking is required to further a bona fide scientific purpose and does not involve unnecessary duplication of research.

The Permit is available for review in the following offices:

By appointment: Office of Protected Resources, Permit Division, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, Maryland 20910 (301/427-2289); and
Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, Florida 33702 (813/893-3141).

Dated: May 16, 1991.
Nancy Foster,
Director, Office of Protected Resources, National Marine Fisheries Service.
[FR Doc. 91-12233 Filed 5-22-91; 8:45 am]
BILLING CODE 3510-22-M

Marine Mammals; Request for Modification to Permit No. 598

AGENCY: National Marine Fisheries Service, NOAA, Commerce.
ACTION: Request for Modification to Scientific Research Permit No. 598, Alaska Fisheries Science Center (P77#28).

Notice is hereby given that the Alaska Fisheries Science Center (NMML), National Marine Fisheries Service, 7600 Sand Point Way NE., Bin C15700, Seattle, Washington 98115-0070, has requested a modification to Permit No. 598 pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 598 issued on July 23, 1988 (52 FR 27697) authorized no more than a total of 32,500 northern fur seal pups (*Callorhinus ursinus*) to be taken annually for population monitoring and assessment programs. The research involved capturing, restraint to affix radio transmitters, time-depth recorders, satellite-linked instruments, swim speed recorders, and/or other environmental sensors and behavioral recorders, lavaging or enema samples taken, and release of the animal.

Modification No. 1 authorized a total of up to 80 northern fur seals per year to be incidentally killed or injured during authorized research activities. An additional 3,260 northern fur seals were authorized to be taken annually to allow continuation of essential population monitoring and assessment programs by specified methods.

Modification No. 2 authorized up to 30,000 juvenile male northern fur seals to be taken annually by roundup. Up to 3,900 of the 30,000 male seals were authorized to be captured by physical restraint, marked, handled and released annualy and the rates of survival monitored.

A new modification is requested to chemically restrain (with 1.2-1.5 mg/kg of Telazol) rather than physically restrain large adult males too large to be handled safety during the attachment of satellite tags and the removal of entangling debris.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this proposed modification, should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Highway, SSMC1, room 7324, Silver Spring, Maryland 20910, within 30 days of the publication date of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular proposal would be appropriate. The holding of such a hearing is at the discretion of the Assistant Administrator for fisheries. All statements and opinions contained in this proposed modification are summaries of those of the applicant and do not necessarily reflect the views of the National Marine Fisheries Service. Documents submitted in connection with the above are available for review, by appointment, by interested persons in the following offices:

Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, SSMC1, room 7324, Silver Spring, Maryland 10910 (301/427-2289);
Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., Bin C15700, Seattle, Washington 98115-0070 (206/526-6150); and
Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal island, California 90731-7415 (213/514-6196).

Dated: May 16, 1991.
Nancy Foster,
Director, Office of Protected Resources, National Marine Fisheries Service.
[FR Doc. 91-12234 Filed 5-22-91; 8:45 am]
BILLING CODE 3510-22-M

Marine Mammals; Issuance of Public Display Permit No. 739

AGENCY: National Marine Fisheries Service, NOAA, Commerce.
ACTION: Issuance of public display permit no. 739.

SUMMARY: On Thursday, April 11, 1991, notice was published in the **Federal Register** (56 FR 14894) that an application (P474) had been filed by Mount Desert Oceanarium, P.O. Box 696, Southwest Harbor, Maine 04679. A public display permit to obtain the care and custody, on a seasonal basis, of four Atlantic harbor seals (*Phoca vitulina vitulina*) currently in the possession of Mystic Marinelife Aquarium of Mystic, Connecticut.

Notice is hereby given that on May 13, 1991, as authorized by the provisions of the Marine Mammal Protection Act, the National Marine Fisheries Service issued a Permit for the above activities subject to the Special and General Conditions set forth therein.

The Permit is available for review by appointment by interested persons in the following offices:

Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, room 7330, SSMC1, Silver Spring, Maryland 20910, (301) 427-2289; and
Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930, (508) 281-9300.

Dated: May 16, 1991.
Nancy Foster,
Director, Office of Protected Resources, National Marine Fisheries Service.
[FR Doc. 91-12235 Filed 5-22-91; 8:45 am]
BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Poland

May 17, 1991.
AGENCY: Committee for the Implementation of Textile Agreements (CITA).
ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: May 28, 1991.
FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:
Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 611 is being increased for swing and carryforward, reducing the limit for Categories 338/339 to account for the swing being applied. As a result, the limit for Category 611, which is currently filled, will re-open.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 50756, published on December 10, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements
May 28, 1991
Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 4, 1990 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Poland, and exported during the twelve-month period which began on January 1, 1991 and extends through December 31, 1991.

Effective on May 28, 1991, you are directed to amend the December 4, 1991 directive to adjust the limits for the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and the Republic of Poland:

Category	Adjusted twelve-month limit [1]
Levels not in a group	
338/339	1,046,750 dozen.
611	1,484,000 square meters.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1990.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Auggie D. Tantillo,
Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 91-12300 Filed 5-22-91; 8:45 am]
BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

AGENCY: Defense Advisory Committee on Women in the Services (DACOWITS).
ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92-463, notice is hereby given of a forthcoming meeting of the Executive Committee of the (DACOWITS). The purpose of the meeting is to review unresolved resolutions made by the committee at the DACOWITS 1991 Spring Conference; review the Subcommittee Issue Agenda; review the proposed agenda for the DACOWITS 1991 Executive Committee overseas visit; and discuss issues relevant to women in the Services. All meeting sessions will be open to the public.

DATES: June 14, 1990, 9:30 a.m.-4 p.m.
ADDRESSES: SECDEF Conference Room 3E869, The Pentagon, Washington, DC.
FOR FURTHER INFORMATION CONTACT: Major Marilyn J. Kendall, Office of the DACOWITS and Military Women Matters, OASD (Force Management and Personnel), The Pentagon, room 3D769, Washington, DC 20301-4000; telephone (703) 697-2122.

Dated: May 17, 1991.
L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 91-12236 Filed 5-22-91; 8:45 am]
BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: CHAMPUS Chiropractic Care Demonstration Beneficiary Survey.

Type of Request: Expedited submission—approval date requested: June 30, 1991.

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Average Burden Hours/Minutes Per Response: 15 minutes.

Responses Per Respondent: One.

Number of Respondents: 381.

Annual Burden Hours: 95.25.

Annual Responses: 381.

Needs and Uses: Information will be used, in conjunction with other objective procedures, to evaluate the CHAMPUS Chiropractic Care Demonstration Project. Statistical sampling of various populations of beneficiaries with similar diagnoses will be utilized to provide data on the benefits and costs of chiropractic care, including the extent to which chiropractic, as an alternative source of care, would replace other medical services, rather than merely adding to the program costs.

Affected Public: Individuals/households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Joseph F. Lackey.

Written comments and recommendations on the proposed information collection should be sent to Mr. Lackey at the Office of Management and Budget, Desk Officer, room 3002, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written request for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22203-4302.

Dated: May 17, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 3810-01-M

CHAMPUS

Blue Cross and Blue Shield of South Carolina
CHAMPUS Fiscal Intermediary
2501 N. Dozier Boulevard
Florence, SC 29501

Mid-Atlantic Region 1-800-476-8500
Western Region 1-800-225-4816
California 1-800-334-0308

OMB APPROVED
0704 - XXXX
EXPIRES:

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302; and to the Office of Management and Budget, Paperwork Reduction Project (0704 - XXXX), Washington, DC 20503.

Mr. John Doe
1234 Highroller Way
Lost Wages, NV 77777

Dear Mr. Doe: SSN#: 123-45-6789

Here are some questions about the chiropractic care you have been receiving. In terms of your satisfaction, how would you rate each of the following? (Circle one number on each line.)

	EXCELLENT	VERY GOOD	GOOD	FAIR	POOR
1. How long you waited to get an appointment	5	4	3	2	1
2. Amount of time you spent with the chiropractor.	5	4	3	2	1
3. Explanation of what was done for you.	5	4	3	2	1
4. The technical skills (thoroughness, carefulness, competence of the chiropractor).	5	4	3	2	1
5. The outcome of your chiropractic care, how much you were helped.	5	4	3	2	1
6. Overall quality of care and service.	5	4	3	2	1

CHAMPUS CCD Form Letter 1

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(2)

Please describe how you have felt after receiving care for this conditon.

_____ Better than before starting treatment.
_____ Same as before starting treatment.
_____ Worse than before starting treatment.

Have your normal activities had to change because of this illness/injury?

/ / No

/ / Yes, I have had to stop working. If yes, please tell us how long you have been out of work. _____

/ / Yes, I am still working, but not at my normal job. If yes, please tell us what your new occupation is now and how long you have been working in this occupation._____

/ / Yes, I can't do all of the things I used to do, i.e, drive a car, wash my hair, activities of daily living. If yes, please tell us how long this has been true._____

Comments:

Thank you for your time and assistance. Please return the completed form in the self-addressed envelope provided.

CHAMPUS

Blue Cross and Blue Shield of South Carolina
CHAMPUS Fiscal Intermediary
200 W. Dozier Boulevard
Florence, SC 29501

Mid-Atlantic Region 1-800-476-8500
Western Region 1-800-225-4816
California 1-800-334-0308

OMB APPROVED
0704 - XXXX
EXPIRES:

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302; and to the Office of Management and Budget, Paperwork Reduction Project (0704 - XXXX), Washington, DC 20503.

Mr. John Doe
1234 Highroller Way
Lost Wages, NV 77777

Dear Mr. Doe: SSN#: 123-45-6789

We have received your letter terminating your participation in the Chiropractic Care Demonstration Project, effective _____. Here are some questions about the chiropractic care you received. In terms of your satisfaction, how would you rate each of the following? (Circle one number on each line.)

	EXCELLENT	VERY GOOD	GOOD	FAIR	POOR
1. How long you waited to get an appointment.	5	4	3	2	1
2. Amount of time spent with the chiropractor.	5	4	3	2	1
3. Explanation of what was done for you.	5	4	3	2	1
4. The technical skills (thoroughness, carefulness, competence of the chiropractor).	5	4	3	2	1
5. The outcome of your chiropractic care, how much you were helped.	5	4	3	2	1
6. Overall quality of care and service.	5	4	3	2	1

CHAMPUS CCD Form Letter 2

(11157) Rev. 7/90

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(2)

Why did you choose to terminate your participation?

/ / Moved out of the area.
Feel you were helped as much as could be, and feel better.
/ / Feel nothing more could be done, and don't feel better.
/ / Problems with the care received.

Would you consider seeing a chiropractor again?

/ / Yes / / No

Comments:

Thank you for your time and assistance. Please return the completed form in the self-addressed envelope provided.

CHAMPUS

Blue Cross and Blue Shield of South Carolina
CHAMPUS Fiscal Intermediary
200 W. Dozier Boulevard
Florence, SC 29501

Mid-Atlantic Region 1-800-476-8500
Western Region 1-800-225-4816
California 1-800-334-8308

OMB APPROVED
0704 - XXXX
EXPIRES:

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302; and to the Office of Management and Budget, Paperwork Reduction Project (0704 - XXXX), Washington, DC 20503.

Mr. John Doe
1234 Highroller Way
Lost Wages, NV 77777

Dear Mr. Doe: SSN#: 123-45-6789

Your chiropractor has notified us that he/she has released you from treatment. Here are some questions about the chiropractic care you received. In terms of your satisfaction, how would you rate each of the following? (Circle one number on each line.)

	EXCELLENT	VERY GOOD	GOOD	FAIR	POOR
1. How long you waited to get an appointment.	5	4	3	2	1
2. Amount of time you spent with the chiropractor.	5	4	3	2	1
3. Explanation of what was done for you.	5	4	3	2	1
4. The technical skills (thoroughness, carefulness, competence of the chiropractor).	5	4	3	2	1
5. The outcome of your chiropractic care, how much you were helped.	5	4	3	2	1
6. Overall quality of care and service.	5	4	3	2	1

CHAMPUS CCD Form Letter 3

(11157) Rev. 7/90

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(2)

Please describe how you felt after finishing your chiropractic treatment.

/ / Better than before starting treatment.
/ / Same as before starting treatment.
/ / Worse than before starting treatment.

Would you consider using a chiropractor again?

/ / Yes
/ / No
/ / Don't Know

Comments:

Thank you for your time and assistance. Please return the completed form in the self-addressed envelope provided.

CHAMPUS

Blue Cross and Blue Shield of South Carolina
CHAMPUS Fiscal Intermediary
200 N. Boyer Boulevard
Florence, SC 29501

Mid-Atlantic Region 1-800-476-8500
Western Region 1-800-225-4816
California 1-800-334-0308

OMB APPROVED
0704 - XXXX
EXPIRES:

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302; and to the Office of Management and Budget, Paperwork Reduction Project (0704 - XXXX), Washington, DC 20503.

Mr. John Doe
1234 Highroller Way
Lost Wages, NV 77777

Dear Mr. Doe: SSN#: 123-45-6789

During the past year, you have received medical care for a problem with your musculoskeletal system (bones, muscles, cartilage). Here are some questions about the medical care you received. In terms of your satisfaction, how would you rate each of the following? (Circle one number on each line.)

	EXCELLENT	VERY GOOD	GOOD	FAIR	POOR
1. Amount of time you waited for an appointment.	5	4	3	2	1
2. Amount of time you spent with the doctor.	5	4	3	2	1
3. Explanation of what was done for you.	5	4	3	2	1
4. The technical skills (thoroughness, carefulness, competence of the doctor).	5	4	3	2	1
5. The outcome of your medical care, how much you were helped.	5	4	3	2	1
6. Overall quality of care and service.	5	4	3	2	1

CHAMPUS CCD Form Letter 4
(11157) Rev. 7/90

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(2)

Please describe how you felt after receiving medical care for this condition.

___ Better than before starting treatment.
___ Same as before starting treatment.
___ Worse than before starting treatment.

Have your normal activities had to change because of this illness/injury?

___ No.

___ Yes, I have had to stop working. If yes, please tell us how long you have been out of work. _____

___ Yes, I cannot do all of the things I used to do, i.e., drive a car, wash my hair, activities of daily living.

___ Yes, I am still working, but not at my normal job. If yes, please tell us what your new occupation is now and how long you have been working in this occupation. _____

Comments:

Thank you for your time and assistance. Please return the completed form in the self-addressed envelope provided.

[FR Doc. 91-12237 Filed 5-22-91; 8:45 am]
BILLING CODE 3810-01-C

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's ad hoc committee on Air Force Aircraft Jet Engine Manufacturing and Production Processes will meet on 17–19 June 1991 from 8 a.m. to 5 p.m. at the ANSER Corporation, 1215 Jefferson Davis Highway, Arlington, Virginia.

The purpose of this meeting is to review the task statement and develop a roadmap for the study.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,
Air Force Federal Register Liaison Officer.
[FR Doc. 91–12258 Filed 5–22–91; 8:45 am]
BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board Technology Strategy Cross-Matrix Panel will meet on 24 June 1991 from 8 a.m. to 5 p.m. at the Pentagon, Washington, DC.

The purpose of the meeting is to gather information, deliberate findings, and draft recommendations for SAF/AQ.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,
Air Force Federal Register Liaison Officer.
[FR Doc. 91–12259 Filed 5–22–91; 8:45 am]
BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Ad Hoc Committee on Alternative Strategies for Software and Computer Processor Upgrades to Software Intensive Aircraft will meet on 25–26 June 1991 from 8 a.m. to 5 p.m. at ANSER Corporation, 1215 Jefferson Davis Highway, Arlington, Virginia.

The purpose of this meeting is to gather information in support of the study.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,
Air Force Federal Register Liaison Officer.
[FR Doc. 91–12260 Filed 5–22–91; 8:45 am]
BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board (SAB) Ad Hoc Committee on Hypersonic Technologies will meet from 8 a.m. to 5 p.m. on 19 June 1991 at Wright Lab, Wright-Patterson Air Force Base, Ohio.

The purpose of this meeting is to review the results of the Air Force Systems Command task group on hypersonic technologies.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4).

For for further information, contact the SAB Secretariat at (703) 697–8404.

Patsy J. Conner,
Air Force Federal Register Liaison Officer.
[FR Doc. 91–12204 Filed 5–22–91; 8:45 am]
BILLING CODE 3910–01–M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

National Science Scholars Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of closing date for submission of fiscal year 1991 scholar nominations under the National Science Scholars Program.

SUMMARY: The Secretary of Education (Secretary) gives notice of the closing date for the State nominating committees approved by the Secretary to submit the names of nominees for National Science Scholarships to the President under the National Science Scholars Program (NSSP) authorized by title VI, part A of the Excellence in Mathematics, Science, and Engineering Education Act of 1990, Public Law 101–589, 20 U.S.C. 5381 *et seq.* (the Act). The NSSP provides scholarships to students selected by the President for undergraduate study of the physical, life, or computer sciences, mathematics, or engineering.

The Secretary will accept the names of nominees on behalf of the President from the nominating committees of States participating in the National Science Scholars Program, including the District of Columbia, Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands. Each State nominating committee must submit for consideration the names and pertinent information of at least four nominees from each congressional district in the State. The Act provides that at least one half of the nominees from each congressional district must be female and all of the nominees must be ranked in order of priority within each congressional district. A State with an approved nominating committee that desires to have its nominees considered for selection as National Science Scholars must provide each nominee's name, permanent address, telephone number where the nominee may be reached during the summer, social security number if provided by the nominee, sex, congressional district, the congressional representative's or delegate's name for that congressional district, priority ranking within the congressional district, and the name and address of the institution of higher education at which the nominee has been accepted or which he or she plans to attend.

CLOSING DATE FOR TRANSMITTAL OF NSSP NOMINATIONS: A State must mail or arrange for hand-delivery of its NSSP nominations for fiscal year 1991 by July 12, 1991.

STATE NSSP NOMINATIONS DELIVERED BY MAIL: NSSP nominations that are mailed must be sent to the address below.

A State must show proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice, or receipt from a Commercial Carrier; or (4) any other proof of mailing acceptable to the Secretary of Education.

If a State's NSSP nominations are sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not dated by the U.S. Postal Service. A State should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, a State should check with its local post office. A State is encouraged to use registered or at least first-class mail.

Each State submitting nominations after the closing date will be notified

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that its nominees cannot be considered for fiscal year 1991 funding.

ADDRESSES: Nominations that are mailed must be sent to the following address: National Science Scholars Program, United States Department of Education, Office of Student Financial Assistance, ROB–3, room 4651, 400 Maryland Avenue, SW., Washington, DC 20202–5453.

APPLICATIONS DELIVERED BY HAND: State NSSP nominations that are hand-delivered must be taken to the U.S. Department of Education, Office of Student Financial Assistance, 7th and D Streets, SW., room 4651, GSA Regional Office Building #3, Washington, D.C. 20202–5453. Hand-delivered nominations will be accepted between 8 a.m. and 4:30 p.m. daily (Washington, DC time), except Saturdays, Sundays, and Federal holidays.

State nominations that are hand-delivered will not be accepted after 4:30 p.m. on the closing date.

PROGRAM INFORMATION: Under the NSSP, the Secretary is authorized to award scholarships to outstanding students selected by the President for the study of physical, life, or computer science, mathematics, or engineering. The Secretary is authorized to award initial scholarships of up to $5,000 for the first year of undergraduate study to graduating high school students as well as continuation awards of up to $5,000 for up to four additional years of undergraduate study. The actual award amounts will depend on available appropriated funds, the number of States that elect to participate, and the prohibition against an award exceeding National Science Scholar's cost of attendance.

APPLICABLE STATUTORY AND REGULATORY PROVISIONS: The following statute and regulations are applicable to the fiscal year 1991 National Science Scholars Program:

(1) The program statute.

(2) The Notice of Final Selection Criteria published in the Federal Register on May 1, 1991, at 56 FR 20092–20094.

(3) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (with the exception of subparts C and D, and sections 75.580–75.592), 77, 79, 81, 82, 85, and 86.

INTERGOVERNMENTAL REVIEW: This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

FOR FURTHER INFORMATION: For further information contact Mr. Fred H. Sellers, Chief, State Student Incentive Grant Section, Office of Student Financial Assistance, U.S. Department of Education, Washington, DC 20202–5447; telephone (202) 708–4607. Deaf and hearing impaired individuals may call: The Federal Dual Party Relay Service at 1–800–877–8339 (in Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

(Authority: 20 U.S.C. 5381 *et seq.*)

(Catalog of Federal Domestic Assistance Number 84.242, National Science Scholars Program)

Dated: May 16, 1991.

Michael J. Farrell,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 91–12230 Filed 5–22–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Proposed Finding of no Significant Impact; the Proposed Adoption and Implementation of a United States Policy on Receipt and Reprocessing of Spent Research Reactor Fuel (Off-Site Fuels Policy)

AGENCY: Department of Energy.

ACTION: Proposed finding of no significant impact.

SUMMARY: The Department of Energy (DOE) has prepared an environmental assessment (EA) on the proposed adoption and implementation of a policy for 10 years or 481 shipments, whichever comes first, of receiving, reprocessing and making financial settlement (monetary or credit) for U.S. origin spent research reactor fuels (for all enrichments) not owned or leased by DOE from reactors not owned or operated by DOE (DOE/EA–0443). Implementation of such a policy would involve the transport of spent research fuel of U.S. origin from reactors in North America and locations around the world to DOE's Savannah River Site (SRS), near Aiken, South Carolina, and DOE's Idaho National Engineering Laboratory (INEL), outside of Idaho Falls, Idaho, for reprocessing. Based on the analysis in the EA, the DOE believes that the proposed action is not a major Federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, and therefore, DOE proposes to issue a Finding of No Significant Impact (FONSI). The proposed FONSI and the supporting EA are being made available for public review for a period of 30 days following the date of this notice. Following completion of the public review period, DOE will make its final determination on whether to issue a FONSI or to prepare an environmental impact statement (EIS).

For further information about the proposed action or to obtain copies of the EA or to provide comments, contact: Lynne Wade, DP–143, U.S. Department of Energy, 19901 Germantown Road, Germantown, Maryland 20874, (301) 353–6828.

For further information about the NEPA process, contact: Carol Borgstrom, EH–25, Director, Office of NEPA Oversight, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600.

Description of the Proposed Action

The proposed action is the adoption and implementation of a policy for 10 years or 481 shipments, whichever comes first, of receiving, reprocessing and making financial settlement (monetary or credit) for U.S. origin spent research reactor fuels (for all enrichments) not owned or leased by DOE from reactors not owned or operated by DOE. Shipments would be made in accordance with International Atomic Energy Agency (IAEA) and U.S. regulations. The fuel elements would be transported in accident-resistant casks (Type B casks) that meet performance criteria of the IAEA, U.S. Nuclear Regulatory Commission (NRC), and U.S. Department of Transportation (DOT). Casks arriving in the U.S. would be transported overland from the port facility by truck to one of two DOE reprocessing facilities, SRS or INEL. At the reprocessing facility, DOE would take title to and reprocess the fuel.

This proposed action is consistent with the Atomic Energy Act, as amended, and the Nuclear Nonproliferation Act. The acceptance of U.S. origin fuel serves nonproliferation interests by removing material potentially usable for nuclear weapons from domestic and foreign research reactors.

Background

In 1968, the Atomic Energy Commission established a policy whereby it agreed to receive, reprocess

and make financial settlement for irradiated reactor fuels. A key and express condition of that Off-Site Fuels Policy was that it involved only fuel containing material produced or enriched in the United Stats (U.S. origin fuel). Over the years as the policy evolved through predecessor agencies to the U.S. DOE, it became focused principally on research reactor fuel using highly enriched uranium. However, the Off-Site Fuels Policy was subsequently amended to include low enriched uranium (LEU) fuels.

This policy covered U.S. origin fuel within the United States or abroad. DOE received and took title to this fuel at its designated facilities, but was not responsible for transporting the fuel to the site of reprocessing. The Off-Site Fuels Policy, as it related to highly enriched uranium, expired on December 31, 1988. 52 FR 49198 (1987). The policy for LEU fuels does not expire until December 31, 1992. 51 FR 7478 (1986).

There is considerable international experience in transporting spent nuclear fuel in the type of accident-resistant packaging (Type B casks) in which research reactor spent fuel is shipped. Over 365 shipments of spent foreign research reactor fuel have been received by the Department of Energy since 1978. There have been no releases or environmentally significant impacts from any of these shipments.

Risk Assessment

The EA assesses the potential environmental impacts of transportation of spent research reactor fuel on the high seas, in U.S. ports and on the highway, and from reprocessing of the fuel at the SRS and the INEL. The RADTRAN risk analysis computer code, which includes an incident free transport module and an accident module, was used to calculate the potential radiological risks associated with the transport of the spent research reactor fuel.

Transportation and Port Impacts

The total radiological risk for transport of spent research reactor fuel for the period of the proposed policy was assessed for alternative implementing cases: a base case in which 381 shipments would go from east coast ports to SRS and 100 shipments would go from west coast ports to INEL; an alternative case in which all 481 shipments would go from east coast ports to SRS; an alternative case in which all 481 shipments would go from west coast ports to INEL; an alternative case in which all 481 shipments would go from west coast ports to SRS; and an alternative case in which all 481 shipments would go from east coast ports to INEL.

As discussed in the EA, the radiological risk calculated for the base case or any of the alternative implementing cases is insignificant. If both the incident-free transport and transport involving an accident are considered, the total estimated radiological exposure over the period of the proposed policy would be equal to or less than 52 person-rem, which corresponds to a radiological risk of 0.026 latent cancer fatalities. During the period of the proposed policy, the risk from transportation of a non-radiological fatality would be equal to or less than 0.22.

A maximum annual receipt rate also was calculated to illustrate the maximum radiological impact in a single year of transport of spent research reactor fuel under the proposed policy. For this case, 96 shipments (20 percent of the total number of shipments expected during the period of the proposed policy) were assumed to be received in single year. Of these shipments, 48 shipments would go to SRS (24 from east coast ports and 24 from west coast ports) and 48 shipments would go to INEL (24 from west coast ports and 24 from east coast ports). All shipments were assumed to consist of high enriched uranium (93 percent U–235) spent fuel. When incident-free transport and transport involving an accident are combined, the total exposure from transport of 96 shipments in a single year would be 9.1 person-rem which corresponds to a radiological risk of 0.0046 latent cancer fatalities.

Reprocessing

The maximum risks at either site from reprocessing fuel received under this policy would occur if all of the spent fuel expected to be received under the proposed policy were reprocessed at either of the sites. If all the spent research reactor fuel were transported to and reprocessed at a single site, the impacts associated with reprocessing (including storage) this spent fuel, including the quantities of waste generated, would be at most 10% of the overall reprocessing impacts for SRS and at most 19% for INEL over the possible 10 year period of the proposed policy. This incremental risk would be insignificant at either site.

Total Radiological Risk

If all of the fuel were transported from west coast ports to, and reprocessed at, the SRS (an assumption which maximizes transport distances, and therefore transportation risks, for the alternative implementing case involving reprocessing at SRS), the maximum radiological dose for both transportation and reprocessing over the period of the proposed policy would be about 82 person-rem. This would correspond to a radiological risk of 0.041 latent cancer fatalities. If all of the fuel were transported from east coast ports to, and reprocessed at, INEL (an assumption which maximizes transport distances and therefore transportation risks, for the alternative implementing case involving reprocessing at INEL), the maximum radiological dose for both transportation and reprocessing over the period of the proposed policy would be about 74 person-rem. This would correspond to a radiological risk of 0.037 latent cancer fatalities.

Alternatives

Alternatives to the proposed action considered in the EA include the No Action Alternative and renewal of the policy without reprocessing. The No Action Alternative, which is not to adopt and implement the proposed policy, would result in storage of the spent fuel at the reactor where it was irradiated or, with the approval of the U.S., in other disposition of the spent fuel (relocation/reprocessing/resale). Under the terms of the Agreement for Cooperation between the U.S. and EURATOM, spent fuel may be relocated, reprocessed or resold within EURATOM without further U.S. approval. For foreign research reactors, the impacts of continued storage of the research reactor spent fuel would occur in the foreign country in which the reactor is located. The No Action Alternative would be inconsistent with the policy objectives and concerns of the Atomic Energy Act of 1954, as amended, and the Nuclear Nonproliferation Act.

Renewal of the policy without reprocessing (i.e., shipment of the spent fuel to SRS or INEL for storage) was also considered as an alterantive. The impacts associated with reprocessing this fuel would be eliminated. However, the resultant accumulation of spent research reactor fuel in DOE operating facilities was considered unacceptable. If the spent fuel were not reprocessed, the fee for reprocessing would not be charged and financial settlement (monetary or credit) for the usable uranium would not be extended to the participants in the proposed program.

Proposed Determination

Based on the insignificant risks associated with implementation of the proposed policy as documented in the EA, DOE believes that the proposed

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action does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the NEPA, and that the preparation of an environmental impact statement is not required. DOE will make its final determination on whether to issue a FONSI or to prepare an EIS following the 30-day public review period.

Issued at Washington, DC, this 16th day of May 1991.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 91-12307 Filed 5-22-91; 8:45 am]

BILLING CODE 6450-01-M

Technical Advisory Committee on Verification of Fissile Material and Nuclear Warhead Controls

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Technical Advisory Committee on Verification of Fissile Material and Nuclear Warhead Controls.

Date and Time: Thursday, May 23, 1991, 8:30 a.m. to 5 p.m.—Closed; Friday, May 24, 1991, 8:30 a.m. to 5 p.m.—Closed.

Place: Lawrence Livermore National Laboratory, 7000 East Avenue, Livermore, California 94550.

Subject: Technical Report to Congress on Verification of Fissile Material and Nuclear Warhead Controls.

Contact: Victor E. Alessi, Director, Office of Arms Control, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2102.

Purpose of Committee: The Technical Advisory Committee is to advise the President in the preparation of a Report to Congress on Verification of Fissile Material and Nuclear Warhead Controls as defined in section 3151 of the National Defense Authorization Act for Fiscal Year 1991 (Pub. L. 101-510).

Agenda

May 23, 1991

8:30 a.m. Closed Meeting at Lawrence Livermore National Laboratory

5 p.m. Adjourn

May 24, 1991

8:30 a.m. Closed Meeting at Lawrence Livermore National Laboratory

5 p.m. Meeting Ends

Waiver of 15-Day Notice: Pursuant to § 101-6.1015(b)(2), title 41, Code of Federal Regulations, Federal Advisory Committee Management, the requirement to provide 15-days notice of a meeting is waived for the following reason. Due to the fact that the Department received a Presidential delegation to prepare this report on April 10, 1991, the chartering of the Technical Advisory Committee was accomplished on May 14, 1991, and invitations to members to participate on the Committee took place subsequently, it is urgent that the Technical Advisory Committee meet at the earliest possible date in order for a report to be forwarded to Congress by the Department's scheduled date of mid-July 1991.

Public Participation: Closed Meeting.

Closed Meeting: Under section 10(d) of the Federal Advisory Committee Act, Public Law 92-463, as amended (U.S.C. App. II (1982)), these advisory committee meetings concern matters listed in 5 U.S.C. 552b(c)(1). Accordingly, both May 23 and 24, 1991, meetings will be closed to the public.

Transcripts: There will be no transcripts of the meeting for public review.

Issued at Washington, DC on May 21, 1991.

Edwin F. Inge,

Deputy Advisory Committee Management Officer.

[FR Doc. 91-12387 Filed 5-21-91; 12:20 pm]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP89-634-000, CP89-634-001, CP90-639-000, CP90-639-001, CP89-661-000 and CP89-661-004]

Iroquois Gas Transmission System, L.P. et al.; Intent to Prepare an Environmental Assessment for the Iroquois/Tennessee Phase II Pipeline Project and Request for Comments on its Scope

May 17, 1991.

Introduction

Phase II of the Iroquois/Tennessee Pipeline Project involves the construction of about 54.2 miles of pipeline, 22,350 horsepower (hp) of compression at 4 locations, and 4 meter stations (see tables 1 and 2 for facility locations). In this second phase of the Iroquois/Tennessee Project, Iroquois Gas Transmission System, L.P. (Iroquois), Tennessee Gas Pipeline Company (Tennessee), and Algonquin Gas Transmission Company (Algonquin) seek certificates of public convenience and necessity under section 7(c) of the Natural Gas Act to construct and operate the above-described facilities for the transportation and delivery of Canadian natural gas to various customers in New York and the New England area.

Phase II of the project would include the transportation and delivery of a total of 153,000 Mcfd (thousands of cubic feet per day) of Canadian natural gas through the Iroquois system over and above the certificated Phase I volumes. The increased volumes would come through additional pipeline and compressor expansion on the Tennessee system, expansion of the Algonquin system, and construction of a meter station along the Iroquois system. Overall, the Phase II project involves the construction of 9 pipeline loops totaling 28.7 miles, 4 segments of replacement pipeline totaling 21.9 miles, 1 new lateral 3.6 miles in length, additional compression at 2 existing compressor stations, 2 new compressor stations totalling 22,350 hp of compression, and 4 meter stations.

On June 1, 1990, a Final Environmental Impact Statement (FEIS) was issued by the Federal Energy Regulatory Commission (FERC or Commission) for the Iroquois/Tennessee Phase I Pipeline Project. That project included delivery of 442,900 Mcfd of natural gas from Canada through the Iroquois system and through expansion of the Tennessee system. On November 14, 1990, the Commission issued an order approving the Phase I project.

Notice is hereby given that the staff of the FERC will prepare an environmental assessment (EA) on the facilities proposed in the above-referenced dockets pertaining to the Iroquois/Tennessee Phase II Pipeline Project.

Proposed Facilities

The general locations of the proposed pipeline and compression facilities for the Iroquois/Tennessee Phase II Pipeline Project are identified in figure 1. Table 1 identifies the proposed pipeline loop segments and replacement pipeline facilities and their locations by state, county, and town. Table 2 identifies the proposed compression and metering facilities and their locations.[1]

Tennessee

Tennessee's proposal involves the construction of 2 pipeline loop segments in Massachusetts totalling 8.8 miles, 2 lateral loop segments totalling 4.2 miles and 3 lateral line replacements totalling 17.9 miles in Massachusetts. Tennessee has proposed to construct its mainline loops in Massachusetts using a 60-foot-wide construction right-of-way and 25 feet would be retained as permanent right-of-way and 25 feet would be on the existing pipeline right-of-way. The lateral loops in Massachusetts are proposed to be constructed using a 55-foot-wide construction right-of-way of which 30 feet would become additional permanent right-of-way. The proposal for the three replacement pipelines would require a temporary 25-foot-wide construction right-of-way with no additional permanent right-of-way.

Tennessee has proposed to construct compression at three locations, two existing compressor stations (CS)—CS 254 and CS 261—and a new station—CS 266A. Compression at these 3 locations, totalling 8,200 hp, was studied in the Iroquois/Tennessee Phase I FEIS but was not necessary to transport Phase I volumes. However, these compressor additions would be necessary to transport the Phase II gas volumes.

At CS 254 in Columbia County, New York, Tennessee has proposed an additional 1,000 hp that was not studied in the Phase I FEIS. A 3,500-hp Solar Centaur unit was studied in the FEIS at this location. In the Phase I FEIS, 3,300 hp of compression was studied at CS 261 in Hampden County, Massachusetts.[2] Currently, 1,200 hp of compression above what was studied in the Phase I FEIS is proposed at CS 261. An additional 800 hp of compression beyond the 1,200 hp studied in the Phase I FEIS is proposed for a new station at CS 266A (Mendon) also in Worcester County, Massachusetts. This station would require a new 3-acre site located in the town of Mendon, near the existing Mendon Meter Station, off of Thayer Road.

Tennessee's Phase II proposal also includes additional metering capacity at two meter stations. Additional metering capacity is required at the certificated meter station in Wright, New York (interconnection with Iroquois) and for an existing meter station in mendon, Massachusetts (interconnection with Algonquin). No additional land would be required for the proposed modifications at the existing meter or compressor stations.

Algonquin

Algonquin's proposal includes five pipeline loop segments in Connecticut and Massachusetts totaling 15.7 miles, a 3.6-mile-long lateral in Rhode Island, and a 4.0-mile-long replacement in Massachusetts. The following facilities proposed by Algonquin were previously certificated by the Commission: The G-8 System Replacement, the E-1 System Loop, and the Manschester Street Lateral in the Niagara Import Point Project or the ANR Phase I Project. Depending on the pipeline size involved, the presently proposed construction right-of-way widths for various loop segments range from 20 feet to 75 feet of which 10 feet to 55 feet would remain as permanent right-of-way.

Algonquin has also proposed construction of a new 13,000-hp compressor station in Chaplin, Connecticut. The proposed facility would occupy approximately 10 acres of a 25-acre site.

The compressor station would be lcoated adjacent to Algonquin's existing 75-foot-wide right-of-way approximately 2,000 feet east of the Mount Hope River. Algonquin would also construct a new meter station, requiring about a 0.5-acre site that would be located adjacent to Algoquin's right-of-way. This meter station would be located in Providence, Rhode Island.

Iroquois

Iroquois proposes to construct a meter station at the interconnection with Algonquin's system in Brookfield, Connecticut. This meter station would be located near milepost 305 of the Iroquois mainline, near the High Medow Road crossing, and would require a 0.5-acre site near the intersection of the Iroquois pipeline and the existing Algonquin system. The meter station would be located north of the existing Algonquin pipelines.

Construction Timing and Techniques

Tennessee proposes to begin construction of its facilities in May 1992, with service expected by November 1992. The work will be divided into a number of separate construction spreads, each operating as a moving assembly line with an expected progression rate of approximately 1,000 to 1,500 feet per day. A typical spread would consist of right-of-way clearing and grading, ditching, stringing, bending, welding, joint coating and lowering in of the pipe, backfilling of the trench, and cleanup of the right-of-way. Special construction techniques would be used for crossing railroads, major roadways, wetlands and streams. These will be discussed in the EA.

New pipeline segments would be hydrostatically tested prior to being placed in service. Construction through residential areas would also be undertaken using selective construction techniques to minimize the extent and duration of disruption. Pipeline installation and testing would conform to the U.S. Department of Transportation minimum Federal safety standards.

Algonquin also proposes to construct its facilities, to the extent possible, during the May through October 1992 construction season. Algonquin would employ construction methods similar to those outlined by Tennessee, except Algonquin has not yet identified any special construction techniques for residential areas. This will also be addressed in the EA.

Current Environmental Issues

The EA will address the environmental concerns that have been and will be identified by the FERC staff and intervenors, and also in comments from concerned resource agencies and individuals. The following issues have been identified for consideration in the EA:

Cultural Resources:
- —Effect of the project on properties listed or eligible for listing on the National Register of Historic Places.

Biological Resources:
- —Impact of the project on threatened and endangered species.
- —Impact on wetlands and fisheries.
- —Habitat alteration.

Land Use:
- —Impact of the factilities on residences and private land.
- —Impact of the Berkshire Loop crossing of the Appalachian Trail.
- —Right-of-way width requirements.

Alternatives:
- —Alternative pipeline routes in residential and public interest areas.

Alternative compressor station sites.

Only specific environmental issues which have not been previously considered would be addressed for the compression proposed by Tennessee at CS 254, CS 261, and CS 266A or the following Algonquin facilities—the Manchester Street Lateral and Meter Station, the E-1 System Loop, and G-8 System Replacement—previously certificated by the Commission. The staff's previous analyses of these facilities will be incorporated by reference from the Phase I FEIS, the Niagara Import Point Project FEIS, and the Eagle Point/NEP Project (ANR Phase I) EA.

Specific Areas of Concern

Based on a preliminary analysis of the applications for new facilities and the environmental information provided by the applicants, the staff has identified several issues which will be specifically addressed in the EA. Comments are solicited on the following issues:

(1) Alternatives to the proposed Chaplin Compressor Station to avoid visual, noise or land use impacts related to this new facility; and

Mitigation, route deviations, and/or compensation in areas where the proposed replacement segments or other construction activities cross state lands

[1] The figures and tables referred to in this notice are not being printed in the Federal Register, but have been included in the mailing to all those receiving this notice. Copies are also available from the Commission's Public Reference Branch, room 3104, 941 North Capitol Street, NE., Washington, DC 20426, telephone (202) 208-1371.

[2] Tennessee filed a Motion for Expedited Certification of Compressor Facilities on March 21, 1991 for the proposed compression at CS 261. If the Commission certifcates the compression at CS 261 no analysis of this facility would be included in the Phase II EA.

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or other environmentally sensitive resources. The public lands crossed by Tennessee include Upton, Otis, and Spenser State Forest and Four Chimneys Wildlife Area. The public land crossed by Algonquin includes Diamond Hill State Park.

Comments are also solicited on any other topics of environmental concern.

Comment Procedures

A copy of this notice and request for comments on environmental issues has been sent to Federal, state and local environmental agencies, parties in this proceeding, and the public. Wherever facilities are proposed for Phase II, all counties in the project area, and all local jurisdictions which have experienced residential development adjacent to the pipelines or compressor stations, have been provided copies of detailed maps which identify the location of the proposed project in their respective areas. Comments on the scope of the EA should be filed as soon as possible but no later than June 17, 1991. All written comments must reference Docket Nos. CP90-639-001 and CP89-661-004, and be addressed to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

A copy of the comments should also be sent to: Mr. Mark Jensen, Environmental Project Manager, Federal Energy Regulatory Commission, Room 7312, 825 North Capitol Street, NE., Washington, DC 20426.

Comments recommending that the FERC staff address specific environmental issues should be supported with a detailed explanation of the need to consider such issues.

The EA will be based on the staff's independent analysis of the proposal and, together with the comments received, will constitute part of the record to be considered by the Commission in this proceeding. The EA may be offered as evidentiary material if an evidentiary hearing is held in this proceeding. In the event that an evidentiary hearing is held, anyone not previously a party to this proceeding and wishing to present evidence on environmental or other matters must first file with the Commission a motion to intervene, pursuant to rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

Organizations and individuals receiving this "Notice of Intent to Prepare an Environmental Assessment" have been selected to ensure public awareness of the Iroquois/Tennessee Phase II Pipeline Project and public involvement in the review process under the National Environmental Policy Act. The EA will be sent automatically to addresses on the Federal Energy Regulatory Commission's official service lists for this project, and to the appropriate Federal and state agencies. However, to reduce printing and mailing costs and related logistical problems, the EA will only be distributed to those other organizations, local agencies, and individuals who return the attached sheet, preferably within 45 days of this notice.

Additional information about the proposal, including detailed route maps for specific locations, is available from Mr. Mark Jensen, telephone (202) 208-1121.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12231 Filed 5-22-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-2021-000, et al.]

Questar Pipeline Co., et al.; Natural gas certification filings

May 16, 1991.

Take notice that the following filings have been made with the Commission:

1. Questar Pipeline Company

[Docket No. CP91-2021-000]

Take notice that on May 13, 1991, Questar Pipeline Company (Questar) of 79 South State Street, Salt Lake City, Utah 84111 filed in Docket No. CP91-2021-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate the Muddy Creek interconnect to provide intermediate transportation of natural gas from Questar's transmission system to the Kern River Gas Transmission Company (Kern River) transmission system in southwestern Wyoming. Such request was made under the blanket certificate issued by the Commission in Docket No. CP82-491-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Questar proposes to construct and operate 108,190 feet (20.49 miles) of 20-inch pipeline and compression facilities at an estimated cost of $11,675,000. Questar states that the installation of the interconnect facilities will allow it to deliver up to 110.5 MMcf per day of natural gas on a summer design day and up to 140 MMcf per day on a winter peak day to the Kern River transmission system. Questar also states that it seeks authorization to construct and operate the Muddy Creek interconnect facilities to transport natural gas to southwest and southern California markets for various Rocky Mountain shippers, including producers, pipeline companies, marketers, local distribution customers and end users.

Questar advises that it proposes to commence construction on the Muddy Creek interconnect by September 1991, with an anticipated in-service date of January 1992.

Comment date: July 1, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. Trunkline Gas Company, Williams Natural Gas Company

[Docket Nos. CP91-2052-000, CP91-2053-000, CP91-2054-000, CP91-2055-000, CP91-2056-000, CP91-2059-000]

Take notice that on May 15, 1991, Trunkline Gas Company, P.O. Box 1642, Houston, Texas 77251-1642, and Williams Natural Gas Company, P.O. Box 3288, Tulsa, Oklahoma 74101, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued in Docket No. CP86-586-000 and Docket No. CP86-631-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: July 1, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Mcf	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2052-000 (5-15-91)	Panhandle Trading Company (Marketer).	25,000 25,000 9,125,000	OLA, OTX, IL, LA, TN, TX.	KY	4-2-91, PT, Interruptible.	ST91-8382-000, 4-4-91.
CP91-2053-00 (5-15-91)	Clinton Gas Transmission, Inc. (Marketer).	50,000 50,000 18,250,000	OLA, OTX, IN, IL, LA, TN, TX.	OH	2-14-91, PT, Interruptible.	ST91-8391-000, 4-1-91.
CP91-2054-000 (5-15-91)	Panhandle Trading Company (Marketer).	25,000 25,000 9,125,000	OLA, OTX, IL, LA, TN, TX.	KY	4-2-91, PT, Interruptible.	ST91-8389-000, 4-4-91.
CP91-2055-000 (5-15-91)	North Canadian Marketing Corp. (Producer).	150,000 150,000 54,750,000	OLA, OTX, IL, LA, TN, TX.	IL	3-22-91, PT, Interruptible.	ST91-8384-000, 4-13-91.
CP91-2056-000 (5-15-91)	Panhandle Trading Company (Marketer).	25,000 25,000 9,125,000	OLA, OTX, IL, LA, TN, TX.	KY	4-2-91, PT, Interruptible.	ST91-8385-000, 4-4-91.
CP91-2059-000 (5-15-91)	Rangeline Corporation (Marketer).	250 250 91,250 [2]	CO, KS, MO, OK, TX, WY.	KS	4-3-91, FTS, Firm	ST91-8584-000, 4-3-91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2] WNG's quantities are in dekatherms.

3. Tennessee Gas Pipeline Company

[Docket No. CP91-1964-000]

Take notice that on May 6, 1991, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP91-1964-000 an application with the Commission, pursuant to section 7(b) of the Natural Gas Act (NGA), for permission and approval to abandon a portion of its firm sales to the Piedmont Natural Gas Company, Inc. (Piedmont), Nashville Gas Division, all as more fully set forth in the application which is open to public inspection.

Tennessee states that it provides Piedmont a daily firm sale and purchase service of up to 130,000 dekatherms (Dth) of natural gas under Tennessee's FERC Rate Schedule CD-1, as authorized in Docket No. CP88-870-000, 47 FERC ¶ 62,291 (1989). Piedmont notified Tennessee on February 15, 1990, that it wished to convert 10,000 Dth per day from firm sales to firm transportation service under Tennessee's FERC Rate Schedule FT, effective November 1, 1990. Tennessee, therefore, requests herein a retroactive effective date of November 1, 1990, for its proposed abandonment of firm sales pursuant to its FERC Rate Schedule CD-1 to Piedmont. No facilities are proposed to be abandoned.

Comment date: June 6, 1991, in accordance with Standard Paragraph F at the end of this notice.

4. Natural Gas Pipeline Company of America

[Docket Nos. CP91-2034-000, CP91-2035-000, CP91-2036-000, CP91-2037-000]

Take notice that Natural Gas Pipeline Company of America, 701 East 22nd Street, Lombard, Illinois 60148 (Applicant), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shipppers under its blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: July 1, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2034-000 (5-14-91)	Western Gas Processors, Ltd. (marketer).	20,000 10,000 3,650,000	Various	Various	3-5-91, ITS, Interruptible.	ST91-6010, 3-9-91.
CP91-2035-000 (5-14-91)	Seagull Marketing Services, Inc. (marketer).	100,000 60,000 21,900,000	Various	Various	2-25-91, ITS, Interruptible.	ST91-7963, 3-5-91.
CP91-2036-000 (5-14-91)	Stellar Gas Co. (marketer).	50,000 25,000 9,125,000	Various	Various	7-13-90, ITS, Interruptible.	ST91-6316, 3-22-91.
CP91-2037-000 (5-14-91)	PSI Marketing, Inc. (marketer).	250,000 100,000 36,500,000	Various	Various	3-1-91, ITS, Interruptible.	ST91-6011, 3-6-91.

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Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12232 Filed 5-22-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 90-113-NG]

Coenergy Ventures, Inc.; Order Granting Authorization to Export Natural Gas to Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an order granting blanket authorization to export natural gas to Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Coenergy Ventures, Inc., authorization to export up to 20 Bcf of natural gas to Canada over a two-year period commencing with the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 16, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-12308 Filed 5-22-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 90-05-NG]

Rochester Gas and Electric Corp.; Conditional Authorization to Import Natural Gas From Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of issuance of conditional order granting long-term authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order conditionally authorizing Rochester Gas and Electric Corporation (RG&E), to import from Canada up to 16,000 Mcf per day of natural gas over a term of ten years commencing on the date the proposed pipeline facilities of Empire State Pipeline Company are placed in service. This gas would be used for RG&E's system supply. The order makes preliminary findings on issues that do not involve environmental matters. The approval is conditioned on the entry of a final opinion and order after DOE independently reviews the results of an environmental assessment being prepared by the Federal Energy Regulatory Commission on the new facilities needed to transport the gas.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 16, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-12309 Filed 5-22-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-00383; FRL-3928-4]

State FIFRA Issues Research and Evaluation Group (SFIREG); Working Committee on Groundwater Protection and Pesticide Disposal; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Groundwater Protection and Pesticide Disposal will hold a 2-day meeting, beginning on May 30, 1991, and ending on May 31, 1991. This notice announces the location and times for the meeting and sets forth tentative agenda topics. The meeting is open to the public.

DATES: The SFIREG Working Committee will meet on Thursday, May 30, 1991, from 8:30 a.m. to 5 p.m., and on Friday, May 31, 1991, beginning at 8:30 a.m. and adjourning at approximately 1 p.m.

ADDRESSES: The meeting will be held at: Holiday Inn - Crowne Plaza, 300 Army Navy Drive, Arlington, VA 22202 (703) 892-4100.

FOR FURTHER INFORMATION CONTACT: By mail: Arty Williams, Office of Pesticide Programs (H7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: rm. 1100E, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA (703) 557-7371.

SUPPLEMENTARY INFORMATION: The tentative agenda includes the following:

1. Pesticides and Ground Water Strategy Status Report.
2. State Management Plan guidance and support documents discussion.
3. Proposed Ground Water Restricted Use Rule.
4. Report of the Senior Pesticide Officials' Ground Water Course.
5. FIFRA section 6(g) policy.
6. FIFRA section 19 disposal regulations.
7. Other topics as appropriate.

Dated: May 15, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 91-12294 Filed 5-22-91; 8:45 am]

BILLING CODE 6560-50-F

[OPTS-400050; FRL-3802-2]

Statement of Policy and Guidance for Petitions under Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document outlines EPA's policy concerning the provisions for petitions to delist individual members of the metal compound categories reportable under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986. This document also provides guidance regarding the appropriate support documentation that will be necessary to allow the Agency to make decisions on such petitions.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, Petitions Coordinator, Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop OS-120, 401 M St., SW., Washington, DC 20460, Toll free: 800-535-0202, In Washington, DC and Alaska, 202-479-2449.

SUPPLEMENTARY INFORMATION:

I. Background

On June 1, 1988, EPA received a petition from the Dry Color Manufacturers' Association (DCMA) requesting EPA to exempt three phthalocyanine pigments C. I. Pigment Blue 15, C. I. Pigment Green 7, and C. I. Pigment Green 36 from the reporting requirements under the section 313 list of toxic chemicals category "copper compounds." This petition was the first that the Agency had received requesting that EPA differentiate between and delete individual members of a category based on the varying toxicities of each individual compound. Because of the precedent that would be set by EPA's response to this request, the Agency determined to seek public comment on the issue of breaking out individual members of categories for delisting decisions made under EPCRA.

Chemicals defined by the 16 metal compound categories are unique in that they are of concern not only because of the toxicity which may be exhibited by the intact species, but also because these compounds may dissociate or react to yield the toxic metal and metal ion. Because of the additional concerns of metal ion toxicity, the Agency believes that it is in the public's best interest to have access to information on all the species that contribute to the burden on the environment of the metal ions described by each of the metal compound categories.

The Agency has taken a conservative approach in developing a policy for reviewing petitions to delete chemicals from these categories. EPA is concerned that without careful consideration, chemicals may be deleted from the list which may be contributory to the concerns for human health and the environment. EPA wants to ensure that the public has information on all chemicals described by these categories which may reasonably be anticipated to contribute to the toxic effects described by the metals as well as the intact metal compounds.

The Agency's concern with metal compounds, which is articulated in this document, is reflected in its decisions to withdraw the proposed rule to delete barium sulfate from the EPCRA section 313 list of toxic substances and to issue a final rule to exempt the three copper phthalocyanine pigments from the EPCRA section 313 list of toxic substances. Both decisions are published elsewhere in this issue of the **Federal Register**.

II. Metal Compound Categories

Metal-containing compounds are of concern not only because of the toxicity which may be exhibited by the intact species (e.g., methyl mercury), but also because these compounds may dissociate or react to yield the toxic metal and metal ion. The toxicity of a metal-containing compound that dissociates or reacts to generate the metal ion can be expressed as a function of the toxicity induced by the intact species and the availability of the metal ion, where the degree of dissociation, bioaccumulation, and the level at which toxicity is induced by the metal ion must be considered. The level at which a metal ion induces toxicity varies depending upon the metal ion. This may be viewed, in a sense, as the toxicologic potency of the metal ion. For example, cadmium ion is considered to be more potently toxic than barium ion, because the toxicologic effects of cadmium ion are produced at very low doses while the toxicologic effects of barium ion are produced at relatively higher doses. Although the level at which a metal ion induces toxicity varies depending upon the metal ion, the effects induced by each metal ion corresponding to each section 313 metal ion category meet the criteria under section 313(d)(2).

The following list consists of metal compound categories that are currently subject to the reporting requirements under section 313.

Antimony compounds
Arsenic compounds
Barium compounds
Beryllium compounds
Cadmium compounds
Chromium compounds
Cobalt compounds
Copper compounds
Lead compounds
Manganese compounds
Mercury compounds
Nickel compounds
Selenium compounds
Silver compounds
Thallium compounds
Zinc compounds

Availability of the metal ion may be the result of biotic or abiotic processes. There are a number of factors which must be considered in determining the availability of the metal ion. These factors are listed below:

Hydrolysis at various pHs
Solubilization in the environment at various pHs
Photolysis
Aerobic transformations -- abiotic and biotic
Anaerobic transformations -- abiotic and biotic
Biological transformations, for example, change in valence or *in vivo* alkylation
Bioavailability of the ion when the compound is ingested -- solubilization in and/or absorption from the gastrointestinal tract -- solubilization in various organs
Bioavailability of the ion when the compound is inhaled -- solubilization in and/or absorption from lungs, especially taking into account the likelihood that the compound will lodge in the lungs and be converted to soluble forms by the lung's defense mechanism.
Bioaccumulation and subsequent food chain magnification.

Although the processes described above must be considered when determining metal ion availability, the data are usually very limited. The lack of data on a particular transformation process may not be important if there is

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information which indicates that the metal ion is available by another route. On the other hand, lack of information on one transformation process may lead to incorrect decisions if the data on the remainder of the transformation processes indicate that the metal ion will not become available via these processes.

The metal categories, which include but are not limited to compound classes such as metal hydroxides and oxides, halides, simple and hydrated salts, organometallic compounds, and inorganic complexes loosely can be divided into three groups: (1) Those chemicals which neither dissociate or react to yield the metal ion at a level which would induce toxicity, nor induce toxic effects in their intact state; (2) those chemicals which dissociate or react to yield the metal ion at a level which can induce toxicity (the intact species may or may not be toxic); and (3) those compounds which remain intact but induce toxicity in this form.

Although, in theory, the categories can be separated into the three groups described above, there are a number of obstacles which would prevent the success of this task. The lack of information on the transformation processes to which the chemicals may be subject may preclude a correct determination of the toxicity of a chemical or group of chemicals within a category. EPA may use all available information, but because of data gaps some chemicals may inadvertently be categorized incorrectly.

"General rules" which could be used to separate the categories into "not significantly toxic" and "toxic" subcategories would have many exceptions. For many groups of chemicals these "general rules" would have to be applied for many, if not all, of the transformation processes. As a result, this exercise may not be very different from the task in which every chemical is evaluated.

The question of metal ion availability has been critical in every petition review of a metal-containing compound. Since the copper pigments petition, the Agency has received seven petitions on metal compounds subject to reporting under section 313. EPA's decision on each petition was made primarily on metal ion availability.

III. Response to Public Comment

In the proposed rule to delete the three copper pigments which was published in the **Federal Register** of May 15, 1989 (54 FR 20866), EPA requested comment on approaches for addressing the issues raised by this petition with regard to chemical categories under section 313. The options that were presented for comment are:

1. EPA would respond to petitions to delete named chemicals from a category, but would give such petitions a secondary priority to those which pertain to individually listed chemicals.
2. EPA would subcategorize the listed categories by assessing the chemical structure of the chemicals within each category.
3. EPA would attempt to evaluate independently the many thousands of chemicals within the listed categories to determine if the individual chemicals meet the toxicity criteria of section 313(d)(2).
4. EPA would consider the set of chemicals defined by each section 313 category as inseparable units for the purpose of making modifications to the list of toxic substances.

EPA has received 19 comments on the options described above.

The majority of the commenters contend that EPA's proposed approach in which the Agency would assign secondary priority to petitions for metal-containing compounds contravenes the statute. The Chemical Manufacturers' Association (CMA) states "[s]uch an approach is ... inconsistent with Congressional intent, which provides that specific listing/delisting procedures be followed." The DCMA contends "[r]ather than adopting a policy inconsistent with Congressional intent, EPA could under such circumstances approach Congress with a request for either more resources or legislative relief from the burden imposed on it." EPA agrees that imposing this type of condition on the petition process is untenable because of the statutory deadline which must be met by the Agency.

With few exceptions, the commenters argue that the approach in which EPA would consider the set of chemicals defined by each section 313 category as inseparable units for the purpose of making modifications to the list of toxic substances is scientifically insupportable and is contradictory to the statute. SCM Chemicals contends "[s]uch a policy would ignore Congress' statutory language and purpose. EPA's mandate is to act, within 180 days, on petitions for deletion of both individually-listed substances and of substances in the general category." Merck and Company, Incorporated believes that this approach is "bad science" because it ignores the fact that some members of the categories do not meet the criteria under section 313(d)(2).

EPA agrees with the commenters that some members of the metal categories may not meet the criteria under section 313(d)(2). The intact metal-containing compound may not be toxic and may not dissociate or react by any of the processes described above. Requiring facilities that manufacture, process, or otherwise use these chemicals to report may be an unnecessary burden, particularly if the release reporting does not contribute to information on the burden of the metal ion upon the environment. In light of these considerations, EPA concluded that it is reasonable to allow for the deletion of members of the categories that do not meet the toxicity criteria of section 313. EPA considered the comments on the remaining alternatives with a view to determining the appropriate approach to providing for such deletions.

The majority of the commenters prefer the approach in which EPA would divide the metal compound categories into "not significantly toxic" and "toxic" subcategories. Color Converting Industries states "[t]hese steps will enable quick, inexpensive and reasonable action by the EPA." Merck and Company, Incorporated contends that this approach would provide "for the public more precise data on releases of toxic chemicals." In contrast, Alex Chemical Company believes that this approach is not feasible because "chemical properties (and toxicity) cannot be generalized."

EPA agrees with the comments that state that this option is not viable because the categories cannot be subcategorized successfully. This is a result of the number of factors which must be taken into account in determining metal ion availability, the lack of information on availability of metal ions via some pathways, and because every general rule applied is likely to have exceptions.

In determining whether a subcategory of chemicals within a category is likely to be "not significantly toxic," EPA must first ascertain that the intact species that make up the subcategory will not meet the criteria of section 313(d)(2) and that the metal ion will not become available at a level which will induce toxicity as a result of the processes described above.

Every rule that could be applied would have exceptions. The Agency suggested in the proposed rule to delete the copper pigments that a criterion that it might consider using to divide the categories into "not significantly toxic" and "toxic" subcategories is bond type, i.e. ionic vs. covalent bonding. Ionic metal salts may be expected to readily dissociate in water to give the metal ion and the appropriate counter ion, whereas covalently bonded metal compounds are not expected to readily dissociate in water. An exception to this rule is illustrated in EPA's review of the barium sulfate petition. Although barium sulfate is ionically bonded, it does not readily dissociate in water. Thus, barium ion, which exhibits toxic effects, is not available as might be expected via dissociation in water of barium sulfate.

Another drawback to this approach is the lack of information on the effect of the transformation processes listed above upon metal compounds. Thus, even if EPA were to carry out this task, some subcategories could be labeled as "not significantly toxic" even though this label may not be appropriate. Deleting category members for which the metal ion availability cannot be properly characterized is neither the intent of EPCRA nor in the public's best interest.

Many of the commenters agree with EPA's position that individually assessing the many thousands of chemicals within the section 313 metal compound categories would not be viable. However, the Procter and Gamble Company contends that this would be the best option because "[i]f EPA were to evaluate each chemical individually, then each chemical's presence on the 40 CFR 372.65 list would be scientifically justified." The Soap and Detergent Manufacturers also prefer this option. They suggest that EPA "announce in advance a schedule for its consideration of section 313 categories. That approach would rationalize the assessment process, allow for meaningful input from the public and the regulated community. . . ."

EPA disagrees with the Procter and Gamble Company's assertion that this option would ensure that each chemical's presence on the section 313 list would be "scientifically justified." As was discussed above, in most cases there will not be sufficient information to properly characterize the availability of the metal ion from a compound. This may result in an incorrect assessment of the availability of the metal ion from a compound and as a consequence the toxicity induced by the compound may be incorrectly assessed.

In addition, the section 313 reporting rule allows facilities to aggregate and report on the total weight of the parent metal released, rather than submitting separate reports for all the individual metal compounds (40 CFR 372.25(b)). Thus, facilities' reporting burdens may be significantly reduced. However, if EPA were to conduct an extensive analysis of each chemical within all the listed categories and delete those chemicals which failed to meet the section 313(d) criteria, EPA might then be obligated to modify the reporting requirement such that separate reports would have to be filed for each of the remaining chemicals in the category listings. An EPA decision to require such individual reporting for chemicals within a category is supported by the legislative history of section 313 (joint Explanatory Statement of The Committee of Conference at 298). This approach, which would effectively transform category listings into separate listings for each chemical within a category that meets the toxicity criteria, would increase the reporting burden for facilities and increase EPA's costs of maintaining the section 313 data base.

IV. Metal Compound Categories Petition Policy

The majority of the commenters objected to option 4 because it would preclude the deletion of individual members of the categories that do not meet the toxicity criteria of section 313. As indicated by the discussion in Unit III, however, none of the proposed options provides a completely satisfactory alternative. The option most favored by commenters, dividing the metals categories, presents potentially insurmountable technical problems and could require the Agency to act on insufficient information. On the other hand, commenters generally recognized that significant problems were presented by the other two options that would have allowed for deletion of individual chemicals.

In response to these concerns, EPA has developed a modified alternative that allows for the deletion of individual chemicals, recognizes the importance of metal ion availability, and provides EPA with sufficient information to make a decision. Accordingly, EPA will accept delisting petitions for individual members of the categories and will give these petitions the same priority as delisting petitions for other chemicals. However, the petition must meet basic criteria which relate to the availability of the metal ion from the metal compound category member and the inherent toxicity of that individual category member. Therefore, EPA has decided to grant petitions on individual members providing that the petitioner establishes and EPA concludes that the intact species does not meet the criteria of section 313(d)(2), and that the metal ion will not become available at a level that can be expected to induce toxicity.

For petitions to exempt specific metal-containing compounds from the reporting requirements under section 313, EPA has decided to base its decisions on the evaluation of all chemical and biological processes that may lead to the metal ion's availability as well as on the toxicity exhibited by the intact species. These decisions will continue to be based on information provided by the petitioner, Agency documents, and available literature. Because the effects induced by the metal ions described by the metal compounds categories meet the criteria under section 313(d)(2), the petitioner must provide competent scientific evidence that demonstrates that the metal compound does not dissociate or react to generate the toxic metal ion at a level that can be expected to induce toxicity by any of the processes described above. Since EPA believes that deleting metal compound category members for which the metal ion availability cannot be properly characterized is neither the intent of EPCRA or in the public's best interest, EPA will deny petitions for chemicals for which the metal ion availability cannot be properly characterized. In its review of petitions to delete individual metal compounds from a metal category, the Agency will consider transformation processes, including but not limited to those listed in unit II above, that may lead to the availability of the metal ion. In this document, the Agency is not specifying toxicity thresholds for each of the effects specified in section 313(d)(2) because these thresholds vary depending upon the metal ion. If the metal compound does not dissociate or react to generate the metal ion at a level which can reasonably be anticipated to cause adverse effects, EPA will determine whether the effects which may be induced by the intact species meet the toxicity criteria of section 313(d)(2).

In its previous reviews of petitions on metal compounds, EPA used a weight-of-evidence approach in determining whether the metal ion is available at a level which would induce toxicity. Although the majority of petitions on metal category compounds have been denied based on the availability of the metal ion, there have been two (barium sulfate and the three copper phthalocyanine pigments) which have been proposed to be granted because the available limited information did not indicate that the respective metal ions would become available at a level which would induce toxicity. The Agency's concern with metal ion availability as articulated in this document is reflected in its decisions to withdraw the proposed rule to delete barium sulfate from the EPCRA section 313 list of toxic substances and to issue a final rule to exempt the three copper

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phthalocyanine pigments from the EPCRA section 313 list of toxic substances. Both decisions are published elsewhere in this issue of the **Federal Register**.

EPA is issuing a final rule to exempt the three copper phthalocyanine pigments from the EPCRA section 313 list of toxic substances because: (1) The copper ion cannot reasonably be anticipated to become available at a level that induces toxicity from any of these pigments; and (2) there is no indication from the available data that the (intact) copper pigments can reasonably be anticipated to cause acute, chronic, or environmental toxicity. Release reporting on the three copper pigments will not contribute information on the total environmental loading of copper, because copper ion is not expected to be available from the three copper pigments.

EPA is withdrawing the proposal to delete barium sulfate from the EPCRA section 313 list of toxic substances. This decision is based on the availability of the barium ion from barium sulfate and the potential of toxicity due to available barium ion. Limited data suggest that the barium ion can reasonably be anticipated to become available as a result of the anaerobic degradation of barium sulfate, although the extent of this degradation is unknown. In addition, one of EPA's reasons for requiring reporting on the metal compound categories is to provide the public with release information on the total environmental loading of each toxic metal. This decision is consistent with EPA's category policy because the data on the anaerobic degradation of barium sulfate indicate that barium ion, which meets the criteria under EPCRA section 313(d)(2), will be available. EPA's reviews of barium sulfate and the three copper pigments illustrate the factors that are considered important in determining metal ion availability.

EPA believes that the effects induced by the metal ions described by the metal compound categories meet the criteria under section 313(d)(2), although the level at which a metal ion induces toxicity varies depending on the metal ion. Consequently, EPA will not continue to make weight-of-evidence determinations on metal ion availability. EPA will grant a petition to delist a member of a metal compound category only if the Agency can determine with a high degree of certainty that the metal ion will not become available at a level that can reasonably be anticipated to induce adverse effects. Such availability would be the result of any of the transformation processes previously described in this document. Lack of information on a transformation process will result in a denial of a petition to delist. This will minimize the errors that may be a consequence of using limited information. Limited data and limited predictive ability may result mainly in underestimating the overall burden a metal ion may place upon the environment. An effect of this underestimation may be incorrect decisions leading to the deletion of potentially toxic chemicals from the list. EPA believes that this approach will allow the Agency to make scientifically based decisions that ensure that the intent of community right-to-know is served.

This approach will still allow for the removal of specific members from the metal categories that do not meet the criteria of section 313(d)(2) and do not contribute to the burden of the metal ion on the environment. The public's ability to assess the burden of a metal ion upon the environment will not be hindered, because the lack of metal ion availability of the compound will be well characterized before the Agency proposes to delete a chemical. For the majority of the categories the number of exceptions is not expected to be large.

V. Petition Guidance

A petitioner should provide the Agency with enough information concerning his or her petition request and as much credible scientific support documentation as can reasonably be developed to assist the Agency in reviewing the petition. EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for submitting petitions. The detailed information given below is similar to that provided in the previous guidance, but is more specific to metal compounds. The burden to the petitioner to develop petitions to delete individual members of the metal compound categories is expected to be the same as for petitions to delete individually listed chemicals.

A. Published Literature Citations

For information that appears in published literature sources, the petitioner should provide EPA with a citation and two copies of pertinent sections of the specific documents that the petitioner believes support the requested action. Such information sources could include one or more of the following:

1. Textbooks on inorganic or organometallic chemistry.
2. Textbooks on toxicology or other health sciences.
3. Reference books or reports relating to toxic effects of chemicals, published by government or private sources.
4. Reference books or reports relating to the environmental fate of chemicals, published by government or private sources.
5. Regulatory documents or other official public notification documents, e.g., **Federal Register** notices relating to current regulation of the chemical, or other Federal, State, or local government actions.
6. Specific scientific journal articles, preferably those articles that have undergone peer review.
7. Results of data base searches. Several comprehensive, computer-accessible data bases contain abstracts of health or environmental studies, or environmental fate or provide citations to specific journal articles or other sources. If petitioners do not have access to such computer-based search services, they may want to start by contacting their local public library. The following list contains representative data bases and certain components of those data bases that can provide information on health, environmental effects, and fate of chemical substances:

DIALOG (a privately maintained data base)
BIOSIS
EXERPTA MEDICA MEDLARS (maintained by the National Library of Medicine)
TOXLINE
CANCERLINE
HSDB Toxnet system CIS (Chemical Information System—a privately maintained data base)
ENVIROFATE
AQUIRE (Aquatic Information Retrieval)
RTECS (Registry of Toxic Effects of Chemical Substances)
GENETOX CAS-ONLINE (Chemical Abstract Service-a privately maintained data base)
REG-FILE
CA-FILE

B. Unpublished Information

The petitioner may be aware of studies or documents that could support the proposed action to which EPA would not have immediate access. In such cases of unpublished information, the petitioner should provide EPA with an actual copy of the unpublished work.

Examples of unpublished information include:

1. Company-sponsored studies.
2. University research papers and dissertations.
3. Government-sponsored reports and assessments, especially those done at the local and State level.

Dated: May 15, 1991.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 91-12295 Filed 5-22-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

[DA 91-591]

Comments Invited on Arizona Public Safety Plan

May 16, 1991.

The Commission has received the public safety radio communications plan for Arizona (Region 3).

In accordance with the Commission's Report and Order in General Docket No. 87-112 implementing the Public Safety National Plan, parties may file comments on or before June 25, 1991 and reply comments on or before July 10, 1991. (See Report and Order, General Docket No. 87-112, 3 FCC Rcd 905 (1987), at paragraph 54.)

In accordance with the Commission's Memorandum Opinion and Order in General Docket No. 87-112, Region 3 consists of the State of Arizona. (See Memorandum Opinion and Order, General Docket No. 87-112, 3 FCC Rcd 2113 (1988)).

Comments should be clearly identified as submissions to PR Docket 91-143, Arizona—Region 3, and commenters should send an original and five copies to the Secretary, Federal Communications Commission, Washington, DC 20554.

Questions regarding this public notice may be directed to Betty Woolford Private Radio Bureau, (202) 632-6497 or Ray LaForge, Office of Engineering and Technology, (202) 653-8117.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-12193 Filed 5-22-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-894-DR]

California; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA-894-DR), dated February 11, 1991, and related determinations.

DATES: May 13, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of California, dated February 11, 1991, is hereby amended to include the Crisis Counseling program in the following areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 11, 1991: The counties of Alameda, Butte, Colusa, Fresno, Glenn, Imperial, Kern, Los Angeles, Medera, Marin, Mendocino, Merced, Monterey, Napa, Riverside, San Benito, San Bernardino, San Diego, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus, Sutter, Tehama, Tulare, Ventura, Yolo, and Yuba for Crisis Counseling.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-12281 Filed 5-22-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-902-DR]

Louisiana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA-902-DR), dated April 23, 1991, and related determinations.

DATES: May 10, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Louisiana, dated April 23, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 23, 1991: The parishes of Catahoula, Claiborne Morehouse, and West Carroll for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83-516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-12282 Filed 5-22-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-904-DR]

Louisiana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA-904-DR), dated May 3, 1991, and related determinations.

DATES: May 10, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Louisiana, dated May 3, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the castastrophe declared a major disaster by the President in his declaration of May 3, 1991: The parishes of Bienville, Caddo, Catahoula, Franklin, Grant, Natchitoches, and Webster for Individual Assistance

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support Federal Emergency Management Agency.

[FR Doc. 91-12283 Filed 5-22-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-904-DR]

Louisiana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA-904-DR), dated May 3, 1991, and related determination.

DATES: May 12, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance

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Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3614.

NOTICE: The notice of a major disaster for the State of Louisiana, dated May 3, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the President in this declaration of May 3, 1991: The parishes of Assumption, Lafourche, Rapides, St. Martin, St. Mary, and Terrebonne for Individual Assistance.

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91–12284 Filed 5–22–91; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–905–OR]

Oklahoma; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oklahoma (FEMA–905–DR), dated May 8, 1991, and related determinations.

DATES: May 10, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of Oklahoma, dated May 8, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 8, 1991: Garfield and Washington Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91–12285 Filed 5–22–91; 8:45 am]

BILLING CODE 6718–02–M

Urban Search and Rescue Program

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of solicitation for award.

DATES: May 16, 1991.

FOR FURTHER INFORMATION CONTACT: Tom Gilboy, Office of Civil Defense, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3507.

Notice of Solicitation is hereby given that funding for Urban Search and Rescue (US&R) equipment and training will be available through the Federal Emergency Management Agency (FEMA) on a limited basis to augment the existing capabilities of task forces sponsored by local jurisdictions. The intention is to strengthen US&R task forces which are already very good and bring those selected into a national network of civilian first-responder resources around the country which can be called on in the event of a major-scale disaster. Each task force selected will be sponsored by a local jurisdiction, endorsed by a State, endorsed by a FEMA region, recommended by a national panel of technical experts to the Steering Committee for US&R, and selected by FEMA at headquarters. Funds will be provided through the vehicle of the endorsing State's Comprehensive Cooperative Agreement with its respective FEMA Region, and then suballocated by the State to the sponsoring jurisdiction. Jurisdictions wishing further information on this funding should contact their respective State emergency management agency.

Proposal evaluation criteria are described below. The State and the pertinent FEMA Region will review and assess each task force's personnel qualifications and on-hand equipment against criteria contained in a solicitation package from the State emergency management agency. The personnel qualifications are to address one or several staff in the following positions: Task Force Leader, Search Team Leader, Canine Search Specialist, Technical Search Specialist, Rescue Team Manager, Rescue Squad Officer, Rescue Specialist, Medical Team Manager, Medical Specialist, Technical Team manager, Structures Specialist, Hazardous Materials Specialist, Heavy Rigging and Equipment Specialist, Technical Information Specialist, Communications Specialist, and Logistics Specialist. The equipment lists are to address the following types of materials: Rescue Equipment, Medical Equipment, Technical Equipment, Communications Equipment, and Logistics Equipment. In addition to reviewing the capabilities of task forces against the above criteria, the technical review panel at the national level will consider the geographic location of the task forces to ensure a capability broadly distributed across the country.

The following evaluation factors (numerically weighted to ensure consistent and balanced scoring) are for consideration by the US&R Technical Review Panel of technical experts convened at the national level when reviewing applications for selection and funding recommendations:

- Is the overall composition of the proposed task force deficient in any area? (Factor weight: 8)
- What percent of the required tools and equipment (by function) does the task force have? (Factor weight: 8)
- Are specialized tools and equipment required to breach, chip and cut through reinforced concrete (heavy rescue and confined space operations) available as specified in the rescue equipment list? (Factor weight: 8)
- Does the task force have the capability to adequately conduct both canine and technical search operations? (Factor weight: 4)
- Are there sufficient task force personnel available to safely conduct a two-shift operation? (Factor weight 7)
- Does the task force have the depth of qualified personnel available to support a 56-person task force (3 to 1 ratio per positon recommended)? (Factor weight: 5)
- Is there required personnel safety equipment to meet task force needs? (Factor weight: 7)
- Are there radios to provide adequate communications within the task force, and to the Department of Defense Liaison and Incident Command Post? (Factor weight: 7)
- Does the organization/task force focus on urban search and rescue operation (past history and experience with US&R)? (Factor weight: 5)
- Can the task force members meet a six-hour get-away standard and be available for a ten-day assignment? (Factor weight: 7)
- Does the task force have the required logistics support needed to be self-sufficient for three days? (Factor weight: 7)
- Are task force personnel capable of providing advance life support services? (Factor weight: 6)
- Does the task force have the required mix of physicians and paramedics? (Factor weight: 5)
- Does the task force have access to appropriate medical equipment and drugs? (Factor weight: 4)
- Do all task force personnel meet qualifications criteria, including training and field experience for each respective position? (Factor weight: 7)
- Does the task force have adequate technical specialist representation based on criteria (especially the Structures Specialists? (Factor weight: 5)

(Total of factor weights is 100.)

In addition to the application review for technical merit by the panel of national experts, FEMA Headquarters will consider the following geographic factors in final selections for funding: a balanced geographic distribution of task forces spread out throughout the Nation; seismic hazard, including the historic occurence of damaging earthquakes, as well as probable seismic activity; total population and major urban concentrations exposed to such risk; and other factors, the loss, damage, or disruption of which by a severe earthquake would have serious national impacts upon national security, such as industrial concentrations, concentrations or occurrences of natural resources, financial/economic centers and national defense facilities.

Awards of these Federal funds are intended to be on a cash-matching basis. The State and local share is to equal the Federal share dollar for dollar. The project for which the application is made is the augmentation of training and equipment needed by the applicant. The training and equipment needed is determined by comparing the existing capabilities of the applicant against the criteria stated in the solicitation materials available from the responsible State agency. The shortfall between existing capabilities and the criteria is then identified as needed. Costs are estimated on this shortfall, or on needed capabilities. The Federal share will be 50 percent, and the State and local matching share will be 50 percent. The State and local cash-match must be applicable to US&R objectives and provide direct benefit to the training and equipment augmentation project. Applicants must indicate the amount of the non-Federal cash-matching contribution on the Standard Form 424A, Budget Information—Non-Construction Programs, when submitting applications.

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 91–12280 Filed 5–22–91; 8:45 am]

BILLING CODE 6718–20–M

FEDERAL HOUSING FINANCE BOARD

[No. FHFB 91–155]

Index Rates for Adjustable-Rate Mortgages

AGENCY: Federal Housing Finance Board.

ACTION: Notice of substitution of indexes for adjustable-rate mortgages.

SUMMARY: The Federal Housing Finance Board ("Finance Board") hereby gives notice of the substitution of substantially similar adjustable-rate mortgage ("ARM") index rates for certain nonstandard index rates formerly made available in its Monthly Survey of Rates and Terms on Conventional 1-Family Nonfarm Mortgage Loans ("Monthly Interest Rate Survey" or "MIRS"). The Finance Board is implementing these changes in order to improve the overall quality of MIRS by replacing statistically unreliable data with more accurate, timely, and practical information, and to reduce the reporting burden on institutions subject to the survey by no longer collecting data of limited economic or financial importance.

EFFECTIVE DATE: May 15, 1991.

FOR FURTHER INFORMATION CONTACT: Joseph A. McKenzie, Senior Financial Economist, (202) 408–2845, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. Requirements for Availability of Indexes in FIRREA

Section 402(e)(3) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), Public Law No. 101–73, 103 Stat. 183 (August 9, 1989), provides that the Finance Board "shall take such action as may be necessary to assure that the indexes prepared by the * * * Federal Home Loan Bank Board * * * immediately prior to the enactment of [FIRREA] and used to calculate the interest rate on adjustable-rate mortgage instruments continue to be available." Section 402(e)(4) of FIRREA provides that "[i]f any agency can no longer make available an index," it may substitute a "substantially similar" index if it determines, after notice and opportunity for comment, that "(A) the new index is based upon data substantially similar to that of the original index; and (B) the substitution of the new index will result in an interest rate substantially similar to the rate in effect at the time the original index became unavailabie."

B. Notice of Proposed Changes to MIRS

On March 8, 1991 the Finance Board published in the **Federal Register** (56 FR 9954) a Notice proposing several changes in the types of monthly information derived from MIRS that it now makes available, as follows:

(1) To substitute the data from the Federal Home Loan Mortgage Corporation's ("Freddie Mac's") Primary Mortgage Market Survey ("PMMS") as the substantially similar successor index for those ARMs using the mortgage commitment rate data from MIRS as an index;

(2) To designate MIRS's newly built homes data as the substantially similar index to succeed the combined construction/purchase loan index in MIRS;

(3) To designate the National Average Contract Mortgage Rate for the Purchase of Previously Occupied Homes by Combined Lenders as the substantially similar successor index for ARMs that use a contract rate series from the Finance Board's internal 57–J and 57–K Reports, and to designate the National Average Effective Mortgage Rate for the Purchase of Previously Occupied Homes by Combined Lenders as the substantially similar series for ARMs that use an effective rate series derived from the 57–J and 57–K Reports; and

(4) To publish the MIRS data on home loans closed for the 32 selected metropolitan statistical areas ("MSAs") on a quarterly instead of monthly basis (*i.e.*, to designate the quarterly series on metropolitan mortgage interest rates as the substantially similar successor to the monthly series).

C. Authority to Substitute Indexes

MIRS, which was prepared by the Federal Home Loan Bank Board before the enactment of FIRREA, is now being compiled by the Finance Board pursuant to the requirement of FIRREA. A small number of mortgage lenders may be using the index rates being changed to calculate the interest rates on existing ARMs. ARMs based on mortgage rate indexes now comprise only a very small proportion of total new mortgages. Most new ARMs are linked to either the yield on U.S. Treasury securities or a cost-of-funds index. Furthermore, most new ARMs that are linked to a mortgage rate use the National Average Contract Mortgage Rate for the Purchase of Previously Occupied Homes by Combined Lenders. None of the changes made by this Notice will affect this series. In short, the number of loans affected by the substitution of the new indexes is likely to be very small.

The Finance Board believes that the intent of section 402(e)(3) is to ensure that accurate, timely, and reliable data continues to be made available, and to permit the substitution of substantially similar indexes where data is not sufficiently reliable. The Finance Board therefore has the authority and discretion to modify its survey methods from time to time to ensure that the public receives quality data. The Finance Board does not believe that section 402(e)(3) is intended to require the reporting of identical data simply

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because it was published in the past. The Finance Board has determined that the indexes being changed are not sufficiently reliable for statistical purposes, and need to be replaced with other more reliable and timely indexes. In addition, pursuant to section 402(e)(4), the Finance Board "can no longer make available" the indexes because they are not sufficiently statistically reliable. Accordingly, the Finance Board may substitute substantially similar indexes for the indexes being changed.

The MIRS indexes being replaced suffer from problems of statistical unreliability and untimeliness. The MIRS mortgage commitment rate data is subject to a five-week reporting lag, and duplicates the similar weekly PMMS conducted by Freddie MAC. In addition, the data on mortgage commitment rates is not useful to lenders or borrowers because MIRS does not ask to what index the ARM is linked, and the information on ARMs in MIRS is not for standardized loans as it is in the PMMS.

Combined construction/purchase loans are loans typically made to small home builders, and combine a construction and permanent loan in a single transaction. These loans comprise only about five percent of MIRS, and the data on such loans is statistically unreliable on a monthly basis because of the small sample size surveyed.

The data contained in the 57–J and 57–K Reports is statistically unreliable due to the small sample sizes involved.

Finally, the data on loans closed for the 32 selected MSAs is statistically unreliable when published on a monthly basis because of the small sample size surveyed.

D. Comments Received in Response to Notice of Proposed Changes to MIRS

In addition to publication of the proposed changes to MIRS in the Federal Register, the Finance Board notified all 5,700 subscribers to its monthly MIRS press release and all subscribers to the 57–J and 57–K Reports of the proposed changes. The Finance board received three comments—one from a Federally sponsored secondary mortgage market agency, one from a housing industry trade association, and one from a private mortgage-rate survey firm. No comments were received from lenders or borrowers who use any of the data in question as an ARM index, which supports the Finance Board's belief that the number of loans affected by the substitution of the new indexes is likely to be very small.

In general, one commenter was strongly supportive of the Finance Board's proposed changes to MIRS, and urged the Finance Board to continue its efforts to increase the survey sample size. The other two commenters focused their comments on the proposed change to the mortgage commitment rate survey. The comment letters are discussed in more detail below.

1. Mortgage Commitment Rate Data

One commenter suggested that substitution of data from Freddie Mac's PMMS for information now being derived from the MIRS's mortgage commitment rate survey could create the perception of a conflict of interest if Freddie Mac were to purchase loans based on that index. However, Freddie Mac generally does not purchase loans for its own portfolio, nor does it purchase seasoned adjustable-rate loans with nonstandard index rates. In addition, because the number of loans affected by the substitution of Freddie Mac's PMMS data is likely to be very small, any financial effect would be minimal.

Another commenter noted that Freddie Mac is under no legal or other obligation to publish the PMMS or similar data. However, Freddie Mac has indicated that it has no current plans to discontinue the PMMS, which has been published since 1971, and the PMMS data on fixed-rate loans is the sole measure of mortgage market conditions published by the Federal Reserve Board in its weekly summary of all interest rates (Release H15). Accordingly, it is unlikely that Freddie Mac will discontinue the series.

It was also suggested by this commenter that the Finance Board replace its mortgage commitment rate data with the National Average Contract (or Effective) Mortgage Rate for the Purchase of Previously Occupied Homes by Combined Lenders in MIRS, rather than with the PMMS data. The commenter noted that unlike MIRS, the PMMS contains no commitment rate averages by type of lender, loan-to-value ratio, metropolitan area, or effective interest rates. However, the MIRS commitment rate data shows almost no variability across loan-to-value ratio. For example, in March 1991 the commitment rate on fixed-rate loans ranged between 9.57 percent and 9.64 percent for various loan-to-value ratio classes. The Finance Board has decided not to accept this suggestion because it believes that the Freddie Mac PMMS data is more similar to the MIRS commitment rate data than is the MIRS data on loans closed.

One commenter also questioned whether the PMMS, which covers 125 lenders, should be used as a "national" ARM index, arguing that a larger sample size would be more representative of the national market and less easily affected by local or regional market forces. The commenter suggested that the Finance Board continue to make available the current mortgage commitment rate data in MIRS, and proposed that the Finance Board contract out the commitment rate survey to a private firm, such as the commenter. However, the Freddie Mac sample, though smaller than the MIRS sample, is national in scope. It also surveys large mortgage lenders that are continuously in the market. A number of institutions in the MIRS sample may not be actively soliciting new mortgage business at given points in time, and thus they may be posting unreasonably high mortgage rates. The PMMS data is thus a better measure of actual conditions in the mortgage market, even if the sample is smaller in size. In addition, these two series have shown such strong correlation in the past that keeping the commitment rate section of MIRS is not warranted.

2. Data on 32 MSAs

One commenter asked for clarification that the MIRS data on home loans closed for the 32 selected MSAs, which now will be published on a quarterly instead of monthly basis, also would be available monthly upon request. The commenter also suggested that the Finance Board increase the number of MSAs published in the quarterly reports as part of an overall effort to increase the sample size of MIRS. The Finance Board is in the process of updating MIRS, including increasing the sample size. As the sample size is increased, the Finance Board intends to expand the scope of such regional house price data made available, either by publishing it more frequently than quarterly, or publishing it for a larger number of MSAs. The Finance Board now makes monthly house price data available to state housing finance agencies in conjunction with determining the "safe-harbor" limits for mortgage revenue bond purchase programs, and will continue to do so.

E. Substitution of Substantially Similar Indexes Under Section 402(e)(4)

All of the new indexes are based upon data substantially similar to that of the original indexes. The Freddie Mac PMMS data uses similar mortgage commitment rate data but is based on standardized loans and is more timely than the MIRS mortgage commitment rate index. The MIRS newly built homes index is based on a larger sample of newly built homes.

Because of the variety of data contained in the 57–J and 57–K Reports with respect to type of loan, type of property and geographic classification, there is no perfect choice for a single successor series for the series in these Reports that are being eliminated. The National Average Contract Mortgage Rate for the Purchase of Previously Occupied Homes by Combined Lenders is based on national average rate data of a larger sample size than the similar regional average rate data contained in the Finance Board's internal 57–J and 57–K Reports. Similarly, the National Average Effective Mortgage Rate for the Purchase of Previously Occupied Homes by Combined Lenders is based on data similar to the effective rate series contained in the 57–J and 57–K Reports but from a larger sample size. Accordingly, the Finance Board has determined that these two series are the most readily available substitute series.

Finally, the MIRS data on loans closed for the 32 selected MSAs will continue to be made available, except that it will be published on a quarterly instead of monthly basis.

Because the new indexes are based on data substantially similar to the current data in MIRS, the Finance Board believes that they will result in interest rates substantially similar to the rates in effect at the time the original indexes become unavailable.

Accordingly, the Finance Board hereby designates the following indexes as substantially similar successor indexes:

(1) The fixed-rate data from Freddie Mac's PMMS is the successor index for those ARMs using MIRS fixed-rate mortgage commitment rate data as an index, and the adjustable-rate data from Freddie Mac's PMMS is the successor index for those ARMs using MIRS adjustable-rate mortgage commitment rate data as an index;

(2) The MIRS's newly built homes data is the successor index for those ARMs using MIRS combined construction/purchase loan data as an index;

(3) The National Average Contract Mortgage Rate for the Purchase of Previously Occupied Homes by Combined Lenders is the successor index for ARMs using a contract rate series from the Finance Board's internal 57–J and 57–K Reports, and the National Average Effective Mortgage Rate for the Purchase of Previously Occupied Homes by Combined Lenders is the successor index for ARMs using an effective rate series from the 57–J and 57–K Reports; and

(4) The quarterly series on metropolitan mortgage interest rates is the successor to the monthly series (*i.e.*, the MIRS data on home loans closed for the 32 selected MSAs will be published on a quarterly instead of monthly basis).

Dated: May 15, 1991.

Daniel F. Evans, Jr.,

Chairman, Federal Housing Finance Board.

[FR Doc. 91–12189 Filed 5–22–91; 8:45 am]

BILLING CODE 6725–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Port Authority of New York and New Jersey Carco, Inc.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200178–003.

Title: Port Authority of New York and New Jersey/Carco, Inc. Terminal Agreement.

Parties: Port Authority of New York and New Jersey Carco, Inc.

Synopsis: The Agreement, filed May 8, 1991, amends the basic agreement to revise the rent commencement date from October 1, 1989 to November 15, 1989.

Dated: May 17, 1991.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 91–12220 Filed 5–22–91; 8:45 am]

BILLING CODE 6730–01–M

State of Hawaii/Matson Navigation Co., Inc.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments and protests are found in §§ 560.602 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–200518.

Title: State of Hawaii/Matson Navigation Company, Inc. Marine Terminal Agreement.

Parties: State of Hawaii (DOT), Matson Navigation Company, Inc. (Matson).

Filing Party: Mr. Edward Y. Hirata, Director of Transportation, State of Hawaii, Department of Transportation.

Synopsis: The Agreement provides for DOT to lease to Matson certain parcels and easements for the operation of a bulk sugar facility to receive from trucks, handle, convey, store and load into ocean vessels bulk raw sugar produced on the Island of Hawaii. The term of this Agreement/Lease shall expire on June 30, 2022.

Agreement No.: 224–200518–001.

Title: State of Hawaii/Matson Navigation Company, Inc./HT&T Company, Inc. Marine Terminal Agreement.

Parties: HT&T Company, Inc. (HT&T), State of Hawaii (DOT), Matson Navigation Company, Inc. (Matson).

Filing Party: Mr. Edward Y. Hirata, Director of Transportation, State of Hawaii, Department of Transportation.

Synopsis: The Agreement provides for Matson to sublease to HT&T the lease premises situated at Hilo Harbor, Hilo, Hawaii under Agreement No. 224–200518 (Harbor Lease No. H–80–8) and lease of certain machinery and equipment on Parcel 1 and Easement 1 and certain gantry cranes, crane rails and related equipment on Easement 2. HT&T, as sublessee, is given authorization to operate Matson's Hilo Bulk Sugar Facility. Rental shall be paid in accordance with the terms specified in the sublease agreement. The term of this Agreement/Lease shall expire on June 30, 2022.

By Order of the Federal Maritime Commission.

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Dated: May 17, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91-12272 Filed 5-22-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Don Bodard, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 11, 1991.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Don Bodard, Shawnee, Oklahoma; to acquire 100 percent of the voting shares of Americorp, Inc., Shawnee, Oklahoma, and thereby indirectly acquire American National Bank and Trust Company, Shawnee, Oklahoma.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Berkshire Hathaway, Inc., Omaha, Nebraska, and its subsidiaries; to acquire up to 22 percent of the voting shares of Wells Fargo & Company, San Francisco, California, and thereby indirectly acquire Wells Fargo Bank, National Association, San Francisco, California.

Board of Governors of the Federal Reserve System, May 17, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-12242 Filed 5-22-91; 8:45 am]

BILLING CODE 6210-01-F

Cedar Valley Bankshares, Ltd., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 11, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Cedar Valley Bankshares, Ltd., Charles City, Iowa; to acquire 100 percent of the voting shares of Nora Springs Investment Company, Nora Springs, Iowa, and thereby indirectly acquire First State Bank, Nora Springs, Iowa, and Riceville Investment Company, Riceville, Iowa, and thereby indirectly acquire First State Bank, Riceville, Iowa.

1. Parkway Bancorp, Inc., Harwood Heights, Illinois; to acquire 100 percent of the voting shares of Parkway Bank of Illinois, Carpentersville, Illinois.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Columbus Bancorp, Inc., Columbus, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Columbia Bancorp-Delaware, Inc., Wilmington, Delaware, and thereby indirectly acquire The First State Bank, Columbus, Texas. In connection with this application, Columbia Bancorp-Delaware, Inc. has applied to become a bank holding company by acquiring 100 percent of the voting shares of The First State Bank, Columbus, Texas.

Board of Governors of the Federal Reserve System, May 17, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-12243 Filed 5-22-91; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Intent To Prepare an Environmental Impact Statement for the Construction of the Internal Revenue Service National Office Consolidation in Prince George's County, MD

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality (40 CFR parts 1500–1508), the General Services Administration (GSA) announces its intent to prepare an Environmental Impact Statement (EIS) for the acquisition of interests in land to construct thereon a building to house the Internal Revenue Service (IRS) National Office in 1.2 million gross square foot (gsf) building, with up to 2,600 parking spaces. All sites to be analyzed must have the capacity for the development of an additional 300,000 gsf of office space and related parking, available for purchase at the option of the Government. The IRS will act as a cooperating agency during preparation of the EIS pursuant to 40 CFR 1501.6. Acquisition of land will allow the Government to construct office space for the IRS National Office to consolidate its offices, which are scattered in approximately 20 leased and four Government-owned buildings in Washington, DC and Northern Virginia.

In response to a recent GSA advertisement, the Government receives six expressions of interest from potential offerors. These responses are identified in this notice, in the interest of public information, and each must satisfy the Government's site selection criteria in order to be considered as a potential IRS site.

The EIS will consider the following alternative sites in whole or part (listed in alphabetical order):

1. Capitol Heights—This is an 11.70 acre Municipal Government-owned site located immediately south of the Capitol Heights Metrorail station on East Capitol Street.

2. First Capital Realty—This is a 73.69 acre privately owned site located south of Central Avenue between Addison Road and Rollins Avenue.

3. Meridian—This is a 121.79 acre privately owned site located south of Central Avenue between Shady Glen Drive and the Addison Road Metro station.

4. Metro View—This is a 54.40 acre privately owned site located between Harkins and Ellin Roads just northwest of the New Carrollton Metro station.

5. Prince George's Center—This is a 26.24 acre privately owned site located on East-West Highway between Belcrest, Toledo, and Adelphi Roads in Hyattsville, Maryland.

6. Riverside—This is a 134.40 acre privately owned site located in the College Park/Riverdale area between Kenilworth Avenue, Calvert Road, Baltimore Avenue, and East-West Highway.

The EIS will also consider a No Action alternative—No change in the current pattern of office space usage by the IRS National Office. Potential environmental impacts resulting from the proposed project include short-term impacts during construction, and long-term changes in traffic, socio-economic and physical conditions in the areas.

GSA will initiate the EIS process with a public scoping meeting for the purpose of determining significant issues related to the proposed construction and relocation of the IRS employees. A public scoping meeting will be held on June 13, 1991, at 7 p.m., in the auditorium of Northwestern High School, located at 7000 Adelphi Road, Hyattsville, Maryland. A short formal presentation will precede the request for public comments. GSA representatives will be available at this meeting to receive comments from the public regarding issues of concern. It is important that Federal, state and county agencies, and interested individuals and groups take this opportunity to identify environmental concerns that should be addressed during the preparation of the Draft EIS. In the interest of available time, each speaker will be asked to limit his or her oral comments to ten (10) minutes.

Agencies and the general public are invited and encouraged to provide written comment in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics which the commentor believes the EIS should address.

All written statements and/or questions regarding the IRS Consolidation project must be mailed no later than July 15, 1991, to the address below: Ms. Sonia I. Rivera, Contracting Officer Technical Representative, room 7062, General Services Administration, National Capital Region, 7th & D Streets, SW., Washington, DC 20407, Phone Number (202) 708–5334.

Dated: May 14, 1991.

Linda Eastman,

Director, NCR Planning Staff—WPL.

[FR Doc. 91-12208 Filed 5-22-91; 8:45 am]

BILLING CODE 6820-23-M

[G-91-2]

Delegation of Authority to the Attorney General

Pursuant to the authority vested in me by section 3726 of title 31, United States Code, I have determined that it is cost-effective or otherwise in the public interest to delegate authority to the Attorney General to conduct a prepayment audit of transportation bills relating to the movement of Foreign and Domestic household goods, subject to the provisions of the Federal Property Management Regulations, title 41, Code of Federal Regulations, subpart 101-41, and amendments thereto. This prepayment audit will be conducted at the Federal Bureau of Prisons, Office of Finance, Office of Relocations Services, Washington, DC.

The Attorney General may redelegate this authority to any officer, official, or employee of the Federal Bureau of Prisons.

The Attorney General shall notify GSA in writing of these redelegations. This delegation is effective upon publication in the **Federal Register**.

Dated: May 6, 1991.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 91-12250 Filed 5-22-91; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

[MH-91-15]

National Technical Assistance Center for Mental Health Consumers

INSTITUTE: National Institute of Mental Health, HHS.

ACTION: Notice of request for applications.

INTRODUCTION: The National Institute of Mental Health (NIMH) announces the availability of support for one National Technical Assistance Center for Mental Health Consumers. This grant will be made under the authority of section 520 of the Public Health Service (PHS) Act which authorizes funds for demonstrations of mental health services for individuals with severe and persistent mental disorders.

Purpose

The National Institute of Mental Health (NIMH) announces the availability of support for one National Technical Assistance Center for Mental Health Consumers. The purpose of this Center is to provide technical assistance to consumers and other interested parties on developing self-help programs and increasing the meaningful involvement of consumers in the planning and provision of mental health and community support services. The Center is focused primarily on consumers and self-help approaches, but, in recognition of the developing role of family members, and others in service delivery, system planning, and research, the Center could also extend assistance to other interested parties.

NIMH intends that a Center funded under this announcement will be planned, directed, and operated by individuals who are current or former users of mental health services and have an advisory committee with representation from the major national primary consumer organizations to review project activities. The Public Health Service (PHS) is committed to achieving the health promotion objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. This Request for Applications (RFA), National Technical Assistance Center for Mental Health Consumers, is related to the priority area of Mental Health and Mental Disorders, Services and Protection Objective 6.12. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock Number 017-001-00474-0) or Healthy People 2000 (Summary Report: Stock Number 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone 202-783-3238).

Background

In the past several years, NIMH has expanded its support of consumer-operated programs. The Community Support Program (CSP) has funded Consumer-Operated Services Demonstration Grants to implement and evaluate a variety of self-help approaches, and State Service System Improvement Grants to enhance the involvement of consumers and family members in the public mental health system. CSP has also sponsored a series

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of national conferences for consumers to discuss aspects of service delivery, including development of self-help programs.

These efforts have been reinforced by recent statutory requirements for consumer and family roles in planning community-based services, for example through the Advisory Councils mandated under Public Law 99–660. Technical assistance designed to strengthen participation in the Councils has been provided directly and through workshops and conferences on regional and national levels.

In addition, interest in studying the most effective approaches to self-help services and related issues, such as development of consumer-led service agencies and consumer-based case management, has resulted in increased research on self-help and other related programs. In the past 2 years, NIMH has funded two new Centers for Research and Knowledge Dissemination on Consumer-Led Self-Help Mental Health Services, which will conduct research as well as develop programs to assist in the application of knowledge gained through such studies.

Center Goals

The goals of the Center are:

• To continue supporting the developing role of consumers and other advocates in services planning, delivery, and research.

• To consolidate and centralize various technical assistance activities that have been undertaken on an individual basis, such as developing technical assistance resource materials, convening national consumer conferences, and organizing monthly national technical assistance conference calls.

• To provide technical assistance on the planning and operation of consumer drop-in centers and alternative programs.

• To coordinate with other centers, grantees, and potential grantees involved in research related to self-help and in efforts to ensure that useful findings are made available and interpreted, so that they can be used most effectively.

Center Activities

The Center will be responsible for implementing a coherent set of technical assistance activities directed at achieving the goals of the RFA. Convening an annual national technical assistance conference each year at a site to be determined by the Advisory Committee and monthly conference calls to consumers throughout the Nation to provide technical assistance and share relevant information are highly encouraged. Other technical assistance activities may include:

• Collaboration with research programs in self-help such as the Centers for Research and Knowledge Dissemination on Self-Help Mental Health Services at the University of Michigan and the University of California at Berkeley, California.

• Technical assistance to consumers and other interested parties on the administrative, staffing, and programmatic aspects of starting self-help programs, such as information on financing, staff selection and supervision, linking with other community agencies, evaluation approaches, and reasonable accommodations.

• Assistance, consultation, and leadership training to consumers to enhance their involvement in the Public Law 99–660 planning process and in the provision and assessment of mental health and supportive services.

• Technical assistance to grantees with NIMH Research Demonstration and Service System Improvement Projects that have self-help components.

• Preparation of readable summaries or information briefs in relevant areas such as findings of research studies on self-help, pertinent legislation or regulations, advocacy issues (e.g., medication, commitment), consumer viewpoints of mental health services and experiences in the system, and best practices in implementing and operating self-help programs.

• Support for a toll-free 800 number for consumers to call for information and telephone consultation.

Eligibility

Applications may be submitted by public or private nonprofit organizations such as universities, colleges, hospitals, units of State or local governments, and eligible agencies of the Federal Government. Women and minority investigators are encouraged to apply.

Application Procedures

Applicants should use the grant application form PHS 398 (Rev. 10/88). The number and title of this Program Announcement, MH–91–06, NIMH Center for Consumer, should be typed in item number 2 on the face page of the PHS 398 application form.

Applicants must affix the RFA label available in the 398 kit to the bottom of the face page. Failure to use this label could result in delayed processing of the application such that it may not reach the review committee in time for review. IMPORTANT—The mailing enveiope (including that provided by an express carrier) must be clearly marked, "RFA MH–91–06, NIMH Center for Consumers." Applications for fiscal year 1991 funding must be received (not post-marked) by July 19, 1991.

Application kits containing the necessary forms and instructions may be obtained from business offices or offices of sponsored research at most universities, colleges, medical schools, and other major research facilities. If such a source is not available, the following office maybe contacted for the necessary application material: Grants Management Branch, National Institute of Mental Health, 5600 Fishers Lane, room 7C–15, Rockville, Maryalnd 20857, (301) 443–4414.

The signed original five (5) permanent legible copies of the completed application should be sent to: Division of Research Grants, NIH, Westwood Building, room 240, 5333 Westbard Avenue, Bethesda, Maryland 20892.*

*If an overnight carrier or Express Mail is used, the Zip Code is 20816.

To facilitate the timely review of your application, it is also requested that one additional copy of the application be sent directly to: Ms. Edna M. Hardy-Hill, Division of Extramural Activities, National Institute of Mental Health, 5600 Fishers Lane, room 9C–15, Rockville, Maryland 20857.

The mailing envelope (including that provided by an express carrier) must be clearly marked, "RFA MH–91–15, NIMH Center for Consumers."

Application Characteristics

Applications must be complete and contain all information needed for initial and National Mental Health Advisory Council review. No subsequent addenda will be accepted unless specifically requested by the Scientific Review Administrator of the review committee. The application should be written in a manner that is self-explanatory to objective, outside reviewers who may not be familiar with prior related activities of the applicant. The applications Section 2, A–D, is limited to 20 pages singled-spaced and must contain the necessary information for reviewers to understand the project. Appendices may be attached but must *not* be used to merely extend the narrative; extensive appendices are discouraged.

To ensure that sufficient information is included for technical merit review, the applications Section 2, A–D, should include the following information:

A. Specific Aims

Discussion of the overall goals and objectives of the Center.

B. Background and Significance

• Review of the Literature and existing knowledge.

• Description of issues, barriers, information gaps, and technical assistance needs nationally in the area of consumer self-help and empowerment, the integration of consumers into the Public Law 99–660 plannign process, and the involvement of consumers in the provision of mental health services.

C. Relevant Activities

Information on relveant research, dissemination, or technical assistance activities that the applicant has been or currently is involved in that are pertinent to the activities of the proposed Center and can establish the experience and competence of the director and key staff.

D. Approach

• Discussion of how the Center will be planned, and operated by primary mental health consumers.

• Plan for forming a representative advisory committee to review the Center's activities.

• The principal areas of technical assistance that the Center will focus on.

• The technical assistance approaches that the Center will use, including a discussion of the specific mechanisms, target audience(s), staffing, and potential impact.

• Discussion of how the Center will relate to research programs on self-help.

Client Safeguards and Protection of Confidentiality

The applicant must satisfactorily address issues regarding protecting of confidentiality of the client. If the Center will be collecting identifiable information about individual clients or project staff for project evaluation purposes, assurance for protecting client and staff confidentiality and anonymity must be included.

Terms and Conditions of Support

Applicants must include the following agreement in their applications: "(Applicant) agrees that not more than 10 percent of any resultant grant award will be expended for administrative purpose."

Applicants may request a maximum of 3 years of support to cover both direct and indirect costs. It is expected that costs for the first year, while the Center is being established, will not exceed $275,000 in direct costs. Depending on the activities to be conducted by the Center, increased direct costs for subsequent years may be requested but should not exceed $350,000 per year. Annual awards will be made, subject to continued availability of funds and progress acheived.

Funds may be requested for core support of the Center, individual technical assistance projects, monthly technical assistance conference calls and dissemination of information, annual technical asssitance conferences, and direct provision or brokering of technical assistance and consultation to primary consumer groups.

The grant must be administered in accordance with the PHS Grants Policy Statement (Rev. October 1, 1990), which should be available from an office of sponsored research. Federal regulations, 45 CFR parts 74 and 92 and 42 CFR part 52, were applicable to this award.

Review Procedures

Applications received under this announcement will be assigned to an Initial Review Group (IRG) in accordance with established PHS Referral Guidelines. The IRGs, consisting primarily of non-Federal scientific and technical experts, will review the applications based on the criteria below. Notification of the review recommendations will be sent to the applicant after the initial review. Applications will receive a second-level review by the National Mental Health Advisory Council whose review will be based on policy considerations as well as merit. Only applications recommended for approval by the Council may be considered for funding.

The intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100, are applicable to this program. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact the State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application kit. The SPOC should send any State process recommendations to: Neal Brown, Chief, Community Support Section, System Development and Community Support Branch, Division of Applied And Services Research, National Institute of Mental Health, 5600 Fishers Lane, 11C–22, Rockville, Maryland 20857, (301) 443–3653.

The due date for State process recommendations is 60 days after the deadline date for receipt of applications. NIMH does not guarantee to accommodate or explain for State process recommendations that are received after the 60-day cut-off date

Review Criteria

Criteria for technical merit include:

• Evidence of indepth knowledge of the literature and current practice in self-help programs.

• Clear description of the issues, barriers, information gaps, and technical assistance needs nationally in the area of consumer self-helf and empowerment and the integration of consumers in the planning and provision of mental health services.

• Understanding of the potential role of consumers in Public Law 99–660.

• Relevance of the overall goals, and activities of the Center to the goals of the RFA and national technical assistance needs.

• Evidence that the Center will be planned, directed, and operated by primary mental health consumers and establish a representative Advisory Committee.

• Quality and feasibility of the technical assistance plan and specific approaches to be used.

• Clear evidence that the Center has the capacity to interpret and disseminate research findings.

• Adequacy of the facilities, general environment, and core resources for the development and implementation of a National Technical Assistance Center.

• Capability and experience of the project director, consultants, and other key staff proposed for the Center in providing and organizing technical assistance for primary consumers and other relevant target groups in the areas of consumer self-help, organizing, empowerment, involvement in services planning and assessment, and employment in the formal system.

• Appropriateness of budget estimates for the proposed technical assistance activites.

Receipt and Review Schedule

Receipt of applications	Initial review	Council review	Earliest start date
July 18, 1991.	August 1991.	Sept. 1991...	Sept. 1991.

Applications received after the above receipt date will not be reviewed and will be returned to the applicant.

Award Criteria

Applications recommended for approval by the Advisory Council will

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be considered for funding on the basis of overall technical merit as determined by peer review, program needs and balance, and availability of funds.

For Further Information

For information on technical and programmatic issues, please contact: Neal Brown or Jacqueline Parrish, Community Support Section, System Development and Community Support Branch, Division of Applied and Services Research, National Institute of Mental Health, 5600 Fishers Lane, room 11C–22, Rockville, Maryland 20857, (301) 443–3653.

For information on business management issues, please contact: Stephen J. Hudak, Grants Management Branch, National Institute of Mental Health, 5600 Fishers Lane, Room 7C–23, Rockville, Maryland 20857, (301) 443–4456.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[W0220-4320-12-241A]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau's Clearance Officer and to the Office of Management and Budget Paperwork Reduction Project (1004–0019), Washington, DC 20503, telephone (202) 395–7340.

Title: Range Improvement Permit. 43 CFR 4120.3–3.

OMB Approval Number: 1004–0019.

Abstract: This form is used by permittees authorized to graze livestock on the public lands to apply for BLM approval to construct or maintain range improvements on the public lands.

Bureau Form Number: 4120–7.

Frequency: On occasion.

Description of Respondents: Applicants requesting permission to construct range improvements on public lands.

Annual Responses: 60.

Annual Burden Hours: 20.

BLM Clearance Officer (Alternate): Gerri Jenkins, (202) 653–8853.

April 22, 1991.

John S. Boyles,

Acting Assistant Director, Land and Renewable Resources.

[FR Doc. 91–12261 Filed 5–22–91; 8:45 am]

BILLING CODE 4310–84–M

[AK–964–4230–15; F–14851–B]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to NANA Regional Corporation, Inc., for approximately 70 acres. The lands involved are in the vicinity of Deering, Alaska, within T. 6 N., R. 18 W., Kateel River Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Tundra Times. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until June 24, 1991 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Carolyn A. Bailey,

Lead Land Law Examiner, Branch of Doyon/Northwest Adjudication.

[FR Doc. 91–12262 Filed 5–22–91; 8:45 am]

BILLING CODE 4310–JA–M

[WY–060–91–4320–12]

Casper District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Casper District Advisory Council.

SUMMARY: The Casper District Advisory council will meet June 27 and June 28, 1991 at the Casper District Office, 1701 East "E" Street, Casper, Wyoming. On June 27, the council will depart the district office at 8:30 a.m. for a tour of a Back Country Byway, a recreation site, and of the Coffman Ranch. The council will reconvene June 28, 1991 at the Casper District office at 8 a.m. for a regular business session.

The agenda items for the June 28, 1991 business session are as follows: (1) Election of officers; (2) status of land and water conservation funds for acquisition of the Coffman Ranch; (3) Buffalo and Newcastle resource area management plans; (4) coal leasing activity in Powder River Basin; (5) predator control on public lands; and (6) animal damage control update.

FOR FURTHER INFORMATION CONTACT: Kate DuPont, Public Affairs Specialist, 307–261–7600, Casper District.

Dated: May 14, 1991.

Don Rhea,

Acting District Manager.

[FR Doc. 91–12263 Filed 5–20–91; 8:45 am]

BILLING CODE 4310–22–M

[OR–013–01–4410–13; GP1–229]

Lakeview District Multiple Use Advisory Council and Grazing Advisory Board Tour

AGENCY: Bureau of Land Management, Interior

ACTION: Notice of a joint tour by the Lakeview District Multiple Use Advisory Council and Grazing Advisory Board.

SUMMARY: The Lakeview District Multiple Use Advisory Council and Grazing Advisory Board will meet for a tour at 9:30 a.m. on Tuesday, June 11, 1991 at the Fire Hall in Silver Lake, OR. The tour will focus on the Lakeview Resource Area's range and riparian programs. The Advisory Council will meet again Wednesday, June 12 at 8 a.m. at the Christmas Valley Lodge to discuss the Council's future involvement in the District's range and riparian programs.

The public is invited to attend the tour and/or the meeting but must contact the Lakeview District Office by Tuesday, June 4 so final arrangements for food and transportation can be made.

FOR FURTHER INFORMATION CONTACT: Renee Snyder, Public Affairs Officer, 1000 South Ninth Street, Lakeview, OR 97630, (503) 947–6110.

Terry H. Sodorff,

Acting District Manager.

[FR Doc. 91–12264 Filed 5–22–91; 8:45 am]

BILLING CODE 4310–33–M

Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting, Ukiah, Califoirnia, District Advisory Council.

SUMMARY: Pursuant to Public Law 94–579 and 43 CFR part 1780, the Ukiah District Advisory Council will meet in Yreka, California, June 26–27, 1991. Agenda items will include a tour of public lands in Siskiyou County, analysis of public comments on the Draft Redding Resource Management Plan, analysis of public comments on the Draft South Fork Eel Wild & Scenic River Managmeent Plan, and miscellaneous items of interest. A complete agenda is available from the Ukiah BLM Office.

DATES: June 26, 10 a.m. to 5 p.m., and June 27, 8 a.m. to 5 p.m.

ADDRESSES: June 26, Field Tour, BLM public lands in Siskiyou County. June 27, Best Western Miner's Inn, 122 East Miner Street, Yreka..

FOR FURTHER INFORMATION CONTACT: Barbara Taglio, Ukiah District Office, Bureau of Land Management, 555 Leslie Street, Ukiah, California 95482, (707) 462–3873.

SUPPLEMENTARY INFORMATION: All meetings of the Ukiah District Advisory Council are open to the public. Individual may submit oral or written comments for the Council's consideration. Opportunity for oral comments will be provided at 10:30 a.m., Thursday, June 27. Summary minutes of the meeting will be maintained by the Ukiah District Office and will be available for inspection and reproduction within 30 days of the meeting.

Dated: May 1, 1991.

Alfred W. Wright,

District Manager.

[FR Doc. 91–12265 Filed 5–22–91; 8:45 am]

BILLING CODE 4310–40–M

[ES–970–01–4111–11–257D; MIES 34888]

(Michigan): Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petititon for reinstatement of oil and gas lease MIES 34888, Wexford County, Michigan, was timely filed by Wilfred Plomis (Lessee) and was accompanied by all required rentals and royalties accruing from June 1, 1990, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new release terms for rentals and royalties at rates of $5 per acre and 16–2/3 percent, respectively. Payment of a $500 administrative fee has been made.

Having met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188(d) and (e)), the Bureau of Land Management is proposing to reinstate the lease effective June 1, 1990 subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Tasha Berry at (703) 461–1466 or Ms. Patricia Ledwell at (703) 461–1464.

Dated: May 17, 1991.

Robert J. Bainbridge,

State Director.

[FR Doc. 91–12288 Filed 5–22–91; 8:45 am]

BILLING CODE 4310–GJ–M

[ES–030–1–4212–18]

Realty Action; Sale of Public Land in Norman County Minnesota

AGENCY: U.S. Department of the Interior, Bureau of Land Management.

ACTION: Realty action noncompetitive sale.

SUMMARY: The following land has been found suitable for direct sale under section 205 of the Minnesota Public Lands Improvement Act of 1990 (104 Stat. 1019) at the estimated fair market value, less equities presented by the applicant. The land will not be offered for sale until at least 60 days after the date of this notice.

Fifth Principal Meridian,

T.145N., R.49W.
Sec. 2, Lot #1.
Containing approximately 4.98 areas.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

This land is being offered by direct sale to Kenneth and Jacqueline Lougheed. It has been determined that the subject parcel contains no known mineral values; therefore, mineral interest may be conveyed simultaneously. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interest under section 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713).

The patent, when issued, will contain certain reservations to the United States. Detailed information concerning these reservations as well as specific conditions of the sale are available for review at the Milwaukee District Office, Bureau of Land Management, 310 West Wisconsin Avenue, suite 225, Milwaukee, Wisconsin 53203.

DATES: On or before July 8, 1991, interested parties may submit comments to the District Manager, Milwaukee District, at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this sale is available at the Milwaukee District Office, Bureau of Land Management, 310 West Wisconsin Avenue, suite 225, Milwaukee, Wisconsin 53203 or by calling Larry Johnson at 414–297–4413.

Gary D. Bauer,

District Manager.

[FR Doc. 91–12266 Filed 5–22–91; 8:45 am]

BILLING CODE 4310–GJ–M

[UT–040–01–4212–13)]

Cedar City District Office; Reality Action; Exchange of Surface Interests in Public and Private Lands Garfield County, Utah UTU–63293

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: The surface estate of the following described public land has been determined suitable for disposal by exchange under sections 205 and 206 of the Federal Land Policy and Management Act of 1976. (43 U.S.C. 1716):

Salt Lake Meridian

T. 35 S., R. 4 E.,
Sec. 12, Lots 14 and 16 (containing 3.83 acres).

In exchange for these lands, the United States will acquire a hiking trail easement in the following described parcels, all in Salt Lake Meridian, T. 35 S., R. 4 E.

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Parcel 1

A parcel of land lying in Section 12, Southwest Quarter of the Southeast Quarter (SW4SE4), the said parcel being all that portion of said property contained within a strip of land 12 feet in width, being 6 feet on each side of the following described traverse line.

Beginning at a point 36.89 feet north and 418.69 feet east of the Center-South 1/16 corner of Section 12, and running thence S. 31°03'14" E., a distance of 251.40 feet; thence S. 17°10'54" E., a distance of 328.54 feet; thence S. 14°02'27" E., a distance of 337.09 feet; thence S. 2°04'12" E., a distance of 434.33 feet to the point of ending. Said point of ending lies 60.04 feet south and 667.60 feet east of the quarter corner common to Sections 12 and 13.

The parcel of land to which the above description applies contains .34 acre, more or less.

Parcel 2

A parcel of land lying in Section 13, the North Half of the Northeast Quarter (N2NE4), the said parcel being all that portion of said property contained within a strip of land 12 feet in width, being 6 feet on each side of the following described traverse line.

Beginning at a point 39.90 feet north and 663.99 feet east of the quarter corner common to Sections 12 and 13; and running thence S. 2°04'12" E., a distance of 211.17 feet; thence S. 8°04'48" W., a distance of 128.32 feet; thence S 3°40'04" E., a distance of 325.72 feet; thence S. 29°24'42" E., a distance of 285.49 feet; thence S. 39°33'08" E., a distance of 75.55 feet; thence S. 79°16'53" E., a distance of 161.30 feet; thence N. 70°51'05" E., a distance of 432.41 feet; thence N. 82°38'10" E., a distance of 70.83 feet; thence N. 73°51'50" E., a distance of 357.99 feet; thence S. 52°52'26" E., a distance of 696.79 feet; thence S 38°54'26" E., a distance of 318.25 feet to the point of ending. Said point of ending lies 14.00 feet South and 30.50 feet East of the South ¼ corner common to Township 35 South, Range 4 East, Section 13, and Township 35 South, Range 5 East, Section 18.

The parcel of land to which the above description applies contains .82 acre, more or less.

Parcel 3

A parcel of land lying in Section 13, the Northwest Quarter of the Northeast Quarter (NW4NE4), the said parcel being all that portion of said property contained within a strip of land 12 feet in width, being 6 feet on each side of the following described traverse line.

Beginning at the point that lies 930.19 feet south and 862.73 feet east of the quarter corner common to Sections 12 and 13; and running thence S. 80°12'07" W., a distance of 278.89 feet; thence N. 62°14'35" W., a distance of 402.55 feet; thence S. 54°24'06" W., a distance of 313.50 feet to the point of ending. Said point of ending lies 972.66 feet South and 23.23 feet West of the quarter corner common to Sections 12 and 13.

The parcel of land to which the above description applies contains .26 acre, more or less.

SUMMARY: The purpose of this action is to acquire by exchange, an interest in nonfederal lands (an easement), valuable for federal natural resource programs. The easement will provide legal public access across private land adjacent to a wilderness study area and will provide hiking access to these public lands. The public interest will be served by making the exchange.

DATES: Interested parties may submit comments on or before July 8, 1991.

ADDRESSES: Detailed information concerning this exchange and copies of the environmental assessment report are available at the Cedar City District Office, 176 East D.L. Sargent Drive, Cedar City, Utah 84720 or the Escalante Resource Area Office, Escalante, Utah 84726. Comments on the proposal should be sent to the Resource Area Office.

SUPPLEMENTARY INFORMATION: The terms and conditions applicable to the land to be transferred from the United States are as follows:

1. There is reserved to the United States a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat 391, (43 U.S.C. 945).

2. The exchange will be for the surface estate only with all mineral rights in the public lands being retained by the United States.

3. Title transfer will be subject to valid existing rights including a powerline right-of-way (U-58155), a road right-of-way (U54533), and a water pipeline right-of-way (U52885).

4. Pursuant to the authority contained in Executive Order 11988 and 11990 and in section 206 of the Federal Land Policy and Management Act of October 21, 1976, the patent will be subject to a restriction which constitutes a covenant running with the land that it may be used only for agricultural or recreational development, but not for residential or commercial development.

The public lands described are hereby segregated from all forms of appropriation under the public land laws, including the mining laws, pending disposition of this action.

Any objections received during the comment period will be reviewed and the State Director may sustain, vacate, or modify this realty action. In the absence of any objections, this Realty Action Notice will become the final determination of the Department of the Interior.

Dated: May 14, 1991.

Gordon R. Staker,

District Manager.

[FR Doc. 91-12247 Filed 5-22-91; 8:45 am]

BILLING CODE 4310-DQ-M

[WY-930-4212-13; WYW 89647]

Notice of Conveyance; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange of public land in Park County for private land in Park County.

SUMMARY: This notice advises the public of completion of an exchange of Federal surface estate for private surface estate between the United States, Bureau of Land Management, and the Webster Ranch Co., under the authority of section 206 of the Federal Land Policy and Management Act of 1976, as amended, 43 U.S.C. 1716.

EFFECTIVE DATE: May 9, 1991.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, Bureau of Land Management, Wyoming State Office, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82001, 307-775-6115.

SUPPLEMENTARY INFORMATION: The Federal surface of the following described land has been conveyed to the Webster Ranch Co., of Meeteetse, Wyoming:

Sixth Principal Meridian, Wyoming

T. 49 N., R. 99 W.,
sec. 28, SE¼SW¼ and SW¼SE¼;
sec. 28, S½NW¼;
sec. 34, S½NE¼ and SE¼NW¼;
sec. 35, lots 4, 5, and 8, and W½SE¼;
sec. 36, lots 1, 2, 3, 4, 9, 18, and 19.
T. 50 N., R. 100 W.,
sec. 25, lots 1 and 4, NW¼NE¼ and N½NW¼;
sec. 26, S½NE¼;
sec. 35, lot 1, NE¼NW¼, and SW¼SW¼;
sec. 36, lots 2 and 6.
T. 50 N., R. 101 W.,
sec. 16, lot 6 and SE¼SE¼;
sec. 21, lots 1 and 2;
sec. 28, lots 1, 2, 3, and 4;
sec. 30, lot 3, NE¼NW¼, and NE¼SW¼;
Lots 38A, 38B, 38C, 38D, 38E, 38F, 38G, and 38H.

The land described contains 1,600.00 acres.

1. In exchange for the Federal surface estate described above, the United States acquired the following described surface estate:

Sixth Principal Meridian, Wyoming

T. 48 N., R. 98 W.,
sec. 5, NE¼SW¼.
T. 49 N., R. 98 W.,
sec. 25, N½NW¼ and SW¼NW¼;
sec. 26, S½NE¼, SE¼NW¼, and SW¼.
sec. 27, lot 3, S½NW¼ and S½;
sec. 28, S½NE¼ and S½;
sec. 33, NW¼;
Tract 37, lots 3, 4, and 5

The land described contains 1,517.43 acres

2. The fair market value of the private land conveyed to the United States is $70,000.00. The fair market value of the Federal land conveyed to Webster Ranch Co., is $71,500.00. The Webster Ranch Co. submitted a cash equalization payment to the United States in the amount of $1,500.00, in order to equalize cash values.

3. At 9 a.m. on June 28, 1991, the above described lands will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9 a.m., on June 28, 1991, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

Dated: May 14, 1991.

Melvin L. Schlagel,

Acting Chief, Branch of Land Resources.

[FR Doc. 91-12289 Filed 5-22-91; 8:45 am]

BILLING CODE 4310-22-M

[G-010-4333-11/G1-0110]

Albuquerque District, New Mexico; Noncommercial Boating Permit Requirement on Rio Chama Wild and Scenic River

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of noncommercial boating permit requirement for upper section of Rio Chama Wild and Scenic River.

SUMMARY: The Bureau of Land Management is announcing that a permit for noncommercial boating is required for the upper section of the Rio Chama Wild and Scenic River that flows through public lands within the Taos Resource Area and forest lands within the Santa Fe National Forest. This determination was made as part of the Rio Chama Management Plan released October, 1990.

Permits and launch reservations are required during the use season, which covers the period from April 15 through September 15 of this year and each year following. To obtain a permit, an application must be mailed to the Bureau of Land Management Office listed below or applied for in person during office hours at the same Bureau Office. Applicants must apply during the preseason application period of February 1 to March 15 of each year. A non-refundable application fee will be applied to each application for a permit. Permits will be issued to applicants upon assignment. A user fee will be assessed for each trip.

ADDRESSES: Information and permit application may be obtained by contacting the Bureau of Land Management, Taos Resource Area, 224 Cruz Alta Road, Taos, New Mexico 87571.

FOR FURTHER INFORMATION CONTACT: Penny Gonzalez, Permit Specialist, Bureau of Land Management, Taos Resource Area, 224 Cruz Alta Road, Taos, New Mexico 87571; telephone (505) 758-8851.

SUPPLEMENTARY INFORMATION: Permits are required under authority of 43 CFR subpart 8372 for public lands and related waters and 36 CFR subpart 261.50 for forest lands and related waters. Persons who fail to obtain a permit or comply with the permit terms or stipulations are subject to a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

Dated: May 13, 1991.

Steve Henke,

Acting Associate District Manager.

[FR Doc. 91-12267 Filed 5-22-91; 8:45 am]

BILLING CODE 4310-FB-M

[ID-943-4214-10; IDI-28376]

Proposed Withdrawal and Opportunity for Public Meeting; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, has filed an application to withdraw 3,285.87 acres of National Forest System lands for protection of the Howell Canyon Recreation Complex. This notice closes the land up to 2 years from location and entry under the United States Mining Laws. The land will remain open to all uses, other than the mining laws.

DATES: Comments and requests for meeting should be received on or before August 21, 1991.

ADDRESSES: Comments and meeting requests should be sent to the Idaho State Director, BLM, 3380 Americana Terrace, Boise, Idaho 83706.

FOR FURTHER INFORMATION CONTACT: Larry Lievsay, BLM, Idaho State Office, 3380 Americana Terrace, Boise, ID 83706, (208) 384-3166.

SUPPLEMENTARY INFORMATION: On May 1, 1991, the United States Department of Agriculture, filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:

Boise Meridian

T. 12 S., R. 24 E.
Sec. 36, SW¼NW¼, W½SW¼ and S½SE¼.
T. 12 S., R. 25 E.
Sec. 31, lot 4, NE¼NE¼, SW¼NE¼, W½SE¼NE¼, SE¼SW¼ and SE¼;
Sec. 32, S½SE¼SW¼NW¼, SE¼NW¼ and N½SW¼.
T. 13 S., R. 24 E.
Sec. 1, N½ lot 1, lots 2, 3 and 4, S½NW¼ and SW¼;
Sec. 2;
Sec. 3, lots 1 to 4 inclusive, S½N½, N½S½ and SW¼SW¼;
Sec. 4, lots 1 and 2, S½NE¼, NE¼SW¼, S½SW¼ and SE¼;
Sec. 9, N½NE¼, SW¼NE¼ and E½NW¼;
Sec. 11, NE¼;
Sec. 12, NW¼.

The area described aggregates 3,285.87 acres in Cassia County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Idaho State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Idaho State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

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For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are leases, licenses, permits, rights-of-way, etc.

The temporary segregation of the lands in connection with this withdrawal application shall not affect administrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of the lands by the Department of Agriculture.

Dated: May 15, 1991.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 91-12270 Filed 5-22-91; 8:45 am]

BILLING CODE 4310-GG-M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT 755733

Applicant: Houston Zoological Gardens, Houston, TX.

The applicant requests a permit to purchase one male and one female white-collared mangabey (*Cercocebus torquatus*) from Zoo Atlanta for breeding purposes. These animals were originally imported from Zoologischer Garten Hannover, Hannover, Germany to Zoo Atlanta.

PRT 709815

Applicant: Abbey Garden, Carpinteria, CA.

The applicant requests a permit to sell artificially propagated specimens of *Agave arizonica* (Arizona agave), *Pediocactus sileri* (Siler pincushion cactus) and *Sclerocactus glaucus* (Uinta Basin hookless cactus) in interstate and foreign commerce. This is an amendment of a pre-existing permit.

PRT 680037

Applicant: Wayne S. Ragen, Thermal, CA.

The applicant requests a permit to export and reimport captive-bred tigers (*Panthera tigris*) and lions (*Panthers leo*) for display purposes. During each performance, applicant intends to provide the public with written and verbal information on the Bengal tiger's ecological role and conservation needs.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45–4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: May 17, 1991.

Maggie Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 91-12197 Filed 5-22-91; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Freedom of Information Act Requests

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of official address.

SUMMARY: The Royalty Management Program (RMP) announces the official address for all Freedom of Information Act (FOIS) requests. This Notice provides the RMP address for written FOIA requests and the telephone number for inquires pursuant to FOIA matters.

EFFECTIVE DATE: May 23, 1991.

ADDRESSES: All FOIA requests directed to RMP should be mailed to the FOIA Coordinator, Attention: Greg Kann, Royalty Management Program, U.S. Department of the Interior, Minerals Management Service, P.O. Box 25165, Mail Stop 3060, Denver, Colorado 80225–0165.

FOR FURTHER INFORMATION CONTACT: FOIA Coordinator, Greg Kann, (303) 231–3013.

SUPPLEMENTARY INFORMATION: The Freedom of Information Act (5 U.S.C. 552) became law on September 6, 1966. It requires each agency to provide information that is subject to an FOIA request on a timely basis.

On February 1, 1990, the FOIA function for RMP was transferred from the Royalty Liaison Office, Washington DC to the Associate Director's Office, Denver, Colorado. As a result, all FOIA requests for RMP information are processed at the new location for control of the function.

Dated: May 17, 1991.

Jimmy W. Mayberry,

Acting Associate Director for Royalty Management.

[FR Doc. 91-12239 Filed 5-22-91; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Proposed Cossatot National Scenic River, Arkansas; Receipt of Application and 45-day Public Review Period

SUMMARY: On July 3, 1990, the Governor of the State of Arkansas submitted an application to the Secretary of the Interior, requesting that a 10.4-mile segment of the Cossatot River, and a 0.3-mile segment of Brushy Creek in Southewestern Arkansas be designated a State-administered component of the National Wild and Scenic Rivers System in accordance with section 2a(ii) of the Wild and Scenic Rivers Act (Public Law 90–542 as amended; 16 U.S.C. 1271 and Scenic Rivers Act (Public Law 90–542 as amended; 16 U.S.C. 1271 *et seq.*). The segments involved are located within the Cossatot River State Park-Natural Area, which extends from the southern boundary of the Quachita National Forest to the upper reaches of Gillham Lake in southwestern Arkansas. The State Park-Natural Area is located approximately 130 miles southwest of Little Rock, Arkansas.

The general public and non-Federal agencies are also invited to review and comment on the State's application and proposed national designation of the Cossatot River. Copies of the State's application have been placed at the following locatings for public inspection and review. The number in parenthesis indicates the numer or copies available for review at that location:

Mike Curran, Supervisor (2), Quachita National Forest, P.O. Box 1270, Hot Springs, AR 71902.

Colonel Charles C. McCloskey, III (2), Little Rock District, Corps of Engineers, P.O. Box 867, Little Rock, AR 72203–0867.

Library Director (2), Winthrop Branch Library, Winthrop, AR 71866.

Library Director (2) Taxarkana Public Library, 600 West Third Street, Texarkana, TX 75501.

Library Director (2), Fulton Public Library, Fifth and Elm, Hope, AR 71801.

Library Director (2), Direrks Branch Library, Dierks, AR 71833.

Library Director (2), Mineral Springs Public Library, Mineral Springs, AR 71851.

Library Director (2), Howard County Library, 426 North Main, Nashville, AR 71852.

Library Director (2), Tollette Branch Library, Tollette, AR 71851

Library Director (2), Umpire Library, Umpire, AR 71971.

Library Director (2), Foreman Public Library, Foreman, AR 71836.

Library Director (2), Lockesburg Branch Library, Lockesburg City Hall Lockesburg, AR 71846.

Library Director (2), Horatio Branch Library, Hratio, AR 71842.

Library Director (2), Gillham Branch Library, Gillham, AR 71841.

Library Director (2), DeQueen Public Library 104 South 5th Street, DeQueen, AR 71832.

Library Director (2), Scott County Library, Waldron, AR 72958.

Library Director (2), Polk County Library, Mena, AR 71953.

Library Director (2), Murfreesboro Branch Library, Murfreesboro, Ar 71958.

Library Director (2), Glenwood Branch Library, Glenwood, AR 71943.

Library Director (2), Delight Branch Library, Delight, AR 71940.

Library Director (2), Ashdown Community Library, 160 East Commerce Street, Ashdown, AR 71822.

DATES: Written comments will be accepted until July 8, 1991.

ADDRESSES: Written comments should be sent to: Regional Director, National Park Service, Southwest Region, P.O. Box 728, 1220 St. Francis Dr., Santa Fe, NM 87504.

FOR FURTHER INFORMATION CONTACT: Alan Ragins, Regional Coordinator, National Wild and Scenic Rivers Systems, (505) 988–6881.

SUPPLEMENTARY INFORMATION: The Cossatot River was designated a State Protected River by Arkansas Natural and Scenic Rivers System Act 257 enacted by the State legislature and approved by the Governor of Arkansas on July 1, 1983. Section 2a(ii) of the Wilo and Scenic Rivers Act (Public Law 90–542 as amended. 16 U.S.C. 1271. *et seq.*), provides that a review protected by or pursuant to an act of the Stae legislative may be designated as a component of the national system by the Secretary of the Interior upon application from the Governor of the State and finding that the river qualifies for inclusion.

Dated: May 9, 1991.

James W. Stewart,

Acting Director National Park Service.

[FR Doc. 91-12275 Filed 5-22-91; 8:45 am]

BILLING CODE 4310-70-M

Land Protection Plan; Everglades National Park

AGENCY: National Park Service, Everglades National Park.

ACTION: Notice of availability of land protection plan.

SUMMARY: The draft Land Protection Plan for the East Everglades Addition of Everglades National Park has been completed. Review copies may be obtained from the Superintendent (LPP), Everglades National Park, Post Office Box 279, Homestead, Florida 33030.

The plan identifies land protection alternatives to meet the objectives of Public Law 101–229, December 18, 1989, which authorizes the expansion of Everglades National Park to restore and enhance the Everglades ecosystem in the addition and existing park, restore natural hydrologic conditions, and provide for appropriate administrative facilities and visitor use.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the Land Protection Plan process. Accordingly, interested persons are invited to submit written comments, suggestions or objections regarding the proposed Land Protection Plan to the Superintendent at the address written above. Written comments will be accepted for 30 days following publication of this notice. Additionally, if the public has questions concerning the proposed plan, National Park Service officials will be available to answer your questions on May 22, 1991, from 7 p.m. to 10 p.m. at the Metro-Dade Government Center, 18th Floor, 111 Northwest First Street, Miami, Florida. This is not a public hearing as defined by 455 DM 1 but rather an opportunity for the public to have National Park Service officials explain or clarify portions of the proposed plan.

Dated: May 7, 1991.

C.W. Ogle,

Acting Regional Director, Southeast Region.

[FR Doc. 91-12276 Filed 5-22-91; 8:45 am]

BILLING CODE 4310-70-M

Acadia National Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. app. 1, sec. 10), that the Acadia National Park Advisory Commission will hold a meeting on Monday, June 17, 1991.

The Commission was established pursuant to Public Law 99–420, sec. 103. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the Park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The meeting will convene at the Acadia National Park Headquarters, McFarland Hill, Route 233, Bar Harbor, Maine, at 1 p.m. to consider the following agenda:

1. Review and approval of minutes from the meeting held October 22, 1990.
2. Introduction of the new Park Superintendent.
3. Update on General Management Plan.
4. Preservation of findings by the Land Acquisition Committee.
5. Preservation of findings by the Conservation Easement Committee.
6. Proposed agenda and date of the next Commission meeting.

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the superintendent at least seven days prior to the meeting.

Further information concerning these meetings may be obtained from the Superintendent, Acadia National Park, P.O. Box 17, Bar Harbor, Maine 04609, tel: (207) 288–5456.

Dated: May 10, 1991.

Chrysandra Walter,

Acting Regional Director.

[FR Doc. 91-12277 Filed 5-22-91; 8:45 am]

BILLING CODE 4310-70-M

Farmington River Study Committee; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C., app. 1, sec. 10), that a meeting of the Farmington River Study Committee will be held Thursday, June 13, 1991.

The Committee was established pursuant to Public Law 99–590. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the study of the Farmington River segments. The meeting will convene at 7:30 p.m. at the Otis Town Hall, Otis, MA, for the following purpose:

1. Approval of minutes from 4/11/91 meeting:

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2. Update on status of instream flow study;
3. River Conservation Planning Subcommittee;
a. Update on local activity—town meetings, zoning regulations;
b. Private land protection program
c. Resident/landowner questionnaire;
4. Opportunity for public comment; and
5. Other business—
a. Election of officers for 1991; and
b. Next meeting dates and locations.

Interested persons may make oral/written presentations to the Committee or file written statements. Such requests should be made to the official listed below prior to the meeting.

Further information concerning this meeting may be obtained from the Chief, Office of Communications, National Park Service, North Atlantic Region, 15 State Street, Boston, MA 02109, (617) 223-5199.

Dated: May 10, 1991.

Chrysandra Walter,

Acting Regional Director.

[FR Doc. 91-12278 Filed 5-22-91; 8:45 am]

BILLING CODE 4310-70-M

[Order No. 3, Amendment 5]

Superintendents, et al., Pacific Northwest Region

Pacific Northwest Region Order No. 3, approved March 6, 1972, and published in the **Federal Register** of March 28, 1972 (37FR6325), as amended, set forth in section 2 certain authorities to offices and employees. This amendment changes paragraph (d) to read as follows and deletes paragraph (g):

Section 2. Delegation. * * *

(d) Regional Chief, Division of Lands

The Regional Chief, Division of Lands, is authorized to execute the land acquisition program, including contracting for acquisition of lands and related properties, and acceptance of offers to sell to, or exchange with the United States, lands or interests in lands, and to execute all necessary agreements and conveyances incidental thereto: to accept deeds conveying to the United States lands or interests in lands; to approve on behalf of the National Park Service offers of settlement in condemnation cases; to provide relocation assistance; and to approve claims for reimbursement under Public Law 91-646, as amended.

Dated: May 13, 1991.

William J. Briggle,

Acting Regional Director.

[FR Doc. 91-12279 Filed 5-22-91; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Meeting of the Advisory Committee for the U.S. Trade and Development Program

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee for the U.S. Trade and Development Program ("TDP"). The meeting will be held on Friday, July 21, 1991 at the Watergate Hotel, 2650 Virginia Avenue, NW., Washington, DC.

The Committee will discuss TDP's Information Dissemination and Procurement Promotion initiative and ways to make TDP even more effective in enhancing American competitiveness.

The meeting will begin at 9 a.m. and will adjourn when its business is completed that afternoon. The meeting is open to the public. Any interested persons may attend, file a written statement with the Advisory Committee, and, when recognized by the chairperson, present short oral statements as time permits.

For further information, contact Priscilla Rabb Ayres, Director, TDP, room 309, S.A.-16, Washington, DC 20523-1602, Telephone: 703-875-4357.

Dated: May 10, 1991.

Priscilla Rabb Ayres,

Director.

[FR Doc. 91-12254 Filed 5-22-91; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—CAD Framework Initiative, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), CAD Framework Initiative, Inc. ("CFI") on April 22, 1991, has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes in the membership of CFI. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act, limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On December 30, 1988, CFI filed its orginal notification pursuant to section 6(a) of the Act. That filing was amended on February 7, 1989. The Department of Justice published a notice concerning the amended filing in the **Federal Register** pursuant to section 6(b) of the Act of March 13, 1989 (54 FR 10456). A correction to this notice was published on April 20, 1989 (54 FR 16013). On May 17, 1989, CFI filed an additional written notification. The Department published a notice in response to this additional notification on June 22, 1989 (54 FR 26265). A correction to the June 22, 1989 notice was published on August 4, 1989 (54 FR 32141); a further correction was published on August 23, 1989 (54 FR 35091). On August 16, 1989, CFI filed an additional written notification. The Department published a notice in response to this additional notification on September 21, 1989 (54 FR 38912). CFI filed a further additional notification on November 15, 1989. The Department published a notice in response to the further additional notification on January 10, 1990, (55 FR 925). On February 15, 1990 CFI filed an additional written notification. The Department published a notice in response to the further additional notification on April 23, 1990 (55 FR 15295).

CFI filed an additional notification on May 15, 1990. The Department published a notice in response to the additional notification on June 29, 1990 (55 FR 26792). CFI filed an additional notification on August 16, 1990. The Department published a notice in response to the additional notification on September 18, 1990 (55 FR 38417). CFI filed an additional notification on October 22, 1990. The Department published a notice in response to the further additional notification on December 10, 1990 (55 FR 50786). On January 25, 1991, CFI filed an additional written notification. The Departmemt published a notice in response to the further additional notification on March 25, 1991 (56 FR 12387).

The purpose of this notification is to disclose certain changes in the membership of CFI. The changes consist of the following: (1) The addition of corporate members: Compass Tech, Inc., Fujitsu America Inc., Nippon Telegraph, Synopsys, Inc.; (2) the addition of associate members: Chips and Technology, STC, Xerox Corporation, Earl F. Ecklund, Jr., Peter Gustafsson, Uwe Jasnoch, Jack Madesky, Jimm Meloy, Dieter Seitzer; (3) Teradyne, Inc., and Xidak, Inc. have changed their membership status in CFI from corporate to associate: (4) Nixdorf Computer AG has changed its membership status from associate to corporate; (5) Advanced Micro Devices, Inc., Compaq Computer Corporation,

Matsushita Electric Industrial Co., Ltd., Plessey Semiconductors Ltd., Sharp Corporation, VLSI Technology, Inc., Zuken, Inc., Engineering Datexpress, Inc., Frauhofer AIS, Intel Corp., Intergraph Corp., PTT Research Neher Laboratories, Racal-Redac, Inc., Scientific & Engineering Software, Tandem Computer, Versant Object Technology, Rohini Adhikari, Gordon Adshead, Timothy Andrews, Gaal Balazs, Antoine Bigirimana, Duane Boning, John Burton, Goodwin Chin, Hong-Tai Chou, Bernard Clark, Aart DeGeus, Jerry Erickson, Read Fleming, Kelly Gomes, J. Stephen Grout, Michael Haney, Robert Harris, Michael Heck, Amir Hekmatpour, Wei-Cheng Her, Tamio Hoshino, Arding Hsu, Michael Jamiolkowski, Mark E. Law, Thomas Lupfer, Michel McLennan, Thomas Miller, Myer Morron, Gordon Neal, Karl Neusinger, Robert Piloty, Detlev Ruland, Jerry Sewell, Moe Shahdad, Ernst Siepmann, Paul Titchener, R. Van Overstraeten, Wolfgan Wilkes, Alexander Wong, James Wu, and Eli Zukovsky have not renewed their memberships in CFI.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-12210 Filed 5-22-91; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—International Association for Character Windowing Standards

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), International Association for Character Windowing Standards ("IACWS") on April 22, 1991, has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties, and their general areas of planned activities are given below.

IACWS is a nonprofit international organization that currently consists of 13 members, all of them makers of computer equipment and/or software. IACWS was organized as a nonprofit mutual benefit corporation under the laws of the state of California on March 15, 1991. The initial members of the organization are Applied Digital Data Systems, Inc., AT&T Bell Laboratories, Cumulus Technology Corporation, Digital Equipment Corp., Esprit System, Inc., JSB Computer Systems Limited, Liberty Electronics, Inc., Link Technologies, Inc., Microterm, Inc., Microvitec PLC, the Santa Cruz Operation, Televideo Systems, Inc., and Wyse Technology.

The purpose of IACWS is to research, establish and publish standards for the development of applications software for alphanumeric terminals attaching to computers running under the UNIX operating system. The standards would consist of a set of rules that applications programmers could follow in writing programs that have multisession "windowing" capability. This function permits users to run two or more applications simultaneously with each application appearing on the terminal monitor as a separate "window."

IACWS's goal in establishing the standards is to achieve broad customer acceptance of alphanumeric terminals and related software and to make such terminals and software more attractive for computer users that need multisessioning capability. The windowing standards will allow programmers to write, and allow terminal users to operate, applications that run on terminals and operating system software irrespective of computer vendor. That is, by conforming to the standards, programs that offer multisession functionality will be portable among different computer vendors' systems.

The establishment of the standards is in response to increasing user demands for greater efficiency and ease of use among different computer systems. Portability would enhance the choices available to computer system users and increase the market opportunities and creative efforts of software developers. As such, IACWS's activities are aimed at promoting the maximum use of computer systems resources in the United States and abroad.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-12211 Filed 5-22-91; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—OSI/Network Management Forum

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), OSI/Network Management Forum ("the Forum") on April 17, 1991, filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to its membership. The additional notification was filed for the purpose of extending the protections of section 4 of the Act, limiting recovery of antitrust plaintiffs to actual damages under specific circumstances.

On October 21, 1988, the Forum filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 8, 1988 (53 FR 49615). On December 23, 1988, March 23, 1989, July 3, 1989, September 28, 1989, November 22, 1989, January 29, 1990, March 20, 1990, May 7, 1990, July 20, 1990, and February 27, 1991, the Forum filed additional written notifications pursuant to section 6(a) of the Act. The Department published notices in the **Federal Register** pursuant to Section 6(b) on January 26, 1989 (54 FR 3870), April 25, 1989 (54 FR 17834), August 4, 1989 (54 FR 32141), October 26, 1989 (54 FR 43631), January 10, 1990 (55 FR 926), February 28, 1990 (55 FR 7046), April 23, 1990 (55 FR 15295), May 24, 1990 (55 FR 21449), August 20, 1990 (55 FR 33967), and April 3, 1991 (56 FR 13655), respectively.

The identities of the additional parties to the venture are given below:

Associate Members

Banyan Systems, Inc., 115 Flanders Road, Westboro, MA 01581.
DSC Communications Corporation, 1000 Coit Road, Plano, TX 75075.
Deutsche Bundespost Telekom, PO Box 10 00 03, Darmstadt D-6100, Germany.
Octocom Systems, Incorporated, 255 Ballardvale Street, Wilmington, MA 01887.
S.I.A.S.P.A., Viale Certosa 218, Milano 20156, Italy.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-12212 Filed 5-22-91; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—Switched Multi-Megabit Data Service Interest Group

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Switched Multi-Megabit Data Service Group ("the Group") on April 19, 1991, has filed a written notification simultaneously with the Attorney General and the Federal Trade

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Commission disclosing: (1) The identities of the parties to the venture and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture and its general areas of planned activities are given below.

The initial, founding members are:

Multiaccess Computing Corporation, 1158 Via Bolzano, Santa Barbara, California 93111.
GTE Telephone Operations, 4500 Fuller Drive, Irving, Texas 75038.
AT&T Network Systems, 184 Liberty Corner Road, Warren, New Jersey 07059–0908.
Bellcore, 331 Newman Springs Road, Mail Stop NVC 1A–333, Red Bank, New Jersey 07701.
ADC Kentrox Industries, 14375 NW Science Park Drive, Portland, Oregon 97229.
Alcatel Network Systems, 2912 Wake Forest Road, Raleigh, North Carolina 27609.
Bell Atlantic NSI, 1310 North Court House Road, 8th Floor, Arlington, Virginia 22201.
Pacific Bell, Inc., 2600 Camino Ramon, room 3S 151, San Ramon, California 94583.
Siemens Stromberg Carlson, 900 Broken Sound Parkway, Boca Raton, Florida 33487.
Wellfleet Communications, Inc., 15 Crosby Drive, Bedford, Massachusetts 01730.
BellSouth Telephone Operations, 3535 Colonnade Parkway, Main Stop North W3A2, Birmingham, Alabama 35243.
Cisco Systems, Inc., 1525 O'Brien Drive, Menlo Park, California 94025.
Digital Link Corporation, 252 Humboldt Court, Sunnyvale, California 94089.
NCR Corporation, Network Products Division, 2700 Snelling Avenue North, Roseville, Minnesota 55113.
Network Systems Corporation, 7600 Boone Avenue North, Mail Stop 21, Brooklyn Park, Minnesota 55428.
NYNEX Corporation, 500 Westchester Avenue, White Plains, New York 10604.
OKI America, Inc., 575 Fifth Avenue, 19th Floor, New York, New York 10017.
Southwestern Bell Corporation, One Bell Center, St. Louis, Missouri 63101–3099.
Williams Telecommunications, 1440 Lake Front Circle, The Woodlands, Texas 77380.

The purpose and objectives of the Group are to promote the development and usage of switched multi-megabit data services ("SMDS"). The Group's activities will include promoting SMDS, providing SMDS education, fostering the exchange of SMDS information, ensuring worldwide interoperability, determining and resolving SMDS issues, identifying and stimulating SMDS applications, encouraging the orderly evolution of SMDS, and coordinating with recognized standards bodies.

The Group is organized as a California non-profit mutual benefit corporation. The Group will not manufacture any products or sell any services. The results of the Group's activities will be available to all members on reasonable terms applied uniformly and openly. Membership is open to any information network or equipment provider or user. The Group intends to file additional written notifications disclosing all changes in membership in the Group.

Joseph H. Widmar,
Director of Operations, Antitrust Division.
[FR Doc. 91–12213 Filed 5–22–91; 8:45 am]
BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree

Notice is hereby given that on May 14, 1991 a proposed Consent Decree was lodged with the United States District Court for the Northern District of Ohio in *United States* v. *Gencorp, Inc., et al.*, Civil Action No. 5:89CV1866 (N.D. Ohio), an action brought pursuant to section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9607. The proposed Consent Decree would resolve certain claims which the United States has asserted against GenCorp, Inc.; SCM Corporation; Elkem Managment Inc.; Hanlin Group, Inc.; Olin Corporation; Cabot Corporation; Imcera Group Inc.; Sherwin-Williams Company; and Union Carbide Chemical and Plastics Company Inc., for recovery of response costs that the United States has incurred in connection with the Fields Brook site in Ashtabula, Ohio. The proposed Consent Decree would also resolve counterclaims that Settling Defendants have asserted against the United States in *United States* v. *Gencorp, Inc.*, Civil Action No. 5:89CV1866 (N.D. Ohio).

The Department of Justice will receive comments relating to the proposed Consent Decree for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Gencorp Inc. et al.*, D.J. Ref. No. 90–11–2–210. The proposed Consent Decree may be examined at the Office of the United States Attorney for the Northern District of Ohio, 1404 East Ninth Street, suite 500, Cleveland, Ohio 444114, and at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004 (202–347–2072). A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $7.00 (25 cents per page reproduction costs) payable to Aspen Systems Corporation.

Barry M. Hartman,
Acting Assistant Attorney, Environmental and Natural Resources Division.
FR Doc. 91–12209 Filed 5–22–91; 8:45 am]
BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Friday, June 14, 1991, in suite S–4215, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

The purpose of the sixty-seventh meeting of the Secretary's ERISA Advisory Council which will begin at 9:30 a.m. is to consider the items listed below, and to invite public comment on any aspect of the administration of ERISA.

Agenda

I. Introduction and Swearing-in of New Council Members
II. Assistant Secretary's Report on:
  A. PWBA Priorities for 1991.
  B. Report to Congress.
  C. Naming of Council Chairperson and Vice Chairperson.
  D. Other.
  E. Miscellaneous Issues.
III. Orientation of New Members
  A. Alan D. Lebowitz, Deputy Assistant Secretary for Program Operations.
  B. Morton Klevan, Director, Office of Policy and Legislative Analysis.
  C. Charles Lerner, Director, Office of Enforcement.
  D. Robert J. Doyle, Director, Office of Regulations and Interpretations.
  E. Ivan Strasfeld, Director, Office of Exemptions and Determinations.
  F. June E. Patron, Director, Office of Program Services.
  G. Robert A. Shapiro, Esq., Deputy Associate Solicitor, Office of the Solicitor.
IV. Report of Advisory Council Working Groups
V. Determination of Council Working Groups for 1991
VI. Establish Council and Working Group Meeting Dates
VII. Statements from the Public
VIII. Adjourn

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before June 5, 1991 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals, or representatives of organizations wishing to address the Advisory Council should forward their request to the Executive Secretary or telephone (202) 523–8753. Oral presentations will be limited to ten minutes, but an extended statement may be submitted for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before June 5, 1991.

David George Ball,
Assistant Secretary for Pension and Welfare Benefits Administration.
[FR Doc. 91–12159 Filed 5–22–91; 8:45 am]
BILLING CODE 4510–29–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, of the ACNW, and the ACNW Working Groups the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published April 24, 1991 (56 FR 18840). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS full Committee and ACNW meetings designated by an asterisk (*) will be closed in whole or in part to the public. ACRS full Committee and ACNW meetings begin at 8:30 a.m. and ACRS Subcommittee and ACNW Working Groups meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS full Committee and ACNW meetings and when ACRS Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the June 1991 ACRS and ACNW full Committee meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committees (telephone: 301/492–4600 (recording) or 301/492–7288, Attn: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

ACRS Subcommittee Meetings

Improved light Water Reactors, May 29, 1991, Bethesda, MD. The Subcommittee will review the Draft Safety Evaluation Reports (DSERs) corresponding to chapters 7, 11, 12, and 13 of the EPRI Requirements document for evolutionary designs.

Advanced Boiling Water Reacto May 30, 1991, Bethesda, MD. The Subcommittee will review the GE/ABWR design detail and layout.

Joint Plant Operations and Probabilistic Risk Assessment, June 5, 1991, Bethesda, Md. The Subcommittees will discuss the NRC staff's Action Plan to evaluate the risk from nuclear power plant shutdown operations.

Regional Programs, June 18–19, 1991, NRC Region III Office, Glen Ellyn, IL. The Subcommittee will discuss the activities of the NRC Region III Office.

Extreme External Phenomena, July 10, 1991, Bethesda, Md. The Subcommittee will discuss the NUMARC/EPRI Fire Vulnerabilities Evaluation (FIVE) Methodology for IPEEE.

Joint Thermal Hydraulic Phenomena and Core Performance, Date to be determined (July/August, tentative), Bethesda, Md. The Subcommittees will continue their review of the issues pertaining to BWR core power stability.

Therma Hydraulic Phenomena, Date to be determined (August, tentative), Bethesda, Md. The Subcommittee will continue its review of the NRC staff program to address the issue of interfacing systems LOCAs.

Thermal Hydraulic Phenomena, Date to be determined, Bethesda, Md. The Subcommittee will review the status of the application of the Code Scaling, Applicability, and Uncertainty (CSAU) Evaluation Methodology to a small-break LOCA calculation for a B&W plant.

Severe Accidents, Date to be determined, Bethesda, Md. The Subcommittee will discuss elements of the Severe Accident Research Program.

Instrumentation and Control Systems, Date to be determined, Bethesda, Md. The Subcommittee will discuss EPRI's reactor set-point analysis methodology for future plants.

Improved Light Water Reactors, Date to be determined, Bethesda, Md. The Subcommittee will discuss adoption of the (N+2) concept for future plants.

Extreme External Phenomena, Date and place to be determined. The Subcommittee will discuss the Diablo Canyon Long-Term Seismic Program.

Regulatory Activities, Date to be determined, Bethesda, Md. The Subcommittee will discuss the proposed final resolution of Generic Safety Issue–113, "Dynamic Qualificatoin Testing of Large Bore Hydraulic Snubbers."

Advanced Pressurized Water Reactors, Date to be determined (September, tentative), Bethesda, Md. The Subcommittee will continue its review of the CE System 80+ Standard Plant Design Certification.

Occupational and Environmental Protection Systems, Date to be determined, Bethesda, Md. The Subcommittee will review the regulatory guides related to the implementation of the revised 10 CFR part 20 rule.

Systematic Assessment of Experience, Date to be determined, Bethesda, Md. The Subcommittee will discuss with the NRC staff and the industry the safety significance of the lessons learned from the operating experience with solenoid-operated valves (SOVs). Also, it will discuss the comments received from the Nuclear Utility Group on Equipment Qualification regarding the AEOD's findings on SOV problems at U.S. nuclear power plants.

ACRS Full Committee Meetings

374th ACRS Meeting, June 6–8, 1991, Bethesda, MD. Items are tentatively scheduled.

A. *Reactor Operating Experience (Open/Closed)*—Briefing regarding recent operating incidents and events including loss of offsite power at the Vermont Yankee nuclear plant, main transformer fault and resulting fire at the Maine Yankee nuclear station (tentative). Representatives of the NRC staff and industry will participate, as appropriate.

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B. *Meeting with NRC Commissioners (Open)*—Discuss items of mutual interest including ACRS recommendations regarding containment design criteria to accommodate severe accidents, the training and qualification of nuclear power plant personnel, and the emergency response data system as appropriate.

C. *Evaluation of Risk During Periods of Low-Power and Shutdown Operations at Nuclear Power Plants (Open)*—Briefing regarding the status of the Staff's evaluation of risk during low-power and shutdown operations. Representatives of the NRC staff and industry will participate, as appropriate.

D. *ACRS Subcommittee Activities (Open/Closed)*—Briefings and discussion regarding the status of designated ACRS Subcommittee activities.

E. *Certification of Nuclear Power Plant Simulators (Open)*—Briefing and discussion regarding the certification process for nuclear power plant training simulators. Representatives of the NRC staff will participate.

F. *Future ACRS Activities (Open)*—Discuss proposed and anticipated Subcommittee and full Committee activities.

G. *Fitness for Duty (tentative) (Open)*—Briefing and discussion regarding the NRC staff evaluation of licensee experience under 10 CFR part 26, the current NRC fitness-for-duty regulation. Representatives of the NRC staff and industry will participate, as appropriate.

H. *Miscellaneous (Open)*—Complete discussion of items that were not completed at previous ACRS meetings as time and availability of information permit, including proposed Committee comments regarding use of PRA in the regulatory process.

375th ACRS Meeting, July 11–13, 1991—Agenda to be announced.

376th ACRS Meeting, August 8–10, 1991—Agenda to be announced.

ACNW Full Committee and Working Group Meetings

ACNW Working Group on Expert Judgment in Performance Assessment of a Geologic Repository, June 18 and 19, 1991, Bethesda, MD. The Working Group will continue the examination of methods for eliciting expert opinion. The meeting will focus on the actual mechanics of elicitation. This includes questions on who will identify and select the experts, as well as how the selected experts are trained and how their opinions are aggregated. Human intrusion will serve as the reference example in relating the elicitation process to a real and useful application. Participants will include normative experts, as well as NRC and DOE staff and consultants involved with Yucca Mountain and WIPP.

32nd ACNW Meeting, June 20, 1991, Bethesda, MD. Items are tentatively scheduled.

A. Complete response to Staff Requirements Memorandum concerning the Low-Level Waste form leachability and groundwater protection requirements in 10 CFR part 61.

B. Report by a Committee member on a recent visit to the West Valley Demonstration Project.

C. Report to the Committee by Chairman of the Joint Working Group on Expert Judgment and Human Instrusion of a meeting held on June 18–19, 1991.

D. Discuss anticipated and proposed Committee activities, future meeting agenda, administrative, and organizational matters, as appropriate. Also, discuss matters and specific issues that were not completed during previous meetings as time and availability of information permit.

33rd ACNW Meeting, July 24–26, 1991.—Agenda to be announced.

34th ACNW Meeting, August 28–29, 1991.—Agenda to be announced.

ACNW Working Group on Geologic Dating, Date to be determined, Bethesda, MD. The Working Group will discuss problems and limitations with various Quaternary dating methods to be used in site characterization of a high-level waste repository.

ACNW Working Group on Long-Term Climate Change, Date to be determined, Bethesda, MD. The Working Group will discuss potential long-range climate changes and their impact on performance assessments of a proposed high-level repository.

ACNW Working Group on Clean-up Criteria for Non-Reactor Sites, Date to be determined, Bethesda, MD. The Working Group will discuss possible clean-up levels for soils and other materials at non-reactor sites contaminated with uranium and/or thorium. Some candidate sites were closed under previously applicable criteria, which are elevated in the present regulatory environment. The Committee was asked by the NRC staff for guidance and recommendations.

Dated: May 17, 1991.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 91–12192 Filed 5–22–91; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Joint Subcommittee on Plant Operations and Probabilistic Risk Assessment; Notice of Meeting

The ACRS joint Subcommittee on Plant Operations and Probabilistic Risk Assessment will hold a meeting on June 5, 1991, room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, June 5, 1991—8:30 a.m. until the conclusion of business.

The Subcommittee will discuss the activities of the NRC staff and industry to address the issue of risk from nuclear power plant shutdown operations.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommitte, its consulants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the meeting, the Subcommittee, along with any of their consulants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, the nuclear industry, their respective consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Paul Boehnert (telephone 301/492–8558) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occured.

Dated: May 16, 1991.

Gary R. Quittschreiber,

Chief Nuclear Reactors Branch.

[FR Doc. 91–12191 Filed 5–22–91; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Performance Management and Recognition System Review; Committee Meeting

The Office of Personnel Management announces the following meeting:

Name: Performance Management and Recognition System Review Committee Meeting.

Date and time: June 11, 1991, 10 a.m. to 5 p.m.

Place: Room 1350, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415–0001.

Type of meeting: Open.

Point of contact: Ms. Doris Hausser, Chief of the Performance Management Division, room 7454, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415–0001.

Purpose of meeting: To review the Performance Management and Recognition System and make recommendations for a fair and effective performance management system for Federal managers.

Agenda: June 11, 1991–Committee goals and objectives; scope of inquiry; research and resources on performance-based pay; basic issues and challenges facing the committee; committee administration, comments and observations; public input; closing.

SUPPLEMENTARY INFORMATION: The committee welcomes written data, views, or comments concerning systems for managing and recognizing the performance of Federal managers. All such submissions received by close of business June 4, 1991, will be provided to the committee members and included in the record of the June 11, 1991, meeting.

If time permits, the committee will consider oral presentations relating to agenda items. Persons wishing to address the committee orally at the June 11, 1991, meeting should submit a written request to be heard by close of business June 4, 1991. The request must include the name and address of the person wishing to appear, the capacity in which the appearance will be made, a short summary of the intended presentation, and an estimate of the amount of time needed.

All communications regarding this committee should be addressed to the Point of Contact named above.

Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91–12257 Filed 5–22–91; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–18156; 811–2448]

Axe-Houghton Fund B, Inc.; Application

May 16, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Axe-Houghton Fund B, Inc.

RELEVANT 1940 ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

FILING DATES: The application on Form N–8F was filed on May 10, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing request should be received by the SEC by 5:30 p.m. on June 13, 1991, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 400 Benedict Avenue, Tarrytown, NY 10591.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, (202) 272–2190, or Jeremy N. Rubenstein, Branch Chief, (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management company organized as a corporation under the laws of the State of Maryland. On January 7, 1974, applicant registered under the 1940 Act as an investment company and filed a registration statement pursuant to section 8(b) of the 1940 Act. On approximately August 6, 1938, a predecessor of applicant filed a registration statement pursuant to the Securities Act of 1933. The registration statement became effective around September 15, 1938 and the initial public offering commenced immediately thereafter. Applicant became a successor to its predecessor's registration statement in 1974.

2. At a meeting held on July 11, 1990, applicant's board of directors approved a proposal to reorganize applicant and authorize the preparation of proxy materials to solicit shareholder approval for the reorganization. Under the proposed reorganization, applicant would sell substantially all of its assets and liabilities to Axe-Houghton Fund B (the "Acquiring Fund"), a separate series of Axe-Houghton Funds, Inc. (the "Acquiring Company").

3. the investment adviser to applicant and the Acquiring Fund is under the common control of USF&G Corporation. USF&G Corporation and its affiliates owned at least 5% of applicant and, prior to the reorganization, owned all of the outstanding shares of the Acquiring Fund. Because of these relationships, applicant and the Acquiring Fund were affiliated persons. Section 17(a) generally prohibits the purchase and sale of securities or other property between an investment company and its affiliated persons. Because applicant and the Acquiring Fund were affiliated by a reason other than having a common investment adviser, applicant was unable to rely on rule 17a–8 unde the 1940 Act, which provides relief from section 17(a) for the sale of substantially all of an investment company's assets to certain affiliated investment companies. Therefore, on July 20, 1990, applicant filed an application under section 17(b) of the 1940 Act for an order exempting applicant from the provisions of section 17(a) of the Act to the extent necessary to implement the reorganization. A notice of the filing of this application was issued on September 27, 1990 (Investment Company Act Release No. 17762) and an order granting the exemption was issued on October 25, 1990 (Investment Company Act Release No. 17821).

4. On September 13, 1990, applicant's board of directors approved a final plan of reorganization and called for consideration of the plan at a special meeting of shareholders held on October

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31, 1990. On September 24, 1990, applicant filed definitive proxy materials with the Commission and mailed these materials to shareholders on or about that same date. Applicant's shareholders approved the reorganization at the special meeting held on October 31, 1990.

5. Pursuant to the reorganization, applicant transferred substantially all of its assets and liabilities to the Acquiring Fund on October 31, 1990 in exchange for shares of the Acquiring Fund. The exchange of assets for shares was at relative net asset value as computed on October 31, 1990. On this date applicant also distributed *pro rata* to its shareholders the Acquiring Fund shares received in the exchange. No brokerage commissions were incurred in this reorganization.

6. All expenses of the reorganization were borne by USF&G Investment Services, Inc., the distributor of the Acquiring Fund.

7. On March 4, 1991, applicant filed Articles of Dissolution with the State Department of Assessments and Taxation of Maryland. Applicant was dissolved as a Maryland corporation on that date.

8. As of the date of the application, the applicant had no assets or debts. All liabilities and obligations not discharged by applicant as of October 31, 1990 were assumed by the Acquiring Fund.

9. Applicant has filed petitions with the Pennsylvania Department of Revenue, Board of Finance and Revenue disputing claims made by this department for franchise taxes allegedly due for tax years 1988 and 1989. Any additional tax liability resulting from this dispute will be paid by the Acquiring Fund.

10. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-12224 Filed 5-22-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18155; 811-2456]

Axe-Houghton Income Fund, Inc.; Notice of Application

May 16, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Axe-Houghton Income Fund, Inc.

RELEVANT 1940 ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

FILING DATE: The application on Form N-8F was filed on May 10, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 13, 1991, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 400 Benedict Avenue, Tarrytown, NY 10591.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, (202) 272-2190, or Jeremy N. Rubenstein, Branch Chief, (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management company organized as a corporation under the laws of the State of Maryland. On February 7, 1974, applicant registered under the 1940 Act as an investment company and filed a registration statement pursuant to section 8(b) of the 1940 Act. On approximately August 8, 1938, a predecessor of applicant filed a registration statement pursuant to the Securities Act of 1933. The registration statement became effective around September 15, 1938 and the initial public offering commenced immediately thereafter. Applicant became a successor to its predecessor's registration statement in 1974.

2. At a meeting held on July 11, 1990, applicant's board of directors approved a proposal to reorganize applicant and authorized preparation of proxy materials to solicit shareholder approval for the reorganization. Under the proposed reorganization, applicant would sell substantially all of its assets and liabilities to Axe-Houghton Income Fund (the "Acquiring Fund"), a separate series of Axe-Houghton Funds, Inc. (the "Acquiring Company").

3. The investment adviser to applicant and the Acquiring Fund is under common control of USF&G Corporation. USF&G and its affiliates owned at least 5% of applicant and, prior to the reorganization, owned all of the outstanding shares of the Acquiring Fund. Because of these relationships, applicant and the Acquiring Fund were affiliated persons. Section 17(a) generally prohibits the purchase and sale of securities or other property between an investment company and its affiliated persons. Because applicant and the Acquiring Fund were affiliated by a reason other than having a common investment adviser, applicant was unable to rely on rule 17a-8 under the 1940 Act, which provides relief from section 17(a) for the sale of substantially all of an investment company's assets to certain affiliated investment companies. Therefore, on July 20, 1990, applicant filed an application under section 17(b) of the 1940 Act for an order exempting applicant from the provisions of section 17(a) of the Act to the extent necessary to implement the reorganization. A notice of the filing of this application was issued on September 27, 1990 (Investment Company Act Release No. 17762) and an order granting the exemption was issued on October 25, 1990 (Investment Company Act Release No. 17821).

4. On September 13, 1990, applicant's board of directors approved a final plan of reorganization and called for consideration of the plan at a special meeting of shareholders held on October 31, 1990. On September 24, 1990, applicant filed definitive proxy materials with the Commission and mailed these materials to shareholders on or about that same date. Applicant's shareholders approved the reorganization at the special meeting held on October 31, 1990.

5. Pursuant to the reorganization, applicant transferred substantially all of its assets and liabilities to the Acquiring Fund on October 31, 1990 in exchange for shares of the Acquiring Fund. The exchange of assets for shares was at relative net asset value as computed on October 31, 1990. On this date applicant also distributed *pro rata* to its shareholders the Acquiring Fund shares received in the exchange. No brokerage commissions were incurred in this reorganization.

6. All expenses of the reorganization were borne by USF&G Investment Services, Inc., the distributor of the Acquiring Company's shares.

7. On March 4, 1991, applicant filed Articles of Dissolution with the State Department of Assessments and Taxation of Maryland. Applicant was dissolved as a Maryland corporation on that date.

8. As of the date of the application, the applicant had no assets or debts. All liabilities and obligations not discharged by applicant as of October 31, 1990 were assumed by the Acquiring Fund.

9. Applicant has filed petitions with the Pennsylvania Department of Revenue, Board of Finance and Revenue disputing claims made by this department for franchise taxes allegedly due for tax years 1988 and 1989. Any additional tax liability resulting from this dispute will be paid by the Acquiring Fund.

10. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-12225 Filed 5-22-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18153; 811-3188]

Axe-Houghton Money Market Fund, Inc.; Notice of Application

May 16, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Axe-Houghton Money Market Fund, Inc.

RELEVANT 1940 ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

FILING DATE: The application on Form N-8F was filed on May 10, 1991.

HEARING OR NOTIFICATION OF HEARINGS: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 13, 1991, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 400 Benedict Avenue, Tarrytown, NY 10591.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, (202) 272-2190, or Jeremy N. Rubenstein, Branch Chief, (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management company organized as a corporation under the laws of the State of Maryland. On May 28, 1981, applicant registered under the 1940 Act as an investment company and on June 3, 1981, filed a registration statement pursuant to section 8(b) of the 1940 Act. On June 3, 1981, applicant also filed a registration statement pursuant to the Securities Act of 1933. The registration statement became effective on September 2, 1981 and the initial public offering commenced immediately thereafter.

2. At a meeting held on July 11, 1990, applicant's board of directors approved a proposal to reorganize applicant and authorized the preparation of proxy materials to solicit shareholder approval for the reorganization. Under the proposed reorganization, applicant would sell substantially all of its assets and liabilities to USF&G Cash Reserve Fund (the "Acquiring Fund"), a separate series of USF&G Money Market Funds, Inc. (the "Acquiring Company").

3. The investment adviser to applicant and the investment adviser to the Acquiring Fund is under common control of USF&G Corporation. USF&G Corporation and its affiliates owned at least 5% of applicant and, prior to the reorganization, owned all of the outstanding shares of the Acquiring Fund. Because of these relationships, applicant and the Acquiring Fund were affiliated persons. Section 17(a) generally prohibits the purchase and sale of securities or other property between an investment company and its affiliated persons. Because applicant and the Acquiring Fund were affiliated by a reason other than having a common investment adviser, applicant was unable to rely on rule 17a-8 under the 1940 Act, which provides relief from section 17(a) for the sale of substantially all of an investment company's assets to certain affiliated investment companies. Therefore, on July 20, 1990, applicant filed an application under section 17(b) of the 1940 Act for an order exempting applicant from the provisions of section 17(a) of the Act to the extent necessary to implement the reorganization. A notice of the filing of this application was issued on September 27, 1990 (Investment Company Act Release No. 17762) and an order granting the exemption was issued on October 25, 1990 (Investment Company Act Release No. 17821).

4. On September 13, 1990, applicant's board of directors approved a final plan of reorganization and called for consideration of the plan at a special meeting of shareholders held on October 31, 1990. On September 24, 1990, applicant filed definitive proxy materials with the Commission and mailed these materials to shareholders on or about that same date. Applicant's shareholders approved the reorganization at the special meeting held on October 31, 1990.

5. Pursuant to the reorganization, applicant transferred substantially all of its assets and liabilities to the Acquiring Fund on October 31, 1990 in exchange for shares of the Acquiring Fund. The exchange was at relative net asset value as computed on October 31, 1990. On this date applicant also distributed *pro rata* to its shareholders the Acquiring Fund shares received in the exchange. No brokerage commissions were incurred in this reorganization.

6. All expenses of the reorganization were borne by USF&G Investment Services, Inc., the distributor of the Acquiring Company's shares.

7. On March 4, 1991, applicant filed Articles of Dissolution with the State Department of Assessments and Taxation of Maryland. Applicant was dissolved as a Maryland corporation on that date.

8. As of the date of the application, the applicant had no assets or debts and is not a party to any litigation or administrative proceeding. All liabilities and obligations not discharged by applicant as of October 31, 1990 were assumed by the Acquiring Fund.

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9. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-12226 Filed 5-22-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18154; 811-2497]

Axe-Houghton Stock Fund, Inc.; Notice of Application

May 16, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Axe-Houghton Stock Fund, Inc.

RELEVANT 1940 ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

FILING DATE: The application on Form N-8F was filed on May 10, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 13, 1991, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 400 Benedict Avenue, Tarrytown, NY 10591.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, (202) 272-2190, or Jeremy N. Rubenstein, Branch Chief, (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management company organized as a corporation under the laws of the State of Maryland. On July 2, 1974, applicant registered under the 1940 Act as an investment company and filed a registration statement pursuant to section 8(b) of the 1940 Act. On approximately July 19, 1933, a predecessor of applicant filed a registration statement pursuant to the Securities Act of 1933. The registration statement became effective around August 8, 1933 and the initial public offering commenced immediately thereafter. Applicant became a successor to its predecessor's registration statement in 1974.

2. At a meeting held on July 11, 1990, applicant's board of directors approved a proposal to reorganize applicant and authorized the preparation of proxy materials to solicit shareholder approval of the reorganization. Under the proposed reorganization, applicant would sell substantially all of its assets and liabilities to Axe-Houghton Growth Fund (the "Acquiring Fund"), a separate series of Axe-Houghton Funds, Inc. (the "Acquiring Company").

3. The investment adviser to applicant and the Acquiring Fund is under common control of USF&G Corporation. USF&G Corporation and its affiliates owned at least 5% of applicant and, prior to the reorganization, owned all of the outstanding shares of the Acquiring Fund. Because of these relationships, applicant and the Acquiring Fund were affiliated persons. Section 17(a) generally prohibits the purchase and sale of securities or other property between an investment company and its affiliated persons. Because applicant and the Acquiring Fund were affiliated by a reason other than having a common investment adviser, applicant was unable to rely on rule 17a-8 under the 1940 Act, which provides relief from section 17(a) for the sale of substantially all of an investment company's assets to certain affiliated investment companies. Therefore, on July 20, 1990 applicant filed an application under section 17(b) of the 1940 Act for an order exempting applicant from the provisions of section 17(a) of the Act to the extent necessary to implement the reorganization. A notice of the filing of this application was issued on September 27, 1990 (Investment Company Act Release No. 17762) and an order granting the exemption was issued on October 25, 1990 (Investment Company Act Release No. 17821).

4. On September 13, 1990, applicant's board of directors approved a final plan of reorganization and called for consideration of the plan at a special meeting of shareholders held on October 31, 1990. On September 24, 1990, applicant filed definitive proxy materials with the Commission and mailed these materials to shareholders on or about that same date. Applicant's shareholders approved the reorganization at the special meeting held on October 31, 1990.

5. Pursuant to the reorganization, applicant transferred substantially all of its assets and liabilities to the Acquiring Fund on October 31, 1990 in exchange for shares of the Acquiring Fund. The exchange of assets for shares was at relative net asset value as computed on October 31, 1990. On this date applicant also distributed *pro rata* to its shareholders the Acquiring Fund shares received in the exchange. No brokerage commissions were incurred in this reorganization.

6. All expenses of the reorganization were borne by USF&G Investment Services, Inc., the distributor of the Acquiring Company's shares.

7. On March 4, 1991, applicant filed Articles of Dissolution with the State Department of Assessments and Taxation of Maryland. Applicant was dissolved as a Maryland corporation on that date.

8. As of the date of the application, the applicant had no assets or debts. All liabilities and obligations not discharged by applicant as of October 31, 1990 were assumed by the Acquiring Fund.

9. Applicant has filed petitions with the Pennsylvania Department of Revenue, Board of Finance and Revenue disputing claims made by this department for franchise taxes allegedly due for tax years 1988 and 1989. Any additional tax liability resulting from this dispute will be paid by the Acquiring Fund.

10. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-12227 Filed 5-22-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18152; 811-4545]

Bankers Systems Granit Fixed Income Fund, Inc.; Notice of Deregistration

May 16, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: Bankers Systems Granit Fixed Income Fund, Inc.

RELEVANT 1940 ACT SECTIONS: Section 8(f) and rule 8f-1 thereunder.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application, filed on October 19, 1989, was placed on inactive status on July 6, 1990. Amendments to the application were filed on December 13, 1990 and April 18, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 10, 1991, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reasons for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 100 South Fifth Street, suite 2200, Minneapolis, MN 55402.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272-2511, or Max Berueffy, Branch Chief, (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a diversified open-end management company incorporated under the laws of Minnesota. Applicant filed its initial registration statement pursuant to section 8(b) of the 1940 Act on February 15, 1985, registering an indefinite number of shares of its common stock under the Securities Act of 1933. Applicant's registration statement became effective and its initial public offering commenced on May 16, 1985.

2. On January 19, 1989, Applicant's Board of Directors approved an Agreement and Plan of Reorganization (the "Plan") between Applicant and Bankers Systems Granit Government Securities Fund, Inc. (now named Voyageur Government Securities Fund, Inc.) (File No. 811-4239) ("Government Securities Fund"). The Plan provided for (a) the acquisition by Government Securities Fund of all or substantially all the assets of Applicant in exchange for shares of Government Securities Fund, (b) the dissolution and liquidation of Applicant and the pro rata distribution by Applicant to its shareholders of all its holdings of Government Securities Fund shares, and (c) the termination of Applicant's registration as an investment company under the 1940 Act.

3. On May 11, 1989, a majority of Applicant's shareholders approved the Plan. In connection with the shareholder meeting, on March 6, 1989, Government Securities Fund filed a Registration Statement on Form N-14, which included a Notice of Special Meeting of Shareholders of Applicant and a Prospectus and Proxy Statement (the "Proxy Statement") dated April 5, 1989, related to the Plan. The Proxy Statement was filed with the SEC on April 24, 1989, and mailed to shareholders prior to the shareholder meeting.

4. Pursuant to the Plan, on June 26, 1989 (the "Closing Date"), Applicant transferred all of its assets to Government Securities Fund in exchange for shares of Government Securities Fund of equal value. The value of Applicant's assets and of Government Securities Fund's shares were determined as of the close of business on June 27, 1989 (the "Valuation Date"). On the Valuation Date, Applicant had 178,121.246 shares outstanding with a net asset value of $10.03 per share. In exchange for its assets, Applicant received 175,324.455 shares of Government Securities Fund with a net asset value of $10.19 per share. The shares of Government Securities Fund received by Applicant were distributed pro rata to Applicant's shareholders on the Closing Date, in complete liquidation of Applicant.

5. Applicant and Government Securities Fund incurred expenses of $100,404 in connection with the completion of the Plan. Applicant's expenses were reimbursed to Applicant by Voyageur Fund Managers and Voyageur Fund Distributors, Inc., the investment adviser and underwriter, respectively, of Government Securities Fund.

6. At the time of filing of the application, Applicant had no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceedings. Applicant is not engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs. On October 19, 1989 Applicant filed Articles of Dissolution with the Secretary of State of the State of Minnesota, which became effective upon filing.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-12228 Filed 5-22-91; 8:45am]

BILLING CODE 8010-01-M

[Rel. No. IC-18151; 811-4221]

Bankers Systems Granit Stock Fund, Inc.; Notice of Deregistration

May 16, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: Bankers Systems Granit Stock Fund, Inc.

RELEVANT 1940 ACT SECTIONS: Section 8(f) and rule 8f-1 thereunder.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application, filed on October 19, 1989, was placed on inactive status on July 6, 1990. Amendments to the application were filed on December 13, 1990 and April 18, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 10, 1991, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

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ADDRESSES: Secretary, SEC, 450 5th Street NW, Washington, DC 20549. Applicant, 100 South Fifth Street, suite 2200, Minneapolis, MN 55402.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272–2511, or Max Berueffy, Branch Chief, (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a diversified open-end management company incorporated under the laws of Minnesota. Applicant filed its initial registration statement pursuant to section 8(b) of the 1940 Act on February 4, 1985, registering an indefinite number of shares of its common stock under the Securities Act of 1933. Applicant's registration statement became effective and its initial public offering commenced on May 16, 1985.

2. On January 19, 1989, Applicant's Board of Directors approved an Agreement and Plan of Reorganization (the "Plan") between Applicant and Bankers Systems Granit Growth Stock Fund, Inc. (now named Voyageur Growth Fund, Inc.) (File No. 811–4547) ("Growth Stock Fund"). The Plan provided for (a) the acquisition by Growth Stock Fund of all or substantially all the assets of Applicant in exchange for shares of Growth Stock Fund, (b) the dissolution and liquidation of Applicant and the pro rata distribution by Applicant to its shareholders of all its holdings of Growth Stock Fund shares, and (c) the termination of Applicant's registration as an investment company under the 1940 Act.

3. On May 11, 1989, a majority of Applicant's shareholders approved the Plan. In connection with the shareholder meeting, on March 6, 1989, Growth Stock Fund filed a Registration Statement on Form N–14, which included a Notice of Special Meeting of Shareholders of Applicant and a Prospectus and Proxy Statement (the "Proxy Statement") dated April 5, 1989, related to the Plan. The Proxy Statement was filed with the SEC on April 24, 1989, and mailed to shareholders prior to the shareholder meeting.

4. Pursuant to the Plan, on June 28, 1989 (the "Closing Date"), Applicant transferred all of its assets to Growth Stock Fund in exchange for shares of Growth Stock Fund of equal value. The value of Applicant's assets and of Growth Stock Fund's shares were determined as of the close of business on June 27, 1989 (the "Valuation Date"). On the Valuation Date, Applicant had 158,255,686 shares outstanding with a net asset value of $14.28 per share. In exchange for its assets, Applicant received 114,948,697 shares of Growth Stock Fund with a net asset value of $19.66 per share. The shares of Growth Stock Fund received by Applicant were distributed pro rata to Applicant's shareholders on the Closing Date, in complete liquidation of Applicant.

5. Applicant and Growth Stock Fund incurred expenses of $100,404 in connection with the completion of the Plan. Applicant's expenses were reimbursed to Applicant by Voyageur Fund Managers and Voyageur Fund Distributors, Inc., the investment adviser and underwriter, respectively, of Growth Stock Fund.

6. At the time of filing of the application, Applicant had no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceedings. Applicant is not engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs. On October 19, 1989 Applicant filed Articles of Dissolution with the Secretary of State of the State of Minnesota, which became effective upon filing.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–12229 Filed 5–22–91; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Region IX Regional Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of San Francisco, will hold a public meeting at 10 a.m. on Thursday, May 30, 1991, at the Sacramento Commercial Bank, Conference Room, 525 "J" Street, Sacramento, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Michael R. Howland, District Director, U.S. Small Business Administration, San Francisco District Office, 211 Main Street, 4th Floor, San Francisco, California 94105–1988, telephone (415) 744–6801.

Dated: May 16, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91–12190 Filed 5–22–91; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Bureau of Diplomatic Security

[Public Notice 1400]

Anti-Terrorism Assistance Training

In accordance with Office of Management and Budget Circular No. A–102, dated March 11, 1988, the Department of State hereby gives notice of intention to continue a cooperative agreement for purposes of facilitating the accomplishment of the objectives of the Foreign Assistance Act of 1961, as codified at 22 U.S.C. 2349aa, et seq. Under this authority, the Department of State provides assistance to foreign law enforcement personnel to enhance their ability to deter terrorists and terrorist groups from engaging in international terrorist acts. In the implementation of this legislation, a cooperative agreement has been in effect with the Louisiana State Police to provide facilities, instruction and logistical support for training. The existing cooperative agreement expires on June 30, 1991.

The Department is now in the process of developing specification and scope of work for a competitive solicitation leading to a contract for these services. It is estimated that this contract will be awarded by October 1, 1991. The Department of State therefore gives this notice of intention to continue, as an interim measure, a cooperative agreement with the Louisiana State Police which will be effective until the contractual arrangements are completed. While the agreement will be executed for one year, funding will be incremental, and fourth quarter fiscal year 1991 funding is estimated at $750,000. This agreement will be terminated upon execution of the contract.

Public comment on this intended action may be submitted within 20 days after the date of the **Federal Register** in which this notice appears, addressed to Rudy G. Hall, U.S. Department of State, DS/ASD, P.O. Box 3590, Washington, DC 20007–0090. Telephone (202) 663–0049.

Dated: May 14, 1991.

Rudy G. Hall,

Chief, Administrative Services Division, Bureau of Diplomatic Security.

[FR Doc. 91–12214 Filed 5–22–91; 8:45 am]

BILLING CODE 4710–10–M

[Public Notice 1399]

Ad Hoc Group on International Communications Development of the National Committee of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that the Ad Hoc Group on International Communications Development of the National Committee of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will hold an open meeting June 28, 1991 at the Department of State, 2201 C Street, NW., Washington, DC in room 1408 commencing at 10 a.m.

The Ad Hoc Group on International Communications Development considers how the U.S. can help improve communications infrastructure in developing countries, particularly through the development programs of the International Telecommunication Union (ITU). The purpose of the meeting is to: Review the current status of the Center for Telecommunication Development (CTD) in light of the report of the High Level Committee of the ITU; discuss the future structure of the ITU's development function, including the Bureau for the Development of Telecommunications (BDT) and World and Regional Development Conferences; and, discuss the role of the United States in telecommunications development and its relationship with ITU development activities.

Members of the general public may attend the meeting and participate in discussions, subject to instructions from the Chairman. Admittance will be limited to the seating available. All attendees must use the C Street entrance. For security reasons, admission to the Department of State is controlled. Prior notification will facilitate clearance into the building. All those planning to attend should call 202 647–5230 well ahead of time and be prepared to provide day and month of birth and social security number.

Dated: May 9, 1991.

Earl S. Barbely,

Chairman, U.S. CCITT National Committee.

[FR Doc. 91–12215 Filed 5–22–91; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Admistration

Environmental Impact Statement: Route 92/I–880 Interchange Project, Hayward, Alameda County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Hayward, Alameda County, California.

FOR FURTHER INFORMATION CONTACT: Mr. C. Glenn Clinton, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95812–1915. Telephone: 916/551–1314.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (Caltrans), will prepare an environmental impact statement (EIS) for a proposal to improve State Route 92/I–880 Interchange in the City of Hayward in order to relive existing freeway congestion and to accommodate projected traffic volumes. The EIR/EIS will evaluate interchange improvements consisting of direct connectors for the State Route 92 Easbound to I–880 Northbound and I–880 Southbound to State Route 92 Westbound movements. These improvements will be compatible with other projects on State Route 92 and I–880 currently under study. Modifications to adjacent interchanges may be required, and will be considered in the preliminary engineering and environmental studies. These improvements are to be funded by voter-approved Measure B and Regional Measure 1 funds.

In addition to the above, the no-project alternative would also be evaluated.

The proposed scoping process includes the distribution of the Notice of Preparation to each responsible and trustee agency pursuant to the California Environmental Quality Act, publication of the notice of intent in the **Federal Register** and a scoping meeting to be held in the spring of 1991. This scoping meeting will be advertised in advance in local newspapers.

Public meetings will also be held during the course of the environmental studies to inform and receive input from the public. A draft environmental impact statement will be circulated for public and agency review and comment followed by a formal public hearing. Public notice will be given of the time and place of the meetings and hearing.

To ensure that the full range of issues related to this proposed action are addressed, and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address previously provided in this document.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding interogvernmental consultation of Federal Programs and activities apply to this program.)

Issued on: May 13, 1991.

Mr. C. Glenn Clinton,

District Engineer, Sacramento, California.

[FR Doc. 91–12249 Filed 5–22–91; 8:45 am]

BILLING CODE 4910–22–M

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DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 16-91]

Treasury Bonds of May 2021

Washington, May 10, 1991.

The Secretary announced on May 9, 1991, that the interest rate on the bonds designated bonds of May 2021, described in Department Circular—Public Debt Series—No. 16-91 dated May 2, 1991, will be 8⅛ percent. Interest on the bonds will be payable at the rate of 8⅛ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91-12217 Filed 5-22-91; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 15-91]

Treasury Notes, Series B-2001

May 9, 1991

The Secretary announced on May 8, 1991, that the interest rate on the notes designated Series B-2001, described in Department Circular—Public Debt Series—No. 15-91, dated May 2, 1991, will be 8 percent. Interest on the notes will be payable at the rate of 8 percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91-12219 Filed 5-22-91; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 14-91]

Treasury Notes, Series S-1994

May 8, 1991.

The Secretary announced on May 7, 1991, that the interest rate on the notes designated Series S-1994, described in Department Circular—Public Debt Series—No. 14-91 dated May 2, 1991, will be 7 percent. Interest on the notes will be payable at the rate of 7 percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91-12218 Filed 5-22-91; 8:45 am]

BILLING CODE 4810-40-M

Corrections

Federal Register
Vol. 56, No. 100
Thursday, May 23, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 12

Highly Erodible La nd and Wetland Conservation

Correction

In rule document 91-9146 beginning on page 18630 in the issue of Tuesday, April 23, 1991, make the following corrections:

§ 12.1 [Corrected]

On page 18635, in the third column, in § 12.1(a), in the eighth line,"eligible" should read "ineligible".

§ 12.5 [Corrected]

On page 18638, in the second column, in § 12.5(b)(6)(i), in the second line, "eligible" should read "ineligible".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 907 and 908

[Docket No. FV-91-249]

Navel Oranges Grown in Arizona and Designated Part of California; Valencia Oranges Grown in Arizona and Designated Part of California; Amendment to Referenda Order

Correction

In proposed rule document 91-11561 beginning on page 22364 in the issue of Wednesday, May 15, 1991, make the following correction:

On page 22365, in the first column, under **DATES**, in the fourth line, after "oranges" insert ", and from February 1, 1990, through January 31, 1991, for Valencia oranges."

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

National Institute of Standards and Technology, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

Correction

In notice document 91-11553 beginning on page 22395 in the issue of Wednesday, May 15, 1991, in the third column, in the paragraph for *Docket Number:* 90-183, in the 11th line, "1.0pA to 10.0pA" should read, "1.0pA to 10.0μA".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 910507-1107]

Snapper-Grouper Fishery of the South Atlantic

Correction

In rule document 91-11295 beginning on page 21960 in the issue of Monday, May 13, 1991, make the following correction:

§ 646.24 [Corrected]

1. On page 21961, in the first column, in § 646.24(b), in third line from the bottom, "where" should read "were".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 685

[Docket No. 910499-1089]

Pelagic Fisheries of the Western Pacific Region

Correction

In rule document 91-9145 beginning on page 15842, in the issue of Thursday, April 18, 1991, make the following corrections:

On page 15843, in § 685.2, in the 3rd column, in the 2nd paragraph, in the 1st line "*zones*" should read "*zone*", and in the same paragraph, in the 11th line, "28°" should read "23°".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 2

[Docket No. 910373-1073]

RIN 0651-AA45

Revision of Patent and Trademark Fees

Correction

In proposed rule document 91-11223 beginning on page 21890 in the issue of Friday, May 10, 1991, make the following corrections:

1. On page 21892, in the first column, in the fifth paragraph, in the sixth line "(a)(2)(iii)" should read "(a)(2)(ii)".

§ 1.16 [Corrected]

2. On page 21896, in the first column, in § 1.16(c), in the third line, "30" should read "20".

3. On the same page, in the same column, in § 1.16(d), in the fifth line, "200.00" should read "100.00" and in the sixth line, "100.00" should read "200.00".

§ 1.19 [Corrected]

4. On page 21897, in the second column, in § 1.19(f), in the second line, after "States" insert "patent".

§ 1.20 [Corrected]

5. On page 21897, in the second column, in § 1.20(a), in the second line "application's" should read "applicant's".

§ 2.6 [Corrected]

6. On page 21901, in the first column, in § 2.6(a)(16), after "filing" insert "petition".

BILLING CODE 1505-01-D

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 532, 550, and 551

RIN 3026-AE29

Pay Administration Under the Fair Labor Standards Act; Overtime Pay Provisions

Correction

In rule document 91-10552 beginning on page 20339 in the issue of Friday, May 3, 1991, make the following corrections:

1. On page 20339, in the third column, in the third paragraph, in the eighth line from the bottom of the paragraph, "500," should read "550,".

2. On page 20340, in the third column, in the third paragraph, in the third line, "not" should read "now".

§ 550.703 [Corrected]

3. On page 20343, in the third column, in § 550.703, in the last line, insert "other" after "any".

BILLING CODE 1505-01-D

POSTAL SERVICE

39 CFR Part 111

Nonmailability of Deceptive Solicitations

Correction

In rule document 91-10635, beginning on page 21304, in the issue of Wednesday, May 8, 1991, make the following correction:

On page 21305, under 123.422(c), in the second column, in the 15th line, "fact" should read "face".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Office of the Assistant Secretary (Domestic Finance)

17 CFR Part 403

Implementing Regulations for the Government Securities Act of 1986

Correction

In proposed rule document 91-8925 beginning on page 15529 in the issue of Wednesday, April 17, 1991, make the following corrections:

1. On page 15530, in the second column, under *A. Buy-ins for Fails to Receive*, in the first paragraph, in the tenth line, the paragraph citation should read, "240.15c3-3(d)(2)". In the same column, in the third line from the bottom, insert "due" after "difficult",

2. On page 15531, in the 2nd column, in the 1st paragraph, in the 15th line, the paragraph citation should read, "403.4(l)".

3. On page 15532, in the first column, in the ninth line, "requirements" should read, "requirement".

§ 403.1 [Corrected]

4. On the same page, in the second column, in § 403.1, the sixth line should read "(e)(2)-(3), (f)-(i), and (l), constitutes".

§ 403.4 [Corrected]

5. In the same column, in amendatory instruction number 3., in the third line "(1)" should read "(l)".

6. In the same column, in § 403.4(g), in the second line, the citation should read "§ 403.15c3-3(d)(2)".

7. In the same column, the second paragraph in § 403.4 now reading, "(1)" should read, "(l)".

BILLING CODE 1505-01-D

federal register

Thursday,
May 23, 1991

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

Funding Availability for Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N-91-3237; FR-3013-N-01]

Funding Availability for Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals

AGENCY: Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of funding availability for Fiscal Year 1991.

DATE: The deadline for receipt of applications is on August 21, 1991, for both Headquarters and the local HUD office covering the jurisdiction in which the project is located. Applications must be received by the close of business on the deadline date, which is 5:15 p.m. Eastern Daylight Savings Time for HUD Headquarters. Information on the time of official close of business for local HUD offices should be obtained directly from the respective HUD offices.

SUMMARY: This Notice of Funding Availability (NOFA) announces HUD's funding for the section 8 Moderate Rehabilitation Program for Single Room Occupancy (SRO) Dwellings for Homeless Individuals.

The Notice states the application, ranking, and selection procedures that will govern the use of the funds made available in Fiscal Year 1991 for use under this program.

FOR FURTHER INFORMATION CONTACT: Madeline Hastings, Moderate Rehabilitation Division, Room 6130, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20310, telephone (202) 755-4969. Hearing-or-speech-impaired individuals may call HUD's TDD number (202) 708-4594. (These telephone numbers are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2502-0367.

Purpose and Substantive Description

The purpose of the section 8 Moderate Rehabilitation Program for Single Room Occupancy (SRO) Dwellings for homeless individuals is to provide rental assistance to homeless individuals in rehabilitated SRO housing. The assistance is in the form of rental assistance under the Section 8 Housing Assistance Payments Program. These payments equal the rent for the unit, including utilities, minus the portion of the rent payable by the tenant under the U.S. Housing Act of 1937. HUD will make the assistance available for 10 years.

Under the program as originally enacted, HUD enters into annual contributions contracts (ACCs) with public housing agencies (PHAs) in connection with the moderate rehabilitation of residential properties in which some or all of the dwelling units may not contain either food preparation or sanitary facilities. Each of these single room occupancy (SRO) units is intended for occupancy by one eligible homeless individual.

The Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11401) requires that first priority for occupancy of SRO Moderate Rehabilitation units shall be given to homeless individuals. This requirement, however, is not meant to eliminate the rights of current tenants to remain in the building after it is rehabilitated. Due to limited resources and considerations of relative need, HUD will only accept, for this funding round, applications that propose assistance for people (described below) who are not currently residing in the building, and for individuals eligible for section 8 who are currently residing in the building. Nonresident applicants must be individuals who: (1) Lack the resources to obtain housing and who (a) have a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings (b) have a primary nighttime residence that is a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing but excluding prisons and other detention facilities); or (c) are at imminent risk of homelessness because they face immediate eviction and have been unable to identify a subsequent residence, which would result in emergency shelter placement; or (2) handicapped persons who are about to be released from an institution and are at risk of imminent homelessness because no subsequent residences have been identified and because they lack the resources and support networks needed to obtain access to decent housing. Applications will not be accepted under this funding round that propose assistance for individuals not residing in the building who are currently housed in overcrowded or substandard conditions but are not at imminent risk of becoming homeless for the reasons described in the previous sentence.

(a) Authority and Other Information

This program is authorized by section 441 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11401), amended by the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved November 7, 1988). On November 7, 1989, the Department published a final rule at 54 FR 46828, which sets forth at 24 CFR part 882, subpart H, the regulations for this program. The funds made available under this Notice are subject to these regulations.

Prior Notices and Fund Availability were published in Fiscal Years 1988, 1989, and 1990. The requirements of this Notice only apply to funds made available in Fiscal year 1991 under Section 441 of the Stewart B. McKinney Homeless Assistance Act. (The Fiscal Years 1988, 1989, and 1990 Notices continue in effect for the funds made available under section 441 for those Fiscal Years.)

Availability of Tax Credit

The Omnibus Revenue Reconciliation Act of 1990 (Pub. L. 101-508, Approved November 5, 1990) Amended the Low Income Housing Tax Credit (LIHTC) (26 U.S.C. 42) to permit the use of Moderate Rehabilitation assistance in conjunction with the LIHTC if the assistance is being provided under the Stewart B. McKinney Homeless Assistance Act. The Department will review all SRO projects using the LIHTC to determine whether the level of housing assistance proposed for the project is appropriate when combined with the LIHTC.

Cost Limit

Under the Stewart B. McKinney Homeless Assistance Amendments of 1988 (Pub. L. 100-628, approved November 7, 1988), HUD is required to increase the SRO per unit rehabilitation cost limit each year to take into account increases in construction costs, starting with assistance provided on or after October 1, 1988. For purposes of Fiscal Year 1991 funding, the cost limitation is raised from $14,600 to $15,000 per unit to take into account increases in construction costs during the past 12-month period. This amendment is made in accordance with 24 CFR 882.805(g), Initial contract rents.

Indian Housing Authority (IHA) Participation

Under section 835 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101-625, Approved November 28, 1990), an Indian Housing Authority may apply for the Moderate Rehabilitation SRO Program.

PHA-Owned Units

Section 548 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101-625, approved November 28, 1990) provides that a PHA may contract to make assistance payments to itself as the owner of dwelling units under the section 8 programs. The PHA must be subject to the same program requirements as are applied to other owners. This provision removes the statutory prohibition against section 8 assistance for units owned by the PHA which administers assistance under the ACC. However, the Department has determined that PHAs will not be authorized to enter Housing Assistance Payments (HAP) Contracts for PHA-owned units before the issuance of final regulations specifying the administrative requirements for PHA owned section 8 units. 24 CFR 882.803(a)(2)(ii), which provides that units owned by the PHA administering the SRO program are not eligible for assistance under the SRO program, remains in effect. The Department does not anticipate issuance of final regulations under section 548 in time for the Fiscal year 1991 funding round for the SRO program. Thus, units owned by the administering PHA may not be selected or funded this round.

(b) Allocation Amounts

Approximately $105 million was appropriated for the program by the Department of Veterans Affairs and Housing and Urban Development-Independent Agencies Appropriations Act, 1991 (Pub. L. 101-507, approved November 5, 1990). HUD estimates that this $105 million will assist approximately 2,700 units over the 10-year period. From this amount, approximately $1 million has been awarded to the Richmond Redevelopment and Housing Authority. This application ranked high enough in the Fiscal year 1990 round and should have been funded. However, the application was not funded because of an error made by the Department. Therefore, funds for the Richmond SRO project are being made available from FY 1991 appropriations. Thus, the amount available for the FY 1991 national competition is approximately $104 million. The statutory national competition procedures established for the program by section 441 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11401) apply, rather than the "fair share" allocation procedures required for most assisted housing funds by section 213(d) of the Housing and Community Development Act of 1974, (42 U.S.C. 1439(d)).

(c) Eligibility

Interested PHAs including IHAs, are invited to submit applications for this program. Under this program, HUD will provide assistance for a 10-year period of selected PHAs.

(d) Selection Criteria/Ranking Factors

1. *Initial Screening.* Applications will be reviewed by both HUD Headquarters and by HUD field offices. Field offices will be responsible for making review comments, but all selections will be made by Headquarters. To be considered for ranking and possible selection, applications must meet certain threshold requirements. The threshold review, which will apply to all applications, will determine whether the application is adequate in form, timeliness, and completeness, and whether the project is eligible to participate in the program. HUD will base its assessment on which applicants best demonstrate a need for the assistance and on their ability to undertake and carry out the program to be assisted.

2. *Environmental Review Requirements.* When ranking applications, HUD will complete environmental reviews required under 24 CFR Part 50 on all applications. HUD may elect to eliminate a proposal from consideration where the application would require an Environmental Impact Statement, or the time necessary for the completion of the review process under an environmental law for structures identified in a particular application would make it difficult for the property to be rehabilitated and occupied within a reasonable period. In order to assist HUD in the timely completion of the Historic Preservation Review process, the applicant may contact the State Historic Preservation Office (SHPO) to determine if the proposed structure(s) requires Historic Preservation clearance. If Historic Preservation clearance is required, there should be early coordination (if possible, before the application deadline) with the HUD field office to provide all the necessary information required by the SHPO.

3. *Ranking.* Except for proposals eliminated for the above-mentioned environmental reasons, HUD will rank all applications from PHAs that contain all items required by 24 CFR 882.805(c) of the program regulations and the application package described in part II of this NOFA that are received by the deadline date. Each application will be ranked based upon HUD's assessment of the ranking factors listed below. Each factor indicates the maximum number of points that may be assigned for that factor. Points may be awarded up to the maximum number allotted for each factor.

(a) The need for assistance, as demonstrated by the PHA's analysis of the size and characteristics of the population to be served and by the thoroughness of the analysis of the need presented and (10 points)

(b) The PHA's ability to undertake and carry out the program within the schedule proposed by the PHA, as demonstrated by:

(i) Whether the preliminary feasibility analysis clearly demonstrates that it appears likely that the proposed structure will be feasible within the Fair Market Rent (15 points)

(ii) Whether there is evidence of site control or other evidence that the site will be available for rehabilitation in accordance with the PHA's schedule (10 points)

(iii) The percentage of units proposed for assistance which are vacant (rehabilitation of vacant units generally will result in more units becoming available for the homeless; therefore, applications where all units to be assisted are vacant will be given the full 10 points for this criterion.) (10 points)

No person shall be displaced (as defined in 24 CFR 882.803(d)(2)(i)) from a dwelling for an assisted project. In addition to applicable sanctions under the agreement, a violation of this policy may trigger a requirement to provide relocation assistance at the levels described in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, implementing regulation at 49 CFR part 24, and HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition. Persons whose occupancy is terminated through a notice to vacate or the refusal to renew a lease in order to provide a vacant unit for the project qualify as "displaced persons" who are eligible for assistance.

(iv) Whether it appears feasible, based on assessments of the capabilities of the PHA and the Owner, that the PHA and Owner will complete all steps necessary so that the HAP Contract may be executed within 12 months of execution of the ACC; and whether basic program requirements are met (5 points)

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(v) Whether the PHA has specified the resources available to provide necessary supportive services, targeted to the needs of the single homeless population identified, including the strength and length of the commitments to provide those resources and the methods by which the population to be served will be sought out and informed of the availability of assistance (20 points)

(vi) The availability of financing, both assisted and unassisted, as demonstrated by statements of intent or commitments from lenders, with the awarding of more points where the lender is legally committed to provide the financing and documented assisted financing availability (e.g., below market interest subsidies, grants). (10 points) and

(vii) The PHA's experience with, or demonstrated ability to operate rehabilitation programs, including past performance in placing Moderate Rehabilitation units under Agreement and Contract; the PHA's experience in working with homeless people; and the PHA's overall administrative capability, as evaluated by the HUD Field Office. (e.g., results of reviews or audits of PHA performance or Field Office's most recent monitoring letter concerning the PHA's ability to carry out its Equal Opportunity Housing Plan). (20 points)

3. *Selection of Applications.* (a) HUD will select the highest ranking applications. However, no city or urban county may have projects receiving a total of more than 10 percent of the assistance to be provided under this program this fiscal year. In FY '91, this limit equals approximately $10,400,000 in budget authority for a city or urban county, which is the equivalent of up to $1,040,000 in administratively controlled contract authority per year. HUD anticipates that this will fund a maximum of approximately 270 units for any one city or urban county. In addition, no single proposal shall receive assistance for more than 100 units.

(b) HUD will notify each PHA whether or not its application has been selected.

II. Application Process

1. *Where to Obtain Application Package.* An application package containing all required forms and exhibits, detailed application instructions, and pertinent program guidance may be obtained from either HUD Headquarters (Moderate Rehabilitation Division, telephone (202) 755-4969) or the HUD field offices listed in Appendix A. Each prospective applicant should obtain and carefully review an application package before preparing an application for submission to HUD.

2. *Deadline for Applications.* The deadline for receipt of applications is on August 21, 1991 for both Headquarters and the local HUD office covering the jurisdiction in which the project is located. Applications must be received by the close of business on the deadline date, which is 5:15 p.m. Eastern Daylight Savings Time for HUD Headquarters. Information on the time of official close of business for local HUD offices should be obtained directly from the respective HUD offices.

HUD will reject any application(s) and supplemental information received at the Washington, DC. address after the deadline. Only applications received by HUD by the deadline will be eligible for consideration. However, technical deficiencies may be corrected in accordance with part IV of this NOFA.

3. *Where to Submit Applications.* Applications must be submitted to HUD Headquarters and to the appropriate HUD field office for the jurisdiction of the submitting PHA. Applications submitted to Headquarters shall be addressed to Madeline Hastings, room 6130, Department of Housing and Urban Development, 451 Seventh Street SW., Washinton, DC 20410. The addresses, locations and telephone numbers of each local HUD office are included in Appendix A.

III. Checklist of Application Submission Requirements

The application must contain all items specified in the application package, and must be in accordance with instructions in the application package. An application may be obtained from HUD Headquarters or the appropriate field office in Appendix A and must include all of the following:

(1) Description of the size and characteristics of the homeless population.

(2) Description of supportive service plan and evidence of commitment or interest from service providers.

(3) Description of PHA's administrative capability, rehabilitation expertise, and experience with the homeless.

(4) A schedule for completion of all necessary steps of project development.

(5) Description of the site(s) proposed for assistance, including information on:

a. Site control and owner interest in participation

b. Proposed financing of rehabilitation work

c. Proposed rehabilitation

d. Number of vacant units

e. Preliminary financial feasibility, as demonstrated by appendix 31 rent calculation from Handbook 7420.3

f. Disclosure of Other Governmental Assistance

(6) The following certifications (fully described in the application package)

(a) Comprehensive Homeless Assistance Plan (CHAP) Certification

(b) Drug-Free Workplace Certification

(c) Anti-Lobbying Certification

(7) Section 213 Letter. Upon receipt of an application that does not include a section 213 letter from the chief executive officer of the unit of general local government, HUD shall send the application to the appropriate chief executive officer in accordance with 24 CFR part 791. Where the review and comment process required under 24 CFR part 791 has not been completed by the time HUD is ready to make its own selections, it may tentatively select one or more applications subject to completion of the comment process required under part 791.

IV. Correction to Technically Deficient Applications

Before the application deadline, both Headquarters and field office staff will be available to provide advice and guidance to potential applicants on application requirements and program policies. In order to provide applicants the opportunity to submit a ratable application, while at the same time ensuring the fairness and integrity of the selection process, HUD Headquarters will screen applications, for completeness and technical deficiencies, within 5 working days after the application deadline date. An application will be determined technically deficient if it contains all the items necessary for HUD review under the Selection Criteria/Ranking Factors but does not contain one or more of the following certifications listed in Section III of this NOFA.

1. Comprehensive Homeless Assistance Plan (CHAP) Certification

2. Drug-Free Workplace Certification

3. Anti-lobbying Certification

In cases where a certification(s) required by this rule is missing, the applicant will first be notified by telephone of the deficiency and then given 14 days from the date of written notification of the deficiency to submit the missing certification(s) necessary for completeness. The purpose of this process is to assist applicants in submitting ratable proposals and not to provide opportunity for an application to be substantively improved once the application deadline has passed. For this reason, HUD will contact applicants only where it is clear that the deficiencies are technical in nature.

Section 102 of HUD Reform Act of 1989

On March 14, 1991, the Department published in the **Federal Register** a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (24 CFR part 12, 56 FR 11032). Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by the Department.

The following should be noted regarding the relationship of the Section 8 Moderate Rehabilitation Program for SRO Dwellings to part 12:

1. Since HUD makes assistance under the program available on a competitive basis, HUD must:

—Ensure that documentation and other information regarding each application submitted to the Department are sufficient to indicate the basis upon which assistance was provided or denied. HUD must make this material available for public inspection for a five-year period. (§ 12.14(b)) HUD will provide further guidance on how this material may be accessed in a later Notice published in the **Federal Register**.

—Publish a Notice in the **Federal Register** at least quarterly indicating the recipients of the assistance. (§ 12.16(a))

2. If a PHA that receives assistance then makes the assistance available on a competitive basis to an owner, the PHA:

—Must ensure that documentation and other information regarding each application submitted to the PHA by an applicant are adequate to indicate the basis upon which assistance was provided or denied. The PHA must make this material available for public inspection for a five-year period. (§ 12.14(c))

—Must notify the public of the subrecipients that receive the assistance. (§ 12.16(b))

Sections 12.14(c) and 12.16(b) are not yet effective; their effectiveness will be announced in a later **Federal Register** Notice. The Notice will make the provisions applicable to all decisions made by a PHA regarding the assistance or on or after the effective date of the Notice. Accordingly, PHAs should be aware that publication of this subsequent Notice may make their future decisions to award or deny assistance subject to these provisions.

3. In accordance with Subpart C of the rule, PHAs that seek assistance under the program from HUD will have to make the disclosures required under § 12.32. An owner applying to a PHA will also have to make the disclosures.

Subpart C is not effective at this time; it will be made effective through later publication of a Notice in the **Federal Register**. PHAs and owners should be aware that publication of this subsequent Notice may make future applications to PHAs subject to its requirements.

Other Matters

Environmental Review. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection weekdays from 7:30 a.m. to 5:30 p.m. in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW. Washington, DC 20410.

Executive Order 12612, Federalism. The General Counsel, as the Designated Official under Section 6(a) of the Executive Order 12612, *Federalism*, has determined that the policies contained in this NOFA do not have federalism implications and, thus, are not subject to review under the Order. The NOFA makes available, pursuant to an authorizing statute and an appropriation Act, housing assistance for homeless individuals through a mechanism that is already established between HUD, the PHA, and the Owner under the Section 8 Housing Assistance Payments Program.

Executive Order 12606, the Family. The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this rule does not have a potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The purpose of the NOFA is to make available assistance for single room housing for homeless individuals.

Catalog of Federal Domestic Assistance. The Catalog of Federal Domestic Assistance Program number is 14.156, Lower Income Housing Assistance Program.

Authority: Secs. 401 and 441, Stewart B. McKinney Homeless Assistance Act, Pub. L. 100-77, approved July 22, 1987; secs. 461 and 485, Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. 100-628, approved November 7, 1988; sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: May 15, 1991.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

Appendix A—HUD Offices

Region I

Boston Regional Office

Boston Federal Office Building, 10 Causeway Street, Room 375, Boston, MA 02222-1092, (617) 565-5234

Hartford Office

330 Main Street, Hartford, CT 06103-2943, (203) 722-3638

Manchester Office

Norris Cotton Federal Building, 275 Chestnut Street, Manchester, NH 03101-2487, (603) 666-7681

Providence Office

John O. Pastore Federal Building and U.S. Post Office-Kennedy Plaza, Room 330, Providence, RI 02903, (401) 528-5351

Region II

New York Regional Office

26 Federal Plaza, Room 32130, New York, NY 10278-0068, (212) 264-8053

Buffalo Office

Statler Builder Messanine, 107 Delaware Avenue, Buffalo, NY 14202-2986, (716) 846-5755

Newark Office

Military Park Building, 60 Park Place, Newark, NJ 07102-5504, (202) 877-1662

Region III

Philadelphia Regional Office

Liberty Square Building, 105 S. 7th Street, Philadelphia, PA 19106-3392, (215) 597-2560

Baltimore Office

The Equitable Building, 10 North Calvert Street, 3rd Fl., Baltimore, MD 20202-1865, (301) 962-2121

Charleston Office

405 Capital Street, Suite 708, Charleston, WV 25301-1795, (304) 347-7000

Pittsburgh Office

412 Old Post Office Courthouse Building, 7th Avenue and Grant Street, Pittsburgh, PA 15219-1906

Richmond Office

701 East Franklin Street, Richmond, VA 23219-2591, (804) 771-2721

Washington, DC Office

820 First Street NE., Washington, DC 20002-4205, (202) 275-8185

Region IV

Atlanta Regional Office

Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, GA 30303-3388, (404) 331-5136

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Birmingham Office
Daniel Building, 15 South 20th Street, Birmingham, AL 35233–2098, (205) 254–1617

Columbia Office
Strom Thurmond Federal Building, 1835–45 Assembly Street, Columbia, SC 29201–2480, (803) 765–5592

Greensboro Office
415 North Edgeworth Street, Greensboro, NC 27401–2107, (919) 333–3561

Jackson Office
Doctor A.H. McCoy, Federal Building, 100 W. Capitol Street, Suite 1096, Jackson, MS 39269–1009, (601) 965–4702

Jacksonville Office
325 West Adams Street, Jacksonville, FL 32202, (904) 971–2626

Knoxville Office
One Northshore Building, 1111 Northshore Drive, Knoxville, TN 37919–4090, (615) 558–1384

Caribbean Office
New San Juan Office Building, 159 Carlos E. Chardon Avenue, San Juan, PR 00918–1804, (809) 766–6121

Louisville Office
601 West Broadway, P.O. Box 1044, Louisville, KY 40201–1044, (502) 582–5251

Nashville Office
One Commerce Place, Suite 1600, Nashville, TN 37239–1600, (615) 736–5213

Region V

Chicago Regional Office
626 West Jackson Blvd., Chicago, IL 60606–5601, (312) 353–5680

Cincinnati Office
Federal Office Building, 550 Main Street, Room 9002, Cincinnati, OH 45202, (513) 684–2884

Cleveland Office
One Playhouse Square, 1375 Euclid Avenue, Room 420, Cleveland, OH 44114–1670, (216) 522–4065

Columbus Office
200 North High Street, Columbus, OH 43215–2499, (614) 469–7345

Detroit Office
McNamara Federal Building, 477 Michigan Avenue, Detroit, MI 48226–2592, (313) 226–7900

Grand Rapids Office
2922 Fuller Avenue NE., Grand Rapids, MI 49505–3409, (616) 456–2216

Indianapolis Office
151 North Delaware Street, P.O. Box 7047, Indianapolis, IN 46204–2526, (317) 269–6303

Milwaukee Office
Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Suite 1380, Milwaukee, WI 53203–2290, (414) 291–1493

Minneapolis-St. Paul Office
220 Second Street, South Minneapolis, MN 55401–2195, (612) 370–3000

Region VI

Fort Worth Regional Office
221 West Lancaster, P.O. Box 2905, Fort Worth, TX 76113–2905, (817) 885–5401

Houston Office
National Bank of Texas Building, 2211 Norfolk, Suite 300, Houston, TX 77098–4096, (713) 229–3950

Little Rock Office
Savers Building, 300 West Capitol, Suite 700, Little Rock, AR 72201, (501) 378–5931

New Orleans Office
1661 Canal Street, P.O. Box 70288, New Orleans, LA 70172, (504) 589–2300

Oklahoma City Office
Murrah Federal Building, 200 N.W. 5th Street, Oklahoma City, OK 73102–3202, (405) 231–4181

San Antonio Office
Washington Square Building, 800 Delorsa, P.O. Box 9163, San Antonio, TX 78207–4563, (512) 229–6781

Region VII

Kansas City Regional Office
Gateway Tower, II, Room 200, 400 State Avenue, Kansas City, KS 66101–2406, (913) 236–2100

Des Moines Office
Federal Building, 210 Walnut Street, Room 259, Des Moines Offices, IA 50309–2155.

Omaha Office
Braiker/Brandeis Building, 210 South 16th Street, Omaha, NE 68102–3703, (402) 221–3703

St. Louis Office
1222 Spruce, St. Louis, MO 63103–2836, (314) 539–6560

Region VIII

Denver Regional Office
Executive Tower Building, 1405 Curtis Street, Denver, CO 80202–2349, (303) 844–4513

Region IX

San Francisco Regional Office
Federal Building, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, CA 94102–3448, (415) 556–4752

Honolulu Office
300 Ala Moana Boulevard, Room 3318, Honolulu, HA 96850–4991, (808) 546–2136

Los Angeles Office
1615 W. Olympic Boulevard, Los Angeles, CA 90015–3801, (213) 251–7122

Phoenix Office
2 Arizona Center, 400 N. First Street, Suite 1600, Phoenix, AR 85004–2361, (602) 262–4434

Sacramento Office
777 12th Street, Suite 200, P.O. Box 1978, Sacramento, CA 95809–1978, (916) 551–1351

Region X

Seattle Regional Office
Arcade Plaza Building, 1321 Second Avenue, Seattle, WA 98101–2054, (206) 442–5414

Anchorage Office
701 C Street, Box 64, Module G, Anchorage, AL 99513–0001, (907) 271–4170

Portland Office
Cascade Building, 520 Southwest Sixth Avenue, Portland, OR 97204–1596, (503) 326–2561.

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federal register

Thursday
May 23, 1991

Part III

Environmental Protection Agency

40 CFR Part 73

Auctions, Direct Sales, and Independent Power Producers Written Guarantee Regulations; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 73

[FRL-3958-4]

RIN 2060-AD41

Auctions, Direct Sales, and Independent Power Producers Written Guarantee Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to title IV of the Clean Air Act as amended by Public Law 101-549, the Clean Air Act Amendments of 1990 ("the 1990 Amendments") ("the Act"), the Administrator must promulgate regulations to reduce emissions of sulfur dioxide (SO_2) and nitrogen oxides (NO_x), precursors of acid rain. The regulations proposed in this notice are part of the title IV program to reduce SO_2 emissions. The centerpiece of this control program is the allocation of transferable allowances, or authorizations to emit SO_2, which are distributed in limited quantities to existing utility units and which eventually must be held by all utility units to cover their SO_2 emissions. These allowances may be transferred among polluting sources, so that market forces may govern their ultimate use and distribution, resulting in the most cost-effective sharing of the emissions control burden. In order to stimulate and support such a market in allowances, and to provide a public source of allowances to new units for which no allowances are allocated, the Administrator is directed under section 416 of the Act to conduct annual sales and auctions of allowances. In this notice, EPA is proposing regulations for conducting these sales and auctions, as well as regulations under which certain independent power producers ("IPP") may obtain written guarantees of the availability of allowances and may exercise priority in purchasing allowances through the direct sale. EPA will hold a public hearing on this proposed rule on the date listed below.

DATES: Comments must be received on or before July 5, 1991. The public hearing will be held on Wednesday, June 5, 1991 from 9:30 a.m. to 11:30 a.m.

ADDRESSES: All written comments must be identified with the document control number "A-91-32" and be submitted in duplicate to: EPA Air Docket (LE-131), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Comments received on this proposed rule will be available for reviewing and copying from 8:30 a.m. to 12 p.m. and 1:30 p.m. to 3:30 p.m., Monday through Friday, excluding legal holidays, in room M-1500, first floor, Waterside Mall, at the address given above.

The public hearing will be held at EPA at the address given above in the EPA Conference Center Room 1 North.

FOR FURTHER INFORMATION CONTACT: Linda Reidt Critchfield, EPA/OAIAP/Acid Rain Division (ANR-445), 401 M St., SW., Washington, DC 20460, (202) 382-7915.

SUPPLEMENTARY INFORMATION:

I. Authority

In order to carry out the auctions and sales provisions of section 416 of the Act, the Administrator of EPA is directed under section 416(b) to create a Special Allowance Reserve, by setting aside up to 2.8% of the allowances that would otherwise be allocated annually for existing utility sources of sulfur dioxide. The Administrator is then to use this Special Allowance Reserve to provide allowances for the auctions and sales programs. The Act requires the Administrator to promulgate regulations for conducting auctions by no later than November 15, 1991, which is 12 months after enactment of the 1990 Amendments (section 416(d)(2)). This is the earliest regulatory deadline required under section 416. EPA proposes to promulgate the direct sale and IPP written guarantee regulations at the same time as the auctions rule to complete most of the rule-making for section 416 of the Act. The Administrator is authorized to wait until 36 months after the date of enactment to propose regulations to create the Special Allowance Reserve and will propose these regulations at a later time, after various calculations for allowance allocations are more fully developed.

The regulations proposed today are to be subpart D of part 73; the remaining regulations required by the Act that will appear in this part will establish allowance allocations, the allowance tracking system, and the rules governing the trading of allowances. As required by the Act, EPA intends to promulgate these regulations no later than May 15, 1992, which is 18 months after the date of enactment.

The actual formulas and calculations for allowance allocations will be part of a separate rulemaking.

II. Background

Acid deposition occurs when emissions of sulfur dioxide (SO_2) and oxides of nitrogen are chemically transformed in the atmosphere into sulfuric and nitric acids and return to earth as precipitation such as rain, fog, or snow. Acid deposition damages lakes and harms forests and buildings. SO_2 emissions contribute to reduced visibility and are suspected of posing a threat to human health at current levels. Electric utilities emit approximately 20 million tons of SO_2 annually.

Title IV, which sets forth the acid rain control program of the 1990 Amendments, establishes a national cap on utility SO_2 emissions of 8.9 million tons per year (with the exception of certain additional emissions which are authorized through 2009). This cap will result in SO_2 emissions reductions of ten million tons from 1980 levels, which will be achieved in two phases. Phase I will begin in 1995 and mainly affects large, high-emitting coal-fired utility plants which are specifically listed in the statute. Phase II will begin in 2000 and affects virtually all utility units with output capacity greater than 25 megawatts, and new utility units of any size. In addition, SO_2 sources not explicitly affected by Phase II requirements (e.g., industrial facilities) may opt into the allowance trading program.

The centerpiece of the acid rain control program is an innovative system of marketable allowances. An allowance authorizes the emission of up to one ton of SO_2. The Act explicitly requires "affected" units (most units in operation prior to passage of The Act) to meet an annual sulfur dioxide emissions tonnage limitation expressed for each unit in the languge of title IV itself. At the same time, the Act requires the Administrator to allocate annually for each affected unit allowances to emit sulfur dioxide in an amount equal to the unit's statutory emissions limitation requirement. Once allowances are allocated, the Act requires that a unit's total annual SO_2 emissions be less than or equal to the number of allowances held for that unit. Allowances may be transferred to and from affected units and to and from any person. Allowances not used for compliance in the year in which they are allocated may be banked for future use. As a result, each unit may meet its SO_2 emissions limitation requirements by the most economically efficient means possible, either by selecting the most efficient method of controlling emissions or by purchasing allowances from other units that can reduce emissions more efficiently. In addition, the marketable value of allowances will create incentives for units to achieve greater reductions than required or to achieve reductions

through improved or innovative methods.

To maintain the total emissions cap, the Act requires new units (most units commencing operation after passage of the Act) to obtain allowances from existing allowance holders, or through the auctions and sales programs, which are the two methods the Act provides for the Administrator to make allowances available outside of the statutory allocations.

Because the availability of allowances is crucial to assure both the economic efficiency of the emissions limitation program and the addition of new electric generating capacity, title IV mandates that the Administrator hold yearly auctions and direct sales of allowances for a small portion (2.8 percent) of the total allowances required by the statute to be allocated each year. It also requires the Administrator to provide a written guarantee assuring priority for certain new IPPs in purchasing allowances in the direct sales. The auctions, sales, and IPP guarantee provisions of title IV should provide some certainty that units, including new IPPs, will have a public source of allowances beyond those which are allocated initially for existing units. In addition, the auctions are expected to help signal price information to the allowance market early in the regulatory program.

As proposed herein, EPA will sell allowances pursuant to section 416(d) at a once-a-year public auction, to be held no later than March 31 of each calendar year beginning in 1993. Each auction is required to include a fixed number of allowances prescribed by statute, and obtained from the Auction Subaccount of the Special Allowance Reserve, as set forth in section 416(d)(1). It may also include allowances offered for sale by private parties pursuant to section 416(d)(4), as well as allowances that are not sold in the direct sale program under section 416(c). The direct sale will begin on June 1 of each calendar year and continue until all available allowances are sold or until the last day on which allowances may be transferred for purposes of compliance (which will be specified in a separate rulemaking). Allowances will be offered for sale at $1500 each (and indexed yearly to inflation), a price fixed by the Act. Allowances not sold in an annual direct sale will be added to those auctioned in the following year. A crucial element of the direct sales program is the special priority afforded to certain IPPs. As required by the Act, the Administrator will guarantee these IPPs the right to purchase direct sale allowances before the allowances are offered to others. To qualify for the written guarantee, an IPP must meet certain criteria set forth in the Act and incorporated in the proposed regulation.

At a future date, EPA will propose and promulgate regulations establishing a Special Reserve of Allowances for the purpose of auctions, direct sales, and the IPP written guarantee. As required by section 416(b), those regulations will specify that the Administrator withhold from original allowance holders 2.8% of the total allowances to be allocated each year from 1995-1999 and 2.8% of the basic Phase II allowance allocation beginning in the year 2000. That reserve will comprise a subaccount for auctions of 150,000 allowances annually for Phase I and 200,000 allowances annually for Phase II and a subaccount for direct sales of 50,000 allowances for Phase II. The direct sale reserve will be subject to the IPP guarantee. (EPA interprets the conflict between the language of Section 416(d)(1), which states that the Phase II Auction Subaccount shall include 250,000 allowances, and the figures in table 2 of section 416(d)(2), which show the Phase II Auction Subaccount totaling 200,000, reflects a technical error in Section 416(d)(1); the correct amount is 200,000 allowances as indicated in Table 2.)

Table 1 below summarizes the standard auction and sales schedule required by section 416.

TABLE 1.—ALLOWANCES OFFERED AT AUCTIONS AND SALES

Year of purchase	Spot sale	Advance sale [2]	Spot auction	Advance auction [1]
1993		25,000	[3] 50,000	100,000
1994		25,000	[3] 50,000	100,000
1995		25,000	50,000	100,000
1996		25,000	150,000	100,000
1997		25,000	150,000	100,000
1998		25,000	150,000	100,000
1999		25,000	150,000	100,000
2000 and after	25,000	25,000	100,000	100,000

[1] Not useable until 7 years after purchase.
[2] Not useable until 1995.

Although this proposed rule may imply that EPA will conduct the auctions and direct sale (including the IPP written guarantee program), section 416(f) of the Act authorizes the Administrator by delegation or contract to provide for the conduct of sales and auctions by other departments or agencies of the United States Government or by nongovernmental agencies, groups, or organizations. EPA is not yet ready to make the determination as to the managing agent, if any, for the conduct of the auctions and direct sale.

III. Auctions

The Administrator is required to sell allowances in yearly "spot" and "advance" auctions beginning in 1993 (Sec. 416(d)(2)). Allowances sold in spot auctions are usable for purposes of compliance in the year in which they are sold and at any time thereafter, except that allowances sold in 1993 and 1994 are not usable until 1995. Allowances sold in advance auctions are usable only beginning seven years after the year of purchase. Such advance-sale allowances are expected to help facilitate utilities' long-term planning by enabling them to secure allowances for future uses.

A. Timing of Annual Auctions

EPA proposes to hold the spot auction and the advance auction on the same day, no later than March 31st, in each calendar year beginning in 1993. This timing will allow those needing to acquire allowances, such as the operators of new IPP units, the opportunity to do so at an auction price before having to resort to buying allowances for $1,500 in the direct sale, which is proposed to follow the auctions. Holding auctions early in the year will also allow new and existing units time to plan for end-of-the year compliance. If utilities need to buy spot allowances for end-of-the year compliance, the direct sale can serve that purpose for those unable to purchase allowances in the private market.

The Act mandates that any unsold allowances from the direct sales must be transferred from the direct sale into the auction subaccount (sec. 416(c)(6)). Spot allowances transferred will be sold in the following year's spot auction. Advance allowances transferred from the advance sale, however, cannot be sold in the following year's advance auction because their compliance use date would be six-year advance when sold. EPA proposes that any advance sale allowances be transferred into the auction subaccount and be sold as spot allowances when the allowances become useable according to their compliance use dates.

B. Method of Allocation of Auctioned Allowances

The Act states that "allowances shall be *sold on the basis of bid price*, starting with the highest-priced bid and continuing until all allowances for sale at such auction have been allocated" (emphesis added) [Sec. 416(d)(2)]. EPA

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interprets this provision to require that allowances be sold to successful bidders at the price of their respective bids (also referred to as a discriminative approach). As a result, the total proceeds of each auction, which are to be paid to the initial allowance-holders, will be greater than they would be if bidders were required to pay only the auction-clearing price (or lowest successful bid price) regardless of the stated price in their respective bids. This outcome appears to be consistent with the statutory requirement that allocation proceeds be transferred to original allowance-holders, and that the auction amounts to a forced sale of allowances otherwise allocated for existing units.

It has been argued that requiring all successful bidders to pay an auction-clearing price would enhance the auction's role of facilitating the private allowance market by sending a clearer price signal to the market. Even if this alternate approach were permissible under the plain language of the statute, a discriminative approach is just as likely to fulfill the auction's market-facilitating function. First, regardless of the variety of prices individual bidders will offer and be required to pay to purchase allowances, a single, auction-clearing price will necessarily be established in each auction assuming the supply of allowances offered is exceeded by the total demand of all bidders. In each auction, the Agency is compelled to identify, and the public will learn, all successful (and, as proposed, unsuccessful) bid prices, including the lowest successful bid price. In addition, the discriminating form of auction is easy for bidders to understand because it is the most familiar form.

Second, in each successive auction, bidders will inevitably price their bids as close to the auction-clearing price as possible (though later on, their bids may reflect solely their marginal costs of control). Consequently, the range of bid prices should become increasingly narrow with each successive auction. As a result, the effective difference between an auction-clearing price approach and a discriminative approach should be relatively narrow with respect to price signals transmitted to the market.

C. Auction Sales of Privately Held Allowances

1. Proposed Rule

The Act allows any person holding allowances to sell those allowances in auctions held by EPA (sec. 416(d)(4)), but requires that allowances from the auction subaccount must be sold before other offerings may be sold. Unlike EPA, other allowance holders may specify a minimum price for the allowances they offer. Subject to these two statutory directives, EPA proposes to treat allowances offered from others as part of the total annual supply of allowances for sale in each auction held by EPA with only allowances allocated for the year of the auction (or allowances banked from previous years' allocations) and seven-year-advance allowances offered.

Allowance holders seeking to sell allowances through this combined auction held by EPA must notify EPA fifteen business days prior to the auction using the SO_2 Allowance Contribution Form published by EPA or by means of electronic communication, which EPA, following public notice, may require or permit at some future time. The notification must state the compliance use date of the allowances offered, the number of allowances to be sold at the specified minimum price (if any), and any other information identifying the allowances offered that may be required by the allowance tracking system regulations, which will be promulgated at a later date. After notification, EPA will deduct the allowances offered from the owner's accounts. EPA will transfer the proceeds from the sale of private allowances to the seller within 90 days after the auction.

All bids to the auctions will be ranked from highest to lowest on the basis of bid price. EPA will allocate and sell all the allowances in the auction subaccount on the basis of this ranking; when all such allowances are sold, EPA will match contributed allowances offered for sale with any remaining bids. Specifically, EPA proposes to match the offer to sell that stipulates the lowest minimum price with the highest remaining bid. This matching process will continue in ascending order of specified minimum price until all bids are awarded or allowances are consumed, or until EPA can no longer match bids with allowances because sellers have set their minimum price higher than any remaining bids.

The matching process is consistent with a policy of rewarding the seller who can provide compliance at the lowest cost. Selling private allowances as a continuation of the auctions held by EPA enhances the likelihood that buyers will be able to secure allowances through the auctions as well as maintains simplicity for would-be buyers.

Some commenters believe that such a system may provide incentives for holders of allowances to specify lower minimum prices for allowances than they would be willing to accept in order to be matched to higher bids. While it is possible that such strategies may be considered, this strategy would be risky, since the allowances from the auction subaccount which have no minimum price, are auctioned first. Depending on the number of prices of bids, offerors with lower minimum prices could find themselves unwilling sellers at the (understated) minimum offering price.

One option to counteract such a tendency is to allocate contributed allowances based on a clearing price established in the second half of the auction, which would remove any offeror's incentive to falsely state a low minimum price. EPA believes, however, that it would be inappropriate to conduct each portion of the joint auction differently, and believes that the discriminatory auction is more appropriate for the reasons discussed above.

2. Options

To supplement today's proposal, commenters have suggested that privately held allowances be offered in a separate auction sponsored by EPA so that sellers could offer a variety of allowance packages, including, for example, multi-year "streams" of allowances (i.e. X allowances/year for Y years), rather than being limited to spot and seven year advance allowances. EPA is seeking comment on the options discussed below.

(i) Catalogue auction. EPA is considering establishing an auction in which each allowance-holder could offer packages of allowances of the offeror's design. In making such an offer in an auction format, the prospective seller would have to specify a minimum acceptable bid price expressed in terms of a dollar amount for the total amount of allowances offered. This would be necessary in order for EPA to identify the highest bid from among all bids submitted in response to the offer, and award the offered allowances to that bid. Thus, if a seller were offering a multi-year stream of allowances, the minimum acceptable bid price would have to be expressed in a dollar total that incorporated any discount rate that the offeror believed appropriate.

To effectuate the offer process, EPA would publish a catalogue of all such offers submitted. Any buyer wishing to participate would submit a bid on any of the allowance products offered in the catalogue, and, as in the case of the auction of EPA allowances, would include payment of the full purchase price. EPA would select the highest bid, transmit the bidder's payment to the seller and transfer the allowances to the bidder. As in the case of the auction of EPA allowances, EPA would publish the results of such an auction.

Clearly, many potential allowance packages would involve a substantial amount of legal and economic complexity. To satisfy the requirements of the auction format, however, sellers would be required to reduce these variables to a single price, and bidders would be compelled to accept an offer without a single variance or amendment. Given the complexity and variety of potential allowance packages from both buyers' and sellers' perspectives, EPA believes that most transactions would benefit from direct negotiations between buyers and sellers, and so should be left to the private market, which has mechanisms such as brokerages and consulting firms to facilitate the matching of, and negotiations between, buyers and sellers. Although the rule as proposed reflects these concerns, EPA invites further comment on this issue.

There is some likelihood that the facilitating mechanisms of the private market might be slow to develop in the early years of the regulatory program. This prospect would justify a separate EPA-sponsored auction to facilitate contact between buyers and sellers who might not have other more efficient means for making contact, and to provide the public with information concerning both offers and the market's response to such offers.

In fact, some commenters have already argued that those brokers who will be active in the near term will offer only a proprietary and costly brokering function, mediating transactions based on limited closely-held information, rather than providing their clients and the market in general with a broad vision of the entire market. For this reason, EPA requests comments on the option of designing a separate auction to accelerate the development of a more open, more efficient market by enabling sellers offering a variety of allowance packages to use the auction to disseminate their offers to a broad public.

(ii) Bulletin board and catalog exchange. As an alternative, or in addition to, a separate auction, EPA requests comments on two non-regulatory approaches it is considering for facilitating the exchange of information among potential market participants. Under one, EPA would establish an electronic "bulletin board" through which those seeking to sell or buy allowances could "post" basic information about their needs and interests as well as instructions for contact. Under the second, EPA could set up a "catalogue exchange." As in the case of the separate, unrestricted private auction, sellers would submit offers of allowances in specified packages with specific terms and conditions. In addition, those seeking to buy allowances could also submit offers to purchase. These offerings would be published. Bids would be submitted to EPA and all bids would be forwarded to the offering parties so that they could take up direct contact with the bidders. As in the case of the auction of EPA allowances, EPA would publish information concerning the responses of the offers. Either approach would supplement the information provided to the market by the auction sponsored by EPA and by private brokers—particularly if, in the early years of the program, the latter engage in proprietary transactions, as some commenters fear. Under either of these approaches, EPA would provide such services only for a limited time, for example, two years.

Both approaches provide an assured channel linking buyers and sellers that might not otherwise exist. Through the publication of the catalogue and of information concerning responses to the offerings in the catalogue, the catalogue exchange, in particular, may tend to maximum information available on prices and terms to all parties, such as state public utility commissions (PUCs), concerned with the allowance market. To this end, a catalogue exchange might prove superior to a bulletin board.

A catalogue exchange might also prove superior to a separate, regulatory auction. In the latter, sellers would be limited in the design of their offers, and buyers their bids, so that there would be sufficient commensurability between offer and bid, and between competing bids, for EPA to identify a clear winning bid. In addition, the parties would not have the benefit of negotiation in designing their obligations. In contrast, a seller could participate in a catalogue exchange through offers that included some terms that were flexible and susceptible to being changed and improved through varied responsive bids and ensuing negotiations. For that reason, the catalogue exchange would be likely to prompt more participation among sellers and potential buyers and, therefore, to elicit more information concerning market activity.

(iii) Combined catalogue auction and catalogue exchange. A final option on which EPA is seeking comment would be to establish both a catalogue auction and a catalogue exchange. The catalogue auction would be designed and conducted as described in option (i), above; the catalogue exchange would function as described in option (ii), above. This approach would enable an allowance-holder to choose which public method for offering allowances to use. Sellers willing to offer allowances on relatively simply terms—that is, where price is the only variable—would be able to avail themselves of the opportunity to sell such allowances at a public auction. At the same time, the availability of both options would avoid the risk that the restrictions participants would have to meet to satisfy the auction format, would dissuade from using the public catalogue, those with allowances for sale (or purchase) involving more complex terms. As a result, EPA would maximize the utility of a public catalogue system both in matching buyers and sellers and in eliciting and disseminating information to the market at large.

(iv) Impact on private market. EPA's reservation concerning adopting any of these options rest on the statute's and EPA's clear commitment to promoting private market solutions. To the extent that an allowance bulletin board or catalogue auction or exchange were valuable, the market itself could be expected to provide such mechanisms. In addition, utilities holding allowances could readily disseminate offers to sell the allowances in requests for proposal as the Long Island Lighting Company of New York has already done. In fact, some analysts suggest that uncertainties concerning compliance costs, PUC action and future growth are likely to be the primary inhibitors of allowance trading. Uncertainties stemming from inadequate dissemination of otherwise available information are less likely to pose a threat simply because given the wide-spread belief that allowance trading can reduce costs, the market is very likely to solve problems involving the sharing of information quickly, efficiently and effectively. In view of that possibility, both the bulletin board and catalogue exchange, as well as the catalogue auction, could prove to be superfluous at best if not damaging to the development of mechanisms that the private market would itself foster. EPA requests comment from anyone planning to establish such services.

D. Bidding

The Act allows any person to participate in the auctions held by EPA (Sec. 416(d)(2), (4)) and EPA proposes no restrictions. The proposed rule simply requires that sealed bids be sent to EPA using the SO_2 Allowance Bid Form published by EPA (or by means of electronic communication, which EPA, following public notice, may require or permit at some future time). The bid

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must specify such things as the number and price of allowances, the type of allowances sought (spot or advance), allowance tracking system account information, authorized account representative, and whether the bidder will accept fewer allowances than the amount requested, if the full amount cannot be supplied. Each bid must be accompanied by a certified check or a letter of credit for the total bid price or by some method of electronic transfer or other instrument, which EPA, following public notice, may require or permit at some future time.

Bidders will be required to provide information to EPA to establish an allowance account in the allowance tracking system if they do not already have one, using the Allowance Tracking System New Account Form. Allowance accounts are needed to transfer allowances purchased at auction directly to the successful bidder's account in the allowance tracking system. If needed, new account forms must be submitted with bids; if the bid is not won, the account will not be established. Standard bid forms will streamline data entry and provide a legal record of the bid, which facsimiles or computer transmissions might not do.

Requiring each bid to include full payment through a certified check or letter of credit reflects EPA's belief that such an approach is implied by the explicit elements of section 416. The Act makes no provision for awarding of allowances to a successful bidder by any method other than certain, direct, and immediate payment. If EPA allowed less than full and certain payment (such as a personal check) for allowances awarded at auction, the sure and complete transfer of allowances to bidders would be jeopardized. Likewise, if EPA allowed partial payment for spot or advance-sale allowances, the auction could become a contingency program, enabling buyers simply to default on their payments, if they subsequently acquired other allowances at a more favorable price. The stability of such an auction program would be in doubt as participants assessed their willingness to buy and sell "contingent" allowances or what amounted to allowance "options."

Requiring full payment with each bid is key to ensuring the equitable treatment of units from whose annual allocations the allowances are withheld to create the special reserve of allowances for the auction. Section 416(d)(3) makes no distinction between spot and advance allowances in terms of payment, but simply mandates that within 90 days of receipt of payment for allowances purchased at each auction, the Administrator transfer the proceeds, on a pro rata basis, to the owners or operators from whose units' annual allocations the allowances were withheld. The Administrator is further required by (section 416(d)(3)) to return any unsold allowances, on a pro rata basis, at the end of each year. By requiring a monetary refund or a refund in kind for all allowances withheld, or a combination of both, the statute preserves unit owners' legal and financial interests in these allowances, again regardless of whether they are auctioned on a spot or advance-sale basis. EPA, in turn, has a strict obligation to protect those ownership rights, and requiring immediate full payment is instrumental to such protection.

1. Timing of Bids

Sealed bids including payment must be received by EPA no later than 3 business days prior to the date of the auctions. Since EPA is proposing to require as one option a certified check for the full purchase price to accompany each bid, and since banks typically debit the payor's account and suspend interest payment upon certification of checks, EPA seeks to avoid holding bidders' money for long periods of time. Accordingly, EPA will also send refund checks or will return letters of credit to unsuccessful bidders immediately upon the conclusion of each auction.

2. Bid Amount and Number of Bids

The Act is silent on the number of allowances a bidder may request (apart from the overall limit on the total allowances for sale in each auction.) EPA proposes no restrictions. EPA recognizes, however, that it may be necessary to amend the regulations in the future to restrict bids. Multiple bids will also be unrestricted, but each bid will be treated individually and require a separate bid form and a separate payment. There do not appear to be any compelling reasons that the number of allowances bid for, or the submission of multiple bids, should be restricted. Furthermore, restrictions are viewed as obstacles to a well-functioning auction. Separate bid forms for each bid would speed bid-sorting and reduce errors.

3. Tie Bids

In the case of tie bids that would exhaust the available allowances for auction, EPA proposes to conduct a lottery to allocate the remaining allowances. Winners of the lottery will receive the full amount bid for until the supply is exhausted. If fewer allowances remain than are requested in the bid (and the bidder has specified nonacceptance of a partial allocation of allowances), EPA will sell the remaining allowances to the next bidder in line who has specified acceptance of a partial allocation of allowances. In a lottery system, all parties have an equal probability of winning. The "winner-take-all" approach is less ambiguous than awarding bidders a pro rata share and thus avoids confusion when allowances are awarded after the auction.

E. Announcement of Results

The Administrator is required by the Act to "publicly report the nature, prices, and results of each auction * * * including the prices of successful bids * * *." (Sec. 416(d)(5)). EPA proposes to publish the names of all bidders and their bids and the lowest price at which allowances are sold in each auction. The statute does not specify that any information be withheld as confidential. Publishing bid prices, amounts, and the cutoff price provides information for market participants to gauge the demand and the price range for allowances. The publication of names will also facilitate information flow and market trading by allowing others to know the parties buying (and selling) allowances. The main argument against publishing names is that it may compromise bidders' ability to negotiate for favorable prices in private transactions. However, if bidders are concerned about having their names revealed, they could use a "street" name or bid through a broker.

Though EPA is proposing that all bids and bidders be revealed, another option EPA considered was to list the names and bids of the winning bidders and just the prices bid by unsuccessful bidders without their names. EPA is unsure whether the listing of names of unsuccessful bidders will be important to the operation of the market. On the other hand, EPA believes that it would be compelled to make such information available pursuant to a Freedom of Information Act (FOIA) request and believes that no purpose would be served in relying on such a method of dissemination when the publication of this information would do no harm. One option to avoid FOIA requests would be to establish a two-envelope bidding process which would separate names from bids. In such a system, large envelopes would contain revised auction bid forms (no names) and payment, and small envelopes would contain names or completed Allowance Tracking System New Account Forms if bidders lacked such an account. Small envelopes would be placed inside large envelopes and sent to EPA. Only successful bidder's small envelopes would be opened after the auction, thereby preventing EPA from collecting information about unsuccessful bidders. All other envelopes would be returned unopened. EPA asks for specific comment on these different options.

EPA proposes to announce auction results in the allowance tracking system. Bidders and others will be permitted to access the system to view the results. A written statement of the results will also be published in the **Federal Register** and the Commerce Business Daily soon after each auction.

F. Transfer of Allowances and Proceeds

EPA proposes to transfer allowances directly to the allowance tracking system accounts of winning bidders as soon as payment is determined to be certain. For unsuccessful bidders, EPA intends to send refund checks, if payment has been tendered in the form of a certified check, and return letters of credit as soon as the auction results are known. (See D 1. Timing of Bids)

The statute requires the Administrator to transfer proceeds of each auction to the owners of the units from whose allocations the auctioned allowances are withheld on a pro rata basis, but allows up to 90 days for the completion of the transfer (sec. 416(d)(3)). EPA intends to send checks for the appropriate amount to the owners and operators of units in as short a time as possible. EPA will also transfer proceeds to the owners of contributed allowances shortly after the auction. The statute neither requires nor authorizes EPA to pay interest on these payments.

The Act requires the Administrator to return any unsold EPA allowances "at the end of each year," on a pro rata basis, to the original units (sec. 416(d)(3)). This re-allocation will be done electronically in the allowance tracking system. EPA cannot identify any rationale for not effecting the return of unsold allowances upon the completion of the auction rather than waiting until the very end of the year. The agency believes that this interpretation will facilitate the efficient functioning of the allowance trading system, and is consistent with the apparent congressional intent merely to ensure that the return of unsold allowances be completed by the end of the year.

When more than one private allowance-holder offers allowances at the same specified minimum price, EPA proposes to distribute the proceeds of the sale according to each seller's pro rata share of all such allowances; any such allowances remaining unsold will also be distributed according to each seller's pro rata share of such allowances. Since the ranking of offers is intended to reward those offering compliance at lower costs, this approach ensures that all who offer allowances at the same price will benefit equally by their place in the minimum-price-based sales order.

IV. Direct Sales

The Act establishes an annual Direct Sales Subaccount of 50,000 annual allowances to be sold for $1500 each (adjusted by the Consumer Price Index). The Administrator is required to sell 25,000 allowances every year on an advance sale basis beginning in 1993, and 25,000 in spot sales beginning in 2000 (sec. 416(c)). Allowances sold in advance sales are useable seven years after purchase, while allowances sold in spot sales are useable the year in which they are sold. The direct sale appears to be intended as a last resort for buyers who fail to obtain the needed allowances in the private market. Congress appears to have foreordained this limited role for the direct sale by pricing these allowances at $1,500 per ton, an amount which is projected to be double the expected market price for allowances. At the same time, the Act affords potential purchasers of these allowances some flexibility before committing to buy these high priced allowances, by giving applicants up to six months to pay 50% of the total purchase price after their request to purchase allowances has been approved by EPA. This six month delay in payment gives applicants time to secure a better price for allowances while holding a place in the direct sale. The remainder of the price must be paid upon or before, the transfer of allowances to the purchaser (Sec. 416(c)(2)).

A. The Form and Timing of the Direct Sale

The Act does not specify when the direct sale should be held. EPA proposes that the direct sale begin no later than June 1st of each year and end on the last day that allowances may be transferred to unit accounts for compliance purposes (which will be specified in a separate rulemaking). Applications may be submitted, and purchases made, on any day during this period. Potential buyers would inform EPA of the type of allowances they seek to purchase (*i.e.*, spot or advance) in their purchase application.

This "rolling sale" approach allows the sale to serve as the compliance alternative of ultimate resort that Congress apparently contemplated. It is also fully compatible with the Act's requirement that applicants to the direct sale submit a 50% deposit within six months after their request to purchase has been approved, as long as the direct sale process begins at least six months before the end of the compliance year.

B. Purchasing Allowances from the Direct Sale

1. Restrictions on Purchasing Parties

The statute allows any person to apply for allowances from the direct sale and places no restrictions on the amount of allowances for which purchasers may apply, up to the annual total of 50,000 allowances in the Direct Sale Subaccount (Sec. 416(c)(2)). Having found no convincing reason to impose restrictions, EPA proposes not to restrict the amount of allowances any person can purchase. Since the price of $1500 per allowance is predicted to be about double market price, EPA finds it highly unlikely that any party would attempt to accumulate this supply of allowances. However, at a future date EPA may amend the regulation to restrict the amount individuals may buy in the direct sale if circumstances prove this to be necessary.

2. The "Request to Purchase"

EPA interprets the language of (sec. 416(c)(2)) to require only a simple application setting forth the nature of the allowances (*i.e.*, advance or spot) the applicant seeks to purchase and the amount. Since any person may purchase allowances in any amount, the purpose of the application is simply to allow for the orderly administration of the direct sale. EPA further interprets the applicable language literally and proposes to approve applications on a first come, first served basis (sec. 416(c)(2)) (*i.e.*, applications will be time and date stamped as they are submitted and allowances will be reserved as approvals are made). Applicants must submit a 50% deposit of the total purchase price for the allowances sought within six months of the time EPA transmits notice of approval. If approval is granted with fewer than six months remaining in the direct sale, full payment shall be paid on or before the closing date of the sale. Failure to make such payments on a timely basis will terminate the approval of the application; as a result, deposits will be forfeited and the allowances subject to such an application will be returned to the subaccount. Any remaining balance of the purchase price must be paid on or

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before the last day of the sale period. Though EPA expects most balances to be paid near the end of the direct sale, applicants may complete the purchase of allowances at any time during the sale period.

In anticipation of the possibility that the Direct Sales Subaccount may be oversubscribed by the total number of applications submitted in any one year, EPA proposes to create a "waiting list," also on the first come, first served basis described above. EPA will notify wait-listed applicants that contingent approval of their applications has been made in the event that previously approved applicants fail to submit their deposits or balances on a timely basis and lose their right to reserved allowances. Allowances not claimed through the deposit or not paid for in full by the last day of the sale will be returned to the Direct Sales Subaccount, and EPA will approve applications from the waiting list in the order in which they have been received. "Wait-listed" applicants will only be approved if previously reserved allowances become available, and if ample time (at minimim five business days) for payment and transfer remains in the direct sale period.

To minimize the risk of oversubscription, EPA considered requiring a non-refundable deposit of the purchase price with each application, or withholding approval of applications until the applicant made the full 50% deposit. The Act, however, explicitly states that "requests to purchase * * * shall be approved in the order of receipt until no allowances remain in such subaccount * * *" (Sec. 416(c)(2)). As stated above, EPA interprets this language to require that allowances be allocated as each request is received. The Act also states that applicants have six months after approval to deposit 50% and specifies no authority to require even a small non-refundable deposit with the application. Because of this clear direction in the Act, EPA is proposing to resolve any problem of over-subscription by the use of a waiting list.

3. Payment

EPA proposes to require a certified check (or an electronic transfer or other instrument which EPA, following public notice, may permit or require at some future time) for the 50% deposit and the remaining balance. All outstanding payments must be received by EPA by close of business on the last day of the sale period. Otherwise, allowances not fully paid for will go into the Auction Subaccount as required by the statute (sec. 416(c)(6)), and any deposits will be forfeited. Instructions for payment will be included in applicants' notification of approval from EPA. EPA is making no differentiation in the payment schedule between the treatment of applications for advance-sale allowances and that for spot allowances. As a result, a purchaser seeking an advance-sale allowance must pay at time of purchase the full non-discounted inflation-adjusted $1500 price for an allowance not useable for compliance purposes for seven years. The buyer of the advance allowances will, however, be acquiring the legal and economic right to the allowances just as if it were purchasing another firm's accounts receivable, and just as a private buyer would in securing another's allowances in an advance purchase contract. This brings the buyer economic and practical advantages of ownership interest in the allowances, even though the allowances cannot be used specifically for compliance immediately. At the same time, the unit from which allowances are withheld is deprived of the same advantages and so deserves to be compensated when ownership rights are transferred, not seven years later when the allowance is useable for compliance. This is fully consistent with the proposed payment rule for the auction and both proposals mention the same rationale.

4. Partial Allocations

Since over-subscription to the direct sales is a possibility, EPA proposes to require each applicant to indicate in the "request to purchase" application whether it is willing to accept a partial allocation of allowances. EPA will make allocations to "last-in line" applications according to these indications until the subaccount has been fully allocated.

5. Transfer of Allowances and Proceeds

EPA proposes that allowances be transferred from the Direct Sale Subaccount to purchasers' allowance tracking system accounts as soon as full payment is received and verified by EPA. Such payments and allowance transfers may occur at any time throughout the sale period. As in the case of purchaser at the auction, EPA proposes that allowance buyers be required to provide information to EPA necessary to establish an account in the allowance tracking system if they do not already have one. A completed Allowance Tracking System New Account Form must be submitted with the Direct Sale Application Form; if payment is not made in full following approval, the account will not be established.

The Act mandates that the Administrator distribute all proceeds from the direct sale (including deposits by approved applicants who fail to complete purchases) within 90 days after the sale period. Proceeds are distributed on a pro rata basis to units which had allowances for purposes of the direct sale (sec. 416(c)(6)). EPA plans to carry out this redistribution as soon after the sale period ends as possible. EPA proposes that all proceeds from the direct sales be distributed at one time after the end of the sale period. As an alternative, EPA considered carrying out a distribution each time a sale was completed throughout the sale period. This option is not required by the Act and EPA believes it would prove to be administratively burdensome without providing significant benefit to unit owners, since EPA expects that most sales will not be consummated until the end of the sale period when compliance with the emissions program must be achieved.

V. IPP Written Guarantee

The Act requires the Administrator to offer "written guarantees" to certain IPPs planning to construct new facilities. The guarantee would allow an IPP to purchase allowances from the Direct Sale Subaccount, for every year of the useful life of the unit, before any other person could purchase allowances in the direct sale (sec. 416(a)(3)).

The written guarantee is available to new IPPs that are not affiliated with a utility from whom allowances could be obtained, and provides those IPPs, at a time when the market for allowances may not yet have developed, with a means of demonstrating to their financial lenders that they have access to a sufficient number of allowances to operate planned facilities fully. IPPs' lenders can be expected to demand a demonstration of the availability and cost of the allowances these facilities will need to comply with the Act's requirement that, for new units, beginning in 2000, their owners hold allowances in an amount to their annual emissions. Since new units, including new IPPs, are not allocated allowances under the Act, these new IPP facilities would have to rely on private market transactions and on the annual auction in order to obtain allowances. Congress appears to have concluded that in the period before the first auction held by EPA the prospects for such transactions may be doubtful, leaving IPPs unable to make the demonstrations concerning allowances that their prospective lenders will almost surely require. Accordingly, the Act assures IPPs obtaining guarantees that allowances will be available, thus enabling IPPs to make the necessary demonstrations to obtain financing.

A. Summary of the Written Guarantee Provisions

The Act requires IPPs seeking a written guarantee to meet several criteria. To apply for a guarantee, section 416(a) requires that an IPP must be the owner or operator of a *new* independent power production facility (*i.e.* commences commercial operations on or after November 15, 1990) that:

(1) Is nonrecourse project-financed, as defined in 30 CFR 715.2;

(2) Sells 80% of electricity generated at wholesale; and

(3) Does not sell electricity to any affiliate (as defined in section 2(a)(11) of the Public Utility Holding Company Act of 1935) or, if it does, demonstrates that it cannot obtain allowances from such an affiliate.

Within 30 days after submission of its application, an IPP is entitled to a written guarantee granting priority in the purchase of allowances at $1500 each (CPI adjusted) from the direct sale if it demonstrates, as required by section 416(c)(3), that it:

(1) Proposes to construct a new facility for which allowances will be needed;

(2) Will apply for financing between January 1990 and the date of the 1993 auction;

(3) Has submitted written offers to each unit listed in Table A to purchase the required allowances at $750 each; and

(4) Has not received an acceptance within 180 days of the offers.

B. Applying for a Written Guarantee

1. Propose to Construct a new Facility

Pursuant to the statutory requirements, each applicant must submit information sufficient to establish that it "proposes to construct" a new independent power production facility for which allowances are required. To fulfill this requirement, EPA proposes that an IPP establish that it has met any one of the following milestones: (1) That it has been selected as a winning bidder in a utility competitive bid solicitation; (2) that it has entered into a fully binding power sales agreement; (3) that it has entered into a fully binding fuel supply agreement; (4) that it has received a site lease or proof of land acquisition; (5) that it has entered into a fully binding signed steam sales agreement; or (6) that it has submitted a complete environmental permit(s) application or has received such a permit(s). Each applicant shall submit the relevant document in support of the demonstration.

Discussions with IPPs, project developers, and staff of lending institutions led EPA to the conclusion that an IPP that has met any of these milestones is a serious project. In proposing this milestone approach, EPA is seeking to minimize oversubscription to the written guarantee and to ensure that guarantees are not issued to projects of doubtful legitimacy or prospects for completion.

EPA interprets the Act to require no payment or deposit upon the issuance of a guarantee. Section 416(c)(2) requires that each applicant shall be required to pay 50% of the total purchase price within 6 months after the approval of the request to purchase. EPA does not believe the word "applicant" refers to holders of written guarantees, who by definition, have been granted the purchase rights under the program. Any other interpretation would defeat the apparent overall purpose of the guarantee program: To provide certain assurances to IPPs, before they secure financing, while affording them subsequent opportunities to obtain allowances in the market. As a result, EPA does not believe it can rely on any payment requirement to discriminate legitimate from frivolous applicants. Instead, the good faith and viability of the applicant must be demonstrated through the steps already taken to develop the project, steps whose completion materially advances the completion of the entire project.

2. Application for Financing

To meet the statutory criterion that an applicant apply for financing between January 1990 and the date of the first auction, EPA proposes that an applicant provide EPA with a certification to this effect. Because the process of applying for financing is not uniform and occurs over an extended period of time rather than in one step, EPA does not believe it appropriate to impose a rigid requirement that a project's financing application be completed or even initiated prior to its application for the written guarantee. An attempt to isolate a single point in time at which, in every instance, a project will be deemed to have applied for financing would inevitably lead to the arbitrary exclusion of otherwise legitimate projects. EPA believes that the legitimacy of a project is better established by requiring it to have met one of several developmental milestones, as discussed above.

3. Submission of $750 Offers

The Act mandates that an applicant must have submitted written offers to each owner or operator of an affected unit listed in Table A to purchase the required allowances at $750 each and must not have received an acceptance within 180 days of the offers.

EPA proposes to require an applicant simply to submit a signed statement that the statutory criterion has been satisfied. In addition to the simple certification, EPA is proposing that applicants submit to EPA one copy of the written offers sent to Phase I utilities. Current projections suggest that the cost of allowances beyond the year 2000 will range between $300 and $800 each, with a somewhat lower cost range in the years between 1995 and 2000. In contrast, the cost of an allowance sold through the direct sale is $1500. Accordingly, IPPs will have powerful incentives to obtain allowances in private transactions if only to avoid resorting to the direct sale. For EPA to require any element beyond a simple certification that the applicant has made the offers required by that statute would add nothing to the result sought by the statute and all but guaranteed by the economic incentives of the market: IPPs will use the written guarantee program only as a last resort.

4. Other Information Required

EPA also proposes to require the following information in the application: (1) The proposed location of the facility; (2) the proposed production capacity and fuel source; (3) sulfur dioxide emissions limits under which the facility will be required to operate; (4) projected annual emissions of sulfur dioxide; (5) annual allowances requested; and (6) the proposed start-up date of the facility and its expected operating lifetime. This information will help EPA evaluate the "reasonableness" of the allowance request and provide some justification that the project is serious. EPA also needs this information to reserve multi-year streams of allowances.

5. Responsible Official

EPA proposes that certification of all requirements shall be made by a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation. For a partnership a general partner would make the certification. The responsible official will be the contact person for all correspondence between EPA and the IPP concerning the written guarantee.

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Changes to the responsible official must be made in writing to EPA.

C. The Nature of the Guarantee

In approving an application and issuing a guarantee, the Administrator will guarantee yearly "streams" of allowances, assuring in each guarantee the new IPPs' right to purchase allowances from the direct sale for the operating life of the unit, up to thirty years. EPA has chosen the operating-life as the time-span for each guarantee to accomplish the purpose of the guarantee program: To enable IPPs to demonstrate to financiers an assured source of allowances, albeit at a high price, necessary for operation in compliance with the Act.

Among the reasons for making special provisions for IPPs as opposed to others to whom the allowance market may pose special problems is that IPP facilities are expected to play a crucial role in the country's new electrical generation capacity and may not have access to allowances allocated to utility units. For this reason, EPA is proposing that guarantees be issued for a unit and not to the unit's owners. As such, guarantees will be transferrable only if the unit itself is sold to new owners. (However, allowances purchased through guarantees will be fully transferable.)

EPA interprets the Act to require that the aggregate annual total of allowances available to be reserved through written guarantees will be 50,000, the full amount in the Direct Sales Subaccount. In the Direct Sale Subaccount, 25,000 of the allowances are to be offered in an "advance" sale seven years before they can be used and the other 25,000 are to be offered in a "spot" sale in the year in which they may be used. Though this schedule exists for the direct sales, the written guarantees are not linked explicitly by the statute to the direct sales schedule. Instead, the statute simply specifies that the allowances subject to the guarantee are those in the Direct Sales Subaccount (sec. 416(c)(5)).

EPA proposes to first make available up to 25,000 yearly allowances for guarantees from allowances reserved for the advance sale. If more than 25,000 allowances are required for guarantees, the number in excess of 25,000 will be reserved from the spot allowance category. This proposed method of guaranteeing allowances will adjust the direct sale schedule as follows: If fewer than 25,000 allowances are subject to written guarantees for any year from 2000 through 2006, any remaining allowances will be sold in the advance sale seven years preceding any such year. If more than 25,000 allowances are reserved for written guarantees for 2000 through 2006, the direct sale will begin in the year 2000 and will consist of any spot allowances not sold pursuant to written guarantees. This proposed approach preserves spot allowances which EPA believes better serves the regulated community because spot allowances can be used for year-end compliance needs. Again, this is consistent with the objective of establishing the direct sale as a source of allowances of last resort.

D. Submittal of the Application

1. Application Deadline

No explicit date is established as a deadline for applications for written guarantees, and EPA proposes none. This approach allows IPPs attempting to negotiate long-term contracts for allowances the flexibility of obtaining written guarantees should those negotiations fail. However, as required by the language of the statute, any applicant submitting an application after the auction date in 1993 must demonstrate compliance with all preconditions set forth in the Act, including that the required activities occurred prior to the date of the 1993 auctions. EPA is proposing that applicants provide the name of the financial entity(ies) to whom application for financing was made.

Other options EPA considered, but rejected, included establishing the 1993 auction date as the application deadline or extending the deadline for a year or two beyond 1993. EPA believes that setting the 1993 auction date as the application deadline was too restrictive and did not allow for contingencies such as the failure of private negotiations.

2. First Come First Served

EPA proposes that written guarantees be processed and approved according to the order in which applications are received, beginning with the date the regulations go into effect. EPA will time and date stamp applications as they are received.

As mandated by the statute (sec. 416(c)(3)), the Administrator must provide written guarantees to qualified applicants within 30 days of receiving the application. Applicants who have filed applications that are deficient will have their application returned as soon as the deficiencies are discovered and these applicants will lose their place in line. Revised applications will be processed according to the date on which they are filed. EPA proposes this system to create an incentive to file only complete and correct applications. Any applications received after the supply of allowances subject to written guarantees is exhausted will be placed on a waiting list in order of receipt. These will be processed according to that order, in the event that any written guarantees are terminated in part or in whole.

E. Written Guarantees and Termination of the Direct Sales Program

The statute requires the Administrator to terminate the Direct Sales Subaccount if fewer than 20 percent of the allowances available have been purchased in any two consecutive calendar years (Sec. 416(c)(7)). The statute does not indicate whether termination of the direct sales subaccount also terminates the written guarantees. However, linking the termination of direct sales to written guarantees in this manner would contradict the plain meaning of a "guarantee" and would be at odds with the intended purpose of the written guarantees, which is to assure lenders that IPPs will have access to allowances over the operating lifetime of the planned facility. Therefore, EPA proposes that termination of the direct sale will not result in termination of written guarantees. If the direct sale is terminated, EPA will maintain the Direct Sales Subaccount solely for the purpose of selling allowances to those exercising guarantees and, as required by the Act, will transfer to the Auction Subaccount any allowances that are not sold to holders of a guarantee.

F. Exercise of the Written Guarantee

To exercise a written guarantee, EPA proposes that the responsible official notify EPA, in writing, of the number of allowances to be purchased. EPA will respond to the notification, within five business days after receipt, by sending the responsible official a statement of the exact price for the allowances and where to send payment. EPA proposes that allowances purchased pursuant to guarantees must be purchased by certified check for the total amount. The responsible official may elect to purchase all guaranteed yearly allowances or simply a portion. EPA proposes that such notification must be received by EPA no later than April 15th of the calendar year in which allowances are to be purchased, and that payment be received by EPA no later than May 15th of that same year, one month before the direct sale begins. EPA proposes to impose this time frame and payment requirements in order to determine, and announce, the number of allowances that are available for sale in the direct sales program. If the direct sale is terminated, the responsible official may elect to notify EPA of an intent to exercise the written guarantee at any time of the year. If a guarantee is not exercised for the year, the allowances previously reserved will be available for sale, or transferred into the Auction Subaccount if the sale is terminated.

This schedule allows IPPs to participate in the annual auction to obtain needed allowances and provides some time to purchase allowances in the private market should they be unsuccessful in the auction. IPPs who do not have an account in the allowance tracking system will be required to set one up prior to the transfer of allowances. When EPA receives full payment for the purchase of allowances, EPA will transfer the requested allowances to the IPP's allowance tracking system account.

G. Termination of the Written Guarantee

EPA proposes the following requirements for IPPs with written guarantees to continue to hold their guarantees. EPA believes these requirements are important in the event that there is an oversubscription to the guarantee program.

1. Continued Good Faith Efforts to Obtain Allowances

The language in the statute implies that the Administrator may terminate a written guarantee if continued efforts to obtain allowances are not pursued (Sec. 416(c)(4)(b)). EPA has chosen not to impose further requirements on IPPs, other than recordkeeping, because, in view of the fact that the price of allowances in the private market is projected to be less than $1500, EPA believes this requirement to be essentially self-enforcing. It is in the obvious financial self-interest of IPPs to obtain allowances priced at less than $1500. However, applicants will be required to retain copies of their bids in the annual auctions and any written offers made to Phase I facilities, and to make such documents available to EPA at its request.

2. Commenced Commercial Operations on Time

EPA proposes to terminate a written guarantee if the project for which a guarantee is issued has not commenced commercial operation by the later of January 1, 2000 or within two years of the date stated in the guarantee. EPA proposes to impose this restriction in order to guard against allowances remaining reserved for projects that are delayed indefinitely. EPA believes a two year delay in start-up to be reasonable. However, EPA requests comment on the development of an appeals process where unusual or unexpected circumstances delayed the start-up of the facility.

3. Notification of Continued Need for the Guarantee

EPA proposes to terminate a written guarantee if the responsible official fails to notify EPA of the continued need for the guarantee. EPA proposes that the responsible official shall certify that the facility continues to require guaranteed allowances pursuant to its application requirements. In addition, information on allowances acquired through other means must be disclosed so EPA can deduct this amount from the original guaranteed amount. This certification shall be signed by the responsible official, and sent to EPA twice a year until the date of the first auction in 1993 and once a year thereafter. The Act does not indicate whether the acquisition of allowances in private transactions is grounds for terminating the written guarantee. EPA proposes to terminate guarantees, at least in part, to the extent, and only to the extent, the acquisition of allowances meets part, or all, of the unit's allowance needs.

VI. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, the Administrator must judge whether a regulation is "major" and therefore subject to the requirement to conduct a regulatory impact analysis. This proposed rule is not major as that term is defined in section 1(b) of E.O. 12291 because: the annual effect of the rule on the economy will be less than $100 million; it will not cause any significant increase in costs or prices for any sector of the economy or for any geographic region; and it will not result in any significant adverse effects on competition, investment, productivity, or innovation or on the ability of United States enterprises to compete with foreign enterprises in domestic or foreign markets.

EPA's economic analysis estimates that the total impact for participants in the auctions, direct sales, and IPP written guarantee program are minimal. The estimated number of bidders for each auction will be between 200 and 400, and each bidder is estimated to submit one to three bids. The number of direct sale applicants is estimated at 100 over two years. The number of applicants for the IPP written guarantee program is estimated to total 100 and is assumed to occur in the first year, 1992.

The total estimated annual costs to auction participants range from $14,100 to $84,600. The estimated total costs for direct sale applicants is $14,100 over two years. Assuming all IPP guarantee applications occur in the first year, the total cost to IPP guarantee applicants is estimated to be $235,000. The Agency anticipates that these proposed regulations will not have a significant effect on competition, costs, or prices. Therefore, EPA has determined that these proposed regulations are not "major."

The analysis is contained in the Economic Analysis of the Proposed Acid Rain Regulations for Auctions, Direct Sales, and IPP Written Guarantees, March 1991, EPA, Office of Atmospheric and Indoor Air Programs.

This proposed rule was submitted to the Office of Management and Budget (OMB) for review prior to publication as required by E.O. 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each Federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities."

EPA has three reasons to expect that the auctions, direct sales, and IPP guarantee regulations will not have significant impacts on small entities. First, the costs to any one entity of participating in the auctions, direct sales, or IPP guarantees are too small to affect the financial health of a participating firm of any size. Second, because participation is voluntary, entities can choose not to incur any of the costs if they do not expect to gain from participation. Finally, the benefits of the programs are likely to flow disproportionately to small entities. The direct sales and IPP guarantees are designed to assist small entities unable to get allowances in any other way; these are much more likely to be small entities than large entities. The auction is designed to ensure that all entities have an essentially equal chance to secure allowances, with minimal transaction costs.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA

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,ICR No. 1584) and a copy may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M St. SW. (PM-223); Washington, DC 20460 or by calling (202) 382-2740.

The public reporting burden for these regulations is estimated to average 1.5 hours per auction bid, 1.5 hours per direct sale application, and 48.5 hours per IPP guarantee application. These estimates include time for reviewing instructions, researching information, securing means of payment, maintaining the data needed, and filling out and submitting the forms.

Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 728 Jackson Place NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 73

Air pollution control, Electric utilities, Sulfur dioxide, Reporting and recordkeeping requirements.

Dated: May 16, 1991.

William K. Reilly,

Administrator.

For the reasons set forth in the preamble, part 73 is proposed to be added to 40 CFR chapter I as follows:

PART 73—SULFUR DIOXIDE ALLOWANCE SYSTEM

Sec.

73.1 Purpose [Reserved]
73.2 Applicability [Reserved]
73.3 Definitions
73.5 General Provisions [Reserved]

Subpart A—Allowance Allocations [Reserved]

73.10–73.29 [Reserved]

Subpart B—Allowance Tracking System [Reserved]

73.30–73.49 [Reserved]

Subpart C—Allowance Transfers [Reserved]

73.50–73.69 [Reserved]

Subpart D—Auctions, Direct Sales, and Independent Power Producers Written Guarantee

73.70 Auctions
73.71 Bidding
73.72 Direct Sales
73.73 Independent Power Producers Written Guarantee
73.74 Application for a Written Guarantee
73.75 Approval and Exercise of Guarantee
73.76 Independent Power Producers Written Guarantee Relationship to the Direct Sale Subaccount

Subpart E—Conservation and Renewable Energy Reserve [Reserved]

73.80–73.89 [Reserved]

Authority: 42 U.S.C. 7601.

§ 73.1 Purpose [Reserved]

§ 73.2 Applicability [Reserved]

§ 73.3 Definitions.

Definitions apply to this part unless otherwise specified in this section. In addition the following definitions apply:

Advance allowance means an allowance that may be used for purposes of compliance with a unit's sulfur dioxide emissions limitation requirements beginning no earlier than seven years following the year in which the allowance is offered for sale.

Advance Auction means an auction of an advance allowance.

Advance Sale means a sale of an advance allowance.

Affiliate is defined in section (2)(11) of the Public Utility Holding Company Act of 1935.

Allowance means an authorization by EPA to emit, during or after a specified calendar year, one ton of sulfur dioxide.

Allowance tracking system means the system by which EPA issues, records, and tracks allowances.

Allowance tracking system account means an account in the allowance tracking system established by the Administrator for units affected pursuant to title IV of the Clean Air Act, for purposes of the allocation and transfer of allowances and the use of allowances for compliance, or for any person for the purposes of the holding and transfer of allowances.

Auction Subaccount means an account in the Special Allowance Reserve, as specified in section 416(b) of the Clean Air Act. The Auction Subaccount shall contain allowances to be sold at auction in the amount of 150,000 per year from 1995 through 1999, inclusive, and 200,000 per year for each year beginning in the calendar year 2000, subject to modifications noted in these regulations.

Authorized account representative means a natural person who may transfer and otherwise dispose of allowances held in an account in the allowance tracking system, including, but not limited to, the designated representative of the owners and operators of an affected unit.

Commenced commercial operation means to have begun to generate electricity for sale.

Compliance transfer deadline means the last day on which allowances may be transferred to an affected unit's allowance tracking system account for the purposes of meeting the unit's sulfur dioxide emissions limitation requirements for a specified calendar year.

Compliance use date means the first calendar year in which an allowance may be used for purposes of meeting a unit's sulfur dioxide emissions limitation requirements.

Consumer Price Index (CPI) means the United States government's primary indicator of the monetary inflation rate as published monthly by the Department of Labor, Bureau of Labor Statistics in the CPI Detailed Report and in the Monthly Labor Review. For purposes of this regulation the Administrator will be using the CPI U (for urban consumers), US city average, all items indexed, or if such index is no longer published, such other index as the Administrator in his discretion determines meets the requirements of the Clean Air Act Amendments of 1990.

(1) CPI (1990) is defined as the most recently adjusted CPI for all urban consumers as of August 31, 1989. The CPI for 1990 is 124.6 (with 1982-1984=100).

(2) CPI (year) is defined as the most recently adjusted CPI for all urban consumers as of August 31st of the previous year.

Direct Sale Subaccount means an account in the Special Allowance Reserve, as defined in section 416(b) of the Clean Air Act. The Direct Sale Subaccount shall contain Phase II allowances to be sold in the amount of 25,000 per year, beginning in calendar year 1993 and of 50,000 per year beginning in the calendar year 2000.

EPA means the United States Environmental Protection Agency or, for purposes of subpart D, any person who by operation of delegation or contract is managing and conducting the auctions and direct sale provided for herein on behalf of EPA.

Fuel supply agreement means a legally binding document between a firm associated with a new independent power production facility (IPPF) or a new IPPF and a fuel supplier that establishes the terms and conditions under which the fuel supplier commits to provide fuel to be delivered to a specific new IPPF.

New Independent Power Production Facility means, for purposes of this part, a unit that:

(1) Commences commercial operation on or after November 15, 1990;

(2) Is nonrecourse project-financed, as defined in 30 CFR 715.2;

(3) Sells 80% of electricity generated at wholesale; and

(4) Does not sell electricity to any affiliate or, if it does, demonstrates it cannot obtain allowances from such an affiliate.

Power sales agreement is a legally-binding document between a firm associated with a new independent power production facility (IPPF) or a new IPPF and a regulated electric utility that establishes the terms and conditions for the sale of power from a specific new IPPF to the utility.

Qualified applicant means an owner or operator of a new independent power production facility.

Responsible Official means, for purposes of part 73 only, one of the following:

(1) For a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation.

(2) For a partnership, a general partner.

Site lease is a legally-binding document signed between a firm associated with a new independent power production facility (IPPF) or a new IPPF and a site owner that establishes the terms and conditions under which the firm associated with the new IPPF has the binding right to utilize a specific site for the purposes of operating or constructing the new IPPF.

Spot allowance means an allowance that may be used for purposes of compliance with a unit's sulfur dioxide emissions limitation requirements beginning in the year in which the allowance is offered for sale.

Spot Auction means an auction of a spot allowance.

Spot Sale means a sale of a spot allowance.

Steam sales agreement is a legally-binding document between a firm associated with a new independent power production facility (IPPF) or a new IPPF and an industrial or commercial establishment requiring steam that sets the terms and conditions under which a specific new IPPF will provide steam to the establishment.

The Administrator is the Administrator of the Environmental Protection Agency.

Unit means a fossil fuel-fired combustion device.

Utility competitive bid solicitation is a public request from a regulated electric utility to select from among offers to the utility for meeting future capacity needs. A new independent power production facility (IPPF) may be regarded as having been "selected" in such solicitation if the utility has named the IPPF as one of the projects with which it intends to negotiate a power sales agreement.

§ 73.5 General Provisions [Reserved]

Subpart A—Allowance Allocations [Reserved]

§§ 73.10–73.29 [Reserved]

Subpart B—Allowance Tracking System [Reserved]

§§ 73.30–73.49 [Reserved]

Subpart C—Allowance Transfers [Reserved]

§§ 73.50–73.69 [Reserved]

Subpart D—Auctions, Direct Sales, and Independent Power Producers Written Guarantee

§ 73.70 Auctions.

(a) *Allowances to be auctioned.* The Administrator will auction allowances every year according to the following schedule:

TABLE 1.—ALLOWANCE SCHEDULE FOR AUCTIONS

Year of purchase	Spot auction	Advance auction
1993	[1] 50,000	[2] 100,000
1994	[1] 50,000	[1] 100,000
1995	50,000	[1] 100,000
1996	150,000	[1] 100,000
1997	150,000	[1] 100,000
1998	150,000	[1] 100,000
1999	150,000	[1] 100,000
2000 and after	100,000	[1] 100,000

[1] Not useable until 7 years after purchase.
[2] Not useable until 1995.

In addition to the allowances listed above, the Administrator will auction allowances pursuant to paragraph (c) of this section and § 73.72(o), in the amounts and at the times provided for therein.

(b) *Timing of the auctions.* The spot auction and the advance auction will be held on the same day, not later than March 31st of each year, on a day selected each year by the Administrator. The Administrator will conduct only one spot and one advance auction in each calendar year.

(c) *Submittal of other allowances for auction.* The authorized account representatives of the owners of allowances held in a non-unit account in the allowance tracking system, may offer allowances to sell, provided that the allowances are dated either for the year in which they are offered or for any previous year or for seven years following the year in which they are offered. Such authorized account representatives may specify a minimum price for the allowances offered in the auctions. The authorized account representative must notify EPA fifteen business days prior to the auctions, using the SO_2 Allowance Contribution Form published by EPA, or by means of electronic communication, which the Administrator, following public notice, may require or permit at some future time. The notification shall include:

(1) The compliance use date of the allowances offered,

(2) Any other information identifying the allowances offered that may be required by the allowance tracking system regulations, which will be promulgated at a later date,

(3) The number of allowances to be sold, and

(4) Any minimum price. After notification, the Administrator will deduct allowances from the appropriate allowance tracking system account from which allowances are being offered.

(d) *Conduct of the auctions.* (1) The Administrator will rank all bids in descending order of bid price starting with the highest. Allowances will be sold from the auction subaccount in this order at the amounts specified in the bids until there are no allowances in the subaccount. Following such sales, the Administrator will sell allowances offered by authorized account representatives, beginning with those offered at the lowest minimum price. The lowest minimum priced allowances will be matched with the highest bid remaining after the auction subaccount is exhausted. Sales of offered allowances, including, but not limited to, allowances offered by more than one seller with the same minimum bid price, will continue in ascending order of minimum price, starting with the lowest, and descending order of remaining bids, starting with the highest, until

(i) All allowances are sold,

(ii) No bids remain, or

(iii) Prices of remaining bids do not meet minimum prices required in remaining offers.

(2) In the event that there is more than one bid offering the same price and the total number of allowances requested in all such bids exceeds the number of allowances remaining, the Administrator will award the remaining allowances by lottery.

(3) In the event that fewer allowances remain than are requested in a bid, the Administrator will sell such remaining allowances to the bidder provided tha'.

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pursuant to § 73.71(b)(4), the bid states the bidder's willingness to purchase fewer allowances than requested in the bid.

(e) *Announcement of results.* Following each auction, the Administrator shall publish the names of all bidders and their bids and the lowest price at which allowances are sold. The Administrator will inform all parties of the results of each auction through the allowance tracking system. The results shall also be published in the **Federal Register** and in the Commerce Business Daily.

(f) *Transfer of allowances.* Allowances will be transferred from the auction subaccount and sellers' allowance tracking system accounts to the accounts of successful bidders as soon as the auction is completed.

(g) *Return of Unsuccessful Bids.* The Administrator will return payment to unsuccessful bidders and to bidders unwilling to purchase fewer allowances than requested, following the conclusion of each auction.

(h) *Transfer of Proceeds.* The Administrator will return all proceeds from the auction as follows:

(1) Allowances auctioned from the subaccount. Not later than 90 days following each auction, the Administrator will pay a pro rata share of the proceeds of each auction to the authorized account representative of each unit from whose annual allowance allocation, allowances were withheld for the purposes of establishing the auction subaccount. Each unit's pro rata share shall be calculated as follows for each allowance year:

Total proceeds of allowances from auction subaccount × Allowances withheld ÷ Total amount in auction subaccount

(Proceeds will be rounded to the nearest dollar)

(2) Allowances contributed from others. Not later than 90 days following each auction, the Administrator will transfer the full amount of the proceeds of each sale of allowances offered by authorized account representatives to such representatives. Proceeds from the sale of allowances that were offered with the same specified minimum price will be distributed according to each such seller's pro rata share of the sale of such allowances.

(3) The Administrator will pay no interest on any payment made pursuant to paragraphs (h) (1) and (2) of this section.

(i) *Return of unsold allowances.* The Administrator will return all unsold allowances from the auction as follows:

(1) Allowances auctioned from the subaccount. At the conclusion of each auction, the Administrator will transfer to the allowance tracking system account of each unit specified in paragraph (h)(1) of this section its pro rata share of any allowances remaining in the auction subaccount. Each unit's pro rata share shall be calculated as follows:

Remaining allowances in the auction subaccount × Allowances withheld ÷ Total amount in auction subaccount

(Allowances will be rounded to the nearest allowance)

(2) Allowances contributed from others. At the conclusion of each auction, the Administrator will returned any unsold allowances to contributors' accounts in the allowance tracking system. Any unsold allowances that were offered with the same specified minimum price will be distributed according to each such seller's pro rata share of the offer of such allowances.

§ 73.71 Bidding.

(a) *Who may participate in the auctions.* Any person may participate in the auctions by submitting a bid or bids pursuant to this section.

(b) *Bidding.* Sealed bids shall be sent to EPA using the Bid Form for SO_2 Allowance Auctions, or some method of electronic transfer, which the Administrator, following public notice, may require or permit at some future time. The Bid Form shall state:

(1) The number of allowances sought and the price;

(2) Whether spot or advance allowances are sought;

(3) Allowance tracking system account number;

(4) Whether the bidder is willing to purchase fewer allowance than the number of allowances stated in paragraph (b)(1) of this section, if the full amount stated in paragraph (b)(1) of this section is not available.

Where the bidder holds no allowance tracking system account, an Allowance Tracking System New Account Form must accompany the bid. New account information shall include at a minimum: name, address, telephone number, facsimile number, organization or company name (if applicable), type of organization, and the authorized account representative for purposes of the account.

(c) *Payment.* Each bid must include a certified check or letter of credit for the total bid price, or may specify a method of electronic transfer or other method of payment, which the Administrator, following public notice, may require or permit at some future time. Methods of payment should be made payable to the U.S. EPA. To qualify as a letter of credit for purposes of this subsection, such instrument must ensure that EPA will receive full payment for allowances awarded at the auctions no later than 24 hours after the results of the auction are announced in the allowance tracking system.

(d) *Bid amount and number of bids.* No bid may request a number of allowances greater than the amount of allowances available for auction. Any person may submit more than one bid in each auction, provided that each bid meets the requirements of this section.

(e) *Deadline for bids.* All bids must be received by EPA no later than 3 business days prior to the date of the auctions.

§ 73.72 Direct sales.

(a) *Allowances to be sold.* The Administrator will sell allowances every year according to the following schedule:

TABLE 1—ALLOWANCE SCHEDULE FOR THE DIRECT SALE

Year of purchase	Spot sale	Advance sale
1993		[1] 25,000
1994		[1] 25,000
1995		[1] 25,000
1996		[1] 25,000
1997		[1] 25,000
1998		[1] 25,000
1999		[1] 25,000
2000 and after	25,000	[1] 25,000

[1] Not useable until 7 years after purchase.

(b) *Adjustment of the direct sale schedule.* The schedule listed in subsection (a) will be adjusted to reflect allowances subject to IPP written guarantees pursuant to Sec. 73.76.

(c) *Price.* Allowances in the direct sale shall be sold at $1,500 per allowance, adjusted by the Consumer Price Index (CPI). The following formula shall be used each year to calculate the price:

$$\$1{,}500 \times \left[1 + \frac{CPI(year) - CPI(1990)}{CPI(1990)}\right]$$

(d) *Form and timing of the direct sale.* The direct sale will begin on June 1st of each calendar year and continue until the compliance transfer deadline. (If June 1st falls on a non-business day (*i.e.* a holiday or week-end), the direct sale will begin on the next business day following June 1st.)

(e) *Who may purchase from the direct sale.* Any person may apply to purchase allowances from the direct sale.

(f) *Amount allowed to purchase.* No applicant may request to purchase a number of allowances greater than the amount available for sale in the direct sale subaccount.

(g) *Request to purchase allowances.* Applicants must submit the Direct Sale Application Form to request to purchase allowances from EPA which shall state:

(1) The number of allowances sought;

(2) Whether spot or advance allowances are sought;

(3) Allowance tracking system account number;

(4) Whether the applicant is willing to purchase fewer allowances than the number of allowances stated in paragraph (g)(1) of this section if the full amount stated in paragraph (g)(1) at this section is not available.

Where the bidder holds no allowance tracking system account, an Allowance Tracking System New Account Form must accompany the bid. New account information shall include at a minimum: name, address, telephone number, facsimile number, organization or company name (if applicable), type of organization, and the authorized account representative for purposes of the account.

(h) *First come, first served.* Applications shall be approved in order of receipt, indicated by the date and time stamped on the applications upon their arrival at EPA.

(i) *Partial fulfillment of requests.* In the event the number of allowances stated in a request for approval exceeds the number of allowances remaining in the direct sale subaccount, the Administrator will approve the request for the number of allowances remaining, provided that, pursuant to paragraph (g)(4) of this section, the application states the applicant's willingness to purchase fewer allowances than the number stated in their application. In all other cases, the Administrator will disapprove the request.

(j) *Notification of approval.* After approving an application, the Administrator will notify the applicant of the amount and type of allowances which may be purchased, the date on which the approval was made, the exact price of allowances for purchase from the direct sale, and instructions for making payment.

(k) *Payment.* Applicants shall submit 50% of the total purchase price by six months after the date of approval of their request to purchase. The remaining 50% shall be paid on or before the last compliance transfer deadline. In the event that approval is granted less than six months before the last day of the direct sale, full payment shall be made on or before the last day of the sale. The Administrator will terminate the approval of any request to purchase upon failure to pay the 50% deposit within six months. Upon failure to submit timely payment for the remaining balance, the Administrator will terminate the sale and the deposit will be forfeited. The 50% deposit and the final payment shall be made by certified check or by some method of electronic transfer or other instrument, which the Administrator, following public notice, may require or permit at some future time. The method of payment should be made payable to the U.S. EPA.

(l) *Oversubscription to the direct sales program.* Applications received after all allowances in the direct sale subaccount are subject to approved applications shall be included on a waiting list and ranked in order of receipt. In the event that an approved application is terminated pursuant to paragraph (k) of this section, applications on the waiting list shall be approved according to the order in which they are ranked, subject to paragraph (i) of this section.

(m) *Transfer of allowances.* Allowances shall be transferred to purchasers' allowance tracking system accounts from the direct sale subaccount as soon as full payment is received.

(n) *Transfer of proceeds.* Not later than 90 days after the conclusion of the direct sale, the Administrator will pay a pro rata share of the total proceeds of the direct sale (including forfeited deposits) to the authorized account representatives of each unit from whose annual allocation allowances are withheld for the purposes of establishing the direct sale subaccount. Each unit's pro rata share will be calculated as follows:

Total proceeds of allowances from direct sale times Allowances withheld divided by Total amount in direct sale subaccount

(Proceeds will be rounded to the nearest dollar and the Administrator will pay no interest on such payment)

(o) *Unsold allowances in the direct sale subaccount.* If allowances remain in the direct sale subaccount after the direct sale has ended, the Administrator will transfer the allowances to the auction subaccount. All allowances remaining from the spot sale will be sold in the spot auction in the following year. Advance allowances transferred from the direct sale shall be sold as spot allowances when the allowances become useable according to their compliance use dates.

§ 73.73 Independent power producers written guarantee.

(a) *Nature of guarantee.* The written guarantee is a right to purchase allowances from the direct sale subaccount for $1,500 (CPI adjusted) prior to the time in each calendar year that such allowances are offered for sale to others.

(b) *Issuance of a guarantee.* Guarantees shall be issued *for* a unit and not *to* the unit's owners and may only be conveyed with the unit itself.

(c) *Yearly total amount guaranteed.* The number of allowances subject to such written guarantees each year shall be equal to the total number of allowances in the Direct Sales Subaccount for that year (50,000).

(d) *Duration of the guarantee.* Applicants may request a guarantee for the useful life of the unit, up to 30 years, beginning in the year 2000.

(e) *Termination of the Written Guarantee.* The Administrator will terminate a written guarantee if the unit for which a guarantee is issued has not commenced commercial operation by January 1, 2000 or within two years of the planned start-up date of the unit, whichever is later, or if the holder of the guarantee fails to make a continuing good faith effort to obtain allowances, including participation in the annual auctions, as required under Section 416(c)(4) of the Act. The Administrator will also terminate a guarantee if the holder of the guarantee fails to notify

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EPA of the continued need for the guarantee pursuant to § 73.75(e).

§ 73.74 Application for a written guarantee.

(a) *Application requirements.* Qualified applicants shall demonstrate the following by filling out the Application For An IPP Written Guarantee For SO2 Allowances.

(1) Qualified applicant. Each applicant shall certify that it meets the criteria set forth in the definition of qualified applicant and, where applicable, submit a certified statement from a senior manager of its affiliate that it cannot supply the required allowances.

(2) Proof of "propose to construct" a new qualified unit. Each applicant shall demonstrate any *one* of the following:

(i) That it has been selected as a winning bidder in a utility competitive bid solicitation;

(ii) That it has entered into a fully binding power sales agreement;

(iii) That it has entered into a fully binding fuel supply agreement;

(iv) That it has received a site lease or proof of land acquisition;

(v) That it has entered into a fully binding steam sales agreement; or

(vi) That it has submitted a complete environmental permit application or has received such a permit. Each applicant shall submit the relevant document in support of the demonstration.

If the document is longer than 10 pages, only the signature page(s) and the first 10 pages of the document shall be submitted.

(3) Pledge to apply for financing. The applicant shall certify that it will apply for, or has applied for, financing for the unit before the date of the 1993 auction.

(4) Submission of written offers at $750. The applicant shall certify that it has made offers to purchase allowances at $750 each from all Phase I utilities, but that it received no unconditional acceptances within 180 days from the date on which each offer was made.

(5) Other information required. The applicant shall submit information for the unit:

(i) The proposed location (complete address);

(ii) The proposed production capacity and fuel source;

(iii) Sulfur dioxide emissions limits under which the unit will be required to operate;

(iv) Projected annual emissions of sulfur dioxide;

(v) Annual allowances requested; and

(vi) The proposed date on which the unit will commence commercial operation and its expected operating lifetime.

(b) *Application submitted after the 1993 Auction.* An application may be submitted after the auction date in 1993 provided that it meets all the requirements of paragraph (b) of this section and includes the name of the financial entity(ies) to whom application for financing was made.

(c) *Submittal location.* Completed applications shall be submitted to:

U.S. Environmental Protection Agency, Acid Rain Division (ANR-445), 401 M Street, SW., Washington, D.C. 20460, Attn: IPP Written Guarantee.

(d) *Certification.* Certification of all requirements shall be made by a responsible official upon his/her verification of all information and documentation submitted. Changes to the responsible official must be made in writing to EPA.

(e) *Recordkeeping requirements.* Applicants shall maintain and make available to EPA, at the Administrator's request, copies of the $750 written offers to phase I utilities, any responses to such offers, and copies of project milestones that have been attained. Holders of written guarantees shall retain copies of their bids in the annual auctions and any written offers made to other allowance holders and shall make such documents available to EPA at the Administrator's request.

§ 73.75 Approval and exercise of guarantee.

(a) *First come, first served.* The Administrator will process and approve or disapprove in whole or in part all applications received on or after the effective date of the regulations. The Administrator will issue guarantees pursuant to approved applications according to the order in which applications are received.

(b) *Oversubscription to the IPP Written Guarantee program.* Applications received after all allowances in the direct sale subaccount have become subject to written guarantees shall be included on a waiting list and ranked in order of receipt. In the event that an IPP guarantee is terminated pursuant to § 73.73(e), the Administrator will process applications on the waiting list and will issue guarantees pursuant to any approved application.

(c) *Deficient applications.* The Administrator will return applications that fail to meet the requirements set forth in § 73.74 (a), and (b) if applicable. Revised applications will be processed according to the date on which such revised applications are filed.

(d) *Notification of approval.* The Administrator will issue written guarantees pursuant to approved applications within 30 days of receipt, provided that a sufficient number of allowances remain in the direct sale subaccount at the time the application is processed.

(e) *Certification of continued need for the guarantee.* Responsible officials of units for which guarantees are issued shall notify the Administrator as soon as the project for which allowances are guaranteed is no longer in need of those allowances, including, but not limited to, as a result of the acquisition of allowances for such units. Upon notification of the acquisition of allowances, the Administrator will deduct the amount acquired from the original amount guaranteed. Such notification shall be in writing and signed by the responsible official. Each responsible official shall also certify where appropriate, that the unit continues to require guaranteed allowances pursuant to § 73.74. This certification shall be in writing, signed by the responsible official, and received by EPA no later than June 30 and December 31 in 1992 and no later than December 31 of each year thereafter. The Administrator may terminate, pursuant to § 73.74(d), any guarantee that lacks a certification.

(f) *Exercise of guarantee.* Allowances may be purchased in each year for those years in which the guarantee has been issued provided that they are purchased for the unit for which the guarantee has been issued. In any year, the responsible official of a unit for which a guarantee is issued may purchase any number of allowances up to the maximum number specified yearly in the guarantee. Allowances purchased through guarantees shall be fully transferable.

(1) Notification and response. To exercise a written guarantee, the responsible official shall notify EPA of the number of allowances to be purchased. Such notification shall be in writing and signed by the responsible official pursuant to §73.74(d). The Administrator will respond to the notification within 5 business days after receipt by sending the responsible official a statement of the exact price for the allowances and where to send payment. If the responsible official does not have an account in the allowance tracking system, the allowance Tracking System New Account Form shall be completed and mailed with payment.

(2) Payment. Responsible officials shall purchase allowances by certified check for the total amount or by some method of electronic transfer or other instrument, which the Administrator, following public notice, may require or

permit at some future time. Checks shall be made payable to U.S. EPA.

(3) Time period to exercise. Notification to exercise a guarantee shall be received by EPA no later than April 15th (or the first business day following April 15th if April 15th is a non-business day) of the calendar year in which allowances are to be purchased. Payment for allowances shall be received by EPA no later than May 15th (or the first business day following May 15th if May 15th is a non-business day) of that same year. If the direct sales program has been terminated pursuant to section 416(c)(7) of the Act, notification and payment may occur at any time prior to the compliance transfer deadline for each year in which allowances are to be purchased.

(g) *Transfer of allowances.* Allowances shall be transferred into the unit's allowance system account as soon as full payment is received.

(h) *Transfer of proceeds.* The Administrator will pay all proceeds from the exercise of written guarantees pursuant to § 73.72(n).

§ 73.76 Independent power producers written guarantee relationship to the direct sale subaccount.

(a) *Reserving allowances in the direct sale subaccount.* The Administrator will make available up to 50,000 yearly allowances in the direct sales subaccount for written guarantees. The Administrator will first reserve for IPP guarantees the 25,000 allowances in the advance sale category. If more than 25,000 allowances are subject to guarantees, the excess allowances needed will be reserved from the spot allowance category, up to 25,000

(b) *Adjustment of the direct sale schedule.* If fewer than 25,000 allowances are subject to written guarantees for any year from 2000 through 2006, any remaining allowances will be sold in the advance sale seven years preceding that year. If more than 25,000 allowances are reserved for written guarantees for 2000 through 2006, the direct sale will begin in the year 2000 and will consist of spot sales of allowances not sold pursuant to written guarantees.

(c) *Termination of the direct sale.* Termination of the direct sale shall not affect IPP written guarantees; guarantees shall last for the operating life of the unit or 30 years, whichever is shorter, unless terminated for other reasons.

(d) *Guaranteed allowances not sold.* If a responsible official of a unit for which a guarantee is issued chooses not to exercise its guarantee for the year in which allowances are reserved, the allowances shall be offered for sale in the direct sale beginning on July 1st. In the event the direct sale is terminated, any unsold allowances shall be transferred to the Auction Subaccount pursuant to § 73.72(o).

Subpart E—Conservation and Renewable Energy Reserve

§§ 73.80–73.89 [Reserved]

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Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 15 and 52
Federal Acquisition Regulation (FAR): Contractor Ownership Changes; Notification; Proposed Rule
Federal Acquisition Regulation (FAR): Agency Information Collection Activities Under OMB Review; Notice

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 15 and 52

[FAR Case 91-20]

Federal Acquisition Regulation (FAR); Notification of Ownership Changes

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering revising FAR 15.804–8 and 52.215 to set forth a new requirement to notify the Government of changes in contractor ownership and their effects, and to emphasize existing recordkeeping requirements. The proposed change is intended to assure that the Government receives timely notification of planned and completed ownership changes and any cost increases which might result therefrom. It also assures that pre-ownership-change net book values are preserved, enabling audit verification that such increases are not charged to Government contracts.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before July 22, 1991 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th and F Streets, NW., room 4041, Washington, DC 20405. Please cite FAR Case 91–20 in all correspondence related to this issue. For information pertaining to this case, call Mr. Jeremy Olson at (202) 501–3221.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Fayson, FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAR Case 91–20.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities are awarded on a competitive, fixed-price basis and the requirement contained in FAR 15.804–8 would not apply. An Initial Regulatory Flexibility Act analysis, therefore, has not been performed. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C. 601 (FAR Case 91–20) in correspondence.

B. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) is deemed to apply because the proposed rule contains information collection requirements. Accordingly, a request for approval of a new information collection requirement concerning Notification of Ownership Changes is being submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Public comments concerning this request will be invited through a subsequent **Federal Register** notice.

List of Subjects in 48 CFR Parts 15 and 52

Government procurement.

Dated: May 15, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 15 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 15 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 15—CONTRACTING BY NEGOTIATION

2. Section 15.804–8 is amended by adding paragraph (g) to read as follows:

15.804–8 Contract clauses.

* * * * *

(g) *Notification of ownership changes.* The contracting officer shall insert the clause at 52.215–39, Notification of Ownership Changes, in solicitations and contracts for which it is contemplated that certified cost or pricing data will be required or for which any preaward or postaward cost determination will be subject to subpart 31.2.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.215–39 is added to read as follows:

52.215–39 Notification of Ownership Changes.

As prescribed in 15.804–8(g), insert the following clause:

NOTIFICATION OF OWNERSHIP CHANGES (APR 1991)

(a) The Contractor shall make the following notifications:

(1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, which could result in increases in the valuation of its amortizable and depreciable assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) in writing within 30 days.

(2) The Contractor shall also notify the ACO within 30 days whenever asset valuation increases or any other cost increases related to a change of ownership have occurred or are certain to occur.

(b) The Contractor shall maintain current, accurate, and complete inventory records of assets and their costs, provide the ACO or designated representative ready access to the records upon request, and ensure that all amortizable and depreciable asset identities and their recorded costs and accumulated depreciation or amoritization can be identified accurately prior and subsequent to all ownership changes. The Contractor shall include the substance of this clause in all subcontracts under this contract which meet the applicability requirement of FAR 15.804–8(g).

(End of clause)

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[FAR Case 91–20]

OMB Clearance Request for Notification of Ownership Changes

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to approve a new information collection requirement concerning Notification of Ownership Changes.

ADDRESSES: Send comments to Ms. Maya Bernstein, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy F. Olson, Office of Federal Acquisition Policy, (202) 501–3221, or Mr. Eric Mens, Defense Acquisition Regulations Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* Allowable costs of assets are limited in the event of change in ownership of a contractor. The Government often does not receive adequate and timely notice of this event.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *100*; responses per respondent, *1*; total annual responses, *100*; preparation hours per response, *1*; and total response burden hours, *100*.

c. *Annual recordkeeping burden:* The annual recordkeeping burden is estimated as follows: Recordkeepers, *100*; hours per recordkeeper, *.25*; and total recordkeeping burden hours, *25*.

Obtaining Copies of Proposals: Requester may obtain copies from the General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Clearance Request for Notification of Ownership Changes.

Dated: May 15, 1991.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 91–12207 Filed 5–22–91; 8:45 am]

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Part V

Environmental Protection Agency

40 CFR Part 721
Significant New Uses of Certain Chemical Substances; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50584A; FRL-3873-3]

RIN 2070-AB27

Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for several chemical substances which were the subject of premanufacture notices (PMNs), and are subject to TSCA section 5(e) consent orders issued by EPA. This rule requires certain persons who intend to manufacture, import, or process these substances for a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing activity designated by this SNUR as a significant new use. The required notice would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it can occur.

EFFECTIVE DATE: The effective date of this rule is July 22, 1991.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, rm. EB-543-B, 401 M St., SW., Washington, DC 20460, telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: This SNUR will require persons to notify EPA at least 90 days before commencing any activity designated by this SNUR as a significant new use. The supporting rationale and background to this rule are more fully set out in the preamble to EPA's first SNURs issued under the Expedited Follow-Up Rule and published at 55 FR 17376 on April 24, 1990. Consult that preamble for further information on the objectives, rationale, and procedures for the rules and on the basis for significant new use designations including provisions for developing test data.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under § 721.10.

II. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Rules on user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and 5(d)(1), the exemptions authorized by section 5(h)(1), (2), (3), and (5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under sections 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUR notice. If EPA does not take action, EPA is required under section 5(g) to explain in the Federal Register its reasons for not taking action. Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707.

III. Background

The Agency proposed a SNUR for these substances which was published in the Federal Register of September 28, 1990 (55 FR 39882). The background of each PMN and the reasons for proposing the SNUR are set forth in the preamble to the proposed rule.

EPA received comments from only one person, the original PMN submitter for all the chemical substances regulated by this SNUR. The PMN submitter is subject to a section 5(e) consent order for each chemical substance. There were two comments which apply generally to the entire rule. First the commenter stated that there were several instances where the section 5(e) consent orders and the SNUR terms were different. The commenter then asked whether, if by adhering to a particular term of the section 5(e) consent orders a significant new use under the terms of the SNUR would occur, the company would be required to notify EPA through a significant new use notice.

According to § 721.45(i) anyone subject to a section 5(e) consent order which is different from a specific significant new use as identified in subpart E of part 721, who is abiding by the terms of that order is exempt from filing significant new use notification for that specific significant new use. In effect, if someone who is subject to a section 5(e) consent order for a chemical substance complies with that section 5(e) consent order, they are exempt from filing any significant new use notification for that substance except as to uses which are not addressed by the consent order.

The commenter also asked EPA to clarify what would constitute a significant new use of a substance under the proposed rule. A significant new use is defined as any use other that those uses identified in part 721 subpart E for each substance. As an example, in the new § 721.1635 in this final rule it is a significant new use to manufacture or process the specific substance, without establishing a protection in the workplace program as described in § 721.1835(a)(i)(A). There are several exceptions to what constitutes a significant new use, including the exception discussed above for those persons subject to a section 5(e) consent order, discussed in § 721.45. For example, as discussed below, the relevant section 5(e) order allows the use of certain respiratory protection measures (specifically, a Category 23C respirator with a half-facepiece and chemical safety goggles) that differ from the terms of § 721.1835(a)(i)(A). The original submitter is exempt from submitting a significant new use notice for the specific respiratory protection measures addressed in the order.

There were several comments regarding inconsistent requirements for respirators in the section 5(e) consent orders versus the SNUR. In general the commenter stated that the section 5(e) consent orders permitted use of Category 23C respirators equipped with acid gas/organic vapor cartridges while the SNUR would require organic gas/vapor cartridges. In particular the commenter noted that section (a)(5)(ii) of the consent orders allows use of a half-facepiece respirator with chemical safety goggles while this practice did not appear in the SNUR. The commenter also noted that for P-86-838, § 721.1840, the 5(e) consent order mandates Category 21C respirators but the SNUR lists Category 23C respirators.

The Agency agrees that the respirators that offer the best protection for P-86-838 are the Category 21C respirators. The respiratory protection requirements in § 721.63 referenced for P-86-838 will contain Category 21C respirators.

Acid gas cartridges will not be required in cases of respiratory protection in the SNUR. The minimal respiratory requirement will be organic vapor cartridges or particulate cartridges (as appropriate) which best reflect the terms of the section 5(e) consent orders. An acid gas/organic vapor cartridge is required only in the consent orders for a Category 23C respirator where the respirator may be equipped with a full facepiece or a half-facepiece with chemical safety goggles. Under all other respiratory protection terms of the SNUR or the consent orders the addition of an acid gas cartridge is permitted but is not required.

EPA has permitted the original submitter in the section 5(e) consent orders to substitute a Category 23C respirator equipped with a half-facepiece with chemical safety goggles for one equipped with a full facepiece based on the information in the original PMN submissions and the fact that the respirator would require an acid gas cartridge. However, EPA believes the best approximation of those consent order terms is to require the organic vapor cartridge respirator equipped with a full facepiece and evaluate significant new uses of other manufacturers and processors on a case-by-case basis.

The commenter noted that the section 5(e) consent orders exclude the use of impervious suits and respiratory protection during sampling operations where either enclosed vented sample boxes or tufline valves are used. The SNUR only excludes impervious suits when using enclosed vented sample boxes. EPA allowed the exclusions in the section 5(e) orders based not only on the sample boxes or tufline valves but on the entire manufacturing process as described in the PMNs. EPA believes that exclusions other than those in the proposed SNUR should be allowed only after review of the manufacturing, processing, or use of the substances in a significant new use notice.

Several comments were made pertaining to the disposal and release to water sections of the proposed SNUR. It was stated that the SNUR permitted the option of chemical destruction or carbon adsorption instead of requiring chemical destruction or, when necessary to ensure complete destruction of the PMN substance, chemical destruction and carbon adsorption as in the section 5(e) orders. EPA agrees that the SNUR should reflect exactly those requirements in the orders and has changed them accordingly.

The commenter stated that the section 5(e) orders contain five options of disposal and one release to water option but the proposed SNUR contains only three disposal options and three release to water options. The six options in the section 5(e) order are the same as the six options in this SNUR. The only difference is the way the options are named. The regulatory requirements are the same whether they are labeled disposal or release to water.

One comment noted that the section 5(e) consent orders specifically permitted the use of test data from analogous chemicals for establishing data relating to imperviousness for protective clothing but § 721.63 referenced in the proposed SNUR did not and requested that the SNUR be changed. EPA believes that § 721.63 adequately reflects the terms of the section 5(e) orders because § 721.63 does allow companies to use test data from analogous chemicals. The language contained in these orders was a vestige from orders negotiated before the use of the generic language contained in § 721.63, and was retained at the request of the original PMN submitter. EPA has always interpreted the language in § 721.63 (a)(3) to permit the use of test data from analogous chemicals. In fact the language in § 721.63 allows the regulated community latitude in deciding what data are necessary to demonstrate imperviousness of a certain material to a particular substance.

The final comment concerns the requirement in the section 5(e) orders, effective 75 days after the final SNUR is issued, that the original PMN submitter must notify each person to whom it distributes the cleaned KCl byproduct of the PMN substances which may contain trace amounts of the PMN substances. EPA was asked to justify why no similar limitations are placed on other companies. According to § 721.5(a)(2) any manufacturer or processor of substances identified in subpart E of part 721, such as the substances in this rule, must either notify recipients of the PMN substances of the final SNUR or have knowledge that those recipients already know about the SNUR or cannot undertake any significant new uses identified in the SNUR. If recipients are not going to be informed then the manufacturer or processor must submit a significant new use notice to EPA before engaging in such activity. EPA expects that when a manufacturer or processor knowingly distributes these PMN substances, even in trace amounts, they will notify the recipients. As the general requirement for any SNUR in subpart E of part 721 is approximately the same as the requirement in the section 5(e) orders EPA finds no inconsistency.

IV. Objectives and Rationale of the Rule

During review of the PMNs submitted for the chemical substances that are subject to this SNUR, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health or environmental effects of the substance. The basis for such findings for these substances is outlined in the preamble of the proposed rule for these substances. Based on these findings, a section 5(e) consent order requiring the use of appropriate controls was negotiated with the PMN submitter, and the SNUR for such substance is consistent with the provisions of the section 5(e) order as discussed above.

EPA is promulgating this SNUR for 16 specific chemical substances which have undergone premanufacture review to ensure the following objectives: (1) EPA will receive notice of any company's intent to manufacture, import, or process a listed chemical substance for a significant new use before that activity begins; (2) EPA will have an opportunity to review and evaluate data submitted in a SNUR notice before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for a significant new use; (3) when necessary to prevent unreasonable risks, EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before a significant new use of that substance occurs; and (4) all manufacturers, importers, and processors of the same chemical substance which is subject to a section 5(e) order are subject to similar requirements.

V. Test Data and Other Information

EPA recognizes that section 5 of TSCA does not require persons to develop any particular test data before submission of a SNUR notice. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. The studies specified in each section 5(e) order may not be the only means of addressing the potential risks of the substance. SNUR notice submitters should be aware that the Agency will be better able to evaluate SNUR notices which provide detailed information on: (1) Human exposure and environmental

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release that may result from the significant new use of the chemical substances; (2) potential benefits of the substances; and (3) information on risks posed by the substances compared to risks posed by potential substitutes.

VI. Applicability of Proposed Rule to Uses Occurring Before Effective Date of the Final Rule

For a use to be a significant "new" use, EPA must determine that the use is not ongoing. When the PMN submitter begins manufacture or import of the substances, the submitter must send EPA a Notice of Commencement of Manufacture/Import and the substances will be added to the Inventory. In those cases where a section 5(e) order has been issued, the notice submitters are prohibited by the section 5(e) orders from undertaking activities which the Agency is designating as significant new uses. In addition, because most of these substances have confidential chemical identities and only a very few *bona fide* inquiries have been received for substances that have undergone PMN review, there is little chance that others are undertaking activities which the Agency is designating as a significant new use. Therefore, at this time, EPA has concluded that the uses are not ongoing. However, EPA recognizes in cases when chemical substances identified in this SNUR are added to the Inventory prior to the promulgation of the SNUR, the substances may be manufactured, imported, or processed by other persons for a significant new use as defined in this rule before promulgation of the rule.

EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of proposal rather than as of the effective date of the rules. If uses which had commenced between the date of proposal and the effective date were considered ongoing, rather than new, any person could defeat the SNURs by initiating a significant new use before the effective date. This would make it difficult for EPA to establish SNUR notice requirements.

Thus, persons who begin commercial manufacture, import, or processing of the substances regulated through this SNUR will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA, not wishing to unnecessarily disrupt the activities of persons who begin commercial manufacture, import, or processing for a proposed significant new use before the effective date of the SNUR, has promulgated provisions to allow such persons to comply with this proposed SNUR before it is promulgated. If a person were to meet the conditions of advance compliance as codified at § 721.45(h) (53 FR 28354, July 17, 1988), the person will be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between proposal and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

VII. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substances contained in this proposed rule. The Agency's complete economic analysis is available in the public record for this rule (OPTS–50584A).

VIII. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–50584A). The record includes basic information considered by the Agency in developing this rule. A public version of this record, without any confidential business information, is available in the TSCA Public Docket Office from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, located at Rm. NE–G004, 401 M St., SW., Washington, DC.

IX. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule is not a "major" rule because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this rule, EPA estimates that the cost for submitting a significant new use notice would be approximately $4,500 to $11,000, including a $2,500 user fee payable to EPA to offset EPA costs in processing the notice. EPA believes that, because of the nature of the rule and the substances involved, there will be few significant new use notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact will be limited because such factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule will not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule will likely be small businesses. However, EPA expects to receive few SNUR notices for the substances. Therefore, EPA believes that the number of small businesses affected by this rule would not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and have been assigned OMB control number 2070–0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: May 14, 1991.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604 AND 2607.

2. By adding new § 721.1835 to subpart E to read as follows:

§ 721.1835 Halogenated pyridines.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as halogenated pyridine (PMN P–83–1163) is subject to reporting under this section for the significant new uses described in paragraph (a)(1)(i) of this section.

(i) The significant new uses are:

(A) *Protection in the workplace.* The general requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (a)(6)(iv), (a)(6)(v), (a)(6)(vi), and (c) apply in all cases except that § 721.63(a)(2)(ii) does not apply for reactor sampling operations where enclosed vented sample boxes are used. In addition § 721.63(a)(2)(iv) applies for processing of any byproduct generated during manufacturing, processing, or use of the chemical substance which contain residual amounts of the chemical substance.

(B) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(1)(iv), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(C) *Disposal.* Requirements as specified in § 721.85 (a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2). The following additional disposal methods also apply: Chemical destruction or, where necessary to ensure complete destruction of the substance, chemical destruction and carbon adsorption.

(D) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (concentration set at 0.2 ppb), on-site waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

(ii) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(A) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (h), (j), and (k).

(B) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(2) The chemical substances identified generically as halogenated pyridines (PMNs P–85–216, P–85–535, and P–85–536) are subject to reporting under this section for the significant new uses described in paragraph (a)(2)(i) of this section.

(i) The significant new uses are:

(A) *Protection in the workplace.* The general requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (a)(6)(iv), (a)(6)(v), (a)(6)(vi), and (c) apply in all cases except that § 721.63(a)(2)(ii) does not apply for reactor sampling operations where enclosed vented sample boxes are used. In addition § 721.63(a)(2)(iv) applies for processing of any byproduct generated during manufacturing, processing, or use of the chemical substance which contains residual amounts of the chemical substance.

(B) *Hazard communication program.* Requirements as specified in § 721.65 (a), (b), (c), (d), (f), (g)(1)(iii), (g)(1)(iv), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(C) *Disposal.* Requirements as specified in § 721.85 (a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2). The following additional disposal methods also apply: Chemical destruction or, where necessary to ensure complete destruction of the substance, chemical destruction and carbon adsorption.

(D) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (concentration set at 0.2 ppb), on-site waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

(ii) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(A) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (h), (j), and (k).

(B) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(b) [Reserved]

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

3. By adding new § 721.1840 to subpart E to read as follows:

§721.1840 Halogenated substituted pyridine.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as halogenated substituted pyridine (PMN P–86–838) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* The general requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(iv), (a)(5)(v), (a)(5)(vi), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (a)(6)(iv), (a)(6)(v), (a)(6)(vi), and (c) apply in all cases except that § 721.63(a)(2)(ii) does not apply for reactor sampling operations where enclosed vented sample boxes are used. In addition § 721.63(a)(2)(iv) applies for processing of any byproduct generated during manufacturing, processing, or use of the chemical substance which contains residual amounts of the chemical substance.

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(1)(iii), (g)(1)(iv), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(iii) *Disposal.* Requirements as specified in § 721.85 (a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2). The following additional disposal methods also apply: Chemical destruction or, where necessary to ensure complete destruction of the substance, chemical destruction and carbon adsorption.

(iv) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (concentration set at 1 ppb), on-site waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

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(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (h), (j), and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

4. By adding new § 721.1845 to subpart E to read as follows:

§ 721.1845 Substituted pyridines.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted pyridine (PMN P-84-1219) is subject to reporting under this section for the significant new uses described in paragraph (a)(1)(i) of this section.

(i) The significant new uses are:

(A) *Protection in the workplace.* The general requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (a)(6)(iv), (a)(6)(v), (a)(6)(vi), and (c) apply in all cases except that § 721.63(a)(2)(ii) does not apply for reactor sampling operations where enclosed vented sample boxes are used. In addition § 721.63(a)(2)(iv) applies for processing of any byproduct generated during manufacturing, processing, or use of the chemical substance which contains residual amounts of the chemical substance.

(B) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(1)(iii), (g)(1)(iv), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(C) *Disposal.* Requirements as specified in § 721.85 (a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2). The following additional disposal methods also apply: Chemical destruction or, where necessary to ensure complete destruction of the substance, chemical destruction and carbon adsorption.

(D) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (concentration set at 10 ppb), on-site waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

(ii) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(A) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (h), (j), and (k).

(B) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(2) The chemical substances identified generically as substituted pyridines (PMNs P-85-236 and P-85-706) are subject to reporting under this section for the significant new uses described in paragraph (a)(2)(i) of this section.

(i) The significant new uses are:

(A) *Protection in the workplace.* The general requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (a)(6)(iv), (a)(6)(v), (a)(6)(vi), and (c) apply in all cases except that § 721.63(a)(2)(ii) does not apply for reactor sampling operations where enclosed vented sample boxes are used. In addition § 721.63(a)(2)(iv) applies for processing of any byproduct generated during manufacturing, processing, or use of the chemical substance which contains residual amounts of the chemical substance.

(B) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(1)(iii), (g)(1)(iv), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(C) *Disposal.* Requirements as specified in § 721.85 (a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2). The following additional disposal methods also apply: Chemical destruction or, where necessary to ensure complete destruction of the substance, chemical destruction and carbon adsorption.

(D) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (concentration set at 0.2 ppb), on-site waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

(ii) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(A) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (h), (j), and (k).

(B) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) The chemical substance identified generically as substituted pyridine (PMN P-85-96) is subject to reporting under this section for the significant new uses described in paragraph (a)(3)(i) of this section.

(i) The significant new uses are:

(A) *Protection in the workplace.* The general requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (a)(6)(iv), (a)(6)(v), (a)(6)(vi), and (c) apply in all cases except that § 721.63(a)(2)(ii) does not apply for reactor sampling operations where enclosed vented sample boxes are used. In addition § 721.63(a)(2)(iv) applies for processing of any byproduct generated during manufacturing, processing, or use of the chemical substance which contains residual amounts of the chemical substance.

(B) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(1)(iii), (g)(1)(iv), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(C) *Disposal.* Requirements as specified in § 721.85 (a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2). The following additional disposal methods also apply: Chemical destruction or, where necessary to ensure complete destruction of the substance, chemical destruction and carbon adsorption.

(D) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (concentration set at 10 ppb), on-site waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

(ii) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(A) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (h), (j), and (k).

(B) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(4) The chemical substance identified generically as substituted pyridine (PMN P-85-1184) is subject to reporting under this section for the significant new uses described in paragraph (a)(4)(i) of this section.

(i) The significant new uses are:

(A) *Protection in the workplace.* The general requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (a)(6)(iv), (a)(6)(v), (a)(6)(vi), and (c) apply in all cases except that § 721.63(a)(2)(ii) does not apply for reactor sampling operations where enclosed vented sample boxes are used. In addition § 721.63(a)(2)(iv) applies for processing of any byproduct generated during manufacturing, processing, or use of the chemical substance which contains residual amounts of the chemical substance.

(B) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(1)(iii), (g)(1)(iv), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(C) *Disposal.* Requirements as specified in § 721.85 (a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2). The following additional disposal methods also apply: Chemical destruction or, where necessary to ensure complete destruction of the substance, chemical destruction and carbon adsorption.

(D) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (concentration set at 1.3 ppb), on-site waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

(ii) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(A) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (h), (j), and (k).

(B) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

(b) [Reserved]

5. By adding new § 721.1858 to subpart E to read as follows:

§ 721.1858 Halogenated alkyl pyridine.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as halogenated alkyl pyridine (PMN P-83-237) is subject to reporting under this section for the significant new uses described in paragraph (a)(1)(i) of this section.

(i) The significant new uses are:

(A) *Protection in the workplace.* The general requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (a)(6)(iv), (a)(6)(v), (a)(6)(vi), and (c) apply in all cases except that § 721.63(a)(2)(ii) does not apply for reactor sampling operations where enclosed vented sample boxes are used. In addition § 721.63(a)(2)(iv) applies for processing of any byproduct generated during manufacturing, processing, or use of the chemical substance which contains residual amounts of the chemical substance.

(B) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(1)(iii), (g)(1)(iv), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(C) *Disposal.* Requirements as specified in § 721.85 (a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2). The following additional disposal methods also apply: Chemical destruction or, where necessary to ensure complete destruction of the substance, chemical destruction and carbon adsorption.

(D) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (concentration set at 10 ppb), on-site waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

(ii) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(A) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (h), (j), and (k).

(B) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(2) The chemical substance identified generically as halogenated alkyl pyridine (PMN P-83-1162) is subject to reporting under this section for the significant new uses described in paragraph (a)(2)(i) of this section.

(i) The significant new uses are:

(A) *Protection in the workplace.* The general requirements as specified in § 721.63(a) (1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (a)(6)(iv), (a)(6)(v), (a)(6)(vi), and (c) apply in all cases except that § 721.63(a)(2)(ii) does not apply for reactor sampling operations where enclosed vented sample boxes are used. In addition § 721.63(a)(2)(iv) applies for processing of any byproduct generated during manufacturing, processing, or use of the chemical substance which contains residual amounts of the chemical substance.

(B) *Hazard communication program.* Requirements as specified in § 721.72(a), (b) , (c), (d), (f), (g)(1)(iv), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(C) *Disposal.* Requirements as specified in § 721.65 (a)(1), (a)(2), (b)(1), (b)(2) , (c), (d), (f), (g)(1)(iv), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5). The following additional disposal methods also apply: Chemical destruction or, where necessary to ensure complete destruction of the substance, chemical destruction and carbon adsorption.

(D) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (concentration set at 0.2 ppb), on-site waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

(ii) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(A) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125 (a) through (h), (j), and (k).

(B) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(b) [Reserved]

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

6. By adding new § 721.1880 to subpart E to read as follows:

§ 721.1880 Disubstituted halogenated pyridinol.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as disubstituted halogenated pyridinol (PMN P-88-1274) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

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(i) *Protection in the workplace.* The general requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (a)(6)(iv), (a)(6)(v), (a)(6)(vi), and (c) apply in all cases except that § 721.63(a)(2)(ii) does not apply for reactor sampling operations where enclosed vented sample boxes are used. In addition § 721.63(a)(2)(iv) applies for processing of any byproduct generated during manufacturing, processing, or use of the chemical substance which contains residual amounts of the chemical substance.

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (f), (g)(1)(iii), (g)(1)(iv), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(iii) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2). The following additional disposal methods also apply: Chemical destruction or, where necessary to ensure complete destruction of the substance, chemical destruction and carbon adsorption.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (concentration set at 44 ppb), on-site waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (h), (j), and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

7. By adding new § 721.1883 to subpart E to read as follows:

§ 721.1883 Substituted halogenated pyridinol.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted halogenated pyridinol (PMN P-88-1273) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* The general requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (a)(6)(iv), (a)(6)(v), (a)(6)(vi), and (c) apply in all cases except that § 721.63(a)(2)(ii) does not apply for reactor sampling operations where enclosed vented sample boxes are used. In addition § 721.63(a)(2)(iv) applies for processing of any byproduct generated during manufacturing, processing, or use of the chemical substance which contains residual amounts of the chemical substance.

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (f), (g)(1)(iii), (g)(1)(iv), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(iii) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2). The following additional disposal methods also apply: Chemical destruction or, where necessary to ensure complete destruction of the substance, chemical destruction and carbon adsorption.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (concentration set at 44 ppb), on-site waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance. (where the number of kilograms per day per site is calculated after wastewater treatment).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (h), (j), and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

8. By adding new § 721.1886 to subpart E to read as follows:

§ 721.1886 Substituted halogenated pyridinol, alkali salt.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as substituted halogenated pyridinols, alkali salts (PMNs P-88-1271 and P-88-1272) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* The general requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(iii), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), (a)(6)(i), (a)(6)(ii), (a)(6)(iii), (a)(6)(iv), (a)(6)(v), (a)(6)(vi), and (c) apply in all cases except that § 721.63(a)(2)(ii) does not apply for reactor sampling operations where enclosed vented sample boxes are used. In addition § 721.63(a)(2)(iv) applies for processing of any byproduct generated during manufacturing, processing, or use of the chemical substance which contains residual amounts of the chemical substance.

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (f), (g)(1)(iii), (g)(1)(iv), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).

(iii) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2). The following additional disposal methods also apply: Chemical destruction or, where necessary to ensure complete destruction of the substance, chemical destruction and carbon adsorption.

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (concentration set at 44 ppb), on-site waste treatment where primary, secondary, and tertiary treatment will occur, treatment in a lined, self-contained solar evaporation pond where UV light will degrade the substance (where the number of kilograms per day per site is calculated after wastewater treatment).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (h), (j), and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

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H.J. Res. 154/Pub. L. 102–47

Designating the month of May 1991, as "National Foster CareMonth". (May 20, 1991; 105 Stat. 250; 1 page) Price: $1.00

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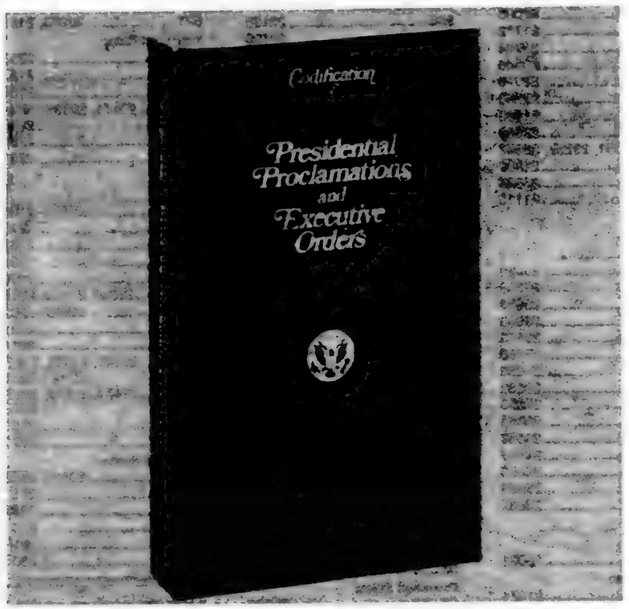

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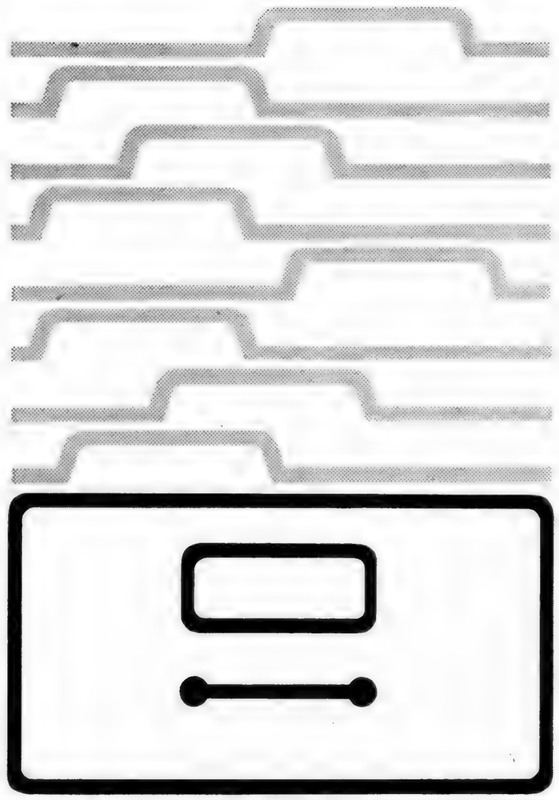

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 917

[Docket No. FV-91-268FR]

Suspension of Certain Plum Requirements Under Marketing Order No. 917 for Fresh Pears, Plums, and Peaches Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule suspends immediately the plum grade, size, quality, maturity, container, pack, container marking, and reporting requirements established under Federal Marketing Order No. 917. Because the results of a recently held producer continuance referendum on the plum program indicated a lack of producer support, the Secretary of Agriculture has determined that the order, as it relates to plums, no longer tends to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937 (Act). Congress is required to be notified at least 60 days prior to the termination of any federal marketing order program. Because the 1991 shipping season is expected to begin before the Congressional notification period ends, the suspension of the above mentioned requirements is necessary to ensure that plum handlers are not subject to regulation during that season.

EFFECTIVE DATE: May 20, 1991.

FOR FURTHER INFORMATION CONTACT: Kurt Kimmel of the USDA, AMS, Marketing Field Office, 2202 Monterey St., Fresno, California 93721, telephone (209) 487-5901, or George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone (202) 475-3919.

SUPPLEMENTARY INFORMATION: This action is being taken under the provisions of sections 8c (6), (7), and (16)(A) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act, and §§ 917.42(b) and 917.61(b) of Marketing Order No. 917 (M.O. 917) regulating the handling of fresh pears, plums and peaches grown in California.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (Act), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing Orders issued under the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 300 handlers of plums subject to regulation under M.O. 917 (7 CFR part 917). There are approximately 1,600 producers of the commodity in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A majority of the producers and handlers may be classified as small entities.

Marketing Order No. 917 has been in effect since 1939. The order provides for the establishment of pear, plum, and peach grade, maturity, quality and size requirements, as well as specifications for the size, pack and marking of pear, plum, and peach containers. The order also authorizes production and marketing research, market development, and paid generic advertising for pears, plums and peaches grown in California. Reporting requirements are also authorized under the marketing order program.

Section 917.61(e) of M.O. 917 specifies that continuance referenda shall be conducted among California pear, plum and peach producers every four years within the period December 1 and February 15. Federal Marketing Order No. 916 for Nectarines Grown in California is a companion marketing order to M.O. 917, and provides that a continuance referendum be conducted among nectarine producers every four years to coincide with the pear, plum and peach referenda. Therefore, during the period January 7 through February 6, 1991, the U.S. Department of Agriculture (Department) conducted referenda among California nectarine, pear, plum and peach producers to determine if they favored continuation of their respective programs under the two marketing orders. The referendum order provided that the Secretary would consider terminating the provisions relating to a particular program covered under the orders if less than two-thirds of the number of producers of the commodity voting and producers of less than two-thirds of the commodity's volume represented in the referendum favored continuance.

Ballots were mailed to 2,757 known growers of nectarines, pears, plums and peaches in California. By the close of the voting period, 1029 valid plum votes had been cast. The results show that 60 percent of the plum growers voting, who produced 52 percent of the plum volume represented in the plum referendum, favored continuation of the plum program. The plum order failed to pass both criteria and demonstrated a lack of producer support to carryout the objectives of the Act. Given the lack of growers support for the plum provisions of M.O. 917, it has been determined that those provisions no longer tend to effectuate the declared policy of the Act.

Therefore, pursuant to section 8c(16)(A) of the Act and § 917.61(b) of M.O. 917, it has been found that the order provisions relating to and regulating the handling of plums in M.O. 917 should be terminated. Section 8c(16)(A) of the Act requires the Secretary to notify Congress at least 60 days in advance of the termination of a Federal marketing order program. Congress has been so notified.

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Because the marketing season for California plums will begin before the termination order becomes effective, and because implementation of any requirements during any part of the 1991 shipping season would be inconsistent with the Secretary's decision to terminate the California plum marketing order program, this action suspends immediately the plum requirements established by regulations issued under M.O. 917. Thus, the maturity, grade, quality, size, pack, container, container marking, and reporting requirements specified in §§ 917.140, 917.177, 917.454, and 917.460 do not tend to effectuate the declared policy of the Act and will not apply during the 1991 marketing season. It is anticipated that these and other regulations, to the extent related to plums, will be removed when the order provisions regarding plums have been terminated.

This final rule reflects the Department's appraisal of the need to suspend the requirements in the regulations applicable to plums for the 1991 shipping season, and is in accordance with the Act.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this final rule into effect and engage in further public procedure with respect to this action, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relieves restrictions on handlers by suspending grade, size, quality, maturity, container, pack, container marking, and reporting requirements currently applicable to shipments of plums; (2) the suspension needs to be effective promptly because the 1991 shipping season is expected to begin in late April; (3) handlers were given notice of this action in a widely distributed press release issued on March 21, 1991, and (4) no useful purpose would be served by delaying the effective date until 30 days after publication in the **Federal Register**.

List of Subjects in 7 CFR Part 917

Marketing agreements, Peaches, Pears, Plums, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 917 is amended as follows:

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 917 continues to read:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§§ 917.140, 917.177, 917.454 and 917.460 [Suspended]

2. The provisions of §§ 917.140, 917.177, 917.454, and 917.460 are suspended.

§ 917.143 [Amended]

3. The word "plums" is removed from paragraph (b) of § 917.143 in the introductory text, and in paragraphs (b)(1), (2), (3), and (4).

§ 917.143 [Amended]

4. The words "200 pounds of plums" are suspended from paragraph (b)(3) of § 917.143.

§ 917.179 [Amended]

5. In the first sentence of § 917.179, the section designation "917.177", and the word "plums" are removed.

Dated: May 20, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91-12410 Filed 5-23-91; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 982

[FV-91-269FR]

Expenses and Assessment Rate for Filberts/Hazelnuts Grown in Oregon and Washington for the 1991–92 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 982 for the 1991–92 marketing year established under the filbert/hazelnut marketing order. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: July 1, 1991, through June 30, 1992.

FOR FURTHER INFORMATION CONTACT: Sonia Jimenez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2524–S, Washington, DC 20090–6456; telephone: (202) 475–5992.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 982 (7 CFR part 982), both as amended, regulating the handling of filberts/hazelnuts grown in Oregon and Washington. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 25 handlers of filberts/hazelnuts grown in Oregon and Washington subject to regulation under the filbert/hazelnut marketing order, and approximately 1,000 producers of filberts/hazelnuts in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of filbert/hazelnut producers and handlers may be classified as small entities.

The filbert/hazelnut marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable filberts/hazelnuts handled from the beginning of such year. An annual budget of expenses is prepared by the Filbert/Hazelnut Marketing Board (Board) and submitted to the Department for approval. The members of the Board are handlers and producers of filberts/hazelnuts. They are familiar with the Board's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget.

The assessment rate recommended by the Board is derived by dividing anticipated expenses by expected shipments of the commodity. Because

that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Board's expected expenses. The recommended budget and assessment rate are usually acted upon by the Board shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approvals must be expedited so that the Board will have funds to pay its expenses.

The Board conducted a telephone vote on March 25, 1991, and unanimously recommended 1991–92 marketing order expenditures of $388,050 and an assessment rate of $14.00 per ton of filberts/hazelnuts. In comparison, 1990–91 marketing year budgeted expenditures were $299,170 and the assessment rate was $14.00 per ton. Major expenditure categories in the 1991–92 budget are $72,350 for administration, $200,000 for promotion, and $100,000 for the emergency reserve fund. Assessment income for 1991–92 is expected to total $350,000 based on a crop estimate of 25,000 tons of filberts/hazelnuts. Major expenditure categories in the 1990–91 budget were $64,970 for administration, and $220,000 for promotion. The 1990–91 budget included a $100,000 emergency reserve fund, but only $25,000 from that fund was used. Assessment income for 1990–91 was $280,000 based on a crop estimate of 20,000 tons of filberts/hazelnuts. Interest and incidental income for 1991–92 is estimated at $15,000. Reserve funds are adequate to meet the anticipated $23,050 deficit in assessment and other income.

While this final action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the **Federal Register** on April 22, 1991 (56 FR 16282). Comments on the proposed rule were invited from interested persons until May 2, 1991. No comments were received.

After consideration of the information and recommendations submitted by the Board and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

This action should be expedited because the Board needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. Therefore, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble 7 CFR part 982 is amended by adding a new § 982.336 as follows:

(Note: This section will not appear in the Code of Federal Regulations.)

1. The authority citation for 7 CFR part 982 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

2. A new § 982.336 is added to read as follows:

§ 982.336 Expenses and assessment rate.

Expenses of $388,050 by the Filbert/Hazelnut Marketing Board are authorized and an assessment rate payable by each handler in accordance with § 982.61 is fixed at $14.00 per ton of assessable filberts/hazelnuts for the 1991–92 marketing year ending June 30, 1992. Unexpended funds may be carried over as a reserve.

Dated: May 22, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91-12426 Filed 5-23-91; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 989

[FV-91-254FR]

Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for the 1990–91 Crop Year for Natural (Sun-Dried) Seedless Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service is adopting without modification, as a final rule the provisions of an interim final rule which established final free and reserve percentages for Natural (sun-dried) Seedless raisins from California's 1990 raisin crop production. These percentages are intended to stabilize supplies and prices and to help counter the destabilizing effects of the burdensome oversupply situation facing the raisin industry. This action was unanimously recommended by the Raisin Administrative Committee (Committee), which is responsible for local administration of the Federal marketing order regulating the handling of raisins produced from grapes grown in California.

EFFECTIVE DATE: May 24, 1991.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 475–3920.

SUPPLEMENTARY INFORMATION: This final rule is issued under marketing agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 25 handlers of California raisins who are subject to regulation under the raisin marketing order, and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts for the last three years of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less

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than $3,500,000. A majority of producers and a minority of handlers of California raisins may be classified as small entities.

The order prescribes procedures for computing trade demands and preliminary and final percentages that establish the amount of raisins that can be marketed throughout the season. The regulations apply to all handlers of California raisins. Raisins in the free percentage category may be shipped immediately to any market, while reserve raisins must be held by handlers in a reserve pool for the account of the Committee. Under the order, reserve raisins may be: Sold at a later date by the Committee to handlers for free use; used in diversion programs; exported to authorized countries; carried over as a hedge against a short crop the following year; or disposed of in other outlets noncompetitive with those for free percentage raisins. While this action may restrict the amount of raisins that enter domestic markets, final free and reserve percentages are intended to lessen the impact of the oversupply situation facing the industry and promote stronger marketing conditions, thus stabilizing prices and supplies and improving grower returns. In addition to the quantity of raisins released under the preliminary percentages and the final percentages, the order specifies methods to make available additional raisins to handlers by requiring sales of reserve pool raisins for use as free tonnage raisins under "10 plus 10" offers, and authorizing sales of reserve raisins under certain conditions.

The Department's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" specifies that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This goal is met by the establishment of these final percentages which release 100 percent of the computed trade demands and the additional release of reserve raisins to handlers under "10 plus 10" offers. The "10 plus 10" offers are two simultaneous offers of reserve pool raisins which are made available to handlers each season. For each such offer, a quantity of raisins equal to 10 percent of the prior year's shipments is made available for fee use.

Pursuant § 989.54(a) of the order, the Committee met on August 14, 1990, to review shipment and inventory data, and other matters relating to the supplies of raisins of all varietal types. The Committee computed, using a formula prescribed in that paragraph, a trade demand for each varietal type for which a free tonnage percentage might be recommended. The trade demand is 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use for each varietal type into all market outlets, adjusted by subtracting the carryin of each varietal type on August 1 of the current crop year and by adding to the trade demand the desirable carryout for each varietal type at the end of that crop year. The order prescribes that the desirable carryout for each varietal type shall be the shipments of free percentage raisins from the prior year during the months of August, September, and October. The inventory adjustments (difference between the carryins and desirable carryouts) used for computing the trade demand were 49,541 tons for Natural (sun-dried) Seedless raisins.

In accordance with these provisions, the Committee computed and announced a trade demand of 246,536 tons for Natural (sun-dried) Seedless raisins.

As required under § 989.54(b) of the order, the Committee met on October 4, 1990, and computed and announced preliminary crop estimates and preliminary free and reserve percentages for Natural (sun-dried) seedless, Dipped Seedless, Oleate and Related Seedless, and Other Seedless raisins which release 85 percent of the trade demands since field prices had been established. The preliminary crop estimates and preliminary free and reserve percentages were as follows: 373,9s6 tons, and 56 percent free and 44 percent reserve for Natural (sun-dried) Seedless raisins; 12,137 tons, and 72 percent free and 28 percent reserve for Dipped Seedless raisins; 403 tons, and 51 percent free and 49 percent reserve for Oleate and Related Seedless; and 2,135 tons, and 52 percent free and 48 percent reserve for Other Seedless raisins.

On November 15, 1990, the Committee met and revised its marketing policy to modify the preliminary percentages for Dipped Seedless, Oleate and Related Seedless, and Other Seedless raisins to 100 percent free and 0 percent reserve. Thus, there are no volume percentage restrictions on other varietal types of California raisins because the available supplies are expected to meet the anticipated demand.

Pursuant to § 989.54(c), the Committee may adopt interim free and reserve percentages. Interim percentages may release less than the computed trade demand for each varietal type for which preliminary percentages have been computed and announced. Interim percentages for Natural (sun-dried) Seedless raisins of 68 percent free and 32 percent reserve were computed and announced on December 19, 1990. The interim percentages for Natural (sun-dried) Seedless raisins released 99.27 percent of the computed trade demand.

Under section 989.54(d) of the order, the Committee is required to recommend to the Secretary, no later than Febraury 15 of each crop year, final free and reserve percentages which, when applied to the final production estimate of a varietal type, will tend to release the full trade demand for any varietal type for which preliminary or interim percentages have been computed and announced. By that time, the Committee has more information available, including its final crop estimate and other information, on which to base the determination of final free and reserve percentages.

The Committee's final estimate of 1990–91 production of Natural (sun-dried) Seedless raisins totaled 357,533 tons (which is 16,403 tons less than the preliminary estimate). Dividing the computed trade demand of 246,536 tons by its final estimate of production results in a final free percentage of 68.95 percent. The Committee rounded that free percentage of 69 percent which results in a final reserve percentage of 31 percent.

An interim final rule establishing final free and reserve percentages for the 1990–91 crop year was published in the **Federal Register** on March 29, 1991 (56 FR 13066). That rule provided that interested persons could file written comments through April 29, 1991. No comments were received. Accordingly, final free and reserve percentages as established by that interim final rule are adopted as a final rule without change.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information presented, including the Committee's recommendations, and other information, it is found that this regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This final rule is an adoption, without modification, of an interim final rule effective March 29, 1991, establishing final free and reserve percentages for the 1990–91 crop year; and (2) handlers need no additional time to comply with these percentages.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Accordingly, the interim final rule adding section 989.243, which was published at 56 FR 13066 on March 29, 1991, is adopted as a final rule without change.

Dated: May 22, 1991.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–12427 Filed 5–23–91; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 079CE, Special Conditions 23–ACE–50]

Special Conditions; Swearingen Model SJ–30 Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are being issued for the Swearingen Engineering and Technology, Inc., Model SJ–30 airplanes. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These design features include engine location, swept wings and stabilizer, and performance characteristics for which the applicable regulations do not contain adequate or appropriate airworthiness standards. These special conditions contain the additional airworthiness standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

EFFECTIVE DATE: June 24, 1991.

FOR FURTHER INFORMATION CONTACT: Norman R. Vetter, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, room 1544, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–5688.

SUPPLEMENTARY INFORMATION:

Background

On October 8, 1986, Swearingen Engineering and Technology, Inc., 1234 99th Street, San Antonio, Texas 78214, made application for normal category type certification of its Model SJ–30 airplane, a six-to-eight place, all metal, low-wing, T-tail, twin turbofan engine powered monoplane with fully enclosed retractable landing gear. The SJ–30 is capable of Mach .78+ performance, and has engines mounted aft on the fuselage.

Type Certification Basis

Type certification basis of the Model SJ–30 airplane is: FAR 23, effective February 1, 1965, through amendment 23–33, dated August 11, 1986; FAR 36, effective December 1, 1969, through the amendment effective on the date of type certification; SFAR 27 dated February 1, 1974, through amendment 27–5 dated January 1, 1984; exemptions, if any; and the special conditions adopted by this rulemaking action.

Discussion

Special conditions may be issued and amended, as necessary, as part of the type of certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become part of the type certification basis as provided by § 21.17(a)(2).

Swearingen plans to incorporate certain novel and unusual design features into the airplane for which the airworthiness regulations do not contain adequate or appropriate safety standards. These features include engine location, and certain performance characteristics necessary for this type of airplane that were not envisaged by the existing regulations.

Engine Fire Extinguishing System

The proposed airplane design includes engines mounted aft on the fuselage; therefore, the early visual detection of engine fires is precluded. This may lead to a fire spreading and damaging other portions of the airplane before the flight crew detects and reacts to such fire. Applicable existing regulations do not require fire extinguishing systems for engines. Aft mounted engine installations, along with the need to protect such installed engines from fires were not envisaged in the development of part 23; therefore, a special condition for a fire extinguishing system for the engines of the SJ–30 is issued.

Cockpit Evacuation of Smoke

Small airplanes have typically been unpressurized where smoke could be evacuated by opening windows or, if pressurized, have had maximum operating altitudes such that the airplane could be readily depressurized to evacuate smoke without creating an unsafe condition. The Swearingen Model SJ–30 will not have smoke evacuation provisions because of higher differential pressures and longer times needed to depressurize and ventilate the cockpit. Because of the need to maintain an acceptable environment at the maximum operating altitudes of this airplane, these special conditions require the capability to evacuate smoke from the cockpit and require the ventilation air for normal operations to be free of harmful or hazardous concentrations of gases and vapors.

Vibration and Buffeting

The Swearingen Model SJ–30 will be operated at high altitudes where stall-mach buffet encounters (small speed margin between stall and transonic flow buffet) are likely to occur, which is not presently addressed in part 23. A special condition is required for buffet onset tests and the inclusion of information in the Airplane Flight Manual (AFM) to provide guidance to the flight crew. This information will enable the flight crew to plan flight operations that will maximize the maneuvering capability during high altitude cruise flight and preclude intentional operations exceeding the boundary of perceptible buffet. Buffeting is considered to be a warning to the pilot that the airplane is approaching an undesirable and eventually dangerous flight regime, i.e., stall buffeting, high speed buffeting or maneuvering (load factor) buffeting. In straight flight, therefore, such buffeting warning should not occur at any normal operating speed up to the maximum operating limit speed, V_{MO}/M_{MO}.

High Speed Characteristics and Maximum Operating Limit Speed

The Swearingen Model SJ–30 will be operated at high altitude and high speeds and the proposed operating

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envelope includes areas in which Mach effects, which has not been considered in part 23, may be significant. The anticipated low drag of the airplane and the proposed operating envelope are representative of conditions not envisaged by the existing part 23 regulations. These conditions may degrade the ability of the flight crew to promptly recover from inadvertent excursions beyond maximum operating speeds. The ability to pull a positive load factor is needed to assure, during recovery from upset, that the airplane speed does not continue to increase to a value where recovery may not be achievable by the average pilot or flight crew.

Additionally, to allow the aircraft designer to conservatively design to higher speeds than may be operationally required for the airplane, the concept of V_{DF}/M_{DF}, the highest demonstrated flight speed for the type design, is appropriate for this airplane. This permits V_D/M_D, the design dive speed, to be higher than the speed actually required to be demonstrated in flight. Accordingly, special conditions are issued to allow determination of a maximum demonstrated flight speed and to relate the determination of V_{MO}/M_{MO} to this speed, V_{DF}/M_{DF}.

Static Directional and Lateral Stability

In keeping with the concept of V_{MO}/M_{MO} being a maximum operational speed limit, rather than a limiting speed for the demonstration of satisfactory flight characteristics, it is appropriate to extend the speed for demonstration of lateral/directional stability characteristics from the V_{MO}/M_{MO} of part 23 to the maximum speed for stability characteristics, V_{FC}/M_{FC}, for this airplane. A special condition is required to do this.

Stability Augmentation Devices

Many swept wing, high altitude airplanes employ stability augmentation devices (usually a yaw damper) to show compliance with the dynamic stability lateral-directional flight characteristics. The special conditions describe in broad terms the acceptable level of degradation of the various flight characteristics of an airplane following the failure or malfunction of the stability augmentation device that is used in showing compliance with the applicable flight characteristic requirements. In all probability, in the event of such a failure or malfunction, compliance with the flight requirements will not be met at certain speeds, altitudes and accelerations, within the approved flight envelope. At the same time, compliance might be met within a flight envelope that is somewhat restricted in comparison to that approved with the device in the operative condition. Such a restricted flight envelope is permitted provided it is practical for operations. In such a situation, it might be hazardous to operate the airplane outside the restricted envelope. Since it is possible for a failure or malfunction to occur that would not be readily apparent to the pilot, special conditions are required for a warning system to alert the pilot to a failure or malfunction in order that he can initiate corrective procedures. The warning system would be independent of the flight controls in order that the corrective action would be under the full control of the pilot. In addition, a visual warning device that requires the attention of the pilot within the cockpit would not be acceptable by itself since the attention of the pilot might be diverted by flight duties at the time of the failure or malfunction.

Out of Trim Characteristics

High speed airplanes have experienced a number of upset incidents involving out-of-trim conditions. This is particularly true for swept-wing airplanes and airplanes with a trimmable stabilizer. Service experience has shown that out-of-trim conditions can occur in flight for various reasons and that the control and maneuvering characteristics of the airplane may be critical in recovering from upsets. Accordingly, the existing part 23 regulations do not address high speed out-of-trim conditions. Special conditions are required that test the out-of-trim flight characteristics by requiring that the longitudinal trim control be displaced from the trimmed position by the amount resulting from a three second movement of the trim system at its normal rate with no aerodynamic load, or the maximum mistrim that the autopilot can sustain in level flight in the high speed cruise condition, whichever is greater. Special conditions are required to explore the maneuvering characteristics, including stick force per g, throughout a specified maneuver loan factor speed envelope. The dive recovery characteristics of the aircraft in the out-of-trim condition specified will be investigated to determine that safe recovery can be made from the demonstrated flight dive speed, V_{DF}/M_{DF}.

Performance

The Swearingen Model SJ–30 has a main wing with 30 degrees of leading-edge sweepback that employs leading-edge slats and double-slotted Fowler flaps. The airplane has a T-tail with trimmable horizontal stabilizer and 36 degrees of leading-edge sweepback. There are two medium bypass ratio turbofan engines mounted on the aft fuselage.

Previous certification and operational experience with airplanes of like design in the transport category reveal certain unique characteristics compared to conventional aircraft certificated under part 23. Further, the average pilot, expected to be the operator of this class of airplane, is not likely to be familiar with the unique characteristics associated with swept-wing design and temperature sensitive turbofan engines. These characteristics have caused significant safety problems in the past when pilots attempted takeoffs and landings, particularly with a large variation in temperature and altitude, using procedures and instincts developed with conventional airplanes.

One of the major distinguishing features of a swept-wing design not considered in current part 23 is a characteristically flatter lift curve without a sharp "stall" break near the maximum coefficient of lift, as in a conventional wing. The "stall" separation point may occur at a much higher angle of attack than the point of maximum lift and the angle of attack for maximum lift can be only recognized by precise test measurements or specific detection systems. This phenomenon is not apparent to a pilot accustomed to operating a conventional airplane where increasing angle of attack produces increased lift to the point where the wing stalls. In a swept-wing design, if the pilot does not operate in accordance with established standards developed through a dedicated test program, increasing angle of attack may produce very little lift yet increase drag markedly to the point where flight is impossible. These adverse conditions may be further compounded by the characteristics of turbojet engines, including specific RPM, temperature and pressure limits that make its variation in thrust output with changes in temperature and altitude more complex and difficult to predict. In recognition of these characteristics, Special Civil Air Regulation No. SR–422, and follow-on regulations, established weight-altitude-temperature (WAT) limitations and procedures for scheduling takeoff and landing for turbine powered transport category airplanes, so the pilot could achieve reliable and repeatable results under all expected conditions of operation.

This entails specific tests such as minimum unstick speed, V_{MU}, to ensure that rotation and flyout speeds are correct and that the airplane will not lift-off in ground effect and then be unable to accelerate and continue climbout. In conjunction with the development of takeoff and landing procedures, it was also necessary to establish required climb gradients and data for flight path determination under all approved weights, altitudes and temperatures. This enables the pilot to determine, before takeoff, that a safe takeoff, departure, and landing at destination can be achieved.

Based upon the knowledge and experience gained with similar high speed, high efficiency, turbojet airplanes with complex high lift devices for takeoff and landing, special conditions are required for the performance requirements of takeoff, takeoff speeds, accelerate-stop distance, takeoff path, takeoff distance, takeoff run, and takeoff flight path.

Climb

To maintain a level of safety that is consistent with the requirements of the special conditions for takeoff, takeoff speeds, takeoff path, takeoff distance, and takeoff run, it is appropriate to issue associated requirements which specify climb gradients, airplane configurations, and consideration of atmospheric conditions that will be encountered. Special conditions are, therefore, required for climb with one engine inoperative, landing climb and general climb conditions.

Landing

Landing distance determined for the same parameters, plus the effects of wind, is consistent with takeoff information for the range of weights, altitudes, and temperatures approved for operation. Further, it is necessary to consider time delays to provide for in-service variation in the activation of deceleration devices, such as spoilers and brakes. Special conditions are required to cover these items.

Minimum Control Speed

The Swearingen Model SJ–30, with its swept-wing design and twin turbofan engines, will be operated in an environment and in a manner requiring defined minimum control speeds both in the air and on takeoff to ensure safe operations. A requisite to sequentially establishing proper controllability from the start of takeoff until reaching the decision speed (V_1) established by special condition 10 is identification of V_{MCG}, the minimum control speed on the ground. In the past, this process has been considered an inherent part of determining V_1 decision speed and has been administered by established policy in Advisory Circular AC 23–8A. A special condition is required to be consistent in establishing all standards that are necessary for the certification basis of the Model SJ–30.

Performance

General performance special conditions are required so that procedures for takeoff, accelerate-stop and landing be those established for operation in service, be executable by pilots of average skill and include reasonably expected time delays.

Minimum Crew

The Swearingen Model SJ–30 operates at high altitude and speed and must be flown to a precise speed schedule to achieve flight manual takeoff and landing distances. It employs complex high lift devices not envisaged in the part 23 requirements that must be operated on a speed schedule. Therefore, it is appropriate to specify workload considerations. Special conditions are required to specify the items to be considered in workload determination.

Airplane Flight Manual (AFM) Information

To be consistent with the performance special conditions, it is also necessary to require that the maximum takeoff and landing weights, takeoff distances and associated atmospheric conditions be made available to the pilot in the AFM. Special conditions are required to add maximum takeoff weights, maximum landing weights, and minimum takeoff distances as limitations in the AFM. Additionally, special conditions are required to add takeoff flight path and procedures, necessary to achieve the performance in the limitations section, as information in the AFM.

Stall Characteristics and Warning

In order to maintain consistency with the stall warning requirements and the level of safety previously applied to other jet powered small airplanes, it is appropriate to specify the conditions under which level flight, turning flight, and accelerated entry stall characteristics should be demonstrated. Current rules contained in part 23 did not envisage this type of airplane with the associated high thrust-to-weight ratio. Special conditions are required to define stall characteristics demonstrations.

Advisory Circular AC 23–8A provides guidelines for the application of the stall warning requirements currently specified in § 23.207(c). On recent certification programs, the FAA has recognized the problems associated with showing literal compliance with § 23.207(c) when airplanes with high thrust-to-weight ratios are being evaluated. Current rules contained in part 23 did not envisage this type of airplane and the associated stall warning considerations. This issue was discussed during the Small Airplane Airworthiness Review Conference held in St. Louis, Missouri, during the week of October 22–26, 1984, at which it was concluded that § 23.207(c) required revision to properly address this condition. This item has been addressed by Notice of Proposed Rulemaking Notice No. 90–16 (55 FR 26534, June 28, 1990). Previous guidance relating to this matter was provided in FAA Order 8110.7 and AC 23–8. The service history of numerous airplanes that were certified using this earlier guidance, which is similar to that applicable to these special conditions, has been satisfactory. Special conditions are required to specify appropriate requirements for stall warning.

Discussion of Comments

Notice of Proposed Special Conditions, Docket No. 079CE, Notice No. 23–ACE–50 (55 FR 5014, February 13, 1990) proposed special conditions for the Swearingen Model SA–30 airplane. The applicant subsequently changed the designation to SJ–30. The comment period for the notice closed June 13, 1990.

On the basis of comments received, the FAA made substantive changes and additions to the proposed special conditions of Notice No. 23–ACE–50 and published a supplemental Notice No. 23–ACE–50S (56 FR 4758, February 6, 1991). The comment period for the supplemental notice closed March 7, 1991.

No comments pertaining to the supplemental notice were received. Therefore, the special conditions as proposed by supplemental Notice No. 23–ACE–50S are adopted without change, except for minor editorial corrections and paragraph re-numbering.

Conclusion

In view of the design features discussed for the SJ–30 Model airplane, the following special conditions are issued. This action is not a rule of general applicability and affects only the model/series of airplane identified in these final special conditions.

List of Subjects in 14 CFR Parts 21 and 23

Aircraft, Air transportation, Aviation safety, and Safety.

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Citation

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration issues the following special conditions as part of the type certification basis for the Swearingen Model SJ–30 airplane:

1. Engine Fire Extinguishing System

(a) Fire extinguishing systems must be installed and compliance shown with the following:

(1) Except for combustor, turbine, and tailpipe sections of turbine-engine installations that contain lines or components carrying flammable fluids for which a fire originating in these sections can be controllable, a fire extinguishing system must serve each engine compartment.

(2) The fire extinguishing system, the quantity of the extinguishing agent, the rate of discharge, and the discharge distribution must be adequate to extinguish fires. An individual "one shot" system may be used.

(3) The fire extinguishing system for a nacelle must be able to simultaneously protect each compartment of the nacelle for which protection is provided.

(b) Fire extinguishing agents must meet the following requirements:

(1) Be capable of extinguishing flames emanating from any burning of fluids or other combustible materials in the area protected by the fire extinguishing system;

(2) Have thermal stability over the temperature range likely to be experienced in the compartment in which they are stored; and

(3) If any toxic extinguishing agent is used, provisions must be made to prevent harmful concentrations of fluid from entering any personnel compartment even though a defect may exist in the extinguishing system.

(c) Fire extinguishing agent containers must meet the following requirements:

(1) Have a pressure relief to prevent bursting of the container by excessive internal pressures;

(2) The discharge end of each discharge line from a pressure relief connection must be located so the discharge of the fire extinguishing agent would not damage the airplane. The line must also be located or protected to prevent clogging caused by ice or other foreign matter;

(3) A means must be provided for each fire extinguishing agent container to indicate that the container has discharged or that the charging pressure is below the established minimum necessary for proper functioning;

(4) The temperature of each container must be maintained, under intended operating conditions, to prevent the pressure in the container from falling below that necessary to provide an adequate rate of discharge, or rising high enough to cause premature discharge; and

(5) If a pyrotechnic capsule is used to discharge the fire extinguishing agent, each container must be installed so that temperature conditions will not cause hazardous deterioration of the pyrotechnic capsule.

(d) Fire extinguishing system materials must meet the following requirements:

(1) No material in any fire extinguishing system may react chemically with any extinguishing agent so as to create a hazard; and

(2) Each system component in an engine compartment must be fireproof.

2. Cockpit Evacuation of Smoke

In the absence of specific requirements for evacuating smoke from the cockpit the following applies:

The ventilating air in the flight crew and passenger compartments must be free of harmful or hazardous concentrations of gases and vapors in normal operations and in the event of a reasonably probable failure or malfunction of the ventilation, heating, pressurization, or other system and equipment.

If the accumulating of hazardous quantitites of smoke in the cockpit area is reasonably probable, the evacuation of such smoke must be readily accomplished starting with full cockpit pressurization and without depressurizing beyond safe limits.

3. Vibration and buffeting

Instead of compliance with § 23.251, the following apply:

(a) The airplane must be designed to withstand any vibration and buffeting that might occur in any likely operating condition. This must be shown by calculations, resonance tests, or other tests found necessary by the Administrator.

(b) Each part of the airplane must be shown in flight to be free from excessive vibration, under any appropriate speed and power conditions up to at least the minimum value of V_D allowed in § 23.335. The maximum speeds shown must be used in establishing the operating limitations of the airplane in accordance with special condition 5. In addition, it must be shown by analysis or tests that the airplane is free from such vibration that would prevent safe flight under the conditions in § 23.629(f).

(c) Except as provided in paragraph (d) of this special condition, there may be no buffeting condition, in normal flight, including configuration changes during cruise, severe enough to interfere with the control of the airplane, to cause excessive fatigue to the crew, or to cause structural damage. Stall warning buffeting within these limits is allowable.

(d) There may be no perceptible buffeting condition in the cruise configuration in straight flight at any speed up to V_{MO}/M_{MO}, except that stall warning buffeting is allowable.

(e) With the airplane in the cruise configuration, the positive maneuvering load factors at which the onset of perceptible buffeting occurs must be determined for the ranges of airspeed or Mach Number, weight, and altitude for which the airplane is to be certified. The envelopes of load factor, speed, altitude, and weight must provide a sufficient range of speeds and load factors for normal operations. Probable inadverent excursions beyond the boundaries of the buffet onset envelopes may not result in unsafe conditions.

4. Operating Procedures

In addition to the requirements of § 23.1585, the buffet onset envelopes determined under special condition 3 must be furnished. The buffet onset envelopes presented may reflect the center of gravity at which the airplane is normally loaded during cruise if corrections for the effect of different center of gravity locations are furnished.

5. Maximum Operating Limit Speed

Instead of compliance with § 23.1505(c), the following applies: The maximum operating limit speed (V_{MO}/M_{MO} airspeed or Mach number, whichever is critical at a particular altitude) is a speed that may not be deliberately exceeded in any regime of flight (climb, cruise, or descent), unless a higher speed is authorized for flight test or pilot training operations. V_{MO}/M_{MO} must be established so that it is not greater than the design cruising speed V_C and so that it is sufficiently below V_D/M_D or V_{DF}/M_{DF}, to make it highly improbable that the latter speeds will be inadvertently exceeded in operations. The speed margin between V_{MO}/M_{MO} and V_D/M_D or V_{DF}/M_{DF} may not be less than that determined under § 23.335(b) or found necessary during the flight tests conducted under special condition 6 below.

6. High Speed Characteristics

Instead of compliance with § 23.253, the following apply:

(a) Speed increase and recovery characteristics. The following speed increase and recovery characteristics must be met:

(1) Operating conditions and characteristics likely to cause inadvertent speed increases (including upsets in pitch and roll) must be simulated with the airplane trimmed at any likely cruise speed up to V_{MO}/M_{MO}. These conditions and characteristics include gust upsets, inadvertent control movements, low stick force gradient in relation to control friction, passenger movement, leveling off from climb, and descent from Mach to airspeed limit altitudes.

(2) Allowing for pilot reaction time after effective inherent or artificial speed warning occurs, it must be shown that the airplane can be recovered to a normal attitude and its speed reduced to V_{MO}/M_{MO}, without:

(i) Exceptional piloting strength or skill;

(ii) Exceeding V_D/M_D, V_{DF}/M_{DF}, or the structural limitations; and

(iii) Buffeting that would impair the pilot's ability to read the instruments or control the airplane for recovery.

(3) There may be no control reversal about any axis at any speed up to V_{DF}/M_{DF}. Any reversal of elevator control force or tendency of the airplane to pitch, roll, or yaw must be mild and readily controllable, using normal piloting techniques.

(b) Maximum speed for stability characteristics, V_{FC}/M_{FC}. V_{FC}/M_{FC} is the maximum speed at which the requirements of § 23.175(b)(1)(iii), special conditions 7 and 9 below, must be met with flaps and landing gear retracted. It may not be less than a speed midway between V_{MO}/M_{MO} and V_{DF}/M_{DF}, except that, for altitudes where Mach number is the limiting factor, M_{FC} need not exceed the Mach number at which an effective speed warning occurs.

7. Static Directional and Lateral Stability

Instead of compliance with § 23.177, the following apply:

(a) The static directional stability (as shown by the tendency to recover from a skid with the rudder free) must be positive for any landing gear and flap position, and for any symmetrical power condition at speeds from 1.2 V_{SI} up to V_{FE}, V_{LE}, or V_{FC}/M_{FC} (as appropriate).

(b) The static lateral stability (as shown by the tendency to raise the low wing in a sideslip with the aileron controls free and for any landing gear position and flap position, and for any symmetrical power conditions) may not be negative at any airspeed (except speeds higher than V_{FE} or V_{LE}, when appropriate) in the following airspeed ranges:

(1) From 1.2 V_{SI} to V_{MO}/M_{MO}.

(2) From V_{MO}/M_{MO} to V_{FC}/M_{FC}, unless the Administrator finds that the divergence is:

(i) Gradual;

(ii) Easily recognizable by the pilot; and

(iii) Easily controllable by the pilot.

(c) In straight, steady, sideslips (unaccelerated forward slips) the aileron and rudder control movements and forces must be substantially proportional to the angle of the sideslip. The factor of proportionality must lie between limits found necessary for safe operation throughout the range of sideslip angles appropriate to the operation of the airplane. At greater angles, up to the angle at which full rudder control is used or when a rudder pedal force of 180 pounds is obtained, the rudder pedal forces may not reverse and increased rudder deflection must produce increased angles of sideslip. Unless the airplane has a yaw indicator, there must be enough bank accompanying sideslipping to clearly indicate any departure from steady unyawed flight.

8. Stability Augmentation and Automatic and Power-Operated Systems

In the absence of specific requirements for stability augmentation devices, the Swearingen Model SJ–30 must comply with the following:

If the functioning of stability augmentation or other automatic, or power-operated, system is necessary to show compliance with the flight characteristics requirements of this part, such system must comply with the following:

(a) A warning that is clearly distinguishable to the pilot under expected flight conditions without requiring his attention must be provided for any failure in the stability augmentation system or in any other automatic or power-operated system that could result in an unsafe condition if the pilot were not aware of the failure. Warning systems must not activate the control systems.

(b) The design of the stability augmentation system, or of any other automatic or power-operated system, must permit initial counteraction of failures without requiring exceptional pilot skill or strength. Counteraction may be accomplished by either the deactivation of the system, or a failed portion thereof, or by overriding the failure by movement of the flight controls in the normal sense.

(c) It must be shown after any single failure of the stability augmentation system or any other automatic or power-operated system that:

(1) The airplane is safely controllable when the failure or malfunction occurs at any speed or altitude, within the approved operating limitations, that is critical for the type of failure being considered;

(2) The controllability and maneuverability requirements of this part are met within a practical operational flight envelope (for example, speed, altitude, normal acceleration, and airplane configurations) that is described in the Airplane Flight Manual; and

(3) The trim, stability, and stall characteristics are not impaired below a level needed to permit continued safe flight and landing.

9. Out-of-Trim Characteristics

In the absence of specific requirements for out-of-trim characteristics, the Swearingen Model SJ–30 must comply with the following:

(a) From an initial condition with the airplane trimmed at cruise speeds up to V_{MO}/M_{MO}, the airplane must have satisfactory maneuvering stability and controllability with the degree of out-of-trim in both the airplane nose-up and nose-down directions, which results from the greater of:

(1) A three-second movement of the longitudinal trim system at its normal rate for the particular flight condition with no aerodynamic load (or an equivalent degree of trim for airplanes that do not have a power-operated trim system), except as limited by stops in the trim system, including those required by § 23.655(b) for adjustable stabilizers; or

(2) The maximum mistrim that can be sustained by the autopilot while maintaining level flight in the high speed cruising condition.

(b) In the out-of-trim condition specified in paragraph (a) of this special condition, when the normal acceleration is varied from +1 g to the positive and negative values specified in paragraph (c) of this special condition:

(1) The stick force vs. g curve must have a positive slope at any speed up to and including V_{FC}/M_{FC}; and

(2) At speeds between V_{FC}/M_{FC}, and V_{DF}/M_{DF}, the direction of the primary

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longitudinal control force may not reverse.

(c) Except as provided in paragraphs (d) and (e) of this special condition, compliance with the provisions of paragraph (a) of this special condition must be demonstrated in flight over the acceleration range:

(1) −1 g to +2.5 g; or

(2) 0 g to 2.0 g, and extrapolating by an acceptable method to −1 g and +2.5 g.

(d) If the procedure set forth in paragraph (c)(2) of this special condition is used to demonstrate compliance and marginal conditions exist during flight test with regard to reversal of primary longitudinal control force, flight tests must be accomplished from the normal acceleration at which a marginal condition is found to exist to the applicable limit specified in paragraph (b)(1) of this special condition.

(e) During flight tests required by paragraph (a) of this special condition, the limit maneuvering load factors, prescribed in §§ 23.333(b) and 23.337, need not be exceeded. Also, the maneuvering load factors associated with probable inadvertent excursions beyond the boundaries of the buffet onset envelopes determined under special condition 3, paragraph (e), need not be exceeded. In addition, the entry speeds for flight test demonstrations at normal acceleration values less than 1 g must be limited to the extent necessary to accomplish a recovery without exceeding V_{DF}/M_{DF}.

(f) In the out-of-trim condition specified in paragraph (a) of this special condition, it must be possible from an overspeed condition at V_{DF}/M_{DF} to produce at least 1.5 g for recovery by applying not more than 125 pounds of longitudinal control force using either the primary longitudinal control along or the primary longitudinal control and the longitudinal trim system. If the longitudinal trim is used to assist in producing the required load factor, it must be shown at V_{DF}/M_{DF} that the longitudinal trim can be actuated in the airplane nose-up direction with the primary surface loaded to correspond to the least of the following airplane nose-up control forces:

(1) The maximum control forces expected in service, as specified in §§ 23.301 and 23.397.

(2) The control force required to produce 1.5 g.

(3) The control force corresponding to buffeting or other phenomena of such intensity that it is a strong deterrent to further application of primary longitudinal control force.

10. Takeoff

Instead of complying with § 23.51, the following apply:

(a) In special conditions 11, 12, 13, and 14, the takeoff speeds, the accelerate-stop distance, the takeoff path, the takeoff distance and takeoff run described must be determined:

(1) At each weight, altitude, and ambient temperature within the operational limits selected by the applicant; and

(2) In the selected configuration for takeoff.

(b) No takeoff made to determine the data required by this section may require exceptional piloting skill or alertness.

(c) The takeoff data must be based on a smooth, dry, hard-surfaced runway.

(d) The takeoff data must include, within the established operational limits of the airplane, the following operational correction factors:

(1) Not more than 50 percent of nominal wind components along the takeoff path opposite to the direction of takeoff, and not less than 150 percent of nominal wind components along the takeoff path in the direction of takeoff.

(2) Effective runway gradients.

11. Takeoff Speeds

Instead of compliance with § 23.53, the following apply:

(a) V_1 must be established in relation to V_{EF} as follows:

(1) V_{EF} is the calibrated airspeed at which the critical engine is assumed to fail. V_{EF} must be selected by the applicant, but may not be less than V_{MCG} determined under special condition 20 below.

(2) V_1, in terms of calibrated airspeed, is the takeoff decision speed selected by the applicant; however, V_1 may not be less than V_{EF} plus the speed gained with the critical engine inoperative during the time interval between the instant at which the critical engine failed and the instant at which the pilot recognizes and reacts to the engine failure, as indicated by the pilot's application of the first retarding means during the accelerate-stop test.

(b) V_2 min, in terms of calibrated airspeed, may not be less than:

(1) 1.2 V_{S1}.

(2) 1.10 times V_{MC} established under § 23.149.

(c) V_2, in terms of calibrated airspeed, must be selected by the applicant to provide at least the gradient of climb required by special condition 15, paragraph (b), but may not be less than:

(1) V_2 min; and

(2) V_R plus the speed increment attained (in accordance with special condition 12) before reaching a height of 35 feet above the takeoff surface.

(d) V_{MU} is the calibrated airspeed at and above which the airplane can safely lift off the ground and continue the takeoff. V_{MU} speeds must be selected by the applicant throughout the range of thrust-to-weight ratios to be certified. These speeds may be established from free-air data if these data are verified by ground takeoff tests.

(e) V_R, in terms of calibrated airspeed, must be selected in accordance with the conditions of paragraphs (e)(1) through (e)(4) of this special condition:

(1) V_R may not be less than:

(i) V_1;

(ii) 105 percent of V_{MC};

(iii) The speed (determined in accordance with special condition 13, paragraph (c)(2)) that allows reaching V_2 before reaching a height of 35 feet above the takeoff surface; or

(iv) A speed that, if the airplane is rotated at its maximum practicable rate, will result in a V_{LOF} of not less than 110 percent of V_{MU} in the all-engines-operating condition and not less than 105 percent of V_{MU} determined at the thrust-to-weight ratio corresponding to the one-engine-inoperative condition.

(2) For any given set of conditions (such as weight, configuration, and temperature), a single value of V_R, obtained in accordance with this special condition, must be used to show compliance with both the one-engine-inoperative and the all-engines-operating takeoff provisions.

(3) It must be shown that the one-engine-inoperative takeoff distance, using a rotation speed of 5 knots less than V_R, established in accordance with paragraphs (e)(1) and (e)(2) of this special condition, does not exceed the corresponding one-engine-inoperative takeoff distance using the established V_R. The takeoff distances must be determined in accordance with special condition 14, paragraph (a)(1).

(4) Reasonably expected variations in service from the established takeoff procedures for the operation of the airplane (such as over-rotation of the airplane and out-of-trim conditions) may not result in unsafe flight characteristics or in marked increases in the scheduled takeoff distances established in accordance with special condition 14.

(f) V_{LOF} is the calibrated airspeed at which the airplane first becomes airborne.

12. Accelerate-Stop Distance

In the absence of specific accelerate-stop distance requirements, the following apply:

(a) The accelerate-stop distance is the sum of the distances necessary to:

(1) Accelerate the airplane from a standing start to V_{EF} with all engines operating;

(2) Accelerate the airplane from V_{EF} to V_1, assuming that the critical engine fails at V_{EF}; and

(3) Come to a full stop from the point at which V_1 is reached assuming that, in the case of engine failure, the pilot has decided to stop as indicated by application of the first retarding means at the speed V_1.

(b) Means other than wheel brakes may be used to determine the accelerate-stop distance if that means:

(1) Is safe and reliable;

(2) Is used so that consistent results can be expected under normal operating conditions; and

(3) Is such that exceptional skill is not required to control the airplane.

(c) The landing gear must remain extended throughout the accelerate-stop distance.

13. Takeoff Path

In the absence of specific takeoff path requirements, the following apply:

(a) The takeoff path extends from a standing start to a point in the takeoff at which the airplane is 1,500 feet above the takeoff surface, or at which the transition from the takeoff to the en route configuration is completed and a speed is reached at which compliance with special condition 16, paragraph (c) is shown, whichever point is higher. In addition:

(1) The takeoff path must be based on procedures prescribed in special condition 21.

(2) The airplane must be accelerated on the ground to V_{EF}, at which point the critical engine must be made inoperative and remain inoperative for the rest of the takeoff; and

(3) After reaching V_{EF}, the airplane must be accelerated to V_2.

(b) During the acceleration to speed V_2, the nose gear may be raised off the ground at a speed not less than V_R. However, landing gear retraction may not be begun until the airplane is airborne.

(c) During the takeoff path determination, in accordance with paragraphs (a) and (b) of this special condition:

(1) The slope of the airborne part of the takeoff path must be positive at each point;

(2) The airplane must reach V_2 before it is 35 feet above the takeoff surface and must continue at a speed as close as practical to, but not less than, V_2 until it is 400 feet above the takeoff surface;

(3) At each point along the takeoff path, starting at the point at which the airplane reaches 400 feet above the takeoff surface, the available gradient of climb may not be less than 1.2 percent;

(4) Except for gear retraction, the airplane configuration may not be changed, and no change in power or thrust that requires action by the pilot may be made, until the airplane is 400 feet above the takeoff surface.

(d) The takeoff path must be determined by a continuous demonstrated takeoff or by synthesis from segments. If the takeoff path is determined by the segmental method:

(1) The segments must be clearly defined and must be related to the distinct changes in the configuration, speed, and power or thrust;

(2) The weight of the airplane, the configuration, and the power or thrust must be constant throughout each segment and must correspond to the most critical condition prevailing in the segment;

(3) The flight path must be based on the airplane's performance without ground effect; and

(4) The takeoff path data must be checked by continuous demonstrated takeoffs, up to the point at which the airplane is out of ground effect and its speed is stabilized, to ensure that the path is conservative relative to the continuous path. The airplane is considered to be out of the ground effect when it reaches a height equal to its wing span.

14. Takeoff Distance and Takeoff Run

In the absence of specific takeoff distance and takeoff run requirements, the following apply:

(a) Takeoff distance is the greater of:

(1) The horizontal distance along the takeoff path from the start of the takeoff to the point at which the airplane is 35 feet above the takeoff surface, determined under special condition 13; or

(2) 115 percent of the horizontal distance along the takeoff path, with all engines operating, from the start of the takeoff to the point at which the airplane is 35 feet above the takeoff surface, as determined by a procedure consistent with special condition 13.

(b) If the takeoff distance includes a clear way, the takeoff run is the greater of:

(1) The horizontal distance along the takeoff path from the start of the takeoff to a point equidistant between the point at which V_{LOF} is reached and the point at which the airplane is 35 feet above the takeoff surface, as determined under special condition 13.

(2) 115 percent of the horizontal distance along the takeoff path, with all engines operating, from the start of the takeoff to a point equidistant between the point at which V_{LOF} is reached and the point at which the airplane is 35 feet above the takeoff surface, determined by a procedure consistent with special condition 13.

15. Takeoff Flight Path

In the absence of specific takeoff flight path requirements, the following apply:

(a) The takeoff flight path begins 35 feet above the takeoff surface at the end of the takeoff distance determined in accordance with special condition 14.

(b) The net takeoff flight path data must be determined so that they represent the actual takeoff flight paths (determined in accordance with special condition 13 and with paragraph (a) of this special condition) reduced at each point by a gradient of climb equal to:

(1) 0.8 percent.

(c) The prescribed reduction in climb gradient may be applied as an equivalent reduction in acceleration along that part of the takeoff flight path at which the airplane is accelerated in level flight.

16. Climb: One Engine Inoperative

Instead of compliance with § 23.67, the following apply:

(a) Takeoff; landing gear extended. In the critical takeoff configuration existing along the flight path (between the points at which the airplane reaches V_{LOF} and at which the landing gear is fully retracted) and in the configuration used in special condition 13 without ground effect, unless there is a more critical power operating condition existing later along the flight path before the point at which the landing gear is fully retracted, steady gradient of climb must be positive at V_{LOF} and with:

(1) The critical engine inoperative and the remaining engines at the power or thrust available when retraction of the landing gear is begun in accordance with special condition 13, and

(2) The weight equal to the weight existing when retraction of the landing gear is begun, determined under special condition 13.

(b) Takeoff; landing gear retracted. In the takeoff configuration existing at the point of the flight path at which the landing gear is fully retracted and in the configuration used in special condition 13, without ground effect, the steady gradient of climb may not be less than 2.4 percent at V_2 and with:

(1) The critical engine inoperative, the remaining engines at the takeoff power

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or thrust available at the time the landing gear is fully retracted, determined under special condition 13 unless there is a more critical power operating condition existing later along the flight path but before the point where the airplane reaches a height of 400 feet above the takeoff surface; and

(2) The weight equal to the weight existing when the airplane's landing gear is fully retracted, determined under special conditon 13.

(c) Final takeoff. In the en route configuration at the end of the takeoff path, determined in accordance with special condition 13, the steady gradient of climb may not be less than 1.2 percent at not less than 1.25 V_s and with:

(1) The critical engine inoperative and the remaining engines at the available maximum continuous power or thrust; and

(2) The weight equal to the weight existing at the end of the takeoff path, determined under special condition 13.

(d) Approach. In the approach configuration corresponding to the normal all-engines-operating procedure in which V_s for this configuration does not exceed 110 percent of the V_s for the related landing configuration, the steady gradient of climb may not be less than 2.1 percent with:

(1) The critical engine inoperative, the remaining engine at the available takeoff power or thrust;

(2) The maximum landing weight; and

(3) A climb speed established in connection with normal landing procedures, but not exceeding 1.5 V_s.

17. Balked Landing

Instead of compliance with § 23.77, the following apply:

In the landing configuration, the steady gradient of climb may not be less than 3.2 percent, with:

(a) The engines at the power or thrust that is available eight seconds after initiation of movement of the power or thrust controls from the minimum flight idle to the takeoff position; and

(b) A climb speed of not more than 1.3 V_s.

18. Climb: General

In the absence of specific general climb requirements, the following applies:

Compliance with the requirements of special conditions 16 and 17 must be shown at each weight, altitude, and ambient temperature within the operational limits established for the airplane and with the most unfavorable center of gravity for each configuration.

19. Landing

Instead of compliance with § 23.75, the following apply:

(a) The horizontal distance necessary to land and to come to a complete stop from a point 50 feet above the landing surface must be determined (for each weight, altitude, temperature and wind within the operational limits established by the applicant for the airplane) as follows:

(1) The airplane must be in the landing configuration.

(2) A steady gliding approach, with a calibrated airspeed of not less than 1.3 V_s, must be maintained down to the 50-foot height.

(3) Changes in configuration, power or thrust, and speed, must be made in accordance with the established procedures for service operation.

(4) The landing must be made without excessive vertical acceleration, tendency to bounce, nose over, ground loop or porpoise.

(5) The landings may not require exceptional piloting skill or alertness.

(6) It must be shown that a safe transition to the balked landing conditions of special condition 17 can be made from the conditions that exist at the 50-foot height.

(b) The landing distance must be determined on a level, smooth, dry, hard-surfaced runway. In addition:

(1) The pressures on the wheel braking systems may not exceed those specified by the brake manufacturer;

(2) The brakes may not be used so as to cause excessive wear of brakes or tires; and

(3) Means other than wheel brakes may be used if that means:

(i) Is safe and reliable;

(ii) Is used so that consistent results can be expected in service; and

(iii) Is such that exceptional skill is not required to control the airplane.

(c) The landing distance data must include correction factors for not more than 50 percent of the nominal wind components along the landing path opposite to the direction of landing and not less than 150 percent of the nominal wind components along the landing path in the direction of landing.

(d) If any device is used that depends on the operation of any engine, and if the landing distance would be noticeably increased when a landing is made with that engine inoperative, the landing distance must be determined with that engine inoperative unless the use of compensating means will result in a landing distance not more than that with each engine operating.

20. Minimum Control Speed

In addition to the requirements of § 23.149, the following apply:

(a) In establishing the minimum control speed required by this special condition, the method used to simulate critical engine failure must represent the most critical mode of powerplant failure with respect to controllability expected in service.

(b) V_{MCG}, the minimum control speed on the ground, is the calibrated airspeed during the takeoff run (when the critical engine is suddenly made inoperative) at which it is possible to recover control of the airplane with the use of primary aerodynamic controls alone (without the use of nose-wheel steering) to enable the takeoff to be safely continued using normal piloting skill and rudder control forces not exceeding 150 pounds. In the determination of V_{MCG}, assuming that the path of the airplane accelerating with all engines operating is along the center line of the runway, the airplane's path from the point at which the critical engine is made inoperative to the point at which recovery to a direction parallel to the center line is completed may not deviate more than 30 feet laterally from the center line at any point. V_{MCG} must be established with:

(1) The airplane in each takeoff configuration or, at the option of the applicant, in the most critical takeoff configuration;

(2) Maximum available takeoff power or thrust on the operating engines;

(3) The most unfavorable center of gravity;

(4) The airplane trimmed for takeoff; and

(5) The most unfavorable weight in the range of takeoff weights.

21. Performance: General

In addition to the requirements of § 23.45, the following apply:

(a) Unless otherwise prescribed, in determining the accelerate-stop distances, takeoff flight paths, takeoff distances, and landing distances, changes in the airplane's configuration, speed, power, and thrust, must be made in accordance with procedures established by the applicant for operation in service.

(b) Procedures for the execution of balked landings and missed approaches associated with the conditions prescribed in special conditions 16 and 17 must be established.

(c) The procedures established under paragraphs (a) and (b) of this special condition must:

(1) Be able to be consistently executed in service by crews of average skill;

(2) Use methods or devices that are safe and reliable; and

(3) Include allowance for any time delays, in the execution of the procedures, that may reasonably be expected in service.

22. Minimum Flight Crew

Instead of compliance with § 23.1523, the following apply:

The minimum flight crew must be established so that it is sufficient for safe operation considering:

(a) The workload on individual crewmembers and each crewmember workload determination must consider the following:

(1) Flight path control,

(2) Collision avoidance,

(3) Navigation,

(4) Communications,

(5) Operation and monitoring of all essential airplane systems,

(6) Command decisions, and

(7) The accessibility and ease of operation of necessary controls by the appropriate crewmember during all normal and emergency operations when at the crewmember flight station.

(b) The accessibility and ease of operation of necessary controls by the appropriate crewmember; and

(c) The kinds of operation authorized under § 23.1525.

23. Operating Limitations

In addition to the requirements of § 23.1583, the following apply:

(a) Additional operating limitations must be established as follows:

(1) The maximum takeoff weights must be established as the weights at which compliance is shown with the applicable provisions of this part (including the takeoff climb provisions of special condition 16, paragraphs (a) through (c), for altitudes and ambient temperatures).

(2) The maximum landing weights must be established as the weights at which compliance is shown with the applicable provisions of this part (including the landing and takeoff climb provisions of special conditions 16 and 17 for altitudes and ambient temperatures).

(3) The minimum takeoff distances must be established as the distances at which compliance is shown with the applicable provisions of this part (including the provisions of special conditions 12 and 14 for weights, altitudes, temperatures, wind components, and runway gradients).

(b) The extremes for variable factors (such as altitude, temperature, wind, and runway gradients) are those at which compliance with the applicable provisions of this part is shown.

24. Performance Information

Instead of compliance with subparagraphs § 23.1587 (a)(5), (a)(6), (a)(7), (a)(8), (c)(4), and (c)(5), the following apply:

(a) Each Airplane Flight Manual must contain the performance information computed under the applicable provisions of this part (including special conditions 15 and 19 for the weights, altitudes, temperatures, wind components, and runway gradients, as applicable) within the operational limits of the airplane, and must contain the following:

(1) The conditions under which the performance information was obtained, including the speeds associated with the performance information;

(2) Procedures established under special condition 21 that are related to the limitations and information required by special condition 23 and by this special condition. These procedures must be in the form of guidance material, including any relevant limitations or information;

(3) An explanation of significant or unusual flight or ground handling characteristics of the airplane.

25. Wings Level Stall

Instead of compliance with § 23.201 (c) and (f), the following apply:

(a) The roll occurring between the stall and the completion of the recovery may not exceed approximately 20 degrees.

(b) Compliance with the requirements of this section must be shown with:

(1) Power—

(i) Off; and

(ii) The thrust necessary to maintain level flight at 1.6 V_{s1} (where V_{s1} corresponds to the stalling speed with flaps in the approach position, the landing gear retracted, and maximum landing weight).

(2) Flaps and landing gear in any likely combination of positions.

(3) Trim at 1.4 V_{s1} or at the minimum speed, whichever is higher.

(4) Representative weights within the range for which certification is requested.

(5) The most adverse center of gravity for recovery.

26. Turning Flight and Accelerated Stalls

Instead of compliance with § 23.203(c), the following apply:

Compliance with the requirements of this section must be shown with:

(a) The thrust necessary to maintain level flight at 1.6 V_{s1} (where V_{s1} corresponds to the stalling speed with flaps in the approach position, the landing gear retracted, and maximum landing weight).

(b) Flaps and landing gear in any likely combination of positions.

(c) Trim at 1.4 V_{s1} or at the minimum trim speed, whichever is higher.

(d) Representative weights within the range for which certification is requested.

(e) The most adverse center of gravity for recovery.

27. Stall Warning

Instead of compliance with § 23.207(c), the following apply:

(a) The stall warning must begin at a speed exceeding the stalling speed by not less than five knots. For stalls where the pitch control reaches the stop without uncontrollable downward pitching motion (i.e., minimum steady speed), a lesser margin is acceptable if the stall warning has enough clarity, duration, distinctiveness or similar properties.

(b) The stall warning margin must not be above a speed at which warning would become objectionable in the normal operating range (i.e., adequate maneuvering capability exists prior to stall warning to conduct normal maneuvers).

Issued in Kansas City, Missouri on May 16, 1991.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-12360 Filed 5-23-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-CE-66-AD; Amendment 39-7006]

Airworthiness Directives; Cessna Model T303 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Cessna Model T303 airplanes. This action will supersede AD 88-22-01, which currently requires inspections and replacement of the nose gear actuator attachment fitting. Cracking of replaced nose gear actuator attachment fittings has been reported on several of the affected airplanes. This action requires inspections and replacement of the nose gear actuator fitting with an improved part. The actions specified by this AD are intended to prevent collapse of the nose landing gear and loss of control of the

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airplane during takeoff or landing operations.

EFFECTIVE DATE: June 28, 1991.

ADDRESSES: Cessna Service Bulletin (SB) MEB88–4, dated August 5, 1988, and Cessna SB MEB88–4, Revision 2, dated October 26, 1990, that are discussed in this AD may be obtained from the Cessna Aircraft Company, Customer Service, P.O. Box 7704, Wichita, Kansas 67277; Telephone (316) 946–7550. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas W. Haig, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, room 100, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4409.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to Cessna Model T303 airplanes was published in the **Federal Register** on February 25, 1991 (56 FR 7624). The action proposed inspections of the nose gear actuator attachment fitting for cracks in accordance with Cessna Service Bulletin (SB) MEB88–4, dated August 5, 1988, and replacement of these fittings with a new fitting of increased lug thickness in accordance with Cessna SB MEB88–4, Revision 2, dated October 26, 1990. It would supersede AD 88–22–01, Amendment 39–6041 (53 FR 40051, October 13, 1988).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. These minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

It is estimated that 315 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 2.5 hours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $250 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $122,062.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 88–22–01, Amendment 39–6041 (53 FR 40051, October 13, 1988) and adding the following new AD:

91–11–09 Cessna: Amendment 39–7000; Docket No. 90–CE–66–AD. Applicability: Model T303 airplanes (all serial numbers), certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent failure of the nose gear actuator attachment fitting, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS) after the effective date of this AD or upon the accumulation of 550 hours TIS, whichever occurs later, and thereafter at intervals of 50 hours TIS, inspect the nose gear actuator attachment fitting for cracks in accordance with Cessna Service Bulletin (SB) MEB88–4, dated August 5, 1988.

(1) If any of the legs of the fitting are cracked, prior to further flight, replace the cracked fitting with an improved fitting, part number P/N 2543004–5, in accordance with Cessna SB MEB88–4, Revision 2, dated October 26, 1990.

(2) If no cracks are found, return the airplane to service and continue the repetitive inspections specified in paragraph (a) of this AD.

(b) Within the next 12 calendar months after the effective date of this AD, unless already accomplished in accordance with paragraph (a)(1) of this AD, replace the nose gear actuator attachment fitting, P/N 2543004–1 or 2543004–3, with an improved fitting, P/N 2543004–5, in accordance with Cessna SB MEB88–4, Revision 2, dated October 26, 1990.

(c) The inspections required by paragraph (a) of this AD are no longer required when the nose gear actuator attachment fitting has been replaced with P/N 2543004–5 in accordance with paragraph (a)(1) or (b) of this AD.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

(f) All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Cessna Aircraft Company, Customer Services, P.O. Box 7704, Wichita, Kansas 67277; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

This amendment supersedes AD 88–22–01, Amendment 39–6041.

This amendment becomes effective on June 28, 1991.

Issued in Kansas City, Missouri, on May 9, 1991.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–12361 Filed 5–23–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 91-AWP-1]

Amendment of the Stockton, CA, Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will amend the description and the effective hours of the Stockton, CA, Control Zone. The Stockton Control Zone does not meet full-time control zone criteria thus the need for an amendment to a part-time control zone.

EFFECTIVE DATE: 0901 u.t.c., September 29, 1991.

FOR FURTHER INFORMATION CONTACT: Tom Bowman, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297–0433.

SUPPLEMENTARY INFORMATION:

History

On January 30, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the description and the effective hours of the Stockton, CA, Control Zone (56 FR 5376).

Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

The amendment of part 71 of the Federal Aviation Regulations amends the description and effective hours of the Stockton, CA, Control Zone.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routes amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. 71.171 is amended as follows:

Stockton Metropolitan Airport, CA [Revised]

Within a 5-mile radius of the Stockton Metropolitan Airport (lat. 37°53'39" N., long. 121°14'14" W.). This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Los Angeles, California, on May 10, 1991.

Richard R. Lien,

Manager, Air Traffic Division Western-Pacific Region.

[FR Doc. 91–12362 Filed 5–23–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 91-ASO-5]

Revision of Control Zone, Brunswick Malcolm-McKinnon Airport, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the Brunswick Malcolm-McKinnon Airport, Control Zone. The existing description references the Brunswick Municipal Airport and excludes from the control zone that portion within a 1.5-mile radius of the airport. The Brunswick Municipal Airport has long been closed. This action eliminates this reference and also, would make a minor correction to the latitude/longitude coordinate position of the Malcolm-McKinnon Airport.

EFFECTIVE DATE: 0901 u.t.c., July 25, 1991.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763–7646.

SUPPLEMENTARY INFORMATION:

History

On February 25, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Malcolm-McKinnon Airport, GA Control Zone (56 FR 7626). Due to typographical errors in the Notice of Proposed Rulemaking a correction was subsequently published on March 13, 1991 (56 FR 10660). The proposed action would eliminate the 1.5-mile radius around the Brunswick Municipal Airport which had been excluded from the control zone description since the airport had been closed. Also, a minor correction would be made in the latitude/longitude coordinate position of the Malcolm-McKinnon Airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6G dated September 4, 1990.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revises the Brunswick Malcolm-McKinnon Airport, GA Control Zone. The existing exclusion from the control zone of the area within 1.5-miles of the Brunswick Municipal Airport has been deleted from the control zone description since the airport has been closed. Additionally, a minor correction has been made to the latitude/longitude coordinate position of the Malcolm-McKinnon Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zone.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

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Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.17 [Amended]

2. Section 71.171 is amended as follows:

Brunswick Malcolm-McKinnon Airport, GA [Revised]

Within a 5-mile radius of Malcolm-McKinnon Airport (lat. 31°09'05" N, long. 81°23'30" W.); within 1.5 miles each side of the Brunswick VORTAC 022° radial, extending from the 5-mile radius zone to the VORTAC.

Issued in East Point, Georgia, on April 30, 1991.

Walter E. Denley,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 91-12363 Filed 5-23-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Counterfeit Drugs Enforcement Activities

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority relating to enforcement activities to add to the authorities delegated to officers and employees of FDA who have been issued certain FDA official credentials. The amendment delegates authority to criminal investigators to conduct certain activities relative to counterfeit drugs and to carry firearms under section 702(e)(1) through (e)(5) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 372(e)(1) through (e)(5)).

EFFECTIVE DATE: May 24, 1991.

FOR FURTHER INFORMATION CONTACT: Ellen Rawlings, Division of Management Systems and Policy (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: FDA is amending § 5.35 *Enforcement activities* (21 CFR 5.35) to delegate authority to FDA officers and employees who have been issued FDA credentials consisting of both Form FDA-200A, Identification Record, and Form FDA-200D, Special Authority for Criminal Investigators, to perform the following relative to counterfeit drugs under section 702(e)(1) through (e)(5) of the act: to carry firearms; to serve and execute search warrants and arrest warrants; to execute seizure by process issued pursuant to libel under section 304 of the act; to make arrests without warrant for offenses under the act with respect to counterfeit drugs under certain conditions; and to seize counterfeit drugs and equipment, labeling, and other things used or designed for use in making counterfeit drugs. The newly delegated authority will allow the designated officials to carry out their responsibilities thoroughly and expeditiously.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organizations and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 2271; 15 U.S.C. 638, 1261-1282, 3701-3711a; secs. 2-12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451-1461); 21 U.S.C. 41-50, 61-63, 141-149, 467f, 679(b), 801-886, 1031-1309; secs. 201-903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321-393); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 354-360F, 361, 362, 1701-1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a 242l, 242n, 243, 262, 263, 263b-263n, 264, 265, 300u-300u-5, 300aa-1); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007-10008; E.O. 11490, 11921, and 12591.

2. section 5.35 is amended in paragraph (a)(1) by removing "(the Act)" and inserting in its place "(the act)", by redesignating paragraph (b), as paragraph (c), by adding a new paragraph (b), by revising the introductory text of newly redesignated paragraph (c), and by adding new paragraph (c)(3) to read as follows:

§ 5.35 Enforcement activities.

(a) * * *

(b) Any designated officer or employee of the Food and Drug Administration who has been issued the Food and Drug Administration Official Credentials consisting of Form FDA-200A, Identification Record, and Form FDA-200D, Special Authority for Criminal Investigators, is authorized to do the following relative to counterfeit drugs, as set forth under section 702 (e)(1) through (e)(5) of the act:

(1) Carry firearms;

(2) Serve and execute search warrants and arrest warrants;

(3) Execute seizure by process issued pursuant to libel under section 304 of the act;

(4) Make arrests without warrant for an offense under the act with respect to counterfeit drugs if the offense is committed in the presence of the criminal investigator or, in the case of a felony, if the investigator has probable cause to believe that the person so arrested has committed, or is committing, such offense; and

(5) Make, prior to the institution of libel proceedings under section 304(a)(2) of the act, seizures of drugs or containers or of equipment, punches, dies, plates, stones, labeling, or other things, if they are, or the criminal investigator has reasonable grounds to believe that they are, subject to seizure and condemnation under section 304(a)(2) of the act.

(c) The Food and Drug Administration's official credentials referred to in paragraphs (a) and (b) of this section are described as follows:

* * * * *

(3) Form FDA-200D, entitled "Special Authority for Criminal Investigators," bears the holder's name, his or her special authority relative to counterfeit drugs, an identification number, an expiration date, the Commissioner's signature, the names of the Department of Health and Human Services, the Public Health Service, and the Food and Drug Administration. The form is superimposed with the Department's seal with blue imprint.

Dated: May 20, 1991.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-12355 Filed 5-23-91; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 581

[Docket No. R-91-1542; FR-2620-I-01]

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-47

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 12a

Use of Real Property To Assist the Homeless

AGENCIES: Department of Housing and Urban Development; General Services Administration; Department of Health and Human Services.

ACTION: Interim final rule with request for comments.

SUMMARY: Title V of the Stewart B. McKinney Homeless Assistance Act, 42 U.S.C. 11411 (McKinney Act), as amended, requires the Administrator of the General Services Administration (GSA), the Secretary of Housing and Urban Development (HUD), and the Secretary of Health and Human Services (HHS) (collectively referred to herein as "the Agencies"), to promulgate regulations to carry out the requirements of title V of the McKinney Act. The Agencies are promulgating the following joint interim final rule to fulfill that mandate.

Title V of the McKinney Act, as amended, Public Law 101-645, 104 Stat. 4673, (November 29, 1990), provides that suitable Federal properties categorized as underutilized, unutilized, excess, or surplus may be made available to States, units of local government and non-profit organizations, for facilities to assist the homeless. Responsibilities under title V are divided among three agencies: GSA, HUD, and HHS, as well as the Interagency Council on the Homeless. The interim final rule (herein rule or regulation) explains the procedures used by each agency in fulfilling its responsibilities under title V of the McKinney Act. The Agencies intend that representatives of the homeless, and thus, the homeless themselves, will benefit from this clarification of the title V process.

DATES: Effective Date: This rule is effective on May 24, 1991, except for §———.3, which will not be effective until approved by the District Court for the District of Columbia pending further proceedings in the case *National Law Center on Homelessness and Poverty* v. *Dept. of Veterans Affairs*, No. 88-2503-OG (Dec. 12, 1988). The Agencies will publish a separate notice in the Federal Register announcing the effective date of that section.

Under section 7(o) of the Department of Housing and Urban Development Act, 42 U.S.C. 1441a, no rule or regulation of HUD may become effective until after the expiration of the 30 day calendar period beginning on the day after the day on which the rule or regulation is published. Because section 501(d) of the Stewart B. McKinney Homeless Assistance Act as amended requires that regulations implementing title V be issued jointly by GSA, HHS, and HUD, and contemplates that such regulations would be effective no later than 90 days after the date of enactment of the 1990 amendments to the Act, the General Counsel of HUD has determined that Congress intended that section 7(o) not apply to this regulation.

Comments Due: Comments must be submitted on or before July 23, 1991, and will be incorporated as appropriate.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying from 7:30 a.m. to 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address. Although comments should be sent to this centralized location, they will be circulated to each of the three agencies.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX is (202) 708-4337. (This is not a toll free number.) Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure access to the equipment. FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk (202) 708-2084, or for the hearing or speech impaired, TDD (202) 708-3259.

FOR FURTHER INFORMATION CONTACT:

Majorie Lomax, General Services Administration, 18th & F Streets NW., DRP 4227, Washington, DC 20405, (202) 501-0052.

Judy Breitman, Chief, Real Property Branch, Division of Health Facilities Planning, Public Health Service, Department of Health and Human Services, Room 17A-10 Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-2265.

Mark Finks, Deputy Director, Office of Special Needs Assistance Programs, Department of HUD, room 7262, 451 7th Street SW., Washington, D.C. 20410, (202) 708-4300 or TDD (202) 708-2565.

Patricia Carlile, Executive Director, Interagency Council on the Homeless, room 7274, 451 7th Street SW., Washington, D.C. 20410, (202) 708-1480.

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, and have been assigned OMB number 09370191.

This rule will supersede Temporary Regulation H-27, published in the Federal Register on October 5, 1989 (54 FR 41099), by the General Services Administration, and codified in the appendix to subchapter H in title 41 of the CFR. This regulation also supersedes the information included in a Federal Register Notice published by HUD on June 23, 1989. See 54 FR 26421.

Under section 501 of title V, 42 U.S.C. 11411, HUD is responsible for collecting information from Federal landholding agencies regarding Federal real property that is excess or surplus or is described as unutilized or underutilized in property surveys which are performed annually by landholding agencies. In addition, HUD is responsible for collecting information from GSA regarding properties identified as excess or surplus pursuant to section 202(b)(2) of the Federal Property and Administrative Services Act of 1949 (FPASA) (40 U.S.C. 483(B)(2).). HUD is also responsible for developing suitability criteria to determine which of those properties are suitable for use as facilities to assist the homeless. Only HUD has the authority to determine whether a property is suitable or unsuitable.

HHS is responsible for accepting and evaluating applications from states, local government agencies, or private nonprofit organizations which provide services to the homeless for use of unutilized, underutilized, excess, and surplus properties. In the case of excess property, HHS will request assignment of the property from GSA, and if the property is declared surplus and assigned to HHS, HHS will enter into a lease agreement or deed with the successful applicant. In the case of unutilized or underutilized property,

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HHS will process applications for the use of the property, but the individual landholding agency will enter into the lease or permit agreement with the successful applicant.

GSA is responsible for determining whether the real properties reported to GSA by a particular agency as excess to its needs are required for use by any other Federal agency. Excess properties are those properties which an individual landholding agency determines are not necessary for the agency to discharge its responsibilities. Once GSA receives a request for assignment from HHS indicating that HHS has evaluated and approved an application under title V from an eligible organization with an approvable program, GSA may assign the property to HHS. In making such a determination, GSA will give priority of consideration to uses to assist the homeless, unless it determines that a competing request for the property under section 203(k) of the FPASA is so meritorious and compelling as to outweigh the needs of the homeless.

The rule establishes procedures for collecting information from landholding agencies about excess, surplus, unutilized and underutilized properties under their control and the criteria for determining the suitability of such property for use as facilities to assist the homeless. The rule also describes the process by which applications are received and evaluated.

Collecting the Information

Under section 202 of the Federal Property and Administrative Services Act of 1949 (FPASA), 40 U.S.C. 483, as amended, and Executive Order 12512, implemented by GSA at 41 CFR 101–47.8, Federal executive landholding agencies are required to conduct annual reviews of real property under their control. The agencies must identify any real property that is unutilized or underutilized in accordance with standards set out in 41 CFR 101–47.801. Pursuant to Executive Order 12512, GSA must also conduct surveys of agencies' real property holdings to identify any property which is unutilized or underutilized.

Section 501(a) of the McKinney Act directs HUD to collect information from Federal landholding agencies about property under their control which the agencies have determined to be unutilized or underutilized in the surveys described above. Under the rule, HUD will be required to canvass agencies on a quarterly basis regarding such property. Agencies must respond to the canvass within 25 days after receiving HUD's canvass letter. In accordance with section 501(a), the rule provides that within 30 days of collecting the information, HUD must determine which properties are suitable.

In addition to collecting information on unutilized and underutilized property, HUD will collect information concerning GSA's inventory of "excess" and "surplus" properties to determine which of those properties are suitable for use as facilities to assist the homeless. GSA offers "excess" properties to other Federal agencies through a process known as "Federal screening." If no other agency expresses a need for the property, it is determined "surplus," at which time GSA may arrange for the disposal of the property.

The agencies note that the section of this interim final rule relating to HUD's collection of information regarding unutilized, underutilized, excess or surplus properties is in conflict with the decision of the U.S. District Court for the District of Columbia in *National Law Center on Homelessness and Poverty, et al.* v. *U.S. Department of Veterans Affairs, et al.*, No. 88–2503–OG (D.D.C.), issued February 13, 1991. That decision interpreted the court's permanent injunction of December 12, 1988, which set forth certain procedures to be followed by the defendants in implementing title V of the Stewart B. McKinney Homeless Assistance Act, 42 U.S.C. 11411 (1987). In interpreting its December 12, 1988, order, the court specifically addressed the issue of HUD's collection of information regarding Federal real properties from Federal landholding agencies as required by title V. The court concluded that the order, which interpreted title V prior to the 1990 amendments, required HUD to perform "comprehensive canvasses," *i.e.*, collection of information from each landholding agency regarding all Federal public buildings, each quarter to determine whether landholding agencies have property that is unutilized, underutilized, excess, or surplus.

Although HUD had not previously interpreted the court's December order as requiring comprehensive quarterly canvasses, on April 1, 1991, HUD, in accordance with the court's February 13, 1991, order, conducted a comprehensive canvass of all Federal landholding agencies to determine whether said agencies had properties as described by the court order. Because the text of §____.3 below, conflicts with the court's February 13, 1991, decision and order, §____.3 will not be effective pending the outcome of further judicial proceedings in the *National Law Center* case. In the interim, the agencies will continue to comply with the court's orders.

Title V, as amended was signed into law on November 28, 1990, and became effective on February 27, 1991. Although the court's February opinion was issued subsequent to the enactment of title V, the court's opinion did not interpret, nor did it purport to interpret, HUD's responsibilities under the newly enacted amendments, because the issues before the court arose prior to the amendment of title V.

Title V, as amended on November 29, 1990, requires the Secretary of HUD, "on a quarterly basis, to request information from each landholding agency regarding Federal public buildings and other Federal real properties * * *" See 42 U.S.C. § 11411(a). The agencies interpret title V not to require HUD to conduct the quarterly collection of information from landholding agencies in the same manner as ordered by the District Court in the *National Law Center* case. The agencies interpret the 1990 amendments to require quarterly canvasses by HUD to collect updated information on properties not previously reported that year, instead of "comprehensive" collections each quarter of information regarding all Federal public buildings or other real property. Any other interpretation, as explained below, would make title V unworkable and would not only impose unnecessary administrative burdens but would lead to a situation in which properties that entered the title V process would continue in the process indefinitely with virtually no chance for the government to dispose of properties determined to be surplus to its needs.

Title V provides for an annual property canvass on December 31 of each year with quarterly updates. Section 501(c)(4)(A) requires that on December 31 of each year, the head of each landholding agency report to the Secretary of HUD the current availability status and the current classification of each property controlled by that agency that was included in a list of properties determined to be both suitable for use by the homeless and available for application by representatives of the homeless, and which remain available for application or have become available for application during that year. The properties identified by the landholding agencies must be published in the **Federal Register** by February 15 of the following year. Any homeless provider interested in applying for any of the listed properties has 60 days from February 15 to submit a written notice of intent to apply for a particular property. Thus, on February 15 of each year a completed list of every suitable and available Federal building or other real property categorized as excess, surplus, unutilized, or underutilized will be available for submissions of notices of intent to apply for property by representatives of the homeless for 60 days, *i.e.*, until April 15.

On January 1, April 1, July 1, and October 1 of each year, HUD will conduct a canvass to collect information on properties not previously reported and about property reported previously, the status or classification of which has changed or for which any of the information reported on the property checklist has changed. Those properties determined suitable will be subject to a 60 day holding period during which homeless providers may submit a written notice of intent to apply for use of a particular property to assist the homeless. If no written notice of intent to apply for a property or application is received after the expiration of the 60-day period, the Federal landholding agency will be free to dispose of the property in accordance with the agency's normal disposal method.

An interpretation of title V which contemplated that a comprehensive canvass of all Federal real properties was to be completed each quarter would effectively bar any disposal of property except to homeless assistance providers. For example, under such an interpretation an agency would report properties that are suitable and available on December 31 as required by the statute. These properties would be published on February 15, and would have to be held for consideration by representatives of the homeless for 60 days—i.e. until April 16. On January 1, HUD would request information from the same agencies regarding all properties that are unutilized, underutilized, excess or surplus, regardless of whether the properties had previously been reported. These properties would be reviewed for suitability and availability. Using the time frames set forth in section 501 (a) and (b) of the Act, properties that would be reported in response to the January 1 canvass would be published in the **Federal Register** by April 25. Properties that are suitable and available would have to be held for homeless consideration for 60 days, or until June 25. Under such an interpretation, the 60-day holding period for the properties reported on December 31, as noted above, ends on April 16, but those same properties if reported pursuant to the January 1 canvass, would be republished on April 25 and therefore would be subject to another 60-day holding period, which means that said properties would be held until June 25. This extremely narrow window of time between these statutorily mandated holding periods may virtually preclude efforts to dispose of property other than through the title V process. Similar problems would occur for canvasses conducted in subsequent quarters. For example, properties that would be held until June 25 would be re-reported to HUD in response to its April 1 canvass by July 9 for publication by July 24.

In the conference language to the title V amendments the conferees stated that "a standard is thus established in the Conference report which is meant to guarantee the rights of successful applicants *while upholding the legitimate property needs of the Federal government.*" H.R. Rep. No. 101–951, 101st Congress, 2nd Sess. at 100 (1990) (emphasis added). That language clearly contemplates a balance between providing an opportunity for homeless applicants and the government's need to otherwise sell or dispose of its properties. Congress' intention not to require Federal properties to be held indefinitely in the Title V process is also evidenced in the conference report where the conferees discussed requests for application extensions by representatives of the homeless. The conferees stated, "[b]y this requirement the conferees intend that surplus properties not be held indefinitely." *Id.* The agencies' interpretation balances the purpose of the Act—to make unused and underused Federal properties available to assist the homeless—with the need of the Federal government to dispose of surplus Federal properties.

Simply because all properties are not reported to HUD every quarter does not mean that homeless providers will lose their ability to apply for properties determined suitable and available. Properties that are reported to HUD and determined suitable and available will be published in the **Federal Register** at least twice in a twelve month period—once upon the initial suitability and availability determination, and again on February 15, if they are still available. Even after the expiration of the 60-day holding period, representatives of the homeless may still apply for properties. Title V provides that a written notice of intent to apply for a property previously published as suitable and available may be filed at any time after a 60-day period has expired, if the property remains available. The representative of the homeless will then have 90 days in which to file an application for use of the property.

Determining Suitability

Under the rule, HUD will determine the suitability of unutilized and underutilized properties solely from the information collected from landholding agencies. In the case of properties designated excess or surplus, HUD's suitability determination will be based on an evaluation of information collected from GSA. Because suitability determinations must be made before applications for use are received, they are made without the knowledge of a specific proposal for use of a property. HUD's determination that a property is suitable does not imply that it is suitable for a particular use (it may be suitable only for storage, for example), nor does it imply any obligation on the part of the Federal Government to repair or modify the property so that it may be used for a particular purpose. Interested applicants will need to inspect properties in which they are interested to determine for themselves whether they are in a position to incur the costs to make a property usable. Suitable properties that are made available are available on an "as is" basis.

The rule will require HUD to keep a written record of the reasons for a determination that a property is unsuitable for use as a facility to assist the homeless. Properties determined unsuitable will be held for 20 days after the determination of unsuitability to allow for review of this decision by representatives of the homeless.

Suitability Criteria

The suitability criteria have been developed with the intent of excluding only those properties that are clearly unsuitable for use to assist the homeless. Thus, most properties will be determined suitable unless certain conditions exist. These conditions include national security concerns, the proximity of flammable or explosive material, location in a floodway, runway clear zone or military airfield clear zone, and other documented deficiencies, including environmental hazards, which would present a clear threat to physical safety. Vacant land may be determined suitable if the land is accessible or is capable of being made accessible by the applicant.

For properties for which applications are received under title V, an environmental evaluation will be completed by HHS based on information provided by the applicants pursuant to the requirements of the National Environmental Policy Act, 42 U.S.C. 4321. This evaluation will be performed after notice of availability is

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published in the **Federal Register** and an application is received. HHS will review the environmental information to determine if exceptional, extraordinary, or hazardous circumstances exist which could affect the use of the property. The application packet provided to the applicant by HHS contains information to assist applicants in obtaining the necessary environmental information. Upon notice from HHS that an application has been received for a particular property, HUD will forward to HHS a copy of the suitability checklist for that property to assist HHS in its environmental evaluation. HHS will assist applicants in obtaining any pertinent environmental information in the possession of HUD, GSA, or the landholding agency.

Determination of Availability

Section 501(b) directs HUD to notify a landholding agency with respect to any property of the agency that HUD has identified as suitable. Within 45 days after receipt of the notice from HUD, the agency must transmit to HUD notice of: (1) Its intention to declare the property excess to the agency's need; (2) its intention to make the property available for use as a facility to assist the homeless; or (3) the reasons why the property cannot be declared excess or made available for use by the homeless.

If the landholding agency decides that the property cannot be declared excess or that it cannot be made available to assist the homeless, the property will not become available. If the landholding agency intends to declare the property excess to the agency's need, the property may be made available to assist the homeless, after screening for use by other Federal agencies, in accordance with the FPASA and GSA's implementing regulations. Under these procedures, another Federal agency may indicate a desire to use the property to execute programs under its responsibility. In certain circumstances, GSA may exercise its discretion to make excess suitable property available for facilities to assist the homeless without offering the property to other Federal agencies through the screening process. Where properties are declared excess subsequent to HUD's publication of suitability, GSA will notify the public through its established procedures. If the landholding agency agrees to make the property available for use by the homeless without declaring it excess, it will be responsible for making the property available after HHS approves an application received from a representative of the homeless for use of the property.

GSA must respond to HUD within 45 days regarding properties which have previously been determined excess and which remain in GSA's inventory. GSA must transmit to HUD either (1) a statement that there is no other compelling Federal need for the property and that, therefore, the property will be determined surplus, or (2) a statement that there is a further and compelling Federal need for the property, and that, therefore, the property is not presently available for use to assist the homeless.

Public Notice

Under title V, as amended, HUD is required to publish in the **Federal Register** a list identifying properties determined suitable and available for use as facilities to assist the homeless. HUD is also required to publish lists of other properties reviewed, i.e., those determined suitable but not available, and those determined unsuitable. In an effort to get information to the homeless on an expedited basis, HUD will publish properties on a weekly basis. Should HUD determine that weekly publication is no longer necessary, HUD will publish a notice in the **Federal Register** stating its new publication schedule. Each notice will include a short description of each property and its location. The notice will also include information regarding whom to contact for further information and where to send written notices of intent to apply for property and applications for use of the property.

HUD is also responsible for transmitting to the Interagency Council on the Homeless (Council) a list of all properties that are published in the **Federal Register**. The Council will immediately distribute to all state and regional homeless coordinators area-relevant portions of the list. The Council will encourage the state and regional homeless coordinators to disseminate this information widely.

On December 31 of each year, each landholding agency will report to HUD the current availability status and the current classification of each property controlled by the agency that was published as suitable during that year. Be February 15 of each year, HUD will publish a list of those properties in the **Federal Register**. HUD will also publish annually a list of suitable/unavailable properties with the reasons why the property was determined unavailable. HUD has established a toll-free number to provide the public with specific information about properties published in the **Federal Register**.

Holding Period

Suitable and available properties will be held for 60 days following publication in the **Federal Register**. During this time, States, units of local government, or private nonprofit organizations interested in particular properties for use to assist the homeless must submit written expressions of interest to HHS. If no expressions of interest have been received after 60 days, GSA or the appropriate landholding agency may proceed with disposal procedures in accordance with other applicable Federal law. The property shall be considered to remain available for application for use to assist the homeless if, subsequent to the 60 day holding period noted above, (1) no application or written expression of interest has been made under any law for use of the property for any purpose, and (2) in the case of surplus property, the Administrator of GSA has not received a bona fide offer to purchase the property or advertised the sale of the property by public auction.

Application Process

HHS is responsible for receiving applications for suitable and available properties published in the **Federal Register**. Written expressions of interest must be received by HHS within 60 days after a property is published in the **Federal Register**. An expression of interest need only be a short letter which identifies the specific property and briefly describes the proposed use. It should also include the name of the organization and indicate whether it is a public body or a private non-profit organization. It is helpful for representatives of the homeless to include the date the property was published in the **Federal Register** and, in the case of excess properties, the GSA number listed in the **Federal Register**.

Upon receipt of an expression of interest, HHS will mail an interested organization an application packet and notify the appropriate landholding agency that it has received an expression of interest. A complete application must be received within 90 days from the date an expression of interest is received from a particular organization for a particular piece of property. Accordingly, each organization will have a different deadline. All applicants which have applied for a particular piece of property will be informed as soon as an application has been approved for that property.

The application packet will ask a series of questions and request information to which the applicant must respond. Applicants must describe their organization and document their authority to acquire real property.

Organizations must be State or local governments, or non-profit entities, and must document that they will provide services to persons who meet the definition of the homeless included in title I of the McKinney Act. Applicants must provide a thorough description of their proposed program, including a description of the manner in which it will be necessary to alter the property to implement the program. Applicants must also indicate that they have notified the relevant local governments regarding their proposed program. Applicants must indicate that they either have the necessary funds or are in the process of obtaining the necessary funds to implement the proposed program. Finally, applicants must answer a series of questions regarding environmental factors, so that HHS can perform an environmental evaluation pursuant to the requirements of the National Environmental Policy Act (NEPA). HHS will assist applicants in obtaining any pertinent environmental information which is in the possession of HUD, GSA, or the landholding agency. The proposed program need not comply with local zoning requirements unless the applicant is interested in receiving a deed for the property.

As stated, section 501(e), as amended, requires HHS to evaluate each completed application within 25 days of receipt. Accordingly, applications will be processed on a first-come, first-served basis. When HHS receives a completed application for excess or surplus property that satisfies the application requirements, HHS will request assignment of that property from GSA for lease or deed to an eligible applicant. HHS will forward approved applications for unutilized or underutilized properties to the landholding agency so that the landholding agency may enter into a lease or permit agreement with the applicant organization. Because applications must be evaluated within 25 days of receipt, HHS' evaluation will be limited to the information contained in the application.

Under section 501, a landholding agency may allow unutilized or underutilized property to be made available to eligible organizations by lease, license, or use permit. Because these are properties which the landholding agencies will use in the future to carry out the agencies' responsibilities, the length of time a property may be available, and the exact terms and conditions of the lease or use permit, will be determined through consultation between the applicant and the landholding agency.

When more than one application is received for a particular property, HHS will convene an objective review panel to rank the applications. Because applications must be evaluated within 25 days of receipt, only those applications received for a particular property within 5 days after the initial application is received will be simultaneously evaluated by an objective review panel. The landholding agency or GSA, as appropriate, will be notified regarding the successful applicant. Applications received subsequent to a decision to lease or permit a property to a particular entity will be returned.

Transfer of Surplus Property by Deed

On August 8, 1990, HHS amended its regulations under part 12 to permit deeding of surplus property to organizations which assist the homeless. 45 CFR 12.3(e). Eligible organizations interested in receiving a deed for a particular piece of suitable property published in the **Federal Register** may file an application in compliance with the requirments set out in this rule, and those set out in 45 CFR part 12. As specified in 45 CFR part 12, organizations must be a state or local government or a section 501(c)(3) tax-exempt entity in order to receive title to a particular piece of Federal surplus real property. Such property will be conveyed under the authority set out in section 203(k) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k)(1) and (4)) and pursuant to the requirements set out in 45 CFR part 12.

Regulatory Procedures

As discussed above, this regulation's main effect is to consolidate and simplify current procedures. Therefore, the agencies have determined that this is not a major rule under Executive Order 12291. An analysis of the rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign enterprises in domestic or export markets.

HUD has made a Finding of No Significant Impact pursuant to the requirements of section 102(c) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street SW., Washington, DC 20410.

The Agencies certify that the rule will not have a significant economic impact on a substantial number of small entities, and that a Regulatory Flexibility Analysis is not required.

The Agencies have determined under Executive Order 12612 that the policies contained in this rule do not have federalism implications.

Under the Paperwork Reduction Act of 1980, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval of any reporting or recordkeeping requirement in a proposed or final rule. This rule contains information collection requirements in section ____.9, which have been approved by OMB for review and approval. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency officials whose names appear in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (room 3028), Washington, DC 20503, Attention: Desk Officer for HUD.

This rule was listed in HUD's Semiannual Agenda of Regulations published at 56 FR 17360, 17375 published on April 22, 1991 under Executive Order 12291 and the Regulatory Flexibility Act.

Waiver of Proposed Rulemaking and of Delayed Effective Date

The following rule is published as an Interim Final Rule and is effective immediately, except for § ____.3. On October 25, 1990, Congress passed amendments to title V of the McKinney Act. 42 U.S.C. 11411. These Amendments were signed into law by President Bush on November 29, 1990. Section 501(d) of the McKinney Act as amended states *inter alia* as follows:

> Promulgation of Regulations: No later than 90 days after the date of the enactment of this Act, the Administrator of General Services, the Secretary of Health and Human Services, and the Secretary of Housing and Urban Development shall promulgate regulations implementing this section and the amendment made by this section.

Cong. Rec. October 25, 1990, H13897. Accordingly, the regulation was intended to have been published by February 27, 1991.

The Administrative Procedure Act requires Notice and Comment

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Rulemaking except "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b). For the following reasons, GSA, HUD, and HHS have determined that good cause exists to publish the following joint regulation as an interim final rule and to make it effective immediately.

It would have been impracticable to publish a Notice of Proposed Rulemaking, include a comment period, and publish a final rule within 90 days of enactment of the amendments. Moreover, the Program has been in operation for several years, and although procedures have been modified by amendments to the statute and several court orders issued by the U.S. District Court for the District of Columbia, in litigation surrounding this program, all representatives of the homeless who have applied for the use of excess, surplus unutilized or underutilized Federal property have had actual notice of the procedures in place at the time of application. In addition, the public was made aware of the procedures utilized by all three agencies in a notice published by HUD in the **Federal Register** on June 23, 1989. 54 FR 26421. The present regulation will codify procedures already in place and formally adopt procedures mandated by the recent amendments to title V. Thus, there are no compelling reasons to publish a notice of proposed rulemaking prior to issuing an interim final rule. Nevertheless, in the interest of the fullest possible public participation, the agencies are inviting public comments on the rule for a sixty day period after its publication. Although section ____.3 is not effective immediately, the agencies will also accept comments from the public on this section. The agencies will revise the rule as appropriate after consideration of any public comments that are submitted.

Department of Housing and Urban Development

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FOR FURTHER INFORMATION CONTACT: Mark Finks, Deputy Director, Office of Special Needs Assistance Programs, Department of HUD, 451 Seventh Street SW., Washington, DC 20410; (202) 708-4300 or TDD (202) 708-2565. (These are not toll-free numbers.)

List of Subjects in 24 CFR Part 581

Homeless, Grant programs—housing and community development, Unutilized or underutilized, excess and surplus Federal property, Reporting and recordkeeping requirements.

Title 24 of the Code of Federal Regulations, Chapter V is amended as set forth below.

Dated: May 15, 1991.

Jack Kemp,

Secretary.

1. Part 581 is added to read as set forth at the end of the common preamble.

PART 581—USE OF FEDERAL REAL PROPERTY TO ASSIST THE HOMELESS

Sec.

581.1 Definitions.
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581.12 No applications approved.

Authority: 42 U.S.C. 11411 note; 42 U.S.C. 3535(d).

2. Part 581 is amended by adding a new 3581.13 to read as follows:

§ 581.13 Waivers.

The Secretary may waive any requirement of this part that is not required by law, whenever it is determined that undue hardship would result from applying the requirement, or where application of the requirement would adversely affect the purposes of the program. Each waiver will be in writing and will be supported by documentation of the pertinent facts and grounds. The Secretary periodically will publish notice of granted waivers in the **Federal Register**.

General Services Administration

41 CFR Part 101-47

FOR FURTHER INFORMATION CONTACT: Marjorie L. Lomax, Director, Policy and Planning Division, Office of Real Estate Policy and Sales, Federal Property Resources Service, General Services Administration (202-501-0052).

List of Subjects in 41 CFR Part 101-47

Government property management, Surplus government property.

Accordingly, 41 CFR part 101-47 and Subchapter H are amended as set forth below.

Dated: May 13, 1991.

Richard G. Austin,

Administrator.

1. The authority citation for part 101-47 is revised to read as follows:

Authority: 40 U.S.C. 486(c). Subpart 101-47.9 also issued under 42 U.S.C. 11411.

2. Subpart 101-47.9 is added to read as set forth at the end of the common preamble.

Subpart 101-47.9 Use of Federal Real Property to Assist the Homeless

101-47.901 (____.1) Definitions.
101-47.902 (____.2) Applicability.
101-47.903 (____.3) Collecting the information.
101-47.904 (____.4) Suitability determination.
101-47.905 (____.5) Real property reported excess to GSA.
101-47.906 (____.6) Suitability criteria.
101-47.907 (____.7) Determination of availability.
101-47.908 (____.8) Public notice of determination.
101-47.909 (____.9) Application process.
101-47.910 (____.10) Action on approved applications.
101-47.911 (____.11) Unsuitable properties.
101-47.912 (____.12) No applications approved.

3. FPMR Temporary Regulation H-27 is removed from the Appendix to Subchapter H in 41 CFR Chapter 101.

Department of Health and Human Services

45 CFR Part 12a

FOR FURTHER INFORMATION CONTACT: Judy Breitman, Chief, Real Property Branch, United States Public Health Service, (301) 443-2265.

List of Subjects in 45 CFR Part 12a

Real property, Homeless, Unutilized or underutilized, excess and surplus Federal property.

Title 45 of the Code of Federal Regulations, subtitle A is amended as set forth below.

Dated: May 16, 1991.

Louis W. Sullivan,

Secretary, U.S. Department of Health and Human Services.

Part 12a is added to read as set forth at the end of the common preamble.

PART 12A—USE OF FEDERAL REAL PROPERTY TO ASSIST THE HOMELESS

Sec.

12a.1 Definitions.
12a.2 Applicability.
12a.3 Collecting the information.
12a.4 Suitability Determination.

Sec.

12a.5 Real property reported excess to GSA.
12a.6 Suitability criteria.
12a.7 Determination of availability.
12a.8 Public notice of determination.
12a.9 Application process.
12a.10 Action on approved applications.
12a.11 Unsuitable properties.
12a.12 No applications approved.

Authority: 42 U.S.C. 11411; 40 U.S.C. 484(k); 42 U.S.C. 3535(d).

Sec.

____.1 Definitions.
____.2 Applicability.
____.3 Collecting the information.
____.4 Suitability determination.
____.5 Real property reported excess to GSA.
____.6 Suitability criteria.
____.7 Determination of availability.
____.8 Public notice of determination.
____.9 Application process.
____.10 Action on approved application.
____.11 Unsuitable properties.
____.12 No applications approved.

§ ____.1 Definitions.

Applicant means any representative of the homeless which has submitted an application to the Department of Health and Human Services to obtain use of a particular suitable property to assist the homeless.

Checklist or property checklist means the form developed by HUD for use by landholding agencies to report the information to be used by HUD in making determinations of suitability.

Classification means a property's designation as unutilized, underutilized, excess, or surplus.

Day means one calendar day including weekends and holidays.

Eligible organization means a State, unit of local government or a private non-profit organization which provides assistance to the homeless, and which is authorized by its charter or by State law to enter into an agreement with the Federal government for use of real property for the purposes of this subpart. Representatives of the homeless interested in receiving a deed for a particular piece of surplus Federal property must be section 501(c)(3) tax exempt.

Excess property means any property under the control of any Federal executive agency that is not required for the agency's needs or the discharge of its responsibilities, as determined by the head of the agency pursuant to 40 U.S.C. 483.

GSA means the General Services Administration.

HHS means the Department of Health and Human Services.

Homeless means:

(1) An individual or family that lacks a fixed, regular, and adequate nighttime residence; and

(2) An individual or family that has a primary nighttime residence that is:

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. This term does not include any individual imprisoned or otherwise detained under an Act of the Congress or a State law.

HUD means the Department of Housing and Urban Development.

ICH means the Interagency Council on the Homeless.

Landholding agency means a Federal department or agency with statutory authority to control real property.

Lease means an agreement between either the Department of Health and Human Services for surplus property, or landholding agencies in the case of non-excess properties or properties subject to the Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687), and the applicant, giving rise to the relationship of lessor and lessee for the use of Federal real property for a term of at least one year under the conditions set forth in the lease document.

Non-profit organization means an organization no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual; that has a voluntary board; that has an accounting system or has designated an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting procedures; and that practices nondiscrimination in the provision of assistance.

Permit means a license granted by a landholding agency to use unutilized or underutilized property for a specific amount of time under terms and conditions determined by the landholding agency.

Property means real property consisting of vacant land or buildings, or a portion thereof, that is excess, surplus, or designated as unutilized or underutilized in surveys by the heads of landholding agencies conducted pursuant to section 202(b)(2) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483(b)(2).)

Regional Homeless Coordinator means a regional coordinator of the Interagency Council on the Homeless.

Representative of the Homeless means a State or local government agency, or private nonprofit organization which provides, or proposes to provide, services to the homeless.

Screen means the process by which GSA surveys Federal agencies, or State, local and non-profit entities, to determine if any such entity has an interest in using excess Federal property to carry out a particular agency mission or a specific public use.

State Homeless Coordinator means a state contact person designated by a state to receive and disseminate information and communications received from the Interagency Council on the Homeless in accordance with section 210(a) of the Stewart B. McKinney Act of 1987, as amended.

Suitable property means that HUD has determined that a particular property satisfies the criteria listed in § ____.6.

Surplus property means any excess real property not required by any Federal landholding agency for its needs or the discharge of its responsibilities, as determined by the Administrator of GSA.

Underutilized means an entire property or portion thereof, with or without improvements which is used only at irregular periods or intermittently by the accountable landholding agency for current program purposes of that agency, or which is used for current program purposes that can be satisfied with only a portion of the property.

Unsuitable property means that HUD has determined that a particular property does not satisfy the criteria in § ____.6.

Unutilized property means an entire property or portion thereof, with or without improvements, not occupied for current program purposes for the accountable executive agency or occupied in caretaker status only.

§ ____.2 Applicability.

(a) This part applies to Federal real property which has been designated by Federal landholding agencies as unutilized, underutilized, excess or surplus and is therefore subject to the provisions of title V of the McKinney Act (42 U.S.C. 11411).

(b) The following categories of properties are not subject to this subpart (regardless of whether they may be unutilized or underutilized).

(1) Machinery and equipment.

(2) Government-owned, contractor-operated machinery, equipment, land, and other facilities reported excess for

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sale only to the using contractor and subject to a continuing military requirement.

(3) Properties subject to special legislation directing a particular action.

(4) Properties subject to a Court Order.

(5) Property not subject to survey requirements of Executive Order 12512 (April 29, 1985).

(6) Mineral rights interests.

(7) Air Space interests.

(8) Indian Reservation land subject to section 202(a)(2) of the Federal Property and Administrative Service Act of 1949, as amended.

(9) Property interests subject to reversion.

(10) Easements.

(11) Property purchased in whole or in part with Federal funds if title to the property is not held by a Federal landholding agency as defined in this Part.

§ ____.3 Collecting the information.

(a) *Canvass of landholding agencies.* On a quarterly basis, HUD will canvass landholding agencies to collect information about property described as unutilized, underutilized, excess, or surplus, in surveys conducted by the agencies under section 202 of the Federal Property and Administrative Services Act (40 U.S.C. 483), Executive Order 12512, and 41 CFR part 101–47.800. Each canvass will collect information on properties not previously reported and about property reported previously the status or classification of which has changed or for which any of the information reported on the property checklist has changed.

(1) HUD will request descriptive information on properties sufficient to make a reasonable determination, under the criteria described below, of the suitability of a property for use as a facility to assist the homeless.

(2) HUD will direct landholding agencies to respond to requests for information within 25 days of receipt of such requests.

(b) *Agency Annual Report.* By December 31 of each year, each landholding agency must notify HUD regarding the current availability status and classification of each property controlled by the agency that:

(1) Was included in a list of suitable properties published that year by HUD, and

(2) Remains available for application for use to assist the homeless, or has become available for application during that year.

(c) *GSA Inventory.* HUD will collect information, in the same manner as described in paragraph (a) of this section, from GSA regarding property that is in GSA's current inventory of excess or surplus property.

(d) *Change in Status.* If the information provided on the property checklist changes subsequent to HUD's determination of suitability, and the property remains unutilized, underutilized, excess or surplus, the landholding agency shall submit a revised property checklist in response to the next quarterly canvass. HUD will make a new determination of suitability and, if it differs from the previous determination, republish the property information in the **Federal Register**. For example, property determined unsuitable for national security concerns may no longer be subject to security restrictions, or property determined suitable may subsequently be found to be contaminated.

§ ____.4 Suitability determination.

(a) *Suitability determination.* Within 30 days after the receipt of information from landholding agencies regarding properties which were reported pursuant to the canvass described in § ____.3(a), HUD will determine, under criteria set forth in § ____.6, which properties are suitable for use as facilities to assist the homeless and report its determination to the landholding agency. Properties that are under lease, contract, license, or agreement by which a Federal agency retains a real property interest or which are scheduled to become unutilized or underutilized will be reviewed for suitability no earlier than six months prior to the expected date when the property will become unutilized or underutilized, except that properties subject to the Base Closure and Realignment Act may be reviewed up to eighteen months prior to the expected date when the property will become unutilized or underutilized.

(b) *Scope of suitability.* HUD will determine the suitability of a property for use as a facility to assist the homeless without regard to any particular use.

(c) *Environmental information.* HUD will evaluate the environmental information contained in property checklists forwarded to HUD by the landholding agencies solely for the purpose of determining suitability of properties under the criteria in § ____.6.

(d) *Written record of suitability determination.* HUD will assign an identification number to each property reviewed for suitability. HUD will maintain a written public record of the following:

(1) The suitability determination for a particular piece of property, and the reasons for that determination; and

(2) The landholding agency's response to the determination pursuant to the requirements of § ____.7(a).

(e) *Property determined unsuitable.* Property that is reviewed by HUD under this section and that is determined unsuitable for use to assist the homeless may not be made available for any other purpose for 20 days after publication in the **Federal Register** of a Notice of unsuitability to allow for review of the determination at the request of a representative of the homeless.

(f) *Procedures for appealing unsuitability determinations.*

(1) To request review of a determination of unsuitability, a representative of the homeless must contact HUD within 20 days of publication of notice in the **Federal Register** that a property is unsuitable. Requests may be submitted to HUD in writing or by calling 1–800–927–7588 (Toll Free). Written requests must be received no later than 20 days after notice of unsuitability is published in the **Federal Register**.

(2) Requests for review of a determination of unsuitability may be made only by representatives of the homeless, as defined in section ____.1.

(3) The request for review must specify the grounds on which it is based, i.e., that HUD has improperly applied the criteria or that HUD has relied on incorrect or incomplete information in making the determination (e.g., that property is in a floodplain but not in a floodway).

(4) Upon receipt of a request to review a determination of unsuitability, HUD will notify the landholding agency that such a request has been made, request that the agency respond with any information pertinent to the review, and advise the agency that it should refrain from initiating disposal procedures until HUD has completed its reconsideration regarding unsuitability.

(i) HUD will act on all requests for review within 30 days of receipt of the landholding agency's response and will notify the representative of the homeless and the landholding agency in writing of its decision.

(ii) If a property is determined suitable as a result of the review, HUD will request the landholding agency's determination of availability pursuant to § ____.7(a), upon receipt of which HUD will promptly publish the determination in the **Federal Register**. If the determination of unsuitability stands, HUD will inform the representative of the homeless of its decision.

§ ____.5 Real property reported excess to GSA.

(a) Each landholding agency must submit a report to GSA of properties it determines excess. Each landholding agency must also provide a copy of HUD's suitability determination, if any, including HUD's identification number for the property.

(b) If a landholding agency reports a property to GSA which has been reviewed by HUD for homeless assistance suitability and HUD determined the property suitable, GSA will screen the property pursuant to § ____.5(g) and will advise HUD of the availability of the property for use by the homeless as provided in § ____.5(e). In lieu of the above, GSA may submit a new checklist to HUD and follow the procedures in § ____.5(c) through § ____.5(g).

(c) If a landholding agency reports a property to GSA which has not been reviewed by HUD for homeless assistance suitability, GSA will complete a property checklist, based on information provided by the landholding agency, and will forward this checklist to HUD for a suitability determination. This checklist will reflect any change in classification, i.e., from unutilized or underutilized to excess.

(d) Within 30 days after GSA's submission, HUD will advise GSA of the suitability determination.

(e) When GSA receives a letter from HUD listing suitable excess properties in GSA's inventory, GSA will transmit to HUD within 45 days a response which includes the following for each identified property:

(1) A statement that there is no other compelling Federal need for the property, and therefore, the property will be determined surplus; or

(2) A statement that there is further and compelling Federal need for the property (including a full explanation of such need) and that, therefore, the property is not presently available for use to assist the homeless.

(f) When an excess property is determined suitable and available and notice is published in the **Federal Register**, GSA will concurrently notify HHS, HUD, State and local government units, known homeless assistance providers that have expressed interest in the particular property, and other organizations, as appropriate, concerning suitable properties.

(g) Upon submission of a Report of Excess to GSA, GSA may screen the property for Federal use. In addition, GSA may screen State and local governmental units and eligible nonprofit organizations to determine interest in the property in accordance with current regulations. (See 41 CFR 101–47.203–5, 101–47.204–1 and 101–47.303–2.)

(h) The landholding agency will retain custody and accountability and will protect and maintain any property which is reported excess to GSA as provided in 41 CFR 101–47.402.

§ ____.6 Suitability criteria.

(a) All properties, buildings and land will be determined suitable unless a property's characteristics include one or more of the following conditions:

(1) *National security concerns.* A property located in an area to which the general public is denied access in the interest of national security (e.g., where a special pass or security clearance is a condition of entry to the property) will be determined unsuitable. Where alternative access can be provided for the public without compromising national security, the property will not be determined unsuitable on this basis.

(2) *Property containing flammable or explosive materials.* A property located within 2000 feet of an industrial, commercial or Federal facility handling flammable or explosive material (excluding underground storage) will be determined unsuitable. Above ground containers with a capacity of 100 gallons or less, or larger containers which provide the heating or power source for the property, and which meet local safety, operation, and permitting standards, will not affect whether a particular property is determined suitable or unsuitable. Underground storage, gasoline stations and tank trucks are not included in this category and their presence will not be the basis of an unsuitability determination unless there is evidence of a threat to personal safety as provided in paragraph (a)(5) of this section.

(3) *Runway clear zone and military airfield clear zone.* A property located within an airport runway clear zone or military airfield clear zone will be determined unsuitable.

(4) *Floodway.* A property located in the floodway of a 100 year floodplain will be determined unsuitable. If the floodway has been contained or corrected, or if only an incidental portion of the property not affecting the use of the remainder of the property is in the floodway, the property will not be determined unsuitable.

(5) *Documented deficiencies.* A property with a documented and extensive condition(s) that represents a clear threat to personal physical safety will be determined unsuitable. Such conditions may include, but are not limited to, contamination, structural damage or extensive deterioration, friable asbestos, PCB's, or natural hazardous substances such as radon, periodic flooding, sinkholes or earth slides.

(6) *Inaccessible.* A property that is inaccessible will be determined unsuitable. An inaccessible property is one that is not accessible by road (including property on small off-shore islands) or is land locked (e.g., can be reached only by crossing private property and there is no established right or means of entry).

§ ____.7 Determination of availability.

(a) Within 45 days after receipt of a letter from HUD pursuant to ____.4(a), each landholding agency must transmit to HUD a statement of one of the following:

(1) In the case of unutilized or underutilized property:

(i) An intention to declare the property excess,

(ii) An intention to make the property available for use to assist the homeless, or

(iii) the reasons why the property cannot be declared excess or made available for use to assist the homeless. The reasons given must be different than those listed as suitability criteria in section ____.6.

(2) In the case of excess property which had previously been reported to GSA:

(i) A statement that there is no compelling Federal need for the property, and that, therefore, the property will be determined surplus; or

(ii) A statement that there is a further and compelling Federal need for the property (including a full explanation of such need) and that, therefore, the property is not presently available for use to assist the homeless.

§ ____.8 Public notice of determination.

(a) No later than 15 days after the last 45 day period has elapsed for receiving responses from the landholding agencies regarding availability, HUD will publish in the **Federal Register** a list of all properties reviewed, including a description of the property, its address, and classification. The following designations will be made:

(1) Properties that are suitable and available.

(2) Properties that are suitable and unavailable.

(3) Properties that are suitable and to be declared excess.

(4) Properties that are unsuitable.

(b) Information about specific properties can be obtained by contacting HUD at the following toll free number, 1–800–927–7588.

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(c) HUD will transmit to the ICH a copy of the list of all properties published in the **Federal Register**. The ICH will immediately distribute to all state and regional homeless coordinators area-relevant portions of the list. The ICH will encourage the state and regional homeless coordinators to disseminate this information widely.

(d) No later than February 15 of each year, HUD shall publish in the **Federal Register** a list of all properties reported pursuant to § ____3(b).

(e) HUD shall publish an annual list of properties determined suitable but which agencies reported unavailable including the reasons such properties are not available.

(f) Copies of the lists published in the **Federal Register** will be available for review by the public in the HUD headquarters building library (room 8141); area-relevant portions of the lists will be available in the HUD regional offices and in major field offices.

§ ____.9 Application process.

(OMB approval number 09370191)

(a) *Holding period.*

(1) Properties published as available for application for use to assist the homeless shall not be available for any other purpose for a period of 60 days beginning on the date of publication. Any representative of the homeless interested in any underutilized, unutilized, excess or surplus Federal property for use as a facility to assist the homeless must send to HHS a written expression of interest in that property within 60 days after the property has been published in the **Federal Register**.

(2) If a written expression of interest to apply for suitable property for use to assist the homeless is received by HHS within the 60 day holding period, such property may not be made available for any other purpose until the date HHS or the appropriate landholding agency has completed action on the application submitted pursuant to that expression of interest.

(3) The expression of interest should identify the specific property, briefly describe the proposed use, include the name of the organization, and indicate whether it is a public body or a private non-profit organization. The expression of interest must be sent to the Division of Health Facilities Planning (DHFP) of the Department of Health and Human Services at the following address:

Director, Division of Health Facilities Planning, Public Health Service, Room 17A–10, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

HHS will notify the landholding agency (for unutilized and underutilized properties) or GSA (for excess and surplus properties) when an expression of interest has been received for a particular property.

(4) An expression of interest may be sent to HHS any time after the 60 day holding period has expired. In such a case, an application submitted pursuant to this expression of interest may be approved for use by the homeless if:

(i) No application or written expression of interest has been made under any law for use of the property for any purpose; and

(ii) In the case of excess or surplus property, GSA has not received a bona fide offer to purchase that property or advertised for the sale of the property by public auction.

(b) *Application Requirements.* Upon receipt of an expression of interest, DHFP will send an application packet to the interested entity. The application packet requires the applicant to provide certain information, including the following——

(1) *Description of the applicant organization.* The applicant must document that it satisfies the definition of a "representative of the homeless," as specified in section ____.1 of this subpart. The applicant must document its authority to hold real property. Private non-profit organizations applying for deeds must document that they are section 501(c)(3) tax-exempt.

(2) *Description of the property desired.* The applicant must describe the property desired and indicate that any modifications made to the property will conform to local use restrictions except for local zoning regulations.

(3) *Description of the proposed program.* The applicant must fully describe the proposed program and demonstrate how the program will address the needs of the homeless population to be assisted. The applicant must fully describe what modifications will be made to the property before the program becomes operational.

(4) *Ability to finance and operate the proposed program.* The applicant must specifically describe all anticipated costs and sources of funding for the proposed program. The applicant must indicate that it can assume care, custody, and maintenance of the property and that it has the necessary funds or the ability to obtain such funds to carry out the approved program of use for the property.

(5) *Compliance with non-discrimination requirements.* Each applicant and lessee under this part must certify in writing that it will comply with the requirements of the Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations; and as applicable, Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations; title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d to d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations; the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations; and the prohibitions against otherwise qualified individuals with handicaps under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations. The applicant must state that it will not discriminate on the basis of race, color, national origin, religion, sex, age, familial status, or handicap in the use of the property, and will maintain the required records to demonstrate compliance with Federal laws.

(6) *Insurance.* The applicant must certify that it will insure the property against loss, damage, or destruction in accordance with the requirements of 45 CFR 12.9.

(7) *Historic preservation.* Where applicable, the applicant must provide information that will enable HHS to comply with Federal historic preservation requirements.

(8) *Environmental information.* The applicant must provide sufficient information to allow HHS to analyze the potential impact of the applicant's proposal on the environment, in accordance with the instructions provided with the application packet. HHS will assist applicants in obtaining any pertinent environmental information in the possession of HUD, GSA, or the landholding agency.

(9) *Local government notification.* The applicant must indicate that it has informed the applicable unit of general local government responsible for providing sewer, water, police, and fire services, in writing of its proposed program.

(10) *Zoning and Local Use Restrictions.* The applicant must indicate that it will comply with all local use restrictions, including local building code requirements. Any applicant which applies for a lease or permit for a particular property is not required to comply with local zoning requirements. Any applicant applying for a deed of a particular property, pursuant to section ____. 9(b)(3), must comply with local zoning requirements, as specified in 45 CFR part 12.

(c) *Scope of evaluations.* Due to the short time frame imposed for evaluating applications, HHS' evaluation will,

generally, be limited to the information contained in the application.

(d) *Deadline.* Completed applications must be received by DHFP, at the above address, within 90 days after an expression of interest is received from a particular applicant for that property. Upon written request from the applicant, HHS may grant extensions, provided that the appropriate landholding agency concurs with the extension. Because each applicant will have a different deadline based on the date the applicant submitted an expression of interest, applicants should contact the individual landholding agency to confirm that a particular property remains available prior to submitting an application.

(e) *Evaluations.*

(1) Upon receipt of an application, HHS will review it for completeness, and, if incomplete, may return it or ask the applicant to furnish any missing or additional required information prior to final evaluation of the application.

(2) HHS will evaluate each completed application within 25 days of receipt and will promptly advise the applicant of its decision. Applications are evaluated on a first-come, first-serve basis. HHS will notify all organizations which have submitted expressions of interest for a particular property regarding whether the first application received for that property has been approved or disapproved. All applications will be reviewed on the basis of the following elements, which are listed in descending order of priority, except that paragraph (e)(2)(iv) and (e)(2)(v) of this section are of equal importance.

(i) *Services offered.* The extent and range of proposed services, such as meals, shelter, job training, and counseling.

(ii) *Need.* The demand for the program and the degree to which the available property will be fully utilized.

(iii) *Implementation Time.* The amount of time necessary for the proposed program to become operational.

(iv) *Experience.* Demonstrated prior success in operating similar programs and recommendations attesting to that fact by Federal, State, and local authorities.

(v) *Financial Ability.* The adequacy of funding that will likely be available to run the program fully and properly and to operate the facility.

(3) Additional evaluation factors may be added as deemed necessary by HHS. If additional factors are added, the application packet will be revised to include a description of these additional factors.

(4) If HHS receives one or more competing applications for a property within 5 days of the first application HHS will evaluate all completed applications simultaneously. HHS will rank approved applications based on the elements listed in section ____.8(e)(2), and notify the landholding agency, or GSA, as appropriate, of the relative ranks.

§ ____.10 Action on approved applications.

(a) *Unutilized and underutilized properties.*

(1) When HHS approves an application, it will so notify the applicant and forward a copy of the application to the landholding agency. The landholding agency will execute the lease, or permit document, as appropriate, in consultation with the applicant.

(2) The landholding agency maintains the discretion to decide the following:

(i) The length of time the property will be available. (Leases and permits will be for a period of at least one year unless the applicant requests a shorter term.)

(ii) Whether to grant use of the property via a lease or permit;

(iii) The terms and conditions of the lease or permit document.

(b) *Excess and surplus properties.*

(1) When HHS approves an application, it will so notify the applicant and request that GSA assign the property to HHS for leasing. Upon receipt of the assignment, HHS will execute a lease in accordance with the procedures and requirements set out in 45 CFR part 12. In accordance with 41 CFR 101–47.402, custody and accountability of the property will remain throughout the lease term with the agency which initially reported the property as excess.

(2) Prior to assignment to HHS, GSA may consider other Federal uses and other important national needs; however, in deciding the disposition of surplus real property, GSA will generally give priority of consideration to uses to assist the homeless. GSA may consider any competing request for the property made under section 203(k) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k)) that is so meritorious and compelling that it outweighs the needs of the homeless, and HHS may likewise consider any competing request made under subsection 203(k)(1) of that law.

(3) Whenever GSA or HHS decides in favor of a competing request over a request for property for homeless assistance use as provided in paragraph (b)(2) of this section, the agency making the decision will transmit to the appropriate committees of the Congress an explanatory statement which details the need satisfied by conveyance of the surplus property, and the reasons for determining that such need was so meritorious and compelling as to outweigh the needs of the homeless.

(4) *Deeds.* Surplus property may be conveyed to representatives of the homeless pursuant to section 203(k) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k)(1), and section 501(f) of the McKinney Act as amended, 42 U.S.C. 11411. Representatives of the homeless must complete the application packet pursuant to the requirements of section ____.9 of this part and in accordance with the requirements of 45 CFR part 12.

(c) *Completion of Lease Term and Reversion of Title.*

Lessees and grantees will be responsible for the protection and maintenance of the property during the time that they possess the property. Upon termination of the lease term or reversion of title to the Federal government, the lessee or grantee will be responsible for removing any improvements made to the property and will be responsible for restoration of the property. If such improvements are not removed, they will become the property of the Federal government. GSA or the landholding agency, as appropriate, will assume responsibility for protection and maintenance of a property when the lease terminates or title reverts.

§ ____.11 Unsuitable Properties.

The landholding agency will defer, for 20 days after the date that notice of a property is published in the **Federal Register**, action to dispose of properties determined unsuitable for homeless assistance. HUD will inform landholding agencies or GSA if appeal of an unsuitability determination is filed by a representative of the homeless pursuant to ____4(f)(4). HUD will advise the agency that it should refrain from initiating disposal procedures until HUD has completed its reconsideration process regarding unsuitability. Thereafter, or if no appeal has been filed after 20 days, GSA or the appropriate landholding agency may proceed with disposal action in accordance with applicable law.

§ ____.12 No applications approved.

(a) At the end of the 60 day holding period described in § ____.9(a), HHS will notify GSA, or the landholding agency, as appropriate, if an expression of interest has been received for a particular property. Where there is no expression of interest, GSA or the landholding agency, as appropriate, will

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proceed with disposal in accordance with applicable law.

(b) Upon advice from HHS that all applications have been disapproved, or if no completed applications or requests for extensions have been received by HHS within 90 days from the date of the last expression of interest, disposal may proceed in accordance with applicable law.

[FR Doc. 91-12428 Filed 5-22-91; 12:45 pm]
BILLING CODE 4210-33-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Alabama Regulatory Program; Extension of Study Concerning Excess Spoil Disposal; Correction

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule concerning an extension of the trial period for a study of provisions for the disposal of excess spoil on abandoned mine sites contained in the Alabama regulatory program under the Surface Mining Control and Reclamation Act of 1977, at 30 CFR 901.15. This rule was published July 2, 1990 (55 FR 27224).

EFFECTIVE DATE: May 24, 1991.

FOR FURTHER INFORMATION CONTACT: Jesse Jackson, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, Barber Business Park, 135 Gemini Circle, suite 215, Homewood, Alabama 35209; telephone (205) 290-7282.

Dated: May 14, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

PART 901—[AMENDED]

In the final rule published in the **Federal Register** issue of Monday, July 2, 1990 (55 FR 27224), the following correction is made:

§ 901.15 [Corrected]

On page 27225 in the second column, amendatory instruction 2 is corrected to read as follows:

"2. Section 901.15 is amended by revising the first sentence of paragraph (e) to read as follows:

[FR Doc. 91-12409 Filed 5-23-91; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R]

Payment Method for Health Care Services Under The Supplemental Health Care Program for Active Duty Members of the Uniformed Services; Adoption of CHAMPUS Procedures

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule partially implements 10 U.S.C. 1074(c), as amended by section 729 of the National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189. The recent amendment authorizes the Department of Defense to establish for the active duty supplemental care program payment rules similar to those used under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). The supplemental care program is the program which provides for the payment to civilian (non federal-governmental) health care providers for care provided to active duty members of the uniformed services. This final rule would adopt CHAMPUS payment amounts for the supplemental care program.

EFFECTIVE DATE: May 24, 1991.

ADDRESSES: Office of the Assistant Secretary of Defense (Health Affairs), Health Services Financing, Room 1B657, Pentagon, Washington, DC 20301-1200.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Ray Kincy, USAF, Room 1B657, Pentagon, Washington, DC 20301-1200, telephone: (703) 697-8975.

SUPPLEMENTARY INFORMATION: This final rule is based on a notice of proposed rulemaking issued on March 20, 1991, for public comment. A commenter asked whether DoD had authority to require hospitals to accept the authorized payment, and the answer is that 10 U.S.C. 1074(c) gives the Secretary of Defense legal authority to link supplemental care under CHAMPUS, which in turn, is linked to medicare. The final rule makes no substantive change to the proposed rule.

I. Background

The primary DoD program for purchasing health care services from private sector providers for uniformed services beneficiaries is the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), which is administered pursuant to 32 CFR part 199. CHAMPUS, however, does not cover active duty members of the uniformed services, who receive most of their health care from military medical treatment facilities. In those limited circumstances in which active duty members need care from private sector providers, such as in emergency situations, when they are stationed in an area not served by a military facility or when care is unavailable in the military treatment facility, this care is provided under the supplemental care program.

This program currently is operated entirely independently from CHAMPUS and is administered by the respective uniformed services.

The implementation by CHAMPUS in recent years of more economical payment methods, particularly the DRG-based payment system for most inpatient hospital services, gave rise to a provision in the National Defense Authorization Act for Fiscal Years 1990 and 1991, Public Law 101-189, section 729, authorizing DoD to establish for the supplemental care program "the same payment rules (subject to any modifications considered appropriate by the Secretary) as apply under [CHAMPUS]". This final rule partially implements this new statutory authority by implementing for the supplemental care program the CHAMPUS DRG-based payment system for most inpatient hospital care.

This final rule is being issued as an amendment to the CHAMPUS regulation because we intend, over time, to integrate the Supplemental Care Program into the CHAMPUS administrative system. This is somewhat akin to the current CHAMPUS administration of the CHAMPVA program for the Department of Veterans Affairs. However, initially, this final rule addresses only DRG-covered hospital charges. Other services, such as inpatient and outpatient professional services, are expected to be addressed in the future under the authority of the statute.

II. Concept

Highlighting several of the provisions of the final rule, it would establish for hospitals covered by the CHAMPUS DRG-based payment system an obligation to be participating providers under the supplemental care program. This means that, just as these hospitals must accept the DRG system payment amount as payment in full for CHAMPUS care, they must accept the same for services to active duty members of the uniformed services. The failure of any hospital to meet this obligation can result in termination from CHAMPUS, which, in turn, can lead to termination of the hospital's Medicare provider agreement. (See 42 U.S.C. 1395 cc(a)(1)([]))

The general rule for hospital payments that would be established pursuant to this final rule is that the methods established for the CHAMPUS DRG-based payment system will also apply to the supplemental care program in the same way. CHAMPUS rates are well established and would be adequate for active duty members. Based on this general approach, the supplemental care program will use the same DRG weights, the same standardized amounts, the same outlier thresholds, the same wage indices and the same adjustments that CHAMPUS uses to pay claims for inpatient hospital services. Services and facilities currently exempt under CHAMPUS DRGs will be exempt for active duty members.

There are some exceptions to the general rules arising from the different statutory nature of the supplemental care program for active duty members. One difference is that active duty members, unlike CHAMPUS beneficiaries, have no cost sharing for health care services purchased in the civilian community. Another difference is that for other than emergent care civilian community care must be pre-authorized for active duty members. These special rules and procedures are set forth in the final rule.

As noted above, we recognize that some CHAMPUS rules and procedures may be inappropriate for the supplemental care program in certain cases. Therefore, the final rule will allow authorized officials of the Office of the Assistant Secretary of Defense (Health Affairs), or the uniformed service concerned to waive any restriction or limitation, if not statutorily required, if necessary to assure the availability of adequate services to active duty members.

Finally, the final rule notes authorities pertinent to the supplemental care program and the administration of CHAMPUS payment methods. The final rule will not effect services provided, only the payment of those services.

III. Regulatory Procedures

With respect to regulatory procedures, this final rule is not a major rule as defined by Executive Order 12291. In addition, we certify that this final rule will not have a significant impact on small entities within the scope of the Regulatory Flexibility Act.

List of Subjects in 32 CFR Part 199

Claims, Health insurance, Military personnel.

For the reasons set forth in the preamble, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. The Table of Contents is amended to add:

Sec. 199.16 Supplemental Health Care Program for Active Duty Members.

3. Section 199.6 is amended by adding paragraph (a)(9) as follows:

§ 199.6 Authorized providers.

* * * * *

(a) * * *

(9) *Authorized provider.* A hospital or institutional provider, physician, or other individual professional provider, or other provider of services or supplies specifically authorized in this chapter to provide benefits under CHAMPUS. In addition, to be an authorized CHAMPUS provider, any hospital which is a CHAMPUS participating provider under paragraph (a)(7) of this section, shall be a participating provider for all care, services, or supplies furnished to an active duty member of the uniformed services for which the active duty member is entitled under 10 U.S.C. 1074(c). As a participating provider for active duty members, the CHAMPUS authorized hospital shall provide such care, services, and supplies in accordance with the payment rules of § 199.16 of this part. The failure of any CHAMPUS participating hospital to be a participating provider for any active duty member subjects the hospital to termination of the hospital's status as a CHAMPUS authorized provider for failure to meet the qualifications established by this part.

4. Section 199.16 is added as follows:

§ 199.16 Supplemental health care program for active duty members.

(a) *Purpose and applicability.* (1) The purpose of this section is to implement, with respect to certain hospital services provided under the supplemental health care program for active duty members of the uniformed services, the provision of 10 U.S.C. 1074(c). This statute authorizes DoD to establish for the supplemental care program the same payment rules, subject to appropriate modifications, as apply under CHAMPUS.

(2) This section applies to the program, known as the supplemental care program, which provides for the payment by the uniformed services to private sector health care providers for health care services provided to active duty members of the uniformed services. Although not part of CHAMPUS, the supplemental care program is similar to CHAMPUS in that it is a program for the uniformed services to purchase civilian health care services for active duty members. For this reason, the Director, OCHAMPUS assists the uniformed services in the administration of the supplemental care program.

(3) This rule applies to inpatient hospital services covered by the CHAMPUS DRG based payment method.

(b) *Obligation of hospitals concerning payment for supplemental health care for active duty members.* For a hospital covered by the CHAMPUS DRG based payment method to maintain its status as an authorized provider for CHAMPUS pursuant to § 199.6, that hospital must also be a participating provider for purposes of the supplemental care program. As a participating provider, each hospital must accept the DRG-based payment system amount determined pursuant to this section as payment in full for the hospital services covered by the system. The failure of any hospital to comply with this obligation subjects that hospital to exclusion as a CHAMPUS-authorized provider.

(c) *General rule for payment and administration.* Subject to the special rules and procedures in paragraph (d) of this section, and the waiver authority in paragraph (e) of this section, as a general rule the provisions of § 199.14(a)(1) shall govern payment and administration of claims from hospitals covered by the CHAMPUS DRG-based payment method under the supplemental care program as they do claims under CHAMPUS. To the extent necessary to interpret or implement the provisions of § 199.14(a)(1), related provisions of this part 199 shall also be applicable.

(d) *Special rules and procedures.* As exceptions to the general rule in paragraph (c) of this section, the special rules and procedures in this paragraph shall govern payment and administration of claims from hospitals covered by the CHAMPUS DRG-based payment system under the supplemental care program. These special rules and procedures are subject to the waiver authority of paragraph (e) of this section.

(1) There is no patient cost sharing under the supplemental care program. All amounts due to be paid to the provider shall be paid by the program.

(2) Preauthorization by the uniformed services of each hospital admission,

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except for an emergency inpatient admission (the definition in § 199.2 shall apply), is required for the supplemental care program. It is the responsibility of the active duty member to obtain preauthorization for each admission. With respect to each emergency inpatient admission, after such time as the emergency condition is addressed, authorization for any proposed continued stay must be obtained within two working days of admission.

(3) With respect to the filing of claims and similar administrative matters under the CHAMPUS DRG-based payment system for which this part 199 refers to activities of the CHAMPUS fiscal intermediaries, for purposes of the supplemental care program, responsibilities for claims processing, payment and some other administrative matters will be assigned to the nearest military medical treatment facility or medical claims office.

(4) The annual cost pass-throughs for capital and direct medical education costs that are available under the CHAMPUS DRG-based payment system are also available, upon request, under the supplemental care program. To obtain payment include the number of active duty bed days as a separate line item on the annual request to the CHAMPUS fiscal intermediaries. The fiscal intermediaries will process the requests on behalf of the supplemental care program. However, payment will be issued by the Department of Defense.

(e) *Waiver authority.* With the exception of statutory requirements, any restrictions or limitation pursuant to the general rule in paragraph (c) of this section and special rules and procedures in paragraph (d) of this section may be waived by an authorized official of the uniformed service concerned based on a determination that such waiver is necessary to assure adequate availability of health care services to active duty members.

(f) *Authorities.* (1) The Uniformed Services may establish additional procedures, consistent with this part, for the effective administration of the supplemental care program in their respective services.

(2) The Assistant Secretary of Defense for Health Affairs is responsible for the overall policy direction of the supplemental care program and the administration of this part.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-12375 Filed 5-23-91; 8:45 am]

BILLING CODE 3810-01-M

32 CFR Part 356

[DoD Directive 5110.4]

Washington Headquarters Services

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This document updates the responsibilities, functions, relationships, and authorities of the Director, Washington Headquarters Services (WHS), a Field Activity of the Department of Defense with the mission of providing administrative and operational support to specified activities in the National Capital Region and elsewhere as required. The revision assigns Director, WHS responsibility for providing information technology operating support to OSD and specified activities. It also assigns responsibility for administration of the Pentagon Reservation to the Director, WHS, pursuant to the FY 91 DoD Authorization Act mandated transfer of custody for the Pentagon Reservation from GSA to DoD, and delegates to the Director, WHS associated administrative authorities prescribed to the Secretary of Defense in Title 10, United States Code.

EFFECTIVE DATE: May 6, 1991.

ADDRESSES: Office of Organizational and Management Planning, the Pentagon, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Mr. D. Clark, telephone (703) 697-1142.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 356

Organization and functions (Government agencies).

Accordingly, 32 CFR part 356 is revised to read as follows:

PART 356—WASHINGTON HEADQUARTERS SERVICES

Sec.

356.1 Purpose.
356.2 Definitions.
356.3 Mission.
356.4 Organization and management.
356.5 Functions and responsibilities.
356.6 Relationships.
356.7 Authorities.

Appendix A to Part 356—Delegations of Authority

Authority: 10 U.S.C. 131.

§ 356.1 Purpose.

Pursuant to the authority vested in the Secretary of Defense under title 10, United States Code, this part updates the mission, functions, responsibilities, relationships, and authorities of the WHS.

§ 356.2 Definitions.

(a) *DoD Components.* The Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities.

(b) *National Capital Region (NCR).* The geographic area located within the boundaries of the District of Columbia; Montgomery and Prince Georges Counties in the State of Maryland; Arlington, Fairfax, Loudoun, and Prince William Counties and the City of Alexandria in the Commonwealth of Virginia; and all cities and other units of government within the geographic areas of such District, Counties, and City.

(c) *Pentagon Reservation.* That area of land (consisting of approximately 280 acres) and improvements thereon, located in Arlington, Virginia, on which the Pentagon Office Building, Federal Office Building #2, the Pentagon heating and sewage treatment plants, and other related facilities are located, including various areas designated for the parking of vehicles.

§ 356.3 Mission.

The WHS shall provide administrative and operational support to specified activities in the NCR and elsewhere as required.

§ 356.4 Organization and management.

(a) The WHS is established as a Field Activity of the Department of Defense. It shall consist of a Director and such subordinate organizational elements as are established by the Director within resources authorized by the Secretary of Defense.

(b) The Director of Administration and Management, Office of the Secretary of Defense (DA&M, OSD), also shall serve as the Director, WHS.

§ 356.5 Functions and responsibilities.

The Director, Washington Headquarters Services, shall:

(a) Organize, direct, and manage the WHS and all resources assigned to the WHS.

(b) Provide administrative support to the OSD and those Defense Agencies, DoD Field Activities, and specified activities that do not have an internal administrative support capability. This support shall include all or part of the following:

(1) Budget and accounting.

(2) Civilian and military personnel management.

(3) Office services.

(4) Personnel and information security.

(5) Correspondence, cables, Directives, and records management.

(6) Travel.

(7) Other miscellaneous administrative support, as required.

(c) Administer information and data systems in support of the OSD decision and policymaking processes. This involves management information collection and reports preparation in areas including, but not limited to, procurement, logistics, manpower, and economics.

(d) Manage the DoD reports and forms programs.

(e) Manage the information technology support program for the OSD and other assigned DoD activities. Develop information management strategies and programs; assist organizational components in developing program proposals, plans, and budgets for automated information systems (AIS) and in acquiring AIS equipment; and provide or arrange for AIS technical assistance and maintenance support.

(f) Develop records management policy and provide appropriate guidance to DoD Components.

(g) Manage the Pentagon Reservation; DoD-occupied, General Services Administration-controlled administrative space in the NCR; and associated support services. This shall include responsibility for:

(1) Real property and building management.

(2) Administrative space management and assignment.

(3) Law enforcement and physical security.

(4) Maintenance, repair, alteration, and renovation.

(5) Design and construction on DoD-controlled property.

(6) Graphics, concessions, custodial care, and other support services.

(7) Contracting for the above, as required.

(8) Manage activities in support of the responsibilities of the Secretary of Defense for the Federal Voting Assistance Program.

§ 356.6 Relationships.

For the performance of assigned functions, the Director, WHS, shall:

(a) Coordinate and exchange information and advice with elements of the OSD and other DoD Components having collateral or related responsibilities.

(b) Make use of established facilities and services in the Department of Defense and other Government Agencies, whenever practical, to avoid duplication and achieve maximum efficiency and economy.

(c) Consult and coordinate with other governmental and nongovernmental agencies on matters related to the WHS mission.

§ 356.7 Authorities.

The Director, WHS, or designee, specifically is delegated authority to:

(a) Obtain such information, consistent with the policies and criteria of DoD Directive 7750.5 [1] advice, and assistance from DoD Components, as necessary.

(b) Issue DoD Instructions, DoD publications, and one-time directive-type memoranda, consistent with DoD 5025.1-M [2] that implement approved policies in the functions assigned to the Director, WHS. Instructions to the Military Departments shall be issued through the Secretaries of those Departments, or their designees. Instructions to the Unified and Specified Commands shall be issued through the Chairman of the Joint Chiefs of Staff.

(c) Communicate directly with heads of DoD Components and other Executive Departments and Agencies, as necessary, in carrying out assigned responsibilities and functions. Communications to the Commanders in Chief of the Unified and Specified Commands shall be coordinated with the Chairman of the Joint Chiefs of Staff.

(d) Exercise the delegations of authority contained in appendix A to this part.

Appendix A to Part 356—Delegations of Authority

Pursuant to the authority vested in the Secretary of Defense, and subject to his direction, authority, and control, and in accordance with DoD policies, Directives, and Instructions, the Director, WHS, or the person properly designated to act for him or her, is hereby delegated authority with respect to the WHS and activities receiving administrative support from the WHS to:

1. Exercise the power vested in the Secretary of Defense by sections 302 and 3101 and chapters 41 and 51 of 5 U.S.C. on the employment, direction, and general administration of civilian personnel.

2. Fix rates of pay for wage-rate employees exempted from the Classification Act of 1949 by 5 U.S.C. 5102 on the basis of rates established under the Federal Wage System. In fixing such rates, the Director, WHS, shall follow the wage schedule established by the DoD Wage Fixing Authority.

3. Establish advisory committees and employ temporary or intermittent experts or consultants, as approved by the Secretary of Defense, for the performance of WHS functions consistent with 10 U.S.C. 173; 5 U.S.C. 3109(b); DoD Directive 5105.4,[3] "DoD Federal Advisory Committee Management Program," September 5, 1989; and the agreement between the Department of Defense and the Office of Personnel Management (OPM) on employment of experts and consultants, June 21, 1977.

4. Administer oaths of office incident to entrance into the Executive Branch of the Federal Government or any other oath required by law in connection with employment therein, in accordance with 5 U.S.C. 2903(b).

5. Establish an Incentive Awards Board and pay cash awards to and incur necessary expenses for the honorary recognition of civilian employees of the Government for suggestions, inventions, superior accomplishments, or other personal efforts, including special acts of services, in accordance with 5 U.S.C. 4502, 4503, and 4505 and applicable OPM regulations.

6. In accordance with 5 U.S.C. 7532; Executive Orders 10450, 12333, and 12356; and DoD Directive 5200.2,[3] "DoD Personnel Security Program," December 20, 1979, as appropriate:

a. Designate positions as "sensitive."

b. Authorize, in case of an emergency, the appointment to a sensitive position, for a limited period of time, of a person for whom a full field investigation or other appropriate investigation, including the National Agency Check, has not been completed.

c. Authorize the suspension of, but not terminate the services of, an employee in the interest of national security.

d. Initiate investigations, issue personnel security clearances and, if necessary in the interest of national security, suspend, revoke, or deny a security clearance for personnel assigned, detailed to, or employed by DoD Components for which the Director, WHS, has been delegated responsibility or has consented by written agreement to provide personnel security support. Any action to deny or revoke a security clearance shall be taken in accordance with procedures prescribed in DoD 5200.2-R,[4] "DoD Personnel Security Program," January 1987.

7. Act as agent for the collection and payment of employment taxes imposed by appropriate statutes.

8. Authorize and approve overtime work for civilian officers and employees in accordance with subchapter V, chapter 55 of 5 U.S.C., and applicable OPM regulations.

9. Authorize and approve:

[1] Copies may be obtained, at cost, from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 356.7(a).

[3] See footnote 1 to § 3 of this appendix.

[4] See footnote 1 to § 3 of this appendix.

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a. Temporary duty travel for military personnel in accordance with Volume I, Joint Federal Travel Regulations.

b. Travel for civilian officers and employees in accordance with Volume II, Joint Travel Regulations.

c. Invitational travel to non-DoD employees whose consultative, advisory, or other highly specialized technical services are required in a capacity that is directly related to, or in connection with, WHS activities, in accordance with Volume II, Joint Travel Regulations.

10. Approve the expenditures of funds available for travel by military personnel for expenses incident to attendance at meetings of technical, scientific, professional, or other similar organizations in such instances when the approval of the Secretary of Defense, or his designee, is required by law (37 U.S.C. 412, 5 U.S.C. 4110 and 4111).

11. Develop, establish, and maintain an active and continuing Records Management Program, pursuant to section 506(b) of the Federal Records Act of 1950 (44 U.S.C. 3102).

12. Establish and use imprest funds for making small purchases of material and services, other than personal, when it is determined to be more advantageous and consistent with the best interest of the Government, in accordance with DoD Directive 7360.10,[4] "Disbursing Policies," January 17, 1989.

13. Authorize the publication of advertisement, notices, or proposals in newspapers, magazines, or other public periodicals, consistent with 44 U.S.C. 3702.

14. Establish and maintain appropriate property accounts and appoint Boards of Survey, approve reports of survey, relieve personal liability, and drop accountability for property contained in the authorized property accounts that has been lost, damaged, stolen, destroyed, or otherwise rendered unserviceable, in accordance with applicable laws and regulations.

15. Promulgate the necessary security regulations for the protection of property and places under the jurisdiction of this Directive, pursuant to DoD Directive 5200.8,[5] "Security of Military Installations and Resources," July 29, 1980.

16. Establish and maintain, for the Department of Defense, an appropriate publications system for the promulgation of Directives, Instructions, publications, and reference documents, and changes thereto, pursuant to the policies and procedures prescribed in DoD 5025.1–M, "DoD Directives System Procedures," December 1990.

17. Establish and maintain, for the functions assigned, an appropriate publications system for the promulgation of common supply and service regulations, Instructions, and reference documents, and changes thereto, pursuant to the policies and procedures prescribed in DoD 5025.1–M, "DoD Directives System Procedures," December 1990.

18. Enter into support and service agreements with the Military Departments, other DoD Components, or other Government Agencies, as required for the effective performance of assigned responsibilities and functions.

19. Enter into and administer contracts, directly or through a Military Department, a DoD contract administration services component, or other Government Department or Agency, as appropriate, for supplies, equipment, and services required to accomplish assigned responsibilities and functions. To the extent that any law or Executive order specifically limits the exercise of such authority to persons at the Secretarial level of a Military Department, such authority shall be exercised by the appropriate Under Secretary or Assistant Secretary of Defense.

20. Approve contractual instruments for commercial-type concessions at the seat of Government, and maintain general supervision over commercial-type concessions operated by or through the Department of Defense at the seat of Government, in accordance with DoD Directive 5120.18,[6] "DoD Concessions Committee," April 8, 1980.

21. Act as custodian of the seal of the Department of Defense and attest to the authenticity of official records of the Department of Defense under said seal (10 U.S.C. 132).

22. Exercise the authority vested in the Secretary of Defense by 10 U.S.C. 2674 on the jurisdiction, custody, and control over, and responsibility for, the operation, maintenance, and management of the Pentagon Reservation.

a. Prescribe such rules and regulations as appropriate to ensure the safe, efficient, and secure operation of the Pentagon Reservation, including rules and regulations necessary to govern the operation and parking of motor vehicles on the Pentagon Reservation.

b. Establish rates and collect charges for space, services, protection, maintenance, construction, repairs, alterations, or facilities provided at the Pentagon Reservation.

c. Authorize expenditures from the Pentagon Reservation Maintenance Revolving Fund for real property management, operations, protection, design, and construction, repair, alteration, and related activities for the Pentagon Reservation.

The Director, WHS, may redelegate these authorities, as appropriate, and in writing, except as otherwise specifically indicated above or as otherwise provided by law or regulation.

These delegations of authority are effective May 6, 1991.

Dated: May 15, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–12378 Filed 5–23–91; 8:45 am]

BILLING CODE 3810–01–M

[4] See footnote 1 to § 3 of this appendix.

[5] See footnote 1 to § 3 of this appendix.

[6] See footnote to § 3 of this appendix.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. AM603MD; FRL–3957–2]

Approval and Promulgation of Implementation Plans; Revision to State of Maryland Implementation Plan for Ozone

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland as it applies to distributors and retailers of gasoline. This revision will reduce emissions of volatile organic compounds (VOC) by limiting the Reid Vapor Pressure (RVP) of gasoline marketed state-wide between May 1 and September 15 of each year. EPA is also finding that Maryland's RVP regulations are "necessary to achieve" the National Ambient Air Quality Standards (NAAQS) in its ozone nonattainment areas and are expected from federal preemption under section 211(c)(4) of the Clean Air Act. The intended effect of this action is to make reasonable further progress towards attainment of the ozone standard in the State of Maryland as expeditiously as practicable as required under the Act.

EFFECTIVE DATE: June 24, 1991.

ADDRESSES: Copies of the final regulations and accompanying support material are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Program Planning Section, Air, Toxics & Radiation Management Division, 841 Chestnut Building, 8th Floor, Philadelphia, Pennsylvania 19107, Attn: David L. Arnold.

Air Management Administration, Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224, Attn: George P. Ferreri.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond K. Forde, (215) 597–8239, at the EPA Region III address above.

SUPPLEMENTARY INFORMATION:

Introduction

This **Federal Register** notice describes EPA's decision to approve a revision to the Maryland SIP which limits the volatility of gasoline marketed during the summer ozone season from May 1 through September 15 as it applies to distributors and retailers of gasoline.

The remainder of this preamble is divided into four sections. The first provides the background for this action, with respect to both chronology and the broad issues involved. The second section presents today's action and EPA's rationale for today's action. The third section summarizes the comments submitted to EPA on its May 17, 1990 proposed rulemaking notice and EPA's responses to them. The final section addresses the sampling and testing methods contained in the RVP regulation.

Background

Beginning in January 1988, six of the eight states comprising the Northeast States for Coordinated Air Use Management (NESCAUM) held public hearings and adopted regulations to control the RVP of gasoline to 9.0 psi between May 1 and September 15 of each year, beginning in 1989. As of June 1990, those six states had submitted requests to the EPA to obtain SIP approvals so that they may regulate gasoline RVP. EPA has taken final action and approved those requests. Several Mid-Atlantic States are also proceeding to adopt regulations to limit RVP to 9.0 psi.

Maryland adopted its RVP regulation which seeks to limit RVP to 9.0 psi from May 1 to September 15, on October 4, 1989 and submitted it to EPA as a requested SIP revision on October 30, 1989. The Notice of Proposed Rulemaking for Maryland's SIP revision was published on May 17, 1990 (55 FR 20479).

EPA published a notice of final rulemaking for Phase I of the Federal gasoline volatility regulations on March 22, 1989 (54 FR 11868) which also requires the control of RVP. The EPA rule calls for the control of the volatility of gasoline nationally. Beginning in 1989, that rule requires that in the Northeastern and Mid-Atlantic regions, the standard is 10.5 psi. The Federal standard applies each year beginning June 1 for retail stations and other end users of gasoline and May 1 for all other points in the distribution system, including refiners and importers, pipelines and terminals. The requirement that RVP not exceed 10.5 psi ends at all points in the system on September 16 of each year. The second phase of the federal gasoline volatility regulation was proposed to take effect in May 1992 and reduce RVP from 10.5 to 9.0 psi in Maryland. However, because of the climatical conditions and other factors, Phase II was amended to reduce RVP of gasoline from 10.5 to 9.0 psi in May and from 9.0 to 7.8 psi for the period of June 1 through September 15 in the Maryland area. EPA published the final rule for Phase II of the regulation in the **Federal Register** on June 11, 1990 (55 FR 23658).

Section 211(c)(4)(A) of the Clean Air Act generally prohibits States from enacting controls or prohibitions on the use of motor vehicle fuels for the purpose of emission control which are different from EPA controls. However, section 211(c)(4)(C) of the Act provides for approval of the State control of fuel or fuel additives if the control is part of the SIP and is necessary to achieve the primary or secondary National Ambient Air Quality Standard (NAAQS) for which the plan is in effect. Because of the severity of the ozone problem in Maryland, EPA believes the Maryland RVP regulations should not be preempted by Federal regulation (Phase I) for the 1991 summertime gasoline volatility season, and consequently is approving it as part of the Maryland State Implementation Plan (SIP) based on a finding that the rule is necessary to achieve attainment. However, it should be noted that once EPA's Phase II regulations take effect in 1992, Maryland's 9.0 regulation would be preempted by the Federal regulation in accordance with section 211(c)(4)(A) of the Clean Air Act, due to more stringent RVP standards at the federal level.

Description of Today's Action

EPA today approves revisions to the Maryland SIP which limit gasoline volatility state-wide to 9.0 psi between May 1 and September 15. EPA is approving the program as it applies to distributors and retailers of gasoline, including any waivers consistent with the federal fuel volatility rule that the State might issue under its authority.

EPA is also explicitly finding that the Maryland revisions are "necessary to achieve" the NAAQS in the State of Maryland within the meaning of section 211(c)(4)(C) of the CAA. This means this Maryland RVP regulation is not preempted by the RVP regulations (Phase I) promulgated on March 22, 1989.

In approving the Maryland RVP SIP revisions, EPA must consider requirements imposed by two different sections of the Clean Air Act. As with all SIP revisions, section 110 provides the requirements for approval of a revision to the SIP. In this case, since EPA has promulgated federal RVP regulations, section 211(c)(4)(A) preempts inconsistent state control. However, section 211(c)(4)(C) provides that the Administrator may except a state RVP program from preemption if he finds it is "necessary" to achieve the NAAQS. Thus, the Maryland revisions must satisfy both section 110 and section 211 requirements to gain approval.

EPA has concluded that the Maryland RVP regulations are "necessary" to achieve the ozone NAAQS. In reaching this conclusion, EPA has followed the "test" articulated in the rulemaking notices approving the Massachusetts RVP SIP published on February 23, 1989 (54 FR 7794) and May 4, 1989 (54 FR 17173) and later presented in the proposed approval notice (55 FR 20979) of the Maryland revisions. EPA stated that if, after accounting for the possible reductions from all other reasonable control measures, Maryland could demonstrate that RVP reductions are still required to achieve the standard, the RVP reductions are necessary within the meaning of section 211(c)(4)(C). EPA does not interpret that provision to require a state to impose more drastic measures such as driving prohibitions or source shutdowns before it can adopt its own fuel control program. Amendments to section 211(c)(4)(C) in the 1990 Amendments to the Clean Air Act (1990 CAAA) confirms that this is the appropriate test for determining necessity under section 211(c)(4)(C).

As discussed in the notice of proposed rulemaking, the record indicated that the Metropolitan Baltimore and Maryland/National Capital AQCR's nonattainment areas will still need VOC emission reductions on the order of at least 21 percent and 23.4 percent respectively, from 1980 inventory levels to achieve the standard as projected in the Maryland 1982 SIP. The State reviewed measures suggested by EPA as reasonable in addition to RVP control and found that they could potentially achieve 15.3 percent and 22.7 percent reductions in the Metropolitan Baltimore and Maryland/National Capital AQCRs, respectively, from 1980 levels. As indicated in the proposed rulemaking, even with the State's regulation of fuel volatility to 9.0 psi during the period May 1 to September 15, a VOC reduction shortfall would still exist in both areas. In order to make up for these shortfalls, the State is examining other VOC control strategies as listed in Table 2 of the proposed rulemaking notice. The potential combined reductions from those VOC control strategies may satisfy the remaining shortfalls in the Metropolitan Baltimore and Maryland/National Capital AQCR. However, in light of all the circumstances, these measures do not appear to be sufficient to make up the shortfall without RVP reductions.

EPA continues to believe that the fact that the state RVP regulation might not

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by itself eliminate the shortfall (and hence not by itself achieve the ozone standard) does not mean this rule is not "necessary to achieve" the NAAQS. EPA believes that the "necessary to achieve" standard must be interpreted to apply to measures which are needed to reduce ambient levels when there are no other reasonable measures that EPA or the state could impose to achieve this reduction. Amendments to section 211(c)(4)(C) in the 1990 CAAA specify that EPA may make a finding of necessity even where the state cannot make a full attainment demonstration for the area. Thus, EPA concludes that the Maryland regulation is "necessary" to achieve the NAAQS.

Although not all of the State of Maryland is designated as nonattainment for the ozone standard, EPA is approving a state-wide regulation to lower the volatility limit in Maryland. As discussed in the proposed rulemaking, the ambient ozone problem has worsened as a result of increases in RVP and vehicle miles traveled since the design of the SIP's ozone attainment plan. The State must apply the RVP rule on a state-wide basis in order to maximize the use of 9.0 RVP gasoline and insure compliance with the RVP rule in the two nonattainment areas without producing supply and distribution problems throughout the State. While the benefits associated with controlling VOC emissions in nonattainment areas are apparent, reducing those emissions in attainment areas is also beneficial. Ozone is a regional concern because VOC emissions originating in one area may be transported through the atmosphere and adversely affect air quality in another area. This phenomenon may cause VOC emissions generated in attainment areas to increase ozone levels in nonattainment areas—such as Metropolitan Baltimore and Maryland/National Capital AQCRs. Thus, reducing VOC emissions in attainment areas may help reduce ozone levels in nonattainment areas.

In light of the administrative and enforcement difficulties Maryland may experience if its RVP regulation were effective only in the Metropolitan Baltimore and Maryland/National Capital AQCRs nonattainment areas, and since EPA is not in a position to conclude that the RVP program is definitely not necessary in areas designated attainment; the Agency believes it is appropriate to make a finding under section 211(c)(4)(C) with respect to the RVP program in the attainment areas.

Such a finding is necessary in the attainment areas to preserve the integrity and enforceability of the RVP program in the nonattainment areas. EPA, therefore, today finds that state-wide RVP control is necessary to achieve attainment in the two ozone nonattainment areas within the meaning of section 211(c)(4)(C).

Waivers

As with its approval of other state RVP programs, EPA is approving Maryland's program including any waivers or variances from compliance Maryland may grant to address emergency supply dislocations that might occur as a result of Maryland's lower RVP requirement. Such waivers shall not waive the limit mandated by the federal RVP program promulgated on March 22, 1989, which currently requires 10.5 psi RVP in Maryland.

Summary of Public Comments and EPA's Responses

The major issues raised during the public comment period were:

1. How soon after the date of final approval of the Maryland revision should the RVP regulations be made effective?

2. What RVP test methods are considered "acceptable" to EPA?

3. What tolerance limit should be allowed in the enforcement of the RVP regulation?

4. What effect will 9 psi gasoline have on driveability in cold weather and vehicle safety?

These issues are more fully discussed and EPA's responses are provided below:

1. How soon after the date of final approval of the Maryland revision should the RVP regulations be made effective?

Comment: EPA received several comments pertaining to the timing of EPA's final action. Several industry representatives stated that if we did approve the RVP regulation we must provide the petroleum industry with a realistic and sufficient lead time to distribute 9 psi gasoline throughout the distribution system. One commenter cited EPA's allowing 70 to 100 days for the March 22, 1989 promulgated national regulations to become effective at the terminal and retail level, respectively, as a precedent for such a decision. Another commenter suggested that EPA make its regulation effective 30 days from the published date of the final rulemaking.

EPA's Response: EPA should not delay action on a SIP revision in such a manner as would thwart the state's intent in requesting that SIP revision. Maryland's submittal of the RVP SIP in October of 1989 was clearly aimed at getting its regulatory program in place for the 1990 ozone season. However, the May 17, 1990 date of EPA's notice of proposed rulemaking, its subsequent public comment period, the time necessary to address the comments received, and additional comments received after the close of its comment period (discussed later in today's notice) have all combined to delay EPA's final rulemaking action until June 24, 1991.

EPA has considered several issues in deciding to make today's final action approving Maryland's RVP program effective on June 24, 1991. First, the Maryland rule was passed in October 1989, EPA promulgated the Federal volatility requirements on March 22, 1989 (with an effective date of April 21, 1989) and EPA proposed approval of the Maryland rule on May 17, 1990. Therefore, the industry has had notice of the State's and EPA's intent since those dates.

An associated issue to be considered is the lead time that would be necessary to enable 9.0 psi gasoline to get through the distribution system. The record for this rulemaking indicates that the industry thought that it would take 60 to 70 days to achieve compliance at terminals in Maryland. The record also indicates that the Colonial Pipeline, which supplies approximately 50 percent of gasoline in the Maryland area, has been shipping 9.0 psi gasoline since June of 1989, in response to the RVP regulations made effective in the NESCAUM states. EPA itself conducted gasoline sampling analysis studies in 1990 at service stations in the Maryland area that have shown some gasoline as low as 8.8 psi. However, because of the slow turnover rate of gasoline for facilities at the end of the gasoline distribution chain (ex. gasoline service stations), EPA believes that a 30 day lead time is warranted for making federal approval of Maryland's RVP regulation effective. The lead time should provide more than enough time for facilities throughout the gasoline distribution chain to meet the more stringent volatility standards.

The final issue EPA has considered in making its approval of the Maryland RVP rule effective on June 24, 1991, is the air quality with regard to ozone in the State. The nonattainment area encompassing the Baltimore Consolidated Metropolitan Statistical Area (CMSA), based on 1987–1989 air quality data, is classified as a severe ozone nonattainment area under the criteria of the Clean Air Act Amendments of 1990. It is therefore critical to have the effective date of EPA's approval of the Maryland RVP rule in time for the 1991 ozone season to maximize the air quality benefits of the program.

2. What RVP test methods are considered "acceptable" to EPA?

Comments: EPA received several comments concerning whether or not the SWI Automatic and D–323 test methods for determining gasoline volatility are considered "acceptable" methods to the Environmental Protection Agency.

EPA's Response: On March 22, 1989, EPA promulgated regulations (FR 11868) for reducing gasoline volatility to 10.5 psi, 9.5 or 9.0 psi (depending on the area of the country and the month) which began in 1989. As part of the rulemaking, EPA approved two methods for determining gasoline volatility—Annex 2 Modification of Method D–323 and the Herzog Semi-Automatic Method.

EPA will soon be reviewing additional test methods (including SWI and D–323) to determine their acceptability as volatility test methods. If the methods are found to be acceptable, a Federal Register Notice will be published which will include them on the list as EPA approved methods. Until that time, the State of Maryland must use the two EPA approved test methods.

3. What enforcement tolerance limit should be allowed in the enforcement of the RVP regulation?

Comments: The Agency received several comments on what enforcement tolerance should be allowed in the enforcement of the regulation.

EPA's Response: As stated in its March 22, 1989 final rulemaking notice promulgating the federal RVP fuel volatility rule, EPA has determined that gasoline refiners and other regulated parties will be expected to meet applicable RVP standards in use. In other words, they must take test variability into account in producing (and marketing) gasoline and cannot rely on the Agency to automatically provide an enforcement tolerance in addition to approving the RVP standard. For example, if the applicable RVP standard is 9.0 psi and the State finds a sample of gasoline to exceed this standard (e.g., 9.1 psi), this will be considered a violation of the regulatory standard that could subject liable parties to an enforcement action. Therefore, all sample test results must be 9.0 psi or less in order to comply with this rule.

4. What effect will 9.0 RVP gasoline have on driveability in cold weather and on vehicle safety?

Comments: Several commentors expressed concern that 9.0 RVP fuel would cause hard starting, hesitation, and stalling in automobiles during early spring and late fall. Statements were made by industry representatives that gasoline will have to enter the distribution system in March and will not be out until October in order to comply with the regulation. Other comments indicated that there should be no adverse effect from the use of 9.0 RVP gasoline.

EPA's Response: EPA believes that the nature of the gasoline distribution system makes it very unlikely that 9.0 RVP fuel will be available to consumers in March or early April, even if the blending-down process by that time has begun to reduce RVP. Continued availability of low RVP fuel is even less likely by late October because the blending-up process will occur rapidly at the close of the control period. Nevertheless, the experience in California, which has required 9.0 RVP fuel for many years, suggests that widespread driveability or fuel safety problems will not occur in Maryland. EPA knows of no evidence of extensive problems in California, despite significant operations at cool temperatures and high elevations.

As further evidence of this conclusion, one can compare the true vapor pressure (TVP) experienced in fuel tanks at different times of the year. For example, when corrected for elevation, gasoline in Billings, Montana at its January 1988 average RVP of 13.6 psi and at a January temperature of −30 degrees Fahrenheit (°F) would result in a true vapor pressure of 1.0 psi. Similarly, in Boston, Massachusetts, an RVP of 10.0 and a temperature of −12 °F would result in a TVP of 1.0 psi. In contrast, 8.5 psi RVP fuel in New York at a temperature of 18 degrees °F would result in a TVP of 1.8 psi, 80 percent higher than the winter figure. As a result of these comparisons (see 54 FR 28037, June 21, 1989). EPA concludes that if low volatility fuel were to reach consumers in Maryland during very low temperatures, any degradation in driveability would be no greater than that experienced currently during the winter.

Conversely, low volatility fuel should improve vehicle driveability in very hot weather by reducing the occurrence of such conditions as vapor lock and fuel foaming.

Gasoline-Alcohol Blends

When EPA's Phase I volatility control regulation was promulgated on March 22, 1989, it provided a 1.0 psi tolerance exemption for gasoline-ethanol mixtures (mixtures which contain at least 9% ethanol by volume) on an interim basis. EPA then instituted the same exemption as a final rule for Phase II of EPA's gasoline volatility regulation (see 54 FR 23865, June 11, 1990). EPA concluded that the potential economic jeopardy to the fuel ethanol industry associated with requiring the same RVP standard for gasoline and gasoline-ethanol blends is significant, and that overall, the 1.0 psi exemption should not adversely affect air quality.

On December 3, 1989, Maryland passed its RVP regulation without including the 1.0 psi RVP gasoline-ethanol tolerance. Maryland was apparently unclear as to whether EPA intended to adopt the 1.0 psi tolerance as a final rule. The final rule incorporating the 1.0 psi gasoline-ethanol tolerance has been adopted (see 55 FR 23658, June 11, 1990).

Therefore, in recognition of EPA's commitment to a national gasoline-ethanol policy, and since Maryland's fuel volatility rule will be preempted in any case by the federal rule starting in 1992, Maryland has committed to amend the state regulation to conform with the federal precedent. For the 1991 ozone season, EPA is approving Maryland's current rule as it applies to gasoline distributors and retailers. However, EPA is not approving the rule as it applies to distributors and retailers of gasoline-ethanol blends. Gasoline-ethanol blends will continue to be regulated by the federal volatility rule found in 40 CFR 80.27(d). This action is consistent with EPA's national fuel policy. The State of Maryland concurs with this approach.

Enforcement

The sampling and test methods in the Maryland regulation are in accordance with the methods contained in EPA's March 22, 1989 Federal Register Final Rulemaking Notice (54 FR 11868). Therefore, EPA is approving the State RVP limit and its sampling and test methods.

Final Action

EPA is approving this revision to the Maryland Ozone State Implementation Plan to control gasoline volatility as it applies to distributors and retailers of gasoline, including any waivers Maryland may grant under this program. EPA has also made a finding that the Maryland revision meets the requirements of section 211(c)(4)(C) of the Clean Air Act for an exception to Federal preemption.

The Agency has reviewed this request for revision of the Federally-approved State Implementation Plan for conformance with the provisions of the 1990 Clean Air Act amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of

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the fact that the submittal preceded the date of enactment.

The Office of Management and Budget has exempted this rule from the requirements of section 3 Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days of publication. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Ozone.

Note: Incorporation by reference of the State Implementation Plan for the State of Maryland was approved by the Director of the Federal Register on July 1, 1982.

EPA is today approving the Maryland SIP revision pertaining to its state gasoline volatility program as it applies to distributors and retailers of gasoline.

Dated: May 9, 1991.

William K. Reilly,

Administrator.

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraph (c)(89) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(88) Revisions to the Maryland State Implementation Plan submitted by the Secretary, Maryland Department of the Environment, on October 30, 1989 as they apply to distributors and retailers of gasoline.

(i) *Incorporation by Reference.* (A) Letter from the Secretary of the Environment, Maryland Department of the Environment dated October 30, 1989, submitting a revision to the Maryland State Implementation Plan.

(B) Amended Regulation .01 and new Regulation .06 under the Code of Maryland Air Regulations (COMAR) 26.11.13, Control of Gasoline and Volatile Organic Compounds Storage and Handling limiting the RVP of gasoline to 9.0 psi from May 1 through September 15. The amendments to COMAR 26.11.13.01 and the addition of COMAR 26.11.13.06 were effective on December 3, 1989 in the State of Maryland.

(ii) Additional Materials—Remainder of State submittal

3. Section 52.1073 is amended by adding paragraph (e) to read as follows:

§ 52.1073 Approval status.

(e) Code of Maryland Air Regulations (COMAR) 26.11.13.06 is approved with the following exception:

(i) Distributors and retailers of gasoline-ethanol blends as defined by 40 CFR 80.27(d)(2) are subject to the provisions of 40 CFR 80.27(d)(1) through 40 CFR 80.27(d)(3).

[FR Doc. 91-12420 Filed 5-23-91; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[FRL 3957-7]

Approval and Promulgation of State Implementation Plans; Montana; Prevention of Significant Deterioration, NO_2 Increments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is today approving revisions to Montana's State Implementation Plan (SIP) submitted by the Governor on July 13, 1990. The submittal includes revisions to the Montana Air Quality Rules, Sub-chapter 9, Prevention of Significant Deterioration of Air Quality (PSD) Regulations, to incorporate the nitrogen dioxide (NO_2) increments. The effect of this action is to make these revisions a part of the Montana SIP and, thus, federally enforceable.

EFFECTIVE DATE: This action will become effective on July 23, 1991 unless notice is received by June 24, 1991 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202–2405.

Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mindy Mohr, Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202–2405, (303) 294–7539, FTS 330–7539.

SUPPLEMENTARY INFORMATION:

NO_2 Increment Revisions

On October 17, 1988 (53 FR 40656), EPA promulgated ambient air quality increments for NO_2 under the PSD regulations at 40 CFR 51.166 and 40 CFR 52.21. The effective date promulgated for the NO_2 increments in 40 CFR 51.166 is October 17, 1989 and in 40 CFR 52.21, November 19, 1990. Those states that have adopted PSD regulations pursuant to 40 CFR 51.166, and have had those regulations approved by EPA as revisions to the SIP, must submit revised PSD regulations to incorporate the NO_2 increments within nine months of the effective date, or by July 17, 1990.

Montana's PSD program was originally approved by EPA on May 5, 1983 (48 FR 20231). Montana submitted the revision to its PSD regulations to incorporate the NO_2 increments on July 13, 1990, within the nine-month timeframe.

Guidance dated August 17, 1990, from Gary McCutchen, Chief of the New Source Review Section, to NSR Contacts, Region I–X, entitled "Final Guidance on Incorporating the NO_2 Increments Regulations Into State Implementation Plans (SIP's) and Delegation Agreements (DA's)" describes the minimum PSD program elements regarded as necessary for protection of the NO_2 increments. States must confirm that they intend to comply with, as well as explain how they intend to satisfy, each of these program elements. Since Montana's PSD program is a SIP-approved program, the minimum program elements include:

1. *Regulatory Language*—revised State PSD rules as required by revisions to 40 CFR 51.166.

2. *NO_2 Increment Consumption Analyses by Major Sources*—assurance that air quality modeling analyses prepared for major source permit applications consider minor source emissions (which include minor point sources, area sources and mobile sources) since the minor source baseline date.

3. *NO_2 Increment Consumption Status Reviews*—periodic reviews of increment status for each section 107 area designated as attainment, summarized in a report for EPA and the public. Additionally, the State is required to prepare an initial report which covers the transition period between February 8, 1988 and the date on which EPA approves the revisions to the SIP for NO_2.

4. *Legal Authority*—certification that the State has the legal authority under State law to administer all of the NO_2 increment provisions of the SIP.

The State's July 13, 1990 submittal addressed the above item 1. In a letter dated October 22, 1990, to Jeffrey Chaffee, Chief, Montana Air Quality Bureau, from Douglas Skie, Chief, Air Programs Branch, EPA Region VIII, EPA requested that Montana commit to address items 2, 3, and 4, above. Such a commitment was sent from Jeff Chaffee to Doug Skie in letters dated December 4, 1990 and January 4, 1991.

It should be noted that Montana did not revise its regulations to be totally consistent with EPA's. EPA modified its definition of "baseline date," 40 CFR 51.166(b)(14), to distinguish between "minor source baseline date" and "major source baseline date." Montana did not revise its rules to make such distinction. However, because Montana has fixed baseline dates for the increment consuming pollutants in its definition of "baseline date," EPA has determined that Montana's rules are no less stringent than the revised EPA rules and that such distinction between "minor source baseline date" and "major source baseline date" was not necessary. Also, because the State did not distinguish between "minor source baseline date" and "major source baseline date," it did not revise its definition of "net emissions increase," "baseline concentration," and "baseline area." These were specific areas that EPA had modified as a result of separately defining "major source baseline date" and "minor source baseline date." All the other required revisions to the PSD rules were made by the State. Therefore, EPA believes that the State of Montana has adopted the minimum PSD program elements regarded as necessary for protection of the NO_2 increments.

As discussed in the letter from the State dated January 4, 1991, the State currently employs a statewide baseline area with a statewide baseline date of February 8, 1988 for NO_2. If at some future date, the State intends to change to county-wide baseline areas, with county-wide baseline dates, as was discussed by the State in the letter of January 4, 1991, the definitions of "baseline concentration," "baseline area," and "baseline date" must be revised to be consistent with EPA's regulations. In order to create county-wide baseline areas with reestablished baseline dates, however, the definition of "baseline date" must also be changed to be consistent with EPA's regulations. Since EPA interprets the State regulations to specify the fixed baseline date of February 8, 1988 for NO_2, this change to the definition of "baseline date" would be necessary for the reestablishment of baseline dates in newly-redesignated baseline areas. Therefore, for any future redesignation of baseline areas to be approvable, the definitions of "baseline area," "baseline date," and "baseline concentration" must be revised. The State was notified of this interpretation in a letter from Doug Skie to Jeff Chaffee, dated April 30, 1991.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective July 23, 1991 unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective July 23, 1991.

Final Action

EPA is approving the SIP revision submitted by the Governor of Montana on July 13, 1990. The submittal includes revisions to the Montana Air Quality Rules, Sub-chapter 9, PSD Regulations, to incorporate the nitrogen dioxide (NO_2) increments.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to any state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (46 FR 8709).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

The Agency has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment. Approval of this specific revision to the SIP does not indicate EPA approval of the SIP in its entirety.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review must be filed in the United States Court of Appeals for the appropriate circuit by July 23, 1991. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Nitrogen dioxide.

Note: Incorporation by reference of the State Implementation Plan for the State of Montana was approved by the Director of the Federal Register on July 1, 1982.

Dated: May 13, 1991.

James J. Scherer,

Regional Administrator.

PART 52—[AMENDED]

40 CFR part 52, subpart BB, is amended as follows:

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart BB—Montana

2. Section 52.1370 is amended by adding (c)(24) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(24) On July 13, 1990, the Governor of Montana submitted revisions to the Montana Air Quality Rules, Sub-chapter 9, Prevention of Significant Deterioration of Air Quality (PSD) Regulations, to incorporate the nitrogen dioxide (NO_2) increments.

(i) *Incorporation by reference.* (A) Revisions to the Montana Air Quality

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Rules, Subchapter B, Prevention of Significant Deterioration of Air Quality (PSD) effective on July 12, 1990.

(ii) *Additional material.* (A) October 22, 1990 letter from Douglas Skie, EPA, to Jeffrey Chaffee, Chief, Montana Air Quality Bureau.

(B) December 4, 1990 letter from Jeffrey Chaffee, Chief, Montana Air Quality Bureau, to Douglas Skie, EPA.

(C) January 4, 1991 letter from Jeffrey Chaffee, Chief, Montana Air Quality Bureau, to Douglas Skie, EPA.

(D) April 30, 1991 letter from Douglas Skie, EPA, to Jeffrey Chaffee, Chief, Montana Air Quality Bureau.

[FR Doc. 91-12394 Filed 5-23-91; 8:45 am]

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40 CFR Part 52

[FRL-3954-7]

Approval and Promulgation of State Implementation Plans; Wyoming; Prevention of Significant Deterioration and New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is today approving revisions to Wyoming's State Implementation Plan (SIP) submitted by the Governor on November 20, 1990, which modified the Prevention of Significant Deterioration of Air Quality (PSD) regulations (section 24, Prevention of Significant Deterioration, of the Wyoming Air Quality Standards and Regulations [WAQSR]) to incorporate the nitrogen dioxide (NO_2) increments. The November 20, 1990 submittal also includes revisions to section 2, Definitions, section 21, Permit Requirements for Construction, Modification, and Operation, and section 24, Prevention of Significant Deterioration, of the WAQSR to make the regulations federally enforceable, and revisions to section 24, Prevention of Significant Deterioration, to allow establishment of multiple PSD baseline areas within the State which may have different minor source baseline dates and baseline concentrations. The effect of this action is to make the NO_2 increment revisions to the PSD program, the New Source Review revisions, and the other miscellaneous PSD revisions part of the Wyoming SIP and thus federally enforceable.

EFFECTIVE DATE: This action will become effective on July 23, 1991 unless notice is received by June 24, 1991 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street Suite 500, Denver, Colorado 80202-2405.

Air Quality Division, Department of Environmental Quality, 122 West 25th Street, Herschler Building, Cheyenne, WY 82002.

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mindy Mohr, Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202-2405, (303) 294-7539, FTS 330-7539.

SUPPLEMENTARY INFORMATION:

NO_2 Increment Revisions

On October 17, 1988 (53 FR 40656), EPA promulgated ambient air quality increments for NO_2 under the PSD regulations at 40 CFR 51.166 and 40 CFR 52.21. The effective date promulgated for the NO_2 increments in 40 CFR 51.166 is October 17, 1989 and in 40 CFR 52.21, November 19, 1990.

Guidance dated August 17, 1990, from Gary McCutchen, Chief of the New Source Review Section, to NSR Contacts, Region I-X, entitled "Final Guidance on Incorporating the NO_2 Increments Regulations Into State Implementation Plans (SIP's) and Delegation Agreements (DA's)," describes the minimum PSD program elements regarded as necessary for protection of the NO_2 increments. States must confirm that they intend to comply with, as well as explain how they intend to satisfy, each of these program elements. Wyoming's PSD program was originally approved by EPA on September 6, 1979 (44 FR 51977). Since Wyoming's PSD program is a SIP-approved program, the minimum program elements include:

1. *Regulatory Language*—revised State PSD rules as required by revisions to 40 CFR 51.166.

2. *NO_2 Increment Consumption Analyses by Major Sources*—assurance that air quality modeling analyses prepared for major source permit applications consider minor source emissions (which include minor point sources, area sources and mobile sources) since the minor source baseline date.

3. *NO_2 Increment Consumption Status Reviews*—periodic reviews of increment status for each section 107 area designated as attainment, summarized in a report for EPA and the public. Additionally, the State is required to prepare an initial report which covers the transition period between February 8, 1988 and the date on which EPA approves the revisions to the SIP for NO_2.

4. *Legal Authority*—certification that the State has the legal authority under State law to administer all of the NO_2 increment provisions of the SIP.

The State's November 20, 1990, submittal addresses the above items. This submittal contains one error in the regulatory revisions, which EPA had identified earlier in a draft submittal, and indicated to the State in a letter dated November 5, 1990 to Charles A. Collins, Administrator, Wyoming Air Quality Bureau, from Douglas Skie, Chief, Air Programs Branch, EPA Region VIII. EPA determined that this error was not so serious in nature as to prevent approving the revisions, and in the November 20, 1990 submittal Wyoming committed to correcting this error in the next regulation revision, as well as implementing the regulation as though the error were corrected.

Therefore, EPA believes that the State of Wyoming has adopted the minimum PSD program elements regarded as necessary for protection of the NO_2 increments.

New Source Review Revisions

The November 20, 1990 submittal contains several minor changes to sections 2, 21, and 24 of the WAQSR to address EPA concerns about federal enforceability, as follows:

1. Section 2, Definitions, is amended to include a definition of "owner or operator" at section 2(a)(xli); this term was not previously defined in section 2.

2. Section 21, Permit Requirements for Construction, Modification and Operation, is amended in two places, as follows:

(a) Section 21(c)(vii) requires that an applicant for a permit to construct or modify a facility must show that the proposed facility will achieve the performance specified in the permit application before it is approved. This submittal revises section 21(c)(vii) to delete language that previously provided for the granting of a conditional permit if the applicant could not demonstrate such compliance prior to initial start-up of the proposed facility;

(b) Section 21(n)(i) addresses the notification which must be given to Federal Class I Area Federal Land Managers regarding permit applications for proposed new major emitting facilities or major modifications whose emissions may affect the Federal Class I Area. Section 21(n)(i) previously addressed only those cases where emissions may affect visibility in the Federal Class I Area; this submittal amends section 21(n)(i) to address notification requirements when emissions may affect Federal Class I Areas in respects other than, as well as, visibility. Section 21(n)(i) is also amended to add language requiring that the notification include an analysis of anticipated impacts on air quality in the Federal Class I Area beyond impact on visibility.

Other Revisions to PSD Program

This submittal makes several changes throughout section 24, Prevention of Significant Deterioration, to make these regulations federally enforceable. Additionally this submittal amends definitions in section 24, Prevention of Significant Deterioration, to allow establishment of multiple PSD baseline areas, which may have different minor source baseline dates and different baseline concentrations. The Wyoming PSD regulations previously established August 7, 1977 as the "baseline date" for the entire state for both sulfur dioxide and particulate matter, and established the entire state as the "baseline area". Wyoming's establishment of a statewide baseline date and area was more stringent than that required by current EPA regulations at 40 CFR 51.166. This submittal revises the definitions of "baseline date", "baseline area", and "baseline concentration" as follows:

1. The definition of "baseline area" in section 24(a)(xv) has been revised to closely conform to that specified in 40 CFR 51.166(b)(15)(i).

2. Section 24(a)(ix) adds definitions for "major source baseline date" and "minor source baseline date" which closely conform to the respective definitions in 40 CFR 51.166(b)(14) (i) and (ii).

3. The definition of "baseline concentration" in section 24(a)(viii) has been revised. The previous definition was based upon the ambient concentration level as of August 7, 1977; the revised definition parallels 40 CFR 51.166(13) in that it is based upon the ambient concentration level at the time of the applicable minor source baseline date.

These revisions allow the establishment of multiple baseline areas which may have different baseline dates.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective July 23, 1991 unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective July 23, 1991.

Final Action

EPA is today approving revisions to Wyoming's SIP submitted by the Governor on November 20, 1990 which modified the State's the Prevention of Significant Deterioration of Air Quality (PSD) regulations (section 24, Prevention of Significant Deterioration, Wyoming Air Quality Standards and Regulations [WAQSR]) to incorporate the nitrogen dioxide (NO_2) increments, revised section 2, Definitions, section 21, Permit Requirements for Construction, Modification, and Operation, and section 24, Prevention of Significant Deterioration, of the WAQSR to make the regulations federally enforceable, and revised section 24, Prevention of Significant Deterioration, to allow establishment of multiple PSD baseline areas which may have different minor source baseline dates and baseline concentrations.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to any state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (46 FR 8709).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

The Agency has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment. Approval of this specific revision to the SIP does not indicate EPA approval of the SIP in its entirety.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review must be filed in the United States Court of Appeals for the appropriate circuit by July 23, 1991. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Nitrogen dioxide.

Note: Incorporation by reference of the State Implementation Plan for the State of Wyoming was approved by the Director of the Federal Register on July 1, 1982.

Dated: April 22, 1991.

Jack W. McGraw,

Acting Regional Administrator.

PART 52—[AMENDED]

40 CFR part 52, subpart ZZ, is amended as follows:

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

Subpart ZZ—Wyoming

2. Section 52.2620 is amended by adding (c)(21) to read as follows:

§ 52.2620 Identification of plan.

* * * * *

(c) * * *

(21) On November 20, 1990, the Governor of Wyoming submitted revisions to the plan. The revisions include amendments to the prevention of significant deterioration of air quality (PSD) regulations to incorporate the nitrogen dioxide (NO_2) increments, revisions to the new source review requirements and PSD regulations to make them federally enforceable, and revisions to the PSD regulations to allow establishment of multiple baseline areas which may have different baseline dates and different baseline concentrations.

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(i) *Incorporation by reference.* (A) Revisions to the Wyoming Air Quality Standards and Regulations, Section 2, *Definitions*, Section 21, Requirements *Permit Regulations for Construction, Modification, and Operation*, and Section 24, *Prevention of Significant Deterioration*, effective October 30, 1990.

(ii) *Additional material.* (A) November 5, 1990, letter from Douglas Skie, EPA, to Charles A. Collins, Administrator, Air Quality Division, Wyoming Department of Environmental Quality.

[FR Doc. 91-12395 Filed 5-23-91; 8:45 am]
BILLING CODE 6560-50-

Proposed Rules

Federal Register
Vol. 56, No. 101
Friday, May 24, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 26344; Notice No. 90-23A]

Small Airplane Airworthiness Review Program Notice No. 3

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Reopening of comment period.

SUMMARY: This notice announces the reopening of the comment period for the Notice of Proposed Rulemaking (NPRM) for powerplant and equipment airworthiness standards for normal, utility, acrobatic and commuter category airplanes. The reopening responds to a request from the Joint Aviation Authority (JAA). The reopening is needed to permit JAA additional time to provide a substantive response to the NPRM.

DATES: Comments must be received on or before july 2, 1991.

ADDRESSES: Comments on this notice may be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Docket No. 26344, 800 Independence Avenue, SW., Washington, DC 20591, or delivered in triplicate to room 915G, 800 Independence Avenue, SW., Washington, DC 20591. Comments must be marked Docket No. 26344. Comments may be inspected in room 915G between 8:30 a.m. and 5 p.m. on weekdays, except on Federal holidays.

In addition, the FAA is maintaining an information docket of comments in the Office of the Assistant Chief Counsel, ACE-7, Federal Aviation Administration, Central Region, 601 East 12th Street, Kansas City, Missouri 64106. Comments in the information docket may be inspected in the Office of the Assistant Chief Counsel weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph H. Snitkoff, Acting Manager, Standards Office (ACE-110), Aircraft Certification Service, Central Region, Federal Aviation Administration, room 1544, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 426-5688

SUPPLEMENTARY INFORMATION:

Comment Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire concerning NPRM 90-23. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with Federal Aviation Administration (FAA) personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26344." The postcard will be date stamped and mailed to the commenter.

Availability of NPRM's

Any person may obtain a copy of NPRM 90-23 by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify NPRM 90-23.

Background

On September 17, 1990, the FAA issued NPRM 90-23 (55 FR 40598, October 3, 1990). The NPRM proposed changes in the powerplant and equipment airworthiness standards for normal, utility, acrobatic and commuter category airplanes. These proposals resulted from the Small Airplane Airworthiness Review Conference held on October 22-26, 1984, in St. Louis, Missouri.

By letter dated March 22, 1991, the JAA requested that the comment period be extended in order to enable the JAA-23 Study Group time to coordinate a European position. Since their request was received after the comment period closed, the comment period for this notice needs to be reopened to accommodate their request.

Conclusion

In view of the possibility of obtaining additional technical information and to provide for a more consistent set of airworthiness standards, the FAA agrees that it would be in the best interest of all concerned to grant JAA's request to reopen the comment period. Accordingly, the comment period for NPRM 90-23 is reopened until July 2, 1991.

List of Subjects in 14 CFR Part 23

Aircraft, Air transportation, Aviation safety, Safety.

Issued in Washington, DC, on May 17, 1991.

Thomas E. McSweeny,

Acting Director, Aircraft Certification Service.

[FR Doc. 91-12365 Filed 5-23-91; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-41-AD]

Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DHC-7, Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain de Havilland Model DHC-7 series airplanes, which

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would require an inspection for cracks, and overhaul or replacement, of the main landing gear upper drag strut assembly. This proposal is prompted by reports of recent incidents involving fatigue cracking in transport category airplanes that are approaching or have exceeded their economic design goal. This condition, if not corrected, could result in the failure of the main landing gear. This action is consistent with the recommendations of the Airworthiness Assurance Task Force assigned to review the de Havilland Model DHC-7 series airplanes, which indicated that, to assure long term continued operational safety, the drag strut should be overhauled.

DATES: Comments must be received no later than July 15, 1991.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-41-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Casale, New York Aircraft Certification Office, Airframe Branch, ANE-172; telephone (516) 791-6220. Mailing address: FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-41-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

In April 1988, a high-cycle Boeing Model 737 suffered major structural damage in flight. Investigation revealed that the airplane had numerous fatigue cracks and a great deal of corrosion. Subsequent inspections conducted by the operator on the high-cycle airplanes in its fleet revealed that two other airplanes had extensive fatigue cracking and corrosion. These airplanes were taken out of service.

In June 1988, the FAA sponsored a conference on aging airplanes. It became obvious that, because of the increase in air travel, the relatively slow pace of new airplane production, and the apparent economic feasibility of operating older technology airplanes, older airplanes will continue to be operated rather than be retired. Because of the problems revealed by the accident described above, it was generally agreed that increased attention needed to be focused on this aging fleet and maintaining its continued operational safety.

The Air Transport Association (ATA) of America and the Aerospace Industries Association (AIA) of America are committed to identifying and implementing procedures to ensure continuing structural airworthiness of aging transport category airplanes. An Airworthiness Assurance Task Force (AATF), with representatives from the aircraft operators, manufacturers, regulatory authorities, and other aviation representatives, was established in August 1988. The objective of the Task Force was to sponsor "Working Groups" to (1) select service bulletins, applicable to each airplane model in the transport fleet, to be recommended for mandatory modification of aging airplanes, (2) develop corrosion-directed inspections and prevention programs, (3) review the adequacy of each operator's structural maintenance program, (4) review and update the Supplemental Structural Inspection Documents (SSID), and (5) assess repair quality.

Cracking has been discovered in the lower lug ends of the upper drag strut sub-assembly, due to a forging material defect. This condition, if not corrected, could result in the failure of the main landing gear.

The "Working Group" assigned to review the de Havilland Model DHC-7 series airplanes has made a recommendation that the main landing gear (MLG) upper drag strut assembly be inspected and overhauled to assure long term continued operational safety. This recommendation is consistent with current FAA policy that long term continued operational safety should be assured by overhaul/modification rather than by repetitive inspections.

Menasco Canada Ltd., the manufacturer of the main landing gear upper drag strut and lock strut sub-assemblies, has issued Service Bulletin No. 32-18, Revision 1, dated June 5, 1980, which describes procedures to perform a non-destructive test of the MLG upper drag strut to determine its suitability for overhaul. (De Havilland has issued Service Bulletin No. 7-32-18, Revision C, dated October 1, 1982, which includes the Menasco Canada Ltd. service bulletin.) The Menasco service bulletin references Menasco Mfg. Component Maintenance Manual 32-10-16, dated September 1, 1976, which describes procedures to accomplish the overhaul.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require removal of the MLG upper drag strut assemblies from the airplane, a non-destructive test to determine their suitability for overhaul, and overhaul or replacement, in accordance with the service bulletins previously described.

There are approximately 27 de Havilland Model DHC-7 series airplanes of the affected design in the worldwide fleet. It is estimated that 14 airplanes of U.S. registry would be affected by this AD, that it would take approximately 150 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Replacement parts costs are negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $115,500.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposed to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing of Canada, Ltd., De Havilland Division: Docket No. 91-NM-41-AD.

Applicability: Model DHC-7 series airplanes, Serial Numbers 1 through 27, certificated in any category.

Compliance: Required, as indicated, unless previously accomplished.

To prevent a possible failure of the main landing gear (MLG), accomplish the following:

(a) Within one year after the effective date of this AD, remove each MLG upper drag strut assembly from the airplane and perform a non-destructive test in accordance with the Accomplishment Instructions, paragraphs 2.D. (1) through (3), of Menasco Canada Ltd. Service Bulletin No. 32-18, Revision 1, dated June 5, 1980.

(1) If there is no evidence of cracking, prior to further flight, overhaul the assembly in accordance with the Accomplishment Instructions, paragraph 2.D.(4), of the service bulletin.

(2) If cracking is evident, prior to further flight, replace the assembly with a serviceable part, in accordance with the service bulletin.

Note: The Menasco Canada Ltd. Service Bulletin references Menasco Mfg. Component Maintenance Manual 32-10-16, dated September 1, 1976, as an additional source of service information for performing overhaul procedures.

Note: In the referenced Menasco Component Maintenance Manual, procedures are found only for "Repair." For this application, repair is equivalent to overhaul.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office (ACO), ANE-170, FAA, New England Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with FARs 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, New England Region, New York Aircraft Certification Office, 181 S. Franklin Avenue, room 202, Valley Stream, New York.

Issued in Renton, Washington, on May 15, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-12366 Filed 5-23-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-43-AD]

Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DHC-7 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain de Havilland Model DHC-7 series airplanes, which would require replacement of left- and right-hand wing flap track No. 4 forward support fittings. This proposal is prompted by reports that some of these fittings are understrength due to incomplete heat treatment during their manufacture. This condition, if not corrected, could result in the flaps jamming. This action relates to the recommendations of the Airworthiness Assurance Task Force, assigned to review de Havilland Model DHC-7 series airplanes, which indicate that, to assure long term continued operational safety, the fittings should be replaced.

DATES: Comments must be received no later than July 15, 1991.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-43-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Sol Maroof, New York Aircraft Certification Office, Airframe Branch, ANE-172; telephone (516) 791-6220. Mailing address: FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice

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must submit a self-addressed, stamped post card on which the following statement is made: "Comment to Docket Number 91-NM-43-AD". The post card will be date/time stamped and returned to the commenter.

Discussion

In April 1988, a high-cycle Boeing Model 737 suffered major structural damage in flight. Investigation revealed that the airplane had numerous fatigue cracks and a great deal of corrosion. Subsequent inspections conducted by the operator on the high-cycle airplanes in its fleet revealed that two other airplanes had extensive fatigue cracking and corrosion. These airplanes were taken out of service

In June 1988, the FAA sponsored a conference on aging airplanes. It became obvious that, because of the increase in air travel, the relatively slow pace of new airplane production, and the apparent economic feasibility of operating older technology airplanes, older airplanes will continue to be operated rather than be retired. Because of the problems revealed by the accident described above, it was generally agreed that increased attention needed to be focused on this aging fleet and maintaining its continued operational safety.

The Air Transport Association (ATA) of America and the Aerospace Industries Association (AIA) of America are committed to identifying and implementing procedures to ensure continuing structural airworthiness of aging transport category airplanes. An Airworthiness Assurance Task Force (AATF), with representatives from the aircraft operators, manufacturers, regulatory authorities, and other aviation representatives, was established in August 1988. The objective of the Task Force was to sponsor "Working Groups" to (1) select service bulletins, applicable to each airplane model in the transport fleet, to be recommended for mandatory modification of aging airplanes, (2) develop corrosion-directed inspections and prevention programs, (3) review the adequacy of each operator's structural maintenance program, (4) review and update the Supplemental Structural Inspection Documents (SSID), and (5) assess repair quality.

The "Working Group" assigned to review the de Havilland Model DHC-7 series airplane made a recommendation that to assure long term continued operational safety, the left- and right-hand wing flap track No. 4 forward support fittings should be replaced. These fittings could be understrength due to incomplete heat treatment during their manufacture. Understrength fittings, if not detected, could fail and consequently result in the flaps jamming, with reduction of airplane controllability.

De Havilland has issued Service Bulletin No. 7-27-37, dated October 28, 1981, which describes procedures for replacement of the left- and right-hand wing flap track No. 4 forward support fittings. Transport Canada has classified this service bulletin as mandatory, and will be issuing an airworthiness directive addressing this subject.

This airplane model is manufactured in Canada and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist on other airplanes of this same type design registered in the U.S., an AD is proposed which would require the replacement of the left- and right-hand wing flap track No. 4 forward support fittings, in accordance with the service bulletin previously described.

It is estimated that 2 Model DHC-7 series airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. The required parts will be supplied to the operators at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $220.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing of Canada, Ltd., De Havilland Division: Docket 91-NM-43-AD.

Applicability: Model DHC-7 series airplanes; Serial Numbers 53 through 57, 59, and 60; certificated in any category.

Compliance: Required within one year after the effective date of this AD, unless previously accomplished.

To prevent jamming of the flaps and reduction of airplane controllability, accomplish the following:

(a) Replace the left- and right-hand wing flap track No. 4 forward support fittings in accordance with the Accomplishment Instructions of de Havilland Service Bulletin No. 7-27-37, dated October 28, 1981.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office (ACO), ANE-170, FAA, New England Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the FAA, New England Region, New York Aircraft Certification Office, 181 S. Franklin Avenue, room 202, Valley Stream, New York 11581.

Issued in Renton, Washington, on May 15, 1991.

Darrell M. Pederson,
Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-12367 Filed 5-23-91; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-CE-26-AD]

Airworthiness Directives; Fairchild Aircraft SA226 and SA227 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would be applicable to certain Fairchild Aircraft SA226 and SA227 series airplanes. The proposed action would require a modification of the parking brake system and recurring inspections of certain landing gear brake system components. Brake system malfunctions have occurred on several of the affected airplanes where regular brake system maintenance had been performed. The actions specified in this AD are intended to prevent brake system malfunctions that could result in a fire in the brake area or possible airplane collision during landing.

DATES: Comments must be received on or before July 16, 1991.

ADDRESSES: Fairchild Aircraft Service Bulletin (SB) No. 227-32-017 and SB No. 226-32-049, both dated November 14, 1984, and B.F. Goodrich Service Letter (SL) No. 1498, dated October 26, 1989, that are discussed in this AD may be obtained from the Fairchild Aircraft Corporation, P.O. Box 790490, San Antonio, Texas 78279-0490 and B.F. Goodrich Aircraft Wheels and Brakes, P.O. Box 340, Troy, Ohio 45373. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-26-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Werner Koch, Aerospace Engineer, Fort Worth Airplane Certification Office, Fort Worth, Texas 76193-0150; Telephone (817) 624-5163.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-26-AD, room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received numerous service difficulty reports on brake system malfunctions on Fairchild SA226 and SA227 series airplanes. These reports include instances of brake overheating, broken discs, brake lock-ups, as well as several reports of incidents involving fires in the brake and wheel well areas. Service information revealed that general brake system maintenance was performed routinely on the airplanes referenced in these service difficulty reports.

As a result, the brake vendor, B.F. Goodrich, has issued Service Letter (SL) No. 1498, dated October 26, 1989, which clarifies the proper location for puck wear measurements as well as allowable measurable puck wear. In addition, Fairchild has issued Service Bulletin (SB) No. 226-32-049 and SB No. 227-32-017, both dated November 14, 1984, which specify a modification of the parking brake system to prevent lock-up of that system. The FAA has examined the circumstances and all available information related to the conditions described above, and has determined that AD action should be taken since regular maintenance procedures are not preventing brake system malfunctions.

Since the condition described is likely to exist or develop in other Fairchild SA226 and SA227 series airplanes of the same type design, the proposed AD would require a modification of the parking brake system and recurring inspections of certain landing gear brake system components in accordance with the instructions and criteria in Fairchild SB No. 227-32-017 and SB No. 226-32-049, both dated November 14, 1984, and B.F. Goodrich SL No. 1498, dated October 26, 1989.

It is estimated that 330 airplanes in the U.S. registry will be affected by this AD, that it will take approximately one hour per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $500 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $183,150.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

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PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Fairchild Aircraft (formerly Swearingten): Docket No. 91-CE-28-AD.

Applicability: Model SA226-T airplanes (Serial numbers (S/N) T201 through T275, and T277 through T291), Model SA226-T(B) airplanes (S/N T(B)276, and T(B)292 through T(B)417), Model SA226-AT airplanes (S/N AT001 through AT074), Model SA226-TC airplanes (S/N TC201 through TC419), Model SA227-TT airplanes (S/N TT421 through TT555), Model SA227-AT airplanes (S/N AT423 through AT509), and Model SA227-AC airplanes (S/N AC406, AC415, AC416, and AC420 through AC599), certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent brake system malfunctions that could result in a fire in the brake area or possible airplane collision during landing, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS) after the effective date of this AD, modify the parking brake system in accordance with the instructions in Fairchild Aircraft Service Bulletin (SB) No. 227-32-017 and SB No. 226-32-049, both dated November 14, 1984, as applicable.

(b) On airplanes equipped with B.F. Goodrich brakes, part number 2-1203-3, within the next 50 hours TIS after the effective date of this AD, and thereafter at intervals not to exceed 200 hours TIS, inspect and conduct measurements in accordance with the instructions in B.F. Goodrich Service Letter No. 1498, dated October 26, 1989. If wear measure exceeds the maximum allowed in accordance with the criteria in B.F. Goodrich Service Letter No. 1498, dated October 26, 1989, prior to further flight, overhaul or replace the brakes in accordance with the instructions in the applicable maintenance manual.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Fort Worth Airplane Certification Office, Fort Worth, Texas 76193-0150. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth Airplane Certification Office.

(e) All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Fairchild Aircraft Corporation, P.O. Box 790490, San Antonio, Texas 78279-0490 and B.F. Goodrich Aircraft Wheels and Brakes, P.O. Box 340, Troy, Ohio 45373; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on May 10, 1991.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-12368 Filed 5-23-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-CE-42-AD]

Airworthiness Directives; FL Aerospace (formerly Janitrol) Models B1500, B2030, B3040 and B4050 Combustion Heaters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would be applicable to FL Aerospace Models B1500, B2030, B3040 and B4050 combustion heaters. The proposed action would supersede AD 82-07-03, which requires repetitive inspections and tests, and repair or overhaul of these heaters if necessary. The proposed AD would maintain the same inspection and test requirements, but would require these to be accomplished in accordance with the latest service information. The actions specified in this proposed AD are intended to detect cracks before a fire ignites or carbon monoxide leaks into the cabin area.

DATES: Comments must be received on or before July 1, 1991.

ADDRESSES: FL Aerospace Service Bulletin No. 76, dated July 27, 1990, that is discussed in this AD may be obtained from the FL Aerospace Corporation, Aircraft Procucts Division/Ocal Unit, 1900 N.E. 25th Avenue, Ocala, Florida 32670; Telephone (904) 622-1101; and FL Aerospace, Janitrol Aero Division, 4200 Surface Road, Columbus, Ohio 43228. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90-CE-42-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Will Trammell, Aerospace Engineer, Propulsion Branch, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; Telephone (404) 991-3810.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90-CE-42-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Airworthiness Directive (AD) 82-07-03, Amendment 39-4354 (47 FR 13788, April 1, 1982) currently requires repetitive inspections and tests of FL Aerospace Models B1500, B2030, B3040, and B4050 combustion heaters; and repair or overhaul if cracks are found. This AD was based upon reports of cracks developing in the affected combustion heaters. The FAA has determined that this AD action is still valid; however, in order to ensure that this unsafe condition is prevented, the requirements should be updated to reflect new service information.

The FL Aerospace Maintenance and Overhaul Manual, Instruction P/N 24E25-1, revised May 1988, specifies procedures for inspecting and repairing or overhauling combustion heaters. The FAA has determined that for FL Aerospace heaters installed in Cessna or Piper airplanes, the appropriate Cessna or Piper Aircraft Overhaul Manual may be used as well as the FL Aerospace Maintenance and Overhaul Manual.

Since these conditions are likely to exist or develop in airplanes that have FL Aerospace Models B1500, B2030, B3040, and B4050 combustion heaters of the same type design installed, the proposed AD would require repetitive inspections of these combustion heaters for cracks, and repair or overhaul if cracks are found and would supersede AD 82-07-03. The proposed AD would be performed in accordance with new service information, would allow the affected airplanes to operate with the combustion heaters disconnected, would define the use of the appropriate maintenance manuals, and would name the Atlanta Aircraft Certification Office as the point of contact.

There have been an estimated 30,000 of the affected heaters manufactured since 1963. The FAA does not have any way of knowing how many airplanes have these heaters. Therefore, the following figures reflect the total amount of heaters manufactured. It is estimated that there could be up to 30,000 airplanes in the U.S. registry that have the affected heaters installed and that it will take approximately 6 hours to accomplish the proposed inspections at $55 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $9,900,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 82-07-03, Amendment 39-4354 (47 FR 13788, April 1, 1982), and adding the following new AD:

FL Aerospace (Formerly Janitrol): Docket No. 90-CE-42-AD.

Applicability: Model B1500, B2030, B3040, and B4050 combustion heaters installed in any airplane, certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To detect and prevent the failure of combustion heater tube assemblies, accomplish the following:

(a) Inspect the combustion heaters in accordance with the instructions in the FL Aerospace Maintenance and Overhaul Manual, Instruction P/N 24E25-1, revised May 1988, in accordance with the following schedule:

(1) If installed heaters have 450 or more heater hours time-in-service (TIS), within the next 50 heater hours TIS, unless already accomplished within the last 50 heater hours TIS, and thereafter at intervals not to exceed 100 heater hours TIS.

(2) If installed heaters have less than 450 heater hours TIS, prior to the accumulation of 500 heater hours TIS or within the next 50 heater hours TIS, whichever occurs later, unless already accomplished within the last 50 heater hours TIS, and thereafter at intervals not to exceed 100 heater hours TIS.

(3) If new or overhauled heaters are installed after the effective date of this AD, within 100 heater hours TIS after installation, and thereafter at intervals not to exceed 100 heater hours TIS.

(b) If any of the affected heaters do not pass the combustion pressure decay test required by the inspection in paragraph (a) of this AD, prior to further flight, accomplish one of the following:

(1) Overhaul the heater in accordance with the instruction in the FL Aerospace Maintenance and Overhaul Manual, Instructions P/N 24E25-1, revised May 1988, and perform the inspection specified in paragraph (a) of this AD at intervals not to exceed 100 heater hours TIS;

(2) If complete overhaul of the heater is not warranted because of TIS requirements, replace the combustion tube with a new serviceable unit in accordance with the instructions in the FL Aerospace Maintenance and Overhaul Manual, Instruction P/N 24E25-1, revised May 1988, and perform the inspection specified in paragraph (a) of this AD at intervals not to exceed 100 heater hours TIS; or

(3) Disconnect the combustion heater and install a placard in accordance with FL Aerospace Corporation Service Bulletin (SB) No. 76, dated July 27, 1990.

(c) If the affected combustion heaters are installed in Cessna or Piper Aircraft, the overhaul specified in paragraph (b) of this AD may be performed in accordance with the applicable Cessna or Piper Aircraft Heater Overhaul Manual or the FL Aerospace Maintenance and Overhaul Manual, Instruction P/N 24E25-1, revised May 1988. If the Cessna or Piper Aircraft Heater Overhaul Manual is utilized, only the procedures in that manual may be used; the time requirements of this AD must be maintained.

(d) The inspection and overhaul requirements of this AD are not required if the heater is disconnected and a placard is installed in accordance with the instructions in FL Aerospace Corporation SB No. 76, dated July 27, 190.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

(g) All persons affected by this directive may obtain copies of the documents referred to herein upon request to the FL Aerospace Corporation, Aircraft Products Division/Ocala Unit, 1900 NE 25th Avenue, Ocala, Florida 32670; Telephone (904) 622-1101; or FL Aerospace, Janitrol Aero Division, 4200 Surface Road, Columbus, Ohio 43228. The SB that is discussed in this AD may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on April 25, 1991.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-12369 Filed 5-23-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 91-AWP-5]

Proposed Amendment of the Red Bluff, CA, Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the effective hours of the Red Bluff, CA, Control Zone. The Red Bluff Control Zone is currently described as a full-time control zone. The control zone does not meet full-time control zone criteria and thus the need for an amendment to a part-time control zone.

DATES: Comments must be received on or before July 1, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP-530, Docket No. 91-AWP-5, Air Traffic Divison, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009. The official docket may be examined in the office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Office of the Manager, System Management Branch, AWP-530, Air Traffic Division, at the above address.

FOR FURTHER INFORMATION CONTACT: Tom Bowman, Airspace Specialist, System Management Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 927-0433.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91-AWP-5." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the System Management Branch, AWP-530, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, AWP-530, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of the NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the effective hours of the Red Bluff, CA, Control Zone. The Red Bluff Control Zone is currently described as a full-time control zone. Red Bluff Flight Service Station (FSS), which provides weather reporting for Red Bluff Municipal Airport, is reducing operating hours due to staffing considerations. When the FSS is not in operation, the control zone does not meet the weather reporting requirement and thus the need for modification to a part-time control zone. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.17 [Amended]

2. Section 71.171 is amended as follows:

Red Bluff, CA [Revised]

Within a 5-mile radius of Red Bluff Municipal Airport (lat. 40°09'04"N., long. 122°15'05"W.) and within 2 miles each side of the Red Bluff VORTAC 167° radial, extending from the 5-mile radius zone to 8 miles south of the VORTAC. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the *Airport/Facility Directory*.

Issued in Los Angeles, California, on May 10, 1991.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 91-12370 Filed 5-23-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 91-ACE-2]

Proposed Removal of Transition Area—Higginsville, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to remove the transition area at Higginsville, Missouri. The only instrument approach for the Higginsville Industrial Municipal Airport is based on the Higginsville Very High Frequency Omnidirectional Range (VOR) which is permanently out of service. Accordingly, action is being taken to remove the Higginsville transition area.

DATES: Comments must be received on or before June 28, 1991.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, System Management Branch, Air Traffic Division, ACE-530, 601 East 12th Street, Kansas City, Missouri 64106. Telephone (816) 426-3408.

The official docket may be examined at the Office of the Assistant Chief Counsel, Central Region, Federal Aviation Administration, room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, System Management Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, System Management Branch, Air Traffic Division, ACE-530, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the System Management Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, System Management Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 426-3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMS should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR part 71) which would remove the transition area for the Higginsville, Missouri, Industrial Municipal Airport. The Higginsville VOR is permanently out of service. Accordingly, since the only instrument approach procedure for the Higginsville Industrial Municipal Airport is based on that VOR, the FAA is proposing to remove the Higginsville, Missouri, transition area.

Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

Higginsville, Missouri [Removed]

2. Section 71.181 is amended as follows:

§ 71.181 [Amended]

Issued in Kansas City, Missouri, on May 14, 1991.

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region.

[FR Doc. 91-12371 Filed 5-23-91; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC-18158; S7-13-91]

RIN 3235-AE16

Rescission of Temporary Rules Providing Exemptions to Certain Money Market Funds and Other Persons and Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rescission of temporary rules.

SUMMARY: The Commission is proposing to rescind two temporary exemptive rules under the Investment Company Act of 1940 that were adopted in 1980. The rules provided exemptive relief primarily to money market funds that were affected by credit control regulations imposed by the Board of Governors of the Federal Reserve System ("Board"). The regulations were terminated in 1980, and the Commission believes that the exemptions provided by the rules have served their intended purposes and are no longer necessary.

DATES: Comments on the proposed rescission should be received on or before June 24, 1991.

ADDRESSES: Comments should refer to File S7-13-91 and should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Larisa Dobriansky, Special Counsel, or Robert E. Plaze, Assistant Director (202) 272-2107, Office of Disclosure and Adviser Regulation, Division of Investment Management, 450 5th Street NW., Washington, DC 20549.

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SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today is proposing to rescind Rule 6c-4(T) (17 CFR 270.6c-4(T)) and Rule 6c-5(T) (17 CFR 270.6c-5(T)) under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) ("Act" or "1940 Act").

I. Discussion of Temporary Rules

The Commission adopted rules 6c-4(T) and 6c-5(T) to provide exemptive relief under the Act and the Commission rules to money market funds affected by the credit control regulations adopted by the Board of Governors of the Federal Reserve System ("Board") in 1980.[1] Issued on March 14, 1980 and rescinded several months later, those regulations were intended to curb the extension of credit in order to reduce inflation in the United States economy. The credit controls, which applied to financial institutions, affected registered investment companies investing primarily in short-term obligations.[2] The regulations generally require those companies to maintain special non-interest bearing deposits ("special deposits") with Federal Reserve banks with respect to new assets.[3] The Commission adopted the two temporary rules to permit money market funds subject to the regulations ("affected or covered funds or companies") to adjust their operations in order to minimize the impact of the Board's regulations on the funds and their shareholders.

For many funds, the credit controls necessitated a freeze on sales to new shareholders and the formation of "clone" funds. The new clone funds were created to absorb new sales of shares which, if sold by the existing funds, would have increased the amount of their special deposits, and, thus, adversely affected the amount of dividends payable to existing shareholders. In many cases, the new fund that was established mirrored the old company, the only difference being that the clone fund was subject to the special deposit requirement while the old one was not.

[1] The Board adopted credit control regulations (formerly cited as 12 CFR 229.11 *et seq.*) under its authority under the Credit Control Act of 1969 (12 U.S.C. 1901 *et seq.*), as implemented by Executive Order 12201 of the President of the United States.

[2] The principal types of investment companies affected by the regulations were money market funds and unit investment trusts ("UIT"). However, the regulations provided an exemption to UITs from the credit controls. This exemption is discussed in section I. A., *infra*.

[3] Funds in existence at the time the controls took effect had to make special deposits only if their assets ("covered credit") increased above their base amounts (the amount of their covered credit outstanding as of the close of business on March 14, 1980).

A. Rule 6c-4(T)

The Commission adopted Rule 6c-4(T) on April 22, 1980 [4] to extend to the clone funds exemptive orders previously granted by the Commission to their "sister" funds ("existing funds").[5] Rule 6c-4(T) also exempted covered money market funds from section 18(f)(1) of the Act (15 U.S.C. 80a-18(f)(1)) to allow those funds to create one or more additional classes of securities in order to allocate fairly among their shareholders the effect of the special deposit requirement.[6]

In addition, Rule 6c-4(T) provided an exemption to covered UITs [7] from the provisions of section 11 of the Act (15 U.S.C. 80a-11) to permit series of those trusts and their principal underwriters to make certain offers of exchange to unitholders of expiring series in order to use effectively an exemption from the Board's regulations.[8] Those regulations exempted a trust or series of a trust from the special deposit requirement if the units of the trust or series were sold to unitholders of the terminating trust or series which were in existence on March 14, 1980.

B. Rule 6c-5(T)

On July 28, 1980, the Board's credit control regulations were rescinded.[9] Rule 6c-5(T) was issued on July 25, 1980 [10] to provide investors in clone funds with a means to exchange their shares promptly for shares of existing funds and to enhance the liquidity of clone funds in order to meet redemptions.[11]

Rule 6c-5(T) provided exemptions for two types of transactions if they were effected by November 21, 1980. The rule provided conditional exemptions from sections 12(d)(1) [12] and 13(a)(3) [13] of the Act (15 U.S.C. 80a-12(d)(1), 13(a)(3)) to facilitate offers of exchange by existing money market funds seeking to acquire the securities issued by affiliated [14] clone companies.[15] The use of exchange offers was one means of transferring shareholder interests in clone funds in an efficient and orderly manner to existing funds.

The rule also provided an exemption from section 17(a) of the Act (15 U.S.C. 80a-17(a)) to permit clone funds to transfer or sell portfolio securities to existing funds and other affiliated persons.[16] This exemption was intended to enable the clone fund to generate sufficient cash to meet anticipated redemptions, and to sell or transfer assets to the existing fund as shareholders transferred from the clone fund to the existing fund.

[4] *See* generally, Investment Company Act Rel. No. 11137 [45 FR 28307 (Apr. 29, 1980)].

[5] Prior to the adoption of Rule 2a-7 [17 CFR 270.2a-7], most money market funds required exemptive orders from the Commission to use amortized cost or penny-rounding valuation procedures to facilitate the maintenance of a stable price per share. *See* Investment Company Act Rel. No. 12206 (Feb. 1, 1982) [47 FR 5428, 5429 (Feb. 5, 1982)].

[6] Section 18(f)(1) of the Act, in relevant part, generally makes it unlawful for any registered open-end company to issue any class of senior security or to sell any senior security of which it is the issuer. Section 18(g) of the Act [15 U.S.C. 80a-18(g)] defines the term "senior security" to include any stock of a class having priority over any other class as to the payment of dividends.

[7] UITs are investment companies that consist of a fixed portfolio of securities, usually municipal bonds.

[8] Under Sections 11(a) and 11(c) of the Act [15 U.S.C. 80a-11 (a) and (c)], any type of offer of exchange of the securities of a registered unit investment trust for the securities of any other investment company would be unlawful absent an order of the Commission approving such offer.

[9] 45 FR 50718 (1980).

[10] Investment Company Act Release No. 11277 [45 FR 50725 (July 31, 1980)].

[11] *See* Investment Company Act Rel. No. 11283 (July 21, 1980) [45 FR 49917 (July 28, 1980)]. In that release, the Commission announced a general statement of policy concerning implications under the federal securities laws of the rescission of the Board's credit controls applicable to certain registered investment companies.

[12] Section 12(d)(1) generally prohibits any registered investment company from purchasing securities issued by another investment company in excess of certain percentage limitations. Rule 6c-5(T) permitted an existing fund to hold securities of a clone fund provided those securities were sold, exchanged, or otherwise disposed of prior to November 21, 1980, and no investment advisory fee, or fee for administrative services, was charged by the existing fund on account of the shares so held.

[13] Section 13(a)(3) prohibits a registered investment company from deviating from any investment policy which is changeable only if authorized by shareholder vote or from any "fundamental" policy recited in its registration statement under section 8(b)(3) of the Act [15 U.S.C. 80a-8(b)(3)]. Rule 6c-5(T) exempted from Section 13(a) existing funds whose fundamental policies would not permit the purchase of shares of other investment companies. However, in providing exemptions from sections 12(d)(1) and 13(a)(3), this rule required existing funds to have the authority under applicable state law to purchase and to hold shares of other registered investment companies.

[14] The term "affiliated person" is defined by section 2(a)(3) of the Act [15 U.S.C. 80a-2(a)(3)].

[15] The offers of exchange remained subject to Section 11(a) of the Act. That section makes it unlawful for an open-end management investment company or its principal underwriter to make an exchange offer to the fund's shareholders or to shareholders of another fund on any basis other than the relative net asset values of the shares to be exchanged, unless the terms of the offer are approved by the Commission or comply with Commission rules governing exchanges.

[16] Section 17(a) of the Act would have otherwise prohibited the transfer or sale of the clone fund's portfolio securities to affiliated persons of the company. Registered investment companies that are part of the same "complex" of investment companies are generally affiliated persons of each other [45 FR 20728]. See section 2(a)(3)(c) of the Act [15 U.S.C. 80a-2(a)(3)(c)].

II. Proposed Rescission of Temporary Rules

The Commission is proposing to rescind rules 6c-4(T) and 6c-5(T). These rules were designed to enable money market funds to adjust to the credit control regulations. In adopting each rule on an emergency basis as a "temporary" rule, the Commission stated that the rule might be rescinded once the exemptions provided by the rule were no longer necessary.[17]

By order effective July 28, 1980, the Board terminated the credit control regulations.[18] The termination of the regulations would seem to have eliminated any further need for rule 6c-4(T). Rule 6c-5(T), which permitted certain transactions resulting from the termination of the controls, required that transactions in reliance upon that rule be effected prior to November 21, 1980.

The Commission believes that the exemptions provided by the rules have served their intended purposes and are no longer necessary. However, the Commission solicits comments from any interested person on the continued need for either of the rules. In particular, comment is requested on whether any clone funds, organized in response to the credit controls, currently exist and continue to function in reliance upon the exemptions provided by rule 6c-4(T).

III. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding the proposed amendments. The analysis notes that the Commission is proposing to rescind rules 6c-4(T) and 6c-5(T) because the rules have served their intended purposes and are no longer necessary. It is unlikely that a substantial number of small money market funds that were affected by the Board's controls continue to rely on the exemptions provided by rule 6c-4(T). The transactions permitted by rule 6c-5(T) were required to be effected prior to November 21, 1980.

IV. Statutory Authority

The Commission is proposing to rescind rules 6c-4(T) and 6c-5(T) under the exemptive and rulemaking authority set forth in sections 6(c) (15 U.S.C. 80a-6(c)) and 38(a) (15 U.S.C. 80a-37(a)) of the Investment Company Act of 1940.

V. Removal of Rule Text

List of Subjects in 17 CFR Part 270

Investment companies, Securities.

The Commission is proposing to amend chapter II, title 17 of the Code of Federal Regulations as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for part 270 is revised to read as follows:

15 U.S.C. 80a-1 *et. seq.*, 80a-37, 80a-39 unless otherwise noted;

* * * * *

2. By removing §§ 270.6c-4(T) and 270.6c-5(T).

§ 270.6c-4(T) Temporary exemption for certain money market funds and other persons and companies. [Removed]

§ 270.6c-5(T) Temporary exemptions for certain money market funds and certain affiliated persons thereof. [Removed]

By the Commission.

Dated: May 20, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-12393 Filed 5-23-91; 8:45 am]

BILLING CODE 8010-01-M

[17] 45 FR 28307; 45 FR 50725.

[18] 45 FR 50718.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-116-90]

RIN 1545-AP30

Allocation of Charitable Contributions; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of public hearing on proposed regulations relating to allocation and apportionment of charitable contributions.

DATES: The public hearing will be held on Thursday, August 1, 1991, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Thursday, July 18, 1991.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (INTL-116-90), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-377-9236, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations to amend § 1.861-8(e) by adding new paragraph (e)(12). The proposed regulations appeared in the **Federal Register** for Tuesday, March 12, 1991 (56 FR 10395).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Thursday, July 18, 1991, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-12316 Filed 5-23-91; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AE45

Veterans Education; The Veterans Education and Employment Amendments of 1989 and the Post-Vietnam Era Veterans' Educational Assistance Program

AGENCY: Department of Defense and Department of Veterans Affairs.

ACTION: Proposed regulations.

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SUMMARY: The Veterans Education and Employment Amendments of 1989 contain several provisions which affect the Post-Vietnam Era Veterans Educational Assistance Program (VEAP). These include amendments to the work-study program; changes in the method for determining the end of a veteran's eligibility period; and a provision concerning duplication of benefits. This proposal will acquaint the public with the way in which the Department of Veterans Affairs (VA) intends to implement these provisions of law.

DATES: Comments must be received on or before June 24, 1991. Comments will be available for public inspection until July 3, 1991. It is proposed that the amendments to § 21.5145, like the provision of law they implement be made retroactively effective on May 1, 1990. It is proposed that the amendments to the remainder of the regulations, like the provisions of law they implement, be made retroactively effective on December 18, 1989.

ADDRESSES: Send written comments to Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address between the hours 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until July 3, 1991.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (202) 233–2092.

SUPPLEMENTARY INFORMATION: The Veterans Education and Employment Amendments of 1989 (title IV, Pub. L. 101–237) contain provisions which affect VEAP. These include changes in the method for determining the end of a veteran's eligibility period and amendments to the work-study program. The regulations governing these portions of VEAP must be amended accordingly.

The Department of Veterans Affairs and the Department of Defense have determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs and the Secretary of Defense have certified that these amended regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulations affect only individuals. They will have no significant impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Department of Veterans Affairs and the Department of Defense find that good cause exists for making the amendments to § 21.5145, like the provision of law they implement retroactively effective on May 1, 1990. The Department of Veterans Affairs and the Department of Defense also find that good cause exists for making the amendments to the remainder of the regulations, like the provisions of law they implement, retroactively effective on December 18, 1989. It is necessary to implement these provisions of law as soon as possible for two reasons. For those provisions which are intended to achieve a benefit for the individual, the maximum benefits intended in the legislation will be achieved through prompt implementation. For those provisions which are restrictive, prompt implementation will properly achieve the intent of the law. Hence, a delayed effective date would be contrary to statutory design, would complicate administration of these provisions of law; might result in the denial of a benefit to someone who is entitled to it; or might result in the awarding of a benefit to someone who is not entitled to it.

The Catalog of Federal Domestic Assistance number for the program affected by these regulations is 64.120.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 13, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Approved: April 23, 1991.

Donald W. Jones,

Lieutenant General, USA Deputy Assistant Secretary of Defense (Military Manpower and Personnel Policy).

PART 21—[AMENDED]

38 CFR part 21, Vocational Rehabilitation and Education, is proposed to be amended as follows:

1. In § 21.5021, paragraph (u)(2) and its authority citation are revised and paragraph (w) is added to read as follows:

§ 21.5021 Definitions.

* * * * * * *

(u) * * *

(2) A course which permits an individual to update knowledge and skills or be instructed in the technological advances which have occurred in the individual's field of employment during and since the individual's active military service and which is necessary to enable the individual to pursue an approved program of education.

(Authority: 38 U.S.C. 1641(a); Pub. L. 100–689, Pub. L. 101–237)

* * * * * * *

(w) *Continuous service* Means—

(1) Active duty served without interruption. A complete separation from active duty service will interrupt the continuity of active duty service.

(2) Time lost while on active duty will not interrupt the continuity of service. Time lost includes, but is not limited to, excess leave, noncreditable time and not-on-duty time.

(Authority: 38 U.S.C. 1632(a); Pub. L. 101–237)

2. In § 21.5022, paragraphs (a)(1) through (6) are added and the authority citation is revised to read as follows:

§ 21.5022 Eligibility under more than one program.

(a) * * *

(1) 38 U.S.C. chapter 31,

(2) 38 U.S.C. chapter 35,

(3) 10 U.S.C. chapter 106,

(4) Section 903 of the Department of Defense Authorization Act, 1981,

(5) The Hostage Relief Act of 1980, or

(6) The Omnibus Diplomatic Security and Antiterrorism Act of 1986.

(Authority: 38 U.S.C. 1781(b); Pub. L. 98–223, Pub. L. 101–237)

* * * * * * *

3. In § 21.5040, paragraph (g) is revised and paragraph (h) is added to read as follows:

§ 21.5040 Basic eligibility.

* * * * * * *

(g) *Election to receive educational assistance allowance under 38 U.S.C. chapter 32 instead of 38 U.S.C. chapter 34.* Some individuals who have eligibility under 38 U.S.C. chapter 34 may elect instead to receive educational assistance allowance under 38 U.S.C. chapter 32.

* * * * * * *

(h) *Election to receive educational assistance allowance under 38 U.S.C. chapter 32 instead of 10 U.S.C. chapter 106.* An individual who serves in the Selected Reserves may not receive credit for that service under both 38 U.S.C. chapter 32 and 10 U.S.C. chapter 106. If he or she wishes to receive educational assistance based upon this service, the veteran must elect the chapter under which he or she will receive benefits.

(1) This election must be in writing and submitted to VA.

(2) If a veteran elects to receive educational assistance under 38 U.S.C. chapter 32, and negotiates an educational assistance check which is based upon the period of service for which the election was made, the election is irrevocable. Negotiation of an educational assistance check provided under either 38 U.S.C. chapter 32 or 10 U.S.C. chapter 106, but based upon a period of service which preceded the period for which an election was made, will not serve to make the election irrevocable.

(Authority: 38 U.S.C. 1621(f); Pub. L. 101–237)

4. In § 21.5041, paragraph (a) is revised to read as follows:

§ 21.5041 Periods of entitlement.

(a) *Ten-year delimiting period.* (1) Except as provided in § 21.5042 no educational assistance shall be afforded an eligible individual under chapter 32 beyond the date of 10 years after the later of the following:

(i) His or her last discharge or release from a period of active duty of 90 days or more of continuous service; or

(ii) His or her last discharge or release from a period of active duty of any length when the eligible individual is discharged or released—

(A) For a service-connected disability;

(B) For a medical condition which preexisted such service and which VA determines is not service-connected;

(C) For hardship; or

(D) Involuntarily for convenience of the government after October 1, 1987, as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(2) In determining whether an individual was discharged or released from active duty for a medical condition which preexisted that active duty, VA will be bound by a decision made by a competent military authority.

(Authority: 38 U.S.C. 1632; Pub. L. 94–502, Pub. L. 99–576, Pub. L. 101–237)

5. In § 21.5065, paragraph (c) is added to read as follows:

§ 21.5065 Refunds without disenrollment.

* * * * * * *

(c) *Refunds following an election under § 21.5040(h).* If a veteran described in § 21.5040(h) makes an election to have a period of service credited toward his or her eligibility and entitlement under 10 U.S.C. chapter 106, he or she will be required to receive a refund of any contributions he or she made to the fund during that period of service.

(Authority: 38 U.S.C. 1621(f); Pub. L. 101–237)

6. In § 21.5138 paragraph (b)(13) is revised to read as follows:

§ 21.5138 Computation of benefit payments and monthly rates.

* * * * * * *

(b) * * *

(13) If the veteran is pursuing certain courses which do not lead to a standard college degree, has excessive absences, and incurred those absences before December 18, 1989, reduce the amount on line 14 sufficiently to avoid paying for any excessive absence. Enter the result.	(16).....

(Authority: 38 U.S.C. 1633 (1989), 38 U.S.C. 1780(a)(2) (1974); Pub. L. 101–237)

7. In § 21.5145, the section heading and paragraph (a), (d) and (f) are revised to read as follows:

§ 21.5145 Work-study program.

(a) *Eligibility.* Veterans pursuing programs of education or training under chapter 32 on a three-quarter-time or greater basis are eligible to receive a work-study allowance.

(Authority: 38 U.S.C. 1641, 1685; Pub. L. 99–576, Pub. L. 101–237)

* * * * * * *

(d) *Rate of payment.* In return for the veteran's agreement to perform services for VA totaling not more than 25 hours times the number of weeks contained in an enrollment period, VA will pay an allowance in an amount equal to the higher of—

(1) The hourly minimum wage in effect under section 6(a) of the Fair Labor Standards Act of 1938 times the number of hours the veteran has agreed to work; or

(2) The hourly minimum wage under comparable law of the State in which the services are to be performed times the number of hours the veteran has agreed to work.

(Authority: 38 U.S.C. 1641, 1685; Pub. L. 99–576, Pub. L. 101–237)

* * * * * * *

(f) *Veteran reduces rate of training.* In the event the veteran reduces his or her training to less than three-quarter-time before completing an agreement, the veteran, with the approval of the Director of the VA field facility, or designee, may be permitted to complete the portions of an agreement in the same or immediately following term, quarter or semester in which the veteran ceases to be a three-quarter-time student.

(Authority: 38 U.S.C. 1641, 1685; Pub. L. 99–576; Pub. L. 101–237)

[FR Doc. 91–12374 Filed 5–23–91; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[FRL–3958–6]

Intent To Form an Advisory Committee To Negotiate Proposed Regulations Implementing NO, Emission Reduction Provisions; Announcement of Additional Meeting

AGENCY: Environmental Protection Agency.

ACTION: Intent to form an advisory committee to negotiate proposed regulations.

SUMMARY: In a notice published on May 8, 1991, (56 FR 21348) the U.S. Environmental Protection Agency (EPA) announced its intention to consider establishing an advisory committee to negotiate regulations for reducing the emissions of nitrogen oxides (NO_x) from existing coal-fired boilers at electrical power plants. The notice stated that if the Agency decides to go forward with the negotiated rulemaking, the first meeting would be held on June 12, 1991. This notice is to inform the public that the first meetings of the advisory committee will occur on June 11 and June 12, 1991.

DATES: EPA will conduct the first meetings of the negotiated rulemaking on June 11 and June 12, 1991.

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ADDRESSES: This notice is also providing the phone number for the location of the public meeting scheduled on May 22, 1991 at 1180 N. Fairfax Street, Alexandria, VA in the event that anyone needs to call for more specific directions. This phone number is: (703) 683-9522. The address for the June 11 and June 12 meeting will occur at the same location.

FOR FURTHER INFORMATION CONTACT: For information pertaining establishment of the negotiation committee and associated administrative matters, contact Chris Kirtz, Director, Regulatory Negotiation Project, Regulatory Management Division, US EPA (PM-223Y), 401 M Street SW., Washington, DC 20460, telephone (202) 382-7565. For information pertaining to the NO_x rule and associated issues, contact Zofia Kosim, ANR-445, EPA, Acid Rain Division, 401 M Street SW., Washington, DC 20460 or by phone, (202) 475-9400.

Dated: May 15, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91-12416 Filed 5-23-91; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 51

[FRL-3959-3]

State Implementation Plan Completeness Criteria

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: The Clean Air Act (Act) Amendments of 1990 (1990 Amendments) require the Administrator of the Environmental Protection Agency (EPA) to promulgate minimum criteria that any plan submission must meet in order to be considered a complete State implementation plan (SIP) submission. The Act requires that such criteria be promulgated by August 15, 1991. This rulemaking notice proposes to satisfy the statutory requirements by making minor changes to the SIP completeness criteria that were published by the EPA as a final rule on February 16, 1990 (55 FR 5824).

DATES: All comments should be submitted to EPA at the address shown below by June 24, 1991. Because of the short statutory deadline for promulgating the completeness criteria, the Agency does not believe that it can extend the 30-day public comment period.

ADDRESSES: Interested parties may submit written comments in duplicate to Public Docket No. A-91-11 at: Central Docket Section (A-130), South Conference Center, room 4, U.S. Environmental Protection Agency, Attention: Docket No. A-91-11, 401 M Street SW., Washington, DC 20460.

Materials relevant to this rulemaking have been placed in Docket No. A-91-11 by EPA and are available for inspection and copying at the above address between 8 a.m. and 3:30 p.m., Monday through Friday. The EPA may charge a reasonable fee for copying.

Additionally, the public is advised that Public Docket No. A-88-18 is the docket that was established for the completeness criteria that were promulgated by EPA on February 16, 1990 (55 FR 5824). The background materials that were placed in that docket may be of interest to the reader.

FOR FURTHER INFORMATION CONTACT: Denise Gerth, Office of Air Quality Planning and Standards (MD-15), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541-5550 or (FTS) 629-5550.

SUPPLEMENTARY INFORMATION:

Completeness Criteria Under SIP Reforms

Prior to passage of the 1990 Amendments, EPA adopted completeness criteria under section 301(a) of the Act on its own initiative as part of an overall effort to reform SIP processing within the Agency. On February 16, 1990 (55 FR 5824), EPA promulgated completeness review criteria for SIP submittals. The completeness criteria described the procedures for assessing whether a SIP submittal was adequate to trigger the Act requirement tht EPA review and take action on the submittal. The completeness criteria were one of the SIP reform measures that were announced on January 19, 1989 (54 FR 2214) by EPA in the Notice of Procedural Changes. The reader is referred to these notices for detailed information on EPA's SIP processing reform initiatives.

Affirmative action is required by EPA on essentially all aspects of every SIP and SIP revision. The EPA's final decision on a SIP submission comes after adoption at the State level and submittal of the SIP to EPA. The EPA's previous SIP processing procedures provided no mechanism to reject or otherwise eliminate essentially unreviewable SIP submittals (i.e., those missing information necessary to make a reasonable decision as to their procedural and environmental adequacy) without going through rulemaking to disapprove the submittal. Therefore, SIP submittals that lacked required basic information such as evidence of legal authority, properly conducted public hearings, or technical support information often went through full notice and comment rulemaking before being rejected. This process resulted in uncertainty as to the review status, caused excessive delays in reviewing SIP's, frustrated the development of an optimum State/Federal partnership, caused confusion for sources regarding applicable regulations, and generally dampened initiatives in State regulatory programs.

The completeness criteria that are in appendix V of part 51 provide a procedure and screening criteria which enable States to prepare adequate SIP submittals and enable EPA reviewers to promptly screen SIP submittals, identify those that are incomplete, and return them to the State for corrective action without having to go through rulemaking. The criteria have been in place since February 16, 1990 and have been effective in screening incomplete SIP submittals.

The criteria for determining whether a submittal by the State is complete have been separated into two categories: Administrative information and technical support information. Administrative information includes the documentation necessary to demonstrate that the basic administrative procedures have been adhered to by the State during the rule adoption process. Technical support information includes the documentation that adequately identifies all of the required technical components of the plan submissions. For detailed information on the completeness criteria, the reader is referred to the proposed rule that was published on January 19, 1989 (54 FR 2138).

Benefits of Completeness Criteria

The completeness criteria that were promulgated on February 16, 1990 have brought about several benefits to both EPA and the State and local agencies in the air quality management process. First, States are informed promptly as to the reviewability of their submittals, thereby reducing the uncertainty on the State's part, and fewer requests by EPA for information from the States during the EPA review process are received. Second, SIP submittals that are inadequate for processing are returned to the States to be corrected rather than going through the SIP review process only to be disapproved, which requires the States to reinitiate the process. Third, unreviewable SIP revisions are removed from the process early so that

resources at the Federal level are allocated to processing only SIP submittals that are adequate for review. Finally, the completeness criteria provide the States with guidelines on how to prepare reviewable SIP's, thereby improving the overall quality of State submittals. The completeness criteria that EPA promulgated on February 16, 1990 for making completeness determinations have been an effective tool for ensuring the quality of State submittals and reducing the effort expended in reviewing proposed SIP actions that are inherently not approvable.

Statutory Requirements of Clean Air Act

The 1990 Amendments established section 110(k)(1) which requires EPA to establish completeness criteria for State plan submissions. Following are the specific requirements that the Amendments set forth in requiring completeness criteria.

1. Completeness of Plan Submissions

The 1990 Amendments established section 110(k)(1) which requires EPA to develop and promulgate completeness criteria not later than August 15, 1991. The completeness criteria are to be the minimum criteria that any plan submission must meet before the Administrator is required to take rulemaking action on such submission. The criteria are to be limited to the information necessary to enable the Administrator to determine whether the plan submission complies with the provisions of the Act.

2. Completeness Finding

The Act requires that within 60 days of the Administrator's receipt of a plan or plan revision, but no later than 6 months after the date by which a State is required to submit the plan or plan revision, the Administrator shall determine whether the completeness criteria have been met. If the Administrator has not made a completeness determination by 6 months after receipt of the submission, that submission shall on that date be considered to have met the minimum criteria (section 110(k)(1)(B)).

The 1990 Amendments impose an additional responsibility upon EPA to make a completeness determination. Where a plan submission is required to be submitted by the State, the Administrator is to make a completeness finding within 6 months whether or not the State has made such a submission. A finding that the State has failed to submit a complete revision may have other effects. A determination that a SIP submissioin is incomplete may trigger the sanctions provisions of the 1990 Amendments (see section 179(a)(1)).

3. Effect of Finding

When a determination has been made that a submittal is complete, the Administrator is required to act on the submittal under section 110(k). When the Administrator determines that a plan submission (or part thereof) does not meet the completeness criteria, the State shall be treated as not having made the submission.

Deadline for Action on Plan Submissions

When it has been determined by the Administrator (or when a determination is made by default) that a State has submitted a plan or plan revision that meets the minimum completeness criteria, the Act requires the Administrator to approve, partially approve, or disapprove the submission within 12 months.

The EPA had previously established an internal 14-month time frame for processing plan submissions. The Congress, in amending the Act, indicated a desire for a different processing schedule. The public is advised that EPA now intends to act on all SIP submissions within 12 months after a completeness determination is made (or a submission is deemed complete by operation of law). The processing times for different categories of SIP actions, however, are expected to vary within that 12-month range. Note that the 12-month time frame does not start until after the completeness determination is made. When EPA was attempting to meet its internally imposed 14-month schedule for processing plan submissions, the completeness review was included in that 14-month time frame. Since the 12-month time frame specified in the Act for EPA to take final rulemaking action on a submittal does not include the 60-day time frame for making a completeness determination, the time EPA actually takes to process a plan submission, in most cases, will not change from that taken before passage of the 1990 Amendments.

Redesignations

As promulgated on February 16, 1990, the existing completeness criteria applied to redesignation requests as well as SIP revisions. The 1990 Amendments, however, provide separate authority for EPA action on redesignations under section 107(d)(3)(D). Redesignations are not subject to section 110(k), and EPA is not obligated to promulgate completeness criteria or make completeness determinations on redesignations. In addition, section 107(d)(3)(D) provides EPA with an 18-month period in which to act on redesignation requests, running from the date of receipt of a complete request. Section 107(d) uses the term "complete" request, but does not specify how EPA is to determine completeness in that context.

The EPA has determined that, pursuant to its general rulemaking authority of section 301(a) of the Act, and as necessary to implement the requirements of section 107(d)(3)(D), it is appropriate to continue applying the completeness criteria to redesignation requests. Although not mandated by section 107(d)(3)(D), EPA will use the criteria to determine when a State has made a complete redesignation request to trigger the requirements of that section.

Section 107(d)(3)(E) of the amended Act sets out the standard for approvable redesignation requests. The EPA has reviewed the completeness criteria in light of these standards and concludes that the existing criteria will serve the purposes of this section with one major addition. This addition, concerning maintenance plans, is described below in the section on changes to the criteria.

Changes to Present Completeness Criteria

The 1990 Amendments require EPA to promulgate completeness criteria by August 15, 1991. The first step EPA took was to review the existing completeness criteria to determine if these criteria met the requirements of section 110(k)(1) of the Act. The EPA has, therefore, reviewed the February 16, 1990 criteria against the requirements in the Act as amended. The EPA believes that the existing criteria, with minor modifications described below, satisfy the requirements of the 1990 Amendments at this time. As EPA gains experience with SIP processing under the amended Act, EPA may revisit the completeness criteria to determine if any additional changes are warranted. Given the 9-month statutory deadline for promulgation of minimum completeness criteria, EPA believes it is appropriate at the present time to adopt the existing criteria with minor changes. The following is a discussion of the changes EPA proposes to make to the February 16, 1990 completeness criteria in 40 CFR part 51, appendix V, in order to meet the requirements in section 110(k)(1) of the amended Act.

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1. Time Frame for Making a Completeness Determination

The February 16, 1990 Federal Register notice promulgating the completeness criteria indicated EPA's intent to make a completeness determination within 45 days of receipt of a submission. The 1990 Amendments, however, require the Administrator to make a completeness determination on a plan submission within 60 days of EPA's receipt of a plan or plan revision, but no later than 6 months after the date by which the State was required to submit the plan or revision. The Amendments further indicate that should the Administrator fail to make a completeness determination within 6 months of receipt of a plan submission, the submission will automatically be deemed complete by operation of law on that date. Consequently, 40 CFR part 51, appendix V, paragraph 1.2, is being revised to include both the 60-day and 6-month time frames.

2. Paragraph 2.2, Technical Support, appendix V

Section 175A of the Act is a new section which requires each State that submits a request under section 107(d) of the Act, for redesignation of an area from nonattainment to attainment for any primary national ambient air quality standard (NAAQS), to also submit a maintenance plan demonstrating maintenance of the relevant NAAQS for at least 10 years after redesignation. Although section 110(k)(1), Completeness of Plan Submissions, does not address maintenance plans for section 107(d) redesignations, EPA believes that section 107(d)(3) (D) and (E) provide the Agency authority to prescribe that a redesignation request will not be considered complete (and hence will not trigger required EPA action) if it does not include, among other things, a maintenance plan meeting the requirements of section 175A. Consequently, appendix V of the completeness criteria is being revised by adding language to paragraph 2.2(d) indicating that States are required to submit a maintenance plan when a request for redesignation to attainment of the primary NAAQS is submitted for approval to EPA.

Legal Authority

The EPA is proposing to promulgate these completeness criteria as they apply to plan submissions under the authority of section 110(k)(1)(A), which specifically requires EPA to promulgate such criteria. Additionally, EPA is proposing to promulgate the completeness criteria as they apply to section 107 redesignation requests under sections 107(d)(3) and 301(a) of the Act.

The EPA originally had promulgated the existing completeness criteria on February 16, 1990 under the general authority of section 301(a)(1) of the pre-amended Act. That section authorized the Administrator to promulgate such regulations as are necessary to carry out his functions under the Act. The EPA concluded that it was necessary to promulgate completeness criteria to enable the Agency to carry out its responsibilities to process SIP submissions in a timely fashion.

The 1990 Amendments include specific authority in section 110(k)(1) that mandates EPA to promulgate minimum criteria for determining completeness of plan submissions. The EPA believes that the action being proposed today, when published as a final rule, will satisfy the requirement of section 110(k)(1) of the Amendments.

Conclusion

The EPA is proposing these amendments to the completeness criteria that were published on February 16, 1990 as required by section 110(k)(1)(A) of the Act. The EPA believes that the completeness criteria that were published on February 16, 1990, with some minor changes that are described above, meet the requirements of the Act. The EPA intends to continue to review the basic provisions of the Act and, if appropriate, will amend these minimum criteria. Because of the myriad of Act requirements imposed on EPA and the States, upon detailed analyses of the Act, EPA may publish a subsequent rule(s) outlining additional completeness requirements.

Administrative Requirements

The docket is an organized and complete file of all the information considered by EPA in the development of these completeness criteria. The docket is a dynamic file because material is added throughout the notice preparation and comment process. The docketing system is intended to allow members of the public and industries involved to identify and locate documents so that they can effectively participate in the process. The public docket number for this rulemaking action is A–91–11. Additionally, the docket for the completeness criteria that EPA promulgated on February 16, 1990 (55 FR 5824) may also be of interest to the reader; that docket number is A–88–18.

Section 317(a) of the Clean Air Act, 42 U.S.C. 7617(a), states that economic impact assessments are required for revisions to standards or regulations when the Administrator determines such revisions to be substantial. The changes described today do not change the substantive requirements for preparing and submitting an adequate SIP package. The completeness criteria merely itemize those components of a SIP submittal that must be included to enable EPA to determine that a submittal meets the requirements imposed by various other provisions in the Act. No increase in cost as a result of complying with the change described today is expected; moreover, the monitoring, recordkeeping, and reporting requirements have been determined to be insubstantial. Because the expected economic effect of the changes is not substantial, no detailed economic impact assessment has been prepared.

Under Executive Order (E.O.) 12291, EPA is required to judge whether an action is "major" and, therefore, subject to the requirement of a regulatory impact analysis (RIA). The Agency has determined that the changes to the SIP completeness criteria being announced today would result in none of the significant adverse economic effects set forth in section 1(b) of the E.O. as grounds for a finding of "major." The Agency has, therefore, concluded that this action is not a "major" action under E.O. 12291. This rule was submitted to the Office of Mangement and Budget (OMB) for review under E.O. 12291. A copy of the draft rule as submitted to OMB, any documents accompanying the draft, any written comment received from other agencies (including OMB), and any written responses to those comments have been included in the docket.

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, requires the identification of potentially adverse impacts of Federal actions upon small business entities. The Act requires the completion of a regulatory flexibility analysis for every action unless the Administrator certifies that the action will not have a significant economic impact on a substantial number of small entities. For the reasons described above relating to the impact of this rule, I hereby certify that the final rule will not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 51

Administrative practice and procedure; air pollution control; reporting and recordkeeping requirements.

Dated: May 21, 1991.

William K. Reilly,

Administrator.

Title 40 Code of Federal Regulations, part 51, is amended as follows:

1. The authority citation for part 51 is revised to read as follows:

PART 51—[AMENDED]

Authority: 42 U.S.C. 7401(b)(1), 7410, 7407(d), 7470–7479, 7501–7508, and 7801(a), unless otherwise noted.

2. Part 51, appendix V, is amended by revising paragraphs 1.2 and 2.2(d) to read as follows:

Appendix V, Criteria for Determining the Completeness of Plan Submissions

* * * * *

1.2 The EPA shall inform the submitting official whether or not a plan submission meets the requirements of this appendix V within 60 days of EPA's receipt of the submittal, but no later than 6 months after the date by which the State was required to submit the plan or revision. If a completeness determination is not made by 6 months from receipt of a submittal, the submittal shall be deemed complete by operation of law on the date 6 months from receipt. A determination of completeness under this paragraph means that the submission is an official submission for purposes of section 51.103.

* * * * *

2.2 * * * (d) The State's demonstration that the national ambient air quality standards, prevention of significant deterioration increments, reasonable further progress demonstration, and visibility, as applicable, are protected if the plan is approved and implemented. For all requests to redesignate an area to attainment for a national primary ambient air quality standard, under section 107 of the Clean Air Act, a revision must be submitted to provide for the maintenance of the national air quality standards for at least 10 years as required by section 175A of the Clean Air Act.

* * * * *

[FR Doc. 91–12510 Filed 5–23–91; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF DEFENSE

Department of the Air Force

48 CFR Chapter 53

Air Force Federal Acquisition Regulation Supplement Clause: Contractor Toxicological Testing—Aircraft Accidents

AGENCY: Department of the Air Force, DoD.

ACTION: Proposed rule.

SUMMARY: The Air Force is considering the use of a clause to require Toxicological testing of certain contractor employees after an aircraft accident. The clause will require Toxicological testing of any contractor employees that operated, controlled or performed maintenance on an Air Force aircraft that is involved in a serious accident. This testing is needed to determine if any of the contractor employees were impaired by use of a controlled substance. This requirement will also apply to subcontractor employees that operate, control or perform maintenance on an Air Force aircraft under the contract.

DATES: Comments are solicited and must be received by June 24, 1991 to be considered in the final rule.

ADDRESSES: SAF/AQCF, room 4C314, The Pentagon, Washington DC 20330–1000.

FOR FURTHER INFORMATION CONTACT: Rick Summerour, SAF/AQCF, The Pentagon, Washington, DC 20330–1000, telephone (703) 695–3859.

SUPPLEMENTARY INFORMATION:

A. Background

When an accident involving an Air Force aircraft results in injury or property damage, a mishap investigation is required to determine the cause and what corrective measures are needed. These investigations routinely include toxicological testing to determine if any persons that operated, controlled or performed maintenance on the aircraft may have been impaired by use of a controlled substance.

Procedures are in place for testing Air Force military and civilian employees. However, there is no mechanism for requiring contractor employees to likewise submit to the testing. Many maintenance functions that previously were done by military personnel are now being performed under contract. Therefore, there is a need to extend this requirement to include contractor personnel.

To ensure that unneeded testing is not done, Air Force procedures will limit contractor testing to flight crews and other individuals whose actions may have been a factor in the accident. Testing will only be required in accidents that involve facilities or serious injuries or property damage that is likely to exceed $200,000. The decision to require testing will reside with the official responsible for the investigation.

In order to minimize the cost and burdens associated with this requirement, implementation will be accomplished under each contractor's existing Drug-Free Work Force Program. Requirements for the Drug-Free Work Force program are in the clause at DFARS 252.223–7500 Drug-Free Work Force (Sep 1988).

B. Regulatory Flexibility Act

The clause will not have a significant effect on small entities. Virtually all aircraft maintenance contracts that would use this clause will be performed by large businesses.

C. Paperwork Reduction Act

This clause will not require "collection of information" as defined in section 3502, para (4), of the act. Therefore, the Paperwork Reduction Act does not apply.

List of Subjects in 48 CFR Part 53

Government procurement.

Therefore, it is proposed to amend title 48 of the Code of Federal Regulations chapter 53 by adding parts 5323 and 5352 to read as follows:

PART 5323—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY AND DRUG-FREE WORKPLACE

Authority: 5 U.S.C. 301 and FAR 1.301.

Subpart 5323.5—Drug-free Workplace

5323.505 Contractor Toxicological Testing—Aircraft Accidents.

Contracting officers shall insert the clause at DFARS 252.223–7500 Drug-Free Work Force and the clause at AFFARS 5352.223–9001, Contractor Toxicological Testing—Aircraft Accidents, in solicitations and contracts in which the contractor will be responsible for operation, control or maintenance of Government aircraft.

PART 5352.2—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Authority: 5 U.S.C. 301 and FAR 1.301.

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Subpart 5352.2—Text of Provisions and Clauses

552.223-9001 Contractor Toxicological Testing—Aircraft Accidents.

As prescribed at 5323.505, insert the following clause:

CONTRACTOR TOXICOLOGICAL TESTING—AIRCRAFT ACCIDENTS (DATE)

(a) If an aircraft accident causes death or serious injury or property damage that is likely to exceed $200,000, the Contractor shall require any of its employees, or the employees of a subcontractor, whose actions or inactions may have been a factor in the accident, to undergo testing as provided in paragraph (c) below.

(b) The Contracting Officer shall identify to the Contractor the employees to be tested and the name and location of the official conducting the mishap or accident investigaton. Employees to be tested will include members of the flight crew and others that in the judgment of the official responsible for the investigation may have been a factor in the accident.

(c) Testing shall be accomplished in accordance with procedures established under Contractor's Drug-Free Work Force Program (see DFARS clause 252.223-7500) and shall be limited to the substances for which testing is prescribed by § 2.1 of subpart B of the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" (53 FR 11980 (April 11, 1988)).

(d) Samples or specimens shall be collected as soon as possible, but no later than 32 hours after notification by the Contracting Officer. The Contractor shall promptly provide the test results of each employee tested to the official conducting the mishap or accident investigation.

(End of Clause)

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91-12246 Filed 5-23-91; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB59

Endangered and Threatened Wildlife and Plants: Proposed Establishment of a Nonessential Experimental Population of Black-Footed Ferrets in Southeastern Wyoming

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service), in cooperation with the Wyoming Game and Fish Department (Department), proposes to reintroduce captive-raised black-footed ferrets (*Mustela nigripes*) into the 5,354 km² (2,068 square miles) Shirley Basin/Medicine Bow Management Area in southeastern Wyoming. A backup reintroduction site (Meeteetse Management Area) in northwestern Wyoming also is being readied. Provided conditions are acceptable, 20 or more excess captive-raised ferrets will be released in 1991 and 50 or more excess ferrets will be released annually thereafter for 2 to 4 years. Releases will test ferret reintroduction techniques and, if fully successful, will establish a wild population within 5 years. The Shirley Basin/Medicine Bow population (or the Meeteetse population, if necessary) is proposed to be designated a nonessential experimental population in accordance with section 10(j) of the Endangered Species Act of 1973, as amended. This population would be managed in accordance with the provisions of the accompanying special rule. The Service solicits comments on this proposed designation and special rulemaking.

DATES: Comments from all interested parties must be received by June 24, 1991.

ADDRESSES: Comments and materials concerning this proposal should be sent to Mr. Larry Shanks, Chief, Division of Endangered Species and Environmental Contaminants, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225 (303/236-7398 or FTS 776-7398). Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Service's:

—Regional Office, Division of Endangered Species and Environmental Contaminants, 134 Union Boulevard, Lakewood, Colorado (303/236-7398 or FTS 776-7398), and

—Wyoming Fish and Wildlife Enhancement Office, 2617 East Lincolnway, suite A, Cheyenne, Wyoming (307/772-2374 or FTS 328-2374).

FOR FURTHER INFORMATION CONTACT: Mr. Larry Shanks (303/236-7398 or FTS 776-7398) at the Colorado address or Mr. Steve Torbit (307/772-2374 or FTS 328-2374) at the Wyoming address above.

SUPPLEMENTARY INFORMATION:

Background

1. Legislative: Among the significant changes made in the Endangered Species Act by the Amendments of 1982, Public Law No. 97-304, was the creation of a new section 10(j) which provides for the designation of specific populations of listed species as "experimental populations." Under previous authorities in the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), the U.S. Fish and Wildlife Service (Service) was permitted to reintroduce populations into unoccupied portions of a listed species' historical range when it would foster the conservation and recovery of the species. However, local opposition to reintroduction efforts, stemming from concerns about the restrictions and prohibitions on Federal and private activities contained in sections 7 and 9 of the Act, severely handicapped the effectiveness of this as a management tool.

Under section 10(j), reintroduced populations established outside the current range but within the species' historical range may be designated, at the discretion of the Service, as "experimental." This designation increases the Service's flexibility to manage reintroduced populations of endangered species because experimental populations may be treated as threatened species. The Service has more discretion in devising management programs for threatened species than for endangered species.

Additional management flexibility is possible if the experimental population is found to be "nonessential" to the continued existence of the species in question. Nonessential experimental populations located outside National Wildlife Refuge or National Park lands are treated for purposes of section 7 of the Act as if they were only proposed for listing. Only two provisions of section 7 would apply: Section 7(a)(1), which requires all Federal Agencies to establish conservation programs; and section 7(a)(4), which requires Federal Agencies to confer informally with the Service on actions that are likely to jeopardize the continued existence of the species. Section 7(a)(2) of the Act, which requires Federal Agencies to insure that their activities are not likely to jeopardize the continued existence of a listed species, would not apply to this proposal.

Individual animals comprising the designated experimental population can be removed from an existing source or donor population only after it has been determined that their removal is not likely to jeopardize the continued

existence of the species. Moreover, removal must be done under a permit issued in accordance with the requirements in 50 CFR 17.22.

2. Biological: The species addressed by this proposed rulemaking is the black-footed ferret (*Mustela nigripes*), an endangered carnivore with a black facemask, black legs, and a black-tipped tail. It is nearly 2 feet long and weighs up to 2.5 pounds. The only ferret native to North America, it may be extinct in the wild.

Though the black-footed ferret was found over a wide area historically, it is difficult to make a conclusive statement on its historical abundance due to its nocturnal and secretive habits. The black-footed ferret's historical range, based on specimens collected since its identification, includes 12 States (Arizona, Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming) and the Canadian Provinces of Alberta and Saskatchewan. There is prehistoric evidence of this ferret from Yukon Territory, Canada, to New Mexico and Texas (Anderson et al. 1986). Although there are no specimen records for black-footed ferrets from Mexico, prairie dogs (*Cynomys* spp.) are established in Chihuahua (Anderson 1972) and were present as far back as the Late Pleistocene-Holocene age (Messing 1986). Because black-footed ferrets depend almost exclusively on prairie dogs for food and shelter (Henderson et al. 1969, Forrest et al. 1985), and ferret range is coincident with that of prairie dogs (Anderson et al. 1986) with no documentation of black-footed ferrets breeding outside of prairie dog colonies, black-footed ferrets may have been historically endemic to northern Mexico.

Black-footed ferrets prey on prairie dogs primarily and use their burrows for shelter and denning. There are specimen records of black-footed ferrets from ranges of three species of prairie dogs: Black-tailed prairie dogs (*Cynomys ludovicianus*), white-tailed prairie dogs (*Cynomys leucurus*), and Gunnison's prairie dogs (*Cynomys gunnisoni*) (Anderson et al. 1986).

Widespread poisoning of prairie dogs and agricultural cultivation of their habitat drastically reduced prairie dog abundance and distribution in the last century. Sylvatic plague, which may have been introduced to North America around the turn of the century, also decimated prairie dogs, particularly in the southern portions of their range. The severe decline of prairie dogs resulted in a concomitant and near-fatal decline in black-footed ferrets, though the latter's decline may be partially attributable to other factors, such as secondary poisoning from prairie dog toxicants or high susceptibility to canine distemper. The black-footed ferret was listed as an endangered species on March 11, 1967.

In 1964, a wild population was discovered in South Dakota and studied intensively, but this population became extinct in 1974, with its last member dying in captivity in 1979. Afterwards, some believed that the species was probably extinct until another wild population was discovered near Meeteetse, Wyoming, in 1981. The Meeteetse population underwent a severe decline in 1985-1986 due to canine distemper, which is fatal to infected ferrets. Eighteen survivors were taken into captivity in 1986-1987 to prevent extinction and to serve as founder animals in a captive propagation program aimed at eventually reintroducing the species into the wild.

3. Recovery efforts: The national recovery objective in the recovery plan for this species (U.S. Fish and Wildlife Service 1988) is "To ensure immediate survival of the black-footed ferret by:

(1) Increasing the captive population of black-footed ferrets to a census size of 200 breeding adults by 1991;

(2) Establishing a prebreeding census population of 1,500 free-ranging black-footed ferret breeding adults in 10 or more populations with no fewer than 30 breeding adults in any population by the year 2010; and

(3) Encourage the widest possible distribution of reintroduced black-footed ferret populations."

When this objective is achieved, the black-footed ferret will be downlisted to threatened, assuming the extinction rate of the established populations remains at or below the rate new populations are established for at least 5 years.

Led by the Wyoming Game and Fish Department (Department), cooperative efforts to breed and raise black-footed ferrets in captivity have been encouraging and successful. In 4 years, the captive population has increased from 18 to 184 black-footed ferrets. In 1988, the single captive population was split into three separate captive subpopulations to avoid the possibility that a single catastrophic event could wipe out the entire known population. These subpopulations are located at the Department's Sybille facility in Wyoming; the Henry Doorly Zoo in Omaha, Nebraska; and the U.S. National Zoo's Conservation and Research Center in Front Royal, Virginia. Two additional captive subpopulations were established in 1990 (Louisville Zoological Garden in Louisville, Kentucky; Cheyenne Mountain Zoo in Colorado Springs, Colorado). Two more captive subpopulations are planned for the Phoenix Zoo in Phoenix, Arizona, and the Toronto Zoo in Toronto, Canada, at the end of 1991, making a total of seven captive subpopulations by the end of 1991.

Since a secure population of 200 breeding adults is expected to be achieved by the summer of 1991, ferret recovery efforts are now moving into the next phase—reintroduction into the wild.

4. Reintroduction Sites:

a. Site Selection Process:

The Service and State wildlife agencies in 11 western States are identifying potential ferret reintroduction sites within its historical range. As of this writing, potential reintroduction sites in Wyoming (two sites), Montana (one site), and South Dakota (one site) have been identified and compared. Other western States are still in the process of identifying and evaluating additional potential reintroduction sites. Sites are compared quantitatively and qualitatively and recommended for reintroduction scheduling by an interdisciplinary group assisting the Service known as the Black-footed Ferret Interstate Coordinating Committee.

The Department has a strong interest in reintroducing the ferret into the wild in Wyoming. A site near the town of Meeteetse in northwestern Wyoming and a site in the Shirley Basin/Medicine Bow (SB/MB) area in southeastern Wyoming were identified as the most promising sites in Wyoming for ferret reintroduction. Working together, the Department and the Service have been evaluating these sites' biological suitability and working with affected landowners to develop mutually acceptable management plans for these sites.

Initially, the Meeteetse site was selected as the first reintroduction site, because: (1) It was the area most recently occupied; (2) efforts to maintain the habitat were onoging and successful at the time of selection; (3) most black-footed ferret data were obtained from the Meeteetse area, simplifying comparison of post-reintroduction and historical data; and (4) released animals may be best adapted to conditions in the Meeteetse area.

In 1988, the prairie dog population at the Meeteetse site was estimated to be capable of supporting 29 families of black-footed ferrets. In 1989, the prairie dog complex declined 52 percent, i.e., only 14 ferret families could be

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supported. In 1990, the site's carrying capacity remained at 14 ferret families. Because of this decline, the Meeteetse site no longer meets one of the minimum requirements for reintroduction, i.e., the ferret habitat rating index (black-footed ferret carrying capacity) must be greater than 50 percent of the 1988 rating. It is entirely possible that prairie dogs at Meeteetse may not increase to or maintain themselves at acceptable population levels, by the summer of 1991 or immediately thereafter.

In September 1990, the Department and the Service met to decide whether to retain the Meeteetse site or to substitute the SB/MB site as the first reintroduction site. After much discussion, both parties agreed to plan for the SB/MB site as the highest priority site, with Meeteetse as a backup site.

The decision to use the SB/MB site as the first reintroduction site does not in any way imply that Meeteetse has been dismissed as a future reintroduction site. In fact, if the SB/MB site does not meet the minimum criteria for reintroduction specified in "A Cooperative Management Plan for Black-footed Ferrets—Shirley Basin/Medicine Bow, Wyoming" (Wyoming Game and Fish Department 1991), then Meeteetse will serve as the backup reintroduction site, provided it meets the minimum criteria for reintroduction specified in "A Cooperative Management Plan for Black-footed Ferrets at Meeteetse" (Wyoming Game and Fish Department 1990). If the Meeteetse site is not used in a backup capacity, then it will remain under consideration as a future reintroduction site provided biological conditions improve.

As noted previously, the only known population of black-footed ferrets is in captivity. The Service has not concluded that the species is extirpated in the wild, and requires black-footed ferret surveys to be performed if any action authorized, funded, or carried out by a Federal Agency may affect prairie dog colonies deemed capable of supporting ferrets. There have been 350 black-footed ferret surveys (3,452 survey hours) conducted in the SB/MB area and over 1,700 survey hours have been expended in the Meeteetse area. These surveys have not turned up any evidence of ferrets (Wyoming Game and Fish Department 1989, 1991). Based on these surveys, it is highly improbable that wild black-footed ferrets exist at the reintroduction and backup sites. To the best of our knowledge, any reintroduced population of ferrets at the SB/MB (or Meeteetse) site would be wholly separate and distinct from other populations of this species.

b. Shirley Basin/Medicine Bow Site

The SB/MB site was historically occupied by black-footed ferrets. The latest physical evidence that black-footed ferrets occupied the SB/MB area and southeastern Wyoming was a skull collected in 1979. The SB/MB reintroduction site encompasses 5,354 km^2 (2,068 square miles), of which 55 percent is private land, 37 percent is federally managed land, and 8 percent is State land. Except for the Shirely Mountains, the majority of the land area is actual or potential prairie dog habitat. Mapping conducted in 1990 indicates that 59,726 hectares (147,581 acres) of prairie dog towns exist at the SB/MB site, with the capability of supporting 142 black-footed ferret families (213 adult ferrets, or 708 ferrets if young-of-the-year are included).

Reintroduction, habitat management, and intensive ferret management will occur in a specifically delineated area designated the "Shirley Basin/Medicine Bow Management Area." Specfics on the location and boundaries of the SB/MB Management Area are provided in the map accompanying the special rule. Current plans are to begin releasing ferrets into a subportion of the SB/MB Management Area considered best for release and initial management, known as a "Primary Management Zone" (PMZ). If reintroduction is successful, ferrets will eventually disperse from the PMZ into other portions of the SB/MB Management Area. The preferred release location is PMZ1 (Shirley Basin) in the northern half of the SB/MB Management Area. If major problems arise in PMZ1 prior to release, ferrets will be released in PMZ2 (Medicine Bow) in the southern half of the SB/MB Management Area.

Ferrets will be released only if biological conditions are suitable and a management framework acceptable to the State, Service, and landowners/land managers in the area has been developed. Reintroduction in the SB/MB Management Area will be re-evaluated if one or more of the following conditions occur:

(1) Failure to maintain at least one PMZ with a black-footed ferret habitat rating index of 26 (i.e., carrying capacity for 40 adult black-footed ferrets) or a strong indication that such will be the case within 5 years.

(2) Inability to formulate a management plan and environmental assessment acceptable to all landowners and agencies with jurisdiction in the Management Area.

(3) Failure to acquire "nonessential experimental population" designation for the site.

(4) A wild black-footed ferret population is discovered within the experimental population area.

(5) An active case of canine distemper is documented in any wild mammal inside the Management Area within 12 months prior to the scheduled reintroduction.

c. Meeteetse (Backup) Site

The Meeteetse site was the last known occupied habitat of the black-footed ferret. It encompasses 538 km^2 (208 square miles), of which 52 percent is private land, 28 percent is federally managed land, and 20 percent is State land. Roughly 9 percent of the site was occupied by prairie dogs in 1988, and its ferret habitat rating was estimated at 29 ferret families in 1988.

The reintroduction and management area at Meeteetse is the "Meeteetse Management Area." Specifics on the location and boundaries of the Meeteetse Management Area are provided in "Location of Reintroduced Population." There is no need to designate a PMZ within the Meeteetse Management Area due to its small size.

The Meeteetse Management Area will not be used as a backup reintroduction site if one or more of the following conditions occur:

(1) The ferret habitat rating index is 50 percent or less than the 1988 index (i.e., 29 ferret families) or 1988–1991 trends strongly indicate that it will fall below 50 percent within 5 years following the start of reintroduction efforts.

(2) An active case of canine distemper is documented in any wild animal inside the Management Area within 12 months prior to the scheduled reintroduction.

(3) Rejection of the Meeteetse management plan and future reintroduction plans by landowners, State, or Federal agencies with jurisdiction of black-footed ferret populations and habitat in the Management Area.

(4) Failure to obtain the designation of "nonessential experimental population" or other legal authorization that allows landowner concerns to be adequately addressed.

(5) A wild black-footed ferret is found within the experimental population area.

5. *Reintroduction protocol:* In general, the reintroduction protocol will involve releasing 20 or more capative-raised ferrets in the first year of reintroduction, and 50 or more captive-raised ferrets annually thereafter for 2 to 4 years. Captive animals selected for release will be as genetically redundant as possible with the gene pool in the captive breeding population, hence any loss of released animals is unlikely to have appreciable impacts on existing genetic diversity in the species. Moreover, because breeding ferrets in captivity is not a problem, any animals lost in the reintroduction effort could be replaced.

As currently envisioned, young-of-the-year ferrets approximately 4 to 6 months of age will be released in PMZ1 in late August to October of 1991, when wild young ferrets typically become independent of natal care and disperse. A "soft" release method will be used, involving a temporary release cage and nest box arrangement with artificial burrows to the outside. The release cage will be placed in or near a high density prairie dog town. As the experimental release proceeds, it may be advisable to surround each release cage with an electric fence to prevent damage by livestock or big game. Black-footed ferrets will be kept in the cage initially, and fed for approximately 10 days. If they appear to be adapting well, an artificial burrow (which had been plugged) will be opened to the outside and the ferrets allowed free egress and ingress. They will be supplied food as needed, and use of the cage until they adapt to life in the wild. Eventually, it is expected that all of the animals will learn to hunt on their own and disperse into the wild.

Released animals will be vaccinated against diseases, as appropriate, including canine distemper if an effective vaccine can be developed for ferret use. Preventative and, where necessary, corrective measures to reduce predation by coyotes, badgers, raptors, or other predators will be taken over the short term, without intent to continue over the long term. Habitat conditions will be monitored continually during the reintroduction effort. If the ferret habitat rating or trend of PMZ1 drops to unacceptable levels, ferrets will be moved to PMZ2, another biologically suitable prairie dog complex in the SB/MB Management Area, the Meeteetse Management Area, translocated to the next scheduled site, or returned to captivity. To the extent consistent with private landowners' needs to control nuisance prairie dogs and with other economic activities, cooperative measures will be taken to maintain overall prairie dog populations at or near 1990 levels in the SB/MB Management Area.

All black-footed ferrets released will be marked. A sample of the released ferrets will be radio-tagged and their behavior monitored.

It is unlikely that released ferrets or their offspring wil emigrate outside of the SB/MB Management Area. The SB/MB Management Area is essentially a large island of excellent ferret habitat (i.e., prairie dog colonies) in southeastern Wyoming. The surrounding area is relatively devoid of prairie dog colonies. The limited mobility of wild ferrets radio-tagged during 1982–1986 studies at Meeteetse (less than 7 km or 4.3 miles/night) makes it unlikely that ferrets will disperse outside of the SB/MB Management Area, given the significantly better colonization opportunitites within its boundaries.

Some of the more detailed elements of the reintroduction protocol are still being investigated. Researchers are testing reintroduction techniques and investigating prerelease conditioning techniques that might improve survival of released captive-raised ferrets, e.g., testing the relative efficacy of available canine distemper vaccines, investigating techniques to teach predator avoidance and develop needed hunting skills, etc.

The first experimental reintroduction design will be more fully developed by fall of 1991. This protocol will be tested at the first reintroduction site and possibly modified at this and/or upcoming reintroduction sites. The first release will be limited by the number of captive ferrets available in excess of the captive population objectives. The 20 to 50 excess individuals expected to be released in 1991 are considered sufficient to begin testing release techniques and monitoring results.

Realistically, the Service and the Department expect high natural mortality (up to 90 percent) among the released ferrets in the first year of release, even with soft release. Despite prerelease conditioning, captive-bred animals will be relatively naive in terms of avoiding predators, securing prey, and withstanding environmental rigors. Mortality is expected to be highest within the first month of release. A realistic goal for the first year would be to work toward enabling a few ferrets to survive at least 1 month after release, with perhaps 10 percent of the released animals surviving the winter.

The intensive studies conducted on the wild Meeteetse population during the 1982–1986 period will provide a natural baseline against which the reintroduction effort can be compared to determine how well the reintroduction experiments are proceeding. These baseline data will be supplemented with baseline biological and behavioral data taken in the 1960's and 70's from the South Dakota population.

If successful, this effort is expected to result in the establishment of a free-ranging population of at least 40 black-footed ferret adults within the SB/MB (or Meeteetse) Management Area by a target date of 1996. The Department and the Service will evaluate project progress annually. The status of the reintroduction effort at this site will be re-evaluated within the first 5 years to determine future management needs of the population.

Status of Reintroduced Population

The SB/MB (or, if necessary, Meeteetse) population of black-footed ferrets is proposed to be designated a nonessential experimental population according to the provisions of section 10(j) of the Act. The basis for this designation is explained below. The term "experimental population" will be discussed first, followed by an explanation of why this experimental population qualifies as "nonessential."

"Experimental population" means the reintroduced population will be treated as a threatened species rather than an endangered species. This designation enables the Service to develop special regulations for management of the population that are less restrictive than the mandatory prohibitions covering endangered species if more management flexibility is needed to make reintroduction compatible with current or planned human activities in the reintroduction area. Per section 4(d) of the Act, these special regulations must be "necessary and advisable" to provide for the conservation of the black-footed ferret.

"Nonessential" experimental populations are not essential to the continued existence of the species. For purposes of section 7 of the Act, they are treated as though they were only proposed for listing. This experimental population qualifies as being nonessential to the continued existence of the black-footed ferret because:

1. For the time being, the captive population will be the primary species population. This population has been protected against the threat of extinction from a single catastrophic event through the planned splitting of the captive population into seven widely separated subpopulations by the end of 1991. Hence, loss of the experimental population will not jeopardize species' survival.

2. For the time being, the primary repository of genetic diversity for the species will be the 200 adult breeders in the captive population. Animals selected for reintroduction purposes will be as genetically redundant as possible with the captive population, hence any loss of reintroduced animals in this experiment will not significantly impact the goal of

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preserving maximal genetic diversity in the species.

3. Any animals lost during the reintroduction attempt can be replaced readily through captive breeding, as demonstrated by the rapid increase in the captive population over the past 4 years. In 1991, 20 or more ferrets should be excess to the numbers needed to maintain the long-term viability and genetic variability of the captive population. After 1991, based on current population dynamics, 100 to 200 juvenile ferrets will eventually be produced each year in excess of numbers needed to maintain 200 breeding adults in captivity.

This reintroduction effort will be the first attempt to reintroduce the black-footed ferret back into the wild. The biological questions and logistical problems that must be addressed are daunting. Yet a reintroduction attempt must be made soon, before the captive population becomes overly adapted to captivity. Continued captivity increases the risk of losing important wild survival instincts and reduces the likelihood of successful reintroduction and recovery of the species. Furthermore, the continuing breeding success of the captive population will create problems in finding and funding adequate housing for captive ferrets in 1991 and beyond.

Fifty-five percent of the habitat in the SB/MB Management Area is privately managed. The nonessential experimental population designation will facilitate re-establishment of the species in the wild by easing landowner concerns about possible overly restrictive protective measures that might be taken. This designation is less restrictive than reintroducing ferrets as an endangered population. The nonessential designation provides a more flexible management framework for protecting and recovering black-footed ferrets such that private landowners may continue their current lifestyles.

The first few attempts to reintroduce the black-footed ferret into the wild will place great emphasis on developing and improving reintroduction techniques. This applied research will lay the groundwork for a general reintroduction and management protocol for re-establishing ferrets in the wild throughout its historical range. An inability to establish the first population in the first few years of effort will not be considered to appreciably reduce the likelihood of the survival of the species in the wild because the knowledge gained will be used to improve reintroduction techniques, thereby enhancing the probability of successful reintroductions later on at this and/or future sites.

Assuming successful reintroduction techniques are developed and refined in the SB/MB Management Area and subsequent reintroduction sites, then most, is not all, future reintroductions will be more in the nature of recovery (as opposed to research) efforts aimed at permanently establishing new populations at suitable sites in the wild. As successful wild populations are established, they will provide wild-raised ferrets that can be used to supplement captive releases at other sites. As additional wild populations become established, the captive population will diminish in relative importance and wild populations will increase in relative importance in the overall species recovery effort.

Ultimately, depending on progress made in overall species recovery and the circumstances applying to a particular reintroduction site, management scenarios for future reintroduction sites could conceivably result in reintroduced populations with different degrees of management restrictions; i.e., populations designated as "nonessential experimental," "essential experimental" (i.e., an experimental population whose loss would likely appreciably reduce the survival of the species in the wild), or "endangered" (i.e., a population under all the protections of the Act). The Service believes that at least 10 or more wild populations are needed to insure the immediate survival and downlisting of this species to threatened status (U.S. Fish and Wildlife Service 1988).

Location of Reintroduced Population

Under section 10(j) of the Act, an experimental population must be wholly separate geographically from nonexperimental populations of the same species. Since the last known member of the original Meeteetse ferret population was captured for inclusion in the captive population in 1987, no other ferrets have been confirmed anywhere in the wild. There is a remote chance that ferrets may still exist in the wild. Thousands of hours of ferret survey work have been conducted in the general areas of the proposed reintroduction and backup sites in Wyoming and no wild ferrets have been found. Based on these data, it is extremely unlikely that the reintroduced population will overlap with any wild population of the species.

1. Shirley Basin/Medicine Bow population: The SB/MB Management Area is a large, irregularly shaped area between the cities of Casper and Laramie, Wyoming. The SB/MB Management Area lies primarily in the northeast corner of Carbon County, extending northward into Natrona County and eastward into Albany County.

Managed so that ferret habitat is maintained in a manner compatible with landowner needs, the SB/MB Management Area will serve as the core recovery area for black-footed ferrets in southeastern Wyoming. The proposed geographic boundaries of the nonessential experimental population would extend beyond the SB/MB Management Area to encompass that portion of Wyoming south and east of the North Platte River in Natrona, Carbon, and Albany counties.

There have been 350 black-footed ferret surveys conducted on lands occupied by prairie dogs in and near the SB/MB Management Area (Wyoming Game and Fish Department 1991, Table 2). Based on this survey work, it is reasonable to infer that wild black-footed ferrets probably no longer exist in the area south and east of the North Platte River in Natrona, Carbon, and Albany counties. A final administrative determination regarding the presence or absence of wild ferrets in this area will be made by the Service when the final rulemaking is published in the **Federal Register.**

Ferrets will be reintroduced into a PMZ in the SB/MB Management Area. After the first breeding season, all ferrets in the wild located south and east of the North Platte River in Carbon, Natrona, and Albany counties, Wyoming, will be considered part of the experimental population. Reintroduced ferrets are expected to remain in the SB/MB Management Area for the reasons explained earlier. In the unlikely event that a ferret leaves the SB/MB Management Area but stays within the boundaries of the experimental population area, the Service and the Department will have the authority to capture the emigrant and place it back into the Management Area, translocate it to another reintroduction site, or return it to captivity. If a ferret is found on private land outside the Management Area but within the experimental population area, the landowner will be consulted, and the ferret removed if the landowner requests it. If the private landowner has no objection to the ferret remaining on his/her land, then it would be allowed to remain.

The SB/MB Management Area will serve as the primary recovery area for the SB/MB experimental population, i.e., efforts to maintain ferret and prairie dog populations will focus on the SB/MB Management Area. The area surrounding the SB/MB Management Area is essentially a low-intensity management area that serves more as a buffer zone than a recovery area. Because the best ferret habitat is in the SB/MB Management Area, ferrets will most likely concentrate and reproduce in this area.

There are some significant movement barriers within and bordering the area proposed for the nonessential experimental population, such as Seminoe Reservoir, the Shirley Mountains, the North Platte River, the Laramie Range, and most importantly, the paucity of significant prairie dog colonies outside the Management Area. These movement barriers will impede ferret dispersal within and outside the experimental population area.

Because all ferrets released in the SB/MB Management Area will be marked, in the unlikely event that an unmarked ferret(s) is found in the experimental population area before the first breeding season (February–May 1992) following the proposed Fall 1991 release of ferrets, this will trigger a concerted effort to find the location of the source wild population. This search will determine whether a wild population exists and if validated, authorities will take appropriate cooperative action for its conservation. In addition, the impact of the ongoing establishment of an experimental population in the SB/MB Management Area on this hypothetical newly found population will be evaluated, and appropriate action taken.

2. Meeteetse (backup) population: If unsurmountable problems arise at the SB/MB site, ferrets will be reintroduced into the Meeteetse Management Area, provided the minimum criteria for reintroducing ferrets into the Meeteetse Management Area are met.

Located 15 miles west of Meeteetse, in Park County in northwestern Wyoming, the Meeteetse Management Area consists of rangeland bounded on the north by Township 50 North, on the west by Range 104 West, on the south by the Greybull River, and on the east by Wyoming State Highway 120. Despite over 1,700 hours of ferret surveys conducted in the area, the Service and the Department have not received any evidence confirming the presence of wild ferrets in the area.

As was the case for the SB/MB population, the boundaries of the Meeteetse experimental population would extend beyond the Meeteetse Management Area. Were ferrets to be reintroduced or transferred to the Meeteetse Management Area, the boundaries of the Meeteetse nonessential experimental population would be all of Park County, Wyoming, south of U.S. Highway 16/14/20.

If ferrets disperse outside the Meeteetse Management Area, they would still be considered part of the nonessential experimental population if they were in Park County south of U.S. Highway 16/14/20. Such ferrets would be handled as described for the SB/MB population, and in accordance with the provisions of the special rule proposed herein, modified to designate the Meeteetse population as the nonessential experimental population.

Like the SB/MB Management Area, the area surrounding the Meeteetse Management Area is relatively devoid of prairie dog colonies. To the west, the Absaroka Range is another barrier to dispersal. Apparently, these or other factors are an effective movement barrier, as researchers were unable to document successful dispersal of young ferrets during the period wild ferrets were being studies at Meeteetse.

Management

The SB/MB reintroduction will be undertaken by the Service and the Department in accordance with "A Cooperative Management Plan for Black-footed Ferrets—Shirley Basin/Medicine Bow, Wyoming" (Wyoming Game and Fish Department 1991). If Meeteetse must be used instead, reintroduction will be undertaken in accordance with "A Cooperative Management Plan for Black-Footed Ferrets at Meeteetse" (Wyoming Game and Fish Department 1990). General reintroduction protocol was discussed under "Background." Additional considerations pertinent to reintroduction are discussed here.

1. Monitoring: Various monitoring efforts are planned over the first 5 years. Prairie dog numbers and distribution will be monitored prior to and annually during the reintroduction effort (Wyoming Game and Fish Department 1991). Monitoring for sylvatic plague will be done prior to the reintroduction and annually at least through 1996. If the ferret habitat rating drops to 50 percent or less of the objective level due to plague, reintroduction efforts will cease. There also will be monitoring for canine distemper prior to and during reintroduction. Reintroduced ferrets and their offspring will be monitored every year, using spotlight surveys and/or snowtracking surveys done on foot. Some ferrets will be radio-collared and all ferrets will be marked. During the first year, the greatest emphasis in ferret monitoring will be placed on determining causes of injury and mortality and using the results to refine the reintroduction protocol to reduce such losses. Assuming a few ferrets survive the winter and enter the courtship and breeding season the next year, monitoring of ferret breeding success and recruitment will take priority. Ferret behavior will be monitored throughout the duration of the effort.

2. Disease consideration: Reintroduction will be re-evaluated if an active case of canine distemper is documented in any wild mammal within 12 months prior to the scheduled reintroduction. Samples from 40 coyotes and 40 badgers will be obtained prior to reintroduction to determine if canine distemper exists in the reintroduction area. Visitors and biologists in the Management Area will be discouraged from bringing dogs. Residents and hunters will be encouraged to vaccinate pets and report sick wildlife. Efforts are continuing to develop an effective canine distemper vaccine for ferrets.

Ferrets will not be introduced into or will be relocated from the Management Area if the ferret habitat rating falls below predetermined levels as a result of sylvatic plague. Sampling for sylvatic plague will occur on a regular basis prior to and during the reintroduction effort. To the extent possible, strategies will be developed to enhance prairie dog recovery in areas impacted by plague.

3. Genetic considerations: While the ultimate genetic goal of the reintroduction program should be to establish wild reintroduced populations that embody the maximum level of genetic diversity available from the captive population, this does not need to be the immediate goal in Wyoming. Individuals used for reintroduction will be chosen so that the level of genetic diversity and demographic stability (e.g., stable age and sex structure) of the captive population is not compromised (reduced) by their removal. Therefore, early experimental reintroductions will likely consist of a biased sample of the genetic diversity of the captive gene pool. This bias will be corrected at a later date by selecting and re-establishing breeding ferrets that theoretically compensate for any genetic biases in earlier releases.

4. Prairie dog management: The Service and the Department will work cooperatively with landowners and land management agencies in the SB/MB Management Area to: (a) Manage the two PMZ's (each with a black-footed ferret family rating of at least 26) and maintain their current black-footed ferret habitat capabilities based on 1990 prairie dog densities and distribution; and (b) maintain at least 60 percent of the current black-footed ferret habitat

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capability (prairie dog acreage) in non-PMZ areas (based on 1990 prairie dog acreage density data). Means for managing the prairie dog ecosystem in the proposed reintroduction area have been incorporated into "A Cooperative Management Plan for Black-footed Ferrets—Shirley Basin/Medicine Bow, Wyoming." (Copies may be obtained by contacting Bob Luce, Wyoming Game and Fish Department, 260 Buena Vista, Lander, Wyoming 82520 (307/332-2688)). Specific prairie dog acreages will be established for each ranch in the Management Area, set entirely at the prerogative of the landowner. On public lands with private grazing leases, the number and distribution of prairie dogs will be set cooperatively. In areas where prairie dogs become a problem for the landowner, control techniques compatible with ferret recovery objectives could be implemented, e.g., use of control methods that are not lethal to ferrets, removal of ferrets prior to control of prairie dogs, use of ferrets to control prairie dog numbers, or agreements to allow expansion of prairie dog acreage elsewhere in the PMZ to compensate for acreage lost during the control program.

5. Mortality: As noted earlier, only those animals considered excess to the needs of the captive breeding goal will be used in this reintroduction attempt. Though efforts will be made to reduce mortality, significant mortality must inevitably occur as captive-raised animals adapt to the wild. Natural mortality from predators, fluctuating food availability, disease, hunting inexperience, etc., will be reduced through predator and prairie dog management, vaccination, soft release, supplemental feeding, and prerelease conditioning. Human-caused mortality will be reduced by information and education efforts directed at landowners and land users, and review and cooperative management (where necessary) of human activities in the area. Even if all released animals were to succumb to natural and human-caused mortality factors, this would not jeopardize the continued existence of the species. As noted earlier, the captive population is the primary species' population and could readily replace any animals lost in the reintroduction effort. This is consistent with the designation of the reintroduced population as a nonessential experimental population. The choice for wildlife managers is either to risk excess captive ferrets in reintroduction efforts in order to re-establish the species in the wild, or to keep all ferrets in relative safety in captivity and forgo re-establishing the species in the wild.

6. Special handling: Under the proposed special regulation (promulgated under authority of section 4(d) of the Act) that will accompany the experimental population designation, Service and Department employees and agents would be authorized to relocate ferrets to avoid conflict with human activities; relocate ferrets that have moved outside the Mangement Area when removal is necessary or requested; relocate ferrets within the experimental population area to improve ferret survival and recovery prospects; relocate ferrets to future reintroduction sites; and aid animals which are sick, injured or otherwise in need of special care. If a ferret is determined to be unfit to remain in the wild it would be returned to captivity. Service and Department employees and agents also would be authorized to salvage or dispose of dead ferrets.

7. Coordination with landowners and land management agencies: The proposed action was discussed with potentially affected State and Federal agencies in the proposed reintroduction area. A scoping effort to identify issues and concerns associated with reintroduction into the SB/MB area was conducted in January 1990. A SB/MB Working Group consisting of a representative each from the Department, Service, Bureau of Land Management, and Wyoming Public Lands Office; and two private landowners was assembled to define the boundaries of the SB/MB Management Area, identify issues and concerns, and actively assist in the development of the SB/MB management plan. Affected private land managers in the area were consulted, were involved in the development of the management plan, and concurred with or did not oppose the proposed action provided it did not interfere with existing lifestyles and current and potential income. Public meetings concerning the proposed SB/MB reintroduction were held in Medicine Bow, Laramie, and Casper, Wyoming, in November 1990 to offer the general public in Wyoming the opportunity to learn about and comment on the reintroduction proposal.

Similar efforts were conducted to involve affected State and Federal agencies, private landowners, and the general public in Wyoming in scoping out and formulating the management plan for Meeteetse. Public meetings were held in Meeteetse, Cody, and Casper, Wyoming, in September 1989.

Thirty-seven percent of the SB/MB Management Area is federally managed lands (197,601 hectares, or 487,904 acres). The Bureau of Land Management has jurisdiction over 97 percent of the surface Federal lands and all of the Federal mineral estate in the Mangement Area. The Bureau of Reclamation has jurisdiction over 3 percent of the land. There are no conflicts expected with any current or anticipated actions of Federal Agencies in the area from the proposal to reintroduce ferrets into the SB/MB Management Area. The Bureau of Land Management participated in the development of the SB/MB management plan and the draft environmental assessment.

The Wyoming Department of State Lands administers about 8 percent of the land in the area (43,241 hectares, or 106,768 acres) and may propose or permit actions in the future that could affect the black-footed ferret or its habitat. This agency also was a participant in developing the SB/MB management plan.

Private landowners own 55 percent of the land (295,320 hectares, or 729,184 acres) in the SB/MB Management Area. Their voluntary participation is crucial to the success of this project. Their acceptance of and participation in this rulemaking process and the SB/MB management plan would be an essential part of the planning for and management of the reintroduced population.

The Meeteetse Management Area is rangeland under private (52 percent), State (20 percent), and Federal (28 percent) ownership. For the most part, prime ferret habitat and access to it is controlled by private landowners. Therefore, the voluntary participation of private landowners is essential to any cooperative reintroduction effort at Meeteetse.

8. Potential for conflict with oil and gas and mineral development activities: The boundaries of the SB/MB Management Area and the PMZ's were, in part, developed to exclude potential conflicts with development activities, where possible. The maximal impact these activities could have on ferret habitat in the SB/MB Management Area is discussed in "A Cooperative Management Plan for Black-footed Ferrets—Shirley Basin/Medicine Bow, Wyoming" and may be summarized as follows:

—There are 35 active oil and gas wells in the SB/MB Management Area. No active wells occur in PMZ1. The greatest potential for future oil and gas development is centered in existing developments, mostly in PMZ2. The high potential areas for oil and gas development lie under 6,404 hectares (15,825 acres) of prairie dog towns in PMZ2, and 1,968 (4,859 acres) of prairie dog towns in non-PMZ areas. Existing and high potential oil and gas development areas comprise 8,378 hectares, or 14.0 percent of the ferret habitat in the SB/MB Management Area.

—Three coal leases occur in the SB/MB Management Area. No active mining occurs in the area at present. Up to 598 hectares of prairie dog towns could potentially be impacted if these leases were developed, or 1.0 percent of the ferret habitat in the SB/MB Management Area.

—Demand for saleable minerals (sand, gravel, limestone) has been low and would probably remain low in the foreseeable future. If mineral materials permits in the area were fully developed, up to 199 hectares, or 0.3 percent of ferret habitat would be lost.

—Locatable mineral claims (primarily uranium and bentonite) occur within the Management Area. Twenty-two claims occur in PMZ1 and 35 claims within PMZ2. At the present time, locatable mineral mining is not contributing to a significant loss of ferret habitat. If fully developed, these claims could impact 3,757 hectares, or 6.3 percent of the ferret habitat in the Management Area.

—There are 447 hectares, or 0.7 percent overlap among the development activities described above.

In summary, considering all existing and potential oil, gas, and mineral development on existing leases in the SB/MB Management Area, a "worst case" maximum of approximately 12,485 hectares, or 20.9 percent of the ferret habitat in the Management Area could be impacted under a full development scenario (see Table 1). A 20.9 percent loss of ferret habitat would not preclude establishment of 40 or more ferret adults in the SB/MB Management Area, as sufficient habitat would remain to support 168 ferret adults. Moreover, such a "worst case" scenario is unlikely, given the opportunity to mitigate habitat losses by expanding prairie dog colonies into areas currently unoccupied by prairie dogs.

TABLE 1.—SUMMARY OF CURRENT AND MAXIMUM POTENTIAL IMPACTS TO BLACK-FOOTED FERRET HABITAT IN THE SB/MB MANAGEMENT AREA

	Area Currently impacted		Area Potentially Impacted	Percent of the Prairie Dog Complex
Oil and Gas	15ha (36ac)	+	8,363ha (20,664ac)	14.0
Coal	0		598ha (1,477ac)	1.0
Salable Minerals	0		199ha (492ac)	0.3
Locatable Minerals	0		3,757ha (9,284ac)	6.3
Area of Overlap			<477ha (1,104ac)>	<0.7>
Highest possible impact from leasing			12,485ha (30,849ac)	20.9%

Note: Adapted from "A Cooperative Management Plan for Black-footed Ferrets—Shirley Basin/Medicine Bow, Wyoming" (1991).

There is oil and gas development potential in the Meeteetse Management Area, however, drillable prospects appear limited at this time. Were ferrets to be reintroduced into the Meeteetse Management Area, the Service, Department, and Bureau of Land Management would work with oil and gas exploration and development companies to develop mutually agreeable means to avoid or mitigate potential adverse impacts from oil and gas activities on ferrets or their habitat. The Service is presently developing oil and gas guidelines for new leases and developments proposed in prairie dog ecosystems managed for black-footed ferret recovery, and pertinent guidelines were included in the Meeteetse management plan.

9. Potential for conflict with grazing and recreational activities: All lands in the SB/MB Management Area are included in grazing allotments, conflicts between grazing and ferret management are not anticipated on Federal lands, as current Federal rangeland management systems favor prairie dog populations in grazed areas. Decreasing animal unit months for livestock will not benefit prairie dog populations and will not be recommended as a tool for ferret management. No additional grazing restrictions will be placed on Federal lands with grazing allotments in the SB/MB Management Area as a result of ferret reintroduction. On Federal lands with private grazing leases, prairie dog population objectives would be cooperatively established to be consistent with ferret recovery and grazing needs.

No additional restrictions will be placed on landowners regarding prairie dog control on private and State lands. Under the SB/MB management plan, landowners can readily control prairie dogs in irrigated fields, wet meadows, and pastures which are economically significant to ranching and of little biological significance to ferret populations. In the unlikely event that prairie dog control proposed on private and State lands might eliminate the prey base for established ferrets in a specific problem area, it will be the responsibility of State and Federal biologists to determine whether ferrets are likely to be negatively impacted, and if so, to provide the necessary coordination to minimize these impacts. If necessary, ferrets could be translocated from the problem area to areas of no conflict.

In the Meeteetse Management Area., equivalent cooperative grazing management measures would be implemeted on Federal, private, and State lands if ferrets were reintroduced.

Recreational activities currently enjoyed in the SB/MB Management Area (antelope hunting, prairie dog shooting, rabbit hunting using greyhound dogs, trapping for furbearers or predators, and off-road vehicle recreation) are either unlikely to impact ferrets or would be managed to avoid or minimize negative impacts to ferrets.

Recreational activities in the Meeteetse Management Area are managed primarily by the private landowners. Based on historical use, it appears unlikely that these activities would adversely impact ferrets.

10. Protection of ferrets: Recently released ferrets will need protection from natural sources of mortality (predators, disease, inadequate prey, etc.) and from human-caused sources of mortality. Natural mortality will be reduced through prerelease conditioning, soft release, vaccination, predator control, positive management of prairie dog populations, etc. Human-caused mortality will be minimized by placing ferrets in an area with low human population density and relatively low development; by working with and

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educating landowners, Federal land managers, developers, and recreationists to develop means for conducting their existing and planned activities in a manner that is compatible with ferret recovery; and by conferring with developers on proposed actions and providing recommendations that will reduce any likely adverse impacts to ferrets.

A draft biological opinion was prepared on the proposed action to reintroduce ferrets into the SB/MB Management Area and concluded that the proposed action will not jeopardize the species. A final biological opinion will be prepared on the final rulemaking.

11. Public awareness and cooperation: An extensive sharing of information about the program and the species, via educational efforts targeted toward the public in the region and nationally, will enhance public awareness of this species and its reintroduction. The public will be encouraged to cooperate with the Service and the Department in attempts to maintain ferrets on the release site.

12. Overall: The designation of the SB/MB (or Meeteetse) population as a nonessential experimental population will encourage local cooperation as a result of the management flexibility allowed under this designation. The Service and the Department consider the nonessential experimental population designation and accompanying special rule, the SB/MB (or Meeteetse) management plan, and the commitment to accommodate cooperatively planned oil, gas, and mineral exploration and development necessary to receive cooperation of affected landowners, agencies, citizens, and oil and gas, minerals, grazing, and recreational interests in the area.

13. Future reintroductions: Since additional excess captive-reared black-footed ferrets should be available for reintroduction in 1992 or 1993, the Service plans to reintroduce black-footed ferrets into other sites within its known historical range. Like this effort, future reintroductions will be planned in partnership with affected State and Federal agencies and/or private landowners. Proposed and final rulemakings will be developed for individual populations and, possibly, several populations at a time, as appropriate. This rule may serve as a key reference document for future rulemaking documents involving reintroduced ferret populations, or even as a model for a possible programmatic rulemaking for future reintroduction efforts.

Public Comments Solicited

In November 1990, the SB/MB management plan developed by the Department and the Service's intention to designate the reintroduced ferrets in the SB/MB area as a nonessential experimental population were presented and discussed at public meetings held in Medicine Bow, Laramie, and Casper, Wyoming. A similar effort was conducted in September 1989 in Meeteetse, Casper, and Cody, Wyoming, to discuss the possible reintroduction of ferrets into the Meeteetse area. The Service intends that any action resulting from this proposed rulemaking to designate the SB/MB (or Meeteetse) population as a nonessential experimental population be as effective as possible. Therefore, comments or recommendations concerning any aspect of this proposed rule are hereby invited to be submitted (see **"ADDRESSES"** section) from State, public, and government agencies, the scientific community, industry, or any other interested party. Comments should be as specific as possible. Final promulgation of a rule to implement this proposed action will take into consideration the comments and any additional information received by the Service. Such communications may lead to a final rule that differs from this proposal.

National Environmental Policy Act

A draft environmental assessment as defined under the authority of the National Environmental Policy Act of 1969 has been prepared and is available to the public at the Service Offices identified in the "ADDRESSES" section. This assessment will form the basis for a decision, which will be made prior to the publication of a final rule, as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969.

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

The Service has determined that this is not a major rule as determined by Executive Order 12291 and that it would not have a significant economic effect on a substantial number of small entities as described in the Regulatory Flexibility Act (Pub. L. 96-354). The rule as proposed does not contain any information collection or recordkeeping requirements as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

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Authors

The principal authors of this rule are Ron Crete, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, Montana Office, Helena, Montana (Phone: 406/449-5225 or FTS 585-5225) and Nancy Chu, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, Regional Office, Denver, Colorado (Phone: 303/236-7398 or FTS 776-7398).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of Chapter I, title 50 of the U.S. Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed that § 17.11(h) be amended by revising the entry for the Black-footed ferret to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
Ferret black-footed	*Mustela nigripes*	Western U.S.A., Western Canada.	Entire, except where listed as an experimental population below.	E	1,3	NA	NA
Do	do	do	WY: in the wild, south and east of the N. Platte River within Natrona, Carbon, and Albany Counties.	XN		NA	17.84(g)

3. It is proposed that 50 CFR 17.84 be amended by adding new paragraph (g) as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(g) Black-footed ferret (Mustela nigripes).

(1) The black-footed ferret population identified in paragraph (g)(6) of this section is a nonessential experimental population.

(2) No person may intentionally take this species in the wild in the experimental population area, except as provided in paragraphs (g) (3), (4), and (9) of this section.

(3) Any person with a valid permit issued by the Service under § 17.32 may take black-footed ferrets in the wild in the experimental population area for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Endangered Species Act and in accordance with applicable State fish and wildlife conservation laws and regulations.

(4) Any employee or agent of the Service or State wildlife agency who is designated for such purposes, when acting in the course of official duties, may take a black-footed ferret in the wild in the experimental population area if such action is necessary to:

(i) Relocate a ferret to avoid conflict with human activities;

(ii) Relocate a ferret that has moved outside the Shirley Basin/Medicine Bow Management Area when removal is necessary or requested;

(iii) Relocate ferrets within the experimental population area to improve ferret survival and recovery prospects;

(iv) Relocate ferrets from the experimental population area into future reintroduction sites or captivity;

(v) Aid a sick, injured, or orphaned specimen; or

(vi) Dispose of a dead specimen, or salvage a dead specimen which may be useful for scientific study.

(5) Any taking pursuant to paragraphs (g)(3) and (4) (v) and (vi) must be immediately reported to the State Supervisor, Fish and Wildlife Enhancement, Fish and Wildlife Service, Cheyenne, Wyoming (Phone: 307/772-2374), who will determine the disposition of any live or dead specimens.

(6) No person shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any such species from the experimental population taken in violation of these regulations or in violation of applicable State fish and wildlife laws or regulations or the Endangered Species Act.

(7) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (g) (2) and (6) of this section.

(8) The site for reintroduction of black-footed ferrets is within the historical range of the species. The reintroduction area ("Shirley Basin/Medicine Bow Management Area") is shown on the attached map and will be considered the core recovery area for this species in southeastern Wyoming. The boundaries of the nonessential experimental population will be that part of Wyoming south and east of the North Platte River within Natrona, Carbon, and Albany counties (see map). Any ferret found in the wild within these boundaries will be considered part of the nonessential experimental population after the first breeding season following the first year of releases of ferrets in the Shirley Basin/Medicine Bow Management Area.

(9) The reintroduced population will be continually monitored during the life of the project, including the use of radio telemetry and other remote sensing devices as appropriate. All released animals will be vaccinated against diseases prevalent in mustelids, as appropriate, prior to release. Any animal which is sick, injured, or otherwise in need of special care may be captured by authorized personnel of the Service or the Department or their agents and given appropriate care. Such an animal may be released back to the wild in the Shirley Basin/Medicine Bow Management Area or another authorized site as soon as possible, unless physical or behavioral problems make it necessary to return the animal to captivity.

(10) The status of the experimental population will be re-evaluated within the first 5 years after the first year of releases of black-footed ferrets to determine future management needs.

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This review will take into account the reproductive success and movement patterns of the individuals released on the area, as well as the overall health of the experimental population and the prairie dog ecosystem in the above described area.

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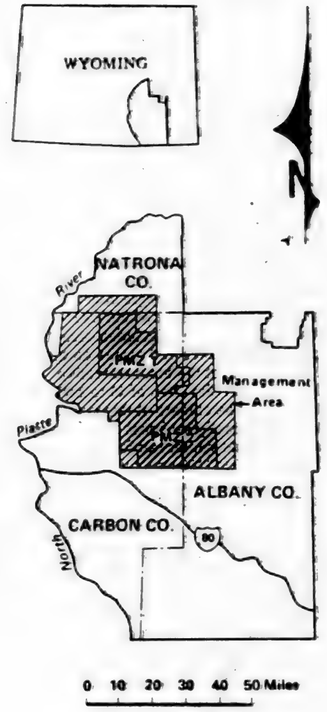

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Dated: May 8, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91-12301 Filed 5-23-91; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

RIN 1018-AB56

Endangered and Threatened Wildlife and Plants; Proposed Endangered or Threatened Status for 15 Plants From the Island of Maui, Hawaii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for 14 plants: *Acaena exigua* (liliwai), *Alectryon macrococcus* (mahoe), *Bidens micrantha* ssp. *Kalealaha* (ko'oko'olau), *Clermontia oblongifolia* ssp. *mauiensis* ('oha wai), *Cyanea lobata* (haha), *Cyanea mceldowneyi* (haha), *Cyrtandra munroi* (ha'iwale), *Geranium multiflorum* (nohoanu), *Hedyotis coriacea* (kio'ele), *Lipochaeta kamolensis* (nehe), *Lycopodium mannii* (wawae'iole), *Lysimachia lydgatei* (no common name (NCN)), *Melicope mucronulata* (alani), and *Schiedea haleakalensis* (NCN). The Service also proposes threatened status for one plant, *Argyroxiphium sandwicense* ssp. *macrocephalum* (Haleakala silversword, 'ahinahina). Fourteen of these taxa are known primarily from the island of Maui, Hawaii. One of two recognized varieties of *Alectryon macrococcus* is known only from East Maui and the other is known primarily from the island of Oahu, Hawaii. Two of these taxa are also known from one or more sites on the islands of Kauai, Oahu, Molokai, and Hawaii. The 15 plant taxa and their habitats have been variously affected and are threatened by one or more of the following: Trampling and/or predation by feral animals (goats, cattle, pigs, rodents); habitat degradation and competition for space, light, water, and nutrients by naturalized, alien vegetation; and habitat loss from fires. One of these taxa has been subject to overcollection. Because of the depauperate number of extant individuals and their severely restricted distributions, populations of these taxa are subject to an increased likelihood of extinction from stochastic events. A determination that these 15 taxa are endangered or threatened would implement the Federal protection and recovery provisions provided by the Act. Comments and materials related to this proposal are solicited.

DATES: Comments from all interested parties must be received by July 23, 1991. Public hearings requests must be received by July 8, 1991.

ADDRESSES: Comments and materials concerning this proposal should be sent to Robert P. Smith, Pacific Islands Field Office Supervisor, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 968590. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Derral R. Herbst, at the above address (808/541-2749 of FTS 551-2749).

SUPPLEMENTARY INFORMATION:

Background

Acaena exigua, Argyroxiphium sandwicense ssp. *macrocephalum, Bidens micrantha* ssp. *kalealaha, Clermontia oblongifolia* ssp. *mauiensis, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Geranium multiflorum, Hedyotis coriacea, Lipochaeta kamolensis, Lycopodium mannii, Lysimachia lydgatei, Melicope mucronulata,* and *Schiedea haleakalensis* are endemic to, or have their largest or best known population on the island of Maui, Hawaii. Of the two recognized varieties of *Alectryon macrococcus,* one is found solely on East Maui and the other variety is widely spread over four islands: Kauai, the Waianae Mountains of Oahu, Molokai, and West Maui. *Lycopodium mannii* is also known from the island of Hawaii and *Melicope mucronulata* from Molokai.

The island of Maui is formed from the remnants of two large shield volcanoes, the older West Maui volcano ot the west and the larger but much younger Haleakala volcano on the east. These two volcanoes and the connecting isthmus formed by lava flows comprise an island 729 square miles (sq mi) (1,888 sq kilometers (km)) in area. Stream erosion has cut deep valleys and ridges into the originally shield-shaped West Maui volcano. The highest point on West Maui is Puu Kukui at 5,787 feet (ft) (1,764 meters (m)) elevation with an average rainfall of 400 inches (in) (1,020 centimeters (cm)) per year, making it the second wettest spot in Hawaii (Walker 1990) and possibly the world. Having erupted just 200 years ago, East Maui's Haleakala, 10,023 ft (3,055 m) in elevation, has retained its classic shield shape and lacks the diverse vegetation typical of the older and more eroded West Maui mountain. Rainfall on Haleakala is about 350 in (890 cm) per year, with its windward slope receiving the most precipitation. However, Haleakala's crater is a dry cinder desert because it is below the level at which precipitation develops and is sheltered from moisture-laden winds (Gagne and Cuddihy 1990).

The 15 proposed taxa grow in a wide variety of vegetation communities (shrublands, forests, and bogs), elevational zones (lowland to alpine), and moisture regimes (dry to wet). Four of the 15 taxa (*Alectryon macrococcus, Hedyotis coriacea, Lipochaeta kamolensis,* and *Melicope mucronulata*) are members of the Lowland Dry Vegetation type that includes several plant communities and occurs on the leeward side of the main Hawaiian Islands at an elevation of 15 to 2,000 ft (5 to 610 m). The climate of this vegetation type is distinctly seasonal with hot dry summers and winter rainfall, usually less than 40 in (100 cm), but ranging up to 80 in (200 cm) annually. These four species grow in forests and shrublands in the wetter parts of this vegetation type, extending into the Lowland Mesic Vegetation type (Gagne and Cuddihy 1990).

Two species, *Cyanea lobata* and *Lysimachia lydgatei,* are found in Lowland Mesic Shrubland and Forest habitats on West Maui and other Hawaiian Islands, occurring mainly between 100 and 5,300 ft (30 and 1,600 m) in elevation in areas topographically unsuitable for agriculture. Annual precipitation ranges from less than 40 to 150 in (100 to 380 cm). The substrate is diverse: Shallow rocky soils on steep slopes to deep soils in gulches and erosional plains (Gagne and Cuddihy 1990, Walker 1990).

The Lowland West Forest habitat of *Cyrtandra munroi* is composed primarily of native vegetation with canopies from 10 to 130 ft (3 to 40 m) high in sheltered, well drained, leeward slopes at elevations between 300 and 3,900 ft (100 and 1,200 m). Annual rainfall is generally between 60 and 200 in (150 and 500 cm). The substrate ranges from clay or organic muck over 'a'a lava to volcanic ash beds or young lava flows (Gagne and Cuddihy 1990).

Four proposed plant taxa occur primarily on the windward slopes of Maui and the island of Hawaii in Montane Wet communities. Included in this vegetation type are Wet Montane Bogs and Wet Montane Forest Communities. *Acaena exigua* is found in the *Metrosideros* ('ohi 'a) Montane Bog Community, characterized by thick peat overlaying an impervious clay substrate

with hummocks of sedges and grasses, stunted trees, and shrubs. The Montane Wet Forests to which *Clermontia oblongifolia* ssp. *mauiensis, Cyanea mceldowneyi,* and *Lycopodium mannii* belong occur on Molokai, Maui, and Hawaii islands at 3,900 to 7,200 ft (1,200 to 2,200 m) in elevation, mainly on steep windward valley walls. This vegetation type is characterized by rich soil development, high rainfall (100 In (250 cm) or more annually), high diversity, and a rich understory (Gagne and Cuddihy 1990).

Schiedea haleakalensis is found in the Subalpine Dry Vegetation type that occurs on East Maui and the island of Hawaii between 5,600 and 9,800 ft (1,700 and 3,000 m) in elevation. The substrate is of cinder or weathered volcanic ash or bare lava with little or no soil development, partly due to the low annual precipitation of 15 to 40 in (40 to 100 cm). Periodic frost and occasional snow cover characterize the upper limits of this vegetation type (Gagne and Cuddihy 1990).

Argyroxiphium sandwicense ssp. *macrocephalum* is found within the Alpine Dry Shrubland community that occurs above 9,800 ft (3,000 m) elevation. Precipitation is only 30 to 50 in (75 to 125 cm) annually. This community is subject to frequent frosts and arid extremes, limiting vegetation (grasses, mosses, and alpine-adapted shrubs) to near the lower boundary of the community, on bare gravel, debris, and cinders (Gagne and Cuddihy 1990).

The final two proposed plant taxa, *Bidens micrantha* ssp. *kalealaha* and *Geranium multiflorum,* grow in diverse vegetation types. *Bidens micrantha* ssp. *kalealaha* is found in open-canopy Dry Montana Forests to Dry Subalpine Shrublands extending from 1,600 to 9,800 ft (500 to 3,000 m) in elevation. Annual precipitation ranges from 10 to 50 in (25 to 125 cm) in seasonally Dry Montane Forests, to about 60 in (150 cm) in subalpine shrublands. The substrate is comprised mostly of blocky lava flows with little or no soil development. The habitat of *Geranium multiflorum* also spans diverse vegetation types, from montane grasslands to wet forests and swamps, extending into the subalpine zone (1,600 to 8,900 ft (500 to 2,700 m)) with an annual range of precipitation from as low as 15 in (40 cm) to over 100 in (250 cm). Occurring on the windward side of East Maui, this species is found mostly within wet forests. Substrates range from lava flows to rich soils (Gagne and Cuddihy 1990).

The land that supports these 15 plant taxa is owned by the City and County of Honolulu, the State of Hawaii (including State parks, forest reserves, Natural Area Reserves, wilderness reserves, and land leased by the U.S. Army on Makua Military Reservation), the Federal government (Haleakala National Park on East Maui and portions of Schofield Barracks under the jurisdiction of the U.S. Army on Oahu), and private parties (including several with easement agreements with private conservation organizations).

Discussion of the 15 Taxa Proposed for Listing

Asa Gray (1854) described *Acaena exigua* based on a specimen collected on Kauai in 1840 by personnel of the U.S. Exploring Expedition. He chose the specific epithet in reference to the small size of the plant as compared to other members of the genus. Heinrich Wawra later collected another specimen on Kauai, which was used by F.A. Georg Bitter (1910–1911) as the type specimen for two varieties, *glabriuscula* and *subtusstrigulosa.* Bitter described a third variety, *glaberrima,* from a specimen collected on Maui by Wilhelm Hillebrand. The current taxonomic treatment (Wagner *et al.* 1990) considers Bitter's varieties to represent only populational variation and recognizes no varieties.

Acaena exigua of the rose family (Rosaceae) is a perennial herb with leafy stems 0.4 to 1.6 in (1 to 4 cm) long and flowering stems 2 to 6 in (5 to 15 cm) long. The leaves are about 0.4 to 1 in (1 to 2.5 cm) long, comprising 6 to 17 oval leaflets, each about 0.04 to 0.12 in (1 to 3 millimeters (mm)) long, 0.04 to 0.08 in (1 to 2 mm) wide, glossy above, and whitish beneath. The petalless flowers are in short, dense spikes 0.2 to 0.4 in (5 to 10 cm) long. The receptacle (base of flower) is urn-shaped and encloses the fruit, which is a pale brown, cone-shaped achene (dry, one-seeded fruit) about 0.04 in (1 mm) long. The only member of the genus native to Hawaii, this species is distinguished from other Hawaiian members of the rose family in that it is a small, compact, high-elevation bog species with flowers which lack petals (Hillebrand 1888, Neal 1965, Wagner *et al.* 1990).

Historically, *Acaena exigua* was known from Puu Kukui on West Maui and from Mount Waialeale on Kauai (Hawaii Heritage Program (HHP) 1990a1, 1990a2; Wagner *et al.* 1990). Although this species has not been observed since 1973, it is still believed to be extant on Puu Kukui on privately owned land (HHP 1990a1, Wagner *et al.* 1990). The plants are small, inconspicuous, and easily overlooked among the tussocks of grasses and sedges with which it grows. Because it is likely that future surveys will show that *Acaena exigua* is still extant (Derral Herbst, U.S. Fish and Wildlife Service, pers. comm., 1990), this species is included here to extend to it the protection warranted by the Act if and when it is rediscovered. While Puu Kukui encompasses about 40 acres (ac) (16 hectares (ha)), it contained only a single observed individual in 1973. *Acaena exigua* typically grows in montane bogs at an elevation of 5,300 to 6,000 ft (1,600 to 1,800 m) (HHP 1990a1, 1990a2, 1990p; Sohmer and Gustafson 1987). Associated species include the native sedges and grasses *Deschampsia nubigena, Dichanthelium* spp., and *Oreobolus furcatus,* and the native shrubs *Metrosideros polymorpha* ('ohi 'a) and *Vaccinium* ('ohelo) (Sohmer and Gustafson 1987). Habitat degradation by feral pigs is the major threat to *A. exigua* and all other native vegetation within the historic range of this species.

Hillebrand collected specimens of *Alectryon macrococcus,* which he discussed in his flora (Hillebrand 1888) under the name "*Mahoe,* gen. nov.?" Emmanuel Drake del Castillo (1890) referred to Hillebrand's plant as "*Dodonaea* sp." in a note under his description of *D. viscosa.* Ludwig Adolph Timotheus Radlkofer (1890) published the name *Alectryon macrococcus,* the specific epithet referring to the large fruit, and later added a Latin description (Radlkofer and Rock 1911). Harold St. John and Lafayette Frederick (1949) segregated the Oahu population of the species into *A. mahoe,* based mostly on a difference in the amount of hair on the undersides of the leaves. George Linney (1987), in the currently accepted treatment, considered this difference too trivial to support maintaining the Oahu plants as a distinct taxon; however, he did formally recognize the East Maui plants, with their densely hairy leaf undersurface, as variety *auwahiensis.* Some botanists, retaining Joseph Gaetner's original neuter designation of the genus, have used the specific epithet *macrococcum* (St. John and Frederick 1949). However, when monographing *Alectryon,* Radlkofer (1890) treated the genus as masculine. He changed the endings of older epithets to agree and published new ones, including *macrococcus,* as masculine.

Alectryon macrococcus of the soapberry family (Sapindaceae) is a tree up to 38 ft (11 m) tall with reddish brown branches. The leaves are usually 8 to 22 in (20 to 55 cm) long, typically with two to five pairs of egg-shaped, slightly asymmetrical leaflets, each 4 to 11 in (10 to 28 cm) long and 1.6 to 4.7 in (4 to 12 cm) wide. Glossy and smooth above, the

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leaves have a conspicuous netted pattern of veins. A dense covering of rust-colored hairs persists on the lower surfaces of mature leaves of *A. macrococcus* var. *auwahiensis*, whereas the mature leaves of *A. macrococcus* var. *macrococcus* lack hairs or are only slightly hairy. In both varieties, the flowers, which may be either bisexual or male, are borne in branched clusters up to 12 in (30 cm) long and lack petals. The hard, spherical fruit, borne singly or sometimes in pairs, encloses a single glossy brown seed with a scarlet aril (fleshy covering over the seed). The only member of its genus found in Hawaii, this species is distinguished from other Hawaiian members of its family by being a tree with a hard fruit 1 in (25 cm) or more in diameter (Degener 1937a, Kimura and Nagata 1980, Lamb 1981, Rock 1913, Wagern *et al.* 1990).

The historical range of *Alectryon macrococcus* var. *auwahiensis* encompasses Auwahi on East Maui, where a single population of nine individuals remains within a 72 ac (29 ha) area on privately owned land (HHP 1990b1 to 1990b4; Medeiros *et al.* 1986). *Alectryon macrococcus* var. *macrococcus* has a much wider distribution. This variety was found historically on four islands: From Kahana Gulch to Olowalu Valley on West Maui; at Kalaupapa, Kamakou Preserve, and Puu Kolekole on East Molokai; in Waimea Canyon and as far south as Makaweli on Kauai; and widely distributed throughout the Waianae Mountains and more restricted in the Koolau Mountains on Oahu (HHP 1990c1 to 1990c4, 1990c6 to 1990c12, 1990c14, 1990c16, 1990c22 to 1990c24, 1990c26, 1990c27). *Alectryon macrococcus* var. *macrococcus* still occurs on those four islands, but within a much smaller range. The three existing populations on West Maui are along the Honokowai Ditch Trail and in Launiupoko Valley on privately owned land and total just a few plants. The five extant populations of *A. macrococcus* var. *macrococcus* on Molokai are restricted to Puu Kolekole jeep road, Kaunakakai Gulch, and Kamakou Preserve, with a total of six plants on State and private land. The 6 populations of this taxon on Kauai occur in Waimea Canyon and in Na Pali Coast State Park on State-owned land and number less than 100 plants. The distribution of the plants on Oahu is now spotty, with most recent sightings in the Waianae Mountains, from as far north as Kaluakauila Gulch to as far south as the ridge above Lualualei. These 28 populations are on City and County, State, Federal, and private land, most numbering only 1 or 2 individuals, but 2 populations number between 50 and 200 individuals. The total number of individuals on Oahu is estimated to be about 400. The entire species currently numbers about 500 individuals. Both varieties of *Alectryon macrococcus* typically grow on dry slopes or in gulches in north-facing, dry to mesic lowland forests at an elevation of 1,200 to 3,500 ft (360 to 1,070 m) (HHP 1990c2; Wagner *et al.* 1990; Steven Perlman, Hawaii Plant Conservation Center (HPCC), pers. comm., 1990). Associated native species include 'ohi'a, *Aleurites moluccana* (kukui), *Diospyros sandwicensis* (lama), *Nestegis sandwicensis* (olopua), and *Psychotria* kopiko) (HHP 1990c2, 1990c4, 1990c5, 1990c10, 1990c13, 1990c15, 1990c18 to 1990c20; S. Perlman, pers comm., 1990). The threats to both recognized varieties of *Alectryon macrococcus* are infestations by the black twig borer; habitat degradation by feral pigs; competition for light, space, and water with the alien plants *Melinis minutiflora* (molasses grass), *Pennisetum clardestinum* (kikuyu grass), *Psidium cattleianum* (strawberry guava), and *Schinus terebinthifolius* (Christmasberry); fire; and predation of fruits and flowers by rodents. Predation and habitat degradation by cattle and the small number of remaining individuals are threats specific to *Alectryon macrococcus* var. *auwahiensis*, whereas goat activity and the resultant habitat destruction are immediate threats to *Alectryon macrococcus* var. *macrococcus*.

Charles Pickering, a naturalist on the U.S. Exploring Expedition, first collected *Argyroxiphium sandwicense* ssp. *macrocephalum* on Haleakala, Maui, in 1841. Gray (1852) named that plant *A. macrocephalum*, the specific epithet referring to the large flower heads. Hillebrand (1888) treated the taxon as variety *macrocephalum* of *A. sandwicense*, while David D. Keck (1936a) did not recognize any varieties of *A. sandwicense*, placing the taxon into synonymy. Alain K. Meyrat renamed this taxon subspecies *macrocephalum*, based on quantitative, geographic, and evolutionary differences (Meyrat *et al.* 1983; Gerald Carr, University of Hawaii, pers. comm., 1990). This is the status accepted in the most recent treatment (Carr 1990).

Argyroxiphium sandwicense ssp. *macrocephalum* of the aster family (Asteraceae) usually is a single-stemmed shrub with a rosette of narrowly sword/shaped leaves 5 to 13 in (13 to 33 cm) long and 0.3 to 0.9 in (8 to 23 mm) wide at the midpoint. A dense mat of silky, silvery hairs covers the leaves, which are more or less three-angled in cross section. The narrow, branched flowering stalk is ellicptic to lance-shaped in outline, 9 to 31 in (23 to 78 cm) wide, 2.3 to 4.9 ft (0.7 to 1.5m) long in unbranched plants, and 2.3 to 3.3 ft (0.7 to 1 m) long in branched plants. Each flowering head is about 1 in (2.5 cm) in diameter and has 11 to 42 pinkish petal-like ray florets. Central disk florets, pink to wine-red at the top and yellowish at the base, number 120 to 600 per head. Fruits are achenes, 0.3 to 0.6 in (7 to 15 mm) long. Plants with a single rosette die after flowering. This subspecies is distinguished from *A. sandwicense* ssp. *sandwicense* by having wider leaves, more ray flowers per head, and a broader flowering stalk, less than four times as long as wide. In addition to those characteristics, *A. sandwicense* ssp. *macrocephalum* differs from other members of the genus by the combination of its longer, three-angled leaves; its silvery leaf hairs which completely hide the leaf surface; and its longer achenes (Carr 1985, 1990; Degener 1936a; Degener and Degener 1957; Herbst 1986; Kepler 1983; Kimura and Nagata 1980; Meyrat 1982a, 1982b; Neal 1965; Wilson 1985).

Argyroxiphium sandwicense ssp. *macrocephalm* apparently occupies essentially all of its historical range (Loope and Crivellone 1986). This taxon occurs only in Haleakala National Park on East Maui, mainly within Haleakala Crater. The 7 known populations, which extend over and area of 2,000 ac (970 ha), contain an estimated 50,000 individuals (HH) 1990d1 to 1990d8; Lloyd Loope, Haleakala National Park, pers. comm., 1990). *Argyroxiphium sandwicense* ssp. *macrocephalum* typically grows on barren cinder cones and young 'a'a lava flows in day alpine areas at an elevation of 7,200 to 8,000 ft (2,200 to 3,000 m) (Carr 1990; HHP 1990d1, 1990 d2, 1990d8; Loope and Crivellon 1986; Whiteaker 1983). Associated native shrubs include 'ohi'a, *Dubautia menziesii* (na'ena'e), *Silene struthioloides*, and *Styphelia tameiameiae* (pukiawe) (HHP 1990d2, 1990d8; Kobayashi 1973b). Historically, *Argyroxiphium sandwicense* ssp. *Macrocephalum* has sustained numerous threats to its survival: Overcollection and vandalism by humans, and trampling and predation by goats, cattle and other feral ungulates. Today, although this taxon receives legal protection within Haleakala National Park, vandalism and illegal collection continue of a small scale. The goats and cattle have been removed from silversword habitat but still pose a potential threat due to the possibility of ingress. Currently, the greatest threat to this taxon is restricted range. One destructive event could possibly extirpate a significant protion of the plants. The predation of silverword pollunators by Argentine ants (Iridomyrmex humilis) and yellow jackets *(Vespula pennsylvanica)* and probable threats to this taxon

A specimen of *Bidens* collected by Charles Noyes Forbes on Lanai in 1918 was described and named *B. distans* by Earl Edward Sherff in 1930. In 1950 William H. Hatheway and Amy B. H. Greenwell collected a specimen of *Bidens* On Haleakala, Maui, which Sherff (1951b) named *Bidens micrantha* var. *rudimentifera*. Kenneth M. Nagata and Fred R. Ganders determined that the Maui and Lanai populations formed a natural taxon, which they named *B. Micrantha* ssp. *kalealaha*, devising an anagram of the word "Haleakala" as the subspecific epithet. Because they believed that Sherff based his variety *rudimentifera* on a plant of this subspecies with abnormal fruits, Ganders and Nagata (1983) did not recognize that name.

Bidens micrantha ssp. *Kalealaha* of the aster family (Asteraceae) is an erect perennial herb, slightly woody at the base, and 1.6 to 4.9 ft (0.5 to 1.5 m) tall. Leaves are 2.4 to 7.5 in (6 to 19 cm) long, usually with three to seven and sometimes up to nine lance-shaped leaflets, each 1 to 4 in (2.5 to 10 cm) long and 0.2 to 1.2 in (0.5 to 3 cm) wide. Flower heads are arranged at the top of the plant and on side branches in open clusters of 15 to 50. Each flower head is 1 to 1.8 in (2.5 to 4.5 cm) in diameter and comprises 5 sterile, yellow ray florets, 0.6 to 1.1 in (15 to 27 mm) long and 0.2 to 0.3 in (5 to 7 mm) wide, and 9 to 15 bisexual disk florets in the center of the head. Fruits are black achenes, 0.3 to 0.6 in (8 to 14 mm) long and 0.03 to 0.06 in (0.8 to 1.5 mm) wide, with two awns and no wings. This taxon differs from other subspecies of *B. micrantha* by its larger flower heads and the intermediate number of ray and disk florets in each head. It is distinguished from other species of *Bidens* by its erect habit and the loose arrangement of the relatively large flower heads on both terminal and lateral branches (Degener 1938; Degener and Sherff 1932; Ganders and Nagata 1983, 1990; Hillebrand 1888).

Historically, *Bidens micrantha* ssp. *kalealaha* was known from Lanai, the south slope of Haleakala on East Maui, and from one collection on West Maui (Ganders and Nagata 1990; HHP 1990e3, 1990e4, 1990e6 to 1990e10, 1990e12, 1990e13). This taxon only remains on East Maui, in Kahua, Manawainui to Wailaulau, and in Haleakala National Park, on State and Federal land (HHP 1990e1, 1990e2, 1990e5, 1990e11). The 4 known populations, which extend over a distance of about 9.5 by 2 mi (15.3 by 3.2 km), number no more than 2,000 individuals (Art Medeiros, Haleakala National Park, pers. comm., 1990). *Bidens micrantha* ssp. *kalealaha* typically grows on sheer rock walls in dry montane forests to subalpine shrubland at an elevation of 5,200 to 7,600 ft (1,600 to 2,300 m) (Ganders and Nagata 1990; HHP 1990e1, 1990e2, 1990e5, 1990e11; Sohmer and Gustafson 1987). Associated native shrubs include pukiawe, *Coprosma* ssp. *(pilo)*, *Dodonaea viscosa* ('a'ali'i), and *Dubautia platyphylla* (na'ena'e) (Ganders and Nagata 1990, HHP 1990e2). The major threats to *Bidens micrantha* ssp. *kalealaha* are habitat destruction by feral goats and cattle, predation by goats and possibly cattle, competition from the alien kikuyu grass, and fire.

In 1911 Joseph F. Rock collected the first specimen of *Clermontia oblongifolia* ssp. *mauiensis* on Maui and two years later described and named it *C. oblongifolia* var. *mauiensis* (Rock 1913). However, in his monograph of the Hawaiian members of the bellflower family (Campanulaceae), Rock (1919) no longer recognized the veriety. Later Otto Degener (1937b) distinguished the taxon as *C. oblongifolia* f. *mauiensis*. Thomas G. Lammers (1988) raised the taxon to the subspecific level with his publication of the new combination C. *oblongifolia* ssp. *mauiensis*.

Clermontia oblongifolia ssp. *mauiensis* of the bellflower family grows only terrestrially as a shrub or tree, reaching a height of 6.6 to 23 ft (2 to 7 m). Leaves, on petioles (leaf stems) 1 to 4.5 in (2.5 to 11.5 cm) long, are oblong or elliptic; have thickened, rounded teeth; and reach a length of 3 to 7.5 in (8 to 19 cm) and a width of 0.8 to 2 in (2 to 5 cm). Two flowers, or sometimes three, are group together on a stalk 0.2 to 1.8 in (0.5 to 4.5 cm) long, each individual flower having a stalk 0.4 to 1.8 in (1 to 4.5 cm) long. The flower is 2.4 to 3.1 in (6 to 7.8 cm) long; the calyx (sepals) and corolla (petals) are similar in size and appearance, each forming an arched tube which is greenish white or purplish on the outside and white or cream-colored on the inside. The nearly spherical, orange fruit is a berry, 0.7 to 1.2 in (17 to 30 mm) long. This subspecies differs from others of the species by its leaf shape; the lengths of its leaf, leaf stalk, and flower stalk; the shapes of the leaf tip and the flower bud; and the purple or magenta color of the fused stamens. This species is distinguished from others in the genus by its calyx and corolla, which are similar in color and are each fused into a curved tube that falls off as the flower ages, as well as by the lengths of the leaf and flower stalks, the flower, and the smooth green basal portion of the flower (the hypanthium) (Degener 1937b; Lammers 1988, 1990; Rock 1913).

Historically, *Clermontia oblongifolia* ssp. *mauiensis* was known from Mahana and Kaiholena valleys on Lanai and from Honomanu Valley on Haleakala, East Maui (Degener 1937b, Lammers 1990, Rock 1913). Although this taxon was not reported earlier from West Maui, the only currently known individual of *Clermontia oblongifolia* ssp. *mauiensis* grows along a trail to Puu Kukui in the Honokowai section of the West Maui Natural Area Reserve on State land (HHP 1990fl, Lammers 1990). This taxon typically grows on the sides of ridges in 'ohi'a-dominated wet montane forests at an elevation of 2,800 to 3,000 ft (850 to 900 m) (HHP 1989b, 1990fl; Rock 1913). Associated species include pilo, *Clermontia* ('oha wai), *Hedyotis* (manono), and *Melicope* (alani) (Robert Hobdy, Hawaii Division of Forestry and Wildlife, pers. comm., 1990). Because only a single individual of *Clermontia oblongifolia* ssp. *mauiensis* is known to exist, the lack of a genetic pool is likely to result in reduced reproductive vigor, and any collecting (mainly for scientific purposes) also could produce the same results. The rooting activities of feral pigs also pose a serious threat to this taxon.

Based on a specimen collected by Horace Mann, Jr., and William Tufts Bringham on Maui, Mann (1867) described *Cyanea lobata*, the specific epithet referring to the lobed leaves. In 1919 George C. Munro collected a plant on Lanai, named *C. baldwinii* by him and Forbes (Forbes and Munro 1920) and later synonymized under *C. lobata* by Lammers (1990). St. John (1987, St. John and Takeuchi 1987), believing no generic distinctions existed between *Cyanea* and *Delissea*, transferred both species to the genus *Delissea*, the older name, creating *D. baldwinii* and *D. lobata*. The current treatment does not follow this course (Lammers 1990). *Cyanea lobata* var. *hamakuae*, described by Rock (1919), is currently considered to be *C. grimesiana* ssp. *grimesiana* (Lammers 1988).

Cyanea lobata, a member of the bellflower family, is a shrub with few branches 4.3 to 7.5 ft (1.3 to 2.3 m) tall that may be smooth or occasionally rough due to small projections on the

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stems and lower leaf surfaces. Leaves are 12 to 20 in (30 to 50 cm) long and 4 to 6 in (10 to 15 cm) wide, with 12 to 25 irregular lobes on each side of the leaf. Flowers, clustered in groups of 5 to 12, have greenish white or purplish petals fused into a curved tube 2.4 to 2.8 in (60 to 70 mm) long and 0.2 to 0.4 in (5 to 11 mm) wide. Berries are yellow and spherical. This species is distinguished from other species of *Cyanea* by the size of the flower and the irregularly lobed leaves with petioles (Degener 1936b, Hillebrand 1888, Lammers 1990, Rock 1919).

Historically, *Cyanea lobata* was known from Lanai and scattered locations throughout West Maui from Honokohau to Wailuku Valley (HHP 1990g3, 1990g4; Lammers 1990). Within the past eight years, this taxon was only found in Waikapu Valley on West Maui on privately owned land (HHP 1990g5). Although that population of one to four individuals was recently destroyed by a landslide following heavy rains (HHP 1990g5, Hobdy *et al.* 1990), the species is still believed to be extant, owing to its wide historical range and the lack of adequate surveys due to the inaccessibility of the area (D. Herbst and R. Hodby, pers. comms., 1990). *Cyanea lobata* typically grows on steep stream banks in mesic lowland forests at an elevation of 1,800 to 3,000 ft (550 to 900 m). (HHP 1990g1, 1990g2, 1990g5; Hobdy *et al.* 1990; Lammers 1990). Associated species include *Diplazium sandwichianum* (ho'i'o) and *Touchardia latifolia* (olona) (Hobdy *et al.* 1990). Major threats to *Cyanea lobata* are reduced reproductive vigor and/or stochastic extinction due to the small number of individuals, and habitat degradation by feral pigs.

Rock collected a new species of *Cyanea* in 1954, which he later described and named *Cyanea mceldowneyi* in honor of George McEldowney, a forester on Maui (Rock 1957). St. John (1987) transferred the species to the genus *Delissea*, but the current treatment of these genera (Lammers 1990) does not accept the transfer.

Cyanea mceldowneyi, an unbranched shrub in the bellflower family, has adult leaves which are 8 to 14 in (20 to 35 cm) long by 2 to 3.5 in (5 to 9 cm) wide and have wedge-shaped bases, hardened teeth, and sometimes a few short prickles on the upper surface. Young leaves are the same width as adult leaves but shorter, and have rounded bases, hardened marginal teeth, and a greater number of prickles. Flowers are in clusters of five to seven, each cluster with a stalk 0.6 to 1.2 in (15 to 30 mm) long and each flower with a stalk 0.4 to 0.6 in (10 to 14 mm) long. Petals, white with purple stripes, are fused into a curved tube 1.6 in (40 mm) long and 0.3 in (8 mm) wide and have small prickles on the lobes. Berries have not been observed. This species is distinguished from other species of *Cyanea* by the size of the leaves, the differing morphology of young and mature leaves, the length of the floral stalks, and the size and proportions of the flowers (Lammers 1990, rock 1957).

Historically, *Cyanea mceldowneyi* was known from Honomanu on East Maui (HHP 1990h2). This species remains in Waikamoi on East Maui on privately owned land (HHP 1990g1, 1990h2). The 2 known populations, about 0.5 mi (0.8 km) apart and measuring not more than 100 sq ft (9 sq m) in area, total less than 30 individuals (HHP 1990h1; R. Hobdy, pers. comm., 1990). *Cyanea mceldowneyi* typically grows in wet montane forests at an elevation of 3,030 to 4,200 ft (925 to 1,1280 m) (HHP 1990h1, 1990h2; Lammers 1990). Associated native vegetation includes alani, manono, and 'ohi'a (R. Hobdy, pers. comm., 1990). The major threats to *Cyanea mceldowneyi* are the same as for *Clermontia oblongifolia* ssp. *mauiensis* and *Cyanea Lobata*: Habitat degradation by feral pigs and stochastic extinction or reduced reproductive vigor due to the small number of remaining individuals.

Cyrtandra munroi was first collected by Forbes on Lanai in 1913 and was named by him (Forbes 1920) in honor of George C. Munro, who had collected other specimens of the species.

Cyrtandra munroi of the gesneria family (Gesneriaceae) is a shrub with opposite, elliptic to almost circular leaves, 3.7 to 8.3 in (9.5 to 21 cm) long and 2.2 to 3.7 in (5.5 to 9.5 cm) wide, which are sparsely to moderately hairy on the upper surface and covered with velvety, rust-colored hairs underneath. The flowers are usually arranged in clusters of three on stalks emerging from the leaf axils. The white petals are fused into a tube, 0.6 to 0.8 in (15 to 20 cm) long, which flares into two upper lobes, 0.1 in (3 mm) long, and three lower lobes, about 0.2 in (5 to 6 mm) long. The white berries, covered with fine hair, are somewhat egg-shaped and 0.7 to 0.9 in (1.8 to 2.3 cm) long. This species is distinguished from other species of the genus by the broad opposite leaves, the length of the flower cluster stalks, the size of the flowers, and the amount of hair on various parts of the plant (Forbes 1920, Wagner *et al.* 1990).

Historically, *Cyrtandra munroi* was known from scattered collections from Lanaihale on Lanai and Makamakaole on West Maui (HHP 1990i1, 1990i2; Wagner *et al.* 1990). This species was considered common in the Makamakaole area on State land in 1971, but has not been sighted there since (HHP 1990i1). The only known existing plant is one individual discovered in 1989 in privately owned Honolua Valley (Randy Bartlett, Maui Land and Pineapple Company, pers. comm., 1990). Located about 5 mi (8 km) from the Makamakaole population, this discovery suggests that the historical distribution of his species was more widespread than previously thought. *Cyrtandra munroi* typically grows on rich, moist talus slopes in wet lowland forests at an elevation of 1,000 to 3,020 ft (300 to 920 m) (HHP 1990i1, 1990i2; Wagner *et al.* 1990). Associated native species include kukui, lama, 'pha wai, 'ohi'a, and *Hedyotis acuminata* (au) (HHP 1990i1; R. Bartlett, pers. comm., 1990). The major threat to *Cyrtandra munroi* is stochastic extinction and/or reduced reproductive vigor due to the small number of existing individuals.

The first specimens of *Geranium multiflorum* were collected by Pickering in 1841 while the U.S. Exploring Expedition was on Maui. It was later described by Gray (1854), who named it for its many flowers in each flower cluster. Other published names which refer to this taxon are: *G. ovatifolium* (Gray 1854), *G. multiflorum* var. *canum* (Hillebrand 1888), *G. multiflorum* var. *ovatifolium* (Fosberg 1936), and *G. multiflorum* ssp. *ovatifolium* (Carlquist and Bissing 1976). Degener elevated Gray's section Neurophyllodes of *Geranium* to the generic level and published the following new varieties and combinations which refer to this taxon: *Neurophyllodes ovatifolium* and *N. multiflorum* (Degener and Greenwell 1952), *N. ovatifolium* var. *forbesii* (Degener and Degener 1967), and *N. ovatifolium* var. *superbum* (Degener and Degener 1967). St. John (1973) rejected Degener's taxonomy and transferred his new taxa back to the genus *Geranium*, resulting in the new combinations *G. multiflorum* var. *forbesii* and *G. multiflorum* var. *superbum*. The current treatment (Wagner *et al.* 1990), however, does not recognize any infraspecific taxa of *G. multiflorum*.

Geranium multiflorum is a 3.3 to 9.8 ft (1 to 3 m) tall, many-branched shrub of the geranium family (Geraniaceae). The leaves, typically oval, 1.8 to 2.8 in (4.5 to 7 cm) long and 0.8 to 1.2 in (1.5 to 3 cm) wide, have 7 to 11 veins, grayish silky hairs, especially on the lower surface, and 7 to 15 teeth on each side. Flowers are in clusters of 25 to 50, and have 5

white petals which are 0.4 to 0.6 in (10 to 15 mm) long with purple veins or bases. One reddish brown seed, about 0.08 in (2 mm) long, is contained in each carpel body (the seed-containing section of the fruit). The carpel body, about 0.1 in (3 mm) long, is topped with an elongated style, 0.6 to 0.8 in (14 to 20 mm) long, which twists to aid dispersal. This species is distinguished from others of the genus by its white, regularly symmetrical flowers and by the shape and pattern of teeth on its leaf margins (Fosberg 1936, Hillebrand 1888, Wagner *et al.* 1990).

Historically, *Geranium multiflorum* was known from Ukulele, Waieleele, and Wai Anapanapa on East Maui (HHp 1990j3, 1990j5, 1990j13). This species is now known from Haleakala National Park, Hanawi Natural Area Reserve, Koolau Forest Reserve, and Waikamoi Preserve on Federal, State, and private land (HHP 1990j1 to 1990j14). The 11 known populations extend over a distance of about 6.5 by 3.5 mi (10.5 by 5.5 km). Due to the inaccessibility of the populations and the difficulty in determining the number of individuals (due to the plant's multi-branched form), the total number of individuals of this species is not known. However, it probably does not exceed 3,000 plants (HHP 1990j1 to 1990j14; A Medeiros, pers. comm., 1990). *Geranium multiflorum* grows in a wide variety of habitats between 5,180 and 8,040 ft (1,580 and 2,450 m) in elevation: Montane grasslands, open sedge swamps, fog-swept lava flows, gulch slopes of montane wet forests, and occasionally in subalpine shrublands dominated by *Sophora chrysophylla* (mamane) (HHP 1990j1 to 1990j14, Wagner *et al.* 1990). Associated species in montane wet forests include 'ohelo, 'ohi'a, pilo, pukiawe, and *Sadleria* ('ama'u) (HHP 1990j1, 1990j2, 1990j10, 1990j14). Species associated with those populations on lava flows are *Dactylis glomerata* (cocksfoot) and *Ranunculus* (makou) (HHP 1990j6). The major threats to *Geranium multiflorum* are habitat destruction by feral pigs and goats and competition with the encroaching alien plant species, *Rubus argutus* (prickly Florida blackberry).

Based on a specimen collected by Archibald Menzies, Sir James Edward Smith described *Hedyotis coriacea* in 1811, the specific epithet referring to the plant's leathery leaves. Other names by which this toxin has been known, not all validly published, include *H. conostyla* (Gaudichaud-Beaupre 1830), *H. coriacea* f. *conostyla* (Fosberg 1943), *H. menziesiana* (Steudel 1840), *H. smithii* (Walpers 1842–47), *Kadua arnottii* (Don 1834), *K. conostyla* (Hooker and Arnott 1832), *K. menziesiana* (Chamisso and Schlechtendal 1829), *K. smithii* (Hooker and Arnott 1832), and *Oldenlandia conostyla* (A.P. de Candolle 1830). The current treatment (Wagner *et al.* 1990) recognizes only *H. coriacea*.

Hedyotis coriacea of the coffee family (Rubiaceae) is a small shrub with leathery leaves which are generally elliptic to oblong in shape, 1.2 to 3.1 in (3 to 8 cm) long and usually 0.6 to 1.2 in (1.5 to 3 cm) wide. Flowers are arranged in clusters at the ends of the branches, a few flowers per cluster. The fleshy petals are fused into a tube 0.2 to 0.4 in (5 to 10 mm) long. The capsules, which split open to release dark brown seeds, are cup- to top-shaped, 0.2 to 0.3 in (4 to 7 mm) long and 0.1 to 0.2 in (3 to 4 mm) in diameter. This species is distinguished from others of the genus by its small, triangular calyx lobes, which do not enlarge in fruit, and the combination of capsules which are longer than wide and flower buds which are square in cross section (Fosberg 1943, Hillebrand 1888, Wagner *et al.* 1990).

Historically, *Hedyotis coriacea* was known from the Waianae and Koolau Mountains on Oahu and the U.S. Army's Pohakuloa Training Area on the island of Hawaii (HHP 1990k1 to 1990k3). Considered extinct in recent years, this species was rediscovered in 1990 by Steve Perlman in the State-owned Lihau section of the West Maui Natural Area Reserve (HHP 1990k4). It could conceivably exist elsewhere on Maui and on the 1859 lava flow near the Pohakuloa Training Area (Wagner *et al.* 1990). Currently, only a single individual is known (HHP 1990k4). *Hedyotis coriacea* is found on steep, rocky, south-facing slopes in dry to mesic 'a'ali'i-dominated shrublands or forests at an elevation of 1,560 to 7,500 ft (470 to 2,300 m) (HHP 1990k1 to 1990k4; S. Perlman, pers. comm., 1990). Associated species include 'ohi'a, pukiawe, *Alyxia oliviformis* (maile), *Bidens menziesii* (ko'oko'olau), and *Gouania* (HHP 1990k4). The major threats to *Hedyotis coriacea* are reduced reproductive vigor and stochastic extinction due to the small number of remaining individuals, and fire.

Lipochaeta kamolensis, first collected in 1948 by Otto Degener, Horace F. Clay, and R. Bertram, was named by Degener and Sherff (Sherff 1951a) after Kamole Gulch, where it was found.

Lipochaeta kamolensis, a perennial herb of the aster family (Asteraceae), has trailing or climbing stems which are woody at the base and reach a length of 1 to 10 ft (0.3 to 3 m). Leaves are variable, ranging from long and narrow to triangular in shape, 1.2 to 2.6 in (3 to 6.5 cm) long and 0.5 to 1.7 in (1.2 to 4.4 cm) wide. Both leaf surfaces are covered with small flat hairs, and the leaf margins are lobed or deeply cut. Flower heads, arranged singly or in pairs, are 0.8 to 1.0 (2 to 2.5. cm) in diameter, and each comprises 6 yellow, ray florets, about 0.3 in (8.5 to 9 mm) long by less than 0.2 in (3.7 to 4 mm) wide, and approximately 15 disk florets. Fruits are grayish-brown, wingless achenes about 0.08 in (2 mm) long. This species is distinguished from others of the genus by the simple leaves which are pinnately lobed or cut and by the size of the flower heads (Sherff 1951a, Wanger *et al.* 1990).

Historically, *Lipochaeta kamolensis* was known from Kamole Gulch, west of Kepuni Gulch, and 11.8 mi southeast of Ulupalakua Ranch Office (Gardner 1979, Sherff 1951a, Wagner *et al.* 1990). This species still occurs in the Kamole Gulch area, both above and below Highway 31 on State-owned land (Gardner 1979; Wagner *et al.* 1990; R. Hobdy, pers. comm., 1990). The only known population, which extends over an area of about 100 ac (40 ha), contains an estimated several hundred individuals (R. Hobdy, pers. comm., 1990). *Lipochaeta kamolensis* typically grows along the bottom of rock ledges in dry to mesic scrub or dry lowland forests at an elevation of about 820 ft (250m) (Gardner 1979; Wagner *et al.* 1990; R. Hobdy, pers. comm., 1990). Associated vegetation includes 'a'ali'i, grasses, and *Lantana camara* (lantana) (Gardner 1979). The major threats to *Lipochaeta kamolensis* are habitat destruction by cattle and goats, predation by goats and probably by cattle, fire, and the small number of populations subject to extinction by stochastic events.

Mann (1867–68) first collected *Lycopodium mannii* on Maui, referring to it as "*Lycopodium phlegmaria?*" Hillebrand (1888) named the taxon *L. phlegmaria* var. *mannii* in Mann's honor. Hermann Nessel (1939) later transferred the taxon to the genus *Urostachys*. Carl Skottsberg (1942), believing the plant's characters to warrant specific status and retaining the genus *Lycopodium*, published the combination *L. mannii*. some species of *Lycopodium* have recently been placed in the genus *Huperzia* (Ollgaard 1989), and Warren H. Wagner (1987) refers to this taxon as *H. mannii*, but this combination has not yet been published (Jane Medlar, Bernice P. Bishop Museum pers. comm., 1990).

Lycopodium mannii, a member of the clubmoss family (Lycopodiaceae), is a

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pendent epiphyte (plant not rooted in the ground) with clustered, delicate, red stems which are 1.6 to 3.9 in (4 to 10 cm) long and less than 0.04 in (1 mm) thick. Leaves, arranged in three rows on the stem, are pointed, flat, and lance-shaped and measure 0.2 to 0.5 in (4 to 12 mm) long and 0.04 to 0.08 in (1 to 12 mm) wide. Fruiting spikes branch four to six times and are 4.7 to 8 in (12 to 20 cm) long and 0.4 to 0.8 in (1 to 2 cm) wide. Bracts on the fruiting spikes are arranged in two to four ranks, measure 0.04 in (1 mm) long, and conceal the spore capsules.

This species can be distinguished from others of the genus in Hawaii by its epiphytic habit, its delicate red stems, and its forked fruiting spikes (Degener and Degener 1959, Hillebrand 1888, St. John 1981).

Historically, *Lycopodium mannii* was known from Haelaau and Hanaula on West Maui, Captain Cook-Kona on the island of Hawaii, and Waiakoali on Kauai (HHP 1990L1, 1990L5, 1990L10). Although not recorded from East Maui before 1982, this species is now known only from Kipahulu and Manawainui on East Maui, Lihau and Puu Kukui on West Maui, and Laupahoehoe Natural Area Reserve on the island of Hawaii, on State and private land (HHP 1990L2 to 1990L4, 1990L6 to 1990L8). Of the 6 known populations, 5 occupy an area of not more than 30 sq ft (2.8 sq m), while the other is scattered over an area of 650 ac (260 ha); the 6 populations total about 35 individuals (A. Medeiros and L. Loope, *in litt.*, 1989; Linda Cuddihy, Hawaii Volcanoes National Park, and R. Hobdy, pers. comms., 1990). *Lycopodium mannii* typically grows on plants such as 'ohi'a or *Acacia koa* (koa) in mesic to wet montane 'ohi'a/koa forests on Maui and the island of Hawaii at an elevation of 2,900 to 5,200 ft (900 to 1,600 m) (HHP 1989a, 1990L1 to 1990L10). Other associated species include pilo, *Cheirodendron trigynum* ('olapa), *Ilex anomala* (kawa'u), and *Myrsine* (kolea) (HHP 1990L2 to 1990L7). Additional associates on the island of Hawaii are mamane and *Astelia menziesiana* (kaluaha) (Cuddihy *et al.* 1982; HHP 1990L5). The major threats to *Lycopodium mannii* are habitat degradation by pigs and cattle, alien plants (prickly Florida blackberry), and reduced reproductive vigor and stochastic extinction due to the small number of extant individuals.

Lysimachia lydgatei was first collected before 1871 and named by Hillebrand in 1888, the specific epithet honoring the Reverend John M. Lydgate. Amos Arthur Heller (1897) created a new genus, *Lysimachiopsis*, into which he placed all endemic Hawaiian species of *Lysimachia*. The current treatment (Wagner *et al.* 1990) recognizes *Lysimachiopsis* as a section of *Lysimachia*.

Lysimachia lydgatei of the primose family (Primulaceae) is a sprawling, branched shrub with stems from 3 to 4 feet (1 to 1.3 m) long. Older stems are smooth, but young ones have a dense covering of rust-colored hairs. The leathery, elliptic leves, 1.9 to 2.8 in (49 to 70 mm) long by 0.6 to 0.9 in (14 to 22 mm) wide, are densely covered with rust-colored hairs. Flowers are arranged singly in the leaf axils. Entire flowers have not been seen, and fruits are capsules which are thought to be about 0.2 in (6 mm) long. This species is distinguished from others in the genus by the dense hairs on both the upper and lower surfaces of mature leaves (Hillebrand 1888, Wagner *et al.* 1990).

Lysimachia lydgatei is only known from two West Maui collections: A historical collection from a gulch behind Lahaina and a recent collection from the Lihau section of the West Maui Natural Area Reserve on State-owned land (HHP 1990m1, 1990m2; Wagner *et al.* 1990). The Lihau population of one to several individuals measures just a few feet across (R. Hobdy, pers. comm., 1990). *Lysimachia lydgatei* typically grows on the sides of steep ridges in 'ohi'a-dominated lowland mesic shrubland at an elevation of about 3,600 ft (900 m) (HHP 1989b, 1990m2; S. Pelman, pers. comm., 1990). Associated vegetation includes 'a'ali'i, 'ohelo, pukiawe, and mat ferns such as *Dicranopteris* (uluhe) (HHP 1989b; R. Hobdy, pers. comm., 1990). The greatest threats to *Lysimachia lydgatei* are the small number of extant individuals, subject to extinction by a single destructive human-caused or natural event; competition with the alien plant species, prickly Florida blackberry; and fire.

St. John (1944) based *Pelea mucronulata* on a specimen collected in 1920 by Forbes, the specific epithet referring to the small sharp point at the end of the fruit. Thomas G. Hartley and Benjamin C. Stone (1989) synonymized *Pelea* under *Melicope*, resulting in the current name (Wagner *et al.* 1990).

Melicope mucronulata of the citrus family (Rutaceae) is a small tree up to 13 ft (4 m) tall with oval to elliptic-oval leaves, 3.1 to 6.3 in (8 to 16 cm) long and 1.4 to 2.6 in (3.5 to 6.5 cm) wide. Flower clusters composed of three to nine flowers are arranged in the leaf axils (point between petiole and branch); floral morphology is unknown. The fruit is 0.9 to 1.1 in (2.4 to 2.8 cm) wide and is made up of separate sections, each containing one or two 0.2 in (6 mm) long seeds. This species is distinguished from others in the genus by the growth habit, the number of flowers in each flower cluster, the size and shape of the fruit, and the degree of hairiness of the leaves and fruit walls (Stone *et al.* 1990).

First discovered in 1920 in Kanaio, East Maui, *Melicope mucronulata* was not relocated until 1983. This species was also found 2 years later in Kupaia on Kamakou Preserve on East Molokai (HHP 1990n1, 1990n2; Stone *et al.* 1990). The Maui population occurs on State land and the Molokai population on private land (HHP 1990n1, 1990n2). The two populations, which together extend over an area of 950 ac (380 ha), contain a total of only five plants (HHP 1990n1, 1990n2; A. Medeiros and S. Perlman, pers. comms., 1990). *Melicope mucronulata* typically grows on steep, west- or north-facing, dry to mesic, forested lowland slopes at an elevation of 2,200 to 2,850 ft (670 to 870 m) (HHP 1990n1, 1990n2). Associated native species include 'a'ali'i, 'ohi'a, pukiawe, and *Dubautia linearis* (na' ena' e). The major threat to the continued existence of this species is the small number of extant individuals. Like most of the proposed taxa, each population of *Melicope mucronulata* is susceptible to destruction by a single stochastic event. Habitat degradation by goats and pigs, predation by goats, and competition with alien plants (molasses grass) also pose immediate threats to this species.

Schiedea haleakalensis was discovered by Otto Degener, Emilio Ordonez, and Felix C. Salucop in 1939 and named by Degener and Sherff (Sherff 1942) after the mountain on which it grows.

Schiedea haleakalensis of the pink family (Caryophyllaceae) is a hairless shrub, 1 to 2 ft (30 to 60 cm) tall with slightly fleshy, narrow leaves with a single vein, 1.6 to 3.1 in (4 to 8 cm) long and 0.04 to 0.12 in (1 to 3 mm) wide. Flowers are arranged in clusters 1.2 to 2 in (3 to 5 cm) long at the ends of the branches. The flower has 5 green, oval sepals, which are about 0.1 in (3 mm) long; no petals; 5 nectaries, which are 0.04 to 0.05 in (1 to 1.3 mm) long; and 10 stamens. Capsules are about 0.2 in (4 mm) long and contain grayish to reddish brown seeds which are less than 0.04 in (1 mm) long. This species differs from other species of the genus on East Maui by its crowded, hairless inflorescence composed of bisexual flowers (Degener and Degener 1956, Degener and Greenwell 1956, Sherff 1942, Wagner *et al.* 1990).

Due to the lack of early collections or sightings, the historical range of *Schiedea haleakalensis* is unknown. This species is known only from two areas in Haleakala National Park on East Maui: Holua and on the west side of Kaupo Gap (HHP 1990o1, 1990o2; Wagner *et al.* 1990; L. Loope, pers. comm., 1990). The two populations are estimated to contain 100 to 200 individuals, which together extend over a total area of 28 ac (11 ha) (A. Medeiros and L. Loope, *in litt.*, 1989; A. Medeiros, pers. comm., 1990). *Schiedea haleakalensis* typically grows on sheer, arid subalpine cliffs at an elevation of 6,000 to 7,020 ft (1,830 to 2,140 m) (Wagner *et al.* 1990, Weller *et al.* 1990). Associated vegetation includes *Artemisia mauiensis* ('ahinahina), *Bidens micrantha* (ko' oko' olau), *Dubautia menziesii* (na' ena' e), and *Viola chamissoniana* (pamakani) (Medeiros *et al.* 1986). The greatest threats to *Schiedea haleakalensis* are fire and the small number of remaining populations and their susceptibility to extinction from stochastic events. Habitat degradation and predation by feral goats are probable threats.

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Acaena exigua* (as *A. exigua* var. *glaberrima*), *Alectryon macrococcus* (as *A. macrococcum* var. *macrococcum* and *A. mahoe*), *Cyanea lobata* (as *C. baldwinii*), *Cyanea mceldowneyi*, and *Geranium multiflorum* (as *G. multiflorum* var. *ovatifolium* and *G. multiflorum* var. *superbum*) were considered to be endangered. *Acaena exigua* (as *A. exigua* var. *exigua*, *A. exigua* var. *glabriuscula*, and *A. exigua* var. *subtusstrigulosa*), and *Cyrtandra munroi* were considered to be threatened. *Bidens micrantha* ssp. *kalealaha* (as *B. distans*), *Hedyotis coriacea*, *Lycopodium mannii*, and *Melicope mucronulata* (as *Pelea mucronulata*) were considered to be extinct. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant species, including all of the above taxa considered to be endangered, plus all the above taxa thought to be extinct. *Argyroxiphium sandwicense* ssp. *macrocephalum* (as *A. macrocephalum*) was considered endangered in the proposed rule. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication.

General comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), and February 21, 1990 (55 FR 6183). In these notices, 10 of the taxa that had been in the proposed rule were treated as Category 1 candidates for Federal listing. Category 1 taxa are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. The aforementioned taxa that were proposed as endangered in the June 16, 1976, proposed rule were considered Category 1 candidates on all three of the notices of review. *Acaena exigua* and *Lipochaeta kamolensis* were also included as Category 1 species on the 1980 notice and remained so on the 1985 and 1990 notices. *Alectryon macrococcus* appeared as a Category 1 species (as *Alectryon macrococcum*) and a Category 3C species (as *A. mahoe*) on the 1980 and 1985 notices, but as a Category 1 species (as *A. macrococcus*) on the 1990 notice, after *A. mahoe* was put into synonymy with *A. macrococcus* in a taxonomic revision (Linney 1987). Category 3C taxa are those which have been found to be more abundant or widespread than previously thought and/or those that are not subject to any identifiable threat. *Argyroxiphium sandwicense* ssp. *macrocephalum* was classified as a Category 1 taxon on all three notices (as *A. sandwicensis* on the 1980 notice, as *A. sandwicense* var. *macrocephalum* on the 1985 notice, and as *A. sandwicense* ssp. *macrocephalum* on the 1990 notice). *Bidens micrantha* ssp. *kalealaha* (as *Bidens distans*) was classified as a Category 1 taxon on the 1980 notice, a Category 3B taxon (as *B. distans*) on the 1985 notice, and a Category 1 taxon (as *Bidens micrantha* ssp. *kalealaha*) on both the 1985 and 1990 notices. Category 3B taxa are those which, on the basis of current taxonomic understanding, do not represent distinct taxa meeting the Act's definition of "species." *Cyrtandra munroi* was included as a Category 2 species on the 1980 and 1985 notices but was included as a Category 1 species on the 1990 notice. Category 2 taxa are those for which there is some evidence of vulnerability, but for which there are not enough data to support listing proposals at the time. *Geranium multiflorum* was included as Category 1 (as *G. multiflorum* var. *multiflorum*) and Category 2 (as *G. multiflorum* var. *ovatifolium* and *G. multiflorum* var. *superbum*) taxa on the 1980 and 1985 notices and as a Category 1 species on the 1990 notice (as *G. multiflorum*) after the most recent taxonomic treatment (Wagner *et al.* 1990) recognized no varietal differences. *Schiedea haleakalensis* first appeared on the 1985 notice as a Category 1 species and remained so on the 1990 notice. *Clermontia oblongifolia* ssp. *mauiensis* and *Lysimachia lydgatei* first appeared on the 1990 notice as Category 1 taxa.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. On October 13, 1983, the Service found that the petitioned listing of these taxa was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, 1989, and 1990. Publication of the present proposal constitutes the final one-year finding for these taxa.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and

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regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). The threats facing these 15 taxa are summarized in Table 1.

TABLE 1.—SUMMARY OF THREATS

Species	Feral animal activity			Alien plants	Fire	Disease insects	Rodents	Limited numbers [1]
	Goats	Cattle	Pigs					
Acaena exigua			X					X
Alectryon macrococcus	X	X	X	X	X	X	X	
Argyroxiphium sandwicense, ssp. *macrocephalum*	P	P				P		
Bidens micrantha, ssp. *kalealahe*	X	X		X	X			
Clermontia oblongifolia, ssp. *mauiensis*			X					X
Cyanea lobata			X					X
Cyanea mceldowneyi			X					X
Cyrtandra munroi								X
Geranium multiflorum	X		X	X				
Hedyotis coriacea					X			X
Lipochaeta kamolensis	X	X			X			X
Lycopodium mannii		X	X	X				X
Lysimachia lydgatei				X	X			X
Melicope mucronulata	X		X	X				X
Schiedea haleakalensis	P				X			X

X = Immediate and significant threat.
P = Potential threat.
[1] No more than 100 individuals and/or fewer than 5 populations.

These factors and their application to *Acaena exigua* A. Gray (liliwai), *Alectryon macrococcus* Radlk. (mahoe), *Argyroxiphium sandwicense* DC ssp. *macrocephalum* (A. Gray) Meyrat (Haleakala silversword, 'ahinahina), *Bidens micrantha* Gaud. ssp. *kalealaha* Nagata and Ganders (ko'oko'olau), *Clermontia oblongifolia* Gaud. ssp. *mauiensis* (Rock) Lammers ('oha wai), *Cyanea lobata* H. Mann (haha), *Cyanea mceldowneyi* Rock (haha), *Cyrtandra munroi* C. Forbes (ha'iwale), *Geranium multiflorum* A. Gray (nohoanu), *Hedyotis coriacea* Sm. (kio'ele), *Lipochaeta kamolensis* Degener and Sherff (nehe), *Lycopodium mannii* (Hillebr.) Skottsb. (wawae'iole), *Lysimachia lydgatei* Hillebr. (NCN), *Melicope mucronulata* (St. John) T. Hartley and B. Stone (alani), and *Schiedea haleakalensis* Degener and Sherff (NCN) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The native vegetation of Maui and other Hawaiian Islands has undergone extreme alterations because of past and present land management practices, including deliberate alien plant and animal introductions, agricultural development, and military use (Cuddihy and Stone 1990, Frierson 1973, Wagner *et al.* 1985). Degradation of habitat by feral animals and competition with alien plants are considered the greatest present threats to the 15 taxa being proposed.

First introduced to Maui in 1793 (Stone and Loope 1987), goats (*Capra hircus*) became established on other Hawaiian islands by the 1820s (Cuddihy and Stone 1990, Culliney 1988). Far from controlling their numbers, the era of trade in goatskins (mid-1800s) saw the feral goat population increase into the millions (Culliney 1988). As a result of their agility, they were able to reach more remote areas than other ungulates (Culliney 1988). Feral goats now occupy a wide variety of habitats, from dry lowland forests to alpine grasslands, where they consume native vegetation, trample roots and seedlings, accelerate erosion, and promote the invasion of alien plants (Scott *et al.* 1986, Stone 1985, Stone and Loope 1987, Yocum 1967).

Currently, goats contribute to the substantial decline of the habitat of all four populations of *Alectryon macrococcus* var. *macrococcus* in Waimea Canyon on Kauai, due to ongoing management of goats by the State for recreational hunting (Daehler 1973, Tomich 1986). In the Waianae Mountains of Oahu, encroaching urbanization and hunting pressure tend to restrict goats to the drier upper slopes (Tomich 1986). Over half of the Oahu populations of *Alectryon macrococcus* var. *macrococcus* are affected by increasing numbers of goats in scattered locations along the Waianae Mountains, especially in Makua and Makaleha (Joel Lau, HHP, pers. comm., 1990). On Molokai, five populations of *Alectryon macrococcus* var. *macrococcus* and the population of *Melicope mucronulata* are immediately threatened by habitat degradation by goats (Medeiros *et al.* 1986). The populations of both taxa are restricted to a 3 sq mi (7.5 sq km) area that goats are known to frequent. Feral goats had nearly extirpated the populations of *Argyroxiphium sandwicense* ssp. *macrocephalum*, *Bidens micrantha* ssp. *kalealaha*, *Geranium multiflorum*, and *Schiedea haleakalensis* within Haleakala National Park by the 1930s. However, an active management program eradicated all but 100 feral goats from the Park by 1988. While they are no longer an immediate threat to plants within the park, the potential for the ingress and reestablishment of goats is still a possibility (L. Loope, pers. comm., 1990). The effects of past feral goat activity have taken their toll on *Schiedea haleakalensis*, which is now restricted to vertical cliff faces inaccessible to goats. Even after the removal of these feral ungulates, there has thus far been no evidence that *S. haleakalensis* is spreading (Bryan Harry, National Park Service, *in litt.*, 1990; A. Medeiros and L. Loope, *in litt.*, 1989).

Of the four taxa just mentioned, *Argyroxiphium sandwicense* ssp. *macrocephalum* has undergone the most extreme population fluctuation due to goats and cattle (*Bos taurus*). Until the 1920s, these animals grazed in what is now Haleakala National Park (Medeiros *et al.* 1986). As a result of the park's eradication program, numbers of *Argyroxiphium sandwicense* ssp. *macrocephalum* have increased significantly: from a low of between 100 and 1,500 to the present estimate of 50,000 plants (Degener 1948, Loope and

Crivellone 1986). However, goats and cattle still threaten plants outside the park's managed areas. Until recently, goats were among the most pervasive threats to the adjacent Waikamoi Preserve (Holt 1983), where 5 of the 11 populations of *Geranium multiflorum* are located (HHP 1990j6, 1990j8, to 1990j10, 1990j12). Management practices initiated by The Nature Conservancy of Hawaii in that preserve within the past 3 years have reduced the number of goats from a high of several thousand to the current estimate of less than 50. Although the reduction is substantial, there is still a possibility of ingress from adjacent parkland areas (Mark White, The Nature Conservancy of Hawaii, pers. comm., 1990). The remaining goats continue to degrade the habitat of *Geranium multiflorum*. Also found along much of the southern slope of Haleakala, goats frequent the area where the only remaining population of *Lipochaeta kamolensis* persists in small depressions and along cattle trails (Medeiros *et al.* 1986).

The impact of cattle on the native vegetation is similar to that described for goats (Scott *et al.* 1986). These two ungulate species are considered the most damaging alien vertebrates to Hawaii's native ecosystems (Culliney 1988). Introducted to Maui in the early 1800s (Tomich 1986) and permitted to range freely, cattle became so abundant that by the 1840s, the northwestern slopes of Haleakala above Makawao were described as "endless bullock paths" (Culliney 1986). On the southern slope of Haleakala, cattle ranching dates from before 1910 (Rock 1913) and still continues in the vicinity of four of the proposed taxa: *Bidens micrantha* ssp. *kalealaha*, *Lycopodium mannii*, and the last known populations of *Alectryon macrococcus* var. *auwahiensis* and *Lipochaeta kamolensis* (R. Hobdy, pers. comm., 1990) The long history of cattle grazing has so altered this area that only pockets of native vegetation remain. As mentioned above, cattle also played a significant role in the decline of *Argyroxiphium sandwicense* ssp. *macrocephalum* in Haleakala National Park. Decades of uncontrolled grazing had devastating effects on native vegetation in Kula and Kahikinui forest reserves on Haleakala's southern and southwestern slopes (Medeiros *et al.* 1986). Although most cattle have been eradicated from these reserves through incentive permits, some were encountered there as recently as 1983 (Medeiros *et al.* 1986). Populations of the proposed taxa occurring outside Maui are also threatened by cattle. Two of the six known populations of *Lycopodium mannii* in Laupahoehoe Natural Area Reserve on the island of Hawaii occupy sites frequented by cattle that stray from adjacent State-leased ranches (L. Cuddihy, pers. comm., 1990). An additional effect of cattle is that their trails provide new routes for feral pigs (*Sus scrofa*) to expand their range (Paul Higashino, The Nature Conservancy of Hawaii, pers. comm., 1981).

In contrast to goats and cattle, pigs occupy the wetter regions of Hawaii's forests and are one of the major current modifiers of wet forest habitats (Stone 1985). Pigs damage the native vegetation by rooting and trampling the forest floor, and encourage the expansion of alien plants that are better able to exploit the newly tilled soil than are native species (Stone 1985). Pigs also disseminate alien species through their feces and on their bodies, accelerating the spread of alien plants within the native forest. Of the 15 proposed plant taxa, *Acaena exigua*, both varieties of *Alectryon macrococcus*, Clermontia oblongifolia ssp. *mauiensis*, *Cyanea lobata*, *Cyanea mceldowneyi*, *Geranium multiflorum*, *Lycopodium mannii*, and *Melicope mucronulata* are threatened by or have already sustained loss of individual plants or habitat as the result of feral pig activity (HHP 1990c17; HHP and Hawaii Division of Forestry and Wildlife (DOFAW) 1989; Sohmer and Gustafson 1987; L. Cuddihy, R. Hobdy, J. Lau, and A. Medeiros, pers. comms., 1990). Present throughout the Waianae Mountains of Oahu in low numbers, feral pigs pose a significant threat to the scattered populations of *Alectryon macrococcus* var. *macrococcus* (J. Lau, pers. comm., 1990). At the time of the last sighting of *Acaena exigua* of Puu Kukui on West Maui (1973), there was no sign of pigs on that plateau. Since then, the montane bog habitat of *A. exigua* has become threatened by the ingress of feral pigs from adjacent areas (Betsy Gagne, Haleakala National Park, pers. comm., 1990). On West Maui, *Clermontia oblongifolia* ssp. *mauiensis*, *Cyanea lobata*, and *Cyanea mceldowneyi* are also threatened by feral pigs (HHP and DOFAW 1989; R. Hobdy, pers. comm., 1990). Pigs are considered one of the most pervasive threats to the wet forests of Waikamoi Preserve on East Maui, an area where *Geranium multiflorum* populations are susceptible to rooting and trampling by pigs (Holt 1983).

Since 1969, flocks of escaped or released domestic European rabbits (*Oryctolagus cuniculus*) have invaded Hosmer's Grove in Haleakala National Park. These animals are extremely prolific and, like feral goats and pigs, can deplete vast areas of vegetation (Tanji 1990a, 1990c). Although the rabbits are currently restricted to Hosmer's Grove, their range is increasing and has the potential of reaching five populations of *Geranium multiflorum*, the closest of which is only 0.7 mi (0.2 km) away.

Six of the 15 taxa being proposed for listing are threatened by competition with 1 or more alien plant species. (See Table 1.) *Schinus terebinthifolius* (Christmasberry), introduced to Hawaii before 1911, has had particularly detrimental impacts (Cuddihy and Stone 1990). This fast-growing tree is able to form dense thickets that displace other plants (Cuddihy and Stone 1990, Smith 1985). It is now replacing the native vegetation of much of the southern Waianae Mountains and threatens to occupy the range of all Oahu populations of *Alectryon macrococcus* var. *macrococcus* (HHP 1990c13, 1990c15, 1990c17, 1990c19, 1990c21; J. Lau, pers. comm., 1990).

Psidium cattleianum (strawberry guava) is a pervasive alien tree in the southern Waianae Mountains of Oahu and the wet forests of Maui. It is also found on the other Hawaiian Islands. Like Christmasberry, strawberry guava is capable of forming dense stands that exclude other plant species (Cuddihy and Stone 1990) and is distributed mainly by feral pigs and fruit-eating birds (Smith 1985). The maui populations of *Alectryon macrococcus* var. *macrocossus* are immediately threatened by competition with this alien plant (J. Lau, pers. comm., 1990).

With the introduction of cattle and goats and the development of organized ranching, the native forests in many parts of the State were converted to vast pastures of alien grasses. Such species as *melinis minutiflora* (molasses grass) and *Pennisetum clandestinum* (kikuyu grass) were introduced as fodder (Cuddihy and Stone 1990) and quickly spread to areas previously disturbed by ungulates. Today, these alien species have infested many dry to mesic forests on most of the Hawaiian Islands (Cuddihy and Stone 1990). Native vegetation on dry mountain ridges of Kauai, Oahu, Maui, Lanai, and Molokai is being replaced by molasses grass. This species and Christmasberry are considered the two most serious alien plant problems in the Waianae Mountains of Oahu (J. Lau, pers. comm., 1990). Molasses grass produces a dense mat capable of smothering plants, provides fuel for fire, and carries fire into areas with woody plants (Cuddihy and Stone 1990). Most populations of *Alectryon macrococcus* var. macroccus

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on Oahu and Molokai as well as the sole population of *Melicope mucronulata* on Molokai are immediately threatened by this alien plant (HHP 1990nl; J. Lau, pers. comm., 1990). Kikuyu grass is invading dry to mesic habitats as well as disturbed wet forests on all of the Hawaiian Islands. Like molasses grass, kikuyu grass forms a thick mat that prevents the reproduction of native plant taxa, such as *Alectryon macrococcus* var. *auwahiensis* at Auwahi (Cuddihy and Stone 1990; Medeiros *et al.* 1986; S. Perlman, pers. comm., 1990) and populations of *Bidens micrantha* ssp. *kalealaha* on East maui (L. Loope, pers. comm., 1990).

Rubus argutus (prickly Florida blackberry), recognized as a noxious weed by the Hawaii State Department of Agriculture, is adapted to open disturbed areas, where it forms impenetrable thickets (Smith 1985). This invasive alien plant poses a serious threat to the habitat of *Geranium multiflorum* and *Lysimachia lydgatei* on Maui (Berger *et al.* 1975, HHP and DOFAW 1989) and, to a lesser degree, threatens *Lycopodium mannii* on Hawaii Island (HHP 1989a; L. Cuddihy, pers. comm., 1990).

Fire threatens six plant taxa growing in dry to mesic grassland, shrubland, and forests on the leeward slopes of West Maui, Haleakala on East Maui, and the Waianae Mountains of Oahu (Center for Plant Conservation (CPC) 1990; HHP and DOFAW 1989; R. Hobdy, pers. comm., 1990). (See Table 1.) Human-set fires and wildfires are known to destroy native hawaiian vegetation and usually favor fire-resistant alien plants (Cuddihy and Stone 1990). A dump located near the Lihau Section of the West Maui Natural Area Reserve regularly burns and starts wildfires, immediately threatening the only known plant of *Hedyotis coriacea* (HHP and DOFAW 1989; S. Perlman, pers. comm., 1990). A single fire could also extirpate the only known population of *Alectryon macrococcus* var. *auwahiensis*, *Lipochaeta kamolensis*, or *Lysimachia lydgatei* (CPC 1990; R. Hobdy, pers. comm., 1990) or affect a significant portion of the populations of *Bidens micrantha* ssp. *kalealaha* and *Schiedea haleakalensis* (A. Medeiros, pers. comm., 1990). Unintentionally ignited fires have resulted from ordnance training practices in Makua Military Reservation on Oahu. Although most fires have been contained within 0.02 ac (0.01 ha), a single 300 ac (120 ha) fire in July 1989 spread upslope and came to within 0.2 mi (0.3 km) of a population of *Alectryon macrococcus* var. *macrococcus*, also threatening seven other populations in the area (Colonel William Chastain, U.S. Army, Fort Shafter, Hawaii, *in litt.*, 1989a, 1989b, 1990a, 1990b).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Illegal collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants could result from increased publicity, and would seriously threaten seven of these taxa (*Acaena exigua, Clermontia oblongifolia* ssp. *mauiensis, Cyanea lobata, Cyrtandra munroi, Hedyotis coriacea, Lysimachia lydgatei,* and *Melicope mucronulata*). Because for each of these taxa, fewer than 10 individuals exist, any collection of whole plants or reproductive parts would adversely impact the gene pool and threaten their survival.

Argyroxiphium sandwicense ssp. *macrocephalum* is of horticultural, ornamental, and scientific interest, and, in the past, collection of seed for propagation or of entire plants for ornamental purposes, combined with habitat degradation by ungulates, nearly extirpated this taxon (Degener 1948, Keck 1936b, Kepler 1983, Kimura and Nagata 1980). Illegal silversword collecting and vandalism continues to this day (Tanji 1990b); however, these activities are now minimal and represent only a potential threat. Propagation of *A. sandwicense* ssp. *macrocephalum* is difficult, since both seed production and germination are quite low (Kobayashi 1974). According to Kobayashi (1973a), trampling by humans and subsequent erosion of the loose cinder substrate, now mainly confined to the western rim of Haleakala Crater, may become a more serious threat as the number of visitors to the national park increases. Such disturbance to the substrate causes serious mechanical damage to *A. sandwicense* ssp. *macrocephalum* by injuring or exposing the shallow root system (Doria 1979, Kobayashi 1973c).

The montane bog habitat of *Acaena exigua* is extremely sensitive to excessive visitation. Habitat degradation may result from trampling, which destroys vegetation and creates pools of mud and standing water (Sohmer and Gustafson 1987).

C. *Disease or predation. Xylosandrus compactus* (black twig borer) has been cited as an immediate threat to the extant populations of both varieties of *Alectryon macrococcus* (CPC 1990; Hara and Beardsley 1979; HHP 1990c25; J. Lau and S. Perlman, pers. comms., 1990). The black twig borer burrows into the branches and introduces a pathogenic fungus, pruning the host severely, often killing branches or whole plants (Hara and Beardsley 1979, Howarth 1985). The Waimea Canyon populations of *Alectryon macrococcus* var. *macrococcus*, most populations on Oahu, and the single population of *Alectryon macrococcus* var. *auwahiensis* suffer severe defoliation and reduced vigor due to infestations of this alien insect (J. Lau, pers. comm., 1990). Most populations of this species probably sustain some damage from the borer (J. Lau, pers. comm., 1990).

The three remaining individuals of *Melicope mucronulata* on Molokai have been browsed by goats (HHP 1990n2, Medeiros *et al.* 1986). Although the plants appeared vigorous when last seen (HHP 1990n2), continued predation would severely threaten the population. *Bidens micrantha* ssp. *kalealaha* is apparently highly palatable to goats (HHP 1990e2). Predation and habitat degradation have destroyed all plants in areas accessible to goats, restricting this taxon to sheer cliffs (HHP 1990e1, 1990e2). It is likely that browsing reduced *Argyroxiphium sandwicense* ssp. *macrocephalum* numbers in Haleakala Crater. Although probably not a preferred food item, goats, cattle and horses will browse the plant if it is available (Bryan 1948, Kimura and Nagata 1980, Kobayashi 1973a to 1973c, Lope and Crivellone 1986).

Cattle ranching continues on private and leased State land in Auwahi and on the southern slope of Haleakala, where the only known remaining populations of *Alectryon macrococcus* var. *auwahiensis* and *Lipochaeta kamolensis* exist. Not only do cattle threaten the mature plants by their browsing activities (Medeiros *et al.* 1986), but they also trample seedlings. While there is no direct evidence of predation of the other proposed taxa, none are known to be unpalatable to goats or cattle. Predation is therefore a probable threat at sites where those animals have been reported, potentially affecting *Geranium multiflorum, Lycopodium mannii,* and *Schiedea haleakalensis*.

Of four rodent species that have been introduced to the Hawaiian Islands, the arboreal black rat (*Rattus rattus*) has probably had the greatest impact on the native flora and fauna (Stone and Loope 1987). Rodents (the arboreal black rat and, to a lesser degree, the Polynesian rat (*Rattus exulans*) and the house mouse (*Mus musculus*)) feed on the fleshy fruits and flowers of Hawaiian plants and/or girdle and strip tender branches (Cuddihy and Stone 1990). Evidence of such predation has been seen on both varieties of *Alectryon macrococcus* (CPC 1990, HPCC 1990, Wagner *et al.* 1990). The combined effect of the black twig borer and predation by goats and and rats has inhibited germination and reproduction of this plant for many years (Medeiros *et al.* 1986).

Argyroxiphium sandwicense ssp. *macrocephalum* is predated by the larvae of a phycitid moth (*Rhynechephestia rhabdotis*) and tephritid fly (*Tephritis cratericola*), which were found to have damaged 60% of the seeds produced on average (Kobayashi 1974, Loope and Crivellone 1986). Since these are native insects which evolved with the silversword, they may not pose a threat to the plant, at least under normal conditions (Kobayashi 1973a). Two alien insects, the Argentine ant (*Iridomyrmex humilis*) and yellow jacket (*Vespula pennsylvanica*) are potential predatory threats to the pollinators of *A. sandwicense* ssp. *macrocephalum* (Beardsley 1980, Stone and Loope 1987) and are moving into the silversword habitat (Loope and Crivellone 1986). In 1985, the highly aggressive Argentine ant had become established within the elevational limits of silversword distribution. Although not currently within Haleakala Crater (Loope and Crivellone 1986), the ant is found in similar habitat (Stone and Loope 1987). The rapid increase in the yellow jacket population following its introduction in the late 1970s is also of concern. The decline in native invertebrates as the yellow jacket population has increased suggests that this species may become a more serious threat in the future (Howarth 1985; L. Loope, pers. comm., 1990).

D. *The inadequacy of existing regulatory mechanisms.* Of the 15 proposed taxa, a total of 7 have populations located on private land, 1 on City and County land, 10 on State land, and 5 on Federal land. While six of the taxa occur in more than one of those three ownership categories, the other nine are restricted to a single category: Two taxa are found only on private land, four only on State land, and two only on Federal land. There are no State laws or existing regulatory mechanisms at the present time to protect or prevent further decline of these plants on private land. However, Federal listing would automatically invoke listing under Hawaii State law, which prohibits taking and encourages conservation by State government agencies. State regualtions prohibit the removal, destruction, or damage of plants found on State lands. However, the regulations are difficult to enforce because of limited personnel. Hawaii's Endangered Species Act (HRS, section 195D-4(a)) states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the Endangered Species Act [of 1973] shall be deemed to be an endangered species under the provisions of this chapter and any indigenous species of aquatic life, wildlife, or land plant that has been determined to be a threatened species pursuant to the Endangered Species Act shall be deemed to be a threatened species under the provision of this chapter." Further, the State may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (HRS, section 195D-5(c)). Funds for these activities could be made available under section 6 of the Federal Act (State Cooperative Agreements). Listing of these 15 plant taxa would therefore reinforce and supplement the protection available under State law. The Act would also offer additional protection to these 15 taxa because if they were to be listed as endangered or threatened, it would be a violation of the Act for any person to remove, cut, dig up, damage, or destroy any such plant in an area not under Federal jurisdiction in knowing violation of State law or regulation or in the course of any violation of a State criminal trespass law.

E. *Other natural or manmade factors affecting its continued existence.* The small number of populations and of individual plants of all of these taxa increases the potential for extinction from stochastic events. The limited gene pool may depress reproductive vigor, or a single man-caused or natural environmental disturbance could destroy a significant percentage of the individuals (or the only known extant population) of these taxa. For example, *Acaena exigua, Clermontia oblongifolia* ssp. *mauiensis,* and *Hedyotis coriacea* are known from a single individual and *Cyanea lobata, Cyrtandra munroi, Lysimachia lydgatei,* and *Melicope mucronulata* from less than 10 individuals. Eleven of the 15 proposed taxa are known from fewer than 5 populations, and 10 of the proposed taxa are estimated to number no more than 100 individuals. (See Table 1.)

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these taxa in determining to propose this rule. Based on this evaluation, the preferred action is to list 14 taxa, *Acaena exigua, Alectryon macrococcus, Bidens micrantha* ssp. *kalealaha, Clermontia oblongifolia* ssp. *mauiensis, Cyanea lobata, Cyanea mceldowneyi, Cyrtandra munroi, Geranium multiflorum, Hedyotis coriacea, Lipochaeta kamolensis, Lycopodium mannii, Lysimachia lydgatei, Melicope mucronulata,* and *Schiedea haleakalensis,* as endangered and one taxon, *Argyroxiphium sandwicense* ssp. *macrocephalum,* as threatened. Eleven of the 14 taxa proposed for listing as endangered either number no more than about 100 individuals or are known from fewer than 5 populations. The 14 taxa are threatened by 1 or more of the following: Habitat degradation and/or predation by feral goats, cattle, and pigs; competition from alien plants; and fire. Small population size makes these taxa particularly vulnerable to extinction from stochastic events. Because these 14 taxa are in danger of extinction throughout all or a significant portion of their ranges, they fit the definition of endangered as defined in the Act. Therefore, the determination of endangered status for these 14 taxa appears warranted.

All populations of *Argyroxiphium sandwicense* ssp. *macrocephalum* are located within Haleakala National Park. Since ongoing management practices have eradicated goats and cattle from the park, those animals no longer pose an immediate threat to this taxon. However, these populations are vulnerable to a variety of alien insects and animals that have the potential of invading the habitat of *A. sandwicense* ssp. *macrocephalum.* As recreational use of the park increases, vandalism or unintentional damage to the plants may become a more serious threat. Although the relatively large number of existing plants provides greater flexibility in recovery and reduces the likelihood that the taxon will go extinct in the immediate future, all populations are threatened to some degree. Because of the limited threats facing *A. sandwicense* ssp. *macrocephalum,* this taxon is not now in immediate danger of extinction throughout all or a significant portion of its range. However, *A. sandwicense* ssp. *macrocephalum* is likely to become endangered in the foreseeable future. As a result, *Argyroxiphium sandwicense* ssp. *macrocephalum* fits the definition of threatened species as defined by the Act.

Critical habitat is not being proposed for the 15 proposed taxa for reasons discussed in the "Critical Habitat" section of this proposal.

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Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for these taxa. Such a determination would result in no known benefit to the taxa. As discussed under Factor B in the "Summary of Factors Affecting the Species," the taxa face numerous anthropogenic threats. The publication of precise maps and descriptions of critical habitat in the Federal Register and local newspapers as required in a proposal for critical habitat would increase the degree of threat to these plants from take or vandaliam and, therefore, could contribute to their decline and increase enforcement problems. The listing of these taxa as either endangered or threatened publicizes the rarity of the plants and, thus, can make these plants attractive to researchers, curiosity seekers, or collectors of rare plants. All involved parties and the major landowners have been notified of the location and importance of protecting the habitat of these taxa. Protection of the habitat of the taxa will be addressed through the recovery process and through the section 7 consultation process. There are only two known Federal activities within the currently known habitats of these plants. Four taxa are found in Haleakala National Park, where laws protect all plants from damage or removal. One taxon is located on Federal property under control of the military, on State property leased on the Federal government for use by the military, and on nearby State lands. Although military and ordnance training takes place on Schofield Barracks, which is Federal property, and Makua Military Reservation, which is leased from the State of Hawaii, the impact areas and buffer zones for these activities are outside the area where the taxon occurs, so it is unlikely that the activities would directly affect the continued existence of these plants. Therefore, the Service finds that designation of critical habitat for these taxa is not prudent at this time, because such designation would increase the degree of threat from vandalism, collecting, or other human activities and because it is unlikely to aid in the conservation of these taxa.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencels to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Two of these taxa, *Argyroxiphium sandwicense* ssp. *macrocephalum* and *Schiedea haleakalensis*, are located only in Haleakala National Park. Some populations of two other taxa, *Bidens micrantha* ssp. *kalealaha* and *Geranium multiflorum*, also are found in this park. Laws relating to national parks prohibit damage or removal of any plants growing in the parks. Two populations of *Alectryon macrococcus* are located on Federal property, one population on Schofield Barracks and the other on Lualualei Naval Reservation. Eight populations of *A. macrococcus* are located on State land, three in areas leased to the Federal government as part of Makua Military Reservation and five in a nearby State Conservation District. Makua Military Reservation and Schofield Barracks are controlled by the U.S. Army, and portions are used by them and other branches of the military for ordnance training of their troops, including a buffer zone adjacent to impact areas. These plants are not located inside impact or buffer zones and thus are not directly affected by military activities. The Army has constructed firebreaks on the Makua Military Reservation to minimize damage from unintentional fires that occasionally result from stray bullets (Herve Messier, U.S. Army, Ft. Shafter, pers. comm., 1990). There are no other known Federal activities that occur within the present known habitat of these 15 plant taxa.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plants and 17.71 and 17.72 for threatened plants set forth a series of general trade prohibitions and exceptions that apply to all endangered and threatened plant species. With respect to the 14 plant taxa proposed to be listed as endangered, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal with respect to any endangered plant for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale in interstate or foreign commerce; or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, the Act prohibits the malicious damage or destruction of any such species on any area under Federal jurisdiction or the removal, cutting digging up, damaging or destroying of endangered plants on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. The Haleakala silversword, proposed to be listed as threatened, would be subject to similar prohibitions (16 U.S.C. 1538(a)(2)(E), 50 CFR 17.61, 17.71). Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered and threatened plant species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued because the species are not common in cultivation nor in the wild.

Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203–3507 (703/358–2093 or FTS 921–2093; FAX 703/358–2281).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these taxa;

(2) The location of any additional populations of these taxa and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these taxa; and

(4) Current or planned activities in the subject area and their possible impacts on these taxa.

The final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Office Supervisor. (See **ADDRESSES** section.)

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Pacific Islands Field Office. (See **ADDRESSES** above.)

Author

The primary authors of this proposed rule are Joan M. Yoshioka, Z.E. Ellshoff, Joan E. Canfield, and Derral R. Herbst, Fish and Wildlife Enhancement, Pacific Islands Field Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (808/541–2749 or FTS 551–2749).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of Chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the families indicated, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
* * * * * *						
Asteraceae—Aster family:						
Argyroxiphium sandwicense sso. *macrocephalum.*	Haleakala silversword, 'ahinahina.	U.S.A. (HI)	T		NA	NA.
Bidens micrantha ssp. *kalealaha*	ko'oko'olau	U.S.A. (HI)	E		NA	NA.
Lipochaeta kamolensis	nehe	U.S.A. (HI)	E		NA	NA.
Campanulaceae—Bellflower family:						
Clermontia oblongifolia ssp. *mauiensis*	'oha wai	U.S.A. (HI)	E		NA	NA.
Cyanea lobata	haha	U.S.A. (HI)	E		NA	NA.
Cyanea mceldowneyi	haha	U.S.A. (HI)	E		NA	NA.
Caryophyllaceae—Pink family:						
Schiedea haleakalensis	None	U.S.A. (HI)	E		NA	NA.
Geraniaceae—Geranium family:						
Geranium multiflorum	nohoanu	U.S.A. (HI)	E		NA	NA.
Gesneriaceae—Gesneria family:						
Cyrtandra munroi	ha'iwale	U.S.A. (HI)	E		NA	NA.

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Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Lycopodiaceae—Clubmoss family:						
Lycopodium mannii	waawae'iole	U.S.A. (HI)	E		NA	NA.
Primulaceae—Primrose family:						
Lysimachia lydgatei	None	U.S.A. (HI)	E		NA	NA
Rosaceae—Rose family:						
Acaena exigua	liliwai	U.S.A. (HI)	E		NA	NA.
Rubiaceae—Coffee family:						
Hedyotis coriacea	kio'ele	U.S.A. (HI)	E		NA	NA.
Rutaceae—Citrus family:						
Melicope mucronulata	alani	U.S.A. (HI)	E		NA	NA.
Sapindaceae—Soapberry family:						
Alectryon macrococcus	mahoe	U.S.A. (HI)	E		NA	NA.

Dated: May 20, 1991.

Richard N. Smith,

Director, Fish and Wildlife Service.

[FR Doc. 91-12302 Filed 5-23-91; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 601 and 605

[Docket No. 910486-1096]

Regional Fishery Management Councils; Guidelines for Fishery Management Plans; Guidelines for Council Operations and Administration

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA proposes to revise the regulations and guidelines governing appointments to, and the operation and administration of, the Regional Fishery Management Councils (Councils) established by the Magnuson Fishery Conservation and Management Act (Magnuson Act) and the preparation of fishery management plans (FMPs) and FMP amendments under the Magnuson Act. These revisions are designed to make the existing regulations and guidelines consistent with the requirements of sections 302 and 303 of the Magnuson Act as amended by sections 108 and 109 of Public Law 101-627. The revisions proposed today, consistent with the Magnuson Act, as amended, would (1) define Council members' qualifications and strengthen the appointment process; (2) place a limit on the number of consecutive terms Council voting members may serve; (3) adjust Council voting members' pay and provide for reimbursement of actual expenses for Council staff members; (4) require the NMFS Regional Director or designee, serving on a Council, on the final vote on any matter to be transmitted to the Secretary of Commerce (Secretary) by the Council, to submit a written statement of the reason(s) for casting a negative vote; (5) require each Council to have a Fishing Industry Advisory Committee (FIAC); (6) require notification to local newspapers of closed or partially closed Council meetings; (7) provide for consideration of new information from the public when a Council considers new information from a state or Federal agency or from a Council advisory body, and provide for public comment on the new information presented; and (8) require that each FMP or FMP amendment include a Fishery Impact Statement.

DATES: Comments must be received on or before July 23, 1991.

ADDRESSES: Send comments on this proposed rulemaking to: Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: CDR Thomas L. Meyer, NOAA, Office of Fisheries Conservation and Management, NMFS, telephone (301) 427-2337.

SUPPLEMENTARY INFORMATION: Public Law 101-627, the "Fishery Conservation Amendments of 1990," amended and reauthorized the Magnuson Act through September 30, 1993. Section 108 of the Fishery Conservation Amendments amended certain provisions of the Magnuson Act governing the appointment of members to, and the operation and administration of, the eight Regional Fishery Management Councils established by the Magnuson Act. The proposed rule would implement these amendments as follows:

(1) Qualification, Nomination and Appointment of Council Members

Proposed revisions to § 601.33 would implement new qualification criteria for appointment to a seat on a Council. The Governors would be responsible for submitting a statement to the Secretary describing how each nominee satisfies the qualifications. The Secretary is required to ensure a fair and balanced apportionment on the Council of active participants in commercial and recreational fisheries. It is agency policy to request that each nominee provide a statement of his or her general philosophy on the conservation and management of living marine resources.

(2) Consecutive Terms of Council Members

Proposed revisions to § 601.32 would implement a statutory limit of three consecutive terms for any voting member appointed by the Secretary to

serve on the Council. Any term completed prior to January 1, 1986, does not count in determining the number of consecutive terms served by any Council member. There is no limit on the total number of terms a member may serve. Thus, a Council member appointed by the Secretary could serve three consecutive terms, not serve one year, and then serve three more consecutive terms. This provision is expected to provide the Secretary with more flexibility in appointing qualified individuals to Council membership, thereby advancing the national conservation and management program. To emphasize the need and desire for a greater number of individuals to participate in the management process, it is agency policy to give preference in the selection process to individuals nominated by the Governors who have not already served two consecutive terms.

(3) Council Member Compensation

Proposed revisions to § 601.39(a) would implement a statutory adjustment of Council members' daily compensation rate after December 31, 1991, to that of a GS-16 when members are engaged in the actual performance of duties as assigned by the Chairman of the Council. The Amendments also provide that Council staff members may be reimbursed for actual expenses. It is agency policy that GS-16 means GS-16 Step 1.

(4) Council Transaction of Business

Proposed revisions to § 605.24(a)(3)(v) would implement the statutory requirement that on the final vote on any matter to be transmitted to the Secretary by a Council, the NMFS Regional Director or designee, when rendering a negative vote, submit a written statement explaining the reason(s) why. The proposed revision would require the Regional Director or designee to submit a copy of the statement to the Council within 10 working days of the close of the Council meeting. Ten days is believed to be a reasonable period of time for a Regional Director to prepare the required documentation, particularly if a number of negative votes were rendered by that Director, or his or her designee, during a Council meeting. If more than one negative vote is given, each could be explained within the single statement, negating the need for a separate statement for each vote. The proposed revision would require the Council to make the statement available to the public upon request.

A proposed revision to § 605.24(a)(7)(i) would expand the geographical area in which a Council may meet to include any of the constituent states of the Council. This would allow the Councils to better serve the fishermen who, in some cases, may reside outside the geographical area of a Council, but who may be directly affected by Council decisions.

(5) Committees and Panels

Proposed revisions to § 605.23(d)(2) would implement the statutory requirement that each Council have a Fishing Industry Advisory Committee (FIAC), describe its responsibilities, and provide for fair representation of commercial fishing interests on the FIAC. Councils that already have equivalent fishing industry panels would not need to establish a FIAC.

(6) Closed Meetings

Proposed revisions to § 605.24(e)(2) would describe the notification process for closed or partially closed meetings. This provision allows the Council process to continue to be open to the public, but provide for brief closures for the discussion of employment or internal administrative matters.

(7) New Information

Proposed revisions to § 605.24(a)(3)(i) would require Council consideration of new information from the public when a Council considers new information from a state or Federal agency or from a Council advisory body, and provide for public comment on the new information presented. The provision requires that the Councils give appropriate weight to data submitted by fishermen and processors, and that such data should not be subject to tests more stringent than those applied to data submitted by NMFS or marine fisheries officials from any state.

(8) Fishery Impact Statement

Section 109 of the Fishery Conservation Amendments amended the requirements of the Magnuson Act applicable to the preparation of FMPs and FMP amendments by requiring the Councils to include in each FMP or FMP amendment a Fishery Impact Statement (FIS). The proposed rule would amend § 605.15(b)(1) to implement this requirement. Under the proposed rule, an expanded Regulatory Impact Review (RIR), including assessments of both economic and social impacts on participants, could serve as the FIS.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this proposed rule is not a "major" rule under E.O. 12291 requiring a regulatory impact analysis. It would revise the regulations and guidelines governing appointments to, and the operation and administrative of, the eight Regional Fishery Management Councils established by the Magnuson Act and the preparation of FMPs and FMP amendments under the Magnuson Act. These revisions concern such matters as appointments, eligibility for consecutive terms, members' pay, and notice of closed meetings, which have no effect on small entities. Other provisions such as requiring the establishment of the FIACs and requiring preparation of FISs would have no direct effect on small entities. These provisions are designed to improve the decisions reached by the Councils. For the same reasons, the General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared.

This proposed rule is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02-10.

This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Parts 601 and 605

Fisheries, Fishing.

Dated: May 20, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR parts 601 and 605 are proposed to be amended as follows:

PART 601—REGIONAL FISHERY MANAGEMENT COUNCILS

1. The authority citation for part 601 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 601.32 is amended by adding new text at the end of the existing text, to read as follows:

§ 601.32 Terms of Council members.

* * * No member appointed after January 1, 1986, may serve more than three consecutive terms. Any term

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completed prior to January 1, 1986, shall not be counted in determining the number of consecutive terms served by any Council member.

3. In § 601.33, paragraphs (c) and (h) are revised to read as follows:

§ 601.33 Appointments.

* * * * *

(c) Governors are responsible for nominating only those persons who meet the qualification requirements of the Magnuson Act; they shall provide a statement explaining how each nominee meets the qualification requirements; and they must provide appropriate documentation to the Secretary that each nomination was made in consultation with commercial and recreational fishing interests, and that each nominee who, by reason of his or her occupational or other experience, scientific expertise, or training, is knowledgeable and experienced in one or more of the following ways related to the fishery resources of the geographical area of concern to the Council:

(1) Commercial fishing or the processing or marketing of fish, fish products, or fishing equipment;

(2) Fishing for pleasure, relaxation or consumption, or experience in any business supporting fishing;

(3) Leadership in a state, regional or national organization whose members participate in a fishery in the Council's area of authority;

(4) The management and conservation of natural resources, including interactions with industry, government bodies, academic institutions and public agencies. This includes experience serving as a member of a Council, Advisory Panel, Scientific and Statistical Committee, or Fishing Industry Advisory Committee;

(5) Representing consumers of fish or fish products through participation in local, state, or national organizations, or performing other activities specifically related to the education or protection of the consumer of marine resources; and

(6) Teaching, journalism, writing, consulting, legal practice, or researching matters related to fisheries, fishery managment, and marine resource conservation.

* * * * *

(h) The Secretary must ensure a fair and balanced apportionment, on a rotating or other basis, of the active participants (or their representatives) in the commercial and recreational fisheries in the Council's area of authority. Further, the Secretary must take action to ensure, to the extent practicable, that those persons dependent for their livelihood upon the fisheries within Council jurisdiction are fairly represented as voting members.

4. In § 601.39, paragraph (a) is revised to read as follows:

§ 601.39 Council member compensation.

(a) The voting members of each Council who are not employed by the Federal Government or any state or local government (that is, anyone who does not receive compensation from any such government for the period when performing duties as a Council member) shall, until January 1, 1992, receive compensation at the daily rate for a GS-18 in the General Schedule, and after December 31, 1991, at the daily rate for a GS-16 (Step 1) in the General Schedule when engaged in the actual performance of duties as assigned by the Chairman of the Council. Actual performance of duties, for the purposes of compensation, may include travel time.

* * * * *

PART 605—GUIDELINES FOR COUNCIL OPERATIONS/ ADMINISTRATION

5. The authority citation for part 605 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

6. In § 605.15, existing paragraphs (b)(2) through (b)(4) are redesignated as paragraphs (b)(3) through (b)(5), respectively, and a new paragraph (b)(2) is added, to read as follows:

§ 605.15 Establishment of management measures.

* * * * *

(b) * * *

(2) The Council must prepare a Fishery Impact Statement (FIS) to be included in the FMP or amendment (submitted to or prepared by the Secretary after October 1, 1990). The FIS shall assess, specify, and describe the likely effects, if any, of the conservation and management measures on participants in the fisheries affected by the FMP or amendment, and on participants in the fisheries conducted in adjacent geographical areas under the authority of another Council, after consultation with such Council and representatives of those participants.

* * * * *

7. In § 605.23, the introductory text of paragraph (d) is revised, existing paragraph (d)(2) is redesigned as paragraph (d)(3), and a new paragraph (d)(2) is added, to read as follows:

§ 605.23 Council organization.

* * * * *

(d) *Advisory groups.* Each Council must establish a Scientific and Statistical Committee (SSC) and a Fishing Industry Advisory Committee (FIAC), and may establish such other Advisory Panel (APs) as necessary or appropriate to assist in carrying out its functions. Councils that already have equivalent fishing industry panels do not need to establish a FIAC. Advisory group size is discretionary within the resources budgeted to each Council. Each Council must specify procedures in its Statement of Organization, Practices and Procedures (SOPP) for continuing involvement of its advisory groups in the development of a amendments to Fishery Management Plans (FMPs). Procedures for appointing members to these groups should also be specified in the SOPPs.

* * * * *

(2) *Fishing Industry Advisory Committee (FIAC).* The FIAC provides information and recommendations on, and assists in the development of, FMPs and their amendments. Appointments to the FIAC shall be made by each Council in such a manner as to provide fair representation to commercial fishing interests in the geographic area of authority of the Council.

* * * * *

8. In § 605.24, paragraph (a)(2) is revised by adding new text at the end of existing text, paragraph (a)(3)(i) is revised, new paragraph (a)(3)(v) is added, and paragraphs (a)(5)(i) introductory text, (a)(5)(ii), and (a)(7)(i) are revised, to read as follows:

§ 605.24 Council meetings and hearings.

* * * * *

(a) * * *

(2) * * * If a meeting or portion of a meeting is closed, the Council concerned shall notify local newspapers in the major fishing ports within its region (and in other major, affected fishing ports) of the time and place of the meeting. Notification is not required regarding any brief closure of a portion of a meeting to discuss employment matters or other internal administrative matters.

(3) * * *

(i) All meetings of the Council advisory and working groups must be open, unless closed in accordance with paragraph (a)(5) of this section. Interested persons will be permitted to present oral or written statements regarding the matters on the agenda at regular meetings of the Council, within reasonable limits established by the Chair. At any time when a Council determines it appropriate to consider new information from a state or Federal agency or from a Council advisory body, the Council shall give comparable consideration to new information offered at that time by interested

members of the public. Interested parties shall have a reasonable opportunity to respond to new data or information before the Council takes final action on conservation and management measures. A vote is required for Council approval or amendment of a fishery management plan (including any proposed regulations), a Council finding that an emergency exists involving any fishery, or Council comments to the Secretary on fishery management plans developed by the Secretary.

* * * * *

(v) On the final vote on any matter to be transmitted to the Secretary by a Council, the Regional Director of the National Marine Fisheries Service serving on the Council, or his or her designee, when rendering a negative vote, shall submit to the Council within 10 working days after adjournment of the Council meeting a statement explaining the reason(s) for the vote. This statement shall remain on file with the Council and copies made available to the public upon request.

* * * * *

(5) * * *

(i) Each Council, SSC, FIAC, and AP:

* * * * *

(ii) Closed meetings, or portions thereof, must be announced in the news media.

* * * * *

(7) * * *

(i) Each Council must conduct its meetings at appropriate times and places in any of the constituent states of the Council. Two or more Councils may hold joint meetings within a constituent state of one of the Councils for the purpose of discussing issues of mutual concern or for the purpose of developing or amending a joint FMP.

* * * * *

[FR Doc. 91-12398 Filed 5-23-91; 8:45 am]

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Notices

Federal Register
Vol. 56, No. 101
Friday, May 24, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Plenary Session; Public Meeting of Assembly

Notice is hereby given, pursuant to the Federal Advisory Committee Act, Public Law No. 92-463, that the membership of the Administrative Conference of the United States, which makes recommendations to administrative agencies, the President, Congress, and the Judicial Conference of the United States regarding the efficiency, adequacy and fairness of the administrative procedures used by federal agencies in carrying out their programs, will meet in Plenary Session on Thursday, June 13, and Friday, June 14, 1991 in the Amphitheatre of the Office of Thrift Supervision, Second Floor, 1700 G Street, NW., Washington, DC. The meeting on June 13 will begin at 1 p.m. and end at approximately 5 p.m.; the meeting on June 14 will begin at 9 a.m. and end at approximately 12.

The Conference will consider, not necessarily in the order stated, proposed recommendations on the following subjects:

1. Federal Agency Cooperation with Foreign Government Regulators.
2. Commerce Department Export Control Proceedings.
3. The SSA Representative Payee Program.
4. The National Vaccine Compensation Program.
5. Rulemaking by the National Labor Relations Board.
6. Government-Sponsored Enterprises.

Plenary sessions are open to the public. Further information on the meeting inlcuding copies of proposed recommendations, may be obtained from the Office of the Chairman, 2120 L Street, NW., suite 500, Washington, DC 20037, telephone (202) 254-7020.

Dated: May 21, 1991.

Jeffrey S. Lubbers,
Research Director.

[FR Doc. 91-12344 Filed 5-23-91; 8:45 am]
BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

Nez Perce National Historic Trail Advisory Council; Public Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: The Nez Perce National Historic Trail Advisory Council will host a 3-day meeting. The purpose of the meeting is to discuss the implementation of the Comprehensive Plan and the roles of the various agencies and organizations having responsibilities for the Trail. Part of the meeting will be the dedication of the Trail at Lolo Pass on July 19, 1991. The Council was established in accordance with the provisions of the National Trails Systems Act. The public is invited to attend.

DATES: The meeting will be held on July 18, through July 20, 1991, from 9 a.m. to 4 p.m.

ADDRESSES: Holiday Inn, 200 S. Pattee, Missoula, Montana 59801.

FOR FURTHER INFORMATION CONTACT: Jim Dolan, Project Coordinator, by telephone (406) 329-3582 or by mail USDA, Forest Service, Northern Region. P.O. Box 7669, Missoula, MT 59807.

Dated: May 14, 1991.

John W. Mumma,
Regional Forester.

[FR Doc. 91-12323 Filed 5-23-91; 8:45 am]
BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Office of the Under Secretary for Economic Affairs, Economics and Statistics Administration

[Docket No. 91282-1108]

Request for Comments on Whether a Statistical Adjustment of the 1990 Census of Population and Housing Should be Made for Coverage Deficiencies Resulting in an Overcount or Undercount of the Population

AGENCY: U.S. Department of Commerce.

ACTION: Notice and request for comments.

SUMMARY: This notice and request for comments seeks public comment(s) on the issue of adjusting the 1990 census to correct for overcounts or undercounts of the population in the 1990 Decennial Census. The purpose of this notice is to inform the public about this important issue and to seek comments from interested members of the public.

DATES: Comments from the public should be received no later than June 21, 1991.

ADDRESSES: Written comments should be addressed to: Michael R. Darby, Under Secretary for Economic Affairs and Administrator, Economics and Statistics Administration, room 4848 Herbert C. Hoover Building, United States Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mark W. Plant, Deputy Under Secretary for Economic Affairs, Economics and Statistics Administration, U.S. Department of Commerce, telephone (202) 377-3523.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce is required, pursuant to 13 U.S.C. 141, to conduct a decennial census of the population of the United States. The population totals derived from the census are used to apportion seats in the House of Representatives, and to allocate federal funds to state and local governments. The possibility of statistically adjusting the decennial census to account for potential undercounts and overcounts in the enumeration of the population has been considered by the Commerce Department, the Congress, and interested members of the public for a number of years.

The adjustment issue has also been the subject of litigation. As a result of an agreement between the parties in a suit which seeks an order mandating a statistical adjustment of the 1990 decennial census, *see City of New York v. Department of Commerce*, (EDNY), this Department agreed to undertake a *de novo* reconsideration of the adjustment issue, and to make its decision on adjustment by July 15, 1991, unless it is practicable to decide the issue at an earlier date. The purpose of this notice is to solicit public comments on the question of whether the 1990 decennial census should be adjusted.

Final guidelines which will aid the Secretary in his decision were published in the **Federal Register** on March 15, 1990 (55 FR 9838-9861).[1] They are intended to provide a framework for a balanced consideration by the Secretary as to whether to adjust the census enumeration.

The census adjustment decision process is divided into several distinct phases. The first phase was the actual enumeration of the population. The second phase was the conduct of a post-enumeration survey, based on a probability sample of housing units. This sample provided data for two purposes: Estimation of the net overcount or undercount of basic enumeration subgroups using the capture-recapture methodology, and application of factors for the adjustment of the enumerated counts. The third phase of the process is a determination of the adequacy of the post-enumeration survey as an evaluation and adjustment tool.

On April 18, 1991, the Census Bureau released preliminary data from the post-enumeration survey. At the time the data were released, the Bureau noted that they were unrefined and unevaluated. During the week of May 27th the Census Bureau will release more refined data from the post-enumeration survey. The Bureau has not, however, completed its evaluation of the data and it therefore is not yet in a position to draw conclusions about the accuracy of the data. Nonetheless, the Department of Commerce has elected to make the data available to the public through news releases with accompanying data tables, so that public comments on the adjustment issue can be informed by the available information to the greatest extent possible.

The Department of Commerce is relying on the Bureau of the Census to implement the technical operations and procedures used in the decisionmaking process. These include operations to evaluate the accuracy of the census enumeration and the proposed adjustments to the census enumeration, the validity of statistical models used in the adjustment process and the quality of the resulting estimates. The Bureau of the Census will use the highest levels of professional standards in carrying out these operations, procedures and evaluations, and will document its judgments in a way that allows the statistical community to evaluate them. Ultimately, however, the Secretary will, in the exercise of his authority, determine whether to adjust the census.

Request for Comments

The Department of Commerce hereby invites the public to comment by June 21, 1991, on whether the 1990 decennial census should be statistically adjusted to account for possible undercounts or overcounts in the population totals derived from the actual enumeration of the population. Comments supporting or opposing adjustment would be especially helpful if they explain how they take into account the adjustment guidelines the Secretary developed and their application to the adjustment decision. For the convenience of commenters, the guidelines are reproduced below. The Department is not, however, soliciting comments on the guidelines themselves, which have already been the subject of notice and public comment, see footnote 1 *Supra*.

To obtain copies of the preliminary and refined post enumeration survey data contained in the press release of April 18, 1991, and the press release scheduled for the week of May 27, as well as the adjustment factors that will be used if the Secretary decides to adjust the enumeration totals, please call the Census Bureau's Public Information Office, (301) 763-4040, and the information and data will be forwarded to you.

Persons who want to obtain the detailed statistical data underlying the preliminary post-enumeration survey estimates including variances, convariances and carrier variables for regression, please call John Thompson at (301) 763-4072.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th Street and Constitution Avenue NW., Washington, DC 20230.

[1] Proposed guidelines were published in the **Federal Register** on December 11, 1989. The Court has previously considered and rejected a challenge to the guidelines. See *City of New York v. United States Department of Commerce*, 739 F.Supp. 767 (EDNY, 1990).

Guidelines for Considering Whether a Statistical Adjustment of the 1990 Decennial Census of Population and Housing Should be Made for Coverage Deficiencies Resulting in an Overcount or Undercount of the Population

Guidelines

(1) The Census shall be considered the most accurate count of the population of the United States, at the national, state, and local level, unless an adjusted count is shown to be more accurate. The criteria for accuracy shall follow accepted statistical practice and shall require the highest level of professional judgment from the Bureau of the Census. No statistical or inferential procedure may be used as a substitute for the Census. Such procedures may only be used as supplements to the Census.

Explanation: The mandate of the Census Bureau is to enumerate the population in a manner that assures that the count of the population is the best achievable given current methodology. As stated in the introduction, the assertion that a method involving statistical inference could lead to a more accurate enumeration warrants close scrutiny.

A set of adjusted counts would be based on a statistical inference that unaccounted for persons were present and that persons who were actually enumerated do not exist or were counted twice. Both determinations are based on a survey of a sample of similar blocks from locations across the country. Thus, the evidence, to be acceptable, must show convincingly that the count can be improved by statistical adjustment at national, state and local levels. In making this assessment, we will examine the effects of the proposed adjustment on the accuracy of counts at all geographic levels.

Comparison of estimates of population size. The estimates of the size of the population from the original enumeration, the demographic analysis, and the post-enumeration-survey estimates will be compared to assess their consistency. The comparison will take into consideration the uncertainty inherent in the demographic analysis and post-enumeration-survey estimates. For the reasons explained in the introduction, the original enumerations will be considered to be more accurate for all geographic areas unless the evidence from demographic analysis and the post-enumeration survey demonstrates convincingly that the dual-system estimate is more accurate.

Accordingly, the Bureau of the Census shall carefully scrutinize and fully describe the size of any net undercount

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or net overcount inferred from demographic analyses of population sub-groups and the sources of any net undercount or net overcount of population subgroups inferred from the analysis of the post-enumeration survey.

Discussion of Technical Grounds

Demographic Analysis. Estimates of the size of certain cohorts of the population are based on assumptions about or studies of the behavior of those populations. For some cohorts these assumptions have led to conclusions of net undercounts or net overcounts in several different censuses. The extent to which such conclusions result from specific assumptions will be described. Moreover, the extent to which these assumptions are warranted, and the sensitivity of such conclusions to changes in these assumptions, will be assessed.

The potential sources of error in the demographic analyses the Bureau currently plans are:

Birth registration completeness.
Net immigration of undocumented aliens.
White births, 1915–1935.
Black births, 1915–1935.
Foreign-born emigrants.
Population over age 65.
Models to translate historical birth-record racial classifications into 1990 self-reported census concepts.

The Bureau will examine the effect of errors in each of these measurements on estimates of the net overcount or net undercount. These studies will yield ranges of uncertainty for the demographic estimates of the population which will in turn yield ranges of uncertainty for the net overcount or net undercount. The effect of uncertainty in each of these components will be cumulated into overall levels of potential error.

Post-Enumeration Survey. The capture-recapture method lies at the heart of the post-enumeration-survey models for estimating population coverage deficiencies. The use of this methodology to derive the net undercount or net overcount estimates will be clearly explained. The appropriateness of this methodology to the enumeration of the population will be assessed.

Like demographic analysis, the post-enumeration-survey adjustment mechanism relies on numerous assumptions. The extent to which these assumptions are warranted, and the sensitivity of the conclusions to changes in these assumptions, will be assessed.

Survey methods are based on randomly chosen samples that use statistical inference to estimate the population of the Nation and its components. Such estimates are subject to statistical variation within some range of values—that is, a replication of the process used to make the estimate (including taking the sample) may not lead to the same estimate as the original procedures. Thus, there is a likely range of estimates around the "true" count of the population that depends on the random sample chosen.

If the range of estimates likely to occur is small and near the "truth," then any particular estimate is close to the truth and, thus, acceptable as an approximation of the "truth." If the range is very large, then any particular estimate may not be close to the "truth," and the estimation process gives us little information about the "truth."

A relevant technical criterion related to uncertainty introduced by sampling is how small any possible range of dual-system estimates must be to conclude that any particular outcome of the dual-system estimation process is more accurate than the enumeration itself.

Because the post-enumeration survey itself is a sample, the quantified parameters of the deficiencies are themselves estimates and subject to statistical variability. This variability must be small enough to ensure that any modification of the enumeration is an improvement over the unadjusted counts.

The post-enumeration survey serves two functions. The first function is to detect any deficiencies in the enumeration. For the post-enumeration survey to show convincingly that the enumeration is deficient, it must be clear that the deficiencies are not a result of problems in taking the post-enumeration survey. It follows, then, that the quality of the post-enumeration survey is a central concern in the decision whether to adjust.

The second function is to quantify any deficiencies attributed to the enumeration precisely enough to allow the enumeration to be modified in such a way that we are reasonably certain that the modified enumeration is more accurate than the original enumeration. Thus the post-enumeration survey must quantify the deficiencies of the enumeration precisely and accurately.

How much uncertainty in the measures of deficiency of the enumeration is acceptable?

(1) If the likely range of measures of deficiency would include outcomes that would call for no modification in the enumeration, then no modification would be done.

(2) The enumeration could be modified if the likely range of measures of deficiency would lead to potential modifications that would be substantially similar in terms of their impact on the counts of demographic groups, their impact on apportionment of Congress, and their impact on local population counts.

The quality of the net overcount or net undercount estimates that result from the post-enumeration survey depends on the quality of a series of operations used to gather and process the required data. The Bureau of the Census will undertake a series of studies to assess the statistical quality of the post-enumeration survey data. The results of these studies will yield measures of the precision and accuracy of the net overcount and net undercount estimates and a range of estimates for the net undercount and net overcount.

The current plans of the Bureau include investigation of the following sources of error for the dual system estimate of population size based on the post-enumeration survey and the census:

Missing data.
Quality of the reported census day address.
Fabrication in the P sample.
Matching error.
Measurement of erroneous enumerations.
Balancing the estimates of gross overcount and gross undercount.
Correlation bias.
Random error.

These and other component errors will be combined to produce an estimate of the overall level of error. In all evaluations, analyses will examine data for the population as a whole and for race, sex, Hispanic origin, and geographical detail.

(2) The 1990 Census may be adjusted if the adjusted counts are consistent and complete across all jurisdictional levels: national, state, local, and census block. The resulting counts must be of sufficient quality and level of detail to be usable for Congressional reapportionment and legislative redistricting, and for all other purposes and at all levels for which census counts are published.

Explanation: This guideline acknowledges that the population counts must be usable for all purposes for which the Census Bureau publishes data. The guideline also reinforces the fact that there can be, for the population at all geographic levels at any one point in time, only *one* set of official government population figures.

Thus, the level of detail must be adequate to produce counts for all such purposes. If the 1990 Census count is to be adjusted, it must be adjusted down to the census block level. It must be arithmetically consistent to eliminate confusion, and to prevent any efforts to choose among alternative sets of numbers to suit a particular purpose.

If the Census is to be adjusted, a process called synthetic adjustment will be used. A synthetic adjustment assumes that the probability of being missed by the census is constant for each person within an age, race, Hispanic origin, sex, and tenure category in a geographical area. A synthetic adjustment if performed in two steps. First, the preferred adjustment factors are estimated for a variety of post strata defined by age, race, Hispanic origin, sex, and tenure within geographic areas. Then the adjusted estimate in each category for a census block is obtained by multiplying the unadjusted census estimate in that category by the adjustment factor. The adjusted census estimate for the census block is computed by adding the estimated adjustments for each post strata cell of the block. Put simply, in an adjusted population count each individual enumerated will receive a relative weight according to his or her race, age, sex, ethnic background, tenure, and place of residence. The aggregate counts will then be built up from the weighted individuals to census block, local area, state and national counts.

We will conduct evaluations of small area estimations to ensure that this process results in counts that are in fact more accurate.

Evaluations of small area estimation. Coverage error may vary substantially within the post-enumeration-survey post-strata, although the post-strata were drawn to be homogeneous with respect to expected coverage error. The goal of this analysis is to determine whether or not the assumptions underlying a synthetic adjustment of the census are valid and produce counts which are more accurate at all geographic levels at which census data are used. In particular, the within-strata block-to-block variance in characteristics and net overcounts or net undercounts will be analyzed.

(3) The 1990 census may be adjusted if the estimates generated from the pre-specified procedures that will lead to an adjustment decision are shown to be more accurate than the census enumeration. In particular, these estimates must be shown to be robust to variations in reasonable alternatives to the production procedures, and to variations in the statistical models used to generate the adjusted figures.

Explanation: The Bureau of the Census will determine the technical and operational procedures necessary for an adjustment decision before the results of the post-enumeration survey are known. This procedure shall be chosen to yield the most accurate adjusted counts that pre-census knowledge and judgment can provide. The Bureau of the Census will then assess the components of systematic and random error in the procedure and it will assess the robustness of the estimates generated from that procedure. Various procedures and statistical models can be used to generate estimates of net overcounts or net undercounts and adjustment factors. This guideline specifies that a set of procedures for generating proposed adjusted counts will be determined in advance of receiving the 1990 post-enumeration-survey estimates. This guideline requires that these procedures be evaluated. These evaluations will identify other procedures and models that could be considered as reasonable alternatives to the chosen production process. These alternatives will be used to assess the accuracy and precision of the proposed adjusted counts. In addition they will be used to assess whether and by how much the adjusted counts could vary if alternative procedures were used.

(4) The decision whether or not to adjust the 1990 census should take into account the effects such a decision might have on future census efforts.

Explanation: The Decennial Census is an integral part of our democratic process. Participation in the census must be encouraged. Respect for the objectivity, accuracy, and confidentiality of the census process must be maintained. Accordingly, if evidence suggests that adjustment would erode public confidence in the census or call into question the necessity of the population participating in future censuses, then that would weigh against adjustment. On the other hand, if evidence suggests that the failure to adjust would erode public confidence in the census and thus result in widespread disinclination to participate in future censuses, that would argue for adjustment. The extent to which adjustment or non-adjustment would be perceived as a politically motivated act, and thus would undermine the integrity of the census, should also be weighed in making any adjustment decision.

(5) Any adjustment of the 1990 Census may not violate the United States Constitution or Federal statutes.

If an adjustment would violate article I, section 2, clause 3 of the U.S. Constitution, as amended by amendment 14, section 2, or 13 U.S.C. 195, or any other Constitutional provision, statute or later enacted legislation, it cannot be carried out.

(6) There will be a determination whether to adjust the 1990 census when sufficient data are available, and when analysis of the data is complete enough to make such a determination. If sufficient data and analysis of the data are not available in time to publish adjusted counts by July 15, 1991, a determination will be made not to adjust the 1990 census.

Explanation: It is inappropriate to decide to adjust without sufficient data and analysis. The Bureau will make every effort to ensure that such data are available and that their analysis is complete in time for the Secretary to decide to adjust and to publish adjusted data at the earliest practicable date and, in all events, not later than July 15, 1991, as agreed to in the stipulation. Note, however, that the Department and the Bureau have consistently stated that this is the earliest possible date by which there is a 50 percent chance that an analysis could be completed on which a decision to adjust could be based.

If, however, sufficient data and analysis of the data are not available in time, a determination will be made not to adjust the 1990 Census. The coverage evaluation research program will continue until all technical operations and evaluation studies are completed. Any decisions whether to adjust other data series will be made after completion of those operations.

(7) The decision whether or not to adjust the 1990 Census shall take into account the potential disruption of the process of the orderly transfer of political representation likely to be caused by either course of action.

Explanation: This guideline is intended to ensure that the factor of disruption of the process of the orderly transfer of political representation is explicitly taken into account as the decision is reached. For example, many states have pointed to adjustment as being disruptive to their redistricting plans. Likewise, members of some communities that are believed to have been historically undercounted contend that if the Census were not adjusted, this would disrupt the orderly and proper transfer of political representation to their communities. The inability to ensure accuracy of counts at local levels may result in politically disruptive challenges by localities to official census counts.

This guideline recognizes that the Decennial Census plays a pivotal role in the orderly redistribution of political representation in our democratic republic. The process used to generate the required counts must not be arbitrary either in fact or appearance.

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The Secretary is thus obliged to consider the impact of his decision on the fairness and reasonableness of that redistribution to all those affected. This guideline requires an explicit statement of how and to what degree adjustment or non-adjustment would be disruptive. Even though these are concepts that are not easily quantifiable, they warrant serious consideration in order for the Secretary to make a prudent decision on an issue that profoundly affects public policy.

(8) The ability to articulate clearly the basis and implications of the decision whether or not to adjust shall be a factor in the decision. The general rationale for the decision will be clearly stated. The technical documentation lying behind the adjustment decision shall be in keeping with professional standards of the statistical community.

Explanation: It is the responsibility of the government to have its critical decisions understood by its citizens. We recognize, however, that the degree to which a decision can be understood cannot alone dictate an important policy decision.

The decennial census is a public ceremony in which all usual residents of the United States are required to participate. If the census count were statistically adjusted, the rationale for that action must be clearly stated and should be understandable to the general public. If the decision were made not to adjust, the elements of that decision must also be clearly stated in an understandable way. It will be the responsibility of the Department of Commerce and the Bureau of the Census to articulate the general rationale and implications of the decision in a way that is understandable to the general public.

This does not require the Bureau or the Department to explain in detail to the general public the complex statistical operations or inferences that could lead to a decision to adjust. But, as with any significant change in statistical policy, the government has the duty to explain to the public, in terms that most can understand, the reason for the change. If the decision is not to adjust, (that is not to change) the public will be informed as well.

The last part of the guideline ensures that the methods, assumptions, computer programs, and data used to prepare population estimates and adjustment factors will be fully documented.

The documentation will be sufficiently complete for an independent reviewer to reproduce the estimates. These standards apply to the post-enumeration survey estimates, the demographic analysis estimates, and the small area synthetic estimates.

Dated: May 21, 1991.

Michael R. Darby,

Under Secretary for Economic Affairs and Administrator, Economics and Statistics Administration.

[FR Doc. 91-12419 Filed 5-21-91; 1:28 pm]

BILLING CODE 3510-EA-M

International Trade Administration

[A-489-501]

Certain Standard Welded Carbon Steel Pipe and Tube From Turkey; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On January 23, 1991, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on certain standard welded carbon steel pipe and tube from Turkey for the period of May 1, 1988 through April 30, 1989. The review covers one manufacturer/exporter of this merchandise to the United States, Borusan. We have now completed that review and determine the weighted average dumping margin to be 0.11 percent *ad valorem*. In accordance with 19 CFR 353.6, any weighted-average margin less than 0.50 percent *ad valorem* is *de mininis*.

EFFECTIVE DATE: May 24, 1991.

FOR FURTHER INFORMATION CONTACT: Alan Christian, Anne D'Alauro or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On January 23, 1991, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on certain standard welded carbon steel pipe and tube from Turkey (56 FR 2501). We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of certain welded carbon steel pipe and tube products with an outside diameter of 0.375 inch or more but not over 16 inches, of any wall thickness. Through 1988, such merchandise was classifiable under Tariff Schedules of the United States Annotated (TSUSA) item numbers 610.3231, 610.3234, 610.3242, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258 and 610.4925. These products are currently classifiable under item numbers 7306.30.50 and 7306.30.10 of the Harmonized Tariff Schedule (HTS). These products, commonly referred to in the industry as standard pipe and tube, are produced to various American Society for Testing and Materials (ASTM) specifications, most notably A-120, A-53 or A-135. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This review covers one manufacturer/exporter to the United States of the subject merchandise, the Borusan Group, and the period May 1, 1988 through April 30, 1989.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the respondent, Borusan. The petitioner submitted rebuttal comments.

Comment 1: Borusan states that the Department failed to grant a guarantee fee adjustment to foreign market value. During the period of this review, Borusan was required to deposit with the Government of Turkey a fee to guarantee the amount of any letter of credit obtained by the company to import raw materials used to produce steel pipe and tube for the home market. The government then returned the full amount of each guarantee fee to Borusan after the final payment was made on a corresponding letter of credit. Borusan claims that, because they forego potential interest on guarantee fees during the time these funds are held by the Government of Turkey, the holding of the guarantee fee represents an additional expense of import transactions. Because Borusan was exempted from having to pose the guarantee fee on letters of credit for imputs imported to produce exports of steel pipe and tube, Borusan claims a circumstance of sale adjustment for the opportunity cost resulting from the temporary payment of the guarantee fee on imported raw materials used to produce steel pipe and tube sold in the home market.

The petitioner counters by asserting that imputed guarantee fee "carrying costs" do not qualify for a circumstance of sale adjustment because they do not pertain to the selling of the end product in Turkey.

Department's Position: We disagree with the respondent. The so-called guarantee fee "carying costs" are, at best, related to the production of steel pipe and tube, and not the sale of this product. Because the guarantee fee "carrying cost" is not a cost pertaining to any physical difference in the merchandise being compared, no adjustment was warranted.

Comment 2: Borusan argues that the Department should have granted a circumstance of sale adjustment for value-added tax (VAT) "carrying costs" related to VAT paid on imported inputs not imported under an export license. Borusan states that these "carrying costs" are applicable only to home market sales because VAT is paid only on those imported inputs used in the production of steel pipe and tube sold in Turkey. Borusan is liable to the Government of Turkey for the difference between the VAT collected on the steel pipe and tube it sells in Turkey and VAT paid on imported inputs used to produce this merchandise. Borusan argues that, since it is credited for the VAT it pays on these imported inputs only when the purchaser of the finished product pays the VAT as part of the gross price of the product, they have incurred an opportunity cost over this time. They suggest that the Department may have confused this adjustment claim for VAT "carrying costs" with the 12 percent VAT charged to customers on all sales of finished pipe and tube in the home market.

Department's Position: We disagree with the respondent. The Department did not inadvertently confuse VAT "carrying costs" with the 12 percent VAT charged to customers on sales of finished pipe and tube in the domestic market, as suggested by the respondent. We adjusted the U.S. and home market prices to account for the 12 percent VAT, and in so doing have effectively accounted for the actual differences between the two markets resulting from the Turkish VAT. The respondent has taken a very selective view of the impact of the VAT. Based on the manner in which VAT reconciliation typically works, a company that sells the majority of its production in the home market, such as Borusan, usually collects more VAT on its sales per period than it pays on various inputs, including imports, during the same period. This provides the company with use of the excess of VAT collections over VAT payments until the difference is remitted to the Turkish government. Such hypothetical gains or losses are not costs pertaining to any physical differences in the merchandise being compared. Therefore, no adjustment was warranted.

Comment 3: Borusan objects to a downward adjustment the Department made to USP to compensate for a "countervailing duty rebate" Borusan provided to U.S. importers. Borusan argues that this adjustment is inconsistent with article VI.5 of the General Agreement on Tariffs and Trade (GATT). Borusan reasons that although the upward adjustment to USP for countervailing duties imposed was appropriate and in accordance with section 772(d)(1)(D) of the Tariff Act, a downward adjustment was inappropriate and violates the GATT to the extent that it subjects Borusan to both antidumping and countervailing duties for the same situation of dumping or export subsidization.

Department's Position: We disagree. Borusan maintains a policy of reimbursing U.S. purchasers/importers of the subject merchandise for any countervailing duties assessed on the importer. This reimbursement is a rebate or a reduction in U.S. sales price, and the corresponding downward adjustment to USP was made in accordance with section 772(d)(2)(A) of the Tariff Act. The two adjustments to USP are easily distinguishable; one is made to account for the countervailing duty imposed (the upward adjustment pursuant to section 772(d)(1)(D)), and is thus consistent with article VI of the GATT, while the other (the downward adjustment pursuant to section 772(d)(2)(A)) is made to compensate for a rebate that the respondent provides to its U.S. customers. The fact that Borusan fixes its rebate at the amount of countervailing duty imposed is immaterial; it is still a rebate for which the Department is required to make a downward adjustment in accordance with section 772(d)(2)(A). In making the adjustment, the Department has followed the same practice established in other cases and in the previous review of this order. See Certain Welded Carbon Steel Pipe and Tube Products from Turkey (55 FR 42230, October 18, 1990).

Final Results of Review

As a result of our review, we determine the weighted-average dumping margin to be:

Manufacturer/exporter	Time period	Margin (Percent)
BORUSAN	5/01/88-4/30/89	0.11

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, the cash deposit of estimated antidumping duties will be waived for Borusan. For any shipments of this merchandise manufactured or exported by the remaining known manufacturers and/or exporters not covered in this review, the cash deposit will continue to be at the rates published in the final results of the last review for these firms (53 FR 39362; October 11, 1988). For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after April 30, 1989 and who is unrelated to the reviewed firm or any previously reviewed firm, no cash deposit shall be required. These deposit requirements and waiver are effective for all shipments of Turkish welded carbon steel pipe and tube entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with sections 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: May 17, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-12421 Filed 5-21-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-301-001]

Termination of Countervailing Duty Investigation: Leather Wearing Apparel From Colombia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We are terminating the countervailing duty investigation of leather wearing apparel from Colombia.

EFFECTIVE DATE: May 24, 1991.

FOR FURTHER INFORMATION CONTACT: Vincent Kane or Julie Anne Osgood, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230;

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telephone: (202) 377-2815 or 377-0167, respectively.

SUPPLEMENTARY INFORMATION: On April 3, 1991, we published a determination to cancel the suspension agreement and resume the countervailing duty investigation of leather wearing apparel from Colombia (56 FR 13621). In our notice, we indicated that the company that was the original petitioner in this case had gone out of business. As a result, we had reason to believe that the domestic industry was no longer interested in continuation of the investigation and that the investigation should be terminated. We gave interested parties an opportunity to submit a statement of interest within 30 days of the date of publication of the notice. The 30-day period expired on May 3, 1991. We received no statement of interest from the domestic industry.

Scope of Review

Imports covered by this investigation are shipments of Colombian leather wearing apparel. The product is classified under subheadings 4203.10.40.30, 4203.10.40.60, and 4203.10.40.90 of the Harmonized Tariff Schedule (HTS) and was formerly classified under items 791.7640 and 791.7660 of the Tariff Schedules of the United States (TSUSA). The HTS and TSUSA subheadings are provided for convenience and customs purposes. The written description remains dispositive as to the scope of this proceeding.

Determination to Terminate Investigation

Based on the domestic industry's lack of interest in this investigation, we have determined to terminate the countervailing duty investigation on leather wearing apparel from Colombia. In addition, the suspension of liquidation ordered in our notice of resumption of investigation is terminated and deposits of estimated countervailing duties will be refunded and bonds posted to secure possible payments of countervailing duties will be released.

This termination of investigation is in accordance with section 704(a)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1671c(a)(1)).

Dated: May 20, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-12422 Filed 5-23-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-015]

Unprocessed Float Glass From Mexico; Final Results of Countervailing Duty Administrative Review and Termination of Suspended Investigation

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review and termination of suspended investigation.

SUMMARY: On May 15, 1990, the Department of Commerce published the preliminary results of its administrative review and intent to terminate the suspended countervailing duty investigation on unprocessed float glass from Mexico. We have now completed that review and determine that the signatories to the suspension agreement have complied with its terms during the period January 1, 1987 through December 29, 1988. As a result of our review, we are terminating the suspended investigation.

EFFECTIVE DATE: May 24, 1991.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1990, the Department of Commerce (the Department) published in the Federal Register (55 FR 20177) the preliminary results of its administrative review and intent to terminate the suspended investigation on unprocessed float glass from Mexico (49 FR 7267; February 28, 1984). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of Mexican unprocessed float glass, a type of flat glass produced by floating molten glass over a bed of molten tin. During the review period, such merchandise was classifiable under item numbers 542.2100 through 543.6900 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under item numbers 7005.29.05, 7005.29.15, 7005.29.25 and 7005.10.00 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1987 through December 29, 1988 and the following programs: (1) FOMEX; (2) CEPROFI; (3) CEDI tax certificates; (4) NDP preferential discounts; (5) import duty reductions and exemptions; (6) delay of payments to PEMEX of fuel charges; (7) preferential state investment incentives; (8) state tax incentives; and (9) debt/equity swaps.

The review covers two exporters, Vidrio Plano de Mexico, S.A. (Vidrio Plano) and Vitro Flotado, S.A., the signatories to the suspension agreement.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received written comments from PPG and the respondents, Vidro Plano and Vitro Flotado.

Comment 1: PPG argue that CEDI benefits were paid at least until 1986, despite the Mexican government's claim that the CEDI program was discontinued in 1982. According to PPG, the Mexican government has consistently provided incorrect and misleading information regarding CEDI which prevents the Department from effectively monitoring compliance with the agreement, as required by 19 U.S.C. 1677c(d). Moreover, there is evidence on the record that Vidrio Plano, one of the signatories to the suspension agreement, violated the suspension agreement. Thus, it is clear that the Department's assumptions with respect to the suspension of the CEDI program and future receipt of CEDI benefits were incorrect and serve no basis for terminating the suspended investigation.

To support its contentions, PPG references information submitted during the first and second administrative reviews. This information includes a report filed by Vidrio Plano with the Mexican Securities Commission showing the receipt of CEDIs after the suspension agreement was signed, the 1985 and 1987 economic reports of the President of Mexico and the annual report for the Vitro Group for 1986. Under the terms of the suspension agreement, Vidrio Plano and Vitro Flotado explicitly agreed not to receive CEDIs. The Department, therefore, should require Vidrio Plano to explain exactly what these CEDIs represented. Even though the CEDIs were received in an earlier review period, the issue is important for the purposes of this review because Vidrio Plano foreswore CEDIs as one of the conditions of the suspension agreement. If Vidrio Plano violated this agreement by receiving CEDIs, then the agreement must be terminated immediately and liquidation of imports of float glass suspended.

Only after PPG challenged the Mexican government's contention that CEDI had been suspended did the government render further explanation regarding the CEDI program. Thus, it was only during the Department's verification of the 1986 review period that the Mexican government, first explained that in addition to a rebate of indirect taxes, the CEDI program could provide a rebate of import duties, that payments rebating indirect taxes after 1982 were for exports made before the indirect tax rebate component of the CEDI program was suspended, and that CEDIs had continued to be paid to export consortia through 1986. The Department, however, saw no documentation to confirm that CEDI payments made to manufacturers since 1982 were for the rebate of import duties only or that CEDIs for indirecte tax payments made since 1982 were for exports prior to the suspension of the CEDI program. Given the history of past inaccuracies by the Mexican government regarding the status and operation of the CEDI program, the Department cannot accept these claims at face value without supporting documentation.

PPG asserts that, given the inconsistency and incompleteness of the Mexican government's information during the 1986 review period, the Department should have thoroughly verified the CEDI program in this administrative review. Instead, the Department's entire verification of the CEDI program consists of the acceptance of an oral statement by a Mexican government official, without any supporting documentation, that the program was terminated in 1982 and has not been reinstated. Because the Department has not resolved the issues surrounding the CEDI program, it cannot conclude that Vidrio Plano and Vitro Flotado, or some other member of the Vitro group, such as an export consortium, could not reveive CEDIs based on exportation of float glass.

Respondents reply that the acronym "CEDI" simply refers to a tax credit. CEDIs have been granted by the Mexican government for different purposes, including tax credits to rebate indirect taxes incurred during the manufacturing process of an article which is ultimately exported, and to refund import duties. The Department previously determined that the CEDI which rebated indirect taxes was countervailable, and it was this CEDI tax program for which the Government of Mexico suspended eligibility on August 25, 1982. Since that time, the term CEDI has been used by the Department and others as a shorthand reference to that specific type of CEDI. See Carbon Black from Mexico; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order (48 FR 29565; June 27, 1983). Likewise, it was this CEDI program that signatories renounced in the suspension agreement.

Furthermore, the respondent points out that PPG mischaracterizes the Department's verification of the CEDI program. In the instant review, the Department verified that neither Vidrio Plano nor Vitro Flotado applied for or received CEDIs during the review period.

Department's Position: We disagree with the petitioner. Throughout the course of the float glass proceeding, the Department has evaluated the CEDI program extensively and has consistently verified that Vitro Flotado and Vidrio Plano, the two signatories to the suspension agreement, have renounced countervailable CEDI benefits in accordance with the suspension agreement. In challenging the Department's proposed termination of the suspension agreement, PPG relies on old claims and information submitted during previous reviews which the Department has reviewed and considered prior to reaching its decisions during past reviews and evidence that was contained in the administrative records reviewed by the Court of International Trade (CIT) prior to affirming the Department's prior determinations. As discussed below, Vidrio Plano and Vitro Flotado consistently have accounted for over 85 percent of the exports of float glass to the United States and have not received countervailable CEDI benefits after February 22, 1984, the day that they signed the suspension agreement.

During our countervailing duty investigation of unprocessed float glass from Mexico, we verified that Vitro Flotado and Vidrio Plano accounted for over 85 percent of the exports of the subject merchandise to the United States. At that time, we also confirmed that the Mexican government suspended the eligibility for CEDI certificates for most manufactured goods by a decree published on August 25, 1982 in the Diario Oficial. See Unprocessed Float Glass from Mexico; Preliminary Affirmative Countervailing Duty Determination (48 FR 56095, 56097; December 19, 1983).

On February 22, 1984, the Department entered into a suspension agreement with Vitro Flotado and Vidrio Plano whereby both companies renounced the receipt of CEDI benefits. See Unprocessed Float Glass from Mexico; Suspension of Countervailing Duty Investigation (49 FR 7264, 7265; February 28, 1984). The CIT subsequently upheld our determination and findings with respect to CEDI in *PPG* v. *United States*, 11 CIT 344, 662 F. Supp 258 (1987), *aff'd*, No. 88-1175 (CAFC, March 22, 1991), sugg. reh'g en banc pending ("PPG I").

Since the Department suspended the float glass investigation over seven years ago, the Department has verified during all of its subsequent administrative reviews that Vidrio Plano and Vitro Flotado have accounted consistently for over 85 percent of the exports of unprocessed float glass exports to the United States and have never received countervailable CEDI benefits subsequent to signing the suspension agreement. See Unprocessed Float Glass from Mexico; Countervailing Duty Determination (49 FR 23097; June 4, 1984); Unprocessed Float Glass from Mexico; Final Results of Countervailing Duty Administrative Review 51 FR 44503, 44504 (1986) (February 1, 1984 through December 31, 1985 final results affirmed in *PPG* v. *United States*, 13 CIT _____, 712 F. Supp. 195 (CIT 1989)), appeal stayed, CAFC No. 89-1520 ("PPG II"); Unprocessed Float Glass from Mexico; Final Results of Countervailing Duty Administrative Review (55 FR 5870, 5873; February 20, 1990) (January 1, 1986 through December 31, 1986 review); Unprocessed Float Glass from Mexico; Preliminary Results of Countervailing Duty Administrative Review (55 FR 20177; May 15, 1990) (January 1, 1987 through December 29, 1988 review); Verification Report, dated March 21, 1991, at 3, 8 and 12.

Furthermore, contrary to PPG's contention, we have verified that, from the outset in 1971, CEDI was intended to rebate: (1) Indirect taxes borne by the exported product; and (2) import duties on imported inputs used in the exported product. See Verification Report (public version) pertaining to the 1986 review of unprocessed float glass from Mexico, dated August 12, 1988 at 5. In that report, we noted that the sample applications from a CEDI instruction package from as far back as 1971 referenced both forms of CEDI benefits. Thus, the import duty drawback facet of CEDI was not something the Mexican government created for the purposes of the 1986 verification, as PPG's comments seemingly suggest.

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We, likewise, verified that the August 1982 decree eliminated only the portion of the CEDI program that governed indirect tax benefits on exports of the previously covered manufactured products (*e.g.*, unprocessed float glass). *Id.* at 6. Accordingly, the import duty drawback portion of the CEDI program remained in effect until April 1985, when a decree published in the Diario Oficial established that duty drawback would henceforth be paid by means of a check drawn on the Mexican Treasury. *Id.* at 5.

PPG offers no new information to warrant the Department's cancellation of the suspension agreement and issuance of a countervailing duty order. Rather, PPG relies on speculation and innuendo and stale information submitted during previous administrative reviews, information previously reviewed by the Department in reaching two determinations subsequently upheld by the CIT.

In its case brief filed on June 15, 199o, for example, PPG references a Mexican Securities Commission report, that it submitted to the Department on February 25, 1986 during the 1984–1985 float glass administrative review. According to PPG, the report demonstrates that Vidrio Plano violated the suspension agreement by receiving CEDI benefits after becoming a signatory. This document, however, refers to duty drawback that was received in the form of CEDIs, a program that the Department has never investigated because there has never been any evidence that the duty drawback received was excessive and therefore countervailable. Further, this document applies to an earlier, completed review period and was already taken into account by the Department in reaching its final results for the 1984–1985 review period. Moreover, this identical information was before the CIT when the court affirmed the Department's final results, concluding that the overall investigation concerning CEDIs and extra-CEDIs was *extensive*. See PPG II; Defendant's Memorandum in Opposition to Plaintiff's Motion for Judgment upon the Agency Record, dated September 10, 1987, at 25–29.

PPG, once again, presents the President of Mexico's economic reports dated in 1985 and 1987, which cover calendar years 1984 through 1986, and the annual report for the Vitro group for 1986 in alleging that CEDI benefits were received subsequent to the suspension of investigation. This information, however, was previously submitted and evaluated during the 1986 administrative review, a review that the Department has completed and is currently subject to litigation before the CIT. See PPG's comments, dated June 15, 1990, at 4; *PPG v. United States*, Ct. No. 90–03–00127 (pending). Because the Department has already made a determination with respect to this information in a previous review period, it is unnecessary for the Department to reconsider the noted information for the purposes of this review.

Comment 2: PPG contends that the Mexican government's earlier representations regarding the CEDI program for export consortia were factually incorrect. By their terms, the CEDIs provided export consortia with rebates on indirect taxes, rather than duty drawbacks, as the Mexican government previously alleged. Thus, the Mexican government continued to pay out at least two types of countervailable CEDIs, export consortia and "regular," long after it claimed that the program had been suspended. This also calls into question the statement in the questionnaire response in the present case that no CEDIs were paid to export consortia in 1987 or 1988.

In the original investigation, PPG requested that Fomento de Comercio Exterior (FCE), an export consortium that was a member of the Vitro group, be included in the suspension agreement. The Department refused to include FCE because there was no extra-CEDI program, so that it had no reason to examine FCE's books.

During the first administrative review, PPG again requested that the Department examine FCE's accounts to determine whether it or any other company had received CEDIs for the exportation of float glass. The Department denied PPG's request because Vidrio Plano and Vitro Flotado had terminated their relationship with FCE prior to the suspension agreement so that any CEDIs received by FCE would not be in connection with exports of float glass by the signatories. The Department also noted that other companies in the Vitro group had received CEDIs, but it did not identify those companies or the source of the CEDIs. There is also no evidence that the Department examined any printouts or other records to determine which Vitro companies in fact had received CEDIs during that period.

PPG argues that the Department has never examined the books of FCE because it believed that FCE could not have received CEDIs. Given the inaccurate information upon which the Department based its prior conclusions, the Department can no longer presume that FCE did not receive CEDIs based on the export of float glass, even if it had no contractual relationship with the signatories. Even if FCE went out of business in 1985, as alleged, there is a distinct possibility that another company within the Vitro group has taken over FCE's role as export consortium. The Department should have determined if this is the case and whether the signatories use an export consortium for any purpose, even though they may not make sales through the consortium. Without reviewing the overall structure of the Vitro group, the Department cannot satisfy itself that some member did not perform export services in connection with the exportation of float glass (whether or not sales are made through the consortium) and did not receive CEDIs as a result.

Furthermore, the Department has admitted on page 9 of its verification report for the 1986 review period that "we did not see any documentation proving that CEDIs to foreign trade consortia did not cover float glass or that these CEDIs were earned only on exports made in 1985." Finally, the Mexican government refused to allow the Department to examine its printout of CEDI recipients for the names of any members of the Vitro group other than Vidrio Plano or Vitro Flotado, FCE, and Vitro, S.A. and printouts of CEDI recipients prior to 1986. See Verification Report for the 1986 review period at page 7.

Respondents reply that the petitioner's allegations of the possible payment of CEDIs to export consortia and payments to FCE was discussed by the Court of International Trade (CIT) at length in PPG I, and the CIT upheld the Department's determination not to include FCE as a party to the suspension agreement. Furthermore, the respondents reply that the Department carefully reviewed both Vidrio Plano and Vitro Flotado's export records and concluded that there was no evidence that either signatory made exports through export consortia.

Department's Position: We disagree with the petitioner. As we noted in response to Comment 1, we have consistently verified that Vidrio Plano and Vitro Flotado have accounted for over 85 percent of the exports of float glass to the United States and have never received CEDI benefits, either directly or indirectly, since they signed the suspension agreement in 1984. Moreover, in challenging the signatories' compliance with the suspension agreement, PPG relies solely on speculation and innuendo and fails to furnish any evidence that the signatories received CEDI benefits indirectly from export consortia. As discussed below, the signatories have never violated the suspension agreement with respect to CEDI, and thus are eligible for termination of the suspended investigation.

During our investigation, the Mexican government reported and we verified that no additional CEDIs were provided to the companies which accounted for all exports of float glass to the United States.

Furthermore, prior to our suspension of the investigation, PPG requested that the Department require Vitro, S.A., the holding company for Vitro Flotado and Vidrio Plano, and FCE, the company that performs marketing services for these companies, to sign the suspension agreement. We declined PPG's request because: (1) Vitro Flotado and Vidrio Plano accounted for all known imports of float glass from Mexico to the United States, and both companies agreed to eliminate the subsidies completely; (2) neither the holding company nor the trading company, which is 2 percent owned by the float glass companies, took title to, or possession of, the merchandise for exportation to the United States; (3) we verified that the float glass producers paid both Vitro, S.A. and FCA for services provided; and (4) at verification, we found no evidence of a program whereby FCE received extra-CEDIs which in turn would provide bounties or grants to the float glass producers. See Unprocessed Float Glass from Mexico; Suspension of Countervailing Duty Investigation (49 FR 7264, 7265 (1984)). These findings were upheld by the CIT in PPG I and were not included in PPG's appeal or PPG I to the CAFC, Slip Op. 88–1175 (March 22, 1991).

Subsequently, during the first administrative review covering the period February 1, 1984 through December 31, 1985, the Department extensively examined PPG's allegation that the Mexican float glass producers benefit from CEDIs by means of a pass-through from Vitro, S.A. and FCE. During verification, we reviewed Vitro, S.A.'s accounting records for the period of review and found that, although Vitro, S.A. received CEDIs (of an undetermined type) during the period of review, it provided no pass-through of CEDI benefits to the float glass producers. We also verified that all financial transfers between the float glass producers and Vitro, S.A. involved arms-length transactions. We found that Vitro, S.A. did not provide investment funds to the float glass producers. Finally, we verified that neither Vitro Flotado nor Vidrio Plano received or used CEDI certificates during the review period. With respect to PPG's allegation concerning CEDIs provided to export consortia (FCE), we found no evidence of pass-through benefits and verified that the float glass producers terminated their relationship with FCE in January 1984 with regard to exports to the United States. See Unprocessed Float Glass from Mexico; Preliminary Results of Countervailing Duty Administrative Review, (51 FR 37319, 37320); Final Results, (51 FR 44503, 44504 (1986)). The CIT affirmed these results in PPG II, finding that "[t]he overall investigation concerning CEDIs and extra-CEDIs was extensive."

Likewise, in the 1986 review, the Department verified that Vidrio Plano and Vitro Flotado accounted for more than 90 percent of the float glass exports to the United States during the review period and that these companies exported directly to the United States. We also verified that the signatories did not receive CEDIs directly on the exports of float glass to the United States and that CEDIs are not transferable.

In addition to the above findings, we confirmed during the 1986 review that the Mexican government repealed the earlier decrees bestowing CEDI benefits on export consortia by an official decree issued on November 14, 1986. See Unprocessed Float Glass from Mexico; Final Results of Countervailing Duty Administrative Review, (55 FR 5870, 5873 (1990)). PPG has challenged these results in *PPG v. United States*, Ct. No. 90–03–00127, a case that is currently pending before the CIT.

Once again, during our recent verification, we found that neither signatory received CEDI benefits, either directly or indirectly during the 1987–1988 review period, and thus complied with the terms of the suspension agreement as it applies to CEDI. See Verification Report, dated March 21, 1991.

To date, PPG has been unable to provide any evidence to support its allegation that the signatories are receiving CEDI benefits indirectly from export consortia. PPG speculates that somehow export consortia received CEDI benefits based on the signatories', not the export consortia's, exports of float glass to the United States and somehow transferred the CEDI benefit to the signatories. Rather than provide evidence to support its allegations, PPG instead relies on the Department's statements in the 1986 verification report that: (1) The verification team did not see any documentation to prove that the CEDIs to export consortia did not cover float glass; and (2) that Hacienda officials objected to our searching for other non-signatory companies in the Vitro group on the computer list of companies that received CEDI certificates. Given the fact that the signatories consistently accounted for over 85 percent of the exports of the subject merchandise to the United States, and did not receive any CEDIs either directly or indirectly on those exports, we were not overly concerned by the Mexican government's objection to our searching the records pertaining to non-signatories and export consortia.

Comment 3: PPG contends that the Department has never conducted an adequate examination of the Mexican duty drawback program. According to PPG, the Department is required to determine whether or not a duty drawback program provides an excessive rebate by examining whether: (1) The program was intended to operate as a rebate of import duties; (2) the foreign government properly ascertained the level of import duties to be rebated; and (3) the rebate amount actually reflects the amount of import duties paid. The Department has not examined these criteria to date.

According to PPG, at verification during a prior review, the Department apparently examined only Vidrio Plano's books and concluded that there was no evidence of an excessive rebate. In the current review, PPG asserts that the Department simply relied on its earlier unsupported assumption that rebate amounts were not excessive. The Department should require the Mexican government to provide the necessary information to determine whether the duty drawback payments received by Vidrio Plano were or were not excessive during the 1986 review period. In the interim, the Department should assume for the purposes of these final results that the payments were excessive and treat the entire amount of the duty drawback as countervailable. If the Department ultimately concludes that Vidrio Plano received countervailable benefits, the Department should terminate the suspension agreement.

Respondents reply that it is well established that CEDIs issued for the payment of duty drawback were not of the kind determined to be countervailable by the Department.

Department's Position: We disagree with the petitioner. Duty drawback, by definition, is the rebate on duties paid on imported goods that are physically incorporated in an exported product; it is a practice acceptable under U.S. countervailing duty law and the GATT,

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and does not give rise to a subsidy unless the drawback is in excess of the duties levied on physically-incorporated goods.

In order to ascertain whether a company has received excessive duty drawback, the Department does not need to apply the criteria noted by PPG. Rather, the Department simply can determine whether the amount rebated exceeds the amount actually levied on physically-incorporated goods. The amount in excess would then constitute the countervailable benefit. The three criteria listed by PPG, on the other hand, apply to indirect tax rebate programs, whereby the Department needs to establish a linkage between eligibility for the indirect tax rebates and the actual indirect tax incidence borne by exported merchandise. These criteria would only be applicable to duty drawback if the duty drawback was rebated in conjunction with an indirect tax program. See *Industrial Fasteners Group, American Importers Assn'n* v. *United States*, 710 F. 2nd 1576 (Fed. Cir. 1983); Certain Apparel from Thailand, (50 FR 9818 (1985)); Textile Mill Products and Apparel from Indonesia, (49 FR 49672 (1984)).

To date, PPG has never provided any information to suggest that the Mexican duty drawback program allows drawback in excess of duties levied upon physically incorporated goods. During verification in the 1984–1985 administrative review, and while we were reviewing Vidrio Plano's tax returns, we noted that Vidrio Plano claimed duty drawback during the review period. Because the amount of duty drawback was so inconsequential, we did not look any further into the duty drawback program. Subsequently, during the 1986 review, we noted an amount less than $200 for duty drawback granted in 1985 but not recorded in Vidrio Plano's books until 1986. We did not note any duty drawback claims on Vitro Flotado's tax returns during the 1984–85 and 1986 review periods. Given our findings during these prior reviews we did not review duty drawback during the 1987–1988 period. Furthermore, since the petition was filed in this case, PPG has never given us reason to believe or suspect that duty drawback in Mexico is excessive or that the program is improperly administered.

Comment 4: PPG argues that the Department's determination regarding the FICORCA program was both contrary to countervailing duty law and unsupported by the facts, because FICORA was limited to companies holding a specified type of foreign debt. The Department's failure to collect information on the application, approval process, as well as the actual distribution, is significant given the data showing that FICORCA benefits were provided to a relatively small number of Mexican businesses. The Department has explicitly stated that it applied the specificity test in determining that the FICORCA program was available to all Mexican firms with foreign indebtedness and was therefore not targeted to a specific enterprise or industry, or group of enterprises or industries. The CIT has repeatedly rejected the specificity test applied by the Department, most recently in *Armco Inc.* v. *United States*, 13 CIT ——, Slip Op. 90–32 (March 29, 1990), and compared the specificity test to the generally available benefits test, which was rejected in *Cabot Corp.* v. *United States*, 694 F. Supp. 949 (1988) ("Cabot II"). The CIT analyzed the specificity test on a fundamental level and stated that if a particular benefit constitutes an unfair countervailable subsidy when a certain company or companies receives it, the fact that other companies were also eligible for the benefit would not change the fact that the benefit was unfair, and thus countervailable when granted to the first company.

PPG further argues that the Department did not address FICORCA in its most recent verification and that the Department has never obtained adequate information regarding a program alleged in the petition to constitute a major subsidy to the Mexican float glass producers. Therefore, the Department cannot consider that any determination it makes regarding FICORCA is supported by substantial evidence, and as such, the verification was fundamentally deficient.

Respondents reply that the Department's determination regarding the non-countervailability of FICORCA has been upheld by the CIT in PPG I and PPG II, and most recently by the Court of Appeals for the Federal Circuit (CAFC) in Slip Op. 88–1175 issued on March 22, 1991. Armco and Cabot do not dictate a result different from that reached by the Department as to the countervailability of FICORCA.

Department's Position: We disagree with the petitioner. In Unprocessed Float Glass from Mexico; Countervailing Duty Determination (49 FR 23097; June 4, 1984) and in Unprocessed Float Glass from Mexico; Preliminary Results of Countervailing Administrative Review (51 FR 57319; October 21, 1986), we determined that the FICORCA program was available to all Mexican firms with foreign currency indebtedness and that it was not targeted to a specific enterprise or industry, group of enterprises or industries, or to companies located in specific regions. We also found that FICORCA was not tied in any way to exports.

The CIT consistently upheld the Department's previous determinations that the Mexican FICORCA program does not confer countervailable benefits. See PPGI, PPG II, and *PPG* v. *United States*, 746 F. Supp. 119 (CIT 1990) (covering the 1984–85 review of fabricated automotive glass). The CAFC, likewise, has found that the Department's specificity test is in accordance with law and that FICORCA is not countervailable. See CAFC Slip Op. 88–1175 issued on March 22, 1991. PPG's reliance upon Armco is misplaced, because that decision conflicts with the long line of judicial decisions cited above.

Comment 5: PPG argues that some firms, including members of the Vitro group, provisionally enrolled debt in FICORCA before the rescheduling negotiations had been completed. The Department did not determine whether provisional enrollment was available to all FICORA participants, or whether the Mexican government allowed provisional enrollment on a case-by-case basis. The restructuring of all debt denominated in foreign currency to long-term debt was a prerequisite for enrollment in FICORCA. Because provisionally-enrolled debt did not meet the eligibility criteria that the Department has previously held made the program non-specific, the agency must determine whether the Mexican government exercised discretion in allowing provisional enrollment.

Respondents reply that this issue was thoroughly investigated by the Department in previous reviews.

Department's Position: We disagree with the petitioner. Contrary to PPG's arguments, the Government of Mexico did not allow Vidrio Plano or Vitro Flotado to enroll debt provisionally in the FICORCA program. PPG simply mischaracterizes FICORCA's "provisional" enrollment program. As explained by the Department in Unprocessed Float Glass from Mexico; Preliminary Results of Countervailing Duty Administrative Review and Tentative Determination to Terminate Suspension Agreement (53 FR 53045; December 30, 1988), when the period for registering debt into FICORCA closed, some companies had not yet concluded their FICORCA negotiations. The creditors issued a "provisional" notice that the debt was in a rescheduling process, which many firms referred to as provisional enrollment in FICORCA. The Vitro group reported long-term foreign debt "provisionally" enrolled in FICORCA in notes to its 1984 financial statements. This merely meant that, until the creditors submitted a written statement for FICORA advising that the debt had been rescheduled, FICORCA contracts would not be issued to the company or group. Because the Government of Mexico did not allow Vidrio Plano or Vitro Flotado to enroll debt "provisionally" into the FICORCA program, PPG's contention that the Department must determine whether the Government of Mexico exercised discretion is erroneous.

Comment 6: PPG argues that some FICORCA participants were reducing their tax liability by refinancing debt covered by FICORCA through the issuance of floating rate notes. The Comision Nacional de Valores, on a case-by-case basis, permitted firms to convert FICORCA debt to floating rate notes. The Department should require the Mexican government to describe what procedure a Mexican firm must go through to issue floating rate notes.

Respondents reply that the Department previously determined that the signatories did not convert FICORCA liabilities to floating rate notes.

Department's Position: We disagree with the petitioner. We fully discussed this issue in Unprocessed Float Glass from Mexico; Preliminary Results of Countevailing Duty Administrative Review and Tentative Determination To Terminate Suspension Agreement (53 FR 53045; December 30, 1988) and in Final Results of Countervailing Duty of Administrative Review; Fabricated Automotive Glass from Mexico (54 FR 51908; December 19, 1989). The signatories to the suspension agreement did not convert FICORCA debt into floating rates notes.

Comment 7: PPG argues that special permission from the Mexican government was required in order for firms to enroll non-bank debt in FICORCA. Therefore, this provision could not have been part of the original FICORCA regulations. The description of the program submitted in the original investigation has been identified by the Department as the FICORCA regulations. It is unclear whether this description constitutes the official regulations regarding the actual operation and administration of FICORCA. The Department should request that the Mexican government clarify in writing whether FICORCA always covered non-bank debt, and if not, then what special measures were necessary to enroll non-bank debt in the program.

Respondents reply that the Department determined that FICORCA was not intended solely for bank debt. The petitioner did not add anything new to its arguments regarding the FICORCA program.

Department's Position: We disagree with the petitioner. We fully addressed this program in Unprocessed Float Glass from Mexico; Preliminary Results of Countervailing Duty Administrative Review and Tentative Determination To Terminate Suspension Agreement (53 FR 53045; December 30, 1988) and in the Final Results of Countervailing Duty Administrative Review (55 FR 5871; February 20, 1990). According to the terms of the FICORCA regulations, no special permission is needed to enroll non-bank debt into the FICORCA program. Mexican firms with foreign debt payable to banks, finance companies, or suppliers, have been eligible to participate in the FICORCA program since the inception of the program. PPG provided no new information during this review period regarding this aspect of the FICORCA program. Therefore, our position that the FICORCA program does not constitute a countervailable subsidy remains unchanged.

Comment 8: PPG argues that the fact that all industries within Mexico are eligible to receive "universally inappropriate" rates on natural gas should not prevent the application of countervailing duties to offset the benefits conferred by these rates. The CIT, in Cabot II, held that the Department's determination regarding the countervailability of the Mexican natural gas program was based upon an impermissible application of the specificity test. In the recent CIT decision in *Armco Inc.* v. *United States*, 13 CIT ——, Slip Op. 90–32 (March 29, 1990), the CIT supported the Cabot holding concerning the impropriety of the general availability test and rejected the Department's application of the specificity test. The Armco court stated that the number of companies eligible for a benefit is irrelevant in determining whether a benefit is unfair and, therefore, a countervailable subsidy. Under the court's analysis, the sale of natural gas by the Mexican government to domestic industries within Mexico at controlled prices confers a countervailable benefit.

Respondents reply that petitioner's argument has been rejected by the Department and the CIT. The Department's determination regarding natural gas in the instant matter is fully consistent with its prior determinations on this issue, as well as with the opinions of the CIT. The Department's decision that Mexico's natural gas pricing practices were not countervailable was upheld by the CIT in *Can-Am Corp.* v. *United States*, CIT 424, 664 F. Supp. 1444 (1987).

Department's Position: We disagree with the petitioner. The CIT has consistently upheld the Department's previous determinations that Mexico's natural gas program does not constitute a countervailable domestic subsidy. See, e.g., Cabot II, 694 F. Supp. at 949; PPG I, PPG II, and *PPG* v. *United States*, 746 F. Supp. 119 (CIT 1990) (fabricated automotive glass). PPG's reliance upon Armco is misplaced, because that decision conflicts with the long line of judicial decisions cited above.

Comment 9: PPG argues that it provided the Department with information that Vitro Flotado is planning the construction of a large float glass facility near Monterrey that could benefit from countervailable subsides. However, the Department did not address this issue at verification. The Department should request certain basic information such as the source of financing for the plant, whether it will involve any loans or equity investments from the Mexican government, and whether Vitro Flotado will take advantage of the PITEX or other programs in connection with the importation of equipment for the new plant. Without such information, the Department cannot determine whether or not there is likelihood that Vitro Flotado will receive subsidies in connection with the construction of this plant. If the Department fails to obtain this information, it would face a situation where an event that could involve the receipt of large amounts of subsidies could occur shortly after termination of the suspension agreement, and the Department would possess no information regarding the likelihood of receipt of subsidies. Therefore, until the Department can confirm that no subsidies were received by Vitro Flotado in building this facility, it should decline termination of the suspension agreement.

Respondents reply that the Department verified that Vitro Flotado did not receive any countervailable benefits during the review period, whether for the manufacturer of unprocessed float glass at its existing facility in Monterrey, or for any other purpose. The company records for 1987 and 1988 were carefully examined and the Department found that the company did not receive any equity investments from the Mexican government. The

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Department also reviewed Vitro Flotado's import records and confirmed that the company did not utilize any aspect of the PITEX program. The Department's verification report confirms that there is no basis to believe or suspect that there is any likelihood that either respondent will receive countervailable benefits in the future. Furthermore, the Department's determination that neither respondent will resume receipt of countervailable benefits is supported not only by the respondents' history of non-receipt of these benefits and their agreement in accordance with 19 CFR 355.42 (1988), but also by the fact that there are fewer countervailable programs available in Mexico. See Fabricated Automotive Glass from Mexico: Final Results of Changed Circumstances Countervailing Duty Administrative Review and Revocation of countervailing Duty Order (April 8, 1991).

Department's Position: We disagree with the petitioner. We examined Vitro Flotado's records, including the audited financial statements, and noted that the firm did not receive any countervailable benefits during the review period. PPG's statement that Vitro Flotado may have received subsidies in building its new float glass facility is merely speculative and without merit.

Comment 10: PPG argues that it would be inappropriate for the Department to terminate the suspension agreement at this time. Pursuant to 19 CFR 355.25, the agency may terminate a suspension agreement if the producers and exporters covered by the agreement have not applied for or received any net subsides on the subject merchandise for programs found to be contervailable for at least five consecutive years, and if the agency determines that it is not likely that the signatories will apply for or receive subsidies from any countervailable programs after the agreement is terminated. The suspension agreement on float glass from Mexico should not be terminated because the Department has been unble to resolve key issues regarding the status and utilization of the CEDI and duty drawkback programs. The Department has not obtained sufficient information regarding FICORCA that is necessary to make a determination regarding countervailability.

Also, a number of aspects of the Department's previous determinations involving float glass from Mexico are currently under judicial review. These issues include the Department's use of the specificity test, the contervailability of FICORCA and natural gas programs, and whether the Department's determination regarding CEDIs and duty drawback were supported by substantial evidence. The Department should not terminate the suspension agreement until the CAFC has ruled on PPG I and PPG II.

Respondents reply that the Department previously determined that neither Vidrio Plano nor Vitro Flotaoo received conuntervailable benefits for a period exceeding two years. Moreover, there is no likelihood of resumption of the receipt of bounties or grants, as both signatories provided the Department with the agreement required under 19 CFR 355.42(e) (1988). The signatories to the suspension agreement renounced the receipt of countervailable bounties or grants, and the Department agreed to suspend the countervailing duty investigation. The Department has conducted administrative reviews for a period exceeding four years and has confirmed that the signatories have complied with the terms. Since all of the requirements for termination of the suspended investigation have been satisified, the agreement should be terminated.

Department's Position: We disagree with the petitioner. The petitioner's reliance upon the current regulations is misplaced. The previous regulations, 19 CFR 355.42 (1988), govern this administrative review because the Department published its notice of tentative determination to terminate the suspended investigation before the effective date of the current regulations. See Unprocessed Float Glass from Mexico; Preliminary Results of Countervailing Duty Administrative Review and Tentative Determination to Terminate Suspension Agreement (53 FR 53045; December 30, 1988); Note, § 355.25 of the Countervailing Duty Final Rule (53 FR 52306, 52331; December 27, 1988). The current review establishes that no bountry or grant was received during the so-called "gap period," January 1, 1987 through December 29, 1988. In accordance with 19 CFR 355.42 (1988), we verified that the Signatories received no countervailable benefits during 1985 and 1986, the two-year base period for the termination, and during 1987 and 1988, the "gap period." Also, because the signatories to the suspension agreement have agreed in writing not to apply for or receive countervailable benefits in the future purusant to 19 CFR 355.42(e) (1988), termination of the suspension agreement is warranted. The Department cannot delay completion of reviews pending judicial reviews or appeals before the court.

Final Results of Review and Termination of Suspended Investigation

As a result of our review, we determine that the signatories have complied with the terms of the suspension agreement during the period January 1, 1987 through December 29, 1988. Given the signatories strict compliance with the Suspension agreement for over four years, as well as the Mexican government's termination of many of its countervailable subsidy programs during recent years, and because the signstories have agreed in writing not to apply for or receive countervailable benefits in the future, the Department is satisified that there is no likelihood of resumption of subsidies. Therefore, we are terminating the suspended investigation.

Further, as a consequence of this termination, the administrative review covering calendar year 1989, initiated on March 22, 1990 (55 FR 10643), is terminated.

This administative review and termination of suspended investigation are in accordance with section 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1) and (c)) and 19 CFR 355.41 and 355.42 (1988).

Dated: May 17, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-12423 Filed 5-23-91; 8:45am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 91-065. *Applicant:* Louisiana State University, Pennington Biomedical Research Center, 6400 Perkins Road, Baton Rouge, LA 70808-4214. *Instrument:* Mass Spectrometer, Model 252. *Manufacturer:* Finnigan, West Germany. *Intended Use:* The instrument will be used for studies of components in blood, urine, breath and saliva during experiments which pertain to the following tasks: (1) Fully automated isotopic analysis of the combusted GC effluents; (2) fully automated analysis of respiratory CO_2; (3) fully automated analysis of CO_2 equilibrated with water; and (4) fully automated, high precision batch measurements of hydrogen at natural abundance levels as well as enriched levels. *Application Received by Commissioner of Customs:* April 25, 1991.

Docket Number: 91-066. *Applicant:* Carnegie Institution of Washington, Geophysical Laboratory, 5251 Broad Branch Road, NW., Washington, DC 20015-1305. *Instrument:* Mass Spectrometer, Model 252. *Manufacturer:* Finnigan MAT, West Germany. *Intended Use:* The instrument will be used by inorganic geochemists for microanalysis of rock and mineral samples for ^{13}C and ^{18}O and by organic geochemists for measurement of ^{13}C and ^{15}N in molecular species separated by gas chromatography. *Application Received by Commissioner of Customs:* April 26, 1991.

Docket Number: 91-067. *Applicant:* University of California, Santa Barbara, Department of Electrical and Computer Engineering, Santa Barbara, CA 93106. *Instrument:* Charcoal Scrubber. *Manufacturer:* Thomas Swan and Company, United Kingdom. *Intended Use:* The instrument is an accessory to a metal-organic chemical vapor deposition system already ordered from the same manufacturer. It is used to remove toxic materials from the system's exhaust gases before those gases are released to the outside. *Application Received by Commissioner of Customs:* April 26, 1991.

Docket Number: 91-068. *Applicant:* Washington University School of Medicine, Anesthesiology Research Unit, 660 S. Euclid Avenue, Box 8054, St. Louis, MO 63110. *Instrument:* Xenon Flash Lamp. *Manufacturer:* Hi-Tech Scientific Ltd., United Kingdom. *Intended Use:* The instrument will be used to trigger photolysis of "caged" signalling molecules. The objective of the experiments which will be conducted is to understand the regulation of intracellular calcium and its importance in controlling cellular secretion. *Application Received by Commissioner of Customs:* May 1, 1991.

Docket Number: 91-069. *Applicant:* The Johns Hopkins University, Department of Physics and Astronomy, 34th and Charles Streets, Baltimore, MD 21218. *Instrument:* 28 Soller Collimators for Neutron Scattering Instrument. *Manufacturer:* Riso National Laboratory, Denmark. *Intended Use:* The instrument will be used in experiments where particularly good spatial and temporal resolution of correlations between magnetic spins in the materials to be investigated is necessary. The objective of the investigations is a fundamental understanding of some extreme cases of magnetism and superconductivity. In addition, the instrument will be used in the training of graduate students in the physics department. *Application Received by Commissioner of Customs:* May 2, 1991.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91-12424 Filed 5-23-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Adminstration

Williams College, et al., Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 91-002. *Applicant:* Williams College, Williamstown, MA 01267. *Instrument:* Electron Microscope with Accessories, Model CM10/PC. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* See notice at 56 FR 4972, February 7, 1991. *Order Date:* October 23, 1990.

Docket Number: 91-008. *Applicant:* Mississippi State University, Mississippi State, MS 39762. *Instrument:* Electron Microscope, Model JEM-100CXII. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* See notice at 56 FR 4972, February 7, 1991. *Application Received by Commissioner of Customs:* January 11, 1991.

Docket Number: 91-020. *Applicant:* U.S. Environmental Protection Agency, Cincinnati, OH 45268. *Instrument:* Electron Microscope, Model JEM-1200Ex/SEG/DP/DP. *Manufacturer:* JEOL, Japan. *Intended Use:* See notice at 56 FR 11545, March 19, 1991. *Application Received by Commissioner of Customs:* February 6, 1991.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91-12425 Filed 5-23-91; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Listing Endangered and Threatened Species: Action to Review the Status of the Harbor Porpoise

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of determination on West Coast harbor porpoise.

SUMMARY: On February 12, 1991 (56 FR 5684), NMFS published a notice of intent to conduct a status review and request for information on the harbor porpoise (*Phocoena phocoena*). It has been determined that there is no information available to indicate that the West Coast stock of harbor porpoise is below its optimum sustainable population level. The status review of the northwest Atlantic stock of harbor porpoise will continue.

DATES: Comments and information must be received by May 31, 1991.

ADDRESSES: Comments should be addressed to Dr. Nancy Foster, Director, Office of Protected Resources, F/PR, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Robert C. Ziobro, Protected Species Management Division, NMFS, 301-427-2323.

SUPPLEMENTARY INFORMATION: NMFS has reviewed the information available on the West Coast stock of harbor porpoise and determined that it is not below its optimum sustainable population level. There are an estimated

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49,852 harbor porpoise between Cape Flattery, Washington, and Point Conception, California, with approximately 35,000 occurring in the coastal waters of Oregon and Washington (Barlow 1987). Abundance estimates for Washington are discussed in Turnock *et al.* (1990) and Calambokidis (1990).

In addition, from 1986–1989, aerial surveys were flown in California to estimate trends in harbor porpoise abundance. Although analyses of data from these 4 years indicate trends in abundance are not statistically significant, the surveys would have to continue for 10 years in order to detect a continuous 10-percent increase or decrease in porpoise abundance with any reliability; however, the trend indicated from 1986–1989 was positive (Barlow and Hanan in press).

The abundance estimates have been made for large sections of coastline, reflecting the lack of knowledge on stock structure. Studies will continue off California, Oregon, Washington, and Alaska to augment information on stock discreteness. If such studies indicate that distinct stocks exist, and if a stock(s) is being adversely affected, appropriate action will be taken to further protect the stock(s). In addition, under section 114(g) of the Marine Mammal Protection Act, if the incidential taking of harbor porpoise in a fishery is having an immediate and significant adverse impact, NMFS will consult with the appropriate Regional Fishery Management Council(s) and state agencies and prescribe emergency regulations to prevent to the maximum extent practicable any further taking.

The status review of the northwest Atlantic stock of harbor porpoise will continue.

References

Barlow, J., 1987. Abundance estimation for harbor porpoise (*Phocoena phocoena*) based on ship surveys along the coasts of California, Oregon and Washington. Admin. Report LJ–88–05. NMFS, SWC, La Jolla, California.

Barlow, J. and D. Hanan, In Press. International Whaling Commission, Harbor Porpoise Special Issue.

Calambokidis, J., 1990. Vessel surveys for harbor porpoise off Washington coast. Pp. 75–110. In Harbor porpoise abundance and interactions with Makah salmon set net fishery in coastal Washington waters, 1988–89. Hiroshi Kajimura (ed.). NMFS, National Marine Mammal Laboratory, Seattle, Washington.

Turnock, B.J., S.J. Jeffries and R. F. Brown, 1990. Population abundance of harbor porpoise (*Phocoena phocoena*), from aerial surveys off the coast of Oregon, Washington, Strait of Juan de Fuca and Vancouver Island. Pp. 58–74. In Harbor porpoise abundance and interactions with Makah salmon set net fishery in coastal Washington waters, 1988–89. Hiroshi Kajimura (ed.). NMFS, National Marine Mammal Laboratory, Seattle, Washington.

Dated: May 21, 1991.

William W. Fox, Jr.,

Assistant Administrator for Fisheries.

[FR Doc. 91–12417 Filed 5–23–91; 8:45 am]

BILLING CODE 3510–22–M

Incidental Take of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of Receipt of Request for a Letter of Authorization.

SUMMARY: NMFS has received a request from Chevron U.S.A., Inc. for a Letter of Authorization that would allow a take of marine mammals (by harassment) incidental to exploration activities in the Beaufort Sea during the 1991/92 drilling season.

DATES: Comments should be received no later than June 24, 1991.

ADDRESSES: Dr. Nancy Foster, Director, Office of Protected Resources 1335 East-West Highway, Silver Spring, MD 20910. A copy of the requests may be obtained by writing to this address or by telephoning the contacts listed below.

FOR FURTHER INFORMATION CONTACT: Margaret C. Lorenz, Office of Protected Resources, NMFS, (301) 427–2322 or Ron Morris, Western Alaska Field Office, (907) 271–5006.

SUPPLEMENTARY INFORMATION:

Background

Regulations governing the taking of marine mammals incidental to oil and exploration activities in Alaska were published July 18, 1990 (55 Fr 29214). The regulations are based on section 101(a)(5) of the Marine Mammal Protection Act and NMFS' determination that the taking of six species of marine mammals (bowhead, gray and beluga whales and bearded, ringed and spotted seals) incidental to exploratory activity in the Beaufort and Chukchi Seas will have a negligible impact on the species or stocks and will not have an unmitigable adverse impact on the availability of the species or stock for subsistence uses. The regulations include permissible methods of taking, and require exploration companies to monitor the effects of their activities on marine mammals and to cooperate with the Alaska native communities to ensure that marine mammals are available for subsistence.

A Letter of Authorization must be requested annually by each group or individual conducting an exploratory activity where there is the likelihood of taking any of the six species of marine mammals identified in the regulations. NMFS grants the Letters based on a determination that the total level of taking by all applicants in any one year is consistent with the estimated level of activity used to make a finding of negligible impact and a finding of no unmitigable adverse impacts.

The regulations require the applicant to submit a request for a Letter of Authorization at least 90 days before the activity is scheduled to begin. NMFS must publish notices of each request in the **Federal Register** with an opportunity for public comment.

Requests for Letters of Authorization must include a plan of cooperation that identifies what measures have been and will be taken to minimize any adverse effects on the availability of marine mammals for subsistence uses. It must include a description of the activity including the methods to be used, the dates and duration of the activity, and the specific location. Also, it must include a site-specific plan to monitor the effects on marine mammals that are present during exploratory activities.

Summary of Request From Chevron U.S.A., Inc.

On May 15, 1991, NMFS received a request from Chevron for a Letter of Authorization that would allow non-lethal takes of bowhead, gray and beluga whales and bearded, ringed and spotted seals incidental to exploratory drilling operations and associated ice management and resupply activities. The location of the well to be drilled is in a prospect area in the Chukchi Sea about 58 miles from Wainwright, Alaska, the nearest subsistence hunting community. The request includes a description of the specific operations Chevron plan to conduct, the measures it will take to minimize any potential conflicts between those activities and subsistence hunting, and a plan to monitor the effects of the activities on marine mammals.

Dated: May 21, 1991.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 91–12418 Filed 5–23–91; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council (Council) will hold a public meeting of a Committee on May 22, 1991, from 10 a.m., to 5 p.m., in the Council office conference room, suite 420, 2000 SW First Avenue, Portland, Oregon. The Council has established a committee to review funding options for a comprehensive on-board observer program for the west coast groundfish fleet. The committee will also discuss alternative measures to collect data on total harvest by the various segments of the fishing industry, and relative costs of the alternative programs. The committee will prepare a report for presentation to the Council at its July 10–12, 1991, meeting in Seattle, Washington.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 20000 SW First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: May 20, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–12354 Filed 5–23–91; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE ON PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing the blind or other severely handicapped.

EFFECTIVE DATE: June 24, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On March 8, 29 and April 5, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (56 FR 4440/41, 13128/20/30 and 14089/90) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodity and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodity and services listed.

c. The actions will result in authorizing small entities to produce the commodity and provide the services procured by the Government.

Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Skirt, Woman's

8410–01–224–0508
8410–01–224–0509
8410–01–224–0510
8410–01–224–0511
8410–01–224–0512
8410–01–224–0513
8410–01–224–0514
8410–01–224–0515
8410–01–224–0516
8410–01–224–0517
8410–01–224–0518
8410–01–224–0519
8410–01–224–0520
8410–01–224–0521
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8410–01–224–0526
8410–01–224–0527
8410–01–224–0528
8410–01–224–0529
8410–01–224–0530
8410–01–224–0531
8410–01–224–0532
8410–01–224–0533
8410–01–224–0534
8410–01–224–0535
8410–01–224–0536
8410–01–224–0537
8410–01–224–0538

Services

Janitorial/Custodial

Autec and Lubratorium, West Palm Beach, Maritime Building, Riviera Beach, Florida

Janitorial/Custodial

U.S. Army Reserve Center, Aiken, South Carolina

Janitorial/Custodial

U.S Army Reserve Center, Clemson, South Carolina

Janitorial/Custodial

Social Security Administration Building, 1891 South 3rd Street, Memphis, Tennessee

Operation of Supply Room

U.S. Corps of Engineers, Estes Kefauver Building, Nashville, Tennessee

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91–12412 Filed 5–23–91; 8:45 am]

BILLING CODE 6820–33–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List, Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 24, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing the blind or other severely handicapped.

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It is proposed to add the following commodities and services to the Procurement List:

Commodities

Moisture Collector

4330-01-033-8119

Bracket, Angle

5340-00-435-8451

Curtain, Blackout

7230-01-138-7054
(Remaining Government Requirement)
7230-00-997-1488
(Remaining Government Requirement)

Paper, Tabulating Machine

7530-00-400-0996

Badge, Qualification

8455-00-000-1748
8455-00-000-1749
8455-01-113-0062

Services

Commissary Shelf Stocking, Custodial and Warehousing
Travis Air Force Base, California

Janitorial/Custodial

Federal Building, U.S. Post Office and Courthouse, 301 West Main Street, Benton, Illinois
Janitorial/Custodial
Clock Tower, Annex Buildings, and Connecting Walkway, Rock Island, Illinois

Janitorial/Custodial

U.S. Army Reserve Center, Anderson, South Carolina

Medical Transcription

Veterans Affairs Medical Center, 2002 Holcombe Blvd, Houston, Texas

Beverly L. Milkman,

Executive Director.

[FR Doc. 91-12413 Filed 5-23-91; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Base Closure and Realignment Commission; Meeting

ACTION: Announcement of Public Hearings of the Defense Base Closure and Realignment Commission.

SUMMARY: Open public meetings of the Defense Base Closure and Realignment Commission will be held in Washington, DC in accordance with the following dates and times, with specific meeting locations as shown below, or to be determined and published in the **Federal Register**: Friday, May 17, 9:30 a.m. Longworth House Office Building, room 1100, Independence Ave. at New Jersey Ave., "Hearings on the General Accounting Office assessment of the DoD process for determining candidate bases for closure/realignment;" Tuesday/Wednesday, May 21–22, 9:30 a.m., locations as shown, "Congressional testimony from federal representatives of communities potentially affected by closures/realignments;" Thursday/Friday, June 6–7, 9:30 a.m., location to be determined, "Commission deliberation hearings on closure/realignment candidates;" Thursday/Friday, June 13–14, a.m., location to be determined, "Commission deliberation hearings on closure/realignment candidates;" Thursday/Friday, June 20–21, 9:30 a.m., location to be determined, "Commission deliberation hearings on closure/realignment candidates."

As previously published in the **Federal Register**, regional hearings outside the Washington, DC area will be held in accordance with the following schedule:

Jacksonville, Florida: The fifth regional hearing will be on Thursday, May 23, 1991, in Jacksonville, Florida, beginning at 9:00 a.m. at the Prime F. Osborn Convention Center, 1000 Water Street, Jacksonville, Florida. Testimony is invited on facilities in the following states; Florida, Georgia, Alabama, and South Carolina.

Philadelphia, Pennsylvania: The sixth regional hearing will be on Friday, May 24, 1991, in Philadelphia, Pennsylvania, beginning at 9:00 a.m., at the Philadelphia Civic Center, Pennsylvania Hall, 34th and Civic Center Blvd. Testimony is invited on facilities in the following states: Pennsylvania, New Jersey, and Maryland.

Boston, Massachusetts: The seventh regional hearing will be on Tuesday, May 28, 1991, in Boston, Massachusetts, beginning at 10 a.m., at Gardner Auditorium in the State House. Testimony is invited on facilities in the following states: Massachusetts, Maine, Rhode Island, and Connecticut.

Indianapolis, Indiana: The eighth regional hearing will be held on Thursday, May 30, 1991, in Indianapolis, Indiana, beginning at 9:00 a.m., at the Indianapolis Convention Center, White River Ballroom, 100 South Capital Street. Testimony is invited on facilities in the following states: Indiana, Michigan, Illinois, Ohio, and Kentucky.

Washington, DC: Hearings will be held in Washington, DC on Tuesday and Wednesday, May 21st and 22nd, beginning at 9:30 a.m. Tuesday, May 21st, hearings will be held in the Dirksen Senate Office Building, room 215. Wednesday, May 22nd, hearings will be held in the Dirksen Senate Office Building, room 138, First St. and Constitution Ave. Testimony on Tuesday, May 21st is invited on facilities in the following states: Virginia and the District of Columbia, as well as congressional testimony on both days. Deliberation meetings will be held June 6–7, 13–14, and (if needed) 20–21 beginning at 3:30 a.m. at a place in Washington, DC to be determined and published in the **Federal Register**.

The Commission will consider all written testimony during its deliberations. All interested individuals and groups are invited to submit their testimony or comments in writing to: Defense Base Closure Commission, 1625 "K" Street, NW., suite 400, Washington, DC 20006. In order to ensure all written comments may be considered, please submit them so as to arrive at the Commission offices by May 30, 1991.

In some instances, less than 15 days notice is being given due to difficulties in confirming appropriate locations in certain metropolitan areas to accommodate large public hearings.

FOR FURTHER INFORMATION: Defense Base Closure and Realignment Commission, Mr. Cary Walker, Director of Communications and Public Affairs, (202) 653-0823.

Dated: May 15, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-12376 Filed 5-23-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Privacy Act of 1974; Altered a System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Alter existing systems of records.

SUMMARY: The Department of the Air Force proposes to alter two existing systems of records in its inventory of records systems notices subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: This action will be effective June 24, 1991, unless comments are received which result in a contrary determination.

ADDRESSES: Send any comments to Mrs. Anne Turner, SAF/AAIA, The Pentagon, Washington, DC 20330-1000. Telephone (703) 697-3491 or Autovon 227-3491.

SUPPLEMENTARY INFORMATION: The Department of the Air Force record system notices subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a), have been published in the **Federal Register** as follows:

50 FR 22332 May 29, 1985 (DoD Compilation, changes follow)
50 FR 24672 Jun. 12, 1985
50 FR 25737 Jun. 21, 1985
50 FR 46477 Nov. 8, 1985
50 FR 50337 Dec. 10, 1985
51 FR 4531 Feb. 5, 1986
51 FR 7317 Mar. 5, 1986
51 FR 16735 May 6, 1986
51 FR 18927 May 23, 1986
51 FR 41382 Nov. 14, 1986
51 FR 44332 Dec. 9, 1986
52 FR 11845 Apr. 13, 1987
53 FR 24354 Jun. 28, 1988
53 FR 45800 Nov. 14, 1988
53 FR 50072 Dec. 13, 1988
53 FR 51301 Dec. 21, 1988
54 FR 10034 Mar. 9, 1989
54 FR 43450 Oct. 25, 1989
54 FR 47550 Nov. 15, 1989
55 FR 21770 May 29, 1990
55 FR 21900 May 30, 1990 (Air Force Address Directory)
55 FR 27868 Jul. 6, 1990
55 FR 28427 Jul. 11, 1990
55 FR 34310 Aug. 22, 1990
55 FR 38128 Sep. 17, 1990
55 FR 42625 Oct. 22, 1990
55 FR 42629 Oct. 22, 1990
55 FR 52072Dec. 19, 1990
56 FR 1990 Jan. 18, 1991
56 FR 5804 Feb. 13, 1991
56 FR 12713 Mar. 27, 1991

The altered records systems reports, as required by the Privacy Act of 1974, as amended (5 U.S.C. 552a(r)), were submitted on May 13, 1991, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB), pursuant to paragraph 4b of Appendix I to OMB Circular A-130, "Federal Agency Responsibilities for Maintaining Records about Individuals" dated December 12, 1985 (50 FR 52738, December 24, 1985). The specific changes to the systems of records being altered are set forth below, followed by the system notices, as altered, published in their entirety.

Dated: May 15, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F011 AF A

System name:

F011 AF A—Locator, Registration and Postal Directory Files, (55 FR 52072, December 19, 1990).

Changes:

* * * * *

Categories of individuals covered by the system:

Delete entire entry and replace with "Air Force military and civilian personnel; Air Force Reserve and National Guard personnel; Civilian employees assigned to, or on duty with, Air Force organizations; Volunteer personnel; United States Armed Forces military and civilian personnel assigned to Headquarters, United States Space and United States Special Operations Commands, and contractor personnel. Dependents are also be included in this system.

* * * * *

Authority for maintenance of the system:

Add to end of entry "and Executive Order 9397."

* * * * *

System manager(s) and address:

Delete entire entry and replace with "Director of Information Management, Office of the Administrative Assistant to the Secretary of the Air Force, Washington, DC 20330-1000.

Local system managers are the Records Custodians at the installation, base, unit, organization, office or function to which the individual is assigned, attached, tenanted on, performing volunteer service at, or on temporary duty. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

* * * * *

Retrievability:

Add to end of entry "and/or Social Security Number."

* * * * *

F011 AF A

SYSTEM NAME:

F011 AF A—Locator, Registration and Postal Directory Files.

SYSTEM LOCATION:

Headquarters, U.S. Air Force; Air Force installations to include bases, units, offices, and functions; Headquarters, United States Space and United States Special Operations Commands. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force military and civilian personnel; Air Force Reserve and National Guard personnel; Civilian employees assigned to, or on duty with, Air Force organizations; Volunteer personnel; United States Armed Forces military and civilian personnel assigned to Headquarters, United States Space and United States Special Operations Commands, and contractor personnel. Dependents are also be included in this system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Cards or listings may contain the individuals name, grade, military service identification number, Social Security Number, duty location, office telephone number, residence address and residence telephone number, and similar type personnel data determined to be necessary by the local authority.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by, and Executive Order 9397.

PURPOSE(S):

Used to locate or identify personnel assigned/attached to, tenanted on, or on temporary duty at the specific installation, office, base, unit, function, and/or organization in response to specific inquiries from authorized users for the conduct of business. Portions of the system are used to directorize and forward individual personal mail received by Air Force postal activities, and for assignment of individual mail boxes. Files may be used locally to support official and unofficial programs which require minimal locator information or membership or user listings.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" published at the beginning of the Department of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Maintained on paper records in card or form media in visible file binders/cabinets or card files, in computers and computer output products.

RETRIEVABILITY:

Retrieved by name and/or Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for

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need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Retained in office files until reassignment or separation, or when superseded or no longer needed for reference. Postal directory files are maintained for six months after reassignment, separation or departure from servicing activity. Records are destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Computer records are destroyed by degaussing or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Information Management, Office of the Administrative Assistant to the Secretary of the Air Force, Washington, DC 20330–1000.

Local system managers are the Records Custodians at the installation, base, unit, organization, office or function to which the individual is assigned, attached, tenanted on, performing volunteer service at, or on temporary duty. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director of Information Management, Office of the Administrative Assistant to the Secretary of the Air Force, Washington, DC 20330–1000.

Local system managers are the Records Custodians at the installation, base, unit, organization, office or function to which the individual is assigned, attached, tenanted on, performing volunteer service at, or on temporary duty. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written requests to the Director of Information Management, Office of the Administrative Assistant to the Secretary of the Air Force, Washington, DC 20330–1000.

Local system managers are the Records Custodians at the installation, base, unit, organization, office or function to which the individual is assigned, attached, tenanted on, performing volunteer service at, or on temporary duty. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from automated system interfaces; the individuals, or from personnel records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F125 AF SP E

System name:

F125 AF SP E—Security Police Automated System (SPAS), (53 FR 45807, November 14, 1988).

Changes:

* * * * *

Categories of individuals covered by the system:

Add to end of entry "All military and civilian personnel who are visitors to Air Force installations. All military and civilian personnel who are granted unescorted or escorted entry into Air Force restricted and controlled areas."

Categories of records in the system:

In paragraphs (4), (7) and (8) delete the word "documentation" and replace with "records". Add two new sentences to end of entry "(10) records used to grant visitors temporary access to Air Force installations. (11) records used to grant military and civilian personnel unescorted or escorted entry to Air Force restricted or controlled areas."

Authority for maintenance of the system:

Delete that portion which reads "Data Project Directive (DPD) DSC–P76–99 dated 5 Mar 84."

Purpose(s):

Add to end of entry "Visitor control records are usd to authorize military and civilian personnel temporary access to Air Force installations. Restricted and controlled area entry authorization records are used to authorize military and civilian personnel to enter Air Force restricted or controlled areas."

* * * * *

Retention and disposal:

Delete last two sentences and replace with "Visitor control records are maintained for 90 days after the termination of the visit period. Restricted or controlled area records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting."

System manager(s) and address:

Add last sentence to read "Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

Notification procedures:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information on them should address written inquiries to the system manager at each appropriate security police activity. When requesting information in writing, the individual must include full name, social security number, military status, full home address with complete zip code.

If an individual requests information in person, that individual must present a military identification card, if applicable, a valid drivers license, or some other form of identification. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.".

Record access procedure:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address written requests to the system manager at the appropriate security police activity. Information relating to police records will be coordinated through local Staff Judge Advocate offices before release. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

Add new category to read "Contesting record procedures: The Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager."

* * * * *

F125 AF SP E

SYSTEM NAME:

F125 AF SP E—Security Police Automated System (SPAS).

SYSTEM LOCATION:

Active Duty Security Police Activities, Air Force Reserve Security Police Units and Air National Guard Security Police Activities. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All military and civilian security police personnel. All military and civilian personnel who register privately owned vehicles or weapons on Air Force installations. All military and civilian personnel who are issued restricted or controlled area passes by a security police activity. All military and civilian personnel who possess an individual incident reference and/or drivers record. All military and civilian personnel who possess an Air Force security clearance. All military and civilian personnel who: are issued traffic citations, are involved in criminal acts or incidents which generate an accident report or are involved in motor vehicle accidents on Air Force installations. All military and civilian personnel who are prohibited from entering an Air Force installation. All military and civilian personnel wo are visitors to Air Force installations. All military and civilian personnel who are granted unescorted or escorted entry into Air Force restricted and controlled areas.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain: (1) Security police and security police augmenter identification data such as name, grade, social security number, address and phone number; (2) security police and security police augmenter qualification data such as security clearance, Personnel Reliability Program status, weapon qualifications, quality control certification and training data; (3) security clearance data on all military and civilian personnel who possess an Air Force security clearance; (4) records used to request identification or entry credentials, information reports on the loss, theft or destruction of said credentials, certain types of entry authority listings and various accountability records; (5) individual records which reflect historical involvement in incidents which require a police report on all military and civilian personnel; (6) records that reflect traffic penalty point accumulation as a result of driving infractions on all military and civilian personnel; (7) records used to register privately owned vehicles and weapons for all military and civilian personnel; (8) records used to identify all military and civilian personnel who have been prohibited from entering Air Force installations; (9) includes a chronology of an investigation being conducted, data on sources of information, information on investigation techniques, and records concerning seized property; (10) records used to grant visitors temporary access to Air Force installations, and (11) records used to grant military and civilian personnel unescorted or escorted entry to Air Force restricted or controlled areas.

AUTHORITY OR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: powers and duties; delegation by; and Executive Order 9397.

PURPOSE(S):

Personnel records are used by security police managers to track and monitor availability and qualification of personnel assigned or attached to security police activities. Vehicle and weapon registration records are used by security police personnel to monitor vehicles and weapons registered on Air Force installations. Incident and traffic records are used by commanders to identify repeat offenders. Security clearance records are used by security police and commanders to determine eligibility for access to classified information. Identification and entry authority records are used by security police personnel for issuing identification cards and restricted by controlled area badges and for accountability of various controlled forms used in the process. Barment records are used by security police installation entry controllers to identify personnel who are prohibited from entering the installation. Investigation records are used by security police investigators to assist in the investigation of a criminal act or incident. Visitor control records are used to authorize military and civilian personnel temporary access to Air Force installations. Restricted and controlled area entry authorization records are used to authorize military and civilian personnel to enter Air Force restricted or controlled areas.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" published at the beginning of the Department of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are maintained manually (paper files), automated (in computer, on hard disks, floppy diskettes or tape backups), and in combination when deemed necessary.

RETRIEVABILITY:

Records in this system are retrieved from manual storage by name and from automated storage by name or Social Security Number.

SAFEGUARDS:

Records are accessed by persons responsible for servicing the record system in performance of their official duties. Personnel are thoroughly screened for need-to-know. Records are maintained/stored on computer hard disks (backup copies are maintained on floppy diskettes or tape media) and/or in secure file containers and in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Files for security police and security police augmenter personnel are destroyed when superseded or upon reassignment or separation from the security police activity. Accountability records are destroyed five years after issue of the last controlled form or the last entry on the accountability log. Incident reports are destroyed three years after last entry or forwarded to gaining installation upon reassignment of the individual. Traffic records are destroyed one year after last entry or forwarded to gaining installation upon reassignment of the individual. Motor vehicle accident records are destroyed three months after posting or forfeiture of collateral. Barred personnel records are destroyed three years after removal from the list. Investigation reports are retained in office for one year after annual cutoff, transferred to a staging area for two years and then destroyed. Visitor control records are maintained for 90 days after the examination of the visit period. Restricted or controlled area records are destroyed 12 months after the termination of entry authority. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting, or overwriting.

SYSTEM MANAGER(S) AND ADDRESSES:

Air Force Office of Security Police, Kirtland Air Force Base, NM 87117–6001 Chiefs of Security Police at each security police activity. Official mailing

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addresses are published as an appendix to the Air Force's compilation of record system notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the system manager at each appropriate security police activity. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

When requesting information in writing, the individual must include full name, social security number, military status, full home address with complete zip codes.

If an individual requests information in person, that individual must present a military identification card, if applicable, a valid drivers license, or some other form of identification.

RECORD ACCESS PROCEDURE:

Individuals seeking to access records about themselves contained in this system should address written requests to the system manager at the appropriate security police activity. Information relating to police records will be coordinated through local Staff Judge Advocate offices before release. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for access to records and for contesting and appealing initial agency determinations by the idividual concerned are published in Air Force Regulation 12–35, 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information on security police and security police augmenter personnel is extracted from computer printouts, unit personnel records, the unit commander, supervisors, and the individual. Other information is extracted from incident exports, traffic tickets, registration forms and applications prepared by the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system of records may be exempt pursuant to 5 U.S.C. 552a(j)(2).

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 806b. For additional information contact the system manager.

[FR Doc. 91–12379 Filed 5–23–91; 8:45 am]

BILLING CODE 3910–01

Department of the Army

Availability (NOA) of the Final Environmental Impact Statement (FEIS) for the Disposal of Chemical Munitions Stored at Anniston Army Depot, Alabama

AGENCY: Department of the Army, DoD.

ACTION: Notice of Availability.

SUMMARY: This announces the Notice of Availability of the FEIS on the potential impact of the construction and operation of the proposed chemical agent demilitarization facility at Anniston Army Depot, Alabama. The proposed facility will be used to demilitarize all chemical agents and munitions currently stored at the Anniston Army Depot. The FEIS examines the potential impacts of on-site incineration, alternative sites within Anniston Army Depot and the "no-action" alternative. The "no-action" alternative is considered to be deferral of demilitarization with continued storage of the agents and munitions at Anniston Army Depot.

SUPPLEMENTARY INFORMATION: In its Record of Decision (53 FR 5816–5817) for the Final Programmatic Environmental Impact Statement on the Chemical Stockpile Disposal Program, the Department of the Army selected on-site disposal by incineration at all eight chemical munitions storage sites within the continental United States as the method by which it will destroy its lethal chemical stockpile. The Department of the Army published a Notice of Intent on December 1, 1988 (53 FR 48573–48574) which provided notice that, pursuant to the National Environmental Policy Act and implementing regulations, it was preparing a Draft EIS for the Anniston chemical munitions disposal facility.

The Department of the Army prepared an EIS to assess the site-specific health and environmental impacts of on-site incineration of chemical agents and munitions stored at Anniston Army Depot. On November 15, 1990, The Department of the Army published a Notice of Availability (55 FR 47791) which provided notice that the Draft EIS was available for public comment. Comments were received on the Draft EIS. The FEIS for Anniston, which incorporates responses to these comments, is now available. Copies may be obtained by writing the Program Manager for Chemical Demilitarization, ATTN: SAIL-PMM-E (Ms. Peggy Thompson), Aberdeen Proving Ground, Maryland 21010–5401.

ADDITIONAL INFORMATION: The Environmental Protection Agency will also publish a Notice of Availability for the FEIS in the **Federal Register**. This FEIS will have a 30-day comment period from the date that the Environmental Protection Agency files a notice of availability in the 7**Federal Register**. Comments on the FEIS will be considered by the Army in their Record of Decision and should be provided in writing to Ms. Peggy Thompson at the address given above.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA(I,L&E).

[FR Doc. 91–12388 Filed 5–23–91; 8:45 am]

BILLING CODE 3710–08–M

Defense Contract Audit Agency

Privacy Act of 1974; Amend One Record System

AGENCY: Defense Contract Audit Agency, DOD.

ACTION: Amend one record system.

SUMMARY: The Defense Contract Audit Agency proposes to amend one record system in its inventory of record systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: The proposed amendment will be effective on June 24, 1991, unless comments are received which would result in a contrary determination.

ADDRESSES: Send any comments to Mr. Dave Henshall, ATTN: CMR, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178. Telephone (703) 274–4400.

SUPPLEMENTARY INFORMATION: The Defense Contract Audit Agency record systems notices, as prescribed by the Privacy Act of 1974 (5 U.S.C. 552a), have been published in the **Federal Register** as follows:

50 FR 22884, May 29, 1985 (DoD Compilation changes follow)
50 FR 50339, Dec. 10, 1985
50 FR 52993, Dec. 27, 1985
51 FR 18017, May 16, 1986
54 FR 37360, Sep. 8, 1989
54 FR 43316, Oct. 24, 1989
54 FR 46756, Nov. 7, 1989
55 FR 6818, Feb. 27, 1990
55 FR 21917, May 30, 1990 (DCAA Address Directory)
55 FR 36847, Sep. 7, 1990

The specific changes to the record system being amended are set forth below, followed by the system notice, as amended, in its entirety. This notice is not within the purview of the provisions of 5 U.S.C. 552a(r) which requires the submission of an altered system report.

Dated: May 10, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

RDCAA 590.9

System name:

590.9 DCAA Automated Personnel Inventory System (APIS) (55 FR 36858, September 7, 1990).

Changes:

* * * * *

System location:

Delete the first paragraph and replace with "Primary location: Office of the Director of Personnel and the Personnel Officer, Civilian Personnel Office, Headquarters Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178, and the DCAA Regional Offices. Official mailing addresses are published as an appendix to the DCAA compilation of record system notices.

Add a new second paragraph "Secondary locations: Defense Construction Supply Center, Defense Electronics Supply Center, and the Defense Logistics Agency Administrative Support Center which maintain systems data under an inter-service support agreement with DCAA to provide payroll and report generating services. Official mailing addresses are published as an appendix to the Defense Logistics Agency's compilation of record system notices."

Categories of records in the system:

Delete entry and replace with "Current and historical data related to positions occupied by an employee of DCAA such as grade, occupational series, title, organizational location, salary and step, competitive area and level, geographical location, supervisory designation, financial reporting requirement, and bargaining unit status.

Current and historical data related to a DCAA employee's status and tenure in the Federal civil service including veterans preference, competitive status, service computation data, tenure group.

Current and historical data personal to an employee of DCAA such as birth date, physical and mental handicap code, minority group identifier code, and enrollment data for life, health, and retirement programs.

Current and historical education and training data on a DCAA employee such as educational level, professional certifications, training accomplishment and requirements.

Current and historical career management data on a DCAA employee such as performance level indicator codes, performance evaluation scores and promotion assessment scores.

Current and historical data on awards and recognition received by an employee of DCAA."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete the first two paragraphs.

* * * * *

Retrievability:

Delete entry and replace with "Information is retrieved by Social Security Number."

Safeguards:

Delete entry and replace with "Access to computerized data requires knowledge and use of a series of system identification codes and passwords which must be entered in proper sequence. Access to computerized data is limited to system analysts and programmers authorized to support the system, individuals authorized to provide payroll and report generating services, and DCAA personnel and EEO office employees.

Access to output reports is limited to individuals with a need-to-know.

Retention and disposal:

Delete entry and replace with "Records in the automated data base, with the exception of non-SES performance appraisal data, are permanent.

Paper input documents and output printouts and reports, except for those required to be maintained in an employee's official personnel, performance, or medical file, are retained for reference purposes only until superseded or no longer required. When superseded or no longer required, these records will be destroyed by shredding or burning.

Copies of records authorized to be maintained by supervisors or other operating officials will be destroyed in one year after transfer or separation of the employee."

* * * * *

Record source categories:

Delete entry and replace with "Agency supervisors and administrative personnel, medical officials, previous federal employees, U.S. Office of Personnel Management. Applications and forms completed by the individual."

* * * * *

RDCAA 590.9

SYSTEM NAME:

DCAA Automated Personnel Inventory System (APIS).

SYSTEM LOCATION:

Primary location: Office of the Director of Personnel and the Personnel Officer, Civilian Personnel Office, Headquarters Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178, and the DCAA Regional Offices. Official mailing addresses are published as an appendix to the DCAA compilation of record system notices.

Secondary location: Defense Construction Supply Center, Defense Electronics Supply Center, and the Defense Logistics Agency Administrative Support Center which maintain systems data under an inter-service support agreement with DCAA to provide payroll and report generating services. Official mailing addresses are published as an appendix to the Defense Logistics Agency's compilation of record system notices. Compuserve, Inc., 500 Arlington Center Boulevard, Columbus, OH 43220, which maintains systems data under contract with the General Services Administration.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current civilian employees of DCAA and former employees who were on DCAA rolls any time after January 1, 1977.

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CATEGORIES OF RECORDS IN THE SYSTEM:

Current and historical data related to positions occupied by an employee of DCAA such as grade, occupational series, title, organizational location, salary and step, competitive area and level, geographical location, supervisory designation, financial reporting requirement, and bargaining unit status.

Current and historical data related to a DCAA employee's status and tenure in the Federal civil service including veterans preference, competitive status, service computation data, tenure group.

Current and historical data personal to an employee of DCAA such as birth date, physical and mental handicap code, minority group identifier code, and enrollment data for life, health, and retirement programs.

Current and historical education and training data on a DCAA employee such as educational level, professional certifications, training accomplishment and requirements.

Current and historical career management data on a DCAA employee such as performance level indicator codes, performance evaluation scores, and promotion assessment scores.

Current and historical data on awards and recognition received by an employee of DCAA.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 133; Executive Order 9397; and DoD Directive 5105.36 which is published in 32 CFR part 357.

PURPOSE(S):

To collect, store, and retrieve information to meet personnel and manpower management information requirements in support of program operations, evaluation, and analysis.

To satisfy external and internal reporting requirements.

To provide information to officials of DCAA for effective personnel management and administration.

To designated employees of the Defense Logistics Agency authorized under agreement with DCAA to maintain records necessary to provide payroll and report generation services.

To designated automated data processing vendors with whom DCAA may contract are authorized to maintain and enhance data and computer operating systems necessary for DCAA personnel to process data and produce required outputs. Vendors neither obtain output from the system nor access the stored data for other than validated, approved test procedures.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of DCAA's compilation of record systems notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Input paper documents are stored in file folders and/or file cabinets. Information converted to automated form for storage in the system is stored on magnetic tape and/or disks.

Output reports on computed printout paper are stored in file cabinets, specialized file containers, or library shelving.

Individual employee output reports are filed in folders retained within official personnel, performance, or medical records.

RETRIEVABILITY:

Information is retrieved by Social Security Number.

SAFEGUARDS:

Access to computerized data requires knowledge and use of a series of system identification codes and passwords which must be entered in proper sequence. Access to computerized data is limited to system analysts and programmers authorized to support the system, individuals authorized to provide payroll and report generating services, and DCAA personnel and EEO office employees.

Access to output reports is limited to individuals with a need-to-know.

RETENTION AND DISPOSAL:

Records in the automated data base, with the exception of non-SES performance appraisal data, are permanent.

Paper input documents and output printouts and reports, except for those required to be maintained in an employee's official personnel, performance, or medical file, are retained for reference purposes only until superseded or no longer required. When superseded or no longer required, these records will be destroyed by shredding or burning.

Copies of records authorized to be maintained by supervisors or other operating officials will be destroyed one year after transfer or separation of employee.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Director of Personnel, Headquarters, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304-6178.

Personnel Officer, Civilian Personnel Office, Headquarters Defense Contract Audit Agency and the DCAA Regional Personnel Officers for data in their data banks. Official mailing addresses are published as an appendix to the DCAA compilation of record system notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Director of Personnel, Headquarters, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304-6178.

For verification purposes, written request for information must include individual's full name, current address, telephone number and office of assignment.

Personal visits may be made to the Office identified above. Individual must furnish positive identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this record system should address written inquiries to the Director of Personnel, Headquarters, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304-6178.

For verification purposes, written requests for information must include individual's full name, current address, telephone number and office of assignment.

Personal visits may be made to the office identified above. Individual must furnish positive identification.

CONTESTING RECORD PROCEDURES:

The Defense Contract Audit Agency rules for accessing records and for contesting contents and appealing initial DCAA determinations by the individual concerned are published in DCAA Instruction 5410.10, 32 CFR part 290a, or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Agency supervisors and administrative personnel, medical officials, previous federal employees, U.S. Office of Personnel Management. Applications and forms completed by the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 91-11587 Filed 5-23-91; 8:45 am]
BILLING CODE 3810-01-M

Department of the Navy

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Shallow Water Antisubmarine Warfare Task Force will meet 13-14 June 1991 from 9 a.m. to 5 p.m., at 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to evaluate U.S. Navy shallow water antisubmarine warfare long-term strategies. The entire agenda for the meeting will consist of discussions of key issues related to shallow water antisubmarine warfare and related intelligence. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and, are in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact: Judith A. Holden Executive Secretary to the CNO Executive Panel 4401 Ford Avenue, room 601 Alexandria, Virginia 22302-0268 Phone (703) 756-1205.

Dated: May 15, 1991.

Wayne T. Baucino,

Lieutenant, JAGC, USNR Alternative Federal Register Liaison Officer.

[FR Doc. 91-12324 Filed 5-23-91; 8:45 am]
BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Naval Research Advisory Committee Panel on Countermine Capabilities for Amphibious Operations (Phase II) will meet on June 12 and 13, 1991. The meeting will be held at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia. The meeting will commence at 8 a.m. and terminate at 4:30 p.m. on June 12 and 13, 1991.

The purpose of the meeting is to provide technical briefings for the panel members pertaining to their review and update of the previous NRAC study on this subject, which was completed in 1989. This Panel will re-examine the issues raised, conclusions reached, and recommendations made by the previous panel, and provide the Navy with a re-assessment of the findings in light of Desert Shield/Storm, new knowledge of the threat and environment, and applicable advances in technology. The agenda will include briefings and discussions related to current operational capabilities and limitations; lessons learned from the Persian Gulf War related to the threat, minefield deployments and operational plans; current U.S. Navy reactions; and promising emerging technology applicable to detection, neutralization, marking, and reporting in very shallow water, the surf zone, and on the beach. These briefings and discussions contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwinded as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Captain Gerald Mittendorff, USN, Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000 Telephone Number: (703) 696-4870.

Dated: 15 May 1991.

G. B. Roberts,

Lieutenant Colonel, USMC, Federal Register Liaison Officer.

[FR Doc. 91-12325 Field 5-23-91; 8:45 am]
BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. QF91-138-000, et al.]

Hadson Power Partners of Rensselaer et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Hadson Power Partners of Rensselaer

[Docket No. QF91-138-000]

May 16, 1991.

On May 7, 1991, Hadson Power Partners of Rensselaer c/o Hadson Power 15 Incorporated, 12500 Fair Lakes Circle, suite 260, Fairfax, Virginia 22033-3822 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Port of Albany, Riverside Avenue, in Rensselaer, New York. The facility will consist of a combustion turbine generator, a steam turbine generator and a supplementary fired heat recovery boiler. Thermal energy recovered from the facility will be used in the manufacture of specialty chemicals and for space heating. The primary energy source will be natural gas. The net electric power production capacity will be 79 megawatts. Installation of the facility will begin in September 1991.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

2. Oklahoma Municipal Power Authority v. Public Service Company of Oklahoma

[Docket No. EL90-43-000]

May 17, 1991.

Take notice that Public Service Company of Oklahoma (PSO) and Oklahoma Municipal Power Authority (OMPA), on May 6, 1991, tendered for filing an amendment to the Offer of Settlement filed on December 5, 1990 in the above-referenced docket.

PSO has submitted revised fuel clause rate sheets reflecting proposed amendments to PSO's interconnection agreement with OMPA.

In their filing, PSO and OMPA request waiver of § 35.14 of the Commission's regulations, 18 CFR 35.14 (1990).

Copies of the filing were served upon PSO's affected PSO customers and the Oklahoma Corporation Commission.

Comment date: June 3, 1991, in accordance with Standard Paragraph E end of this notice.

3. Tampa Electric Company

[Docket No. ER91-128-000]

May 17, 1991.

Take notice that on May 14, 1991, Tampa Electric Company (Tampa Electric) tendered for filing an amendment to its prior submittal of a Letter of Commitment with the Kissimmee Utility Authority (Kissimmee). The amended Letter of Commitment provides for the sale by Tampa Electric to Kissimmee of 10 megawatts of capacity and energy.

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Tampa Electric proposes an effective date of January 1, 1991, for the commitment of capacity and energy, and therefore requests waiver of the Commission's notice requirements.

Copies of the amendatory filing have been served on Kissimmee and the Florida Public Service Commission.

Comment date: May 31, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Tampa Electric Company

[Docket No. ER91-129-000]

May 17, 1991

Take notice that on May 14, 1991, Tampa Electric Company (Tampa Electric) tendered for filing an amendment to its prior submittal of a Letter of Commitment with the Reedy Creek Improvement District (RCID). The amended Letter of Commitment provides for the sale by Tampa Electric to RCID of 10 megawatts of capacity and energy.

Tampa Electric proposes an effective date of January 1, 1991, for the commitment of capacity and energy, and therefore requests waiver of the Commission's notice requirements.

Copies of the amendatory filing have been served on RCID and the Florida Public Service Commission.

Comment date: May 31, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Orange and Rockland Utilities, Inc.

[Docket No. ER88-112-000]

May 17, 1991.

Take notice that on May 1, 1991, Orange and Rockland Utilities, Inc. ("Orange and Rockland") tendered for filing an amendment to Orange and Rockland's previous filing of March 27, 1991, pursuant to the Federal Energy Docket No. 88-112-000, of an executed Service Agreement between Orange and Rockland and Delaware Valley Cement Block Co., Inc.

Comment date: May 31, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. Tampa Electric Company

[Docket No. ER91-130-000]

May 17, 1991.

Take notice that on May 14, 1991, Tampa Electric Company (Tampa Electric) tendered for filing an amendmnt to its prior submittal of a Letter of Commitment with the Utilities Commission, City of New Smyrna Beach, Florida (New Smyrna Beach). The amended Letter of Commitment provides for the sale by Tampa Electric to New Smyrna Beach of 15 megawatts of capacity and energy.

Tampa Electric proposes an effective date of December 1, 1990, for the commitment of capacity and energy, and therefore requests waiver of the Commission's notice requirements.

Copies of the amendatory filing have been served on New Smyrna Beach and the Florida Public Service Commission.

Comment date: May 31, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. Iowa Public Service Company

[Docket No. ER91-375-000]

May 17, 1991.

Take notice that Iowa Public Service Company (IPS) on May 14, 1991, filed an Amendment to its FERC filing of April 12, 1991 of an executed Peaking Capacity Sales Agreement between Iowa Public Service Company and Iowa Power Inc. which reclassifies the transaction to be in accordance with MAPP Service Schedule J.

IPS also requests a waiver of the Commission's rules so that the Agreement may be approved retroactive to May 1, 1991.

IPS states that copies of this filing were served on Iowa Power Inc. and the Iowa Utilities Board.

Comment date: May 31, 1991, in accordance with Standard Paragraph E at the end of this notice.

8. Oklahoma Gas and Electric Company

[Docket No. ER91-438-000]

May 17, 1991.

Take notice that on May 14, 1991, Oklahoma Gas and Electric Company (OG&E) tendered for filing a Trade Electricity for Gas Rider (TEGR) Service Agreement Pendente Lite (Agreement) between OG&E and Oklahoma Municipal Power Authority (OMPA) whereby OMPA may conditionally participate in the Company's TEGR program during the period the TEGR program is in effect in 1991. OG&E's filing also included notice of termination of the interim Agreement to be effective as of September 30, 1991.

Copies of this filing have been served on the Oklahoma Corporation Commission and the Arkansas Public Service Commission.

Comment date: May 31, 1991, in accordance with Standard Paragraph E at the end of this notice.

9. Centel Corporation

[Docket No. ER91-430-000]

May 17, 1991.

Take notice that Centel Corporation (Centel) on May 14, 1991 tendered for filing Service Schedule 91-CWh-2 for providing electrical wholesale service to Kansas Electric Power Cooperative, Inc. (KEPCo). This Service Schedule replaces Service Schedule 88-CWh-2 and represents only a change in the demand rate and corresponding billing determinant. There is no effect on the annual revenues derived from this service. Waiver of the notice has been respectfully requested and an effective date of this filing has been requested for July 1, 1991.

Copies of the filing were served upon KEPCo.

Comment date: May 31, 1991, in accordance with Standard Paragraph E at the end of this notice.

10. John E. Hodges, Jr.

[Docket No. ID-2610-000]

May 17, 1991.

Take notice that on May 6, 1991, John E. Hodges, Jr. (Applicant) tendered for filing an informational report for automatic authorization to hold the following positions:

Vice President—Gulf Power Company
Director—Citizens and Peoples Bank of Pensacola
Director—Bank South of Pensacola, Inc.

Comment date: June 7, 1991, in accordance with Standard Paragraph E at the end of this notice.

11. W. Deck Hull, Jr.

[Docket No. ID-2611-000]

May 17, 1991.

Take notice that on May 6, 1991, W. Deck Hull, Jr. (Applicant) tendered for filing an informational report for automatic authorization to hold the following positions:

Director—Gulf Power Company
President and CEO Director—Sun Commercial Bank

Comment date: June 7, 1991, in accordance with Standard Paragraph E at the end of this notice.

12. C. Walter Ruckel

[Docket No. ID-2612-001]

May 17, 1991.

Take notice that on May 7, 1991, C. Walter Ruckel (Applicant) tendered for filing an informational report for automatic authorization to hold the following positions:

Director—Gulf Power Company
Director—Vanguard Bank & Trust Co.

Comment date: June 7, 1991, in accordance with Standard Paragraph E at the end of this notice.

13. Vincent J. Whibbs, Sr.

[Docket No. ID-2576-000]

May 17, 1991.

Take notice that on May 6, 1991, Vincent J. Whibbs, Sr. (Applicant) tendered for filing an informational report for automatic authorization to hold the following positions:

Director—AmSouth Bancorporation of Florida
Director—AmSouth Bank of Florida

Comment date: June 7, 1991, in accordance with Standard Paragraph E at the end of this notice.

14. Jack K. Widener, Jr.

[Docket No. ID-2577-000]

May 17, 1991.

Take notice that on May 6, 1991, Jack K. Widener, Jr. (Applicant) tendered for filing an informational report for automatic authorization to hold the following positions:

Vice President—Georgia Power Company
Advisory Director—First Union National Bank

Comment date: June 3, 1991, in accordance with Standard Paragraph E at the end of this notice.

14. Freeman R. O'Neal, Jr.

[Docket No. ID-2571-000]

May 17, 1991.

Take notice that on May 6, 1991, Freeman R. O'Neal, Jr. (Applicant) tendered for filing an information report for automatic authorization to hold the following positions:

Vice President—Southern Region of Georgia Power Company
Director—Columbus Bank and Trust Company

Comment date: June 7, 1991, in accordance with Standard Paragraph E at the end of this notice.

15. John W. Rowe

[Docket No. ID-2093-002]

May 17, 1991.

Take notice that on May 9, 1991, John W. Rowe (Applicant) tendered for filing a supplemental application under section 305(b) of the Federal Power Act to hold the following positions:

Director—UNUM Corporation
Director—New England Hydro-Transmission Electric Company, Inc.
Director—New England Hydro-Transmission Corporation
Director—New England Electric Transmission Corporation
Director—The Narragansett Electric Company
Director, President—New England Power Company
Director—Massachusetts Electric Company

Comment date: June 7, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12335 Filed 5-23-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-2033-000, et al.]

National Fuel Gas Supply Corp., et al.; Natural Gas Certificate Filings

May 17, 1991.

Take notice that the following filings have been made with the Commission:

1. National Fuel Gas Supply Corporation

[Docket No. CP91-2033-000]

Take notice that on May 13, 1991, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP91-2033-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport gas on behalf of Consolidated Edison Company of New York, Inc. (Con Ed) under National Fuel's blanket certificate issued in Docket No. CP89-1582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

National Fuel proposes to transport on a firm basis up to 18,594 .MMBtu of natural gas equivalent per day on behalf of Con Ed pursuant to a transportation agreement dated January 16, 1991, between National Fuel and Con Ed. National Fuel would receive the gas at existing delivery points in Pennsylvania and New York and redeliver equivalent volumes at existing delivery points in Pennsylvania and New York.

National Fuel states that the estimated average daily and annual quantities would be 18,594 MMBtu and 6,786,810 MMBtu, respectively. Service under § 284.223(a) commenced on February 1, 1991, as reported in Docket No. ST91-8657-000, it is stated.

Comment date: July 1, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. Williston Basin Interstate Pipeline Company

[Docket Nos. CP91-2062-000, CP91-2063-000]

Take notice that on May 15, 1991, Williston Basin Interstate Pipeline Company (Williston Basin), suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed prior notice requests with the Commission in the above-referenced dockets pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP89-1118-000, pursuant to section 7 of the NGA, all as more fully set forth in the requests which are open to public inspection.[1]

Williston Basin has provided information applicable to each transaction, including the shipper's identity; the type of transportation service; the appropriate transportation rate schedule; the peak day, average day and annual volumes; the service initiation date; and related ST docket number of the 120-day transaction under § 284.223 of the Commission's Regulations, as summarized in the appendix.

Comment date: July 1, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

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Docket No.	Shipper name (type)	Peak day, average day, annual dth	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2062-000	Amoco Production Company (Producer).	86,100 86,100 31,426,500	MT, ND, WY	ND, WY	1-24-91, IT-1, Interruptible.	ST91-7090, 1-26-91.
CP91-2063-000	Inland Oil and Gas Corporation (Producer).	2,715 468 990,610	MT, SD, WY	MT, ND, WY	3-22-91, IT-1, Interruptible.	ST91-8561, 4-4-91.

3. Columbia Gas Transmission Corporation

[Docket No.'s CP91-2060-000, CP91-2061-000]

Take notice that Columbia Gas Transmission Corporation, 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under its blanket certificate issued in Docket No. CP86-240-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: July 1, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2060-000 (5-15-91)	Transport Gas Corporation (Marketer).	9,667 7,734 3,528,455	OH, PA, WV, KY, NY	OH	1-30-91, ITS, Interruptible.	ST91-8304, 3-12-91.
CP91-2061-000 (5-15-91)	Tenngasco Corporation (Marketer).	50,000 40,000 18,250,000	OH, PA, WV, KY, NY	Various	3-26-90, ITS, Interruptible.	ST91-8021, 3-6-91.

4. Trunkline Gas Company

[Docket No.'s CP91-2047-000, CP91-2048-000, CP91-2049-000, CP91-2050-000, CP91-2051-000]

Take notice that on May 15, 1991, Trunkline Gas Company (Applicant), P.O. Box, 1642, Houston, Texas 77251-1642, filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under its blanket certificate issued in Docket No. CP86-586-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests that are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: July 1, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name	Peak Day,[1] average annual	Points of Receipt	Delivery	Start up date, rate schedule	Related [2] dockets
CP91-2047-000 5-15-91	Panhandle Trading Co..	25,000 25,000 9,125,000	On TX, Off TX, On LA, Off LA, IL, TN, IN.	KY	4-3-91, PT	ST91-8388-000.
CP91-2048-000 5-15-91	Panhandle Trading Co..	125,000 125,000 45,625,000	On TX, Off TX, On LA, Off LA, IL, TN, IN.	IL	4-1-91, PT	ST91-8383-000.
CP91-2049-000 5-15-91	Coast Energy Group, Inc.	35,000 35,000 12,775,000	Off LA	On LA	4-1-91, PT	ST91-8386-000.
CP91-2050-000 5-15-91	Panhandle Trading Co..	25,000 25,000 9,125,000	On TX, Off TX, On LA, Off LA, TN, IL, IN.	TN	4-4-91, PT	ST91-8392-000

Docket No. (date filed)	Shipper name	Peak Day,[1] average annual	Points of Receipt	Delivery	Start up date, rate schedule	Related [2] dockets
CP91-2051-000 5-15-91	Clinton Gas Transmission, Inc.	5,000 5,000 1,825,000	On TX, Off TX, On LA, Off LA, TN, IL, IN.	IL	3-20-91 PT	ST91-8306-000.

[1] Quantities are shown in Mcf.
[2] The CP docket corresonds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

5. Florida Gas Transmission Company, Florida Gas Transmission Company; Midwestern Gas Transmission Company

[Docket Nos. CP91-2038-000, CP91-2039-000, CP91-2040-000]

Take notice that Florida Gas Transmission Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, and Midwestern Gas Transmission Company, P.O. Box 2511, Houston, Texas 77252, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued in Docket No. CP89-555-000 and Docket No. CP90-174-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: July 1, 1991, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points [1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2038-000 (5-14-91)	Louis Dreyfus Energy Corporation.	100,000 75,000 36,500,000	TX, LA, OTX, OLA, MS, AL, FL	LA, OLA	4-11-91, ITS-1, Interruptible.	ST91-8560, 4-12-91.
CP91-2039-000 (5-14-91)	Lake Apopka Natural Gas District.	2,043 1,532 348,717	LA, TX, OTX, OLA, MS, AL, FL	FL	4-1-91, FTS-1, Firm.	ST91-8455, 4-1-91.
CP91-2040-000 (5-14-91)	Clinton Gas Transmission, Inc. (Marketer).	[2] 1,000 1,000 365,000	TN, IN, IL, KY	TN, IN, IL, KY	4-2-91, IT, Interruptible.	ST91-8323, 4-2-91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2] Measured in dt equivalent.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12336 Filed 5-23-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST91-7146-000 through ST91-7959-000]

Williston Basin Interstate Pipeline Co.; Self-Implementing Transactions

May 17, 1991

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

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pursuant to § 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–LT" or "G–LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "G–HT" or "G–HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's regulations.

A "K–S" indicates transportation of natural gas on the Outer Continental Shelf by an intrastate pipeline on behalf of shippers other than interstate pipelines pursuant to § 284.303 of the Commission's regulations.

Lois D. Cashell,

Secretary.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]
ST91-7146	Williston Basin Interstate P/L Co	Amerada Hess Corp	03-01-91	G-S	41,000
ST91-7147	Tennessee Gas Pipeline Co	Southern Connecticut Gas Co. (The)	03-01-91	B	24,000
ST91-7148	Tennessee Gas Pipeline Co	Citizens Gas Supply Corp	03-01-91	G-S	90,000
ST91-7149	Tennessee Gas Pipeline Co	Amerada Hess Corp	03-01-91	G-S	100,000
ST91-7150	East Texas Gas Systems	Tennessee Gas Pipeline Co	03-01-91	C	125,000
ST91-7151	Natural Gas Pipeline Co. of America	Arco Oil & Gas Co	03-01-91	G-S	100,000
ST91-7152	Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co. (The)	03-01-91	G-S	20,000
ST91-7153	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	03-01-91	B	250,000
ST91-7154	ONG Transmission Co	Natural Gas Pipeline Co. of America	03-01-91	C	50,000
ST91-7155	Williams Natural Gas Co	Kansas Power & Light Co. (The)	03-01-91	G-S	114,215
ST91-7156	Williams Natural Gas Co	Kansas Power & Light Co. (The)	03-01-91	G-S	18,926
ST91-7157	Lone Star Gas Co	Southern California Gas Co	03-01-91	C	100,000
ST91-7158	Gulf Energy Pipeline Co	Natural Gas Pipeline Co. of America	03-01-91	C	15,000
ST91-7159	Transcontinental Gas Pipeline Corp	City of Buford	03-01-91	B	120,000
ST91-7160	Mississippi River Trans. Corp	Southern Indiana Gas & Electric	03-01-91	B	45,000
ST91-7161	Mississippi River Trans. Corp	Northern Indiana Public Serv. Co	03-01-91	B	30,000
ST91-7162	Mississippi River Trans. Corp	Midwest Natural Gas Corp	03-01-91	B	15,000
ST91-7163	Mississippi River Trans. Corp	Battle Creek Gas Co	03-01-91	B	45,000
ST91-7164	Delhi Gas Pipeline Corp	Arkla Energy Resources	03-04-91	C	150,000
ST91-7165	Midwestern Gas Transmission Co	Peoples Gas Co	03-04-91	B	150,000
ST91-7166	Valley Gas Transmission, Inc	Energy Development Corp	03-04-91	G-S	5,000
ST91-7167	Louisiana Intrastate Gas Corp	Arkla Energy Resources	03-04-91	C	45,000
ST91-7168	Northern Natural Gas Co	Cibola Corp	03-04-91	G-S	20,000
ST91-7171	Columbia Gulf Trans. Co	Equitable Resources Marketing Co	03-04-91	G-S	100,000
ST91-7172	Columbia Gulf Trans. Co	Sonat Marketing Co	03-04-91	G-S	10,000
ST91-7173	Lone Star Gas Co	Tennessee Gas Pipeline Co	03-04-91	C	100,000
ST91-7174	National Fuel Gas Supply Corp	Cuba Memorial Hospital	03-04-91	G-S	110
ST91-7175	National Fuel Gas Supply Corp	Saint Vincent Health Center	03-04-91	G-S	685
ST91-7176	National Fuel Gas Supply Corp	Dubois Regional Med. Center East	03-04-91	G-S	91
ST91-7177	National Fuel Gas Supply Corp	Connecticut Natural Gas	03-04-91	G-S	51,300
ST91-7178	National Fuel Gas Supply Corp	Dubois Regional Med. Center West	03-04-91	G-S	116
ST91-7179	National Fuel Gas Supply Corp	Du Pont de Nemours and Company	03-04-91	G-S	5,888
ST91-7180	National Fuel Gas Supply Corp	Connecticut Natural Gas	03-04-91	G-S	51,300
ST91-7181	National Fuel Gas Supply Corp	Entrade Corp	03-04-91	G-S	25,000
ST91-7182	National Fuel Gas Supply Corp	Mallinckrodt Specialty Chemicals	03-04-91	G-S	769
ST91-7183	National Fuel Gas Supply Corp	Centerville Castings, Inc	03-04-91	G-S	48
ST91-7184	National Fuel Gas Supply Corp	Dunbar Slag Co. Inc	03-04-91	G-S	175
ST91-7185	National Fuel Gas Supply Corp	Buffalo Brake Beam	03-04-91	G-S	116
ST91-7186	National Fuel Gas Supply Corp	Depew Union Free School Dist	03-04-91	G-S	428
ST91-7187	National Fuel Gas Supply Corp	Brockway Pressed Metals, Inc	03-04-91	G-S	385
ST91-7188	National Fuel Gas Supply Corp	Kane Gas Light & Heating Co	03-04-91	G-S	2,000
ST91-7189	National Fuel Gas Supply Corp	Buffalo Color Corp	03-04-91	G-S	250
ST91-7190	National Fuel Gas Supply Corp	Consolidated Edison Co. of NY	03-04-91	G-S	100,000
ST91-7191	National Fuel Gas Supply Corp	Brockway Area School District	03-04-91	G-S	148
ST91-7192	National Fuel Gas Supply Corp	National Fuel Gas Dist. of Corp	03-04-91	G-S	1,615
ST91-7193	National Fuel Gas Supply Corp	Beaver Meadow Creamery Inc	03-04-91	G-S	137
ST91-7194	National Fuel Gas Supply Corp	Bryan Hospitals, Inc	03-04-91	G-S	60
ST91-7195	National Fuel Gas Supply Corp	Chautauqua Energy Marketing	03-04-91	G-S	7,000
ST91-7196	National Fuel Gas Supply Corp	Acme Electric Corp	03-04-91	G-S	268
ST91-7197	National Fuel Gas Supply Corp	Penn State University	03-04-91	G-S	173
ST91-7198	National Fuel Gas Supply Corp	Buffalo Sewer Authority	03-04-91	G-S	1,500
ST91-7199	National Fuel Gas Supply Corp	Greenville Metal Lith	03-04-91	G-S	330
ST91-7200	National Fuel Gas Supply Corp	Buffalo Forge Co	03-04-91	G-S	240
ST91-7201	National Fuel Gas Supply Corp	Alfred University	03-04-91	G-S	2,000
ST91-7202	National Fuel Gas Supply Corp	Commonwealth Gas Co	03-04-91	G-S	50,000
ST91-7203	National Fuel Gas Supply Corp	Liuzzo DBA Fenton Park Nursing Home	03-04-91	G-S	70
ST91-7204	National Fuel Gas Supply Corp	Penn State University	03-04-91	G-S	120
ST91-7205	National Fuel Gas Supply Corp	Brookville Area School District	03-04-91	G-S	220
ST91-7206	National Fuel Gas Supply Corp	Brookville Hospital	03-04-91	G-S	92
ST91-7207	National Fuel Gas Supply Corp	Attica Central School Dist	03-04-91	G-S	156

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]
ST91-7208	National Fuel Gas Supply Corp	American Stone-Mix, Inc	03-04-91	G-S	203
ST91-7209	National Fuel Gas Supply Corp	State University of NY	03-04-91	G-S	1,845
ST91-7210	National Fuel Gas Supply Corp	National Fuel Gas Distri. Corp	03-04-91	G-S	6,000
ST91-7211	National Fuel Gas Supply Corp	St. Marys Carbon Co., Inc	03-04-91	G-S	175
ST91-7212	National Fuel Gas Supply Corp	Rochester Gas & Electric Corp	03-04-91	G-S	50,000
ST91-7213	National Fuel Gas Supply Corp	Urick Foundry	03-04-91	G-S	550
ST91-7214	National Fuel Gas Supply Corp	Upstate Milk Cooperatives, Inc	03-04-91	G-S	280
ST91-7215	National Fuel Gas Supply Corp	Lewiston-Porter Central School	03-04-91	G-S	351
ST91-7216	National Fuel Gas Supply Corp	Chevron, Inc	03-04-91	G-S	75
ST91-7217	National Fuel Gas Supply Corp	Insul-Board, Inc	03-04-91	G-S	33
ST91-7218	National Fuel Gas Supply Corp	Cheektowaga Central School Dist	03-04-91	G-S	286
ST91-7219	National Fuel Gas Supply Corp	General Mills, Inc	03-04-91	G-S	3,212
ST91-7220	National Fuel Gas Supply Corp	Vac Air Alloys Division	03-04-91	G-S	100
ST91-7221	National Fuel Gas Supply Corp	Dubois Area School District	03-04-91	G-S	247
ST91-7222	National Fuel Gas Supply Corp	Central Christian High School	03-04-91	G-S	55
ST91-7223	National Fuel Gas Supply Corp	Dubois Nursing Home Association	03-04-91	G-S	75
ST91-7224	National Fuel Gas Supply Corp	Cast Metals Operations	03-04-91	G-S	428
ST91-7225	National Fuel Gas Supply Corp	Dubois Powdered Metals, Inc	03-04-91	G-S	110
ST91-7226	National Fuel Gas Supply Corp	Allegheny Powder Metallurgy, Inc	03-04-91	G-S	109
ST91-7227	National Fuel Gas Supply Corp	Valeo Engine Cooling, Inc	03-04-91	G-S	1,350
ST91-7228	National Fuel Gas Supply Corp	Stackpole Carbor Company	03-04-91	G-S	2,500
ST91-7229	National Fuel Gas Supply Corp	Talon, Inc	03-04-91	G-S	495
ST91-7230	National Fuel Gas Supply Corp	Chevron, Inc	03-04-91	G-S	75
ST91-7231	National Fuel Gas Supply Corp	Greenville Metals, Inc	03-04-91	G-S	275
ST91-7232	National Fuel Gas Supply Corp	Advanced Cast Products, Inc	03-04-91	G-S	362
ST91-7233	National Fuel Gas Supply Corp	Nabisco Brands, Inc	03-04-91	G-S	1,757
ST91-7234	National Fuel Gas Supply Corp	Oglevee Mercer	03-04-91	G-S	586
ST91-7235	National Fuel Gas Supply Corp	American Stone Mix	03-04-91	G-S	160
ST91-7236	National Fuel Gas Supply Corp	National Fuel Resources	03-04-91	G-S	200,000
ST91-7237	National Fuel Gas Supply Corp	Warren State Hospital	03-04-91	G-S	1,415
ST91-7238	National Fuel Gas Supply Corp	Penn State University	03-04-91	G-S	73
ST91-7239	National Fuel Gas Supply Corp	Chapin Fagin	03-04-91	G-S	150
ST91-7240	National Fuel Gas Supply Corp	Buffalo Convention Center Mgmt	03-04-91	G-S	90
ST91-7241	National Fuel Gas Supply Corp	Powder Metal Products	03-04-91	G-S	330
ST91-7242	National Fuel Gas Supply Corp	Hyman Drum & Barrel Corp	03-04-91	G-S	105
ST91-7243	National Fuel Gas Supply Corp	Mercyhurst College	03-04-91	G-S	200
ST91-7244	National Fuel Gas Supply Corp	Letchworth Central School Dist	03-04-91	G-S	156
ST91-7245	National Fuel Gas Supply Corp	Morrison Industries	03-04-91	G-S	250
ST91-7246	National Fuel Gas Supply Corp	Occidental Chemical Corp	03-04-91	G-S	2,500
ST91-7247	National Fuel Gas Supply Corp	Lilly Industrial Coating, Inc	03-04-91	G-S	50
ST91-7248	National Fuel Gas Supply Corp	American Sterilizer Co	03-04-91	G-S	625
ST91-7249	National Fuel Gas Supply Corp	Centran Corp	03-04-91	G-S	15,136
ST91-7250	National Fuel Gas Supply Corp	Assumption R.C.C. Society, Inc	03-04-91	G-S	39
ST91-7251	National Fuel Gas Supply Corp	Humphrey Charcoal Corp	03-04-91	G-S	50
ST91-7252	National Fuel Gas Supply Corp	Buffalo Forge Co	03-04-91	G-S	----
ST91-7253	National Fuel Gas Supply Corp	Bertrand Chaffee Hospital	03-04-91	G-S	110
ST91-7254	National Fuel Gas Supply Corp	Donver Incorp	03-04-91	G-S	257
ST91-7255	National Fuel Gas Supply Corp	Commodore Perry School Dist	03-04-91	G-S	77
ST91-7256	National Fuel Gas Supply Corp	PHB—Parker Die Casting	03-04-91	G-S	1,000
ST91-7257	National Fuel Gas Supply Corp	Diamond Energy Inc	03-04-91	G-S	8,000
ST91-7258	National Fuel Gas Supply Corp	Andrew Kaul Memorial Hospital	03-04-91	G-S	199
ST91-7259	National Fuel Gas Supply Corp	Hope's Architectural Prod. Inc	03-04-91	G-S	345
ST91-7260	National Fuel Gas Supply Corp	Tech Specialty Steel Corp	03-04-91	G-S	3,100
ST91-7261	National Fuel Gas Supply Corp	Dresser Mfg., Dresser Indust	03-04-91	G-S	440
ST91-7262	National Fuel Gas Supply Corp	Hamburg Central School Dist	03-04-91	G-S	512
ST91-7263	National Fuel Gas Supply Corp	Lancaster Central School Dist	03-04-91	G-S	375
ST91-7264	National Fuel Gas Supply Corp	NYS—Dept. of Health	03-04-91	G-S	410
ST91-7265	National Fuel Gas Supply Corp	North Tonawanda Housing Authority	03-04-91	G-S	107
ST91-7266	National Fuel Gas Supply Corp	National Forge Co	03-04-91	G-S	3,000
ST91-7267	National Fuel Gas Supply Corp	NGC Transportation, Inc	03-04-91	G-S	500,000
ST91-7268	National Fuel Gas Supply Corp	Cranberry Area School Dist	03-04-91	G-S	165
ST91-7269	National Fuel Gas Supply Corp	Equitable Resources	03-04-91	G-S	50,000
ST91-7270	National Fuel Gas Supply Corp	North Tonawanda City School Dist	03-04-91	G-S	594
ST91-7271	National Fuel Gas Supply Corp	Goodyear Tire & Rubber Co. (The)	03-04-91	G-S	850
ST91-7272	National Fuel Gas Supply Corp	Nazareth Home of Sisters	03-04-91	G-S	90
ST91-7273	National Fuel Gas Supply Corp	Cyclops Corp	03-04-91	G-S	150
ST91-7274	National Fuel Gas Supply Corp	Cuba Memorial Hospital	03-04-91	G-S	110
ST91-7275	National Fuel Gas Supply Corp	Conair Franklin	03-04-91	G-S	110
ST91-7276	National Fuel Gas Supply Corp	Colorlorme Incorp	03-04-91	G-S	90
ST91-7277	National Fuel Gas Supply Corp	Cyclope Corp	03-04-91	G-S	2,000
ST91-7278	National Fuel Gas Supply Corp	Corry Hiebert Corp	03-04-91	G-S	492
ST91-7279	National Fuel Gas Supply Corp	Corry Contract, Inc	03-04-91	G-S	185
ST91-7280	National Fuel Gas Supply Corp	Eight Hundred West Ferry Condom	03-04-91	G-S	110
ST91-7281	National Fuel Gas Supply Corp	Paris Cleaners, Inc	03-04-91	G-S	137
ST91-7282	National Fuel Gas Supply Corp	Associated Spring, Barnes Group	03-04-91	G-S	244
ST91-7283	National Fuel Gas Supply Corp	Arcata Graphics	03-04-91	G-S	1,831
ST91-7284	National Fuel Gas Supply Corp	Bishop Pipeline	03-04-91	G-S	10,000
ST91-7285	National Fuel Gas Supply Corp	Joy Technologies, Inc	03-04-91	G-S	990
ST91-7286	National Fuel Gas Supply Corp	Gannon University	03-04-91	G-S	145
ST91-7287	National Fuel Gas Supply Corp	Daemen College	03-04-91	G-S	32

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Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]
ST91-7286	National Fuel Gas Supply Corp	Div. of Zarn Industries	03-04-91	G-S	172
ST91-7289	National Fuel Gas Supply Corp	Thiel College	03-04-91	G-S	550
ST91-7290	National Fuel Gas Supply Corp	Franklin Regional Medical Center	03-04-91	G-S	158
ST91-7291	National Fuel Gas Supply Corp	Salamanca District Hosp. Auth	03-04-91	G-S	50
ST91-7292	National Fuel Gas Supply Corp	Sharon City School District	03-04-91	G-S	175
ST91-7293	National Fuel Gas Supply Corp	Nabisco Brands, Inc	03-04-91	G-S	2,152
ST91-7294	National Fuel Gas Supply Corp	Sharpsville Area School Dist	03-04-91	G-S	74
ST91-7295	National Fuel Gas Supply Corp	Delawere Tower Assoc., L.P. (The)	03-04-91	G-S	183
ST91-7296	National Fuel Gas Supply Corp	Continental Baking Co	03-04-91	G-S	1,071
ST91-7297	National Fuel Gas Supply Corp	Marathon Oil Co	03-04-91	G-S	323
ST91-7298	National Fuel Gas Supply Corp	Oil City Area Health Ctr	03-04-91	G-S	186
ST91-7299	National Fuel Gas Supply Corp	Potomac Electric Power Co	03-04-91	G-S	250,000
ST91-7300	National Fuel Gas Supply Corp	Arro Forge Inc	03-04-91	G-S	169
ST91-7301	National Fuel Gas Supply Corp	Rad-O-Mat Holding U.S.A.	03-04-91	G-S	100
ST91-7302	National Fuel Gas Supply Corp	Broadway Market	03-04-91	G-S	54
ST91-7303	National Fuel Gas Supply Corp	M.J. Peterson Co	03-04-91	G-S	70
ST91-7304	National Fuel Gas Supply Corp	L-Tec Welding & Cutting Sys	03-04-91	G-S	428
ST91-7305	National Fuel Gas Supply Corp	Morco, Inc	03-04-91	G-S	110
ST91-7306	National Fuel Gas Supply Corp	Moog, Inc	03-04-91	G-S	100
ST91-7307	National Fuel Gas Supply Corp	Reed Manufacturing Co	03-04-91	G-S	160
ST91-7308	National Fuel Gas Supply Corp	Sharon Tube Co	03-04-91	G-S	2,198
ST91-7309	National Fuel Gas Supply Corp	R.D. Werner Co., Inc	03-04-91	G-S	1,320
ST91-7310	National Fuel Gas Supply Corp	Sharon Steel	03-04-91	G-S	20,000
ST91-7311	National Fuel Gas Supply Corp	Elite Metal Products, Inc	03-04-91	G-S	55
ST91-7312	National Fuel Gas Supply Corp	Emi Company	03-04-91	G-S	55
ST91-7313	National Fuel Gas Supply Corp	Erie Press Systems	03-04-91	G-S	400
ST91-7314	National Fuel Gas Supply Corp	Emi Company	03-04-91	G-S	550
ST91-7315	National Fuel Gas Supply Corp	Erie Tool Works	03-04-91	G-S	60
ST91-7316	National Fuel Gas Supply Corp	Main Seneca Corp	03-04-91	G-S	280
ST91-7317	National Fuel Gas Supply Corp	Mayer Bros. Construction Co	03-04-91	G-S	200
ST91-7318	National Fuel Gas Supply Corp	Erie Forge & Steel, Inc	03-04-91	G-S	3,000
ST91-7319	National Fuel Gas Supply Corp	Ervite Corp	03-04-91	G-S	274
ST91-7320	National Fuel Gas Supply Corp	Equameter Inc	03-04-91	G-S	412
ST91-7321	National Fuel Gas Supply Corp	Farrell Area School Dist	03-04-91	G-S	175
ST91-7322	National Fuel Gas Supply Corp	Electralloy Corp	03-04-91	G-S	770
ST91-7323	National Fuel Gas Supply Corp	Foamex, LP	03-04-91	G-S	388
ST91-7324	National Fuel Gas Supply Corp	Ford Motor Co	03-04-91	G-S	1,800
ST91-7325	National Fuel Gas Supply Corp	Four Seasons Fitness & Racket Club	03-04-91	G-S	70
ST91-7326	National Fuel Gas Supply Corp	Exxon-Esk Co	03-04-91	G-S	420
ST91-7327	National Fuel Gas Supply Corp	Franklin Area School Dist	03-04-91	G-S	275
ST91-7328	National Fuel Gas Supply Corp	Fenestra Corp	03-04-91	G-S	213
ST91-7329	National Fuel Gas Supply Corp	Entrade Corp	03-04-91	G-S	25,000
ST91-7330	National Fuel Gas Supply Corp	Ferro Corp	03-04-91	G-S	860
ST91-7331	National Fuel Gas Supply Corp	Indeck-Yerkes Ltd. Partnership	03-04-91	G-S	12,845
ST91-7332	National Fuel Gas Supply Corp	Iroquois Central School Dist	03-04-91	G-S	401
ST91-7333	National Fuel Gas Supply Corp	Natural Gas Marketing, Incorp	03-04-91	G-S	6,000
ST91-7334	National Fuel Gas Supply Corp	Genesee Memorial Hospital	03-04-91	G-S	220
ST91-7335	National Fuel Gas Supply Corp	Great Lakes Carbon Corp	03-04-91	G-S	1,713
ST91-7336	National Fuel Gas Supply Corp	Christ the King	03-04-91	G-S	110
ST91-7337	National Fuel Gas Supply Corp	Exotic Metals, Incorp	03-04-91	G-S	330
ST91-7338	National Fuel Gas Supply Corp	Mid American Natural Res. Inc	03-04-91	G-S	1,333
ST91-7339	National Fuel Gas Supply Corp	Occidental Chemical Corp	03-04-91	G-S	14
ST91-7340	National Fuel Gas Supply Corp	Corporate Communications	03-04-91	G-S	30
ST91-7341	National Fuel Gas Supply Corp	Electric Materials, Co., (The)	03-04-91	G-S	400
ST91-7342	National Fuel Gas Supply Corp	Warren County School Dist	03-04-91	G-S	200
ST91-7343	National Fuel Gas Supply Corp	Rad-O-Mat Holdings US TNK DBA	03-04-91	G-S	100
ST91-7344	National Fuel Gas Supply Corp	GTE Products Corp	03-04-91	G-S	990
ST91-7345	National Fuel Gas Supply Corp	Texas Ohio Gas Inc	03-04-91	G-S	12,458
ST91-7346	National Fuel Gas Supply Corp	Jennie B. Richmond Chaffee	03-04-91	G-S	60
ST91-7347	National Fuel Gas Supply Corp	Motion Control Ind	03-04-91	G-S	659
ST91-7348	National Fuel Gas Supply Corp	St. Francis Home	03-04-91	G-S	70
ST91-7349	National Fuel Gas Supply Corp	Wilson Greatbatch Ltd	03-04-91	G-S	86
ST91-7350	National Fuel Gas Supply Corp	Bay City Forge Operations	03-04-91	G-S	428
ST91-7351	National Fuel Gas Supply Corp	Empire Exploration, Inc	03-04-91	G-S	11,868
ST91-7352	National Fuel Gas Supply Corp	Westfield Memorial Hospital	03-04-91	G-S	50
ST91-7353	National Fuel Gas Supply Corp	Empire Exploration, Inc	03-04-91	G-S	9,643
ST91-7354	National Fuel Gas Supply Corp	Dean Dairy Products Co	03-04-91	G-S	220
ST91-7355	National Fuel Gas Supply Corp	Special Metals Corp	03-04-91	G-S	970
ST91-7356	National Fuel Gas Supply Corp	McDowell Manufacturing Co	03-04-91	G-S	165
ST91-7357	National Fuel Gas Supply Corp	Deveaux Manor Nursing Home	03-04-91	G-S	59
ST91-7358	National Fuel Gas Supply Corp	Daemen College	03-04-91	G-S	32
ST91-7359	National Fuel Gas Supply Corp	Lancaster Steel Service	03-04-91	G-S	80
ST91-7360	National Fuel Gas Supply Corp	Buffalo Board of Education	03-04-91	G-S	5,898
ST91-7361	National Fuel Gas Supply Corp	Sharpsville Area School Dist	03-04-91	G-S	126
ST91-7362	National Fuel Gas Supply Corp	Scott Aviation	03-04-91	G-S	110
ST91-7363	National Fuel Gas Supply Corp	Rad-O-Mat Holdings US	03-04-91	G-S	80
ST91-7364	National Fuel Gas Supply Corp	Russer Foods, Div. of Zemco Indus	03-04-91	G-S	428
ST91-7365	National Fuel Gas Supply Corp	Sharon Steel Corp	03-04-91	G-S	405
ST91-7366	National Fuel Gas Supply Corp	Union City School Dist	03-04-91	G-S	192
ST91-7367	National Fuel Gas Supply Corp	Diocese of Buffalo (The)	03-04-91	G-S	525

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]
ST91-7368	National Fuel Gas Supply Corp	Carbon/Graphite Group, Inc. (The)	03-04-91	G-S	7,692
ST91-7369	National Fuel Gas Supply Corp	Columbus McKinnon Corp	03-04-91	G-S	150
ST91-7370	National Fuel Gas Supply Corp	Dunkirk Public Schools	03-04-91	G-S	151
ST91-7371	National Fuel Gas Supply Corp	Hamlin Terace Heath Care Center	03-04-91	G-S	90
ST91-7372	National Fuel Gas Supply Corp	Tonawanda City School Dist	03-04-91	G-S	216
ST91-7373	National Fuel Gas Supply Corp	Bethlehem Steel Corp	03-04-91	G-S	12,847
ST91-7374	National Fuel Gas Supply Corp	NSO Company	03-04-91	G-S	725
ST91-7375	National Fuel Gas Supply Corp	Oil City Tube Works, Inc	03-04-91	G-S	440
ST91-7376	National Fuel Gas Supply Corp	Hilbert College	03-04-91	G-S	107
ST91-7377	National Fuel Gas Supply Corp	Hermitage School Dist	03-04-91	G-S	310
ST91-7378	National Fuel Gas Supply Corp	Morrison Knudsen Corp	03-04-91	G-S	570
ST91-7379	National Fuel Gas Supply Corp	NYS Office of Genral Services	03-04-91	G-S	118
ST91-7380	National Fuel Gas Supply Corp	Orchard Park Central School Dist	03-04-91	G-S	394
ST91-7381	National Fuel Gas Supply Corp	Outokumpu American Brass, Inc	03-04-91	G-S	2,000
ST91-7382	National Fuel Gas Supply Corp	Hamot Medical Center	03-04-91	G-S	487
ST91-7383	National Fuel Gas Supply Corp	Oil City Area School Dist	03-04-91	G-S	275
ST91-7384	National Fuel Gas Supply Corp	Hegedus Aluminum Industries, Inc	03-04-91	G-S	330
ST91-7385	National Fuel Gas Supply Corp	Haysite Reinforced Plastics Co	03-04-91	G-S	80
ST91-7386	National Fuel Gas Supply Corp	Pierce & Stevens Corporative	03-04-91	G-S	130
ST91-7387	National Fuel Gas Supply Corp	PVS Chemicals, Inc	03-04-91	G-S	1,000
ST91-7388	National Fuel Gas Supply Corp	Panhandle Trading Company	03-04-91	G-S	50,000
ST91-7389	National Fuel Gas Supply Corp	Jamestown Area School	03-04-91	G-S	23
ST91-7390	National Fuel Gas Supply Corp	Jamestown Electroplating Works	03-04-91	G-S	100
ST91-7391	National Fuel Gas Supply Corp	Joy Technologies, Inc	03-04-91	G-S	1,100
ST91-7392	National Fuel Gas Supply Corp	Jamestown Metal Corp	03-04-91	G-S	240
ST91-7393	National Fuel Gas Supply Corp	Jefferson Apartments, W.D. Hassett	03-04-91	G-S	60
ST91-7394	National Fuel Gas Supply Corp	Hard Mfg. Co., Inc	03-04-91	G-S	110
ST91-7395	National Fuel Gas Supply Corp	Hydromechanics Division of Zurn	03-04-91	G-S	400
ST91-7396	National Fuel Gas Supply Corp	Highland Land & Minerals, Inc	03-04-91	G-S	33
ST91-7397	National Fuel Gas Supply Corp	Kidder Exploration Inc	03-04-91	G-S	1,000
ST91-7398	National Fuel Gas Supply Corp	Triangle Auto Spring Co. Inc	03-04-91	G-S	375
ST91-7399	National Fuel Gas Supply Corp	Triangle Auto Spring Co. Inc	03-04-91	G-S	25
ST91-7400	National Fuel Gas Supply Corp	Niagara Frontier Transportation	03-04-91	G-S	765
ST91-7401	National Fuel Gas Supply Corp	U.S. Bronze, Inc	03-04-91	G-S	550
ST91-7402	National Fuel Gas Supply Corp	Thompson Brothers Greenhouse	03-04-91	G-S	100
ST91-7403	National Fuel Gas Supply Corp	Tonawanda Housing Authority	03-04-91	G-S	61
ST91-7404	National Fuel Gas Supply Corp	Tam Ceramics Inc	03-04-91	G-S	750
ST91-7405	National Fuel Gas Supply Corp	Tonawanda Housing Authority	03-04-91	G-S	28
ST91-7406	National Fuel Gas Supply Corp	Sivaco New York	03-04-91	G-S	545
ST91-7407	National Fuel Gas Supply Corp	Sorrento Cheese Company, Inc	03-04-91	G-S	1,120
ST91-7408	National Fuel Gas Supply Corp	Williamsville Central School Dist	03-04-91	G-S	1,014
ST91-7409	National Fuel Gas Supply Corp	Spaulding Composite Co., Inc	03-04-91	G-S	2,141
ST91-7410	National Fuel Gas Supply Corp	State University of NY at Buffalo	03-04-91	G-S	2,500
ST91-7411	National Fuel Gas Supply Corp	St. Catherine of Siena Church	03-04-91	G-S	55
ST91-7412	National Fuel Gas Supply Corp	Smith Meter Inc	03-04-91	G-S	263
ST91-7413	National Fuel Gas Supply Corp	Westvaco Corp	03-04-91	G-S	500
ST91-7414	National Fuel Gas Supply Corp	W.C.A. Hospital	03-04-91	G-S	95
ST91-7415	National Fuel Gas Supply Corp	Citizens Gas Supply Corp	03-04-91	G-S	38,500
ST91-7416	National Fuel Gas Supply Corp	St. Marys of the Angels	03-04-91	G-S	180
ST91-7417	National Fuel Gas Supply Corp	St. Amelia School	03-04-91	G-S	128
ST91-7418	National Fuel Gas Supply Corp	Springville-Griffith Institute	03-04-91	G-S	178
ST91-7419	National Fuel Gas Supply Corp	Windsor Apartments	03-04-91	G-S	80
ST91-7420	National Fuel Gas Supply Corp	Clarence Materials Corp	03-04-91	G-S	50
ST91-7421	National Fuel Gas Supply Corp	Clarion Hospital	03-04-91	G-S	68
ST91-7422	National Fuel Gas Supply Corp	Cliffstar Corp	03-04-91	G-S	734
ST91-7423	National Fuel Gas Supply Corp	Entrade Corp	03-04-91	G-S	25,000
ST91-7424	National Fuel Gas Supply Corp	Entrade Corp	03-04-91	G-S	100,000
ST91-7425	National Fuel Gas Supply Corp	Imperial Mold	03-04-91	G-S	631
ST91-7426	National Fuel Gas Supply Corp	International Paper	03-04-91	G-S	9,000
ST91-7427	National Fuel Gas Supply Corp	Industrial Ceramics, Inc	03-04-91	G-S	570
ST91-7428	National Fuel Gas Supply Corp	Carborundum Co., Inc	03-04-91	G-S	337
ST91-7429	National Fuel Gas Supply Corp	Reserve Gas Company, Inc	03-04-91	G-S	1,499
ST91-7430	National Fuel Gas Supply Corp	Erie Bronze & Aluminum Corp	03-04-91	G-S	274
ST91-7431	National Fuel Gas Supply Corp	Freezer Queen Foods, Inc	03-04-91	G-S	856
ST91-7432	National Fuel Gas Supply Corp	Fred Koch Brewery	03-04-91	G-S	600
ST91-7433	National Fuel Gas Supply Corp	Gibraltar Steel Corp	03-04-91	G-S	444
ST91-7434	National Fuel Gas Supply Corp	Public Service Electric & Gas Co	03-04-91	G-S	101,000
ST91-7435	National Fuel Gas Supply Corp	Westminster Presbyterian Soc	03-04-91	G-S	42
ST91-7436	National Fuel Gas Supply Corp	Carmen Spears, Inc	03-04-91	G-S	165
ST91-7437	National Fuel Gas Supply Corp	Mooney Chemicals, Inc	03-04-91	G-S	990
ST91-7438	National Fuel Gas Supply Corp	Medical Manufacturing Corp	03-04-91	G-S	50
ST91-7439	National Fuel Gas Supply Corp	Coastal Gas Marketing Co	03-04-91	G-S	200,000
ST91-7440	National Fuel Gas Supply Corp	Mogen David Wine Corp	03-04-91	G-S	200
ST91-7441	National Fuel Gas Supply Corp	McInnes Steel Corp	03-04-91	G-S	1,650
ST91-7442	National Fuel Gas Supply Corp	Industrial Energy Serv. Co	03-04-91	G-S	5,313
ST91-7443	National Fuel Gas Supply Corp	Witco Corp	03-04-91	G-S	650
ST91-7444	National Fuel Gas Supply Corp	Cleveland Hill Union Free School	03-04-91	G-S	173
ST91-7445	National Fuel Gas Supply Corp	Entrade Corp	03-04-91	G-S	25,000
ST91-7446	National Fuel Gas Supply Corp	Niagara Falls Sightseeing Sheridan	03-04-91	G-S	110
ST91-7447	National Fuel Gas Supply Corp	Corry Memorial Hospital	03-04-91	G-S	88

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Docket No.[2]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [3]
ST91-7448	National Fuel Gas Supply Corp	MRC Bearings	03-04-91	G-S	250
ST91-7449	National Fuel Gas Supply Corp	Rochester Gas & Elec. Corp	03-04-91	G-S	1,071
ST91-7450	National Fuel Gas Supply Corp	Daemen College	03-04-91	G-S	224
ST91-7451	National Fuel Gas Supply Corp	Episcopal Church Home of Western	03-04-91	G-S	50
ST91-7452	National Fuel Gas Supply Corp	Bush Industries, Inc	03-04-91	G-S	703
ST91-7453	National Fuel Gas Supply Corp	St. Mary's Manor	03-04-91	G-S	140
ST91-7454	National Fuel Gas Supply Corp	Symmco, Incorp	03-04-91	G-S	110
ST91-7455	National Fuel Gas Supply Corp	West Seneca Central School District	03-04-91	G-S	620
ST91-7456	National Fuel Gas Supply Corp	Weber Knapp Co	03-04-91	G-S	440
ST91-7457	National Fuel Gas Supply Corp	Specialty Packaging Prod. Inc	03-04-91	G-S	200
ST91-7458	National Fuel Gas Supply Corp	West Middlesex School Dist	03-04-91	G-S	152
ST91-7459	National Fuel Gas Supply Corp	Clarion Sintered Metals, Inc	03-04-91	G-S	173
ST91-7460	National Fuel Gas Supply Corp	Warren Components Corp	03-04-91	G-S	119
ST91-7461	National Fuel Gas Supply Corp	CNG Transmission Corp	03-04-91	G-S	100,000
ST91-7462	National Fuel Gas Supply Corp	Dahlstrom Manufacturing Co., Inc	03-04-91	G-S	720
ST91-7463	National Fuel Gas Supply Corp	Empire Exploration, Inc	03-04-91	G-S	100,000
ST91-7464	National Fuel Gas Supply Corp	Reznor Division of FL Indus. Inc	03-04-91	G-S	205
ST91-7465	National Fuel Gas Supply Corp	Cheektowaga-Sloan Union Free	03-04-91	G-S	286
ST91-7466	National Fuel Gas Supply Corp	Morgan Services, Inc	03-04-91	G-S	224
ST91-7467	National Fuel Gas Supply Corp	Clarence Central School Dist	03-04-91	G-S	260
ST91-7468	National Fuel Gas Supply Corp	Chase Interiors Inc	03-04-91	G-S	160
ST91-7469	National Fuel Gas Supply Corp	General Motors Corp	03-04-91	G-S	5,580
ST91-7470	National Fuel Gas Supply Corp	General Air Division of Zurn Industries	03-04-91	G-S	20
ST91-7471	National Fuel Gas Supply Corp	GAF Building Materials Corp	03-04-91	G-S	860
ST91-7472	National Fuel Gas Supply Corp	Riley Stoker Corp	03-04-91	G-S	550
ST91-7473	National Fuel Gas Supply Corp	Phillips Steel Co., Inc	03-04-91	G-S	167
ST91-7474	National Fuel Gas Supply Corp	Pennsylvania Pressed Metals, Inc	03-04-91	G-S	494
ST91-7475	National Fuel Gas Supply Corp	Pure Carbon Co., Div of Pure Industries	03-04-91	G-S	330
ST91-7476	National Fuel Gas Supply Corp	General Electric Co	03-04-91	G-S	407
ST91-7477	National Fuel Gas Supply Corp	Globe International Inc	03-04-91	G-S	214
ST91-7478	National Fuel Gas Supply Corp	Genesee County Nursing Home	03-04-91	G-S	90
ST91-7479	National Fuel Gas Supply Corp	Reynolds School Dist	03-04-91	G-S	115
ST91-7480	National Fuel Gas Supply Corp	Phillips Lighting Co	03-04-91	G-S	70
ST91-7481	National Fuel Gas Supply Corp	Algonquin Gas Transmission Co	03-04-91	G-S	100,000
ST91-7482	National Fuel Gas Supply Corp	Connecticut Natural Gas	03-04-91	G-S	20,000
ST91-7483	National Fuel Gas Supply Corp	Commodore Gas	03-04-91	G-S	3,000
ST91-7484	National Fuel Gas Supply Corp	Seton School	03-04-91	G-S	80
ST91-7485	National Fuel Gas Supply Corp	Ridgway Area Public Schools	03-04-91	G-S	170
ST91-7486	National Fuel Gas Supply Corp	Geotz Energy Corp	03-04-91	G-S	10,000
ST91-7487	National Fuel Gas Supply Corp	St. Mary's Metal Finishing, Inc	03-04-91	G-S	440
ST91-7488	National Fuel Gas Supply Corp	Rhode Island St. Nursing Home Co	03-04-91	G-S	90
ST91-7489	National Fuel Gas Supply Corp	Westbury United Methodist Church	03-04-91	G-S	184
ST91-7490	National Fuel Gas Supply Corp	Zurn Energy Division of Zurn	03-04-91	G-S	1,200
ST91-7491	National Fuel Gas Supply Corp	Cameron County School Dist	03-04-91	G-S	110
ST91-7492	National Fuel Gas Supply Corp	Chautauqua Hardware Corp	03-04-91	G-S	198
ST91-7493	National Fuel Gas Supply Corp	Canisius High School	03-04-91	G-S	110
ST91-7494	National Fuel Gas Supply Corp	F. H. Buhl Club	03-04-91	G-S	110
ST91-7495	National Fuel Gas Supply Corp	Tri-County Memorial Hospital	03-04-91	G-S	42
ST91-7496	National Fuel Gas Supply Corp	Carbon/Graphite Group, Inc	03-04-91	G-S	4,527
ST91-7497	National Fuel Gas Supply Corp	Kenmore-Tonawanda Union Free	03-04-91	G-S	922
ST91-7498	National Fuel Gas Supply Corp	KN Gas Marketing, Inc	03-04-91	G-S	150,000
ST91-7499	National Fuel Gas Supply Corp	Kenmore Mercy Hospital	03-04-91	G-S	280
ST91-7500	National Fuel Gas Supply Corp	Laurel Manufacturing Inc	03-04-91	G-S	137
ST91-7501	National Fuel Gas Supply Corp	Lancaster Knives, Inc	03-04-91	G-S	70
ST91-7502	National Fuel Gas Supply Corp	Lender's Bagel Bakery	03-04-91	G-S	637
ST91-7503	National Fuel Gas Supply Corp	Lakeview Forge Co	03-04-91	G-S	116
ST91-7504	National Fuel Gas Supply Corp	Clarence Materials Corp	03-04-91	G-S	100
ST91-7505	National Fuel Gas Supply Corp	John XXII Home	03-04-91	G-S	54
ST91-7506	National Fuel Gas Supply Corp	Union Texa Petroleum	03-04-91	G-S	2,000
ST91-7507	National Fuel Gas Supply Corp	Buffalo Forge Co	03-04-91	G-S	650
ST91-7508	National Fuel Gas Supply Corp	Peoples Natural Gas Co. (The)	03-04-91	G-S	710
ST91-7509	National Fuel Gas Supply Corp	YMCA of Niagara Falls	03-04-91	G-S	50
ST91-7510	National Fuel Gas Supply Corp	Zurn Corporate Headquarters	03-04-91	G-S	15
ST91-7511	National Fuel Gas Supply Corp	El Paso Natural Gas Co	03-04-91	G-S	25,000
ST91-7512	National Fuel Gas Supply Corp	Trunkline Gas Co	03-04-91	G-S	50,000
ST91-7513	National Fuel Gas Supply Corp	Northern Natural Gas Co	03-04-91	G-S	50,000
ST91-7514[1]	National Fuel Gas Supply Corp	Georgia-Pacific Corp	03-04-91	G-S	13,000
ST91-7515	Texas Eastern Transmission Corp	Monterey Pipeline Co	03-05-91	B	30,000
ST91-7516	Texas Eastern Transmission Corp	Olympic Pipeline Co	03-05-91	B	50,000
ST91-7517	Texas Eastern Transmission Corp	Columbia Gas of Ohio, Inc	03-05-91	G-S	20,000
ST91-7518	Texas Eastern Transmission Corp	Public Service Electric & Gas Co	03-05-91	B	330,000
ST91-7519	Southern Natural Gas Co	Texican Natural Gas Co	03-05-91	G-S	15,000
ST91-7520	Southern Natural Gas Co	South Georgia Natural Gas Co	03-05-91	G	4,000
ST91-7521	Southern Natural Gas Co	Riverside Energy Resources, Inc	03-05-91	G-S	80,000
ST91-7522	U-T Offshore System	Tennessee Gas Pipeline Co	03-05-91	K-S	10,000
ST91-7523	National Fuel Gas Supply Corp	Pleasant Ridge Manor	03-05-91	G-S	181
ST91-7524	National Fuel Gas Supply Corp	Gannondale Residental Center	03-05-91	G-S	40
ST91-7525	National Fuel Gas Supply Corp	Sharon Regional Health Systems	03-05-91	G-S	265
ST91-7526	National Fuel Gas Supply Corp	St. Mark Catholic Center	03-05-91	G-S	57
ST91-7527	National Fuel Gas Supply Corp	Cranberry Pipeline Corp	03-05-91	G-S	5,000

Docket No.[2]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [3]
ST91-7528	National Fuel Gas Supply Corp	Sharah A. Reed Retirement Center (The)	03-05-91	G-S	85
ST91-7529	National Fuel Gas Supply Corp	Benedictine Sisters of Erie, Inc	03-05-91	G-S	41
ST91-7530	National Fuel Gas Supply Corp	Sacred Heart School	03-05-91	G-S	20
ST91-7531	National Fuel Gas Supply Corp	Young Mens Christian Assoc. of Dubois	03-05-91	G-S	110
ST91-7532	National Fuel Gas Supply Corp	Crawford County Care Center	03-05-91	G-S	160
ST91-7533	National Fuel Gas Supply Corp	Millcreek Community Hospital	03-05-91	G-S	68
ST91-7534	National Fuel Gas Supply Corp	Elk County General Hospital	03-05-91	G-S	164
ST91-7535	National Fuel Gas Supply Corp	Titusville Area Hospital	03-05-91	G-S	104
ST91-7536	National Fuel Gas Supply Corp	Greenville Regional Hospital	03-05-91	G-S	182
ST91-7537	National Fuel Gas Supply Corp	Hospitality Motels USA, Inc	03-05-91	G-S	60
ST91-7538	National Fuel Gas Supply Corp	Metro Health Center	03-05-91	G-S	142
ST91-7539	National Fuel Gas Supply Corp	Elk County Christian High School	03-05-91	G-S	110
ST91-7540	National Fuel Gas Supply Corp	Sweet Home Central School District	03-05-91	G-S	248
ST91-7541	Colorado Interstate Gas Co	Rangeline Corp	03-05-91	G-S	15,000
ST91-7542	ANR Pipeline Co	Wisconsin Public Service Co	03-05-91	B	4,825
ST91-7543	ANR Pipeline Co	Transtate Gas Service Co	03-05-91	B	2,000
ST91-7544	Sabine Pipe Line Co	Riverside Pipeline Co	03-05-91	B	80,000
ST91-7545	Valero Transmission, L.P	El Paso Natural Gas Co	03-05-91	C	50,000
ST91-7546	ANR Pipeline Co	Wisconsin Public Service Corp	03-05-91	B	750
ST91-7547	Williams Natural Gas Co	TXO Gas Marketing Corp	03-06-91	G-S	50,000
ST91-7548	Williams Natural Gas Co	Vesta Energy Co	03-06-91	G-S	1,110
ST91-7549	Williams Natural Gas Co	Delhi Gas Pipeline Corp	03-06-91	G-S	50,000
ST91-7550	Arkla Energy Resources	Iowa Public Service Co	03-06-91	B	50,000
ST91-7551	Arkla Energy Resources	Midwest Natural Gas Corp	03-06-91	B	50,000
ST91-7552	Houston Pipe Line Co	Transcontinental Gas Pipe Line Corp	03-06-91	C	25,000
ST91-7553	Houston Pipe Line Co	Transcontinental Gas Pipe Line Corp	03-06-91	C	50,000
ST91-7554	Houston Pipe Line Co	Natural Gas Pipeline Co. of America	03-06-91	C	50,000
ST91-7555	Houston Pipe Line Co	Black Marlin Pipeline Co	03-06-91	C	25,000
ST91-7556	Houston Pipe Line Co	Northern Natural Gas Co	03-06-91	C	10,000
ST91-7557	Houston Pipe Line Co	United Gas Pipe Line Co	03-06-91	C	3,000
ST91-7558	Houston Pipe Line Co	United Gas Pipe Line Co	03-06-91	C	50,000
ST91-7559	Houston Pipe Line Co	Black Marlin Pipeline Co	03-06-91	C	15,000
ST91-7560	Houston Pipe Line Co	Black Marlin Pipeline Co	03-06-91	C	10,000
ST91-7561	Houston Pipe Line Co	Black Marlin Pipeline Co	03-06-91	C	5,000
ST91-7562	Houston Pipe Line Co	Black Marlin Pipeline Co	03-06-91	C	100,000
ST91-7563	Houston Pipe Line Co	Black Marlin Pipeline Co	03-06-91	C	50,000
ST91-7564	Houston Pipe Line Co	Tennessee Gas Pipeline Co	03-06-91	C	25,000
ST91-7565	Houston Pipe Line Co	TPC Transmission	03-06-91	C	50,000
ST91-7566	Houston Pipe Line Co	TPC Transmission	03-06-91	C	20,000
ST91-7567	Houston Pipe Line Co	Northern Natural Gas Co	03-06-91	C	50,000
ST91-7568	Houston Pipe Line Co	Northern Natural Gas Co	03-06-91	C	50,000
ST91-7569	Houston Pipe Line Co	Northern Natural Gas Co	03-06-91	C	5,000
ST91-7570	Oasis Pipe Line Co	Transwestern Pipeline Co	03-06-91	C	50,000
ST91-7571	Oasis Pipe Line Co	Transwestern Pipeline Co	03-06-91	C	100,000
ST91-7572	Columbia Gas Transmission Corp	Shawmut Development Corp	03-06-91	G-S	5,000
ST91-7573	Transcontinental Gas Pipe Line Corp	United Texas Transmission Co	03-06-91	B	75,000
ST91-7574	Transcontinental Gas Pipe Line Corp	City of Elberton	03-06-91	B	120,000
ST91-7575	Transcontinental Gas Pipe Line Corp	City of Hartwell	03-06-91	B	120,000
ST91-7576	Transok, Inc	Natural Gas Pipeline Co. of America	03-06-91	C	25,000
ST91-7577	Florida Gas Transmission Co	PSI, Inc	03-06-91	G-S	200,000
ST91-7578	Florida Gas Transmission Co	City of Clearwater	03-06-91	G-S	10,219
ST91-7579	Florida Gas Transmission Co	United States Gypsum Co	03-06-91	G-S	24,000
ST91-7580	Florida Gas Transmission Co	Westvaco Corp	03-06-91	G-S	500
ST91-7581	Florida Gas Transmission Co	Chesapeake Utilities Corp	03-06-91	G-S	20,000
ST91-7582	Valero Transmission, L.P	El Paso Natural Gas Pipeline Co	03-06-91	C	3,000
ST91-7583	ONG Transmission Co	Williams Natural Gas Co	03-06-91	C	75,000
ST91-7584	Questar Pipeline Co	Mountain Fuel Supply Co	03-06-91	B	24,000
ST91-7585	Trunkline Gas Co	PSI, Inc	03-06-91	G-S	50,000
ST91-7586	ANR Pipeline Co	Acadian Gas Pipeline System	03-07-91	B	20,000
ST91-7587	ANR Pipeline Co	Columbia Gas of Ohio	03-07-91	B	100,000
ST91-7588	ANR Pipeline Co	Northern Illinois Gas Co	03-07-91	B	50,000
ST91-7589	ANR Pipeline Co	Tex/Con Gas Pipeline Co	03-07-91	B	50,000
ST91-7590	ANR Pipeline Co	Acadian Gas Pipeline System	03-07-91	B	200,000
ST91-7591	Transwestern Pipeline Co	Cibola Corp	03-07-91	G-S	50,000
ST91-7592	Transwestern Pipeline Co	Vesta Energy Co	03-07-91	G-S	100,000
ST91-7593	Florida Gas Transmission Co	Florida Public Utilities Co	03-07-91	G-S	51,900
ST91-7594	Florida Gas Transmission Co	City of Tallahassee	03-07-91	B	150,000
ST91-7595	Florida Gas Transmission Co	Public Service Electric & Gas Co	03-07-91	G-S	50,000
ST91-7596	Florida Gas Transmission Co	Okaloosa County Natural Gas District	03-07-91	G-S	28,000
ST91-7597	Williston Basin Interstate P/L Co	PSI Gas Marketing, Inc	03-07-91	G-S	50,000
ST91-7598	Northwest Pipeline Corp	Southern California Gas Co	03-07-91	B	20,000
ST91-7599	United Gas Pipeline Co	Laser Marketing Co	03-07-91	G-S	618,000
ST91-7600	United Gas Pipeline Co	Midcon Marketing Corp	03-07-91	G-S	721,000
ST91-7601	United Gas Pipeline Co	Penzoil Gas Marketing Co	03-07-91	G-S	206,000
ST91-7602	U-T Offshore Systems	Laser Marketing Co	03-07-91	K-S	150,000
ST91-7603	Tennessee Gas Pipeline Co	Cincinnati Gas and Electric Co	03-07-91	B	100,000
ST91-7604	Natural Gas Pipeline Co. of America	Midwest Gas, Div. Iowa Pub. Service Co	03-07-91	B	135,000
ST91-7605	Columbia Gulf Transmission Co	Mobil Natural Gas, Inc	03-07-91	G-S	80,000
ST91-7606	Columbia Gulf Transmission Co	NGC Transportation, Inc	03-07-91	G-S	50,000
ST91-7607	Columbia Gulf Transmission Co	Hadson, Gas Systems, Inc	03-07-91	G-S	45,000

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ST91-7608	Columbia Gulf Transmission Co	Math Corp	03-07-91	G-S	25,000
ST91-7609	Columbia Gulf Transmission Co	Exxon Corp	03-07-91	G-S	25,000
ST91-7610	East Texas Gas Systems	Texas Gas Transmission Corp	03-06-91	C	80,000
ST91-7611	Viking Gas Transmission Co	Northern Minnesota Utilities	03-06-91	G-S	4,028
ST91-7612	Gas Transport, Inc	Gas Marketing, Inc	03-06-91	G-S	450
ST91-7613	Gas Transport, Inc	Natural Gas Clearinghouse	03-06-91	G-S	10,000
ST91-7614	Gas Transport, Inc	River Gas Co. (The)	03-06-91	G-S	5,000
ST91-7615	Natural Gas Pipeline Co. of America	Entrade Corp	03-06-91	G-S	200,000
ST91-7616	South Georgia Natural Gas Co	Entrade Corp	03-06-91	G-S	200,000
ST91-7617	Panhandle Eastern Pipe Line Co	Union Gas, Ltd	03-06-91	B	140,000
ST91-7618	Panhandle Eastern Pipe Line Co	City of Richmond	03-06-91	B	20,000
ST91-7619	Panhandle Eastern Pipe Line Co	Amgas, Inc	03-06-91	G-S	100
ST91-7620	Panhandle Eastern Pipe Line Co	Enserch Gas Co	03-06-91	G-S	100,000
ST91-7621	Washington Gas Light Co	Piedmont Natural Gas co	03-11-91	D	50,000
ST91-7622	Natural Gas Pipeline Co. of America	Caspen Gas Co	03-11-91	G-S	30,000
ST91-7623	Enogex Inc	Alkla Energy Resources	03-11-91	C	5,000
ST91-7624	Peach Ridge Pipeline Inc	El Paso Natural Gas co	03-11-91	C	46,000
ST91-7625	Transok, Inc	Northern Natural Gas Co	03-11-91	C	25,000
ST91-7626	Acadian Gas Pipeline System	Trancontinenal Gas Pipe Line Corp	03-11-91	C	15,000
ST91-7627	Northern Natural Gas Co	City of Remsen	03-11-91	B	400
ST91-7628	Northern Natural Gas Co	NGC Transportation, Inc	03-11-91	G-S	12,000
ST91-7629	Northern Natural Gas Co	Northern States Power Co	03-11-91	B	107,528
ST91-7630	Williston Basin Interstate P/L Co	Western Gas Processors, Ltd	03-11-91	G-S	117,770
ST91-7631	Northern Pipeline Corp	Pacific Gas & Electric Co	03-11-91	B	100,000
ST91-7632	Northern Pipeline Corp	Southern California Gas Co	03-11-91	B	100,000
ST91-7633	Northern Pipeline Corp	Pacific Gas & Electric Co	03-11-91	B	30,000
ST91-7634	Northern Pipeline Corp	Southwest Gas Corp	03-11-91	B	100,000
ST91-7635	Northern Pipeline Corp	Southern California Gas Co	03-11-91	B	2,000
ST91-7636	Northern Pipeline Corp	Southern California Gas Co	03-11-91	B	25,000
ST91-7637	Transcontinental Gas Pipe Line Corp	Mississippi Fuel Co	03-11-91	B	40,000
ST91-7638	Transcontinental Gas Pipe Line Corp	Consolidated Edison Co. of NY, Inc	03-11-91	B	335,000
ST91-7639	Transcontinental Gas Pipe Line Corp	North Carolina Natural Gas Corp	03-11-91	B	846,000
ST91-7640	Transcontinental Gas Pipe Line Corp	Energy Marketing Exchange, Inc	03-11-91	G-S	2,000,000
ST91-7641	Transcontinental Gas Pipe Line Corp	City of Bowman	03-11-91	B	120,000
ST91-7642	Green Canyon Pipe Line Co	Bayou Industrial Gas Corp	03-11-91	B	25,000
ST91-7643	Green Canyon Pipe Line Co	Pontchartrain Natural Gas System	03-11-91	B	50,000
ST91-7644	Algonquin Gas Transmission Co	Paragon Gas Corp	03-11-91	G-S	90,000
ST91-7645	Algonquin Gas Transmission Co	O&R Energy, Inc	03-11-91	G-S	50,000
ST91-7646	Algonquin Gas Transmission Co	Coastal Gas Marketing Co	03-11-91	G-S	500,000
ST91-7647	Algonquin Gas Transmission Co	Texas-Ohio Gas, Inc	03-11-91	G-S	15,000
ST91-7648	Algonquin Gas Transmission Co	Distrigas of Massachusetts Corp	03-11-91	G-S	90,000
ST91-7649	Algonquin Gas Transmission Co	O&R Energy, Inc	03-11-91	G-S	50,000
ST91-7650	Algonquin Gas Transmission Co	Citizens Gas Pipe Line Corp	03-11-91	G-S	150,000
ST91-7651	Algonquin Gas Transmission Co	Coastal Gas Marketing Co	03-11-91	B	500,000
ST91-7652	Algonquin Gas Transmission Co	O&R Energy, Inc	03-11-91	G-S	50,000
ST91-7653	Algonquin Gas Transmission Co	O&R Energy, Inc	03-11-91	G-S	50,000
ST91-7654	Texas Gas Transmission Corp	Indiana Gas Co. Inc	03-11-91	G-S	22,000
ST91-7655	Texas Gas Transmission Corp	Southern Gas Co., Inc	03-11-91	G-S	2,000
ST91-7656	Texas Gas Transmission Corp	Memphis Light, Gas and Water Div	03-11-91	B	1,700
ST91-7657	Texas Gas Transmission Corp	Western Kentucky Gas Co	03-12-91	B	504
ST91-7658	Mississippi Valley Gas Co	Texas Eastern Transmission Corp	03-12-91	C	6,000
ST91-7659	Natural Gas Pipeline Co. of America	Triumph Gas Marketing Co	03-12-91	G-S	500,000
ST91-7660	Columbia Gas Transmission Corp	Krupp & Associates	03-12-91	G-S	30,000
ST91-7661	Houston Pipe Line Co	Seagull Interstate Corp	03-12-91	C	5,000
ST91-7662	Houston Pipe Line Co	Transcontinental Gas Pipe Line Corp	03-12-91	C	50,000
ST91-7663	Houston Pipe Line Co	Transcontinental Gas Pipe Line Corp	03-12-91	C	20,000
ST91-7664	Houston Pipe Line Co	Transwestern Pipeline Co	03-12-91	C	20,000
ST91-7665	Houston Pipe Line Co	Florida Gas Transmission Co	03-12-91	C	5,000
ST91-7666	Houston Pipe Line Co	Florida Gas Transmission	03-12-91	C	30,000
ST91-7667	Houston Pipe Line Co	Florida Gas Transmission Co	03-12-91	C	3,500
ST91-7668	Houston Pipe Line Co	Amoco Gas Transmission co	03-12-91	C	100,000
ST91-7669	Arkla Energy Resources	Arkansas Louisiana Gas Co	03-12-91	B	15,000
ST91-7670	Panhandle Eastern Pipe Line Co	North Atlantic Utilities, Inc	03-12-91	G-S	30,000
ST91-7671	Tennessee Gas Pipeline Co	Coronado Transmission Co	03-13-91	B	1,000
ST91-7672	Delhi Gas Pipeline Corp	Transcontinental Gas Pipeline Corp	03-13-91	C	32,000
ST91-7673	Valero Transmission, L.P	Texas Eastern Transportation Corp	03-13-91	C	3,300
ST91-7674	Transcontinental Gas Pipe Line Corp	Texas-Ohio, Inc	03-13-91	G-S	20,000
ST91-7675	High Island Offshore System	Laser Marketing Co	03-13-91	K-S	580,000
ST91-7676	Northwest Pipeline Corp	Industrial Gas Sales, Inc	03-13-91	G-S	1,000
ST91-7677	United Gas Pipe Line Co	Citizens Gas Supply Corp	03-13-91	G-S	20,600
ST91-7678	K N Energy, Inc	American Central Gas Marketing Co	03-14-91	G-S	100,000
ST91-7679	Midwestern Gas Transmission Co	CMS Gas Marketing	03-14-91	G-S	50,000
ST91-7680	Northern Natural Gas Co	Fina Natural Gas Co	03-14-91	G-S	30,000
ST91-7681	Transwestern Pipeline Co	Meridian Oil Trading, Inc	03-14-91	G-S	100,000
ST91-7682	Louisiana Intrastate Gas Corp	Columbia Gulf Transmission Co	03-14-91	C	25,000
ST91-7683	Enogex Inc	Natural Gas Pipeline Co. of America	03-14-91	C	50,000
ST91-7684	Enogex Inc	Natural Gas Pipeline Co. of America	03-14-91	C	25,000
ST91-7685	Enogex Inc	ANR Pipeline Co	03-14-91	C	100,000
ST91-7686	Enogex Inc	ANR Pipeline Co	03-14-91	C	5,000
ST91-7687	Enogex Inc	ANR Pipeline Co	03-14-91	C	50,000

Docket No.[2]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [3]
ST91-7688 *	Enogex Inc	Arkla Energy Resources	03-14-91	C	15,000
ST91-7689	United Gas Pipe Line Co	Graham Energy Marketing Corp	03-14-91	G-S	123,600
ST91-7690	United Gas Pipe Line Co	Consolidated Fuel Corp	03-14-91	G-S	77,250
ST91-7691	United Gas Pipe Line Co	Independent Energy Marketing, Ltd	03-14-91	G-S	515
ST91-7692	United Gas Pipe Line Co	Oryx Gas Marketing Limited Partnership	03-14-91	G-S	61,800
ST91-7693	United Gas Pipe Line Co	Oryx Gas Marketing Limited Partnership	03-14-91	G-S	61,800
ST91-7694	United Gas Pipe Line Co	United Texas Transmission Co	03-14-91	B	25,750
ST91-7695	United Gas Pipe Line Co	Eastex Gas Transmission Co	03-14-91	G-S	144,200
ST91-7696	United Gas Pipe Line Co	Equitable Marketing Co	03-14-91	G-S	257,500
ST91-7697	United Gas Pipe Line Co	Transamerica Gas Transmission Corp	03-14-91	G-S	154,500
ST91-7698	United Gas Pipe Line Co	Tejas Power Corp	03-14-91	G-S	51,500
ST91-7699	United Gas Pipe Line Co	Texaco Gas Marketing Inc	03-14-91	G-S	206,000
ST91-7700	United Gas Pipeline Co	Pennzoil Gas Marketing Co	03-14-91	G-S	206,000
ST91-7701	United Gas Pipeline Co	Bishop Pipeline Corp	03-14-91	G-S	41,200
ST91-7702	United Gas Pipeline Co	Arkla Energy Marketing Co	03-14-91	G-S	206,000
ST91-7703	Columbia Gas Transmission Corp	Cumberland Gas Marketing Co	03-14-91	G-S	25,000
ST91-7704	Columbia Gas Transmission Corp	Gas Access Systems, Inc	03-14-91	G-S	200,000
ST91-7705	Columbia Gas Transmission Corp	Columbia Gas of Kentucky, inc	03-14-91	B	2,650
ST91-7706	Valero Transmission, L.P	Truckline Gas Co	03-15-91	C	9,500
ST91-7707	Valero Transmission, L.P	Texas Eastern Gas Pipeline Co	03-15-91	C	1,500
ST91-7708	El Paso Natural Gas Co	Texaco Gas Market Inc	03-15-91	G-S	103,000
ST91-7709	Trailblazer Pipeline Co	Northern Indiana Public Service Co	03-15-91	B	353,000
ST91-7710	Natural Gas Pipeline Co. of America	Trunkline Gas Co	03-15-91	G-	15,000
ST91-7711	East Texas Gas Systems	Tennessee Gas Pipeline Co	03-01-91	C-	50,000
ST91-7712	United Gas Pipeline Co	PSI Gas Marketing, Inc	03-15-91	G-S	103,000
ST91-7713	Transwestern Pipeline Co	Cibole Corp	03-15-91	B	50,000
ST91-7714	Northwest Pipeline Corp	Pacific Gas & Electric Co	03-15-91	B	70,000
ST91-7715	Northwest Pipeline Corp	Southern California Gas Co	03-15-91	B	70,000
ST91-7716	Williston Basin Interstate P/L Co	Prairielands Energy Marketing, Inc	03-15-91	G-S	16,502
ST91-7717	Williston Basin Interstate P/L co	Marillat Industries, Inc	03-15-91	G-S	1,500
ST91-7718	Equitrans, inc	Cng Trading Co	03-15-91	G-S	51,205
ST91-7719	Delhi Gas Pipeline Corp	Arkla Energy Resources	03-18-91	C	5,000
ST91-7720	Dow Pipeline Co	Florida Gas Transmission Co	03-18-91	C	50,000
ST91-7721	Equitrans, Inc	Clinton Gas Marketing	03-18-91	G-S	6,750
ST91-7722	United Gas Pipeline Co	Phoenix Gas Pipeline Co	03-18-91	G-S	103,000
ST91-7723	Natural Gas Pipeline Co. of America	Texaco Gas Marketing, Inc	03-18-91	G-S	100,000
ST91-7724	Dow Pipeline Co	Texas Eastern Transmission Co	03-18-91	C	50,000
ST91-7725	Dow Pipeline Co	Natural Gas Pipeline Co of America	03-18-91	C	50,000
ST91-7726	Dow Pipeline Co	Tennessee Gas Pipeline Co	03-18-91	C	50,000
ST91-7727 [1]	United Gas Pipeline Co	City of Pascagoula	03-18-91	G-S	618,300
ST91-7728	Trunkline Gas Co	North Atlantic Utilities, Inc	03-18-91	G-S	30,000
ST91-7729	Trunkline Gas Co	Baltimore Gas & Electric Co., Et Al	03-18-91	B	30,000
ST91-7730	Trunkline Gas Co	City of Richmond	03-18-91	B	20,000
ST91-7731	Trunkline Gas Co	Shell Gas Trading Co	03-18-91	G-G	100,000
ST91-7732	Trunkline Gas Co	Access Energy Corp	03-18-91	G-S	100,000
ST91-7733	Trunkline Gas Co	Enron Gas Marketing, Inc	03-18-91	G-S	50,000
ST91-7734	Trunkline Gas Co	Gastrak Corp	03-18-91	G-S	100,000
ST91-7735	Trunkline Gas Co	Northern Indiana Public Service Co	03-18-91	B	150,000
ST91-7736	Louisiana Resources Co	Southern Natural Gas Co	03-18-91	C	100,000
ST91-7737	Trunkline Gas Co	East Ohio Gas Co	03-18-91	B	100,000
ST91-7738	El Paso Natural Gas Co	Valero Industrial Gas, L.P	03-19-91	G-S	206,000
ST91-7739	El Paso Natural Gas Co	Texas-Ohio Gas, Inc	03-19-91	G-S	14,987
ST91-7740	El Paso Natural Gas Co	Southern Union Gas Co	03-19-91	G-S	5,150
ST91-7741	El Paso Natural Gas Co	Gas Company of New Mexico	03-19-91	G-S	2,060
ST91-7742	Ong Transmission Co	Williams Natural Gas Co	03-19-91	C	15,000
ST91-7743	Ong Transmission Co	United Gas Pipeline Co	03-19-91	C	100,000
ST91-7744	Northern Natural Gas Co	Northern Minnesota Utilities	03-19-91	B-	100,000
ST91-7745	Northern Natural Gas Co	Enron Gas Marketing, Inc	03-19-91	G-S	500,000
ST91-7746	Northern Natural Gas Co	Wes Cana Marketing Energy (U.S.) Inc	03-19-91	G-S	50,000
ST91-7747	Florida Gas Transmission Co	U.S. Agri-Chemicals Corp	03-19-91	G-S	712
ST91-7748	U-T Offshore System	Citizens Gas Supply Corp	03-19-91	K-S	400,000
ST91-7749	Transcontinental Gas Pipeline Corp	City of Royston	03-19-91	B	120,000
ST91-7750	Transcontinental Gas Pipeline Corp	City of Madison	03-19-91	B	120,000
ST91-7751	Transcontinental Gas Pipeline Corp	City of Commerce	03-19-91	B	120,000
ST91-7752	Transcontinental Gas Pipeline Corp	City of Covington	03-19-91	B	120,000
ST91-7753	Transcontinental Gas Pipeline Corp	Corpus Christi Industrial Pipeline Co	03-19-91	B	200,000
ST91-7754	Transcontinental Gas Pipeline Corp	City of Lawrenceville	03-19-91	B	140,000
ST91-7755	Transcontinental Gas Pipeline Corp	City of Sugar Hill	03-19-91	B	120,000
ST91-7756	Transcontinental Gas Pipeline Corp	L&E Gas Marketing, Inc	03-19-91	G-S	945,000
ST91-7757	Arkla Energy Resources	Union Pacific Resources	03-19-91	B	25,000
ST91-7758	Texas Eastern Transmission Corp	Commonwealth Gas Co	03-19-91	B	574,000
ST91-7759	Texas Eastern Transmission Corp	City of Batesville	03-19-91	B	12,000
ST91-7760	Texas Eastern Transmission Corp	Central Illinois Public Service Co	03-19-91	B	130,000
ST91-7761	Texas Eastern Transmission Corp	Columbia Gas of Ohio, Inc	03-19-91	B	6,500
ST91-7762	Texas Eastern Transmission Corp	Central Hudson Gas & Electric Corp	03-19-91	B	40,000
ST91-7763	Texas Eastern Transmission Corp	Commonwealth Gas Co	03-19-91	B	200,000
ST91-7764	Texas Eastern Transmission Corp	Excel Intrastate Pipeline Co	03-19-91	B	150,000
ST91-7765	Texas Eastern Transmission Corp	Columbia Gas of NY Inc	03-19-91	B	50,000
ST91-7766	Texas Eastern Transmission Corp	American Distribution Co	03-19-91	B	6,200
ST91-7767	Texas Eastern Transmission Corp	Consolidated Edison Co. Of NY, Inc	03-19-91	B	710,000

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Docket No.[8]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [9]
ST91-7768	Texas Eastern Transmission Corp	Commonwealth Gas Services, Inc	03-19-91	B	50,000
ST91-7769	Texas Eastern Transmission Corp	Elizabethtown Gas Co	03-19-91	B	574,000
ST91-7770	Texas Eastern Transmission Corp	UGI	03-19-91	B	160,000
ST91-7771	Texas Eastern Transmission Corp	New Jersey Natural Gas Co	03-19-91	B	788,604
ST91-7772	Texas Eastern Transmission Corp	Public Service Electric & Gas Co	03-19-91	B	1,359,335
ST91-7773	Texas Eastern Transmission Corp	New Jersey Natural Gas Co	03-19-91	B	180,000
ST91-7774	Texas Eastern Transmission Corp	Bridgeline Gas Distribution Co	03-19-91	B	50,000
ST91-7775	Texas Eastern Transmission Corp	Philadelphia Gas Works, Inc	03-19-91	B	200,000
ST91-7776	Texas Eastern Transmission Corp	City of Chambersburg Gas Dept	03-19-91	B	104,000
ST91-7777	Texas Eastern Transmission Corp	City of Chambersburg Gas Dept	03-19-91	B	104,000
ST91-7778	Texas Eastern Transmission Corp	New Jersey Natural Gas Co	03-19-91	B	574,000
ST91-7779	Texas Eastern Transmission Corp	Allied Gas Co	03-19-91	B	44,800
ST91-7780	Texas Eastern Transmission Corp	Columbia Gas of PA, Inc	03-19-91	B	170,000
ST91-7781	Texas Eastern Transmission Corp	Columbia Gas of MD, Inc	03-19-91	B	50,000
ST91-7782	Texas Eastern Transmission Corp	Brooklyn Union Gas Co	03-19-91	B	23,000
ST91-7783	Texas Eastern Transmission Corp	Columbia Gas of KY Inc	03-19-91	B	50,000
ST91-7784	Texas Eastern Transmission Corp	Philadelphia Electric Co	03-19-91	B	32,000
ST91-7785	Texas Eastern Transmission Corp	Sabine Gas Transmission Co	03-19-91	B	150,000
ST91-7786	Texas Eastern Transmission Corp	Columbia Gas of Ohio, Inc	03-19-91	B	123,000
ST91-7787	Texas Eastern Transmission Corp	Colonial Gas Co	03-19-91	B	35,000
ST91-7788	Texas Eastern Transmission Corp	Polaris Energy Co	03-19-91	B	25,200
ST91-7789	Texas Eastern Transmission Corp	Allied Gas Co	03-19-91	B	44,800
ST91-7790	Texas Eastern Transmission Corp	Equitable Gas Co	03-19-91	B	40,000
ST91-7791	Texas Eastern Transmission Corp	Apache Transmission Corp	03-19-91	B	140,000
ST91-7792	Texas Eastern Transmission Corp	Long Island Lighting	03-19-91	B	20,000
ST91-7793	United Texas Transmission Co	Neches Gas Distribution Co	03-20-91	C	100,000
ST91-7794	United Gas Pipe Line Co	FRM, Inc	03-20-91	G-S	15,450
ST91-7795[1]	United Gas Pipe Line Co	Midcon Marketing Corp	03-20-91	G-S	30,900
ST91-7796	Texas Gas Transmission Corp	K N Gas Marketing Inc	03-20-91	G-S	150,000
ST91-7797	Texas Gas Transmission Corp	K N Gas Marketing Inc	03-20-91	G-S	150,000
ST91-7798	Texas Gas Transmission Corp	K N Gas Marketing Inc	03-20-91	G-S	150,000
ST91-7799	Trunkline Gas Co	Coast Energy Group, Inc	03-20-91	G-S	35,000
ST91-7800	ENOGEX Inc	Williams Natural Gas Co	03-21-91	C	5,000
ST91-7801[1]	Transcontinental Gas Pipe Line Corp	Access Energy Corp	03-21-91	G-S	30,000
ST91-7802	Transwestern Pipeline Co	PSI Gas Marketing, Inc	03-21-91	G-S	250,000
ST91-7803	Transwestern Pipeline Co	Enron Gas Marketing, Inc	03-21-91	G-S	50,000
ST91-7804	Transwestern Pipeline Co	NGC Transportation, Inc	03-21-91	G-S	50,000
ST91-7805	Great Lakes Gas Transmission L.P	Michigas Consolidated Gas Co	03-21-91	G-S	200,000
ST91-7806	Great Lakes Gas Transmission L.P	Progas U.S.A. Inc	03-21-91	G-S	275,000
ST91-7807	Panhandle Eastern Pipe Line Co	Gastrak Corp	03-21-91	G-S	10,000
ST91-7808	Panhandle Eastern Pipe Line Co	Tex/Con Gas Marketing Co	03-21-91	G-S	50,000
ST91-7809	Panhandle Eastern Pipe Line Co	Sun Gas Transmission L.P	03-21-91	G-S	20,000
ST91-7810	United Gas Pipe Line Co	ORYX Gas marketing L.P	03-21-91	G-S	8,240
ST91-7811	Columbia Gulf Transmission Co	Eagle Natural Gas Co	03-21-91	G-S	30,000
ST91-7813	Tennessee Gas Pipeline Co	Meth Corp	03-22-91	G-S	125,000
ST91-7814	Tennessee Gas Pipeline Co	Varibus Pipeline	03-22-91	B	20,000
ST91-7815	Orange and Rockland Utilities, Inc	Boston Gas Co	03-22-91	C	80,000
ST91-7816	Arkla Energy Resources	Louisiana Intrastate Gas Corp	03-22-91	B	55,000
ST91-7817	Consumers Power Co	Southeastern Michigan Gas Co	03-22-91	G-HT	60,000
ST91-7818	Consumers Power Co	Michigan Consolidated Gas Co	03-22-91	G-HT	25,000
ST91-7819	Consumers Power Co	Unified Natural Gas	03-22-91	G-HT	5,000
ST91-7820	Consumers Power Co	Unigas Energy Inc	03-22-91	G-HT	80,000
ST91-7821	Consumers Power Co	Mich Con Trading Co	03-22-91	G-HT	100,000
ST91-7822	Consumers Power Co	Howard Energy Co	03-22-91	G-HT	200,000
ST91-7823	Michigan Gas Storage Co	Howard Energy Co	03-22-91	B	200,000
ST91-7824	Michigan Gas Storage Co	Consumers Power Co	03-22-91	B	100,000
ST91-7825	Michigan Gas Storage Co	Consumers Power Co	03-22-91	B	80,000
ST91-7826	Michigan Gas Storage Co	Consumers Power Co	03-22-91	B	5,000
ST91-7827	Michigan Gas Storage Co	Consumers Power Co	03-22-91	B	60,000
ST91-7828	Michigan Gas Storage Co	Consumers Power Co	03-22-91	B	25,000
ST91-7829	Delhi Gas Pipeline Corp	Arkla Energy Resources	03-25-91	C	10,000
ST91-7830	Delhi Gas Pipeline Corp	Arkla Energy Resources	03-25-91	C	10,000
ST91-7831	Delhi Gas Pipeline Corp	Arkla Energy Resources	03-25-91	C	5,000
ST91-7832	Delhi Gas Pipeline Corp	Arkla Energy Resources	03-25-91	C	7,000
ST91-7833	Delhi Gas Pipeline Corp	Williams Natural Gas Co	03-25-91	C	30,000
ST91-7834	Delhi Gas Pipeline Corp	Williams Natural Gas Co	03-25-91	C	25,000
ST91-7835	Delhi Gas Pipeline Corp	Arkla Energy Resources	03-25-91	C	3,000
ST91-7836	Northern Natural Gas Co	TXO Gas Marketing Corp	03-25-91	G-S	100,000
ST91-7837	Northern Natural Gas Co	Public Service Ele. and Gas Co	03-25-91	B	109,500
ST91-7838	Northern Natural Gas Co	Enron Gas Marketing, Inc	03-25-91	G-S	30,000
ST91-7839	Northern Natural Gas Co	City of Preston	03-25-91	B	128
ST91-7840	Northern Border Pipeline Co	Northern Natural Gas Co., et al	03-25-91	G	50,000
ST91-7841	El Paso Natural Gas Co	Shell Western E&P, Inc	03-25-91	G-S	25,750
ST91-7842	Transok, Inc	Williams Natural Gas Co	03-25-91	C	50,000
ST91-7843	Colorado Interstate Gas Co	Public Service Company of Colorado	03-25-91	B	95,700
ST91-7844	Trunkline Gas Co	Tex/Con Gas Marketing Co	03-25-91	G-S	50,000
ST91-7845	United Gas Pipe Line Co	NGC Transportation, Inc	03-25-91	G-S	154,500
ST91-7846	United Gas Pipe Line Co	Williams Gas Marketing Co	03-25-91	G-S	51,500
ST91-7847	Equitrans, Inc	O&R Energy, Inc	03-26-91	G-S	10,120
ST91-7848	Kansok Partnership	KPL Gas Service Co	03-26-91	C	39,000

Docket No.[8]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [9]
ST91-7849	Kansok Partnership	KPL Gas Service Co	03-26-91	C	21,000
ST91-7850	Delhi Gas Pipeline Corp	Natural Gas Pipeline Co. of America	03-26-91	C	10,000
ST91-7851	Colorado Interstate Gas Co	Rangeline Corp	03-26-91	G-S	10,000
ST91-7852	Colorado Interstate Gas Co	Mountain Cement	03-26-91	G-S	6,400
ST91-7853	Colorado Interstate Gas Co	Amoco Energy Trading Corp	03-26-91	G-S	50,000
ST91-7854	Northern Natural Gas Co	Polaris Pipeline Co	03-26-91	G-S	35,000
ST91-7855	Northern Natural Gas Co	Gasmark, Inc	03-26-91	G-S	100,000
ST91-7856	Northern Natural Gas Co	Delhi Gas Pipeline Co	03-26-91	G-S	100,000
ST91-7857	Exxon Gas System, Inc	Transcontinental Gas Pipe Line Corp	03-25-91	E	200,000
ST91-7858	Williston Basin Interstate P/L Co	Amerada Hess Corp	03-26-91	G-S	28,000
ST91-7859	Columbia Gulf Transmission Co	Unocal Exploration Corp	03-26-91	G-S	30,000
ST91-7860	Columbia Gulf Transmission Co	City of Richmond	03-26-91	B	53,841
ST91-7861	Columbia Gulf Transmission Co	Dayton Power & Light Co	03-26-91	G-S	1,200
ST91-7862	United Gas Pipe Line Co	Fina Natural Gas Co	03-26-91	G-S	103,000
ST91-7863	Panhandle Eastern Pipe Line Co	Shell Gas Trading Co	03-26-91	G-S	100,000
ST91-7864	Panhandle Eastern Pipe Line Co	Acces Energy Corp	03-26-91	G-S	10,000
ST91-7865	Delhi Gas Pipeline Corp	Mississippi River Transmission Corp	03-27-91	C	30,000
ST91-7866	Transcontinental Gas Pipe Line Corp	Mississippi Fuel Co	03-27-91	E	100,000
ST91-7867	Transcontinental Gas Pipe Line Corp	Mississippi Fuel Co	03-27-91	E	60,000
ST91-7868	Viking Gas Transmission Co	Woodward Marketing, Inc	03-27-91	G-S	20,000
ST91-7869	Viking Gas Transmission Co	Harbert Oil & Gas Corp	03-27-91	G-S	20,000
ST91-7870	Viking Gas Transmission Co	Manville Sales Corp	03-27-91	G-S	25,000
ST91-7871	Colorado Interstate Gas Co	Northern Illinois Gas Co	03-27-91	B	50,000
ST91-7872	ANR Pipeline Co	Fuel Services Group, Inc	03-27-91	G-S	4,000
ST91-7873	ANR Pipeline Co	Kaztex Energy Management, Inc	03-27-91	G-S	995
ST91-7874	ANR Pipeline Co	Battle Creek Gas Co	03-27-91	B	500
ST91-7875	ANR Pipeline Co	Hunt Oil Co	03-27-91	G-S	30,000
ST91-7876	ANR Pipeline Co	Michigan Gas Utilities	03-27-91	B	300
ST91-7877	ANR Pipeline Co	Chevron U.S.A., Inc	03-27-91	G-S	20,000
ST91-7878	ANR Pipeline Co	Triumph Gas Marketing Co	03-27-91	G-S	2,000
ST91-7879	ANR Pipeline Co	Southeastern Michigan Gas Co	03-27-91	B	100,000
ST91-7880	Columbia Gulf Transmission Co	Citizens Gas Supply Corp	03-27-91	G-S	40,000
ST91-7881	Columbia Gulf Transmission Co	Mobil Exploration & Producing N. America	03-27-91	G-S	50,000
ST91-7882	Columbia Gulf Transmission Co	Union Texas Petroleum Corp	03-27-91	G-S	50,000
ST91-7883	Columbia Gulf Transmission Co	Stellar Gas Co	03-27-91	G-S	50,000
ST91-7884	Columbia Gulf Transmission Co	SJR Resources, Inc	03-27-91	G-S	100,000
ST91-7885	Columbia Gas Transmission Corp	Clinton Gas Marketing, Inc	03-27-91	G-S	10,000
ST91-7886	Columbia Gas Transmission Corp	Woodward Marketing, Inc	03-27-91	G-S	667
ST91-7887	Columbia Gas Transmission Corp	Manville Sales Corp	03-27-91	G-S	1,398
ST91-7888	Columbia Gas Transmission Corp	Manville Sales Corp	03-27-91	G-S	12,800
ST91-7889	Columbia Gas Transmission Corp	Manville Sales Corp	03-27-91	G-S	12,800
ST91-7890	Columbia Gas Transmission Corp	Manville Sales Corp	03-27-91	G-S	12,800
ST91-7891	Questar Pipeline Co	Coastal Gas Marketing Co	03-26-91	G-S	5,000
ST91-7892	Questar Pipeline Co	Western Gas Processors, Inc	03-26-91	G-S	30,000
ST91-7893	Natural Gas Pipeline Co. of America	PSI Gas Marketing, Inc	03-26-91	G-S	250,000
ST91-7894	Natural Gas Pipeline Co. of America	Enmark Gas Corp	03-26-91	G-S	30,000
ST91-7895	Natural Gas Pipeline Co. of America	Rangeline Corp	03-26-91	G-S	100,000
ST91-7896	Viking Gas Transmission Co	Wee Cana Energy Marketing	03-26-91	G-S	50,000
ST91-7897	Viking Gas Transmission Co	Consolidated Edison Co. of NY, Inc	03-26-91	B	100,000
ST91-7898	Tennessee Gas Pipeline Co	CNG Transmission Corp	03-26-91	G	700,000
ST91-7899	Great Lakes Gas Transmission L.P	POCO Petroleums Ltd	03-26-91	G-S	300,000
ST91-7900	Great Lakes Gas Transmission L.P	Tarpon Gas Marketing Ltd	03-26-91	G-S	200,000
ST91-7901	Texas Eastern Transmission Corp	Phillips Petroleum Co	03-26-91	G-S	452,080
ST91-7902	Algonquin Gas Transmission Co	Distrigas of MA Corp	03-26-91	G-S	900,000
ST91-7903	Algonquin Gas Transmission Co	Entrade Corp	03-26-91	G-S	200,000
ST91-7904	Algonquin Gas Transmission Co	Paragon Gas Corp	03-26-91	G-S	60,000
ST91-7905	Algonquin Gas Transmission Co	Bay State Gas Co	03-26-91	B	60,000
ST91-7906	Algonquin Gas Transmission Co	Broklyn Interstate Nat. Gas Corp	03-26-91	G-S	900,000
ST91-7907	Algonquin Gas Transmission Co	Entrade Corp	03-26-91	G-S	10,000
ST91-7908	Algonquin Gas Transmission Co	Ocean State Power	03-26-91	G-S	100,000
ST91-7909	Algonquin Gas Transmission Co	O&R Energy, Inc	03-26-91	G-S	50,000
ST91-7910	Algonquin Gas Transmission Co	O&R Energy, Inc	03-26-91	G-S	100,000
ST91-7911	CNG Transmission Corp	Consolidated Fuel Corp	03-26-91	G-S	4,500
ST91-7912	CNG Transmission Corp	Consolidated Fuel Corp	03-26-91	G-S	10,000
ST91-7913	CNG Transmission Corp	Albany Cogen Assoc	03-26-91	G-S	6,274
ST91-7914	CNG Transmission Corp	Texas-Ohio Gas, Inc	03-26-91	G-S	3,000
ST91-7915	CNG Transmission Corp	Brooklyn Interstate	03-26-91	G-S	20,000
ST91-7916	CNG Transmission Corp	O&R Energy	03-26-91	G-S	15,000
ST91-7917	Seagull Shoreline System	Texas Eastern Transmission Corp	03-29-91	C	10,000
ST91-7918	Seagull Shoreline System	Texas Eastern Transmission Corp	03-29-91	C	70,000
ST91-7919	Cavallo Pipeline Co	Texas Eastern Transmission Corp	03-29-91	C	10,000
ST91-7920	Valero Transmission, L.P	Valero Interstate Transmission Co	03-29-91	C	800,000
ST91-7921	Valero Transmission, L.P	El Paso Natural Gas Co	03-29-91	C	5,000
ST91-7922	Equitrans, Inc	Energy Marketing Exchange, Inc	03-29-91	G-S	15,181
ST91-7923	Western Gas Interstate Co	Southern Union Gas Co	03-29-91	B	5,000
ST91-7924	Western Gas Interstate Co	Gas Co. of New Mexico	03-29-91	G-S	444
ST91-7925	United Gas Pipe Line Co	Midcon Marketing Corp	03-29-91	G-S	721,000
ST91-7926	United Gas Pipe Line Co	V.H.C. Gas Systems, L.P	03-29-91	G-S	208,000
ST91-7927	National Fuel Gas Supply Corp	Integrated Oil Field Services	03-29-91	G-S	2,000
ST91-7928	National Fuel Gas Supply Corp	Phibro Energy Inc	03-29-91	G-S	250,000

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Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]
ST91-7929	National Fuel Gas Supply Corp	Pine Roe Natural Gas Co	03-29-91	G-S	30
ST91-7930	National Fuel Gas Supply Corp	Sinclair & Valentine	03-29-91	G-S	577
ST91-7931	National Fuel Gas Supply Corp	Wes Cana Energy Marketing	03-29-91	G-S	58,000
ST91-7932	National Fuel Gas Supply Corp	Woodward Marketing, Inc	03-29-91	G-S	29,000
ST91-7933	National Fuel Gas Supply Corp	TXG Gas Marketing Corp	03-29-91	G-S	50,000
ST91-7934	National Fuel Gas Supply Corp	Colonial Gas Co	03-29-91	G-S	98,000
ST91-7935	National Fuel Gas Supply Corp	CNG Producing Co	03-29-91	G-S	80,000
ST91-7936	National Fuel Gas Supply Corp	Chevron USA, Inc	03-29-91	G-S	209,000
ST91-7937	National Fuel Gas Supply Corp	Central Hudson Gas	03-29-91	G-S	10,000
ST91-7938	National Fuel Gas Supply Corp	Catamount Natural Gas	03-29-91	G-S	58,000
ST91-7939	National Fuel Gas Supply Corp	Bay State Gas Co	03-29-91	G-S	100,000
ST91-7940	National Fuel Gas Supply Corp	Ellicottville Energy Inc	03-29-91	G-S	1,300
ST91-7941	National Fuel Gas Supply Corp	Eastern Natural Gas Co	03-29-91	G-S	9,809
ST91-7942	National Fuel Gas Supply Corp	Dresser-Rand Co	03-29-91	G-S	850
ST91-7943	National Fuel Gas Supply Corp	Allegheny Particleboard Ltd	03-29-91	G-S	2,000
ST91-7944	National Fuel Gas Supply Corp	Access Energy Corp	03-29-91	G-S	21,800
ST91-7945	National Fuel Gas Supply Corp	New Jersey Natural Gas Co	03-29-91	G-S	20,000
ST91-7946	National Fuel Gas Supply Corp	Fuel Services Group	03-29-91	G-S	500
ST91-7947	National Fuel Gas Supply Corp	Enviropec, Inc	03-29-91	G-S	375
ST91-7948	National Fuel Gas Supply Corp	Open Flow Gas Supply Corp	03-29-91	G-S	5,000
ST91-7949	National Fuel Gas Supply Corp	Lenape Resources Corp	03-29-91	G-S	1,800
ST91-7950	National Fuel Gas Supply Corp	National Fuel Gas Dist. Corp	03-29-91	G-S	508,000
ST91-7951	National Fuel Gas Supply Corp	National Fuel Gas Dist. Corp	03-29-91	G-S	50,000
ST91-7952	National Fuel Gas Supply Corp	Midcon Marketing Corp	03-29-91	G-S	309,800
ST91-7953	National Fuel Gas Supply Corp	Nazareth Home of the Franciscan	03-29-91	G-S	80
ST91-7954	National Fuel Gas Supply Corp	Niagara Mohawk Power	03-29-91	G-S	209,000
ST91-7955	National Fuel Gas Supply Corp	Kogas, Inc	03-29-91	G-S	150,000
ST91-7956	National Fuel Gas Supply Corp	Jamestown Macadam Inc	03-29-91	G-S	680
ST91-7957	National Fuel Gas Supply Corp	Vineyard Oil & Gase	03-29-91	G-S	1,740
ST91-7958	National Fuel Gas Supply Corp	Southern Connecticut Gas Co. (The)	03-29-91	G-S	45,000
ST91-7959	National Fuel Gas Supply Corp	Suncor, Inc	03-29-91	G-S	100,000

Below are nine ST-docketed initial reports which are noticed out of sequence. These initial reports were not noticed previously because they required additional commission staff review.

ST91-6057	Tejas Gas corp	Tennessee Gas Pipeline Co	12-27-90	C	50,000
ST91-6532	Great Lakes Gas Transmission L.P	Northern Minnesota Utilities	01-22-91	G-S	100,000
ST91-6533	Great Lakes Gas Transmission L.P	Ford Motor Co	01-22-91	G-S	400,000
ST91-6534	Great Lakes Gas Transmission L.P	Ladco Inc	01-22-91	G-S	50,000
ST91-6615	Channel Industries Gas Co	Northern Natural Gas Co	01-26-91	C	10,000
ST91-6710	National Fuel Gas Supply Corp	CNG Transmission Co	01-31-91	G	100,000
ST91-6711	National Fuel Gas Supply Corp	Citizens Gas Supply Corp	01-31-91	G-S	400,000
ST91-6861	Lone Star Gas Co	El Paso Natural Gas Co	02-11-91	C	50,000
ST91-6862	Lone Star Gas Co	El Paso Natural Gas Co	02-11-91	C	50,000

[1] Transportation service converted from authority under 18 C.F.R. section 284.106, subpart B, to authority under 18 C.F.R. section 284.223(F)(1), subpart G-S.
[2] Notice of transactions does not constitute a determination that filings comply with commission regulations in accordance with order No. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372, 10/10/85).
[3] Estimated maximum daily volumes includes volumes reported by the filing company in MMBTU, MCF and DT.

[FR Doc. 91-12338 Filed 5-23-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. QF90-88-000]

Bristol-Myers Squibb Co.; Amendment to Filing

May 17, 1991.

On May 10, 1991, Bristol-Myers Squibb Company tendered for filing an amendment to its filing in this docket.

The amendment clarifies certain aspects of the thermal energy uses of the proposed cogeneration facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules and 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 21 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91-12337 Filed 5-23-91; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3957-4]

Proposed Consent Decree; Organic Solvent Cleaners

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act ("Act"), notice is hereby given of a proposed consent decree concerning litigation instituted against the Environmental Protection Agency ("EPA") regarding the fact that EPA has not promulgated a final rule establishing standards for emissions of air pollutants from organic solvent cleaners. EPA had published a Notice of Proposed Rulemaking proposing emission standards for such pollutants on June 11, 1980 (45 FR 39766).

For a period of thirty [30] days following the date of publication of this notice, the Agency will receive written comments relating to the consent decree. EPA or the Department of Justice may withhold or withdraw consent to the proposed consent decree if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadquate, or inconsistent with the requirements of the Act.

Copies of the consent decree are available from Kevin W. McLean, Air and Radiation Division (LE-132A), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-7635. Written comments should be sent to Kevin W. McLean at the above address and must be submitted on or before June 24, 1991.

Dated: April 17, 1991.

E. Donald Elliott,
Assistant Administrator and General Counsel.

[FR Doc. 91-12008 Filed 5-23-91; 8:45 am]
BILLING CODE 6560-50-M

[ER-FRL-3958-9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 6 1991 through May 10, 1991 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 5, 1991 (56 FR 14096).

Draft EISs

ERP No. D-AFS-J02020-CO Rating EO2, HD Mountains Coalbed Methane Gas Field Development Project, Construction and Operation, Application for Permit Drilling, 404 Permit and Special Use Permit, San Juan National Forest, Pine District, Archuleta and LaPLata Counties, CO.

Summary

EPA has environmental objections to the proposed action. The alternatives discussed in the EIS have major deficiencies, are artificially limited, fail to provide public understanding of the management options available and ignored many of the substantive issues raised during the public comment process. The final EIS should include a discussion of improved well-casing requirements.

ERP No. D-AFS-J65172-UT Rating LO, Chepeta Lake, Whiterocks River and Lakeshore Basin Allotment Management Plans, Updated and Issuance of Grazing Permits, Ashley National Forest, Vernal Ranger District, Duchesne and Uintah Counties, UT.

Summary

EPA has no objections to the preferred alternative.

ERP No. D-AFS-J65173-MT Rating EC2, Gravelly Sagebrush Burning Project, Implementation, Beaverhead National Forest, Madison County, MT.

Summary

EPA in general, has no objections to the Beaverhead National Forest's preferred alternative, but requests completion of a current resource inventory prior to management of project areas. Management of both rangeland and riparian should be discussed in the final EIS.

ERP No. D-AFS-J65174-MT Rating EC2, Andrus Creek Area Timber Sale and Road Construction/Reconstruction, Implementation, Beaverhead National Forest, Dillon Ranger District, Beaverhed County, MT.

Summary

EPA has environmental concerns regarding the preferred alternative's potential to impact water quality and fisheries. The final EIS should provide additional information on water quality and fisheries, and identify and commit to a monitoring program.

ERP No. D-AFS-K65130-CA Rating EC2, Primrose Buy Out Timber Sale, Implementation, Tahoe National Forest, Downie Ranger Distict, Sierra County, CA.

Summary

EPA expressed environmental concerns regarding projected adverse impacts to water quality, coldwater fisheries and public drinking water supplies from increased erosion and watershed damage. EPA urged Forest Service to adopt all applicable Best Management Practices and a water quality monitoring and mitigation program.

ERP No. D-HUD-C80010-NY Rating LO. East Falls Street Redevelopment Project, Manufacturers MegaMall Construction, UDAG, Urban Renewal Plan Amendment, Niagara County, NY.

Summary

EPA believes that the proposed project will not result in any significant adverse environmental impacts.

FINAL EISs

ERP No. F-AFS-J61074-MT, White Stallion Timber Sale Management, Implementation, Darby Range District, Bitterroot National Forest, Ravalli County, MT.

Summary

EPA supports proposed monitoring plans for harvest activities but remains concerned that the selected alternative in the ROD has the potential for greater environmental impacts than another EIS alternative which meets the stated projects goals.

ERP No. F-AFS-J65162-MT, Mill-Lion Project Area Timber Sale, Implementation, Lewis and Clark National Forest, Musselshell Ranger District, Meagher County, MT.

Summary

EPA is still concerned over the lack of a comprehensive monitoring plan. The final EIS has surfaced new concerns regarding potential impacts to water quality/fish habitat from other planned timber sales.

ERP No. F-AFS-J62013-MT, Bitterroot National Forest Noxious Weed Control Program, Herbicide Use on Eight Sites, Implementation, Ravalli County, MT.

Summary

EPA's concerns with this project has been adequately addressed in this document.

ERP No. F-NAS-A12038-00, Space Station Freedom Program, Design, Develop and Operation, First Element Launch (FEL).

Summary

EPA believes that the concerns raised about the first tier draft EIS have been satisfactorily addressed, with the exception of air quality impacts. EPA recommended that the second tier EIS provide at a minimum, a summary of impacts associated with rocket motor emissions.

Regulations

ERP No. R-MMS-A02232-00, Mid 1992-Mid 1997 Outer Continental Shelf (OCS) Natural Gas and Oil Leasing, Comprehensive Resource Management Program.

Summary

EPA is primarily concerned with the three objectives of MMS's proposed new Area Evaluation and Decision Process

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plus a few additional observations including: (1) Adequacy of information; (2) clarification of commitment to environmental stipulations; and (3) clarification of timing of the coastal zone consistency determination.

Dated: May 21, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[DR Doc. 91-12431 Filed 5-23-91; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3958-8]

Environmental Impact Statements; Notice of Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed May 13, 1991 Through May 17, 1991 Pursuant to 40 CFR 1506.9.

EIS No. 910155, DRAFT EIS, AFS, ID, Van Camp Timber Sales and Winter Range Improvements, Road Construction/Reconstruction, Implementation, Clearwater National Forest, Lochsa Ranger District, Idaho County, ID, Due: July 8, 1991, Contact: Kris Hazelbaker (208) 926-4275.

EIS No. 910156, DRAFT EIS, USA, NM, OR, NV, AZ, OR, Fort Wingate Depot and Navajo Depot Activity Closures, Realignment of Umatilla Depot Activity with transfers to Hawthorne Army Ammunition Plant, Mineral County, NV; McKinley County, NM; Coconino County, AZ; Morrow and Umatilla Counties, OR, Due: July 8, 1991, Contact: Arver Ferguson (817) 334-2095.

EIS No. 910157, DRAFT EIS, USA, KY, MD, PA, AL, Lexington Facility of Lexington-Bluegrass Army Depot Closure and Realignment of functions to Tobyhanna Army Depot, Lackawanna and Wyoming Counties, PA; Letterkenny Army Depot, Fulton and Franklin Counties, PA and Washington County, MD; Redstone Arsenal, Madison County, AL; and Anniston Army Depot, Calhoun County, AL, Due: July 8, 1991, Contact: William R. Haynes (502) 582-6015.

EIS No. 910158, DRAFT EIS, USA, IN, AZ, IN, AZ, Jefferson Proving Ground Base Closure and Realignment, Relocating the U.S. Army Munitions Production Acceptance Test and Evaluation Mission to Yuma Proving Ground, Yuma and La Paz Counties, AZ and Jefferson, Jennings, and Ripley Counties, IN, Due: July 8, 1991, Contact: James M. Baker (502) 582-5774.

EIS No. 910159, FINAL SUPPLEMENT, COE, AL, MS, Tombigbee River and Tributaries Flood Control Project, Luxapalila Creek Segment, New and Additional Information, Lowndes County, MS and Lamar County, AL, Due: June 24, 1991, Contact: Dennis Barnett (404) 331-4580.

EIS No. 910160, FINAL EIS, AFS, CA, Stormy II Watershed/Fire Recovery, Implementation, Sequoia National Forest, San Joaquin Valley Air Basin, Tulare and Kern Counties, CA, Due: June 24, 1991, Contact: James W. Whitefield (209) 784-1500.

EIS No. 910161, FINAL EIS, FRC, CA, WA, ID, OR, Pacific and Altamont Natural Gas Transmission Pipeline Projects, Construction, Operation and Maintenance, Section 10 and 404 Permits, extending from Canada to CA, Due: June 24, 1991, Contact: Mark Kalpin (202) 208-0916.

EIS No. 910162, DRAFT EIS, AFS, AK, Bohemia Mountain Timber Sales, Implementation and COE Permit, and Duncan Salt Chuck Creek Designation and Nondesignation into the Wild and Scenic River System, Tongass National Forest, Stikine Area, AK, Due: July 15, 1991, Contact: Tamara S. Malone (907) 772-3841.

EIS No. 910163, DRAFT EIS, ICC, OH, Indiana and Ohio Railroad Line, Construction and Operation extending from the northern border at Brecon to the southern city limits of Mason, Right-of-Way, Butler, Warren and Hamilton Counties, OH, Due: July 26, 1991, Contact: Elaine K. Kaiser (202) 275-0804.

EIS No. 910164, FINAL EIS, AFS, ID, Horizon Forest Resource Area, Timber Sale and Road Construction, Implementation, Idaho Panhandle National Forests, Fernan Ranger District, Kootenai County, ID, Due: June 24, 1991, Contact: Pat Sheridan (208) 765-7381.

EIS No. 910165, FINAL EIS, AFS, MT, Flathead National Forest Noxious Weeds Management Project, Herbicide Use on Seven Sites, Bob Marshall Wilderness Area, Implementation, Spotted Bear and Hungry Horse Ranger Districts, Flathead County, MT, Due: June 24, 1991, Contact: Greg Warren (406) 387-5243.

EIS No. 910166, DRAFT EIS, UMT, CA, Tasman Corridor Mass Transit System Improvements, between Milpitas and Northern San Jose and Mountain View/Sunnyvale, Funding Santa Clara County, CA, Due: July 8, 1991, Contact: Mark Roddin (415) 464-7827.

EIS No. 910167, FINAL EIS, USN, NV, Naval Air Station Fallon Geothermal Resources for Electrical Power Generation, Phase I and II Development, COE Section 404 Permit and Right-of-Way Grants, Churchill County, NJ, Due: June 24, 1991, Contact: Dr. Francis Monastero (619) 939-3411.

EIS No. 910168, DRAFT SUPPLEMENT, COE, MS, Arkabutla, Enid, Grenada and Sardis Lakes, Operation and Maintenance, Channel Restoration on the Tallahatchie River and Yalobusha River, MS, Due: July 8, 1991, Contact: W. Harold Lee (601) 485-7104.

EIS No. 910169, FINAL EIS, USN, WA, Naval Station Puget Sound (NSPS) Sand Point Realignment to NSPS Everett, Implementation, City of Seattle, WA, Due: June 24, 1991, Contact: Don Morris (206) 476-5773.

Amended Notices

EIS No. 910083, DRAFT EIS, AFS, OR, Augur Creek Timber Sale and Road Construction, Implementation, Fremont National Forest, Paisley Ranger District, Lake County, OR, Due: June 14, 1991, Contact: Roger King (503) 943-3114. Published FR 3-29-91—Review period extended.

Dated: May 21, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-12430 Filed 5-23-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3958-7]

Intent to Grant an Exclusive Patent License

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Intent to Grant an Exclusive Patent License.

SUMMARY: Pursuant to 37 CFR part 404, EPA hereby gives notice of intent to grant Bio-Rad Laboratories, Inc. of Hercules, California 94547 an exclusive, royalty-bearing, revocable license to practice the inventions as described and claimed in: U.S. Patent 4,281,246 entitled "Continuous-Flow Solution Concentrator And Liquid Chromatograph/Mass Spectrometer Interface And Methods For Using Both." The exclusive license will include patent 4,281,246 and all reexamination and reissued patents granted thereon or in connection therewith and all divisions, continuations, continuations-in-part, renewals, or extensions thereof. The announcement of said patent as available for licensing was made at (55 FR 10469) on March 21, 1990.

The proposed exclusive license will contain appropriate terms, limitations and conditions to be negotiated in accordance with 35 U.S.C. 209 and the U.S. Government Patent Licensing Regulation at 37 CFR part 404. EPA will negotiate the final terms and conditions and grant the exclusive license, unless within 60 days from the Date of this Notice the EPA Patent Counsel receives, at the address below, written objections to the grant, together with supporting documentation. The Patent Counsel and other EPA officials will review all written responses and then recommend to the Assistant Administrator for Research and Development, for the U.S. Environmental Protection Agency, Washington, DC, or his or her designee, who has been delegated the authority to issue patent licenses under 35 U.S.C. 207, whether to grant the exclusive license.

DATE: Comments to this notice must be received July 23, 1991.

ADDRESS: Benjamin Bochenek, Patent Counsel, Office of General Counsel (LE-132G), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Benjamin Bochenek, [202] 382-5460.

Dated: May 17, 1991.

E. Donald Elliott,

Assistant Administrator and General Counsel.

[FR Doc. 91-12396 Filed 5-23-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Coastal Barrier Improvement Act: Property Availability; Troydale Road/ Rocky Creek

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Legal Description: All of the East ¾ of Section 3, Township 29 South, Range 17 East, LESS: That part of said Section 3, platted as Rocky Creek Estates Subdivision, as per map or plat thereof recorded in Plat Book 31, on Page 34 of the Public Records of Hillsborough County, Florida and LESS: That part of said Section 3, described as follows: Commencing at a point on the East boundary of Section 3, Township 29 South, Range 17 East, 628.1 feet South of the Northeast corner of said Section 3, run thence North 88°24' West 900.00 feet along the South boundary of Lagoon Street, thence South 0°06' West parallel to the East boundary of the Northeast ¼ of Section 3, 425.0 feet, thence North 88°24' West 795.0 feet, thence South 0°06' West 2910.3 feet, thence South 88°24' East 1320 feet, thence South 89°23' East 370.0 feet, to the Southeast corner of the Northeast ¼ of the Southeast ¼ of Section 3, thence Northerly along the East boundary of Section 3, to the Point of beginning.

LESS that part of the following described parcel lying within the above described parcel: Begin at the NW corner of the NW ¼ of the NE ¼ of Section 3, Township 29 South, Range 17 East, thence South 89°02'00" East 202.12 feet along the North line of said Section 3, to the centerline of Channel "G" UPPER TAMPA BAY WATERSHED: thence North 47°26'00" East along the centerline of Channel "G" a distance of 169.06 feet to the Point of Beginning; thence run South 42°34'00" East a distance of 115 feet, thence run South 47°26'00" West 321.37 feet, thence run South 42°34'00" East a distance of 500 feet thence run South 47°26'00" West 1538.98 feet, thence run South 05°46'20" East a distance of 1050 feet, thence run south 45°25'05" West a distance of 1410 feet more or less to the West line of the NE ¼ of the SW ¼ of Section 3, at a point which is 320 feet North of the SE corner of the NW ¼ of the SW ¼ of said Section 3, thence run Northerly along the West line of the East ¾ of Section 3, a distance of 2200 feet thence run North 47°26'00" East a distance of 2340 feet more or less along the Northwesterly line of Channel "G" to a point North 42°34'00" West 115 feet from the Point of Beginning, thence run South 42°34'00" East 115 feet to the Point of Beginning.

And LESS the part described as follows: A tract of land lying in the Southeast Quarter of Section 3, Township 29 South, Range 17 East, Hillsborough County, Florida; described as follows: Begin at the Northeast corner of stated Section 3; thence S00°-06'-00"W along the East boundary of stated Section 3 a distance of 2557.03 feet; thence S00°-18'-00"W along the East boundary of stated Section 3 a distance of 1399.89 feet to the Southeast corner of the Northeast Quarter of the Southeast Quarter of stated Section 3 for a point of beginning. Thence continue S00°-18'-00"W along the East boundary of stated Section 3 a distance of 1220.59 feet; thence N88°-43'-44"W along a line 100.0 feet North of and parallel to the South boundary of stated Section 3 a distance of 375.05 feet; thence N00°-18'-00"E along a line 375.0 feet West of and parallel to the East boundary of said Section 3 a distance of 1216.39 feet; thence S88°-24'-00"E a distance of 5.0 feet; thence S89°-23'-00"E a distance of 370.0 feet to the point of beginning, containing 266.21 acres, more or less. Located in the state of Florida, is affected by Section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property specified herein may be mailed or faxed to the FDIC until August 22, 1991 as specified hereinafter.

ADDRESS: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following: Bill Negron, Federal Deposit Insurance Corporation, 5778 South Semoran, Orlando, Florida 32822, Telephone: 1-800-678-3342, Fax (407) 823-7947.

SUPPLEMENTARY INFORMATION: The property known as *Legal Description:* All of the East ¾ of Section 3, Township 29 South, Range 17 East, LESS: That part of said Section 3, platted as Rocky Creek Estates Subdivision, as per map or plat thereof recorded in Plat Book 31, on Page 34 of the Public Records of Hillsborough County, Florida and LESS: That part of said Section 3, described as follows: Commencing at a point on the East boundary of Section 3, Township 29 South, Range 17 East, 628.1 feet South of the Northeast corner of said Section 3, run thence North 88°24' West 90.00 feet along the South boundary of Lagoon Street, thence South 0°06' West parallel to the East boundary of the Northeast ¼ of Section 3, 425.0 feet, thence North 88°24' West 795.0 feet, thence South 0°06' West 2910.3 feet, thence South 88°24' East 1320 feet, thence South 89°23' East 370.0 feet, to the Southeast corner of the Northeast ¼ of the Southeast ¼ of Section 3, thence Northerly along the East boundary of Section 3, to the Point of beginning.

LESS that part of the following described parcel lying within the above described parcel: Begin at the NW corner of the NW ¼ of the NE ¼ of Section 3, Township 29 South, Range 17 East, thence South 89°02'00" East 202.12 feet along the North line of said Section 3, to the centerline of Channel "G" UPPER TAMPA BAY WATERSHED: thence North 47°26'00" East along the centerline of Channel "G" a distance of 169.06 feet to the Point of Beginning; thence run South 42°34'00" East a distance of 115 feet, thence run South 47°26'00" West 321.37 feet thence run South 42°34'00" East a distance of 500 feet thence run South 05°46'00" East a distance of 1050 feet, thence run South 45°25'05" West a distance of 1410 feet more or less to the West line of the NE ¼ of the SW ¼ of Section 3, at a point

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which is 320 feet North of the SE corner of the NW ¼ of said Section 3, thence run Northerly along the West line of the East ¾ of Section 3, a distance of 2200 feet thence run North 47°26'00" East a distance of 2340 feet more or less along the Northwesterly line of Channel "G" to a point North 42°34'00" West 115 feet from the Point of Beginning, thence run South 42°34'00" East 115 feet to the Point of Beginning.

And LESS the part described as follows: A tract of land lying in the Southeast Quarter of Section 3, Township 29 South, Range 17 East, Hillsborough County, Florida; described as follows: Begin at the Northeast corner of stated Section 3; thence S00°-06'-00"W along the East boundary of stated Section 3 a distance of 2557.03 feet; thence S00°-18'-00"W along the East boundary of stated Section 3 a distance of 1399.89 feet to the Southeast corner of the Northeast Quarter of the Southeast Quarter of stated Section 3 for a point of beginning. Thence continue S00°-18'-00"W along the East boundary of stated Section 3 a distance of 1220.59 feet; thence N88°-43'44" along a line 100.0 feet North of and parallel to the South boundary of stated Section 3 a distance of 375.05 feet; thence N00°-18'-00"E along a line 375.0 feet West of and parallel to the East boundary of said Section 3 a distance of 1216.39 feet; thence S88°-24'-00"E a dsitance of 5.0 feet; thence S89°-23'-00"E a distance of 370.0 feet to the point of beginning, containing 266.21 acres, more or less. OR Troydale Road, Rocky Creek is affected by section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101-591.

Characteristics of the property include: Possible classification as wetlands; contiguous to State preservation area.

Property size: 266.21 acres.

Written notice of serious interest in the purchase or other transfer of the property must be *received* on or before August 22, 1991 by: Bill Negron, Federal Deposit Insurance Corporation, 5778 South Semoran, Orlando, Florida 3282, Telephone: 1-800-678-3342, Fax (407) 823-7947.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;
2. Agencies or entities of State or local government; and
3. "Qualified organization" pursuant to section 170(h) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3).

Written noticess of serious interest to purchase or effect other transfers of the property must be submittted to: Bill Negron, Federal Deposit Insurance Corporation, 5778 South Semoran, Orlando, Florida 32822, Telephone 1-800-678-3342, Fax (407) 823-7947 in the following form:

Notice of Serious Interest RE:

Legal Description: All of the East ¾ of Section 3, Township 29 South, Range 17 East, LESS: That part of said Section 3, platted as Rocky Creek Estates Subdivision, as per map or plat thereof recorded in Plat Book 31, on Page 34 of the Public Records of Hillsborough County, Florida and LESS: That part of said Section 3, described as follows: Commencing at a point on the East boundary of Section 3, Township 29 South, Range 17 East, 828.1 feet South of the Northeast corner of said Section 3, run thence North 88°24' West 900.00 feet along the South boundary of Lagoon Street, thence South 0°06' West parallel to the East boundary of the Northeast ¼ of Section 3, 425.0 feet, thence North 88°24' West 795.0 feet, thence South 0°06' West 2910.3 feet, thence South 88°24' East 1320 feet, thence South 89°23' East 370.0 feet, to the Southeast corner of the Northeast ¼ of the Southeast ¼ of Section 3, thence Northerly along the East boundary of Section 3, to the Point of beginning. LESS that part of the following described parcel lying within the above described parcel: Begin at the NW corner of the NW ¼ of the NE ¼ of Section 3, Township 29 South, Range 17 East, thence South 89°02'00" East 202.12 feet along the North line of said Section 3, to the centerline of Channel "G" UPPER TAMPA BAY WATERSHED: thence North 47°26'00" East along the centerline of Channel "G" a distance of 169.06 feet to the Point of Beginning; thence run South 42°34'00" East a distance of 115 feet, thence run South 47°26'00" West 321.37 feet, thence run South 42°34'00" East a distance of 500 feet, thence run South 47°26'00" West 1538.98 feet, thence run South 05°46'20" East a distance of 1050 feet, thence run South 45°25'05" West a distance of 1410 feet more or less to the West line of the NE ¼ of the SW ¼ of Section 3, at a point which is 320 feet North of the SE corner of the NW ¼ of the SW ¼ of said Section 3, thence run Northerly along the West line of the East ¾ of Section 3, a distance of 2200 feet, thence run North 47°26'00" East a distance of 2340 feet more or less along the Northerwesterly line of Channel "G" to a point North 42°34'00" West 115 feet from the Point of Beginning, thence run South 42°34'00" East 115 feet to the Point of Beginning.

And LESS the part described as follows: A tract of land lying in the Southeast Quarter of Section 3, Township 29 South, Range 17 East, Hillsborough County, Florida; described as follows: Begin at the Northeast corner of stated Section 3; thence S00°-06'-00"W along the East boundary of stated Section 3 a distance of 2557.03 feet; thence S00°-18'-00"W along the East boundary of stated Section 3 a distance of 1399.89 feet to the Southeast corner of the Northeast Quarter of the Southeast Quarter of stated Section 3 for a point of beginning. Thence continue S00°-18'-00"W along the East boundary of stated Section 3 a distance of 1220.59 feet; thence N88°-43'-44"W along a line 100.0 feet North of and parallel to the South boundary of stated Section 3 a distance of 375.05 feet; thence N00°-18'00"E along a line 375.0 feet West of and parallel to the East boundary of said Section 3 a distance of 1216.39 feet; thence S88°-24'-00"E a distance of 5.0 feet; thence S89°-23'-00"E a distance of 370.0 feet to the point of beginning. Containing 266.21 acres, more or less.

1. Entity name.
2. Declaration of eligibility to submit Notice under criteria set forth in Public Law 101-591, section 10(b)(2).
3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).
4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.
5. Authorized Representative: Bill Negron, Federal Deposit Insurance Corporation, 5778 South Semoran, Orlando, Florida 32822, Telephone: 1-800-678-3342, Fax (407) 823-7947.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91-12390 Filed 5-23-91; 8:45 am]

BILLING CODE 6714-04-M

FEDERAL ELECTION COMMISSION

[Notice 1991-9]

Filing Dates for the Arizona Special Elections

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special elections.

SUMMARY: Arizona has scheduled special elections on August 13, 1991, and September 24, 1991, in the Second Congressional District to fill the seat of Representative Morris K. Udall.

Committees required to file reports in connection with the Special Primary Election should file a 12-day Pre-Primary Report by August 1, 1991. Committees required to file reports in connection with both the Special Primary and Special General Election to be held on September 24, 1991, must file a 12-day Pre-Primary Report, a 12-day Pre-General Report by September 12, 1991, and a Post-General Report by October 24, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Public Information Office, 999 E Street NW., Washington, DC 20463, Telephone: (202) 376-3120; Toll Free (800) 424-9530.

SUPPLEMENTARY INFORMATION: All principal campaign committees of candidates in the Special Primary Election and all other political committees not filing monthly which support candidates in the Special Primary shall file a 12-day Pre-Primary Report by August 1, 1991, with coverage dates from the last report filed through July 24, 1991. The Mid-Year report is waived for all committees required to file the 12-day Pre-Primary Report.

All principal campaign committees of candidates in the Special Primary and Special General Election and all other political committees not filing monthly which support candidates in the Special General shall file a 12-day Pre-General Election Report due on September 12, 1991, with coverage dates from July 25, 1991, through September 4, 1991, and a 30-day Post-General Election Report due on October 24, 1991, with coverage dates from September 5, 1991, through October 14, 1991.

All political committees not filing monthly which support candidates in the Special General only shall file a 12-day Pre-General Election Report due on September 12, 1991, with coverage dates from July 1, 1991, through September 4, 1991, and a 30-day Post-General Election Report due on October 24, 1991, with coverage dates from September 5, 1991, through October 14, 1991.

CALENDAR OF REPORTING DATES FOR ARIZONA SPECIAL ELECTIONS

Report	Period covered [1]	Reg./Cert. Mailing Date [2]	Filing Date
I. All Committees Involved in the Special Primary (8/13) Only Must File			
Mid-Year [3]	Waived		
Pre-Primary	01/01/91-07/24/91	07/29/91	08/01/91
II. All Committees Involved in the Special Primary (8/13) and Special General (9/24) Must File			
Mid-Year [3]	Waived		
Pre-Primary	01/01/91-07/24/91	07/29/91	08/01/91
Pre-General	07/25/91-09/04/91	09/09/91	09/12/91
Post-General	09/05/91-10/14/91	10/24/91	10/24/91
III. All Committees Involved in the Special General (9/24) Only Must File			
Mid-Year	01/01/91-06/30/91	07/31/91	07/31/91
Pre-General	07/01/91-09/04/91	09/09/91	09/12/91
Post-General	09/05/91-10/14/91	10/24/91	10/24/91

[1] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

[2] Reports sent by registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.

[3] A Mid-Year Report may be waived if it is due within 10 days of the filing date of a Special Election Report. Therefore, the Mid-Year Report is waived for all committees required to file the Pre-Primary Report.

Dated: May 20, 1991.

Joan D. Aikens,

Vice Chairman, Federal Election Commission.

[FR Doc. 91-12319 Filed 5-23-91; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

May 20, 1991

Background

Notice is hereby given of the final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public)

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829)

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503 (202-395-7340)

Final approval under OMB delegated authority of the one-year extension, without revision, of the following reports:

1. *Report title:* Domestic Finance Company Report of Consolidated Assets and Liabilities
Agency form number: FR 2248
OMB Docket number: 7100-005
Frequency: Monthly
Reporters: Domestic finance companies
Annual reporting hours: 2045
Estimated average hours per response: 1.2 hours (1.1 hours each month, except 1.4 hours in March, June, September, and December)
Number of respondents: 142
Small businesses are affected.
General description of report: This information collection is voluntary (12 U.S.C. 225(a)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

The FR 2248 collects monthly data on business and consumer receivables and other balance sheet items from a sample of finance companies. These data are used at the Board to construct universe estimaes of finance company holdings, which are published in two monthly releases, the G.20, Finance Companies, and the G.19, Consumer Installment Credit.

Every five years, the Federal Reserve conducts a more detailed survey from a larger sample of finance companies. This quinquennial survey is used to benchmark the monthly finance company series constructed from the FR

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2248, to evaluate and improve the FR 2248 reporting panel, and to assess the adequacy of the monthly report's item content. A quinquennial survey was conducted in 1990 and now is in the final stages of processing. Upon completion of that processing, the adequacy and efficacy of the FR 2248 will be assessed and revisions will be formulated as appropriate. In the meantime, an interim extension of this monthly report is needed in order to continue the series in its current form.

2. *Report title:* Quarterly Report of Condition for a New York State Investment Company and its Domestic Subsidiaries
Agency form number: FR 2886a
OMB Docket number: 7100–0207
Frequency: Quarterly
Reporters: New York State investment companies
Annual reporting hours: 936
Estimated average hours per response: 18
Number of respondents: 13
Small businesses are not affected.
General description of report: This information collection is authorized by Federal law (12 U.S.C. 3105(b)(1)) and by state law (New York State Banking Law § 513). Data from Schedule M are given confidential treatment (5 U.S.C. 552(b)(4)).

This report is collected quarterly from investment companies chartered under Article XII of New York state banking law that are engaged in banking and that are majority-owned by foreign banks. It is a scaled-down version of the quarterly condition ("Call") reports collected from U.S. branches and agencies of foreign banks (FFIEC 002) and from U.S. commercial banks (FFIEC 031–034). The Federal Reserve collects the FR 2886a both on its own behalf, for use in the construction of various U.S. banking statistics and on behalf of the New York State Banking Department, which uses the information for supervisory and regulatory purposes.

The New York State Banking Department has requested that the report be expanded. While possible revisions are being worked out, an interim extension of the survey in its current form is needed.

3. *Report title:* Monthly Survey of Debits to Demand and Savings Deposits Accounts
Agency form number: FR 2573
OMB Docket number: 7100–0081
Frequency: Monthly
Reporters: Commercial banks
Annual reporting hours: 3600
Estimated average hours per response: 1.0
Number of respondents: 300
Small businesses are affected.
General description of report: This information collection is voluntary (12 U.S.C. 248(a)(2) and 353 *et seq.*) and is given confidential treatment (5 U.S.C. 552(b)(4).

This report collects debits (total withdrawals during the month) to four categories of deposits accounts (demand deposits of individuals, partnerships, and corporations and state and political subdivisions; ATS and NOW accounts; money market deposit accounts; and other savings deposit accounts) from a sample of commercial banks. The debits data from this report are used in conjunction with deposit balances from other reports for the calculation of universe estimates of bank debits and deposit turnover rates for the major types of deposit accounts that money stock holders can use directly or indirectly for transactions purposes. The turnover rates have been used by the Federal Reserve primarily in analysis of the behavior of the monetary aggregates and in money demand studies. The data are published in the monthly G.6 release, Debits and Deposit Turnover at Commercial Banks.

The primary sources for deposits balance data that are needed for construction of the debits series are now undergoing review by the Federal Reserve and revisions may be proposed. (Any proposed revisions would undergo normal clearance.) Any such revisions in these other reports could in turn call for revisions to the debits series. In the meantime, an interim extension of the debits report is needed in order to continue the series in its current form.

Final approval under OMB delegated authority of the three-year extension, without revision, of the following report:
Report title: Weekly and Monthly Money Market Mutual Fund Asset Reports
Agency form number: FR 2051a, b, c, and d
OMB Docket number: 7100–0012
Frequency: Weekly and Monthly
Reporters: Money market mutual funds
Annual reporting hours: 3375
Estimated average hour per response: .13
Number of respondents: 500
Small businesses are affected.
General description of report: This information collection is voluntary (12 U.S.C. 353 et seq.) and is given confidential treatment (5 U.S.C. 552(b)(4).

These reports provide information on the assets of money market mutual funds which is used by the Federal Reserve System in the construction of the monetary aggregates.

Board of Governors of the Federal Reseve System, May 20, 1991.
William W. Wiles,
Secretary of the Board.
[FR Doc. 91–12358 Filed 5–23–91; 8:45 am]
BILLING CODE 6210–01–M

Consumer Advisory Council; Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, June 20. The meeting, which will be open to public observation, will take place in Terrace Room E of the Martin Building. The meeting is expected to begin at 9 a.m. and to continue until 5 p.m., with a lunch break from 1 until 2 p.m. The Martin Building is located on C Street, Northwest, between 20th and 21st Streets in Washington, DC.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

Federal Reserve Board's Feasibility Study on the Use of Testers. Discussion of the Board's feasibility study on the use of testers to detect unlawful discrimination in mortgage lending.
Council Member Profiles. Remarks by Council members identifying special areas of importance and concern to their organizations regarding the provision of financial services to consumers and communities.
Committee Reports. Reports from Council Committees on their work and plans for 1991.

Other matters previously considered by the Council or initiated by Council members may also be discussed.

Persons wishing to submit to the Council their views regarding any of the above topics may do so by sending written statements to Ann Marie Bray, Secretary, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC. 20551. Comments must be received no later than close of business Friday, June 15, and must be of a quality suitable for reproduction.

Information with regard to this meeting may be obtained from Bedelia Calhoun, Staff Specialist, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–2412. Telecommunications Device for the Deaf (TDD) users may contact Dorothea Thompson, (202) 452–3544.

Board of Governors of the Federal Reserve System, May 20, 1991.
William W. Wiles,
Secretary of the Board.
[FR Doc. 91–12357 Filed 5–23–91; 8:45 am]
BILLING CODE 6210–01–M

Banco Mexicano Somex, S.N.C. Mexico City, Mexico; Proposal To Engage in the Business of Receiving Money for Transmission to a Foreign Country and To Engage in Certain Data Processing Activities

Banco Mexicano Somex, S.N.C., Mexico City, Mexico ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act ("BHC Act") (12 U.S.C. 1843(c)(8)) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for prior approval to engage *de novo* in the business of receiving money for transmission to a foreign country through its indirectly wholly-owned subsidiary, Somex Payment Systems, Inc. ("Company").

Applicant proposes for Company and agents of Company to receive funds from the general public for the purpose of transmitting such funds to a customer's designated beneficiary in Mexico. This activity would be conducted pursuant to Article XIII–B of the New York Banking Law. N.Y. Banking Law §§ 640, *et seq.* Company has submitted an application to the New York State Banking Department for a money transmission license.

This activity would be conducted initially in the state of New York at the offices of Applicant's state-chartered Agency ("Agency") and at retail establishments, such as travel agencies and regulated check cashing establishments, appointed as Company's agents pursuant to a standard form agency agreement. Applicant also proposes to expand Company's money transmisison activity in the future into other states subject to obtaining all necessary state and local governmental approvals. Company would engage only in the activity of a licensed money transmitter and would not engage in commercial lending.

Under the proposal, funds received by Company and its agents would be deposited daily into demand accounts maintained by Company at commercial banks in New York City. Applicant expects to deliver the transmitted funds for payment to the customer's designated beneficiary in Mexico within two to three business days. The funds would be cleared through Applicant's New York Agency and would be payable at all Mexican branches of Applicant and at other authorized payment institutions in Mexico. Such funds would be payable either in U.S. dollars or in Mexican pesos.

Applicant also proposes to engage, through Company or Agency, in activities related to the proposed money transmission services, pursuant to 12 CFR 225.22(a) and 12 CFR 225.25(b)(7), including processing of financial data, data transmission, and marketing, advertising, and public relations activities.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with the Board's approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." 12 U.S.C. 1843(c)(8).

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally so similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Association* v. *Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (1984).

Applicant contends that the proposed activity is closely related to banking citing previous orders of the Board that have permitted certain money transmission activities to foreign countries including Philippine Commercial International Bank, 77 Federal Reserve Bulletin 270 (1991), and Bergen Bank A/S, 76 Federal Reserve Bulletin 457 (1990). Applicant also states that the proposed activity is similar to the issuance and sale of money orders, traveler's checks, and similar payment instruments as permitted by Regulation Y (12 CFR 225.25(b)(12)) and by various Board orders such as Midland Bank PLC, 74 Federal Reserve Bulletin 252 (1988). Applicant is not proposing to issue negotiable payment instruments.

In determining whether an activity is a proper incident to banking, the Board must consider whether the proposal may "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." 12 U.S.C. 1843(c)(8). Applicant contends that its proposal would result in increased competition in the market for payment instruments. Applicant also maintains that the proposal would increase consumer convenience and efficiency and would provide other benefits to the public.

In publishing the proposal for comment the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act.

Comments are requested on whether the proposed activities are "so closely related to banking or managing or controlling banks as to be a proper incident thereto," and whether the proposal as a whole can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."

Any request for a hearing on these questions must be accompanied, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Any comments or requests for a hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than June 17, 1991.

Board of Governors of the Federal Reserve System, May 20, 1991.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 91–12539 Filed 5–23–91; 8:45 am]
BILLING CODE 6210–01–M

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GENERAL SERVICES ADMINISTRATION

[G-91-1]

Delegation of Authority to the Secretary of Energy

Pursuant to the authority vested in me by section 3726 of title 31, United States Code, I have determined that it is both cost-effective and in the public interest to delegate authority to the Secretary of Energy to conduct a prepayment audit of freight and passenger transportation bills, subject to the provisions of the Federal Property Management Regulations, title 41, Code of Federal Regulations, subpart 101-41, and amendments thereto. This prepayment audit will be conducted by the General Services Administration's (GSA's) contractors, at the contractors' site, for any of the Department of Energy's 20 payment offices in addition to the Headquarters payment office in Germantown, MD. The Department of Energy has identified the following offices to conduct such audits:

Operations Offices

Albuquerque Operations Office, Financial Management Division, P.O. Box 5400, Albuquerque, NM 87115.
Chicago Operations Office, Financial Management Division, 9800 South Cass Avenue, Argonne, IL 60439.
Idaho Operations Office, Financial Management Division, 785 Doe Place, Idaho Falls, ID 83402.
Nevada Operations Office, Financial Management Division, P.O. Box 98518, Las Vegas, NV 89193-8518.
Oak Ridge Operations Office, Finance Division, P.O. Box 2001, Oak Ridge, TN 37831.
Richland Operations Office, Financial Resources Division, 825 Jadwin Avenue, P.O. Box 550, Richland, WA 99352.
San Francisco Operations Office, Financial Management Division, 1333 Broadway, Oakland, CA 94612.
Savannah River Operations Office, Financial Management and Support Division, P.O. Box A, Aiken, SC 29808.

Power Administrations

Alaska Power Administration, Administrative Division, P.O. Box 020050, Juneau, AK 99802-0050.
Bonneville Power Administration, Office of Finanical Management, P.O. Box 3621, Portland, OR 97208.
Southeastern Power Administration, Division of Fiscal Operations, Samuel Elbert Building, Elberton, GA 30635.
Southwestern Power Administration, Division of Administrative Management, P.O. Box 1619, Tulsa, OK 74101.
Western Area Power Administration, Division of Budget and Financial Management, P.O. Box 3402, Golden, CO 80401.

Naval Reactors

Pittsburgh Naval Reactors Office, Finance Division, P.O. Box 109, West Mifflin, PA 15122-0109.
Schenectady Naval Reactors Office, Finance Division, P.O. Box 1069, Schenectady, NY 12301.

Energy Technology Centers

Morgantown Energy Technology Center, Finance and Budget Division, P.O. Box 880, 3610 Collins Ferry Road, Morgantown, WV 26507-0880.
Pittsburgh Energy Technology Center, Financial Management and Program Control Division, P.O. Box 10940, Pittsburgh, PA 15236-0940.

Naval Petroleum Reserves

Naval Petroleum and Oil Shale Reserves, Finance Division, 800 Werner Court, suite 342, Casper, WY 82601.
Naval Petroleum Reserves in CA, Contracts and Financial Management Division, P.O. Box 11, Tupman, CA 93276.

Strategic Petroleum Reserve

Strategic Petroleum Reserve, Project Management Office, Planning and Financial Management Office, 900 Commerce Road East, New Orleans, LA 70123.

Headquarters

Headquarters Accounting Operations, 19901 Germantown Road, CR-50, room D-202, Germantown, MD 20545.

The Secretary of Energy may redelegate this authority to any officer, official, or employee of the Department of Energy.

The Secretary of Energy shall notify GSA in writing of these additional delegations and their basis. This delegation is effective upon publication in the **Federal Register**.

Dated: May 6, 1991.

Richard G. Austin,

Administrator of General Services.

[FR Doc 91-12251 Filed 5-23-91; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

On Fridays, the Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following are those information collections recently submitted to OMB.

1. Client Satisfaction and Experience with Social Security's Toll-Free Service—NEW—Information is needed to determine client experiences with and assessment of the Social Security Toll-Free Service. The information will be compared with the results of the on-going Social Security client satisfaction study and will provide an overview of clients' telephone sophistication and preferences. Respondents: individuals or households; Annual Number of Respondents: 750; Annual Frequency of Response: one time; Average Burden per Response: 10 minutes; Total Annual Burden: 125 hours.

OMB Desk Officer: Allison Herron.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 619-0511. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: May 13, 1991.

Raffie Shahrigian,

Acting Deputy Assistant Secretary for Management and Acquisition.

[FR Doc. 91-11886 Filed 5-23-91; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

Preclinical Evaluation of Unstented and Allograft Heart Valves; In Vivo Studies; Availability of Cooperative Agreement; Request for Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Devices and Radiological Health, is announcing the availability of $30,000 per year, for a period of up to 3 years, for the establishment of a cooperative agreement to support in vivo studies of unstented bioprosthetic and allograft heart valves. Appropriated FY 1991 funds are currently available for the first year of this study. It should be noted that only direct costs will be available to support this project. This agreement will have no impact on the approved protocol and is intended to support the implantation of additional numbers of bioprosthetic and allograft heart valves as well as extend the duration of implantation.

DATES: Applications must be received by 4:30 p.m. on July 23, 1991. The earliest date for award is September 1, 1991.

ADDRESSES: Application forms are available from, and completed applications should be submitted to: Robert L. Robins, State Contracts and Assistance Agreements Branch (HFA-520), Food and Drug Administration, Park Bldg., rm. 3-20, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6170. Applications hand-carried or commercially delivered should be addressed to Park Bldg., rm. 3-20, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Regarding the administrative and financial management aspects of the program:
Robert L. Robins (address above).
Regarding the programmatic aspects of the research program:
Stephen L. Hilbert, Center for Devices and Radiological Health, Office of Science and Technology, Division of Mechanics and Materials Science, Food and Drug Administration, 12200 Wilkins Ave., Rockville, MD 20852, 301-443-7003.

SUPPLEMENTARY INFORMATION: FDA will support the preclinical studies covered by this notice under section 301 of the Public Health Service Act (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance, No. 93.103.

The Public Health Service (PHS) urges applicants to submit work plans that address specific objectives of the publication "Healthy People 2000." Potential applicants may obtain a copy of "Healthy People 2000" (full report; Stock No. 017-001-00474-0) or "Healthy People 2000" (summary report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, 202-783-3238.

I. Background

FDA is presently conducting laboratory investigations focusing on the evaluation of the safety and efficacy of allograft heart valves and unstented bioprostheses. A fundamental component of the determination of prosthetic valve safety involves the in vivo preclinical evaluation of valve hemodynamic performance and pathology following valvular replacement in a chronic animal model. Mitral valve replacement in juvenile sheep for a period of 20 weeks has evolved as the optimal animal model for the assessment of bioprosthetic valve hemodynamic performance, anticalcification treatments, and valve-related pathology. However, the juvenile sheep model has the following limitations: an extremely small aortic annulus (e.g., 17 millimeters or less); and, the rapid development of aortic valve stenosis caused by aortic valve replacement with unstented bioprostheses. Aortic valve allografts have also been evaluated in juvenile sheep as a right ventricle-pulmonary artery shunt. This procedure allows for the assessment of allograft hemodynamic performance and valve-related pathology; however, the physiological loads placed on the valve during the cardiac cycle using this right-heart model are substantially less than those experienced on the left side of the heart (e.g., aortic position). The in vivo preclinical assessment of unstented replacement heart valve (i.e., xenografts and allografts) safety and performance should include the following: the evaluation of surgical techniques required for replacement heart valve implantation; an acute evaluation of valvular hemodynamic performance; the chronic evaluation of hemodynamic performance; and, the assessment of valvular calcification and valve-related pathology following implantation in a juvenile animal model.

To accomplish this task, FDA proposes to establish a cooperative agreement with an academic cardiac surgery department having both clinical and research expertise in the harvesting and processing of allograft heart valves and their surgical implantation.

II. Research Goals and Objectives

This cooperative agreement is intended to provide financial assistance to a scientific investigator for conducting preclinical in vivo studies suitable for assessing unstented bioprosthetic and allograft heart valve safety and efficacy.

The objectives of this laboratory investigation are to evaluate unstented bioprosthetic and allograft heart valve hemodynamic performance, quantify the extent of valvular calcification, identify valve-related pathology, and, in the case of allograft valves, investigate the molecular biologic aspects of cell viability and the influence of cell viability on valve performance.

The intention of FDA is to encourage the development of scientific and technical expertise involving the implantation of unstented and allograft heart valves in the descending aorta (Refs. 1 and 2) or as a left ventricle to aorta shunt in juvenile sheep. FDA proposes that a 20-week implantation period be initially studied, because this 20-week time interval is currently established in the juvenile sheep model protocol for mitral valve replacement of the National Heart, Lung, and Blood Institute. This 20-week interval is also endorsed by FDA ("Guidance for Replacement Heart Valves," May 1990). The experimental groups should include: Low-pressure-fixed, surfactant-treated porcine aortic valve bioprostheses, six patients minimum (N=6); unstented porcine aortic valve bioprostheses (N=6); antibiotic-stored aortic valve allografts (N=6); and, cryopreserved aortic valve allografts (N=6). Valvular hemodynamic performance (e.g., pressure gradient) studies should be conducted immediately (postimplantation) and at the time of terminal elective study. Cineangiocardiographic studies should also be conducted following 20 weeks of implantation as a measure of valve regurgitation (i.e., native, bioprosthetic, and allograft valves).

It is the intention of FDA to increase the level of funding up to $100,000 as funds become available, to support the implantation of additional numbers of bioprosthetic and allograft heart valves as well as to extend the duration of implantation to 12 months.

III. References

1. Lam, C. R., H. H. Aram, and E. R. Mennell, "An Experimental Study of Aortic Valve Homografts," *Surgery, Gynecology, and Obstetrics*, 94:129-135, 1952.
2. Allen, M. D., Y. Shoji, Y. Fujimura, D. Gordon, R. Thomas, G. M. Martin, and C. M. Disteche, "Growth and Cell Viability of Aortic Versus Pulmonic Homografts in the Systemic Circulation," *Circulation*, (Supp. III), 82:3046, 1990.

IV. Reporting Requirements

A program progress report and an annual Financial Status Report (SF-269) are required. An original and two copies of these reports shall be submitted to FDA's Grants Management Officer within 90 days of the budget expiration

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date of the grant. Failure to file the Financial Status Report (SF-269) in time will be grounds to withhold continuing support of the grant.

A final program progress report, Financial Status Report (SF-269), and Invention Statement must be submitted within 90 days after the expiration of the project period as noted on the Notice of Grant Award.

Program monitoring of grantees will be conducted on an ongoing basis and written reports will be done at least quarterly by the project officer. The monitoring may be in the form of telephone conversations between the project officer/grants management specialist and the principal investigator and/or a site visit with appropriate officials of the grantee organization. The results of these reports will be duly recorded in the official grant file and may be available to the grantee upon request.

V. Mechanism of Support

A. Award Instrument

Support for this program will be in the form of a cooperative agreement award. This award will be subject to all policies and requirements that govern the research grant programs of PHS, including the provisions of 42 CFR part 52 and 45 CFR parts 74 and 92. The regulations promulgated under Executive Order 12372 do not apply to this program.

B. Eligibility

This cooperative agreement is available to any public or private nonprofit organization (including State and local units of government) and to any for-profit organization. For profit organizations must exclude fees or profit from their request for support. Applications will be accepted from other Federal institutions in accordance with PHS Policy Statement, V-1. Copies of this policy will be furnished upon request to the grants management officer.

C. Length of Support

The length of the study will depend upon the nature of the study. For those studies with an expected duration of more than 1 year, noncompetitive continuation of support beyond the first year will depend on: (1) Performance during the preceding year; and (2) the availability of Federal fiscal year appropriations.

D. Funding Plan

Appropriated FY 1991 funds are currently available for the first year of these studies. The intention of FDA is to fund one grant at the level of $30,000 per year, for a period of up to 3 years conditional upon the availability of Federal funds in subsequent fiscal years. This agreement will have no impact on the approved protocol and is intended to support the implantation of additional numbers of bioprosthetic and allograft heart valves as well as extend the duration of implantation. Acceptance of a cooperative agreement award made under this request for application will be evidence that the applicant institution has waived their right to recover any indirect cost under this agreement.

VI. Delineation of Substantive Involvement

Inherent in the cooperative agreement award is substantive involvement by the awarding agency. Accordingly, FDA will have a substantive involvement in the programmatic activities of the project funded under this request for application (RFA). Involvement may be modified to fit the unique characteristics of the application. Substantive involvement includes, but is not limited to the following:

1. FDA will appoint a project officer who will actively monitor the FDA-supported program under this award. During monitoring, FDA may direct or redirect the in vivo studies supported by this award.

2. An appointed FDA scientist will collaborate with the recipient and have final approval of the experimental protocol. This collaboration may include the development of the experimental design, exchange of laboratory personnel for the purpose of data collection and analysis, and interpretation of findings.

3. FDA will conduct explant pathology studies.

VII. Review Procedures and Criteria

A. Review Methods

All applications submitted in response to this request for applications will first be reviewed by grants management and program staff for responsiveness to this request for applications. If applications are found to be nonresponsive, they will be returned to the applicants without further consideration.

Responsive applications will be reviewed and evaluated for scientific and technical merit by outside experts in the field of the specific application. This review will take the form of a competitive review panel. Responsive applications will also be subject to a second level of review by a National Advisory Council for concurrence of the recommendations made by the first-level reviewers with funding decisions made by the Commissioner of Food and Drugs.

B. Review Criteria

Applications must be responsive to this RFA, and those judged nonresponsive will be returned immediately without consideration for funding under this RFA. All applications will be reviewed according to the following criteria:

1. Responsiveness to the RFA (10 points);

2. Request for financial support is adequately justified and fully documented (10 points);

3. Availability and adequacy of laboratory and associated animal facilities (i.e., compliance with the "Principles of Laboratory Animal Care" formulated by the National Safety for Medical Research and the "Guide for the Care and Use of Laboratory Animals" prepared by the National Academy of Sciences (10 points);

4. Ability to accommodate the exchange of laboratory personnel, foster scientific interactions between the respective laboratory investigators, and facilitates the transfer of explanted heart valves and data analysis (20 points);

5. Clinical and research expertise in the procurement and processing of allograft heart valves (10 points);

6. Clinical expertise in cardiac reconstructions with allograft heart valves (10 points);

7. Research expertise in the preclinical evaluation of bioprosthetic and/or allograft heart valves in juvenile sheep (10 points);

8. Research expertise in the area of molecular biology (10 points); and,

9. Research experience, training, and competence of the principal investigator and support staff (10 points)

A total of 100 points is available.

VIII. Submission Requirements

The original and six copies of the completed Grant Application Form PHS 398 (Rev. 9/89), with sufficient copies of all reprints critical to the review, should be delivered to Robert L. Robins (address above). The outside of the mailing package and the top of the application face page should be labeled "Response to RFA-FDA-CDRH-91-01." Supplementary material will not be accepted.

Do not mail the application to the National Institutes of Health.

IX. Methods of Application

A. Submission Instructions

Applications will be accepted from 8 a.m. to 4:30 p.m., Monday through Friday, on or before July 23, 1991 at the above addresses.

Applications will be considered received on time if sent on or before the closing date(s) as evidenced by a legible U.S. Postal Service dated postmark or a legible date receipt from a commercial carrier. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will not be considered for funding and will be returned to the applicant.

Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on this method, applicants should check with their local post office.

B. Format for Applications

Applications must be submitted on Grant Application Form PHS 398 (Rev. 9/89). The face page of the application must reflect the RFA number, RFA-FDA-CDRH-91-01. Data included in the application, if restricted with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (5 U.S.C. 552(b)(4) and FDA's implementing regulations (21 CFR 20.61).

The collection of information requested on Form PHS 398 and instructions have been submitted by PHS to the Office of Management and Budget (OMB) and were approved and assigned OMB control number 0925-0001.

C. Legend

Unless disclosure is required by the Freedom of Information Act as amended (5 U.S.C. 552), as determined by the freedom of information officials of the Department of Health and Human Services, data contained in the portions of this application that have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted information, shall not be used or disclosed except for evaluation purposes.

Dated: March 21, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-12356 Filed 5-23-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-1917; FR-2934-N-27]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: May 24, 1991.

ADDRESSES: For further information, contact James Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free title V Information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinley Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a Notice in the Federal Register identifying the properties determined as suitable.

The properties identified as suitable in this Notice have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Homeless assistance providers interested in any property identified as suitable and available in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 60 days from the date of this Notice. For complete details concerning the processing of applications, the reader is encouraged to refer to HUD's Federal Register Notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

This Notice also contains a list of properties determined by HUD to be unsuitable for use as facilities to assist the homeless. These properties will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to James N. Foresberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the Federal Register, the landholding agency, and the property number.

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For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Air Force: Bob Menke, USAF, Bolling AFB, HQ-USAF/LEER, Washington, DC 20332-5000; (202) 767-4191; U.S. Air Force Base Closures: John Carr, Realty Specialist, HQ-ASESC/BC Pentagon, Washington, DC 20330; (703) 697-7462. (These are not toll-free numbers.)

Dated: May 17, 1991.

Paul R. Bardack,

Deputy Assistant Secretary for Economic Development.

SUITABLE/AVAILABLE PROPERTIES

California

Suitable/Available Buildings (by Agency)

Air Force

Bldgs. 004, 005, 612, 611, 613-618
Point Arena Air Force Station
Mendocino County, CA 95468-5000
Federal Register Notice Date: 05/24/91
Property Numbers: 189010237-189010246
Status: Unutilized
Base Closure: No
Comment: 1232 sq. ft. each; stucco-wood frame; most recent use—housing.

Hawes Site (KHGM)
March AFB
Hinckley, CA, CO: San Bernardino 92402-
Federal Register Notice Date: 05/24/91
Property Number: 189010084
Status: Unutilized
Base Closure: No
Comment: 9290 sq. ft., 2 story concrete, most recent use—radio relay station, possible asbestos, land belongs to Bureau of Land Management, potential utilities.

Suitable/Available Land

Camp Kohler Annex
McClellan AFB
Sacramento, CA, Co: Sacramento 95652-5000
Federal Register Notice Date: 05/24/91
Property Number: 189010045
Status: Excess
Base Closure: No
Comment: 35.30 acres + .11 acres easement; 30+ acres undeveloped; potential utilities; secured area; alternate access.

60 ARG/DE
Travis ILS Outer Marker Annex
Rio-Dixon Road
Travis AFB, CA, Co: Solano 94535-5496
Location: State Highway 113
Federal Register Notice Date: 05/24/91
Property Number: 189010189
Status: Excess
Base Closure: No
Comment: .13 acres; most recent use—location for instrument land systems equipment.

Colorado

Suitable/Available Land (by Agency)

Air Force

NTMU—Partial Area
Lowry Air Force Base
Denver, CO, Co: Denver 80230-5000
Location: West of Aspen Terr. housing area and South of (AFAFC) along the base boundary.
Federal Register Notice Date: 05/24/91
Property Number: 189010254
Status: Excess
Base Closure: No
Comment: Approximately 20 acres; sloping parts in area.

Guam

Suitable/Available Land (by Agency)

Air Force

Annex 1
Andersen Communication
Dededo, GU, Co: Guam 96912-
Location: In the municipality of Dededo.
Federal Register Notice Date: 05/24/91
Property Number: 189010427
Status: Underutilized
Base Closure: No
Comment: 862 acres; subject to utilities easements.

Annex 2, (Partial)
Andersen Petroleum Storage
Dededo, GU, Co: Guam 96912-
Location: In the municipality of Dededo.
Federal Register Notice Date: 05/24/91
Property Number: 189010428.
Status: Underutilized
Base Closure: No
Comment: 34 acres; subject to utilities easements.

Suitable/Available Buildings

Anderson VOR
In the municipality of Dededo
Dededo, GU, Co: Guam 96912-
Location: Access is through Route 1 and Route 3, Marine Drive.
Federal Register Notice Date: 05/24/91
Property Number: 189010267
Status: Unutilized
Base Closure: No
Comment: 550 sq. ft.; 1 story perm/concrete; on 226 acres.

Anderson Radio Beacon Annex
In the municipality Dededo
Dededo, GU, Co: Guam 96912-
Location: Approximately 7.2 miles southwest of Anderson AFB proper; access is from Route 3, Marine Drive.
Federal Register Notice Date: 05/24/91
Property Number: 189010266
Status: Unutilized
Base Closure: No
Comment: 480 sq. ft.; 1 story perm/concrete; on 25 acres; most recent use—radio beacon facility.

Annex No. 4
Anderson Family Housing
Municipality of Dededo
Dededo, GU, Co: Guam 96912-
Location: Access is through Route 1, Marine Drive.
Federal Register Notice Date: 05/24/91
Property Number: 189010545
Status: Underutilized
Base Closure: No
Comment: various sq ft.; 1 story frame/modified quonset; on 376 acres; portions of building and land leased to Government of Guam.

Idaho

Suitable/Available Buildings (by Agency)

Air Force

Bldg. 121
Mountain Home Air Force Base
Maine Avenue
Elmore County, ID 83648-
Federal Register Notice Date: 05/24/91
Property Number: 189030007
Status: Excess
Base Closure: No
Comment: 3375 sq. ft.; 1 story wood frame; potential utilities; needs rehab; presence of asbestos; building is set on piers; most recent use—medical administration, veterinary services.

Illinois

Suitable/Available Buildings (by Agency)

Air Force-BC

Bldgs. 9, 11-14, 21-24, 32-33, 35, 37, 39, 41, 49, 51, 53, 55-71, 73-75, 77-84, 87, 89, 92, 93, 95-97, 99, 103, 107, 111-113, 119, 122-124, 126, 130, 132-136, 138, 140, 141, 145, 146, 150, 152, 154
Chanute Air Force Base
Chapman Courts
Rantoul, IL, Co: Champaign 61866-
Federal Register Notice Date: 05/24/91
Property Numbers: 189030224-189030301
Status: Excess
Base Closure: Yes
Comment: 2-unit residential buildings; wood frame; termite damage; needs major rehab; possible asbestos; possible easement restrictions.

Bldgs. 2, 4, 6-8, 125, 127-129, 131, 153
Chanute Air Force Base
Chapman Courts
Rantoul, IL, Co: Champaign 61866-
Federal Register Notice Date: 05/24/91
Property Numbers: 189030302-189030312
Status: Excess
Base Closure: Yes
Comment: 4-unit residential buildings; wood frame; termite damage; needs major rehab; possible asbestos; possible easement restriction.

Bldgs. 15, 17-20, 26, 27, 29-31, 38, 40, 42, 43, 44, 45, 47, 52, 54, 72, 85, 86, 90-91, 102, 106, 114-115, 120, 144
Chanute Air Force Base
Chapman Courts
Rantoul, IL, Co: Champaign 61866-
Federal Register Notice Date: 05/24/91
Property Numbers: 189030313-189030342
Status: Excess
Base Closure: Yes
Comment: 1-unit residential buildings; wood frame; termite damage; needs major rehab; possible asbestos; possible easement restriction.

Bldg. 5
Chanute Air Force Base Annex
Chapman Courts
Rantoul, IL, Co: Champaign 61866-
Federal Register Notice Date: 05/24/91
Property Number: 189030343
Status: Excess
Base Closure: Yes
Comment: 2707 sq. ft.; 1 story wood frame; termite damage, possible asbestos; needs major rehab; possible easement restriction; most recent use—administrative office.

Bldg. 732
Chanute Air Force Base
Rantoul, IL, Co: Champaign 61866-
Federal Register Notice Date: 05/24/91
Property Number: 189030344
Status: Excess
Base Closure: Yes
Comment: 13336 sq. ft.; 2 story wood frame; needs structural repairs; most recent use—warehouse.

Bldg. 118
Chanute Air Force Base
Rantoul, IL, Co: Champaign 61866-
Federal Register Notice Date: 05/24/91
Property Number: 189030345
Status: Excess
Base Closure: Yes
Comment: 3996 sq. ft.; 1 story wood frame; needs structural repairs; most recent use—band facility.

Bldg. 107
Chanute Air Force Base
Falcon Street
Rantoul, IL, Co: Champaign 61866-
Federal Register Notice Date: 05/24/91
Property Number: 189030346
Status: Excess
Base Closure: Yes
Comment: 17118 sq. ft.; 1 story wood frame; needs rehab; potential utilities; most recent use—cold storage.

Louisiana

Suitable/Available Buildings (by Agency)

Air Force

Barksdale Radio Beacon Annex
Barksdale Radio Beacon Annex
Curtis, LA, Co: Bossier 71111-
Location: 7 miles south of Bossier City on highway 71 south; left 1¼ miles on highway C1552.
Federal Register Notice Date: 05/24/91
Property Number: 189010269
Status: Unutilized
Base Closure: No
Comment: 360 sq. ft.; 1 story wood/concrete; on 11.25 acres.

Maine

Suitable/Available Buildings (by Agency)

Air Force

Bldgs. 1-16
Family Housing Annex, Loring Air Force Base
U.S. Route #1
Caswell, ME, Co: Aroostook 04750-
Federal Register Notice Date: 05/24/91
Property Numbers: 189010590-189010605
Status: Excess
Base Closure: No
Comment: 1116 sq. ft. each; 1 story frame residence; no utilities; asbestos and radon tests pending; fuel tanks removed; sewage line needs repair.

Michigan

Suitable/Available Land (by Agency)

Air Force

Tract A-100E
Port Austin AFS
Port Austin Township, MI Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010108
Status: Excess
Base Closure: No
Comment: .5 acres; used as entrance road for Port Austin AFS; easement and right of way rights need to be negotiated.

Tract A-100
Port Austin AFS
Port Austin Township, MI Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010111
Status: Excess
Base Closure: No
Comment: 30.80 acres; existing easements for utilities, etc.

Tract A-101
Port Austin AFS
Port Austin Township, MI Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010112
Status: Excess
Base Closure: No
Comment: 10.0 acres; existing easements for utilities, etc.

Tract A-101E
Port Austin AFS
Port Austin Township, MI Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010114
Status: Excess
Base Closure: No
Comment: 1.0 acres; 1320 ft long and 33.5 wide; easement and right of way rights need to be negotiated.

Tract A-102E
Port Austin AFS
Port Austin Township, MI Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010116
Status: Excess
Base Closure: No
Comment: 1.21 acres; 50 ft wide and 1050 ft in length; portion used as drainage easement.

Tract A-106-1E
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010117
Status: Excess
Base Closure: No
Comment: 4.0 acres; portion used as drainage easement.

Tract A-106-2E
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010119
Status: Excess
Base Closure: No
Comment: 4.55 acres; portion used as drainage ditch.

Tract A-103
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010121
Status: Excess
Base Closure: No
Comment: 5.30 acres.

Suitable/Available Buildings

Bldg. 1
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010006
Status: Excess
Base Closure: No
Comment: 6642 sq. ft.; 1 story concrete block; possible asbestos; most recent use—library/arts/crafts & storage

Bldg. 2
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010007
Status: Excess
Base Closure: No
Comment: 1546 sq. ft.; 1 story concrete bldg; possible asbestos; most recent use—sales store.

Bldg. 3
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010008
Status: Excess
Base Closure: No
Comment: 7650 sq. ft.; 1 story concrete; possible asbestos; most recent use—maintenance shop and commissary.

Bldg. 4
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467-8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010009
Status: Excess
Base Closure: No

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Comment: 120 sq. ft.; 1 story concrete; most recent use—storage

Bldg. 5
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010010
Status: Excess
Base Closure: No
Comment: 3139 sq. ft.; 1 story concrete & wood; possible asbestos; most recent use—NCO Club.

Bldg. 6
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010021
Status: Excess
Base Closure: No
Comment: 2,885 sq. ft.; 2 story concrete/block/wood, possible asbestos, most recent use-dorm.

Bldg. 7
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010023
Status: Excess
Base Closure: No
Comment: 144 sq. ft.; 1 story block—3 sections, most recent use—storage.

Bldg. 10
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, CO: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010024
Status: Excess
Base Closure: No
Comment: 1000 sq ft., 1 story concrete, would need furnace, most recent use—automotive/hobby shop.

Bldg. 11
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, CO: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010025
Status: Excess
Base Closure: No
Comment: 1547 sq ft., 1 story concrete, no windows, tunnel type entrance, most recent use—troop shelter.

Bldg. 12
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, CO: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010026
Status: Excess
Base Closure: No
Comment: 3630 sq ft., 5 story tower with freight elevator.

Bldg. 13
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010027
Status: Excess
Base Closure: No
Comment: 1364 sq ft., 1 story concrete, most recent use—storage.

Bldg. 15–17
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, CO: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Numbers: 189010028–189010030
Status: Excess
Base Closure: No
Comment: 2855 sq ft. each, 2 story wood/concrete, most recent use—dorm.

Bldg. 18
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, CO: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010031
Status: Excess
Base Closure: No
Comment: 2802 sq ft., 1 story concrete, most recent use—vehicle maintenance shop.

Bldg. 19
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, CO: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010032
Status: Excess
Base Closure: No
Comment: 2304 sq ft., 1 story concrete, most recent use—heat plant.

Bldg. 20
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, CO: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010033
Status: Excess
Base Closure: No
Comment: 3547 sq ft., 1 story concrete, most recent use—dining hall.

Bldg. 23
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, CO: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010034
Status: Excess
Base Closure: No
Comment: 576 sq ft., 1 story concrete, most recent use—water supply building.

Bldg. 24
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010035
Status: Excess
Base Closure: No
Comment: 87 sq. ft., 1 story concrete, most recent use-water pump station.

Bldg. 25
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010036
Status: Excess
Base Closure: No
Comment: 114 sq. ft., 1 story concrete, most recent use-water pump station.

Bldg. 26
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010037
Status: Excess
Base Closure: No
Comment: 3221 sq. ft., 2 story wood/concrete, most recent use-combination officers quarters and medical/dental clinic.

Bldg. 28
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010038
Status: Excess
Base Closure: No
Comment: 2084 sq. ft., 1 story concrete, most recent use-bowling alley.

Bldg. 29
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91

Property Number: 189010039
Status: Excess
Base Closure: No
Comment: 3907 sq. ft., 1 story concrete/metal/steel, designated to be a power plant.

Bldg. 30
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010040
Status: Excess
Base Closure: No
Comment: 2178 sq. ft., 2 story concrete, open at bottom, top floor no roof, radar tower.

Bldg. 31
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010041
Status: Excess
Base Closure: No
Comment: 114 sq. ft., 1 story concrete, most recent use-water pump station.

Bldg. 32
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010042
Status: Excess
Base Closure: No
Comment: 2,466 sq. ft., 1 story concrete block, most recent use-office.

Bldg. 33
Port Austin AFS
754th RADS (TAC)
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010043
Status: Excess
Base Closure: No
Comment: 1,621 sq. ft., 1 story concrete, most recent use-supply warehouse.

Bldg. 34
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010066
Status: Excess
Base Closure: No
Comment: 1972 sq ft., 1 story concrete.

Bldg. 35
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010068
Status: Excess
Base Closure: No
Comment: 1052 sq ft., 1 story frame/concrete.

Bldgs. 36–39
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Numbers: 189010091–189010094
Status: Excess
Base Closure: No
Comment: 845 sq ft. each, 1 story frame/concrete.

Bldgs. 40–43
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Numbers: 189010095–189010096, 189010098, 189010100
Status: Excess
Base Closure: No
Comment: 1052 sq ft. each, 1 story frame/concrete.

Bldgs. 139, 140–143, 135–138
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Numbers: 189010097, 189010099, 189010101–189010103, 189010127–189010130
Status: Excess
Base Closure: No
Comment: 56 sq ft.; 1 story prefab wood; potential use for storage; no utilities.

Bldg. 144
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010104
Status: Excess
Base Closure: No
Comment: 45 sq ft.; 1 story prefab wood; potential use for storage; no utilities.

Bldg. 145
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010105
Status: Excess
Base Closure: No
Comment: 45 sq ft.; 1 story prefab wood; potential use for storage; no utilities.

Telephone Co. Facility
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010106
Status: Excess
Base Closure: No
Comment: 440 sq ft.; 1 story; possible asbestos.

Recreation/Gym Bldg.
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010107
Status: Excess
Base Closure: No
Comment: 5899 sq ft.; 1 story plus mezzanine.

Bldg. 44
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010108
Status: Excess
Base Closure: No
Comment: 108 sq ft., 1 story concrete, most recent use-sewage pump station, potential for storage, no utilities.

Bldg. 46
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010110
Status: Excess
Base Closure: No
Comment: 2924 sq ft., 1 story circular structure, limited utilities.

Bldg. 48
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010113
Status: Excess
Base Closure: No
Comment: 120 sq ft., 1 story wood/concrete, potential utilities.

Bldg. 50
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010115
Status: Excess
Base Closure: No
Comment: 1922 sq ft., 1 story concrete block/most recent use-communications transmitter/receiver building.

Bldg. 51
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010116
Status: Excess

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Base Closure: No
Comment: 672 sq ft., 1 story frame/cement, most recent use-garage, limited utilities.
Bldg. 52
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010120
Status: Excess
Base Closure: No
Comment: 672 sq ft., 1 story frame/cement, limited utilities.
Bldg. 53
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010122
Status: Excess
Base Closure: No
Comment: 672 sq ft., 1 story frame/cement, limited utilities.
Bldg. 54
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010123
Status: Excess
Base Closure: No
Comment: 672 sq ft., 1 story frame/cement, limited utilities.
Bldg. 55
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 05/24/91
Property Number: 189010124
Status: Excess
Base Closure: No
Comment: 336 sq ft., 1 story frame/cement, limited utilities.
Bldg. 75
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 5/24/91
Property Number: 189010125
Status: Excess
Base Closure: No
Comment: 384 sq. ft.; 1 story frame, most recent use—fire hose storage, potential use for storage.
Bldg. 103
Port Austin AFS
Port Austin Township, MI, Co: Huron 48467–8195
Location: Two miles south of Lake Huron on the northern tip of the Saginaw Peninsula.
Federal Register Notice Date: 5/24/91
Property Number: 189010126
Status: Excess
Base Closure: No
Comment: 192 sq. ft.; 1 story wood, most recent use—waste oil.
Bldg. 97
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 5/24/91
Property Number: 189010029
Status: Excess
Base Closure: No
Comment: 171 sq. ft.; 1 floor, potential utilities; most recent use—pump house.

Suitable/Available Land

Calumet Air Force Station
Section 1, T57N, R31W
Houghton Township
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 5/24/91
Property Number: 189010082
Status: Excess
Base Closure: No
Comment: 34 acreas; potential utilities.
Calumet Air Force Station
Section 31, T58N, R30W
Houghton Township
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 5/24/91
Property Number: 189010083
Status: Excess
Base Closure: No
Comment: 3.78 acres; potential utilities.

Suitable/Available Buildings

Bldg. 21
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 5/24/91
Property Number: 189010776
Status: Excess
Base Closure: No
Comment: 2146 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—storage.
Bldg. 22
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 5/24/91
Property Number: 189010777
Status: Excess
Base Closure: No
Comment: 1546 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—administrative facility.
Bldg. 30
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 5/24/91
Property Number: 189010779
Status: Excess
Base Closure: No
Comment: 2593 sq. ft.; 1 floor; concrete block; possible asbestos; potential utilities; most recent use—communications transmitter building.
Bldg. 40
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 5/24/91
Property Number: 189010780
Status: Excess
Base Closure: No
Comment: 2060 sq. ft.; 2 floors; concrete block; possible asbestos; potential utilities; most recent use—administrative facility.
Bldg. 41
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 5/24/91
Property Number: 189010781
Status: Excess
Base Closure: No
Comment: 2069 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—dormitory.
Bldg. 42
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 5/24/91
Property Number: 189010782
Status: Excess
Base Closure: No
Comment: 4017 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—dining hall.
Bldg. 43
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 5/24/91
Property Number: 189010783
Status: Excess
Base Closure: No
Comment: 3674 sq. ft.; 2 story; concrete block; potential utilities; possible asbestos; most recent use—dormitory.
Bldg. 44
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 05/24/91
Property Number: 189010784
Status: Excess
Base Closure: No
Comment: 7216 sq. ft.; 2 story; concrete block; possible asbestos; potential utilities; most recent use—dormitory.
Bldg. 45
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 05/24/91
Property Number: 189010785
Status: Excess
Base Closure: No
Comment: 6070 sq. ft.; 2 story; concrete block; potential utilities; possible asbestos; most recent use—administrative facility.
Bldg. 46
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 05/24/91
Property Number: 189010786
Status: Excess
Base Closure: No
Comment: 5898 sq. ft.; 2 story; concrete block; potential utilities; possible asbestos; most recent use—visiting personnel housing.
Bldg. 47
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 05/24/91
Property Number: 189010787
Status: Excess
Base Closure: No
Comment: 83 sq. ft.; 1 story; concrete block; potential utilities; most recent use—storage.
Bldg. 48
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 05/24/91
Property Number: 189010788
Status: Excess
Base Closure: No

Comment: 96 sq. ft.; 1 story; concrete block; potential utilities; most recent use—storage.
Bldg. 49
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 05/24/91
Property Number: 189010789
Status: Excess
Base Closure: No
Comment: 1944 sq. ft.; 1 story; concrete block; potential utilities; most recent use—dormitory.
Bldg. 50
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 05/24/91
Property Number: 189010790
Status: Excess
Base Closure: No
Comment: 6171 sq. ft.; 1 story; concrete block; potential utilities; possible asbestos; most recent use—Fire Department vehicle parking building.
Bldgs. 51–62
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 05/24/91
Property Number: 189010791–189010802
Status: Excess
Base Closure: No
Comment: 1134 sq. ft. each; 1 story wood frame residence with garages; possible asbestos.
Bldgs. 63–67
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 05/24/91
Property Number: 189010807
Status: Excess
Base Closure: No
Comment: 1308 sq. ft. each; 1 story wood frame residence with garages; possible asbestos.
Bldg. 68
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 05/24/91
Property Number: 189010808
Status: Excess
Base Closure: No
Comment: 1478 sq. ft.; 1 story wood frame residence with garage; possible asbestos.
Bldg. 70
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 05/24/91
Property Number: 189010809
Status: Excess
Base Closure: No
Comment: 1394 sq. ft.; 1 story concrete block; possible asbestos; most recent use—youth center.
Bldgs. 72–89
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 05/24/91
Property Number: 189010811–189010828
Status: Excess
Base Closure: No
Comment: 1168 sq. ft. each; 1 story wood frame residence; potential utilities; possible asbestos.
Bldg. 98
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 05/24/91
Property Number: 189010830
Status: Excess
Base Closure: No
Comment: 114 sq. ft.; 1 floor; potential utilities; most recent use—pump house.
Bldg. 14
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 05/24/91
Property Number: 189010833
Status: Excess
Base Closure: No
Comment: 6751 sq. ft.; 1 floor concrete block; possible asbestos; most recent use—gymnasium.
Bldg. 16
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 05/24/91
Property Number: 189010834
Status: Excess
Base Closure: No
Comment: 3000 sq. ft.; 1 floor concrete block; most recent use—commissary facility.
Bldgs. 9–13
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 05/24/91
Property Numbers: 189010835–189010839
Status: Excess
Base Closure: No
Comment: 1056 sq. ft. each; 1 story wood frame residences.
Bldgs. 5–8
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 05/24/91
Property Numbers: 189010840–189010843
Status: Excess
Base Closure: No
Comment: 864 sq. ft. each; 1 floor wood frame residences; possible asbestos.
Bldg. 4
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 05/24/91
Property Number: 189010844
Status: Excess
Base Closure: No
Comment: 2340 sq. ft.; 1 floor concrete block; most recent use—heating facility.
Bldg. 3
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 05/24/91
Property Number: 189010845
Status: Excess
Base Closure: No
Comment: 5314 sq. ft.; 1 floor concrete block; possible asbestos; most recent use—maintenance shop and office.
Bldg. 1
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 05/24/91
Property Number: 189010846
Status: Excess
Base Closure: No
Comment: 4528 sq. ft.; 1 floor concrete block; possible asbestos; most recent use—office.
Bldgs. 216–224, 211–214
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 05/24/91
Property Numbers: 189010847–189010855, 189010858–189010861
Status: Excess
Base Closure: No
Comment: 780 sq. ft. each; 1 story wood frame housing garage.
Bldg. 215
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 05/24/91
Property Number: 189010856
Status: Excess
Base Closure: No
Comment: 390 sq. ft.; 1 story wood frame housing garage.
Bldg. 158
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 05/24/91
Property Number: 189010857
Status: Excess
Base Closure: No
Comment: 3803 sq. ft.; 1 story concrete/steel; possible asbestos; most recent use—electrical power station.
Bldg. 15
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 05/24/91
Property Number: 189010864
Status: Excess
Base Closure: No
Comment: 538 sq. ft.; 1 floor; concrete/wood structure; potential utilities; most recent use—gymnasium facility.
Bldg. 23
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 05/24/91
Property Number: 189010865
Status: Excess
Base Closure: No
Comment: 44 sq. ft.; 1 story; metal frame; prior use—storage of fire hoses.
Bldg. 24
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 05/24/91
Property Number: 189010866
Status: Excess
Base Closure: No
Comment: 44 sq. ft.; 1 story; metal frame; prior use—storage of fire hoses.
Bldgs. 31–35
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 05/24/91
Property Numbers: 189010867–189010871
Status: Excess
Base Closure: No
Comment: 36 sq. ft. each; 1 story; metal frame; prior use—storage of fire hoses.
Bldgs. 36–37, 201–207
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 05/24/91
Property Numbers: 189010872–189010874, 189010879–189010885
Status: Excess
Base Closure: No

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Comment: 25 sq. ft. each; 1 floor metal frame; prior use—storage of fire hoses.

Bldg. 153
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 05/24/91
Property Number: 189010886
Status: Excess
Base Closure: No
Comment: 4314 sq. ft.; 2 story concrete block facility; (radar tower bldg.) potential use—storage.

Bldg. 154
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 05/24/91
Property Number: 189010887
Status: Excess
Base Closure: No
Comment: 8980 sq. ft.; 4 story concrete block facility; (radar tower bldg.) potential use—storage.

Bldg. 157
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 05/24/91
Property Number: 189010888
Status: Excess
Base Closure: No
Comment: 3744 sq. ft.; 1 story concrete/steel facility; (radar tower bldg.); potential use—storage.

North Dakota

Suitable/Available Buildings (by Agency)

Air Force

Bldgs. 101, 107, 110, 111
Fortuna Air Force Station
Fortuna, ND, Co: Divide 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Federal Register Notice Date: 05/24/91
Property Numbers: 189110095, 189110101–189110103
Status: Excess
Base Closure: No
Comment: 768 sq. ft.; 2 bedroom single family housing units; needs rehab; off-site use only

Bldgs. 102–106
Fortuna Air Force Station
Fortuna, ND, Co: Divide 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Federal Register Notice Date: 05/24/91
Property Numbers: 189110096–189110100
Status: Excess
Base Closure: No
Comment: 988 sq. ft.; 3 bedroom single family housing units; needs rehab; off-site use only.

Bldgs. 112–116, 123–129
Fortuna Air Force Station
Fortuna, ND, Co: Divide 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Federal Register Notice Date: 05/24/91
Property Numbers: 189110104–189110108, 189110115–189110121
Status: Excess
Base Closure: No
Comment: 1510 sq. ft.; 3 bedroom single family housing units with attached garages; needs rehab; off-site use only.

Bldgs. 117, 119, 120–122
Fortuna Air Force Station
Fortuna, ND, Co: Divide 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Federal Register Notice Date: 05/24/91
Property Numbers: 189110109, 189110111–189110114
Status: Excess
Base Closure: No
Comment: 1595 sq. ft.; 3 bedroom single family housing units with attached garages; needs rehab; off-site use only.

Bldg. 118
Fortuna Air Force Station
Fortuna, ND, Co: Divide 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Federal Register Notice Date: 05/24/91
Property Number: 189110110
Status: Excess
Base Closure: No
Comment: 2295 sq. ft.; 4 bedroom single family housing unit; needs rehab; off-site use only.

Bldg. 141
Fortuna Air Force Station
Fortuna, ND, Co: Divide 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Federal Register Notice Date: 05/24/91
Property Number: 189110122
Status: Excess
Base Closure: No
Comment: 364 sq. ft.; 1 stall vehicle garage; needs rehab; off-site use only.

Bldgs. 142–145
Fortuna Air Force Base
Fortuna, ND, Co: Divide 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Federal Register Notice Date: 05/24/91
Property Numbers: 189110123–189110126
Status: Excess
Base Closure: No
Comment: 624 sq. ft.; 2 stall vehicle garages; needs rehab; off-site use only.

Bldgs. 201–218
Fortuna Air Force Base
Fortuna, ND, Co: Divide 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Federal Register Notice Date: 05/24/91
Property Numbers: 189110127–189110144
Status: Excess
Base Closure: No
Comment: 1203 sq. ft.; 3 bedroom single family relocatable housing units; needs rehab; off-site use only.

Bldgs. 221–229
Fortuna Air Force Base
Fortuna, ND, Co: Divide 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Federal Register Notice Date: 05/24/91
Property Numbers: 189110145–189110153
Status: Excess
Base Closure: No
Comment: 672 sq. ft.; 2 stall vehicle garages; needs rehab; off-site use only.

New Hampshire

Suitability/Available Buildings (by Agency)

Air Force–BC

60 Residences
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Numbers: 189040059, 189040060, 189040062–189040064, 189040066–189040070, 189040072, 189040074, 189040075, 189040077–189040080, 189040092–189040094, 189040096–189040097, 189040100, 189040104, 189040108–189040112, 189040114–189040119, 189040122–189040123, 189040125, 189040130, 189040132, 189040134, 189040136, 189040142, 189040146, 189040165–189040167
Status: Excess
Base Closure: Yes
Comment: 4630 sq. ft. each; 2 story wood frame; 4-unit residences.

18 Residences
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Numbers: 189040061, 189040065, 189040071, 189040073, 189040076, 189040091, 189040095, 189040098, 189040099, 189040105–189040107, 189040113, 189040120–189040121, 189040124, 189040138, 189040140
Status: Excess
Base Closure: Yes
Comment: 3936 sq. ft. each; 2 story wood frame; 4-unit residences.

68 Residences
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Numbers: 189040126, 189040129, 189040135, 189040141, 189040152, 189040154, 189040156, 189040158, 189040160–189040164, 189040189, 189040191, 189040193, 189040195, 189040197, 189040201, 189040203, 189040205–189040210, 189040212–189040214, 189040220, 189040223–189040224, 189040227–189040228, 189040233, 189040240–189040241, 189040243, 189040247–189040249, 189040252–189040257, 189040280–189040282, 189040284, 189040267–189040270, 189040274–189040275, 189040278, 189040284, 189040287, 189040292, 189040297, 189040299, 189040301–189040303
Status: Excess
Base Closure: Yes
Comment: 3744 sq. ft. each; 2 story wood frame; 4-unit residences.

98 Residences
Capehart Family Housing

Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Numbers: 189040127–189040128, 189040131, 189040133, 189040137, 189040139, 189040143–189040145, 189040147–189040151, 189040153, 189040155, 189040157, 189040159, 189040166, 189040170–189040190, 189040192, 189040194, 189040196, 189040198–189040200, 189040204, 189040211, 189040215–189040219, 189040221, 189040225–189040226, 189040229–189040232, 189040234–189040239, 189040242, 189040244–189040246, 189040250–189040251, 189040258–189040259, 189040263, 189040265–189040266, 189040271–189040273, 189040277, 189040279–189040283, 189040285–189040286, 189040288–189040291, 189040293–189040296, 189040298, 189040300
Status: Excess
Base Closure: Yes
Comment: 4400 sq. ft. each; 2 story wood frame; 4-unit residences.

Bldg. 848
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040276
Status: Excess
Base Closure: Yes
Comment: 5100 sq. ft.; 2 story wood frame; 4-unit residence.

12 Residences
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Numbers: 189040304–189040306, 189040308, 189040311–189040312, 189040314–189040319
Status: Excess
Base Closure: Yes
Comment: 7960 sq. ft. each; 2 story wood frame; 4-unit residences.

4 Residences
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Numbers: 189040307, 189040309–189040310, 189040313
Status: Excess
Base Closure: Yes
Comment: 8064 sq. ft. each; 2 story wood frame; 4-unit residences.

Bldg. 26
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040320
Status: Excess
Base Closure: Yes
Comment: 15088 sq. ft.; one story concrete block/brick; most recent use—open mess.

Bldg. 46
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040321
Status: Excess
Base Closure: Yes
Comment: 12704 sq. ft.; one story concrete block/brick; most recent use—open mess; presence of asbestos.

Bldg. 60
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040322
Status: Excess
Base Closure: Yes
Comment: 12764 sq. ft.; one story concrete block/brick; most recent use—dining hall; presence of asbestos.

Bldg. 99
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040323
Status: Excess
Base Closure: Yes
Comment: 13222 sq. ft.; one story concrete block/brick; most recent use—open mess; presence of asbestos.

Bldg. 41
Credit Union
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040324
Status: Excess
Base Closure: Yes
Comment: 2400 sq. ft.; one story brick; most recent use—bank facility.

Bldg. 44
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040325
Status: Excess
Base Closure: Yes
Comment: 14234 sq. ft.; 2 story brick/concrete; most recent use—lodging.

Bldg. 96
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040326
Status: Excess
Base Closure: Yes
Comment: 11801 sq. ft.; 2 story wood/steel; most recent use—lodging; presence of asbestos in pipe insulation.

Bldg. 89
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040327
Status: Excess
Base Closure: Yes
Comment: 4260 sq. ft.; one story; possible asbestos; hospital heat plant.

Bldg. 93
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040328
Status: Excess
Base Closure: Yes
Comment: 28233 sq. ft.; 4 story; most recent use—hospital.

Bldg. 98
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040329
Status: Excess
Base Closure: Yes
Comment: 1536 sq. ft.; 1 story; trailer/office space.

Bldg. 35
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040330
Status: Excess
Base Closure: Yes
Comment: 29498 sq. ft.; 1 story; possible asbestos; training facility.

Bldg. 36
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040331
Status: Excess
Base Closure: Yes
Comment: 7602 sq. ft.; 1 story; possible asbestos; training facility.

Bldg. 88
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040332
Status: Excess
Base Closure: Yes
Comment: 10863 sq. ft.; 3 story; possible asbestos; education center.

Bldg. 74
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040333
Status: Excess
Base Closure: Yes
Comment: 4426 sq. ft.; one story; child care center.

Bldg. 76
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040334
Status: Excess
Base Closure: Yes
Comment: 11500 sq. ft.; 1 story; child care center.

Bldg. 62
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040335
Status: Excess
Base Closure: Yes
Comment: 5160 sq. ft.; 1 story masonry frame; most recent use—fire services.

Bldg. 30
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040347
Status: Excess
Base Closure: Yes
Comment: 4510 sq. ft.; 1 story brick; most recent use—sales store; presence of asbestos.

Bldg. 115
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040349
Status: Excess
Base Closure: Yes

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Comment: 48973 sq. ft.; 1 story brick/blocks; most recent use—sales store.

Bldg. 116
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040350
Status: Excess
Base Closure: Yes
Comment: 71509 sq. ft.; 1 story masonry unit; most recent use—commissary; presence of asbestos.

Bldg. 25
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040351
Status: Excess
Base Closure: Yes
Comment: 10426 sq. ft.; 1 story wood frame; presence of asbestos; most recent use—chapel.

Bldg. 63
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040352
Status: Excess
Base Closure: Yes
Comment: 7550 sq. ft.; 1 story wood frame; presence of asbestos; most recent use—chapel

Bldg. 423
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040383
Status: Excess
Base Closure: Yes
Comment: 1338 sq. ft.; 1 story wood frame residence; possible asbestos.

Bldg. 427
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040384
Status: Excess
Base Closure: Yes
Comment: 4995 sq. ft.; 2 story wood frame; most recent use—rod and gun club.

Bldg. 130
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040385
Status: Excess
Base Closure: Yes
Comment: 36570 sq. ft.; 1 story metal; presence of asbestos; most recent use—motor pool.

9 Dormitories
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Numbers: 189040386–189040394
Status: Excess
Base Closure: Yes
Comment: 32589 sq. ft. each; 3 story steel/concrete dormitories; presence of asbestos.

6 Residences w/Detached Garages
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Numbers: 189040395–189040400
Status: Excess
Base Closure: Yes
Comment: 2021 sq. ft. each; 1 story brick/blocks residences with detached garages.

Bldg. 506
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040401
Status: Excess
Base Closure: Yes
Comment: 3138 sq. ft.; 1 story brick/blocks residence with detached garage.

Bldg. 507
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040402
Status: Excess
Base Closure: Yes
Comment: 2317 sq. ft.; 1 story brick/blocks residence with detached garage.

Bldg. 508
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040403
Status: Excess
Base Closure: Yes
Comment: 2524 sq. ft.; 1 story brick/blocks residence with detached garage.

Bldg. 509
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040404
Status: Excess
Base Closure: Yes
Comment: 1621 sq. ft.; 1 story brick/blocks residence with detached garage.

57 Residences w/Detached Garages
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Numbers: 189040405–189040461
Status: Excess
Base Closure: Yes
Comment: 3326 sq. ft. each; 2 story wood frame; 2 unit residences with detached garages.

6 Residences w/Detached Garages
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Numbers: 189040462–189040467
Status: Excess
Base Closure: Yes
Comment: 4462 sq. ft. each; 1 story wood frame; 2 unit residences with detached garages.

4 Residences w/Attached Garages
Capehart Family Housing
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Numbers: 189040468–189040471
Status: Excess
Base Closure: Yes
Comment: 13058 sq. ft. each; 2 story wood frame; 6 unit residences with attached garages.

244 Detached Housing Storage Sheds
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Numbers: 189040472–189040715
Status: Excess
Base Closure: Yes
Comment: Wood frame detached housing storage sheds.

Bldg. 22
Communications Facilities
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040720
Status: Excess
Base Closure: Yes
Comment: 5345 sq. ft.; 1 story concrete block; possible asbestos; most recent use—communications facility.

Bldg. 32
Communications Facilities
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040721
Status: Excess
Base Closure: Yes
Comment: 11310 sq. ft.; 1 story brick/block frame; possible asbestos; most recent use—data processing.

Bldg. 420
Communications Facilities
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040726
Status: Excess
Base Closure: Yes
Comment: 1843 sq. ft.; 1 story concrete frame; most recent use—communications transmitter.

Bldg. 18
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040734
Status: Excess
Base Closure: Yes
Comment: 6134 sq. ft.; 1 story concrete block; most recent use—library.

Bldg. 28
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040735
Status: Excess
Base Closure: Yes
Comment: 14417 sq. ft.; 1 story concrete block; presence of asbestos; most recent use—bowling center.

Bldg. 29
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040736
Status: Excess
Base Closure: Yes
Comment: 13362 sq. ft.; 1 story concrete block; presence of asbestos; most recent use—theater.

Bldg. 37
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040737
Status: Excess
Base Closure: Yes
Comment: 27415 sq. ft.; 1 story concrete block; presence of asbestos; most recent use—gymnasium.

Bldg. 38
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040738
Status: Excess
Base Closure: Yes
Comment: 25785 sq. ft.; 1 story concrete block; presence of asbestos; most recent use—recreation center.

Bldg. 61
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040739
Status: Excess
Base Closure: Yes
Comment: 5730 sq. ft.; 1 story concrete block; presence of asbestos; most recent use—youth center.

Bldg. 85
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040740
Status: Excess
Base Closure: Yes
Comment: 12220 sq. ft.; 1 story concrete block; most recent use—storage facility.

Bldg. 103
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040741
Status: Excess
Base Closure: Yes
Comment: 7863 sq. ft.; 1 story concrete block; most recent use—automotive shop.

Bldg. 470
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040742
Status: Excess
Base Closure: Yes
Comment: 1105 sq. ft.; 1 story concrete block; presence of asbestos; most recent use—swimmers bath house.

9 Buildings
Munitions Storage Area
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040743–189040751
Status: Excess
Base Closure: Yes
Comment: 1 story concrete frame; most recent use—munitions storage area; possible asbestos.

Bldg. 2
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040752
Status: Excess
Base Closure: Yes
Comment: 1206 sq. ft.; 1 story brick block; most recent use—administrative facility.

Bldg. 4
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040753
Status: Excess
Base Closure: Yes
Comment: 4120 sq. ft.; 1 story brick/block; presence of asbestos; most recent use—post office.

Bldg. 5
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040754
Status: Excess
Base Closure: Yes
Comment: 10863 sq. ft.; 3 story steel/blocks; presence of asbestos; most recent use—administrative facility.

Bldg. 6
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040755
Status: Excess
Base Closure: Yes
Comment: 13019 sq. ft.; 1 story concrete; most recent use—administrative facility.

Bldg. 7
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040756
Status: Excess
Base Closure: Yes
Comment: 4120 sq. ft.; 1 story brick/block; presence of asbestos; most recent use—administrative facility.

Bldg. 10
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040757
Status: Excess
Base Closure: Yes
Comment: 4640 sq. ft.; 1 story brick/block; presence of asbestos; most recent use—administrative facility.

Bldg. 21
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040758
Status: Excess
Base Closure: Yes
Comment: 2178 sq. ft.; 1 story brick/blocks; most recent use—administrative facility.

Bldg. 23
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040759
Status: Excess
Base Closure: Yes
Comment: 14572 sq. ft.; 2 story wood/concrete blocks; presence of asbestos; most recent use—administrative facility.

Bldg. 31
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040760
Status: Excess
Base Closure: Yes
Comment: 14959 sq. ft.; 1 story brick/blocks; presence of asbestos; most recent use—administrative facility.

Bldg. 34
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040761
Status: Excess
Base Closure: Yes
Comment: 5111 sq. ft.; 1 story brick/blocks; presence of asbestos; most recent use—photo lab.

Bldg. 43
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040762
Status: Excess
Base Closure: Yes
Comment: 6641 sq. ft.; 1 story wood frame; most recent use—administrative facility.

Bldg. 48
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040763
Status: Excess
Base Closure: Yes
Comment: 4120 sq. ft.; 1 story brick/blocks; presence of asbestos; most recent use—post office.

Bldg. 59
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040764
Status: Excess
Base Closure: Yes
Comment: 4120 sq. ft.; 1 story; brick/blocks; presence of asbestos; most recent use—administrative facility.

Bldg. 77
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040765
Status: Excess
Base Closure: Yes
Comment: 12220 sq. ft.; 1 story concrete; presence of asbestos; most recent use—administrative facility.

Bldg. 78
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040766
Status: Excess
Base Closure: Yes
Comment: 4120 sq. ft.; 1 story brick/blocks; presence of asbestos; most recent use—administrative facility.

Bldg. 79
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040767
Status: Excess
Base Closure: Yes

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Comment: 10883 sq. ft.; 3 story concrete; presence of asbestos; most recent use—administrative facility.
Bldg. 86
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040768
Status: Excess
Base Closure: Yes
Comment: 4850 sq. ft.; 1 story brick/block; most recent use—administrative facility.
Bldg. 90
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040769
Status: Excess
Base Closure: Yes
Comment: 6282 sq. ft.; 2 story brick/blocks; most recent use—administrative facility.
Bldg. 91
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040770
Status: Excess
Base Closure: Yes
Comment: 10898 sq. ft.; 1 story brick; most recent use—administrative facility.
Bldg. 95
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040771
Status: Excess
Base Closure: Yes
Comment: 12683 sq. ft.; 1 story wood frame; presence of asbestos; most recent use—band center.
Bldg. 40
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040773
Status: Excess
Base Closure: Yes
Comment: 100 sq ft.; 1 story metal frame; limited utilities; possible asbestos.
Bldg. 66
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040774
Status: Excess
Base Closure: Yes
Comment: 1000 sq. ft.; 1 story cinder blocks frame; limited utilities; possible asbestos.
Bldg. 67
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number 189040775
Status: Excess
Base Closure: Yes
Comment: 1728 sq. ft.; 1 story wood frame; limited utilities; possible asbestos; most recent use—maintenance shop.
Bldg. 69
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number 189040776
Status: Excess
Base Closure: Yes
Comment: 240 sq. ft.; 1 story wood frame; limited utilities; possible asbestos; most recent use—storage.
Bldg. 82
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number 189040777
Status: Excess
Base Closure: Yes
Comment: 720 sq. ft.; 1 story wood frame; limited utilities; possible asbestos; most recent use—storage.
Bldg. 104
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number 189040778
Status: Excess
Base Closure: Yes
Comment: 488 sq. ft.; 1 story cement frame; limited utilities; possible asbestos; most recent use—offices.
Bldg. 125
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number 189040779
Status: Excess
Base Closure: Yes
Comment: 345 sq. ft.; 1 story masonry frame; limited utilities; possible asbestos; most recent use—storage.
Bldg. 134
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number 189040780
Status: Excess
Base Closure: Yes
Comment: 1344 sq. ft.; 1 story aluminum frame; limited utilities; most recent use—clubhouse.
Bldg. 135
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number 189040781
Status: Excess
Base Closure: Yes
Comment: 2100 sq. ft.; 1 story brick/block frame; limited utilities; possible asbestos; most recent use—administrative.
Bldg. 179
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number 189040782
Status: Excess
Base Closure: Yes
Comment: 54 sq. ft.; 1 story concrete frame; limited utilities; possible asbestos; most recent use—traffic check house.
Bldg. 204
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number 189040783
Status: Excess
Base Closure: Yes
Comment: 192 sq. ft.; 1 story concrete frame; limited utilities; possible asbestos.
Bldg. 208
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number 189040784
Status: Excess
Base Closure: Yes
Comment: 32 sq. ft.; 1 story aluminum frame; limited utilities; possible asbestos; most recent use—storage.
Bldg. 218
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number 189040785
Status: Excess
Base Closure: Yes
Comment: 54 sq. ft.; 1 story brick/block frame; limited utilities; possible asbestos.
Bldg. 228
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number 189040786
Status: Excess
Base Closure: Yes
Comment: 54 sq. ft.; 1 story brick/block frame; limited utilities; possible asbestos; most recent use—traffic check house.
Bldg. 265
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040787
Status: Excess
Base Closure: Yes
Comment: 451 sq. ft.; 1 story metal frame; limited utilities; possible asbestos; most recent use—storage.
Bldg. 307
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040788
Status: Excess
Base Closure: Yes
Comment: 1325 sq. ft.; 1 story cement frame; limited utilities; possible asbestos; most recent use—administrative.
Bldg. 367
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040790
Status: Excess
Base Closure: Yes
Comment: 70 sq. ft.; 1 story brick/block frame; limited utilities; possible asbestos; most recent use—traffic check house.
Bldg. 410
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040791
Status: Excess
Base Closure: Yes
Comment: 1470 sq. ft.; 1 story concrete frame; limited utilities; possible asbestos; most recent use—club house.
Bldg. 431
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040792
Status: Excess

Base Closure: Yes
Comment: 500 sq. ft.; 1 story concrete frame; limited utilities; possible asbestos; most recent use—storage.
Bldg. 457
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040793
Status: Excess
Base Closure: Yes
Comment: 1325 sq. ft.; 1 story cement frame; limited utilities; possible asbestos; most recent use—administrative.
11 Buildings
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040795–189040805
Status: Excess
Base Closure: Yes
Comment: 120 sq. ft. each; 1 story concrete frame; limited utilities; possible asbestos; most recent use—storage.

NEVADA

Suitable/Available Buildings (by Agency)

Bldgs. 300–302
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs, NV, Co.: Clark 89018–
Federal Register Notice Date: 05/24/91
Property Numbers: 189120001–189120003
Status: Unutilized
Base Closure: No
Comment: 1573 sq. ft. each, one story family housing, easement restrictions, potential utilities, off-site removal only.
Bldgs. 303–306
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs, NV, Co.: Clark 89016–
Federal Register Notice Date: 05/24/91
Property Numbers: 189120004–189120007
Status: Unutilized
Base Closure: No
Comment: 2750 sq. ft. each, one story family housing, easement restrictions, potential utilities, off-site removal only.
Bldgs. 307–310, 318, 320–322
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs, NV, Co: Clark 89018–Federal Register Notice Date: 05/24/91
Property Numbers: 189120008–189120011, 189120019, 189120021–189120023
Status: Unutilized
Base Closure: No
Comment: 2170 sq. ft. each, one story family housing, easement restrictions, potential utilities, off-site removal only.
Bldgs. 311–317, 319, 324–326
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs, NV, Co: Clark 89016–Federal Register Notice Date: 05/24/91
Property Numbers: 189120012–189120018, 189120020, 189120025–189120027
Status: Unutilized
Base Closure: No
Comment: 2424 sq. ft. each, one story family housing, easement restrictions, potential utilities, off-site removal only.
Bldg. 323
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs, NV, Co: Clark 89018–Federal Register Notice Date: 05/24/91
Property Number: 189120024
Status: Unutilized
Base Closure: No
Comment: 1233 sq. ft., on story family housing, easement restrictions, potential utilities, off-site removal only.
Bldgs. 331–341, 343, 345, 346, 348–353
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs, NV, Co: Clark 89018–Federal Register Notice Date: 05/24/91
Property Numbers: 189120026–189120047
Status: Unutilized
Base Closure: No
Comment: 1170 sq. ft. each, one story family housing, easement restrictions, potential utilities, off-site removal only.
Bldg. 400
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs, NV, Co: Clark 89018–Federal Register Notice Date: 05/24/91
Property Number: 189120048
Status: Unutilized
Base Closure: No
Comment: 2464 sq. ft. each, one story most recent use—maintenance shop, easement restrictions, potential utilities, off-site removal only.
Bldg. 402
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs, NV, Co: Clark 89018–Federal Register Notice Date: 05/24/91
Property Number: 189120049
Status: Unutilized
Base Closure: No
Comment: 2570 sq. ft., one story, most recent use—Chapel, easement restrictions, potential utilities, off-site removal only.
Bldg. 404
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs, NV, Co: Clark 89018–Federal Register Notice Date: 05/24/91
Property Number: 189120050
Status: Unutilized
Base Closure: No
Comment: 2376 sq. ft., one story, most recent use—religious education facility, easement restrictions, potential utilities, off-site removal only.
Bldg. 406
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs, NV, Co: Clark 89018–Federal Register Notice Date: 05/24/91
Property Number: 189120051
Status: Unutilized
Base Closure: No
Comment: 2605 sq. ft., one story, most recent use—child care facility, easement restrictions, potential utilities, off-site removal only.
Bldgs. 3027, 3029–3040
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs, NV, Co: Clark 89018–Federal Register Notice Date: 05/24/91
Property Numbers: 189120052, 189120054–189120065
Status: Unutilized
Base Closure: No
Comment: 120 sq. ft. each, one story, most recent use-storage, easement restrictions, potential utilities, off-site removal only.
Bldgs. 3036
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs, NV, Co: Clark 89018–Federal Register Notice Date: 05/24/91
Property Number: 189120053
Status: Unutilized
Base Closure: No
Comment: 60 sq. ft., one story, most recent use—storage, easement restrictions, potential utilities, off-site removal only.

TEXAS

Suitable/Available buildings (by Agency)

Air Force
Bldg. 605
Brooks Air Force Base
San Antonio, TX, Co: Bexar 78235–
Federal Register Notice Date: 05/24/91
Property Number: 189110090
Status: Unutilized
Base Closure: No
Comment: 392 sq. ft.; 1 story sheet metal building; most recent use—storage; possible asbestos; needs rehab.
Bldg. 696
Brooks Air Force Base
San Antonio, TX, Co: Bexar 78235–
Federal Register Notice Date: 05/24/91
Property Number: 189110091
Status: Unutilized
Base Closure: No
Comment: 1344 sq. ft.; possible asbestos; most recent use—auto hobby shop; needs rehab.
Bldg. 697
Brooks Air Force Base
San Antonio, TX, Co: Bexar 78235–
Federal Register Notice Date: 05/24/91
Property Number: 189110092
Status: Unutilized
Base Closure: No
Comment: 770 sq. ft.; possible asbestos; most recent use—supply store; needs rehab.
Bldg. 698
Brooks Air Force Base
San Antonio, TX, Co: Bexar 78235–
Federal Register Notice Date: 05/24/91
Property Number: 189110093
Status: Unutilized
Base Closure: No
Comment: 5815 sq. ft.; 1 story corrugated iron; possible asbestos; needs rehab; most recent use—recreation, workshop.
Bldg. 699
Brooks Air Force Base
San Antonio, TX, Co: Bexar 78235–
Federal Register Notice Date: 05/24/91
Property Number: 189110094
Status: Unutilized
Base Closure: No
Comment: 2659 sq. ft.; 1 story; possible asbestos; most recent use—arts and crafts center.

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SUITABLE/UNAVAILABLE PROPERTIES

California

Suitable/Unavailable Land (by Agency)

Air Force
Norton Com. Facility Annex
Norton AFB
Sixth and Central Streets
Highland, CA, Co: San Bernadino 92409–5045
Federal Register Notice Date: 05/24/91
Property Number: 189010194
Status: Excess
Base Closure: No
Comment: 30.3 acres; most recent use—recreational area; portion subject to easements.

Suitable/Unavailable Buildings (by Agency)

Bldg. 540
Vandenberg Air Force Base
Off Coast Road
Vandenberg AFB, CA, Co: Santa Barbara 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Federal Register Notice Date: 05/24/91
Property Number: 189010561
Status: Unutilized
Base Closure: No
Comment: 384 sq. ft.; 1 story concrete/sheet metal; needs rehab; most recent use—locomotive maintenance/supply building; potential use—storage.

Florida

Suitable/Unavailable Buildings (by Agency)

Air Force
Bldgs. 166, 168, 170, 172, 174, 176
Patrick Air Force Base
North Highway A1A
Cocoa Beach, FL, Co: Brevard 32925–
Federal Register Notice Date: 05/24/91
Property Numbers: 189110154–189110159
Status: Unutilized
Base Closure: No
Comment: 2100 sq. ft. each; 1 story concrete block residence; needs major repair; presence of asbestos.

Suitable/Unavailable Land (by Agency)

Eglin AFB
S½, SW¼, Sect. 16, T2S R25W
Mary Esther, FL, Co: Okaloosa 32569–
Location: North side of US Highway 98
Federal Register Notice Date: 05/24/91
Property Number: 189010133
Status: Excess
Base Closure: No
Comment: 49 acres, Parcel 3; Flat, cleared land; previous use—buffer safety zone; county has license to construct sewage treatment facility on land.

Eglin AFB
Mossy Head, FL, Co: Walton 32533–
Location: NW quadrant of Florida Highway 285 and I–10. Bounded on the North by Louisville RR near Mossy Head, Florida.
Federal Register Notice Date: 05/24/91
Property Number: 189010134
Status: Excess
Base Closure: No
Comment: 50 acres, Parcel 9; previous buffer zone; potential utilities.

Eglin AFB
Mossy Head, FL, Co: Walton 32533–
Location: NE quadrant of Florida Highway 285, I-10 intersection. Bounded on the North by Louisville and Nashville RR near Mossy Head, Florida.
Federal Register Notice Date: 05/24/91
Property Number: 189010135
Status: Excess
Base Closure: No
Comment: 285 acres; Parcel 10; previous buffer zone; potential utilities.

Eglin AFB
Mossy Head, FL, Co: Walton 32533–
Location: Approximately 1 mile east of Florida Highway 285 and US Highway 90 on north side.
Federal Register Notice Date: 05/24/91
Property Number: 189010136
Status: Excess
Base Closure: No
Comment: 47 acres; Parcel 11; previous buffer zone; potential utilities.

Georgia

Suitable/Unavailable Land (by Agency)

Air Force
Robins Air Force Base
1600 Area No. Davis Drive
Warner Robins, GA, Co: Houston 31098–
Federal Register Notice Date: 05/24/91
Property Number: 18910214
Status: Excess
Base Closure: No
Comment: Approximately 70 acres; potential utilities; paved roads and parking areas.

Suitable/Unavailable Buildings (by Agency)

Bldgs. 1675–1680, 1682–1687
Robins Air Force Base
1600 Area No. Davis Drive
Warner Robins, GA, Co: Houston 31098–
Federal Register Notice Date: 05/24/91
Property Numbers: 189010215–189010228
Status: Excess
Base Closure: No
Comment: 20110 sq. ft. (10 bldgs.), 15875 sq. ft. (1 bldg.), 5909 sq. ft. (1 bldg.); 1 story concrete; possible asbestos; utilities disconnected; two right-of-way easements.

Illinois

Suitable/Unavailable Buildings (by Agency)

Air Force
Bldg. 1380
Chanute Air Force Base
Rantoul, IL, Co: Champaign 61868–
Federal Register Notice Date: 05/24/91
Property Number: 189010232
Status: Unutilized
Base Closure: No
Comment: 350 sq. ft.; one story wood frame; no utilities; structural deficiencies; used for training exercise (chemicals and explosives).

Bldg. 106
Chanute Air Force Base
Rantoul, IL, Co: Champaign 61868–
Federal Register Notice Date: 05/24/91
Property Number: 189010255
Status: Unutilized
Base Closure: No
Comment: 2360 sq. ft.; 2 story wood; possible asbestos; most recent use—jail.

Bldg. 123
Chanute Air Force Base
Rantoul, IL, Co: Champaign 61868–
Federal Register Notice Date: 05/24/91
Property Number: 189010256
Status: Unutilized
Base Closure: No
Comment: 1500 sq. ft.; 1 story wood; potential utilities.

Bldg. 125
Chanute Air Force Base
Rantoul, IL, Co: Champaign 61868–
Federal Register Notice Date: 05/24/91Property Number: 189010257
Status: Unutilized
Base Closure: No
Comment: 16846 sq. ft.; 1 story wood frame; possible abestos; no utilities.

Bldg. 383
Chanute Air Force Base
Rantoul, IL, Co: Champaign 61868–
Federal Register Notice Date: 05/24/91
Property Number: 189010258
Status: Unutilized
Base Closure: No
Comment: 1945 sq. ft.; 1 story masonry/glass frame; most recent use—bank; friable asbestos on ceiling tiles in two rooms.

Bldg. 1220
Chanute Air Force Base
Rantoul, IL, Co: Champaign 61868–
Federal Register Notice Date: 05/24/91
Property Number: 189010259
Status: Unutilized
Base Closure: No
Comment: 589 sq. ft.; 1 story concrete block; water pump house for swimming pool; potential utilities.

Bldg. 1221
Chanute Air Force Base
Rantoul, IL, Co: Champaign 61868–
Federal Register Notice Date: 05/24/91
Property Number: 189010260
Status: Unutilized
Base Closure: No
Comment: 2893 sq. ft.; 1 story concrete; bath house for swimming pool limited utilities; possible asbestos.

Massachusetts

Suitable/Unavailable Buildings (by Agency)

Air Force
5 Bldgs.
Otis Air National Guard—Family Housing
Cape Cod
Barnstable County, MA 02542–5000
Federal Register Notice Date: 05/24/91
Property Numbers: 189010611–189010613, 189010647, 189010648
Status: Unutilized
Base Closure: No
Comment: 8856 sq. ft. to 10423 sq. ft. each; wood/concrete frame; 6-unit family housing; lacks functional sewage disposal system; possible asbestos; needs rehab; potential utilities.

91 Bldgs.
Otis Air National Guard—Family Housing
Cape Cod
Barnstable County, MA 02542–5001
Federal Register Notice Date: 05/24/91
Property Number: 189010614–189010631, 189010649–189010721
Status: Unutilized

Base Closure: No
Comment: 5904 sq. ft. to 9216 sq. ft. each; wood/concrete frame; 4-unit family housing; lacks functional sewage disposal system; possible asbestos; needs rehab; potential utilities.

15 Bldgs.
Otis Air National Guard—Family Housing
Cape Cod
Barnstable County, MA 02542–5001
Federal Register Notice Date: 05/24/91
Property Numbers: 189010632–189010639, 189010640–189010646
Status: Unutilized
Base Closure: No
Comment: 2952 sq. ft. to 3474 sq. ft. each; wood/concrete frame; 2-unit family housing; lacks functional sewage disposal system; possible asbestos; needs rehab; potential utilities.

Michigan

Suitable/Unavailable Buildings (by Agency)

Air Force
Bldg. 20
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 05/24/91
Property Number: 189010775
Status: Excess
Base Closure: No
Comment: 13404 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—warehouse/supply facility.

Bldg. 28
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913–
Federal Register Notice Date: 05/24/91
Property Number: 189010776
Status: Excess
Base Closure: No
Comment: 1000 sq. ft.; 1 floor; possible asbestos; potential utilities; most recent use—maintenance facility.

Missouri

Suitable/Unavailable Buildings (by Agency)

Air Force
Jefferson Barracks ANG Base
Missouri National Guard
1 Grant Road
St. Louis, MO, Co: St. Louis 63125–4118
Federal Register Notice Date: 05/24/91
Property Number: 189010081
Status: Underutilized
Base Closure: No
Comment: 20 acres; portion near flammable materials; portion on archaeological site; special fencing required.

Montana

Suitable/Unavailable Buildings (by Agency)

Air Force
Housing Area Facility Nos. 5–12, 130
Kalispell Air Force Station
Kalispell, MT, Co: Flathead 59901–
Federal Register Notice Date: 05/24/91
Property Numbers: 189030033–189030041
Status: Excess
Base Closure: No
Comment: 980 sq. ft. to 1768 sq. ft. each; 1 story concrete building; possible asbestos; easement restrictions; most recent use—military training school; scheduled to be vacated 10/31/90.

New Mexico

Suitable/Unavailable Buildings (by Agency)

Air Force
Bldg. 13 1606 ABW/DE
Kirtland AFB
Wyoming Avenue
Kirtland, NM, Co: Bernalillo 87117–5496
Federal Register Notice Date: 05/24/91
Property Number: 189010072
Status: Unutilized
Base Closure: No
Comment: 520 sq. ft., 1 story portable building, off-site use only.

South Dakota

Suitable/Unavailable Buildings (by Agency)

Air Force
54 Bldgs.
Renel Heights
Ellsworth AFB, SD, Co: Pennington 57706–
Location: Across from main gate turn off.
Federal Register Notice Date: 05/24/91
Property Numbers: 189010343–189010355, 189010386–189010426
Status: Unutilized
Base Closure: No
Comment: 852 sq. ft. to 1652 sq. ft. each; 1 story concrete masonry block residences; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.

124 Bldgs.
Skyway
Ellsworth AFB, SD, Co: Pennington 57706–
Location: Between main gate turn off and school gate.
Federal Register Notice Date: 05/24/91
Property Numbers: 189010356–189010384, 189010780–189010774, 189030008–189030015, 189040003–189040028, 189110033–189110080
Status: Unutilized
Base Closure: No
Comment: 461 sq. ft. to 1256 sq. ft. each; 1 and 2 story residences; structurally deteriorated; possible asbestos; secured area with alternate access; potential utilities.

Bldgs. 1108, 1109, 1113, 1114
Ellsworth Air Force Base
Center Drive
Ellsworth AFB, SD, Co: Pennington 57706–
Federal Register Notice Date: 05/24/91
Property Numbers: 189010439–189010442
Status: Unutilized
Base Closure: No
Comment: 10303 sq. ft. each; 2 story wood frame with basement; possible asbestos; secure facility with alternate access; potential utilities.

Texas

Suitable/Unavailable Buildings (by Agency)

Air Force
176 Bldgs.
Carswell Air Force Base
Fort Worth, TX, Co: Tarrant 76114–
Federal Register Notice Date: 05/24/91
Property Numbers: 189030043–189030218
Status: Unutilized
Base Closure: No
Comment: 1387 sq. ft. to 2148. sq. ft. each; 1 story wood frame; structurally deteriorated; possible asbestos and termite infestation; inadequate sewage disposal system.

Bldg. 467
Laughlin Air Force Base
Val Verde Co., TX, Co: Val Verde 78843–5000
Location: Six miles on Highway 90 east of Del Rio, Texas.
Federal Register Notice Date: 05/24/91
Property Numbers: 189010179
Status: Underutilized
Base Closure: No
Comment: 10500 sq. ft.; wood frame; needs rehab; seasonal use by scouts and CAP.

Bldg. 89
Laughlin Air Force Base
Val Verde Co., TX, Co: Val Verde 78843–5000
Location: Six miles on Highway 90 east of Del Rio, Texas.
Federal Register Notice Date: 05/24/91
Property Number: 189010180
Status: Underutilized
Base Closure: No
Comment: 4122 sq. ft.; 1 floor; wood frame; needs rehab; portion temporarily used for storage.

UNSUITABLE PROPERTIES

Alaska

Unsuitable Buildings (by Agency)

Air Force
Bldg. 1025
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB, AK, Co: Anchorage 99506–5000
Federal Register Notice Date: 05/24/91
Property Number: 189010318
Status: Unutilized
Base Closure: No
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Unsuitable Land (by Agency)

Campion Air Force Station
21 CSG/DEER
Elmendorf AFB, AK, Co: Anchorage 99506–5000
Federal Register Notice Date: 05/24/91
Property Number: 189010430
Status: Unutilized
Base Closure: No
Reason: Other, Isolated area, Not accessible by road
Comment: isolated and remote area; Arctic environment.

Lake Louise Recreation
21 CSG–DEER
Elmendorf AFB, AK, Co: Anchorage 99506–5000
Federal Register Notice Date: 05/24/91
Property Number: 189010431
Status: Unutilized
Base Closure: No
Reason: Other, Isolated area, Not accessible by road
Comment: Isolated and remote area; Arctic coast.

Nikolski Radio Relay Site
21 CSG/DEER

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Elmendorf AFB, AK, Co: Anchorage 99506–5000
Federal Register Notice Date: 05/24/91
Property Number: 189010432
Status: Unutilized
Base Closure: No
Reason: Other, Isolated area, Not accessible by road
Comment: Isolated and remote area; Arctic coast.

Unsuitable Buildings (by Agency)

Bldg. 203, 113
Tin City Air Force Station
21 CSG/DEER
Elmendorf AFB, AK, Co: Anchorage 99506–5000
Federal Register Notice Date: 05/24/91
Property Number: 189010296–189010297
Status: Unutilized
Base Closure: No
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldg. 165, 150, 130
Sparrevohn Air Force Station
21 CSG/DEER
Elmendorf AFB, AK, Co: Anchorage 99506–5000
Federal Register Notice Date: 05/24/91
Property Number: 189010298–189010300
Status: Unutilized
Base Closure: No
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldg. 306
King Salmon Airport
21 CSG/DEER
Elmendorf AFB, AK, Co: Anchorage 99506–5000
Federal Register Notice Date: 05/24/91
Property Number: 189010301
Status: Unutilized
Base Closure: No
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldg. 1401
Galena Airport
21 CSG/DEER
Elmendorf AFB, AK, Co: Anchorage 99506–5000
Federal Register Notice Date: 05/24/91
Property Number: 189010302
Status: Unutilized
Base Closure: No
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldg. 11–230, 21–116, 34–616, 43–010, 63–320, 63–325
Elmendorf Air Force Base
21 CSG/DEER
Elmendorf AFB, AK, Co: Anchorage 99506–5000
Federal Register Notice Date: 05/24/91
Property Number: 189010303–189010308
Status: Unutilized
Base Closure: No
Reason: Secured Area, Contamination

Bldg. 103, 110, 112–115, 118, 1001, 1018, 1055
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB, AK, Co: Anchorage 99506–5000
Federal Register Notice Date: 05/24/91
Property Number: 189010309–189010317, 189010319
Status: Unutilized
Base Closure: No
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldg. 107, 115, 113, 150, 152, 301, 1001, 1003, 1055, 1056
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB, AK, Co: Anchorage 99506–5000
Federal Register Notice Date: 05/24/91
Property Number: 189010320–189010329
Status: Unutilized
Base Closure: No
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldg. 103–105, 110, 114, 202, 204–205, 1001, 1015
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB, AK, Co: Anchorage 99506–5000
Federal Register Notice Date: 05/24/91
Property Number: 189010330–189010339
Status: Unutilized
Base Closure: No
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldg. 50
Cold Bay Air Force Station
21 CSG/DEER
Elmendorf AFB, AK, Co: Anchorage 99506–5000
Federal Register Notice Date: 05/24/91
Property Number: 189010433
Status: Unutilized
Base Closure: No
Reason: Other, Isolated area, Not accessible by road
Comment: Isolated and remote; Arctic environment.

Alabama

Unsuitable Buildings (by Agency)

Air Force

Bldg. 913, 927, 935, 936
Maxwell AFB
Montgomery, AL, Co: Montgomery 36112–
Federal Register Notice Date: 05/24/91
Property Number: 189010002–189010005
Status: Unutilized
Base Closure: No
Reason: Secured Area

Bldg. 809, 861, 1011, 1022, 1042, 1052, 1060–1061
Gunter AFB
Montgomery, AL, Co: Montgomery 36114–
Federal Register Notice Date: 05/24/91
Property Number: 189010011–189010013, 189010015–189010018, 189010019–189010020, 189010022
Status: Underutilized
Base Closure: No
Reason: Secured Area

Bldg. 1435–1436, 1440–1441
Maxwell Air Force Base
Mimosa Road
Montgomery, AL, Co: Montgomery 36112–
Federal Register Notice Date: 05/24/91
Property Number: 189030220–189030223
Status: Unutilized
Base Closure: No
Reason: Floodway, Secured Area

Bldg. 830, 421, 428
Gunter Air Force Base
Montgomery, AL, Co: Montgomery 36114–5000
Federal Register Notice Date: 05/24/91
Property Number: 189040853–189040855
Status: Underutilized
Base Closure: No
Reason: Secured Area

Petrol OPS Bldg.
Maxwell Air Force Base
1101 Chanute Street
Montgomery, AL, Co: Montgomery 36112–
Federal Register Notice Date: 05/24/91
Property Number: 189110165
Status: Unutilized
Base Closure: No
Reason: Secured Area

Law Center
Maxwell Air Force Base
519 10th Street
Montgomery, AL, Co: Montgomery 36112–
Federal Register Notice Date: 05/24/91
Property Number: 189110166
Status: Unutilized
Base Closure: No
Reason: Secured Area

Bldg. 1011
Maxwell Air Force Base
Dannelly Street
Montgomery, AL, Co: Montgomery 36112–5000
Federal Register Notice Date: 05/24/91
Property Number: 189110167
Status: Unutilized
Base Closure: No
Reason: Secured Area

Arizona

Unsuitable Buildings (by Agency)

Air Force

Dormitory Building 632
Williams Air Force Base
corner of 4th and D Streets
Williams AFB, AZ, Co: Maricopa 85240–5000
Federal Register Notice Date: 05/24/91
Property Number: 189040856
Status: Unutilized
Base Closure: No
Reason: Secured Area

California

Unsuitable Buildings (by Agency)

Air Force

Bldg. 100–101, 116, 202
Point Arena Air Force Station
(See County), CA, CO: Mendocino 95468–5000
Federal Register Notice Date: 05/24/91
Property Number: 189010233–189010236
Status: Unutilized
Base Closure: No
Reason: Secured Area

Bldg. 4052
March AFB
Ice House in West March
Riverside, CA, Co: Riverside 92518–
Federal Register Notice Date: 05/24/91
Property Number: 189010082
Status: Unutilized
Base Closure: No
Reason: Within airport runway clear zone

Unsuitable land (by Agency)

Air Force-BC

Mather Air Force Base
SF corner of Mather
Sacramento, CA, Co: Sacramento 95655–
Federal Register Notice Date: 05/24/91
Property Number: 189010609
Status: Unutilized
Base Closure: Yes
Reason: Secured Area

Unsuitable Buildings (by Agency)

Bldg. 3686, 3494, 2566, 1766
Mather Air Force Base
Sacramento, CA, Co: Sacramento 95655–
Federal Register Notice Date: 05/24/91
Property Number: 189010606–189010608, 189030001
Status: Unutilized
Base Closure: Yes
Reason: Secured Area

Air Force

Bldg. 707 63 ABG/DE
Norton Air Force Base
Norton, CA, Co: San Bernadino 92409–5045
Federal Register Notice Date: 05/24/91
Property Number: 189010193
Status: Excess
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 575 63 ABG/DE
Norton Air Force Base
Norton, CA, Co: San Bernadino 92409–5045
Federal Register Notice Date: 05/24/91
Property Number: 189010195
Status: Excess
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 502 63 ABG/DE
Norton Air Force Base
Lorton, CA, Co: San Bernadino 92409–5045
Federal Register Notice Date: 05/24/91
Property Number: 189010196
Status: Excess
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 23 63 ABG/DE
Norton Air Force Base
Norton, CA, Co: San Bernadino 92409–5045
Federal Register Notice Date: 05/24/91
Property Number: 189010197
Status: Excess
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 201–204
Vandenberg Air Force Base
Point Arguello
Vandenberg AFB, CA, Co: Santa Barbara 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Federal Register Notice Date: 05/24/91
Property Number: 189010546–189010549
Status: Unutilized
Base Closure: No
Reason: Secured Area

Bldg. 1001–1010, 1015, 1022–1024
Vandenberg Air Force Base
Off Tangair Road
Vandenberg AFB, CA, Co: Santa Barbara 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Federal Register Notice Date: 05/24/91
Property Number: 189010550–189010563
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 8008–8010
Vandenberg Air Force Base
Off California on Lompoc Avenue
Vandenberg AFB, CA, Co: Santa Barbara 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Federal Register Notice Date: 05/24/91
Property Number: 189010564–189010566
Status: Unutilized
Base Closure: No
Reason: Secured Area

Bldg. 1100–1101, 1103–1107
Vandenberg Air Force Base
Off Terra Road
Vandenberg AFB, CA, Co: Santa Barbara 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Federal Register Notice Date: 05/24/91
Property Number: 189010567–189010574
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 13423–13424, 13511–13512
Vandenberg Air Force Base
K Street off Kansas
Vandenberg AFB, CA, Co: Santa Barbara 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Federal Register Notice Date: 05/24/91
Property Number: 189010575–189010578
Status: Unutilized
Base Closure: No
Reason: Secured Area

Bldg. 1110, 1108
Vandenberg Air Force Base
Off Terra Road
Vandenberg AFB, CA, Co: Santa Barbara 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Federal Register Notice Date: 05/24/91
Property Number: 189010579–189010580
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 23102
Vandenberg Air Force Base
Vandenberg AFB, CA, Co: Santa Barbara 93437–
Location: Highway 1, and Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Federal Register Notice Date: 05/24/91
Property Number: 189010550–189110062
Status: Unutilized
Base Closure: No
Reason: Secured Area

Bldg. 39260 ABG/DE
Travis Air Force Base
Hospital Drive
Travis AFB, CA, Co: Solano 94535–5496
Federal Register Notice Date: 05/24/91
Property Number: 189010187
Status: Underutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 1182 60 ABG/DE
Travis Air Force Base
Perimeter Road
Travis AFB, CA, Co: Solano 94535–5496
Federal Register Notice Date: 05/24/91
Property Number: 189010188
Status: Underutilized
Base Closure: No
Reason: Within airport runway clear zone, Secured Area

Bldg. 152, 158 60 ABG/DE
Travis Air Force Base
Broadway Street
Travis AFB, CA, Co: Solano 94535–5496
Federal Register Notice Date: 05/24/91
Property Number: 189010190–189010191
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 384 60 ABG/DE
Travis Air Force Base
Hospital Drive
Travis AFB, CA, Co: Solano 94535–5496
Federal Register Notice Date: 05/24/91
Property Number: 189010192
Status: Underutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Colorado

Unsuitable Buildings (by Agency)

Air Force

Bldg. 24
Buckley Air Nat'l Guard Base
Aurora, CO, Co: Arapahoe 80011–9509
Location: Demolished 7 Dec. 90.
Federal Register Notice Date: 05/24/91
Property Number: 189010249
Status: Unutilized
Base Closure: No
Reason: Secured Area

Bldg. 291
Lowry Air Force Base
Denver, CO, Co: Denver 80230–5000
Location: South of 6th Avenue and east of Rosemary Court.
Federal Register Notice Date: 05/24/91
Property Number: 189010250
Status: Excess
Base Closure: No
Reason: Secured Area

Delaware

Unsuitable Buildings (by Agency)

Air Force

Bldg. 1310
Dover Air Force Base
436 ABG/DE
Dover AFB, DE, Co.: Kent 19902–
Federal Register Notice Date: 05/24/91
Property Number: 189010727
Status: Unutilized
Base Closure: No
Reason: Secured Area

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Florida

Unsuitable Buildings (by Agency)

Air Force

Bldg. 576
Patrick Air Force Base
6th Street and South Patrick Drive
Cocoa Beach, FL, Co: Brevard 32925-
Federal Register Notice Date: 05/24/91
Property Number: 189110160
Status: Unutilized
Base Closure: No
Reason: Floodway

Bldg. 1635
Patrick Air Force Base
River Picnic Area/Skeet Range
Cocoa Beach, FL, Co: Brevard 32925-
Federal Register Notice Date: 05/24/91
Property Number: 189110161
Status: Unutilized
Base Closure: No
Reason: Secured Area

Unsuitable Land (by Agency)

Land
MacDill Air Force Base
6001 S. Manhattan Avenue
Tampa, FL, Co: Hillsborough 33608-
Federal Register Notice Date: 05/24/91
Property Number: 189030003
Base Closure: No
Reason: Floodway

Unsuitable Buildings (by Agency)

Bldg. 42
Eglin Air Force Base
Eglin AFB, FL, Co: Oklaloosa 32542-5000
Federal Register Notice Date: 05/24/91
Property Number: 189110001
Status: Unutilized
Base Closure: No
Reason: Secured Area

Bldg. 6058-6059
Eglin Air Force Base
AF Aux Field 6
Eglin AFB, FL, Co: Okaloosa 32542-5000
Federal Register Notice Date: 05/24/91
Property Number: 189110002-189110003
Status: Unutilized
Base Closure: No
Reason: Secured Area

Bldg. 8200
Eglin Air Force Base
Site A-2, Okaloosa Island
Elgin AFB, FL, Co: Okaloosa 32542-5000
Federal Register Notice Date: 05/24/91
Property Number: 189110004
Status: Unutilized
Base Closure: No
Reason: Floodway

Bldg. 8501, 8505-8507
Eglin Air Force Base
Site A-5
Elgin AFB, FL, Co: Okaloosa 32542-5000
Federal Register Notice Date: 05/24/91
Property Number: 189110005-189110008
Status: Unutilized
Base Closure: No
Reason: Floodway, Secured Area

Bldg. 8973
Eglin Air Force Base
Site D100-B (Clausen)
Elgin AFB, FL, Co: Okaloosa 32542-5000
Federal Register Notice Date: 05/24/91
Property Number: 189110009
Status: Unutilized
Base Closure: No
Reason: Floodway, Secured Area

Bldg. 9600
Eglin Air Force Base
Site B-71
Elgin AFB, FL, Co: Okaloosa 32542-5000
Federal Register Notice Date: 05/24/91
Property Number: 189110010
Status: Unutilized
Base Closure: No
Reason: Floodway, Secured Area

Unsuitable Land (by Agency)

W½ of SW¼, Sect. 31, T1S, R27W
Holley, FL, Co: Santa Rosa 32566-
Location: 3½ miles NW of Holley, Florida on No. shore of East.
Federal Register Notice Date: 05/24/91
Property Number: 189010131
Status: Excess
Base Closure: No
Reason: Floodway

Eglin AFB

W½ of NW of Sect. 36, T1S, R27W
Holley, FL, Co: Santa Rosa 32566-
Federal Register Notice Date: 05/24/91
Property Number: 189010132
Status: Excess
Base Closure: No
Reason: Within airport runway clear zone

Idaho

Unsuitable Buildings (by Agency)

Air Force

Bldg. 1012, 923
Mountain Home Air Force Base
7th Avenue
(See County), ID, Co: Elmore 83648-
Federal Register Notice Date: 05/24/91
Property Number: 189030004-189030005
Status: Excess
Base Closure: No
Reason: Within 2000 ft of flammable or explosive material

Bldg. 604
Mountain Home Air Force Base
Pine Street
(See County), ID, Co: Elmore 83648-
Federal Register Notice Date: 05/24/91
Property Number: 189030006
Status: Excess
Base Closure: No
Reason: Within 2000 ft of flammable or explosive material

Bldg. 229
Mt. Home Air Force Base
1st Avenue and A Street
Mt. Home AFB, ID, or Elmore 83648-
Federal Register Notice Date: 05/24/91
Property Number: 189040857
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft of flammable or explosive material, Within airport runway clear zone

Illinois

Unsuitable Buildings (by Agency)

Air Force

Bldg. 550
Chanute Air Force Base
Rantoul, IL, Co: Champaign 61868-
Federal Register Notice Date: 05/24/91
Property Number: 189010227
Status: Unutilized
Base Closure: No
Reason: Other environmental
Comment: Water treatment sewage building.

Bldg. 551-552
Chanute Air Force Base
Rantoul, IL, Co: Champaign 61868-
Federal Register Notice Date: 05/24/91
Property Number: 189010228-189010229
Status: Unutilized
Base Closure: No
Reason: Other environmental
Comment: Water treatment plant.

Bldg. 556
Chanute Air Force Base
Rantoul, IL, Co: Champaign 61868-
Federal Register Notice Date: 05/24/91
Property Number: 189010230
Status: Unutilized
Base Closure: No
Reason: Other environmental
Comment: Sewage treatment building witl pumps.

Bldg. 964
Chanute Air Force Base
Rantoul, IL, Co: Champaign 61868-
Federal Register Notice Date: 05/24/91
Property Number: 189010231
Status: Unutilized
Base Closure: No
Reason: Other environmental
Comment: Waste treatment pump station.

Bldg. 3191
Scott Air Force Base
East Drive 375/ABG/DE
Scott AFB, IL, Co: St. Clair 62225-5001
Federal Register Notice Date: 05/24/91
Property Number: 189010247
Status: Unutilized
Base Closure: No
Reason: Within airport runway clear zone, Secured Area

Bldg. 3670, 503, 351, 869
Scott Air Force Base
375/ABG/DE
Scott AFB, IL, Co: St. Clair 62225-5001
Federal Register Notice Date: 05/24/91
Property Number: 189010248, 18901025, 189110086-189110087
Status: Unutilized
Base Closure: No
Reason: Secured Area

Indiana

Unsuitable Buildings (by Agency)

Air Force

Bldg. 520, 309, 301
Grisson Air Force Base
Lancer Road and Matador Street
Grisson, IN, Co: Miami 46971-
Federal Register Notice Date: 05/24/91
Property Number: 189010183-189010184, 189010186
Status: Underutilized
Base Closure: No
Reason: Secured Area

Bldg. 219, 307
Grissom Air Force Base
Grissom, IN, Co: Miami 46971-5000
Federal Register Notice Date: 05/24/91
Property Number: 189110084-189110085
Status: Underutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Massachusetts

Unsuitable Buildings (by Agency)

Air Force

Bldg. 1900, 1604, 1633
Westover Air Force Base
Chicopee, MA, Co: Hampden 01022-
Federal Register Notice Date: 05/24/91
Property Number: 189010438, 189040001-189040002
Status: Underutilized
Base Closure: No
Reason: Secured Area

Maryland

Unsuitable Land (by Agency,

Air Force

Land
Brandywine Storage Annex
1776 ABW/DE Brandywine Road, Route 381
Andrews AFB, MD, Co: Prince Georges 20613-
Federal Register Notice Date: 05/24/91
Property Number: 189010263
Status: Underutilized
Base Closure: No
Reason: Secured Area

Unsuitable Buildings (by Agency)

Bldg. 4-5
Brandywine Storage Annex
1776 ABW/DE Brandywine Road, Route 381
Andrews AFB, MD, Co: Prince Georges 20613-
Federal Register Notice Date: 05/24/91
Property Number: 189010261, 189010264
Status: Underutilized
Base Closure: No
Reason: Secured Area

Maine,

Unsuitable Buildings (by Agency)

Air Force

Bldg. 5200, 6200, 6100
Loring Air Force Base
Limestone, ME, Co: Aroostook 04750-
Federal Register Notice Date: 05/24/91
Property Number: 189010541-189010543
Status: Underutilized
Base Closure: No
Reason: Secured Area

Michigan

Unsuitable Buildings (by Agency)

Air Force

Bldg. 71
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913-
Federal Register Notice Date: 05/24/91
Property Number: 189010810
Status: Excess
Base Closure: No
Reason: Other
Comment: sewage treatment and disposal facility.

Bldg. 99-100 (Water Well)
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913-
Federal Register Notice Date: 05/24/91
Property Number: 189010831-189010832
Status: Excess
Base Closure: No
Reason: Other
Comment: water well.

Bldg. 118, 120, 168
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913-
Federal Register Notice Date: 05/24/91
Property Number: 189010875-189010876, 189010878
Status: Excess
Base Closure: No
Reason: Other
Comment: Gasoline Station.

Bldg. 166
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913-
Federal Register Notice Date: 05/24/91
Property Number: 189010877
Status: Excess
Base Closure: No
Reason: Other
Comment: Pump lift station.

Bldg. 69
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913-
Federal Register Notice Date: 05/24/91
Property Number: 189010889
Status: Excess
Base Closure: No
Reason: Other
Comment: Sewer pump facility.

Bldg. 2
Calumet Air Force Station
Calumet, MI, Co: Keweenaw 49913-
Federal Register Notice Date: 05/24/91
Property Number: 189010890
Status: Excess
Base Closure: No
Reason: Other
Comment: Water pump station.

Bldg. 560, 5658, 580, 856, 1005, 1012, 1041, 1412, 1434, 1688, 1689, 5670
Selfridge Air National Guard Base
Selfridge, MI, Co: Macomb 48045-
Federal Register Notice Date: 05/24/91
Property Number: 189010522-189010533
Status: Unutilized
Base Closure: No
Reason: Secured Area

Minnesota

Unsuitable Buildings (by Agency)

Air Force

Bldg. 616, 622
Minnesota Air Nat'l Guard
HQ 133rd Tactical Airlift Wing (MAC)
Minneapolis, MN, Co: Hennepin 55111-
Federal Register Notice Date: 05/24/91
Property Number: 189010087, 189010089
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material.

Bldg 46
NAVAIRESCEN
6201 32nd Avenue South
Minneapolis, MN, Co: Hennipen 55450-
Federal Register Notice Date: 05/24/91
Property Number: 189010085
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Missouri

Unsuitable Buildings (by Agency)

Air Force

Bldg. 42, 45-47, 61
Jefferson Barracks ANG Base
1 Grant Road, Missouri National Guard
St. Louis, MO, Co: St. Louis 63125-
Federal Register Notice Date: 05/24/91
Property Number: 189010726, 189010728-189010731
Status: Unutilized
Base Closure: No
Reason: Secured Area

Montana

Unsuitable Buildings (by Agency)

Air Force

Bldg. 140
Malmstrom AFB
Between Goddard Avenue & 2nd Street
Malmstrom, MT, Co: Cascade 59402-
Federal Register Notice Date: 05/24/91
Property Number: 189010076
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone, Secured Area, Other environmental

Bldg. 280
Malmstrom AFB
Flightline & Avenue G
Malmstrom, MT, Co: Cascade 59402-
Federal Register Notice Date: 05/24/91
Property Number: 189010077
Status: Underutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone, Secured Area, Other environmental

Bldg. 621
Malmstrom AFB
1st Street & Avenue I
Malmstrom, MT, Co: Cascade 59402-
Federal Register Notice Date: 05/24/91
Property Number: 189010078
Status: Unutilized
Base Closure: No
Reason: Other environmental, Secured Area
Comment: Friable asbestos

Bldg. 1500, 1502
Malmstrom AFB
Perimeter Road
Malmstrom, MT, Co: Cascade 59402-
Federal Register Notice Date: 05/24/91
Property Number: 189010079-189010080
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Other environmental

Bldg. 627, 677
Malmstrom Air Force Base
Great Falls, Mt, Co: Cascade 59402-
Federal Register Notice Date: 05/24/91
Property Number: 189010722-189010723
Status: Unutilized
Base Closure: No
Reason: Secured Area

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Bldg. 1991
Malmstrom Air Force Base
Between Avenue G and H
Malmstrom, MT, Co: Cascade 59405–
Federal Register Notice Date: 05/24/91
Property Number: 189040057
Status: Underutilized
Base Closure: No
Reason: Secured Area

North Carolina

Unsuitable Buildings (by Agency)

Air Force

Bldg. 187
Pope Air Force Base
317 CSG/DE Reilly Road
Pope AFB, NC, Co: Cumberland 28308–5045
Federal Register Notice Date: 05/24/91
Property Number: 189010262
Status: Unutilized
Base Closure: No
Reason: Secured Area

North Dakota

Unsuitable Buildings (by Agency)

Air Force

Bldg. 422
Minot Air Force Base
Minot, ND, Co: Ward 58705–
Federal Register Notice Date: 05/24/91
Property Number: 189010724
Status: Underutilized
Base Closure: No
Reason: Secured Area

New Hampshire

Unsuitable Land (by Agency)

Air Force–BC

Golf Course
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040360
Status: Excess
Base Closure: Yes
Reason: Within airport runway clear zone

Unsuitable Buildings (by Agency)

Bldg. 8
Pease Air Force Base
Newington Road
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189010534
Status: Excess
Base Closure: No
Reason: Secured Area

Bldg. 94
Pease Air Force Base, Temp. Lodging Facility
Rockingham Drive
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189010535
Status: Excess
Base Closure: No
Reason: Secured Area

Bldg. 132
Pease Air Force Base, Vehicle Fuel Station
Exeter Street
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number 189010536
Status: Excess
Base Closure: No
Reason: Secured Area

Bldg. 317
Pease Air Force Base, Jet Fuel Pumphouse
On the flightline
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number 189010537
Status: Excess
Base Closure: No
Reason: Secured Area

Bldg. 343
Pease Air Force Base, Jet Fuel Pumphouse
On the flightline
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number 189010538
Status: Excess
Base Closure: No
Reason: Secured Area

Bldg. 439
Pease Air Force Base
Weapons Storage Area
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number 189010539
Status: Excess
Base Closure: No
Reason: Secured Area

Bldg. 309–371, 373–375, 377–380, 382
Family Housing
Pease Air Force Base.
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number 189040336–189040346
Status: Excess
Base Closure: Yes
Reason: Within airport runway clear zone

Bldg. 33
Pease Air Force Base.
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number 189040348
Status: Excess
Base Closure: Yes
Reason: Other
Comment: Service Station

Bldg. 398–401, 403, 405, 407
Pease Air Force Base.
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number 189040353–189040359
Status: Excess
Base Closure: Yes
Reason: Within airport runway clear zone

Bldg. 105, 113, 117, 119–122, 136, 180, 224, 226. 235, 1069
Industrial Facilities
Pease Air Force Base.
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number 189040361–189040373
Status: Excess
Base Closure: Yes
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 112, 205–207, 211, 217, 220, 237–238
Aircraft Operations
Pease Air Force Base.
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number 189040374–189040382
Status: Excess
Base Closure: Yes
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 68, 123–124, 361
Pease Air Force Base.
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number 189040716–189040719
Status: Excess
Base Closure: Yes
Reason: Other
Comment: Utility Plant

Bldg. 232–233, 239, 416
Communications Facilities
Pease Air Force Base.
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number 189040722–189040725
Status: Excess
Base Closure: Yes
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 212–215, 222, 227, 229
Aircraft Operations
Pease Air Force Base.
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number 189040727–189040733
Status: Excess
Base Closure: Yes
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 3, 11372
Pease Air Force Base.
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number 189040772, 189040794
Status: Excess
Base Closure: Yes
Reason: Other

Bldg. 355
Pease Air Force Base.
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number 189040789
Status: Excess
Base Closure: Yes
Reason: Utility station

Bldg. 106, 203
Pease Air Force Base.
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number 189040806, 189040808
Status: Excess
Base Closure: Yes
Reason: Other
Comment: Sewage pump station

Bldg. 161, 225, 327
Pease Air Force Base.
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Numbers: 189040807, 189040809, 189040814
Status: Excess
Base Closure: Yes
Reason: Other
Comment: Pump Station

Bldg. 312, 317, 321, 325, 330, 334, 339, 343, 414
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040810–189040813, 189040815–189040818, 189040821
Status: Excess
Base Closure: Yes
Reason: Other comment: Power station.

Bldg. 360, 395, 422, 428–429

Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040819–189040820, 189040822–189040824
Status: Excess
Base Closure: Yes
Reason: Other comment: Pump station.

Bldg. 1000, 1005, 1010, 1015, 1068
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040825–189040829
Status: Excess
Base Closure: Yes
Reason: Other comment: Sewage pump station.

Bldg. 35016, 35022, 35068, 35090, 35092, 35153, 35155, 35202, 35211, 35227, 35238, 35241, 35321, 35327, 35330, 35334, 35351, 35355, 35359, 35408, 35419, 35432
Pease Air Force Base
Pease AFB, NH, Co: Rockingham 03803–
Federal Register Notice Date: 05/24/91
Property Number: 189040830–189040851
Status: Excess
Base Closure: Yes
Reason: Other comment: Power station.

New Mexico

Unsuitable Buildings (by Agency)

Air Force

Bldg. 20330
Kirtland Air Force Base
1606 ABW/DEEVR
Kirtland AFB, NM, Co: Bernalillo 87117–5496
Federal Register Notice Date: 05/24/91
Property Number: 189110083
Status: Unutilized
Base Closure: No
Reason: Secured Area.

New York

Unsuitable Buildings (by Agency)

Air Force

Bldg. 518, 524, 626 (Pin: RVKQ)
Niagara Falls International Airport
914th Tactical Airlift Group
Niagara Falls, NY, Co: Niagara 14304–5000
Federal Register Notice Date: 05/24/91
Property Number: 189010073–189010075
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Ohio

Unsuitable Buildings (by Agency)

Air Force

Facility 30092, 30205
Wright-Patterson Air Force Base
(See County), OH, Co: Greene 45433–5000
Federal Register Notice Date: 05/24/91
Property Number: 189010266, 189010434
Status: Unutilized
Base Closure: No
Reason: Secured Area.

910 TAG
Base Sewage Treatment Plant
Vienna, OH, Co: Trumbull 44473–5000
Location: West of the 910 TAG Base on Ridge Road. Youngstown Municipal Airport
Federal Register Notice Date: 05/24/91
Property Number: 189110061
Status: Excess
Base Closure: No
Reason: Other Comment: Sewage treatment plant.

Oklahoma

Unsuitable Buildings (by Agency)

Air Force

Bldg. 604
Vance Air Force Base
Enid, OK, Co: Garfield 73705–5000
Federal Register Notice Date: 05/24/91
Property Number: 189010204
Status: Unutilized
Base Closure: No
Reason: Secured Area, Within 2000 ft. of flammable or explosive material.

Pennsylvania

Unsuitable Buildings (by Agency)

Air Force

Bldg. 329, 334
911th Tactical Airlift Group (AFRES)
Greater Pittsburg IAP
Coraopolis, PA, Co: Allegheny 15108–
Federal Register Notice Date: 05/24/91
Property Number: 189110088–189110089
Status: Unutilized
Base Closure: No
Reason: Secured Area

Puerto Rico

Unsuitable Buildings (by Agency)

Air Force

Bldg. 10
Punta Salinas Radar Site
Toa Baja, PR, Co: Toa Baja 00759–
Federal Register Notice Date: 05/24/91
Property Number: 189010544
Status: Underutilized
Base Closure: No
Reason: Secured Area

South Dakota

Unsuitable Buildings (by Agency)

Air Force

176 Buildings at Renel Heights
Ellsworth Air Force Base
Ellsworth AFB, SD, Co: Pennington 57706–
Location: Across from main gate turn off.
Federal Register Notice Date: 05/24/91
Property Number: 189010443–189010521, 189010732–189010759, 189030016–189030032, 189040027–189040055, 189040058, 189110011–189110032
Status: Unutilized
Base Closure: No
Reason: Other
Comment: Earth movement/shifting, cracked exterior and interior walls with separations several inches wide; earth shift severed sewer lines.

Texas

Unsuitable Buildings (by Agency)

Air Force

Bldg. 645
Reese Air Force Base
Lubbock, TX, Co: Lubbock 79489–
Location: West of Lubbock
Federal Register Notice Date: 05/24/91
Property Number: 189010210
Status: Excess
Base Closure: No
Reason: Secured Area.

Bldg. 400
Laughlin Air Force Base
Val Verde Co., TX, Co: Val Verde 78843–5000
Location: Six miles on Highway 90 east of Del Rio, Texas.
Federal Register Notice Date: 05/24/91
Property Number: 189010173
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone.

Utah

Unsuitable Buildings (by Agency)

Air Force

22 Buildings
Hill Air Force Base
(See County), UT, Co: Davis 84056–
Federal Register Notice Date: 05/24/91
Property Number: 189010274–189010295
Status: Unutilized
Base Closure: No
Reason: Secured Area

Bldg. 788–789, 790
Hill Air Force Base
(See County), UT, Co: Davis 84056–
Federal Register Notice Date: 05/24/91
Property Number: 189040858–189040860
Status: Unutilized
Base Closure: No
Reason: Within airport runway clear zone, Secured Area

Virginia

Unsuitable Land (by Agency)

Air Force

ANG Site
Camp Pendleton
Virginia Air National Guard
Virginia Beach, VA, Co: (See County) 23451–
Federal Register Notice Date: 05/24/91
Property Number: 189010589
Status: Unutilized
Base Closure: No
Reason: Secured Area

Parcel 1 (Byrd Field)
Richmond IAP
5680 Beulah Road
Richmond, VA, Co: Henrico 23150–
Federal Register Notice Date: 05/24/91
Property Number: 189010435
Status: Unutilized
Base Closure: No
Reason: Floodway

Parcel 3, (Byrd Field)
Richmond IAP
5680 Beulah Road
Richmond, VA, Co: Henrico 23150–
Federal Register Notice Date: 05/24/91
Property Number: 189010436
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material

Parcel 2, (Byrd Field)
Richmond IAP
5680 Beulah Road
Richmond, VA, Co: Henrico 23150–

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Federal Register Notice Date: 05/24/91
Property Number: 189010437
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Washington

Unsuitable land (by Agency)

Air Force

Fairchild AFB
SE corner of base
Fairchild AFB, WA, Co: Spokane 99011–
Federal Register Notice Date: 05/24/91
Property Number: 189010137
Status: Unutilized
Base Closure: No
Reason: Secured Area
Fairchild AFB
Fairchild AFB, WA, Co: Spokane 99011–
Location: NW corner of base
Federal Register Notice Date: 05/24/91
Property Number: 189010138
Status: Unutilized
Base Closure: No
Reason: Secured Area

Unsuitable Buildings (by Agency)

Bldg. 640–643, 845–847
Fairchild AFB
Fairchild, WA, Co: Spokane 99011–
Federal Register Notice Date: 05/24/91
Property Number: 189010139–189010145
Status: Unutilized
Base Closure: No
Reason: Secured Area

Bldg. 1415, 1429, 1464–1466
Fairchild AFB
Fairchild, WA, Co: Spokane 99011–
Federal Register Notice Date: 05/24/91
Property Number: 189010146–189010150
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 3503–3507, 3510, 3514, 3518, 3521
Fairchild AFB
Fairchild, WA, Co: Spokane 99011–
Federal Register Notice Date: 05/24/91
Property Number: 1890105151–189010159
Status: Unutilized
Base Closure: No
Reason: Secured Area

Wyoming

Unsuitable Buildings (by Agency)

Air Force

Bldg. 31, 34, 37, 284, 385, 803
F. E. Warren Air Force Base
Cheyenne, WY, Co: Laramie 82005–
Federal Register Notice Date: 05/24/91
Property Number: 189010198–189010203
Status: Unutilized
Base closure: No
Reason: Secured area

[FR Doc. 91–12222 Filed 5–23–91; 8:45 am]
BILLING CODE 4310–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–960–4230; AA–70146, AA–70147, AA–70148, AA–70149, AA–70150, AA–70151, AA–70153, AA–74549]

Waiver of Regulations

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; order of waiver.

SUMMARY: This order waives the application filing date and the minimum 2-mile linear exterior boundary requirement for selections made pursuant to subsection 14(h)(8) of the Alaska Native Claims Settlement Act in order for the Calista Corporation to file selections under serial numbers AA–70146, AA–70147, AA–70148, AA–70149, AA–70150, AA–70151, AA–70153, and AA–74549 within the Calista regional boundaries.

EFFECTIVE DATE: May 24, 1991.

FOR FURTHER INFORMATION CONTACT: Ann Johnson, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–5799, 907–271–4571 .

SUPPLEMENTARY INFORMATION: On Feburary 6, 1991, as amended, the Calista Corporation, an Alaska Native regional corporation, requested the Secretary of the Interior to waive the regulations in 43 CFR 2653.4(c) to reopen its land selection period and 43 CFR 2653.9(c) to suspend the requirement of the minimum 2-mile linear boundary for lands in applications AA–70146, AA–70147, AA–70148, AA–70149, AA–70150, AA–70151, AA–70153, and AA–74549. This will allow the corporation to proceed with planned development activities that will provide the corporation an opportunity to fulfill its obligations to make a profit for its stockholders and to fulfill its entitlement goals.

This order waives the application date and minimum 2-mile linear exterior boundary requirements for selections pursuant to subsection 14(h)(8) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601 (1988), contained in 43 CFR 2653.4(c) and 43 CFR 2653.9(c).

Waiver of Regulations

The Calista Corporation, an Alaska Native regional corporation, has requested a waiver of subsection 14(h)(8) of the Alaska Native Claims Settlement Act selection period and minimum 2-mile linear exterior boundary requirement regulations in 43 CFR 2653.4(c) and 2653.9(c). It has been concluded that the request meets the criteria for waiver as provided in 43 CFR 2650.0–8.

It is hereby ordered, as authorized by 43 CFR 2653.0–8, that for a period of 90 days from the date of this publication, these regulations be waived for selections filed with the Department by Calista Corporation, under subsection 14(h)(8) of the Alaska Native Claims Settlement Act and described in applications AA–70146, AA–70147, AA–70148, AA–70149, AA–70150, AA–70151, AA–70153, and AA–74549.

David C. O'Neal,
Assistant Secretary, Land and Materials Management.
[FR Doc. 91–12386 Filed 5–23–91; 8:45 am]
BILLING CODE 4310–JA–M

[UT–062–4333–12]

San Juan and San Rafael Resource Areas, Utah; Intent to Conduct Further Planning

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of intent to do further planning within the San Juan and San Rafael Resource Areas, Utah, for consideration of potential additions to the National Wild and Scenic Rivers System, and call for public nomination of eligible river segments.

SUMMARY: As part of BLM's resource planning process and in accordance with the Wild and Scenic Rivers Act of October 2, 1968 (Pub. L. 90–542), as amended, and with Department of Interior and Bureau guidance, the Moab District will review and determine the eligibility of river segments on Public Lands in southeastern Utah within the geographic areas administered by the San Juan and San Rafael Resource Areas Offices for possible addition to the National Wild and Scenic Rivers System. The District will also determine the potential classification (wild, scenic, or recreational) of each eligible river segment and will determine protective management actions, where needed, to maintain the eligibility and potential classification of eligible rivers and their immediate environs (within ¼-mile of each bank of the river).

The District requests public nominations at this time of river segments that could be considered eligible and reasons why. Although all streams within the identified areas will be evaluated, the District is requesting nominations to assure that all eligible segments are so identified.

SUPPLEMENTARY INFORMATION: To be considered eligible for addition to the National Wild and Scenic Rivers System, each river segment must be in a free-flowing condition and contain at least one outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar value. The District will develop criteria for making these determinations which will be available to the public for review upon request.

Nominations should include the nominating person's name and address, the name of the segment, the upstream and downstream boundaries of the segment, any available information about dams, diversions, or other management activities that would impact the free-flowing nature of the segment, and a summary of trhe characteristics that could be considered to be outstandingly remarkable.

All nominations must be received by the Moab District Manager, P.O. Box 970, Moab, Utah, 84532, within 60 days of the publication of this notice.

FOR FURTHER INFORMATION CONTACT: Russell von Koch, Outdoor Recreation Planner at the above address or at (801) 259–6111.

Dated: May 17, 1991.

James M. Parker,
State Director.
[FR Doc. 91–12351 Filed 5–23–91; 8:45 am]
BILLING CODE 4310–DQ–M

[OR–130–01–4212–13; GP1–227]

Realty Action; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following described lands in Benton and Yakima Counties have been determined to be suitable for exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

	Acres
Yakima County:	
T12N, R16E, WM	
Section 8: NE¼NE¼	40.00
T12N, R17E, WM	
Section 7: SE¼SW¼	40.00
T13N, R17E, WM	
Section 10: SE¼NE¼, E½E½SE¼SW¼NE¼	42.50
Section 10: SW¼SW¼	40.00
Section 24: N½NE¼	80.00
T14N, R18E, WM	
Section 10: S½SE¼	80.00
T13N, R19E, WM	
Section 4: SW¼NW¼	40.00
Benton County:	
T11N, R24E, WM	
Section 4: Lots 1–4, S½N½, S½	641.92
T12N, R24E, WM	
Section 22: SW¼	160.00
Total	1164.42

In exchange for these lands, the Federal Government will acquire the following described private lands in Kittitas County:

	Acres
Sec. 15: N½N½, S½NE¼	240.00
Sec. 23: E½NW¼	80.00
Sec. 26: E½, EXCEPT:	
1. Rights-of-way of State Route and Burlington Northern Railway Company;	
2. That portion of the NW¼NE¼ of said section lying West of State Route No. 821, conveyed to the State of Washington by deed recorded in Book 98 of Deeds, page 504;	
3 That portion of the SE¼ of said section lying West of State route 821 and East of the Yakima River, conveyed to Robert D. Riste et al, by deed recorded in Book 32 of Deeds, page 749	305.12
Sec. 33: That portion of the N½, which lies North and East of State Route No. 821, and that portion of the SE¼ which lies East of the East bank of the Yakima River, EXCEPT:	
1. A strip of land across said section, 60 feet in width, conveyed to the State of Washington, by deed recorded in Book 38 of Deeds, page 141,	
2. A strip of land across said section, 130 feet in width, conveyed to the State of Washington, by deed recorded in Book 38 of Deeds, page 223;	
3. A strip of land 100 feet in width conveyed to the State of Washington, by deed recorded in Book 49 of Deeds, page 541;	
4. Rights-of-way of Burlington Northern Railway Company	206.22
Sec. 35: W½E½, W½, E½SE¼	560.00
Sec. 36: W½W½NE¼SW¼, W½SW¼, SE¼SW¼	130.00
Total	1521.34

The purpose of this exchange is to acquire the subject private lands, which are within and adjacent to Yakima River Canyon, by trading up to nine tracts of scattered and mostly isolated public lands. the private lands have significant wildlife, recreation and rare plant values. The acquisition of these lands will also consolidate the existing public ownership pattern within Yakima River Canyon and significantly improve access. Most all of the public lands to be traded have no public access and provide little public benefit. This exchange is consistent with BLM planning, including BLM's Yakima River Canyon Recreation Management Plan.

DATES: On or before July 8, 1991, interested parties may submit comments to the District Manager, Bureau of Land Management, Spokane District Office, E. 4217 Main, Spokane, Washington 99202. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTAL INFORMATION: The publication of this notice in the **Federal Register** segregates the Federal lands described above from appropriation under the public land laws, including the mining laws, but not from exchange under the above cited statute, for 2 years or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

This exchange will be made subject to a reservation to the United States of all minerals, plus the right to construct ditches and canals. The patent for the public land will also be subject to all valid existing rights of record (e.g., rights-of-way, oil and gas leases, etc.). The conveyance of the private land will be made subject to an existing reservation of minerals, and various existing easements for access and utilities. Lastly, the exchange will be subject to value equalization through acreage adjustments. Detailed information concerning these reservations as well as specific conditions of the exchange are available for review at the above address.

Dated: May 15, 1991

Ann B. Aldrich,
Acting District Manager.
[FR Doc. 91–12326 Filed 5–23–91; 8:45 am]
BILLING CODE 4310–33–M

[G–010–4111–08/G1–0115]

Availability of the Draft Albuquerque District Resource Management Plan Amendment and Environmental Impact Statement, Oil and Gas Leasing and Development

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with section 102 of the National Environmental Policy Act of 1969, a draft Resource Management Plan Amendment and Environmental Impact Statement (RMPA/EIS) has been prepared for the Albuquerque District. This RMPA/EIS

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updates management constraints on and analyzes the environmental impact of oil and gas leasing and development. It amends the previous RMPs prepared for the Farmington, Rio Puerco, and Taos Resource Areas. The total area administered by BLM Albuquerque District is 4,296,500 surface acres and 5,607,500 acres of oil and gas mineral (subsurface) estate. The District covers the following Northern New Mexico counties: Bernalillo, Cibola, Colfax, Harding, Los Alamos, McKinley, Mora, Rio Arriba, Sandoval, San Juan, San Miguel, Santa Fe, Taos, Torrance, Union, and Valencia.

The amendment is needed to comply with the requirement for identifying where needed, "* * * fluid mineral determinations * * * in every RMP regardless of whether or not fluid minerals is associated with a planning issue or management concern." The current management constraints or restrictions to oil and gas leasing and development in Special Management Areas (SMAs) are updated and modified (if necessary) in this document. Additionally, areas are identified where (1) stipulations may be applied to new oil and gas leases, or (2) conditions of approval (COAs) may be attached to applications for permits to drill (APDs) on existing leases.

The primary purpose of the EIS is to analyze and document the direct, indirect and cumulative impacts of reasonably foreseeable future actions resulting from Federally authorized fluid minerals activities.

Copies will be available for reference at the following libraries and a copy can be obtained at the BLM offices listed below: College of Santa Fe Library Center, Farmington Public Library, Gallup Public Library,

BLM-Farmington Resource Area Office, 1235 La Plata Highway, Farmington, New Mexico; Rio Puerco Resource Area Office, 435 Montano NE., Albuquerque, New Mexico; Taos Resource Area Office, 224 Cruz Alta Road, Taos, New Mexico; Albuquerque District Office, 435 Montano NE., Albuquerque, New Mexico, and New Mexico State Office, Joseph M. Montoya Federal Building, South Federal Place, Santa Fe, New Mexico.

DATES: Written comments on the draft RMPA/EIS must be submitted or postmarked no later than September 7, 1991. Oral and/or written comments may also be presented at three public hearings to be advertised in local news media, but tentatively scheduled as follows:

Date	Time	City	Location
Aug. 6, 1991	7 p.m.	Albuquerque	BLM Office, 435 Montano NE.
Aug. 7, 1991	7 p.m.	Taos	Taos County Commission Chambers.
Aug. 8, 1991	1 p.m.	Farmington	BLM Office, La Plata Highway.

ADDRESSES: Written comments on the document should be addressed to: Robert T. Dale, District Manager, Bureau of Land Management, 435 Montano NE., Albuquerque, New Mexico 87107; phone (505) 761-8700.

SUPPLEMENTARY INFORMATION: The draft RMPA/EIS analyzes three alternatives to consider the following issues and establish the fluid minerals determinations required in every RMP prepared by BLM.

1. Determine if additional federal mineral estate should be considered for oil and gas leasing.

2. Based on reasonable foreseeable development (RFD) scenarios, determine the effects of developing oil and gas leases in designated Special Management Areas (SMAs) and other areas of concern.

3. Determine the impact of management constraints (lease stipulations, conditions of approval, and no leasing) on oil and gas development.

4. Identify the cumulative impacts of oil and gas development.

Public participation has occurred throughout the RMP process. A Notice of Intent was filed in the **Federal Register** in September 20, 1989. Since that time scoping meetings have been held and letters have been sent to encourage public input. Any comments presented throughout the process have been considered.

Dated: May 16, 1991.

Steve Henke,

Acting Associate, District Manager.

[FR Doc. 91-12329 Filed 5-23-91; 8:45 am]

BILLING CODE 4310-FB-M

[ID-943-01-4214-10; IDI-841]

Termination of Proposed Withdrawal and Reservation of Lands; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Due to the multiplicity of errors in the Notice of Termination of Proposed Withdrawal and Reservation of Lands published as **Federal Register** Document No. 56-69 on page 14533 in the issue of April 10, 1991, this notice is being republished for clarification. The lands were relieved of their segregative effect at 9 a.m. on May 9, 1991, in the original publication notice.

EFFECTIVE DATE: May 9, 1991.

FOR FURTHER INFORMATION CONTACT: Larry Lievsay, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, (208) 384-3166.

The lands involved in this notice of termination are:

Boise Meridian

T. 11 S., R. 16 E.,
Sec. 19, N½NE¼;
Sec. 22, SE¼SE¼, NE¼SW¼, NW¼SE¼, N½SW¼SE¼ and SE¼SW¼SE¼;
Sec. 30, SE¼SE¼;
Sec. 31, NE¼NE¼;
Sec. 34, E½NE¼, SW¼NW¼SE¼, W½W½SE¼NW¼SE¼ and SE¼SE¼;
Sec. 35, E½NW¼, E½E½W½NW¼, S½N½NW¼SW¼SW¼, S½NW¼S W½SW¼, SW¼SW¼SW¼, S½S½S ½NE¼SW¼, E½SE¼SW¼, E½E½N W¼SE¼ and SW¼SE¼.

T. 12 S., R. 16 E.,
Sec. 1, NW¼NW¼SW¼NW¼, S½NW¼S W½NW¼, SW¼SW¼NW¼, NW¼SE¼SW¼NW¼, S½SE¼S W½NW¼, S½NW¼NE¼SW¼, SW¼NE¼SW¼, W½SE¼NE¼SW¼, SE¼SE¼NE¼SW¼, NW¼SW¼, S½SW¼W½SW¼SE¼, SE¼SW¼SE¼ and S½NE¼SW¼SE¼;
Sec. 2, W½SW¼NE¼, W½SE¼S W¼NE¼, SW¼NE¼SW¼NE¼, SE¼SE¼SW¼NE¼, S½NW¼, N½SW¼, S½NE¼SE¼, SW¼NW¼N E¼SE¼, W½SE¼ and SE¼SE¼;
Sec. 3, S½NE¼, S½SW¼, S½S½N W¼SW¼, N½NE¼SE¼, SW¼NE¼S E¼, W½SE¼SE¼ and E½E½S E¼NW¼;
Sec. 4, SE¼;
Sec. 10, N½NE¼, N½N½S½NE¼, N½N½NE¼NW¼ and N½NE¼N W¼NW¼;
Sec. 11, SW¼NE¼, W½SE¼NE¼, N½N½NW¼, SE¼NE¼NW¼, E½SE¼NW¼, E½NE¼SW¼, N½SW¼SE¼, NW¼SE¼, E½SW¼S W½SE¼, SE¼SE¼ and SE¼SW¼SE¼;
Sec. 13, NW¼NW¼, E½SW¼NW¼, E½NW¼SW¼NW¼, NE¼NE¼N W¼SW¼ and N½N½SE¼SW¼;
Sec. 14, N½NE¼;
Sec. 24, NW¼NW¼.

T. 11 S., R. 17 E.,
Sec. 19, N½N½NE¼SE¼;
Sec. 20, NE¼SW¼, NE¼NW¼SW¼, NE¼SE¼NW¼SW¼, N½NW¼N W¼SW¼, NE¼SE¼SW¼, E½SE¼S E¼SW¼, W½SE¼, E½SE¼SE¼ and NW¼SE¼SE¼;

Sec. 24, E½SE¼;
Sec. 25, W½E½, SE¼SE¼;
Sec. 30, lot 1;
Sec. 31, lots 2, 3 and 4;
Sec. 34, W½E½NW¼, S½S½SE¼SE¼N W¼, NW¼NW¼, E½SW¼NW¼, E½W½SW¼NW¼, N½NE¼SW¼, W½W½SW¼NE¼SW¼, E½SE¼N W¼SW¼, NE¼NW¼SW¼, N½SW¼S W¼, N½SW¼SW¼SW¼ and W½NW¼NW¼SE¼;
Sec. 35, SE¼NE¼, NW¼NE¼, E½NW¼, S½S½S½NE¼SW¼ and E½SE¼.

T. 12 S., R. 17 E.,
Sec. 1;
Sec. 2, E½SE¼;
Sec. 3, lot 3, N½SW¼, SW¼SW¼ and SE¼NW¼;
Sec. 4, S½NW¼ and NW¼SW¼;
Sec. 6, lots 5, 6 and 7 and W½SE¼SW¼;
Sec. 7, lots 1, 2, 3, and 4, E½SW¼, SE¼, W½NE¼NW¼;
Sec. 8, E½E½SE¼NE¼;
Sec. 9, E½NE¼NW¼, SE¼SW¼N E¼NW¼ and SW¼SW¼;
Sec. 10, W½W½SE¼NE¼, SW¼NE¼, S½NW¼, SW¼, N½NW¼SE¼, SW¼NW¼SE¼, W½W½SE¼NW¼S E¼ and W½SW¼SE¼;
Sec. 11, E½ and SE¼SW¼;
Sec. 12, W½NW¼NE¼, NW¼, W½NE¼S W¼ and W½SW¼;
Sec. 14, SW¼NW¼;
Sec. 15, W½NW¼NE¼ and N½NW¼.

T. 11 S., R. 18 E.,
Sec. 18, lots 2, 3, and 4 and E½SW¼;
Sec. 30, lot 1, NE¼NW¼ and SE¼SW¼;
Sec. 33, SE¼SE¼;
Sec. 34, S½SW¼.

T. 12 S., R. 18 E.,
Sec. 4, lots 1 and 4 and SW¼NW¼;
Sec. 5, SE¼NE¼, SE¼SW¼, NE¼SE¼ and S½SE¼;
Sec. 6, E½SW¼ and SE¼.

T. 12 S., R. 19 E.,
Sec. 6, lot 6.

The areas described aggregate approximately 6803.00 acres in Twin Falls and Cassia Counties.

Dated: May 17 1991.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 91-12330 Filed 5-23-91; 8:45 am]

BILLING CODE 4310-GG-M

[NM-940-4214-10; NMNM 58234]

Proposed Meeting and Request For Comments; New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of proposed meeting and request for comments.

SUMMARY: On January 28, 1991, Public Land Order (PLO) 6826 was published in the **Federal Register**. (56 FR 3038-3039). PLO 6826 was a modification of PLO 6403 allowing for the transportation, storage, or burial of radioactive materials at the Waste Isolation Pilot Plant site for the Test Phase. This PLO stated that no waste would be transported or emplaced until such time as the Department of Energy (DOE) had provided copies of required permits and the BLM issued a Notice to Proceed. Upon notification to both Houses of Congress, the House Committee on Interior and Insular Affairs passed Resolution No. 4 stating that in order to provide for a reasonable opportunity for Congress to take action, the Vice Chairman of the Committee was directed to notify the Secretary of the Interior (SOI) that an emergency situation existed and that the extraordinary measures of an emergency withdrawal of the public lands covered by PLO 6826 from any location or emplacement of any radioactive materials was necessary to protect natural resources values. Following this Resolution, the Department of the Interior published a proposed modification stating that transportation or emplacement of waste would be prohibited, for test purposes until June 30, 1991. This proposed modification also required a public meeting to receive comments on the proposal.

DATES: Requests to speak at the public meeting must be received by June 25, 1991. Written comments must be received by July 1, 1991.

ADDRESSES: Comments and requests to speak at the public meeting should be sent to the New Mexico State Director, BLM, P.O. Box 1449, Santa Fe, New Mexico 87504-1449

FOR FURTHER INFORMATION CONTACT: Clarence F. Houghland, BLM, New Mexico State Office, 505-988-6071.

SUPPLEMENTARY INFORMATION: The public meeting required by the proposed modification will be held on June 28, 1991, at the Elks Lodge, 1568 Elk Drive, Carlsbad, New Mexico. The meeting will be conducted as a hearing with an Administrative Law Judge presiding and a recorder. The meeting will being at 10 a.m. and will continue until all registered speakers have spoken. For the convenience of those who cannot attend the daytime session, an evening session will begin at 7 p.m. The purpose of the meeting is to provide an opportunity for verbal comments on when the DOE should proceed with the Test Phase. Comments should be limited solely to this issue. The SOI in consultation with the DOE will consider all comments received per this Notice before making a decision on the date for proceeding with the Test Phase.

To ensure that all interested parties are afforded an opportunity to speak at the public meeting, they must submit their name, and if applicable, who they represent, to the above address by June 25, 1991. Speakers should specify their preference of the daytime or evening session. Speakers at the public meeting will be heard in the order in which they are received at the New Mexico State Office. During the meeting, each speaker will be limited to 5 minutes to make comments or to summarize their comments.

Additional written comments should then be given to the recorder for inclusion in the record. Those unable to attend the public meeting may also submit written comments by July 1, 1991. Both written and oral comments will receive equal consideration.

Dated: May 17, 1991.

Monte G. Jordan,

Associate State Director.

[FR Doc. 91-12350 Filed 5-23-91; 8:45 am]

BILLING CODE 4310-FB-M

[UT-942-4214-11; UTU 9850, et al.]

Proposed Continuation of Withdrawals; Utah

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The U.S. Forest Service, Department of Agriculture, proposes that the withdrawals of approximately 3,840.68 acres of National Forest System land (N.F.S.) and public land be continued for an additional 20 to 100 years.

ADDRESSES: Comments should be sent to the Utah State Director, BLM, P.O. Box 45155, Salt Lake City, Utah, 84145-0155.

EFFECTIVE DATE: Comments should be received on or before August 22, 1991.

FOR FURTHER INFORMATION CONTACT: Michael Crocker, BLM, Utah State Office, 801-539-4118.

SUPPLEMENTARY INFORMATION: The U.S. Forest Service proposes that the withdrawals of N.F.S. land and public land, as identified below, be continued for the period of time listed for each withdrawal pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

Salt Lake Meridian

Uinta National Forest

(UTU 9650-PLO 4928)

Spanish Moss Cave

T. 6 S., R. 3 E.,
Sec. 28, NW¼NW¼SE¼.

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It is proposed that this withdrawal of 10 acres be continued for 30 years. The land would remain closed to appropriation under the mining laws, but has been and would remain open to the operation of the public land laws and to mineral leasing.

Ashley National Forest

(UTU 0148813 and UTU 0148813A—PLO 4774)

Lodgepole Campground

T. 1 N., R. 22 E.,
Sec. 17, E½SE¼SW¼SW¼, W½SW¼SE¼SW¼;
Sec. 20, E½NE¼NW¼NW¼, W½NW¼NE¼NW¼.

It is proposed that this withdrawal of 20 acres be continued for 20 years and the description be corrected to more accurately describe the area occupied by the campground. The land would remain closed to appropriation under the mining laws, but has been and would remain open to the operation of the public land laws and to mineral leasing.

Wasatch National Forest

(UTU 42871—E.O. 1400)

Hole-In-The-Rock Administrative Site

T. 3 N., R. 10 E.,
Sec. 31, N½NE¼.

It is proposed that this withdrawal of 80 acres be continued for 30 years. The land would remain closed to operation of the public laws and open to the mining laws for location of nonmetalliferous minerals. All the land has been and would continue to be open to metalliferous mining and mineral leasing.

Manti-LaSal National Forest

(UTU 42867—Secretarial Order dated November 7, 1906 as amended by Secretarial Order dated August 4, 1930)

Mammoth Adminstrative Site

T. 13 S., R. 5 E.,
Sec. 13, E½NE¼NE¼.
T. 13 S., R. 6 E.,
Sec. 18, Lot 1.

It is proposed that this withdrawal of 58.16 acres be continued for 20 years. The land would remain closed to operation of the public land laws, including the mining laws, but would be open to mineral leasing.

(UTU 42851—Secretarial Order dated November 22, 1907)

Seely Creek Administrative Site

T. 17 S., R. 4 E.,
Sec. 25, N½SW¼NW¼NW¼.

It is proposed that this withdrawal of 5 acres be continued for 30 years. The land would remain closed to the public land laws, including the mining laws, but has been and would remain open to mineral leasing.

(UTU 028280 and UTU 018148—PLO's 1715 and 2968)

Hammond Canyon Archaeological and Scenic area

T. 35 S., R. 19 E., (unsurveyed)
Sec. 25, W½NE¼, SE¼NE¼, E½W½SE¼;
Sec. 36, N½NE¼, NE¼NW¼.
T. 35 S., R. 20 E.,
Sec. 20, SE¼NE¼, SW¼, NE¼SE¼, S½SE¼;
Sec. 21, NW¼SW¼, S½SW¼;
Sec. 27, W½;
Sec. 28, N½, N½S½, S½SE¼;
Sec. 29, N½, N½S½;
Sec. 30, lots 1, 2, 3, S½NE¼, E½NW¼, NE¼SW¼, N½SE¼;
Sec. 33, N½NE¼.

It is proposed that this withdrawal of 3,639.52 acres be continued for 100 years. The land has been and would remain closed to operation of the public land laws, including the mining laws, but has been and would remain open to the mineral leasing laws.

Uintah Special Meridian

Ashley National Forest

(UTU 069197A—PLO 3480)

South Fork Recreation Area (original name)

Rock Creek Administrative Site (proposed name)

T. 2 N., R. 7 W.,
Sec. 20, NE¼SE¼SE¼.

Rock Creek Recreation Area (proposed name)

T. 2 N., R. 7 W.,
Sec. 21, S½NE¼NW¼SW¼, SE¼NW¼SW¼, N½NE¼SW¼SW¼.

It is proposed that this withdrawal of 30 acres be continued for 25 years and to divide the original area, South Fork Recreation Area, into two separate sites, Rock Creek Administrative Site and Rock Creek Recreation Site. The land would remain closed to operation of the mining laws, but has been and would remain open to operation of the public land laws and to mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or views in connection with the proposed actions may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Ted Stephenson,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91-12352 Filed 5-23-91; 8:45 am]

BILLING CODE 4310-DQ-M

Fish and Wildlife Service

Availability of a Draft Recovery Plan for Sagittaria Secundifolia (Kral's Water-Plantain) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for Kral's water-plantain. The only known population is on state and private lands in the Little River system in northeast Alabama (DeKalb, Cherokee Counties) and northwest Georgia (Chattooga County). The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before July 23, 1991 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Fish and Wildlife Reference Service, 5430 Grosvenor Lane, suite 110, Bethesda, Maryland 20814, or calling 301/492-6403 or 1/800/582-3421. Written comments and materials regarding the plan should be addressed to the Field Supervisor at U.S. Fish and Wildlife Service, Endangered Species Office, 6578 Dogwood View Parkway, suite A, Jackson, Mississippi 39213. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the latter address.

FOR FURTHER INFORMATION CONTACT: Robert Bowker at the above address (601/965-4900).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The species considered in this draft recovery plan is *Sagittaria secundifolia* (Kral's water-plantain). Listing Kral's water-plantain was considered necessary because of its very limited distribution and degradation of its aquatic habitat. Major objectives of this recovery plan include reestablishing the distribution of the rare plant within its historic range (the Cumberland Plateau physiographic province of northeast Alabama and northwest Georgia), restoring its habitat quality, and providing long-term protection for the plant and its habitat.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated May 14, 1991.

Robert Bowker,

Complex Field Supervisors.

[FR Doc. 91-12327 Filed 5-23-91; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Pacific Outer Continental Shelf Region's 6th Information Transfer Meeting

May 17, 1991.

AGENCY: Pacific OCS Region, Department of the Interior, Minerals Management Service.

ACTION: Pacific Outer Continental Shelf Region's 6th Information Transfer Meeting; notice and meeting agenda.

The Pacific OCS Region's 6th Information Transfer Meeting is scheduled to be held May 29-31, 1991 at the Fess Parker's Red Lion Resort, 633 East Cabrillo Blvd., Santa Barbara, CA 93103 (805) 564-4333.

The tentative agenda for the meeting follows:

Day 1: ITM Welcome Session—3 p.m.-5 p.m.
- An Introduction To Minerals Management Service's Pacific Outer Continental Shelf Regional Office

Exhibit Session—5 p.m.-7 p.m.

Day 2: Theme: Environmental Sensitivity and Its Relationship to OCS Decisionmaking—8 a.m.-5 p.m.
- Definitions of Environmental Sensitivity
- Questions and Discussion
- Environmental Sensitivity and Public Education
- Quantifying Environmental Sensitivity
- How Environmental Sensitivity Affects the Local Decisionmaking Process
- Workable Alternative Energy Sources
- Developing Environmentally Responsive Mitigation
- Environmental Tradeoffs Associated with Various Fuel Sources
- Environmental Sensitivity and Legislation
- Public Discussion Exhibits—5 p.m.-7 p.m.

Day 3: Regional Environmental Studies—8 a.m.-4:30 p.m.
- Focus: Santa Barbara Channel and Santa Maria Basin
- Effect of Discharges from Point Arguello Platforms on Hard Substrate Benthos—Phase II
- Southern California Bight Circulation Study
- Recovery of Vegetation at Onshore Facility Sites
- Fugitive Hydrocarbon Emissions from POCS Facilities
- New Seismic Sensitivity Network for Point Arguello
- Platform Effects on Local Fisheries
- Shipwreck Archeology in the Channel Islands National Park
- Brown Pelicans Following Oil Spill Exposure
- Goals Established at the Socioeconomic Workshop
- A New Focus for the MMS Environmental Studies Program
- Public Discussion

Proceedings from the Information Transfer Meeting will be published and will be available upon completion at: Pacific OCS Region; Minerals Management Service, 770 Paseo Camarillo, Camarillo, CA 93010.

Questions about this meeting can be directed to Ms. Mary Elsine Dunaway, MMS, at (FTS) 683-7848 or (805) 389-7848 or to our contractor from MBC, Ms. Kathy Mitchell, at (714) 646-1601.

Dated: May 13, 1991.

J. Lisle Reed,

Regional Director, Pacific OCS Region.

[FR Doc. 91-12331 Filed 5-23-91; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Mississippi River Corridor Study Commission Meeting

AGENCY: National Park Service.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming initial meeting of the Mississippi River Corridor Study Commission. Notice of this meeting is required under the Federal Advisory Committee Act, 5 U.S.C. appendix (1988).

DATE & TIME: June 26, 1991; 3 p.m. and continuing June 27, 1991; 8:30 a.m. until 4:30 p.m.

ADDRESSES: Mayfair Hotel, 806 St. Charles Street, St. Louis, Missouri 63101-1507.

The business meeting will be open to the public. Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first come, first served basis. The Chairman may permit attendees to address the Commission, but may restrict the length of presentations as necessary to allow the Commission to complete its agenda within the allotted time.

FOR FURTHER INFORMATION CONTACT: David N. Given, Associate Regional Director, Planning and Resources Preservation, National Park Service, Midwest Region, 1709 Jackson Street, Omaha, Nebraska 68102, (402) 221-3082.

SUPPLEMENTARY INFORMATION: The Mississippi River Corridor Study Commission was established by Public Law 101-398, September 28, 1990.

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Dated: May 17, 1991.

Don H. Castleberry,

Regional Director, Midwest Region.

[FR Doc. 91-12353 Filed 5-23-91; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Establishment of the International Private Investment Advisory Council on Foreign Aid

AGENCY: U.S. Agency for International Development (A.I.D.).

ACTION: Establishment of Advisory Committee.

SUMMARY: The Administrator of A.I.D. has determined that it is in the public interest to establish the International Private Investment Advisory Council on Foreign Aid (herein referred to as the Business Advisory Council). The Council will offer an independent business perspective and advice to the Administrator on A.I.D.'s Business and Development Partnership Initiative and related A.I.D. issues, as well as report on the progress of A.I.D. in enhancing U.S. competitiveness internationally.

FOR FURTHER INFORMATION CONTACT: Ms. Tracy L. Smith, APRE/IBS, Room 3214 New State, U.S. Agency for International Development, Washington, D.C. 20523-0084; (202) 647-3605.

Jan W. Miller,

Assistant General Counsel for Employee and Public Affairs.

[FR Doc. 91-12328 Filed 5-23-91; 8:45 am]

BILLING CODE 8116-01-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31320]

Indiana & Ohio Railway Company—Construction and Operation of A Line of Railway—In Butler, Warren and Hamilton Counties, Ohio; Availability of Draft Environmental Impact Statement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of availability of draft environmental impact statement.

SUMMARY: The Indiana and Ohio Railway Company (IORY) has applied to the Interstate Commerce Commission for authorization to construct and operate a 2.9 mile railroad in Butler, Warren and Hamilton Counties Ohio. The Commission has prepared its Draft Environmental Impact Statement (DEIS) which concludes that the proposed action could create potentially significant safety impacts for residents living adjacent to the proposed right-of-way. We, therefore, conclude that this proposal may have serious adverse effects on public health and safety which may significantly affect the quality of the human environment. The Commission will consider any comments to the conclusions reached in the DEIS before rendering a final decision in this proceeding.

DATES: Written comments must be filed by July 26, 1991.

ADDRESSES: Send an original and 10 copies of comments referring to Finance Docket No. 31320 to: (1) Section of Energy and Environment, Room 3219, Interstate Commerce Commission, Washington, DC 20423, to the attention of John O'Connell and one copy of the comments to: (2) Applicant's representative: Robert L. Calhoun, 1025 Connecticut Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: John J. O'Connell (202) 275-6842 or Elaine K. Kaiser, Section Chief (202) 275-7684. (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: Copies of the full DEIS may be obtained from the Section of Energy and Environment, Office of Economics, Room 3219, Interstate Commerce Commission, Washington, DC 20423. Telephone (202) 275-7684. Assistance for the hearing impaired is available through TDD Services at (202) 275-1721. Because of the large size of the service list we have distributed to all parties of record an expanded Executive Summary. Also, we have provided a limited number of copies of the full DEIS to the Applicant (IORY), concerned groups and shippers located on the line and appropriate Federal, State and local officials. In addition, copies of the full DEIS are available at the following locations:

6798 Fallen Oaks Drive, Mason, Ohio 45040, (513) 398-4798.

Yorktowne, 7260 Fields-Ertel Road, Cincinnati, Ohio 45241, (513) 777-6065.

Indiana & Ohio Railway Company, 8901 Blue Ash Road, Blue Ash, Ohio, (513) 891-9191.

By the Commission, Howard K. Face, Director, Office of Economics.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-12306 Filed 5-23-91; 8:45 am]

BILLING CODE 7035-01-M

Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Eastern Foods, Inc., 1000 Naturally Fresh Blvd., Atlanta, Geogria 30349.

2. Wholly owned subsidiaries which will participate in the operations, Eastern Masters Distributors, Inc. (a Georgia corporation), Naturally Fresh, Inc. (a Georgia corporation), Corporate Leasing Corp. (a Georgia corporation).

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-12401 Filed 5-23-91; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31873]

Great Western Railway Co. of Iowa, Inc.—Acquisition and Operation Exemption—Council Bluffs and Ottumwa Railway, Inc.; Notice of Exemption

The Great Western Railway Company of Iowa, Inc. (GWRI), a noncarrier, has filed a notice of exemption to acquire and operate the approximately 27 miles of rail line of Council Bluffs and Ottumwa Railway, Inc., at Council Bluffs, IA. The lines consist of: (1) Approximately 5 miles of line in the former Norfolk and Western freight yard between mileposts 407.7 and 410.86; and (2) approximately 22 miles of line in the former Milwaukee Road terminal property between mileposts 0.0 and 0.3. The transaction was expected to be consummated on or shortly after May 15, 1991.

This transaction is related to a notice of exemption filed subsequently in Finance Docket No. 31878, *Great Western Railway Company—Continuance in Control Exemption—Great Western Railway Company of Iowa, Inc.*

Any comments must be filed with the Commission and served on: William R. Neff, Otten, Johnson, Robinson, Neff & Ragonett, 1600 Colorado National Building, 950 Seventeenth Street, Denver, CO 80202.

GWRI shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 407.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: May 17, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-12399 Filed 5-23-91; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31878]

Great Western Railway Co.—Continuance in Control Exemption—Great Western Railway Co. of Iowa, Inc.; Notice of Exemption

Great Western Railway Company (GWR), a noncarrier holding company, has filed a notice of exemption to continue to control Great Western Railway Company of Iowa, Inc. (GWRI), upon GWRI's becoming a carrier. GWR owns all of the outstanding shares of GWRI, which was formed to acquire the Iowa rail lines of Council Bluffs and Ottumwa Railway, Inc.[1] GWR also owns all of the outstanding shares of Great Western Railway Company of Colorado, Inc. (GWRC), GWRC owns and operates one rail line in Colorado and a second rail line in California and Oregon.

GWR indicates that: (1) The properties operated by the named railroads will not connect with each other; (2) the continuance in control is not a part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a Class I carrier. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the condition set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: William R. Neff, Otten, Johnson, Robinson, Neff & Ragonett: 1600 Colorado National Building, 950 Seventeenth Street, Denver, CO 80202.

Decided: May 17, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-12400 Filed 5-23-91; 8:45 am]

BILLING CODE 7035-01-M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Bankruptcy Rules

AGENCY: Judicial Conference of the United States.

ACTION: Notice of open meeting.

SUMMARY: There will be a two-day meeting of the Advisory Committee on Bankruptcy Rules to consider future revisions to the Bankruptcy Rules. The meeting will be open to public observation.

DATES: June 20-21, 1991—9 a.m.

ADDRESSES: United States District Court, John W. McCormack Post Office & Courthouse, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Joseph F. Spaniol, Jr., Secretary, Committee on Rules of Practice and Procedure, Washington, DC 20544, telephone (202) 633-6021.

Dated: May 9, 1991.

Joseph F. Spaniol, Jr.,

Secretary, Committee on Rules of Practice and Procedure.

[FR Doc. 91-12196 Filed 5-24-91; 8:45 am]

BILLING CODE 2210-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance; AT&T Microelectronics, et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 3, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 3, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 13th day of May 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
AT&T Microelectronics (Wkrs)	Radford, VA	05/13/91	04/29/91	25,791	Transformers & switches.
Bergman Knitting sweaters Mills (Wkrs)	Philadelphia, PA	05/13/91	04/22/91	25,792	Men's knit.
Birchcraft Kitchens, Inc. (Wkrs)	Reading, PA	05/13/91	04/26/91	25,793	Kitchen cabinets.

[1] GWRI has filed a notice of exemption for this transaction in Finance Docket No. 31873, *Great Western Railway Company of Iowa, Inc.—Acquisition and Operation Exemption—Council Bluffs and Ottumwa Railway, Inc.*

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APPENDIX—Continued

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Brown & Sharpe Mfg. Co. (Wkrs)	N Kingstown, RI	05/13/91	04/29/91	25,794	Parts for machines.
Capital Tackle, Inc. (Wkrs)	Vancouver, WA	05/13/91	04/26/91	25,795	Terminal tackle.
Cee Mfg. (USWA)	Painesville, OH	05/13/91	04/29/91	25,796	Machines for wood.
Columbian Chemicals (USWA)	Monmouth Station, NJ	05/13/91	04/25/91	25,797	Iron oxide.
Delta Faucet Co. (Wkrs)	Decatur, MI	05/13/91	04/03/91	25,798	Toilets.
Eastern Steel Barrel Crop. (USWA)	Piscataway, NJ	05/13/91	04/26/91	25,799	Steel & plastic containers.
Falconer Glass Ind. (ABGW)	Falconer, NJ	05/13/91	05/02/91	25,800	Fabricated glass.
First Phillips Mfg. Corp. (Wkrs)	Sunbury, PA	05/13/91	04/26/91	25,801	Plastic items.
Gerber Childrenswre, Inc. (Wkrs)	Liberty, SC	05/13/91	05/03/91	25,802	Infant sleep ware.
Gerber Childrenswre, Inc. (Wkrs)	Easley, SC	05/13/91	05/03/91	25,803	Infant sleep ware.
Golan Mfg. Co. (ILGWU)	Abingdon, VA	05/13/91	04/30/91	25,804	Swimwear.
Hagglunds Denison (Wkrs)	Marysville, OH	05/13/91	04/30/91	25,805	Pumps & motors.
Hughes H. Wilson Corp. (Wkrs)	Sunbury, PA	05/13/91	04/26/91	25,806	Plastic items.
ITT Hancock (UAW)	Williamston, MI	05/13/91	05/06/91	25,807	Auto seats.
Kelsey Hayes Co. (UAW)	Mt. Vernon, OH	05/13/91	04/26/91	25,808	Auto brake assemblies
Motorola Inc., Telephones General Systems (Wkrs).	Houston, TX	05/13/91	07/18/91	25,809	Cellular.
North American Biological, Inc. (Wkrs)	El Paso, TX	05/13/91	04/17/91	25,810	Blood plasma.
Olde New England Leather (Wkrs)	Rockland, MA	05/13/91	05/06/91	25,811	Women's handbags.
Plyfiber Container Containers Corp. (USWA)	Raritan, NJ	05/13/91	04/26/91	25,812	Cardboard.
Republic Engineered Steels (Wkrs)	Massillon, OH	05/13/91	05/01/91	25,813	Stainless steel.
Rhone-Poulenc Rorer Pharmaceutical (Wkrs)	Fort Wash, PA	05/13/91	04/26/91	25,814	Pharmaceuticals.
Robert E. Derecktor of R.I. Inc (USWA)	Middletown, RI	05/13/91	04/11/91	25,815	Ships.
Sandy Dee Fashions (Wkrs)	Scranton, PA	05/13/91	04/30/91	25,816	Women's apparel.
Santa Fe Minerals, Inc. (Hdqts) (Wkrs)	Dallas, TX	05/13/91	04/30/91	25,817	Oil & gas.
Santa Fe Minerals, Inc. (Wkrs)	El Reno, OK	05/13/91	04/30/91	25,818	Oil & gas.
Santa Fe Minerals, Inc. (Wkrs)	Lafayette, LA	05/13/91	04/30/91	25,819	Oil & gas.
Santa Fe Minerals, Inc. (Wkrs)	Tulsa, OK	05/13/91	04/30/91	25,820	Oil & gas.
Sinteris Magnetics Corp. (Wkrs)	Grand Haven, MI	05/13/91	04/29/91	25,821	Magnetic motors.
Thorngate Uniforms Inc. (UGWA)	Norristown, PA	05/13/91	04/16/91	25,822	Marine uniforms.
Thornton Drum Corp. Rings (USWA)	Springfield, NJ	05/13/91	04/26/91	25,823	Steel closing.
Towne-Robinson Inc. (Wkrs)	Dearborn, MI	05/13/91	03/21/91	25,824	Bolts & nuts.
U.S. Shoe Corp—Osgood Plant (Company)	Osgood, IN	05/13/91	04/22/91	25,825	Women's footwear
Vending Services, Inc. (Wkrs)	Eau Claire, WI	05/13/91	05/02/91	25,826	Vending machines services.
Vigor Co. (Wkrs)	New York NY	05/13/91	05/06/91	25,827	Whole sale distributors.

[FR Doc. 91-12408 Filed 5-23-91; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-25,248]

Detroit Strip Division Cyclops Corp. Detroit, MI; Affirmative Determination Regarding Application for Reconsideration

By a letter dated April 25, 1991, a former company official and petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for former workers of Detroit Strip Division, Cyclops Corporation, Detroit, Michigan. The Negative Determination was issued on March 20, 1991 and was published in the **Federal Register** on April 2, 1991 (56 FR 13500).

The former company official claims that the Department's survey was inadequate and submitted a list of additional customers with declining purchases from Detroit Strip.

Conclusion

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 17th day of May 1991.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-12407 Filed 5-23-91; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-25,598 & 25,599]

Joneco, Inc., Kingfield ME; North Anson, ME; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 25, 1991 in response to a worker petition which was filed on March 25, 1991 on behalf of workers at the Kingfield, Maine and North Anson, Maine plants of Joneco, Incorporated.

All workers were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 17th day of May, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-12406 Filed 5-23-91; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-25,434; TA-W-25,443]

Rubber Workers Club, Inc., Eau Claire, WI United Rubber Corp. Linoleum and Plastic Workers of America, Secretarial Staff, Eau Claire, WI; Negative Determination Regarding Application for Reconsideration

By an application dated April 25, 1991, the office staff of Local 19 of the United Rubber Workers' union and an official of the Rubber Workers Club, Inc., requested administrative reconsideration of the subject petitions for trade adjustment assistance. The denial notice for petition TA-W-25,443 was signed on April 17, 1991 and published in the **Federal Register** on April 30, 1991 (56 FR 19884). The denial notice for petition TA-W-25,434 was signed on April 15, 1991 and will soon be published in the **Federal Register.**

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous:

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers at the Rubber Workers Club provide bar services for workers of the Eau Claire plant of Uniroyal-Goodrich Tire Company. The United Rubber Workers' Union employs the workers of the Rubber Workers Club. There is no corporate-affiliation between the Rubber Workers Club and Uniroyal-Goodrich Tire Company.

Office workers of the URCLPWA provide secretarial services to Local #19 of the URCLPWA.

The Department's denial is based on the fact that the workers do not produce an article within the meaning of the Trade Act of 1974 nor are they corporately related to Uniroyal-Goodrich in Eau Claire. This point was addressed in the Department's notices of negative determination issued on April 15, 1991 and April 17, 1991.

Employees of Local 19 and the Rubber Workers Club claim that they should be certified because of the close-down of operations at the Uniroyal-Goodrich plant in Eau Claire, Wisconsin. Workers at the Uniroyal-Goodrich plant (TA-W-24,109) were certified on May 18, 1990.

Although the services provided by Local 19 and the Rubber Workers Club are dependent on the Uniroyal-Goodrich plant, this would not form a basis for a worker group certification.

In order for workers providing services to the Uniroyal-Goodrich plant in Eau Claire to become certified eligible to apply for adjustment assistance, their separations must be caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to the subject firm by ownership, or a firm related by control. Investigation findings show that Uniroyal-Goodrich does not own either the Rubber Workers Club or Local 19 of the United Rubber Workers Union nor does if control either group.

Conclusion

After review of the applications and investigative findings, I conclude that there has been no error or misinterpretation of the facts or of the law which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the applications are denied.

Signed at Washington, DC, this 13th day of May 1991.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-12403 Filed 5-23-91; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-25,375]

Sun Plywood, Inc. North Bend, OR; Affirmative Determination Regarding Application for Reconsideration

By a letter dated April 9, 1991, one of the petitioners requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers and former workers of Sun Plywood, Inc., North Bend, Oregon. The Negative Determination was issued on March 29, 1991 and will soon be published in the **Federal Register.**

The petitioner claims that workers at a local plywood plant were certified eligible to apply for adjustment assistance. Also, a review of the files shows that the local plant was a customer of Sun Plywood.

Conclusion

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 13th day of May 1991.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-12404 Filed 5-23-91; 8:45 am]
BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued

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Under The Davis-Bacon and Related Acts," shall be the minimum paid by the contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination No. GA91-28, dated February 22, 1991.

Agencies and construction projects pending to which this wage decision would have been applicable should utilize General Wage Determination No. GA91-8. (See Regulations 29 CFR part 1, § 1.5.) Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6 (c)(2)(i)(A), when the opening of bids is within ten (10) days of this notice, the contract specifications need not be affected.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register, are in parentheses following the decisions being modified.

Volume I

Connecticut, CT91-1 (Feb. 22, 1991).	p. 63, p. 64.
District of Columbia, DC91-1 (Feb. 22, 1991).	p. 79, pp. 80-83.
Florida, FL91-3 (Feb. 22, 1991).	p. 107, p. 108.
Georgia:	
GA91-4 (Feb. 22, 1991).	p. 229, p. 230.
GA91-9 (Feb. 22, 1991).	p. 239, p. 240.
GA91-10 (Feb. 22, 1991).	p. 243, p. 244.
CA91-11 (Feb. 22, 1991).	p. 245, p. 246.
GA91-12 (Feb. 22, 1991).	p. 247, p. 248.
GA91-24 (Feb. 22, 1991).	p. 271, p. 272.
GA91-25 (Feb. 22, 1991).	p. 273, p. 274.
GA91-26 (Feb. 22, 1991).	p. 275, p. 276.
GA91-27 (Feb. 22, 1991).	p. 277, p. 278
GA91-28 (Feb. 22, 1991).	p. 279, p. 280.
GA91-29 (Feb. 22, 1991).	p. 281, p. 282.
Massachusetts, MA91-1 (Feb. 22, 1991).	p. 421, p. 426.
Mississippi:	
MS91-21 (Feb. 22, 1991).	p. 581, pp. 582-583.
MS91-26 (Feb. 22, 1991).	p. 599, pp. 600-601.
MS91-27 (Feb. 22, 1991).	p. 603, p. 604.
New Jersey:	
NJ91-2 (Feb. 22, 1991)...	p. 701, pp. 705, 708.
NJ91-3 (Feb. 22, 1991)...	p. 721, pp. 727-732.
New York:	
NY91-2 (Feb. 22, 1991).	p. 777, p. 780.
NY91-12 (Feb. 22, 1991).	p. 893, pp. 894-895,897.
Pennsylvania:	
PA91-5 (Feb. 22, 1991)..	p. 995, pp. 996-997.
PA91-6 (Feb. 22, 1991)..	p. 1007, p. 1008.
Virginia, VA91-52 (Feb. 22, 1991).	p. 1363, p. 1363

Volume II

Arkansas:	
AR91-1 (Feb. 22, 1991).	p. 3, p. 4.
AR91-7 (Feb. 22, 1991).	p. 17, pp. 18-19.
AR91-8 (Feb. 22, 1991).	p. 21, p. 22.
Iowa:	
IA91-2 (Feb. 22, 1991)...	p. 29, p. 30.
IA91-4 (Feb. 22, 1991)...	p. 37, pp. 38-39.
Illinois:	
IL91-2 (Feb. 22, 1991) ...	p. 97, p. 99.
IL91-18 (Feb. 22, 1991).	p. 237, p. 238.
Kansas:	
KS91-7 (Feb. 22, 1991)..	p. 369, pp. 370-371.
KS91-9 (Feb. 22, 1991)..	p. 381, p. 382.
Michigan:	
MI91-1 (Feb. 22, 1991)..	p. 441, pp. 442-443, 447.
MI91-2 (Feb. 22, 1991)..	p. 461, pp. 462-466.
MI91-4 (Feb. 22, 1991)..	p. 491, p. 492.
MI91-7 (Feb. 22, 1991)..	p. 515, p. 516.
MI91-17 (Feb. 22, 1991).	p. 559, p. 560.
Minnesota:	
MN91-7 (Feb. 22, 1991).	p. 587, pp. 590, 597.
MN91-15 (Feb. 22, 1991).	p. 627, pp. 630-630.
Missouri:	
MO91-5 (Feb. 22, 1991).	p. 697, pp. 698-701.
MO91-6 (Feb. 22, 1991).	p. 703, pp. 704-705.
MO91-7 (Feb. 22, 1991).	p. 711, pp. 712-715.
MO91-8 (Feb. 22, 1991).	p. 717, p. 718.
MO91-12 (Feb. 22, 1991).	p. 741, p. 742.
Nebraska:	
NE91-2 (Feb. 22, 1991)..	p. 748, p. 750.
NE91-3 (Feb. 22, 1991)..	p. 753, p. 754.
New Mexico, NM91-1 (Feb. 22, 1991).	p. 779, pp. 780, 785.
Ohio, OH91-34 (Feb. 22, 1991).	p. 949, p. 950.
Texas, TX91-10 (Feb. 22, 1991).	p. 1045, p. 1046.

Volume III

Arizona:	
AZ91-1 (Feb. 22, 1991).	p. 9, pp. 10-11.
AZ91-2 (Feb. 22, 1991).	p. 15, pp. 16, 18, 22.
AZ91-5 (Feb. 22, 1991).	p. 27, pp. 28.
Idaho, ID91-1 (Feb. 22, 1991).	p. 207, pp. 209-210.
Oregon, OR91-1 (Feb. 22, 1991).	p. 371, pp. 372, 374.
Washington:	
WA91-1 (Feb. 22, 1991).	p. 451, pp. 453, 455, pp. 459-462.
WA91-2 (Feb. 22, 1991).	p. 477, p. 478.
WA91-3 (Feb. 22, 1991).	p. 487, p. 488.
WA91-5 (Feb. 22, 1991).	p. 495, pp. 496-496.
WA91-7 (Feb. 22, 1991).	p. 501, p. 502.
WA91-8 (Feb. 22, 1991).	p. 507, p. 508.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, This 7th Day of May 1991.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 91-12271 Filed 5-23-91; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

Petitions for Modification, Yuba-Placer Gold Co. et al.

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Yuba-Placer Gold Company

[Docket No. M-91-02-M]

Yuba-Placer Gold Company, 7545 Hammonton Road, Marysville, California 95901 has filed a petition to modify the application of 30 CFR 56.15020 to its Dredge #21 Mine (I.D. No. 04-02386) located in Yuba, California. The petitioner proposes to have flotation belts worn at all times while employees are on duty in lieu of life vests when working around water.

2. Tg Soda Ash, Inc.

[Docket No. M-91-03-M]

Tg Soda Ash, Inc., P.O. Box 100, Granger, Wyoming 82934 has filed a petition to modify the application of 30 CFR 57.22305 to its Trona Operations Mine (I.D. No. 48-00639) located in Sweetwater County, Wyoming. The petitioner proposes to use a nonpermissible battery-powered drill for drilling holes for surveying spads in the panel face area inby the last open crosscut.

3. Lenco, Inc.

[Docket No. M-91-38-C]

Leeco, Inc., 100 Coal Drive, London, Kentucky 40741-8799 has filed a petition to modify the application of 30 CFR 75.1701 to its No. 22 Mine (I.D. No. 15-11548), its No. 49 Mine (I.D. No. 15-14616), and its No. 60 Mine (I.D. No. 15-12941) located in Leslie County, Kentucky; its No. 62 Mine (I.D. No. 15-16412), and its No. 63 Mine (I.D. No. 15-16413) located in Perry County, Kentucky. The petitioner proposes to maintain a testhole parallel to the mining area in advance of the working face.

4. Cross Mountain Coal Company

[Docket No. M-91-39-C]

Cross Mountain Coal, Inc., 100 Coal Drive, London, Kentucky 40741-8799 has filed a petition to modify the application of 30 CFR 75.1701 to its No. 6 Mine (I.D. No. 40-02971) located in Campbell County, Tennessee. The petitioner proposes to maintain a testhole parallel to the mining area in advance of the working face.

5. Soldier Creek Coal Company

[Docket No. M-91-40-C]

Soldier Creek Coal Company, P.O. Box 1, Price, Utah 84501 has filed a petition to modify the application of 30 CFR 75.326 to its Soldier Canyon Mine (I.D. No. 42-00077) located in Carbon County, Utah. The petition proposes to use belt air to ventilate the face area and install a low-level carbon monoxide detection system in the belt entry.

6. Soldier Creek Coal Company

[Docket No. M-91-41-C]

Soldier Creek Coal Company, P.O. Box 1, Price, Utah 84501 has filed a petition to modify the application of 30 CFR 75.1103-4 to its Soldier Canyon Mine (I.D. No. 42-00077) located in Carbon County, Utah. The petitioner proposes to install a low-level carbon monoxide detection system in the belt entry.

7. Soldier Creek Coal Company

[Docket No. M-91-42-C]

Soldier Creek Coal Company, P.O. Box 1, Price, Utah 84501 has filed a petition to modify the application of 30 CFR 75.1105 to its Soldier Canyon Mine (I.D. No. 42-00077) located in Carbon County, Utah. The petitioner proposes to enclose electrical equipment in a monitored fireproof structure in lieu of ventilating the equipment to the return.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 24, 1991. Copies of the petitions are available for inspection at that address.

Dated: May 17, 1991.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 91-12405 Filed 5-23-91; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 91-45]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on High Temperature Materials and Structures Technology.

DATES: June 18, 1991, 8 a.m. to 5 p.m.; and June 19, 1991, 8 a.m. to 2 p.m. (to be held at the Langley Research Center); and June 20, 1991, 8 a.m. to 5 p.m. and June 21, 1991, 8 a.m. to Noon (to be held at the Lewis Research Center).

ADDRESSES: National Aeronautics and Space Administration, Langley Research Center, Building 1229, Room 223, Hampton, VA 23665; and National Aeronautics and Space Administration, Lewis Research Center, Building 49, Room 131, 21000 Brookpark Road, Cleveland, OH 44135.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Venneri, Office of Aeronautics, Exploration and Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2760.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics, Exploration and Technology (OAET) on aeronautics research and technology activities. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team on High Temperature Materials and Structures Technology, chaired by Professor Edgar A. Starke, Jr., is composed of ten members.

The meeting will be open to the public up to the seating capacity of the room (approximately 20 persons including the team members and other participants).

Type of Meeting: Open.

Agenda

June 18, 1991

8 a.m.—Welcome.
8:15 a.m.—Opening Remarks.
8:30 a.m.—High Temperature Airframe Materials and Structures Overview.

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9 a.m.—Review of High Temperature Airframe Materials Research.
1 p.m.—Review of High Temperature Airframe Structures Research.
3:30 p.m.—Group Discussion.
5 p.m.—Adjourn.

June 19, 1991

8 a.m.—Review of Interdisciplinary Research.
9 a.m.—Facility Tour and Demonstration.
1 p.m.—Group Discussion.
2 p.m.—Adjourn.

June 20, 1991

8 a.m.—Welcome.
8:30 a.m.—Review of High Temperature Propulsion Materials Research.
10:30 a.m.—Review of High Temperature Propulsion Structures Research.
1:30 p.m.—Facility Tour and Demonstration.
3 p.m.—Group Discussion.
5 p.m.—Adjourn.

June 21, 1991

8 a.m.—Group Discussion.
Noon—Adjourn.

Dated: May 20, 1991.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91-12414 Filed 5-23-91; 8:45 am]

BILLING CODE 7510-01-M

[Notice 91-44]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee.

DATES: June 5, 1991, 8:30 a.m. to 5:30 p.m.; June 6, 1991, 8:30 a.m. to 5:30 p.m.; and June 7, 1991, 8:30 a.m. to 3 p.m.

ADDRESSES: The National Aeronautics and Space Administration, 600 Independence Avenue, SW., room 226A, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph K. Alexander, Code S, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1430).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long-range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Committee will meet to discuss the OSSA program status, budget outlook, Woods Hole Workshop planning strategy, and future issues. The Committee is chaired by Dr. Berrien Moore and is composed of 26 members. The meeting will be closed to the public from 4:30 p.m. to 5:30 p.m. on June 6, 1991 for a discussion of the qualifications of additional candidates for membership. Such a discussion would invade the privacy of the candidates and other individuals involved. Since this discussion will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting will be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the capacity of the room (approximately 50 persons including Committee members). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Type of meeting: Open—except for a closed session as noted in the agenda below.

Agenda

Wednesday, June 5

8:30 a.m.—Committee Business.
8:45 a.m.—OSSA Status Report and Budget Outlook.
1:15 p.m.—Preparation for the Woods Hole Workshop on Strategic Planning.
4:30 p.m.—Committee Discussion.
5:30 p.m.—Adjourn.

Thursday, June 6

8:30 a.m.—Committee Business.
8:45 a.m.—Status of the Gravity Probe B Ad Hoc Review.
9:45 a.m.—OSSA/Office of Aeronautics, Exploration and Technology Integrated Technology Plans.
10:45 a.m.—Review of Restructured Space Station.
1 p.m.—Science Tutorial.
2 p.m.—Orbiting Solar Laboratory New Start Discussion.
3 p.m.—NAC Education Study Activity.
3:30 p.m.—Small Mission Follow-up Discussion.
4:30 p.m.—Closed Session.
5:30 p.m.—Adjourn.

Friday, June 7

8:30 a.m.—Committee Business.
8:45 a.m.—Writing Groups.
1:30 p.m.—Committee Discussion with OSSA.
3 p.m.—Adjourn.

Dated: May 20, 1991.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91-12415 Filed 5-23-91; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Catherine Wolhowe, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. Date: June 25, 1991.
Time: 9 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review applications for Undergraduate/Precollegiate Education, submitted to the Office of Challenge Grants, for projects beginning after December 1, 1990.
2. Date: June 27, 1991.
Time: 9 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review applications in Undergraduate Education, submitted to the Office of Challenge Grants, for projects beginning after December 1, 1990.

Catherine Wolhowe,

Advisory Committee Management Officer.

[FR Doc. 91-12380 Filed 5-23-91; 8:45 am]

BILLING CODE 7536-01-M

Arts in Education Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Arts in Education Advisory Panel (Arts Education Collaboration Initiative Prescreening #3 Section) to the National Council on the Arts will be held on June 10, 1991 from 9 a.m.-5 p.m. in room M-14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, as amended, this session will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: May 20, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-12381 Filed 5-23-91; 8:45 am]

BILLING CODE 7537-01-M

Arts in Education Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Arts in Education Advisory Panel (Arts Education Collaboration Initiative Prescreening #4 Section) to the National Council on the Arts will be held on June 12, 1991 from 9 a.m.-4 p.m. in room M-14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on application for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in conference to the Agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, as amended, this session will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: May 20, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-12380 Filed 5-23-91; 8:45 am]

BILLING CODE 7537-01-M

Folk Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Folk Arts Advisory Panel to the National Council on the Arts will be held on June 11-13, 1991 from 9 a.m.-6 pm. and June 14 from 9 a.m.-5 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on June 13 from 1:30 p.m.-2:30 p.m. The topic will be policy discussion.

The remaining portions of this meeting on June 11-12 from 9 a.m.-6 p.m., June 13 from 9 a.m.-1:30 p.m. and 2:30 p.m.-6 p.m., and June 14 from 9 a.m.-5 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, as amended, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: May 20, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-12382 Filed 5-23-91; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Education and Human Resources; Committee of Visitors; Meeting

The National Science Foundation announces the following meeting.

Name: Committee of Visitors Review of the Private Sector Partnerships Program.
Dates & Time: June 11, 1991; 1 to 5 p.m., June 12, 1991; 8 a.m. to 5 p.m.
Place: Room 638A, 1800 G Street, NW., Washington, DC.
Type of Meeting: Closed.
Contact Person: Dr. Donald E. Sands, Section Head or Dr. Donald S. Douglas, Program Director, rm. 806, National Science Foundation, Washington, DC 20550 telephone 202-357-7751.
Purpose of Meeting: To provide oversight review of the Private Sector Partnerships Program within the Division of Teacher Preparation and Enhancement.
Agenda: To carry out Committee of Visitors (COV) review including examination of decisions on proposals, reviewer comments, and other privileged materials.
Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b (c) and (6) of the

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Government in the Sunshine Act would improprely be disclosed.

Dated: May 20, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-12341 Filed 5-23-91; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION:

Special Emphasis Panels; Meetings

Summary: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting(s) to be held at 1800 G Street, NW., Washington, DC 20550 (except where otherwise indicated).

Supplementary Information: The purpose of the meetings is to provide advice and recommendations to the National Science Foundation concerning the support of research, engineering, and science education. The agenda is a review and evaluate proposals as part of the selection process for awards. The entire meeting is closed to the public because the panels are reviewing proposals that include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

Contact Person: M. Rebecca Winkler, Committee Management Officer, room 208, 357-7363.

Dated: May 20, 1991.

M. Rebecca Winkler,

Committee Management Officer.

Committee name	Agena	Room [1]	Date(s)	Times
Special Emphasis Panel in Mechanical and Structural Systems	Review RIA proposals	1108	06/11/91	9 a.m.-5 p.m.
Special Emphasis Panel in Mechanical and Structural Systems	To review unsolicited proposals	1108	06/17/91 06/18/91	8:30 a.m.-5 p.m. 8:30 a.m.-5 p.m.

[1] At 1800 G Street NW., Washington, DC

[FR Doc. 91-12342 Filed 5-23-91; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Experimental Program to Stimulate Competitive Research (EPSCoR); Notice of Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to review and evaluate and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: EPSCoR Proposal Review Panel.

Dates: June 10-12, 1991.

Times: 8 a.m.-5 p.m.

Place: New Hampshire Suites, 1121 New Hampshire Avenue, NW., Washington, DC 20037, (202) 457-0565.

Type of Meeting: Closed.

Agenda: Review and evaluate research proposals submitted to the EPSCoR Advanced Development Competition.

Contact: Dr. Richard J. Anderson, Program Manager, Office of Experimental Programs, National Science Foundation, Room 1228, Washington, DC 20550 (202) 357-7560.

Dated: May 20, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-12340 Filed 5-23-91; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Mathematical Sciences; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to review and evaluate and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and the proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of the U.S.C. 552(c), Government in the Sunshine Act.

Name: Special Emphasis in Mathematical Sciences.

Date: June 15, 1991.

Time: 8 a.m.-5 p.m.

Place: Mathematical Association of America, 1529 18th Street, NW., Washington, DC.

Type of Meeting: Closed.

Agenda: Review and evaluate research proposals submitted to the Conference Board on Mathematical Sciences Regional Conference Panel.

Contact: Anne Steiner, Program Director, Office of Special Projects, National Science Foundation, Washington, DC 20550 (202) 357-3453.

Dated: May 20, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-12343 Filed 5-24-91; 8:45 am]

BILLING CODE 7555-01-M

Proposal Review Panel for Undergraduate Science, Engineering, & Mathematics Education; Notice of Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to review and evaluate and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals, the meetings are closed to the public. These matters are within exceptions (4) and (6) of the 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Proposal Review Panel for Undergraduate Science, Engineering, & Mathematics Education.

Dates: June 9-11, 1991.

Times: 7:30-9 p.m. 9th June; 8 a.m.-5 p.m. 10th June; 8 a.m.-4 p.m. 11th June.

Place: Holiday Inn—The Governor's House Hotel, Washington, DC.

Type of Meeting: Closed.

Agenda: Review of proposals submitted to Leadership Laboratory Development (LLD) program.

Contact: Drs. Jim Harris & Karen Frair, Program Directors/USEME Division (202) 357-7051.

Dated: May 20, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-12339 Filed 5-23-91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-155]

Consumers Power Co., Big Rock Point Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 55.45(b)(2)(ii) to the Consumer Power Company (the licensee) for the Big Rock Point Plant located in Charlevoix County, Michigan.

Environmental Assessment

Identification of the Proposed Action

The proposed exemption would grant schedular relief until September 27, 1991, from the requirements of 10 CFR 55.45(b)(2)(ii) which requires submittal of an application for use of a simulation facility not later than 42 months after the effective date of the rule. As part of the application, 10 CFR 55.45(b)(4)(i)(C) requires that the application include a description of the performance tests and the results of such tests. The proposed exemption is administrative since only schedular relief would be granted from the requirement to provide the description of the performance tests and the results of the tests.

The proposed action is in accordance with the licensee's application for exemption dated May 20, 1991.

The Need for the Proposed Action

An application for use of a simulator facility is required to be submitted by April 6, 1992 by 10 CFR 55.45(b)(2)(ii). Due to software interface problems being experienced during implementation of simulator enhancements beyond the phase I commitments described in the licensee's June 29, 1990 submittal, the performance testing specified by 10 CFR 55.45(b)(4)(i)(C) cannot be accomplished by the required date.

The proposed exemption is needed to grant temporary schedular relief until September 27, 1991, for submittal of the "performance tests requirements" of the application.

Environmental Impacts of the Proposed Action

The proposed exemption to grant temporary schedular relief is completely administrative in nature. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

It has been concluded that the environmental effects of the proposed exemption are negligible; therefore, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts of plant operation and would result in the licensee's violation of the schedular requirements contained in 10 CFR 55.45(b)(4)(i)(C).

Alternative Use of Resources

This action does not involve the use of resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to the proposed action, see the licensee's letter dated May 20, 1991, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Dated at Rockville, Maryland this 21st day of May 1991.

For the Nuclear Regulatory Commission.

L.B. Marsh,

Project Director, Project Directorate III-1, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-12526 Filed 5-23-91; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on June 6-7, 1991, in Room P-110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the **Federal Register** on April 24, 1991.

Thursday, June 6, 1991, Room P-110, 7920 Norfolk Avenue, Bethesda, Md.

8:30 a.m.-8:45 a.m.: Opening Remarks by ACRS Chairman (Open)—The ACRS Chairman will make opening remarks and comment briefly regarding items of current interest.

8:45 a.m.-11 a.m.: Risk Assessment (Open)—The Committee will hear a briefing by and hold a discussion with representatives of the NRC staff on the status of the effort to evaluate risk during periods of low-power operation and shutdown of nuclear power plants.

11 a.m.-12:30 p.m.: Fitness for Duty (Open)—The Committee will hear a briefing by and hold a discussion with representatives of the NRC staff regarding the NRC staff evaluation of fitness-for-duty incidents reported under the existing fitness-for-duty regulation.

1:30 p.m.-4:30 p.m.: Standardized Nuclear Power Plant (Westinghouse AP-600 Passive Plant) (Open/Closed)—The Committee will meet with representatives of the NRC staff and the applicant for a briefing and discussion regarding the design of the Westinghouse AP-600 passive nuclear power plant.

Portions of this session may be closed as appropriate to discuss Proprietary Information applicable to this project.

4:30 p.m.-6 p.m.: Reactor Operating Experience (Open)—The Committee will hear reports and discuss recent operating events at the Vermont Yankee nuclear plant (loss of all off-site power) and the Maine Yankee nuclear plant (main transformer fault and resulting generator fire).

Friday, June 7, 1991

8:30 a.m.-10 a.m.: Simulator Certification (Open)—The Committee will hear a briefing by and hold a discussion with

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representatives of the NRC staff regarding the certification of simulators used for the training and qualification of nuclear power plant operators.

10:15 a.m.–11 a.m.: Miscellaneous (Open/Closed)—The Committee will discuss the status of assigned ACRS subcommittee activities and other matters related to the conduct of Committee activities, including future ACRS activities. The status of the appointment of candidates to the Committee will be discussed as appropriate.

Portions of this session will be closed as appropriate to discuss information the release of which would constitute an unwarranted invasion of personal privacy.

11 a.m.–12 Noon: Preparation for Meeting with NRC Commissioners (Open)—The Committee will consider the topics to be discussed during the meeting with the NRC Commissioners, including recent ACRS reports on proposed criteria to accommodate severe accidents in containment design; training and qualification of civilian nuclear power plant personnel; and the emergency response data system (if time permits).

1:30 p.m.–3 p.m.: Meeting with NRC Commissioners at One White Flint North, Commissioners Conference Room (Open)—The Committee will discuss items of mutual interest, including topics noted above.

3:30 p.m.–6 p.m. (Open)—The Committee will complete the discussion of items considered during this meeting and at previous meetings as time and availability of information permit, including a proposed report on use of PRA in the regulatory process.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 2, 1990 (55 FR 40249). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those open portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) Public Law 92–463 that it is necessary to close portions of this meeting noted above to discuss information the release of which would represent an unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)) and to discuss Proprietary Information applicable to the matter being considered (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492–8049), between 8 a.m. and 4:30 p.m.

Dated: May 20, 1991.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 91–12392 Filed 5–23–91; 8:45 am]

BILLING CODE 7590–01–M

New Standard Technical Specifications (Draft); Second Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Second extension of comment period.

SUMMARY: The Nuclear Regulatory Commission (NRC) has published five DRAFT reports documenting the results of the NRC staff review of new Standard Technical Specifications (STS) proposed by vendor-specific utility owners groups. These new STS were developed based on the criteria in the interim Commission Policy Statement on Technical Specification Improvements for Nuclear Power Reactors, dated February 6, 1987. The new STS will be used as bases for individual nuclear power plant owners to develop improved plant-specific technical specifications.

The original Notice of Availability was issued allowing a 30 working-day comment period. Subsequently, the NRC staff received a request to extend the comment period. The NRC staff reviewed the request, determined that it had merit, and extended the comment period until May 31, 1991. Recently, the NRC staff received another request to extend the comment period further. The NRC has reviewed this request and is extending the comment period until July 31, 1991. Following the comment period, the NRC staff will analyze comments received, finalize the new STS, and issue them for plant-specific implementation.

Comments should be submitted in accordance with the following guidance: Mark, in pen and ink, the exact wording of proposed changes on copies of all the affected pages of the draft NUREG. Number each proposed change. Provide the technical justification for each proposed change separately, cross referenced to the applicable proposed change on the marked up pages.

DATES: Submit comments by July 31, 1991. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received by this date.

ADDRESSES: Submit written comments to: David L. Meyer, Chief, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U. S. Nuclear Regulatory Commission, Washington, DC 20555.

Hand deliver comments to: 7920 Norfolk Avenue, Bethesda, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Mark Reinhart, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–1185.

A free single copy of each of the following draft NUREGs may be requested by those considering public comment by writing to the Office of Information Resources Management, Distribution Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy is also available for inspection or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

The five drafts of the new Standard Technical Specifications, containing 3 volumes each, are as follows:

NUREG–1430, "Standard Technical Specifications, Babcock and Wilcox Plants.",

NUREG–1431, "Standard Technical Specifications, Westinghouse Plants.",

NUREG–1432, "Standard Technical Specifications, Combustion Engineering Plants.",

NUREG–1433, "Standard Technical Specifications, General Electric Plants, WR/4.",

NUREG–1434, "Standard Technical Specifications, General Electric Plants, BWR/6.".

Dated at Rockville, Maryland, this 20 day of May, 1991.

For the Nuclear Regulatory Commission.

Christopher I. Grimes,

Chief, Technical Specifications Branch, Division of Operational Events Assessment, Office of Nuclear Reactor Regulation.

[FR Doc. 91–12391 Filed 5–23–91; 8:45 am]

BILLING CODE 7590–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Power Plan Amendments; (Columbia River Basin)

May 13, 1991.

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Request for recommendations for amendments to the Columbia River Basin Fish and Wildlife Program.

SUMMARY: On Nomvember 15, 1982, pursuant to the Pacific Electric Power Planning and Conservation Act (the Northwest Power Act, 16 U.S.C. section 839, et seq.) the Pacific Northwest Electric Power and Conservation Planning Council (Council) adopted a Columbia River Basin Fish and Wildlife Program (program). The program has been amended from time to time since then.

The Council now invites recommendations to amend the program as follows:

- August 9, 1991: submit recommendations for amendments to program provisions affecting anadromous fish. The Council expects to make decisions regarding appropriate mainstem survival, harvest, and production measures for anadromous fish before the end of 1991. For long-term production, habitat, and other provisions, the Council will make final decisions before August 9, 1992.
- September 15, 1992: submit recommendations for amendments to the program's resident fish and wildlife provisions. The Council will make final decisions on these recommendations by September 15, 1992.

The Council will, at a later date, provide notice of recommendations received, the availability of the recommendations for public review and comment, and a schedule for public hearings on the recommendations in Idaho, Montana, Oregon, and Washington.

For a fuller explanation of the Council's program amendment process, including instructions for submitting amendment recommendations, or for further information: Contact the Council's Public Affairs Division at 851 S.W. Sixth Avenue, suite 1100, Portland, Oregon 97204 or (503) 222–5161, toll free 1–800–222–3355 in Idaho, Montana, and Washington or 1–800–452–2324 in Oregon.

Edward Sheets,

Executive Director.

[FR Doc. 91–12347 Filed 5–23–91; 8:45 am]

BILLING CODE 0000–00–M

Columbia River Basin Fish and Wildlife Program; Final Wildlife Amendments

May 13, 1991.

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of final wildlife amendments to the Columbia River Basin Fish and Wildlife Program (Dworshak and Minidoka wildlife amendments).

SUMMARY: On November 15, 1982, pursuant to the Pacific Electric Power Planning and Conservation Act (the Northwest Power Act, 16 U.S.C. section 839, et seq.) the Pacific Northwest Electric Power and Conservation Planning Council (Council) adopted a Columbia River Basin Fish and Wildlife Program (program). The program has been amended from time to time since then. In 1989, the Council amended the program to establish wildlife mitigation goals and a process for adopting wildlife loss estimates developed by wildlife agencies and Indian tribes as starting points for wildlife mitigation measures. To be used as starting points, loss estimates must first be amended into the Council's program.

On October 10, 1990, the Council voted to initiate proceedings pursuant to section 4(d)(1) of the Northwest Power Act to consider amending the program to include wildlife loss estimates for the Dworshak and Minidoka hydroelectric projects. Comments were received through February 11, 1991, and hearings were held in Idaho, Montana, Oregon, and Washington.

FINAL ACTION: The Council adopted the proposed amendments at its March 13, 1991 meeting.

FOR FURTHER INFORMATION CONTACT: The final amendments and a response to public comments are available on request. In addition, the Council's wildlife mitigation process is explained in a document called "Wildlife Mitigation Rule and Response to Comments," paper no. 89–35. The loss estimates themselves, entitled "Wildlife Protection, Mitigation, and Enhancement Planning, Dworshak Reservoir," and "Minidoka Dam Wildlife Impact Assessment" are also available upon request. Those wishing to receive copies of any of these papers should contact the Public Affairs Division in the Council's central office, 851 SW. Sixth Avenue, Suite 1100, Portland, Oregon, 97204.

Edward Sheets,

Executive Director.

[FR Doc. 91–12348 Filed 5–23–91; 8:45 am]

BILLING CODE 0000–00–M

Power Plan Amendments; Columbia River Basin Fish and Wildlife Program

May 13, 1991.

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of final amendments to the Columbia River Basin Fish and Wildlife Program (Yakima River Basin and Enloe Dam).

SUMMARY: On November 15, 1982, pursuant to the Pacific Electric Power Planning and Conservation Act (the Northwest Power Act, 16 U.S.C. 839, *et seq.*) the Pacific Northwest Electric Power and Conservation Planning Council (Council) adopted a Columbia River Basin Fish and Wildlife Program (program). The program has been amended from time to time since then.

On March 13, 1991, the Council began a process to consider amendments to the program concerning fish passage facilities at irrigation diversions in the Yakima River Basin, Washington, and at Enloe Dam, Washington. Public comments were received, and hearings were held in Idaho, Montana, Oregon, and Washington. On May 6, 1991, the Council made final decisions on the proposed amendments. The Council adopted the proposed Yakima amendments with certain minor modifications. In the case of the proposed Enloe Dam amendments, the Council amended the program to require the license holder of any operating hydroelectric facility to design and construct facility improvements to be compatible with later installation of anadromous fish passage facilities, if the decision is made to introduce anadromous fish in the Similkameen River above Enloe Dam.

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FOR FURTHER INFORMATION CONTACT: The final amendments and a response to public comments are available on request. Those wishing to receive copies of these documents should contact the Public Affairs Division in the Council's central office, 851 SW. Sixth Avenue, suite 1100, Portland, Oregon, 97204.

Edward Sheets,

Executive Director.

[FR Doc. 91-12349 Filed 5-23-91; 8:45 am]

BILLING CODE 6560-50-M

SECURITIES AND EXCHANGE COMMISSION

[International Series Release No. 272, File No. 255-15]

Emerging Markets Advisory Committee Meeting

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting of the Securities and Exchange Commission Emerging Markets Advisory Committee.

SUMMARY: This is to give notice that the Securities and Exchange Commission Emerging Markets Advisory Committee will conduct a meeting on June 5, 1991, at 9:30 a.m., in room 1C30 at the Commission's main offices, 450 Fifth Street NW., Washington, DC. The meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: Thomas L. Riesenberg, Office of General Counsel, (202) 272-3088, or Joseph G. Mari, Office of International Affairs, (202) 272-2306, Securities and Exchange Commission, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. app. 10a, the Securities and Exchange Commission Emerging Markets Advisory Committee hereby gives notice that it will conduct a meeting on June 5, 1991, at 9:30 a.m., in room 1C30, 450 Fifth Street NW., Washington, DC. The meeting will be to review past activities of the Committee and to discuss plans for future activities of the Committee. The Committee will consider areas in which the Commission's assistance has recently been sought by officials in countries with emerging securities markets.

Dated: May 17, 1991.

Jonathan G. Katz,

Advisory Committee Management Officer.

[FR Doc. 91-12318 Filed 5-23-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29390; File No. SR-MSE-91-11]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Midwest Stock Exchange, Inc., Relating to Price Protection of Limit Orders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 7, 1991, the Midwest Stock Exchange, Inc. ("MSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSE proposes to amend Article XX, Rule 37 (Guaranteed Execution System) of the Exchange's Rules of the Board of Governors and to add an Interpretation and Policy paragraph which would require MSE specialists to provide primary market protection for limit orders, designated as executable after the MSE close, based on volume that prints in the primary market's after-hours session.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The MSE proposes the instant rule change as a competitive response to the New York Stock Exchange's ("NYSE") recent after-hours trading session proposals.[2] The MSE's proposal is specifically directed at NYSE's proposed Crossing Session I.[3]

The purpose of the rule change is to protect limit orders on the books of MSE specialists by providing primary market protection if an issue trades at the limit price in a primary market's after-hours trading session. Currently, the NYSE has a rule filing pending with the Commission that would permit the NYSE to conduct an after-hours closing-price trading session known as Crossing Session I ("CSI").[4] In that rule filing, the NYSE has also proposed to create a new order type, known as a "GTX" order ("good till canceled, executable in the after-hours session").[5] The GTX order is specifically designed to participate in CSI and will "migrate" from the NYSE's regular day trading session into CSI if the GTX order is priced at the 4:00 p.m., EST, NYSE closing price. Moreover, the NYSE proposal also seeks to permit the entry of single-sided closing-price orders in CSI by NYSE members.[6]

Because CSI is a "fixed-price" session, the MSE can protect limit orders priced at the NYSE closing price without establishing a separate after-hours session. The MSE proposes instead to systematically scan the MSE specialists' books for eligible limit orders,[7] priced at the NYSE closing price. Execution of the orders will be delayed only until the appropriate volume that prints in CSI is determined. (This will occur at approximately 5 p.m., EST; 4 p.m. CST.) This approach is efficient and is consistent with the NYSE's "price validation" argument.[8] Because the MSE

[1] The exact text of the proposal was attached to the rule filing as Exhibit A and is available at the MSE and the Commission at the address noted in Item IV below.

[2] *See* Files No. SR-NYSE-90-52 and 90-55 in which the NYSE proposes to extend its trading hours beyond the 9:30 a.m. to 4 p.m. trading session to establish two trading sessions: Crossing Session I and Crossing Session II. Crossing Session I would permit the execution of single-stock single-sided Closing-price orders and crosses of single-stock Closing-price buy and sell orders. Crossing Session II would allow the execution of crosses of multiple-stock aggregate-price buy and sell orders.

[3] *See* File No. SR-NYSE-90-52.

[4] *Id.*

[5] NYSE members may designate certain limit orders entered during the 9:30 a.m. to 4 p.m. trading session as GTX to enable the orders to migrate to CSI for execution against closing-price single-sided orders.

[6] The Commission notes that the NYSE proposal also permits the entry of crosses of single-stock closing-price buy and sell orders into CSI. See File SR-NYSE-90-52.

[7] The MSE will establish a separate designator for those limit orders that customers want to have filled based on executions in an after-hours session. If a limit order is so designated and is priced at the NYSE's closing price, then it will be eligible for a fill at the NYSE closing price based on volume that prints in the primary market's after-hours session. If the MSE orders are not filled, they will remain on the MSE specialists' books and retain their status.

[8] In its Response to Comments on Off-Hours Trading Proposals, the NYSE stated that it would

Continued

proposal does not seek to establish an after-hours session, the MSE will not permit orders to be entered after its 3 p.m., CST close. The operation of this proposal will be accomplished within existing MSE systems and will have no impact on system capacity since all functions will occur after trading has ended.

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the MSE. All submissions should refer to File No. SR-MSE-91-11 and should be submitted by June 14, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 16, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-12317 Filed 5-23-91; 8:45 am]

BILLING CODE 8010-01-M

not expect trading to occur at its closing prices if those prices did not remain a "valid equilibrium price at 5 (p.m., EST)." See letter from Catherine R. Kinney, Executive Vice President, Equities/Audit, NYSE, to Mary Revell, Branch Chief, Division of Market Regulation, SEC, dated February 25, 1991, at 8.

[Release No. 35-25315]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

May 17, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 10, 1991 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Narragansett Electric Company (70-7842)

The Narragansett Electric Company ("Narragansett"), 280 Melrose Street, Providence, Rhode Island 02901, an electric public-utility subsidiary company of New England Electric System ("NEES"), a registered holding company, has filed a declaration pursuant to section 12(d) of the Act and rules 43 and 44 thereunder.

Narragansett proposes to sell, prior to December 31, 1991, ninety percent of its ownership in its Manchester Street Station ("Station"), an electric generating facility located in Providence, Rhode Island, to New England Power Company ("NEPCO"), an electric public-utility subsidiary company of NEES, for a cash price equal to ninety percent of the net book value of the Station. Costs as of the date of the transfer, including property taxes, assessments, and other appropriate costs related to the interest to be transferred, such as fuel inventory, materials, and supplies, shall be included. The net book value, including the cost of inventories to be transferred, was approximately $5.6 million as of December 31, 1990. Narragansett and NEPCO propose to hold the Station as joint tenants with several liability and waiver of right of partition. The generating facilities currently on site at the Station include three boilers and associated steam turbine generators with a combined rating of about 132 megawatts. Narragansett and NEPCO plan to repower the Station and increase the capacity from 132 megawatts to approximately 455 megawatts.

American Electric Power Company, Inc. (70-7870)

American Electric Power Company, Inc. ("AEP"), 1 Riverside Plaza, Columbus, Ohio 43215, a registered holding company, has filed a declaration under sections 6(a) and 7 of the Act and rule 50(a)(5) thereunder.

AEP proposes to issue an unconditional and irrevocable guaranty of payment ("Guaranty"), whereby AEP would guarantee $1 million of a $21 million revolving loan ("Loan"), plus the prorata share of the charges on such loan, which would be made by Bank One, Columbus, N.A. to AmeriFlora 1992

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("AmeriFlora"), an Ohio non-profit corporation. It is proposed that the Guaranty be issued under an exception from the competitive bidding requirements of rule 50 under subsection (a)(5) thereunder.

Citizens Utilities Company (31-849)

The Citizens Utilities Company ("Citizens"), 1200 High Ridge Road, P.O. Box 3801, Stamford, Connecticut 06905, a Delaware corporation, as successor in interest to Louisiana General Services, Inc. ("LGS") and its wholly owned subsidiary, LGS Pipeline, Inc. ("LGS Pipeline"), has filed an application under section 5(d) for an order declaring that both LGS and LGS Pipeline have ceased to be holding companies.

Prior to the mergers described herein, both LGS and LGS Pipeline were holding companies exempt from registration under section 3(a)(1) of the Act pursuant to rule 2. For purposes related to local law, however, each company filed on December 17, 1984 a Notification of Registration under section 5(a) of the Act on Form U5A.

LGS' wholly owned gas utility subsidiary, Louisiana Gas Service Company ("LGS Gas"), provided natural gas service to approximately 236,000 residential customers in southeastern and northern Louisiana. LGS Pipeline's wholly owned gas utility subsidiary, LGS Intrastate, Inc. ("LGS Intrastate"), provided gas service to industrial customers in the area served by LGS Gas.

On December 4, 1990, LGS, LGS Pipeline, LGS Gas and LGS Intrastate were merged into Citizens. The separate existence and corporate organization of each LGS company has ceased; the companies have continued their operations as internal divisions of Citizens. Accordingly, neither LGS nor LGS Pipeline is presently a "holding company" within the meaning of section 2(a)(7) of the Act.

Citizens provides telecommunications, electric, gas, water and wastewater services in areas of twelve states. Operating divisions of Citizens provide all gas and electric utility services. Citizens has no gas or electric utility subsidiaries and is therefore not a "holding company" as defined under section 2(a)(7) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-12332 Filed 5-23-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular: Protection of Aircraft Fuel Systems Against Fuel Vapor Ignition Due to Lightning

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed advisory circular (AC) and request for comments.

SUMMARY: This notice announces the availability of and request for comments on a revised AC which provides information and guidance concerning protection of aircraft fuel systems against fuel vapor ignition due to lightning.

DATES: Comments must be received on or before July 25, 1991.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, Standards Office (ACE-110), 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Michael K. Dahl, Aerospace Engineer, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; commercial telephone (816) 426-6941 or FTS 867-6941.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this proposed AC by writing to: Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, Standards Office (ACE-110), 601 East 12th Street, Kansas City, Missouri 64106.

Comments Invited

Interested parties are invited to submit comments on the proposed AC. Commenters must identify AC 20-53B, and submit comments to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before issuing the final AC. The proposed AC and comments received may be inspected at the Standards Office (ACE-110), room 1544, Federal Office Building, 601 East 12th Street, Kansas City, Missouri, between the hours of 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

Background

This AC is a revision to AC 20-53A which provides guidance for compliance with regulations for protection of fuel systems against fuel vapor ignition hazards due to the direct effects of lightning. The revised AC will incorporate the latest methodology and provide improvements in the state-of-the-art, utilizing the latest verification methods that have been developed since the previous version of this AC. This AC will address correction of numerical descriptions of lightning phenomena; an additional method to determine lightning zones on aircraft surfaces; and a more detailed explanation of the severe lightning strike and the component waveforms. Accordingly, the FAA is proposing and requesting comments on AC 20-53B which will provide an acceptable means of compliance with parts 23, 25, 27, or 29 of the Federal Aviation Regulations (FAR), applicable to preventing ignition of fuel vapors due to lightning.

Issued in Kansas City, Missouri, May 13, 1991.

Don C. Jacobsen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-12372 Filed 5-23-91; 8:45 am]

BILLING CODE 4910-13-M

Rotorcraft and Transport Airplane Seating Systems

AGENCY: Federal Aviation Administration (FAA), Transportation.

ACTION: Notice of availability of technical standard order (TSO) and request for comments.

SUMMARY: The proposed TSO-C127 prescribes the minimum performance standards that rotorcraft and transport airplanes seating systems must meet to be identified with the marking "TSO-C127."

DATES: Comments must identify the TSO file number and be received on or before August 30, 1991.

ADDRESSES: Send all comments on the proposed technical standard order to: Technical Analysis Branch, AIR-120, Aircraft Engineering Division, Aircraft Certification Service—File No. TSO-C127, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Analysis Branch, AIR-120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267-9546.

Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in room 335, FAA Headquarters Building (FOB-10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. All communications received on or before the closing date for comments specified above will be considered by the Manager of the Aircraft Engineering Division before issuing the final TSO.

Background

The FAA requested the Society of Automotive Engineers, Inc. (SAE) to conduct a review of performance standards and approval procedures for seating systems intended for use in normal and transport category rotorcraft and normal, utility, acrobatic, and transport category airplanes. The SAE established an *ad hoc* committee to facilitate the review of those subjects for aircraft seating systems. The membership of the committee was international in composition with representatives from both government and industry.

The review resulted in the development and issuance of Aerospace Standard AS8049, "Performance Standard for Seats in Civil Rotorcraft and Transport Airplanes." This proposed TSO-C127, based on SAE AS8049, addresses design criteria, tests, acceptance criteria, and data requirements for such appliances.

Note: The FAA is not planning to amend TSO-C39b. The performance standards applicable to Type I and Type IV berths and Type II and III seats and berths are still in effect for those seating systems.

How to Obtain Copies

A copy of the proposed TSO-C127 may be obtained by contacting the person identified under the caption "For Further Information Contact." TSO-C127 references SAE AS8049 and SAE J211, "Instrumentation for Impact Tests." SAE AS8049 and J211 may be purchased from the Society of Automotive Engineers, Inc., Department 331, 400 Commonwealth Drive, Warrendale, PA 10596.

Issued in Washington, DC, on May 16, 1991.

Daniel P. Salvano,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 91-12373 Filed 5-23-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service; Meeting

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date of the next meeting and the agenda for consideration by the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service.

DATES: The next meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service will be held on Friday, June 14, 1991 at 9:30 a.m. in Room 4121 of the Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Director, Office of Trade and Tariff Affairs, Office of the Assistant Secretary (Enforcement), Room 4004, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Tel.: (202) 566-8435.

SUPPLEMENTARY INFORMATION: Agenda items for the second meting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service on June 14, 1991 will include:

I. Old Business

1. User fees and the level of commercial operations services.
2. The Customs Modernization Act and the Joint Industry Group legislative initiatives.
3. The concept of annual or periodic filings of entry summaries.

II. New Business

1. Customs budget and staffing for FY 1992.
2. Changes in Customs work shifts at airports.
3. The "Fast Track" and the Mexican Free Trade Area negotiations.
4. Public comments and the proposed amendments to the Foreign Trade Zone Regulations.
5. Regulations and standards applicable to Central Examination Stations.
6. Other new business.

The meeting is open to the public. Owing to the security procedures in place at the Treasury Building, it is necessary for any person other than an Advisory Committee member who wishes to attend the meeting to give advance notice. In order to be admitted to the building to attend the meeting, contact Dennis M. O'Connell at (202) 566-8435, no later than Friday, June 7, 1991.

Dated: May 17, 1991.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 91-12313 Filed 5-23-91; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Readjustment Problems of Vietnam Veterans; Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92-463 that a meeting of the Advisory Committee on Readjustment Problems of Vietnam Veterans will be held June 6 and 7, 1991. This is a regularly scheduled meeting for the purpose of reviewing VA and other relevant services for Vietnam veterans, to review Committee work in progress and to formulate Committee recommendations and objectives. The meeting on June 6 will be held at TechWorld in the Secretary's Conference Room located at 801 I Street, NW., Washington, DC. The room number is 1105. The meeting on June 7 will be held in the Export-Import Bank Building, room 442, 811 Vermont Avenue, NW., Washington, DC. The meetings on June 6 and 7 will both begin at 8:30 a.m. and conclude at 4:30 p.m. The agenda for June 6 will consist of presentation, discussion and review of VA readjustment counseling and mental health services available for veterans returning from the Persian Gulf. The agenda for June 7 will address the Committee's work in progress. Major topics include revision of the Committee charter to include the readjustment of all war veterans, coordination of compensation and treatment for war-related post-traumatic stress disorder (PTSD) and system-wide coordination of PTSD services. The second day's agenda will also include a review and finalization of recommendations from the Committee's February 1991 field visit to VA facilities in San Francisco, California.

Both meetings will be open to the public up to the seating capacity of the

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room. Due to limited seating capacity of the room, those who plan to attend or who have questions concerning the meeting should contact Arthur S. Blank, Jr., M.D., Director, Readjustment Counseling Service, Department of Veterans Affairs (phone number: 202–535–7554).

Dated: May 6, 1991.

By direction of the Secretary:

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 91–12321 Filed 5–23–91; 8:45 am]

BILLING CODE 8320–01–M

Privacy Act of 1974; Amendment of Systems of Records New Routine Use Statement

Notice is hereby given that the Department of Veterans Affairs (VA) is amending a system of records entitled "Personnel and Accounting Pay System-VA" (27VA047) which is set forth on page 891 of the **Federal Register** publication, "Privacy Act Issuances, 1989 Compilation, Volume II," and amended at 55 FR 42534, October 19, 1990.

Routine uses Nos. 18 and 19, pertaining to the release of information in response to a Federal, State, or municipal subpoena, are deleted because of recent litigation involving the Department of Veterans Affairs. Current routine uses Nos. 20 through 24 are renumbered 18 through 22. Routine use No. 9 is amended and new routine uses Nos. 23 and 24 are added to conform to court holdings in these same cases.

The proposed new routine use No. 25 specifically permits the disclosure of information to the Internal Revenue Service (IRS) in order to effect payment of taxes to IRS and to create W–2's. The proposed routine use No. 26 authorizes disclosure of records to the Federal Retirement Thrift Investment Board in order to transfer information concerning employee contributions to the Thrift Savings Plan, such as amounts contributed, loan repayments, and interfund transfers.

VA has determined that the release of information for these purposes is a necessary and proper use of information in this system of records and that specific routine uses for transfer of this information are appropriate.

Routine uses Nos. 5, 8, 12, 14, and 16 are revised by updating references to statutory authority, names of Federal agencies, and names of offices within VA.

The paragraph pertaining to storage of documents is revised by deleting the reference to magnetic tape and inserting a reference to magnetic media, which is a term used to describe the automated storage of information in general, including magnetic tape, discs, etc. The paragraph pertaining to the system manager is being revised to reflect a recent staff reorganization within VA Central Office.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed routine use of the system of records to the Secretary (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC, 20420. All relevant material received before June 24, 1991, will be considered. All written comments received will be available for public inspection in the Veterans Service Unit, room 132, at the above address only between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until July 3, 1991.

If no public comment is received during the 30-day review period allowed for public comment, or unless otherwise published in the **Federal Register** by VA, the new routine use statement is effective June 24, 1991, and other amendments included herein are effective May 24, 1991.

Approved: May 13, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Notice of Amendments to System of Records

In the system identified as 27VA047, "Personnel and Accounting Pay System-VA", set forth on page 891 of the **Federal Register** publication, "Privacy Act Issuances, 1989 Compilation, Volume II," and amended at 55 FR 42534, October 19, 1990, the system is revised as follows:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

* * * * *

5. Transfer retirement record information to the Office of Personnel Management in order to provide a history of service and retirement deductions.

* * * * *

8. Transfer personnel data to the Office of Personnel Management (OPM) in order to provide OPM with a readily accessible major data source for meeting work force information needs of OPM, national planning agencies, the Congress, the White House, and the public.

9. The Department of Veterans Affairs, on its own initiative, may disclose any information in this system, except veterans' names and addresses, which is relevant to a suspected violation or reasonably imminent violation of law, whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, to any Federal, foreign, State, or local government agency charged with the responsibility of investigative or prosecuting such violations, or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

* * * * *

12. Relevant information from this system of records, including the nature and amount of a financial obligation, may be disclosed as a routine use, in order assist VA in the collection of unpaid financial obligations owed to VA, to a debtor's employing agency or commanding officer so that the debtor-employee may be counseled by his or her Federal employer or commanding officer. This purpose is consistent with the Federal Claims Collection Act (31 U.S.C. chapter 37, subchapters I and II) 4 CFR parts 101–105, and 38 CFR 1.900–1.954.

* * * * *

14. Relevant information from this system of records, including available identifying data regarding the debtor, such as name of debtor, last known address of debtor, name of debtor's spouse, social security account number of debtor, VA insurance number, VA loan number, VA claims number, place and date of birth of debtor, name and address of debtor's employer or firm, and dates of employment, may be disclosed to other Federal agencies, State probate courts, State drivers' license bureaus, and State automobile title and license bureaus as a routine use in order to obtain current address, locator and credit report assistance in the collection of unpaid financial obligations owed to the U.S. This purpose is consist with the Federal Claims Collection Act (31 U.S.C. chapter 37, subchapters I and II) 4 CFR parts 101–105, and 38 CFR 1.900–1.954.

* * * * *

16. Information and records in this system may be disclosed to the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906 and the implementing regulations.

* * * * *

23. Any information in this system of records may be disclosed to any State, local, or foreign civil or criminal law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety for the purpose of protecting public health or safety if a qualified representative of such agency or instrumentality has made a written request that such information be provided in order to meet a statutory reporting requirement.

24. Any information in this system may be disclosed to a Federal agency in response to its request when it states that it needs information for an official purpose other than a civil or criminal law enforcement actiity covered by subsection (b)(7) of the Privacy Act, and the purpose for which disclosure is sought is compatible with a purpose for which the record was collected.

25. Any information in this system may be disclosed to the Department of Treasury, Internal Revenue Service (IRS), where required by law or regulation to report withholding information and to effect payment of taxes withheld to IRS and to create W-2's.

26. Relevant information from this system of records, including social security number, date of birth, home address, and the amount of contributions, interfund transfers, or other financial information may be disclosed to the Federal Retirement Thrift Investment Board in order to effect employee participation in the Thrift Savings Plan.

* * * * *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents, microfiche, magnetic media.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Assistant Secretary for Financial Management (047), DVA Central Office, Washington, DC. 20420.

[FR Doc. 91–12322 Filed 5–23–91; 8:45 am]

BILLING CODE 8320–01–M

VOL 56 ISS 101 MY 24 1991 UMI

Sunshine Act Meetings

Federal Register
Vol. 56, No. 101
Friday, May 24, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Tuesday, May 21, 1991, the Corporation's Board of Directors determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Vice Chairman Andrew C. Hove, Jr., Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required the withdrawal from the agenda for consideration at the meeting on less than seven days' notice to the public, of a memorandum and resolution regarding rulemaking petition for policy regarding state and local property taxes.

By the same majority vote, the Board further determined that no notice earlier than May 17, 1991, of this change in the subject matter of the meeting was practicable.

Dated: May 22, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91-12532 Filed 5-22-91; 1:55 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at 3:40 p.m. on Tuesday, May 21, 1991, the Corporation's Board of Directors determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required the addition to the agenda for consideration at the meeting on less than seven days' notice to the public, of matters relating to a certain financial institution.

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(9)(A)(ii), and (c)(9)(B).

Dated: May 22, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91-12533 Filed 5-22-91; 1:55 pm]

BILLING CODE 6714-01-M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Audit and Appropriations Committee Meeting; Notice

TIME AND DATE: A meeting of the Board of Directors Audit and Appropriations Committee will be held on June 2, 1991. The meeting will commence at 5:00 p.m.

PLACE: The Madison Hotel, 15th and "M" Streets, NW., Drawing Rooms 1 and 2, Washington, DC 20005, (202) 862-1600.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes of March 24, 1991.
3. Status Report on Selection of Independent Auditor to Conduct Corporation's Fiscal Year (FY) 1991 Annual Audit.
4. Consideration of Mid-Year Budget Modifications.
5. Consideration of FY 1993 Program Funding Levels.
6. Status Report on Management's Assessment of Corporation Space Needs.
7. Other Business.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 863-1839.

Date Issued: May 22, 1991.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 91-12568 Filed 5-22-91; 3:39 pm]

BILLING CODE 7050-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:35 p.m. on Tuesday, May 21, 1991, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to (1) the resolution of failed thrift institutions, and (2) sale of assets.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, Vice Chairman Andrew C. Hove, Jr., and Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the mattters could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550—17th Street, NW., Washington, D.C.

Dated: May 22, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91-12530 Filed 5-22-91; 1:54 pm]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of May 27, 1991.

A closed meeting will be held on Tuesday, May 28, 1991, at 2:30 p.m. An open meeting will be held on Thursday, May 30, 1991, at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, May 28, 1991, at 2:30 p.m., will be:

Settlement of injunctive actions.
Formal order of investigation.
Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.

The subject matter of the open meeting scheduled for Thursday, May 30, 1991, at 10 a.m., will be:

Consideration of whether to adopt a multijurisdictional disclosure system ("MJDS") with respect to Canadian companies, consisting of certain rules, forms and schedules that would: (1) permit specified offerings of Canadian issuers to be registered with the Commission under the Securities Act of 1933 using Canadian disclosure documents; (2) permit compliance with Canadian takeover laws to satisfy the Williams Act requirements for certain tender offers in the United States; (3) permit use of Canadian disclosure documents to satisfy registration and reporting requirements under the Securities Exchange Act of 1934; (4) permit, with respect to MJDS offerings, certain Canadian persons to act as sole trustees in connection with indentures qualified under the Trust Indenture Act of 1939; and (5) provide an exemption from certain provisions of the Trust Indenture Act for trust indentures of certain Canadian issuers making offerings under the MJDS.

In conjunction with MJDS, the Commission will consider whether to adopt revisions to certain rules and forms under the Securities Act and the Exchange Act permitting Canadian foreign private issuers to register and report under such Acts on the same basis as other foreign private issuers. For further information, please contact Anita Klein at (202) 272-3246.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Paul Atkins at (202) 272-2000.

Dated: May 22, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-12570 Filed 5-22-91; 3:52 pm]

BILLING CODE 8010-01-M

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Corrections

Federal Register
Vol. 56, No. 101
Friday, May 24, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1427

Cotton

Correction

In proposed rule document 91-10579 beginning on page 20554, in the issue of Monday, May 6, 1991, make the following corrections:

1. On page 20554, in the third column, in the third paragraph, in the third line, after "upland" insert "cotton".

a. In the fifth line, "interests" should read "interest".

b. In the sixth line, after "loan" insert "level".

c. In the last line, "of" should read "or".

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket No. FV-91-301]

Pistachio Nuts in the Shell; Grade Standards

Correction

In proposed rule document 91-10533, beginning on page 20373, in the issue of Friday, May 3, 1991, make the following corrections:

§ 51.2542 [Corrected]

1. On page 20374, in § 51.2542, under Tables I, II, and III, in the second column, in the second heading, "U.S. fancy" should read "U.S. Fancy" each time it appears.

2. On the same page, in the same section, in Table II, in the last column, in the first line, "80" should read "8".

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-477; RM-6962 and RM-7265]

Radio Broadcasting Services; Arkansas City and Winfield, KS

Correction

In rule document 91-9942 appearing on page 19298, in the issue of Friday, April 26, 1991, the Docket No. should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

International Biotechnology Conference—"Biologics '91"

Correction

In notice document 91-10815 beginning on page 21167, in the issue of Tuesday, May 7, 1991, in the second column, under **SUPPLEMENTARY INFORMATION:**, in the second line, "land" should read "and".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 19, 20, 30, 31, 32, 34, 35, 39, 40, 50, 61 and 70

RIN 3510-AA38

Standards for Protection Against Radiation

Correction

In rule document 91-8162 beginning on page 23360 in the issue of Tuesday, May 21, 1991, make the following correction:

1. On page 23360, in the first column, in the **EFFECTIVE DATE:** paragraph, "(30 days after publication in the **Federal Register**).", should read "June 20, 1991."

BILLING CODE 1505-01-D

federal register

Friday
May 24, 1991

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

Proposed Regime to Govern Interactions Between Marine Mammals and Commercial Fishing Operations; Notice

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 910484-1084]

Proposed Regime to Govern Interactions Between Marine Mammals and Commercial Fishing Operations

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice and request for comment.

SUMMARY: Prior to 1988, judicial interpretation of the Marine Mammal Protection Act of 1972 (MMPA; 16 U.S.C. 1361 *et seq.*) and the lack of information on marine mammal stocks would have resulted in few authorizations to take marine mammals incidentally to commercial fishing operations. This likely would have resulted in severe impacts to U.S. fisheries and coastal economies. The 1988 Amendments to the MMPA established the Interim Exemption for Commercial Fisheries (Interim Exemption) which provides a 5-year exemption for certain incidental takings of marine mammals by commercial fishermen. The Interim Exemption will expire on October 1, 1993.

As required by section 114 of the MMPA, NMFS is publishing its proposed regime to govern the interactions between marine mammals and commercial fishing operations after the Interim Exemption expires. A Draft Legislative Environmental Impact Statement (DLEIS) that analyzes this proposed regime and three alternative management regimes will be available for public review and comment within 30 days of publication of this notice. After considering comments on the proposed regime and DLEIS and consulting with interested parties, NMFS will submit a final recommendation to Congress by January 1, 1992.

The general objective of NMFS was to develop a proposed regime that would provide for the conservation of marine mammal stocks while minimizing hardship to commercial fisheries. The NMFS proposed regime is based on sound principles of wildlife management, is consistent with the purposes and policies of the MMPA, and is based on the guidelines provided by the Marine Mammal Commission (MMC). The NMFS proposed regime (1) reaffirms the goals and objectives of the MMPA, including the goals to maintain or restore marine mammal stocks to their optimum sustainable population (OSP) levels and to reduce the incidental kill and serious injury of marine mammals to insignificant levels approaching a zero rate; (2) requires long-term monitoring of marine mammal stocks; (3) allows incidental mortalities from stocks that are depleted, provided that it is consistent with established conservation plans; (4) establishes conservative total allowable biological removal levels for each marine mammal stock, such that the stock could reach an equilibrium within its OSP level; (5) provides a framework for allocating all or part of the allowable biological removal among user groups and among fisheries; (6) requires a program for fisheries to monitor adequately the incidental takes of marine mammals and any quotas that are established; and (7) requires that actions be taken to prevent incidental removal quotas from being exceeded.

DATES: Comments on the proposal must be received by September 23, 1991.

ADDRESSES: Comments should be sent to, and copies of the DLEIS will be available from, Marine Mammal-Fishery Interactions, Office of Protected Resources (F/PR), NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Karnella, Deputy Director, Office of Protected Resources, F/PR, NMFS, Silver Spring, MD 20910, 301-427-2322.

SUPPLEMENTARY INFORMATION:

Background

Interactions between fisheries and marine wildlife, including marine mammals, are a continuing problem. Marine mammals are accidentally injured or killed during certain fishing operations and, in some cases, are intentionally harassed, injured or killed to protect fishing gear, catch or personal safety. The injury and mortality of marine mammals incidental to fishing operations is an issue of concern particularly in those cases where the marine mammal stocks are decreasing, threatened or endangered or where little is known about the status of the affected stocks or the level of mortality. In addition to the impacts on marine mammal stocks, interactions between marine mammals and fisheries result in damage and loss of fishing gear and reduced value of catch.

A. The MMPA Prior to the 1988 Amendments

Prior to 1988, the MMPA established a general moratorium on the taking and importing of marine mammals with certain exceptions, including provisions for allowing non-depleted marine mammals to be taken incidental to commercial fishing operations. Sections 101(a)(2), 101(a)(4) and 104 of the MMPA and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR 216.24) required that either a small take exemption or a general incidental take permit be obtained to authorize the incidental taking of non-depleted marine mammals in the course of commercial fishing operations within the U.S. Exclusive Economic Zone (EEZ). The U.S. Fish and Wildlife Service (FWS), Department of the Interior, is responsible for issuing permits and small take exemptions for manatees, dugongs, walrus, polar bears, and sea and marine otters, and NMFS is responsible for the remaining marine mammal species (all cetaceans and pinnipeds other than walruses).

General permits could be issued under sections 101(a)(2), 103 and 104 if NMFS or FWS determined that (1) the involved stocks were within their OSP levels, (2) such takings would not disadvantage the stocks involved, and (3) issuance of the permit would be consistent with the purposes and policies of the MMPA. Small take exemptions could be granted for unintentional takes if NMES or FWS (1) determined that the total of the authorized taking would have a negligible impact on the stock and (2) provided guidelines pertaining to the establishment of a cooperative system among involved fishermen to monitor and report such taking.

In 1987, Alaska Native fishing groups and environmental organizations challenged a MMPA general permit issued to the Federation of Japan Salmon Fisheries Cooperative Association for the taking of Dall's porpoise because other marine mammals for which a permit could not be issued (e.g., the depleted northern fur seal) would inevitably be taken (*Kokechik Fishermen's Ass'n* v. *the Secretary of Commerce*, 839 F.2d. 795). The District Court for the District of Columbia ruled on June 15, 1987, in favor of the plaintiffs and invalidated the permit. The U.S. Court of Appeals for the District of Columbia affirmed the District Court's decision on February 16, 1988, holding in effect that NOAA could not issue an incidental take permit for one species of marine mammal in circumstances where unpermitted takings of another species of marine mammal would occur. The U.S. Court of Appeals also affirmed an earlier court pronouncement that, as a matter of law, the removal of even a single individual from a depleted population would disadvantage the stock and, therefore, could not be allowed.

On January 26, 1988 (53 FR 2069), NMFS announced its intention to prepare an environmental impact statement (EIS) on the proposed reissuance of domestic general permits that were scheduled to expire on December 31, 1988. In preparing the draft EIS, NMFS determined that insufficient information was available to determine whether most of the marine mammal stocks that interact with commercial fishing were within their OSP, and that collecting the necessary data to determine OSP would require many years and the commitment of a large amount of resources.

Due to the constraints placed on NMFS by the court's interpretation of the MMPA in the Kokechik decision and the fact that OSP determinations has not been made for most marine mammal stocks, NMFS determined that many existing general permits and small take exemptions could not be reissued and that some new authorizations could not be issued for foreign or domestic commercial fishing operations within the EEZ. Without general permits or small take exceptions, many fishermen would be forced to forgo fishing at certain times or in certain areas or risk substantial penalties for violating the MMPA if an incidental take occurred, even in cases where there was reason to believe that the incidental take would not disadvantage the affected stocks.

B. The Marine Mammal Protection Act Amendments of 1988

Congress passed the MMPA Amendments of 1988 (Pub. L. 100-711, signed November 23, 1988) in part because NMFS would be unable to issue many incidental take permits. A new section 114 of the MMPA (16 U.S.C. 1383(a)) was added, establishing the 5-year Interim Exemption for certain incidental takings of marine mammals by commercial fishermen. The primary objective of this Interim Exemption is to provide a means for collecting reliable information about interactions between commercial fishing activities and marine mammals while allowing commercial fishing to continue. Based upon this and other relevant information, the Secretary of Commerce (Secretary) was directed to develop a suggested regime that would govern the incidental taking of marine mammals following the termination of the interim exemption program on October 1, 1993.

Section 114(i)(1) of the MMPA required the MMC to submit recommended guidelines for the proposed regime to the Secretary by February 1, 1990. By February 1, 1991, after consultation with the MMC, Regional Fishery Management Councils, and other interested governmental and non-governmental organizations, the Secretary was required to publish a proposed regime in the Federal Register for public review and comment (section 114(1)(3) of the MMPA). This Federal Register notice contains the proposed regime in response to this requirement.

The Secretary is required to submit a final recommendation to Congress pertaining to the incidental take of marine mammals during commercial fishing operations by January 1, 1992. This recommendation will be developed after consideration of the public comments on the proposed regime and after consultation with the MMC, Fisheries Management Councils, Marine Fisheries Commissions, state fisheries agencies, FWS, the fishing industry, the environmental community and other interested parties. It must include (a) the suggested regime, (b) a proposed schedule for implementing the regime, and (c) recommendations for additional legislation to implement the suggested regime (section 114(1)(4) of the MMPA).

C. The Marine Mammal Commission Guidelines

The MMC transmitted its recommended guidelines to the Secretary on July 12, 1990. The MMC based its guidelines on the need for decisions authorizing incidental takes to account for (1) the status and trends of the affected species or stocks, (2) the likely impact(s) of the take, alone and in combination with other sources of mortality, on the future status of the species or stock, (3) uncertainties related to the status of affected species or stocks and the impacts of incidental taking on these species or stocks, and (4) the impacts of decisions related to the management and conservation of other resources (e.g., fish). Within these constraints, the MMC's guidelines conclude that it is appropriate to authorize the incidental taking of depleted and non-depleted species to (1) allow the ecologically sound utilization of other resources and (2) help obtain data required to manage marine mammals and marine ecosystems effectively.

In its guidelines, the Commission recommended that the proposed regime should:

- Reaffirm the MMPA's goal to reduce the incidental kill and serious injury of marine mammals to insignificant levels approaching a zero mortality rate.
- Make it illegal to fish without the proper MMPA authorization.
- Reinstate the substantive requirements of the general permit and small take provisions of the MMPA by authorizing takes if (a) the marine mammal stocks are within OSP, (b) the authorized takings will not reduce the stock below OSP or will have a negligible effect on the stock, (c) the authorized take will not be exceeded; and (d) reasonable efforts are made to reduce the take to as close to zero as possible.
- Authorize the incidental taking of endangered, threatened and depleted stocks if (a) a recovery/conservation plan is in place, (b) the taking is consistent with the plan and will have a negligible impact on recovery, (c) monitoring and enforcement are adequate, and (d) the taking will be reduced to levels as close to zero as possible.
- Authorize the incidental take of marine mammals from stocks with uncertain status for a limited time (3-5 years) if (a) available data are sufficient to reasonably conclude that the taking would have negligible effects; and (b) assessment, enforcement and monitoring programs will (1) ensure that the authorized take will not be exceeded, (2) determine the status of the stocks within that time, and (3) identify methods to reduce the taking.
- Consider the impact of takes by fisheries alone and in combination with other forms of taking and human-caused habitat degradation and destruction on affected species and stocks when establishing take levels.
- Authorize NMFS to place observers on any fishing vessel in U.S. waters.
- Streamline and, as appropriate, continue the registration program of the marine mammal exemption system.
- Require NMFS to hold workshops to determine data requirements for making status of stocks findings and to identify methods for evaluating the indirect effects of fisheries on marine mammals.
- Require Fishery Management Councils to assess and account for food requirements of marine mammals when calculating the optimal yield of fishery resources.

D. NMFS Response to the MMC Guidelines

NMFS agrees with the scientific rationale and principles of wildlife management contained in the MMC guidelines and, in general, incorporated most of the MMC's recommendations into its proposal. NMFS believes that the proposed regime should reaffirm the MMPA's zero mortality rate goal and that the regime governing incidental takes during commercial fishing operations should include provisions for stock and take monitoring, including the authority to place observers on any fishing vessel and to require reports.

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NMFS agrees with the MMC that quota levels should take into account all human-induced removals, including subsistence, uncontrolled mortalities, fishery incidental mortalities, scientific research, enhancement, and public display. Furthermore, limited takes from depleted stocks should be allowed as long as recovery/conservation plans are in place and the authorized take levels will not significantly delay recovery of the stocks. NMFS also agrees with the MMC that vessel owners should be required to obtain MMPA authorization before their vessels can lawfully engage in certain fisheries.

NMFS' only significant departure from the MMC's recommended guidelines concerns the use of OSP to determine the level of allowable biological removal. According to the MMC guidelines, takes could be authorized from a stock if its size with respect to its OSP has been determined. Takes also could be authorized for some stocks for which OSP determinations have not been made, but only for a limited experimental period (e.g., 3–5 years), during which it is expected that an OSP determination would be made. If, at the end of this period, sufficient data were not available, further takes from these stocks would be prohibited until the necessary information was obtained.

Although NMFS agrees with the MMC that maintaining stocks within their OSP is an important goal of the MMPA, NMFS believes that at this time OSP determinations should not be a prerequisite to allowing incidental takes. OSP determinations have not been made for over 80 percent of coastal stocks, and, in contrast to MMC assumptions, NMFS will have made OSP determinations for little more than 20 percent of coastal stocks by 1993. Assessing the status of stocks relative to OSP for the remaining species will require the collection of large amounts of data over extended periods of time. Therefore, OSP determinations for most stocks will not be available for many years, even without resource constraints. NMFS believes that OSP determinations should be the basis for take decisions only when the data to make such determinations are available, and recommends that a program for collecting such data be implemented so that these determinations can be made at the earliest possible time.

National Marine Fisheries Service Proposal

A. General Approach of the NMFS Proposal

The MMPA recognizes marine mammals to be resources of great aesthetic, recreational, and economic significance to the nation, and states that they should be conserved and encouraged to develop to the greatest extent feasible commensurate with sound resource management policies. The primary objective of a marine mammal program should be to maintain the health and stability of the marine ecosystem. Whenever consistent with this primary objective, the goal of the MMPA is to maintain marine mammals at OSP levels and to restore species or stocks that are below such population levels.

In accordance with Congressional guidance, the general objective of NMFS was to develop a proposed regime that would provide for the conservation of marine mammal stocks while minimizing hardship to commercial fisheries. The NMFS proposed regime is based on sound principles of wildlife management, is consistent with the purposes and policies of the MMPA, and is based on the MMC guidelines.

To develop a regime consistent with both the MMPA and sound wildlife management principles, NMFS determined that it is necessary to consider the impacts from all sources of taking. NMFS believes that an effective program cannot be limited to evaluating the effects of the takings incidental to commercial fishing operations alone; the effects of taking, both lethal and non-lethal, whether directed or incidental to other activities also must be considered.

NMFS recognizes that data on both the status of affected marine mammal stocks and the level of incidental take are necessary to assess adequately the effects of marine mammal/fishery interactions. Nevertheless, NMFS believes that incidental takes can be authorized without making OSP determinations, while still retaining the goal of maintaining stocks at, or restoring stocks, to, their OSP levels. NMFS proposes an alternative method for calculating allowable biological removals that incorporates sufficient safeguards to allow limited takings from populations of uncertain status without significant risk to these populations. The NMFS proposal would allow incidental removals from stocks designated as depleted only in compliance with approved conservation plans. The proposed regime is dependent on implementation of programs for the adequate monitoring of both takes and marine mammal stock size to account for uncertainty and to ensure that authorized takes are not having a significant adverse impact on affected marine mammal stocks. In addition, a program would be developed to investigate the nature of interactions in the various fisheries and to develop and implement effective methods for achieving the goal to reduce the incidental kill and serious injury of marine mammals to insignificant levels approaching a zero mortality rate.

B. Issue-by-Issue Discussion of the NMFS Proposal

The NMFS proposal contains the following key elements:

• Scope of Proposal.

The NMFS proposal would apply to all commercial fishing operations under U.S. jurisdiction, with the exception of the yellowfin tuna purse-seine fishery in the eastern tropical Pacific (ETP), and would affect those marine mammal stocks that directly interact with these fisheries. The proposal would affect other activities under U.S. jurisdiction that interact with these stocks, including public display, scientific research, and other activities that may take marine mammals.

NMFS believes that sound principles of wildlife management require that all human interactions must be considered to ensure that marine mammals are not being disadvantaged. Governing only takes incidental to commercial fishing would not provide the comprehensive approach requisite to conserving marine mammal stocks. Although NMFS believes that its proposed regime could be used in managing all marine mammal stocks, including dolphin stocks incidentally taken in the ETP tuna purse-seine fishery, this approach may go beyond the mandate contained in section 114 of the MMPA. Therefore, NMFS has limited its proposal.

• Optimum Sustainable Population (OSP).

The NMFS proposal would retain the goal of allowing marine mammal stocks to maintain or achieve OSP levels. However, it would not be necessary to make OSP determinations prior to authorizing removals incidental to commercial fishing operations and removals from stocks that are, or may be, below OSP could be allowed. In the absence of quantitative data, qualitative judgments on the status of the stock, estimates of minimum abundance, conservative estimates of net productivity, and recovery factors would be used to determine allowable levels of removal.

This approach provides the basis for a regime that would conserve marine mammal stocks by allowing them to equilibrate within their OSP range, and still be workable in view of severe data limitations. Approaches dependent on precise data for determining OSP would prolong restrictions on many commercial fisheries while data are collected to make OSP determinations. Such restrictions would result in significant economic impacts on the fishing and associated industries, despite NMFS' belief that determining OSP is not necessary (or possible in some cases) prior to authorizing incidental taking.

• Monitoring Stocks.

The NMFS proposal would require long-term population monitoring of abundance, trends and status of marine mammal stocks affected by fisheries to provide a better basis for establishing limits on removals and assessing the impacts of removals on stocks. The paucity of data currently available, with their inherent limitations and resulting uncertainty about the status of stocks, necessitates establishing conservative removal levels if the risks of disadvantaging marine mammal stocks are to be minimized. Such a conservative approach to decisions on authorizing removals is necessary to conserve marine mammals, but may result in economic losses to the fishing industry that would not have been necessary if better information were available. To prevent this situation from continuing, NMFS believes a monitoring program for those stocks that interact with fisheries is critical.

Although the MMPA recognizes the need for research on marine mammal stocks, long-term stock monitoring studies are not explicitly required. This has not promoted the development of required long-term and consistent data bases necessary to provide reliable estimates of abundance, population trend information, stock delineations, and OSP determinations. Additional stock-specific studies will lead to more precise information and will allow NMFS to establish removal limits with greater confidence that the effects of these removals will not disadvantage the marine mammal stocks.

• Calculating Allowable Biological Removal Levels.

The NMFS proposal would establish a method for establishing a total allowable biological removal (ABR) level for each marine mammal stock. The ABR would govern removals incidental to commercial fishing and other activities and directed removals for public display, scientific research, enhancement, and other purposes. The number of removals authorized in any year may be less than, but not more than, the ABR. A number of factors can be considered in determining the level of removals to authorize, including an assessment of needs, implementing the zero mortality rate goal, and other factors.

The ABR would be calculated by multiplying the best estimate of minimum stock abundance, times the best estimate of the stock's maximum annual net productivity, times a recovery factor. To be conservative, an estimate of minimum stock abundance would be used, rather than a mean abundance estimate. The estimate selected for minimum stock size would depend on the available data. For example, it may be the lower limit of the 95 percent confidence interval of estimated stock size or an actual count of animals. The proposal uses conservative default values for maximum net productivity (6 percent for pinnipeds and sea otters and 2 percent for cetaceans and manatees) when specific information on net productivity is not known, but can accommodate more precise information as it becomes available. The recovery factor would depend on a qualitative estimate of the status of the stock, and would be 0.9 for stocks believed to be above ⅔ of carrying capacity; and 0.5 for stocks between ⅓ and ⅔ of carrying capacity; and 0.1 for stocks below ⅓ of carrying capacity. If there is no information available to make this judgment, the recovery factor would be 0.1.

The NMFS approach for determining ABR is conservative with respect to maintaining the health of marine mammal stocks and is workable because it can be calculated with existing information. NMFS believes that this level of removal would allow stocks to be maintained within OSP levels and would not significantly prolong recovery times of depleted stocks. Other approaches considered would allow too high a level of removal in light of uncertainty or establish unattainable data requirements that could result in severe restrictions to many fisheries. NMFS believes that its proposal is consistent with the goals to provide for the conservation of marine mammal stocks, while minimizing the disruption of commercial fishing.

• Process for Establishing ABRs.

NMFS proposes to draft Stock Assessment Reports at least once every 3 years, based upon the best available scientific information, that (1) define the marine mammal management stocks; (2) provide estimates of minimum abundance; (3) provide estimates of the stocks' maximum net productivity; (4) provide qualitative assessments of the status of the stocks; (5) evaluate the need to restrict mortality by season or area, or by age, sex, reproductive class, or other biological considerations; and (6) evaluate the need for other protective measures, such as restrictions on non-lethal takings. Scientific Review Groups comprised of marine mammal scientists from the MMC, Federal and state agencies, the academic community and other organizations would evaluate the draft Stock Assessment Reports. Revised Stock Assessment Reports would be available for public comment and further Scientific Review Group evaluation before being issued as final. The determinations made in the final report would be used to calculate the ABR for each stock.

NMFS believes that its proposal effectively incorporates significant scientific and public input into the process for determining ABRs and also provides the opportunity for judicial review of the final determination. These procedures are designed to focus attention on the available data to establish the ABR and to minimize needless formality that could impede or protract the process.

• Zero Mortality Rate Goal.

NMFS proposes to retain the goal of reducing the incidental kill and serious injury of marine mammals to insignificant levels approaching a rate of zero, and to require that more effective steps be taken to attain that goal. NMFS would establish a program to evaluate the interactions between marine mammals and commercial fisheries and to determine ways to reduce the resulting serious injuries and mortalities. Priority would be given to fisheries having significant impacts on marine mammal stocks. Measures would be implemented through Fishery Management Councils, states, and/or NMFS, as appropriate.

NMFS does not believe that the status quo has significantly advanced the zero mortality rate goal. In many cases, the lack of guidance on how the goal should be attained has led to inaction. In contrast, the NMFS approach focuses on how the zero mortality rate goal should be approached, while not mandating any specific measure.

• Depleted Stocks.

The NMFS proposal would allow incidental removals from stocks designated as depleted (including endangered and threatened stocks), only in compliance with approved conservation plans that address the potential impacts of such incidental mortality and possible steps to reduce the impacts. The total level of removal allowed for a stock could not exceed the level specified in the conservation plan. After a stock is designated as depleted, there would be 2 years to develop a conservation plan, during which time conservative levels of removal could be

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allowed consistent with the other aspects of the proposed regime.

NMFS believes that limited removals can be allowed from most depleted stocks without disadvantaging the stock, if the actions outlined in the conservation plans are followed. For example, some species designated as depleted (e.g., northern fur seal) are sufficiently numerous or are increasing in abundance, and small removals would have a negligible effect on their persistence and recovery. This approach allowing removals from depleted stocks will avoid unnecessary restrictions on commercial fishing that would result if no taking of depleted stocks were allowed. It is expected that for some severely depleted stocks (e.g., right whale), no incidental mortalities would be authorized.

• Endangered Species Act (ESA).

The NMFS proposal recommends amending the ESA to allow section 10 incidental take permits to cover activities within the EEZ and on the high seas, and to allow ESA section 7(b)(4) incidental take statements for commercial fishing activities to authorize the taking of marine mammals. This would involve only minor changes to the existing ESA incidental take provisions.

The NMFS proposed regime under the MMPA is built upon the belief that, in certain cases, incidental taking of depleted marine mammals, including those listed as endangered and threatened, would not disadvantage the stocks and should be allowed. However, both the MMPA and ESA apply to endangered and threatened species of marine mammals. Even if taking depleted marine mammals could be authorized under the MMPA as proposed, most taking of endangered or threatened marine mammals would be prohibited under the current provisions of the ESA. Therefore, NMFS proposes to amend the ESA to allow for the taking of endangered and threatened marine mammals incidental to commercial fishing.

• Allocation Among User Groups.

NMFS proposes to allocate the ABR annually for each stock among user groups based first on our ability to control the takings. An estimate of "uncontrollable" mortalities would be made and deducted from the ABR. These would include subsistence harvests of non-depleted species, collisions with ships, and incidental takes by foreign fishing outside the EEZ. All or part of the remaining ABR would be allocated among "controllable" user groups, including commercial fishing, public display, and scientific research. Allocations would be based on an assessment of needs, economic impacts, historic takes, and other factors, including implementation of the zero mortality rate goal. The sum of the allocations could be lower, but not higher, than the ABR based on this assessment. Proposed allocations would be made available for public comment.

Placing all removals of marine mammals under a single regime should ensure that the authorized levels of removals will not disadvantage the involved stock(s) and assure the various users that their operations will not be suddenly and unnecessarily disrupted. No removals would be authorized without an allocation of part of the ABR for that marine mammal stock. When a particular user group reaches the number of animals allocated to it for a marine mammal stock, additional removals from that stock would be prohibited, and the operations of the user group may need to be modified or stopped.

• Incidental Removal Quotas for Fisheries.

To recommend quotas for individual fisheries, NMFS would appoint Regional Quota Board comprised of representatives from NMFS, FWS, the MMC, the Fishery Management Councils, Marine Fishery Commissions, state fishery agencies and appropriate Indian tribes. NMFS would establish criteria, by regulation, to be used by the Boards in developing their recommendations, including an assessment of needs, economic impacts, historic removals, the zero mortality rate goal, and other factors. The Regional Boards would seek input from the fishing industry, environmental groups and other interested parties, and would provide to NMFS recommended quotas for each fishery, along with the basis for their recommendations. The sum of the quotas could not exceed the amount of the ABR allocated to commercial fishing. NMFS could accept or modify the recommendations of the Regional Boards, as appropriate, in establishing quotas. NMFS could reserve part of the fishing allocation and make minor within-year adjustments to quotas.

NMFS believes that this approach provides for adequate review by interested and affected parties. Individuals knowledgeable in matters dealing with commercial fisheries and marine mammals would make the initial recommendation to NMFS. NMFS expects that such recommendations would carry great weight and would be modified only rarely to ensure the safety of the involved marine mammal stocks or to ensure consistency with established criteria.

• Intentional Non-Lethal Taking.

Under the NMFS proposal, fishermen would be allowed to use intentional non-lethal methods of take to deter marine mammals from damaging their catch or gear if NMFS determines by regulation that the taking will not have a significant adverse effect on the marine mammal stocks. Regulations could specify the types of devices and techniques that could be used, and could further restrict areas, times or frequency of their use.

NMFS has chosen this approach because, although not conclusive, studies suggest that repeated exposure to harassment devices could have adverse effects on social behavior, physiology, and reproduction of marine mammals. This approach allows NMFS to control taking and allows fishermen to protect their catch and gear where so doing will not significantly adversely affect marine mammal stocks.

• Intentional Lethal Taking.

The NMFS proposal would prohibit commercial fishermen from intentionally killing or injuring marine mammals, except to ensure personal safety. Upon request, exceptions for a fishery could be made, if the lethal taking is necessary to mitigate a demonstrable negative impact on the fishery, if the taking could be conducted within the quota for the fishery, and if there would be mechanisms to monitor the taking.

NMFS believes that lethal takings would be limited under the proposal and thus would not adversely affect marine mammal stocks. Rather, the proposal would allow flexibility for intentional lethal taking in certain situations. Lethal taking would be allowed only if non-lethal methods were ineffective and if marine mammal interactions preclude normal fishing operations.

• MMPA Authorization.

NMFS proposes that authorization to fish be required under the MMPA. No separate authorization to take marine mammals would be required; one MMPA authorization would authorize both fishing and the incidental take of marine mammals. Vessel owners operating in certain fisheries would be required to register annually with NMFS and obtain an MMPA authorization. For other vessel owners, authorization would be by regulation and no registration would be required. Restrictions on fishing to reduce or prevent incidental taking would be implemented through the MMPA authorization or through regulations.

The mandatory registration system would assist NMFS in informing and educating fishermen, allocating and monitoring takes, and enforcing quotas. The registration system would be similar to that being used under the Interim Exemption, with modification of categories of fisheries and requirements associated with the categories.

• Categories of Fisheries.

Under the NMFS proposal, fisheries would be divided into two categories: (1) Those likely to interact with marine mammals or whose direct interactions (lethal or non-lethal) may adversely affect a marine mammal stock; or (2) those not likely to interact with marine mammals and whose direct interactions do not adversely affect marine mammal stocks. Vessel owners in the first category would be required to register and obtain an MMPA authorization.

This approach offers the advantage of protecting marine mammal stocks, while avoiding the need for vessels operating in all fisheries to register. It addresses problems with the categorization scheme under the Interim Exemption, which is based solely on the likelihood of individual vessels (rather than the fishery) taking marine mammals and does not consider the impacts of a fishery on marine mammal stocks. NMFS believes that requiring all vessels to register would be an unnecessary burden on those fisheries that are unlikely to interact with marine mammals and that will need very little monitoring.

• Monitoring Removals.

The NMFS proposal would require establishing a monitoring program for all fisheries to obtain accurate information about marine mammal interactions and to ensure that removal quotas are not exceeded. Since fisheries differ greatly in both the frequency of interactions and in the stocks of marine mammals involved in these interactions, NMFS would determine the type and degree of coverage necessary for each fishery. NMFS would have the authority to place observers on any vessel in any fishery, and would have the authority to require reports. However, monitoring programs would not necessarily involve observers or reports. Further, especially for fisheries that are believed to take marine mammals only infrequently, monitoring programs would not necessarily be required each year.

• Enforcing Quotas.

The established monitoring program would be designed to estimate removals in a timely manner so that actions can be taken to prevent any quota from being exceeded during the year. When the best available information indicates that a quota will be reached, the fishery would be restricted or closed to prevent or sufficiently reduce additional removals. Fishery restrictions, which could include time of day, gear, location or other limits would be made through the MMPA authorization or emergency regulations.

NMFS believes it needs this clear and wide-ranging authority to ensure that marine mammal stocks will not be disadvantaged by removals due to commercial fishing operation. Quotas are meaningless without the means to ensure that quotas will not be exceeded, i.e., adequate monitoring and authority to close or approximately restrict fishing operations. The specific action would not be mandated since NMFS believes the method should be as flexible as possible to manage the quota with as little impact on commercial fisheries as possible.

• User fees.

Under the NMFS proposal, a standard registration fee would be charged, with the proceeds retained by NMFS to cover administrative costs. In addition, fishery-specific user fees could be assessed by NMFS to supplement monitoring costs for particular fisheries.

For any regime governing interactions between marine mammals and commercial fishing operations to be successful, adequate funding must be available on a consistent basis to implement the regime, including programs to monitor marine mammal stocks and incidental takes. NMFS believes that some of the funding should come from a registration fee. Commercial fishermen should also contribute funding for unusual monitoring requirements that are necessary to ensure that their fishing operations are not likely to result in significant adverse impacts to marine mammal stocks. NMFS believes that the proposed combination of funding represents and appropriate and equitable approach to finance the proposed regime.

• Implementation Date.

The proposed regime would be implemented in a step-wise manner over a 2-year period after legislation is passed. NMFS believes that 2 years are necessary to implement fully its proposed regime, including the preparation of stock assessment reports and conservation/recovery plans, the establishment of Scientific Review Groups and Allocation Boards, and the establishment of monitoring programs.

• Applicability to Native Americans.

Any amendments to the MMPA to establish a new regime to govern the incidental taking of marine mammals during commercial fishing operations should (1) address whether all or part of the requirements for authorizing the incidental take of marine mammals, including permit or other authorization requirements, fees, and the application of fishery restrictions and closures, apply to Native Americans, especially those exercising treaty fishing rights; and (2) specify which of the existing prohibitions in the MMPA are intended to apply to Native Americans and take precedence over treaty Indian rights. The NMFS proposal would not affect exemptions for Alaskan natives as described in section 101(b) of the MMPA.

Draft Legislative Environmental Impact Statement

On March 10, 1990 (55 FR 19642), NMFS announced that it would prepare a DLEIS in conjunction with the development of the proposed regime. The proposal and the DLEIS were prepared by a NMFS task group, consisting of representatives from NMFS Headquarters, Regional Offices and Fisheries Science Centers, and from FWS.

NMFS prepared a scoping paper that presented issues related to marine mammal fishery interactions. Public scoping meetings under the National Environmental Policy Act (NEPA) were convened in ten locations around the United States between May 31 and July 12, 1990. Written comments were accepted up to 15 days after the hearings. In addition, all Fishery Management Councils were advised of NMFS' planned actions at their public meetings in June and July, 1990. Pre-publication meetings were held during February 1991 in Tampa, Florida; Silver Spring, Maryland; Seattle, Washington; and Anchorage, Alaska.

NMFS examined many separate but interrelated issues and developed alternatives for each issue. After analyzing the impacts of each option, NMFS selected the preferred alternative. When appropriate, NMFS incorporated the concerns, recommendations, and information provided during the scoping and development process into its selection of issues, analyses, discussions, and selection of proposed alternatives. The alternatives for each issue were then combined into four management regimes: (1) The MMPA prior to the 1988 Amendments; (2) the Interim Exemption; (3) the MMC Guidelines; and (4) the NMFS Proposal. The DLEIS will be available for review and comment no later than 30 days following publication of this notice in the **Federal Register**. Copies can be obtained from the address provided above (see **ADDRESSES**).

Comments and Consultation

As required by section 114(1)(4) of the MMPA, NMFS is requesting public comments on its proposed regime (see

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ADDRESSES). When the DLEIS is available, NMFS will also be requesting comments on the analysis of the alternative management regimes and the environmental impacts of the proposed regime. In addition to the public comment process, NMFS intends to meet and consult with the MMC and other interested groups, including the Fishery Management Councils, fishing industry and environmental groups, to discuss the proposed regime, analysis of the alternatives, and the potential environmental impacts. NMFS will consult with any interested group that wishes to do so. Members of the NMFS task group will be available for such consultations throughout the public comment period. Requests for such consultations should be made to the address provided above (see ADDRESSES).

NMFS Proposal to Congress

Following a review of the public comments and consultations with the MMC, the Fishery Management Councils, fishing industry, environmental community and other interested groups, NMFS will make appropriate modifications to its proposed regime. Section 114 of the MMPA requires that NMFS submit its final legislative proposal to Congress by January 1, 1992. The legislative proposal will include (1) the suggested regime, (2) a proposed schedule for implementing the regime, and (3) recommendations for additional legislation to implement the suggested regime. NMFS' proposal will be accompanied by a Final Legislative Environmental Impact Statement that will incorporate all substantive comments made by the public, the MMC, and other interested parties.

Dated: May 17, 1991.

Samuel W. McKeen,

Program Management Officer.

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Part III

Department of the Interior

Minerals Management Service

Outer Continental Shelf, Beaufort Sea: Oil and Gas Lease Sale and Leasing Systems, Sale 124, and Modification to the Bid Adequacy Procedures; Notices

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf Beaufort Sea Oil and Gas Lease Sale 124

1. Authority

This notice is published pursuant to the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331–1356, (1982)), as amended by the OCS Lands Act Amendments of 1985 (100 Stat. 147), and the regulations issued thereunder (30 CFR part 256).

2. Filing of Bids

Sealed bids will be received by the Regional Director (RD), Alaska OCS Region, Minerals Management Service (MMS), 949 E. 36th Avenue, room 544, Anchorage, Alaska 99508–4302. Bids may be delivered in person to that address during normal business hours (8 a.m. to 4 p.m.) until the Bid Submission Deadline at 10 a.m., June 25, 1991. All times cited in this notice refer to Alaska Standard Time (A.s.t.) unless otherwise stated. Bids will not be accepted the day of Bid Opening, June 26, 1991. Bids received by the RD later than the time and date specified above will be returned unopened to the bidders. Bids may not be modified or withdrawn unless a written modification or written withdrawal request is received by the RD prior to 10 a.m., June 25, 1991. Bid Opening Time will be 9 a.m., on June 26, 1991, at the Egan Civic & Convention Center, 555 W. 5th Avenue, Anchorage, Alaska. All bids must be submitted and will be considered in accordance with applicable regulations including 30 CFR 256. The list of restricted joint bidders which applies to this sale appeared in the **Federal Register** (FR) on April 4, 1991, at 56 FR 13842.

3. Method of Bidding

A separate signed Bid in a sealed envelope labeled "Sealed bid for Oil and Gas Lease Sale 124, (Official Protraction Diagram (OPD) number(s), OPD name(s), and block number(s)), not to be opened until 9 a.m., A.s.t., June 26, 1991," must be submitted for each block or prescribed bidding unit bid upon. The company qualification number should also appear on the envelope. For example, a label would read as follows: "Sealed Bid for Oil and Gas Lease Sale 124, NR 6–3, Beechey Point, Block 455, not to be opened until 9 a.m., June 26, 1991, Company Qualification No. Y0234." For those blocks which must be bid upon as a bidding unit (see paragraph 12), it is recommended that all numbers of blocks and OPD's comprising the bidding unit appear on the sealed envelope. A suggested bid form appears in 30 CFR part 256, appendix A. In addition, the total amount bid must be in whole dollar amounts (no cents). Bidders must submit with each bid one-fifth of the cash bonus, in cash or by cashier's check, bank draft, or certified check, payable to the order of the U.S. Department of the Interior—Minerals Management Service. The company qualification number should also appear on the check or draft together with OPD and block identification. No bid for less than all of the unleased portions of a block or bidding unit as described in paragraph 12 will be considered.

All documents must be executed in conformance with signatory authorizations on file. Partnerships also need to submit or have on file in the Alaska OCS Region office a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of 5 decimal places after the decimal point, e.g., 33.33333 percent. Other documents may be required of bidders under 30 CFR 256.46. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. Bidding System, Rental, and Royalty Rates

All bids submitted at this sale must provide for a cash bonus in the amount of $62 or more per hectare or fraction thereof. The bidding system applied for this sale will be cash bonus with a fixed royalty of twelve and one half percent. All leases awarded will provide for a yearly rental of $8 per hectare or fraction thereof. All leases will provide for a minimum royalty of $8 per hectare or fraction thereof.

5. Equal Opportunity

Each bidder must qualify for the sale by submitting prior to the Bid Submission Deadline stated in paragraph 2, the certification required by 41 CFR 60–1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, form MMS–2033 (June 1985), and the Affirmative Action Form, form MMS 2032 (June 1985). See the Affirmative Action paragraph under "Information to Lessees" ITL (i).

6. Bid Opening

Bid opening will begin at the time stated in paragraph 2. The public opening of the bids is for the sole purpose of announcing bids received, and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight on the day of bid opening, that bid may be returned unopened to the bidder as soon thereafter as possible.

7. Deposit of Payment

Any cash, cashier's checks, certified checks, or bank drafts submitted with a bid may be deposited by the Government in an interest-bearing account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. Withdrawal of Blocks

The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

9. Acceptance, Rejection, or Return of Bids

The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any block or bidding unit will be awarded to any bidder, unless:

(a) The bidder has complied with all requirements of this Notice and applicable regulations;

(b) The bid is the highest valid bid; and

(c) The amount of the bid has been determined to be adequate by the authorized officer.

No bonus bid will be considered for acceptance unless it provides for a cash bonus in the amount of $62 or more per hectare or fraction thereof. Any bid submitted which does not conform to the requirements of this notice, the OCS Lands Act, as amended, and other applicable regulations will be returned to the person submitting that bid by the authorized officer and not considered for acceptance.

10. Successful Bidders

Each person who has submitted a bid accepted by the authorized officer will be required to execute copies of the lease, pay the balance of the cash bonus bid together with the first year's annual rental for each lease issued, by electronic funds transfer (EFT) in accordance with the requirements of 30 CFR 218.155. The Federal Reserve Bank of New York must receive the EFT payment no later than noon, Eastern Standard Time, on the eleventh business day after receipt of the notice of bid acceptance. The term "business day" is defined as a day on which the Alaska OCS Region office is open for business. Successful bidders must satisfy the bonding requirements of 30 CFR 256, subpart I.

11. Official Protraction Diagrams

Blocks offered for lease may be located on the following Official Protraction Diagrams which may be purchased from the Alaska OCS Region office for $2 each:

NS 4–7
NR 6–4 Flaxman Island
NR 5–3 Teshekpuk
NS 5–7 Barrow Canyon
NR 5–2
NS 4–8
NR 7–3 Barter Island
NR 5–4 Harrison Bay
NR 7–4
NR 6–1
NR 4–2 Barrow
NR 7–6
NR 6–3 Beechey Point
NR 4–1 Hanna Shoal
NR 7–5 Demarcation Point
NR 6–2
NR 5–1 Dease Inlet

12. Description of the Areas Offered for Bids

The lease sale area offered for bids is listed by OPD. Three categories of blocks may appear under each OPD listed: (1) Whole or partial blocks, (2) split blocks, and (3) blocks which comprise bidding units.

Whole or partial blocks fall entirely under the jurisdiction of the Federal Government. Each block must be bid on separately. Hectares for whole or partial blocks listed in this paragraph are found on the appropriate OPD.

Split blocks are blocks divided into two or more portions. This occurs where the 3-geographical mile line intersects a block or where a jurisdictional dispute exists between the Federal and State Governments. A block may also be split into portions when a part of the block lies within 3 geographical miles of the seaward boundary of Alaska. The symbol "G" appearing next to block numbers identifies a block or portion of a block that lies within this 3-mile area. This area is subject to provisions of section 8(g) of the OCS Lands Act (43 U.S.C. 1337). Each split block or bidding unit comprised of split blocks must be bid on separately.

Split block areas referred to in the block list by an alpha indicator (i.e. Block 123 Area CC) indicates that specific area so identified on the OCS Composite Block Diagram for that block. Copies of block diagrams for split blocks are available from the Alaska OCS Region office.

Bidding units are a combination of portions of adjacent blocks. The entire bidding unit is listed under the OPD where the first partial block is located. When part of the bidding unit is located on an adjacent OPD, the appropriate OPD number will be listed (i.e. 617, (NR 6–4)). All parts of a bidding unit must be bid on together.

The letter symbol "D" appearing next to block numbers identifies a block or portion of a block where a jurisdictional dispute between the Federal and State Governments is pending before the United States Supreme Court, *United States of America* v. *State of Alaska*, No. 84, Original. Nothing in this Notice shall affect or prejudice the legal position of the United States in *United States of America* v. *State of Alaska*, No. 84, Original.

The following blocks are affected by the jurisdictional dispute between the United States and Canada (see paragraph 15, "Jurisdiction"): NR 7–4, blocks 485, 529–532, 573–579, 617–623, 661–667, 706–710, 749, 751–754, 793–796, 798, 842, 882, 886, 925, 969–971; NR 7–6, blocks 3–4, 46–48, 89–91, 133–135, 177–179, 221–222, 265–266, 309.

The following blocks or portions of blocks are offered for bidding:

Official Protraction Diagram NS 4–7 (Approved April 25, 1978)

(1) Whole and Partial Blocks:

5–18	486–506	836–852
47–64	530–550	856–858
90–108	574–594	882–885
134–154	618–638	898–902
178–196	662–682	925–939
222–242	706–723	942–946
266–286	728	969
310–330	750–765	971–982
354–374	769–770	985–990
398–418	794–809	
442–462	813–814	

(2) Split Blocks: None.
(3) Bidding Units:

Blocks	Hectares	Total hectares
2	1078.65	
46	1194.27	
		2273.12
485	43.88	
529	158.07	
573	273.17	
617	386.23	
661	503.27	
705	618.28	
		1984.90
749	733.26	
793	848.21	
		1581.47
837	963.13	
881	1078.03	
		2041.16

Official Protraction Diagram NS 4–8 (Approved January 21, 1981)

(1) Whole and Partial Blocks:

177–178	485–495	793
221–223	529–540	797–813
265–269	573–585	837–838
309–314	617–631	840–857
353–360	661–676	881–901
397–405	705–723	925–946
441–450	749–769	969–990

(2) Split Blocks: None.
(3) Bidding Units:

Blocks	Hectares	Total hectares
770	733.26	
749 (NS 5–7)	733.26	
		1466.52
814	848.21	
793 (NS 5–7)	848.21	
		1696.42
858	963.13	
837 (NS 5–7)	963.13	
		1926.26
902	1078.03	
881 (NS 5–7)	1078.03	
		2156.06

Official Protraction Diagram NS 5–7 Barrow Canyon, (Revised September 14, 1987)

(1) Whole and Partial Blocks:

794–796	882–888	969–982
838–842	925–935	

(2) Split Blocks: None.
(3) Bidding Units: None.

Official Protraction Diagram NR 4–1 Hanna Shoal, (Revised September 14, 1987)

(1) Whole and Partial Blocks:

2	222	576–585
4–23	225–231	625–629
45–47	234–243	666–683
45–67	266–267	714–727
90–91	270–287	752
93–100	310–311	759–771
103–111	313–331	793
134	355–375	795–797
137–144	399	804–815
146–155	401–419	837–858
178	444–463	881–901
182–188	488–507	925–942
190–199	534–551	969–986

(2) Split Blocks: None.
(3) Bidding Units:

Blocks	Hectares	Total hectares
617	722.96	
661	837.34	
		1560.30
705	951.70	
749	1066.03	
		2017.73

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Official Protraction Diagram NR 4-2
Barrow, (revised February 16, 1984)

(1) Whole and Partial Blocks:

1–22	309–325	617–625
45–66	353–368	661–667
89–110	397–410	705–710
133–154	441–453	749–752
177–198	485–496	793–794
221–242	529–539	
265–286	573–583	

(2) Split Blocks: None.
(3) Bidding Units: None.

Official Protraction Diagram NR 5–1
Dease Inlet, (revised January 12, 1988)

(1) Whole and Partial Blocks:

23–44	394–396	611–616
67–88	421–428	647–653
111–132	435–434	655–660
155–176	438–440	691–704
199–211	465–466	737–748
213–220	468–470	760
243–254	473–484	785–792
291–294	509–510	825–826
287–300	512–513	831–836
305–308	519–528	871
333–338	553–554	875–879
341–346	557–561	915–921
348–352	565–572	962–965
377–383	597	1008
386–390	602–607	

(2) Split Blocks:

Blocks	Hectares	Total hectares
641	1547.69	
641 G	756.31	
777 G	1728.54	
779	1639.69	
779 G	664.31	
823 G	2225.42	
824 G	1040.84	
867 G	537.42	
958 G	2197.44	
960	2265.39	
1002 G Area CC	18.56	
1003 G Area CC	4.50	
685 G	2070.73	
729 G	36.00	
730 G Area EE	.38	
		2107.11
730 G Area DD	53.22	
731 G Area CC	52.92	
		106.14
731 G Area EE	.03	
775 G	114.06	
776 G	730.74	
		844.83
821 G	0.87	
822 G	946.89	
		947.76
823	18.21	
824	1254.16	
		1272.37
868 G Area BB	40.29	
912 G Area CC	61.35	
913 G Area BB	18.86	
		120.50
957 G	794.54	
1001 G	0.11	
		794.65
958	106.56	
959	1388.28	
		1494.84
959 G	915.72	
960 G	38.61	
		954.33

(3) Bidding Units:

Blocks	Hectares	Total hectares
685 G	687.95	
86 G	13.92	
		701.87
44 D	5.35	
1 D (NR 5–4)	77.93	
		83.28
44 G	1496.70	

Official Protraction Diagram NR 5–2
(approved May 5, 1976)

(1) Whole and Partial Blocks:

133	529–545	881–903
177–178	573–591	929–930
221–224	617–637	932–934
265–269	661–682	938–947
309–315	705–726	972
353–360	749–770	974–978
397–405	794–815	982–991
441–451	841–859	
485–499	886–889	

(2) Split Blocks:

Blocks	Hectares
970	1670.39
971	2180.36

(3) Bidding Units:

Blocks	Hectares	Total hectares
683	837.34	
682 (NR 6–1)	837.34	
		1674.68
727	951.70	
726 (NR 6–1)	951.70	
		1903.40
771	1066.03	
770 (NR 6–1)	1066.03	
		2132.06
970 G	633.61	
971 G	123.64	
		757.25

Official Protraction Diagram NR 5–3
Teshekpuk, (Approved June 3, 1976)

(1) Whole and Partial Blocks: None.
(2)Split Blocks:

Blocks	Hectares
35 G Area CC	1.17
37 G	2114.19
41 G	2116.30
41	187.70
42 G	1807.33
43 G	1239.55
1	1878.73
6 G	194.00
6	2110.00
49 G	1876.45
50 G	2118.11
52	2224.01
95 G	1895.83
98 G	1805.85
96	498.15
97 G	60.04
141 G	843.57
184 G	1129.59
186	2197.70
230 G	1393.19
230	910.81
274 G	2204.07
275 G	707.10
320	2094.92
363 G	1622.25
364	546.86
365	2148.40
369	2262.05
369 G	21.95
409	897.44
412 G	447.79
414 G	2269.97
414	14.03
415 G	2278.06
416 G	1832.83
453 D	2136.18
454 D	1150.85
456 G	2279.37

(3) Bidding Units:

Blocks	Hectares	Total hectares
2 G Area DD	4.47	
46 G Area DD	52.39	
47 G	905.35	
48 G	906.08	

Official Protraction Diagram NR 5–4
Harrison Bay, (Revised January 20, 1988)

(1) Whole and Partial Blocks:

7–11	147–152	279–283
16–23	154–155	321
53	187–188	324
56–57	191–194	326–328
60–67	231	366–368
100–111	233–237	410–411
142–144	276–277	

(2) Split Blocks:

Blocks	Hectares	Total hectares
50	85.89	
51	1152.33	
		1268.27
51 G	1151.67	
52 G	79.99	
		1238.22
93 G	0.60	
94 G	639.25	
		1231.66
139 G	91.31	
140 G	2003.14	
		640.05
141	1460.43	
185	327.71	
		2094.45
185 G	1976.29	
186 G	106.30	
		1788.14
228 G	41.63	
229 G	1821.72	
273 G	345.36	
		2062.59
274	3.32	
275	1596.90	
319	194.70	
		2208.71
288	131.64	
285 (NR 6–3)	131.64	
332	64.73	
329 (NR 6–3)	57.33	
		1794.92
318 G	963.15	
362 G	5.30	
		385.34
319 G	2109.30	
320 G	209.08	
		968.45
331 G	1350.81	
332 G	180.85	
		2318.38
364 G	1757.14	
365 G	155.60	
		1531.66
373 G Area FF	5.49	
417 G	480.82	
		1912.74
373 D Area EE	3.78	
416 D	26.13	
417 D	406.66	
		487.31
375 G	1254.07	
376 G	169.88	
		436.57
375 D	306.44	
376 D	52.72	
373 D (NR 6–3)	11.70	
		1423.95
407 G	163.84	
408 G	1268.69	
		372.86
409 G	1297.66	
453 G	65.96	
		1363.62
412	1856.21	
456	14.69	
		1870.90
407 D	17.52	
408 D	483.54	
409 D	108.90	
		609.96
453	101.86	
454	884.68	
455	365.08	
		1351.62
454 G	268.47	
455 G	1772.37	
		2040.84
457 G	1300.16	
458 G	316.50	
459 G	49.07	
		1665.73
452 D	884.91	
496 D	1165.09	
		2050.00
497 D	2198.79	
541 D	59.20	
		2257.99
498 D	1920.82	
542 D	149.07	
		2069.89
455 D	166.55	
499 D	720.60	
500 D	13.90	
		901.05
499 G	109.93	
500 G	297.40	
		407.33

Official Protraction Diagram NR 6–1
(Approved June 3, 1976)

(1) Whole and Partial Blocks:

583–664	856–874	960–967
727–738	902–913	990–1001
771–784	916–921	1005–1012
814–829	948–957	

(2) Split Blocks: None.
(3) Bidding Units: None.

Official Protraction Diagram NR 6–2
(Approved May 5, 1976)

(1) Whole and Partial Blocks: 969.
(2) Split Blocks: None.
(3) Bidding Units: None.

Official Protraction Diagram NR 6–3,
Beechey Point, (Revised April 23, 1984)

(1) Whole and Partial Blocks:

22–44	249–264	364
66–88	286–289	386–396
110–132	291	436–440
154–176	296–308	480–484
198–220	339	527–528
243–246	341–352	572

(2) Split Blocks:

Blocks	Hectares	Total hectares
331 G	1954.10	
332 G	2013.85	
333 G	1523.23	
375 D	54.19	
426	891.35	
426 G	1412.65	
427	1479.68	
428	2233.70	
429	1417.63	
431	1365.69	
431 G	938.31	
432	1108.52	
432 G	1195.48	
433 G	1768.78	
435	2178.60	
471 G Area AA	1420.31	
472	184.85	
472 G	1337.96	
473 G	1428.24	
474 G	1368.81	
478	706.04	
479 G	1597.96	
525	1424.69	
526	2136.49	
569 G	1862.04	
570 G	2094.40	
571 G	419.90	
617 G	2222.53	
616	1337.80	
616 G	966.20	
659 G	687.52	
660 G	1796.55	
241	24.45	
242	2297.22	
		2321.67
330	467.37	
331	349.90	
		817.27
329 G	188.25	
330 G	1836.63	
		2024.88
332	290.15	
333	780.77	
		1070.92
373 G	168.27	
374 G	867.55	
		1035.82
375 G	715.68	
376 G Area BB	682.54	
		1398.22
427 G	824.32	
428 G West	45.85	
		870.17
428 G East	24.45	
429 G	886.37	
		910.82
433	535.22	
434	1003.48	
		1538.70
434 G	1300.52	
435 G	125.40	
		1425.92
469 G Area FF	152.20	
470 G Area CC	914.59	

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Blocks	Hectares	Total hectares
470 G Area GG	182.36	
		1249.15
472 D	781.19	
473 D	616.27	
474 D	8.55	
		1406.01
475 D Area BB	154.37	
476 D Area BB	397.14	
519 D	36.00	
520 D	182.89	
		770.40
475 G Area CC	622.85	
476 G Area CC	493.82	
477 G Area EE	35.41	
		1152.08
517 D	560.49	
561 D Northwest	114.81	
		675.30
522 G	126.21	
523 G	1393.37	
		1519.58
522 D	130.72	
523 D	908.67	
566 D	3.29	
567 D	516.90	
		1559.58
523	1.06	
524	1309.88	
		1311.84
524 G	986.58	
568 G	613.90	
		1600.48
525 G	879.31	
526 G	167.51	
		1046.82
561 D Southeast	68.35	
562 D	47.89	
605 D	32.45	
606 D	679.32	
607 D	488.81	
		1336.82
564 D	260.41	
608 D	1814.17	
652 D	13.41	
		2087.99
568 D	1193.54	
569 D	28.88	
524 D	7.54	
		1229.76
570	209.60	
571	1884.10	
615	67.50	
		2161.20
609 D	1240.62	
653 D	474.59	
		1715.21
610 D	23.83	
654 D	1273.68	
		1297.51
613 G	4.84	
614 G	1278.25	
		1283.09
655 D	1409.65	
656 D	133.44	
		1543.09
659 D	472.06	
660 D	132.55	
		604.61
698 D	24.52	
699 D	1043.90	
		1068.42
700 D	1911.66	
701 D	270.22	
		2181.88
743 D	4.87	
744 D	1964.79	
788 D	162.64	
		2132.30
745 D	1687.02	
746 D	1.29	
789 D	546.48	
		2234.79
792 D	172.86	
836 D	148.04	
793 D (NR 6-4)	37.43	
		358.33

Official Protraction Diagram NR 6-4, Flaxman Island, (revised November 10, 1983)

(1) Whole and Partial Blocks:

1-23	280-361	620-622
45-67	303-364	525-527
89-111	389-375	669-671
133-155	397-402	682
177-182	406-410	715-716
185-199	415-419	723
221-225	441-447	725
229-242	450-455	761
265-270	459-463	763-764
272-275	485-500	767-768
278-287	503-507	806-812
309-319	529-548	854
323-331	575-578	
353-357	582-592	

(2) Split Blocks:

Blocks	Hectares
573	1820.63
574	2295.03
617 G	2201.00
618	484.51
619	1946.04
663 G	2082.83
664 G	1504.96
665 G	1368.85
666 G	1080.33
709 G	1324.92
710 G	1742.70
711 G	2265.74
712 G	1961.99
714	2023.14
755 D	5.62
757 G	1607.57
759 G	1315.80
760	2228.53
849 G	2230.95
850 G	1466.85
851	1580.08
852	1860.76
853	2293.68
865	2291.86
856	1581.89
857 G	1514.38
858 G	2249.97
894 D	19.83
895 G	1982.85
896 G	2236.48
897	554.27
898	1998.22
899	737.14
899 G	1586.86
900 G	2111.69
942 G	2282.36
943 G	2172.05
944 G	204.90

(3) Bidding Units:

Blocks	Hectares	Total hectares
243	2297.22	
244	24.45	
		2321.67
288	131.64	
265 (NR 7-3)	131.64	
332	245.58	
309 (NR 7-3)	245.58	
376	359.49	
353 (NR 7-3)	359.49	
		1473.42
420	473.37	
397 (NR 7-3)	473.37	
464	587.22	
441 (NR 7-3)	587.22	
		2121.18
508	701.04	
485 (NR 7-3)	701.04	
		1402.08
552	814.83	
529 (NR 7-3)	814.83	
		1629.66
573 G	483.37	
574 G	8.97	
		492.34
618 G	1819.49	
619 G	357.96	
		2177.45
661 G	149.46	
662 G	1417.84	
		1567.30
663	221.17	
664	799.04	
		1020.21
665	935.15	
666	1223.67	
		2158.82
706 G	76.80	
707 G	960.69	
708 G	1188.59	
		2226.08
706 D	1.68	
707 D	141.07	
		142.75
711	38.04	
712	342.01	

Blocks	Hectares	Total hectares
713	977.32	
		1357.37
713 G	1326.68	
714 G	280.86	
		1607.54
758	44.71	
759	988.40	
		1033.11
755 G	403.41	
756 G	766.66	
		1170.07
849	1.30	
850	837.14	
		838.44
851 G	713.92	
852 G	413.24	
853 G	10.32	
		1137.48
855 G	12.14	
856 G	722.20	
		734.34
857	789.62	
858	32.00	
		821.62
859 G	1353.33	
860 G	349.76	
		1703.09
895 D	33.96	
896 D	4.66	
		38.62
897 G	1749.73	
898 G	305.78	
		2055.51
901 G	1388.41	
902 G	399.59	
		1788.00
940 G	127.52	
941 G	1348.49	
		1476.01
940 D	1.63	
941 D	415.09	
942 D	1.06	
		417.78
986 G	200.80	
987 G	506.13	
		706.93

Official Protraction Diagram NR 7-3, Barter Island (approved October 26, 1979)

(1) Whole and Partial Blocks:

134	492-508	813-814
178-181	530-552	816
223-227	575-596	851-856
266-274	616-640	860
310-321	663-684	894-901
354-368	712-725	939-940
396-415	727	942-944
442-446	756-766	948
448-462	768-770	964
486-490	804-810	987-989

(2) Split Blocks:

Blocks	Hectares
706	2236.48
709	2299.36
710	2256.72
711	2207.65
751 G	1802.43
752 G	2295.60
753 G	2056.76
754 G	2200.25
755 G	2281.74
757	2236.69
794 G	1378.70
795 G	991.11
800 G	1884.18
801	450.78
983 G	686.98

(3) Bidding Units:

Blocks	Hectares	Total hectares
221	24.45	
222	2297.22	
		2321.67
706 G	67.52	
709 G	4.64	
		72.16
710 G	47.28	
711 G	96.35	
		143.62
751	501.57	
752	8.40	
		509.97
753	247.24	
754	103.75	
		350.99
755	22.26	
756	840.28	
		862.54
756 G	1463.72	
757 G	67.31	
		1531.03
796 G	355.17	
797 G	864.10	
		1219.27
798 G	588.25	
799 G	393.44	
		981.69
801 G	1853.22	
802 G	342.22	
		2195.44
802	1961.78	
846	86.87	
		2048.65
937	114.12	
938	1773.73	
		1887.85
982	66.56	
983	1617.04	
		1685.60

Official Protraction Diagram NR 7-4 (Revised January 22, 1984)

(1) Whole and Partial Blocks:

485	661-666	793-796
529-532	706-710	882
573-578	749	925
617-622	751-754	969-971

(2) Split Blocks: None.

(3) Bidding Units:

Blocks	Hectares	Total hectares
579	572.01	
623	236.20	
667	6.95	
		815.16
796	1191.34	
842	696.41	
886	31.83	
		1919.58

Official Protraction Diagram NR 7-5, Demarcation Point, (Revised November 10, 1983)

(1) Whole and Partial Blocks:

20-22	110-113	200-201
64-69	155-157	

(2) Split Blocks:

Blocks	Hectares
15 G	873.03
60 G	778.56
61 G	2217.54
63	2193.97
105 G	469.01
106 G	1841.59
107 G	2067.40
109	2225.04
152 G	1938.60
153 G	1995.36
154 G	486.41
198 G	2208.62
199 G	590.51
242 G	996.89
243 G	2256.39
244 G	1917.28
245 G	1377.73
289 G	1524.32

(3) Bidding Units:

Blocks	Hectares	Total hectares
62 G	1264.52	
63 G	110.03	
		1374.55
107	236.60	
108	1263.80	
		1500.40
108 G	1040.20	
109 G	78.96	
		1119.16
150 G	50.86	
151 G	811.50	
		862.36
153	306.64	
154	1815.59	
		2124.23
196 G	37.74	

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Blocks	Hectares	Total hectares
197 G	1170.84	1206.58
198	86.00	
199	1713.49	
243	47.61	
		1847.10
244	386.72	
245	926.27	1312.99
286 G	0.05	
287 G	392.30	
288 G	810.94	1203.29

Official Protraction Diagram NR 7–6 (Revised January 22, 1994)

(1) Whole and Partial Blocks:

3 89–90 177–178
46–47 133–134

(2) Split Blocks: None.

(3) Bidding Units:

Blocks	Hectares	Total hectares
4	1327.49	1662.58
48	335.09	
91	1612.00	
135	616.45	
179	10.78	2239.23
221 G	323.05	
265 G	1774.96	
309 G	143.47	2241.48
221	1980.95	
265	89.79	2070.74
222	766.65	
266	11.11	777.76

13. Lease Terms and Stipulations

(a) Leases resulting from this sale will have an initial term of ten (10) years. Leases will be issued on form MMS–2005 (March 1986). Copies of the lease form are available from the Regional Supervisor, Leasing & Environment, Alaska OCS Region, at the first address stated in paragraph 2.

(b) The following stipulations will apply to each lease resulting from this sale unless otherwise indicated.

Stipulation No. 1—Protection of Archaeological Resources

(a) "Archaeological resource" means any prehistoric or historic district, site, building, structure, or object (including shipwrecks); such term includes artifacts, records, and remains which are related to such a district, site, building, structure, or object, National Historic Preservation Act, as amended, 16 U.S.C. 470w(5)). "Operations" means any drilling, mining, or construction, or placement of any structure for exploration, development, or production of the lease.

(b) If the Regional Supervisor, Field Operations (RSFO), believes an archaeological resource may exist in the lease area, the RSFO will notify the lessee in writing. The lessee shall then comply with subparagraphs (1) through (3).

(1) Prior to commencing any operations, the lessee shall prepare a report, as specified by the RSFO, to determine the potential existence of any archaeological resource that may be affected by operations. The report, prepared by an archaeologist and a geophysicist, shall be based on an assessment of data from remote-sensing surveys and of other pertinent archaeological and environmental information. The lessee shall submit this report to the RSFO for review.

(2) If the evidence suggests that an archaeological resource may be present, the lessee shall either:

(i) Locate the site of any operation so as not to adversely affect the area where the archaeological resource may be; or

(ii) Establish to the satisfaction of the RSFO that an archaeological resource does not exist or will not be adversely affected by operations. This shall be done by further archaeological investigation, conducted by an archaeologist and a geophysicist, using survey equipment and techniques deemed necessary by the RSFO. A report on the investigation shall be submitted to the RSFO for review.

(3) If the RSFO determines that an archaeological resource is likely to be present in the lease area and may be adversely affected by operations, the RSFO will notify the lessee immediately. The lessee shall take no action that may adversely affect the archaeological resource until the RSFO has told the lessee how to protect it.

(c) If the lessee discovers any archaeological resource while conducting operations in the lease area, the lessee shall report the discovery immediately to the RSFO. The lessee shall make every reasonable effort to preserve the archaeological resource until the RSFO has told the lessee how to protect it.

Stipulation No. 2—Protection of Biological Resources

If biological populations or habitats that may require additional protection are identified by the Regional Supervisor, Field Operations (RSFO), in the lease area, the RSFO may require the lessee to conduct biological surveys to determine the extent and composition of such biological populations or habitats. The RSFO shall give written notification to the lessee of the RSFO's decision to require such surveys. Based on any surveys which the RSFO may require of the lessee or on other information available to the RSFO on special biological resources, the RSFO may require the lessee to:

(1) Relocate the site of operations;

(2) Establish to the satisfaction of the RSFO, on the basis of a site-specific survey, either that such operations will not have a significant adverse effect upon the resource identified or that a special biological resource does not exist;

(3) Operate during those periods of time, as established by the RSFO, that do not adversely affect the biological resources; and/or

(4) Modify operations to ensure that significant biological populations or habitats deserving protection are not adversely affected.

If any area of biological significance should be discovered during the conduct of any operations on the lease, the lessee shall immediately report such findings to the RSFO and make every reasonable effort to preserve and protect the biological resource from damage until the RSFO has given the lessee direction with respect to its protection.

The lessee shall submit all data obtained in the course of biological surveys to the RSFO with the locational information for drilling or other activity. The lessee may take no action that might affect the biological populations or habitats surveyed until the RSFO provides written directions to the lessee with regard to permissible actions.

Stipulation No. 3—Orientation Program

The lessee shall include in any exploration or development and production plans submitted under 30 CFR 250.33 and 250.34 a proposed orientation program for all personnel involved in exploration or development and production activities (including personnel of the lessee's agents, contractors, and subcontractors) for review and approval by the Regional Supervisor, Field Operations. The program shall be designed in sufficient detail to inform individuals working on the project of specific types of environmental, social, and cultural concerns which relate to the sale and adjacent areas. The program shall be formulated by qualified instructors experienced in each pertinent field of study and shall employ effective methods to ensure that personnel are informed of archaeological and biological resources and habitats, including endangered species, fisheries, bird colonies, and marine mammals, and to ensure that personnel understand the importance of not disturbing archaeological resources and of avoidance and nonharassment of wildlife resources. The program shall also be designed to increase the sensitivity and understanding of personnel to community values, customs, and lifestyles in areas in which such personnel will be operating. The orientation program also shall include information concerning avoidance of conflicts with subsistence activities. The program also shall include presentations and information about all pertinent lease sale stipulations and information to lessees provisions.

The program shall be attended at least once a year by all personnel involved in onsite exploration or development and production activities (including personnel of the lessee's agents, contractors, and subcontractors) and all supervisory and managerial personnel involved in lease activities of the lessee and its agents, contractors, and subcontractors.

The lessee shall maintain a record of all personnel who attend the program. This record shall include the name and date(s) of attendance of each attendee and shall be kept onsite for so long as the site is active, not to exceed 5 years.

Stipulation No. 4—Transportation of Hydrocarbons

Pipelines will be required: (a) If pipeline rights-of-way can be determined and obtained; (b) if laying such pipelines is technologically feasible and environmentally preferable; and (c) if, in the opinion of the lessor, pipelines can be laid without net social loss, taking into account any incremental costs of pipelines over alternative methods of transportation and any incremental benefits in the form of increased environmental protection or reduced multiple-use conflicts. The lessor specifically reserves the right to require that any pipeline used for transporting production to shore be placed in certain designated management areas. In selecting the means of transportation, consideration will be given to any recommendation of the Regional Technical Working Group, or other similar advisory groups with participation of Federal, State, and local governments and industry.

Following the development of sufficient pipeline capacity, no crude oil production will be transported by surface vessel from offshore production sites, except in the case of emergency. Determinations as to emergency conditions and appropriate responses to these conditions will be made by the Regional Supervisor, Field Operations.

Stipulation No. 5—Industry Site-Specific Bowhead Whale-Monitoring Program

Lessees shall conduct a site-specific monitoring program during exploratory drilling activities to determine when bowhead whales are present in the vicinity of lease operations and the extent of behavioral effects on bowhead whales due to these activities. The lessee shall provide its proposed monitoring plan to the Regional Supervisor, Field Operations (RSFO), for review and approval no later than 60 days prior to commencement of drilling activities. Information obtained from this site-specific monitoring program shall be provided to the RSFO in accordance with the approved monitoring plan. This stipulation will remain in effect until termination or modification by the Department of the Interior after consultation with the National Marine Fisheries Service.

This stipulation applies to the following blocks for the following time periods: (Official Protraction Diagram [OPD])

SPRING MIGRATION AREA

[Apr. 15 to June 15]

OPD	Blocks included
NR 4–1	770–771, 813–815, 856–858, 899–901, 942, 985–986.
NR 4–2	241–242, 283–286, 496, 536–539, 579–583, 621–625, 663–667, 705–710, 749–752, 793–794.
NR 5–1	243–254, 261–264, 267–300, 305–306, 333–338, 341–346, 348–352, 377–383, 386–390, 394–396, 421–426, 428–434, 438–440, 465–466, 468–470, 473–484, 509–510, 512–515, 519–526, 553–554, 557–561, 565–572, 597, 602–607, 611–616, 655–660, 699–704.
NR 5–2	221–224, 265–269, 309–315, 353–360, 397–405, 441–451, 485–499, 529–545, 573–591, 617–637, 661–683.
NR 6–1	662–684.

FALL MIGRATION AREAS

[Western Blocks—Sept. 15 through Oct. 31]

OPD	Blocks included
NR 4–1	416–419, 460–463, 500–507, 542–551, 584–595, 626–639, 669–683, 714–727, 759–771, 804–815, 841–858, 884–901, 925–942, 969–986.
NR 4–2	231–242, 275–286, 314–325, 358–368, 397–410, 441–453, 485–496, 529–539, 573–583, 617–625, 661–667, 705–710, 749–752, 793–794.

[Central Blocks—Sept. 1 through Oct. 31]

OPD	Blocks included
NR 5–1	243–254, 261–264, 267–300, 305–306, 333–338, 341–346, 348–352, 377–383, 386–390, 394–396, 421–426, 428–434, 438–440, 465–466, 468–470, 473–484, 509–510, 512–515, 519–526, 553–554, 557–561, 565–572, 597, 602–607, 611–616, 641, 647–653, 655–660, 685, 691–704, 729–731, 737–746, 775–777, 779–780, 785–792, 821–826, 831–836, 867–868, 871, 875–879, 912–913, 915–921, 957–960, 962–965, 1001–1003, 1008.
NR 5–2	221, 265–267, 309–312, 353–356, 397–401, 441–447, 485–492, 529–537, 573–587, 617–637, 661–683, 705–727, 749–771, 794–815, 841–858, 886–889, 891–903, 929–930, 932–934, 938–947, 970–972, 974–978, 982–991.
NR 5–3	35, 37, 41–44, 85–86.
NR 5–4	1–2, 6–11, 16–23, 46–53, 56–57, 60–67, 93–97, 100–111, 139–144, 147–152, 154–155, 184–188, 191–194, 226–231, 233–237, 273–277, 279–285, 288, 318–321, 324, 326–328, 331–332, 362–369, 373, 375–376, 407–412, 414–417, 452–458, 496–500, 541–542.
NR 6–1	662–684, 726–736, 770–784, 814–829, 858–874, 902–913, 916–921, 946–957, 960–967, 990–1001, 1005–1012, 999.
NR 6–2	
NR 6–3	22–44, 86–88, 110–132, 154–176, 198–220, 241–246, 249–264, 285–289, 291, 296–306, 329–333, 336, 341–352, 373–376, 384, 386–396, 426–429, 431–440, 469–484, 517, 519–520, 522–528, 566–572, 611–616, 659, 660.
NR 6–4	1–8, 45–52, 89–96, 133–140, 177–182, 221–225, 265–270, 272, 309–316, 353–357, 360, 397–402, 441–447, 485–492, 529–536, 573–578, 617–622, 661–668, 706–712, 755–756.

[Eastern Blocks—Aug. 1 through Oct. 31]

OPD	Blocks included
NR 6–4	9–23, 53–67, 97–111, 141–155, 185–199, 229–244, 273–275, 278–288, 317–319, 323–332, 361, 363–364, 369–376, 406–410, 415–420, 450–455, 459–464, 493–500, 503–508, 537–549, 552, 582–592, 626–627, 669–671, 682, 713–716, 723, 725, 757–761, 763–764, 767–768, 806–812, 849–860, 894–902, 940–944, 986–987.
NR 7–3	134, 178–181, 221–227, 265–274, 308–321, 353–368, 397–415, 441–446, 448–462, 485–490, 492–506, 529–552, 575–596, 618–640, 663–684, 708–725, 727, 751–766, 768–770, 794–802, 804–810, 813–814, 816, 846, 851–856, 860, 894–901, 937–940, 942–944, 948, 962–964, 967–988.
NR 7–4	485, 529–532, 573–579, 617–623, 661–667, 706–710, 746, 751–754, 793–796, 798, 842, 862, 886, 925, 969–971.
NR 7–5	15, 20–22, 60–69, 105–113, 150–157 196–201, 242–245, 286–289.

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[Eastern Blocks—Aug. 1 through Oct. 31]

OPD	Blocks included
NR 7-6	3-4, 46-48, 89-91, 133-135, 177-179, 221-222, 265-266, 309.

Stipulation No. 6—Subsistence Whaling and Other Subsistence Activities

All exploration and development and production operations shall be conducted in a manner that minimizes any potential for conflict between the oil and gas industry and subsistence activities, particularly the subsistence bowhead whale hunt.

Prior to submitting an exploration plan or development and production plan to the lessor for activities proposed during the bowhead whale migration period, the lessee shall contact the potentially affected communities, Wainwright, Barrow, Kaktovik, or Nuiqsut, and the Alaska Eskimo Whaling Commission to discuss potential conflicts with the siting, timing, and methods of proposed operations and safeguards or measures which could be implemented by the operator to reduce or eliminate any conflict. Through this consultation, the lessee shall make reasonable efforts to assure that exploration, development, and production activities are compatible with whaling and other subsistence hunting activities and will not result in undue interference with subsistence harvests.

A discussion of resolutions reached during this consultation process and any unresolved conflicts shall be included in the exploration plan or the development and production plan. In particular, the lessee shall show in the plan how mobilization of the drilling unit and crew and supply boat routes will be scheduled and located to minimize conflicts with subsistence activities. Communities, individuals, and other entities who were involved in the consultation shall be identified in the plan. The lessee shall notify the Regional Supervisor, Field Operations, of all complaints received from subsistence hunters during operations and of steps taken to resolve such complaints.

The lessee shall send a copy of the exploration plan or development and production plan to the potentially affected communities and the Alaska Eskimo Whaling Commission at the same time they are submitted to the lessor to allow concurrent review and comment as part of the lessor's plan approval process.

Subsistence whaling activities occur generally during the following periods:

April to June: Barrow whalers use lead systems off Point Barrow and west of Barrow in the Chukchi Sea. Wainwright whalers use lead systems between Wainwright and Peard Bay.

August to October: Kaktovik/Nuiqsut hunters use the area circumscribed from Anderson Point in Camden Bay to a point 30 kilometers north of Barter Island to Humphrey Point east of Barter Island. The area of use may extend from Thetis Island to Flaxman Island seaward of the barrier islands.

September to October: Barrow hunters use the area circumscribed by a western boundary extending approximately 15 kilometers west of Barrow, a northern boundary 50 kilometers north of Barrow, then southeastward to a point about 50 kilometers off Cooper Island, with an eastern boundary on the east side of Dease Inlet. Occasional use may extend eastward as far as Cape Halkett.

Stipulation No. 7—Oil-Spill-Response Preparedness

Lessees must be prepared to respond to oil spills, which includes training of personnel for familiarization with response equipment and strategies, and conducting drills to demonstrate readiness. Prior to approval of exploration or development and production plans, lessees shall submit for review and approval oil-spill-contingency plans (OSCP's) in accordance with 30 CFR 250.42. The OSCP must address all aspects of oil-spill-response readiness including an analysis of potential spills and spill-response strategies; type, location, and availability of appropriate oil-spill equipment; and response times and equipment capability for the proposed activities. The plan must also address response drills and training requirements. The lessee shall conduct drills under realistic conditions to the extent necessary to demonstrate continued readiness and response capability for appropriate environmental conditions: e.g., solid-ice, open-water, and broken-ice conditions. For production operations, drills shall be conducted at least semiannually. Drills shall include deployment of onsite response equipment and additional equipment, available from a cooperative or other sources identified in the OSCP, to the extent necessary to demonstrate adequate response preparedness for the type, location, and scope of proposed activities and anticipated environmental conditions.

Stipulation No. 8—Agreement Between the United States of America and the State of Alaska

This stipulation applies to the following blocks or portions of blocks referred to in this Notice as disputed: NR 5-3, Teshekpuk, block 44; NR 5-4, Harrison Bay, blocks 1, 373, 375-376, 407-409, 416-417, 452-455, 498-500, 541-542; NR 6-3, Beechey Point, blocks 373, 472-476, 517, 519-520, 522-524, 561-562, 564, 566-569, 605-610, 652-656, 659-660, 698-701, 743-746, 788-789 , 792, 836; and NR 6-4, Flaxman Island, blocks 706-707, 755, 793, 894-896, 940-942.

This lease is subject to the "Agreement between the United States of America and the State of Alaska Pursuant to section 7 of the Outer Continental Shelf Lands Act and Alaska Statutes 38.05.137 for the Leasing of Disputed Blocks in Federal Outer Continental Shelf Oil and Gas Lease Sale 124 and State Oil and Gas Lease Sale 65" (commonly referred to as the "Agreement"), and the lessee hereby consents to every term of that Agreement. Nothing in that Agreement or this notice shall affect or prejudice the legal position of the United States in *United States of America* v. *State of Alaska*, No. 84, Original.

Any loss incurred or sustained by the lessee as a result of obtaining validation and recognition of this lease pursuant to the "Agreement," and in particular any loss incurred or sustained by the lessee as a result of conforming this lease with any and all provisions of all applicable laws of the party prevailing in *United States of America* v. *State of Alaska*, United States Supreme Court No. 84, Original, shall be borne exclusively by the lessee.

No taxes payable to the State of Alaska will be required to be paid with respect to this lease until such time as ownership of or jurisdiction over the lands subject to this lease is resolved. In the event that the lands subject to this lease or any portion of them are judicially determined to be State lands, the lessee shall pay to the State a sum equivalent to the State taxes which would have been imposed under Alaska law if the lands, or portion thereof determined to be State lands, had been undisputed State lands from the date the lease was executed, plus interest at the annual legal rate of interest provided under Alaska law accruing from the date the taxes would have become due under Alaska law. Such payment shall be in lieu of, and in satisfaction of, the actual State taxes.

Stipulation No. 9—Agreement Regarding Unitization

This stipulation applies to the following blocks or portions of blocks referred to in this Notice as disputed: NR 5-3, Teshekpuk, block 44; NR 5-4, Harrison Bay, blocks 1, 373, 375-376, 407-409, 416-417, 452, 455, 498-500, 541-542; NR 6-3, Beechey Point, blocks 373, 375, 472-476, 517, 519-520, 522-524, 561-562, 564, 566-569, 605-610, 652-656, 659-660, 698-701, 743-746, 788-789, 792, 836; and NR 6-4, Flaxman Island, blocks 706-707, 755, 793, 894-896, 940-942.

This lease is subject to the "Agreement Regarding Unitization for the Outer Continental Shelf Oil and Gas Lease Sale 124 and State Oil and Gas Lease Sale 65 Between the United States of America and the State of Alaska" and the lessee is bound by the terms of that Agreement.

14. Information to Lessees

(a) Bird and Marine Mammal Protection

Lessees are advised that during the conduct of all activities related to leases issued as a result of this sale, the lessee and its agents, contractors, and subcontractors will be subject to, among others, the provisions of the Marine Mammal Protection Act (MMPA) of 1972, as amended (16 U.S.C. 1361 et seq.); the Endangered Species Act (ESA), as amended (16 U.S.C. 1531 et seq.); and applicable International Treaties.

Lessees and their contractors should be aware that disturbance of wildlife could be determined to constitute harm or harassment and thereby be in violation of existing laws and treaties. With respect to endangered species and marine mammals, disturbance could be determined to constitute a "taking" situation. Under the ESA, the term "take" is defined to mean "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in such conduct." Under the MMPA, "take" means "harass, hunt, capture, or kill or attempt to harass, hunt, capture, or kill any marine mammal." Violations under these Acts and applicable Treaties may be reported to the National Marine Fisheries Service (NMFS) or the U.S. Fish and Wildlife Service (FWS), as appropriate.

Incidental taking of marine mammals and endangered and threatened species is allowed only when the statutory requirements of the MMPA and/or the ESA are met. Section 101(a)(5) of the MMPA allows for the taking of small numbers of marine mammals incidental to a specified activity within a specified geographical area. Section 7(b)(4) of the ESA allows for the incidental taking of endangered and threatened species under certain circumstances. If a marine mammal species is listed as endangered or threatened under the ESA, the requirements of both the MMPA and the ESA must be met before the incidental take can be allowed.

Under the MMPA, the NMFS is responsible for species of the order *Cetacea* (whales and dolphins) and the suborder *Pinnipedia* (seals and sea lions) except walrus; the FWS is responsible for the polar bears, sea and marine otters, and walrus. Procedural regulations implementing the provisions of the MMPA are found at 50 CFR part 18 for FWS, and at 50 CFR part 228 for NMFS.

Lessees are advised that specific regulations must be applied for and in place and that Letters of Authorization must be obtained by those proposing the activity to allow the incidental take of marine mammals whether or not they are endangered or threatened. The regulatory process may require one year or longer.

Of particular concern is disturbance at major wildlife concentration areas, including bird colonies, marine mammal haulout and breeding areas, and wildlife refuges and parks. Maps depicting major wildlife concentration areas in the lease area are available from the Regional Supervisor, Field Operations. Lessees are also encouraged to confer with the FWS and NMFS in planning transportation routes between support bases and leaseholdings.

Behavioral disturbance of most birds and mammals found in or near the lease area would be unlikely if aircraft and vessels maintain at least a 1-mile horizontal distance and aircraft maintain at least a 1,500-foot vertical distance above known or observed wildlife concentration areas, such as bird colonies and marine mammal haulout and breeding areas.

For the protection of endangered whales and marine mammals throughout the lease area, it is recommended that all aircraft operators maintain a minimum 1,500-foot altitude when in transit between support bases and exploration sites. Lessees and their contractors are encouraged to minimize or reroute trips to and from the leasehold by aircraft and vessels when endangered whales are likely to be in the area. Human safety should take precedence at all times over these recommendations.

(b) Areas of Special Biological and Cultural Sensitivity

Lessees are advised that certain areas are especially valuable for their concentrations of marine birds, marine mammals, fishes, or other biological resources or cultural resources. Identified areas and time periods of special biological and cultural sensitivity include:

(1) The lead system off Point Barrow, April–June;

(2) The salt marshes from Kogru Inlet to Smith Bay, June–September;

(3) The Plover Islands, June–September;

(4) The Boulder Patch in Stefansson Sound, June–October;

(5) The Camden Bay area (especially the Nuvugag and Kaninniivik hunting sites), January, April–September, November;

(6) The Canning River Delta, January–December;

(7) The Barter Island—Demarcation Point Area, January–December;

(8) The Colville River Delta, January–December;

(9) The Cross, Pole, Egg, and Thetis Islands, June–September; and

(10) The Flaxman Island waterfowl use and polar bear denning areas (Leffingwell Cabin, a National Historic Site, is located on Flaxman Island).

These areas are among areas of special biological and cultural sensitivity to be considered in the oil spill contingency plan required by 30 CFR 250.42. Lessees are advised that they have the primary responsibility for identifying these areas in their oil spill contingency plans and for providing specific protective measures. Additional areas of special biological and cultural sensitivity may be identified during review of exploration plans and development and production plans.

Consideration should be given in oil spill contingency plans as to whether use of dispersants is an appropriate defense in the vicinity of an area of special biological and cultural sensitivity. Lessees are advised that prior approval must be obtained before dispersants are used.

(c) Arctic Peregrine Falcon

Lessees are advised that the arctic peregrine falcon (*Falco peregrinus tundrius*) is listed as threatened by the U.S. Department of the Interior and is protected by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Peregrines are generally present in Alaska from mid-April to mid-September and are most disturbed by human activities in the vicinity of nest sites. The conduct of Outer Continental Shelf exploration or development and production activities will not conflict with arctic peregrine falcons if onshore facilities are located away from known

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nest sites. The lessee should contact the Fish and Wildlife Service (FWS) for information on locations of known nest sites of peregrine falcons. Aircraft should maintain at least a 1-mile horizontal and 1,500-foot vertical distance from known or potential peregrine nest sites to avoid conflict.

Lessees are advised that the FWS will review exploration plans and development and production plans submitted by lessees to the Minerals Management Service (MMS). The FWS review may determine that certain restrictions could apply to further protect arctic peregrine falcon habitats. Lessees and affected operators should establish regular communication with MMS and FWS. Human safety should take precedence at all times over these recommendations.

(d) Beaufort Sea Biological Task Force

Lessees are advised that in the enforcement of the Protection of Biological Resources stipulation, the Regional Supervisor, Field Operations (RSFO), will consider recommendations from the Beaufort Sea Biological Task Force (BTF) composed of designated representatives of the Minerals Management Service, Fish and Wildlife Service, National Marine Fisheries Service, and Environmental Protection Agency. Personnel from the State of Alaska and local communities are invited and encouraged to participate in the proceedings of the BTF. The RSFO will consult with the Beaufort Sea BTF on the conduct of biological surveys by lessees and the appropriate course of action after surveys have been conducted.

(e) Coastal Zone Management

Lessees are advised that the Alaska Coastal Management Program (ACMP) may contain policies and standards that are relevent to exploration and development and production activities associated with leases resulting from this sale.

In addition, The North Slope Borough Coastal Management Program (NSB CMP) has been incorporated into the ACMP and contains more specific policies related to energy facility siting; areas with particular geologic hazards, subsistence uses, habitats, and transportation uses; and areas which have historic or prehistoric resources.

Relevant policies are applicable to ACMP consistency reviews of postlease activities. Lessees are encouraged to consult and coordinate early with those involved in coastal management review

(f) Endangered Whales and MMS Monitoring Program

Lessees are advised that the Minerals Management Service (MMS) intends to continue its areawide endangered whale monitoring program in the Beaufort Sea during exploration activities. The program will gather information on whale distribution and abundance patterns and will provide additional assistance to determine the extent, if any, of adverse effects to the species.

The MMS will perform an environmental review for each proposed exploration plan and development and production plan, including an assessment of cumulative effects of noise on endangered whales. Should the review conclude that activities described in the plan will be a threat of serious, irreparable, or immediate harm to the species, the Regional Supervisor, Field Operations (RSFO), will require that activities be modified, or otherwise mitigated before such activities would be approved.

Lessees are futher advised that the RSFO has the authority and intends to limit or suspend any operations, including preliminary activities, as defined under 30 CFR 250.31, on a lease whenever bowhead whales are subject to a threat of serious, irreparable, or immediate harm to the species. Should the infomation obtained from MMS or lessees' monitoring programs indicate that there is a threat of serious, irreparable, or immediate harm to the species, the RSFO will require the lessee to suspend operations causing such effects, in accordance with 30 CFR 250.10. Any such suspensions may be terminated when the RSFO determines that circumstances which justified the ordering of suspension no longer exist. Notice to Lessees No. 86-2 specifies performance standards for preliminary activities.

Incidental taking of marine mammals and endangered and threatened species is allowed only when the statutory requirements of the MMPA and/or the ESA are met. Section 101(a)(5) of the MMPA allows for the taking of small numbers of marine mammals incidental to a specified activity within a specified geographical area. Section 7(b)(4) of the ESA allows for the incidental taking of endangered and threatened species under certain circumstances. If a marine mammal species is listed as endangered or threatened under the ESA, the requirements of both the MMPA and the ESA must be met before the incidental take can be allowed.

Information regarding endangered whales will be reviewed annually by the MMS in consultation with the NMFS and the State of Alaska until it is determined that annual reviews are no longer necessary. The sources of information include: The MMS monitoring program; the industry site-specific monitoring required by Stipulation No. 5 (including data obtained within 90 days of completion of a drilling season); pertinent results of the MMS environmental studies and other applicable information. The purpose of the review will be to determine whether existing mitigating measures adequately protect the endangered whales. Should the review indicate the threat of serious, irreparable, or immediate harm to the species, the MMS will take action to protect the species, including the possible imposition of a seasonal drilling restriction, or other restrictions if appropriate.

(g) Consultation with NMFS To Protect Bowhead Whales in the Spring-Lead System

The Minerals Management Service (MMS) has been advised by the National Marine Fisheries Service (NMFS) that, based on currently available information and technology, NMFS believes that development and production activities in the spring lead systems used by bowhead whales in the western part of the lease sale area along the Chukchi Sea coast and extending to the northeast of Point Barrow would likely jeopardize the continued existence of the bowhead whale population. The NMFS has advised that they will reconsider this conclusion when new information, technology, and/or measures become available or are proposed that would effectively eliminate or otherwise mitigate this potential jeopardy situation. In addition, the biological opinions are based on the assumption that there will not be any exploration within the spring-lead system. Therefore, the lessees are advised that MMS and NMFS will review exploration plans to ascertain if endangered species consultation will be required for activities planned during the spring (April 15 to June 15). Lessees are advised that specific options, alternatives, and/or mitigating measures may be developed for exploration, production, and development activities during MMS consultation with NMFS as new information or technology is developed for specific development plans, but that the possibility exists that exploration, development, and production on leases in this area may be constrained or precluded.

This ITL applies to the following blocks for the following time periods: (Official Protraction Diagram (OPD))

SPRING MIGRATION AREA

[Apr. 15 to June 15]

OPD	Blocks included
NR 4-1	770-771, 813-815, 856-858, 899-901, 942, 985-986.
NR 4-2	241-242, 283-286, 496, 538-539, 579-583, 621-625, 663-667, 705-710, 749-752, 793-794.
NR 5-1	243-254, 261-264, 287-300, 305-308, 333-338, 341-346, 348-352, 377-383, 386-390, 394-396, 421-426, 428-434, 436-440, 465-466, 468-470, 473-484, 509-510, 512-515, 519-526, 553-554, 557-561, 585-572, 597, 602-607, 611-616, 655-660, 699-704.
NR 5-2	221-224, 265-269, 309-315, 353-360, 397-405, 441-451, 485-499, 529-545, 573-591, 617-637, 661-683.
NR 6-1	682-684.

(h) Information on Oil-Spill-Cleanup Capability

Exploratory drilling, testing, and other downhole activities may be prohibited in broken-ice conditions unless the lessee demonstrates to the Regional Supervisor, Field Operations (RSFO), the capability to detect, contain, clean up, and dispose of spilled oil in broken ice. The adequacy of such oil-spill-response capability will be determined with the Best Available and Safest Technologies requirements, and will be considered at the time the oil-spill-contingency plans are reviewed. The adequacy of these plans will be determined by the RSFO prior to approval of exploration or development and production plans.

(i) Affirmative Action Requirements

Revision of Department of Labor regulations on affirmative action requirements for Government contractors (including lessees) has been deferred, pending review of those regulations (see Federal Register (FR) of August 25, 1981, at 46 FR 42865 and 42968). Should changes become effective at any time before the issuance of leases resulting from this sale, section 18 of the lease form (form MMS-2005, March 1986) would be deleted from leases resulting from this sale. In addition, existing stocks of the affirmative action forms contain language that would be superseded by revised regulations at 41 CFR 60-1.5(a)(1) and 60-1.7(a)(1). Submission of form MMS-2032 (June 1985) and form MMS-2033 (June 1985) will not invalidate an otherwise acceptable bid, and the revised regulations' requirements will be deemed to be part of the existing affirmative action forms.

(j) Navigation Safety

Operations on some of the blocks offered for lease may be restricted by designation of fairways, precautionary zones, anchorages, safety zones, or traffic separation schemes established by the U.S. Coast Guard pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.), as amended. U.S. Army Corps of Engineers permits are required for construction of any artificial islands, installations, and other devices permanently or temporarily attached to the seabed located on the OCS in accordance with section 4(e) of the OCS Lands Act, as amended.

(k) Offshore Pipelines

Lessees are advised that the Department of the Interior and the Department of Transportation have entered into a Memorandum of Understanding, dated May 6, 1976, concerning the design, installation, operation, and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

(l) State Review of Exploration Plans—Kaktovik Area

Relevant policies of the Alaska Coastal Management Program (ACMP) and the North Slope Borough Coastal Management Program are applicable to the ACMP consistency review of postlease activities. Lessees are advised that the State of Alaska will review exploration plans for consistency with the ACMP pursuant to 307(c)(3)(B) of the Coastal Zone Management Act. In the review, the State intends to consider additional measures to minimize potential impacts to marine mammals, waterfowl, and subsistence harvest activities in the Kaktovik area. These measures may include avoidance, monitoring, coordination, or drilling restrictions.

(m) State Review of Exploration Plans and Associated Oil-Spill-Contingency Plans

The State of Alaska has advised the Minerals Management Service (MMS) that, to the extent State regulations for oil-spill-contingency plans (OSCP's) are more restrictive than MMS regulations, the State will review Outer Continental Shelf plans and associated OSCP's through the consistency review process for consistency with the State standards. In addition, the contingency plans will be reviewed for use of best available and safest technology, and coordination with State and regional coastal management plans during the consistency review of individual proposals on a case-by-case basis.

(n) Availability of Bowhead Whales for Subsistence Hunting Activities

Lessees are advised that the National Marine Fisheries Service (NMFS) issued final regulations for incidental take of marine mammals, including bowhead whales in the Beaufort and Chukchi Seas on July 18, 1990. Incidental takes of bowhead whales are allowed only if Letters of Authorization (LOA's) are obtained from the NMFS pursuant to these regulations. In issuing a LOA, the NMFS must determine that proposed activities will not have an unmitigable adverse effect on the availability of the bowhead whale to meet subsistence needs by causing whales to abandon or avoid hunting areas, directly displacing subsistence users, or placing physical barriers between whales and subsistence users.

Lessees are also advised that, in reviewing proposed exploration plans which propose activities during the bowhead whale migration, the Minerals Management Service (MMS) will conduct an environmental review of the potential effects of the activities, including cumulative effects of multiple or simultaneous operations, on the availability of the bowhead whale for subsistence use. The MMS may limit or require operations be modified if they could result in significant effects on the availability of the bowhead whale for subsistence use.

The MMS and the NMFS have established procedures to coordinate results from site-specific surveys required by Sale 124 Stipulation No. 5 and NMFS LOA's and to determine if further modification to lease operations are necessary.

(o) Polar Bear Interaction

Lessees are advised that polar bears may be present in the area of operations, particularly during the solid-ice period. Lessees should conduct their activities in a manner which will limit potential encounters and interaction between lease operations and polar bears. The U.S. Fish and Wildlife Service (USFWS) is responsible for the protection of polar bears under the provisions of the Marine Mammal Protection Act of 1975, as amended. Lessees are advised to contact the USFWS regarding proposed operations and actions which might be taken to minimize interaction with polar bears.

Lessees are reminded of the provisions of the 30 CFR 250.40 regulations which prohibit discharges of

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pollutants into offshore waters. Trash, waste, or other debris which might attract polar bears or be harmful to polar bears should be properly stored and disposed of to minimize attraction of, or encounters with, polar bears.

15. Jurisdiction

The United States claims exclusive mineral resource jurisdiction over the area offered. Canada claims such jurisdiction over a portion of the area. Blocks in the area of differing claims are listed in paragraph 12 of this notice. Nothing in this notice shall affect or prejudice in any manner the position of the United States with respect to the nature or extent of the internal waters of the United States, of the territorial sea of the United States, of the high seas, or of sovereign rights or jurisdiction for any purpose whatsoever.

For any block or bidding unit in the area of U.S.-Canada difference, the procedure for bid acceptance will be different from procedures otherwise identified in this notice. After the MMS completes its bid adequacy review, it will notify bidders of the results of this review. If a bid is found inadequate, it will be rejected and the bidder's deposit will be returned with interest, as prescribed in 30 CFR 218.155. If a bid is found adequate, the bidder will be so notified; and the one-fifth bid amount will be held in an escrow account created pursuant to an agreement between the Department of the Interior and Treasury pending acceptance or rejection of the bid. Bidder notification will not constitute acceptance of the bid. No bid will be accepted until the United States determines that it is in its best interest to do so. At such time as it is so determined, the authorized officer will promptly accept the bid and require the bidder to execute the lease, pay the remaining four-fifths bonus amount and the first year's rental by electronic funds transfer (EFT), and file a bond, as prescribed by 30 CFR 256.47(f) and using the procedures described in paragraph 10.

At such time as the United States may determine that it will not be in its best interest to accept a bid, MMS shall reject such bids within the area of U.S.—Canada difference and refund the deposit with interest. Interest will accrue and be paid in accordance with 30 CFR 218.155. In any event, if the authorized officer does not accept the bid within 5 years after the date on which bids are opened, the bidder may elect, by notice delivered to the United States within 60 days after expiration of the 5-year period, to withdraw the bid. If the bid is withdrawn, the deposit and accrued interest will then be refunded promptly to the bidder. Authority for the procedures in this paragraph is in 30 CFR 218.155, 256.46(b), and 256.47(e)(2). Except as set forth in this paragraph, the procedures for submitting bids and awarding leases are the same as for all other blocks or bidding units offered in this sale.

Dated: May 20, 1991.

Barry Williamson,

Director, Minerals Management Service.

Approved:

David O'Neal,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 91-12838 Filed 5-23-91; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf Beaufort Sea; Leasing Systems, Sale 124

Section 8(a)(8) (43 U.S.C. 1337(a)(8)) of the Outer Continental Shelf Lands Act (OCSLA) requires that, at least 30 days before any lease sale, a notice be submitted to the Congress and published in the Federal Register:

1. Identifying the bidding systems to be used and the reasons for such use; and

2. Designating the tracts to be offered under each bidding system and the reasons for such designation.

This notice is published pursuant to these requirements.

1. Bidding System To Be Used

In the Outer Continental Shelf (OCS) Sale 124, blocks will be offered under the following bidding system as authorized by section 8(a)(1) (43 U.S.C. 1337(a)(1)): Bonus bidding with a fixed 12½-percent royalty.

a. Bonus Bidding with a 12½-Percent Royalty. This system is authorized by section 8(a)(1)(A) of the OCSLA. It has been chosen for all blocks proposed for the Beaufort Sea (Sale 124) because these blocks are expected to have high exploration, development, and production costs.

The Department of the Interior analyses indicate that the minimum economically developable discovery on a block in such high-cost areas under a 12½-percent royalty system would be less than for the same blocks under a 16⅔-percent royalty system. In addition, the lower royalty rate system is expected to encourage more rapid production and higher economic profits. It is not anticipated, however, that the larger cash bonus bid associated with a lower royalty rate will significantly reduce competition, since the higher costs for exploration and development are the primary constraints to competition.

2. Designation of Blocks

All blocks in this lease sale will be offered under a 12½-percent royalty system because that system is most appropriate to the resource levels and costs expected in this sale area.

Barry A. Williamson,

Director, Minerals Management Service.

Approved:

David O'Neal,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 91-12384 Filed 5-23-91; 8:45 am]

BILLING CODE 4310-MR

Modification to the Bid Adequacy Procedures

AGENCY: Minerals Management Service, Interior.

ACTION: Notification of procedural changes.

SUMMARY: The Minerals Management Service (MMS) has made a modification to its existing bid adequacy procedures for ensuring receipt of fair market value on Outer Continental Shelf (OCS) oil and gas leases. This procedure requires that all high bids submitted on drainage and development tracts eligible for comparison to the Geometric Average Evaluation Of Tract (GAEOT) must be no less than one-sixth of the Government's estimate of tract value. If the submitted high bid is less than this ratio, the tract will be removed from further consideration in the subject sale and the amount of the deposit will be returned (with interest) to the bidder. The tract will be eligible for reoffering at a future time.

DATES: This modification will be implemented beginning with the Beaufort Sea Lease Offering (June 1991).

FOR FURTHER INFORMATION CONTACT: Dr. Marshall Rose, Chief, Economic Evaluation Branch; Minerals Management Service; MS 4220; 381 Elden Street; Herndon, Virginia 22070-4817; telephone (703) 787-1536.

SUPPLEMENTARY INFORMATION: Previous changes in the February 1983 bid adequacy procedures were made in February, March, and July 1984, and May 1985. The following complete set of bid adequacy procedures incorporates those earlier changes and this most recent change.

(b) The bid adequacy procedures provide for the application of criteria in a two phased process for bid adequacy determination.

(1) Phase 1 provides for the application of criteria designed to partition blocks receiving bids into three general categories:

—Those receiving bids which the MMS has identified as being nonprospective (nonviable);

—Those where opportunities for strategic underbidding, information asymmetry, collusion, and other noncompetitive practices are greatest and where the Government has the most detailed and reliable data; and

—Those where the competitive market forces can be relied upon to assure fair market value.

Based on these categories, the following three phase 1 criteria are applied to all blocks receiving bids:

—High bids on all blocks classified by the MMS as being either development or drainage will be referred directly for further evaluation in phase 2.

—All legal high bids judged by the MMS not to be located on a viable prospect will be accepted.

—After screening for anomalous bids, all legal high bids will be accepted for wildcat and proven blocks receiving three or more bids and more than the average number of bids for viable wildcat and proven blocks receiving one or two adjusted bids and all wildcat and proven blocks receiving three or more adjusted bids, i.e., whichever is more.

Note: Anomalous bids will not be included in the bid number in either phase 1 or phase 2. Anomalous bids include all but the highest bid submitted for a block by the same company, bidding alone or jointly, and the lowest bid on a block when it is less than one-eighth of the next lowest bid. The "one-eighth rule" can exclude no more than one bid for a given block.

After applying the phase 1 criteria for bid acceptance, the Regional Director, if he should determine that an unusual bidding pattern can be documented, has the discretionary authority, after consultation and coordination with the Solicitor, to pass those blocks so identified to phase 2 for further analysis.

Phase 1 is conducted block-by-block and is generally completed within 3 days of the bid opening.

(2) Phase 2 provides for the application of criteria designed to further determine bid adequacy on a block-specific basis. All prospective wildcat and proven blocks which are not accepted in phase 1 are passed to phase 2 for further evaluation. After completion of further mapping and/or analysis in phase 2, the viability determinations of these blocks can be reviewed, using the same procedures to determine viability that were applied in phase 1. Those wildcat and proven blocks which are subsequently determined to be nonviable can be eliminated from the set of blocks undergoing a full-scale MONTCAR run and the high bids on them accepted. All of the remaining blocks, including all drainage and development blocks, receive further evaluation by comparing the high bids with the Mean Range of Values (MROV) and the Adjusted Delay Value (ADV). All blocks in phase 2 which received three or more adjusted bids and wildcat and proven blocks which received two adjusted bids will be compared to the Geometric Average Evaluation of Tract (GAEOT). On eligible drainage and development tracts, the GAEOT will be used only as a comparative bid adequacy measure when the high bid is equal to or greater than one-sixth of the MROV. If the submitted high bid is less than one-sixth, the deposit will be returned, with interest, and the tract will be removed from further consideration for the sale. The tract will become eligible for a future reoffering. In addition, if in the judgment of the Regional Director a block is or may be subject to drainage, the relevant costs due to delays associated with bid rejection are considered in the bid adequacy determination. While it is expected that most evaluations would be undertaken based upon geological and geophysical data and analyses available at the time of the sale, additional analyses can be undertaken postsale at the discretion of the Regional Director.

The bid adequacy recommendations for acceptance/rejection developed in phase 2 are normally completed sequentially over a period ranging between 3 and 60 days after the sale. The Regional Director has the discretionary authority to extend this period up to 90 days after the sale when necessary to assure a thorough evaluation.

Dated: May 20, 1991.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 91-12385 Filed 5-23-91; 8:45 am]

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Friday
May 24, 1991

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 6, 8, 15, 41, and 52
Federal Acquisition Regulation; Acquisition of Utility Services; Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 6, 8, 15, 41, and 52

[FAR Case 91-13]

Federal Acquisition Regulation; Acquisition of Utility Services

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a rewrite of the FAR coverage dealing with utility services, including the establishment of a new part 41 for this purpose. This proposed rule will replace the existing coverage now located at FAR subpart 8.3, and will provide uniform coverage applicable to all executive agencies. The existing FAR coverage at subpart 8.3 in large measure does not apply to DOD, and it also exempts agency regulatory requirements in the utility area that predated the establishment of the FAR.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before July 23, 1991 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th and F Streets NW., Room 4041, Washington, DC 20405. Please cite FAR Case 91-13 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: For information pertaining to this case, contact Mr. Edward Loeb at (202) 501-4547. For general information, contact Ms. Beverly Fayson, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAR Case 91-13.

SUPPLEMENTARY INFORMATION:

A. Background

In response to the need to provide uniform utility coverage in the FAR, a major rewrite of the existing FAR coverage was undertaken. The principle proposed changes follow:

(1) The proposed FAR part 41 would apply across the board to all executive agencies and would also enable agencies to delete most of the regulatory coverage in their agency FAR supplements. The current FAR subpart 8.3 provides that agencies' procedures predating the FAR may continue to be used. In addition, subpart 8.3 specifically exempted DOD from much of the FAR coverage.

(2) Substantial additional guidance for contracting officers in acquiring and administering utility service contracts was included.

(3) Additional definitions applicable to utility service contracts were established.

(4) Coverage was established delineating the existing statutory and delegated authority for utility service contracting.

(5) FAR clauses to be used on a "substantially the same as" basis were established.

(6) Substantive coverage providing for handling rate changes by the agencies was established. This coverage would enable agencies to handle such matters without automatically referring such matters to GSA for action.

(7) Coverage was added providing generally for the use of a Standard Form 33 to acquire utility services.

(8) "Standard" specification formats have been established for use in acquiring utility services. Such formats will not be included in the FAR but will be available for agency use.

(9) "Standard" annual utility service review formats have been established for use in acquiring utility services. Such formats will not be included but will be available for agency use.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most public utility companies are not small business.

Therefore, an Initial Regulatory Flexibility Analysis has not been prepared. However, comments are invited from small businesses and other interested parties. Such comments will be considered in the formulation of a final rule. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C. 610 (FAR Case 91-13) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 6, 8, 15, 41, and 52

Government procurement.

Dated: May 20, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 6, 8, 15, 41, and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 6, 8, 15, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 6—COMPETITION REQUIREMENTS

2. Section 6.302-1 is amended by revising paragraph (b)(3) to read as follows:

6.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

* * * * *

(b) * * *

(3) When acquiring utility services (see 41.001), circumstances may dictate that only one supplier can furnish the service (see 41.004); or when the contemplated contract is for construction of a part of a utility system and the utility company itself is the only source available to work on the system.

* * * * *

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 8.3 [8.300-8.309 Removed]

3. Subpart 8.3, consisting of sections 8.300 through 8.309, is removed and reserved.

PART 15—CONTRACTING BY NEGOTIATION

15.812-2 [Amended]

4. Section 15.812-2 is amended in paragraph (a)(3) by removing "Subpart 8.3" and inserting in its place "part 41".

PART 41—ACQUISITION OF UTILITY SERVICES

5. Part 41, consisting of sections 41.000 through 41.010, is added to read as follows:

Sec.

41.000 Scope of part.
41.001 Definitions.
41.002 Applicability.
41.003 Statutory and delegated authority.
41.004 Acquiring utility services.

Sec.

41.004-1 Policy.
41.004-2 Procedures.
41.004-3 GSA assistance and approval.
41.004-4 GSA areawide contracts.
41.004-5 Separate contracts.
41.004-6 Interagency agreements.
41.005 Pre-award contract review.
41.006 Administration.
41.006-1 Monthly and annual review.
41.006-2 Rate changes and regulatory intervention.
41.007 Contract clauses.
41.008 Utility services contract form.
41.009 Formats for utility service specifications.
41.010 Formats for annual utility service review.

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

41.000 Scope of part.

This part prescribes policies, procedures, and contract format for the acquisition of utility services. (See 41.002(b) for services that are excluded from this part.)

41.001 Definitions.

As used in this part,

Areawide contract means a contract entered into between the General Services Administration (GSA) and a utility service supplier to cover the utility service needs of Federal agencies within the franchise/service area of the supplier. Each areawide contract includes an "Authorization" form for requesting service, connection, disconnection, or change in service.

Authorization means the document executed by the ordering agency and the utility supplier to order service under that areawide contract.

Connection charge means an amount to be paid by the Government to the utility supplier for the required connecting facilities, which are installed, owned, operated, and maintained by the utility supplier (see Termination liability).

Delegated agency means an agency that has received a written delegation of authority from GSA to contract for utility services for periods not exceeding ten years (see 41.003(b)).

Federal Power and Water Marketing Agency means a governmental entity that produces, manages, transports, controls, and sells electrical and water supply service to customers.

Franchise service territory means a geographical area, defined or granted to a specific utility service supplier(s) to supply the customers in that area.

Intervention means action by GSA or a delegated agency to formally participate in a utility regulatory proceeding on behalf of all Federal agencies.

Multiple service locations means the various locations or delivery points in the utility supplier's service area to which it provides service under a single contract.

Rates includes rate schedules, riders, rules, terms and conditions of service, and other tariff and service charges.

Separate contract means a utility services contract (other than a GSA areawide contract, an authorization under an areawide contract, or an interagency agreement), to cover the acquisition of utility services at a specific delivery point(s).

Termination liability means a contingent Government obligation to pay a utility supplier the unamortized portion of a connection charge in the event the Federal Government terminates the contract before the cost of connection facilities has been recovered by the utility supplier (see Connection charge).

Utility service means a service such as furnishing electricity, natural or manufactured gas, water, sewerage, thermal energy, chilled water, steam, hot water, or high temperature hot water. The application of part 41 to other services (*e.g.*, rubbish removal, snow removal) may be appropriate when the acquisition is not subject to the Service Contract Act of 1965 (see 37.107).

41.002 Applicability.

(a) Except as provided in paragraph (b) of this section, this part applies to the acquisition of utility services for the Federal Government, including connection charges and termination liabilities.

(b) This part does not apply to—

(1) Utility services produced, distributed, or sold by another Federal agency. In those cases, agencies shall use interagency agreements (see 41.004-6);

(2) Utility services obtained by purchase, exchange, or otherwise by a Federal power or water marketing agency incident to that agency's marketing or distribution program;

(3) Cable television (CATV) and telecommunications services;

(4) Acquisition of natural or manufactured gas when purchased as a commodity;

(5) Acquisition of utilities services in foreign countries;

(6) Acquisition of rights in real property, acquisition of public utility facilities, and on-site equipment needed for the facility's own distribution system, or construction/maintenance of Federal Government-owned facilities; or

(7) Third party financed shared-savings projects authorized by 42 U.S.C. 8287; however, agencies may utilize part 41 for any energy savings or purchased utility service directly resulting from implementation of such measures during the term of the contract executed pursuant to 42 U.S.C. 8287 for periods not to exceed 25 years. "Shared-savings project" means a project to reduce energy and demand costs in existing facilities through privately financed energy efficiency and management projects.

41.003 Statutory and delegated authority.

(a) *Statutory authority.* (1) The General Services Administration (GSA) is authorized by section 201 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481) to prescribe policies and methods governing the acquisition and supply of utility services for Federal agencies. This includes related functions such as managing public utility services and representing Federal agencies in proceedings before Federal and state regulatory bodies. GSA is authorized by section 201 of the Act to contract for utility services for periods not exceeding ten years.

(2) The Department of Defense (DOD) is authorized by 10 U.S.C. 2301, 2304, and 40 U.S.C. 474(3) to acquire utility services for military facilities.

(3) The Department of Energy (DOE) is authorized by the Department of Energy Organization Act (42 U.S.C. 2751, *et seq.*) to acquire utility services. DOE is authorized by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2204) to enter into new contracts or modify existing contracts for electric services for periods not exceeding 25 years for uranium enrichment installations.

(b) *Delegated authority.* GSA has delegated its authority to enter into utility service contracts for periods not exceeding ten years to DOD and DOE, and for connection charges only to the Department of Veteran Affairs. Contracting pursuant to this delegated authority shall be consistent with the requirements of this part. Other agencies requiring utility service contracts for periods over one year, but not exceeding ten years, may request a delegation of authority from GSA at the address specified in 41.004-3(b). In keeping with its statutory authority, GSA will, as necessary, conduct reviews of delegated agencies' acquisitions of utility services to ensure compliance with the terms of the delegation and applicable laws and regulations.

41.004 Acquiring utility services.

41.004-1 Policy.

(a) Subject to paragraph (d) of this subsection, it is the policy of the Federal

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Government that agencies obtain required utility services from sources of supply which are most advantageous to the Government in terms of economy, efficiency, reliability, or service.

(b) Except for acquisitions below the small purchase limitation (see 13.000), agencies shall acquire utility services by a bilateral written contract, which must include the clauses required by 41.007, regardless of whether rates or terms and conditions of service are fixed or adjusted by a regulatory body. Agencies may not use the utility supplier's forms and clauses to avoid the inclusion of provisions and clauses required by 41.007 or by statute. (See 41.004–2(c) for procedures to be used when the supplier refuses to execute a written contract.)

(c) Specific operating and management details, such as procedures for internal agency contract assistance and review, delegations of authority, and approval thresholds, may be prescribed by an individual agency, subject to compliance with applicable statutes and regulations.

(d)(1) Section 8093 of the Department of Defense Appropriations Act of 1988, Public Law 100–202, provides that none of the funds appropriated by the Act or any other Act with respect to any fiscal year by any department, agency, or instrumentality of the United States, may be used for the purchase of electricity by the Government in any manner that is inconsistent with state law governing the providing of electric utility service, including state utility commission rulings and electric utility franchises or service territories established pursuant to state statute, state regulation, or state-approved territorial agreements.

(2) The Act does not preclude—

(i) The head of a Federal agency from entering into a contract pursuant to 42 U.S.C. 8287 (which pertains to the subject of shared energy savings including cogeneration);

(ii) The Secretary of a military department from entering into a contract pursuant to 10 U.S.C. 2394 (which pertains to contracts for energy or fuel for military installations including the provision and operation of energy production facilities); or

(iii) The Secretary of a military department from purchasing electricity from any provider when the utility or utilities having applicable state-approved franchise or other service authorizations are found by the Secretary to be unwilling or unable to meet unusual standards for service reliability that are necessary for purposes of national defense.

(3) Additionally, the head of a Federal agency may—

(i) Consistent with applicable state law, enter into contracts for the purchase or transfer of electricity to the agency by a non-utility, including a qualifying facility under the Public Utility Regulatory Policies Act of 1978;

(ii) Enter into an interagency agreement, pursuant to 41.004–6 and 17.5, with a Federal power marketing agency or the Tennessee Valley Authority for the transfer of electric power to the agency; and

(iii) Enter into a contract with an electric utility under the authority or tariffs of the Federal Energy Regulatory Commission.

(e) Prior to acquiring electric utility services on a competitive basis in an area governed by a franchise service territory, the contracting officer shall determine, with the advice of legal counsel, by a market survey or any other appropriate means, that such competition would not be inconsistent with state law governing the provision of electric utility service, including state utility commission rulings and electric utility franchises or service territories established pursuant to state statute, state regulation, or state-approved territorial agreements. Proposals from alternative electric suppliers must provide a representation that service can be provided in a manner not inconsistent with section 8093 of Public Law 100–202 (see 41.004–1(d)). The representation must be supported with appropriate legal and factual rationale.

41.004–2 Procedures.

(a) Prior to executing a utility service contract, the contracting officer shall comply with parts 6 and 7 and subsections 41.004–1 (d) and (e). In accordance with parts 6 and 7, agencies shall conduct market surveys and perform acquisition planning in order to promote and provide for full and open competition. If competition for an entire utility service is not available, the market survey may be used to determine the availability of competitive sources for certain portions of the requirement. The scope of the term "entire utility service" includes the provision of the utility service capacity, energy, water, sewage, transportation, standby or back-up service, transmission and/or distribution service, quality assurance, system reliability, system operation and maintenance, metering, and billing.

(b) In performing a market survey (see 7.101), the contracting officer shall consider, in addition to alternative competitive sources, use of the following methods:

(1) GSA areawide contracts (see 41.004–4);

(2) Separate contracts (see 41.004–5); and

(3) Interagency agreements (see 41.004–6).

(c) When a utility supplier refuses to execute a tendered contract as outlined in 41.004–1(b), the agency shall obtain a written definite and final refusal signed by a corporate officer of the supplier (or if unobtainable, documentation of any verbal refusal by a corporate officer) and transmit this document, along with statements of the reasons for the refusal and the record of negotiations, to GSA at the address specified at 41.004–3(b). Unless urgent and compelling circumstances exist, the contracting officer shall notify GSA prior to acquiring utility services without executing a tendered contract. After such notification, the agency may proceed with the acquisition and pay for the utility service under the provisions of 31 U.S.C. 1501(a)(8)—

(1) By issuing a purchase order in accordance with 13.5; or

(2) By ordering the necessary utility service and paying for it upon the presentation of an invoice, provided that a determination is approved by the head of the contracting activity that a formal contract cannot be obtained and that the issuance of a purchase order is not feasible.

(d) When obtaining service utilizing either of the methods at subparagraph (c)(1) or (c)(2) of this section, the contracting officer shall establish a utility history file on each acquisition of utility service provided by a contractor. This utility history file shall contain, in addition to applicable documents in 4.803, the following information:

(1) The unsigned, tendered contract and any related letter of transmittal;

(2) The reasons stated by the utility supplier for not executing the tendered contract, the record of negotiations, and a written definite and final refusal by a corporate officer of the supplier (or if unobtainable, documentation of the verbal refusal by a corporate officer);

(3) Services to be furnished and the estimated annual cost;

(4) Historical record of any applicable connection charges;

(5) Historical record of any applicable ongoing capital credits; and

(6) A copy of the applicable rate schedule.

(e) Determinations made and actions taken under (c) of this subsection to execute a contract, and related acquisition actions taken under this subsection, are valid for one year only. The contracting officer shall take actions to execute a bilateral written contract prior to expiration of the one-year period.

41.004–3 GSA assistance and approval.

(a) The GSA office specified in 41.004–3(b) will, upon request, provide technical and acquisition assistance, and will arrange for the furnishing of the services described in this part for any Federal agency, mixed-ownership Government corporation, the District of Columbia, the Senate, the House of Representatives, or the Architect of the Capitol (and any activity under the Architect's direction. (See 41.005, Pre-award contract review.)

(b) Except as otherwise specified in 41.003, agencies shall submit all information required under this part to the General Services Administration, Public Buildings Service, Public Utilities Division (PPU), Washington, DC 20405.

(c) When contracting for utility services meeting the criteria in this paragraph, agencies, except delegated agencies (see 41.003(b)) or agencies performing their own review pursuant to paragraph (d) of this subsection, shall obtain GSA review and approval of their prospective contract document and shall provide the information described in 41.005, if—

(1) The annual cost of the service to be acquired is estimated by the using agency, at the time of initiation of the service or annual review, to exceed $150,000 for separate contracts, or $250,000 for authorizations under an areawide contract; or

(2) A connection charge, termination liability, nonrefundable or nonrecurring service charge, or other facilities charge to be paid by the agency is estimated to exceed $75,000 for separate contracts, or $125,000 for authorizations under areawide contracts.

(d) Agencies may request, from the GSA office specified at 41.004–3(b), general authority to conduct their own pre-award contract reviews of the proposed utility contracts specified in 41.004–3(c). Such requests shall include a certification from the acquiring agency's Senior Procurement Executive that the agency has

(1) An established acquisition program;

(2) Personnel technically qualified to deal with specialized utilities problems; and

(3) The ability to accomplish its own pre-award contract review.

The request shall also include information regarding the agency's pre-award contract review procedures.

(e) Requests for review and approval of contract actions described in paragraph (c) of this section, shall contain the information required by 41.005 and shall be forwarded to GSA as early as possible, but not later than 20 working days prior to the date new services are to commence or expiration of an existing contract. If GSA does not respond to the referring agency within 20 working days after a proposed utility services contract is received for review and approval (or within a lesser period if agreed upon), the referring agency may complete negotiations and execute the contract.

(f) Agencies seeking GSA contracting assistance for utility services, shall forward such requests (see 41.005) to GSA not later than 120 days prior to the date new services are required to commence or the date of expiration of an existing contract.

41.004–4 GSA areawide contracts.

(a) GSA enters into areawide contracts (see 41.001) for use by Federal agencies in the acquisition of utility services. An agency in an area covered by an areawide contract shall acquire utility services under the areawide contract unless the agency determines that more advantageous rates or terms and conditions of service are available from another supplier under a separately negotiated contract. Upon request, the GSA office specified at 41.004–3(b) will furnish agencies with a list of the areawide contracts showing the types of utility services available and the geographical areas served. GSA will also provide a copy of any areawide contract upon request.

(b) Each areawide contract includes an authorization form for requesting service, connection, disconnection, or change in service. Upon execution of an authorization by the contracting officer, the utility service supplier is required to furnish services, without further negotiations, at the supplier's current, applicable published or unpublished rates, unless other rates, and/or terms and conditions are separately negotiated.

(c) The contracting officer shall implement the areawide contract by executing the authorization, and attaching it to a Standard Form (SF) 26, Award/Contract, along with any supplemental agreements on connection charges, special facilities, or service arrangements to be paid by the agency. The contracting officer shall also attach any specific fiscal, operational, and administrative requirements of the agency, applicable rate schedules, technical items, maps or drawings of delivery points, details on Government ownership, maintenance, or repair of facilities, and other information deemed necessary to fully define the service conditions in the authorization/contract.

(d) Agencies shall provide GSA at the address specified at 41.004–3(b) a copy of each SF 26 and executed authorization issued under an areawide contract within 30 days after execution.

41.004–5 Separate contracts.

(a) In the absence of an areawide contract or interagency agreement (see 41.004–6), agencies shall acquire utility services by separate contract subject to the requirements and limitations of 41.004–1, 41.004–3(c), and agency contracting authority (see 41.004–3(d)), 41.008, and 41.009.

(b) Subject to the procedures contained in 41.004–2, when an agency is entering into a separate contract, the contracting officer shall document the contract file with the following information:

(1) The number of available suppliers;

(2) Any special equipment, service reliability, or facility requirements and related costs;

(3) The utility supplier's rates, connection charges, and termination liability;

(4) Total estimated contract value (including costs in paragraphs (b) (2) and (3) of this section;

(5) Any technical or special contract terms required;

(6) Any unusual characteristics of services required; and

(7) The utility's willingness to wheel or otherwise transport utility service.

(c) When requesting GSA to enter into a separate contract, the requesting agency shall furnish the technical and acquisition data specified in 41.005(b), 41.004–5(b), and such other technical data as GSA may request to complete the contract.

(d) A contract exceeding a one-year period, but not exceeding ten years (except pursuant to 41.003), may be justified, and is usually required, where any of the following circumstances exist:

(1) The Government will obtain lower rates, larger discounts, or more favorable terms and conditions of service;

(2) A proposed connection charge, termination liability, or any other facilities charge to be paid by the Federal Government will be reduced or eliminated; or

(3) The utility service supplier refuses to render the desired service except under a contract exceeding a one-year period.

41.004–6 Interagency agreements.

Agencies shall use interagency agreements (*e.g.*, consolidated purchase, joint use, or cross-service agreements) to acquire utility services or facilities from

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other Government agencies and shall comply with the policies and procedures at Subpart 17.5, Interagency Acquisitions Under the Economy Act.

41.005 Pre-award contract review.

(a) Where pre-award contract review is required, the agency shall provide the following information to GSA with the proposed contract document sufficiently in advance of award to permit a complete review. Requests for GSA review, approval, or assistance shall be forwarded as provided in 41.004-3(e), and shall include the following information:

(1) A technical description or specification of the type, quantity, and quality of service required, and a delivery schedule;

(2) A copy of any service proposal or proposed contract;

(3) Copies of all current published or unpublished rates of the utility supplier;

(4) Identification of any unusual factors affecting the acquisition; and

(5) Identification of all available sources or methods of supply, an analysis of the cost effectiveness of each, and a statement of the ability of each source to provide the required services, including the location and a description of each available supplier's facilities at the nearest point of service.

(b) For new or initial utility services or suppliers, the agency shall furnish the information in paragraph (a) of this section and the following as applicable:

(1) The date initial service is required;

(2) For the first 12 months of full service, estimated maximum demand, monthly consumption, annual cost of the service, and connection charges to be paid by the agency;

(3) Known or estimated time schedule for growth to ultimate requirements;

(4) Estimated ultimate maximum demand and ultimate monthly consumption;

(5) A simple schematic diagram or line drawing showing the meter locations, the location of the new utility facilities to be constructed on Federal property by the Federal agency, and any required new connection facilities on either side of the delivery point to be constructed by the utility supplier to provide the new services;

(6) Accounting and appropriation data to cover the required utility services and any connection charges required to be paid by the agency receiving such utility services; and

(7) The following data concerning proposed facilities and related charges or costs:

(i) Proposed refundable or nonrefundable connection charge, termination liability, or other facilities charge to be paid by the agency, together with a description of the supplier's proposed facilities and estimated construction costs, and its rationale for the charge;

(ii) A written, signed statement by the supplier that any proposed connection charge is not in excess of the charge that other customers would be required to pay for like facilities under similar class and conditions of service; and

(iii) A copy of the acquiring agency's estimate to make its own connection to the supplier's facilities through use of its own resources or by separate contract. When feasible, the acquiring agency shall provide its estimates to construct and operate its own utility facilities in lieu of participating in a cost-sharing construction program with the proposed utility supplier.

(c) For existing utility services or suppliers, the agency shall furnish GSA the information in paragraph (a) of this section and the following, as applicable:

(1) A copy of the most recent 12-month's service invoices;

(2) A tabulation, by month, for the most recent 12 months, showing the actual utility demands, consumption, connection charges, fuel adjustment charges, and the average monthly cost per unit of consumption;

(3) An estimate, by month, for the next 12 months showing the estimated maximum demands, monthly consumption, annual cost of the services, and any connection charges to be paid;

(4) Accounting and appropriation data to cover the costs for the continuation of utility services; and

(5) For electric connection contracts, a statement whether the transformer, or other system components, on either side of the delivery point is owned by the Federal agency or the utility supplier, and if the metering is on the primary or secondary side of the transformer.

(d) Agencies conducting their own pre-award contract reviews shall establish appropriate agency procedures.

41.006 Administration.

41.006-1 Monthly and annual review.

Agencies shall review (a) utility service invoices on a monthly basis; and (b) each contract, authorization, purchase order, or other written request for service exceeding the small purchase dollar limitation on an annual basis. The purposes of such review are to ensure that the utility supplier is furnishing the services to each facility under the utility's most economical, applicable rate and to examine utility commercial markets for advantageous competitive resolicitations. The annual review shall be based upon the facility's usage, conditions, and characteristics of service, at each individual delivery point, for the most recent 12 months. If a change in rate is appropriate, the Federal agency shall request the supplier to make such rate change immediately.

41.006-2 Rate changes and regulatory intervention.

(a) When a supplier proposed a change in rates or terms and conditions of service to the Government, the agency shall promptly determine whether the proposed change is reasonable, justified, and not discriminatory.

(b) When a regulated supplier proposes changes in rates or terms and conditions of service that may be of interest to other Federal agencies, and intervention before a regulatory body is considered justified, the matter shall be referred to GSA. The agency may request from GSA a delegation of authority for the agency to intervene on behalf of the consumer interests of the Federal Executive agencies.

(c) If a regulatory body approves a utility supplier's request for rate change, pursuant to 52.241-6, Change in Rates or Terms and Conditions of Service for Regulated Suppliers, any rate change shall be made a part of the contract by contract modification. The approved applicable rate shall be effective on the date determined by the regulatory body and resulting rates and charges shall be paid promptly to avoid late payment, provisions. Copies of the modification containing the utility supplier's approved rate change shall be sent to the agency's paying office (see 41.006-1).

(d) When the utility supplier is not regulated and the rates, terms, and conditions of service are subject to negotiation pursuant to the clause at 52.241-7, Change in Rates or Terms and Conditions of Service for Unregulated Suppliers, any rate change shall be made a part of the contract by contract modification, with copies sent to the agency's paying office.

41.007 Contract clauses.

(a) Because the terms and conditions under which utility suppliers furnish service may vary from area to area, the differences may influence the terms and conditions appropriate to a particular utility's contracting situation. To accommodate requirements that are peculiar to the contracting situation, this section prescribes clauses on a "substantially the same as" basis (see 52.101) which permits the contracting officer to prepare and utilize variations of the prescribed provision and clauses, in accordance with agency procedures.

(b) The contracting officer shall insert in solicitations and contracts for utility services clauses substantially the same as the following:

(1) The clause at 52.241-1, Conflicts;

(2) The clause at 52.241-2, Scope and Duration of Contract;

(3) The clause at 52.241-3, Change in Class of Service;

(4) The clause at 52.241-4, Contractor's Facilities; and

(5) The clause at 52.241-5, Service Provisions.

(c) The contracting officer shall insert a clause substantially the same as the clause at 52.241-6, Change in Rates or Terms and Conditions of Service for Regulated Suppliers, in solicitations and contracts for utility services when the utility supplier is subject to regulatory body.

(d) The contracting officer shall insert a clause substantially the same as the clause at 52.241-7, Change in Rates or Terms and Conditions of Service for Unregulated Suppliers, in solicitations and contracts for utility services when the utility supplier is not subject to a regulatory body.

(e) The contracting officer shall insert a clause substantially the same as the clause at 52.241-8, Connection Charge, when a connection charge is required to be paid by the Government to compensate the contractor for furnishing additional facilities necessary to supply service. When conditions require the incorporation of a nonrecurring, nonrefundable service charge or a termination liability, see paragraphs (f) and (i) of this section.

(f) The contracting officer shall insert a clause substantially the same as the clause at 52.241-9, Termination Liability, when payment is to be made to the contractor upon termination of service in lieu of a connection charge upon completion of the facilities.

(g) The contracting officer shall insert a clause substantially the same as the clause at 52.241-10, Multiple Service Locations, as defined in 41.001, when providing for possible alternative service locations is required.

(h) The contracting officer shall insert a clause substantially the same as the clause at 52.241-11, Electric Service Territory Compliance Representation, when proposals from alternative electric suppliers are sought.

(i) The contracting officer shall insert a clause substantially the same as the clause at 52.241-12, Nonrefundable, Nonrecurring Service Charge, when the Government is required to pay a nonrefundable, nonrecurring membership fee, a charge for initiation of service, or a contribution for the cost of facilities construction. The Government may provide for inclusion of such agreed amount or fee as a part of the connection charge, a part of the initial payment for services, or as periodic payments to fulfill the Government's obligation.

(j) The contracting officer shall insert a clause substantially the same as the clause at 52.241-13, Capital Credits, when the Federal Government is a member of a cooperative and is entitled to capital credits.

41.008 Utility services contract form.

The Standard Form (SF) 33, Solicitation, Offer and Award, prescribed in 53.214(c) and illustrated in 53.301-33, shall be used when contracting for utility services unless

(a) An areawide contract (see 41.004-4(c)) is utilized, or

(b) A purchase order form is authorized by this regulation. The contracting officer shall incorporate the applicable rate schedule to each contract, purchase order or modification.

41.009 Formats for utility service specifications.

(a) The followng specification formats for use in acquiring utility services are available from the address specified at 41.004-3(b) and may be used and modified at the agency's discretion:

(1) Electric service;

(2) Water service;

(3) Steam service;

(4) Sewage service; and

(5) Natural gas service.

(b) Contracting officers may modify the specification format referenced in paragraph (a) of this section and attach technical items, details on Government ownership of facilities and maintenance or repair obligations, maps or drawings of delivery points, and other information deemed necessary to fully define the service conditions.

(c) The specifications and attachments (see paragraph (b) of this section) shall be inserted in section C of the utility service solicitation and contract.

41.010 Formats for annual utility service review.

(a) Formats for use in conducting annual reviews of the following utility services are available from the address specified at 41.004-3(b) and may be used at the agency's discretion:

(1) Electric service;

(2) Gas service; and

(3) Water and sewage service.

(b) Contracting officers may modify the annual utility service review format as necessary to fully cover the service used.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.208-3 [Removed]

6. Section 52.208-3 is removed and reserved.

7. Sections 52.241-1 through 52.241-13 are added to read as follows:

52.241-1 Conflicts.

As prescribed in 41.007(b)(1), insert a clause substantially the same as the following:

Conflicts (Date)

To the extent of any inconsistency between the terms of this contract (including the specifications) and any rate schedule, rider, or exhibit incorporated in this contract by reference or otherwise, or any of the Contractor's rules and regulations, the terms of this contract shall control.

(End of clause)

52.241-2 Scope and Duration of Contract.

As prescribed in 41.007(b)(2), insert a clause substantially the same as the following:

Scope and Duration of Contract (Date)

(a) For the period (date) to (date), the Contractor agrees to furnish and the Government agrees to purchase (specify type) utility services in accordance with the applicable tariff(s), rules, and regulations as approved by the applicable governing regulatory body and as set forth in the contract.

(b) It is expressly understood that neither the Contractor nor the Government is under any obligation to continue any services beyond the term of this contract.

(c) The Contractor shall provide the Government one complete set of rates, terms, and conditions of service which are in effect as of the date of this contract and any subsequently approved contractor shall also, concurrently with filing with the regulatory body, furnish the Government proposed revisions in rates or terms and conditions of service.

(d) The Contractor shall be paid at the applicable rate(s) under the tariff and the Government shall be liable for the minimum monthly charge, if any, specified in this contract commencing with the period in which service is initially furnished and continuing for the term of this contract. Any minimum monthly charge specified in this contract shall be equitably prorated for the periods in which commencement and termination of this contract become effective.

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(End of clause)

52.241-3 Change in Class of Service.

As prescribed in 41.007(b)(3), insert a clause substantially the same as the following:

Change in Class of Service. (Date)

(a) In the event of a change in the class of service, such service shall be provided at the contractor's lowest available rate schedule applicable to the class of service furnished.

(b) Where the Contractor does not have on file with the regulatory body approved rate schedules applicable to services provided, no clause in this contract shall preclude the parties from negotiating a rate schedule applicable to the class of service furnished.

(End of clause)

52.241-4 Contractor's Facilities.

As prescribed in 41.007(b)(4), insert a clause substantially the same as the following:

Contractor's Facilities (Date)

(a) The Contractor, at its expense, shall furnish, install, operate, and maintain all facilities required to furnish service hereunder to, and measure such service at the point of delivery specified in the Service Specifications. Title to all such facilities remain with the Contractor and the Contractor shall be responsible for all loss or damage to such facilities.

(b) Notwithstanding any terms expressed in thi clause, the Contractor shall obtain approval from the Contracting Officer prior to any equipment installation, construction, or removal. The Government hereby grants to the Contractor, free of any rental or similar charge, but subject to the limitations specified in this contract, a revocable permit or license to enter the service location for any proper purpose under this contract. This permit or license includes use of the site or sites agreed upon by the parties hereto for the installation, operation, and maintenance of the facilities of the Contractor required to be located upon Government premises. All taxes and other charges in connection therewith, together with all liability of the contractor in construction, operation, or maintenance of such facilities, shall be assumed by the Contractor.

(c) Authorized representatives of the Contractor will be allowed access to the facilities on Government premises at reasonable times to perform the obligations of the Contractor regarding such facilities. It is expressly understood that the Government may limit or restrict the right of access herein granted in any manner considered necessary for national security.

(d) Such facilities shall be removed and Government premises restored to their original condition by the contractor at its expense within a reasonable time after the Government revokes the termination of this contract. In the event such termination of this contract is due to the fault of the Contractor, such facilities may be retained in place at the option of the Government until service comparable to that provided for hereunder is obtained elsewhere.

(End of clause)

52.241-5 Service Provisions.

As prescribed in 41.007(b)(5), insert a clause substantially the same as the following:

Service Provisions (Date)

(a) *Measurement of service.* (1) All service furnished by the Contractor shall be measured by suitable metering equipment of standard manufacture, to be furnished, installed, maintained, calibrated, and read by the Contractor at its expense. When more than a single meter is installed at the service location, the readings thereof shall be billed conjunctively. In the event any meter fails to register (or registers incorrectly) the service furnished, the parties shall agree upon the length of time of meter malfunction and the quantity of service delivered during such period of time. An appropriate adjustment shall be made to the next invoice for the purpose of correcting such errors. However, any meter which registers not more than _____ percent slow or fast shall be deemed correct.

(2) The Contractor shall read all meters at periodic intervals of approximately 30 days or in accordance with the policy of the cognizant regulatory body. All billings based on meter readings of less than _____ days or more than _____ days shall be prorated accordingly.

(b) *Meter test.* (1) The Contractor, at its expense, shall periodically inspect and test Contractor-installed meters at intervals not exceeding one year or at intervals in accordance with the policy of the cognizant regulatory body. The Government will have the right to have representation during the inspection and test.

(2) At the written request of the Contracting Officer, the Contractor shall make additional tests of any or all such meters in the presence of government representatives. The cost of such additional tests shall be bourne by the Government if the percentage of errors is found to be not more than _____ percent slow or fast.

(3) No meter shall be placed in service or allowed to remain in service which has an error in registration in excess of _____ percent under normal operating conditions.

(c) *Change in volume or character.* Reasonable notice shall be given by the Contracting Officer to the Contractor regarding any material changes anticipated in the volume or characteristics of the utility service required at each location.

(d) *Continuity of service and consumption.* (1) The Contractor shall use reasonable diligence to provide a regular and uninterrupted supply of service at the service location, but shall not be liable for damages, breach of contract or otherwise to the Government for failure, suspension, diminution, or other variations of service occasioned by or in consequence of any cause beyond the control of the Contractor, including but not limited to acts of God or of the public enemy, fires, floods, earthquakes, or other catastrophe, strikes, or failure or breakdown of transmission or other facilities; Provided that when any such failure, suspension, diminution, or other variation of service shall aggregate more than one hour during any period hereunder, an equitable adjustment shall be made in the monthly billing specified in this contract (including the minimum monthly charge).

(2) In the event the Government is unable to operate the service location in whole or in part for any cause beyond its control, including but not limited to acts of God or of the public enemy, fires, floods, earthquakes, other catastrophe, or strikes, an equitable adjustment shall be made in the monthly billing specified in this contract (including the minimum monthly charge) if the period during which the Government is unable to operate such service location, in whole or in part, shall exceed 15 days during any period hereunder.

(End of clause)

52.241-6 Change in Rates or Terms and Conditions of Service for Regulated Suppliers.

As prescribed in 41.007(c), insert a clause substantially the same as the following:

Change in Rates or Terms and Conditions of Service for Regulated Suppliers (Date)

(a) Services furnished under this contract are subject to regulation by a regulatory body. The Contractor agrees to give the Contracting Officer written notice of the filing of an application for change in rates or terms and conditions of service concurrently with the filing of the application. Such notices shall fully describe the proposed change. If, during the term of this contract, the regulatory body having jurisdiction approves any changes, the Contractor shall forward to the Contracting Officer a copy of such changes within 15 days after the effective date thereof. The Contractor agrees to continue furnishing service under this contract in accordance with the amended tariff, and the Government agrees to pay such service at the higher or lower rates as of the date when such rates are made effective.

(b) The Contractor hereby represents and warrants that currently and during the life of this contract the applicable published and unpublished rate schedule(s) shall not be in excess of the lowest published and unpublished rate schedule(s) available to any other customers of the same class under similar conditions of use and service.

(c) In the event that the regulatory body promulgates any regulation concerning matters other than rates which affects this contract, the Contractor shall immediately provide a copy to the Contracting Officer. The Government shall not be bound to accept any new regulation inconsistent with Federal laws or regulations.

(d) Any changes to rates or terms and conditions of service shall be made a part of this contract by the issuance of a contract modification. The effective date of the change shall be the effective date by the regulatory body.

(End of clause)

52.241-7 Change in Rates or Terms and Conditions of Service for Unregulated Suppliers.

As prescribed in 41.007(d), insert a clause substantially the same as the following:

Change in Rates or Terms and Conditions of Service for Unregulated Suppliers (Date)

(a) After (insert date), either party may request a change in rates or terms and conditions of service, unless otherwise provided in this contract. Both parties agree to enter in negotiations concerning such changes upon receipt of written request detailing the proposed change and specifying the reasons for the proposed changes.

(b) The effective date of any change shall be as agreed to by the parties. The Contractor hereby represents and warrants that the rates so negotiated will not be in excess of published and unpublished rates charged to any other customer of the same class under similar terms and conditions of use and service.

(c) The failure of the parties to agree upon any change after a reasonable period of time, shall be a dispute under the Disputes clause of this contract.

(d) Any changes agreed to rates, terms, or conditions as a result of such negotiations shall be made a part of this contract by the issuance of a contract modification.

(End of clause)

52.241-8 Connection Charge.

As prescribed in 41.007(e), insert a clause substantially the same as the following:

Connection Charge (Date)

(a) *Charge.* In consideration of the Contractor furnishing and installing at its expense the new connection facilities described herein, the Government shall pay the Contractor a connection charge. The payment shall be in the form of progress payments, advance payments or as a lump sum, as agreed to by the parties and as permitted by applicable law. The total amount payable shall be either the estimated cost of $_____ less the agreed to salvage value of $_____, or the actual cost less the salvage value, whichever is less. As a condition precedent to final payment, the Contractor shall execute a release of any claims against the Government arising under or by the virtue of such installation.

(b) *Ownership, operation, and maintenance of new facilities to be provided.* The facilities to be supplied by the Contractor under this clause, notwithstanding the payment by the Government of a connection charge, shall be and remain the property of the Contractor and shall, at all times during the life of this contract or any renewals thereof, be operated and maintained by the Contractor at its expense. All taxes and other charges in connection therewith, together with all liability arising out of the construction, operations, or maintenance of such facilities, shall be the obligation of the Contractor.

(c) *Credits.* The Contractor agrees to allow the Government, on each monthly bill for service furnished under this contract to the Service Location, a credit of _____ percent of the amount of each such bill as rendered until the accumulation of credits shall equal the amount of such connection charge, provided that the Contractor may at any time allow a credit up to 100 percent of the amount of each such bill.

(2) In the event the Contractor, before any termination of this contract but after completion of the facilities provided for in this clause, serves any customer other than the Government (regardless of whether the Government is being served simultaneously, intermittently, or not at all) by means of these facilities, the Contractor shall promptly notify the Government in writing. Unless otherwise agreed by the parties in writing at that time, the contractor shall promptly accelerate the credits provided for under subparagraph (c)(1) of this clause, up to 100 percent of each monthly bill until there is refunded the amount that reflects the Government's connection costs for that portion of the facilities used in serving others.

(3) In the event the Contractor terminates this contract, or defaults in performance, prior to full credit of any connection charge paid by the Government, the Contractor shall pay to the Government an amount equal to the uncredited balance of the connection charge as of the date of the termination or default.

(d) *Termination before completion of facilities.* The Government reserves the right to terminate this contract at any time before completion of the facilities with respect to which the Government is to pay a connection charge. In the event the Government exercises this right, the Contractor shall be paid the cost of any work accomplished prior to the time of termination by the Government, plus the cost of removal, less the salvage value.

(e) *Termination after completion of facilities.* In the event the Government terminates this contract after completion of the facilities with respect to which the Government is to pay a connection charge, but before the crediting in full by the Contractor of any connection charge in accordance with the terms of this contract, the Contractor shall have the following options:

(1) To retain in place for twelve months or more after the notice of termination by the Government such facilities on condition that:

(i) If, during such twelve-month period, the Contractor serves any other customer by means of such facilities, the Contractor, shall, in lieu of allowing credits, pay the Government during such period installments in like amount, manner, and extent as the credit provided for under paragraph (c) of this clause before such termination, and

(ii) Immediately, after such twelve-month period the Contractor shall promptly pay in full to the Government the uncredited balance of the connection charge.

(2) To remove such facilities at the Contractor's own expense within twelve months after the effective date of the termination by the Government; Provided that if the Contractor elects to remove such facilities, the Government shall then have the option of purchasing such facilities at the agreed salvage value set forth herein; and provided further, that the Contractor shall, at the direction of the Government, leave in place such facilities located on Government property which the Government elects to purchase at the agreed salvage value.

(End of clause)

52.241-9 Termination Liability.

As prescribed in 41.007(f), insert a clause substantially the same as the following:

Termination Liability (Date)

(a) If the Government discontinues utility service under this contract before completion of the facilities cost recovery period specified in paragraph (b) of this clause, in consideration of the Contractor furnishing and installing at its expense, the new facilities described herein, the Government shall pay termination charges, calculated as set forth in this clause.

(b) *Facility cost recovery period.* The period of time, not exceeding the term of this contract, during which the net cost of the new facilities, shall be recovered by the contractor is _____ months. [*Insert negotiated duration.*]

(c) *Net facility cost.* The cost of the new facilities, less the agreed upon salvage value of such facilities, is—

$_____. [*Insert appropriate dollar amount.*]

(d) *Monthly facility cost recovery rate.* The monthly facility cost recovery rate which the Government shall pay the contractor whether or not service is received is—

$_____. [*Divide the net facility cost in paragraph (c) of this clause by the facilities' cost recovery period in paragraph (b) of this clause and insert the resultant figure.*]

(e) *Termination charges.*

Termination charges = [*Multiply the remaining months of the facilities' cost recovery period specified in paragraph (b) of this clause by the monthly facility cost recovery rate in paragraph (d) of this clause.*]

(End of clause)

52.241-10 Multiple Service Locations.

As prescribed in 41.007(g), insert a clause substantially the same as the following:

Multiple Service Locations (Date)

(a) At any time by written order, the Contracting Officer may designate any location within the service area of the Contractor at which utility service shall commence or be discontinued. The contract shall be modified in writing, by adding to or deleting from the Service Specifications, the name and location of the service, specifying any different rate, the point of delivery, different service specifications, and any other terms and conditions.

(b) The minimum monthly charge specified in this contract shall be equitably prorated from the period in which commencement or discontinuance of service at any service location designated under the Service Specifications shall become effective.

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(End of clause)

52.241-11 Electric Service Territory Compliance Representation.

As prescribed in 41.007(h), insert a representation substantially the same as the following:

Public Law 100-202, Electric Service Territory Compliance Representation (Date)

(a) The Offeror represents as part of its offer that the Offeror's sale of electricity in accordance with the terms and conditions of this solicitation is [ ] is not [ ] consistent with Public Law 100-202, section 8093.

(b) The Offeror's supporting rationale is as follows:

_____

_____

_____

_____

(End of clause)

52.241-12 Nonrefundable, Nonrecurring Service Charge.

As prescribed in 41.007(i), insert a clause substantially the same as the following:

Nonrefundable, Nonrecurring Service Charge (Date)

The Government may pay a nonrefundable, nonrecurring charge when the rules and regulations of a supplier require that a customer pay (1) a charge for the initiation of service, (2) a contribution in aid of construction, or (3) a nonrefundable membership fee. This charge may or may not be in addition to or in lieu of a connection charge. Therefore, there is hereby added to the Contractor's schedule a nonrefundable, nonrecurring charge for _____ in the amount of $_____ dollars payable

_____

(specify dates or schedules)—

(End of clause)

52.241-13 Capital Credits.

As prescribed in 41.007(j), insert a clause substantially the same as the following:

Capital Credits (Date)

(a) The Government is a member of the (cooperative name) _____, and as any other member, is entitled to capital credits consistent with the by-laws of the cooperative, which states the obligation of the Contractor to pay capital credits and which specifies the method and time of payment.

(b) Within 60 days after the close of the Contractor's fiscal year, the Contractor shall furnish to the Contracting Officer, or the designated representative of the Contracting Officer, in writing, a list of accrued credits by contract number, year, and delivery point. Also, the Contractor shall state the amount of capital credits to be paid to the Government and the date the payment is to be made.

(c) Upon termination or expiration of this contract, unless the Government directs that unpaid capital credits are to be applied to another contract, the Contractor shall make payment to the Government for the unpaid credits.

(d) Payment of capital credits will be made by certified check, payable to the Treasurer of the United States; and forwarded to the Contracting Officer at _____, unless otherwise directed in writing by the Contracting Officer. Checks shall cite the current or last contract number and indicate whether the check is partial or final payment for all capital credits accrued.

(End of clause)

[FR Doc. 91-12245 Filed 5-23-91; 8:45 am]

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S.J. Res. 134/Pub. L. 102–48

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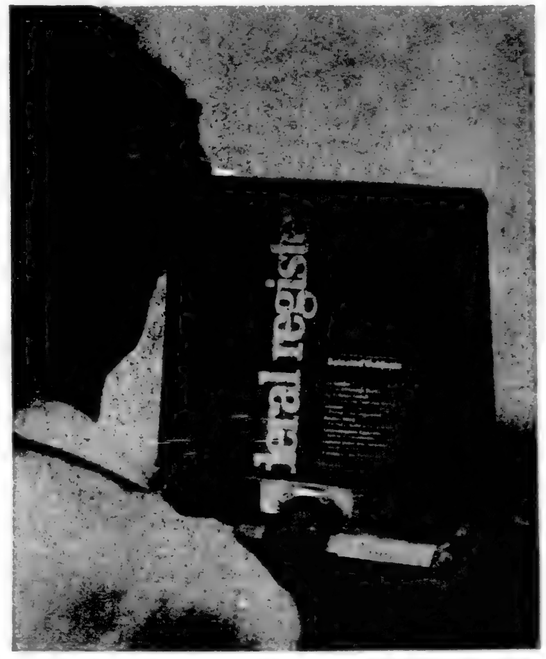

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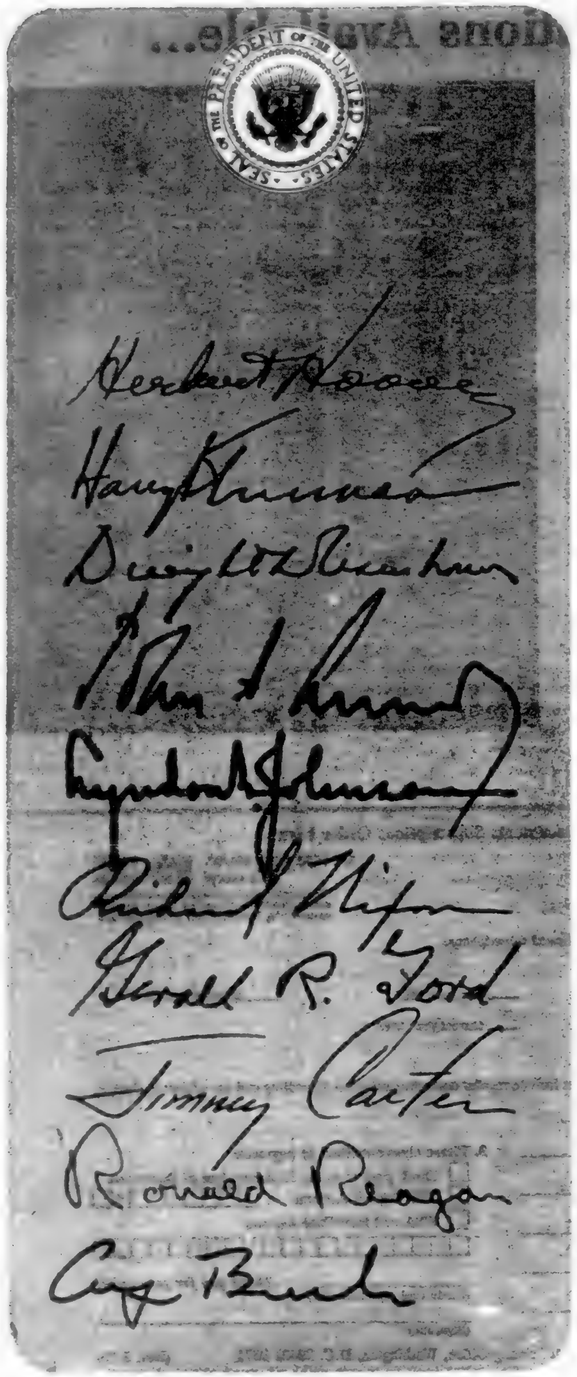

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Presidential Documents

Title 3—

The President

Memorandum of May 14, 1991

Waiver of Limitation With Respect to End Strength Level of U.S. Armed Forces in Japan for Fiscal Year 1991

Memorandum for the Secretary of Defense

Consistent with section 8105(d)(2) of the Department of Defense Appropriation Act, 1991 (Public Law 101–511; 104 Stat. 1856), I hereby waive the limitation in section 8105(b) which states that the end strength level for each fiscal year of all personnel of the Armed Forces of the United States stationed in Japan may not exceed the number that is 5,000 less than such end strength level for the preceding fiscal year, and declare that it is in the national interest to do so.

You are authorized and directed to inform the Congress of this waiver and of the reasons for the waiver contained in the attached justification, and to publish this memorandum in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, May 14, 1991.

Justification Pursuant to Section 8105(d)(2) of the Department of Defense Appropriations Act, 1991 (Public Law No. 101–511; 104 Stat 1856)

In January of this year the Department of Defense signed a new Host Nation Support Agreement with the Government of Japan in which that government agreed to pay all utility and Japanese labor costs incrementally over the next five years (worth $1.7 billion). Because United States forward deployed forces stationed in Japan have regional missions in addition to the defense of Japan, we did not seek to have the Government of Japan offset all of the direct costs incurred by the United States related to the presence of all United States military personnel in Japan (excluding military personnel title costs).

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Rules and Regulations

Federal Register
Vol. 56, No. 102
Tuesday, May 28, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; TIL-1]

Truth in Lending; Update of Official Staff Commentary

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Official staff interpretation; correction.

SUMMARY: The Board is correcting an error in the final revisions to the official staff commentary to Regulation Z (Truth in Lending) which appeared in the **Federal Register** on April 4, 1991.

FOR FURTHER INFORMATION CONTACT: Michael Bylsma at (202) 452–3667. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson at (202) 452–3544.

SUPPLEMENTARY INFORMATION: The revisions to the official staff commentary to Regulation Z, published in the **Federal Register** on April 4, 1991, contained certain errors that were corrected by the **Federal Register** in a notice published on May 14, 1991 (56 FR 22200). A final correction relating to changes in the terms of a home equity plan (changing the word "before" to "after"), which was not included by the **Federal Register** in the May 14 correction notice, appears below.

EFFECTIVE DATE: Effective April 1, 1991, but compliance optional until October 1, 1991.

1. The following correction is made to the revisions to the official staff commentary to Regulation Z (Supplement I to part 226) which appeared in the **Federal Register** on April 4, 1991 (56 FR 13751). On page 13755, in the third column, under comment 6, *Changes to home equity plans entered into on or after November 7, 1989.*, the first sentence is corrected to read as follows:

* * * * *

6. *Changes to home equity plans entered into on or after November 7, 1989.* Section 226.9(c) applies when, by written agreement under § 226.5b(f)(3)(iii), a creditor changes the terms of a home equity plan—entered into on or after November 7, 1989—at or before its scheduled expiration, for example, by renewing a plan on terms different from those of the original plan. * * *

Board of Governors of the Federal Reserve System, May 21, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91–12468 Filed 5–24–91; 8:45 am]

BILLING CODE 6210–01–M

12 CFR Part 271

[Docket No. R-0725]

Federal Open Market Committee; Rules Regarding Availability of Information

AGENCY: Federal Open Market Committee, FRS.

ACTION: Final Rule.

SUMMARY: The Federal Open Market Committee ("Committee") has amended its Rules Regarding Availability of Information to conform its provisions regarding fees to the requirements of the Freedom of Information Reform Act. The new fee schedule is set out in "Appendix A" and reflects the direct costs to the Committee to conduct searches, review documents, and copy documents in response to requests made under the Freedom of Information Act. In addition, these amendments update other portions of the Rules.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Normand R.V. Bernard, Deputy Secretary, Federal Open Market Committee (202/452-3606); or Stephen L. Siciliano, Special Assistant to the General Counsel, Board of Governors of the Federal Reserve System (202/452-3920); or for the hearing impaired *only*, Telecommunications Device for the Deaf ("TDD"), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Committee last amended its Rules Regarding Availability of Information in 1977 (42 FR 13299, March 10, 1977). The Freedom of Information Reform Act of 1986 (Pub. L. No. 99-570) ("FOI Reform Act") requires each federal agency to "promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests..." under the Freedom of Information Act ("FOIA"). These regulations must conform to guidelines issued by the Office of Management and Budget ("OMB"). (52 FR 10017, March 27, 1987.) The FOI Reform Act requires that the fees charged provide only for the recovery of the direct costs of search, review, and duplication. (5 U.S.C. 552(a)(4)(A)(iv)). In conformance with that Act, the Committee published a proposed fee schedule on February 13, 1991. (56 FR 5776)

In addition to conforming the Committee's fee procedures to the FOI Reform Act, the Committee proposed technical changes to update provisions of its Rules Regarding Availability of Information ("Rules"). In particular, modified definitions were proposed for "Records of the Committee" and "Search".

The Committee also proposed changes to § 271.6 of its rules to conform provisions of that section to changes in statutory exemptions from the disclosure requirements of FOIA that have been enacted since the Committee's Rules were last published. Changes were also proposed to § 271.5 to clarify its scope by referring in § 271.5(b)(3) to foreign exchange and domestic securities markets rather than only to securities markets.

The Committee received only one comment on the proposed changes from The Reporters Committee for Freedom of the Press. This comment letter objected to only one aspect of the fee schedule, but had strong objections to the proposed definition of "search."

The objection to the fee schedule concerned the amount of the routine fee waiver. Under the FOI Reform Act (5 U.S.C. 552(a)(4)(A)(iv)(I)), no fee may be charged if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. Based on the calculations of these costs, this waiver was proposed to be $5. The commenter suggested that the Committee follow other agencies in routinely waiving $25 in fees. The Committee has not followed this

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suggestion because it has calculated the costs of routine collection and processing as $5. Therefore, the Committee believes this is the appropriate amount of the waiver.

The commenter also objected to the proposed definition of "search," particularly the proposed exclusions to the definition of "search." Commenter believes that the Committee has based these exclusions on a recent poll by the Justice Department regarding the applicability of the FOIA to electronic records. In actuality, the proposed definition is based upon, and is virtually identical to, the FOIA regulation of the Board of Governors of the Federal Reserve System ("Board"), because the Committee expects to use Board staff when responding to FOIA requests. Commenter also stated that these exclusions are ambiguous and may lead to staff not performing a reasonable search for responsive records. These proposed exclusions are based on existing case law regarding a "reasonable search", which governs in any event. Nevertheless, the Committee has determined to evaluate the matter further and will not make this proposed change at the present time. Accordingly, the Committee has determined to eliminate the proposed exclusions to the definition of "search" set forth at § 271.2(d)(2).

Commenter's final objection focused on § 271.5 which permits the Committee to defer availability of certain information. The Committee did not propose to amend the substance of the subsection, but only proposed a revision to the reasons for deferral. Commenter claims that failure to provide documents within the statutory deadline of 10 days constitutes denial. A similar contention was considered by the Supreme Court in *Merrill* v. *FOMC*, 443 U.S. 340 (1979). In that case, the Court upheld the Committee's longstanding position that the release of certain information of the Committee may be delayed.

Except for the elimination of § 271.2(d)(2), the regulation is adopted in final as it appeared in the proposed rulemaking.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 98-354, 5 U.S.C. 601 *et seq.*), the Committee certifies that this rule will not have a significant economic impact on a substantial number of small entities. The amendment is primarily a change in agency fees applicable to FOIA requests that would not have a substantial effect on particular small entities.

List of Subjects in 12 CFR Part 271

Federal Open Market Committee, Freedom of Information.

For the reasons set forth in this notice, and pursuant to the Committee's authority under the Freedom of Information Reform Act of 1986, Public Law No. 99-570 (5 U.S.C. 552(a)(4)(A)(i)), to promulgate rules implementing the FOI Reform Act, and its authority under 12 U.S.C. 263 to issue rules regarding the conduct of its business, the Committee proposes to amend 12 CFR part 271 as follows:

PART 271—RULES REGARDING AVAILABILITY OF INFORMATION

1. The authority citation for part 271 is revised to read as follows:

Authority: 12 U.S.C. 263; 5 U.S.C. 552.

2. Section 271.1 is revised to read as follows:

§ 271.1 Authority.

This part is issued by the Federal Open Market Committee (the "Committee") pursuant to the requirement of section 552 of title 5 of the United States Code that every agency shall publish in the **Federal Register** for the guidance of the public descriptions of the established places at which, the officers from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions, and the requirement that agencies promulgate, pursuant to notice and receipt of public comment, the fees applicable to those requests for information, and also pursuant to the Committee's authority under section 12A of the Federal Reserve Act, 12 U.S.C. 263, to issue regulations governing the conduct of its business.

3. In § 271.2, paragraph (b) is revised and paragraphs (c) and (d) are added to read as follows:

§ 271.2 Definitions.

* * * * *

(b) *Records of the Committee.* (1) For purposes of requests submitted pursuant to the Freedom of Information Act (5 U.S.C. 552), the term "records of the Committee" includes rules, statements, opinions, orders, memoranda, letters, reports, accounts, and other written material, as well as magnetic tapes, computer printouts of information obtained through use of existing computer programs, charts, and other materials in machine readable form that constitute a part of the Committee's official files.

(c) *Board* and *Federal Reserve bank.* For the purposes of this part, "Board" means the Board of Governors of the Federal Reserve System established by the Federal Reserve Act of 1913 (38 Stat. 251), and "Federal Reserve bank" means one of the district banks authorized by that same Act, 12 U.S.C. 222, including any branch of any such bank.

(d) *Search.* (1) For the purposes of this part, "search" means a reasonable search of the Committee's files and any other files containing records of the Committee as seems reasonably likely in the particular circumstances to contain documents of the kind requested. Searches may be done manually or by computer using existing programming. For purposes of computing fees under § 271.8 of this regulation, search time includes all time spent looking for material that is responsive to a request, including line-by-line identification of material within documents. Such activity is distinct from "review" of material to determine whether the material is exempt from disclosure.

4. Section 271.4 is amended by revising paragraph (c) to read as follows, and by removing paragraph (f):

§ 271.4 Records available to the public on request.

* * * * *

(c) *Obtaining access to records.* Any person requesting access to records of the Committee shall submit such request in writing to the Secretary of the Committee. In any case in which the records requested, or copies thereof, are available at a Federal Reserve Bank, the Secretary of the Committee or his or her designee may so advise the person requesting access to the records. Every request for access to records of the Committee shall state the full name and shall describe such records in a manner reasonably sufficient to permit their identification without undue difficulty. The Secretary of the Committee or his or her designee shall determine within ten working days after receipt of a request for access to records of the Committee whether to comply with such request; and he shall immediately notify the requesting party of his decision, of the reasons therefor, and of the right of the requesting party to appeal to the Committee any refusal to make available the requested records of the Committee.

* * * * *

5. Section 271.5 is amended by revising paragraph (b)(3) to read as follows:

§ 271.5 Deferment of availability of certain information.

* * * * *

(b) * * *

(3) Result in unnecessary or unwarranted disturbances in foreign exchange or domestic securities markets;

* * * * *

6. Section 271.6 is amended by revising paragraphs (b) and (d), by removing the word "or" at the end of paragraph (e) and adding a semicolon in place of the period at the end of paragraph (f), and adding paragraphs (g) and (h) to read as follows:

§ 271.6 Information not disclosed.

* * * * *

(b) Relates solely to internal personnel rules or practices or other internal practices of the Committee within the meaning of 5 U.S.C. 552(b)(2);

* * * * *

(d) Is contained in inter- or intra-agency memorandums, reports, or letters that would not be routinely available by law to a party (other than an agency) in litigation with the Committee, including by not limited to:

(1) Memorandums;

(2) Reports;

(3) Other documents prepared by the staff or agents of the Committee;

(4) Records of deliberations of the Committee and of discussions at meetings of the Committee, or staff or agents of the Committee.

* * * * *

(g) Constitutes records or information compiled for law enforcement purposes, to the extent permitted under 5 U.S.C. 552(b)(7).

(h) Constitutes a document or information that is covered by an order of a court of competent jurisdiction that prohibits its disclosure.

7. Section 271.8 is added to read as follows:

§ 271.8 Fee schedule; waiver of fees.

(a) *Fee schedule.* Records of the Committee available for public inspection and copying are subject to a written Schedule of Fees for search, review, and duplication. (See appendix A for Schedule of Fees.) The fees set forth in the Schedule of Fees reflect the full allowable direct costs of search, duplication, and review, and may be adjusted from time to time by the Secretary to reflect changes in direct costs.

(b) *Fees charged.* The fees charged only cover the full allowable direct costs of search, duplication, or review.

(1) *Direct costs* mean those expenditures which the Committee actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a request made under § 271.4 of this regulation. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus a factor to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) *Duplication* refers to the process of making a copy of a document necessary to respond to a request for disclosure of records, or for inspection of original records that contain exempt material or that otherwise cannot be inspected directly. Such copies may take the form of paper copy, microform, audio-visual materials, or machine readable documentation (*e.g.*, magnetic tape or disk), among others.

(3) *Review* refers to the process of examining documents located in response to a request that is for a commercial use to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, *e.g.*, doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(c) *Commercial use.* (1) The fees in the Schedule of Fees for document search, duplication, and review apply when records are requested for commercial use.

(2) *Commercial use request* refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(d) *Educational, research, or media use.* (1) Only the fees in the Schedule of Fees for document duplication apply when records are not sought for commercial use and the requester is a representative of the news media, or of an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research. However, there is no charge for the first one hundred pages of duplication.

(2) *Educational institution* refers to a preschool, a public or private elementary or secondary school, or an institution of undergraduate higher education, graduate higher education, professional education, or an institution of vocational education which operates a program of scholarly research.

(3) *Noncommercial scientific institution* refers to an institution that is not operated on a "commercial" basis (as that term is used in paragraph (c) of this section) and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(4) *Representative of the news media* refers to any person who is actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. "Free lance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

(e) *Other uses.* For all other requests, the fees in the Schedule of Fees for document search and duplication apply. However, there is no charge for the first one hundred pages of duplication or the first two hours of search time.

(f) *Aggregated requests.* If the Secretary reasonably believes that a requester or group of requesters is attempting to break down a request into a series of requests, each seeking portions of a document or documents solely for the purpose of avoiding the assessment of fees, the Secretary may aggregate such requests and charge accordingly. It is considered reasonable for the Secretary to presume that multiple requests of this type made within a 30-day period have been made to avoid fees.

(g) *Payment procedures.* (1) Fee payment. The Secretary may assume that a person requesting records pursuant to § 271.4 of this regulation will pay the applicable fees, unless a request includes a limitation on fees to be paid or seeks a waiver or reduction of fees pursuant to paragraph (h) of this section.

(2) *Advance notification.* If the Secretary estimates that charges are likely to exceed $25, the requester shall be notified of the estimated amount of fees, unless the requester has indicated in advance willingness to pay fees as high as those anticipated. Upon receipt of such notice the requester may confer with the Secretary as to the possibility of reformulating the request in order to lower the costs.

(3) *Advance payment.* (i) The Secretary may require advance payment of any fee estimated to exceed $250. The Secretary may also require full payment in advance where a requester has previously failed to pay a fee in a timely fashion.

(ii) For purposes of computing the time period for responding to requests under

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§ 271.4(c) of this regulation, the running of the time period will begin only after the Secretary receives the required payment.

(4) *Late charges.* The Secretary may assess interest charges when a fee is not paid within 30 days of the date on which the billing was sent. Interest will be at the rate prescribed in section 3717 of title 31 U.S.C.A. and will accrue from the date of the billing. This rate of interest is published by the Secretary of the Treasury before November 1 each year and is equal to the average investment rate for Treasury tax and loan accounts for the 12-month period ending on September 30 of each year. The rate is effective on the first day of the next calendar quarter after publication.

(5) *Fees for nonproductive search.* Fees for record searches and review may be charged even if no responsive documents are located or if the request is denied. The Secretary shall apply the standards set out in paragraph (h) of this section in determining whether to waive or reduce fees.

(h) *Waiver or reduction of fees.* (1) *Standards for determining waiver or reduction.* The Secretary or his or her designee shall grant a waiver or reduction of fees chargeable under paragraph (b) of this section where it is determined both that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and that the disclosure of information is not primarily in the commercial interest of the requester. The Secretary or his or her designee shall also waive fees that are less than the average cost of collecting fees.

(2) *Contents of request for waiver.* The Secretary shall normally deny a request for a waiver of fees that does not include:

(i) A clear statement of the requester's interest in the requested documents;

(ii) The use proposed for the documents and whether the requester will derive income or other benefit from such use;

(iii) A statement of how the public will benefit from such use and from the Board's release of the requested documents; and

(iv) If specialized use of the documents or information is contemplated, a statement of the requester's qualifications that are relevant to the specialized use.

(3) *Burden of proof.* In all cases the burden shall be on the requester to present evidence or information in support of a request for a waiver or reduction of fees.

(4) *Employee requests.* In connection with any request by an employee, former employee, or applicant for employment, for records for use in prosecuting a grievance or complaint of discrimination against the Committee, fees shall be waived where the total charges (including charges for information provided under the Privacy Act of 1974 (5 U.S.C. 552a) are $50 or less; but the Secretary may waive fees in excess of that amount.

10. "Appendix A" is added to the end of part 271 to read as follows:

* * * * *

Appendix A to Part 271—Freedom of Information Fee Schedule

Duplication:

Photocopy, per standard page	$ 0.10
Paper copies of microfiche, per frame	$ 0.10
Duplicate microfiche, per microfiche	$ 0.30

Search and Review:

Clerical/Technical, hourly rate	$17.00
Professional/Supervisory, hourly rate	$32.00
Manager/Senior Professional, hourly rate	$53.00

Computer search and production:

Operator search time, hourly rate	$25.00
Cassette tapes	$ 5.00
PC computer output, per minute	$ 0.10
Mainframe computer output	Actual cost

Special Services:

The Secretary of the Committee may agree to provide, and set fees to recover the costs of, special services not covered by the Freedom of Information Act, such as certifying records or information and sending records by special methods such as express mail. The Secretary may provide self-service photocopy machines and microfiche printers as a convenience to requesters.

Fee Waivers:

For qualifying educational and noncommercial scientific institution requesters and representatives of the news media, the Committee will not assess fees for review time, for the first 100 pages of reproduction, or, when the records sought are reasonably described, for search time. For other noncommercial use requests, no fees will be assessed for review time, for the first 100 pages of reproduction, or the first two hours of search time. For requesters qualifying for 100 free pages of reproduction, the fees for duplicate microfiche will be prorated to eliminate the charge for 100 frames.

The Committee will waive in full fees that total less than $5.

The Secretary of the Committee or his or her designee will also waive or reduce fees, upon proper request, if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. A fee reduction is available to employees, and applicants for employment who request records for use in prosecuting a grievance or complaint against the Committee.

By order of the Federal Open Market Committee, May 17, 1991.

Donald L. Kohn,

Secretary of the Committee.

[FR Doc. 91-12240 Filed 5-24-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-CE-47-AD; Amendment 39-7013; AD 91-12-02]

Airworthiness Directives; Beech Models 1900 and 1900C Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Beech Models 1900 and 1900C airplanes. This action requires initial and repetitive inspections of the engine trusses for cracks at the weld joints and the installation of reinforcement doublers on certain airplanes. Numerous reports of engine truss cracks at the weld joints have been received. The actions specified in this AD are intended to prevent engine truss failure that could result in complete loss of the engine from the airplane.

EFFECTIVE DATE: July 1, 1991.

ADDRESSES: Beech Service Bulletin (SB) No. 2196, dated September 1987, and Beech SB No. 2255, Revision II, dated December 1990, that are discussed in this AD may be obtained from the Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085; Telephone (316) 676-7111. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Don Campbell, Aerospace Engineer, Airframe Branch, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to Beech Models 1900 and 1900C airplanes was published in the **Federal Register** on February 20, 1991 (56 FR 6814). The action proposed initial and repetitive visual inspections of the engine trusses for cracks at the weld joints and, if cracks are found, repair or replacement in accordance with Beech SB No. 2255, Revision II, dated December 1990, on certain Beech Models 1900 and 1900C airplanes. It also proposed the installation of a doubler in accordance with the instructions in Beech SB No. 2196, dated September 1987, on airplanes that have engine truss P/N 114-910025-1 or P/N 118-910025-1 installed. This requirement would not be mandatory if the doubler had been installed in accordance with Beech Letter No. 52-86-1645, dated December 15, 1986.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

One commenter requested that the statement in the NOTE following paragraph (a)(2) of the AD be reworded to read that "the removal and in-turn magnetic particle inspection of the engine truss be performed anytime the engine is removed" as is written in Service Bulletin 2255. The FAA cannot enforce compliance with this action unless intervals are specified. The FAA's intent of the NOTE in the AD was to recommend this action. Therefore, the AD remains unchanged as a result of this comment.

Another commenter expressed concern that maintenance practices do not address dynamic balancing of the propeller on the engine. The commenter acknowledges that the propeller balancing will not eliminate engine mount cracking but should improve service life. Beech recommends that propeller balancing be performed on a periodic basis as is illustrated in the June 1989 issue of the Model 1900 Airline Communique. However, the FAA is only mandating inspections of the engine mount truss and the installation of a reinforcement doubler through this AD action. If the FAA finds that propeller balancing should be mandated, further AD action will be taken. The AD remains unchanged as a result of this comment.

The economic analysis paragraph that is discussed below, has been revised to increase the specified hourly labor rate from $40 an hour (as was cited in the preamble of the notice of proposed rulemaking (NPRM)) to $55 an hour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD action to account for various inflationary costs in the aviation industry.

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the change in the economic analysis labor rate and minor editorial corrections. These minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already necessary.

It is estimated that 225 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 19 hours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $235,125.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a subtantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES".**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

AD 91-12-02 **Beech:** Amendment 39-7013; Docket No. 90-CE-47-AD. Applicability: Model 1900 airplanes (serial numbers (S/N) UA-2 and UA-3); and Model 1900C airplanes (S/N UB-1 through UB-74, S/N UC-1 through UC-156, and S/N UD-1 through UD-6), certificated in any category.

Compliance: Required initially upon the accumulation of 1,700 hours time-in-service (TIS), or within the next 100 hours TIS, whichever occurs later, after the effective date of this AD, unless already accomplished, and thereafter as indicated.

To detect cracks and prevent possible failure of the engine truss assembly, accomplish the following:

(a) If engine truss, part number (P/N) 118-910025-37 or P/N 118-910025-121 is installed, or if engine truss P/N 114-910025-1 or P/N 118-910025-1 that has a reinforcement doubler incorporated in accordance with the instructions in Beech Service Bulletin (SB) 2196, dated September 1987, or Beech Letter No. 52-86-1645, dated December 15, 1986, is installed, inspect the engine trusses for cracks at the weld joints in accordance with the instructions in Beech SB 2255, Revision II, dated December 1990.

(1) If no cracks are found, return the airplane to service and reinspect the engine trusses at intervals of 600 hours TIS thereafter.

(2) If cracks are found, prior to further flight, repair the cracked engine truss in accordance with the instructions in Beech SB 2255, Revision II, dated December 1990, or replace the cracked engine truss with a new truss, P/N 118-910025-37 or P/N 118-910025-121, in accordance with the instructions in Beech SB 2255, Revision II, dated December 1990, and reinspect the engine trusses at intervals of 600 hours TIS thereafter.

Note: Any time the engine is removed, it is recommended that the truss be removed and a magnetic particle inspection be performed in accordance with Beech SB 2255, Revision II, dated December 1990.

(b) If engine truss, P/N 114-910025-1 or P/N 118-910025-1 that does not have a doubler incorporated in accordance with the instructions in Beech Service Bulletin 2196, dated September 1987, or Beech Letter No. 52-86-1645, dated December 15, 1986, is installed, inspect the engine trusses for cracks at the weld joints in accordance with the instructions in Beech SB 2255, Revision II, dated December 1990.

(1) If no cracks are found, install a reinforcement doubler in accordance with the instructions in Beech SB 2196, dated September 1987, or Beech Letter No. 52-86-1645, dated December 15, 1986, and reinspect

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the reinforced engine trusses at intervals of 600 hours TIS thereafter.

(2) If cracks are found, prior to further flight, repair the cracked engine truss in accordance with the instructions in Beech SB 2255, Revision II, dated December 1990, and install a reinforcement doubler in accordance with the instructions in Beech SB 2196, dated September 1987, or Beech Letter No. 52–86–1645, dated December 15, 1986; or replace the cracked engine truss with a new truss, P/N 118–910025–37 or P/N 118–910025–121, in accordance with the instructions in Beech SB 2255, Revision II, dated December 1990, and reinspect the engine trusses at intervals of 600 hours TIS thereafter.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the initial repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

(e) All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Whichita, Kansas 67201–0085; Telephone (316) 676–7111; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on July 1, 1991.

Issued in Kansas City, Missouri, on May 15, 1991.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–12474 Filed 5–24–91; 8:45 am]

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14 CFR Part 39

[Docket No. 91–CE–39–AD; Amdt. 39–6992]

Airworthiness Directives; Partenavia Costruzioni Aeronautiche, S.p.A., Models P68C–TC, P68–OTC, P68C, and P68 Observer Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Partenavia Costruzioni Aeronautiche, S.p.A., Models P68C–TC, P68–OTC, P68C, and P68 Observer airplanes. This action requires the replacement of the engine fuel lines and Janitrol fuel lines. Corrosion in the engine and Janitrol fuel lines of two of the affected airplanes resulted in fuel leakage and the detection of fuel fumes in the airplane cabin. The actions specified by this AD are intended to prevent ignition and possible explosion of the airplane.

DATES: Effective June 14, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 14, 1991. Comments for inclusion in the Rules Docket must be received on or before July 15, 1991.

ADDRESSES: Partenavia Service Instruction No. 39 or Partenavia Service Instruction No. 40, both dated February 14, 1991, that are discussed in this AD may be obtained from Partenavia Costruzioni Aeronautiche, S.p.A., Via G. Pascoli N. 7, 80026 Casoria (NA), Italy. This information may also be examined at the Rules Docket at the address below. Send comments on this AD in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 91–CE–39–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Carl F. Mittag, Project Manager, Brussels Aircraft Certification Office, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone 322.513.38.30 extension 2710; or Mr. Michael Dahl, Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 601 E. 12th Street, Kansas City Missouri 64106; Telephone (816) 426–6932; Facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: The Registro Aeronautico Italiano (RAI), which is the airworthiness authority for Italy, recently notified the FAA that an unsafe condition may exist on Partenavia Costruzioni Aeronautiche, S.p.A. Models P68C–TC, P68–OTC, P68C, and P68 Observer airplanes. The RAI advises that corrosion in the engine and Janitrol fuel lines behind the engine firewall has resulted in fuel leakage and detection of fuel fumes in the airplane cabin. Fuel leakage into the airplane cabin could result in ignition and possible explosion of the airplane. The manufacturer (Partenavia Costruzioni Aeronautiche, S.p.A.) has issued Service Bulletin No. 61, Revision 2, dated February 19, 1991, and Service Instructions Nos. 39 and 40, both dated February 14, 1991, which specify inspection and replacement procedures for the engine and Janitrol fuel lines on the affected airplanes. The RAI has classified the service information as mandatory to assure the continued airworthiness of these airplanes. Pursuant to a bilateral airworthiness agreement, the RAI has kept the FAA fully informed of the above situation.

The FAA has examined the findings of the RAI, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. Rather than rely on the inspections to detect the corrosion, the FAA has determined that the fuel lines should be replaced by the installation of the applicable service kit and the Janitrol fuel lines should be replaced with an improved part.

Since this condition could exist or develop in other Partenavia Costruzioni Aeronautiche, S.p.A., Models P68C–TC, P68–OTC, P68C, and P68 Observer airplanes of the same type design, this AD requires the replacement of the engine and Janitrol fuel lines in accordance with the instructions in Partenavia Service Instruction No. 39 or Partenavia Service Instruction No. 40, both dated February 14, 1991, whichever is applicable. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered and this rule may be amended in light of the comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD and determining whether additional rulemaking is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Dockets at the address given above. A report that summarizes each

FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Partenavia Costruzioni Aeronautiche: Amendment 39–6992; Docket No. 91–CE–39–AD.

Applicability: Models P68C–TC airplanes (all serial numbers (S/N)), P68–OTC airplanes (S/N 344–01–OTC and 340–02–OTC), and P68C and P68 Observer airplanes (S/N 268 to 381), certificated in any category.

Compliance: Within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent fuel leakage into the airplane cabin that could result in ignition and explosion of the airplane, accomplish the following:

(a) For Models P68C–TC and P68–OTC, remove the fuel and Janitrol system lines in accordance with the instructions in Partenavia Service Instruction No. 39, dated February 14, 1991.

(1) Install the applicable service kit in accordance with the instructions in Partenavia Instruction No. 39.

(2) Replace the light alloy line of the Janitrol system (part number (P/N) 7.6131–2) with P/N 7.6131C–2 on the applicable Model P68C–TC airplanes in accordance with the instructions in Partenavia Service Instruction No. 39.

(b) For Models P68C and P68 Observer, remove the fuel and Janitrol system lines in accordance with the instructions in Partenavia Service Instruction No. 40, dated February 14, 1991.

(1) Install the applicable service kit in accordance with the instructions in Partenavia Instruction No. 40.

(2) Replace the light alloy line of the Janitrol system (part number (P/N) 7.6131–2) with P/N 7.6131C–2 on the applicable Model P68C airplanes in accordance with the instructions in Partenavia Service Instruction No. 40.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

(e) The replacements and modifications required by this AD shall be done in accordance with Partenavia Service Instruction No. 39 or Partenavia Service Instruction No. 40, both dated February 14, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Partenavia Costruzioni Aeronautiche, S.p.A., Via G. Pascoli N. 7, 80026 Casoria (NA), Italy. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

This amendment becomes effective on June 14, 1991.

Issued in Kansas City, Missouri, on April 30, 1991.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–12487 Filed 5–24–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

RIN 0960–AC90

Federal Old-Age, Survivors, and Disability Insurance; Elimination of Dependency Requirements for Certain Adopted Children

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: The rule reflects section 10301 of Public Law (Pub. L.) 101–239, the Omnibus Budget Reconciliation Act of 1989, enacted on December 19, 1989. Section 10301 eliminated the dependency requirements for a child adopted by an individual entitled to retirement or disability insurance benefits after the individual became entitled to such benefits if the child was legally adopted by the individual in an adoption issued by a court of competent jurisdiction within the United States and the child was under age 18 when the adoption proceedings were started. Section 10301 also provided that if the child was age 18 or older when the adoption proceedings were started, the child must have been living with or receiving one-half support from the entitled individual for the year prior to adoption. The provisions of section 10301 are applicable to child's insurance benefits payable for months after December 1989, but only on the basis of applications filed on or after January 1, 1990.

DATES: This rule is effective on July 29, 1991.

FOR FURTHER INFORMATION CONTACT: Cassandra Bond, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–1794.

SUPPLEMENTARY INFORMATION: Current regulations at 20 CFR 404.362(a) and (b) state that if a child is legally adopted by the worker after the worker's entitlement to retirement or disability insurance benefits, and the child is not the worker's natural child or stepchild,

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he or she is considered dependent on the worker only if the child: (1) Was adopted under an order of a court of competent jurisdiction within the United States; (2) began living with the worker before age 18; and (3) was living with and receiving at least one-half support from the worker for the year before the worker became entitled to benefits or became disabled (or, if the child is the worker's grandchild or stepgrandchild, for the year before the child applied for benefits).

The rule amends § 404.362 of our regulations to reflect the changes made by section 10301 of Public Law 101-239 which provides that a child adopted after the worker's entitlement began is considered dependent if the adoption was issued by a court of competent jurisdiction within the United States and either (1) the adoption proceedings began before the child attained age 18, or (2) the child was living with or receiving one-half support from the worker for the year prior to adoption.

Justification for Dispensing with Rulemaking Procedures

We are publishing these amendments without prior notice and public procedure thereon. The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act (APA) notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of regulations. The APA provides exceptions to its notice and comment requirements when an agency finds there is good cause for dispensing with such procedures. Section 553(b)(B) exempts a rule from the notice and comment rulemaking procedures "when the agency for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." We find good cause to dispense with notice of proposed rulemaking in the case of this rule because we find that such procedure is "unnecessary" since we are only reflecting the statutory provisions in the regulations and these provisions do not involve any exercise of discretion.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because the issuance of this regulation is not expected to result in significant costs. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

This regulation imposes no new reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities because this rule will affect only individuals. Therefore a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program Nos. 13.802, Social Security Disability Insurance; 13.803, Social Security Retirement Insurance; and 13.805, Social Security Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure; Death benefits; Disability benefits; Old-age, survivors and disability insurance.

Dated: November 7, 1990.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: March 27, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

Part 404 of title 20 of the Code of Federal Regulations is amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950-)

1. The authority citation for subpart D of part 404 continues to read as follows:

Authority: Secs. 202, 203(a) and (b), 205(a), 216, 223, 228(a)-(e), and 1102 of the Social Security Act; 42 U.S.C. 402, 403(a) and (b), 405(a), 416, 423, 428(a)-(e), and 1302.

2. In § 404.362, paragraph (b)(1) is revised; paragraph (b)(2) is removed; and paragraph (b)(3) is redesignated paragraph (b)(2) to read as follows:

§ 404.362 When a legally adopted child is dependent.

* * * * *

(b) *Adoption by the insured after he or she became entitled to benefits.* (1) *General.* If you are legally adopted by the insured after he or she became entitled to benefits and you are not the insured's natural child or stepchild, you are considered dependent on the insured during his or her lifetime only if—

(i) You had not attained age 18 when adoption proceedings were started, and your adoption was issued by a court of competent jurisdiction within the United States; or

(ii) You had attained age 18 before adoption proceedings were started; your adoption was issued by a court of competent jurisdiction within the United States; and you were living with or receiving at least one-half of your support from the insured for the year immediately preceding the month in which your adoption was issued.

* * * * *

[FR Doc. 91-12443 Filed 5-24-91; 8:45 am]

BILLING CODE 4190-29-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8337]

RIN 1545-AM08

Allocation and Apportionment of Deduction for State Income Taxes; Correcting Amendments

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to final regulations (T.D. 8337), which were published Tuesday, March 12, 1991 (56 FR 10365). The final regulations relate to the allocation and apportionment of deductions for state income taxes in computing taxable income from sources inside and outside the United States.

EFFECTIVE DATE: These regulations are effective for taxable years ending after March 12, 1991.

FOR FURTHER INFORMATION CONTACT: David F. Chan, (202) 566-6645 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The regulations were issued under the authority contained in section 7805 (26 U.S.C. 7805) of the Internal Revenue Code of 1986.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR 1.861-1 Through 1.864-12

Income taxes, United States investments abroad.

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

§ 1.861-8 [Amended]

Par. 2. On page 10371, column one, in § 1.861-8, paragraph (e)(6)(ii)(D)(*2*)(*i*), in the heading on line 3, the phrase "portfolio dividends." is corrected to read "portfolio dividends and other income.".

Par. 3. On page 10371, column one, in § 1.861-8, paragraph (e)(6)(ii)(D)(*2*)(*i*), line 27, the following sentence is added after the phrase "28 of paragraph (g).":

"If a state income tax is determined based upon formulary apportionment of the total taxable income attributable to the taxpayer's unitary business, the taxpayer must also apply the methodology illustrated in paragraph (ii)(C) through (G) of Example 29 of paragraph (g) of this section to make specific allocations of appropriate portions of the deduction for state income tax on the basis of income that, under separate accounting, would have been attributed to other members of the unitary group."

Par. 4. On page 10371, column one, in § 1.861-8, paragraph (e)(6)(ii)(D)(*2*)(*i*), line 30, the phrase "portfolio dividends to which a specific" is corrected to read "portfolio dividends and other income to which a specific".

Par. 5. On page 10371, column two, in § 1.861-8, paragraph (e)(6)(ii)(D)(*2*)(*iii*), line 5, the phrase "foreign source portfolio dividends under" is corrected to read "foreign source portfolio dividends and other income under".

Par. 6. On page 10371, column two, in § 1.861-8, paragraph (e)(6)(ii)(D)(*3*)(*i*), in the heading on line 3, the phrase "portfolio dividends." is corrected to read "portfolio dividends and other income.".

Par. 7. On page 10371, column three, in § 1.861-8, paragraph (e)(6)(ii)(D)(*3*)(*iii*), line 5 from the top of the column, the phrase "foreign source portfolio dividends under" is corrected to read "foreign source portfolio dividends and other income under".

Par. 8. On page 10376, column three, in § 1.861-8, paragraph (g), General examples, paragraph (i) of Example 33, line 4, the phrase "income tax on corporations" is corrected to read "income tax on corporations, and P's non-unitary state F taxable income equals $462,500."

Par. 9. On page 10376, column three, in § 1.861-8, paragraph (g), General examples, paragraph (ii)(A) of Example 33, last line of that paragraph, after the phrase "$37,500 of foreign source portfolio dividends)." add the following sentence:

"Because the remaining amount of state F taxable income ($462,500) equals P's non-unitary state F taxable income, no further specific allocation of state tax is required."

Par. 10. On page 10377, column two in § 1.861-8 paragraph (g), General examples, paragraph (iii)(D) of Example 33, in the second paragraph of text, last line of that paragraph, after the phrase "U.S. source federal taxable income", add the following language, "and reduced by the amount of foreign source portfolio dividends to which the tax has been specifically allocated".

Par. 11. On page 10377, column two, in § 1.861-8, paragraph (g), General examples, paragraph (iii)(D) of Example 33, the remainder of the example is corrected to read as follows:

"Portion of remainder apportioned to foreign source general limitation income (statutory grouping): $21,413.93 X ($212,500/$662,500)	$6,868.62
Remaining state income tax deduction to be apportioned to income from sources within the United States (residual grouping): $21,413.93 X ($450,000/$662,500)	$14,545.31

Of P's total deduction of $56,000 for state income tax, the portion allocated and apportioned to foreign source general limitation income equals $10,618.62—the sum of $6,868.62 apportioned under Step Four and the $3,750.00 specifically allocated to foreign source portfolio dividend income under Step One. The portion of the deduction allocated and apportioned to U.S. source income equals $45,381.38—the sum of the $30,836.07 and the $14,545.31 apportioned under Step Four."

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-12314 Filed 5-24-91; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 601

RIN 1545-AP25

Statement of Procedural Rules

AGENCY: Internal Revenue Service, Treasury.

ACTION: Amendment of the statement of procedural rules.

SUMMARY: This document contains amendments to the Conference and Practice Requirements of the Statement of Procedural Rules. The Statement of Procedural Rules sets forth the procedural rules of the Internal Revenue Service for all taxes it administers as well as certain rules that apply to the Bureau of Alcohol, Tobacco, and Firearms. The Conference and Practice Requirements set forth the rules concerning powers of attorney required for representation of taxpayers before the Internal Revenue Service and the Bureau of Alcohol, Tobacco, and Firearms. The amendments in this document concern only those provisions of the Conference and Practice Requirements which relate to the Internal Revenue Service. This action is necessary to address issues not specifically contained in the old rules, such as durable powers of attorney and powers of attorney received by the Internal Revenue Service by facsimile transmission. The rules also have been restated in order to clarify and simplify procedures concerning power of attorney requirements.

EFFECTIVE DATE: May 28, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. D. LaMar Whitman or Mr. Patrick W. McDonough of the Office of Director of Practice, Internal Revenue Service, at (202) 535-6787 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document is a revision and restatement of the Conference and Practice Requirements contained in the Statement of Procedural Rules (26 CFR part 601). The Conference and Practice Requirements contain the procedural rules for powers of attorney required for representation of taxpayers before the Internal Revenue Service. A notice was published in the **Federal Register** on April 19, 1989 (54 FR 15779), in which written comments were solicited with respect to the Conference and Practice Requirements, powers of attorney, and tax information authorizations. As a result of such comments, the rules have been restated in order to clarify and simplify the requirements. In doing so, the following matters have been either revised or added as a new provision.

a. *Form 2848-D, "Tax Information Authorization and Declaration of Representative," to be replaced by form 8821, "Tax Information Authorization."* Concurrent with the issuance of these new rules, form 2848-D, "Tax Information Authorization and Declaration of Representative" will become obsolete and will be replaced by (new) form 8821, "Tax Information Authorization." Form 2848-D has been

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eliminated in order to end confusion concerning the differences between form 2848, "Power of Attorney and Declaration of Representative," and form 2848–D. The new rules contemplate the use of form 8821 by any person authorized by the taxpayer to receive and/or inspect confidential tax return information of such taxpayer. However, unlike form 2848–D, form 8821 is only a disclosure authorization and cannot be used by a taxpayer to appoint a representative. Instead, form 2848 is the appropriate form to be used by a taxpayer who wishes to appoint a representative.

Under the old rules, a taxpayer who wished to appoint an unenrolled return preparer for representation before the Examination Division of the Internal Revenue Service was required to file form 2848–D. Because this form has been eliminated, the revised form 2848 now may be used to name an unenrolled return preparer for such representation. However, the rights and privileges of an unenrolled return preparer have not been changed (i.e., the scope of authority with respect to representation by an unenrolled return preparer remains subject to the limitations imposed by § 10.7(a)(7) of Treasury Department Circular No. 230 (subtitle A of 31 CFR part 10)).

b. *Power of attorney documents other than form 2848.* In general, the new rules are intended to ease the perceived restriction on acceptance of power of attorney documents other than Form 2848 ("non-IRS powers of attorney"), such as general, limited, and durable powers of attorney. The old rules required, among other things, that a power of attorney list: (1) The type of tax involved, (2) the Federal tax form number, (3) the year(s) or period(s) involved, and (4) for estate tax matters, the date of death of the decedent. Many non-IRS powers of attorney do not routinely include such information. Therefore, those powers of attorney generally were not accepted by the Internal Revenue Service even though the authorization was complete and valid under the law of the local jurisdiction. The Internal Revenue Service recognizes the possible hardship caused by requiring a taxpayer to execute a second power of attorney conforming to the requirements of the Internal Revenue Service. While the information previously required continues to be necessary, the new rules provide that the attorney-in-fact (named on the non-IRS power of attorney) will be permitted to execute a form 2848 on behalf of the taxpayer if (i) the original power of attorney contemplates the authority on the part of the attorney-in-fact to handle Federal tax matters (e.g., the power of attorney includes the authority to handle tax matters or the authority to perform any and all acts); and (ii) the attorney-in-fact attaches a statement to the form 2848 that the original power of attorney is valid.

c. *Centralized Authorization File.* Information regarding the authority of a person appointed under either a power of attorney (form 2848) or a tax information authorization (form 2848–D) (which will be replaced by form 8821) is routinely recorded onto the Centralized Authorization File ("CAF"). Regarding such information onto the CAF system facilitates automatic routing of tax notices and correspondence to a representative appointed under a power of attorney or to a person authorized under a tax information authorization. However, recognition of the validity of a power of attorney or tax information authorization is not contingent on the entry of such information onto the system.

1. *Specific tax periods required.* In order to process a power of attorney or tax information authorization onto the CAF system, the tax matter identified thereon must relate to a specific tax period (e.g., form 1040 for the 1988 calendar year or form 941 for the quarters ended June 30, 1987, and September 30, 1987). If a tax period is not provided, it is systemically not possible to enter a power of attorney or tax information authorization onto the CAF system. This limitation also means that certain tax matters which do not relate to a specific tax period (e.g., matters concerning the 100% penalty for failure to pay over withholding taxes imposed by section 6672 of the Internal Revenue Code, applications for an employer identification number, and requests for a private letter ruling request pertaining to a proposed transaction) cannot be recorded onto the CAF system. This limitation has been present since the development of the CAF system and is not changed by the new rules. It is described in the new rules for information purposes.

2. *Limitation concerning future periods to be recorded onto the CAF system.* CAF system data analysis indicates an increasing number of powers of attorney being filed for periods ending far into the future (e.g., for periods through 2025). This has begun to cause an undue burden on CAF database management. The new rules address this burden by providing that only those matters relating to tax periods ending not more than three years after receipt (by the Internal Revenue Service) of the power of attorney will be recorded onto the CAF system. This limitation does not affect the validity of a power of attorney covering any future period. A copy of such document may be refiled for processing at a future date provided the taxpayer and practitioner wish to continue the representation during the later periods.

3. *Non-IRS power of attorney to be attached to "transmittal" form 2848.* The new rules request that a form 2848 completed by the attorney-in-fact named under the non-IRS power of attorney accompany the non-IRS power of attorney. The form 2848 is "transmittal" in nature; it is not the operative power of attorney document. However, it will contain information which is necessary for processing the power of attorney. Failure by the attorney-in-fact to furnish a transmittal form 2848 is not determinative of the current or future validity of the non-IRS power of attorney. However, its use is encouraged, for without this form, the non-IRS power of attorney will not be recorded onto the CAF file.

4. *Assignment of CAF numbers.* When a power of attorney or tax information authorization is recorded onto the CAF system, a CAF number is assigned to the representative appointed under the power of attorney or the appointee authorized under the tax information authorization. A CAF number is unique to the representative or appointee. It does not identify either the taxpayer or the tax matter. The CAF number issued should be used by the representative (in the case of a power of attorney) or the appointee (in the case of a tax information authorization) on all powers of attorney or tax information authorizations filed in the future. The new rules are intended to make it clear that issuance of a CAF number does not indicate that a person is either recognized or authorized to practice before the Internal Revenue Service; it is merely a means to facilitate the processing of a power of attorney or tax information authorization.

d. *Automatic revocation of power of attorney.* Under the old rules, a newly filed power of attorney automatically revoked either a previously filed power of attorney or tax information authorization relating to the same tax matter. The new rules provide that a newly filed power of attorney will revoke a previously filed power of attorney but not a previously filed tax information authorization. Similarly, a newly filed tax information authorization will revoke a previously filed tax information authorization concerning the same tax matter but will not revoke a power of attorney concerning such matter. This is considered appropriate because the two documents are separate and distinct. However, the new rules continue to provide that the automatic revocation procedures can be avoided if instructions for non-revocation are included on the newly filed document.

e. *Substitution or delegation of recognized representative.* The old rules provided that even without a specific grant of authority from a taxpayer, a representative appointed under a form 2848 or general power of attorney (authorizing the representative to perform any and all acts the taxpayer can perform with respect to specified tax matters) was authorized to make a substitution of representative or to delegate authority in a matter to another representative. The new rules continue to permit the appointed representative to substitute a representative or to delegate authority to a new representative. However, such act must be authorized by the taxpayer on the power of attorney. It is believed desirable hat the taxpayer not unwittingly grant a representative authority to substitute or to delegate.

f. *Situations in which a power of attorney is required.* Although the old rules provided that a power of attorney was required to be filed by a representative to perform certain acts, they did not clearly state that a power of attorney is required in order for an individual to represent a taxpayer before the Internal Revenue Service. The new rules clarify this issue by requiring a power of attorney for the purpose of representation before the Internal Revenue Service irrespective of a specific act. The new rules also now contain specific permission for a representative to sign a tax return on behalf of a taxpayer. This permission is valid only if the substitute signature is allowed under the Internal Revenue Code (e.g., the authority to sign an income tax returns is governed by the provisions of § 1.6012–1(a)(5) of the Income Tax Regulations) and is expressly authorized by the taxpayer in the power of attorney.

g. *Facsimile copies.* Although the old rules provided that a copy of a power of attorney would be accepted by the Internal Revenue Service, they did not address the acceptability of a power of attorney submitted via facsimile transmission (FAX). The new rules specifically authorize the Internal Revenue Service to accept a power of attorney submitted by facsimile transmission.

h. *Situations in which a taxpayer may be contacted directly.* The new rules provide that the Internal Revenue Service is permitted to contact a taxpayer directly in situations in which the recognized representative of the taxpayer unreasonably delays or hinders an examination, collection or investigation by failing to furnish, after repeated request, nonprivileged information necessary to the examination, collection or investigation. This provision conforms the new rules to section 7521(c) of the Internal Revenue Code.

i. *Notarization of signature of taxpayer not required.* Under the old rules, the signature of the taxpayer was required to be acknowledged before a notary public or witnessed by two disinterested individuals if the representative appointed by the taxpayer was a person other than an attorney, certified public accountant, enrolled agent, or enrolled actuary. Those rules also required a notarial seal to be affixed under certain circumstances. Those requirements have been eliminated by the new rules.

j. *Fiduciaries.* A fiduciary (e.g., trustee, executor, administrator or receiver) stands in the position of a taxpayer and acts as the taxpayer. Therefore, a fiduciary does not act as a representative in the traditional sense of the term and need not file a power of attorney (as a representative). However, the fiduciary should file form 56, "Notice Concerning Fiduciary Relationship," to notify the Internal Revenue Service of the existence of the fiduciary relationship. If a fiduciary wishes to authorize an individual to represent or perform certain acts on behalf of the entity, a power of attorney signed by the fiduciary acting in the position of the taxpayer must be filed.

Special Analyses

The Commissioner of Internal Revenue has determined that this rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for procedural rules. Accordingly, the proposed amendments to the Statement of Procedural Rules do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting information

The principal authors of this amendment of the statement of procedural rules are Mr. D. LaMar Whitman and Mr. Patrick W. McDonough of the Office of Director of Practice, Internal Revenue Service. However, personnel from other Offices of the Internal Revenue Service participated in developing the rules both on matters of substance and style.

List of Subjects in 26 CFR Part 601

Administrative practice and procedure, Aged, Alcohol and alcoholic beverages, Arms and munitions, Cigars and cigarettes, Claims, Freedom of information, Petroleum, Reporting and recordkeeping requirements, Taxes.

Amendments to Statement of Procedural Rules

Accordingly, 26 CFR part 601 is amended as follows:

PART 601—[AMENDED]

Paragraph 1. The authority citation for part 601 continues to read as follows:

Authority: 68A Stat. 917, 26 U.S.C. 7805; 5 U.S.C. 301.

Par. 2. §§ 601.501 through 601.509 of Conference and Practice Requirements are revised to read as follows:

§ 601.501 Scope of rules; definitions.

(a) *Scope of rules.* The rules prescribed in this subpart concern, among other things, the representation of taxpayers before the Internal Revenue Service under the authority of a power of attorney. These rules apply to all offices of the Internal Revenue Service in all matters under the jurisdiction of the Internal Revenue Service and apply to practice before the Internal Revenue Service (as defined in 31 CFR 10.2(a) and 10.7(a)(7). For special provisions relating to alcohol, tobacco, and firearms activities, see §§ 601.521 through 601.527. These rules detail the means by which a recognized representative is authorized to act on behalf of a taxpayer. Such authority must be evidenced by a power of attorney and declaration of representative filed with the appropriate office of the Internal Revenue Service. In general, a power of attorney must contain certain information concerning the taxpayer, the recognized representative, and the specific tax matter(s) for which the recognized representative is authorized to act. (See § 601.503(a).) A "declaration of representative" is a written statement made by a recognized representative that he/she is currently eligible to practice before the Internal Revenue Service and is authorized to represent the particular party on whose behalf he/she acts. (See § 601.502(b).)

(b) *Definitions—*(1). *Attorney-in-fact.* An agent authorized by a principal

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under a power of attorney to perform certain specified act(s) or kinds of act(s) on behalf of the principal.

(2) *Centralized Authorization File (CAF) system.* An automated file containing information regarding the authority of a person appointed under a power of attorney or designated under a tax information authorization.

(3) *Circular No. 230.* Treasury Department Circular No. 230 codified, at 31 CFR part 10, which sets forth the regulations governing practice before the Internal Revenue Service.

(4) *Declaration of representative.* (See § 601.502(b).)

(5) *Delegation of authority.* An act performed by a recognized representative whereby authority given under a power of attorney is delegated to another recognized representative. After a delegation is made, both the original recognized representative and the recognized representative to whom a delegation is made will be recognized to represent the taxpayer. (See § 601.505(b)(2).)

(6) *Form 2848, "Power of Attorney and Declaration of Representative."* The Internal Revenue Service power of attorney form which may be used by a taxpayer who wishes to appoint an individual to represent him/her before the Internal Revenue Service. (See § 601.503(b)(1).)

(7) *Matter.* The application of each tax imposed by the Internal Revenue Code and the regulations thereunder for each taxable period constitutes a (separate) matter.

(8) *Office of the Internal Revenue Service.* The Office of each district director, the office of each service center, the office of each compliance center, the office of each regional commissioner, and the National Office constitute separate offices of the Internal Revenue Service.

(9) *Power of attorney.* A document signed by the taxpayer, as principal, by which an individual is appointed as attorney-in-fact to perform certain specified act(s) or kinds of act(s) on behalf of the principal. Specific types of powers of attorney include the following—

(i) *General power of attorney.* The attorney-in-fact is authorized to perform any or all acts the taxpayer can perform.

(ii) *Durable power of attorney.* A power of attorney which specifies that the appointment of the attorney-in-fact will not end due to either the passage of time (i.e., the authority conveyed will continue until the death of the taxpayer) or the incompetency of the principal (e.g., the principal becomes unable or is adjudged incompetent to perform his/her business affairs).

(iii) *Limited power of attorney.* A power of attorney which is limited in any facet (i.e., a power of attorney authorizing the attorney-in-fact to perform only certain specified acts as contrasted to a general power of attorney authorizing the representative to perform any and all acts the taxpayer can perform).

(10) *Practice before the Internal Revenue Service.* Practice before the Internal Revenue Service encompasses all matters connected with presentation to the Internal Revenue Service or any of its personnel relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include the preparation and filing of necessary documents, correspondence with and communications to the Internal Revenue Service, and the representation of a taxpayer at conferences, hearings, and meetings. (See 31 CFR 10.2(a) and 10.7(a)(7).)

(11) *Principal.* A person (i.e., taxpayer) who appoints an attorney-in-fact under a power of attorney.

(12) *Recognized representative.* An individual who is recognized to practice before the Internal Revenue Service under the provisions of § 601.502.

(13) *Representation.* Acts performed on behalf of a taxpayer by a representative in practice before the Internal Revenue Service. (See § 601.501(b)(10).) Representation does not include the furnishing of information at the request of the Internal Revenue Service or any of its officers or employees. (See 31 CFR 10.7(c).)

(14) *Substitution of representative.* An act performed by an attorney-in-fact whereby authority given under a power of attorney is transferred to another recognized representative. After a substitution is made, only the newly recognized representative will be considered the taxpayer's representative. (See § 601.505(b)(2).)

(15) *Tax information authorization.* A document signed by the taxpayer authorizing any individual or entity (e.g., corporation, partnership, trust or organization) designated by the taxpayer to receive and/or inspect confidential tax information in a specified matter. (See section 6103 of the Internal Revenue Code and the regulations thereunder.)

(c) *Conferences*—(1) *Scheduling.* The Internal Revenue Service encourages the discussion of any Federal tax matter affecting a taxpayer. Conferences may be offered only to taxpayers and/or their recognized representative(s) acting under a valid power of attorney. As a general rule, such conferences will not be held without previous arrangement. However, if a compelling reason is shown by the taxpayer that an immediate conference should be held, the Internal Revenue Service official(s) responsible for the matter has the discretion to make an exception to the general rule.

(2) *Submission of information.* Every written protest, brief, or other statement the taxpayer or recognized representative wishes to be considered at any conference should be submitted to or filed with the appropriate Internal Revenue Service official(s) at least five business days before the date of the conference. If the taxpayer or the representative is unable to meet this requirement, arrangement should be made with the appropriate Internal Revenue Service official for a postponement of the conference to a date mutually agreeable to the parties. The taxpayer or the representative remains free to submit additional or supporting facts or evidence within a reasonable time after the conference.

§ 601.502 Recognized representative.

A recognized representative is an individual who is

(i) Appointed as an attorney-in-fact under a power of attorney, and a

(ii) Member of one of the categories described in § 601.502(a) and who files a declaration of representative, as described in § 601.502(b).

(a) *Categories*—(1) *Attorney.* Any individual who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth, or the District of Columbia;

(2) *Certified public accountant.* Any individual who is duly qualified to practice as a certified public accountant in any state, possession, territory, commonwealth, or the District of Columbia;

(3) *Enrolled agent.* Any individual who is enrolled to practice before the Internal Revenue Service and is in active status pursuant to the requirements of Circular No. 230;

(4) *Enrolled actuary.* Any individual who is enrolled as an actuary by and is in active status with the Joint Board for the Enrollment of Actuaries pursuant to 29 U.S.C. 1242.

(5) *Other individuals.*—(i) *Temporary recognition.* Any individual who is granted temporary recognition as an enrolled agent by the Director of Practice (31 CFR 10.5(c)).

(ii) *Practice based on a relationship or special status with a taxpayer.* Any individual authorized to represent a taxpayer with whom/which a special

relationship exists (31 CFR 10.7(a) (1)–(6)). (For example, an individual may represent another individual who is his/her regular full-time employer or a member of his/her immediate family; an individual who is a bona fide officer or regular full-time employee of a corporation or certain other organizations may represent that entity.)

(iii) *Unenrolled return preparer.* Any individual who signs a return as having prepared it for a taxpayer, or who prepared a return with respect to which the instructions or regulations do not require that the return be signed by the preparer. The acts which an unenrolled return preparer may perform are limited to representation of a taxpayer before revenue agents and examining officers of the Examination Division in the offices of District Director with respect to the tax liability of the taxpayer for the taxable year or period covered by a return prepared by the unenrolled return prepared (31 CFR 10.7(a)(7)).

(iv) *Special appearance.* Any individual who, upon written application, is authorized by the Director of Practice to represent a taxpayer in a particular matter (31 CFR 10.7(b)).

(b) *Declaration of representative.* A recognized representative must attach to the power of attorney a written declaration (e.g., part II of form 2848) stating the following—

(1) I am not currently under suspension or disbarment from practice before the Internal Revenue Service or other practice of my profession by any other authority;

(2) I am aware of the regulations contained in Treasury Department Circular No. 230 (31 CFR part 10), concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries, and others);

(3) I am authorized to represent the taxpayer(s) identified in the power of attorney; and

(4) I am an individual described in § 601.502(a).

If an individual is unable to make such declaration, he/she may not engage in representation of a taxpayer before the Internal Revenue Service or perform the acts described in §§ 601.504(a) (2) through (6).

§ 601.503 Requirements of power of attorney, signatures, fiduciaries and Commissioner's authority to substitute other requirements.

(a) *Requirements.* A power of attorney must contain the following information—

(1) Name and mailing address of the taxpayer;

(2) Identification number of the taxpayer (i.e., social security number and/or employer identification number);

(3) Employee plan number (if applicable);

(4) Name and mailing address of the recognized representative(s);

(5) Description of the matter(s) for which representation is authorized which, if applicable, must include—

(i) The type of tax involved;

(ii) The Federal tax form number;

(iii) The specific year(s)/period(s) involved; and

(iv) In estate matters, decedent's date of death; and

(6) A clear expression of the taxpayer's intention concerning the scope of authority granted to the recognized representative(s).

(b) *Acceptable power of attorney documents*—(1) *Form 2848.* A properly completed form 2848 satisfies the requirements for both a power of attorney (as described in § 601.503(a)) and a declaration of representative (as described in § 601.502(b)).

(2) *Other documents.* The Internal Revenue Service will accept a power of attorney other than form 2848 provided such document satisfies the requirements of § 601.503(a). However, for purposes of processing such documents onto the Centralized Authorization File (see § 601.506(d)), a completed form 2848 must be attached. (In such situations, form 2848 is not the operative power of attorney and need not be signed by the taxpayer. However, the Declaration of Representative must be signed by the representative.)

(3) *Special provision.* The Internal Revenue Service will not accept a power of attorney which fails to include the information required by §§ 601.503(a)(1) through (5). If a power of attorney fails to include some or all of the information required by such section, the attorney-in-fact can cure this defect by executing a form 2848 (on behalf of the taxpayer) which includes the missing information. Attaching a form 2848 to a copy of the original power of attorney will validate the original power of attorney (and will be treated in all circumstances as one signed and filed by the taxpayer) provided the following conditions are satisfied—

(i) The original power of attorney contemplates authorization to handle, among other things, Federal tax matters, (e.g., the power of attorney includes language to the effect that the attorney-in-fact has the authority to perform any and all acts).

(ii) The attorney-in-fact attaches a statement (signed under penalty of perjury) to the form 2848 which states that the original power of attorney is valid under the laws of the governing jurisdiction.

(4) *Other categories of powers of attorney.* Categories of powers of attorney not addressed in these rules (e.g., durable powers of attorney and limited powers of attorney) will be accepted by the Internal Revenue Service provided such documents satisfy the requirements of §§ 601.503(b) (2) or (3).

(c) *Signatures.* Internal Revenue Service officials may require a taxpayer (or such individual(s) required or authorized to sign on behalf of a taxpayer) to submit appropriate identification or evidence of authority. Except when form 2848 (or its equivalent) is executed by an attorney-in-fact under the provisions of § 601.503(b)(3), the individual who must execute a form 2848 depends on the type of taxpayer involved—

(1) *Individual taxpayer.* In matter(s) involving an individual taxpayer, a power of attorney must be signed by such individual.

(2) *Husband and wife.* In matters involving a joint return the following rules apply—

(i) *Joint representation.* In the case of any matter concerning a joint return in which both husband and wife are to be represented by the same representative(s), the power of attorney must be executed by both husband and wife.

(ii) *Individual representation.* In the case of any matter concerning a joint return in which both husband and wife are not to be represented by the same recognized representative(s), the power of attorney must be executed by the spouse who is to be represented. However, the recognized representative of such spouse cannot perform any act with respect to a tax matter that the spouse being represented cannot perform alone.

(3) *Corporation.* In the case of a corporation, a power of attorney must be executed by an officer of the corporation having authority to legally bind the corporation, who must certify that he/she has such authority.

(4) *Association.* In the case of an association, a power of attorney must be executed by an officer of the association having authority to legally bind the association, who must certify that he/she has such authority.

(5) *Partnership.* In the case of a partnership, a power of attorney must be executed by all partners, or if executed in the name of the partnership, by the partner or partners duly authorized to act for the partnership, who must certify that he/she has such authority.

(6) *Dissolved partnership.* In the case of a dissolved partnership, each of the

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former partners must execute a power of attorney. However, if one or more of the former partners is deceased, the following provisions apply—

(i) The legal representative of each deceased partner(s) (or such person(s) having legal control over the disposition of partnership interest(s) and/or the share of partnership asset(s) of the deceased partner(s)) must execute a power of attorney in the place of such deceased partner(s). (See § 601.503(c)(6)(ii).)

(ii) Notwithstanding § 601.503(c)(6)(i), if the laws of the governing jurisdiction provide that such partner(s) has exclusive right to control or possession of the firm's assets for the purpose of winding up its affairs, the signature(s) of the surviving partner(s) alone will be sufficient. (If the surviving partner(s) claims exclusive right to control or possession of the firm's assets for the purpose of winding up its affairs, Internal Revenue Service officials may require the submission of a copy of or a citation to the pertinent provisions of the law of the governing jurisdiction upon which the surviving partner(s) relies.)

(d) *Fiduciaries.* In general, when a fiduciary is involved in a tax matter, a power of attorney is not required. Instead form 56, "Notice Concerning Fiduciary Relationship" should be filed. Types of taxpayer for which fiduciaries act are—

(1) *Dissolved corporation*—(i) *Appointed trustee.* In the case of a dissolved corporation, form 56, "Notice Concerning Fiduciary Relationship," should be filed by the liquidating trustee(s), if one or more have been appointed, or by the trustee(s) deriving authority under a law of the jurisdiction in which the corporation was organized. If there is more than one trustee, all must join unless it is established that fewer than all have authority to act in the matter under consideration. Internal Revenue Service officials may require the submission of a properly authenticated copy of the instrument and/or citation to the law under which the trustee derives his/her authority. If the authority of the trustee is derived under the law of a jurisdiction, Internal Revenue Service officials may require a statement (signed under penalty of perjury) setting forth the facts required by the law as a condition precedent to the vesting of authority in said trustee and stating that the authority of the trustee has not been terminated.

(ii) *No appointed trustee.* If there is no appointed trustee, a form 56, "Notice Concerning Fiduciary Relationship," should be filed by the stockholder(s) holding a majority of the voting stock of the corporation as of the date of dissolution. Internal Revenue Service officials may require submission of a statement showing the total number of outstanding shares of voting stock as of the date of dissolution, the number of shares held by each signatory to a power of attorney, the date of dissolution, and a representation that no trustee has been appointed.

(2) *Insolvent taxpayer.* In the case of an insolvent taxpayer, form 56, "Notice Concerning Fiduciary Relationship," should be filed by the trustee, receiver, or attorney appointed by the court. Internal Revenue Service officials may require the submission of a certified order or document from the court having jurisdiction over the insolvent taxpayer which shows the appointment and qualification of the trustee, receiver, or attorney and that his/her authority has not been terminated. In cases pending before a court of the United States (e.g., U.S. District Court or U.S. Bankruptcy Court), an authenticated copy of the order approving the bond of the trustee, receiver, or attorney will meet this requirement.

(3) *Deceased taxpayers*—(i) *Executor, personal representative or administrator.* In the case of a deceased taxpayer, a form 56, "Notice Concerning Fiduciary Relationship," should be filed by the executor, personal representative or administrator if one has been appointed and is responsible for disposition of the matter under consideration. Internal Revenue Service officials may require the submission of a short-form certificate (or authenticated copy of letters testamentary or letters of administration) showing that such authority is in full force and effect at the time the form 56, "Notice Concerning Fiduciary Relationship," is filed.

(ii) *Testamentary trustee(s).* In the event that a trustee is acting under the provisions of the will, a form 56, "Notice Concerning Fiduciary Relationship," should be filed by the trustee, unless the executor, personal representative or administrator has not been discharged and is responsible for disposition of the matter. Internal Revenue Service officials may require either the submission of evidence of the discharge of the executor and appointment of the trustee or other appropriate evidence of the authority of the trustee.

(iii) *Residuary legatee(s).* If no executor, administrator, or trustee named under the will is acting or responsible for disposition of the matter and the estate has been distributed to the residuary legatee(s), a form 56, "Notice Concerning Fiduciary Relationship," should be filed by the residuary legatee(s). Internal Revenue Service officials may require the submission of a statement from the court certifying that no executor, administrator, or trustee named under the will is acting or responsible for disposition of the matter, naming the residuary legatee(s), and indicating the proper share to which each is entitled.

(iv) *Distributee(s).* In the event that the decedent died intestate and the administrator has been discharged and is not responsible for disposition of the matter (or none was ever appointed), a form 56, "Notice Concerning Fiduciary Relationship," should be filed by the distributee(s). Internal Revenue Service officials may require the submission of evidence of the discharge of the administrator (if one had been appointed) and evidence that the administrator is not responsible for disposition of the matter. It also may require a statement(s) signed under penalty of perjury (and such other appropriate evidence as can be produced) to show the relationship of the individual(s) who sign the form 56, "Notice Concerning Fiduciary Relationship," to the decedent and the right of each signer to the respective shares of the assets claimed under the law of the domicile of the decedent.

(4) *Taxpayer for whom a guardian or other fiduciary has been appointed.* In the case of a taxpayer for whom a guardian or other fiduciary has been appointed by a court of record, a form 56, "Notice Concerning Fiduciary Relationship," should be filed by the fiduciary. Internal Revenue Service officials may require the submission of a court certificate or court order showing that the individual who executes the form 56, "Notice Concerning Fiduciary Relationship," has been appointed and that his/her appointment has not been terminated.

(5) *Taxpayer who has appointed a trustee.* In the case of a taxpayer who has appointed a trustee, a form 56, "Notice Concerning Fiduciary Relationship," should be filed by the trustee. If there is more than one trustee appointed, all should join unless it is shown that fewer than all have authority to act. Internal Revenue Service officials may require the submission of documentary evidence of the authority of the trustee to act. Such evidence may be either a copy of a properly executed trust instrument or a certified copy of extracts from the trust instruments, showing—

(i) The date of the instrument;

(ii) That it is or is not of record in any court;

(iii) The names of the beneficiaries;

(iv) The appointment of the trustee, the authority granted, and other information as may be necessary to show that such authority extends to Federal tax matters; and

(v) That the trust has not been terminated and the trustee appointed therein is still legally acting as such.

In the event that the trustee appointed in the original trust instrument has been replaced by another trustee, documentary evidence of the appointment of the new trustee must be submitted.

(e) *Commissioner's authority to substitute other requirements for power of attorney.* Upon application of a taxpayer or a recognized representative, the Commissioner of Internal Revenue may substitute a requirement(s) other than provided herein for a power of attorney as evidence of the authority of the representative.

§ 601.504 Requirements for filing power of attorney.

(a) *Situations in which a power of attorney is required.* Except as otherwise provided in § 601.504(b), a power of attorney is required by the Internal Revenue Service when the taxpayer wishes to authorize a recognized representative to perform one or more of the following acts on behalf of the taxpayer—

(1) *Representation.* (See §§ 601.501(b)(10) and 601.501(b)(13).)

(2) *Waiver.* Offer and/or execution of either

(i) A waiver of restriction on assessment or collection of a deficiency in tax, or

(ii) A waiver of notice of disallowance of a claim for credit or refund.

(3) *Consent.* Execution of a consent to extend the statutory period for assessment or collection of a tax.

(4) *Closing agreement.* Execution of a closing agreement under the provisions of the Internal Revenue Code and the regulations thereunder.

(5) *Check drawn on the United States Treasury.* The authority to receive (but not endorse or collect) a check drawn on the United States Treasury must be specifically granted in a power of attorney. (The endorsement and payment of a check drawn on the United States Treasury are governed by Treasury Department Circular No. 21, as amended, 31 CFR part 240. Endorsement and payment of such check by any person other than the payee must be made under one of the special types of powers of attorney prescribed by Circular No. 21, 31 CFR part 240. For restrictions on the assignment of claims, see Revised Statute section 3477, as amended (31 U.S.C. 3727).)

(6) *Signing tax returns.* The filing of a power of attorney does not authorize the recognized representative to sign a tax return on behalf of the taxpayer unless such act is both—

(i) Permitted under the Internal Revenue Code and the regulations thereunder (e.g., the authority to sign income tax returns is governed by the provisions of § 1.6012-1(a)(5) of the Income Tax Regulations); and

(ii) Specifically authorized in the power of attorney.

(b) *Situations in which a power of attorney is not required.* (1) *Disclosure of confidential tax information.* The submission of a tax information authorization to request a disclosure of confidential tax information does not constitute practice before the Internal Revenue Service. (Such procedure is governed by the provisions of section 6103 of the Internal Revenue Code and the regulations thereunder.) Nevertheless, if a power of attorney is properly filed, the recognized representative also is authorized to receive and/or inspect confidential tax information concerning the matter(s) specified (provided the power of attorney places no limitations upon such disclosure).

(2) *Estate matter.* A power of attorney is not required at a conference concerning an estate tax matter if the individual seeking to act as a recognized representative presents satisfactory evidence to Internal Revenue Service officials that he/she is—

(i) An individual described in § 601.502(a); and

(ii) The attorney of record for the executor, personal representative, or administrator before the court where the will is probated or the estate is administered.

(3) *Bankruptcy matters.* A power of attorney is not required in the case of a trustee, receiver, or an attorney (designated to represent a trustee, receiver, or debtor in possession) appointed by a court having jurisdiction over a debtor. In such a case, Internal Revenue Service officials may require the submission of a certificate from the court having jurisdiction over the debtor showing the appointment and qualification of the trustee, receiver, or attorney and that his/her authority has not been terminated. In cases pending before a court of the United States (e.g., U.S. District Court or U.S. Bankruptcy Court), an authenticated copy of the order approving the bond of the trustee, receiver, or attorney will meet this requirement.

(c) *Administrative requirements of filing*—(1) *General.* Except as provided in this section, a power of attorney (including the declaration of representative and any other required statement(s)) must be filed in each office of the Internal Revenue Service in which the recognized representative desires to perform one or more of the acts described in § 601.504(a).

(2) *Regional offices.* If a power of attorney (including the declaration of representative and any other required statement(s)) is filed with the office of a district director or with a service center which has the matter under consideration, it is not necessary to file a copy with the office of a regional commissioner which subsequently has the matter under consideration unless requested.

(3) *National Office.* In case of a request for a ruling or other matter to be considered in the National Office, a power of attorney, including the declaration of representative and any other required statement(s), must be submitted with each request or matter.

(4) *Copy of power of attorney.* The Internal Revenue Service will accept either the original or a copy of a power of attorney. A copy of a power of attorney received by facsimile transmission (FAX) also will be accepted.

(d) *Practice by correspondence.* If an individual desires to represent a taxpayer through correspondence with the Internal Revenue Service, such individual must submit a power of attorney, including the declaration of representative and any other required statement(s), even though no personal appearance is contemplated.

§ 601.505 Revocation, change in representation and substitution or delegation of representative.

(a) *By the taxpayer*—(1) *New power of attorney filed.* A new power of attorney revokes a prior power of attorney if it is granted by the taxpayer to another recognized representative with respect to the same matter. However, a new power of attorney does not revoke a prior power of attorney if it contains a clause stating that it does not revoke such prior power of attorney and there is attached to the new power of attorney either—

(i) a copy of the unrevoked prior power of attorney; or

(ii) a statement signed by the taxpayer listing the name and address of each recognized representative authorized under the prior unrevoked power of attorney.

(2) *Statement of revocation filed.* A taxpayer may revoke a power of attorney without authorizing a new representative by filing a statement of

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revocation with those offices of the Internal Revenue Service where the taxpayer has filed the power of attorney to be revoked. The statement of revocation must indicate that the authority of the first power of attorney is revoked and must be signed by the taxpayer. Also, the name and address of each recognized representative whose authority is revoked must be listed (or a copy of the power of attorney to be revoked must be attached).

(b) *By the recognized representative*—(1) *Revocation of power of attorney.* A recognized representative may withdraw from representation in a matter in which a power of attorney has been filed by filing a statement with those offices of the Internal Revenue Service where the power of attorney to be revoked was filed. The statement must be signed by the representative and must identify the name and address of the taxpayer(s) and the matter(s) from which the representative is withdrawing.

(2) *Substitution or delegation of recognized representative.* Any recognized representative appointed in a power of attorney may substitute or delegate authority under the power of attorney to another recognized representative if substitution or delegation is specifically permitted under the power of attorney. Unless otherwise provided in the power of attorney, a recognized representative may make a substitution or delegation without the consent of any other recognized representative appointed to represent the taxpayer in the same matter. A substitution or delegation if effected by filing the following items with offices of the Internal Revenue Service where the power of attorney has been filed—

(i) *Notice of substitution or delegation.* A Notice of Substitution or Delegation is a statement signed by the recognized representative appointed under the power of attorney. The statement must contain the name and mailing address of the new recognized representative and, if more than one individual is to represent the taxpayer in the matter, a designation of which recognized representative is to receive notices and other written communications;

(ii) *Declaration of representative.* A written declaration which is made by the new representative as required by § 601.502(b); and

(iii) *Power of attorney.* A power of attorney which specifically authorizes the substitution or delegation.

An employee of a recognized representative may not be substituted for his/her employer with respect to the representation of a taxpayer before the Internal Revenue Service unless the employee is a recognized representative in his/her own capacity under the provisions of § 601.502(a). However, even if such employee is not a recognized representative in his/her own capacity under the provisions of § 601.502(a), that individual may be authorized by the taxpayer under a tax information authorization to receive and/or inspect confidential tax information under the provisions of section 6103 of the Internal Revenue Code and the regulations thereunder.

§ 601.506 Notices to be given to recognized representative; direct contact with taxpayer; delivery of a check drawn on the United States Treasury to recognized representative.

(a) *General.* Any notice or other written communication (or a copy thereof) required or permitted to be given to a taxpayer in any matter before the Internal Revenue Service must be given to the taxpayer and, unless restricted by the taxpayer, to the representative according to the following procedures—

(1) If the taxpayer designates more than one recognized representative to receive notices and other written communications, it will be the practice of the Internal Revenue Service to give copies of such to two (but not more than two) individuals so designated.

(2) In a case in which the taxpayer does not designate which recognized representative is to receive notices, it will be the practice of the Internal Revenue Service to give notices and other communications to the first recognized representative appointed on the power of attorney.

(3) Failure to give notice or other written communication to the recognized representative of a taxpayer will not affect the validity of any notice or other written communication delivered to a taxpayer.

Unless otherwise indicated in the document, a power of attorney other than form 2848 will be presumed to grant the authority to receive notices or other written communication (or a copy thereof) required or permitted to be given to a taxpayer in any matter(s) before the Internal Revenue Service to which the power of attorney pertains.

(b) *Cases where taxpayer may be contacted directly.* Where a recognized representative has unreasonably delayed or hindered an examination, collection or investigation by failing to furnish, after repeated request, nonprivileged information necessary to the examination, collection or investigation, the Internal Revenue Service employee conducting the examination, collection or investigation may request the permission of his/her immediate supervisor to contact the taxpayer directly for such information.

(1) *Procedure.* If such permission is granted, the case file will be documented with sufficient facts to show how the examination, collection or investigation was being delayed or hindered. Written notice of such permission, briefly stating the reason why it was granted, will be given to both the recognized representative and the taxpayer together with a request of the taxpayer to supply such nonprivileged information. (See 7521(c) of the Internal Revenue Code and the regulations thereunder.)

(2) *Effect of direct notification.* Permission to by-pass a recognized representative and contact a taxpayer directly does not automatically disqualify an individual to act as the recognized representative of a taxpayer in a matter. However, such information may be referred to the Director of Practice for possible disciplinary proceedings under Circular No. 230, 31 CFR part 10.

(c) *Delivery of a check drawn on the United States Treasury*—(1) *General.* A check drawn on the United States Treasury (e.g., a check in payment of refund of internal revenue taxes, penalties, or interest, see § 601.504(a)(5)) will be mailed to the recognized representative of a taxpayer provided that a power of attorney is filed containing specific authorization for this to be done.

(2) *Address of recognized representative.* The check will be mailed to the address of the recognized representative listed on the power of attorney unless such recognized representative notifies the Internal Revenue Service in writing that his/her mailing address has been changed.

(3) *Authorization of more than one recognized representative.* In the event a power of attorney authorizes more than one recognized representative to receive a check on the taxpayer's behalf, and such representatives have different addresses, the Internal Revenue Service will mail the check diretly to the taxpayer, unless a statement (signed by all of the recognized representatives so authorized) is submitted which indicates the address to which the check is to be mailed.

(4) *Cases in litigation.* The provisions of § 601.506(c) concerning the issuance of a tax refund do not apply to the issuance of a check in payment of claims which have been either reduced

to judgment or settled in the course (or as a result) of litigation.

(d) *Centralized Authorization File (CAF) system*—(1) *Information recorded onto the CAF system.* Information from both powers of attorney and tax information authorizations is recorded onto the CAF system. Such information enables Internal Revenue Service personnel who do not have access to the actual power of attorney or tax information authorizations to—

(i) Determine whether a recognized representative or an appointee is authorized by a taxpayer to receive and/or inspect confidential tax information;

(ii) Determine, in the case of a recognized representative, whether that representative is authorized to perform the acts set forth in § 601.504(a); and

(iii) Send copies of computer generated notices and communications to an appointee or recognized representative so authorized by the taxpayer.

(2) *CAF number.* A Centralized Authorization File (CAF) number generally will be issued to—

(i) A recognized representative who files a power of attorney and a written declaration of representative; or

(ii) An appointee authorized under a tax information authorization.

The issuance of a CAF number does not indicate that a person is either recognized or authorized to practice before the Internal Revenue Service. Such determination is made under the provisions of Circular No. 230, 31 CFR part 10. The purpose of the CAF number is to facilitate the processing of a power of attorney or a tax information authorization submitted by a recognized representative or an appointee. A recognized representative or an appointee should include the same CAF number on every power of attorney or tax information authorization filed. However, because the CAF number is not a substantive requirement (i.e., as listed in § 601.503(a)), a tax information authorization or power of attorney which does not include such number will not be rejected based on the absence of a CAF number.

(3) *Tax matters recorded on CAF.* Although a power of attorney or tax information authorization may be filed in all matters under the jurisdiction of the Internal Revenue Service, only those documents which meet each of the following criteria will be recorded onto the CAF system—

(i) *Specific tax period.* Only documents which concern a matter(s) relating to a specific tax period will be recorded onto the CAF system. A power of attorney or tax information authorization filed in a matter unrelated to a specific period (e.g., the 100% penalty for failure to pay over withholding taxes imposed by section 6672 of the Internal Revenue Code, applications for an employer identification number, and requests for a private letter ruling request pertaining to a proposed transaction) cannot be recorded onto the CAF system.

(ii) *Future three-year limitation.* Only documents which concern a tax period that ends no later than three years after the date on a power of attorney is received by the Internal Revenue Service will be recorded onto the CAF system. For example, a power of attorney received by the Internal Revenue Service on August 1, 1990, which indicates that the authorization applies to form 941 for the quarters ended December 31, 1990 through December 31, 2000, will be recorded onto the CAF system for the applicable tax periods which end no later than July 31, 1993 (i.e., three years after the date of receipt by the Internal Revenue Service).

(iii) *Documents for prior tax periods.* Documents which concern any tax period which has ended prior to the date on which a power of attorney is received by the Internal Revenue Service will be recorded onto the CAF system provided that matters concerning such years are under consideration by the Internal Revenue Service.

(iv) *Limitation on representatives recorded onto the CAF system.* No more than three representatives appointed under a power of attorney or three persons designated under a tax information authorization will be recorded onto the CAF system. If more than three representatives are appointed under a power of attorney or more than three persons designated under a tax information authorization, only the first three names will be recorded onto the CAF system.

The fact that a power of attorney or tax information authorization cannot be recorded onto the CAF system is not determinative of the (current or future) validity of such document. (For example, documents which concern tax periods that end more than three years from the date of receipt by the IRS are not invalid for the period(s) not recorded onto the CAF system, but can be resubmitted at a later date.)

§ 601.507 Evidence required to substantiate facts alleged by a recognized representative.

The Internal Revenue Service may require a recognized representative to submit all evidence, except that of a supplementary or incidental character, over a declaration (signed under penalty of perjury) that the recognized representative prepared such submission and that the facts contained therein are true. In any case in which a recognized representative is unable or unwilling to declare his/her own knowledge that the facts are true and correct, the Internal Revenue Service may require the taxpayer to make such a declaration under penalty of perjury.

§ 601.508 Dispute between recognized representatives of a taxpayer.

Where there is a dispute between two or more recognized representatives concerning who is entitled to represent a taxpayer in a matter pending before the Internal Revenue Service (or to receive a check drawn on the United States Treasury), the Internal Revenue Service will not recognize any party. However, if the contesting recognized representatives designate one or more of their number under the terms of an agreement signed by all, the Internal Revenue Service will recognize such designated recognized representatives upon receipt of a copy of such agreement according to the terms of the power of attorney.

§ 601.509 Power of attorney not required in cases docketed in the Tax Court of the United States.

The petitioner and the Commissioner of Internal Revenue stand in the position of parties litigant before a judicial body in a case docketed in the Tax Court of the United States. The Tax Court has its own rules of practice and procedure and its own rules respecting admission to practice before it. Accordingly, a power of attorney is not required to be submitted by an attorney of record in a case which is docketed in the Tax Court. Correspondence in connection with cases docketed in the Tax Court will be addressed to counsel of record before the Court. However, a power of attorney is required to be submitted by an individual other than the attorney of record in any matter before the Internal Revenue Service concerning a docketed case.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91-12429 Filed 5-24-91; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD1 91-021]

National Sweepstakes Regatta, Red Bank, NJ

AGENCY: Coast Guard; DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the special local regulations contained in 33 CFR 100.103 which govern the National Sweepstakes Regatta. This final rule amends the permanent regulations, 33 CFR 100.103, by changing the dates on which the National Sweepstakes Regatta will take place to between 8 a.m. and 6 p.m. on June 14, 15, and 16, 1991. This change in the date of the event represents the sole change to the existing permanent regulations. These regulations are needed to provide for the safety of life on the navigable waters of the United States.

EFFECTIVE DATES: These regulations will be effective on June 14, 15, and 16, 1991, from 8 a.m. to 6 p.m.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) E. G. Westerberg, Chief Boating Safety Affairs Branch, (617) 223-8310.

SUPPLEMENTARY INFORMATION: On April 24, 1991, the Coast Guard published a notice of proposed rule making in the **Federal Register** for these regulations (56 FR 18795). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of these regulations are LT(jg) E. G. WESTERBERG, project officer, First Coast Guard District Boating Safety Affairs Branch, and LT R. E. KORROCH, project attorney, First Coast Guard District Legal Division.

Discussion of Comments

No public comments were received regarding these regulations.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the races. This should have a favorable impact on commercial facilities providing services to the spectators. Because this area is used primarily by recreational boaters, impact on commercial traffic in the area will be negligible. The Coast Guard shall ensure that the regulated area is opened periodically, allowing transiting vessels to pass without undue delay. Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.103(b) is revised to read as follows:

§ 100.103 National Sweepstakes Regatta, Redbank NJ.

* * * * *

(b) *Effective period.* This regulation is effective from 8:00 am on the morning of June 14, 1991 until 6:00 p.m. in the evening of June 16, 1991, unless otherwise specified in the Coast Guard Local Notice to Mariners and a **Federal Register** notice.

* * * * *

Dated: May 14, 1991.

R.I. Rybacki,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 91-12509 Filed 5-24-91; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 440

[MB-014-CN]

RIN 0938-AD16

Medicaid Program; Eligibility Groups, Coverage, and Conditions of Eligibility; Legislative Changes Under OBRA '87, COBRA, and TEFRA

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule; correction notice.

SUMMARY: This notice corrects 42 CFR 440.210, Required services for the categorically needy, 42 CFR 440.220, Required services for the medically needy, and 42 CFR 440.250, Limits on comparability of services, to restore current text which was inadvertently deleted in the final rule and to make conforming redesignation changes. This notice rescinds a correction notice published on March 14, 1991, in which certain corrections pertaining to §§ 440.220 and 440.250 were inadvertently omitted.

EFFECTIVE DATES: These corrections are effective November 12, 1990.

FOR FURTHER INFORMATION CONTACT: Valerie Krauss, (301) 966-4670.

SUPPLEMENTARY INFORMATION: On November 21, 1990, in FR Doc. 90-27393, we published a final rule that included revisions to 42 CFR part 440. In doing so, we failed to take into account changes made to part 440 by a final rule published on September 7, 1990 (55 FR 36813). As a result, we inadvertently deleted in the November 21 final rule regulatory text that was added to §§ 440.210 and 440.220 by the September 7 final rule. Consequently, we published a correction notice, FR Doc. 91-5923, on March 14, 1991 at 56 FR 10807 to integrate the provisions of the two final rules, to restore the deleted text in §§ 440.210 and 440.220, and to make technical changes to § 440.250. However, the correction notice inadvertently omitted certain corrections pertaining to §§ 440.220 and 440.250. We are, therefore, rescinding the correction notice published on March 14, 1991, and are republishing it to include the omitted material.

A. In vol. 56, on pages 10807 and 10808, the corrections in document 91-5923 are rescinded.

B. In vol. 55, on page 48611, column 1, § 440.210, is correctly revised to read as follows:

§ 440.210 Required services for the categorically needy.

(a) A State plan must specify that, as a minimum, categorically needy recipients are provided the following services:

(1) The services as specified in §§ 440.10 through 440.50, 440.70 and (to the extent nurse-midwives are authorized to practice under State law or regulation), § 440.165;

(2) Pregnancy-related services and services for other conditions that might complicate the pregnancy.

(i) Pregnancy-related services are those services that are necessary for the health of the pregnant woman and fetus, or that have become necessary as a result of the woman having been pregnant. These include, but are not limited to, prenatal care, delivery, postpartum care, and family planning services.

(ii) Services for other conditions that might complicate the pregnancy include those for diagnoses, illnesses, or medical conditions which might threaten the carrying of the fetus to full term or the safe delivery of the fetus; and

(3) For women who, while pregnant, applied for, were eligible for, and received Medicaid services under the plan, all services under the plan that are pregnancy-related for an extended postpartum period. The postpartum period begins on the last day of pregnancy and extends through the end of the month in which the 60-day period following termination of pregnancy ends.

(b) A State plan must specify that eligible aliens as defined in §§ 435.406(a) and 436.406(a) of this subchapter will receive at least the services provided in paragraph (a) of this section.

(c) A State plan must specify that aliens not defined in §§ 435.406(a) and 436.406(a) of this subchapter will only be provided the limited services specified in § 440.255.

C. In vol. 55, on page 48611, column 2, § 440.220 is correctly revised to read as follows:

§ 440.220 Required services for the medically needy.

(a) A State plan that includes the medically needy must specify that the medically needy are provided, as a minimum, the following services:

(1) Prenatal care and delivery services for pregnant women.

(2) Ambulatory services, as defined in the State plan, for—

(i) Individuals under age 18; and

(ii) Individuals entitled to institutional services.

(3) Home health services (§ 440.70) to any individual entitled to skilled nursing facility services.

(4) If the State plan includes services in an institution for mental diseases (§ 440.140 or § 440.160) or in an intermediate care facility for the mentally retarded (§ 440.150(c)) for any group of medically needy, either of the following sets of services to each of the medically needy groups:

(i) The services contained in §§ 440.10 through 440.50 and (to the extent nurse-midwives are authorized to practice under State law or regulation) § 440.165; or

(ii) The services contained in any seven of the sections in §§ 440.10 through 440.165.

(5) For women who, while pregnant, applied for, were eligible as medically needy for, and received Medicaid services under the plan, services under the plan that are pregnancy-related (as defined in § 440.210(a)(2)(i) of this subpart) for an extended postpartum period. The postpartum period begins on the last day of pregnancy and extends through the end of the month in which the 60-day period following termination of pregnancy ends.

(b) A State plan must specify that eligible aliens as defined in §§ 435.406(a) and 436.406(a) of this subchapter will receive at least the services provided in paragraphs (a)(4) (i) and (ii) of this section.

(c) A State plan must specify that aliens defined in §§ 435.406(b), 435.406(c), 436.406(b) and 436.406(c) of this subchapter will only be provided the limited services specified in § 440.255.

D. In vol. 55, on page 48611, column 2, § 440.250 is correctly revised to read as follows:

§ 440.250 Limits on comparability of services.

* * * * *

(o) [Reserved]

(p) A State may provide a greater amount, duration, or scope of services to pregnant women than it provides under its plan to other individuals who are eligible for Medicaid, under the following conditions:

(1) These services must be pregnancy-related or related to any other condition which may complicate pregnancy, as defined in § 440.210(a)(2) of this subpart; and

(2) These services must be provided in equal amount, duration, and scope to all pregnant women covered under the State plan.

(Catalog of Federal Domestic Assistance Program No. 93.714—Medical Assistance Program)

Dated: May 16, 1991.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 91-12442 Filed 5-24-91; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 5

[General Docket No. 90-217; FCC 91-112]

Establishment of Procedures To Provide a Preference to Applicants Proposing an Allocation for New Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the Commission's Rules to provide preferential treatment in its licensing process for parties requesting spectrum allocation rule charges associated with the development of new communications services and technologies. The objective of this action is to encourage innovators, including individuals, small businesses, and large corporations, to develop new services and technologies.

EFFECTIVE DATE: July 30, 1991.

FOR FURTHER INFORMATION CONTACT: Rodney Small, telephone (202) 653-8116.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Final Rule in General Docket 90-217, FCC 91-112, adopted April 9, 1991, and released May 13, 1991.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street, NW., Washington, DC 20036.

Paperwork Reduction

Public reporting burden for this collection of information is estimated to vary from 50 hours to 500 hours per response, with an average of 325 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of Managing Director, Paperwork Reduction Project, OMB No. 3060-0446, Washington, DC 20554 and to the Office of Management and Budget, Paperwork Reduction Project, OMB No. 3060-0446, Washington, DC 20503.

Summary of Final Rule

1. On July 14, 1989, Washington Center for Public Policy Research filed a petition requesting that the FCC initiate a proceeding to explore changes in the Commission's Rules that could foster the introduction and development of new communications technologies in the spectrum allocation and authorization process. In its petition, Washington Center asserted that the Commission's

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current allocation and authorization processes inhibit the flow of venture capital to technological development involving use of the spectrum.

2. The Notice of Proposed Rule Making (notice) in this proceeding (55 FR 18738; May 4, 1990) proposed that a petitioner first proposing a new service through a spectrum allocation rule change and submitting pertinent information concerning its qualifications to be a licensee, its financial condition, and its plan for implementing service be awarded a license to operate in that service upon adoption by the Commission of rules for the service. The notice also proposed that application from other parties seeking to serve the same areas proposed by the petitioner be deferred for six months after grant of the petitioner's license or construction authorization. The notice requested comment on how novelty should be measured and what degree of novelty should be required in order for the preference to be obtained. As an alternative to the proposal to guarantee an innovator the opportunity to be a licensed service provider, the notice requested comment on the appropriateness of giving the innovator a comparative preference in a lottery or hearing. Finally, the notice sought comment on the desirability of permitting innovators to transfer their authorizations or licenses to other parties.

3. The Commission finds that a "pioneer's preference" is desirable and will foster a host of valuable new technologies and services for the public. The present method of assigning licenses, while beneficial in many respects, appears to have dissuaded in the past at least some potential pioneers from seeking the authorization of new communications services. Of greater concern is the possibility that a future pathbreaking new telecommunications technologies and services are introduced worldwide, American consumers may not have the early benefit of these technologies and services, owing to the belief of innovators that the regulatory burden is excessive in the United States.

4. To implement a pioneer's preference, the Commission will effectively guarantee an innovating party a license in the new service (assuming it is otherwise qualified) by permitting the recipient of a pioneer's preference to file a license application without being subject to competing applications. However, the innovator will not receive a headstart beyond the *de facto* headstart that may occur due to the time it may take other entities to apply for and receive a license. The key public interest benefit of a preference is the assurance to the pioneering entity that, if otherwise qualified, it will receive a license.

5. Commenters convinced the Commission that its proposal to limit preferences to new communications services is too restrictive. The Commission is persuaded that both a new radio service and a new technology used to improve an existing service by significantly improving spectrum efficiency should be considered for a preference. In addition, proposals that promise to enable the sharing, or co-use, of allocated spectrum may qualify. By these modifications, the Commission recognizes the risks and uncertainties associated with various paths innovation might take not only to create new communications services, but to improve existing ones. However, the Commission will not consider a request for a preference simply for a new technology. Unless a new technology is associated with a licensable service, there is little opportunity for the Commission to create a system or rewards to encourage its implementation.

6. An applicant for a preference will be required to file a petition for rule making for either a new service or a new technology used to improve an existing service, and a separate preference request. The preference request must be accompanied by either a demonstration of the technical feasibility of the new service or technology or an experimental license application, unless an experimental license application has previously been filed for that new service or technology. The Commission believes that such a technical showing or experiment can aid in its public interest determination. However, no financial showing will be required. The Commission believes that an applicant who develops a viable proposal will be able to attract financial support at the time the Commission awards a preference.

7. To provide guidance to innovators and financial institutions as to when a preference might be granted, the Commission will use a flexible standard. Specifically, the Commission, in its discretion, will award a preference to an entity that demonstrates that it (or its predecessor-in-interest) has developed an innovative proposal that leads to the establishment of a service not currently provided, *provided* that the rules adopted for the new or existing service are a reasonable outgrowth of the proposal and lend themselves to the grant of a preference and a license to the pioneer. The Commission believes that awarding a preference based on such a standard will provide innovators and financial institutions with sufficient certainty while at the same time ensuring that the Commission can consider and take into account a wide array of innovative services and technologies. In the context of the comment process on a request for a preference, the Commission may seek the opinion of specific recognized experts in scientific disciplines that are relevant to proposals before the Commission.

8. Regarding the area of the preference award, the Commission will permit the person receiving a preference to select the one area of licensing that it desires to serve. The area selected will depend on how the Commission report and order defines the area of operation under its rules; *e.g.*, city or region. In cases where the Commission adopts rules defining service areas different than had been proposed or anticipated by the petitioner, it will permit a choice of eventual licensing for the pioneer to be made after a report and order is adopted in the proceeding. In general, the Commission is adopting an approach such that the preference would be awarded for the area defined for the service under its licensing rules. However, the Commission will not grant a nationwide preference unless the service is inherently nationwide.

9. With respect to the number of preferences to be awarded, the Commission believes that in many services there will be a single, clear-cut innovator, while in other services, it will be difficult to distinguish among several innovative parties. In the latter situations, the Commission finds it appropriate to award preferences to each applicant that can meet the eligibility standard for being awarded a preference. For example, if the Commission adopts rules that combine aspects of two or more applicants' proposals or rules that permit the use of two or more applicants' proposed technologies, more than one preference would be warranted. The Commission recognizes that there is a potential drawback to awarding multiple preferences in that some parties who are not truly pioneers may be encouraged to file "copycat" applications in an attempt to gain a preference. However, the Commission will look very carefully at each application to ensure that what is being proposed meets the standard set forth above.

10. The Commission notes that a situation could arise in which the final rules adopted for a service would be so different from all of the service proposals that any preference would be inappropriate. Nevertheless, it will be the Commission's general policy to award a preference to any otherwise qualified innovator meeting the standard even if the final rules for the service are not identical to the innovator's original proposal. However, if the modifications are so significant that the particular innovator does not meet the eligibility standard, the Commission will not award a preference to that innovator. The Commission believes that such an approach should result in providing innovators with the certainty necessary to garner financial support in a timely manner and should ensure that the benefits of the new service can be realized expeditiously by the public.

11. With regard to timing of the preference award, the Commission believes that an initial determination of entitlement to a preference at the time the notice of proposed rule making (NPRM) on the innovator's proposal is issued will best serve the public interest. The Commission believes that if this decision is deferred to the report and order stage of the proceeding, it will prolong the regulatory uncertainty for the innovator and thereby have a chilling effect on investors' willingness to provide financial support. Nonetheless, as a situation may occasionally arise wherein a particular service either will not be adopted or will be modified to such an extent that no preference is warranted, a preference grant will not be made final until a report and order on the proposal is adopted by the Commission. If the grant is finalized, any application for a license would not be subject to competing applications.

12. The Commission will not permit the preference to be transferred. It is not the Commission's desire to create some new form of negotiable instrument and thereby encourage unjustified petitions from speculators hoping to obtain a thing of value to sell. By this decision, however, the Commission is not precluding a change of control of a preference attendant upon the sale of a company. To the extent a preference may be regarded as an asset, it may pass, along with other assets, to new ownership should a company be sold.

13. The Commission notes that adoption of the notice in this proceeding appears to have generated a number of experimental license applications, as well as requests for a pioneer's preference in various services. In order to treat all parties equitably, the Commission will allow parties who have already filed an application for an experimental license to file a request for a pioneer's preference under the rules set forth herein. Those entities who have already filed a request for a preference will be required to submit a new request. Preference requests will be accepted except when an NPRM has already been issued proposing rules for a new service or modifications to rules in an existing service. This means that in Commission proceedings in which only a petition for rule making has been received or a notice of inquiry adopted, potential innovators are eligible to file for a preference.

14. The Commission also considered arguments that an innovator might be able to foreclose competition by refusing to license its related patents. In appropriate cases the Commission will consider the need to condition grant of a license to a pioneer's preference recipient on a requirement that it license any related patents on a nondiscriminatory basis to other entities providing the same service.

15. Accordingly, *It is Ordered*, that parts 1 and 5 of the Commission's Rules and Regulations are amended as specified below, effective July 30, 1991. This action is taken pursuant to sections 4(i), 7(a), 303 (c), (g), and (r), and 309(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 303 (c), (g), and (r), and 309(a).

List of Subjects

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 5

Experimental radio services (other than broadcast). Radio.

Rule Changes

16. Parts 1 and 5 of title 47 of the Code of Federal Regulations are amended as follows:

PART 1—PRACTICE AND PROCEDURE

17. The authority citation in part 1 continues to read:

Authority: Sec. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

18. A new § 1.402 is added to read as follows:

§ 1.402 Pioneer's preference.

(a) When filing a petition for rule making pursuant to § 1.401, that seeks an allocation of spectrum for a new service or which, by use of innovative technology, will substantially enhance an existing service, the petitioner may also submit a separate request that it be awarded a pioneer's preference in the licensing process for the service. The preference request must contain pertinent information concerning its plan for implementing the service, the frequencies it proposes to use, the area for which the preference is sought, and must address any existing conflicting licensing rules such as multiple ownership, showing how these rules should or should not apply. The petitioner must demonstrate that it (or its predecessor-in-interest) has developed the new service or technology; *e.g.*, that it (or its predecessor-in-interest) has brought out the capabilities or possibilities of the technology or service or has brought them to a more advanced or effective state. The petitioner must accompany its preference request with either a demonstration of the technical feasibility of the new service or technology, or an experimental license application, unless an experimental license application has previously been filed for that new service or technology. If the petitioner files or has filed an experimental license application, it must specify the area in which the applicant intends to conduct its experiment and whether that is the area for which a preference is sought. In determining in its discretion whether to grant a pioneer's preference, the Commission will consider whether the petitioner has demonstrated that it (or its predecessor-in-interest) has developed an innovative proposal that leads to the establishment of a service not currently provided or a substantial enhancement of an existing service. Additionally, the preference will be granted only where rules, as adopted, are a reasonable outgrowth of the proposal and lend themselves to the grant of a preference.

(b) An initial determination on a request for a pioneer's preference will be made at the time of the adoption (if any) of a notice of proposed rule making. A final determination on a request for a pioneer's preference (and its scope) will be made at the time of the adoption (if any) of a report and order adopting new rules. If awarded, the pioneer's preference will provide that the petitioner's application for a construction permit or license will not be subject to mutually exclusive applications.

(c) Any comments on the request for a pioneer's preference shall be filed in accordance with the pleading schedule set forth in § 1.405 of the rules, but not as part of comments on the petition for rule making.

(d) In the event of a conflict between this rule and any rule for a particular

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service that provides for the filing and consideration of competing applications, this rule shall prevail.

19. Section 1.403 is revised to read as follows:

§ 1.403 Notice and availability.

All petitions for rule making (other than petitions to amend the FM, Television, and Air-Ground Tables of Assignments) meeting the requirements of § 1.401 will be given a file number, and promptly thereafter, a "Public Notice" will be given (by means of a Commission release entitled "Petition for Rule Making Filed") as to the petition, file number, nature of the proposal, and date of filing. If a petition for rule making includes a request for a pioneer's preference, that request will be separately listed in the Public Notice with a separate file number. Petitions are available for public inspection at the Commission's Dockets Reference Room in Washington, DC.

PART 5—EXPERIMENTAL RADIO SERVICES (OTHER THAN BROADCAST)

20. The authority citation in part 5 continues to read:

Authority: Sec. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply sec. 301, 48 Stat. 1081, as amended; 47 U.S.C. 301.

21. A new § 5.207 is added to read as follows:

§ 5.207 Experiments performed in conjunction with pioneer's preference applications.

An applicant for a pioneer's preference pursuant to § 1.402 of this chapter may file an experimental license application concurrent with a petition for rule making requesting an allocation of spectrum for a new service or a rule amendment to permit use of a new technology. The experimental application should be for a limited geographical area, generally including no more than one Metropolitan Statistical Area.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-12436 Filed 5-24-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 25

[CC Docket No. 86-496; FCC 91-136]

Satellite Communication Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has revised its rules governing satellite communications. These rules codify and clarify licensing policies for earth stations and satellite facilities as well as eliminate unnecessary regulatory requirements. A new form, Form 493, is included and will increase the efficiency of the earth station licensing program and afford applicants clearer directions. The new rules include a registration procedure to facilitate domestic receive-only operations while affording the same interference protection as the previous licensing procedure. The rules eliminate the requirements for earth station construction permits and demonstrations of financial qualifications by applicants. A rule is established conditioning licenses on certification of completion of construction and commencement of operation. Other rules include codification of special temporary authority policies, licensing requirements for very small aperture terminal (VSAT) networks and transborder services, and requirements affecting applications for emergency replacement of domestic space stations, international coordination, and public notice of applications for earth station modifications. All operators of satellite facilities may be affected by these rules.

EFFECTIVE DATE: June 27, 1991, except for §§ 25.131(j) and 25.300(c) which contain an information collection requirement and are not effective until approved by the Office of Management and Budget. FCC will publish public notice of the effective date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Rosalee Chiara, Satellite Radio Branch, Common Carrier Bureau, (202) 634-1624.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's First Report and Order in CC Docket No. 86-496, FCC 91-136, adopted April 23, 1991 and released May 21, 1991.

The full text of this Commission decision is available for inspection and copying during the normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1114 21st Street, NW., Washington, DC 20036.

The following are estimated average hours per response for the collections of information contained in 47 CFR part 25 which are subject to the clearance procedures of 5 CFR part 1320, *et seq.*: PCC Form 493 and exhibits—24 hours; § 25.111—100 hours; § 25.113—20 hours; § 25.114—100 hours; § 25.115—5 hours; § 25.119—1 hour; § 25.133—1 hour; § 25.140—1000 hours; §§ 25.154 and 25.163—2 hours; and § 25.300—24 hours. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing this burden to Federal Communications Commission, Office of Managing Director, Washington, DC 20554, and to Office of Management and Budget, Paperwork Reduction Project (3060-0383). OMB control numbers for §§ 25.140 and 25.300 are 3060-0343 and 3060-0184, respectively.

Summary of First Report and Order

1. Several factors have necessitated adoption of this rulemaking. In 1983, the Commission reduced orbital spacings between domestic fixed-satellites to two degrees. 48 FR 40233 (September 6, 1983). Because of the greater potential for interference caused by this reduction, a joint industry-government advisory committee was established to make recommendations for regulations to alleviate interference problems. 50 FR 2671 (January 18, 1985). Rules were proposed to implement the recommendations of the advisory committee, to codify application filing and processing procedures, to eliminate certain outdated requirements and to adopt a new application form for earth stations. Comments by interested parties were solicited in a notice of proposed rulemaking, 2 FCC Rcd 762 (1987), 52 FR 6175, March 2, 1987, and seventy-eight entities responded.

2. After evaluating the comments, the Commission adopted rules revising and codifying application processing procedures for satellite communications services. In addition, a new earth station application form, Form 493, has been adopted which will simplify and clarify the licensing procedures. Specifically, these rules eliminate the construction permit requirement for most earth stations and eliminate the requirement that earth station applicants demonstrate financial qualifications. The rules also establish a registration program in lieu of licensing for domestic receive-only earth stations. Other rules include codification of special temporary authority policies, licensing requirements for very small aperture terminal (VSAT) networks and transborder services, and requirements affecting applications for emergency replacement of domestic space stations, international coordination, and public notice of applications for earth station modifications.

3. With respect to the technical and operational rules proposed in the *notice*, many commenters stated that the proposed rules would place a burden on licensees and questioned the technical and economic feasibility of these rules. The Commission is deferring action on the proposed technical and operation rules, pending further evaluation.

Regulatory Flexibility Analysis

4. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, this proceeding will have an impact on all entities including small entities who seek authorization under part 25 of the Commission's rules to operate satellite facilities. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's complete decision.

Ordering Clauses

5. Accordingly, *It is Ordered*, That part 25 of the Commission's Rules and Regulations is amended as specified below, effective 30 days after publication in the **Federal Register**.

6. *It is Further Ordered*, That FCC Form 403 is superseded by new FCC Form 493 as set forth in the appendix to this document, subject to review by the Office of Management and Budget.[1]

List of Subjects in 47 CFR Part 25

Satellites, Radio communications satellites.

Part 25 of the Commission's Rules and Regulations (Chapter I of title 47 of the Code of Federal Regulations) is amended as follows:

1. The Table of Contents for part 25 is revised to read as follows:

[1] OMB has not yet approved the new FCC Form 493. A tentative copy of FCC Form 493 is in the appendix to this document. This form is not to be used until it has received the approval of the Office of Management and Budget. A public notice will be issued when the new form has been approved and is available for use. Until that time, the existing Form 403 should be used. We delegate to the Chief, Common Carrier Bureau, authority to issue a public notice detailing specific procedures to follow between the time the rules are effective and the new form is available.

PART 25—SATELLITE COMMUNICATIONS

Subpart A—General

Sec.
25.101 Basis and scope.
25.102 Station authorization required.
25.103 Definitions.
25.104 Preemption of local zoning of earth stations.
25.105–25.108 [Reserved]
25.109 Cross-reference.

Subpart B—Applications and Licenses

GENERAL APPLICATION FILING REQUIREMENTS

25.110 Filing of applications, fees, and numbers of copies.
25.111 Additional information.
25.112 Defective applications.
25.113 Construction permits.
25.114 Applications for space station authorizations.
25.115 Applications for earth station authorizations.
25.116 Amendments to applications.
25.117 Modification of station license.
25.118 Assignment or transfer of control of station authorization.
25.119 Application for special temporary authorizations.
25.120 License term and renewals.

EARTH STATIONS

25.130 Filing requirements for transmitting earth stations.
25.131 Filing requirements for receive-only earth stations.
25.132 [Reserved]
25.133 Period of construction; certification of commencement of operation.

SPACE STATIONS

25.140 Qualifications of domestic fixed satellite space station licensees.
25.141 Licensing provisions for the radiodetermination satellite service.

PROCESSING OF APPLICATIONS

25.150 Receipt of applications.
25.151 Public notice period.
25.152 Dismissal and return of applications.
25.153 Repetitious applications.
25.154 Opposition to applications and other pleadings.
25.155 Mutually exclusive applications.
25.156 Consideration of applications.

FORFEITURE, TERMINATION, AND REINSTATEMENT OF STATION AUTHORIZATION

25.160 Administrative sanctions.
25.161 Automatic termination of station authorization.
25.162 Cause for termination of interference protection.
25.163 Reinstatement.

Subpart C—Technical Standards

25.201 Definitions.
25.202 Frequencies, frequency tolerance and emission limitations.
25.203 Choice of sites and frequencies.
25.204 Power limits.
25.205 Minimum angle of antenna elevation.
25.206 Station identification.
25.207 Cessation of emissions.
25.208 Power flux density limits.
25.209 Antenna performance standards.
25.251 Special requirements for coordination.
25.252 Maximum permissible interference power.
25.253 Determination of coordination distance for near great circle propagation mechanisms.
25.254 Computation of coordination distance contours for propagation modes associated with precipitation scatter.
25.255 Guidelines for performing interference analyses for near great circle propagation mechanisms.
25.256 Guidelines for performing interference analyses for precipitation scatter modes. [Reserved]

Subpart D—[Reserved]

Subpart E—Development Operations

25.300 Developmental authorization.
25.306 Automatic transmitter identification system.

Subparts F-G—[Reserved]

Subpart H—Authorization to Own Stock in the Communications Satellite Corporation

Sec.
25.501 Scope of this subpart.
25.502 Definitions.
25.503–25.504 [Reserved]
25.505 Persons requiring authorization.
25.506–25.514 [Reserved]
25.515 Method of securing authorization.
25.516–25.519 [Reserved]
25.520 Contents of applications.
25.521 Who may sign applications.
25.522 Full disclosures.
25.523 Form of application, number of copies, fees, etc.
25.524 [Reserved]
25.525 Action upon applications.
25.526 Amendments.
25.527 Defective applications.
25.528–25.529 [Reserved]
25.530 Scope of authorization.
25.531 Revocation of authorization.

2. The authority citation for part 25 continues to read as follows:

Authority: §§ 25.101 to 25.531 issued under sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply secs. 101–404, 76 Stat. 419–427; 47 U.S.C. 701–744.

3. In § 25.101, paragraph (a) is revised to read as follows:

§ 25.101 Basis and scope.

(a) The rules and regulations in this part are issued pursuant to the authority contained in secton 201(c)(11) of the Communications Satellite Act of 1962, as amended, section 501(c)(6) of the International Maritime Satellite Telecommunications Act, and titles I through III of the Communications Act of 1934, as amended.

* * * * *

4. A new § 25.102 is added to read as follows:

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§ 25.102 Station authorization required.

(a) No person shall use or operate apparatus for the transmission of energy or communications or signals by space or earth stations except under, and in accordance with, an appropriate authorization granted by the Federal Communications Commission.

(b) Protection from impermissible levels of interference to the reception of signals by earth stations in the Fixed-Satellite Service from terrestrial stations in a co-equally shared band is provided through the authorizations granted under this part.

§§ 25.105, 25.106, 25.107 & 25.108 [Reserved]

5. Sections 25.105, 25.106, 25.107, and 25.108 are added and reserved.

6. A new § 25.109 is added to read as follows:

§ 25.109 Cross-reference.

The space radiocommunications stations in the following services are not licensed under this part:

(a) Amateur Satellite Service, see 47 CFR part 97.

(b) Direct Broadcasting Satellite Service, see 47 CFR part 100; and

(c) Ship earth stations in the Maritime Mobile Satellite Service, see 47 CFR part 83.

7. Subpart B is removed and a new subpart B is added to read as follows:

Subpart B—Applications and Licenses

GENERAL APPLICATION FILING REQUIREMENTS

§ 25.110 Filing of applications, fees, and number of copies.

(a) Standard application forms applicable to this Part may be obtained by writing Federal Communications Commission, Forms Distribution Center, 2803 52nd Ave., Hyattsville, MD 20781 or calling (202) 632–FORM.

(b) Applications for satellite radio station authorizations governed by this part and requiring a fee shall be mailed or hand-delivered to the location specified inpart 1, subpart G of this title. All other applications shall be submitted to the Secretary, 1919 M Street, NW., Federal Communications Commission, Washington, DC 20554. Applications for facilities used for fixed-satellite service between the United States and foreign points should be addressed to the attention of Chief, International Facilities Division. All other applications should be addressed to the attention of Chief, Satellite Radio Branch. The following applications should be addressed to the attention of Chief, International Facilities Division:

(1) All applications for facilities utilizing the INTELSAT system, the INMARSAT system and for separate international satellite systems;

(2) Applications for facilities utilizing any satellites, other than U.S. domestic satellites, for the provision of fixed satellite service between the United States and foreign points;

(3) Applications proposing to construct and operate new earth stations for provision of transborder services only via U.S. and non-U.S. satellites.

(c) All correspondence and amendments concerning an application shall clearly identify the satellite radio service, the name of the applicant, station location, the call sign or other identification of the station, and the file number of the application involved (if available).

(d) Except as otherwise specified, all applications, amendments, and correspondence shall be submitted in triplicate, including exhibits and attachments thereto. All matters relating to space station applications shall be submitted as an original and nine copies.

(e) The original copy of the application shall be signed as specified in § 1.743 of this chapter, and shall supply the information prescribed by this Part for the particular authorization requested. All other copies may be conformed.

(f) Each application shall be accompanied by the appropriate fee, specified by, and submitted in accordance with, subpart G of part 1 of this Chapter.

§ 25.111 Additional information.

(a) The Commission may request from any party at any time additional information concerning any application, or any other submission or pleading regarding an application, filed under this part.

(b) Applicants, permittees and licensees of radio stations governed by this part shall provide the Commission with all information it requires for the Advance Publication, coordination and notification of frequency assignments pursuant to the international Radio Regulations and consultations required by Article XIV of the INTELSAT Agreement and Article 8 of the INMARSAT Convention. This information includes, but is not limited to, that specified in appendices 3 and 4 of the Radio Regulations (Geneva 1979). No protection from interference caused by radio stations authorized by other Administrations is guaranteed unless coordination procedures are timely completed or, with respect to individual administrations, by successfully completing coordination agreements. Any radio station authorization for which coordination has not been completed may be subject to additional terms and conditions as required to effect coordination of the frequency assignments with other Administrations.

§ 25.112 Defective applications.

(a) An application will be unacceptable for filing and will be returned to the applicant with a brief statement identifying the omissions or discrepancies if:

(1) The application is defective with respect to completeness of answers to questions, informational showings, internal inconsistencies, execution, or other matters of a formal character; or

(2) The application does not substantially comply with the Commission's rules, regulations, specific requests for additional information, or other requirements.

(b) Applications considered defective under paragraph (a) of this section may be accepted for filing if:

(1) The application is accompanied by a request which sets forth the reasons in support of a waiver of (or an exception to), in whole or in part, any specific rule, regulation, or requirement with which the application is in conflict;

(2) The Commission, upon its own motion, waives (or allows an exception to), in whole or in part, any rule, regulation or requirement.

(c) If an applicant is requested by the Commission to file any additional information or any supplementary or explanatory information not specifically required in the prescribed application form or these rules, a failure to comply with the request within a specified time period will be deemed to render the application defective and will subject it to dismissal.

§ 25.113 Construction permits.

(a) Except as provided in paragraph (b) of this section or in § 25.131, construction permits must be obtained for all fixed or temporary fixed earth stations and for all space station facilities governed by this Part. Simultaneous application for a construction permit and station license may be made for all earth station and space station facilities governed by this Part.

(b) Construction permits are not required for domestic satellite earth stations, for satellite earth stations that operate with INTELSAT or INMARSAT space stations, or for earth stations that operate with international space stations licensed pursuant to

Establishing of Satellite Systems Providing International Communications, 50 FR 42286 (October 18, 1985), 101 FCC 2d 1046 (1985). Construction of such stations may commence prior to grant of a license at the applicant's own risk. Applicants must comply with the provisions of 47 CFR 1.1312 relating to environmental processing prior to commencing construction.

(c) Applicants for earth station antenna facilities exceeding 6.10 meters above ground or existing manmade structure, *see* 47 CFR part 17, must file an FCC Form 854 with the Antenna Survey Branch and be notified of FCC clearance before beginning construction. A copy of this notification must accompany an application for earth station license or registration for antennas exceeding 6.10 meters above ground or existing manmade structures.

(d) In addition to the construction permit required by paragraph (a) of this section, a launch authorization must be applied for and granted before a space station may be launched and operated in orbit. Request for launch authorization and station license may be included in the application for space station construction permit. A launch authorization and station license may also be requested at any time for a space station constructed as an on-ground spare satellite. However, an application for authority to launch and operate an on-ground spare domestic satellite will be considered to be a newly filed application for cut-off purposes, except where the space station to be launched is determined to be an emergency replacement for a previously authorized space station which has been lost as a result of a launch failure or a catastrophic in-orbit failure.

§ 25.114 Applications for space station authorizations.

(a) A comprehensive proposal shall be submitted for each proposed space station in narrative form with attached exhibits as described in paragraph (c) of this section. A separate application should be filed for each space station to be constructed. If an applicant is proposing more than one space station, information common to all space stations may be submitted in a consolidated system proposal. This information may be incorporated by reference in the individual space station applications.

(b) Each application for a new or modified space station authorization must constitute a concrete proposal for Commission evaluation, although the applicant may propose alternatives that increase flexibility in accommodating the satellite in orbit. Each application must also contain the formal waiver required by section 304 of the Communications Act, 47 CFR 304. The technical information for a proposed satellite radio system need not be filed on any prescribed form but should be complete in all pertinent details. Applications should be captioned in a manner that clearly distinguishes individual satellites within the applicant's system. The format of the applications should conform to the specifications of § 1.49 of this chapter.

(c) The following information shall be contained in the separate applications:

(1) Name, post office address and telephone number of the applicant.

(2) Name, address and telephone number of the person(s), including counsel, to whom inquiries or correspondence should be directed.

(3) Type of authorization requested (e.g., construction permit, launch authority, station license, modification of authorization).

(4) General description of overall system facilities, operations and services.

(5) Radio frequencies and polarization plan (including beacon, telemetry, and telecommand functions), center frequency and polarization of transponders (both receiving and transmitting frequencies), emission designators and allocated bandwidth of emission, final amplifier output power (identify any net losses between output of final amplifier and input of antenna and specify the maximum EIRP for each antenna beam), identification of which antenna beams are connected or switchable to each transponder and TT&C function, receiving system noise temperature, the relationship between satellite receive antenna gain pattern and gain-to-temperature ratio and saturation flux density for each antenna beam (may be indicated on antenna gain plot), the gain of each transponder channel (between output of receiving antenna and input of transmitting antenna) including any adjustable gain step capabilities, and predicted receiver and transmitter channel filter response characteristics.

(6) Orbital location, or locations if alternatives are proposed, requested for the satellite, the factors which support such an orbital assignment, the range of orbital locations from which adequate service can be provided and the basis for determining that range of orbital locations, and a detailed explanation of all factors that would limit the orbital arc over which the satellite could adequately serve its expected users.

(7) Predicted space station antenna gain contour(s) for each transmit and each receive antenna beam and nominal orbital location requested. These contour(s) should be plotted on an area map at 2 dB intervals down to 10 dB below the peak value of the parameter and at 5 dB intervals between 10 dB and 20 dB below the peak values, with the peak value and sense of polarization clearly specified on each plotted contour.

(8) Estimated number and geographic distribution of earth stations, and description of proposed arrangements for access to the system between the premises of the users and the earth stations for domestic satellites only.

(9) A description of the types of services to be provided, the estimated demand for these services, and the areas and entities to be served, including a description of the transmission characteristics and performance objectives for each type of proposed service, details of the link noise budget, typical or baseline earth station parameters, modulation parameters and overall link performance analysis (including an analysis of the effects of each contributing noise and interference source). An estimate of transponder capacity under each of the proposed operating conditions must also be supplied.

(10) Accuracy with which the orbital inclination, the antenna axis attitude, and longitudinal drift will be maintained.

(11) Calculation of power flux density levels within each coverage area and of the energy dispersal, if any, needed for compliance with § 25.208.

(12) Launch vehicles and arrangements for procuring launch services.

(13) Arrangement for tracking, telemetry, and control.

(14) Physical characteristics of the space station including weight and dimensions of spacecraft, detailed mass (on ground and in-orbit) and power (beginning and end of life) budgets, and estimated operational lifetime and reliability of the space station and the basis for that estimate.

(15) A detailed description of the capabilities, if any, of each proposed domestic satellite to provide service to Alaska, Hawaii, and/or Puerto Rico/Virgin Islands.

(16) If the request is for additional or replacement satellites, detailed information on the historical use of the system transponder-by-transponder and on a year-by-year basis, together with a projection of the types and amount of

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services, including restoral or protection requirements, for each additional satellite on a year-by-year and transponder-by-transponder basis over the estimated lifetime of the satellite(s).

(17) A detailed schedule of the estimated investment costs and operating costs for the proposed system by year, including annual depreciation, maintenance and operating costs, and the basis on which such costs are calculated. Estimated annual revenue requirements should be provided in detail on a year-by-year basis over the estimated design lifetime of the satellites, including any pre-operational periods.

(18) Detailed information demonstrating the financial qualifications of the applicant to construct and launch the proposed satellites. Applications for domestic satellite systems shall provide the financial information required by § 25.140 (b)–(e). Applications for international satellite systems shall provide the information required by Establishing of Satellite Systems Providing International Communications, 50 FR 42286 (October 18, 1985), 101 FCC 2d 1046 (1985).

(19) Legal qualifications of applicant. FCC Form 430 (Licensee Qualification Report). If FCC Form 430 is already on file, indicate date, radio service and file number of most recent filing.

(20) A clear and detailed statement of whether the space station is to be operated on a common carrier basis, or whether noncommon carrier transactions are proposed. If noncommon carrier transactions are proposed, describe the nature of the transactions and specify the number of transponders to be offered on a noncommon carrier basis.

(21) Dates by which construction will be commenced and completed, launch date, and estimated date of placement into service.

(22) Public interest considerations in support of grant.

(23) Applications for authorizations for domestic fixed-satellite space stations shall also include the information specified in § 25.140.

(24) Applications for international fixed-satellite authorizations shall also provide all information necessary to comply with the policies and procedures set forth in Establishing of Satellite Systems Providing International Communications, 50 FR 42286 (October 18, 1985), 101 FCC 2d 1046 (1985).

(25) Applications for authorizations in the Radiodetermination Satellite Service shall also include the information specified in § 25.141.

(26) Applications for authorizations in the Mobile Satellite Service shall also provide all information necessary to comply with the policies and procedures set forth in Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service, 52 FR 4017 (February 9, 1987), 2 FCC Rcd 485 (1987).

§ 25.115 Application for earth station authorizations.

(a) Transmitting earth stations. Except as provided under § 25.113(b), Commission authorization must be obtained for authority to construct and/or operate a transmitting earth station. Applications shall be filed on FCC Form 493 (Application for Authorization of Earth Station or for Modification of Station License) and include the information specified in § 25.130.

(b) Receive-only earth stations. Applications to license or register receive-only earth stations shall be filed on FCC Form 493 and conform to the provisions of § 25.131.

(c) Large Networks of Small Antennas operating in the 12/14 GHz bands with U.S. domestic satellites for domestic services. Applications to license small antenna network systems operating in the 12/14 GHz frequency band under blanket operating authority shall include the following:

(1) A general narrative section describing the applicant and the overall system operation,

(2) A Form 430 (License Qualification Report),

(3) A Form 493 for each large (5 meters or larger) hub station operating with the network,

(4) A Form 493 for each representative type of small antenna (less than 5 meters), and

(5) A designation of a point of contact where records of location and frequency use will be maintained.

§ 25.116 Amendments to applications.

(a) Unless otherwise specified, any pending application may be amended until designated for hearing, a public notice is issued stating that a substantive disposition of the application is to be considered at a forthcoming Commission meeting, or a final order disposing of the matter is adopted by the Commission.

(b) Major amendments submitted pursuant to paragraph (a) of this section are subject to the public notice requirements of § 25.151. An amendment will be deemed to be a major amendment under the following circumstances:

(1) If the amendment increases the potential for interference, or changes the proposed frequencies or orbital locations to be used.

(2) If the amendment would convert the proposal into an action that may have a significant environmental effect under § 1.1307 of this chapter.

(3) If the amendment specifies a substantial change in beneficial ownership or control (*de jure* or *de facto*) of an applicant such that the change would require, in the case of an authorized station, the filing of a prior assignment or transfer of control application under section 310(d) of the Communications Act, provided however, that the change would not be considered major where it merely amends an application to reflect a change in ownership or control of the station that had been previously approved by the Commission.

(4) If the amendment, or the cumulative effect of the amendment, is determined by the Commission otherwise to be substantial pursuant to section 309 of the Communications Act.

(c) Any application will be considered to be a newly filed application if it is amended by a major amendment (as defined by paragraph (b) of this section) after a "cut-off" date applicable to the application, except under the following circumstances:

(1) The amendment resolves frequency conflicts with authorized stations or other pending applications but does not create new or increased frequency conflicts;

(2) The amendment reflects only a change in ownership or control found by the Commission to be in the public interest and, for which a requested exemption from a "cut-off" date is granted;

(3) The amendment corrects typographical, transcription, or similar clerical errors which are clearly demonstrated to be mistakes by reference to other parts of the application, and whose discovery does not create new or increased frequency conflicts; or

(4) The amendment does not create new or increased frequency conflicts, and is demonstrably necessitated by events which the applicant could not have reasonably foreseen at the time of filing.

(d) Any amendment to an application shall be signed and submitted in the same manner, and with the same number of copies, as was the original application.

§ 25.117 Modification of station license.

(a) Except as provided, no modification of a radio station governed by this part which affects the parameters or terms and conditions of the station authorization shall be made except upon application to and grant of such application by the Commission. Licensees of U.S. domestic satellite earth stations proposing transmit and/or receive communications with U.S. domestic satellites for the provision of transborder services need not apply for modifications of their licenses provided that:

(1) Consultations pursuant to Article XIV(d) of the INTELSAT Agreement have been completed for the satellites, services and countries involved in the transborder services; and

(2) The operators of the U.S. domestic satellites have received specific authoriztion to provide the services to the proposed locations.

(b) Applications for modification of an earth station license to add, change or replace transmiters or antenna facilities conforming to § 25.209 will be considered to be minor modifications if the particulars of operations remain unchanged and frequency coordination is not required, provided however, that the maximum power and power density delivered into any antenna at the earth station site shall not exceed the values calculated by subtracting the maximum antenna gain specified in the license from the maximum authorized e.i.r.p. and e.i.r.p. density values.

(c) Applications for modification of earth station authorizations shall be submitted on FCC Form 493 except as set forth in paragraph (e) of this section.

(d) Applications for modifications of space station authorizations shall be filed in accordance with § 25.114, but only those items of information listed in § 25.114(c) that change need to be submitted provided the applicant certifies that the remaining information has not changed.

(e) Any application for modification of authorization to extend a required date of completion (e.g., begin construction, complete construction, launch, bring into operation) shall be filed on FCC Form 701 (Application for Additional Time to Construct). The application must include a verified statement from the applicant:

(1) That states the additional time is required due to unforeseeable circumstances beyond the applicant's control, describes these circumstances with specificity, and justifies the precise extension period requested; or

(2) That states there are unique and overriding public interest concerns that justify an extension, identifies these interests and justifies a precise extension period.

§ 25.118 Assignment or transfer of control of station authorization.

(a) No station license, nor any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation or any other entity holding such license, to any person except upon application to the Commission and upon finding by the Commission that the pubic interest, convenience and necessity will be served thereby.

(b) For purposes of this section, transfers of control requiring Commission approval shall include any and all transactions that:

(1) Change the party controlling the affairs of the licensee, or

(2) Affect any change in a controlling interest in the ownership of the licensee, including changes in legal or equitable ownership.

(c) Assignment of license. FCC Form 702 (Application for Consent to Assignment of Radio Station Construction Permit or License for Stations in Services Other than Broadcast) shall be submitted to assign voluntarily (as by, for example, contract or other agreement) or involuntarily (as by, for example, death, bankruptcy, or legal disability) the station authorization. In the case of involuntary assignment (or transfer of control), the applications should be filed within 10 days of the event causing the assignment (or transfer of control). FCC Form 702 shall also be used for non-substantial (*pro forma*) assignments. In addition, FCC Form 430 shall be submitted by the proposed assignee of a transmitting station unless the assignee has a current and substantially accurate report on file with the Commission.

(d) Transfer of control of corporation holding a license. FCC Form 704 (Application for Consent to Transfer of Control) shall be submitted in order to transfer voluntarily or involuntarily (*de jure* or *de facto*) control of a corporation holding any licenses. FCC Form 704 shall also be used for non-substantial (*pro forma*) transfers of control. In addition, FCC Form 430 shall be submitted by the proposed transferee of a transmitting station unless the transferee has a current and substantially accurate report on file with the Commission.

(e) Whenever a group of station licenses in the same radio service for the same class of facility licensed to the same entity is to be assigned or transferred to a single assignee or transferee, a single application may be filed to cover the entire group, if the application identifies in an exhibit each station by call sign, station location and expiration date of license.

(f) Assignments and transfers of control shall be completed within 60 days from the date of authorization. The Commission shall be notified by letter of the date of consummation and the file numbers of the applications involved in the transaction.

§ 25.119 Application for special temporary authorization.

(a) In circumstances requiring immediate or temporary use of facilities, request may be made for special temporary authority to install and/or operate new or modified equipment. The request must contain the full particulars of the proposed operation including all facts sufficient to justify the temporary authority sought and the public interest therein. No request for temporary authority will be considered unless it is received by the Commission at least 3 working days prior to the date of proposed construction or operation or, where an extension is sought, the expiration date of the existing temporary authorization. A request received within less than 3 working days may be accepted only upon due showing of extraordinary reasons for the delay in submitting the request which could not have been earlier foreseen by the applicant. A copy of the request for special temporary authority also shall be forwarded to the Commission's Laurel, Maryland Field Office.

(b) The Commission may grant a temporary authorization for a period not to exceed 180 days, with additional periods not exceeding 180 days, upon a finding that there are extraordinary circumstances requiring temporary operations in the public interest and that delay in the institution of these temporary operations would seriously prejudice the public interest. Convenience to the applicant, such as marketing considerations of meeting scheduled customer in-service dates, will not be deemed sufficient for this purpose.

§ 25.120 License term and renewals.

(a) License term. Licenses for facilities governed by this Part will be issued for a period of 10 years, except developmental licenses which will be issued for period of 1 year.

(b) The Commission reserves the right to grant or renew station licenses for less than 10 years if, in its judgment, the public interest, convenience and necessity will be served by such action.

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(c) For earth stations, the license term will be specified in the instrument of authorization.

(d) For space stations, the license term will begin at 3 a.m. EST on the date the licensee certifies to the Commission that the satellite has been successfully placed into orbit and that the operations of the satellite fully conform to the terms and conditions of the space station radio authorization.

(e) Renewal of License. Applications for renewals of earth station licenses must be submitted on FCC Form 405 (Application for Renewal of Radio Station License in Specified Services) no earlier than 90 days and no later than 30 days before the expiration date of the license.

EARTH STATIONS

§ 25.130 Filing requirements for transmitting earth stations.

(a) Applications for a new or modified transmitting earth station facility shall be submitted on FCC Form 493, accompanied by any required exhibits.

(b) A frequency coordination analysis in accordance with § 25.203 shall be provided for earth stations transmitting in frequency bands shared with equal rights between terrestrial and space services.

(c) In those cases where an applicant is filing a number of essentially similar applications, showings of a general nature applicable to all of the proposed stations may be submitted in the initial application and incorporated by reference in subsequent applications.

(d) Transmission of signals or programming to non-U.S. domestic satellites, or to foreign points by means of U.S. domestic satellites, may be subject to restrictions as a result of international agreements or treaties. The Commission will maintain public information on the status of any such agreements.

§ 25.131 Filing requirements for receive-only earth stations.

(a) Except as provided in paragraphs (b) and (j) of this section, applications for a license for a receive-only earth station shall be submitted on FCC Form 493, accompanied by any required exhibits.

(b) Except as provided in paragraph (j) of this section, receive-only earth stations in the domestic fixed-satellite service may be registered with the Commission in order to protect them from interference from terrestrial microwave stations in bands shared co-equally with the fixed service in accordance with the procedures of §§ 25.203 and 25.251–25.256.

(c) Licensing or registration of receive-only earth stations with the Commission confers no authority to receive and use signals or programming received from satellites. *See* section 705 of the Communications Act, 47 U.S.C. 605.

(d) Applications for registration shall be filed on FCC Form 493 accompanied by the coordination exhibit required by § 25.203, and any other required exhibits. Any application which is deficient or incomplete in any respect shall be immediately returned to the applicant without processing.

(e) Complete applications for registration will be placed on public notice for 30 days and automatically granted if no objection is submitted to the Commission and served on the applicant. Additional pleadings are authorized in accordance with § 1.45 of this chapter.

(f) The registration of a receive-only earth station results in the listing of an authorized frequency band at the location specified in the registration. Interference protection levels are those agreed to during coordination.

(g) Reception of signals or programming from non-U.S. domestic satellites may be subject to restrictions as a result of international agreements or treaties. The Commission will maintain public information on the status of any such agreements.

(h) Registration term: Registrations for receive-only earth stations governed by this section will be issued for a period of 10 years from the date on which the application was filed. Applications for renewals of registrations must be submitted on FCC Form 405 (Application for Renewal of Radio Station License in Specified Services) no earlier than 90 days and no later than 30 days before the expiration date of the registration.

(i) Applications for modification of license or registration of receive-only earth stations shall be made in conformance with § 25.117 of this part. Registrants are required to notify the Commission when a receive-only earth station is no longer operational or when it has not been used to provide any service during any 6 month period.

(j) Receive-only earth stations operating with:

(1) INTELSAT space stations;

(2) International space stations; or

(3) U.S. domestic and non-U.S. space stations for reception of services from other countries;

Shall file an FCC Form 493 requesting a license for such station. Receive-only earth stations used to receive INTELNET I services from INTELSAT space stations need not file for licenses. *See* Deregulation of Receive-Only Satellite Earth Stations Operating with the INTELSAT Global Communications Satellite System, Declaratory Ruling, RM No. 4845, FCC 86–214 (released May 19, 1986).

§ 25.132 [Reserved]

§ 25.133 Period of construction; certification of commencement of operation.

(a) Each license for an earth station governed by this part shall specify as a condition therein the period in which construction of facilities must be completed and station operation commenced. Construction of the earth station must be completed and the station must be brought into regular operation within 12 months from the date of the construction permit and/or license grant except as may be otherwise determined by the Commission for any particular application.

(b) Each license for a transmitting earth station included in this part shall also specify as a condition therein that upon the completion of construction, each licensee must file with the Commission a certification including the following information: The name of the licensee, file number of the application, call sign of the antenna, date of the license, a certification that the facility as authorized has been completed, that each antenna facility has been tested and is within 2 dB of the pattern specified in § 25.209, and that the station is operational including the date of commencement of service, and will remain operational during the license period unless the license is submitted for cancellation. For stations authorized under § 25.115(c) of this part (Large Networks of Small Antennas operating in the 12/14 GHz bands), a certificate must be filed when the network is put into operation.

(c) If the facility does not meet the technical parameters set forth in § 25.209, a request for a waiver must be submitted and approved by the Commission before operations may commence.

(d) Each receiving earth station licensed or registered pursuant to § 25.131 must be constructed and placed into service within 6 months after coordination has been completed. Each licensee or registrant must file with the Commission a certification that the facility is completed and operating as provided in paragraph (b) of this section, with the exception of certification of antenna patterns.

SPACE STATIONS

§ 25.140 Qualifications of domestic fixed-satellite space station licensees.

(a) New domestic fixed-satellites shall comply with the requirements established in Report and Order in CC Docket No. 81–704. The requirements for radio station applications for new domestic fixed-satellites are specified in appendix B to the Commission's 1983 Processing Order (93 FCC 2d 1260 (1983)). Applications must also meet the requirements in paragraphs (b) through (e) of this section. The Commission may require additional or different information in the case of any individual application. Applications will be unacceptable for filing and will be returned to the applicant if they do not meet the requirements referred to in this paragraph.

(b) Each applicant for a space station authorization in the domestic fixed-satellite service must demonstrate, on the basis of the documentation contained in its application, that it is legally, financially, technically, and otherwise qualified to proceed expeditiously with the construction, launch and/or operation of each proposed space station facility immediately upon grant of the requested authorization. Each applicant must provide the following information:

(1) The information specified in § 25.114.

(2) Financial qualifications should be demonstrated in the form specified below. Failure to make such a showing shall result in the dismissal of the application.

(3) An interference analysis to demonstrate the compatibility of its proposed system 2° from any authorized space station. Applicants should provide details of their proposed r.f. carriers which they believe should be taken into account in these analyses. At a minimum, the applicant must include, for each type of r.f. carrier, the link noise budget, modulation parameters, and overall like performance analysis. (*See, e.g.*, appendices B and C to Licensing of Space Stations in the Domestic Fixed-Satellite Service, 48 FR 40233 (September 6, 1983).)

(c) Each application for authority to construct and/or to launch and operate a space station in this service shall include a detailed statement of estimated investment and operating costs for the expected lifetime of the facility, and shall demonstrate in accordance with paragraph (d) of this section the applicant's current financial ability to meet the:

(1) Estimated costs of proposed construction and/or launch, and any other initial expenses for the space station(s); and

(2) Estimated operating expenses for one year after launch of the proposed space station(s).

(d) Each application for authority to construct and/or launch a space station shall demonstrate an applicant's current financial ability to meet the costs specified in paragraph (c) of this section by submitting the following financial information verified by affidavit:

(1) A balance sheet current for the latest fiscal year and documentation of any financial commitments reflected in the balance sheet (such as, for example, loan agreements and service contracts) together with an exhibit demonstrating that the applicant has current assets and operating income sufficient to satisfy the requirements of paragraph (c) of this section. If the applicant is owned by more than one corporate parent, it must submit evidence of a commitment to the proposed satellite program by management of the corporate parent upon whom it is relying for financial resources;

(2) If the submissions of paragraph (d)(1) of this section do not satisfy paragraph (c) of this section, the applicant shall submit additional information as listed below to satisfy paragraph (c) of this section.

(i) The terms of any fully negotiated loan or other form of credit arrangement intended to be used to finance the proposed construction, acquisition, or operation of the requested facilities including such information as the identity of the creditor (or creditors), the amount committed, letters of commitment, detailed terms of the transaction, including the details of any contingencies, and a statement that paragraph (e) of this section is complied with;

(ii) The terms of any fully negotiated sale or placement of any equity or other form of ownership interest, including the sale, or long-term lease for the lifetime of the satellite, of proposed satellite transponder capacity in the level of detail as specified in paragraph (d)(2)(i) of this section;

(iii) Any financing arrangements contingent on further performance by either party, such as marketing of satellite capacity or raising additional financing, will not satisfy the requirements of paragraph (c) of this section.

(3) Whatever other information or details the Commission may require with regard to a specific application or applicant;

(e) Any loan or other credit arrangement providing for a chattel mortgage or secured interest in any proposed facility must include a provision for a minimum of ten (10) days prior written notification to the licensee or permittee, and to the Commission, before any such equipment may be repossessed under default provision of the agreement.

(f) An applicant found to be qualified pursuant to paragraph (b) of this section may be initially assigned up to two orbital locations in each pair of frequency bands proposed. Authorizations to construct ground spares are at the applicant's risk that launch authorization will not be granted by the Commission.

(g) Each applicant found to be qualified pursuant to paragraph (b) of this section may be assigned no more than one additional orbital location beyond its current authorizations in each frequency band in which it is authorize to operate, provided that its in-orbit satellites are essentially filled and that it has no more than two unused orbital locations for previously authorized but unlaunched satellites in that band.

(h) In the event that one or more applications satisfying the requirements of this section are ready for grant, any orbital location occupied by a satellite that is determined to be a part of a system that is not essentially filled may be cancelled and colocation of in-orbit satellites may be required. The Commission may take this action if, in so doing, it would allow the grant of pending applications that satisfy the requirements of this section. If a cancellation is made, the licensee will be afforded a period of 30 days to notify the Commission which of its assigned locations should be cancelled.

§ 25.141 Licensing provisions for the radiodetermination satellite service.

(a) Space station application requirements. Each application for a space station license in the radiodetermination satellite service shall describe in detail the proposed radiodetermination satellite system, setting forth all pertinent technical and operational aspects of the system, including its capability for providing and controlling radiodetermination service on a geographic basis, and the technical, legal and financial qualifications of the applicant. In particular, each application shall include the information specified in appendix B of Space Station Application Filing Procedures, 93 FCC 2d 1260, 1265 (1983), except that in lieu of demonstrating compliance with item II.F (two degree spacing), applicants are required to demonstrate compatibility with licensed radiodetermination

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satellite systems. Applicants must also file information demonstrating compliance with all requirements of this section, specifically including information demonstrating how the applicant has complied or plans to comply with the requirements of paragraph (f) of this section.

(b) Space station application procedures. Each application for a space station in the radiodetermination satellite service shall be placed on public notice for 60 days, during which time interested parties may file comments and petitions related to the application. A 60 day cut-off period shall also be established for the filing of applications to be considered in conjunction with an original application.

(c) User transceivers. Individual user transceivers will not be licensed. Service vendors may file blanket applications for transceiver units using FCC Form 493 and specifying the number of units to be covered by the blanket license. FCC Form 430 should be submitted if not already on file in conjunction with other facilities licensed under this subpart. Each application must demonstrate that transceiver operations will not cause interference to other users of the spectrum.

(d) Permissible communications. Stations in this service are authorized to render radiodetermination service, and may not render other services except as ancillary to the radiodetermination service.

(e) Frequency allocation policies. Each radiodetermination satellite service licensee will be assigned the entire allocated frequency bands on a non-exclusive basis. Coding techniques and power limits as set forth in paragraph (f) of this section and orbital spacing shall be employed to avoid harmful interference with other radiodetermination satellite service systems.

(f) Radiodetermination satellite service. Licenses shall coordinate with other licensees to avoid harmful interference to other radiodetermination satellite systems through (1) power flux density limits; (2) use of pseudorandom-noise codes (for both the satellite-to-user link and for the user-to-satellite link); and (3) random access, time division multiplex techniques.

(g) License conditions. All authorizations in the radiodetermination satellite service shall be subject to the policies set forth in the Report and Order, including compliance with appendix D, and the Second Report and Order in General Docket Nos. 84–689 and 84–690 and to any policies and rules the Commission may adopt at the later date.

PROCESSING OF APPLICATIONS

§ 25.150 Receipt of applications.

Applications received by the Commission are given a file number and (domestic only) a unique station identifier for administrative convenience. Neither the assignment of a file number and/or other identifier nor the listing of the application on public notice as received for filing indicates that the application has been found acceptable for filing or precludes the subsequent return or dismissal of the application if it is found to be defective or not in accordance with the Commission's rules.

§ 25.151 Public notice period.

(a) At regular intervals, the Commission will issue public notices listing:

(1) The receipt of applications for new station authorizations;

(2) The receipt of applications for license or registration of receive-only earth stations;

(3) The receipt of applications for major modifications to station authorizations;

(4) The receipt of major amendments to pending applications;

(5) The receipt of applications to assign or transfer control of space station facilities, transmitting earth station facilities, or international receive-only earth station facilities;

(6) Significant Commission actions regarding applications;

(7) Information which the Commission in its discretion believes to be of public significance; and

(8) Special environmental considerations as required by part 1 of this chapter.

(b) Special public notices may also be issued at other times under special circumstances involving non-routine matters where speed is of the essence and efficiency of Commission process will be served thereby.

(c) A public notice will not normally be issued for receipt of any of the following applications:

(1) For authorization of a minor technical change in the facilities of an authorized station;

(2) For temporary authorization pursuant to § 25.119;

(3) For an authorization under any of the proviso clauses of section 308(a) of the Communications Act of 1934, as amended (47 U.S.C. 308(a));

(4) For consent to an involuntary assignment or transfer of control of a transmitting earth station authorization; or

(5) For consent to an assignment or transfer of control of a transmitting earth station authorization, where the assignment or transfer does not involve a substantial change in ownership or control; or

(6) For change in location of an earth station operating in the 4/6 GHz and 10.95–11.7 GHz bands by no more than 1° in latitude and/or longitude and for change in location of an earth station operating in the 12/14 GHz bands by no more than 10° in latitude and/or longitude.

(d) No application that has appeared on public notice will be granted until the expiration of a period of thirty days following the issuance of the public notice listing the application, or any major amendment thereto. Any comments or petitions must be delivered to the Commission by that date in accordance with § 25.154.

§ 25.152 Dismissal and return of applications.

(a) Any application may be dismissed without prejudice as a matter of right if the applicant requests its dismissal prior to final Commission action.

(b) The Commission will dismiss an application for failure to prosecute or for failure to respond substantially within a specified time period to official correspondence or requests for additional information. Dismissal will be without prejudice unless the application is mutually exclusive pursuant to § 25.155, in which case it will be dismissed with prejudice.

§ 25.153 Repetitious applications.

(a) Where an application has been denied or dismissed with prejudice, the Commission will not consider a like application involving service of the same kind to the same area by the same applicant, or by its successor or assignee, or on behalf of or for the benefit of any of the original parties in interest, until after the lapse of 12 months from the effective date of the Commission's action. The Commission may, for good cause shown, waive the requirements of this section.

(b) Where an appeal has been taken from the action of the Commission denying a particular application, another application for the same class of station and for the same area, in whole or in part, filed by the same applicant or by his successor or assignee, or on behalf or for the benefit of the original parties in interest, will not be considered until the final disposition of the appeal.

§ 25.154 Opposition to applications and other pleadings.

(a) Petitions to deny, petitions for other forms of relief, and other objections or comments must:

(1) Identify the application or applications (including applicant's name, station location, Commission file numbers, and radio service involved) with which it is concerned;

(2) Be filed within thirty (30) days after the date of public notice announcing the acceptance for filing of the application or major amendment thereto (unless the Commission otherwise extends the filing deadline);

(3) Filed in accordance with the pleading limitations, periods and other applicable provisions of §§ 1.41 through 1.52 of this chapter;

(4) Contain specific allegations of fact (except for those of which official notice may be taken) to support the specific relief requested, which shall be supported by affidavit of a person or persons with personal knowledge thereof, and which shall be sufficient to demonstrate that the petitioner (or respondent) is a party of interest and that a grant of, or other Commission action regarding, the application would be prima facie inconsistent with the public interest; and

(5) Contain a certificate of service showing that it has been mailed to the applicant no later than the date the pleading is filed with the Commission.

(b) The Commission will classify as informal objections:

(1) Any pleading not filed in accordance with paragraph (a) of this section;

(2) Any pleading to which the thirty (30) day public notice period of § 25.151 does not apply; or

(3) Any objections to the grant of an application when the objections do not conform to either paragraph (a) of this section or to other Commission rules and requirements.

(c) Oppositions to petitions to deny an application or responses to comments and informal objections regarding an application may be filed within 10 days after the petition, comment, or objection is filed and must be in accordance with other applicable provisions of §§ 1.41 through 1.52 of this chapter.

(d) Reply comments by the party that filed the original petition may be filed with respect to pleadings filed pursuant to paragraph (c) of this section within 5 days after the time for filing oppositions has expired unless the Commission otherwise extends the filing deadline and must be in accordance with other applicable provisions of §§ 1.41 through 1.52 of this chapter.

§ 25.155 Mutually exclusive applications.

(a) The Commission will consider applications to be mutually exclusive if their conflicts are such that the grant of one application would effectively preclude by reason of harmful electrical interference, or other practical reason, the grant of one or more other applications.

(b) An application will be entitled to comparative consideration with one or more conflicting applications only if:

(1) The application is mutually exclusive with another application; and

(2) The application is received by the Commission in a condition acceptable for filing

(i) By the "cut-off" date specified in a public notice; or

(ii) If no "cut-off" date is specified, within 30 days after the date of the public notice listing the first of the conflicting applications as acceptable for filing.

§ 25.156 Consideration of applications.

(a) Applications for a radio station authorization, or for modification or renewal of an authorization, will be granted if, upon examination of the application, any pleadings or objections filed, and upon consideration of such other matters as it may officially notice, the Commission finds that the applicant is legally, technically, and otherwise qualified, that the proposed facilities and operations comply with all applicable rules, regulations, and policies, and that grant of the application will serve the public interest, convenience and necessity.

(b) Whenever the Commission grants any application in part, or subject to any terms or conditions other than those routinely applied to applications of the same type, the grant shall be considered final unless the Commission should revise its action (either by granting the application as originally requested, or by designating the application for hearing) in response to a petition for reconsideration which:

(1) Is filed by the applicant within thirty (30) days from the release date of the conditioned grant; and

(2) Rejects the grant as made and explains the reasons why the application should be granted as originally requested.

(c) Reconsideration or review of any final action taken by the Commission will be in accordance with subpart A of part 1 of this chapter.

FORFEITURE, TERMINATION, AND REINSTATEMENT OF STATION AUTHORIZATION

§ 25.160 Administrative sanctions.

(a) A forfeiture may be imposed for failure to operate in conformance with the Communications Act, license specifications, any conditions imposed on an authorization, or any of the Commission's rules and regulations; or for failure to comply with Commission requests for information needed to complete international coordination or for failure to cooperate in Commission investigations with respect to international coordination.

(b) A forfeiture will be imposed and the station license may be terminated for the malicious transmissions of any signal that causes harmful interference with any other radio communications or signals.

(c) A station license may be revoked for any repeated and willful violation of the kind set forth in paragraphs (a) and (b) of this section.

(d) The sanctions specified in paragraphs (a), (b), and (c) of this section will be imposed only after the licensee has been provided an opportunity to be heard pursuant to titles III and V of the Communications Act of 1934, as amended.

(e) For purposes of this section, the term "repeated" and "willful" are defined as set out in section 312(f) of the Communications Act, 47 U.S.C. 312(f).

§ 25.161 Automatic termination of station authorization.

A station authorization shall be automatically terminated in whole or in part without further notice to the licensee upon:

(a) The expiration of the required date of completion of construction or other required action specified in the authorization, or after any additional time authorized by the Commission, if a certification of completion of the required action has not been filed with the Commission unless a request for an extension of time has been filed with the Commission but has not been acted on;

(b) The expiration of the license period, unless an application for renewal of the license has been filed with the Commission pursuant to § 25.120(e); or

(c) The removal or modification of the facilities which renders the station not operational for more than 90 days, unless specific authority is requested.

§ 25.162 Cause for termination of interference protection.

The protection from interference afforded by the registration of a receiving earth station shall be automatically terminated if:

(a) The request for registration is not submitted to the Commission within 3 months of the completion of the frequency coordination process, except as provided for in § 25.203;

(b) The receiving earth station is not constructed and placed into service

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within 6 months after completion of coordination;

(c) The Commission finds that the station has been used less than 50% of the time during any 12 month period;

(d) The Commission finds that the station has been used for an unlawful purpose or otherwise in violation of the Commission's rules, regulations or policies;

(e) The Commission finds that the actual use of the facility is inconsistent with what was set forth in the registrant's application; or

(f) The Commission finds that the frequency coordination exhibit, upon which the granted registration is based, is incomplete or does not conform with established coordination procedures.

§ 25.163 Reinstatement.

(a) A station authorization terminated in whole or in part under the provisions of § 25.161 may be reinstated if the Commission, in its discretion, determines that reinstatement would best serve the public interest, convenience and necessity. Petitions for reinstatement will be considered only if:

(1) The petition is filed within 30 days after the expiration date set forth in § 25.161(a) or § 25.161(b), whichever is applicable;

(2) The petition explains the failure to file a timely notification or renewal application; and

(3) The petition sets forth with specificity the procedures which have been established to insure timely filings in the future.

(b) A special temporary authorization shall automatically terminate upon the expiration date specified therein, or upon failure of the grantee to comply with any special terms or conditions set forth in the authorization. Temporary operation may be extended beyond the termination date only upon application to the Commission.

8. Section 25.202(c) is removed and §§ 25.202 (d) through (g) are redesignated as §§ 25.202 (c) through (f), respectively.

9. The heading of subpart E is revised to read as follows:

Subpart E—Developmental Operations

10. Section 25.390 is redesignated as § 25.300 and paragraphs (c) and (g) are removed and paragraphs (d) through (o) are redesignated as (c) through (m) respectively.

11. Newly redesignated § 25.300(c) is revised to read as follows:

§ 25.300 Developmental operation.

* * * * *

(c) *Forms to be used:* A separate application for construction permit shall be submitted on FCC Form 493 for each earth station. No form is used for space stations. See § 25.114 for information to be supplied in space station applications.

* * * * *

12. In addition to the amendments set forth above, in newly redesignated § 25.300 remove the words "Communication-Satellite Service" and add, in their place, the words "space radiocommunication service" in the following places: Newly redesignated § 25.300 (a), (b), (d), and (f).

§ 25.308 of Subpart C [Redesignated as § 25.308 of Subpart E]

13. Section 25.308 of subpart C is redesignated as § 25.308 of subpart E.

§§ 25.391 & 25.392 [Removed]

14. Sections 25.391 and 25.392 are removed.

Donna R. Searcy,

Secretary.

Appendix

Note: This appendix will not appear in the Code of Federal Regulations.

Instructions for Completion of FCC Form 493—Application for Earth Station Authorization or for Modification of Station License

General Information and Instructions

A. FCC Form 493 is to be used to apply for a license to construct and/or operate a transmit/receive earth station, a transmit-only earth station; to register a domestic receive-only earth station; to license an international receive-only earth station; or to modify a granted license or registration. These licensing activities are restricted to the following satellite services:

Domestic Fixed-Satellite Service
International Fixed-Satellite Service
Radiodetermination-Satellite Service
Mobile-Satellite Service

Applicable Rules and Regulations

B. Before this application is prepared, the applicant should refer to part 25 of the Rules and Regulations of the Commission, (Title 47, Code of Federal Regulations (CFR), part 25) copies of which may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Part 25 may require information to be filed with an application in addition to that specified in the application form. Applicant should make every effort to file a complete application in compliance with the Rules. Failure to do so can result in rejection or return of the application or a delay in the processing of the application. Use additional sheets only where necessary. All additional sheets must contain the applicant's name and the number of question to which it responds.

Number of Copies

C. All entries on the form shall be typed or legibly printed in ink. An original and two copies of the application must be submitted. Applicants filing for a 12/14 GHz VSAT Network should submit an original and five copies of each application.

Fees

D. A processing fee is required with this application. Please refer to either 47 CFR 1.1105, the Common Carrier Fee Filing Guide, or call (202) 632–FEES for appropriate fee. DO NOT SEND CASH. Payment may be made by check, bank draft, or single money order payable to: Federal Communications Commission.

Submission of Applications

(E) Each application should be assembled with a Fee Processing Data Sheet (FCC 155 Form) stapled to the top of the application. Place the check on top of the Fee Processing Data Sheet. Please do not staple the check to the application. Required copies of applications should be clearly identified as "duplicate copy" and placed behind the original package. A copy of an application submitted for receipt purposes only should be placed at the bottom of the submission. Extraneous material and extra copies should be avoided at all times. Failure to abide by these instructions will delay the processing of your submission.

Addresses for Mail-In Applications

(F)(1) Applications for Domestic Earth Stations are to be mailed to: Federal Communications Commission, Common Carrier Domestic Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.

(2) Applications for International Earth Stations are to be mailed to: Federal Communications Commission, Common Carrier International, P.O. Box 358115, Pittsburgh, PA 15251–5115.

Receive-Only Earth Station Registration

G. Receive-only earth stations may be registered with the Commission in order to protect them from interference from terrestrial microwave stations in the 4 GHz shared band pursuant to 47 CFR 25.131 and 25.133. Registration results in the listing of an earth station at a specified location with interference levels agreed to during coordination. We will not accept applications for registration of receive-only earth stations in the 12 GHz band because downlinks in the fixed-satellite service are given primary allocation status in that band. Pursuant to 47 CFR 25.133(d), each registrant for a receive-only earth station must file a certificate that its facility is constructed and operating. Receive-only earth stations operating with INTELSAT space stations, international space stations or U.S. domestic and non-U.S. space stations for reception of services from other countries are required to be licensed except that earth stations used to receive INTELNET I services from INTELSAT space stations need not file for licenses.

Transmit/Receive Earth Station Applications

H. Pursuant to 47 CFR 25.113, construction permits are no longer required for certain transmit/receive earth stations. These include domestic satellite earth stations, international satellite earth stations operating with INTELSAT and INMARSAT and earth

stations operating with international space stations licensed pursuant to Establishing of Satellite Systems Providing International Communications, 50 FR 42266 (October 18, 1985), 101 FCC 2d 1201 (1985). A construction permit is required for all other earth station facilities. Construction of stations prior to the grant of a license is at the applicant's own risk. Pursuant to 47 CFR 25.133(b), each licensee for a transmitting station shall file a certification that its facility is constructed and in operation.

Notice to Individuals Required by the Privacy Act of 1974 and the Paperwork Reduction Act of 1980

I. The information requested by this form will be used by Federal Communications Commission staff to determine eligibility for issuing authorizations in the use of frequency spectrum and to effect the provisions of regulatory responsibilities rendered the Commission by the Communications Act of 1934, as amended. Response to the information requested is required to obtain the requested authorization. Information requested by FCC 493 will be available to the public.

Public reporting burden for this collection of information is estimated to average 24 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Federal Communications Commission, Office of Managing Director, Washington, DC 20554, and to Office of Management and Budget, Paperwork Reduction Project (3060–0000), Washington, DC 20503.

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FCC 493 March 1991

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

Approved By OMB 3060–0000 Expires 00/00/00

APPLICATION FOR EARTH STATION AUTHORIZATION OR FOR MODIFICATION OF STATION LICENSE

Read Instructions Before Completing and For Information Regarding Public Burden Estimate

FCC USE ONLY
File Number
Call Sign

1. Name of Applicant (must be same as reported on FCC 430 Form, Licensee Qualification Report)

Mailing Street Address or P.O. Box, City, State and ZIP Code | (Area Code) Telephone Number

2. Contact Representative. Provide the following if the person to contact is other than applicant.
Name

Mailing Street Address or P.O. Box, City, State and ZIP Code | (Area Code) Telephone Number

3. Class of Station
- a ☐ Fixed Earth Station
- b ☐ Temporary Fixed Earth Station
- c ☐ 12/14 GHz VSAT Network
- d ☐ Mobile Earth Station
- e ☐ Other (Specify):

4. Nature of Service
- a ☐ Domestic Fixed-Satellite
- b ☐ International Fixed-Satellite
- c ☐ Radiodetermination-Satellite
- d ☐ Mobile-Satellite
- e ☐ Other (Specify):

5. Is developmental operation requested? ☐ YES ☐ NO

6(a) Type of Request
- 1 ☐ License for transmit/receive earth station
- 2 ☐ License for transmit-only earth station
- 3 ☐ Registration or License for receive-only earth station
- 4 ☐ Modification of License/Registration (Complete Items 7(a)-(c))

6(b) Number of Stations: ▶

7(a) Purpose of Proposed Modification
- 1 ☐ Change in emissions
- 2 ☐ Change in antenna
- 3 ☐ Change in location
- 4 ☐ Change in assigned frequencies
- 5 ☐ Change in points of communications
- 6 ☐ Change in range of satellite arc
- 7 ☐ Other (Specify):

(b) Call Sign of Station

(c) File No. of Current Authorization

8. Location (Number, Street, City, County, State and ZIP Code) and Telephone Number of Earth Station Site. (If temporary fixed or VSAT Network license, specify area of operation and point of contact - name and telephone number)

9. Latitude and Longitude
Deg. - Min. - Sec.
Lat. North
Long. West

10. Site Elevation (AMSL)
feet meters

11. Points of Communications (For satellites operating within the frequency bands and geostationary arc coordinated for these facilities, in most cases, the entry "ALSAT" is sufficient for Domestic Fixed-Satellite Services; for all other services each satellite must be listed).

12. Frequency Coordination Limits

(a) Frequency Limits	(b) Range of Satellite Arc (i) Eastern Limit	(b) (ii) Western Limit	(c) Antenna Elevation Angle (i) Eastern Limit	(c) (ii) Western Limit	(d) Earth Station Azimuth (i) Eastern Limit	(d) (ii) Western Limit	(e) Maximum EIRP Density Toward the Horizon (dBW/4kHz)

13. Transmitting Equipment

(a) No. of HPA's	(b) Manufacturer	(c) Model No.	(d) Maximum Power Output (watts)

14. Antenna Facilities (Corresponding line number in item 14 and 15 applies to same antenna)

Line No.	(a) Quantity	(b) TT&C#	(c) Manufacturer	(d) Model	(e) Size (meters)	(f) Type of Feed	(g) Gain Transmit and/or Receive (_____dBi at _____ GHz)
1							
2							
3							
4							

15. Antenna Heights - Measurements to be given in English and metric units)

Line No.	(h) Maximum Antenna Height Above Ground Level		Above Mean Sea Level		(i) Building Height## Above Ground Level		(j) Maximum Antenna Height## Above Rooftop	
1	feet	meters	feet	meters	feet	meters	feet	meters
2	feet	meters	feet	meters	feet	meters	feet	meters
3	feet	meters	feet	meters	feet	meters	feet	meters
4	feet	meters	feet	meters	feet	meters	feet	meters

16. Particulars of Operation (Full particulars are required for each r.f. carrier)

(a) Frequency Bands (MHz)	(b) Antenna Polarization (H,V,L,R)	(c) Emission Designator	(d) Maximum EIRP (dBW)	(e) Maximum EIRP Density (dBW/4kHz)	(f) Description of Modulation

17. Receiving System Noise Temperature: (in kelvin with applicable antenna elevation angle and frequency)

#Check only for antennas used for satellite Telemetry, Tracking and Control (TT&C).
##Attach sketch of site or exemption. See 47 CFR Part 17.

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Place an "X" in the appropriate column.	YES	NO
18. Does the proposed antenna(s) comply with the antenna gain patterns specified in Section 25.209(a) and (b) as demonstrated by the manufacturer's qualification measurements? ▶ Attach manufacturer's verification that the antenna complies with these patterns if not on file.		
19. Is the facility to be operated by remote control? If "YES," provide the location (street, city, county, state, zip code) and telephone number of the control point.		
20. Small Antenna Impact (a) Will an antenna less than 9 meters in diameter be used at this site to transmit to a fixed-satellite below 7075 MHz?		
(b) Will an antenna less than 5 meters in diameter be used at this site to transmit to a fixed-satellite from 7075 MHz to 14.5 GHz?		
(c) If the answer to (a) or (b) above is "YES", answer all of the following questions that apply to the proposed earth station facilities. (i) Transmissions in the band 5925-7075 MHz will be limited to a maximum bandwidth of _____ MHz and maximum EIRP density of _____ dBW/4kHz. (ii) Transmissions in the band 7075 MHz to 14.5 GHz will be limited to a maximum bandwidth of _____ MHz and maximum EIRP density of _____ dBW/4kHz. (iii) Will operation of this facility be governed by a previous small antenna authorization? If "YES", provide cite: _____ If "NO", attach small antenna analysis.		
21. Is the facility to be used to provide Radiodetermination-Satellite Service (RDSS) in the frequencies allocated for RDSS? If "YES", attach exhibit demonstrating that operations are compatible with other operations.		
22. Is the facility to be used to provide Mobile-Satellite Service (MSS) in the frequencies allocated for MSS? If "YES", attach exhibit demonstrating that facility is consistent with operations in these frequencies.		
23. Frequency Coordination (a) Is frequency coordination required? If "YES", attach a frequency coordination report.		
(b) Is coordination with another country required? If "YES", attach name of country and plot of coordination contours.		
24. FAA Notification - (See 47 CFR Part 17) Is FAA notification required for any of the new or modified structures proposed in this application? If "YES", attach a copy of FCC 854 form and/or the FAA's study regarding the potential hazard to aviation of the structure.		
25. Environmental Impact Would a commission grant of this application be an action which may have a significant environmental effect as defined by Section 1.1307 of the Commission's Rules? If "YES", submit the statement as required by Sections 1.1308 and 1.1311.		

26. Description. (Summarize the nature of the application and the services to be provided).

Place an "X" in the appropriate column.	YES	NO
27. Rule Waivers and Exceptions Is this application inconsistent with any of the Commission's Rules? If "YES", attach a copy of requests for waivers or exceptions with supporting documents.		
28. Eligibility (a) Is the applicant a foreign government or a representative thereof?		
(b) Does the applicant meet the requirements of Section 310(b)(1), (2) and (3) of the Communications Act (47 USC 310(b)(1), (2) and (3))?		
(c) Does the applicant meet the requirements of Section 310(b)(4) of the Communications Act (47 USC 310(b)(4))? If "NO", attach an exhibit explaining why grant is in the public interest.		
29. Will the station be used to provide common carrier services?		
30. Will the station be used for developmental purposes? If "YES", attach an exhibit detailing the developmental plan.		
31. If transmitting antenna, will individual applicant, partner (in case of partnership) or full-time manager (in case of corporation) actively participate in the day-to-day management and operation of proposed facility? If "NO", submit an exhibit providing an explanation, and including a demonstration of how control over the facility will be retained.		
32. For transmitting antennas that provide domestic or international service, attach FCC 430 form, or if a complete and accurate FCC 430 form is already on file with the FCC give date filed: Is FCC 430 form attached?		

33. Exhibits. Identify the exhibits that are attached to this application.

Exhibit No.	
1	
2	
3	
4	
5	

34. **Certification of Person Responsible for Preparing Engineering Information in this Application.** I hereby certify that I am the technically qualified person responsible for preparation of the engineering information contained in this application, that I am familiar with Part 25 of the Commission's Rules, that I have either prepared or reviewed the engineering information submitted in this application, and that it is complete and accurate to the best of my knowledge.

Date	Typed Name of Person Signing	Signature

35. Certification of Applicant. The applicant waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests a construction permit, if necessary, in accordance with this application. All statements made in the attached exhibits are a material part hereof and are incorporated herein as if set out in full in this application. The undersigned, individually and for the applicant, hereby certifies that the statements made in this application are true, complete and correct to the best of the signer's knowledge and belief, and are made in good faith.

Date	Typed Name of Person Signing	Signature

WILLFUL FALSE STATEMENTS MADE ON THIS APPLICATION ARE PUNISHABLE BY FINE AND IMPRISONMENT (U.S. Code, Title 18, Section 1001), and/or **REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT** (U.S. Code, Title 47, Section 312(a)(1)), and/or **FORFEITURE** U.S. Code, Title 47, Section 503).

Notice to Individuals Required by the Privacy Act of 1974 and the Paperwork Reduction Act of 1980
The information requested by this form will be used by Federal Communications Commission staff to determine eligibility for issuing authorizations in the use of frequency spectrum and to effect the provisions of regulatory responsibilities rendered the Commission by the Communications Act of 1934, as amended. Response to the information requested is required to obtain the requested authorization. Information requested by this form will be available to the public. Public reporting burden for this collection of information is estimated to average 24 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Federal Communications Commission, Office of Managing Director, Washington, D.C. 20554, and to Office of Management and Budget, Paperwork Reduction Project (3060-0000), Washington, D.C. 20503.

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47 CFR Part 73

[MM Docket No. 90-128; RM-7202]

Radio Broadcasting Services; Union City, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Twin States Broadcasting, allots Channel 289A to Union City, Tennessee. *See* 55 FR 10791, March 23, 1990. Channel 289A can be allotted to Union City, Tennessee, in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.7 kilometers (6.6 miles) north to avoid short-spacings to Station WAKQ(FM), Channel 288A, Paris, Tennessee, and Station WGKX(FM), Channel 290C, Memphis, Tennessee. The coordinates for the allotment of Channel 289A at Union City are North Latitude 36-31-01 and West Longitude 89-05-21. With this action, this proceeding is terminated.

DATES: July 8, 1991. The window period for filing applications will open on July 9, 1991, and close on August 8, 1991.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-128, adopted May 9, 1991, and released May 22, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by adding Channel 289A at Union City.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-12542 Filed 5-24-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 243, 249, and 252

Department of Defense Federal Acquisition Regulation Supplement; Contract Modifications and Termination of Contracts

AGENCY: Department of Defense (DOD).

ACTION: Interim rule with request for comments.

SUMMARY: The Defense Acquisition Regulations (DAR) Council has issued an interim rule to implement section 4201 of the Fiscal Year 1991 DoD Authorization Act (Pub. L. 101-510) which requires the Secretary of Defense to notify the Secretary of Labor if a modification or termination of a major defense contract or subcontract will have a substantial impact on employment.

DATES: Comments on the interim rule should be submitted in writing at the address shown below on or before June 27, 1991, to be considered in the formulation of the final rule. Please cite DAR Case 90-339 in all correspondence.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, ATTN: Mr. Eric Mens, Procurement Analyst, DAR Council, OUSD(A)DP(DARS), room 3D139, The Pentagon, Washington, DC 20301-3000.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Mens, Procurement Analyst, DAR Council, (703) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

Section 4201 of the National Defense Authorization Act for Fiscal Year 1991 (Pub. L. 101-510, Division D, title XLII; Defense Economic Adjustment, Diversification, Conversion, and Stabilization Act of 1990) requires the Secretary of Defense to notify the Department of Labor if a modification or termination of a major defense contract or subcontract will have a substantial impact on employment. Public Law 101-510 was effective upon enactment (November 5, 1990).

Under section 4003 of the Authorization Act, a major defense contract means a contract of $5 million or more, and a major defense subcontract means a subcontract of $500,000 or more. Section 4003 also establishes criteria to determine if there is "a substantial impact on employment." The statute reflects Congressional concern about the economic impact on communities, businesses, and employees affected by "(1) the annual budget of the President submitted to Congress . . . and any longer-term guidance document of the Secretary of Defense; (2) the public announcement of the realignment or closure of a military installation or defense facility; or (3) the cancellation or curtailment of a major defense contract" (Sec. 4101(a) of Public Law 101-510). Under section 4103 of the Act, any determination that a community is "substantially and seriously affected" by a contract modification or termination may qualify that community for economic assistance under title IX of the Public Works and Economic Development Act of 1965.

In order to comply with the requirement to provide prompt notice to the Secretary of Labor, the Department of Defense needs to know if a proposed contract modification or termination will have a substantial impact on employment, as defined in the Act. This information can only be provided by the contractor or subcontractor affected by the modification or termination.

The interim rule provides that, prior to modification or termination of certain defense contracts and subcontracts, contractors must notify contracting officers if the proposed modification or termination will have a substantial impact on employment. This notification is required by a new clause 252.249-7001, Notification of Substantial Impact on Employment. Contracting officers may either modify existing contracts over $5 million to include the clause or tailor any termination notices that are subsequently issued against these contracts to request the contractor to provide a statement of impact on employment. The interim rule establishes new coverage at 243.107 (S-70), 249.102(a)(5), 249.7003, and a new clause at 252.249-7001.

B. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this regulation as an interim rule. This action is necessary because Public Law 101-510 was effective upon enactment (November 5, 1990). Moreover, the identification and curtailment of programs and contracts is currently underway as a result of budget cutbacks and anticipated base closings and realignments.

C. Regulatory Flexibility Act

The proposed rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* because the notification requirement applies to all businesses, large and small, who contract with DoD. An initial Regulatory Flexibility Analysis has been prepared and submitted to the Chief Counsel for Advocacy of the Small Business Administration. The IRFA states that it is impossible to accurately estimate the number of small businesses that may be impacted because it is impossible to estimate the number of small entities who currently hold, or prospectively will hold, major defense contracts or subcontracts and who may experience a substantial impact on employment when contracts or subcontracts are modified or terminated as a result of budgetary cutbacks, realignments or closing of bases, or cancellation of contracts.

A copy of the IRFA may be obtained from: Defense Acquisition Regulations Council, ATTN: Mr. Eric Mens, Procurement Analyst, DAR Council, OUSD(A)DP(DARS), room 3D139, The Pentagon, Washington, DC 20301-3000. Comments are invited. Comments from small entities concerning the affected DFARS Subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and must cite DAR Case 90-610 in all correspondence.

D. Paperwork Reduction Act

The interim rule imposes a new reporting requirement which requires the approval of OMB under 44 U.S.C. 3501, *et. seq.* DoD is requesting OMB emergency review and approval for this new information collection requirement.

List of Subjects in 48 CFR Parts 243, 249, and 252

Government procurement.

Nancy L. Ladd,

Director, Defense Acquisition Regulations Council.

Therefore, 48 CFR parts 243, 249, and 252 are amended as follows:

1. The authority citation for 48 CFR parts 243, 249, and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

PART 243—CONTRACT MODIFICATIONS

2. Section 243.107 is added to read as follows:

243.107 Contract clause.

(S-70) The Secretary of Defense is required to notify the Secretary of Labor if the modification or termination of a major defense contract or subcontract will have a substantial impact on employment. See 249.7003(c) for the prescribed contract clause.

PART 249—TERMINATION OF CONTRACTS

3. Section 249.102 is revised to read as follows:

249.102 Notice of termination.

(a) *General.* See 243.301 for use of the Standard Form 30 (SF 30), Amendment of Solicitation/Modification of Contract, in providing notice of termination and amendment of the termination notice.

(5) Include a statement that, if the termination will have a substantial impact on employment, as defined in the clause at 252.249-7001, Notification of Substantial Impact on Employment, the contractor must promptly provide the required notice to the contracting officer.

4. Section 249.7003 is redesignated as 249.7004 and a new section 249.7003 is added to read as follows:

249.7003 Contract modifications and terminations having a substantial impact on employment.

(a) Section 4201(a)(1)(B) of the National Defense Authorization Act for Fiscal Year 1991 (Pub. L. 101-510, Division D, title XLII; Defense Economic Adjustment, Diversification, Conversion, and Stabilization Act of 1990), requires the Secretary of Defense to notify the Secretary of Labor if a modification or termination of a major defense contract or subcontract will have a substantial impact on employment, as defined in the clause at 252.249-7001, Notification of Substantial Impact on Employment.

(b) When a contractor provides the notice required under the clause at 252.249-7001, the head of the contracting activity shall notify the Office of Economic Adjustment, Assistant Secretary of Defense (Force Management and Personnel), in accordance with department/agency procedures.

(c) Use the clause at 252.249-7001, Notification of Substantial Impact on Employment, in all contracts of $5 million or more and all contracts with subcontracts of $500,000 or more.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 252.249-7001 is added to read as follows:

252.249-7001 Notification of substantial impact on employment.

As prescribed in 243.107(S-70) and 249.7003(c), use the following clause:

Notification of Substantial Impact on Employment (May 1991)

(a) Definitions.

(1) "Major defense contract or subcontract" means—

(i) All prime contracts of $5 million or more; and

(ii) All subcontracts, awarded under the prime, of $500,000 or more.

(2) "Substantial impact on employment" means—

(i) A reduction of—

(A) 2,500 or more employee positions, in the case of a Metropolitan Statistical Area (MSA) or similar area. MSAs are identified FIPS Publication 8-5, Metropolitan Statistical Areas, which is available from the U.S. Department of Commerce, National Technical Information Service, Springfield, VA 22161, Tel. (703) 487-4650. Telephone inquiries concerning MSAs may also be directed to the Bureau of the Census, Population Division, Population Distribution Branch, Washington, DC, Tel. (301) 763-5158;

(B) 1,000 or more employee positions, in the case of a labor market area outside an MSA, or

(C) 1 percent of the total number of civilian jobs in that area; or

(ii) A reduction, or the threat of a reduction, of—

(A) 25 percent or more in sales or production of the contractor or subcontractor; or

(B) 80 percent or more of the workforce of the contractor or subcontractor in any division of such contractor or such subcontractor or at any plant or other facility of such contractor or subcontractor; or

(iii) Any group of 100 or more workers at a defense facility who are, or who are threatened to become, eligible to participate in the Defense Conversion Adjustment Program under section 325 of the Job Training Partnership Act (29 U.S.C. 1662-1662c, as amended).

(b) This clause applies only if a modification or termination of a major defense contractor or subcontract will have a substantial impact on employment.

(c) The Contractor shall promptly notify the Contracting Officer if the proposed modification or termination of this contract or a major defense subcontract under this contract will have a substantial impact on employment.

(d) The Contractor shall include the substance of this clause in all

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subcontracts of $500,000 or more under this contract.

(End of Clause)

[FR Doc. 91-12459 Filed 5-24-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 70355-7127]

Atlantic Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NMFS issues this notice to close the fishery for Atlantic bluefin tuna conducted by longline vessels permitted in the Incidental Catch category and operating in all parts of the Regulatory Area. Closure of this fishery is necessary because the total annual quota of 145 short tons (131.5 mt) of Atlantic bluefin tuna allocated for this category has been attained. The intent of this action is to prevent overharvest of the quota established for this fishery.

EFFECTIVE DATE: The closure is effective 0001 hours local time May 30, 1991, through December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, 508-281-9324.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971-971h) regulating the harvest of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction were published in the **Federal Register** on October 25, 1985 (50 FR 43396).

Section 285.22(f)(1) of the regulations at 50 CFR part 285 provides for an annual quota of 145 st (132 mt) of Atlantic bluefin tuna to be harvested from the Regulatory Area by longline vessels permitted in the Incidental Catch category. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), is authorized under § 285.20(b)(1) to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the total catch of Atlantic bluefin tuna will equal any quota under § 285.22. The Assistant Administrator is further authorized under § 285.20(b)(1) to prohibit the fishing for, or retention of, Atlantic bluefin tuna by those fishing in the category subject to the quota when the catch of tuna equals the quota established under § 285.22. The Assistant Administrator has determined, based on the reported catch, that the annual quota of Atlantic bluefin tuna for longline vessels fishing in the Regulatory Area will be attained by the effective date of this notice. Fishing for, and retention of, any Atlantic bluefin tuna harvested under § 285.22(f)(1) must cease at 0001 local time on May 30, 1991.

Other Matters

Notice of this action will be mailed to all Atlantic bluefin tuna dealers and to vessel owners permitted in the Incidental Catch category. This action is taken under the authority of 50 CFR 285.20, and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

Authority: 16 U.S.C. 971 *et seq.*

Dated: May 22, 1991.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-12499 Filed 5-24-91; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 102
Tuesday, May 28, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket No. FV-89-210]

Green Corn; Grade Standards; Reopening and Extension of Comment Period on Proposed Rule

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Reopening and extension of the comment period.

SUMMARY: Notice is hereby given that the time period for filing comments is reopened and extended on the proposed rule published in the April 5, 1991, issue of the **Federal Register** (56 FR 14027) for U.S. Standards for Grades of Green Corn. The comment period is reopened and extended until June 27, 1991.

DATES: Comments must be postmarked or courier dated on or before June 27, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, room 2056 South Building, Washington, DC 20090-6456. Such comments should reference the docket number and the date and page numbers of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Marlene M. Betts, at above address or call (202) 447-2188.

SUPPLEMENTARY INFORMATION: The proposed rule to revise the U.S. Standards for Grades of Green Corn was issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et. seq.) and was published on April 5, 1991, in the **Federal Register** (56 FR 14027). Comments were to be postmarked or courier dated on or before May 6, 1991. The proposal included establishing two new grades to accommodate small, consumer size packages, as well as revising and updating the amount of mechanical damage, and revising and adding definitions and changing the format in order to bring the standard into conformity with current harvesting and marketing practices. The U.S. Department of Agriculture has received a request from a grower/packer organization of sweet corn to extend the comment period to provide more time for interested persons to analyze the proposed rule and prepare comments. Reopening and extending the comment period will provide such interested persons more time to review this proposed rule and submit written views and information pertinent to the proposed changes. Accordingly, the comment period is reopened and extended to June 27, 1991.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Vegetables.

Authority: Secs. 203, 205, 60 Stat. 1087 as amended, 1090 as amended; 7 U.S.C. 1622, 1624, unless otherwise noted.

Dated: May 22, 1991.

Daniel D. Haley,

Administrator.

[FR Doc. 91-12497 Filed 5-24-91; 8:45 am]

BILLING CODE 3410-02-M

Food and Nutrition Service

7 CFR Parts 210, 215, 220, and 245

National School Lunch Program, Special Milk Program, School Breakfast Program, and Determination of Eligibility for Free and Reduced Price Meals and Free Milk in Schools; State Agency-School Food Authority/Child Care Institution Agreements and Direct Certification

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the regulations for the National School Lunch Program, Special Milk Program, and School Breakfast Program to make the annually executed State agency-school food authority and State agency-child care institution agreement to operate these programs a permanent document to be amended as necessary. This rule also proposes to amend the regulations governing the determination of eligibility for free and reduced price benefits to (1) increase the number of provisions required in a school food authority's free and reduced price policy statement to ensure that households receive adequate information about the programs and (2) make most of the provisions in the policy statement permanent. These amendments would also apply to the policy statement for child care institutions participating in the Special Milk Program. The school food authority or child care institution would be able to amend its policy statement as necessary. State agency approval would continue to be necessary for any amendments to an approved policy statement. Under this proposal, the only portions of the policy statement that would be required to be submitted annually to the State agency for approval are the public release, the notice or letter to households, the application form and any other documents or provisions that contain the eligibility criteria for free and reduced price benefits. School food authorities electing to use the State agency prototype materials would not be required to submit these documents. Additionally, this rule proposes to allow school food authorities to certify children as eligible for free meals or free milk without further application by directly communicating with the appropriate State or local agency to obtain documentation that the child is a member of a household currently certified to receive food stamps or AFDC. School food authorities that implement this provision would be required to notify these households that their children are eligible for free meals or free milk, as appropriate, and give households the opportunity to decline these benefits. This proposed rule affects State agencies, participating school food authorities, and households. These proposed amendments are in response to certain provisions in the Child Nutrition and WIC Reauthorization Act of 1989, Public Law 101-147, and are intended to reduce paperwork and to facilitate eligibility determinations for free and reduced meals or free milk.

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DATES: To be assured of consideration, comments must be postmarked on or before July 29, 1991.

ADDRESSES: Comments should be sent to Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, room 1007, Alexandria, Virginia 22302. Comments in response to this rule may be inspected at the above address during normal business hours—8:30 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Eadie or Mr. Charles Heise at the above address or by phone at (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This proposed rule has been reviewed by the Assistant Secretary for Food and Consumer Services under Executive Order 12291 and has been classified as not major because it does not meet any of the three criteria indentified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. Furthermore, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Administrator of the Food and Nutrition Service has certified that this rule will not have a significant adverse economic impact on a substantial number of small entities.

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting and recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: State Agency-School Food Authority/Child Care Institution Agreements and Direct Certification.

Description: This proposed rule would reduce the reporting burdens associated with the free and reduced price policy statement. However, there would be a slight increase in burden for this activity in the initial year of implementation. The increase has not been incorporated in the estimated burden since the total proposed annual increase in burden hours in the year of implementation of the revised policy statement requirements would not result in a significant change in burden. Several existing activities have been incorporated into this rule. They are not identified in the estimated burdens listed below, since there are no or nonsignificant changes in burden hours for these activities. This rule would delete three existing reporting requirements, the State agency-school food authority/child care institution agreements. However, a new burden, direct certification, is proposed as optional. If implemented, direct certification would reduce two existing burdens, completion of the application by households and application review and approval by school officials. The existing information collections under parts 210, 215, 220, and 245 have been approved under OMB Nos. 0584–006, 0584–005, 0584–0012, and 0584–0028, respectively.

Description of Respondent: State agencies, school food authorities, child care institutions, and households.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
7 CFR 210.9(b)				
Existing	19,560	1	.25	4,890
Proposed	XXX	XXX	XXX	XXX
7 CFR 215.7(b)				
Existing	9,670	1	.5	4,836
Proposed	XXX	XXX	XXX	XXX
7 CFR 220.7(e)				
Existing	3,800	1	.583	2,215
Proposed	XXX	XXX	XXX	XXX
7 CFR 245.6(a)				
Existing	5,095,024	1	.07	356,652
Proposed	2,547,512	1	.07	178,326
7 CFR 245.6(b)				
Existing	XXX	X	XXX	XXX
Proposed	10,600	1	.08	848
7 CFR 245.6(c)				
Existing	91,947	55	.052	262,968
Proposed	91,947	27.5	.052	131,484
7 CFR 245.6(c)(1)				
Existing	XXX	XXX	XXX	XXX
Proposed	10,600	120	.08	101,760
7 CFR 245.10(a)–(b)				
Existing	21,201	1	.5	10,601
Proposed	21,201	1	(1)	(1)
Total existing burden hours: +642,162				
Total proposed burden hours: +412,418				
Total difference: −229,744				

[1] Negligible.

As required by section 3504(h) of the Paperwork Reduction Act of 1980, FNS has submitted a copy of this proposed rule to OMB for its review of these information collection requirements. Other organizations and individuals desiring to submit comments regarding this burden estimate or any aspects of these information collection requirements, including suggestions for reducing the burdens, should direct them to the Policy and Program Development Branch, Child Nutrition Division, (address above), and to the Office of Information and Regulatory Affairs, OMB room 3208, New Executive Office Building, Washington, DC 20503, Attn: Laura Oliven, Desk Officer for FNS.

This proposed rule affects the School Breakfast Program, National School Lunch Program and Special Milk Program, which are listed in the Catalog of Federal Domestic Assistance under Nos. 10.553, 10.555, and 10.556, respectively. These programs are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, 48 FR 29112, June 24, 1983.)

Background

Sections 201, 202, 211, and 212 of Public Law 101–147, enacted on November 10, 1989, amended the National School Lunch Act and Child Nutrition Act, in part, as follows: (1) The agreement between the State agency and local school food authorities to operate the School Nutrition Programs (National School Lunch, School Breakfast and Special Milk Programs) is to be made a permanent document which may be amended, as necessary; and (2) any school food authority is allowed to certify any child as eligible for free or reduced price lunches or breakfasts by directly communicating with the appropriate State or local agency to obtain documentation that the child is a member of either a household receiving food stamps or an Aid to Families with Dependent Children (AFDC) assistance unit (information obtained in this manner must be used only for the purpose of determining eligibility for meal or milk benefits). These amendments are intended to reduce administrative paperwork burdens, simplify the certification process for free and reduced price benefits, and expedite the feeding of needy children. The manner in which the Department proposes to implement these provisions is discussed below.

Permanency of State Agency-Local Agreements

Prior to the enactment of Public Law 101–147, school food authorities entered into a written agreement with the State agency each year to administer the School Nutrition Programs in schools under their jurisdiction. Similarly, child care institutions annually entered into written agreements with the State agency to operate the Special Milk Program. Please note that references in this document to child care institutions are limited to child care institutions that participate in the Special Milk Program under 7 CFR part 215. Sections 201 and 212 of Public Law 101–147 amended the National School Lunch Act and the Child Nutrition Act to require the agreement to be a permanent document and to provide for amendments to the agreement, as necessary. Additionally, sections 201, 211, and 212 specify that the permanency of the agreement does not prohibit the State agency from suspending or terminating the agreement in accordance with regulations prescribed by the Secretary. In response to this statutory provision, the Department proposes to amend the regulations for the National School Lunch Program, Special Milk Program and School Breakfast Program, §§ 210.9(b), 215.7(d) and 220.7(e), respectively, to make the agreement between a State agency and a school food authority or a child care institution a permanent document, as mandated by statute.

While the changes above are nondiscretionary, the Department has exercised some discretion in proposing to make the free and reduced price policy statement permanent as well. In accordance with current §§ 210.9(a), 215.7(b)(2), and 220.7(a)(7), each school food authority entering into an agreement with a State agency to participate in the National School Lunch or School Breakfast Programs or the Special Milk Program with the free milk option must currently submit a free and reduced price policy statement that meets the requirements of § 245.10. Similarly, child care institutions agreeing to participate in the Special Milk Program with the free milk option must submit a free and reduced price policy statement in accordance with § 215.13a(b) of the current regulations. The policy statement consists of an assurance that the school food authority will abide by the provisions of part 245 and describes how the school food authority's free and reduced price policy provisions will be uniformly implemented in schools throughout the school food authority. In accordance with current § 245.10(a)(1)–(5), at a minimum, the policy statement must include (1) the official(s) designated by the school food authority to make free and reduced price meal and free milk eligibility determinations on its behalf; (2) a copy of the Income Eligibility Guidelines (also referred to as "family-size income guidelines") for determining household eligibility for free and reduced price benefits; (3) the specific procedures for accepting free and reduced price meal or free milk applications from households; (4) a description of the collection procedures to prevent the overt identification of children eligible for free and reduced price meals or free milk; and (5) an assurance that the school(s) will abide by the hearing procedure and nondiscrimination practices set forth in the regulations. Section 215.13a(d) of the current regulations sets forth similar requirements for the policy statement for free milk for child care institutions. Pursuant to § 245.10(b), the policy statement must also include a copy of the application form and the letter or notice to parents informing them about free and reduced price benefits. Once approved, the policy statement becomes part of the State agency-school food authority/child care institution agreement to operate the programs. Although many provisions in the school food authority/child care institution's free and reduced price policy statement do not change from year to year, currently the school food authority/child care institution must annually submit its policy statement to the State agency for approval. If the school food authority/child care institution does not have an approved free and reduced price policy statement on file at the State agency by October 15 each year, § 245.10(c) provides for suspension of reimbursement and commodities until the statement is approved. Similarly, § 215.13a(c) provides that a child care institution shall not be approved to participate unless the free milk policy has been reviewed and approved.

Additionally, State agencies are required under § 245.11(a)(1) and § 215.13a(b) to annually issue to each school food authority and child care institution a prototype free and reduced price policy statement for free and reduced price meals or free milk, as applicable, and all instructions necessary to ensure that the school food authorities/child care institutions are fully informed of the requirements related to free and reduced price benefits. The State agency must review each school food authority's and child care institution's policy statement and

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notify of either approval of their policy statement or the need for revision. Any change to an approved policy statement must be submitted to the State agency for approval prior to implementation.

Congress did not specifically include the free and reduced price policy statement in the provisions of Public Law 101–147 concerning permanent agreements. However, in keeping with Congressional intent to reduce the paperwork burdens associated with program participation, the Department believes that the burden associated with the annual submission and approval of the free and reduced price policy statement can be reduced by making most of the provisions in the statement permanent. The Department, however, is concerned that households receive adequate information about the programs available to them and the related eligibility criteria.

Therefore, the Department proposes to amend § 245.10 to make the policy statement a permanent document which may be amended as necessary, with certain exceptions. The policy statement would continue to be required to contain the items and attachments specified in § 245.10(a) and § 245.10(b). This rule would also amend § 245.10(b) to require certain additional attachments to the policy statements: the public release required to be issued at the beginning of each school year currently under § 245.5(a)(2); the notice to households of approval/denial of benefits, currently required under § 245.6(b); the notice of selection for verification of eligibility and adverse action, currently required under § 245.6a(a)(2); and the notice to food stamp/AFDC households regarding their children's eligibility for benefits under direct certification procedures, required under § 245.6(b) of this proposal. The Department has determined that many State agencies traditionally request these documents with the policy statements required by the regulations and therefore these new requirements should not pose a significant burden on school food authorities.

Except as described below, once approved, the school food authority would only amend its policy statement and attachments as changes occur. The Department expects any amendments primarily to involve discretionary changes initiated by the school food authority, such as a change in collection procedures, or changes in procedures required by the State agency due to regulatory changes. Amendments to an approved policy statement would continue to require approval by the State agency prior to implementation.

As noted in the discussion above, the free and reduced price policy provisions in § 215.13a(d) for free milk in child care institutions are similar to those contained in § 245.10 for schools. Because of the very small number of child care institutions that participate in the Special Milk Program (only about 300 nationwide), the Department believes that many State agencies use the same prototype policy statement for child care institutions participating in the milk program as they use for schools that participate in the milk program. Therefore, for consistency and to reflect the manner in which the programs actually operate, the Department is proposing to delete § 215.13a and require that child care institutions participating in the Special Milk Program with the free milk option comply with the provisions in part 245 and provide free milk to eligible children under the same terms and conditions as pertaining to free milk in schools. Accordingly, further references in this rule to school food authorities should be read to include child care institutions providing free milk under the Special Milk Program.

As an exception to this permanency requirement, this rule proposes to require each school food authority to annually submit to the State agency for approval only those documents which were determined necessary to ensure that school food authorities are properly notifying the public of the annually revised eligibility criteria. These include (1) the public release; (2) the notice or letter to households regarding application for benefits; (3) the application form; and (4) any other documents or provisions that contain the eligibility criteria for free and reduced price benefits. In lieu of submitting these documents, however, a school food authority and child care institution may annually notify the State agency that it is adopting the State agency prototypes as its own. State agencies would continue to be required to annually provide school food authorities and child care institutions with, at a minimum, the Income Eligibility Guidelines, a prototype public release, notice or letter to households and application form, and any instructions necessary to ensure that school food authorities and child care institutions are fully informed of the requirements under part 245. Thus, it would be incumbent on the State agency to determine the needs of its school food authorities and child care institutions. For school food authorities that do not use the State agency prototype materials, the State agency would continue to review each school food authority's public release, notice or letter to households and application form, notify the school food authority of approval and to distribute the materials. The State agency would continue to have responsibility for approving any changes to a policy statement of a school food authority and a child care institution and for ensuring that school food authorities and child care institutions are in compliance with the free and reduced price provisions under part 245. The regulations would continue to require that the school food authority and child care institution have a currently approved policy statement on file at the State agency by October 15. Thus, this rule proposes to amend §§ 245.10(a)–(c) and 245.11(a)–(d) to implement the above changes and to clarify current language in the existing regulatory provisions.

Certification of Children from Food Stamp/AFDC Households

Section 202(b)(1) of Public Law 101–147 amends section 9(b)(2)(C) of the National School Lunch Act to allow a school food authority to certify children as eligible for free or reduced price meals, without further application, by directly communicating with the appropriate State or local agency to obtain documentation that the children are members of households currently receiving food stamps or are part of households currently receiving AFDC assistance. Section 202(b)(1) also specifies that school food authorities that obtain such information shall use the information only for the purpose of determining eligibility for participation in programs under the National School Lunch Act (42 U.S.C. 1751) and the Child Nutrition Act (42 U.S.C. 1771). This limitation is consistent with the Department's longstanding policy that the information provided on the application by households is only for the determination of eligibility for free and reduced price benefits and that the information on the application and the eligibility status of individual children are confidential.

Additionally, a statement adopted by key members of the House and Senate indicated their intent that school food authorities provide parents the opportunity to decide whether or not they want their children to receive free meals by notifying parents of their children's eligibility for free benefits and asking them to inform the school if they do not want their children to receive free meals. (135 Cong. Rec. H 6866 (Oct. 10, 1989) and S 14027 (Oct. 24, 1989.)) The statement further provides that school officials are to assume consent if they do not hear from the household within a certain number of days as specified by the Secretary.

As mentioned above, the Department believes that it is important to have consistency between the school meal programs and the Special Milk Program. Further, it is the intention of the Department to make the application process for free and reduced price lunches and free milk as simple as possible for all parties involved in the process. The Department, therefore, proposes to extend the following amendments concerning the direct certification of children receiving food stamps or AFDC benefits to children eligible under the Special Milk Program. By doing so, children eligible for free milk will receive this benefit as expeditiously as possible. Further, although the law provides that the food stamp/AFDC information be used to determine eligibility for free or reduced price meals, under this rule the reference to "or reduced price" is dropped. This modification is made to clarify that children who are members of food stamp households or part of AFDC assistance units are already categorically eligible for free benefits under section 9(b)(6) of the National School Lunch Act.

Section 245.2(a)(4) of the regulations currently defines "documentation" as the completion of specific information on a free and reduced price application. To implement the direct certification provision of section 202(a)(2), the Department proposes to expand that definition to include certification obtained directly from the appropriate food stamp or AFDC office. Documentation in this situation would be (1) a list of names of the children, (2) a statement certifying that the children are members of households currently certified to receive food stamps or of assistance units currently certified to receive AFDC benefits, (3) information in sufficient detail to match the children attending schools in the school food authority with the names of children identified as currently certified to receive food stamps/AFDC benefits, (4) the signature of the official of the food stamp or AFDC office, and (5) the date.

The Department emphasizes that the information provided by the food stamp/AFDC office must be in sufficient detail to enable the school or school food authority to match the names of children on the food stamp/AFDC list with children enrolled in the school food authority. The Department considers this as essential for ensuring that benefits are made available only to eligible children. The accurate identification of children in large school districts where a number of children may have the same or similar names may pose a problem. Therefore, it is essential that documentation include some type of specific identifying information that is available to both the school and the food stamp/AFDC office to ensure that benefits are directed to the correct children. This could include children's addresses, parents' names, birth dates, or other types of information, including social security numbers, which would substantiate that the individual children enrolled in the school are those children listed by the food stamp or AFDC office as currently certified to receive benefits. Since households move and parents' names may not be listed the same way at both the school and at the food stamp/AFDC office, addresses or parents' names by themselves may not always be adequate identifiers. Thus, it may be necessary to use more than one personal identifier. It would be incumbent on school officials who want to use direct certification to contact the appropriate State or local agency to discuss how this direct certification provision may be implemented locally. Commenters should be aware that nothing in the statute or this regulation requires the local food stamp/AFDC office to provide this information. Nevertheless, both the Food Stamp Program and AFDC are permitted by their authorizing legislation to disclose or confirm information obtained from their recipients to other Federal assistance programs and federally-assisted State programs (7 U.S.C. 2020(e)(8); 42 U.S.C. 602(a)(8)(c)). The Department will request that State and local food stamp offices cooperate with school food authorities in implementing this provision and will ask for the cooperation of the Department of Health and Human Services in notifying their State and local AFDC offices of this provision and asking them to cooperate. However, it is possible that State and local offices may individually elect to share or not to share this information. Moreover, the specific information which may be available and released and the manner in which it may be obtained may differ from State to State and locality to locality. This is due to methods of filing (automated vs. manual, filing by case numbers, social security numbers, or head of household) and other basic differences among the Food Stamp, AFDC and School Nutrition Programs. Therefore, school food authorities intending to implement the direct certification provision would need to contact their State or local food stamp/AFDC office to enlist their cooperation and to identify the information that is available and establish a system for obtaining the required documentation.

Section 9(b)(2)(B) of the National School Lunch Act and § 245.5(a)(1) of the regulations require school food authorities to distribute free and reduced price meals or free milk applications and letters to parents/guardians of children in attendance at the school at the beginning of the school year. The Department is aware that there could be confusion and duplication if households that have children who are eligible for free meals or free milk under direct certification receive multiple sets of applications and letters. The Department is also concerned with preventing the overt identification of children eligible for free meals or milk under direct certification. The Department is proposing to amend § 245.5(a)(1) to provide an option for school food authorities that implement direct certification. Under this provision, school food authorities that implement direct certification need not send the notice or letter and application to those households eligible under direct certification when these materials are distributed through the mail, individual student packets, or other method which prevents the overt identification of children eligible for direct certification. Households with children who are eligible for free meals and free milk under direct certification must receive a notice concerning eligibility for benefits, as required under § 245.6(b) of this proposal. Thus parents will either receive a notice or letter and application regarding free meals or free milk, or a notice that their children are eligible for free meals or free milk under direct certification. School food authorities that do not distribute the notice or letter and application, or notice concerning eligibility for benefits under direct certification using a method mentioned above must continue to distribute the notice or letter and application to all households to avoid the overt identification of those children eligible under the direct certification.

Additional conforming amendments are proposed in § 245.6 to allow the determination of eligibility based on direct certification in lieu of an application and to clarify that children from food stamp households or AFDC assistance units are automatically eligible for free benefits. To ensure that households determined as eligible based on direct certification are given the opportunity to decline benefits,

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§ 245.6(c)(1) is further proposed to require that school food authorities provide these households with written notice that their children are eligible for benefits, that no further application is required, and that they must notify the school if they do not want their children to receive free meals or milk benefits. This notice also would advise households that they must notify the school when they no longer receive food stamps or AFDC. Under this proposal, school food authorities would provide benefits to children determined eligible based on documentation from the food stamp/AFDC office as promptly as possible. However, school food authorities would promptly discontinue the benefits if they are notified that households do not want free benefits for their children. School food authorities would document such notification and make it available for review. Additionally, households that notify the school that the child is no longer a member of a currently certified food stamps household or AFDC assistance unit would be provided the opportuntiy to complete an application to establish continued eligibility.

The recordkeeping provisions in §§ 210.9(b)(17), 215.7(d)(8) and 220.7(e)(14) require that school food authorities maintain free and reduced price applications on file for 3 years after the end of the fiscal year to which they pertain. Thus, the Department proposes to amend § 245.6(b) to require that school food authorities maintain the documentation obtained from the food stamp/AFDC office for 3 years, since this documentation substantiates children's eligibility for benefits in lieu of the free and reduced price application. Consistent with other recordkeeping requirements, this information shall be maintained beyond the 3 year period as long as required for resolution of issues raised if audited.

Although the intent of the provision allowing eligibility determinations based on direct communication with the food stamp/AFDC office is to expedite the delivery of benefits to needy children, the Department has some concern about providing free benfits, prior to household consent, to children from households who have not specifically requested meal or milk benefits for their children. It is possible that some households could regard this policy as an infringement upon their rights. However, the Department believes that few households will decline benefits and that providing meals and milk to needy children as quickly as possible outweighs other concerns. Moreover, households would still have the opportunity to decline benefits and, if they exercise this option, schools must comply promptly. The Department is encouraging comment on this provision.

Further, under this proposed rule, households determined eligible based on documentation from the food stamp/AFDC office are not subject to verification of eligibility required under § 245.6a. Most school food authorities will obtain documentation from the food stamp/AFDC office in August or September. Since school food authorities must complete the verification requirements by December 15 each year, the Department does not believes that enough of these households will have changed eligibility status in that period of time to make the verification process for these households cost effective. The Department prefers that limited resources be used to verify those households which submit applications.

Summary of Discretionary Provisions

The Department is encouraging comments on those proposed provisions in which Department has some discretion on implementation. Of particular interest to the Department are comments on the following provisions: (1) The expansion of the free and reduced price policy statement and making the policy statement a permanent document, to be amended as necessary; (2) the annual submission and approval of those portions of the expanded policy statement which provide the eligibility criteria, (i.e., the letter to households with the proposed household application for free and reduced price benefits and public release, unless the State agency prototypes are adopted); (3) the requirement that documentation for children determined as eligible for free benefits based on direct certification include identifying information to link the names of children receiving food stamps/AFDC with individual children enrolled in the school food authority; (4) the requirement that school food authorities promptly provide benefits to such children and the method by which households may decline benefits; and (5) the exclusion from verification requirements of households whose children are determined eligible based on direct certification. In addition to State agency and school food authority comment, the Department encourages comments from State and local food stamp and AFDC offices and other interested members of the public.

List of Subjects in Parts 210, 215, 220, and 245

7 CFR Part 210

Food assistance programs, National School Lunch Program, Commodity School Program, Grant programs-social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 215

Food assistance peograms, Special Milk Program, Grant programs-social programs, Nutrition, Children, Reporting and recordkeeping requirements.

7 CFR Part 220

Food assistance programs, School Breakfast Program, Grant programs-social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 245

Food assistance programs, Grant programs-social programs, National School Lunch Program, School Breakfast Program, Special Milk Program, Reporting and recordkeeping requirements.

Accordingly parts 210, 215, 220, and 245 are proposed to be amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for part 210 continues to read as follows:

Authority: The provisions of part 210 issued under sec. 3–12, 60 Stat. 230, as amended; sec. 10, 80 Stat. 889, as amended; 84 Stat. 270; 42 U.S.C. 1751–1760, 1779.

2. In § 210.9, introductory paragraph (b) is amended by removing the title and the first two sentences and by adding a new title and two new sentences in their places to read as follows:

§ 210.9 Agreement with State agency.

* * * * *

(b) Agreement. Each school food authority approved to participate in the program shall enter into a permanent written agreement with the State agency that may be amended as necessary. Nothing in the preceding sentence shall be construed to limit the ability of the State agency to suspend or terminate the agreement in accordance with § 210.24. * * *

* * * * *

PART 215—SPECIAL MILK PROGRAM FOR CHILDREN

1. The authority citation for part 215 continues to read as follows:

Authority: Secs. 3, 10, Child Nutrition Act of 1966, as amended (42 U.S.C. 1772, 1779).

§ 215.7 [Amended]

2. In § 215.7:

a. The second sentence in introductory paragraph (b) is amended by adding a comma after the word "Program" and removing the words and comma "and thereafter at least annually,";

b. Paragraph (b)(2) is revised; and

c. Introductory paragraph (d) is amended by removing the first sentence and adding two new sentences in its place.

The revision and addition read as follows:

§ 215.7 Requirements for participation.

* * * * *

(b) * * *

(2) If it wished to provide free milk, shall also submit for approval a free milk policy statement in accordance with part 245 of this chapter.

* * * * *

(d) Each school food authority or child care institution approved to participate in the program shall enter into a permanent written agreement with the State agency or the Department through the FNSRO, as applicable, that may be amended as necessary. Nothing in the preceding sentence shall be construed to limit the ability of the State agency to suspend or terminate the agreement in accordance with § 215.15. * * *

* * * * *

§ 215.13a [Removed]

3. Section 215.13a is removed.

PART 220—SCHOOL BREAKFAST PROGRAM

1. The authority citation for part 220 continues to read as follows:

Authority: Secs. 4 and 10 of the Child Nutrition Act of 1966, 80 Stat. 886, 889 (42 U.S.C. 1773, 1779), unless otherwise noted.

2. In § 220.7, introductory paragraph (e) is amended by removing the first sentence and adding two new sentences in its place to read as follows:

§ 220.7 Requirements for participation.

* * * * *

(e) Each school food authority approved to participate in the program shall enter into a permanent written agreement with the State agency or the Department through the FNSRO, as applicable, that may be amended as necessary. Nothing in the preceding sentence shall be construed to limit the ability of the State agency to suspend or terminate the agreement in accordance with § 220.18. * * *

* * * * *

PART 245—DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS

1. The authority citation for part 245 continues to read as follows:

Authority: Secs. 3, 4, and 10, 80 Stat. 885, 886, 889, as amended (42 U.S.C. 1772, 1773, 1779); secs. 2–12, 60 Stat. 230 as amended (42 U.S.C. 1751–60).

2. In § 245.2, paragraph (a–4) is amended by adding a sentence at the end of the paragraph to read as follows:

§ 245.2 Definitions.

* * * * *

(a–4) * * * In lieu of an application, documentation means a list of names of children; a statement certifying that the children are members of currently certified food stamp households or AFDC assistance units; information in sufficient detail to match the children attending schools in the school food authority with the names of children certified as members of food stamp households or AFDC assistance units; the signature of the individual authorized to provide the certification on behalf of the Food Stamp or AFDC office, as appropriate; and the date.

* * * * *

3. § 245.5 is amended by revising the first sentence in paragraph (a)(1) to read as follows:

§ 245.5 Public announcement of the eligibility criteria.

(a) * * *

(1) Except as provided in § 245.6(b), a letter or notice and application distributed on or about the beginning of each school year, to the parents of all children in attendance at school. * * *

* * * * *

4. § 245.6 is amended as follows:

a. The introductory text of paragraph (b) and paragraphs (b)(1), (b)(2), and (c) are redesignated as the introductory text of paragraph (c) and paragraphs (c)(2), (c)(3), and (d) respectively;

b. New paragraphs (b) and (c)(1) are added; and

c. Redesignated paragraph (c) introductory text is revised. The addition and revision read as follows:

§ 245.6 Application for free and reduced price meals and free milk.

* * * * *

(b) *Certification by the Food Stamp/AFDC Office.* With State agency approval, in lieu of determining eligibility based on information provided by the household on the free and reduced price meal or milk application specified in paragraph (a) of this section, school food authorities may determine children to be eligible for free meals or milk based on documentation obtained directly from the appropriate State or local agency responsible for the administration of the Food Stamp Program and/or the AFDC Program. The documentation shall include the names of the children; a statement certifying that the children are members of currently certified food stamp households and/or AFDC assistance units; information in sufficient detail to match the children attending schools in the school food authority with the names of children certified as members of food stamp households or AFDC assistance units; the signature of the individual authorized to provide the certification on behalf of the food stamp or AFDC office, as appropriate; and the date.

(1) The school food authority shall maintain such documentation substantiating eligibility determinations on file for 3 years after the date of the fiscal year to which they pertain, except that if audit findings have not been resolved, the documentation shall be maintained as long as required for resolution of the raised by the audit.

(2) Information about the child or the household obtained directly from the food stamp or AFDC office shall be kept confidential and shall be used solely for the purpose of determining the child's elibility for school meal or milk benefits.

(3) If school food authorities choose to distribute the letters or notices and application forms specified in § 245.5(a) and notice to households concerning elibility for benefits under direct certification specified in § 245.6(c)(1) thorugh the mail, individualized student packets, or other method which prevents the overt identification of children eligible for direct certification, the school food authorities are not required to mail the letter or notice or application form under § 245.5(a) to the parents of children who are eligible for free meals or free milk based upon documentation obtained directly from the food stamp or AFDC office.

(c) *Determination of eligibility.* School food authorities may seek verification of eligibillty. School officials shall take the income and frequency information provided by the household on the application and calculate the household's total current income. When

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a household submits an application containing complete documentation, as specified in § 245.2(a–4), and the household's total current income is at or below the eligibility limits specified in the Income Eligibility Guidelines, the children in that household shall be approved for free or reduced price benefits, as applicable. When a household submits an application containing the required food stamp or AFDC documentation, as specified in § 245.2(a–4), the children in that household shall be approved for free benefits. Additionally, when the school food authority obtains documentation directly from the State or local agency responsible for the administration of the Food Stamp Program and/or AFDC Program that children are members of currently certified food stamp households or AFDC assistance units, as specified in § 245.2(a–4), the school food authority shall approve such children for free benefits without application from the households.

(1) *Notice of Approval.* The school food authority shall promptly notify the household of the children's eligibility and provide the children from the household the benefits to which they are entitled. Households approved for benefits based on documentation provided by the appropriate State or local agency responsible for the administration of the Food Stamp or AFDC Program shall be notified in writing that its children are eligible for free meals or free milk, that households must contact the school when the children are no longer members of a food stamp household or ADFC assistance unit, and that no application is required at this time. The notice shall also inform households that they must notify the school if they do not want their children to receive free benefits. Children from households that notify the school that they do not want free benefits shall have their benefits discontinued as soon as possible. Any notification from the household declining benefits shall be documented and maintained on file. Additionally, a school food authority that is notified by the household that the children are no longer members of food stamps households or AFDC assistance units shall follow the procedures for adverse action, as specified in § 245.6a(e), and shall inform the household that it must submit an application with income information to establish continued eligibility for such children.

* * * * *

4. § 245.6a is amended by adding a sentence at the end of paragraph (a)(5).

The addition reads as follows:

§ 245.6a Verification requirements.

(a) * * *

(5) * * * Verification of eligibility is not required of households for which the determination of eligibility was based on documentation provided by the State or local agency responsible for the administration of the Food Stamp Program or AFDC Program

* * * * *

5. In § 245.10,

a. The introductory text of paragraph (a) is amended by adding a sentence between the first and second sentences;

b. Paragraph (b) is revised; and

c. Paragraph (c) is revised.

The addition and revisions read as follows:

§ 245.10 Action by School Fund Authorities.

(a) * * * Once approved, the policy statement shall be a permanent document which may be amended as necessary, except as specified in paragraph (c) of this section. * * *

* * * * *

(b) The policy statement submitted by each school food authority shall be accompanied by a copy of application form, the letter or notice to households which accompanies the application form and the public release, as specified in § 245.5(a)(2), the notice to households of approval/denial, as specified in § 245.6(b), the notices of selection for verification and adverse action, as specified in § 245.6a(a)(2), and in school food authorities that have opted to implement direct certification as described in § 245.6(b), the notice to households regarding their children's eligibility under the direct certification provision.

(c) Each school fund authority shall annually amend its prior year's policy statement to reflect changes resulting from revisions to the eligibility criteria for free and reduced price benefits for the current school year. At a minimum, such amendment shall include the public release, letter or notice to households regarding application for benefits and the application form, and any other documents or provisions that contain the eligibility criteria for free and reduced price benefits. Such amendment to a policy shall be approved by the State agency prior to implementation, or as provided under § 245.10(e). In lieu of submitting these documents as amendments to its policy statement, the school food authority may notify the State agency in writing that it is adopting the State agency prototypes as its own. Each year, if a school food authority does not have its policy statement approved by the State agency, or FNSRO where applicable by October 15 or as provided under § 245.10(e), reimbursement shall be suspended for any meals or milk served until such time as the school food authority's free and reduced price policy statement has been approved by the State agency, or FNSRO where applicable. Further, no commodities donated by the Department shall be used in any school after October 15, or as provided under § 245.10(e), until such time as the school food authority's free and reduced price policy statement has been approved by the State agency, or FNSRO where applicable. Once the school food authority's free and reduced price policy statement has been approved, reimbursement may be allowed at the discretion of the State agency, or FNSRO where applicable, for eligible meals and milk served during the period of suspension. Pending approval of a revision of a policy statement, the existing statement shall remain in effect.

* * * * *

6. In § 245.11,

a. Paragraphs (a), (b), (c) and (d) are revised; and

b. Paragraph (a–1) is removed.

The revisions read as follows:

§ 245.11 Action by State agencies and FNSRO's.

(a) As necessary, each State agency or FNSRO, as applicable, shall issue a prototype free and reduced price policy statement and any other instructions necessary to ensure that each school food authority is fully informed of the provisions of this part. By July 1 each year, the State agency shall publicly announce the Income Eligibility Guidelines as issued by the Department. If the State agency elects to establish a maximum price for reduced price lunches in all schools that is less than 40 cents, the State agency shall establish that price in its prototype policy. Such State agency shall receive the adjusted national average factor in accordance with § 210.4(b).

(b) State agencies or FNSRO where applicable shall review any amendments to policy statements submitted by school food authorities for compliance with the provisions of this part and inform the school food authorities of any necessary changes or amendments required in any policy statement to bring the statement into compliance. Annually, each state agency shall notify school fund authorities in writing of approval of the amendments to their policy statements required under § 245.10(c) and, shall direct the school fund authority to distribute promptly the public announcements required under § 245.5.

(c) When there is a revision in the criteria for determining eligibility for free and reduced price meals or free milk because of a change in the Department's Income Eligibility Guidelines or because of other program changes, the State agency or FNSRO as applicable shall publicly announce the revised criteria no later than 30 days after the Department has announced the change.

(d) Not later than 10 days after the State agency or FNSRO as applicable announces the change in free and reduced price eligibility criteria, it shall notify school food authorities in writing of any amendment to their free and reduced price policy statements necessary to bring their policy statements into conformance with this part.

* * * * *

Dated: May 20, 1991.

Betty Jo Nelsen,

Administrator, Food and Nutrition Service.

[FR Doc. 91–12454 Filed 5–24–91; 8:45 am]

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Agricultural Marketing Service

7 CFR Part 989

[FV–91–258PR]

Raisins Produced From Grapes Grown in California; Revising Reserve Pool Requirements for Certain Seedless Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on a change to the administrative rules and regulations of the California raisin marketing order. This action would revise reserve pool requirements for raisins produced from Fiesta, Emerald Seedless, Perlette, Delight, and other similar grape varieties. This change was recommended by the Raisin Administrative Committee (Committee), which is responsible for local administration of the Federal marketing order regulating the handling of raisins produced from grapes grown in California.

DATES: Comments must be received by June 27, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3920.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under marketing agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This proposed rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 25 handlers of California raisins who are subject to regulation under the raisin marketing order, and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A majority of producers and a minority of handlers of California raisins may be classified as small entities.

This proposed rule invites comments on a change to the administrative rules and regulations of the raisin marketing order. This action was unanimously recommended by the Committee.

The change would revise the reserve pool requirements for raisins produced from Fiesta, Perlette, Delight, Emerald Seedless and other similar grape varieties. Currently, these varietal types are included under the Natural (sun-dried) Seedless raisin category.

Section 989.110(a) of the rules and regulations provides the definition for Natural (sun-dried) Seedless varietal type of raisin which includes all sun-dried seedless raisins that possess characteristics similar to Natural Thompson Seedless raisins. The above-mentioned grape varieties fit into this varietal type category when they are sun-dried into raisins. Raisins made from Fiesta, Perlette, Delight, Emerald Seedless and other similar grape varieties that meet the minimum grade and condition standards may be placed in the Natural (sun-dried) Seedless reserve pool by handlers to satisfy their reserve pool obligations. (§ 989.66). The reserve portion of a crop must be held by handlers for the account of the Committee to be sold into specified outlets throughout the crop year.

Reserve pool raisins must be stored by handlers until they are relieved of their responsibility by the Committee. The Committee may relieve a handler's reserve pool responsibility by transferring reserve pool raisins to another handler who needs reserve pool raisins for an authorized reserve pool purchase. The Committee has found that some handlers are reluctant to accept raisins from the Natural (sun-dried) Seedless reserve pool that are of the Fiesta, Perlette, Delight, Emerald Seedless, and other similar grape varieties from other handlers because the receiving handlers do not have a market for them.

Raisins made from these varietal types are somewhat larger than raisins made from the Thompson Seedless grape and generally are sold into different markets. Therefore, the Committee has recommended that handlers who acquire raisins from the Fiesta, Perlette, Delight, Emerald Seedless, and other similar grape varieties from producers and place them in the Natural (sundried) Seedless reserve pool be required to utilize such raisins. Handlers could not transfer reserve pool raisins made from the above-mentioned varietal types unless the transfer to another handler was acceptable to the Committee or the receiving handler. Handlers acquiring

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such raisins could place them in the reserve pool. However, they would be required to use them rather than transfer them to another handler. This would alleviate the concerns receiving handlers have in accepting such raisins when they have no market in which to sell them. In the case where handlers may not have any other reserve pool raisins besides raisins made from the Fiesta, Perlette, Delight, Emerald Seedless, and other similar grape varieties, handlers could substitute free tonnage raisins that would be acceptable to the Committee for the varieties mentioned above. Substitution of free tonnage for reserve pool tonnage is authorized under § 989.66(b)(3) of the marketing order.

The rules and regulations currently provide that handlers must identify each lot of raisins received by having the Inspection Service attach control cards to one container on each pallet or to each bin of raisins in a lot. Thus, each lot of raisins received and placed in the reserve pool can be identified as to its varietal type and can be properly disposed of by handlers. Therefore, this change could be easily implemented since containers are properly marked as to the varietal type of raisins.

Based on available information, the Administrator of the AMS has determined that the issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 989 be amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority. Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 989.166 is amended by revising paragraph (a)(1) to read as follows:

§ 989.166 Reserve tonnage generally.

(a) *Setaside obligations*—(1) *Natural (sun-dried) Seedless.* Handlers who acquire any lot of natural condition Natural (sun-dried) Seedless raisins which have been dipped in or sprayed with water, with or without chemicals prior to or during the drying process, for purposes other than to expedite drying, or that have been produced from seedless varieties of grapes other than Thompson Seedless (i.e., Fiesta, Emerald Seedless, Perlette, Delight, and other similar grape varieties), may set aside such raisins to satisfy their reserve pool obligation: *Provided,* That such raisins shall be identified by the Inspection Service affixing to one container on each pallet or to each bin in each lot, a prenumbered RAC control card (to be furnished by the Committee) which shall remain affixed until raisins are processed or disposed of as natural conditions raisins: and *Provided further,* That such raisins shall not be delivered to another handler without approval of the Committee or the receiving handler.

* * * * *

Dated: May 22, 1991.

Robert C. Kenney,

Deputy Director Fruit and Vegetable Division.

[FR Doc. 91–12496 Filed 5–24–91; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–CE–13–AD]

Airworthiness Directives; Beech Models F33A, F33C, V35B, A36, A36TC, and B36TC Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would be applicable to certain Beech Models F33A, F33C, V35B, A36, A36TC, and B36TC airplanes. The proposed action would require a one-time inspection and modification of the cabin fresh air blower installation. Blower housing attachments have failed on several of the affected airplanes. The actions specified in the proposed AD are intended to prevent blower housing failure, which could lead to blower impingement on the flight control cables located below the blower and possible loss of control of the airplane.

DATES: Comments must be received on or before July 29, 1991.

ADDRESSES: Beech Service Bulletin (SB) No. 2380, revised April 1991, that is discussed in this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–13–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4409.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–13–AD, room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

There have been reports of cracks in the housing of the fresh air blower that is installed as optional equipment on certain Beech Models F33A, F33C, V35B, A36, A36TC, B36TC airplanes. In one instance, the fresh air blower motor and fan blade cage separated from the housing and were secured to the aft fuselage frame by only the electrical wiring, which allowed the motor to continue to run. The fan blade severed the elevator trim cable, which is one of several flight control cables in that area. Severing a flight control cable may lead to loss of control of the airplane.

As a result, Beech issued Service Bulletin (SB) No. 2380, revised April 1991, which specifies a one-time inspection and modification of the cabin fresh air blower installation on certain Beech Models F33A, F33C, V35B, A36, A36TC, B36TC airplanes. The FAA has determined that AD action is necessary to detect and correct cracks in the housing of the fresh air blowers on the affected airplanes.

Since the condition described is likely to exist or develop in other Beech Models F33A, F33C, V35B, A36, A36TC, B36TC airplanes of the same type of design, the proposed AD is intended to prevent blower housing failure, which could cause reduced control of the airplane. It would require a one-time inspection and modification of the cabin fresh air blower installation in accordance with the instructions in Beech SB No. 2380, revised April 1991.

It is estimated that 1,787 airplanes will be affected by the proposed AD, that it will take approximately 8 hours per airplane to accomplish the proposed inspection and modification at $55 an hour, and that parts cost approximately $300. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,322,380.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Beech: Docket No. 91–CE–13–AD.

Applicability: The following model and serial number airplanes that are equipped with an optional fresh air blower, certificated in any category:

Model	Serial No.
F33A	CE–941 through CE–1555.
F33C	CJ–156 through CJ–179.
V35B	D–10348, and D–10364 through D–10403.
A36	E–1809 through E–2592.
A36TC and B36TC	EA–192 through EA–514.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent fresh air blower housing failure, which could lead to blower inpingement on the flight control cables located below the blower and possible loss of control of the airplane, accomplish the following:

(a) Inspect and modify as required the attachment of the fresh air blower housing in accordance with the instructions and the criteria contained in Beech Service Bulletin No. 2380, revised April 1991.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 operate airplanes to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas, 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on May 16, 1991.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–12475 Filed 5–24–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

Regulations No. 4

RIN 0960–AC68

Federal Old-Age, Survivors, and Disability Insurance; Suspension of Benefits of Deported Nazis; Exemption from Social Security Because of Religious Belief

AGENCY: Social Security Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: These regulations reflect provisions of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA), Public Law 100–647, and the Omnibus Budget Reconciliation Act of 1989 (OBRA), Public Law 101–239, that provide—

1. For the nonpayment of Social Security benefits if an individual is ordered deported from the United States because of certain past activities performed under the direction of or in association with the Nazi government of Germany or one of its allies;

2. For an exemption from Social Security if an employee and his or her employer both belong to a religious faith and are adherents to established tenets and teachings of that faith opposed to acceptance of insurance benefits including those provided by the Social Security program;

3. For an exemption from Social Security of an employee of a partnership if both the employee and the members of the partnership (each of the partners) belong to a religious faith and are adherents to the established tenets and teachings of that faith opposed to acceptance of insurance benefits including those provided by the Social Security program; and

4. For an exemption from Social Security for persons who have religious convictions in opposition to the acceptance of insurance benefits including those provided by Social Security and who are employees of churches or church-controlled organizations, but who are treated as

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self-employed individuals because the employing church or organization has exercised its option to be exempt from paying the employer portion of the Social Security Tax.

DATES: To be sure your comments are considered we must receive them no later than July 29, 1991.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to the Office of Regulations, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: L. V. Dudar, Legal Assistant, Office of Regulations, Social Security Administration, 3–B–1 Operations Buildings, 6401 Security Boulevard, Baltimore, MD 21235 (301) 965–1795.

SUPPLEMENTARY INFORMATION:

Nonpayment of Benefits After Deportation or Order of Deportation on the Basis of Association With Nazi Germany During World War II

Section 202(n) of the Social Security Act (the Act) provides that no monthly benefits shall be paid to a beneficiary entitled to old-age or disability insurance benefits on his or her wages or self-employment income who is ordered deported from the United States for violating specified provisions of the Immigration and Nationality Act. It also provides that if such a beneficiary is ordered deported under one of these specified provisions, no lump sum death benefit shall be paid on the basis of his or her earnings record and other benefits that may be payable on his or her earnings record may not be paid to a non-United States citizen outside the United States.

Section 8004 of TAMRA made two changes to section 202(n) of the Act. First, by adding a reference to paragraph 19 to section 241(a) of the Immigration and Nationality Act it incorporated Nazi war criminals into the list of individuals to whom benefits are not payable due to their deportation. Paragraph 19 provides for the deportation of an individual upon a finding that he or she persecuted others on account of their race, religion, national origin, or political opinion under the direction of or in association with the Nazi government of Germany or its allies. Second, TAMRA provided that the date as to which benefits would not be paid to these war criminals would be the date of issuance of a final order of deportation from the United States under paragraph 19 of section 241(a) of the Immigration and Nationality Act. We are amending our regulations at 20 CFR 404.464 to reflect these statutory changes.

The nonpayment of benefits under the statutory amendments includes situations where a final order of deportation was issued, even though the actual deportation may not have occurred. However, it applies only in the case of final orders of deportation issued on or after November 10, 1988, and only to benefits for months beginning, and deaths occurring, on or after that date.

Exemption From Social Security for Employees and Employers Who Are Both Members of Certain Religious Faiths

Section 8007 of TAMRA added a new section 3127 to the Internal Revenue Code (the Code) and a conforming amendment to section 202(v) of the Act. Under this statutory change, an employee and his or her employer may file applications with the Internal Revenue Service (IRS) for exemption from their respective shares of the Federal Insurance Contributions Act taxes on the employee's wages based upon their religious convictions in opposition to acceptance of insurance benefits including those provided by Social Security. In order for the exemption to be granted, both the employee and his or her employer must have applications filed and approved and both must submit waivers of their right to receive benefits under title II and part A of title XVIII of the Act. Under section 202(v) of the Act, no benefits or other payments are payable under title II and part A of title XVIII of the Act to the individual who files such a waiver and receives such an exemption. In addition, no benefits or other payments are payable under title II and part A of title XVIII on the basis of the exempted individual's wages and self-employment income to any other person after the filing of the waiver.

Prior to the enactment of TAMRA, the availability of a Social Security tax exemption on religious grounds was limited under sections 202(v) and 211(c)(8) of the Act and section 1402(g) of the Code to individuals who were self-employed. Sections 404.1075 and 404.305 of the regulations implement the exemption from the Social Security self-employment tax and the corresponding waiver of benefits. The TAMRA enactment extends to an employee and his or her employer the right to request a Social Security tax exemption if they both have religious convictions in opposition to participation in insurance programs including Social Security. Additionally, it provides that no exemption will be granted if the employee would be receiving benefits but for suspension of his or her benefits under section 203 or section 222(b) of the Act. This rule already applied to the exemption for self-employed persons, but was not reflected in the regulations. We are therefore revising § 404.1075 to reflect this rule for the self-employed. We are also amending § 404.305(a), which discusses the effect of the waiver of benefits, to revise a reference to the regulatory section describing the tax exemption on religious grounds for self-employed persons to reflect that that section currently appears in § 404.1075, and to clarify that, in order for a waiver of benefits to be applicable, it is necessary for the applicant to be granted a tax exemption in addition to filing the waiver.

Section 10204(b) of OBRA amended section 3127 of the Internal Revenue Code to provide that the tax exemption is available when an employee of a partnership and each partner in that partnership have religious convictions in opposition to participation in insurance programs including Social Security and file applications for exemption which include waivers of their right to receive benefits under title II and part A of title XVIII of the Act.

To reflect these new statutory provisions concerning the employee and employer, we are adding a cross-reference to § 404.305(a) of subpart D and adding a new section to subpart K, § 404.1039, which is modeled after § 404.1075, to state that, in order for the tax exemption to be granted, both an employee and his or her employer (or, if the employer is a partnership, each of its partners) must—

1. Belong to a recognized religious sect or a division thereof; and

2. Adhere to the tenets or teachings of that sect or division of the sect and for that reason conscientiously oppose the acceptance of insurance benefits from any public or private insurance including Social Security that—

a. Makes payment in the event of death, disability, old-age, or retirement; or

b. Makes payment for the cost of, or provides services for, medical care (including the benefits of any insurance system established by the Act); and

3. File applications with IRS for exemption from Social Security taxation (which includes a waiver of the right to

receive benefits under title II and part A of title XVIII of the Act) that IRS approves pursuant to section 3127 of the Internal Revenue Code.

In order for an application to be approved, we must find that the sect or division of the sect has established tenets or teachings which cause the applicants to be conscientiously opposed to receiving the types of insurance benefits described above, that the sect or division of the sect has continuously been in existence since December 31, 1950, and that its members make provision for dependent members that is reasonable in view of their general level of living.

An application for exemption will be approved by the Internal Revenue Service only if no benefits became payable (or, but for section 203 or section 222(b) of the Act, would have become payable) to the applicant at or before the time the application was filed. Once IRS approves the tax exemption authorized under section 3217 of the Internal Revenue Code, the exemption continues until the exemption requirements are no longer met. If the exemption ceases to be in effect, the waiver of the right to receive Social Security and Medicare benefits will also no longer apply. However, earnings for years before the waiver ceases to apply cannot be used for Social Security benefit purposes.

The exemption provided under these statutory amendments applies to wages paid after December 31, 1988.

Exemption From Social Security of Workers in Churches and Church-Controlled Organizations

Section 10204(a) of OBRA amended 1402(g) of the Internal Revenue Code. Under this statutory change, employees of churches and church-controlled organizations who are treated as self-employed individuals because the employing church or church-controlled organization has been approved for exemption from payment of the Federal Insurance Contributions Act tax on religious grounds are exempt from payment of the Self-Employment Contributions Act tax effective for tax years beginning January 1, 1990, if the worker has an approved application for exemption as described in § 404.1075.

Prior to the enactment of OBRA, these church employees, who are treated as self-employed individuals, were subject to payment of the Self-Employment Contributions Act tax. We are therefore revising § 404.1068 to reflect this statutory change.

Regulatory Procedures

Executive Order 12291

These proposed regulations have been reviewed under Executive Order 12291 and the Secretary has determined that this is not a major rule since these regulations will not result in any significant costs or otherwise meet the criteria for a major rule. Therefore, a regulatory impact analysis is not required. The statutory amendments reflected in these regulations will cause a reduction in estimated Social Security tax revenues of $13 million for FY 1990 and FY 1991, and $14 million each for FY 1992, FY 1993, and FY 1994.

Paperwork Reducation Act

These proposed regulations impose no reporting/recordkeeping requirements subject to Office of Management and Budget clearance.

Regulatory Flexibility Act

The Secretary certifies that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities since they only apply to individuals and certain partnerships. Consequently, these regulations will have a minimal overall economic impact and a regulatory flexibility analysis, as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program: No. 13.802 Social Security—Disability Insurance; No. 13.803 Social Security—Retirement Insurance; No. 13.805 Social Security—Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors, and Disability Insurance.

Dated: December 28, 1990.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: April 3, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

Part 404 of chapter III, title 20 of the Code of Federal Regulations is amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950–)

1. The authority citation for subpart D is revised to read as follows:

Authority: Secs. 202, 203 (a) and (b), 205(a), 216, 223, 228 (a)–(e), and 1102 of the Social Security Act; 42 U.S.C. 402, 403 (a) and (b), 405(a), 416, 423, 428 (a)–(e), and 1302.

2. Section 404.305 is amended by revising paragraph (a) to read as follows:

§ 404.305 When you may not be entitled to benefits.

* * * * *

(a) *Waiver of benefits.* If you have waived benefits and been granted a tax exemption on religious grounds as described in §§ 404.1039 and 404.1075, no one may become entitled to any benefits or payments on your earnings record and you may not be entitled to benefits on anyone else's earnings record; and

* * * * *

3. The authority citation for subpart E continues to read as follows:

Authority: Secs. 202, 203, 204 (a) and (e), 205(a), 222(b), 223(e), 224, 227, and 1102 of the Social Security Act; 42 U.S.C. 402, 403, 404 (a) and (e), 405(a), 422(b), 423(e), 424, 427, and 1302.

4. Section 404.464 is amended by revising paragraphs (a) and (c) to read as follows:

§ 404.464 Nonpayment of benefits where individual is deported; prohibition against payment of lump sum based on deported individual's earnings records.

(a) *Old-age or disability insurance benefits.* When an individual is deported under the provisions of paragraphs (1), (2), (4), (5), (6), (7), (10), (11), (12), (14), (15), (16), (17), (18), or (19) of section 241(a) of the Immigration and Nationality Act, no old-age or disability insurance benefit is payable to the individual for any month occurring after the month in which the Secretary is notified by the Attorney General of the United States that the individual has been deported and before the month in which the individual is thereafter lawfully admitted to the United States for permanent residence. An individual is considered lawfully admitted for permanent residence as of the month he enters the United States with permission to reside here permanently. For purposes of this paragraph and paragraph (c) following, an individual ordered deported under paragraph (19) of section 241(a) of the Immigration and Nationality Act may not be considered deported unless the final order of deportation was signed on or after November 10, 1988. An individual so ordered deported shall be considered to have been deported as of the date on which such order became final, although the actual deportation may not have occurred.

* * * * *

(c) *Lump sum death payment.* No lump-sum death payment is payable on

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the basis of the earnings of an individual deported under paragraphs (1), (2), (4), (5), (6), (7), (10), (11), (12), (14), (15), (16), (17), (18), or (19) of section 241(a) of the Immigration and Nationality Act if the individual dies in or after the month in which notice that he has been deported is received by the Secretary and before the month in which the individual is thereafter lawfully admitted to the United States for permanent residence.

5. The authority citation for subpart K is revised to read as follows:

Authority: Secs. 202(v), 205(a), 209, 210, 211, 229(a), 230, 231, and 1102 of the Social Security Act; 42 U.S.C. 402(v), 405(a), 409, 410, 411, 429(a), 430, 431, and 1302.

6. A new § 404.1039 is added to subpart K to read as follows:

Exemption From Social Security by Reason of Religious Belief

§ 404.1039 Employers (including Partnerships) and employees who are both members of certain religious groups opposed to insurance.

(a) You and your employer (or, if the employer is a partnership, each of its partners) may file applications with the Internal Revenue Service for exemption from your respective shares of the Federal Insurance Contributions Act taxes on your wages paid by that employer if you and your employer (or, if the employer is a partnership, each of its partners)—

(1) Are members of a recognized religious sect or division of the sect; and

(2) Adhere to the tenets or teachings of the sect or division of the sect and for that reason are conscientiously opposed to receiving benefits from any private or public insurance that—

(i) Makes payment in the event of death, disability, old-age, or retirement; or

(ii) Makes payment for the cost of, or provides services for, medical care including the benefits of any insurance system established by the Act.

(b) Both your application and your employer's application (or, if your employer is a partnership, each partner's application) must be filed with and approved by the Internal Revenue Service pursuant to section 3127 of the Internal Revenue Code. An application must contain or be accompanied by the applicant's waiver of all benefits and payments under title II and part A of title XVIII of the Act. See § 404.305 for the effect of the filing of the waiver and the granting of the exemption.

(c) Regardless of whether the applicant meets all these conditions, the application will not be approved unless we find that—

(1) The sect or division of the sect has established tenets or teachings which cause the applicant to be conscientiously opposed to the types of insurance benefits described in paragraph (a)(2) of this section; and

(2) For a substantial period of time it has been the practice for members of the sect or division of the sect to make provision for their dependent members that is reasonable in view of their general level of living; and

(3) The sect or division of the sect has been in existence continuously since December 31, 1950.

(d) An application for exemption will be approved by the Internal Revenue Service only if no benefit or payment under title II or part A of title XVIII of the Act became payable (or, but for section 203 or section 222(b) of the Act, would have become payable) to the applicant at or before the time of the filing of the application for exemption.

(e) The tax exemption ceases to be effective with respect to wages paid beginning with the calendar quarter in which either the employer (or if the employer is a partnership, any of its partners) or the employee involved does not meet the requirements of paragraph (a) of this section or the religious sect or division of the sect is found by us to no longer meet the requirements of paragraph (c) of this section. If the tax exemption ceases to be effective, the waiver of the right to receive Social Security and Medicare part A benefits will also no longer be effective. Benefits may be payable based upon the wages of the individual, whose exempt status was terminated, for and after the calendar year following the calendar year in which the event occurred upon which the cessation of the exemption is based. Benefits may be payable based upon the self-employment income of the individual whose exempt status was terminated for and after the taxable year in which the event occurred upon which the cessation of the exemption is based.

7. Section 404.1068 is amended by revising paragraph (f) to read as follows:

§ 404.1068 Employees who are considered self-employed.

* * * * *

(f) *Employees of a church or church-controlled organization that has elected to exclude employees from coverage as employment.* If you perform services that are excluded from employment as described in § 404.1026, you are engaged in a trade or business. Special rules apply to your earnings from those services which are known as church employee income. If you are paid $100 or more in a taxable year by an employer who has elected to have its employees excluded, those earnings are self-employment income (see § 404.1096(c)(1)). In figuring your church employee income you may not reduce that income by any deductions attributable to your work. Your church employee income and deductions may not be taken into account in determining the amount of other net earnings from self-employment. Effective for taxable years beginning on or after January 1, 1990, your church employee income is exempt from self-employment tax under the conditions set forth for members of certain religious groups (see § 404.1075).

8. Section 404.1075 is amended by revising paragraphs (b) and (d) and adding paragraph (e) to read as follows:

§ 404.1075 Members of certain religious groups opposed to insurance.

* * * * *

(b) Your application must be filed under the rules described in 26 CFR 1.1402(h). An application must contain or be accompanied by the applicant's waiver of all benefits and payments under title II and part A of title XVIII of the Act. See § 404.305 for the effect of the filing of the waiver and the granting of the exemption.

* * * * *

(d) Your application for exemption will be approved by the Internal Revenue Service only if no benefit or other payment under title II or part A of title XVIII of the Act became payable or, but for section 203 or section 222(b) of the Act, would have become payable, to you or on your behalf at or before the time of the filing of your application for exemption.

(e) The tax exemption cases to be effective for any taxable year ending after the time you do meet the requirements of paragraph (a) of this section or after the time the religious sect or division of the sect of which you are a member is found by us to no longer meet the requirements of paragraph (c) of this section. If your tax exemption ceases to be effective, your waiver of the right to receive Social Security and Medicare part A benefits will also no longer be effective. Benefits may be payable based upon your wages for and after the calendar year following the calendar year in which the event occurred upon which the cessation of the exemption is based. Benefits may be payable based upon your self-employment income for and after the taxable year in which the event occurred upon which the cessation of the exemption is based.

[FR Doc. 91-12468 Filed 5-24-91; 8:45 am]
BILLING CODE 4150-29-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-595, Rm-6433]

Television Broadcasting Services; Casper and Sheridan, WY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial of.

SUMMARY: The Commisson denies the petition for rule making filed by Jessica Longston for reallotment of VHF Television Channel 9 from Sheridan to Casper, Wyoming, as that community's fifth commercial television service. See 54 FR 3823, January 26, 1989. It is Commission policy not to reallocate a channel in which interest has been expressed, absent a sufficient reason, and we find that petitioner has failed to provide sufficient reason. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-595, adopted May 14, 1991, and released May 22, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center (202) 452-1422 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-12544 Filed 5-24-91; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-30; RM-7191, RM-7361]

Radio Broadcasting Services; Rock Island, Moses Lake, and Warden, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of.

SUMMARY: This document dismisses, at the request of KXA Radio Corporation, its petition for rule making requesting substitution of Channel 258A for Channel 258C3 at Rock Island, Washington, the modification of Station KXAA(FM)'s permit to specify operation on the higher powered channel, the substitution of Channel 242A for Channel 257A at Moses Lake, Washington, and the modification of Station KDRM(FM)'s license accordingly (RM-7191). See 55 FR 4886, February 12, 1990. In addition, at the request of Warden Broadcasting Associates, the Commission dismisses its counterproposal requesting the allotment of Channel 242C3 to Warden, Washington (RM-7361). The untimely filed counterproposal of Jon Bruce Thoen to allot Channel 242C3 to Royal City, Washington, will be the subject of a separate Notice of proposed rule making. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-30, adopted May 14, 1991, and released May 23, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center (202) 452-1422 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-12543 Filed 5-24-91; 8:45 am]
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Notices

Federal Register
Vol. 56, No. 102
Tuesday, May 28, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Grant to Cornell University

AGENCY: Office of International Cooperation and Development (OICD).

ACTION: Notice of intent.

ACTIVITY: OICD intends to award a grant to Cornell University to provide partial funding support for an "International Workshop on Modeling of Grapevine Downy Mildew."

AUTHORITY: Section 1458 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

OICD anticipates the availability of funds in fiscal year 1991 (FY1991) for partial funding to Cornell University in support of transportation and per diem expenses for attendees at the "International Workshop on Modeling of Grapevine Downy Mildew". Scientists from Australia, Brazil, Canada, France, Italy, Korea, Mexico, Switzerland, and West Germany, as well as the U.S., are expected to attend.

Based on the above, this is not a formal request for application. An estimated $18,560 will be available in FY1991 as partial project support.

Information on proposed Grant #59–319R–1–008 may be obtained from: USDA/OICD/Administrative Services, Washington, DC 20250–4300.

Dated: May 22, 1991.

Nancy J. Croft,

Contracting Officer.

[FR Doc. 91–12521 Filed 5–24–91; 8:45 am]

BILLING CODE 3410–01–M

Food and Nutrition Service

Food Stamp Program; Electronic Benefit Transfer (EBT) Alternative Issuance Demonstration Projects

AGENCY: Food and Nutrition Service, USDA.

ACTION: General notice.

SUMMARY: This notice announces sites which will be demonstrating the use of on-line Electronic Benefit Transfer (EBT) systems for issuing food stamp benefits and describes the general operating procedures which will be used by all on-line EBT demonstrations. An on-line EBT system is one in which the benefit authorization is completed while the point-of-sale (POS) terminal is in contact with a central computer. The emphasis will be on operating procedures applicable to the Food Stamp Program (FSP). Each project, however, will also use EBT for issuing benefits of other programs.

Four sites were selected through the solicitation process announced in the Department's Notice of Intent published September 18, 1987 in the **Federal Register** (52 FR 35287). The sites were three State agencies: Arizona, New Mexico, and Washington; and one political subdivision: Ramsey County, Minnesota. Arizona and Washington withdrew from the project prior to implementation.

In addition to selecting sites on a competitive basis, the Department issued guidelines in August 1988 for other sites interested in operating on-line demonstrations. Functional and program requirements are the same as for solicited sites. Maryland has been approved to participate under these guidelines. An area within Baltimore County was selected as the pilot site and began operations in November 1989.

The EBT demonstrations will operate under the authority of subsections 17 (a) and (b) of the Food Stamp Act of 1977 (7 U.S.C. 2026 (a) and (b)). These demonstrations are intended to provide the Department with essential information on the impact of electronic issuance technologies on the food stamp issuance, redemption, and reconciliation processes. The operations described herein do not apply to the Mickey Leland Memorial Domestic Hunger Relief Act of 1990 which will make EBT a food stamp issuance alternative April 1, 1992. Proposed regulations regarding that legislation are expected to be published for comment July 1, 1991.

DATES: Comments must be received by July 29, 1991, to ensure consideration.

ADDRESSES: Comments should be submitted to: Jeffrey Cohen, Supervisor, Demonstration Projects Section, Program Design Branch, Program Development Division, Food Stamp Program, Food and Nutrition Service, USDA, room 718, 3101 Park Center Drive, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION: Jeffrey Cohen, Supervisor, Demonstration Projects Section, Program Design Branch, Program Development Division, Food Stamp Program, Food and Nutrition Service, USDA, room 718, 3101 Park Center Drive, Alexandria, Virginia 22302 (703) 756–3517.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This notice has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1, and has been classified not major because the provisions will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, industries, Federal, State or local governments, or geographical regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related notice to 7 CFR part 3015, subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This notice has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). Betty Jo Nelsen, Administrator, Food and Nutrition Service (FNS), has certified that the action will not have a significant economic impact on a substantial number of small entities.

Reporting and Recordkeeping

This notice does not contain reporting and recordkeeping requirements subject to approval by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Background

The Reading, Pennsylvania EBT Demonstration

Since the early 1980's, FNS has been experimenting with various means to improve the efficiency and integrity of benefit issuance in the Food Stamp Program. One major effort has been a demonstration project which tested the use of an EBT system in the benefit issuance and redemption process.

In July 1983, FNS contracted for demonstration of an EBT system in cooperation with State and local food stamp authorities, retailers, and financial institutions. The system began operating in October 1984 in Reading, Pennsylvania. It served an average food stamp caseload of about 3,400 households, who made over 25,000 electronic food purchases in about 125 retail food stores each month. The initial demonstration ended in December 1985; the Pennsylvania Department of Public Welfare (PDPW) subsequently assumed responsibility for extended demonstration project operations.

In parallel with that demonstration, FNS contracted for an evaluation of the demonstration in June 1983. The evaluation's main objective was to compare the EBT system to the coupon-based issuance and redemption procedures previously used in Reading. The evaluation measured the difference between the two systems in terms of their administrative cost, their vulnerability to benefit loss and abuse, and their impacts on participating food retailers, food stamp recipients, and financial institutions. In the EBT demonstration, recipients had magnetic-stripe plastic cards and computerized accounts at the EBT Center. When certified eligible for benefits, food stamp recipients received an EBT card, training on how to use it, and selected a secret four-digit personal identification number (PIN). Benefits were electronically deposited in each household's account. Once benefits were posted to accounts, recipients used them to buy food in any store participating in the demonstration.

All retailers authorized to participate in the Food Stamp Program and located within a five-mile radius of central Reading were eligible to take part in the demonstration, and virtually all of them participated. Checkout counters were equipped with point-of-sale (POS) terminals. To buy food with EBT benefits, the recipient presented the EBT card to the cashier, who passed it through the POS terminal's card reader. The recipient keyed in his or her PIN, which was verified within the terminal. The cashier then entered the amount of the purchase. The terminal made a dial-up connection with the EBT Center computer, which checked the recipient's account, debited it for the amount of the purchase, credited the retailer's account, and sent an authorizing message back to the store terminal. The terminal printed receipts for the recipient and retailer showing the purchase amount and the remaining balance in the food stamp account.

Once a day, the EBT Center totalled all retailer credits. Center staff then initiated an electronic funds transfer process, using the Automated Clearinghouse (ACH) network operated by the Federal Reserve. Retailer's bank accounts were credited for their food stamp sales the following business day.

The evaluation results compiled by the contractor are as follows:

(1) The EBT system was found to be operationally feasible. It worked, and was well received by the various parties involved in its use.

(2) Retailers prefer the EBT system to coupons, primarily because it reduces the post-sale handling effort required for coupons.

(3) Recipients prefer the EBT system to coupons—they found it easier to use and spent less time and money (making a special trip to obtain coupons) than they previously had spent to obtain coupons.

(4) Banks strongly prefer the EBT system because their role as issuance agents is eliminated and their costs for handling and redeeming food stamp benefits are substantially reduced.

(5) By eliminating cash change, an EBT system directs all food stamp benefits to food purchases.

(6) Due to the short duration of project operations and inherent measurements difficulties, the impact of the EBT system in reducing fraud and abuse was generally unmeasurable.

(7) EBT system costs exceeded Authorization-to-Participate (ATP) coupon costs by about 9:1. This was primarily due to a combination of high operating costs, resulting from the use of dedicated staff and equipment, and a small demonstration caseload (fixed costs were averaged over a relatively small number of households).

(8) EBT operating costs could be reduced by increasing the size of the caseload, integrating the system either with other assistance programs or commercial POS systems, purchasing rather than leasing equipment, and/or operating the system in a routine setting, i.e., an on-going, non-demonstration setting.

(9) Integrated systems offer the most promise for reducing program costs because system costs can either be spread over a larger number of users or more organizations can share in such costs. Integration can be accomplished by developing a combined EBT system which would merge food stamps and other benefit programs operated by the State, e.g., Aid to Families with Dependent Children (AFDC) and General Assistance (GA). Alternatively, the food stamp EBT system could be "piggybacked" onto a commercial POS system, becoming one of multiple users.

In January 1988, PDPW assumed responsibility for the extended EBT demonstration project. During the extension, PDPW first took over administration of the contract and then took over operation of the project using the original computer equipment. In the current third stage, PDPW is operating the system on its larger multi-purpose State computer equipment and is sharing processing resources with other programs. System enhancements which have accompanied this phase have improved the system's service to both recipients and retailers.

The evaluation of the EBT extension assesses the costs and benefits of the extension on major constituencies, e.g., FNS, State and local Food Stamp Program administrators, recipients, food retailers, and financial institutions. The final report (which was published in early 1990) also describes State agency procedures for assuming operational responsibilities. This information will assist FNS in making decisions regarding the future of EBT in the Food Stamp Program.

Evaluation results include:

(1) The administrative costs of the redesigned EBT system exceed those of the ATP/coupon system. These costs however, are substantially lower than the administrative costs during the original demonstration project. EBT costs were reduced from more than $27 a case month to a little over $9 a case month. The latter is still three times the cost of the ATP coupon system.

(2) Total vulnerabilities to benefit loss and diversion are lower under the EBT system.

(3) Inadequate controls on system accessibility to those who would attempt to violate computer security can increase the potential for losses to the Food Stamp Program.

(4) Retailers' costs to participate in the Food Stamp Program are lower with the redesigned EBT system than with coupons.

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(5) A large majority of retailers support the redesigned EBT system.

(6) Recipients continue to overwhelmingly prefer the EBT system over the ATP/coupon system.

(7) Recipients' costs of participation in the Food Stamp Program remain considerably lower in the EBT system than in the coupon system.

(8) Banks have lower participation costs under the EBT system and prefer it to the ATP/coupon system.

New EBT Demonstration Projects

Solicited Sites

Based on the results of the Reading demonstration, the Department published a Notice of Intent in the **Federal Register** on September 18, 1987 (52 FR 35287) soliciting concept papers for EBT systems. Thirteen concept papers were received from State and local agencies by the deadline of November 17, 1987. Of these, nine were selected to submit full proposals by July 5, 1988. This deadline gave the nine agencies 6 months to select a vendor and develop a proposal for an EBT system. FNS selected four of the nine agencies as demonstration sites and chose the cooperative agreement as the funding mechanism to ensure substantial FNS involvement in the development, management, and/or oversight of each project. Two of the sites have since dropped their EBT projects—Arizona early on in the development process and Washington prior to implementation of their system. The two remaining sites are: (1) Ramsey County, Minnesota (St. Paul); and (2) New Mexico—Bernalillo County (Albuquerque).

Grants were awarded through cooperative agreements to the remaining two sites. These grants provided 100 percent Federal funding for the costs of project design, development, and implementation up to the approved budget amount. Ongoing operational costs will be reimbursed at the normal 50/50 match rate, with Federal costs capped at per-case-month cost associated with each site's coupon issuance system.

A major emphasis in the solicitation process was for sites to achieve a cost-effective EBT system, i.e., EBT costs should be equal to or less than the costs of the site's coupon issuance system. The solicited sites took into account the Reading evaluation finding that integrated systems offer the most promise for reducing program costs; they contracted with vendors who designed their EBT systems in accordance with the third EBT system configuration described in the September 18, 1987 Notice of Intent (52 FR 35287). This configuration is an EBT/cash benefit card system, where a single card provides access to food stamp benefits, AFDC, GA, and/or other benefits, and the EBT system is tied, at least in part, to existing commercial networks. Food stamp benefits will be separately identified to preserve their use for eligible food purchases at authorized stores.

The new solicited demonstration projects are being conducted in four phases with progress from one phase to the next conditioned by a "GO/NO GO" decision from FNS. Phase I is the design stage of the demonstration, phase II is the development of that design and completion of a successful functional test of the system, phase III is system implementation, and phase IV is the actual operation of the system. Implementation is scheduled to begin in 1990 with full operations following soon thereafter.

The contract for evaluating the solicited sites has been awarded to Abt Associates of Cambridge, Massachusetts. The final evaluation report is due in 1992. The report will present the study findings on:

(1) The process of implementing the demonstration systems;

(2) Comparisons of EBT costs to coupon costs and EBT costs between sites;

(3) Impacts of EBT systems for demonstration participants (e.g., recipients, retailers, financial institutions); and

(4) The feasibility of extending EBT on-line system technology and/or variations of it to a non-demonstration setting.

Unsolicited Sites

FNS issued guidelines in the Summer of 1988 to allow additional sites to test EBT. There is currently one unsolicited on-line EBT system implemented in the Park Circle district of Baltimore, Maryland. This unsolicited site has also utilized a multibenefit approach whereby a single card provides access to food stamps, AFDC, GA, and other benefits. The system also provides the capacity for future commercial use. Maryland began staggered implementation in November 1989 and achieved full implementation of its pilot in February 1990. Maryland plans to expand Statewide should the pilot prove successful.

Many other State agencies are also expressing interest in implementing unsolicited on-line EBT projects and FNS expects that additional systems will be designed and implemented in the next couple of years.

EBT as an Operational Alternative

The Mickey Leland Memorial Domestic Hunger Relief Act of 1990, signed into law on November 28, 1990, requires the Department of Agriculture to publish guidelines for approval of EBT systems as operational alternatives for all States. As required by the Act, these guidelines must be effective by April 1, 1992.

General Procedures

In accordance with the general notice requirements of 7 CFR 282.5, FNS is providing the following description of the operational procedures for the on-line EBT demonstration projects. These procedures apply only to current and future demonstration projects and are not intended to cover provisions for EBT issuance contained in the Mickey Leland Memorial Domestic Hunger Relief Act of 1990.

All food retailers within the demonstration sites will be eligible to participate in the demonstration. Surveys on recipient shopping patterns will be conducted to determine the need for extending retailer participation beyond the geographical boundaries of the demonstration sites.

Currently operating and/or newly authorized retailers will be permitted to begin participating in the EBT project at any time during the project. If participating retailers have no EBT business during a reasonable period of time, FNS reserves the right to have site vendors remove the POS equipment if it was purchased or leased with FNS funds. In such a situation, the retailer will be notified in writing that the equipment will be removed.

Retailer appeals of the above action would follow the procedures of 7 CFR part 278. If at any time following the removal or denial of FNS purchase equipment, a retailer presents to FNS or the State agency demonstrable proof that it is losing food stamp business as a result of its exclusion from the demonstration, the equipment may be returned to that retailer provided the EBT demonstration is still in operation. All retailers participating in the demonstration will continue to accept food stamp coupons from recipients living outside the demonstration area.

Food stamp households living within the demonstration sites will use a single magnetic stripe benefit card and PIN, instead of food coupons, to buy eligible food. Each recipient will select or receive a PIN at the time of card issuance and EBT system training. Cash assistance households will use the card to access cash benefits from Automated Teller Machines (ATMs) or POS terminals. The card and PIN will access food stamp benefits through POS devices. It is intended that only household members or authorized representatives be able to access benefits through the system.

Eligible households will continue to be certified according to the standard procedures of each site with changes in the issuance process taking place as EBT is implemented. Under EBT, mail issuance and ATP transactions will no longer be necessary. Households will go to the certifying agency or office of the site's vendor upon notice of initial certification. Recipients will be trained on the EBT system prior to initial receipt of their benefits. The State agency will be responsbile for issuing the benefit card. The actual issuance of benefits will take place when the household's dollar value of benefits is electronically loaded into the household's computer file at the EBT Center. At that point, the benefits will be available for use by the household at the retailer. Households will be notified in advance for the exact date regular monthly benefits will be available. For each month's issuance, the same card will be used and additional visits to the certification office for issuance purposes will not be necessary.

In all sites, a household member will need to establish that he/she is entitled to use the benefit card before a purchase can be made. An eligible recipient or authorized representative will establish his entitlement by presenting to the store clerk an EBT benefit card and entering a proper PIN on the POS device's PIN pad. The PIN will be verified through an on-line link-up with the main EBT computer system or through the POS device and PIN offset. Following verification that the account has a sufficient balance to cover the purchase, the household's computer file will be updated to reflect the purchase. A receipt, documenting the purchase amount and the account balance after the purchase, will be printed for the purchaser. A copy of this receipt will be retained by the retailer to document each EBT transaction.

Each system will display an error message if the PIN has been entered incorrectly. Recipients will have the opportunity to reenter their PIN correctly, but the system may limit the number of re-entry tries. Training will emphasize the importance of the PIN by instructing recipients to record it in a secure but accessible place. Recipients will be instructed on who to call or where to go to resolve any problems they have with the EBT system.

More than one transaction will be required if a recipient wants to use cash assistance benefits and/or cash in addition to food stamp benefits when making a purchase. For example, when there are insufficient funds in the food stamp account to make the entire purchase, the EBT system will print out the amount of available funds in the account. If the required dollar difference is available from another of the recipient's benefit accounts (e.g., AFDC), the recipient can first initiate a transaction to debit the food stamp balance and then initiate a further transaction to debit the difference from another account. In situations where the use of other benefits is not available or desired, the recipient may pay the difference in cash or have the cashier debit no more than the maximum of the food stamp account balance to cover a smaller purchase. Recipients will be able to observe and verify the purchase amount as the cashier enters it into the system.

An on-line, manual transaction is required when an EBT card is defective. In this situation, most sites require that the card number and PIN be entered manually, and the store manager verify card possession and enter a password in the POS device. Unlike other manual transactions, no manual voucher or signature will be required since the transaction will be processed on-line.

Occasionally, off-line, manual transactions are necessary, either when equipment fails at an individual retail store or when the site's host EBT system fails. In either situation, cashiers will use three-part manual transaction forms, resembling those used for credit card purposes, to copy down information from the benefit card, verify the purchaser's signature against the signature on the EBT benefit card, register the purchase with the EBT Center, and obtain an authorization number. Upon completion of the transaction, the retailer and the household will each retain a portion of the voucher, and the third portion will be sent to the EBT vendor.

In some project areas, credit to the retailer's account will occur when the EBT center receives its portion of the voucher. In other project areas, the retailer will receive immediate credit but have their account debited if the supporting voucher is not received by the EBT center within an established period of time (e.g., 7 days). If a manual transaction is necessary because of retailer equipment failure and the retailer wishes to accept the transaction, the retailer will telephone the EBT Center to obtain authorization for approval of the purchase. The operator will verify that there are sufficient funds in the household's benefit account to cover the purchase, debit the account to reflect the purchase, and issue an authorization number to the cashier to be recorded on the sales slip.

In the event of EBT host system failure, the purchase limit established by the site will go into effect. Computer system failure is anticipated to be a rare occurrence because of the built-in redundancy in each site's system. That is, should the main computer malfunction, there is a back-up database available to support operations. However, should failure occur, the retailer will need to call the EBT Center for authorization. The Center personnel will then check the latest available balance on the latest balance report and note the transaction amount for later posting. A manual voucher is also required in the situation.

In some sites when telephone lines are inoperable, making telephone authorization impossible, retailers may complete transactions manually at their own risk. However, if phone lines are out of service or if the host computer is down and a retailer accepts a purchase for which there are insufficient benefits in the household's account, the retailer may be allowed to represent the transaction for payment in the month following the transaction month. If re-presentation is permitted, the representation limits are $50 for the first month following the insufficient funds transaction, and the greater of 10 percent of the household's monthly allotment or $10 for each month thereafter until the manual purchase is repaid. If there is more than one insufficient funds transaction in a given month, there is still only one opportunity for the $50 limit and the 10 percent or $10 limit still holds in subsequent months.

Sufficient notice must be provided for re-presentation to take place. First, the manual voucher must include a notification to the household that re-presentation could be made if there is an insufficient balance in the recipient's account to cover the manual transaction. Second, if a re-presentation is to be made, the household must be notified of the re-presentation in advance of the date that the recoupment would occur. Notification must be sent for each insufficient funds transaction.

Retailers who, as a matter of course, do not have immediate access to telephones when they collect payment for purchases will be accommodated by a form of the manual back-up system. These retailers include stationary food

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stores which opt to make home deliveries to food stamp households and retail route vendors which operate on standing orders from customers, such as those retailers which deliver milk and bread. Either before the delivery or upon returning to the store, the retailer shall telephone the EBT Center to log the transaction and obtain an authorization number, as is done with back-up transactions for equipment failure. The retailer shall complete the three-part manual transaction form at the home to document the transaction and leave one with the household for their record. To be eligible for using the back-up system under these circumstances, retailers must indicate at the time they are equipped for EBT transactions or at some time prior to making the first delivery transaction that they intend to offer home deliveries.

There shall be no limit on the purchase amount for either home deliveries or retail route vendors operating on standing orders. In either of these transactions, however, FNS shall not assume liability for unpaid amounts if households have insufficient benefits in their benefit accounts to fully settle the debt. Retailers may perform preliminary verification of a household's account balance by calling the EBT Center prior to or at the time of making a home delivery. As with other transactions, the retailer would retain liability for each transaction until the EBT Center provides an authorization number. As route purchases occur throughout the course of a month and are seldom of a one-time-only nature, vendors may do a cumulative debit to the household's account once a month.

Due to the nature of the EBT system, cash change for purchases will not be necessary and will be eliminated. The recipient's unused benefits will remain stored in the household's computer file awaiting the next purchase.

If a household loses its benefit card or has it stolen, the household needs to report this as soon as possible via each site's 24-hour, toll-free telephone number. The EBT Center will then identify the card as lost or stolen in the EBT system's computer, which will promptly block the card from being used to access the household's benefit account. Generally, lost or stolen cards will be replaced within one business day if the recipient of record (head of household) provides proof of his/her identity. The EBT Center will update the benefit account to permit use of the new card for benefit access. If the household finds the lost or stolen card after receiving a new card, the old card should be returned to the certification office which will see that it is destroyed. If any benefits which were in the account at the time the card was lost or stolen are drawn from the account before access to the account could be blocked, those benefits will be treated as lost and shall not be replaced. Once benefits have been issued to the household (i.e., posted on the household's file at the EBT Center), the household will be responsible for those benefits.

If a card becomes damaged to the extent that it is not accepted by the EBT system, the household should also use the 24-hour, toll-free telephone number to report this problem. The same procedures for replacement of a lost or stolen card apply to damaged cards.

The EBT redemption process will differ from the current process by using electronic funds transfer technology for payment in lieu of the current coupon cycle used by financial institutions and the Federal Reserve. Financial institutions and the Federal Reserve will no longer be processing coupons. The information generated by the on-line interaction between the cashier and the computer system will be used to develop payment tapes to initiate payments to the financial institutions of the respective retailers. Consequently, this system will entail different roles and/or procedures for retailers, wholesalers, financial institutions and the Federal Reserve than those provided in 7 CFR part 278. For purposes of applying the requirements and sanctions of 7 CFR part 278.6 to these demonstrations, food stamp benefits in the EBT demonstration shall be the equivalent of coupons.

EBT systems in all sites must permit reconciliation and reporting at each point in the issuance cycle. The audit trail must be able to establish when and where benefits were transacted.

The final reporting will be able to reconcile those benefits issued with those benefits redeemed by households at the retailers as well as with payments made by FNS to retailers through the Federal Reserve system. Since EBT systems will not use coupons, the coupon production, inventory storage and management, and destruction requirements will not be necessary. Security will be maintained through measures tailored to on-line computer systems and communications. Coupons will continue to circulate within the test area since retailers within the test area will continue to accept coupons from households living outside the test area. These coupons will continue to be processed as required by 7 CFR part 274.

Special Food Stamp Requirements

The EBT system shall maintain the level and quality of service to participants that is mandated by law and program regulations. If there is no way to avoid a conflict with basic program requirements, any deviations necessary to successfully accomplish project implementation must be described and waivers of requirements, where necessary to implement the design, must be requested. Specific FNS approval of such waivers will be required.

The State or local agency shall consider and fully address the following items in the design of the EBT demonstration system, the operation of the EBT system, and the possible transition to a broader EBT system implementation.

Recipient Access

The EBT system shall provide for minimal disruption of recipients' access to retail outlets since recipient access is a critical element of the FSP. All authorized retailers within the project area must be afforded the opportunity to participate in the project. If all authorized stores which choose to participate are not equipped with on-line POS devices, an alternate method to accept client benefits must be established. The alternate method cannot be burdensome on either the participant or the retailer. Recipients residing inside the project's boundary should be able to shop at nearby stores even though the store may be outside the project area.

Equal Treatment

The EBT system shall maintain equal treatment for food stamp recipients. A strategy for avoiding unequal treatment and negative impacts on food stamp transaction time must be developed by each site.

The Department does not believe it is necessary to equip every grocery store lane with a POS device. However, two principles must be adhered to when less than all lanes are equipped. First, the lanes themselves must not be designated in a fashion which would readily identify users of the lane as food stamp recipients. A fundamental part of this principle is that the lane not be one that non-food stamp shoppers would avoid. In other words, it will not be acceptable to establish special lines which are only for food stamp recipients. However, if special lines are established for check cashers or holders of other debit/credit cards, food stamp customers could also be assigned to such lines. The second principle is that

POS equipped lanes cannot be measurably longer, on a regular basis, than other lanes in the stores. Enough POS devices must be available to avoid lane backup at those times of the month when benefits are issued. The latter can be achieved by taking into consideration both food stamp issuance dates and redemption levels of the stores. If cash benefits are to be issued, the volume of this type of transaction must also be considered.

If a strategy cannot be developed that ensures adherence to these principles without equipping all lanes with POS devices, the Department will require full equipage.

Knowledge of Allotment Balance

Households needs to know their account balance in order to plan purchases. The EBT system shall provide recipients with informational access to the system without their having to make a purchase or stand in a check-out line. This may be accomplished by an Audio Response Unit or a balance only terminal. Recipients must also receive information about their account balance at the time of food purchases.

Retention of Remaining Monthly Balance

The EBT system shall allow for the carry-over from month-to-month of accumulated balances of household benefits. However, if household accounts are inactive for a period of time, the State or local agency may arrange to "store" such benefits off-line pending recontact by recipients.

Replacement of Lost, Stolen, or Damaged Cards

The EBT system shall be capable of quickly replacing the benfit card for any household claiming its damage or loss, while ensuring that the household does not obtain more than one account with which to access the system. Similarly, households believing that someone else has unauthorized knowledge of their PIN or code must be able to obtain a new PIN.

Benefit Adjustment

Procedures must be available to restore/debt benefits and sales that have been erroneously debited/credited. Authority for such functions shall be limited to appropriate managers and any corrections must be fully documented.

Expedited Service

Program regulations require that certain types of households demonstrating immediate need be provided benefits in accordance with the time frames established at 7 CFR 273.2(i) of FSP regulations., The EBT system must provide for the creation of a household benefit account, the production and issuance of identification/benefit cards, and the training on card usage within these specified time frames.

Household Mobility

The EBT system must provide a mechanism to allow households leaving or entering an EBT project area to take their current benefit allotment with them. Benefits must be converted to coupons for those leaving the demonstration area. This provision is intended to accommodate those situations where recipients are permanently or temporarily (vacation, emergency, etc.) re-locating their place of residence.

Project Boundary and Transition Problems

The demonstration site should ideally be a contained grocery shopping area in order to minimize participants shopping out of the test area. If the project area is not a contained area, the State or local agency must allow for recipient shopping in stores which border on the demonstration sites. Decisions about which stores to include should be made in consultation with recipient groups. If the demonstration is phased-in, the State or local agency shall specify how transitional problems will be handled.

Restricted Access to System

The EBT system shall include procedures to limit access to information about recipient households and their benefits. While households and their authorized representatives need easy system access, this need cannot open the system to abuse by retailers, cashiers, or any other persons. The PIN cannot be available for a clerk or others to use in obtaining unauthorized benefits. Similarly, if recipients fail to exhaust the contents of their accounts, unauthorized individuals shall not be able to divert the remaining benfits to their own use.

Issuance of Household Benefit Card

The EBT system shall provide for the separation of certification from issuance and card initialization functions. By substituting the benefit card for other authorizing documents, such as the Authorization To Participate (ATP), access to benefits is more rapid since the intermediate step of ATP exchange for food coupons is removed. Elimination of the ATP, however, makes security of the benefit card more important since it becomes the authorizing instrument for access to benefits. By having benefit card production and initialization done by an issuance unit employee or staff other than certification unit personnel, no single agency employee or unit will have the ability to both authorize and provide access to the benefit allotments.

Retailer Identification/Clearance

The EBT system shall include a retailer validation check to ensure that only currently-authorized stores can access the system. Stores whose program participation has been withdrawn or disqualified must be denied access immediately, while newly authorized stores must be included in the system as quickly as possible.

System Reliability and Back-up

The reliability of the EBT system is absolutely essential to its success. In contrast to existing credit card or debit card systems, the unavailability of the EBT system, even temporarily, would impose severe hardship on households largely dependent on it for purchasing their food. This may be addressed through full redundancy of critical system components, through a manual back-up system for emergency use, through an alternate mechanism, or through some combination of these. Any system chosen must be fully consistent with FSP security requirements and acceptable to stores.

Applicability to Entire Food Stamp Program on a Larger Scale

The EBT demonstration will originally be implemented in a small-scale environment. However, the design of the EBT demonstration system must be suitable for a larger scale implementation, i.e., in other project areas or jurisdictions, should this later be deemed desirable. Only with the prior approval of FNS, may State or local agencies expand the demonstration.

Integrity

The EBT system shall be designed to ensure its integrity through the separation of responsibilities, data reconciliation, and other safeguards such as encryption, limited access, and security bonding. Points of particular vulnerability in an EBT system include tampering with or creating recipients' accounts, erroneous posting of issuances to recipients' accounts, manipulation of retailers' accounts, and tampering with information on the ACH tape.

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Cards

The following language must be included on all EBT cards or on the card jackets: "This is an equal opportunity program. If you believe that you have been the victim of discrimination in your efforts to participate in the Food Stamp Program because of your race, color, national origin, age, sex, handicaped, religion or political beliefs, write immediately to: Administrator, Food and Nutrition Service, 3101 Part Center Drive, Alexandria, Virginia 22302." Also, it is unacceptable to have political party identifiers or names of state officials such as state governors, printed on EBT cards used for food stamp beneftis.

Implementation

Implementation of the EBT systems will be phased-in over several months. All sites will stagger implementation of EBT by dividing the sites' caseloads into groups.

Prior to implementation of the demonstration, the following steps shall be taken:

1. Notice will be provided to retailers, formally announcing the project. In each site, the State agency will conduct meetings about the EBT system and secure agreements with each participating retailer.

2. Sites will provide stores with EBT equipment, including POS terminals, electrical and telephone lines and PIN pads. No charge will be made for food stamp-only POS terminals.

3. Training on the new system in each site will be provided for recipients, State agency staff, retailers, financial institutions, and the staffs of community agencies that serve food stamp households.

4. Evaluation plans will be finalized and baseline data collected. At a minimum, each evaluation must:

(a) Compare the full resource costs of the EBT system to the coupon system it replaces;

(b) Contrast the impacts of the EBT and coupon systems for each major participant group, e.g., retailers, receipients, and banks; and

(c) Describe the development and operation of the EBT system.

Department decisions to extend and/or expand any demonstration are contingent on the completion of an approval evaluation and all other criteria specified in this notice.

In addition to food stamps, the specific programs that will provide or authorize benefits via EBT are listed by site as follows:

(1) Ramsey County, Minnesota—AFDC, General Assistance (GA), State Supplemental Assistance, and Refugee Assistance;

(2) New Mexico—AFDC;

(3) Maryland—AFDC, Public Assistance, GA, and child support grants.

If operations are cost-effective and successful, Maryland plans to begin expanding the EBT system Statewide sometime in the future. Ramsey County plans to begin staggered implementation of its project in 1991. New Mexico began phased implementation of its project in September, 1990, and plans to complete client conversion to the EBT system by September, 1991, with a total of 19 to 20 thousand households. Other states which have submitted EBT demonstration proposals are New Jersey, Iowa and South Carolina. Pennsylvania has proposed to expand its project to additional counties in the State and to add on AFDC.

Dated: May 20, 1991.

Betty Jo Nelsen,

Administrator.

[FR Doc. 91-12440 Filed 5-24-91; 8:45 am]

BILLING CODE 3410-30-M

Soil Conservation Service

Ecleto Creek Watershed Project; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102 (2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Ecleto Creek Watershed; De Witt, Guadalupe, Karnes, and Wilson Counties, Texas.

FOR FURTHER INFORMATION CONTACT: Harry W. Oneth, State Conservationist, Soil Conservation Service, 101 South Main, Temple, Texas 76501-7682, telephone (817) 774-1214.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Harry W. Oneth, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood control and watershed protection. The planned works of improvement include 11 floodwater retarding structures and technical assistance for land treatment.

The notice of a Finding of a No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to Various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Harry W. Oneth.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: May 15, 1991.

Harry W. Oneth,

State Conservationist.

[FR Doc. 91-12508 Filed 5-24-91; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Economic Analysis.
Title: Ocean Freight Revenues and Foreign Expenses of United United States Carriers.
Form Number: Agency—BE-30; OMB—0608-0011.
Type of Request: Renewal of a currently approved collection.
Burden: 40 respondents; 800 reporting hours.
Average Hours per Response: 5.0 hours.
Needs and Uses: The survey is required in order to obtain comprehensive data concerning United States Ocean Carriers' Freight Revenues and Foreign Expenses. The data are needed primarily to compile U.S. international accounts.
Affected Public: U.S. Ocean Carriers.
Frequency: Quarterly.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Marshall Mills.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, New Executive Office Building, Washington, DC 20503.

Dated: May 21, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-12476 Filed 5-24-91; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Economic Analysis.
Title: Foreign Airline Operators' Revenue and Expenses in the United States.
Form Number: Agency—BE-36; OMB—0608-0013.
Type of Request: Renewal of a currently approved collection.
Burden: 60 respondents; 300 reporting hours.
Average Hours per Response: 5.0 hours.
Needs and Uses: The survey is required in order to obtain comprehensive data concerning Foreign Air Carriers' Revenues and Expenses in the United States. The data are needed primarily to compile U.S. international accounts.
Affected Public: Foreign Airline Companies.
Frequency: Annually.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Marshall Mills.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, New Executive Office Building, Washington, DC 20503.

Dated: May 21, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-12477 Filed 5-24-91; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Economic Analysis.
Title: U.S. Airline Operators' Foreign Revenues and Expenses.
Form Number: Agency-BE-37; OMB-0608-0011.
Type of Request: Renewal of currently approved collection.
Burden: 14 respondents; 224 reporting hours.
Average Hours per Response: 4.0 hours.
Needs and Uses: The survey is required in order to obtain comprehensive data concerning United States Airline Operators' Foreign Revenues and Expenses. The data are needed primarily to compile U.S. international accounts.
Affected Public: U.S. Airline Operators.
Frequency: Quarterly.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Marshall Mills.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, New Executive Office Building, Washington, DC 20503.

Dated: May 21, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-12478 Filed 5-24-91; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Economic Analysis.
Title: Foreign Ocean Carriers' Expenses in the United States.
Form Number: Agency-BE-29; OMB-0608-0012.
Type of Request: Renewal of currently approved collection.
Burden: 130 respondents; 520 reporting hours.
Average Hours per Response: 4.0 hours.
Needs and Uses: The survey is required in order to obtain comprehensive data concerning Foreign Ocean Carriers' Expenses in the United States. The data are needed primarily to compile the U.S. international accounts.
Affected Public: Foreign Carriers' U.S. agents.
Frequency: Annually.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Marshall Mills.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, New Executive Office Building, Washington, DC 20503.

Dated: May 21, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-12479 Filed 5-24-91; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration.
Title: Accommodations for Government Observers on U.S. Flag Tuna Purse Seine Vessels.
Form Number: No form; OMB-0648-0208.
Type of Request: Request for extension of the expiration date of a currently approved collection without any change in the substance or method of the collection.
Burden: 2 respondents; 4 reporting hours; average hours per response—2 hours.
Needs and Uses: NOAA has issued regulations establishing basic living accommodations for observers on board U.S. tuna vessels and the minimum adjustments required on vessels carrying female observers when the crew are all males. A possible exemption to carrying females is provided as part of

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applying for a vessel certificate of inclusion.
Affected Public: Businesses or other for profit.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Ronald Minsk, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Ronald Minsk, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 21, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91–12480 Filed 5–24–91; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration.
Title: Recreational Billfish Reporting Logs.
Form Number: No form number assigned; OMB—0648–0031.
Type of Request: Request for revision of a currently approved collection.
Burden: 307 respondents; 480 reporting hours; average hours per response—.02 hours.
Need and Uses: Collection of catch/effort information on Atlantic billfish is necessary to enable scientists and resource managers to estimate billfish catches and to track changes in abundance in order to detemine status of stocks and avoid over-fishing.
Affected Public: Individuals, small business or organizations.
Frequency: On occasion.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Ronald Minsk, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Ronald Minsk, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 21, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91–12481 Filed 5–24–91; 8:45 am]

BILLING CODE 3510-CW-M

Bureau of Export Administration

Computer Systems Technical Advisory Committee; Closed Meeting

A meeting of the Computer Systems Technical Advisory Committee (CSTAC) will be held June 19 & 20, 1991, in the Herbert C. Hoover Building, room 1617F, 14th Street & Pennsylvania Avenue NW., Washington, DC. The CSTAC advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to computer systems, peripherals and technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information, contact Lee Ann Carpenter on (202) 377–2583.

Dated: May 21, 1991.

Betty Anne Ferrell,

Director, Technical Advisory Committee Staff.

[FR Doc. 91–12482 Filed 5–24–91; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A–588–819]

Initiation of Antidumping Duty Investigation: Aspheric Ophthalmoscopy Lenses From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the Department), we are initiating an antidumping duty investigation to determine whether aspheric ophthalmoscopy lenses from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether there is a reasonable indication that an industry in the United States is being materially injured, or is threatened with material injury, or the establishment of an industry in the United States is being materially retarded, by reason of imports from Japan of aspheric ophthalmoscopy lenses. The ITC will make its preliminary determination on or before June 14, 1991. If that determination is affirmative, we will make a preliminary determination on or before October 7, 1991.

EFFECTIVE DATE: May 28, 1991.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or James Terpstra, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–8830 or 377–3965, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On April 30, 1991, we received a petition filed in proper form on behalf of Volk Optical, Inc., a manufacturer of aspheric ophthalmoscopy lenses in the United States. In compliance with the filing requirements of the Department's regulations (19 CFR 353.12), petitioner alleges that imports of ophthalmoscopy lenses are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that there is a reasonable indication that an industry in the United States is being materially injured, or is threatened with material injury, or the establishment of an industry in the United States is being materially retarded, by reason of imports from Japan of aspheric ophthalmoscopy lenses.

Petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(E) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file a written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

U.S. Price and Foreign Market Value

Petitioner based its estimates of U.S. price on actual prices offered to U.S. distributors for several types of aspheric ophthalmoscopy lenses. Petitioner made no adjustments to the F.O.B. factory prices.

Petitioner's estimate of foreign market value is based on actual retail prices offered in Japan for several aspheric ophthalmoscopy lenses. Petitioner reduced the retail price by 25 percent to arrive at the price offered to Japanese distributors. The terms of the Japanese prices were F.O.B. factory; therefore, no deductions were made to the wholesale price.

Based on a comparison of U.S. price and foreign market value, petitioner alleges dumping margins ranging from 0.5 to 158 percent.

Initiation of Investigation

Pursuant to section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to petitioner supporting the allegations.

We have examined the petition and found that it complies with the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of aspheric ophthalmoscopy lenses from Japan are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by October 7, 1991.

Scope of Investigation

The products covered in this investigation are aspheric ophthalmoscopy lenses, which are single element non-contact ophthalmoscopic lenses, whether mounted or unmounted, framed or unframed, of which one or both surfaces are aspherical in shape. The subject merchandise is classifiable under subheading 9018.50.00 of the *Harmonized Tarriff Schedule* (HTS). HTS subheadings are provided for convenience and customs purposes. The written description remains dispositive.

ITC Notification

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

Preliminary Determination by ITC

The ITC will determine by June 14, 1991, whether there is a reasonable indication that an industry in the United States is being materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of aspheric ophthalmoscopy lenses. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: May 20, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–12539 Filed 5–24–91; 8:45 am]

BILLING CODE 3510-DS-M

[A–357–007]

Carbon Steel Wire Rod From Argentina; Preliminary Results of Antidumping Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the respondent, the Department of Commerce is conducting an administrative review of the antidumping duty order on carbon steel wire rod from Argentina. The review covers shipments of this merchandise to the United States from one exporter during the period November 1, 1988 through October 31, 1989. As a result of this review, the Department has preliminarily determined that dumping margins do not exist. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 28, 1991.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Alain Letort, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–3793 or telefax (202) 377–1388.

SUPPLEMENTARY INFORMATION:

Background

On November 23, 1984, the Department of Commerce ("the Department") published an antidumping duty order on carbon steel wire rod from Argentina in the **Federal Register** (49 FR 46180). On November 9, 1989, we published in the **Federal Register** a notice of opportunity to request an administrative review of this order (54 FR 47101). On November 21, 1989, a certain exporter of the subject merchandise requested an administrative review of this order. We initiated the review, covering the period beginning on November 1, 1988 and ending on October 31, 1989, on December 29, 1989 (54 FR 53669). The Department is now conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act"). This review covers shipments made by one exporter of wire rod from Argentina to the United States. The exporter covered by this review is Acindar Industria Argentina de Aceros S.A. ("Acindar").

Scope of the Review

The United States has developed a system of tariff classification based on

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the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted from the Tariff Schedules of the United States, Annotated (TSUSA) to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption, on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of carbon steel wire rod. Until January 1, 1989, this merchandise was classifiable under item number 607.1700 of the TSUSA. This merchandise is currently classifiable under HTS item numbers 7213.20.00, 7213.31.30, 7313.49.00, 7213.39.00, 7213.41.30 and 7213.50.00. As with the TSUSA numbers, the HTS numbers are provided for convenience and customs purposes. The written product description remains dispositive.

United States Price

In accordance with section 772(b) of the Act, we based United States price on purchase price, because the merchandise was sold to unrelated purchasers in the United States prior to its importation. We calculated purchase price based on f.o.b., stowed value, packed prices to U.S. customers. We made deductions from purchase price, where appropriate, for brokerage, foreign inland freight, stowage, banking expenses, and certain export duties (foreign currency tax, statistical tax, National Commercial Fleet Fund tax, and additional export duties).

Foreign Market Value

In accordance with section 773(a)(1)(B) of the Act, we calculated foreign market value based on C & F prices to unrelated purchasers in Chile because Acinda had insufficient sales of the subject merchandise in the home market during the period of review. Petitioners have alleged that sales in the third-country market were made at prices below the cost of producing the merchandise. We compared Acindar's sale prices to Chile to Acindar's production costs during the month of sale; as a result of our analysis, we have no reasonable grounds to believe or suspect that sales to Chile were made at prices below the cost of producing the merchandise.

We made deductions to foreign market value, where appropriate, for brokerage, foreign inland freight, stowage, banking expenses, and certain export duties (foreign currency tax, statistical tax, National Commercial Fleet Fund tax, and additional export duties). In order to adjust for differences in packing between the two markets, we deducted packing costs on sales to Chile and added packing costs on sales to the United States. In accordance with section 773(a)(4)(C) of the Act, we made an adjustment to foreign market value to account for differences in the physical characteristics of the merchandise, since the merchandise sold in the third-country market is not identical to that sold in the United States.

Preliminary Results of the Review

As a result of our comparison of the United States price to foreign market value, we preliminarily determine that the following dumping margin exist:

Manufacturer/producer/exporter	*Margin*
Acindar	0%
All Other Manufacturers/Producers/ Exporters	0%

Pursuant to section 751 of the Tariff Act of 1930 the cash deposit requirement established in the previous review will remain in effect until publication of the final results of this administrative review, at what time the Department will issue appropriate appraisement and deposit instructions to the Customs Service based on the final results of this review. That cash deposit rate is 119.11%.

Public Comment

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested parties may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this preliminary notice or the first workday thereafter.

Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. The Department will publish final results of this administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing. This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act [19 U.S.C. 1675(a)(1)] and section 353.22 of the Commerce Department's regulations 19 CFR 353.22.

Dated: May 21, 991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc 91-12540 Filed 5-24-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-406]

Certain Round Shaped Agricultural Tillage Tools From Brazil; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminarily results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on certain round shaped agricultural tillage tools from Brazil. We preliminarily determine the net subsidy to be 0.25 percent *ad valorem* for one firm and 1.15 percent *ad valorem* for all other firms for the period January 1, 1989 through December 31, 1989. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: May 28, 1991.

FOR FURTHER INFORMATION CONTACT: Anne Driscoll, Elizabeth Levy or Michael Rollin, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5260.

SUPPLEMENTARY INFORMATION:

Background

On October 5, 1990, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (55 FR 40931) of the countervailing duty order on certain round shaped agricultural tillage tools from Brazil (50 FR 42743; October 22, 1985) for the period January 1, 1989 through December 31, 1989. On October 31, 1990, Marchesan S.A. requested an administrative review for that period. We initiated the review on December 10, 1990 (55 FR 50739). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). The final results of the last administrative review of this order were published in the **Federal Register** on April 18, 1991 (56 FR 15862).

Scope of Review

Imports covered by this review are shipments of certain round shaped agricultural tillage tools (discs) with plain or notched edge, such as colters and furrow-opener blades. During the review period, such merchandise was classifiable under item numbers 8432.21.00, 8432.29.00, 8432.80.00 and 8432.90.00 of the *Harmonized Tariff Schedule* (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the periods January 1, 1989, through December 31, 1989 and nine programs.

Analysis of Programs

(1) CACEX Preferential Working Capital Financing for Exports

Under this program, the Department for Foreign Commerce (CACEX) of the Banco do Brasil provides short-term working capital financing to exporters at preferential rates. The loans have a term of one year or less.

On May 2, 1985, Resolution 1009 made CACEX working capital financing available through commercial banks at prevailing market rates, with interest due at maturity. It authorized the Banco do Brasil to pay the lending institution an "equalization fee," or rebate, of up to 15 percentage points of the commercial interest rate, which the lending institution could pass on to borrowers. In addition, the IOF (a general tax on financial transactions) does not apply to these loans.

Since the interest charged on CACEX export financing under Resolution 1009 is at prevailing market rates, this program would not be countervailable absent the equalization fee and the exemption from the IOF. Therefore, the interest differential for those loans is equal to the equalization fee plus the 1.5 percent IOF. Because this program only provides financing at preferential rates to exporters, we preliminarily determine that it is countervailable.

We consider the benefit from loans to occur when the borrower makes the interest payments. During the review period, three agricultural tillage tool exporters made interest payments on CACEX loans. For those loans, we multiplied the interest differential by the loan principal. We allocated the result over each firm's total exports and then weight-averaged the benefits by each firm's share of exports of the subject merchandise to the United States. On this basis, we preliminarily determine the benefit from this program to be 0.25 percent *ad valorem* for Semeato, and 0.22 percent *ad valorem* for all other firms for the period January 1, 1989 through December 31, 1989.

This program was terminated, effective August 30, 1990, by Central Bank Resolution 1744. For purposes of the cash deposit of estimated countervailing duties, we preliminarily determine the benefit from this program to be zero for all firms.

(2) Income Tax Exemption for Export Earnings

Under this program, exporters of agricultural tillage tools are eligible for an exemption from income tax on the portion of their profits attributable to exports. The exporter calculates the tax-exempt portion of profit based on the ratio of export revenue to total revenue. Because this program provides tax exemptions that are limited to exporters, we preliminarily determine that it is countervailable.

The nominal corporate tax rate in Brazil in 1989 was 30 percent. However, Brazilian tax law permits all companies to reduce their income taxes by investing up to 28 percent of their tax liability in specified companies and funds. These tax credits effectively reduce the nominal 30 percent corporate tax rate. The four agricultural tillage tool exporters that claimed this exemption on their tax returns filed in 1989 invested in the specified companies and funds, and their effective tax rate was lower than the nominal 30 percent rate during the period of review.

We calculated the effective tax rate for each firm by dividing the net tax liability by taxable profit. We calculated the benefit by multiplying the amount of tax-exempt profit by the effective tax rate and allocating the result over each firm's total exports. We then weight-averaged the benefits by each firm's share of exports of the subject merchandise to the United States. On this basis, we preliminarily determine the benefit from this program to be zero for Semeato, and 0.93 percent *ad valorem* for all other firms for the period January 1, 1989 through December 31, 1989.

Decree Law 8034 of April 12, 1990 eliminated this tax exemption and established a prevailing tax rate of 30 percent for domestic and export earnings for year of assessment 1991 (year basis 1990). For purposes of the cash deposit of estimated countervailing duties, we preliminarily determine the benefit from this program to be zero for all firms.

(3) Other Programs

We also examined the following programs and preliminarily determine that the exporters of the subject merchandise did not use them during the review period:

A. Preferential Export Financing under CIC-OPCRE of the Banco do Brasil
B. Preferential Financing for Industrial Enterprises by the Banco do Brasil (FST and EGF loans)
C. Reductions of Taxes and Import Duties under Decree Law No. 77.065 through BEFIEX and CIEX
D. Preferential Financing for National Trading Companies under Resolution 683 of the Banco Central do Brasil
E. Accelerated Depreciation for Brazilian-Made Capital Goods
F. Preferential Financing under Resolution 68 and 509 through FINEX
G. Preferential Financing under FINEP

Preliminary Results of Review

As a result of our review, we preliminarily determine the net subsidy to be 0.25 percent *ad valorem* for Semeato, and 1.15 percent *ad valorem* for all other firms for the period January 1, 1989 through December 31, 1989. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

Therefore, the Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from Semeato, and to assess countervailing duties of 1.15 percent of the f.o.b. invoice price on all other shipments of the subject merchandise exported on or after January 1, 1989 and on or before December 31, 1989.

Further, the Department intends to instruct the Customs Service to waive the collection of cash deposits of estimated countervailing duties on all shipments of the subject merchandise from Brazil entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the

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scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e). Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under § 355.38(c), are due. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: May 17, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-12541 Filed 5-24-91; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's (Council) Anchovy Advisory Subpanel and Plan Development Team, will hold a public meeting on June 24, 1991, beginning at 10:30 a.m., at the National Marine Fisheries Service, Southwest Regional Office, 300 South Ferry Street, Terminal Island, CA.

The agenda includes a review of last season's fishery, the 1991 spawning biomass estimate, and the proposed quotas for the 1991–1992 fishery. The process of amending the anchovy fishery management plan to include other coastal pelagic species will be reviewed. The Plan Development Team will continue to meet in the afternoon.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: May 21, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-12461 Filed 5-24-91; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT) and Scientific and Statistical Committee (SSC) Groundfish Subcommittee will hold public meetings on May 29–31, 1991, at the Northwest and Alaska Fishery Center, National Marine Fisheries Service, 7600 Sand Point Way NE., Building 4, room 2143, Seattle, WA. The meetings will begin on May 29 at 8 a.m., and adjourn on May 31 at 4:30 p.m.

The GMT and SSC subcommittee will review preliminary stock assessment reports for four groundfish species and prepare recommendations to the authors. The Council will receive a report on these assessments at its July meeting in Seattle, Washington, and the assessments may be used as the scientific basis for harvest levels set for the 1992 fishing year.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: May 21, 1991.

David S. Crestin,

Deputy Director Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-12462 Filed 5-24-91; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council (Council) will hold public meetings required by the salmon fishery management plan on May 30, 1991, at the Olympia Center, 222 North Columbia, room 101, Olympia, Washington, and on June 3, 1991, at the Linn Benton Community College, in the Calapooia Room of the College Center Building, 6500 SW. Pacific Boulevard, Albany, Oregon. The Council is commencing a review of stocks which have not met their spawning escapement objectives for the past three years. The Council has appointed two work groups to direct the review. These groups will review the causes for the escapement failures and provide recommendations for their resolution to the Council prior to the 1992 ocean salmon season.

On May 30 the Puget Sound Salmon Stock Review Group will begin meeting at 10 a.m. This meeting is expected to last most of the day. The group will examine the causes which have led to a failure in meeting spawning escapement objectives for naturally produced Skagit and Hood Canal coho, and Skagit spring, Stillaguamish summer/fall and Snohomish summer/fall chinook stocks.

On June 3 the Oregon Coastal Natural Coho Review Group will begin meeting at 10 a.m. This meeting is also expected to last most of the day. This group will examine the causes which have led to a failure in meeting the spawning escapement objective for the Oregon coastal natural coho stock.

For more information contact John Coon, Staff Officer (Salmon), Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (505) 326–6352.

Dated: May 21, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-12463 Filed 5-24-91; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before June 27, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: May 21, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Postsecondary Education

Type of Review: Extension.
Title: Application for grants under the Jacob K. Javits Fellows Program.
Frequency: Annually.
Affected Public: Individuals or households.
Reporting Burden:
Responses: 2,500.
Burden Hours: 12,500.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by graduate students to apply for funding under the Jacob K. Javits Fellows Program. The Department will use the information to make grant awards.

Office of Postsecondary Education

Type of Review: Extension.
Title: Application for continuation of the Title III, Strengthening Historically Black Colleges and Universities Program (HBCU).
Frequency: Annually.
Affected Public: Non-profit institutions.
Reporting Burden:
Responses: 98.
Burden Hours: 1,470.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by State educational agencies to apply for funding under Title III, Strengthing Historically Black Colleges and Universities Program. The Department will use the information to make grant awards.

[FR Doc. 91-12446 Filed 5-24-91; 8:45 am]

BILLING CODE 4000-1-M

DEPARTMENT OF ENERGY

Elementary Teacher Research Internship Program

AGENCY: U.S. Department of Energy.

ACTION: Notice on non-competitive financial assistance (grant) award with the Community College of Allegheny County (CCAC).

SUMMARY: The Department of Energy—Pittsburgh Energy Technology Center (DOE–PETC) announces that pursuant to 10 CFR 600.7(b)(2)(i) criterion (D) it intends to make a non-competitive financial assistance award (grant) to CCAC for support to facilitate the implementation of DOE's Elementary Teacher Research Internship program (ETRI) at PETC.

SCOPE: The objectives of this grant are: (1) To provide management, recruiting, and training of elementary school teachers and (2) to facilitate the DOE/PETC's education outreach program with the school districts in Southwestern Pennsylvania. The goal of DOE–PETC's new education outreach program is to strengthen the elementary school math/science curriculum through teacher retraining and enrichment at the DOE–PETC's R&D laboratories. This effort is in response to the DOE's new National Energy Strategy that calls for fortifying the nation's foundation by investing in human resources to assure competency and creativity in managing technology.

In accordance with 10 CFR 600.7(b)(2)(i) criterion (D) the Community College of Allegheny County has been selected as the grant recipient.

DOE support of the activity would enhance the public benefits to be derived by enhancing the quality of elementary school teachers. This activity represents a unique idea and a method which would not be eligible for financial assistance under a recent, current or planned solicitation. Furthermore, DOE has determined that a competitive solicitation would be inappropriate.

The term of the grant is for a twelve (12) month period at an estimated value of $70,000 that will entirely be funded by the DOE.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236, Attn: Norey B. Laug, Telephone: AC (412) 892–4827.

Dated: May 16, 1991.

Carroll A. Lambton,

Acting Director, Aquisition and Assistance Division, Pittsburgh Energy Technology Center.

[FR Doc. 91-12517 Filed 5-24-91; 8:45 am]

BILLING CODE 6450-01-M

Methodology for the Evaluation of Technology Transfer Efforts

AGENCY: U.S. Department of Energy, Bartlesville Project Office.

ACTION: Notice of non-competitive financial assistance (grant) award with the Interstate Oil Compact Commission (IOCC).

SUMMARY: The Department of Energy (DOE), Bartlesville Project Office (BPO) announces that pursuant to 10 CFR 600.7(b)(2)(i) criteria (A) and (D), it intends to make a non-competitive Financial Assistance (Grant) award through the Pittsburgh Energy Technology Center to the Interstate Oil Compact Commission (IOCC) for the continuation of their effort entitled "Methodology for the Evaluation of Technology Transfer Efforts."

SCOPE: Based upon the authority of 10 CFR 600.7(b)(2)(i) criteria (A) and (D), the objective of this Grant is for the Interstate Oil Compact Commission to continue conducting basic research on an effective evaluation methodology for technology transfer efforts. IOCC will assess the effectiveness of the DOE technology transfer program while working closely with federal program managers, appropriate state agencies and regional oil and gas associations. The intended research will be carried out in two phases: (1) An initial assessment of existing methodologies and infrastructure used by state oil and gas technology transfer progams, as well as those of the oil and gas associations in several states; (2) a subsequent design and development of evaluation methodology to assess the effectiveness of the DOE Technology Transfer Program. The terms of the grant is

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twelve (12) months at an estimated value of $247,000.00.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236, Attn: Martin J. Byrnes, Telephone: AC 412/892–4486.

Dated: May 17, 1991.

Carroll A. Lambton,

Acting Director, Acquisition and Assistance Division.

[FR Doc. 91–12518 Filed 5–24–91; 8:45 am]

BILLING CODE 6450–01–M

Supercleon Coal-Water Slurry Combustion (SCCWS) Testing in an Oil-Fired Industrial Boiler; Non-Competitive Financial Assistance (Revision) Award

AGENCY: U.S. Department of Energy, Pittsburgh Energy Technology Center.

ACTION: Notice of Non-Competitive Financial Assistance (Revision) Award with The Pennsylvania State University.

SUMMARY: The Department of Energy (DOE), Pittsburgh Energy Technology Center (PETC) announces that pursuant to 10 CFR 600.7(b)(2)(i) Criteria (A), it intends to make a non-competitive Financial Assistance (Revision) award to The Pennsylvania State University to expand the scope of work for the existing SCCWS demonstration project.

SCOPE: The proposed activity with PSU would implement an expanded scope of work for a SCCWS demonstration that arose in 1989 from a formal agreement between the U.S. and Italy. Development of SCCWS's for displacement of oil as a boiler fuel has strategic value in reducing both countries' dependence on imported oil. In the U.S., availability of a SCCWS technology base capable of rapid implementation can provide the Federal Government with technical, economic, and military options that otherwise would not be available. Specifically, the additional tests will provide valuable information for the designs of boiler retrofits and also, new systems specifically configured to fire these clean coal-based fuels that will be prepared from U.S. coals.

With additional DOE funds, and matching Pennsylvania contribution, the scope of the demonstration will be expanded to include the following major tasks and their objectives:

(1) *Test other U.S. coal(s), preferably from the midwest or west.* This task would broaden the potential market for the boiler system.

(2) *Install and test an advanced, high efficiency burner.* A recent U.S. DOE contract developed a coal-water fuel burner specifically for retrofit to oil/gas-designed boilers. Other advanced burners may also be available. The SCCWS project presents a unique opportunity to demonstrate the effectiveness of an advanced burner on a commercial boiler for several hundred hours of testing.

(3) *Install and test a superheater.* The superheater will enable the industrial-scale boiler to more closely approximate a utility boiler in terms of configuration and operation. Results could then be extrapolated to a much broader range of commercial boilers.

(4) *Install and test an advanced flue gas treatment system.* U.S. DOE/PETC's Environmental Control Division is developing SO_x, NO_x and particulate control systems for coal-fired units that include the type of industrial-scale boiler at PSU. The expanded SCCWS project will provide an excellent, cost-effective approach to examine a selected component's emission control capabilities during operation on a commercially available boiler.

This grant to The Pennsylvania State University for continuation of an existing project is considered suitable for non-competitive financial assistance based on 10 CFR 600.7(b)(2)(i) Criteria A.

Because of the current price of imported oil, the necessary economic incentives do not exist to develop the SCCWS technology necessary to displace oil as the fuel of choice. When the economic justifications are realized, this transaction, in conjunction with the base project, should help the private sector participate in the development of a SCCWS infrastructure that will be needed to commercialize the technology.

The terms of the continuation of the existing Cooperative Agreement are for twenty-four (24) months at an estimated value of $2,978,000.00, with each of the Participants (DOE and PSU) sharing 50% of the project costs.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236, Attn: Keith R. Miles, Telephone: (412) 892–5984

Dated: May 17, 1991.

Carroll A. Lambton,

Acting Director, Acquisition and Assistance Division, Pittsburgh Energy Technology Center.

[FR Doc. 91–12516 Filed 5–24–91; 8:45 am]

BILLING CODE 6450–01–M

DOE Acceptance for Documenting the Resolution of Issues Contained in the Westinghouse Savannah River Company Reactor Operations Management Plan (ROMP) for Restart of the K-Reactor; Response to Recommendation 91–2 of the Defense Nuclear Facilities Safety Board

AGENCY: Department of Energy.

ACTION: Notice and request for public comment.

SUMMARY: Pursuant to section 315(b) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(b) the Department of Energy (DOE) hereby publishes notice of a response of the Secretary of Energy (Secretary) to Recommendation 91–2 of the Defense Nuclear Facilities Safety Board, concerning documenting the resolution of issues contained in the Westinghouse Savannah River Company Reactor Operations Management Plan (ROMP) for restart of the K-Reactor. DOE hereby requests public comment on the response of the Secretary to Recommendation 91–2.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before June 27, 1991.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Donald F. Knuth, Deputy Assistant Secretary for Operations, Defense Programs, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: May 18, 1991.

Donald F. Knuth,

Deputy Assistant Secretary for Operations, Defense Programs.

May 14, 1991.

The Honorable John T. Conway, Chairman
Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004.

Dear Mr. Conway: Under section 315 of Public Law 100–456, I am providing the Department of Energy (DOE) response to the Defense Nuclear Facilities Safety Board Recommendation 91–2, dated March 27, 1991, for documenting the resolution of issues contained in the Westinghouse Savannah River Company Reactor Operations Management Plan (ROMP) for restart of the K-Reactor.

Board Recommendation 91–2 contained the following two recommendations:

1. That each closure package of an issue in the ROMP be provided with a brief narrative discussion that clarifies the meaning of the issue, describes the steps that were taken to resolve it, states the reason for concluding that closure has been achieved, and shows how the referenced documents support the claim of closure; and

2. That the DOE revert to its earlier plan to fully review and concur with the determinations of each issue closure.

I accept the Board's Recommendation 91–2. The actions required to adopt the recommendations already have been initiated in response to a discussion held with the Board on March 18, 1991.

Under section 318(d) of the Atomic Energy Act of 1954 (42 U.S.C. 2286d(d)) this response will be published in the **Federal Register.**

If you have any questions, please contact Steven D. Richardson (202/586–2185) of my staff.

Sincerely,

James D. Watkins,

Admiral, U.S. Navy (Retired).

[FR Doc. 91–12524 Filed 5–24–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP91–2066–000, et al.]

Natural Gas Pipeline Company of America, et al.; Natural Gas Certificate Filings

May 20, 1991.

Take notice that the following filings have been made with the Commission.

1. Natural Gas Pipeline Company

[Docket No. CP91–2066–000]

Take notice that on May 16, 1991, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP91–2066–000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon effective May 27, 1991, the firm and interruptible transportation services performed by Natural for Columbia Gas Transmission Corporation (Columbia Gas), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Natural states that it provides a firm transportation service of up to 27,000 Mcf of natural gas per day plus the interruptible transportation of excess quantities of up to 18,000 Mcf of natural gas per day for Columbia Gas pursuant to a gas transportation agreement between Natural and Columbia Gas dated January 23, 1978, which is on file with the Commission as Natural's Rate Schedule X–62.

Natural states that pursuant to Rate Schedule X–62 it transports natural gas for Columbia Gas from West Cameron Block 543 to a point of interconnection with Stingray Pipeline Company located in West Cameron Block 565, offshore Louisiana.

Natural further states that pursuant to letters dated October 8, 1990 and March 28, 1991, Columbia Gas has given Natural written notice of Columbia Gas' election to terminate the transportation agreement effective May 27, 1991.

Comment date: June 10, 1991, in accordance with Standard Paragraph F at the end of this notice.

Texas Gas Transmission Corporation; Tennessee Gas Pipeline Co.

[Docket Nos. CP91–2064–000, CP91–2065–000, CP91–2066–000]

Take notice that Applicant filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identify of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: July 5, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Applicant: Texas Gas Transmission Corporation, 3800 Frederica Street, Owensboro, KY 42301.
Blanket Certificate Issued in Docket No.: CP88–868–000.

Docket No. (date filed)	Shipper name (type shipper)	Peak day [1] avg. annual	Points of		Start up date rate schedule	Related [2] dockets
			Receipt	Delivery		
CP91–2064–000 (05–16–91)	Coast Energy Group	200,000 30,000 10,950,000	LA, TX, TN, Offshore LA, Offshore TX, KY IL.	LA, TX	04–10–91, IT	ST91–8359–000
CP91–2065–000 (05–16–91)	NGC Transportation, Inc	3,000 3,000 1,095,000	Offshore TX	Offshore TX	04–09–91, IT	ST91–8358–000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] If an ST docket is shown, 120-day transportation service was reported in it.

Applicant: Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, TX 77252.
Blanket Certificate Issued in Docket No.: CP87–115–000.

Docket No. (date filed)	Shipper name (type shipper)	Peak day [1] avg. annual	Points of		Start up date rate schedule	Related [2] dockets
			Receipt	Delivery		
CP91–2068–000 (05–16–91)	Direct Gas Supply Corporation.	51,150 51,150 18,669,750	Offshore TX, Offshore LA, LA, TX, MS.	LA, TX, MS, AL, NJ, CT, NY, WV, OH, PA, KY, MA.	04–02–91, IT	ST91–8563–000.

[1] Quantities are shown in Dekatherms unless otherwise indicated.
[2] If an ST docket is shown, 120-day transportation service was reported in it.

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Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12455 Filed 5-24-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER90-527-004]

Northern States Power Co.; Filing

May 20, 1991.

Take notice that on April 25, 1991, Northern States Power Company tendered for filing its compliance refund report in the above referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before May 31, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12458 Filed 5-24-91; 8:45 am]

BILLING CODE 6717-01-M

Trunkline Gas Co.; Application

May 20, 1991.

Take notice that on May 10, 1991, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP91-2013-000 an application, as supplemented on May 17, 1991, pursuant to section 7(b) of the Natural Gas Act for permission and approval for the abandonment of transportation of natural gas for Natural Gas Pipeline Company of America (Natural), all as more fully set forth in the application on file with the Commission and open to public inspection.

Trunkline requests permission and approval to abandon firm transportation of up to 25,000 Mcf per day (Mcf/d) of natural gas and interruptible transportation of up to 6,000 Mcf/d of natural gas for Natural under authority granted in Docket No. CP85-345-000. Trunkline states that it will continue the transportation service for Natural, pursuant to Trunkline's blanket authorization and subpart G of part 284 of the Commission's Regulations.

Trunkline states that under the current arrangement, gas is received by Tarpon Transmission Company (Tarpon) for the account of Natural in Eugene Island Area Block 361, offshore Louisiana, and that Trunkline has used its capacity in the Tarpon system to transport Natural's gas to Trunkline's system in Ship Shoal Area Block 274. Trunkline then transports and redelivers the gas to Natural at a point of interconnection in Cameron Parish, Louisiana. Trunkline states that it has terminated its firm transportation agreement with Tarpon, under which Trunkline transported gas for the account of Natural, and can no longer transport Natural's gas on the Tarpon system.

Trunkline states that it will continue to transport up to 18,000 Mcf/d on a firm basis and up to 10,000 Mcf/d of natural gas on an interruptible basis on behalf of Natural under subpart G of part 284 of the Regulations pursuant to transportation agreements dated June 29, 1991, between Trunkline and Natural. Trunkline states that Natural is arranging transportation agreements with Tarpon. Trunkline states that under the June 29, 1991, agreements, it would receive gas for the account of Natural from the Tarpon terminus at Ship Shoal Area Block 274 and from various existing points of receipt in the states of Illinois, Louisiana, Tennessee and Texas and from the Panhandle Eastern Pipe Line Company receipt point at Douglas County, Illinois, and from the areas of offshore Louisiana and offshore Texas. Trunkline states that it would transport and redeliver Natural's gas, less fuel and unaccounted-for line loss, to Natural in Cameron Parish, Louisiana.

Trunkline states that to the extent a waiver of its transportation tariff may be deemed necessary by the Commission to permit Trunkline to provide the transportation service under § 284.222 of the Commission's Regulations (18 CFR 284.222) as replacement authorization without any change in the priority or character of service to Natural, Trunkline requests such a waiver. Trunkline states that exhibit A attached to the replacement contract in the subject docket identifies all points of receipt applicable to open access type transportation

arrangements; however, the existing transportation arrangement to which the replacement contract applies involves only the intended point of receipt at the interconnection between the facilities of Trunkline and Tarpon in Ship Shoal Area Block 274, offshore Louisiana.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 4, 1991, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Trunkline to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12456 Filed 5-24-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP91-2014-000]

Trunkline Gas Co.; Application

May 20, 1991.

Take notice that on May 10, 1991, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP91-2014-000 an application as supplemented on May 17, 1991, pursuant to section 7(b) of the Natural Gas Act for permission and approval for the abandonment of transportation of natural gas for Transcontinental Gas Pipe Line Corporation (Transco), all as more fully set forth in the application on file with the Commission and open to public inspection.

Trunkline requests permission and approval to abandon interruptible transportation of up to 7,000 Mcf per day (Mcf/d) of natural gas for Transco under authority granted in Docket No. CP86-410-000. Trunkline states that it will continue the transportation service for Transco pursuant to Trunkline's blanket authorization and subpart G of part 284 of the Commission's Regulations.

Trunkline states that under the current arrangement, Trunkline transports Transco's gas from the production platform to the Eugene Island Area Block 361 interconnection with Tarpon transmission Company (Tarpon). Trunkline states that it has utilized its own capacity in the Tarpon system to transport Transco's gas to Trunkline's system in Ship Shoal Area block 274, offshore Louisiana. Trunkline states that it then transports and redelivers the subject gas to Transco at an interconnection near Ragley in Beauregard Parish, Louisiana. Trunkline states that it has terminated its firm transportation agreement with Tarpon, under which Trunkline transported gas for the account of Transco, and as such can no longer transport Transco's gas on the Tarpon system.

Trunkline states that it will continue to transport up to 7,000 Mcf/d of natural gas on an interruptible basis on behalf of Transco under subpart G of part 284 of the Regulations pursuant to a transportation agreement dated July 1, 1991, between Trunkline and Transco. Trunkline states that Transco has amended an existing interruptible transportation agreement it has with Tarpon to include these receipt and delivery points to facilitate the continuance of service. Trunkline states that under the July 1, 1991, agreement, it would receive gas for the account of Transco from the Tarpon terminus at Ship Shoal Area Block 274 and from various existing points of receipt in the states of Illinois, Louisiana, Tennessee and Texas and from the Panhandle Eastern Pipe Line Company receipt point at Douglas County, Illinois, and from the areas of offshore Louisiana and offshore Texas. Trunkline states that it would transport and redeliver Transco's gas, less fuel and unaccounted for line loss, to Transco in Beauregard Parish, Louisiana.

Trunkline states that to the extent a waiver of its transportation tariff may be deemed necessary by the commission to permit Trunkline to provide the transportation service under § 284.222 of the Commission's Regulations (18 CFR 284.222) as replacement authorization without any change in the priority or character of service to Transco, Trunkline requests such a waiver. Trunkline states that exhibit A attached to the replacement contract in the subject docket identifies all points of receipt applicable to open access type transportation arrangements; however, the existing transportation arrangement to which the replacement contract applies involves only the intended point of receipt at the interconnection between the facilities of Trunkline and Tarpon in Ship Shoal Area Block 274, offshore Louisiana.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 4, 1991, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Trunkline to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12457 Filed 5-24-91; 8:45 am]

BILLING CODE 6717-01-M

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Office of Hearings and Appeals

Cases Filed During the Week of March 29 Through April 5, 1991

During the week of March 29 through April 5, 1991, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: May 17, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Mar. 29 through Apr. 5, 1991]

Date	Name and location of applicant	Case No.	Type of submission
Mar. 29, 1991	Texaco/Lizzi Bros. Texaco, Sandusky, OH	RR321-57	Request for modification/rescission in the Texaco refund proceeding. *If granted:* The May 9, 1990 Decision and Order (Case Nos. FR321-623 & FR321-3614) issued to Lizzi Bros. Texaco would be modified regarding the firm's Application for Refund submitted in the Texaco Inc. special refund proceeding.
Apr. 5, 1991	Barton J. Bernstein, Stanford, CA	LFA-0 06	Appeal of an information request denial. *If granted:* The January 30, 1991 Freedom of Information Request Denial issued by Albuquerque Operations Office would be rescinded, and Barton J. Bernstein would receive access to DOE information.

REFUND APPLICATIONS RECEIVED

[Week of Mar. 29 through Apr. 5, 1991]

Received	Name of firm	Case No.
03/29/91 thru 04/05/91.	Crude Oil Refund Applications Received.	RF272-88674 thru RF272-89227.
03/29/91 thru 04/05/91.	Gulf Oil Refund Applications Received.	RF300-16197 thru RF300-16826.
03/29/91 thru 04/05/91.	Texaco Refund Applications Received.	RF321-14699 thru RF321-14732.
04/01/91	Gold Bond Bldg. Products.	RF326-00248.
04/01/91	Mitchell Energy & Development.	RF326-00249.
04/01/91	Transportation Supplies.	RF304-12200.
04/02/91	Neal, Inc.	RF326-00251.
04/03/91	J.C. Penney Co., Inc.	RF334-00005.
04/03/91	Fred Meyers, Inc.	RF334-00008.
04/03/91	Union Texas Petroleum.	RF326-00250.
04/04/91	W.J. Runyon and Son, Inc.	RA272-00036.
04/05/91	Clarence J. Rulon.	RF307-10181.
04/05/91	Dom's Arco	RF304-12201.
04/05/91	Jim Rapano's	RF304-12203.
04/05/91	G.R.B., Inc.	RF304-12202.

[FR Doc. 91-12519 Filed 5-24-91; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders Issued the Week of March 18 Through March 22, 1991

During the weeks of March 18 through March 22, 1991, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Remedial Order

Richome Oil ad Gas Co., (a.k.a. Herrmann Energy), Jerome B., Herrmann, Richard P. Herrmann, Economic Regulatory Administration, 3/18/91, KRO-0710, LRD-0004

Richard P. Hermann, on behalf of himself, Richome Oil and Gas Company (a.k.a. Herrmann Energy), and Jerome B. Herrmann (collectively, the respondents) objected to a Proposed Remedial Order (PRO) which the Economic Regulatory Administration (ERA) issued to the respondents on September 21, 1988. In the PRO, the ERA alleged that during the period from November 27, 1973 through December 31, 1974, the respondents violated the price regulations applicable to first sales of crude oil set forth in 10 CFR part 212, subpart D and the predecessor regulations and, as a consequence, overcharged Permian Oil Corporation in the amount of $137,030.20. After considering the respondents' Statements of Objections, the DOE concluded that the PRO should be issued as a final Remedial Order. In reaching its conclusion, the DOE rejected the respondents' contentions that: (a) The ERA failed to establish a *prima facie* case against Richome for violations of the producer price regulations; (b) the PRO impermissibly sought restitution from Richome for alleged overcharges it never received or was foreclosed from recovering; (c) the doctrine of laches prevented the ERA from proceeding with this action; (d) the reactivation of this enforcement action constituted inordinate delay and was a violation of Richome's due process rights; (e) Herrmann Energy was not a proper party and should not be held liable; and (f) the interest rates used by the ERA were never properly adopted by the DOE and imposing them constituted an abuse of discretion. Finally, since the DOE established that sufficient evidence existed in the record to make determinations on all of the issues in the proceeding, the DOE found that the ERA's Motion for Discovery was moot.

Refund Applications

A & B Transportation, 3/22/91 RF272-70289, RD272-70289

The Department of Energy (DOE) issued a Decision and Order denying an Application for Refund filed by A & B Transportation (A&B) in the subpart V crude oil refund proceeding. A & B applied for a refund based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981 (the crude oil price control period). The DOE found that the estimation technique A & B used to calculate its total gallonage claim is easily duplicated, and therefore required the firm to document its purchases. However, the applicant was unable to do so. Accordingly, the DOE denied A & B's Application because it lacks the necessary information to substantiate the gallonage claim. The DOE also dismissed a Motion for Discovery which was filed by a group of state governments and two territories of the United States.

Agway, Inc./Wooten Oil Co., 3/20/91, RF324-0003

The DOE issued the first Decision and Order in the Agway, Inc. (Agway) special refund proceeding on March 20, 1991, to Wooten Oil Co. (Wooten). The DOE approved the Application for Refund filed by Wooten on the basis of purchases of 43,586,994 gallons of Agway products. The firm elected the 40 percent mid-level reseller presumption. The amount of the refund granted was $6,970.

Brannan Sand and Gravel Co., 3/21/91, RF272-44981, RD272-44981

Brannan Sand and Gravel Co. (Brannan) is involved in the road construction industry. It filed an Application for Refund as an end user of refined petroleum products in the subpart V crude oil refund proceeding. A group of state governments and two territories of the United States (the States) objected to the application, provided evidence concerning the construction industry as a whole and filed a Motion for Discovery. The DOE determined that the States had failed to produce any convincing evidence to show that Brannan had been able to pass on the crude oil overcharges to its customers, and found that the States' evidence failed to properly address the individual situation of the applicant. As in previous decisions, the DOE rejected the States' contention that industry-wide data constituted sufficient evidence to rebut the presumption that end-users such as Brannan were injured by crude oil overcharges. The DOE granted Brannan a refund of $43,598 based on its approved purchases of petroleum products. The DOE accordingly denied the Motion for Discovery by the States.

City of Virginia Beach, 3/22/91, RR272-67

The DOE issued a Decision and Order concerning a Motion for Reconsideration that the City of Virginia Beach (Virginia Beach) filed in the subpart V crude oil special refund proceeding being conducted by the DOE under 10 CFR part 205. The DOE determined that the Motion contained no new factual or legal evidence to warrant granting the Virginia Beach Motion. Accordingly, the Motion for Reconsideration was denied.

Gulf Oil Corporation/Don's Gulf, et al., 3/20/91, RF300-11204, et al.

In the Gulf Oil Corporation special refund proceeding the Department of Energy granted a total refund amount of $20,339 to seven resellers and retailers. Some of the applicants in this decision filed their claims through Federal Refunds, Inc. (FRI). The refund checks of applicants represented by FRI were sent directly to the applicants. *See Gulf Oil Corp./LeBlanc's Gulf Service*, 18 DOE ¶85,876 (1989).

J.M. Huber Corporation, 3/20/91, RF272-42024, RD272-42024

J.M. Huber Corporation produces printing ink. Huber filed an Application for Refund as an end-user of refined petroleum products in the subpart V crude oil refund proceeding. A group of state governments and two territories of the United States (the States) objected to the application, and provided evidence concerning the printing ink industry as a whole. The States also inferred that Huber had not absorbed the alleged overcharges from information which Huber submitted with its application. The DOE determined that the States had failed to produce any convincing evidence to show that Huber had been able to pass on the crude oil overcharges to its customers, and found that most of the States' evidence failed to properly address the individual situation of the applicant. The DOE granted Huber a refund a $43,971, based on its approved purchases of 54,963,295 gallons of petroleum products. The DOE also denied a Motion for Discovery which was filed by the States.

J. R. Simplot Co., 3/20/91, RF272-06114, RD272-06114, RF272-15267, RD272-15267, RD272-21987

The DOE issued a Decision and Order concerning three Applications for Refund filed by divisions of J. R. Simplot Company (Simplot) in the subpart V crude special refund proceeding. The DOE determined that the refund claims were meritorious and granted refunds totalling $49,720. The DOE also denied Objections filed, in two of the three cases, by a consortium of states and two U.S. territories (the States), finding that the industry-wide econometric data submitted by the States did not rebut the presumption that Simplot was injured by the crude oil overcharges. The DOE also found that an allegation of price fixing published in the Wall Street Journal was insufficient to rebut the end-user presumption. The Motions for Discovery filed by the States were also denied.

National Mines Corporation, 3/22/91, RF272-77439

The Department of Energy issued a Decision and Order denying a refund from the crude oil overcharge funds to National Mines Corporation (Mines), because an affiliate of Mines filed in the Stripper Well proceeding and received a refund from the Surface Transporters Escrow Account. Previously, in *National Steel Corproation/Granite City*, 21 DOE ¶85,134 (1991) the DOE determined that the Permian Corporation (Permian) was an affiliate of National Steel Corporation (NSC) on the Surface Transporters Escrow Account Payment Date (August 7, 1986) and that Permian had waived NSC's right to a crude oil refund. In this Decision, the DOE determined that Mines was also an affiliate of NSC on the Surface Transporters Payment Date and that Permian's waiver also waived Mines' right to receive a refund. Accordingly, National Mines Corporation's Application for Refund was denied.

Placid Oil Co. Highway Oil, Inc., 3/18/91, RF314-6

In the Placid Oil Company special refund proceeding the Department of Energy granted a refund of $3,175 to Highway Oil Inc. (Highway) based on its approved purchases of 5,570,913 gallons of Placid refined petroleum products. Highway is subject to a Proposed Remedial Order (PRO) (Case No. HRO-0123) issued by the Economic Regulatory Administration (ERA) on October 29, 1982. Therefore, the DOE directed that the refund be held in an interest-bearing escrow account until the ERA enforcement action against Highway is resolved. This money may only be distributed upon further order of the Director of the Office of Hearings and Appeals or his designee.

Shell Oil Co. C & L Super Shell, 3/20/91, RF315-2

The DOE issued a Decision and Order concerning a Motion for Reconsideration filed by Carmine A. Langone, former partner in C & L Super Shell. Mr. Langone's Motion requested the reversal of a November 8, 1990 Decision which ordered Mr. Langone to remit $732 to the DOE. Mr. Langone, although having sold his interest in C & L in 1977, contended that he still deserved the refund based on purchases made through May 1979 because until that time, his name remained on the station's lease with Shell. The DOE found that the name on the lease did not override the Purchase and Sale Agreement that Mr. Langone signed in 1977. His Motion was therefore denied.

Shell Oil Co./Ozark Airlines, Trans World Airlines, 3/20/91, RF315-6271, RF315-6272, RF315-6273

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The DOE issued a Decision and Order granting three Applications for Refund filed in the Shell Oil Company special refund proceeding. The applicants, Trans World Airlines and its subsidiary, Ozark Airlines, purchased directly from Shell and were end-users of Shell products. Accordingly, the applicants were granted refunds equal to their full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision is $386,960 ($287,084 principal plus $99,876 interest).

Shell Oil Co./S & W Oil Co., W & W Co., 3/18/91, RF315–1539, RF315–10124, RF315–1540

The DOE issued a Decision and Order concerning the refund applications filed in the Shell Oil Company special refund proceeding by Frank Waggener, Jr. and Elaine Safley, widow of Charles Safley. Mr. Waggener and Mr. Safley were partners in S & W Oil Company until November 1976, when Mr. Waggener bought out Mr. Safley and formed a new company, W & W Company. Mr. Waggener was granted a $3,185 refund ($2,363 principal and $822 interest) based on 50 percent of S & W's purchases during the period of partnership and on all of W & W's purchases. Mrs. Safley was granted a $2,074 refund ($1,539 principal and $535 interest) based on 50 percent of S & W's purchases during the period of partnership. The total refund granted in this Decision is $5,259.

Texaco Inc./P & R Distributing et al., 3/20/91, RF321–410 et al.

The DOE issued a Decision and Order in the Texaco Inc. refund proceeding concerning five Applications for Refund filed by resellers of Texaco products. Each of these applicants had an allocable share greater than $10,000. Four of the applicants stated that they accepted the medium-range presumption of injury, and accordingly they were not required to demonstrate injury. The fifth applicant, National Car Rental System, stated that the medium-range presumption was not applicable to it because it was not a reseller. The DOE rejeted this contention, finding that National, like most other car rental firms was a reseller under the DOE price regulations. Consequently, in order to receive a refund equal to its full allocable share, National, like any other reseller with an allocable share greater than $10,000, would have to demonstrate injury. Under the mid-level presumption of injury, the five applicants were each granted a refund equal to the greater of $10,000 or 50 percent of its allocable share.

Texaco Inc./Stuckey's Inc., Pet Incorporated, 3/18/91, RF321–12552 et al.

The DOE issued a Decision and Order in the Texaco Inc. refund proceeding concerning three Applications for Refund filed by Pet Incorporated and four Applications filed by Pet's affiliate, Stuckey's Inc. The applications indicated that, during the refund period, Stuckey's resold 186,943,899 gallons of Texaco products and Pet consumed 5,644,928 gallons of Texaco products in its food processing facilities. Stuckey's stated that it accepted the presumption of injury with respect to its reselling activities. Accordingly, it was not required to demonstrate injury. The DOE found that Stuckey's should be granted a refund under the medium-range presumption of injury of $50,000 plus interest. The DOE also found that, since Pet's food processing activities were unrelated to Stuckey's reselling activities, Pet should be granted a separate refund equal to its full allocable share, plus interest.

Texaco Inc./Warfield Oil Co. et al. 3/20/91, RF321–5450 et al.

The DOE issued a Decision and Order in the Texaco Inc. refund proceeding concerning seven Applications for Refund filed by consignees and resellers of Texaco products. The DOE noted that consignees are entitled to refunds on the same basis as resellers in order to compensate for possible allocation violations during the refund period. In determining the appropriate volume upon which to calculate the refunds, the DOE (1) reduced volumes claimed by jobber applicants by volumes involved in "Delivery for Our Account" transactions since these volumes did not constitute purchases, and (2) excluded from consignee claims volumes that the applicant purchased through the consigneeship since those volumes were already included in the consignee volumes. The applicants stated that they accepted the applicable reseller presumption of injury. Accordingly, they were not required to demonstrate injury. The applicants who had allocable shares of less than $10,000 were granted refunds equal to their full allocable share. Under the medium-range presumption of injury, the other applicants were granted a refund equal to the greater of $10,000 or 50 percent of their allocable share.

Yenkin Majestic Paint Corp., 3/18/91, RF272–62234

The Department of Energy (DOE) issued a Decision and Order granting refund monies from crude oil overcharge funds to Yenkin Majestic Paint Corp. (Yenkin) based upon its purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Using the definition of end-user set forth in City of Annapolis, 17 DOE 85,714 (1988), the DOE determined that Yenkin was eligible for a refund based upon its purchases of 10 of the 34 products claimed in its Application. The refund granted to Yenkin was $8,142.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Ancona Brothers Co	RC272–107	03/22/91
Atlantic Richfield Co./Mapco, Inc	RF304–12162	03/20/91
Atlantic Richfield Co./Mountain Valley Arco *et al*	RF304–11150	03/21/91
Co-OP Gas & Supply Co., Inc. *et al*	RF272–64006	03/21/91
Dubuque Packing Co	RF272–70447	03/22/91
Gleason Co	RF272–49633	03/21/91
Gulf Oil Corp./Winnie Air Service, Inc. *et al*	RF300–11711	03/20/91
Harmsdorf Fixture Mfg. Co. *et al*	RF272–52503	03/20/91
Ka'u Agribusiness Co., Inc	RF272–3503	03/21/91
Point Judith Fishermen's Cooperative Association, Inc	RF272–374	03/19/91
Shell Oil Co./United Oil Corporation *et al*	RF315–1295	03/20/91
Tesoro Petroleum Corporation/Matthews Oil Co., Inc. *et al*	RF326–5	03/21/91
Texaco Inc./Barker Texaco Service	RF321–10499	03/22/91
Barker Texaco	RF321–13871	
Texaco Inc./Bazell Oil Co., Inc. *et al*	RF321–1609	03/22/91
Texaco Inc./Bob & Tom's Texaco *et al*	RF321–644	03/20/91

Texaco Inc./East Main Texaco Service Station	RF321–11583	03/21/91
East Main Texaco	RF321–13867	
Texaco Inc./Freeway Texaco Service *et al*	RF321–4099	03/21/91
Texaco Inc./Gallaway Texaco Truck Stop	RF321–1555	03/19/91
Esequiel Garza Gallaway Texaco	RF321–13627	
Texaco Inc./Oliver Bros. Texaco	RF321–12536	03/22/91
Oliver Brothers Texaco	RF321–13874	
Texaco Inc./Rhodes, Inc	RF321–6478	03/18/91
Rhodes Texaco	RF321–12929	
Texaco Inc./Ridge Service Station	RF321–11270	03/18/91
Ridge Service Station, Inc	RF321–13462	
Texaco Inc./Robert P. Akers Fuel Oil *et al*	RF321–1266	03/22/91
Texaco Inc./Sharp's Texaco *et al*	RF321–467	03/21/91
Texaco Inc./Swinnea Texaco Service	RF321–14552	03/19/91

Dismissals

The following submissions were dismissed:

Name	Case No.
Acorn Building Components, Inc	RF272–86380
Alamo Gulf	RF300–12485
Berry's Texaco	RF321–8136
Billy Yarbourgh Grocery	RF300–12405
Brown's Gulf	RF300–15025
Butler County Highway Dept	RF272–86220
Calhoun Gulf	RF300–14311
Canal Gulf	RF300–13395
Canatella's Gulf	RF300–13394
Carson's Texaco	RF321–2202
City Gulf	RF300–14217
City Service Station	RF300–12156
Cook's Gulf	RF300–14640
Corayer's Gulf	RF300–14993
Corey Oil Co	RF315–10041
Cousins Metal Industries, Inc	RF272–79543
Dallastown Service Center	RF300–14981
Day's Downtown Texaco	RF321–7482
Days Gulf Service	RF300–13415
Deaconess Medical Center	RF272–85767
Doug's Texaco	RF321–5051
Downing Oil Co	RF304–11667
East Bro. Gulf	RF300–15444
Edward's Gulf	RF300–14436
Ernie's Gulf Service	RF300–12859
Ernoco Shell	RF315–10128
Fall Hill Texaco	RF321–9381
Faulk County, SD	RF272–85921
Forty's Texaco	RF321–5661
Four Way Market	RF300–12150
Fowlkes Grocery	RF300–13935
Frank & Rick's, Inc	RF300–15494
Gaines Petroleum Co., Inc	RF315–10040
Gopher State Truck Stop	RF300–13612
Gordy's Gulf	RF300–15203
Greene St. Gulf	RF300–15247
Guilbeau's Service Station	RF300–13259
Harold Jones Gulf	RF300–11536
Hayes Gulf, Inc	RF300–13884
Henry County, Georgia	RF272–85812
Henry's Interstate	RF300–13112
High Ridge Gulf	RF300–14029
Hoeffner Service Station	RF300–13348
Homestead Gulf	RF300–15376
IA Construction Corp	RF272–86054
Interstate Shell	RF315–10044
Jimmy's SVC Station	RF300–13455
John W. Clark Oil Co., Inc	RF300–11537
Johnnie Collins Gulf #1	RF300–14992
Jones County, IA	RF272–85734
Joseph Matvya Gulf	RF300–15293
Just Us Gulf	RF321–11963
Kay's Gulf	RF300–14453
Kelly's Gulf	RF300–13898
Knight's Gulf	RF300–11608
Kowal's Gulf	RF300–15215
Lahey's Gulf	RF300–11506
Laurel Springs Gulf	RF300–14282
Lee Gulf Service Station	RF300–15069
Lester G. Juiifs	RF272–86443
Limehouse Gulf	RF300–14728
M. Coy Jackson	RF300–15125
Macaluso Oil Co., Inc	RF300–13031
Magic Valley Electric Coop., Inc	RF272–64095
Mahaska Oil Co	RF300–15051
Marion County, IA	RF272–85662
Marion's Gulf	RF300–14357
Mascoma Valley Reg. School District	RF272–79969
McMahon Oil Co	RF300–15156
McNeese Texaco	RF321–2690
Meadow Brook Service Station	RF300–12697
Melton Bank	RF300–15447
Melrose Gulf & Grocery	RF300–12208
Midview Gulf Service	RF300–14843
Mike's Gulf Service	RF300–15049
Miller's Gulf Service	RF300–12517
Milton Duke	RF300–12345
Minford Local School District	RF272–79944
Mountain View School District	RF272–79824
Mr. Discount Drug	RF300–12168
Nazione Gulf	RF300–14982
Nelson A. Mills	RF300–14751
New Rock Garage	RF300–15271
North Green Unit School District	RF272–84100
Parishville-Hopkinton School District	RF272–81838
Parson's Gulf	RF300–12191
Pedro Z. Martinez	RF300–15484
Petterson's Grocery	RF300–15304
Pickens County, AL	RF272–85497
Piedmont Hills Texaco	RF321–4527
Powers Gulf	RF300–12234
Providence Road Shell	RF315–10129
Purchase Line School District	RF272–82413
Quik Thrift Food	RF300–13379
R.B. Little, Inc	RF300–14260
Ray's West Side Gulf	RF300–14396
Raymond Muzny Texaco	RF321–8851
Red's Texaco	RF321–1237
Redwood Falls Municipal Hospital	RF272–85560
Rhoman Trucking	RF272–84327
Ridgedale Gulf Service	RF300–14365
Roseboro Gulf	RF300–13915
Rosemont Gulf	RF300–15029
Roshong's Gulf	RF300–11623
Roy Davis Gulf Service	RF300–13553
Sadieville Gulf	RF300–13294
Sam's Auto Service	RF300–12263
Schauer Service Station	RF300–12736
Sevilan Texaco	RF321–6374
Sheckler's Texaco	RF321–5898
Southern Park Gulf	RF300–14341
St. Johns Public Schools	RF272–81872
T.C. Graham's Gulf	RF300–14625
Ted's Service Station	RF300–12247
Ted's Texaco	RF272–1331
Texaco Bulk Plant	RF321–8676
Thayer County, NE	RF272–85613
The Sharon Hospital	RF272–85601
Theo Dinkins Service Station	RF300–15405
Thomas County, KS	RF272–85857
Toms Sierra Co., Inc	RF300–15170
Tony's Gulf Service	RF300–13727
Triangle Exxon	RF307–1760
Tube Bends, Inc	RF321–6403
TWP of Bridgewater	RF300–15395
Union Parish Policy Jury	RF272–85302
Union School Corporation	RF272–80592
W.E. Jersey & Sons	RF300–13983
W.E. Jersey & Sons	RF300–13985
Walt's Texaco Service Station	RF321–1472
Walworth County, SD	RF272–86061
Wayne Lockard	RF300–13300
Wayne's Shell #1	RF315–10108
Wayne's Shell #2	RF315–10109
Wayne's Shell #3	RF315–10110
West Raleigh Gulf	RF300–14943
Western School District	RF272–79562
Wildwood Gulf Service	RF300–14141
Williams' Grocery	RF300–14040
Willie Quall's Gulf	RF300–14004
Wright's Gulf	RF300–12625
Yellow Cab Co	RF300–15178

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: May 17, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91–12520 Filed 5–24–91; 8:45 am]

BILLING CODE 6450–01–M

Western Area Power Administration

Public Notice of Floodplain/Wetlands Involvement for the Fort Morgan Substation Rebuild Project; Morgan County, CO

AGENCY: Western Area Power Administration, DOE.

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ACTION: Public notice of floodplain/wetlands involvement and opportunity to comment.

SUMMARY: The Department of Energy (DOE), Western Area Power Administration (Western), is proposing to construct a new Fort Morgan North Substation Tap, and associated 115-kilovolt (kV) transmission lines near Fort Morgan, Colorado. Pursuant to DOE's "Compliance with Floodplain/Wetlands Environmental Review Requirements," 10 CFR part 1022, Western has determined that this proposed project would involve activities within a floodplain area. This notice is published to notify the public of the proposed action and to request comments on the potential actions to be taken in the floodplain of the South Platte River.

SUPPLEMENTAL INFORMATION: Executive Orders 11988 and 11990 direct Federal Agencies to consider the impacts of proposed projects on floodplains and wetlands, respectively. Pursuant to DOE's "Compliance with Floodplain/Wetlands Environmental Review Requirements," 10 CFR part 1022, Western has determined that this proposed project would involve activities within a floodplain area and Western will, therefore, prepare a floodplain/wetlands assessment.

The existing Fort Morgan Substation is located within the floodplain of the South Platte River. Western proposes to remove the existing Fort Morgan Substation from the floodplain. The substation will be replaced by two new substations that, according to Federal Emergency Management Agency floodplain maps, would not be located in a designated floodplain. The names of the new substations would be Fort Morgan North Substation and Fort Morgan West Substation.

The existing Fort Morgan Substation has provided power to the City of Fort Morgan and Morgan County Rural Electric Association (MCREA) since 1941. The existing substation has several problems relative to environmental and operational safety requirements. Inadequate drainage is a severe problem at the site. An irrigation canal is located to the south and immediately above the substation. The ground beneath the substation is saturated during wet periods. Existing drainage slopes north, approximately 1500 feet to the South Platte River, through the City's Riverside Park. The river's elevation is 3 feet lower than the substation grade. These conditions limit design options for proper drainage and oil spill containment at the existing site. The existing facilities at the substation are inadequate to serve current reliability criteria and projected load requirements. The City prefers that the substation be relocated to the west of Fort Morgan and MCREA prefers that the substation be relocated east of the town in order to efficiently serve their present and future customer loads. Two new substations, in lieu of the one existing facility, would better serve the needs of both the City and MCREA. The two new substations will greatly enhance the system reliability, and eliminate present operational safety and environmental problems.

DATES: Comments or suggestions concerning the floodplain involvement of Western's proposed actions are invited. Any comments are due June 12, 1991.

FOR FURTHER INFORMATION CONTACT: Comments or suggestions should be sent to: Mr. Stephen A. Fausett, Area Manager, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539, (303) 490-7200.

For additional information on the proposed project contact: Rodney D. Jones, Environmental Specialist, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539, (303) 490-7371.

Issued at Golden, Colorado, May 15, 1991.

William H. Clagett,

Administrator.

[FR Doc. 91-12525 Filed 5-24-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3959-2]

Pacific States Steel Site; Proposed Administrative Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), notice is hereby given of the proposed administrative cost recovery settlement entered into by EPA Region IX and the Special Master appointed by the United States District Court for the Northern District of California to oversee the assets of the Pacific States Steel Corporation (PSSC). The proposed settlement was entered into under the authority granted EPA in section 122(h) of CERCLA, and provides that PSSC will reimburse EPA within three years for all costs incurred at, or in connection with, an emergency removal conducted at the PSSC site in Union City, California.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region IX, (RC-1), 75 Hawthorne St., San Francisco, CA 94105, Attention: Steve Armsey, Regional Hearing Clerk.

DATES: Comments must be submitted on or before June 27, 1991.

ADDRESSES: A copy of the proposed settlement may be obtained from Steven Armsey, U.S. EPA Region IX Hearing Clerk (RC-1), 75 Hawthorne St., San Francisco, CA 94105. Comments should reference the Pacific States Steel Site and EPA Docket No. IX-90-21.

FOR FURTHER INFORMATION CONTACT: Robert Ogilvie, Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105, Telephone: (415) 744-1332.

Dated: May 16, 1991.

Jeff Zelikson,

Director, Hazardous Waste Management Division.

[FR Doc. 91-12514 Filed 5-24-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[PR Docket No. 91-138]

Hearing Designation Order; Branstine Flying Service, Inc. et al.

AGENCY: Federal Communications Commission.

ACTION: Hearing designation order.

SUMMARY: Notice is given that the application for an aeronautical advisory station (unicom) at Liberal Municipal Airport in Liberal, Kansas, filed by Branstine Flying Service, Inc., and the application for a unicom at the same location, filed by Liberal Aircraft, Inc. have been determined to be mutually exclusive and are therefore designated for hearing in a consolidated proceeding to determine in light of the evidence presented, which application, if any, should be granted.

EFFECTIVE DATE: May 28, 1991.

ADDRESSES: Federal Communications Commission, 2025 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Susan Jones, Aviation & Marine Branch, Private Radio Branch (202) 632-7175.

Hearing Designation Order

In re applications of Branstine Flying Service, Inc. and application of Liberal Aircraft, Inc. for an Aeronautical Advisory Station at Liberal Municipal Airport in Liberal, Kansas; PR Docket No. 91-138, File No. 810116, File No. 810345.

Adopted: May 7, 1991; Released: May 20, 1991.

1. The applications of Branstine Flying Service, Inc. (Branstine) and Liberal Aircraft, Inc. (Liberal) propose to operate an aeronautical advisory station (unicom) at Liberal Municipal Airport in Liberal, Kansas. Unicom stations provide information concerning flying conditions, weather, availability of ground services, and other information to promote the safe and expeditious operation of aircraft. See § 87.213(b)(1) of the Commission's Rules, 47 CFR 87.213(b)(1).

2. Both applicants propose to provide service at Liberal Municipal Airport, where there is no control tower or FAA flight service station. Section 87.215(b) of the Commission's Rules, 47 CFR 87.215(b), authorizes the operation of only one unicom station at such airports. Pursuant to §§ 1.227(b)(4) and 1.973(a) of the Commission's Rules, 47 CFR 1.227(b)(4) and 1.973(a), these applications are mutually exclusive and therefore must be designated for comparative hearing.

3. Liberal operates a unicom station under special temporary authority, initially granted April 4, 1988, and subsequently renewed. Liberal allowed its unicom license to expire prior to April 1988. Branstine has alleged, by letter to the FCC's Field Operations Bureau, Kansas City, Missouri office dated January 23, 1990, and by letter to the Private Radio Bureau dated October 20, 1990, that Liberal does not provide impartial unicom service in accordance with § 87.213(a) of the Commission's Rules, 47 CFR 87.213(a). In addition, Branstine has alleged by letter to the Private Radio Bureau dated December 18, 1990, that, since filing their 1988 application, Liberal Aircraft, Inc. has been sold to Aero Center. This sale would constitute a transfer of control without notifying the Commission, in violation § 1.65 of the Commission's Rules, 47 CFR 1.65.

4. *Accordingly, it is ordered,* That pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e), and § 1.221(a) of the Commission's Rules, 47 CFR 1.221(a), the above captioned applications are designated for hearing in a consolidated proceeding to determine the following issues:

a. To determine which applicant would provide the public with better aeronautical advisory service based on the following considerations:

(1) Location of the fixed-based operation and proposed radio station in relation to the landing area and traffic patterns;

(2) Hours of operation;

(3) Personnel available to provide advisory service;

(4) Experience of applicant and employees in aviation and aviation communications;

(5) Ability to provide information pertaining to primary and secondary communications as specified in § 87.213 of the Commission's Rules, 47 CFR 87.213;

(6) Proposed radio system including control and dispatch points; and

(7) The availability of the radio facilities to other fixed-base operators.

b. To determine whether Liberal Aircraft, Inc. transferred control to Aero Center without properly notifying the Commission pursuant to § 1.65 of the Commission's Rules, 47 CFR 1.65, as alleged by Branstine.

c. To determine whether Liberal provides impartial information concerning available ground services while operating the unicom station, under Special Temporary Authority, in compliance with § 87.213(a) of the Commission's Rules, 47 CFR 87.213(a).

d. To determine, in light of the evidence presented, which application, if any, should be granted to best serve the public interest, convenience, and necessity.

5. *It is further ordered,* That the burden of proceeding with the introduction of evidence with respect to the issues listed in subsection (a) and (d) shall be governed by § 1.254 of the Commission's Rules, 47 CFR 1.254. With respect to subsections (b) and (c), the burden of proof shall be upon Branstine.

6. *It is further ordered,* That to avail themselves of the opportunity to be heard, the applicants, Liberal and Branstine, must each file with the Commission, within 20 days of the mailing of this Hearing Designation Order, a written notice of appearance in triplicate, accompanied by a processing fee of $6,760.00, stating their intentions to appear on the date fixed for the hearing and to present evidence on the issues specified in this order, in accordance with § 1.221(c), (f) and (g) of the Commission's Rules, 47 CFR 1.221(c), (f) and (g).

7. The time and place of the comparative hearing will be specified in a subsequent order.

Federal Communications Commission.

Robert H. McNamara,

Chief, Special Services Division.

[FR Doc. 91-12434 Filed 5-24-91; 8:45 am]

BILLING CODE 6712-01-M

Barbara Key Peel et al; New FM Station Applications

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM docket No.
A. Barbara Key Peel	Jupiter, FL	BPH-890906MI	91-85
B. Sage Broadcasting Corporation of Jupiter, Florida	do	BPH-890912MF	
C. Sun Over Jupiter Broadcasting, Inc	do	BPH-890913MG	
D. Jupiter Inlet Mariners Radio Service, Inc	do	BPH-890913MH	
E. Triple J Properties, Inc	do	BPH-890913MI	
F. Tyler Communications, Limited Partnership	do	BPH-890913MK	
G. Diane M. Besler	do	BPH-890913ML	
H. (John E. Morris and Lawrence R. Baker d/b/a) Morbak Communications	do	BPH-890913MN	
I. Rieke General Partnership	do	BPH-890914MB	
J. Great Red Spot, Inc	do	BPH-890914MC	
K. Stone Mountain Broadcasting Company	do	BPH-890914MD	
L. Jupiter Radio, Inc	do	BPH-890914ME	
M. Intermart Boradcasting of Palm Beach, Inc	do	BPH-890914MG	
N. Owens Broadcasting, Ltd	do	BPH-890914MI	
O. Southern Media, Inc	do	BPH-890914MJ	
P. (Terry D. Moore d/b/a) Pelican Broadcasting	do	BPH-890914MK	

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Applicant	City/State	File No.	MM docket No.
Q. Mary R. Meadows	do	BPH-890914MN	
R. Nephele Wing Domencich	do	BPH-890914MO	
S. Beatrice Snyder	do	BPH-890914MQ	
T. Afro-American Broadcasters Limited	do	BPH-890914MS	
U. Marilyn Birk	do	BPH-890914MV	
V. (James B. Orthwein and George Y. Wheeler, III d/b/a) PalMar Radio Partners	do	BPH-8I0914MW	
W. Aragon One, Inc	do	BPH-890914MX	
X. Palm Beach Broadcasting, Inc	do	BPH-890914MY	
Y. Lighthouse Broadcasting, Inc	do	BPH-890914MZ	
Z. Mostella Broadcasting Corp., Inc	do	BPH-890914NC	
AA. (Fred Adams and Margaret Ann Wells, et al. d/b/a) Jupiter Radio Partners	do	BPH-890914NI	
AB. Jupiter Broadcasting Limited Partnership	do	BPH-890914NK	
AC. Jupiter Communications Co	do	BPH-890914NM	
AD. Jupiter Media Partners, Ltd	do	BPH-890914NN	
AE. Jupiter FM Broadcasters Limited Partnership	do	BPH-890914NO	
AF. Gold Coast Communications, Inc	do	BPH-890914NQ	
AG. Phyllis B. Giles	do	BPH-890914NS	
AH. KB Radio	do	BPH-890914NU	
AI. Manuel Palau	do	BPH-890914NX	
AJ. Laura Maria McComas De Los Reyes	do	BPH-890914NZ	
AK. Richard M. Carrus	do	BPH-890914OB	
AL. Jupiter Radio Broadcasting, Inc	do	BPH-890914OE	
AM. Treasure Coast Media, Inc	do	BPH-890914ML (DISMISSED HEREIN)	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicant
1. (See Appendix)	F
2. (See Appendix)	F
3. Financial	F,X
4. (See Appendix)	F
5. Cross-interest	Q
6. Air Hazard	K,M,O,T
7. Site Availability	F,I,U,V,AF,AI
8. Environmental	A,B,F,G,J,N,Q,R,S,U,V, W,X,AA,AB,AE,AF,AG, AH,AI,AK
9. Comparative	A–AL
10. Ultimate	A–AL

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036 (Telephone (202) 452–1422).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

1. To determine, with respect to F (Tyler), whether its principal Bruce Lyons (if he dismisses his application to serve Brandon, Vermont prior to resolution of Issue 3 in MM Docket 90–636) was an undisclosed party-in-interest in Maxine Snow's Lebanon, New Hampshire FM application (File No. BPH–880128NX).

2. To determine whether F (Tyler) violated § 1.65 of the Commission's Rules, and/or lacked candor, by failing to report the designation of character issues against other applicants in which one or more of its partners has or had an ownership interest and/or failing to report the dismissal of such applications (or termination of such ownership interest) with unresolved character issues pending.

4. To determine, from the relevant evidence adduced pursuant to Issues 1–3 above, whether F (Tyler) possesses the basic qualifications to be a licensee of the facilities sought herein.

[FR Doc. 91–12435 Filed 5–24–91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; U.S. Atlantic & Gulf, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–011102–014.

Title: U.S. Atlantic & Gulf/Western Mediterranean Rate Agreement.

Parties: Compagnie Generale Maritime, Compania Trasatlantica Espanola, S.A., Evergreen Marine Corporation (Taiwan) Ltd., Italia di Navigazione, S.p.A., Lykes Lines, Nedlloyd Lines, P & O Containers Limited, Sea-Land Service, Inc., Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment would alter the geographic scope of the Atlantic and Gulf sections of the Agreement to include Florida ports from Jacksonville to, but not including, Key West as part of the Atlantic section of the Agreement. Key West and Gulf Coast Florida ports would remain part of the Agreement's Gulf section.

Agreement No.: 217–011332.

Title: WALLNYK Joint Service—Wallenius Lines Space Charter and Cooperative Working Agreement.

Parties: WALLNYK Joint Service, Wallenius Lines AB.

Synopsis: The proposed Agreement would permit the parties to charter space on each other's vessels and to discuss and agree upon the capacity of the vessels utilized, their scheduling and their ports of loading and discharge in the trade from United States Atlantic and Gulf ports and Puerto Rico to ports in the United Kingdom, Eire, Continental Europe (including North Sea and Scandinavian ports), and islands of the Atlantic.

Agreement No.: 207–011333.

Title: WALLNYK Eastbound Atlantic Joint Service Agreement.

Parties: Wallenius Lines AB, Nippon Yusen Kaisha.

Synopsis: The proposed Agreement would permit the parties to form a joint service utilizing roll-on/roll-off vessels in the trade from United States Atlantic and Gulf Coast ports and Puerto Rico to ports in the United Kingdom, Eire, continental Europe (including North Sea and Scandinavian ports), and islands of the Atlantic.

Dated: May 21, 1991.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–12441 Filed 5–24–91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

First Michigan Bank Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 17, 1991

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Michigan Bank Corporation, Holland, Michigan; to acquire 100 percent of the voting shares of FMB-Trust and Financial Service, National Association, Holland, Michigan, a *de novo* bank.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Spearman Financial Corp., Wilmington, Delaware; to become a bank holding company by acquiring 99.5 percent of the voting shares of First National Bank, Spearman, Texas.

Board of Governors of the Federal Reserve System, May 21, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-12466 Filed 5-24-91; 8:45 am]

BILLING CODE 6210-01-F

Union Bank of Switzerland, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than June 17, 1991.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Union Bank of Switzerland, Zurich, Switzerland; to acquire 100 percent of the voting shares of Chase Investors Management Corporation New York, New York, New York, and thereby engage in acting as investment or financial advisor by providing portfolio investment advice and investment management services to institutions and individuals pursuant to § 225.25(b)(4) of the Board's Regulation Y.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. National City Corporation, Cleveland, Ohio; to acquire Consolidated Data-Tech, Inc., La Palma, California, and thereby engage in data processing and related services to business customers pursuant to §§ 225.25(b)(7) and (b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 21, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-12467 Filed 5-24-91; 8:45 am]

BILLING CODE 6210-01-F

Craig C. Wilcox; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be

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available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than June 17, 1991.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Craig C. Wilcox, Grand Rapids, Minnesota; to acquire an additional 20.95 percent of the voting shares of Wilcox Bancshares, Inc., Grand Rapids, Minnesota, for a total of 50.09 percent, and thereby indirectly acquire Grand Rapids State Bank, Grand Rapids, Minnesota.

Board of Governors of the Federal Reserve System, May 21, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-12465 Filed 5-24-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Meetings; Advisory Committees

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following advisory committees scheduled to meet during the month of June 1991:

Name: Health Care Technology Study Section

Date and Time: June 10-11, 1991, 8 a.m.

Place: Holiday Inn—Crowne Plaza, Parklawn Room, 1750 Rockville Pike, Rockville, Maryland. Open June 10, 8 a.m. to 9 a.m. Closed for remainder of meeting.

Purpose: The Study Section is charged with conducting the initial review of health services research grant applications addressing the utilization and effects of health care technologies and procedures as well as applications in the area of information and decision sciences relating to health care delivery.

Agenda: The open session on June 10 from 8 a.m. to 9 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Administrator, AHCPR. The closed sessions of the meeting will be devoted to a review of health services research grant applications emphasizing medical care technologies and procedures, and relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, title 5, U.S. Code, appendix 2 and title 5, U.S. Code 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meetings, or other relevant information should contact Alan E. Mayers, Ph.D., Agency for Health Care Policy and Research, room 18A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-3091.

Name: Health Services Developmental Grants Review Subcommittee

Date and Time: June 5-7, 1991, 8 a.m.

Place: Holiday Inn—Bethesda, Room to be announced, 8120 Wisconsin Avenue, Bethesda, Maryland.

Open June 5, 8 a.m. to 9 a.m.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications proposing to do analysis of data derived from experiments and demonstrations designed to test the cost-effectiveness or efficiency of particular methods of health services delivery and financing, for the research grants program administered by the Agency for Health Care Policy and Research.

Agenda: The open session of the meeting on June 5 from 8 a.m. to 9 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Administrator, AHCPR. During the closed sessions, the Subcommittee will be reviewing research and demonstration grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, title 5, U.S. Code, appendix 2 and title 5, U.S. Code 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meetings, or other relevant information should contact Gerald E. Calderone, Ph.D., Agency for Health Care Policy and Research, room 18A20, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-3091.

Name: Health Services Research Dissemination and User Liaison Advisory Committee

Date and Time: June 18-19, 1991, 8:30 a.m.

Place: Hyatt Regency Bethesda, Diplomat Ambassador Room, One Bethesda Metro Center, Bethesda, Maryland. Open June 18, 1:30 p.m. to 3:30 p.m., and June 19, 9 a.m. to 9:45 a.m. Closed for remainder of meeting.

Purpose: The Committee is charged with the review and making recommendations on grant applications for Federal support of conferences, workshops, meetings, or projects related to dissemination and utilization of research findings, and agency liaison with health care policy makers, providers, and consumers.

Agenda: The open sessions of the meeting on June 18 from 1:30 p.m. to 3:30 p.m., and June 19 from 9 a.m. to 9:45 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Administrator, AHCPR. During the closed portions of the meeting, the Committee will be reviewing grant applications relating to the dissemination of research on the organization, costs, and efficiency of health care. In accordance with the Federal Advisory Committee Act, title 5, U.S. Code, appendix 2 and title 5, U.S. Code 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Mrs. Linda Blankenbaker, Agency for Health Care Policy and Research, room 18A20, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-3091.

Name: Health Services Research Review Subcommittee.

Date and Time: June 12-13, 1991, 9 a.m.

Embassy Suites, Chevy Chase II Room, 4300 Military Road, Northwest, Washington, DC.

Open June 13, 9 a.m. to 9:30 a.m. Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications proposing analytical and theoretical research on costs, quality, access, and efficiency of the delivery of health services for the research grant program administered by the Agency for Health Care Policy and Research.

Agenda: The open session of the meeting on June 13 from 9 a.m. to 9:30 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Administrator, AHCPR. During the closed sessions, the Subcommittee will be reviewing analytical and theoretical research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, title 5, U.S. Code, appendix 2 and title 5, U.S. Code 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Christine T. Parker, Ph.D., Agency for Health Care Policy and Research, room 18A20, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-3091.

Agenda items are subject to change as priorities dictate.

Dated: May 21, 1991.

J. Jarrett Clinton,

Administrator, Agency for Health Care Policy and Research.

[FR Doc. 91-12547 Filed 5-24-91; 8:45 am]

BILLING CODE 4160-90-M

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meetings in June

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Correction of meeting notices.

SUMMARY: Public notice was given in the **Federal Register** on May 3, 1991, Volume 56, No. 86, on page 20431 that:

(1) The Behavioral Neurobiology Subcommittee of the Neurosciences Research Review Committee, NIMH, would meet June 6-8 at the Wyndham Bristol Hotel, 2430 Pennsylvania Avenue, Washington, DC. The location of this meeting has been changed to the Channel Inn, 650 Water Street, SW., Washington, DC 20024.

(2) The Board of Scientific Counselors, NIMH, would meet June 6-8 in Bethesda, MD. This committee meeting has been canceled.

(3) The Cognition, Emotion, and Personality Research Review Committee, NIMH, would meet June 6-8 at the Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814. The location of this meeting has been changed to the Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Bethesda, MD 20815.

Dated: May 21, 1991.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 91-12433 Filed 5-24-91; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 91N-0103]

Drug Export; IM®X AUSAB®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Abbott Laboratories, Inc., has filed an application requesting approval for the export of the biological product IM®x Ausab® in vitro disagnostic test system to Japan.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Carl J. Chancey, Center for Biologics Evaluation and Research (HFB-124), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8191.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Abbott Laboratories, Diagnostics Division, Abbott Park, IL 60064, has filed an application requesting approval for the export of the biological product IM®x Ausab® in vitro diagnostic test system to Japan. The IM®x Ausab® in vitro diagnostic test system is a micropartical enzyme immunoassay (MEIA) for the quantitative and qualitative determination of antibody to hepatitis B surface antigen (Anti-HBs) on the IMx analyzer. The application was received and filed in the Center for Biologics Evaluation and Research on April 5, 1991, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m. Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by June 7, 1991, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: May 8, 1991.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 91-12432 Filed 5-24-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91P-0043]

Cottage Cheese Deviating From Identity Standard; Temporary Permit for Market Testing; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the notice published in the **Federal Register** of April 2, 1991 (56 FR 13480), announcing that a temporary permit had been issued to Safeway, Inc., for the market testing of a product designated as "nonfat cottage cheese" that deviates from the U.S. standards of identify for cottage cheese (21 CFR 133.128), dry curd cottage cheese (21 CFR 133.129), and lowfat cottage cheese (21 CFR 133.131). The notice incorrectly stated, "The permit provides for the temporary marketing of a total of 400,000 pounds (181,440 kilograms) of the test product to be packaged in 16-ounce (454-gram) containers." It should have stated, "The permit provides for the temporary marketing of a total of 1,100,000 pounds (500,000 kilograms) of the test product." This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Shellee A. Davis, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0112.

In FR Doc. 91-7729, appearing at page 13480 in the **Federal Register** of Tuesday, April 2, 1991, the following correction is made: On the same page, in the third column, in the second complete paragraph, in the second line, "* * * 400,000 pounds (181,440 kilograms) of the test product to be packaged in 16-ounce (454-gram) containers." is

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corrected to read "* * * 1,100,000 pounds (500,000 kilograms) of the test product."

Dated: May 20, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-12484 Filed 5-24-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91D-0158]

Generic Drug Program; Development of a Monograph System; Request for Recommendations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is examining its administrative policies and procedures pertaining to the review and approval of generic drug products. FDA has received proposals and heard suggestions regarding the development and use of a monograph system for the approval of generic drug products. In general, a monograph would establish a public standard for the marketing approval of generic drug products. The standards could include information on the product's active and inactive ingredients, method of manufacturing, bioequivalence, and labeling. FDA invites interested persons to submit specific comments and recommendations on this concept and will consider any comments and recommendations it receives in deciding whether a monograph system should be developed.

DATES: Written comments and recommendations by August 26, 1991.

ADDRESSES: Submit written comments and recommendations to the Dockets Management Branch (HFA-305), Food and Drug Administration, room. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Center for Drug Evaluation and Research (HFD-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8049.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is examining its operating policies and procedures pertaining to the review and approval of abbreviated new drug applications (ANDA's). This action represents a continuation of a plan announced by the Secretary of Health and Human Services and the Commissioner of Food and Drugs on August 18, 1989, to improve FDA's generic drug review program, ensure the safety and effectiveness of generic drugs, and further strengthen the generic drug review system to prevent corrupt and fraudulent practices.

The Drug Price Competition and Patent Term Restoration Act of 1984 (the 1984 Amendments) authorized the submission of ANDA's for generic versions of "innovator" or "pioneer" drugs that were first approved after 1962. In general, the safety and effectiveness of a particular drug product are established by the pioneer firm's new drug application (NDA), so the 1984 Amendments authorize FDA to approve generic versions of approved drugs that have been shown through the ANDA review process to be the same as the pioneer drug. For most drug products, the 1984 Amendments require each applicant who submits an ANDA to provide information demonstrating, among other things, that: (1) The conditions of use prescribed, recommended, or suggested in the labeling for its proposed drug product have been previously approved for the pioneer drug; (2) the active ingredient in the proposed drug product is the same as that in the pioneer drug or, if the drug has more than one active ingredient, that all active ingredients are the same as the active ingredients in the pioneer drug; (3) the route of administration, dosage form, and strength of the proposed drug product are the same as those of the pioneer drug; (4) the proposed drug product is bioequivalent to the pioneer drug; and (5) the labeling for the proposed drug product is the same as that for the pioneer drug. (See 21 U.S.C. 355(j)(2)(A).) FDA published a proposed rule on ANDA's in the **Federal Register** of July 10, 1989 (54 FR 28872), implementing the statutory requirements contained in the 1984 Amendments for ANDA approval.

The 1984 Amendments also authorized the agency to release safety and effectiveness data that were submitted in an application for a pioneer drug upon the effective date of the approval of the first ANDA for that drug or upon the date upon which an ANDA could have been made effective had an ANDA been submitted (21 U.S.C. 355(j)). However, the statute does not permit FDA to release such information if "extraordinary circumstances" are shown.

In many cases, ANDA applicants have also been unable to acquire important information about a pioneer drug product, including information about the product's chemistry and method of manufacture. The lack of available information has created problems for ANDA applicants attempting to meet statutory requirements for generic drug product approval. The agency believes that a public monograph system may alleviate some of these problems by assisting generic drug manufacturers in manufacturing drug products that meet marketing approval standards. FDA also believes that a monograph system may streamline the ANDA review process and assist the agency in its administration of that process. A monograph system may have the potential to help ensure generic drug safety and effectiveness and increase public confidence in generic drug products.

A. Monographs and Generic Drug Products: Recent Comments and Suggestions

On April 6, 1990, the chairman of the House Subcommittee on Oversight and Investigations wrote to the former Acting Commissioner of Food and Drugs to make several comments and suggestions on FDA's and ANDA regulations and procedures. One comment stated:

> The FDA should consider replacing the existing sytem of abbreviated new drug application (ANDA) approvals with a monograph approach in which the agency establishes and makes public the chemistry and any special bioequivalence requirements (and attendant testing procedures) for the manufacture of generic drugs. Labeling of generic products could also be specified in the monograph, eliminating that part of the ANDA review process entirely. The agency currently approves antibiotic and over-the-counter drug approvals under monograph approaches.

Under this approach, the FDA would develop such monographs for products now in the pipeline and require innovator companies to develop such monographs as a condition of new drug application (NDA) approval for future drug products. Such a system appears feasible, would likely improve the quality of generic drugs, and would minimize the incentive for payoffs and fraud. In particular, binding monographs would eliminate the inconsistency of chemistry and bioequivalence requirements among reviewers which formed the basis for the recent scandal and created concern about the competence of the FDA's review.

Also, binding monographs could establish standards for certain of the most frequently filed supplements for broad therapeutic range drugs. These would include change of facility, change of supplier of active ingredient raw material, change of supplier of excipients, change of the container closure system, and change in label.

(Letter from the Honorable John D. Dingell, chairman of the Subcommittee on Oversight and Investigations, to James S. Benson, Acting Commissioner of Food and Drugs, April 6, 1990, pp. 1 and 2.)

The U.S. Pharmacopeia Convention (U.S.P.C.) presented a different monograph system in a statement before the Blue Ribbon Committee on Generic Medicines (Blue Ribbon Committee). The statement noted the U.S.P.C.'s role in publishing the United States Pharmacopeia (U.S.P.) and the National Formulary (N.F.). According to the statement, the U.S.P. and the N.F. "contain continuously revised monographs for over 3,300 drugs and other articles." (Statement of Jerome A. Halperin, Executive Director, U.S. Pharmacopeial Convention, Inc., before the Blue Ribbon Committee, June 20, 1990, p. 1.) The U.S.P.C. proposed that the sponsor of the first NDA for a drug submit a draft U.S.P. monograph, as part of the application. Under this proposal,

> The draft monograph could contain the bioavailability requirements, if inclusion of such requirements is found to be feasible and advisable * * *. The draft monograph would be reviewed by the NDA chemist and when determined to meet FDA standards, transmitted to USP upon approval of the NDA. The USP and the Committee of Revision would publish the monograph in the form provided by FDA and agree not to subject it to the revision process for a certain period of time post approval (e.g. three years) without the concurrence of both the FDA and the NDA holder unless the drug became multisource or a problem surfaced, such as with international trade of the drug.

(Id. at p. 3.)

The U.S.P.C. stated that its proposed monograph system would contain requirements for strength, quality, purity, packaging, and labeling and that "Standards established in USP monographs and General Chapters would be public to the maximum extent; subject to public scrutiny, and public participation in revision." (Id. at p. 4.)

The U.S.P.C. encouraged new drug manufacturers to provide reference standards materials to the U.S.P.C. for use in developing official chemical reference standards and indicated that, while the FDA's antibiotic monograph system could serve as a model for a generic drug product monograph system, U.S.P. monographs could be updated much more easily than FDA's antibiotic monographs. (Id. at pp. 4 and 5.)

On November 15, 1990, the Blue Ribbon Committee created by the Generic Pharmaceutical Industry Association (GPIA) issued a report titled "Generic Medicines: Restoring Public Confidence." This report identified several problems with a generic drug monograph system, such as difficulties in specifying chemistry review criteria, manufacturing equipment and processes used, and bioequivalence requirements. The report also expressed some concern that pioneer drug manufacturers, if given the responsibility of preparing a monograph as part of an NDA, would be tempted to develop "unnecessarily narrow or restrictive criteria in order to discourage generic competition" and that FDA "would not have the benefit of the extensive chemistry, pharmacokinetic, and pharmacodynamic database expanded by many scientific studies, mostly carried out by academic, industrial, and government scientists not associated with the innovator, which typically only becomes available after a drug product is approved for marketing." Consequently, the Blue Ribbon Committee did not endorse a generic drug monograph system for the first group of ANDA's for a particular drug product, but did recommend "developing guidance and expanding the existing USP monographs to include what is learned during reviews of the group of 'first-in' ANDA's to provide additional guidance to subsequent ANDA applicants on chemistry, bioequivalence, and perhaps labeling." (Generic Pharmaceutical Industry Association, "Generic Medicines: Restoring Public Confidence," November 15, 1990, pp. 14 to 16.)

These comments are available in their entirety under the docket number listed in the heading of this document.

B. FDA's Experience with Monograph Systems

FDA has monograph or monograph-like systems in place for ceretain drug products and has, at other times, considered the use of monographs for other products. These systems and proposals could serve as a model for a generic drug product monograph system and are described below.

C. Antibiotic Drug and Insulin Monographs

Sections 506 and 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 356 and 357) require the Secretary to provide for the certification of drugs composed wholly or partly of insulin and of antibiotic drugs, respectively. Both provisions direct the Secretary to promulgate regulations for such certification and state that the regulations shall contain provisions prescribing:

> (1) standards of identity and of strength, quality, and purity; (2) tests and methods of assay to determine compliance with such standards; (3) effective periods for certificates, and other conditions under which they shall cease to be effective as to certified batches and as to portions thereof; (4) administration and procedure; and (5) such fees, specified in such regulations, as are necessary to provide, equip, and maintain an adequate certification service.

(21 U.S.C. 356(b), see also 21 U.S.C. 357(b).)

The regulations, which are at 21 CFR part 429 (for insulin) and 21 CFR parts 440 to 460 (for antibiotics), contain standards and specifications for insulin and antibiotic drug products and are based on information contained in the marketing application for the drug product. Thus, these regulations serve as public standards that are applied, along with other requirements, during the FDA approval process for generic versions of those products.

D. Over-the-Counter (OTC) Monographs

The Drug Amendments of 1962 (Pub. L. 87-701) require applicants to show that their drug products are both safe and effective. The amendments prompted FDA to examine the effectiveness of OTC drug products. When the OTC drug review program began, over 300,000 OTC drug products, consisting of approximately 700 active ingredients, were on the market. Therefore, rather than review products individually, FDA developed a program to review active ingredients and to group them into classes or therapeutic categories. FDA classifies the active ingredients in three ways: category I (generally recognized as safe and effective and not misbranded); category II (not generally recognized as safe and effective or is misbranded); and category III (insufficient data to permit classification).

The review process itself has involved three-steps. First, advisory panels reviewed data submitted by drug manufacturers and other parties and presented their findings and a recommended monograph to FDA. The recommended monographs include standards on active ingredients, labeling indications, warnings and adequate directions for use, and other conditions necessary for the drug's safety and effectiveness. (See 21 CFR 330.10(a)(5)(i).) They do not, however, contain information on inactive ingredients, bioavailability, or method of manufacturing. FDA publishes these recommendations in the **Federal Register** and requests public comment on them. (See 21 CFR 330.10(a)(6).) Second, after reviewing the advisory panels' findings and public comments, FDA publishes a "tentative final monograph" in the **Federal Register**, "establishing conditions under which a category of OTC drugs is generally recognized as safe and effective and not misbranded," and provides opportunities for public comment or for

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an administrative hearing. (See 21 CFR 330.10(a)(7).) Finally, after reviewing any comments or objections to the tentative final monograph and any new data and upon the completion of any administrative hearing, FDA publishes a final monograph. See 21 CFR 330.10(a)(9).) The agency has published a number of final monographs in several drug categories, such as antacid and anthelmintic drug products, and these monographs can be found at 21 CFR parts 331 through 357.

The OTC drug monograph system in use today allows firms to market an OTC drug product without any product specific review providing the product conforms to a published monograph. (See 21 CFR 330.13.) As noted, however, these monographs are usually limited to standards on active ingredients labeling indications, warnings and adequate directions for use, and any other conditions necessary for the drug's safety and effectiveness; they generally do not contain information on inactive ingredients, bioavailability, or method of manufacturing.

E. Proposals for Prescription Drug Monographs

During the mid-1970's, the agency explored the possibility of using a monograph system for regulating prescription drugs.

On June 20, 1975, FDA announced its intent to create a monograph system for regulating prescription drugs. (See 40 FR 26142 and 26146.) The monographs would have specified the conditions under which a drug could be marketed without prior FDA approval and would have included items such as complete labeling, product specifications, dosage information, bioavailability data, and analytical methods. (See McEniry, "Drug Monographs," Food, Drug, Cosmetic Law Journal, vol. 29, p. 168 (1974); 40 FR 26142 at 26146.) FDA's plan was to publish the monographs as regulations in the Federal Register and the Code of Federal Regulations (40 FR 26142 at 26151). Most drugs that would have been selected for the monograph process would have been those generally recognized as safe and effective under the Drug Efficacy Study Implementation Program. (See McEniry, "Drug Monographs," Food, Drug, Cosmetic Law Journal, Vol. 29, p. 169 (1974).) However, FDA never issued a rule establishing such a system for prescription drug monographs.

In 1978, FDA examined a comprehensive monograph system as part of the proposed Drug Regulation Reform Act of 1978. The bill would have required a manufacturer developing a "new drug entity" to seek approval of a monograph for that entity as well as a marketing application for the product. (See Department of Health, Education, and Welfare, "Drug Regulation Reform Act of 1978, Section-by-Section Analysis," at p. 16 (1978).) The monograph would identify the drug entity, state the indications for which the product had been determined to be safe and effective, describe the products that could be licensed under the monograph, contain samples of physician and patient labeling (as an appendix to the monograph), and prescribe product standards and requirements. (Id. at pp. 15 to 19.) The bill would also authorize the release of scientific data related to risk and effectiveness, including full reports of the clinical investigations. The bill, however, was never enacted.

II. Request for Comments and Recommendations

The agency believes that there may be merit in a monograph system for generic drug products. Such a system could result in a more efficient and uniform generic drug review and approval process, stimulate competition, and reduce costs to the agency, to consumers, to industry, and, ultimately, to the Federal Government's reimbursement programs under titles XVIII and XIX of the Social Security Act.

FDA is aware that a monograph system may necessitate disclosure of information about the pioneer drug product, including information about manufacturing methods, that the research industry might consider to be proprietary information. The disclosure of such information may, therefore, be viewed as having a potential adverse economic impact on future sales of pioneer drug products. Nevertheless, the agency believes that the availability of such information could significantly assist generic drug manufacturers in replicating pioneer drug products, ensuring generic drug safety and effectiveness, and increasing public confidence in generic drug products. A monograph system that contains detailed information on product formulation, method of manufacture, and method of assay would also increase assurance of the uniformity of all generic versions of a drug product and reduce potential drug quality problems associated with product variability. Thus, FDA is also interested in comments as to whether some type of consideration, such as a change in the patent term or marketing exclusivity period, should be extended to the pioneer drug industry in exchange for agreeing to the disclosure of information that has previously not been made available. Comments might also address other legal issues, such as the need for additional legislation, the disclosure of information on the pioneer drug, and the impact of a monograph system on the ANDA provisions at 21 U.S.C. 355(j).

Therefore, with this notice, FDA invites persons to submit comments and recommendations regarding the possible development and use of a monograph system for generic drug products. In addition to the items mentioned above, the agency specifically invites comments on the following issues:

1. How should monographs be used? Should they be used as a substitute for the existing review and approval process or should they be used to supplement the existing review and approval process? How would monographs work under either scenario?

2. Who should prepare a monograph? As noted above, some proposals would have the pioneer manufacturer prepare the monograph as part of its NDA. Other proposals would have FDA or other organizations prepare the monograph.

3. What information should be contained in a monograph? Some proposals would create monographs that would include bioequivalence standards and detailed information about the method of manufacture. Other proposals would be limited to chemistry and labeling information. Should a monograph contain sufficient information on the product's chemistry and manufacturing, including information on excipients and synthesis, to enable a firm to produce an identical product? Currently, ANDA applicants may not have access to such information. How detailed should bioequivalence standards be? Are the bioequivalence guidances that FDA has been issuing appropriate models?

4. When should a monograph be prepared? For example, should monographs be prepared before the pioneer drug product is approved or at the time of approval? Or should the monograph be prepared after there has been some experience with the drug product? As noted in one of the proposals, valuable bioequivalence information may be acquired after marketing experience with the first generic drug product. If a monograph is prepared before or at the time of initial approval, the bioequivalence information would not have the benefit of such postmarketing experience.

5. What procedures should FDA establish for issuing and revising monographs? Should monographs be promulgated through notice and comment rulemaking? If not, what procedures should be used?

6. How should deviations from the monograph for a different active ingredient in a combination product, a new strength or new dosage form or route of administration, etc., be addressed, if permitted?

FDA will review all comments and recommendations submitted in response to this notice along with those already received by the agency in deciding whether to develop a monograph system for generic drug products.

Interested persons may, on or before August 26, 1991, submit written comments or recommendations to the Dockets Management Branch (address above). Two copies of any comments or recommendations are to be submitted, except that individuals may submit one copy. Comments or recommendations are to be identified with the docket number found in brackets in the heading of this document. Received comments and recommendations may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 22, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-12548 Filed 5-24-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91N-0194]

Drug Export; Colavage™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Block Drug Co., Inc., has filed an application requesting approval for the export of the human drug Colavage™ to the United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Thomas J. Schall, Division of Drug Labeling Compliance (HFD-313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8054.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Block Drug Co., Inc., 257 Cornelison Ave., Jersey City, NJ 07302-9988, has filed an application requesting approval for the export of the drug Colavage™, to the United Kingdom. This product is an isotonic and iso-osmotic oral lavage preparation indicated in the cleansing of the gastrointestinal tract prior to colonoscopy or barium x-ray examination. The application was received and filed in the Center for Drug Evaluation and Research on April 30, 1991, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by June 7, 1991, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: May 15, 1991.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 91-12485 Filed 5-24-91; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority; Reorganization of the Bureau of Data Management and Strategy

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA) is amended to reflect a major realignment of the Bureau of Data Management and Strategy (BDMS) along with some minor changes to the Office of Budget and Administration (OBA). Two divisions are being transferred from the Office of Budget and Administration (OBA) to BDMS. The two divisions affected are the Division of Administrative Systems and the Division of Medicare Operations Support. In addition, two new offices are established in BDMS as a result of consolidating management responsibility for HCFA's major databases. The new offices will be the Office of Information Technology and the Office of Enrollment Systems. The other four offices are the Office of Information Resources Management, the Office of Computer Operations, the Office of Statistics and Data Management, and the Office of Program Systems. In OBA, the Office of Administrative Services is restructured for improved management of the remaining administrative services activities and several division level functional statements in the Office of Human Resources are updated.

The specific changes to Part F are as follows:

- Section FH.20.A.1.b., Division of Staffing and Employee Services (FHA62), is amended to reflect an update to the functional statement for the division. The new functional statement should read as follows:

b. Division of Staffing and Employee Services (FHA62)

- Provides service to all Central Office HCFA components in the areas of recruitment, in-service staffing, and pre-employment investigations for all types of appointments and all occupational classes and levels of work (except Senior Executive Service, Schedule C, and related appointments).

- Provides advice, guidance, and consultation to HCFA supervisory and management officials on such issues as optional staffing mixes, recruitment sources, and qualification factors.

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• Interprets regulations, guides, directives, and bulletins related to staffing and personnel services.

• Establishes and maintains the employment data base for routine and special reports and statistical studies related to the employee population.

• Plans and controls the central system for all personnel and payroll employee transaction processes (except U.S. Savings Bonds), serves as the official custodian for all personnel folder clearances, confidential reports, employment agreements and other related areas.

• Plans, administers, and evaluates HCFA-wide employee relations activities.

• Provides general employee and supervisory counseling on such matters as employee/management communication, retirement, life insurance, health plans, worker's compensation claims, and related areas.

• Serves as the central HCFA reference point for inquiries, guidance and interpretation on employee relations matters.

• Processes insurance claims and annuity applications for retirees and survivors of deceased employees. Processes the full range of employee benefit and payroll transaction documents, with the exception of U.S. Savings Bonds.

• Assures due process in adverse personnel actions and provides procedural advice in the processing of grievances and appeals under Agency and negotiated agreements.

• Directs programs for occupational health services, employee health enhancement, physical fitness, and blood assurance programs. Plans and administers the Agency's contract for the Employee Assistance Program. Directs and administers HCFA's child care initiative. Directs the Agency's Voluntary Leave Transfer Program.

• Under direction of the HCFA Deputy Ethics Officer, plans and administers the entire ethics program for both central and regional offices. Reviews financial disclosure reports prior to departmental submittal and coordinates outside activities requests and approvals.

• Section FH.20.A.1.C., Division of Performance and Development (FHA63), is amended to reflect an update of the functional statement for the division. The new functional statement reads as follows:

c. Division of Performance Management and Development (FHA63)

• Provides leadership, direction, and control with respect to HCFA's employee training and career development activities, performance management, and awards programs in both headquarters and the regions.

• Provides management advisory service concerning the regulatory and procedural aspects of implementing the assigned programs.

• Serves as an Agency representative in dealing with employee/management/union organizations, the Department of Health and Human Services, and other Federal agencies on the issues concerning the Division's programs.

• Plans, coordinates, and executes a wide range of major studies and projects involving performance management, employee development, and awards issues of Agency-wide magnitude.

• Section FH.20.A.3., Office of Administrative Services (FHA5), is deleted in its entirety and replaced by the following new section. The Office of Administrative Services is amended to reflect the transfer of the Division of Medicare Operations Support and the Division of Administrative Systems (except for the telecommunications functions) to BDMS. The new section FH.20.A.3. reads as follows:

3. Office of Administrative Services (FHA8)

• Provides services, policy direction, coordination, and broad operational control of HCFA's voice telecommunication services, administrative services, single-site planning, printing and distribution services, conference management, records and mail services, facilities management, space management, property management, real property management, and related support services.

• Conducts extensive analyses in the areas of facilities management, property management, real property management, environmental safety and security, and space planning for HCFA's single site.

• Determines the overall impact, budget and administrative, of changes in the areas of facilities management, property management, real property management, environmental safety and security, and space planning.

• Coodinates and handles graphics services for the Agency.

a. Division of Facilities Management (FHA81)

• Provides direct services and establishes policy for other HCFA components with respect to facilities management, real property management, space management, supplies, space acquisition, management and maintenance, conference facilities, and parking.

• Develops comprehensive budget estimates for and management of centralized facilities management funds.

• Conducts extensive analyses in the areas of facilities management, space management, real property management, property management, environmental safety and security, printing and distribution management for HCFA's single site.

• Analyzes and determines the budget and administrative impact of changes in the areas of facilities management, space management, real property management, property management, environmental safety and security, printing and distribution management.

• Coordinates all Information Resources Center activities.

b. Division of Safety and Property Management (FHA82)

• Provides direct service and establishes/implements policies and procedures for the HFCA personal property and supply management programs.

• Maintains and operates the warehouse and the computerized property management and accountability system.

• Provides direct service and establishes/implements policies and procedures for environmental safety nationwide, emergency preparedness, civil defense, tort claims, accident and fire prevention, and personal security clearances.

• Conducts special studies and analyses in the areas of personal property and supply management, and environmental safety and security.

c. Division of Telecommunications and Graphics Services (FHA83)

• Manages all activities associated with the operation of HFCA's nationwide voice telecommunications system.

• Conducts extensive research, studies, and analyses associated with voice telecommunications activities in HFCA.

• Develops policies and procedures for nationwide implementation and operation of various voice telecommunications systems in HFCA.

• Develops policies, standards, and procedures for HCFA's graphics management program.

• Provides graphics services to the Agency.

• Serves as the Agency's liaison on all matters concerning graphics policy and the acquisition of graphics supplies and services.

d. Division of Printing and Distribution Services (FHA84)

• Provides printing, reprographic, distribution, and forms management services for HFCA.

• Conducts research, planning, and analyses to determine Agency needs for photocopying equipment and printing services.

• Develops policies, standards, and procedures for HFCA's printing, reprographics, forms, and distribution programs.

• Obtains printing, binding, and distribution services from private vendors under contracts negotiated and entered into by the Government Printing Office (GPO).

• Manages and maintains centralized program (except for research and demonstrations) for the distribution, printing, and reproduction of forms and other printed materials.

• Manages HFCA's acquisition, leasing and utilization of copying equipment.

• Provides HFCA liaison on all forms, distribution, and printing matters with the HHS, the General Printing Office and the Congressional Joint Committee on Printing.

• Sections FH.20.D.1. through FH.20.D.4. are deleted in their entirety and replaced by the new subordinate structure of BDMS. The new sections FH.20.D.1. through FH.20.D.6. read as follows:

1. Office of Information Resources Management (FHE1)

• Plans, organizes, and coordinates the activities required to maintain a HCFA-wide Information Resources Management (IRM) program including the management of funds to support IRM operations and information systems development activities.

• Formulates and executes the HCFA IRM common expense budget and Information Technology Systems (ITS) plans and budget in conjunction with HCFA-wide budgetary submissions to the Department.

• Develops and maintains a process to administer, document, and monitor the software and hardware changes planned and implemented within HCFA.

• Provides systematic identification, assessment, and certification of new, revised, or existing HCFA information systems and processes in accordance with HCFA policies, standards, information plans, and department requirements.

• Develops, coordinates, and directs the HCFA ADP Systems Security Program to ensure the protection of HCFA systems and ADP equipment.

• Designs, evaluates, and performs analyses related to HCFA-wide data administration and data base administration improvement projects.

• Negotiates and administers agreements and provides ADP liaison between HCFA users, the Social Security Administration, and other external organizations for the provision of ADP capacity and support services.

• Formulates strategies, prepares procurement documents, and performs contract administration activities for major contractual agreements through all phases of the systems development life cycle.

a. Division of Information Systems Management (FHE11)

• Direct the planning, design, and maintenance of information systems development standards and database administration policies and standards, including review of work products for compliance with standards, and the support of the Standards Board activities.

• Plans, directs, and coordinates the development and maintenance of a project management and software metrics program to monitor, evaluate, and improve the information systems development processes for HCFA. Directs the establishment and maintenance of the HCFA IRM systems inventory.

• Directs and coordinates the performance of post-implementation reviews for Agency systems to validate that all systems components are maintained concurrently with the operational systems.

• Formulates strategies and performs contract administration activities for major software contractual agreements across all phases of the information systems development life cycle.

b. Division of ADP Planning and Resources Management (FHE12)

• Plans, develops, and implements HCFA-wide policies, procedures and analyses related to IRM planning and ADP resource maangement.

• Formulates and assures compliance with HCFA's IRM Plan and associated long range strategic and operational plans. Formulates and executes the HCFA Information Technology System (ITS) 5-year plan and the HCFA ADP common expense budget.

• Develops, implements, and maintains a HCFA-wide financial management program to fund and support IRM operations and information systems development activities, all HCFA equipment and related IRM/ADP services.

• Administers the HCFA project management program and performs Agency-wide resource accounting functions to assess and monitor ADP resource utilization.

• Develops, coordinates, and directs the HCFA ADP Systems Security Program.

• Negotiates and administers agreements between HCFA users and other external organizations for the provision of ADP/IRM support services.

• Coordinates HCFA's participation in the Federal Information Processing Standards Program and administers HCFA's ADP/IRM Contract Administration Program.

2. Office of Statistics and Data Management (FHE2)

• Performs strategic planning to enhance program data and analysis to meet program policy development and program assessment requirements.

• Develops, disseminates, and monitors data release policies for HCFA.

• Identifies, documents, and measures the trends in the reliability of program decision support data and information needed to support HCFA's policy development, research, and program assessment goals.

• Represents the Agency as the primary contact with the Department, other Federal agencies, the health care community, and the public for the use and release of HCFA program data.

• Plans, organizes, and coordinates data development and information analysis activities required to identify, develop, implement, and document decision support and statistical analysis processes.

• Provides decision support information and analysis to meet the Agency's research, actuarial, legislative, economc, and policy analysis; and the objectives of the Department's Medical Treatment Effectiveness initiative.

a. Data Release Policy Staff (FHE2–1)

• Defines, develops, and disseminates data release policies and procedures for the Agency.

• Manages the coordination and clearance of data to support epidemiological and health studies, including the preparation and clearance of beneficary letters for the Administrator's signature.

• Represents the Agency as the primary contact for program data release issues with the Department, other Federal agencies, the health care community, and the public.

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• Determines pricing policies for release of HCFA data, i.e., Public Use Files.

• Chairs and provides staff support to the HCFA Data Release Steering Committee.

• Develops and manages Interagency Agreements covering the transfer of program data and the provision of information services to other government entities.

• Monitors the preparation of and compliance with data release agreements with non-HCFA organizations and individuals.

• Develops, implements, and maintains the HCFA Data Release Policy Guide.

• Coordinates all Privacy Act and Freedom of Information Act activities in the Office.

• Plans, coordinates, and manages program data user training conferences, including the design, development, and preparation of instructional and presentation materials.

b. Division of Payment Policy Support (FHE21)

• Develops strategic short- and long-range plans to acquire the data necessary to meet program payment policy development and assessment requirements.

• Organizes and analyzes data to develop the information systems necessary to support the Agency's and the Department's needs for HCFA program data in support of payment policy analysis and related research.

• Defines, develops, and implements quality assurance procedures covering decision support processes to measure and improve the reliability and usefulness of program data for decision support and statistical analysis. Develops statistical analyses and trend data to monitor data reporting and data reliability.

• Provides technical data analysis and processing support required to develop payment rates to advise Senior HCFA management of the information necessary to evaluate the effectiveness of current and proposed health care financing systems, the implications of experimental financing methods on providers and physicians, the cost aspect of the effectiveness of care being received by beneficiaries, and the monetary effects of new legislation on alternative reimbursement methodologies.

c. Decision Support Division (FHE22)

• Develops strategic short- and long-range plans to define, acquire, and measure the reliability of the data and information necessary to support intramural and extramural health services research to advance the Department's mission. Reviews legislation to define the program decision support activities needed to implement and monitor legislatively-mandated health services research initiatives and program changes.

• Defines, develops, and implements quality assurance programs to measure trends and improve the reliability and usefulness of Medicare program data.

• Plans, organizes, and coordinates activities required to define the sources, uses and reliability of HCFA data to support research, program administration and evaluation, actuarial and statistical initiatives, and the Department's needs for HCFA program data in health services, medical effectiveness and epidemiologic research.

• Performs liason function to advise researchers, program analysts, and actuaries on the sources, uses and limitations of program data. Provides technical data analysis and processing assistance required to effectively use HCFA program data for decision support.

• Analyzes and organizes information analysis describing the Medicare and Medicaid programs and national health care expenditures and develops information dissemination systems necessary to support the Agency's need for Medicare and Medicaid program data.

• Develops and maintains the sample data sets necessary to support beneficiary-based program surveys and assessments, including support to the Medicare Beneficiary Health Status Registry, the Current Beneficiary Survey, the Medicare History Sample, and the Peer Review Organizations.

• Participates in the development and establishment of data standards used for HCFA programs, including beneficiary enrollment, uniform billing, uniform coding systems, and common reporting systems (e.g., Common Working File).

d. Division of Special Programs (FHE23)

• Develops strategic short- and long-range plans to define and acquire institutional financial data and special medical data on specific Medicare populations.

• Analyzes and organizes data to develop the information systems necessary to support the Agency's and the Department's special program data and information requirements.

• Designs, develops, implements, and operates special program data collection and processing systems, e.g., Hospital Cost Report Information System (HCRIS) and End Stage Renal Disease (ESRD) Program Management and Medical Information System (PMMIS), to identify and meet special program data and information needs.

• Defines, develops, and implements quality assurance programs pertaining to special programs systems to improve the reliability and usefulness of program decision support and statistical data.

• Identifies and implements processes and procedures that will take maximum advantage of the multi-tier data processing architecture, as well as to maximize the efficient use of the mainframe to process large scale special program applications.

• Represents the Bureau as primary contact for special program data collection and use issues within the Department and with outside groups.

3. Office of Program Systems (FHE3)

• Handles the receipt, control, edit, quality assurance, and basic monitoring of common working file claims data and input data relating to program management systems, including development and maintenance of ADP application telecommunications software providing access and front end quality control.

• Performs the planning, organization, and coordination activities required to build and control HCFA'S National Claims History databases (NCHDB) for both the Medicare and Medicaid programs and related hardware requirements.

• Implements and maintains the centralized provider survey, certification (including clinical labs), and billing databases which provide on-line query and reply capabilities through a national telecommunications network.

• Provides standard and ad hoc data files and reports on health standards and quality data, intermediary and provider statistical and reimbursement data, and information regarding chain ownership data.

• Designs, implements, maintains, and ensures the continuing operations of software applications which array and Program Management (PM) data in accordance with the ongoing program management needs of HCFA.

• Develops short- and long-range NCHDB and PM IRM plans to ensure that the proper hardware and software is available to meet the Agency's NCH and PM operations support needs and to support budget development and life cycle planning.

• Defines and coordinates an NCHDB and PM quality assurance program to ensure that the databases are reliable for use in program development and evaluating ongoing program operations.

• Designs, implements, and maintains a number of computer systems that are used by HCFA to monitor the performance of the fiscal intermediary contracting community.

a. Division of Program Management Systems (FHE31)

• Handles the receipt, control, edit, quality assurance, and basic monitoring of input data relating to program management systems.

• Implements and maintains the centralized provider survey, certification (including clinical labs), and billing databases which provide on-line query and reply capabilities through a national telecommunications network.

• Provides standard and ad hoc data files and reports on health standards and quality data, intermediary and provider statistical and remibursement data, and information regarding chain ownership data.

• Maintains and enhances the systems that enable HCFA to monitor the quality of claims processing in carrier and intermediary sites.

• Designs, implements, maintains, and ensures the continuing operations of software applications which array Program Management (PM) data in accordance with the ongoing program management needs of HCFA.

• Negotiates user requirements and develops design alternatives, systems specifications, test, conversion and implementation plans, operation plans (e.g., HDC support requirements), and documentation for PM and related applications.

• Defines and coordinates a PM data quality assurance program including the development of process controls, edits and statistical measures to ensure that the databases are reliable for use in program development and evaluating ongoing program operations.

• Manages PM database administration activities directed toward ensuring the integrity of the databases.

• Participates in the development and establishment of data standards used for HCFA programs, including uniform billing, uniform coding systems and common reporting systems.

b. National Claims History Division (FHE32)

• Manages and directs the receipt, control, editing, quality assurance, and basic monitoring of the common working file claims and program liability data.

• Performs the planning, organization, technical consultation, and coordination activities required to design, develop, document control, and ensure the integrity of HCFA's National Claims History database (NCHDB) for both the Medicare and Medicaid programs and related hardware requirements.

• Defines systems accesses, interfaces, and operational requirements to ensure the efficient development and use of the NCHDB for program purposes.

• Negotiates user requirements and develops design alternatives, systems specifications, test, conversion and implementation plans, operation plans (e.g., HDC support requirements), and documentation for the NCHDB and related applications.

• Defines and coordinates an NCHDB and beneficiary record quality assurance program including the development of process controls, edits, and statistical measures to ensure database validity and integrity for use in program development and evaluating ongoing program operations. Defines and coordinates a beneficiary record quality assurance program to ensure the consistency of data maintained at the Common Working File sites with the enrollment databases.

• Manages NCH database administration activities directed toward ensuring the integrity of the databases.

• Designs, implements, and maintains the Medicaid drug information databases.

• Participates in the development and establishment of data standards used for HCFA programs, including beneficiary enrollment, uniform billing, uniform coding systems, and common reporting systems.

4. Office of Enrollment Systems (FHE4)

• Performs the planning, organization, and coordination activities required to build and control HCFA's Medicare Enrollment database (EDB) and related hardware requirements and software applications.

• Designs, implements, maintains, and ensures the continuing operations of software applications which develop EDB data in accordance with the ongoing program management needs of HCFA, including the ADP operations to prepare bills for the receipt and processing of Medicare premium remittances and the generation of Health Insurance cards.

• Defines and negotiates user requirements, design alternatives, systems specifications, test, conversion and implementation plans, operation plans and documentation for the EDB and related applications.

• Defines and coordinates an EDB quality assurance program, including the development of process controls, edits, and statistical measures to ensure that the database is reliable for use in program operations and development.

• Coordinates operational and program development requirements for data about Medicare Enrollment with other components within HCFA, the Department, other Federal agencies and local governments, the private sector, and the public. This includes support for the Common Working File by maintaining and providing accurate and timely information regarding beneficiary enrollment status for Medicare claims processing purposes.

a. Division of Enrollment Applications (FHE41)

• Responsible for the integration and coordination of all EDB database design, development and management activities.

• Assures the viability of the databases including maintenance, backup, recovery, on-line access, etc.

• Responsible for the integration of the EDB database(s) with other database systems; planned/proposed systems software efforts; and overall IRM policies.

• Provides a technical review point within OES to insure adequate control, testing, validation, and documentation of all applications database software within the office.

• Receives, controls, edits and validates transactions which affect HCFA's authoritative record of enrollment in the Medicare program.

• Coordinates operational and program development requirements for data about Medicare Enrollment with other components within HCFA, the Department, other Federal agencies and local governments, the private sector and the public. This includes support for the Common Working File by maintaining and providing accurate and timely information regarding beneficiary enrollment status for Medicare claims processing purposes.

b. Division of Capitation and Collection Systems (FHE42)

• Bills and collects Medicare premiums from the direct-paying beneficiary population and from third-party payers such as state agencies, private groups and the Office of Personnel Management.

• Insures that premium-related entitlement data received from other sources (such as the Social Security Administration) is validated and applied properly to HCFA's authoritative database of Medicare enrollment information.

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• Enables and records enrollment in and disenrollment from health maintenance organizations and other group health plans.

• Computes the individual capitation amounts due for each beneficiary enrolled in a group health plan, and communicates that information to other automated processes that provide for paying the plans.

• Notifies beneficiaries of their enrollment in group health plans, and supports solicitation of beneficiary participation in managed health care delivery systems.

c. Division of Medicare Operations Support (FHE43)

•Oversees clerical operations and manages work requests to resolve data errors.

•Oversees the receipt, resolution, and response to correspondence concerning Health Insurance questions from a wide variety of sources including beneficiaries, Congressional Offices, Social Security Offices, States, the Railroad Retirement Board (RRB), and others.

•Directs the review of part B payment records and reconciliation related to Medicare billing exceptions and a multitude of exceptions created between SSA, HCFA, and RRB exchange of data.

•Provides clerical support to process accretions and deletions for State Buy-In and third party beneficiaries; ensures investigation of Medicare premium problem cases.

•Directs the processing of applications for enrollment of individuals to receive Supplemental Medical Insurance benefits.

•Coordinates the planning, design, and implementation of major work processes involving outside components. Resolves problems related to Medicare insurance with other HCFA components, regional offices, and SSA components.

5. Office of Information Technology (FHE5)

•Provides applications software support to HCFA headquarters and regional offices in administrative management systems.

•Serves as focal point for the personal computing and office information systems technology use throughout the Agency.

•Develops short and long range plans for administrative, personnel, and financial systems.

•Manages all aspects of the Agency's investment in microcomputing technology.

•Develops and manages the agency's ADP training program.

a. Division of Administrative Systems (FHE51)

•Provides applications software support to HCFA headquarters and regional offices in administrative management systems.

•Provides applications software support services to other HCFA components in the development of administrative systems, including those utilizing microcomputer technology. Responsible for the macro design and evaluation of protoype administrative systems.

•Develops short and long range plans for administrative, personnel, and financial systems.

•Develops appropriate standard and guidelines to govern the development and ongoing support of administrative systems.

b. Division of Office Automation Systems (FHE52)

•Serves as focal point for the personal computing and office information systems technology use throughout the Agency.

•Develops the acquisition strategy for personal computing hardware, software, and services in HCFA—both central and regional offices.

•Manages all aspects of the Agency's investment in microcomputing technology.

•Develop the Agency strategy for the acquistion and use of office information systems technology including the HCFA-wide office automation and electronic mail capabilities.

•Develops user requirements, plans, and implements the use of office information systems technology including text management, imaging, and executive information systems.

•Develops and manages the Agency's ADP training program.

6. Office of Computer Operations (FHE6)

•Directs the planning, budgeting, evaluation, procurement, operation, maintenance, control, and security of all centralized automated data processing (ADP) and data communications (DC) equipment and services for HCFA's Data Center (HDC) which includes: DC activities and equipment; centralized large-scale computers; nationally distributed departmental minicomputers; vendor supplied operating systems; utility software; facilities management and other contracts; and various intra/inter Agency agreements.

•Advises the bureau and HCFA exective staff on ADP and DC issues and concerns and represents HCFA in dealings with Federal and non-Federal agencies and organizations in these areas.

•Serves as the Agency's final technical authority for the approval of the purchase, lease, and maintenance of all ADP and DC equipment and systems.

•Manages the HDC and DC resource planning function to ensure the availability of resources Agency approved projects.

•Develops HDC and DC plans and policies and provides program direction to HCFA staff and contractor support organizations to ensure that the Agency mission is efficiently and effectively met.

a. Technical Research and Planning Staff (FHE6–1)

• Advises the Director, Office of Computer Operations, and executives throughout HCFA components of the impact on the HCFA Data Center (HDC) of new technology and Agency programmatic activities including new requirements and growth.

•Plans, organizes, and directs the acquisition of HDC and DC hardware and software within HCFA. Coordinates the procurement, installation, acceptance, and certification of newly acquired HDC and DC hardware and new/existing vendor maintenance agreements and service requests for installed hardware/software.

•Develops and manages the HDC capacity planning activities. Monitors HDC and DC equipment utilization and capacity, making available the necessary planning reports for all levels of management.

•Performs technical assessments of new products, conducts independent evaluations, and acts as liaison for all beta testing.

•Conducts comprehensive impact analyses on HDC and DC network planning and design to ensure continuity in support of the total HCFA user community. Conducts studies to determine and define HDC and DC user requirements.

•Serves as the Agency representative and inter- and intra-Department liaison for technology changes in the HCFA HDC and DC environment.

•Serves as principal focus and coordinator of HDC involvement for major system designs/redesigns resulting from new technology or significant legislation.

•Provides program direction to contract support organizations to ensure that the Agency mission is efficiently and effectively met.

b. Contract Administration and Utilization Staff (FHE6–2)

•Provides the Director, Office of Computer Operations, with broad ADP contract administration support, including serving as Project Officer of the Facilities Management Contract (FMC) for the HCFA Data Center (HDC), Agency/wide minicomputer systems, data communication (DC) systems operation, technical support, and maintenance. Also provides contract management expertise to other major ADP contracts, as necessary.

•Provides program direction to contractor support staff to ensure that the Agency mission is effectively and efficiently supported.

•Reviews HDC procurement acquisitions and subsequent contract administration for compliance with Federal and Department standards and regulations, as well as conformance with Agency plans.

•Develops and maintains the HCFA-wide accounting and chargeback system for HDC and DC users, determining and/or recommending the allocation of resources to the user community. Oversees the resource billing to non-HCFA users of the HDC.

•Monitors and analyzes ADP lease, purchase, and maintenance agreements to ensure continuing efficient use of the HDC and DC equipment.

•Develops and manages the HDC, minimcomputer, and DC spending plans and estimates for equipment, software, maintenance, supplies, and support services.

• Prepares and controls contract performance evaluation procedures including the specification of evaluation periods, award fee criteria, evaluation categories, and performance measurement controls.

c. Division of Data Center Services (FHE61)

• Directs the planning, budgeting, operation, maintenance control, and security for the HCFA Data Center (HDC) data processing resources and related support facilities (backup power, environmental systems, fire protection, etc.).

• Develops standards and policies for efficient use of the HDC. Effects these policies and standards through software and hardware controls.

• Manages, evaluates, installs, and maintains HDC operating systems software, utility software products, and data base management systems (DBMS).

• Plans, organizes, schedules, and controls activities required to maintain a contingency and disaster recovery plan for the HDC.

• Develops HDC operations policies, operational plans, and technical guidelines, and provides program direction to contractor support organizations to ensure that the Agency mission is efficiently and effectively met.

d. Division of Data Communications and Distributed Services (FHE63)

• Directs and manages HCFA's data communications (DC) and minicomputer systems at central and regional HCFA sites, including the Agency-wide installations/relocations of microcomputer, minicomputer, and DC equipment.

• Manages the evaluation and implementation of minicomputer hardware, operating system, and utility software products. Establishes workload planning and controls and schedules services to be provided.

• Assists in the evaluation and implementation of application software and other office automation products for operation on the minicomputer systems.

• Conducts studies to determine DC network requirements and provides technical advice and consultation to the DC user community.

• Directs and manages the HCFA Data Center (HDC) action desk providing on-line assistance for resolving HDC user problems.

• Develops DC, minicomputer, and action desk operating plans and policies and provides program direction to contractor support organizations to ensure that the Agency mission is efficiently and effectively met.

Dated: May 14, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 91–12486 Filed 5–24–91; 8:45 am]

BILLING CODE 4120–03–M

National Institutes of Health

National Center for Research Resources; Meeting of the Biomedical Research Technology Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Biomedical Research Technology Review Committee, National Center for Research Resources, National Institutes of Health.

This meeting will be open to the public as listed below for a brief staff presentation on the current status of the Biomedical Research Technology Program and the selection of future meeting dates. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public as listed below for the review, discussion and evaluation of individual grant applications submitted to the Biomedical Research Technology Program. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biomedical Research Technology Review

Date of Meeting: June 27–28, 1991

Place of Meeting: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, MD 20852

Open: June 27–8 a.m.–9 a.m. (Approximately)

Closed: June 27–9 a.m.—Recess; June 28–8 a.m.—Adjournment.

Mr. James J. Doherty, Information Officer, NCRR, Westwood Building, room 10A15, National Institutes of Health, Bethesda, MD 20892, (301) 496–5545, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Ismael Almodovar, Scientific Review Administrator of the Biomedical Research Technology Review Committee, National Center for Research Resources, National Institutes of Health, 5333 Westbard Avenue, room 10A14, Bethesda, MD 20892, (301) 496–9971 will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 93.389, Biomedical Research Support, National Institutes of Health)

Dated: May 8, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–12534 Filed 5–24–91; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of Research Training Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Research Training Review Committee, National Heart, Lung, and Blood Institute, National Institutes of Health, on June 23, 24, and 25, 1991, at the Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

This meeting will be open to the public on June 23, from 8 p.m. to approximately 9:30 p.m. to discuss administrative details and to hear reports concerning the current status of

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the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C., and section 10(d) of Public Law 92-463, the meeting will be closed to the public on June 24, from approximately 8 a.m. until adjournment on June 25, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Kathryn Ballard, Scientific Review Administrator, NHLBI, Westwood Building, room 550, Bethesda, Maryland 20892, (301) 496-7361, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: May 8, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-12535 Filed 5-24-91; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting of the Clinical Trials Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Clinical Trials Review Committee, National Heart, Lung, and Blood Institute, June 23-25, 1991, Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland, 20815.

The meeting will be open to the public on June 23, from 7 p.m. to approximately 8 p.m. to discuss administrative details and to hear a report concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on June 23, from approximately 8 p.m. to 10 p.m., on June 24, from approximately 8 a.m. to 8 p.m. and on June 25 from approximately 8 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A-21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. David M. Monsees, Jr., Contracts, Clinical Trials and Training Review Section, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, Westwood Building, room 550B, Bethesda, Maryland 20892, (301) 496-7361, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; 13.839, Blood Diseases and Resources Research, National Institutes of Health).

Dated: May 8, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-12536 Filed 5-24-91; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting of Heart, Lung, and Blood Research Review Committee A

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee A, National Heart, Lung, and Blood Institute, National Institutes of Health, on June 20-21, 1991 in Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on June 20, 1991 from 8 a.m. to approximately 9 a.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C., and section 10(d) of Public Law 92-463, the meeting will be closed to the public on June 20 from approximately 9 a.m. until recess and from 9 a.m. until adjournment on June 21, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236 will provide a summary of the meeting and a roster of the committee members.

Dr. Robert M. Chasson, Executive Secretary (Acting), Heart, Lung, and Blood Research Review Committee A, Westwood Building, room 552, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-7917, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; National Institutes of Health)

Dated: May 8, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-12537 Filed 5-24-91; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting of Heart, Lung, and Blood Research Review Committee B

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee B, National Heart, Lung, and Blood Institute, National Institutes of Health, on June 20, 1991 in Building 31, Conference Room 9, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on June 20 from 8 a.m. to approximately 9 a.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in §§ 552b(c)(4) and 552b(c)(6), title 5, U.S.C., and § 10(d) of Public Law 92-463, the meeting will be closed to the public on June 20 from approximately 9 a.m. until adjournment for the review, discussion, and evaluation of individual

grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236 will provide a summary of the meeting and a roster of the committee members.

Dr. Jeffrey H. Hurst, Executive Secretary, Heart, Lung, and Blood Research Review Committee B, Westwood Building, Room 5A-10, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4465, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research, National Institutes of Health)

Dated: May 8, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-12538 Filed 5-24-91; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-010-91-4410-10]

Elko District Advisory Council Meeting

Notice is hereby given that the District Advisory Council for the Elko District, Nevada, will meet on June 12, 1991, in accordance with 43 CFR 1784.6-4. The meeting will be held from 8-9 a.m. in the District Conference Room at 3900 E. Idaho, in Elko. Following the meeting, a field trip to the Marys River will be conducted.

The agenda is as follows:

1. Discussion of the Marys River land management issues;

2. Field trip to Marys River.

The meeting is open to the public, and members of the public may make statements before the Council from 8:30.-9 a.m. Persons wishing to make a statement to the Council should contact Lauren Mermejo at the District Office at (702) 753-0200 no later than June 10. Those wishing to accompany the Advisory Council to the Marys River will be required to provide their own transportation.

Dated: May 17, 1991.

Rodney Harris,

District Manager

[FR Doc. 91-12513 Filed 5-24-91; 8:45 am]

BILLING CODE 4310-HC-M

[WY-920-41-5700; WYW72019]

Notice of Proposed Reinstatement of Terminated; Oil and Gas Lease

Pursuant to the provisions of Public Law 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW72019 for lands in Converse County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW72019 effective September 1, 1990, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 91-12444 Filed 5-24-91; 8:45 am]

BILLING CODE 4310-22-M

[CO-070-00-4212-13; C-50877]

Pitkin County, Co; Notice of Realty Action—Exchange

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Designation of public lands in Pitkin Country, Colorado, as preliminarily suitable for disposal out of Federal ownership by exchange.

SUMMARY: Pursuant to sections 205, 206, 209, 302(b) and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), the Bureau of Land Management, Glenwood Springs Resource Area, has identified the following-described public lands as preliminarily suitable for exchange. This action is in response to a land exchange proposal submitted by the Western Land Group, Inc.

Sixth Principal Meridian, Colorado

T. 10 S., R. 86 W.,

Surface and Subsurface Estate

Sec. 3: Lots 15 and 17, SE¼SE¼NW¼

Subsurface Estate Tract 51

The lands described above contain 251.31 acres, more or less. The publication of this notice in the Federal Register will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws, except for disposal by exchange. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be considered as filed and shall be returned to the applicant. The segregative effect will terminate upon issuance of a patent, upon publication in the Federal Register of termination of the segregation, or 2 years from the date of this publication, whichever occurs first.

Final determination on disposal will await completion of an environmental assessment. Upon completion of the environmental assessment and the land use decision, a Notice of Realty Action shall be published to specify the selected public lands and the offered private lands proposed for exchange.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the lands proposed for exchange is available for review in the Glenwood Springs Resource Area Office at 50629 Highway 6 and 24, P.O. Box 1009, Glenwood Springs, Colorado 81602. Comments can be sent to the District Manager, Grand Junction District, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81506.

Dated: May 13, 1991.

Bruce Conrad,

Grand Junction District.

[FR Doc. 91-12551 Filed 5-24-91; 8:45 am]

BILLING CODE 4310-JB-M

[CO-070-01-4930-12-4583; C-50831]

Exchange of Lands in Garfield County, CO

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Exchange of Lands.

SUMMARY: Pursuant to sections 205, 206, 302(b) and 310 of the Federal Land

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Policy and Management Act of 1976 (43 U.S.C. 1716), the Bureau of Land Management, Glenwood Springs Resource Area, has identified parcels of public and private land as preliminarily suitable for exchange.

FOR FURTHER INFORMATION: Additional information concerning this proposed exchange, including the planning documents and environmental assessment, is available for review in the Glenwood Springs Resource Area Office at 50629 Highway 6 and 24, P.O. Box 1009, Glenwood Springs, Colorado 81602.

For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to the District Manager, Grand Junction District, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81506. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this Notice of Realty Action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: The following-described lands have been determined to be preliminarily suitable for exchange under sections 205, 206, 302(b) and 310 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Selected Public Land—680.00 Acres

T. 3 S., R. 94 W., 6th P.M.
Sec. 33: SE¼NE¼, E½SE¼

T. 4 S., R. 94 W., 6th P.M.
Sec. 26: SW¼NW¼, S½SW¼, SW¼SE¼
Sec. 34: E½NE¼, NE¼SE¼
Sec. 35: NE¼NW¼, W½W½, NE¼SE¼
Sec. 36: NW¼SW¼

And an administrative access easement through T. 4 S., R. 94 W., Sec. 34: SE¼NW¼

Offered Private Land—270.00 Acres

T. 4 S., R. 94 W., 6th P.M.
Sec. 33: E½SW¼SE¼, SE¼SE¼
Sec. 34: NE¼NE¼SW¼, S½N½SW¼, S½SW¼, W½SE¼

It is anticipated any adjustments to the selected public land to equalize values would be made in T. 4 S., R. 94 W., Secs. 28, 35, or 36.

These 680.00 acres of public land and the administrative access easement under the jurisdiction of the Bureau of Land Management have been identified as preliminarily suitable for exchange. The determination has been made in response to a Bureau-benefiting exchange proposal developed cooperatively between the Bureau and Aaron C. Woodward.

In the proposal, 270.00 acres of offered private land with public values would be exchanged for 680.00 acres of public land which have been identified for disposal. The exchange proposal has been made to provide legal access to federal lands and to consolidate public and private land holdings.

The values of the lands to be exchanged have been determined to be approximately equal. Upon completion of the final appraisal of the lands, the acreages will be adjusted or money will be used to equalize the exchange values.

Terms and Conditions

The following reservations would be made in patent issued for public land:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. A reservation to the United States of all mineral deposits of known value.

3. A reservation for all existing and valid land uses, including grazing leases, unless waived.

4. The reservation of power line rights-of-way C–0108739, C–22713, and C–23562.

5. The reservation of pipeline rights-of-way C–018388 and C–048809.

6. The reservation of oil and gas leases C–34543, C–36955, C–38437, C–44378, C–44959, and C–51162.

The public lands in T. 4 S., R. 94 W. described above are currently segregated from appropriation under the public land laws, including the general mining laws, under PLO 4522. The publication of the notice in the **Federal Register** will segregate the public lands in T. 3 S., R. 94 W. described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws, except for disposal by exchange. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be considered as filed and shall be returned to the applicant.

Dated: May 15, 1991.

Bruce Conrad,

District Manager, Grand Junction District.

[FR Doc. 91–12552 Filed 5–24–91; 8:45 am]

BILLING CODE 4310–JB–M

[NV–930–01–4212–13; N–54527]

Elko County, NV; Notice of Realty Action Exchange of Public Lands

The following described public lands are being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Mount Diablo Meridian

T. 31 N., R. 51 E.,
Sec. 2, S½.
T. 32 N., R. 51 E.,
Sec. 36, E½, SE¼NW¼, E½SW¼.
T. 45 N., R. 51 E.,
Sec. 5, SW¼, N½SE¼, SE¼SE¼;
Sec. 7, Lots 1–4, E½, SE¼NW¼, E½SW¼;
Sec. 8, N½, SW¼, N½SE¼, SE¼SE¼;
Sec. 16, SW¼NE¼, S½NW¼, N½SW¼, SW¼SW¼;
Sec. 17, E½E½, N½NW¼, SW¼NW¼, NE¼SW¼, NW¼SE¼;
Sec. 18, Lots 1, 2, NE¼, E½NW¼;
Sec. 20, N½NE¼, SW¼NE¼, NW¼, N½SW¼.
T. 36 N., R. 52 E.,
Sec. 1, Lots 1–4, S½N½, SW¼;
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 3, Lots 1, 2, S½NE¼, SE¼;
Sec. 10, E½, E½W½;
Sec. 11, All;
Sec. 12, All;
Sec. 14, E½, NE¼NW¼, S½NW¼, SW¼;
Sec. 24, NE¼, E½NW¼, S½;
Sec. 36, N½, SW¼, W½SE¼.
T. 39 N., R. 52 E.,
Sec. 3, Lot 2, SW¼NE¼, E½SE¼ SE¼SW¼, NE¼NW¼SE¼, E½NW¼ NW¼SE¼, S½NW¼SE¼, SW¼SE¼;
T. 40 N., R. 52 E.,
Sec. 14, SW¼, W½SE¼;
Sec. 15, E½E½SE¼, E½W½E½SE¼;
Sec. 22, E½E½;
Sec. 23, W½E½, W½;
Sec. 25, Lots 4–8;
Sec. 26, W½E½, W½;
Sec. 27, E½E½, E½E½NW¼NE¼, E½SW¼NE¼, E½W½SE¼;
Sec. 33, W½NW¼SE¼, SE¼NW¼SE¼, W½W½SE¼SE¼;
Sec. 34, E½NE¼, E½W½NE¼, E½W½W ½NE¼;
Sec. 35, W½NE¼, NW¼;
Sec. 36, Lots 1–6, S½SW¼, SE¼;
T. 40 N., R. 53 E.,
Sec. 7, Lots 5–9, 12.
T. 33 N., R. 54 E.,
Sec. 2, S½SE¼;
T. 41 N., R. 54 E.,
Sec. 1, SE¼;
Sec. 11, N½N½;
Sec. 12, N½N½, S½S½;
Sec. 13, NW¼;
Sec. 14, NE¼, W½NW¼;
Sec. 24, Lots 1, 2, 7, 8, N½.
T. 42 N., R. 54 E.,
Sec. 27, SE¼SW¼, NE¼SE¼, S½SE¼;
Sec. 34, NE¼, NE¼NW¼, S½NW¼.
T. 30 N., R. 55 E.,
Sec. 12, E½E½NE¼, E½NE¼SE¼.
T. 39 N., R. 55 E.,
Sec. 1, Lots 6, 10, 11, 13, 14, 16, NE¼SE¼, E½NW¼SW¼, S½SW¼, W½SE¼;
Sec. 12, Lots 1–4, W½E½, W½;
Sec. 13, Lots 3, 4, NW¼, W½SW¼;
Sec. 23, E½SE¼SE¼NE¼, E½E½ NE¼SE¼, SE¼SW¼NE¼SE¼, SW¼SE¼NE¼SE¼, E½SE¼SE¼, E½W½SE¼SE¼, SW¼SW¼SE¼SE¼;
Sec. 24, Lots 1–4, SW¼NW¼, SW¼, W½SE¼;
Sec. 25, Lots 1–4, W½E½, W½;
Sec. 26, NE¼NE¼, E½NE¼NW¼NE¼, S½SW¼NW¼NE¼, SE¼NW¼NE¼, S½NE¼, S½S½NW¼, NE¼SE¼NW¼, S½NW¼SE¼NW¼, S½;
Sec. 34, E½E½, SW¼SE¼;
Sec. 35, Lots 1–4, N½, N½S½;
Sec. 36, Lots 1–7, W½NE¼, NW¼, N½SW¼, NW¼SE¼.
T. 40 N., R. 55 E.,
Sec. 25, S½SE¼SW¼;
Sec. 36, Lots 2–3 (within), Lot 4, W½NE¼, E½W½, NW¼SE¼.
T. 44 N., R. 55 E.,
Sec. 25, Lots 4, 9, 10, SE¼NW¼, NE¼ SW¼, S½SW¼;
Sec. 35, N½NE¼, NW¼;
Sec. 36, Lots 3, 4, N½NW¼.
T. 30 N., R. 56 E.,
Sec. 6, Lot 7, SE¼SW¼, SW¼SW¼SE¼;
Sec. 7, Lot 4, SW¼NE¼NE¼, SE¼NE¼, SE¼SW¼, W½SE¼, SE¼SE¼;
Sec. 8, SW¼SW¼, S½NE¼SE¼, NW¼ SE¼;
Sec. 9, NE¼SW¼, S½NW¼SW¼, SW¼ NE¼SE¼, S½NW¼SE¼, S½SE¼;
Sec. 16, W½SW¼;
Sec. 17, S½NE¼, NW¼, NE¼SW¼, NE¼ NW¼SW¼, N½SE¼, N½SW¼SE¼, SE¼SW¼SE¼, SE¼SE¼;
Sec. 18, N½NE¼, NE¼SW¼NE¼, N½ SE¼NE¼, SE¼SE¼NE¼, N¼NE¼ NW¼;
Sec. 20, NE¼NE¼NE¼;
Sec. 21, NW¼NE¼NE¼, N½NW¼NE¼, SW¼NW¼NE¼, NE¼NW¼, N½NW¼ NW¼, SE¼NW¼NW¼.
T. 32 N., R. 56 E.,
Sec. 15, S½;
Sec. 21, E½;
Sec. 22, All;
Sec. 28, E½;
Sec. 34, All.
T. 33 N., R. 56 E.,
Sec. 26, N½,SE¼;
Sec. 36, NE¼NE¼, W½W½, SE¼SW¼, S½SE¼.
T. 35 N., R. 56 E.,
Sec. 16, N½NW¼;
Sec. 20, NE¼NW¼;
Sec. 30, SW¼NE¼.
T. 38 N., R. 56 E.,
Sec. 4, Lots 1–4, S½N½, S½;
Sec. 6, Lots 1–7, SW¼NE¼, SE¼NW¼, E½SW¼, W½SE¼;
Sec. 8, All;
Sec. 10, N½NW¼;
Sec. 15, N½NE¼NW¼, SW¼NE¼NW¼, NW¼NW¼, N½SW¼NW¼;
Sec. 16, N½NE¼SW¼, SW¼NE¼SW¼, N½SW¼SW¼, N½NW¼SE¼;
Sec. 18, Lots 1–4, E½, E½W½;
Sec. 20, NW¼NE¼NE¼, N½SE¼NW¼, NW¼NW¼SW¼;
Sec. 30, Lots 1–4, N½NE¼, SW¼NE¼, NW¼SE¼NE¼, E½NW¼, NE¼SW¼, NW¼SE¼SW¼, NW¼NW¼SE¼.
T. 39 N., R. 56 E.,
Sec. 6, Lots 5, 6, S½SE¼;
Sec. 7, Lot 1, E½NE¼NE¼SE¼, SE¼NE¼ SE¼, SE¼SE¼;
Sec. 18, Lots 3, 4, E½;
Sec. 19, Lots 1–4, E½;
Sec. 30, Lots 1–4, E½;
Sec. 31, Lots 1–4, E½.
T. 44 N., R. 56 E.,
Sec. 7, Lot 12 (within), Lot 13;
Sec. 17, SE¼SW¼.
T. 30 N., R. 57 E.,
Sec. 31, Lots 1, 2, E½NW¼.
T. 32 N., R. 57 E.,
Sec. 6, Lots 1–6, SE¼NW¼, NE¼SW¼, N½SE¼;
Sec. 8, S½NW¼.
T. 33 N., R. 57 E.,
Sec. 32, NE¼SW¼, S¼SW¼.
T. 34 N., R. 58 E.,
Sec. 32, SW¼NW¼.
T. 35 N., R. 58 E.,
Sec. 1, Lots 1–4, S½N½, S½;
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 10, NE¼NE¼;
Sec. 11, NW¼SW¼.
T. 36 N., R. 58 E.,
Sec. 2, Lots 1–4, S½N½, S½;
Sec. 34, E½;
Sec. 35, S½N½N½, S½N½, N½NW¼ NW¼, S½;
Sec. 36, SW¼NE¼, W½SE¼NE¼, S½ NW¼NW¼, S½NW¼, SW¼, W½E½ SE¼, W½SE¼.
T. 31 N., R. 59 E.,
Sec. 10, Lots 3, 4, 6–10, E½SW¼, SW¼ SE¼;
Sec. 11, SW¼SW¼;
Sec. 13, NW¼NW¼, N½SW¼NW¼;
Sec. 14, N½N¼, N½S½NE¼;
Sec. 15, Lots 1–3, 6–11, 13–26, N½SE¼.
T. 35 N., R. 59 E.,
Sec. 2, Lot 4;
Sec. 10, W½E½, S½NW¼, SW¼;
Sec. 15, W½;
Sec. 16, N½;
Sec. 17, All;
Sec. 18, Lots 1, 2, NE¼, E½NW¼, N½SE¼.
T. 40 N., R. 59 E.,
Sec. 28, All;
Sec. 36, All.
T. 32 N., R. 60 E.,
Sec. 13, N¼NE¼, N½SW¼NE¼, N½ NW¼SE¼NE¼, NE¼NW¼, N½SE¼ NW¼, N½S½SE¼NW¼;
Sec. 15, SE¼SW¼;
Sec. 22, E½SE¼.
T. 40 N., R. 60 E.,
Sec. 6, W½W½;
Sec. 12, NE¼SE¼;
Sec. 14, NW¼, N½SW¼, SW¼SW¼;
Sec. 18, Lots 1–4;
Sec. 20, SW¼NW¼, W½SW¼.
T. 41 N., R. 60 E.,
Sec. 19, SE¼;
Sec. 30, E½NE¼, SW¼NE¼, SE¼;
Sec. 36, S½SW¼, SW¼SE¼.
T. 42 N., R. 60 E.,
Sec. 5, Lot 1 (within), Lot 2, SW¼NE¼;
Sec. 8, NW¼SE¼.
T. 43 N., R. 60 E.,
Sec. 29, W½SE¼;
Sec. 32, W½NE¼, NW¼SE¼.
T. 32 N., R. 61 E.,
Sec. 18, Lot 1 (within), NW¼NE¼NW¼.
T. 33 N., R. 61 E.,
Sec. 12, S½NE¼;
Sec. 13, SW¼NE¼, W½SE¼, SE¼SE¼;
Sec. 24, N½NE¼, SE¼NE¼.
T. 36 N., R. 61 E.,
Sec. 26, Lots 6, 7.
T. 37 N., R. 61 E.,
Sec. 5, Lots 1–4, S½N½, SE¼;
Sec. 8, E½NE¼;
Sec. 9, Lots 2–4, Parcels B, C, N½, NW¼ SW¼, NE¼SE¼;
Sec. 10, Lots 2–4, NW¼, NE¼SW¼.
T. 38 N., R. 61 E.,
Sec. 32, S½S½SW¼, S½SE¼.
T. 41 N., R. 61 E.,
Sec. 1, S½NW¼, SW¼.
T. 42 N., R. 61 E.,
Sec. 5, SE¼SW¼, W½SE¼;
Sec. 8, NW¼NE¼, NW¼;
Sec. 11, SW¼SE¼, W½SE¼SE¼;
Sec. 14, N½N½NE¼, SW¼NW¼NE¼;
Sec. 18, NE¼SE¼NW¼, S½SE¼SW¼;
Sec. 23, N½NW¼, SE¼NW¼;
Sec. 24, W½SW¼NW¼, SE¼SW¼NW¼;
Sec. 25, Lot 1 (within), S½NW¼NE¼, N½ SW¼NE¼;
Sec. 31, Lots 1–6, 8–11.
T. 33 N., R. 62 E.,
Sec. 7, Lots 1, 2, W½NE¼, E½NW¼;
Sec. 8, E½, SE¼NW¼, E½SW¼;
Sec. 17, N½, SW¼;
Sec. 20, NW¼NE¼NW¼, NW¼NW¼, NW¼SW¼NW¼.
T. 36 N., R. 62 E.,
Sec. 10, W½SW¼NE¼, S½NW¼, E½E½ SW¼, W½W½SE¼.
T. 37 N., R. 62 E.,
Sec. 3, Lots 3–6, 15, 16.
T. 38 N., R. 62 E.,
Sec. 30, Lot 2 (within), Lot 4, SW¼SW¼ SE¼NW¼, SE¼SW¼, NW¼SE¼, SE¼ SE¼;
Sec. 31, N¼NE¼NE¼NE¼, SE¼NE¼ NE¼NE¼, NE¼NW¼NE¼NE¼;
Sec. 32, W½NW¼NW¼NW¼, NW¼ SW¼NW¼NW¼.
T. 39 N., R. 62 E.,
Sec. 28, N½NE¼, SE¼SE¼.
T. 40 N., R. 62 E.,
Sec. 36, NW¼NW¼, S½NW¼, N½SW¼, E½SE¼.
T. 42 N., R. 62 E.,
Sec. 25, SE¼NW¼;
Sec. 26, NE¼NE¼, NW¼SE¼;
Sec. 27, NE¼SW¼;
Sec. 34, Lot 1, Lot 2 (within).
T. 43 N., R. 62 E.,
Sec. 24, Lots 2, 3.
T. 38 N., R. 63 E.,
Sec. 18, NE¼;
Sec. 30, Lots 1–2 (within).
T. 39 N., R. 63 E.,
Sec. 2, Lot 4, SW¼NW¼, W½SW½;
Sec. 6, Lots 1–8, 6, 7, SE¼NE¼, E½SW¼, SW¼SE¼;
Sec. 8, NE¼NE¼, NW¼;
Sec. 10, SE¼NE¼, S½;
Sec. 14, W½W½W½.
T. 40 N., R. 63 E.,
Sec. 32, NE¼NW¼, NW¼SW¼.
T. 43 N., R. 63 E.,
Sec. 3, SE¼NE¼;
Sec. 10, NW¼NE¼, NE¼NW¼;
Sec. 11, W½NE¼NW¼;
Sec. 19, N½NE¼NW¼.
T. 44 N., R. 63 E.,
Sec. 6, NE¼SE¼;
Sec. 8, NW¼SW¼;
Sec. 16, NW¼NE¼, E½SW¼NE¼;
Sec. 22, NE¼SW¼SW¼, S½SW¼SW¼;
Sec. 28, NE¼NW¼NE¼, S½NW¼NE¼, SW¼NE¼, NE¼SW¼;
Sec. 33, SE¼NE¼;
Sec. 34, SE¼SW¼.

Total Acres 47,302.36.

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Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), subject to valid existing rights, publication of this Notice shall segregate the affected pubic lands from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws, and from any subsequent land exchange proposals filed by any proponent other than Olympic Nevada, Inc., or their nominee.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the Federal Register of a notice of termination of the segregation; or the expiration of two years from the date of publication of this notice, whichever occurs first.

For a period of forty-five days, interested parties may submit comments to the District Manager, Elko District Office, P.O. Box 831, Elko, Nevada 89801.

Dated: May 13, 1991.

Rodney Harris,

District Manager, Elko District Office, Nevada.

[FR Doc. 91-12553 Filed 5-24-91; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-91-4212-14; N-54291]

Realty Action; Non-Competitive Sale of Public Lands in Clark County, NV

The following described public land in Las Vegas, Clark County, Nevada has been determined to be suitable for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is section 203 of Public Law 94-579, the Federal Land Policy and Management Act of 1976 (FLPMA). The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register.**

Mount Diablo Meridian, Nevada

T. 21 S., R. 60 E.,
Sec. 28, W½SE¼NW¼SE¼.
Aggregating 5.00 acres (gross).

This parcel of land, situated in Las Vegas is being offered as a direct sale to Century Pacific Development Company.

This land is not required for any Federal purposes. The sale is consistent with the Bureau's planning system. The sale of this parcel would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no know mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of mineral interests. The applicant will be required to pay a $50.00 non-returnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.
2. Oil, gas, sodium, potassium and saleable minerals.

and will be subject to:

1. An easements for streets, roads and public utilities in accordance with the transportation plan for Clark County.
2. Those rights for flood control purposes which have been granted to Clark County by Permit No. N-43234 under the Act of October 21, 1978.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with Public Law 94-579, or other applicable laws.

Dated: May 16, 1991.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 91-12495 Filed 5-24-91; 8:45am]

BILLING CODE 4310-HC-M

Fish and Wildlife Service

Availability of a Draft Environmental Assessment on the Restoration and Expansion of Bear River Migratory Bird Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This Notice advises the public that the Draft Environmental Assessment (DEA) on the restoration and expansion of the Bear River Migratory Bird Refuge (MBR) in Box Elder County, Utah, is available for public review. Comments and suggestions are requested. The U.S. Fish and Wildlife Service (Service) proposes to purchase real property and real property interests on approximately 38,200 acres of private land in the Bear River wetlands complex to expand the Bear River Migratory Bird Refuge. These lands will be actively managed for wetland protection and enhancement for migratory waterfowl and other wetland-dependent species of wildlife. A new office/visitor center and support complex will be located within the acquired area.

DATES: Written comments are requested by July 8, 1991. A public meeting will be held on June 5, 1991, at 7 p.m. at the Brigham City High School, Brigham City, Utah.

ADDRESSES: Comments should be addressed to Al Trout, Refuge Manager, Bear River Migratory Bird Refuge, 866 South Main, Brigham City, Utah 84302.

FOR FURTHER INFORMATION CONTACT: Al Trout, Bear River Migratory Bird Refuge, 866 South Main, Brigham City, Utah 84302, (801) 723-5887.

Individuals wishing copies of the DEA should immediately contact the above person. Copies have been sent to all agencies, organizations, and public who participated in the scoping process. Copies will be available for examination at the Bear River MBR office, the public library in Brigham City, and the Service Regional Office in Lakewood, Colorado.

SUPPLEMENTARY INFORMATION: This DEA addresses the restoration of the existing refuge lands and acquisition of the Bear River MBR addition. It poses four alternative sets of actions and discusses how each would address the objectives of the Service and the Bear River MBR. It describes the pertinent environmental characteristics of the area and it projects how the environment would be affected with the implementation of each of these alternatives.

The No Action Alternative would involve only the application of legislatively mandated State and Federal statutes and regulations which protect wetlands in the project area. There would be no additional purchases of land by the Service and no wetland restoration, creation, or enhancement would occur. The refuge would be allowed to revert to an appearance preceding development.

Another alternative presented is the Restoration Alternative which involves rebuilding the Bear River MBR to its condition prior to the flooding of the Great Salt Lake. Existing physical features would be repaired and restored to preflood conditions. There would be no additional purchases of land by the Service and public use facilities would be minimal.

An additional alternative is the Enhancement Alternative which involves additional development of existing Service lands. Large marsh units would be subdivided, and the water delivery system would be improved. There would be no additional purchases of land by the Service, and public use opportunities would be similar to the Restoration Alternative.

The Proposed Alternative is the Expansion Alternative which involves Service purchasing real property or real property interests on approximately 38,200 acres of land exclusive of existing Federal land. These lands would be managed for wildlife, public recreation, and educational uses. Additional lands would provide an opportunity for the construction of a visitor center, a new auto tour route, nature trails, and environmental education areas. Compatible public recreational uses on lands acquired would be permitted in accordance with adopted public use regulations for these categories of land areas.

Dated: May 16, 1991.

Galen L. Buterbaugh,

Regional Director, Region 6.

[FR Doc. 91-12498 Filed 5-24-91; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Deadline for Acceptance of Termination Claims for U.S. Government Contracts in Vietnam

AGENCY: Agency for International Development, IDCA.

ACTION: Notice.

SUMMARY: The Agency for International Development (A.I.D.) hereby gives notice that it will accept claims for the termination costs of U.S. Government contracts that are submitted by former citizens of South Vietnam only until September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. James D. Murphy, Chief, Procurement Policy, Planning, and Evaluation Staff, Bureau for Management Services, Agency for International Development, Washington DC 20523-1435; telephone (703) 875-1533.

SUPPLEMENTARY INFORMATION: After the fall of the Government of South Vietnam, A.I.D. terminated its U.S. Government contracts with local South Vietnamese contractors for the convenience of the government, as of April 29, 1975.

Due to their imprisonment by the successor government and to the restrictions of the U.S. Treasury Department Foreign Assets Control, Sanctions, Transactions, and Funds Control Regulations (31 CFR parts 500-599), many of these contractors were unable to file timely claims for termination costs on their contracts. Therefore, the requirement to file timely claims for termination costs on these contracts under the then governing Federal Procurement Regulation (41 CFR 1-8) was inapplicable.

On August 1, 1985, the Foreign Assets Control, Sanctions, Transactions, and Funds Control Regulations were modified to permit payment to former Vietnamese contractors, based on pro-rata share of ownership, provided these individuals are residents of the United States or other Free-World countries. However, due to the depletion of available funds through the payment of such claims and to the restrictions of Public Law 101-510 on A.I.D.'s access to expired appropriation accounts, A.I.D. hereby gives notice that it will not accept termination claims for such contracts after September 30, 1992.

Dated: May 16, 1991.

John F. Owens,

Procurement Executive.

[FR Doc. 91-12491 Filed 5-24-91; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Docket No. 40510]

Jasper Wyman & Son et al.—Petition for Declaratory Order—Certain Rates and Practices of Overland Express, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of right to file comments.

SUMMARY: This declaratory order proceeding, instituted by decision served February 19, 1991, involves an issue of industry-wide importance that is the subject of many pending court and Commission proceedings, *i.e.*, whether Overland Express, Inc. (respondent), was a participating carrier in the Household Goods Carriers' Bureau Mileage Guide 100 and whether respondent's mileage rates are void and may not form the basis for the undercharges sought in pending Commission proceedings and court cases. The Commission has established a new procedural schedule for the submission of evidence, and interested persons, including any party to a case involving this issue pending before the Commission or in court are invited to file comments in this proceeding.

DATES: Initial comments and petitioners' statement must be filed by June 27, 1991.

Responsive comments and respondent's statement must be filed by July 29, 1991.

Rebuttals must be filed by August 19, 1991.

ADDRESSES: Send pleadings, referring to Docket No. 40510 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and

(2) Petitioner's representative: William J. Augello, Augello, Pezold & Hirschmann, P.C., 120 Main Street, Huntington, NY 11743.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 275-7691. (TDD for hearing impaired: (202) 275-1721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD service (202) 275-1721.)

Decided: May 22, 1991.

By the Commission, Sidney L. Strickland, Jr.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-12531 Filed 5-24-91; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-No. 333X]

Burlington Northern Railroad Co.—Abandonment Exemption—in Butler County, NE; Exemption

Applicant has filed a notice of exemption under 49 CFR 1152, Subpart F—*Exempt Abandonment* to abandon its 1.85-mile line of railroad between mileposts 62.15 and 64.00, in Bellwood, Butler County, NE.

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Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on June 27, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by June 7, 1991.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by June 17, 1991, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Sarah J. Whitley, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by May 31, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: May 20, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-12402 Filed 5-24-91; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in these proceedings where an informed decision on environmental issues (whether raised by a party or by the section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Department Policy, 28 CFR 50.7, notice is hereby given that on May 15, 1991, a proposed Consent Decree in *United States* v. *AMF, Incorporated*, C.A. No. *3-91-CV-249 (AHN)*, was lodged with the United States District Court for the District of Connecticut. Pursuant to sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9606 and 9607, the United States seeks in this litigation to compel nineteen defendants to perform the remedial work identified by EPA for the Laurel Park Landfill Site in Naugatuck, Connecticut and to require these defendants to pay the costs incurred and to be incurred by EPA in connection with this Site.

The proposed Consent Decree embodies an agreement by nineteen defendants to perform the remedial work selected by EPA in its June 30, 1988 Record of Decision and to pay the United States $500,000 in past costs and all but $200,000 of future costs.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *AMF, Incorporated*, DOJ No. 90-11-2-710.

The proposed Consent Decree may be examined at the Region I Office of the Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts 02202, and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202-347-2072).

A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Box 1097, Washington, DC 20004. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $28.25 (25 cents per page reproduction cost) for the Consent Decree.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-12402 Filed 5-24-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a complaint styled *United States* v. *George Fox College and Elliott-Jochimsen Construction, Inc.* was filed in the United States District Court for the District of Oregon on February 23, 1990. On 5/8/91 a consent decree was lodged with the Court in settlement of the allegations in that complaint. The complaint, brought pursuant to sections 113(b) of the Clean Air Act ("the Act") 42 U.S.C. 7413(b), alleged inter alia that in the process of conducting renovation operations at the George Fox College library, defendants committed various violations of the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for asbestos, promulgated under section 112 of the Act, 42 U.S.C. 7412, and codified at 40 CFR part 61, subpart M. The violations included failure to properly remove, wet, and dispose of asbestos containing material and failure to notify the appropriate regulatory authorities that asbestos containing material was being removed.

Under the terms of the proposed consent decree, the defendants agree to pay the United States the sum of $131,250.00 in civil penalties for the violations alleged in the government's complaint and further agree to sample for the existence of asbestos containing material before conducting any future renovation projects.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States* v. *George Fox College, and Elliott-Jochimsen Construction, Inc.*, D.J. Ref. 90-5-2-1-1448.

The proposed consent decree may be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave. NW., Box 1097, Washington, DC 20004, (202) 347-7829. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $2.50 (25 cents per page reproduction costs) payable to Consent Decree Library. The proposed Consent Decree may also be reviewed at the Environmental Protection Agency:

EPA Region X

Contact: Juliane Matthews, Office of Regional Counsel, U.S. Environmental Protection Agency, Region X, 1200 Sixth Avenue, Seattle, WA 98101

and the Office of the United States Attorney:

888 S.W. 5th Ave., suite 1000, Portland, OR 97204-2024.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-12493 Filed 5-24-91; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

The National Cooperative Research Act of 1984—DEET Joint Venture

Notice is hereby given that, on April 29, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), McLaughlin Gormley King Co. filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in the membership of the parties to the DEET Joint Venture ("Joint Venture"). The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The current members of the Joint Venture are:

Aerosol Company, Inc.; Amway Corporation; Bayer AG; Chemical Specialties Manufacturers Association; Chesebrough-Ponds USA; Fuller Brush Company; Hoechst Celanese Corporation; S.C. Johnson Wax; McLaughlin Gormley King Company; Miles, Inc.; Mohawk Laboratories; Morflex, Inc.; "Ole Time" Woodsman (Pete Rickard, Inc.); Schering-Plough Healthcare; Speer Products, Inc.; Tender Corporation; and Wisconsin Pharmacal.

No other changes have been made in either the membership, the objectives or the planned activities of the Joint Venture.

On September 26, 1985, Schering-Plough Healthcare filed the original notification concerning the Joint Venture pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on October 22, 1985, at 50 FR 42786.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-12494 Filed 5-24-91; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Celgene Corp.; Manufacturer of Controlled Substances; Notice of Registration

By Notice dated March 6, 1991, and published in the Federal Register on March 14, 1991, (56 FR 10926), Celgene Corporation, 7 Powder Horn Drive, Warren, New Jersey 07059, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of 2,5-dimethoxyamphetamine (DMA) (7396), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: May 16, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91-12507 Filed 5-24-91; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 90-17]

Farone Drugs; Denial of Application

On February 9, 1990, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Farone Drugs (Respondent), 19 East Washington Street, New Castle, Pennsylvania 16101, proposing to deny the pharmacy's application, executed on November 27, 1989, for registration as a retail pharmacy. The Order to Show Cause alleged that the pharmacy's registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f).

Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held before Judge Bittner in Pittsburgh, Pennsylvania on August 7 and 8, 1990. On February 12, 1991, the administrative law judge issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. Having received no exceptions during the time period provided in 21 CFR 1316.66, on March 18, 1991, the administrative law judge transmitted the entire record to the Administrator.

On April 2, 1991, the administrative law judge received, and then transmitted to the Administrator, exceptions to her opinion filed on behalf of Respondent and a motion requesting the Administrator to accept the exceptions even though they were not timely filed. On April 4, 1991, Government counsel filed with the Administrator a response to Respondent's motion urging the Administrator not to consider Respondent's exceptions as they were not timely filed. The Administrator hereby denies Respondent's motion. The regulations allow for the filing of exceptions within 20 days of service of the administrative law judge's opinion and recommended ruling. Respondent's exceptions were filed almost one month after the deadline for the filing of exceptions. Accordingly, the Administrator has not considered Respondent's exceptions. The Administrator has considered the record in its entirety, excluding Respondent's exceptions, and pursuant to 21 CFR 1316.67 hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

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The administrative law judge found that Gary J. Sperl is the principal stockholder and pharmacist-in-charge of Respondent pharmacy. In May 1981 Gary Sperl purchased Warrendale Pharmacy with a limited partner, Donald Dietz, who would share in the eventual profits of the pharmacy. It was agreed that initially, only Gary Sperl would manage the pharmacy and be paid a salary. In late December 1981, Donald Dietz began working at Warrendale without compensation. The relationship between the two partners eventually deteriorated and Donald Dietz withdraw from the business in May 1982.

In the summer of 1982, according to Gary Sperl, Warrendale Pharmacy was overextended financially. Mr. Sperl further testified at the hearing in this matter that he suspected that one of the pharmacists was stealing from Warrendale Pharmacy. However, even after that pharmacist was fired from the pharmacy in December 1982, he was permitted to work at the pharmacy on an occasional basis.

In February 1983, Gary Sperl was sued by another pharmacist who worked at Warrendale Pharmacy when the pharmacist's paycheck was returned for insufficient funds. On February 9, 1983, after failing to appear at a magistrate's hearing regarding the bad check, Gary Sperl was arrested. During the course of the arrest, a search of Mr. Sperl's truck revealed a gun and a handkerchief containing controlled substances, which were later analyzed as 31 capsules containing the Schedule II controlled substance amphetamine, 27 capsules containing the Schedule IV controlled substance chlordiazepoxide, 32½ tablets containing the Schedule II controlled substance oxycodone, 90 tablets containing the Schedule II controlled substance methylphenidate, and fragments of capsules containing amphetamine and chlordiazepoxide.

As a result, Gary Sperl was charged in the Butler County Pennsylvania Court of Common Pleas with possession with intent to deliver a controlled substance, simple possession of a controlled substance, possession of adulterated and/or misbranded controlled substances, and carrying a firearm without a license. On June 8, 1983, Gary Sperl pled guilty to the charges of carrying a firearm without a license and possession of an adulterated/misbranded substance, both *misdemeanors*, and the other charges were disposed of by entries of *nolle prosequi*. On August 11, 1983, the court sentenced Gary Sperl to pay the costs of prosecution and placed him on probation for two years.

In February 1983, an agent of the Drug Enforcement Unit of the Pennsylvania Attorney General's Office went to Warrendale Pharmacy to conduct an audit of the controlled substances. However, the agent was unable to accurately audit the substances because the records were in disarray. Specifically, the records were not readily retrievable as required by both Federal and state law; no filing system existed for Schedule II controlled substance invoices; several prescriptions were not filed, but were lying on the pharmacy counter and did not include the address of the patient, the pharmacist's initials, a prescription number, or the quantity dispensed; and DEA order forms were not properly completed.

After receiving the distributor's invoices, the agent conducted a thorough audit on April 8, 1983, which revealed shortages of more than 9,300 dosage units of Percocet; over 4,900 dosage units of Ritalin 5 mg.; 4,190 dosage units of Ritalin 20 mg.; 1,163 dosage units of Biphetamine 10 mg.; 1,788 dosage units of Ritalin 10 mg.; and 182 dosage units of Biphetamine 12.5 mg. The audit further revealed an overage of 124 dosage units of Biphetamine 7.5 mg.

In March and April 1983, state agents interviewed approximately 25 then-current and former employees of Warrendale Pharmacy. During the course of these interviews, it was learned that the pharmacy's controlled substances were easily accessible to non-pharmacists, the recordkeeping was "sloppy", the pharmacy did not always have a registered pharmacist on duty, and a pharmacy intern had on occasion filled prescriptions for controlled substances when no registered pharmacist was present.

As a result of the audit Gary Sperl was charged in Allegheny County, Pennsylvania, with two misdemeanor counts of failure to keep records. On September 19, 1983, Gary Sperl pled guilty to both counts, and was sentenced to six months probation on each count to run consecutively. In addition, he was required to surrender his license to dispense drugs, resulting in his not practicing pharmacy from September 1983 to March 1984.

During the hearing in this matter, Gary Sperl seemed to blame all of the problems at Warrendale Pharmacy on Donald Dietz. However, Mr. Sperl did not indicate why he did not confront his partner or why he allowed the situation to continue. Mr. Sperl believed that the only reason he was held responsible instead of Mr. Dietz was because he was listed as the pharmacy's manager.

Warrendale Pharmacy ultimately filed for bankruptcy and went out of business. On January 19, 1989, the Pennsylvania State Board of Pharmacy issued an order placing Gary Sperl's license to practice pharmacy on probation for 18 months. However, the Board treated the six months Mr. Sperl did not practice in 1983 and 1984 as part of the probation period, so he was effectively on probation for one year.

In September 1989, Gary Sperl began negotiating with Frank Farone, its then-owner, to purchase the Respondent pharmacy. On October 13, 1989, Mr. Farone and Mr. Sperl executed a written agreement dated October 1, 1989, which provided, *inter alia*, that Mr. Farone agreed to permit Mr. Sperl "to use all current permits and licenses until new permits and licenses are obtained as may be necessary." Mr. Sperl argued at the hearing that it was understood that the sale would not be completed or consummated until all necessary permits were obtained. The administrative law judge did not find Gary Sperl to be a credible witness, and as a result, found that Mr. Sperl intended to, and became, the owner of Respondent pharmacy, with all of the responsibilities ownership entails, as of October 1, 1989.

The Pennsylvania State Department of Health requires all pharmacists to file monthly reports listing the names of all persons receiving Schedule II controlled substances, the name of the prescribing physician and the amount dispensed. On February 7, 1990, DEA Investigators went to the Bureau of Narcotics Investigations and Drug Control to review the monthly reports filed on behalf of Respondent pharmacy. The last report filed covered the months of August and September 1989. No reports were filed following Gary Sperl's purchase of the pharmacy. Gary Sperl testified that he assumed that Frank Farone continued to file the reports. The administrative law judge concluded that once Mr. Sperl assumed ownership of Respondent, he also assumed the obligation to insure that the pharmacy complied with applicable state and Federal regulations.

Following his purchase of Respondent pharmacy on October 1, 1989, Gary Sperl continued to use the DEA registration number issued to the pharmacy under Mr. Farone's ownership. Pursuant to 21 CFR 1301.62 and 1301.63, a DEA registration terminates when the person holding the registration ceases doing business, and that a registration may be transferred only upon conditions designated by the Administrator and with his written consent. Gary Sperl testified that he was unaware that he was violating Federal regulations by operating the pharmacy using Mr. Farone's DEA registration instead of waiting until he had obtained his own number.

On November 27, 1989, Gary Sperl filed the application for registration for Respondent pharmacy which is the subject of this proceeding. While investigating this application, DEA Investigators went to Respondent pharmacy on December 15, 1989, and obtained a copy of the sales agreement. Frank Farone told the Investigators, that in accordance with the agreement, he had allowed Gary Sperl to use his DEA registration from the date of sale, and that the sale included the pharmacy's controlled substance inventory. In addition, Gary Sperl told the Investigators that he purchased Respondent pharmacy from Frank Farone according to the written agreement.

On December 22, 1989, as a result of learning that Gary Sperl was using the DEA registration issued to Frank Farone, DEA Investigators served an administrative inspection warrant on Respondent pharmacy and advised Gary Sperl that the pharmacy was not properly registered with DEA to handle controlled substances. The Investigators then seized all of the controlled substances in the pharmacy and advised Mr. Sperl that he could not possess, purchase or dispense any controlled substances until properly registered, and directed him to contact DEA if he later found any controlled substances on the premises.

In February 1990, Frank Farone contacted DEA and advised that Gary Sperl had dispensed controlled substances after being advised by DEA Investigators on December 22, 1989, that Respondent pharmacy was not authorized to do so. Upon further investigation, the Investigators discovered that Respondent pharmacy purchased over 14,100-dosage units of Schedule III, IV and V controlled substances after December 22, 1989.

On February 20, 1990, a search warrant was executed at Respondent which revealed controlled substances hidden about the pharmacy, in places including the bathroom storage area, shelving units behind non-controlled substances, a file cabinet, behind the sales counter, as well as open areas accessible to the public. Gary Sperl showed Agents and Investigators executing the warrant where some of the substances were hidden and stated that he knew he violated DEA regulations by ordering controlled substances, but said that "he did what he had to do to feed his family." Further, a search was conducted of Gary Sperl's vehicle which revealed documents regarding prescriptions for controlled substances which were filled after December 22, 1989.

Gary Sperl testified at the hearing in this proceeding that he ordered controlled substances after being told he was not authorized to do so because he feared that Respondent would fail financially if it was not able to handle controlled substances. He further alleged that he ordered the controlled substances because he was concerned that many of his customers were sick with the flu and needed controlled substances. However, Mr. Sperl conceded at the hearing that many of the controlled substances which he purchased after December 22, 1989, are not used in the treatment of colds or the flu.

Several individuals testified on behalf of Gary Sperl and Respondent regarding the need for the pharmacy in the community. However, evidence was presented that there are other pharmacies in the area.

The Administrator may deny an application for a DEA Certificate of Registration if he determines that the registration of the applicant would be inconsistent with the public interest, 21 U.S.C. 823(f). Pursuant to 21 U.S.C. 823(f), the Administrator considers the following factors in determining the public interest: (1) The recommendation of the appropriate state licensing board or professional disciplinary authority; (2) the applicant's experience in dispensing or conducting research with respect to controlled substances; (3) the applicant's conviction record under Federal or State laws relating to the manufacture, distribution or dispensing of controlled substances; (4) compliance with applicable state, Federal or local laws relating to controlled substances; and (5) such other conduct which may threaten the public health and safety.

The Administrator may rely on any one or a combination of those enumerated factors. He may give such factors the weight he deems appropriate in determining whether an application should be denied. See, Fredal Pharmacy, 55 FR 53592 (1990); Henry J. Schwarz, Jr., M.D., Docket No. 88-42, 54 FR 16422 (1989); Neveille H. Williams, D.D.S., Docket No. 87-47, 53 FR 23465 (1988); David E. Trawick, D.D.S., Docket No. 86-69, 53 FR 5326 (1988).

In this case, all of the factors are relevant. Gary Sperl's license to practice pharmacy was placed on probation for 18 months. He ordered and displensed controlled substances when the pharmacy was not registered with DEA to handle such substances. Gary Sperl was convicted of controlled substance-related offenses in two different courts. While at Warrendale Pharmacy, Mr. Sperl failed to keep complete and accurate records of controlled substances, as evidenced by the audit results, and failed to maintan readily retrievable controlled substance records, in violation of both Federal and state law. While at Respondent pharmacy, Gary Sperl operated the pharmacy using a DEA registration number issued to another, and further violated Federal laws and regulations by continuing to handle controlled substances, knowing that the pharmacy was not so authorized.

Respondent contents that Gary Sperl's 1983 convictions were for misdemeanors; he satifactorily served his probation; and was held accountable for the shortages at Warrendale Pharmacy only because he was the listed manager. Gary Sperl's state license to practice pharmacy has never been suspended or revoked, and since 1983, he has practiced pharmacy without incident except for his use of the DEA registration issued to Mr. Farone. Respondent also contents that Mr. Farone, rather than Mr. Sperl, should be held accountable for not filing the required state forms regarding Schedule II controlled subtances. Gary Sperl argues that his initial operation of Respondent without proper DEA registration was an "inadvertent mistake" and he continued to sell controlled substances at Respondent after being advised he could not lawfully do so in "an effort to keep his newly acquired business operational under the pressing weight of the DEA's imposed financial constraints." Finally, Respondent contends that its continued operation is necessary to the New Castle community.

The administrative law judge concluded that Gary Sperl's 1983 convictions clearly establish that as of that time he had little concern for his obligations as a DEA registrant. Regarding Respondent, it is undisputed that Gary Sperl continued to order and dispense controlled substances after specifically being advised by proper authorities that he could not lawfully do so. Judge Bittner found no merit in Gary Sperl's contention that his violation of Federal regulations, by using Mr. Farone's DEA registration number, was inadvertent, and thus excusable, since knowledge and acceptance of applicable laws and regulations are among the prime responsibilities of a DEA registrant. The administrative law judge was also unimpressed with

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Respondent's argument that Gery Sperl was driven by financial hardship and concern for his customers when he handled controlled substances after specifically being instructed not to do so. Judge Bittner concluded that desire to save an ailing business is simply no excuse for violating the law and that Mr. Sperl's purported anxiety for his sick customers failed to explain why he ordered controlled substances which were not used in the treatment of the ailments from which those customers allegedly suffered.

Judge Bittner further concluded that the convenience of having the Respondent pharmacy available to the New Castle community does not outweigh the need to protect the public from a registrant who cannot, or will not, abide by the laws and regulations established to prevent diversion of controlled substances from legitimate to illicit channels. Gary Sperl has proven himself unwilling or unable to carry out the obligations of a DEA registrant in the past and there is no credible evidence that he will be more responsible in the future. Consequently, the administrative law judge concluded that Respondent's registration would be inconsistent with the public interest and recommended that Respondent's application for registration be denied.

The Administrator adopts the opinion and recommended ruling, findings of fact, conclusion of law and decision of the administrative law judge in its entirety. Respondent pharmacy, with Gary Sperl as its owner and managing pharmacist, cannot be trusted to responsibly handle controlled substances. The Administrator concludes that Respondent's registration would be contrary to the public interest.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby orders that the application, executed on November 27, 1989, for registration under the Controlled Substances Act, submitted by Farone Drugs, be, and it hereby is, denied. This order is effective May 28, 1991.

Dated: May 14, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 91-12500 Filed 5-24-91; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Houba, Inc. Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on March 1, 1991, Houba, Inc., 16235 State Road 17, P.O. Box 187, Culver, Indiana 46511, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the schedule II controlled substance methylphenidate (1724).

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR) and must be filed no later than June 27, 1991.

Dated: May 20, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91-12501 Filed 5-24-91; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Johnson Matthey, Inc. Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on November 14, 1990, Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2002 Nolte Drive, West Deptford, New Jersey 08066, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic class of controlled substances listed below:

Drug	Schedule
Thebaine (9333)	II.
Alfentanil (9737)	II.
Sufentanil (9740)	II.
Fentanyl (9801)	II.

Any other applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR) and must be filed no later than June 27, 1991.

Dated: May 16, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91-12502 Filed 5-24-91; 8:45 am]

BILLING CODE 4410-09-M

Noramco of Delaware, Inc.; Manufacturer of Controlled Substances; Notice of Registration

By Notice dated April 12, 1991, and published in the **Federal Register** on April 24, 1991, (56 FR 18838), Noramco of Delaware, Inc., Div. McNeilab, Inc., 500 Old Swedes Landing Road, Wilmington, Delaware 19801, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Codeine (9050)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: May 16, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91-12506 Filed 5-24-91; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a contolled substance in schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on February 19, 1991, Stepan Chemical Company, Natural Products Department, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement Adminstration to be registered as an importer of coca leaves (9040) a basic class of controlled substances in Schedule II.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 27, 1991.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e) and (f) are satisfied.

Dated: May 16, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91-12504 Filed 5-24-91; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Stepan Chemical Co. Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on February 19, 1991, Stepan Chemical Company, Natural Products, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II.
Benzoylecgonine (9180)	II.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 27, 1991.

Dated: May 16, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91-12503 Filed 5-24-91; 8:45 am]

BILLING CODE 4410-09-M

UpJohn Co.; Manufacturer of Controlled Substances; Notice of Registration

By Notice dated April 8, 1991, and published in the **Federal Register** on April 16, 1991, (56 FR 15384), UpJohn Company, 7171 Portage Road, Kalamazoo, Michigan 49001, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of 2,5-dimethoxyamphetamine (DMA) (7396), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: May 16, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91-12505 Filed 5-24-91; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act and Targeted Jobs Tax Credit; Lower Living Standard Income Level

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of determination of lower living standard income level.

SUMMARY: The Job Training Partnership Act (JTPA) provides that the term "economically disadvantaged" may be defined as 70 percent of the "lower living standard income level" (LLSIL). To provide the most accurate data possible, the Department of Labor is issuing revised figures for the LLSIL. The Internal Revenue Code also provides that the term "economically disadvantaged" may be defined as 70 percent of the LLSIL for purposes of the Targeted Jobs Tax Credit (TJTC).

EFFECTIVE DATE: This notice is effective on May 28, 1991.

ADDRESSES: Send written comments to: Mr. Hugh Davies, Acting Director, Office of Employment and Training Programs, Employment and Training Administration, Department of Labor, room N-4703, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. Hugh Davies, Telephone: 202-535-0580 (this is not a toll free number.)

SUPPLEMENTARY INFORMATION: It is a purpose of the Job Training Partnership Act (JTPA) "to afford job training to those economically disadvantaged individuals * * * who are in special need of such training to obtain productive employment." JTPA section 2; see 20 CFR 626.1(a)(2). JTPA section 4(8) defines, for the purposes of JTPA eligibility, the term "economically disadvantaged" in part by reference to the "lower living standard income level" (LLSIL). See 20 CFR 626.4.

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The LLSIL figures published in this notice shall be used to determine whether an individual is economically disadvantaged for applicable JTPA purposes. JTPA section 4(16) defines the LLSIL as follows:

The term "lower living standard income level" means that income level (adjusted for regional, metropolitan, urgan, and rural differences and family size) determined annually by the Secretary [of Labor] based on the most recent "lower living family budget" issued by the Secretary.

Internal Revenue Code (I.R.C.) sections 44B and 51 established the Targeted Jobs Tax Credit (TJTC) for a portion of the wages paid by employers to employees from "targeted" groups. Certain of the targeted groups require that the worker be a member of "an economically disadvantaged family." See, *e.g.*, 26 U.S.C. 51(d)(3)(A)(ii), (4)(C), (B), (8)(A)(iv), and (12)(A)(iv). The LLSIL figures published in this notice shall be used to determine whether an individual is a member of an economically disadvantaged family for applicable TJTC purposes.

The most recent lower living family budget was issued by the Secretary in the fall of 1981. Using those data, the 1981 LLSIL was determined for programs under the now-repealed Comprehensive Employment and Training Act, and for the TJTC. The four-person urban family budget estimates previously published by the Bureau of Labor Statistics (BLS) provided the basis for the Secretary to determine the LLSIL for training and employment program operators. BLS terminated the four-person family budget series in 1982, after publication of the Fall 1981 estimates.

Under JTPA, the Employment and Training Administration (ETA) published the 1990 updates to the LLSIL in the **Federal Register** of April 13, 1990. 55 FR 14008. ETA has again updated the LLSIL to reflect costs of living increases for 1990 by applying the percentage change in the December 1990 Consumer Price Index for All Urban Consumers (CPI–U), compared with the December 1989 CPI–U, to each of the April 13, 1990 LLSIL figures. Those updated figures for a family of four are listed in Table 1 below by region for both metropolitan and nonmetropolitan areas. Since eligibility is determined by family income at 70 percent of the LLSIL, pursuant to section 4(8) of JTPA, those figures are listed below as well.

Jurisdictions included in the various regions, based generally on Census Divisions of the U.S. Department of Commerce, are as follows:

Northeast

Connecticut	New York
Maine	Pennsylvania
Massachusetts	Rhode Island
New Hampshire	Vermont
New Jersey	Virgin Islands

North Central

Illinois	Missouri
Indiana	Nebraska
Iowa	North Dakota
Kansas	Ohio
Michigan	South Dakota
Minnesota	Wisconsin

South

Alabama	Kentucky
American Samoa	Louisiana
Arkansas	Marshall Islands
Delaware	Maryland
District of Columbia	Mississippi
Florida	Micronesia
Georgia	North Carolina
Northern Marianas	Tennessee
Oklahoma	Texas
Palau	Virginia
Puerto Rico	West Virginia
South Carolina	

West

Arizona	New Mexico
California	Oregon
Colorado	Utah
Idaho	Washington
Montana	Wyoming
Nevada	

Additionally, separate figures have been provided for Alaska, Hawaii, and Guam as indicated in Table 2 below.

For Alaska, Hawaii, and Guam, the 1990 figures were updated by creating a "State Index" based on the ratio of the urban change in the State (using Anchorage for Alaska and Honolulu for Hawaii and Guam) compared to the West regional metropolitan change, and then applying that index to the West regional nonmetropolitan change.

Data on 25 selected Metropolitan Statistical Areas (MSAs) are also available. These are based on monthly, biomonthly or semiannual CPI–U changes for a 12-month period ending in December 1990. The updated LLSIL figures for these MSAs, and 70 percent of the LLSIL, rounded to the next highest ten, are set forth in Table 3 below.

Table 4 below is a listing of each of the various figures at 70 percent of the updated 1991 LLSIL for family sizes of one to six persons. For families larger than six persons, an amount equal to the difference between the six-person and the five-person family income levels should be added to the six-person family income level for each additional person in the family. Where the poverty level for a particular family size is greater than the corresponding LLSIL figure, the figure is indicated in parentheses.

Section 4(8) of JTPA defines "economically disadvantaged" as, among other things, an individual whose family income was not in excess of the higher of the poverty level or 70 percent of the LLSIL. The Department of Health and Human Services published the annual update of the poverty-level guidelines at 56 FR 6859 (February 20, 1991).

Use of These Data

Based on these data, Governors should provide the appropriate figures to service delivery areas (SDAs), State Employment Security Agencies, and employers in their States to use in determining eligibility for JTPA and TJTC. The Governor should designate the appropriate LLSILs for use within the State from Tables 1 through 3. Table 4 may be used with any of the levels designated.

Information may be provided by disseminating information on MSAs and metropolitan and nonmetropolitan areas within the State, or it may involve further calculations. For example, the State of New Jersey may have four or more figures: Metropolitan, nonmetropolitan, for portions of the State in the New York City MSA, and for those in Philadelphia MSA. If an SDA includes areas that would be covered by more than one figure, the Governor may determine which is to be used. Pursuant to the JTPA regulations at 20 CFR 627.1, guidelines, interpretations, and definitions adopted by the Governor shall be accepted by the Secretary to the extent that they are consistent with the JTPA and the JTPA regulations.

Disclaimer on Statistical Uses

It should be noted that the publication of these figures is only for the purpose of determining eligibility for applicable JTPA and TJTC programs. BLS has not revised the lower living family budget since 1981, and has no plans to do so. The four-person urban family budget estimates series has been terminated. The CPI–U adjustments used to update the LLSIL for this publication are not precisely comparable, most notably because certain tax items were included in the 1981 LLSIL but are not in the CPI–U.

Thus, these figures should not be used for any statistical purposes, and are valid only for eligibility determination purposes under the JTPA and TJTC programs.

Signed at Washington, DC, this 14th day of May, 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

TABLE 1.—LOWER LIVING STANDARD INCOME LEVEL BY REGION [1]

Region	1991 adjusted LLSIL	70 percent LLSIL
Northwest:		
Metro	23,360	16,360
Non-Metro	23,010	16,110
North Central:		
Metro	21,670	15,170
Non-Metro	20,400	14,280
South:		
Metro	20,600	14,420
Non-Metro	19,480	13,640
West:		
Metro	23,000	16,100
Non-Metro	22,800	15,960

[1] For ease of calculation, these figures have been rounded to the next highest ten dollars.

TABLE 2.—LOWER LIVING STANDARD INCOME LEVEL—ALASKA, HAWAII AND GUAM [1]

Region	1991 adjusted LLSIL	70 percent LLSIL
Alaska:		
Metro	29,310	20,520
Non-Metro	29,060	20,350
Hawaii-Guam:		
Metro	30,690	21,490
Non-Metro	30,440	21,310

[1] Rounded to the next highest ten dollars.

TABLE 3.—LOWER LIVING STANDARD LEVEL—25MSAs [1]

Region MSA	1991 adjusted LLSIL	70 percent LLSIL
Anchorage, AK	29,310	20,520
Atlanta, GA	20,660	14,470
Baltimore, MD	21,940	15,360
Boston-Lawrence-Salem, MA/NH	24,950	17,470
Buffalo-Niagara Falls, NY	20,660	14,480
Chicago-Gary-Lake County, IL/IN/WI	22,530	15,780
Cincinnati-Hamilton, OH/KY/IN	21,880	15,320
Cleveland-Akron-Lorain, OH	22,540	15,780
Dallas-Ft Worth, TX	19,690	13,790
Denver-Boulder, CO	20,920	14,650
Detroit-Ann Arbor, MI	20,950	14,670
Honolulu, HI	30,690	21,490
Houston-Galveston-Brazoria, TX	19,390	13,580
Kansas City, MO/KS	20,820	14,580
Los Angeles-Anaheim-Riverside, CA	24,180	16,930
Milwaukee, WI	21,450	15,020
Minneapolis-St Paul, MN/WI	21,040	14,730
New York-Northern N.J.-Long Island, NY/NJ/CT	24,130	16,900
Philadelphia-Wilmington-Trenton, PA/NJ/DE/MD	22,760	15,940
Pittsburgh-Beaver Valley, PA	21,460	15,030
St Louis-East St Louis, MO/IL	21,320	14,930
San Diego, CA	24,420	17,100
San Francisco-Oakland-San Jose, CA	23,830	16,690
Seattle-Tacoma, WA	23,740	16,620
Washington, DC/MD/VA	25,180	17,630

[1] Rounded to the next highest ten dollars.

TABLE 4.—SEVENTY PERCENT OF UPDATED 1991 LLSIL, BY FAMILY SIZE [1]

Family of one	Family of two	Family of three	Family of four	Family of five	Family of six
(4,890)	(8,020)	(11,000)	13,580	16,030	18,740
(4,910)	(8,050)	(11,050)	13,640	16,100	18,830
(4,970)	(8,140)	11,170	13,790	16,280	19,030
(5,150)	(8,430)	11,570	14,280	16,850	19,710
(5,200)	(8,510)	11,680	14,420	17,020	19,900
(5,210)	(8,540)	11,720	14,470	17,080	19,970
(5,220)	(8,550)	11,730	14,480	17,090	19,990
(5,250)	(8,610)	11,810	14,580	17,210	20,120
(5,280)	(8,650)	11,870	14,650	17,290	20,220
(5,290)	(8,660)	11,890	14,670	17,320	20,250
(5,310)	(8,700)	11,940	14,730	17,390	20,330
(5,380)	(8,810)	12,100	14,930	17,620	20,610
(5,410)	(8,870)	12,170	15,020	17,730	20,730
(5,420)	(8,870)	12,180	15,030	17,740	20,750
(5,470)	8,950	12,290	15,170	17,910	20,940
(5,520)	9,040	12,410	15,320	18,080	21,150
(5,530)	9,070	12,450	15,360	18,130	21,200
(5,690)	9,310	12,790	15,780	18,620	21,780
(5,740)	9,410	12,920	15,940	18,810	22,000
(5,750)	9,420	12,930	15,960	18,840	22,030
(5,800)	9,500	13,050	16,100	19,000	22,220
(5,800)	9,510	13,050	16,110	19,010	22,220
(5,890)	9,660	13,260	16,360	19,310	22,580
(5,990)	9,810	13,470	16,620	19,620	22,940
(6,010)	9,850	13,520	16,680	19,700	23,040
(6,090)	9,960	13,690	16,900	19,950	23,330
(6,100)	9,990	13,720	16,930	19,980	23,370
(6,160)	10,090	13,860	17,100	20,180	23,600
(6,290)	10,310	14,160	17,470	20,620	24,110
(6,350)	10,410	14,280	17,630	20,810	24,330
7,330	12,010	16,490	20,350	24,020	28,090
7,390	12,110	16,630	20,520	24,220	28,320
7,580	12,580	17,270	21,310	25,150	29,410
7,740	12,680	17,410	21,490	25,360	29,660

[1] Figures provided in Tables 1–3 of this notice are for a family size of four persons. To use Table 4, the appropriate figure should be found in the Family of Four column. Then one may read across the row for family sizes other than four in the appropriate columns. For ease of calculation, these figures are rounded to the next highest ten dollars.

[FR Doc. 91–12464 Filed 5–24–91; 8:45 am]

BILLING CODE 4510–30–M

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LIBRARY OF CONGRESS

National Film Preservation Board Meeting; June 13, 1991, Washington, DC

AGENCY: National Film Preservation Board, Library of Congress.

ACTION: Notice of meeting.

This notice is issued pursuant to Public Law 100-446, The National Film Preservation Act of 1988, 2 U.S.C. 178, by Dr. James H. Billington, the Librarian of Congress, to inform the public that the next meeting of the National Film Preservation Board will be held in Washington, DC in the office of the Librarian of Congress on June 13, 1991 at 9 a.m. At the request of the National Film Preservation Board, this meeting will be closed to the public.

FOR FURTHER INFORMATION CONTACT: Eric Schwartz, Counsel, The National Film Preservation Board, Library of Congress, Washington, DC 20540. Telephone: (202) 707-6350.

Dated: May 21, 1991.

James H. Billington,

The Librarian of Congress.

[FR Doc. 91-12540 Filed 5-24-91; 8:45 am]

BILLING CODE 1410-16-M

NATIONAL SCIENCE FOUNDATION

Division of Earth Sciences; Special Emphasis Panel, Meetings

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposal being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Earth Sciences.

Date: June 10-11, 1991.

Time: 8 a.m. to 5 p.m.

Place: U.S. Geological Survey, room BA-102B, Reston, VA.

Type of Meeting: Closed.

Agenda: Review and evaluate proposals for the Creede Drilling Program.

Contact: Dr. Leonard E. Johnson, Program Director, Continental Dynamics Program, National Science Foundation.

Dated: May 21, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-12438 Filed 5-24-91; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Education and Human Resources; Committee of Visitors; Meetings

The National Science Foundation announces the following five Committee of Visitor meetings:

Name: Committee of Visitors Review of the Young Scholars Program

Date & Time: June 12, 1991; 8:30 to 5.

Place: Room 523, 1800 G Street, NW., Washington, DC

Contact Person: Dr. Virginia Eaton, Program Director, Division of Research Career Development, room 630, National Science Foundation, Washington, DC 20550 telephone 202-357-7538.

Committee of Visitors will review the following programs within the Division of Undergraduate Science, Engineering and Mathematics Education. All meetings will be held in Room 639 at the National Science Foundation from 8:30 to 5 and are closed. Contact persons can be reached at 202-357-9644.

June 12, 1991

Undergraduate Curriculum & Course Development in Engineering, Mathematics & the Sciences (UCCP) Program

Contact Person: Dr. Jack Lohmann, Program Director

June 19

Undergraduate Faculty Enhancement (FE) Program

Contact Person: Dr. William Haver, Program Director

July 12

Undergraduate Curriculum Development in Mathematics: Calculus Program

Contact Person: Dr. John Bradley, Program Director

July 15

Instrumentation and Laboratory of Visitors Improvement (ILI) Program

Contact Person: Dr. Duncan McBride, Program Director

Agenda: To carry out Committee of Visitors (COV) review including examination of decisions on proposal, reviewer comments, and other privileged materials.

Reason for Closing: The meetings are closed to the public because the Committee of Visitors will be reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b (c) (4) and (6) of the Government in the Sunshine Act would improperly be disclosed.

Dated: May 21, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-12439 Filed 5-24-91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-445]

Texas Utilities Electric Company, et al.; Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the schedular requirements of 10 CFR 50.71(e)(3)(i) to Texas Utilities Electric Company, et al. (the licensee) for the Comanche Peak Steam Electric Station, Unit No. 1, located in Somervell County, Texas.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirement of 10 CFR 50.71(e)(3)(i) to submit an updated Final Safety Analysis Report (UFSAR) for Unit 1 of the Comanche Peak Steam Electric Station within 24 months of the issuance of the operating license. The operating license was issued for Comanche Peak Steam Electric Station, Unit No. 1, on April 17, 1990. By letter dated April 1, 1991, the licensee requested an exemption from 10 CFR 50.71(e)(3)(i) which would defer submittal of the UFSAR for Comanche Peak Steam Electric Station, Unit 1, until two years following receipt of a low-power operating license for Comanche Peak Steam Electric Station, Unit 2, on the basis that the present FSAR applies to both units. The FSAR has been amended and will continue to be amended until Comanche Peak Steam Electric Station, Unit 2, is licensed.

The Need for the Proposed Action

Section 50.34 of title 10 of the Code of Federal Regulations requires that, until Comanche Peak Steam Electric Station, Unit 2, receives an operating license, the information contained in the FSAR docketed with the operating license application be maintained current. Hence, if an extension to the submittal date for the UFSAR is not granted, the licensee would be required to maintain current both the present FSAR as well as the UFSAR until Comanche Peak Steam Electric Station, Unit 2, is licensed. Maintaining two versions of the same document for the two Comanche Peak units would cause a hardship and would serve no useful purpose if the existing FSAR is maintained up-to-date until Unit 2 is licensed.

Therefore, an extension is needed to eliminate the hardship of maintaining two versions of the same document. Until Unit 2 receives an operating license, the licensee has committed to maintain the present FSAR current for both units by periodically amending the document.

Environmental Impact of the Proposed Action

The proposed exemption affects only the required date for submitting the UFSAR and does not affect the risk of facility accidents. Thus, post-accident radiological releases will not differ from those determined previously, and the proposed exemption does not otherwise affect facility radiological effluents, or any significant occupational exposures. With regard to potential non-radiological impacts, the proposed exemption does not affect plant non-radiological effluents and has no other environmental impact. Therefore, the Commission concludes that there are no measurable radiological or non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives either will have no environmental impact or will have a greater environmental impact. The principal alternative to the exemption would be to require an earlier date for submittal of the UFSAR. Such an action would not enhance the protection of the environment and would result in unnecessary hardship of maintaining two versions of the same document.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for Comanche Peak Steam Electric Station, Units 1 and 2, dated September 1981 and Supplement dated October 1989.

Agencies and Persons Contacted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letter dated April 1, 1991. The letter is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19297, Arlington, Texas 76019.

Dated at Rockville, Maryland, this 20th day of May 1991.

For the Nuclear Regulatory Commission.

George F. Dick,

Acting Director, Project Director IV-2, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-12527 Filed 5-24-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-424 and 50-425]

Georgia Power Co., et al.; Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed no Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. NPF-68 and NPF-81 issued to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia (the licensee) for operation of the Vogtle Electric Generating Plant, Units 1 and 2, located in Burke County, Georgia.

The proposed amendments would change the Technical Specifications (TSs) to reflect a planned modification to the method of measuring reactor coolant system (RCS) delta temperature (DT). The current method uses resistance temperature detectors (RTDs) located in a bypass manifold to provide signals for the Overtemperature DT and Overpower DT reactor trip instrumentation. The modification would eliminate the bypass manifold and locate fast-response RTDs in thermowells directly in the hot and cold legs of the RCS loops to provide these signals.

Specifically, the definition of DT in Notes 1 (Overtemperature DT) and 3 (Overpower DT) of TS Table 2.2-1 would be revised to delete the phrase "by RTD Manifold Instrumentation." Additionally, footnote 12 of TS Table 4.3-1, which states that channel calibration of Overtemperature DT instrumentation shall include the RTD bypass loops flow rate, would be deleted. Because Vogtle Units 1 and 2 share a common TS document and the planned modifications are to occur at different times, the TS changes would be expressed both before and after the modification and annotated as needed for each Vogtle unit based upon modification status.

Other changes in the licensee's amendment requests have been previously noticed and are outside the scope of this notice.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendments involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

RTD bypass elimination does not significantly increase the probability of an accident previously evaluated. The integrity of the reactor coolant pressure boundary is maintained by design and installation procedures adhering to appropriate codes and standards. In addition, an instrumentation and control evaluation has concluded that the fast response RTD system remains in compliance with industry standards and criteria for single failure, independence, separation, and qualification considerations. No new accident initiators are created by this modification. Therefore, the modification has no effect on the probability of previously analyzed accidents involving the integrity of the reactor coolant pressure boundary or performance of the control and protection system.

The consequences of an accident previously evaluated are not significantly increased due to RTD bypass manifold elimination. Although the pressure boundary will be modified, proper welding techniques and tests will ensure the integrity of the

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pressure boundary and thus it will not contribute to any additional radiological consequences. Protection and mitigation systems will continue to operate as assumed in the safety analyses and will not result in any additional challenges to fuel integrity or changes in mass/energy releases.

RTD bypass does not create the possibility of a new accident or one different from any previously evaluated. The modification creates no new accident initiators and no new single failures have been identified. The installation operations minimize the potential for debris escaping into the RCS, and the small amount of debris introduced has been determined to be inconsequential. Additionally, the reliability and performance of the protection system remains consistent with that assumed in the safety analyses. Therefore, no new accidents have been created.

The margin of safety is not significantly reduced as a result of this modification. The resultant effects on the Overtemperature Delta-T and Overpower Delta-T reactor trip setpoints defined in TS Table 2.2-1 have been included in the safety analyses presented in reference 2 [reference 2 is the VANTAGE-5 Reload Transition Safety Report for Vogtle Electric Generating Plant forwarded by the licensee's letter of November 28, 1990]. The reason for footnote 12 in TS Table 4.3-1 has been eliminated and therefore the footnote is no longer appropriate. It has been confirmed that the changes identified for the VANTAGE-5 fuel program (reference 2) remain bounding for elimination of the bypass system and replacing it with the fast-response RTDs. Additionally, the integrity of the reactor coolant pressure boundary and protection system is maintained. Therefore, this change does not result in a significant reduction in a margin of safety.

The Commission's staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the Commission's staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 27, 1991, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendments involves no significant hazards consideration, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If a final determination is that the amendments involve a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commisison, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to David B. Matthews: (petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, suite 1400, 127 Peachtree Street, NE., Atlanta, Georgia 30043, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated November 29, 1990; as supplemented January 29 and March 6, 1991; and as revised March 29, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Dated at Rockville, Maryland, this 21st day of May 1991.

For the Nuclear Regulatory Commission.

Robert E. Martin,

Acting Project Director, Project Directorate II-3, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-12528 Filed 5-24-91; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

(1) Collection title: Lag Service Reports.

(2) Form(s) submitted: AA-12, G-88A.

(3) OMB Number: 3220-0005.

(4) Expiration date of current OMB clearance: Three years from date of OMB approval.

(5) Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) Frequency of response: On occasion.

(7) Respondents: Businesses or other for-profit.

(8) Estimated annual number of respondents: 740.

(9) Total annual responses: 3,900.

(10) Average time per response: .1056.

(11) Total annual reporting hours: 412.

(12) Collection description: The reports obtain the current service and compensation of an employee not yet reported to the Railroad Retirement Board. This lag information is used to determine eligibility for and amount of annuity applied for and to pay benefits due on a deceased employee's earnings records.

Additional Information or Comments: Copies of the proposed forms and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312-751-4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 91-12554 Filed 5-24-91; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-6893; 34-29206; 35-253 ; 39-2265; IC-18159; IA-1278; PA-15]

Privacy Act of 1974; Modification of Systems of Records

AGENCY: Securities and Exchange Commission.

ACTION: Notification of minor changes to descriptions of existing Privacy Act systems of records for the Securities and Exchange Commission.

SUMMARY: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Securities and Exchange Commission is altering the notices of ten existing systems of records to reflect address changes, citations and agency names, and to more accurately describe system names, safeguards employed and retention and disposal practices.

EFFECTIVE DATE: May 28, 1991.

FOR FURTHER INFORMATION CONTACT: Carol K. Scott, Assistant General Counsel (202-272-2474), or Fran L. Paver, Attorney (202-272-2453), Office of the General Counsel, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: In accordance with guidelines issued by the Office of Management and Budget pursuant to the Privacy Act of 1974, the Securities and Exchange Commission recently conducted an extensive review of its published systems of records notices. During this review, the Commission identified ten notices that require minor alterations. These alterations will not affect an individual's ability to gain access to his or her records maintained by the Commission. For the most part, the changes involve updating Commission addresses. Other changes include a revised description of safeguards, revised system names, a revised system manager, corrected citations to the Code of Federal Regulation and to the Commission's

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Rules of Conduct Regulations, a revised retention and disposal period, a deletion of references to the Civil Service Commission and insertion of the Office of Personnel Management in its stead, and a replacement of a reference to super grade with SES.

The following systems of records notices are amended as follows:

SEC–22

SEC–22 is amended as follows:

1. *System name:* The system name is revised to read: Division of Corporation Finance Branch and Support Office Working Files—SEC.

2. *Routine uses of records maintained in the system, including categories of users and the purposes of such uses:* In numbered paragraph 10, the citation in the seventh paragraph to the Commisson's Rules of Conduct is revised to read: 17 CFR 202.735–1 et seq.

3. *System manager(s) and address; Notification procedure; and Record access procedures:* The addresses in each of these sections are revised to read: 450 Fifth Street, NW., Washington, DC 20549.

SEC–31

SEC–31 is amended as follows:

1. *Retention and disposal:* This section is revised to read: Records are kept for three years.

2. *System manager(s) and address; Notification procedure; and Record access procedures:* The addresses in each of these sections are revised to read: 450 Fifth Street, NW., Washington, DC 20549.

SEC–43

SEC–43 is amended as follows:

1. *Routine uses of records maintained in the system, including categories of uses and the purposes of such uses:* In numbered paragraph 7, the citation to the Commission's Rules of Practice in the third paragraph is revised to read 17 CFR 201.1 et seq.; in the sixth paragraph, the citation to the Commission's Rules of Conduct is revised to read 17 CFR 200.735–1 et seq.

2. *System manager(s) and address; Notification procedure; and Record access procedures:* The addresses in each of these sections are revised to read: 450 Fifth Street, NW., Washington, DC 20549.

SEC–46

SEC–46 is amended as follows:

1. *System name:* The system name is evised to read: Office of General Counsel (Adjudication) Working Files—SEC.

2. *System location:* This section is revised to remove the phrase "500 North Capitol Street, NW.," and to include the zip code 20549.

3. *Categories of records in the system:* The reference to the Office of Opinions and Review is removed and replaced by Office of General Counsel.

4. *System manager(s) and address:* This section is revised to read: Associate General Counsel (Adjudication), Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

5. *Notification procedure and Record access procedures:* The address in both of these sections are revised to read: 450 Fifth Street, NW., Washington, DC 20549.

SEC–47

SEC–47 is amended as follows:

1. *Categories of records in the system:* Paragraph (b) is revised to read: Code of Conduct files—established under SEC employee conduct regulations (17 CFR 200.735–1 et seq.): Rule 4—Outside employment material; Rule 5—Employee securities transactions; Rule 6—Actions in cases of personal interests; Rule 7—Negotiations for private employment; Rule 8—Practice by former members and employees of the SEC; Rule 9—Employee debts; Rule 11—Statements of employments of and financial interests (GS–16's and above); Rule 12—Statement of employment and financial interest (Special Employees).

2. *Record access procedures:* The address in this section is revised to read: 450 Fifth Street, NW., Washington, DC 20549.

SEC–48

SEC–48 is amended as follows:

1. *System location:* This section is amended to remove the phrase "500 North Capitol Street."

2. *System manager(s) and address; Notification procedures;* and *Record access procedures:* The addresses in each of these sections are revised to read: 450 Fifth Street, NW., Washington, DC 20549.

SEC–51

SEC–51 is amended to read:

1. *System manager(s) and address; Notification procedures;* and *Record access procedures:* The addresses in each of these sections are revised to read: 450 Fifth Street, NW., Washington, DC 20549.

SEC–78

SEC–78 is amended to read:

1. *System location:* This section is revised to read: Fort Worth Regional Office, 411 West Seventh Street, 8th Floor, Fort Worth, Texas 76102; Houston Branch Office, 7500 San Felipe Street, Suite 550, Houston, Texas 77063.

2. *Safeguards:* The Third sentence is revised and a fourth sentence is added to read: Records are safeguarded by a 24-hour mechanically coded, limited access entry security system on all doors to the offices occupied, except for the front door which is watched by a receptionist during business hours and locked at all other times. In addition, the building provides private 24-hour security.

3. *System manager(s) and address:* a. The address in the first sentence is revised to read: 411 West Seventh Street, 8th Floor, Forth Worth, Texas 76102.

b. The address in the second sentence is revised to read: 7500 San Felipe Street, Suite 550, Houston, Texas 77063.

4. *Notification procedure* and *Record access procedures:* The addresses of the SEC Public Reference Room and the Privacy Act Officer are revised to read: 450 Fifth Street, NW., Washington, DC 20549.

SEC–98

SEC–98 is amended to read:

1. *System name:* The system name is revised to read: Philadelphia Regional Office, Administrative Proceeding Files—SEC.

2. *System location:* The system location is revised to read: The Curtis Center, Suite 1005 E, 601 Walnut Street, Philadelphia, PA 19106–3322.

3. *System manager(s) and address:* This section is revised to read: Regional Administrator, Securities and Exchange Commission, The Curtis Center, Suite 1005 E, 601 Walnut Street, Philadelphia, PA 19106–3322.

4. *Notification procedure* and *Record access procedures:* The addresses of the SEC Public Reference Room and the Privacy Act Officer are revised to read: 450 Fifth Street, NW., Washington, DC 20549.

SEC–100

SEC–100 is revised to read:

1. *System location:* This section is amended to remove the phrase "500 North Capitol Street."

2. *Categories of records in the system:* a. All references to the Civil Service Commission in this section are removed and the Office of Personnel Management is added.

b. In paragraph (h), the reference to super grade is removed and SES is added.

3. *System manager(s) and address; Notification procedure;* and *Record access procedures:* The addresses in each of these sections are revised to read: 450 Fifth Street, NW., Washington, DC 20549.

Dated: May 20, 1991.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–12447 Filed 5–28–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–29205; File No. SR–NYSE–91–16]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to an Enhancement to the Exchange's Overnight Comparison System to Automate Adjustments to Odd-Lot Transactions

May 17, 1991.

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 8, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in items I, II, and III below, which items have been prepared by the self-regulatory organization ("SRO"). The Commission is publishing this notice and order to solicit comments from interested parties and to approve the proposed rule change.

I. SRO's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change sets forth in detail an enhancement to the NYSE's Overnight Comparison System ("OCS") that will automate the process of making adjustments to odd-lot transactions.[2] Currently, the NYSE operates a manual odd-lot adjustment facility that receives adjustment requests from its member firms by telephone. This facility, which is operated by Exchange employees, conveys odd-lot adjustment requests from member firms to the specialists and returns the specialists' answers to the member firms. The NYSE intends to eliminate the existing facility that manually adjusts odd-lot trades. Instead, the odd-lot adjustment function will be incorporated into the Exchange's automated Correction System,[3] which is a component of OCS. Odd-lot adjustments then will be displayed on-line through the OCS terminal network. Accordingly, the member firms will be able to enter, or have their clearing firms enter, an odd-lot transaction into OCS for correction.

II. SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the SRO included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in item IV below and is set forth in sections (A), (B), and (C) below.

(A) SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The NYSE member firms that execute odd-lot orders sometimes find it necessary to request that the registered specialists [4] in a stock cancel a trade or make some type of adjustment to a trade. The types of adjustments involved include, but are not limited to, changes in: (1) The number of shares, (2) the price, or (3) whether the execution was a purchase or a sale.

Currently, the NYSE operates a manual odd-lot adjustment facility that receives adjustment requests from its member firms by telephone. This facility, which is operated by Exchange employees, conveys odd-lot adjustment requests from member firms to the specialists and returns the specialists' answers to the member firms. When a request is received, an Exchange employee verifies that the transaction in question took place and contacts the specialist on the NYSE trading floor. If the specialist agrees to make the adjustment, an Exchange employee notifies the firm that made the request and manually enters the adjustment into the odd-lot system. These Exchange employees, however, do not participate in the negotiations between the member firm seeking the adjustment and the specialist considering the request. If the specialist declines to make the adjustment, an Exchange employee will notify the firm of the specialist's decision. The firm then must contact the specialist directly or take another type of remedial action.

The NYSE intends to eliminate the existing facility that manually adjusts odd-lot trades.[5] Instead, the odd-lot adjustment function will be incorporated into the Exchange's automated Correction System,[6] which is a component of OCS. Odd-lot adjustments then will be displayed on-line through the OCS terminal network. Accordingly, the member firms will be able to enter, or have their clearing firms enter, an odd-lot transaction into OCS for correction.

Technically, under this proposal, a member firm may communicate an odd-lot problem directly to the specialist via an OCS terminal and may enter the details of a problem and a proposed adjustment into the appropriate fields. In response, the specialist either will accept ("OK") or will reject ("DK") the proposed adjustment. At the end of the trading day, OCS will transmit all of the accepted adjustments to the appropriate Qualified Clearing Agency for clearance and settlement. With regard to fees, the Exchange will apply the existing schedule for adjustments within its Correction System.

The NYSE states that to service odd-lot trades, it has built certain safeguards into OCS that will preserve the integrity of its odd-lot execution system. Under the proposal, odd-lot adjustments may be entered into OCS only with the specialist's clearing firm identified as the contra-side and with the specialist's badge number or the equivalent Exchange identifier in both the executing and contra-badge fields. Clearing firms may not enter adjustments with any of the Exchange's omnibus accounts (*e.g.*, DOT, LMT, OARS, or YB) as the contra-side. Specialists will not be permitted to "pair-off" buy and sell adjustments (*i.e.*, one side of each adjustment must be for the specialist's own account).

The NYSE represents that this enhancement to OCS will not diminish OCS's capability to accommodate ordinary message traffic as well as peak traffic. Additionally, the Exchange represents that the changes that have been made to the system's security measures are satisfactory to prevent internal as well as external violations.

The Exchange will implement its automated odd-lot adjustment service on a gradual basis. Beginning on May 17, 1991, clearing firms will enter odd-lot adjustments with stock symbols beginning with the letters "A", "B", and

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[1] 15 U.S.C. 78s(b).

[2] For a discussion of OCS, see Securities Exchange Act Release No. 26627 (March 14, 1989), 54 FR 11470 [SEC File No. SR–NYSE–88–36].

[3] For a discussion of the NYSE's Correction System, see Securities Exchange Act Release No. 26773 (May 1, 1989), 54 FR 20227 [SEC File No. SR–NYSE–89–03].

[4] The NYSE states in its filing that Exchange members who register as specialists in listed stocks also register as odd-lot dealers in such stocks.

[5] Adjustments to odd-lot trades can total 500 per day.

[6] For a discussion of the NYSE's Correction System, see Securities Exchange Act Release No. 26773 (May 1, 1989), 54 FR 20227 (Sec File No. SR–NYSE–89–03).

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"C" into the OCS. The remainder of the listed stocks will be phased into the service over a period of about six weeks (*i.e.*, through approximately June 28, 1991) with the exact speed of implementation to depend on the Exchange's evaluation of the service's operation with stocks beginning with the first three letters of the alphabet.

(2) Statutory Basis

The Exchange believes that changing the manner in which adjustments are made to odd-lot transactions from a manual to an automated process will help to foster coordination with persons engaged in clearing and settling transactions in securities as called for in section 6(b)(5) of the Act.[7] This proposed enhancement to OCS also furthers the objectives of section 17A(a)(1) of the Act [8] in that it will help eliminate inefficient procedures for clearance and settlement that impose unnecessary costs on investors and persons facilitating transactions by and on behalf of investors.

(B) SRO's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) SRO's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The NYSE has not solicited comments on the proposed rule change, and no unsolicited comments have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NYSE believes that its initiative to process odd-lot adjustments more efficiently on behalf of its member firms by replacing an essentially manual operation with a computerized operation is consistent with the Act and in the best interests of its member firms and public investors. The Exchange emphasizes, however, that it already has begun to phase out its existing manual odd-lot operation and estimates that it will need approximately six weeks to implement the new automated service. Therefore, the Exchange requests that the Commission accelerate the effectiveness of this proposed rule change in order to avoid any gap in its ability to process odd-lot trades.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78q-1(a)(1).

The Commission finds good cause under section 19(b)(2) of the Act [9] for approving this proposed rule change prior to the thirtieth day after the publication of notice of filing thereof, in that the proposal is consistent with the Act particularly sections 6(b)(5) and 17A of the Act.[10]. Furthermore, the Commission believes the proposal consists of changes that are limited in scope to electronic enhancements to systems previously approved by the Commission [11] and will lead to improved NYSE trading practices in the processing of odd-lot trades.

IV. Solicitation of Comments

Interested persons are invited to submit data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of NYSE. All submissions should refer to File No. SR-NYSE-91-16 and should be submitted by June 18, 1991.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (File No. SR-NYSE-91-16) be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-12448 Filed 5-24-91; 8:45 am]

BILLING CODE 8010-01-M

[9] 15 U.S.C. 78s(b)(2).

[10] See supra notes 7 and 8 and accompanying text.

[11] See supra notes 2 and 3 and accompanying text.

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30-3(a)(12).

[Release No. 34-29207; File Nos. SR-OCC-87-11 and SR-OCC-87-21]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Withdrawal of Proposed Rule Changes Relating to an OCC Trust Company and to Margin Requirements for Deep-Out-of-the-Money Options Positions

May 17, 1991.

On May 13, 1987, and November 25, 1987, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] proposed rule changes relating to an OCC trust company (File No. SR-OCC-87-11) and to margin requirements for deep-out-of-the-money options positions (File No. SR-OCC-87-21), respectively.

Notice of the proposed rule changes were published in the **Federal Register** on June 19, 1987,[2] and December 14, 1987.[3] On May 10, 1991, OCC withdrew both proposals.[4]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-12448 Filed 5-24-91; 8:45 a.m.]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 24591 (June 15, 1987), 52 FR 23387 (File No. SR-OCC-87-11).

[3] Securities Exchange Act Release No. 25174 (December 4, 1987), 52 FR 47474 (File No. SR-OCC-87-21).

[4] Letters from Don L. Horwitz, Senior Vice President and General Counsel, OCC, to Jonathan Kallman, Assistant Director, Division of Market Regulation, Commission (May 8, 1991).

[1] 15 U.S.C. 78s(b)(1).

[Release No. 34-29206; File No. SR-SCCP-91-01]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Establishment of a Liability Notice Procedure for Book-Entry Deliverable Instruments With an Exercise Privilege

May 17, 1991.

On March 14, 1991, the Stock Clearing Corporation of Philadelphia ("SCCP") filed a proposed rule change (File No. SR-SCCP-91-01) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] SCCP filed the proposed rule

change to establish a liability notice procedure for book-entry deliverable instruments with an exercise privilege. Notice of the proposed rule change appeared in the **Federal Register** on April 25, 1991.[2] No comments were received regarding the proposed rule change. This order approves the proposed rule change.

I. Description of the Proposal

The proposed rule change establishes a new SCCP Rule 40 relating to a liability notice procedure for book-entry deliverable instruments with an exercise privilege, such as the Nikkei 225 Stock Average Index warrants trading on designated National Securities Exchanges.[3] Unlike other securities for which SCCP has liability notice procedures (*e.g.*, securities subject to a tender or exchange offer at a time certain) [4] these instruments are unique because while they have a stated expiration they have the potential to be exercised at any time.

The exercise provisions for most index warrants require delivery of the warrants to the warrant agent on the day of exercise. Currently, a Participant who fails to receive the warrant and is thereby unable to exercise such warrant cannot hold anyone liable for the value of the exercise because SCCP's existing Liability Notice procedures are limited to the time period preceding the actual expiration of the warrant. SCCP, at the request of the Reorganization Division of the Securities Industry Association ("SIA"), has developed a procedure that would remedy this deficiency for book-entry deliverable issues.

Under the proposed rule change, Participants who have sold but not delivered book-entry deliverable index warrants and similar instruments would be advised of their potential liability based on their short positions on the CNS Projection Report starting on T+4. This report would put them on notice that they may be held liable for damages by a Participant with a long position who is prevented from exercising because of failure to receive the securities. Participants with long positions or long settling trade positions who want to exercise must file a Notice of Intention to Exercise ("Notice") with SCCP specifying the number of securities they want to exercise ("Exercise Position").[5] The day the notice is filed is referred to as "N".[6] If the Exercise Position remains unfilled after allocation on N, SCCP will remove the long position from the CNS system before the allocation on N+1, and will remove a corresponding short position(s) based on a random allocation method. On the morning of N+1, SCCP will issue fail to receive and fail to deliver instructions naming a failing to receive Participant and a failing to deliver Participant. This ticket will allow a failing to receive Participant to claim damages from the failing to deliver Participant. Those damages would be for losses that result from the receiving member's inability to exercise the security on N.[7] If exercises of the security are suspended according to the terms of the prospectus, the failing to deliver Participant's liability for damages to the failing to receive Participant would continue but the amount of damages would be established once the suspension was lifted, or the liability could be satisfied by the delivery of the warrants before exercises resume.

II. Discussion

The Commission believes that SCCP's proposed rule change is consistent with section 17A of the Act and, specifically, with sections 17A(b)(3)(A) and (F).[8] Sections 17A(b)(3)(A) and (F) of the Act require a clearing agency be organized and its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

The proposed rule change will enable members who are unable to exercise a long index warrant position because of another member's failure to deliver securities, to hold the other member liable for the value of the exercise. Unlike other securities for which SCCP has liability notice procedures (*e.g.*, convertible securities or securities subject to a tender or exchange offer at a time certain), American style index warrants are unique because, while they have a stated expiration, they can be exercised at any time until their expiration and the exercising holder can obtain value before the expiration date.[9] Under SCCP's current rules, a member with a long index warrant position who fails to receive the warrant and is unable to exercise that warrant cannot hold anyone liable for the value of the exercise because SCCP's existing liability notice procedures depend on expiration of, not the exercise of, a warrant. Thus, the proposal would adapt SCCP's rules to new securities for which SCCP provides clearance and settlement functions.

The Commission believes the proposed rule change is well designed to protect the interests of both parties to a trade in these securities. A member with a long position in a security with an exercise privilege will be protected against the risk that a customer will exercise the warrant on settlement date before the member has received the warrant from SCCP (or another SCCP member) to enable that exercise. Similarly, members with short positions in these securities should benefit from the proposal because SCCP will remind them, through reports on T+4, that they face potential liability for exercises if they fail to deliver securities on T+5.

SCCP has requested that the proposed rule change be approved on an accelerated basis because a number of index warrants are already approved for trading on the American Stock Exchange, the Chicago Board Options Exchange, the New York Stock Exchange, and the Pacific Stock Exchange. Without a mechanism to provide for damages when a receiving member is unable to exercise a warrant because of the delivering member's failure to deliver the securities the receiving member and its customers could sustain a loss. This proposal is similar to that of the National Securities Clearing Corporation ("NSCC") and the Midwest Clearing Corporation ("MCC"), which the Commission approved on February 1, 1991, and February 5, 1991.

[2] See, Securities Exchange Act Release No. 29092 (April 17, 1991), 56 FR 19136.

[3] The index warrants currently trading are eligible to clear at SCCP and also are eligible for book-entry settlement at qualified securities depositories.

[4] SCCP's Liability Notice procedures attach liability to a failing to deliver Participant where, because of an expiring event, the failing to receive Participant is prevented from receiving the benefit of that event.

[5] Settling trades are the CNS contracts compared and accounted for by the Corporation for which such day is the settlement date.

[6] SCCP will establish time frames for submission of Notices after consultation with tender agents and will notify Participants of the time frame via an Administrative Bulletin.

[7] If a member files a notice with SCCP on exercise date, T+5 or thereafter, the failing to deliver member will be liable for the cash amount the member would have received if the member was able to exercise the warrant on the exercise date, which is the difference between the strike price of the index warrant, established at the time the warrant was purchased, and the cash value of the index on the exercise date as established in the prospectus. Because of the time differences, the cash value on exercise date of some foreign index warrants, *e.g.*, Nikkei 225 Index Warrants, is established based on the close of the stock market in that particular country on the day folowing the exercise date.

[8] 15 U.S.C. 78q-1(b)(3)(A) and (F).

[9] The exercise provisions for most index warrants also require delivery of the warrants to the warrant agent on the day of exercise. In many exchange or tender offers for which SCCP's liability notice rules were originally designed, it is possible to accept the offer and deliver the securities to the tender agent after the offer expires.

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respectively.[10] Neither of those proposals generated comments or objections. Thus, the Commission believes "good cause" exists under section 19(b)(2) of the Act for approving the proposal prior to the thirtieth day after publication of notice.

III. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the requirements of the Act, particularly with section 17A of the Act, and the rules and regulations thereunder. Further, the Commission finds that "good cause" exists under section 19(b)(2) of the Act for approving the proposal prior to the thirtieth day after publication of notice.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change (File No. SR-SCCP-91-01) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-12460 Filed 5-24-91; 8:45 am]

BILLING CODE 8010-01-M

[10] Securities Exchange Act Release No. 28948 (February 1, 1991) 55 FR 5437 (MSCC), and Securities Exchange Act Release No. 28865 (February 5, 1991) 56 FR 5716 (MCC).

Issuer Delisting; Application to Withdraw from Listing and Registration; Brown-Forman Corporation, Class A Common Stock, $.15 Par Value; Class B Common Stock, $.15 Par Value; Preferred Stock, $10.00 Par Value (File No. 1-123)

May 21, 1991.

Brown-Forman Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and rule 12d2-2(d) promulgated thereunder to withdraw the above specified securities from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing these securities from listing and registration including the following:

In making the decision to withdraw its common stock and preferred from listing on the Amex, the Company considered the direct and indirect costs of expenses attendant on maintaining the dual listing of these securities on the New York Stock Exchange, Inc. and the Amex. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its common stock and preferred.

Any interested person may, on or before June 12, 1991, submit by letter to the Secretary of the Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-12451 Filed 5-24-91; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Application to Withdraw from Listing and Registration; UniCARE Financial Corp., Common Stock, No Par Value (File No. 1-9956)

May 21, 1991.

UniCARE Financial Corp. ("Company") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and rule 12d2-2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs of expenses attendant on maintaining the dual listing of its common stock on the New York Stock Exchange, Inc. and the Amex. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before June 12, 1991, submit by letter to the Secretary of the Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-12452 Filed 5-24-91; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission.

DATES: Comments should be submitted within 30 days of this publication in the Federal Register. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Elizabeth Zaic, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205-6629.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: MED-Week Procurement Trade Fair Questionnaire.

Form No.: SBA Form 1808.

Frequency: On Occasion.

Description of Respondents: Participants in the Med-Week Procurement Trade Fair.

Annual Responses: 3,000.

Annual Burden: 25.

Cleo Verbillis,

Acting Chief, Administrative Information Branch.

[FR Doc. 91-12490 Filed 5-27-91; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Economic Injury Disaster Loan Area #7317]

New Jersey; (With Contiguous Counties in New York); Declaration of Disaster Loan Area

Hudson County and the contiguous counties of Essex and Bergen in the State of New Jersey, and New York and Richmond Counties in the State of New York constitute an Economic Injury Disaster Loan Area due to damages caused by a fire which occurred on April 5, 1991 on East 22nd Street in the City of Bayonne. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on February 18, 1992 at the address listed below:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South, 3rd Fl., Occidental Chemical Center, Niagara Falls, NY 14302.

or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The economic injury number assigned to the State of New York is 731800.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: May 15, 1991.

June M. Nichols,

Acting Administrator,

[FR Doc. 91-12489 Filed 5-24-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended May 17, 1991

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47543.
Date filed: May 14, 1991.
Parties: Members of the International Air Transport Association.
Subject: TC1 Reso/C 0239 dated May 3, 1991, TC1 (except USA/US Territories) Expedited Reso 002cc (R-1), TC12 Reso/C 0687 dated May 3, 1991, South Alantic Expedited Resos oo2ee (R-2) & 003dd (R-3), TC12 Reso/C 0889 dated May 1, 1991, North Atlantic-Africa (except USA/US Territories) Expedited, Resos 554a (R-5) and 590 (R-6), TC12 Reso/C 0892 dated May 1, 1991, North Atlantic-Middle East (except USA/US Territories), Expedited Reso 590 (R-7), TC12 Reso/C 0892 dated May 1, 1991, Canada-Europe Expedited Resos 554a (R-8) and 590 (R-9).
Proposed Effective Date: August 1, 1991.

Docket Number: 47544.
Date filed: May 14, 1991.
Parties: Members of the International Air Transport Association.
Subject: TC1 Reso/C 0240 dated May 3, 1991.
TC1 (USA/US Territories) Expedited Resos: r-1—001aa; r-2—531a; r-3—351; r-4—590.
TC12 Reso/C 0888 dated May 1, 1991 North Atlantic Expedited Reso 002ii: R-5.
TC12 Reso/C 0890 dated May 1, 1991 North Atlantic Expedited Reso 501: R-6.
Proposed Effective Date: August 1, 1991.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc 91-12470 Filed 5-24-91; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended May 17, 1991

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47542.
Date filed: May 14, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 11, 1991.
Description: Application of American Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, applies for renewal of its certificate of public convenience and necessity for Route 517 (Dallas/Ft. Worth-Tokyo).

Docket Number: 47545.
Date filed: May 15, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 12, 1991.
Description: Application of AHK Air Hong Kong Limited, pursuant to section 402 of the Act and subpart Q of the Regulations, applies for issuance of a Foreign Air Carrier permit authorizing it to operate charter all-cargo air service between Hong Kong and points in the United States and its territories and possessions.

Docket Number: 43575.
Date filed: May 15, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 12, 1991.
Description: Application of Delta Air Lines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations applies to renew its certificate of public convenience and necessity to permit Delta to continue to operate nonstop Portland, Oregon-Tokyo, Japan services.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc 91-12469 Filed 5-24-91; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Approval of Noise Compatibility Program Greater Rockford Airport, Rockford, IL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Greater Rockford Airport Authority under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96-193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On March 23, 1990, the FAA determined that the noise exposure maps submitted by the Greater Rockford Airport Authority under part 150 were in compliance with applicable requirements. On April 23, 1991, the Assistant Administrator for Airports approved the Greater Rockford Airport noise compatibility program, as supplemented and revised by errata and addenda from the airport operator dated January 10, 1991. A total of sixteen (16)

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measures are included in the Greater Rockford Airport Authority's recommended program. Five are listed as Noise Abatement Measures, eight are listed as Land Use Management Measures and three are Other Implementation Measures (Continuing Planning). The FAA has approved twelve measures, disapproved two measures for purposes of part 150 and gave partial approval/partial disapproval to two measures.

EFFECTIVE DATE: The effective date of the FAA's approval of the Greater Rockford Airport noise compatibility program is April 23, 1991.

FOR FURTHER INFORMATION CONTACT: Jerri L. Horst, Federal Aviation Administration, Great Lakes Region, Chicago Airports District Office, CHI-ADO-640.8, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (312) 694-7534. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Greater Rockford Airport, effective April 23, 1991.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Chicago Airports District Office in Des Plaines, Illinois.

The Greater Rockford Airport Authority submitted to the FAA on May 19, 1988, noise exposure maps, descriptions and other documentation. This documentation was produced during the Airport Noise Compatibility Planning (part 150) Study at Greater Rockford Airport from September 9, 1986 through April 1991. The Greater Rockford Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on March 23, 1990. Notice of this determination was published in the Federal Register on April 6, 1990.

The Greater Rockford Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 2000. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on October 29, 1990 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period would have been deemed to be an approval of such program.

The submitted program, as supplemented and revised by errata and addenda from the airport operator dated January 16, 1991, contained sixteen (16) proposed measures for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Assistant Administrator for Airports effective April 23, 1991.

Five of the sixteen measures submitted were listed as "Noise Abatement Measures". Most of these noise abatement measures were designed to alter flight tracks and all were approved. Eight of the sixteen measures submitted are listed as "Land Use Management Measures", of which four were approved outright. Of these four land use measures, two are preventive measures including adopting part 150 NCP as a comprehensive plan element and adopting guidelines for discretionary review. Two other of these four land use management measures are corrective measures such as acquiring or urging others to acquire noise impacted homes. Two additional land use management measures were disapproved for purposes of part 150 because they did not conform to the statutory and regulatory criteria of reducing or preventing noncompatible land uses within the area covered by the noise exposure map. Two land use management measures were approved in part, and disapproved in part for not conforming to the statutory and regulatory criteria of reducing or preventing non-compatible land uses within the area covered by the noise exposure map. Finally, three measures, "Other Implementation Measures" dealing with continuing planning were also approved outright. These determinations are set forth in detail in a Record of Approval endorsed by the Assistant Administrator for Airports on April 23, 1991. The Record of Approval, as well as other evaluation materials and documents which comprised the submittal to FAA are available for review at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., room 617, Washington, DC 20591.

Federal Aviation Administration, Great Lakes Region, 2300 East Devon Avenue, room 261, Des Plaines, Illinois 60018.

Federal Aviation Administration, Chicago Airports District Office, Great Lakes Region, 2300 East Devon Avenue, room 258, Des Plaines, Illinois 60018.

Greater Rockford Airport Authority, Greater Rockford Airport, 2 Airport Circle, Rockford, Illinois 61109.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Des Plaines, Illinois, May 6, 1991.

Louis H. Yates,

Manager, Chicago Airports District Office, FAA Great Lakes Region.

[FR Doc. 91-12472 Filed 5-24-91; 8:45 am]

BILLING CODE 4910-13-M

Acceptance of Noise Exposure Maps for Stockton Metropolitan Airport, Stockton, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Stockton Metropolitan Airport for Stockton Metropolitan Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96-193) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is May 10, 1991.

FOR FURTHER INFORMATION CONTACT: David Cross, Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Burlingame, California 94010-1303, Telephone: 415/876-2779.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Stockton Metropolitan Airport are in compliance with applicable requirements of part 150, effective May 10, 1991.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Stockton Metropolitan Airport. The specific maps under consideration are Exhibits V-1 and V-2 in the submission. The FAA has determined that these maps for Stockton Metropolitan Airport are in compliance with applicable requirements. This determination is effective on May 10, 1991. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., room 617, Washington, DC 20591

Federal Aviation Administration, Western-Pacific Region, Airports Division, room 3E24, 1500 Aviation Boulevard, Hawthorne, California 90261

Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Burlingame, California 94010-1303

Mr. Dan DeAngelis, Airport Manager, Stockton Metropolitan Airport, 5000 South Airport Way, Stockton, California 95206

Questions may be directed to the individual named above under the heading.

Issued in Hawthorne, California on May 10, 1991.

Herman C. Bliss,

Manager, Airports Division, AWP-600.

[FR Doc. 91-12473 Filed 5-24-91; 8:45 am]

BILLING CODE 4910-13-M

Missouri; Informal Airspace Meetings; Notice

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of informal airspace meeting.

SUMMARY: This notice announces an informal airspace meeting to discuss the modification of the Kansas City, MO, Terminal Control Area (TCA). Alteration of the TCA is being proposed as a means of containing arriving and departing aircraft within the TCA after the new parallel runway (01R/19L) is completed.

DATE: The informal airspace meeting will be held on September 4, 1991.

ADDRESS: The informal airspace meeting location is as follows: Kansas City, MO TCA. Date: September 4, 1991. Time: 7 p.m. Location: Kansas City Airport Marriott 775 Brasilia, Kansas City, MO.

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FOR FURTHER INFORMATION CONTACT: Mr. Dale Carnine, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426-3408.

Issued in Kansas City, MO on May 8, 1991.

Bryan Burlesson,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 91-12471 Filed 5-24-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 17-91]

Treasury Notes of May 31, 1993, Series AB-1993

Washington, May 16, 1991.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately $12,250,000,000 of United States securities, designated Treasury Notes of May 31, 1993, Series AB-1993 (CUSIP No. 912827 A9 3), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated May 31, 1991, and will accrue interest from that date, payable on a semiannual basis on November 30, 1991, and each subsequent 6 months on May 31 and November 30 through the date that the principal becomes payable. They will mature May 31, 1993, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $5,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, Wednesday, May 22, 1991, prior to 12 noon, Eastern Daylight Saving time, for noncompetitive tenders and prior to 1 p.m., Eastern Daylight Saving time, for competitive tenders. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, May 21, 1991, and received no later than Friday, May 31, 1991.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue being auctioned prior to the designated closing time for receipt of competitive tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a 1/8 of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final.

If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Friday, May 31, 1991. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Wednesday, May 29, 1991.

When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91-12602 Filed 5-23-91; 11:06 am]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 18-91]

Treasury Notes of May 31, 1996, Series P-1996

Washington, May 16, 1991.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for approximately $9,250,000,000 of United States securities, designated Treasury Notes of May 31, 1996, Series P-1996 (CUSIP No. 912827 B2 7), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated May 31, 1991, and will accrue interest from that date, payable on a semiannual basis on November 30, 1991, and each subsequent 6 months on May 31 and November 30 through the date that the principal becomes payable. They will mature May 31, 1996, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in a minimum amount of $1,000 and in multiples of that amount. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500, Thursday, May 23, 1991, prior to 12 noon, Eastern Daylight Saving time, for noncompetitive tenders and prior to 1 p.m., Eastern Daylight Saving time, for competitive tenders. Noncompetitive

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tenders as defined below will be considered timely if postmarked no later than Wednesday, May 22, 1991, and received no later than Friday, May 31, 1991.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue being auctioned prior to the designated closing time for receipt of competitive tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or buy a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of competitive tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitve tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Friday, May 31, 1991. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Wednesday, May 29, 1991.

When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91-12603 Filed 5-23-91; 11:06 am]

BILLING CODE 4810-40-M

CUSTOMS SERVICE

[T.D. 91-48]

Country-of-Origin Marking Requirement on Frozen Produce Packages; Revocation of Ruling and Request for Comments Regarding Effective Date for Change in Practice

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Revocation of ruling letter and solicitation of public comments.

SUMMARY: On February 27, 1991, the U.S. Court of International Trade, per Judge Musgrave, issued its decision in *Norcal/Crosetti Foods, Inc., et al.* v. *U.S. Customs Service, et al.*, Slip Op. 91-12, 758 F.Supp. 729, a case which concerned the country of origin marking of frozen produce. The court found that marking placed on the rear panel of imported frozen produce packages was neither located in a conspicuous place nor set forth as legibly as the nature of the containers would permit, as required by statute. The court also determined that in order to be in compliance with the statutory requirements the country of origin marking for frozen produce must be placed on the front panel of the package. The court remand the matter to Customs with directions to issue a new ruling within 90 days of February 27, 1991 (not later than May 28, 1991), that revoked any Customs decisions or rulings not in accordance with the court's decision. This document constitutes the mandated corrective ruling and solicits comments concerning the date the country of origin marking change for frozen produce packages should be made effective.

DATES: Comments (preferably in triplicate) must be received on or before July 29, 1991.

ADDRESSES: Written comments may be submitted to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service Headquarters, room 2119, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Gregory R. Vilders, Office of Regulations and Rulings (202) 566-2938.

SUPPLEMENTARY INFORMATION:

Background

The marking statute, section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit in such a manner as to indicate to the ultimate purchaser the English name of the country of origin of the article. Part 134, Customs Regulations (19 CFR part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304. With regard to the conspicuousness and legibility requirements, § 134.41(b), Customs Regulations (19 CFR 134.41(b)), provides that the ultimate purchaser in the U.S. must be able to find the marking easily and read it without strain.

On May 9, 1988, Norcal/Crosetti Foods, Inc., a California packager of frozen produce, and others requested a ruling regarding the conspicuousness of country of origin markings on packages of imported frozen produce. It was the requesters' position that imported frozen produce packages were neither conspicuously marked, in that the location of the marking was not on the front of the package, nor were the markings employed easily found, in that the lettering was not at least as prominent as the lettering of the product description and/or appear in a type style or color vividly contrasting with the rest of the front panel. Customs Headquarters denied the ruling request (HRL 731830 dated November 21, 1988), stating that the industry practice of marking the country of origin on the back panel usualy near the nutritional information and the expiration date of food products satisfied the requirements of 19 U.S.C. 1304 and 19 CFR part 134.

Following Customs denial of the ruling request, Norcal brought suit, which was subsequently decided by the U.S. Court of International Trade. The court, per Judge Musgrave, found that the present practice of marking the country of origin on the rear panels of frozen produce packages was neither conspicuous nor as legible as the nature of the packages would permit, as customers were unable to scan the labels as easily as they could those on dry goods of other produce that was not frozen, because the packages were frozen and "cold to the touch." The court held that, to be conspicuous, the country of origin marking for such merchandise must be located on the front panel of the package and must be marked in a type size and style so as to be conspicuous. On remanding the matter to Customs for action in compliance with the decision, the court directed Customs to submit a new ruling letter to the court not later than 90 days from the date of the order (February 27, 1991).

Statement of Position

The U.S. Customs Service has filed a Notice of Appeal with the U.S. Court of Appeals for the Federal Circuit (April 25, 1991). However, in order to comply with the court's order regarding issuing a new ruling letter in this matter, Customs hereby adopts those findings and determinations made by the court in *Norcal*, subject to such modifications as may be directed by the appellate court, concerning the proper location of and the type size and style to be employed in marking the country of origin on frozen produce packages.

Effect on Previous Customs Rulings

Customs Headquarters Ruling Letter (HRL) 731830 dated November 21, 1988, which held that the country of origin marking on packages of imported frozen produce need not appear on the fromt panel of the package, is revoked. Although we are unaware of any other rulings which are not in accordance with the court's decision, parties may seek clarification regarding the continued viability of any ruling which they believe may be inconsistent with the *Norcal* decision.

Comments

Because of the unique circumstances of this case, Customs has not previously had the opportunity to consider comments from interested persons regarding the impact this new marking requirement may have on importers of frozen produce and how much time is reasonably needed to comply. Accordingly, before implementing this country of origin marking policy for frozen produce packages, and mindful of Judge Restani's comments in *National Juice Products Association* v. *United States*, 10 CIT 48, 66, 628 F.Supp. 978 (1986), regarding the propriety of seeking comments from interested parties concerning the effective date of policy changes which have a significant impact on an entire industry, Customs seeks public comment as to when this marking change should be implemented.

Before making a determination on this matter, Customs will consider any written comments timely submitted respecting the earliest practicable implementation date for the requirement that the country of origin marking on imported frozen produce packages must be located on the front panel of the

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package and must be marked in a type size and style so as to be conspicuous. Prior to that date, importers may continue to enter frozen produce marked in accordance with the existing industry practice. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9 a.m. and 4:30 p.m. on normal business days, at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229. Following a careful review of all the issues raised, another **Federal Register** Notice will be published announcing the date the country of origin marking scheme for frozen produce packaging will be effective.

Michael H. Lane,

Acting Commissioner of Customs.

Approved: May 23, 1991.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 91-12660 Filed 5-23-91; 8:45 am]

BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

Central American Teacher Training Institute (CATT 6)

AGENCY: United States Information Agency.

ACTION: Announcement.

SUMMARY: The United States Information Agency (USIA); Bureau of Educational and Cultural Affairs; Office of Academic Programs; American Republics Branch; solicits proposals from U.S. accredited institutions of higher education with at least four years' expertise in the field of teaching English as a Foreign Language (TEFL), and experience in handling cross-cultural programs in Latin America to conduct a six week Central American Teacher Training Institute for approximately 26 Central American TEFL teachers/teacher-trainers during January-February 1992.

DATES: Deadline for proposals: Must be received at USIA by 5 p.m. EDT on June 14, 1991. Faxed documents will not be accepted, nor will documents post-marked June 14th but received at a later date.

APPROXIMATE PROGRAM DATES: January 12, 1992 to February 29, 1992.

GRANT PERIOD: Approximate time period for the activities should be from September 1, 1991 to June 1, 1992. Organization and planning for the institute should begin around September 1, 1991 and the termination date should be 90 days after the end of the program date, around June 1, 1992, to cover mailing of educational materials and the required end-of-program report.

BUDGET: A maximum of $135,000 will be available for this program. No funds may be expended until the agreement is signed by the recipient and the Agency.

ADDRESSES: Fifteen copies of the proposal, labeled "Central American Teacher Training Institute (CATT 6), including USIA cover sheet and required forms, should be submitted to the office below: U.S. Information Agency, Bureau of Educational and Cultural Affairs, Office of the Executive Director, E/X, room 336, 301 4th Street, SW., Washington, DC 20547.

REQUIRED FORMS: USIA cover sheet, Assurance of Compliance form; Certification Regarding Drug-Free Workplace Requirements; Certification Regarding Debarment, Suspension, and Other Responsibility Matters; and Certification for Contracts, Grants and Cooperative Agreements with appropriate Disclosure of Lobbying Activities forms. These forms may be obtained by contacting the Program Officer listed below.

FOR FURTHER INFORMATION CONTACT: A grant package containing a detailed description of the program and requirements with required forms is available through: Program Officer Paula Curry, USIA, 301 4th Street SW., Office of Academic Programs, American Republics Branch (E/AEL), room 246, Telephone (202) 619-5398, Fax 202-401-1720.

SUPPLEMENTARY INFORMATION: The authority for this exchange program is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87-256 (Fulbright-Hays Act). The Fulbright Program seeks to increase mutual understanding between the people of the United States and people of other countries. Programs and projects must conform with all Agency requirements and guidelines and are subject to final review by the USIA contracting officer.

Dated: May 21, 1991.

William P. Glade,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 91-12545 Filed 5-24-91; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 102
Tuesday, May 28, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEPARTMENT OF JUSTICE

PAROLE COMMISSION

Public Announcement: Pursuant To The Government In the Sunshine Act (Public Law 94-409) [5 U.S.C. Section 552b]

TIME AND DATE: 1:00 p.m., Tuesday, May 28, 1991.

PLACE: 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of previous Commission meeting.
2. Reports from the Chairman, Commissioners, Legal, Case Operations, Program Coordinator and Administrative Sections.
3. Discussion with Regional Administrators regarding any specific problems being encountered.
4. Discussion of Technical Parole Violator Alternative Sanctions Task Force Recommendations.
5. Discussion on the realignment of the Regional Offices.
6. The Commission's response to *White* v. *White*, 25 F.2d 257 (9th Cir. 1991).
7. Discussion on Decisions to depart from the D.C. Guidelines.
8. Proposal for handling of Special Parole Term cases where prisoner should have received supervised release; Discussion of *Gozlon-Peretz* v. *United States*, 111 S.Ct. 840 (1991).
9. The final rule regarding searches of Federal Parolees by U.S. Probation Officers.
10. Presentation of the nominations for the recipient of the Daniel R. Lopez Memorial Award.

CONSENT AGENDA: The following matters have been placed on the consent agenda and will be considered at the open meeting only if a Parole Commissioner requests that they be discussed at the meeting:

1. Final Rule on rating solicitation offenses.
2. Final Rule on distinguishing between "simple couriers" and "transporters" in illegal drug cases.
3. Final Rule on the total abstinence from alcohol requirements for parolees in special drug and alcohol treatment programs.
4. Final Rule on the effect of acquittals on admissibility of evidence in parole hearings.
5. Petition for rule-making under 5 U.S.C. § 553(e): Rule prohibiting "double counting."
6. Delegation of authority to Regional Administrators to approve or deny travel; Rules and Procedures § 2.41-01.

Note: Earlier announcement of this meeting was not possible due to the delay in appointing a new chairman for the Commission following the death of Chairman Benjamin F. Baer, and the urgency of holding a Commission meeting as soon as possible to go forward with pending agency business.

AGENCY CONTACT: Linda Wines Marble, Director, Case Operations and Program Development, United States Parole Commission, (301) 492-5962.

Dated: May 22, 1991.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 91-12653 Filed 5-23-91; 2:01 p.m.]

BILLING CODE 4410-1-M

DEPARTMENT OF JUSTICE

PAROLE COMMISSION

Public Announcement: Pursuant To The Government In The Sunshine Act (Public Law 94-409) [5 U.S.C. Section 552b]

TIME AND DATE: 9:00 a.m. to 12:00 p.m., Friday, May 31, 1991.

PLACE: 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED:

1. Appeals to the Commission of approximately 12 cases decided by the National Commissioners pursuant to a reference under 28 CFR § 2.17. These are all cases originally heard by examiner panels wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey Kostbar, Case Analyst, National Appeals Board, United States Parole Commission, (301) 492-5968.

Dated: May 22, 1991.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 91-12654 Filed 5-23-91; 2:01 pm]

BILLING CODE 4410-1-M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Reauthorization Committee Hearing and Meeting; Notice

TIME AND DATE: A hearing and meeting of the Board of Directors Reauthorization Committee will be held on June 3, 1991. The hearing will commence at 9:30 a.m., and the meeting will commence immediately following the hearing.

PLACE: The Madison Hotel, 15th and "M" Streets, N.W., Washington, D.C. 2005, The Executive Chambers, (202) 862-1600.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

A. HEARING:
1. Approval of Agenda.
2. Public Comment on Reauthorization of the Legal Services Corporation.
3. The Legal Services Corporation Act.
4. The 1991 Subcommittee Bill on the Legal Services Corporation.
5. The March 7, 1991 McCollum-Stenholm Bill.

B. MEETING:
1. Approval of Minutes of April 20, 1991; Meeting, Continued on April 28, 1991.
2. Consideration of Public Comment and Possible Recommendation to the Board of Directors Regarding the Reauthorization of the Legal Services Corporation.

CONTACT PERSON FOR INFORMATION: Patricia Batie, Executive Office (202) 863-1839.

Dated issued: May 23, 1991.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 91-12676 Filed 5-23-91; 3:58 pm]

BILLING CODE 7050-01-M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of a meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that in intends to hold a meeting at 1 p.m. on Monday, June 3, 1991, and at 8:30 a.m. on Tuesday, June 4, 1991, in Louisville, Kentucky. The June 3 meeting, at which the Board will: (1) Consider a new filing with the Postal Rate Commission for barcode discounts on flats and parcels (see 56 FR 20644, May 6, 1991) and (2) consider the Postal Rate Commission's recommended decision in Docket No. R90-1, is closed to the public.

By telephone vote, May 21-22, 1991, a majority of the members contacted and voting, the Board of Governors voted to add to the agenda of the June 3 meeting consideration of the Postal Rate

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Commission decision. The Board determined that pursuant to section 552b(c)(3) of title 5, United States Code, and section 7.3(c) of title 39, Code of Federal Regulations, the discussion of the PRC decision is exempt from the open meeting requirement of the Government in the Sunshine Act (5 U.S.C. 552b(b)), because it is likely to disclosure information in connection with proceedings under Chapter 36 of title 39, United States Code (having to do with rate making, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of title 39, United States Code. The Board determined further that pursuant to section 552b(c)(10) of title 39 United States Code, and section 7.3(j) of title 39, Code of Federal Regulations, this discussion is exempt because it is likely to specifically concern participation of the Postal Service in a civil action or proceeding involving a determination on the record after an opportunity for a hearing. The Board further determined that the public interest does not require that the Board's discussion of the matter be open to the public.

The June 4 meeting is open to the public and will be held in Room 304, Louisville Division Office, 134 Gardiner Lane. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

Agenda

Monday Session

June 3—1 p.m. (Closed)

1. Consideration of a Filing with the Postal Rate Commission for Barcode Discounts on Flats and Parcels.
2. Consideration of the Postal Rate Commission's Further Opinion and Recommended Decision Upon Reconsideration in Docket No. R90–1.

Tuesday Session

June 4—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, April 29–30, 1991.
2. Capital Investments. (Stanley W. Smith, Assistant Postmaster General, Facilities Department)
   a. Miami, Florida, Air Mail Facility.
   b. El Segundo, California, Bay Cities Annex.
   c. Charleston, South Carolina, General Mail Facility.
3. Remarks of the Postmaster General. (Anthony M. Frank)
4. Report on the Mailgram Program.
5. Briefing on the Philatelic Program. (Gordon C. Morison, Assistant Postmaster General, Philatelic and Retail Sales Department)
6. Report on the Eastern Region. (Samuel Green, Jr., Regional Postmaster General)
7. Report on Louisville Division. (James D. Syers, Field Division General Manager/Postmaster)
8. Semiannual Report of the Chief Postal Inspector. (Charles R. Clauson, Chief Postal Inspector)
9. Tentative Agenda for July 1–2, 1991, meeting in Washington, D.C.

David F. Harris,

Secretary.

[FR Doc 91-12900 Filed 5-23-91; 11:31 am]

BILLING CODE 7710-12-M

Corrections

Federal Register
Vol. 56, No. 102
Tuesday, May 28, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1152

[Ex Parte No. 55 (Sub-No. 81)]

Commission Regulations: Technical Amendments

Correction

In rule document 91-9480 beginning on page 18532 in the issue of Tuesday, April 23, 1991, make the following correction:

Appendix to Part 1152 [Corrected]

1. On the same page, in the third column, in the appendix to part 1152, in AB No. 295, "Indian" should read "Indiana".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6849

[NV-930-91-4214-10; Nev-051742]

Mineral Withdrawal of a Portion of the Sheldon National Wildlife Refuge; Nevada

Correction

In rule document 91-9376 beginning on page 12678 in the issue of Monday, April 22, 1991, make the following corrections:

1. In the **Mount Diablo Meridian** land description on page 12678:

   a. In the 2d column, the ninth line of the description should read, "Sec. 15, NE¼, W½NW¼, NW¼SW¼,".

   b. In the 3d column, the 33d line should read, "Sec. 21, E½, E½NW¼, SW¼;".

2. On page 12679, in the 2d column:

   a. The 7th line should read, "W½SW¼, N½SE¼, SW¼SE¼, ".

   b. The 11th line should read, "Sec. 14, W½NE¼, NW¼, NE¼SW¼, ".

   c. The 14th line should read, "W½SW¼, SE¼SW¼, S½SE¼".

   d. The 22d line should read, "Sec. 21, E½, SW¼, S½NW¼;".

   e. The 45th line should read, "E½SE¼ ;".

3. On page 12680, in the 1st column, the 49th line should read "Sec. 14, NW¼NW¼".

BILLING CODE 1505-01-D

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Part II

Department of Education

Rehabilitation Services Administration

Protection and Advocacy of Individual Rights; Notice

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DEPARTMENT OF EDUCATION

Rehabilitation Services Administration

Protection and Advocacy of Individual Rights; Notice

AGENCY: Department of Education.

ACTION: Notice of proposed priority for fiscal year 1991.

SUMMARY: The Secretary of Education proposes a priority for fiscal year 1991 for grants to develop pilot projects to protect and advocate for the rights of individuals with severe disabilities who are receiving services under title VII of the Rehabilitation Act of 1973, as amended, (Act) and who are not eligible for services provided by existing protection and advocacy or ombudsman programs or whose request for services cannot be provided by client assistance programs funded under section 112 of the Act.

DATES: Comments must be received on or before June 27, 1991.

ADDRESSES: All comments concerning this proposed priority should be addressed to Michael Morgan, Office of Developmental Programs, Rehabilitation Services Administration, Department of Education, room 3038 Switzer Building, 400 Maryland Avenue, SW., Washington, DC 20202–2575.

FOR FURTHER INFORMATION CONTACT: Thomas Finch, Office of Developmental Programs, Rehabilitation Services Administration, room 3319 Switzer Building, 400 Maryland Avenue, SW., Washington, DC 20202–2741. Telephone: (202) 732–1398. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: Section 731 (part D of title VII) of the Rehabilitation Act of 1973, as amended, authorizes grants to States to establish systems for the protection and advocacy of the rights of individuals with severe disabilities receiving services under title VII. The Secretary proposes to conduct a competition for pilot projects to establish a protection and advocacy program for those individuals.

The legislative history of section 731 indicates that Congress intended to have the Protection and Advocacy of Individual Rights (PAIR) program coordinated with existing protection and advocacy programs and systems in the State to avoid duplication of services. Although the fiscal year 1991 Appropriations Act is silent, the Senate committee report accompanying the fiscal year 1991 Appropriations Act encourages projects established under section 731 of the Act to include within the services that they provide the protection and advocacy of those rights established in the Fair Housing Amendments Act of 1988 and the Americans with Disabilities Act of 1990.

Eligible Applicants

An eligible applicant is the State through its Governor. The Governor shall designate a State agency to conduct the protection and advocacy system under section 731 of the Act that is independent of the designated State unit for vocational rehabilitation or any other agency that provides services under Title VII of the Act.

Proposed Priority

In accordance with the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.105(c)(3), the Secretary proposes to set aside funds and give an absolute preference to applications that respond to the proposed priority described in this notice for fiscal year 1991. An absolute priority is one that permits the Secretary to select for funding only those applications proposing statewide pilot projects that meet the priority. The Secretary invites public comment on the merits of the proposed priority, including suggested modifications to the proposed priority.

The final priority will be announced in the **Federal Register**. The final priority will be determined by responses to this notice, available funds, and other departmental considerations. The publication of this proposed priority does not bind the United States Department of Education to fund projects in this service area, unless otherwise specified by statute. Funding of particular projects depends on the availability of funds, the nature of the final priority, and the quality of the applications received.

A State shall provide the Secretary with assurances that projects established with grants made under section 731 of the Act will have the authority to pursue legal, administrative, and other appropriate remedies to ensure the protection of the rights of individuals with severe disabilities receiving services under Title VII of the Rehabilitation Act within the State. A State shall assure that a protection and advocacy system funded under section 731 of the Act will be independent of any designated State unit that provides services under title VII of the Act to those individuals. A State shall also assure that the designated agency to conduct the protection and advocacy system under section 731 of the Act will utilize mediation to the maximum extent feasible prior to resorting to administrative or legal remedies.

To prevent duplication of services, the State shall assure that the agency designated to conduct this program has knowledge of the eligibility requirements and the range of services provided by the following programs and will coordinate, as appropriate, with—

(1) The system to protect and advocate for the rights of individuals with developmental disabilities required under the Developmental Disabilities Assistance and Bill of Rights Act Amendments of 1978;

(2) The system to protect and advocate for the rights of mentally ill individuals required under the Protection and Advocacy for Mentally Ill Individuals Act of 1986;

(3) The system to provide ombudsman services on behalf of individuals receiving long-term care required under the Older Americans Act;

(4) The client assistance program required under section 112 of the Rehabilitation Act of 1973, as amended;

(5) The advocacy services provided by centers for independent living within the State; and

(6) The investigative and conciliation services funded under the Fair Housing Amendments Act of 1988.

Priority would be given to statewide pilot projects that will protect and advocate for the rights of individuals with severe disabilities who are receiving services under title VII of the Rehabilitation Act of 1973, as amended, and who are not eligible for services provided by existing protection and advocacy or ombudsman programs, or whose request for services cannot be provided by client assistance programs funded under section 112 of the Act. "Individual with severe disabilities" means an individual whose ability to function independently in family or community or to engage or continue in employment is so limited by the severity of his or her physical or mental disability that independent living rehabilitation services are required for the individual to achieve a greater level of independence in functioning in family or community or engaging or continuing in employment.

Projects funded under this priority must—(1) Provide protection and advocacy services to individuals with severe disabilities receiving independent living services under title VII of the Rehabilitation Act to ensure the protection of their rights under the Rehabilitation Act and, to the extent necessary to achieve their independent living goals, the Fair Housing Amendments Act of 1988, the Americans with Disabilities Act of 1990, and other applicable Federal, State, and local laws; (2) Engage in cooperative activities with relevant public and private agencies and organizations to address barriers that prevent these individuals from achieving their independent living goals; and (3) Conduct a self-evaluation to assist the Secretary in determining the effectiveness of the pilot demonstration projects and the future directions and scope of Federal funding of protection and advocacy services for individuals with severe disabilities.

Projects funded under this priority must build upon existing systems to carry out activities not already funded by other sources or to serve individuals not already served by other programs.

The applicant shall describe how the project will inform individuals with severe disabilities of their rights and will assist those individuals in pursuing remedies under the Rehabilitation Act of 1973, as amended, the Fair Housing Amendments Act of 1988, and the Americans with Disabilities Act of 1990.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority.

All comments submitted in response to these proposed priorities will be available for public inspection, during and after the comment period, in room 3038, Mary Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

(Authority: 29 U.S.C. 796g).

(Catalog of Federal Domestic Assistance No. 84.240, Protection and Advocacy of Individual Rights)

Dated: May 21, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 91–12445 Filed 5–24–91; 8:45 am]

BILLING CODE 4000–01–M

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Part III

The President

Proclamation 6299—Week for the National Observance of the 50th Anniversary of World War II

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Presidential Documents

Title 3—

The President

Proclamation 6298 of May 23, 1991

Week for the National Observance of the 50th Anniversary of World War II

By the President of the United States of America

A Proclamation

When the United States entered World War II half a century ago, it became engaged in a struggle for the fate of millions of people—and for the future of freedom on Earth. During the period that commemorates the 50th anniversary of this conflict, we do well to study its lessons and to honor all of those Americans who helped to achieve the Allied victory.

Following America's entry into World War II, President Franklin Roosevelt declared that we fought

> to uphold the doctrine that all men are equal in the sight of God . . . . There never has been—there never can be—successful compromise between good and evil. Only total victory can reward the champions of tolerance and decency, freedom and faith.

That unwavering sense of purpose would characterize the actions of all Americans, both on the home front and on the field of battle, as they rallied to defend the cause of freedom.

President Roosevelt aptly described World War II as "the most tremendous undertaking in American history." In homes, schools, and churches across the Nation, on our farms and in our factories, citizens of every age and every walk of life labored and sacrificed to support the Allied military effort. From the Aleutian Islands to the Coral Sea, from the shores of northwest Africa to Anzio, Normandy, and the Rhineland, members of our Armed Forces braved the horrors of battle to defend the lives and liberty of others. Hundreds of thousands of these heroes gave "the last full measure of devotion" in service to our country, and we will never forget them.

Six long years after the war first began, the Allies secured the unconditional surrender of Nazi Germany and Imperial Japan. President Truman noted that the Allied triumph was

> more than a victory of arms. It was a victory of one way of life over another . . . . We know now that the basic proposition of the worth and dignity of man is not a sentimental aspiration or a vain hope or a piece of rhetoric.

Those words are still true today.

We live in a world transformed by World War II. The Allied victory affirmed America's leadership in global affairs, and it led to the formation of the United Nations as a vehicle for promoting international peace and security. Moreover, it contained what President Truman called a "promise to people everywhere who join us in the love of freedom"—a promise that we have begun to see fulfilled with the emergence of democratic governments around the world and with the movement toward a Europe whole and free.

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This week, let us remember in prayer all those heroes who gave their lives for the universal cause of freedom during World War II. Let us honor the World War II veterans who are with us today, especially the infirm and the hospitalized, and let us salute the millions of civilians who rallied in support of their efforts. Most important, let us resolve to learn from the past, so that we too might be faithful and effective guardians of liberty.

The Congress, by Public Law 101–491, has designated the week of June 2 through June 8, 1991, as a "Week for the National Observance of the 50th Anniversary of World War II" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of June 2 through June 8, 1991, as a Week for the National Observance of the 50th Anniversary of World War II. I call upon all Americans to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 23 day of May, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

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LIST OF PUBLIC LAWS

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–275–3030).

S.J. Res. 127/Pub. L. 102–49

To designate the month of May 1991, as "National Huntington's Disease Awareness Month". (May 22, 1991; 105 Stat. 253; 1 page) Price: $1.00

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $620.00 domestic, $155.00 additional for foreign mailing.

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[6] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[7] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

RIN 0960-AC59

Federal Old-Age, Survivors, and Disability Insurance Supplemental Security Income for the Aged, Blind and Disabled; Representation of Parties—Suspension and Disqualification of Representatives

AGENCY: Social Security Administration, HHS.

ACTION: Final Rules.

SUMMARY: These final rules amend the regulations governing the suspension and disqualification of persons who represent claimants in dealings with the Social Security Administration (SSA). The regulations update organizational designations and establish the framework for more efficient processing of possible violations of our rules. The regulations also require that a panel of three Appeals Council members, rather than a single member, will consider a request for review of an administrative law judge's (ALJ) decision on the issue of suspension or disqualification of a representative. The procedures for initiating and processing complaints are largely unchanged but the regulations designate the Deputy Commissioner for Programs, or his or her designee, as the official responsible for issuing complaints.

EFFECTIVE DATE: These final regulations are effective May 29, 1991.

FOR FURTHER INFORMATION CONTACT: Philip Berge, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 (301) 965–1769.

SUPPLEMENTARY INFORMATION: On February 1, 1990, we published a notice of proposed rulemaking (NPRM) to provide that, when it appears that a person who represents claimants in dealings with SSA has violated one of our rules, SSA's Associate Commissioner for Hearings and Appeals, or his or her designee, will initiate proceedings to suspend or disqualify the representative. This differed from the regulations then in effect, which provided that the Deputy Commissioner (Operations) or the Director (or Deputy Director), Office of Insurance Programs, would prepare a notice containing a statement of charges that constituted the basis for a proceeding against the representative.

The NPRM also provided that a request for review of the decision issued by the ALJ designated to act as hearing officer would be decided by a panel of three Appeals Council members rather than a single member, as is presently the case. In addition, the NPRM updated organizational designations and clarified the functional responsibility of the designated officials.

Final Regulations

The final regulations:

1. Update organizational designations and establish a framework for more efficient processing of matters involving the possible suspension or disqualification of a representative;
2. Authorize the establishment of a panel of three Appeals Council members who will consider a request for review of an ALJ's decision on the issue of suspension or disqualification of a representative, and
3. Provide that the Deputy Commissioner for Programs, or his or her designee, will initiate proceedings to suspend or disqualify a representative.

The only substantive change in these final regulations from the NPRM is that the Deputy Commissioner for Programs, or his or her designee, will initiate proceedings to suspend or disqualify the representative, rather than the Associate Commissioner for Hearings and Appeals, or his or her designee.

The Deputy Commissioner for Programs has direct authority over the Office of Hearings and Appeals. That office will investigate alleged violations and forward its findings and recommendations to the Deputy Commissioner for Programs who will independently decide whether to issue a notice of charges against a representative. The Deputy Commissioner for Programs will also consider any answer filed in response to the complaint, and determine whether the complaint should be withdrawn. If the complaint is not withdrawn, the Deputy Commissioner for Programs will request the Associate Commissioner for Hearings and Appeals to designate an ALJ who will serve as hearing officer to hold a hearing on the charges. The Office of Hearings and Appeals' Special Counsel Staff which investigated the alleged violations, will represent the Deputy Commissioner for Programs during all phases of the proceeding.

These procedures will not only have the advantages of efficiency and economy, but will also provide for direct review and oversight of the activities of the Office of Hearings and Appeals by the senior SSA official responsible for overall management of this area of the program. Moreover, the process will allow SSA personnel familiar with the facts to represent the Agency during proceedings on charges and thereby eliminate the duplication of effort that would result from separation of the investigative and prosecutorial functions.

Public Comments and Responses

We received 19 letters in response to the NPRM containing comments from attorneys, claimant representatives, private individuals, and legal aid organizations. We have carefully considered all the comments and, below, have attempted to address all of the significant comments we received, including those that resulted in changes to the rules and those that were rejected. For ease of reference we have grouped the comments according to the issues raised.

Comment: All of the commenters objected in some form to the consolidation within the Office of Hearings and Appeals of all phases of the process involved in the suspension or disqualification of representatives. Some of the commenters believed that the proposed change would violate statutory provisions or deny the representatives due process of law. Each of the commenters cited several of the following factors as representing actual or apparent conflicts of interest because of the perception that there was intermingling of the investigative,

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prosecutorial, and adjudicative functions:

1. The Office of Hearings and Appeals would conduct the investigation of suspected violations of the rules governing representatives' conduct;
2. The Associate Commissioner for Hearings and Appeals would issue the notice of charges against a representative;
3. The Associate Commissioner for Hearings and Appeals would assign an ALJ employed by the Agency to conduct the hearing and issue a decision on the charges;
4. Personnel assigned to the Office of Hearings and Appeals would represent the Agency in proceedings to suspend or disqualify representatives;
5. Both the representative and the Office of Hearings and Appeals personnel who prosecuted the charges filed against the representative could request review of the decision issued by the ALJ; and,
6. The Appeals Council, which is a part of the Office of Hearings and Appeals, would consider the request for review of the ALJ's decision.

Response: To avoid even the appearance of impropriety or unfairness, we have modified the proposed regulations to indicate that the Deputy Commissioner for Programs will be the official with the authority to issue notices of charges against representatives. The Deputy Commissioner for Programs has authority over employees working at the Office of Hearings and Appeals, as well as several other components within SSA, with responsibility for formulating the regulations and policies by which SSA administers its benefit programs. As such, the Deputy Commissioner for Programs has the knowledge necessary to evaluate whether a representative has committed a violation with regard to any Social Security program. Further, the broad responsibilities and wider scope of authority of the Deputy Commissioner for Programs emphasize the gravity of a decision to issue a notice of charges. Assigning this authority to the Deputy Commissioner for Programs retains the function at its current organizational placement level.

The propriety of a system in which both investigation/prosecution and adjudication are the responsibility of a single entity, was settled by the United States Supreme Court in *Withrow* v. *Larkin*, 421 U.S. 35 (1975). In *Withrow*, a state medical board which investigated physician misconduct was also empowered to prosecute and adjudicate in an adversarial proceeding the issue of whether the physician's medical license should be suspended. The primary issue in the case was whether the combination of investigative and adjudicative functions within a single agency created an unconstitutional risk of bias in the adjudication. The Court advised that mere exposure to evidence obtained during an investigative procedure was insufficient, in itself, to impugn the fairness of the adjudicators at a later adversary proceeding. Without a showing to the contrary, adjudicators were assumed to be persons of "conscience and intellectual discipline, capable of judging a particular controversy fairly on the basis of its own circumstances" (421 U.S. at 55). The Court found that the medical board's practice of receiving investigative results, approving the filing of charges or formal complaints, and participating in the ensuing hearings was "very typical" of administrative agencies, and held that such procedures do not violate the Administrative Procedure Act or due process of law.

The American Bar Association has also approved the use of such systems for regulating professional misconduct, as indicated by its formulation and adoption of the model Standards for Lawyer Discipline and Disability Proceedings.

In its 1984 Survey of Lawyer Disciplinary Procedures in the United States, the American Bar Association revealed that lawyer disciplinary procedures in the majority of jurisdictions (36) utilized disciplinary counsel to perform all of the following functions:

1. Screening information;
2. Investigating allegations;
3. Recommending dispositions;
4. Prosecuting matters at all stages;
5. Investigating facts relating to petitions for reinstatement; and
6. Maintaining records of the agency's operations and individual matters processed by the agency.

Accordingly, it is a widely utilized and accepted organizational concept to avoid segmentation of the investigative and prosecutorial functions in dealing with matters involving professional conduct.

The Social Security Act and the Administrative Procedure Act also permit the investigative, prosecutorial, and adjudicative functions to be combined within the same agency, providing that adjudicators are able to function independently, outside the direction or supervision of the agency employees involved in investigative and prosecutorial matters. 42 U.S.C. 405 and 1383(c)(1) and 5 U.S.C. 554(d). The Attorney General's Manual on the Administrative Procedure Act, United States Department of Justice (1947), commented on this required separation of functions, noting that "[a]s a practical matter this means that an agency's hearing examiners [now ALJs] should be placed in an organizational unit apart from those to which investigative and prosecuting personnel are assigned * * *." Attorney General's Manual on the Administrative Procedure Act at 55–56.

The Agency's organizational structure is consistent with the Court's holding in *Withrow* and satisfies the concerns regarding separation of function noted above. ALJs and Appeals Council members exercise independent authority to adjudicate complaints and are assigned to components distinct and separate from the Office of Hearings and Appeals Special Counsel Staff personnel engaged in investigative and prosecutorial functions on behalf of the Deputy Commissioner for Programs.

We believe that the final rules satisfy procedural safeguards and offer a fair and equitable process for addressing circumstances which, if established, warrant suspending or disqualifying a person from representing Social Security claimants.

Comment: Some of the commenters objected to authorizing the Associate Commissioner for Hearings and Appeals to assign ALJs to act as hearing officers for suspension/disqualification proceedings. See §§ 404.1765(b) and 416.1565(b), as revised. One commenter characterized this authority as the ability to choose a "hanging judge."

Response: ALJs are assigned to cases in rotation so far as practicable. In this type of situation, however, it is not practicable to employ a strict rotation because of variable factors such as: The availability of the ALJ; office workload; individual docket considerations; and the practice of choosing an ALJ stationed outside the geographic area in which the charged representative resides, who does not normally adjudicate cases in which the representative has an interest. Thus, practical concerns mandate a discretionary decision rather than strict mechanical rotation in designating a hearing officer, and officials within the Office of Hearings and Appeals are capable of making this determination.

In addition, the regulations provide a remedy when the representative or any party to the hearing believes that the ALJ who has been assigned to the case is prejudiced against or partial to either party, or has any interest in the matter. The party may file an objection that will be considered by the ALJ. If the ALJ withdraws, another ALJ will be appointed. If the ALJ refuses to withdraw, the party may upon issuance of the decision present his or her objections to the Appeals Council as a reason why the decision should be revised or assigned to another ALJ for a new hearing. See §§ 404.1765(b) and 416.1565(b), as revised. Accordingly, we do not believe that the authority to designate the ALJ to hear the complaint should be removed from the Associate Commissioner for Hearings and Appeals.

Comment: One commenter noted that the Office of Hearings and Appeals does not have authority over applications for supplemental security income benefits, questionable retirement issues, overpayment issues, and continuing disability reviews and thus would not be in a position to monitor the behavior of representatives appearing on behalf of claimants who have problems in these areas.

Response: We do not agree. Although these issues are often resolved without the need for an ALJ hearing, they clearly may be decided by an ALJ or the Appeals Council. Since most claimants do not obtain representation until review by an ALJ or Appeals Council is requested, most violations of our rules by representatives occur when the claim is being considered by an ALJ or the Appeals Council. Therefore, the Office of Hearings and Appeals is able to identify possible violations, recognize multiple offenders, and undertake the investigation and prosecution of these matters.

Comment: Some commenters were generally critical of the conduct and attitudes of ALJs and expressed concern that the proposed "rules" were not adequately explained, thus allowing ALJs to charge representatives arbitrarily with violations. This in turn, the commenters maintained, would inhibit aggressive representation.

Response: We do not agree. The regulations set forth at §§ 404.1740 and 416.1540 as well as §§ 404.1745 and 416.1545 as amended herein, contain the specific rules governing representatives. In addition, §§ 404.1705 and 416.1505 provide the requisite qualifications for a person to serve as a representative. The above cited regulations provide clear and specific notice of conduct which may lead to a suspension or disqualification.

Apparently, the commenters thought that the proposed regulations, if adopted, would create a new process or establish new procedures permitting ALJs to suspend or disqualify representatives arbitrarily. This is not the case. Other than authorizing the Deputy Commissioner for Programs in place of the Deputy Commissioner for Operations or the Director or Deputy Director for the Office of Insurance Programs to issue notices of charges, the procedures essentially are not changed by these final rules. As before, ALJs may bring allegations of misconduct to the attention of appropriate Agency officials, but they have no authority under either the amended or prior regulations to issue formal charges or to suspend or disqualify representatives without following the procedures prescribed by the regulations.

Regulatory Procedures

Executive Order No. 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because the issuance of these regulations is not expected to result in significant costs. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These final regulations impose no new reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities because these rules will affect only individuals. Therefore a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 93.773 and 93.774, Medicare; 93.802–93.806 Social Security; and 93.807 Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Death benefits; Disability benefits; Old-Age, Survivors and Disability Insurance.

20 CFR Part 416

Administrative practice and procedures; Aged, Blind, Disability benefits; Public assistance programs; Supplemental Security Income (SSI).

Dated: December 28, 1990.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: March 27, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, subpart R of part 404 and subpart O of part 416 of chapter III of title 20 of the Code of Federal Regulations are amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE

1. The authority citation for subpart R of part 404 continues to read as follows:

Authority: Secs. 205(a), 206, and 1102 of the Social Security Act; 42 U.S.C. 405(a), 406, and 1302.

2. The introductory paragraph in § 404.1745 is revised to read as follows:

§ 404.1745 What happens to a representative who breaks the rules.

The Deputy Commissioner for Programs, or his or her designee, may begin proceedings to suspend or disqualify a person from acting as a representative in dealings with us if it appears that he or she—

* * * * *

3. Paragraphs (a), (d) and (e)(2) of § 404.1750 are revised to read as follows and the cross-reference in paragraph (f) of § 404.1750 is changed from § 404.1765(f) to § 404.1765(g):

§ 404.1750 Notice of charges against a representative.

(a) The Deputy Commissioner for Programs, or his or her designee, will prepare a notice containing a statement of charges that constitutes the basis for the proceeding against the representative.

* * * * *

(d) The Deputy Commissioner for Programs, or his or her designee, may extend the 30-day period for good cause.

(e) The representative must—

* * * * *

(2) File the answer with the Social Security Administration, Office of Hearings and Appeals, Attention: Special Counsel Staff, within the 30-day time period.

§ 404.1760 [Removed]

4. Section 404.1760 is removed.

5. In § 404.1765, paragraphs (a) through (n) are redesignated as paragraphs (b) through (o), and a new paragraph (a) is added to read as follows:

§ 404.1765 Hearing on charges.

(a) *Scheduling the hearing.* If the Deputy Commissioner for Programs, or his or her designee, does not take action to withdraw the charges within 15 days after the date on which the representative filed an answer, we will hold a hearing and make a decision on the charges.

* * * * *

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6. In § 404.1765, the paragraphs newly redesignated as (b)(1), (c) and (e) are revised to read as follows:

§ 404.1765 Hearing on charges.

* * * * *

(b)(1) *Hearing officer.* The Associate Commissioner for Hearings and Appeals, or his or her designee, shall assign an administrative law judge, designated to act as a hearing officer, to hold a hearing on the charges.

* * * * *

(c) *Time and place of hearing.* The hearing officer shall mail the parties a written notice of the hearing at their last known addresses, at least 20 days before the date set for the hearing.

* * * * *

(e) *Parties.* The representative against whom charges have been made is a party to the hearing. The Deputy Commissioner for Programs, or his or her designee, shall also be a party to the hearing.

7. Paragraph (a) (3) of § 404.1770 is revised to read as follows:

§ 404.1770 Decision by hearing officer.

(a) * * *

(3) The hearing officer shall mail a copy of the decision to the parties at their last known addresses. The notice will inform the parties of the right to request the Appeals Council to review the decision.

* * * * *

8. A new § 404.1776 is added to read as follows:

§ 404.1776 Assignment of request for review of the hearing officer's decision.

Upon receipt of a request for review of the hearing officer's decision, the matter will be assigned to a panel consisting of three members of the Appeals Council none of whom shall be the Chair of the Appeals Council. The panel shall jointly consider and rule by majority opinion on the request for review of the hearing officer's decision, including a determination to dismiss the request for review. Matters other than a final disposition of the request for review may be disposed of by the member designated chair of the panel.

9. Paragraph (e) of § 404.1790 is revised to read as follows:

§ 404.1790 Appeals Council's decision.

* * * * *

(e) The Appeals Council shall make its decision in writing and shall mail a copy of the decision to the parties at their last known addresses.

10. Paragraphs (c) and (e) of § 404.1799 are revised to read as follows:

§ 404.1799 Reinstatement after suspension or disqualification—period of suspension not expired.

* * * * *

(c) The Appeals Council shall allow the Deputy Commissioner for Programs, or his or her designee, upon notification of receipt of the request, 30 days in which to present a written report of any experiences with the suspended or disqualified person subsequent to that person's suspension or disqualification. The Appeals Council shall make available to the suspended or disqualified person a copy of the report.

* * * * *

(e) The Appeals Council shall mail a notice of its decision on the request to the suspended or disqualified person. It shall also mail a copy to the Deputy Commissioner for Programs.

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND AND DISABLED

1. The authority citation for subpart O of part 416 continues to read as follows:

Authority: Secs. 1102 and 1631(d) of the Social Security Act; 42 U.S.C. 1302 and 1383(d).

2. The introductory paragraph in § 416.1545 is revised to read as follows:

§ 416.1545 What happens to a representative who breaks the rules.

The Deputy Commissioner for Programs, or his or her designee, may begin proceedings to suspend or disqualify a person from acting as a representative in dealings with us if it appears that he or she—

* * * * *

3. Paragraphs (a), (d) and (e)(2) of § 416.1550 are revised to read as follows and the cross-reference in paragraph (f) of § 416.1550 is changed from § 416.1565(f) to § 416.1565(g):

§ 416.1550 Notice of charges against a representative.

(a) The Deputy Commissioner for Programs, or his or her designee, will prepare a notice containing a statement of charges that constitutes the basis for the proceeding against the representative.

* * * * *

(d) The Deputy Commissioner for Programs, or his or her designee, may extend the 30-day period for good cause.

(e) The representative must—

* * * * *

(2) File the answer with the Social Security Administration, Office of Hearings and Appeals, Attention: Special Counsel Staff, within the 30-day time period.

* * * * *

§ 416.1560 [Removed]

4. Section 416.1560 is removed.

5. In § 416.1565 paragraphs (a) through (n) are redesignated as paragraphs (b) through (o), and a new paragraph (a) is added to read as follows:

§ 416.1565 Hearing on charges.

(a) *Scheduling the hearing.* If the Deputy Commissioner for Programs, or his or her designee, does not take action to withdraw the charges within 15 days after the date on which the representative filed an answer, we will hold a hearing and make a decision on the charges.

* * * * *

6. In § 416.1565, the paragraphs newly redesignated as (b)(1), (c) and (e) are revised to read as follows:

§ 416.1565 Hearing on charges.

* * * * *

(b)(1) *Hearing officer.* The Associate Commissioner for Hearings and Appeals, or his or her designee, shall assign an administrative law judge, designated to act as a hearing officer, to hold a hearing on the charges.

* * * * *

(c) *Time and place of hearing.* The hearing officer shall mail the parties a written notice of the hearing at their last known addresses, at least 20 days before the date set for the hearing.

* * * * *

(e) *Parties.* The representative against whom charges have been made is a party to the hearing. The Deputy Commissioner for Programs, or his or her designee, shall also be a party to the hearing.

* * * * *

7. Paragraph (a)(3) of § 416.1570 is revised to read as follows:

§ 416.1570 Decision by hearing officer.

(a) * * *

(3) The hearing officer shall mail a copy of the decision to the parties at their last known addresses. The notice will inform the parties of the right to request the Appeals Council to review the decision.

* * * * *

8. A new § 416.1576 is added to read as follows:

§ 416.1576 Assignment of request for review of the hearing officer's decision.

Upon receipt of a request for review of the hearing officer's decision, the matter will be assigned to a panel consisting of three members of the

Appeals Council none of whom shall be the Chair of the Appeals Council. The panel shall jointly consider and rule by majority opinion on the request for review of the hearing officer's decision, including a determination to dismiss the request for review. Matters other than a final disposition of the request for review may be disposed of by the member designated chair of the panel.

9. Paragraph (e) of § 416.1590 is revised to read as follows:

§ 416.1590 Appeals Council's decision.

* * * * *

(e) The Appeals Council shall make its decision in writing and shall mail a copy of the decision to the parties at their last known addresses.

10. Paragraphs (c) and (e) of § 416.1599 are revised to read as follows:

§ 416.1599 Reinstatement after suspension or disqualification—period of suspension not expired.

* * * * *

(c) The Appeals Council shall allow the Deputy Commissioner for Programs, or his or her designee, upon notification of receipt of the request, 30 days in which to present a written report of any experiences with the suspended or disqualified person subsequent to that person's suspension or disqualification. The Appeals Council shall make available to the suspended or disqualified person a copy of the report.

* * * * *

(e) The Appeals Council shall mail a notice of its decision on the request to the suspended or disqualified person. It shall also mail a copy to the Deputy Commissioner for Programs.

[FR Doc. 91-12565 Filed 5-28-91; 8:45 am]

BILLING CODE 4190-29-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Chapter I

Freedom of Information and Privacy Acts; Implementation

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This document transfers 32 CFR parts 284 and 285 from subchapter M to subchapter O and revises the headings of subchapters N and O in order to place the Freedom of Information Program and the Privacy Act Program parts in separate subchapters.

EFFECTIVE DATE: May 29, 1991.

ADDRESSES: Directives Division, Correspondence and Directives Directorate, Washington Headquarters Services, Washington, DC 20301-1155.

FOR FURTHER INFORMATION CONTACT: Ms. L. Bynum, telephone (703) 697-4111.

Accordingly, by the authority of 5 U.S.C. 552 and 552a, title 32, chapter I, of the Code of Federal Regulations is amended as follows:

PARTS 284 and 285—[AMENDED]

1. Subchapter M is amended by transferring parts 284 and 285 to subchapter O.

2. Subchapter N, which is currently reserved is amended by revising the heading to read as follows:

SUBCHAPTER N—PRIVACY PROGRAM—[RESERVED]

3. Subchapter O, consisting of newly transferred parts 284 and 285, is amended by revising the heading to read as follows:

SUBCHAPTER O—FREEDOM OF INFORMATION ACT PROGRAM

Dated: May 22, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-12592 Filed 5-28-91; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3956-6]

Approval and Promulgation of State Implementation Plans; Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: By this notice, EPA is approving an amendment to the State of Washington sulfur dioxide emission limitation as a revision to the Washington state implementation plan (SIP). This amendment was submitted to EPA on April 28, 1983, by the Washington Department of Ecology (WDOE) to satisfy the requirements of section 110 of the Clean Air Act (hereinafter the Act). This amendment clarifies the averaging time for the sulfur dioxide emission limitation in WAC 173-400-040(6).

EFFECTIVE DATE: July 29, 1991.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Air Programs Branch, Docket #10A-88-4, Environmental Protection Agency, 1200 Sixth Avenue, AT-082, Seattle, Washington 98101.

Air Programs, Washington Department of Ecology, 4226—6th Avenue SE., Rowe Six, Building #4, Lacey, Washington 98504.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Environmental Protection Agency, 1200 Sixth Avenue, AT-082, Seattle, Washington 98101, telephone: (206) 553-4253, FTS: 399-4253.

SUPPLEMENTARY INFORMATION:

I. Background

On April 27, 1979, the State of Washington Department of Ecology (WDOE) submitted a general emission limitation for sulfur dioxide as a revision to the Washington state implementation plan (SIP). On June 5, 1980 (45 FR 37821), EPA approved this emission limitation on the condition that WDOE submit source test and compliance procedures for enforcing the emission limitation. On July 31, 1980, and January 13, 1981, WDOE submitted source test methods and compliance procedures as revisions to the Washington SIP. EPA approved these revisions to the Washington SIP on September 14, 1981 (45 FR 45607).

On April 28, 1983, WDOE submitted amendments to the regulation for control of sulfur dioxide emissions (WAC 173-400-040(6)) as a revision to the Washington SIP. These amendments clarified the averaging time for the sulfur dioxide emission limitation, and updated, rearranged, and recodified the regulation. On November 7, 1988 (53 FR 44911), EPA proposed to approve the portion of the amendments which clarified the averaging time of the sulfur dioxide emission limitation. However, EPA proposed to take no action on the remaining provisions which provided for the granting of an exception to the general emission limitation and furthermore, proposed to rescind its June 5, 1980, approval of the exception provisions.

II. Response to Comments

EPA received numerous comments on its proposal from state and local air pollution authorities, the National Park Service, and the owners of a large coal-fired power plant. In general, the comments fall into two general categories—the appropriateness of a 60-minute averaging time, and the need for the exception provisions.

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The WDOE objected to EPA's proposed disapproval of the exception provision and requested that EPA either withhold action on the submitted revision or approve the revision in its entirety. The WDOE indicated that it was aware of EPA's concerns with the exception provisions and requested an opportunity to revise its regulations through either an informal process or pursuant to a formal SIP call under section 110(a)(2)(H).

EPA agrees that its proposal to rescind the previous approval of the exception provisions in the Washington SIP was premature. Congress provided a process in section 110(a)(2)(H) for EPA to identify deficiencies within SIPs and to provide an opportunity for states to correct such deficiencies. While EPA is not changing its position on the approvability of the exception provisions in the proposed revisions or the current Washington SIP, EPA is not disapproving either sets of exception provisions at this time. Rather, EPA is taking no action on the proposed revisions, thereby leaving the currently approved exception provisions in place. However, EPA intends, in the near future, to make a finding of SIP deficiency pursuant to section 110(a)(2)(H), requiring the revision of the exception provisions.

WDOE emphasized the state's prerogative to establish emission limits and grant exceptions thereto, so long as the requirements of the Clean Air Act were met. Furthermore, the WDOE acknowledged that changes to previously established SIP emission limits, granted through the exception process, would need to be submitted to, and approved by, EPA as a revision to the Washington SIP, even if EPA has approved the exception provisions themselves. In order to clearly indicate the need for case-by-case EPA approval of exceptions granted pursuant to this, or any other exception provision in the Washington SIP, EPA has added a new section to 40 CFR part 52, subpart WW.

The Southwest Air Pollution Control Authority (SWAPCA), a local air pollution control authority in southwest Washington objected to EPA's proposed approval of the 60-minute averaging time and proposed disapproval of the exception provision on a number of grounds, and urged EPA to remand the regulations to the state for reconsideration. First, SWAPCA indicated that the impact of the addition of the 60-minute averaging time was not adequately discussed during the state public hearing process. However, there is no requirement that a portion of a proposed revision be specifically discussed during the hearing process, if it is not raised by a commentor. As such, EPA finds that the state's public hearing process on this revision was fully adequate.

Second, SWAPCA pointed out a potential conflict between the averaging time specified in the regulation and a table in the Washington SIP which describes the applicable source test methods. Since the table is not regulatory, and is descriptive only, EPA believes that deference must be given to the regulatory provisions in any apparent conflict. However, EPA has taken note of this potential conflict and will request that WDOE revise the table, as appropriate, at the next opportune update of their SIP.

Third, SWAPCA argued that EPA should not approve the 60-minute averaging time because WDOE has not demonstrated that the sulfur dioxide emission limit is adquate to attain and maintain the national ambient air quality standards. However, as described above, the revision only clarifies the averaging time of the existing emission limitation. Since there are currently no designated sulfur dioxide nonattainment areas in Washington, nor are there any areas for which EPA has found the current SIP emission limitations to be substantially deficient to attain and maintain the ambient standards, EPA finds that no demonstration is needed to support the approval of this technical amendment. However, SWAPCA's point regarding the ability of a volumetric concentration standard to ensure attainment and maintenance is well taken. EPA will consider this further in its next assessment of the Washington sulfur dioxide control program.

Finally, SWAPCA argued that the requirements of part C of the Act (prevention of signficant deterioration (PSD), visibility protection) only apply to new sources and not to existing sources such that an existing source which applies for an exception would not need to demonstrate compliance with PSD increments or visibility requirements. This comment, however, is contrary to the explicit language in part C of the Act and EPA regulations (40 CFR part 51, subparts I and P). As such, EPA maintains that exception provisions in the proposed revision and the current Washington SIP need to be revised.

The National Park Service supported EPA's proposed action, indicating the need for an enforceable and unambiguous emission limitation.

Seven of the owners of a large coal-fired steam electric generating plant in southwest Washington, and one of the owners of the adjacent coal mine, submitted comments objecting to EPA's proposed action.

The owners objected to EPA's proposed disapproval of the exception provisions as making the emission limitation more stringent than intended by the state. They contend that the intent of the current provision was to require compliance with the 1000 ppm, 60-minute average limitation only where feasible and to grant exceptions, through the exception provisions, where compliance was not feasible. By disapproving the exception provisions, EPA would be tightening the state's regulation by eliminating the means for revising the emission limit for situations where compliance was not feasible. As discussed above, EPA has decided not to disapprove the exception provisions at this time, leaving the currently approved exception provisions in place. However, as discussed above, EPA intends to make a finding pursuant to Section 110(a)(2)(H) that the existing exception provisions fail to meet all applicable requirements of the Clean Air Act and need to be revised.

The owners further contend that the addition of the 60-minute average is not simply a technical amendment to the current SIP but rather, could be interpreted as a tightening of the current provision. Therefore, EPA's finding that the amended regulation is functionally equivalent to the current SIP was erroneous and its rationale for proposing approval was flawed. However, as discussed above, the state of Washington's control strategy for sulfur dioxide is fully approved and there are currently no known problem areas. If, as the owners contend, this amendment is a tightening of the current SIP provisions, EPA would have no recourse but to approve it, since section 116 of the Clean Air Act allows states to adopt emission limitations which are more stringent than required by EPA. Furthermore, EPA's requirements for SIP emission limitations clearly state that an averaging time must be specified and such averaging time can be no longer than that of any short-term ambient air quality standard. This amendment to the Washington sulfur dioxide emission standard satisfies these requirements and is therefore approvable as a revision to the Washington SIP.

The owners also urge EPA to remand the proposed revision to the WDOE until current studies of the power plant's impact on air quality are completed. The results of these studies will be used by SWAPCA and WDOE to grant an exception under the exception provisions and to determine appropriate emission limitations for the power plant. However, EPA feels that it is appropriate to take final action on the technical amendment at this time since this emission limitation applies to nearly all sulfur dioxide sources in the state of Washington and not just to one power plant. EPA recognizes that studies are underway which will enable SWAPCA and WDOE to establish appropriate emission limitations for the power plant. Since EPA is not disapproving the current exception provisions, the mechanism for establishing such appropriate limitations remains in place.

The owners felt that the proposed rulemaking was subject to section 3 of Executive Order 12291 and, therefore, should have been required to be reviewed by the Office of Management and Budget (OMB). EPA agrees that the proposed rulemaking should have been reviewed by the OMB since EPA was rescinding its previous approval of the exception provisions in the Washington SIP. However, since EPA is no longer rescinding its previous approval of the exception provisions in the currently-approved Washington SIP, this issue is moot. This final rulemaking is not subject to the requirements of section 3 of Executive Order 12291.

The owners also felt that this rulemaking was incorrectly exempted from Regulatory Impact Analysis and Review requirements of Executive Order 12291, claiming that the action is a "major rule" as defined therein. This claim is based on the highly unlikely scenario that the EPA action would result in the shutdown of the power plant and adjacent coal mine. However, EPA's proposed action would have done nothing to limit the state's authority to grant an exception under its existing regulations, or EPA's authority and obligation to approve such an exception as a revision to the Washington SIP if all of the requirements of the Clean Air Act were met. As such, EPA's proposed action was not a "major rule" as defined in Executive Order 12291, since it, in and of itself, had no direct effect on the ability of any source to obtain an exception to the 1000 ppm, 60-minute average emission limitation. However, since EPA is no longer disapproving the exception provision in the currently-approved Washington SIP, this issue is also moot. This rulemaking is not a "major rule" as defined in Executive Order 12291.

III. Discussion

The Clean Air Act and EPA regulations and guidelines are clear with respect to the need for enforceable emission limitations in the SIP. The Act defines an emission limitation or emission standard as "* * * a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis * * *" (section 302(k)). For an emission limitation to be approvable as a control measure under sections 110, 161, or 172, it must meet certain requirements. There must be a clear numerical limitation, and an averaging time must be specified which is consistent with that of the national ambient air quality standards the limitation is designed to protect. Furthermore, it must include explicit test methods and procedures adequate to verify compliance.

The 1979 version of WAC 173-400-040(6) did not, in and of itself, include a specified averaging time but instead, relied upon the sampling time and averaging protocol of the source test method. Since this resulted in some ambiguity regarding the applicable averaging time, WDOE amended the regulation in 1983 to explicitly require a 60-minute averaging time, consistent with the State of Washington one-hour ambient air quality standard for sulfur dioxide. Since the addition of the 60-minute averaging time to the regulation fulfills EPA's requirement for an explicit averaging time which is no longer than the averaging time of the applicable ambient air quality standards, EPA finds this amendment to be approvable as a revision to the Washington SIP.

The Act and EPA regulations for state implementation plans (40 CFR part 51) are also clear with respect to the requirements for modifying SIP emission limitations and provisions. Section 110(i) of the Act states that, with certain exceptions, "* * * no order, suspension, plan revision, or other action modifying any requirement of an applicable implementation plan may be taken with respect to any stationary source by the State or by the Administrator." One of the listed exceptions is plan revisions under section 110 of the Act.

The exception provisions in WAC 173-400-040(6) fail to meet the requirement of section 110(i) in several ways. First and foremost, they fail to recognize the need for submittal to EPA and EPA approval of any exception granted by the state, before the existing requirement of the state implementation plan could be modified. Second, they would allow the State to grant an exception which fails to comply with the requirements of the Act and as such, could not be approved as a revision to the SIP under section 110. Specifically, the current provisions would allow an exception based solely on a showing that ambient air quality standards would not be exceeded. This fails to ensure that the requirements for prevention of significant deterioration and visibility in part C of the Act would be met or that ambient standards were not being met as a result of the use of stack heights or dispersion techniques prohibited by section 123 of the Act. Furthermore, the provisions do not ensure that a source would be required to comply with any other applicable requirement, including new source performance standards under section 111, best available control technology under section 165, lowest achievable emission rates under section 173, or best available retrofit technology under section 169A of the Act.

Because the exception provisions in WAC 173-400-040(6) fail to meet Act and EPA requirements, EPA cannot approve the provisions as a revision to the Washington SIP. However, since the current SIP contains nearly identical provisions, disapproving the submittal would not, in and of itself, rectify the SIP deficiency. Rather, EPA is taking no action on the submitted revision and intends to make a SIP call pursuant to section 110(a)(2)(H) in order to provide the State an opportunity to amend the current provisions and submit a revised regulation as a revision to the Washington SIP. This approach differs from EPA's proposal in that it would leave in the SIP, until an amended rule is approved by EPA, the current exception provisions, based on the understanding that WDOE will submit to EPA each exception granted under the current provisions as a case-by-case revision to the SIP. This approach should address the concerns of the state and local agencies and affected industries that EPA's action not constrain the State's ability to grant exceptions to its rules, while at the same time, provide the State an opportunity to ensure that its rule conforms to the Act and EPA requirements.

IV. Summary of Action

EPA is today approving amendments to the State of Washington sulfur dioxide emission limitation, specifically the first uncodified sentence of WAC 173-400-040(6), as a revision to the Washington state implementation plan (SIP). EPA is taking no action on the exception provisions (paragraphs (a) and (b)) in WAC 173-400-040(6), leaving the current SIP provisions (WAC 173-400-040(6)(a) (i) and (ii) and (6)(b)) in place. Note however, that EPA intends to make a SIP call pursuant to section 110(a)(2)(H) of the Act in order to

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require revision to the exception provisions in the current regulation for control of sulfur dioxide.

Administrative Review

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years and has subsequently extended the waiver to April 6, 1991.

The Agency has reviewed this request for revision of the federally-approved State implementation plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal precedes the date of enactment.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 29, 1991. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and Recordkeeping requirements, Sulfur oxides.

Dated: April 23, 1991.

Gerald A. Emison,

Acting Regional Administrator.

Note: Incorporation by reference of the Implementation Plan for the State of Washington was approved by the Director of the Office of Federal Register on July 1, 1982.

Title 40, chapter I of part 52 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642

Subpart WW—Washington

2. Section 52.2470 is amended by adding paragraph (c)(37) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(37) On April 28, 1983, the State of Washington Department of Ecology submitted amendments to the State of Washington sulfur dioxide emission limitation. These amendments clarify the averaging time for the sulfur dioxide emission limitation in WAC 173–400–040(6).

(i) Incorporation By Reference.

(A) Letter dated April 28, 1983, from the Director of the Department of Ecology to EPA Region 10 amending the State of Washington State Implementation Plan.

(B) Washington Administrative Code [WAC] Chapter 173–400 [General Regulations for Air Pollution Sources], –040 [General Standard for Maximum Emissions], (6) [Sulfur Dioxide] introductory sentence adopted into state law by the State of Washington Department of Ecology on March 30, 1983 and became effective on May 11, 1983.

3. Section 52.2476 is added to read as follows:

§ 52.2476 Discretionary authority.

(a) This section applies to any variance, exception, exemption, alternative emission limitation, bubble, alternative sampling or testing method, compliance schedule revision, alternative compliance schedule, or any other substantial change to a provision of the state implementation plan, granted by the Department of Ecology, the Department of Natural Resources, the Energy Facility Site Evaluation Council, or a local air pollution control agency in accordance with any discretionary authority granted under its statutes or regulations, regardless of whether such statutes or regulations are part of the state implementation plan.

(b) Any change to a provision of the state implementation plan described in paragraph (a) of this section must be submitted by the state for approval by EPA in accordance with the requirements of 40 CFR 51.104.

(c) Any change to a provision of the state implementation plan described in paragraph (a) of this section does not modify the requirements of the federally-approved state implementation plan or a federally-promulgated implementation plan until approved by EPA as a revision to the state implementation plan in accordance with section 110 of the Clean Air Act.

4. Section 52.2479 is revised to read as follows:

§ 52.2479 Contents of the federally approved, state submitted implementation plan.

The following sections of the Washington State Implementation Plan for Compliance with Requirements of the Federal Clean Air Act (as adopted on the dates indicated) have been approved and are part of the current federally-approved, state-submitted implementation plan.

(a) Washington Administrative Code.

WAC 18–04 General Regulations for Air Pollution Sources
- Section 080 Compliance Schedules (1/22/73)
- Section 130 Regulatory Actions (1/22/73)
- Section 140 Appeals (1/22/73)

WAC 18–08 Emergency Episode Plan (undated, approved 5/31/72)

WAC 18–16 Grass Seed Field Burning (undated, approved 5/31/72)

WAC 173–400 General Regulations for Air Pollution Sources
- Section 010 Purpose (4/26/79)
- Section 020 Applicability (8/20/80)
- Section 030 Definitions (8/20/80)
- Section 040 General Standards for Maximum Permissible Emissions (except (6) Sulfur Dioxide and (13), Use of Tall Stacks or Dispersion Techniques) (8/20/80)
- Section 040(6) Sulfur Dioxide (except (b)) (4/15/83)
- Section 050 Minimum Emission Standards for Combustion and Incineration Sources (8/20/80)
- Section 060 Minimum Emission Standards for General Process sources (8/20/80)
- Section 070 Minimum Standards for Certain Source Categories (8/20/80)
- Section 090 Sensitive Area Designation (8/20/80)
- Section 100 Registration (8/20/80)
- Section 110 New Source Review (12/17/80)
- Section 120 Monitoring and Special Report (8/20/80)
- Section 130 Maintenance of Pay (4/26/79)

WAC 173–402 Civil Sanctions under Washington Clear Air Act (8/24/80)

WAC 173–403 Implementation of Regulations for Air Contaminant Sources
- Section 030 Definitions
  - Subsection (2) "Adverse Impact on Visibility" (3/6/85)
  - Subsection (9) "Best Available Retrofit Technology [BART]" (3/6/85)
  - Subsection (11) "Class I Area" (3/6/85)
  - Subsection (24) "Integral Vista" (3/6/85)
  - Subsection (25) "Land Manager" (3/6/85)
  - Subsection (31) "Natural Conditions" (3/6/85)
  - Subsection (42) "Reasonably Attributable" (3/6/85)
  - Subsection (46) "Significant Visibility Impairment" (3/6/85)
  - Subsection (51) "Visibility Impairment" (3/5/85)
  - Subsection (52) "Visibility Impairment of a Class I Area" (3/5/85)
- Section 080 Retrofit Requirements for Visibility Protection (8/26/83)

WAC 173–405 Kraft Pulping Mills
- Section 012 Statement of Purpose (8/20/80)
- Section 021 Definitions (8/20/80)
- Section 040 Emission Standards
  - Subsection (1) "Recovery Furnaces" (8/20/80)
  - Subsection (2) "Smelt Dissolver Tank Vent" (8/20/80)
  - Subsection (3) "Lime Kilns" (8/20/80)
  - Subsection (4) "Other Sources" (8/20/80)
  - Subsection (5) "Emission of Particulate Matter * * *" (8/20/80)
  - Subsection (6) "Fugitive Emissions" (8/20/80)
  - Subsection (17) "Source Testing" (8/20/80)
- Section 072 Monitoring Requirements
  - Subsection (1) "Particulate" (8/20/80)
  - Subsection (4) "Production" (8/20/80)
  - Subsection (5) "Other Data" (8/20/80)
- Section 077 Abnormal Operations or Upset Conditions (8/20/80)
- Section 086 New Source Review (8/20/80)
- Section 101 Exemptions (8/20/80)

WAC 173–410 Sulfite Pulping Mills
- Section 012 Statement of Purpose (8/20/80)
- Section 021 Definitions (8/20/80)
- Section 040 Emission Standards
  - Subsection (1) "Sulfur Dioxide" (8/20/80)
  - Subsection (2) "Particulate" (8/20/80)
  - Subsection (3) "Fugitive Emissions" (8/20/80)
  - Subsection (5) "Fallout" (8/20/80)
  - Subsection (16) "Source Testing" (8/20/80)
- Section 062 Monitoring Requirements (except (4)) (8/20/80)
- Section 067 Abnormal Operations or Upset Conditions (8/20/80)
- Section 086 New Source Review (8/20/80)
- Section 090 Operating Permit (8/20/80)
- Section 091 Exemptions (8/20/80)

WAC 173–415 Primary Aluminum Plants
- Section 010 Statement of Purpose (8/24/80)
- Section 020 Definitions (8/14/80)
- Section 030 Emission Standards
  - Subsection (2)(b) "Fluoride" (8/14/80)
  - Subsection (4) "Visible Emissions" (8/14/80)
  - Subsection (5) "Fallout" (8/14/80)
  - Subsection (7) "Fugitive Emissions" (8/14/80)
  - Subsection (11) "Source Testing" (8/14/80)
- Section 050 New Source Review (8/14/80)
- Section 060 Monitoring and Reporting
  - Subsection (1)(c) "Particulate Emissions" (8/14/80)
  - Subsection (2) "Other Data" (8/14/80)
- Section 070 Abnormal Operations or Upset Conditions (8/14/80)
- Section 090 Operating Permits (8/14/80)

WAC 173–420 State Jurisdiction Over Motor Vehicles (3/29/77)

WAC 173–422 Motor Vehicle Emission Inspection (12/31/81)

WAC 173–425 Open Burning (10/24/77)

WAC 173–490 Emission Standards and Controls for Sources Emitting Volatile Organic Compounds
- Section 010 Purpose (8/20/80)
- Section 020 Definitions (8/29/82)
- Section 025 General Applicability (8/29/82)
- Section 030 Registration and Reporting (8/20/80)
- Section 040 Requirements (8/29/82)
- Section 070 Schedule of Control Dates (8/20/80)
- Section 071 Alternative Schedule of Control Dates (8/20/80)
- Section 080 Exceptions (8/29/82)
- Section 090 New Source Review (4/26/79)
- Section 120 Compliance Schedules (4/26/79)
- Section 130 Regulatory Actions (4/26/79)
- Section 135 Criminal Penalties (4/26/79)
- Section 140 Appeals (4/26/79)
- Section 200 Petroleum Refinery Equipment Leaks (8/20/80)
- Section 201 Petroleum Liquid Storage In External Floating Roof Tanks (8/20/80)
- Section 202 Leaks from Gasoline Transport Tanks and Vapor Collection Systems (8/20/80)
- Section 203 Perchloroethylene Dry Cleaning Systems (8/29/82)
- Section 204 Graphic Arts Systems (8/29/82)
- Section 205 Surface Coating of Miscellaneous Metal Parts and Products (8/29/82)
- Section 207 Surface Coating of Flatwood Paneling (8/20/80)
- Section 208 Aerospace Assembly and Component Coating Operations (8/29/82)

WAC 463–39 General Regulations for Air Pollution Sources
- Section 010 Purpose (7/23/79)
- Section 020 Applicability (7/23/79)
- Section 030 Definitions (except (4), (7), (10), (24), (25), (30), (35), (36)) (7/23/79)
- Section 040 General Standards for Maximum Permissible Emissions (except introductory paragraph) (7/23/79)
- Section 050 Minimum Emission Standards for Combustion and Incineration Sources (7/23/79)
- Section 060 Minimum Emission Standards for General Process Sources (7/23/79)
- Section 080 Compliance Schedules (7/23/79)
- Section 100 Registration (7/23/79)
- Section 110 New Source Review (except (1), first two sentences of (3)(b), (3)(c), (3)(d), (3)(e)) (7/23/79)
- Section 120 Monitoring and Special Report (7/23/79)
- Section 130 Regulatory Actions (7/23/79)
- Section 135 Criminal Penalties (7/23/79)
- Section 150 Variance (7/23/79)
- Section 170 Conflict of Interest (7/23/79)

(b) Puget Sound Air Pollution Control Authority—Regulation I.

- Article 1 Policy, Short Title & Definitions (except 1.07(s), 1.07(rr) and 1.07(xx)) (12/74)
- Article 1.07(s) General Definitions, "Facility" (10/11/83)
- Article 1.07(rr) General Definitions, "Source" (10/11/83)
- Article 1.07(xx) General Definitions, "Volatile Organic Compound" (10/11/83)
- Article 3 General Provisions (12/74)
- Article 6 Notices of Construction and Orders of Approval (except 6.07(b)(7) and 6.08) (12/74)
- Article 6.07(b)(7) Issuance of Approval or Order (10/11/83)
- Article 6.08 Special Conditions for New Air Contaminant Sources Which Will Significantly Impact A NonAttainment Area (10/11/83)
- Article 9.02 Outdoor Fires (6/13/73)
- Article 9.02A (6/20/74)
- Article 9.03 Emission of Air Contaminant: Visual Standard (1/77)
- Article 9.04 Deposition of Particulate Matter (1/77)
- Article 9.05 Incinerator Burning (1/77)
- Article 9.06 Refuse Burning Equipment: Time Restriction (1/77)
- Article 9.07(c) Emission of Sulfur Dioxide (6/12/70)
- Article 9.07(d) Emission of Sulfur Dioxide (1/77)
- Article 9.07(e) Emission of Sulfur Dioxide (1/77)
- Article 9.09 Emission of Particulate Matter: Weight Rate Standard (1/77)

(c) Puget Sound Air Pollution Control Authority—Regulation II.

- Article 1 Purpose, Policy, Short Title and Definitions (except 1.02) (4/8/82)
- Article 1, Section 1.02 Policy (12/13/84)
- Article 2 Volatile Organic Compound Emission Standards Group 1 (except 2.13) (4/8/82)
- Article 2, Section 2.13 Schedule of Control Dates (12/13/84)
- Article 3 Volatile Organic Compound Emission Standards—Group 2 (except 3.11) (4/8/82)
- Article 3, Section 3.11 Schedule of Compliance Dates (12/13/84)
- Article 4 General Provisions (except 4.02) (4/8/82)
- Article 4, Section 4.02 Scope, Registration, Reporting and Notice of Construction (12/13/84)

(d) Northwest Air Pollution Authority—Regulations.

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Article 455.11 Particulate Matter Standard (8/9/78)

(e) Spokane County Air Pollution Control Authority—Regulation II.

Article IV, Section 4.01 Particulate Emissions—Grain Loading Restrictions (1/6/75)

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BILLING CODE 6560-50-M

40 CFR Parts 148 and 268

[FRL-3958-4]

Underground Injection Control Program: Hazardous Waste Disposal Injection Restrictions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action to grant a case-by-case extension.

SUMMARY: The EPA is granting final approval to E.I. du Pont de Nemours & Co., Inc., in Orange, Texas for a case-by-case extension for specific injected wastes which were impacted by the August 8, 1990, ban date (California listed wastes, solvents less than one (1) percent solvent constituents and First Third wastes). This action responds to the petition submitted under 40 CFR 148.4 according to procedures set out in 40 CFR 268.5, which allows any person to request that the Administrator grant, on a case-by-case basis, an extension of the applicable effective date based on a showing that the petitioner has entered into a binding contractual commitment to construct or otherwise provide adequate alternative treatment, recovery, or disposal capacity for the petitioner's waste. The Agency proposed action on this request in a July 5, 1990, **Federal Register** notice at (55 FR 27659). The Agency stated in an October 2, 1990, **Federal Register** notice at (55 FR 40229), that it was taking no action at that time on the proposed Dupont-Orange case-by-case extension because Dupont had not yet demonstrated that the no migration standard of the land disposal restrictions could be met. Dupont has now met this no migration standard through a chemical transformation demonstration for its acidic waste. In addition, Dupont will complete its containment demonstration for all its waste within the next few weeks. The EPA anticipates issuing a proposed decision on Dupont's no migration demonstration once Dupont completes its containment demonstration. Therefore, the EPA is granting Dupont-Orange a case-by-case extension. By granting this approval, Dupont-Orange can inject the above identified wastes through August 7, 1991, but not later than this date without being subject to the prohibitions applicable to such wastes.

DATES: This action is effective May 20, 1991.

ADDRESSES: The docket for this action is located at the EPA Region 6 library, 1445 Ross Avenue, Dallas, Texas 75202, and is open during normal business hours, 8 a.m. through 4 p.m., Monday through Friday. The public can review all docket materials by visiting the library.

FOR FURTHER INFORMATION CONTACT: For information contact Oscar Cabra, Jr., Chief Municipal Facilities Branch, EPA Region 6, 1445 Ross Avenue, Dallas, Texas, 75202-2733 or telephone (214) 655-7110, FTS 255-7110.

SUPPLEMENTARY INFORMATION:

I. Summary of Proposal and Response to Comments

A. Background

A more complete discussion of the Hazardous and Solid Waste Amendments (HSWA) of 1984 to amend the Resource Conservation and Recovery Act (RCRA), may be found in previous rulemakings by the Agency. See (55 FR 22520), June 1, 1990.

On July 26, 1988, EPA promulgated a final rule (53 FR 28118, effective August 8, 1988), that established an effective date of August 8, 1990 for injected spent F001–F005 solvent wastes containing less than 1 percent solvent constituents. An August 8, 1990, effective date was established for specified California list wastes that are deep well injected. See (53 FR 30908), effective August 8, 1988.

Section 3004(m) requires the Agency to set levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized. Wastes that meet treatment standards established by EPA are no longer prohibited and may be land disposed.

Section 3004(d), (e), (f), and (g) also allows the applicant to demonstrate to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous. The no migration petition process has been established by the Agency for injected wastes under 40 CFR part 148 subpart C. See (53 FR 28118), July 26, 1988.

Congress recognized that adequate alternative treatment, recovery, or disposal capacity any of which is protective of human health and the environment may not be available by the applicable statutory effective dates and authorized EPA to grant a variance (based on the earliest dates that such capacity will be available) from the effective date which would otherwise apply to specific hazardous wastes (RCRA section 3004(h)(2) and (h)(3)). In addition, under section 3004(h)(3), the Agency can grant case-by-case extensions of the statutory deadlines for up to one year beyond the applicable deadlines. These extensions are renewable once for up to one additional year.

On November 7, 1986, EPA published a final rule (51 FR 40572) establishing the regulatory framework to implement the land disposal restrictions program including procedures for submitting case-by-case extensions under § 268.5. On July 26, 1988, EPA published a final rule (53 FR 28118) establishing restrictions and requirements for Class I hazardous waste injection wells, including the framework for the no migration petition process and allowing case-by-case extensions under § 148.4 following § 268.5 procedures.

B. Demonstration Requirements

1. Summary of Requirements

Case-by-case extension applications must satisfy the requirements outlined in 40 CFR 268.5. These requirements include those specified in RCRA Section 3004(h)(3). The applicant must have entered into a binding contractual commitment to construct or otherwise provide alternative capacity (40 CFR 268.5(a)(2)), but due to circumstances beyond his control, this alternative capacity cannot reasonably be made available by the applicable effective date (40 CFR 268.5(a)(3)).

In addition, EPA has established by regulation the following requirements: The applicant must demonstrate that he has made a good faith effort to locate and contract with treatment, recovery, or disposal facilities nationwide to manage his waste (40 CFR 268.5(a)(1)). Again, the applicant must demonstrate why this nationwide capacity cannot reasonably be made available by the effective date.

Additional requirements for case-by-case demonstrations are summarized in the July 5, 1990, proposal to today's rulemaking. See 55 FRL-3805-7.

2. Commitment to Provide Protective Disposal Capacity

EPA believes that the applicant for a case-by-case extension has shown the necessary commitment to provide protective disposal capacity within the meaning of RCRA section 3004(h)(3) and 40 CFR 268.5(a)(1). These provisions require an applicant to make two showings: (1) That the proposed "disposal capacity" is "protective of human health and the environment", and (2) that the applicant has made "a binding contractual commitment to construct or otherwise provide" such capacity. The Agency construes the first phrase to mean a no migration unit. No migration findings in 40 CFR parts 148 or 268 provide for a variance to the land disposal prohibitions and, accordingly, are functionally equivalent to compliance with treatment standards under part 268. Moreover, the statute defines protective disposal capacity for purposes of RCRA sections 3004(d), (e), and (g) as no migration units. EPA also considers no migration capacity as protective disposal capacity for purposes of RCRA section 3004(h)(2).

With respect to showing a "binding contractual commitment", where applicants have already constructed (and, indeed, are operating) the disposal units at issue, EPA interprets the regulatory language to require objective indicia of applicant's commitment to provide this capacity. EPA's approach is in line with similar practical interpretations of regulatory language. For example, the Agency has construed the term "commenced construction" to include facilities which have completed construction but did not commence operations. See 46 FR 2344, 2346 (January 9, 1981).

EPA believes that where the Agency has concluded that a no migration petition is sufficient to propose a no migration finding, this proposed finding is legitimate indicia that the applicant is, in good faith, committed to providing protective disposal capacity for purposes of 40 CFR 268.5. See 55 FR 22520. If EPA were to require an actual no migration finding as a condition for a case-by-case extension, such a reading would effectively read the phrase "protective disposal capacity" out of RCRA section 3004(h)(3) in violation of all standard tenets of statutory construction, which require that all terms be given effect when possible. The term would be read out of the statute because once the no migration petition was granted, there is no need to seek a case-by-case extensions as wastes could be disposed directly in the unit. In addition, case-by-case extension necessarily involve predictions about future capacity. For example, such predictive findings specifically include the need for permits that may not yet be issued. See 40 CFR 268.5(a)(5).

Today's case-by-case extension is based on objective indicia of the applicant's commitment to provide disposal capacity. First, the petitioner's application is based on already constructed wells. Thus, this petitioner's commitment is more definitive from petitions based solely on contracts to construct such capacity. See RCRA section 3004(h)(3). Second, the injection wells have all been permitted under both RCRA and SDWA standards, thus further demonstrating a commitment to provide this capacity. The applicant has demonstrated that only a no migration finding prevents the units from being available as protective disposal capacity. Third, today's applicant has made substantial contractual commitments in preparing the no migration petitions. Finally, EPA has a good basis for believing that this capacity will, in fact, be provided in a short period of time. Permitted hazardous waste injection wells, as a class of units, have a good record for obtaining no migration findings. EPA has already issued several no migration findings.

3. Requirement to Seek Other Alternative Capacity

The applicant's commitment to provide protective disposal capacity is not the sole basis for EPA granting a case-by-case extension. Under 40 CFR 268.5(a)(1), applicants must also make a good faith effort to seek other protective treatment, recovery, or disposal where feasible during the period that his proposed alternative capacity is not available. Such good faith efforts under § 268.5(a)(1) can be evaluated considering both the expected time period that the alternative capacity will take to become available and technical difficulties that the operator will face in bringing his waste to alternative capacity in consideration of factors in § 268.5(a)(3).

There is limited other capacity under (a)(1) to eventually handle the waste from the well operator in this proposal. However, due to logistic problems of retooling, repiping, and transportation of the large volume of waste at issue, this other capacity is not reasonably available during the short period of time EPA anticipates is necessary to process final no migration approvals or denials for these wells.

4. Reasons Alternative Capacity Cannot Reasonably be Made Available by the Applicable Effective Date

Today's applicant has, in good faith, pursued the no migration process. The operator submitted its no migration petition in a timely manner, and has responded appropriately to Agency requests for additional information in order to make a determination on the petition.

The timing of the actual finding is beyond the applicant's control. This no migration finding is a precondition to the provision of the alternative disposal capacity. EPA has reviewed 65 no migration petitions in an intensive, time-consuming process. The order that decisions are made are primarily a function of Agency resources and priorities.

The well operator in today's rulemaking has documented several logistic problems that make short-term capacity not reasonably available. The facility in question involves production operations directly connected by piping, or otherwise rely on immediate disposal in on-site injection wells. In order to make the necessary adjustments, the facility would need to temporarily shut down, perform necessary retooling and repiping, and construct a transportation system to move the large volumes of waste at issue. The receiving facility would also need to make substantial adjustments to receive these large waste volumes. These factors indicate that the other capacity is not reasonably available for short-term waste management. EPA has relied on similar criteria in providing nationwide variances under RCRA section 3004(h)(2). See 55 FR 22520.

5. Response to Comments

Dupont was the only one to comment on the EPA's proposed decision for a 3 month extension. Dupont's initial request was for a one year extension. Dupont commented during the comment period that the full year extension was necessary because the petitioning process has frequently required more than 3 months to complete. The EPA agrees in this case that the petition process has exceeded the proposed 3 month extension. Therefore, the EPA is granting an extension from May 20, 1991, through August 7, 1991, which is one year past the ban date of August 8, 1990. Dupont's additional concerns were addressed in the October 2, 1990, **Federal Register**. See 55 FR 40231.

II. Petition

A. Facility Summary

E.I. du Pont de Nemours & Co., Inc., Orange, Texas has petitioned EPA to grant them a twelve month extension of the effective date of the hazardous waste injection restrictions applicable to

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the following wastes: California listed wastes, solvents less than one (1) percent solvent constituents, and First Third wastes.

EPA is granting Dupont-Orange an extension of the effective date of the applicable restrictions from May 20, 1991, through August 7, 1991, for the hazardous wastes which were impacted by the August 8, 1990, ban date. Dupont's request and supporting documentation are available in the public docket for this rulemaking.

B. Description of Petitioning Facility

E. I. du Pont de Nemours & Co., Inc. is a chemical manufacturing company which operates six hazardous waste injection wells in Orange, Texas.

C. Case-by-Case Extension Petition Demonstrations

Dupont's application for an extension of the effective date includes the following demonstrations:

40 CFR 268.5(a)(1) Dupont has made a good-faith effort on a nationwide basis to locate and contract for adequate alternative treatment, recovery, or disposal capacity, or to establish such capacity by the effective date of the applicable restrictions.

40 CFR 268.5(a)(2) Dupont has entered into a binding contractual commitment to provide alternative treatment, recovery, or disposal capacity.

40 CFR 268.5(a)(3) Dupont has shown that lack of alternative capacity is beyond its control.

40 CFR 268.5(a)(4) Dupont has shown that there will be adequate alternative treatment, recovery, or disposal capacity for all the waste after the effective date established by the extension.

40 CFR 268.5(a)(5) Dupont has provided a detailed schedule for obtaining alternative capacity, including dates.

40 CFR 268.5(a)(6) Dupont has arranged for adequate capacity to manage the waste during the extension period.

40 CFR 268.5(a)(7) No surface impoundments or landfills will be used by Dupont to manage the waste during the extension period.

III. Agency Action

For the reasons discussed above, the Agency believes that Dupont's demonstration has satisfied all the requirements for a case-by-case extension of the August 8, 1990, effective date of the hazardous waste injection restrictions.

Therefore, EPA is granting an extension of the August 8, 1990, effective date of the restrictions on these wastes for Dupont-Orange. These wastes can be injected starting from May 20, 1991, through August 7, 1991, or until a final decision of the applicant's no migration petition is made, but not later than August 7, 1991, (unless an additional extension is granted). (sections 1006, 2002(a), 3001, and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6924)).

Myron O. Knudson,

Director, Water Management Division (6W), EPA Region 6.

[FR Doc. 91-12564 Filed 5-28-91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF DEFENSE

48 CFR Parts 203 and 252

Department of Defense Federal Acquisition Regulation Supplement; Contractor Employee Communications with Government Officials

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Defense Acquisition Regulations (DAR) Council has added a new subpart 203.71 and a clause at 252.203-7004 in the Defense FAR Supplement to implement section 837 of the FY 1991 DoD Authorization Act (Pub. L. 101-510). This statute requires the Department to prescribe regulations to prohibit a defense contractor from discriminating against any employee with respect to the employee's terms of employment because the employee has disclosed information to a Government official concerning a defense contract, when the employee believes there has been a violation of any Federal law or regulation relating to DoD procurement. The rule also provides procedures for receiving, investigating, and adjudicating complaints from employees who believe they have been discriminated against. A clause, Prohibition Against Retaliatory Personnel Actions, is added at 252.203-7004. The new subpart and clause apply to all contracts exceeding $500,000 except contracts for commercial items sold in substantial quantities to the general public where the price is based solely on established catalog or market prices.

DATES: Effective date: May 10, 1991. Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before June 28, 1991, to be considered in the formulation of the final rule. Please cite DAR Case 90-319 in all correspondence related to this issue.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, ATTN: Ms. Valorie Lee, Procurement Analyst, DAR Council, OUSD(A)DP(DARS), room 3D139, The Pentagon, Washington, DC 20301-3000.

FOR FURTHER INFORMATION CONTACT: Ms. Valorie Lee, Procurement Analyst, DAR Council, (703) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Determination to Issue Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this regulation as an interim rule. It is determined that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this notice will be considered in formulating the final rule.

B. Background

Section 837 of the FY 1991 DoD Authorization Act (Pub. L. 101-510) requires the Secretary of Defense to prescribe regulations to prohibit defense contractors from discharging or otherwise discriminating against an employee with respect to the employee's compensation or terms of employment because an employee discloses information to a Government official concerning a contract between the defense contractor and the Department, when the employee believes there has been a violation of any Federal law or regulation relating to DoD procurement. This interim rule was issued under Departmental Letter 91-010, May 10, 1991, effective that date.

C. Regulatory Flexibility Act

The interim changes are not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 60 et seq.

D. Paperwork Reduction Act

The interim rule does not impose reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3051, et seq.

List of Subjects in 48 CFR Parts 203 and 252

Government procurement.

Nancy L. Ladd,

Director, Defense Acquisition, Regulations Council.

Therefore, it is proposed that 48 CFR parts 203 and 252 be amended as follows:

1. The authority citation for 48 CFR parts 203 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. A new subpart 203.71 is added to read as follows:

Subpart 203.71—Contractor Employee Communications with Government Officials

Sec.

203.7100 Scope
203.7101 Applicability.
203.7102 Policy.
203.7103 Prohibited conduct.
203.7104 Procedures for investigation of complaints.
203.7105 Procedures for adjudicating complaints.
203.7106 Procedures for review and enforcement of orders.
203.7107 Contract clause.

Subpart 203.71—Contractor Employee Communications with Government Officials

203.7100 Scope.

This subpart implements 10 U.S.C. 2409a, which expires November 5, 1994.

203.7101 Applicability.

This subpart applies to all contracts exceeding $500,000 except contracts for commercial items sold in substantial quantities to the general public where the price is based solely on established catalog or market price (see FAR 15.804-3(c)).

203.7102 Policy.

Defense contractors may not discriminate against or discharge an employee for disclosing information to an appropriate Government official, which information the employee reasonably believes evidences violations of Federal procurement laws and regulations.

203.7103 Prohibited conduct.

10 U.S.C. 2409a states that defense contractors shall not discharge or otherwise discriminate against any employee with respect to the employee's compensation or terms and conditions of employment because the employee (or any person acting pursuant to a request of the employee) discloses to an appropriate Government official information concerning a defense contract which the employee reasonably believes evidences a violation of any Federal law or regulation relating to defense procurement or the subject matter of the contract.

203.7104 Procedures for investigation of complaints.

(a) Any employee of a defense contractor who believes that he or she has been discharged or otherwise discriminated against by the contractor in violation of 10 U.S.C. 2409a for disclosing information to a Government official may file a complaint alleging the discharge or discrimination with the Director, Defense Logistics Agency. Complaints should be addressed to the Director, DLA, ATTN: DLA-G, Cameron Station, Alexandria, Virginia 22304-6100. Complaints must be filed not more than 180 days after the date on which the violation is alleged to have occurred or the date on which the violation was discovered, whichever is later.

(b) A complaint under this section shall contain a certification, signed by the complainant, with the following information:

(1) The specific nature of the alleged discriminatory act;

(2) The nature of the disclosure giving rise to the act; and

(3) Whichever of the following statements is appropriate—

(i) All attempts at resolution through an internal company grievance procedure have been exhausted;

(ii) The company grievance procedure was not used because the complainant reasonably believed it to be ineffectual, or would expose the complainant to employer reprisals; or

(iii) The company has no grievance procedure.

(c) Upon receipt of a complaint filed under paragraph (a) of this section, the Director, DLA shall—

(1) Notify both the Defense contractor named in the complaint and the head of the contracting activity (HCA) which entered into the contract of the complaint; and

(2) Conduct an initial investigation to determine whether the complaint is frivolous or merits further investigation. As part of the initial investigation, the Director shall determine whether the complainant and the defense contractor have attempted to resolve the complaint.

(d) If the Director determines that the complaint does not merit further investigation, the Director shall notify the complainant, the defense contractor, and the HCA.

(e)(1) If the Director determines that the complaint merits further investigation, the Director shall, except as provided in paragraph (e)(2) of this section, complete an investigation within 90 days after receipt of the complaint.

(2) If the Director determines that it is not possible to complete an investigation within the 90-day period prescribed in paragraph (e)(1), the Director shall notify the complainant of the reason(s) and of the date the investigation is expected to be completed. The Director may defer action on a complaint at any time with the consent of the complainant and the defense contractor.

(3) Not later than 30 days after an investigation is completed, the Director shall provide a written report of the results of the investigation to—

(i) The complainant,

(ii) Any person acting on behalf of the complainant, and

(iii) The defense contractor alleged to have committed the violation.

203.7105 Procedures for adjudicating complaints.

(a) Not later than 90 days after providing a report of the results of an investigation of a complaint, the Director shall either—

(1) Issue an order providing the appropriate relief prescribed in paragraph (d) of this section;

(2) Issue an order denying the complaint; or

(3) Terminate proceedings on the basis of a settlement agreement entered into by the Director and the Defense contractor alleged to have committed the violation.

(b) The Director may enter into a settlement agreement terminating proceedings on a complaint only with the participation and consent of the complainant.

(c) An order of the Director under this section shall be made on the record after notice and opportunity for a hearing. In issuing an order, the Director shall follow procedures that are as informal as practicable, consistent with principles of fundamental fairness. At a minimum, the Director shall afford the complainant and the contractor an opportunity to submit in writing information and argument in opposition to the conclusion of the report of the results of the investigation.

(d) If, in response to a complaint, the Director determines that a violation has occurred, the Director may issue, separately or in combination, any of the following—

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(1) An order that the Defense contractor that committed the violation take affirmative action to abate the violation.

(2) An order that the contractor reinstate the complainant to the position held when discharged, together with the compensation (including back pay), employment benefits, and other terms and conditions of the complainant's employment.

(3) At the request of the complainant, an assessment against the contractor, as determined by the Director, of a sum equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) reasonably incurred by the complainant for, or in connection with, bringing the complaint on which the order was issued.

(e) In determining whether a violation has occurred, the Director shall use the standard of proof that is used by the Merit Systems Protection Board in proceedings under 5 U.S.C. 1221, as described in 5 U.S.C. 1221(e) (1) and (2).

203.7106 Procedures for review and enforcement of orders.

(a) Any person adversely affected or aggrieved by an order may obtain review of the order's conformance with 10 U.S.C. 2409a in the United States court of appeals for the circuit in which the violation alleged in the order occurred. A petition seeking such review shall be filed not more than 60 days after the issuance of the Director's order. Review shall conform to chapter 7 of title 5.

(b) Under 10 U.S.C. 2409a, an order of the Director with respect to which review could have been obtained under paragraph (a) shall not be subject to judicial review in any criminal or other civil proceeding.

(c) Whenever a person has failed to comply with an order issued under this subpart, the Director shall file an action for enforcement of the order in the United States district court for the district in which the violation was found to have occurred. In any such action, the court may grant appropriate relief, including injunctive relief, and compensatory and exemplary damages.

203.7107 Contract clause.

Use the clause at 252.203–7004, Prohibition Against Retaliatory Personnel Actions, in all solicitations and contracts exceeding $500,000 except contracts for commercial items sold in substantial quantities to the general public where the price is based solely on established catalog or market prices (see FAR 15.804–3(c)).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.203–7004 is added to read as follows:

252.203–7004 Prohibition against retaliatory personnel actions.

As prescribed in 203.7107, use the following clause:

Prohibition Against Retaliatory Personnel Actions (Apr. 1991)

(a) *Definitions.*

As used in this clause,

Appropriate Government official means—

(1) An officer or employee of the Department of Defense responsible for command, direct staff assistance to a commander, contract administration, program management, audit, inspection, investigation, or enforcement of any law or regulation relating to Government procurement or the subject matter of the contract;

(2) A Member of Congress or an officer or employee of Congress, the General Accounting Office, the Congressional Budget Office, or the Office of Technology Assessment; and

(3) Any other officer or employee of the United States whose duties include the investigation or enforcement of any law, rule, or regulation relating to Government procurement or the subject matter of the contract.

Information concerning a contract means information about cost, price, compliance with specifications, meeting the user's requirements, user safety, use or disposition of services, real property or personal property acquired under the contract, the procurement process (including competition, negotiation, award, and administration), and relationships with Government personnel, competitors, or subcontractors.

(b) *Prohibition.* In accordance with 10 U.S.C. 2409a, the Contractor shall not discharge or otherwise discriminate against any employee with respect to the employee's compensation or terms and conditions of employment because the employee (or any person acting pursuant to a request of the employee) discloses to a Government official information concerning a defense contract, which information the employee reasonably believes evidences a violation of any Federal law or regulation relating to defense procurement or the subject matter of this contract.

(c) The Government will notify the Contractor upon receipt of any complaint filed under the provisions of this clause and subpart 203.71 of the Defense FAR Supplement. The Contractor agrees to cooperate with the Government during its investigation of any such complaint.

(d) The Contractor shall inform all employees of—

(1) The prohibitions of this clause;

(2) Employees' rights under 10 U.S.C. 2409a; and

(3) Availability of procedures implementing the statute.

(End of clause)

[FR Doc. 91–12809 Filed 5–28–91; 8:45 am]

BILLING CODE 3810–01–M

Proposed Rules

Federal Register
Vol. 56, No. 103
Wednesday, May 29, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1910 and 1955

Providing Assistance to Beginning Farmers or Ranchers

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations to define "beginning farmer or rancher." This action is necessary due to provisions in the Food, Agriculture, Conservation, and Trade Act (Pub. L. 101–624), dated November 28, 1990 (hereinafter referred to as "the 1990 Farm Bill"), that require the Agency to define this term and give priority to qualified beginning farmers and ranchers to purchase suitable FmHA inventory farmland. The intended effect is to assure that a priority is given in providing assistance in the purchase of suitable FmHA inventory farmland property to applicants who are eligible beginning farmers or ranchers.

DATES: Written comments must be submitted on or before June 28, 1991.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, USDA, room 6348, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address. The reporting and recordkeeping requirements contained in this regulation have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980. Public reporting burden for this collection of information is estimated to vary from 20 minutes to 2 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of collection of this information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB# 0575–0134), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mark Falcone, Senior Loan Officer, Farmer Programs Loan Making Division, Farmers Home Administration, USDA, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, DC 20250, telephone (202) 475–4019.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be nonmajor because it will not result in an annual effect on the economy of $100 million or more.

Intergovernmental Consultation

For the reasons set forth in the final rule related to notice 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Farm Ownership Loans are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Programs Affected

These changes affect the FmHA farm ownership loan program as listed in the Catalog of Federal Domestic Assistance: 10.407—Farm Ownership Loans.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Discussion of Proposed Rule

The purpose of this proposed rule is to initiate the process of implementing provisions of the 1990 Farm Bill. Several sections of the Bill refer to the term "beginning farmer or rancher." Section 1813(e) states that qualified beginning farmers or ranchers will have priority over operators of not larger than family farms to purchase suitable inventory farmland. Section 1814 requires the Agency to define "beginning farmer or rancher." Senate Report No. 101–357, 101st Congress, 2nd Session (1990), indicates Congressional intent as to what the definition of "beginning farmer or rancher" should include, and that the definition should be published as proposed rule for public comment.

The Senate definition reads as follows: A farmer or rancher who "has operated a farm or ranch for not more than ten years; will materially and substantially participate in the operation of the farm or ranch; provides a majority of the day-to-day labor and management of the farm or ranch individually or along with the immediate family; agrees to participate in the loan assessment and borrower training programs established under this title; does not own land or who, directly or through interest in family farm corporations, owns land the aggregate acreage of which does not exceed 15 percent of the median acreage of the farms in the county in which the individual is located; and demonstrates that the available resources of the family of the individual are not sufficient to enable the individual to enter or continue farming or ranching on a viable scale. The Committee intends that this provision allow the Secretary to develop criteria under which a farmer or rancher who previously farmed or ranched his or her own property may be considered a beginning farmer." FmHA has included this language in its proposed definition and has clarified that a farmer or rancher who previously farmed or ranched his or her own property may be considered a beginning farmer or rancher if they previously operated a farm or ranch not more than 10 years and will meet all other criteria addressed in the definition. FmHA has

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also stated that if an applicant is an entity, all members of the entity must meet the definition.

FmHA has included the language from the Senate Report as a starting point for a definition. The Agency believes the proposed definition is relatively flexible, and will review and consider all public comments received as a result of the proposed rule before implementing the final definition.

In developing a proposed definition of a beginning farmer, FmHA prepared a Regulatory Impact Analysis to consider other alternatives to the language included in the Senate Report. It was determined if the group is defined too narrowly, there may be no applicants assigned a higher priority. If the group is defined too broadly, the priority group could include most applicants and would be equally ineffective. The broader the criteria defining the preference group, of course, the lesser chance applicants not in the preference group will have to purchase the inventory property.

The impact on the pool of applicants assigned a priority, given alternative definitions of beginning farmers, is considered here. Information is not available which would allow the Agency to determine with precision the effect of alternative definitions. However, census data and Agency surveys provide some guidance on the impact of using alternative numbers of years in farming as one of the determinants of beginning farmers.

The Agency considered that the definition limit eligibility to those operators with less than 2 years of experience. Based on both the census data and the Agency surveys, it would appear that the combination of criteria limiting eligibility to applicants with minimal owned acreage and less than 2 years on the farm would provide a preference to about 10 percent of current applicants. The Agency estimates that the proposed definition of up to 10 years on the farm would expand the preference group to up to one-third of current applicants.

The Agency also considered including age limitations in the definition. However, this criteria would be quite restrictive. Census data shows only 1 percent of the survey farms were managed by operators younger than 25 years old, and 13 percent of farms were managed by operators younger than 35 years old. In addition, an age restriction would cause concern that the definition is discriminatory against farm operators over a certain age.

The Agency has proposed the broader criteria to assure the preference will be effective on the level with very limited numbers of applicants. In addition, the 10-year limit will assure the more farmers/ranchers in the beginning farmer category will have experience, equity, and a better chance to succeed in farming.

Section 1822 of the 1990 Farm Bill is a "Sense of Congress" that states, in part, the Agency should maintain statistics on the number of insured and guaranteed loans made, and inventory farmland sold or leased, to qualified beginning farmers or ranchers. The Agency plans to maintain these statistics. While section 1813 provides for qualified beginning farmers or ranchers to have priority to purchase suitable farmland, there are no provisions in the 1990 Farm Bill that give priority to qualified beginning farmers or ranchers when requesting financial assistance. The FmHA County Committee will determine if an applicant meets the definition of "beginning farmer or rancher." Section 1813(b) requires the County Committee to randomly select the purchaser of suitable inventory property when there is more than one equally qualified eligible applicant.

Other changes of a clarifying or editorial nature which are unrelated to the 1990 Farm Bill are also included in this proposed rule.

List of Subjects

7 CFR Part 1910

Applications, Credit, Loan programs-Agriculture, Loan programs-Housing and Community Development, Low and moderate income housing, Marital status discrimination, Sex discrimination.

7 CFR Part 1955

Foreclosure, Government acquired property, Government property management, Sale of governement acquired property, Surplus government property.

Therefore, as proposed, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1910—GENERAL

1. The authority citation for part 1910 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Receiving and Processing Applications

§ 1910.4 [Amended]

2. Section 1910.4 (b)(20) is amended by changing the title of Form FmHA 1945–29 from "ASCS Verification of Farm Acreage, Production and Benefits" to "ASCA Verificiation of Farm Acreages, Production and Benefits."

3. Section 1910.4 is amended by revising the fourth sentence in paragraph (g) and by adding two new sentences after the fourth sentence to read as follows:

§ 1910.4 Processing applications.

* * * * *

(g) *Determining eligibility.* * * * The County Committee will certify whether or not the applicant meets the eligibility requirements and whether or not the applicant is a beginnign farmer or rancher, as defined in § 1955.103 of subpart C of part 1955 of this chapter, by use of Form FmHA 440–2, "County Committee Certification or Recommendation." An eligible FO applicant requesting to purchase suitable farmland, who is considered a beginning farmer or rancher, will be given priority as outlined in § 1955.107 (f) of subpart C of part 1955 of this chapter. In addition, it is the responsibility of the County Committee to determine whether or not the applicant is an operator of not larger than a family size farm, as of the time immediately after the contract of sale or lease is enered into, even though the applicant is not in need of FmHA credit assistance on eligible rates and terms to purchase suitable farmland. * * *

* * * * *

4. Section 1910.6 is amended by revising the first sentence in paragraph (b)(2), by redesignating paragraphs (e), (f), (g), (h), and (i) as paragraphs (f), (g), (h), (i), and (j), and by adding new paragraph (e) to read as follows:

§ 1910.6 Notification of applicant.

* * * * *

(b) * * *

(2) If the County Committee determines that the applicant is not eligible, the specific reason(s) for the rejection and the factual basis will be listed on Form FmHA 440–2. * * *

(e) *Notification of applicants requesting to purchase suitable farmland.* Applicants requesting to purchase suitable farmland in FmHA inventory will be prioritized by the County Committee in accordance with § 1955.107 (f) of subpart C of part 1955 of this chapter. Prior to the selection of the purchaser, all applicants will be notified of the category in which the County Committee placed them. Those applicants that are not in the highest priority category, *i.e.*, eligible beginning farmer and rancher catgory, will also be informed of their appeal rights in accordance with subpart B of part 1900 of this chapter. All notifications will include the ECOA statement described in § 1910.6 (b)(1) of this chapter.

* * * * *

§ 1910.7 [Amended]

5. Section 1910.7(a) is amended in the first sentence by changing "Form FmHA 431–3" to read "Form FmHA 1944–3."

* * * * *

PART 1955—PROPERTY MANAGEMENT

6. The authority citation for part 1955 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart C—Disposal of Inventory Property

7. Section 1955.103 is amended by placing the definition of "auction sale" after the definition of "approval official" and by adding, in alphabetical order before the definition of "capitalization value," the definition of "beginning farmer or rancher" to read as follows:

§ 1955.103 Definitions.

* * * * *

Beginning farmer or rancher. A beginning farmer or rancher is an applicant who:

(1) Is an eligible applicant for FO loan assistance in accordance with § 1943.12 of subpart A of part 1943 of this chapter.

(2) Has operated a farm or ranch for not more than 10 years.

(3) Will materially and substantially participate in the operation of the farm or ranch.

(4) Provides a majority of the day-to-day labor and management of the farm or ranch individually or along with the immediate family.

(5) Agrees to participate in the loan assessment and borrower training programs developed by FmHA.

(6) Does not own real farm or ranch property or who, directly or through interests in family farm entities, owns real farm or ranch property which does not exceed 15 percent of the median farm or ranch acreage in the county where the applicant will purchase land (median county farm or ranch acreage will be determined from the most recent Census of Agriculture developed by the U.S. Department of Commerce, Bureau of the Census).

(7) Demonstrates that the available resources of the family of the individual are not sufficient to enable the individual to enter or continue farming or ranching on a viable scale.

(8) If an entity, demonstrates that all members of the entity meet the above requirements.

(9) If a farmer or rancher who previously farmed or ranched their own property, has previously operated a farm or ranch for not more than 10 years and also meets all the other criteria listed above.

* * * * *

8. Section 1955.107 is amended by revising and redesignating paragraph (e)(1) as paragraph (e), and paragraph (e)(2) as paragraph (f) to read as follows:

§ 1955.107 Sale of suitable property (CONACT).

* * * * *

(e) *Selection of purchaser for nonfarm property.* When more than one acceptable offer is received during business hours on the same day, the order in which they will be considered is by lot. If otherwise acceptable, the contract should be signed and accepted subject to approval of credit. "Backup" offers will be retained in case the first offer processed cannot be closed.

(f) *Selection of purchaser for farm property.* After leaseback/buyback and homestead protection rights have expired or been waived, suitable farmland may only be sold to beginning farmers or ranchers and operators (as of the time immediately after the contract for sale or lease is entered into) of not larger than family size farms, as determined by the County Committee. In determining if the property is a family size farm, the County Committee should refer to the definitions of family farm and farm in § 1943.4 of subpart A of part 1943 of this chapter. When farm inventory property is larger than family size, the property will be subdivided into suitable family size farms pursuant to § 1955.140 of this subpart.

(1) *Priority.* In selling suitable farmland, priority will be given to applicants in the following order, as determined by the County Committee:

(i) Beginning farmers or ranchers, as defined in § 1955.103 of this subpart, who meet the eligibility requirements outlined in § 1943.12 of subpart A of part 1943 of this chapter as of the time immediately after the contract for sale or lease is entered into.

(ii) Operators of not larger than family-size farms, who meet the eligibility requirements outlined in § 1943.12 of subpart A of part 1943 of this chapter.

(iii) Operators of not larger than family-size farms, as of the time immediately after the contract of sale or lease is entered into (such operators are not in need of FmHA credit assistance on eligible rates and terms).

(2) *Random selection.* Any appeals involving an applicant's eligibility and/or the priority category that the County Committee determined that the applicant should be placed in, as set forth in § 1910.6(e) of subpart A of part 1910 of this chapter, will be concluded prior to the County Committee selecting the purchaser. When there is more than one applicant in the same priority category, the County Committee will select the purchaser from the highest priority category by lot by placing the names in a receptacle and drawing names sequentially. Drawn offers will be numbered and those drawn after the first drawn offer will be held as backup offers pending sale to the successful offeror.

(3) *Notification of applicants not selected to purchase suitable farmland due to priority selection.* When the County Committee selects an eligible applicant who has priority to purchase suitable farmland, in accordance with this paragraph, all applicants not selected will be notified in writing that they were not selected. The County Committee's random selection by lot is not appealable.

Dated: May 6, 1991.

Roland R. Vautier,

Under Secretary For Small Community and Rural Development.

[FR Doc. 91–12846 Filed 5–28–91; 8:45 am]

BILLING CODE 3410–07–M

7 CFR Part 1955

Holding Period for Suitable Inventory Farm Property in Accordance With Provisions of the Food, Agriculture, Conservation, and Trade Act of 1990

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624), hereinafter referred to as the "1990 Farm Bill," amends provisions of the Consolidated Farm and Rural Development Act (CONACT) and therefore revises the procedure by which Farmers Home Administration (FmHA) manages and disposes of suitable farm inventory property. The FmHA proposes to amend its regulations to conform to paragraph (a), "Holding Period," of section 1813, "Disposition of Suitable Property," of the 1990 Farm Bill, that will allow the Agency to declare suitable farm inventory property surplus 12 months from the date first published for sale to family-size farm operators. The intended effect is to facilitate the Agency's efforts to sell farm and ranch property, reduce the Agency's holding cost for inventory

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property and implement the provisions of the 1990 Farm Bill.

DATES: Written comments must be received on or before June 28, 1991.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, USDA, room 6348, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250. All written comments will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Roger Witt, Branch Chief, Farmer Programs Loan Servicing and Property Management Division, Farmers Home Administration, USDA, Room 5446, South Building, Washington, DC 20250, telephone (202) 382–1984.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be nonmajor because it will not result in an annual effect on the economy of 100 million dollars or more.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans.
10.406—Farm Operating Loans.
10.407—Farm Ownership Loans.
10.410—Low Income Housing Loans. (Section 502 Rural Housing Loans)
10.416—Soil and Water Loans.

Intergovernmental Consultation

1. For the reasons set forth in the final rule related to notice 7 CFR 3015, subpart VC (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency Loans, Farm Operating Loans, and Farm Ownership Loans are excluded with the exception of the nonfarm enterprise activity from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loans Program is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940–J.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, (Pub. L. 91–190), an Environmental Impact Statement is not required.

Background

Section 1813, "Disposition of Suitable Property," of the 1990 Farm Bill amends the CONACT and therefore revises the procedures by which the Agency disposes of farm inventory property. Paragraph (a), "Holding Period," of Section 1813 provides that the Agency will classify suitable farm property surplus 12 months from the date first published for sale. The Agency's current regulations require suitable farm property to be held in inventory for a 3-year period after the date of acquisition before the property can be declared surplus and offered for sale to the general public. The Agency proposes to amend its regulations by removing the 3-year holding period and adding the provision of the 1990 Farm Bill that provides that suitable farm property will be classified surplus 12 months from the date the property was first published for sale to family-size farm operators. There are other provisions of Section 1813 of the 1990 Farm Bill that require revisions to FmHA regulations but will be addressed in separate issuances of the regulations.

The FmHA published an Interim Rule on September 14, 1988, in the Federal Register (53 FR 35638–35798) implementing certain provisions of the Agricultural Credit Act of 1987. The Interim Rule dated September 14, 1988, was effective October 14, 1988, and revised certain sections of Subparts B and C of Part 1955 of this chapter. The 1990 Farm Bill amends, in part, the Agriculture Credit Act of 1987 and related statutes and requires amendments to the Agency's existing regulations. The purpose of this document is to propose amendments to the Interim Rule in order that the Agency's regulations will be in compliance with the 1990 Farm Bill provisions.

List of Subjects in 7 CFR Part 1955

Foreclosure, Government acquired property, Government property management, Sale of government acquired property, Surplus government property.

Accordingly, chapter XVIII, title 7, Code of Federal Regulations is proposed to be amended as follows:

PART 1955—PROPERTY MANAGEMENT

1. The authority citation for part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart B—Management of Property.

2. Section 1955.53 is amended by revising the definition of "Surplus property" to read as follows:

§ 1955.53 Definitions.

* * * * *

Surplus property. Real property acquired pursuant to the CONACT and other Acts authorizing agricultural lending as defined in this section that is neither farmland nor can be used for general farming purposes. It also includes chattel property as well as suitable CONACT real property which is not sold within 12 months after the date the property was first advertised for sale to family-size farm operators. The 12-month period begins with the date of the first advertisement after November 28, 1990. If the real estate property was withheld from the market because it was determined its sale would have a negative impact on farm real estate values or for other administrative purposes, such as statutory or proposed regulation revisions, the 12-month perid will be extended to compensate for the period of time the property was not available for sale.

3. Section 1955.63 is amended by revising paragraph (a) to read as follows:

§ 1955.63 Suitability determination.

* * * * *

(a) *Property other than housing.* Property which secured loans or was acquired under the CONACT will be classified as suitable or surplus. Farm property will be classified by the applicable County Committee. Property acquired under the CONACT which is originally classified as suitable may be reclassified as surplus because of physical damage such as fire, flood, sheet erosion or falling water table, which occurs, or changes in economic conditions, such as rising cost of production inputs, viable market outlets and obsolescence, which affect its suitability for program purposes. In addition, suitable farm property that is not sold to a family-size farm operator within 12 months from the date first published for sale in accordance with § 1955.107(a) of subpart C of part 1955 of this chapter will be reclassified surplus. The 12-month period begins with the date of the first advertisement after November 28, 1990. If the property was withheld from the market because its sale may have a negative impact on farm real estate values or other administrative reasons, such as statutory or proposed regulation revisions, the 12-month period will be extended to compensate for the period of time the property was not available for sale. Form FmHA 1955–3A must be completed and entered into the FmHA field office terminal to update the change in the property's classification. If the property is offered for sale as surplus and the purchaser is eligible for FmHA assistance, it may be reclassified as suitable if it is, in fact, suitable for program purposes.

* * * * *

Subpart C—Disposal of Inventory Property

4. Section 1955.103 is amended by revising the definition of "Surplus property" to read as follows:

§ 1955.103 Definitions.

* * * * *

Surplus property. Real property acquired pursuant to the CONACT and other Acts authorizing agricultural lending as defined in this section that is neither farmland nor can be used for general farming purposes. It also includes chattel property as well as suitable CONACT real property which is not sold within 12 months after the date the property was first advertised for sale to family-size farm operators. The 12-month period begins with the date of the first advertisement after November 28, 1990. If the real estate property was withheld from the market because it was determined its sale would have a negative impact on farm real estate values or for other administrative purposes, such as statutory or proposed regulation revisions, the 12-month period will be extended to compensate for the period of time the property was not available for sale.

5. Section 1955.106 is amended by revising the introductory text and revising paragraph (c) to read as follows:

§ 1955.106 Sale of surplus property (CONACT)

Except where a lessee is exercising the option to purchase under Homestead Protection and/or Leaseback/Buyback provisions of Subpart S of Part 1955 of this chapter, surplus property will be offered for public sale by sealed bid or auction in accordance with § 1955.147 or § 1955.148 of this subpart as soon as possible after it has been declared surplus and made available for sale. Suitable farm property which has not been sold to a family-size farm operator within 12 months after the property was first advertised for sale will be offered for sale in accordance with this section. If during the 12-month period the property was withheld from the market because it was determined its sale would have a negative impact on farm real estate values or for other administrative purposes, such as statutory or proposed regulation revisions, the 12-month period will be extended to compensate for the period of time the property was not available for sale. After the 12-month term, the property will be offered for sale as surplus; however, if the buyer is eligible for FmHA assistance, any surplus property which is actually suitable will be reclassified to suitable by the County Committee and sold on eligible terms. The basis for this redetermination must be documented in the running record. On a credit sale, the property may not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in exhibit M of subpart G of part 1940 of this chapter. Additionally, all prospective buyers will be notified as a part of the property advertisement of the presence of highly erodible land, converted wetlands, floodplains, wetlands, or other special characteristics of the property that may limit its use or cause an easement to be placed on the property.

* * * * *

(c) *Sale by sealed bid or auction.* Surplus real property must be offered for public sale by sealed bid or auction. Suitable real property may be sold by sealed bid or auction once the property has been in inventory for 12 months after the date the property was first advertised for sale to family-size farm operators. The State Director will determine the method of sale, the minimum acceptable sale price, and whether or not credit will be offered prior to the offering. The minimum acceptable sale price established may not be more than the market value. For sealed bid sales, preference will be given to a cash offer which is at least * percent of the highest offer requiring credit. [* Refer to Exhibit B of FmHA instruction 440.1 (available in any FmHA office) for the current percentage.] For property other than farm property, equally acceptable sealed bid offers will be decided by lot. For farm property, when equally acceptable sealed bids are received from other bidders as well as an operator of not larger than a family-size farm, the County Committee will select the bidder who is the operator of not larger than a family-size farm. If there is more than one equally acceptable sealed bid offer received from not larger than family-size farm operators, the County Committee will give a priority and select the purchaser in accordance with § 1955.107 of this subpart.

* * * * *

Dated: March 22, 1991.

La Verne Ausman,
Administrator, Farmers Home Administration.

[FR Doc. 91–12647 Filed 5–28–91; 8:45 am]

BILLING CODE 3410–07–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 709

Involuntary Liquidation of Federal Credit Unions and Adjudication of Creditor Claims Involving Federally Insured Credit Unions in Liquidation

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The NCUA is proposing to issue a new part 709 to its rules and regulations. This proposal will set forth procedures applicable to revocations of charter and involuntary liquidations of Federal credit unions pursuant to 12 U.S.C. 1787(a)(1)(A), (B). It also sets forth procedures applicable to involuntary liquidations and adjudication of creditor claims against all federally insured credit unions.

DATES: Comments must be received on or before July 29, 1991.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G. Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: John K. Ianno, Trial Attorney, Office of General Counsel, NCUA, at the above address, or telephone: (202) 682–0630.

SUPPLEMENTARY INFORMATION:

A. Background

The NCUA has statutory authority to liquidate insolvent Federal credit unions pursuant to 12 U.S.C. 1787(a)(1)(A). Upon appointment by the appropriate state authorities, NCUA also acts as liquidating agent for insolvent, state-chartered federally insured credit unions. As liquidating agent of federally insured credit unions, the NCUA has

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broad powers to act in place of former officals of the institution and do all things necessary to wind up the affairs of the institution. These powers help assure that credit union members receive prompt access to their funds and, if possible, continued credit union service through another institution. They also assure that NCUA is able to fulfill its obligation to minimize the cost of a liquidation to the National Credit Union Share Insurance Fund thereby protecting the Fund's assets.

Both the Financial Institution Reform, Recovery and Enforcement Act (FIRREA) (1989) and the Crime Control Act (1990) provide explicit language concerning NCUA's duties and responsibilities as liquidating agent. FIRREA also provides a framework for adjudication of creditor claims and requires NCUA to provide for alternative dispute resolution of claims.

Congress recognized that this detailed statutory scheme would likely require implementing regulations and specifically authorized the Board to regulate in this area. *See* 12 U.S.C. 1787(b)(1), (4).

This regulation addresses the powers and duties of NCUA as liquidating agent and establishes creditor claims adjudication and alternative dispute resolution procedures. It does not apply to insurance claims arising out of the liquidation of a federally insured credit union. Insurance claims are decided pursuant to part 745 of NCUA's rules and regulations. (*See* 12 CFR part 745, subpart B.) The Board believes this regulation will provide substantive guidance to its employees acting as liquidating agents and to claimants seeking to assert a claim against a credit union in liquidation.

B. Section-by-Section Analysis

Section 709.0 sets forth the scope of part 709 and § 709.1 contains definitions used in this part.

Section 709.2 provides that the Board, by operation of law, becomes successor in interest to all rights, powers and privileges of the credit union and its members, officials and shareholders. Once the Board is appointed liquidating agent, members, officials and shareholders no longer have any right to act on behalf of the credit union. The Board, as liquidating agent, has the right to possession of all assets and property of every description of the credit union.

Section 709.3 sets forth the manner in which officials of a Federal credit union placed into liquidation by the Board may challenge that action. The Board of Directors of the credit union in liquidation may meet for the sole purpose of considering and authorizing an action in the name of the credit union to challenge the liquidation. Such an action must be brought in the United States District Court for the district where the credit union is located or the United States District Court for the District of Columbia. The action must be commenced not later than 10 days after the date on which the Board closes the credit union for liquidation. No credit union funds are available to pay the legal expenses of a challenge.

Section 709.4 sets forth the powers and duties of the liquidating agent. Subsection (a) requires the liquidating agent to promptly inventory the credit union's assets. Subsection (b) requires the liquidating agent to promptly publish a notice to creditors to present their claims by a specified date, not less than 90 days after initial publication. A similar notice must be mailed to all creditors listed on the credit union's books. The liquidating agent is required to republish the notice 1 and 2 months after the initial publication. These subsequent publications do not extend the date by which creditors must file their claims with the liquidating agent.

Subsection 709.4(c) states the liquidating agent's broad discretionary authority to collect all obligations due the credit union and do all other things, consistent with Federal law, desirable or expedient to wind up the affairs of the credit union. This inclues *inter alia* the liquidating agent's authority to dispose of assets of the credit union and repudiate contracts. The statutory basis for this broad authority is 12 U.S.C. 1787(b)(2). Although subsection (c) sets forth many of those things a liquidating agent will be required to do in connection with winding up the affairs of a credit union, it is not intended to be all-inclusive. When liquidating state chartered federally insured credit unions, in addition to the powers provided under Federal law, the liquidating agent has all the powers and privileges granted a liquidating agent pursuant to state law. *See* 12 U.S.C. 1787(j).

Subsection 709.4(d) sets forth the liquidating agent's authority to expend funds from the liquidated estate for liquidation expenses. This authority is consistent with statutory authority to perform all functions of the credit union and to preserve and conserve assets and property of the credit union. 12 U.S.C. 1787(b)(2) (A) and (B). An illustrative list of the types of assets commonly present in a liquidation is included in this section.

Section 709.5 sets forth the provisions relating to priority of payouts from the liquidation estate. Under subsection (a), secured creditors will receive their security. The value of any security will be established to the satisfaction of the liquidating agent. To the extent a claim exceeds the value of the security, it is treated as an unsecured claim of a general creditor under subsection (b), the schedule of payout priorities. This is the same schedule currently used in liquidations. Subsection (c) provides that the determination of priorities shall be based on the circumstances that exist on the date of the liquidation and subsection (d) provides that claims arising from repudiation or disaffirmance of any contract, including a lease, shall be considered claims by a general creditor for purposes of payout priority. The general policy that all claims in each category of payout priority should be paid in full before claims from a lower priority are paid is set out in subsection (e). The liquidating agent can, however, pay claims of a lower priority when he determines that adequate funds exist or will be recovered to pay all claims of a higher category in full and such action is reasonably necessary to conduct the liquidation. Any surplus after payment of allowed claims shall be paid, pro rata, to shareholders to the extent of their uninsured shares and to the National Credit Union Administration Share Insurance Fund.

Section 709.6 covers initial determinations of creditor claims. Subsection (a) requires anyone who asserts a claim to do so in writing and to comply with the requirements specified in the notice to creditors. The claim must be submitted within the time provided for in the notice to creditors. Failure to file a timely claim shall be considered a waiver of the claim and shall constitute a bar to any rights or remedies with respect to the claim. All claimants, including those involved in litigation against the credit union at the time of liquidation, must file a claim within the period provided for in the notice. The filing of a claim and the exhaustion of administrative remedies is a prerequisite necessary to establish subject matter jurisdiction in the District Court over any action brought or continued against a credit union in liquidation. *Circle Industries* v. *City Federal Sav. Bank*, 749 F.Supp. 447 (E.D.N.Y. 1990).

Under § 709.6(b), the liquidating agent has the discretion to request supplemental evidence in connection with a claim and may set reasonable limitations on the size and scope of supplemental evidence. The liquidating agent is required to compile a written record of a claim which he determines to be sufficient to provide a reasonable

basis for a decision on the claim. Subsection (c) requires the liquidating agent to render a determination on a claim within 180 days from the date the claim is filed; failure to render a determination within that time may be treated as a denial of the claim. The liquidating agent and the claimant may extend this period by written agreement.

Subsections (d) and (e) require the liquidating agent, whenever a claim is disallowed in whole or in part, to provide a written explanation of the reasons for the action to the claimant. The claimant must also be informed of his appeal rights. Notice of a determination regarding a claim is sufficient if mailed to the claimant's most recent address appearing on the credit union's books, in the claim, or in the documents filed with the claim. If the liquidating agent disallows all or part of a claim, subsection (f) requires him to file with the Board, or its designated agent, a report of his determination. This report must contain the notice to the claimant and the findings by the liquidating agent on all relevant issues.

Section 709.7 sets forth the procedures for appealing the liquidating agent's determination. The claimant must choose one of three options within 60 days of the date of mailing of the initial determination by the liquidating agent. The three options are: (1) File an administrative appeal (as discussed in subsequent sections); (2) file a lawsuit against the liquidated credit union in the United States District Court having jurisdiction over the place where the credit union's principal place of business is located or in the United States District Court for the District of Columbia; or (3) continue a lawsuit commenced before the appointment of the liquidating agent. If the claimant fails to exercise one of these options within the 60-day period, the liquidating agent's determination will be final and the claimant will have no further rights with respect to the claim.

Section 709.8 governs administrative appeals. Subsection (a) is a general section addressing administrative appeals of the initial determination by the liquidating agent. Any request for an administrative appeal must be in writing, addressed to the Board, and specify the type of appeal claimant desires. At this time there are five types of administrative appeal which may be requested. Discussed in subsequent sections, they are: (1) Hearing on the record; (2) appeal to the Board; (3) mediation; (4) nonbinding arbitration; and (5) neutral fact finding. The determination of whether to agree to a request for an administrative appeal rests solely with the Board. The 60-day period for filing or continuing a lawsuit provided for in § 709.7 is tolled from the date of a request for administrative appeal to the date of the Board's decision regarding the request.

Subsection (b) provides that a hearing on the record will be conducted in accordance with subpart A, part 747 of NCUA's rules and regulations. The burden of proof rests with the claimant. Judicial review of a final decision must be filed within 30 days.

Subsequent (c) addresses alternative dispute resolution. Paragraph (1) sets forth the procedures applicable to a claimant who requests and receives authorization to appeal the initial determination directly to the Board. This is a written appeal; there is no right of personal appearance before the Board in connection with such an appeal. The appeal must identify the facts on which the request for review is based and identify the portion of the initial determination to which the claimant objects and the reasons for the objection. Any alleged error in the initial determination should be identified. Any evidence relied upon by the claimant which was not provided to the liquidating agent must be made available to the Board.

The Board will issue a decision on the claimant's appeal within 180 days of its receipt of the appeal. Failure to do so may be treated as a denial of the appeal. The Board's decision will be in writing and will constitute final agency action on the claim. Any request for judicial review of the Board's decision must be filed within 60 days of the date of the Board's decision or be forever barred. Judicial review shall be in accordance with chapter 7, title 5 of the U.S. Code in the Court of Appeals for the District of Columbia or the court of appeals for the judicial circuit where the credit union's principal place of business is located.

Paragraph (2) of § 709.8(c) provides the Board with the discretion to authorize mediation, nonbinding arbitration or neutral fact finding as means of alternative dispute resolution.

Section 709.9 discusses procedures for requesting expedited determination of a creditor claim in lieu of seeking a determination pursuant to the normal procedure in § 709.6. As provided in subsection (a) the claimant has the burden of demonstrating a need for expedited relief. Claimant must show: (1) Presence of a valid and enforceable or perfected security interest in the assets of the credit union; and (2) that irreparable injury will occur if the normal claims procedure is followed. Under subsection (b), any request for expedited relief, in order to be considered, must be in writing and must be received by the Secretary of the NCUA Board within 30 days of the date of the liquidating agent's mailing of the notice to the creditor. A copy of the request must be simultaneously served on the liquidating agent for the credit union. There is no right of personal appearance before the Board in connection with such a request.

Subsection 709.9(c) provides that a request for expedited relief must include the following: (1) A clear statement of the facts and issues on which the request is based; (2) a description of the nature of any security interest in the assets of the credit union; (3) a statement of the irreparable harm likely to occur if expedited relief is not granted; (4) an assessment of the likelihood of success on the merits; (5) citations to applicable legal authority supporting the request or the merits of the claim itself; and (6) a statement certifying that the liquidating agent has been mailed or hand delivered a copy of the request on or before the date it was filed with the Board. Under subsection (d) the party requesting expedited review has the burden of demonstrating entitlement to it.

Subsection 709.9(e) provides that the Board may request supplemental information to assist it in its decision regarding a request for expedited review. The Board may specify a date certain for the production of the supplemental information. A failure to provide supplemental information may, at the discretion of the Board, constitute grounds for denial of the relief requested.

As stated in § 709.9(f), the Board must render a decision within 90 days of the date the request for expedited relief was filed. If expedited review is granted, the Board's decision will allow or disallow the claim, in whole or in part. If the claim is disallowed in whole or in part, the decision will state the reasons for the disallowance and the procedure for judicial review. If expedited review is not granted, the claim is decided pursuant to the normal claims process set forth in § 709.6. A Board decision to deny expedited review is final.

Subsections (g) and (h) apply to two situations: (1) Where the Board grants expedited review and disallows all or part of the claim; and (2) the Board fails to render any decision on the request for expedited review within 90 days of the date on which the request was filed. In either case, the claimant may seek judicial determination of its rights, with respect to its security interest, by filing a

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suit or continuing a suit which was filed before the appointment of the liquidating agent. Any suit must be filed or renewed within 30 days after the claimant's right to sue becomes effective under one or two above. Failure to file suit within this period shall be deemed final disallowance of the claim. Claimant shall have no further rights or remedies with respect to the claim.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board has determined and certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small credit unions (primarily those under $1 million in assets). It would not impose an additional burden on credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The Board has determined that the requirements of the Paperwork Reduction Act do not apply.

Executive Order 12612

The NCUA Board, pursuant to Executive Order 12612, has determined that this rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 12 CFR Part 709

Administrative practice and procedure; Credit unions, Involuntary liquidation.

By the National Credit Union Administration Board on May 14, 1991.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to add a new part 709 to its regulations to read as follows:

PART 709—INVOLUNTARY LIQUIDATION OF FEDERAL CREDIT UNIONS AND ADJUDICATION OF CREDITOR CLAIMS INVOLVING FEDERALLY INSURED CREDIT UNIONS IN LIQUIDATION

Sec.

709.0 Scope.
709.1 Definitions.
709.2 Appointment of liquidating agent.
709.3 Challenge to revocation of charter and involuntary liquidation.
709.4 Powers and duties of liquidating agent.
709.5 Payout priorities in involuntary liquidation.
709.6 Initial determination of creditor claims by the liquidating agent.
709.7 Procedures for appeal of initial determination.
709.8 Administrative appeal of the initial determination.
709.9 Expedited determination of creditor claims.

Authority: 12 U.S.C. 1766, 12 U.S.C. 1787, Pub. L. 101–73, 101–647.

§ 709.0 Scope.

The rules and procedures set forth in this part apply to charter revocations of Federal credit unions pursuant to 12 U.S.C. 1787(a)(1)(A), (B) and the involuntary liquidation and adjudication of creditor claims in all cases involving federally insured credit unions. Section 709.3. applies only to Federal credit unions. Remaining sections of this Regulation are applicable to all federally insured credit unions. This part does not apply to share insurance claims arising out of the liquidiation of a federally insured credit union. Insurance claims are decided pursuant to part 745 of this chapter.

§ 709.1 Definitions.

For the purposes of this part, the following definitions apply:

(a) *General Counsel* means the General Counsel of the National Credit Union Administration or any attorney assigned to the General Counsel's staff.

(b) *Liquidating Agent* means the NCUA Board or person(s) appointed by it with delegated authority to carry out the liquidation of the credit union.

(c) *Insolvent* means insolvency as that term is defined in § 700.1(j) of this chapter.

(d) *Claim* means a creditor's claim against the credit union in liquidation. This term does not include insurance claims arising out of the liquidation of a federally insured credit union. Insurance claims are decided pursuant to part 745 of this chapter.

§ 702.2 Appointment of liquidating agent.

(a) The Board, as liquidating agent, by operation of law and without any conveyance or other instrument, act or deed, shall succeed to all the rights, titles, powers, and privileges of the credit union, and of its members, shareholders, officers and directors, with respect to the credit union and its assets, and such members, shareholders, officers or directors, shall not thereafter have or exercise any such rights, powers, or privileges or act in connection with any assets or property of any nature of the credit union.

(b) **The Board, as liquidating agent, shall take possession of and title to books, records, and assets of every description of such credit union to which such credit union has rights of possession and title to all offices and other facilities of such credit union.**

§ 709.3 Challenge to revocation of charter and involuntary liquidation.

If a Federal credit union is determined to be insolvent and placed into liquidation pursuant to 12 U.S.C. 1787, the Federal credit union may, not later than 10 days after the date on which the board closes the credit union for liquidation, apply to the United States District Court for the judicial district in which the principal office of the credit union is located or the United States District Court for the District of Columbia for an order requiring the Board to show cause why it should not be prohibited from continuing such liquidation. Notwithstanding other provisions of this part, the board of directors of the credit union may meet following the placing of the institution into liquidation for the sole purpose of considering and authorizing the filing of this action in the name of the credit union. No such action in the name of the credit union may be instituted without the authorization of the board of directors of the institution pursuant to a valid board of directors resolution. No credit union funds shall be available to pay expenses incurred in bringing a legal action to challenge the Board's liquidation action.

§ 709.4 Powers and duties of liquidating agent.

(a) *Inventory of assets.* As soon as practicable after taking possession, the liquidating agent shall inventory the assets of such credit union as of the date of taking possession, showing the value as carried on the books of the credit union, and the security therefore, if any, a brief description of the assets and any security, and a record of the credit union's creditor and accounts liabilities.

(b) *Notice to creditors.* The liquidating agent shall promptly publish a notice to the credit union's creditors to present their claims, together with proof, to the liquidating agent by a date specified in the notice. This date shall be not less than 90 days after the publication of the notice. The liquidating agent shall republish such notice approximately 1 and 2 months, respectively, after the initial publication. At the time of initial publication, the liquidating agent shall mail a notice similar to the published notice to any creditor shown on the credit union's books at the last address appearing therein. If the liquidating agent discovers the name of a creditor whose name does not appear on the credit union's books, a notice similar to the published notice shall be mailed to such creditor within 30 days after the discovery of the name and address.

(c) *General.* The liquidating agent shall collect all obligations and money due such credit union and may, to the extent consistent with its appointment, do all things desirable or expedient in its discretion to wind up the affairs of the credit union including, but not limited to, the following:

(1) Exercise all rights and powers of the credit union including, but not limited to, any rights and powers under any mortgage, deed of trust, chose in action, option, collateral note, contract, judgment or decree, or instrument of any nature;

(2) Institute, prosecute, maintain, defend, intervene, and otherwise participate in any and all actions, suits, or other legal proceedings by and against the liquidating agent or the credit union or in which the liquidating agent, the credit union, or its creditors or members, or any of them, shall have an interest, and in every way to represent the credit union, its members and creditors, subject to the direction of General Counsel;

(3) Employ on a salary or fee basis such persons as in the judgment of the liquidating agent are necessary or desirable to carry out its responsibilities and functions, including, but not limited to, appraisers and Certified Public Accountants, and pay the costs out of the assets of the liquidated credit union;

(4) Employ or retain any attorney or attorneys designated by, or acceptable to, the General Counsel in connection with litigation or for legal advice and assistance, for the liquidation generally or in particular instances, and pay compensation and retainers of such attorney or attorneys, together with all expenses, including, but not limited to, the costs and expenses of any litigation, as approved by the General Counsel, out of the assets of the liquidated credit union;

(5) Execute, acknowledge, and deliver any and all deeds, contracts, leases, assignments, bills of sale, releases, extensions, satisfactions, and other instruments necessary or proper for any purposes, including, but not limited to, the effectuation, termination, or transfer of real, personal or mixed property, or that shall be necessary or proper to liquidate the credit union, and any deed or other instrument executed pursuant to the authority hereby given shall be as valid and effective for all purposes as if the same had been executed as the act and deed of the credit union;

(6) With concurrence of General Counsel, disaffirm or repudiate any contract or lease to which the credit union is a party; the performance of which the liquidating agent, in his sole discretion, determines to be burdensome; and which in the liquidating agent's sole discretion will promote the orderly administration of the credit union's affairs.

(7) Deposit, withdraw, or transfer funds, and otherwise exerecise complete control over all investment or depository accounts maintained by or for the credit union at financial depository or similar institutions;

(8) Do such things, and have such rights, powers, privileges, immunities, and duties, whether or not otherwise granted in the rules and regulations of this part 709, as shall be authorized, directed, conferred, or imposed from time to time by the Board, or as shall be conferred by the Federal Credit Union Act;

(9) Exercise such other authority as is conferred by the Federal Credit Union Act; and

(10) Where acting as liquidating agent for a state chartered federally insured credit union, exercise all the rights, powers, and privileges granted by state law to such a liquidating agent.

(d) *Expenditure of funds of the liquidation.* The liquidating agent shall have power to:

(1) Pay all costs and expenses of the liquidation as determined by the liquidating agent;

(2) Pay off and discharge taxes and liens;

(3) Pay out and expend such sums as are deemed necessary or advisable for or in connection with the preservation, maintenance, conservation, protection, remodeling, repair, rehabilitation, or improvement of any asset or property of any nature of the credit union or the liquidating agent;

(4) Pay off and discharge any assessments, liens, claims, or charges of any kind against, any asset or property of any nature on which the credit union or the liquidating agent has a lien by way of mortgage, deed of trust, pledge, or otherwise, or in which the credit union or liquidating agent has any interest;

(5) Settle, compromise, or obtain the release of, for cash or other consideration, claims and demands against the credit union or the liquidating agent; and

(6) Indemnify its employees and agents from the assets of the credit union against liabilities incurred in the good faith performance of their duties.

(e) *Assets, claims, and contracts.* The liquidating agent shall have power to:

(1) Sell for cash or on terms, exchange, assign, or otherwise dispose of, in whole or in part, any or all of the assets and property of the credit union, real, personal and mixed, tangible and intangible, of any nature, including any mortgage, deed of trust, chose in action, bond, note, contract, judgment, or decree, share or certificate of share of stock or debt, owing to the credit union or the liquidating agent; and

(2) Surrender, Abandon, and release any chose in action, or other assets or property of any nature, whether the subject of pending litigation or not, and settle, compromise, modify, or release, for cash or other consideration, claims and demands in favor of the credit union or the liquidating agent.

§ 709.5 Payout priorities in involuntary liquidation.

(a) Claimants whose claims are secured shall receive their security. To the extent their claim exceeds the value of their security, as determined to the satisfaction of the liquidating agent, they shall have an unsecured claim against the credit union having priority as provided in paragraph (b) of this section.

(b) Unsecured claims against the liquidation estate that are proved to the satisfaction of the liquidating agent shall have priority in the following order:

(1) Administrative costs and expenses of liquidation;

(2) Claims for wages and salaries, including vacation, severance, and sick leave pay;

(3) Taxes legally due and owing to the United States or any state or subdivision thereof;

(4) Debts due and owing the United States, including the National Credit Union Administration;

(5) General creditors, and secured creditors (to the extent that their claims exceed their security interest);

(6) Shareholders to the extent of unsecured shares, and the National Credit Union Share Insurance Fund, to the extent of its payment of share insurance; and

(7) In a case involving liquidation of a corporate credit union, permanent capital base instruments of corporate credit unions.

(c) Priorities are to be based on the circumstances that exist on the date of liquidation.

(d) If the repudiation or disaffirmance of any contract or lease gives rise to a claim for damages, such claim shall be considered a general creditor claim under paragraph (b)(5) of this section

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and not a cost or expense of liquidation under paragraph (b)(1) of this section.

(e) All unsecured claims of any category or class or priority described in paragraph (b)(1) through (b)(7) of this section shall be paid in full, or provisions made for such payment, before any claims of lesser priority are paid. If there are insufficient funds to pay all claims of a category or class, payment shall be made pro rata. Notwithstanding anything to the contrary herein, the liquidating agent may, at any time, and from time to time, prior to the payment in full of all claims for a category or class with higher priority, make such distributions to claimants in priority categories described in paragraphs (b)(1), (b)(2), (b)(3), (b)(4), and (b)(5) of this section as the liquidating agent believes are reasonably necessary to conduct the liquidation, provided that the liquidating agent determines that adequate funds exist or will be recovered during the liquidation to pay in full all claims of any higher priority. If a surplus remains after making distribution in full of allowed claims, such surplus shall be distributed to the uninsured shareholders and the National Credit Union Share Insurance Fund pro rata. In a case involving liquidation of a corporate credit union, any remaining surplus shall be distributed to claimants in priority category in paragraphs (b)(7) of this section.

§ 709.6 Initial determination of creditor claims by the liquidating agent.

(a) Any party wishing to sumbit a claim against the liquidated credit union must submit a written proof of claim in accordance with the requirements set forth in the notice to creditors. A failure to submit a written claim within the time provided in the notice to creditors shall be deemed a waiver of said claim and claimant shall have no further rights or remedies with respect to such claim.

(b) The liquidating agent may require submission of supplemental evidence by the claimant and by interested parties in the event of a dispute concerning a claim against any asset of the liquidated credit union. In requiring the submission of supplemental evidence, the liquidating agent may set such limitations of time, scope, and size as the liquidating agent deems reasonable in the circumstances, and may refuse to include in the record submissions or portions of submissions not in compliance with such limitations or requirements. The liquidating agent shall compile such written record of a claim or dispute as, in its discretion, is deemed sufficient to provide a reasonable basis for allowing or disallowing a claim or resolving a dispute. This written record shall be considered the administrative record.

(c) The liquidating agent shall determine whether to allow or disallow a claim and shall notify the claimant within 180 days from the date a claim against a credit union is filed pursuant to paragraph (a) of this section. This 180-day period may be extended by written agreement between the claimant and the liquidating agent. Failure by the liquidating agent to determine a claim within the 180 day period, or within the extended period, shall be deemed a denial of the claim.

(d) If a claim or any portion thereof is disallowed the notice to the claimant shall contain a statement of the reasons for the disallowance and an explanation of appeal rights pursuant to § 709.7 of this part.

(e) Notice of any determination with respect to a claim shall be sufficient if mailed to the most recent address of the claimant which appears:

(1) On the credit union's books;

(2) In the claim filed by the claimant; or

(3) In the documents submitted in the proof of claim.

(f) In the event the liquidating agent disallows all or part of a claim, the liquidating agent shall file with the Board, or its designated agent, a report of its determination. This report shall become part of the record and shall include the notice to the claimant and findings on all issues raised and decided by the liquidating agent.

§ 709.7 Procedures for appeal of initial determination.

Time for filing. In order to appeal all or part of an initial decision which disallows a claim, in whole or in part, a claimant must, within sixty (60) days of the mailing of the initial determination, file an administrative appeal pursuant to § 709.8 of this part, or file suit against the liquidated credit union in the United States District Court for the District of Columbia or in the United States district court having jurisdiction over the place where the credit union's principal place of business is located, or continue an action commenced before the appointment of the liquidating agent. If the claimant does not appeal or file or continue a suit, any disallowance shall be final and the claimant shall have no further rights or remedies with respect to such claim.

§ 709.8 Administrative appeal of the initial determination.

(a) *General.* A claimant requesting an administrative appeal may request review pursuant to any of the procedures listed in paragraphs (b) or (c) of this section. Any appeal of the initial determination must be in writing and must specify what type of appeal the claimant requests. The determination of whether to agree to a request for administrative appeal shall rest solely with the Board, which shall notify the claimant of its decision in writing. The sixty (60) day period for filing a lawsuit in United States district court, provided for in § 709.7 of this part, shall be tolled from the date of claimant's request for an administrative appeal to the date of the Board's decision regarding that request.

(b) *Hearing on the record.* Except as provided herein, any hearing requested pursuant to this section shall be conducted in accordance with the provisions of subpart A, part 747, of this chapter. The Board shall render a final decision with respect to such claim after consideration of the hearing record and recommended decision. The Board's determination shall be subject to judicial review under Chapter 7 of Title 5, United States Code. Any claimant seeking judicial review of the Board's final decision under this paragraph must file a petition in the court of appeals for the circuit in which the principal office of the credit union is located, or in the United States Court of Appeals for the District of Columbia Circuit, within thirty (30) days of the date of the Board's final decision. If a claimant does not file a petition before the end of the 30-day period, the Board's decision shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(1) *Burden of proof.* In any hearing on the record, the burden of proof to establish entitlement to any modification of the initial determination shall rest solely upon the claimant.

(2) *Order of procedure.* In any hearing on the record, at the time for opening arguments, counsel for the claimant shall argue first, and at the time for closing arguments, counsel for the claimant shall argue last.

(c) *Alternative dispute resolution.* Paragraphs (c) (1) and (2) of this section list alternatives for dispute resolution which may be available at the discretion of the Board. From time to time, the NCUA Board may authorize additional alternative dispute resolution processes.

(1) *Appeal to the Board.* Pursuant to this subparagraph, the claimant may file an appeal with the NCUA Board within the time provided for in § 709.7. The appeal must be in writing and filed with the Secretary of the Board, National Credit Union Administration, 1776 G Street NW., Washington, DC 20456. There shall be no personal appearance before the Board in connection with an appeal under this subparagraph.

(i) *Content of appeal.* Any appeal must include:

(A) A statement of the facts on which the appeal is based;

(B) A statement of the basis for the initial determination to which the claimant objects and the alleged error in such determination, including citations to applicable statutes and regulations;

(C) Any other evidence relied upon by the claimant which was not previously provided to the liquidating agent.

(ii) *Procedures for review of the appeal—*

(A) Within 60 days of the date of the Board's receipt of an appeal, pursuant to paragraph (c)(1) of this section, the Board may request in writing that the claimant submit supplemental evidence in support of its appeal. If additional evidence is requested, the claimant shall have 45 days from the date of issuance of such request to provide such additional information. Failure by the claimant to provide such additional information may, as determined solely by the Board, result in denial of the claimant's appeal.

(B) Within 60 days from the date of the Board's receipt of an appeal, pursuant to paragraph (c)(1) of this section, the claimant may amend or supplement the appeal in writing. In the event the claimant does amend or supplement the appeal, the provisions of paragraph (c)(1)(ii)(A) of this section, with respect to requests for additional information and responses to such requests, shall apply with equal force to any such amendment or supplement to an appeal.

(ii) *Determination on appeal.* (A) Within 180 days from the date of receipt of an appeal by the Board, the Board shall issue a decision allowing or disallowing claimant's appeal.

(B) The decision by the Board on appeal shall be provided to the claimant in writing, stating the reasons for the decision, and shall constitute a final agency decision regarding the claimant's claim.

(C) Failure by the Board to issue a decision on appeal of the claimant's claim within the 180-day period provided for under paragraph (c)(1)(iii)(A) of this section shall be deemed to be a denial of such appeal for the purposes of paragraph (c)(1)(ii) of this section.

(iv) *Judicial review.* (A) For the purposes of seeking judicial review of actions taken pursuant to paragraph (c)(1) of this section, only a determination on appeal issued by the NCUA Board pursuant this section shall constitute a final determination regarding a claim.

(B) A Final determination by the Board is reviewable in accordance with the provisions of chapter 7, title 5, United States Code, by the United States Court of Appeals for the District of Columbia or the court of appeals for the Federal judicial circuit where the credit union's principal place of business is located. Any request for judicial review under this subparagraph must be filed within 60 days of the date of the Board's final decision. If any claimant fails to file before the end of the 60-day period, the Board's decision shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(2) The following additional procedures for dispute resolution may be made available at the sole discretion of the Board: mediation; nonbinding arbitration; and neutral fact finding.

§ 709.9 Expedited determination of creditor claims.

(a) *General.* The provisions of this section establish procedures under which claimants may request expedited relief in lieu of the procedures set forth in § 709.6 of this part. A claimant shall be entitled to expedited determination of a claim only upon a showing that there exists a legally valid and enforceable or perfected security interest in assets of the liquidated credit union; and that irreparable injury will occur if the routine claims procedure is followed.

(b) *Filing of request for expedited relief.* All requests for expedited relief must be filed within 30 days from the date of mailing, by the liquidating agent, of the notice to the creditor concerned. The request shall be deemed to be filed when received by the Secretary of the Board, National Credit Union Administration, 1776 G Street NW., Washington, DC 20456. A copy of the request must be simultaneously served upon the agent for the liquidating agent for the credit union concerned. There shall be no right of personal appearance before the Board in connection with any claim submitted under this paragraph.

(c) *Content of request for expedited relief.* Any Request for Expedited Relief must contain the following:

(1) A clear and concise statement of the facts and issues on which the request is based;

(2) A clear and concise statement describing the nature of any security interests in any assets of the credit union;

(3) A clear and concise statement of the probable, imminent and irreparable harm likely to occur if expedited relief is not granted;

(4) An assessment of the likelihood of success on the merits of the underlying claim, including statutory citations and relevant documentation supporting the merits of the claim;

(5) Any other relevant documentation that supports the request;

(6) Citations to applicable statutes, regulations, or other legal authority; and

(7) A signed statement certifying that the agent for the liquidating agent has been mailed or hand delivered a copy of the request on or before the day that the request was filed with the Board.

(d) *Burden of proof.* The burden of proving entitlement to expedited relief rests at all times with the requester.

(e) *Additional information.* The Board may order the filing of additional information and or documentation in order to make its determination. Such filing shall be on a date certain, and failure to provide the additional documentation or information may constitute the sole grounds for denial of the request.

(f) *Decision.* Before the end of the 90-day period on which a request is filed, the Board shall render its decision and provide it to the requester. The Board will determine whether to grant expedited review and allow or disallow the claim or whether such claim should be resolved pursuant to the claims process described in § 709.6 of this part.

(1) *Expedited review denied.* A decision by the Board that expedited review is not appropriate shall be final and the claim shall be decided pursuant to the claims adjudication process set forth in § 709.6 of this part.

(2) *Expedited review granted.* If expedited review is granted, the Board shall decide the claim. If the claim is disallowed, in whole or in part, the decision shall contain a statement of each reason for the disallowance and the procedure for obtaining judicial review.

(g) *Period for filing or renewing suit.* Any claimant who files a request for expedited relief shall be permitted to file a suit, or to continue a suit filed before the appointment of the liquidating agent, seeking a determination of the claimant's rights with respect to its security interest after the earlier of:

(1) The end of the 90-day period beginning on the date of the filing of a request for expedited relief; or

(2) The date the Board denies the claim.

(h) *Statute of Limitations.* If an action described in paragraph (g) of this section is not filed, or the motion to renew a previously filed suit is not

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made, before the end of the 30-day period beginning on the date on which such action or motion may be filed in accordance with paragraph (g) of this section, the claim shall be deemed to be disallowed as of the end of such period (other than any portion of such claim that was allowed by the Board). Such disallowance shall be final and the claimant shall have no further rights or remedies with respect to such claim.

[FR Doc. 91-12411 Filed 5-28-91; 8:45 am]
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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-39-89]

RIN 1545-AN64

Limitation on Passive Activity Losses and Credits—Treatment of Self-Charged Items of Income and Expense; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to the notice of proposed rulemaking (including the address for comments and requests to speak at the hearing) which was published in the **Federal Register** on April 5, 1991 (56 FR 14034). The proposed rules relate to the treatment of self-charged items of income and expense for purposes of applying the limitations on passive activity losses and passive activity credits.

DATES: Written comments must be received by June 4, 1991. Requests to speak at the public hearing scheduled for Friday, September 6, 1991, and outlines of oral comments must be received by August 23, 1991.

ADDRESSES: Send comments, requests to speak, and outlines of oral comments to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044 (Attention CC:CORP:T:R: (PS-39-89), room 5228).

FOR FURTHER INFORMATION CONTACT: Dexter A. Johnson (202) 566-4751 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of these corrections contains proposed amendments to title 26 of the Code of Federal Regulations to provide additional rules under section 469 of the Internal Revenue Code of 1986, as amended (the "Code"). Section 469 was added to the code by sections 501 and 502 of the Tax Reform Act of 1986 (Pub. L. 99-514), and was amended by section 10212 of the Revenue Act of 1987 (Pub. L. 100-203), sections 1005(a); 2004(g) and 6009(c)(3) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100-647), and section 7109(a) of the Revenue Reconciliation Act of 1989 (Pub. L. 101-239).

Need for Correction

As published, the proposed regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of proposed regulations (PS-39-89), which was the subject of FR Doc. 91-8062, is corrected as follows:

1. On page 14034, column 2, in the preamble under the heading "**ADDRESSES:**", last line of that paragraph, the language "89), room 4229)." is corrected to read "89), room 5228).".

2. On page 14036, column 3, under the authority citation, line 2, the language "1.469-7 also issued under 26 U.S.C. 469(l)(1)." is corrected to read "1.469-7 also issued under 26 U.S.C. 469(l))4)."

§ 1.469-7 [Corrected]

3. On page 14036, column 3, § 1.469-7, the section heading "§ 1.469-7 Treatment of certain lending transactions between taxpayers and passthrough entities." is corrected to read "§ 1.469-7 Treatment of self-charged items of interest income and deduction.".

4. On page 14037, column 3, § 1.469-7(d)(1)(ii), line 3, the language "entity at the end of the entity taxable" is corrected to read "entity at any time during the entity taxable".

5. On page 14038, column 3, § 1.469-7(g) under Example (3)(i), second line from bottom of that paragraph, the language "share of X's interest income from the loans" is corrected to read "share of X's interest income from the loan".

6. On page 14038, column 3, § 1.469-7(g), under Example (3)(ii), line 5, the language "and F(X'self-charged interest income), (b)E" is corrected to read "(X's self-charged interest income), (b)E".

7. On page 14039, column 1, § 1.469-7(g), under Example (4)(i), line 8, the language "borrows the $50,000 from A on September 1," is corrected to read "borrows the $50,000 from A on October 1,".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-12315 Filed 5-28-91; 8:45 am]
BILLING CODE 4830-01-M

26 CFR Part 1

[FI-34-91]

RIN 1545-AP69

Conclusive Presumption of Worthlessness of Debts Held by Banks

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed income tax regulations relating to a bank's determination of worthlessness of a debt. To provide greater certainty in the treatment of bank bad debts, the proposed regulations provide for a conclusive presumption of worthlessness of debt based on the application of a single set of standards for both regulatory and tax accounting purposes.

DATES: Written comments and requests for a public hearing must be received by July 29, 1991.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, attn: CC:CORP:T:R (FI-34-91), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Bernita L. Thigpen, telephone 202-566-3516 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Management and Budget, attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collections of information in these regulations are in § 1.166-2(d)(3). This information is required by the Internal Revenue Service in connection with

making an election. This information will be used for audit and examination purposes. The likely respondents are banks.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Estimated total reporting burden: 2375 hours.

The estimated burden per respondent varies from 10 minutes to 20 minutes, depending on individual circumstances, with an estimated average of 15 minutes.

Estimated number of respondents: 9500.

Estimated number of responses per respondent: 1.

Background

This document provides proposed regulations on the circumstances under which a bank (within the meaning of section 581 of the Internal Revenue Code), subject to supervision by Federal or state authorities, may elect to determine the worthlessness of debts using a method of accounting for Federal income tax purposes under which debts generally are conclusively presumed to be worthless when they are charged off for regulatory purposes. Under current law, a taxpayer that is subject to supervision by Federal authorities, or by state authorities maintaining substantially equivalent standards, may rely on a conclusive presumption of worthlessness of debts and claim deductions for those bad debts if the taxpayer (1) is specifically ordered by its supervisory authority to charge off the debt or (2) voluntarily charges off the debt and the supervisory authority confirms in writing that it would have ordered the taxpayer to charge off the debt had there been an examination at the time of the charge-off. The conclusive presumption applies only if the taxpayer claims a deduction for the amount charged off at the time of filing its Federal income tax return for the year in which the charge-off takes place.

Taxpayers have requested that the Internal Revenue Service amend its regulations relating to the conclusive presumption of worthlessness and extend the presumption to routine debt charge-offs made in accordance with the policies established by bank supervisory authorities. Generally, routine charge-offs made by a bank are done based on a finding of worthlessness pursuant to the bank's internal loan review process, which is subject to examination by the bank's supervisory authority. Thus, taxpayers have urged that a determination of worthlessness for regulatory purposes should entitle a bank to a conclusive presumption of worthlessness for tax purposes.

Explanation of Provisions

Section 1.166-2(d) is proposed to be amended by adding new subparagraphs (3) and (4). New paragraph (d)(3) provides banks an election which, subject to certain conditions, generally allows banks to conform their tax accounting for bad debts with their regulatory accounting and thereby deduct for tax purposes those loans that are charged off for regulatory purposes. New paragraph (d)(4) clarifies that the term "bank", for purposes of § 1.166-2(d), means a bank as defined in section 581 of the Code and, therefore, includes thrift institutions. New paragraph (d)(4) also clarifies that the term "charge-off", as it pertains to banks regulated by the Office of Thrift Supervision, includes the establishment of specific allowances for loan losses.

By making the conformity election under paragraph (d)(3), a bank establishes a conclusive presumption that debts charged off for regulatory purposes are worthless for Federal tax purposes. This conclusive presumption of worthlessness, however, only applies to debt charge-offs that (1) result from specific order of the bank's supervisory authority or (2) correspond to the bank's classification of the debt, in whole or in part, as a loss asset under applicable regulatory standards. This rule is designed to limit the application of the conclusive presumption to debts that generally would be worthless under general tax principles. While this limits the scope of the conclusive presumption, the presumption would still apply to qualifying charge-offs whether or not the bank also claims other charge-offs or bad debt deductions that are outside the scope of the presumption.

For example, under reporting standards recently proposed by the Federal Financial Institutions Examination Council, financial institutions would, under certain circumstances, be permitted to return nonaccrual loans to accrual status by charging off a portion of the loan. See 56 FR 11441 (March 18, 1991). Although the conclusive presumption would not apply to many of the charge-offs made under this proposed reporting standard because most debt charge-offs made under that standard would not correspond to the classification of the debt as a loss asset, a bank that elects to use the conclusive presumption would continue to apply that presumption to the qualifying portion of charge-offs even if it also made non-qualifying charge-offs under the proposed reporting standard.

If a bank elects to use this conclusive presumption, the bank must be consistent and claim its bad debt deduction for debt charge-offs subject to the conclusive presumption in the same year that the debt is charged off for regulatory purposes. If the conclusive presumption does not apply to a debt charge-off, the bank will be allowed a deduction for that charge-off only for the taxable year in which the debt is worthless, in whole or in part, under general tax rules. See § 1.166-2. Moreover, no bad debt deduction will be allowed for any debt that has not been charged off for regulatory purposes. In addition, the bank must (1) maintain internal loan review and loss classification standards that are consistent with the requirements of its supervisory authority and (2) have the supervisory authority's approval of those standards and their application.

The conformity election is made by attaching a statement to the bank's Federal income tax return, and it applies to the year of the return and all subsequent years. The bank may revoke its election only with the permission of the Commissioner. See section 446(e) and § 1.446-1(e). The revocation of the election may also be initiated by the Commissioner, but only if the bank has not adhered to the conditions for making the election or if it has claimed deductions that exceed those warranted by the exercise of reasonable business judgment in applying the regulatory standards. If an election made by a bank under paragraph (d)(3) is revoked, another election may be made by the bank only with the consent of the Commissioner.

The election under proposed paragraph (d)(3) applies only to debts that become worthless and, therefore, does not apply to interest accruals on nonperforming loans. The issue of when a bank may cease to accrue interest on nonperforming loans for Federal income tax purposes is currently being considered by the Treasury Department.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to

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these regulations and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably an original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be scheduled upon written request by any person who submits timely written comments on the proposed rules. Notice of the time, place, and date for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Bernita L. Thigpen, Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, personnel from other offices of the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.161–1 through 1.194–4

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, title 26, chapter I, part 1 of the Code of Federal Regulations are proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.166–2 is amended by adding new paragraphs (d)(3) and (d)(4) to read as follows:

§ 1.166–2. Evidence of worthlessness.

* * * * *

(d) * * *

(3) *Conformity election.*—(i) *In general.* In lieu of applying paragraphs (d) (1) and (2) of this section, a bank that is subject to supervision by Federal authorities, or by state authorities maintaining substantially equivalent standards, and that meets the requirements of paragraph (d)(3)(iii) of this section may elect under this paragraph (d)(3) to establish a conclusive presumption of worthlessness for debts.

(ii) *Conclusive presumption.* If a bank makes an election under this paragraph (d)(3) and satisfies the requirements of paragraph (d)(3)(iii) of this section, debts charged off, in whole or in part, for regulatory purposes during a taxable year are conclusively presumed to have become worthless, or worthless only in part, as the case may be, during that year, but only if the charge-off results from a specific order of the bank's regulatory authority or corresponds to the bank's classification of the debt, in whole or in part, as a loss asset. An asset is classified as a loss asset by a bank if the bank assigns the asset to a class that corresponds to a loss asset classification under the standards set forth in the "Uniform Agreement on the Classification of Assets and Securities held by Banks" (See Attachment to Comptroller of the Currency Banking Circular No. 127, Rev. 4–26–91, Comptroller of the Currency, Communications Department, Washington, DC 20219), or other similar guidance, issued by the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve, and the Conference of State Bank Examiners; or for institutions under the supervision of the Office of Thrift Supervision, 12 CFR 563.160(b)(3).

(iii) *Requirements.* For purposes of this paragraph (d)(3), the following requirements must be satisfied for the year of the election and any subsequent year for which this paragraph (d)(3) applies—

(A) In connection with its most recent examination involving the bank's loan review process, the bank's supervisory authority must have expressly determined that the bank maintains and applies loan review and loss classification standards that are consistent with the regulatory standards of that supervisory authority; and

(B) The bank claims a bad debt deduction only for debts that have been charged off, in whole or in part, for regulatory purposes, and, in the case of all debt charge-offs subject to the conclusive presumption, claims the deduction for such debts (or portion thereof) only for the taxable year in which the debt is conclusively presumed to be worthless under paragraph (d)(3)(ii) of this section.

(iv) *Election*—(A) *In general.* For any taxable year ending after *(Insert the date this document is published in the* **Federal Register** *as a final regulation)*, a bank makes an election under this paragraph (d)(3) for the taxable year and all subsequent years by attaching a written statement to its timely filed return (including extensions) for the first taxable year. A written statement required pursuant to this paragraph (d)(3)(iv) must include the name, address, and taxpayer identification number of the electing bank and contain a declaration that the requirements of paragraph (d)(3)(iii) of this section are currently satisfied and will continue to be satisfied until such time as the bank obtains the Commissioner's consent to revoke its election or the election is revoked by the Commissioner pursuant to paragraph (d)(3)(v) of this section.

(B) *Method of Accounting.* An election under this paragraph (d)(3) is a change in method of accounting. The consent of the Commissioner, pursuant to section 446(e), to make this change is granted to any bank that makes the election in accordance with the procedures in paragraph (d)(3)(iv)(B) of this section for the first time. The making of an election under this paragraph (d)(3) does not by itself change the basis of any debt held by the bank. Therefore, no adjustment under section 418(a) is permitted or required.

(C) *Revocation of election.* Once made, an election under this paragraph (d)(3) is revocable only with the consent of the Commissioner. See section 446(e) and § 1.446–1(e). If the bank has previously made an election under this paragraph (d)(3) and the Commissioner has either revoked or granted permission to revoke that election, another election under this paragraph (d)(3) may only be made with the consent of the Commissioner.

(D) *Transition period.* For taxable years ending before the first examination of the bank by its supervisory authority that is after *(Insert the date this document is published in the* **Federal Register** *as a final regulation)* and involves the bank's loan review process, the requirement in paragraph (d)(3)(iii)(A) of this section will be deemed to have been met provided that—

(1) the bank represents in the declaration required in paragraph (d)(3)(iv)(A) of this section that its supervisory authority did not criticize the bank's internal loan review and loss classification process in its most recent examination of the bank involving such process that occurred prior to *(Insert the date this document is published in the* **Federal Register** *as a final regulation)*, and

(2) in the first such examination after *(Insert the date this document is published in the* **Federal Register** *as a final regulation)*, the bank's supervisory authority expressly determines that the bank maintains and applies loan review and loss classification standards that are consistent with the regulatory standards of that supervisory authority.

(v) *Revocation of election by Commissioner.* An election under this paragraph (d)(3), and the resulting conclusive presumption, may be revoked by the Commissioner as of the beginning of a taxable year only if:

(A) The bank failed to satisfy either of the requirements of paragraph (d)(3)(iii) of this section for the taxable year; or

(B) The bank has taken charge-offs and deductions for the taxable year that, under all the facts and circumstances existing at the time, were substantially in excess of those warranted by the exercise of reasonable business judgment in applying the regulatory standards of the supervisory authority.

(4) *Definitions.* For purposes of this paragraph (d)—

(i) *Bank.* The term "bank" has the meaning assigned to it by section 581.

(ii) *Charge-off.* For banks regulated by the Office of Thrift Supervision, the term "charge-off" includes the establishment of specific allowances for loan losses in the amount of 100 percent of the portion of the debt classified as loss.

Michael J. Murphy,

Acting Commissioner of Internal Revenue

[FR Doc. 91–12644 Filed 5–28–91; 8:45 am]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[FRL–3959–9]

Open Meetings of the Negotiated Rulemaking Advisory Committee; Clean Fuels Rules and Guidelines

AGENCY: Environmental Protection Agency.

ACTION: FACA Committee meetings—Negotiated Rulemaking Committee on Clean Fuels Rules and Guidelines.

SUMMARY: The Clean Fuels Rules and Guidelines Negotiating Committee will hold two, two-day meetings to attempt to reach consensus.

DATES: The Committee will meet on June 13, 14, 26, and 27. The June 13 and 26 meetings will run from 9 a.m. to 6 p.m. The June 14 and 27 meetings will run from 8 a.m. to 4 p.m.

ADDRESSES: All meetings will be held at the Hyatt Regency, 1 Bethesda Metro Center, Bethesda, Maryland, (301) 657–1234.

FOR FURTHER INFORMATION CONTACT: Persons with questions regarding substantive aspects of the reformulated fuels rule, should call Carol Menninga at (303) 668–4575. Call Alfonse Mannato, (202) 382–2667, with questions regarding the oxygenated fuels guidelines. Persons needing further information on Administrative matters should call Phil Harter at (202) 887–1033.

Dated: May 23, 1991.

Paul Lapsley,

Director, Regulatory Management Division, Office of Policy, Planning, and Evaluation.

[FR Doc. 91–12625 Filed 5–28–91; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP 7E3557/P523; FRL–3883–8]

RIN–AC18

Pesticide Tolerances for Chlorpyrifos

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for residues of the pesticide chlorpyrifos in or on the raw agricultural commodity caneberries (*Rubus* spp., including blackberries; *Rubus caesius* (youngberry); *Rubus loganbaccus* (loganberry); *Rubus occidentalis, idaeus,* and *strigosus* (red and black raspberries); and varieties and/or hybrids of these). The proposed regulation to establish a maximum permissible level for residues of the pesticide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATES: Comments, identified by the document control number [PP 7E3557/P523], must be received on or before June 28, 1991.

ADDRESSES: By mail, submit written comments to: Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H-7505C), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 7E3557 to EPA on behalf of the Agricultural Experiment Stations of New York, Oregon, and Washington.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the insecticide chlorpyrifos (*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate) and its metabolite TCP (3,5,6-trichloro-2-pyridinol in or on the raw agricultural commodity caneberries at 2.0 parts per million (ppm), of which no more than 1.0 ppm is chlorpyrifos. The petition was later amended to propose the tolerance at 1.0 ppm for residues of chlorpyrifos per se in or on caneberries.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A 2-year dog feeding study with a no-observed-effect level (NOEL) for systemic effects of 1.0 milligram (mg)/kilogram (kg)/day and lowest effect level (LEL) (increased liver weight) of 3.0 mg/kg/day. The NOELs for cholinesterase (ChE) inhibition were as follows: 0.01 mg/kg/day for plasma, 0.1 mg/kg/day for red blood cells, and 1.0 mg/kg/day for brain cells. Levels tested were 0, 0.01, 0.03, 0.1, 1.0, and 3 mg/kg/day.

2. A voluntary human study with ChE NOEL of 0.03 mg/kg/day (based on 20 days of exposure at this level).

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3. A 2-year mouse chronic toxicity/carcinogenicity study with a NOEL of 15 ppm for systemic effects (equivalent to 2.25 mg/kg/day) and no carcinogenic effects observed under the conditions of the study at all levels tested (0, 0.5, 5, and 15 ppm, equivalent to 0.075, 0.75, and 2.25 mg/kg/day).

4. A 2-year rat feeding/carcinogenicity study with ChE NOEL of 0.1 and LEL of 1.0 mg/kg/day (based on decreased plasma and brain ChE activity), and a systemic NOEL of 1.0 mg/kg/day and LEL of 10 mg/kg/day (based on decreased erythrocyte and hemoglobin values and increased platelet count during the first year). There were no observed carcinogenic effects at the levels tested (0.05, 0.1, 1.0, and 10 mg/kg/day) under the conditions of the study.

5. A three-generation reproduction study in rats with no reproductive effects observed at the dietary levels tested (0, 0.1, 0.3, and 1.0 mg/kg/day).

6. Two rat developmental toxicity studies: one negative for developmental toxicity at all dose levels (levels tested were 0.1, 3.0, and 15.0 mg/kg/day); and one with maternal and developmental NOELs of 2.5 mg/kg/day (levels tested, by gavage, were 0, 0.5, 2.5, and 15 mg/kg/day).

7. A mouse developmental toxicity study with a teratogenic NOEL greater than 25 mg/kg/day (highest dose tested), and a developmental fetotoxic NOEL of 10 mg/kg/day and LEL of 25 mg/kg/day (decreased fetal length and increased skeletal variants).

8. A developmental toxicity study in rabbits with maternal and developmental NOELs of 81 mg/kg/day, and maternal and developmental LELs of 140 mg/kg/day (based on maternal decreased food consumption on gestation days 15 to 19, and body weight loss during the dosing period followed by a compensatory weight gain; and based on a slight reduction in fetal weights and crown-rump lengths, and fetal increased incidence of unossified fifth sternebrae and/or xiphisternum). Levels tested were 0, 1, 9, 81, and 140 mg/kg/day.

9. An acute delayed neurotoxicity study in the hen that was negative at 50 and 100 mg/kg/day.

10. Several mutagenicity studies which were all negative. These include an Ames assay, two Chinese hamster ovary cell mutation assays, a micronucleus assay for chromosomal aberration, an in vitro chromosomal aberration assay with and without enzymatic activation, and an unscheduled DNA synthesis assay.

11. A general metabolism study in rats shows that the major metabolite of chlorpyrifos is TCP. TCP is considered to be less toxic than chlorpyrifos and is not a ChE inhibitor. Several available toxicity studies utilizing TCP are described below:

a. A 90-day rat feeding study with a systemic NOEL of 30 mg/kg/day. Levels tested were 0, 10, 30, and 100 mg/kg/day.

b. A rat developmental toxicity study with no developmental toxicity observed at the dosages tested (0, 50, 100, and 150 mg/kg/day).

c. Mutagenicity studies (including an Ames assay and an unscheduled DNA synthesis assay) were negative for mutagenic effects.

Most existing tolerances for chlorpyrifos are established for combined residues of chlorpyrifos and its TCP metabolite. In the Registration Standard for Chlorpyrifos, dated June 1989, the Agency concluded that the TCP metabolite is not of toxicological concern and is proposing comprehensive tolerance revisions to remove TCP from the tolerance definition. Accordingly, tolerances can be lowered by reducing them to levels adequate to cover residues of chlorpyrifos per se. The Agency is currently reviewing data that will allow a comprehensive tolerance revision to remove TCP from the tolerance expression. The tolerance for caneberries is proposed for chlorpyrifos per se since the residue data indicate that a tolerance of 1.0 ppm is adequate to cover residues of chlorpyrifos resulting from the proposed use of the pesticide.

Although additional plant and animal metabolism data are needed to fully characterize the residues, the available metabolism data are adequate to support the proposed use of chlorpyrifos on the commodity, caneberries.

The reference dose (RfD) based on the human voluntary ChE study (ChE NOEL of 0.03 mg/kg/day) and using a 10-fold uncertainty factor is calculated to be 0.003 mg/kg of body weight/day. The anticipated residue contribution (ARC) from dietary exposure to chlorpyrifos residues is estimated to be 0.00424 mg/kg body weight/day for the overall U.S. population. The ARC is calculated using percent crop treated and anticipated residue data for only some crops. The available information pertaining to the direct treatment of beef and dairy cattle is not adequate to calculate anticipated residues for milk and beef products, which are major contributors to exposure. Registration for direct treatment of beef and dairy cattle was voluntarily cancelled by the registrant in December of 1989, with a provision allowing the use of existing stocks already labeled for this use. For these reasons, EPA believes that the 0.00424 mg/kg body weight/day likely overstates the exposure. When the Agency is satisfied that direct application to cattle is no longer practiced, exposure estimates will be revised accordingly.

The contribution to exposure from the proposed tolerance on caneberries (assuming tolerance-level residues and 100 percent of crop treated) is estimated to be 0.00002 mg/kg/day, calculated to be less than 1 percent of the total estimated exposures, a negligible increase.

An adequate analytical method, gas chromatography, is available in the Pesticide Analytical Manual, Vol. II (PAM II), for enforcement purposes. No secondary residues in meat, milk, poultry, or eggs are expected since caneberries are not an animal feed commodity. There are currently no actions pending against continued registration of this chemical.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.342 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 7E3557/P523]. All written comments filed in response to this petition will be available in the Public Information Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 20, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.342, by redesignating existing paragraph (c) as paragraph (d) and adding new paragraph (c), to read as follows:

§ 180.342 Chlorpyrifos; tolerances for residues.

* * * * *

(c) Tolerances are established for residues of the pesticide chlorpyrifos (*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate in or on the following raw agricutural commodity:

Commodity	Parts per million
Caneberries	1.0

(d) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of the pesticide chlorpyrifos (*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate) in or on the following commodities:

Commodity	Parts per million
Cherimoya	0.05
Feijoa (pineapple guava)	0.05
Sapote	0.05

[FR Doc. 91-12638 Filed 5-28-91; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Parts 180 and 186

[PP 8F3617 and FAP 8H5554/P524; FRL-3889-7]

RIN 2070-AC18

Pesticide Tolerances for Metalaxyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish a tolerance for residues of the fungicide metalaxyl and its metabolites in or on sugar beet (tops) at 10.0 parts per million (ppm), sugar beet (roots) at 0.5 ppm, and for the feed additive tolerance of 5.0 ppm in sugar beet molasses. This regulation to establish the maximum permissible levels for residues of metalaxyl in or on the commodities was requested in petitions submitted by Ciba-Geigy Corp.

DATES: Comments, identified by the document control number, (PP 8F3617 and FAP 8H5554/P524), must be received on or before June 28, 1991.

ADDRESSES: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202 (703)-557-1900.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in rm. 246 at the address given below, from 8 a.m. to 4 p.m., Monday and Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Susan T. Lewis, Product Manager (PM) 21, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202 (703)-557-1900.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of October 12, 1988 (53 FR 39783), which announced that Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419, had submitted a tolerance petition (PP) 8F3617 and a feed additive petition (FAP) 8H5554 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for the fungicide metalaxyl (N-(2,6-dimethylphenyl)-N-(methoxyacetyl) alanine methyl ester) and its metabolites containing the 2,6-dimethylaniline moiety, and N-(2-hydroxymethyl-6-methylphenyl)-N-(methoxyacetyl) alanine methyl ester in or on sugar beet (tops) at 10.0 ppm, sugar beet (roots) at 0.5 ppm, nongrass animal feeds group at 6.0 ppm, grass forage, fodder, and hay group at 2.0 ppm, legume vegetables (dry or succulent) group at 1.0 ppm, legume vegetables (foliage) at 10.0 ppm, and legume vegetable cannery waste at 11.0 ppm, and a food additive regulation for the same pesticide in or on molasses at 4.0 ppm resulting from application of the pesticide to the growing crop. Since then, Ciba-Geigy Corp. has petitioned the Agency to withdraw all proposed tolerances except for the sugar beet (tops at 10.0 ppm and roots at 0.5 ppm) and to increase the food additive regulation level for sugar beet molasses to 5.0 ppm.

There were no comments received in response to the notice of filing.

The data submitted in support of the petition and other relevant material have been evaluated. The pesticide is considered useful for the purposes for which the tolerances and food additive regulation are being sought and capable of achieving the intended physical or technical effect. The toxicological data considered in support of the tolerance include the following:

1. A 3-month dietary study in rats with a no-observed-effect level (NOEL) at 12.5 milligrams per kilogram (mg/kg) body weight (bwt)/day (250 ppm).

2. A developmental toxicity study in rats with a NOEL of 400 mg/kg bwt (highest dose tested (HDT)). Metalaxyl did not cause developmental toxicity, even in the presence of maternal toxicity.

3. A developmental toxicity study in rabbits with a NOEL of 300 mg/kg bwt (HDT). Metalaxyl did not cause developmental toxicity, even in the presence of maternal toxicity.

4. Metalaxyl did not induce gene mutations in bacteria, yeast, and lymphoma cells in vitro with or without metabolic activation. The fungicide also caused no structural or numerical chromosomal aberrations in yeast, hamsters (in vivo nucleus anomaly assay), or mice (a dominant lethal assay). No DNA damage was observed

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in bacteria, and no unscheduled DNA synthesis was noted in rat primary hepatocytes or human fibroblasts in vitro as the result of exposure to metalaxyl. These results suggest that metalaxyl is not genotoxic.

5. A mouse dominant-lethal study that was negative for mutagenicity.

6. A three-generation rat reproduction study with a NOEL of 62.5 mg/kg bwt/day (1,250 ppm).

7. A 6-month dog feeding study with a NOEL of 6.25 mg/kg bwt/day (250) ppm. Effects found at 250 mg/kg were increased serum alkaline phosphatase activity and increased liver weight and liver-to-brain weight ratios without histological changes.

8. A 2-year rat chronic feeding/oncogenic study with no compound-related carcinogenic effects under the conditions of the study at dietary levels up to 1,250 ppm. The NOEL is 12.5 mg/kg bwt/day (250 ppm) based upon slight increases in liver weight to body weight ratios at 1,250 ppm.

9. A 2-year mouse oncogenic study with no compound-related carcinogenic effects under the conditions of the study at dietary levels up to 1,250 ppm.

Because of concerns raised over some equivocal increases in tumor incidences in the male mouse liver and the male rat adrenal medulla, and the female rat thyroid, the two chronic feeding studies were submitted to the Environmental Pathology Laboratories (EPL) for an independent reading of the microscopic slides. The new pathological evaluation by EPL and the original reports of the rat and mouse oncogenicity studies were then both submitted for review to EPA's Carcinogen Assessment Group (CAG). A final review of the carcinogenicity studies and related material was performed by the Peer Review Committee of the Toxicology Branch (TB) of the Office of Pesticide Programs (OPP).

The four major issues evaluated by CAG and the peer review group included: (1) Perifollicular cell adenomas in the thyroid of female rats; (2) adrenal medullary tumors (pheochromocytomas) in male rats; (3) liver tumors in male mice; and (4) whether the HDT (1,250 ppm) in the rat and mouse oncogenicity studies represented a maximum tolerated dose (MTD).

Regarding the thyroid tumors in female rats, the peer review group concluded that the increased incidences of thyroid tumors in females of treated groups were not compound related. This conclusion was based on the following: (1) There was no progression of benign tumors (adenomas) to malignancy (carcinomas); (2) there was no increase in hyperplastic changes; (3) there was no dose-response relationship; and (4) the two reevaluations of the microscopic slides by the pathologists at EPL and TB in OPP further did not confirm any apparent effects observed in the original report.

The issue of a possible treatment-related increase of adrenal medullary gland tumors, namely, pheochromocytomas, in the male rat was also reassessed by both CAG and the Peer Review Committee. Both concluded that the data, especially in view of the reevaluation of the microscopic slides performed by EPL, did not support a compound-related increase of adrenal medullary tumors; the incidence of pheochromocytomas more accurately represented spontaneous variations of a commonly occurring tumor in the aged rat.

The analysis of the significance of the equivocal increase in the incidence of liver tumors in male mice was very similar to that performed for the rat thyroid and adrenal gland tumors. The original pathological reading of the tissue slides reported an elevated increase of tumors in some treatment groups; however, these increases were not evident after a reevaluation of the microscopic slides was performed by an independent pathologist at EPL and by the reading of a CAG pathologist. The Peer Review Committee concurred that the reevaluation of the slides is reliable and does not show any compound-related increase in the incidence of liver tumors in the mouse.

The Agency believes that the data from the rat and mouse long-term studies are sufficient to support the conclusion that metalaxyl does not show a carcinogenic potential in laboratory animals. This conclusion is supported by the following: (1) The doses tested in both the rat and mouse long-term studies approached an MTD based upon compound-related changes in liver weight and/or liver histology; (2) extensive available mutagenic evidence indicates no potential genotoxic activity which correlates with the negative carcinogenic potential demonstrated in long-term testing; (3) metalaxyl is not structurally related to known carcinogens; and (4) under the conditions of the rat and mouse tests, no indication of compound-related carcinogenic effects were noted at any of the treatment doses, sexes, or species.

The reference dose (RFD) based on the 6-month dog feeding (NOEL 6.25 mg/kg bwt/day), and using a hundred-fold safety factor, is calculated to be 0.060 mg/kg bwt/day. The theoretical maximum residue contribution from previously established tolerances and food additive regulations and the tolerances and food additive regulations established here are 0.010633 mg/kg bwt/day and utilize 17.55 percent of the RFD.

The nature of the residue is adequately understood, and adequate analytical methods (capillary N/P GLC) are available for enforcement purposes. Because of the long lead time from establishing these tolerances and food additive regulations to publication of the enforcement methodology in the Pesticide Analytical Manual, vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Information Branch, Field Operations Division (H7506C), 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202 (703)-557-4432.

The pesticide is considered useful for the purpose for which the tolerances and food additive regulation are sought and capable of achieving the intended physical or technical effect. Existing meat and milk tolerances are adequate to cover any secondary residues from the feed use of metalaxyl in conjunction with proposed tolerances. Based on the information and data considered, the Agency concludes that the establishment of the tolerances for sugar beet tops and roots will protect the public health, and use of the pesticide in accordance with the terms of the prepared food additive regulation will be safe. Therefore, the tolerances and food additive regulation are established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the Federal Register that the rulemaking proposal for a tolerance on sugar beet tops and roots be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulations. Comments must bear a notation indicating the document control number, (PP 8F3617 and FAP 8H5554/P524). All written comments filed in response to this petition will be available in the Public Docket and Freedom of Information Section, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or food additive regulations, or raising tolerance levels or food additive regulations, or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (40 FR 24950).

The Office of Management and Budget has exempted this rule from the requirement of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Parts 180 and 186

Administrative practice and procedures, Agriculture commodities, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 7, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that chapter I of title 40 of the Code of Federal Regulations be amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. Section 180.408(a) is amended in the table therein by revising the entry for sugar beet tops and by adding and alphabetically inserting a new entry for sugar beet roots, to read as follows:

§ 180.408 Metalaxyl; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Sugar beet (roots)	0.5
Sugar beet (tops)	10.0
* * * * *	

PART 186—[AMENDED]

2. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. Section 186.4000(b) is amended in the table therein by adding and alphabetically inserting the feed commodity sugar beet molasses, to read as follows:

§ 186.4000 Metalaxyl.

(b) * * *

Feeds	Parts per million
* * * * *	
Sugar beet molasses	5.0
* * * * *	

[FR Doc. 91-12397 Filed 5-28-91; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-300233; FRL-3926-6]

RIN 2070-AC18

Vinylpyrrolidone-Vinyl Acetate Copolymer; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that an exemption from the requirement of a tolerance be established for residues of the pesticide chemical vinylpyrrolidone-vinyl acetate copolymer (CAS Reg. No. 25086-89-9) when used as an inert ingredient (emulsion stabilizer, film-forming agent) in pesticide formulations applied to growing crops and raw agricultural commodities after harvest. The proposed regulation was requested by the GAF Chemicals Corporation (GAF).

DATES: Comments, identified by the document control number (OPP-300233), must be received on or before June 28, 1991.

ADDRESSES: By mail, submit written comments to: Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Kerry Leifer, Registration Support Branch, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 726, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-5180.

SUPPLEMENTARY INFORMATION: At the request of GAF Chemicals Corp., 1361 Alps Rd., Wayne, NJ 07470, the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, proposes to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of vinylpyrrolidone-vinyl acetate copolymer (CAS Reg. No. 25086-89-9) when used as an inert ingredient (emulsion stabilizer, film-forming agent) in pesticide formulations applied to growing crops and raw agricultural commodities after harvest.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbon; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the Federal Register of April 22, 1987 (52 FR 13305), the Agency established data requirements which will be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide

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formulation. Exemptions from some or all of these requirements may be granted if it can be determined that the inert ingredient will present minimal or no risk. The Agency has decided that the data normally required to support the proposed tolerance exemption for vinylpyrrolidone-vinyl acetate copolymer will not need to be submitted. The rationale for this decision is described below.

In the case of certain chemical substances which are defined as "polymers" the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) limit potential risks by identifying polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk.

Vinylpyrrolidone-vinyl acetate copolymer conforms to the definition of a polymer given 40 CFR 723.250(b)(11) and meets the following criteria which are used to identify low-risk polymers:

1. The minimum average molecular weight of vinylpyrrolidone-vinyl acetate copolymer is 6,700. Substances with molecular weights greater than 400 are generally not readily absorbed through the intact skin, and substances with molecular weights greater than 1,000 are generally not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract are generally incapable of eliciting a toxic response.

2. Vinylpyrrolidone-vinyl acetate copolymer is not a cationic polymer, nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

3. Vinylpyrrolidone-vinyl acetate copolymer does not contain less than 32.0 percent by weight of the atomic element carbon.

4. Vinylpyrrolidone-vinyl acetate copolymer contains as an integral part of its composition the atomic elements carbon, hydrogen, nitrogen, and oxygen.

5. Vinylpyrrolidone-vinyl acetate copolymer does not contain as an integral part of its composition, except as impurities, any elements other than those listed in 40 CFR 723.250(d)(3)(ii).

6. Vinylpyrrolidone-vinyl acetate copolymer is not a biopolymer, a synthetic equivalent of a biopolymer, or a derivative or modification of a biopolymer that is substantially intact.

7. Vinylpyrrolidone-vinyl acetate copolymer is not manufactured from reactants containing, other than as impurities, halogen atoms or cyano groups.

8. Vinylpyrrolidone-vinyl acetate copolymer does not contain reactive functional groups that are intended or reasonably anticipated to undergo further reaction.

9. Vinylpyrrolidone-vinyl acetate copolymer is not designed or reasonably anticipated to substantially degrade, decompose, or depolymerize.

Based upon the above information and review of its use, it has been found that when used in accordance with good agricultural practice this ingredient is useful and does not pose a risk to human health or the environment. Therefore, EPA concludes that a tolerance is not necessary to protect the public health and proposes an exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, (OPP-300233). All written comments filed in response to this petition will be available in the Public Information Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 20, 1991.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In subpart D, new § 180.1106 is added, to read as follows:

§ 180.1106 Vinylpyrrolidone-vinyl acetate copolymer; exemption from the requirement of a tolerance.

Vinylpyrrolidone-vinyl acetate copolymer (CAS Reg. No. 25086-89-9), minimum average molecular weight 6,700, is exempted from the requirement of a tolerance when used as an inert ingredient (emulsion stabilizer, film-forming agent) for pesticides applied to growing crops or to raw agricultural commodities after harvest. The inert will constitute no more than 20 percent by weight of any pesticide formulation. Registration of each new pesticide formulation incorporating this dispersing agent must be supported by residue data for the active ingredient(s).

[FR Doc. 91-12523 Filed 5-28-91; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 390 and 395

[FHWA Docket No. MC-91-2]

RIN 2125-AC67

Federal Motor Carrier Safety Regulations; General; Emergency Relief Exemption

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA is proposing to amend the Federal Motor Carrier Safety Regulations (FMCSRs) to exempt from parts 390 through 399 motor carriers and drivers operating in interstate commerce that are providing direct assistance as part of a disaster relief effort. This rule would also remove the requirement for motor carriers to request authorization from the FHWA prior to providing disaster relief. This rule would not relieve motor carriers from having the required minimum levels of financial responsibility coverage prior to operating in interstate commerce, including motor carriers previously operating solely in intrastate commerce.

DATES: Comments must be received on or before July 15, 1991.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC-91-2, room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk in standard or high density formats containing data compatible with either WordPerfect or WordStar for IBM systems or Microsoft Word or WordPerfect or WordStar for Apple MacIntosh systems. Commenters should clearly label submitted disk with the software format used (e.g. WordPerfect 5.0 [IBM] or Microsoft Word 4.0 [Mac]). All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. William H. Blount, Office of Motor Carrier Standards, (202) 366-2981, or Mr. Charles E. Medalen, Office of the Chief Counsel, (202) 366-1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

Since the inception of the FMCSRs under the Interstate Commerce Commission, the regulations governing truck and bus safety have always contained provisions to permit motor carriers to provide transportation and resource relief in the event of a major disaster. Disasters often cause loss of life, human suffering, and property loss while disrupting the normal functioning of government, businesses, and communities. Recent disasters, such as Hurricane Hugo, highlight the critical need to ensure that emergency relief services be provided quickly and easily.

Utility companies, disaster relief organizations, insurance companies, religious and civic groups and others often render emergency relief services. Such groups are now required to comply with the FMCSRs, when operating commercial motor vehicles in interstate commerce, or with compatible State regulations when operating in intrastate commerce. In the wake of disasters, organizations that normally operate within a single State may be called upon to provide emergency assistance in another State. However, these organizations may be unable to provide such assistance without violating the FMCSRs.

Discussion

Currently, section 390.23 of the FMCSRs sets forth a procedure by which any interstate motor carrier that has been requested to provide relief services due to disasters such as floods, earthquakes, or pestilence, or governmentally declared emergencies may request relief from the hours of service requirements of § 395.3(b), regarding maximum driving and on-duty time. Any motor carrier seeking relief from § 395.3(b) must contact the Regional Director of Motor Carriers in the region in which the motor carrier's principal place of business is located, and provide full details of the disaster or emergency situation. Based on the information received from internal and external sources, the Regional Director makes a determination if relief from § 395.3(b) is appropriate. The Regional Director either denies or grants the request along with any restrictions which may be considered necessary. The Regional Director does not have the authority to exempt a motor carrier from any other requirements of the FMCSRs (e.g., driver qualifications, vehicle standards, etc).

Within 24 hours after an exemption has been granted by telephone, the motor carrier must submit a formal written request to the Regional Director, providing full details of the relief operation, the regulatory exemption sought, and the period of time for which the exemption from the FMCSRs is requested. All approvals of regulatory relief may be subject to special conditions (e.g., that all excess hours must be spread evenly among all drivers).

In addition, section 395.12 exempts from the hours of service regulations any interstate motor carrier transporting passengers or property to or from any section of the country with the object of providing relief in the case of earthquake, flood, fire, famine, drought, epidemic, pestilence, or other disaster.

Because full compliance with the FMCSRs during disaster relief work would often delay or interrupt efforts to protect lives, property, and public health, the FHWA is proposing to amend parts 390 and 395 of the FMCSRs to remove nearly all regulatory requirements otherwise applicable to motor carriers and drivers who are actively participating in an "emergency relief" effort associated with a disaster.

This rule would be issued under the authority of section 206(f) of the Motor Carrier Safety Act of 1984 [Pub. L. 98-554, title II, section 206(f), 98 Stat. 2832, 2835, codified at 49 U.S.C. app. 2505(f) (1988)]. Section 206(f) reads in part as follows: "After notice and an opportunity for comment, the Secretary [of Transportation] may waive, in whole or in part, application of any regulation issued under this section with respect to any person or class of persons if the Secretary determines that such waiver is not contrary to the public interest and is consistent with the safe operation of commercial motor vehicles." This waiver authority has been delegated to the Federal Highway Administration [49 CFR 1.48(aa) (1990)].

The waiver of the FMCSRs authorized by this rule would enable motor carriers and drivers involved in disaster relief work to devote all of their time and effort to those critical tasks. Lives often depend on the rapid restoration of essential services (e.g., power, water, and sewer lines) or the immediate delivery of essential supplies. While the FMCSRs are important in maintaining the safety of commercial motor vehicle operations, a disaster may present greater risks to public health and safety at that place and time. Thus, the FHWA is proposing to waive the application of the FMCSRs to motor carriers providing emergency relief services during times of disaster as declared by the President or a Governor of a State.

However, we are also proposing that compliance with the FMCSRs not be suspended for longer than 30 consecutive calendar days because of the risks associated with the accumulation of mechanical deficiencies, human fatigue, and potential inattention to operational safety practices. Except in truly extraordinary situations, to be decided on a case-by-case basis, the exemption from the FMCSRs would be limited to 30 consecutive calendar days, or the duration of the emergency, whichever ends first.

This proposal would permit a motor carrier to provide emergency relief service without complying with the FMCSRs only if:

(1) There is a publicly declared disaster needing emergency relief, and

(2) The motor carrier is directly engaged in providing assistance to disaster sites or locations.

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In other words, a disaster would have to occur and the President of the United States, a Governor of a State, or a representative acting in either the President's or Governor's behalf, must publicly declare that Federal or State assistance is needed to supplement State and local efforts to save lives, to protect property and public health and safety or to lessen the impact of a disaster in any part of the United States. In general, disaster declarations are in the form of a public announcement (e.g., in the newspapers, on the radio, or television, or other public announcement to the general public). Normally such declarations identify the type of disaster occurring, the specific location which has been declared as the disaster area that needs assistance, and when the specific disaster occurred.

Furthermore, only motor carriers and drivers providing direct relief to the disaster would be permitted to use this exception. Included would be operations such as transporting persons or materials to or from a disaster area and relief operations within a disaster area. Returning to the motor carrier's principal place of business (or primary operating base) would also be included in this exemption. However, the participating motor carrier and its drivers would be required to return to the motor carrier's principal place of business in a safe manner, in furtherance of the intent and purpose of the FMCSRs.

This rule would not require that motor carriers or drivers involved in the relief effort be individually identified (e.g., that a specific motor carrier be requested by public disaster relief authorities to transport a shipment of blankets to flood victims or that a specific utility company be asked to supplement the capabilities and work force of a utility company in a disaster area). Rather, if there is a declared disaster, then a motor carrier or driver who elects to take part in the effort would be afforded this exception. However, in the event the FHWA later discovers what appear to be violations of the FMCSRs, it would be the responsibility of the motor carrier to document sufficiently the claim that it was conducting disaster-related emergency relief operations and was, therefore, exempt from the regulations. This proposal does not specify the type of documentation a motor carrier must provide. However, such documentation could include, among other things, a record of the declaration of a disaster and a complete description of the relief provided including equipment, supplies and drivers used, and the dates and times of such operation. Comment is requested on whether particular documentation should be required and, if so, what type.

The rule would provide regulatory relief for the duration of the emergency or for a maximum of 30 days, whichever is less, without requiring prior approval from FHWA. The 30-day period would start when a disaster is declared by a Governor or the President, not when a motor carrier initiates its emergency relief operations. For example, if an official declaration of a disaster is made on May 1, a motor carrier commencing relief operations on May 10 will have to the end of the emergency or 21 days, whichever occurs first, to operate under this exemption. The FHWA believes that most emergencies necessitating immediate regulatory relief could be addressed within a period of 30 days or less. In those instances where longer periods of relief are necessary, we believe that the Regional Director of Motor Carriers can best ascertain the need to extend the exception for an additional limited period of time.

If more time is needed than the initial 30-day period, a motor carrier would be required to request an extension by contacting the FHWA Regional Director of Motor Carriers in the region where the motor carrier has its principal place of business. Any motor carrier or driver seeking to extend the 30-day time period of the exemption would be required to obtain approval from the Regional Director of Motor Carriers in the region in which the motor carrier's principal place of business is located, before the expiration of the 30-day period. The motor carrier would be required to give full details of the additional relief requested. The Regional Director would determine if additional relief from the regulations is necessary to enhance the motor carrier's ability to provide emergency service to the public. The Regional Director would establish a new time period for the exemption and place any restrictions that may be deemed necessary on the extension of the exemption.

The intent of this proposal is to facilitate quick and effective responses by motor carriers directly involved in providing emergency relief to disaster areas. The FHWA requests comments on this 30-day period of time. Is the time period of sufficient length to respond effectively to most disasters? Shoud other criteria be used to establish the time period? If so, what?

For the purposes of this exemption, the FHWA is proposing to define the term "direct assistance" to mean transportation and other services provided by a motor carrier or its drivers incident to the immediate restoration of essential services or supplies. It would not include transportation related to long-term rehabilitation of damaged physical infrastructure, or routine commercial deliveries, after the initial threat of loss of life or property has passed.

The term "disaster" would be defined to mean "any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, mud slide, snow storm, drought, forest fire, explosion, blackout or other occurrences, natural or man-made, as determined by the President or a Governor of a State." This exception would not be used to provide reconstruction assistance after the initial threat of loss of life or property has passed and immediately needed services have been restored. The FHWA believes that this proposed definition is consistent with the current FMCSRs and with the Department of Transportation's publication, "Transportation Preparedness Planning, Glossary of Terms and Abbreviations," July 1990, (p. 1945.1B).

The term "emergency relief" is proposed to be defined for the purposes of this rule as "An operation in which a motor carrier or driver of a commercial motor vehicle is providing direct assistance to save lives and property, to protect public health and safety or to lessen a disaster as declared by the President of the United States or a Governor of a State, or his or her duly authorized representative."

With the implementation of this proposal, there would no longer be a need for § 395.12 which currently addresses relief from the regulations. Therefore, it is proposed that § 395.12 be removed and reserved.

Implementation of this proposal would relieve interstate and intrastate motor carriers and their drivers from the requirements of parts 390 through 399 of the FMCSRs when providing direct assistance, in interstate commerce to a declared disaster, in an emergency relief operation. The regulatory applicability and requirements of parts 350 through 389 would be unchanged by this rule, and any motor carrier or driver operating under this exemption would still be required to comply with the regulations in those parts whenever applicable. Intrastate motor carriers operating in interstate commerce must meet the required minimum levels of financial responsibility, as required by 49 CFR part 387, prior to any interstate operations.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rulemaking will be minimal. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), the agency has evaluated the effects of this rule on small entities. It is anticipated that the economic impact of this rulemaking will be minimal. For these reasons and under the criteria of the Regulatory Flexibility Act (Pub. L. 96–354), the FHWA hereby certifies that this action will not have a signficant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this proposal does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Nothing in this document preempts any State law or regulation. This rule, if adopted, will not limit the policymaking discretion of the States. States would not be required as part of the Motor Carrier Safety Assistance Program to adopt this proposal for intrastate safety regulations, but they will have to adopt this amendment for the enforcement of interstate operations. The FMCSRs establish minimum safety requirements which, at the present time, may be supplemented by the States, although not by the adoption of inconsistent regulations. The issues addressed in this proposed rule therefore have no federalism implications. Accordingly, it is certified that the policies contained in this document have been assessed in light of the principles, criteria, and requirements of the Federalism Executive Order 12612.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number, 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This proposal does not contain a collection of information requirement for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

This action would make it appreciably easier for intrastate or interstate motor carriers to respond to declared "emergency relief" situations by removing the need for prior application and approval as currently required by the regulations. Therefore, this action should reduce the reporting burdens for the motor carrier industry.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act and has determined that this action would not have any effect on the quality of the environment.

Regulatory Identification Number

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Parts 390 and 395

Disaster assistance, Driver qualifications, Highway safety, Motor carriers, Reporting and recordkeeping requirements.

Issued on: May 22, 1991.

T.D. Larson,
Administrator.

In consideration of the foregoing, the FHWA is proposing to amend parts 390 and 395 of title 49, Code of Federal Regulations, to read as set forth below:

PART 390—[AMENDED]

1. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. App. 2503 and 2505; 49 U.S.C. 3102 and 3104; 49 CFR 1.48.

§ 390.5 [Amended]

2. Section 390.5 is amended by adding the definitions of *Direct assistance, Disaster,* and *Emergency relief,* placing them in alphabetical order to read as follows:

§ 390.5 Definitions.

* * * * *

Direct assistance means transportation and other relief services provided by a motor carrier or its driver(s) incident to the immediate restoration of essential services (such as, medical care, electricity, water, and sewer) or essential supplies (such as, food and fuel). It does not include transportation related to long-term rehabilitation of damaged physical infrastructure, or routine commercial deliveries after the initial threat to life and property has passed. Upon termination of the relief services the motor carrier and driver must return to the principal place of business by the most direct route and in a safe manner.

Disaster means any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, mud slide, snow storm, drought, forest fire, explosion, blackout or other occurrences, natural or man-made, as determined by the President of the United States or a Governor of a State.

* * * * *

Emergency relief means an operation in which a motor carrier or driver of a commercial motor vehicle is providing direct assistance to supplement State and local efforts and capabilities to save lives and property, to protect public health and safety, or to lessen a disaster as declared by the President of the United States or a Governor of a State, or his or her duly authorized representative.

* * * * *

3. In § 390.23, is revised to read as follows:

§ 390.23 Relief from regulations.

Parts 390 to 399 of this subchapter shall not apply to transportation performed by any motor carrier, or driver, operating a commercial motor vehicle in an "emergency relief" effort associated with a disaster as defined in § 390.5. This emergency relief exemption may be utilized only when a disaster has occurred and the President of the United States, a Governor of a State, or his or her duly authorized representative has publicly declared that Federal or State assistance is needed to supplement State and local efforts to save lives and property, to protect public health and safety, or to lessen a disaster in any part of the United States. Except as provided in § 390.25, this exception shall not exceed the length of the emergency or 30 days from the time of the initial declaration of a disaster, whichever is less.

4. Section 390.25 is added to read as follows:

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§ 390.25 Extension of relief from regulations—disaster-related emergencies.

Any motor carrier or driver seeking to extend the 30-day time period of the exemption contained in § 390.23 shall obtain approval from the Regional Director of Motor Carriers in the region in which the motor carrier's principal place of business is located, before the expiration of the 30-day period. The motor carrier shall give full details of the additional relief requested. The Regional Director shall determine if additional relief from the regulations is necessary to enhance the motor carrier's ability to provide emergency service to the public. The Regional Director shall establish a new time period for the exemption and place any restrictions that may be deemed necessary on the extension of the exemption.

PART 395—[AMENDED]

5. The authority citation for part 395 continues to read as follows:

Authority: 49 U.S.C. 3102; 49 App. 2505; and 49 CFR 1.48.

§ 395.12 [Removed]

6. Section 395.12 is removed and reserved.

[FR Doc. 91-12822 Filed 5-28-91; 8:45 am]

BILLING CODE 4910-62-M

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49 CFR Part 395

[FHWA Docket No. MC-91-3]

RIN 2125-AC66

Hours of Service of Drivers; Exception for Emergency Relief Situations

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA is seeking comments on a proposal to amend the drivers hours-of-service requirements of the Federal Motor Carrier Safety Regulations (FMCSRs). This proposal would exempt from certain hours of service requirements those individuals or business entities engaged in emergency relief operations as defined in this proposal. The exemption would be used primarily by interstate public utilities, motor carriers that deliver fuel, and drivers of commercial motor vehicles responding to an emergency situation at the request of State or local government officials. The FHWA is proposing this rulemaking in response to requests and petitions for regulatory relief by public utilities and fuel suppliers. This proposal, if adopted, would provide needed flexibility to those businesses when responding to an emergency.

DATES: Written comments must be received on or before July 15, 1991.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC-91-3, room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington DC 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk in standard or high density formats containing data compatible with either WordPerfect or WordStar for IBM systems or Microsoft Word or WordPerfect or WordStar for Apple MacIntosh systems. Commenters should clearly label submitted disk with the software format used (e.g. WordPerfect 5.0 [IBM] or Microsoft Word 4.0 [Mac]). All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. William H. Blount, Officer of Motor Carrier Standards, (202) 366-2981, or Mr. Charles E. Medalen, Office of the Chief Counsel, (202) 366-1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

This notice of proposed rulemaking is being issued under the authority of section 206(f) of the Motor Carrier Safety Act of 1984 (Pub. L. 98-554, title II, section 206(f), 98 Stat. 2832, 2835, codified at 49 U.S.C. app. section 2505(f) (1988)). Section 206(f) reads in part as follows: "After notice and an opportunity for comment, the Secretary (of Transportation) may waive, in whole or in part, application of any regulation issued under this section with respect to any person or class of persons if the Secretary determines that such waiver is not contrary to the public interest and is consistent with the safe operation of commercial motor vehicles." This waiver authority has been delegated to the Federal Highway Administration [49 CFR 1.48(aa) (1990)].

Since the inception of the FMCSRs under the Interstate Commerce Commission, the regulations governing truck and bus safety have always contained provisions and a mechanism for motor carriers to provide some type of transportation and resource relief in the event of an emergency. Emergencies require immediate attention and prompt action. Under such conditions the FHWA believes that a limited exemption to permit motor carriers to expeditiously render emergency assistance to affected jurisdictions, communities, and entities is needed.

The FHWA is proposing to provide the regulatory relief from the hours-of-service requirements primarily but not exclusively for the drivers of vehicles belonging to interstate public utilities and motor carriers that deliver fuel. This regulatory relief would enable motor carriers subject to the FMCSRs to respond to an emergency situation at the request of State or local government officials, even though the drivers may be exceeding the hours-of-service requirements of the FMCSRs. The FHWA is proposing this action as a result of instances in which response to an emergency situation by a public utility or fuel supplier operating across State lines has been substantially delayed because the only available drivers had run out of driving time, according to the requirements of the Hours-of-Service regulations. The FHWA believes that this limited exemption would not compromise the safe operations of commercial motor vehicles.

The term "emergency situation," within the context of this proposal, means "any occasion or instance in which relief assistance is needed to supplement State or local efforts and capabilities to save lives, protect against substantial loss of property, protect the public health and safety, and/or to lessen or avert the consequence of a catastrophe."

Currently, the hours-of-service regulations state in part that no motor carrier shall permit or require any driver to:

(1) Drive more than 10 hours following 8 consecutive hours off duty; or

(2) Drive for any period after having been on duty 15 hours following 8 consecutive hours off duty; or

(3) Drive for any period after being on duty more than 60 hours in any 7 consecutive days, except if a carrier operates every day of the week, in which case the limit is 70 hours in an 8 consecutive days.

Exception: This requirement shall not apply to any driver driving a motor vehicle in the State of Alaska, or to any driver-salesperson whose total driving time does not exceed 40 hours in any period of 7 consecutive days.

This proposed emergency relief rule would provide motor carriers and their drivers regulatory relief from the hours-of-service requirements to respond to emergency situations at the request of State or local government officials, including law enforcement or emergency response officials.

Previous request

The FHWA has received several requests from motor carriers to revise or interpret the FMCSRs to permit relief from the hour-of-service requirements under certain circumstances. The Virginia Electric and Power Company (Virginia Power), Richmond, Virginia, petitioned the Secretary of Transportation for a clarification of 49 CFR 395.12 as a means of obtaining regulatory relief from the hours-of-service requirements. Virginia Power requested that emergency restoration of electrical power be considered a disaster or other calamitous visitation. In addition, representatives of the Kansas City Power and Light Company, Kansas City, Missouri, made a presentation to the FHWA regarding its emergency operation procedures and requested that such operations be exempted from the maximum hours-of-service requirements.

The National Propane Gas Associations (NPGA) wrote to the Secretary of Transportation, requesting that a mechanism be established to issue blanket exemptions from the hours-of-service rules for the propane gas industry. The NPGA argued that the industry needs the exemption to meet possible emergency shortages and demands caused by the embargo of Iraq. The New England Fuel Institute (NEFI) petitioned the Secretary of Transportation for a waiver of the maximum hours-of-service. The NEFI asserted that drivers for its member companies do little driving compared to their overall work duties. According to NEFI, the drivers spend approximately 20-25% of the work time driving. The rest of their time is spent loading fuel oil into their trucks and delivering it (off-loading into fuel receptacles) to residences and businesses. The NEFI argued that the drivers' work duties are similar to those of driver-salesmen who are currently granted limited relief from the hours-of-service requirements. Consequently, the NEFI requested that its drivers be classified as driver-salesmen. This request was limited to the heating season, specifically the period from December 1 to February 28 of each year.

Discussion

The FHWA recognizes that there are times when emergency situations and endanger individuals and/or the public's safety and health. The agency also recognizes that, in many cases, the FMCSRs provide no relief from the hours-of-service regulations which would enable a motor carrier to respond immediately to a call for help from State or local authorities. For example, public utilities have asserted that there are times when their drivers, having completed their normal work shift for the day or week, are requested by law enforcement or other emergency response official to respond to emergency situations on very short notice. There is usually very little time to summon personnel from their homes, off-duty activities, or other job sites. These emergencies require immediate action and can often be met only by using a driver who has completed his or her work time or who is currently on duty and nearing the end of his or her work shift.

Drivers for public utilities and fuel suppliers operate in relatively restricted geographical areas. Most of their driving is done over short distances, often at less than highway speeds. These drivers in fact spend the majority of their on-duty time in a nondriving capacity. Such driving and work patterns would not change when responding to emergencies. The nature of emergency relief work would usually require drivers for other types of motor carriers to operate in a similar manner. Although remaining on duty somewhat longer than normal, they would tend to drive infrequently, for short distances at low to moderate speeds, with substantial intervals between trips. We believe that the accumulation of fatigue which the hours of service regulations are designed to prevent will be minimized by this varied pattern of activity. The FMWA has therefore determined that the exemption proposed by this rule would not adversely affect the safe operation of commercial motor vehicles. Furthermore, the exemption would not be contrary to the public interest since emergency relief must be undertaken quickly and maintained until the immediate crisis has passed. The FHWA waiver of the maximum hours of service limitations will permit motor carriers and their drivers to render immediate and sustained emergency assistance to affected States and communities.

Proposal

The FHWA is proposing to amend part 395 by establishing an exemption from the requirements of § 395.3(a) and (b) for response to emergency situations under the following conditions:

(1) The driver must be in full compliance with the FMCSRs at the time of the request;

(2) There must be no other drivers with unused driving time available at the same location;

(3) The request for emergency response must be made by a State or local government official, who may be a law enforcement or emergency response official;

(4) Upon completion of the emergency response operations, the driver must go off duty for a minimum of 8 consecutive hours or until sufficient time has accrued for the driver to meet the requirements of paragraph 395.3(b) of this section (to ensure that drivers who have had their rest period interrupted by a request for emergency service will be afforded ample time to recuperate from that interruption and be rested enough to operate a commercial motor vehicle safely when they return to driving status); and

(5) A notation of the time, type of emergency, and the name, title, address and telephone number of the public official making the request must be recorded upon the applicable record of duty status required to be maintained in compliance with § 395.8 of this subpart.

Comments Are Specifically Requested on the Above-Mentioned Conditions

The FHWA proposes that commercial motor vehicle operators who respond to emergency situations at the request of a responsible public official be temporarily exempted from the following hours of service requirements:

(1) The 10-hour rule (§ 395.3(a)(1));

(2) The 15-hour rule (§ 395.3(a)(2)); and

(3) The 60- or 70-hour rule (§ 395.3(b)).

In addition, the FHWA proposes to revise § 395.8(l) regarding the 100 air-mile exemption from maintaining a driver's record-of-duty status. Under the proposed rule, motor carriers and drivers that normally operate under this exemption shall be able to continue to do so when they exceed the maximum hours limitations of this section when participating in an emergency relief operation. This proposal is intended to spare those motor carriers and drivers additional paperwork requirements because of their emergency relief work. However, individuals who are required to fill out a record-of-duty status (a log) must continue to do so and must make a notation on their log that they were providing emergency relief. This notation must include the time, type of emergency, and the name, title, address, and telephone number of public official making the request.

The FHWA specifically requests comments on the following questions:

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1. Should the motor carrier be required to report emergency operations to the FHWA before and/or after the fact?

2. Should there be any additional or specific documentation requirements (e.g., written certification of the "emergency situation" recorded or maintained on file)?

3. For what period of time should the motor carrier and driver be permitted to use this exemption?

4. Should motor carriers involved be required to utilize all drivers with available hours before using drivers who have exceeded or will exceed the hours of service requirements?

5. What safeguards if any, should be incorporated into the rule to ensure that a motor carrier complies with this exception?

6. Should some type of documentation be required to prevent the driver from being placed out of service by other State or Federal enforcement personnel when responding to an emergency situation? If so, what type?

If there are areas of concern not addressed in this Notice of Proposed Rulemaking (NPRM), please include them with your responses.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rulemaking will be minimal. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), the agency has evaluated the effects of this rule on small entities. This proposal would remove hours of service limitations to enable responders to emergencies, who must use commercial motor vehicles, to provide assistance in a timely and effective manner. Small entities would be able to provide emergency assistance to communities experiencing hardship. The focus of this amendment would be to make emergency assistance available which, but for this change, might be unavailable or available at a greater cost or after some delay in time. This amendment would remove a restriction, and would not have a significant economic impact on small entities which might provide emergency assistance under this exemption.

For these reasons and under the criteria of the Regulatory Flexibility Act (Pub. L. 96–354), the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles, criteria, and requirements of Executive Order 12612.

Since nothing in this document preempts any State law or regulation, this notice of proposed rulemaking has no federalism implications.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number, 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

This action would make it appreciably easier for interstate motor carriers to respond to an emergency situation upon the request of a law enforcement or emergency response official by reducing the need for prior application and approval, as presently required by the regulations. This action should therefore reduce the reporting burdens for the motor carrier industry.

National Environmental Policy Act

The agency has analyzed this action for purposes of the National Environmental Policy Act. The agency has determined that this action would not have any effect on the quality of the environment.

Regulatory Identification Number

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 395

Motor carriers, Highway safety, Driver's hours-of-service. Reporting and record keeping requirements.

(Catalog of Federal Domestic Assistance Program Number, 20.217, Motor Carrier Safety)

Issued on: May 22, 1991.

T.D. Larson,

Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 49, Code of Federal Regulations, subtitle B, chapter III, part 395 to read as set forth below:

PART 395—[AMENDED]

1. The authority citation for 49 CFR part 395 continues to read as follows:

Authority: 49 U.S.C. App. 2505; 49 U.S.C. 504 and 3102; 49 CFR 1.48.

2. Section 395.3 is amended by revising paragraph (a) introductory text and adding a new paragraph (g) to read as follows:

§ 395.3 Maximum driving and on-duty time.

(a) Except as provided in paragraphs (c), (e) and (g) of this section and in § 395.10, no motor carrier shall permit or require any driver used by it to drive nor shall any such driver drive:

* * * * *

(g) The provisions of paragraphs (a) and (b) of this section shall not apply with respect to motor carriers or drivers of commercial motor vehicles while such vehicles are being used to respond to an emergency situation at the request of a State or local government official having jurisdiction and authority to respond to emergency situations, including law enforcement or emergency response officials. A motor carrier and driver must meet the following conditions in order to comply with this paragraph:

(1) The driver must be in full compliance with the FMCSRs at the time of the request;

(2) There must be no other drivers with unused driving time available at the same location;

(3) The request for emergency response must be made by a State or local government official, including a law enforcement or emergency response official; and

(4) Upon completion of the emergency response operations, the driver must go off duty for a minimum of 8 consecutive hours and until sufficient time has accrued for the driver to meet the requirements of paragraph (b) of this section; and

(5) A notation of the time, type of emergency, and the name, title, address, and telephone number of public official making the request, must be recorded upon the applicable record of duty status required to be maintained in compliance with § 395.8 of this subpart.

3. Section 395.8 is amended by adding a new paragraph (l)(3) to read as follows:

§ 395.8 Driver's record of duty status.

* * * * * *

(l) * * *

(3) Emergency relief situations. The exemption provided by this paragraph is not altered when the driver of a commercial motor vehicle responding to an emergency situation at the request of a State or local government official having jurisdiction and authority for responding to that emergency situation violates the requirements of § 395.8(l)(1)(ii), (iii), and (iv). A notation of the time, type of emergency, and the name, title, address, and telephone number of the public official making the request shall be recorded upon the time record required to be maintained in compliance with this paragraph.

* * * * *

[FR Doc. 91–12623 Filed 5–28–91; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 90927–1123]

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of proposed action under Flexible Area Action System.

SUMMARY: NOAA issues this notice to inform the public and the fishing industry that the New England Fishery Management Council (Council) is considering Flexible Area Action System #5 under Amendment 3 to the Northeast Multispecies Fishery Management Plan (FMP). The purpose of the action would be to protect a large concentration of Atlantic cod that are smaller than the legal minimum landing size but are being caught and wastefully discarded at sea. The areas affected are located offshore of Massachusetts, New Hampshire, and Maine and are generally described as Stellwagen Bank and Jeffreys Ledge. Closure of these areas to various types of gear is contemplated. However, other alternatives under consideration include specifying mesh size or prohibition of specific gear types.

DATES: Comments on the proposed action must be received by June 12, 1991.

ADDRESSES: Copies of the NMFS Northeast Regional Director's (Regional Director) fact finding report and the Council's impact analysis will be available on June 6, 1991, upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01960.

Send comments on the proposed action, the fact finding report, and the Council's impact analysis to Richard B. Roe, Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, (NMFS, Resource Management Specialist), 508–281–9272.

SUPPLEMENTARY INFORMATION: This action is taken under 50 CFR 651.26, as established by Amendment 3 to the FMP. Amendment 3 was approved by the Secretary of Commerce on November 24, 1989, and implemented by regulations effective December 19, 1989 (54 FR 52803, December 22, 1989). Section 651.26 specifies a Flexible Area Action System (FAAS) whereby protection can be provided to concentrations of juvenile, sublegal or spawning fish. As part of this process, the Regional Director will initiate a fact finding investigation of the alleged discard problem. The Council will also provide an impact analysis of alternative measures that might be implemented under this action.

The Council's Multispecies Committee (Committee) received a request for action after it was reported that significant discards of sublegal (less than 19 inches in length) Atlantic cod were occurring in the vicinity of Stellwagen Bank and Jeffreys Ledge. This event has also occurred in previous years. The Committee has initiated this action to determine the extent of the problem and whether it is appropriate to take action. Both the Regional Director's fact finding report and the Council's impact analysis will be available by June 6, 1991, at the Council Office (see **"ADDRESSES"**). The Committee will hold a public hearing on June 13, 1991, at 7 p.m. at the National Marine Fisheries Service (Northeast Region), Gloucester, Massachusetts. A second public hearing will be held on June 14, 1991, at 9:30 a.m. at the Ramada Inn, Rt. 1A, East Boston, Massachusetts, in conjunction with a meeting of the Committee to solicit comments on the proposed action. More specific information is below.

(1) The areas of the proposed action are Stellwagen Bank off the Massachusetts coast and Jeffreys Ledge off the Maine coast. The Stellwagen Bank area is defined by the following coordinates: 42°34.0' N. Latitude, 70°23.5' W. Longitude; then to 42°28.8' N. Latitude, 70°39.0' W. Longitude; then to 42°18.6' N. Latitude, 70°22.5' W. Longitude; then to 42°05.5' N. Latitude, 70°23.3' W. Longitude; then to 42°34.0' N. Latitude, 70°23.5' W. Longitude;.

Jeffreys Ledge is defined by the following coordinates: 43°12.7' N. Latitude, 70°00.0' W. Longitude; then to 43°09.5' N. Latitude, 70°08.0' W. Longitude; then to 42°57.0' N. Latitude, 70°08.0' W. Longitude; then to 42°52.0' N. Latitude, 70°21.0' W. Longitude; then to 42°41.5' N. Latitude, 70°32.5' W. Longitude; then to 42°34.0' N. Latitude, 70°26.2' W. Longitude; then to 42°55.2' N. Latitude, 70°00.0' W. Longitude; then back to 43°12.7' N. Latitude, 70°00.0' W. Longitude.

(2) The principal species that may be affected by any action will be Atlantic cod, northern shrimp, pollock, winter flounder, American plaice (dab), and haddock. To a lesser extent, silver hake, angler (monkfish), and American lobster may be affected.

(3) The types of gear that could be affected by this action are all types of gear capable of catching groundfish, including, but not limited to, otter trawls, midwater trawls, gillnets, scallop dredges, and hook-and-line gear, both commercial and recreational.

(4) The fisheries that potentially will be impacted are the commercial and recreational fisheries that utilize gear capable of catching groundfish that operate in the area of the proposed action.

(5) The principal ports that will be affected are Boston, Massachusetts; Gloucester, Massachusetts; Provincetown, Massachusetts; Portland, Maine; and Portsmouth, New Hampshire.

(6) The expected duration of the action is up to 180 days. If implemented as early as June 14, 1991, the action could last until December 11, 1991.

(7) The Committee expects to recommend that those areas that are determined to have large concentrations of small codfish (less then 19" in lenth) be closed to fishing with the types of gear described in (3) above.

Other actions that might be considered are (a) a minimum mesh size in the trawl and/or gillnet fisheries, (b) a prohibition of mobile net gear only, and (c) a prohibition of all fishing except with hook gear.

(8) The Council will begin analyzing the potential impacts from possible action upon publication of this notice.

(9) The Council's impact analysis will be available on June 6, 1991.

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List of Subjects in 50 CFR Part 651

Fishing, Fisheries, Vessel permits and fees.

Dated: May 23, 1991.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-12838 Filed 5-23-91; 1:12 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 56, No. 103
Wednesday, May 29, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Economic Research Service

Cost of Production Review Board: Call for Membership Nominations

Under authority of section 1005 of the Agriculture and Food Act of 1981, the Secretary of Agriculture established the National Agricultural Cost of Production Standards Review Board (Advisory Committee). Public Law 101-624 extended the authority for the Advisory Committee through September 30, 1995. The Advisory Committee was renewed by the Secretary of Agriculture on April 8, 1991. The Advisory Committee reviews the adequacy of the parity formulae; advises the Secretary as to whether the cost of production methodology used by the Department accurately and fairly represents the cost of production incurred by producers; makes such recommendations to the Secretary as the Committee deems appropriate, including ways of improving the cost of production methodology and the parity formulae; and reviews the adequacy, accuracy, and timeliness of the cost of production methodology used by the Department.

The Advisory Committee will consist of eleven members appointed by the Secretary. Seven members of the Board will be chosen from a pool of nominees who are, individually or as a group, engaged in the commercial production of each of the program crops (corn, barley, oats, grain sorghum, wheat, rice, and upland cotton) and in one or more of the various major agricultural commodities produced in the United States. Three members of the Board will be chosen from a pool of nominees who are knowledgeable about cost of production by virtue of their education or experience and may be drawn from the fields of agricultural economics, banking, finance, accounting, or related areas. One member will be an employee of the Department. To insure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership should include minorities, women, and persons with disabilities. Members of the Committee serve without compensation except that members, while away from their homes or regular places of business in the performance of service, are reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized under section 5703 of title 5, United States Code.

Nominations are needed for persons to serve on the Advisory Committee to replace members whose terms expired with the Food Security Act of 1985. The terms of all members, with the exception of the member who is an employee of the Department, will be for four years or until the expiration of authority for the Committee, whichever comes earlier. Any person appointed to fill a vacancy on the Committee will be appointed only for the unexpired term of such person's predecessor.

Persons interested in serving on the Advisory Committee, or persons interested in nominating persons to serve, should contact John E. Lee, Jr., Administrator, ERS, room 1226, 1301 New York Avenue, NW., Washington, DC 20005-4788, in writing (please mark Attention: COP Review Board), and request a copy of Form AD-755, which must be completed and submitted to the Administrator at the above address not later than August 1, 1991.

The final selection of committee members will be made by the Secretary.

John E. Lee, Jr.,

Administrator.

[FR Doc. 91-12562 Filed 5-28-91; 8:45 am]

BILLING CODE 3410-18-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 522]

Resolution and Order Approving the Application of the City of San Antonio, Texas, for Expansion of Foreign-Trade Zone 80, and for Non-Manufacturing Subzone Status at the Plants of Bausch and Lomb (Sunglasses), Colin Medical Instruments (Medical Equipment), and Friedrich Air Conditioning and Refrigeration (Air Conditioners)

Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 13, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the City of San Antonio, Texas, grantee of FTZ 80, filed with the Foreign-Trade Zones Board (the Board) on May 15, 1990, requesting authority to expand and reorganize its general-purpose zone and requesting special-purpose subzone status for the San Antonio area plants of Bausch and Lomb, Inc. (assembly), Colin Medical Instruments Corporation (non-manufacturing), and Friedrich Air Conditioning and Refrigeration Company (non-manufacturing), the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the FTZ Board's regulations are satisfied, and that the proposal is in the public interest, approves the application. The new general-purpose zone plan would involve six sites with activation limits at Site Nos. 3, 4, 5, and 6 of 225 acres each.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority

To Expand Foreign-Trade Zone 80 and to Establish Foreign-Trade Subzones in the San Antonio, Texas, Area

Whereas, by an Act of Congress approved June 18, 1934, an Act "To

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provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board is empowered to authorize the expansion of zones when additional facilities are needed (15 CFR 400.607);

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot service the specific use involved, and where a significant public benefit will result;

Whereas, the City of San Antonio, Texas, grantee of Foreign-Trade Zone 80, has made application (filed May 15, 1990, FTZ Docket 18–90, 55 FR 22052) in due and proper form to the Board for authority to expand and reorganize its general-purpose zone at sites in San Antonio and Bexar County, Texas, and to establish special-purpose subzones at the sunglasses assembly and distribution facility of Bausch and Lomb, Inc., the medical equipment distribution (non-manufacturing) facility of Colin Medical Instruments Corporation, and, the air conditioning equipment distribution (non-manufacturing) facility of Friedrich Air Conditioning and Refrigeration Company, all located in the San Antonio area.

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, Therefore, in accordance with the application filed May 15, 1990, the Board hereby authorizes the expansion of FTZ 80 and the establishment of subzones at the Bausch and Lomb, Colin Medical Instruments and Friedrich plants, designated on the records of the Board as Foreign-Trade Subzone Nos. 80A, 80B and 80C, respectively, at the locations mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the restriction in the resolution accompanying this action, and also to the following express conditions and limitations:

Activation of the subzones shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from federal, state, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade zone and subzone sites in the performance of their official duties.

The grantee shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefore.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness Whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 17th day of May, 1991, pursuant to Order of the Board.

Eric I. Garfinkel,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–12648 Filed 5–28–91; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–559–802]

Industrial Belts and Components and Parts Thereof From Singapore; Preliminary Results of Antidumping duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner, the Department of Commerce has conducted an administrative review of the antidumping duty order on industrial belts and components and parts thereof, whether cured or uncured, (hereinafter referred to as industrial belts) from Singapore. The review covers one manufacturer and exporter of this merchandise to the United States, and the period February 1, 1989 through May 31, 1990. As a result of the review, the Department has preliminarily determined that dumping margins exist.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 29, 1991.

FOR FURTHER INFORMATION CONTACT: Millie Mack or Jeffrey Laxague, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–3793.

SUPPLEMENTARY INFORMATION:

Background

On June 14, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 25315) the antidumping duty order on industrial belts from Singapore. On June 29, 1990, the petitioner requested that we conduct an administrative review of the February 1, 1989 through May 31, 1990 period. We published a notice of initiation of the antidumping administrative review on July 26, 1990 (55 FR 30490). The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act") (19 U.S.C. 1675).

Scope of the Review

Imports covered by the review are shipments of industrial belts and components and parts thereof, whether cured or uncured, from Singapore. The merchandise covered by this review includes certain industrial V-belts used for power transmission. These include V-belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loops) belts, or in belting in lengths or links. This review excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

During the period of review, the merchandise was classifiable under Harmonized Tariff System ("HTS") subheadings 3926.90.55, 4010.10.10, 4010.10.50, 5910.00.10, 5910.00.90, and 7326.20.00. The HTS subheadings are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the shipments of one manufacturer and exporter of industrial belts from Singapore to the United States and the first review period, beginning on February 1, 1989 and ending on May 31, 1990.

United States Price

In calculating the United States price, the Department used purchase price or exporter's sales price ("ESP"), both as defined in section 772 of the Tariff Act (19 U.S.C. 1677a(b) & (c)), as appropriate. United States price was based on the packed c.i.f. price to both unrelated and related purchasers in, or for exportation to, the United States. We made adjustments, where applicable, for U.S. foreign inland freight, U.S. duties, U.S. and foreign brokerage, ocean freight and marine insurance, repacking in the United States, commissions, credit expenses, discounts, and indirect selling expenses. No other adjustments were allowed.

Foreign Market Value

In calculating foreign market value, the Department used home market price as defined in section 773 of the Tariff Act (19 U.S.C. 1677b) as sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the packed c.i.f. or f.o.b. price to unrelated purchasers in the home market. We made adjustments, where appropriate, for inland freight, discounts, differences in cost attributable to differences in physical characteristics of the merchandise, differences in credit expenses, and differences in packing. We made further adjustments, where applicable, for indirect selling expenses to offset U.S. commissions and U.S. selling expenses deducted in ESP calculations, but not exceeding the amount of those U.S. commissions or indirect selling expenses. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margin exists:

Company	Period of review	Margin (percent)
Mitsuboshi Belting (Singapore) Pte. Ltd.	2/1/89–5/31/90	4.81

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested parties may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this notice or the first workday thereafter.

Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. The Department will publish final results of this administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)), a cash deposit of estimated antidumping duties based on the above margins shall be required. The cash deposit rate for all other exporters/producers shall be 4.81 percent for shipments the industrial belts covered by this review. This deposit requirement, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Commerce regulations (19 CFR 353.22(c)(5)).

Dated: May 22, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–12649 Filed 5–28–91; 8:45 am]

BILLING CODE 3510–DS–M

[C–307–702]

Certain Electrical Conductor Aluminum Redraw Rod From Venezuela; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on certain electrical conductor aluminum redraw rod from Venezuela for the period January 1, 1989 through December 31, 1989. There are no known unliquidated entries from the review period. We preliminarily determine that the rate of cash deposit of estimated countervailing duties will remain unchanged at 5.50 percent *ad valorem*. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: May 29, 1991.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 8, 1990, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (55 FR 32279) of the countervailing duty order on certain electrical conductor aluminum redraw rod from Venezuela (53 FR 31904; August 22, 1988). On August 31, 1990, the Government of Venezuela requested an administrative review of the order. We initiated the review, covering the period January 1, 1989 through December 31, 1989, on September 24, 1990 (55 FR 39032). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). The Department published the final results of its last administrative review on April 8, 1991 (56 FR 14232).

Scope of Review

Imports covered by this review are shipments of certain electrical conductor aluminum redraw rod from Venezuela, which is wrought rod of aluminum electrically conductive and containing not less than 99 percent of aluminum by weight. This merchandise is currently classifiable under item numbers 7604.10.3010, 7604.10.3050, 7604.29.3010, 7604.29.3050, 7605.11.0030 and 7605.21.0030 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1989 through December 31, 1989 and seven programs.

In its questionnaire response, the Government of Venezuela reported no shipments of the subject merchandise to the United States during the review period. We subsequently confirmed with the United States Customs Service that there were no known unliquidated entries of this merchandise from the review period.

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Preliminary Results of Review

As a result of our review, we preliminarily determine that there are no known unliquidated entries of the subject merchandise exported to the United States from the period January 1, 1989 through December 31, 1989. Given that there has been no demonstration of any program-wide change, the rate of cash deposit of estimated countervailing duties will remain unchanged at 5.50 percent *ad valorem*.

Therefore, as provided for by section 751(a)(1) of the Tariff Act, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 5.50 percent of the f.o.b. invoice price on all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Parties to the proceeding may request disclosure of the calculations methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 355.38(c), are due.

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: May 21, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-12650 Filed 5-28-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-062]

Pig Iron from Brazil; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On February 11, 1991, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on pig iron from Brazil for the period January 1, 1989 through December 31, 1989. We have now completed that review and determine the net subsidy to be 0.24 percent *ad valorem*. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

EFFECTIVE DATE: May 29, 1991.

FOR FURTHER INFORMATION CONTACT: Mark Spellun or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC, 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On February 11, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 5401) the preliminary results of its administrative review of the countervailing duty order on pig iron from Brazil (45 FR 23045). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of Brazilian pig iron of basic foundry, malleable, and low phosphorous grades. During the review period, such merchandise was classifiable under item numbers 7201.10.00, 7201.20.00, 7201.30.00 and 7206.10.00 of the Harmonized Tariff Schedule. The HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1989 through December 31, 1989 and ten programs: (1) CACEX Preferential Working Capital Financing for Exports, (2) Income Tax Exemption for Export Earnings, (3) BEFIEX and CIEX, (4) PROEX and PROSIM, (5) Preferential Financing for the Storage of Merchandise, (6) FST and EGF Financing, (7) Accelerated Depreciation for Brazilian-Made Capital Goods, (8) FINEX, (9) FUNPAR, and (10) FINEP.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from Consider U.S.A., Inc., an importer.

Comment 1: Consider states that the exemption of export financing from the tax on financial transactions (the IOF tax) is not a subsidy. Consider claims that, in calculating the interest differential under the program for preferential working capital financing for exports, the exemption from the IOF tax for loans received under CACEX should not be considered. The IOF is an indirect tax on the financing used for the purchase of physically incorporated inputs. The non-excessive rebate of an indirect tax borne by exported merchandise is not a subsidy.

Department's Position: We addressed this issue in the last administrative review of this countervailing duty order, as well as in numerous administrative reviews of other countervailing duty orders on Brazilian products. See, *e.g.*, Certain Castor Oil Products from Brazil; Final Results of Administrative Review of Countervailing Duty Order (September 8, 1983; 48 FR 40534). The Brazilian government has provided neither new evidence nor new arguments that convince us to reconsider our position on this issue.

Comment 2: Consider claims that the benefits derived from the income tax exemption for export earnings should be allocated over total revenue rather than export revenue. Under this program, a Brazilian exporter receives an exemption from income tax liabilities at the end of the fiscal year based upon the ratio of export to total revenue, provided that the firm has made an overall profit. Consider argues that, because the determining factor in a firm's eligibility for this benefit is its overall profitability for a given year, the benefit accrues to the operations of the whole firm and not just the exports.

Department's Position: We have considered and rejected this argument in numerous administrative reviews of other countervailing duty orders on Brazilian products. See, *e.g.*, Certain Scissors and Shears from Brazil; Final Results of Administrative Review of Countervailing Duty Order (March 10, 1982; 47 FR 10286). We have stated that, when a firm must export to be eligible for benefits under a subsidy program and when the amount of the benefit received is tied directly or indirectly to the firm's level of exports, that program is an export subsidy. The fact that the firm as a whole must be profitable to benefit from this program does not detract from the program's basic function as an export subsidy. Therefore, the Department will continue to allocate the benefits under this program over export revenue instead of total revenue.

Comment 3: Consider argues that since CACEX Preferential Working Capital Financing for Exports and the Income Tax Exemption for Export Earnings (the two programs found to be used during the current review period) have been terminated, there is sufficient grounds to warrant a changed circumstances review under 19 CFR 355.22(h).

Department's Position: A changed circumstances review under 19 CFR 355.22(h) would have no purpose. As a result of the findings in this review and the termination of these programs, the rate of cash deposit will be zero. The termination of the two programs found to be countervailable in this review does not constitute changed circumstances sufficient to warrant revocation under 19 CFR 355.25(d). Revocation based on the government's elimination of all subsidies on the merchandise is provided for under 19 CFR 355.25(a)(1). Under that section, an order can be revoked only after the government has eliminated all subsidies for a period of at least three consecutive years; the Government of Brazil has not yet met this requirement.

Final Results of Review

As a result of our review, we determine the net subsidy to be 0.24 percent *ad valorem* for the period January 1, 1989 through December 31, 1989. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*. Therefore, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all entries of this merchandise exported on or after January 1, 1989 and on or before December 31, 1989.

Further, the Department will instruct the Customs Service to waive cash deposits of estimated countervailing duties on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit waiver shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: May 22, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-12651 Filed 5-28-91; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

Computer System Security and Privacy Advisory Board; Meeting

AGENCY: National Institute of Standards and Technology, DoC.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer System Security and Privacy Advisory Board will meet Wednesday, June 12, 1991, and Thursday, June 13, 1991, from 8:30 a.m. and 5 p.m. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100-235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to Federal computer systems. A closed session of the meeting will be held to discuss NIST out-year computer security budget matters. The closed session is scheduled to be held on Wednesday, June 12, 1991, from 1 p.m. to 5 p.m. All other sessions will be open to the public.

DATES: The meeting will be held on June 12, and 13, 1991, from 8:30 a.m. to 5 p.m. A closed session will be held on Wednesday, June 12, 1991, from 1 p.m. to 5 p.m.

ADDRESSES: The meeting will take place at the Sheraton International Conference Center, 11810 Sunrise Valley Drive, Reston, VA 22090. The specific conference room assignment will be posted on the days of the meeting at the facility. Inquiries regarding the Board meeting should not be directed to the conference facility.

Agenda

1. Welcome
2. Review of Federal Information Policies
3. Discussion of NIST's Long Range Plans
4. Discussion of proposed Information Security Foundation
5. Pending Board Issues
6. Public Participation
7. Wrap-up

Public Participation: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the Computer System Security and Privacy Advisory Board, Computer Systems Laboratory, Building 225, Room B154, National Institute of Standards & Technology, Gaithersburg, MD 20899. Approximately fifteen seats will be available for the public, including three seats reserved for the media. Seats will be available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn McNulty, Associate Director for Computer Security, Computer Systems Laboratory, National Institute of Standards and Technology, Building 225, Room B154, Gaithersburg, MD 20899, telephone: (301) 975-3240.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on May 15, 1989, that the portion of this meeting which involves examination of out-year computer security budgets may be closed pursuant to Section 10 (d) of the Federal Advisory Act, 5 U.S.C. App. 2, as amended by Section 5(c) of the Government in Sunshine Act, P.L. 94-409. Those portions of the meeting, which involve discussion of future budget requests, may be closed to the public in accordance with Section 552(b)(9)(B) of Title 5, United States Code, since those portions of the meeting are likely to divulge matters that may significantly frustrate implementation of proposed agency action. All other portions of the meeting will be open to the public.

Dated: May 22, 1991.

John W. Lyons,

Director.

[FR Doc. 91-12645 Filed 5-28-91; 8:45 am]

BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Application for Permit; Jenkinson Seauarium Corporation (P488).

SUMMARY: Notice is hereby given that an applicant has applied in due form for a Public Display Permit to obtain the care and custody of marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing

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the Taking and Importing of Marine Mammals (50 CFR part 216).

1. Applicant: Jenkinson Sequarium Corporation, 3 Broadway, Point Pleasant Beach, NJ 08742.

2. Type of Permit Requested: Public Display.

3. Number and Name of Marine Mammals: Four Atlantic harbor seals (*Phoca vitulina*).

4. The applicant requests permission to maintain four Atlantic harbor seals. The animals will be obtained from captive or stranded stock in the possession of other NMFS approved institutions or of the Northeast Regional Stranding Network. The education program associated with the seal-display tank will have a conservation theme.

The arrangements and facilities for transporting and maintaining the marine mammals requested in this application will be concluded consistent with requirements established by the US Department of Agriculture under the Animal Welfare Act. The animals will be under the care of a licensed veterinarian at Jenkinson Sequarium.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Highway, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Room 7330, Silver Spring, Maryland 20910, (301) 427–2289; and

Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930, (508) 281–9300.

May 22, 1991.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 91–12556 Filed 5–28–91; 8:45 am]

BILLING CODE 3510-22-M

Travel and Tourism Administration

Travel and Tourism Advisory Board; Meeting

Pursuant to section 10 (a) (2) of the Federal Advisory Committee Act, 5 U.S.C. (app. 1976) notice is hereby given that the Travel and Tourism Advisory Board of the U.S. Department of Commerce will meet on June 14, 1991, at 1 p.m. at 84 Beacon Street, Hampshire House Library, Boston, Massachusetts 02108.

Established March 19, 1982, the Travel and Tourism Advisory Board consists of 15 members, representing the major segments of the travel and tourism industry and state tourism interests, and includes one member of a travel labor organization, a consumer advocate, an academician and a financial expert.

Members advise the Secretary of Commerce on matters pertinent to the Department's responsibilities to accomplish the purpose of the National Tourism Policy Act (Public Law 97–63), and provide guidance to the Assistant Secretary for Tourism Marketing in the preparation of annual marketing plans.

Agenda items are as follows:

I. Call to Order.
II. Approval of Minutes.
III. Introduction of Harvard Study.
IV. Review of current legislative issues.
V. Free Trade—Canada and Mexico.
VI. U.S./Canadian Open CIVAIR Negotiations: Open Skies.
VII. International Marketing Initiatives.
VIII. USTTA Fee Update.
IX. Miscellaneous.
X. Adjournment.

A very limited number of seats will be available to observers from the public and the press. To assure adequate seating, individuals intending to attend should notify the Committee Control Officer in advance. The public will be permitted to file written statements with the Committee before or after the meeting. To the extent time is available, the presentation of oral statements is allowed.

Karen M. Cardran, Committee Control Officer, United States Travel and Tourism Administration, room 1865, U.S. Department of Commerce, Washington, DC 20230 (telephone: 202–377–0140) will respond to public requests for information about the meeting.

John G. Keller, Jr.,

Under Secretary of Commerce for Travel and Tourism.

[FR Doc. 91–12852 Filed 5–28–91; 8:45 am]

BILLING CODE 3510-11-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits and Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic; Correction

May 22, 1991.

In the letter to the Commissioner of Customs published in the **Federal Register** on May 15, 1991 (56 FR 22402), correct the import restraint levels for Categories 342/642 and 644 as follows:

Category	Twelve-month restraint limit
342/642	368,271 dozen.
644	402,563 numbers.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–12607 Filed 5–28–91; 8:45 am]

BILLING CODE 3510-DR-F

Clarification of Visa and Quota Requirements for Handloomed Fabrics Produced or Manufactured in Thailand

May 21, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs exempting handloomed fabrics from visa and quota requirements.

EFFECTIVE DATE: May 29, 1991.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The purpose of this notice is to clarify that, pursuant to exchange of notes dated September 7 and 16, 1982 between the Governments of the United States and Thailand, handloomed fabrics, produced or manufactured in Thailand and exported to the United States from Thailand are exempt from visa and quota requirements if properly certified.

See **Federal Register** notices 42 FR 5994, published on February 1, 1977; and 47 FR 46732, published on October 20, 1982.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 21, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directives issued to you on January 26, 1977 and October 14, 1982 by the Chairman, Committee for the Implementation of Textile Agreements. Those directives establish export visa and exempt certification requirements for certain textiles and textile products, produced or manufactured in Thailand.

Effective on May 29, 1991, the January 26, 1977 and October 14, 1982 directives shall be amended to reflect that handloomed fabrics, produced or manufactured in Thailand shall be exempt from visa and quota requirements. You are directed to permit entry of shipments of handloomed fabrics if accompanied by an appropriate exempt certification issued by the Government of Thailand, regardless of the date of export.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Facsimile of Government of Thailand Certification for Exempt Textile Products Exported to the United States

Department of Foreign Trade
Ministry of Commerce
Thailand

Certificate No.

EXEMPTED ITEMS

Description

Certified on

Facsimile of Government of Thailand Certification for Exempt Textile Products Exported to the United States—Continued

Authorized Signature

Title

[FR Doc. 91–12483 Filed 5–28–91; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Office of the Secretary

Ada Board: Meeting

ACTION: Notice of meeting.

SUMMARY: A meeting of the Ada Board will be held Thursday and Friday, June 27 and 28, 1991 from 9 a.m. to 5 p.m. at the Software Engineering Institute, 5000 Forbes Avenue, Pittsburgh, PA 15213.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Carlson, Ada Information Clearinghouse c/o IIT Research Institute, 4600 Forbes Boulevard, Lanham, Maryland, 20706, (703) 685–1477.

Dated: May 22, 1991.

L.M. Bynum,

Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense.

[FR Doc. 91–12590 Filed 5–28–91; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary of Defense

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday, 24 July 1991.

ADDRESSES: The meeting will be held at the Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Becky F. Terry, AGED Secretariat, 2011 Crystal Drive, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law No. 92–463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: May 22, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–12588 Filed 5–28–91; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, 27 June 1991.

ADDRESSES: The meeting will be held at the Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: David Slater, AGED Secretariat, 201 Varick Street, New York, NY 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquistion, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with

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industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law No. 92-463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: May 22, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-12589 Filed 5-28-91; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Weapon Development and Production Technology; Meeting

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Weapon Development and Production Technology will meet in open session on 20 and 21 June 1991 at Fort McNair, Washington, DC.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will receive briefings on manufacturing processes related to improving weapon development strategies.

For further information contact Mr. Charles Kimzey at (703) 695-7560.

Dated: May 22, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-12591 Filed 5-28-91; 8:45 am]

BILLING CODE 3810-01-M

Defense Logistics Agency

Meeting: Department of Defense Clothing and Textiles Board

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Deputy Director for Acquisition Management, Defense Logistics Agency, announces the sixth meeting of the Department of Defense Clothing and Textiles (DoD C&T) Board.

DATE: June 12, 1991.

ADDRESS AND TIME: Defense Logistics Agency, Cameron Station, room 3A260, Alexandria, Virginia, 1000-1600.

FOR FURTHER INFORMATION CONTACT: Ms. Maxine James; Quality Assurance Specialist, Product Quality Management Division, Defense Logistics Agency, Department of Defense, Cameron Station, Alexandria, VA, (703) 274-7141.

SUPPLEMENTARY INFORMATION: Agenda for the meeting will focus on improvements to DoD acquisition of clothing and textile products. DoD C&T Board members are encouraged to attend. Staff officers and the general public should request further information prior to scheduling attendance.

M. J. Schildwachter,

Executive Secretary DoD C&T Board.

[FR Doc. 91-12658 Filed 5-28-91; 8:45 am]

BILLING CODE 3820-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[FAR Case 87-21]

OMB Clearance Request for Architect-Engineer and Related Services Questionnaire for Specific Project, Standard Form 255

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submited to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Architect-Engineer and Related Services Questionnaire for Specific Project, SF 255.

ADDRESSES: Sent comments to Ms. Maya Bernstein, FAR Desk Officer, Attention: Docket Library, room 3201, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill, Office of Federal Acquisition Policy (202) 501-3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

This form is used by all Executive agencies to obtain information from architect-engineer (A-E) firms interested in a particular project. The information on the form is reviewed by a selection panel composed of professional people and assists the panel in selecting the most qualified A-E firm to perform the specific project. The form is designed to provide a uniform method for A-E firms to submit information on experience, personnel, capabilities of the A-E firm to perform, along with information on the consultants they expect to collaborate with on the specific project. Hence the need for information regarding the number and discipline of consultant personnel. The degree to which an A-E firm will utilize consultants can significantly impact on their suitability and qualifications for a specific project. The revision to the form requesting A-E firms provide the name and phone number of a point of contact, usually the project manager, will (1) reduce the time required by the Government to verify performance on current Federal contracts, and (2) reduce the time lost by the A-E firms providing this information at a later date. The information is used to determine if a firm is qualified to perform a specific project.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: *Respondents,* 5,000; *responses per respondent,* 4; *total annual responses,* 20,000; *preparation hours per response,* 1.2; *and total response burden hours,* 24,000.

Obtaining Copies of Proposals: Requester may obtain copies from General Servies Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0005, Architect-Engineer and Related Services Questionnaire for Specific Project, SF 255.

Dated: May 17, 1991.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 91-12549 Filed 5-28-91; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF ENERGY

Cooperative Agreement Award Center for Applied Research

AGENCY: U.S. Department of Energy.

ACTION: Notice of acceptance of an unsolicited application for award of a financial assistance instrument.

SUMMARY: The Department of Energy (DOE), through the Denver Support Office gives notice of its plans to award a cooperative agreement to the Center for Applied Research, Denver, Colorado, for an integrated resource planning initiative for the Rocky Mountain Region. This unsolicited proposal was submitted by the Center under its own initiative in January 1991, and is accepted for support pursuant to the provisions of 10 CFR 600.14. The cooperative agreement will encourage and assist utilities, public utility commissions, state energy offices, and consumer groups to design and implement programs and policies that promote integrated resource planning (IRP). This agreement will stimulate the development of a regional data base, establishment of a Working Group and strategic plan, and the development of a new regional organization to support IRP.

The determination to make this award is based on the following information:

A technical evaluation of the proposed project was performed pursuant to 10 CFR 600.14 (d) and (e). It was determined that the proposed project was meritorious and that the probability of achieving the anticipated objectives was extremely high. The facilities and capabilities that will be made available are appropriate, and the qualifications of the key personnel are exceptional.

The proposal represents an innovative approach which would not be eligible for financial assistance under a recent, current, or planned solicitation, and as determined by DOE, a competitive solicitation would be inappropriate.

The estimated cost of the project for the first year of the three year project is expected to be $150,000.

FOR FURTHER INFORMATION CONTACT: Margaret Learmouth, Denver Support Office, U.S. Department of Energy, 1075 South Yukon St., Lakewood, Colorado 80228. (303) 969-7000.

Issued in Chicago, Illinois on May 10, 1991.

Edwin H. Headricks,

Deputy Assistant Manager for Administration.

[FR Doc. 91-12631 Filed 5-28-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER91-407-000, et al.]

Florida Power & Light Co, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

May 21, 1991.

Take notice that the following filings have been made with the Commission:

1. Florida Power & Light Company

[Docket No. ER91-407-000]

Take notice that Florida Power & Light Company (FPL) on April 29, 1991, tendered for filing the system average distribution loss percentage determination effective May 1, 1991 for use in connection with Docket No. ER86-383, section D.4 of Attachment D to the Amended Agreement to Provide Specified Transmission Service between FLP and Seminole Electric Cooperative, Inc. (Rate Schedule FERC No. 78).

FPL requests an effective date of May 1, 1991, and therefore requests waiver of the Commission's notice requirements

FPL states that Seminole has been served with a copy of this filing.

Comment date: June 3, 1991 in accordance with Standard Paragraph E at the end of this notice.

2. Cogen Technologies Baltimore, Inc.

[Docket No. QF91-123-000]

On May 14, 1991, Cogan Technologies Baltimore, Inc. tendered for filing an amendment to its filing in this docket.

The amendment clarifies certain aspects of the ownership of the proposed cogeneration facility, and the thermal usage of its steam hosts.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

3. Cental Corporation

[Docket No. ES91-28-000]

Take notice that on May 10, 1991, Cental Corporation ("Applicant") filed an application with the Federal Energy Regulatory Commission pursuant to 204 of the Federal Power Act for authority to issue not more than $750 million of short-term indebtedness on or before December 31, 1992 with a final maturity date no later than December 31, 1993.

Comment date: June 7, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825, North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12561 Filed 5-28-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-151-000, RP91-37-001, RP91-37-004, and RP91-151-001]

Carnegie Natural Gas Co; Proposed Changes in FERC Gas Tariff

May 21, 1991.

Take notice that on May 15, 1991, Carnegie Natural Gas Company (Carnegie) tendered for filing certain registered tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1.[1]

Carnegie requests waiver of the 30-day notice period to allow the rates to become effective on June 1, 1991.

Carnegie states that these tariff sheets are being filed in compliance with the Commission's order issued on December 28, 1990, in Docket No. RP91-37-000, in which the Commission denied Carnegie authorization to continue to track standby charges incurred from Texas Eastern Transmission Corporation (Texas Eastern). Carnegie states that the referenced tariff sheets are substantially identical to the tariff sheets originally filed by Carnegie on November 30, 1990 in Docket No. RP91-37-000, except that the rate summary shown on Alt Thirteenth Revised Tariff Sheet Nos. 8 and 9, Second Revised Volume No. 1, reflects the removal of the standby charge tracker and the inclusion of the related Account No. 858 costs in Carnegie's base sales rates. In addition,

[1] The filing was initially made on April 30, 1991 in Docket No. RP91-37-001 and supplemented on May 3, 1991 in Docket No. RP91-37-004. The filing dates have been changed to May 15, 1991 due to the filings being re-docketed as a general rate filing under Section 4 of the Natural Gas Act in Docket Nos. RP91-151-000 and RP91-151-001. This notice will replace the previous notice of May 3, 1991. (56 FR 21482, May 8, 1991) and any person who filed to intervene or protest in response to the May 3 notice will not be required to do so again.

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Carnegie states that First Revised Sheet no. 124, Second Revised Volume No. 1, reflects the removal of the pertinent tariff language from Carnegie's Purchased Gas Adjustment (PGA) clause in the General Terms and Conditions of its FERC Gas Tariff.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person who filed to intervene or protest in response to the May 3, 1991 notice will not be required to do so again. Any other person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 24, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must filed a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12585 Filed 5-28-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-67-005]

Granite State Gas Transmission, Inc. Proposed Changes in Rates and Tariff Provisions

May 21, 1991.

Take notice that on May 14, 1991, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581 filed the tariff sheets listed below in its FERC Gas Tariff, Second Revised Volume No. 1, proposing changes in rates and tariff provisons:

2nd Sub. 6th Rev. Sheet No. 21
Sub. 1st Rev. Sheet No. 22
Sub. 2nd Rev. Sheet No. 24
Sub. 2nd Rev. Sheet No. 139
Sub. 2nd Rev. Sheet No. 140
Sub. 2nd Rev. Sheet No. 141
Sub. 1st Rev. Sheet No. 143
Sub. 1st Rev. Sheet No. 144

Granite State proposes an effective date of May 1, 1991 for the above listed tariff sheets.

According to Granite State, its filing is submitted to track the passthrough to its customers for take-or-pay buydown costs charged Granite State by Tennessee Gas Pipeline Company (Tennessee). It is stated that the Commission rejected Granite State's previous April 11 and 19, 1991 filing in this proceeding which tracked an underlying filing by Tennessee in Docket No. RP91-21 that the Commission rejected. Granite State also notes that the Commission required Granite State to clarify that its April 11 and 19, 1991 filing complied with Order No. 528-A with respect to the effective date of its reallocation of costs to small customers.

Granite State further states that on May 2, 1991, Tennessee filed revised tariff sheets in compliance with the Commission's order of April 26, 1991, in Docket No. RP91-21. According to Granite State, its resubmitted tariff sheets reflect the changes in Tennessee's allocation of take-or-pay costs to Granite State in the compliance filing, and also complies with the requirements of that Granite State clarify the effective date of its reallocation of costs to small customers pursuant to Order No. 528-A.

Granite State also requests that the filing fee of $1,880 previously paid in its filing of April 11 and 19, 1991 be applied to the resubmitted filing. Granite State bases its request for application of the previously paid filing fee to the resubmitted filing on the fact that the April 11 and 19, 1991 filing was rejected due to the rejection of the underlying Tennessee filing, and not through any fault of Granite State. Moreover, Granite State submits that the previous filing of April 11 and 19, 1991 did comply with the requirements of Order No. 528-A in terms of the effective date of the reallocation of costs to small customers, as clarified in the resubmitted filing.

According to Granite State the proposed rate changes and tariff provisions are applicable to its jurisdictional sales services rendered to Bay State Gas Company and Northern Utilities, Inc. and to a sale to a direct customer, Pease Air Force Base. Granite State further states that copies of its filing were served upon its customers and the regulatory commissions of the states of Maine, New Hampshire and Massachusetts.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commision's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 29, 1991. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12586 Filed 5-28-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP91-6-000]

Jack J. Grynberg, Individually and as General Partner For The Greater River Basin Drilling Program: 72-73 v. Rocky Mountain Natural Gas Company, a Division of KN Energy, Inc.; Notice of Complaint

May 21, 1991.

On May 8, 1991, Jack J. Grynberg, individually and as General Partner for the Greater Green River Basin Drilling Program: 72-73 (Grynberg) filed, pursuant to Rule 206 of the Federal Energy Regulatory Commission's (Commission) rules of practice and procedure, a complaint protesting the claim for refunds by Rocky Mountain Natural Gas Company, Inc. (Rocky Mountain). Grynberg requests the Commission to: (1) Require Rocky Mountain for the period commencing October 1, 1988 to cease and desist from engaging in unauthorized billing adjustments; and (2) order that Grynberg is entitled to collect the NGPA sections 104 (replacement and post-1974 contract vintages) 103, and 105 maximum lawful price's (MLP) for various gas production sold pursuant to a July 14, 1975 intrastate gas purchase contract between Grynberg and Rocky Mountain (1975 Agreement) and a May 9, 1984 Stipulation for Settlement and Dismissal (1984 Settlement Agreement) in which Rocky Mountain agreed, as partial consideration, to pay a price which is the equivalent of the NGPA section 102 MLP for all production under the 1975 Agreement commencing April 1, 1984.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with rules 211 or 214 of the Commission's rules of practice and procedure. All such petitions should be filed within 30 days following publication of this notice in the **Federal Register**. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12588 Filed 5-28-91; 8:45 am]

BILLING CODE 6717-01-M

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Respondent's answer to the complaint is also due on or before 30 days following **Federal Register** publication.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12584 Filed 5-28-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER90-499-001]

Niagara Mohawk Power Corp.; Filing

May 22, 1991.

Take notice that on April 29, 1991, Niagara Mohawk Power Corporation (Niagara) tendered for filing revised rate sheets for transmission services provided to Green Mountain Power Corporation, which were inadvertently excluded from the January 24, 1991 filing in this docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before May 31, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12582 Filed 5-28-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-62-013]

Pacific Gas Transmission Company; Proposed Changes in FERC Gas Tariff

May 21, 1991.

Take notice that Pacific Gas Transmission Company, (Pacific Gas) on May 17, 1991, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1-A.

Pacific Gas states that the proposed changes are in compliance with a FERC order of April 2, 1991 in the above-mentioned dockets to allocate capacity at Malin, Oregon above the 1,066 MMcf/d MDD of PL-1 service. The allocation scheme is to be a bidding mechanism that ranks bids first, according to the value of the bid, and second, pro rata among shippers submitting the highest value bids.

Pacific states that copies of the filing were served upon all parties in Docket Nos. RP87-62-101, and RP86-148-007.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 29, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12587 Filed 5-28-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-259-048]

Northern Natural Gas Co.; Proposed Changes in F.E.R.C. Gas Tariff

May 21, 1991.

Take notice that Northern Natural Gas Company (Northern) on May 14, 1991, tendered for filing to become part of Northern's FERC Gas Tariff, the following Tariff sheets:

Third Revised Volume No. 1

First Revised Sheet No. 74L
First Revised Sheet No. 74N

Original Volume No. 2

First Revised Sheet No. 1X
First Revised Sheet No. 1Z

Northern states that such tariff sheets are being submitted in compliance with the Commission's Order Granting Rehearing, dated April 10, 1991, in this preceeding. An effective date of June 1, 1991 has been requested for this filing

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to protest said filing shold file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 29, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12581 Filed 5-28-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-179-009]

Western Gas Interstate Co.; Compliance Filing

May 21, 1991.

Take notice that Western Gas Interstate Company ("Western") on May 17, 1991, pursuant to the Commission's Order issued on April 17, 1991, in this proceeding at 55 FERC Para. 61,088, tendered for filing certain tariff sheets to Second Revised Volume No. 1. Those tariff sheets reflect changes specifically required by the Order or which were necessary in order for the terms of Western's tariff to conform with the Order.

In addition, Western moved to place the foregoing tariff sheets into effect on June 1, 1991.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 29, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12583 Filed 5-28-91; 8:45 am]

BILLING CODE 6717-01-M

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Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $105,000.00, plus accrued interest, in alleged refined petroleum product violation amounts obtained by the DOE under the terms of a consent order entered into with John R. Adams (Adams), Case No. LEF–0020. The OHA has determined that the funds will be distributed to customers which purchased regulated refined petroleum products from Adams during the period December 1, 1973 through May 31, 1975.

DATES AND ADDRESS: Applications for Refund from the Adams settlement fund must be filed in duplicate, addressed to "Adams Special Refund Proceeding, Case No. LEF–0020," and sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Applications for Refund from the Adams settlement fund must be postmarked by May 29, 1992.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2094 (Mann); 586–2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute to eligible claimants $105,000.00, plus accrued interest, obtained by the DOE under the terms of a compromise settlement entered into with John R. Adams (Adams), formerly doing business as J.R. Adams Oil Company, on February 28, 1990. The funds were paid by Adams towards the settlement of alleged violations of the DOE's Mandatory Petroleum Price and Allocation Regulations.

The OHA has determined that it will distribute the Adams settlement funds in two stages. In the first stage, we will accept claims from identifiable purchasers of petroleum products from Adams who may have been injured by the alleged overcharges. The specific requirements which an applicant must meet in order to receive a refund are set out in section V of the Decision. Claimants who meet these specific requirements will be eligible to receive refunds based on the number of gallons of regulated refined petroleum products which they purchased from Adams during the December 1, 1973 through May 31, 1975, refund period. As indicated in the Decision, Adams provided the OHA with records listing its customers' purchases of Adams petroleum products during the refund period, and the OHA has attempted to forward this purchase information to Adams' customers. Applicants may rely on this purchase information in completing their Applications for Refund. In the Decision, we also listed those Adams customers who are prohibited from receiving Adams refund monies due to their possible participation in the alleged violations underlying Adams' compromise settlement.

Any settlement funds remaining after valid claims are paid in the first stage will be used for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07.

Purchasers of regulated petroleum products from Adams during the December 1, 1973 through May 31, 1975, refund period may now file Applications for Refund from the Adams settlement fund. These Applications for Refund must be postmarked by May 29, 1992. Instructions for the completion of Applications for Refund are set forth in section V of the Decision that immediately follows this notice. Applications for Refund should be sent to the address listed at the beginning of this notice.

Unless labelled as "confidential," all submissions must be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: May 21, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Dated: May 21, 1991.

Name of Firm: John R. Adams.

Date of Filing: July 18, 1990.

Case Number: LEF–0020.

On July 18, 1990, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA), to distribute the funds which John R. Adams, formerly doing business as J.R. Adams Oil Company, remitted to the DOE.[1] Adams has remitted $105,000 pursuant to a compromise settlement, to which $44,421.37 in interest has accrued as of April 30, 1991. In accordance with the procedural regulations codified at 10 CFR part 205, subpart V (hereinafter subpart V), the ERA requests that the OHA establish special refund procedures to remedy the effects of Adams' alleged regulatory violations.

I. Background

Adams sold a range of refined petroleum products in the midwestern and southwestern regions of the United States. These sales were covered by the Mandatory Petroleum Price and Allocation Regulations (the DOE regulations), which were issued under the Emergency Petroleum Allocation Act of 1973 (EPAA), 15 U.S.C. 751 *et. seq.* Adams was a "reseller-retailer" subject to the price regulations set forth at 10 CFR part 212, subpart E, between August 19, 1973 and January 27, 1981.

During the period of petroleum price controls, the ERA conducted an audit of Adams' operations to determine its compliance with the DOE regulations. The ERA's audit of Adams covered the company's sales during the period between December 1973 and May 31, 1975. As a result of this audit, the ERA issued a Proposed Remedial Order (PRO) in 1984 alleging that Adams had not complied with the refiner price regulations in its refined product sales.[2]

On October 21, 1985, Adams entered into a consent order with the DOE resolving issues of its alleged violation of the DOE regulations between December 1973 and January 1981 (the consent order period). Without admitting any violations of these regulations, Adams agreed to remit monies to the DOE under the provisions of the consent order. On February 20, 1990, the DOE obtained consent judgment from the U.S. District Court for the Western District of Oklahoma enforcing the 1985 consent order. On February 28, 1990, the DOE received a compromise settlement from Adams resolving issues of Adams' adherence to the 1985 consent order and the 1990 consent judgment.

Since $44,421.37 in interest has accrued, as of April 30, 1991, on the $105,000.00 remitted under the compromise settlement, a total of $149,421.37 is available for disbursement pursuant to the compromise settlement. These funds are held in an interest-bearing escrow account at the Department of the Treasury awaiting a determination of their proper disposition.

[1] All references herein to "Adams" include both John R. Adams individually and J.R. Adams Oil Company.

[2] In December 1979, John R. Adams pled guilty to an Information filed in the U.S. District Court for the Western District of Oklahoma relating to his criminal violation of the petroleum price regulations in twenty specific 1974 transactions. As a result, Mr. Adams was fined $100,000.

II. Jurisdiction and Authority

The regulations codified in subpart V establish general guidelines which the OHA utilizes in formulating and implementing a distribution plan for funds received as a result of an enforcement action. A more detailed treatment of subpart V and the authority of the OHA to design refund procedures may be found in Office of Enforcement, 9 DOE ¶ 82,508 (1981) and in Office of Enforcement, 8 DOE ¶ 82,597 (1981) (*Vickers*).

We have considered the ERA's petition for the implementation of refund procedures under the subpart V mechanism with respect to the Adams settlement monies and have determined that such refund procedures are appropriate. This Decision and Order establishes the OHA's plan to distribute these funds.

III. Proposed Decision and Order

On February 27, 1991, the DOE issued a Proposed Decision and Order establishing tentative refund procedures for the distribution of the Adams settlement fund. Although this Proposed Decision and Order was published in the **Federal Register** and a 30-day period was provided for the submission of comments regarding our proposed refund plan, no interested parties filed comments with regard to the Proposed Decision. We will adopt the refund procedures of the Proposed Decision and Order, set forth below, in final form.

IV. Refund Mechanism and Refund Period

The 1985 consent order and subsequent court actions between the DOE and Adams settled issues of Adams' alleged violation of regulations governing the pricing of refined petroleum prducts. These issues were based upon a 1984 PRO alleging that Adams did not properly calculate its refined product selling prices under the refiner price rule. Since no information in the enforcement record indicates that Adams participated in the refining, processing, or reselling of crude oil and Adams' alleged violations were solely attributable to refined product operations, all of the Adams settlement funds will be made available for distribution to persons who purchased Adams refined petroleum products.

Applications in this refund proceeding must be based solely on purchases of covered Adams petroleum products made between December 1, 1973 and May 31, 1975 (the "refund period"). This refund period represents the period of Adams' operations audited by the ERA and during which Adams' alleged regulatory violations occurred. Even though the 1985 consent order covered a duration longer than the refund period, we believe that the refund period should reflect the isolated pattern of Adams' alleged violations. Accord Cloyce K. Box, 15 DOE ¶ 85,001 (1986) (*Box*) (refund period restricted to the 4½ months during which the alleged violations transpired).[3]

V. Refund Procedures

We will implement a two-stage refund procedure for the Adams settlement funds. Purchasers of refined petroleum products from Adams during the refund period may file Applications for Refund in the initial stage, and any monies remaining after the payment of all valid first-stage claims will be disbursed to the state governments for indirect restitution. Our experience with subpart V refund proceedings indicates that potential claimants will consist of: (1) End-users, (2) regulated entities, such as public utilities, and cooperatives, and (3) retailers, resellers, and refiners of petroleum products (hereinafter collectively referred to as "resellers").

The only purchasers of Adams petroleum products during the refund period which are ineligible for refunds are those parties identified in the enforcement record as having participated with Adams in its alleged violations.[4] Since the Adams settlement monies are intended for those injured by Adams' alleged overcharges, we do not believe that it would be appropriate to compensate parties who may have themselves participated in and benefitted from the alleged overcharges covered by the Adams settlement. *See* Box at 88,002. Additionally, the stricture against "unclean hands" in the equitable subpart V refund proceedings prevents the parties described above from receiving Adams settlement funds. *Id.*

A. Claims Based on Alleged Overcharges

In order to receive a refund, each claimant will be required to submit a schedule of its monthly refined petroleum product purchases from Adams during the December 1, 1973 through May 31, 1975, refund period. If the petroleum products were not purchased directly from Adams, the claimant must establish that they originated with Adams. Unless a reseller claimant elects to utilize the injury presumptions described below, it will be required to submit a detailed showing that it was injured by Adams' alleged overcharges. The two distinct elements generally required in such an injury showing are: (1) The existence of "banks" of unrecovered increased product costs by a reseller claimant in excess of the refund sought,[5] and (2) evidence that market conditions prevented the reseller claimant from raising its prices to pass through the costs of the alleged overcharges. See *Vickers Energy Corp./Hutchens Oil Co., Inc.* 11 DOE ¶ 85,070 at ¶ 88,105 (1983). The second element of the injury showing could be a demonstration that the company suffered a competitive disadvantage as a result of its purchases from Adams. See *National Helium Corp./Atlantic Richfield Co.*, 11 DOE ¶ 85,257 (1984), *affirmed sub nom. Atlantic Richfield Co.* v. *DOE*, 616 F. Supp. 1199 (D. Del. 1985).

1. Use of Presumptions

The use of certain presumptions permits claimants to participate in refund proceedings without incurring

[3] Cloyce K. Box was a business associate of John R. Adams, and the alleged violations underlying the *Box* special refund proceeding were substantially the same as those underlying this Decision.

[4] The companies and individuals purportedly linked to Adams' alleged violations and, thereby, prohibited from receiving Adams refund monies are as follows:

CLB Enterprises, Inc.—Dan Baxter
Consolidated Materials, Inc.—Boyce Box
OKC Corporation—Cloyce K. Box
OKC Trading Company—Carl Lavery
Quality Oil—Jean Parker
Stonewalk Corporation—Phil Parker

[5] Claimants which have previously obtained refunds in other refund proceedings should deduct those refunds from any cost banks submitted in this refund proceeding. See *Husky Oil Co./Metro Oil Products, Inc.*, 16 DOE ¶ 85,090 at 88,179 (1987). Additionally, a claimant attempting tho show injury may not receive a refund for any month in which it has a negative accumulated cost bank (for the petroleum products) or for any prior month. See Standard Oil Co. (Indiana)/Suburban Propane Gas Corp., 13 DOE ¶ 85,090 at 88,082 (1985). If a claimant no longer has records of its banked costs, the OHA may use its discretion to permit the claimant to approximate those cost banks. See Gulf Oil Corp./Sturdy Oil Co., 15 DOE ¶ 85,187 (1986).

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burdensome expenses, and aids in the efficient evaluation of refund claims. See, e.g., *Texaco Inc.*, 20 DOE ¶ 85,147 (1990). The use of presumptions in refund cases is specifically authorized by the pertinent Subpart V regulations at 10 CFR 205.282(e). We will adopt the presumptions described below.

a. Calculation of Refunds. We will adopt a presumption that the alleged overcharges were dispersed equally in all of Adams' sales of regulated (covered) refined petroleum products during the refund period and, thereby, refunds will be made on a per gallon, or "volumetric," basis.[6]

In the absence of other information, a volumetric refund is appropriate because the petroleum price regulations generally required a regulated company to account for increased costs on a company-wide basis in establishing its prices.

Under this volumetric method, a claimant's "allocable share" of the settlement fund is equal to the number of gallons of covered petroleum products which it purchased from Adams during the refund period multiplied by the per gallon (volumetric) refund amount.[7] In the present refund proceeding, we have computed the per gallon refund amount to be $0.00093.[8] Using this volumetric amount, a claimant would be eligible for a refund of $930 per one million gallons purchased. In addition to this principal refund, a claimant whose application is granted in this refund proceeding will receive a pro rata share of the interest that has accrued on the Adams settlement fund since the time of its deposit in the appropriate escrow account.[9]

We will also adopt various presumptions concerning a claimant's injury, which are listed below.

b. End-Users. In accordance with prior subpart V refund proceedings, we will adopt the presumption that end-users of Adams petroleum products, whose businesses are unrelated to the petroleum industry, were injured by Adams' alleged overcharges. See, e.g., Texas Oil and Gas Corp., 12 DOE ¶ 85,069 at 88,209 (1984) (*TOGCO*). Unlike the regulated companies in the petroleum industry, end-users generally were not subject to the petroleum prices regulations during the refund period, and they were not required to keep records justifying selling price increases by reference to petroleum cost increases. Therefore, evaluation of the impact of the alleged overcharges on the prices of the end-users' goods and services would be beyond the scope of this refund proceeding. See TOGCO at 88,209. Accordingly, end-users will only be required to establish their purchase volumes of covered Adams petroleum products during the refund period to make sufficient showings that they were injured by the alleged overcharges.

c. Regulated Bodies and Cooperatives. A claimant whose prices for goods and sevices are regulated by a governmental body (e.g. public utilities), or an agricultural cooperative, will only need to submit documentation of its purchases, or those of its members in the case of a cooperative, in order to receive a full volumetric refund. However, a regulated company or a cooperative will be required to certify that it will: (1) Pass any refund received through to its customers or member-customers, (2) explain the manner in which it plans to provide this restitution to its customers or members, and (3) notify the appropriate regulatory or membership body of the receipt of a refund. See Exxon at 89,150. These requirements are based upon the presumption that a regulated firm or cooperative would have routinely passed any overcharges through to its purchasers and, therefore, should pass through any refunds resulting from the alleged overcharges to its customers and member-customers, respectively.

Accordingly, these firms will not be required to make detailed demonstrations of injury to receive refunds.[10]

d. Retailers, Resellers, and Refiners.

i. Small Claims Presumption. We will adopt a "small claims" presumption that a retailer, reseller, or refiner claimant which resold Adams petroleum products and possesses an allocable share of the settlement fund of $5,000 or less, exclusive of interest, was injured by the alleged overcharges. Under the small claims injury presumption, such a claimant will not be required to submit evidence of injury beyond documentation of its purchase volume of covered Adams petroleum products. *See TOGCO* at 88,210. This presumption is based on the fact that the considerable expense which may be involved in a detailed injury showing may exceed the potential refund for many of the smaller claimants. Therefore, the absence of simplified refund procedures for small claims could deprive injured parties of their possibility of obtaining refunds. Furthermore, the use of the small claims injury presumption is desirable because it expedites the OHA's evaluation of the large number of routine refund claims expected.[11]

ii. Mid-Level Claims Presumption. Additionally, a retailer, reseller, or refiner claimant whose allocable share of the Adams settlement fund exceeds $5,000, exclusive of interest, may elect to receive either $5,000 or 40 percent of its allocable share, whichever is greater, also exclusive of interest.[12] The use of this presumption reflects our belief that the mid-level claimants were likely to have experienced some injury as a result of Adams' alleged overcharges. See Total Petroleum, Inc., 17 DOE ¶ 85,542 at 89,050 (1988). In some prior refund proceedings, we determined product-specific levels of injury through detailed evaluations. See, e.g., Getty Oil Co., 15 DOE ¶ 85,064 (1986). However, in Gulf Oil Corp., 16 DOE ¶ 85,381 at 88,737 (1987) (*Gulf*), we determined that it was better to adopt a single presumptive level of injury for all mid-level claimants of 40 percent for all covered petroleum products which they purchased.

We believe that the method used in the *Gulf* determination is sound and, accordingly, we will adopt a 40 percent presumptive level of injury for all mid-level claimants in all of their covered purchases in the present refund proceeding. A claimant seeking a refund under the mid-level injury presumption will only be required to establish its purchase volume of covered Adams petroleum products to be eligible for a refund of $5,000 or 40 percent of its allocable share, whichever is greater.[13]

iii. Spot Purchasers. We will adopt a rebuttable presumption that a retailer, reseller, or refiner claimant which only made spot purchases from Adams did not sustain injury as a result of those purchases. As we have stated in prior Decisions, spot purchasers generally had considerable discretion in the timing and location of their purchases and, therefore, would not have made the purchases at increased prices unless they were able to pass through the full amount of their supplier's selling price to their downstream customers. *See, e.g., Vickers* at 85,396-97. Accordingly, a spot purchaser applicant must submit specific and detailed evidence to rebut the spot purchaser presumption of non-injury and to establish the degree to which it was injured in its spot purchases from Adams.[14]

B. Allocation Claims

We may also receive claims based upon Adams' alleged failure to supply petroleum products that it was obligated to supply under the DOE allocation regulations. 10 C.F.R. Part 211. Any such applications will be evaluated with reference to the standards established in Subpart V implementation cases such as Office of Special Counsel, 10 DOE ¶ 85,048 at 88,220 (1982), and in specific refund cases such as Mobil Oil Corp./Aromalene Oil Co., 20 DOE ¶ 85,155 (1990); Mobil Oil Corp./Reynolds Industries, Inc., 17 DOE ¶ 85,808 (1988). These standards generally require an allocation claimant to demonstrate: (1) The existence of a supplier/purchaser relationship with the consent order firm, (2) the likelihood that the consent order firm violated the DOE allocation regulations by not supplying the claimant with petroleum products as required by 10 C.F.R. Part 211, (3) a contemporaneous complaint to the DOE, or other evidence that the claimant contemporaneously sought redress, with respect to the alleged allocation violation, and (4) the occurrence and degree of injury that it sustained as a result of this alleged violation.

In evaluating whether allocation claims meet these standards, we will consider various factors. For example, we will seek to obtain as much information as possible concerning the DOE's treatment of any contemporaneous complaints made by the claimant. We will also look at any defenses to the alleged allocation violation by Adams. See Marathon Petroleum Co./Research Fuels, Inc., 19 DOE ¶ 85,575 (1989), action for review pending, No. CA3-89-2983G (N.D. Tex. filed November 22, 1989). In evaluating a claimant's injury from an alleged allocation violation, we will consider the effect of the alleged violation on its entire business operation, with particular attention to the volume of petroleum products which it received from suppliers other than Adams. In determining the amount of any allocation refund, we will utilize any available information regarding the portion of the Adams settlement fund that the DOE, and its predecessors, generally attributed to alleged allocation violations and to the specific allocation violation alleged by the claimant. Finally, since the consent order underlying the Adams fund was the result of a negotiated settlement of the issues identified in the enforcement action against Adams and the amount of the settlement fund is less than Adams' potential liability under that action, we will reduce allocation refunds which would otherwise be disproportionately large in relation to the settlement fund. See Amtel, Inc./Whitco, Inc., 19 DOE ¶ 85,319 at 88,596 (1989) (refund reduced by the ratio of the amount of the consent order fund to the aggregate amount of the consent order firm's alleged overcharges).

C. Refund Application Requirements

To apply for a refund from the Adams settlement fund, a claimant should submit an Application for Refund containing all of the following information:

(1) Identifying information including the claimant's name, address, social security number or employer identification number, an indication whether the claimant is a corporation, the name, title, and telephone number of a person to contact for any additional information, and the name and address of the person who should receive any refund check;

(2) The applicant's use(s) of the Adams petroleum products: e.g. retail gasoline station, petroleum jobber, petroleum refiner, consumer (end-user), cooperative, or public utility;

(3) A statement indicating whether the applicant established the volume of covered petroleum products which it purchased from Adams by consulting its own records or by relying on the customer information provided by Adams.[15] If it consulted its own records, the applicant should follow the requirements of part (a) below; whereas if it relied on Adams, customer information,[16] the applicant should follow the requirements of part (b) below;

(a) For each petroleum product which the applicant purchased from Adams, a schedule showing, on a monthly basis, its purchases made between the beginning of the refund period (December 1, 1973) and the date of decontrol of the petroleum product or the end of the refund period (May 31, 1975), whichever is earlier. The applicant should specify the source of this gallonage information. In calculating its purchase volumes, an applicant should use actual records from the refund period, if available. If these records are not available, the applicant may submit estimates of its petroleum purchases, but the estimation

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[6] If an individual claimant believes that it was injured by more than its volumetric share, it may elect to forego this presumption and file a refund application based upon a claim that it suffered a disproportionate share of Adams' alleged overcharges. See, e.g., Mobil Oil Corp./The Atchison, Topeka and Santa Fe Railway Co., 20 DOE ¶ 85,786 (1990); Mobil Oil Corp./Marine Corps Exchange Service, 17 DOE ¶ 85,714 (1988). Such a claim will be granted if the claimant shows that is was "overcharged" by a specific amount and absorbed those overcharges. See Panhandle Eastern Pipeline Co./Western Petroleum Co., 19 DOE ¶ 85,705 (1989).

[7] The petroleum products sold by Adams which were subject to the petroleum price regulations and their respective decontrol dates are as follows:

Liquid Asphalt—April 1, 1974
Residual Fuel Oil—June 1, 1976
No. 2 Fuel Oil—July 1, 1976
Jet Fuel—February 25, 1979
Motor Gasoline—January 28, 1981

[8] We obtained the per gallon refund figure by dividing the principal portion of the Adams settlement fund ($105,000.00) by the approximate volume of refined petroleum products sold by Adams between the beginning of the refund period (December 1, 1973) and the earlier of the end of the refund period (May 31, 1975) or the date of decontrol for each relevant product (113,880,000 gallons).

[9] As in prior cases, we will establish a minimum principal refund amount of $15. In this determination, any potential claimant purchasing less than 16,129 gallons of petroleum products from Adams would have an allocable share of less than $15. We have found that the cost of processing claims in which refunds of less than $15 are sought outweighs the restitutionary benefits in those instances. See Exxon Corp., 17 DOE ¶ 85,900 at 89,150 (1988) (Exxon).

[10] A cooperative's purchases of Adams petroleum products which were subsequently resold to non-members will be treated as if they were purchases made by other resellers. See Total Petroleum, Inc./Farmers Petroleum Cooperative, Inc., 19 DOE ¶ 85,215 (1989).

[11] In order to be considered under the small claims injury presumption, a retailer, reseller, or refiner applicant must have purchased less than 5,376,344 gallons of Adams petroleum products during the refund period.

[12] Under the mid-level injury presumption, a claimant which purchased between 5,376,344 gallons and 13,440,860 gallons of Adams petroleum products would be eligible to receive a principal (exclusive of interest) refund of $5,000. A claimant purchasing more than 13,440,860 gallons of petroleum products would be eligible for a principal refund equal to 40 percent of its allocable share.

[13] A claimant who attempts to make a detailed injury showing in order to obtain 100 percent of its allocable share but, rather, provides evidence leading us to conclude that it passed through all of the alleged overcharges, or that it was injured to a lesser degree than is presumed herein, will not receive a full refund under an injury presumption. Instead, such a claimant will receive a refund reflecting the level of injury established in its application.

[14] In other refund proceedings, we have stated that spot purchaser applicants wishing to rebut the spot purchaser presumption should demonstrate that they made the spot purchases in order to fulfill obligations to their base period customers and resold the petroleum products at a loss.

[15] In order to further the DOE's providing restitution to parties injured by actual or alleged oil overcharges, the DOE requested Adams' customer records from the refund period. Adams sent such records to the DOE, from which the DOE computed, on a product-by-product basis, the volume purchased by each Adams customer. If an applicant in this refund proceeding believes that Adams' customer records accurately reflect the volume of Adams petroleum products which it purchased during the refund period, it may rely on those purchase volumes in completing this section of its application. Even if an applicant relies of Adams' customer purchase figures, the DOE may reflect that the applicant provide documents verifying those figures. Furthermore, any applicant may elect not to rely on Adams' figures and, instead, substantiate its own purchase figures in the manner described in Section V.C.(3)(a).

[16] The DOE will send the following items to each Adams customer for whom an address is listed in Adams' records: (1) Adams' sales volume information corresponding to the customer; and (2) a copy of this Implementation Order.

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methodology must be reasonable and must be explained in detail; or

(b) For each petroleum product which the applicant purchased from Adams, the total gallonage figure computed from Adams' record, for the entire refund period. The applicant should also submit a statement certifying that Adams, customer records accurately reflect the volume of Adams petroleum products which it purchased during the refund period;

(4) If the applicant was a direct purchaser from Adams, it should provide its customer number. If the applicant was an indirect purchaser from Adams (e.g. it purchased Adams petroleum products through another supplier), it should submit the name, address, and telephone number of its immediate supplier and should specify why it believes that the petroleum products claimed were originally sold by Adams;

(5) If the applicant is a regulated utility or a cooperative certifications that it will pass on the entirety of any refund received to its customers, will notify its state utility commission, other regulatory agency, or membership body of the receipt of any refund, and a brief description as to how the refund will be passed along;

(6) If the applicant is a retailer, reseller, or refiner whose allocable share exceeds $5,000 (i.e. whose purchases equal or exceed 5,376,344 gallons), it must indicate whether it elects to rely on the appropriate reseller injury presumption and receive the larger of $5,000 or 40% of its allocable share. If it does not elect to rely on the injury presumption, it must submit a detailed showing that it absorbed Adams' alleged overcharges. *See* Section V.A. *supra*;

(7) A statement as to whether the applicant or a related firm has filed, or has authorized any individual to file on its behalf, any other application in the Adams refund proceding. If so, an explanation of the circumstances of the other filing or authorization should be submitted;

(8) If Adams has or ever had any financial interest in the applicant, it should explain this interest (e.g. stock ownership, commonly owned assets, lending institution), including the years in which this interest existed.[17]

(9) A statement as to whether the ownership of the applicant's firm changed during or since the refund period. If an ownership change occurred, the applicant should list the names, addresses, and telephone numbers of any prior or subsequent owners. The applicant should also provide copies of any relevant Purchase and Sale Agreements, if available. If such written documents are not available, the applicant should submit a description of the ownership change, including the year of the sale and the type of sale (e.g. sale of corporate stock, sale of company assets);

(10) A statement as to whether the applicant has ever been a party in a DOE enforcement action or a private Section 210 action. If so, an explanation of the case and copies of relevant documents should also be provided;

(11) The statement listed below signed by the individual applicant or a responsible official of the company filing the refund application:

> I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

The application information may be submitted in a letter; there is no required nor suggested application format. All applications should be either typed or printed and clearly labeled "Adams Special Refund Proceeding, Case No. LEF-0020." Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information on its application is confidential and does not wish for this information to be publicly disclosed, it must submit an original application, clearly designated, "confidential," containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be postmarked no later than May 29, 1992, and sent to:

Adams Special Refund Proceeding,
Office of Hearings and Appeals,
Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585

D. Distribution of Funds Remaining After the First Stage

Any funds remaining in the Adams settlement fund after the payment of all valid first-stage claims will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. §§ 4501–07. PODRA requires that the Secretary of Energy annually determine the amount of oil overcharge funds that will not be needed to meet the claims of injured parties in Subpart V refund proceedings and make those funds available to state governments for use in four identified energy conservation programs. The Secretary has delegated these duties to the OHA, and any funds in the Adams fund that the OHA determines will not be required for direct restitution to injured customers will be distributed in accordance with the procedures established in PODRA.

It Is Therefore Ordered That:

(1) Applications for Refunds from the funds remitted to the Department of Energy by John R. Adams pursuant to the Consent Order executed on October 21, 1985, may now be filed.

(2) All Applications for Refunds from the John R. Adams settlement funds must be postmarked no later than May 29, 1992.

Dated: May 21, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91-12832 Filed 5-28-91; 8:45 am]

BILLING CODE 6450-01-M

[17] As in other refund proceedings involving alleged refined product violations, the DOE will presume that affiliates or subsidiaries of Adams were not injured by Adams' alleged overcharges. See, e.g. Marathon Petroleum Co./EMRO Propane Co., 15 DOE ¶ 85,288 (1987). This is so because Adams presumably would not have sold petroleum products to an affiliate or subsidiary if such a sale would have placed the purchaser at a competitive disadvantage. See Marathon Petroleum Co./Pilot Oil Corp., 16 DOE ¶ 85,611 (1987), amended claim denied, 17 DOE ¶ 85,291 (1988), reconsideration denied, 20 DOE ¶ 85,238 (1990). Additionally, if an affiliate or subsidiary of Adams was granted a refund, Adams would be indirectly compensated from a fund remitted to settle its own alleged violations.

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3959-8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 28, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standards for Secondary Brass and Bronze Production Plants (Subpart M). (ICR #1129.03; OMB #2060-0110). This is a reinstatement of a previously approved collection. On December 19, 1990, at 55 FR 52095, EPA mistakenly published a notice that this ICR would not be renewed.

Abstract: Owners or operators of brass and bronze production facilities must notify EPA of construction, reconstruction, modification, startup, shutdown, and malfunction of reverberatory and electric furnaces of 1,000 kg or greater production capacity, and blast furnaces of 250 kg/hr or greater production capacity. Owners or operators must record all data and calculations and results of initial performance tests and submit that data of EPA. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period in which the monitoring system is inoperative. Recurring compliance reports are not required under this standard. EPA uses the data to determine the ability of each plant to comply with the emission standards.

Burden Statement: The public reporting burden for this collection of information is estimated to be 42 hours per response, and 1.5 hours for recordkeeping annually.

Respondents: Owners and operators of secondary brass and bronze production plants.

Estimated No. of Respondents: 2 for reporting and 18 for recordkeeping.

Estimated No. of Respondents per Respondent: 1.

Estimated Total Annual Burden on Respondents: 111 hours.

Frequency of Collection: Once.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460

and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: May 22, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91-12828 Filed 5-28-91; 8:45 am]

BILLING CODE 6560-50-M

Establishment of the Expert Panel on the Role of Science at EPA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of establishment of the Expert Panel on the role of science at EPA.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. 9(c), EPA gives notice of the establishment of the Expert Panel on the Role of Science at EPA. EPA has determined that this action is in the public interest. The purpose of the Panel is to provide independent advice and counsel to the Administrator on how best to integrate current, objective scientific information into the process of EPA policy development and decision-making.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Special Assistant to the Administrator (A-101), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 382-4724.

SUPPLEMENTARY INFORMATION: The text of the Charter for the Panel follows:

Expert Panel on the Role of Science at EPA

1. Purpose and Authority. This Charter establishes the Expert Panel on the Role of Science at EPA in accordance with requirements of the Federal Advisory Committee Act, 5 U.S.C. app. 9(c). The purpose of the Expert Panel is to provide independent advice and counsel to the Administrator on how best to integrate current, objective scientific information into the process of EPA policy development and program decision-making.

2. Scope of Activity. The activities of the panel will include analyzing problems, conducting reviews, holding meetings, providing reports, making recommendations, forming study groups, and other activities needed to meet the Panel's objectives.

3. Objectives. The Panel will provide expert advice to the Administrator on the role of science at EPA. The Panel will work with EPA offices to accomplish this task. The Panel will make recommendations to the Administrator on how to achieve the following objectives:

- To identify how best to provide the Administrator with up-to-date, objective scientific information in keeping with the Agency's new Strategic Direction;
- To assure proper planning and management;
- To ensure that the research and scientific information needs of the programs and regions are adequately met, and their views incorporated in the scientific advice provided to the Administrator; and
- To enhance the stature of science within the Agency and among the many constituencies with which EPA deals.

4. Composition. The Panel shall be composed of four members, including the chairperson. Members of the Panel will be selected on the basis of their professional qualifications to examine the role of science at EPA. To the extent feasible, the panel membership will represent a range of scientific disciplines relevant to environmental issues. Most members will be appointed as Special Government Employees, subject to the conflict-of-interest restrictions.

5. Meetings. The Panel will meet at the request of the Administrator or the Administrator's designee. A full-time employee of the Agency, who will serve as the Designated Federal Official, will be present at all meetings and is authorized to adjourn any meeting whenever it is determined to be in the public interest. Each meeting will be conducted in accordance with an agenda approved in advance of the meeting by the Designated Federal Official. The estimated annual operating cost of the Panel is $50,000, including 0.5 workyears of staff support. Support for the Panel's activities will be provided by the Office of the Administrator and the Office of Research and Development.

6. Duration. The Panel will terminate by February 29, 1992, unless the Deputy Administrator determines that the Panel will not finish its work within 30 days of the original termination date. If the Deputy Administrator makes such a determination, he can extend the termination date by 30 days without further consultation with GSA. In the event more time is needed, EPA may seek an extension under section 14 of FACA.

Copies of the charter will be filed with the appropriate committees of the Congress and the Library of Congress.

Dated: May 22, 1991.

F. Henry Habicht II,

Deputy Administrator.

[FR Doc. 91-12827 Filed 5-28-91; 8:45 am]

BILLING CODE 6560-50-M

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[OPP-42039E; FRL-3874-8]

Kansas State Plan for Certification of Applicators of Pesticides Classified for Restricted Use

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of approval of amendments to the Kansas State Plan.

SUMMARY: In the **Federal Register** of June 6, 1990, the Agency announced the intention to approve amendments to Kansas' Plan for Certification of Applicators of Pesticides Classified for Restricted Use. EPA hereby announces final approval of these amendments.

ADDRESSES: Copies of the Kansas State Plan and the amendments are available for review at the following locations:

1. Toxics and Pesticides Branch, U. S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, KS 66101.
2. Plant Health Division, Kansas State Board of Agriculture, 109 SW., 9th St., Topeka, KS 66612.

FOR FURTHER INFORMATION CONTACT: Donald Bahnke (913–551–7020), or Dale Lambley (913–296–2283), Director, Plant Health Division, Kansas State Board of Agriculture, 109 SW., 9th St., Topeka, KS 66612.

SUPPLEMENTARY INFORMATION: The Kansas State Plan for Certifying Pesticide Applicators was formally approved by notice in the **Federal Register** of October 28, 1977 (42 FR 56786). The Kansas State Board of Agriculture requested approval of amendments to establish a pesticide dealer registration program, impose additional supervision and training requirements in specified areas, establish civil authority over commercial applicators and some private applicators, and the subdivision of some commercial categories into subcategories.

EPA received two comments on the June 6, 1990 Notice of Intent to Approve. The first comment was from the Kansas State Board of Agriculture. This comment identifies two errors. First, the Notice indicates records of general and restricted use pesticide sales must be maintained by pesticide dealers. This is incorrect as only records of restricted use pesticide sales are required to be maintained. Second, the Notice indicates that all pesticide dealers of both general and restricted use pesticides must register annually. This is basically correct; however, dealers of general use pesticides defined by the Kansas State Board of Agriculture as household pesticides are exempt from this registration requirement. Since this comment only identified technical errors in the Notice of Intent to Approve and not Plan deficiencies, no further action is required.

The second comment on the Plan was from the Baker Performance Chemicals, Inc. (BFC). The first part of the comment objected to the requirement that a certified applicator be physically present during an application performed by a nonregistered pest control technician. The Agency and the Kansas State Board of Agriculture believe that this provision provides additional protection, which outweighs the possible disruption to a business' normal operating procedures. Therefore, this provision is retained.

The second part of BFC's comment requested that the additional certification categories of non-agricultural herbicides and microbiocides be added to the Plan. This request was rejected because the existing categories/subcategories already include the uses in question. Further, the categories proposed by BFC are highly specialized and would be utilized by only a small group of pesticide applicators.

EPA hereby grants final approval of the amendments to the Kansas Plan for Certification of Applicators of Pesticides Classified for Restricted Use.

Dated: April 22, 1991.

Morris Kay,

Regional Administrator, Region VII.

[FR Doc. 91–12522 Filed 5–28–91; 8:45 a.m.]

BILLING CODE 6560–50–F

[OPP–42067; FRL–3840–5]

Shoshone-Bannock Tribes; Notice of Intent to Approve the Tribal Plans for the Certification of Pesticide Applicators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to approve Tribal Plan.

SUMMARY: The Fort Hall Business Council governing body of the Shoshone-Bannock Tribes has submitted to EPA through the Department of Interior a Plan for the certification of applicators of restricted use pesticides. Notice is given of the intention of the Regional Administrator, EPA Region 10, to approve this Plan. A summary of the Plan appears below. Interested persons are invited to comment.

DATES: Written comments must be submitted on or before June 28, 1991.

ADDRESSES: Address comments identified by the docket control number OPP–42067 to: Allan Welch, Pesticides and Toxic Substances Branch (AT–083), Air and Toxics Division, Region 10, U. S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Allan Welch (206–442–1960).

SUPPLEMENTARY INFORMATION: In accordance with the provisions of section 11(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, U.S.C. 136(b) and 40 CFR part 171, the Fort Hall Business Council governing body of the Shoshone-Bannock Tribes has submitted a Tribal Plan for the certification of applicators of restricted use pesticides to EPA through the Department of Interior for approval.

I. Summary of Plan

The Fort Hall Council governing body has designated the Pesticide Control Officer, within the Shoshone-Bannock Tribes Land Use Department, as the responsible official for the administration of the pesticide applicator certification program.

Legal authority for the certification program is contained in the Shoshone-Bannock Tribal Pesticides Code. A copy of the Code is attached to the Plan.

The Plan lists the personnel available to carry out the certification program. Also, it lists the Idaho State Department of Agriculture and the Idaho Cooperative Extension Service as Cooperating Agencies. Funding to operate the certification plan will be provided by the Shoshone-Bannock Tribes and through Cooperative Agreement Awards from EPA.

The Shoshone-Bannock Tribes' Pesticide Control Officer will submit an annual report to EPA by October 30 of each year and other reports requested by the Administrator of EPA. The annual report will cover the period from October 1 through September 30.

The Shoshone-Bannock Tribes' Plan utilizes the Idaho State Certification program to determine applicator competence. An Idaho State pesticide license is a prerequisite to obtaining a tribal certification. Also, the Plan requires applicants to pass a written competency examination administered by the tribes on Tribal Law and Environmental Ethics. Once these conditions are met, an applicant, after paying the fee, can receive a Shoshone-Bannock Tribal applicator certification. The certification and licensing document will list the category(ies) and have the same expiration date that appears on the Idaho credential. It is estimated that 150 private applicators and 140 commercial applicators will require Shoshone-Bannock Tribes Certification.

The commercial applicator categories listed in the Plan are the same as those listed in the Idaho Plan. Shoshone-Bannock Tribes' categories are:

1. Agricultural Insecticide.
2. Agricultural Herbicide.
3. Agricultural Soil Fumigation.
4. Livestock Pest Control.
5. Ornamental Insecticide.
6. Ornamental Herbicide.
7. General Pest Control Operator (PCO).
8. Structural Destroying Pests.
9. Right-of-Way Herbicide.
10. Rodent Control.
11. Aquatic Weed Control.
12. Seed Treatment.
13. Commodity Fumigation.
14. Potato Cellar Pest Control.
15. Weed Preservative.
16. Mosquito Control.
17. Forest Environment.
18. General Vertebrate.
19. Dealer Manager.
20. Consultant.

The general standards of competency will be the same as those listed in 40 CFR 171.4(b) and 171.6. The specific standards of competency for each category or subcategory are the same as the standards listed in 40 CFR 171.4(c).

The certification period for private and commercial applicators will be every 3 years. Shoshone-Bannock Tribes may revoke the tribal certification of any individual whose Idaho certification is revoked.

The Tribes will coordinate certification activities with the Idaho State Department of Agriculture. Tribal applicator training needs will be coordinated with the Idaho Cooperative Extension Service.

II. Public Comments

Copies of the Plan, the Tribal Pesticides Code, and all written comments are available for review at the following locations during normal business hours.

1. Shoshone-Bannock Tribes Land Use Department, Fort Hall, Idaho 83203.
2. Pesticides and Toxic Substances Branch, Air and Toxics Division, Region 10, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101, Telephone: (206) 442–1960.
3. Field Operations Division (H7506C), Office of Pesticide Programs, rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, Telephone: (703) 557–3262.

Interested persons are invited to submit written comments on the proposed Tribal Plan.

Dated: May 1, 1991.

Charles Findley,

Acting Regional Administrator, Region X.

[40 FR Doc. 91–12634 Filed 5–28–91; 8:45]

BILLING CODE 6560–50–F

[PF–547; FRL–3925–5]

Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces initial filings for pesticide petitions (PP) and for food and feed additive petitions (FAP) and the amendment of an FAP proposing the establishment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

ADDRESSES: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/ telephone number:

Product Manager	Office location/ telephone number	Address
George LaRocca (PM 16).	Rm. 204, CM #2, 703-557-2400.	1921 Jefferson Davis Hwy., Arlington, VA.
Susan Lewis (PM 21).	Rm. 227, CM #2, 703-557-1900.	Do.
Joanne Miller (PM 23).	Rm. 237, CM #2, 703-557-1830.	Do.
Robert Taylor (PM 25).	Rm. 245, CM #2, 703-557-1900.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions and/or food/feed additive petitions as follows proposing the establishment and/or amendment of tolerances or regulations for residues of certain pesticide chemicals in or on certain agricultural commodities.

Initial Filings

1. *PP 0F3915.* Mobay Corp., P.O. Box 4913, Hawthorn Rd., Kansas City, MO 64120-0013, proposes to amend 40 CFR 180.349 by establishing a regulation to permit combined residues of nemacur (ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl)phosphoramidate) and its cholinesterase-inhibiting metabolites ethyl 3-methyl-4-(methylsulfinyl)phenyl (1-methylethyl)phosphoramidate and ethyl 3-methyl-4-(methylsulfonyl)phenyl (1-methylethyl)phosphoramidate in or on plums at 0.02 ppm, almonds at 0.3 ppm, almond hulls at 0.4 ppm, walnuts at 0.4 ppm, and pecans at 3.5 ppm. The analytical method used is gas chromatography with flame photometric detector. (PM 21)

2. *PP 1F3971.* E.R. Butts International, Inc., 555 Clinton Ave., P.O. Box 3337, Bridgeport, CT 06605-0337, proposes to amend 40 CFR part 180 by establishing a regulation to exempt from the requirement of a tolerance residues of the biofungicide *Streptomyces griseoviridis* in or on seeds, cuttings, and plants. (PM 21)

3. *PP 1F3972.* Autochem North America, Inc., Agrichemicals Division, Three Parkway, Philadelphia, PA 19102, proposes to amend 40 CFR 180.110 by establishing a regulation to reduce residue levels of maneb in or on broccoli from 10 ppm to 7 ppm. The analytical method used is gas chromatography and high-photometric liquid chromatography. (PM 21)

4. *PP 1F3973.* Merck Sharp & Dohme Research Laboratories, Division of Merck & Co., Inc., Hillsborough Rd., Three Bridges, NJ 0887, proposes to amend 40 CFR 180.449 by establishing a regulation to permit combined residues of abamectin including its delta 8,9-isomer in or on lettuce at 0.05 ppm, and

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almonds and walnuts at 0.005 ppm. The analytical method used is high-pressure liquid chromatography. (PM 15)

5. *FAP 0H5601.* Mobay Corp., P.O. Box 4913, Hawthorn Rd., Kansas City, MO 64120-0013, proposes to amend 40 CFR 185.2950 by establishing a food additive regulation to permit combined residues of nemacur (ethyl 3-methyl-4-(methylthio) phenyl (1-methylethyl)phosphoramidate) and its cholinesterase-inhibiting metabolites ethyl 3-methyl-4-(methylsulfinyl)phenyl(1-methylethyl)phosphoramidate and ethyl 3-methyl-4-(methylsulfonyl)phenyl(1-methylethyl)phosphoramidate in or on prunes at 0.04 ppm. The analytical method used is gas chromatography with flame photometric detector. (PM 21)

6. *FAP 1H5611.* Merck Sharp & Dohme, Research Laboratories, Division of Merck & Co., Inc., Hillsborough Rd., Three Bridges, NJ 08887, proposes to amend 40 CFR part 186 by establishing a feed additive regulation for combined residues of abamectin and its delta 8,9-isomer in or on almond hulls at 0.1 ppm. The analytical method used is high-pressure liquid chromatography. (PM 15)

Amended Petition

7. *FAP 0H5595.* Rhone-Poulenc Ag Co., P.O. Box 12014, Research Triangle Park, NC 27709, proposes to amend 40 CFR 185.2700 to establish a tolerance for the plant growth regulator ethephon [(2-chloroethyl)phosphonic acid] in or on sugarcane molasses at 3.0 parts per million (ppm) and baagasse at 0.25 ppm in conjunction with an experimental use program. A previous notice of FAP 0H5595 proposing to amend 40 CFR 185.2700 by establishing a tolerance of 1.5 ppm on sugarcane molasses appeared in the **Federal Register** of May 9, 1990 (55 FR 19320).

Authority: 7 U.S.C. 136a.

Dated: May 14, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91-12629; Filed 5-28-91; 8:45 am]

BILLING CODE 6560-50-F

[OPP-30319; FRL 3892-6]

Stine Microbial Products; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by June 28, 1991.

ADDRESSES: By mail submit comments identified by the document control number [OPP-30319] and the registration/file number to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Attention PM 21, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: rm. 246, Attention PM 21, Registration Division (H7505C), Environmental Protection Agency, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: PM 21, Susan Lewis, rm. 227, CM #2, (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 63950-R. Applicant: Stine Microbial Products, 4722 Pflaum Road, Madison, WI 53704. Product name: Blue Circle. Fungicide. Active ingredient: *Pseudomonas cepacia* type Wisconsin at 3.8 percent. Proposed classification/Use: General. To be used on various crops as a seed treatment. (PM 21)

2. File Symbol: 63950-E. Applicant: Stine Microbial Products. Product name: SMP PcpWI. Fungicide. Active ingredient: *Pseudomonas cepacia* type Wisconsin at 3.8 percent. Proposed classification/Use: General. For manufacturing use. (PM 21)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Program Management and Support Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703-557-3262), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: May 10, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91-12293 Filed 5-28-91; 8:45 am]

BILLING CODE 6560-50-F

[OPP-30312; FRL 3875-6]

Vinclozolin; Receipt of Request to Amend Registration to Delete Use

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt.

SUMMARY: This notice, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., announces EPA's receipt of a request from the BASF Corporation to amend the registration of their vinclozolin, 3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione, pesticide products to delete all plum and prune use. The products are marketed under the tradenames Ronilan WP Fungicide (EPA Registration No. 7969-53), Ronilan FL Fungicide (EPA Registration No. 7969-62), and Ronilan DF Fungicide (EPA Registration No. 7969-85). EPA expects to approve these requests thereby amending affected registrations of BASF products containing vinclozolin.

DATES: Modifications of registrations shall be effective August 27, 1991 and all future distribution, sale, or use of affected vinclozolin products shall be in accordance with the terms and conditions described herein.

FOR FURTHER INFORMATION CONTACT: By mail: Susan T. Lewis, Product Manager (PM) 21, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. 703-557-1900.

SUPPLEMENTARY INFORMATION: On October 29, 1990, BASF Corporation , PO Box 13256, Research Triangle Park, NC 27709-3528 submitted applications to amend registration of Ronilan WP Fungicide (EPA Registration No. 7969-53), Ronilan FL Fungicide (EPA Registration No. 7969-62), and Ronilan DF Fungicide (EPA Registration No. 7969-85) to delete the plum and prune use.

EPA has reviewed the existing stocks and relabeling elements of the registrant's request and has concluded that all existing stocks under the control of BASF Corporation must be labeled within in 1 month of EPA's approval of the request for use deletion and all new product as produced must bear approved labels reflecting the use restriction.

EPA has received and expects to approve the request described above effective August 27, 1991, incorporating the requested actions and the existing stocks provisions as described above.

Authority: 7 U.S.C. 136.

Dated: May 20, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91-12633 Filed 5-28-91; 8:45 am]

BILLING CODE 6560-50-F

[OPP-180945; FRL 3887-2]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the six States as listed below. Four crisis exemptions were initiated by various States, including one by the United States Department of Agriculture. Also granted were two quarantine exemptions to the United States Department of Agriculture/APHIS. These exemptions were issued in February, except for one issued in January. They are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific, crisis, and quarantine exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. California Department of Food and Agriculture for the use of avermectin B_1 on strawberries to control two-spotted spider mites; February 14, 1991, to February 13, 1992. (Jim Tompkins)

2. Iowa Department of Agriculture and Land Stewardship for the use of Pro-Gro (30% carboxin/50% thiram) on onions seeds to control onion smut; February 15, 1991, to May 31, 1991. (Susan Stanton)

3. Minnesota Department of Agriculture for the use of Pro-Gro (30% carboxin/50% thiram) on onion seed to control onion smut; February 15, 1991, to May 31, 1991. (Susan Stanton)

4. Oregon Department of Agriculture for the use of fosetyl-aluminum (Aliette) on hops to control hop downy mildew; February 11, 1991, to September 15, 1991. (Susan Stanton)

5. Washington Department of Agriculture for the use of fosetyl-aluminum (Aliette) on head and leaf lettuce to control downy mildew; February 11, 1991, to October 31, 1991. (Susan Stanton)

6. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of Pro-Gro (30% carboxin/50% thiram) on onion seed to control onion smut; February 15, 1991, to May 31, 1991. (Susan Stanton)

Crisis exemptions were initiated by the:

1. Louisiana Department of Agriculture on February 15, 1991, for the use of triadimefon on strawberries to control powdery mildew. This program has ended. (Susan Stanton)

2. Louisiana Department of Agriculture and Forestry on February 22, 1991, for the use of pendimethalin on sugarcane to control itchgrass and browntop panicum. The need for this program is expected last until June 30, 1991. (Jim Tompkins)

3. Texas Department of Agriculture on February 18, 1991, for the use of iprodione on cabbage to control alternaria brassicae. Since it was anticipated that this program would be needed for more than 15 days, Texas is expected to request a specific exemption to continue it. (Libby Pemberton)

4. United States Department of Agriculture on January 24, 1991, for the use of methyl bromide on durian to control mealybugs. This program has ended. (Libby Pemberton)

EPA has granted quarantine exemptions to the:

1. United States Department of Agriculture/APHIS for the use of diquat dibromide on citrus trees to control citrus canker; February 5, 1991, to February 4, 1994. (Jim Tompkins)

2. United States Department of Agriculture/APHIS for the use of Quaternary Ammonium Compounds on field equipment, clothing, shoes, trucks, vans, tires, and other exposed surfaces to control citrus canker; February 5, 1991, to February 4, 1994. USDA had initiated a crisis exemption for this use. (Jim Tompkins)

Authority: 7 U.S.C. 136.

Dated: May 10, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 91-12635 Filed 5-28-91; 8:45 am]

BILLING CODE 6560-50-F

[OPTS-44570; FRL 3827-4]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on 1,1,1-trichloroethane (CAS No. 71-55-6), and C.I. disperse blue 79:1 (CAS No. 3618-72-2) submitted pursuant to consent orders under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

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SUPPLEMENTARY INFORMATION: Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for 1,1,1-trichloroethane were submitted by the Halogenated Solvents Industry Alliance pursuant to a consent order at 40 CFR 799.5000. They were received by EPA on March 12, 1991. The submission describes the validation with scopolamine and methscopolamine of a test of short-term memory in rats. Health effects testing is required by this consent order. This chemical is used as a cleaning stabilizer.

Test data for C.I disperse blue 79:1 were submitted by the U.S. Operating Committee of ETAD on behalf of the test sponsors and pursuant to a consent order at 40 CFR 799.5000. They were received by EPA on May 3, 1991. The submission describes the developmental toxicity evaluation of C.I. disperse blue administered by gavage to New Zealand white rabbits. Health effects testing is required by this consent order. This chemical is used for dyeing or printing polyester fibers.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44570). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: May 20, 1991.

Charles M. Auer,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 91-12630 Filed 5-28-91; 8:45 am]

BILLING CODE 6560-50-F

[FRL-3969-5]

Public Water System Supervision Program: Primacy Delegation for the State of Indiana

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Indiana has applied for primary enforcement authority for the Public Water Supply Supervision (PWSS) program. Indiana has adopted drinking water regulations corresponding to the National Primary Drinking Water Regulations promulgated by the EPA. EPA has determined that the State regulations and program constituents meet the Federal requirements for primacy under 40 CFR 142.10, except for the Total Coliform Rule and Surface Water Treatment Rule. Therefore, except for the Total Coliform Rule and Surface Water Treatment Rule, EPA has tentatively decided to approve this State request for primacy authorization for the PWSS program. EPA is conditioning approval of Indiana's application upon the State's correction or clarification of certain provisions in the State statutes or regulations to ensure that the Indiana rules are fully consistent with Federal drinking water regulations. A list of the State statutory or regulatory provisions identified by EPA as needing corrections or clarifications is included in the docket. These items do not raise significant issues about Indiana's authority for, or implementation of, PWSS primacy.

All interested parties are invited to submit written comments or request a public hearing. Submission of written comments, or a request for a public hearing must be made within 30 days of the date of this Notice to the Regional Administrator, at the address shown below. If requests which indicate sufficient interest and/or significance are received by the end of this Notice period, a public hearing will be held. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his own motion, approval of Indiana's application shall become effective 30 days from the date of this Notice.

Any request for a public hearing must include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing, (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing, (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Indiana Department of Environmental Management, Drinking Water Branch, 105 South Meridian Street, Indianapolis, Indiana 46206, State Docket Officer: Mr. Robert Hilton, Phone: (317) 233-4240.

United States Environmental Protection Agency, Region 5, Safe Drinking Water Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Thomas Poleck, Region 5, Drinking Water Section at the Chicago address given above, telephone 312/886-2407, or FTS/886-2407.

(Sec. 1413 of the Safe Drinking Water Act, as amended. (1986) and 40 CFR 142.10 of the National Primary Drinking Water Regulations)

Dated: May 20, 1991.

Ralph R. Bauer,

Acting Regional Administrator, EPA, Region 5.

[FR Doc. 91-12626 Filed 5-28-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

May 21, 1991.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036 (202) 452-1422. For further information on these submissions contact Judy Boley, Federal Communications Commission (202) 632-7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503 (202) 395-4814.

OMB Number: 3060-0213.

Title: Section 73.3525, Agreements for removing application conflicts.

Action: Revision.

Respondents: Business or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 238 responses; 8 hours average burden per response; 1,904 hours total annual burden.

Need and Uses: Section 73.3525 requires applicants in a comparative proceeding for a broadcast station construction permit who enter into an agreement to withdraw, dismiss or amend an application to file with the FCC a joint request for approval of such agreement. The Report and Order, in MM Docket No. 90-263, adopted 12/31/90, limits settlement payments that may be received by competing applicants for new broadcast stations, until commencement of the trial phase of the proceeding, to legitimate and prudent out-of-pocket expenses, and prohibits any payments therefore. The attached Memorandum Opinion and Order, in MM Docket No. 90-263, adopted on 5/9/91, modified its decision to allow competing applicants to recover legitimate and prudent out-of-pocket expenses at any stage in the comparative hearing process. The data is used by FCC staff to assure that the agreement is in compliance with its Rules and Regulations and section 311 of the Communications Act of 1934, as amended.

OMB Number: 3060-0040.

Title: Application for Aircraft Radio Station License and Temporary Aircraft Radio Station Operating Authority.

Form Number: FCC Form 404/404A.

Action: Revision.

Respondents: Individuals or households, states or local governments, non-profit institutions and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 38,000 responses; 33 hours average burden per response; 12,540 hours total annual burden.

Need and Uses: FCC Rules require that applicants filed the FCC 404 for a new station license, renewal, or modification of an existing license. An applicant filing for a new station license may operate the aircraft radio station pending issuance of a station license for a period of 90 days under a temporary operating authority evidenced by a properly executed certification on FCC 404A. The data will be used by FCC staff to determine eligibility for a radio station authorization, and to issue a radio station license. Data is also used by Compliance personnel in conjunction with Field Engineers for enforcement and interference resolution purposes.

OMB Number: 3060-0079.

Title: Application to Renew or Modify an Amateur Club, RACES or Military Recreation Station License.

Form Number: FCC Form 610B

Action: Extension.

Respondents: Non-profit institutions.

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 200 responses; .084 hours average burden per response; 17 hours total annual burden.

Need and Uses: FCC Rules require applicants to file FCC Form 610B to renew and/or modify Amateur Club, Radio Amateur Civil Emergency Service (RACES), or Military Recreation station licenses. The data is used by examiners to determine if the applicant is eligible for renewed and/or modified Amateur Club, RACES, or Military Recreation Station license.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-12605 Filed 5-28-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Companhia Anonima Venezolana De Navegacion, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties my inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-006190-057.

Title: United States Atlantic and Gulf/Venezuela Freight Association.

Parties: Companhia Anonima Venezolana De Navegacion, American Transport Lines, Inc., Venezuelan Container Service, King Ocean Service de Venezuela, S.A., Maritima Aragua, S.A., Consorcio Naviero de Occidente, C.A.

Synopsis: The proposed amendment would modify article 5(b) by (1) eliminating the restriction on the number of container yards (CY) and container freight stations (CFS) that a member may have; (2) stipulating that the location of the CY's and/or CFS's shall be set forth in the tariff and (3) providing that no CY or CFS may be a shipper's or consignee's facility.

Agreement No.: 212-010027-29.

Title: Brazil/U.S. Atlantic Coast Agreement.

Parties: Companhia de Navegacao Lloyd Brasileiro, Companhia de Navegacao Maritima Netumar, American Transport Lines, Inc., Empresa Lineas Maritimas Argentinas S.A., A. Bottacchi S.A. de Navegacion C.F.I.E., Hamburg-Sudamerikanische Dampfschifffahrts-Gesellschaft Eggert & Amsinck (Columbus Line); Van Nievelt Goudriaan and Co., B.V.

Synopsis: The proposed amendment would delete Columbus Line, American Transport Lines, Inc., Empresa Lineas Maritimas Argentinas, S.A. and Van Nievelt Goudriaan and Co., B.V. as parties to the Agreement. It would also redistribute pool shares and sailing requirements among the remaining parties.

Agreement No.: 212-010027-030.

Title: Brazil/U.S. Atlantic Coast Agreement.

Parties: Companhia de Navegacao Lloyd Brasileiro, Companhia de Navegacao Maritima Netumar, A. Bottacchi S.A. de Navegacion C.F.I.I.

Synopsis: The proposed amendment would add Companhia Maritima Nacional, American Transport Lines, Inc. and Empresa Lineas Maritimas Argentinas, S.A. as parties to the Agreement effective July 1, 1991. It would reestablish a 100 percent carrying rate for the pool period July 1, 1991 to September 30, 1991. It would also shorten the resignation notice period from 90 days to 30 days, and it would provide for four quarterly pool periods for 1991. Further, it would delete provisions concerning the immediate effectiveness of certain amendments to the agreement.

Dated: May 22, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-12578 Filed 5-28-91; 8:45 am]

BILLING CODE 6730-01-M

L.A. Cruise Ship Terminals Inc./Starlite Cruises (USA), Inc.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the

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following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC. Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200519.

Title: A. Cruise Ship Terminals Inc./ Starlite Cruises (USA), Inc. Terminal Agreement.

Parties. A. Cruise Ship Terminals Inc. Starlite Cruises (USA), Inc. (Starlite)

Synopsis: The Agreement, filed May 20, 1991, provides Starlite certain passenger vessel terminal facilities and services at the Port of Los Angeles Harbor.

Agreement No.: 224–200520.

Title: Georgia Ports Authority/Pan American Independent Line Terminal Agreement.

Parties. Georgia Ports Authority
Pan American Independent Line (PAIL)

Synopsis: The Agreement, filed May 20, 1991, provides PAIL a per container consolidated rate for wharfage, dockage, crane rental as well as other per container rates for related terminal services at Containerport, Savannah, Georgia. The Agreement's initial term is for three years.

Agreement No.: 224–200521.

Title: Maryland Port Administration/ Hobelmann Port Services, Inc. Terminal Agreement.

Parties. Maryland Port Administration
Hobelmann Port Services, Inc.

Synopsis: The Agreement, filed May 20, 1991, provides for the month to month lease of 10 acres at the Masonville Marine Terminal in the Port of Baltimore for the storage of import and export motor vehicles.

Agreement No.: 224–200370.

Title: Georgia Ports Authority/Star Shipping A/S Terminal Agreement.

Parties. Georgia Ports Authority
Star Shipping A/S

Synopsis: The Agreement, filed May 20, 1991, extends the term of the basic agreement between the parties for an additional year.

Dated: May 22, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–12567 Filed 5–28–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

NCNB Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 17, 1991.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. NCNB Corporation, Charlotte North Carolina; to engage *de novo* through its subsidiary, NCNB Capital Markets, Inc., Charlotte, North Carolina, in making, acquiring and servicing loans or other extensions of credit (including issuing letters of credit and accepting drafts) for the account of NCNB Capital Markets, Inc. or for the account of others pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Terrapin Bancorp, Inc., Elizabeth, Illinois; to engage *de novo* in conducting general insurance activities in Elizabeth, Illinois, a town with a population of less than 5,000 people, pursuant to § 225.25(b)(8) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 22, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-12507 Filed 5-28-91; 8:45 am]

BILLING CODE 6210-01-F

Telluride Bancorp, Ltd., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 17, 1991.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Telluride Bancorp, Ltd, Telluride, Colorado; to acquire San Miguel Investment Company, Norwood, Colorado, and thereby indirectly acquire San Miguel Basin State Bank, Norwood, Colorado.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Roscoe Financial Corporation, Roscoe, Texas; to become a bank holding company by acquiring 75.1 percent of the voting shares of The Roscoe State Bank, Roscoe, Texas.

Board of Governors of the Federal Reserve System, May 22, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-12596 Filed 5-28-91; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[Docket No. 9244]

Harbour Group Investments, L.P.; and Diethelm Holding (U.S.A.) Ltd.; Proposed Consent Agreements With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreements.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, the two consent agreements, accepted subject to final Commission approval, would require, among other things, two producers of telescopes to seek prior Commission approval for certain mergers or acquisitions for a period of ten years.

DATES: Comments must be received on or before July 29, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Steven Newborn, FTC/S–2308, Washington, DC 20580. (202) 326–2815.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The agreement herein, by and between Harbour Group Investments, L.P. ("Harbour Group"), a limited partnership, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission ("the Commission"), is entered into in accordance with the Commission's Rules governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Harbour Group is a limited partnership organized under the laws of Missouri, with its executive office at 7701 Forsyth Blvd., suite 600, Clayton, Missouri 53103.

2. Harbour Group has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violations of section 5 of the Federal Trade Commission Act, as amended, and section 7 of the Clayton Act, as amended. Harbour Group denies said charges.

3. Harbour Group admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Harbor Group wavies:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise challenge or contest the validity of the Order entered pursuant this agreement; and

d. All rights under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the complaint issued by the Commission, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify Harbour Group, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of this proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by Harbour Group that the law has been violated as alleged in the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to Harbour Group, (1) issue its decision containing the following Order in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect as, and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed to order to Harbour Group's address as stated in this agreement shall constitute service. Harbour Group waives any right it may have to any other manner of service. The complaint may be used in construing the terms of this Order, and no agreement, understanding, representation or interpretation not contained in the Order or this agreement may be used to vary or contradict the terms of the Order.

8. Harbour Group has read the complaint and the Order contemplated hereby. Harbour Group understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Harbour Group further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

For purposes of this Order, the following definitions shall apply:

Harbour Group means Harbour Group Investments, L.P., as well as its officers, employees, representatives, agents, parents, divisions, subsidiaries, operating companies, successors, and assigns, as well as the officers, employees and agents of its parents, divisions, subsidiaries and operating companies.

Meade means Meade Instruments, a subsidiary of Harbour Group, as well as its officers, employees, representatives, agents, parents, divisions, subsidiaries, successors, and assigns, as well as the officers, employees and agents of its parents, divisions and subsidiaries.

SCTs means mid-sized Schmidt-Cassegrain telescopes with apertures of eight (8) to eleven (11) inches used for astronomical viewing.

II

It is ordered That for a period commencing on the date this Order

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becomes final and continuing for ten (10) years, Harbour Group shall not acquire, without the prior approval of the Commission, directly or indirectly, through subsidiaries or otherwise, the whole or any part of the stock, share capital, equity interest, or assets, other than purchases of manufactured product in the ordinary course of business, of any company engaged in the manufacture or sale of SCTs in the United States.

III

It is further ordered That Harbour Group shall require, as a condition precedent to the closing of any sale or other disposition of all or a substantial part of the stock of Meade, or a substantial part of the assets of Meade to any party that is engaged in or, to the best of Harbour Group's knowledge upon reasonable inquiry, is planning to, considering or contemplating engaging in the manufacture of SCTs in the United States or elsewhere for sale in the United States, that the acquiring party file with the Commission, prior to the closing of such sale or other disposition, a written agreement to be bound by the provisions of this Order.

IV

It is further ordered That Harbour Group shall within sixty (60) days after this Order becomes final and one year from the date this Order becomes final and annually for nine (9) years thereafter, file with the Commission a verified written report setting forth in detail the manner and form in which it has complied and intends to comply with this Order.

V

It is further ordered That, for the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Harbour Group made to its principal office, Harbour Group shall permit any duly authorized representatives of the Federal Trade Commission:

(A) Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Harbour Group relating to any matters contained in this Order; and

(B) Upon five days notice to Harbour Group and without restraint or interference from Harbour Group, to interview officers or employees of Harbour Group, who may have counsel present, regarding such matters.

VI

It is further ordered That Harbour Group shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment or sale resulting in the emergence of a successor partnership or corporation, the creation, dissolution or sale of subsidiaries (except subsidiaries not engaged in any manner, directly or indirectly, in the manufacture or sale of SCTs), including, but not limited to, sale of the stock or assets of Meade, or any other change that may affect compliance obligations arising out of this Order.

Agreement Containing Consent Order

The agreement herein, by and between Diethelm Holding (U.S.A.) Ltd. ("Diethelm USA"), a corporation, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission ("the Commission"), is entered into in accordance with the Commission's Rules governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Diethelm USA is a corporation organized under the laws of Nevada, with its executive office at 17 Gina Drive, Centerport, New York 11721.

2. Diethelm USA has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violations of section 5 of the Federal Trade Commission Act, as amended, and section 7 of the Clayton Act, as amended. Diethelm USA denies said charges.

3. Diethelm USA admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Diethelm USA waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise challenge or contest the validity of the Order entered pursuant this agreement; and

d. All rights under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the complaint issued by the Commission, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify Diethelm USA, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of this proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by Diethelm USA that the law has been violated as alleged in the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commision pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to Diethelm USA, (1) issue its decision containing the following Order in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect as, and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed to order to Diethelm USA's address as stated in this agreement shall constitute service. Diethelm USA waives any right it may have to any other manner of service. The compliant may be used in construing the terms of this Order, and not agreement, understanding, representation or interpretation not contained in the Order or this agreement may be used to vary or contradict the terms of the Order.

8. Diethelm USA has read the complaint and the Order contemplated hereby. Diethelm USA understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Diethelm USA further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

For purposes of this Order, the following definitions shall apply:

Diethelm USA means Diethelm Holding (U.S.A.) Ltd., as well as its officers, employees, representatives, agents, parents, divisions, subsidiaries, successors, and assigns, as well as the officers, employees and agents of its parents, divisions and subsidiaries.

Celestron means Celestron International, a subsidiary of Diethelm USA, as well as its officers, employees, representatives, agents, parents, divisions, subsidiaries, successors, and assigns, as well as the officers, employees and agents of its parents, divisions and subsidiaries.

SCTs means mid-sized Schmidt-Cassegrain telescopes with apertures of eight (8) to eleven (11) inches used for astronomical viewing.

II

It is ordered That for a period commencing on the date this Order becomes final and continuing for ten (10) years, Diethelm USA shall not acquire, without the prior approval of the Commission, directly or indirectly, through subsidiaries or otherwise, the whole or any part of the stock, share capital, equity interest, or assets that have at any time been used in the manufacture or sale of SCTs, other than purchases of manufactured product in the ordinary course of business, of any company engaged in the manufacture or sale of SCTs in the United States, *provided*, this paragraph shall not require Diethelm USA to obtain prior approval of the Commission to purchase a foreign company that established its SCT manufacturing pursuant to contract with Diethelm USA and who, pursuant to such contract, may sell SCTs in the United States only to or through Diethelm USA or under the Celestron tradename.

III

It is further ordered That Diethelm USA shall require, as a condition precedent to the closing of any sale or other disposition of all or a substantial part of the stock of Celestron, or a substantial part of the assets of Celestron to any party that is engaged in or to the best of Diethelm USA's knowledge upon reasonable inquiry, is planning to, considering or contemplating engaging in the manufacture of SCTs in the United States or elsewhere for sale in the United States, that the acquiring party filed with the Commission, prior to the closing of such sale or other disposition, a written agreement to be bound by the provisions of this Order.

IV

It is further ordered That Diethelm USA shall within sixty (60) days after this Order becomes final and one year from the date of this Order becomes final and annually for nine (9) years thereafter, file with the Commission a verified written report setting forth in detail the manner and form in which it has complied and intends to comply with this Order.

V

It is further ordered That, for the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Diethelm USA made to its principal office, Diethelm USA shall permit any duly authorized representatives of the Federal Trade Commission:

(A) Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records documents in the possession or under the control of Diethelm USA relating to any matters contained in this Order; and

(B) Upon five days notice to Diethelm USA and without restraint or interference from Diethelm USA, to interview officers or employees of Diethelm USA, who may have counsel present, regarding such matters.

VI

It is further ordered That Diethelm USA shall notify the Commission at least thirty (30) days prior to any proposal change in the respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation or partnership, the creation, dissolution or sale of subsidiaries (except subsidiaries not engaged in any manner, directly or indirectly, in the manufacture or sale of SCTs), including, but not limited to, sale of the stock or assets of Celestron or any other change that may affect compliance obligations arising out of this Order.

Analysis of Proposed Consent Orders to Aid Public Comment

The Federal Trade Commission has accepted agreements containing proposed consent orders from Harbour Group Investments L.P. ("Harbour Group") and Diethelm Holding (U.S.A.) Ltd. ("Diethelm"), concerning a proposed joint venture between their respective telescope subsidiaries, Meade Instruments ("Meade") and Celestron International ("Celestron"). The proposed orders require Harbour Group and Diethelm to seek prior approval for certain mergers or acquisitions for a period of ten (10) years.

The proposed consent orders have been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreements and any comments received and will decide whether it should withdraw from the agreements or make final the agreements' proposed orders.

In May 1990, Harbour Group and Diethelm entered into a joint venture agreement which when consummated would combine their respective telescope subsidiaries. On October 15, 1990, the Federal Trade Commission filed a preliminary injunction action against Harbour Group and Diethelm in the United States District Court for the District of Columbia seeking to enjoin the proposed joint venture pending an administrative trial on the legality of the proposed joint venture. The Commission won a preliminary injunction on November 8, 1990; the district court's opinion supporting the injunction was issued on November 19, 1990.

On November 28, 1990, the Commission issued an administrative complaint against Harbour Group and Diethelm which alleges that the proposed joint venture violates the provisions of section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act. The complaint alleges that both Meade and Celestron are competitors in the market for mid-sized Schmidt-Cassegrain telescopes ("SCTs"). The complaint also alleges that the market is highly concentrated and that the barriers to entry into the manufacture and sale of SCTs are significant. The complaint alleges that the effects of the proposed joint venture would be substantially to lessen competition or tend to create a monopoly in the SCT market.

The first paragraph of each proposed order defines the terms used in the order. Paragraph II of each order bans Harbour Group and Diethelm respectively from acquiring, directly or indirectly, without the prior approval of the Federal Trade Commission, any stock, share capital, or assets used to manufacture or sell SCTs of any company that has manufactured or sold SCTs in the United States. This ban lasts ten (10) years from the date the order becomes final.

The third paragraph of each proposed order requires that any successor partnership or corporation to Meade or Celestron that is engaged in the manufacture of SCTs in the United States or is considering doing so shall agree to be bound by this order to the same extent as Harbour Group and Diethelm.

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Paragraphs IV and V of the proposed orders require that Harbour Group and Diethelm each provide annual reports to the Commission of their compliance with provisions of the order and that the Commission be afforded an opportunity to review their compliance with the order, if necessary.

Paragraph VI of the proposed orders require that Harbour Group and Diethelm each notify the Commission at least thirty (30) days prior to any proposed change in the partnership or corporation that may affect their compliance obligations arising out of the order.

The Commission anticipates that the effect of the proposed orders will be to maintain the opportunity for competition in the market for SCTs in the United States.

The agreements are for settlement purposes only and do not constitute an admission by Harbour Group or Diethelm that the law has been violated as alleged in the complaint issued by the Commission.

The purpose of this analysis is to facilitate public comment on the proposed orders, and it is not intended to constitute an official interpretation of the agreements and proposed orders or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 91-12613 Filed 5-28-91; 8:45 am]

BILLING CODE 6750-01-M

[Docket No. C-3329]

Nobody Beats the Wiz, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a New Jersey retailer of consumer electronic goods from violating the Pre-Sale Availability Rule, promulgated under the Magnuson-Moss Warranty Act, requiring warranty disclosures. In addition, respondent is required to instruct all current and future Wiz retail-store managers engaged in the sale of consumer products as to their obligations and duties under the Act.

DATES: Complaint and Order issued May 7, 1991.[1]

FOR FURTHER INFORMATION CONTACT: Alice Au, Federal Trade Commission, New York Regional Office, 150 William St., suite 1300, New York, NY 10038, (212) 264-1207.

SUPPLEMENTARY INFORMATION: On Monday, February 25, 1991, there was published in the **Federal Register**, 56 FR 7710, a proposed consent agreement with analysis In the Matter of Nobody Beats the Wiz, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46; interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 110(b), 88 Stat. 2190; 15 U.S.C. 2310)

Donald S. Clark,

Secretary

[FR Doc. 91-12611 Filed 5-28-91; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[Docket No. C-3330]

he Torrington Company, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, two producers of needle rollers, The Torrington Company, of Connecticut, and Universal Bearings, Inc., of Indiana, from implementing or otherwise providing for any consolidation of the business or assets of the entity to be acquired and the acquiring entity prior to the consummation of any proposed acquisition.

DATES: Complaint and Order issued May 10, 1991.[1]

FOR FURTHER INFORMATION CONTACT: Casey Triggs, FTC/S-2308, Washington, DC 20580. (202) 326-2682.

SUPPLEMENTARY INFORMATION: February 25, 1991, there was published in the **Federal Register**, 56 FR 7712, a proposed consent agreement with analysis In the Matter of the Torrington Company, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 91-12612 Filed 5-28-91; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

GENERAL SERVICES ADMINISTRATION

Notice of Intent to Prepare an Environmental Impact Statement for the Construction of the Eastern Portion of the Southest Federal Center and the Construction of the General Services Administration Headquarters Facility, Washington, DC.

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500-1508), the General Services Administration (GSA) announces its intent to prepare an Environmental Impact Statement (EIS) for the following: (1) Construction of the eastern portion of the Federally-owned Southeast Federal Center (SEFC) site (the area east of an extended New Jersey Avenue); and, (2) construction of a facility, on the SEFC site, to house the GSA headquarters.

The SEFC, a 55.3 acre site along the Anacostia River, is adjacent to the Navy Yard and approximately one mile south of the U.S. Capitol. The site is bounded on the north by M Street, SE; on the east by the Washington Navy Yard; on the south by the Anacostia River; and on the west by 1st Street, SE. The northwest portion of the site is adjacent to the new Navy Yard Metro Rail Station, which will service the "Green Line". This waterfront project site is currently improved with a number of industrial structures used for office, storage and light industrial activities. The SEFC is eligible for listing on the National

Register for Historic Places. Approximately 3,000 Féderal employees currently work at the SEFC.

GSA's plans for the site include the development of office and retail space and the relocation of employees to the SEFC. This development will create an urban atmosphere conducive to a successful waterfront development which will be accessible to the general public. Design and construction of the eastern portion of the SEFC is proposed to commence in fiscal year 1992, and be completed by the year 2001.

The GSA headquarters facility, which will be located on the eastern portion of the site, will contain approximately 959,000 gross square feet (GSF) [700,000 occupiable square feet (OSF)] of office and related space and will house approximately 4,285 employees. Design and construction of the GSA headquarters facility will commence in fiscal year 1992. The occupancy date for this building is projected for fiscal year 1996.

The National Capital Planning Commission (NCPC) will act as cooperating agency during preparation of the EIS pursuant to 40 CFR 1501.6.

The EIS will be developed in two phases. Phase I of the EIS will examine the general impact of constructing the eastern portion of the SEFC based on the following alternatives:

- Developing the eastern portion of the SEFC to accommodate 4.3 million gsf of first class office space and 174,000 gsf of retail space; or
- Developing the eastern portion of the SEFC to accommodate 3.6 million gsf of first class office space and 147,000 gsf of retail space; or
- Not developing the eastern portion of the SEFC and instead, continuing to lease an equivalent amount of office space in the District of Columbia.

Phase II of the EIS will examine the impact of the construction of the GSA headquarters facility. The examination will be based on the following alternatives:

- Construction of a new GSA headquarters facility of approximately 965,500 gsf (700,000 osf) in size.
- Status quo: (approximately 494,000 osf in three Government-owned buildings in the District of Columbia, approximately 193,000 osf leased space in Northern Virginia, and approximately 21,000 osf of leased space in Maryland.)

Phase II is to be presented in the EIS report as a supplement and will only address those impacts which are the result of GSA's relocation (versus any other agency's relocation) to the SEFC (e.g. transportation, consolidation, vacating office space in Maryland and Virginia, etc.).

Potential environmental impacts resulting from the proposed action include short term impacts during construction, and long term changes in traffic, socio-economic and fiscal conditions.

GAS will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying the significant issues related to this proposed action. A public scoping meeting will be held on June 19, 1991, at 7 pm in Building #159, 1st floor, room 102, 3rd & M Street, SE, South East Federal Center, Washington, DC.

A formal presentation will precede the request for public comments. GSA representatives will be available at this meeting to receive comments from the public regarding issues of concern. It is important that Federal, state and county and city agencies, as well as interested individuals and groups take ths opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. In the interest of available time, each speaker will be asked to limit oral comments to five (5) minutes.

Agencies and the general public are also invited and encouraged to provide written comment in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics which the commentor believes the EIS should address.

All written statement and/or questions regarding the scoping process should be mailed no later than July 5, 1991, to: Mr. Frank T. Thomas—WPL, Contracting Officer Technical Representative, room 7062, National Capital Region, General Services Administration, 7th & D Streets SW., Washington DC 20407 (telephone 202/708-5334).

Dated: May 17, 1991.

Linda Eastman,

Director, NCR Planning Staff—WPL.

[FR Doc. 91-12550 Filed 5-28-91; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Inspector General

Statement of Organization, Functions and Delegations of Authority

AGENCY: Office of the Secretary, Office of Inspector General (OIG), HHS.

ACTION: Correction notice.

SUMMARY: This notice amends Part A (Office of the Secretary) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services to reflect technical corrections in Chapter AF (Office of Inspector General) to add the Accounting and Financial Management Audits component to the Office of Audit Services.

SUPPLEMENTARY INFORMATION: Chapter AFH.00 is amended as follows:

1. Under the heading *Section AFH.00 Office of Audit Services (OAS)—Mission add the following:*

E. The office serves as the focal point for all financial audit activity within the department and will provide the primary liaison conduit between the OIG and departmental management.

Provides overall leadership and direction in carrying out the responsibilities mandated under the Chief Financial Officers Act relating to financial statement audits and Federal Managers Financial Integrity Act for matters relating to internal controls.

2. Under the heading *Section AFH.10 Office of Audit Services—Organization* add the new component G. Accounting and Financial Management Audits.

3. Under the heading *Section AFH.20 Office of Audit Services—Functions* add the following:

G. Accounting and Financial Management Audits. This office is directed by the Assistant Inspector General for Accounting and Financial Management Audits who also serves as the Audit Director for Accounting and Financial Management Audits. The office is the focal point for all financial audit activity within the Department and provides the primary liaison conduit between the OIG and Departmental management. It maintains an internal quality assurance system, including periodic quality control reviews, to provide reasonable assurance that applicable laws, regulations, policies, procedures, standards and other requirements are followed in all financial statement audit activities performed by, or on behalf of, the Department.

Dated: May 15, 1991.

R.P. Kusserow,

Inspector General, Department of Health and Human Services.

[FR Doc. 91-12566 Filed 5-28-91; 8:45 am]

BILLING CODE 4150-04-M

VOL 56 ISS 103 MY 29 1991 UMI

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meeting in June

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Correction of meeting notice.

SUMMARY: Public notice was given in the **Federal Register** on May 3, 1991, Volume 56, No. 86, on page 20432 that:

The Drug Abuse Clinical and Behavioral Research Review Committee, NIDA, would meet June 11–14 at the Brazilian Court, 301 Australian Avenue, Palm Beach, FL. This meeting has been canceled.

Dated: May 22, 1991.

Peggy W. Cockrill,

Committee Management Officer Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 91–12604 Filed 5–28–91; 8:45 am]

BILLING CODE 4160–20–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–4410–08 GP1–238]

Spokane District West Side State Exchange; Environmental Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the finding of no significant impact on the final planning analysis for Spokane District West Side State Exchange.

SUMMARY: In accordance with 43 CFR 1610.5 and section 102(2)(c) of the National Environmental Policy Act of 1969 (40 CFR 1505.2), the Department of the Interior, Bureau of Land Management, notice is hereby given of the issuance of the Decision Record for the Planning Analysis for the Spokane District West Side State Exchange, involving Federal land administered by the Bureau of Land Management and State Lands administered by the Washington Department of Natural Resources in Clallam, King, Okanogan, San Juan, Skagit and Skamania Counties, Washington. Initiation of actions, which implement this plan, can begin with the signing of the Decision Record.

SUPPLEMENTARY INFORMATION: The Draft Planning Analysis was released for a 60 day comment period beginning on March 19, 1991. No comments indicating opposition to the exchange proposal where received. However, continuing evaluation by BLM biologists has indicated the possibility of spotted owl habitat on three of the selected parcels. As a result a biological assessment is being conducted of the parcels.

The exchange proposal addressed in this document had its beginnings in early 1985, when the State Department of Natural Resources (DNR) proposed a trade of its 20.1 acre parcel adjacent to the BLM Iceberg Point land for the BLM's 77.25 acre tract near DNR land at Point Lawrence. The stated objective at that time was for both the BLM and DNR to consolidate their lands, the BLM intending to include the acquired land in a proposed Area of Critical Environmental Concern (ACEC) designation for Iceberg Point. Although an exchange agreement was signed, processing on the action was delayed until recently, when the proposal was enlarged to include 120 acres of DNR land at Chadwick Hill on Lopez Island, and seven additional parcels of BLM land scattered in five different countries. The objective is still the consolidation of both BLM and DNR ownerships, which is expected to result in more effective and efficient management of the respective lands. The exchange lands would be added to the ACEC, and managed as a natural area in accordance with the existing plan and Bureau ACEC Guidelines.

The purpose of this document is to comply with Federal regulations, which require that both an environmental assessment and a planning analysis be performed to examine the resource values of the lands, analyze long term management goals, and determine if these actions are in the public interest.

Only two alternatives were considered. The Preferred Alternative and the No Action Alternative.

Under the Preferred Alternative, the Federal government would acquire the surface and mineral estate of the offered State lands, exchanging in return the surface and mineral estate of all or a portion of the selected Federal lands. The land obtained through this exchange would be incorporated into the existing Iceberg Point and Point Colville ACEC and managed as a Natural Area.

The No Action Alternative would result in the continuation of the existing situation. Under this alternative, none of the selected public lands would pass out of Federal ownership, and no effort would be made to acquire any parcels in the vicinity of the existing ACECs

DECISION: The decision is to proceed with the exchange as indicated under the proposed action with the following exception. The three public land parcels that were identified during the comment period as possibly containing Spotted Owl habitat would not be exchanged unless the biological assessment indicates that there is no conflict.

FOR FURTHER INFORMATION CONTACT: Joseph K. Buesing, District Manager, Spokane District Office, East 4217 Main Avenue, Spokane, WA 99202, or James F. Fisher, Area Manager, Wenatchee Resource Area Office, 1133 North Western Avenue, Wenatchee, WA 98801.

Copies of the Final are available for review at the following offices and libraries:

U.S. Bureau of Land Management, Spokane District Office, East 4217 Maine Avenue, Spokane WA 99202.
U.S. Bureau of Land Management, Wenatchee Resource Area Office, 1133 North Western Avenue, Wenatchee, WA 98801.
Washington State Library, State Library Building, Olympia, WA 98504.
San Juan County Court House Annex Library, 135 Rhone Street, Friday Harbor, WA 98250.

A limited supply of copies of the Planning Analysis are available upon request to the Spokane District Manager or the Wenatchee Resource Area Manager.

Dated: May 23, 1991.

Joseph K. Buesing,

District Manager.

[FR Doc. 91–12599 Filed 5–28–91; 8:45 am]

BILLING CODE 4310–33–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 11, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by June 13, 1991.

Carold D. Shull,

Chief of Registration, National Register.

ALASKA

Matanuska—Susitna Borough-Census Area

Bailey Colony Farm (Settlement and Economic Development of Alaska's Matanuska—Susitna Valley MPS), 3150 N. Glenn Hwy., Palmer vicinity, 91000775.
Berry House (Settlement and Economic Development of Alaska's Matanuska—Susitna Valley MPS), 5805 N. Farm Loop Rd., Palmer vicinity, 91000779.
Herried House (Settlement and Economic Development of Alaska's Matanuska—Susitna Valley MPS), 4400 N. Palmer—Fishook Hwy., Palmer vicinity, 91000778.
Hyland Hotel (Settlement and Economic Development of Alaska's Matanuska—Susitna Valley MPS), 333 W. Evergreen, Palmer vicinity, 91000774.
Matanuska Colony Community Center (Settlement and Economic Development of Alaska's Matanuska—Susitna Valley MPS), Roughly bounded by S. Colony, E. Firewood, S. Eklutua, E. Elmwood, S. Denali and a line N of properties on E. Dahlia, Palmer, 91000773.
Patten Colony Farm (Settlement and Economic Development of Alaska's Matanuska—Susitna Valley MPS), Mi. 39.9 Glenn Hwy., across from State Fairground, Palmer vicinity, 91000776.
Puhl House (Settlement and Economic Development of Alaska's Matanuska—Susitna Valley MPS), 13151 E. Scott Rd., Palmer vicinity, 91000777.

ARIZONA

Maricopa County

Willo Historic District (Boundary Increase), 534—540 W. Wilshire Dr. and 533—541 W. Virginia Ave., Phoenix, 91000780.

GEORGIA

Coweta County

Grantville Historic District, Bounded by US 29, LaGrange St., W Grantville Rd. and the city cemetery, Grantville, 91000772.

MAINE

Aroostook County

Church of the Advent, Church St. 1 block S of jct. with ME 229, Limestone, 91000767.

Knox County

Surprise (schooner), Camden Harbor, Camden, 91000771.

Lincoln County

St. John's Episcopal Church, S side of ME 27 at jct. with Blinn Hill Rd., Dresden Mills, 91000769.

Somerset County

First Baptist Church, Former, W side of Main St., S of ME 104, Skowhegan, 91000770.

York County

First Congregational Church, Former, SW corner of Rt. 1 and Barker's Ln., Wells, 91000766.

MONTANA

Ravalli County

Bitter Root Cooperative Creamery, [Stevensville MPS], 3730 Eastside Hwy., Stevensville, 91000728.
Buck, Charles Amos, House [Stevensville MPS], 211 Buck St., Stevensville, 91000727.
Buck, Charles and Eva, House, [Stevensville MPS], 405 Buck St., Stevensville, 91000728.
Buck, Fred, House [Stevensville MPS], 217 Buck St., Stevensville, 91000729.
Caple, W. F., House [Stevensville MPS], 210 Church St., Stevensville, 91000730.
Clark, Jennie, House [Stevensville MPS], 423 Pine St., Stevensville, 91000731.
Cochran, William, House [Stevensville MPS], 3713 East Side Hwy., Stevensville, 91000732.
Cook, Calvin and Maggie, House [Stevensville MPS], 501 Main St., Stevensville, 91000734.
Cook, Wilbur, House [Stevensville MPS], 3717 East Side Hwy., Stevensville, 91000733.
Emhoff House [Stevensville MPS], 401 Church St., Stevensville, 91000736.
First State Bank, Dowling and Emhoff Buildings [Stevensville MPS], 300—304, 306—308 Main St., Stevensville, 91000738.
Fisher, Joseph, House [Stevensville MPS], 103 College St., Stevensville, 91000739.
Foust, Perry, House [Stevensville MPS], 401 Mission St., Stevensville, 91000740.
Fulton, Charles, House [Stevensville MPS], 377 Fifth St., Stevensville, 91000742.
Gavin House [Stevensville MPS], 219 College St., Stevensville, 91000743.
Gleason Building [Stevensville MPS], 200—202 Main St., Stevensville, 91000744.
Harrington, Rose, House [Stevensville MPS], 3709 East Side Hwy., Stevensville, 91000745.
Howe, John G., House [Stevensville MPS], 215 Park Ave., Stevensville, 91000746.
IOOF Hall [Stevensville MPS], 217—219 Main St., Stevensville, 91000747.
Lancaster House [Stevensville MPS], 407 Third St., Stevensville, 91000748.
Lockridge House [Stevensville MPS], 301 Mission St., Stevensville, 91000750.
May, Albert, House [Stevensville MPS], 218 Church St., Stevensville, 91000751.
May, Charles, House [Stevensville MPS], 109 Church St., Stevensville, 91000753.
May, Harry, House [Stevensville MPS], 526 Third St., Stevensville, 91000752.
May, Louis, House [Stevensville MPS], 100 Church St., Stevensville, 91000754.
McFarlane House [Stevensville MPS], 200 College St., Stevensville, 91000755.
McLaughlin, John, House [Stevensville MPS], 105 Main St., Stevensville, 91000757.
Metcalf House [Stevensville MPS], 214 Pine St., Stevensville, 91000758.
Morr, Philip and Ella, House [Stevensville MPS], 502 Buck St., Stevensville, 91000760.
Sharp, John, House [Stevensville MPS], 306 College St., Stevensville, 91000761.
Stevensville Feed Mill [Stevensville MPS], 407 Main St., Stevensville, 91000762.
Stevensville Grade School—United Methodist Church [Stevensville MPS], 216 College St., Stevensville, 91000764.
Stevensville Mercantile Company Oil Storage Building [Stevensville MPS], 300 Mission St., Stevensville, 91000763.
Thornton Hospital [Stevensville MPS], 107 E. Third St., Stevensville, 91000765.
Williams House [Stevensville MPS], 500 Fifth St., Stevensville, 91000766.
Williams, John and Ann, House [Stevensville MPS], 205 Church St., Stevensville, 91000735.
Young, Benjamin, House [Stevensville MPS], 523 Main St., Stevensville, 91000741.

[FR Doc. 91–12595 Filed 5–28–91; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 16, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by June 13, 1991.

Carol D. Shull,

Chief of Registration, National Register.

DISTRICT OF COLUMBIA

District of Columbia State Equivalent

Potomac Boat Club, 3530 Water St., NW., Washington, 91000786

GEORGIA

White County

Stovall, John, House, Stovall Rd. S of jct. with GA 255, White vicinity, 91000784

INDIANA

Hancock County

New Palestine School, Larrabee St. at jct. with Depot St., New Palestine, 91000791

Johnson County

Edinburgh Commercial Historic District, Roughly bounded by Thompson and Main Sts., the alley N of Main Cross St. and the Conrail RR tracks, Edinburgh, 91000789
Greenwood Commercial Historic District, 172—332 W. Main St. and 147—211 S. Madison Ave., Greenwood, 91000792

La Porte County

Washington Park, Roughly bounded by Lake Michigan, Krueger St., Trail Cr., Lakeshore Dr., Heisman Harbor Rd. and Browne Basin Rd., Michigan City, 91000793

Madison County

Pendleton Historic District, Roughly bounded by Fall Cr., the Conrail right-of-way, Madison and Adams Sts., Pendleton, 91000788

Marion County

Indiana School for the Deaf, 1200 E. 42nd St., Indianapolis, 91000790
St. Joseph Neighborhood Historic District, Roughly bounded by St. Clair, Delaware and Eleventh Sts. and Central and Ft. Wayne Aves., Indianapolis, 91000794

Wayne County

Cambridge City Historic District, Roughly bounded by Boundary, Maple, High and Fourth Sts., Cambridge City, 91000787

NEW JERSEY

Cape May County

Cold Spring Presbyterian Church, 760 Seashore Rd., Lower Township, 91000785

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TEXAS

Brazoria County

Brazoria Bridge, 0.9 mi. E of TX 36 of TX 332, Brazoria, 91000783

WASHINGTON

King County

Blomeen, Oscar, House, 324 B St. NE., Auburn, 91000781

Parsons, William, House, 2706 Harvard Ave. E., Seattle, 91000782

A proposed move is being considered for the following property. To assist in its preservation, the commenting period is being waived.

SOUTH CAROLINA

Lexington County

Stewart, James, House (Lexington County MRA), Address Restricted, Lexington vicinity, 83003917

[FR Doc. 91-12859 Filed 5-28-91; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 303-TA-21 (Preliminary) and 731-TA-519 (Preliminary)]

Gray Portland Cement and Cement Clinker From Venezuela

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of preliminary countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigation No. 303-TA-21 (Preliminary) under section 303 of the Tariff Act of 1930 (19 U.S.C. 1303) and of preliminary antidumping investigation No. 731-TA-519 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Venezuela of gray portland cement and cement clinker, provided for in subheadings 2523.29.00, 2523.90.00, and 2523.10.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of Venezuela and sold in the United States at less than fair value. The Commission must complete preliminary countervailing duty and antidumping investigations in 45 days, or in this case by July 5, 1991.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR Part 201, as amended by 56 FR 11918, Mar. 21, 1991).

EFFECTIVE DATE: May 21, 1991.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202-252-1190), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on May 21, 1991, by the Ad Hoc Committee of Florida Producers of Gray Portland Cement, Washington, DC.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on June 11, 1991, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Valerie Newkirk (202-252-1190) not later than June 7, 1991, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before June 14, 1991, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules.

Issued: May 22, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-12593 Filed 5-28-91; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSON

Nonacceptance of Insurance Facsimiles (FAX)

The requirements for insurance filings and cancellation notices are set forth in the Commission's regulations at 49 CFR parts 1043 and 1084. Under these regulations, hard copies of certificates of insurance, surety bonds and notices of cancellation must be filed with the Commission in triplicate. All insurance filing and cancellation notices must be filed in accordance with these regulations.

Accepting FAX insurance filings and cancellation notices with follow-up by mail, places too great a burden on the limited staff available to process these documents. Accordingly, FAX insurance filing will not be accepted.

FOR FURTHER INFORMATION CONTACT: Edward Fernandez (202) 275-7591.

Sidney L. Strickland, Jr.

Secretary

[FR Doc. 91-12655 Filed 5-28-91; 8:45 am]

BILLING CODE 7035-01-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31650 (Sub-No. 1); Finance Docket No. 31651 (Sub-No. 1)]

Burlington Northern Railroad Co.; Construction and Operation Exemption, Connector Track at Atmore, AL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts, under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 10901; (1) The construction by the Burlington Northern Railroad Company (BN) and CSX Transportation, Inc. (CSXT), and the operation by BN of approximately 1,034 feet of connecting line at Atmore, AL; and (2) the construction and operation by BN and CSXT of approximately 1,062 feet of connecting line in Atmore, AL.

DATES: The exemptions will be effective upon completion of the Commission's environmental review and further decision. Petitions for reconsideration must be filed by June 24, 1991.

ADDRESSES: Send pleadings, referring to Docket No. 31650 (Sub-No. 1), *et al.*, to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

and

(2) Petitioner's representatives: Edmund W. Burke, Douglas J. Babb, Ethel A. Allen, 3800 Continental Plaza, 777 Main Street, Forth Worth, TX 76102

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721.]

SUPPLEMENTARY INFORMATION: Additional information as contained in the Commisison's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275-1721.]

Decided: May 3, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-12656 Filed 5-28-91; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31876]

SPTC Holding, Inc., and Southern Pacific Transportation Co., Corporate Family Transaction Exemption, SPCSL Corp.

SPTC Holding, Inc. (SPTCH), a non-carrier holding company, and Southern Pacific Transportation Company (SPTC), a common carrier by railroad, have filed a notice of exemption for the acquisition of indirect and direct control, respectively, over SPCSL Corp. (SPCSL), a common carrier by railroad. Prior to this change of control both SPCSL and SPTCH were directly owned subsidiaries of Rio Grande Industries, Inc. (RGI), a non-carrier holding company. After consummation of this transaction, SPCSL will be a directly owned subsidiary of SPTC, and indirectly controlled by RGI, through SPTCH.

The purpose of this transaction, which was to be consummated May 11, 1991, is the simplification of intercorporate control among transportation companies in the RGI corporate family. This will be facilitated by making SPCSL a subsidiary of, and reporting directly to, SPTC, instead of to RGI, the parent holding company.

This is a transaction within a corporate family of the type specifically exempted from prior approval under 49 CFR 1180.2(d)(3). It will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock. Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: John MacDonald Smith, 813 Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

Decided: May 16, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-12657 Filed 5-28-91; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 91-46]

NASA Advisory Council University Relations Task Force; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council University Relations Task Force.

DATES: June 21, 1991, 9 a.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, room 7002, Federal Office Building 6, 400 Maryland Avenue, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Sylvia D. Fries, Code ADA-2, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-8766.

SUPPLEMENTARY INFORMATION: The NASA Advisory Council was established as an interdisciplinary group to advise senior management on the full range of NASA's programs, policies, and plans. The University Relations Task Force, reporting to the Council, will examine current forecasts of future national requirements for aerospace science and engineering and their supporting university infrastructure; it will also evaluate the degree, mechanisms, and appropriateness of NASA support for university programs in these fields. The Task Force is chaired by Dr. Steven Muller and is composed of 11 members.

The meeting will be open to the public up to the seating capacity of the room, which is approximately 60 persons including Task Force members and other participants. Visitors will be requested to sign a visitor's register.

Type of Meeting: Open.

Agenda:

June 6, 1990

9 a.m.—Welcome and Introductory Remarks.

9: 15 a.m.—Review of Key Issues.

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10 a.m.—Discussion with NASA Center Directors.
1 p.m.—Discussion with NASA Advisory Council Committee Chairs.
3 p.m.—Review of Funding Data.
4 p.m.—Study Agenda.
5 p.m.—Adjourn.

Dated: May 22, 1991.

John W. Gatt,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91-12608 Filed 5-28-91; 8:45 am]

BILLING CODE 7510-16-M

THE NATIONAL EDUCATION GOALS PANEL

Meeting

AGENCY: The National Education Goals Panel.

ACTION: Notice of meeting.

SUMMARY: The National Education Goals Panel was established by a Joint Statement between the President and the Nation's governors dated July 31, 1990. The panel will determine how to measure and monitor progress toward achieving the national education goals and to report to the nation on the progress toward the goals. Members of the National Education Goals Panel are six governors appointed by the Chairman of the National Governor's Association, four senior Administration officials, and four Congressional leaders. Governor Roy Romer of Colorado is the initial chairman.

TENTATIVE AGENDA ITEMS: The tentative agenda for the meeting includes discussion of indicators to include in the September 1991 report card to the Nation.

DATE: The sixth meeting is scheduled for Monday, June 3, 1991 in the afternoon. Time TBA.

ADDRESS: Location TBA.

FOR FURTHER INFORMATION CONTACT: Pat Forgione at the National Education Goals Panel office to indicate attendance or for further information on specific time and location. The phone number is (202) 632-0952.

Dated: May 22, 1991.

Roger B. Porter,

Assistant to the President for Economic and Domestic Policy.

[FR Doc. 91-12772 Filed 5-28-91; 8:45 am]

BILLING CODE 3701-01-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from May 6, 1991 through May 16, 1991. The last biweekly notice was published on May 15, 1991 (56 FR 22460).

Notive of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, D.C. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 28, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555 and at the Local Public Document Room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the

petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (Project Director): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: April 2, 1991

Description of amendments request: The proposed Technical Specification (TS) changes modify the Definitions, Section 1.8, Item 1.8.3 and the Surveillance Requirements, Section 4.6.1.1.b, for both units. Section 1.8 defines when containment integrity exists, Item 1.8.3 defines the conditions the containment air locks must meet to assure containment integrity, and Section 4.6.1.1.b specifies the required surveillances of the air locks to assure containment integrity. The proposed changes would remove the existing requirement that the air locks be operable in both the definitions and surveillance sections, and replace it with the requirement that the air locks be in compliance with the requirements of TS Section 3.6.1.3. Section 3.6.1.3 provides the Limiting Conditions of Operation (LCO), Applicable Modes, and Actions to be taken when the air locks are inoperable. The design of the air locks and the impact of their being inoperable in relation to overall primary containment integrity was taken into consideration in establishing the LCOs and action statements of TS Section 3.6.1.3. The change will allow the use of the current specified out-of-service times to repair air lock problems prior to requiring unit shutdown.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The containment air locks are not considered as initiators for any previously evaluated accident. This change does not impact their design and therefore does not significantly increase the probability that they would initiate any previously evaluated accident.

The safety analyses consider the containment leakage barrier to be intact and

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maintaining the leakage at less than the assumed value at the initiation of the evaluated accidents that occur during operation. Since each air lock door is designed to provide that containment barrier and is periodically tested to assure that leakage is not excessive, this change will not significantly increase the consequences of any previously evaluated accidents.

(2) Would not create the possibility of a new or different type of accident previously evaluated.

This change does not involve a change to the design of the plant. The new method of operation will not involve any components which could initiate an accident. Therefore, this change would not create the possibility of a new or different type of accident from any accident previously evaluated.

(3) Would not involve a significant reduction in a margin of safety.

The margin of safety for the containment integrity specification is provided by assuring that the release of radioactive materials from the containment atmosphere will be restricted to those leakage paths and associated leak rates assumed in the accident analyses. Since each air lock door is designed to provide that containment barrier, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Attorney for licensee: Jay E. Silbert, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC. 20037.

NRC Project Director: Robert A. Capra

Carolina Power & Light Company, et al., Docket No. 50-324, Brunswick Steam Electric Plant, Unit 2, Brunswick County, North Carolina

Date of amendment request: April 23, 1991

Description of amendment request: The proposed amendment revises the minimum critical power ratio (MCPR) safety limit specified in Technical Specification 2.1.2 from 1.06 to 1.07 for Cycle 10 operation. In addition, Technical Specification 5.3.1 is being revised to reflect the new fuel type (GE8x8NB-3) which will be inserted during the upcoming refueling outage.

Basis for proposed no significant hazards consideration determination: Required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The NRC accepted methodology used to derive the updated safety limit MCPR of 1.07 applies the same criteria as that used to derive the current safety limit MCPR value of 1.06. The updated safety limit MCPR value of 1.07 assures that fuel cladding protection equivalent to that provided with the safety limit MCPR value of 1.06 is maintained. Thus, the consequences of accidents previously evaluated are not significantly increased. The safety limit MCPR does not affect any physical system or equipment which could change the probability of an accident.

Use of the GE8x8NB-3 fuel type was generically found to be acceptable by the NRC in Amendment 21 to GESTAR-II. The fuel design has been analyzed using approved methods documented in GESTAR-II with the results being within accepted limits. As discussed above, the MCPR safety limit was selected to maintain the fuel cladding integrity safety limit. The GE8X8NB-3 fuel response to analyzed transients will be performed and appropriate operating limit MCPR values will be incorporated in the Core Operating Limits Report as required by Technical Specification 6.9.3.1.

Therefore, based on the arguments presented above, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Adoption of the proposed MCPR safety limit does not affect the function of any component or system. The GE8x8NB-3 fuel type was previously reviewed and found acceptable by the NRC for use as documented in Amendment 21 to GESTAR-II. No new mode or condition of plant operation will be authorized by this change. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The safety limit MCPR value is determined for cycle specific application of fuel types as described in NEDE-24011-P-A, "General Electric Standard Application for Reactor Fuel," to meet Criterion 10 of 10 CFR 50, Appendix. The GE8x8NB-3 fuel type and its associated analysis methodologies were reviewed and found acceptable by the NRC in Amendment 21 to GESTAR-II.

Analyses of the limiting anticipated operational occurrences for each cycle are used in conjunction with the applicable safety limit MCPR value to determine cycle specific operating limit MCPR values. The above referenced methods are used to ensure required margins to safety (e.g., fuel cladding integrity safety limit and reactor coolant system integrity) are maintained. The MCPR safety limit was selected to maintain the fuel cladding integrity safety limit (i.e., that 99.9 percent of all fuel rods in the core be expected to avoid boiling transition). Use of the 1.07 safety limit MCPR for Cycle 10 will result in equivalent fuel cladding protection as that provided by the current cycle limit of 1.06. Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis; and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Acting Project Director: Anthony J. Mendiola

Commonwealth Edison Company, Docket No. 50-265, Quad Cities Nuclear Power Station, Unit 2, Rock Island County, Illinois

Date of application for amendment: April 18, 1991

Description of amendment request: The proposed amendment would change the Technical Specifications to reflect a modification to the fast acting solenoid valves which initiate rapid closure of the turbine control valves. A similar amendment was issued for Unit 1 and noted in the Federal Register on March 20, 1991 (56 FR 11789).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident.

The turbine control valve fast closure scram is provided to anticipate the rapid increase in pressure and neutron flux resulting from the fast closure of the turbine control valves due to a load reject and subsequent failure of the bypass valves (UFSAR section 14.1.2, 3.2.5.4). The turbine control valves are required to fast close as rapidly as possible to prevent overspeed of the turbine-generator rotor. The rapid closure of the control valves causes a sudden reduction of the steam flow which results in an increase to reactor pressure. The scram is provided to prevent the violation of the minimum critical power ratio (MCPR) safety limit.

The use of a pressure switch (in lieu of the limit switch) does not involve a significant increase in the probability of the transient. Upon actuation of the fast acting solenoid, the new pressure switch will sense the decreasing electro-hydraulic control (EHC) fluid (indicative of the control valve closure) and provide a reactor scram. The use of the pressure switch, therefore, provides the same function as the limit switch. In addition, the logic for the RPS trip remains the same. The pressure switches on fast acting solenoid valves for control valves 1 and 2 input to the Reactor Protection System (RPS) Channel A. Either pressure switch will cause the RPS channel to trip. Similarly, the pressure switches on the fast acting solenoid valves for control valves 3 and 4 input into Reactor Protection System Channel B. In order to achieve a full reactor scram, both RPS channels must be tripped.

The use of the pressure switch does not affect the limiting parameter (MCPR) of the transient. As such, there would be no sequence of events which would lead to the safety limit being exceeded and barrier integrity would be assured. Additionally, the proposed change would not change, degrade or prevent the responses of systems assumed in the accident(s) nor alter any assumptions previously made in evaluating the radiological consequences of an accident described (above) in the SAR.

The consequences of the turbine/generator load reject with the subsequent failure of the bypass valves are not significantly increased by this change. The pressure switch provides a scram signal to RPS when the turbine control valves close rapidly in the same time period as the position switch in place. The use of a pressure switch to input into the Reactor Protection System is widely used throughout the industry and has been shown to be reliable. The results of the accident (the lowest MCPR achieved) are, therefore, not significantly affected and are bounded by the existing analysis. The existing analysis concludes that under this transient, the site boundary doses are well within the 10 CFR 100 limits.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The significant difference between the existing valve design and the proposed design is the use of a pressure switch in lieu of a limit switch. The use of the pressure switch eliminates the failure mode associated with the limit switch and inherently introduces its own failure mode. The failure of the tubing which connects the pressure switch to the solenoid valve would initiate a scram signal. The use of the pressure switch to input into the Reactor Protection System is widely used throughout the industry and has been shown to be reliable. Based on industry experience, the new design of the fast acting solenoid valve has been more reliable in actuating the fast closure of control valves than the use of the existing design.

The logic for the RPS trip remains unchanged. In order to create a reactor scram, the logic is arranged such that actuation of the pressure switches for the fast acting solenoid valves on control valve 1 or 2 and 3 or 4 will initiate a reactor scram. Therefore, in order for the scram function to fail, two pressure switches would have to fail within the same RPS channel (which is the same RPS failure mode as the existing design).

The fast closure of the turbine control valves is considered to be an anticipatory reactor scram. The reactor pressure and neutron flux would increase significantly in the event of the turbine fast closure without a scram; however, the reactor pressure (1080 psig) or the high neutron flux scrams provide backup to the turbine fast closure scram, in the event that sensor fails to actuate RPS.

The existence of the new failure mode, therefore, does not introduce the possibility of a new or different kind of accident than previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The limiting event associated with the turbine control valve fast closure is the load reject with failure of the bypass valves. A reactor scram is initiated, when the turbine control valves fast close, to anticipate the increase in reactor pressure and neutron flux, thereby ensuring that the MCPR safety limit is not violated. The use of the pressure switch does not affect the margin of safety associated with the MCPR safety limit since the pressure switch will initiate the reactor scram within the same time period as the existing design. The trip setpoint was calculated to ensure that a reactor scram will be initiated when the turbine control valves start to close rapidly.

The proposed fast acting solenoid valves are designed such that the pressure switch will be actuated within 30 milliseconds of the time the control valves start to close. Also, current Technical Specifications require that the RPS trip actuator contacts be actuated within 50 milliseconds of the actuation of the pressure switch. These times are consistent with the design values used in the Reload Licensing calculation to analyse the load reject without bypass valve transient. The trip setpoint was calculated such that the trip signal will be generated within the 30 milliseconds after the start of the control valve fast closure. Verification of the 30 millisecond actuation will be conducted during post modification testing. This modification, therefore, does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of application for amendments: May 3, 1991

Description of amendments request: The proposed amendment would revise Technical Specification 3.2.1.F to allow a reduction in the boric acid system concentration from 12% to 3.4%.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The function of the boric acid system is to maintain adequate boric acid volume and concentration and transfer capabilities to borate the RCS to a cold shutdown concentration at any time during the core cycle, with a shutdown margin that is consistent with the Technical Specifications. The boric acid system and its function are not assumed to be a precursor to any design basis accident assumed in the Safety Analysis Report. The boric acid system is not assumed in the mitigation of any design basis accident or transient. The only credited source of borated water injection to the reactor coolant system for accident mitiagation is from the Refueling Water Storage Tank. Implementing this change does not alter nor does it create any new radiological release pathways to the environment. As such, the changes proposed to the boric acid system do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

The failure of the boric acid system does not initiate any new or different kind of accident from any previously evaluated. These proposed changes do not degrade the boric acid systems' reliability or operation as designed. Additionally, since the corrosive property of boric acid is accelerated at higher concentration and temperatures, a nominal 3.4% concentration actually minimizes the potential for corrosion of equipment, valves, and piping surfaces. The modifications proposed by this license amendment request will maintain system boration capabilities consistent with the assumptions made in the UFSAR, and will result in a significant increase in system reliability and availability. As such, the implementation of this specification does not create the possibility of a new or different kind of accident from any previously analyzed.

3. The proposed changes do not represent a significant reduction in a margin of safety.

The function of the boric acid system is not assumed in any accident analyses. The boric acid system is not a process variable assumed in any design basis accident. During an accident the credited source of boron injection into the reactor coolant system is the Refueling Water Storage Tank. The function of the boric system is to provide a source of concentrated boric acid to the reactor during normal operations. The design function of the boric acid system has not been altered as a result of these changes. As such, the proposed change does not represent a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this

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view, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085. Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of application for amendments: May 9, 1991

Description of amendments request: The proposed amendment would revise Technical Specification 4.0.2 to delete the 3.25 limit on extension of surveillance intervals. The request is in response to the guidance provided in NRC Generic Letter 89-14.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change involves the deletion of the 3.25 limit on extending surveillances. The frequency at which surveillances are performed is not assumed in the initiation of any analyzed event. The deletion of the 3.25 limitation recognizes that the most probable result of any particular surveillance being performed is the verification of conformance with Surveillance Requirements. Accident analysis assumptions reflected in these Surveillance Requirements will still be verified on a frequency sufficient to ensure that the assumptions are reliably maintained. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change, which involves the deletion of the 3.25 limit on surveillance extensions, does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. Additionally, the surveillance interval will still be constrained by the 25 percent extension criteria of Specification 4.0.2. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated for the Zion Nuclear Generating Station.

3. Does this change involve a significant reduction in a margin of safety?

Any potential reduction in a margin of safety has been evaluated and determined to be insignificant in NRC Generic Letter 89-14 since the most probable result of the performance of a surveillance is the verification of conformance with Surveillance Requirements and the use of the allowance to extend surveillance intervals by 25 percent results in a significant safety benefit when conditions are not suitable for performing the surveillance. In these cases, the safety benefit of allowing the use of the 25 percent extension outweighs any benefit derived by limiting three consecutive intervals to 3.25 limit. As such, any potential reduction in a margin of safety will be offset by the safety benefit gained by allowing the surveillance to be extended when conditions are not suitable for performing the surveillance and by not forcing the plant through a shutdown transient to perform refueling interval surveillances.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085. Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: April 18, 1991

Description of amendment request: The proposed amendment would change Technical Specification Section 1.10, the definition of E-bar - Average Disintegration Energy, for the purpose of determining a reactor coolant activity limit, deletes tritium as an isotope to be used in the calculation of E-bar.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The change to the definition of [E-bar] does not adversely affect the consequences of the design basis accidents. The proposed change will impose more restrictive limits on the reactor coolant activity. Tritium is not included in the accident dose calculations and need not be included because of its low dose conversion factors. As such, changing the definition of [E-bar] to exclude tritium makes it more consistent with the dose calculation assumptions and is more conservative in terms of potential accident dose calculations. Therefore, it is concluded that previously analyzed accidents are not affected.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

Since there are no changes in the way the plant is operated, the potential for an unanalyzed accident is not created. Based on experience, the lower coolant activity limit will not result in an increased potential for plant shutdowns. For most fuel failures, the Dose Equivalent I-131 limit is much more restrictive than 68/ [E-bar]. . .or the debris induced fuel failures typical of Cycle 15 for stainless clad fuel, the 160 failed rod limit, based on Xenon-133 equivalent, will be more limiting than the 68/[E-bar] limit. No new failure modes are introduced.

3. Involve a significant reduction in a margin of safety.

The proposed change does not have any adverse impact on the protective boundaries. Since the proposed change also does not affect the consequences of any accident previously analyzed, there is no reduction in a margin to safety. The proposed change provides a greater measure of protection for the public.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Entergy Operations, Inc., Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Unit Nos. 1 and 2 (ANO-1&2), Pope County, Arkansas

Date of amendment request: April 18, 1991

Description of amendment request: The proposed change revises the format of the Semisannual Radioactive Effluent Release Report from Regulatory Guide 1.21, Revision 0, Appendix A, to Regulatory Guide 1.21, Revision 1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

This change is to update the Specifications to a more recent reporting format. This change is administrative in nature and therefore no increase in the probability or consequences of an accident previously evaluated is incurred as a result of this change.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed change is administrative in nature and therefore does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 -

Does not Involve a Significant Reduction in the Margin of Safety.

As this proposed change will revise the reporting requirements to a more recent revision to the Regulatory Guide and is therefore administrative in nature, the margin of safety will not be reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Theordore R. Quay

Entergy Operations, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: April 11, 1991

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) by changing those specifictions involving written reports submitted to the NRC in order to be consistent with 10 CFR 50.4.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. No significant increase in the probability or consequences of an accident previously evaluated results from this change.

The proposed changes are purely administrative in that they remove an administrative inconsistency between GGNS TS and 10 CFR 50.4 where the Commission has clearly stated that Section 50.4 takes precedent over existing technical specifications. Therefore, the proposed change cannot increase the probability or consequences of an accident previously evaluated.

b. This change would not create the possibility of a new or different kind of accident from any previous analysed.

The proposed changes are editorial in nature and have no impact on plant equipment or operation other than reporting certain events to the Commission. Therefore, the requested revisions will not create the possibility of a new or different accident from any previously analyzed.

c. This change would not involve a significant reduction in the margin of safety.

The margin of safety is not reduced since the proposed changes are administrative in nature and do not impact plant equipment. No change to plant equipment will occur due to this proposal. These changes are being proposed to comply with the requirements of Section 50.4 of 10 CFR 50.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington, DC 20005-3502.

NRC Project Director: Theodore R. Quay

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: April 4, 1991

Description of amendment request: The proposed amendments would revise the Technical Specifications to reflect (a) the undervoltage relay setpoints for the Emergency Power System (EPS) Enhancement Project, (b) an additional fire zone, and (c) administrative changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment[s] would not involve a significant increase in the probability or consequences of an accident previously evaluated.

[Regarding the changes to TS 3.3.2, Engineered Safety Features Actuation System Instrumentation,] [t]he...trip setpoint values ...[have] been [recalculated] to reflect plant changes recently finalized. Recalculation was necessary primarily because of the replacement of [motor operated valve (MOV)] motors...in response to [G]eneric Letter 89-10..., and the availability of final vendor data on some safety-related [heating ventilation air conditioning (HVAC)] equipment added during the dual unit outage. These plant modifications resulted in different voltage requirements for the [load centers]. The assumptions and calculational methodology used in the revised calculation...are consistent with those of the calculation performed to determine the existing setpoint values. Since the same undervoltage protection is afforded by the revised setpoint values, there is no significant increase in the probability or consequences of an accident previously evaluated.

[Regarding the changes to TS 3.3.3.4, Fire Detection Instrumentation,] [t]he additional fire zone added to Table 3.3-6 is consistent with the existing listed fire zones and provides assurance that the [s]pare [b]attery located in this fire zone will be appropriately monitored. [T]he [s]pare [b]attery [r]oom and the [e]lectrical [e]quipment [r]oom are both within one fire area labeled as G. Originally, this whole area (formerly the Auxiliary Building Machine Shop) was labeled as Fire Zone 25. Conversion of this room into the [e]lectrical [e]quipment [r]oom and [s]pare [b]attery [r]oom, as part of the EPS Enhancement Project, resulted in unique fire detection requirements for the equipment being monitored. In accordance with NUREG/CR-1798..., thermal detectors are to be used for detection in the battery rooms and ionization smoke detectors in the area containing the electrical equipment. Since different types of detection are appropriate for the [s]pare [b]attery [r]oom and the [e]lectrical [e]quipment [r]oom within the Fire Area G, unique fire zone identifiers have been assigned to each room for convenience. To ensure that failure of a single detector does not result in a total loss of detection in the fire zone, a minimum of two detectors are required for each area. Due to the geometry of the [e]lectrical [e]quipment [r]oom and the location of HVAC ducts, an additional smoke detector has been added in Fire Zone 25, in accordance with the National Fire Protection Association (NFPA) Standard 72E.... Therefore, the current listing of five smoke detectors in zone 25 have been updated to six.

The probability or consequences of an accident is not affected by [these] change[s]. The new fire zone identifier, 25A, and the revision of the number of smoke detectors in Fire Zone 25 do not affect the initiator of any accident evaluated in the F[inal] S[afety] A[nalysis] R[eport] nor the mitigation of any accident.

[Regarding the administrative change to TS 3.3.3.4,] [t]his change is editorial in nature, since the original plant configuration has not changed and this change has no impact on plant operating requirements or F[inal] S[afety] A[nalysis] R[eport] [FSAR] analyzed accidents. This change is proposed solely to ensure the consistency of the Technical Specifications with the actual plant

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configuration and the associated Technical Specifications.

[Regarding the change to TS 3.5.2, ECCS Subsystems - Tavg Greater than or Equal to 350° F,] [t]his change is editorial in nature and has no impact on plant operating requirements or FSAR analyzed accidents. This change is proposed solely to enhance the consistency in the wording of ACTION statements in the Turkey Point Technical Specifications.

[Regarding the changes to TS 3/4.7.8.3, Fire Hose Stations,] [t]he addition of this new Hose Station...provides for the same OPERABILITY requirements as specified for the existing Fire Hose Stations. Note this hose station was added to Turkey Point's design per FPL's commitment. This additional requirement ensures that an appropriate level of protection is provided for the new Unit 4 EDG building, as compared to the existing Unit 3 EDG Building, for mitigating the consequences of a fire. Therefore, the probability of or consequences of losing an EDG due to a fire is not increased. This added Hose Station does not affect the initiator of any other accident evaluated in the FSAR and provides assurance that adequate fire protection is available for required plant equipment in the vicinity of the new Unit 4 EDG Building.

[For the changes to TS 4.8.1.1.2, AC Sources - Operating,] [t]he probability of occurrence of an accident previously evaluated in the FSAR has not been affected, since the surveillance testing of EDGs does not affect the probability of occurrence of accidents. The consequences of an accident previously evaluated in the FSAR are not affected by this change either. The revisions to the surveillance footnote are proposed to enhance consistency with the rest of Turkey Point's [EDG] surveillance requirements (e.g., 4.8.1.1.2.a.5...). The specification of load bands versus a single specific value is endorsed by the EDG vendors and the NRC. (The NRC has endorsed a similar change for both Carolina Power and Light Shearon Harris Unit 1 and Texas Utilities Comanche Peak Unit 1.) The specified bands provide the same EDG performance assurance as the existing criteria, but minimize the wear and tear on the EDG. The specified bands preclude testing the EDGs while excessively loaded.

[The changes to TS 3.8.3.1, Onsite Power Distribution Operation] are editorial in nature and have no impact on plant operating requirements or FSAR analyzed accidents. The addition of "(hours)" is provided for clarity. The specified Allowable Outage Times provided in these table[s] [are] in units of hours; however, this was not explicitly shown.

[Regarding the changes to TS 3.8.3.2, Onsite Power Distribution - Shutdown,] [t]he editorial change to the double asterisk footnote is proposed to enhance consistency within Turkey Point's Technical Specifications. The addition of the clarification phrase provides better understanding for the operator regarding the configuration and usage of a backup inverter.

The proposed change[s] [do] not result in any new plant operating requirements. No accident initiating events are affected. The change[s] [are] editorial and [do] not affect the probabilities of the occurrence of, or the consequences of, an accident.

2. Operation of the facility in accordance with the proposed amendment[s] would not create the possibility of a new or different kind of accident from any accident previously evaluated.

[For the change to TS 3.3.2,] [n]o new types of equipment are added by this change. The proposed change introduces no changes in operation or new modes of operation. The ability of the system to detect and appropriately respond to an off-normal undervoltage condition is maintained.

[For the change to TS 3.3.3.4,] [t]he additional fire zone...is consistent with the existing listed fire zones. The resulting number of detectors indicated provide adequate fire detection capability. No new types of fire detectors are being added to the plant. The proposed change introduces no changes in operation or new modes of operation.

[Regarding the administrative change to TS 3.3.3.4,] [t]his change is of an editorial nature, and has no effect on the possibility of accidents. The resulting number of detectors indicated provide adequate fire detection capability. No new types of fire detectors are being added to the plant. The proposed change introduces no change in operation or new modes of operation.

[The changes to TS 3.5.2 are] editorial in nature and [have] no effect on the possibility of accidents. The proposed change[s] [introduce] no changes in operation or new modes of operation.

[For TS 3/4.7.8.3,] [t]he Hose Station at the new Unit 4 EDG Building provides a similar degree of protection against fire-induced losses of an EDG as provided for the existing Unit 3 EDG Building. The new Hose Station will be maintained and operated in accordance with the existing fire protection program, and therefore, will not create the possibility of a new or different kind of accident. The proposed change introduces no changes in operation or new modes of operation.

[For TS 4.8.1.1.2,] [t]he revisions to the surveillance footnote are proposed to enhance consistency with the rest of Turkey Point's [EDG] surveillance requirements...and do not require any new types of testing. The proposed change introduces no basic changes in operation or new modes of operation.

[For TS 3.8.3.1,] [t]hese changes are editorial in nature and have no effect on the possibility of accidents. The proposed changes introduce no changes in operation or new modes of operation.

[For TS 3.8.3.2,] [t]he proposed change in the the footnote is basically editorial in nature and does not require any new types of testing. The proposed change introduces no basic changes in operation or new modes of operation.

3. Operation of the facility in accordance with the proposed amendment[s] would not involve a significant reduction in a margin of safety.

[For TS 3.3.2,] [t]he same criteria utilized in the calculation of the existing setpoints has been applied to the calculation of the revised setpoints. The purpose of the specified trip settings is to separate the busses from the offsite power and reenergize these same busses from the onsite power if an unacceptable voltage drop should occur on the offsite power system. The margin of safety provided by the new values is commensurate with the existing values since they were calculated in a similar manner.

[For TS 3.3.3.4,] [t]he margin of safety remains unchanged since the additional fire zone does not affect the level of detection and warning currently provided by the existing Technical Specification requirements. The resulting number of detectors indicated are consistent with the industry standards, i.e., NFPA and NUREG/CR-1798, for providing adequate fire detection capability; thus the margin of safety is maintained.

[For the administrative change to TS 3.3.3.4,] [t]he resulting number of detectors are consistent with the industry standards, i.e., NFPA and NUREG/CR-1798, for providing adequate fire detection capability; thus the margin of safety is maintained.

[For TS 3.5.2,] [t]his change is editorial in nature and has no effect on the margin of safety.

[For TS 3/4.7.8.3,] [t]he new Unit 4 EDG Building Hose Station will assure that the safety-related equipment in this new building is provided with the same level of protection as the safety-related equipment in the existing Unit 3 EDG Building. Thus, the margin of safety is not reduced.

[For TS 4.8.1.1.2,] [t]he surveillance footnote has been revised to enhance consistency with the requirements of the other EDG surveillances at Turkey Point. The revised footnote provides a commensurate level of confidence that the EDGs will perform as designed.

[For TS 3.8.3.1,] [t]hese changes are editorial in nature and have no effect on the margin of safety.

[For TS 3.8.3.2,] [t]he change only enhances the Technical Specifications by providing better consistency and providing more understandable footnotes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street, N.W., Washington, D.C. 20036

NRC Project Director: Herbert N. Berkow

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: November 28, 1990

Description of amendment request: Technical Specification (TS) 3.4.6.1 for the Reactor Coolant System Leakage Detection Systems does not specify actions to be taken if less than two of the required leakage detection systems are operable. The proposed amendments would supplement TS 3.4.6.1 to require for this condition that the plant be placed in at least hot standby within the next 6 hours and in cold shutdown within the following 30 hours.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. If less than two leakage detection systems are operable, the proposed amendment would require placing the plant in Hot Standby within six hours and Cold Shutdown within the following 30 hours. The provisions of TS 3.0.3 would require action within one hour to place the plant in Hot Standby within the next 6 hours, Hot Shutdown within the following 6 hours, and Cold Shutdown within the subsequent 24 hours. The net effect on plant operation is the same under either requirement. Therefore, there is no effect on the probability or consequences of any accident previously evaluated.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated above, the net effect on plant operation is the same under the proposed amendment or under TS 3.0.3. They both require a shutdown in essentially the same time frame. Therefore, there is no potential for a new or different kind of accident.

The proposed change does not involve a significant reduction in a margin of safety. The existing margin of safety is maintained in that a plant shutdown will continue to be required in the event that less than two leakage detection systems are operable.

The Commission's staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the Commission's staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suite 1400, 127 Peachtree Street, N.E., Atlanta, Georgia 30043.

NRC Project Director: David B. Matthews

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: November 29, 1990; as supplemented January 29, March 6, 27, and 29, and April 19, 1991.

Description of amendment request: The proposed amendments would revise Technical Specifications (TSs) 3/4.1.2.5, 3/4.1.2.6, and 3/4.5.4 by reducing the minimum solution temperature inside the refueling water storage tank (RWST). Specifically, the minimum solution temperature for the limiting condition for operation would be reduced from 54 to 44 degrees F. The associated surveillance limit, which establishes a minimum outside air temperature at which the tank solution temperature must be verified daily, would be reduced from 59 to 40 degrees F. Additionally, "(break flow equal to or greater than 3.0 square feet)" would be deleted in Bases 3/4.5.4, Refueling Water Storage Tank, which states that limits on RWST minimum volume and boron concentration ensure that... 3) the reactor will remain subcritical in the cold condition following a large break LOCA (break flow equal to or greater than 3.0 square feet) assuming complete mixing of the RWST, RCS, ECCS water and other sources of water that may eventually reside in the sump, post-LOCA with all control rods assumed to be out."

Other changes in the licensee's application and supplements have been previously noticed and are outside the scope of this notice. These other changes include those associated with the planned future use of Westinghouse VANTAGE-5 fuel.

Basis for proposed no significant hazards consideration determination:

The proposed TS changes would provide additional operating flexibility by increasing the range of temperature within which the RWST will be available as an operable borated water source. The licensee has had Westinghouse reanalyze those safety analyses in the Final Safety Analysis Report (FSAR) which are sensitive to minimum RWST solution temperature as part of the VANTAGE-5 fuel transition study. These analyses include Inadvertent Operation of the Emergency Core Cooling System (ECCS) During Power Operation, Small Break Loss of Coolant Accident (LOCA), and Steam Generator Tube Failure. The licensee also reconfirmed the solubility of the RWST solution at the reduced temperature for the required range of boron concentration as part of the VANTAGE-5 program.

The change to the Bases to delete "(break flow equal to or greater than 3.0 square feet)" is a correction to the TSs. The phrase erroneously implies that a large break LOCA is defined as being greater than 3 square feet, whereas it is actually defined as larger than 1.0 square foot. This error is only in the text and did not affect the associated analyses. Since the correct values are given in the FSAR, the licensee prefers deletion rather than substitution of the correct value.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The reduced RWST minimum solution temperature does not increase the probability or consequences of an accident previously evaluated in the FSAR. The RWST solution temperature is a parameter used in the analysis of the Steam Generator Tube Failure and Small Break LOCA accidents. Since RWST solution temperature is only used in the analysis of these events, it does not contribute as an initiator or affect the probability of occurrence. The Inadvertent Operation of the ECCS During Power Operation accident involves injection of borated RWST water into the RCS. Although RWST injection is part of the event, the initiator of the event is either operator error or a false electrical actuation signal, which are unaffected by RWST solution temperature. Therefore, a change in the RWST minimum solution temperature will not increase the probability of occurrence of this event.

The consequences of an accident previously evaluated in the FSAR are not increased due to the reduced RWST minimum solution temperature. Small Break LOCA and Inadvertent Operation of the ECCS During Power Operation are not evaluated for radiological consequences since they are not limiting transients with respect to prediction of offsite doses. A revised analysis has been performed for the Steam Generator Tube Failure event as part of the VANTAGE-5 submittal which documents that all doses are within the Standard Review Plan acceptance criteria. Therefore, the consequences to the public resulting from any accident previously evaluated in the FSAR have not significantly increased.

The reduced RWST minimum solution temperature does not create the possibility of a new or different kind of accident than those already evaluated in the FSAR. No new accident scenarios, failure mechanisms or

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limiting single failures associated with the RWST are introduced as a result of the reduced allowable solution temperature. This reduced temperature condition in the RWST has no adverse effect and does not challenge the performance or integrity of any other safety related system. Therefore, the possibility of a new or different kind of accident is not created.

The margin of safety provided by the Technical Specifications relative to the RWST as a borated water source ensures that the reactor will remain subcritical under post-accident conditions. This inherently assumes that the defined boron concentration range will remain soluble at the RWST minimum solution temperature. By confirming that solubility at the reduced temperature is maintained, it is concluded that the operating envelope defined by the Technical Specifications continues to be bounded by the revised analytical basis. Therefore, the margin of safety provided by the RWST as a source of borated water is maintained and not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suite 1400, 127 Peachtree Street, NE., Atlanta, Georgia 30043.

NRC Project Director: David B. Matthews

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: April 16, 1991

Description of amendment request: The proposed amendment would change Technical Specification Requirement 4.3.8.2.a "Turbine Overspeed Protection System" by reducing the testing frequency of the high pressure turbine control valves from once every 7 days to once every 31 days. The change in the testing interval is recommended by the turbine vendor based on accumulated operating experience and a change in the basis for calculating turbine missile generation probability.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed change would not increase the probability or the consequences of a previously evaluated accident because:

The General Electric (GE) probabilistic analysis for the River Bend Station turbine has demonstrated that the probability of missile generation in the turbine is 5.0×10^{-6} if the rotor is inspected every six years. This is well within the acceptable limit of 10^{-4} as recommended by Regulatory Guide (RG) 1.115. The GE analysis has been previously reviewed and results approved by the NRC in a letter dated August 26, 1987. Also, the probability of damage to safety related systems resulting from a missile is 5×10^{-9} compared to the recommended limit of 1×10^{-7} specified in RG 1.115. The probability of missile generation, and hence damage, is increased only a negligible amount by increasing the testing interval because turbine steam inlet valve reliability is no longer the major contributing factor in determining hypothetical missiles based on past in-service experience.

2. The proposed change would not create the possibility of a new or different kind of accident from any previously evaluated because:

The change does not involve a modification to any systems or components and does not alter the surveillance procedures. Therefore, the possibility of a new or different kind of accident will not result. Additionally, an increase in the test interval will decrease the probability of upsetting plant stability during testing and will decrease the number of times the turbine steam load is unbalanced.

3.The proposed change would not involve a significant reduction in the margin of safety because:

The General Electric Service Information Letter Number 413 confirms the excellent reliability of turbine control valves and recommends a 31-day surveillance frequency. This has been reviewed and approved by the NRC for inclusion in the Technical Specifications for all recently licensed BWRs. Past operating experience and testing provide adequate assurance that the high-pressure turbine control valves will function. The monthly surveillance will ensure operability of the turbine control valves and will reduce mechanical wear to the valves. Therefore, a reduction in the margin of safety does not occur as a result to the change.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Mark Wetterhahn, Esq., Bishop, Cook, Purcell and Reynolds, 1401 L Street, N.W., Washington, D.C. 20005

NRC Project Director: George F. Dick, Jr., Acting Director

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: April 23, 1991

Description of amendment request: The proposed changes to the Cooper Nuclear Station Technical Specifications include: 1) revision of Section 5.2.B to allow the use of NRC approved neutron absorber material in BWR control rods, 2) revision of Section 6.5.1.D to more closely follow the guidance of Standard Technical Specifications regarding submittal of the monthly operating report, and 3) administrative changes to Section 5.3, 5.4.A, and 5.4.B.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

EVALUATION

(a) The proposed change allows the use of the neutron absorbing material that has been specifically approved for use by the NRC in BWR control rods. Use of these materials will not significantly alter the neutron absorption, mechanical, or other functional characteristics of a control rod. The proposed change does not change the required number of control rods nor does it affect existing Limiting Conditions of Operation for minimum shutdown margin for the core, coupling of a control rod with its drive mechanism to address the Control Rod Drop Accident and the control rod average and four rod scram time requirements. The acceptability of utilizing the control rod materials and design will be verified following nuclear industry standards in the reload and licensing analyses. The proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(b) The proposed change revises the schedule and the manner of submittal of the monthly operating report. This change is administrative in nature and does not affect any plant operation, hardware, or analysis. It does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(c) The proposed change to reference the USAR for the design of the reactor vessel, primary containment, and secondary containment is administration in nature. This change does not affect any plant operation, equipment, or analysis, and therefore does not create a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility for a new or different kind of accident from any accident previously evaluated?

EVALUATION

(a) The use of NRC approved neutron absorber material in the control rods will not create any new mode of plant operation or alter the control rods in such a way as to affect their function or continued operability. The proposed change does not create the possibility for a new or different kind of accident from any accident previously evaluated.

(b) The change to the schedule and manner of submittal of the monthly operating report is administrative in nature and will not cause any new mode of plant operation or change to the facility. This change will not create the possibility for a new or different kind of accident from any accident previously evaluated.

(c) The proposed change to reference the USAR for the design of the reactor vessel, primary containment, and secondary containment is administrative in nature. This change does not affect any plant operation, equipment, or analysis, and therefore does not create the possibility for a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

EVALUATION

(a) The proposed change allows the use of neutron absorbing material that has been specifically approved by the NRC for use in BWR control rods. It does not change the required number of existing control rods. It does not affect existing Technical Specification requirements regarding minimum core shutdown margin, coupling of control rods to their drive mechanism and scram times for average rod and four-rod grouping. Margins of safety will be verified using approved methodologies and criteria in the reload and licensing analysis. The proposed change will not involve a significant reduction in the margin of safety.

(b) The change to the schedule and manner of submittal of the monthly operating report is administrative in nature and does not affect plant operation, equipment, setpoints or analysis and will not involve a significant reduction in the margin of safety.

(c) The proposed change to reference the USAR for the design of the reactor vessel, primary containment, and secondary containment is administrative in nature. This change does not affect any plant operation, equipment, or analysis, and therefore does not create a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68602-0499

NRC Project Director: Theodore R. Quay

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: April 25, 1991

Description of amendment request: The proposed amendment would reduce the low reactor water level scram setpoint (Level 3) from greater than or equal to 12.5" to greater than or equal to 4.5" above instrument zero (greater than or equal to 176.69" to greater than or equal to 168.69" above the top of the active fuel). The amendment also would make administrative changes involving editorial and typographical corrections.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change to the Level 3 instrument setpoint in Technical Specifications does not involve a significant increase in the probability or consequences of an accident previously evaluated. The Attachment 2 evaluation demonstrates that the consequences of operational transients, loss of coolant accident (LOCA) events, and anticipated transient without scram (ATWS) events remain within the acceptance criteria of the licensing basis. The functions of the primary and secondary containment isolation valves are not affected by the proposed Level 3 setpoint change. The proposed setpoint reduces the probability of inadvertent reactor scrams on low reactor water level. The possibility of unnecessary activations of PCIS Groups 2, 3 and 6 isolations during low power level manual scrams as a part of normal plant shutdowns, which could divert operator attention from the shutdown, is also reduced.

Thus, there is no significant increase in the probability of an accident previously evaluated as a result of the change to the setpoint in Technical Specifications.

The miscellaneous administrative changes do not involve a significant increase in the probability or consequences of an accident previously evaluated since they do not affect plant operations, equipment, or any safety related activity. Thus, these administrative changes cannot affect the probability or consequences of any accident.

2. The proposed change to the Level 3 setpoint in Technical Specifications does not create the possibility for a new or different kind of accident from any accident previously evaluated. As discussed in the Attachment 2 evaluation, the proposed change in the Level 3 setpoint in Technical Specifications does not introduce any hardware change, and the performance of the Level 3 initiated trips is not affected. The Level 3 trip will still fulfill its design basis objective of initiating a scram and the isolation of the primary containment on low reactor water level such that the licensing safety limits are maintained. No new modes of operation are created for any engineered safety feature or safety system. The potential for operator error is reduced by preventing unnecessary isolations during low power normal plant shutdowns, which may divert operator attention from the evolution. Therefore, the proposed Technical Specifications change does not create the possibility of any new accident or malfunction.

The miscellaneous administrative changes do not create the possibility of a new or different kind of accident from any accident previously evaluated since these changes are purely administrative and do not affect the plant operation or design. Therefore, these administrative changes cannot create the possibility of any accident.

3. The proposed change to the Level 3 setpoint in Technical Specifications does not create a significant reduction in the margin of safety. The Attachment 2 evaluation demonstrates that the results of the transient and accident analysis are within the required acceptance criteria and that all licensing safety limits are avoided. Therefore, the proposed change does not create a significant reduction in the margin of safety.

The miscellaneous administrative changes do not create a significant reduction in the margin of safety since these changes do not affect any safety related activity or equipment. These changes are purely administrative in nature and increase the probability that the Technical Specifications are correctly interpreted by adding clarifying information and correcting errors. Thus, these changes cannot reduce any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68602-0499

NRC Project Director: Theodore R. Quay

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Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: March 18, 1991, as supplemented by letter dated May 3, 1991 (Reference LAR 91-01)

Description of amendment requests: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant Unit Nos. 1 and 2 to delete the requirement to verify that the containment fan cooler unit (CFCU) dampers transfer from the normal to the accident position. Specifically, Surveillance Requirement 4.6.2.3.a.(3) of TS 3/4.6.2.3, "Containment Cooling System," would be modified to delete the requirement to verify that the containment fan cooler unit (CFCU) dampers transfer to the accident position. The requirement to verify damper position will not be necessary after a planned CFCU modification is made because the dampers will be secured in their accident position. The CFCU modification will be made during the 5th refueling outage for Unit 1 and the 4th refueling outage for Unit 2. Therefore, the revised TS 4.6.3.2.a.(3) would be made applicable starting with Unit 1 Cycle 6 and Unit 2 Cycle 5.

PG&E plans to simplify the design and operation of the CFCUs, in accordance with the provisions of 10 CFR 50.59, by eliminating the HEPA filters and moisture separators from each CFCU and adjusting the variable inlet vanes to the fan in order to maintain the design air flow rate. The assumptions used to calculate off-site doses resulting from controlled post-accident containment venting carried out when the wind is blowing onshore are described in Table 15.5-28 of the FSAR Update, and do not take credit for the HEPA filters or moisture separators in the accident analyses. In addition, the deletion of the HEPA filters and moisture separators from the CFCUs has been evaluated by Westinghouse, based on the assumption that modifications to the CFCUs will be made so the heat removal capability of the CFCUs and the heat load to the containment cooling water system would not be affected.

Upon removal of the HEPA filters and moisture separators, the CFCU normal and accident mode dampers would be permanently secured in positions such that normal and accident mode operations could be performed without changing damper positions. The CFCU airflow rate for both normal and accident operation after the proposed changes will be in accordance with design airflow rates. All controls associated with the CFCU dampers would also be removed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee, in its submittal of March 18, 1991, evaluated the proposed changes against the significant hazards criteria of 10 CFR 50.92 and against the Commission guidance concerning application of this standard. Based on the evaluation given below, the licensee has concluded that the proposed changes do not involve a significant hazards consideration. The licensee's evaluation is as follows:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed modifications to the accident inlet and outlet dampers of the CFCUs simplify the system design and operation by reducing the number of components required to function during testing and standard operation. By simplifying the damper configuration, the probability of having a damper failure is reduced. In addition, the proposed change will not adversely affect the CFCU's function of heat removal and therefore not affect analyzed accidents.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Securing the dampers will have no affect on the ability of the CFCUs to perform their intended function during normal or accident conditions. In addition, the CFCUs will function the same following the proposed changes. Hence, no new failure mechanisms will be introduced.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

Securing the CFCU dampers would not degrade the ability of the CFCUs to perform their heat removal function, as the normal and accident operation flow rates would be met.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Attorney for licensee: Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120

NRC Project Director: James E. Dyer

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: March 27, 1991 (Reference LAR 91-03)

Description of amendment request: The proposed amendments revise Technical Specification (TS) 3/4.4.4, "Relief Valves," TS 3/4.4.9.3, "Overpressure Protection Systems," and their associated Bases. The changes address the recommendations of Generic Letter 90-06 with some differences.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change of maintaining power to closed block valves could potentially increase the probability of an inadvertent opening of the block valve, and the proposed change of operating the block valve through one complete cycle of full travel to demonstrate operability when the block valve is closed due to excessive seat leakage of a PORV could potentially increase the probability of inadvertent RCS leakage. The safety impact is, however, not significant since the proposed changes are only applicable if the PORV is inoperable due to excessive seat leakage. If the block valve were inadvertently opened or opened for testing, only leakage would occur, and the RCS would not undergo a rapid depressurization.

The PORVs are used by operators for recovery from postulated accidents such as an SGTR. Automatic actuation of the PORVs is needed for LTOP of the RCS. The proposed changes to the TS increase the availability of the PORVs for these functions. Therefore, there would be no increase in consequences as a result of the proposed TS changes.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The requested license amendment would not involve any physical changes to the plant and, in particular, the PORVs and block valves.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The primary purpose of the proposed TS changes is to increase the availability and reliability of the PORVs. The proposed TS changes do not involve any changes to actuation setpoints of the PORVs or LTOP system. There is no impact of the proposed changes on any safety analysis assumptions.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Attorney for licensee: Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120

NRC Project Director: James E. Dyer

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: April 15, 1991

Description of amendment request: The proposed amendment to the James A. FitzPatrick Technical Specifications incorporates a reference to the NRC-approved FitzPatrick Inservice Inspection (ISI) program into the Technical Specifications.

This change adds the following statement to Section 4.6.F.3: An Inservice Inspection Program for piping identified in the NRC Generic Letter 88-01 shall be implemented in accordance with NRC staff positions on schedules, methods, personnel, and sample expansion included in this Generic Letter, or in accordance with alternate measures approved by the NRC staff.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the James A. FitzPatrick Nuclear Power Plant in accordance with this proposed amendment would not involve a significant hazards consideration, as defined in 10 CFR 50.92, since the proposed changes would not:

1. involve a significant increase in the probability or consequence of an accident previously evaluated. This proposed change is purely administrative in nature, since it simply incorporates a reference to the existing ISI program into the Technical Specifications. The existing FitzPatrick ISI program has been extensively reviewed and approved by the NRC staff. This change does not involve a modification of any structures, systems, or components; nor does it alter any plant operating procedure or the ISI program.

2. create the possibility of a new or different kind of accident from those previously evaluated. The proposed change is purely administrative in nature, since it simply incorporates a reference to the existing ISI program into the Technical Specifications. This change does not involve a modification to any structures, systems, or components. Since the existing ISI program requires no hardware changes, the introduction of new failure modes will not occur. Therefore, this proposed change will not create any new or different kind of accident from those previously evaluated.

3. involve a significant reduction in the margin of safety. The proposed change is purely administrative in nature, since it simply incorporates a reference to the existing ISI program into the Technical Specifications. The existing FitzPatrick ISI program ensures that surveillance is performed on piping susceptible to IGSCC in a manner that increases the probability of detecting any defects or flaws. This change does not involve a modification of any structures, systems, or components; nor does it alter any plant operating procedures or the ISI program.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: April 19, 1991

Description of amendment request: This proposed amendment to the James A. FitzPatrick Technical Specifications incorporates two new seotions, 3.11.F and 4.11.F, and their associated Bases. These new specifications contain operability requirements for ventilation and air conditioning (HVAC) equipment associated with four environmental enclosures. These enclosures are installed around two safety-related 600 VAC electrical load centers and the two LPCI independent power supply charger/inverters within the reactor building.

The load centers and charger/inverters are required to be operable under post-accident conditions. This equipment is not qualified to withstand the local post-accident environment. Therefore, enclosures around this equipment were installed to maintain a controlled atmosphere to protect the equipment from postulated harsh environments.

The proposed technical specifications ensure the operability of the equipment inside the enclosures under post-accident conditions by imposing operability, testing, and action statement requirements on the enclosures' HVAC equipment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as stated in 10 CFR 50.92 since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed technical specifications add operability and surveillance requirements to ventilation and air conditioning equipment associated with four environmental enclosures within the reactor building. These structures ensure the availability of the enclosed safety-related electrical equipment under postulated accident conditions. No accidents as analyzed in the FSAR [Final Safety Analysis Report] are affected by these changes.

2. create the possibility of a new or different kind of accident from any accident previously evaluated. The enclosures and their associated HVAC units can not initiate any type of reactor transient. No postulated failure mode or combination of failures of the HVAC systems can initiate an accident.

3. involve a significant reduction in a margin of safety. The proposed changes maintain all existing margins of safety by ensuring the availability of safety-related equipment under accident conditions.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: March 28, 1991

Description of amendment request: The licensee requests an amendment to the Technical Specification to include smoke detectors and hose stations which are to be provided in a new building being constructed to house the intake structure. Miscellaneous changes and corrections are also being made.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Consistent with the requirements of 10 CFR 50.92, the enclosed application is judged to involve no significant hazards based on the following information:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response:

The proposed changes do not involve an increase in the probability of a previously-analyzed accident. The proposed changes add smoke detectors and hose stations for the intake structure building to the lists of equipment required to be operable by Tables 3.14-1 and 3.14-2. Tables 3.14-1 and 3.14-2 provide operability requirements for smoke detectors and hose stations in areas that contain safe shutdown equipment. The intake structure area includes safe shutdown equipment (the service water pumps), so the smoke detectors and hose stations protecting the service water pumps need to be included in Tables 3.14-1 and 3.14-2. The fire protection measures for the enclosed intake structure were found acceptable by the NRC staff. (See Fire Protection SER supplement dated May 2, 1980.)

The miscellaneous changes do not affect plant operation.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response:

The proposed changes do not create the possibility of a new or different kind of accident. The smoke detectors and hose stations provide protection against a fire for equipment used for safe shutdown of the plant. This level of protection has been previously approved by the NRC staff.

The miscellaneous changes do not affect plant operation.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response:

The proposed amendment does not involve a significant reduction in a margin of safety. The amendment provides control for new smoke detectors and hose stations in the newly enclosed intake structure. These tech. spec. [technical specifications] changes are necessary because the intake structure area includes equipment used for safe shutdown of the plant (the service water pumps).

The miscellaneous changes do not affect plant operation.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

Public Service Company of New Hampshire, Docket No. 50-443, Seabrook Station, Rockingham County, New Hampshire

Date of amendment request: November 13, 1990

Description of amendment request: The proposed amendment would delete the Technical Specification (TS) surveillance requirement to perform a weekly stroke test of the high pressure turbine control valves and would add editorial changes with respect to valve nomenclature to provide consistency throughout the TS. The TS surveillance requirements for the monthly stroke test of the high pressure turbine control valves would remain unchanged.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.92(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NHY has reviewed the proposed changes in accordance with the criteria specified in 10 CFR 50.92 and has determined that the proposed changes would not:

1. Involve a significant increase in the probability or consequences of any accident previously evaluated. The Seabrook Station Probabilistic Safety Assessment (SSPSA) estimates the frequency of turbine missile generation and its consequences. This conservative analysis demonstrates that the risk to public health and safety from turbine missiles is negligible. The SSPSA turbine missile generation estimates are based on contribution by overspeed failures versus failures at operating speed. Given that the generation of turbine missiles is not very sensitive to changes in control system reliability, the extension of the testing frequency for the high pressure turbine control valves will not cause a significant increase in the probability of core damage or radiological consequences from turbine missiles. Also, the in-series stop valves which are tested on a weekly basis provide additional overspeed protection. Redundant isolation capabilities to prevent turbine overspeed are also provided by the main steam isolation valves. Extending the frequency of testing the high pressure turbine control valves reduces the number of power reductions required to perform this testing and reduces the risk of inadvertent turbine trip (and reactor trip) caused by such testing.

2. Create the possibility of a new or different kind of accident from any previously evaluated. The analyses presented in FSAR Section 15.1 and 15.2 bound the two possible failure mechanisms which exist for the high pressure turbine control valves (i.e., the possibility of a control valve not closing in conjunction with a stop valve not closing, or spurious control valve closure). The extension of the testing frequency from weekly to monthly does not create a new failure mechanism; therefore, the possibility of a new or different kind of accident is not created.

3. Involve a significant reduction in a margin of safety. Margin of safety as it relates to the protection of safety-related structures, systems and components from turbine missiles is measured in terms of the probability of radiological consequences exceeding 10 CFR 100 limits. FSAR Section 3.5.1.3 specifies the acceptance criteria and analytical results for the probability that a turbine missile is generated and strikes a safety related area which may lead to consequences exceeding 10 CFR 100 limits. Additionally, the Seabrook Station Probabilistic Safety Assessment (SSPSA) quantifies turbine missile damage frequencies for several common cause initiating events. The SSPSA analysis demonstrates that the probability of core damage from turbine missiles provides negligible contribution to public risk. The SSPSA turbine missile generation estimates are based on statistical and analytical data which show a relatively small contribution by overspeed failures versus failures at operating speed, therefore, damage frequencies would be further reduced if only turbine missiles generated as a result of overspeed were considered. Given that the generation of turbine missiles is not very sensitive to changes in control system reliability, the extension of the testing frequency for the high pressure turbine control valves does not significantly increase turbine missile damage frequencies and therefore does not result in a significant decrease in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire, 03833.

Attorney for licensee: Thomas Dignan, Esquire, Ropes & Gray, One International Place, Boston, Massachusetts 02110

NRC Project Director: Richard H. Wessman

Public Service Company of New Hampshire, Docket No. 50-443, Seabrook Station, Rockingham County, New Hampshire

Date of amendment request: December 14, 1990 as supplemented on April 24, 1991.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to permit a Safety Injection (SI) pump to be made operable in operating MODES 5 and 6 provided that a Reactor Coolant System (RCS) vent area of at least 18 square inches is first established. Editorial changes to the TS format are proposed to renumber the statements after incorporating the new requirements. In addition, flexibility is proposed to establish the vent with some device other than a valve, if desired.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.92(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

New Hampshire Yankee has reviewed the proposed changes in accordance with the criteria specified in 10 CFR 50.92, and based upon the information provided in the revised Technical Specifications and above has determined that the proposed changes would not:

1. Involve a significant increase in the probability or consequences of any accident previously evaluated. The only accident potentially affected by the proposed change to allow operation of an SI pump when the RCS has a vent area equal to or greater than 18 square inches is the low temperature overpressurization mass addition transient. The probability of this event is not affected since the operable Safety Injection (SI) pump would only be made OPERABLE after the suitable vent area in the Reactor Coolant System pressure boundary had been established. The creation of this vent area is similar to the existing requirement in Technical Specification 3.4.9.3.c to provide an RCS vent of at least 1.58 square inches in the event that neither of the COMS alternate relief valve configurations is available. The maximum possible flow rate into the Reactor Coolant System (RCS) during the mass addition transient will be increased, however this does not increase the consequences of this type of accident. The consequences of such an event would be mitigated by ensuring that a suitable vent area in the RCS pressure boundary exists prior to making an SI pump OPERABLE. This vent area will prevent any transient induced pressure increase from exceeding the 10 CFR 50 Appendix G pressure limit. The inclusion of the surveillance requirement in Technical Specification 3.4.9.3.3 ensures that the RCS vent area is maintained. Additionally, by providing an additional source of reactor vessel inventory, the proposed change reduces the consequences of a malfunction of the Residual Heat Removal (RHR) system.

2. Create the possibility of a new or different kind of accident from any previously evaluated. Allowing a SI pump to be operable in these modes creates the possibility of a more severe mass addition transient than those within the capability of the Cold Overpressure Mitigation System (COMS). However, the proposed requirement to provide an RCS vent area equal to or greater than 18 square inches prior to making the SI pump OPERABLE provides overpressure protection for the Appendix G limit. This prerequisite to provide the RCS vent area prior to allowing one (1) SI pump to be OPERABLE is similar to the existing requirement in Technical Specification 3.4.9.3c to provide an RCS vent of at least 1.58 square inches in the event that neither of the COMS alternate relief valve configurations is available. The opening of a small vent in the RCS pressure boundary to provide overpressure protection is not a new or different approach than that currently used for low temperature overpressure protection and therefore does not create the possibility of a new or different type of accident than any previously evaluated.

3. Involve a significant reduction in a margin of safety. The proposed changes would allow one SI pump to be made OPERABLE in MODE 5 and MODE 6 creates the possibility of a mass addition transient more severe than those considered in the COMS design basis. However, the requirement to provide a suitably sized RCS vent area prior to making the SI pump OPERABLE will ensure that no violation of Appendix G limits will occur for such an event and no reduction of margin of safety for overpressure protection can occur. The utilization of the RCS vent area equal to or greater than 18 square inches provides protection of the reactor vessel Appendix G limit independent of the COMS system. Therefore, the proposed changes do not result in a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis, and adds the following comments. The editorial changes to the TS to renumber the statements have no bearing on any accident scenario or margin of safety and, therefore, no significant hazards consideration is involved. The proposal to possibly use a device other than a valve to establish a vent pathway does not involve a significant hazards consideration because the accident scenario, probability, consequences, and margin of safety depend on RCS pressure and coolant inventory, and the nature of the device used to provide the vent area does not change this. Any vent device is subject to the same requirements and TS as a valve used for that purpose. Based on the staff's review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire, 03833.

Attorney for licensee: Thomas Dignan, Esquire, Ropes & Gray, One International Place, Boston, Massachusetts 02110

NRC Project Director: Richard H. Wessman

Public Service Company of New Hampshire, Docket No. 50-443, Seabrook Station, Rockingham County, New Hampshire

Date of amendment request: January 24, 1991

Description of amendment request: The amendment would add a definition of a Digital Channel Operational Test to Section 1 of the Technical Specifications and revise certain notes to Technical Specification Tables 4.3-5 and 4.3-6 to clarify the requirements and provide consistency with the proposed definition.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.92(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NHY has reviewed the proposed changes in accordance with the criteria specified in 10 CFR 50.92 and has determined that the proposed changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change is a clarification of existing requirements. No change to any system, structure, or component is involved, nor are the criteria for determining the OPERABILITY of any component or system revised. The affected radiation monitors will continue to perform at the same functional level as currently required, with the same OPERABILITY requirements and allowed outage times. The proposed change does not effect the functional requirements of the affected systems. With these requirements unchanged, the potential doses to personnel onsite and members of the public are not increased.

2. Create the possibility of a new or different kind of accident from previously

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evaluated. The proposed change clarifies testing requirements for existing plant equipment. This change does not alter the function of this equipment or create a new failure mode for this equipment. No changes to any plant equipment or operating procedures are involved.

3. Involve a significant reduction in a margin of safety. The proposed change adds a Technical Specification Definition of Digital Channel Operational Test (DCOT) and revises three notes in two Technical Specification Tables to clarify the intent of the Technical Specifications. The change does not affect the current method of performing the required surveillance testing. The proposed change does not affect the functional requirements of the affected systems. The affected radiation monitors will continue to perform at the same functional level as currently required, with the same OPERABILITY requirements and allowed outage times. Therefore, the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire, 03833.

Attorney for licensee: Thomas Dignan, Esquire, Ropes & Gray, One International Place, Boston, Massachusetts 02110-2624

NRC Project Director: Richard H. Wessman

Public Service Company of New Hampshire, Docket No. 50-443, Seabrook Station, Rockingham County, New Hampshire

Date of amendment request: March 18, 1991

Description of amendment request: The proposed amendment would involve an increase in the maximum enrichment of reload fuel assemblies authorized by Technical Specification 5.3.1 (Fuel Assemblies) to 5.0 weight percent Uranium-235 from the current 3.5 weight percent Uranium-235, and the addition of two new Technical Specifications 3/4.9.13 (Spent Fuel Assembly Storage) and 3/4.9.14 (New Fuel Assembly Storage) and their associated bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.92(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NHY has reviewed the proposed changes utilizing the criteria specified in 10 CFR 50.92 and has determined that the proposed changes do not involve a Significant Hazards Consideration pursuant thereto as discussed below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. There is no increase in the probability of a fuel assembly drop accident in the Spent Fuel Pool since the mass of the fuel assembly does not increase when the fuel enrichment is increased. There is not a significant increase in the consequences of a fuel assembly drop accident in the Spent Fuel Pool since the fission product inventories in the fuel assemblies do not change significantly due to an increase in the fuel enrichment. The existing FSAR analyses for the fuel assembly drop accident indicate that radiological consequences are well within 10 CFR 100 limits. This conclusion remains valid at the increased fuel assembly enrichment. There is no increase in the probability or consequences of misplacing fuel assemblies in the Spent Fuel Pool because fuel assembly placement will be procedurally controlled and surveilled pursuant to the proposed Technical Specifications and criticality analyses demonstrate that the pool will remain subcritical assuming misplacement does occur. There is no increase in the probability or consequences of introducing optimum moderation conditions in the New Fuel Storage Vault as a result of an increase in fuel enrichment. These analyses demonstrate that the New Fuel Storage Vault remains subcritical under these modification conditions.

2. The proposed changes do not create the possibility of a new or different kind of accident than previously evaluated. Spent fuel handling accidents are not new or different types of accidents in that they are already analyzed in the FSAR. Criticality accidents in the New Fuel Storage Vault or Spent Fuel Pool are not new or different types of accidents in that they are already analyzed in the FSAR for fuel enrichments up to 3.5 weight percent Uranium-235. Additional criticality analyses have been performed for fuel enrichments up to 5.0 weight percent Uranium-235.

3. The proposed changes do not involve a significant reduction in a margin of safety. Criticality analyses have been performed which demonstrate that the New Fuel Storage Vault will remain subcritical under a range of moderation conditions from fully flooded to optimum moderation. Criticality analyses have been performed which demonstrate that the Spent Fuel Pool will be at least five percent subcritical under a fuel assembly misplacement accident with soluble boron (2000 parts per million) present in the pool and will remain subcritical with no soluble boron present.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire, 03833.

Attorney for licensee: Thomas Dignan, Esquire, Ropes & Gray, One International Place, Boston, Massachusetts 02110-2624.

NRC Project Director: Richard H. Wessman

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: Two letters both dated April 3, 1991

Description of amendment request: For Salem Units 1 and 2 the requested change would modify Surveillance 4.10.2.2 to provide more specific cross references to the required surveillances and clarify the requirements.

For Salem Unit 2, the requested changes are as follows:

1. This proposed change will correct a typographical error in Table 3.2-1. The DNB parameter for pressurizer pressure is maintained at greater than or equal to 2220 psia, not less than 2220 psia.

2. Action Statement 24 of Table 3.3-6 for an inoperable Radiation Monitoring System channel incorrectly refers to Specification 3.4.6.1, Steam Generators. The reference is being corrected to refer to Specification 3.4.7.1, Reactor Coolant System Leak Detection.

3. Currently, there are two surveillances numbered 4.4.7.2. These surveillances are being renumbered to 4.4.7.2.1 and 4.4.7.2.2 for clarity.

4. Table 3.4-1 describes the function of the SJ144 valves as Safety Injection (H.P. from SI Pumps to Hot Legs). These valves are in the lines to the Cold Legs, and should be described as Safety Injection (H.P. from SI Pumps to Cold Legs).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

A. Involve a significant increase in the possibility or consequences of an accident previously analyzed.

1. For Salem Units 1 and 2, the proposed changes to surveillance requirement 4.10.2.2 will provide more specific cross references to the required surveillances. The proposed rewording of the specification will eliminate redundancy and improve consistency. These changes are administrative and not technical in nature. Therefore, these changes would not increase the probability or consequences of a previously analyzed accident.

2. For Salem Unit 2:

a. The proposed change to correct a typographical error for Table 3.2-1, Pressurizer Pressure DNB parameter is administrative only. There is no technical change. Therefore, this change would not increase the probability or consequences of a previously analyzed accident.

b. Correction of the typographical error so that the action statement references the correct action assures that proper actions will be taken. This change does not increase the probability or consequences of a previously analyzed accident.

c. Renumbering of a specification is purely an administrative change which allows easier procedural references. As such, the proposed change will not increase the probability or consequences of a previously analyzed accident.

d. The proposed change corrects an improper component functional description for the component and is therefore an administrative change. As such, the proposed change will not increase the probability or consequences of a previously analyzed accident.

B. Create the possibility of a new or different kind of accident. As demonstrated above, all of the proposed changes are administrative and would not create the possibility for a new or different type of accident.

C. As demonstrated above, all of the proposed changes are administrative and do not change Technical Specifications in a way that would reduce any margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C., 20005-3502

NRC Project Director: Walter R. Butler

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: February 15, 1991

Description of amendment request: The proposed amendment would delete the reference to the Deaerator Storage Tanks (DSTs) as condensate storage facilities for the Auxiliary Feedwater System and would revise the nomenclature for "condensate storage tank" and "condensate storage facilities" to "condensate storage tanks."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

Toledo Edison has reviewed the proposed change and determined that a significant hazards consideration does not exist because operation of the DBNPS, Unit Number 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no accident conditions and assumptions are affected. Revising TS 3.7.1.3 to delete the DST as a source of condensate does not increase the probability of an accident since there are no changes to any plant system, equipment or procedure. The accident analysis assumes a volume of water equal to 250,000 gallons be available for AFWS operation. This volume is available from CSTs, and has always been available from this source. Therefore, the volume of the DST is not needed nor has it been credited in USAR analyses. The changes to Surveillance Requirement (SR) 4.7.1.3.1 and Bases Section 3/4.7.1.3 are editorial only.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because no accident conditions and assumptions are affected. Revising TS 3.7.1.3 to delete the DST as a source of condensate does not affect the consequences of an accident since the accident analysis assumes a volume of water equal to 250,000 gallons be available for AFWS operation. This volume is available from the CSTs, and has always been available from this source. Therefore, the volume of the DST is not needed nor has it been credited in USAR analyses. The changes to SR 4.7.1.3.1 and Bases Section 3/4.7.1.3 are editorial only.

2a. Not create the possibility of a new kind of accident from accident previously evaluated because no accident conditions and assumptions are affected. Revising TS 3.7.1.3 to delete the DST as a source of condensate does not create the possibility of a new kind of accident since there are no changes to any plant system, equipment or procedure. The accident analysis assumes only that a volume of water equal to 250,000 gallons be available for AFWS operation. This volume is available from the CSTs, and has always been available from this source. Therefore, the volume of the DST is not needed nor has it been credited in USAR analyses, and deletion of this potential source from the TS does not create any new type of accident. The changes to SR 4.7.1.3.1 and Bases Section 3/4.7.1.3 are editorial only.

2b. Not create the possibility of a different kind of accident from any accident previously evaluated because no accident conditions and assumptions are affected. Revising Ts 4.7.1.3 to delete the DST as a source of condensate does not create the possibility of a different kind of accident since there are no changes to any plant system, equipment or procedure. The accident analysis assumes only that a volume of water equal to 250,000 gallons be available for AFWS operation. This volume is available from the CSTs, and has always been available from this source. Therefore, the volume of the DST is not needed nor has it been credited in USAR analyses, and deletion of this potential source from the TS does not create any new type or accident. The changes to SR 4.7.1.3.1 and Bases Section 3/4.7.1.3 are editorial only.

3. Not involve a significant reduction in a margin of safety because the condensate volume requirements to meet analysis assumptions are not changed. Revising TS 3.7.1.3 to delete the Deaerator Storage Tank as a source of condensate only provides for a change in the cited source of condensate; however, it should be noted that the deaerator storage tank has never been considered in meeting the TS 3.7.1.3 volume requirements. The margin of safety has not been reduced because at least 250,000 gallons of condensate remain required by the TS. The changes to SR 4.7.1.3.1 and Bases Section 3/4.7.1.3 are editorial only and do not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: John N. Hannon

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: March 1, 1991

Description of amendment request: The proposed amendment would revise TS 3/4.6.1.2, to increase the allowed Secondary Containment bypass leakage

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rate from 0.015 La to 0.03 La, relocate the list of containment bypass leakage paths (Table 3.6-1) from the TS's to the Updated Safety Analysis Report (USAR), and delete Surveillance Requirements (SR) leakage tests for bypass of containment penetrations and containment isolation valves which are not incorporated in the DBNPS design.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

Toledo Edison has reviewed the proposed change and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station Unit 1 in accordance with these changes would:

1a) Not involve a significant increase in the probability of an accident previously evaluated because there are no design modifications or hardware changes proposed.

1b) Not involve a significant increase in the consequences of an accident previously evaluated because the proposed change does not increase the consequence above those previously analyzed and found acceptable by the NRC in NUREG-0136, Supplement 1.

2a) Not create the possibility of a new kind of accident from any accident previously evaluated because there are no design modifications or hardware changes proposed.

2b) Not create the possibility of a different kind of accident form any accident previously evaluated because there are no design modifications or hardware changes proposed.

3a) Not involve a significant reduction in a margin of safety as defined in the Basis for any Technical Specification since the TS will continue to limit the allowed secondary containment bypass leakage rate and maintain appropriate surveillance requirements.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: John N. Hannon

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: March 1, 1991

Description of amendment request: The proposed amendment would revise Technical Specification 4.7.7 and TS Bases 3/4.7.7, to change the surveillance schedule to be in accordance with NRC Generic Letter 90-09.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

Toledo Edison has reviewed the proposed change and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no initiators or assumptions for a previously evaluated accident are affected by these proposed changes to Technical Specification 4.7.7 and Bases 3/4.7.7. There are no hardware or operational modifications associated with these changes. The proposed changes are consistent with those developed by the NRC and recommended in Generic Letter 90-09 for ensuring snubber operability.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because no initiators or assumptions for a previously evaluated accident are affected by these proposed changes to Technical Specification 4.7.7 and Bases 3/4.7.7. There are no hardware or operational modifications associated with these changes.

2a. Not create the possibility of a new kind of accident from any accident previously evaluated because no new accident initiators are created. No new hardware changes are being made and no new operating manipulations are being created by these proposed changes to Technical Specification 3/4.7.7 and Bases 3/4.7.7.

2b. Not create the possibility of a different kind of accident from any accident previously evaluated because no accident initiations are created. No changes in hardware or plant manipulations are being created by these proposed changes to Technical Specification 4.7.7 and Base 3/4.7.7.

3a. Not involve a significant reduction in a margin of safety because the proposed changes are consistent with those developed and approved by the NRC to ensure the revised schedule for visual inspections maintains the same confidence level in snubber operability as the existing schedule. Since the snubber Functional Test Program (which provides a high confidence level of snubber operability) is not being changed, and since there is no reduction in the NRC accepted licensing basis, there is no significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: John N. Hannon

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: March 15, 1991

Description of amendment request: The proposed amendment would revise Technical Specification 3.4.6.2(f) and the associated bases to change the allowable leakage limits for pressure isolation valves (PIVs) in the reactor coolant system. Specifically, the allowable leakage limit for a PIV is proposed to be proportional to its size for all PIVs larger than 2 inches with a maximum upper limit of 5 gallons per minute (gpm) at a system differential pressure of 2235 ±20 pounds per square inch. For valve sizes 2 inches or less, the allowable leakage limit is proposed as 1 gpm which is the same as the present technical specification limit. Additionally, a series of editorial changes are proposed for Table 3.4-1 including the addition of valve sizes plus a listing of the maximum allowable leakage rates for the PIVs which conform to the proposed leakage criteria.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

1.The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The licensee's proposal does not alter any of the actions required by the subject technical specification so that neither the probability nor the consequences of a previously evaluated accident are affected. Further, the proposed changes do not affect either the operability requirements of these PIVs or the capability of these PIVs to perform their intended safety function.

2.The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. While the proposed changes to the maximum allowable leakage limits for the PIVs permits a higher leakage rate for all valve sizes greater than 2 inches, the total amount of identified reactor coolant system leakage from the reactor coolant system remains unchanged. The proposed changes are being made in recognition that larger valve sizes (i.e., those valves larger than 2 inches) can be expected to have larger leak rates. However, the proposed revisions do not affect previously evaluated accidents since both the total identified leakage rate and the other maximum leakage permissible rates (e.g., no pressure boundary leakage) remain unchanged.

3.The proposed changes do not involve a significant reduction in a margin of safety. The present margins of safety remain unchanged in that no hardware changes will be made and all other maximum permissible leakage rates, except for individual valves, remain the same.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: John N. Hannon

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: March 15, 1991

Description of amendment request: The licensee is proposing to add two words to Technical Specification 4.8.1.1.a so as to achieve consistency with the definition for containment integrity contained in Technical Specification 1.7.a(2). The additional requests for three specific exemptions from the requirements of Appendix J to 10 CFR Part 50 will be reviewed separately as will the request for a change to Technical Specifications 3/4.6.1.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below. The proposed change does not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The change provides clarification and is administrative in nature.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. There are no design changes being made that would create a new type of accident or malfunction and the method and manner of plant operation remains unchanged. This change is merely an administrative change.

3. Involve a significant reduction in a margin of safety. The change provides clarification and is an administrative only change. Therefore, the margin of safety is unaffected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: John N. Hannon

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: March 19, 1991

Description of amendment request: The proposed amendment would revise Technical Specification Tables 3.3-1, 4.3-1, 3.3-3 and 4.3-2 and associated Bases to extend the allowable out-of-service times (AOTs) and surveillance test intervals for the analog channels of the Engineered Safety Features Actuation System (ESFAS). Extended AOTs are also proposed for the ESFAS actuation logic and actuation relays of the solid state protection system. These proposed changes are consistent with the guidance contained in the staff's Safety Evaluation Report (SER) issued on February 22, 1989 and the supplement to this SER issued on April 30, 1990. Both the SER and its supplement encouraged licensees to propose appropriate revisions to the affected portions of the Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

1.The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The NRC staff's determination that some of the proposed changes are acceptable under this criterion was originally established in the staff's Safety Evaluation Report (SER) issued on February 22, 1989. This SER found acceptable two Westinghouse Topical Reports which are WCAP-10271, Supplement 2 and WCAP-10271, Supplement 2, Revision 1, "Evaluation of Surveillance Frequencies and Out-of-Service Times for the Engineered Safety Features Actuation System." These topical reports, submitted by the Westinghouse Owners Group (WOG) proposed extensions of surveillance test intervals (STIs) and extensions of allowable out-of-service times (AOTs) for tests and maintenance for the Engineered Safety Features Actuation System (ESFAS). This acceptance was conditioned on two matters which the licensee has satisfied.

The staff subsequently issued a supplement to the SER cited above (i.e., an SSER) on April 30, 1990, which found acceptable a portion of the WOG proposals, as cited below, contained in Appendix D to WCAP-10271, Supplement 2, Revision 1. This appendix presented supporting analyses for proposed AOT extensions for the logic cabinets of the reactor protection system. Additionally, the NRC staff concluded in this SSER that certain STI and AOT extensions for some of the ESFAS functions which are plant specific and not included in the Westinghouse Standard Technical Specifications, are acceptable. Some of these extensions include those proposed by the licensee. As with the SER cited above, the acceptance in the SSER of the WOG proposals was conditioned on two matters which the licensee has satisfied.

The impact on safety due to less frequent surveillance has been evaluated by the staff and its consultants and found to be not significant. Under a set of very conservative assumptions, the potential increase in core damage frequency

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(CDF) and public health risk was less than 6 percent. The staff concluded in the SER cited above that this increase in the CDF was small compared to the range of uncertainty in the CDF analyses and, therefore, acceptable.

2.The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not involve hardware changes and do not result in a change in the manner in which the reactor trip system (RTS) or the ESFAS provide plant protection. No change is being made which alters the functioning of the RTS or ESFAS. The impact of the probability of the RTS or ESFAS functioning properly due to the extended STIs and AOTs, is discussed above (i.e., the small increase in the CDF).

3.The proposed changes do not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. The impact of reduced testing, other than as addressed above for the CDF, is to allow a longer time interval over which instrument uncertainties (e.g., drift) may act. The licensee's commitment to monitor the effects of drift addresses this concern. Implementation of the proposed changes is expected to result in an overall improvement in safety, as follows:

a. Reduced testing will result in fewer inadvertent reactor trips, less frequent actuation of ESFAS components, and less frequent distraction of operations personnel.

b. Improvements in the effectiveness of the operating staff in monitoring and controlling plant operation will be realized. This is due to less frequent distraction of the operators and the shift supervisor to attend to instrumentation testing.

c. Longer repair times associated with increased AOTs will lead to higher quality repairs and improved reliability.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: John N. Hannon

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: January 16, 1990, as supplemented on March 29, 1990, and modified on December 13, 1990.

Description of amendment request: The proposed amendments of January 16, 1990 would have allowed unlimited use of solid stainless steel or solid Zircaloy-4 filler rods in place of fuel rods that are known to be failed, and would have removed the rod uranium weight limit of 1780 grams. The supplemental changes dated March 29, 1990 modified the original submittal to be consistent with the guidance of NRC Generic Letter (GL) 90-02, "Alternative Requirements for Fuel Assemblies in the Design Features Section of Technical Specifications," dated February 1, 1990. Subsequently, the licensee was informed that the NRC was in the process of writing a second generic letter to rescind the use of water channels for the unlimited use of filler rods. The licensee's modified submittal dated December 13, 1990 proposed only the limited use of filler rods. In addition, a limit of five repaired fuel assemblies per core containing no more than three solid stainless steel or Zircaloy-4 filler rods per assembly would be also allowed and open water channels would not be permitted. The initial application dated January 16, 1990, was noticed in the Federal Register on February 7, 1990 (55 FR 4286). Due to the changes as noted above, the staff has determined that a renotice should be issued.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not significantly increase the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report. In fact, the proposed change[s] will have no impact on the probability of occurrence or the consequences of an accident or malfunction of equipment. The only changes from the original submittal (dated January 16, 1990) are the restriction on the number of stainless steel or Zircaloy-4 filler rods to be used per cycle and the disallowance of open water channels.

2. The proposed amendment[s] will not create the possibility of a new or different kind of accident from any accident previously evaluated. No physical changes or modifications are being made to the plant or its equipment. As noted above, the only changes are an additional restriction on the number of stainless steel or Zircaloy-4 filler rods and the disallowance of open water channels from our original submittal.

3. The proposed amendment[s] [do] not involve a significant reduction in a margin of safety. No physical changes or modifications are being made to the plant or its equipment. No changes are being made to the cycle-specific reload analysis. As previously stated, the only changes are an additional restriction on the number of stainless steel or Zircaloy-4 filler rods and the disallowance of open water channels from our original submittal.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Herbert N. Berkow

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: November 8, 1990

Description of amendment request: Currently, the Surry Technical Specifications do not have allowed outage times (AOT) for the majority of the instruments listed in Tables 3.7-2 and 3.7-3. To provide consistent required operator actions and AOT for the reactor protection (trip) instruments and the engineered safeguards actuation instruments, Tables 3.7-1, 3.7-2 and 3.7-3 would be modified. Table 3.7-1, Reactor Trip Instruments, was previously modified in accordance with the Westinghouse Owners Group Topical Report WCAP-10271, Supplement 1 and the NRC Safety Evaluation Report dated February 21, 1985. The proposed Technical Specification change reformats and provides action statements and AOT for each functional unit (instrument) in Tables 3.7-2 and 3.7-3. The action statements and AOT are consistent with WCAP-10271, Supplement 2, Revision 1, "Evaluation of Surveillance Frequencies and Out of Service Times for the Engineered Safety Features Actuation System (ESFAS)" and the NRC Safety Evaluation Reports (SER) dated February 22, 1989 and April 30, 1990. Several additional changes would be incorporated into Table 3.7-1 to maintain consistent action statements and AOT for the instruments that are included in Tables 3.7-2 and 3.7-3. In addition, operability and surveillance requirements for the feedwater isolation/turbine trip instruments would be added to Table 3.7-3 in accordance with Generic Letter 89-19, "Safety Implication of Control Systems in LWR Nuclear Power Plants." The surveillance intervals would not be changed to quarterly at this time. Surry Power Station performs surveillance tests of the reactor protection and engineered safeguards instruments on a monthly basis. To make the Surry Technical Specifications more consistent with the Standard Technical Specifications, operability requirements for the reactor protection system and engineered safeguards system interlocks would be included in Tables 3.7-1 and 3.7-2. The appropriate surveillance requirements for these interlocks, which are enveloped by the above-cited topical reports and NRC Safety Evaluations, would be added to Table 4.1 in accordance with Generic Letter 89-19.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Virginia Electric and Power Company has reviewed the proposed changes against the criteria of 10 CFR 50.92 and has concluded that the changes as proposed do not pose a significant hazards consideration.

Specifically, the proposed change[s] will reformat the [e]ngineered [s]afeguards instruments tables, provide operability requirements for [r]eactor [p]rotection and [e]ngineered [s]afeguards interlocks, and provide action statements and allowed outage times consistent with WCAP[-]10271, Supplement 2, "Evaluation of Surveillance Frequencies and Out of Service Times for the Engineered Safety Features Actuation System (ESFAS)." Thus, operation of the Surry Power Station in accordance with the proposed changes will not:

1. Involve a significant increase in the probability or consequences of any accident previously evaluated. Based on the Westinghouse/WOG analyses and Brookhaven National Laboratory sensitivity studies of those analyses, the proposed ESFAS changes would have only a small impact on plant risk. The overall upper bound for the Core Damage Frequency (CDF) increase is less than 6% for the proposed changes which is relatively small compared to the range of uncertainty in the CDF analyses. Since the proposed change[s] [do] not extend the surveillance frequencies to quarterly, the overall CDF increase will be much smaller than the Westinghouse/WOG analyses projections of 2.4%.

2. Create the possibility of a new or different type of accident from those previously evaluated in the safety analysis report. Physical plant modifications are not being made and overall plant operations are not being changed. Only instrument [a]llowed [o]utage [t]imes, [a]ction [s]tatements, and surveillance requirements are being included or changed. Therefore, new accident precursors are not being generated and no new or different kind of accident is created.

3. Involve a significant reduction in the margin of safety. Plant operations are not changed nor are any of the accident analysis assumptions modified or exceeded by [these changes]. The changes in [a]llowed [o]utage [t]imes for [e]ngineered [s]afeguards [a]ction instruments and [o]perator [a]ctions with inoperable instruments have no impact on the margin of safety because as long as the minimum channel operable requirements are met the unit is operating within the design basis. Therefore, the accident analysis assumptions remain bounding and safety margins remain unchanged.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Herbert N. Berkow

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendments request: December 30, 1987, August 1, 1989, and March 29, 1990.

Description of amendments request: The licensee proposes amending Technical Specification Section 15.6, ADMINISTRATIVE CONTROLS, to document changes to the staff organization and to remove the organization charts from the Technical Specifications. New requirements would be added to Sections 15.6.2.1 and 15.6.2.2 to include essential aspects of the organization charts not already contained in the Technical Specifications. Figures 15.6.2-1, "Management Organization Chart," 15.6.2-2, "Conduct of Plant Operations," 15.6.2-3, "Wisconsin Electric Power Company Off-Site Management Fire Protection Organization," and 15.6.2-4, "Point Beach Nuclear Plant Fire Protection Organization," would be removed.

Technical Specification 15.6.2.2.d requiring the presence of an individual qualified in radiation protection when fuel is in either reactor would be revised to allow this position to be unfilled for up to 2 hours to accommodate unexpected absences.

A new item would be added to Section 15.6.2.1 to specify that individuals who carry out health physics and quality assurance functions have sufficient organizational freedom to be independent of operational pressure.

The proposed amendment would increase the quorum requirements for meetings of the Managers Supervisory Staff set forth in Technical Specification 15.6.5.1.5 and the Offsite Review Committee set forth in Technical Specification 15.6.5.2.6.

Several non-substantive administrative changes in Section 15.6 are also proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because the changes "...are strictly administrative and do not affect physical plant operation or the procedures for operating the plant. Therefore they cannot affect previously evaluated accidents."

(2) The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated because "...no physical plant changes or changes to plant operating parameters or procedures are proposed."

(3) The proposed changes do not involve a significant reduction in a margin of safety because "...each of the proposed changes are strictly administrative in nature and the changes will enhance the management of our facility."

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and

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Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

Previously Published Notices of Consideration of Issuance of Amendments to Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London, Connecticut

Date of application for amendment: March 21, 1991

Brief description of amendment request: The proposed amendment would revise Facility Operating License No. NPF-49 to reflect the fact that Public Service Company of New Hampshire will be a wholly owned subsidiary of Northeast Utilities as of the merger date.

Date of individual notice in **federal register:** May 13, 1991 (56 FR 22024)

Expiration date of individual notice: June 12, 1991

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Notice of Issuance of Amendment to Facility Operating License

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: March 17, 1991

Brief description of amendments: The amendments change the Technical Specifications (TSs) for Unit 2 to require that the Safety Injection Tanks (SITs) be operable throughout Mode 3. The Unit 1 TSs already include this requirement. The amendments also revise the TSs surveillance requirements for the SITs of both Units 1 and 2 to be consistent with the operability requirements during Mode 3 operation, includes editorial changes to the applicable TSs titles to accurately reflect the amendment changes, and the Index and Bases Sections are updated to reflect the changes in operability and surveillance requirements. Date of issuance: May 6, 1991 Effective date: May 6, 1991 Amendment Nos.: 153 and 133

Facility Operating License Nos. DPR-53 and DPR-69. Amendments revised the Technical Specifications.

Date of initial notice in **federal register:** April 3, 1991 (56 FR 13658) The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated May 6, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: January 7, 1991, as supplemented April 9, 1991.

Brief Description of amendments: The proposed amendment removes the existing visual inspection surveillance requirements and acceptance criteria associated with Technical Specification 3/4.7.5 and inserts a refueling-outage-based visual examination schedule.

Date of issuance: May 8, 1991

Effective date: May 8, 1991

Amendment Nos.: 152 and 182

Facility Operating License Nos. DPR-71 and DPR-62. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** February 6, 1991 (56 FR 4861) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 8, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: February 28, 1991

Brief description of amendment: The amendment will establish periodic operability testing of the steam generator overfill protection system at the Haddam Neck Plant. Date of Issuance: May 6, 1991

Effective date: May 6, 1991

Amendment No.: 136

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 3, 1991 (56 FR 13661) Th Commission's related evaluation of this

amendment is contained in a Safety Evaluation dated May 6, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: September 26, 1990

Brief description of amendment: The amendment revises Technical Specification Section 3.3 to reflect changes made to the power feeds to the Component Cooling Water Pumps; Sections 3.7 and 4.6 to show the increased Emergency Diesel Generator (EDG) short-term rating and the resultant increase in required EDG fuel oil storage requirements; and to update the designation of power feeds at the Buchanan Substation. Date of issuance: May 9, 1991 Effective date: May 9, 1991 Amendment No.: 153

Facility Operating License No. DPR-26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 31, 1990 (55 FR 45878) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 9, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: March 15, 1991

Brief description of amendment: The amendment revised Technical Specification 6.0, "Administrative Controls" by changing the title "GGNS General Manager" to "General Manager, Plant Operations".

Date of issuance: May 6, 1991

Effective date: May 6, 1991

Amendment No: 76

Facility Operating License No. NPF-29. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** April 3, 1991 (56 FR 13663) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 6, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120.

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: December 7, 1990

Brief description of amendment: The amendment revised the Technical Specifications (TS) by removing the TS on radioactive effluents and radiological environmental monitoring and adding controls to include them in the offsite Dose Calculational Manual (ODCM). Specifications on solid radioactive wastes will be relocated to the Process Control Program (PCP). These revisions are in response to Generic Letter 89-01 dated January 31, 1989.

Date of issuance: April 24, 1991

Effective date: April 24, 1991

Amendment No.: 68

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 23, 1991 (56 FR 2548) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 24, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: November 28, 1990

Brief description of amendment: Modify surveillance frequency for ECCS pumps from monthly to quarterly, consistent with ASME code, and make administrative clarification.

Date of issuance: May 9, 1991

Effective date: May 9, 1991

Amendment No.: 121

Facility Operating License No. DPR-36: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 3, 1991 (56 FR 13664) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 9, 1991

No significant hazards consideration comments received: No

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2, Scriba, New York

Date of application for amendment: February 20, 1991

Brief description of amendment: The amendment revises Technical Specification 4.7.5 to incorporate the recommendations on snubber visual inspection frequencies contained in Generic Letter 90-09, "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions." The amendment increases the allowable time interval between visual inspections of snubbers when the snubbers are operating at a high level of dependability. The amendment also makes editorial changes to delete references to tests and inspections required during the first refueling outage since those tests and inspections have been completed. Date of issuance: May 6, 1991 Effective date: May 6, 1991 Amendment No.: 29

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** April 3, 1991 (56 FR 13657) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 6, 1991

Significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2, Scriba, New York

Date of application for amendment: January 21, 1991

Brief description of amendment: The amendment revises Technical Specification Table 4.3.7.10-1 to require isolation of the offgas system as part of the 18-month channel calibration for the noble gas activity monitor in lieu of the requirement to demonstrate actual isolation during the monthly functional test. This amendment also revises Technical Specification Table 3.3.7.10-1 to reflect the as-built configuration of the noble gas activity monitor instrumentation and makes an editorial change. Date of issuance: May 9, 1991 Effective date: May 9, 1991 Amendment No.: 30

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Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** April 3, 1991 (56 FR 13665) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 9, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Philadelphia Electric Company, Docket No. 50-353, Limerick Generating Station, Unit 2, Montgomery County, Pennsylvania

Date of application for amendment: March 12, 1991

Brief description of amendment: The amendment changed Sections 2.1.2, 3.2.1, 3.2.3 and the pertinent Bases of the Technical Specifications to reflect changes to the Minimum Critical Power Ratio (MCPR) Safety Limit as a result of changes in reload fuel type and to reflect the revised computer methods used to calculate thermal limits.

Date of issuance: May 6, 1991

Effective date: May 6, 1991

Amendment No. 14

Facility Operating License No. NPF-85. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 3, 1991 (56 FR 13669) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 6, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Toledo Edison Company, Centerior Service Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: July 21, 1988

Brief description of amendment: This amendment revised Table 3.3-7, "Seismic Monitoring Instrumentation," and Table 4.3-4, "Seismic Monitoring Instrumentation Surveillance Requirements," of Technical Specification 3/4.3.3.3. The tables were revised to (1) reflect the actual and appropriate configuration of the seismic trigger, its associated station site strong motion triaxial accelerometer and the shield building peak recording accelerometer, and (2) revise the frequency range and include an actuation range of the station site seismic trigger.

Date of issuance: May 6, 1991

Effective date: May 6, 1991

Amendment No. 156

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 22, 1990 (55 FR 34383) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 6, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: October 30, 1990

Brief description of amendments: These amendments revise Technical Specifi cation 15.3.1.F, Limiting Conditions For Operation, Reactor Coolant System, Minimum Conditions for Criticality, by adding a new specification 3 which requires that during approach to criticality at least one count per second, attributable to neutrons shall register on a narrow range source monitor. The corresponding basis section was modified to include the basis for this new specification. Technical Specification 15.5.3.A.5, Design Features, Reactor, would be revised to state that neutron source assemblies may be used instead of stating that they are used.

Date of issuance: May 8, 1991

Effective date: May 8, 1991

Amendment Nos.: 127 and 131

Facility Operating License Nos. DPR-24 and DPR-27. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 20, 1991 (56 FR 11787) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 8, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Notice of Issuance of Amendment to Facility Operating License and Final Determination of No Significant Hazards Consideration and Opportunity for Hearing (Exigent or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By June 28, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555 and at the Local Public Document Room for the particular facility involved.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (Project Director): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the

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factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Scriba, New York

Date of amendment request: April 29, 1991

Description of amendment request: The amendment revises Technical Specification 3/4.6.1.7 to permit plant operation to continue until the next cold shutdown (to occur no later than September 30, 1991) with an inoperable containment purge inboard isolation valve (2CPS*AOV106).

Date of Issuance: May 9, 1991

Effective date: May 9, 1991

Amendment No.: 31

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: No

The Commission's related evaluation of the amendment, finding of emergency circumstances, consultation with the State, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated May 9, 1991.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC. 20005-3502.

NRC Project Director: Robert A. Capra

Dated at Rockville, Maryland, this 21 day of May 1991.

For the Nuclear Regulatory Commission

Jose A. Calvo,

Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation

[Doc. 91-12529 Filed 5-28-91; 8:45 am]

BILLING CODE 7590-01-D

OVERSIGHT BOARD

Regional Advisory Board Meetings, Regions 1-6

AGENCY: Oversight Board for the Resolution Trust Corporation.

ACTION: Meeting notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub.L. 92-463), announcement is hereby published for the regional advisory board meetings for Regions 1 through 6. The meetings are open to the public.

DATES: The meetings are scheduled as follows:

1. June 11, 1991, 10 a.m. to 4 p.m., Oklahoma City, OK, Region 2 Advisory Board.
2. June 13, 1991, 10 a.m. to 4 p.m., Phoenix, AZ, Region 6 Advisory Board.
3. June 18 1991, 10 a.m. to 4 p.m., Raleigh, N.C., Region 1 Advisory Board.
4. June 28, 1991, 10 a.m. to 4 p.m., Ft. Worth, TX, Region 4 Advisory Board.
5. July 2, 1991, 10 a.m. to 4 p.m., Detroit, MI, Region 3 Advisory Board.
6. July 9, 1991, 10 a.m. to 4 p.m., Seattle, WA, Region 5 Advisory Board.

ADDRESSES: The meetings will be held at the following locations:

1. Oklahoma City, OK—Metro Tech, 1990 Springlake Drive, Auditorium.
2. Phoenix, AZ—Phoenix Civic Plaza, 225 East Adams Street, Flagstaff Rooms 4 & 5.
3. Raleigh, NC—Radisson Plaza Raleigh, 420 Fayetteville Strteet Mall, Hanover III Rm.
4. Ft. Worth, TX—Texas Christian University, M.J. Neeley School of Business, 2900 Lubbock, Dan Rogers Hall, room 134.
5. Detroit, MI—Federal Reserve Bank of Chicago/Detroit Branch, 160 W. Fort Street, Conference Room.
6. Seattle, WA—Seattle International Trade Center, 2601 Elliott Ave., Skyline Room, 5th Floor.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, Oversight Board/RTC, 1777 F Street, NW., Washington, DC 20232, 202/786-9675.

SUPPLEMENTARY INFORMATION: Section 501(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (the ACT), Public Law No. 101-73, 103 Stat. 183, 382-383, directed the Oversight Board to establish one national advisory board and six regional advisory boards.

Purpose: The advisory boards provide the Resolution Trust Corporation (RTC) with information and recommendations on the policies and programs for the sale of RTC owned real property assets.

Agenda: A detailed agenda will be available at the meeting. Discussions will center around the activities of each region. The issues to be addressed include: (1) Making the RTC more user friendly; (2) RTC seller financing program; (3) RTC pricing policy; (4) RTC contracting programs as it relates to minority and women outreach programs; (5) RTC affordable housing program; and (6) local real estate market conditions. In addition, there will be briefings by the RTC on activity pertaining to that region and policy updates by the Oversight Board.

Statements: Interested persons may present data, information, or views in writing on the issues pending before the advisory board. Persons wishing to make oral statements are to notify the contact person 10 days before each meeting giving a brief statement on the nature of the remarks. Time permitting, oral comments will be limited to approximately five minutes. There will be opportunity to sign up for the public forum at the meeting. All meetings are open to the public. Seating is available on a first come first served basis.

Dated: May 24, 1991.

Jill Nevius,

Committee Management Officer, Office of Advisory Board Affairs.

[FR Doc. 91-12637 Filed 5-28-91; 8:45 am]

BILLING CODE 2323-01-M

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next meeting on Monday and Tuesday, June 10-11, 1991, in the City Centre Ballroom of the Sheraton City Centre Hotel, 1143 New Hampshire Avenue, NW., Washington, DC. The meetings will begin a 9 a.m.

ADDRESSES: The Commission is located at 2120 L Street, NW. in suite 510, Washington, DC. The telephone number is 202/653-7220.

FOR FURTHER INFORMATION CONTACT: Lauren LeRoy, Deputy Director, 202/653-7220.

SUPPLEMENTAL INFORMATION: The discussions will include review of HCFA's Notice of Proposed Rule Making for the Medicare Fee Schedule, the President's budget, and the HHS report on access and utilization, as well as the Commission's report to Congress on physician payment under Medicaid due on July 1, 1991.

Information about the exact agenda can be obtained on Wednesday, June 5, 1991. Copies of the agenda can be mailed at that time. Please direct all requests for the agenda to the Commission's receptionist.

Paul B. Ginsburg,

Executive Director.

[FR Doc. 91-12594 Filed 5-28-91; 8:45 am]

BILLING CODE 6820-SE-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29211; File No. SR-NASD-91-23]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Operation of the SelectNet System

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 3, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to extend for six months the current operational structure of the SelectNet system, which was approved by the Commission on November 21, 1990.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organizaton's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On November 21, 1990, the SEC approved enhancements to SelectNet [1] which included a six month approval for three system "rules" that were thought necessary to preclude the type of abuses occurring in the Small Order Execution System ("SOES") in SelectNet.[2] The six month period expires on May 21, 1991. The NASD believes that SelectNet should retain its current operational structure, in order to allow more time to evaluate whether the rules should be made permanent, or should be modified in any way. SelectNet currently operates under the following rules and the Association is proposing to retain this structure for another six months:

- SelectNet will be available only for agency or principal orders that are greater than the SOES tier size.
- Market makers receiving orders through SelectNet will not be required to execute partial orders, but may elect to execute partials at their discretion.
- In the event of an emergency or during extraordinary market conditions, either one or both of the aforementioned conditions may be eliminated pursuant to the authority granted to the Board of Governors and its designees in Article VII, Section 3 of the NASD By-Laws.

These rules were implemented for SelectNet in November because the mandatory display of size that requires market makers to post quotations at the SOES tier level took effect on December 1, 1990 and the SEC firm quote rule requires broker/dealers to execute orders presented to them at their quoted size. At that time, the NASD believed that the same sort of abuses taking place in SOES might occur in SelectNet, especially as SelectNet allows principal as well as agency orders, and therefore sought Commission approval of these rules. The NASD notes that SOES abuse remains of great concern to the NASD and the various proposals submitted by the NASD to curb abuses and improve operation of the system are still under consideration by the Commission.

The NASD believes that SelectNet should continue operating as it does today, retaining its interactive, negotiation features, with market maker participation truly voluntary as opposed to a system that takes on the characteristics of an automatic execution system with mandatory participation requirements—recognizing that during emergency conditions, the fundamental nature of the system may be modified to include mandatory market maker obligations.

The NASD believes the proposed rule change is consistent with section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to "foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market." SelectNet offers an automated, negotiation trading environment that results in locked-in trades sent to clearing.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause, pursuant to section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register**, and, in any event, on or before May 21, 1991, the date on which the current approval for SelectNet operational rules expires. The NASD believes that the SelectNet service benefits members and their public customers by providing an automated alternative to traditional telephone negotiation that is more responsive to a trading room environment and easier for members to use. In light of these factors, the NASD requests that the Commission approve the rule change on an accelerated basis, on or before May 21, 1991.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A(b)(6) and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof. The Commission believes that accelerated approval is appropriate to allow the NASD to retain market maker support of the SelectNet system and to continue to assess the impact of the

[1] See Securities Exchange Act Release No. 28630 (November 21, 1990); 55 FR 49732 (November 30, 1990).

[2] See Securities Exchange Act Release No. 28709 (December 19, 1990); 55 FR 53224 (December 27, 1990), noticing SR-NASD-90-59; Release No. 29181 (May 9, 1991) noticing SR-NASD-91-17; and Release No. 29182 (May 9, 1991) noticing SR-NASD-91-18. All of the aforementioned filings contain proposals to amend SOES Rules.

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existing operational rules on SelectNet usage. The Commission expects that during this second six month period the NASD will continue to consider the feasibility of a direct response to the potential for abuse of SelectNet by a small number of active professional traders, as an alternative to the present limitations imposed on SelectNet participants. We believe that leaving the existing operational rules intact will aid in preventing attempts by market participants to abuse the automated routing in the system as experienced in SOES,[3] while allowing the NASD additional time to consider whether these rules should be made permanent or modified in any way.

Furthermore, we are of the opinion that the operational rule which stipulates that market makers receiving orders through SelectNet will not be required to execute partial orders but may execute partial orders at their discretion promotes the voluntary nature of SelectNet trading. As a result, we believe that use of the system by market participants as an alternative vehicle to efficiently negotiate, execute, and compare transactions is encouraged.

IV. Solicitation of Comment

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days from the date of publication].

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is approved for a period of 6 months from the date of this order.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: May 20, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-12640 Filed 5-28-91; 8:45 am]

BILLING CODE 8010-01-M

[3] In SOES sophisticated market professionals found ways to abuse the automated nature of the system to the detriment of market maker participation and liquidity by, for example, sending in orders for automatic execution against the last market maker to update a quotation in an issue.

[Release No. 34-29210; No. SR-Phlx-91-22]

Self-Regulatory Organizations; Notice of Proposed Rule Change by Philadelphia Stock Exchange, Inc. Relating to Odd-lot Limit Orders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 6, 1991, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commisson is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 227 and 229 respecting the execution of odd-lot orders. The text of the proposed rule change is available at the Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Phlx proposes to amend the provision of Rules 227 and 229 relating to the execution of odd-lot limit orders. Currently, these rules provide odd-lot limit orders with the guarantee of an execution after a sale occurs in the primary market through the limit price. The amendments would improve this guarantee from the vantage of customers by guaranteeing them an execution of their odd-lot limit order after a sale occurs in the primary market at the limit price. The Phlx believes that this proposed rule change is procompetitive and generally reflects the evolving industry structure that affords odd-lot orders highly efficient and price superior execution services.

The proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that

may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-91-22 and should be submitted by June 19, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 20, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-12639 Filed 5-28-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

May 22, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Autozone, Inc.
Common Stock, $.01 Par Value (File No. 7-6877)
Caldor Corp.
Common Stock, $.01 Par Value (File No. 7-6878)
Comerica, Inc.
Common Stock, $5.00. Par Value (File No. 7-6879)
Continuum, Inc.
Common Stock, $.10 Par Value (File No. 7-6880)
Duracell International Inc.
Common Stock, $.01 Par Value (File No. 7-6881)
Western Waste Industries
Common Stock, No Par Value (File No. 7-6882)
Ann Taylor Stores Corp.
Common Stock, $.0068 Par Value (File No. 7-6883)
Telefonos de Mexico S.A. de C.V.
American Depository Shares (File No. 7-6884)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 13, 1990, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-12571 Filed 5-28-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

May 22, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Avon Products, Inc.
Preferred Equity Redemption Stock, $2.00 Par Value (File No. 7-6851)
Genentech, Inc.
Common Stock, $0.02 Par Value (File No. 7-6852)
Greenery Rehabilitation Group, Inc.
Common Stock, $0.01 Par Value (File No. 7-6853)
MDC Holdings, Inc.
Common Stock, $0.01 Par Value (File No. 7-6854)
National Health Laboratories, Inc.
Common Stock, $0.01 Par Value (File No. 7-6855)
NUI Corp.
Common Stock, $10.00 Par Value (File No. 7-6856)
Sensormatic Electronics Corp.
Common Stock, $0.01 Par Value (File No. 7-6857)
Utilicorp United, Inc.
$2.4375 Perference Stock, No Par Value (File No. 7-6858)
Go Video, Inc.
Common Stock, $.001 Par Value (File No. 7-6859)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 13, 1991, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-12572 Filed 5-28-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

May 22, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Calisle Plastics, Inc.
Class A Common Stock, $.01 Per Value (File No. 7-6870)
Jones Apparel Group, Inc.
Common Stock, $.01 Par Value (File No. 7-6871)
Sensormatic Electronics Corporation
Common Stock, $.01 Par Value (File No. 7-6872)
Ann Taylor Stores Corporation
Common Stock, $.0068 Par Value (File No. 7-6873)
International Colin Energy Corporation
Common Stock, No Par Value (File No. 7-6874)
NAPA Valley Bancorp
Common Stock, No Par Value (File No. 7-6875)
Tremont Corporation
Common Stock, $1.00 Par Value (File No. 7-6876)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 13, 1991, written data, views and arguments concerning the above-referenced

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applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-12573 Filed 5-28-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

May 22, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Ann Taylor Stores Corporation
Common Stock, $.0068 Par Value (File No. 7-8849)
Jones Apparel Group, Inc.
Common Stock, $.01 Par Value (File No. 7-8850)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 13, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz

Secretary.

[FR Doc. 91-12574 Filed 5-28-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Incorporated

May 22, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Ann Taylor Stores Corp.
Common Stock, $.0068 Par Value (File No. 7-8860)
Blackstone Strategic Term Trust, Inc.
Common Stock, $0.01 Par Value (File No. 7-8861)
Cabot Oil & Gas Corp.
Common Stock Class A, $.10 Par Value (File No. 7-8862)
Graham-Field Health Products, Inc.
Common Stock, $.025 Par Value (File No. 7-8863)
Intellicall, Inc.
Common Stock, $0.01 Par Value (File No. 7-8864)
National Health Laboratories, Inc.
Common Stock, $0.01 Par Value (File No. 7-8865)
Pet, Inc.
Common Stock, $0.01 Par Value (File No. 7-8866)
Sierra Health Laboratories, Inc.
Common Stock, $0.01 Par Value (File No. 7-8867)
Sizzler International, Inc.
Common Stock, $0.01 Par Value (File No. 7-8868)
Telefonos de Mexico, SA de CV
American Depositary Receipts (File No. 7-8869)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 13, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-12641 Filed 5-28-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18160; 811-1252]

American Capital Growth Fund, Inc.; Notice of Application

May 21, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: American Capital Growth Fund, Inc.

RELEVANT 1940 ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on January 7, 1991. Amendments were filed on March 21, 1991 and May 21, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 17, 1991, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 2800 Post Oak Blvd. Houston, Texas 77056.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Staff Attorney, at (202) 504-2259 or Max Berueffy, Branch Chief, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant registered under the 1940 Act by filing Form N-8A on March 19, 1964. Its initial registration statement on Form S-5 under the Securities Act of 1933 was filed on or about March 26, 1964, and became effective on July 21, 1964. Ten million (10,000,000) shares of capital stock, all of which shares are of one class, $1.00 par value, were registered. Applicant was organized as a Maryland corporation.

2. On March 9, 1990, Applicant's Board of Directors approved its Agreement and Plan of Reorganization (the "Plan") and recommended its submission to Applicant's shareholders. Proxy materials were mailed to shareholders on May 23, 1990. On June 26, 1990, at a special meeting of shareholders, the Plan was approved by the affirmative vote of the holders of a majority of the outstanding shares of capital stock of Applicant.

3. Pursuant to the Plan, Applicant transferred all of its assets and liabilities to American Capital Enterprise Fund ("Enterprise Fund") (File No. 811-630) on June 29, 1990 in exchange for shares of Enterprise Fund. The net asset values per share of outstanding shares of the Applicant and Enterprise Fund were each determined as of the close of business of the New York Stock Exchange on June 29, 1990. On that date, Applicant transferred 584,184.148 shares of its capital stock having a net asset value of $20.77 per share for 988,915.632 shares of the Enterprise Fund, with a net asset value of $11.85 per share. The aggregate net asset value of the shares exchanged was $11,718,650.24.

4. Applicant and Enterprise Fund each bore their own expenses relating to the reorganization. Applicant's expenses totalled approximately $18,864 while Enterprise Fund expenses totalled approximately $8,725. All expenses of the reorganization were allocated to, and paid by, American Capital Asset Management, Inc., Applicant's investment adviser. These expenses consisted of legal fees, printing, outside auditor's fees and licenses and fees. No brokerage commissions were paid in connection with the reorganization.

5. Applicant intends to file articles of dissolution within twelve months of the closing date. Applicant has no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage in any business activities other than those necessary to wind up its affairs.

6. As of the date of filing the application, the Applicant was current in all filings required to be made pursuant to the 1940 Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-12842 Filed 5-28-91; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Public Meeting

The National Small Business Development Center Advisory Board will hold a public meeting on Friday, June 28th, from 8:30 a.m. to 10:30 a.m., in the Lafayette Hotel, One Avenue de Lafayette, Boston, Massachusetts.

The purpose of the meeting is to discuss such matters as may be presented by Advisory Board members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Hardy Patten, U.S. Small Business Administration, 409 3rd Street, SW., 6th Floor, Washington, DC 20416, telephone 202/205-6766.

Dated: May 22, 1991.

Jean Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91-12577 Filed 5-28-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Vehicle-Highway Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA announces that the Intelligent Vehicle-Highway Society of America (IVHS America) will hold a meeting of its Coordinating Council. The IVHS America provides a forum for national discussion and recommendation on IVHS activities including system architecture, standards, human factors, institutional issues and program priorities. The charter for the utilization of IVHS America as an advisory committee within the meaning of section 3(2)(C) of the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2, as amended (Pub. L. 92-463), was approved by the General Services Administration on February 28, 1991. This charter establishes the Executive Committee and the Coordinating Council of IVHS America as an advisory committee under the FACA when they provide advice or recommendations to DOT officials on IVHS policies and programs.

DATES: The Coordinating Council will meet on June 18 and 19, 1991, from 8:30 a.m. to 3:30 p.m., e.t. The sessions are open to the public without charge under the provisions of the FACA and are expected to focus on: (1) A review of the goals and objectives of the individual IVHS America technical committees; (2) The establishment of additional technical committees as required; and (3) A discussion of future program activities of the technical committees.

ADDRESSES: Marriott City Center Hotel, 30 South 7th Street, Minneapolis, MN 55402.

FOR FURTHER INFORMATION CONTACT: Mr. Lyle Saxton, FHWA, HTV-10, room 3100, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2197, office hours are from 7 a.m. to 3:30 p.m., e.t., Monday through Friday, except for legal holidays; or Dr. James Constantino, IVHS America, 1776 Massachusetts Avenue, NW., Fifth Floor, Washington, DC 20036, (202) 857-1242.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: May 20, 1991.

T. D. Larson,

Administrator.

[FR Doc. 91-12579 Filed 5-28-91; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

Petition for Exemption of Waiver

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that two railroads have petitioned the Federal Railroad Administration (FRA) for a waiver of compliance with provisons of the Hours of Service Act (89 Stat. 464, Pub. L. No. 91-169, 45 U.S.C. 64a(e)).

The Hours of Service Act currently makes it unlawful for a railroad to require specified employees to remain on duty in excess of 12 hours. However, the Hours of Service Act contains a provision permitting a railroad which employs not more than 15 employees subject to the statute, to seek an exemption from the 12-hour limitation.

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Atlantic and Gulf Railroad (AGLF)

[FRA Waiver Petition Docket No. HS-91-5]

The Gulf & Ohio Railways seeks an exemption for AGLF so it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The AGLF states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The AGLF provides service over 78 miles of trackage between Thomasville and Sylvester, Georgia. The AGLF interchanges with CSX Transportation, Inc. at Thomasville and Albany, Georgia; with Norfolk Southern Corporation at Camilla and Chapco, Georgia; and with the Georgia Great Southern Division-South Carolina Central Railroad Company, Inc. at Albany, Georgia.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstated good cause for granting this exemption.

Kansas City Terminal Railway Company (KCT)

[FRA Waiver Petition Docket No. HSR-91-1]

The KCT seeks a waiver from the recordkeeping requirements of title 49, Code of Federal Regulations, 228.17 (a)(4) and (a)(5), regarding Dispatcher's Records of Train Movements. The KCT requests relief from recording the weather conditions at 6-hour intervals, and identification of enginemen and conductors and their times on-duty on Dispatcher's Records of Train Movements.

The KCT, owned by nine railroads, dispatches train movements and directs its own switching operations over approximately twelve geographical miles of trackage, all of which is within interlocking limits and located within the metropolitan area of Kansas City.

The petitioner indicates that granting the waiver is in the public interest and will not adversely affect safety. Interested persons are invited to participate in these proceedings by submitting written views and comments FRA has not scheduled a public hearing since facts do not appear to so warrant. If any interested party desires a public hearing, he or she should notify FRA in writing, before the end of the comment period and specify the basis for his or her request. Any communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number HS-90-XX) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC. 20590.

Communications received before July 8, 1991, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments during regular business hours (9 a.m.–5 p.m.) in room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington DC on May 20, 1991.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 91-10624 Filed 5-28-91; 8:45 am]

BILLING CODE 4910-06-M

Research and Special Programs Administration

[Docket No. P-90-5W; Notice 2]

Texas Gas Transmission Corporation; Transportation of Natural and Other Gas by Pipeline, Grant of Waiver

Texas Gas Transmission Corporation (Texas Gas) petitioned the Research and Special Programs Administration (RSPA) for a waiver from compliance with 49 CFR 192.179(a)(2), which requires each point on the pipeline in a Class 3 location to be within 4 miles of a sectionalizing block valve. Texas Gas is adding a 13.06 mile section of 36-inch outside diameter loop line along its existing main line system in Jefferson County, Kentucky, and seeks permission to align placement of valves on the new 36-inch line concurrent with valves on two existing 26-inch lines. The 13.06 mile section of new construction extends across Class 1, 2, and 3 Locations and includes farmland, single-family housing areas, and urban development.

The 3 existing valve sites (BV-55A, BV-56, and BV-56A) are shown on Emergency Response Location Drawing Nos. SK-871-PL, SK-872-PL, and SK-873-PL, which are available in the Docket. Two proposed sites for the new line, the 579.41 (BV-56) and 588.28 (BV-56A) mile locations, require a waiver because from point to point there is a 0.67 mile section of pipeline that is more than 4 miles from a valve (between the 583.41 and 584.28 mile points) as required by the Class 3 location regulation. The BV-56 valve site is in a Class 3 location and is surrounded by a trailer park. Class 3 locations are characterized as areas with 46 or more buildings per mile of pipeline. The BV-56A site is within a Class 1 area. Class 1 locations have 10 or less buildings within the prescribed area. (See 49 CFR 192.5 for class location definitions.)

In response to this petition, and the justification contained therein, RSPA issued a Notice of Petition for Waiver inviting interested parties to comment (Notice 1) (56 FR 8826; March 1, 1991). In that notice, RSPA explained why granting a waiver from § 192.179(a)(2) to allow placement of valves on the new 36-inch line concurrent with valves on two existing 26-inch lines would not affect safety.

Comments were received from four pipeline operators and one interstate pipeline association. Each commenter endorsed the petition and recommended granting the waiver.

In accordance with the foregoing, RSPA, by this order, finds that compliance with § 192.179(a)(2) is unnecessary for the reasons explained in Notice 1, and that the requested waiver would not be inconsistent with pipeline safety. Accordingly, Texas Gas's petition for waiver from compliance with § 192.179(a)(2) is granted.

Authority: 49 U.S.C. 1672(d); 49 CFR 1.53, and appendix A of part 106.

Issued in Washington, DC on May 23, 1991.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety.

[FR Doc. 91-12610 Filed 5-28-91; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Altus Federal Savings Bank; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Altus Federal Savings Bank, Mobile, Alabama, on May 17, 1991.

Dated: May 23, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-12621 Filed 5-28-91; 8:45 am]

BILLING CODE 6720-01-M

Ludington Federal Savings Bank, Ludington, MI; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Ludington Federal Savings Bank, Ludington, Michigan, on May 17, 1991.

Dated: May 23, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-12620 Filed 5-28-91; 8:45 am]

BILLING CODE 6720-01-M

Altus Bank, a Federal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Altus Bank, A Federal Savings Bank, Mobile, Alabama, OTS No. 2747, on May 17, 1991.

Dated: May 23, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-12615 Filed 5-28-91; 8:45 am]

BILLING CODE 6720-01-M

Ludington Savings Bank, F.S.B., Ludington, MI; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Ludington Savings Bank, F.S.B., Ludington, Michigan, OTS No. 4100, on May 17, 1991.

Dated: May 23, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-12616 Filed 5-28-91; 8:45 am]

BILLING CODE 6720-01-M

Palo Duro Federal Savings and Loan Association; Replacement of Conservator With a Receiver

Notice is here by given that, pursuant to the authority contained in subdivisions (f) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Palo Duro Federal Savings and Loan Association, Amarillo, Texas ("Association,"), with the Resolution Trust Corporation as sole Receiver for the Association on May 17, 1991.

Dated: May 23, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-12618 Filed 5-28-91; 8:45 am]

BILLING CODE 6720-01-M

Red River Federal Savings and Loan Assoc.; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Red River Federal Savings and Loan Association, Choushatta, Louisiana ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on May 17, 1991.

Dated: May 23, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-12617 Filed 5-28-91; 8:45 am]

BILLING CODE 6720-01-M

Time Federal Savings and Loan Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5 (d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Time Federal Savings and Loan Association, San Francisco, California ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on May 17, 1991.

Dated: May 23, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-12619 Filed 5-28-91; 8:45 am]

BILLING CODE 6720-01-M

[AC-21; OTS No. 3292]

Baxley Federal Savings Bank, Baxley, Georgia; Final Action; Approval of Conversion Application

Notice is hereby given that on May 13, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of Baxley Federal Savings Bank, Baxley, Georgia, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and District Director, Office of Thrift Supervision of Atlanta Regional Office, 1475 Peachtree Street, NE., Atlanta, Georgia 30348-5217.

Dated: May 14, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-12557 Filed 5-28-91; 8:45 am]

BILLING CODE 6720-01-M

[AC-25; OTS No. 0176]

First Federal Bank, FSB, Waukegan, IL; Final Action, Approval of Conversion Application

Notice is hereby given that on May 14, 1991, the Office of the Chief Counsel, Office of the Thrift Supervision, acting pursuant to delegated authority, approved the application of First Federal Bank, FSB, Waukegan, Illinois for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601-4360.

Dated: May 15, 1991.

By the Office of Thrift Supervision

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-12558 Filed 5-28-91; 8:45 am]

BILLING CODE 6720-01-M

[AC-22; OTS No. 5300]

First Federal Savings Bank, Calhoun, GA; Final Action, Approval of Conversion Application

Notice is hereby given that on May 13, 1991, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority,

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approved the application of First Federal Savings Bank, Calhoun, Georgia, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and District Director, Office of Thrift Supervision of Atlanta Regional Office, 1475 Peachtree Street, NE., Atlanta, Georgia 30348–5217.

Dated: May 14, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–12550 Filed 5–28–91; 8:45 am]

BILLING CODE 6720–01–M

[AC–29; OTS No. 3817]

First Federal Savings and Loan Association of Morgantown, Morgantown, WV; Final Action, Approval of Conversion Application

Notice is hereby given that on May 15, 1991, the Office of the Chief Counsel, Office of the Thrift Supervision, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Morgantown, Morgantown, West Virginia for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and District Director, Office of Thrift Supervision of Pittsburgh, One Riverfront Center, Twenty Stanwix Street, Pittsburgh, Pennsylvania, 15222–4893.

Dated: May 16, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–12560 Filed 5–28–91; 8:45 am]

BILLING CODE 6720–01–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 103
Wednesday, May 29, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, May 30, 1991.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on various compliance matters.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 492–6800.

Dated: May 23, 1991.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 91–12752 Filed 5–24–91; 1:25 pm]

BILLING CODE 6355–01–M

FEDERAL ENERGY REGULATORY COMMISSION

Notice of Closed Meeting

Dated: May 22, 1991.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–4109), 5 U.S.C. 552b:

DATE AND TIME: May 29, 1991, 9:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

(1) Docket No. IN89–1–000, Transcontinental Gas Pipe Line Corporation.
(2) Docket No. IN89–1–001, Transcontinental Gas Pipe Line Corporation
(3) Docket No. RP88–68–000, *et al.*, Transcontinental Gas Pipe Line Corporation
(4) Transcontinental Gas Pipe Line Corporation, Sulpetro Limited Natural Gas.
(5) Transcontinental Gas Pipe Line Corporation, Imbalances.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400.

Lois D. Cashell,

Secretary.

[FR Doc. 91–12699 Filed 5–23–91; 4:36 pm]

BILLING CODE 6717–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Dated: May 23, 1991.

TIME AND DATE: 2:00 p.m., Thursday, May 30, 1991.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Eastern Associated Coal Corporation*, Docket No. WEVA 89–192. (Issues include whether the Mine Act authorized the Secretary of Labor to issue to Eastern an imminent danger order and an unwarrantable failure order, pursuant to 30 U.S.C. §§ 817(a) and 814(d)(2), for the same violative condition.)

Any person intending to attend this meeting who requires special accessibility features, and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay 1–800–877–8339 (Toll Free).

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 91–12802 Filed 5–25–91; 3:07 am]

BILLING CODE 6735–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Friday, May 31, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 24, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–12686 Filed 5–23–91; 4:36 pm]

BILLING CODE 6210–01–M

INTERNATIONAL TRADE COMMISSION

[USITC SE–91–16]

TIME AND DATE: Wednesday, June 5, 1991 at 10:30 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and complaints
5. Inv. 731–TA–516 (Preliminary) (Fresh Kiwifruit from New Zealand)—briefing and vote.
   Inv. 731–TA–517 (Preliminary) (Refined Antimony Trioxide from the People's Republic of China)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252–1000.

Dated: May 23, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–12766 Filed 5–24–91; 1:26 pm]

BILLING CODE 7020–02–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Office of the Inspector General Oversight Committee; Notice

TIME AND DATE: A meeting of the Board of Directors Office of the Inspector General Oversight Committee will be held on June 3, 1991. The meeting will commence at 9:30 a.m.

PLACE: The Madison Hotel, 15th and "M" Streets, N.W., The Executive Chambers, Washington, DC 20005, (202) 862–1600.

STATUS OF MEETING: Open [A portion of the meeting may be closed, subject to a

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vote by a majority of the Board of Directors, to discuss personnel-related and personal matters under the Government in the Sunshine Act [5 U.S.C. 552b(c)(2) and (6), and 45 C.F.R. Sections 1622.5(a) and (e)].

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Consideration of Applications Submitted for Pending Inspector General Position Vacancy.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 863–1839.

Date Issued: May 24, 1991.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 91–12833 Filed 5–24–91; 3:58 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Audit and Appropriations Committee Meeting; Changes

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: FR Doc. 91–12568.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: Meeting commencing at 5:00 p.m. on June 2, 1991.

CHANGES IN THE MEETING: The meeting has been cancelled.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 863–1839.

Date Issued: May 23, 1991.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 91–12833 Filed 5–24–91; 4:16 pm]

BILLING CODE 7050–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of May 27, June 3, 10, and 17, 1991.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of May 27

Friday, May 31

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting)

a. First Initial Decision LBP–91–12 (In the Matter of the Curators of the University of Missouri, Byproduct License No. 24–00513–32; Special Nuclear Materials License No. SNM–247) (Tentative)

Week of June 3—Tentative

Friday, June 7

1:30 p.m.

Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)

3:00 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of June 10—Tentative

Monday, June 10

2:00 p.m.

Briefing on Proposed Rule on Training and Qualification of Nuclear Power Plant Personnel (Public Meeting)

Tuesday, June 11

10:00 a.m.

Briefing by Agreement States on Compatibility Issues (Public Meeting)

Wednesday, June 12

10:00 a.m.

Briefing on Progress of Design Certification Review and implementation (Public Meeting)

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of June 17—Tentative

Wednesday, June 19

1:30 p.m.

Briefing on Shutdown Risk Status (Public Meeting)

Thursday, June 20

9:30 a.m.

Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting)

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: By a vote of 4–0 on May 21, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Return of Topaz II Reactor System to the Soviet Union" (Public Meeting), be held on May 21 and on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: May 23, 1991.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 91–12745 Filed 5–24–91; 1:24 pm]

BILLING CODE 7590–01–M

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, June 13, 1991.

PLACE: Room 410, 1825 K Street, NW., Washington, D.C. 20006.

STATUS: Open Meeting.

MATTERS TO BE CONSIDERED: Oral Argument before the Commission in *Caterpillar, Inc.*

OSHRC Docket No. 87–0922

CONTACT PERSON FOR MORE INFORMATION: Mrs. Mary Ann Miller, (202) 634–4015.

Dated: May 23, 1991.

Earl R. Ohman, Jr.,

General Counsel.

[FR Doc. 91–12803 Filed 5–24–91; 3:08 pm]

BILLING CODE 7600–01–M

Corrections

Federal Register
Vol. 56, No. 103
Wednesday, May 29, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[No. TM-91-01]

Nominations for Members of the National Organic Standards Board

Correction

In notice document 91-8881 appearing on page 15323 in the issue of Tuesday, April 16, 1991, the file line at the end of the document was omitted and should have appeared as follows:

[FR Doc. 91-8881 Filed 4-15-91; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission on Childhood Vaccines; Request for Nominations for Voting Members

Correction

In notice document 91-9602 beginning on page 18823 in the issue of Wednesday, April 24, 1991, in the third column, under **FOR FURTHER INFORMATION CONTACT:**, in the last line "5693" should read "6593".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Meeting of National Cancer Advisory Board, Subcommittee on Information and Cancer Control for the Year 2000

Correction

In notice document 91-8992 beginning on page 15627 in the issue of Wednesday, April 17, 1991, the file line was left off, make the following correction:

On page 15627, the file line at the end of the document was omitted and should have appeared as follows:

[FR Doc. 91-8992 Filed 4-16-91; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing–Federal Housing Commissioner

24 CFR Part 206

[Docket No.R-91-1508;FR-2933-F-01]

Elimination of Reservations of Insurance Authority Home Equity Conversion Mortgage Insurance Program

Correction

In rule document 91-9125 beginning on page 16002 in the issue of Friday, April 19, 1991, make the following correction:

§ 206.15 [Corrected]

On page 16003, in the third column, in § 206.15, in the first line, paragraph designation "(1)" should read "(a)".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB32

Endangered and Threatened Wildlife and Plants; Proposed Determination of Critical Habitat for the Northern Spotted Owl

Correction

In proposed rule document 91-10263 beginning on page 20816 in the issue of Monday, May 6, 1991, make the following correction:

On page 20822, in the second column, in the tenth line from the bottom, "May 31" should read "June 5".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Part 541

Computer-Related Occupations; Exemptions From Minimum Wage and Overtime Compensation Requirements of the Fair Labor Standards Act

Correction

In the issue of Tuesday, March 5, 1991, on page 9252, in the first column, in the correction of rule document 91-4704, the page number "5250" and "5251" should read "8250" and "8251" throughout the document.

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

RIN 3150-AA90

Access Authorization Program for Nuclear Power Plants

Correction

In rule document 91-9479 beginning on page 18997 in the issue of Thursday, April 25, 1991, make the following correction:

§ 73.56 [Corrected]

On page 19007, in the first column, in § 73.56(a)(2), in the seventh line, "which" should read "whichever".

BILLING CODE 1505-01-D

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AF20

Accrued Benefits

Correction

In rule document 91-9622 beginning on page 18732 in the issue of Wednesday, April 24, 1991, make the following correction:

On page 18733, in the first column, in amendatory instruction 1, in the second line, "amended" should read "revised".

BILLING CODE 1505-01-D

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May 29, 1991

Part II

Environmental Protection Agency

40 CFR Parts 80 and 86
Regulation of Fuels and Fuel Additives: Standards for Gasoline Volatility and Particulate Emissions From Urban Buses; Notice of Proposed Rulemaking

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Regulation of Fuels and Fuel Additives: Standards for Gasoline Volatility; and Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Standards for Particulate Emissions From Urban Buses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the following regulatory requirements as mandated by the Clean Air Act Amendments of 1990 (CAA): (a) A particulate emission standard of 0.25 gram per brake horsepower-hour (g/BHP-hr) for 1991 and 1992 model year urban buses and accompanying required changes to the urban bus noncompliance penalties, and (b) modification o. existing regulations restricting the volatility of summertime gasoline. EPA proposes to revise the maximum allowable Reid Vapor Pressure (RVP) for gasoline from 7.8 to 9.0 pounds per square inch (psi) in those areas which are designated as unclassifiable or in attainment with the National Ambient Air Quality Standard (NAAQS) for ozone. The state-by-state RVP standards in EPA's current regulations, scheduled to take effect in the summer of 1992 (55 FR 23658, June 11, 1990), are proposed to be revised such that RVP limits below 9.0 psi will go into effect for nonattainment areas only. Both the urban bus and gasoline volatility provisions are proposed to conform current EPA regulations with the requirements of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990.

DATES: EPA will conduct a public hearing on this Notice of Proposed Rulemaking on June 17, 1991. Comments on this proposal will be accepted until July 17, 1991. Additional information on the public hearing and the submission of comments can be found under "Public Participation" in the Supplementary Information section of today's notice.

ADDRESSES: The public hearing will be held at EPA's Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, MI. The public hearing will begin at 10 a.m. and will continue until such time as all testimony has been presented. The hearing will be recorded and a transcript of the hearing will be placed in the Public Docket. Interested parties may submit written comments (in duplicate if possible) to Public Docket No. A-91-06 at the address given below.

Materials relevant to this proposed rulemaking are contained in Public Docket No. A-91-06. Public Docket No. A-85-21, established in support of the previous volatility rulemakings, Public Docket No. A-84-07, established in support of the previous heavy-duty exhaust standards, and Public Docket No. EN-87-02, established in support of the previous heavy-duty noncompliance penalty rulemaking also contain considerable background information. Each of these dockets is referenced in Public Docket No. A-91-06. These dockets are located in Room M-1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The dockets may be inspected from 8 a.m. until 12 noon and from 1:30 p.m. until 3 p.m., Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Joanne I. Goldhand, U.S. EPA (SDSB-12), Emission Control Technology Division, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668-4504.

SUPPLEMENTARY INFORMATION:

I. Background

This section presents a brief overview of the background information pertinent to this action. It describes the 0.10 g/BHP-hr urban bus standard (40 CFR 86.091) and the gasoline volatility regulations (40 CFR 80.27 *et seq.*). It also describes the amendments to the CAA that required the changes to those regulations proposed today. Finally, this section summarizes two petitions to which EPA, by this notice, is responding in light of the changes required by the new CAA. The proposals summarized are as follows: One received by EPA on February 16, 1989 from the American Public Transit Association requesting a three-year delay (from 1991 to 1994) in the particulate emission standard for urban buses; and one received on August 8, 1990 from the National Council of Farmer Cooperatives requesting that the sub-9.0 psi RVP controls not be applicable in attainment areas.

A. Regulatory History

1. Urban Bus Particulate Matter Emissions Standards.

On March 15, 1985 (50 FR 10606), EPA promulgated regulations which included emissions standards for particulate matter from urban buses. In the case of particulate emissions from heavy-duty diesel engines, EPA specified standards of: (a) 0.60 g/BHP-hr applicable to all heavy-duty diesel engines (HDDEs) effective with the 1988 model year, (b) 0.10 g/BHP-hr for HDDEs used in urban buses and 0.25 g/BHP-hr for all other HDDEs effective with the 1991 model year, and (c) 0.10 g/BHP-hr for all HDDEs effective with the 1994 model year.

In the final rule establishing emission standards for methanol-fueled vehicles and engines (54 FR 14426), EPA expanded the scope of the gasoline-fueled and diesel-fueled standards to include methanol-fueled engines operating on the Otto and Diesel engine-cycles. The particulate emission standards established in that rulemaking for methanol-fueled diesel-cycle heavy-duty engines were the same as those described above.

2. EPA Gasoline Volatility Program.

As part of a final rule published March 22, 1989 (54 FR 11868), EPA established maximum volatility levels for gasoline sold during the summertime beginning in 1989 (Phase I). EPA later promulgated a second phase of more stringent volatility controls on June 11, 1990 (55 FR 23658) (Phase II) which is scheduled to take effect in the summer of 1992. The second phase of volatility controls set monthly RVP requirements for each state based upon many factors including, for example, its meteorological conditions. Generally, under Phase II the maximum allowable RVP of gasoline sold in northern states was set at 9.0 psi and the maximum allowable RVP of gasoline sold in southern states was set at 7.8 psi. Both the Phase I and Phase II regulations set a control period of May 1 through September 15 applicable to refiners, importers, distributors, resellers, carriers, and ethanol blenders. For retailers and wholesale purchaser-consumers, however, the RVP controls apply from June 1 through September 15.

The Phase I and Phase II regulations also contained a one psi increase in the maximum allowable RVP for fuel which contained between 9 and 10 percent ethanol and met other specified conditions. Finally, the regulations contained enforcement provisions including provisions establishing liability, and defenses to such liability, for violations of the standards.

B. Clean Air Act Amendments of 1990

Pursuant to the Clean Air Act Amendments of 1990,[1] Congress amended the Clean Air Act to include specific language pertaining to urban bus particulate emissions and gasoline volatility. Section 202(f) [2] specifies a particulate standard of 0.25 g/BHP-hr for 1991 and 1992 model year buses. That section also requires a particulate standard of 0.10 g/BHP-hr for all 1993 and later model year buses. Since the 0.10 g/BHP-hr particulate standard is currently required for model year 1991 and later urban buses under 40 CFR 86.041, this section mandated a 2 year delay of the current standard for urban buses. Section 219 of the CAA contains standards for later model year urban buses. Today's proposal deals only with the two year delay requirement of the Act for urban buses; the nature of the 1993 bus standard and the 1994 urban bus standard are not relevant issues to this rulemaking. The delay is being handled separately in order to expedite completion of today's proposal, which directly impacts 1991 urban buses.

Section 211(h) of the CAA requires that EPA promulgate regulations establishing a maximum RVP of 9.0 psi for gasoline introduced into commerce during the high ozone season. This standard is to apply in the 48 contiguous States and the District of Columbia beginning in the summer of 1992. It further provides that EPA shall promulgate a more stringent RVP limit for ozone nonattainment areas if EPA finds such a standard is necessary to achieve comparable evaporative emissions reductions, on a per vehicle basis, in such areas. EPA may not make it unlawful to market sub-9.0 psi RVP gasoline in ozone attainment areas, except those previously designated as ozone nonattainment areas. The current Phase II regulations set the maximum allowable RVP of gasoline on a state-wide basis, and set the volatility of gasoline in many southern states at 7.8 psi. Thus, the regulations prohibit, in certain attainment areas, the sale of gasoline with an RVP of 9.0 psi. Today's proposal would raise the RVP limit to 9.0 psi in all attainment areas where it is not currently set at that level. The CAA specifies that regulations implementing the legislative requirements for RVP are to be effective no later than the 1992 high ozone season. The CAA also provides a one psi allowance for certain ethanol blends and creates a defense to liability for exceeding that standard for ethanol blenders, distributors, marketers, resellers, carriers, retailers or wholesale purchaser-consumers.

C. Petitions

As noted earlier in this preamble, EPA has received petitions for regulatory changes in the same two areas covered by today's proposal. The American Public Transit Association (APTA) petition requested that the 0.10 g/BHP-hr standard for urban buses be delayed to coincide with implementation of the standard for all other HDDEs (i.e., 1994). The main points made by APTA in support of its petition were: (a) That complying diesel-fueled buses would not be available in 1991, (b) that even if complying alternative-fueled buses were available in 1991, costs would be prohibitive due to the need for the construction of fueling facilities and because of reduced fuel economy and perhaps durability of alternative-fueled engines, and (c) that only very small, or perhaps even negative, environmental benefits would result from retaining the 0.10 g/BHP-hr standard for urban buses in 1991.

The National Council of Farmer Cooperatives (NCFC) petition requested that the RVP controls promulgated in the second phase of volatility controls be revised upward to 9.0 psi for all ozone attainment areas. The main argument made in favor of this change was that producing 7.8 psi gasoline for attainment areas was not cost-effective for producers or consumers. They also argued that such a broadly enforced requirement might create pressure on the pipelines to require 7.8 psi fuel nationwide which they claimed EPA itself did not believe would be cost-effective.

Before EPA was able to take final action on either the APTA or NCFC petition, the issues raised therein were taken up by Congress as part of the debates regarding amendments to the Clean Air Act. During the course of those debates, and presumably in response to them, APTA itself changed aspects of its position. EPA believes that Congress in its deliberations fully considered the issues raised by APTA and NCFC. Congress enacted specific measures regarding the particulate standard for urban buses and gasoline RVP control in attainment areas and EPA believes implementing the changes directed by Congress is a satisfactory resolution of the concerns raised by APTA and NCFC. For this reason EPA plans no action beyond this rulemaking in response to either of these petitions.

II. Content of the Proposal

A. Urban Bus Particulate Matter Emissions Standards

Today's notice proposes a particulate emission standard of 0.25 g/BHP-hr for all 1991 and 1992 model year heavy-duty diesel engines used in urban buses. The 0.10 g/BHP-hr particulate emissions standard for heavy-duty diesel engines used in urban buses currently in place is being delayed until model year 1993. The standard will be implemented in the same manner as previous heavy-duty standards, including without limitation the averaging, trading and banking program under 40 CFR Parts 86.091-15 and 86.094-15, and the heavy-duty exhaust test procedures under 40 CFR Subpart D. EPA believes that this is consistent with the CAA.

The delay of the 0.10 g/BHP-hr particulate standard from the 1991 to the 1993 model year affects the petroleum-fueled urban bus particulate non-compliance penalty (NCP) promulgated under the NCP III Final Rule (55 FR 46622, November 5, 1990; 40 CFR 86.1105-87). EPA proposes that the NCPs and NCP parameters applicable to 1991 and future model year petroleum-fueled heavy-duty diesel engines not used in urban buses shall now be applied to model year 1991 and 1992 heavy-duty engines used in urban buses. This is appropriate since, due to the proposed changes, particulate emission requirements are now the same for both categories. It also conforms to historical NCP practices since urban buses and other heavy-duty engines had been treated the same for NCPs until the standards for the engines were set at different levels.

A revised NCP is also being proposed for the 1993 petroleum-fueled urban bus particulate standard at this time. Even though the 0.10 g/BHP-hr standard is unchanged, EPA believes that the new circumstances require that the upper limit for NCP availability and the values of the NCP parameters be revised because of the delay. The upper limit for NCP availability is intended to be set at the previous standard for that class of engines. At the time of the Phase III rulemaking, the previous PM standard for urban bus engines was the 1986 heavy-duty PM standard of 0.60 g/BHP-hr, and the upper limit was therefore set at 0.60 g/BHP-hr. Since the standard previous to the 1993 urban bus PM standard is the 1991 heavy-duty diesel PM standard of 0.25 g/BHP-hr, the upper limit is proposed to be changed from 0.60 to 0.25 g/BHP-hr.

Additionally, the fact that the previous PM standard is now 0.25 and

[1] Pub. L. No. 101-549, enacted November 15, 1990.

[2] Section 207(b) of the Clean Air Act Amendments of 1990 amends section 202 by adding a new section 202(f). However, the current section 202(f) in the CAA was not omitted by the amendments. Section 202(f) will be used in this NPRM to refer solely to the new subsection added by section 207(b) of the amendments.

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not 0.60 g/BHP-hr affects the values of the NCP parameters. During the NCP Phase III rulemaking, the average incremental cost of compliance (COC_{ee}) and the ninetieth percentile incremental cost of compliance (COC_{ee}) were based on the average and high cost for urban bus manufacturers to lower the PM emissions of their engines from 0.60 to 0.10 g/BHP-hr. Since urban bus manufacturers must now lower emissions from 0.25 to 0.10 g/BHP-hr the cost estimates are proposed to be changed to reflect the different reduction in emissions. During the NCP Phase III rulemaking, the petroleum-fueled urban bus PM NCPs were technologically based on an urban bus manufacturer reducing engine-out emissions from 0.60 to 0.25 g/BHP-hr through the use of engine modifications and then lowering emissions from 0.25 to 0.10 g/BHP-hr through the use of trap technology (see Docket EN–87–02, Item III–B–1, page 4). During the NCP Phase III rulemaking, the cost of adding a trap to an average petroleum-fueled urban bus engine was estimated to be $4,020 and the cost of adding a trap to a high cost petroleum-fueled urban bus engine was estimated to be $4,535 (see Docket EN–87–02, Item IV–B–1, pages 4 to 8). Trap technology remains a likely candidate for technology to meet the new standard, therefore, EPA is proposing to continue basing the urban bus NCP on the use of traps. EPA also proposes to use the same trap cost estimates developed during the NCP Phase III rulemaking since no better estimates are available.

Therefore, COC_{ee} and COC_{ee} are proposed to be changed to $4,020 and $4,535, respectively. The average marginal cost of compliance in dollars per emission unit reduction (MC_{ee}) is proposed to remain $22,971 per g/BHP-hr because the marginal cost of adding the least cost effective piece of hardware is still the marginal cost of adding a trap. Since trap technology is still being used as the benchmark for these calculations, the factor used to calculate the ninetieth percentile marginal cost of control from the average marginal cost of control (F) will remain 1.2. The factor used to determine the engineering and development component of the NCP for refund purposes is proposed to be changed to 0.02 to reflect the portion of the new COC_{ee} which is attributed to fixed costs.

B. EPA Gasoline Volatility Program

1. Standards

EPA researched the environmental need for volatility controls as part of the Phase II rulemaking completed in June, 1990. As detailed in that analysis, EPA demonstrated that certain areas need lower RVP gasoline to achieve vehicle evaporative emissions comparable to those achieved using 9.0 psi fuel in other, cooler, parts of the nation. The areas which require sub-9.0 psi fuel are those in which high temperatures combine with high volatility gasoline in vehicle fuel tanks to create substantially higher per vehicle volatile organic compound emissions.

The CAA, however, has limited EPA's authority to set gasoline volatility levels below 9.0 psi. EPA may set such an RVP standard only for ozone nonattainment areas and former ozone nonattainment areas. For nonattainment areas, EPA is required to establish an RVP standard more stringent than 9.0 psi as EPA finds "necessary to generally achieve comparable evaporative emissions (on a per vehicle basis) in nonattainment areas, taking into consideration the enforceability of such standards, the need of an area for emission control, and economic factors." (Section 211(h)(1)) EPA reviewed all of these issues in promulgating the Phase I and Phase II volatility controls. The determinations made therein regarding per vehicle emissions and need for attainment are still valid under the new scheme. The total compliance costs are lower under the new scheme than under the current regulatory program and enforcement, while changed, is not made substantially more difficult.

Based on that information, EPA now believes the regulations promulgated previously conform to the new statute except with respect to warmer attainment areas. Thus, the only change to the volatility standards proposed in this rule is the elimination of federal sub-9.0 psi requirements for those areas where EPA no longer has the authority to adopt such levels. More specifically, EPA proposes that the RVP limit for gasoline be 9.0 psi in all areas not designated ozone nonattainment after publication of the redesignations required by section 107(d)(4)(A)(ii) of the Clean Air Act [8] (that is, in all areas designated attainment or unclassifiable for ozone after such rulemaking). (Designations are codified in volume 40 of the Code of Federal Regulations (CFR) Part 81.)

The federal RVP limit for gasoline sold in areas designated ozone nonattainment pursuant to such designation shall remain at the level determined in the second phase of volatility controls for states containing nonattainment areas. This means that sub-9.0 psi RVP gasoline will be required only in areas which are currently designated nonattainment for ozone (or those designated nonattainment in the upcoming rulemaking, as noted above) and which are in states with a 7.8 psi RVP standard pursuant to the Phase II final rule (55 FR 23659, June 11, 1990).

New section 211(h) provides EPA with the authority to set an RVP limit of less than 9.0 psi for former nonattainment areas that have been redesignated attainment under the Clean Air Act, that the area is capable of maintaining areas. In order for a nonattainment area to be so redesignated, revised section 107(d)(3) of the CAA requires the state to make a showing, pursuant to Section 175A of attainment for 10 years. Since such a showing may well include continuation of the RVP control program, EPA believes that it is appropriate to consider whether to continue volatility control below 9.0 psi at such time. Whenever an attainment area becomes a designated ozone nonattainment area after the Section 107(d) redesignations described above, the 9.0 psi RVP limit shall remain in effect unless EPA promulgates a lower RVP standard in a separate rulemaking.

As stated in the preamble for the Phase II volatility controls (55 FR 23660, June 11, 1990), EPA will rely on states to initiate changes to the EPA program which they believe will enhance local air quality and/or increase the economic efficiency of the program, within the statutory limits. The process, as described in that rulemaking, would be generally as follows. If states desire the EPA program to be adjusted to respond to localized issues, one or two options are available, depending on the nature of the change. For cases where a state desires to increase the stringency of the standard in a nonattainment area, CAA section 211(c)(4) provides a mechanism for states to adopt such a state program as a revision to their State Implementation Plan (SIP) for ozone.

It is also possible that a state may identify the existence of localized impacts for which it may be appropriate to make minor changes in the EPA

[8] Under section 107(d)(4) each Governor must, within 120 days of enactment of the Clean Air Act Amendments of 1990, submit a list to EPA that designates the status of all areas of the state as either attainment, nonattainment, or unclassifiable, with respect to the NAAQS for ozone. Within 120 days after that date, EPA must promulgate such designations, making any appropriate modifications. By July 15, 1991 there will therefore be a complete, current designation of the attainment status of all areas covered by the RVP regulations. EPA does not expect that section 107(d)(4)(A)(ii) will result in a substantial change in the number or identity of areas designated as nonattainment. Most, if not all, areas currently designated as nonattainment are expected to continue in that status, with the expected addition of several new areas.

program to be more or less stringent in some month or months. In such a case, a state may petition the Administrator to amend the applicable standard for an area, within the statutory constraints. If EPA determines to revise its regulations, such changes will be made through a rulemaking process. Because of the broad potential effects and diversity of interested parties in matters related to RVP control, a state should make any request to EPA for revised standards through the governor (or the governor's designee). In such a request, EPA would look for documentation of the local economic impact and, in the case of a request for a less stringent standard, for an indication that sufficient alternative programs are available to achieve attainment and maintenance of the ozone NAAQS.

2. Ethanol Blends

EPA's current regulations provide that certain blends of gasoline and ethanol violate the RVP standard only if their volatility exceeds the applicable standard by more than one psi. 40 CFR 80.27(d) (1), (2), and (3). To qualify for this 1 psi allowance, an ethanol blend has to meet certain conditions—the blend has to contain between 9 and 10 percent ethanol (by volume), the maximum ethanol content cannot exceed any applicable waiver condition under section 211(f)(4) of the CAA, and the ethanol blend must be marketed in accordance with certain specified requirements. These requirements are that retail pumps dispensing the blend be labeled as to alcohol content, and that invoices, loading tickets, and similar documents which accompany the blend must contain a statement that the gasoline being shipped contains ethanol. These documents must be retained for at least one year, and are subject to inspection by the Agency.

Section 211(h)(4) of the CAA establishes a one psi RVP allowance for fuel blends containing gasoline and 10 percent denatured anhydrous ethanol. EPA proposes to revise its regulations to include use of denatured and anhydrous ethanol as a specific condition for the one psi allowance. However, EPA is not proposing any change to the current requirement that the blend contain between 9 and 10 percent ethanol (by volume) to obtain the one psi allowance. EPA believes this is consistent with Congressional intent.

First, the legislative history indicates that Congress envisioned continuation of the 9 to 10 percent requirement. Section 216 of the Clean Air Act Amendments as passed by the House of Representatives [4] also established a one psi allowance for blends of gasoline and ethanol which contained "at least 10 percent ethanol." In discussing this requirement, the House Committee on Energy and Commerce stated that EPA "regulations shall permit gasoline containing at least 9 but not more than 10 percent ethanol (by volume) to exceed the volatility requirements by up to 1.0 pounds per square inch." [5] There is no indication that Congress intended a different result through the language finally adopted.

In addition, interpreting this provision to provide a one psi allowance only if the blend contains exactly 10 percent ethanol would place a next to impossible burden on ethanol blenders. Compliance with the conditions of a fuel waiver under section 211(f)(4) of the CAA requires that the ethanol portion of the gasoline blend cannot lawfully be any greater than 10 percent (by volume). Congress was clearly aware of such waiver conditions, as they are referenced in section 211(h). The nature of the blending process itself (including filling procedures and the use of denaturing additives), further complicates a requirement that the ethanol portion of the blend be exactly 10 percent ethanol. EPA believes that Congress did not intend to require, as a condition to the one psi allowance, that blenders have absolutely no margin of safety for lawful compliance with section 211(f)(4) waiver conditions, given the practical difficulties involved in the blending process. Therefore, EPA is not proposing any changes to its current requirement that ethanol blends contain between 9 and 10 percent ethanol.

Finally, a new defense against liability for violation of the ethanol blend RVP requirements is included in this package as required by the CAA. This defense is for a distributor, blender, marketer, reseller, carrier, retailer, or wholesale purchaser-consumer who can demonstrate that the gasoline portion of an ethanol blend meets the applicable RVP standard, that the ethanol does not exceed its waiver condition under section 211(f)(4), and that no additional alcohol or other additive has been added to increase the volatility of the ethanol portion of the blend. This defense will provide protection from liability if the volatility of an ethanol blend exceeds the exemption standard when all requirements of the statute have been met. EPA believes that this statutorily mandated defense is in addition to and does not supersede any of the defenses currently contained in the regulations.

In accordance with the statutory language, EPA proposes that a party may demonstrate the elements of the new defense by production of a certification from the facility from which the gasoline was received. EPA believes the defense established in section 211(h)(4) is limited to ethanol blends which meet the 9 to 10 percent requirement in the regulations. Thus a certificate which otherwise meets the requirements of the regulations does not establish a defense for gasoline containing ethanol outside these percentages.

EPA is not proposing a requirement that upstream parties produce such certificates to downstream parties, and believes this is consistent with the holding in *National Tank Truck Carriers v. EPA*, 907 F.2d 177 (D.C. Cir. 1990). In that case the court invalidated one element of a defense which required the production of certain documentation when the upstream parties were not required to produce such documentation to the carriers. The regulation before the court in National Tank was not based on a statutory defense, and was the only defense available to the carrier. Here the defense is based on specific statutory terms which do not on their face require upstream parties to produce such certificates. In addition, the statutory defense is not the only defense available to violators. As previously discussed, all the defenses currently in EPA's regulations are still available and are not superseded by section 211(h)(4). EPA therefore believes that the proposed defense based on a certificate does not in any way run counter to the court's holding in National Tank.

Today's proposal specifies when a certification will be considered acceptable to the Administrator for purposes of establishing the statutory defense. The language used in section 211(h)(4) indicates Congress meant to provide discretion for the Administrator to determine what evidence, including certifications, would be acceptable in establishing this defense. There is also no indication Congress meant to insulate persons from liability based solely on a paper certification which only repeats the words of the statute. EPA has therefore tried to define those reasonable circumstances when the regulated community can properly rely on a certification, thus providing a reasonable defense as envisioned by Congress.

[4] S.1630, as passed by the House of Representatives on May 23, 1990.

[5] H.R. Rep No. 101–490, 101st Cong., 2d Sess. 312 (1990).

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Under today's proposal the certifications will have to contain the information called for in the statute, and must have been supplied by the facility from which the gasoline was received. For retailers or wholesale purchaser-consumers, a defense based on certifications will be accepted only if all the gasoline found in the storage tank which is in violation at the facility when a violation is detected is covered by such certifications. For distributors, ethanol blenders, resellers and carriers alleged to be in violation, a certification will be accepted as a defense to such violation only if it is supported by evidence of an ongoing program to verify the accuracy of such certifications, such as a periodic sampling and testing program conducted by such person or on the facility's behalf. In addition, no certification will be accepted if the party at whose facility the violation is detected has reason to believe the certification is not accurate.

In effect, production of an acceptable certification or certifications replaces one element of a defense under EPA's current regulations, the requirement that a party prove he or she did not cause the violation. A party, however, is not limited to providing such certification to meet the statutory defense. The party may also demonstrate the statutory defense elements by other evidence acceptable to the Administrator, as provided in the statute. EPA would evaluate such other evidence on a case by case basis to determine whether it is sufficient to establish that the defense elements have been met.

EPA is also proposing to delete the current pump labeling and document statement conditions to the one psi allowance for ethanol blends under § 80.27(d)(3). EPA believes that these additional requirements are not appropriate under the statute, which specifically provides that the one psi allowance applies to blends containing 10% denatured anhydrous ethanol, without further conditions. However, EPA proposes to add a new § 80.27(d)(3), requiring marketing documents to contain a statement regarding the ethanol content of the gasoline; and a new § 80.27 (d)(4), requiring pump labeling. These requirements would not be conditions of the waiver; rather, they are independent requirements for the purpose of facilitating EPA's sampling and testing process and ensuring that ethanol products are not mixed with other products resulting in high RVP gasoline.

3. Regulatory Control Period and Regulated Parties

EPA is not proposing any structural changes to the enforcement periods or timing contained in the regulations. For the earlier volatility rulemaking, EPA studied in detail the timing of high ozone conditions, the nature of gasoline distribution systems and the best procedure for ozone control given these parameters.

The statute requires that marketers and blenders be included as regulated parties. EPA believes that under the existing regulations they are already treated as regulated parties.

Finally, the statute prohibits the introduction into commerce of high RVP gasoline by "any person" during the high ozone season. EPA s current regulations cover a wide variety of persons involved in the production, distribution, and sale of gasoline, but are limited to these designated parties. Current regulations do not include, for example, the typical retail purchaser of gasoline. New section 211(h) is therefore broader in scope than EPA's current regulations. To conform to the statute, EPA proposes to expand the group of regulated parties during the high ozone season to include any person.

The regulatory control period will stay as under Phase II volatility control: May 1 through September 15. Additionally, as under the Phase II program "[e]nforcement is delayed until June 1 at the beginning of the control season for end-users [retail outlets, wholesale purchaser-consumer and other consumers] to prevent outlets with slower turnover from needing advance supplies of RVP controlled gasoline from suppliers over which they often have little control" (June 11, 1990; 55 FR 23659). Thus the "high ozone season" statutory prohibitions on all persons apply June 1 to September 15 but EPA has retained control over suppliers from May 1 through June 1. EPA believes that this regulatory scheme best ensures the gasoline is available when needed without unnecessary burdens on small retailers.

III. Environmental Impact

A. Urban Bus Particulate Matter Emissions Standard

For the two years, 1991 and 1992, during which new urban buses purchased and placed in service will be required to comply with a particulate emission standard of 0.25 g/BHP-hr rather than 0.10 g/BHP-hr, the increase in national urban diesel particulate emissions was estimated, based upon the Regulatory Impact Analysis prepared for the earlier rulemaking, to be no more than 70 tons in 1991 and 140 tons in 1992. Relative to the total urban diesel particulate inventory of approximately 70,000 tons, the overall effect will be small.

B. EPA Gasoline Volatility Program

The proposed changes in the volatility regulations are not expected to have a detrimental effect on the health of those living in the areas affected. The areas affected by the changes proposed today are already in attainment of the ozone standard without the benefit of sub-9.0 psi RVP fuel. Additionally, 9.0 psi gasoline itself has a lower volatility than gasoline at previous uncontrolled volatility levels.

IV. Economic Impact

A. Urban Bus Particulate Matter Emission Standard

Changes in bus particulate emissions standards contained in this action could impact new vehicle price and perhaps vehicle operating costs due to changes in fuel economy and maintenance requirements. The relaxed standard will permit lower costs for the bus engine manufacturers in model years 1991 and 1992. Although it was earlier assumed that trap oxidizers would be used to meet the 0.10 g/BHP-hr, it is currently unclear what technology would have been used to meet the standard in 1991. It is therefore also unclear exactly how much savings will be realized due to this proposed change. However, for a trap-equipped bus, the savings could exceed several thousand dollars per bus.

B. EPA Gasoline Volatility Program

EPA believes that the economic effects of the proposed changes in the volatility regulations will be small. As fully discussed in the rulemaking for the Phase II volatility controls, it may be more economical for large refineries to market gasoline with only one RVP in a limited geographical area. This reduced cost derives from the simplification which results from only having to produce, store and distribute one type of product. Therefore, some refiners may continue to make 7.8 psi RVP fuel for attainment areas in a given geographic area if 7.8 Psi RVP fuel is required in adjacent nonattainment areas. Those refiners marketing 9.0 psi RVP fuel will realize a cost savings of approximately 1.1 cents per gallon if they no longer have to make 7.8 psi fuel. EPA does not believe any great overall change in refinery operations or costs will occur as a result of this regulation. Any change will be positive for some refiners and should result in lower costs to their consumers.

The modified volatility program will have somewhat improved cost effectiveness. The cost effectiveness analysis performed for the original two volatility rulemakings was aimed at nonattainment areas. Although a slight benefit was included for attainment areas, the great majority of the benefit was in nonattainment areas. This benefit will still be fully experienced under this new scheme. Cost savings in areas with a relaxed standard would more than offset the loss of benefits, resulting in a better overall cost effectiveness.

V. Public Participation

EPA desires full public participation in arriving at its final decisions, and therefore solicits comments on all aspects of this proposal from all interested parties. Wherever applicable, full supporting data and detailed analyses should be submitted to allow EPA to make maximum use of the comments. Commenters are especially encouraged to provide specific suggestions for changes to any aspects of the proposal that they believe need to be modified or improved. All comments should be directed to the EPA Air Docket, Docket No. A-91-06 [see **"ADDRESSES"**].

Any person desiring to testify at the public hearing [see **"DATES"**] should notify the contact person listed above at least seven days prior to the day of the hearing. Persons wishing to testify at the hearing should also provide an estimate of the time required for the presentation of the testimony and notification of any need for audio/visual equipment. It is suggested that sufficient copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, a sign-up sheet will be available at the registration table the morning of the hearing for scheduling of the order of testimony.

The official record of the hearing will be kept open for 30 days following the hearing to allow submission of rebuttal and supplementary testimony. All such submittals should be directed to the EPA Air Docket, Docket No. A-91-06 [see **"ADDRESSES"**].

Commenters desiring to submit proprietary information for consideration should clearly distinguish such information from other comments to the greatest possible extent, and clearly label it "Confidential Business Information." Submissions containing such proprietary information should be sent directly to the contact person listed above, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket.

Information covered by such a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the commenter.

The hearing will be conducted informally, and technical rules of evidence will not apply. Written transcripts of the hearing will be made. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the court reporter recording the proceedings.

VI. Statutory Authority

The statutory authority for the standards proposed today is granted to EPA by sections 202, 206, 211, 114 and 301(a) of the Clean Air Act, as amended.

VII. Administrative Designation and Regulatory Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. Major regulations have an annual effect on the economy in excess of $100 million, have a significant adverse impact on competition, investment, employment or innovation, or result in a major price increase. The two elements of this rulemaking package, individually and together, do not constitute major rules according to the established criteria. In fact, as discussed above, the elements of this rulemaking package will reduce the cost of compliance with already existing rules for certain industrial sectors. Therefore, I have determined that this proposal does not constitute a "major" regulation.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any EPA response to those comments have been placed in the public docket for this rulemaking.

VIII. Compliance With the Regulatory Flexibility Act

Under section 605 of the Regulatory Flexibility Act, the Administrator is required to certify that a regulation will not have a significant adverse economic impact on a substantial number of small business entities. There will not be a significant impact on a substantial number of small business entities due to the new PM standards since few of the vehicle manufacturers which will be affected by these regulations are small business entities and any effect of this regulation would be beneficial. The changes in the volatility controls may have a significant beneficial impact on some smaller gasoline refiners. For these reasons, I certify that the rules contained in this proposed rule will not have a significant adverse economic impact on a substantial number of small entities.

IX. Reporting and Recordkeeping Requirements

Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, EPA must obtain OMB clearance for any activity that will involve collecting substantially the same information from 10 or more non-Federal respondents. This proposed rule does not create any new information requirements or contain any new information collection activities.

X. List of Subjects in 40 CFR Parts 80 and 86

Administrative practice and procedures, Air pollution control, Environmental protection, Motor vehicle and motor vehicle engines, Fuel additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: May 21, 1991.

William K. Reilly,

Administrator.

APPENDIX—TABLE OF CHANGES PROPOSED TO BE TO VARIOUS SUBPARTS OF 40 CFR

Section	Change	Reason
1. Part 80 Authority	None	
2. § 80.2 (cc), (dd) and (ee)	Add definitions for ethanol, designated attainment area and designated nonattainment area.	Implement CAAA of 1990.
3. § 80.27 (a), (d)(2) and (d)(3)	Revise paragraphs	Change regulatory requirements to conform to CAAA of 1990.

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APPENDIX—TABLE OF CHANGES PROPOSED TO BE TO VARIOUS SUBPARTS OF 40 CFR—Continued

Section	Change	Reason
4. § 80.28 (b)(1), (b)(3), (c)(1), (c)(4), (d)(1), (d)(4), (e)(1), (e)(2), (e)(5), (f)(1), (f)(2), (f)(4), and (g)(8).	Revise paragraphs (b)(1), (b)(3), (c)(1), (c)(4), (d)(1), (d)(4), (e)(1), (e)(2), (e)(5), (f)(1), (f)(2), and (f)(4), and add paragraph (g)(8).	Add new defense.
5. Part 86 Authority	Add references to section 205 and 216	Correct typographical error.
6. § 86.091–11 (a)(1)(iv)(A) and (a)(1)(iv)(B)	Revise paragraphs	Omit 1991 urban bus particulate standard of 0.10g/BHP-hr.
7. § 86.093–11	Add § 86.093–11	Add 1993 urban bus particulate standard of 0.10g/BHP-hr.
8. § 86.1105–87 (c), (d) and (e)	Revise § 86.1105–87 (c) and (d); add § 86.1105–87(e)	Change NCPs to reflect new standards.

For the reasons set forth in the preamble, parts 80 and 86 of title 40 of the Code of Federal Regulations are amended as follows:

PART 80—REGULATIONS OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211 and 301 (a) of the Clean Air Act as amended, 42 U.S.C. 7414, 7545 and 7601(a).

2. Section 80.2 is proposed to be amended by adding new paragraphs (cc), (dd) and (ee) to read as follows:

§ 80.2 Definitions

* * * * *

(cc) *Ethanol* means denatured anhydrous ethyl alcohol.

(dd) *Designated Nonattainment Area* means an area designated as being in nonattainment with the National Ambient Air Quality Standard for ozone pursuant to section 107(d)(4)(A)(ii) of the Clean Air Act.

(ee) *Designated Attainment Area* means an area not designated as being in nonattainment with the National Ambient Air Quality Standard for ozone pursuant to section 107(d)(4)(A)(ii) of the Clean Air Act.

3. Section 80.27 is proposed to be amended by revising the non-chart portion of paragraph (a), and all of paragraphs (d)(1) and (d)(3) and by adding paragraph (d)(4) to read as follows:

§ 80.27 Controls and prohibitions on gasoline volatility.

(a)(1) *Prohibited activities in 1991.* During the 1991 regulatory control periods, no refiner, importer, distributor, reseller, carrier, retailer or wholesale purchaser-consumer shall sell, offer for sale, dispense, supply, offer for supply, or transport gasoline whose Reid vapor pressure exceeds the applicable standard. As used in this section and § 80.28, "applicable standard" means the standard listed in this paragraph for the geographical area and time period in which the gasoline is intended to be dispensed to motor vehicles or, if such area and time period cannot be determined, the standard listed in this paragraph that specifies the lowest Reid vapor pressure for the year in which the gasoline is being sampled. As used in this section and § 80.28, "regulatory control periods" mean June 1 to September 15 for retail outlets and wholesale purchaser-consumers and May 1 to September 15 for all other facilities.

(2) *Prohibited activities in 1992 and beyond.* During the 1992 and later high ozone seasons no person, including without limitation, no retailer or wholesale purchaser-consumer, and during the 1992 and later regulatory control periods, no refiner, importer, distributor, reseller, or carrier shall sell, offer for sale, dispense, supply, offer for supply, transport or introduce into commerce gasoline whose Reid vapor pressure exceeds the applicable standard. As used in this section and § 80.28, "applicable standard" means:

(i) 9.0 psi for all designated attainment areas, and

(ii) The standard listed in this paragraph for the state and time period in which the gasoline is intended to be dispensed to motor vehicles for any designated nonattainment area within such State or, if such area and time period cannot be determined, the standard listed in this paragraph that specifies the lowest Reid vapor pressure for the year in which the gasoline is sampled. Designated attainment and designated nonattainment areas and their exact boundaries are described in 40 CFR part 81, or such part as shall later be designated for that purpose. As used in this section and § 80.28, "high ozone season" means the period from June 1 to September 15 of any calendar year and "regulatory control period" means May 1 to September 15.

* * * * *

(d) * * *

(1) Any gasoline which meets the requirements of paragraph (d)(2) of this section shall not be in violation of this section if its Reid vapor pressure does not exceed the applicable standard in paragraph (a) of this section by more than one pound per square inch (1.0 psi).

* * * * *

(3) Each invoice, loading ticket, bill of lading, delivery ticket and other document which accompanies a shipment of gasoline containing ethanol shall contain a legible and conspicuous statement that the gasoline being shipped contains ethanol and the percentage concentration of ethanol.

(4) Each gasoline pump stand from which such gasoline is dispensed at a retail outlet or wholesale purchaser-consumer facility shall be affixed with a legible and conspicuous label which states that the gasoline dispensed from the pump contains ethanol and the percentage concentration of ethanol.

4. Section 80.28 is proposed to be amended by revising paragraphs (b)(1), (b)(3), (c)(1), (c)(4), (d)(1), (d)(4), (e)(1), (e)(2), (e)(5), (f)(1), (f)(2), (f)(4), and by adding a new paragraph (g)(8) to read as follows:

§ 80.28 Liability for violations of gasoline volatility controls and prohibitions.

* * * * *

(b) * * *

(1) The carrier, except as provided in paragraph (g)(1) or (g)(8) of this section; and

* * * * *

(3) The ethanol blender (if any) at whose ethanol blending plant the gasoline was produced, except as provided in paragraph (g)(6) or (g)(8) of this section.

(c) * * *

(1) The distributor or reseller, except as provided in paragraph (g)(3) or (g)(8) of this section;

* * * * *

(4) The ethanol blender (if any) at whose ethanol blending plant the gasoline was produced, except as provided in paragraph (g)(6) or (g)(8) of this section.

(d) * * *

(1) The distributor, except as provided in paragraph (g)(3) or (g)(8) of this section;

* * * * *

(4) The ethanol blender (if any) at whose ethanol blending plant the gasoline was produced, except as provided in paragraph (g)(6) or (g)(8) of this section.

(e) * * *

(1) The retailer or wholesale purchaser-consumer, except as provided in paragraph (g)(5) or (g)(8) of this section;

(2) The distributor and/or reseller (if any), except as provided in paragraph (g)(3) or (g)(8) of this section;

* * * * *

(5) The ethanol blender (if any) at whose ethanol blending plant the gasoline was produced, except as provided in paragraph (g)(6) or (g)(8) of this section.

(f) * * *

(1) The retailer or wholesale purchaser-consumer, except as provided in paragraph (g)(5) or (g)(8) of this section;

(2) The distributor (if any), except as provided in paragraph (g)(3) or (g)(8) of this section;

* * * * *

(4) The ethanol blender (if any) at whose ethanol blending plant the gasoline was produced, except as provided in paragraph (g)(6) or (g)(8) of this section.

(g) * * *

(8) In addition to the defenses provided in paragraphs (g)(1) through (g)(6) of this section, in any case in which an ethanol blender, distributor, reseller, carrier, retailer, or wholesale purchaser-consumer would be in violation under paragraph (b), (c), (d), (e) or (f) of this section, as a result of gasoline which contains between 9 and 10 percent ethanol (by volume) but exceeds the applicable standard by more than one pound per square inch (1.0 psi), the ethanol blender, distributor, reseller, carrier, retailer or wholesale purchaser-consumer shall not be deemed in violation if such person can demonstrate, by showing receipt of a certification from the facility from which the gasoline was received or other evidence acceptable to the Administrator, that:

(i) The gasoline portion of the blend complies with the Reid vapor pressure limitations of § 80.27(a); and

(ii) The ethanol portion of the blend does not exceed 10 percent (by volume); and

(iii) No additional alcohol or other additive has been added to increase the Reid vapor pressure of the ethanol portion of the blend.

In the case of a violation alleged against an ethanol blender, distributor, reseller, or carrier if the demonstration required by paragraphs (g)(8) (i), (ii), and (iii), of this section is made by a certification, it must be supported by evidence that the criteria in paragraphs (g)(8) (i), (ii), and (iii) of this section have been met, such as an oversight program conducted by or on behalf of the ethanol blender, distributor, reseller or carrier alleged to be in violation, which includes periodic sampling and testing of the gasoline or monitoring the volatility and ethanol content of the gasoline. Such certification shall be deemed sufficient evidence of compliance provided it is not contradicted by specific evidence, such as testing results, and provided that the party has no other reasonable basis to believe that the facts stated in the certification are inaccurate. In the case of a violation alleged against a retail outlet or wholesale purchaser-consumer facility, such certification shall be deemed an adequate defense for the retailer or wholesale purchaser-consumer, provided that the retailer or wholesale purchaser-consumer is able to show certificates for all of the gasoline contained in the storage tank found in violation, and, provided that the retailer or wholesale purchaser-consumer has no reasonable basis to believe that the facts stated in the certifications are inaccurate.

PART 86—CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINE: CERTIFICATION AND TEST PROCEDURES

5. The authority citation for part 86 is revised to read as follows:

Authority: Secs. 202, 203, 205, 206, 207, 208, 215, 216, and 301(a), Clean Air Act, as amended; 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550 and 7601 (a).

6. Section 86.091–11 of subpart A is proposed to be amended by revising paragraphs (a)(1)(iv)(A) and removing and reserving paragraph (a)(1)(iv)(B) to read as follows:

§ 86.091–11 Emission standards for 1991 and later model year diesel heavy-duty engines.

(a)(1) * * *

(iv) *Particulate.* (A) For diesel engines, including those to be used in urban buses, 0.25 gram per brake horsepower-hour (0.093 gram per megajoule) as measured under transient operating conditions.

(B) [Reserved]

* * * * *

7. A new § 86.093–11 of subpart A is proposed to be added to read as follows:

§ 86.093–11 Emission standards for 1993 and later model year diesel heavy-duty engines.

(a)(1) Exhaust emissions from new 1993 and later model year diesel heavy-duty engines shall not exceed the following:

(i)(A) *Hydrocarbons (for petroleum-fueled diesel engines).* 1.3 grams per brake horsepower-hour (0.48 gram per megajoule), as measured under transient operating conditions.

(B) *Organic material hydrocarbon equivalent (for methanol-fueled diesel engines).* 1.3 grams per brake horsepower-hour (0.48 gram per megajoule), as measured under transient operating conditions.

(ii) *Carbon monoxide.* (A) 15.5 grams per brake horsepower-hour (5.77 grams per megajoule), as measured under transient operating conditions.

(B) 0.50 percent of exhaust gas flow at curb idle (methanol-fueled diesel only).

(iii) *Oxides of nitrogen.* (A) 5.0 grams per brake power-hour (1.9 grams per megajoule), as measured under transient operating conditions.

(B) A manufacturer may elect to include any or all of its diesel heavy-duty engine families in any or all of the NO_x averaging, trading, or banking programs for heavy-duty engines, within the restrictions described in § 86.091–15. If the manufacturer elects to include engine families in any of the programs, the NO_x FELs may not exceed 6.0 grams per brake horsepower-hour (2.2 grams per megajoule). This ceiling value applies whether credits for the family are derived from averaging, trading or banking programs.

(iv) *Particulate.* (A) For diesel engines to be used in urban buses, 0.10 grams per brake horsepower-hour (0.037 gram per megajoule), as measured under transient operating conditions.

(B) For all other diesel engines only, 0.25 grams per brake horsepower-hour (0.093 gram per megajoule), as measured under transient operating conditions.

(C) A manufacturer may elect to include any or all of its diesel heavy-duty engine families in any or all of the particulate averaging, trading, or banking programs for heavy-duty engines, within the restrictions described in § 86.094–15. If the manufacturer elects to include engine families in any of these programs, the particulate FEL may not exceed 0.25 gram per brake horsepower-hour (.093 gram per megajoule) for diesel engines

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used in urban buses or 0.60 gram per brake horsepower-hour (0.22 gram per megajoule) for other diesel engines. This ceiling value applies whether credits for the family are derived from averaging, trading or banking programs.

(2) The standards set forth in paragraph (a)(1) of this section refer to the exhaust emitted over operating schedules as set forth in paragraph (f)(2) of Appendix I of this part, and measured and calculated in accordance with the procedures set forth in subpart N of this part, except as noted in § 86.091–23(c)(2)(i) and (iii).

(b)(1) The opacity of smoke emission from new 1993 and later model year diesel heavy-duty engines shall not exceed:

(i) 20 percent during the engine acceleration mode.

(ii) 15 percent during the engine lugging mode.

(iii) 50 percent during the peaks in either mode.

(2) The standards set forth in paragraph (b)(1) of this section refer to exhaust smoke emissions generated under the conditions set forth in Subpart I of this part and measured and calculated in accordance with those procedures.

(3) *Evaporative emissions* (total of non-oxygenated hydrocarbons plus methanol) for 1993 and later model year heavy-duty vehicles equipped with methanol-fueled diesel engines shall not exceed:

(i) For vehicles with Gross Vehicle Weight Rating of up to 14,000 lbs., 3.0 grams per test.

(ii) For vehicles with a Gross Vehicle Weight Rating of greater than 14,000 lbs., 4.0 grams per test.

(4)(i) For vehicles with a Gross Vehicle Weight Rating of up to 26,000 lbs., the standards set forth in paragraph (b)(3) of this section refer to a composite sample of evaporative emission collected under the conditions set forth in Subpart M and measured in accordance with those procedures.

(ii) For vehicles with a Gross Vehicle Weight Rating of greater than 26,000 lbs., the standard set forth in paragraph (b)(3)(ii) of this section refers to the manufacturers' engineering design evaluation using good engineering practice (a statement of which is required in § 86.091–23(b)(4)(ii)).

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any new 1993 or later model year methanol-fueled diesel, or any naturally-aspirated diesel heavy-duty engine. For petroleum fueled engines only, this provision does not apply to engines using turbochargers, pumps, blowers or superchargers for air induction.

(d) Every manufacturer of new motor vehicle engines subject to the standards prescribed in this section shall, prior to taking any of the actions specified in section 203(a)(1) of the Act, test or cause to be tested motor vehicle engines in accordance with applicable procedures in subpart I or N of this part to ascertain that such test engines meet the requirements of paragraphs (a), (b), and (c) and (d) of this section.

8. Section 86.1105–87 of subpart L is proposed to be amended by revising paragraphs (c) and (d) and by adding paragraph (e) to read as follows:

§ 86.1105–87 Emissions standards for which nonconformance penalties are available.

* * * * *

(c) Effective in the 1991 model year, NCPs will be available for the following additional emission standards:

(1) Petroleum-fueled diesel heavy-duty engine particulate matter emission standard of 0.25 grams per brake horsepower-hour.

(i) For petroleum-fueled light heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(*1*) COC_{80}: $1,480.

(*2*) COC_{80}: $1,513.

(*3*) MC_{80}: $5,833 per gram per brake horsepower-hour.

(*4*) F: 1.2.

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.07.

(ii) For petroleum-fueled medium heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(*1*) COC_{80}: $905.

(*2*) COC_{80}: $2,169.

(*3*) MC_{80}: $7,083 per gram per brake horsepower-hour.

(*4*) F: 1.2.

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.11.

(iii) For petroleum-fueled heavy heavy-duty diesel engines including those to be used for urban buses:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(*1*) COC_{80}: $930.

(*2*) COC_{80}: $1,630.

(*3*) MC_{80} $22,500 per gram per brake horsepower-hour.

(*4*) F: 1.2.

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.11.

(2) Petroleum-fueled diesel heavy-duty engine oxides of nitrogen standard of 5.0 grams per brake horsepower-hour.

(i) For petroleum-fueled light heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(*1*) COC_{80}: $830.

(*2*) COC_{80}: $946.

(*3*) MC_{80}: $1,167 per gram per brake horsepower-hour.

(*4*) F: 1.2.

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.12.

(ii) For petroleum-fueled medium heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(*1*) COC_{80}: $905.

(*2*) COC_{80}: $1,453.

(*3*) MC_{80} $1,417 per gram per brake horsepower-hour.

(*4*) F: 1.2.

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.11.

(iii) For petroleum-fueled heavy heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(*1*) COC_{80}: $930.

(*2*) COC_{80}: $1,590.

(*3*) MC_{80}: $2,250 per gram per brake horsepower-hour.

(*4*) F: 1.2.

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.11.

(3) Petroleum-fueled diesel light-duty trucks (between 6,001 and 14000 lbs GVW) particulate matter emission standard of 0.13 grams per vehicle mile.

(i) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(A) COC_{80}: $711.

(B) COC_{80}: $1,396.

(C) MC_{80}: $2,960 per gram per vehicle mile.

(D) F: 1.2.

(ii) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.01.

(d) Effective in the 1993 model year, NCPs will be available for the following additional emission standard:

(1) Petroleum-fueled diesel urban bus engine (as defined in § 86.091–2)

particulate matter emission standard of 0.10 grams per brake horsepower-hour.

(i) The following values shall be used to calculate an NCP for the standard set forth in § 86.093–11(a)(1)(iv)(A) in accordance with § 86.1113–87(a):

(A) COC_{80}: $4,020.

(B) COC_{80}: $4,535.

(C) MC_{80}: $22,971 per gram per brake horsepower-hour.

(D) F: 1.2.

(E) UL: 0.25 grams per brake horsepower-hour.

(ii) The following factor shall be used to calculate the engineering and development component of the NCP for the standard set forth in § 86.093–11(a)(1)(iv)(A) in accordance with § 86.1113–87(h): 0.02.

(e) The values of COC_{80}, COC_{80}, and MC_{80} in paragraphs (a) and (b) of this section are expressed in December 1984 dollars. The values of COC_{80}, COC_{80}, and MC_{80} in paragraph (c) and (d) of this section are expressed in December 1989 dollars. These values shall be adjusted for inflation to dollars as of January of the calendar year preceding the model year in which the NCP is first available by using the change in the overall Consumer Price Index, and rounded to the nearest whole dollar in accordance with ASTM E29–67.

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Part III

Department of Transportation

Federal Aviation Administration
14 CFR Part 158
Passenger Facility Charges; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 158

[Docket No. 25385; Part 158(New)]

RIN No. 2120-AD67

Passenger Facility Charges

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule adopts new regulations to establish a passenger facility charge program. The rule implements sections 9110 and 9111 of the Aviation Safety and Capacity Expansion Act of 1990, enacted November 5, 1990, which requires the Department of Transportation to issue regulations under which a public agency may be authorized to impose an airport passenger facility charge (PFC) of $1, $2, or $3 per enplaned passenger at a commercial service airport it controls. The proceeds from such PFC's are to be used to finance eligible airport-related projects that preserve or enhance safety, capacity, or security of the national air transportation system, reduce noise from an airport that is part of such system, or furnish opportunities for enhanced competition between or among air carriers.

The rule sets forth procedures for public agency applications for authority to impose PFC's, for FAA processing of such applications, for collection, handling, and remittance of PFC's by air carriers, for recordkeeping and auditing by air carriers and public agencies, for terminating PFC authority, and for reducing Federal grant funds apportioned to large and medium hub airports imposing a PFC.

EFFECTIVE DATE: June 28, 1991.

FOR FURTHER INFORMATION CONTACT: Lowell H. Johnson, Office of Airport Planning and Programming, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3831.

SUPPLEMENTARY INFORMATION:

Availability of NPRM's and Final Rules

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484.

Persons interested in being placed on a mailing list for future NPRM's should request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The Aviation Safety and Capacity Expansion Act of 1990 authorizes the Secretary of Transportation to approve local imposition of PFC's of $1, $2, or $3 per enplaned passenger and to use PFC revenue for approved projects. Section 9110 of the Act requires the Secretary to issue regulations necessary to implement this authority.

On November 14, 1990, the FAA issued a "Request for Data and Information; Passenger Facility Charges" (55 FR 47483) seeking information helpful in developing this rulemaking. The FAA asked specific questions concerning methods and practices involved in fee collection, handling, remittance, and audit/recordkeeping procedures related to airline passenger ticketing. Thirteen commenters responded to this request for data. The comments are available for inspection in the FAA Rules Docket, No. 26385.

Subsequently the FAA published a Notice of Proposed Rulemaking (NPRM) (56 FR 4678; February 5, 1991) inviting all interested persons to submit written comments, data, views, and arguments.

In addition to requesting written comments, the FAA held a public hearing on February 15, 1991, at FAA headquarters, to hear testimony from interested parties. In all, 18 people testified at the hearing.

On March 7, 1991, the FAA extended the comment period until March 18, 1991. The extension responded to a joint request for additional time from the Air Transport Association of America (ATA), the American Association of Airport Executives (AAAE), and the Airport Operators Council International (AOCI).

The FAA received comments on the NPRM from a wide representation of the aviation and financial communities. Approximately 200 separate responses were received in the docket. The major categories of commenters were airport owners, scheduled air carriers (foreign and U.S.), air taxi and air charter operators, airport concessionaires, car rental companies, state aviation agencies, bond underwriters and financial institutions, and various aviation industry trade associations. Private individuals and several members of Congress also commented on the proposal. The AAAE, ATA, and AOCI jointly submitted comments on the NPRM ("joint submission").

Due to the large number of comments received, not every comment is individually addressed in this preamble, although all have been considered. Many of the less complex suggestions are accommodated by revisions in the final rule but not expressly discussed. In other cases, comments are grouped together with others regarding the same issue. The FAA has considered all comments received. However, this document will not generally address comments that request provisions already in the NPRM and unchanged in the final rule.

The procedures and requirements contained in the NPRM were intended to ensure compliance with the statute. This approach paralleled the AIP grant process to some degree, and many commenters indicate such a process would be excessive and burdensome. Many commenters argue that PFC revenue is local money, not federal, that restrictive procedures are unwarranted, and that the airport grant program should not be used as a model for this regulation.

The final rule is intended to provide public agencies with the flexibility to tailor their PFC programs to their own needs while meeting the requirements of the statute. In addition, it is intended to reduce the administrative burden as much as possible for public agencies and air carriers.

The final rule responds to the public agencies' desire to receive PFC revenue while environmental, airspace, and airport layout plan studies are being accomplished. Revenue collected prior to FAA approval of the project could be used, after approval is obtained to use the funds, to reimburse costs incurred during the project formulation period. It also could be accumulated so that financing needs for construction and other development will be partially (or fully) met when the project is ready for implementation. The final rule contains provisions for advance collection and safeguards to ensure that PFC revenue will be used only on approved projects. This issue is addressed more fully below. In contrast, the NPRM would have required all environmental, airspace and airport layout plan requirements be completed before an application could be submitted to impose a PFC.

Another change adding flexibility to the rule is a provision for public agencies to request that those classes of carriers providing less than one percent of the total annual passenger enplanements not be required to collect or remit PFC's at the airport. This is intended to give public agencies the opportunity to reduce the administrative and financial burden associated with collecting PFC's from carriers whose operations would provide little PFC revenue. It would also reduce the burden on the carriers belonging to these classes.

Foreign carriers and U.S. carriers with international operations express concern about administrative costs and the legal authority of the U.S. to enforce the collection of PFC's outside the U.S. Thus, they recommend air carriers and foreign air carriers not be required to collect the PFC on such tickets. However, sales outside the U.S. represent a substantial number of U.S. enplanements, and, therefore, failure to collect PFC's on such tickets could account for a significant potential loss of revenue at some U.S. airports.

To accommodate these conflicting concerns, the final rule gives carriers the option of collecting PFC's only at the passenger's departure gateway. Air carriers and those foreign air carriers that serve a point or points in the U.S. will have three choices: (1) They may follow the regular collection procedure for U.S.-issued tickets; (2) they may collect PFC's for the passenger's U.S. departure gateway at the time of ticket issuance outside the U.S.; or (3) they may collect at the time the passenger is last enplaned in the U.S.

Another major issue was carrier compensation. Under the NPRM, the only compensation to which the carrier would have been entitled was the interest earned on PFC revenue prior to remittance. Numerous comments were received on this issue. Most, but not all, agree that additional compensation for carriers is justified. The final rule provides for a specific fee per PFC collected in addition to the interest earned prior to remittance. In addition, the final rule reduces the remitting, reporting, and auditing burdens of collecting carriers.

A number of airport commenters and financial institutions argue that the NPRM did not sufficiently provide for use of PFC revenue to support project-related debt. A primary concern is that uncertainty created by the termination process proposed in the NPRM could lead to lower bond ratings and higher project financing costs. Changes in the final rule are intended to increase investor confidence in PFC-backed bonds, enhance the marketability of such bonds and, ultimately, reduce the amount of PFC revenue needed for interest and financing costs. While the final rule retains the Administrator's statutory authority to terminate a PFC, the process has been significantly revised to provide assurance to all parties that every effort will be made to resolve a problem before termination.

In addition, commenters note the NPRM did not specifically define debt service and bond financing costs as allowable costs reimbursable by PFC revenue. The definition of allowable cost is modified in the final rule to accommodate this concern.

A detailed discussion of the individual subparts in the regulation follows:

Subpart A

Subpart A contains the general provisions of the PFC rule including definitions, information on project eligibility, the authority to impose PFC's and certain limitations.

Section 158.3 Definitions

Several definitions in the NPRM generated numerous comments. After considering these comments, some definitions have been changed and other terms added. The following is a discussion of the significant departures from the NPRM.

Allowable cost. As proposed, allowable costs would have been those considered reasonable and necessary to accomplish the project, including formulation costs incurred before approval to impose a PFC. The comments express concern that this definition does not address debt related costs when PFC revenue is used to finance borrowing.

The final rule spells out allowable costs in more detail, and identifies debt service and bond financing by name as allowable costs. Allowable costs incurred after November 5, 1990, but prior to project approval, are reimbursable once the public agency receives project approval. A public agency's costs of administering its PFC program are also included in allowable costs.

This definition includes multi-phased projects listed in the airport capital plan. As noted in the NPRM, the FAA will retain the authority to do an independent review to determine what costs are reasonable and necessary. However, because a project may be financed entirely with PFC's or other local funds, the FAA would not ordinarily conduct the kind of detailed review associated with the AIP program. In addition, in the event of a dispute, the FAA will first look to local laws and procurement requirements and procedures for guidance in determining what costs are reasonable and necessary.

Approved project and project. The NPRM defined the term "project" to mean airport planning, land acquisition, noise compatibility measures and other such work to be undertaken with PFC revenue. Because of the need to differentiate projects for which approval has been granted to use PFC revenue from projects still under consideration or those for which only imposition of a PFC has been approved, the final rule includes two definitions, "approved project" and "project." As the name implies, an approved project is one that has received FAA approval under Subpart B of this part for use of PFC revenue. The term "project" is used to refer to all projects whether approved or contemplated.

Bond financing costs. A new term, bond financing costs are the costs associated with issuance, underwriting, credit enhancement and the other costs of incurring new indebtedness. It does not include the cost of debt service, which is defined separately. The financial community suggests that these costs do not ordinarily exceed 2 percent of the debt package, but the FAA will not impose a regulatory limit. If such costs prove to be excessive, the FAA has the authority to take action in the future.

Collecting carrier. The NPRM defined "issuing carrier" to mean an air carrier or foreign air carrier that issues a ticket or whose imprinted ticket stock is used by an agent. All PFC collection would have been accomplished by issuing carriers under the proposal. As discussed below, the final rule has been modified to permit collection of PFC's by other than issuing carriers. The new term "collecting carrier" is added to refer to carriers collecting PFC's whether or not such carriers issue the air travel ticket.

Debt service. This term refers to items normally associated with the payment of interest, principal and fees.

Exclusive long term lease or use agreement. The NPRM defined "long-term lease and use agreements" as those of 5 years or more. This definition implements the statutory prohibition on exclusive long-term leases of PFC-financed facilities. Some commenters suggest that all exclusive leases be prohibited, and others suggest the definition refer explicitly to exclusive long-term leases.

The final rule modifies the proposed definition by inserting the word "exclusive." The FAA did not adopt the suggestion that all exclusive leases be prohibited because the statute itself bars only long-term exclusive leases. A public agency may adopt a policy of permitting no exclusive lease or use agreements of any duration for PFC-financed facilities, but it is not required to do so.

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Implementation of an approved project. This new definition reflects the separate approval process to impose a PFC and to use PFC revenue. As discussed more fully below, the authority to impose a PFC will expire or terminate if a public agency does not begin implementation of an approved project in a timely fashion. This definition specifies the actions required to effect implementation of various kinds of projects. For a construction project, issuance of a notice to proceed to the contractor or the physical start of construction is required. For other projects commencement of work by the contractor or public agency to carry out a statement of work is required. For property acquisition, implementation is defined as beginning the title search, surveying or appraisal for a significant portion of the property to be acquired.

One-way trip and round trip. One of the most difficult issues in this proceeding has been finding a way to meet the statutory limitation of collecting no more than two PFC's per one-way trip and two in each direction of a round trip. Most trips can be identified as one-way or round trips as those terms are commonly understood, however, about 15 percent of trips cannot. These include open-jaw trips (those that have identifiable outbound and return legs but that have different origin and termination points) and other trips. The NPRM incorporated an earlier airport trade association suggestion that the one-way trip be defined according to a "four-hour rule." It would have specified that after each scheduled stop between flights of more than four hours, a new one-way trip would start.

The joint submission and other commenters state that this proposed definition is inappropriate and difficult to use. Instead, the joint submission recommends the rule provide for collection of PFC's at the first four airports, regardless of whether the trip meets the ordinary understanding of "round trip." In the alternative, the joint submission requests the PFC be collected at the first two and last two airports imposing PFC's. According to the commenters, these systems, particularly the first alternative, would be easier and less costly for the carriers to implement.

While sympathetic to these concerns, the FAA is bound by the statutory language, which clearly prohibits the collection of more than two PFC's on a one-way trip and more than two in each direction on a round trip.

Therefore, the final rule defines a round trip as a trip where the passenger's itinerary terminates at the origin point. Other trips are considered one-way trips. This would include open jaw trips, as well as trips meeting the commonly understood meaning of one-way. On a one-way trip the carrier would collect PFC's for the first two enplaning airports imposing PFC's. On a round trip, the carrier would collect PFC's at the first two and last two enplaning airports where PFC's are imposed. This assures that PFC's will be collected from passengers on both directions of a round trip and not more than four charges will be made. The suggestion of collecting at the "first four" airports imposing a PFC could result in three or four charges on a one way trip, contrary to the statutory requirement.

Passenger enplaned. As proposed in the NPRM, "passenger enplaned" would have included passengers on board international flights that transit an airport within the continental United States for nontraffic purposes as is provided in the Airport and Airway Improvement Act of 1982 (AAIA). This category of passenger is excluded from the definition in the final rule. Without this change, passengers that transit an airport on a technical stop, such as for refueling or customs inspection, would be liable for payment of any PFC imposed at that airport. Such stops, however, are not shown on the passenger's ticket, a requirement for collection of the PFC. Additionally, the passenger is not "enplaned" at that airport as that term is generally interpreted.

State. The NPRM did not include a definition of State. This new definition has been added to the final rule to clarify that all territories and possessions of the United States that control commercial service airports may impose a PFC. Under the rule, a State is defined to include the District of Columbia, Puerto Rico, the U.S. Virgin Islands, the Northern Mariana Islands, the Trust Territory of the Pacific Islands and Guam.

Unliquidated PFC Revenue. The NPRM did not include a definition of this term and a number of commenters were unclear about what this term meant. The term is defined as PFC revenue received by the public agency but not yet used on approved projects.

Section 158.5 Authority To Impose PFC's. (Proposed: Authority to Impose PFC's)

As proposed, this section would have permitted a public agency controlling a commercial service airport to impose a $1.00, $2.00 or $3.00 PFC on passengers enplaned at the airport. It also would have prohibited states or political subdivisions of states not controlling such airports from imposing a PFC.

Comments: Some commenters recommend a uniform fee of $3.00, arguing the cost of programming automated systems would be as much as 24 percent less if only one amount were permitted to be collected. They also claim that there is a limited space on the automated ticket stock for individual PFC charges. The commenters also suggest the rule would be less confusing to the travelling public. However, some smaller airports indicate that they would not impose the maximum allowed PFC amount if they could impose a lesser amount.

Final rule: While the FAA recognizes the merit of these arguments, statutory language clearly permits airports to impose PFC's of $1.00, $2.00 or $3.00. Therefore, this section is unchanged from the NPRM. However, while the ticket will be required to indicate each PFC airport, only the total amount of PFC's collected must be shown on the ticket. This change should eliminate some of the burden on carriers of collecting a variable charge.

Section 158.9 Limitations. (Proposed: Limitation Regarding Passengers of Air Carriers Receiving Essential Air Service Compensation).

As proposed, this section would have prohibited the imposition of a PFC only on specific flights to an essential air service (EAS) point for which compensation was being paid. In addition, it would have required the compensated carrier to notify other carriers of these individual flights.

Comments: Several comments request the prohibition on PFC collection for these flights be removed, thereby allowing PFC's to be collected from all passengers enplaning at an airport imposing a PFC. The commenters also ask that if the limitation is retained, the Department of Transportation should provide a monthly list of those carriers compensated and the flight to EAS airports for which compensation is paid. Comments also point out carriers cannot always designate the specific flights for which EAS compensation is paid.

Final rule: The statute clearly prohibits airports from collecting PFC's on flights to EAS points over routes for which EAS compensation is paid. However, it is not possible to distinguish which flights by that carrier on a particular route are compensated. Therefore, the final rule, § 158.9(a), states that no PFC may be imposed on any flight to the eligible point (EAS airport) by a carrier serving a route for which EAS compensation is paid to that carrier. Thus, in response to the comments, the final rule does not require compensated carriers to identify individual flights as those for which compensation has been received. However, a public agency may impose a PFC on passengers enplaned on any flight to an EAS point that operates over a route for which no subsidy is paid. This includes service over the subsidized route by a carrier not receiving EAS compensation in addition to service over other routes by any carrier.

In addition, the final rule is modified to eliminate the requirement that EAS carriers provide notice of compensated service. The FAA will make available a monthly list of carriers and airports receiving essential air service compensation.

A new § 158.9(b) is added to the final rule. This provision prohibits a public agency from requiring a foreign airline with no service to the United States to collect a PFC. This subject is addressed further in the discussion of § 158.47.

Section 158.11 Public Agency Request Not To Require Collection of PFC's by a Class of Air Carriers or Foreign Air Carriers

This section was not in the NPRM, but was added following consideration of the comments received. The NPRM would have required all air carriers and foreign air carriers to collect a PFC and would have required public agencies to consult with all such carriers at the airport.

Comments: Numerous comments request that particular classes of persons or carriers not be subject to PFC's. These include military and government personnel travelling on official business, passengers of on-demand air taxi operators, all international passengers, all charter passengers, persons travelling on "frequent flyer" discount fares and others. Some of these suggestions were proposed solely for the convenience or financial benefit of the commenting party, while others are based on concerns that the cost of collection to both the carrier and the public agency would outweigh any benefits of the PFC revenue derived by the public agency.

The joint submission recommends public agencies be given discretion to impose PFC's on passengers travelling on carriers in any class accounting for one percent or less of total enplanements at the particular airport.

Final rule: The FAA believes the proposal in the joint submission provides a reasonable cut-off point, and it forms the basis for the final rule. The FAA notes that the PFC will be a local charge, generating local revenue to be used locally. However, to ensure that public agencies designate classifications accurately, reasonably and without arbitrary or discriminatory effect, the final rule requires public agencies to obtain FAA approval of any class of carriers not required to collect a PFC.

Thus, while air taxis, for instance, may not make up 1 percent of the enplanements at large hub airports, that class may provide the majority of enplanements at smaller airports. Therefore, it would be unfair to these smaller airports to categorically exclude this type of operator.

Section 158.11 allows public agencies to determine what classes account for less than one percent of the airport's enplanements and to exclude them from the initial notice and consultation requirements under § 158.23. However, the public agency must formally request that particular classes of carriers not be required to collect PFC's as part of its application for authority to impose the PFC or as part of the amendment procedure. Since this request would be an essential part of the PFC application, disapproval by the Administrator of the proposed class would require the public agency to engage in reconsultation with all carriers operating at the airport and subsequent application.

Therefore, it may be prudent for the public agency to proceed with caution in preparing to submit the first such application. FAA Airport offices may be able to provide informal assistance in designating appropriate classes, but this assistance should not be relied on as an approval with respect to any request or class.

Section 158.13 Use of PFC Revenue. (Proposed: Use of PFC Revenue.)

As proposed, this section would have permitted the use of PFC's to pay the total cost of eligible projects and to pay debt service on bonds or other indebtedness incurred to carry out PFC-eligible projects. However, debt service was not otherwise defined.

The NPRM would not have allowed a public agency to use PFC revenue to finance the local matching share for projects receiving AIP funds. The FAA's intent was to ensure that PFC revenue would be used to supplement other sources of local airport construction funds rather than replace them.

Comments: The latter proposal drew a great deal of criticism, including a letter from several members of Congress arguing that Congress intended that PFC's be used as the local share for AIP projects. In particular, small airports argue such a prohibition would eliminate their ability to implement AIP projects; this, they claim, would defeat the intent of this program to enhance the capacity of the national airspace system.

Airports and the financial community also request that reimbursable debt service be further defined. Bond financing costs should also be eligible. A final comment in this area urges that the rule prohibit a public agency from imposing additional user charges to help pay the costs of a PFC-financed project.

Final rule: PFC revenue may be used to meet the non-federal share of projects funded under the AIP. The FAA recognizes the special problems that smaller airports may have in generating local matching funds and that PFC revenue may be a necessary source for the local match. The FAA intends to maximize the funds available to enhance safety, capacity, security and competitiveness under the PFC statute, and the FAA has been persuaded that this change in the final rule will accomplish this objective.

The FAA also is mindful that PFC revenue is local revenue. Historically, the FAA has not defined permissible and impermissible sources of local matching revenue under the AIP. Finally, the FAA notes that the statute is silent on the availability of PFC revenue for the local match.

This section also provides for the use of PFC revenue for bond associated debt service and financing costs. To further enhance the value of PFC revenue streams as support for debt financing, § 158.13(b)(2) of the final rule permits PFC revenue to be commingled with the airport's general revenue stream when required by bond documents. However, the correct proportion of the bond proceeds (or an equal amount) must be used for approved projects and any excess collections over annual debt service or other financing costs must be used on approved projects or to retire existing PFC-financed debt. Also, under § 158.13(c), public agencies may combine PFC revenue and federal grant funds to accomplish an approved project. This provision is unchanged from the NPRM.

Section 158.13(e) expressly requires a public agency to obtain FAA approval to use PFC revenue before the public agency may expend PFC revenue. Thus, if a public agency wants to use PFC revenue to fund environmental studies and other planning activities before receiving full project approval, it will have to identify these formulation activities as a separate project or projects for use of PFC revenue. Otherwise, it could be reimbursed for costs incurred for these activities once it

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obtained project approval. More information on this two-step application process can be found in § 158.25.

The final rule does not prohibit the imposition of additional user charges to help pay for the costs of a PFC-financed project. The statute prohibits a public agency from including the PFC portion of the cost of any project in its rate base. However, a public agency may establish user fees to recoup the costs of operating and maintaining any such facilities, as well as any financial contribution not covered by PFC's or the AIP.

Section 158.15 Project Eligibility (Proposed: Project Eligibility)

As proposed, this section specified the kinds of projects that could be funded by PFC revenue and the objectives these projects must achieve to receive approval for use of PFC revenue. Eligible projects, by statute, are those that preserve or enhance the safety, capacity or security of the national air transportation system, reduce airport noise or mitigate airport noise impacts or enhance competition among air carriers. In addition, PFC financing would have been available for AIP-eligible airport development and planning projects, AIP-eligible terminal development, airport noise compatibility planning as described in 49 U.S.C. 2103(b), noise compatibility measures eligible for Federal assistance under 49 U.S.C. 2104 and public use, revenue and non-revenue passenger enplanement or deplanement areas and related facilities. The NPRM also provided examples of non-eligible categories of facilities, including all concessions, car rental facilities, restaurants and parking garages.

Comments: Several commenters question whether off-airport ground transportation projects are eligible. Smaller airports also request that concession facilities, including car rental and parking facilities, be eligible for PFC financing.

Final rule: The text of the rule has not been changed from the NPRM in any material way. However, ground transportation projects are eligible if the public agency acquires the right-of-way and any necessary land. Ownership is also necessary for project eligibility under the AIP. In this case, under the statute, PFC eligibility is identical to AIP eligibility. The final rule does not set any eligibility restrictions on the mode of transportation for airport access projects, nor does it impose any requirements on the geographical proximity of the project to the airport. These issues will be reviewed on a case-by-case basis as part of the Administrator's review and approval of an application to use PFC revenue.

Concession facilities are not eligible under the final rule for two reasons. First, such facilities are not AIP-eligible. Second, while gates and related areas are eligible projects, the FAA finds no basis for expanding the definition of eligibility to include concession spaces in these areas. Third, these facilities do not appear to increase the safety, security or capacity of the national air transportation system or increase airline competition, as required by the statute.

Subpart B

This subpart specifies the procedures to be followed and the supporting documentation to be submitted to the FAA by public agencies applying for authority to impose a PFC. It also describes the procedures and criteria that would be used by the FAA in reviewing applications to impose a PFC.

(Proposed Section 158.23 Requirements Prior to Submission of Applications)

The NPRM proposed the requirement that airport layout plan, airspace and environmental studies be completed and approved prior to submission of an application for a PFC by a public agency. The concept of such prerequisites for all PFC's drew criticism from over 40 respondents, especially the airport community. Many argue that the statute does not limit approval of authority to impose a PFC to only those situations where a project is ready to be implemented. Rather, they assert, a public agency should be authorized to collect for a major project, or slate of projects, that are nominally eligible but are still in the planning stage.

The majority of these commenters suggest that completion of all or some of the proposed prerequisites be deferred until the public agency submits an application to use its PFC revenue. Others argue that these requirements should not be applicable to imposition of a PFC or to implementation of PFC-financed projects.

An important consideration in this regard is the degree to which approval to impose a PFC irrevocably commits the FAA or a public agency to a course of action on a proposed project. If approval to impose a PFC is equivalent to such a commitment, the FAA's approval could be a major Federal action requiring a review under the National Environmental Policy Act of 1969 (NEPA), and it would be necessary to complete all environmental studies prior to such approval. Therefore, the FAA sought comments in the NPRM on whether the approval of an application to impose a PFC would be a major Federal action under NEPA or, alternatively, whether such approvals are outside the scope of NEPA.

Two respondents provide particularly helpful comments in this regard. They cite applicable court rulings and draw meaningful comparisons between these decisions and the approval of authority to impose a PFC separately from approval to use PFC revenue on a specific project. Following further analysis, the FAA has concluded that, with clear requirements for meaningful alternatives available to the proposed project and adequate safeguards on the expenditure of PFC revenue prior to approval, approval to impose a PFC would not ordinarily be a major Federal action within the meaning of NEPA. Rather, in most cases the approval would be categorically excluded from the requirement for an environmental assessment or statement. Environmental reviews would, however, be required before approval is given for use of PFC revenue to finance a project under the same procedures as are currently applicable to AIP or locally financed projects subject to FAA approval.

Although about one out of six respondents commenting on this issue concurred with the method set forth in the NPRM, the FAA agrees with the views of the majority that prior completion of environmental, ALP and airspace studies is not required for an application to impose a passenger facility charge. Accordingly, the final rule provides a procedure under which a PFC may be imposed prior to the completion of such studies.

The FAA recognizes the danger cited by some commenters that, in extraordinary circumstances, mere approval to impose a PFC may as a practical matter, commit the FAA or a public agency to a course of action or may otherwise influence future Federal decisions. If the FAA believes that danger to exist in a particular case, it will not approve an application to impose a PFC unless the appropriate environmental reviews have been completed.

In addition, the procedures for consultation, application, review and approval set forth in the NPRM are modified in the final rule to accommodate applications submitted for the authority to impose a PFC, either before or with an application to use PFC revenue on an approved project.

Several commenters propose various ways to streamline the process for notice, consultation, application, review and approval. Most involve submission of a comprehensive slate of projects in

the form of a master plan or capital program. One airport authority proposes a completely different process based on that concept with abbreviated periods for consultation and review. The FAA may, in some cases, be able to complete its required notice and review processes in less than the 120 days permitted by the statute. However, because of complexity or opposition, there are likely to be many applications that will not be able to be fully evaluated in less than the full 120-day period.

The FAA has attempted to adopt the spirit of the comments that urge a more streamlined, less complicated, process in obtaining approval to impose a PFC and to use the revenue remitted by carriers. Many of the suggestions were accepted and resulted in revisions in the final rule. Readers familiar with the NPRM will note substantial change throughout this section. Not all the comments were adopted, however, and the reasons are given in the discussion of each section below.

Section 158.23 Consultation With Air Carriers and Foreign Air Carriers (Proposed: § 158.25 Consultations With Air Carriers and Foreign Air Carriers)

This section in the NPRM would have required that, to the extent possible, a public agency provide notice to all air carriers and foreign air carriers currently operating at the airport. It specified the items to be included in such a notice, time limits for acknowledgement by air carriers of receipt of the notice, meeting requirements, and it established that the carriers must certify agreement or disagreement with the proposed projects.

Comments: Airports and airport organizations argue for relaxed notice and consultation requirements. Some recommend that air taxi operators be exempt from the notice procedure required of public agencies, and others urge a like exemption for charter operators because, by definition, they serve the airport on an irregular basis. A few endorsed the requirement in the NPRM that all carriers be notified and consulted. A number of commenters point out that a public agency's cost for consultation could easily exceed the amount of PFC revenue collected for some air carriers that enplane small numbers of passengers. The joint submission also suggests that attempts to coordinate and require collection of PFC's below some threshold of enplanements would be uneconomic. New § 158.11 was developed in response to their suggestions in this regard.

Final rule: The FAA weighed the comments requesting relief from notice to and consultation with all air carriers and concluded that the relief sought is warranted. Accordingly, § 158.23(a) has been modified to reflect the provision in § 158.11 that allows public agencies to request such relief with respect to any class of air carrier enplaning less than one percent of all passengers enplaned at the airport. The information about any such class of carrier is now included in § 158.23(a)(3) of the final rule. The Administrator's decision granting or denying such a request is discussed below under § 158.29.

Public agencies should note, however, that FAA approval or disapproval of the request will occur only in conjunction with the approval or disapproval of an application to impose a PFC under § 158.29. The Administrator must ensure that any relief to a class is reasonable, not arbitrary and not discriminatory. If the request is approved under that section, carriers in the named class or classes would not be required to collect the PFC. If the request is not approved, the public agency will have to undertake new consultations with carriers, including the class or classes which were named in the original application.

A few commenters recommend that consultation be limited to "major operators" at the airport. While this approach would seem to address the carriers serving most of the passengers enplaned at an airport, and, therefore, could comply with the spirit of the consultation requirement, the term itself is difficult to define. There is no agreed-upon level of activity that would serve to divide "major operators" from other operators at an airport; in addition, the same carrier may be considered "major" at one airport, but not at another. Therefore, the FAA has not adopted this suggestion.

Other commenters believe that no airline consultation is necessary, that consultation could be satisfied by mailing all project information to carriers in lieu of a meeting, or that consultation should not be needed on projects not affecting operations. The FAA did not adopt these suggestions because the statute is quite clear that air carriers should be consulted, that a meeting is required, and that the nature of the project is not a basis for eliminating consultation on a PFC-financed project.

There were also comments recommending that airlines not currently serving the airport, air cargo carriers and passenger representatives be consulted. The FAA encourages public agencies to involve as many interested parties as possible in the consultation process, but cannot, under the statute, make such widespread consultation a requirement. Of course, for any project requiring environmental study prior to implementation, all interested persons must be afforded the opportunity to provide comment. In addition, the FAA provides notice to and opportunity for comment by all interested parties during the application review process under § 158.27.

Some commenters argue that notice should be sent by registered letter or published in the **Federal Register**; others suggest that a facsimile transmission would be adequate. The FAA has chosen not to specify the form of written notice, leaving that choice to the public agency. However, failure by a public agency to satisfy the written notice requirement of this section could result in disapproval of an application. The **Federal Register**, as the vehicle used by the Federal Government to provide public notice, is not readily available for use by non-Federal organizations or individuals.

The remaining changes in this section result from reorganization and editing to improve clarity.

Section 158.25 Applications (Proposed: § 158.27 Application)

A main feature of the procedure proposed in the NPRM was the requirement that all environmental and technical studies for a proposed project be completed and approved before the PFC application could be submitted. As proposed, this section would have required public agencies to file applications not more than one year in advance of the proposed charge effective date and to implement an approved project within 2 years of that date. No provision was made for separate approval to impose a PFC in advance of project approval. Applications for more than one project would have been acceptable, but no work other than project formulation could have commenced until project approval.

The NPRM also set forth information that would have been required to accompany the application, and specified that the Administrator could request additional information if needed. In addition, the proposed rule referred to an application form depicted in Appendix A and accompanying public agency assurances set forth in Appendix B.

Comments: Most commenters argue that PFC application procedures modelled after those for AIP grants, as proposed in the NPRM, would be too burdensome and restrictive. They urge instead simpler, more flexible.

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procedures for application, review and approval.

A number of commenters argue that authority to impose PFC's should be allowed separately in advance of project approval, as long as the public agency can demonstrate that it has under consideration or preparation sufficient projects that are nominally eligible for use of the PFC revenue collected. One commenter proposes that approval of a major capital program, a new airport, for example, be tied to a showing by the public agency of a demonstrated need for the program.

Under the two-step process most suggest, a public agency could submit an application to impose a PFC for projects currently in the planning stage and later file for approval of a specific project, or an extensive list of projects such as a long term capital plan. The documentation needed for project approval, say these commenters, can be submitted when appropriate for review and approval of specific projects on which PFC revenue would be spent.

Some respondents suggest slightly differing sequences for completing environmental and technical requirements in relation to PFC and project approval. One suggests that these requirements be accomplished in tandem with consultation; another that they be done concurrently with the Administrator's review and approval process; a third argues that environmental and technical approvals are not needed for PFC-financed projects; and a fourth suggests that a previously approved ALP can be used to satisfy that requirement.

Many commenters also suggest that an application to impose a PFC in advance of approval to use PFC revenue be accompanied by a list of back-up projects on which the accumulated revenue could be spent if major multi-phase projects were ultimately disapproved. A similar suggestion is that the public agency describe any alternative methods it is considering to accomplish its stated objectives.

A comment appearing frequently is that the term "project" in the application should be broadened to include major capital plans and multi-phased programs. Those who support this concept argue that this would give public agencies the flexibility they need to apply PFC revenue to specific projects in the most efficient manner and reduce the need to reapply for each successive project.

Many commenters also suggest that a public agency should have the flexibility to revise its implementation schedule for approved projects in a capital plan in any order it considers appropriate. This they argue, would allow public agencies to respond quickly to changing local priorities and to take advantage of more economical contracting and procurement opportunities. Another proposal for added flexibility suggests that public agencies be allowed to gradually phase in increasing PFC levels at their airports.

A number of comments specifically relate to time limits proposed in sections 158.27(c) and 158.27(d) of the NPRM. A few suggest that applications be accepted more than 1 year in advance of the proposed charge effective date; others argue for more than the proposed 2 years that would have been allowed between application approval and project implementation; and at least one commenter urged that no more than 6 months be allowed from the time of PFC approval to implementation.

A number of commenters express confusion with respect to the term "formulation" as it was used in the application procedure outlined in the NPRM. Several respondents suggest that the FAA define the term and some offer their own definition. Other commenters seek to expand the meaning of project to include various specific activities often associated with project formulation such as contracting for architectural and engineering services.

Others strongly urge that projects such as environmental studies and preliminary plans be eligible or reimbursable in conjunction with proposed projects. They assert that smaller airports in particular will not be able to afford the cost of required studies if they cannot use PFC revenue for that purpose.

Some commenters suggest that the application also include a certification from the public agency that it is not in violation of sections 9304 or 9307 of the Airport Noise and Capacity Act of 1990. A suggested alternative is that the FAA make that a specific standard of the approval process. Another commenter proposes that public agencies certify in the application, and on the form depicted in appendix A of the NPRM, that FAA's NEPA requirements have been satisfied.

One commenter argues that the application should include a checklist on which the public agency would be required to indicate deficiencies in airport safety or design standards. This commenter argues that an application to impose a PFC for a project other than to address such deficiencies should require an additional justification. Another seeks a requirement for project description to ensure that projects intended to benefit primarily all-cargo operators be easily identified for disapproval.

Some commenters recommend that the meaning of several terms used in the NPRM should be clarified or their use eliminated. Among these, it is suggested that the proposed requirement for a financial plan be revised to accommodate preliminary financial estimates; that the final rule provide guidelines for preparing acceptable enplanement projections; and that applications require greater specificity in the factors used to propose a charge effective date and other estimates related to total PFC revenue. One comment suggests that there is no valid need for a public agency to project the total PFC amount.

While one commenter asks for an explanation of what additional information the Administrator might request, as was provided for in the NPRM, another proposes that the provision be deleted.

Finally, two public agencies propose that certain existing agreements between airport sponsors under the AIP be used to justify relaxation of application requirements. One recommends that, where the FAA has issued a letter of intent (LOI) with respect to future funding of an approved program or project, and the LOI requires the public agency to impose a PFC, the public agency not be required to obtain the additional approval to impose a PFC. Another suggests that sponsors already obligated by AIP grant assurances be relieved of having to submit additional assurances with an application to impose a PFC.

Final rule: The FAA agrees that the authority to impose a PFC can be granted in advance of an approval to use PFC revenue on specific projects.

Accordingly, this section of the final rule is restructured to provide two application options. Under the final rule, a public agency may apply for authority to impose a PFC while finalizing the plans and studies for a project to be financed with the PFC revenue. The application to use the PFC revenue may then be submitted when all needed plans are complete and prerequisite approvals have been obtained. Alternatively, if a public agency is ready to immediately implement a project using PFC revenue, it may apply to do so at the same time it files the application to impose the PFC. The information to be submitted with an application for the authority to impose a PFC and to use PFC revenue are set forth in § 158.25(b) and (c), respectively, in the final rule.

The FAA considers the final rule to permit substantial flexibility on

alternative sequences to complete the requirements for approvals to impose a PFC and to use PFC revenue. A public agency may, in many instances, pursue completion of these requirements concurrently. The FAA considers it unnecessary, however, to specify in the rule the various paths by which a public agency satisfy the requirements.

The information to be submitted in all cases in which a public agency seeks the authority to impose a PFC is set forth in section 158.25(b). Inasmuch as the final rule does not include a specific form on which the application is to be submitted, as was proposed in Appendix A of the NPRM, the listing of required information in this section is more detailed. (The FAA intends to develop an application form independently from this rule, but a public agency need not await its availability in order to file an application.)

The application to impose a PFC requires information about the public agency, the airport at which the PFC is to be imposed and at which the revenue is to be used, the PFC level to be imposed, the proposed charge effective date and the project, including its justification.

In this regard, the definition of "project" in subpart A is revised as discussed above to clarify the FAA's intent that large capital programs and multi-phased projects, as well as more modest projects, are considered approvable. The requirement under § 158.25(b)(6), therefore, may be interpreted broadly or narrowly, as in the case of a public agency with plans for the immediate use of PFC revenue on discrete projects.

The results of consultation with air carriers and foreign air carriers are also to be submitted.

If the public agency wishes to request that any class of air carrier not be required to collect the PFC at the airport, that request and specified information regarding the class must accompany the application.

If the project is still in the planning stage and the public agency is seeking only the authority to impose a PFC, the financial information required by § 158.25(b)(14) must still be included. However, a public agency is required to provide only as much information as can reasonably be expected to be available during the planning stages of a comprehensive capital program. Finally, the FAA retains the provision whereby the Administrator may request additional information.

In a case where the public agency intends to proceed immediately with a PFC-financed project, the application should include the information required under § 158.25(c)(1) of the final rule. If such is the case, the public agency need not submit the information set forth in § 158.25(b)(14). It should be noted that a public agency is required to submit a signed certification regarding the completion of any necessary environmental, ALP and airspace studies and approvals. (If the application is to conduct planning or environmental study projects, to be done in preparation for a later application involving construction, this certification is not required.) The FAA intends to monitor the veracity of this certification closely to ensure that all requirements are fully met before granting approval to use PFC revenue.

If a public agency has obtained approval of an application for the authority to impose a PFC, and later applies for the authority to use accumulated PFC revenue, it must first consult further with air carriers and foreign air carriers. This consultation is intended to be less rigorous than the first in that it requires no meeting at which the public agency presents its proposed project to the carriers. It should, however, emphasize new or revised PFC or project information, including cost, that is relevant to the application. The public agency must then submit the information required under § 158.24(c)(2) of the final rule, including a summary of the further consultation. Again, the emphasis should be on changes to the original application to impose a PFC.

Whether a public agency intends to seek approval to use PFC revenue concurrent with or subsequent to the approval to impose a PFC, the project it proposes may consist of one or more discrete projects or a general program of projects. In either case, the public agency has the option to implement approved projects in whatever order best responds to local priorities and best meets local objectives regarding airport development.

The FAA agrees that an application to impose a PFC by a public agency that has been found to be in violation of these provisions should not be approved, and incorporates this provision as a criterion for approval, rather than including it as an item to be included in the application. See the discussion below on § 158.29, the Administrator's decision, in this regard.

The FAA has concluded that it is unlikely that a public agency will file an application to impose a PFC more than 1 year in advance of its proposed charge effective date and, consequently, this provision is deleted in the final rule. The 2-year limit for implementing a project approved under § 158.25(c), however, is considered appropriate. When coupled with the option to impose a PFC for an additional 3 years before approval to use the funds, as discussed below under §§ 258.31 and 158.33, a public agency may accumulate PFC revenue for up to 5 years before actually implementing a project. See the discussion of §§ 158.31 and 158.33 below regarding duration of authority to impose a PFC prior to obtaining project approval and prior to implementing an approved project.

The FAA considered developing a definition for "formulation" but has not done so. The problem lies, in part, with the fact that some costs of formulating a project, e.g., environmental studies, can be undertaken by public agencies as individual projects. (Some commenters interpreted the NPRM too narrowly in this regard.) Conversely, land acquisition, which is considered project formulation under the AIP, clearly could not be financed with PFC revenue until such use is approved.

This issue is resolved in the final rule by revising the definition of "allowable cost" as discussed above under subpart A to clarify that the costs can be incurred prior to approval to impose a PFC or use PFC revenue. It should be understood, however, that a public agency that incurs costs related to a project before the project is approved, may use PFC revenues to reimburse those costs only if the project is ultimately approved.

The FAA has chosen not to require an airport safety checklist or specific steps to highlight any particular type of project. To do so would indicate that the FAA intends to substitute its priorities for those of the public agency controlling the airport. In addition, with respect to concerns about airport safety, the FAA conducts periodic inspections of certificated commercial service airports to help ensure that critically needed safety projects are implemented when needed. This should be addressed during the required consultation process prior to the filing of an application. With regard to highlighting specific types of projects to preclude PFC of funding ineligible items, section 158.15(b)(6) indicates some of the types of projects that are ineligible for use of PFC revenue. The FAA is confident that, because eligibility for PFC-financed projects so closely parallels that for AIP-financed projects with the exception of gates and related areas, there is little likelihood that ineligible projects will be proposed or financed with PFC revenue. Consequently, these proposals are not incorporated in the final rule.

The FAA has not adopted suggestions that final rule incorporate more specific

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guidelines for preparing any types of projections or any estimating methods that a public agency may use to develop its proposed charge effective or expiration dates. There is sufficient expertise extant in this specialized area that to proscribe a particular methodology by rule would reduce flexibility to adopt new or proven methods to locally controlled estimating needs. Although the FAA declines to specify the methods for developing such estimates, the final rule retains the requirements that public agencies present certain temporal and financial forecasts.

Readers will also note that the final rule retains the provision allowing the Administrator to request additional information if it is needed to fully evaluate an application. Although the Administrator would have that authority even in the absence of this provision, its presence is intended to advise public agencies that some additional information may be needed in certain circumstances. Because it cannot be predicted what specific information could be needed in a given case, however, the FAA has chosen not to articulate examples of information that potentially could be requested.

The final rule also retains the application requirement that public agencies certify in writing that they will comply with certain assurances related to the imposition of PFC's and the use of PFC revenues. These are considered necessary to ensure that projects constructed with PFC revenues are compatible with airport safety and design standards, further the policy of encouraging air carrier competition, and assuring compliance with specific PFC-related requirements. The individual assurances in the final rule are discussed below under appendix A.

The FAA has also decided not to adopt the proposal that an airport sponsor required by a letter of intent issued under the AIP to impose a PFC be exempt from the PFC-related application requirements. While certain of the consultation and application requirements may be redundant, the statute cannot be interpreted to provide such an exemption. In addition, although prior consultation and project approval will very likely allow speedier review and approval, it can also be expected that new issues will arise pertaining to imposition of the PFC and use of the revenue.

Section 158.27 Review of Applications (Proposed: Review and Approval Process)

As proposed, this section included the procedures for review of applications and the standards and procedures for approval of applications by the Administrator in a single section. With respect to review, the NPRM proposed that the Administrator would review the completeness of the application within 30 days after receipt. If the application was complete, the Administrator would have published a notice in the Federal Register soliciting public comment. Comments would be due in 30 days. Following review of the record, including public comments, the Administrator would have issued a decision within 120 days of the receipt of the application.

If the application was not substantially complete, the NPRM provided for the Administrator to advise the public agency of the deficiencies, and the public agency would have had 15 days to advise the Administrator of its intention to supplement the application. If the public agency chose not to supplement the application, the Administrator would have proceeded with a Federal Register notice inviting public comment and would have issued a decision within 120 days after receipt of the application. If the public agency supplemented the application, the Administrator would have reviewed the supplemented application for completeness. If the Administrator still considered the supplemented application to be incomplete, the public agency would have had a further opportunity to supplement the application. This process could have been repeated until the Administrator determined that the application was substantially complete or the public agency declined to file further supplements. Following notice and an opportunity for public comment, the Administrator would have issued a decision within 120 days after receipt of the final supplement.

The proposed rule also included provisions specifying the contents of the Administrator's decision to be published in the Federal Register and the standards for approval of PFC applications.

Comments: A number of commenters urge that the process be streamlined, and many propose the elimination of certain requirements, as discussed below. At least one commenter suggests that some expedition could be achieved if certain steps could proceed in tandem rather than sequentially. Others propose that certain requirements be eliminated.

Two airports propose that the rule provide for an Administrator's decision in less than 120 days, especially in the case of PFC applications that are not opposed by carriers. One of these proposals is part of a larger recommendation to expedite the review process.

With respect to completeness determinations, an airport operator proposes that the FAA take only 15 days to review the completeness of the application. On a related matter, another airport authority proposes that instead of restarting the 120-day decisional clock with receipt of each supplement, the final rule provide for a suspension of the clock between the time the Administrator determines the application is not substantially complete and receipt of the final supplement. Finally, one commenter suggests that notices of substantially complete applications under § 158.27(a) include a description of information required to achieve full conformity, or, in the alternative, that the concept of substantially complete be defined. Some airport commenters propose eliminating the Federal Register notice following receipt of an application as unduly burdensome or limiting public comments on the Federal Register notice to airport users. Another proposes that commenters be required, not merely permitted, to submit any comments in the local consultation process as their comments to the FAA. One trade association recommends that the FAA comment period conform to the period allowed in the local consultation process. A Federal Government agency proposes that the final rule omit the requirement that commenters serve a copy of their comments on the public agency and that the FAA arrange to forward public comments.

Final Rule: In addition to the many changes made in direct response to the public comments, the FAA has made a major structural change in the final rule. In the NPRM, § 158.29 contained proposed provisions that would govern both the FAA's review of an application and the Administrator's decision. The FAA has separated the provisions on FAA review and the Administrator's decision into § 158.27 and § 158.29 respectively. This separation is made because the same review process will be used for both an application for authority to impose a PFC and an application to use PFC revenue. In contrast, the Administrator's decision and standards for approval will vary with each kind of application. Section 158.29 is discussed more fully below.

The FAA has made some changes to simplify the review process, as discussed below. In addition, the provision for separate applications to impose PFC's and to use PFC revenue should permit some public agencies to impose a PFC sooner than would have been possible under the NPRM. However, many of the steps of the review process are mandated by statute, e.g. notice and an opportunity for comment after FAA receipt of an application. Other steps are necessary to meet requirements imposed on the FAA. For example, the preliminary review for completeness is necessary to ensure the FAA will be able to make a decision on an application within the time required by statute. Many of the commenters' suggestions, including, for example, the proposal for a complete expedited review process, could not be implemented in the final rule as discussed below.

To simplify the review process, the final rule eliminates multiple supplements to applications deemed to be substantially incomplete by the Administrator. Under the final rule, the public agency may be required to provide only one supplement to the application. This change should eliminate the possibility that the review process can be extended for long periods without a final decision. A decision denying an application would not prevent the public agency from reapplying following further consultations.

The final rule does not provide for concurrent completion of different steps of the process, although that may be possible in the future.

The statute requires certain steps to be completed before filing the application and gives the FAA 120 days to complete the review. Given these requirements, the FAA is reluctant to provide specifically for concurrent actions at this time prior to gaining experience in implementing the rule. Therefore, the final rule does not reduce the number of days for the Administrator's decision on an application.

The final rule retains the provision for Federal Register notice and opportunity for public comment since this notice is the usual means of advising the public of that opportunity. The FAA will bear the burden of publishing the notice. The requirement that the public agency make a copy of this notice available upon request should not be unduly burdensome since a copy for inspection at the airport is sufficient. Publication of the notice in a local newspaper is optional with the public agency. As to limiting comments to users of the airport, the statute specifies that any "interested person" have an opportunity to comment, and there is no statutory basis for treating that language as limiting comment to airport users. Moreover, potential "users" of the airport may come from anywhere in the country. Therefore, the final rule does not incorporate either of these suggestions.

The final rule also retains the 30-day FAA comment period proposed in the NPRM. If the comment period matched the total time allowed in the local consultation process, 75 days, the FAA would, in many cases, have insufficient time to complete the review process within the 120 days provided in the statute. Also, the final rule does not require air carriers to submit to the FAA their comments in the local consultation process. Such a requirement would effectively preclude air carriers from responding to a public agency's explanations of its reasons for pursuing an application in light of certifications of disagreement and in doing so would frustrate the purpose and value of the notice and comment requirement.

The final rule also retains the requirement that commenters serve a copy of their comments on the public agency. Principles of fundamental fairness clearly entitle an applicant to be made aware of comments, arguments and evidence being presented in opposition to its application. The burden on commenters proposed in the NPRM—the cost of one additional copy and first class postage—is not unreasonable.

With respect to supplemented applications, the final rule provides that the 120-day review period be restarted with the filing of the supplement. It does not incorporate a commenter's suggestion that the clock be suspended while the supplement is being filed. Because the final rule provides for only one supplement, however, the prospect for extensive delay is largely eliminated.

On a related matter, the final rule does not incorporate a suggestion that notices of substantially complete applications specify any additional information required. This proposal misconstrues the concept of substantially complete applications, which is to assure that applications will be reviewed on their merits, even if not in strict technical compliance with all requirements of the rule. An application will not be considered substantially complete if the FAA considers additional information to be necessary for a decision.

Section 158.29 The Administrator's Decision (Proposed: Review and Approval Process).

As proposed, this section sets forth the standards for approval of an application and the contents of the Administrator's notice to the public agency of approval. Under the proposal, the Administrator would have approved an application only after a determination there would be no excessive PFC collections, the project met the objectives and standards of § 158.17, and the application was substantially complete. The NPRM required public agencies to file an application to both impose a PFC and use PFC revenue on a project.

Comments: This provision of the NPRM generated very little comment. A comment from the financial community suggests the rule state that the Administrator's decision be binding and conclusive.

Final Rule: The paragraph of the NPRM dealing with this issue (§ 158.29(g)) has been replaced with a new § 158.29. This reflects the fact that public agencies have the option to seek approval for imposition of PFC's separately from approval to use PFC revenue. Somewhat different standards are provided for each type of approval. Paragraph (a) defines the standards for approval to impose a PFC, and paragraph (b) defines the standards for approval to use PFC revenue. However, when a public agency applies for concurrent approval to impose a PFC and use PFC revenue, the public agency must satisfy the requirements of both paragraphs before the Administrator will approve the application.

Under paragraph (a), the Administrator will approve an application to impose a PFC only upon determining that excess revenue will not be collected, and the preferred project is eligible. In addition, the collection process, including a request to waive the collection requirement for a class of carriers, must be determined by the Administrator to be reasonable, not arbitrary, nondiscriminatory and in accordance with the law. When the public agency has not sought concurrent approval to use PFC revenue, there must be alternative uses for PFC revenue in case the public agency's preferred project is not approved.

The first standards reflect statutory requirements. The next standard allows the Administrator to ensure that the public agency has adopted a fair classification system that does not unfairly favor any carrier or class of carrier. Under this standard, for example, a classification of on-demand Part 135 operators might be approved, whereas a classification of Part 135 operators that had served the airport 5 years or more probably would not. The last requirement regarding alternative projects ensures that approval to impose a PFC does not inexorably commit the FAA to permit the use of PFC revenue on a particular project. The proposed standard that the application comply

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with the final rule's application requirements has been omitted. Because the Administrator will rule on the merits of all applications after at most one supplement, this standard is no longer necessary.

Section 158.29(a)(2) specifies the Administrator's notice of approval will list projects and alternative uses that may qualify for PFC financing, the PFC to be imposed, total approved PFC revenue, duration of authority and the earliest permissible charge effective date. The FAA considers this information relevant to the approval to impose a PFC. In particular, the specification of the earliest permissible charge effective date allows the Administrator to ensure carriers will be ready to begin collection on the public agency's charge effective date. It is expected that this issue will be discussed during the local consultation process. The Administrator will not specify the exact charge effective date because, under § 158.43, the charge effective date will depend on the date of the public agency's notice to carriers.

Paragraph (b) defines the standards for approval to use PFC revenue on an approved project. The Administrator will approve an application only after the determinations that there will not be excessive collections, that the project meets the statutory standards for use of PFC revenue, and that any project satisfies all applicable requirements with respect to FAA airspace determinations, ALP approvals and compliance with NEPA. The first two standards relate to the standards in the PFC statute. Once a specific project has been identified for PFC financing, it is necessary to assure that the specific project may be financed by PFC revenue under the statute and that PFC revenue will not exceed the allowable costs of that project. The latter standard assures that a public agency does not use PFC funds on a project until all requisite Federal approvals have been obtained. If the Administrator cannot verify that these requirements have been met, the application will be disapproved. Under § 158.29(b)(2), approval to use PFC revenue on any project will be considered approval of that project for purposes of the rule.

Paragraph (c) of this section specifies that the Administrator will give written notice when an application is disapproved. That notice will include the reasons for the decision. While the NPRM included notification of approval, notification of disapproval was inadvertently omitted. If a public agency files a new application following disapproval, it must comply with the consultation and application requirements of the rule since it is likely a new application will involve some changes.

Section 158.31 Duration of Authority to Impose a PFC Following Project Implementation (Proposed Duration of Authority To Impose a PFC)

As proposed, this section would have allowed that a public agency to impose a PFC until it received the total approved PFC revenue, or the Administrator had terminated PFC authority under subpart E, or the public agency was determined to be in violation of relevant provisions of the Airport Noise and Capacity Act of 1990 and terminated the authority to impose a PFC thereunder.

Comments: Some commenters express concern that tying termination to receipt of total approved PFC revenue would be unduly burdensome to public agencies which had underestimated project costs and collected the amount of total approved PFC revenue before a project was completed or fully paid for. These commenters suggest termination be tied to collection of PFC revenue when they equal project costs. Some suggest public agencies be allowed to continue to impose the PFC and apply the PFC revenue to other approved projects.

Final rule: The proposed provision has been modified in three ways in the final rule. First, the final rule specifies that the public agency may impose a PFC until total PFC revenue plus interest equals the allowable cost of the approved project. This may require a public agency to revise its charge expiration date so revenue collected match allowable costs. This revision addresses the concern raised in the comments. The final rule does not explicitly provide for the continued imposition of a PFC to finance approved backup projects. If backup projects have been approved, under the terms of the rule, the public agency may use PFC revenue to finance these projects, and imposition could continue. However, the public agency must obtain specific approval to use PFC revenue for the backup projects. If authority to use the revenue on specific backup projects has not been obtained, the authority to impose the PFC would expire once the public agency had received sufficient PFC revenue and interest to pay for the costs associated with approved projects.

In the second change, this section of the final rule now explicitly applies only when a public agency has begun implementation of an approved project. New section § 158.33, addresses instances when a public agency has not implemented an approved project in a timely fashion, and is discussed below.

The third change is in paragraph (c), referring to termination for noncompliance with provisions of the Airport Noise and Capacity Act of 1990. The final rule specifies that the authority to impose a PFC will be terminated for noncompliance with that law in accordance with the implementing regulations for that statute.

Section 158.33 Time Limits for Imposition of PFC Collection Before Project Implementation (No Corresponding Provision in NPRM)

This new section in the final rule sets forth the standards and procedures governing the loss of authority to impose a PFC for failure to implement an approved project. The NPRM included a proposal requiring projects begin implementation within 2 years after the public agency's proposed charge effective date, but it did not explicitly provide for the consequences if a project were not implemented.

The final rule provides for such circumstances. The FAA also determined that the final rule should address the duration of authority to impose a PFC before a public agency applies for approval to use PFC revenue and implements a project. This ensures that collections do not continue indefinitely without PFC revenue being put to use as contemplated in the statute. Airport comments are generally critical of the proposed 2-year accumulation period. A number of commenters propose that collection be permitted up to 5 years. Some propose initial authorization of up to 5 years with periodic progress reports to carriers and the FAA. The joint submission recommends initial authorization of 3 years with the possibility of seeking a 2-year extension, and even a 5-year extension. One major airport suggests advance collection should not have a set time limit. This airport would allow the public agency to schedule PFC imposition, accumulation of revenue, and use of PFC revenue to minimize financing costs. One industry trade association proposes an even shorter accumulation period.

The FAA determined that the 2 year accumulation period may be insufficient for major projects when a public agency imposes a PFC during the planning and formulation process. The final rule permits initial accumulation for 3 years before a public agency applies for approval to use PFC revenue. The public agency may seek an extension of up to 2 years following an abbreviated application process, but at the end of 5 years, it must begin project implementation.

The FAA recognizes that the ability to accumulate PFC revenue may ultimately reduce total project financing costs by reducing the amounts public agencies need to borrow. However, advance accumulation by its nature requires passengers to pay for facilities that they may never use. Therefore, a limit on accumulation is appropriate.

The FAA believes that the three-plus-two approach is a reasonable limit. Even if a major project requires 10 years to complete, the public agency should be well along in the planning process by the third year and should have progressed to the point of project implementation by the fifth year. In addition, this approach has broad support in the comments.

Under paragraph (a), a public agency may impose a PFC for up to 2 years after receiving approval to use PFC revenue before it implements a project. However, if it had obtained prior authority to impose a PFC, it must implement the subsequently approved project no later than 5 years after the charge effective date. Thus, a public agency that imposed a PFC and received approval to use a PFC 2 years after imposition could continue to impose a PFC for 2 more years before project implementation—a total of 4 years. In contrast, a public agency that did not receive approval to use PFC revenue until 4 years after it began imposing a PFC could continue to impose the charge for only 1 more year before project implementation—a total of 5 years.

If after 2 years (or 5, when appropriate) when the public agency has project approval and the Administrator believes sufficient progress has not been made toward project implementation, the Administrator will begin termination proceedings under subpart E. The use of subpart E procedures allows the public agency to take corrective action and should reduce, but will not eliminate, bondholders' uncertainties over abrupt termination of a PFC revenue stream.

The FAA anticipates that in virtually all cases arising under paragraph (a), the matter would be resolved through informal resolution. The FAA does not expect that questions of project implementation would progress to the hearing stage.

Paragraph (b) sets forth the time limits for imposition of a PFC before approval to use PFC revenue. The public agency may collect for up to 3 years before an application for approval to spend PFC revenue has been filed or a request for an extension has been filed under § 158.35. If an extension is authorized, the public agency may continue to impose a PFC for only 2 more years unless it obtains approval to use PFC revenue. At the end of 3 years without an extension or project approval or 5 years without project approval and implementation of the project, the authority to impose a PFC will expire automatically.

In either case, it is doubtful that the public agency would have succeeded in obtaining debt financing based on PFC revenue without approval to use PFC revenue on an approved project. Therefore, the need to accommodate the financial community's concerns over sudden termination of PFC revenue streams should be less of a concern. In any event, the FAA has a statutory duty to prevent excess collections. In these circumstances, automatic expiration prevents the continued receipt of PFC revenue by the public agency without expenditure for the purposes intended by the statute.

The final rule also provides a mechanism for stopping collection of a PFC when authority has expired. The public agency must provide a list of carriers operating at the airport and other collecting carriers remitting to the airport in the previous 12 months. The FAA will notify these carriers of the expiration and the carriers will terminate collection within 30 days of the FAA's notification.

Finally, paragraph (e) provides that if authority to impose a PFC has expired, the Administrator will not grant new approval to reimpose the PFC until the project has been implemented. This provision will assure public agencies are not able to impose a PFC indefinitely by filing successive applications for authority to impose a PFC.

Section 158.35 Extension of Time To Submit Application To Use PFC Revenue (No Corresponding Section in NPRM)

This section sets forth the procedures for public agency requests for extension of authority to impose PFC's before receiving approval to use PFC revenue and implementing an approved project. The final rule provides for a more expedited local consultation and FAA review process than is required for initial approvals to impose a PFC or to use PFC revenue.

Paragraph (a) specifies that the public agency must provide notice in a local newspaper at least 30 days before submitting a request to the FAA and soliciting public comments. The notice must include progress to date, a revised schedule for obtaining project approval and reasons for delay.

Following public comment, but at least 120 days before the charge expiration date, the public agency must submit the request to the Administrator accompanied by the following information: the information provided in the local notice; a summary financial report showing PFC revenue already collected plus interest and to be collected during the extension and any local funds expended for which reimbursement will be sought; a summary of any further consultation with carriers operating at the airport; and a summary of comments received in response to the local notice.

The final rule does not require further consultation with carriers before the request is submitted. The local notice and comment process will provide carriers with an opportunity to register their views. In addition, full consultation is required before submitting the application for authority to use PFC revenue. However, a public agency may always engage in additional carrier consultation if it so chooses. A summary of such consultation must be included with the request.

The Administrator will approve the application upon determining that the agency has shown good cause for the delay in applying for approval to use PFC revenue; the revised schedule is satisfactory; and further collections will not result in excessive PFC revenue. The Administrator will decide on the request and provide written notice to the public agency within 90 days after the request was received.

Section 158.37 Amendment of Approved PFC (Proposed: Amendment of Approved PFC)

Under the NPRM, a public agency would have followed one of three courses in requesting an amendment to an approved PFC. If the public agency wished to decrease the level of the PFC without any appreciable change in the nature or scope of the project, no consultation with air carriers and no justification would have been required. If the amendment would have increased the PFC level, resulted in an incidental change in the project scope and increased the amount of PFC revenue used on the project by less than 15 percent, the public agency would not have been required to consult with air carriers, but would have been required to justify the amendment in writing to the appropriate FAA Airports office. More extensive amendments would have required consultation and any other information requested by the Administrator. The NPRM also proposed that the Administrator's review process would provide public notice and

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opportunity for comment only for the most extensive category of amendments.

Comments: Over 20 commenters responded to this proposal in the NPRM. Although one finds the proposed amendment rule to be acceptable, about half of all commenters claim that it would be too burdensome and time consuming. Many add that the process proposed would adversely affect bond financing, unnecessarily delay projects, and limit the flexibility that public agencies need to deal with changing circumstances during the course of a project.

A number of commenters suggest that the criteria that would have been used to determine approval be spelled out, and that the final rule provide definitions of changes "incidental" to the project or changes in the "scope" of the project. Several ask that the threshold for cost increases requiring carrier consultation be raised from 15 percent, as was proposed, to 25 or 30 percent. Others suggest that no approval be required for amendments unless the carriers object, and some propose that the rule require only notification to the FAA and carriers upon a decision by a public agency to amend a PFC-financed project. One feels that there should be no threshold below which carriers consultation should not be required.

Some commenters question whether the FAA can initiate or require an amendment to an approved PFC by a public agency. Others express concern that, should an application for an amendment be disapproved, it not adversely affect the original PFC, and another proposes that there be an appeal process in the event that an application to amend is disapproved. Only one commenter urges that the rule specify a more expeditious review and approval process, to be completed in 30 to 45 days. Other comments suggest that the FAA consider suspending imposition of a PFC if the amendment is inconsistent with the original project, and that approval of an amendment be categorically excluded under NEPA.

Final rule: The FAA understands that most public agencies would like additional flexibility to modify approved projects, increase or decrease the PFC level, and otherwise respond promptly when financial or technical changes in a project are necessary. The final rule adopts a number of changes suggested by commenters which liberalize the requirements for obtaining an amendment. The requirement for FAA approval of an amendment is retained, however, to help ensure that future PFC revenue is used for eligible projects and that the costs of a PFC-financed project are limited to those which meet the "reasonable and necessary" criteria in the definition of allowable cost.

Under § 158.37(a) in the final rule, a public agency may decrease the level of PFC collected, decrease the total amount of PFC collected, or increase the total amount of PFC collected by 15 percent or less by simply notifying the collection carriers and the FAA in writing. Any new charge resulting from a change in the PFC level will be effective on the first day of a month which is at least 60 days from the date of notification to the carriers. For example, if the public agency notifies the carriers on the fourth of August that the PFC will decrease from $3 to $2, the effective date of that change is the first of November.

If a public agency wishes to amend an approved PFC project by increasing the PFC level, the total amount of PFC revenue collected by more than 15 percent, or by materially altering the scope of the project, it is subject to slightly more rigorous requirements. If such is the case, the agency must consult with air carriers and foreign air carriers and provide the FAA with written evidence of that consultation and the justification for the requested amendment. The Administrator may also request additional information if needed to fully evaluate the request.

If the carriers agree with the public agency's requested amendment, it will be effective 30 days after the FAA receives the application, unless notified otherwise. Any new charge resulting from the amendment will be effective on the first day of a month which is at least 60 days from the time of notification to the carriers, as discussed above.

If the carriers disagree with the requested amendment, the FAA will review the information submitted, including any reasons given by air carriers for opposing the amendment. The FAA will approve or disapprove such requests within 120 days of receipt of the application, allowing for such consultation, public notice and opportunity for comment as may be appropriate.

The consultation and review procedure outlined above will also apply to any request for approval of a new class of air carrier to be designated, or modification of any previously approved class, under § 158.11.

Although a number of commenters urge that amendments be automatically approved, or that they be approved unless the carriers object, the final rule retains the option to disapprove an amendment, even though the air carriers may not oppose it. This is, in part, to protect the interests of the passengers who ultimately pay the PFC's to fund the project, and, in part, to ensure that project costs do not exceed what are considered reasonable and necessary for the accomplishment of the project.

The statute establishes the authority for the Secretary of Transportation, through the FAA, to approve or disapprove the imposition of PFC's and the use of PFC revenue; approval or disapproval of a subsequent amendment is simply an extension of that authority.

The final rule establishes no specific requirements regarding environmental, ALP or airspace studies solely related to an application to amend an approved PFC or PFC-financed project. This is largely due to distinction between approval to use PFC revenue to pay the estimated costs of a specific project and approval to use more or less revenue to cover the actual costs of that project. Such amendments would almost always be within the scope of the project as it was defined in earlier studies. If the amendment would put the project outside the scope of that definition, or constitute an essentially new project, the appropriate NEPA reviews, as well as other studies, would be mandated.

The final rule does not refer to "incidental" changes to the project, but it retains the concept, suggested in the comments, of materially altering the project "scope." This term, although it may be insufficiently precise for some, is suggested by the joint industry commenters who would be most likely to be involved in any dispute arising over a proposed amendment. In addition, the FAA intends to apply a standard to this term which would include a quantitative increase in the project (e.g., increasing the length of a PFC-financed taxiway), but would not include amending an approved taxiway construction project to allow extension of a runway. Such changes would require that the additional project be included in a previously approved application to use PFC revenue, or that it be the subject of a newly filed application to use PFC revenue.

The final rule provides no specific appeal procedure for a public agency in the event an application for amendment, or an original application, is disapproved. The agency may, of course, refile an application at any time. The disapproval of an application for amendment will not affect the validity of any previous PFC-related approval. In addition, the final rule does not provide that disapproval of an application for an amendment result in suspension of authority to impose an approved PFC. Provisions for termination of that authority are provided in subpart E of the final rule in the event that such a course of action is necessary.

Section 158.39 Use of Excess PFC Revenue (Proposed: Use of Excess PFC Revenue)

Because this section was geared toward concurrent approvals for imposing a PFC and using PFC revenue, it provided only for the use of excess revenue after receipt of approved PFC amounts. Accordingly, it proposed to require public agencies to notify carriers to stop collecting when PFC revenue equalled the amount of total PFC revenue approved. In addition, it specified that any excess revenue be reserved for future eligible projects. However, it did not provide a mechanism to assure that the excess revenue were used as required.

Comments: The comments generally support the NPRM's approach, although they note some concerns. A number of airport operators are concerned that tying the requirement to stop collecting PFC's to the amount of approved PFC revenue did not allow for incorrect prediction of estimated project costs. In addition, some commenters express concern that the proposed rule did not explicitly provide for the use of PFC revenue required to meet debt coverage requirements over and above payments of principal and interest.

Commenters, including the joint submission, also suggest that excess PFC revenue be used to retire existing PFC-backed bonds or to issue new bonds.

Other comments propose additional related uses for excess PFC revenue such as applying the excess revenue to the Federal share of projects undertaken by the public agency or distributing the excess to general aviation, small hub and non-hub commercial airports under AIP formula.

One commenter proposes that excess revenue be held in reserve without penalty or termination.

Final rule: The final rule defines excess revenue in terms of approved PFC amounts in § 158.31, as described above, and in a revision to the NPRM language on use of excess revenue. Under § 158.31, the duration of authority to impose is tied to receipt of PFC revenue equal to allowable costs, not total approved PFC revenue. Excess revenue is now defined in § 158.33 as revenue, plus accumulated interest thereon, exceeding allowable project costs. When revenue collected to satisfy bond coverage requirements creates excess revenue, that revenue may be used for approved projects.

A new paragraph (c) provides for the use of accumulated revenue received before authority to impose a PFC lapsed due to failure to implement an approved project. In any case, excess PFC revenue must be used on approved projects, including retirement of existing PFC-financed debt.

Under new paragraph (d), the public agency must, within 30 days after authority to impose the PFC has terminated or expired, present to the FAA a plan for using unspent PFC revenue. If the public agency does not present the plan, or the plan is unacceptable, the Administrator will start proceedings to offset AIP entitlement funds under subpart E. The PFC statute authorizes offset of AIP entitlement funds as one means to cure excess collections. Under this provision, PFC revenue cannot be held indefinitely without penalty. To permit a public agency to do so would be contrary to the statutory intention that PFC revenue be applied to projects that enhance the safety, capacity, security, and competitiveness of the national air transportation system or that mitigate adverse noise effects of airport operation. The final rule does not provide for use of excess PFC revenue as part of the Federal share of specific grant-eligible projects or for redistribution to other airports. PFC revenues are local funds, not Federal funds. The FAA can find no basis in the statute for distributing them to other airports or for applying them to the Federal share of specific AIP projects. However, as discussed above, the FAA will start proceedings to offset apportioned Federal financial assistance as provided by the statute if the public agency does not commit to using the accumulated PFC revenue.

Subpart C

Subpart C specifies requirements for providing notice of the imposition of PFC's, and for collecting, handling and remitting PFC's. This subpart has been designed to allow as much flexibility as possible to the public agencies and the air carriers and foreign air carriers while still maintaining adequate protection for each party involved.

Section 158.43 Public Agency Notification To Collect PFC's (Proposed: Public Agency Notification To Air Carriers and Foreign Air Carriers)

As proposed, this section would have required each public agency that had been granted authority to impose a PFC to give written notice to the carriers and foreign air carriers operating at the airport. The carriers would then be responsible for notifying their agents, including other issuing carriers, of the requirement to collect and the effective date to begin collection. As proposed, the effective date of the PFC would be no sooner than 30 days after notification.

Comments: Commenters suggest all notices of approval to impose PFC's appear in the Federal Register. These commenters also want some provision for notification for any subsequent amendment to the amount of PFC collected. Commenters suggest that the public agency be required to give more than an "estimated" charge expiration date, because public agencies would be unable to forecast the exact date to stop collecting the PFC. Some commenters, including the joint submission, also want the FAA to set up and maintain a PFC clearinghouse and publish a monthly report that would list any PFC's approved in that month and any relevant EAS information. Travel agents note the absence of specific requirements for notifying the CRS vendors or travel agents, and suggest that FAA provide a mechanism for such notification.

Final rule: Under the final rule, those carriers required to collect the PFC are provided notice of collection levels, the total revenue to be collected and the charge effective date. This date must be at least 60 days from the date the public agency notifies the carriers and must be on the first day of a month. This should provide sufficient time for carriers to arrange collection procedures.

A public agency must notify the carriers required to collect the PFC of any amendment to the total amount of PFC revenue being collected or the level of PFC imposed, and the word "proposed" has been added to "expiration date" to recognize that this date is proposed. Each carrier will be responsible for notifying its agents, including travel agents.

Section 158.45 Collection of PFC's on Tickets Issued in the United States (Proposed: Collection of PFC's)

This section as proposed contemplated that the issuing carrier, upon notification, would be required to collect a PFC on all air travel tickets sold on or after the charge effective date. The ticket would be required to show the PFC imposed at each airport and the total PFC paid by each passenger. As required by statute, no PFC's would be collected after the passenger has paid two charges on a one-way trip (or two in each direction of a round trip) and no PFC may be collected when the passenger is being provided air service for which essential air service (EAS) compensation is being paid. The NPRM also stipulated a PFC could not be collected when a passenger's travel to an airport charging

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a PFC is the result of an involuntary change in a passenger's itinerary. All PFC's would be collected and remitted by the issuing carrier as noted on the ticket, thus eliminating the need for interline settlements.

Comments: The issue drawing the most attention in the comments was the determination of one-way and round trips for the purpose of determining which airports in a passenger's itinerary are entitled to receive PFC revenue. The joint submission recommends that PFC's only be collected at the first four airports where PFC's are imposed without regard to whether the itinerary was a round trip. They argue this is the simplest and least expensive way for the carriers to redesign their systems, and would also be the least confusing to passengers. Recognizing that statutory requirements could prevent the adoption of this proposal, the joint submission offers an alternative under which the PFC would be assessed at the first two airports and the last two airports on a passenger's itinerary at which a PFC is being imposed. Although the second alternative presented is more costly than the first, the joint submission supports the adoption of either of these alternatives.

Most commenters agree with the NPRM that, in the event of an involuntary change in a passenger's itinerary not requested by the passenger, the PFC's should be remitted to the airports on the original ticket itinerary. Conversely, for voluntary changes requested by the passenger, the commenters support assessing the PFC. However, they recommend limiting refunds or new PFC's to those cases in which there is an adjustment made to the amount paid by the passenger.

Another major issue was the treatment of foreign carriers. The comments from individual foreign carriers and from IATA request that foreign carriers be exempt from collecting and remitting PFC's. Commenters indicate that some countries prohibit the collection of foreign taxes. The PFC, they contend, would be considered such a tax. (While carriers already routinely collect customs service inspection fees, the airline ticket tax, and other such charges, these commenters claim this is done on a "voluntary" basis.)

Some comments from individual airports indicate that there should be a penalty for carriers that refuse to collect or remit PFC's.

Final rule: The first change is in the title. Because of the comments received on the treatment of foreign air carriers and on tickets issued outside the U.S., the final rule addresses these issues in two different sections. Upon notification by the public agency, the collecting carriers will be required to collect PFC's on all tickets issued in the U.S. on or after the charge effective date. The appropriate charge is the PFC in effect at the time the ticket is issued.

The PFC's collected will reflect a passenger's itinerary at the time of issuance. Any changes in itinerary initiated by a passenger that require an adjustment to the amount paid by the passenger are subject to collection or refund of PFC's.

Each air travel ticket must show the total amount paid by the passenger for PFC's and each airport for which the PFC is collected. For each one-way trip, a PFC may only be collected for the first two airports where PFC's are imposed. For each round trip, a PFC will be collected only for enplanements at the first two airports and the last two enplaning airports where PFC's are imposed. This assures that PFC's will be collected from passengers on both directions of a round trip and not more than four charges will be made.

The rule requires that no PFC can be collected from a passenger on any flight to an eligible point on an air carrier that receives essential air service compensation on that route.

Carriers and their agents must stop collecting PFC's on the charge expiration date that is specified in a notice from the public agency or as required by the Administrator.

The FAA has not included in this section any penalties for carriers for non-collection of PFC's. However, carriers are subject to the same penalties for violations of this rule as for any other violation of FAA regulations.

Section 158.47 Collection of PFC's on Tickets Issued Outside the U.S. (Proposed: No Previous Section)

This is a new section of the rule, created in response to the comments received from individual foreign carriers and from IATA requesting special treatment for foreign carriers.

No foreign air carrier is required to collect a PFC on tickets written on its own imprinted ticket stock unless it serves a point or points in the U.S. Under this section, an air carrier or foreign air carrier that issues tickets outside the U.S. has three alternatives. (1) It may follow the procedures for tickets sold in the U.S. as set forth in § 158.45. (2) It may collect the PFC's for the passenger's U.S. departure gateway at the time of ticket issuance outside the U.S.; or (3) It may collect the PFC from the passenger at the time the passenger is last enplaned in the U.S. Foreign and domestic carriers are given equal flexibility for tickets issued outside the U.S.

If a carrier chooses not to follow the procedures in § 158.45, it is only required to collect PFC's for public agencies controlling the last airport at which the passenger is enplaned prior to departure from the U.S. Some commenters complain that foreign air carriers would be unable to keep track of different PFC levels and imposing airports. However, the FAA believes that no such burden exists at an airport directly served by the carrier. Whenever the PFC is collected, the collecting carrier must give a written indication, but not necessarily printed on the ticket, that such PFC has been paid. The same procedures discussed in § 158.45 concerning changes in itinerary initiated by a passenger are also applicable in this section.

Those air carriers and foreign air carriers that elect to collect the PFC at the time of issuance are not required to make separate provision to collect PFC's at the airport for tickets sold by other air carriers or foreign air carriers or the agents of such carriers. While this will reduce PFC revenue received by the passenger's departure airport, the FAA believes it is not reasonable to require carriers to establish two different PFC collection systems. Those carriers that collect the PFC at the gateway airport must examine the ticket of each enplaning passenger and collect the PFC from any passenger whose ticket does not indicate that the PFC was collected at the time of issuance. As in § 158.45, collected PFC's shall be distributed as indicated to the passenger, and collecting carriers and their agents shall stop collecting the PFC on the charge expiration date included in a notice from the public agency or the Administrator.

Section 158.49 Handling of PFC's. (Proposed § 158.47)

The NPRM proposed that each air carrier and foreign air carrier responsible for collecting PFC's would be required to account for PFC charges separately in accordance with Generally Accepted Accounting Principles (GAAP).

Comments: Many of the comments indicate that using GAAP is inappropriate; that GAAP is for the presentation of information in financial statements and not for accounting purposes. Instead the commenters recommend that the FAA require only that carriers maintain a financial management system that establishes accountability of the funds.

Other comments on this section focus on how carriers should treat the funds

they collect for the public agencies before remittance. Several individual airports urge the FAA to require carriers to establish separate escrow accounts in which to hold PFC revenue pending remittance to the public agency. Bond rating agencies and other financial entities ask the FAA to regulate the type of investment instruments in which the air carriers and foreign air carriers could invest PFC revenue. These commenters express concern that the holders of bonds backed by PFC revenue would not be protected if the carriers could invest in high-risk, high yield investments, and suggest that all PFC revenue be aggregated in separate trust accounts with strict stipulations on the type of investments allowed. These commenters are particularly concerned that, in the event of a carrier's bankruptcy, PFC revenue would become subject to bankruptcy proceedings and the public agency would be denied access to the funds. Individual carriers, on the other hand, indicate that such an accounting system would be an unnecessary and expensive administrative burden.

The joint submission suggests that the carriers: (1) Be allowed to commingle PFC revenue with other revenue but treat PFC's as trust assets of the public agencies in which the carriers hold only a possessory interest and not an equitable interest; (2) be required to disclose the existence and amount of funds subject to the PFC trust in any financial statements; and (3) be required to place PFC revenue in a separate trust fund promptly if the carrier misses a payment or payments to the public agency without a satisfactory justification to the Secretary. The joint submission also suggests that the Secretary may decide that it is sufficient to issue a notice to the carrier to remit the revenue promptly and meet future payment deadlines or face further action.

Final rule: Instead of requiring the use of Generally Accepted Accounting Principles, the final rule provides that collecting carriers must maintain their financial management systems in accordance with the Department of Transportation's Uniform System of Accounts and Reports, which are contained in 14 CFR part 241. Those carriers not subject to Part 241 must establish and maintain an accounts payable system to handle the PFC revenue.

The FAA adopted the commenters' suggestion on how to handle the PFC revenue between collection and remittance. The rule allows the carriers to commingle the PFC revenue with other sources of revenue, but the carriers must regard the PFC revenue as trust funds held for the beneficial interest of the public agencies imposing the PFC. This is revenue in which the carriers hold only a possessory and not an equitable interest. The carriers must also disclose the existence and amount of these funds subject to the PFC trust in any financial statements. The final rule does not impose investment requirements on PFC revenue. Such a requirement would interject the Federal Government too deeply into management of local funds. Moreover, the final rule provides for additional carrier compensation, thus reducing the likelihood of carriers investing PFC revenue in risky high yield investments.

Section 158.51 Remittance of PFC's. (Proposed: § 158.49)

The NPRM proposed that revenue collected by the issuing carrier or its agent within the first 15 days of a month would be remitted by the fifteenth day of the following month. Revenue collected within the second half of the month would be remitted by the end of the following month. Thus, an air carrier would be allowed to retain the PFC revenue for a maximum of 45 days and funds would be remitted to the public agency twice a month.

Comments: Overwhelmingly, commenters think such remittance is excessive and overly burdensome. Some individual airports support twice-monthly remittance and some individual carriers suggest quarterly remittance. The joint submission recommends monthly remittance, 30 days after the end of the month in which the PFC was collected.

Final rule: The carriers shall submit the PFC revenue to the public agency on a monthly basis no later than the last day of the following calendar month.

Section 158.53 Collection Compensation

The NPRM provided for carriers to retain any interest they may earn on PFC revenue from time of collection to time of remittance as compensation for the administrative costs associated with collecting, handling, and remitting PFC's.

Comments: Most carriers claim that the float, expected to be about $0.03 per PFC, is inadequate to cover their expected costs. Although total cost figures differed, they reflect a carrier's level of automation for administrative and accounting processes, with the most automated carriers incurring the greatest start-up costs but lesser on-going costs. Each carrier commenting on this issue submitted statements that costs could not be recovered by the float mechanism alone. Of the comments submitted by the carriers, the FAA received varying amounts of information on how the carriers estimated the costs of the PFC program. In particular, the FAA notes that no useful data was received from foreign carriers to support their claim that their costs are higher than those of U.S. carriers, or, indeed, to give any indication of what their costs might be. In the absence of such data, and without any other basis for a different conclusion, the FAA concludes that the cost of PFC collection is likely to be similar among carriers of similar size and levels of automation. Accordingly, the agency further concludes that there is no basis to believe that such costs would significantly alter the average of reasonable and necessary costs, which must be the basis of any uniform charge under the statute. Some of the individual airports comment that the float should be adequate to cover the administrative costs of PFC's. The joint submission agrees that the float would not be adequate compensation but could not agree on or recommend an appropriate level of compensation.

Final rule: The quantitative data submitted to the docket was examined to determine the average necessary and reasonable costs necessary to compensate the industry. The FAA also attempted to adjust the carriers' cost estimates to reflect the requirements of the final rule. The data reveal variation from carrier to carrier. For example, carriers with the most complete automation of the ticketing and revenue accounting functions generally projected higher start-up costs than those with less automation. However, the operating costs of the more fully automated carriers are projected to be lower.

The statute requires collection compensation to reflect carriers' average costs. By definition, such an average cost figure will not fully reflect all of the variation among individual carriers. However, the FAA has carefully reviewed the data available and is satisfied that collection compensation provided in the final rule is a reasonable assessment of carriers' average costs based on that dat. In addition to retaining the interest it may earn on PFC revenue from time of collection to time of remittance, the collecting carrier will be entitled to retain $0.12 of each PFC remitted on or before June 28, 1994. Thereafter, air carriers will be entitled to retain $0.08 of each PFC. The higher compensation in the early years of the program is intended to allow carriers to recoup start-up costs in a more timely fashion. The FAA encourages cooperative efforts among

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representatives of airports and air carriers to ascertain any future need for changes to this compensation level. We are particularly interested in methods for determining the appropriate fee without extensive ratemaking-type analysis by the FAA.

Subpart D

Subpart D specifies requirements for reporting, recordkeeping and auditing by the collecting carrier and the public agency. This subpart has been revised to minimize requirements while providing adequate information to protect each party.

Section 158.63 Reporting Requirements: Public Agency

As proposed, this section would have required each public agency to report within 30 days of work beginning on a project and any substantial deviation from the estimated project schedule. It also proposed reporting costs and the agency's proposed corrective action, 60 days advance notice of project completion and receipt of 90% of total PFC revenue.

Comments: A number of commenters state it is impossible to know precisely 60 days in advance when project completion would occur and want the FAA to define "substantial deviation from the estimated project schedule." Many comments, including the joint submission, claim the reporting requirements are burdensome and recommend public agencies be required instead to submit regular progress reports or quarterly reports to the carriers. Two commenters recommend the public agency report any changes in its aircraft operating rules as they apply to the use of Stage 2 equipment. The later is a reference to requirements in the Airport Noise and Capacity Act of 1990 to local restrictions on the operation of Stage 2 and Stage 3 aircraft. See the FAA's NPRM (56 FR 8644; February 28, 1991).

Final rule: The public agency will provide quarterly reports to carriers collecting PFC's for the public agency, with a copy submitted to the appropriate FAA Airports office. The report will include PFC revenue received from collecting carriers, interest and expenditures for the quarter and cumulatively, current project schedule and the amount committed for use on projects already approved. The commenters believe the quarterly report will provide the carriers and the FAA with the sufficient information for oversight of PFC revenue. This section also includes a new requirement for airports enplaning 0.25 percent or more of the total annual enplanements. The public agency controlling such an airport must provide FAA with an estimate of PFC revenue to be collected in the next fiscal year. This must be done by August 1st of each year, so the FAA can determine the reduction in AIP apportionment levels for these airports for the subsequent fiscal year.

This section does not require the public agency to report any changes in its aircraft operation rules as they apply to the use of Stage 2 equipment. This would be a burdensome requirement; only those actions not in compliance with 9307 and 9304(e) of the Airport Noise and Capacity Act (ANCA) would affect imposition of the PFC. As noted above, the FAA has proposed regulations to implement the ANCA, including actions necessary to counter illegal restrictions.

Section 158.65 Reporting Requirements: Collecting Carrier. (Proposed: Reporting Requirements: Issuing Carrier)

As proposed, this section would have required each issuing carrier collecting PFC's for a public agency to file quarterly reports to the public agency, unless otherwise agreed. The reports are to provide an accounting of funds collected and funds remitted to the public agency. The reports were to identify, by airport and air carrier, the total passengers enplaned, the passengers exempt from collection because of the EAS limitation (§ 158.9), limitations per one-way trip (§ 158.11), limitations regarding involuntary change in itinerary, and the number who were exempt due to purchase of tickets before the charge effective date. The report was also to identify any PFC's collected and remitted, but subsequently refunded to passengers due to changes in itinerary initiated by passengers.

Comments: Most commenters support the concept of quarterly reports, but several recommend monthly reports to accompany remittance of PFC revenue to the public agency. A number of commenters state the report needs to show only the amount of PFC's collected, the amount refunded, and the amount reimbursed. Carriers state that it would be nearly impossible to reconcile monthly passenger enplanements and revenue. One carrier states that only by collecting itinerary information from all passengers would a carrier be able to identify the enplaned passengers exempt from the PFC, and that, today, carriers collect complete itinerary data for only 10 percent of passenger itineraries. Some commenters recommend relaxed requirements for foreign carriers, and others recommend an annual report for carriers carrying a limited number of PFC passengers.

Final rule: The reporting requirement has been simplified. Unless otherwise agreed to by the collecting carrier and the public agency, reports will be required to include the collecting carrier and airport involved, the total PFC revenue collected, the total amount of PFC revenue refunded to passengers, and the amount of revenue withheld by collecting carriers from the 12-cent or 8-cent fee for compensation and the total amount remitted to the public agency. The carrier does not have to report earnings from interest gained on PFC revenue between collection and remittance to the public agency. The FAA believes that the revised reporting requirements are not burdensome, will provide public agencies with necessary information in a timely fashion, and should be required of all carriers collecting a PFC.

Section 158.67 Recordkeeping and Auditing: Public Agency

As proposed, this section would have required that each public agency keep unliquidated PFC revenue on deposit in an interest-bearing account. Revenue and interest earned was to be used to pay the allowable costs of the PFC-funded project. The public agency would have been required to establish and maintain for each approved application, a separate accounting record including revenue received and amounts expended on the project. Each public agency would have been required to provide for an independent audit at least annually of each project.

Comments: A number of commenters state that while airports should be required to account for PFC revenue separately, they should not be required to segregate those revenue in separate accounts. The consensus of comments is that it would be unnecessarily onerous to require independent audits for each PFC funded project. Many commenters believe the auditing requirements are too burdensome and costly and recommend that the public agency be allowed to provide for an audit under the Single Agency Audit Act as used for AIP projects, allowing for a combined audit for all PFC projects at the airport. Public agencies also want to recover auditing costs of PFC revenue as a part of the project cost. One commenter questions the purpose for requiring the public agency to provide copies of its audits to air carriers upon request. A number of commenters request that the term "unliquidated PFC revenue" be defined.

Final rule: The final rule continues the requirement to keep any unliquidated PFC revenue on deposit in an interest-bearing account, but adds that it may be deposited in other interest-bearing investment instruments used by the public agency's airport capital fund. Thus, PFC revenue may be commingled with other public agency airport capital funds. While a segregated PFC account is not required by the rule, an amount equal to the PFC revenue remitted by carriers and any interest earned must be retained in an airport's capital account until used on an approved project.

The auditing requirements in the final rule have been reduced to limit the cost while still ensuring that the public agency adequately protect PFC revenue. The audit shall be performed by an accredited independent public accountant who shall express an opinion of the fairness and reasonableness of the public agency's procedures for receiving, holding and using PFC revenue, and shall express an opinion on whether the quarterly reports required in § 158.63 fairly represent the net transactions within the PFC account. As requested by a number of commenters, public agencies can provide for an audit under the Single Agency Audit Act as used for AIP projects, as long as PFC projects are specifically addressed by the auditor.

The rule continues to require that public agencies provide copies of their audits to air carriers upon request and to provide carriers with the assurance that the funds they collect for the public agency are being properly used and adequately accounted for. Air carriers must also provide public agencies with a copy of their audits upon request. Public agencies can recover auditing costs of PFC revenue as a part of the allowable project cost. The term "unliquidated PFC revenue" has been defined in subpart A.

Section 158.69 Recordkeeping and Auditing: Collecting Carrier (Proposed: Recordkeeping and auditing: Issuing Carrier)

As proposed, this section would have required that issuing carriers establish and maintain for each public agency for which they collect a PFC an accounting record of PFC revenue collected, remitted and refunded. The accounting record was to identify the airport and carriers on which passengers were enplaned at the airport. Carriers were required to provide an independent audit of the PFC account annually and provide copies to each public agency upon request.

Comments: Carriers comments recommend that the amount of PFC revenue collected be recorded by airport and not include enplanement data by airline. A few commenters recommend allowing carriers to aggregate all airport accounts with fewer than 100 passengers per year into a single account. The general consensus of the carriers' request on audits is that the requirement be limited to focusing on whether the proper procedures are in place to ensure that the best effort is made to remit and report the fees due. A number of commenters object to the requirement for annual independent audits, because it would require a significant amount of work and expense. They recommend that the audit cover the PFC account of the carrier and not be a separate audit for each public agency for which the carrier collects a PFC. Smaller carriers and foreign carriers seek relaxed audit standards, with foreign carriers stating that the audit requirement would be difficult to enforce outside the U.S.

Final rule: Both recordkeeping and audit requirements have been revised as a result of the comments. All carriers are required to establish and maintain for each public agency for which they collect a PFC an accounting record of PFC revenue collected, remitted, and refunded, and the compensation retained from the 12-cent or 8-cent fee. As recommended in the comments, the record must identify the airport at which a passenger actually enplanes but there is no requirement to identify the carrier transporting the passenger.

The rule requires that a procedural audit be performed by an accredited independent public accountant who shall express an opinion of fairness and reasonableness of the carrier's process for accounting, collecting, holding, and remitting PFC revenue. The opinion would also address whether the quarterly reports required in § 158.65 fairly represent the net transactions of the PFC account. The audit is for the PFC account of the carrier; the rule does not require a separate audit for each public agency for which the carrier collects a PFC. The audit would only apply to PFC revenue once it has been paid to the carrier, either by the passenger or by an agent of the carrier. The rule does not require carriers with fewer than 50,000 PFC passengers a year to perform an audit, because the cost of the audit could exceed the carrier's collection fee. In those cases where an audit may be necessary for those carriers not providing an audit, it would be performed by the Administrator, the Secretary, or the Comptroller General as provided in § 158.71. Upon request, a copy of the audit must be provided to the public agency for which a PFC is collected.

Section 158.71 Federal oversight (Proposed: Federal Recordkeeping and Auditing Oversight)

As proposed, this section provided for periodic audit and/or review of the collection and remittance of PFC revenue by carriers and of the use of PFC revenue by public agencies. Audits and reviews could be performed by the Administrator, the Secretary, or the Comptroller General to ensure compliance with this regulation.

Comments: Commenters generally did not object to the proposed requirements in the NPRM. One airport comments that any requirement beyond an independent audit is an inefficient use of government and industry resources.

Final rule: The rule retains the requirements in the NPRM, providing for periodic review and/or audit of both the public agency and the carriers. While the FAA expects to rely primarily on the audits performed for the air carrier and public agency, the statute calls for direct Federal audit and review. This provision is particularly important since carriers collecting less than 50,000 PFC's annually are not required to provide for an independent audit.

Subpart E

Subpart E provides for termination of PFC authority when the Secretary determines revenue is not being used in accordance with this regulation. It also allows for a reduction in a public agency's AIP funds to ensure compliance with this regulation.

Section 158.83 Informal resolution (New Section)

The NPRM proposed that the Administrator may enter into informal resolution with the public agency if, after review under § 158.71, there were concerns that PFC revenue was not being used in accordance with this regulation or with section 1113(e) of the FA Act. Under the final rule informal resolution will be attempted in each case.

Comments: Carrier comments generally support the proposed termination process but a number of commenters from airports and financial institutions express concern about the Administrator's ability to terminate PFC collection. According to the commenters, the ability to terminate could complicate the use of bonds backed by PFC revenue. These comments claim the perceived risk of termination would require bonds to be issued at higher rates of interest. Commenters recommend limiting the ability of the Administrator to terminate PFC's, including a requirement of informal

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resolution, before a more formal process is instituted.

Final rule: The final rule requires the Administrator undertake informal resolution with the public agency to attempt to solve any concerns before a formal process is begun. Other changes in the termination procedure made in response to public agency and financial market concerns are discussed below.

Section 158.85 Termination of Authority To Impose PFC's (Proposed § 158.83)

If informal resolution was not successful, the NPRM proposed a process to begin proceedings to terminate PFC authority. The Administrator was required to publish a notice of proposed termination in the **Federal Register**, including the basis for the proposed action, and any corrective action the public agency could take. The proposed date for comments and corrective action would have been 30 days after the notice. If requested by the public agency, a hearing would have been held prior to the Administrator's final decision. The Administrator would then publish a notice of the final decision in the **Federal Register**. The decision could be to terminate the authority to impose a PFC in whole or in part or to allow full continued authority.

Comments: Airports and financial institutions are concerned with the uncertainty associated with FAA's unilateral ability to terminate PFC authority. Airports state that the uncertainty would result in greater debt costs, ultimately resulting in higher project costs. Representatives of the financial community question the ability to finance a bond if PFC authority is terminated. These commenters argue that continuity of PFC revenue pledged against debt service is essential, and termination should occur only after all other courses of action have been exhausted including AIP offset. If termination is required, it should come only after informal resolution as well as a public hearing, with specific time frames for each step of the process. Some commenters suggest PFC authority should not be terminated if PFC revenue is pledged to a bond until the bond is liquidated. Some commenters recommend disapproval of future amendments or authority to impose new PFC's rather than termination. A number of commenters also recommended this section include termination for violation of sections 9304(e) and 9307 of the Airport Noise and Capacity Act.

Final rule: The final rule retains the Administrator's ability to terminate PFC authority. This authority is provided for in the statute. However, the process has been revised significantly to assure all parties that every effort would be made to resolve a problem before formal termination. A process that will last a minimum of 130 days is required before the Administrator can terminate PFC authority. In addition to a mandatory attempt at informal resolution as provided in § 158.83, the rule continues to require the Administrator to publish a notice of proposed termination, but allows for no less than 60 days rather than 30 for corrective action. If corrective action is not taken, the Administrator will provide the public agency with an opportunity to be heard. This hearing will be in a form and manner appropriate to the circumstances, and will occur after at least 30 days following a second notice in the **Federal Register**. The Administrator will then publish a third notice in the **Federal Register** of the final decision, and any prescribed corrective action that is still possible. If corrective action is still possible, the public agency will also have an additional 30 days to take the corrective action before the Administrator notifies carriers to discontinue collection.

The rule has not adopted the recommendation that a public agency be permitted to continue to receive PFC revenue in violation of this regulation if it has pledged the PFC revenue to bond payments. The FAA believes that it is inappropriate for the passenger, rather than the bond holder, to incur the risk for the bond. Moreover, the public agency's choice of a method for financing a project cannot be a basis for limiting that agency's duty to carry out the requirements of the statute.

Section 158.87 Loss of Federal Airport Grant Funds (Proposed: § 158.85)

As proposed, this section would have allowed the Administrator to reduce the public agency's AIP funds if PFC collection were excessive or if PFC revenue were not being used as approved.

Comments: As discussed earlier, many commenters believe AIP funds should be reduced rather than allow the Administrator to terminate PFC authority. An industry group commented that FAA should not be able to reduce future AIP funds without a public hearing.

Final rule: The final rule retains the Administrator's ability to offset AIP funds if PFC revenue are not used appropriately rather than terminate PFC authority. However, the FAA does not believe the ability to reduce AIP funds alone in place of termination would be adequate. PFC revenue could greatly exceed AIP funds, reducing the incentive for a public agency to take corrective action. In addition, the Administrator may have to wait for up to a year to reduce any AIP funds if the airport has already received its funds for the year. The statute, and therefore this rule, does not require a public hearing before such AIP offset. However, the public agency is likely to have had a hearing through the termination process.

Subpart F

Subpart F specifies how funds apportioned under the Airport Improvement Program would be reduced to public agencies controlling certain large and medium airports imposing a PFC, and the procedure for implementing such reductions.

Section 158.93 Public Agencies Subject To Reduction

Section 9111 of the statute requires that funds apportioned under Section 507(a)(1) of the Airport and Airway Improvement Act of 1982, be reduced at commercial service airports imposing a PFC and enplaning 0.25 percent or more of total annual enplanements in the United States. There are currently 71 airports in this category. Apportionments for all other commercial service airports would not be reduced.

As proposed, the apportionment would be reduced on an airport-by-airport basis rather than on the amount apportioned to a public agency for all airports controlled by the agency. If a public agency controlled more than one airport, the reduction in apportionments would be calculated separately for each airport.

Comments: Commenters point out that only passenger entitlement funds, and not cargo or state apportionments, should be reduced in return for authority to impose a PFC.

Final rule: No changes were made in this section because the NPRM was clear in stating that funds apportioned under Section 507(a)(1) of the AAIA would be reduced. That section applies only to apportionments to primary airports based on passenger counts.

Section 158.95 Implementation of Reduction.

The NPRM provided for apportionments to be reduced at large and medium hubs in the fiscal year following the date of PFC application approval. The apportionment in the fiscal year of approval would not be reduced. The amount of the reduction would have equaled 50 percent of the PFC revenue forecast for the fiscal year. However, a public agency would not lose more than 50 percent of its apportioned funds and the annual calculation of AIP apportioned amounts would have reflected the reductions caused by PFC revenue.

The NPRM proposed adjustments in reductions to reflect actual results should forecasts prove inaccurate or should the charge expiration date change. The adjustment would occur in the apportionment calculation for the following year, except the total reduction would not exceed 50 percent of the otherwise apportioned amounts.

Comments: Several commenters suggest apportionment funds not available to the primary airport be granted to airports within the same general area or the same state. Other comments propose a hearing be held before any reductions in apportionments are made. One comment objects to the fact that apportionment would not be reduced in the same year as approval is granted to impose a PFC.

Final rule: The final rule is only slightly changed from the NPRM. The rule does not provide for returning apportioned funds to airports in the same state or area or for a hearing procedure. The Aviation Safety and Capacity Expansion Act, in sections 9111 and 9112, clearly states that apportioned funds will be reduced if a large or medium hub airport imposes a PFC and specifies how these funds will be made available for other airports.

The final rule retains the concept of reducing apportionments in the fiscal year immediately following the year in which the Administrator approves authority to impose a PFC. This eliminates the requirement to adjust apportioned levels throughout the year and to readjust the amount of foregone apportioned funds available to the categories of airports.

Appendix A—Assurances (Proposed: Appendix B Assurances)

The NPRM included a list of 12 numbered assurances to which a public agency would have been required to agree for approval of a PFC application. The assurances addressed a number of issues, ranging from the public agency's authority to impose a PFC to restrictions on airport rates, fees and charges. The FAA intended them to function much like conditions of approval. The use of assurances was proposed because of public agency familiarity with the use of assurances under the AIP. The assurances were intended to ensure that implementation of approved PFC projects would be consistent with the PFC statute and this regulation and that approval of the use of PFC revenue would not conflict with other FAA responsibilities related to airports.

The proposed assurances generated numerous comments. A few commenters suggest assurances are unnecessary, while several others believe the assurances should only include those directly referenced in the PFC legislation. Other commenters propose deletion or modification of specific assurances. Other comments request additional assurances on a variety of topics ranging from procedures for consultant selection to compliance with sections 9304 and 9307 of the ANCA.

The final rule retains the requirement for signed public agency assurances as part of the application process. This approach has worked well in the AIP context, and is consistent with the statutory authority to impose establish terms and conditions for approval. However, the FAA has modified a number of the individual assurances and deleted some in response to the comments. In addition, one new assurance has been added. The FAA's intent in the final rule has been to limit the assurances to subjects directly related to compliance with the PFC statute and this regulation, or to the safe and efficient use of the national airspace. The FAA agrees with the views expressed in many comments that the PFC regulation or assurances should not be used to address wholly unrelated airport practices.

For ease of understanding, each assurance proposed in the NPRM is discussed separately and identified by the assurance number listed in the NPRM. The final assurance number and reference is also given. Following this discussion, new assurances are addressed.

Assurance No. 1 Responsibility and Authority of Public Agency (Proposed Assurance No. 2)

As proposed, the public agency would certify through this assurance that it has legal authority to impose a PFC and carry out a project, that the governing body has properly authorized the filing of the application, and that the official submitting the application has been authorized to provide such additional information as may be required.

Some commenters believe it unnecessary to assure that future requirements for information will be complied with.

The final rule omits the reference to providing additional information. The regulation allows the Administrator to request this information without a separate assurance.

Assurance No. 2 Compliance With 14 CFR (Proposed: Assurance No. 1)

As proposed, the public agency would agree to comply with the PFC regulation through this assurance. The assurance is unchanged in the final rule.

Assurance No. 3 Compliance With Local Law and Regulations

As proposed, this assurance would have required the public agency to certify that it has complied with applicable local laws and regulations. In the final rule, the wording has been modified to allow a public agency to certify prospectively that it will comply. The latter assurance would be made in the case of an application for authority to impose a PFC when project implementation is not imminent.

Proposed Assurance No. 4 Fund Availability (Deleted)

As proposed, this assurance would have required the public agency to certify it had funds to pay for the non-PFC share of project costs and to pay for operations and maintenance of the project. Many commenters say an assurance that funds are currently available for future operation and maintenance of facilities is unrealistic, especially when approval is sought only to impose a PFC. Upon consideration of the comments, this assurance has been deleted from the final rule. The FAA agrees it is not realistic to ask public agencies to certify as to their financial condition many years in the future.

Assurance No. 4 Environmental, Airspace and Airport Layout Plan Requirements (Proposed Assurance No. 5)

As proposed, this assurance would have required the public agency to commit to comply with applicable regulations of the Council on Environmental Quality (CEQ) implementing NEPA. Some comments suggest Assurance 5 be deleted in its entirety as it is not necessary to ensure CEQ requirements are met.

In the final rule, the assurance has been substantially revised. The reference to CEQ regulations is eliminated. However, as revised, this assurance requires public agencies to have approved environmental and airspace studies and an approved ALP before using PFC revenue to implement a project. The assurance is particularly applicable when a public agency has received authority to impose a PFC without concurrent authority to use revenue. It provides additional notice to the public agency on the limits of its authority to use PFC revenue without

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obtaining necessary Federal approvals and provides a means for the public agency to expressly acknowledge those limitations.

Proposed Assurance No. 6 Safety and Security Prerequisites (Deleted)

As proposed, this assurance would have required the public agency to commit to provide all safety and security equipment required by regulation at each of the airports under its control before imposing a PFC.

Some commenters suggest the deletion of Assurance 6 or at least rewriting it to require airports to meet current standards, not just minimum regulations.

This assurance has been deleted from the final rule. The FAA encourages public agencies to focus their use of PFC revenue, AIP grants and other funding sources on projects to improve airport safety and security, whether by construction or acquisition of up-to-date facilities and equipment. However, the FAA recognizes PFC revenue is local money and that under the statute PFC revenue may be used to finance projects that accomplish a number of objectives. The assurance has been deleted so as not to interfere with the flexibility provided by statute.

Assurance No. 5 Nonexclusivity of Contractual Agreements (Proposed Assurance No. 7)

As proposed, this assurance required the public agency to commit not to enter into long-term exclusive lease and use agreements for PFC-financed projects. The assurance also would have specified that such leases not preclude the funding, developing or assigning of new PFC-financed capacity. This assurance was intended to carry out the statutory prohibitions on such long-term leases and lease agreements.

As discussed above, some commenters argue for prohibiting all exclusive lease and use agreements. However, the statute itself prohibits exclusive agreements only when they are long-term. Therefore, this assurance is unchanged in the final rule.

Assurance No. 6 Carryover Provision (Proposed Assurance No. 8a)

As proposed, this assurance would have required the public agency to refrain from entering into a lease or use agreement for PFC-financed facilities that would automatically extend the term of the agreement in preference to a potentially competing carrier trying to negotiate for the use of those facilities. It was proposed to ensure lease and use agreements did not operate to limit the procompetitive effects of new facilities. In particular, it was intended to prevent short-term leases from effectively becoming long-term leases during extended negotiations with carriers over lease renewals. The proposed provision was part of a two-element assurance on competitive access.

The FAA did not receive significant comment on this element of proposed assurance 8. It is retained without change in the final rule, but it has been designated as a separate assurance to facilitate a clearer understanding of the requirement.

Assurance No. 7 Competitive Access (Proposed Assurance 8b)

As proposed, this assurance would have required a public agency to commit that any agreement for the use of a PFC-financed facility would prevent the carrier from using the PFC-financed facility if that carrier's existing exclusive-use facilities were not fully utilized or were not made available to other carriers.

Some commenters ask for a better definition of "fully utilized." Others ask that the assurance be deleted altogether.

Subject to technical, clarifying language changes, the assurance is retained in the final rule. It is intended to prevent tenant airlines from locking up new facilities, as well as those they may already lease under exclusive use provisions, and then leaving the latter facilities idle. It is thus retained to ensure that new PFC-financed facilities are actually available to foster competition.

The term "fully utilized" is retained in the assurances. If a different carrier could be accommodated at a facility without disrupting the incumbent carrier's operation at the facility, then the facility is not fully utilized.

Assurance No. 8 Rates, Fees and Charges (Proposed Assurance No. 9)

As proposed, this assurance requires the public agency to make three commitments with respect to rates and charges. (1) It would not treat PFC revenue as airport revenue when establishing a rate, fee or charge pursuant to contracts with carriers; (2) It would not include in the airport's rate base, for purposes of establishing rates, fees or charges, that portion of the capital costs of projects funded by PFC revenue; (3) It would not charge less for exclusive- or preferential-use terminal facilities, including gates, financed with PFC revenue than it charges for similar facilities financed by other means. This assurance was intended to conform to statutory requirements for public agency policies on rates, fees and charges if a PFC is imposed.

Some commenters ask for clarification of this assurance. They noted a potential conflict between the language of the second and third provision. The language of the third provision has been modified to indicate that it is applicable, notwithstanding the limitation provided in the preceding paragraph.

Assurance No. 9 Standards and Specifications (Proposed Assurance No. 10)

As proposed, this assurance would have required the public agency to commit to follow design, construction and equipment standards and specifications contained in FAA advisory circulars in effect on the application date. It was proposed to help ensure system-wide uniformity in the design and construction of airports.

Comments on this assurance range from proposals for complete deletion to modification of the assurance to permit use of state or local specifications and standards. One commenter requests using standards and specifications exceeding the FAA's.

The assurance is retained in the final rule with some modification. The FAA has concluded that the assurance is appropriate to further the objective of system-wide uniformity. The FAA will interpret the assurance to require that minimum standards be met, but not to preclude airports from exceeding these requirements where local policies call for such.

The advisory circulars covered by the assurance will be only those related to design, construction and equipment standards and specifications and will not include those related to such other areas as planning or consultant selection. Considering that PFC revenue is local money, the FAA has determined not to require compliance with standards that do not directly relate to achieving uniformity in airport design and construction. The FAA will develop and make available a list of the applicable advisory circulars.

The assurance has been changed to indicate that a project is to be carried out in accordance with standards and specifications in effect on the date of project approval rather than on the date of application submission. This change is necessary to accommodate the new provision in the rule that permits a public agency to apply for approval only to impose a PFC. In addition, the title has been changed to more accurately reflect the contents of the assurance.

Assurance No. 10 Recordkeeping and Audit (Proposed Assurance No. 11)

As proposed, this assurance would have required the public agency to commit to maintain an accounting record until 3 years after completion of a project or as long as PFC revenue is collected to finance the project. It was intended to help ensure that adequate financial records would be available to the Administrator throughout the period a PFC is imposed.

Some commenters suggest accounting records under this assurance be kept until the completion of the project, not for the duration of the PFC.

The assurance is modified in the final rule to require retention of records only for 3 years after completion of the project. Once the project is completed and its final costs are known, the public agency's compliance with the periodic reporting and auditing requirements should provide sufficient information to the FAA. A separate accounting record would be unnecessary.

Assurance No. 11 Reports (Proposed Assurance 12)

As proposed, this assurance would have required the public agency to commit to comply with the reporting requirements of subpart D of the rule, including the Administrator's reasonable requests for special reports. It was intended to provide clear notice and evidence of the public agency's acceptance of reporting obligations under the rule.

This assurance did not generate significant specific comment, and it is retained unchanged from the NPRM.

Assurance No. 12 Airport Noise and Capacity Expansion Act of 1990

This new assurance had no counterpart in the NPRM. The FAA has added it following consideration of the comments. Under the assurance, the public agency must acknowledge that it understands that provisions of the Airport Noise and Capacity Act require the Administrator to terminate authority to impose a PFC if the Administrator finds the public agency to be in violation of those provisions.

The assurance is intended to provide additional notice to the public agency of the link between compliance with the noise statute and the continued authority to impose a PFC. It also provides a ready means for the public agency to confirm it understands that linkage.

Miscellaneous Issues

Tax Status of PFC's

Seven respondents requested clarification of tax status of PFC's. All state that the PFC charges should not be subject to the 10 percent ticket tax, because PFC's are not part of the fare. The FAA agrees with this interpretation; however, the FAA had not been able to obtain a definitive interpretation from the Federal offices responsible for administering the tax.

Application of Department Policy on Price Advertising

To alleviate uncertainty about the application of the Department's price advertising policy to PFC's, the NPRM indicated that the Department tentatively had decided to allow carriers to state separately that "up to $12 per round trip in local airport charges may be collected in addition to the advertised price" in order to satisfy 14 CFR 399.84. The FAA received no negative comments on this issue. The Department has advised the FAA that it will make final its tentative decision.

Paperwork Reduction Act

The recordkeeping and reporting requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for approval. The information collection requirements in this rule will become effective when they are approved by OMB.

Environmental Issues

The FAA tentatively concluded in the NPRM that issuance of this final rule would not be a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA. A final environmental assessment has concluded that issuance of this rule is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA. A copy of this assessment has been placed in the docket.

Regulatory Evaluation Summary

This summary discusses the anticipated benefits and costs associated with implementing this final rule, which is based on section 9110 of the Aviation Safety and Capacity Expansion Act of 1990 (the Act). The regulatory evaluation contained in the docket provides more detail on the economic consequences of this regulatory action. In addition to a summary of the regulatory evaluation, this summary also contains the regulatory flexibility determination required by the Regulatory Flexibility Act and an International Trade Impact assessment. It is available for review in the docket.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a regulatory impact analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an effect on the economy of $100 million or more; a major increase in costs or prices for consumers or for individual industries, government entities, or regions; or a significant adverse effect on competition, employment, or other significant determinants of economic growth.

Under the Act, the Administrator is authorized to approve applications by public agencies to impose PFC's. The Federal Government has discretion only over the procedures governing the application for and approval of PFC authority and the collection, handling, and use of PFC revenue. In addition, PFC revenue will be generated only as a consequence of a state or local initiative to impose a PFC. Finally, all such revenue accrues to the public agencies, not the Federal Government. Therefore, although the total annual revenue raised by passenger facility charges (PFC's) could easily exceed the $100 million per year threshold, the FAA, for several reasons, has determined that this rule is not "major" as defined in the executive order. As a result of this determination, the requirement of the Act is satisfied by a regulatory evaluation, rather than a full regulatory impact analysis.

Benefits and Costs of PFC-Funded Projects

This evaluation examines the impact of a final rule under which the FAA allows public agencies that control airports to impose PFC's. The rule requires that the air carriers collect these charges and remit them to public agencies that control commercial service airports. PFC revenue may be used to fund investments in various types of eligible projects.

A recent survey of airports indicated that total public spending on capital improvements, including items not eligible for Federal aid, was $4.5 billion in 1989. (The FAA and others have estimated that future investment needs for airport expansion, including work not eligible for Federal grants, will

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continue at that level or more for the next 5 to 10 years.) PFC revenue of $1 billion per year could, therefore, finance 20 to 25 percent more in airport capital investment. The benefits and costs of these projects are discussed below.

Capacity Expansion. A major purpose for which PFC revenue may be used is the expansion of airport capacity on both airside and landside. Such investments can be expected to reduce airport delays. Some indication of the magnitude of the potential savings can be derived by noting that, for 1987, the total airside delay costs associated with the 100 largest airports in the U.S. have been estimated to be on the order of $11 billion. Landside delays, including those associated with on-airport roads and terminals would add significantly to the total of airport-related delays that were experienced.

A significant investment of PFC revenue for capacity expansion can be assumed to reduce airport-associated delay time. The benefits of capacity expansion vary with specific projects, but computer simulations for airport capacity planners have consistently shown very favorable benefit to cost ratios for major projects such as new runways. For example, if 20 percent of the estimated airport investments (about: $1 billion per year) were to reduce passenger airport delays by 10 percent, the value of time savings would be about $1.1 billion per year and the PFC-funded projects would yield benefits in excess of costs. Further, it is likely that the delay reductions from funding 20 percent of the desired investments would be in excess of 10 percent of current delays for two reasons. (1) Airport operators would have an incentive to make the best use of their new revenue by selecting as their investments the projects that have the greatest incremental benefits for the funds spent. (2) A large amount of this development will probably occur at the busiest airports, which are also the most congested and in greatest need of expansion.

Noise Mitigation. The FAA estimates that approximately $1.8 billion will be spent for noise mitigation or other environmental projects over the next 10 years. PFC revenue could be used to fund these noise mitigation projects. Like delays, noise impacts most often occur at the busiest airports. For example, 57 percent of the cost of noise mitigation projects planned over the next 10 years is concentrated at the 29 busiest primary airports.

When PFC's fund projects that benefit noise-impacted individuals, the investment (e.g., for soundproofing of existing structures or the purchase of impacted real estate) can be thought of as compensation to those individuals who have incurred an indirect cost of air travel. By financing these projects, travelers who pay PFC's are, in effect, reducing a subsidy that has been—or would otherwise be—involuntarily provided to them by noise-impacted individuals. Whether the avoided costs of noise pollution are less than the costs incurred for abatement can be estimated only on a case-by-case basis. To the extent that noise mitigation expenditures respond to expressed public concerns, there is an incentive to give priority to the projects that yield the greatest net benefits.

The availability of substantial PFC revenue is expected to facilitate investments in noise mitigation projects. Detailed benefit/cost analyses are problematical, however, because of the difficulty of fully expressing benefits in monetary terms. Individual projects, however, are carefully developed, analyzed, and discussed by public agencies and noise-impacted individuals to produce projects that address serious public concerns.

Enhanced Competition Among Air Carriers. Projects that furnish opportunities for enhanced competition between or among air carriers may be funded with PFC revenue. Benefits that may be conferred upon PFC payers as a result of enhanced competition are likely to be in the form of lower air fares and/or improved service that arise from the construction of gates at an airport that allow new entrants/new competition in a travel market. Such benefits to travelers are highly dependent on the policy followed by any new entrant and the reactions of competing carriers. For instance, a new entrant may offer significantly lower fares but be so constrained by the limited amount of available airport space that it is unable to increase its operations to the extent that other carriers are induced to lower their fares in order to compete. In the limiting case of a single dominant carrier and a small new entrant carrier, the dominant carrier may perceive that there is little to be gained by lowering fares. As a result, a new entrant may substantially duplicate existing fares and service. Lower fares are believed to be more likely in cases where the new entrant is able to provide substantial competition with incumbent carriers.

In the event that the use of PFC revenue, for instance for the construction of gates, results in enhanced competition and lower air fares at an airport, air carriers may suffer a reduction in profits. However, if the resulting lower prices result in a reduction in profits, much of the loss in profits is likely to become a benefit that is transferred to passengers. In addition, there may be a higher level of travel service provided so that the combined consumers' and producers' surplus for the airport would be increased.

Funds Shifted to Smaller Airports. Section 9111 of the Act requires that sponsors of airports that annually have more than 0.25 percent or more of total annual enplanements in the U.S. will have their Airport Improvement Program entitlement funds reduced by 50 percent of their projected PFC revenue—up to 50 percent of this entitlement. The funds released from entitlements to these large and medium hub airports are to be used under section 9112 of the Act as follows: 25 percent for a discretionary fund of which half is for small hub airports and 75 percent for a Small Airports Fund for use by general aviation airports and nonhub commercial service airports. It may be argued that the overall national airspace system is improved by (1) the increased capacity at larger airports and (2) increased capacity at smaller airports that would be unlikely to occur in the absence of the diversion of entitlement funds from larger to smaller airports. Sponsors of smaller airports may be unable to finance substantially improved facilities from funds raised at their airports in the absence of funds from outside sources. However, improvements at smaller airports may yield benefits through improved operations at nearby larger airports that the small airport operators are unable to fully capture through increased fees and charges. This can occur because reduced congestion at larger airports may result from the diversion of general aviation traffic to the smaller fields.

Handling of PFC Revenue and Compensation for these Costs.

Under §§ 158.51 and 158.53 of the rule, carriers are to be compensated for handling PFC's through the retention of a fixed fee per PFC plus earnings on the revenue "float" for the PFC's that they collect. The fixed fee is set at $0.12 per PFC for the first 3 years after the effective date of the rule, in order to provide compensation not only for collecting, handling, and remitting the revenue, but for the cost of establishing the system that carries out these functions. This fixed fee drops to $0.08 per PFC after 3 years. The amount of interest accrued annually on an account held by a carrier for payment to an airport will equal the applicable annual interest rate multiplied by the average balance held by the carrier. The average balance held by a carrier for payment to public agencies will depend on the total fee revenue collected by the carrier, the payment schedule, and the applicable fixed fee. For example, with revenue of $1 billion per year, if the applicable interest rate (or earnings on the balance held) were 10 percent, and the payment schedule were as specified in the rule (in which revenue collected during each month are paid to the airports at the end of the month after the end of each month of collection) annual earnings on the float could be approximately $12 million.

It is noted that, should $1 billion per year be collected in $3 PFC's, 333 million PFC's would be handled. With earnings on the float of approximately $12 million per year, interest earnings would be on the order of $0.036 per PFC collected. Under these assumptions, compensation per $3 PFC collected would be approximately $0.156 during the initial 3-year period and $0.116 thereafter.

The FAA has attempted to structure the rule so as to achieve maximum cost effectiveness in administration (i.e., in ticketing collection burdens, as well as reporting, recordkeeping and auditing requirements). For example, it is specified in Subpart C that all PFC's be collected and remitted by the issuing carrier, thus eliminating interline settlements.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. This Act requires a Regulatory Flexibility Analysis if a rule has a significant economic impact, either detrimental or beneficial, on a substantial number of small business entities. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, establishes threshold cost values and small entity size standards for operators of aircraft for hire for complying with review requirements in FAA rulemaking actions. The lowest of these categories is indicated to be $3,300 per year in 1983 dollars for unscheduled operators of 9 or fewer aircraft. This level is approximately $4,200 in 1990 dollars. Since provisions of the final rule allow the retention of a fixed fee plus the earning of interest on PFC revenue held in order to compensate carriers for the costs of administering PFC's, the net cost of collecting, handling, remitting, and reporting PFC's for such operators of aircraft should be small. There are numerous charter and air taxi operators that are believed to have 9 or fewer aircraft. Small carriers are provided protection against auditing costs by § 158.69(b) of the rule, which requires at least annual audits only for collecting carriers that collect more than 50,000 PFC's annually. This level of PFC collection implies compensation for PFC collection on the order of $5,800 to $7,800 per year. Further protection against PFC collection burden is given by § 158.11, which provides that "a public agency may request that collection of PFC's by any class of air carriers or foreign air carriers not be required, if the number of passengers enplaned by the carriers in the class constitute no more than 1 percent of the total number of passengers enplaned annually at the airport at which the PFC is imposed." The conclusion is that the imposition of PFC's will not have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities.

The impact of PFC administration costs on small airports is not believed to be a problem, since PFC's are to be initiated by public agencies that control airports. These agencies are assumed to assess a PFC only if they have reason to expect that the revenue collected will be in excess of the costs of establishing the charge and managing the revenue that results.

Trade Impact Assessment

The provisions of this rule are expected to have little or no impact on trade for both U.S. firms (including air carriers) doing business in foreign countries and foreign firms (including air carriers) doing business in the United States. PFC's are not likely to cause a significant increase in costs for most international travel. It is noted that the $3 per airport limitation on PFC's per enplaned passenger and the generally higher cost per ticket for international travel to or from the United States than for domestic travel make PFC's imposed on international travel a smaller proportion of the cost of international travel than domestic travel. Although PFC's will raise the amounts paid for tickets for international travel, in many cases, the airport capacity improvements financed with the resulting revenue may result in improvements in the amenities afforded travelers. These improvements may include reduced delay that is made possible by increased airport capacity that more than compensates passengers for the cost of the PFC. In addition, while the rule permits carriers to limit collection to the last airport at which a passenger enplanes before departing from the U.S. when a ticket is issued outside the U.S., this provision applies equally to air carriers and foreign air carriers. Likewise, for tickets issued in the U.S., the rule imposes the same requirements on foreign air carriers.

Federalism Implications

The regulations implement a new statute that authorizes state and local public agencies that control commercial service airports to impose PFC's at their airports. While the imposition of PFC's would be a local decision, the statute imposes Federal requirements on the airport operator (e.g., the local consultation requirement) and requires Federal oversight (through the approval and audit provisions).

The provisions of the regulations are intended to impose on state and local agencies the minimum restrictions and requirements that are mandated by the statute, including the Federal oversight role contemplated by the PFC statute and other legislation or regulations that would pertain to a PFC-financed project (e.g., environmental requirements).

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13612, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this final rule is not major under Executive Order 12291. This rule is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A regulatory evaluation of the rule, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects 14 CFR Part 158

Air carriers, Airport, Air transportation, Passenger facility charge.

The Final Rule

Accordingly, the FAA adds a new part 158 of the Federal Aviation Regulations, 14 CFR part 158, as follows:

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PART 158—PASSENGER FACILITY CHARGES (PFC'S)

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Appendix A—Assurances

Authority: 49 U.S.C. App. 1513 (as amended by the Aviation Safety and Capacity Expansion Act of 1990, Pub. L. 101–508, Title II, Subtitle B, November 5, 1990); 49 U.S.C. App. 2208 (as amended by the Aviation Safety and Capacity Expansion Act of 1990); 49 U.S.C. App. 2218; section 9304(e) and 9307 of the Airport Noise and Capacity Act of 1990, Pub. L. 101–508, Title IX, Subtitle D.

Subpart A—General

§ 158.1 Applicability.

This part applies to passenger facility charges (PFC's) as may be approved by the Administrator of the Federal Aviation Administration (FAA) pursuant to section 1113(e) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1513(e)), and imposed by a public agency that controls a commercial service airport. This part also describes the procedures for reducing funds apportioned under section 507(a) of the Airport and Airway Improvement Act of 1982, as amended (49 U.S.C. App. 2208(a)), to a large or medium hub airport that imposes a PFC.

§ 158.3 Definitions.

The following definitions apply in this part:

Airport means any area of land or water, including any heliport, that is used or intended to be used for the landing and takeoff of aircraft, and any appurtenant areas that are used or intended to be used for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

Airport capital plan means a capital improvement program that lists airport-related planning, development or noise compatibility projects expected to be accomplished with anticipated available funds.

Airport layout plan (ALP) means a plan showing the existing and proposed airport facilities and boundaries in a form prescribed by the Administrator.

Airport revenue means revenue generated by a public airport (1) through any lease, rent, fee, PFC or other charge collected, directly or indirectly, in connection with any aeronautical activity conducted on an airport that it controls; or (2) in connection with any activity conducted on airport land acquired with Federal financial assistance, or with PFC revenue under this part, or conveyed to such public agency under the provisions of any Federal surplus property program or any provision enacted to authorize the conveyance of Federal property to a public agency for airport purposes.

Air travel ticket means all documents pertaining to a passenger's complete itinerary necessary to transport a passenger by air, including passenger manifests.

Allowable cost means the reasonable and necessary costs of carrying out an approved project including costs incurred prior to and subsequent to the approval to impose a PFC, and making payments for debt service on bonds and other indebtedness incurred to carry out such projects. Allowable costs include only those costs incurred on or after November 5, 1990.

Approved project means a project for which use of PFC revenue has been approved under this part. Specific projects contained in a single or multi-phased project or development described in an airport capital plan may also be approved separately.

Bond financing costs means the costs of financing a bond and includes such costs as those associated with issuance, underwriting discount, original issue discount, capitalized interest, debt service reserve funds, initial credit enhancement costs, and initial trustee and paying agent fees.

Charge effective date means the date on which carriers are obliged to collect a PFC.

Charge expiration date means the date on which carriers are to cease to collect a PFC.

Collecting carrier means an issuing carrier or other carrier collecting a PFC, whether or not such carrier issues the air travel ticket.

Collection means the acceptance of payment of a PFC from a passenger.

Commercial service airport means a public airport (as defined by 49 U.S.C. app. 2202(17)) determined by the Secretary to enplane annually 2,500 or more passengers and to receive scheduled passenger service of aircraft.

Debt service means payments for such items as principal and interest, sinking funds, call premiums, periodic credit enhancement fees, trustee and paying agent fees, coverage, and remarketing fees.

Exclusive long-term lease or use agreement means an exclusive lease or use agreement between a public agency and an air carrier or foreign air carrier with a term of 5 years or more.

FAA Airports office means a regional, district or field office of the Federal Aviation Administration that administers Federal airport-related matters.

Implementation of an approved project means: (1) With respect to construction, issuance to a contractor a notice to proceed or the start of physical construction; (2) with respect to nonconstruction projects other than property acquisition, commencement of work by a contractor or public agency to carry out the statement of work; or (3) with respect to property acquisition projects, commencement of title search, surveying, or appraisal for a significant portion of the property to be acquired.

Issuing carrier means any air carrier or foreign air carrier that issues an air travel ticket or whose imprinted ticket stock is used in issuing such ticket by an agent.

One-way trip means any trip that is not a round trip.

Passenger enplaned means a domestic, territorial or international revenue passenger enplaned in the States in scheduled or nonscheduled service on aircraft in intrastate, interstate, or foreign commerce.

PFC means a passenger facility charge covered by this part imposed by a public agency on passengers enplaned at a commercial service airport it controls.

Project means airport planning, airport land acquisition or development of a single project, a multi-phased development program, (including but not limited to development described in an airport capital plan) or a new airport for which PFC financing is sought or approved under this part.

Public agency means a State or any agency of one or more States; a municipality or other political subdivision of a State; an authority created by Federal, State or local law; a tax-supported organization; or an Indian tribe or pueblo that controls a commercial service airport.

Round trip means a trip on a complete air travel itinerary which terminates at the origin point.

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and Guam.

Unliquidated PFC revenue means revenue received by a public agency from collecting carriers but not yet used on approved projects.

§ 158.5 Authority to impose PFC's.

Subject to the provisions of this part, the Administrator may grant authority to a public agency that controls a commercial service airport to impose a PFC of $1.00, $2.00, or $3.00 on passengers enplaned at such an airport. No public agency may impose a PFC under this part unless authorized by the Administrator. No State or political subdivision or agency thereof that is not a public agency may impose a PFC covered by this part.

§ 158.7 Exclusivity of authority.

(a) No State or political subdivision or agency thereof may impair the imposition of a PFC, collection of such PFC, or use of PFC revenue by a public agency in accordance with this part.

(b) No contract or agreement between an air carrier or foreign air carrier and a public agency may impair the authority of such public agency to impose a PFC or use the PFC revenue in accordance with this part.

§ 158.9 Limitations.

(a) No public agency may impose a PFC on any passenger on any flight to an eligible point on an air carrier that receives essential air service compensation on that route under section 419 of the Federal Aviation Act (49 U.S.C. app. 1389). The Administrator makes available a list of carriers and eligible routes determined by the Department of Transportation for which PFC's may not be imposed under this section.

(b) No public agency may require a foreign airline that does not serve a point or points in the U.S. to collect a PFC from a passenger.

§ 158.11 Public agency request not to require collection of PFC's by a class of air carriers or foreign air carriers.

Subject to the requirements of this part, a public agency may request under § 158.25 or § 158.37 that collection of PFC's by any class of air carriers or foreign air carriers not be required if the number of passengers enplaned by the carriers in the class constitutes no more than one percent of the total number of passengers enplaned annually at the airport at which the PFC is imposed.

§ 158.13 Use of PFC revenue.

PFC revenue, including any interest earned after such revenue has been remitted to a public agency, may be used only to finance the allowable costs of approved projects at any airport the public agency controls.

(a) *Total cost.* PFC revenue may be used to pay all or part of the allowable cost of an approved project.

(b) *Bond-associated debt service and financing costs.* (1) PFC revenue may be used to pay debt service and financing costs incurred on that portion of a bond issued to carry out approved projects.

(2) If bond documents require that PFC revenue be commingled in the general revenue stream of the airport controlled by the public agency and pledged generally for the benefit of holders of obligations issued thereunder, PFC revenue is deemed to have been used to pay the costs covered in § 158.13 (b)(1) if—

(i) An amount equal to that portion of the proceeds of the bond issued to carry out approved projects is used to pay allowable costs of such projects; and

(ii) To the extent that the amount of PFC revenue collected in any year exceeds the amount of debt service and financing costs on such bonds during that year, an amount equal to the excess is applied as required by § 158.39.

(c) *Combination of PFC revenue and Federal grant funds.* A public agency may use a combination of PFC revenue and airport grant funds to accomplish an approved project. Such projects shall be subject to the recordkeeping and auditing requirements set forth in subpart D of this part, in addition to the reporting, recordkeeping and auditing requirements imposed pursuant to the Airport and Airway Improvement Act of 1982 (AAIA).

(d) *Non-Federal share.* PFC revenue may be used to meet the non-Federal share of the cost of projects funded under the Federal airport grant program.

(e) *Approval of project following approval to impose a PFC.* The public agency shall not use PFC revenue or interest earned thereon except on an approved project.

§ 158.15 Project eligibility.

(a) To be eligible, a project must—

(1) Preserve or enhance safety, security, or capacity of the national air transportation system;

(2) Reduce noise or mitigate noise impacts resulting from an airport; or

(3) Furnish opportunities for enhanced competition between or among air carriers.

(b) Eligible projects are—

(1) Airport development eligible under the AAIA;

(2) Airport planning eligible under the AAIA;

(3) Terminal development as described in 49 U.S.C. App. 2212(b);

(4) Airport noise compatibility planning as described in 49 U.S.C. App. 2103(b);

(5) Noise compatibility measures eligible for Federal assistance under 49 U.S.C. App. 2104(c), without regard to whether the measures have been approved pursuant to 14 CFR part 150; or

(6) Construction of gates and related areas at which passengers are enplaned or deplaned and other areas directly related to the movement of passengers and baggage in air commerce within the boundaries of the airport. These areas do not include restaurants, car rental facilities, automobile parking facilities, or other concessions.

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Subpart B—Application and Approval

§ 158.21 General.

This subpart specifies the consultation and application requirements under which a public agency may obtain approval to impose a PFC and use PFC revenue on a project. This subpart also establishes the procedure for the Administrator's review and approval of applications and amendments and establishes requirements for use of excess PFC revenue.

§ 158.23 Consultation with air carriers and foreign air carriers.

(a) *Notice by public agency.* Prior to submitting an application to the FAA for authority to impose a PFC under § 158.25(b) and for project approval under § 158.25(c), a public agency shall provide written notice to all air carriers and foreign air carriers operating at the airport except those air carriers that the public agency may choose to request not to collect PFC's as provided by § 158.11. The notice shall include—

(1) Descriptions of projects being considered for funding by PFC's;

(2) The PFC level, the proposed charge effective date, the estimated charge expiration date and the estimated total PFC revenue;

(3) For a request by a public agency that any class or classes of carriers not be required to collect the PFC—

(i) The designation of each such class,

(ii) The names of the carriers belonging to each such class, to the extent the names are known,

(iii) The estimated number of passengers enplaned annually by each such class, and

(iv) The public agency's reasons for requesting that carriers in each such class not be required to collect the PFC; and

(4) Except as provided in § 158.25(c)(2), the date and location of a meeting at which the public agency will present such projects to air carriers and foreign air carriers operating at the airport.

(b) *Meeting.* The meeting required by paragraph (a)(4) of this section shall be held no sooner than 30 days nor later than 45 days after issuance of the written notice required by paragraph (a) of this section. At or before the meeting, the public agency shall provide air carriers and foreign air carriers with—

(1) A description of projects;

(2) An explanation of the need for the projects; and

(3) A detailed financial plan for the projects, including—

(i) the estimated allowable project costs allocated to major project elements;

(ii) The anticipated total amount of PFC revenue that will be used to finance the projects; and

(iii) The source and amount of other funds, if any, needed to finance the projects.

(c) *Requirements of air carriers and foreign air carriers.* (1) Within 30 days following issuance of the notice required by paragraph (a) of this section, each carrier must provide the public agency with a written acknowledgement that it received the notice.

(2) Within 30 days following the meeting, each carrier must provide the public agency with a written certification of its agreement or disagreement with the proposed project. A certification of disagreement shall contain the reasons for such disagreement. The absence of such reasons shall void a certification of disagreement.

(3) If a carrier fails to provide the public agency with timely acknowledgement of the notice or timely certification of agreement or disagreement with the proposed project, the carrier is considered to have certified its agreement.

§ 158.25 Applications.

(a) *General.* This section specifies the information to be submitted by a public agency when applying for the authority to impose a PFC and for the authority to use PFC revenue on a project. A public agency may apply for the authority to impose a PFC at any commercial service airport it controls to finance airport-related projects to be carried out at that airport or at any existing or proposed airport which the public agency controls. A public agency may apply for the authority to impose a PFC in advance of or concurrent with an application to use PFC revenue. Applications shall be submitted in a manner and form prescribed by the Administrator and shall include the information required under paragraphs (b) or (c), or both, of this section.

(b) *Application for authority to impose a PFC.* This paragraph sets forth the information to be submitted by all public agencies seeking authority to impose a PFC. A separate application shall be submitted for each airport at which a PFC is to be imposed. The application shall be signed by an authorized official of the public agency, and, unless otherwise authorized by the Administrator, must include the following:

(1) The name and address of the public agency.

(2) The name and telephone number of the official submitting the application on behalf of the public agency.

(3) The official name of the airport at which the PFC is to be imposed.

(4) The official name of the airport at which a project is proposed.

(5) A copy of the airport capital plan or other documentation of planned improvements for each airport at which a PFC financed project is proposed.

(6) A description of each project proposed.

(7) The project justification, including the extent to which the project achieves one or more of the objectives set forth in § 158.15(a). In its justification for any project for terminal development, including gates and related areas, the public agency shall discuss any existing conditions that limit competition between and among air carriers and foreign air carriers at the airport, any initiatives it proposes to foster opportunities for enhanced competition between and among such carriers, and the expected results of such initiatives.

(8) The charge to be imposed on each enplaned passenger.

(9) The proposed charge effective date.

(10) The estimated charge expiration date.

(11) A summary of consultation with air carriers and foreign air carriers operating at the airport, including—

(i) A list of such carriers and those notified;

(ii) A list of carriers that acknowledged receipt of the notice provided § 158.23(a);

(iii) Lists of carriers that certified agreement and that certified disagreement with the project; and

(iv) A summary of substantive comments by carriers contained in any certifications of disagreement with the project, and the public agency's reasons for proceeding.

(12) If the public agency is also filing a request under § 158.11—

(i) The request;

(ii) A copy of the information provided to the carriers under § 158.23(a)(3);

(iii) A copy of the carriers' comments with respect to such information;

(iv) A list of any class or classes of carriers that would not be required to collect a PFC if the request is approved; and

(v) The public agency's reasons for submitting the request in the face of any opposing comments.

(13) A copy of information regarding the financing of the project presented to the carriers and foreign air carriers under § 158.23 of this part and as revised during consultation.

(14) For an application not accompanied by a concurrent application for authority to use PFC revenue:

(i) A description of any alternative methods being considered by the public agency to accomplish the objectives of the project;

(ii) A description of alternative uses of the PFC revenue to ensure such revenue will be used only on eligible projects in the event the proposed project is not approved;

(iii) A timetable with projected dates for completion of project formulation activities and submission of an application to use PFC revenue; and

(iv) A projected date of project implementation and completion.

(15) A signed statement certifying that the public agency will comply with the assurances set forth in Appendix A to this part.

(16) Such additional information as the Administrator may require.

(c) *Application for authority to use PFC revenue.* A public agency may use PFC revenue only for projects approved under this paragraph. This paragraph sets forth the information that a public agency shall submit, unless otherwise authorized by the Administrator, when applying for the authority to use PFC revenue to finance specific projects.

(1) An application submitted concurrently with an application for the authority to impose a PFC, must include:

(i) The information required under paragraphs (b) (1) through (13) of this section;

(ii) A signed certification that—

(A) For projects required to be shown on an ALP, the ALP depicting the project has been approved by the FAA and the date of such approval;

(B) All environmental reviews required by the National Environmental Policy Act (NEPA) of 1969 have been completed and a copy of the final FAA environmental determination with respect to the project has been approved, and the date of such approval, if such determination is required; and

(C) The final FAA airspace determination with respect to the project has been completed, and the date of such determination, if an airspace study is required.

(iii) The estimated project implementation date, schedule and completion date; and

(iv) The information required by § 158.25(b)(25) and (16).

(2) An application where the authority to impose a PFC has previously been approved—

(i) Shall be preceded by further consultation with air carriers and foreign air carriers as set forth under § 158.23 of this part, except that the meeting required under § 158.23(a)(4) is optional; and

(ii) Shall include, in addition to a summary of further consultation conducted under paragraph (c)(2)(i) of this section, the following, updated and revised where appropriate—

(A) The information required by paragraphs (b) (1), (2), (4), (5), (6), (7), (10) and (13) of this section;

(B) The information required by paragraph (c)(1)(iii) of this section; and

(C) The information required by paragraphs (b) (15) and (16) of this section.

§ 158.27 Review of applications.

(a) *General.* This section describes the process for review of all applications filed under § 158.25 of this part.

(b) *Determination of completeness.* Within 30 days after receipt of an application by the FAA Airports office, the Administrator determines whether the application substantially complies with the requirements of § 158.25.

(c) *Process for substantially complete application.* If the Administrator determines the application is substantially complete, the following procedures apply:

(1) The Administrator advises the public agency by letter that its application is substantially complete.

(2) The Administrator publishes a notice in the Federal Register advising that the Administrator intends to rule on the application and inviting public comment, as set forth in paragraph (e) of this section. A copy of the notice is also provided to the public agency.

(3) The public agency—

(i) Shall make available for inspection, upon request, a copy of the application, notice, and other documents germane to the application, and

(ii) May publish the notice in a newspaper of general circulation in the area where the airport covered by the application is located.

(4) Following review of the application, public comments and any other information obtained under paragraph (g) of this section, the Administrator issues a final decision approving or disapproving the application, in whole or in part, no later than 120 days after the application was received by the FAA Airports office.

(d) *Process for applications not substantially complete.* If the Administrator determines an application is not substantially complete, the following procedures apply:

(1) The Administrator notifies the public agency in writing that its application is not substantially complete. The notification will list the information required to complete the application.

(2) Within 15 days after the Administrator sends such notification, the public agency shall advise the Administrator in writing whether it intends to supplement its application.

(3) If the public agency declines to supplement the application, the Administrator follows the procedures for review of an application set forth in paragraph (c) of this section and issues a final decision approving or disapproving the application, in whole or in part, no later than 120 days after the application was received by the FAA Airports office.

(4) If the public agency supplements its application, the original application is deemed to be withdrawn for purposes of applying the statutory deadline for the Administrator's decision. Upon receipt of the supplement, the Administrator issues a final decision approving or disapproving the supplemented application, in whole or in part, no later than 120 days after the supplement was received by the FAA Airports office.

(e) *The Federal Register notice.* The Federal Register notice includes the following information:

(1) The name of the public agency and the airport at which the PFC is to be imposed;

(2) A brief description of the PFC project, the level of the proposed PFC, the proposed charge effective date, the proposed charge expiration date and the total estimated PFC revenue;

(3) The address and telephone number of the FAA Airports office at which the application may be inspected;

(4) The Administrator's determination on whether the application is substantially complete and any information required to complete the application; and

(5) The due dates for any public comments.

(f) *Public comments.*

(1) Interested persons may file comments on the application within 30 days after publication of the Administrator's notice in the Federal Register.

(2) Three copies of these comments shall be submitted to the FAA Airports office identified in the Federal Register notice.

(3) Commenters shall also provide one copy of their comments to the public agency.

(4) Comments from air carriers and foreign air carriers may be in the same form as provided to the public agency under § 158.23.

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§ 158.29 The Administrator's decision.

(a) *Authority to impose a PFC.* (1) An application to impose a PFC will be approved in whole or in part only after a determination that—

(i) The amount and duration of the PFC will not result in revenue that exceeds amounts necessary to finance the project;

(ii) The project will achieve the objectives set forth in § 158.15(a);

(iii) The project meets the criteria set forth in § 158.15(b);

(iv) The collection process, including any request by the public agency not to require a class of carriers to collect PFC's, is reasonable, not arbitrary, nondiscriminatory, and otherwise in compliance with the law;

(v) The public agency has not been found to be in violation of section 9304(e) or section 9307 of the Airport Noise and Capacity Act of 1990; and

(vi) If the public agency has not applied for authority to use PFC revenue, a finding that there are alternative uses of the PFC revenue to ensure that such revenue will be used on approved projects.

(2) The Administrator notifies the public agency in writing of the decision on the application. The notification will list the projects and alternative uses that may qualify for PFC financing under § 158.15, PFC level, total approved PFC revenue, duration of authority to impose and earliest permissible charge effective date.

(b) *Authority to use PFC revenue on an approved project.* (1) An application for authority to use PFC revenue will be approved in whole or in part only after a determination that—

(i) The amount and duration of the PFC will not result in revenue that exceeds amounts necessary to finance the project;

(ii) The project will achieve the objectives set forth in § 158.15(a);

(iii) The project meets the criteria set forth in § 158.15(b); and

(iv) All applicable requirements pertaining to the ALP for the airport, airspace studies for the project, and the National Environmental Policy Act of 1969 (NEPA), 40 U.S.C. have been satisfied.

(2) The Administrator notifies the public agency in writing of the decision on the application. The notification will list the approved projects, PFC level, total approved PFC revenue, and any limit on the duration of authority to impose a PFC as prescribed under § 158.33.

(3) Approval to use PFC revenue to finance a project shall be construed as approval of that project.

(c) *Disapproval of application.* (1) If an application is disapproved, the Administrator notifies the public agency in writing of the decision and the reasons for the disapproval.

(2) A public agency reapplying for approval to impose or use a PFC shall comply with §§ 158.23 and 158.25 of this part.

(d) The Administrator publishes a monthly notice of PFC approvals and disapprovals in the **Federal Register**.

§ 158.31 Duration of authority to impose a PFC after project implementation.

A public agency that has begun implementation of a project approved under § 158.29 is authorized to impose a PFC until—

(a) The charge expiration date is reached;

(b) The total PFC revenue collected plus interest thereon will equal the allowable cost of the approved project;

(c) The authority to collect the PFC is terminated by the Administrator under subpart E of this part; or

(d) The public agency is determined by the Administrator to be in violation of section 9304(e) or 9307 of the Airport Noise and Capacity Act of 1990 (Pub. L. 101–508, Title IX, Subtitle D), and the authority to collect the PFC is terminated under that statute's implementing regulations under this title.

§ 158.33 Duration of authority to impose a PFC before project implementation.

(a) A public agency shall not impose a PFC beyond the lesser of the following—

(1) 2 years after approval to use PFC revenue on an approved project if the project has not been implemented, or

(2) 5 years after the charge effective date if an approved project is not implemented.

(b) If, in the Administrator's judgment, the public agency has not made sufficient progress toward implementation of an approved project within the times specified in paragraph (a) of this section, the Administrator begins termination proceedings under subpart E of this part.

(c) The authority to impose a PFC following approval shall automatically expire without further action by the Administrator on the following dates:

(1) 3 years after the charge effective date unless—

(i) The public agency has filed an application for approval to use PFC revenue for an eligible project that is pending before the FAA;

(ii) An application to use PFC revenue has been approved; or

(iii) A request for extension (not to exceed 2 years) to submit an application for project approval, under § 158.35, has been granted; or

(2) 5 years after the charge effective date unless the public agency has obtained project approval.

(d) If the authority to impose a PFC expires under paragraph (c) of this section, the public agency must provide the FAA with a list of the air carriers and foreign air carriers operating at the airport and all other collecting carriers that have remitted PFC revenue to the public agency in the preceding 12 months. The FAA notifies each of the listed carriers to terminate PFC collection no later than 30 days after the date of notification by the FAA.

(e) Restriction on reauthorization to impose a PFC. Whenever the authority to impose a PFC has expired or been terminated under this section, the Administrator will not grant new approval to impose a PFC in advance of implementation of an approved project.

§ 158.35 Extension of time to submit application to use PFC revenue.

(a) A public agency may request an extension of time to submit an application to use PFC revenue after approval of an application to impose PFC's. At least 30 days prior to submitting such request, the public agency shall publish notice of its intention to request an extension in a local newspaper of general circulation and shall request comments. The notice shall include progress on the project, a revised schedule for obtaining project approval and reasons for the delay in submitting the application.

(b) The request shall be submitted at least 120 days prior to the charge expiration date and, unless otherwise authorized by the Administrator, shall be accompanied by the following:

(1) A description of progress on the project application to date.

(2) A revised schedule for submitting the application.

(3) An explanation of the reasons for delay in submitting the application.

(4) A summary financial report depicting the total amount of PFC revenue collected plus interest, the projected amount to be collected during the period of the requested extension, and any public agency funds used on the project for which reimbursement may be sought.

(5) A summary of any further consultation with air carriers and foreign air carriers operating at the airport.

(6) A summary of comments received in response to the local notice.

(c) The Administrator reviews the request for extension and accompanying information, to determine whether—

(1) The public agency has shown good cause for the delay in applying for project approval;

(2) The revised schedule is satisfactory; and

(3) Further collection will not result in excessive accumulation of PFC revenue.

(d) The Administrator, upon determining that the agency has shown good cause for the delay and that other elements of the request are satisfactory, grants the request for extension to the public agency. The Administrator advises the public agency in writing not more than 90 days after receipt of the request. The duration of the extension shall be as specified in § 158.33 of this part.

§ 158.37 Amendment of approved PFC.

(a) A public agency may, without consultation or approval by the Administrator, institute a decrease in the level of PFC to be collected from each passenger, institute a decrease in the total PFC revenue, or an increase in the total approved PFC revenue of 15 percent or less. The public agency shall notify the collecting carriers and the FAA in writing of these changes. Any new charge will be effective on the first day of a month which is at least 60 days from the time the public agency notifies the carriers.

(b) Subject to paragraph (b)(1) or (b)(2) of this section, an approved PFC may be amended to increase the level of PFC to be collected from each passenger, increase the total approved PFC revenue by more than 15 percent, materially alter the scope of an approved project, establish a new class of carriers under § 158.11 or amend any such class previously approved. The public agency must submit to the Administrator a notification of any proposal to institute such an amendment. Such notification shall include written evidence of further consultation with and agreement or disagreement by the air carriers and foreign air carriers operating at the airport, justification for the amendment, and such other information as may be requested by the Administrator.

(1) In the event of no carrier disagreement with a change proposed under paragraph (b) of this section, the public agency may institute the proposed amendment unless, within 30 days after providing the notification required under that paragraph, it is notified otherwise by the Administrator. The public agency shall notify the carriers of the effective date of any change to the approved PFC resulting from the amendment, subject to the limitation that the effective date of any new charge shall be no earlier than the first day of a month which is at least 60 days from the time the public agency notifies the carriers.

(2) In the event of any carrier disagreement with a change proposed under paragraph (b) of this section, the public agency shall submit a request to the Administrator that the proposed amendment be approved. In addition to the notification and written evidence required under that paragraph, the public agency shall submit the reasons presented by the carriers for disagreeing with the proposed amendment, its reasons for requesting the amendment in the face of such disagreement, and such other information as may be requested by the Administrator. The Administrator reviews and approves or disapproves the amendment within 120 days of receipt of the request following such consultation, public notice and opportunity for comment as the Administrator may deem appropriate. If the amendment is approved, the Administrator advises the public agency and notification to the carriers will be as provided under paragraph (b)(1) of this section.

§ 158.39 Use of excess PFC revenue.

(a) If the amount of PFC revenue remitted to the public agency, plus interest, exceeds allowable costs of the project, excess funds shall be used for approved projects or retirement of outstanding PFC-financed bonds.

(b) For bond-financed projects, any excess PFC revenue collected under debt servicing requirements shall be retained by the public agency and used for approved projects or retirement of outstanding PFC-financed bonds.

(c) When the authority to impose a PFC has expired or has been terminated, accumulated PFC revenue shall be used for approved projects or retirement of outstanding PFC-financed bonds.

(d) Within 30 days after the authority to impose a PFC has expired or has been terminated, the public agency shall present a plan to the appropriate FAA Airports office to begin using accumulated PFC revenue. The plan shall include a timetable for the submission of any necessary application under § 158.25(c) of this part. If the public agency fails to submit such a plan or if the plan is not acceptable to the Administrator, the Administrator offsets Federal airport grant program apportioned funds.

Subpart C—Collection, Handling, and Remittance of PFC's

§ 158.41 General.

This subpart contains the requirements for notification, collection, handling and remittance of PFC's.

§ 158.43 Public agency notification to collect PFC's.

(a) Following approval of an application to impose a PFC under subpart B of this part, the public agency shall notify the air carriers and foreign air carriers required to collect PFC's at its airport of the Administrator's approval. Each notified carrier shall notify its agents, including other issuing carriers, of the collection requirement.

(b) The notification shall be in writing and contain at a minimum the following information:

(1) The level of PFC to be imposed.

(2) The total revenue to be collected.

(3) The charge effective date which will be the first day of a month which is at least 60 days from the date the public agency notifies the carriers of approval to impose the PFC.

(4) The proposed charge expiration date.

(5) A copy of the Administrator's notice of approval.

(6) The address where remittances and reports are to be filed by carriers.

(c) The public agency shall notify carriers required to collect PFC's at its airport of changes in the charge expiration date. Each notified carrier shall notify its agents, including other issuing carriers, of such changes.

(d) The public agency shall provide a copy of the notification to the appropriate FAA Airports office.

§ 158.45 Collection of PFC's on tickets issued in the U.S.

(a) On and after the charge effective date, tickets issued in the U.S. shall include the required PFC except as provided in paragraphs (c) and (d) of this section.

(1) Issuing carriers shall be responsible for all funds from time of collection to remittance.

(2) The appropriate charge is the PFC in effect at the time the ticket is issued.

(3) Issuing carriers and their agents shall collect the PFC's based upon the itinerary at the time of issuance. Any changes in itinerary that are initiated by a passenger that require an adjustment to the amount paid by the passenger are subject to collection or refund of the PFC as appropriate.

(b) Issuing carriers and their agents shall note as a separate item on each air travel ticket upon which a PFC is shown,

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the total amount of PFC's paid by the passenger and the airports for which the PFC's are collected.

(c) For each one-way trip shown on the complete itinerary of an air travel ticket, issuing air carriers and their agents shall collect a PFC from a passenger only for the first two airports where PFC's are imposed. For each round trip, a PFC shall be collected only for enplanements at the first two enplaning airports and the last two enplaning airports where PFC's are imposed.

(d) Issuing carriers and their agents shall not collect PFC's from a passenger on any flight to an eligible point on an air carrier that receives essential air service compensation on that route under section 419 of the Federal Aviation Act (49 U.S.C. App. 1389).

(e) Collected PFC's shall be distributed as noted on the air travel ticket.

(f) Issuing carriers and their agents shall stop collecting the PFC's on the charge expiration date stated in a notice from the public agency, or as required by the Administrator.

§ 158.47 Collection of PFC's on tickets issued outside the U.S.

(a) With respect to tickets issued outside the U.S., an air carrier or foreign air carrier may follow the requirements of either § 1.58.45 of this part or this section.

(b) Notwithstanding any other provisions of this part, no foreign airline is required to collect a PFC on air travel tickets issued on its own ticket stock unless it serves a point or points in the U.S.

(c) If an air carrier or foreign air carrier elects not to comply with § 158.45 for tickets issued outside the U.S.—

(1) The carrier is required to collect PFC's on such tickets only for the public agency controlling the last airport at which the passenger is enplaned prior to departure from the U.S.

(2) The carrier may collect the PFC either at the time the ticket is issued or at the time the passenger is last enplaned prior to departure from the U.S. The carrier may vary the method of collection among its flights.

(3) The carrier shall provide a written record to the passenger that a PFC has been collected. Such a record shall appear on or with the air travel ticket and shall include the same information as required by § 158.45(b), but need not be preprinted on the ticket stock.

(4) The carrier shall collect the PFC based upon the itinerary at the time of issuance. Any changes in itinerary that are initiated by a passenger and that require an adjustment of the amount paid by the passenger are subject to collection or refund of the PFC as appropriate.

(d) With respect to a flight on which the air carrier or foreign air carrier chooses to collect the PFC at the time the air travel ticket is issued—

(1) The carrier and its agents shall collect the required PFC on tickets issued on or after the charge effective date.

(2) The carrier is not required to collect PFC's at the time of enplanement for tickets sold by other air carriers or foreign air carriers or their agents.

(e) With respect to a flight on which the air carrier or foreign air carrier chooses to collect the PFC at the time of enplanement, the carrier shall examine the air travel ticket of each passenger enplaning at the airport on and after the charge effective date and shall collect the PFC from any passenger whose air travel ticket does not include a written record indicating that the PFC was collected at the time of issuance.

(f) Collected PFC's shall be distributed as noted on the written record provided to the passenger.

(g) Collecting carriers shall be responsible for all funds from time of collection to remittance.

(h) Collecting carriers and their agents shall stop collecting the PFC on the charge expiration date stated in a notice from the public agency, or as required by the Administrator.

§ 158.49 Handling of PFC's.

(a) Collecting carriers shall establish and maintain a financial management system to account for PFC's in accordance with the Department of Transportation's Uniform System of Accounts and Reports (14 CFR part 241). For carriers not subject to 14 CFR part 241, such carriers shall establish and maintain an accounts payable system to handle PFC revenue with subaccounts for each public agency to which such carrier remits PFC revenue.

(b) PFC revenue must be accounted for separately by collecting carriers, but the revenue may be commingled with the carrier's other sources of revenue. The PFC revenue is to be regarded as trust funds held by collecting carriers as agents, for the beneficial interest of the public agencies imposing PFC's. All PFC revenue collected and held by the carriers are property in which the carriers hold only a possessory interest and not an equitable interest.

(c) Each collecting carrier shall be required to disclose the existence and amount of funds regarded as trust funds in financial statements.

§ 158.51 Remittance of PFC's.

Passenger facility charges collected by carriers shall be remitted to the public agency on a monthly basis. PFC revenue recorded in the accounting system of the carrier, as set forth in § 158.49 of this part, shall be remitted to the public agency no later than the last day of the following calendar month (or if that date falls on a weekend or holiday, the first business day thereafter).

§ 158.53 Collection Compensation.

As compensation for collecting, handling and remitting the PFC revenue, the collecting air carrier shall be entitled to:

(a) Retain $0.12 of each PFC remitted on or before [insert date 3 years after the effective date of this rule]. Thereafter, air carriers shall be entitled to $0.08 of each PFC remitted; and

(b) Any interest or other investment return earned on PFC revenue between the time of collection and remittance to the public agency.

Subpart D—Reporting, Recordkeeping and Audits

§ 158.61 General.

This subpart contains the requirements for reporting, recordkeeping and auditing of accounts maintained by collecting carriers and by public agencies.

§ 158.63 Reporting requirements: public agency.

(a) The public agency shall provide quarterly reports to carriers collecting PFC's for the public agency with a copy to the appropriate FAA Airports office. The quarterly report shall include PFC revenue received from collecting carriers, interest earned, and expenditures for the quarter; cumulative PFC revenue received, interest earned, expenditures, and the amount committed for use on currently approved projects, including the quarter; and the current project schedule.

(b) The report shall be provided on or before the last day of the calendar month following the calendar quarter or other period agreed by the public agency and collecting carrier.

(c) For airports enplaning 0.25 percent or more of the total annual enplanements in the U.S. for the prior calendar year as determined by the Administrator, the public agency must provide the FAA, by August 1 of each year, an estimate of PFC revenue to be collected for each such airport in the ensuing fiscal year.

§ 158.65 Reporting requirement: Collecting carrier.

Each carrier collecting PFC's for a public agency shall file quarterly reports to the public agency unless otherwise agreed by the collecting carrier and public agency, providing an accounting of funds collected and funds remitted.

(a) Unless otherwise agreed by the collecting carrier and public agency, reports shall state the collecting carrier and airport involved, the total PFC revenue collected, the total amount of PFC revenue refunded to passengers, and the amount of collected revenue withheld by the collecting carrier for reimbursement of expenses in accordance with § 158.53 of this part. The report shall include the dates and amounts of each remittance for the quarter.

(b) The report shall be filed on or before the last day of the calendar month following the calendar quarter or other period agreed by the collecting carrier and public agency for which funds were collected.

§ 158.67 Recordkeeping and auditing: Public agency.

(a) Each public agency shall keep any unliquidated PFC revenue remitted to it by collecting carriers on deposit in an interest bearing account or in other interest bearing instruments used by the public agency's airport capital fund. Interest earned on such PFC revenue shall be used, in addition to the principal, to pay the allowable costs of PFC-funded projects. PFC revenue may only be commingled with other public agency airport capital funds in deposits or interest bearing instruments.

(b) Each public agency shall establish and maintain for each approved application a separate accounting record. The accounting record shall identify the PFC revenue received from the collecting carriers, interest earned on such revenue, the amounts used on each project, and the amount reserved for currently approved projects.

(c) At least annually during the period the PFC is collected, held or used, each public agency shall provide for an audit of its PFC account. The audit shall be performed by an accredited independent public accountant and may be of limited scope. The accountant shall express an opinion of the fairness and reasonableness of the public agency's procedures for receiving, holding, and using PFC revenue. The accountant shall also express an opinion on whether the quarterly report required under § 158.63 fairly represents the net transactions within the PFC account. The audit may be—

(1) Performed specifically for the PFC account; or

(2) Conducted as part of an audit under the Single Agency Audit Act of 1983 (31 U.S.C. 7501–7) provided that the PFC is specifically addressed by the auditor.

(3) Upon request, a copy of the audit shall be provided to each collecting carrier that remitted PFC revenue to the public agency in the period covered by the audit and to the Administrator.

§ 158.69 Recordkeeping and auditing: Collecting carriers.

(a) Collecting carriers shall establish and maintain for each public agency for which they collect a PFC an accounting record of PFC revenue collected, remitted, refunded and compensation retained under § 158.53(a) of this part. The accounting record shall identify the airport at which the passengers were enplaned.

(b) Each collecting carrier that collects more than 50,000 PFC's annually shall provide for an audit at least annually of its PFC account.

(1) The audit shall be performed by an accredited independent public accountant and may be of limited scope. The accountant shall express an opinion on the fairness and reasonableness of the carrier's procedures for collecting, holding, and dispersing PFC revenue. The opinion shall also address whether the quarterly reports required under § 158.65 fairly represent the net transactions in the PFC account.

(2) For the purposes of an audit under this section, collection is defined as the point when agents or other intermediaries remit PFC revenue to the carrier.

(3) Upon request, a copy of the audit shall be provided to each public agency for which a PFC is collected.

§ 158.71 Federal oversight.

(a) The Administrator may periodically audit and/or review the use of PFC revenue by a public agency. The purpose of the audit or review is to ensure that the public agency is in compliance with the requirements of this part and section 1113(e) of the Federal Aviation Act.

(b) The Administrator may periodically audit and/or review the collection and remittance by the collecting carriers of PFC revenue. The purpose of the audit or review is to ensure collecting carriers are in compliance with the requirements of this part and section 1113(e) of the Federal Aviation Act.

(c) Public agencies and carriers shall allow any authorized representative of the Administrator, the Secretary of Transportation, or the Comptroller General of the U.S., access to any of its books, documents, papers, and records pertinent to PFC's

Subpart E—Termination

§ 158.81 General.

This subpart contains the procedures for termination of PFC's or loss of Federal airport grant funds for violations of this part or section 1113(e) of the Federal Aviation Act. This subpart does not address the circumstances under which authority to collect PFC's may be terminated for violations of the Airport Noise and Capacity Act of 1990.

§ 158.83 Informal resolution.

The Administrator shall undertake informal resolution with the public agency or any other affected party if, after review under § 158.71, the Administrator cannot determine that PFC revenue is being used for the approved projects in accordance with the terms of the Administrator's approval to impose a PFC for those projects or with section 1113(e) of the Federal Aviation Act.

§ 158.85 Termination of authority to impose PFC's.

(a) The FAA begins proceedings to terminate the public agency's authority to impose a PFC only if the Administrator determines that informal resolution is not successful.

(b) The Administrator publishes a notice of proposed termination in the **Federal Register** and supplies a copy to the public agency. This notice will state the scope of the proposed termination, the basis for the proposed action and the date for filing written comments or objections by all interested parties. This notice will also identify any corrective actions the public agency can take to avoid further proceedings. The due date for comments and corrective action shall be no less than 60 days after publication of the notice.

(c) If corrective action has not been taken as prescribed by the Administrator, the FAA holds a public hearing, and notice is given to the public agency and published in the **Federal Register** at least 30 days prior to the hearing. The hearing will be in a form determined by the Administrator to be appropriate to the circumstances and to the matters in dispute.

(d) The Administrator publishes the final decision in the **Federal Register**. Where appropriate, the Administrator may prescribe corrective action, including any corrective action the public agency may yet take. A copy of

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the notice is also provided to the public agency.

(e) Within 10 days of the date of publication of the notice of the Administrator's decision, the public agency shall—

(1) Advise the FAA in writing that it will complete any corrective action prescribed in the decision within 30 days; or

(2) Provide the FAA with a listing of the air carriers and foreign air carriers operating at the airport and all other issuing carriers that have remitted PFC revenue to the public agency in the preceding 12 months.

(f) When the Administrator's decision does not provide for corrective action or the public agency fails to complete such action, the FAA provides a copy of the Federal Register notice to each air carrier and foreign air carrier identified in paragraph (e) of this section. Such carriers are responsible for terminating or modifying PFC collection no later than 30 days after the date of notification by the FAA.

§ 158.87 Loss of federal airport grant funds.

(a) If the Administrator determines that revenue derived from a PFC is excessive or is not being used as approved, the Administrator may reduce the amount of funds otherwise payable to the public agency under section 507 of the AAIA of 1962, 49 U.S.C. App. 2208. Such a reduction may be made as a corrective action under § 158.83 or § 158.85 of this part.

(b) The amount of the reduction under paragraph (a) of this section shall equal the excess collected, or the amount not used in accordance with this part.

(c) A reduction under paragraph (a) of this section shall not constitute a withholding of approval of a grant application or the payment of funds under an approved grant within the meaning of 49 U.S.C. App. 2216.

Subpart F—Reduction in Airport Improvement Program Apportionment

§ 158.91 General.

This subpart describes the required reduction in funds apportioned to a large or medium hub airport that imposes a PFC.

§ 158.93 Public agencies subject to reduction.

The funds apportioned under section 507(a)(1) of the Airport and Airway Improvement Act of 1982 to a public agency for a specific primary commercial service airport that it controls are reduced if—

(a) Such airport enplanes 0.25 percent or more of the total annual enplanements in the U.S., and

(b) The public agency imposes a PFC at such airport.

§ 158.95 Implementation of reduction.

(a) A reduction in apportioned funds will be applied beginning in the fiscal year immediately following the Administrator's approval of authority to impose a PFC and will be applied in each succeeding fiscal year in which the public agency imposes a PFC.

(b) The reduction in apportioned funds is calculated at the beginning of each fiscal year and shall be an amount equal to 50 percent of the PFC revenue forecast for the fiscal year, except that the maximum reduction in a fiscal year shall not exceed 50 percent of the funds that would otherwise be apportioned to the public agency based on passengers enplaning at the airport.

(c) If the projection of PFC revenue in a fiscal year is inaccurate, the reduction in apportioned funds may be increased or decreased in the following fiscal year, except that any further reduction shall not cause the total reduction to exceed 50 percent of such apportioned amount as would otherwise be apportioned in any fiscal year.

Appendix A—Assurances

A. *General.*

1. These assurances shall be complied with in the conduct of a project funded with passenger facility charge (PFC) revenue.

2. These assurances are required to be submitted as part of the application for approval of authority to impose a PFC under the provisions of the Aviation Safety and Capacity Expansion Act of 1990.

3. Upon approval by the Administrator of an application, the public agency is responsible for compliance with these assurances.

B. *Public agency certification.* The public agency hereby assures and certifies, with respect to this project that:

1. Responsibility and authority of the public agency. It has legal authority to impose a PFC and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the public agency's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the public agency to act in connection with the application.

2. Compliance with regulation. It will comply with all provisions of 14 CFR part 158.

3. Compliance with state and local laws and regulations. It has complied, or will comply, with all applicable State and local laws and regulations.

4. Environmental, airspace and airport layout plan requirements. It will not use PFC revenue on a project until the FAA has notified the public agency that—

(a) Any actions required under the National Environmental Policy Act of 1969 have been completed;

(b) The appropriate airspace finding has been made; and

(c) The FAA Airport Layout Plan with respect to the project has been approved.

5. Nonexclusivity of contractual agreements. It will not enter into an exclusive long-term lease or use agreement with an air carrier or foreign air carrier for projects funded by PFC revenue. Such leases or use agreements will not preclude the public agency from funding, developing, or assigning new capacity at the airport with PFC revenue.

6. Carryover provisions. It will not enter into any lease or use agreement with any air carrier or foreign air carrier for any facility financed in whole or in part with revenue derived from a passenger facility charge if such agreement for such facility contains a carryover provision regarding a renewal option which, upon expiration of the original lease, would operate to automatically extend the term of such agreement with such carrier in preference to any potentially competing air carrier or foreign air carrier seeking to negotiate a lease or use agreement for such facilities.

7. Competitive access. It agrees that any lease or use agreements between the public agency and any air carrier or foreign air carrier for any facility financed in whole or in part with revenue derived from a passenger facility charge will contain a provision that permits the public agency to terminate the lease or use agreement if—

(a) The air carrier or foreign air carrier has an exclusive lease or use agreement for existing facilities at such airport; and

(b) Any portion of its existing exclusive use facilities is not fully utilized and is not made available for use by potentially competing air carriers or foreign air carriers.

8. Rates, fees and charges.

(a) It will not treat PFC revenue as airport revenue for the purpose of establishing a rate, fee or charge pursuant to a contract with an air carrier or foreign air carrier.

(b) It will not include in its rate base by means of depreciation, amortization, or any other method, that portion of the capital costs of a project paid for by PFC revenue for the purpose of establishing a rate, fee or charge pursuant to a contract with an air carrier or foreign air carrier.

(c) Notwithstanding the limitation provided in subparagraph (b), with respect to a project for terminal development, gates and related areas, or a facility occupied or used by one or more air carriers or foreign air carriers on an exclusive or preferential basis, the rates, fees, and charges payable by such carriers that use such facilities will be no less than the rates, fees, and charges paid by such carriers using similar facilities at the airport that were not financed by PFC revenue.

9. Standards and specifications. It will carry out the project in accordance with FAA airport design, construction and equipment standards and specifications contained in advisory circulars current on the date of project approval.

10. Recordkeeping and Audit. It will maintain an accounting record for audit purposes for a period of 3 years after completion of the project. All records will satisfy the requirements of 14 CFR part 158 and will contain documentary evidence for all items of project costs.

11. Reports. It will submit reports in accordance with the requirements of 14 CFR part 158, subpart D, and as the Administrator may reasonably request.

12. Airport Noise and Capacity Act of 1990. It understands sections 9304 and 9307 of the Airport Noise and Capacity Act of 1990 require the authority to impose a PFC be terminated if the Administrator determines the public agency has failed to comply with that act or with the implementing regulations promulgated thereunder.

Issued in Washington, DC, on May 22, 1991.

James B. Busey,

Administrator.

[FR Doc. 91-12576 Filed 5-23-91; 9:40 am]

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Part IV

Department of Housing and Urban Development

Office of the Secretary

NOFA for the Rental Voucher Program and Rental Certificate Program FY 1991; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary for Housing—Federal Housing Commissioner

[Docket No. N-91-3234; FR-3037-N-01]

NOFA for the Rental Voucher Program and Rental Certificate Program FY 1991

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of funding availability for FY 1991 and procedures for allocating funds and approving PHA/IHA applications.

SUMMARY: This notice identifies the amount of housing assistance budget authority available for incremental rental vouchers and rental certificates for HUD-established allocation areas during Fiscal Year 1991. This notice also invites Public Housing Agencies (PHAs), including Indian Housing Authorities (IHAs), to submit applications for housing assistance funds and provides instructions to PHA/IHAs governing the submission of applications, and describes procedures for rating, ranking, and approving PHA/IHA applications. The purpose of the Rental Voucher and the Rental Certificate Programs is to assist eligible families to pay the rent for decent, safe, and sanitary housing.

DATES: Applications must be received in the HUD Field Office by 3 p.m. local time on July 29, 1991.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Rental Assistance Division, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–0477. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These telephone numbers are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 and have been assigned OMB Control Number 2502–0123.

Public reporting burden for this collection of information is estimated to include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the documents making up the collection of information. Information on the estimated public reporting burden is provided elsewhere in this document. Information on the burden hours for these requirements is provided as follows: Form HUD–52515, number of responses, 1,000; hours per response, 4; total burden hours 4,000. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Purpose and Substantive Description

(A) Authority

The regulations governing the Rental Voucher Program and the Rental Certificate Program are published at 24 CFR part 887 and 24 CFR part 882. The regulations for allocation of housing assistance budget authority are published at 24 CFR part 791, subpart D (revised 56 FR 9822, March 7, 1991).

(B) Allocation Amounts

(1) Housing Needs Formula

Approximately $1.3 billion of budget authority available for incremental rental vouchers and rental certificates is being allocated to HUD Field Offices and allocation areas using the housing needs factors established in accordance with 24 CFR 791.402. In addition, approximately $344 million of budget authority available for incremental rental vouchers and rental certificates will be made available at a later date when notices are published in the **Federal Register** for the Family Self-Sufficiency program.

(2) Fiscal Year 1990 Awards

In Fiscal Year 1990, a large number of applications failed to receive funding because of a misunderstanding about new program requirements. The Department published a notice in the **Federal Register** on January 8, 1991 (56 FR 750) advising applicants that, if their applications had been rejected solely because of their failure to contain the necessary drug-free workplace and anti-lobbying certifications and disclosures, that these documents could be submitted by February 7, 1991. Corrected Fiscal Year 1990 applications that are approvable will be funded from Fiscal Year 1991 allocations for each allocation area before Fiscal Year 1991 applications are considered. In this same manner the Department will also make funding available for Fiscal Year 1990 applications that HUD erroneously returned as incomplete or late.

(3) Metropolitan—Nonmetropolitan Mix

Separate housing needs factors were developed for the metropolitan and nonmetropolitan portions of each Field Office jurisdiction. On a nationwide basis, approximately 23 percent of the Fiscal Year 1991 budget authority for Rental Voucher Program and Rental Certificate Program incremental units is designated for nonmetropolitan areas. The nonmetropolitan housing needs factors were applied to the housing assistance budget authority available for use in nonmetropolitan areas, and metropolitan housing needs factors were applied to the housing assistance budget authority available for use in metropolitan areas.

(4) Allocation Areas

The allocation areas have been established to ensure sufficient competition among PHA/IHAs (including State and regional or multi-county PHA/IHAs) operating housing programs within the HUD-established allocation areas. With certain exceptions where it was not practicable, the formula allocation for each allocation area supports at least 50 units and each allocation area contains at least three PHA/IHAs with satisfactory administrative capability to ensure meaningful competition.

(5) Program Type

This notice announces the allocation of housing assistance budget authority for the Rental Voucher Program and for the Rental Certificate Program to each Field Office for designated allocation areas, based on the housing needs factors. The allocation of housing assistance budget authority to each allocation area, however, is a total for both programs. The allocations have been structured to give Field Offices flexibility in approving PHA/IHA applications for a specific program. It is not necessary that each allocation area within a Field Office be provided both rental vouchers and rental certificates. This notice also provides, for each allocation area, an estimate of the total number of rental vouchers and rental certificates that could be funded from the housing assistance available in the allocation area. These estimates are based on the average fair market rents for two-bedroom units in the Field Office's jurisdiction and assume a 45 percent Rental Voucher Program mix and a 55 percent Rental Certificate Program mix. These percentages reflect the nationwide funding available for each of these Programs. The actual number of units assisted will vary from these estimates because of differences in the actual bedroom size mix and the actual mix of rental vouchers and rental certificates that are funded in a given allocation area.

(C) Rental Rehabilitation Program Obligations

(1) For low income families living in units rehabilitated under the Rental Rehabilitation Program (24 CFR part 511), section 8(u) of the United States Housing Act of 1937 requires that:

(a) Rental vouchers or rental certificates shall be made available for families who are required to move out of their units because of physical rehabilitation activities or because of overcrowding;

(b) At the discretion of the PHA/IHA, rental vouchers or rental certificates may be made available for families who would have to pay more than 30 percent of adjusted income for rent after rehabilitation whether they choose to remain in or move from the project; and

(c) HUD shall allocate rental certificates or rental vouchers to ensure that sufficient resources are available to address the physical or economic displacement or potential economic displacement of tenants living in rental rehabilitation projects.

(2) The HUD-Independent Agencies Appropriations Act for Fiscal Year 1991 (Pub. L. 101–507, approved November 5, 1990) requires that highest priority for incremental rental vouchers shall be given to families who, as a result of rental rehabilitation actions, are involuntarily displaced or are or would be displaced as a consequence of increased rents (i.e., rent burden exceeds 35 percent of adjusted income).

(3) In determining the minimum number of rental vouchers or rental certificates to allocate to a PHA/IHA, Field Office staff must first determine the total number of rental vouchers and rental certificates needed during Fiscal Year 1991 for families affected by rental rehabilitation activities and the amount of such housing assistance available to the PHA/IHA without additional funding. In reviewing the amount of assistance available to a PHA/IHA for rental rehabilitation families, the Field Office staff must make certain that the PHA/IHA has enough rental certificates for low income families who are affected by rental rehabilitation activities, but who are not eligible for rental vouchers.

(4) The Field Office will determine the minimum amount of assistance to be provided to a PHA/IHA during Fiscal Year 1991 as follows:

(a)(i) Identify the rental rehabilitation projects to be completed by December 1991 and identify the number of eligible families living in the projects that will be physically displaced (i.e., forced to vacate a unit because of physical construction, housing overcrowding, or a change in use of the unit as a result of rental rehabilitation activities) or whose rent would be more than 30 percent of income as a result of rental rehabilitation activities.

(ii) Families whose incomes are between 50 percent and 80 percent of median income and whose rent after rehabilitation would be more than 30 percent of their adjusted income, but who are not physically displaced, are ineligible for rental vouchers. Because rental certificates must be made available to these low income families, the number of these families should be separately identified.

(b) From the number of eligible families affected by rental rehabilitation activities, subtract the number of rental vouchers and rental certificates under ACC for use within the allocation area, but not issued to families. Do not include any special allocations of rental vouchers and rental certificates which were provided by HUD to be used for special purposes such as opt-outs, public housing demolition or disposition, or desegregation of public housing projects or rental certificates approved by HUD for use in connection with project-based assistance.

(c) From the number of affected eligible families determined in paragraph (b), above, subtract the number of rental vouchers and rental certificates that are expected to turn over (i.e., those rental vouchers or rental certificates that are expected to be available for reissuance) in the allocation area during Fiscal Year 1991.

(d) The remainder, computed in accordance with the above, equals the minimum number of rental vouchers or rental certificates that must be made available to the PHA/IHA during Fiscal Year 1991.

(D) Eligibility

All PHA/IHAs are invited by this notice to submit applications for the Rental Voucher Program (24 CFR part 887) and the Rental Certificate Program (24 CFR part 882).

(E) Selection Criteria/Ranking Factors

(1) General

To provide each applicant a fair and equitable opportunity to receive Fiscal Year 1991 rental vouchers and rental certificates, Field Offices will use the objective selection criteria stated in this notice to rate, within each allocation area, all applications found acceptable for further processing. After the Field Office has determined, under section I.(B) above, the number of rental vouchers and rental certificates required to fund Fiscal Year 1990 corrected applications and, under section I.(C) above, the number of rental vouchers and rental certificates required for families affected by rental rehabilitation activities, if any incremental housing assistance budget authority remains available within an allocation area, the Field Office will rate and rank all Fiscal Year 1991 applications with respect to assistance sought for other purposes. The Office of Indian Programs will rate applications received from IHAs. The Field Office will use selection criteria 1 through 4 in section I.(E)(3) below to rate and rank these applications.

(2) Applications for Families Living in Rental Rehabilitation Projects

The Field Office will identify the number of units in each application needed for—

(a) Families that will be physically displaced from units to be rehabilitated under the Rental Rehabilitation Program (24 CFR part 511); and

(b) Families who would have to pay more than 30 percent of adjusted income for rent as a result of rental rehabilitation activities.

The Field Office will compare the PHA/IHA estimate and the Field Office estimate developed in accordance with the procedures identified in section I.(C)(3). The Field Office estimate shall be used unless it is clear that the Field Office estimates are incorrect.

(3) Applications for Families Other Than Families Living in Rental Rehabilitation Projects

(a) *Selection Criterion 1: PHA/IHA Administrative Capability (32 points)*—(i) *Description:* Overall PHA/IHA administrative ability as evidenced by factors such as leasing rates and correct administration of housing quality standards, tenant rent computation, and rent reasonableness requirements in the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs. If a PHA/IHA is not administering either a Rental Certificate, Rental Voucher, or Moderate Rehabilitation Program, the Field Office will rate PHA/IHA administration of the Public or Indian Housing Program. A PHA/IHA administering a Rental Voucher, Rental Certificate, or Moderate Rehabilitation Program will not be rated on the

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administration of its Public or Indian Housing Program.

(ii) *Rating: 16–32 points.* Field Office rates overall PHA/IHA administration of the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs (or public housing) as excellent; there are no serious outstanding management review or Inspector General audit findings; and the leasing rate (or occupancy rate for public housing) for rental vouchers and rental certificates under ACC for one year was at least 95 percent as of September 30, 1990;

1–15 points. Field Office rates overall PHA/IHA administration of the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs (or public housing) as good; any management review or Inspector General audit findings are being satisfactorily addressed; and the leasing rate (or occupancy rate for public housing) for rental vouchers and rental certificates under ACC for one year was at least 85 percent as of September 30, 1990;

0 points. If none of the above statements apply, assign 0 points.

(b) *Selection Criterion 2: Underfunding of Housing Needs (25 points)*—(i) *Description:* The degree to which the housing needs of the area specified in the PHA/IHA's application from which the PHA/IHA draws families to assist (primary area) have previously been underfunded relative to the needs of other localities within the allocation area, taking into account such factors as the number of assisted housing units and the number of very low income renter households eligible for such assistance. The Field Office will, wherever practicable, consider needs being met by all federally assisted rental housing programs, including the FmHA Section 515 Rural Rental Program, but will, as a minimum, consider assistance provided under the Rental Voucher Program, the Rental Certificate Program, other Section 8 Programs, and the Public or Indian Housing Program.

(ii) *Rating: Underfunded Assisted Housing (25 points).* The Field Office will evaluate whether housing needs in the primary area specified in the application have been underfunded with respect to assisted housing provided to other communities in the allocation area.

25 points. Housing needs in the area(s) specified in the application have been severely underfunded.

12 points. Housing needs in the area(s) specified in the application have been moderately underfunded.

0 points. Housing needs in the area(s) specified in the application have received a proportionate share of funding or have been overfunded.

(c) *Selection Criterion 3: Replacement Housing (10 points)*—(i) *Description:* The percentage of the units in the application which the PHA/IHA will count to satisfy the replacement housing requirements under section 5(h) of the United States Housing Act of 1937.

(ii) *Rating: 10 points.* 50–100% of the units being applied for will be used for replacement housing.

7 points. 25–49% of the units being applied for will be used for replacement housing.

4 points. 1–24% of the units being applied for will be used for replacement housing.

0 points. None of the units being applied for will be used for replacement housing.

(d) *Selection Criterion 4: Homeless Program (20 points)*—(i) *Description:* The percentage of the units in the application which will be targeted to homeless families.

(ii) *Rating: 20 points.* 75–100% of the units being applied for will be used for the homeless.

15 points. 50–74% of the units being applied for will be used for the homeless.

10 points. 1–49% of the units being applied for will be used for the homeless.

0 points. None of the units being applied for will be used for the homeless.

(iii) *Field Office Assessment:* The Field Office shall evaluate the capacity of the PHA/IHA to have a homeless program operational within six months of ACC execution. If the Field Office determines that the PHA/IHA does not have the capacity to coordinate the provision of supportive services and to implement a homeless program of the size indicated in the PHA/IHA application, up to one-half of the points assigned to the PHA/IHA under this criterion may be deducted.

(e) *Selection Criterion 5: Local Initiatives (3 points)*—(i) *Description.* (1) Extent to which PHA/IHAs provide families with greater housing opportunities (e.g., State or regional PHA/IHAs, or local PHA/IHAs participating in voluntary exchange programs and interjurisdictional mobility programs). (2) Extent to which PHA/IHAs demonstrate locally initiated efforts in support of their rental voucher and rental certificate programs or comparable tenant-based rental assistance programs. Evaluation of a locality's contribution is measured competitively by the extent to which a locality is able to provide services or cash contributions or demonstrate its intention to provide this kind of support in the future, as compared to services or contributions provided by other localities of like program size.

(ii) *Rating: 3 points:* PHA/IHA is a State or regional PHA/IHA or local PHA/IHA participating in voluntary mobility programs *and* the State or locality provides local support (i.e., financial, manpower for inspection services) to its rental voucher or rental certificate program.

2 points: PHA/IHA provides broader housing choice *or* the State or locality provides support to the PHA/IHA's rental voucher or rental certificate program.

0 points: PHA/IHA *does not* provide broader housing choice and the State or locality does not provide support to the PHA/IHA's rental voucher or rental certificate program.

(F) Unacceptable Applications

(1) After the 14 calendar day technical deficiency correction period, the Field Office will disapprove PHA/IHA applications that it determines are not acceptable for processing (refer to section III, Checklist of Application Submission Requirements and section IV, Corrections to Deficient Applications). The Field Office notification of rejection letter must state the basis for the Field Office decision.

(2) Applications that fall into any of the following categories will not be processed.

(a)(i) The Department of Justice has brought a civil rights suit against the applicant PHA/IHA, and the suit is pending;

(ii) There are outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations as a result of formal administrative proceedings, or the Secretary has issued a charge against the applicant under the Fair Housing Act, unless the applicant is operating under a conciliation or compliance agreement designed to correct the areas of noncompliance;

(iii) HUD has denied application processing under Title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3), and the HUD Title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1).

(b) the PHA/IHA has serious unaddressed, outstanding Inspector General audit findings or Field Office management review findings for one or more of its Rental Voucher, Rental Certificate, or Moderate Rehabilitation Programs, or, in the case of a PHA/IHA that is not currently administering a Rental Voucher, Rental Certificate, or Moderate Rehabilitation Program, for its Public Housing Program or Indian Housing Program.

(c) The leasing rate for rental certificates and rental vouchers under ACC for at least one year is less than 75 percent, or, in the case of a PHA/IHA not currently administering a Rental Voucher or Rental Certificate Program, the leasing rate for all units available for occupancy in the Public or Indian Housing Program is less than 75 percent; or

(d) The PHA/IHA is involved in litigation and HUD determines that the litigation may seriously impede the ability of the PHA/IHA to administer an additional increment of rental vouchers or rental certificates.

(G) Local Government Comments

The Field Office will obtain section 213 comments from the unit of general local government. Comments submitted by the unit of general local government must be considered before an application can be approved.

(H) Funding Applications

Within each allocation area, the Field Office must approve applications in accordance with HUD requirements in amounts needed for families affected by Rental Rehabilitation activities under section I.(C) above. The Field Office must approve any corrected Fiscal Year 1991 applications deemed approvable in accordance with the procedures identified in the January 8, 1991, **Federal Register** notice (56 FR 750). The Field Office must approve applications for any remaining assistance based on the ranking of the applications.

The Field Office must approve applications in rank order until all the housing assistance budget authority is used. Funding may be either 100 percent or some lower percentage of the units in each application, up to the maximum number of units allowed. Within each allocation area, the Field Office must apply the same percentage to each application that is funded. For example, if the Field Office reduces the number of units requested in one application by 10 percent, then the number of units in all applications in that allocation area must also be reduced by that same percentage. If an application contains more than the maximum number of units allowed under this Notice (10 percent of units under ACC or 50 units, whichever is greater), the Field Office must apply the funding percentage to the maximum units allowed and not to the number of units listed in the application.

In those instances where a Field Office funds applications according to rank order at 100 percent of the requested amount in a given allocation area, only to find it has some number of units left but not enough to fund the next fundable application in its entirety, that application can be funded to the extent of the number of units available without requiring an across the board adjustment.

If a PHA/IHA applies for a specific program (i.e., rental vouchers or rental certificates) and funding for the specified program is not available in the allocation area, the Field Office will award the available form of assistance, though not specifically requested by the applicant.

(I) Reallocations of Funds

The Field Office shall make every reasonable effort to use the funds made available for each allocation area within that area. It may be necessary, however, to reallocate funds from one allocation area to another allocation area when the funds are not likely to be used in the allocation area to which they were initially assigned during Fiscal Year 1991. If an allocation area has no fundable applications or has an insufficient number of fundable applications to utilize allocated resources, the following procedures shall be followed:

(a) Reallocations Within the Same State

If the Field Office determines that not all of the funds allocated for a particular allocation area are likely to be used during Fiscal Year 1991, the Field Office must reallocate the remaining funds to other allocation areas within the same State where they are likely to be used during Fiscal Year 1991. Similarly, if the Regional Office determines that an allocation of funds to a Field Office is not likely to be used within that State and Field Office jurisdiction during Fiscal Year 1991, the Regional Office must reallocate those funds to another Field Office where they are likely to be used during Fiscal Year 1991, for use in the same State. In making these reallocations priority must be given to those allocation areas where additional funds are needed for families affected by Rental Rehabilitation Program activities.

(b) Reallocations Between States

If a Regional Office cannot use funds from an allocation area within the same State, the Regional Office may request Headquarters approval to reallocate funds to another State within the jurisdiction of the Regional Office. In approving such a reallocation, Headquarters must consider whether these funds are needed within the same Region or other Regions for families affected by Rental Rehabilitation Program activities.

A request for Headquarters approval of a reallocation between States must explain the reasons that funds cannot be used in the original State, the amount being withdrawn from the original State, the program type, the metropolitan/nonmetropolitan mix, and the amount to be reallocated subsequently to each State. Such requests must be submitted to Headquarters (Attention: Funding Control Division, HOBF) for approval.

(c) Reallocations Between Metropolitan and Nonmetropolitan Areas

The Regional Office must follow the original fund assignments to metropolitan and nonmetropolitan areas when it reallocates unused budget authority. If there are no approvable applications for the designated area, the Regional Office may switch the budget authority between a metropolitan and a nonmetropolitan area within the same State provided that an offsetting switch can be made in another State within the same Region. If an offsetting switch cannot be made and the metropolitan or nonmetropolitan amounts require changes to the regional fund assignments, the Regional Office must obtain the approvel of the Funding Control Division before switching budget authority between a metropolitan and a nonmetropolitan area.

(J) Notification of Funds Awarded

After the Field Offices have reviewed, rated, ranked, and approved the applications, Regional Offices must submit to Headquarters a list of all approved applications for the Federal Fiscal Year quarters ending December, March, June, and September, listed by Field Office. The Regional Office application approval list for each calendar quarter is due in Headquarters (Attention: Funding Control Division, HOBF) on the tenth working day of April, July, October, and January (i.e., the months following the end of each calendar quarter).

The Regional Offices must provide the following information for each application approved:

(a) The name and address of the PHA/IHA;

(b) The project number, the number of rental vouchers and the number of rental certificates, as applicable, approved for the PHA/IHA;

(c) The amount of contract authority and budget authority stated separately

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for rental vouchers and rental certificates;

(d) The number of rental vouchers and the number of rental certificates for each of the following: rental rehabilitation, FY 1990-corrected applications, the homeless, and other purposes.

On March 14, 1991, the Department published in the **Federal Register** a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (24 CFR part 12, 56 FR 11632). Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by the Department.

Since HUD makes assistance under the programs available on a competitive basis, part 12 requires HUD to:

—Ensure that documentation and other information regarding each application submitted to the Department are sufficient to indicate the basis upon which assistance was provided or denied. HUD must make this material available for public inspection for a five-year period. (§ 12.14(b)) HUD will provide further guidance on how this material may be accessed in a later notice published in the **Federal Register**.

—Publish a notice in the **Federal Register** at least quarterly indicating the recipients of the assistance. (§ 12.16(a))

(K) Administrative Fees

The administrative fees for units in Fiscal Year 1991 appropriation are specified as follows:

(a) FY 1991 Incremental (Fees Specified by FY 1991 Appropriation)

	Rental vouchers	Rental certificates
(1) On-going	8.2	8.2
(2) Preliminary	$275	$275
(3) Hard-to-house	$45	$45

(b) FY 1991 Opt-outs/Public Housing Demolition (Replacements and Relocation)

	Rental vouchers	Rental certificates
(1) On-going	6.5	7.65
(2) Preliminary	$215	$250
(3) Hard-to-house	$45	$45

(c) Renewal of Rental Vouchers and Rental Certificates

	Rental vouchers	Rental certificates
(1) On-going	6.5	7.65
(2) Preliminary	$0	$0
(3) Hard-to-house	$45	$45

For budget preparation, submission of requisitions and approving year-end operating statements, PHA/IHAs should use the August 3, 1990 Housing Notice (H–90–53), Administrative Fee Requirements for the Housing Voucher and Certificate Programs, to determine the blended rate for all rental voucher or rental certificate increments for a given PHA/IHA.

(L) Headquarters Reserve

The Department is retaining approximately $85 million of the budget authority available for incremental rental vouchers and rental certificates in a Headquarters Reserve for use in connection with natural disasters, litigation, desegregation, and other housing emergencies.

(M) Other Allocations

In addition to the budget authority for incremental rental vouchers and rental certificates, the Department has $5.8 billion of budget authority, including carryover budget authority, for rental vouchers and rental certificates available for allocation on an as-needed basis for the following purposes:

(1) Opt-Outs

Assisting families that are adversely affected by an owner's decision to opt-out as follows:

(a) Families living in a Section 8 Loan Management Set-Aside Project where the Section 8 Housing Assistance Payments Contract ends.

(b) Families living in a Section 8 New Construction or Substantial Rehabilitation Project where the owner has sole discretion to "opt-out" of an additional term of assistance under the Section 8 Housing Assistance Payments Contract and does so.

Field Office requests for funding under this category will be approved on a first-come, first-served basis. Field Offices should indicate whether rental vouchers, rental certificates, or both are needed and should include all necessary data required to determine the amount of funds required.

(2) Public Housing Demolition and Disposition (Relocation and Replacement)

Assisting families that are living in public housing projects that are being demolished or disposed of with HUD approval. Relocation assistance may be provided in the form of funding for 5-year rental vouchers. Replacement housing may be provided in the form of funding for 15-year rental certificate assistance. The Assistant Secretary for Public and Indian Housing, before approving a PHA/IHA demolition or disposition proposal, will request from the Assistant Secretary for Housing the number of rental certificates required for replacement assistance and the number of rental vouchers required for relocation assistance.

(3) Renewals

Headquarters will allocate funds directly to the Field Offices to provide for the renewal of rental voucher and rental certificate funding increments expiring in Fiscal Year 1991. Renewal funding will be provided in-kind (i.e., rental voucher funding for rental vouchers and rental certificate funding for rental certificates).

(4) Section 23 Conversions

Headquarters will allocate rental certificate funds directly to the Field Offices to provide assistance to residents of section 23 leased housing for which leases are expiring or have been terminated by owners. Field Office requests for funding under this category will be approved on a first-come, first-served basis. Field Offices should include all necessary data required to determine the amount of funds required.

(5) Section 8 Amendments

Rental Certificate Program cost amendments provide budget authority increases to PHA/IHA rental certificate programs to support increases in housing assistance payments to maintain the PHA/IHA's program at the number of units originally approved by HUD. Funds are allocated on a needs basis based on actual housing costs and tenant contributions.

II. Application Process

(A) Form HUD–52515 may be obtained from the local HUD Field Office. To assist PHA/IHAs, the following are attached to this notice: Form HUD 52515 (Attachment 1); Certification for a Drug-Free Workplace (Attachment 2); Text for the certification regarding Lobbying (Attachment 3); and Standard Form LLL, Disclosure of Lobbying Activities (Attachment 4).

(B) PHA/IHA applications must be received in the HUD Field Office by 3 p.m. local time on July 29, 1991. An IHA must submit, at the same time, a copy of its application to appropriate HUD Office of Indian Programs. Field Offices will notify PHA/IHAs of the exact address and room number where applications must be received.

III. Application Submission Requirements

(A) General

PHA/IHA applications must be submitted to the local Field Office and Office of Indian Programs, if appropriate, on Form HUD–52515 in accordance with the applicable program regulations.

The PHA/IHA application must identify the number of rental vouchers and rental certificates requested for families living in rental rehabilitation projects, the homeless, or other uses and should include an explanation of how the application meets, or will meet, the application selection criteria. Failure to submit a narrative description is not cause for application rejection, however, the Field Office can only rate and rank the application based on information it has on-hand.

The exhibit published at the end of this notice lists the allocation areas and the number of units and budget authority available for each allocation area. PHA/IHAs should limit their applications to a reasonable number of rental vouchers and rental certificates based on the capacity of the PHA/IHA to lease all the units within 12 months of ACC execution. The number of units on the PHA/IHA application may not exceed the greater of: (a) Ten (10) percent of the total rental vouchers and rental certificates under ACC for the PHA/IHA; or (b) 50 units. An application may exceed this limit only if the PHA/IHA cannot, within this limit, meet the needs of families affected by rental rehabilitation activities.

An application (Form HUD–52515) may request units in only one allocation area. If a PHA/IHA seeks units in more than one allocation area, it must submit a separate application (Form HUD–52515) for each allocation area in which the PHA/IHA requests units. If both rental vouchers and rental certificates are requested on the same application, then the application will be given two project numbers, one for the rental voucher program and one for the rental certificate program.

In determining ten percent (10%) of the total rental vouchers and rental certificates available to a PHA/IHA, the Field Office will count the number of rental certificates under ACC, plus the number of rental vouchers reserved (since the ACC does not specify units) and then take ten percent (10%) of the total. The Field Office will reduce the number of units requested in any application that exceeds this limit to the greater of, ten percent (10%) of the total number of rental vouchers and rental certificates (under reservation for rental vouchers or under ACC for rental certificates) or 50 units.

When a PHA/IHA submits more than one application, the Field Office will compute the reduction in units as follows: by allocation area, reduce the number of units requested to ten percent (10%) of the units the PHA/IHA has under ACC (under reservation for rental vouchers) for that allocation area or 50 units, whichever is greater. If the PHA/IHA requested a number less than the ten percent (10%) or 50 units for a specific allocation area, use the number requested for that area.

(B) Certification Regarding Drug-Free Workplace

The Drug-Free Workplace Act of 1988 requires grantees of Federal agencies to certify that they will provide a drug-free workplace. Thus, each PHA/IHA must certify (even though it has done so previously) that it will comply with the drug-free workplace requirements in accordance with 24 CFR part 24, subpart F. (See attached Certificate for Drug-Free Workplace, Attachment 2.)

(C) Certification Regarding Lobbying

Section 319 of the Department of the Interior Appropriations Act, Public Law 101–121, approved October 23, 1989, (31 U.S.C. 1352) generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The Department's regulations on these restrictions on lobbying are codified at 24 CFR part 87. To comply with 24 CFR 87.110, any PHA/IHA (other than an IHA that meets the definition of "person" in 24 CFR 87.105) submitting an application under this NOFA for more than $100,000 of budget authority assistance must submit a certification and, if warranted, a Disclosure of Lobbying Activities. To assist PHA/IHAs, the text for the certification regarding Lobbying (Attachment 3) and Standard Form LLL, "Disclosure Form to Report Lobbying" (Attachment 4) are attached.

(D) Checklist for Technical Requirements

The following checklist specifies the required information that must be submitted in the PHA/IHA's application. It is recommended but not required that the application contain a narrative explaining how the application meets the selection criteria.

INITIAL SCREENING CHECKLIST—APPLICATION FOR RENTAL VOUCHERS AND RENTAL CERTIFICATES

PHA/IHA		Field office		
Yes	No	Yes	No	
___	___	___	___	The application contains a completed Form HUD 52515.
___	___	___	___	The application specifies the number of rental vouchers and/or rental certificates requested for families living in rental rehabilitation projects, the homeless, or other uses.
___	___	___	___	The application states by number of bedrooms the total number of units requested by the PHA/IHA (i.e., one bedroom units, two bedroom units), and the approximate number of units for elderly, handicapped, or disabled families.
___	___	___	___	The application demonstrates that the project requested is consistent with the applicable Housing Assistance Plan, including the goals for meeting the housing needs of low income families, or in the absence of such a plan, that the proposed project is responsive to the condition of the housing stock in the community and the housing assistance needs of low income families (including the elderly, handicapped, disabled, large families and those displaced) residing in or expected to reside in the community.
___	___	___	___	The application demonstrates that the applicant qualifies as a public housing agency and is legally qualified and authorized to participate in the rental assistance programs for the area in which the programs are to be carried out. Such demonstration includes: (i) The relevant enabling legislation, (ii) any rules and regulations adopted or to be adopted by the agency to govern its operations, and (iii) a supporting opinion from the agency counsel. If such documents are currently on file in the Field Office they do not have to be resubmitted.

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INITIAL SCREENING CHECKLIST—APPLICATION FOR RENTAL VOUCHERS AND RENTAL CERTIFICATES—Continued

PHA/IHA		Field office		
Yes	No	Yes	No	
—	—	—	—	The application includes a statement that the housing quality standards to be used in the operation of the program will be as set forth in 24 CFR 882.109 and 24 CFR 887.251 or that variations in the Acceptability Criteria are proposed. In the latter case, each proposed variation shall be specified and justified.
—	—	—	—	The application contains the PHA/IHA schedule of leasing, which must provide for the expeditious leasing of units in the program. In developing the schedule, a PHA/IHA must specify the number of units in the program that are expected to be leased at the end of each three-month interval. The schedule must project lease-up by eligible families within twelve months or sooner after execution of the ACC by HUD.
—	—	—	—	The application contains estimates of the average adjusted income for prospective participants for each bedroom size.
				Requirement for Drug-Free Workplace Certification and Anti-Lobbying Certification and Disclosure Statement
—	—	—	—	The application meets HUD's drug-free workplace requirements set out at 24 CFR part 24, subpart F. (The application contains an executed Certification for a Drug-Free Workplace (Attachment 2)).
—	—	—	—	The application meets HUD's regulations regarding anti-lobbying set out at 24 CFR part 87. The anti-lobbying requirements apply to applications that, if approved, would result in the PHA/IHA obtaining more than $100,000 in budget authority. To comply, PHA/IHAs must submit an Anti-lobbying Certification (Attachment 3) and, if warranted, a Disclosure of Lobbying Activities (Attachment 4).

IV. Corrections to Deficient Applications

To be eligible for processing, an application must be received by the Field Office no later than the date and time specified in this notice. The Field Office will initially screen all applications and notify PHA/IHAs of technical deficiencies by letter.

The following is a list of items that may be requested from a PHA/IHA during the technical correction period. This list is intended to be a complete list and only these items may be requested after the application submission deadline date.

- Signature on the Form HUD–52515.
- Number of units required to meet rental rehabilitation program needs.
- Section 213 comments from local government.
- Proposed leasing schedule.
- Average adjusted income for prospective participants for each bedroom size.
- Drug-Free Workplace Certification
- Anti-Lobbying Certification and, if warranted, Disclosure Statement of Lobbying Activities.

All PHA/IHAs must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any such deficiency. Information received after 3 p.m. local time of the fourteenth day of the correction period will not be accepted and the application will be rejected on the basis of being incomplete. All PHA/IHAs are encouraged to review the initial screening checklist provided in Section III of this notice. The checklist identifies all technical requirements needed for application processing. A PHA/IHA application that does not comply with the requirements of 24 CFR 882.204(a) or 887.55(b) and this notice, including the drug-free workplace certification and the anti-lobbying certification disclosure requirements after the 14-day technical deficiency correction period will be rejected from processing (see section III).

V. Other Matters

An environmental finding under the National Environmental Policy Act (42 U.S.C. 4321–4347) is unnecessary since the Rental Voucher Program and the Rental Certificate Program are part of the Section 8 Existing Housing Program, which is categorically excluded under HUD regulations at 24 CFR 50.20(d).

HUD has determined, in accordance with E.O. 12612, *Federalism*, that this notice does not have a substantial, direct effect on the States or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government because this rule would not substantially alter the established roles of HUD, the States and local governments, including PHA/IHAs.

HUD has determined that this notice is not likely to have a significant impact on family formation, maintenance, and general well-being within the meaning of E.O. 12606, *The Family*, because it is a funding notice and does not alter program requirements concerning family eligibility.

Authority: Secs. 3, 5, 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f).

Dated: May 15, 1991.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

BILLING CODE 4210-27-M

33

Application for Existing Housing
Section 8 Housing Assistance Payments Program
Send original and two copies of this application form and attachments to the local HUD Field Office

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

Attachment 1

OMB Approval No. 2502-0123 (exp. 11/30/90)

Public reporting burden for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0123), Washington, D.C. 20503.

Name of the Public Housing Agency (PHA) requesting housing assistance payments: | Application/Project No. (HUD use only)

Mailing Address of the PHA | Requested housing assistance payments are for: How many Certificates? How many Vouchers?

Signature of PHA Officer authorized to sign this application | Have you submitted prior applications: No Yes
. . . for Section 8 Certificates? ☐ ☐
. . . for Section 8 Housing Vouchers? ☐ ☐

X

Title of PHA Officer authorized to sign this application | Phone Number | Date of Application

Legal Area of Operation (area in which the PHA determines that it may legally enter into Contracts)

A. Primary Area(s) from which families to be assisted will be drawn.

Locality (City, Town, etc.)	County	Congressional District	Units

B. Proposed Assisted Dwelling Units

Housing Program	Number of Dwelling Units by Bedroom Count									Total Dwelling Units
	Elderly, Handicapped, Disabled			Non-Elderly						
	Efficiency	1-BR	2-BR	1-BR	2-BR	3-BR	4-BR	5-BR	6+BR	
Certificates										
Housing Vouchers										

C. **Need for Housing Assistance.** Demonstrate that the project requested in this application is consistent with the applicable Housing Assistance Plan including the goals for meeting the housing needs of Lower-Income Families or, in the absence of such a Plan, that the proposed project is responsive to the condition of the housing stock in the community and the housing assistance needs of Lower-Income Families (including the elderly, handicapped and disabled, large families and those displaced or to be displaced) residing in or expected to reside in the community. (If additional space is needed, add separate pages.)

D. Qualification as a Public Housing Agency. Demonstrate that the applicant qualifies as a Public Housing Agency and is legally qualified and authorized to carry out the project applied for in this application. (check √ the appropriate boxes)	Submitted with this application	Previously submitted
1. The relevant enabling legislation		
2. Any rules and regulations adopted or to be adopted by the agency to govern its operations		
3. A supporting opinion from the Public Housing Agency Counsel		

Retain this record for the term of the ACC.
Previous editions are obsolete

page 1 of 2

form HUD-52515 (7/88)
ref. handbook 7420.3

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33a

E. Financial and Administrative Capability. Describe the experience of the PHA in administering housing or other programs and provide other information which evidences pre- ent or potential management capability for the proposed program.

F. Housing Quality Standards. Provide a statement that the Housing Quality Standards to be used in the operation of the program will be as set forth in the program regulation or that variations in the Accessibility Criteria are proposed. In the latter case, each proposed variation shall be specified and justified.

G. Leasing Schedule. Provide a proposed schedule specifying the number of units to be leased by the end of each three-month period.

H. Average Monthly Adjusted Income (Housing Vouchers Only)

Efficiency	1-BR	2-BR	3-BR	4-BR	5-BR	6-BR

I. Attachments. The following additional items must be submitted either with the application or after application approval, but no later than with the PHA executed ACC.

	Submitted with this application	To be submitted	Previously submitted
1. Equal Opportunity Housing Plan			
2. Equal Opportunity Certifications, Form HUD-916			
3. Estimates of Required Annual Contributions, Forms HUD-52672 and HUD-52673			
4. Administrative Plan			
5. Proposed Schedule of Allowances for Utilities and Other Services, Form HUD-52667, with a justification of the amounts proposed			

HUD Field Office Recommendations

Recommendation of Appropriate Reviewing Office	Signature and Title	Date

form HUD-52515

Attachment 2—Certification Regarding Drug-Free Workplace Requirements (From 24 CFR 24, Appendix C)

Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance was placed when the agency determined to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies. Certification Regarding Drug-Free Workplace Requirements.

Alternate I

A. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Alternate II

The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

Attachment 3—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signed by: (Name, Title & Signature of Authorized PHA/IHA Official)

_____

(Name & Title)

_____

(Signature & Date)

BILLING CODE 4210-27-M

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DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

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1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter ____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: Congressional District, *if known*:	Congressional District, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (*check all that apply*):	13. Type of Payment (*check all that apply*):
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

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This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

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DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

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Reporting Entity: _____ Page _____ of _____

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Standard Form - LLL-A

FISCAL YEAR 1991 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION

HUD REGION I (BOSTON)

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
BOSTON, MASSACHUSETTS OFFICE METROPOLITAN ALLOCATION AREAS			
Western Massachusetts	$ 193 200	115	BERKSHIRE county towns of: Cheshire, Dalton, Hinsdale Lanesborough, Lee, Lenox, Pittsfield, Richmond, Stockbridge HAMPDEN county towns of: Agawam, Chicopee, East Longmeadow Hampden, Holyoke, Longmeadow, Ludlow, Monson, Montgomery Palmer, Russell, Southwick, Springfield, Westfield West Springfield, Wilbraham, HAMPSHIRE county towns of: Belchertown, Easthampton, Granby, Huntington, Northampton Southampton, South Hadley
Worcester County	4,173,507	92	MIDDLESEX county towns of: Ashby, WORCESTER county towns of: Ashburnham, Fitchburg, Leominster, Lunenburg, Westminster WORCESTER county towns of: Auburn, Barre, Boylston, Brookfield Charlton, Clinton, Douglas, Dudley, East Brookfield, Grafton Holden, Leicester, Millbury, Northborough, Northbridge North Brookfield, Oxford, Paxton, Princeton, Rutland Shrewsbury, Spencer, Sterling, Sutton, Uxbridge, Webster Westborough, West Boylston, Worcester
Boston	27,092,924	597	BRISTOL county towns of: Mansfield, Norton, Raynham, ESSEX county towns of: Lynn, Lynnfield, Nahant, Saugus, MIDDLESEX county towns of: Acton, Arlington, Ashland, Ayer, Bedford Belmont, Boxborough, Burlington, Cambridge, Carlisle, Concord Everett, Framingham, Groton, Holliston, Hopkinton, Hudson Lexington, Lincoln, Littleton, Malden, Marlborough, Maynard Medford, Melrose, Natick, Newton, North Reading, Reading Sherborn, Shirley, Somerville, Stoneham, Stow, Sudbury Townsend, Wakefield, Waltham, Watertown, Wayland, Weston Wilmington, Winchester, Woburn, NORFOLK county towns of: Bellingham, Braintree, Brookline, Canton, Cohasset, Dedham Dover, Foxborough, Franklin, Holbrook, Medfield, Medway Millis, Milton, Needham, Norfolk, Norwood, Quincy, Randolph Sharon, Stoughton, Walpole, Wellesley, Westwood, Weymouth Wrentham, PLYMOUTH county towns of: Carver, Duxbury, Hanover Hanson, Hingham, Hull, Kingston, Lakeville, Marshfield Middleborough, Norwell, Pembroke, Plymouth, Plympton, Rockland Scituate, SUFFOLK county towns of: Boston, Chelsea, Revere Winthrop, WORCESTER county towns of: Berlin, Bolton, Harvard Hopedale, Lancaster, Mendon, Milford, Southborough, Upton
Northeast	5,600,384	123	ESSEX county towns of: Amesbury, Andover, Boxford, Georgetown Groveland, Haverhill, Lawrence, Merrimac, Methuen, Newbury Newburyport, North Andover, Salisbury, West Newbury, MIDDLESEX county towns of: Billerica, Chelmsford, Dracut, Dunstable Lowell, Pepperell, Tewksbury, Tyngsborough, Westford, ESSEX county towns of: Beverly, Danvers, Essex, Gloucester, Hamilton Ipswich, Manchester, Marblehead, Middleton, Peabody, Rockport Rowley, Salem, Swampscott, Topsfield, Wenham
Southeast	5,013,539	111	BRISTOL county towns of: Easton, NORFOLK county towns of: Avon PLYMOUTH county towns of: Abington, Bridgewater, Brockton East Bridgewater, Halifax, West Bridgewater, Whitman, BRISTOL county towns of: Fall River, Somerset, Swansea, Westport BRISTOL county towns of: Acushnet, Dartmouth, Fairhaven

FISCAL YEAR 1991 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			Freetown, New Bedford, PLYMOUTH county towns of: Marion Mattapoisett, Rochester, BRISTOL county towns of: Attleboro North Attleborough, Rehoboth, Seekonk, NORFOLK county towns of: Plainville, WORCESTER county towns of: Blackstone Millville
NONMETROPOLITAN ALLOCATION AREAS Nonmetropolitan Statewide	5,660,380	152	BARNSTABLE, BERKSHIRE county towns of: Adams, Alford, Becket Clarksburg, Egremont, Florida, Great Barrington, Hancock Monterey, Mount Washington, New Ashford, New Marlborough North Adams, Otis, Peru, Sandisfield, Savoy, Sheffield Tyringham, Washington, West Stockbridge, Williamstown, Windsor BRISTOL county towns of: Berkley, Dighton, Taunton, DUKES FRANKLIN, HAMPDEN county towns of: Blandford, Brimfield Chester, Granville, Holland, Tolland, Wales, HAMPSHIRE county towns of: Amherst, Chesterfield, Cummington, Goshen, Hadley Hatfield, Middlefield, Pelham, Plainfield, Ware, Westhampton Williamsburg, Worthington, NANTUCKET, PLYMOUTH county towns of: Wareham, WORCESTER county towns of: Athol, Gardner Hardwick, Hubbardston, New Braintree, Oakham, Petersham Phillipston, Royalston, Southbridge, Sturbridge, Templeton Warren, West Brookfield, Winchendon
HARTFORD, CONNECTICUT OFFICE METROPOLITAN ALLOCATION AREAS Brideport-Milford, Norwalk, Stamford	4,700,738	118	FAIRFIELD county towns of: Bridgeport, Easton, Fairfield Monroe, Shelton, Stratford, Trumbull, NEW HAVEN county towns of: Ansonia, Beacon Falls, Derby, Milford, Oxford, Seymour FAIRFIELD county towns of: Norwalk, Weston, Westport, Wilton FAIRFIELD county towns of: Darien, Greenwich, New Canaan Stamford
Bristol, Danbury, New Britain, Waterbury	3,354,587	85	HARTFORD county towns of: Bristol, Burlington, LITCHFIELD county towns of: Plymouth, FAIRFIELD county towns of: Bethel Brookfield, Danbury, New Fairfield, Newtown, Redding Ridgefield, Sherman, LITCHFIELD county towns of: Bridgewater New Milford, HARTFORD county towns of: Berlin, New Britain Plainville, Southington, LITCHFIELD county towns of: Bethlehem Thomaston, Watertown, WOODbury, NEW HAVEN county towns of: Middlebury, Naugatuck, Prospect, Southbury, Waterbury, Wolcott
Hartford	4,786,129	120	HARTFORD county towns of: Avon, Bloomfield, Canton East Granby, East Hartford, East Windsor, Enfield, Farmington Glastonbury, Granby, Hartford, Manchester, Marlborough Newington, Rocky Hill, Simsbury, South Windsor, Suffield West Hartford, Wethersfield, Windsor, Windsor Locks LITCHFIELD county towns of: Barkhamsted, New Hartford MIDDLESEX county towns of: East Haddam, NEW LONDON county towns of: Colchester, TOLLAND county towns of: Andover, Bolton Columbia, Coventry, Ellington, Hebron, Somers, Stafford Tolland, Vernon, Willington
Midd'etown, N.London, Norwich, N. Haven-Merid	5,325,767	133	MIDDLESEX county towns of: Cromwell, Durham, East Hampton Haddam, Middlefield, Middletown, Portland, NEW LONDON county towns of: Bozrah, East Lyme, Franklin, Griswold, Groton Ledyard, Lisbon, Montville, New London, North Stonington Norwich, Old Lyme, Preston, Salem, Sprague, Stonington

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			Waterford, WINDHAM county towns of: Canterbury, MIDDLESEX county towns of: Clinton, Killingworth, NEW HAVEN county towns of: Bethany, Branford, Cheshire, East Haven, Guilford, Hamden Madison, Meriden, New Haven, North Branford, North Haven Orange, Wallingford, West Haven, Woodbridge
NONMETROPOLITAN ALLOCATION AREAS Nonmetropolitan Connecticut Statewide	2,650,338	73	HARTFORD county towns of: Hartland, LITCHFIELD county towns of: Canaan, Colebrook, Cornwall, Goshen, Harwinton, Kent Litchfield, Morris, Norfolk, North Canaan, Roxbury, Salisbury Sharon, Torrington, Warren, Washington, Winchester, MIDDLESEX county towns of: Chester, Deep River, Essex, O:d Saybrook Westbrook, NEW LONDON county towns of: Lebanon, Lyme Voluntown, TOLLAND county towns of: Mansfield, Union, WINDHAM county towns of: Ashford, Brooklyn, Chaplin, Eastford, Hampton Killingly, Plainfield, Pomfret, Putnam, Scotland, Sterling Thompson, Windham, Woodstock
MANCHESTER, NEW HAMPSHIRE OFFICE METROPOLITAN ALLOCATION AREAS Vermont - Burlington	873,857	23	CHITTENDEN county towns of: Burlington, Charlotte, Colchester Essex, Hinesburg, Jericho, Milton, Richmond, St George Shelburne, South Burlington, Williston, Winooski, FRANKLIN county towns of: Georgia, GRAND ISLE county towns of: Grande Isle, South Hero
Metropolitan New Hampshire	2,949,905	79	ROCKINGHAM county towns of: Atkinson, Brentwood, Danville Derry, East Kingston, Hampstead, Kingston, Newton, Plaistow Salem, Sandown, Seabrook, Windham, HILLSBOROUGH county towns of: Bedford, Goffstown, Manchester, MERRIMACK county towns of: Allenstown, Hooksett, ROCKINGHAM county towns of: Auburn Candia, HILLSBOROUGH county towns of: Pelham, HILLSBOROUGH county towns of: Amherst, Brookline, Hollis, Hudson Litchfield, Merrimack, Milford, Mont Vernon, Nashua, Wilton ROCKINGHAM county towns of: Londonderry, ROCKINGHAM county towns of: Exeter, Greenland, Hampton, New Castle, Newfields Newington, Newmarket, North Hampton, Portsmouth, Rye, Stratham STRAFFORD county towns of: Barrington, Dover, Durham Farmington, Lee, Madbury, Milton, Rochester, Rollinsford Somersworth
Metropolitan Maine	2,658,536	71	PENOBSCOT county towns of: Bangor, Brewer, Eddington, Glenburn Hampden, Hermon, Holden, Kenduskeag, Old Town, Orono Orrington, Penobscot Indian I, Veazie, WALDO county towns of: Winterport, ANDROSCOGGIN county towns of: Auburn, Greene Lewiston, Lisbon, Mechanic Falls, Poland, Sabattus, CUMBERLAND county towns of: Cape Elizabeth, Cumberland, Falmouth Freeport, Gorham, Gray, North Yarmouth, Portland, Raymond Scarborough, South Portland, Standish, Westbrook, Windham Yarmouth, YORK county towns of: Buxton, Hollis Old Orchard Beach, YORK county towns of: Berwick, Eliot Kittery, North Berwick, South Berwick, Wells, York
NONMETROPOLITAN ALLOCATION AREAS Nonmetropolitan Vermont Statewide	3,333,887	107	ADDISON, BENNINGTON, CALEDONIA, CHITTENDEN county towns of: Bolton, Buels, Huntington, Underhill, Westford, ESSEX FRANKLIN county towns of: Bakersfield, Berkshire, Enosburg

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	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			Fairfax, Fairfield, Fletcher, Franklin, Highgate, Montgomery Richford, St. Albans, St. Albans, Sheldon, Swanton, GRAND ISLE county towns of: Alburg, Isle La Motte, North Hero, LAMOILLE ORANGE, ORLEANS, RUTLAND, WASHINGTON, WINDHAM, WINDSOR
Nonmetropolitan New Hampshire Statewide	3,391,390	108	BELKNAP, CARROLL, CHESHIRE, COOS, GRAFTON, HILLSBOROUGH county towns of: Antrim, Bennington, Deering, Francestown, Greenfield Greenville, Hancock, Hillsborough, Lyndeborough, Mason New Boston, New Ipswich, Peterborough, Sharon, Temple, Weare Windsor, MERRIMACK county towns of: Andover, Boscawen, Bow Bradford, Canterbury, Chichester, Concord, Danbury, Dunbarton Epsom, Franklin, Henniker, Hill, Hopkinton, Loudon, Newbury New London, Northfield, Pembroke, Pittsfield, Salisbury Sutton, Warner, Webster, Wilmot, ROCKINGHAM county towns of: Chester, Deerfield, Epping, Fremont, Hampton Falls, Kensington Northwood, Nottingham, Raymond, South Hampton, STRAFFORD county towns of: Middleton, New Durham, Strafford, SULLIVAN
Nonmetropolitan Maine Statewide	5,153,900	166	ANDROSCOGGIN county towns of: Durham, Leeds, Livermore Livermore Falls, Minot, Turner, Wales, AROOSTOOK, CUMBERLAND county towns of: Baldwin, Bridgton, Brunswick, Casco Harpswell, Harrison, Naples, New Gloucester, Pownal, Sebago FRANKLIN, HANCOCK, KENNEBEC, KNOX, LINCOLN, OXFORD, PENOBSCOT county towns of: Alton, Argyle, Bradford, Bradley, Burlington Carmel, Carroll, Charleston, Chester, Clifton, Corinna Corinth, Dexter, Dixmont, Drew, East Millinocket, Edinburg Enfield, Etna, Exeter, Garland, Grand Falls, Greenbush Greenfield, Howland, Hudson, Kingman, Lagrange, Lakeville, Lee Levant, Lincoln, Lowell, Mattawamkeag, Maxfield, Medway Milford, Millinocket, Mount Chase, Newburgh, Newport North Penobscot, Passadumkeag, Patten, Plymouth, Prentiss Seboeis, Springfield, Stacyville, Stetson, Summit, Twombly Webster, Whitney, Winn, Woodville, PISCATAQUIS, SAGADAHOC SOMERSET, WALDO county towns of: Belfast, Belmont, Brooks Burnham, Frankfort, Freedom, Islesboro, Jackson, Knox, Liberty Lincolnville, Monroe, Montville, Morrill, Northport, Palermo Prospect, Searsmont, Searsport, Stockton Springs, Swanville Thorndike, Troy, Unity, Waldo, WASHINGTON, YORK county towns of: Acton, Alfred, Arundel, Biddeford, Cornish, Dayton Kennebunk, Kennebunkport, Lebanon, Limerick, Limington, Lyman Newfield, Parsonfield, Saco, Sanford, Shapleigh, Waterboro
PROVIDENCE, RHODE ISLAND OFFICE METROPOLITAN ALLOCATION AREAS			
Statewide Metropolitan Allocation Area	5,702,187	163	NEWPORT county towns of: Little Compton, Tiverton, WASHINGTON county towns of: Hopkinton, Westerly, PROVIDENCE county towns of: Burrillville, Central Falls, Cumberland, Lincoln North Smithfield, Pawtucket, Smithfield, Woonsocket, BRISTOL county towns of: Barrington, Bristol, Warren, KENT county towns of: Coventry, East Greenwich, Warwick, West Warwick NEWPORT county towns of: Jamestown, PROVIDENCE county towns of: Cranston, East Providence, Foster, Glocester, Johnston North Providence, Providence, Scituate, WASHINGTON county towns of: Exeter, Narragansett, North Kingstown, Richmond South Kingstown

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	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
NONMETROPOLITAN ALLOCATION AREAS			
Statewide Nonmetropolitan Allocation Area	842,370	21	KENT county towns of: West Greenwich, NEWPORT county towns of: Middletown, Newport, Portsmouth, WASHINGTON county towns of: Charlestown, New Shoreham
HUD REGION II (NEW YORK)			
BUFFALO, NEW YORK OFFICE			
METROPOLITAN ALLOCATION AREAS			
ALBANY-SCHENECTADY-TROY/GLENS FALLS, NY	3,772,201	134	ALBANY, GREENE, MONTGOMERY, RENSSELAER, SARATOGA, SCHENECTADY WARREN, WASHINGTON
BUFFALO-NIAGARA FALLS/JAMESTOWN-DUNKIRK, NY	5,885,159	210	ERIE, NIAGARA, CHAUTAUQUA
SYRACUSE/UTICA-ROME/BINGHAMTON/ELMIRA, NY	5,323,369	189	MADISON, ONONDAGA, OSWEGO, HERKIMER, ONEIDA, BROOME, TIOGA CHEMUNG
ROCHESTER, NY	5,116,786	183	LIVINGSTON, MONROE, ONTARIO, ORLEANS, WAYNE
NONMETROPOLITAN ALLOCATION AREAS			
NORTHEAST NEW YORK	3,233,967	122	CLINTON, ESSEX, FRANKLIN, FULTON, HAMILTON, JEFFERSON, LEWIS ST LAWRENCE
SOUTHEAST NEW YORK	4,222,184	159	TOMPKINS, CAYUGA, CORTLAND, COLUMBIA, CHENANGO, DELAWARE OTSEGO, SCHOHARIE
SOUTHWEST NEW YORK	2,237,579	84	ALLEGANY, CATTARAUGUS, GENESEE, SCHUYLER, SENECA, STEUBEN WYOMING, YATES
NEW YORK, NEW YORK OFFICE			
METROPOLITAN ALLOCATION AREAS			
Nassau Count,	4,335,992	115	NASSAU
Suffolk County	3,618,345	96	SUFFOLK
New York Pmsa	145,023,080	3837	NEW YORK, PUTNAM, ROCKLAND, WESTCHESTER
Dutchess & Orange Counties	2,722,471	72	ORANGE, DUTCHESS
NONMETROPOLITAN ALLOCATION AREAS			
Sullivan & Ulster Counties	1,835,174	57	SULLIVAN, ULSTER
NEWARK, NEW JERSEY OFFICE			
METROPOLITAN ALLOCATION AREAS			
BERGEN-PASSAIC NJ	9,723,204	237	BERGEN, PASSAIC
JERSEY CITY NJ	9,141,467	223	HUDSON
NEWARK NJ	17,047,414	417	ESSEX, MORRIS, SUSSEX, UNION, WARREN
SOUTH CENTRAL NEW JERSEY	16,686,389	407	ATLANTIC, BURLINGTON, CAMDEN, CAPE MAY, CUMBERLAND, GLOUCESTER HUNTERDON, MERCER, MIDDLESEX, MONMOUTH, OCEAN, SALEM, SOMERSET
HUD REGION III (PHILADELPHIA)			
BALTIMORE, MARYLAND OFFICE			
METROPOLITAN ALLOCATION AREAS			
MARYLAND METROPOLITAN	14,483,150	451	ANNE ARUNDEL, BALTIMORE, CARROLL, HARFORD, HOWARD QUEEN ANNE'S, BALTIMORE, ALLEGANY, WASHINGTON, CALVERT CHARLES, FREDERICK, CECIL
NONMETROPOLITAN ALLOCATION AREAS			
MARYLAND NON METROPOLITAN	2,137,032	76	CAROLINE, DORCHESTER, GARRETT, KENT, ST MARY'S, SOMERSET TALBOT, WICOMICO, WORCESTER
CHARLESTON, WEST VIRGINIA OFFICE			
METROPOLITAN ALLOCATION AREAS			

FISCAL YEAR 1991 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
ALL METRO COUNTIES	2,330,289	88	KANAWHA, PUTNAM, MINERAL, CABELL, WAYNE, WOOD, BROOKE, HANCOCK MARSHALL, OHIO
NONMETROPOLITAN ALLOCATION AREAS ALL NONMETRO COUNTIES	6,365,177	288	BARBOUR, BERKELEY, BOONE, BRAXTON, CALHOUN, CLAY, DODDRIDGE FAYETTE, GILMER, GRANT, GREENBRIER, HAMPSHIRE, HARDY, HARRISON JACKSON, JEFFERSON, LEWIS, LINCOLN, LOGAN, MCDOWELL, MARION MASON, MERCER, MINGO, MONONGALIA, MONROE, MORGAN, NICHOLAS PENDLETON, PLEASANTS, POCAHONTAS, PRESTON, RALEIGH, RANDOLPH RITCHIE, ROANE, SUMMERS, TAYLOR, TUCKER, TYLER, UPSHUR WEBSTER, WETZEL, WIRT, WYOMING
PHILADELPHIA, PENNSYLVANIA OFFICE			
METROPOLITAN ALLOCATION AREAS			
ALLENTOWN/BETHLEHEM	2,510,400	79	CARBON, LEHIGH, NORTHAMPTON
HARRISBURG/LEBANON/CARLISLE	2,559,362	81	CUMBERLAND, DAUPHIN, LEBANON, PERRY
LANCASTER/READING/YORK	4,662,080	148	LANCASTER, BERKS, ADAMS, YORK
PHILADELPHIA, WILMINGTON	18,650,242	989	BUCKS, CHESTER, DELAWARE, MONTGOMERY, PHILADELPHIA, NEW CASTLE
SCRANTON/WILKES-BARRE/STATE COL./WILLIAMSPORT	3,881,176	122	COLUMBIA, LACKAWANNA, LUZERNE, MONROE, WYOMING, CENTRE LYCOMING
NONMETROPOLITAN ALLOCATION AREAS NONMETROPOLITAN DELAWARE/PENNSYLVANIA	5,186,033	195	BRADFORD, CLINTON, FRANKLIN, JUNIATA, MIFFLIN, MONTOUR NORTHUMBERLAND, PIKE, SCHUYLKILL, SNYDER, SULLIVAN SUSQUEHANNA, TIOGA, UNION, WAYNE, KENT, SUSSEX
PITTSBURGH, PENNSYLVANIA OFFICE			
METROPOLITAN ALLOCATION AREAS ALL METRO COUNTIES	11,096,420	426	BLAIR, BEAVER, ERIE, CAMBRIA, SOMERSET, ALLEGHENY, FAYETTE WASHINGTON, WESTMORELAND, MERCER
NONMETROPOLITAN ALLOCATION AREAS ALL NONMETRO COUNTIES	5,127,663	199	ARMSTRONG, BEDFORD, BUTLER, CAMERON, CLARION, CLEARFIELD CRAWFORD, ELK, FOREST, FULTON, GREENE, HUNTINGDON, INDIANA JEFFERSON, LAWRENCE, MCKEAN, POTTER, VENANGO, WARREN
RICHMOND, VIRGINIA OFFICE			
METROPOLITAN ALLOCATION AREAS			
Richmond-Petersburg-Hopewell, VA MSA	3,212,926	115	CHARLES CITY, CHESTERFIELD, DINWIDDIE, GOOCHLAND, HANOVER HENRICO, NEW KENT, POWHATAN, PRINCE GEORGE, COLONIAL HEIGHTS HOPEWELL, PETERSBURG, RICHMOND
Norfolk-Virginia Beach-Newport News, Va MSA	4,622,290	166	GLOUCESTER, JAMES CITY, YORK, CHESAPEAKE, HAMPTON NEWPORT NEWS, NORFOLK, POQUOSON, PORTSMOUTH, SUFFOLK VIRGINIA BEACH, WILLIAMSBURG
All Other MSAs	2,651,863	97	ALBEMARLE, FLUVANNA, GREENE, CHARLOTTESVILLE, PITTSYLVANIA DANVILLE, AMHERST, CAMPBELL, LYNCHBURG, SCOTT, WASHINGTON BRISTOL, BOTETOURT, ROANOKE, ROANOKE, SALEM, STAFFORD
NONMETROPOLITAN ALLOCATION AREAS Nonmetro Portion of Virginia	8,535,636	375	ACCOMACK, ALLEGHANY, AMELIA, APPOMATTOX, AUGUSTA, BATH BEDFORD, BLAND, BRUNSWICK, BUCHANAN, BUCKINGHAM, CAROLINE CARROLL, CHARLOTTE, CLARKE, CRAIG, CULPEPER, CUMBERLAND DICKENSON, ESSEX, FAUQUIER, FLOYD, FRANKLIN, FREDERICK, GILES GRAYSON, GREENSVILLE, HALIFAX, HENRY, HIGHLAND, ISLE OF WIGHT KING AND QUEEN, KING GEORGE, KING WILLIAM, LANCASTER, LEE LOUISA, LUNENBURG, MADISON, MATHEWS, MECKLENBURG, MIDDLESEX MONTGOMERY, NELSON, NORTHAMPTON, NORTHUMBERLAND, NOTTOWAY

FISCAL YEAR 1991 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			ORANGE, PAGE, PATRICK, PRINCE EDWARD, PULASKI, RAPPAHANNOCK RICHMOND, ROCKBRIDGE, ROCKINGHAM, RUSSELL, SHENANDOAH, SMYTH SOUTHAMPTON, SPOTSYLVANIA, SURRY, SUSSEX, TAZEWELL, WARREN WESTMORELAND, WISE, WYTHE, BEDFORD, BUENA VISTA, CLIFTON FORGE COVINGTON, EMPORIA, FRANKLIN, FREDERICKSBURG, GALAX HARRISONBURG, LEXINGTON, MARTINSVILLE, NORTON, RADFORD SOUTH BOSTON, STAUNTON, WAYNESBORO, WINCHESTER
WASHINGTON, D C. OFFICE			
METROPOLITAN ALLOCATION AREAS			
Washington, D.C.	21,283,152	498	MONTGOMERY, PRINCE GEORGE'S, WASHINGTON, ARLINGTON, FAIRFAX LOUDOUN, PRINCE WILLIAM, ALEXANDRIA, FAIRFAX, FALLS CHURCH MANASSAS, MANASSAS PARK
H.D REGION IV (ATLANTA)			
ATLANTA, GEORGIA OFFICE			
METROPOLITAN ALLOCATION AREAS			
GA. METRO ALLOCATION AREA NO. 1	3,829,779	130	FULTON
GA. METRO ALLOCATION AREA NO. 2	1,923,271	65	DE KALB
GA. METRO ALLOCATION AREA NO. 3	2,905,189	100	BARROW, BUTTS, CHEROKEE, CLAYTON, COBB, COWETA, DOUGLAS FAYETTE, FORSYTH, GWINNETT, HENRY, NEWTON, PAULDING, ROCKDALE SPALDING, WALTON
GA. METRO ALLOCATION AREA NO. 4	6,470,775	219	BIBB, CHATTAHOOCHEE, HOUSTON, JONES, MUSCOGEE, PEACH, CATOOSA CHATHAM, CLARKE, COLUMBIA, DADE, DOUGHERTY, EFFINGHAM, JACKSON LEE, MCDUFFIE, MADISON, OCONEE, RICHMOND, WALKER
NONMETROPOLITAN ALLOCATION AREAS			
GA. NONMETRO ALLOCATION AREA NO. 1	1,525,558	77	BARTOW, CHATTOOGA, FLOYD, GILMER, GORDON, HARALSON, MURRAY PICKENS, POLK, WHITFIELD
GA. NONMETRO ALLOCATION AREA NO. 2	1,560,867	80	BANKS, DAWSON, ELBERT, FANNIN, FRANKLIN, GREENE, HABERSHAM HALL, HART, LINCOLN, LUMPKIN, MORGAN, OGLETHORPE, RABUN STEPHENS, TALIAFERRO, TOWNS, UNION, WARREN, WHITE, WILKES
GA. NONMETRO ALLOCATION AREA NO. 3	1,325,938	68	CARROLL, HARRIS, HEARD, LAMAR, MERIWETHER, MONROE, PIKE TALBOT, TROUP, UPSON
GA. NONMETRO ALLOCATION AREA NO. 4	1,436,611	73	BALDWIN, BEN HILL, BLECKLEY, CRAWFORD, CRISP, DODGE, GLASCOCK HANCOCK, JASPER, JOHNSON, LAURENS, PULASKI, PUTNAM, TELFAIR TWIGGS, WASHINGTON, WHEELER, WILCOX, WILKINSON
GA. NONMETRO ALLOCATION AREA NO. 5	1,641,177	82	BRYAN, BULLOCH, BURKE, CANDLER, EMANUEL, EVANS, JEFFERSON JENKINS, LIBERTY, LONG, MCINTOSH, MONTGOMERY, SCREVEN TATTNALL, TOOMBS, TREUTLEN
GA. NONMETRO ALLOCATION AREA NO. 6	2,137,891	108	BAKER, BROOKS, CALHOUN, CLAY, COLQUITT, DECATUR, DOOLY, EARLY GRADY, MACON, MARION, MILLER, MITCHELL, QUITMAN, RANDOLPH SCHLEY, SEMINOLE, STEWART, SUMTER, TAYLOR, TERRELL, THOMAS WEBSTER, WORTH
GA. NONMETRO ALLOCATION AREA NO. 7	2,298,960	118	APPLING, ATKINSON, BACON, BERRIEN, BRANTLEY, CAMDEN, CHARLTON CLINCH, COFFEE, COOK, ECHOLS, GLYNN, IRWIN, JEFF DAVIS, LANIER LOWNDES, PIERCE, TIFT, TURNER, WARE, WAYNE
BIRMINGHAM, ALABAMA OFFICE			
METROPOLITAN ALLOCATION AREAS			
METROPOLITAN ALLOCATION AREA 1	1,408,496	62	DALE, HOUSTON, AUTAUGA, ELMORE, MONTGOMERY, RUSSELL
METROPOLITAN ALLOCATION AREA 2	1,220,673	54	BALDWIN, MOBILE
METROPOLITAN ALLOCATION AREA 4	3,497,983	152	CALHOUN, BLOUNT, JEFFERSON, ST CLAIR, SHELBY, WALKER

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	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
METROPOLITAN ALLOCATION AREA 3	1,733,420	76	TUSCALOOSA MADISON, COLBERT, LAUDERDALE, LAWRENCE, MORGAN, ETOWAH
NONMETROPOLITAN ALLOCATION AREAS			
NON-METROPOLITAN ALLOCATION AREA 1	1,419,360	77	COFFEE, PIKE, LEE, HENRY, GENEVA, CRENSHAW, BULLOCK, BARBOUR CHAMBERS
NON-METROPOLITAN ALLOCATION AREA 2	1,070,604	58	BUTLER, LOWNDES, MACON, COVINGTON, DALLAS
NON-METROPOLITAN ALLOCATION AREA 3	1,169,087	63	JACKSON, MARSHALL, DE KALB, CHEROKEE, WINSTON, LIMESTONE LAMAR, FRANKLIN, CULLMAN
NON-METROPOLITAN ALLOCATION AREA 4	1,258,387	70	CLEBURNE, CLAY, COOSA, TALLADEGA, TALLAPOOSA, RANDOLPH, HALE GREENE, FAYETTE, BIBB, CHILTON
NON-METROPOLITAN ALLOCATION AREA 5	1,043,744	58	CHOCTAW, CLARKE, CONECUH, ESCAMBIA, MARENGO, MARION, MONROE PERRY, PICKENS, SUMTER, WASHINGTON, WILCOX
CARIBBEAN OFFICE			
METROPOLITAN ALLOCATION AREAS			
Caribbean - Metropolitan Areas	8,402,355	329	AGUADA MUNICIPIO, AGUADILLA MUNICIPIO, ISABELA MUNICIPIO MOCA MUNICIPIO, ARECIBO MUNICIPIO, CAMUY PUEBLO HATILLO MUNICIPIO, QUEBRADILLAS MUNICIPIO AGUAS BUENAS MUNICIPIO, CAGUAS MUNICIPIO, CAYEY MUNICIPIO CIDRA MUNICIPIO, GURABO MUNICIPIO, SAN LORENZO MUNICIPIO ANASCO MUNICIPIO, CABO ROJO MUNICIPIO, HORMIGUEROS MUNICIPIO MAYAGUEZ MUNICIPIO, SAN GERMAN MUNICIPIO, JUANA DIAZ MUNICIPIO PONCE MUNICIPIO, BARCELONETA MUNICIPIO, BAYAMON MUNICIPIO CANOVANAS MUNICIPIO, CAROLINA MUNICIPIO, CATANO MUNICIPIO COROZAL MUNICIPIO, DORADO MUNICIPIO, FAJARDO MUNICIPIO FLORIDA MUNICIPIO, GUAYNABO MUNICIPIO, HUMACAO MUNICIPIO JUNCOS MUNICIPIO, LAS PIEDRAS MUNICIPIO, LOIZA MUNICIPIO LUQUILLO MUNICIPIO, MANATI MUNICIPIO, NARANJITO MUNICIPIO RIO GRANDE MUNICIPIO, SAN JUAN MUNICIPIO, TOA ALTA MUNICIPIO TOA BAJA MUNICIPIO, TRUJILLO ALTO MUNICIPIO VEGA ALTA MUNICIPIO, VEGA BAJA MUNICIPIO
NONMETROPOLITAN ALLOCATION AREAS			
Caribbean - Nonmetropolitan Areas	3,353,344	166	ADJUNTAS MUNICIPIO, AIBONITO MUNICIPIO, ARROYO MUNICIPIO BARRANQUITAS MUNICIPIO, CEIBA MUNICIPIO, CIALES MUNICIPIO COAMA MUNICIPIO, COMERIO MUNICIPIO, CULEBRA MUNICIPIO GUANICA MUNICIPIO, GUAYAMA MUNICIPIO, GUAYANILLA MUNICIPIO JAYUYA MUNICIPIO, LAJAS MUNICIPIO, LARES MUNICIPIO LAS MARIAS MUNICIPIO, MARICAO MUNICIPIO, MAUNABO MUNICIPIO MOROVIS MUNICIPIO, NAGUABO MUNICIPIO, OROCOVIS MUNICIPIO PATILLAS MUNICIPIO, PENUELAS MUNICIPIO, RINCON MUNICIPIO SABANA GRANDE MUNICIPIO, SALINAS MUNICIPIO SAN SEBASTIAN MUNICIPIO, SANTA ISABEL MUNICIPIO UTUADO MUNICIPIO, VIEQUES MUNICIPIO, VILLALBA MUNICIPIO YABUCOA MUNICIPIO, YAUCO MUNICIPIO, VIRGIN ISLANDS
COLUMBIA, SOUTH CAROLINA OFFICE			
METROPOLITAN ALLOCATION AREAS			
Metropolitan Allocation Area 1	5,391,307	226	ANDERSON, AIKEN, BERKELEY, CHARLESTON, DORCHESTER, YORK LEXINGTON, RICHLAND, FLORENCE, GREENVILLE, PICKENS SPARTANBURG
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetropolitan Allocation Area 1	5,913,120	295	ABBEVILLE, ALLENDALE, BAMBERG, BARNWELL, BEAUFORT, CALHOUN CHEROKEE, CHESTER, CHESTERFIELD, CLARENDON, COLLETON

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	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
GREENSBORO, NORTH CAROLINA OFFICE			DARLINGTON, DILLON, EDGEFIELD, FAIRFIELD, GEORGETOWN GREENWOOD, HAMPTON, HORRY, JASPER, KERSHAW, LANCASTER, LAURENS LEE, MCCORMICK, MARION, MARLBORO, NEWBERRY, OCONEE, ORANGEBURG SALUDA, SUMTER, UNION, WILLIAMSBURG
METROPOLITAN ALLOCATION AREAS			
CHARLOTTE-GASTONIA MSA	2,776,188	112	CABARRUS, GASTON, LINCOLN, MECKLENBURG, ROWAN, UNION
GREENSBORO--WINSTON SALEM--HIGH POINT MSA	2,429,451	99	DAVIDSON, DAVIE, FORSYTH, GUILFORD, RANDOLPH, STOKES, YADKIN
RALEIGH-DURHAM MSA	2,411,549	99	DURHAM, FRANKLIN, ORANGE, WAKE
ALL OTHER METROPOLITAN AREAS, N.C.	2,452,423	100	BUNCOMBE, ALAMANCE, CUMBERLAND, ALEXANDER, BURKE, CATAWBA ONSLOW, NEW HANOVER
NONMETROPOLITAN ALLOCATION AREAS			
NON-METROPOLITAN COUNTIES, WESTERN N.C.	6,298,769	298	ALLEGHANY, ANSON, ASHE, AVERY, CALDWELL, CASWELL, CHATHAM CHEROKEE, CLAY, CLEVELAND, GRAHAM, GRANVILLE, HAYWOOD HENDERSON, IREDELL, JACKSON, JOHNSTON, LEE, MCDOWELL, MACON MADISON, MITCHELL, MONTGOMERY, MOORE, PERSON, POLK, RICHMOND ROCKINGHAM, RUTHERFORD, STANLY, SURRY, SWAIN, TRANSYLVANIA VANCE, WARREN, WATAUGA, WILKES, YANCEY
NON-METROPOLITAN COUNTIES, EASTERN N.C.	7,628,996	355	BEAUFORT, BERTIE, BLADEN, BRUNSWICK, CAMDEN, CARTERET, CHOWAN COLUMBUS, CRAVEN, CURRITUCK, DARE, DUPLIN, EDGECOMBE, GATES GREENE, HALIFAX, HARNETT, HERTFORD, HOKE, HYDE, JONES, LENOIR MARTIN, NASH, NORTHAMPTON, PAMLICO, PASQUOTANK, PENDER PERQUIMANS, PITT, ROBESON, SAMPSON, SCOTLAND, TYRRELL WASHINGTON, WAYNE, WILSON
JACKSON, MISSISSIPPI OFFICE			
METROPOLITAN ALLOCATION AREAS			
Metropolitan Allocation Area No. 1	2,151,713	85	HANCOCK, HARRISON, HINDS, MADISON, RANKIN, DE SOTO, JACKSON
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetropolitan Allocation Area No. 1	10,308,304	532	ADAMS, ALCORN, AMITE, ATTALA, BENTON, BOLIVAR, CALHOUN CARROLL, CHICKASAW, CHOCTAW, CLAIBORNE, CLARKE, CLAY, COAHOMA COPIAH, COVINGTON, FORREST, FRANKLIN, GEORGE, GREENE, GRENADA HOLMES, HUMPHREYS, ISSAQUENA, ITAWAMBA, JASPER, JEFFERSON JEFFERSON DAVIS, JONES, KEMPER, LAFAYETTE, LAMAR, LAUDERDALE LAWRENCE, LEAKE, LEE, LEFLORE, LINCOLN, LOWNDES, MARION MARSHALL, MONROE, MONTGOMERY, NESHOBA, NEWTON, NOXUBEE OKTIBBEHA, PANOLA, PEARL RIVER, PERRY, PIKE, PONTOTOC PRENTISS, QUITMAN, SCOTT, SHARKEY, SIMPSON, SMITH, STONE SUNFLOWER, TALLAHATCHIE, TATE, TIPPAH, TISHOMINGO, TUNICA UNION, WALTHALL, WARREN, WASHINGTON, WAYNE, WEBSTER, WILKINSON WINSTON, YALOBUSHA, YAZOO
JACKSONVILLE, FLORIDA OFFICE			
METROPOLITAN ALLOCATION AREAS			
MIAMI-FT LAUDERDALE	16,349,476	536	DADE, BROWARD
WEST PALM BEACH-FT PIERCE	2,332,824	78	PALM BEACH, MARTIN, ST LUCIE
TAMPA-ST PETERSBURG-CLEARWATER	5,463,075	180	HERNANDO, HILLSBOROUGH, PASCO, PINELLAS
JACKSONVILLE-OCALA-DAYTONA BEACH-GAINESVILLE	5,423,716	178	CLAY, DUVAL, NASSAU, ST JOHN, MARION, VOLUSIA, ALACHUA BRADFORD
ORLANDO-MELBOURNE	3,237,592	106	ORANGE, OSCEOLA, SEMINOLE, BREVARD
PENSACOLA-FT WALTON-PANAMA CITY-TALLAHASSEE	2,477,136	81	ESCAMBIA, SANTA ROSA, OKALOOSA, BAY, GADSDEN, LEON
LAKELAND-BRADENTON-NAPLES-SARASOTA-FT MYERS	2,876,843	95	POLK, MANATEE, COLLIER, SARASOTA, LEE

FISCAL YEAR 1991 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
NONMETROPOLITAN ALLOCATION AREAS			
NONMETROPOLITAN ALLOCATION AREA 1	4,367,039	175	BAKER, CALHOUN, CHARLOTTE, CITRUS, COLUMBIA, DE SOTO, DIXIE FLAGLER, FRANKLIN, GILCHRIST, GLADES, GULF, HAMILTON, HARDEE HENDRY, HIGHLANDS, HOLMES, INDIAN RIVER, JACKSON, JEFFERSON LAFAYETTE, LAKE, LEVY, LIBERTY, MADISON, MONROE, OKEECHOBEE PUTNAM, SUMTER, SUWANNEE, TAYLOR, UNION, WAKULLA, WALTON WASHINGTON
LOUISVILLE, KENTUCKY OFFICE			
METROPOLITAN ALLOCATION AREAS			
METROPOLITAN ALLOCATION AREA	3,849,844	160	BOURBON, BULLITT, CLARK, FAYETTE, JEFFERSON, JESSAMINE, OLDHAM SCOTT, SHELBY, WOODFORD
METROPOLITAN ALLOCATION AREA 2	1,792,570	74	BOONE, BOYD, CAMPBELL, CARTER, CHRISTIAN, DAVIESS, GREENUP HENDERSON, KENTON
NONMETROPOLITAN ALLOCATION AREAS			
NONMETROPOLITAN ALLOCATION AREA - NORTHEAST	1,051,581	52	BRACKEN, ROBERTSON, MASON, FLEMING, LEWIS, MONTGOMERY, BATH ROWAN, POWELL, MENIFEE, MORGAN, ELLIOTT, LAWRENCE, JOHNSON MARTIN
NONMETROPOLITAN ALLOCATION AREA - SOUTH CENTR	1,777,742	88	ANDERSON, FRANKLIN, HARRISON, NICHOLAS, CUMBERLAND, ADAIR GREEN, TAYLOR, CLINTON, RUSSELL, WAYNE, MCCREARY, PULASKI CASEY, LINCOLN, GARRARD, MADISON
NONMETROPOLITAN ALLOCATION AREA - SOUTHEAST	2,754,864	138	ESTILL, LEE, WOLFE, MAGOFFIN, FLOYD, PIKE, JACKSON, LAUREL WHITLEY, KNOX, BELL, CLAY, LESLIE, HARLAN, OWSLEY, BREATHITT PERRY, KNOTT, LETCHER, ROCKCASTLE
NONMETROPOLITAN ALLOCATION AREA - MIDWEST	1,395,574	70	UNION, WEBSTER, MCLEAN, HANCOCK, OHIO, BUTLER, LOGAN, SIMPSON WARREN, ALLEN, MONROE, METCALFE, BARREN, HART, EDMONSON
NONMETROPOLITAN ALLOCATION AREA - FAR WEST	1,311,867	64	FULTON, BALLARD, CARLISLE, HICKMAN, MCCRACKEN, GRAVES CALLOWAY, MARSHALL, LIVINGSTON, CRITTENDEN, LYON, TRIGG CALDWELL, HOPKINS, MUHLENBERG, TODD
NONMETROPOLITAN ALLOCATION AREA - NORTH CETN\	1,429,924	70	GRAYSON, BRECKINRIDGE, MEADE, HARDIN, LARUE, NELSON, MARION WASHINGTON, SPENCER, TRIMBLE, HENRY, CARROLL, GALLATIN, OWEN GRANT, PENDLETON, MERCER, BOYLE
KNOXVILLE, TENNESSEE OFFICE			
METROPOLITAN ALLOCATION AREAS			
METROPOLITAN ALLOCATION AREA 1	3,620,543	155	HAMILTON, MARION, SEQUATCHIE, CARTER, HAWKINS, SULLIVAN UNICOI, WASHINGTON, ANDERSON, BLOUNT, GRAINGER, JEFFERSON KNOX, SEVIER, UNION
NONMETROPOLITAN ALLOCATION AREAS			
NON-METROPOLITAN ALLOCATION AREA 1	2,237,751	117	BLEDSOE, BRADLEY, CAMPBELL, CLAIBORNE, COCKE, CUMBERLAND FENTRESS, GREENE, GRUNDY, HAMBLEN, HANCOCK, JOHNSON, LOUDON MCMINN, MEIGS, MONROE, MORGAN, PICKETT, POLK, RHEA, ROANE SCOTT
NASHVILLE, TENNESSEE OFFICE			
METROPOLITAN ALLOCATION AREAS			
MEMPHIS-JACKSON TN. ALLOCATION AREA	3,817,182	147	SHELBY, TIPTON, MADISON
NASHVILLE-CLARKSVILLE TN. ALLOCATION AREA	3,445,066	132	CHEATHAM, DAVIDSON, DICKSON, ROBERTSON, RUTHERFORD, SUMNER WILLIAMSON, WILSON, MONTGOMERY
NONMETROPOLITAN ALLOCATION AREAS			
WEST TN. ALLOCATION AREA	1,956,700	102	BENTON, CARROLL, CHESTER, CROCKETT, DECATUR, DYER, FAYETTE GIBSON, HARDEMAN, HARDIN, HAYWOOD, HENDERSON, HENRY, LAKE LAUDERDALE, MCNAIRY, OBION, WEAKLEY

FISCAL YEAR 1991 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
MIDDLE TN. ALLOCATION AREA	2,279,395	115	BEDFORD, CANNON, CLAY, COFFEE, DE KALB, FRANKLIN, GILES HICKMAN, JACKSON, LAWRENCE, LEWIS, LINCOLN, MACON, MARSHALL MAURY, MOORE, OVERTON, PERRY, PUTNAM, SMITH, VAN BUREN, WARREN WAYNE, WHITE, STEWART, HOUSTON, HUMPHREYS, TROUSDALE
HUD REGION V (CHICAGO)			
CHICAGO, ILLINOIS OFFICE			
METROPOLITAN ALLOCATION AREAS			
METRO I CHICAGO	43,494,438	1222	COOK, DU PAGE, MCHENRY
METRO II CHICAGO COLLAR COUNTIES	2,972,458	84	LAKE, KANE, KENDALL, GRUNDY, WILL
METRO III ROCKFORD	2,166,063	61	BOONE, WINNEBAGO
METRO IV BLOOMINGTON CHAMPAIGN DECATUR KANKE.	2,373,352	67	MCLEAN, CHAMPAIGN, MACON, KANKAKEE
METRO V PEORIA ROCK ISLAND SPRINGFIELD	2,787,057	79	PEORIA, TAZEWELL, WOODFORD, HENRY, ROCK ISLAND, MENARD SANGAMON
METRO VI ST. LOUIS-ILLINOIS PORTION	2,423,517	67	CLINTON, JERSEY, MADISON, MONROE, ST CLAIR
NONMETROPOLITAN ALLOCATION AREAS			
NON-METRO I	3,422,901	142	ADAMS, BROWN, BUREAU, CALHOUN, CARROLL, CASS, FULTON, GREENE HANCOCK, HENDERSON, JO DAVIESS, KNOX, LEE, MARSHALL, MCDONOUGH MERCER, OGLE, PIKE, PUTNAM, SCHUYLER, SCOTT, STARK, STEPHENSON WARREN, WHITESIDE
NON-METRO II	4,382,985	185	BOND, CHRISTIAN, COLES, DE KALB, DE WITT, DOUGLAS, EFFINGHAM FAYETTE, FORD, IROQUOIS, LA SALLE, LIVINGSTON, LOGAN, MACOUPIN MASON, MONTGOMERY, MORGAN, MOULTRIE, PIATT, SHELBY, VERMILION
NON-METRO III	3,194,764	136	ALEXANDER, CLARK, CLAY, CRAWFORD, CUMBERLAND, EDGAR, EDWARDS FRANKLIN, GALLATIN, HAMILTON, HARDIN, JACKSON, JASPER JEFFERSON, JOHNSON, LAWRENCE, MARION, MASSAC, PERRY, POPE PULASKI, RANDOLPH, RICHLAND, SALINE, UNION, WABASH, WASHINGTON WAYNE, WHITE, WILLIAMSON
CINCINNATI, OHIO OFFICE			
METROPOLITAN ALLOCATION AREAS			
CINCINNATI OFFICE - METROPOLITAN	8,210,878	319	BUTLER, CLERMONT, GREENE, HAMILTON, MIAMI, MONTGOMERY, WARREN
NONMETROPOLITAN ALLOCATION AREAS			
CINCINNATI OFFICE - NONMETROPOLITAN	1,251,391	58	ADAMS, BROWN, CLINTON, DARKE, HIGHLAND, PREBLE
CLEVELAND, OHIO OFFICE			
METROPOLITAN ALLOCATION AREAS			
AKRON-CANTON MSA AREA	2,711,665	103	PORTAGE, SUMMIT, CARROLL, STARK
CLEVELAND PMSA AREA	8,030,710	307	CUYAHOGA, GEAUGA, LAKE, MEDINA
LORAIN-TOLEDO-MANSFIELD MSA AREA	3,147,486	120	FULTON, LUCAS, WOOD, RICHLAND, LORAIN
STEUBENVILLE-YOUNGSTOWN MSA AREA	1,574,284	60	JEFFERSON, MAHONING, TRUMBULL
NONMETROPOLITAN ALLOCATION AREAS			
CLEVELAND NONMETRO AREA 1	2,210,918	94	WAYNE, ERIE, SENECA, WYANDOT, OTTAWA, SANDUSKY, HANCOCK, HENRY PAULDING, DEFIANCE, WILLIAMS
CLEVELAND NONMETRO AREA 2	2,018,057	85	ASHTABULA, COLUMBIANA, HARRISON, TUSCARAWAS, HOLMES, CRAWFORD ASHLAND, HURON
COLUMBUS, OHIO OFFICE			
METROPOLITAN ALLOCATION AREAS			
COLUMBUS OFFICE - METROPOLITAN	6,247,489	246	LAWRENCE, DELAWARE, FAIRFIELD, FRANKLIN, LICKING, MADISON PICKAWAY, UNION, CLARK, ALLEN, AUGLAIZE, WASHINGTON, BELMONT
NONMETROPOLITAN ALLOCATION AREAS			

FISCAL YEAR 1991 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
COLUMBUS OFFICE - NONMETROPOLITAN SOUTH	2,575,056	117	ATHENS, FAYETTE, GALLIA, HOCKING, JACKSON, MEIGS, MORGAN PERRY, PIKE, ROSS, SCIOTO, VINTON
COLUMBUS OFFICE - NONMETROPOLITAN NORTH	2,256,910	103	CHAMPAIGN, COSHOCTON, GUERNSEY, HARDIN, KNOX, LOGAN, MARION MERCER, MONROE, MORROW, MUSKINGUM, NOBLE, PUTNAM, SHELBY VAN WERT
DETROIT, MICHIGAN OFFICE			
METROPOLITAN ALLOCATION AREAS			
ANN ARBOR,FLINT,SAGINAW-BAY-MIDLAND MSAs	4,237,046	147	WASHTENAW, GENESEE, BAY, MIDLAND, SAGINAW
WAYNE COUNTY	10,674,598	367	WAYNE
DETROIT PMSA LESS WAYNE COUNTY	4,952,925	171	LAPEER, LIVINGSTON, MACOMB, MONROE, OAKLAND, ST CLAIR
NONMETROPOLITAN ALLOCATION AREAS			
DETROIT OFFICE NON-METRO	1,587,524	68	ALCONA, ALPENA, ARENAC, GLADWIN, HURON, IOSCO, LENAWEE MONTMORENCY, OGEMAW, OSCODA, PRESQUE ISLE, SANILAC, SHIAWASSEE TUSCOLA
GRAND RAPIDS, MICHIGAN OFFICE			
METROPOLITAN ALLOCATION AREAS			
GRAND RAPIDS--LANSING-E. LANSING MSAs	3,303,513	124	KENT, OTTAWA, CLINTON, EATON, INGHAM
CALHOUN,BERRIEN,JACKSON,KALAMAZOO&MUSKEGON CO	2,602,298	98	CALHOUN, BERRIEN, JACKSON, KALAMAZOO, MUSKEGON
NONMETROPOLITAN ALLOCATION AREAS			
NON METRO--UPPER PENISULAR	1,541,015	64	ALGER, BARAGA, CHIPPEWA, DELTA, DICKINSON, GOGEBIC, HOUGHTON KEWEENAW, IRON, LUCE, MACKINAC, MARQUETTE, MENOMINEE ONTONAGON, SCHOOLCRAFT
NON METRO--LOWER PENISULAR	4,231,335	177	IONIA, ALLEGAN, ANTRIM, BARRY, BENZIE, BRANCH, CASS CHARLEVOIX, CHEBOYGAN, CLARE, CRAWFORD, EMMET, GRAND TRAVERSE GRATIOT, HILLSDALE, ISABELLA, KALKASKA, LAKE, LEELANAU MANISTEE, MASON, MECOSTA, MISSAUKEE, MONTCALM, NEWAYGO, OCEANA OSCEOLA, OTSEGO, ROSCOMMON, ST JOSEPH, VAN BUREN, WEXFORD
INDIANAPOLIS, INDIANA OFFICE			
METROPOLITAN ALLOCATION AREAS			
METRO NORTH	3,304,272	125	LAKE, PORTER, ST JOSEPH, ELKHART, ALLEN, DE KALB, WHITLEY
METRO CENTRAL	4,859,614	185	TIPPECANOE, HOWARD, TIPTON, BOONE, HAMILTON, HANCOCK HENDRICKS, JOHNSON, MARION, MORGAN, SHELBY, MADISON, DELAWARE
METRO SOUTH	3,027,209	115	CLAY, VIGO, MONROE, DEARBORN, POSEY, VANDERBURGH, WARRICK CLARK, FLOYD, HARRISON
NONMETROPOLITAN ALLOCATION AREAS			
NONMETRO NORTH	1,862,599	86	NEWTON, BENTON, JASPER, LA PORTE, STARKE, PULASKI, WHITE CARROLL, MARSHALL, FULTON, CASS, KOSCIUSKO, MIAMI, WABASH HUNTINGTON, WELLS, ADAMS, LAGRANGE, NOBLE, STEUBEN
NONMETRO CENTRAL	1,917,753	87	WARREN, VERMILLION, FOUNTAIN, PARKE, MONTGOMERY, PUTNAM CLINTON, GRANT, BLACKFORD, JAY, RANDOLPH, HENRY, WAYNE, RUSH FAYETTE, UNION
NONMETRO SOUTH	2,317,022	105	SULLIVAN, KNOX, GIBSON, OWEN, GREENE, DAVIESS, MARTIN, PIKE DUBOIS, SPENCER, PERRY, LAWRENCE, ORANGE, CRAWFORD, BROWN JACKSON, WASHINGTON, BARTHOLOMEW, DECATUR, JENNINGS, SCOTT JEFFERSON, RIPLEY, FRANKLIN, OHIO, SWITZERLAND
MILWAUKEE, WISCONSIN OFFICE			
METROPOLITAN ALLOCATION AREAS			
Metropolitan Allocation Area #1	3,225,090	118	CALUMET, OUTAGAMIE, WINNEBAGO, DOUGLAS, CHIPPEWA, EAU CLAIRE BROWN, LA CROSSE, ST CROIX, SHEBOYGAN, MARATHON

FISCAL YEAR 1991 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
Metropolitan Allocation Area #2	3,213,326	118	ROCK, KENOSHA, DANE, RACINE
Metropolitan Allocation Area #3	6,502,195	239	MILWAUKEE, OZAUKEE, WASHINGTON, WAUKESHA
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetropolitan Allocation Area #1	2,432,639	104	COLUMBIA, CRAWFORD, DODGE, GRANT, GREEN, IOWA, JEFFERSON LAFAYETTE, RICHLAND, SAUK, VERNON, WALWORTH
Nonmetropolitan Allocation Area #2	2,466,613	107	ASHLAND, BARRON, BAYFIELD, BUFFALO, BURNETT, CLARK, DUNN, IRON JACKSON, JUNEAU, MONROE, PEPIN, PIERCE, POLK, PRICE, RUSK SAWYER, TAYLOR, TREMPEALEAU, WASHBURN, WOOD
Nonmetropolitan Allocation Area #3	2,659,226	115	ADAMS, DOOR, FLORENCE, FOND DU LAC, FOREST, GREEN LAKE KEWAUNEE, LANGLADE, LINCOLN, MANITOWOC, MARINETTE, MARQUETTE OCONTO, ONEIDA, PORTAGE, SHAWANO, VILAS, WAUPACA, WAUSHARA MENOMINEE
MINNEAPOLIS-ST. PAUL, MINNESOTA OFFICE			
METROPOLITAN ALLOCATION AREAS			
MINNEAPOLIS/ST. PAUL MSA	9,113,367	291	ANOKA, CARVER, CHISAGO, DAKOTA, HENNEPIN, ISANTI, RAMSEY SCOTT, WASHINGTON, WRIGHT
GREATER MINNESOTA METRO	1,951,057	63	ST LOUIS, OLMSTED, CLAY, BENTON, SHERBURNE, STEARNS
NONMETROPOLITAN ALLOCATION AREAS			
NORTHERN MINNESOTA	2,536,374	110	KITTSON, ROSEAU, MARSHALL, PENNINGTON, RED LAKE, POLK, NORMAN LAKE OF THE WOODS, BELTRAMI, CLEARWATER, MAHNOMEN, HUBBARD BECKER, WILKIN, OTTER TAIL, GRANT, DOUGLAS, TRAVERSE, STEVENS POPE, KOOCHICHING, ITASCA, AITKIN, CARLTON, LAKE, COOK, CASS CROW WING, WADENA, TODD, MORRISON, MILLE LACS, KANABEC, PINE
SOUTHWESTERN MINNESOTA	1,377,039	59	BIG STONE, SWIFT, CHIPPEWA, LAC QUI PARLE, YELLOW MEDICINE KANDIYOHI, MEEKER, RENVILLE, MCLEOD, LINCOLN, LYON, REDWOOD PIPESTONE, MURRAY, COTTONWOOD, ROCK, NOBLES, JACKSON
SOUTHEASTERN MINNESOTA	2,331,354	105	SIBLEY, NICOLLET, LE SUEUR, BROWN, WATONWAN, BLUE EARTH WASECA, MARTIN, FARIBAULT, RICE, GOODHUE, WABASHA, STEELE DODGE, WINONA, FREEBORN, MOWER, FILLMORE, HOUSTON

HUD REGION VI (FORT WORTH)

FORT WORTH, TEXAS OFFICE			
METROPOLITAN ALLOCATION AREAS			
CENTRAL TEXAS	1,976,136	70	BELL, CORYELL, TOM GREEN, MCLENNAN
DALLAS TEXAS	6,492,369	233	COLLIN, DALLAS, DENTON, ELLIS, KAUFMAN, ROCKWALL
EAST TEXAS	1,435,626	53	GREGG, HARRISON, GRAYSON, BOWIE, SMITH
FORT WORTH-ARLINGTON	2,691,999	97	JOHNSON, PARKER, TARRANT
FAR WEST TEXAS	4,035,207	146	EL PASO, MIDLAND, ECTOR
WEST TEXAS	2,041,225	72	TAYLOR, POTTER, RANDALL, LUBBOCK, WICHITA
NEW MEXICO	2,648,560	95	BERNALILLO, DONA ANA, LOS ALAMOS, SANTA FE
NONMETROPOLITAN ALLOCATION AREAS			
CENTRAL TEXAS	1,497,812	72	MILAM, LAMPASAS, SAN SABA, HAMILTON, MILLS, HILL, KIMBLE REAGAN, MASON, COKE, SUTTON, CONCHO, SCHLEICHER, CROCKETT MARTIN, MENARD, STERLING, IRION, NOLAN, KENT, BROWN, JONES STONEWALL, HASKELL, STEPHENS, FISHER, SCURRY, EASTLAND, KNOX COMANCHE, RUNNELS, COLEMAN, MITCHELL, SHACKELFORD THROCKMORTON, CALLAHAN
FAR WEST TEXAS	1,788,354	83	REEVES, ANDREWS, MARION, HOWARD, PECOS, GAINES, TERRELL, CRANE UPTON, LOVING, WARD, DAWSON, GLASSCOCK, BORDEN, WINKLER BAILEY, KING, COCHRAN, LAMB, DICKENS, LYNN, GARZA, MOTLEY HOCKLEY, TERRY, FLOYD, CROSBY, HALE, YOAKUM, HUDSPETH

FISCAL YEAR 1991 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			JEFF DAVIS, CULBERSON, BREWSTER, PRESIDIO
NORTH CENTRAL TEXAS	1,570,853	73	LIMESTONE, BOSQUE, FREESTONE, FALLS, HUNT, PALO PINTO, WISE ERATH, HOOD, SOMERVELL, NAVARRO, FANNIN, COOKE
NORTHEAST TEXAS	1,851,919	86	FRANKLIN, HOPKINS, TITUS, DELTA, MORRIS, RED RIVER, LAMAR CASS, HENDERSON, MCCULLOCH, CAMP, RAINS, CHEROKEE, VAN ZANDT RUSK, ANDERSON, WOOD, UPSHUR, PANOLA
TEXAS PANHANDLE	1,259,993	57	JACK, YOUNG, HARDEMAN, ARCHER, CLAY, MONTAGUE, FOARD, COTTLE BAYLOR, WILBARGER, HEMPHILL, HANSFORD, HALL, SWISHER, GRAY ROBERTS, DONLEY, OLDHAM, DEAF SMITH, MOORE, DALLAM, HUTCHINSON COLLINGSWORTH, WHEELER, CHILDRESS, PARMER, CASTRO, LIPSCOMB CARSON, SHERMAN, HARTLEY, OCHILTREE, BRISCOE, ARMSTRONG
NORTH & WEST NEW MEXICO	1,465,206	68	COLFAX, MCKINLEY, MORA, RIO ARRIBA, SAN JUAN, SAN MIGUEL SANDOVAL, TAOS, TORRANCE, VALENCIA
SOUTH & EAST NEW MEXICO	1,606,226	75	CATRON, CHAVES, CURRY, DE BACA, EDDY, GRANT, GUADALUPE HARDING, HIDALGO, LEA, LINCOLN, LUNA, OTERO, QUAY, ROOSEVELT SIERRA, SOCORRO, UNION
HOUSTON, TEXAS OFFICE			
METROPOLITAN ALLOCATION AREAS			
BEAUMONT-PORT ARTHUR MSA	1,171,738	47	HARDIN, JEFFERSON, ORANGE
HOUSTON PMSA	9,163,359	360	FORT BEND, HARRIS, LIBERTY, MONTGOMERY, WALLER
SOUTHEAST TEXAS METO	1,537,269	61	BRAZORIA, BRAZOS, GALVESTON
NONMETROPOLITAN ALLOCATION AREAS			
NONMET BVDC AND HGAC NON-METRO	1,518,092	65	AUSTIN, BURLESON, CHAMBERS, COLORADO, GRIMES, LEON, MADISON MATAGORDA, ROBERTSON, WASHINGTON, WALKER, WHARTON
DEEP EAST TEXAS NON-METRO	1,277,506	57	ANGELINA, HOUSTON, JASPER, NACOGDOCHES, NEWTON, POLK, SABINE SAN AUGUSTINE, SAN JACINTO, SHELBY, TRINITY, TYLER
LITTLE ROCK, ARKANSAS OFFICE			
METROPOLITAN ALLOCATION AREAS			
METRO 1	1,350,594	56	FAULKNER, LONOKE, PULASKI, SALINE
METRO 2	1,551,554	64	CRAWFORD, SEBASTIAN, JEFFERSON, MILLER, CRITTENDEN, WASHINGTON
NONMETROPOLITAN ALLOCATION AREAS			
NORTH	1,340,739	71	CLEBURNE, FULTON, INDEPENDENCE, IZARD, JACKSON, SHARP, STONE VAN BUREN, WHITE, WOODRUFF, BAXTER, BENTON, BOONE, CARROLL MADISON, MARION, NEWTON, SEARCY
NORTHEAST	1,239,137	66	CLAY, CRAIGHEAD, GREENE, LAWRENCE, MISSISSIPPI, POINSETT RANDOLPH
EAST	1,179,531	62	MONROE, PRAIRIE, CROSS, LEE, PHILLIPS, ST FRANCIS
SOUTH	1,560,309	80	ARKANSAS, ASHLEY, BRADLEY, CHICOT, CLEVELAND, DESHA, DREW GRANT, LINCOLN, CALHOUN, COLUMBIA, DALLAS, HEMPSTEAD, HOWARD LAFAYETTE, LITTLE RIVER, NEVADA, OUACHITA, SEVIER, UNION
WEST	1,434,203	76	CLARK, CONWAY, GARLAND, HOT SPRING, JOHNSON, MONTGOMERY, PERRY PIKE, POPE, YELL, FRANKLIN, LOGAN, POLK, SCOTT
NEW ORLEANS, LOUISIANA OFFICE			
METROPOLITAN ALLOCATION AREAS			
Baton Rouge Metro Area	1,492,351	55	ASCENSION PARISH, EAST BATON ROUGE PARISH, LIVINGSTON PARISH WEST BATON ROUGE PARISH
South-Western Louisiana Metro Areas	2,145,386	78	LAFOURCHE PARISH, TERREBONNE PARISH, LAFAYETTE PARISH ST MARTIN PARISH, CALCASIEU PARISH
North-Central Louisiana Metro Areas	2,126,983	79	BOSSIER PARISH, CADDO PARISH, OUACHITA PARISH, RAPIDES PARISH
New Orleans Metro Area	7,055,947	258	JEFFERSON PARISH, ORLEANS PARISH, ST BERNARD PARISH

FISCAL YEAR 1991 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			ST CHARLES PARISH, ST JOHN THE BAPTIST PAR ST TAMMANY PARISH
NONMETROPOLITAN ALLOCATION AREAS North-Western Louisiana	1,279,318	71	WEBSTER PARISH, CLAIBORNE PARISH, LINCOLN PARISH BIENVILLE PARISH, DE SOTO PARISH, RED RIVER PARISH WINN PARISH, SABINE PARISH, NATCHITOCHES PARISH, GRANT PARISH VERNON PARISH
South-Western Louisiana	2,020,801	111	BEAUREGARD PARISH, ALLEN PARISH, EVANGELINE PARISH ST LANDRY PARISH, JEFFERSON DAVIS PARISH, ACADIA PARISH CAMERON PARISH, VERMILION PARISH, IBERIA PARISH ST MARY PARISH, ASSUMPTION PARISH
North-Eastern Louisiana	1,076,609	59	UNION PARISH, MOREHOUSE PARISH, EAST CARROLL PARISH WEST CARROLL PARISH, JACKSON PARISH, RICHLAND PARISH MADISON PARISH, CALDWELL PARISH, FRANKLIN PARISH TENSAS PARISH, LA SALLE PARISH, CATAHOULA PARISH CONCORDIA PARISH, AVOYELLES PARISH
South-Eastern Louisiana	1,347,170	75	POINTE COUPEE PARISH, WEST FELICIANA PARISH EAST FELICIANA PARISH, ST HELENA PARISH, TANGIPAHOA PARISH WASHINGTON PARISH, ST JAMES PARISH, PLAQUEMINES PARISH IBERVILLE PARISH
OKLAHOMA CITY, OKLAHOMA OFFICE METROPOLITAN ALLOCATION AREAS WESTERN METRO	3,313,066	128	CANADIAN, CLEVELAND, LOGAN, MCCLAIN, OKLAHOMA, POTTAWATOMIE COMANCHE, GARFIELD
EASTERN METRO	1,876,389	73	CREEK, OSAGE, ROGERS, TULSA, WAGONER, SEQUOYAH
NONMETROPOLITAN ALLOCATION AREAS WESTERN NON-METRO	2,033,217	107	ALFALFA, BEAVER, BECKHAM, BLAINE, CADDO, CIMARRON, COTTON CUSTER, DEWEY, ELLIS, GRADY, GRANT, GREER, HARMON, HARPER JACKSON, JEFFERSON, KAY, KINGFISHER, KIOWA, MAJOR, NOBLE ROGER MILLS, STEPHENS, TEXAS, TILLMAN, WASHITA, WOODS WOODWARD
CENTRAL NON-METRO	1,581,401	80	ATOKA, BRYAN, CARTER, COAL, GARVIN, HUGHES, JOHNSTON, LINCOLN LOVE, MARSHALL, MURRAY, OKFUSKEE, PAWNEE, PAYNE, PONTOTOC SEMINOLE
EASTERN NON-METRO	1,971,730	104	ADAIR, CHEROKEE, CHOCTAW, CRAIG, DELAWARE, HASKELL, LATIMER LE FLORE, MCCURTAIN, MCINTOSH, MAYES, MUSKOGEE, NOWATA OKMULGEE, OTTAWA, PITTSBURG, PUSHMATAHA, WASHINGTON
SAN ANTONIO, TEXAS OFFICE METROPOLITAN ALLOCATION AREAS			
Metropolitan Area A	2,752,640	99	HIDALGO, CAMERON, WEBB
Metropolitan Area B	4,269,786	154	BEXAR, COMAL, GUADALUPE
Metropolitan Area C	2,621,347	94	TRAVIS, WILLIAMSON, HAYS
Metropolitan Area D	1,680,560	61	VICTORIA, NUECES, SAN PATRICIO
NONMETROPOLITAN ALLOCATION AREAS Nonmetropolitan Area A	1,180,893	58	VAL VERDE, EDWARDS, REAL, KERR, BANDERA, KINNEY, UVALDE MEDINA, MAVERICK, ZAVALA, FRIO, DIMMIT, LA SALLE
Nonmetropolitan Area B	1,152,802	56	ATASCOSA, MCMULLEN, LIVE OAK, BEE, REFUGIO, ARANSAS, DUVAL JIM WELLS, KLEBERG, ZAPATA, JIM HOGG, BROOKS, KENEDY, STARR WILLACY
Nonmetropolitan Area C	1,326,302	64	CALHOUN, GOLIAD, JACKSON, KARNES, DE WITT, LAVACA, WILSON GONZALES, KENDALL, GILLESPIE, LLANO, BURNET, BLANCO, CALDWELL

FISCAL YEAR 1991 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION
DOLLARS UNITS-COMPONENT PARTS OF ALLOCATION AREA
BASTROP, LEE, FAYETTE

HUD REGION VII (KANSAS CITY)

DES MOINES, IOWA OFFICE			
METROPOLITAN ALLOCATION AREAS	2,357,529	85	BLACK HAWK, BREMER, DUBUQUE, JOHNSON, LINN, SCOTT
Metro-East	1,781,524	63	DALLAS, POLK, POTTAWATTAMIE, WARREN, WOODBURY
Metro-West			
NONMETROPOLITAN ALLOCATION AREA	2,880,095	125	ALLAMAKEE, BENTON, BUCHANAN, BUTLER, CEDAR, CHICKASAW, CLAYTON CLINTON, DELAWARE, DES MOINES, FAYETTE, GRUNDY, HARDIN, HENRY HOWARD, IOWA, JACKSON, JONES, LEE, LOUISA, MARSHALL, MUSCATINE POWESHIEK, TAMA, WASHINGTON, WINNESHIEK
Non-Metro-East			
Non-Metro-Northwest/Central	2,705,210	114	AUDUBON, BUENA VISTA, CALHOUN, CARROLL, CERRO GORDO, CHEROKEE CLAY, CRAWFORD, DICKINSON, EMMET, FLOYD, FRANKLIN, GREENE GUTHRIE, HAMILTON, HANCOCK, HUMBOLDT, IDA, KOSSUTH, LYON MITCHELL, MONONA, O'BRIEN, OSCEOLA, PALO ALTO, PLYMOUTH POCAHONTAS, SAC, SIOUX, WEBSTER, WINNEBAGO, WORTH, WRIGHT
Non-Metro-Southwest/Central	2,734,710	119	ADAIR, ADAMS, APPANOOSE, BOONE, CASS, CLARKE, DAVIS, DECATUR FREMONT, HARRISON, JASPER, JEFFERSON, KEOKUK, LUCAS, MADISON MAHASKA, MARION, MILLS, MONROE, MONTGOMERY, PAGE, RINGGOLD SHELBY, STORY, TAYLOR, UNION, VAN BUREN, WAPELLO, WAYNE
KANSAS CITY, MISSOURI OFFICE			
METROPOLITAN ALLOCATION AREAS	3,374,081	131	CASS, CLAY, JACKSON, LAFAYETTE, PLATTE, RAY
METROPOLITAN KANSAS CITY, MISSOURI	1,316,672	51	JASPER, NEWTON, BUCHANAN, CHRISTIAN, GREENE
METRO JOPLIN, SPRINGFIELD & ST. JOSEPH, MO.	1,634,171	64	JOHNSON, LEAVENWORTH, MIAMI, WYANDOTTE; DOUGLAS
METRO KANSAS CITY, KANSAS & LAWRENCE	1,870,290	73	BUTLER, HARVEY, SEDGWICK, SHAWNEE
METRO WICHITA & TOPEKA, KANSAS			
NONMETROPOLITAN ALLOCATION AREAS	2,415,856	118	ANDREW, ATCHISON, BARRY, BARTON, BATES, BENTON, CALDWELL CAMDEN, CARROLL, CEDAR, CHARITON, CLINTON, DADE, DALLAS DAVIESS, DE KALB, GENTRY, GRUNDY, HARRISON, HENRY, HICKORY HOLT, JOHNSON, LACLEDE, LAWRENCE, LINN, LIVINGSTON, MCDONALD MERCER, MILLER, MORGAN, NODAWAY, PETTIS, POLK, PULASKI, PUTNAM ST CLAIR, SALINE, STONE, SULLIVAN, TANEY, VERNON, WEBSTER WORTH
WESTERN NON-METROPOLITAN MISSOURI			
EASTERN NON-METROPOLITAN KANSAS	1,671,283	82	ALLEN, ANDERSON, ATCHISON, BOURBON, BROWN, CHASE, CHEROKEE COFFEY, CRAWFORD, DONIPHAN, FRANKLIN, JACKSON, JEFFERSON LABETTE, LINN, LYON, MARSHALL, MONTGOMERY, NEMAHA, NEOSHO OSAGE, WILSON, WOODSON
CENTRAL AND WESTERN NON-METROPOLITAN KANSAS	3,293,716	159	BARBER, BARTON, CHAUTAUQUA, CHEYENNE, CLARK, CLAY, CLOUD COMANCHE, COWLEY, DECATUR, DICKINSON, EDWARDS, ELK, ELLIS ELLSWORTH, FINNEY, FORD, GEARY, GOVE, GRAHAM, GRANT, GRAY GREELEY, GREENWOOD, HAMILTON, HARPER, HASKELL, HODGEMAN JEWELL, KEARNY, KINGMAN, KIOWA, LANE, LINCOLN, LOGAN MCPHERSON, MARION, MEADE, MITCHELL, MORRIS, MORTON, NESS NORTON, OSBORNE, OTTAWA, PAWNEE, PHILLIPS, POTTAWATOMIE, PRATT RAWLINS, RENO, REPUBLIC, RICE, RILEY, ROOKS, RUSH, RUSSELL SALINE, SCOTT, SEWARD, SHERIDAN, SHERMAN, SMITH, STAFFORD STANTON, STEVENS, SUMNER, THOMAS, TREGO, WABAUNSEE, WALLACE WASHINGTON, WICHITA

FISCAL YEAR 1991 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
OMAHA, NEBRASKA OFFICE			
METROPOLITAN ALLOCATION AREAS			
Metro-Nebraska	2,413,909	94	DAKOTA, DOUGLAS, LANCASTER, SARPY, WASHINGTON
NONMETROPOLITAN ALLOCATION AREAS			
East-Nebraska	1,810,969	81	ANTELOPE, BOONE, BURT, BUTLER, CASS, CEDAR, CLAY, COLFAX CUMING, DIXON, DODGE, FILLMORE, GAGE, HAMILTON, JEFFERSON JOHNSON, KNOX, MADISON, MERRICK, NANCE, NEMAHA, NUCKOLLS, OTOE PAWNEE, PIERCE, PLATTE, POLK, RICHARDSON, SALINE, SAUNDERS SEWARD, STANTON, THAYER, THURSTON, WAYNE, YORK
West-Nebraska	2,054,758	98	ADAMS, ARTHUR, BANNER, BLAINE, BOX BUTTE, BOYD, BROWN, BUFFALO CHASE, CHERRY, CHEYENNE, CUSTER, DAWES, DAWSON, DEUEL, DUNDY FRANKLIN, FRONTIER, FURNAS, GARDEN, GARFIELD, GOSPER, GRANT GREELEY, HALL, HARLAN, HAYES, HITCHCOCK, HOLT, HOOKER, HOWARD KEARNEY, KEITH, KEYA PAHA, KIMBALL, LINCOLN, LOGAN, LOUP MCPHERSON, MORRILL, PERKINS, PHELPS, RED WILLOW, ROCK SCOTTS BLUFF, SHERIDAN, SHERMAN, SIOUX, THOMAS, VALLEY WEBSTER, WHEELER
ST. LOUIS, MISSOURI OFFICE			
METROPOLITAN ALLOCATION AREAS			
Metropolitan Allocation Area	7,134,361	255	BOONE, FRANKLIN, JEFFERSON, ST CHARLES, ST LOUIS, ST LOUIS
NONMETROPOLITAN ALLOCATION AREAS			
Nonmetropolitan Allocation Area	4,226,671	215	ADAIR, AUDRAIN, BOLLINGER, BUTLER, CALLAWAY, CAPE GIRARDEAU CARTER, CLARK, COLE, COOPER, CRAWFORD, DENT, DOUGLAS, DUNKLIN GASCONADE, HOWARD, HOWELL, IRON, KNOX, LEWIS, LINCOLN, MACON MADISON, MARIES, MARION, MISSISSIPPI, MONITEAU, MONROE MONTGOMERY, NEW MADRID, OREGON, OSAGE, OZARK, PEMISCOT, PERRY PHELPS, PIKE, RALLS, RANDOLPH, REYNOLDS, RIPLEY STE GENEVIEVE, ST FRANCOIS, SCHUYLER, SCOTLAND, SCOTT SHANNON, SHELBY, STODDARD, TEXAS, WARREN, WASHINGTON, WAYNE WRIGHT
HUD REGION VIII (DENVER)			
DENVER, COLORADO REGIONAL OFFICE			
METROPOLITAN ALLOCATION AREAS			
DENVER COLORADO PMSA	5,070,577	186	ADAMS, ARAPAHOE, DENVER, DOUGLAS, JEFFERSON
COLORADO NORTHERN FRONT RANGE METRO	2,013,658	74	BOULDER, LARIMER, WELD
COLORADO SOUTHERN FRONT RANGE METRO	1,483,162	55	EL PASO, PUEBLO
MONTANA METRO AREAS	645,195	24	YELLOWSTONE, CASCADE
NORTH DAKOTA METRO AREAS	782,475	30	BURLEIGH, MORTON, CASS, GRAND FORKS
SOUTH DAKOTA METRO AREAS	524,000	19	PENNINGTON, MINNEHAHA
UTAH METRO AREAS	3,647,239	135	UTAH, DAVIS, SALT LAKE, WEBER
WYOMING METRO AREAS	334,888	12	NATRONA, LARAMIE
NONMETROPOLITAN ALLOCATION AREAS			
COLORADO NONMETRO AREA	3,550,134	133	ALAMOSA, ARCHULETA, BACA, BENT, CHAFFEE, CHEYENNE, CLEAR CREEK CONEJOS, COSTILLA, CROWLEY, CUSTER, DELTA, DOLORES, EAGLE ELBERT, FREMONT, GARFIELD, GILPIN, GRAND, GUNNISON, HINSDALE HUERFANO, JACKSON, KIOWA, KIT CARSON, LAKE, LA PLATA LAS ANIMAS, LINCOLN, LOGAN, MESA, MINERAL, MOFFAT, MONTEZUMA MONTROSE, MORGAN, OTERO, OURAY, PARK, PHILLIPS, PITKIN PROWERS, RIO BLANCO, RIO GRANDE, ROUTT, SAGUACHE, SAN JUAN SAN MIGUEL, SEDGWICK, SUMMIT, TELLER, WASHINGTON, YUMA

FISCAL YEAR 1991 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
MONTANA NONMETRO AREA	4,165,546	157	BEAVERHEAD, BIG HORN, BLAINE, BROADWATER, CARBON, CARTER CHOUTEAU, CUSTER, DANIELS, DAWSON, ANACONDA-DEER LODGE COUN FALLON, FERGUS, FLATHEAD, GALLATIN, GARFIELD, GLACIER GOLDEN VALLEY, GRANITE, HILL, JEFFERSON, JUDITH BASIN, LAKE LEWIS AND CLARK, LIBERTY, LINCOLN, MCCONE, MADISON, MEAGHER MINERAL, MISSOULA, MUSSELSHELL, PARK, PETROLEUM, PHILLIPS PONDERA, POWDER RIVER, POWELL, PRAIRIE, RAVALLI, RICHLAND ROOSEVELT, ROSEBUD, SANDERS, SHERIDAN, BUTTE-SILVER BOW STILLWATER, SWEET GRASS, TETON, TOOLE, TREASURE, VALLEY WHEATLAND, WIBAUX, YELLOWSTONE NATIONAL PAR
NORTH DAKOTA NONMETRO AREA	2,088,960	81	ADAMS, BARNES, BENSON, BILLINGS, BOTTINEAU, BOWMAN, BURKE CAVALIER, DICKEY, DIVIDE, DUNN, EDDY, EMMONS, FOSTER GOLDEN VALLEY, GRANT, GRIGGS, HETTINGER, KIDDER, LA MOURE LOGAN, MCHENRY, MCINTOSH, MCKENZIE, MCLEAN, MERCER, MOUNTRAIL NELSON, OLIVER, PEMBINA, PIERCE, RAMSEY, RANSOM, RENVILLE RICHLAND, ROLETTE, SARGENT, SHERIDAN, SIOUX, SLOPE, STARK STEELE, STUTSMAN, TOWNER, TRAILL, WALSH, WARD, WELLS, WILLIAMS
SOUTH DAKOTA NONMETRO AREA	3,293,454	132	AURORA, BEADLE, BENNETT, BON HOMME, BROOKINGS, BROWN, BRULE BUFFALO, BUTTE, CAMPBELL, CHARLES MIX, CLARK, CLAY, CODINGTON CORSON, CUSTER, DAVISON, DAY, DEUEL, DEWEY, DOUGLAS, EDMUNDS FALL RIVER, FAULK, GRANT, GREGORY, HAAKON, HAMLIN, HAND HANSON, HARDING, HUGHES, HUTCHINSON, HYDE, JACKSON, JERAULD JONES, KINGSBURY, LAKE, LAWRENCE, LINCOLN, LYMAN, MCCOOK MCPHERSON, MARSHALL, MEADE, MELLETTE, MINER, MOODY, PERKINS POTTER, ROBERTS, SANBORN, SHANNON, SPINK, STANLEY, SULLY, TODD TRIPP, TURNER, UNION, WALWORTH, YANKTON, ZIEBACH
UTAH NONMETRO AREA	1,485,893	58	BEAVER, BOX ELDER, CACHE, CARBON, DAGGETT, DUCHESNE, EMERY GARFIELD, GRAND, IRON, JUAB, KANE, MILLARD, MORGAN, PIUTE RICH, SAN JUAN, SANPETE, SEVIER, SUMMIT, TOOELE, UINTAH WASATCH, WASHINGTON, WAYNE
WYOMING NONMETRO AREA	1,757,456	71	ALBANY, BIG HORN, CAMPBELL, CARBON, CONVERSE, CROOK, FREMONT GOSHEN, HOT SPRINGS, JOHNSON, LINCOLN, NIOBRARA, PARK, PLATTE SHERIDAN, SUBLETTE, SWEETWATER, TETON, UINTA, WASHAKIE, WESTON
HUD REGION IX (SAN FRANCISCO)			
HONOLULU, HAWAII OFFICE			
METROPOLITAN ALLOCATION AREAS			
HONOLULU, HI MSA	5,563,066	136	HONOLULU
NONMETROPOLITAN ALLOCATION AREAS			
NONMETROPOLITAN ALLOCATION AREA	4,593,039	114	HAWAII, KAUAI, MAUI, GUAM
LOS ANGELES, CALIFORNIA OFFICE			
METROPOLITAN ALLOCATION AREAS			
Los Angeles County, CA	90,221,623	2098	LOS ANGELES
Orange County, CA	12,082,065	281	ORANGE
Riverside and San Bernardino Counties, CA	8,835,678	206	RIVERSIDE, SAN BERNARDINO
Kern-Ventura-Santa Barbara Counties, CA	8,680,398	202	KERN, VENTURA, SANTA BARBARA
San Diego County, CA	15,365,454	357	SAN DIEGO
NONMETROPOLITAN ALLOCATION AREAS			
S.Luis Obispo-Imperial-Inyo-Mono Counties, CA	4,140,923	115	SAN LUIS OBISPO, IMPERIAL, INYO, MONO
PHOENIX, ARIZONA OFFICE			

FISCAL YEAR 1991 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
METROPOLITAN ARIZONA	8,058,483	241	MARICOPA, PIMA
NONMETROPLITAN ALLOCATION AREAS			
NONMETROPOLITAN ARIZONA ALLOCATION AREA EAST	2,008,504	73	APACHE, COCHISE, GILA, GRAHAM, GREENLEE, PINAL, SANTA CRUZ
NONMETROPOLITAN ARIZONA ALLOCATION AREA WEST	2,006,122	74	COCONINO, MOHAVE, NAVAJO, YAVAPAI, YUMA, LA PAZ
SACRAMENTO, CALIFORNIA OFFICE			
METROPOLITAN ALLOCATION AREAS			
METROPOLITAN ALLOCATION AREA 1	3,585,059	117	BUTTE, SHASTA, SAN JOAQUIN, SUTTER, YUBA
METROPOLITAN ALLOCATION AREA 2	4,814,399	157	EL DORADO, PLACER, SACRAMENTO, YOLO
SAN FRANCISCO, CALIFORNIA OFFICE			
METROPOLITAN ALLOCATION AREAS			
METROPOLITAN ALLOCATION AREA 1	8,617,422	192	FRESNO, MERCED, STANISLAUS, TULARE
METROPOLITAN ALLOCATION AREA 2	16,063,041	358	ALAMEDA, CONTRA COSTA
METROPOLITAN ALLOCATION AREA 3	20,240,408	450	MARIN, SAN FRANCISCO, SAN MATEO, ALPINE, AMADOR, CALAVERAS COLUSA, GLENN, LASSEN, MODOC, NEVADA, PLUMAS, SIERRA, SISKIYOU TEHAMA, TRINITY, TUOLUMNE
METROPOLITAN ALLOCATION AREA 4	13,224,242	294	MONTEREY, SANTA CLARA, SANTA CRUZ
METROPOLITAN ALLOCATION AREA 5	4,501,363	100	SONOMA, NAPA, SOLANO
METROPOLITAN ALLOCATION AREA 6	4,462,221	99	CLARK, WASHOE
NONMETROPLITAN ALLOCATION AREAS			
NONMETROPOLITAN ALLOCATION AREA (SF&SAC)	8,846,630	283	CHURCHILL, DOUGLAS, ELKO, ESMERALDA, EUREKA, HUMBOLDT, LANDER LINCOLN, LYON, MINERAL, NYE, PERSHING, STOREY, WHITE PINE CARSON CITY, DEL NORTE, HUMBOLDT, KINGS, LAKE, MADERA MARIPOSA, MENDOCINO, SAN BENITO
HUD REGION X (SEATTLE)			
ANCHORAGE, ALASKA OFFICE			
METROPOLITAN ALLOCATION AREAS			
Anchorage	609,997	19	ANCHORAGE BOROUGH
NONMETROPLITAN ALLOCATION AREAS			
Nonmetro Alaska	2,504,937	62	ALEUTIAN ISLANDS CENSUS, BETHEL CENSUS AREA BRISTOL BAY BOROUGH, DILLINGHAM CENSUS AREA FAIRBANKS NORTH STAR BOR, HAINES BOROUGH, JUNEAU BOROUGH KENAI PENINSULA BOROUGH, KETCHIKAN GATEWAY BOROUG KOBUK CENSUS AREA, KODIAK ISLAND BOROUGH MATANUSKA-SUSITNA BOROUG, NOME CENSUS AREA NORTH SLOPE BOROUGH, PRINCE OF WALES-OUTER KE, SITKA BOROUGH SKAGWAY-YAKUTAT-ANGOON C, SOUTHEAST FAIRBANKS CENS VALDEZ-CORDOVA CENSUS AR, WADE HAMPTON CENSUS AREA WRANGELL-PETERSBURG CENS, YUKON-KOYUKUK CENSUS ARE
PORTLAND, OREGON OFFICE			
METROPOLITAN ALLOCATION AREAS			
Portland/Vancouver	6,393,927	216	CLACKAMAS, MULTNOMAH, WASHINGTON, YAMHILL, CLARK
Ida-Ore Metro	3,208,815	109	ADA, JACKSON, LANE, MARION, POLK
NONMETROPLITAN ALLOCATION AREAS			
Idaho Nonmetro	4,974,729	175	ADAMS, BANNOCK, BEAR LAKE, BENEWAH, BINGHAM, BLAINE, BOISE BONNER, BONNEVILLE, BOUNDARY, BUTTE, CAMAS, CANYON, CARIBOU CASSIA, CLARK, CLEARWATER, CUSTER, ELMORE, FRANKLIN, FREMONT GEM, GOODING, IDAHO, JEFFERSON, JEROME, KOOTENAI, LATAH, LEMHI LEWIS, LINCOLN, MADISON, MINIDOKA, NEZ PERCE, ONEIDA, OWYHEE

FISCAL YEAR 1991 SECTION 8 CERTIFICATE AND VOUCHER ALLOCATION

	DOLLARS	UNITS	COMPONENT PARTS OF ALLOCATION AREA
			LEWIS, LINCOLN, MADISON, MINIDOKA, NEZ PERCE, ONEIDA, OWYHEE PAYETTE, POWER, SHOSHONE, TETON, TWIN FALLS, VALLEY WASHINGTON
Eastern Oregon	2,639,564	92	KLICKITAT, SKAMANIA, BAKER, CROOK, DESCHUTES, GILLIAM, GRANT HARNEY, HOOD RIVER, JEFFERSON, KLAMATH, LAKE, MALHEUR, MORROW SHERMAN, UMATILLA, UNION, WALLOWA, WASCO, WHEELER
Western Oregon	4,214,479	150	BENTON, CLATSOP, COLUMBIA, COOS, CURRY, DOUGLAS, JOSEPHINE LINCOLN, LINN, TILLAMOOK
SEATTLE, WASHINGTON OFFICE			
METROPOLITAN ALLOCATION AREAS			
METRO-1	7,788,482	247	KING, SNOHOMISH
METRO-2	3,830,206	122	PIERCE, WHATCOM, KITSAP, THURSTON
METRO-3	3,127,971	99	SPOKANE, BENTON, FRANKLIN, YAKIMA
NONMETROPOLITAN ALLOCATION AREAS			
NONMETRO-1	3,080,344	112	CLALLAM, COWLITZ, GRAYS HARBOR, ISLAND, JEFFERSON, LEWIS MASON, PACIFIC, SAN JUAN, SKAGIT, WAHKIAKUM
NONMETRO-2	3,234,345	118	ADAMS, ASOTIN, CHELAN, COLUMBIA, DOUGLAS, FERRY, GARFIELD GRANT, KITTITAS, LINCOLN, OKANOGAN, PEND OREILLE, STEVENS WALLA WALLA, WHITMAN

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Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Pre-Foreclosure Sale Demonstration Program; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-91-3222; FR-2714-N-01]

Pre-Foreclosure Sale Demonstration Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice announces the Department's intent to conduct a limited demonstration program to gauge the demand for, and the efficacy of, pre-foreclosure sales as a means of saving the Department money and of assisting qualified mortgagors in avoiding foreclosure of their FHA-insured mortgages.

DATES: Effective date: August 19, 1991. Comment due date: July 29, 1991.

In accordance with section 470 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181, approved November 30, 1983), commencement of this demonstration program will await the conclusion of a 60-day public comment period during which full consideration will be given to all public comments received. After the close of the comment period, another Notice will be published setting forth revised requirements and procedures if public comments received indicate that such changes are necessary.

ADDRESSES: Interested persons are invited to submit comments regarding this Notice to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708-4337. (This is not a toll-free number.) Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk ((202) 708-2084).

FOR FURTHER INFORMATION CONTACT: Joseph Bates, Director, Single Family Servicing Division, Office of Insured Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 708-3080. A telecommunications device for deaf persons (TDD) is available at (202) 708-1112. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this Notice have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced in the **Federal Register**. The public reporting burden for the collection of information requirements contained in this Notice are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided later in this Notice under *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

Background

Sometimes, a mortgagor must confront the twin realities of not being able to meet his or her mortgage obligation *and* static or declining property values. Such a situation makes it virtually impossible for a financially distressed mortgagor to sell the home and, using the proceeds, to fully discharge the mortgage debt. Foreclosure of the mortgage is often the method of resolving these difficulties.

Over the past few years, a considerable amount of interest has been expressed by mortgagors and real estate agents in a transaction known as the "pre-foreclosure sale." In a successful pre-foreclosure sale, neither foreclosure nor conveyance of the property back to the Department occurs. A third party buys the home from a defaulting mortgagor at fair market value (with certain adjustments, as approved by the Secretary), which is less than the owner's outstanding indebtedness at the time of sale. Section 1064 of the McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628) amended section 204(a) of the National Housing Act (12 U.S.C. 1710(a)) to authorize HUD to pay a claim to a lender equal to the difference between the fair market sale price and the outstanding indebtedness. A successfully completed pre-foreclosure sale benefits the mortgagor, who avoids the stigma of foreclosure on his or her credit record, and also benefits HUD, which can expect to save by not paying foreclosure-related costs. HUD also saves on maintenance costs and marketing expenses for properties which would otherwise be conveyed to the Department following foreclosure.

This Notice

The Department has decided to conduct a limited demonstration program to gauge the demand for, and the efficacy of, pre-foreclosure sales; and to obtain feedback from participating offices and the public, so that appropriate program criteria and procedures can be formulated. Prior to designing the program, the Department calculated the estimated savings from the anticipated level of participation in this demonstration. The savings to HUD amounted to approximately $17 million. The program expands the options available to financially distressed mortgagors and does not adversely affect any mortgagor rights or interests under existing FHA-insured loan servicing regulations.

Upon publication of this Notice, the public is invited to comment during a 60-day comment period on policies, procedures, estimated savings and other aspects of the proposed program. At the conclusion of this period, comments received will be reviewed and, if necessary, another Notice will be published setting forth any changes in requirements necessary to conduct this initial demonstration. If no comments are received, or if the comments received do not indicate that changes are needed in these initially established criteria and procedures, the demonstration will take effect and begin on August 19, 1991. For purposes of initiating and evaluating demonstration, certain procedures and eligibility

criteria will be adoped, as discussed below.

The demonstration program, which will last 6 to 12 months, will be conducted in five local HUD Offices: Houston, Denver, Phoenix, Atlanta, and Milwaukee. This selection includes three offices in long-term "soft" real estate markets, as well as two other offices in more typical markets.

Eligibility Criteria

In order to be eligible for the pre-foreclosure sale program, a mortgagor must:

(1) Be an owner-occupant in a single family unit with a mortgage under sections 203(b), 221(d)(2), 234(c), 235, or 245 of the National Housing Act (12 U.S.C. 1709, 17151, 1715y, 1715z, or 1715z-10);

(2) Have an account in default; i.e., with three installments due and unpaid; (The default must not be the result of the mortgagor's willful abuse of the single family mortgage program.); and

(3) Have been aware of the assignment program, as discussed below under Notification of Program, and have been either turned down for it by HUD, or have decided not to apply for it.

In addition, those mortgagors who are small investors with only one FHA-insured mortgage (e.g., a former owner-occupant who now rents out his/her property) will be considered for eligibility under the Pre-Foreclosure Sale Program. Under no circumstances, however, will the program be made available to "walkaways" who have abandoned their mortgage obligations despite their continued ability to pay. Mortgagors determined to be eligible for, and who participate in, pre-foreclosure sales will *not* be pursued for deficiency judgments by the Department.

Use of Contractors ("Evaluators") To Implement Program

The Department intends to utilize the services of one or more contractors, called "Evaluators," to perform many crucial steps in the Pre-Foreclosure Sale Program. Because five local HUD Offices are to be included in the demonstration, there may be as many as five Evaluators. (For purposes of comparison, the Department reserves the option to have staff in one of the five local HUD offices perform these tasks instead of an Evaluator.)

The competition preceding selection of Evaluators will be open to both non-profit and for-profit organizations that can demonstrate their facility in providing housing counseling services, and in guiding real estate transactions. The Evaluators will commence action by determining which of the mortgagors, who express an interest in pre-foreclosure sales, actually meet the program's eligibility criteria.

Justification of Cash Incentives

The Department has decided to incorporate the payment of certain cash incentives to mortgagors who qualify for the program and whose participation ultimately culminates in a consummated pre-foreclosure sale, or, alternatively, in a deed-in-lieu of foreclosure. HUD is aware that other mortgage insurers and financial institutions have not authorized the retention of a portion of sale proceeds and do not otherwise reward mortgagors who engage in a pre-foreclosure sale or deed-in-lieu of foreclosure, beyond the fact that these results necessarily preclude the possibility of foreclosure. However, the proportion of pre-foreclosure sales occurring in these other agencies and institutions among defaulting mortgagors is generally much lower than the level of participation hoped for in HUD's upcoming program.

Furthermore, although the Department acknowledges that the avoidance of a foreclosure on their credit records is a prime motivation for mortgagors to attempt to dispose of their properties via pre-foreclosure sales, HUD has a number of other reasons to substantiate offering monetary incentives to program participants.

—HUD has an underlying objective to maximize the number of interested participants in pre-foreclosure sales, because of the estimated savings to the Department, in the aggregate, that these transactions represent. We estimate that the program incentives, when paid out, will be offset by the savings in pre- and post-acquisition costs for the properties affected by participation in the pre-foreclosure sale program.

—Program participants must make considerable efforts and undergo significant inconvenience is seeking out third-party buyers, making the property presentable, and allowing the public access to their home as they attempt to reach an approved transaction before the foreclosure deadline has run.

—Mortgagors can request deeds-in-lieu of foreclosure without first attempting to execute pre-foreclosure sales and might request deeds-in-lieu of foreclosure rather than the pre-foreclosure sale option, when they become fully apprised of the efforts involved in the pre-foreclosure sale and the concomitant tax implications. If a mortgagor meets prevailing criteria and the mortgagee is willing to cooperate, a deed-in-lieu of foreclosure can occur. This would benefit the mortgagor but would represent only modest savings to the Department. Therefore, it is in HUD's interest to make the pre-foreclosure sale option as attractive as possible in order to maximize the number of program participants.

—The provision of supplemental incentives for expedited pre-foreclosure sales occurring within three or four months' time represents a small portion of the estimated savings to the Department of interest that would otherwise have to be paid to mortgagees as part of the insurance contract.

Deed-In-Lieu of Foreclosure as a Program Feature

At the time he or she applies to participate in the Pre-Foreclosure Sale Program, the mortgagor will certify whether there are encumbrances on the mortgage, or whether there are title problems of which he or she is aware. The Evaluator may, in its discretion, authorize a title search at any time during the mortgagor's participation in the program. The existence of encumbrances or title problems may preclude or result in a refusal to permit either a pre-foreclosure sale or a deed-in-lieu. For those mortgagors whose mortgages do qualify under these criteria, but who, despite a good faith effort (as determined by the Evaluator), do not consummate a pre-foreclosure sale, the program will arrange the acceptance of a deed-in-lieu of foreclosure by the mortgagee, if foreclosure is imminent upon the failure of the participant to execute a pre-foreclosure sale. This action will leave the mortgagor without a foreclosure on his or her credit history.

Notification of Program

HUD Headquarters will circulate an Information Sheet on pre-foreclosure sales among mortgagees and housing counseling agencies, and the mortgagees and housing counseling agencies will be encouraged to distribute the document to mortgagors believed to be interested in, and possibly qualified for, the Pre-Foreclosure Sale Program. The literature will contain, for each of the five demonstration areas, a toll-free number that mortgagors can call for answers to questions about pre-foreclosure sales and information regarding how they can contact program Evaluators.

Mortgagees will be required to notify mortgagors in the geographic areas covered by the demonstration of the pre-foreclosure sale option when the mortgagors lose the right to apply for

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assignment of their mortgages. When an assignment application is terminated before a final decision is made because of a lack of timely responsiveness by the mortgagor, or when an assignment applicant receives a negative final decisions, this notification will be performed by the local HUD Office.

Initiating the Pre-foreclosure Sale Option

Once a mortgagor contacts an Evaluator and is determined to be eligible to pursue a pre-foreclosure sale, and is so notified by the Evaluator, the mortgagor is then authorized to seek out a third-party purchaser. The Evaluator will also refer the mortgagor to one or more qualified real estate brokers in an attempt to market the property within the established time and price guidelines. (See "Other Provisions," paragraphs (1) and (4).) These brokers will be prohibited from sharing a business interest with the Evaluator. HUD's Information Sheet will explain that while mortgagors are free to try to sell their properties themselves, the Department recommends that a broker be retained because of the tight time constraints involved in finding a buyer and consummating the pre-foreclosure sale.

An "As-Is" appraisal will be ordered by the Evaluator from the local HUD Office, which will assign a staff appraiser, if possible, or a free-panel (independent) appraiser to conduct the appraisal. Any costs for the property appraisal will be borne by the local HUD Office. Copies of the appraisal will be conveyed to the Evaluator, who will forward one copy of the appraisal to the real estate broker, or to the mortgagor, as applicable.

Homeownership Counseling Responsibilities

Before a particular pre-foreclosure sale transaction can be approved by the Evaluator, either the Evaluator or the local HUD Office or a HUD-approved counseling agency located in the mortgagor's geographic area will do the following:

(1) Provide substantive "homeownership counseling" to mortgagors considering the pre-foreclosure sale option. This will include explaining the alternatives available to the mortgagor, including a payment plan negotiated with the lender, foreclosure and deed-in-lieu of foreclosure, the assignment program (if still available), and changes in household income or size that might have a bearing on the ability of the mortgagor to retain ownership of the property.

(2) Advise mortgagors considering the pursuit of a pre-foreclosure sale that they may wish to contact a financial or tax counselor to assess the specific tax consequences to them of a pre-foreclosure sale.

(3) Assist in executing certifications for the mortgagors to sign before the local HUD Office is asked to approve the actual pre-foreclosure sale. These certifications shall include statements that:

(a) Homeownership counseling has been received;

(b) The proposed pre-foreclosure sale is an "arm's length" transaction between the mortgagor and would-be purchaser; and

(c) If the mortgagor has not made application for mortgage assignment, that the assignment program has been explained to him and that he desires to waive any right he has to apply for the program arising from his present mortgage default.

Responsibilities of the Real Estate Broker Or the Mortgagor's Attorney

The real estate broker or the mortgagor's attorney should forward to the Evaluator a copy of the contract of sale made conditional upon HUD's approval (including sales commission), and the necessary certifications (if they are in the broker's or attorney's possession) that they have been signed by the mortgagor. The Evaluator will review the package for approval and render a decision within ten (10) days of receiving the completed package.

Monitoring Responsibilities of HUD Personnel

The pre-screening by the Evaluator of the mortgagor's eligibility to pursue a pre-foreclosure sale, as well as the Evaluator's final approval of a proposed sale, shall be reviewed by the appropriate HUD personnel. During the Demonstration, the reviews may occur at any time, and will be performed on-site by Regional or Headquarters personnel. (There will also be reviews of the Evaluators' monthly reports.) Actions taken by local HUD Office staff during the demonstration (e.g., referring mortgagors to the program Evaluators; provision of property appraisals; etc.) will be reviewed by Regional or Headquarters staff, to ensure that program criteria and other procedures are being followed. Mortgagee cooperation with Evaluators and local HUD offices in pursuit of pre-foreclosure sales, will be evaluated on-site during mortgagee reviews conducted by HUD staff.

The Department will also conduct an overall program review at the conclusion of the Demonstration. The Office of Housing will conduct this evaluation in cooperation with other policy and research arms of HUD. The review will include, but is not limited to:

(a) Determining the ratio of successful outcomes to total program participants;

(b) Determining the cost to HUD per successful program participant, relative to the cost of customary foreclosure and related conveyance-claim proceedings;

(c) Producing a comparative analysis of the cost and performance of the various contractors engaged by the Department to administer the Demonstration in four of the five locations, which will also include the cost and performance of the fifth HUD office specifically engaged in program administration;

(d) Determining the appropriateness of eligibility criteria and other program procedures utilized during the Demonstration, with an eye toward making any necessary adjustments to guidelines pertaining to program costs, cash incentives, time deadlines, and quantitative guidelines governing the pre-foreclosure sales transaction.

If, based on its analysis of the Demonstration of the Pre-foreclosure Sales option, the Department determines that the program is workable and cost-beneficial, implementing regulations will be drafted and Pre-foreclosure Sales will subsequently be inaugurated as a Department-wide program.

Responsibilities of Mortgagees

Mortgagees will be responsible for:

(1) Correct notification procedures (in particular, sending appropriate notices, and contacting mortgagors in only those five local HUD Office jurisdictions covered by the demonstration;

(2) Pre-screening of mortgagors to participate in the pre-foreclosure sale program after assignment application is turned down or the opportunity for assignment has been waived or has expired;

(3) Overall responsiveness and timeliness of the servicing staff to mortgagors who appear to be interested in, or qualified for, the pre-foreclosure sale program; and

(4) Overall mortgagee cooperation with all aspects of the program.

Compensation

Mortgagors who qualify for the pre-foreclosure sales option and who arrange a sale that is approved by the Evaluator, and subsequently completed (goes to closing), shall be able to retain from the sales proceeds before disbursement to the mortgagee, the base amount of $1,500 (one thousand five hundred dollars).

In addition to the base amount, the mortgagor will be able to retain the following sums from the proceeds of sale if these conditions are met:

If the closing of an approved pre-foreclosure sale occurs within three (3) months of the commencement of the mortgagor's participation in the pre-foreclosure sales program (i.e., from the time the mortgagor is found eligible to participate in the program), the sum of $500 (five hundred dollars).

Alternatively, if the closing of an approved pre-foreclosure sale occurs within four (4) months of the commencement of the mortgagor's participation in the program, the sum of $200 (two hundred dollars).

In the event that net sale proceeds exceed the appraised market value of the property, the Evaluator will authorize the mortgagor to retain from net proceeds an incentive equal to 50% of the excess amount, if by doing so the resulting incentive would be greater than the aforementioned $1500 base amount.

If, after a good faith effort—as determined by the Evaluator—a property does not sell under the Pre-Foreclosure Sale Program (i.e, does not result in a signed contract of sale within three months, or a closing within five months of commencement of participation), the Evaluator will authorize a title search of the participant's mortgage for title problems and encumbrances (if it has not done so already). If problems are not discovered, the Evaluator will forward a positive recommendation regarding the acceptance of a deed-in-lieu of foreclosure to the mortgagee (copy to the local HUD office). The mortgagee shall then follow established instructions for acceptance of a deed-in-lieu of foreclosure. If the mortgagee accepts a deed-in-lieu of foreclosure, the mortgagor will receive the sum of $500. This sum will be 100% reimbursable to the mortgagee through the FHA claims process.

Other Provisions

During the demonstration program, the following additional provisions will apply:

(1) The Evaluator will have the authority, on a case-by-case basis, to extend the customary program deadlines (three months for a signed contract of sale or five months to go to closing) if it determines that it would be in the best interest of the Department to do so.

(2) The Evaluator, in consultation with the local HUD office, will determine whether participating mortgagees are to be instructed to continue taking the necessary steps, up to but not including the actual initiation of foreclosure, while a program participant is seeking an appropriate third-party purchaser for his property.

(3) In determining the eligibility of a mortgagor to participate in the Pre-Foreclosure Sale Program, the Evaluator shall make a determination that the property's appraised value is at least 70% of the outstanding mortgage indebtedness at the time application is made for the program. In cases where the appraised value is less than 70% of the outstanding debt, the Evaluator must obtain local HUD Office approval to permit the mortgagor to engage in a pre-foreclosure sale.

(4) The offer to purchase the property should net HUD at least 90% of the appraised value of the property. However, the Evaluator may exercise discretion in cases where the bid is at least 90% of appraised value but the net to HUD is less than 90% of appraised value. Offers which do not reach the 90% level of appraised value, but which the Evaluator thinks should be accepted anyway, must have advance written approval of the local HUD Office.

(5) All sales contracts submitted for consideration by the pre-foreclosure sale program Evaluator shall contain a clause which provides that HUD approval (directly or through the Evaluator) is a pre-condition of the sale.

(6) Purchasers in approved pre-foreclosure sales may qualify for FHA mortgage insurance.

(7) Notwithstanding the provisions of regulation 24 CFR 203.402(f) regarding reimbursement of the mortgagee of foreclosure and acquisition costs via the claims process, the Pre-Foreclosure Sale Demonstration will establish appropriate guidelines for payment of such items as an expanded fee for securing a deed-in-lieu of foreclosure, and reimbursement for the discharge of certain junior liens in order to accommodate a pre-foreclosure sale. The experience during the demonstration will allow the Department to determine whether it is in its best interest to modify existing regulatory limits on such claim reimbursements within the context of pre-foreclosure sales.

The Closing of the Pre-Foreclosure Sale; Payment of Claims

Prior to closing the sale:

(1) The Evaluator will provide to the Closing Agent, or to the mortgagee responsible for providing the payoff statement, a list of those parties entitled to receive financial incentives and the amounts payable out of sale proceeds.

(2) The Closing Agent will calculate the net sale proceeds and communicate this data to the Evaluator, so that the Evaluator can ascertain that the actual terms of the transaction are in accordance with the proposed sale that the Evaluator had approved earlier.

If the Evaluator approves the transaction, and closing occurs, the Closing Agent will pay the incentives contained in the list previously provided by the Evaluator, and will send the net proceeds of sale and a form HUD–1 to the mortgagee, and a copy of the HUD–1 to the Evaluator.

Upon receipt of the payoff funds, the mortgagee will file a claim for the balance due to it under the terms of the contract for insurance. Reimbursement will be made under the provisons of section 1064 of the McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100–628) and section 204(a) of the National Housing Act (12 U.S.C. 1710(a)).

For proposed pre-foreclosure sales that fall through, and for those instances where sales are sought without positive result, the mortgagee should file its claim under existing procedures for conveyance claims, after compliance with the last paragraph under the Section headed Compensation.

Note: If a mortgagee proceeds with steps leading to foreclosure against a mortgagor participating in the pre-foreclosure sale program, after being requested by the Evaluator to suspend temporarily such action, this action may be considered a lack of prudent mortgage servicing on the part of an FHA-approved mortgagee/servicer.)

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Information collection requirements. The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Information on these requirements is provided as follows:

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TABULATION OF ANNUAL REPORTING BURDEN.—NOTICE OF LIMITED DEMONSTRATION OF PRE-FORECLOSURE SALES

Description of information collection	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Disclosure by:					
Applicants	3,149	1	3,149	0.5	1,575
Mortgagee	3,149	1	3,149	0.75	2,362
Certifications by Participants	2,362	1	2,362	0.5	1,181
Transactional:					
Applicants	2,362	1	2,362	0.6	1,417
Closings	2,008	1.15	2,309	1.0	2,309
Reporting:					
Periodic	5	12	60	1.5	90
Final/Overview	5	1	5	5.0	25
Total (annual) burden	13,040		13,396		8,959

Executive Order 12612, Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this demonstration does not have "federalism implications" because it does not have substantial direct effects on the States (including their potential subdivisions), or on the distribution of power and responsibilities among the various levels of government. The purpose of this demonstration is to gauge the demand for, and the efficacy of, pre-foreclosure sales as a means of saving the Department money and of assisting qualified mortgagors in avoiding foreclosure of their FHA-insured mortgages.

Executive Order 12606, the Family. The General Counsel, as the Designated Official under Executive Order 12606, *the Family*, has determined that this demonstration does not have potential significant impact on family formation, maintenance, and general well-being because of the limited nature of it. It is to be conducted only through five HUD field offices in an attempt to gauge the demand for, and efficacy of, the pre-foreclosure sale transaction and to obtain feedback from the participating offices so that program criteria and procedures can be established through rule making if the demonstration is successful.

Dated: May 22, 1991.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 91-12598 Filed 5-28-91; 8:45 am]

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federal register

Wednesday
May 29, 1991

Part VI

National Indian Gaming Commission

25 CFR Chapter III

Annual Fees Payable by Class II Gaming Operations; Proposed Rule

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NATIONAL INDIAN GAMING COMMISSION

25 CFR Chapter III

Annual Fees Payable by Class II Gaming Operations

AGENCY: National Indian Gaming Commission.

ACTION: Proposed rule.

SUMMARY: The National Indian Gaming Commission is proposing to establish Chapter III in title 25 of the Code of Federal Regulations (parts 500–599). This proposed rule provides direction and guidance to Class II gaming operations (activities) to enable them to compute and pay the annual fees as authorized by the Indian Gaming Regulatory Act (IGRA) beginning with calendar year 1991. With the publication of the final rule, the computation and payment of annual fees will be self-administered by each Class II gaming operation which is subject to the jurisdiction of the Commission.

DATES: Comments must be submitted on or before June 28, 1991.

ADDRESSES: Comments may be mailed to: Fee Regulation Comments, Suite 250, National Indian Gaming Commission, 1850 M Street, NW., Washington, DC 20036–5803, delivered to that address between 8:30 a.m. and 5:30 p.m., Monday through Friday, or faxed to 202/632–7066 (this is not a toll-free number). Comments received may be inspected between 9 a.m. and noon, and between 2 p.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Fred W. Stuckwisch at 202/632–7003 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) which was enacted on October 17, 1988, established the National Indian Gaming Commission (Commission). The Commission is charged with, among other things, regulating Class II gaming on Indian lands. These regulations are being promulgated pursuant to IGRA.

The purpose of these regulations is to implement those portions of the IGRA that provide for the payment of fees by Class II gaming operations and for the collection and use of such fees by the Commission. Gaming operations are the economic entities that are licensed by a tribe, operate the games, receive the revenues, issue the prizes, and pay the expenses. Gaming operations may be operated by a tribe directly, by a management contractor, or in the case of certain grandfathered class II gaming operations, by an individual owner/operator.

These regulations provide for a system of fee assessment and payment that is self-administered by the Class II gaming operations. Briefly, the Commission adopts and communicates the assessment rates; the gaming operations apply those rates to their revenues, compute the fees to be paid, and report and remit the fees to the Commission on a quarterly basis.

Annual fees are payable quarterly each calendar year based on the previous calendar year's assessable gross revenues from the Class II gaming operations. For this purpose, all revenues from gaming operations determined by the licensing tribe to be Class II are to be included.

The Commission will adopt preliminary annual fee rate(s) during the first quarter of each calendar year and final annual fee rate(s) for that year during the fourth quarter. Separate rates may be established for assessable gross revenue amounts under $1,500,000 (1st tier) and amounts over $1,500,000 (2nd tier). It is the present intent of the Commission but not a requirement that if different preliminary rates are used for each tier, the final rates will bear the same relationship to each other as the preliminary rates adopted earlier that year. The rates when adopted by the Commission will be published in the **Federal Register**.

The Commission anticipates that it will adopt a single preliminary fee rate of 1% for the first two quarters of the current calendar year. This rate may be modified during the third or fourth quarter when more information about the assessable gross revenue base becomes available. The last or final rate adopted will ultimately determine the amount of fees that will be paid during the year.

If a tribe has a certificate of self-regulation, the rate of fees imposed shall be no more than .25 percent of gross revenues from self-regulated gaming operations. The definition of self-regulation and the requirements for obtaining a certificate of self-regulation will be added to the regulations in later rulemakings.

Gaming operations are to apply the rates adopted to their assessable gross revenues from the preceding calendar year to determine the amount of fees to be paid. The gaming operations are to report the amounts of assessable gross revenues, the fees to be paid, and their calculations to the Commission when they remit their quarterly payments. Remittances and reports are due no later than March 31, June 30, September 30, and December 31, of each calendar year, beginning in 1991. The Commission invites comments from interested parties as to whether a form should be provided for these reports.

Briefly, the computations required for each quarter are as follows:

(1) Multiply the previous calendar year's 1st tier assessable gross revenues by the rate for those revenues adopted by the Commission.

(2) Multiply the previous calendar year's 2nd tier assessable gross revenues by the rate for those revenues adopted by the Commission.

(3) Add (total) the results (products) obtained in steps (1) and (2) above.

(4) Multiply the total obtained in (3) by the fraction representing the quarter for which the computation is being made: 1st quarter—¼; 2nd quarter—½ (¾); 3rd quarter—¾; and 4th quarter—1 (¼).

(5) Subtract the amounts already remitted by the operation for the current year and credits, if any, which are due for any previous year's overpayment from the amount determined in (4). (The "credits" to be deducted are computed by the Commission and the gaming operations are advised as to the amounts.)

(6) The amount computed in (5) is the amount to be remitted for the quarter.

Examples of the computations are included at § 500.14(b)(3) and (c)(7) of the regulations.

By basing the fees on the previous year's assessable gross revenues, sufficient time is provided to the gaming operations to finalize and submit adjusted numbers before the end of the third quarter of the calendar year. Furthermore, by providing for the adoption of preliminary and final rates by the Commission, sufficient time is provided the Commission to ascertain the assessable gross revenue base before finalizing the rates for each calendar year.

This rule will become effective for calendar year 1991 which means that all Class II gaming operations within the jurisdiction of the Commission will be required to begin self-administering the provisions of these regulations and will be required to begin reporting and paying any fees that are due to the Commission as soon as the regulation becomes final.

These regulations are applicable to all Class II gaming operations under the jurisdiction of the Commission. New gaming operations (with no gaming revenues generated in the previous calendar year) must file reports quarterly even though no fees will be due.

Penalties and interest may be assessed for failures to file quarterly statements and to pay fees when due; and required approvals may be withheld, denied or revoked for failures to pay fees, penalties and interest. Procedures for appealing such adverse actions will be added to the regulations in separate rulemaking.

The IGRA provides that to the extent that revenues derived from fees imposed are not expended or committed at the close of any fiscal year, such surplus funds shall be credited to each gaming operation on a pro-rata basis against such fees imposed for the succeeding year. This provision was rendered moot by the 1990 Interior and Related Agencies Appropriations Act (Pub. L. 101–121, 103 Stat. 718) which provided that fees remain available until used. Even without this provision, it is expected that all fees will be used because the annual budget of the Commission is expected to exceed the maximum amount of fees the Commission is authorized to collect. As a result, the only post calendar-year adjustments of fees paid that should be required will be the pro-rata credits to the gaming operations for payments in excess of the statutory maximum of $1,500,000.

Additional Information

The Commission has determined this document is not a major rule under E.O. 12291. The rule will not have any significant effects on the economy or result in major increases in costs or prices for consumers, individual industries, Federal, State or local governments, agencies, or geographical regions. The rule will not have any adverse affects on competition, employment, investment, productivity, innovation, or the export/import market.

Pursuant to the Regulatory Flexibility Act, the Commission has tentatively determined that this rule will not have a significant impact on small business entities. However, because the Commission is new and may lack certain information that should be considered before making a final determination, the Commission invites interested persons to submit written comments regarding the impact of the proposed rule. The comments should be directed to the location identified in the **ADDRESSES** section of this preamble.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et. seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget.

The Commission has determined that this proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Dated: May 23, 1991.

Anthony J. Hope,

Chairman, National Indian Gaming Commission.

List of Subjects in 25 CFR Part 500

Gaming, Indian lands.

National Indian Gaming Commission Regulations

For the reasons set out in the preamble, title 25 of the Code of Federal Regulations is proposed to be amended by adding a new chapter III consisting of parts 500–599.

CHAPTER III—NATIONAL INDIAN GAMING COMMISSION

PART 500—ANNUAL FEE REGULATIONS

PARTS 501–599—[RESERVED]

PART 500—ANNUAL FEE REGULATIONS

Sec.
500.14 Annual fees.

Authority: 25 U.S.C. 2706, 2708, 2710, 2717, 2717a.

§ 500.14 Annual Fees.

(a) Each class II gaming operation under the jurisdiction of the Commission shall pay to the Commission annual fees as established by the Commission. The Commission, by a vote of not less than two of its members, shall adopt the rates of fees to be paid.

(1) The Commission shall adopt preliminary rates for each calendar year during the first quarter of that year (or as soon thereafter as possible), and, if considered necessary, shall modify those rates during the second and third quarters of the calendar year.

(2) The Commission shall adopt final rates of fees for each calendar year during the fourth quarter of that year.

(3) The Commission shall publish the rates of fees in a notice in the **Federal Register**.

(4) The rates of fees imposed shall be—

(i) No less than 0.5 percent nor more than 2.5 percent of the first $1,500,000 (1st tier), and

(ii) No more than 5 percent of amounts in excess of the first $1,500,000 (2nd tier) of the assessable gross revenues from each gaming operating regulated by the Commission.

(5) If a tribe has a certificate of self-regulation, the rate of fees imposed shall be no more than .25 percent of assessable gross revenues from self-regulated gaming operations. The .25 percent limit shall apply to the payments made during the first full calendar year following the year during which the certificate of self-regulation is issued.

(b) For purposes of computing fees, assessable gross revenues for each gaming operation are the annual total amounts of money wagered, including admission fees, less any amounts paid out as prizes or paid for prizes awarded, and less an allowance for amortization of capital expenditures for structures.

(1) Unless otherwise provided by the regulations, generally accepted accounting principles shall be used.

(2) The allowance for amortization of capital expenditures for structures shall not exceed 5% of the cost of structures in use throughout the year and 2½% of the cost of structures in use during only a part of the year.

(3) Example:

Gross gaming revenues:		
Money wagered		$1,000,000
Admission fees		5,000
		1,005,000
Less:		
Prizes paid in cash	$500,000	
Cost of other prizes awarded	10,000	510,000
Gross gaming profit		495,000
Less allowance for amortization of capital expenditures for structures:		
Capital expenditures for structures made in—		
Prior years	750,000	
Current year	50,000	
	800,000	
Maximum allowance—		
$750,000 × .05 =	37,500	
50,000 × .025 =	1,250	38,750
Assessable gross revenues		$456,250

(c) Each Class II gaming operation regulated by the Commission shall file with the Commission quarterly a statement showing its assessable gross revenues for the previous calendar year.

(1) These quarterly statements shall show the amounts derived from each type of game, the amounts deducted for prizes, and the amounts deducted for the amortization of structures;

(2) These quarterly statements shall be filed no later than: March 31, June 30, September 30, and December 31, of each calendar year the Class II gaming operation is subject to the jurisdiction of

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the Commission, beginning in 1991. Any changes or adjustments to the previous year's assessable gross revenue amounts from one quarter to the next shall be explained.

(3) The quarterly statements shall identify an individual or individuals to be contacted should the Commission need to communicate further with the gaming operation. The telephone numbers of the individual(s) shall be included.

(4) The quarterly statements shall be transmitted to the Commission to arrive no later than the due date.

(5) Each Class II gaming operation shall determine the amount of fees to be paid and remit them with the statement required in paragraph (c) of this section. The fees payable shall be computed using—

(i) The most recent rates of fees adopted by the Commission pursuant to paragraph (a)(1) or (a)(2) of this section,

(ii) The assessable gross revenues for the previous calendar year as reported pursuant to this paragraph, and

(iii) The amounts paid and credits received during previous quarters.

(6) Each quarterly statement shall include the computation of the fees payable, showing all amounts used in the calculations. The required calculations are as follows:

(i) Multiply the previous calendar year's 1st tier assessable gross revenues by the rate for those revenues adopted by the Commission.

(ii) Multiply the previous calendar year's 2nd tier assessable gross revenues by the rate for those revenues adopted by the Commission.

(iii) Add (total) the results (products) obtained in paragraphs (c)(6)(i) and (ii) of this section.

(iv) multiply the total obtained in paragraph (c)(6)(iii) of this section by the fraction representing the quarter for which the computation is being made: 1st quarter–¼; 2nd quarter–½ (⅔); 3rd quarter–¾; and 4th quarter–1 (4/4).

(v) Subtract the amounts already remitted by the operation for the current year and credits, if any, which are due for any previous year's overpayment from the amount determined in paragraph (c)(6)(iv) of this section.

(vi) The amount computed in paragraph (c)(6)(v) of this section is the amount to be remitted.

(7) Examples of fee computations follow:

(i) Example 1: Where a filing is made for the first quarter of the calendar year, the previous year's assessable gross revenues are $2,000,000, the fee rates adopted by the Commission are 2% on the first $1,500,000 and 4% on the remainder, and a credit of $2,000 is due from the previous year, the amounts to be used and the computations to be made are as follows:

1st tier revenues—$1,500,000×2%	$30,000
2nd tier revenues—500,000×4%	20,000
Annual fees	50,000
Multiply for fraction of year—¼ or	.25
Fees for first quarter	12,500
Deduct credit due	2,000
Amount to be remitted	$10,500

(ii) Example 2: Where a filing is being made for the third quarter, the previous year's assessable gross revenues are $5,000,000, the fee rates adopted by the Commission are 1% on the first $1,500,000 and 1.5% on the remainder, and $35,000 has already been remitted, the amounts to be used and the computations to be made are as follows:

1st tier revenues—$1,500,000×1%	$15,000
2nd tier revenues—3,500,000×1.5%	52,500
Annual fees	67,500
Multiply for fraction of year—¾ or	.75
Fees for first three quarters	50,625
Deduct amounts already remitted	[1] 35, 000
Amount to be remitted	$15,625

[1] This amount may be other than $33,750 ($67,500 x .50) because the assessable gross revenues may have been adjusted, the fee rate may have changed, a credit for the previous year's overpayment may have been received, or a clerical error may have been discovered.

(8) Quarterly statements, remittances and communications about fees shall be transmitted to the Commission at the following address: Office of Finance, National Indian Gaming Commission, 1850 M Street, NW., Suite 250, Washington, DC 20036–5803.

Checks should be made payable to the National Indian Gaming Commission (do not remit cash).

(9) The Commission may assess a penalty for failure to timely file a quarterly statement.

(10) Interest shall be assessed at rates established from time to time by the Secretary of the Treasury on amounts remaining unpaid after their due date (31 U.S.C. 3717).

(d) The total amount of all fees imposed during any fiscal year shall not exceed $1,500,000. The Commission shall credit pro-rata any fees collected in excess of this amount against amounts otherwise due at the end of the quarter following the quarter during which the Commission makes such determination.

(1) The Commission will notify each gaming operation as to the amount of overpayment, if any, and therefore the amount of credit to be taken against the next quarterly payment otherwise due.

(2) The notification required in paragraph (d)(1) of this section shall be made in writing addressed to the gaming operation.

(e) Failure to pay fees, any applicable penalties, and interest related thereto may be grounds for:

(1) Closure, or

(2) Disapproving or revoking the approval of the Chairman of any license, ordinance, or resolution required under this Act for the operation of gaming.

(f) To the extent that revenue derived from fees imposed under the schedule established under this paragraph are not expended or committed at the close of any fiscal year, such funds shall remain available until expended (Pub. L. 101–121; 103 Stat. 716; 25 U.S.C. 2717a) to defray the costs of operations of the Commission.

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S. 248/Pub. L. 102-50

Niobrara Scenic River Designation Act of 1991. (May 24, 1991; 105 Stat. 254; 5 pages) Price: $1.00

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
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WASHINGTON, DC

WHEN: June 25, at 9:00 am
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: 202–523–5240

NEW ORLEANS, LA

WHEN: July 23, at 9:00 am
WHERE: Federal Building, 501 Magazine St. Conference Room 1120, New Orleans, LA
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CE-RM-87-102]

Energy Conservation Program for Consumer Products: Energy Conservation Standards for Two Types of Consumer Products; Correction

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

ACTION: Correction to final rule.

SUMMARY: The Department of Energy (Department or DOE) is correcting a typographical error in the energy conservation standards for refrigerators, refrigerators-freezers, and freezers found in 10 CFR part 430, section 430.32(a). These standards appeared in the Federal Register on November 17, 1989 (54 FR 47916) and October 24, 1990 (55 FR 42845).

EFFECTIVE DATE: January 1, 1993.

FOR FURTHER INFORMATION CONTACT:
Carl Adams, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station CE-43, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127.
Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-12, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: The following correction is made to the final energy conservation standards for refrigerators, refrigerator-freezers, and freezers published in the Federal Register on October 24, 1990 (55 FR 42847) and which appear at 10 CFR 430.32(a).

J. Michael Davis,
Assistant Secretary, Conservation and Renewable Energy.

PART 430—[CORRECTED]

1. Section 430.32(a) is corrected by revising item 10 in the table to read as follows; paragraph (a) introductory text is republished for the convenience of the reader.

§ 430.32 Energy conservation standards and effective dates.

(a) Refrigerators/refrigerator-freezers/freezers. These standards do not apply to refrigerators and refrigerator-freezers with total refrigerated volume exceeding 39 cubic feet or freezers with total refrigerated volume exceeding 30 cubic feet.

Product class	Energy standards equations (Kwh/yr)/effective dates	
	Jan. 1, 1990	Jan. 1, 1993
•	•	•
10. Chest freezers and all other freezers	(14.8AV+223)	(11.0AV+160)
•	•	•

[FR Doc. 91-12788 Filed 5-29-91; 8:45 am]
BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-CE-30-AD; Amdt. 39-7007]

Airworthiness Directives; Jetstream Model 3101 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting Airworthiness Directive (AD) 91-08-01, which was previously made effective as to all known U.S. owners and operators of Jetstream Model 3101 airplanes by individual letters. The AD specified revising the maximum speed for flaps at 50 degrees from 153/149 knots indicated airspeed (KIAS) to 130 KIAS, and limiting the maximum flap extension to 20 degrees anytime ice is present on the airplane. The AD was issued based upon incidents where the affected airplanes experienced sudden pitch downs, which could result in loss of control of the airplane.

DATES: Effective June 10, 1991, as to all persons except those persons to whom it was made immediately effective by priority letter AD 91-08-01, issued April 2, 1991, which contained this amendment. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 10, 1991.

ADDRESSES: Jetstream Service Bulletin No. 27-A-JA 910340, dated March 25, 1991, and Jetstream Service Bulletin 32-JM 7483, Revision 1, dated March 25, 1991, that are discussed in this AD may be obtained from British Aerospace, Manager Product Support, Commercial Aircraft Limited, Airlines Division, Prestwick Airport, Ayrshire, KA9 2RW Scotland; Telephone (44-292) 79888; Facsimile (44-292) 79703; or British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC, 20041; Telephone (703) 435-9100; Facsimile (703) 435-2628. This information may be examined in the Regional Rules Docket, FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT:
Mr. Raymond A. Stoer, Project Manager, Brussels Aircraft Certification Office, Europe, Africa, Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone 322.513.38.30 extension 2710; or Mr. John P. Dow, Sr., Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 601 E. 12th Street, Kansas City Missouri 64106; Telephone (816) 426-6932; Facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION: On April 2, 1991, priority letter AD 91-08-01 was issued and made effective immediately as to all known U.S. owners and operators of Jetstream Model 3101 airplanes. The AD required revising the maximum speed for flaps at 50 degrees from 153/149 knots indicated airspeed (KIAS) to 130 KIAS, and limiting the

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maximum flap extension to 20 degrees anytime ice is present on the airplane.

The AD was prompted by a report of an accident in which a Jetstream Model 3101 airplane crashed following flap extension to the 50-degree position for landing. The airplane experienced a sudden pitch down and near total recovery. The airplane had been flown with tile wing and empennage deicing system inoperative, and at the time of the accident had over one inch of ice accretion. This airplane was reported to be traveling in excess of the recommended approach speed. The FAA is aware of two other accidents where the causal factors were not determined to be icing-related but the conditions were similar to those of the airplane involved in the reported accident.

The National Transportation Safety Board (NTSB) requested that other airplane owners or pilots of Jetstream Model 3101 airplanes file post-incident reports of pitch down occurrences that did not result in an accident. Three such reports were filed. In one case, a pilot experienced a pitch down and after landing noticed a buildup of over three inches of rough ice on the leading edge of the horizontal stabilizer. The two other reports were of a similar nature with lesser amounts of ice.

Under the terms of a bilateral airworthiness agreement, the FAA is working with the Civil Aviation Authority (CAA) of the United Kingdom (UK) in conducting a special flight test and evaluation program of the Jetstream Model 3101 airplane. Until this program is completed, possible problem areas are identified, and permanent remedial measures are defined, the FAA reduced the maximum flap operating and extension speeds for flaps at 50 degrees to 130 KIAS, and reduced the maximum flap extension when any ice is visible on the airplane to 20 degrees.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued April 2, 1991, to all known U.S. owners and operators of Jetstream Model 3101 airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations to make it effective as to all persons.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding the following new AD:

91-08-01 Jetstream: Amendment 39-7007: Docket No. 91-CE-30-AD. Applicability: Model 3101 airplanes (all serial numbers), certificated in any category.

Compliance: Required as indicated after the effective date of this AD receipt of this AD, unless already accomplished.

To prevent sudden pitch down of the airplane during icing conditions, accomplish the following:

(a) Within the next 10 hours time-in-service (TIS), accomplish the following:

(1) Modify the operating limitations placards located on the flight deck in accordance with Jetstream Alert Service Bulletin (SB) No. 27-A-JA 910340. This modification will limit the maximum flap extension speed at the 50-degree position to 130 knots indicated airspeed (KIAS).

(2) Insert a copy of this AD into the limitations section of the airplane flight manual and operate the airplane in accordance with these limitations.

(b) Within the next 25 hours TIS, accomplish the following:

(1) Fabricate a placard with the words "Do not extend the flaps beyond the 20-degree position if ice is visible on airplane and ensure that the landing gear selector is down prior to landing." Install this placard on the airplane's instrument panel within the pilot's clear view and operate the airplane in accordance with these limitations. Parts of the airplane where ice could specifically be visible include the windshield wipers, center windshield, propeller spinners, or inboard wing leading edges.

(2) Operate the airplane in accordance with BAe CAA-Mandatory Alert Service Bulletin 27-A-JA 910340, dated March 25, 1991, Section 2.B.—*Instruction for Aircraft Operations*, paragraphs (1)(a) and (1)(c) until Amendments P/32, P/49, and P/52 have been received. Upon receipt, incorporate these amendments into Airplane Flight Manual (AFM) HP.4.10 and operate the airplane accordingly. Ensure that Amendment G/10 is incorporated into AFM HP.4.10.

(c) Within the next 150 hours TIS, perform an operational test of the landing gear position indication and warning system to establish whether the warning system operates at the 20-degree or 50-degree position. Accomplish this test in accordance with the instructions in the Jetstream Series 3100 Airplane Maintenance Manual.

(1) If the warning system operates at the 20-degree position, no further action is needed.

(2) If the warning system operates at the 50-degree position, modify the airplane in accordance with the instructions in Jetstream SB 32-JM 7493, Revision 1, dated March 25, 1991.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

(f) The operational test and modifications required by this AD shall be done in accordance with Jetstream Alert SB No. 27-A-JA 910340 and Jetstream SB 32-JM 7493, Revision 1, both dated March 25, 1991. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. Section 552(a) and 1 CFR Part 51. Copies may be obtained from British Aerospace, Manager Product Support, Commercial Aircraft Limited, Airlines Division, Prestwick Airport, Ayrshire, KA9 2RW Scotland; Telephone (44-292) 79888; Facsimile (44-292) 79703; or British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC, 20041; Telephone (703) 435-9100; Facsimile (703) 435-2628. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

This amendment becomes effective on June 10, 1991, as to all persons except those persons to whom it was made immediately effective by priority letter AD 91-08-01, issued April 2, 1991, which contained this amendment.

Issued in Kansas City, Missouri, on May 8, 1991.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-12703 Filed 05-29-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-106-AD; Amdt. 39-7011]

Airworthiness Directives; Lockheed Aeronautical Systems Company-Georgia Model 1329-23A, -23D, -23E, and -25 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Lockheed Model 1329-23A, -23D, -23E, and -25 series airplanes, which requires repetitive eddy current inspections of the empennage pivot fitting assembly to detect cracks, and repetitive visual inspections of the attaching fasteners to detect loose, missing, or broken fasteners, and repair or replacement, if necessary. This amendment is prompted by a recent report of cracking and loose fasteners in the empennage pivot fitting assembly where it attaches to the vertical stabilizer spar cap. This condition, if not corrected, could result in failure of the empennage pivot fitting assembly, loss of the empennage, and subsequent reduced controllability of the airplane.

DATES: Effective June 24, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 24, 1991.

ADDRESSES: The applicable service information may be obtained from Lockheed Aeronautical Systems Company-Georgia, Attn: Commercial and Customer Support, Dept. 73-05, Zone 0199, 86 South Cobb Drive, Marietta, Georgia 30063.

This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia; or at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas B. Peters, Flight Test Branch, ACE-160A; FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta Georgia; telephone (404) 991-3915.

SUPPLEMENTARY INFORMATION: On November 26, 1984, the FAA issued AD 84-23-01, which required a one-time visual inspection of the JE24-1 empennage pivot fitting where the fitting attaches to the flange of the JE22-1 rear beam of the vertical stabilizer, as described in Lockheed Alert Service Bulletins A329II-55-3 (for Model 1329-25) and A329-299 (for Models 1329-23A, -23D, and -23E), both dated October 19, 1984. [Lockheed subsequently added a procedure to the Handbook of Operating and Maintenance Instructions (HOMI) to repeat this visual inspection annually.] That action was prompted by a report of cracking in the empennage pivot fitting assembly. This condition, if not corrected, could result in failure of the empennage pivot fitting assembly, loss of the empennage, and subsequent reduced controllability of the airplane.

Since issuance of AD 84-23-01, four occurrences of cracking in the empennage pivot fitting assembly recently have been reported; one occurrence was discovered only two months after an annual inspection had been performed. In light of these recent occurrences, the FAA has determined that visual inspections alone are inadequate to detect cracking of the assembly in a timely manner.

The FAA has reviewed and approved Revision 1 to Lockheed Alert Service Bulletins A329II-55-3 and A329-299, both dated April 12, 1991, which describes procedures to perform an eddy current inspection of the JE24 series empennage pivot fitting assembly to detect cracks; a visual inspection of fasteners attaching the empennage pivot fitting assembly to the vertical stabilizer rear beam caps for loose, missing, or broken fasteners, or improper countersinks; and repair or replacement, if necessary.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires repetitive eddy current inspections of the JE24 series empennage pivot fitting assembly to detect cracks, and repair of cracks or replacement of the fitting assembly, if necessary; and repetitive visual inspections of all fasteners attaching the pivot fitting assembly to the vertical stabilizer rear beam caps to detect loose, missing, or broken fasteners, or improper countersinks, and repair or replacement of defective or missing fasteners, if necessary; in accordance with Revision 1 of the service bulletins previously described. In addition, operators are required to submit a report of their inspection findings to the FAA.

Lockheed has advised the FAA that it intends to revise the HOMI to specify performing eddy current inspections of the assembly on an annual basis. The FAA has determined that, based on growth rates and scenarios associated with the subject cracking, eddy current inspections are more effective if performed on an hours time-in-service basis; therefore, the repetitive eddy current inspection interval required by this AD is based upon hours time-in-service.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an

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unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-11-13. Lockheed Aeronautical Systems Company-Georgia: Amendment 39-7011. Docket No. 91-NM-106-AD.

Applicability: Model 1329-23A, -23D, and -23E (JetStar) series airplanes, Serial Numbers 5001 through 5162; and 1329-25 (JetStar II) series airplanes, Serial Numbers 5201 through 5240; certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent failure of the empennage pivot fitting assembly, loss of the empennage, and subsequent reduction of controllability of the airplane, accomplish the following:

(a) Within the next 10 hours time-in-service, or within 20 days after the effective date of this AD, whichever occurs first, perform an eddy current inspection of the JE24 series empennage pivot fitting assemblies to detect cracks, in accordance with Revision 1 of Lockheed Alert Service Bulletins A329II-55-3 (for Model 1329-25) and A329-299 (for Models 1329-23A, -23D, and -23E); both dated April 12, 1991, as applicable.

Repeat this inspection thereafter at intervals not to exceed 300 hours time-in-service.

(b) If cracks are found as a result of the eddy current inspections required by paragraph (a) of this AD, prior to further flight, replace the JE24 series empennage pivot fitting, or repair the fitting in a manner approved by the Manager, Atlanta Aircraft Certification Office.

After replacement or repair, continue to perform the repetitive eddy current inspections required by paragraph (a) of this AD.

(c) Within 7 days after the initial inspection required by paragraph (a) of this AD, submit a report of the inspection results, positive or negative, to the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349, telefax (404) 991-3606.

Note: Negative results of the repetitive inspections need not be reported.

(d) Within the next 10 hours time-in-service, or within 20 days after the effective date of this AD, whichever occurs first, perform a visual inspection of all fasteners attaching the pivot fitting assembly to the vertical stabilizer rear beam caps to detect loose, missing, or broken fasteners, or improper countersinks, in accordance with Revision 1 of Lockheed Alert Service Bulletins A329II-55-3 (for Models 1329-25) and A329-299 (for Model 1329-23A, -23D, and -23E), both dated April 12, 1991, as applicable. Repeat this inspection thereafter at intervals not to exceed 300 hours time-in-service.

(e) If loose, missing, or broken fasteners, or improper countersinks, where applicable, are found as a result of the visual inspection required by paragraph (d) of this AD, prior to further flight, repair or replace defective or missing fasteners in accordance with Revision 1 of Lockheed Alert Service Bulletins A329II-55-3 (for Models 1329-25) and A329-299 (for Model 1329-23A, -23D, and -23E), both dated April 12, 1991, as applicable.

(f) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Atlanta Aircraft Certification Office, ACE-115A, FAA, Small Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Atlanta Aircraft Certification Office, ACE-115A.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

The inspection and repairs shall be done in accordance with Revision 1 of Lockheed Alert Service Bulletins A329II-55-3 (for Model 1329-25) and A329-299 (for Models 1329-23A, -23D, and -23E), both dated April 12, 1991, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Lockheed Aeronautical Systems Company-Georgia, Attn: Commercial and Customer Support, Dept. 73-05, Zone 0199, 86 South Cobb Drive, Marietta, Georgia 30063. Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue S.W., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta Georgia; or at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

This amendment (39-7011, AD 91-11-13) becomes effective June 24, 1991.

Issued in Renton, Washington, on May 14, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-12704 Filed 5-29-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-CE-29-AD; Amdt. 39-6988]

Airworthiness Directives; SOCATA Groupe AEROSPATIALE Models TB9, TB10, and TB20 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to SOCATA Groupe AEROSPATIALE Models TB9, TB10, and TB20 airplanes. This action requires an inspection of the horizontal stabilizer balance weights to ensure proper and secure attachment, and modification if found improperly attached or loose. Loose or improperly attached horizontal stabilizer balance weights have been reported on over 30 of the affected airplanes. The actions specified in this AD are intended to prevent adverse airplane handling qualities and possible loss of control of the airplane.

DATES: Effective June 20, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 20, 1991. Comments for inclusion in the Rules Docket must be received on or before July 19, 1991.

ADDRESSES: SOCATA Groupe AEROSPATIALE Imperative Service Bulletin No. 57, dated January 1991, that is discussed in this AD may be obtained from SOCATA Groupe AEROSPATIALE, Socata Product Support, Aeroport Tarbes-Ossun-Lourdes, B P 930, 65009 Tarbes Cedex, France; Telephone 62.41.74.26; Facsimile 62.41.74.32; or the Product Support Manager, U.S.; AEROSPATIALE, 2701 Forum Drive, Grand Prairie, Texas 75053; Telephone (214) 641-3614; Facsimile (214) 641-3527. This information may be examined at the Rules Docket at the address below. Send comments on the AD in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-29-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be

inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Manager, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000 Brussels, Belgium; Telephone (322) 513.38.30 ext. 2710; Facsimile (322) 230.68.99; or Mr. Richard Yotter, Project Manager, Small Airplane Directorate, Airplane Certification Service, FAA, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932; Facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on SOCATA Groupe AEROSPATIALE Models TB9, TB10, and TB20 airplanes. The DGAC reported that the horizontal stabilizer balance weights on over 30 of the affected airplanes were either loose or improperly attached. SOCATA Groupe AEROSPATIALE has issued Imperative Service Bulletin (SB) No. 57, dated January 1991, which specifies inspection and modification procedures for the horizontal stabilizer balance weights on Models TB9, TB10, and TB20 airplanes. The DGAC classified this SB as mandatory and issued DGAC AD No. 91-031(A) to assure the continued airworthiness of these airplanes in France. Pursuant to a bilateral airworthiness agreement, the DGAC has kept the FAA fully informed of the above situation.

The FAA examined the findings of the DGAC, reviewed all available information, and has determined that emergency AD action is necessary for products of this type design that are certificated for operation in the United States. Since this condition is likely to exist or develop on other SOCATA Groupe AEROSPATIALE Models TB9, TB10, and TB20 airplanes of the same type design, an emergency AD is being issued to prevent loss of control of the affected airplanes. The action requires an inspection of the horizontal stabilizer balance weights to ensure proper and secure attachment, and immediate modification if found improperly attached or loose. The actions are to be done in accordance with the instructions in SOCATA Groupe AEROSPATIALE Imperative Service Bulletin No. 57, dated January 1991.

Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and that good cause exists for making this amendment effective in less than 30 days. Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket at the address given above. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding the following new AD:

SOCATA Groupe AEROSPATIALE: Amendment 39-6988; Docket No. 91-CE-29-AD.

Applicability: Model TB9, TB10, and TB20 airplanes (all serial numbers), certificated in any category.

Compliance: Required within the next 25 hours time-in-service after the effective date of this AD, unless already accomplished.

Note: The compliance time referenced in this AD takes precedence over that in the referenced service bulletin.

To prevent adverse airplane handling qualities and possible loss of control of the airplane, accomplish the following:

(a) Inspect the horizontal stabilizer balance weight attachment nuts for proper installation in accordance with the instructions in parts 1 and 2 of SOCATA Groupe AEROSPATIALE Imperative Service Bulletin No. 57, dated January 1991.

(1) If the horizontal stabilizer balance weight attachment nuts are not loose and are properly installed, accomplish the requirements in part 3, of SOCATA Groupe AEROSPATIALE Imperative Service Bulletin No. 57, dated January 1991 and return the airplane to service.

(2) If the horizontal stabilizer balance weight attachment nuts are loose or are improperly installed, prior to further flight, remove, inspect, modify and reinstall the horizontal stabilizer balance weight in accordance with the criteria and instructions in Part 4 of SOCATA Groupe AEROSPATIALE Imperative Service Bulletin No. 57, dated January 1991.

(b) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000, Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add

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comments and then send it to the Manager, Brussels Aircraft Certification Office.

(c) The inspection and possible modification required by this AD shall be done in accordance with SOCATA Groupe AEROSPATIALE Imperative Service Bulletin No. 57, dated January 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from SOCATA Groupe AEROSPATIALE, Socata Product Support, Aeroport Tarbes-Ossun-Lourdes, B P 930, 65009 Tarbes Cedex, France; or the Product Support Manager, U.S.; AEROSPATIALE, 2701 Forum Drive, Grand Prairie, Texas. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC.

This amendment becomes effective on June 20, 1991.

Issued in Kansas City, Missouri, on April 19 1991.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-12702 Filed 05-29-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF STATE

Bureau of Economic and Business Affairs

[Public Notice 1464]

22 CFR Part 89

Foreign Prohibitions on Longshore Work by U.S. Nationals

AGENCY: Department of State.

ACTION: Interim final rule with request for comments.

SUMMARY: The interim final rule contains a list, of longshore work by particular activity, of countries where performance of such a particular activity is prohibited by law, regulation or in practice in the country concerned. This list is being issued pursuant to section 258(d) of the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. 1288, as added by the Immigration Act of 1990, Public Law 101-649 of November 29, 1990.

DATES: *Effective Dates:* May 28, 1991 to December 31, 1991. The Department of State will issue a final rule on or before the last effective date and after it has had an opportunity to review public and agency comments. Interested parties are invited to submit, in duplicate, comments on or before July 1, 1991.

ADDRESSES: For mailing public comments: Office of Maritime and Land Transport (EB/TRA/MA), Bureau of Economic and Business Affairs, room 5828, Department of State, Washington, DC 20520-5816.

FOR FURTHER INFORMATION CONTACT: Stephen Miller, Office of Maritime and Land Transport, Department of State, Washington, DC 20520-5816. (202) 647-6961.

SUPPLEMENTARY INFORMATION: Section 258(d)(2) of the Immigration and Nationality Act of 1952, as amended, (hereinafter: the Act) directs the Secretary of State (hereinafter: the Secretary) to "compile and annually maintain a list, of longshore work by particular activity, of countries where performance of such work by crewmembers aboard United States vessels is prohibited by law, regulation or in practice in the country." As announced in the Notice of Proposed Rulemaking dated February 27, 1991, the Department of State (hereinafter: the Department) is establishing such a list from reports received from United States diplomatic posts abroad concerning relevant laws, regulations and practices of their host countries and from comments received from interested parties.

In the notice of proposed rulemaking, the Department proposed publishing such a list in the form of a proposed rule within 45 days and a final rule not later than 45 days thereafter (proposed at 56 FR 8167, February 27, 1991, as part 138, now being adopted as an interim final rule, part 89). Collection of information regarding longshore rules, regulations and practices of foreign countries has, however, taken longer than anticipated. The Department therefore plans to issue a list in the form of an interim final rule. This will allow implementation of the reciprocity exemption by the effective date set forth in section 203(d) of the Immigration Act of 1990. The Department will issue a final rule not later than December 31, 1991, after it has had an opportunity to review comments submitted by interested members of the public, other government agencies and foreign governments.

On March 3, 1991, the Department directed U.S. diplomatic posts to seek to determine through contacts with appropriate host appropriate government officials and other sources of information (a) which, if any, host country laws or regulations restrict or have the effect of restricting any type of longshore activity by crews of any vessels, and (b) which, if any, host country practices have restricted the crews of U.S. vessels from performing any type of longshore activity normally performed in the country over the past year. Posts were instructed to be as specific as possible in describing such laws, regulations, practices and particular longshore activities.

The Department has in consequence received reports from 109 countries. Of these, embassies in 47 countries reported laws and regulations that restrict U.S. mariners from performing certain activities constituting longshore work. Reports in respect of 11 other countries indicate that the host governments have no such laws and regulations, but that collective bargaining agreements may restrict crews abroad U.S. ships from carrying out certain longshore activities.

Comments From Interested Parties

The Department has received a number of public comments in response to the notice of proposed rulemaking.

The International Council of Cruise Lines (ICCL) advised that legislative history exempting the cruise industry was inserted on ICCL's behalf. The ICCL declares that this was the intention of Congress and its own intention.

The Council of European and Japanese Shipowners' Associations (CENSA) opposes using non-governmental collective bargaining agreements or other industry contracts as a standard for compiling the list of countries prohibiting longshore work by U.S. mariners. CENSA takes the position that such an interpretation of the term "practices" would be contrary to direct provisions of the statute, which CENSA interprets as only applying to governmental restrictions. CENSA notes that in testimony before the House Committee on the Judiciary in connection with H.R. 2138, a predecessor bill to section 203 of the Immigration Act of 1990, proponents of this legislation intended to counter alleged governmental rules, regulations and practices. CENSA also notes the fact that the issue of collective bargaining agreements never emerged in discussions with members of Congress and staff and concludes that this is the reason the final version of the Conference Report omits references to this matter included in earlier drafts.

In addition, CENSA expresses the concern that a proposed rule could violate treaties of Friendship, Commerce and Navigation. CENSA observes that section 258 of the Act has the effect of discriminating against foreign-registered vessels in the United States by denying them the same treatment afforded to U.S.-flag carriers, citizens and nationals. If the proposed rule were to include foreign collective bargaining agreements, which are by nature are flag-blind non-governmental actions, CENSA considers that the treaties would be violated by denying national treatment to foreign-flag vessels within the United States.

The Canadian American Company (CANAMCO), commenting on behalf of the Canadian Shipowners Association (CSA), states that, to its knowledge, there are no Canadian laws, regulations, or practices that prohibit particular longshore activities by crews on U.S. ships in Canada.

CSA suggests that the Department may wish to clarify the definition of "in practice" in section 258(d)(3). CSA takes the position that the term refers to governmental practices applied throughout a country. CSA points out that draft Conference Report language referring to collective bargaining agreements and industry agreements, contracts, and organizational policies was omitted from the final Conference Report. CSA believes that this omission reflects the intent of Congress not to include collective bargaining and other private agreements and policies. Similarly, CSA recalls that a proposed clause was not adopted that would have directed the Secretary of State to consider activities performed in each coastal region of contiguous countries, rather than on a nation-wide basis, to reflect actual practices in each such region. CSA interprets this deletion as a reflection of congressional intent to refer only to activities that occur nation-wide.

Counsel to the International Longshoremen's Association, AFL-CIO, advises that its client's affiliates and colleagues in foreign countries are gathering information relevant to the establishment of the list, but might not be able to submit the information before the March 29, 1991, deadline for submission of comments. He underscores the need to assemble an accurate list.

In the view of the ILA counsel, the bill has the objective of remedying an inequity which deprived his client and longshoremen generally of rights and protections the Act accords to workers in other fields. He expresses concern that changes to the reciprocity provisions added to the bill during congressional deliberations may yield a different interpretation from that he believes was originally intended. He submits that the Conference Report shows that Congress carefully and articulately delineated exceptions in order to maintain the fundamental objective of preventing foreign mariners from performing longshore work. He further submits that the Department must account for regulations and practices which in law and theory tend to bar, or actually bar, U.S. mariners from performing longshore activities, including contracts, traditions and local political factors.

The Transportation Institute, representing more than 140 U.S.-flag vessel operators engaged in all aspects of maritime transportation in both the domestic and international trades, supports publication of the list as a proposed rule, in order to give vessel operators the opportunity to confirm or challenge the items listed. The Institute further requests the Department to seek public comment before the list is updated each year as required by the Act.

Stolt-Nielsen Inc., in its capacity as managing agent for Stolt Tankers and Terminals (Holdings) S.A., identifies itself as the largest chemical parcel tanker operator in the world, whose ships can simultaneously carry up to 58 different products. Stolt-Nielson emphasizes that many of these products are hazardous and require specialized handling. According to the company, parcel tankers routinely berth at privately owned terminals or specialized public terminals and that the ship's crews perform all cargo handling duties as a matter of established practice around the world. Attached to Stolt-Nielson's comments are a list of reasons why untrained longshoremen should not be involved in the operation of parcel tankers.

The American Great Lakes Ports has submitted comments on behalf of the International Association of Great Lakes Ports (IAGLP). In connection with its policy for cost containment for the St. Lawrence Seaway, the IAGLP opposes any application of the Act which would increase the costs of Great Lakes/Seaway trade. Referring to the definition in the Act, the Association interprets the term "in practice" as general and consistent practices nationwide excluding isolated cases. The IAGLP recalls that the Act specifies a list of countries by particular activity to establish that restrictions on the crews of foreign ships in U.S. ports and waters would only apply to identical activities.

On behalf of the Republic of Cyprus, the Cyprus Maritime Office in New York City urges that the Department not include Cyprus in the list. According to the Government of Cyprus, the prohibition in the Cyprus Port Workers (Regulation of Employment) Law of December 31, 1952, as amended, against longshore work by crewmembers only applies to the operation of on-board cranes, unless the superintendent of the port determines that port workers do not have the special technical knowledge required to handle a particular type of crane. The Government of Cyprus further reports that this law only applies to the ports of Limassol and Larnaca. It also observes that the law applies both to Cypriot and other vessels and does not discriminate in favor of vessels of Cyprus and their crewmembers. The Government of Cyprus draws a parallel to the objective of section 258(d)(2) of ensuring that U.S. mariners have the same rights to perform longshore work in a foreign country as do nationals of that country. The Government of Cyprus notes that the practice of using local longshore workers may reflect economic, historic and other reasons not related to compulsion or discriminatory policies. It cites the case where longshoremen may perform the work more efficiently, quickly, and cheaply than a ship's crew. The Government of Cyprus states that in practice, it allows foreign crewmembers to perform all loading and unloading activities within the definition of longshore work, but Cypriot port workers must receive payment they would have earned for the work. Finally, The Government of Cyprus notes the possible impact that inclusion in the list would have on the national economy of a country with an open registry, such as Cyprus.

Shippers for Competitive Ocean Transport (SCOT) have submitted comments on behalf of its members, which it advises account for over 60 percent of all U.S. liner exports and for major maritime movements of liquid chemical, petroleum products, and dry bulk products. SCOT emphasizes that practices for products in bulk differ significantly from practices for container or break bulk liner shipping. Consequently, SCOT calls upon the Department to gather separate information on longshore activities for liner, dry bulk and tanker shipping. SCOT also takes the position that practices in isolated labor contracts or in individual ports should not be taken into account in compiling the list.

SCOT attaches importance to determining whether foreign countries on the list prohibit activities on board the ship. In particular, SCOT notes that the crews of U.S. and foreign vessels do not normally handle lines on the docks of U.S. ports. SCOT does not believe that the U.S. could take action against the crews of foreign vessels for activities that U.S. crews cannot perform in U.S. ports. SCOT expresses concern that unique longshore labor requirements, particularly for bulk vessels, could render U.S. exports uncompetitive and would significantly increase the risk of harm to the environment, the ship and shore personnel.

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The Lake Carriers' Association and the American Iron Ore Association (the Associations) have submitted joint comments urging that Canada not be placed on the list of countries which prohibit U.S. crewmembers of bulk vessels from carrying out longshore activities. The Associations report that the Canadian Government does not prohibit crewmembers of U.S.-flag bulk vessels from performing longshore work as defined in the Act. According to the Associations, U.S. mariners may handle mooring lines on the dock when the vessel is made fast or let go; move the vessel to place it under shoreside unloading equipment; move the vessel in position to unload the vessel onto specific cargo piles, hoppers or conveyor belt systems; operate the cargo related equipment integral to the vessel; and other related activities. The Associations note that these practices have been going on "for decades" and were undoubtedly in practice during the past year.

Standards for Reciprocity Exception

Taking into account the information and comments received to date in response to the notice of proposed rulemaking, the Department is listing those countries where restrictions on longshore activities by crewmembers of U.S. ships are imposed or approved by the foreign government on a national basis

—By law or regulation,
—Through a collective bargaining agreement directly negotiated by the foreign government with other parties, or
—Through restrictions in private collective bargaining agreements imposed or approved by the foreign government.

Within these categories, the Department is listing only those countries where laws, regulations and practices in fact prevent U.S. crewmembers from performing longshore work. The Department is considering possible or hypothetical effects of laws, regulations and practices as evidence of restrictions on U.S. mariners if these crewmembers are in fact able to perform longshore activities.

Because section 258(d) of the Act only refers to the effects on crewmembers of U.S. ships, the list of countries does not include laws, regulations or practices that do not have an effect on the crewmembers of U.S. ships even if they restrict the crews on ships of other countries. Consequently, countries where the Department has determined that no U.S. ships have called in the past year will not be on the list.

The Governments of several countries have informed U.S. Embassies that their laws, regulations and practices do not discriminate against the crews of U.S. ships vis a vis their own or third-country vessels. The Act, however, directs the Secretary to compile a list of countries restricting the crews of U.S. ships, regardless of whether there is discrimination as between crews of U.S. ships and ships of other countries.

Concerning the application of the Act to the loading and discharge of parcel tankers and other specialized bulk carriers, section 258(b)(2) exempts from the definition of longshore work loading or unloading of any cargo for which special regulations have been prescribed by the Secretary of Transportation under chapter 37 of title 46 of the United States Code (relating to carriage of liquid bulk dangerous cargoes), section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321), or section 105 or 106 of the Hazardous Materials Transportation Act (49 U.S.C. App. 1804, 1805).

Definition of Longshore Work

Section 258(b) defines the term "longshore work" as "any activity relating to the loading or unloading of cargo, and operation of cargo-related equipment (whether or not integral to the vessel), and the handling of mooring lines on the dock when the vessel is made fast or let go, in the United States or the coastal waters thereof."

In its cable of March 3, the Department of State included this definition as guidance for the posts abroad. Information developed by the Department indicates that there is no international consensus on what constitutes "longshore work". The laws and regulations of many countries which prohibit crews of U.S. ships from performing longshore work do not provide a definition of the term and do not enumerate particular activities which are covered. Other countries specify particular activities exempt from their restrictions on longshore work. It is also possible that given activities covered by the Act's definition of "longshore work" may not be viewed in other countries as "longshore work" for the purposes of their laws or regulations. For example, some countries apply prohibitions to activities on board the ship, while other countries do not even consider shipboard activities as longshore work. In this connection, in order to complete as detailed a list as possible, the Department sought information regarding restrictions on particular shipboard activities, e.g., opening of hatches, rigging of ship's gear and handling of lines. Moreover, the regulations of many countries are not sufficiently detailed to differentiate between practices applying to dry bulk, tanker and liner shipping. Where identified, exceptions from restrictions on longshore work are noted in the list of countries established in accord with section 258(d)(2) of the Act.

Definition of "In Practice"

Section 258(d)(3) defines "in practice" as "an activity normally performed in such country during the one-year period preceding the arrival of such vessel into the United States or coastal waters thereof."

Comments generally centered on three aspects of the term: Application to collective bargaining agreements, the geographic scope of restrictive practices, and the presumptions created by established commercial practice.

Collective Bargaining Agreements

The Department has received a variety of comments regarding the inclusion, as indicative of foreign practice, of collective bargaining agreements that have the effect of restricting the activities of U.S. crewmembers. In this regard, the Department has carefully considered the language and underlying purpose of section 258, as well as its legislative history. Taking all relevant factors into account, the Department has concluded that whether such agreements should be considered foreign practice is determined by the degree of foreign governmental involvement in the collective bargaining agreement, i.e., the extent to which the restrictions in the agreement are in fact imposed or approved by a foreign government. Thus, collective bargaining agreements directly between a foreign state on the one hand, and a labor union, on the other hand, concerning the operation of a public port would constitute foreign practice. Where restrictions in other collective bargaining agreements are either specifically imposed or approved by the foreign government, the Department has also considered the agreement as indicative of foreign practice. In the case of agreements concluded by foreign port authorities, the Department has examined, consistent with these criteria, the degree of foreign government control over the port authority's employment practices. The Department would also include as practice any requirements that vessels comply with restrictions in collective bargaining agreements as a condition for the entry of U.S. crewmembers, with respect to those restrictions. Purely private agreements between private operators and longshore unions not imposed or approved by the foreign government would not constitute foreign practice.

In accordance with these criteria, the Department is placing Congo and Jamaica on the list because their governments have directly negotiated restrictive agreements with labor unions. Argentina, Belgium, Belize, and Colombia are listed because their governments either give designated labor unions the exclusive right to do certain longshore activities or have approved collective bargaining agreements with such restrictions. Canada, the Dominican Republic, Ecuador, and Korea are not listed because the bargaining agreements were negotiated by private parties without any government intervention. Barbados, Finland, and Ireland are not listed because the port authorities concluding the agreements with the longshore unions are independent of the government with respect to employment practices. The Department is still gathering information concerning collective bargaining agreements in effect in Haiti. Haiti has not been included on the list pending receipt of this information.

Geographic Scope

The Conference Report establishes "general practice" as a test for reciprocity exemptions. A number of comments received by the Department addressed this point. The Department notes that proposed provisions allowing the Secretary of State to examine each region of contiguous countries rather than considering activities on a nation-wide basis were not included in the final bill enacted by the Congress. The Department has concluded that a country where restrictions do not generally prevail throughout that country should not be listed.

Commercial Practice

Several comments observed that carriers may use local longshore workers as a matter of established commercial practice. Carriers may voluntarily employ local workers for reasons other than governmentally imposed or approved constraints. In the absence of evidence of restrictive laws, regulations or practices, the Department presumes that the choice to use local longshoremen results from purely voluntary commercial decisions.

Compensation of Port Workers

Although the Department received no comments on this issue, information from U.S. Embassies revealed that several countries require carriers to compensate local workers for wages foregone if crewmembers perform longshore work. The Department is not including such restrictions as indicative of foreign practices unless it determines that the compensation does not reflect the ordinary market wages for such work.

International Obligations

Some comments raise the point that exclusion of the crews of foreign vessels from longshore work in U.S. ports pursuant to the Act may violate treaties of Friendship, Commerce and Navigation in force between the United States and other countries. The Department has considered the matter and has concluded that no inconsistency with U.S. treaty obligations is apparent.

Opportunity for Public Comments

Several interested parties expressed the desire to comment on the first round of comments submitted in response to the Department's notice of February 27, 1991. For this reason, the Department has included extensive summaries of the comments in this Notice. In accordance with section 258(d)(2) of the Act and 5 U.S.C. 553, the Department will provide public notice in the **Federal Register** before updating the list each year.

Longshore Work in Certain Countries

The situations of certain countries warrant detailed comment.

Cyprus

The Cyprus Maritime Office has stated on behalf of the Government of Cyprus that U.S. crewmembers will not be restricted from doing longshore work. The Department therefore is not including Cyprus on the list.

Panama

The Port Authority of Panama has also submitted a statement asserting that the crews of U.S. ships have the right to do longshore work, on a reciprocal basis. The Department therefore is not including Panama on the list pending confirmation of this statement by the Government of Panama.

Liberia

Liberia has been in a state of internal turmoil since January 1990, with government services operating at a minimal level. An interim National Port Authority is operating the freeport of Monrovia and has witnessed a resumption of commercial shipping since last November. No U.S. vessels have called at Liberian ports in the past year. Therefore in accordance with the general criteria described earlier, the Department is not including Liberia in the list.

Peru

Peruvian regulations formerly reserved for Peruvian stevedores all loading and unloading activities, including those involving equipment integral to the ship, such as hatches and cranes. Decrees passed in 1990 allow shipping companies to contract freely for longshore services. On March 11, 1991, the Peruvian Government abolished the Maritime Labor Control Commission, which had the responsibility for regulating longshore work since 1935. On March 14, the Government declared a state of emergency in the ports and authorized the Ministry of Defense to take control of port operations. U.S. shipping lines report that the crews of their ships have been able to perform longshore activities. For that reason, the Department is not including Peru on the list.

List of Subjects in 22 CFR Part 89

Aliens, Crewmembers, Immigration, Labor, Longshore work.

For the reasons set out in the preamble, 22 CFR chapter I is amended as follows.

Part 89, consisting at this time of § 89.1, is added to read as follows:

PART 138—PROHIBITIONS ON LONGSHORE WORK BY U.S. NATIONALS

§ 89.1 Prohibitions on Longshore work by U.S. nationals, listing by country.

The Secretary of State has determined that, in the following countries, longshore work by crewmembers aboard United States vessels is prohibited by law, regulation, or in practice, with respect to the particular activities noted:

Argentina

(a) Loading and discharge of cargo.

Australia

(a) Handling of cargo or ballast in connection with the loading or discharge of a ship, including rigging of ship's gear, unless there is insufficient shore labor.
(b) Exceptions: Operation of self discharging equipment and other automatic loading/unloading mechanisms.

Belgium

(a) Cargo loading and discharge.
(b) Exception: operation of cargo-related machinery on board the ship.

Belize

(a) Loading and unloading cargo vessels and handling of containers.

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(b) Exception: operation of shipboard cranes to load and offload containers.

Brazil

(a) movement of cargo.
(b) lashing or unlashing of containers.
(c) operation of cargo related equipment, whether or not on board the ship.
(d) activities performed by cargo checkers, tally clerks, watchmen, and coopers.

Burma

(a) Loading and discharge of cargo from and in any sea-going vessels coming to any dock, wharf, quay, stage, jetty or pier.
(b) Handling of mooring lines.
(c) Exceptions: Shipboard activities including opening hatches and rigging ship's gear; loading or discharge of cargo when the equipment or cargoes require special handling; and loading or discharge of other cargoes, by special agreement with port authorities.

Chile

(a) Any and all functions relating to the loading and unloading of cargo and other tasks appropriate to a port, wheter on board boats and ships in the port or in the dock area, including the operation of cargo-related equipment, whether or not integral to the vessel, including hatches and rigging of ship's gear.
(b) Exceptions:
(1) Placement and removal of mooring ropes from dock bitts and operation of the capstans aboard the vessel, when under the control of the harbor pilot; and
(2) Doing a vessel's mess and purveying alongside the ship with the provisions, loading and placament of the provisions in the ship's larder or stores.

China, People's Republic of

(a) All longshore activities.

Colombia

(a) All activities related to the loading and discharge of cargo, including operation of cargo-related equipment integral to the vessel.

Congo

(a) All longshore activities.

Costa Rica

(a) Operation of loading and unloading equipment affixed to the pier.

Cote d'Ivoire

(a) All longshore activities.

Egypt

(a) Cargo loading and unloading activities not on board the ship.

El Salvador

(a) Port operations, including the loading and discharge of cargo, the operation of equipment, whether on the ship or not, and the handling of lines.

France

(a) All loading and unloading of ocean-going ships.
(b) Exception: movement of personal belongings and machinery belonging to the ship.

Guatemala

(a) All port operations except for the opening of hatches and entrances to ship storage areas.

Guinea

(a) All longshore activities.

Honduras

(a) All longshore activities, including loading and discharge of cargo, handling of containers, operation of cranes, hoisting machinery and roll-on/roll-off equipment.
(b) Exception: handling of toxic or hazardous materials, with clearances obtained through the national port authority prior to entry into port.

India

(a) All on-board activities relating to loading and discharge of cargo and operation of cargo-related equipment, including rigging of derricks, and opening and closing of hatches.
(b) All movement of cargo on shore.
(c) Berthing vessels and handling of mooring lines on dock when the vessel is made fast or let go.

Indonesia

(a) All longshore activities, including opening of hatches, rigging of ship's gear and line handling, as long as there are Indonesian longshoremen available.
(b) Exceptions: activities for which local workers lack the requisite skills; in an emergency situation, duties ordinarily performed by longshoremen; and loading and discharge of hazardous chemicals at industrial ports if no Indonesian workers are available for the job.

Israel

(a) All longshore activities, including loading and unloading of cargo, operation of cargo-related equipment, and handling of mooring lines.
(b) Exception: jobs related to the maintenance of the ship itself.

Italy

(a) All longshore activities.
(b) Exceptions: operation of automated loading and discharge equipment on board the vessel; and on board activities other than handling of cargo-related equipment, including
(1) Handling of the lifts on ferries,
(2) Preparation of on board derricks, winches and cranes,
(3) Opening and closing of hatches,
(4) Loading and discharge operations relative to barges from LASH vessels,
(5) Installation of bulkheads to secure cargo,
(6) Lashing and unlashing operations, and
(7) Securing of cargo.

Jamaica

(a) Activities normally carried out by stevedores, linesmen, gangmen or longshoremen, including
(1) all on-shore activities dealing with the handling and placement of cargo;
(2) all movement of cargo from or onto ships whether by gangplank or crane;
(3) all stacking and slinging of pallets within the ship's cargo holds;
(4) mooring and unmooring of ships, including handling of mooring lines aboard ships; and
(5) any other activity involving the discharge of cargo into Jamaica.
(b) All activities associated with the discharge of grain and loading of grain products, with the exception of handling of on-board machinery to keep the ship righted.
(c) Exception: direction of supervisors by the ship's officers only insofar as necessary to identify which cargo is to be palletized, shifted, or off-loaded.

Kenya

(a) All longshore activities.

Madagascar

(a) All longshore activities.

Mauritania

(a) All longshore activities.
(b) Exception: supervision by the vessel's master or loadmaster.

Morocco

(a) Handling of any product, creates, boxes, bales or containers destined for unloading.
(b) Exception: any shipboard activities not relating to loading or discharge operations and not having any commercial character, including opening hatches, rigging of ship's gear and line handling.

Mozambique

(a) All longshore activities.

Namibia

(a) Port services and cargo loading and discharge.
(b) Exception: handling of cargo only while it remains on the vessel.

Oman

(a) Longshore work without a labor permit, including loading or discharge of cargo, handling of containers or any other activity not related to a crewman's job on the ship or to basic ship repair.
(b) Exceptions: opening of hatches, rigging of the ship's gear and handling of lines aboard ship.

Pakistan

(a) All longshore activities.
(b) Exceptions: Shipboard activities other than opening of hatches; with prior approval from Ministry of Communications officials, loading or discharge of special cargoes with on-board equipment in cases where dockside equipment operated by longshoremen cannot safely move the cargoes.

Philippines

(a) All longshore activities.

Portugal

(a) All operations associated with loading or unloading cargo and complementary operations within the port area, including lashing.
(b) Exceptions:
(1) opening and closing of hatches;
(2) rigging of ship's gear;
(3) handling of lines;
(4) military vessels or the operation of military material in areas under military jurisdiction;
(5) the supply of bulk operating fuels and lubricating oils to a ship;
(6) the movement of spare parts, supplies, ship's stores, fuels and lubricants when the quantities to be moved are less than three tons per vessel;
(7) the loading, unloading and transfer of fuels and bulk liquid petroleum products;
(8) the loading, unloading and transfer of chemical products whose characteristics require special handling;
(9) the loading, unloading and packing of fresh, refrigerated or frozen fish from a fishing vessel, except when such cargo is listed on the manifest; and
(10) the movement of goods and materials within naval construction and repair yards or petroleum terminals.

Romania

(a) All longshore activities not on board the ship.

St. Lucia

(a) All longshore activities.

Sierra Leone

(a) All longshore activities on shore.

South Africa

(a) Cargo handling without a license issued by the port authority.

Spain

(a) Longshore operations, including any loading, offloading, stowage and transfer of goods within port intended for maritime transport by ship.
(b) Exceptions include:
(1) handling of goods, material, and machinery belonging to the port authorities;
(2) material of the Ministry of Defense unless operations are carried out by a stowage company;
(3) mail loading and offloading;
(4) private vehicles offloaded by owners or drivers and complementary grip tasks carried out by ship's crew;
(5) offloading, transport to storage and complementary work of fresh fish from ships of less than 100 gross tons capacity or those above this size under special contract when carried out by the crew;
(6) operations carried out within the port directly related to processing plants, industrial zones or canning factories, as long as they are not carried out by a stowage company;
(7) handling of personal belongings of passengers and crewmembers;
(8) loading and offloading of maintenance goods as long as it does not require hiring additional personnel or operations carried out by pipelines;
(9) the use of cranes and tractor devices not assigned to port operations as long as they are used by their regular personnel; and
(10) driving and coupling tractor devices to load and offload trailers as long as it is done on a provisional basis outside port areas to and from loading areas. Driving of any vehicles transporting goods to crane or loading device in truck ship operations, if done on a provisional basis.

Sri Lanka

(a) All longshore activities.
(b) Exceptions: With a waiver granted by the Minister of Ports and Shippping upon application through the ports authority, handling of long lines of ships awaiting unloading and other activities under exceptional circumstances.

Taiwan

(a) Loading and discharge activities, including opening of hatches and rigging of ship's gear.
(b) Handling of mooring lines on the dock for all vessels.
(c) Exceptions: loading and discharge of cargo if the longshoremen cannot handle the cranes of a particular ship; and operation of certain hatch opening equipment.

Thailand

(a) All longshore activities, including opening of hatches, rigging ship's gear and line handling once the ship has berthed.
(b) Exception: operation of onboard cargo machinery integral to the ship.

Togo

(a) Handling of mooring lines on the dock.

Trinidad and Tobago

(a) All longshore activities, including opening hatches, rigging of ship's gear and handling of mooring lines.

Tunisia

(a) All longshore or dock activities, including the operation of on-board hoists.

Turkey

(a) Work done on the pier, including mooring, cargo handling, crane operations and ground vehicle transportation.
(b) Exceptions: activities on board vessels to assist in loading and discharge of cargo.

Uruguay

(a) All longshore activities, including the opening of hatches, rigging of ship's gear and line handling.
(b) Exception: loading and discharge of cargo where Uruguayan workers cannot operate on board loading cranes.

Yemen

(a) All longshore activities.

(8 U.S.C. 1288, Pub. L. 101-649, 104 Stat. 4978)

Dated: May 25, 1991.

Richard E. Hecklinger,

Acting Assistant Secretary, Economic and Business Affairs, Department of State.

[FR Doc. 91-12895 Filed 5-28-91; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 221

[Docket No. R-91-1488; FR-2774-N-04]

RIN 2502-AE95

Mortgage Insurance for Single Room Occupancy Projects, Notice of Extension of Effective Date

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of extension of effective date.

SUMMARY: On April 19, 1991, the Department published a final rule in the **Federal Register** establishing a new program of mortgage insurance for single room occupancy projects. The effective date of this final rule was given as June 1, 1991, with the proviso that, if it became necessary to delay this effective date, HUD would publish a document in the **Federal Register** before June 1, 1991 to announce a different date. The purpose of this document is to change the announced June 1, 1991 effective date to June 15, 1991.

EFFECTIVE DATE: June 15, 1991.

FOR FURTHER INFORMATION CONTACT: Linda Cheatham, Acting Director, Office of Insured Multifamily Development, room 6134, Department of Housing and Urban Development, 451 Seventh Street, SW. Washington, DC 20410, telephone (202) 708-3000. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Department published a final rule in the **Federal Register** on April 19, 1991 entitled "Mortgage Insurance for Single Room Occupancy Projects" (56 FR 16198).Under the heading "Effective Date," that rule set forth a date of June 1, 1991 with the following additional sentence, "If it is necessary to delay this effective date, HUD will publish a document in the **Federal Register** prior to June 1, 1991 doing so."

The Department has found, and notice is hereby given, that it is necessary to extend the effective date of this final rule on Mortgage Insurance for Single Room Occupancy Projects from June 1, 1991 to June 15, 1991.

Dated: May 22, 1991.

Arthur J. Hill,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 91-12863 Filed 5-29-91; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Regulatory Program; Revision of Administrative Rule

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of the proposed continuation of Revised Program Amendment Number 39 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This amendment is intended to satisfy a requirement placed on the Ohio program as part of OSM's approval of Ohio Revised Program Amendment Number 39. The amendment states that Ohio will require that all operators fence, cover, or use other appropriate methods to exclude wildlife from ponds that contain hazardous concentrations of toxic-forming materials.

EFFECTIVE DATE: May 30, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 2242 South Hamilton Road, Room 202, Columbus, Ohio 43232; Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determination.

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Submission of Amendment

On February 22, 1990, Ohio submitted Revised Program Amendment Number 39 to the Ohio program (Ohio Administrative Record No. OH-1284). The revised amendment was intended to make the Ohio program consistent with Federal regulations. On September 18, 1990, OSM approved, with certain exceptions, Ohio Revised Program Amendment Number 39 (55 FR 38319). As part of that approval, OSM required Ohio to further amend its program to require that all operators fence, cover, or use other appropriate methods to exclude wildlife from ponds that contain hazardous concentrations of toxic-forming materials.

By letter dated March 1, 1991 (Ohio Administrative Record No. OH-1470), Ohio submitted a proposed continuation of Ohio Revised Program Amendment Number 39. This proposed continuation of the amendment would revise the Ohio Administrative Code (OAC) Section 1501:13-9-11 by reiterating the Federal language from 30 CFR 816.97(e)(4) requiring that all operators fence, cover, or use other appropriate methods to exclude wildlife from ponds that contain hazardous concentrations of toxic-forming materials.

OSM announced receipt of the proposed amendment in the March 27, 1991, **Federal Register** (56 FR 12690), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on April 26, 1991.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Ohio program.

In the preamble to OSM's partial approval of Program Amendment Number 39R on September 18, 1990 (55 FR 38325), the Director of OSM required that:

> Ohio amend its program to require that operators fence, cover, or use appropriate methods to exclude wildlife from ponds that contain hazardous concentrations of toxic-forming materials.

Subsequently, Ohio proposes to amend OAC 1501:13-9-11 by adding a new paragraph (D)(3) to require that all operators fence, cover, or use other appropriate methods to exclude wildlife from ponds that contain hazardous concentrations of toxic-forming materials. Upon review, OSM has determined that the proposed amendment fully satisfies the Federal requirement at 30 CFR 935.16(a). The Director finds, therefore, that the proposed amendment is substantively identical to and no less effective than the corresponding Federal regulation at 30 CFR 816.97(e)(4). Consequently, the required program amendment codified at 30 CFR 935.16(a) is satisfied and can be removed.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the March 27, 1991, **Federal Register** ended on April 26, 1991. No public comments were received and the scheduled public hearing was not held as no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Ohio program. The U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers, and the U.S. Department of Agriculture, Soil Conservation Service, responded that they had no comments on the proposed amendment. No other comments were received.

V. Director's Decision

Based on the above findings, the Director is approving the continuation of Revised Ohio Program Amendment Number 39, as submitted on March 1, 1991. The Director is amending 30 CFR part 935 to implement this decision. As explained in the finding, this amendment satisfies the required amendment at 30 CFR 935.16(a) and, therefore, the Director is revising the Federal rules to remove this requirement.

This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no such provisions and that EPA concurrence is, therefore, unnecessary.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exception from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 15, 1991.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 935.15, a new paragraph (xx) is added to read as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(xx) The following amendment to the Ohio permanent regulatory program, as submitted by letter dated March 1, 1991, is approved effective May 30, 1991: The continuation of Revised Program Amendment Number 39 which adds a new rule concerning excluding wildlife from toxic ponds at Ohio Administrative Code (OAC) Section 1501:13-9-11(D)(3).

§ 935.16 [Amended]

3. In § 935.16 paragraph (a) is removed and reserved.

[FR Doc. 91-12714 Filed 5-29-91; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[OGD 05-91-23]

Special Local Regulations for Marine Events, American Diabetes Association Choptank River Swim, Choptank River Bridge, Cambridge, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of Implementation of 33 CFR 100.512.

SUMMARY: This notice implements 33 CFR 100.512 for the swim portion of the American Diabetes Association Triathalon. The event will be held on June 2, 1991 in the Choptank River. The swim portion of the triathalon will consist of approximately 400 swimmers racing across the Choptank River. The course will begin at the sandy beach on the west side of the Gateway Marina entrance on the north shore to the Choptank River and end at Great Marsh Point on the opposite shore. These regulations restrict vessel navigation in the regulated area during the swim portion of the triathalon.

EFFECTIVE DATES: The regulations in 33 CFR 100.512 are effective from 7 a.m. to 2 p.m., June 2, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, (804) 398-6204.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

Mr. Fletcher Hanks, Race Chairman for American Diabetes Association Choptank River swim, submitted an application requesting permission to hold the swim portion of this triathalon on June 2, 1991. Since a portion of the Choptank River must be closed to traffic during this portion of the event, the special local regulations in 33 CFR 100.512 are implemented.

Dated: May 22, 1991.

H.B. Gehring,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District Acting.

[FR Doc. 91-12734 Filed 5-29-91; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 05-91-22]

Special Local Regulations for Marine Events; Harborfest 1991; Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.501.

SUMMARY: This notice implements 33 CFR 100.501 for Harborfest 1991, an annual event held in the Waterside area of the Elizabeth River between Norfolk and Portsmouth, Virginia. These special local regulations are needed to control vessel traffic within the immediate vicinity of Waterside due to the confined nature of the waterway and expected vessel congestion during the Harborfest 1991 activities. The effect will be to restrict general navigation in the regulated area for the safety of participants and spectators.

EFFECTIVE DATES: The regulations in 33 CFR 100.501 are effective for the following periods: 10 a.m. to 9 p.m., June 7, 1991. 8 a.m. to 11 p.m., June 8, 1991. 8:30 a.m. to 6:30 p.m., June 9, 1991.

If inclement weather causes the postponement of the fireworks display on June 8, 1991, the regulations will be in effect until 11 p.m., June 9, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, (804) 398-6204.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Fifth Coast Guard District, and Lieutenant Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

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Discussion of Regulations

Norfolk Harborfest, Inc. has submitted an application dated April 5, 1991 to hold Harborfest 1991 on June 7, 8, and 9, 1991, in the Waterside area of the Elizabeth River. This area is covered by 33 CFR 100.501 and generally includes the waters of the Elizabeth River between Town Point Park, Norfolk, Virginia, the mouth of the Eastern Branch of the Elizabeth River, and Hospital Point, Portsmouth, Virginia. Since this event is of the type contemplated by this regulation and the safety of the participants and spectators viewing this event will be enhanced by the implementation of special local regulations for the Elizabeth River, 33 CFR 100.501 will be in effect during Harborfest 1991. Harborfest 1991 will be a three-day event sponsored by Norfolk Harborfest, Inc. The event will consist of aerobatic demonstrations, an air/sea rescue demonstration, fireworks, and numerous other water events, to include a parade of sailboats and several boat and raft races. Because commercial vessels will be permitted to transit the regulated area between events, commercial traffic should not be severely disrupted. In addition to regulating the area for the safety of life and property, this notice of implementation also authorizes the Patrol Commander to regulate the operation of the Berkley drawbridge in accordance with 33 CFR 117.1007, and authorizes spectators to anchor in the special anchorage areas described in 33 CFR 110.72aa.

Dated: May 22, 1991.

H.B. Gehring,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District Acting.

[FR Doc. 91-12735 Filed 5-29-91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD 05-91-24]

Special Local Regulations for Marine Events; National Flag Day Fireworks Display; Fort McHenry, Baltimore, MD

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the National Flag Day firework display. The fireworks will be launched from a barge anchored approximately 120 yards northeast of Fort McHenry Range Front Light (LLNR 7550), Patapsco River, East Channel, Baltimore, Maryland. These regulations are necessary to control spectator craft and to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATES: These regulations are effective from 6 p.m. to 11:30 p.m., June 14, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, (804) 398-6204.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Adherence to normal rulemaking procedures would not have been possible. Specifically, the sponsor's application to hold the event was not received until May 3, 1991, leaving insufficient time to publish a notice of proposed rulemaking in advance of the event.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Fifth Coast Guard District, and Lieutenant Monica L. Lambardi, project attorney, Fifth Coast Guard District Legal Staff.

Background and Purpose

The National Flag Day Foundation, Inc. submitted an application to hold a fireworks display on June 14, 1991. As part of the application, the National Flag Day Foundation, Inc. requested that the Coast Guard provide control of spectator and commercial traffic during the fireworks display.

Discussion of Regulations

The fireworks will be launched from a barge anchored approximately 120 yards northeast of Fort McHenry Range Front Light (LLNR 7550), Patapsco River, East Channel, Baltimore, Maryland. These regulations are necessary to control spectator craft and to provide for the safety of life and property on navigable waters during the event. A portion of the East Channel will be closed during the fireworks display. Since the main shipping channel will not be closed for an extended period, commercial traffic should not be severely disrupted.

Regulatory Evaluation

This final rule is not considered major under Executive Order 12291 and not significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this regulation is expected to be so minimal that a full regulatory evaluation is unnecessary. This regulation will only be in effect for several hours, and the impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*)., the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small Entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since the impact of this regulation on non-participating small entities is expected to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b), that this regulation, will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

This final rule has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and been placed in the rulemaking docket.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Final Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations is temporarily amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-T0524 is added to read as follows:

§ 100.35-T0524 Patapsco River, East Channel, Fort McHenry, Baltimore, Maryland.

(a) *Definitions.* (1) Regulated area. The waters of the Patapsco River bounded by the arc of a circle with a radius of 600 feet and with its center located at latitude 39°15'52.0" North, longitude 76°34'36.0" West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Coast Guard Group Baltimore.

(b) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop vessel immediately when directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a)(1) of these regulations, but may not block a navigable channel.

(c) *Effective Dates:* These regulations are effective from 6:00 p.m. to 11:30 p.m., June 14, 1991.

Dated: May 22, 1991.

H.B. Gehring,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District, Acting.

[FR Doc. 91-12736 Filed 5-29-91; 8:45 am]

BILLING CODE 4910-14-M

Maritime Administration

46 CFR Part 222

RIN No. 2133-AA90

[Docket No. R-136]

Statements, Reports, and Agreements Required to be Filed

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Removal of rule.

SUMMARY: 46 CFR 222.1 requires the filing of informational statements by shipbuilders, ship operators and affiliates, and certain persons employed or retained to represent them before the Secretary of Transportation, the Maritime Subsidy Board, the Maritime Administration (MARAD), or Congress with respect to matters under specified authorities. Since the statutory authority for this filing requirement was repealed by Public Law 101-225 on December 12, 1989, there is no longer any legal basis for a regulation requiring such filing. Part 222.2 requires that the operators of vessels engaged in the oceanborne foreign trade of the United States file Container/Trailer Reports with MARAD. The information that MARAD has been collecting is now available from other sources, which eliminates MARAD's need to require the submission of the information. The remaining provisions of 46 CFR part 222, §§ 222.3 through 222.5, relate to the penalty for failing to file these reports and the procedure for petitioning for relief from the imposition of such penalty.

Accordingly, 46 CFR part 222 is unnecessary and is being removed in its entirety.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brown, Chief, Division of Statistics, Maritime Administration, 400 Seventh Street, SW., room 8117, Washington, DC 29590, tel. (202) 366-2277.

SUPPLEMENTARY INFORMATION: As authorized by former section 807 of the Merchant Marine Act, 1936, as amended (Act), 46 App. U.S.C. 1225, MARAD has been collecting statements from shipbuilders, ship operators, and persons employed or retained by them or by any affiliate to present, advocate, or oppose, before Congress or any committee thereof, or before the Secretary of Transportation, the Maritime Subsidy Board, or the Maritime Administration, any matter within the scope of the Shipping Act, 1916, as amended, the Merchant Marine Act, 1920, as amended, or the Act. Since section 807 of the Act was repealed on December 12, 1989, by section 307(7) of Public Law 101-225, there is no longer any legal authority for MARAD to require the submission of this information by regulation. Also, as authorized by section 212(A) of the Act (46 app. U.S.C. 1122a), MARAD has been collecting the Container/Trailer Report-Foreign Trade (form MA-578A) from operators of vessels engaged in the foreign waterborne commerce of the United States. The data collected from the reports are entered into a data base from which statistical reports are compiled.

The Container/Trailer Report has been used to assist the Maritime Administration in determining essentiality of services and U.S.-flag service requirements, and in supporting the Maritime Subsidy Board formal hearing procedures in connection with the amendment of existing Operating-Differential Subsidy contracts. Container information is frequently requested from MARAD by shipping companies, U.S. port authorities, investment banks, government agencies and others for use in forecasting trends, in planning for port development, and as criteria for financial investment. The MARAD publication Containerized Cargo Statistics, form MA-578A, has been derived from the container data. Approximately 8,460 forms MA-578A have been submitted annually to MARAD by over 230 respondents. Information reported on form MA-578A is now available through other data sources.

The Bureau of the Census includes a "containerized" indicator in the commodity movement monthly tape files which are purchased and processed by MARAD. This indicator provides the same information as the form MA-578A, with the exception of TEU's (Twenty-foot Equivalent Units). TEU data can be obtained monthly on a carrier and trade area basis from a commercial source at a lower price than MARAD's current processing cost. Obtaining the information from a commercial source would also relieve vessel operators of the reporting burden associated with filing the forms MA-578A. Since MARAD can obtain containerized cargo information from other sources, and these other sources have gained acceptance in the shipping industry, the reporting burden on the operators of filing forms MA-578A can no longer be justified. As the two reporting requirements in 46 CFR part 222 are, respectively, without legal authority and available from alternative sources, that part is being removed. There will be an estimated resulting net annual cost savings to MARAD of over $37,000. The annual reduction in the cost to the public of complying with the reporting burden that MARAD is eliminating is estimated to be over $40,000.

List of Subjects in 46 CFR Part 222

Administrative practice and procedure, maritime carriers, penalties, and reporting requirements.

PART 222—[REMOVED]

Accordingly, under the Secretary's authority, 46 app. U.S.C. 1114, 46 CFR part 222 is removed.

By order of the Maritime Administrator.

Dated: May 23, 1991.

James E. Saari,

Secretary.

[FR Doc. 91-12724 Filed 5-29-91; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 33

RIN 1018-AA50

Refuge-Specific Fishing Regulations

March 12, 1991.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) hereby amends certain regulations in 50 CFR part 33 that pertain to fishing on individual national wildlife refuges (NWRs). Refuge fishing programs are reviewed annually to determine whether the regulations governing fishing on individual refuges should be modified. Changing environmental conditions, State and Federal regulations and other factors affecting fish populations and habitats may warrant such amendments. The modifications ensure the continued compatibility of fishing with the purposes for which the individual refuges involved were established and, to the extent practical, make refuge fishing programs consistent with State regulations.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy Marx, Division of Refuges, Fish and Wildlife Service, 1849 C Street, NW., MS 670-ARLSQ, Washington, DC 20240; Telephone 703-358-2043.

SUPPLEMENTARY INFORMATION: 50 CFR part 33 contains the provisions that govern fishing on NWRs. Fishing is regulated on refuges to (1) ensure compatibility with primary refuge purposes, (2) properly manage the fishery resource and (3) protect other refuge values. On many refuges, the Service policy of adopting State fishing regulations is an adequate way of meeting these objectives. On other refuges it is necessary to supplement State regulations with refuge-specific fishing regulations which will ensure that the Service meets its management responsibilities, as outlined under the section entitled "Conformance with Statutory and Regulatory Authorities." These regulations may list the seasons, methods of taking fish, descriptions of open areas and other provisions. The Service has previously issued refuge-specific fishing regulations in 50 CFR part 33. These regulations are issued only after final publication in the Federal Register of the opening of a wildlife refuge to fishing.

This rule amends and supplements certain refuge-specific regulations in 50 CFR part 33, §§ 33.5 through 33.55, which pertain to fishing on individual refuges in their respective alphabetically listed State.

The policy of the Department of the Interior (Department) is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. On November 13, 1990, at FR 47350, the Service published a proposed rulemaking to amend certain regulations in 50 CFR part 33 and invited the public to comment. No comments were received. Therefore, the proposed refuge-specific fishing regulations are here published, with minor technical corrections, as a final rulemaking

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act (NWRSAA) of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act (RRA) of 1962 (16 U.S.C. 460k) govern the administration and public use of NWRs. Specifically, section 4(d)(1)(A) of the NWRSAA authorizes the Secretary of the Interior (Secretary), under such regulations as he may prescribe, to permit the use of any area within the National Wildlife Refuge System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access when he determines that such uses are compatible with the major purposes for which such areas were established.

The RRA authorizes the Secretary to administer refuges within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purposes for which the refuge was established. The RRA also authorizes the Secretary to issue regulations to carry out the purposes of the Act.

Fishing plans are developed for each fishing program on a refuge prior to its opening to fishing. In many cases, refuge-specific fishing regulations are included as part of fishing plans to ensure the compatibility of the fishing programs with the purposes for which the refuge was established. Compliance with the NWRSAA and RRA is ensured when fishing plans are developed and the determinations required by these Acts are made prior to the addition of the refuge to the list of areas open to fishing in 50 CFR part 33. Continued compliance is ensured by annual review of fishing programs and regulations.

Economic Effect

Executive Order 12291 requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

These amendments to the codified refuge-specific fishing regulations make relatively minor adjustments to existing fishing programs. The regulations are not expected to have any gross economic effect and will not cause an increase in costs or prices for consumers, individual industries, Federal, State or local governments, agencies or geographic regions. The benefits accruing to the public are expected to exceed the costs of administering this rule. Accordingly, the Department has determined that this rule is not a "major rule" within the meaning of Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The information collection requirements contained in part 33 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018-0014. The information is being collected to assist the Service in administering these programs in accordance with statutory authorities which require that recreational uses be compatible with the primary purposes for which the areas were established. The information requested in the application form is required to obtain a benefit.

The public reporting burden for the application form is estimated to average six minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments on the burden estimate or any other aspect of this form to the Information Collection Officer, U.S. Fish and Wildlife Service, MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018-0014), Washington, DC 20503.

Environmental Considerations

Compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(2)(C)) and the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) is ensured when fishing plans are developed and the determinations required by these Acts are made prior to the addition of refuges to the list of areas open to sport fishing in 50 CFR part 33. Refuge-specific fishing regulations are subject to a categorical exclusion from the NEPA process if they do not significantly alter the existing use of a particular refuge. The changes in this rulemaking will not significantly alter the existing uses of the refuges involved.

Information regarding the conditions that apply to individual refuge fishing programs, any restrictions related to public use on the refuge, and a map of the refuge are available at refuge headquarters. This information can also be obtained from the Regional Offices of the Service at the addresses listed below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon, Pacific Islands Territory and Washington: Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 911 NE 11th Ave., Portland, Oregon 97232-4181; Telephone (503) 231-6214.

Region 2—Arizona, New Mexico, Oklahoma and Texas: Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766-1829.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin: Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 725-3507.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Puerto Rico, Tennessee and the Virgin Islands: Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303; Telephone (404) 331-0633.

Region 5—Connecticut, Delaware, District of Columbia, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia: Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158; Telephone (617) 965-5222.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming: Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; Telephone (303) 236-8145.

Region 7—Alaska: Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; Telephone (907) 786-3538.

Nancy Marx, Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC, is the author of this document.

List of Subjects in 50 CFR Part 33

Fishing, Reporting and recordkeeping requirements, Wildlife refuges.

PART 33—[AMENDED]

Accordingly, part 33 of chapter I of title 50 of the *Code of Federal Regulations*, is amended as set forth below:

1. The authority citation for part 33 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

2. Section 33.2 is amended by removing the three undesignated paragraphs following paragraph (e) and adding a new paragraph (f) to read as follows:

§ 33.2 General regulations and information collection requirements.

* * * * *

(f) The information collection requirements contained in part 33 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018-0014. The information is being collected to assist the Service in administering these programs in accordance with statutory authorities which require that recreational uses be compatible with the primary purposes for which the areas were established. The information requested in the application form is required to obtain a benefit. The public reporting burden for the application form is estimated to average six minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments on the burden estimate or any other aspect of this form to the Information Collection Officer, U.S. Fish and Wildlife Service, MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018-0014), Washington, DC 20530.

3. Section 33.5 is amended by adding paragraphs (d) (3) and (4) as follows:

§ 33.5 Alabama.

* * * * *

(d) *Wheeler National Wildlife Refuge.* * * *

(3) Entry and use of airboats and hovercraft is prohibited on all waters within the refuge boundaries.

(4) Entry and use of personalized watercraft, such as but not limited to, jetskis, watercycles, and waterbikes are prohibited on all waters within the boundaries of the refuge except that portion of the Tennessee River and Flint Creek from its mouth to mile-marker three.

4. Section 33.6 is amended by revising paragraph (f)(1) as follows:

§ 33.6 Arkansas.

* * * * *

(f) *White River National Wildlife Refuge.* * * *

(1) Fishing is permitted from March 1 through October 31 except as posted and as follows: Fishing is permitted year-round in LaGrue, Essex, Prairie, and Brooks Bayous, Big Island Chute, Moon Lake next to Highway 1, the portion of Indian Bay south of Highway 1, the Arkansas Post Canal and adjacent drainage ditches, and those borrow ditches located adjacent to the west bank of that portion of the White River Levee north of the Arkansas Power and Light Company powerline right-of-way.

* * * * *

5. Section 33.9 is amended by removing paragraphs (a), (c) and (h); redesignating paragraph (b) as (a); redesignating paragraphs (d), (e), (f) and (g) as (b), (c), (d) and (e) respectively; redesignating paragraphs (i), (j) and (k) as (f), (g) and (h) respectively; and revising newly redesignated paragraphs (b) and (h)(2) as follows:

§ 33.9 California.

* * * * *

(b) *Delevan National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following condition: Fishing is permitted during daylight hours only from February 1 through October 15.

* * * * *

(h) *San Luis National Wildlife Refuge.* * * *

(2) Only the use of pole and line or rod and reel is permitted.

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6. Section 33.12 is amended by adding paragraph (a)(5) as follows:

§ 33.12 Delaware.

(a) *Prime Hook National Wildlife Refuge.* * * *

(5) The use of air-thrust watercraft is not permitted.

7. Section 33.17 is amended by revising paragraphs (a)(1), (b)(3), and (c)(1) through (4) and removing paragraphs (c)(5) through (8) as follows:

§ 33.17 Illinois.

(a) *Chautauqua National Wildlife Refuge.* * * *

(1) From December 15 through October 15 bank fishing is permitted and all refuge waters are open to fishing. From October 16 through December 14 bank fishing is permitted in the posted area that extends from the Recreation Area to the break in the cross dike and along Boatyard #3 to 100 feet west of the radial gate structure, from boats in Goofy Ridge Ditch, and in all waters within the Public Hunting Area. Fishing is permitted during daylight hours only.

* * * * *

(b) *Crab Orchard National Wildlife Refuge.* * * *

(3) It is unlawful to take largemouth bass between 12" to 15" in length from Little Grassy Lake; there is no minimum length limit on largemouth bass in effect on Devils Kitchen Lake.

* * * * *

(c) *Mark Twain National Wildlife Refuge.* * * *

(1) Fishing is permitted all year in the Big Timber Division, Iowa, including Turkey and Otter Island, and in the Gardner Division, Illinois.

(2) Fishing is permitted in the Louisa Division, Iowa, from February 1 until the start of the Iowa waterfowl hunting season with the exception of certain designated areas adjacent to the Port Louisa Road that are open all year.

(3) Fishing is permitted in the Keithsburg Division, Illinois, from January 1 through September 15. Bank fishing at the Spring Slough access is permitted all year.

(4) Fishing is permitted in the Calhoun, Batchtown, and Gilbert Lake Division, Illinois, from December 16 through October 15.

* * * * *

8. Section 33.22 is amended by revising paragraphs (c)(1) through (5) and (f), and removing paragraph (c)(6) as follows:

§ 33.22 Louisiana.

* * * * *

(c) *Catahoula National Wildlife Refuge.* * * *

(1) Fishing is permitted from one hour before sunrise until one-half hour after sunset. Only pole and line or rod and reel fishing is permitted.

(2) Boat launching on all refuge waters is permitted only at designated boat ramps. Boats with motors over the maximum size listed are prohibited, whether or not the motors are used for power. Boats may not be left on the refuge overnight.

(3) Cowpen Bayou is open to fishing year-round. Only nonmotorized boats or boats with electric motors are permitted.

(4) Duck Lake, all outlet waters, and all flooded woodlands are open to fishing and boating from March 1 through October 31.Only nonmotorized boats or boats with motors of 10 horsepower or less are permitted.

(5) Muddy Bayou is open to fishing from March 1 through October 31. Only nonmotorized boats or boats with electric trolling motors are permitted.

* * * * *

(f) *Lacassine National Wildlife Refuge.* Fishing and crayfishing are permitted on designated areas of the refuge subject to the following conditions:

(1) Fishing and crayfishing are permitted from one hour before sunrise until one hour after sunset during the period of March 1 through October 15.

(2) Only pole and line or rod and reel fishing is permitted. Crayfish may be taken only with drop nets or hand lines. The use or possession of any other type of fishing and crayfishing gear is prohibited.

(3) No person may take or possess more than 100 pounds of crayfish per vehicle per day.

(4) Only boats with motors totaling 25 horsepower or less are permitted in the Lacassine Pool. Entry and use of airboats and hovercraft is prohibited on all waters within refuge boundaries. Boats may not be left on the refuge overnight.

(5) Access into refuge marshes and ponds outside the Lacassine Pool is permitted by walking, poling, paddling or rowing. The use of outboard motors in these area is prohibited.

(6) Boat access to the Lacassine Pool is prohibited from November 1 to March 1.

* * * * *

9. Section 33.27 is amended by revising paragraph (e) as follows:

§ 33.27 Minnesota.

* * * * *

(e) *Tamarac National Wildlife Refuge.* * * *

(1) Fishing is permitted in North Tamarac Lake and Wauboose Lake all year, in accordance with State seasons.

(2) Fishing is permitted on Two Island Lake, Blackbird Lake and Lost Lake from the first day of the State walleye season through Labor Day.

(3) Bank fishing only is permitted in an area 50 yards on either side of the Ottertail River Bridges on County Roads #26 and #128 during State seasons.

* * * * *

10. Section 33.28 is amended by redesignating paragraph (b) as paragraph (c) and adding new paragraph (b) as follows:

§ 33.28 Mississippi.

* * * * *

(b) *Mathews Brake National Wildlife Refuge.* Fishing and frogging are permitted on designated areas of the refuge subject to the following condition: The designated waterfowl sanctuary is closed to entry from December 1 through March 15.

* * * * *

11. Section 33.32 is amended by adding new paragraph (c) as follows:

§ 33.32 Nevada.

* * * * *

(c) *Sheldon National Wildlife Refuge.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

(1) Big Springs Reservoir—only non-motorized boats are permitted.

(2) Dufurrena Ponds—only float tubes and similar flotation devices are permitted.

(3) McGee Pond—only individuals 12 years of age and under, or 65 years of age and older, or handicapped individuals, are permitted to fish.

12. Section 33.40 is amended by revising paragraph (b)(2) as follows:

§ 33.40 Oklahoma.

* * * * *

(b) *Salt Plains National Wildlife Refuge.* * * *

(2) Fishing is permitted from April 1 through October 15.

* * * * *

§ 33.41 [Amended]

13. Section 33.41 is amended by removing paragraph (g)(4) and redesignating paragraph (g)(5) as paragraph (g)(4).

14. Section 33.53 is amended by revising paragraphs (b) (1) and (2), and adding (b)(3) as follows:

§ 33.53 Wisconsin.

* * * * *

(b) *Necedah National Wildlife Refuge.* * * *

(1) Fishing is permitted in Areas 1, 2, 4, and 5 according to State seasons and regulations, except that the Suk Cerney Pool in Area 5 is open only from December 15 through September 15.

(2) Fishing is permitted in all waters of Area 3 that are located south of the Turkey Track Road and north of the Sprague-Mather Road including the Goose and Sprague Pools from December 15 through March 15 and from June 1 through September 15.

(3) Non-motorized boats are permitted in all areas that are open at the time of fishing.

* * * * *

15. Section 33.55 is amended by adding new paragraph (a)(3) as follows:

§ 33.55 Pacific Islands Territory.

(a) *Johnston Atoll National Wildlife Refuge.* * * *

(3) Taking of fish by the use of spear "guns" is prohibited. Hand-propelled spears or "Hawaiian Slings" consisting of a single shaft propelled by a rubber tube are permitted for underwater taking of fish.

* * * * *

Dated: March 12, 1991.

Bruce Blanchard,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 91-12867 Filed 5-29-91; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 901184-1042]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure; request for comments.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the remaining share of the total allowable catch amounts (TACs) for sablefish allocated to hook-and-line gear in the combined Southeast Outside/East Yakutat District of the Eastern Regulatory Area (SEO/EYK) of the Gulf of Alaska for the 1991 fishing year is needed as a bycatch amount to support directed fisheries in that area for remaining groundfish species. The Secretary of Commerce is prohibiting further directed fishing for sablefish by vessels using hook-and-line gear in the SEO/EYK. This action is necessary to prevent the hook-and-line share of sablefish in that area from being exceeded before the end of the fishing year. The intent of this action is to promote optimum use of groundfish while conserving sablefish stocks.

DATES: *Effective* from 12 noon, Alaska local time (A.l.t.), on May 25, 1991, through December 31, 1991. *Comments* are invited for 15 days following the effective date of this notice.

ADDRESSES: Comments should be mailed to Dale R. Evans, Chief, Fisheries Management Division, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668, or be delivered to 9109 Mendenhall Mall Road, Federal Building Annex, Suite 6, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone within the Gulf of Alaska (GOA) management area under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and was implemented by regulations appearing at 50 CFR 611.92 and parts 620 and 672.

Section 672.20(a)(1) of the implementing regulations establishes an optimum yield (OY) range of 116,000 to 800,000 metric tons (mt) for all groundfish species in the GOA management area. The TAC for target species and the "other species" category are specified annually within the OY range and are apportioned among the regulatory areas and districts.

The 1991 TAC specified for sablefish in the SEO/EYK District is 4,950 mt (March 1, 1991, 56 FR 8723). The portion of that TAC assigned to hook-and-line gear is 4,700 mt.

Under §§ 672.20(c)(2) and 672.24(c)(3)(i), if the Regional Director determines that the share of the sablefish TAC assigned to any type of gear in any regulatory area or district is likely to be reached, the Regional Director may establish a directed fishing allowance. In establishing a directed fishing allowance, the Regional Director shall consider the amount of sablefish that will be taken as incidental catch in directed fishing for other species in the same regulatory area or district. If the Regional Director establishes a directed fishing allowance and that allowance is or will be reached, he will prohibit directed fishing for sablefish in the specified regulatory area or district by that gear type.

The Regional Director has determined that the remaining hook-and-line gear share of sablefish in the SEO/EYK District of the Eastern Regulatory Area, 235 mt, will be necessary as bycatch to support remaining groundfish fisheries in that district. With this action the Regional Director is establishing a directed fishing allowance of 4,465 mt for the SEO/EYK and is prohibiting directed fishing for sablefish taken with hook-and-line gear in the SEO/EYK District of the Eastern Regulatory Area, effective 12:00 noon, A.l.t., May 25, 1991. After the closure, in accordance with § 672.20(g)(2), amounts of sablefish retained on board hook-and-line vessels in the SEO/EYK District of the Eastern Regulatory Area at any time during a trip must be less than 4 percent of the total amount of all other fish species retained at the same time by the vessel during the same trip.

Classification

This action is taken under §§ 672.20 and 672.24 and is in compliance with Executive Order 12291.

Immediate effectiveness of this notice is necessary to prevent excessive harvest of sablefish by hook-and-line gear that will occur if amounts of the sablefish TACs that are allocated to hook-and-line gear are exceeded and retention of sablefish is prohibited. Therefore, the Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment or to delay its effective date. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 24, 1991.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-12771 Filed 5-24-91; 2:55 pm]

BILLING CODE 3510-22-M

50 CFR Part 683

[Docket No. 910354-1111]

RIN 0648-AD74

Western Pacific Bottomfish and Seamount Groundfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

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ACTION: Final rule.

SUMMARY: NOAA issues a final rule to implement Amendment 4 to the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (FMP). This rule requires bottomfish vessel operators intending to fish within 50 nautical miles (nm) of certain islands in the Northeastern Hawaiian Islands (NWHI) to notify NMFS prior to such fishing and to carry observers aboard their vessels if directed to do so by the Director, Southwest Region, NMFS (Regional Director). This rule also authorizes the Regional Director to change the size of the area in which observers might be required after consultation with the Western Pacific Fishery Management Council (Council). This action is intended to ensure adequate collection of data on interactions between the bottomfish fishery and marine mammals or endangered and threatened species in the NWHI. This rule also standardizes the fishing permit application process and contains a technical revision to clarify the restriction against overlapping permits for the Ho'omalu and Mau Zones in the NWHI.

EFFECTIVE DATE: This action becomes effective at 0000 hours local time May 28, 1991.

ADDRESSES: Copies of the amendment are available from Kitty B. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813 (808–523–1368).

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Fisheries Management Division, Southwest Region, NMFS, Terminal Island, California (213) 514–6660, or Alvin Katekaru, Pacific Area Office, Southwest Region, NMFS, Honolulu, Hawaii (808) 955–8831.

SUPPLEMENTARY INFORMATION: This rule implements Amendment 4 to the FMP, which was prepared by the Council and approved by the Secretary of Commerce in 1985. This amendment is intended to ensure that fishing under the FMP will not result in adverse impacts on endangered and threatened animals in the NWHI.

Prior to implementation of the FMP, NMFS issued a biological opinion pursuant to section 7(b) of the Endangered Species Act (ESA) concerning the potential impacts on threatened and endangered species associated with the bottomfish and seamount groundfish fishery. The opinion stated that the proposed FMP would not likely jeopardize any threatened or endangered species nor adversely affect any critical habitat for such species, and the opinion recommended that NMFS and the Council document marine mammal and sea turtle interactions with the fishery. Criteria also were established for reinitiating consultation under the ESA. The main concern with regard to the bottomfish fishery has been entanglement of Hawaiian monk seals and turtles with fishing gear; therefore, the FMP prohibits the use of bottom set gill nets and bottom trawls in the NWHI.

However, concerns about the impact of the fishery on monk seals were deepened as a result of reports received in April 1990 that monk seals were being hooked by pelagic longline fishermen in the NWHI. The NMFS Honolulu Laboratory sent a field party to French Frigate Shoals in May to conduct a survey of the monk seals and turtles on the beaches for evidence of interaction with the pelagic fishery. Nine dead monk seals were found, well within the range for numbers of carcasses normally reported each year, but injuries were observed on several animals ranging from gaping wounds to abrasions that could not be attributed to shark attack, male monk seal harassment, or other natural causes.

NMFS Special Agents interviewed captains and crews of 28 vessels returning from the NWHI. Insufficient information was received for agents to take enforcement action; however, there was enough consistency in the reports to raise concern that measures were needed to obtain definitive information on possible impacts from the longline fishery as well as the bottomfish fishery.

At a meeting on June 20, 1990, the Council heard reports from its Pelagic Plan Monitoring Team and its Scientific and Statistical Committee on the dramatic increase in the number of vessels in the Hawaiian pelagic longline fishery. The reports indicated the possible effects this increase might have on the harvest and stocks of pelagic resources and discussed the potential for interactions between the pelagic longline and bottomfish fisheries and protected species, primarily the Hawaiian monk seal.

The Council voted to propose that NMFS implement the following emergency actions: (1) A permit and logbook reporting system for the pelagic longline fishery, and (2) a program to place observers on selected longline and bottomfish vessels operating within a 50-nm study zone around certain islands in the NWHI. Permit requirements were already in effect for the bottomfish fishery. The Council indicated it would follow up with an FMP amendment to institute these measures on a permanent basis.

NMFS concurred with the Council's request and promulgated emergency regulations for the NWHI bottomfish fishery effective for a 90-day period beginning November 27, 1990 (55 FR 49050, November 26, 1990). The regulations were extended for a second 90-day period ending May 25, 1991 (56 FR 5159, February 8, 1991). The regulations stipulate that no bottomfish vessel can fish within 50-nm of certain islands in the NWHI (French Frigate Shoals, Gardner Pinnacles, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Islands, and Kure Island), unless the operator of the vessel has provided the Regional Director with an opportunity to place an observer aboard the vessel for that trip to document whether there are any interactions with protected species and if so, the particulars of the interactions. The estimated cost to NMFS for placing observers on selected bottomfish vessels was $80,000 per year, based on an estimate of 15 observer trips per year using staff in Honolulu.

The primary reason the Council proposed this observer requirement on an emergency basis was the precarious condition of the Hawaiian monk seal, listed as an endangered species under the Endangered Species Act, which made it imperative that accurate and site-specific data on interactions be collected immediately. If interactions were in fact occurring, then the effects of such interactions could be evaluated and solutions to any problems could be identified quickly. Therefore, in the Council's and NMFS' view, it was crucial that the rule go into effect on an emergency basis. This concern deepened after further reports, in January 1991, of monk seals observed with hooks embedded in their bodies and severe injuries that appear to be the result of interactions with longline fishing operations.

Amendment 4 implements these emergency measures for the bottomfish fishery on a permanent basis. In the Council's view, the conditions that generated the need for emergency action continue to exist, and implementation of Amendment 4 will provide for continuation of data collection necessary to arrive at long-term solutions to conservation problems facing the bottomfish fishery.

The proposed rule to implement Amendment 4 was published at 56 FR 11166 (March 15, 1991). With the Council's concurrence, the proposed rule varied from the emergency rule in several ways. In addition to continuing

the requirement of notifying the Regional Director before fishing within 50-nm of the islands listed in the emergency rule, the proposed rule would extend this requirement to include the waters within 50-nm of Nihoa Island, Necker Island, and Maro Reef. These areas are referred to as protected species study zones. These regulations would also authorize the Regional Director to adjust the size of the protected species study zones after consultation with the Council, if the Regional Director determines that the fishery is not adversely affecting any threatened or endangered species. The final rule adds a definition of protected species study zones for clarification throughout the rule.

The proposed rule also proposed revision of certain permit application requirements, consistent with the streamlining of the permit process for federally permitted fisheries in the western Pacific region. In addition, it proposed a technical correction to § 683.21(a)(4). In that paragraph, the word "groundfish" was proposed to be revised to read "bottomfish," making the paragraph consistent with the original intent and language of the bottomfish fishery limited access program, which was established by Amendment 2 to the FMP. This revision would not affect the stocks or the fishery.

This final rule differs from the proposed rule in one respect. The protected species study zones have been defined as the waters within 50-nm of certain islands of the NWHI, measured from the midpoints of those islands. Coordinates are listed for each island. No other changes in the rule were deemed necessary following public review and comment.

Public Comments Received and Responses

Comment

The Marine Mammal Commission (Commission) recommended that the proposed measure be revised to require annual observer coverage of at least 30 percent of the bottomfish fishing trips to the NWHI to assure that interactions avoid lethal takings of monk seals. The Commission noted that the environmental assessment (EA) for this action suggested that, at 1989 fishing levels, this would be an appropriate level of coverage. The Commission also recommended that the EA for this action be revised to describe evidence of interactions between monk seals and fishermen this year and to indicate the numbers of observers that had been placed on bottomfish fishing vessels under the 1990 emergency regulations.

Response

The final rule does not specify a target level of observer coverage due to uncertainty about the level of fishing in the NWHI and the inflexibility that would result if the regulations set forth a specific target. In 1990, there were 15 active vessels in the NWHI, which made 82 trips. However, only four vessels were active in the Ho'omalu Zone (i.e., the limited entry zone) and only 23 trips were made. This is considerably below the 1989 activity level, and NMFS estimates that the 1991 fishery will not be substantially greater than 1990. The Ho'omalu Zone encompasses most of the monk seal habitat in the NWHI. It is quite possible that NMFS will arrange for observer coverage on more than 30 percent of all bottomfishing trips to this area given the relatively low level of fishing activity. On the other hand, if observer reports indicate there is no interaction occurring, it may not be necessary to maintain a 30 percent rate of coverage indefinitely. It would be unnecessarily cumbersome if NMFS were required to amend the regulations whenever it adjusted the rate of observer coverage.

With respect to observer coverage under the emergency rule, two complete bottomfish fishing trips have been observed with no documented interactions to date. It can also be noted that there have been no additional reports since January of monk seals with hooks in them or with injuries suggesting interaction with either the bottomfish fishery or the pelagic longline fishery.

Comment

The U.S. Fish and Wildlife Service (FWS) commented that the process for changing the size of the protected species study zone was predisposed to reducing the size of the zone. FWS also urged that NMFS fully fund and staff the observer program to ensure adequate coverage.

Response

The final rule does not preclude enlargement of the study zone. However, because there is virtually no bottomfish habitat beyond the 50-nm radii of the protected species study zones, it is unlikely there could be any interactions between the bottomfish fishery and monk seals or other protected animals beyond the study zones. With respect to funding of the observer coverage, longline fishing within a new protected species zone in the NWHI has been prohibited by an emergency rule (56 FR 15842, April 18, 1991). Observers who might have been assigned to longline vessels will be available for assignment to bottomfish fishing vessels. NMFS is committed to placing a sufficient number of observers to ensure a sound basis for future actions if needed to protect monk seals from interactions with the bottomfish fishery.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator) has determined that Amendment 4 to the FMP and its implementing rule are necessary for the conservation and management of the bottomfish resources of the Western Pacific Region and are consistent with the Magnuson Fishery Conservation and Management Act (Magnuson Act) and other applicable law.

The Council prepared an EA for this amendment. The Assistant Administrator has determined that there will not be a significant impact on the environment. A copy of the amendment containing the EA may be obtained from the Council (see **ADDRESSES**).

The Assistant Administrator has determined that this is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. The final rule will not have a cumulative effect on the economy of $100 million or more, nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse impacts are anticipated on competition, employment investments, productivity, innovation, or competitiveness of U.S.-based enterprises.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. The reason for this conclusion is that the rule will not impose significant costs on the fishery. The observer program costs generally are borne by NMFS. Observer salaries, provisions, and supplies are paid for by NMFS, and a vessel owner or operator can be reimbursed for insurance costs associated with coverage of the observer. Also, if a vessel is forced to curtail operations due to observer illness or injury, there is a process to reimburse the vessel for lost fishing time. It is recognized that displacement of a crew member by an observer could adversely affect revenues and profits from a particular trip, and the capability of the vessel to carry an observer without severe economic impacts will be among the factors considered in deciding whether an observer should be

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required for that trip. In NMFS' view, the impacts on the fishery will be less than if more conservative management (e.g., area closures) were required to ensure that no adverse impacts would occur to monk seals. In summary, no significant impacts are expected. Therefore, a regulatory flexibility analysis was not prepared.

This final rule contains a collection-of-information requirement subject to the provisions of the Paperwork Reduction Act. This requirement was established by the emergency rule as a result of the observer program. Vessel owners or operators who intend to fish within the protected species study zones around the NWHI must notify the Regional Director so that NMFS has the opportunity to place an observer aboard their vessels. Placing observers aboard bottomfish vessels in the NWHI ensures the collection and processing and analysis of data needed for sound management decisions. Observers will ensure the collection of data and document whether there are adverse interactions with protected species and the particulars of the interactions. The public reporting burden for this collection-of-information is 2 minutes for the pre-trip notification. This collection-of-information has been approved by the Office of Management and Budget, OMB Control Number 0648-0214.

This rule also contains a revised reporting requirement whereby information requested from bottomfish permit applicants would be standardized as part of an effort by NMFS to consolidate into one form the different application forms now being used for fisheries permits in the western Pacific region. An applicant for a NWHI bottomfishing permit would use the same application form and provide the same information on vessel owner, vessel operator, and vessel, as a person who applies for a precious corals, crustaceans, or pelagic longline fishing permit. The public reporting burden for this collection-of-information is estimated to average 15 minutes per application. The permit requirement has been approved by the Office of Management and Budget under the title Southwest Region Federal Fisheries Permits (OMB Control Number 0648-0204).

Comments on the collections of information and/or suggestions on how to reduce the burden can be sent to the Regional Director, Southwest Region, NMFS, (see **ADDRESSES**) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, ATTN: Paperwork Reduction Projects 0648-0204 and 0648-0214, Washington, DC 20503.

The Assistant Administrator has determined that the final rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Hawaii. This determination was submitted for review by the responsible state agency under section 307 of the Coastal Zone Management Act. The State of Hawaii agreed with the determination.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12812.

Fishery operations under this rule are not likely to jeopardize the continued existence of any endangered or threatened species or result in destruction or adverse modification of any critical habitat. This conclusion is based on a biological opinion issued by NMFS in May 1991.

Amendment 4 and its implementing regulations will not have an adverse impact on marine mammals.

In order to afford maximum opportunity for public comment and participation, the Administrative Procedure Act (5 U.S.C. 553) requires that, generally, final rules be published not less than 30 days before they become effective. This 30-day period may be shortened or waived if the rulemaking agency publishes with the rule an explanation of what good cause justifies an earlier date. This rule, implementing Amendment 4 to the FMP, makes permanent certain management measures that were promulgated, with a request for public comments, by emergency rule on November 27, 1990. The public has had opportunities to comment on that emergency rule as well as to participate in the development of Amendment 4. The emergency rule is effective through May 25, 1991. To prevent a lapse in the management regime, which includes urgent measures necessary to protect the endangered Hawaiian monk seals, this rule should be effective when the emergency rule expires. However, the public comment period on the proposed rule ended on April 26, 1991, and, although this rule has been published as expeditiously as possible, it is not possible to provide a full 30 days before the emergency measures will expire. Accordingly, good cause is found for making this rule effective on May 26, 1991.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 23, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 663 is amended as follows:

PART 663—WESTERN PACIFIC BOTTOMFISH AND SEAMOUNT GROUNDFISH FISHERIES

1. The authority citation for part 663 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 663.2, the following definitions are added in alphabetical order, to read as follows:

§ 663.2 Definitions.

* * * * *

Pacific Area Office means the Pacific Area Office, Southwest Region, National Marine Fisheries Service, 2570 Dole Street, Honolulu, HI 96822.

Protected species study zones means the waters within a specified distance, designated by the Regional Director pursuant to § 663.29(d) of this part, around the following islands of the NWHI and as measured from the following coordinates: Nihoa Island 23°05' N. 161°55' W., Necker Island 23°35' N. 164°40' W., French Frigate Shoals 23°45' N. 166°15' W., Gardner Pinnacles 25°00' N. 168°00' W., Maro Reef 25°25' N. 170°35' W., Laysan Island 25°45' N. 171°45' W., Lisianski Island 26°00' N. 173°55' W., Pearl and Hermes Reef 27°50' N. 175°50' W., Midway Island 28°14' N. 177°22' W., and Kure Island 28°25' N. 178°20' W. Until further notice by the Regional Director the protected species study zones will encompass waters within 50 nautical miles of the geographical coordinates listed above.

* * * * *

Sexual harassment means any unwelcome sexual advance, request for sexual favors, or other verbal and physical conduct of a sexual nature which has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

3. In § 663.6, new paragraphs (i), (j), and (k) are added to read as follows:

§ 663.6 Prohibitions

* * * * *

(i) Fishing within any protected species study zone in the Northwestern Hawaiian Islands without notifying the Regional Director of the intent to fish in these zones as required under § 663.29.

(j) Fishing without an observer after having been directed to do so by the Regional Director as required under § 663.29.

(k) Forcibly assault, impede, intimidate, interfere with, influence, attempt to influence, or harass (including sexual harassment) an observer by conduct that has the purpose or effect of unreasonably interfering with the observer's work performance, or that creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

4. In § 663.21 paragraphs (a)(4), (b), (d), (e)(2), and (g) are revised to read as follows:

§ 663.21 Permit requirements for the Northwestern Hawaiian Islands.

(a) * * *

(4) No vessel owner may have permits for a single vessel to harvest bottomfish in the Ho'omalu Zone and the Mau Zone at the same time.

(b) *Applications.* (1) An application for a permit under this section must be submitted to the Pacific Area Office by the vessel owner, or a designee of the owner, at least 15 days before the date the applicant desires to have the permit be effective.

(2) Each application must be submitted on a form that is obtained from the Pacific Area Office and contains at least the following information:

(i) Type of application; whether the application is for a new permit or a renewal; and whether it is for the Mau Zone or the Ho'omalu Zone;

(ii) Owner's name, social security number, mailing address, and telephone numbers (business and home);

(iii) Name of the partnership or corporation, if the vessel is owned by such an entity;

(iv) Primary operator's name, social security number, mailing address, and telephone numbers (business and home);

(v) Relief operator's name;

(vi) Name of the vessel;

(vii) Official number of the vessel;

(viii) Radio call sign of the vessel;

(ix) Principal port of the vessel;

(x) Length of the vessel;

(xi) Engine horse power;

(xii) Approximate fish hold capacity;

(xiii) Number of crew;

(xiv) Construction date;

(xv) Date vessel purchased;

(xvi) Purchase price;

(xvii) Type and amount of fishing gear carried on board the vessel;

(xviii) Position of the applicant in the corporation, if the vessel is owned by such an entity;

(xix) Signature of the applicant; and

(xx) Date of signature.

* * * * *

(d) *Change in application information.* Any change in the information specified in paragraph (b)(2) of this section must be reported to the Pacific Area Office 10 days before the effective date of the change. Failure to report such changes may result in termination of the permit.

(e) * * *

(2) If an incomplete or improperly completed permit application is filed, the Regional Director will notify the applicant in writing of the deficiency. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned.

* * * * *

(g) *Renewal.* An application for renewal must be submitted to the Pacific Area Office in the same manner as described in paragraph (b) of this section.

* * * * *

5. A new § 663.29 is added to read as follows:

§ 663.29 Observers.

(a) The owner or operator of a fishing vessel subject to this part shall inform the Pacific Area Office by telephone, (808) 955-8831, at least 72 hours (not including weekends and holidays) before leaving port, of his or her intent to fish within the protected species study zones defined in § 663.2 of this part. The notice must include the name of the vessel, name of the operator, intended departure and return date, and a telephone number at which the owner or operator may be contacted during the business day (8 a.m. to 5 p.m.) to indicate whether an observer will be required on the subject fishing trip.

(b) The Pacific Area Office will advise the vessel owner or operator of any observer requirement within 72 hours (not including weekends or holidays) of receipt of the notice. If an observer is requried, the owner or operator will be informed of the terms and conditions of observer coverage, and the time and place of embarkation of the observer.

(c) All fishing vessels subject to this part must carry an observer when directed to do so by the Regional Director.

(d) The Regional Director may change the size of the protected species study zones defined in § 663.2 of this part:

(1) If the Regional Director determines that a change in the size of the study zones would not result in fishing for bottomfish in the NWHI that would adversely affect any species listed as threatened or endangered under the Endangered Species Act;

(2) After consulting with the Council; and

(3) Through a notice in the **Federal Register** published at least thirty (30) days prior to the effective date or through actual notice to the permit holders.

(e) All observers must be provided with sleeping, toilet, and eating accomodations at least equal to that provided to a full crew member. A mattress or futon on the floor or a cot is not acceptable in place of a regular bunk. Meal and other galley privileges must be the same for the observer as for other crew members.

(f) Female observers on a vessel with an all-male crew must be accommodated either in a single-person cabin or, if reasonable privacy can be ensured by installing a curtain or other temporary divider, in a two-person cabin shared with a licensed officer of the vessel. If the cabin assigned to a female observer does not have its own toilet and shower facilities that can be provided for the exclusive use of the observer, then a schedule for time-sharing of common facilities must be established and approved by the Regional Director prior to the vessel's departure from port.

[FR Doc. 91-12726 Filed 5-24-91; 2:55 pm]

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VOL 56 ISS 104 MY 30 1991 UMI

Proposed Rules

Federal Register
Vol. 56, No. 104
Thursday, May 30, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1924, 1941, and 1943

Amendments of Portions of Farmer Programs Insured Loan Making Regulations

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations to require a debt service margin of at least 5 percent on insured Farmer Programs loans. This action is necessary to improve borrowers' chances for success through prudent planning, by allowing for a minimum 5 percent margin over debt repayment in the projected plan of operation. Such a requirement will allow the Agency to assist/continue with those applicants/borrowers who have a reasonable chance to succeed in their farming operation. The intended effect is to reduce losses within the Farmer Programs insured loan portfolio and to increase the number of borrowers moving to conventional credit sources.

DATES: Written comments must be submitted on or before July 1, 1991.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, USDA, room 6348, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. All written comments will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: David R. Smith, Senior Loan Officer, Farmer Programs Loan Making Division, Farmers Home Administration, USDA, South Building, 14th and Independence Avenue SW., Washington, DC 20250, telephone (202) 382–1645.

SUPPLEMENTAL INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be nonmajor because it will not result in an annual effect on the economy of $100 million or more.

Intergovernmental Consultation

1. For the reasons set forth in the final rule related to Notice 7 CFR Part 3015, subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 24, 1983), Farm Operating Loans and Farm Ownership Loans are excluded with the exception of nonfarm enterprise activity from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loan Program is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940–J.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.416—Soil and Water Loans
10.404—Emergency Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Discussion of the Proposed Rule

Loans made to FmHA applicants are governed mainly by the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1921 et. seq.). FmHA, unlike commercial lenders has loaned the full value of security to farming operations based on plans of operation reflecting no planned cash reserve/contingency over and above their debts. Existing FmHA insured loan making regulations do not require any planned cash contingency or debt service margin in the proposed plan of operation.

The Agency in accordance with OMB directives is required to improve loan quality and reduce losses through financial management of FmHA loan programs. GAO/RCED–89–9 Report, "Sounder Loans Would Require Revised Loan-Making Criteria," recommended that FmHA issue regulations to improve the cash flow analysis used in loan making decisions by incorporating an allowance to cover contingencies and equipment replacement. Continuation with the present policy of not requiring a debt service margin will not promote prudent planning and will contribute to continued FP losses and deterioration of the FP loan portfolio.

The Agency proposes to amend subpart B of part 1924, subpart A of part 1941, and subparts A and B of part 1943 by revising the "feasible plan" definition to incorporate the 5 percent debt service margin. One exception to this requirement is made for annual production loans to delinquent borrowers in accordance with § 1941.14 of subpart A of part 1941 of this chapter. Another exception is made for when a servicing action, in accordance with subpart S of part 1951 of this chapter, is completed in conjunction with an initial or subsequent loan request. The latter exception complies with section 353 (c)(3) of the CONACT (7 U.S.C. 2001 (c)(3)) which indicates that any amount up to 105 percent of debt payment requirements is considered adequate.

List of Subjects

7 CFR Part 1924

Agriculture, Construction management, Construction and repair, Energy conservation, Housing, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing.

7 CFR Part 1941

Crops, Livestock, Loan programs—Agriculture, Rural areas, Youth.

7 CFR Part 1943

Credit, Loan programs—Agriculture, Recreation, Water resources.

Therefore, as proposed, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1924—CONSTRUCTION AND REPAIR

1. The authority citation for Part 1924 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Management Advice to Individual Borrowers and Applicants

2. Section 1924.57 is amended by adding a new paragraph (c)(5)(iv) to read as follows:

§ 1924.57 Planning.

* * * * *

(c) * * *

(5) * * *

(iv) Provide at least a 5 percent debt service margin, except as provided in § 1941.14 of subpart A of part 1941 of this chapter, for annual production loans to delinquent borrowers, and except for servicing actions made under subpart S of part 1951 of this chapter in conjunction with an initial or subsequent loan request. The debt service margin is to provide for risk and uncertainties associated with the family operation so as to support the projection that the total estimated cash income will equal or exceed the total estimated cash outflows for the planned period. The debt service margin will be calculated in accordance with the "Debt service margin" definition in § 1941.4 of subpart A of part 1941 of this chapter.

* * * * *

PART 1941—OPERATING LOANS

3. The authority citation for part 1941 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Operating Loan Policies, Procedures, and Authorizations

4. Section 1941.4 is amended by adding in alphabetical order a "Debt service margin" definition and by adding a new paragraph (d) to the "Feasible plan" definition to read as follows:

§ 1941.4 Definitions.

* * * * *

Debt service margin. The balance available after payment of the total amount due on all debts in Table K of Form FmHA 431–2, "Farms and Home Plan," expressed as a percentage of the total amount due this year in Table K. The margin is calculated by subtracting the total amount due on all debts in Table K from the balance available in line 16 of Table J of the Farm and Home Plan. This remainder is then divided by the total amount due this year in Table K and expressed as a percent of the total amount due.

Example:

Balance available (Line 16)	$100,000
Total due on all debts (Table K)	93,000
Remainder	$7,000

$7,000 divided by
$93,000=.075×100=7.5 percent margin

* * * * *

Feasible plan. * * *

* * * * *

(d) Provide at least a 5 percent debt service margin, except as provided in § 1941.14 of subpart A of part 1941 of this chapter, for annual production loans to delinquent borrowers, and except for servicing actions made under subpart S of part 1951 of this chapter in conjunction with an initial or subsequent loan request. The debt service margin is to provide for risk and uncertainties associated with the family operation so as to support the projection that the total estimated cash income will equal or exceed the total estimated cash outflows for the planned period. The debt service margin will be calculated in accordance with the "Debt service margin" definition in this section.

* * * * *

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

5. The authority citation for Part 1943 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Insured Farm Ownership Loan Policies, Procedures and Authorizations

6. Section 1943.4 is amended by adding a new paragraph (d) to the "Feasible plan" definition to read as follows:

§ 1943.4 Definitions.

* * * * *

Feasible plan. * * *

* * * * *

(d) Provide at least a 5 percent debt service margin, except as provided in § 1941.14 of subpart A of part 1941 of this chapter, for annual production loans to delinquent borrowers, and except for servicing actions made under subpart S of part 1951 of this chapter in conjunction with an initial or subsequent loan request. The debt service margin is to provide for risk and uncertainties associated with the family operation so as to support the projection that the total estimated cash income will equal or exceed the total estimated cash outflows for the planned period. The debt service margin will be calculated in accordance with the "Debt service margin" definition in § 1941.4 of subpart A of part 1941 of this chapter.

* * * * *

Subpart B—Insured Soil and Water Loan Policies, Procedures and Authorizations

7. Section 1943.54 is amended by adding a new paragraph (d) to the "Feasible plan" definition to read as follows:

§ 1943.54 Definitions.

* * * * *

Feasible plan. * * *

* * * * *

(d) Provide at least a 5 percent debt service margin, except as provided in § 1941.14 of subpart A of part 1941 of this chapter, for annual production loans to delinquent borrowers, and except for servicing actions made under subpart S of part 1951 of this chapter in conjunction with an initial or subsequent loan request. The debt service margin is to provide for risk and uncertainties associated with the family operation so as to support the projection that the total estimated cash income will equal or exceed the total estimated cash outflows for the planned period. The debt service margin will be calculated in accordance with the "Debt service margin" definition in § 1941.4 of subpart A of part 1941 of this chapter.

* * * * *

Dated: April 11, 1991.

La Verne Ausman,

Administrator, Farmers Home Administrator.

[FR Doc. 91–12784 Filed 5–29–91; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[IA–026–90]

RIN 1545–AP61

Extension of Time for Making Elections; Public Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

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SUMMARY: This document provides notice of a public hearing relating to the Commissioner granting taxpayers an extension of time for making certain elections under the Internal Revenue Code.

DATES: The public hearing will be held on Monday, June 3, 1991, and will continue, if necessary, on Tuesday, June 4, 1991, beginning at 10 a.m. Outlines of oral comments must have been received by May 15, 1991.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Felicia A. Daniels of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–566–3935, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 9100 of the Internal Revenue Code. The proposed regulations appeared in the **Federal Register** for Friday, April 5, 1991, at page 14041 (56 FR 14041).

The rules of § 601.601 (a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desired to present oral comments at the hearing on the proposed regulations should have submitted not later than Wednesday, May 15, 1991, an outline of oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9 a.m.

An agenda showing the scheduling of the speakers will be made available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[Fk Doc. 91–12942 Filed 5–29–91; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 902

Alaska Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: OSM is announcing receipt of additional explanatory information and revisions pertaining to a previously proposed amendment to the Alaska permanent regulatory program (hereinafter, the "Alaska program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The additional explanatory information and revisions pertain to permit application requirements, environmental resource information requirements, reclamation and operation plan, permit application review procedures, exploration activities, bonding requirements, performance standards, inspection and enforcement requirements, lands unsuitable for mining and general provisions. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards.

This notice sets forth the times and locations that the Alaska program and proposed amendment to that program are available for public inspection and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received by 4 p.m., m.d.t. June 14, 1991.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the Alaska program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, Room 2128, Casper, Wyoming 82601–1918, Telephone: (307) 265–5776.

Samuel M. Dunaway, Jr., Acting Director, Department of Natural Resources, Division of Mining, P.O. Box 107016, Anchorage, Alaska 99510–7106, Telephone: (907) 762–2170.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Director, Casper Field Office, on telephone number (307) 265–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Alaska Program

On March 23, 1983, the Secretary of the Interior approved the Alaska program. General background information on the Alaska program, including the Secretary's findings and the disposition of comments can be found in the March 23, 1983 **Federal Register** 48 FR 12274. Subsequent actions concerning Alaska's program and program amendments can be found at 30 CFR 902.15.

II. Proposed Amendment

By letter dated February 2, 1990 (Administrative Record No. AK–C–01). Alaska submitted a proposed amendment to its program pursuant to SMCRA. Alaska submitted the proposed amendment in response to letters dated May 7, 1986, June 9, 1987, and December 16, 1988 sent by OSM in accordance with 30 CFR 732.17(d).

The regulations that Alaska proposes to amend are: Article 3, General Permit Application Information Requirements; Article 4, Environmental Resource Information Requirements; Article 5, Reclamation and Operation Plan; Article 6, Processing of Permit Applications; Article 7, Permitting for Special Categories of Mining; Article 8, Exploration; Article 9, Small Operator Assistance Program; Article 10, Bonding; Article 11, Performance Standards; Article 12, Inspection and Enforcement; Article 13, Process for Indentifying Land Unsuitable for Mining; and Article 17, General Provisions.

Alaska also submitted proposed policy statements addressing the following subjects: Policy Statement A, Maintenance of Records; Policy Statement B, Small Operator Assistance; Policy Statement C, Public Notice of Blasting; Policy Statement D, Surface Water Information; Policy Statement E, Scope of the Cumulative Hydrologic Impact Assessment; Policy Statement F, U.S. Fish and Wildlife Service Information Requests; and Policy Statement G, Determining Peak Discharge for Hydrologic Designs.

The amendment package also contains proposed Guidelines for Conducting Premining Vegetation Inventories and Determining Revegetation Success and revised petition forms for designating lands as unsuitable for mining as well as terminating such designations.

OSM published a notice in the February 14, 1990 **Federal Register** (55 FR 5226) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. AK–C–06). The public comment period ended March 16, 1990.

By letter dated March 14, 1990 (Administrative Record No. AK–C–15) the Alaska Coal Association notified OSM of its opinion that certain portions of the proposed Alaska program amendment were not made available for adequate public review at the State level. The Alaska Coal Association requested that OSM extend the public comment period in order to allow interested parties sufficient time to review the material. When contacted by OSM, the Alaska Department of Natural Resources, Division of Mining, agreed that additional time was needed for review of the policy statements, revegetation success guidelines, and lands unsuitable for mining forms. The State indicated that interested parties would be notified of additional time for review and copies of the material would be made available.

OSM published a notice in the March 30, 1990 **Federal Register** (55 FR 11958) announcing the reopening and extension of the public comment period (Administrative Record No. AK–C–22). The public comment period closed April 16, 1990.

During its review of the amendment, OSM identified concerns related to: Article 3, General Permit Application Information Requirements; Article 4, Environmental Resource Information Requirements; Article 5, Reclamation and Operation Plan; Article 8, Exploration; Article 9, Small Operator Assistance Program; Article 11, Performance Standards; and Article 17, General Provisions. OSM notified Alaska of these concerns by letter dated February 8, 1991 (Administrative Record No. AK–C–28). Alaska responded in a letter dated May 7, 1991 by submitting additional explanatory information (Administrative Record No. AK–C–30).

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Alaska program amendment to provide the public an opportunity to reconsider the adequacy of the amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Alaska program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

List of Subjects in 30 CFR Part 902

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 21, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 91–12715 Filed 5–29–91; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 913

Illinois Permanent Regulatory Program; Permit Issuance

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period on proposed amendments to the Illinois permanent regulatory program (hereinafter referred to as the Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendment was initiated by the Illinois Department of Mines and Minerals (Department) to make the requirements of the Illinois program no less effective than the Federal program. The proposed amendments concern changes made to the Illinois Surface Coal Mining Land Conservation and Reclamation Act (State Act) and the Illinois Administrative Code (IAC), title 62, Mining, chapter I. OSM announced receipt of the proposed amendment to the Illinois Administrative Code in the April 1, 1991, **Federal Register** (56 FR 13300) and in the same notice opened the public comment period and provided opportunity for comment on the revised State Act.

This notice sets forth the times and locations that the Illinois program and proposed amendments to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m., on July 1, 1991. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on June 24, 1991. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on June 14, 1991.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. James F. Fulton, Director, Springfield Field Office, at the address listed below. Copies of the Illinois program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Sprinfield Field Office.

Office of Surface Mining Reclamation and Enforcement, Sprinfield Field Office, 511 West Capitol, Suite 202, Springfield, Illinois 62704, Telephone: (217) 492–4495.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Director, Springfield Field Office, (217) 492–4495.

SUPPLEMENTARY INFORMATION:

I. Background

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. Information pertinent to the general background of the Illinois program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the June 1, 1982, **Federal Register** (47 FR 23883). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 913.11, 913.15, 913.16, and 913.17.

II. Discussion of Proposed Amendment

On August 29, 1990, the Illinois General Assembly amended section 2.11(d) of the State Act, Ill. Rev. Stat. 1989, ch. 96½, par. 7902.11(d), in order to make the issuance of coal mine permits in Illinois consistent with the counterpart provisions of section 514(c) of SMCRA. On March 14, 1991, Illinois submitted a copy of House Bill 3743 (Administrative Record No. IL–1153) which contained this amendment. The statute change consisted of the deletion of the working "and no hearing is requested under subsection (c) of this section." Revised § 2.11(d) now reads "If

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the application is approved under either subsection (a) or (b) of this section, the permit shall be issued."

This amendment of the State Act required that part 1773 of title 62 of the Illinois Administrative Code also be amended. Therefore, in order to make the requirements of the Illinois program no less effective than the Federal program, the Department by letter dated March 5, 1991 (Administrative Record No. IL–1144), submitted proposed changes to the State regulation at 62 IAC 1773.19, which sets forth the Department's requirements for permit issuance. The proposed changes include the addition of the word "and" in subsection (b)(1); the deletion of subsection (b)(2), which required a 30-day waiting period for permit issuance after mailing written notification of the Department's final permit decision as provided in 62 IAC 1773.19(a); and the renumbering of subsection (b)(3) to (b)(2). The regulation now reads:

(b) The permit shall be deemed to be issued when: (1) The permit application, as originally submitted or as modified, is approved by the Department; and (2) Permit fees and reclamtion bond, in the form and amounts set by 62 Ill. Adm. Code 1777.17 and 1800, have been received and accepted by the Department.

III. Public Comments Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendments satisfy the applicable program approval criteria of 30 CFR 732.15.

If the amendments are deemed adequate, they will become part of the Illinois program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the OSM Springfield Field Office will not necessarily be considered and included in the Administrative Record for the final rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by 4 p.m. on June 14, 1991. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM office listed under **"ADDRESSES"** by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings will be open to the public, and, if possible, notices of meetings will be posted at the locations under **"ADDRESSES."** A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 21, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 91–12716 Filed 5–29–91; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–3917–3]

Proposed Change in Volatility Regulations for Gasoline; Northeastern Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to amend phase I federal gasoline and alcohol blend volatility regulations for the portion of Arizona bordered by New Mexico and Utah, north of 34 degrees latitude and east of 111 degrees longitude. The effect of this amendment would be to change the phase I summertime volatility standard for the portion of Arizona described from 9.0 to 9.5 pounds per square inch (psi), limited to the month of August, 1991. This action is proposed in response to a petition dated August 22, 1990 received by EPA from Giant Industries Arizona and other refiners.

DATES: The Agency does not plan to hold a public hearing on this proposed amendment unless one is requested. A hearing will be held if requested by June 13, 1991. Comments on this proposal must be received no later than July 1, 1991. If a public hearing is held, comments must be received 30 days after the hearing. Please direct all correspondence to the addresses shown below.

ADDRESSES: Materials relevant to this rulemaking have been placed in Docket A–91–03 by EPA. The docket is located at the Air Docket Section (LE–131), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, in room M–1500 Waterside Mall and may be inspected from 8:30 a.m. to 12 noon and from 1:30 p.m. to 3:30 p.m. Monday through Friday. A reasonable fee may be charged for copying docket material.

Comments should be submitted (in duplicate if possible) to the Air Docket Section at the above address. A copy should also be sent to Ms. Anne-Marie Cooney at the EPA address listed below. U.S. Environmental Protection Agency, Office of Air and Radiation, 401 M Street, SW. (EN–397F), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Anne-Marie Cooney (202) 382–2640.

SUPPLEMENTARY INFORMATION:

Introduction

This notice describes EPA's proposed action to revise the Reid vapor pressure (RVP) standard for the northeastern part of Arizona for the month of August, 1991. The remainder of this preamble is divided into two parts. The first provides the background for this proposed action, with respect to chronology and broad issues involved. The second section presents EPA's proposed action and rationale.

Background

EPA has received a petition, dated August 22, 1990, to reconsider its phrase I volatility regulations from Giant Industries Arizona, Inc., Bloomfield Refining Company, and Thriftway Marketing Company. The petition requests that EPA change the August standard for northeastern Arizona.

On August 19, 1987, the Agency proposed a two-phase reduction in summertime gasoline volatility (52 FR 31274). On March 22, 1989 (54 FR 11868), EPA published a notice of final

rulemaking promulgating phase I of these volatility control regulations. These phase I regulations included a list of applicable standards for geographical areas throughout the 48 contiguous states and the District of Columbia for the period of May 1 through September 15, effective June 1, 1989.[1]

In the final rule for the phase I program, the entire State of Arizona has a federal volatility standard of 9.0 psi for the month of August. The petition requests that the August volatility standard be amended to 9.5 psi for northeastern Arizona.

The petitioners base their request on the following facts. On June 18, 1990, the American Society for Testing and Materials (ASTM) voted to change the volatility classification for northeastern Arizona from "A" to "A/B", eliminating the distinction between northeastern Arizona and northern New Mexico for all months except January. They further argue that the northeastern part of Arizona is more similar to northern New Mexico in terms of climate, altitude, and population density than it is to the rest of Arizona. The petitioners argue that the difference in EPA's volatility standard poses a number of practical problems for refiners attempting to serve both the northern New Mexico and northeastern Arizona markets. Therefore, they request that EPA amend its classification for northeastern Arizona to be consistent with recent changes in ASTM classifications for the area.

On November 30, 1990, EPA wrote a letter to Governor Rose Mofford of Arizona, conveying the concerns that had been raised by the petition. In the letter, EPA presented the issues raised and requested the Governor's opinion as to whether EPA should begin rulemaking to amend volatility regulations for northeastern Arizona. On January 18, 1991, a response was received from the Arizona Department of Environmental Quality. The letter stated that the State supports the petition because of climatic and geographic reasons, the isolation of the area, and the fact that the area does not have a current or potential ozone problem.

The effect of the proposed amendment would be to change the federal Phase I volatility standard for northeastern Arizona from 9.0 to 9.5 psi, for the month of August, 1991. This change is limited to this one month, as beginning with the summer of 1992, EPA's phase II gasoline and alcohol blend volatility regulations will become effective.

[1] In 1989, the standards did not go into effect until June 1.

Proposed Action

In response to the petition described above, EPA is proposing to change the phase I volatility standard for northeastern Arizona from 9.0 to 9.5 psi for the month of August, 1991. Based on the petition itself and the letter from the Arizona DEQ, EPA believes that the proposed action is justified because of the following considerations. The petitioners are refiners in northern New Mexico who serve the New Mexico and northeastern Arizona markets in the Four Corners region of the Rocky Mountains. The difference in EPA's phase I volatility standard for northern New Mexico and northeastern Arizona poses practical problems for refiners seeking to serve both markets. In particular, unless the refiner has redundant blending facilities, it cannot serve the smaller Arizona market during the month of August under the phase I standards. The part of Arizona in question is not served by products pipelines and most of the area's demand for petroleum products is supplied by local refineries, such as the petitioners'. Northeastern Arizona and northern New Mexico are similar in climate and topography. The portion of Arizona in question is in attainment for ozone [2] and has a low population density. Finally, the proposed change would be effective for only one month, August 1991, before phase II standards become effective in 1992.

EPA is holding a 30 day comment period on this notice of proposed rulemaking. Public comments received on or before July 1, 1991 will be considered in EPA's final rulemaking. If a public hearing is held, comments must be received 30 days after the hearing. All comments will be available for inspection during normal business hours at the EPA office listed in the addresses section of the notice.

Commenters desiring to submit proprietary information for consideration should clearly distinguish such information from other comments to the greatest possible extent, and clearly label it "Confidential Business Information." Submissions containing such proprietary information should be sent directly to the contact person listed above, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket.

Information covered by such a claim of confidentiality will be discussed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentially accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the commenter.

[2] See, 40 CFR 81.303

Environmental Impact

The proposed amendment is not expected to have any adverse environmental effect. The portion of Arizona affected has a low population density and does not have an ozone problem. The Amendment would affect only one month (August) in 1991.

Economic Impact

The rule will not have a substantial impact. It will allow flexibility for refiners seeking to serve both the Northern New Mexico and northern Arizona markets, and may result in cost savings for consumers.

Administration Requirements

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment, a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations and small governmental jurisdictions). The Administrator may certify, however, that the rule will not heve a significant impact on a substantial number of small entities. In such circumstances, a regulatory flexibility analysis is not required.

The expected impact of the rule on small entities is negligible. This proposed rule does not impose additional regulatory requirements on small entities.

According, I hereby certify that these regulations will not have a significant impact on a substantial number of small entities. These regulations, therefore, do not require a regulatory flexibility analysis.

Under Executive Order 12291, the Agency must judge whether a regulation is "major" and thus subject to the requirement to prepare a regulatory impact analysis. The proposed rule published today is not major because the rule will not result in an effect on the economy of $100 million or more, will not result in increased costs or prices, will not have significant adverse effects on competition, employment, investment, productivity, and innovation, and will not significantly disrupt domestic export markets. Therefore the Agency has not prepared a regulatory impact analysis under the Executive Order.

This regulation was submitted to the Office of Management and Budget

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(OMB) for review as required by Executive Order No. 12291 and cleared without comment.

This proposed rulemaking does not include any new information collection requirements. Information collection requirements in the regulations promulgated on March 22, 1989, were approved by OMB under the Paperwork Reduction Act, 44 U.S.C. et seq., and have been assigned OMB control number 2060-0178.

Authority for the action proposed in this notice is granted to EPA by sections 114, 211, and 301 of the Clean Air Act (42 U.S.C. 7414, 7545, and 7601).

List of Subjects in 40 CFR Part 80

Fuel Additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: May 21, 1991.

William K. Reilly,

Administrator.

For the reasons set forth in the preamble, part 80 of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 80—REGULATIONS OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 will continue to read as follows:

Authority: Sections 114, 211 and 301(a) of the Clean Air Act as amended, 42 U.S.C. 7414, 7545, and 7601(a).

2. Section 80.27(a) is proposed to be amended by replacing the entry under the Arizona heading with the following two entries, to read as follows:

§ 80.27 Controls and prohibitions on gasoline volatility.

(a) * * *

APPLICABLE STANDARDS [1]

[(1) 1989–1991]

State	May	June	July	Aug.	Sept.
Arizona:					
North of 34 degrees latitude and east of 111 degrees longitude	9.5	9.0	9.0	9.5	9.5
All areas except North of 34 Degrees latitude and east of 111 degrees longitude	9.5	9.0	9.0	9.0	9.5

[1] Standards are expressed in pounds per square inch (psi).

[FR Doc. 91-12761 Filed 5-29-91; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 80

[FRL-3960-2]

Regulation of Fuels and Fuel Additives; Definition of Substantially Similar

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advanced notice of proposed interpretive rule.

SUMMARY: This action announces EPA's intent to propose a definition of the term "substantially similar," as used in section 211(f)(1)(B) of the Clean Air Act (Act), with respect to diesel fuel and fuel additives. Section 211(f)(1)(B), effective November 15, 1990, expands the prohibitions of section 211(f)(1) to include diesel fuel and fuel additives. The prohibitions of 211(f)(1) apply to fuels and additives which are not "substantially similar" to those used in emissions certification. Hence, this definition will enable manufacturers to determine whether their diesel fuels or fuel additives are covered by or excluded from the prohibitions of section 211(f)(B) of the Act. Such a definition should also reduce the potential burdens on manufacturers and on EPA for processing waivers for fuels and additives under section 211(f)(4). EPA invites comments for its consideration in drafting a proposed "substantially similar" definition for diesel fuel and diesel fuel additives.

DATES: Comments should be submitted on or before July 29, 1991.

ADDRESSES: Copies of the information relative to this application are available for inspection in public docket A-91-27 at the Air Docket (LE-131) of the EPA, room M-1500, 401 M Street, SW., Washington, DC 20460, (202) 382-7548, between the hours of 8:30 a.m. to noon and 1:30 pm to 3:30 p.m. weekdays. Any comments from interested parties should be addressed to this docket with a copy forwarded to Mary T. Smith, Director, Field Operations and Support Division (EN-397F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: David J. Kortum, Environmental Engineer, Field Operations and Support Division (EN-397F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 475-8841.

SUPPLEMENTARY INFORMATION: Section 211(f)(1)(B) of the Act makes it unlawful, effective November 15, 1990, for any manufacturer of a fuel and fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel and fuel additive for use by any person in motor vehicles manufactured after model-year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act. Thus, section 211(f)(1)(B) expands the prohibitions of 211(f)(1)(A), which applies only to light-duty vehicles for which EPA has promulgated a definition of "substantially similar" only with respect to unleaded gasoline.[1] Since the term "substantially similar" in section 211(f)(1) is not defined in the Act, the intent of this rulemaking is to interpret the term "substantially similar" in regard to diesel fuel and diesel fuel additives and thus make more explicit which products are prohibited by section 211(f)(1)(B).

Fuels and fuel additives which are "substantially similar" to those used during a 1975, or subsequent model year certification, are excluded from the section 211(f)(1)(B) prohibitions. For those fuels or fuel additivies which are not "substantially similar," and have not been first introduced into commerce prior to November 15, 1990, manufacturers may apply for a waiver of the section 211(f)(1)(B) prohibitions. The definition of "substantially similar" enables manufacturers to determine whether their fuels or fuel additives are covered by, or excluded from, the prohibitions of section 211(f)(1)(B) of the Act. Thus, this definition should reduce the potential burdens on those manufacturers and on EPA for processing waivers for fuels and additives under section 211(f)(4).

[1] An interpretive rule defining the term "substantially similar" under section 211(f)(1)(A) was promulgated for unleaded gasoline at 49 FR 36562 (July 28, 1981), and revised at 56 FR 5352 (February 11, 1991).

Discussion

The Agency's preliminary investigation of the composition of diesel fuel indicates that diesel fuel elemental composition is similar to gasoline: diesel fuel is a heterogenous mixture of hydrocarbon cmpounds and additives primarily composed of carbon, hydrogen, oxygen, nitrogen, and sulfur. The levels of additives added to diesel fuel appear to be similar to the levels of additives in gasoline. Therefore, the Agency's inclination in formulating a proposal for diesel fuel under section 211(f)(1)(B) is to take a similar approach as was taken for unleaded gasoline in defining the term "substantially similar" under section 211(f)(1)(A). Generally, the unleaded gasoline definition has proved to be acceptable by industry and workable for the Agency.

Such an approach would include the following: (1) Placing a limit on the elemental composition of diesel fuel and diesel fuel additives, probably limiting it to carbon, hydrogen, oxygen, sulfur, and nitrogen. The Agency is aware that certain manufacturers of diesel fuel utilize additives containing other elements. However, the Agency is unaware of the extent of use of these additives for certification purposes; (2) Placing an upper limit on the amount of an additive which may be present. The "substantially similar" definition for gasoline places an upper limit on each additive of 0.25 weight percent and the Agency sees no reason why the same limit would not be appropriate for diesel fuel. Furthermore, the Agency is unaware of any use of additives in diesel which are not completely hydrocarbon in nature and used at relatively high levels (such as with oxygenates in unleaded gasoline). Likewise, EPA is not aware of any high-level non-hydrocarbon additives currently added to certification diesel fuel. The Agency sees no reason why sulfur must be limited beyond the already promulgated sulfur content regulations for diesel fuel which limit the sulfur content of diesel fuel to 0.05 weight percent (*See* 55 FR 34120, August 21, 1990.); (3) Limiting impurities [2] to trace levels of elements which are gaseous at Standard Temperature and Pressure (STP); (4) Finally, the Agency is inclined to require diesel fuel to meet the traditional industry specifications for diesel fuel, such as American Society of Testing and Materials (ASTM) Standard D 975.

Comments

The Agency requests comments on all aspects of an interpretation of the definition of "substantially similar" in regard to diesel fuel and fuel additives. While all manufacturers of diesel fuels and additives are required to be registered by the EPA under 40 CFR 79, and provide compositional data, and while certification diesel fuels must meet certain specifications under 40 CFR 86, EPA lacks specific information on which fuels and additives have been used in certification. Specifically, the Agency requests comments on diesel fuel and certification diesel fuel in the areas of: (1) Elemental composition, (2) levels of additives, and, (3) information on the chemical and physical properties of diesel fuels, especially in regard to ASTM D 975. Comments are also requested on the approach, outlined above, for composing a "substantially similar" definition for desel fuel.

Dated: May 21, 1991.

William K. Reilly,

Administrator.

[FR Doc. 91-12759 Filed 5-30-91; 8:45 am]

BILLING CODE 6560-50

[2] An impurity is that substance which is present through contamination, or remains naturally, after processing of the fuel is completed (56 FR 5355, February 11, 1991).

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8360

[WO-702-4830-15-24 1A]

RIN 1004-AB91

Visitor Services: Rules of Conduct

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) is proposing a mandatory safety belt regulation that would apply to visitors occupying the front seats of motor vehicles operated on roadways on Federal lands managed by the BLM (public lands) lying within States that do not have in effect a mandatory safety belt law, or that have enacted such a law but the law does not apply to public lands or may not be enforced by the BLM. Under current BLM regulations at 43 CFR 8365.1-7, the use of safety belts by visitors is required only on public lands in States that have a mandatory safety belt law in effect. Requiring use of safety belts is expected to reduce risk of injury or death in vehicle accidents on public lands, and contribute to the reduction of societal costs caused by such incidents.

DATES: Comments should be submitted by July 29, 1991. Comments received or postmarked after the above date may not be considered in the decisionmaking process on the final rule.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, room 5555, Main Interior Building, 1849 C Street, NW., Washington, DC 20240. Comments will be available for public review at this address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Paul Lynch, Chief, Safety Staff, 202-653-8851.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management (BLM) currently administers over 270 million acres of public lands. The Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1701 *et seq.*) requires the BLM to provide, among other things, for outdoor recreation and the regulation of human occupancy and use on these lands. In most cases, recreation access is gained by using motorized vehicles. The BLM administers and operates approximately 50,000 miles of roads open to the public. In addition, thousands of miles of unimproved roads and trails cross through or over public lands.

According to the National Highway Traffic Safety Administration and the National Safety Council, all States having substantial amounts of public lands with road traffic on them have mandatory safety belt laws, except for North and South Dakota. Also, according to the National Highway Traffic Safety Administration, all 50 States and the District of Columbia have mandatory child restraint laws. FLPMA (43 U.S.C. 1733) authorizes the BLM to cooperate with the regulatory and law enforcement officials of any State or political subdivision thereof in the enforcement of the laws and ordinances of such State or its subdivision. State and local agencies quite often are unable to provide appropriate levels of enforcement of safety belt requirements in the public land setting. The public lands attract visitors from other areas, placing an additional burden on local agencies not staffed for such temporary increases in population. In 1990, there

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were about 57,000,000 recreational visits recorded to public lands.

The Department of the Interior and the BLM strongly support the use of appropriate restraint systems by vehicle occupants. The proper wearing of safety belts may reduce accidents, and the potential reduction in personal injuries and fatalities that would result is highly desirable. The Department of the Interior itself requires safety belt use for its on-duty employees (Departmental Manual: Safety and Health Handbook, chapter 16.3.E).

The BLM safety belt regulation proposed in this rule would require that a motor vehicle operator and all front seat passengers be restrained by a properly fastened, safety belt while the motor vehicle is in motion. The burden of compliance would be placed on the operator: the proposed regulation prohibits operating a motor vehicle in motion unless all front seat passengers and the operator are restricted by a properly fastened safety belt. Children, as defined by applicable State law, are required to be restrained in accordance with State law. A person convicted of violating this or any other BLM regulation promulgated under the authority of FLPMA would be subject to a maximum penalty as defined by law, currently a $1,000 fine or 12 months imprisonment or both.

The safety belt regulation in this rule is intended to apply on all public lands that are open to visitors. In States that do have a mandatory safety belt law in effect that can be enforced on BLM lands, the BLM will continue to enforce the applicable State safety belt law, regardless of whether the provisions of the State law are identical to or different from the provisions of this rule. If the law of a State does not apply to the public lands or prevents BLM enforcement of that State's mandatory safety belt requirements on public lands, the BLM will adhere to and enforce the provisions of this rule.

The rule would not apply if a motor vehicle operator or passenger is occupying a front seat that was not originally equipped with a safety belt by the vehicle manufacturer, nor would it apply to an operator or passenger with a medical condition that prevents restraint by a safety belt or other occupant-restraining device. The rule provides that safety belts shall conform to applicable United States Department of Transportation standards, which are imposed on manufacturers. The intent is to require factory- or professionally-installed safety belts as opposed to home-made or jury-rigged belts, and to allow vehicle operators to rely on the vehicle manufacturer, not to require them to consult Federal regulations to make sure their equipment is satisfactory.

The rule would apply only to those vehicles ordinarily used for transportation on public roads, as opposed to farm, construction, work, or off-road recreation vehicles that occasionally appear on public roads.

The BLM intends that this regulation be observed and enforced primarily through signs, text in brochures, and incidental public contact, not through checkpoints or other enforcement contacts that are not initiated as the result of another violation.

The primary authors of this rule are Walter Johnson, Chief, Division of Law Enforcement, and Paul Lynch, Chief, Safety Staff, Bureau of Land Management. The staffs of the National Park Service and the National Highway Traffic Safety Administration were consulted informally during the development of this rule and provided valuable advice and assistance.

It is hereby determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule, and under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that it will not have a significant economic impact on a substantial number of small entities. These findings are based on the fact that the overall economic effects of this rule are negligible: It would impose no additional costs on any group or class of individuals. The BLM will incur costs associated with the installation of signs and the development of other public information programs in all affected areas. These administrative costs could be significant in some areas, depending on the road inventory and the number of access points. Additionally, as required by Executive Order 12630, the Department has determined that the rule would not cause a taking of private property.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 43 CFR Part 8360

Penalties, Public lands, Reporting and recordkeeping requirements, Traffic safety, Vehicles, Wilderness.

In consideration of the foregoing, and under the authorities stated below, part 8360, group 8000, subchapter H, chapter II, subtitle B of title 43 of the Code of Federal Regulations is amended as follows:

PART 8360—VISITOR SERVICES

1. The authority citation for part 8360 continues to read as follows:

Authority: 43 U.S.C. 1701 *et seq.*, 43 U.S.C. 315a, 16 U.S.C. 1281c, 16 U.S.C. 670 *et seq.*, 16 U.S.C. 460*l*-6a, 16 U.S.C. 1241 *et seq.*

2. Section 8360.0–5 is amended by adding paragraph (e) to read as follows:

§ 8360.0–5 Definitions.

* * * * *

(e) "Vehicle" means any motorized transportation conveyance designed and licensed for use on roadways, such as an automobile, bus, or truck.

Subpart 8365—Rules of Conduct

3. Section 8365.1–3 is amended by redesignating the existing section as paragraph (a), and adding paragraph (b) to read as follows:

§ 8365.1–3 Vehicles.

* * * * *

(b)(1) The operator of a motor vehicle is prohibited from operating a motor vehicle in motion, unless the operator and each front seat passenger is restrained by a properly fastened safety belt that conforms to applicable United States Department of Transportation standards, except that children, as defined by State law, shall be restrained as provided by State law.

(2) Paragraph (b) applies on public lands, or portions thereof, that are located within a State in which there is not State law in effect that requires the mandatory use of a safety belt by the vehicle operator and any front seat passenger. It also applies on public lands, or portions thereof, located within a State in which the mandatory safety belt law of the State does not apply to the public lands or in which any provision of State law renders the mandatory safety belt law of the State unenforceable by the authorized officer as to acts or omissions occurring on the public lands.

(3) This section does not apply to an operator or a passenger of a motor vehicle occupying a seat that was not originally equipped by the manufacturer with a safety belt, nor does it apply to an operator or passenger with a medical condition that prevents restraint by a safety belt or other occupant restraining device.

(4) An authorized officer may not stop a motor vehicle for the sole purpose of determining whether a violation of paragraph (b)(1) of this section is being committed.

Dated: April 17, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91–12729 Filed 5–29–91; 8:45 am]

BILLING CODE 4310–84–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1313

[Ex Parte No. 387 (Sub-No. 963)]

Railroad Transportation Contracts

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to preclude the amendment of any contract more than 90 days after its expiration date and to require that contracts be amended to reflect any automatic extensions of expiration dates. The Commission is experiencing a problem storing the large volume of confidential rail contracts filed by carriers pursuant to section 10713 of the Interstate Commerce Act (49 U.S.C. 10713). The problem results primarily from our inability to determine from our files which contracts are active or may be reactivated, and which have been permanently terminated and can be destroyed or stored off-site.

The proposed action will alleviate the Commission's storage problem for confidential rail contracts and will significantly enhance the integrity of the Commission's files, while continuing to provide carriers and shippers with what should be more than adequate flexibility.

DATES: Comments are due on July 1, 1991.

ADDRESSES: Send comments (an original and 10 copies) referring to Ex Parte No. 387 (Sub-No. 963) to: Interstate Commerce Commission, Office of the Secretary, Case Control Branch, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: James W. Greene (202) 275–7795, or Charles E. Langyher, III (202) 275–7739, TDD for hearing impaired (202) 275–1721).

SUPPLEMENTARY INFORMATION:

Our regulations allow a confidential rail contract to be reinstated after it has expired, but do not impose a restriction on the length of time after the expiration date that it can be reinstated (49 CFR 1313.3(c)). Thus, we have no way of knowing which of the expired contracts might be reactivated.

Additionally, many of the confidential rail contracts have expiration dates that are automatically extended, unless one of the parties gives notice of its intention to let the contract expire. Filers do not amend their contracts to reflect such expirations or extensions, and we are therefore unable to tell from our files whether such contracts are still active after the initial expiration date.

Under the Act and our regulations, whenever a contract is amended or reinstated, the entire contract is again subject to the Commission's jurisdiction and review, just as though it were an entirely new contract. Thus, we must maintain ready access to all contracts as long as they might be subject to reinstatement or amendment by the filer. This requirement, in conjunction with the matters discussed above, has resulted in the Commission being required to retain all confidential rail contracts on-site. Clearly, this is an unwarranted expense and an unnecessary encumbrance on the efficient conduct of the Commission's business.

Some action is clearly warranted to alleviate the severe housekeeping problem the Commission currently has with the storage of contracts. To limit the time in which the Commission will need to retain expired contracts, we will not permit amendment of any contract at a time more than 90 days after expiration of the contract. We expect that most, if not all, contract amendments will be filed well in advance of the 90 day limitation. We do not foresee any circumstances in which the proposed limitation will impose an unreasonable burden on carriers or shippers.

Energy and Environmental and Energy Considerations

We preliminarily conclude that the proposed rule revision will not affect significantly either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

We preliminarily conclude that this action will not have a significant impact on a substantial number of small entities.

List of Subjects in 49 CFR part 1313

Administrative practice and procedure, Agricultural commodities, Forest and forest products, Railroads.

Decided: May 14, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1313 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1313—RAILROAD CONTRACTS ENTERED INTO PURSUANT TO 49 U.S.C. 10713

1. The authority citation for Part 1313 would continue to read as follows:

Authority: 49 U.S.C. 10321 and 10713; 5 U.S.C. 553.

2. In § 1313.7, paragraph (d) is redesignated as paragraph (e), a new paragraph (d) is added and the introductory text and paragraph (e)(1) of redesignated paragraph (e) are revised to read as follows:

§ 1313.7 Contract filing, title pages, and numbering.

* * * * *

(d) *Modification of contract termination dates.* (1) An amendment extending a contract expiration date must be filed with the Commission prior to such expiration date. An amendment reactivating an expired contract, as provided for in § 1313.3(c), will not be accepted more than 90 days after such expiration date.

(2) A contract that provides for optional renewal or extension, whether by mutual agreement, unilateral action or lack of action, must be amended to reflect such renewal or extension. Any contract not so amended will expire on the initial expiration date specified therein. An amendment reactivating such a contract will not be accepted more than 90 days after its expiration date.

(3) A contract that provides for optional earlier termination, whether by mutual agreement, unilateral action or lack of action, and any other contract that is terminated before the termination date specified therein, must be amended to reflect such earlier termination. Said amendment must be filed within 90 days after such earlier termination.

(e) *Application for Relief from Requirements of paragraphs (a), (b) (c), or (d) of this section.* (1) Application for relief from one or more of the requirements of paragraphs (a), (b), (c) or (d) of this section shall be submitted to the Suspension/Special Permission Board.

* * * * *

[FR Doc. 91–12750 Filed 5–29–91; 8:45 am]

BILLING CODE 7035–01–M

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Notices

Federal Register
Vol. 56, No. 104
Thursday, May 30, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Request for Applications from Persons Interested in Designation to Provide Official Services in the Geographic Areas Currently Assigned to the Idaho (ID) and Lewiston (ID) Agencies and the State of Utah (UT)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. The Service announces the designations of three agencies will terminate, according to the Act, and requests applications from persons interested in designation to provide official services in the specified geographic areas. The official agencies are the Idaho Grain Inspection Service, Inc. (Idaho), the Lewiston Grain Inspection Service, Inc. (Lewiston), and the Utah Department of Agriculture (Utah).

DATES: Applications must be postmarked on or before July 1, 1991.

ADDRESSES: Applications must be submitted to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-447-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes the Administrator of the Service to designate any qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

The Service designated Idaho, located at 1199 East County Road, Pocatello, ID 83205; Lewiston, located at 1450 3rd Avenue North, Lewiston, ID 83501; and Utah, located at 350 North Redwood Road, Salt Lake City, UT 84116, to provide official inspection services under the Act on December 1, 1988.

Section 7(g)(1) of the Act provides that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act.

The designations of Idaho, Lewiston, and Utah terminate on November 30, 1991.

The geographic area presently assigned to Idaho, in the State of Idaho, pursuant to section 7(f)(2) of the Act, that will be assigned to the applicant selected for designation is as follows: The southern half of the State of Idaho up to the northern boundaries of Adams, Valley, and Lemhi Counties.

The geographic area presently assigned to Lewiston, in the State of Idaho, pursuant to section 7(f)(2) of the Act, that will be assigned to the applicant selected for designation is as follows: The northern half of the State of Idaho down to the northern boundaries of Adams, Valley, and Lemhi Counties.

The geographic area presently assigned to Utah, pursuant to section 7(f)(2) of the Act, that will be assigned to the applicant selected for designation, is the entire State of Utah.

Interested persons, including Idaho, Lewiston, and Utah, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning December 1, 1991, and ending November 30, 1994. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: May 22, 1991.

J. T. Abshier,
Director, Compliance Division.

[FR Doc. 91-12754 Filed 5-29-91; 8:45 am]
BILLING CODE 3410-EN-F

Request for Applications from Persons Interested in Designation to Provide Official Domestic Services in Portions of Illinois (IL) and Indiana (IN)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), authorizes the Administrator of the Service to designate persons to perform official services under the Act. The Service asks persons interested in providing official domestic services in the vicinity of Chicago, Illinois, to submit an application for designation. The Service has been and will continue to provide services to all export port locations in this area.

DATES: Applications must be postmarked on or before July 1, 1991.

ADDRESSES: Applications must be submitted to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. All applications will be made available for public inspection at this address at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-447-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes the Administrator of the Service to designate any qualified applicant to provide official domestic services in a specified area after determining that the applicant is better able than any other applicant to provide such official domestic services. The Service asks persons interested in providing official domestic services in the vicinity of Chicago, Illinois, to submit an application for designation. The Service has been and will continue to provide such official domestic services in this geographic area, as specified below, until a decision can be made in this matter. The Service will continue to provide services to all export port locations in this area. These are: Cargill Burns Harbor Elevator, Portage, Indiana; Cargill Elevator, Chicago, Illinois; Continental "B", Chicago, Illinois; Continental "C", Chicago, Illinois; Rialto Elevator, Chicago, Illinois; Gateway Elevator, Chicago, Illinois.

Section 7(g)(1) of the Act provides that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures rescribed in section 7(f) of the Act. Designation in this geographic area will be for a period not to exceed 3 years. The geographic area, in the States of Illinois and Indiana, that will be assigned to the applicant selected for designation, pursuant to section 7(f)(2) of the Act, is as follows:

Bounded on the North by the northern Illinois State line;

Bounded on the East by the eastern Illinois State line; across the Illinois-Indiana State line; the northern Indiana State line east to Interstate 94;

Bounded on the South by Interstate 94 west to the Indiana-Illinois State line; the Indiana-Illinois State line south to the northern Will County line; the northern Will County line west to Interstate 55; and

Bounded on the West by Interstate 55 northeast to Interstate 294; Interstate 294 north to Interstate 94; Interstate 94 north to the northern Illinois State line.

Interested persons are hereby given an opportunity to apply for designation to provide official domestic services in the geographic area specified above under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official domestic services in the above-mentioned geographic area.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: May 22, 1991.

J. T. Abshier,
Director, Compliance Division.

[FR Doc. 91-12755 Filed 5-29-91; 8:45 am]
BILLING CODE 3410-EN-F

Sioux City (IA) and Tischer (IA) Designation

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Service announces the designation of the Sioux City Inspection and Weighing Agency, Inc. (Sioux City), and A. V. Tischer and Son, Inc. (Tischer), to provide official services under the United States Grain Standards Act, as amended (Act). The Service also announces the removal of certain exceptions within the areas that Aberdeen Grain Inspection, Inc. (Aberdeen), Fremont Grain Inspection Department, Inc. (Fremont), and Tischer are designated to serve.

EFFECTIVE DATE: July 1, 1991.

ADDRESSES: Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-447-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the January 2, 1991, Federal Register (56 FR 65), the Service announced that the designations of Sioux City and Tischer terminate on June 30, 1991, and asked persons interested in providing official services within a specified geographic area to submit an application for designation. Applications were to be postmarked by February 1, 1991.

Sioux City applied for designation in the entire area currently assigned to that agency, except for: Farmers Elevator Company, and Feeders Mill & Elevator, Inc., both in Platte, Charles Mix County, South Dakota (located inside Aberdeen's area); Charter Oak Grain & Seed, and Delanty Grain Company, both in Charter Oak, Crawford County, Iowa (located inside Fremont's area); and Gooch Seed Mill, and Ernie's Seed & Field Service, both in Storm Lake, Buena Vista County, Iowa (located inside Tischer's area). The Tischer, Aberdeen, and Fremont agencies are contiguous to the Sioux City agency.

Tischer applied for designation in the entire area currently assigned to that agency, as well as Gooch Seed Mill, and Ernie's Seed & Field Service, both in Storm Lake, Buena Vista County, Iowa.

Aberdeen applied for designation to serve Farmers Elevator Company, and Feeders Mill & Elevator, Inc., both in Platte, Charles Mix County, South Dakota, in addition to the area they are already designated to serve.

Fremont applied for designation to serve Charter Oak Grain & Seed, and Delanty Grain Company, both in Charter Oak, Crawford County, Iowa, in addition to the area they are already designated to serve.

The Service named and requested comments on the applicants for designation in the March 8, 1991, Federal Register (56 FR 9934). Comments were to be postmarked by April 22, 1991. The Service received no comments by that deadline.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and according to section 7(f)(1)(B), determined that Sioux City, Tischer, Aberdeen, and Fremont are able to provide official services in the geographic areas for which they applied.

Effective July 1, 1991, and terminating June 30, 1994, Sioux City and Tischer are designated to provide official inspection services in the above specified geographic areas.

Effective July 1,1991, and terminating November 30, 1993, for Aberdeen and August 31, 1992, for Fremont these agencies are designated to provide official inspection services in the above specified geographic areas in addition to the area they are already designated to serve.

Interested persons may obtain official services by contacting Sioux City at 712-255-8073, Tischer at 515-955-7012, Fremont at 402-721-1270, and Aberdeen at 605-225-8432.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: May 22, 1991.

J. T. Abshier,
Director, Compliance Division.

[FR Doc. 91-12758 Filed 5-29-91; 8:45 am]
BILLING CODE 3410-EN-F

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Request for Comments on the Designation Applicants in the Geographic Areas Currently Assigned to the Louisville (KY), Minot (ND), and Tri-State (OH) Agencies

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Service requests interested persons to submit comments on the applicants for designation in the geographic areas currently assigned to Louisville Grain Inspection Services, Inc. (Louisville), Minot Grain Inspection, Inc. (Minot), and Tri-State Grain Inspection Service, Inc. (Tri-State).

DATES: Comments must be postmarked on or before July 15, 1991.

ADDRESSES: Comments must be submitted in writing to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. SprintMail users may respond to [HDUNN/FGIS/USDA]. Telecopier users may send responses to the automatic telecopier machine at 202-447-4628, attention: Homer E. Dunn.All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-447-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the April 2, 1991, **Federal Register** (56 FR 13447), the Service asked persons interested in providing official services within the Louisville, Minot, or Tri-State geographic areas to submit an application for designation. Applications were to be postmarked by May 2, 1991. Minot applied for the entire Minot area. Tri-State applied for the entire Tri-State area. Louisville, J. W. Barton Grain Inspection Service, Inc., a designated official agency, (Barton), and Tri-State each applied for the entire Louisville area. Barton would accept less than the entire area as long as it included the Consolidated Grain & Barge Co., facilities in Louisville, Kentucky, and Jeffersonville, Indiana, and Indiana Farm Bureau Co-op Association, Inc., Gold Proof Elevator in Louisville, Kentucky. Tri-State would accept less than the entire area and is especially interested in Jefferson, Clark, and Floyd counties, Indiana, and the northern Kentucky area including Scott, Fayette, Jessamine, Woodford, Anderson, Spencer, Bullitt, and Jefferson counties and points north thereof.

The Service is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants for designation. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of these applicants. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. The Service will publish notice of the final decision in the **Federal Register**, and the Service will send the applicants written notification of the decision.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: May 22, 1991.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 91-12757 Filed 5-29-91; 8:45 am]

BILLING CODE 3410-EN-F

Cancellation of Fostoria Grain Inspection's Designation and Request for Applications from Persons Interested in Designation to Provide Official Services in Northwestern Ohio (OH)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: Robert B. Whitta dba Fostoria Grain Inspection (Fostoria), asked the Service to cancel his designation, effective November 30, 1991. The Service asks persons interested in providing official services in the geographic area currently assigned to Fostoria to submit an application for designation.

DATES: Applications must be postmarked on or before July 1, 1991.

ADDRESSES: Applications must be submitted to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. All applications will be made available for public inspection at this address at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-447-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the United States Grain Standards Act, as amended (Act), authorizes the Administrator of the Service, to designate any qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

Section 7(g)(1) of the Act provides that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act.

The Service designated Fostoria, located at 626 West Fourth Street, Fostoria, OH 44830, for the period beginning October 1, 1989, and ending September 30, 1992. Fostoria requested voluntary cancellation of its designation, effective November 30, 1991.

The geographic area presently assigned to Fostoria, in the State of Ohio, that will be assigned to the applicant selected for designation is as follows:

Bounded on the North by the northern and eastern Fulton County lines; the eastern Henry County line; the northern and eastern Wood County lines; the northern Sandusky County line east to State Route 590;

Bounded on the East by State Route 590 south to Seneca County; the northern Seneca County line east to State Route 53; State Route 53 south to Wyandot County; the northern Wyandot County line; the northern Crawford County line east to State Route 19; State Route 19 south to U.S. Route 30;

Bounded on the South by U.S. Route 30 west to the western Hancock County line; and

Bounded on the West by the western Hancock County line; the southern Henry County line west to State Route 108; State Route 108 north to U.S. Route 24; U.S. Route 24 southwest to the Henry County line; the western Henry and Fulton County lines.

Interested persons are hereby given an opportunity to apply for designation to provide official services in the Northwestern Ohio area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the Northwestern Ohio area is for the period beginning December 1, 1991, and ending November 30, 1994. Parties wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in the Northwestern Ohio area.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: May 22, 1991.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 91-12756 Filed 5-29-91; 8:45 am]

BILLING CODE 3410-EN-F

Food and Nutrition Service

National Advisory Council on Maternal, Infant and Fetal Nutrition; Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Council meeting:

Date and Time: June 17-19, 1991, 8:30 a.m.

Place: Food and Nutrition Service, Park Office Center, 3101 Park Center Drive, Eighth Floor Conference Room, Alexandria, Virginia 22302.

Purpose of Meeting: The Department will meet with an ad hoc work group, composed of volunteers from the Council, to discuss the reviews of nutritional risk criteria used in, and food packages issued by, the Special Supplemental Food Program for Women, Infants, and Children (WIC), as mandated by sections 123 (b) and (c) of Public Law 101-147, enacted November 10, 1989. No recommendations will be developed; rather, the purpose of the meeting is to prepare the ad hoc work group to assist the Department in discussing the reviews with the full Council when it meets in September.

Agenda: The agenda for the ad hoc work group meeting will focus on discussion of issues related to nutritional risk criteria and food package reviews, such as which nutritional risk criteria are currently used to determine eligibility for the WIC Program, the relationship of such criteria to the WIC participant priority system, the appropriateness of the foods issued in the various WIC food packages, which nutrients should be targeted by the WIC Program, and the bioavailability of iron.

The ad hoc work group meeting is open to the public, and members of the public may participate, as time permits. Members of the public should be aware, however, that this meeting of the ad hoc work group, a voluntary sub-group of the full Council, is merely a preliminary working session, preparatory in nature to the full Council meeting scheduled for September 18-20, 1991. Written statements may be filed by members of the public with the Council before or after the meeting. A separate notice will be published in the **Federal Register** prior to the full Council meeting in September.

Persons wishing to file written statements or to obtain additional information about this meeting should contact Tama Eliff, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, room 540, Alexandria, Virginia 22302, (703) 756-3730.

Dated: May 22, 1991.

Betty Jo Nelsen,

Administrator.

[FR Doc. 91-12777 Filed 5-29-91; 8:45 am]

BILLING CODE 3410-30-M

Forest Service

Bald Mountain Timber Sale

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the USDA Forest Service will prepare an Environmental Impact Statement to disclose the environmental consequences of the proposed Bald Mountain Timber Sale located on the La Porte Ranger District, Plumas National Forest, Plumas County, California. The Bald Mountain Timber Sale is approximately four air miles north of the town of La Porte, California in Township 21 N. and Range 9 E., Mt. Diablo Meridian. The Forest Service invites written comments on this proposal. A full environmental analysis will be conducted. The Draft Environmental Impact Statement (DEIS) will be published in July 1992 and the Final Environmental Impact Statement (FEIS) will be available for review in November 1992.

DATES: Comments concerning the scope of analysis should be received in writing by July 14, 1991.

ADDRESSES: Submit written comments and suggestions to Charles W. Smay District Ranger, P.O. Drawer 369, Challenge, CA 95925.

FOR FURTHER INFORMATION CONTACT: Jerry Bertagna, Program Accomplishment Forester, phone 916-675-2462, who can answer questions related to this project.

SUPPLEMENTARY INFORMATION: The Plumas National Forest Land and Resource Management Plan provides direction for management of the project area which is located within the Little Grass Management Area (Management Area #15), which was designated in the Forest Plan to be managed under the Recreation Area, Visual Retention, Bald Eagle Habitat, Visual Partial Retention, and Timber Emphasis Prescriptions. The proposed action within this Management Area would use a variety of logging systems to harvest approximately 11.7 million board feet of timber through application of unevenaged silvicultural systems. A range of alternatives for this project will be considered, one of which would be a no action alternative.

John Palmer, Acting Forest Supervisor, Plumas National Forest, Quincy, California, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). Some initial scoping and analysis have been completed for this proposed project. Comments received during the original scoping will be retained and considered in the analysis. The Forest Service will be seeking information, comments and assistance from federal, state and local agencies, other individuals and organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the DEIS. The scoping process includes:

1. Identifying potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring alternatives to the proposed project.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the proposed timber sale area.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by July 1992. At that time the EPA will publish a notice of availability of the DEIS in the Federal Register. The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency's Notice of Availability appears in the **Federal Register**. It is very important that those interested in the management of the Bald Mountain Timber Sale participate at that time. To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits

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of the alternatives discussed (see the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

After the comment period for the DEIS ends, the comments received will be analyzed and considered by the Forest Service in preparation of the FEIS. The FEIS is scheduled to be completed by November 1992. The Forest Service is required to respond to comments received (40 CFR 1503.4). The responsible official will consider comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal.

The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

Dated: May 20, 1991.

John Palmer,

Acting Forest Supervisor.

[FR Doc. 91-12666 Filed 5-29-91; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-015]

Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative reviews.

SUMMARY: On March 4, 1991, the Department of Commerce published the preliminary results of its administrative reviews of the antidumping finding on television receivers, monochrome and color, from Japan. The reviews cover one manufacturer/exporter of this merchandise to the United States and various periods from August 19, 1983 through February 28, 1988.

We gave interested parties an opportunity to comment on our preliminary results.

Based on our analysis of the comments received and the correction of certain clerical errors, we have changed the final results for all of the reviews. The final margins range from 0.01 percent to 2.79 percent.

EFFECTIVE DATE: May 30, 1991.

FOR FURTHER INFORMATION CONTACT: Maura Kim or Melissa G. Skinner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington DC 20230; telephone: (202) 377-3601 or (202) 377-4851.

SUPPLEMENTARY INFORMATION:

Background

On March 4, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 8983) the preliminary results of its administrative reviews of the antidumping finding on television receivers, monochrome and color, from Japan (36 FR 4597, March 10, 1971). We have now completed these administrative reviews in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

Imports covered by the reviews are shipments of television receivers, monochrome and color, from Japan. Television receivers include, but are not limited to, units known as projection televisions, receiver monitors, and kits (containing all parts necessary to receive a broadcast television signal and produce a video image). Not included are certain monitors not capable of receiving a broadcast signal, certain combination units, and certain subassemblies not containing the components essential for receiving a broadcast television signal and producing a video image. During the review periods, television receivers, monochrome and color, were classifiable under item numbers 684.9230, 684.9232, 684.9234, 684.9236, 684.9238, 684.9240, 684.9245, 684.9246, 684.9248, 684.9250, 684.9252, 684.9253, 684.9255, 684.9256, 684.9258, 684.9262, 684.9263, and 684.9255 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under item numbers 8528.10.80 and 8528.20.00 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

These reviews cover one manufacturer/exporter to the United States of Japanese televisions, Victor Company (Victor), and various periods from August 19, 1983 through February 28, 1988.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received comments from one domestic party to the proceeding, Zenith Electronics Corporation (Zenith) and Victor, the respondent.

Certain comments by Victor concerned clerical errors. We have corrected the following such errors in the computer programs for the final results: We removed programming language which set the home market selling department's expenses, and the adjustment for differences in physical characteristics, at values equal to zero in the partial fifth review; we calculated Victor's selling department's expenses for direct sales to unrelated parties in the partial fifth and sixth reviews separately from its other sales; we deducted one additional discount and cash rebate from foreign market value in the partial fifth and sixth reviews; we used the correct amount of uncollected U.S. commodity tax in the U.S. for model C-14N in the seventh review. Contrary to Victor's assertion, in our preliminary determination we had in fact deducted inventory carrying costs from home market price in the sixth review.

We note that in its brief, Zenith listed several issues that had been raised in separate prior proceedings, and that there is nothing else on this record concerning these issues. Zenith explains that it chose not to reargue these issues in this proceeding and merely raised them in the hope that the Department would change its views. Since Zenith decided not to address these issues in this proceeding, we will not address them either.

Comment 1: Victor argues that its direct home market sales to unrelated customers are sold in a different "channel of trade" than its home market sales to related companies, and, therefore, are not in the ordinary course of trade. It argues further that the fact that its direct sales in the home market constituted only a small percentage of total home market sales as another reason that they were not in the ordinary course of trade. As a result, Victor reasons that these sales should be excluded from the analysis of home market sales. Additionally, Victor raises the point that the direct home market sales should not be considered, because they were in minimal quantities, noting that the Department did not require Victor to report its sales to two of its sales companies, San-In and Okinawa Victor, because they were also in minimal quantities.

Department's Position: We disagree. Victor sells television in the home market through two different channels of trade; most of its sales are through its related sales companies, but some sales are directly to unrelated customers. Victor provided no justification or support for its claim that its direct home market sales to unrelated customers are outside the ordinary course of trade. Victor has consistently sold through both channels of trade, and examination of the direct sales during these periods of review provides no evidence that they were made for unusual reasons or under unusual circumstances. Moreover, the mere fact that direct sales represent only a small percentage of total home market sales does not signify that the sales are outside the ordinary course of trade. In fact, Victor's claim that sales in such small quantities are outside the ordinary course of trade is an assertion unsupported by any evidence on the record. Accordingly, we considered these sales as being within the ordinary course of trade and have included them in our analysis of home market sales. For the purpose of these reviews, we decided that Victor need not report a minimal number of sales to two of its smallest sales companies, not because we did not consider them to be within the ordinary course of trade, but because the number of sales involved was insignificant in relation to the total number of sales already reported for this channel of trade, and because inclusion of these sales would have had *de minimis* effect on the margin. Since Victor's direct home market sales were made in a different channel of trade and we needed information on both channels of trade, because these sales might have had an impact on margins, and because we considered them in the ordinary course of trade we included them in our analysis of home market sales.

Comment 2: Victor argues that the Department should not have separately calculated home market and U.S. inventory carrying costs, since Victor had already calculated and included these expenses in its claimed interest expenses.

Department's Position: We disagree. We did not use Victor's inventory carrying cost figures because they were incorrectly calculated. Victor used inventory balances from the beginning and end of the review period, as representative of the entire period; however, this practice could potentially distort inventory carrying costs in that it captures costs from only a portion of the review period. We have determined that an average of Victor's monthly inventory balances more accurately accounts for Victor's actual inventory carrying costs because an average of the twelve monthly balances is not susceptible to the distortions that might result from, using only two daily balances. Therefore, in lieu of using Victors' reported average inventory balance, as is our practice we used the average of Victor's monthly inventory balances to calculate Victor's inventory carrying costs. We deducted the resulting inventory carrying costs from the foreign market value and U.S. price, as applicable.

Comment 3: Victor argues that the Department should not have calculated Victor's home market and U.S. direct credit expenses, but should have used the information it submitted.

Department's Position: We did not use Victor's direct credit expense figures because they were incorrectly calculated. It is our normal practice to use monthly accounts receivable balances rather than beginning and ending balances for the review period, because examining only these two daily balances is not likely to present as accurate an accounting of a firm's direct credit expenses of the entire review period. A noted in *Comment 2*, use of balances from only the beginning and end of the review period might lead to distorted results because two daily balances do not capture normal fluctuations in accounts receivable balances. Therefore, in lieu of using Victor's average accounts receivable balances to calculate the direct credit expense. We deducted the resulting direct credit expense from FMV and U.S. price, as applicable.

Comment 4: Victor argues that the Department's calculation of U.S. inventory carrying costs should be based on landed costs of the merchandise, rather than unit resale prices.

Department's Position: We agree. U.S. inventory carrying costs should be calculated on the landed costs of the merchandise, rather than the unit resale prices, because the merchandise is valued while in inventory at landed costs. Therefore, in these final results we have calculated U.S. inventory carrying costs based on landed costs.

Comment 5: Victor argues that the Department should adjust both home market resale prices, and U.S. resale prices, for discounts and cash rebates, for the purpose of calculating direct credit expenses.

Department's Position: We agree in part. For the purpose of calculating direct credit expenses, we adjusted home market resale prices and U.S. resale prices for those discounts and cash rebates which were granted before or by the date of sale. We did not adjust U.S. resale prices for Volume Incentive Rebates or Extra Profit Incentive Programs, nor did we adjust home market resale prices for Discount for Employees to Establish Independent Retail Outlets, Victor Shop Rebates, general volume incentive rebates, and Color Television Incentive Rebates, because Victor only granted them when the customer had met conditions which could only have occurred after the sale date. Therefore, for these discounts and rebates which were granted after the sale date, we did not adjust the U.S. and home market resale prices for the purpose of calculating direct credit expenses, since Victor incurred a credit cost on full sale prices.

Comment 6: Victor claims that its U.S. subsidiary included time on the water in its reported time in inventory. Therefore, it argues that the Department's separate adjustment for imputed credit expenses, or the credit expenses incurred for time on the water, should be omitted in these final results.

Department's Position: We agree and have ensured a single deduction of imputed credit expenses from U.S. prices in these final results.

Comment 7: Victor argues that the Department should deduct certain movement and direct selling expenses from its general expenses (GE) when calculating constructed value (CV).

Department's Position: We agree in part. In these final results in calculating CV, we have deducted brokerage, handling, and inland freight from general expenses. We also made deductions for the following direct selling expenses because they were included in the GE which we used to calculate CV: Warranty expenses, advertising and sales promotion expenses, and royalties. However, we did not make Victor's requested adjustment to CV for U.S. direct selling

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expenses, because we had already deducted them from U.S. price.

Comment 8: Victor argues that the Department added home market packing twice to CV.

Department's Position: We agree. Victor included its cost of packing in the cost of manufacture. Accordingly, in these final results we removed the double counting of packing to CV.

Final Results of the Review

As a result of the comments received and the correction of certain clerical errors, we have revised our preliminary results for Victor, and we determine the margins to be:

Manufacturer/ Exporter	Review No.	Period of review	Margin (%)
Victor	5	6/19/83–3/31/84	0.01
Victor	6	4/01/84–2/28/85	2.79
Victor	7	3/01/85–2/28/86	0.90

The Department will instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties of 35.40 percent, based on the margin for Victor in the eleventh review, covering the period from March 1, 1989 through February 28, 1990, will be required for Victor. For any shipments of this merchandise manufactured by Funai, Fujitsu General, Hitachi, Matsushita, Mitsubishi, NEC, Sanyo, Seiko Epson, Sharp, or Toshiba, the case deposit will continue to be the same as the rates published in the final results of the administrative reviews for these firms (56 FR 5392, February 11, 1991). Since these reviews cover periods which have been superceded by more recent reviews, the rates in this notice do not affect the cash deposit rate for any firm.

These administrative reviews and notices are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Commerce Regulations (19 CFR 353.22).

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-12775 Filed 5-29-91; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Determination: Certain Welding Quality Continuous Cast Steel Billets

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of short-supply determination on certain welding quality continuous cast steel billets.

SHORT-SUPPLY REVIEW NUMBER: 48.

SUMMARY: The Secretary of Commerce ("Secretary") hereby grants short supply for 10,000 metric tons of certain welding quality continuous cast steel billets for May–June 1991 under article 8 of the U.S.-Finland steel arrangement.

EFFECTIVE DATE: May 23, 1991.

FOR FURTHER INFORMATION CONTACT: James Rice or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230 (202) 377–2667 or (202) 377–0159.

SUPPLEMENTARY INFORMATION: On April 23, 1991, the Secretary of Commerce ("Secretary") received an adequate short-supply petition from American Steel and Wire Corporation ("ASW") for 10,000 metric tons of certain welding quality continuous cast steel billets for May–June 1991. ASW requested short supply because it alleges no domestic producer can meet its specifications for the product and its potential Finnish supplier has exhausted its regular export license allocation. This request is made under article 8 of the Arrangement Betweeen the Government of Finland and the Government of the United States of America Concerning Trade in Certain Steel Products ("the U.S.-Finland steel arrangement"). The Secretary conducted a short-supply review on this product, pursuant to section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101–221, 103 Stat. 1886 (1989) ("the Act"), and § 357.102 of the Department of Commerce's Short-Supply Procedures, 19 CFR 357.102 ("Commerce's Short-Supply Procedures").

The requested grades and physical specifications are as follows:

Grade/Quantity requested:

70S–3	2,700	metric tons
70S–6	6,300	metric tons
ER70S–7	1,000	metric tons
Total	10,000	metric tons

Cross-section: 130mm (± 2mm);
Length: 9.4M–10.3M (no shorts);
Twist: 5 degrees maximum over length of billet;
Straightness: 13mm maximum out-of-straight in any 1.5m, 76mm maximum out-of-straight over billet length;
Ends: Perpendicular to longitudinal axis. Tapered cuts are unacceptable. Mushroomed ends must not exceed 6mm per side. No open or split ends. Detachable saw burrs, fins, or shear lips must be minimized;
Surface: Billet must be commercially free of cracks, mechanical defects and other melting/casting type surface discontinuities. Pinhole defects shall not exceed 2mm in depth;
Squareness: Rhomboid sections with uneven diagonals more than 8mm are unacceptable;
Corner Radius: 6mm (± 2mm);
Cast: Must be continuous (direct) cast billets;
Other: Must be B.O.F. steel.

On April 24, 1991, the Secretary established an official record on this short-supply request (Cast Number 48) in the Central Records Unit, room B–099, Import Administration, U.S. Department of Commerce, at the above address. A notice of this short-supply review and request for comments was published in the **Federal Register** (56 FR 19963) on May 1, 1991. Questionnaires were sent to the following eight companies on April 24, 1991: Bethlehem Steel Corporation ("Bethlehem"), Georgetown Steel Corporation ("Georgetown"), Inland Steel Industries ("Inland"), North Star Steel Texas, Inc. ("North Star") Raritan River Steel Company ("Raritan"), Republic Engineered Steels ("Republic"), the Timken Company ("Timken"), and USS/Kobe Steel Company ("USS/Kobe"). Responses to the questionnaries were due no later than May 3, 1991. All comments to the **Federal Register** notice by interested parties were due no later than May 8, 1991, and replies to those comments were to be filed no later than May 13, 1991.

Questionnaire Responses: The Department received adequate questionnaire responses from six of the eight parties to which it sent questionnaries. Raritan and North Star did not respond. Timken indicated that it does not have the capability to produce this size billet meeting ASW's specifications. Inland stated that it could not produce the grades requested by ASW. Georgetown indicated that they are currently in the process of becoming a "qualified supplier" to ASW for these billets, but that they could not supply ASW until the third quarter of 1991 at the earliest. Georgetown also noted that they are working with ASW's two customers, L–TEC Welding and Cutting Systems ("L–TEC") and National Standard Corporation ("National Standard"), to supply them with wire rod in the three noted grades. Bethlehem, Republic, and USS/Kobe indicated they could supply the entire 10,000 metric tons, meeting ASW's specifications, with the exception that it would be ingot cast. In addition, Republic admitted that to meet the 31–34 foot length requirement, it would have to "double convert" its ingots.

The Department also received comments from L–TEC and National Standard specifying that the billets must be continuous cast. L–TEC stated that "when, on our purchase orders to ASW we specify Dalsbruk billets, it is understood that we require direct billet cast steel." National Standard stated that the billets they require "must be direct cast material for our welding application."

ASW submitted comments to the questionnaire responses on May 10, 1991. These comments addressed the questionnarie responses of Bethlehem, Republic, and USS/Kobe.

ASW stated that Bethlehem cannot provide direct cast billets, nor could they report product analysis at the beginning and end of a cast, as the specifications dictate. Instead, according to ASW, Bethlehem can only report their heat ladle analysis. Regarding Republic's questionnaire response, ASW simply stated that Republic "clearly cannot meet our specification" regarding billet length or direct casting. ASW acknowledged that USS/Kobe did provide ASW with trial ingot casts of 70S–6 and ER70S–7, but that the results of this trial were not acceptable. ASW also stated that USS/Kobe is not interested in purchasing 130mm molds to cast these billets.

Analysis: The key issue in this short-supply review is the reasonableness of ASW's specification that the requested material be direct or continuous cast. Three domestic producers stated that they could generally meet all of ASW's specifications for this product, except that the material would be ingot cast. ASW's specifications, and the supporting comments submitted by L-TEC and National Standard, indicate that the mateiral must be direct cast. In this case, the direct casting requirement is dictated by ASW's customers, and ASW has a history of purchasing only direct cast billets meeting these specifications. The House Report to the Steel Trade Liberalization Act addresses both of these issues in deciding whether specifications should be considered reasonable. Regarding the necessity of ASW to follow the specifications of its customers, the House Report states that the Secretary should be "sensitive to the position of certain manufacturers who purchase steel for the production of an intermediate product under specifications prescribed by another unrelated manufacturer who uses the intermediate product in the production of a new and different product." H.R. No. 263, 101st Cong., 1st Sess. 15 (1989). Moreover, the Secretary is urged "to be particularly sympathetic to the needs of such steel purchasers to acquire steel with those particular specifications in order to be able to supply its own customers." *Id.* In addition, Dalsbruk has supplied ASW with substantial quantities of direct cast welding quality billets since 1989, and the House Report states that "if the petitioner has been purchasing the same steel product for the same end use, with the same requested specifications from all its sources for a significant period of time, then such specifications should be considered reasonable." *Id.* at 14.

Conclusion: Since ASW's requirement that these billets be direct cast is specified by ASW's customers and since ASW has been purchasing this product since 1989, the Secretary must consider the specification to be reasonable. No domestic suppliers of welding quality steel billets are able to produce this material meeting the direct cast specification. Therefore, the Secretary determines that short-supply exists with respect to this requested product. Pursuant to section 4(b)(4)(A) of the Act, the §357.102 of Commerce's Short-Supply Procedures, the Secretary grants a short-supply allowance for 10,000 metric tons of the requested billets for May-June 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-12776 Filed 5-29-91; 8:45 am]

BILLING CODE 3510-DS-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of First Request for Panel Review of Final Determination in the Scope Exclusion Request made by the Department of Commerce, International Trade Administration, Import Administration, respecting Oil Country Tubular Goods from Canada, filed by The Algoma Steel Corporation, Limited with the United States Section of the Binational Secretariat on May 16, 1991.

SUMMARY: On May 16, 1991, The Algoma Steel Corporation, Limited, filed a Request for Panel Review with the United States Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the Final Determination in the Scope Exclusion Request respecting Oil Country Tubular Goods from Canada made by the International Trade Administration, Import Administration, Import Administration File Number A–122–506. The Binational Secretariat has assigned Case Number USA–91–1904–01 to this Request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, Suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The panel review in this matter will be conducted in accordance with these Rules.

Rule 35(2) requires the Secretary of the responsible Section of the FTA Binational Secretariat to publish a notice that a first Request for Panel Review has been received. A first Request for Panel Review was filed with the United States Section of the Binational Secretariat, pursuant to Article 1904 of the Agreement, on May

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16, 1991, requesting panel review of the final determination described above.

Rule 35(1)(c) of the Rules provides that:

(a) a Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 30 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is June 17, 1991);

(b) a Party, investigating authority or interested person that does not file a Complaint may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is July 1, 1991); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: May 24, 1991.

Carstina L. Alston,

Deputy U.S. Secretary, FTA Binational Secretariat.

[FR Doc. 91-12713 Filed 5-29-91; 8:45 am]

BILLING CODE 3510-GT-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Language Institute Board of Visitors

AGENCY: Defense Language Institute Foreign Language Center.

ACTION: Notice of meeting.

SUMMARY: The Defense Language Institute Board of Visitors will hold a semi-annual open meeting at the Defense Language Institute Foreign Language Center, Presidio of Monterey, California.

DATES: August 27–28, 1991.

ADDRESSES: Those desiring to attend should contact Dr. Martha Herzog, Commandant, Defense Language Institute, ATTN: ATFL–DIC, Presidio of Monterey, California 93944–5006, for further details.

Dated: May 23, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-12672 Filed 5-29-91; 8:45 am]

BILLING CODE 3810-01-M

Joint Defense Policy Board/Defense Science Board Task Force on Nonstrategic Nuclear Forces

ACTION: Notice of Task Force Meeting.

SUMMARY: The Joint Defense Policy Board/Defense Science Board Task Force on Nonstrategic Nuclear Forces will meet in closed session on June 12–13, 1991 from 0900 until 1700 at 2560 Huntington Avenue (suite 500), Alexandria, VA 22303.

The mission of the Joint Defense Policy Board/Defense Science Board Task Force is to provide the Secretary of Defense, Deputy Secretary of Defense, Under Secretary of Defense for Policy and the Under Secretary of Defense for Acquisition with independent, informed advice and opinion concerning major matter relating to nonstrategic nuclear force policy and acquisition. At the meeting the Task Force will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this Joint Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Dated: May 23, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 91-12673 Filed 5-29-91; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Low Observable (LO) Technology

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Low Observable (LO) Technology will meet in closed session on June 12–13, July 23–24, and September 12–13, 1991 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will handle all Defense Science Board activity associated with LO technology and Counter Low Observable (CLO) technology.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. app. II (1988)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: May 23, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-12674 Filed 5-29-91; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Review of the B–2

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Review of the B–2 will meet in closed session on June 20, 1991 in Seattle, Washington, and on June 21, 1991 at the Northrop Corporation, Pico Rivera, California.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will review the B–2 program with emphasis on the flight test program and reductions of program costs.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: May 23, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-12675 Filed 5-29-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by June 14, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., new, revision, extension, existing, or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting and/or Recordkeeping burden and (6) Abstract. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: May 23, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: Expedited.
Title: Public Libraries Data Collection — Federal-State Cooperative System (FSCS).
Abstract: The FSCS is an annual census of the status of 9000 public libraries, with data aggregated at the regional, state, and national levels. Federal, State and local officials use the data for evaluation, planning, monitoring, budgeting, administration and policy.
Additional Information: An expedited review is requested because this data collection has been done in the past two years and the data for this fiscal year is due to the Department in July, 1991. This data collection was developed with significant State involvement. In fiscal year (FY) 1989, the data collection has a 100% response rate and participation by States is voluntary. However, this information collection has never received OMB approval. The importance of this data collection cannot be overstated. If these data are not collected, there would be no current, national data on the status of and rapid changes in the public libraries. In order to continue to obtain national data in a timely manner for this fiscal year, the Department is requesting an expedited review.
Frequency: Annual.
Affected Public: State or local governments.
Reporting Burden:
Responses: 51.
Burden Hours: 1224.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.

BILLING CODE 4000-01-M

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U.S. DEPARTMENT OF EDUCATION

NATIONAL CENTER FOR EDUCATION STATISTICS

PUBLIC LIBRARIES DATA COLLECTION - FEDERAL-STATE COOPERATIVE SYSTEM

(FSCS)

FY 1991 COLLECTION

STATE LIBRARIAN AUTHORIZATION OF FSCS

These data for the state of _____ have been compiled by our State's FSCS data coordinator, who has performed the required editing functions.

I hereby authorize, that to the best of my knowledge and belief, this submission of these data to NCES constitutes our State's data.

_____

State Librarian's Name

_____

State Librarian's signature and date of signature

Dear Chief Officer:

The National Center for Education Statistics (NCES) of the U.S. Department of Education requests your participation in the 1991 Public Libraries Data Collection - Federal-State Cooperative System (FSCS). Your State is one of 50 States and the District of Columbia from whom we are requesting these data. NCES is authorized to collect these data by the Hawkins-Stafford Elementary and Secondary School Improvement Amendments of 1988 (PL 100-297).

FSCS is an annual census of the status of the nation's nearly 9000 public libraries. Your participation will not only result in the availability of data at the local public library level, but will enable NCES to aggregate these data at the regional, state, and national levels. FSCS provides descriptive information about public libraries, including, staffing, revenues, expenditures, circulation, size of collection, hours of operation, and use by the public. Recently you were mailed a copy of "Public Libraries in 50 States and the District of Columbia: 1989" which contains data from the 1990 FSCS.

State library agencies' 100% response rate for the 1990 FSCS collection is one indication of your commitment to FSCS. In fact, FSCS has been cited as a model of State/Federal cooperation, and I would like to thank you for your contribution to making that possible.

FSCS has been the first national NCES data collection to be collected, edited, and tabulated completely in machine readable form. This technology was developed to keep the overall response burden to a minimum, an average of 24 hours per state.

June and July are designated as the FSCS data collection months. Your FSCS Coordinator serves as NCES' contact for data collection in your State and mailings of diskettes and instructions for the collection go directly from NCES to the Coordinators. As in the past, NCES staff will work cooperatively with your coordinator to ensure the quality and timeliness of data for each State, and therefore the integrity of the national totals. Submissions are due to NCES by July 31, 1991.

Beginning with this data collection, we have introduced a Chief Officer sign-off, giving you the opportunity to authorize your State's submission (Attachment). Your Coordinator will request your signature prior to submitting the data.

Technical assistance for your State's submission is available from NCES. If you anticipate needing such assistance, please notify Carrol Kindel as soon as possible at NCES (202) 219-1371. Ron Hall, Acting Associate Commissioner for Postsecondary Education Statistics, and Carrol are also available to answer any other

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questions you may have regarding this data collection.

Public reporting burden for this collection of information is estimated to average 24 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Please send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington D.C. 20202-4651; and to the Office of management and Budget, Paperwork Reduction Project 1850-NEW, Washington, D.C. 20503.

I thank you for your cooperation in this very important effort.

Sincerely,

Emerson J. Elliott
Acting Commissioner

[FR Doc. 91-12685 Filed 5-29-91; 8:45 am]
BILLING CODE 4000-01-C

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 1, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: May 23, 1991.

Mary P. Liggett,
Acting Director, Office of Information Resources Management.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: New.
Title: Title VII Data Collection and Evaluation System, Development Bilingual Education Grants Program.
Frequency: Annually.
Affected Public: State or local governments.
Reporting Burden:
Responses: 26.
Burden Hours: 3,120.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will collect factual and relevant evaluation information regarding the Developmental Bilingual Education Program. The Department will use this information to document the programs achievement and effectiveness, and to research and improve the effectiveness of the program.

Office of Educational Research and Improvement

Type of Review: Extension.
Title: Final Performance Report for HEA title II-B, Final Performance Report for HEA title II-C.
Frequency: Annually.
Affected Public: Non-profit institutions.
Reporting Burden:
Responses: 80.
Burden Hours: 320.
Recordkeeping Burden:
Recordkeepers: 80.
Burden Hours: 80.
Abstract: This form is used to determine the use of grant funds awarded by the Library Career Training Program. The Department uses the information to evaluate project performance.

Office of Vocational and Adult Education

Type of Review: Revision.
Title: Application for Vocational and Adult Education Direct Grant Programs.
Frequency: Annually.
Affected Public: Individuals or households; state or local governments; non-profit institutions.
Reporting Burden:
Responses: 1032.
Burden Hours: 92,880.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used to apply for funds under Vocational and Adult Education direct grant programs. The Department uses the information to make grant and cooperative agreement awards.

[FR Doc. 91-12683 Filed 5-29-91; 8:45 am]
BILLING CODE 4000-01-M

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by June 24, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., new, revision extension,

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existing, or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting and/or Recordkeeping burden and (6) Abstract. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: May 24, 1991.

Mary P. Liggett,

Acting Director, Resources Management.

Office of Special Education and Rehabilitative Services

Type of Review: Expedited

Title: Application for Grants Under Disability and Rehabilitation Research.

Abstract: This form will be used by State Educational agencies to apply funding under the Disability and Rehabilitation Research program.

Additional Information: An expedited review is requested in order to keep the grant awards under the Program of Disability and Rehabilitation Research in FY 1991. This application contains Part II of the Budget Information, Standard Form 424 (Application for Federal Assistance), Standard Form 424B (Assurances), Lobbying Certifications, Debarment Certifications, Drug-Free Certifications, and Lobbying Activities Disclosures. There are no proposed changes to the instructions for the program narrative.

Frequency: Annually

Affected Public: State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations.

Reporting Burden:

Responses: 800.

Burden Hours: 16,000.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

BILLING CODE 4000-01-M

INSTRUCTIONS FOR COMPLETION OF PART III

NATIONAL INSTITUTE ON DISABILITY AND REHABILITATION RESEARCH

PROJECT NARRATIVE FOR NEW AND CONTINUATION APPLICATIONS

Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U. S. Department of Eduction, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820-0027, Washington, D. C. 20503.

The successful narrative should include the basic information described below and, excluding resumes of key personnel, should be limited to:

* 100 pages for applications for Rehabilitation Research and Training Centers, Rehabilitation Engineering Centers, and Special Projects and Demonstrations for Spinal Cord Injury

* 40 pages for application under the Research and Demonstrations Projects, Knowledge Dissemination and Utilization Projects, and Field-Initiated Research programs

* 20 pages for applications under the Innovation Grants program

* 12 pages, which is the regulatory limit, for applications under the Fellowship Program

Should the proposed project be funded, the information provided in the "project narrative' will form the basis for evaluating progress for continuation funding. The narrative for continuation applications must include the accomplishments, unanticipated obstacles and future plans of the project. The applicant must also revise budget statements for the program. Please refer to 34 CFR 75.118(b)

The narrative for new applications may be organized under the major headings in the regulations governing the specific programs. The applicant must respond to the selection criteria for each program listed below.

Research and Demonstration Projects - 34 CFR 351. Selection

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criteria for this program can be found in 34 CFR 350.34.

Rehabilitation Research and Training Centers - 34 CFR 352.31.

Rehabilitation Engineering Centers - 34 CFR 353.31.

Rehabilitation Research and Training Centers - 34 CFR 354. Selection criteria for this program can be found in 34 CFR 350.34.

Research Fellowships Program - 34 CFR 356.30.

Field-Initiated Projects - 34 CFR 357.32

Innovation Projects - 34 CFR 358.32.

Special Projects and Demonstrations for Spinal Cord Injuries - 34 CFR 359.31.

Research Training and Career Development Program - 34 CFR 360.31.

Americans with Disabilities Program - 34 CFR 355. Selection criteria for this program can be found in 34 CFR 350.34 as amended by the supplemental selection criteria contained in the FY '91 priorities related to this program.

[FR Doc. 91-12717 Filed 5-29-91; 8:45 am]
BILLING CODE 4000-01-C

[CFDA No: 84.217]

Ronald E. McNair Post-Baccalaureate Achievement Program; Inviting Applications for New Grants for Fiscal Year 1991

Purpose of Program: The purpose of this program is to provide grants to enable institutions of higher education to prepare low-income, first-generation college students, and students from groups underrepresented in graduate education, for doctoral study. Projects assisted under this program may provide, at the undergraduate and graduate levels, services such as—(1) Opportunities for research or other scholarly activities; (2) summer internships; (3) seminars and other educational activities designed to prepare students for doctoral study; (4) tutoring; (5) academic counseling; and (6) activities designed to assist participants in securing admission to and financial assistance for enrollment in graduate programs.

Eligible Applicants: Institutions of higher education are eligible to receive grants under this program.

Deadline for Transmittal of Applications: July 15, 1991.

Deadline for Intergovernmental Review: September 13, 1991.

Applications Available: May 30, 1991.

Available Funds: $1,400,000.

Estimated Range of Awards: $80,000—$120,000 per year.

Estimated Average Size of Awards: $116,000.

Estimated Number of Awards: 10–12.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85 and 86.

The Secretary uses the selection criteria published under § 75.210 of EDGAR. The Secretary assigns the fifteen points reserved in § 75.210(c) as follows: 10 points to selection criterion (3)—Plan of operation—in § 75.210 (3) for a total of 25 points for that criterion; 3 points to selection criterion (4)—Quality of key personnel—in § 75.210 (4) for a total of 10 points for that criterion; and 2 points to selection criterion (7)—Adequacy of Resoruces—in § 75.210 (7) for a total of 5 points for the criterion.

For Applications or Information Contact: May J. Weaver, U.S. Department of Education, 400 Maryland Avenue, SW., room 3060, ROB #3, Washington DC 20202–5249. Telephone: (202) 708–4804. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–80–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 1070d–1b(d).

Dated: May 15, 1991.

Michael J. Farrell,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 91–12684 Filed 5–29–91; 8:45 am]
BILLING CODE 4000–01–M

Student Financial Aid Programs in Which Race, Color or National Origin is a Factor

AGENCY: Department of Education.

ACTION: Notice of request for comments.

SUMMARY: The Assistant Secretary is publishing this notice of Request for Comments (notice) to solicit from all interested parties written comments on student financial aid programs in which race, color, or national origin is a factor and, in particular, the constraints, if any, that title VI of the Civil Rights Act of 1964, 42 U.S.C. 200d, imposes on those programs. These comments are intended to provide the Secretary and the Assistant Secretary with the most comprehensive information possible on this issue, including information on the nature and extent of the financial aid programs, the reasons underlying the programs, the limitations that may be imposed on the programs by title VI, and the feasibility of alternative methods of promoting higher education opportunities for members of minority groups.

SUPPLEMENTARY INFORMATION: Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color and national origin in programs and activities that receive Federal financial assistance. Title VI applies to the financial aid programs of colleges and universities that receive Federal funds. Some of these programs or specific assistance plans administered thereunder take race or national origin into account in the award of financial aid.

This notice asks questions about different types of financial aid programs that consider race or national origin as a factor in the award process. One type of financial aid program is a "minority-limited" financial aid program. This means any scholarship, fellowship, loan, work-study, or other financial aid program in which eligibility requirements include membership in a particular racial or national origin group, thereby excluding individuals of other racial or national origin groups from eligibility for that particular program. Factors such as academic merit or financial need may also be a consideration in determining who will receive financial aid, but the program nonetheless is available only for members of a certain racial or national origin group.

Another type of program referred to in the notice is a "plus" program. This means a financial aid program open to students of all races and national origin groups, but under which a student's membership in a particular racial or national origin group is considered to be a positive or "plus" factor in the selection process.

All inquiries in this notice referring to "colleges or universities" refer to all postsecondary institutions that are extended Federal financial assistance.

Inquiries for Public Comment

1. Are students of particular races or national origin groups who desire to attend college, or to pursue a particular profession requiring postsecondary education, being denied the opportunity due to financial reasons? If so, what is the nature and extent of that denial and how can it best be addressed?

2. What types of minority-limited financial aid programs exist today? How many dollars are available in those programs on an annual basis? How many students are aided? What are the reasons for limiting the aid to members of particular races or national origin groups? What are the reasons for selecting particular races or national origin groups as the ones eligible for the aid?

3. Should financial aid programs be analyzed for consistency with title VI in the same way as the Supreme Court analyzed admissions in *Regents of the University of California* v. *Bakke*, 438 U.S. 265 (1978)? In *Bakke*, the Court held that a university's setting aside of certain medical school admission slots for minorities violated title VI, but that the school could lawfully consider race as a "plus" factor in an individual's file (considered along with other objective and subjective factors) in order to promote a diverse student body contributing to a robust exchange of ideas. Should the same line be drawn regarding financial aid? Are there any material differences between admissions programs and financial aid programs that would make financial aid programs outside the scope of *Bakke*?

4. Is it consistent with title VI for a college or university to establish, award, administer, solicit, list, approve, or provide facilities or other services for, a minority-limited financial aid program?

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Does it depend on whether the program is funded by a private source that has imposed the limitation to members of specified races or national origin groups? Does it depend on the circumstances giving rise to and the rationales for the minority-limited aid programs? If so, what are the circumstances (e.g., court order, desegragation plan of the Office for Civil Rights of the Department of Education, underrepresentation at the particular institution, underrepresentation in specific professions) and rationales rendering some programs lawful?

5. Do minority-limited financial aid programs funded out of an institution's own unrestricted funds have an adverse effect on non-minority students' financial aid opportunities? If not, why not? If so, can the effect be quantified or estimated? Is any adverse effect eliminated at those colleges and universities that commit to meeting the demonstrated financial needs of all their students?

6. Could the objectives of minority-limited programs be achieved through race-neutral programs focused on students who are disadvantaged economically, educationally or in some other respect? If not, why not? Could the objectives be achieved through plus financial aid programs? If not, why not?

7. What standards should be applied in determining whether particular minority-limited financial aid programs are consistent with title VI?

8. If any existing financial aid programs in which race, color or national origin is a factor are determined to be inconsistent with title VI, what steps should the Department take to bring institutions into compliance with title VI, without harming students?

9. Please advise the Department of any other information or views concerning minority-limited or plus programs that you believe the Department should consider.

DATES: All comments should be received on or before July 15, 1991. Comments will be available for public inspection at the offices of the Office for Civil Rights, at the address listed below.

ADDRESSES: Written comments and requests for further information should be sent to: Jeanette J. Lim, Acting Director, Policy Development Division, Office for Civil Rights, U.S. Department of Education, 330 C Street SW., Washington, DC 20202. Telephone (202) 732-1637. Individuals who are hearing-impaired may call (202) 732-1663 for TDD services.

Authority: 42 U.S.C. 2000d.

Dated: May 23, 1991.

Michael L. Williams,

Assistant Secretary for Civil Rights.

[FR Doc. 91-12719 Filed 5-29-91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Task Force on the Department of Energy National Laboratories; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, as amended), notice is hereby given of the following advisory committee task force meeting:

Name: Secretary of Energy Advisory Board Task Force on the Department of Energy National Laboratories.

Date and Time: Monday, June 24, 1991, 8:30 a.m.-5 p.m.

Contact: Dr. E. Fenton Carey, Designated Federal Officer, 1000 Independence Avenue SW., Washington, DC 20585, Telephone: (202) 586-7092.

Purpose: The Task Force will provide advice to the Secretary of Energy on the research, development, energy, and national defense responsibilities, activities, and operations of the Department of Energy's (DOE) National Laboratories and the Department's management of those laboratories.

Tentative Agenda

Monday, June 24, 1991.

8:30 a.m. Closed Meeting to discuss national security issues relating to the future roles and mission of the DOE weapons laboratories.

5 p.m. Adjourn.

Closed Meeting: Pursuant to section 10(d) of the Federal Advisory Committee Act, Public Law 92-463, as amended (5 U.S.C. App.), and 42 U.S.C. 7234(b), the meeting will be closed to the public in the interest of national security.

Issued: Washington, DC, on: May 23, 1991.

Edwin F. Inge,

Deputy Advisory Committee Management Officer.

[FR Doc. 91-12785 Filed 5-29-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP88-28-000, et al.]

Nora Transmission Company, et al.; Natural Gas Certificate Filings

May 21, 1991.

Take notice that the following filings have been made with the Commission:

1. Nora Transmission Co.

[Docket No. CP88-28-009]

Take notice that on May 14, 1991, Nora Transmission Company (Nora), 3500 Park Lane, Pittsburgh, Pennsylvania 15275, filed in Docket Nc. CP88-28-009 a request pursuant to section 7(c) of the Natural Gas Act to amend the order issued October 28, 1989, in Docket No. CP88-28-003, as amended, to extend the authorized term of an interruptible transportation service for an additional year, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Nora states that it is currently authorized to transport up to 10,000 Mcf of natural gas per day on an interruptible basis, for Equitable Resources Exploration, a division of Equitable Resources Energy Company (EREX) for a term expiring on October 22, 1991. Nora proposes to extend the authorization for an additional year. No other changes are proposed.

Comment date: June 11, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Columbia Gas Transmission Corp. Columbia Gulf Transmission Co. Columbia Gulf Transmission Co. Southern Natural Gas Co.

[Docket Nos. CP91-2078-000, CP91-2079-000, CP91-2080-000, CP91-2081-000]

Take notice that on May 17, 1991, Applicants filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued to Applicants pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix A. Applicants' addresses and transportation blanke

[1] These prior notice requests are not consolidated.

certificates are shown in the attached appendix B.

Comment date: July 5, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2078-000 (5-17-91)	Marville Sales Corporation (End-user).	1,300 1,040 474,500	Various	Various	3-15-91, ITS interruptible.	ST91-8640-000, 3-10-91.
CP91-2079-000 (5-17-91)	Kerr-McGee Corporation (Producer).	40,000 10,000 3,650,000	OTX	OTX	2-1-91, ITS-2, interruptible.	ST91-8460-000, 4-4-91.
CP91-2080-000 (5-17-91)	Catex Energy, Inc. (Marketer).	100,000 15,000 5,475,000	OLA	LA	4-1-91, ITS-2, interruptible.	ST91-8457-000, 4-8-91.
CP91-2081-000 (5-17-91)	Shell Gas Trading Company (Marketer).	60,000 50,000 21,900,000	OTX, OLA, TX, LA, MS, AL	SC	3-14-91, IT, interruptible.	ST91-8591-000, 3-19-91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

Applicant's address	Blanket docket
Columbia Gas Transmission Corporation, 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314	CP86-240-000.
Columbia Gulf Transmission Company, P.O. Box 683, Houston, Texas 77001	CP86-239-000.
Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202-2563	CP88-316-000.

3. Panhandle Eastern Pipe Line Co.

[Docket No. CP91-2041-000]

Take notice that the above referenced company (Applicant) filed in the respective docket a prior notice request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of a shipper under its blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice request which is on file with the Commission and open to public inspection.[2]

Information applicable to the transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket number and initiation date of the 120-day transaction under § 284.223 of the Commission's Regualtions has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the servie for the shipper under an executed transportation agreement, and that the Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule.

Comment date: July 5, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (dated filed)	Applicant	Shipper name	Peak day,[1] average annual	Points of Receipt	Points of Delivery	Start up date, rate schedule	Related [3] dockets
CP91-2041-000 5-17-91 [2]	Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, TX, 77251-1642.	Kal Kan Foods, Inc.	700 700 255,500	Co, KS, MI, OH, OK, TX, WY.	Il	12-1-89, PT-1	CP86-585-000, ST91-8425-000.

[1] Quantities are shown in Dt, unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.
[3] The request was tendered for filing on May 14, 1991, however, the fee required by Section 381.208 of the Commission's Rules was not paid until May 17, 1991. Section 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

4. Trunkline Gas Co. et al.

[Docket Nos. CP91-2043-000, CP91-2044-000, CP91-2045-000, CP91-2046-000]

Take notice that the above referenced company (Applicant) filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for each shipper under an executed

[3] These prior notice requests are not consolidated.

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transportation agreement, and that the Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: July 5, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Applicant	Shipper name	Peak average, day, annual [1]	Points of Receipt	Points of Delivery	Start up date rate schedule	Related [2] dockets
CP91-2043-000 5-15-91	Trunkline Gas Company, P.O. Box 1642, Houston, TX 77251-1642.	Citizens Gas Supply Corporation.	200,000 100,000 40,000,000	TX, IL, LA, TN, Off LA, Off TX.	LA	4-10-91 PT-I	CP86-586-000, ST91-8394-000.
CP91-2044-000 5-15-91	Trunkline Gas Company, P.O. Box 1642, Houston, TX 77251-1642.	Clinton Gas Transmission, Inc.	5,000 5,000 1,825,000	TX, IL, LA, TN, Off LA, Off TX.	IL	4-1-91, PT-I	CP86-586-000, ST91-8387-000.
CP91-2045-000 5-15-91	Trunkline Gas Company, P.O. Box 1642, Houston, TX 77251-1642.	Panhandle Trading Company.	25,000 25,000 9,125,000	Off LA, IL, LA, TN, TX, Off TX.	KY	4-4-91, PT-I	CP86-586-000, ST91-8390-000.
CP91-2046-000 5-15-91	Trunkline Gas Company, P.O. Box 1642, Houston, TX 77251-1642.	Access Energy Corporation.	60,000 60,000 21,900,000	LA, TX, IL, TN, Off LA, Off TX.	IL	4-1-91, PT-I	CP86-586-000, ST91-8393-000.

[1] Quantities are shown in Mcf unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12700 Filed 5-29-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10959-001—Georgia]

Clinton Pumped Storage Corp.; Surrender of Preliminary Permit

May 22, 1991.

Take notice that the Clinton Pumped Storage Corporation, permittee for the Lynn Mountain Project, located on Brandy Brook, in Clinton County, New York, has requested that its preliminary permit be terminated. The preliminary permit was issued on October 29, 1990, and would have expired on September 30, 1993. The permittee states that the proposed project would not be economically feasible.

The permittee filed the request on April 22, 1991, and the preliminary permit for Project No. 10959-000 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12690 Filed 5-29-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10935-001—Georgia]

Lynne B. Pyle and Hoke Thomas; Surrender of Preliminary Permit

May 22, 1991.

Take notice that Lynne B. Pyle and Hoke Thomas, permittees for the Lower Mulberry Creek Hydropower Project, located on Mulberry Creek, Harris County, Georgia, has requested that their preliminary permit be terminated. The preliminary permit was issued on August 16, 1990, and would have expired on July 31, 1993. The permittee states that the request is due to the death of one of the permittees.

The permittee filed the request on April 2, 1991, and the preliminary permit for Project No. 10935 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12691 Filed 5-29-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-3-22-002]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 21, 1991.

Take notice that CNG Transmission Corporation ("CNG"), on May 16, 1991, pursuant to section 4 of the Natural Gas Act ("NGA") and in compliance with Ordering Paragraph (C) of the May 1, 1991, order in this docket, filed the following revised tariff sheet to Volume No. 1 of CNG's FERC Gas Tariff:

Substitute Fourth Revised Sheet No. 31

The proposed effective date for this tariff sheet is March 1, 1991.

CNG states that the purpose of this filing is to amend CNG's last quarterly PGA filing to reflect the elimination of "as-billed" producer demand charges from the current ceiling rates. CNG also states that the filing does not affect the rates that CNG will actually charge pursuant to the interim filing made on February 22, 1991, in Docket No. TF91-2-22-000 and accepted by letter order of the Director issued March 5, 1991.

CNG states that copies of the filing were served upon CNG's customers as well as interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 29, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12687 Filed 5-29-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-6-22-000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 22, 1991.

Take notice that CNG Transmission Corporation ("CNG"), on May 20, 1991, pursuant to section 4 of the Natural Gas Act, the Stipulation and Agreement approved by the Commission on October 6, 1989, in Docket Nos. RP88-217-000, et al., and section 12.9 of the General Terms and Conditions of CNG's FERC Gas Tariff, and Order Nos. 528 and 528-A, filed six (6) copies of the following revised and original tariff sheets to First Revised Volume No. 1 of CNG's FERC Gas Tariff:

Second Revised Sheet No. 45
Third Revised Sheet No. 45
Fourth Revised Sheet No. 53
First Revised Sheet No. 54
Original Sheet No. 55
Fourth Revised Sheet No. 211
Original Sheet No. 211A
First Revised Sheet No. 212A
Second Revised Sheet No. 212A

The proposed effective date for Second Revised Sheet No. 45 and First Revised Sheet No. 212A, is May 21, 1991. The proposed effective date for the remaining tariff sheets is June 20, 1991.

CNG states that the purpose of this filing is to flow through changes in take-or-pay costs allocated to CNG by two of its pipeline suppliers. CNG proposes in the filing to reflect the changes in the allocation of take-or-pay costs proposed by:

(1) Transcontinental Gas Pipe Line Corporation ("Transco") in its April 1, 1991, filing in Docket No. RP91-130. Transco's filing was accepted by the Commission on May 1, 1991. Also, CNG is proposing to flowthrough to its customers the take-or-pay charges in Transco's May 1, 1991 filing in Docket No. RP91-147.

(2) Texas Gas Transmission Corporation ("Texas Gas") in its April 10, 1991, filing in Docket No. RP91-134. Texas Gas's filing was accepted by the Commission on May 10, 1991.

CNG states that copies of the filing were served upon CNG's customers as well as interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 30, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12695 Filed 5-29-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-123-001]

Canyon Creek Compression Co.; Changes in FERC Gas Tariff

May 22, 1991.

Take notice that on May 15, 1991, Canyon Creek Compression (Canyon) submitted for filing copies of the revised tariff sheets, listed on appendix A attached to the filing, to become effective May 1, 1991, in compliance with an order issued by the Commission on April 30, 1991.

Canyon states that the revised tariff sheets result in a rate decrease and reflect the elimination of (1) the $150,000 working capital allowance for Canyon's prepayment to its operator, (2) the $54,301 working capital allowance for interest on the ACA charge and (3) the efficiency adjustment of $142,612. Canyon further states that the revisions transform Canyon's filing from a rate increase to a rate decrease. Canyon states that it has also revised §§ 2.2(b) and 2.2(c) of Rate Schedules FCS and ICS, respectively, to provide for a thirty day notification procedure prior to suspension of service for nonpayment.

Canyon states that although the filing reflects elimination of the efficiency

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adjustment, Canyon reserves its right to file for another efficiency adjustment in this proceeding, as contemplated by the Suspension Order. Canyon further reserves its right to raise in its rehearing, to be filed on or before May 30, 1991, issues which are, among other things, the subject of this compliance filing.

Canyon seeks any waivers which may be necessary to permit the tendered tariff sheets to take effect May 1, 1991.

Canyon states that copies of the filing have been mailed to Canyon's jurisdictional sales customers, interested state regulatory agencies, and all parties set out on the official service list in Docket No. RP91-123-000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 30, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12892 Filed 5-29-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-82-003]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 22, 1991.

Take notice that Columbia Gas Transmission Corporation (Columbia) on May 15, 1991, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective on March 4, 1991:

Second Substitute First Revised Sheet No. 76

Columbia states that the tariff sheet is being submitted pursuant to the provisions of Ordering Paragraph (B) of the Federal Energy Regulatory Commission's May 1, 1991 "Order Accepting Compliance Filing Subject to Conditions" in the above-referenced proceeding.

Columbia states that copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 30, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12896 Filed 5-29-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-136-020]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

May 21, 1991.

Take notice that on May 13, 1991, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, proposed to become effective on December 5, 1990:

Second Substitute Original Sheet No. 33
Second Substitute Original Sheet No. 41

National states that its filing is made in compliance with the Commission's letter order dated April 16, 1991 in the above-captioned proceeding. The Order rejected three tariff sheets for non-compliance with the Commission's Order of February 7, 1991, which required National to refile Rate Schedule FT and IT tariff sheets to treat extended FT and IT service as a continuation of service under which a shipper does not lose priority by the renewal or extension of the underlying service agreement. The Order further directed National to refile the attached tariff sheets to conform to the intent of the February 7, 1991 Commission Order.

National states that copies of this filing were served upon the Company's jurisdictional customers and the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 29, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell

Secretary.

[FR Doc. 91-12888 Filed 5-29-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-155-000]

Northwest Alaskan Pipeline Co.; Tariff Changes

May 21, 1991.

Take notice that on May 16, 1991, Northwest Alaskan Pipeline Company ("Northwest Alaskan"), 295 Chipeta Way, Salt Lake City, Utah 84158-0900, tendered for filing in Docket No. RP91-155-000, Twenty-Eighth Revised Sheet No. 5 to its FERC Gas Tariff Original Volume No. 2.

Northwest Alaskan states that it is submitting Twenty-Eighth Revised Sheet No. 5 reflecting a decrease in total demand charges for Canadian gas purchased by Northwest Alaskan from Pan-Alberta Gas Ltd. ("Pan-Alberta") and resold to three of Northwest Alaskan's four U.S. purchasers, Northern Natural Gas Company ("Northern"), Panhandle Eastern Pipe Line Company ("Panhandle") and Pacific Interstate Transmission Company ("PIT") under Rate Schedules X-1, X-2, and X-4, respectively, and an increase in total demand charges to Natgas U.S. Inc. ("Natgas") under Rate Schedule X-3.

Northwest Alaskan states that it is submitting Twenty-Eighth Revised Sheet No. 5 pursuant to the provisions of the amended purchase agreements between Northwest Alaskan and Northern, Panhandle, Natgas and PIT, and pursuant to Rate Schedules X-1, X-2, X-3, and X-4, which provide for Northwest Alaskan to file 45 days prior to the commencement of the next demand charge period (July 1, 1991 through December 31, 1991) the demand charges and demand charge adjustments which Northwest Alaskan will charge during that period.

Northwest Alaskan requests that Twenty-Eighth Revised Sheet No. 5 become effective July 1, 1991.

Northwest Alaskan states that a copy of this filing has been served on Northwest Alaskan's customers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before May 29, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12889 Filed 5-29-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-94-007]

Trailblazer Pipeline Co.; Proposed Changes in FERC Gas Tariff

May 21, 1991.

Take notice that on May 9, 1991, Trailblazer Pipeline Company (Trailblazer) submitted for filing Eleventh Revised Sheet No. 4 of Original Volume No. 1 and Third Revised Sheet No. 4 of Original Volume No. 1A, to be a part of its FERC Gas Tariff. Trailblazer states that these sheets were submitted in compliance with the Federal Energy Regulatory Commission Order issued April 9, 1991 at Docket Nos. RP84-94-000, *et al.* (April 9 Order) and reflect the lower rates under a settlement approved by the Commission with modifications in the April 9 Order. Filing of these sheets reflects acceptance by Trailblazer of the settlement as modified by the April 9 Order. An effective date of June 1, 1991 is requested for these tariff sheets.

Trailblazer states that a copy of this filing was mailed to Trailblazer's customers, interested state regulatory agencies and all parties set out in the official service list at Docket No. RP84-94-000, *et al.*

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 29, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12893 Filed 5-29-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-152-001]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 22, 1991.

Take notice that Williams Natural Gas Company (WNG) on May 17, 1991, tendered for filing Substitute Fourth Revised Sheet No. 9 to its FERC Gas Tariff, First Revised Volume No. 1 to be effective June 7, 1991.

WNG states that the above referenced tariff sheet is being filed to correct a typographical error on Fourth Revised Sheet No. 9 filed May 8, 1991.

WNG states that copies of its filing were served on all jurisdictional customers and interested state Commissions.

Any persons desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such protests should be filed on or before May 30, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12894 Filed 5-29-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-40-005]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 22, 1991.

Take notice that Northern Natural Gas Company ("Northern") on May 20, 1991, tendered for filing an amendment to its November 30, 1990 filing proposing changes to its FERC Gas Tariff. Northern has requested that the proposed filing become effective July 1, 1991, instead of June 1, 1991, as proposed in its Amendment to its November 30, 1990 filing. Northern proposes no other changes to that filing.

Northern states that it seeks to postpone the effective date of its filing because a Settlement was filed with the Commission on March 1, 1991 and said Settlement will allow this docket to be concluded in an orderly manner.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 30, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12887 Filed 5-29-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-224-000, RP89-203-000, RP-139-000, and RP91-69-000]

Southern Natural Gas Co.; Informal Settlement Conference

May 22, 1991.

Take notice that an informal settlement conference will be convened in this proceeding on Thursday May 30, 1991, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced dockets.

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Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contract Betsy R. Carr at (202) 208–1240 or James A. Pederson at (202) 208–2158.

Lois D. Cashell,

Secretary.

[FR Doc. 91–12698 Filed 5–29–91; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 90–33–NG]

Power City Partners, L.P.; Final Order Granting Long-Term Authorization to Import Natural Gas from Canada

AGENCY: Department of Energy, Office of Fossil Energy;

ACTION: Notice of a final order granting long-term authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued a final order granting Power City Partners, L.P., authority to import at Massena, New York, up to 21,000 Mcf per day and a total of 111.3 Bcf of Canadian natural gas through October 31, 2007. Power City would buy the gas from Husky Oil Operations Ltd. and its affiliate Canterra Energy Ltd., to fuel a new 79.9 megawatt cogeneration facility which Power City plans to build at an Aluminum Company of America smelting plant in the Town of Massena. Transportation from the international border would be provided by St. Lawrence Gas Company (St. Lawrence).

Previously, on March 20, 1991, Power City was granted conditional authority to import this gas suject to the entry of a final option and order after DOE assessed the potential environmental impacts associated with the proposal, as required by the National Environmental Policy Act (NEPA) of 1969. DOE determined that the authorization does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA and, therefore, no environmental impact statement is required.

A copy of the order is available for inspection and copying in the Office of Fuels Programs Docket Room 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9476. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 23, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–12786 Filed 5–29–91; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 91–07–NG]

Spot Market Corp.; Order Granting Blanket Authorization to Import Canadian Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to import Canadian natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Spot Market Corporation blanket authorization to import up to 300 Bcf of Canadian natural gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 23, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–12787 Filed 5–29–91; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Cases Filed; Week of April 19 Through April 26, 1991

During the week of April 19 through April 26, 1991, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: May 22, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of April 19 Through April 26, 1991]

Date	Name and location of applicant	Case No.	Type of submission
4/22/91	Texaco/East Main Texaco Service Station, Memphis, Tennessee.	RR321–60	Request for Modification/Rescission in the Texaco Refund Proceeding. If Granted: The March 21, 1991 Decision and Order (Case No. RF321–11583 & RF321–13867) issued to East Main Texaco Service Station would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
4/23/91	James L. Schwab, Spokane, Washington	LFA–0115	Appeal of an Information Request Denial. If Granted: The April 16, 1991 Freedom of Information Request Denial issued by the Office of Administrative Services would be rescinded, and James L. Schwab would receive access to DOE documents concerning his termination as a DOE contractor employee

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of April 19 Through April 26, 1991]

Date	Name and location of applicant	Case No.	Type of submission
4/23/91	Gulf/Dock Rabon Gulf, Conway, South Carolina	RR300–19	Request of Modification/Rescission in the Gulf Refund Proceeding. If Granted: The March 8, 1991 Dismissal Letter (Case No. RF300–11003) issued to Dock Rabon Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
4/23/91	Ray Marchand Oil Company, Inc., Lowell, Massachusetts.	LEE–0024	Exception to the Reporting Requirements. If Granted: Ray Marchand would not be required to file Form EIA–782B, "Reseller/Retailers' Monthly Petroleum Product Sales Report."
4/23/91	Texaco/Barker's Texaco Service, Memphis, Tennessee.	RR321–61	Request for Modification/Rescission in the Texaco Refund Proceeding. If Granted: The March 22, 1991 Decision and Order (Case No. RF321–10499 & RF321–13871) issued to Barker's Texaco Service would be modified regarding the firm's application for refund activities in the Texaco refund proceeding.
4/25/91	Gulf/North Trimble Car Wash, Inc., Woodbridge, Virginia.	RR300–20	Request for Modification/Rescission in the Gulf Refund Proceeding. If Granted: The March 26, 1991 Dismissal Letter (Case No. RF300–11053) issued to North Trimble Car Wash, Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
4/26/91	B.M.F. Enterprises, Waverly, Ohio	LFA–0116	Appeal of an Information Request Denial. If Granted: The April 15, 1991 Freedom of Information Request Denial issued by C.S. Przybylek would be rescinded, and B.M.F. Enterprises would receive access to information in the RFO No. 1W0095 package.

REFUND APPLICATIONS RECEIVED

[Week of April 19 through April 26, 1991]

Name of refund proceeding/name of refund applicant	Case No.	Date Received
Ward Pavements, Inc.	RF307–10185	4/22/91
Steffens Keystone.	RF338–2	4/22/91
Zapata Offshore Drilling Corp.	RF326–261	4/23/91
Chesley Pruet Drilling Company.	RF326–262	4/23/91
Amerada Hess Corporation.	RF326–263	4/23/91
Consolidated Edison Co. of NY.	RF382–7	4/23/91
Chrysler Motors Corp.	RF272–38	4/23/91
Ellis Shell Service.	RF315–10143	4/24/91
Supreme Petroleum Co. of NJ.	RF326–264	4/24/91
Fuel Distributors	RF326–265	4/24/91
Alice Cude	RF326–266	4/24/91
Beyer & Fortner, Inc.	RF333–3	4/26/91
R.L. Gaude Co., Inc.	RF333–4	4/26/91
Montaur Auto Service Co.	RF333–5	4/26/91
Townsend Oil Corp.	RF333–6	4/26/91
Vince Stein, Inc	RF333–7	4/26/91
Crude Oil refund applications received.	RF272–89285 thru RF272–89290	4/19/91 thru 4/25/91
Gulf Oil refund applications received.	RF300–16447 thru RF300–16598.	4/19/91 thru 4/26/91
Texaco refund applications received.	RF321–14822 thru RF321–14959.	4/19/91 thru 4/26/91

[FR Doc. 91–12759 Filed 5–29–91; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders During the Week of April 15 Through April 19, 1991

During the week of April 15 through April 19, 1991, the decisions and order summarized below were issued with respect to applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Request for Exception

Leemon Oil, 4/17/91, LEE–0019 Reporting Requirements

Leemon Oil filed an Application for Exception from the Energy Information Administration (EIA) reporting requirements. The firm sought relief from filing Form EIA–782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report," and Form EIA–821, entitled "Annual Fuel Oil and Kerosene Sales Report." In considering the request, the DOE found that the firm was not adversely affected by the reporting requirement in a way that was significantly different from the burden borne by similar reporting firms. Accordingly, exception relief was denied with respect to the filing of Form EIA–782B and Form EIA–821.

Refund Applications

BIC Corporation, Ronson Consumer Products Corporation, 4/19/91, RF272–28268, RF272–85000

The DOE issued a Decision and Order concerning Applications for Refund filed by Bic Corporatin and Ronson Consumer Products Corporation in the subpart V crude oil refund proceeding. The Applicants' claims were based on purchases of butane and naphtha, which they retailed to end-users, and on other petroleum products that they used in connection with their retailing operations. The DOE denied the Applications because the Applicants failed to provide the detailed showing of injury that is required of resellers and retailers in the subpart V crude oil refund proceeding.

Exxon Corporation/A.H. Smith, 4/19/91, RF307–9361

The DOE issued a Decision and Order concerning an Application for Refund filed by A.H. Smith Associates in the Exxon Corporation special refund proceeding. The application was based on purchases of Exxon products by A.H. Smith, a sole proprietor during the consent order period, who later transferred all assets and liabilities to a partnership with his two sons. That partnership, A.H. Smith Associates, was granted the refund based on the purchases made by Mr. Smith because the firm was a continuation of the same business. The sum of the refund granted was $3,040 ($2,180 principal plus $860 interest).

Gulf Oil Corporation/Price's Gulf Service, 4/17/91, RF300–9142

In the Gulf Oil Corporation special refund proceeding, the Department of Energy denied an Application for refund filed by Energy Watch, Inc. on behalf of Price's Gulf Service (Price's), a gasoline

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retailer. The record did not contain sufficient information to allow DOE to approve a refund for Price's. After repeated specific requests for information relating to the Applicant's ownership and operation of this station the Applicant submitted a self-serving affidavit. Such an affidavit is not sufficient to support a refund claim. Accordingly, the application was denied.

HPI Industries, Inc., 4/19/91, RF272–61733

The Department of Energy (DOE) issued a Decision and Order granting refund monies from crude oil overcharge funds to HPI Industries, Inc. (HPI) based upon its purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Using the definition of end-user set forth in City of Annapolis, the DOE determined that HPI was eligible for a refund based upon its purchases of five of the substances listed in its Application, and ineligible for thirteen other substances for which it had sought restitution. The refund granted to HPI was $7,199.

J.H. Rudolph & Co., Inc., 4/18/91, RA272–37

The Department of Energy (DOE) issued a Supplemental Order to J.H. Rudolph & Company, Inc. in connection with the subpart V Crude Oil Proceedings. The DOE granted the applicant, Case No. RF272–344, a refund amount of $113,213 in *J.H. Rudolph & Company, Inc.*, 21 DOE ¶ 85,115 (1991). Subsequent to receiving the refund check, the applicant notified the DOE that it intended to claim a lower gallonage figure. Therefore, the DOE rescinded the original refund amount and granted the applicant the correct refund amount of $24,939.

Suburban Propane Corp./Ozona Butane Co., Inc., 4/18/91, RR299–1

Ozona Butane Co., Inc. (Ozona) filed a Motion for Reconsideration in the Suburban Propane Gas Corp. special refund proceeding requesting that the DOE reconsider its determination in *Suburban Gas Corp./Ozona Butane Co., Inc.* 20 DOE ¶ 85,807 (1990) (*Ozona*). In *Ozona*, the DOE denied Ozona's pricing claim in the Suburban proceeding because Ozona was unable to establish what volume of petroleum products it purchased from Suburban. Ozona's allocation claim was also denied because the firm was unable to show that its claim was not spurious. In the Motion for Reconsideration, DOE once again denied both claims, as Ozona had still not provided a reliable gallonage schedule on which to base a pricing refund, nor had it provided any new information or new arguments to show that it was entitled to a refund based on an allocation claim.

Texaco Inc./Fred A. Thomas Co., Barnett Oil Co., Inc., Twin City Ready Mix, Inc., 4/16/91, RF321–3526, RF321–4760, RF321–3548, RF321–4442, RF321–4443

The DOE issued a Decision and Order in the Texaco Inc. refund proceeding concerning five Applications for Refund filed by resellers of Texaco refined pertroleum products. Each applicant had included "Delivery for Our Account" (DFOA) transactions in its volume claim. Since DFOA volumes do not constitute purchases, the DOE determined that the applicants were not entitled to refunds based on those gallons. The applicants elected the applicable presumption of injury and were therefore not required to demonstrate injury. Two applicants received refunds equal to their full allocable shares, and one recieved a refund amount equal to 50 percent of its allocable share. The total of the refunds granted in this Decision is $23,951, ($19,395 principal plus $4,556 interest).

Texaco, Inc./Gonzalez Texaco, 4/19/91, RF321–14774

The DOE issued a Supplemental Order concerning an Application for Refund filed in the Texaco Inc. special refund proceeding by Energy Refunds, Inc. (ERI) and Horacio Gonzalez on behalf of Gonzalez Texaco, a retail outlet in Alice, Texas. In *Texaco Inc./Gonzalez Texaco*, Case Nos. RF321–1541 *et al.*, (October 25, 1990), Mr. Gonzalez was granted a refund of $1,844 based on purchases made by Gonzalez Texaco from March 1973 to March 1978. However, the DOE subsequently learned Mr. Gonzalez did not operate the station during that time period. Accordingly, the DOE directed ERI and Mr. Gonzalez to remit the entire refund amount plus the interest that would have accrued had the erroneous payment remained in the escrow account.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications,which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Co./Carl Robbins & Son L. P. Gas Co. et al.	RF304–1171	*04/16/91*
Atlantic Richfield Co./Sonny's Arco et al.	RF304–11066	*04/18/91*
Atlantic Richfield Co./Steffen's Arco #1 et al.	RF304–9214	*04/19/91*
Bell of Pennsylvania.	RF272–3220	*04/19/91*
Ben Franklin Stores, Inc.	RF272–15494	*04/15/91*
Ben Franklin Stores, Inc.	RD282–15494	*04/15/91*
Dayco Products, Inc.	RF272–49885	*04/17/91*
Dayco Products, Inc.	RF272–49885	*04/17/91*
Excambia Treating Co.	RF272–27793	*04/16/91*
Escambia Treating Co.	RD272–27793	
Exxon Corporation/ Mel's Car Care Center.	RF307–10182	*04/16/91*
Federated Co-Ops, Inc.	RF272–45074	*04/15/91*
Fletcher Oil & Refining Co./ Diamond Oil Company.	RF329–2	*04/17/91*
Greenway Co-Op Service Co. et al.	RF272–72545	*04/16/91*
Gulf Oil Corp./ Assad Gulf et al.	RF300–11146	*04/17/91*
Gulf Oil Corp./ Butler Oil Company.	RF300–11175	*04/16/91*
Parton Oil Company, Inc.	RF300–11385	
Gulf Oil Corp./ City Service Station et al.	RF300–11721	*04/17/91*
Long Mile Rubber Company, Inc. et al.	RF272–75645	*04/19/91*
Mutual Redevelopment Houses.	RF272–9452	*04/19/91*
Jefferson Asphalt Co., Inc.	RF272–24823	
Shell Oil Company/ Downtown Shell et al.	RF315–65	*04/18/91*
Tesoro Petroleum Corporation/ City of Bryan et al.	RF326–256	*04/17/91*
Texaco Inc./231 Texaco.	RF321–13477	*04/16/91*
Two Thirty One Texaco.	RF321–13859	
Texaco Inc./ Corrente Service Station et al..	RF312–2231	*04/17/91*
Texaco Inc./ Crowe Peele Texaco.	RF321–13117	*04/17/91*
Crow Peele Texaco.	RF321–14422	*04/17/91*
Texaco Inc./Del-Ray Texaco et al.	RF321–98	*04/17/91*
Texaco Inc./ Gillmore Oil Co., Inc. et al.	RF321–6651	*04/18/91*
Texaco Inc./R.C. Miller Co., Inc. et al.	RF321–1710	*04/19/91*
Texaco Inc./Tri-County Oil and Gas, Inc. et al.	RF321–3686	*04/19/91*
The L.E. Myers Co.	RF272–6447	*04/18/91*
The L.E. Myers Co.	RD272–6447	
Rollins, Inc	RF272–7160	
Rollins, Inc	RF272–7166	
West Coast Oil Company Jeffries Bros. Inc.	RF328–2	*04/16/91*
Witco Chemical Corporation/ Tenn-Penn Oil Company.	RF115–8	*04/19/91*

Dismissals

The following submissions were dismissed:

Name	Case No.
Arapaho Texaco	RF321–0030
Austin's Gulf Service	RF300–15544
B/J Delivery Service	RD272–71321
Belair Gulf	RF300–12882
Belair Gulf	RF300–15824
Bennetts Gulf	RF300–15775
Bernard Zinzler, Inc	RF272–60291
Brenk's Texaco	RF321–6387
Brule County Highway Dept	RF272–86610
Carlo Gaudenti	RF300–15549
Clara Mass Medical Center	RF272–86840
Daniel's Gulf	RF300–13710
Dewey Davis Tire Center	RF300–15702
Dick's Service Station	RF300–15084
Durham County Schools	RF272–77360
Durham North Carolina City Schools.	RF272–77231
Elmer Whittaker	RF315–8753
Emery's Texaco	RF321–203
George Oberhausen	RF321–14228
George Oberhausen	RF321–14229
Hanes Corp	RF300–15641
Holiday Gulf	RF300–15788
Jack's Gulf	RF300–15785
Johasky & Donati Gulf	RF300–15778
Lincoln County Board of Education	RF272–77359
Memorial Sloan Kettering Cancer Center.	RF272–86891
Mulherns Service Station	RF321–13889
National Tool & Mfg. Co	RF272–64270
North Main Gulf	RF300–15825
Pamlico County School District	RF272–81344
Pat S. Todd Oil Co., Inc	RF300–15779
Roy & Benny's	RF300–15569
Schulenberg Food Mart	RF300–15525
Shea & Gardner	LFA–0107
Shelton's Gulf Service	RF300–14208
Sierra County, New Mexico	RF272–86498
Sparkman's Gulf	RF300–15522
Steward St. Gulf	RF300–15038
Thomasville City School District	RF272–81329
Tipton's Gulf	RF300–15554
Towson Gulf	RF300–15767
Wallace Gulf	RF300–15768
Warwick Valley Central School District.	RF272–80065
Westgate Texaco Service	RF321–14192
Westside Transport, Inc	RF272–70286
Westside Transportation, Inc	RF272–70286
Whitener Enterprises, Inc	RF300–11409
Wilmington Medical Center	RF300–15664

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: May 22, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91–12790 Filed 5–29–91; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3952–1]

Clean Air Act; Enforcement Authority Guidance

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice, guidance on using the order authority under section 112(r)(9) of the Clean Air Act, as amended, and on coordinated use with other order and enforcement authorities.

SUMMARY: The Clean Air Act Amendments of 1990 include a provision granting EPA authority to take administrtive action or obtain judicial relief when an accidental release or threatened accidental release of certain extremely hazardous substances poses an imminent and substantial endangerment to the public health, welfare, or the environment. The Act requires EPA to publish guidance on the use of the order authority and its coordinated use with other specified EPA authorities. This notice fulfills that mandate for guidance to EPA regions and states.

FOR FURTHER INFORMATION CONTACT: Lyse Helsing, Chemical Emergency Preparedness and Prevention Office, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Background

Following the 1984 chemical tragedy in Bhopal, India, the Environmental Protection Agency (EPA or the Agency) began a voluntary program to encourage chemical emergency preparedness, response, and prevention. Many elements of that program were incorporated into the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), also known as title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). Section 305(b) of EPCRA required EPA to conduct a study of emergency systems for detecting, monitoring, and preventing chemical accidents. The results of that study, published in Review of Emergency Systems (EPA, 1988), indicated that accident prevention requires an integrated approach that combines both management practices and technologies. As part of its prevention program, EPA has been collecting information on prevention practices and the causes of accidents, and has been conducting chemical safety audits of facilities.

In the Clean Air Act Amendments of 1990 (CAAA), Congress adopted a number of provisions aimed at reducing the number and severity of chemical accidents. The accident prevention requirements for which EPA is responsible are included primarily in the new subsection (r) of section 112 of the Clean Air Act (42 U.S.C. 7412). Subsection (r) requires EPA to develop a list of at least 100 substances, with threshold quantities. This list of substances will define in part the applicability of "reasonable regulations," including risk management plans, that EPA shall promulgate by November 15, 1993. Subsection (r) also establishes a chemical safety and hazard investigation board to investigate chemical accidents. Under subsection (r) and other CAAA provisions, EPA will conduct research on topics related to chemical accident prevention.

Section 112(r)(9), as amended, grants EPA authority to take civil and administrative action under certain circumstances and requires EPA to publish guidance on this order authority by May 15, 1991. This notice is published in response to that mandate to provide guidance on the use of the order authority and its coordination with other EPA statutory authorities.

This guidance discusses the order authority granted under section 112(r)(9) and the other statutory "emergency

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powers" [1] with which this new authority will be coordinated. Specifically, section 112(r)(9) requires coordinated use with the following statutory authorities: sections 113, 114, and 303 of the Clean Air Act (CAA); section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); sections 3007, 3008, 3013, and 7003 of the Solid Waste Disposal Act, also known as the Resource Conservation and Recovery Act (RCRA); sections 311(c), 308, 309, and 504(a) of the Federal Water Pollution Control Act, also known as the Clean Water Act (CWA); sections 1445 and 1431 of the Safe Drinking Water Act (SDWA); and sections 5 and 7 of the Toxic Substances Control Act (TSCA). For each of the order authorities above the discussion focuses on the substances covered, the types of releases covered, the actions available to EPA (judicial and administrative), notification and consultation requirements, and any significant limitations. Other authorities cited in the CAAA are also described in brief.

Notice: This notice is published in compliance with section 112(r)(9) of the Clean Air Act, as amended, and is intended solely as guidance. It does not represent final Agency action nor is it ripe for judicial review. This is not intended, nor can it be relied upon, to create any rights enforceable, by any party in litigation with the United States. EPA officials may decide to follow the guidance provided in this Notice or to vary from it, depending on the specific circumstances presented. The Agency also may change this guidance at any time without public notice.

Section 112(r)(9) Order Authority

Section 112(r)(9) states that when the Agency "determines that there may be an imminent and substantial endangerment to the human health or welfare or the environment because of an actual or threatened accidental release of a regulated substance, the (Agency) may secure such relief as may be necessary to abate such danger or threat." The section 112(r)(9) order authority applies to actual or threatened accidental releases of certain substances regulated under section 112(r). Section 112(r)(2)(A) defines an accidental release to mean "an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source." The section 112 order authority applies only to stationary air pollution sources. Under this authority, EPA may initiate a civil action. EPA may also, after notice to the relevant state, take other actions, including issuing administrative orders, as may be needed to protect human health. The statute requires the Agency to take action under the authority of CAA section 303, as discussed below, rather than the authority granted in section 112(r)(9), whenever the authority granted in section 303 is adequate to protect human health and the environment.

The authority is also limited to releases of regulated substances and other extremely hazardous substances. Under section 112(r), regulated substances mean those substances listed under subsection (r)(3). This provision requires the Agency to develop a list of at least 100 substances that are known to pose the greatest risk of causing death, injury, or serious adverse effects to human health or the environment from accidental release. EPA shall promulgate this list by November 15, 1992. Congress listed 16 substances that are to be included on the initial list: Chlorine, ammonia, anhydrous ammonia, methyl chloride, ethylene oxide, vinyl chloride, methyl isocyanate, hydrogen cyanide, hydrogen sulfide, toluene diisocyanate, phosgene, bromine, anhydrous hydrogen chloride, hydrogen flouride, anhydous sulfur dioxide, and sulfur trioxide.

The order authority may be exercised in two ways. First, the United States may file an action in Federal district court in the district in which the release or threatened release occurs. The court has the power to grant such relief, including injunctive relief, as the public interest and the equities of the case may require. Under this authority, there is no requirement that the Agency consult with or notify the state prior to petitioning the district court for relief, although, to the extent feasible, EPA should attempt to notify and consult with state and local authorities. Second, after notice to the state, EPA may take other actions, which include, but are not limited to, issuing administrative orders as may be necessary to protect human health. The statute requires the Agency to take action under CAA section 303 whenever that authority is adequate to protect human health and the environment.

CAA Section 303

In addition to establishing this new order authority under section 112(r)(9), the CAAA amended the existing order authority under CAA section 303. Section 303 previously addressed releases to air that posed an imminent and substantial endangerment only to the health of persons. Section 303 also required EPA to refrain from taking any action until it had information that the state or local authorities had not taken action to abate the endangerment to the health of persons. If the state and local authorities failed to act to abate the danger, the United States could file a civil action in the district court or, if that was not practicable to assure protection of the public health, EPA could issue administrative orders, which were effective for up to 24 hours. Prior to taking any action, EPA was required to confirm with state and local authorities the correctness of the information on which the proposed action was based. The CAAA broadened the scope of this order authority to include pollution sources presenting imminent and substantial endangerment to "public health or welfare, or the environment." Additionally, the amended section 303 order authority empowers EPA to act immediately; while EPA must still consult with state authorities, EPA is no longer required to make a determination that the activity of the state and local authorities is inadequate to abate the danger. The CAAA also lengthened the duration of administrative orders to 60 days.

The section 303 order authority applies to air "pollution" sources, including stationary and mobile sources. The legal threshold for section 303 is that the pollution source or combination of sources must be presenting an "imminent and substanital endangerment to public health or welfare, or the environment." If there exists a non-speculative risk of substantial harm, the Agency may immediately act under the "imminent and substantial endangerment" provisions. This is consistent with the legislative history of CAA section 303, as illustrated by the House Report on the Clean Air Act Amendments of 1977:

> In retaining the words "imminent (and) substantial endangerment to the health of persons", the committee intends that the authority of this section not be used where the risk of harm is completely speculative in nature or where the harm threatened is insubstantial. However, * * * the committee intends that this language be construed by the courts and the Administrator so as to give paramount importance to the objective of protection of the public health. *Administrative and judicial implementation of this authority must occur early enough to prevent the potential hazard from materializing.* (H.R. Rep. No. 294, 95th Cong., 1st Sess. 328 (1977) (emphasis added)).

This interpretation is also consistent with the established definition of "endangerment" as referring to the risk of harm, not actual harm itself. Thus, EPA may properly take action to abate air releases when a substantial risk of harm is imminent This may be prior to the occurrence of any actual harm, and is appropriate in view of the precautionary nature of the "imminent and substantial endangerment" provisions.

The order authority under section 303 may be exercised in two ways. First, the United States may file an action in the appropriate Federal district court. The court is granted the power to immediately restrain any person causing or contributing to the alleged pollution, or to take such other action as may be necessary. Second, if it is not practicable to assure prompt protection of public health or welfare or the environment by the commencement of a civil action, EPA may issue such administrative orders as may be necessary to protect public health or welfare or the environment. Section 303 administrative orders are effective for a period of not more than 60 days, unless the Agency initiates a civil action before the expiration of that period, in which case the order remains in effect an additional 124 days. Prior to taking any action under section 303, EPA must consult with appropriate state and local authorities and attempt to confirm the accuracy of the information on which the proposed action is based.

In order for the Agency to seek administrative or judicial relief under section 303, the Agency must have evidence that reasonably indicates that air emissions or potential air emissions from a pollution source, or combination of sources, are creating an imminent and substantial endangerment to public health or welfare or the environment. As noted, the CAAA requires EPA to act under section 303, rather than section 112(r)(9) whenever section 303 is adequate to protect human health and the environment. EPA will rely on its CAA section 303 authority unless it is inadequate to protect human health and the environment.

Other Authorities

In determining which legal authorities to rely upon in an action, EPA will also consider the appropriateness of taking action under other emergency powers granted the Agency and will coordinate its use of these authorities to ensure that imminent and substantial endangerment to human health or welfare or the environment are addressed effectivley. CAA section 112(r)(9) mandates that the order authority under this section be coordinated with authorities under five other environmental statutes. The authorities referenced in CAA section 112(r)(9) are discussed in more detail below.

CAA

In addition to the imminent and substantial endangerment provision contained in CAA section 303, the CAA, as amended, also contains more general enforcement provisions. CAA section 112(r)(9) requires that the order authority in that section also be coordinated with the following CAA enforcement authorities:

- Section 113 allows EPA, among other things, to take action based on a finding that a person is in violation of a state implementation plan, permit, or other specified requirements contained in the CAA. The authority under section 113 may be exercised in three ways:
  - —EPA may initiate a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty. EPA must notify the affected state of the initiation of civil action.
  - —EPA may issue an administrative compliance order.
  - —EPA may issue an administrative penalty order. This order is effective only after written notice, and after providing an opportunity for a hearing conducted in accordance with 5 U.S.C. sections 554 and 556.
- Section 114, among other things, provides EPA the authority to enter, obtain records, and inspect monitoring equipment. Under this section, EPA may also require recordkeeping and installation of monitoring equipment.

CERCLA

Section 106 of CERCLA states that "when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility," the President may require the Attorney General to initiate a civil action to secure such relief as may be necessary. The President's authority under this section has been delegated by Executive Order 12580 to the Agency (52 FR 2923, January 29, 1987). In addition, the Agency my also, after notice to the affected state, take other actions including issuing administrative orders, as may be necessary to protect public health and welfare and the environment.

Section 106 refers to actual or threatened releases of CERCLA hazardous substances. These substances primarily are defined by reference to other environmental statutes, including CWA, CAA, TSCA and RCRA; 40 CFR 302.4 lists more than 70 CERCLA hazardous substances. CERCLA hazardous substances include over 1500 radionuclides and characteristic hazardous wastes covered by RCRA. CERCLA section 106 covers releases to all environmental media.[2]

The authority under CERCLA section 106 may be exercised in two ways. First, the Agency may request the Attorney General to file an action in United States district court. The court has the power to grant such relief as the public interest and the equities of the case may require. Under this authority, the Agency is not required to consult with the state prior to petitioning the district court for relief. Second, the Agency may take other actions after notifying the affected state, including, but not limited to, issuing administrative orders as may be necessary to protect public health, welfare or the environment.[3]

RCRA

Section 7003 of RCRA provides EPA authority to pursue civil actions or issue administrative orders "upon receipt of evidence that the past or present handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste may present an imminent and substantial endangerment to health or the environment." EPA may also take other action after notice to the affected state, including, but not limited to, issuing such orders as may be necessary to protect public health and the environment. EPA must provide notice of civil actions to the affected state.

Section 7003 authority applies to persons who in the past have or presently are handling, storing, treating, transporting, or disposing of solid and hazadous wastes. Section 7003 may also be used to abate imminent hazards caused by past treatment, storage, disposal, or transportation practices. Section 7003 authority has no media limitation. Evidence to support the issuance of a RCRA section 7003 order must show that the "handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste

[1] "Emergency powers" is the term used in section 112(r)(9) to described these provisions and will be used throughout this guidance document.

[2] Guidelines for the use of section 106 were published at 47 FR 20664 (May 13, 1982).

[3] Although not cited in CAA section 112(r)(9), CERCLA section 104 authorizes EPA to take any response actions necessary to address a release or a threatened release of a hazardous substance. Pursuant to CERCLA 107, EPA may then recover such response costs. Section 104 also authorizes response actions to address a release or threatened release of a pollutant or contaminant when there is an imminent and substantial threat to the public health or welfare. Section 104 is similar to the authority granted under CWA section 311(c), discussed below. Furthermore, CERCLA section 104 provides the Agency with broad information gathering and access authority.

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may present an imminent and substantial endangerment to health or the environment." While the risk of harm must be imminent in order for EPA to act under section 7003, the harm itself need not be. For example, EPA could act if there exists a likelihood that contaminants might be introduced into a water supply which could cause damage after a period of latency.

Section 7003 authority may be exercised in two ways. First, the United States may file an action in Federal district court. The court may restrain any person who has contributed or who is contributing to the handling, storage, treatment, transportation, or disposal of any solid waste or hazardous waste that may present an imminent and substantial endangerment to health or the environment, or may order the person to take other action as may be necessary to protect health or the environment. Second, the Agency may take other actions, including, but not limited to, issuing such orders as may be necessary to protect public health and the environment.

Under section 7003, EPA must give notice to the affected state. In some cases, this may involve more than one state, such as where a facility is located near the border of a state and the hazardous wastes have migrated from the facility into another state(s). The Agency is also required to provide notice to the appropriate local government agencies upon receipt of information that there is hazardous waste at any site which has presented an imminent and substantial endangerment to human health or the environment. The Agency must also require notice of such endangerment to be posted promptly at the site(s) where waste is located.

In addition to the imminent and substantial endangerment provision contained in RCRA section 7003, there are several other RCRA enforcement authorities. CAA section 112(r)(9) requires that the order authority in that section also be coordinated with the following RCRA enforcement authorities:

- Section 3007 provides EPA the authority to enter any establishment or other place where hazardous wastes are generated, stored, treated, disposed of, or transported from, and obtain records and other information and to inspect and obtain samples.
- Section 3008(a) authorizes the Administrator to address violations of RCRA's subtitle C hazardous waste management requirements. The order authority under section 3008 may be exercised in several ways. Among other things, EPA may issue an administrative order assessing a civil penalty or requiring immediate compliance. Administrative orders may include a suspension or revocation of permits. EPA may also initiate a civil action for relief, including a temporary or permanent injunction, as well as civil penalties. Subsection (h) specifically provides for administrative orders and civil actions requiring corrective action addressing releases of hazardous wastes and hazardous constituents from interim status facilities.
- Section 3013 provides EPA the authority to issue orders requiring a facility owner or operator to conduct monitoring, testing, analysis, and reporting if it is determined that hazardous waste is present at a facility or that the release of any such waste may present a substantial hazard to human health or the environment. The Agency or an authorized state or local authority also may conduct monitoring, testing, and analysis, and recover the cost of doing so. The United States may commence a civil action against any person who fails to comply with an order issued under this section.

CWA

The CAA requires EPA to coordinate the use of CAA section 112(r)(9) with two emergency power provisions under CWA, sections 504(a) and 311(c).[4] Section 504(a) of the CWA states that "upon receipt of evidence that a pollution source or combination of sources is presenting an imminent and substantial endangerment to the health of persons or to the welfare of persons where such endangerment is to the livelihood of such persons," EPA may commence a civil action or take other action that may be necessary.

Section 502(19) defines "pollution" as the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water. This definition limits the applicability of this section to activities that have some effect on water.

Under CWA section 504(a), the United States may file an action in Federal district court. The court is granted the power to immediately restrain any person causing or contributing to the alleged pollution, or to take such other action as may be necessary. Under this authority, the Agency is not required to consult with the state prior to the initiation of a civil suit. The limitation on this authority is that section 504(a) is not designed to protect the environment generally, but only to protect "the health of persons" and the "welfare of persons where such endangerment is to the livelihood of such persons, such as inability to market shellfish."

The second CWA emergency power provision cited in CAA section 112(r)(9) is section CWA 311(c), as amended by the Oil Pollution Act of 1990. Amended section 311(c) states that to "ensure effective and immediate removal of a discharge, and mitigation or prevention of a substantial threat of a discharge, of oil or a hazardous substance," the President may remove or arrange for the removal of such a discharge, direct or monitor all actions to remove the discharge, and remove and, if necessary, destroy a vessel discharging, or threatening to discharge, by whatever means are available.

Under section 311(a)(14), a "hazardous substance" is defined as any substance designated pursuant to section 311(b)(2). The list of hazardous substance promulgated under section 311(b)(2) is set forth at 40 CFR 116.4. The removal authority applies to discharges and threats of discharges: (1) Into or on the navigable waters; (2) on the adjoining shorelines to the navigable waters; (3) into or on the waters of the exclusive economic zone; or (4) that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States.

In accordance with the National Contingency Plan and other applicable contingency plans, the President may intervene directly to take charge of, or to monitor a removal. The President *must* direct all Federal, state, and private removal actions if the discharge from a vessel, offshore facility, or onshore facility is of such a size or character as to be a substantial threat to the public health or welfare of the United States.

In addition to the emergency power provisions contained in the CWA, there are several other general enforcement provisions. CAA section 112(r)(9) requires that the order authority in that section also be coordinated with the following CWA enforcement authorities:

- Section 308 of the CWA authorizes EPA to require monitoring, record maintenance, and reporting by owners or operators of point sources, and entitles EPA to enter and at reasonable times to sample discharges, inspect equipment, and copy records.
- Section 309 provides a number of mechanisms for enforcement action against persons in violation of specified

[4] Although not cited in the CAA, section 311(e) of the CWA also provides the Agency with authority to seek such judicial relief as is necessary to address an imminent and substantial threat to the public health or welfare because of an actual or threatened release of oil or a hazardous substance into or upon the navigable waters of the United States.

requirements contained in the CWA. The authority under section 309 of the CWA may be exercised in three ways:

—EPA may issue an order requiring compliance. Compliance orders must be provided to the state in which the violation occurred and to corporate officers, if a corporation is subject to such an order. A compliance order enforcing against a violation of section 308 shall not take effect until the person to whom it is issued has had an opportunity to confer with the Agency concerning the alleged violation.

—EPA may commence a civil action in Federal district court for appropriate relief, including civil penalties. Notice of the commencement of such action must be given immediately to the appropriate state.

—EPA may assess penalties in administrative proceedings against a person who violates provisions of the CWA, including discharges without authorization under section 301(a), failure to comply with pre-treatment requirements established under section 307, and failure to provide information pursuant to section 308. The Agency must consult with the state in which the violation occurs before assessing any penalty. Additionally, EPA "shall provide public notice of and reasonable opportunity to comment on the proposed issuance of such order" to interested persons.

SDWA

Section 1431 of the SDWA states that "upon receipt of information that a contaminant which is present in or is likely to enter a public water system or an underground source of drinking water may present an imminent and substantial endangerment to the health of persons," EPA may, if state and local authorities have not acted appropriately, issue orders or take civil action.

Section 1431 order authority applies to contaminants that are present in or are likely to enter a public water system or an underground source of drinking water (including private wells or future sources of drinking water). Section 1401(6) defines a contaminant as any physical, chemical, biological, or radiological substance or matter in water.

The Agency may take action where: (1) A contaminant is present in or likely to enter a public water system or underground source of drinking water; (2) the contaminant may present an imminent and substantial endangerment to human health; and (3) the appropriate state or local authority has not acted to protect public health. EPA may act on information that a danger to health exists or may exist, but is not required to have uncontroverted proof that persons will be injured.

The action that the Agency may take under section 1431 may include, but is not limited to, issuing orders and commencing a civil action. EPA may issue orders as may be necessary to protect the health of persons including orders for the provision of alternative water supplies by the person(s) who caused or contributed to the endangerment. The United States also may file an action in Federal district court for appropriate relief, including a restraining order or permanent or temporary injunction. EPA may not take any action under this section unless the appropriate state and local authorities have not acted to protect the health of persons. To the extent practicable, in light of the endangerment, the Agency shall consult with state and local authorities in order to confirm the corrections of the information on which the proposed action is based and to ascertain the actions which the state and local authorities are or will be taking.

In addition to the imminent and substantial endangerment provision discussed above, CAA section 112(r)(9) requires that the order authority under that section be coordinated with the authority in SDWA section 1445. Section 1445 authorizes EPA to enter a facility to determine compliance and to inspect records and other information. This section also requires recordkeeping and monitoring for all water supplies and for persons subject to a primary drinking water regulation, to an applicable underground injection control program, or to certain permit requirements.

TSCA

Section 7 of TSCA applies to an "imminently hazardous chemical substance or mixture or any article containing such a substance or mixture." Section 7(f) defines an "imminently hazardous chemical substance or mixture" as a chemical substance or mixture which presents an imminent and unreasonable risk of serious or widespread injury to health or the environment. The risk to health or the environment will be considered imminent if it is shown that the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance or mixture, or any combination of such activities, is likely to result in injury to health or the environment before a final rule issued under TSCA section 6 can protect against such risks.

The United States may file an action in Federal district court for: (1) Seizure of an imminently hazardous chemical substance or mixture; (2) relief against any person who manufactures, processes, distributes in commerce, uses, or disposes of an imminently hazardous chemical substance or mixture; or (3) both seized and relief. The court may grant temporary or permanent relief as may be necessary to protect health or the environment. Such relief may include the issuance of a mandatory order requiring notification to the purchaser of an imminently hazardous chemical substance or mixture of the risk associated with it; public notice of such risk; recall; the replacement or repurchase of such substance, mixture, or article; or any combination of these actions.

In addition to the imminent and substantial endangerment provision discussed above, CAA section 112(r)(9) requires that the order authority under that section be coordinated with TSCA section 5. Section 5 applies to persons who manufacture new chemical substances and who manufacture or process any chemical substance for a significant new use.

In addition to the authorities cited in the CAAA, EPA notes that the Occupational Safety and Health Administration (OSHA) also has authority to address potential hazards posed by accidental releases. EPA and OSHA are coordinating their enforcement efforts under a Memorandum of Understanding, signed on November 23, 1990.

Conclusion

Each of the six environmental statutes discussed in this document contains an emergency power provision similar to that contained in CAA section 112(r)(9). These emergency power provisions allow the Agency to take action when it obtains evidence that a situation presents an "imminent and substantial endangerment" to human health and, in most cases, to the environment. There are, however, important factors in the specific provisions of these statutes that will affect decisions about which provision(s) to rely upon in an enforcement action.

While the general aim of these provisions is the abatement, removal, mitigation, or remediation of hazardous or endangering environmental conditions, there are important differences in definitional coverage or exclusions which should be considered. The application of these differences to a given set of facts should serve as an aid in determination of an appropriate legal

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mechanism for response. It is also important to keep in mind the legislative purposes for enactment of the statute, or in some cases such as this, the statutory section within which the provision under consideration resides. As discussed below, these provisions cover different substances and different media, and often have different consultation requirements.

The emergency provisions cover different but sometimes overlapping lists of substances. CAA section 303 covers air pollutants, RCRA section 7003 covers solid and hazardous waste, CWA section 504(a) covers water pollution, SDWA section 1431 covers contaminants, and TSCA section 7 covers imminently hazardous chemical substances or mixtures. CERCLA section 106 covers CERCLA hazardous substances, which are listed in 40 CFR 302.4 and, by reference, include substances addressed by CAA, RCRA, CWA, and TSCA. In selecting the appropriate statutory authority, it is important to be cognizant of the definitional differences of the substances addressed by the various provisions. For example, the universe of substances regulated under CAA section 112(r)(9) will encompass an initial list of at least 100 substances under CAA section 112(r)(3) that pose the greatest risk of death, injury, or serious adverse health effects to human health or the environment, as well as other extremely hazardous substances. While there may be fewer substances listed under CAA section 112(r)(3) than under sections 101(14) and 102(a) of CERCLA, the section 112(r)(3) list may well cover substances that are excluded from regulation under CERCLA.

While some emergency power provisions of the six different statutes are media-specific, others are not. Media-specific statutes include the CAA (releases affecting air), the CWA (releases affecting water and adjoining shorelines), the SDWA (releases likely to enter a public water system or an underground source of drinking water). In contrast, CERCLA and RCRA apply to releases to all media (i.e., "the environment" defined broadly). TSCA section 7 applicability is defined by characteristics of chemicals rather than types of releases.

In general, these emergency power provisions provide EPA with judicial and administrative remedies. That is, under these provisions EPA may initiate a civil action and issue administrative orders. In some cases, EPA is authorized to take other action as may be necessary. These statutory provisions, however, contain different requirements regarding consultation with, or notice to, the affected state or local authorities. Under CAA section 303, EPA must consult with state and local authorities and attempt to confirm the accuracy of the information on which the proposed action to be taken is based. Under CERCLA section 106, EPA may issue administrative orders only after notice to the affected state. Under RCRA section 7003, EPA must provide notice to the affected state of any civil action and may issue administrative orders only after providing notice to the affected state. Under SDWA section 1431, EPA may take action if the state and local authorities have not acted appropriately; EPA also shall consult with state and local authorities in order to confirm the corrections of the information on which the proposed action is based, to the extent practicable. Under CWA section 504(a) and TSCA section 7, EPA is not required to consult with the state prior to initiating an action.

In light of the differences in these emergency power provisions, EPA will determine on a case-by-case basis the authority, or combination of authorities, to rely upon in a particular action, based on the authority that is most appropriate in addressing an imminent and substantial endangerment to human health or welfare, or the environment. This will involve a consideration not only of the law, regulations (if any), policy or guidance, and the particular facts involved, but also of the degree and urgency of the problem.

Dated: May 21, 1991.

William K. Reilly,

Administrator.

[FR Doc. 91-12760 Filed 5-29-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of March 26, 1991

In accordance with § 271.5 of its rules regarding availability of information, there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on March 26, 1991.[1] The Directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that economic activity weakened further in the opening months of 1991. In February, total nonfarm payroll employment fell sharply further, especially in manufacturing, and the civilian unemployment rate rose to 6.5 percent. Industrial output also declined markedly again in February, with cutbacks evident in a wide range of industries. Advance indicators point to further weakness in business fixed investment in coming months, notably in nonresidential construction. On the other hand, after declining considerably in previous months, retail sales turned up in February; consumer sentiment appears to have rebounded sharply in recent weeks. Housing starts jumped in February, retracing a sizable decline in January but remaining at a low level. The nominal U.S. merchandise trade deficit increased somewhat in January but was considerably below its average rate in the fourth quarter. Energy prices fell substantially further in January and February, but prices of other consumer goods and services rose more rapidly than in preceding months. Wage increases have moderated in recent months.

Short-term interest rates have declined slightly since the Committee meeting on February 5-6. In longer-term markets, rates on Treasury bonds have risen appreciably, owing at least in part to heightened expectations of a recovery in U.S. economic activity. Risk premiums on corporate debt instruments have declined, and stock prices have moved up considerably on balance. The trade-weighted value of the dollar in terms of the other G-10 currencies increased very sharply over the intermeeting period.

Growth of M2 and M3 strengthened substantially in February, reflecting rapid expansion in liquid retail deposits; partial data suggest appreciable further growth in March.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability, promote a resumption of sustainable growth in output, and contribute to an improved pattern of international transactions. In furtherance of these objectives, the Committee at its meeting in February established ranges for growth of M2 and M3 of 2-1/2 to 6-1/2 percent and 1 to 5 percent, respectively, measured from the fourth quarter of 1990 to the fourth quarter of 1991. The monitoring range for growth of total domestic nonfinancial debt was set at 4-1/2 to 8-1/2 percent for the year. With regard to M3, the Committee anticipated that the ongoing restructuring of thrift depository institutions would continue to depress its growth relative to spending and total credit. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. Depending upon progress toward price stability, trends in economic activity, the behavior of the monetary aggregates, and developments in foreign exchange and domestic financial markets, somewhat greater reserve restraint or somewhat lesser reserve restraint might be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with growth of M2 and M3 over the period from March through June at annual rates of about 5-1/2 and 3-1/2 percent, respectively.

By order of the Federal Open Market Committee, May 22, 1991.

Normand Bernard,

Deputy Secretary, Federal Open Market Committee.

[FR Doc. 91-12712 Filed 5-29-91; 8:45 am]

BILLING CODE 6210-01-F

[1] Copies of the Record of policy actions of the Committee for the meeting of March 26, 1991, are available upon request to The Board of Governors of the Federal Reserve System, Washington, DC 20551.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N-0191]

Generic Drug Program; Expedited Review for Economically Important Drug Products; Request for Recommendations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting comments and recommendations regarding an expedited abbreviated new drug application (ANDA) review process for generic copies of economically important or so-called "blockbuster" drug products. In an effort to improve its generic drug review program, FDA is examining its administrative policies and procedures pertaining to the review and approval of such products. At present, a person who wishes to market a generic drug product must submit and obtain approval of an ANDA or abbreviated antibiotic drug application (AADA) for that product. FDA invites interested persons to submit specific comments and recommendations on a policy of expedited review for generic copies of "blockbuster" drug products and will consider any comments and recommendations it receives in deciding whether such a system should be developed.

DATES: Written comments and recommendations by August 28, 1991.

ADDRESSES: Submit written comments and recommendations to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Center for Drug Evaluation and Research (HFD-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8049.

SUPPLEMENTARY INFORMATION: FDA is examining its operating policies and procedures pertaining to the review and approval of an ANDA. This action represents a continuation of a plan announced by the Secretary of Health and Human Services and the Commissioner of Food and Drugs on August 18, 1989, to improve FDA's generic drug review program, to ensure the safety and effectiveness of generic drugs, and to further strengthen the generic drug approval system to prevent corrupt and fraudulent practices.

The Drug Price Competition and Patent Term Restoration Act of 1984 (the 1984 amendments) authorized the submission of ANDA's for generic versions of "innovator" or "pioneer" drugs that were first approved after 1962. The 1984 amendments authorize FDA to approve generic versions of approved drugs that have been shown through the ANDA review process to be the same as the pioneer drug. With certain exceptions provided for in the statute, the 1984 amendments require each ANDA applicant to provide information demonstrating, among other things, that: (1) The conditions of use prescribed, recommended, or suggested in the labeling for its proposed drug product have been previously approved for the pioneer drug; (2) the active ingredient in the proposed drug product is the same as that in the pioneer drug or, if the drug has more than one active ingredient, that the other active ingredients are the same as the active ingredients in the pioneer drug; (3) the route of administration, dosage form, and strength of the proposed drug product are the same as those of the pioneer drug; (4) the proposed drug product is bioequivalent to the pioneer drug; and (5) the labeling for the proposed drug product is the same as that for the pioneer drug. (See 21 U.S.C. 355(j)(2)(A).) The 1984 amendments also provide that FDA shall approve or disapprove an ANDA within 180 days after its receipt. (See 21 U.S.C. 355(j)(4)(A).)

To determine the order in which ANDA's would be reviewed, FDA has adopted a "first-in, first-reviewed" policy. This means that, with few exceptions, FDA receives an ANDA in the order in which it is received.

On April 6, 1990, the Honorable John D. Dingell, Chairman of the House Subcommittee on Oversight and Investigations wrote a letter to James S. Benson, the former Acting Commissioner of Food and Drugs to make several comments and suggestions on FDA's ANDA regulations and procedures. One comment stated:

> Another critically important shift in Office of Generic Drug priorities must be implemented quickly. "First-in, first-reviewed" should also be modified to permit expedited review of the ANDA's for the "blockbuster" drugs coming off patent over the next five years. For those drugs which are used by large numbers of Americans at innovator prices and that do not involve extraordinary testing to demonstrate bioequivalence, the FDA should have in place multiple approvals of ANDA's (which meet Waxman-Hatch standards) as the drugs come off patent.

FDA's experience with generic drug products suggests that manufacturers begin developing ANDA's several years before the patent for a listed drug product expires. The number of ANDA's submitted to the agency for any particular drug product depends, in large part, on the annual sales figures for that drug product. Products with high annual sales figures result in more ANDA submissions than those with lower sales figures.

FDA also notes that substantial savings to third-party payers and to consumers may result when generic copies of economically important drugs first become available. This fact has prompted the agency to examine whether an expedited ANDA review process should be created for the first few generic versions of economically important, or so-called "blockbuster," drug products. The agency believes that an expedited review process may result in significant cost savings to consumers and third-party payers, including Federal reimbursement programs, by shortening the time period between the expiration of the patent or exclusivity for a listed drug and the availability of lower priced generic versions of economically important drug products. Therefore, with this notice, FDA invites persons to submit comments and recommendations regarding an expedited ANDA review process for generic versions of "blockbuster" drug products. Comments may address any aspect, including, but not limited to, the following:

1. Should FDA create an administrative process that would expedite agency review of some ANDA's for generic versions of certain important drug products? What would be the costs and benefits to the public, the agency, and the industry of an expedited review process?

2. What legal issues might arise if FDA creates an expedited review process for generic versions of certain important drug products?

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3. Assuming that the agency does create an expedited ANDA review process for generic versions of "blockbuster" drug products, how should "blockbuster" drug products be selected? When should such drug products be designated? One possibility would be to designate any drug whose annual retail sales are greater than some fixed amount, e.g., $50 million, as a "blockbuster" drug. These drug products could be identified at some time period, e.g., 2 years, before the expiration of patent terms and market exclusivity.

4. If FDA has already received several ANDA's for a drug product at the time it is designated as a "blockbuster" drug product, should these pending ANDA's also receive priority in the review process? Or should the expedited review process apply only to those ANDA's that are received after the "blockbuster" drug product has been designated?

5. It has been argued that the first ANDA approvals for a particular drug product account for a substantial portion of the price reduction attributable to the availability of generic drug products and that subsequent approvals do not lower drug prices significantly. Therefore, how should an expedited review process be operated? How should an expedited review process be terminated? One option would be to expedite review only for a limited number of ANDA's for a generic version of a "blockbuster" drug product. Subsequent ANDA's would be reviewed under the first-in, first-reviewed policy. However, because there can be no assurance that ANDA's accepted for expedited review will ultimately be approved, this process could not be relied upon to assure the timely availability of generic versions of "blockbuster" drugs. Consequently, how many ANDA's should receive expedited reviews? Another option would be to adopt an expedited review process for all ANDA versions of a "blockbuster" drug until a sufficient number of ANDA's are approved to achieve a substantial price reduction. Once a sufficient number is approved, a "first-in, first-reviewed" policy would be reinstated. Yet how many ANDA approvals for a particular drug product are necessary to achieve a substantial price reduction?

6. How should ANDA's for generic versions of "blockbuster" drug products be reviewed relative to other ANDA's and amendments? Should FDA review all ANDA's and amendments for generic versions of "blockbuster" drug products before reviewing or approving any other ANDA's and amendments?

The agency also invites comments on any other aspects of this issue, including alternative approaches that might better ensure the safety, effectiveness, uniformity, and timely approval of generic drug products. FDA will review all comments and recommendations submitted in response to this notice in deciding whether to develop an expedited ANDA review process for certain generic drug products.

Interested persons may, on or before August 28, 1991, submit written comments and recommendations to the Dockets Management Branch (address above). Two copies of any recommendations are to be submitted, except that individuals may submit one copy. Recommendations are to be identified with the docket number found in brackets in the heading of this document. Received recommendations may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 24, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-12780 Filed 5-29-91; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: Atlanta District Office, chaired by John H. Turner, District Director. The topic to be discussed is seafood safety.

DATES: Saturday, June 15, 1991, 1 p.m. to 2 p.m.

ADDRESSES: Citadel Mall, 2070 Sam Rittenburg Blvd., suite 200, Charleston, SC.

FOR FURTHER INFORMATION CONTACT: Ruth Feeley, Public Affairs Specialist, Food and Drug Administration, 60 Eighth St., NE., Atlanta, GA 30309, 404-347-7355.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: May 22, 1991.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-12781 Filed 5-29-91; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Notice of Hearing; Reconsideration of Disapproval of North Carolina State Plan Amendment (SPA)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on July 10, 1991, at 10 a.m. in the 7th floor Conference Room, 101 Marietta Tower, Atlanta, Georgia to reconsider our decision to disapprove North Carolina State Plan Amendment 90-14.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by June 14, 1991.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, Suite 110, Security Office Park, 7000 Security Blvd., Baltimore, Maryland 21207, Telephone: (301) 597-3013.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove North Carolina State Plan amendment (SPA) number 90-14.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

North Carolina SPA 90-14 proposes changes to the State's payment plan for long-term care services. This amendment to the State's payment plan for long-term care services would modify, for State-operated nursing facilities (NFs) only, the prospective direct care rate calculation effective April 1, 1990. This portion of the amendment would exclude only State-operated NFs from the 80th percentile cap for prospective direct care rate calculations effective April 1, 1990. Effective November 1, 1990, this amendment would also establish a restrospective (i.e., cost based) payment methodology using Medicare principles of reimbursement for these same facilities.

Federal regulations at 42 CFR 430.12(c) require a State plan to be amended to reflect new or revised Federal statutes or regulations or material change in any phase of State law, organization, policy, or State agency operation. In accordance with Federal regulations at 42 CFR 447.253(f), the Medicaid agency must also comply with the public notice requirements in section 42 CFR 447.205 when it is proposing significant changes to its methods and standards for setting payment rates for long-term care facility services. Section 42 CFR 447.205(d)(1) requires that the notice be published before the proposed effective date of the change. Sections 42 CFR 447.205(c) and (d) set forth additional requirements regarding the content and publication of the notice.

The issue in this matter is whether the State's proposed amendment to its payment plan for long-term care services significantly changes its methods and standards used for setting payment rates for long-term care facility services, and therefore must comply with Federal regulations at 42 CFR 447.253(f).

The plan amendment was submitted by the State of North Carolina on June 28, 1990, together with assurances and related rate information. The State did publish a public notice for its proposed cost settlement payment methodology for State-operated NFs which met the requirements at 42 CFR 447.205 on October 31, 1990. However, the State did not publish public notice for its proposed payment rate calculation that would be effective April 1, 1990. Accordingly HCFA believes the effective date for the amendment cannot be April 1, 1990. HCFA approved the amendment with an effective date of November 1, 1990, the day following the publication of the State's public notice.

In the State's letter dated December 20, 1990, the State indicated the Federal regulations at 42 CFR 447.253(f) and 42 CFR 447.205 regarding public notice were not applicable to this proposed amendment. In the State's view, these facilities qualify for an exception to the Medicare cost limits due to the atypical services provided by these facilities. Moreover, the State indicates that this proposal would implement the best reimbursement solution to the particular problem of funding the high nursing cost required to serve a small segment of the Medicaid population for the long-term care needs of patients with severe mental illness. Therefore, the State indicated that modification of the methods and standards used for setting payment rates for providers of State-operated NFs does not represent a significant change necessitating prior public notice.

Regardless of the State's intentions to recognize the services provided by State-operated NFs as atypical, HCFA believes that the proposed plan amendment represents a significant change in the methods and standards used by the State to set payment rates. HCFA supports the State's right to grant exceptions to the Medicare costs limits as set forth in 42 CFR 413.30(f)(1) and as explained in section 6005.1D of the State Medicaid Manual. However, the State is still obligated to abide by the provisions set forth at 42 CFR 447.253(f) when proposing significant changes to the methods and standards used to set payment rates.

As stated in **Federal Register** notices at pages 47966-47967 of September 30, 1981 and pages 56049-56050 of December 19, 1983, the goal is to assure opportunity for public comment on any major or significant changes in methods or standards. The sole determinant factor of significance is the degree to which the State is proposing to modify its payment methods and standards. HCFA believes the revision to the State's payment plan to exclude State operated NFs from the 80th percentile direct care payment rate limitation constitutes a significant change to the methods and standards used to set payment rates for providers of State-operated NFs.

The notice to North Carolina announcing an administrative hearing to reconsider the disapproval of its State plan amendment reads as follows:

May 22, 1991.

Mrs. Barbara D. Matula, Director, Division of Medical Assistance,

Department of Human Resources, 1985 Umstead Drive, Raleigh, North Carolina 27603.

Dear Mrs. Matula: I am responding to your request for reconsideration of the decision to disapprove North Carolina State Plan Amendment (SPA) 90-14.

North Carolina SPA 90-14 relates to the State Medicaid plan for payment of long-term care services. This amendment to the State's payment plan for long-term care services would modify, for State-operated nursing facilities (NFs) only, the prospective direct care rate calculation effective April 1, 1990. This portion of the amendment would exclude only State-operated NFs from the 80th percentile cap for prospective direct care rate calculations effective April 1, 1990. Effective November 1, 1990, this amendment would also establish a retrospective (i.e., cost based) payment methodology using Medicare principles of reimbursement for these same facilities.

This issue in this matter is whether the State's proposed amendment to its payment plan for long-term care services significantly modifies its methods and standards used in setting payment rates for long-term care facility services, and therefore must comply with Federal regulations at 42 CFR 447.253(f). This regulation provides that a State must comply with the public notice requirements at 42 CFR 447.205 when proposing significant changes for setting payment rates for inpatient hospital or long-term care facility services. This regulation requires notice to be published prior to the effective date of the amendment.

I am scheduling a hearing on your request for reconsideration to be held on July 10, 1991, at 10 a.m. in the 7th floor Conference Room, 101 Marietta Tower, Atlanta, Georgia. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR part 430.

I am designating Mr. Stanley Krostar as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 597-3013.

Sincerely,

Gail R. Wilensky,

Administrator.

Authority: Section 1116 of the Social Security Act 42 U.S.C. section 1316); 42 CFR 430.18.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: May 22, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 91-12864 Filed 5-29-91; 8:45 am]

BILLING CODE 4120-03-M

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Public Health Service

Title XV of the Public Health Service Act, as Amended; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority from the Secretary of Health and Human Services to the Assistant Secretary for Health on April 5, 1991, I have delegated to the Director, Centers for Disease Control, with authority to redelegate, all the authorities vested in the Assistant Secretary for Health under title XV of the Public Health Service Act (42 U.S.C. 300k *et seq.*), as amended (section 2 of Pub. L. 101-354, the Breast and Cervical Cancer Mortality Prevention Act of 1990). This delegation excludes the authority to promulgate regulations and to submit reports to Congress.

This delegation became effective upon date of signature. In addition, I have affirmed and ratified any actions taken by the Director, Centers for Disease Control, or his subordinates which, in effect, involved the exercise of the authorities delegated herein prior to the effective date of the delegation.

Dated: May 3, 1991.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 91-12782 Filed 5-29-91; 8:45 am]

BILLING CODE 4160-16-M

Americans with Disabilities Act of 1990; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority of April 5, 1991 by the Secretary of Health and Human Services to the Assistant Secretary for Health, I have delegated to the Director, Centers for Disease Control, with authority vested in the Assistant Secretary for Health under section 103(d) of the Americans with Disabilities Act of 1990, Public Law 101-336, as amended hereafter. This delegation excludes the authority to promulgate regulations and to submit reports to Congress.

This delegation became effective upon date of signature. In addition, I have affirmed and ratified any actions taken by the Director, Centers for Disease Control, or his subordinates which, in effect, involved the exercise of the authorities delegated herein prior to the effective date of the delegation.

Dated: May 3, 1991.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 91-12783 Filed 5-29-91; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Assistant Secretary for Public and Indian Housing

[Docket No. N-91-3273]

Submission of Proposed Information Collection to OMB—Public and Indian Housing Drug Elimination Program NOFA

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposal.

DATES: June 19, 1991.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by title and docket number and should be sent to both of the following:

Wendy Sherwin Swire, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Joan Campion, Rules Docket Clerk, Department of HUD, 451 Seventh Street, room 10276, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street SW., room 4142, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for expedited processing, an information collection package with respect to a Notice of Funding Availability (NOFA) for the Public and Indian Housing Drug Elimination Program.

The funds for this program were appropriated by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 1991 (Pub. L. 101-507, approved November 5, 1990).

Under Drug Elimination Program, HUD intends to provide $140,775,000 for grants to public housing agencies and Indian housing authorities for the purpose of eliminating drug-related crime in public and Indian housing projects.

In addition to giving the amounts available for funding the Drug Elimination Program for FY 1991, the NOFA describes: (1) The nature and scope of eligible program activities; (2) the requirements and procedures for applicants to follow; (3) the selection criteria for applications.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review as required by the Paperwork Reduction Act (44 U.S.C. chapter 35):

(1) Title of the information collection proposal: Public and Indian Housing Drug Elimination Notice of Funding Availability.

(2) Office of the Agency to collect the information: Office of the Assistant Secretary for Public and Indian Housing

(3) Description of the need for the information and its proposed use: The information is needed for the purpose of evaluating activities proposed for funding by applicants. The information comprises the application by eligible applicants who compete for funding under this program.

(4) Agency form number: Not applicable at this time.

(5) Members of the public who will be affected by the proposal: Public Housing Agencies (PHAs), and Indian Housing Authorities (IHAs).

(6) How frequently information submissions will be required: One time.

(7) An estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response: See the Chart under the heading "Findings and Certifications" below.

(8) Type of request: Revision of existing request.

(9) The name and telephone number of an agency official familiar with the proposal: David Caprara, Office of Public and Indian Housing, (202) 708-0950.

A summary of the information collection requirements of the Drug Elimination Program NOFA are set forth following my signature in this notice as an exhibit only. The paperwork burden is stated on a chart under the heading "Reporting Burden".

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 16, 1991.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

Proposal: Notice of Funding Availability for 1991—Public and Indian Housing Drug Elimination Program.

Office: Office of Drug-Free Neighborhoods.

Description of the Need for the Information and Its Proposed Use: This information collection is required in connection with the issuance of a Notice of Funding Availability (NOFA) that announces the availability of $141,775,000 for the Public and Indian Housing Drug Elimination Program. The information is needed for the purpose of evaluating activities proposed for funding by applicants. The information comprises the application by eligible applicants who compete for funding under this program.

Form Number: None.

Respondents: Public Housing Agencies (PHAs), and Indian Housing Authorities (IHAs).

Frequency of Submission: One time.

Reporting Burden:

Section of NOFA affected	No. of respondents	No. of respondents per response	Total annual responses	Hours per response	Total hours
I(c)(f)	300	1	300	6	1,800
III (entire)	500	1	500	70	35,000
Total annual reporting burden					36,800

Total Estimated Burden Hours: 36,800.

Status: Reinstatement.

Contact: Julie Fagan HUD (202) 708-1197; Wendy Sherwin Swire, OMB (202) 395-6880.

Date: May 16, 1991.

Supporting Statement for Information Collection—Notice of Fund Availability for the Public and Indian Housing Drug Elimination Program—FY 1991

A. Justification

1. This revised information collection is required in connection with HUD's issuance of a Notice of Fund Availability that will announce the availability of $140,775,000.00 in grant funds appropriated by the National Affordable Housing Act of 1990, approved November 28, 1990, Section 581, Public Law 101-625. Before the National Affordable Housing Act amendments to the Drug Elimination Program, a final rule, codified as 24 CFR part 961, was issued by HUD, July 2, 1990. A revised rule for the Drug Elimination Program is being proposed that will amend 24 CFR part 961. The requirements of this Notice of Fund Availability will provide guidance for applicants that will implement changes for this year's funding while the rulemaking is pending.

Public Housing Agencies and Indian Housing Authorities are eligible to apply for Drug Elimination grants for drug elimination activities in public and Indian housing projects. Grant funds may be used for one or more of the following activities to eliminate drug-related crime: security personnel/protective services, physical improvements to enhance security, employment of investigators, voluntary tenant patrols, drug prevention programs, funding of Resident Management Corporations (RMCs) and Resident Councils (RCs) to develop security and drug abuse prevention programs involving site residents.

There are several sections of the Notice of Fund Availability that impose information collection requirements:

Section I(c)(f) Drug Prevention, (3) Drug Treatment—Applicants must be able to demonstrate the ability to provide comprehensive drug treatment programs which include drug free residential, intensive outpatient, and aftercare components on-site, or to provide formal referral arrangements to other treatment programs not on or around the assisted projects in instances where the resident is able to obtain treatment costs from sources other than this program.

Section III. Application Submission Requirements (entirety): Applicants must submit Standard Grant Application Form SF-424 and SF-424A with narrative describing each major program and its related cost; plan for addressing the problem of drug related crime on the premises of the housing including an assessment of the severity of the drug-related crime problem, as reflected by crime statistics or other information prepared from surveys, on-site reviews/management reviews; statistical indicators; research of studies conducted by local officials, and analysis and critique of a particular drug-related crime problem; specify the measures that are important in evaluating the success of the plan and indicate the method by which the applicant will gather and analyze this information; a narrative discussion of the applicant's current activities to eliminate drug-related crime in its targeted projects; a narrative discussion of the applicant's strategy for addressing the problem of drug-related crime in each project; a description of each component of the applicant's strategy, including activities to be undertaken with funding under this program and how these components interrelate. The applicant's comprehensive drug elimination strategy must include management practices, enforcement/security techniques, and a combination of drug abuse prevention, intervention, referral, and treatment programs including cost for each component of the strategy, timetable, estimate of the results that each component of the strategy is expected to achieve for each year that the strategy is in effect and upon its completion. The resources that the applicant may reasonably expect to be available at the end of the grant term to continue the anti-drug related effort and how they will be allocated to plan initiatives. Summary of any written resident and resident organization comments submitted to the applicant. Applicant certifications for assessment of its drug-related crime problem, description of current activities being undertaken to address the problem of drug-related crime problem, description of current activities being undertaken to address the problem of drug-related crime in its projects, and the information provided under the applicant's strategy for addressing the problem(s) are both accurate and complete; for maintenance of a drug-free workplace as required by the Drug-Free Workplace Act of 1988;

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for compliance with the requirements of Section 319 of the Department of Interior Appropriations Act (HUD Interim Rule, February 26, 1990) prohibiting grantees from lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific, contract, grant, or loan; for chief executive officer of a State or a unit of general local government (including an Indian tribe) to certify that grant funds provided under this NOFA will not substitute for activities currently being undertaken by the jurisdiction to address the problem of drug-related crime in the projects; for Resident Management Corporation (RMC) or Resident Council (RC), or other involved resident group where an RMC or RC does not exist, for a project proposed for funding under this program that the grant application was jointly prepared with the applicant; for Letters of commitment from governmental or private entities that describe the financial or other resources that the entity agrees to provide for the applicant's anti-drug related crime efforts under this program; and applicants applying for treatment program funding must certify that the relevant single state agency or authority with drug program coordination responsibilities has been notified and consulted concerning its application.

2. Information provided by the applicant will be reviewed by HUD and evaluated against rating criteria for possible grant funding. HUD will review and determine the feasibility and effectiveness of the plan for addressing the problem of drug-related crime and the strategies the applicant will use as part of the application process for the Drug Elimination Program. Applicants will be notified of their selection/rejection. If the information were not collected, there would be no guarantee that the anti-drug plan/strategy would be effective nor could they be held fully accountable for using the funds for eligible activities.

3. We have not considered the use of improved technology since there is no other way to get the information except directly from the applicant.

4. There will be no duplication of information.

5. There is no similar information already available which could be used or modified for use for the purpose described in 2.

6. We attempted to minimize the burden on the applicant by using standard forms and by leaving the exact format (narrative/description) of the required information requirements up to the applicants.

7. The information cannot be collected less frequently.

8. There are no special circumstances that require the collection to be conducted in a manner which is inconsistent with the guidelines in 5 CFR 1320.6.

9. There has been no outside consultation on this information collection.

10. No assurances of confidentiality is provided.

11. No sensitive questions are asked.

12. We do not estimate that there will be any additional cost to the Federal Government. The applications will be reviewed in accordance with HUD's existing review and monitoring requirements. Annual cost to the respondent is estimated to be minimal since the application submission may be prepared by the Public Housing Agencies, Indian Housing Authorities, RMCs and RCs.

13. We estimate that the information requirements of the proposed NOFA will have the following reporting burden:

Section of NOFA affected	No. of respondents	No. of respondents per response	Total annual respondents	Hours per respondents	Total hours
I(f)(1)(3)	300	1	300	6	1,800
III (entirety)	500	1	500	70	35,000
Total Annual Reporting Burden					36,800

14. Not applicable.

15. The collection of this information will not be published for statistical use.

The following is an excerpt from an as-yet unpublished notice of funding availability (NOFA) for the 1991 Drug Elimination Program. The purpose of this publication is to inform the public of the information collection that will be contained in the NOFA.

Excerpts From the Unpublished Public Housing Drug Elimination Program Notice of Funding Availability—FY 1991

I. Purpose and Substantive Description:

* * * * *

(c) Eligibility

* * * * *

(f) *Programs to reduce the use of drugs.* Programs that reduce the use of drugs in and around the premises of public and Indian housing projects, including drug abuse prevention, intervention, referral and treatment programs are permitted under this program.

(1) *Drug Prevention.* Programs that will be considered for funding under this program must provide a comprehensive drug prevention approach for public and Indian housing residents that will address the individual resident and his or her relationship to family, peers, and the community. Prevention programs must include activities designed to identify and change the factors present in public or Indian housing that lead to drug-related problems, and thereby lower the risk of drug usage. Many components of a comprehensive approach, such as refusal and restraint skills training programs or drug-related family counseling, may already be available in the community of which the housing project of the applicant is a part, and the applicant must act to bring those available program components onto the premises. The salary of a coordinator whose responsibilities would include finding out what community resources are already available and bringing these resources onto the premises, or providing residents referrals to them, as components of a comprehensive drug prevention program is an eligible activity under this paragraph. Activities that should be included in these programs are:

(i) Drug education opportunities for public and Indian housing residents. The causes and effects of illegal drug usage must be discussed in a formal setting to provide both young people and adults the working knowledge and skills they need to make informed decisions to confront the potential and immediate dangers of illegal drugs. Grantees may contract with drug education professionals to provide appropriate training or workshops. The drug education professionals contracted to provide these services shall be required to base their services upon the needs assessment and program plan of the grantee. These educational opportunities may be a part of resident meetings, youth activities, or other gatherings of public and Indian housing residents.

(ii) Family and other support services. Drug prevention programs must demonstrate that they will provide directly or otherwise make available services designed to distribute drug education information, to foster effective parenting skills, and to provide referrals for treatment and other available support services in the project or the community for public and Indian housing families.

(iii) Youth services. Drug prevention programs must demonstrate that they have included groups composed of young people as a part of their prevention programs. These groups must be coordinated by adults with the active participation of youth to organize youth leadership, sports, recreational, cultural and other activities involving public and Indian housing youth. The dissemination of drug education information, the development of peer leadership skills and other drug prevention activities must be a component of youth services. Activities or services funded under this program may not also be funded under the Youth Sports Program.

(iv) Economic/educational opportunities for residents and youth. Drug prevention programs should demonstrate a capacity to provide public and Indian housing residents the opportunities for interaction with or referral to established higher education or vocational institutions with the goal of developing or building on the residents skills to pursue educational, vocational and economic goals. The program must also demonstrate the ability to provide public and Indian housing residents the opportunity to interact with private sector businesses in their immediate community for the same desired goals.

(2) *Intervention.* The aim of intervention is to identify and refer public and Indian housing resident drug users and to assist them in modifying their behavior or, if necessary, to obtain early treatment. The applicant must establish a program with the goal of preventing drug problems from continuing once detected. The training of housing staff and residents for this purpose is an eligible activity under this paragraph, as is the employment of a coordinator to establish and implement the program.

(3) *Drug Treatment.* Drug treatment programs designed to reduce use of drugs in and around public and Indian housing are made eligible under this program. The cost of leasing, acquiring, constructing or rehabilitating the facility space for a drug treatment program is not an eligible expense, but the costs of staffing and reasonable expenses for furnishing and equipping a facility are eligible expenses.

(i) Treatment funded under this program shall be in or around the premises of housing projects to provide tenants more effective and economic treatment. For the purposes of this program, "in and around" means within, or immediately adjacent to, the physical boundaries of a public or Indian housing project.

(ii) Treatment professionals hired under this program are required to meet all relevant State, tribal, or local training or continuing training, insurance, licensing, or other similar requirements.

(iii) Funds awarded under this program are targeted towards the development and implementation of new treatment programs, or the improvement of, or expansion of existing programs on-site in public and Indian housing developments.

(iv) Each proposed drug treatment program should address the following goals:

(A) increase resident accessibility to drug treatment services,

(B) decrease criminal activity in and around public and Indian housing projects by reducing illicit drug use among public and Indian housing residents, and

(C) provide services designed for youth and/or maternal drug abusers, i.e., prenatal/post parium care, specialized counseling in women's issues, parenting classes.

(v) Treatment programs should meet the following criteria:

(A) Applicants must be able to demonstrate the ability to provide comprehensive drug treatment programs which may include drug-free residential, intensive outpatient, and aftercare components, all of which must be on-site. Applicants may provide the service of formal referral arrangements to other treatment programs not in or around the assisted projects in instances where the resident is able to obtain treatment costs from sources other than this program.

(B) Family/collateral counseling.

(C) Linkages to educational/vocational counseling.

(D) Therapeutic approaches which have proven effective with similar populations will be considered, e.g., therapeutic community approaches, cognitive restructuring approaches which empower residents to address their recovery, behavioral approaches with emphasis on educational and vocational accomplishments.

(E) Coordination of services to appropriate local drug, HIV-related service agencies, state mental health and public health programs.

(vi) Applicants must demonstrate a working partnership with the Single State Agency or current state licensure provider, to coordinate, develop and implement the drug treatment proposal.

(vii) The Single State Agency or state licensure must certify that the drug treatment provider(s) has provided drug treatment services to similar populations, identified in the application, for two prior years.

(viii) The Single State Agency must certify that the drug treatment proposal is consistent with the state treatment plan; and that the treatment provider(s) meets all individual and state licensing requirements.

(4) Funding is not permitted for treatment of residents at residential treatment programs not in or around the premises of the public or Indian housing projects.

(5) Funding is not permitted for insurance for residents for drug treatment.

(6) Funding is not permitted for detoxification procedures, short term or long term, designed to reduce or eliminate the presence of toxic substances in the body tissues of a patient.

(7) Funding is not permitted for the leasing, acquisition, construction or rehabilitation of drug treatment facilities.

(8) Funding is not permitted for maintenance drug programs. Maintenance drugs are medications that are prescribed regularly for a long period of supportive therapy (e.g., methadone maintenance), rather than for immediate control of a disorder.

(9) Funding is not permitted to subgrantees until they obtain required insurance coverage.

(10) Funding is not permitted for T-shirts, caps, (except tenant patrol uniforms) buttons, advertising campaigns, rallies, marches, or community celebrations.

(11) The administrative costs related to screening or evicting residents for drug-related crime is not permitted.

(12) Funding is not permitted for the purchase of vehicles for youth activities.

(13) Funding is permitted for the leasing of vehicles for youth activities.

* * * * *

III. Checklist of Application Submission Requirements

The application requirements consist of the following procedures:

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(a) An application package may be obtained from the local HUD field office having jurisdiction over the public or Indian housing authority making application, or by calling HUD's Drug Information and Strategy Clearinghouse, telephone 800–245–2691. The application package contains information on all exhibits and certifications required under this NOFA.

(b) For assistance in completing the application or information on training/workshops, the public or Indian housing authority may contact the local HUD field office or Drug-Free Neighborhoods Division, Office of Resident Initiatives, Public and Indian Housing, Department of Housing and Urban Development, telephone 202–708–3502 or 202–708–3503.

(c) To qualify for a grant under this program, an applicant must submit an application to HUD that contains the following:

(1) Standard Grant Application Form SF–424 and SF–424A with narrative describing each major program and its related cost.

(2) A plan for addressing the problem of drug-related crime on the premises of the housing for which the application is being submitted that provides the following information:

(i) An assessment of the severity of the drug-related crime problem, as reflected by crime statistics or other information prepared in accordance with Section I(d)(1) (A) and (B), above, of this NOFA.

(A) The assessment provided under paragraph (i) can be accomplished through a variety of methods, using more than one existing source of information. Some examples of assessments include: surveys; on-site reviews/management reviews; statistical indicators (such as type of crimes, area where the offenders reside, age of offenders, school attendance, health service referrals, grade point averages, vandalism costs, vacancy rates, unemployment rates, library check out records, etc.); research or studies conducted by local officials; and analysis and critique of a particular drug-related crime problem.

(ii) The applicant must specify the measures that it believes to be important in evaluating the success of the plan, including goals that relate back to the assessment data provided under paragraph (i); discuss the types of information the applicant will need to measure the plan's success; and indicate the method by which the applicant will gather and analyze this information.

(iii) The plan must include a narrative discussion of the applicant's current activities to eliminate drug-related crime in its targeted projects, including its efforts to implement eviction and screening procedures to determine an applicant's suitability for public housing (consistent with the requirements of 42 U.S.C. 3604(f) and 24 CFR 100.202, and 29 U.S.C. 794 and 24 CFR part 8.4 which deal with individuals with disabilities); to implement a plan to reduce vacancies; or to undertake other management practices to eliminate drug-related crime in the applicant's projects. Actions and initiatives in the plan that can be sustained over a period of years beyond the grant term shall be identified. The applicant should also describe its experience in implementing and managing other HUD grant programs (e.g., CIAP, youth sports, child care, etc.), and other Federal anti-drug related crime programs; describe the current activities being undertaken by community and governmental entities, project residents, or RMCs or RCs, to address the problem of drug-related crime in the projects proposed for assistance; and provide a listing of the names of agencies or other entities (including the applicant) currently providing assistance to address the drug-related crime problem in the targeted projects and describe what assistance they are providing.

(iv) A narrative discussion of the applicant's strategy for addressing the problem of drug-related crime in each of the projects proposed for assistance must be included in the plan. The discussion must indicate how the applicant's proposed strategy will respond to its demonstrated need in the targeted projects, and offer a realistic approach for dealing with the applicant's drug-related crime problem, taking into account the nature and extent of the problem, the amount of funding requested under this program, and the local and other non-HUD funding and other resources that reasonably may be expected to be available to combat the problem. At a minimum, the discussion must include the following information for each of the projects proposed for assistance:

(A) A description of each component of the applicant's strategy, including activities to be undertaken with funding under this program (narrative describing each major activity and its related cost), and how these components interrelate. The applicant should specifically address whether it plans to implement a comprehensive drug elimination strategy that involves management practices, enforcement/security techniques, and a combination of drug abuse prevention, intervention, referral, and treatment programs. In addition, the applicant should indicate how its proposed activities will complement, and be coordinated with, current services.

(B) The anticipated cost of each component of the strategy, and the financial and other resources (including funding under this program, and from other resources) that may reasonably be expected to be available to carry out each component, and a discussion of how funding decisions were reached;

(C) A timetable for beginning and completing each component of the strategy;

(D) An estimate of the results that each component of the strategy, as well as the overall strategy, is expected to achieve for each year that the strategy is in effect and upon its completion.

(E) The resources that the applicant may reasonably expect to be available at the end of the grant term to continue the anti-drug related effort and how they will be allocated to plan initiatives that can be sustained over a period of years;

(F) The role of residents, and RMCs and RCs where they exist, in planning and developing the grant application and strategy, and in implementing the applicant's plan. The applicant must also provide the name of the RMC or incorporated RC that will develop any security and drug abuse prevention programs involving site residents. The applicant must also describe the role of any other entities (e.g., local and State governments and community organizations) in planning and carrying out the strategy; and describe the funds or other resources (e.g., staff or in-kind resources) to be provided by resident or community organizations, local and State governments, and project tenants to implement the plan strategy.

(G) If grant amounts are to be used for physical improvements, a statement as to how these improvements will be coordinated with the applicant's modernization program under 24 CFR part 968 or 24 CFR part 905;

(H) If grant amounts are to be used for prevention, intervention or treatment programs to reduce the use of drugs in and around the premises of public or Indian housing projects, a statement by the applicant as to the nature of the program, a discussion of how the program represents a prevention, intervention or treatment strategy, and how the program will further the PHA's or IHA's strategy to eliminate drug-related crime in the projects proposed for assistance.

(3) Summary of any written resident and resident organization comments submitted to the applicant.

(4) A certification by the applicant that:

(i) The applicant's assessment of its drug-related crime problem, and the problems associated with drug-related crime, is based upon the best available objective data; and that the description of current activities being undertaken by the applicant to address the problem of drug-related crime in its projects, and the information provided under regarding the applicant's strategy for addressing the problem of drug-related crime in its projects are both accurate and complete.

(ii) The applicant will maintain a drug-free workplace in accordance with the requirements of the Drug-Free Workplace Act of 1988, 24 CFR part 24, subpart F. (Applicants may submit a copy of their most recent drug-free workplace certification, which must be dated within the past year.)

(iii) The applicant will comply with the requirements of Section 319 of the Department of the Interior Appropriations Act (Pub. L. 101–121, approved October 23, 1989), as implemented in HUD's interim final rule published in the **Federal Register** on February 26, 1990 (55 FR 6738). This statute generally prohibits recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific, contract, grant, or loan.

(5) A certification by the chief executive officer of a State or a unit of general local government (including an Indian tribe), in which the projects proposed for assistance are located that:

(i) Grant funds provided under this part will not substitute for activities currently being undertaken by the jurisdiction to address the problem of drug-related crime in these projects;

(ii) Any additional security and protective services to be provided under this program meet the requirements of this program as indicated in this NOFA;

(iii) The relevant governmental jurisdiction will take the actions described in the applicant's strategy under its plan;

(iv) That the locality is meeting its obligations under the Intergovernmental Agreement with the PHA or IHA, particularly with regard to law enforcement services. Whether or not a locality is meeting its obligations under the Intergovernmental Agreement with the applicant, the CEO for the locality must describe the current level of law enforcement services being provided to the projects proposed for assistance. If the jurisdiction is not meeting its obligations under the Intergovernmental Agreement, the CEO should identify any special circumstances relating to its failure to do so.

(6) If applying for voluntary tenant patrol funding, a certification from the chief of the local law enforcement agency, that the law enforcement agency has entered into, or will enter into, a cooperation agreement with the voluntary tenant patrol, in accordance with the requirements of this program;

(7) A certification by the RMC or RC, or other involved resident group where an RMC or RC do not exist, for a project proposed for funding under this program that the grant application was jointly prepared with the applicant, and that the applicant's description of the activities that the resident group will implement under the program is accurate and complete.

(8) Letters of commitment from governmental or private entities that describe the financial or other resources (e.g., staff or in-kind resources) that the entity agrees to provide for the applicant's anti-drug related crime efforts under this program.

(9) If applying for treatment program funding, a certification that the applicant has notified and consulted with the relevant single state agency or authority with drug program coordination responsibilities concerning its application; that the drug treatment provider(s) has provided drug treatment to a similar population for at least two years; that the proposed drug treatment project is consistent with the state treatment plan; and that the treatment providers meet all individual state licensing requirements.

[FR Doc. 91–12662 Filed 5–29–91; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–060–01–5440–10 ZBAF]

Proposed State of California Indemnity Selection; Subsequent Low-Level Radioactive Waste Facility, San Bernardino County

AGENCY: Bureau of Land Management, Interior.

ACTION: Amending notice of availability of final EIS/EIR.

SUMMARY: This notice amends the Notice of Availability (**Federal Register**, May 8, 1991) of the joint final EIS/EIR prepared by the Bureau of Land Management and the California Department of Health Services. The Notice of Availability stated that comments on the final EIR/EIS would be accepted until June 3, 1967. To ensure that interested persons will have an opportunity to review the final EIS/EIR, the comment period has been extended to July 3, 1991. The joint EIS/EIR covers the proposed State of California indemnity selection for 1000 acres, issuance of a right-of-way, and identification of a site for a low-level radioactive waste disposal facility which will be licensed by the State of California for 30 years. The proposed facility is located at Ward Valley, about 23 miles west of the City of Needles, San Bernardino County.

DATES: Public comment period is extended from June 3, 1991 to July 3, 1991. Comments received after that date may be considered in the Record of Decision.

ADDRESSES: Written comments may be sent to: District Manager, Desert District, Bureau of Land Management, Attn: LLRW, 6221 Box Springs Blvd., Riverside, CA 92507.

Dated: May 22, 1991.

Jean Rivers-Council,

Acting District Manager.

[FR Doc. 91–12711 Filed 5–29–91; 8:45 am]

BILLING CODE 4310–40–M

[MT–930–4212–10; MTM–17858]

Reversion of Lands to the Department of the Interior Under the Provisions of the Act of Congress Dated April 15, 1924, 43 Stat. 99, and Opening of Public Lands; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Act of April 15, 1924, 43 Stat. 99, 131.92 acres of public lands have reverted to the Department of the Interior. This notice announces when those lands will be open to surface entry and mining. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2935.

SUPPLEMENTARY INFORMATION: The Act of Congress dated April 15, 1924, 49 Stat. 99, transferred the former Fort Keogh Military Reservation from the Department of the Interior to the Department of Agriculture for use by that department for experiments in stock raising and growing of forage crops. The

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Act provided that if the lands were no longer used or needed for the purposes for which they were transferred those lands would revert to and become subject to the control and jurisdiction of the Department of the Interior. Under the reversionary provisions of this Act, the following—described lands were returned to the Department of the Interior:

Principal Meridian

(MTM–17858)

T. 7 N., R. 46 E.,
Sec. 14, lots 6 and 7;
Sec. 15, lot 3;
Sec. 22, lots 1, 4 and 5;
Sec. 23, lots 2 and 3.

The areas described aggregate 131.92 acres in Custer County.

1. At 9 a.m. on July 1, 1991, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on July 1, 1991 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

2. At 9 a.m. on July 1, 1991 the land will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provision of existing withdrawals, and other segregations of record. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: April 19, 1991.

Thomas P. Lonnie,

Acting State Director.

[FR Doc. 91–12669 Filed 5–29–91; 8:45 am]

BILLING CODE 4310–DN–M

[NM–010–4212–13/GPO–0109]

Realty Action; Exchange of Lands in New Mexico; Correction

In notice document 91–6145 on page 11268 in the issue of Friday, March 15, 1991, make the following correction:

1. The legal description under New Mexico Principal Meridian, T. 17 N., R. 23 E., Sec. 27, "S½", should read "S½SW¼".

Dated: May 20, 1991.

Steve Henke,

Acting Associate District Manager, Albuquerque, NM.

[FR Doc. 91–12700 Filed 5–29–91; 8:45 am]

BILLING CODE 4310–FB–M

[OR–090–01–4212–13; GP1–233; OR 39411]

Realty Action; Exchange of Public Lands; Lane County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; exchange of public lands in Lane County, Oregon.

SUMMARY: The following described public land has been examined and determined to be suitable for transfer out of Federal ownership by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

Willamette Meridian, Oregon

T. 17 S., R. 9 W.
Sec. 13: E½SW¼
T. 22 S., R. 1 W.
Sec. 19: Lot 21
Sec. 29: Lots 1, 2

Containing 198.76 acres in Lane County.

In exchange for these lands, the United States will acquire the following described lands from Bohemia Inc.:

Willamette Meridian, Oregon

T. 15 S., R. 6 W.
Sec. 33: SW¼NW¼
T. 16 S., R. 7 W.
Sec. 20: Metes and Bounds in SW¼SW¼
Sec. 30: Metes and Bounds in N½NE¼
T. 16 S., R. 8 W.
Sec. 28: S½SE¼

Containing 201.24 acres, more or less, in Lane County.

The purpose of the exchange is to improve the resource management program of the Bureau of Land Management and the property management program of Bohemia, Inc. The public lands to be exchanged are relatively isolated parcels, noncontiguous to other BLM lands and in some cases lacking legal access. The private lands being offered have important timber, fisheries and wildlife habitat values. These lands will be managed for multiple use along with the adjoining public lands. The public interest will be well served by making this exchange.

The value of the lands to be exchanged is approximately equal, and the acreage will be adjusted to bring the values as close as possible upon completion of the final appraisal of the lands. Full equalization of values will be achieved by payment to the United States of funds in an amount not to exceed 25 percent of the total value of the public land to be transferred. All mineral rights will be transferred with the surface, except for 48.39 acres of the offered land where Bohemia Inc. does not own the mineral rights.

The exchange will be subject to:

1. All valid existing rights, including any right-of-way, easement, permit or lease of record.

2. A reservation to the United States of a right-of-way for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

Publication of this notice in the **Federal Register** segregates the public land, described above, from appropriation under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect of this notice will terminate upon issuance of patent or in two years, whichever occurs first.

DATES: On or before July 15, 1991, interested parties may submit comments to the Eugene District Manager at the address shown below. Any objections will be reviewed by the Oregon State Director, Bureau of Land Management, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

ADDRESSES: Detailed information concerning this exchange, including the environmental assessment, is available for review at the Eugene District Office, P.O. Box 10226 (1255 Pearl Street), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Ronald Wold, Eugene District Office, at (503) 683–6403.

Date of Issue: May 20, 1991.

Ronald L. Kaufman,

District Manager.

[FR Doc. 91–12670 Filed 5–29–91; 8:45 am]

BILLING CODE 4310–33–M

Fish and Wildlife Service

Meeting, Klamath River Basin Fisheries Task Force

AGENCY: Department of the Interior.

ACTION: Notice of meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. I), this notice announces a meeting of the Klamath River Basin Fisheries Task Force, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss et seq.). The meeting is open to the public.

DATES: The Klamath River Basin Fisheries Task Force will meet from 1 p.m. to 5 p.m. on Monday, June 17; from 8 a.m. to 5 p.m. on Tuesday, June 18; and from 8 a.m. to 5 p.m. on Wednesday, June 19, 1991.

PLACE: The meeting will be held at the Red Lion Motor Inn, 1929 4th Street, Eureka, California.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1030 South Main), Yreka, California 96097–1006, telephone (916) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Task Force, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639). On June 17–19, 1991, the Task Force will meet to discuss an amendment to the long-range restoration plan. The amendment is to include policies for the upper Klamath River basin, above. Iron Gate Dam. The Task Force will also discuss and recommend for Federal funding, project proposals to make up the Fiscal Year 1992 Restoration Program work plan. A public comment period is provided each afternoon of the meeting.

Dated: May 20, 1991.

William E. Martin,

Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 91–12668 Filed 5–29–91; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Outer Continental Shelf; Availability; Proposed Notice of Sale, Western Gulf of Mexico, Oil and Gas Lease Sale 141

Gulf of Mexico Outer Continental Shelf (OCS); Notice of Availability of Proposed Notice of Sale, Western Gulf of Mexico, Oil and Gas Lease Sale 141.

With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, as amended, provides the affected States the opportunity to review the proposed Notice of Sale.

The proposed Notice of Sale for Sale 141, Western Gulf of Mexico, may be obtained by written request to the Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, or by telephone (504) 736–2519.

The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is scheduled for mid-1992.

This Notice of Availability is hereby published, pursuant to 30 CFR 256.29(c), as a matter of information to the public.

Dated: May 22, 1991.

Thomas Gernhofer,

Acting Director, Minerals Management Service.

[FR Doc. 91–12705 Filed 5–29–91; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Cape Cod National Seashore, South Wellfleet, MA; Cape Cod National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1 section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, June 21, 1991.

The Commission was reestablished pursuant to Public Law 99–349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission members will meet for a regular business meeting which will convene at Park Headquarters, Marconi Station, South Wellfleet, Massachusetts at 1 p.m. for the following reasons:

1. Adoption of Agenda
2. Approval of Minutes of Previous Meeting
3. Old Business
4. Reports of Officers
5. Superintendent's Report
6. Recommendation Concerning Salt Pond House
7. Status of Race Point Road Project
8. Joshua A. Nickerson Conservation Fund
9. New Business
10. Agenda for Next Meeting
11. Date for Next Meeting
12. Communications/public comment
13. Adjournment

The business meeting is open to the public. It is expected that 15 persons will be able to attend the session in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Cape Cod National Seashore, South Wellfleet, MA 02663.

Dated: May 20, 1991.

Cynthia E. Kryston,

Acting Regional Director.

[FR Doc. 91–12778 Filed 5–29–91; 8:45 am]

BILLING CODE 4310–70–M

National Capital Region; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Commission will be held on Tuesday, June 11, 1991, at 1:30 p.m., at the Commission of Fine Arts, 5th and F Streets, NW., suite 312, Washington, DC.

The Commission was established by Public Law 99–652, for the purpose of advising the Secretary of the Interior or the Administrator of the General Services Administration, depending on which agency has jurisdiction over the lands involved in the matter, on policy and procedures for establishment of (and proposals to establish) commemorative works in the District of Columbia or its environs, as well as such other matters concerning commemorative works in the Nation's Capital as it may deem appropriate. The Commission evaluates each memorial proposal and makes recommendations to the Secretary or the Administrator with respect to appropriateness, site location and design, and serves as an information focal point for those seeking to erect memorials on Federal land in Washington, DC, or its environs.

The members of the Commission are as follows:

James Ridenour, Chairman, Director, National Park Service, Washington, DC.

George M. White, Architect of the Capitol, Washington, DC.

Honorable Andrew J. Goodpaster, Chairman, American Battle Monuments Commission, Washington, DC.

J. Carter Brown, Chairman, Commission of Fine Arts, Washington, DC.

Glen Urquhart, Chairman, National Capital Planning Commission, Washington, DC.

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Honorable Sharon Pratt Dixon, Mayor of the District of Columbia, Washington, DC.
Honorable Richard G. Austin, Administrator, General Services Administration, Washington, DC.
Honorable Richard B. Cheney, Secretary of Defense, Washington, DC.

The purpose of the meeting will be to review and take action on the following:

I. Review of Preliminary Design

(a) Memorial to Women who Served in the Armed Forces for America.
(b) National Peace Garden.

II. Review of Proposed Legislation

(a) S. 239 and H.J. Res. 159, to authorize the Alpha Phi Alpha Fraternity to establish a memorial to Martin Luther King, Jr., in the District of Columbia.

(b) S.J. Res. 103 and H.J. Res. 178, to authorize the National Committee of Airmen Rescued by General Mihailovich to erect a monument to General Draza Mihailovich in Washington, DC.

(c) S. 781, to authorize the American Forum for Political Education to establish a memorial to Mahatma Gandhi in the District of Columbia.

(d) H.R. 132, to provide for the establishment of a memorial on Federal land within the District of Columbia to honor individuals who have served as volunteers in the Peace Corps.

(e) H.J. Res. 155, to authorize the Association for an African-American National Monument to Promote History and Culture, Inc., to establish a memorial in the District of Columbia or its environs to honor the history and culture of African Americans.

(f) H.R. 662, to direct the Secretary of the Interior to display the flag of the United States of America at the apex of the Vietnam Veterans Memorial.

(g) H.R. 1624, to provide for the establishment of a memorial on Federal land within the District of Columbia to honor members of the Armed Forces who served in World War II.

(h) S. 855 and H.R. 1744, to amend Public Law 99-572 concerning the Korean War Veterans Memorial.

(i) Draft legislation to amend Public Law 99-652, the Commemorative Works Act.

Dated: May 23, 1991.

Edward J. Dratos,

Regional Director, National Capital Region.

[FR Doc. 91-12779 Filed 5-29-91; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-520 and 521 (Preliminary)]

Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China and Thailand

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of preliminary antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution and preliminary antidumping investigations Nos. 731-TA-520 and 521 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China and Thailand of carbon steel butt-weld pipe fittings, under 360 millimeters (14 inches) in inside diameter,[1] provided for in subheading 7307.93.30 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by July 8, 1991.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201, as amended by 56 FR 11918, Mar. 21, 1991), and part 207, subparts A and B (19 CFR part 207, as amended by 56 FR 11918, Mar. 21, 1991).

EFFECTIVE DATE: May 22, 1991.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202-252-1200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on May 22, 1991, by the U.S. Fittings Group, Washington, DC.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in these investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on June 12, 1991, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Elizabeth Haines (202-252-1200) not later than June 10, 1991, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before June 17, 1991, a written brief containing information and arguments pertinent to the subject matter of these investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

[1] For purposes of these investigations, such fittings may be finished or unfinished.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to these investigations must be served on all other parties to these investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: May 24, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-12886 Filed 5-29-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 332-267]

Effects of Greater Economic Integration Within the European Community on the United States

AGENCY: United States International Trade Commission.

ACTION: Deadline for submissions in connection with the fourth followup report.

SUMMARY: The Commission has commenced work on the fourth in a series of followup reports updating its initial report issued in July 1989 in connection with investigation No. 332-267, The Effects of Greater Economic Integration Within the European Community on the United States. The reports were requested under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) by the House Committee on Ways and Means and the Senate Committee on Finance in a letter received on October 13, 1988. Notice of the institution of the investigation and scheduling of a public hearing was published in the **Federal Register** of December 21, 1988 (53 FR 51328), and notice of the procedure to be followed in followup reports was published in the **Federal Register** of September 20, 1989 (54 FR 38751).

The report on the initial phase of the investigation was sent to the Committees on July 17, 1989. Followup reports were sent to the Committees on March 30, 1990, September 28, 1990, and March 29, 1991. Copies of the reports, The Effects of Greater Economic Integration Within the European Community on the United States, may be obtained by calling 202-252-1809, or from the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Requests can also be faxed to 202-252-2186.

The fourth followup report will be sent to the Committees on April 30, 1992.

EFFECTIVE DATE: April 23, 1991.

FOR FURTHER INFORMATION CONTACT: For further information on the investigation contact Ms. Kim Frankena at (202) 252-1265 or Ms. Joanne Guth at 202-252-1264.

WRITTEN SUBMISSIONS: Interested persons are invited to submit written statements concerning the investigation. Written submissions to be considered by the Commission for the fourth followup report should be received by the close of business on December 12, 1991. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

Issued: May 20, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-12769 Filed 5-29-91; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-39 (Sub-No. 16X)]

St. Louis Southwestern Railway Co.—Abandonment Exemption—In Pulaski, Lonoke, and Jefferson Counties, AR

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by St. Louis Southwestern Railway Company of 35.79 miles of rail line in Pulaski, Lonoke, and Jefferson Counties, AR; subject to standard labor protective conditions and an historic preservation condition.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 1, 1991. Formal expressions of intent to file an offer [1] of financial assistance with 49 CFR 1152.27(c)(2) must be filed by June 10, 1991, petitions to stay must be filed by June 14, 1991, and petitions for reconsideration must be filed by June 24, 1991. Requests for a public use condition must be filed by June 10, 1991.

ADDRESSES: Send pleadings referring to Docket No. AB-39 (Sub-No. 16X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's representative: Gary A. Laakso, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245 (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

Decided: May 22, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-12749 Filed 5-29-91; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31674]

South Dakota Railway Co.; Modified Rail Certificate

On April 26, 1991, the South Dakota Railway Company (SDRC) filed a notice for a modified certificate of public convenience and necessity under 49 CFR 1150.23 to operate approximately 83.3 miles of line, between milepost 0.0, at a point known as Napa Junction, SD, and milepost 83.3, in Platte, SD, acquired by the State of South Dakota from the Chicago, Milwaukee, St. Paul, and Pacific Railroad Company (MILW) after the line was approved for abandonment

[1] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987).

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by the United States District Court for the Northern District of Illinois, Eastern Division.[1] The State subsequently leased the line to the Napa-Platte Regional Railroad Authority (NPRRA).

On March 30, 1989, SDRC entered into a 5-year agreement with NPRRA under which SDRC would operate and maintain the line. (SDRC, however, did not commence operations at that time.) SDRC intends to interchange and connect traffic with the Burlington Northern Railroad Company at Napa Junction.

This notice involves the lease of property, which is defined by the regulations of the Advisory Council on Historic Preservation as potentially having an adverse effect on properties. SDRC shall maintain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470.

This notice must be served on the Association of American Railroads (Car Service Division) as agent of all railroads subscribing to the car-service and car-hire agreement, and on the American Short Line Railroad Association.

Dated: May 22, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-12748 Filed 5-29-91; 8:45 am]

BILLING CODE 7035-01-M

Release of Waybill Data for Use By Intermodal Policy Division (IPD), Association of American Railroads

The Commission has received a request from the Intermodal Policy Division, Association of American Railroads (AAR) for permission to use certain data from the Commission's 1989 ICC Waybill Sample.

A copy of the request (WB573-5/9/91) may be obtained from the ICC Office of Economics.

The Waybill Sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data (Ex Parte 385 (Sub-No. 2)) are codified at 49 CFR 1244.8.

Contact: James A. Nash (202) 275-6864.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-12751 Filed 5-29-91; 8:45 am]

BILLING CODE 7035-01-M

[1] Section 8 of the Milwaukee Railroad Restructuring Act transferred jurisdiction over MILW abandonments from this Commission to the United States District Court for the Northern District of Illinois, Eastern Division (Court), which had jurisdiction over MILW's reorganization. The Court thereafter directed this Commission to report to it concerning abandonment of certain MILW lines. In Docket No. AB-7 (Sub-No. 88), Richard Ogilvie, Trustee of the Property of the Chicago, Milwaukee, St. Paul, and Pacific Railroad Company—Abandonment—in South Dakota, Iowa, and Nebraska (not printed), served May 14, 1990, the Commission recommended that the Court authorize abandonment, which the Court subsequently did.

DEPARTMENT OF JUSTICE

Information Collections Under Review

May 23, 1991.

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published.

Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether section 3504(h) of Public Law 96-511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Edward H. Clarke, on (202) 395-7340 and to the Department of Justice's Clearance Officer, Mr. Larry E. Miesse, on (202) 514-4312.

If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible.

Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Larry E. Miesse, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Revision of a Currently Approved Collection

(1) NCJRS Registration for Service Form.

(2) NIJ 1431/2, NIJ 131/7. National Institute of Justice, Office of Justice Programs.

(3) Annually.

(4) Individuals or households, State or local governments. The National Institute of Justice was established to meet technical information needs of the law enforcement, criminal justice, juvenile justice, and investigative communities. Information is collected and used only by the National Criminal Justice Reference Service (NCJRS) to tailor its products and services.

(5) 65,000 annual respondents at .034847 hours each.

(6) 2,272 estimated annual burden hours.

(7) Not applicable under 3504(h).

New Collections

(1) Nondiscrimination on the basis of disability in State and Local Government Service.

(2) No form number. Coordination and Review Section, Civil Rights Division.

(3) Recordkeeping.

(4) State or local governments. Under title II of the Americans with Disabilities Act (ADA), State and local governments are required to evaluate their current services, policies, and practices for compliance with the ADA. Under certain circumstances, such entities must also maintain the results of such self-evaluation on file for public review.

(5) 25,000 annual recordkeepers at 6 hours each.

(6) 150,000 estimated annual burden hours.

(7) Not applicable under 3504(h).

(1) Nondiscrimination on the Basis of Disability in State and Local Government Services (Transition Plan).

(2) No form number. Civil Rights Division.

(3) Recordkeeping burden only.

(4) State or local governments. Under the Americans with Disabilities Act, State and local governments cannot discriminate against individuals with disabilities in operating services, programs, and activities. If physical changes to existing facilities are required, certain of such entities must prepare a transition plan and make it available for public inspection.

(5) 6,000 annual respondents at 8 hours each.

(6) 48,000 estimated annual burden hours.

(7) Not applicable under 3504(h).

(1) Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities (Certification).

(2) No form number. Civil Rights Division.

(3) One time only.

(4) State or local governments. Under Title II of the Americans with Disabilities Act (ADA), upon application from State or local government, the Assistant Attorney General for Civil Rights may certify that a State or local building code meets the minimum accessibility and usability standards set forth in the ADA regulations.

(5) 200 annual respondents at 16 hours each.

(6) 3,200 estimated annual burden hours.

(7) Not applicable under 3504(h).

Larry E. Miesse,

Department Clearance Officer, Department of Justice.

[FR Doc. 91-12727 Filed 5-29-91; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 532-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Employment and Training Administration.

Petition for Adjustment Assistance/Solicitud De Asistencia Para Ajuste 1205-0192; ETA 8560 & ETA 8559.

On occasion.

Form No.	Affected Public	Respondents	Frequency	Average Time Per Response
ETA 8560	Individuals or households	1,400	On occasion	15 minutes
ETA 8559	Individuals or households	1,400	On occasion	15 minutes

Petition used by American workers applying to U.S. Department of Labor for eligibility to receive worker trade adjustment assistance in accordance with provisions of the Trade Act of 1974 as amended. The petition initiates action on part of the Department to determine if workers are eligible.

Extension

OSHA.

Ethylene Oxide.

1218-0108.

On Occasion.

Business or other for-profit; small business or organizations. Respondents *97; 8* total hours; *.68* hrs. per response; *0* form. The purpose of this standard and its information collection requirements is to provide protection for employees from adverse health effects associated with occupational exposure to Ethylene Oxide. The standard requires that OSHA have access to various records to ensure that employers are complying with disclosure provisions of the Ethylene Oxide standard.

Signed at Washington, DC this 23rd day of May, 1991.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 91-12767 Filed 5-29-91; 8:45 am]

BILLING C/ 4510

Employment and Training Administration

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of May 1991.

In order for an affirmative determination to be made and a certification of eligibility to apply for

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adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,495; General Engines, Inc., Thorofare, NJ.

TA-W-25,461; Granby Manufacturing, Granby, MO.

TA-W-25,554; Irvin Automotive/Takata, Inc., Dandridge, TN.

TA-W-25,553; Hoover Tool & Die Co., Warren, MI.

TA-W-25,483; Trani Fashions, Inc., Jersey City, NJ.

TA-W-25,545; F-Dyne Electrics, Inc., Bridgeport, CT.

TA-W-25,490; Cor-Mac Vanguard Machinery, Edison, NJ.

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specificed.

TA-W-25,580; Pennsylvania Power Co., Bruce Mansfield Plant, Shippingport, PA.

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,556; The McFarland Co., Harrisburg, PA.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-25,534; Graphics Plus, Inc., Bridgeport, CT.

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,540; South Haven Rubber Co., South Haven, MI.

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,582; Stearns & Foster, South Brunswick, NJ.

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,532; Edgewater Steel Co., Oakmont, PA.

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,552; Hartco-Tibbals Flooring Co., Oneida, TN.

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,438; Tandy Magnetic Media Div. of Tandy Electronics, Santa Clara, CA.

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,538; North Star Steel Pennsylvania, Milton, PA.

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,658; Zenith Corp., Glenview, IL & Operating at The Following Locations: A; Chicago-Austin, IL, B; Chicago-Kostner, IL, C; Franklin Park, Chicago, IL, D; Northlake, IL, E; Uniondale, NY, F; Springfield, MO, G; Lenexa, KS, H; (Bayly Outlet), Greely, CO, I; Plano, TX, J; Dallas, TX, K; Douglas, AR, L; San Francisco, CA, M; So. San Francisco, CA, N; Santa FE Springs, CA.

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations

TA-W-25,569; MRC Bearings, Philadelphia Plant, A Unit of SKF USA, Inc., Philadelphia, PA.

A certification was issued covering all workers spearated on or after March 8, 1990.

TA-W-25,463; Hazlehurst Lingerie, Hazlehurst, GA.

A certification was issued covering all workers spearated on or after February 14, 1990.

TA-W-25,456; Duncraft, Inc., New York, NY.

A certification was issued covering all workers spearated on or after February 11, 1990.

TA-W-25,460; General Motors Corp., CPC Van Nuys, Van Nuys, CA.

A certification was issued covering all workers separated on or after February 14, 1990.

TA-W-25,615; Bridgestone/Firestone, Inc., Decatur, IL.

A certification was issued covering all workers separated on or after March 20, 1990

TA-W-25,542; Bridgestone/Firestone, Inc., Oklahoma City, OK.

A certification was issued covering all workers separated on or after March 4, 1990.

TA-W-25,546; Freeman Shoe Co., Beloit, WI.

A certification was issued covering all workers separated on or after April 14, 1991.

TA-W-25,618; Country Miss, Inc., Walterboro, SC.

A certification was issued covering all workers separated on or after March 21, 1990.

TA-W-25,619; Country Mills, Inc., Easton, PA.

A certification was issued covering all workers separated on or after March 21, 1990.

TA-W-25,436; Sylvania Shoe Manufacturing Corp., McSherrystown, PA.

A certification was issued covering all workers separated on or after February 11, 1990.

TA-W-25,437; Sylvania Shoe Manufacturing Corp., Greencastle, PA.

A certification was issued covering all workers separated on or after February 11, 1990.

TA-W-25,574; North American Philips Lighting, Warren, PA.

A certification was issued covering all workers separated on or after March 6, 1990.

TA-W-25,584; Xerox Corp., Pomona, CA.

A certification was issued covering all workers separated on or after March 6, 1990.

TA-W-25,551; Grant Norpac, Inc., Traverse City, MI.

A certification was issued covering all workers separated on or after November 22, 1990 and before March 1, 1991.

TA-W-25,575; Ocean Products, Inc., Headquarter Portland, ME.

A certification was issued covering all workers separated on or after February 18, 1990 and before April 1, 1991.

TA-W-25,576; Ocean Products, Inc., Eastport, ME.

A certification was issued covering all workers separated on or after February 18, 1990 and before April 1, 1991.

TA-W-25,577; Ocean Products, Inc., DeBois, ME.

A certification was issued covering all workers separated on or after February 18, 1990 and before April 1, 1991.

TA-W-25,578; Ocean Products, Inc., East Machias, ME.

A certification was issued covering all workers separated on or after February 18, 1990 and before April 1, 1991.

TA-W-25,570; National Industries, Inc., Plant #5, Wetumpka, AL.

A certification was issued covering all workers separated on or after February 25, 1990.

TA-W-25,571; National Industries, Inc., Plant 31, West Montgomery, AL.

A certification was issued covering all workers separated on or after February 25, 1990.

TA-W-25,572; National Industries, Inc., Plant #3, Montgomery, AL.

A certification was issued covering all workers separated on or after February 25, 1990.

TA-W-25,573; National Industries, Inc., Plant #7, Union Springs, AL.

A certification was issued covering all workers separated on or after February 25, 1990.

TA-W-25,614; Bayly Corp., Denver, CO & Operating at The Following Locations: TA-W-25,614A; (Waco Apparel), Waco, TX B; (Bayly Distribution Center), Newnan, GA, C; (Morey Boogie/Bayly), Barbank, CA, D; (O.P./Bayly) Tustin, CA, E; (O'Neill/Bayly Santa Cruz, CA, F; (Ocean Warehouse) Fort Collins, CO, G; (Ocean Warehouse) Greeley, CO, H; (Bayly Outlet), Greeley, CO, I; (Ocean Warehouse) Bloomington, IN.

A certification was issued covering all workers separated on or after March 19, 1990.

I hereby certify that the aforementioned determinations were issued during the month of May, 1991. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 22, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-12788 Filed 5-29-91; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 91-47]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration (NASA) announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee.

DATES: June 27, 1991, 8:30 a.m. to 4:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Federal Building 10B, room 625, 600 Independence Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine L. Smith, Office of Aeronautics, Exploration and Technology (OAET), National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2367.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee was established to provide overall guidance and direction to the aeronautics research and technology activities in the Office of Aeronautics, Exploration and Technology. The Committee, chaired by Mr. Phil M. Condit, is composed of 17 members. The meeting will be open to the public up to the seating capacity of the room (approximately 30 persons including the committee members and other participants).

Type of Meeting: Open.

Agenda:

June 27, 1991.

8:30 a.m.—Opening Remarks.

8:45 a.m.—NASA and OAET Update.

9 a.m.—Report on NASA Advisory Council Meeting.

9:15 a.m.—Fiscal Year 1992 Budget Status and Fiscal Year 1993 Preliminary Budget and Plans.

10:30 a.m.—NASA Aeronautics Flight Research Strategy.

12:30 p.m.—Special Topics.

1:30 p.m.—Ad Hoc Study Reports.

2:45 p.m.—Ad Hoc Study Proposals.

3:15 p.m.—Discussion and Topics for Next Meeting.

4:30 p.m.—Adjourn.

Dated: May 22, 1991.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91-12709 Filed 5-29-91; 8:45 am]

BILLING CODE 7510-01-M

[Notice 91-48]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee and the Aerospace Research and Technology Subcommittee.

DATES: June 24, 1991, 8:30 a.m. to 4:30 p.m.; June 25, 1991, 8:30 a.m. to 4:30 p.m.; June 26, 1991, 8:30 a.m. to 4:30 p.m.; June 27, 1991, 8:30 a.m. to 4:30 p.m.; and June 28, 1991, 8:30 a.m. to 4:30 p.m.

ADDRESSES: The McLean Hilton at Tysons Corner, The Franklin Sherman Amphitheater, 7920 Jones Branch Drive, McLean, VA 22102.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Smith, Office of Aeronautics, Exploration and Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2367.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance to the Office of Aeronautics, Exploration, and Technology (OAET) on space systems and technology programs. The Aerospace Research and Technology Subcommittee (ARTS) was formed to provide technical support for the SSTAC and to conduct ad hoc interdisciplinary studies and assessments. The Committee, chaired by Dr. Joseph F. Shea, is composed of 17 members. The Subcommittee is composed of 32 members. The meeting will be open to the public up to the seating capacity of the room (approximately 100 persons including the Committee and Subcommittee members and other participants).

Type of Meeting: Open.

Agenda:

June 24, 1991.

8:30 a.m.—Plenary Session.

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10:30 a.m.—Mission Needs.
3 p.m.—Panel Discussion.
4:30 p.m.—Adjourn.
June 25, 1991.
8:30 a.m.—External Perspectives.
10:30 a.m.—Integrated Technology Plan Overview.
1 p.m.—Thrust Working Groups.
4:30 p.m.—Adjourn.
June 26, 1991.
8:30 a.m.—Technology Working Groups.
4:30 p.m.—Adjourn.
June 27, 1991.
8:30 a.m.—Technology Working Groups Continued.
4:30 p.m.—Adjourn.
June 28, 1991.
8:30 a.m.—Wrap-Up Working Groups.
1 p.m.—Plenary Wrap-Up.
4:30 p.m.—Adjourn.

Dated: May 22, 1991.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91-12710 Filed 5-29-91; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303(a).

DATES: Request for copies must be received in writing on or before July 15, 1991. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and or private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. General Services Administration, Federal Supply Service (N1-137-91-2). Reduction in retention period for records relating to information provided to customers.

2. Department of Health and Human Services, Health Care and Financing Administration (N1-440-91-2). End Stage Renal Disease exception requests.

3. Department of Health and Human Services, Health Care Financing Administration (N1-440-91-1). Files relating to potential cases of dual coverage (Medicare and employer sponsored group health coverage).

4. Department of the Interior, Minerals Management Service (N1-473-91-2). Records accumulated in reviewing and recommending actions on competitive reservoir proposals.

5. Department of Justice, Foreign Claims Settlement Commission (N1-299-91-2). Miscellaneous working papers, form letters, and other routine documentation, Polish and Czechoslovakian claims programs.

6. Department of the Labor, Office of Federal Contract and Compliance Programs (N1-448-90-2). Comprehensive records disposition schedule.

7. National Aeronautics and Space Administration, Marshall Space Flight Center (N1-255-91-6). SKYLAB Project administrative support files and results of routine tests and inspections.

8. National Aeronautics and Space Administration, Marshall Space Flight Center (N1-255-91-7). Technical reference files and logistic support records for minor Research and Development projects.

9. National Aeronautics and Space Administration, Marshall Space Flight Center (N1-255-91-8). Saturn Launch Vehicle Project administrative support files and results of routine tests and inspections.

10. National Aeronautics and Space Administration, Marshall Space Flight Center (N1-255-91-9). Test schedules and log books for rocket engines.

11. National Aeronautics and Space Administration, Marshall Space Flight Center (N1-255-91-10). High Energy Astronomy Observatories Project Office administrative support and scheduling records.

12. National Security Agency, Information Resources Management (N1-457-91-2). Release of this schedule for public inspection is precluded pursuant to provisions of Public Law 86-36.

13. Peace Corps of the United States (N1-362-91-5). Office of Training and Program Support administrative, subject and case files.

14. United States Postal Service (N1-28-91-10). Post Office Department motion picture film, 1964-65, that is duplicative, of poor quality, or lacking in historical value.

15. Regulatory Information Service Center (N1-220-91-4). Case files relating to publication of the Unified Agenda of Federal Regulations and the Regulatory Program of the United States Government.

16. Department of State, United States Mission to the United Nations (N1-84-90-5). Facilitative records.

17. Tennessee Valley Authority, Purchasing (N1-142-90-4). General correspondence file.

18. Tennessee Valley Authority, Purchasing (N1-142-90-6). Facilitative records relating to the Employment Opportunity Program.

19. Tennessee Valley Authority, Purchasing (N1-142-91-7). Bellefonte Nuclear Plant Repowering Task Force Study.

20. Department of Transportation, Office of the Secretary (N1-398-91-1). Office of Departmental Accounting and Financial Information System program files.

21. Department of the Treasury, Office of Thrift Supervision, Financial and Administrative Management (N1-483-91-1). Administrative records of the Deputy Assistant Director.

Dated: May 16, 1991

Don W. Wilson,

Archivist of the United States.

[FR Doc. 91-12701 Filed 5-29-91; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL ENDOWMENT FOR THE ARTS AND THE HUMANITIES

Office of Public Partnership Advisory Panel; Amended Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice of a meeting of the Office of Public Partnership Advisory Panel (States Program Overview and Challenge III Section) to the National Council on the Arts to be held June 6, 1991, from 9 a.m.-4 p.m. (originally published May 21, 1991, 56 FR 23308) should be amended to read:

"A portion of this meeting will be open to the public from 8:30 a.m.-9 a.m. and 9:45 a.m.-4 p.m. The topics will be opening remarks, action on minutes, proposed changes in Challenge program, guidelines/review for Arts Projects in Underserved Communities, recommendation on NASAA cooperative agreement for Information Service, AIDS Working Group report, proposed application questions for regional organizations, proposed regional funding formula, and other business.

"The remaining portion of this meeting from 9 a.m.-9:45 a.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, as amended, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code."

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-12816 Filed 5-29-91; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Earth Sciences; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Public Law 92-463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to provide oversight review of the activities in Education and Human Resources within the Division of Earth Sciences. The entire meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would improperly be disclosed.

Name: Advisory Committee for Earth Sciences/Committee of Visitors.
Dates: June 24 and 25, 1991.
Time: 8 a.m. to 5 p.m. each day.
Place: Room 1243, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.
Type of Meeting: Closed.
Agenda: Oversight review of Education and Human Resources activities, including examination of decisions on proposals, reviewer comments, and other privileged materials.
Contact: Dr. Ian D. MacGregor, Acting Division Director, Division of Earth Sciences, Room 602, National Science Foundation, Washington, DC. (202) 357-0501.

Dated: May 24, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-12770 Filed 5-29-91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

NUMARC/BWROG/NRC Appendix J Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting.

SUMMARY: A meeting will be held to discuss material on 10 CFR part 50, Appendix J, "Leakage Rate Testing of Containments of Light-Water-Cooled Nuclear Power Plants," that NUMARC will submit. This will address eight issues the BWROG Containment Testing Committee brought up at the May 1991 ACRS Subcommittee and full Committee meetings on this rule.

DATES: Tuesday, June 25, 1991, 9 a.m..

ADDRESSES: White Flint North, room 4B11.

FOR FURTHER INFORMATION CONTACT: Mr. Gunter Arndt, Office of Nuclear Regulatory Research, Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492-3814.

Dated at Rockville, Maryland, this 16th day of May 1991, for the Nuclear Regulatory Commission.

Lawrence C. Shao,

Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 91-12737 Filed 5-29-91; 8:45 am]

BILLING CODE 7590-01-M

Nuclear Safety Research Review Committee; Meeting

In accordance with the requirements of the Federal Advisory Committee Act (FACA), the Nuclear Safety Research Review Committee (NSRRC) will hold its next meeting on June 13 and 14, 1991. The meeting will be held at the Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland. The meeting will be open to public attendance. The NSRRC provides advice to the Director of the Office of Nuclear Regulatory Research (RES) on matters of overall management importance in the direction of the NRC's program of nuclear safety research. The purpose of this meeting is to review the NRC's recently reorganized advanced reactor research program.

Thursday, June 13, 1991

8 a.m.-noon: The Director of RES will present background and an overview of 6 advanced reactor types (AP600, SBWR, PIUS, MHTGR, ALMR, and CANDU 3). The Director of the Division of Advanced Reactors of NRR will discuss the schedule of

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design certification and prototype licensing of advanced reactors. The Director of the Division of Regulatory Applications of RES will discuss a list of early research needs for passive LWRS.

1 p.m.–6 p.m.: Six reactor vendors will make presentations on their safety research programs for the advanced reactors. The likely order of presentation is: AP600, SBWR, PIUS, MHTGR, ALMR, and CANDU 3.

Friday, June 14, 1991

8 a.m.–noon: NRC Staff and contractors will present the status of ongoing and new advanced reactor research projects.

1 p.m.–3 p.m.: Continuation of NRC staff and contractor presentations.

3 p.m.–4 p.m.: Committee discussions.

4 p.m.: Adjourn.

Members of the public may file written statements regarding any matter to be discussed at the meeting. Members of the public may also make requests to speak at the meeting, but permission to speak will be determined by the committee chairperson in accordance with procedures established by the committee. A verbatim transcription will be made of the NSRRC meeting and a copy of the transcript will be placed in the NRC's Public Document Room in Washington, DC.

Inquiries regarding this notice, any subsequent changes in the status of the meeting, the filing of written statements, requests to speak at the meeting, or the transcription, may be made to the Designated Federal Officer, Dr. Ralph O. Meyer (telephone: 301/492–3904), between 8:15 a.m. and 5 p.m.

Dated this 24th day of May, 1991, in Rockville, Maryland.

Andrew L. Bates,

Acting Advisory Committee Management Officer.

[FR Doc. 91–12744 Filed 5–29–91; 8:45 am]

BILLING CODE 7590–01–M

Solicitation of Public Comments on Generic Issue 23, "Reactor Coolant Pump Failure;" and Draft Regulatory Guide; Issuance, Availability; Correction

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: General notice; correction.

SUMMARY: This document corrects a general notice which was published in the **Federal Register** on April 19, 1991; 56 FR 16130. This notice is necessary to correct the address for submittal of comments on the general notice. The comment period expires on July 31, 1991.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–7758.

SUPPLEMENTARY INFORMATION:

In the **Federal Register** of April 19, 1991, make the following change:

In the third column on page 16131, in the first complete paragraph, starting on line seven, remove the words, "the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch," and add "Chief, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555."

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Office of Administration.

[FR Doc. 91–12741 Filed 5–29–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. STN 50–601]

Westinghouse Electric Corporation; Availability of Safety Evaluation Report and Preliminary Design Approval Related to the Preliminary Design of the Standard Nuclear Steam Supply Reference System, RESAR SP/90

The U.S. Nuclear Regulatory Commission has published its Safety Evaluation Report related to the Preliminary Design of the Standard Nuclear Steam Supply Reference System, RESAR SP/90, and has issued a Preliminary Design Approval to Westinghouse Electric Corporation for the RESAR SP/90, Docket No. STN 50–601 (NUREG–1413).

Copies of the Report have been placed in the NRC's Public Docket Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, for review by interested persons. Copies of the Report may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082. GPO deposit account holders may charge order by calling 202–275–2060. Copies are also available from the National Technical Information Service, Springfield, Virginia 22161.

Dated at Rockville, Maryland, this 22nd day of May 1991.

For the Nuclear Regulatory Commission.

Jerry N. Wilson,

Acting Director, Standardization Project Directorate, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 91–12739 Filed 5–29–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–254 and 50–265]

Commonwealth Edison Co. (Quad Cities Nuclear Power Station, Units 1 and 2); Exemption

I.

The Commonwealth Edison Company (CECo, the licensee) is the holder of Operating License No. DPR–29, which authorizes operation of Quad Cities Nuclear Power Station (QCNPS) Unit 1, and Operating License No. DPR–30, which authorizes operation of QCNPS Unit 2. These licenses provide, among other things, that QCNPS Units 1 and 2 are subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The station is composed of two boiling water reactors at the licensee's site located in Rock Island County, Illinois.

II.

On November 19, 1980, the Commission published revised 10 CFR 50.48, "Fire Protection," and a new appendix R to 10 CFR part 50, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979," regarding fire protection features of nuclear power plants required to satisfy the general design criterion related to fire protection (Criterion 3, appendix A to 10 CFR part 50). The revised 10 CFR 50.48 and appendix R to 10 CFR part 50 (appendix R) became effective on February 17, 1981. Section III of appendix R contains 15 subsections, lettered A through O, each of which specified requirements for a particular aspect of the fire protection features at a nuclear power plant. Two of these sections, III.G, "Fire Protection of Safe Shutdown Capability," and III.J, "Emergency Lighting," were included in the licensee's exemption requests.

III.

By letter dated September 30, 1987, the licensee requested exemptions from the requirements of appendix R for separation of redundant reactor vessel pressure and level indicating instruments in the Unit 1 reactor building and separation of redundant suppression pool level indicating instruments in the Unit 1 and Unit 2 reactor buildings.

By letter dated October 1, 1987, the licensee supplemented its September 30, 1987 submittal by making a request for two additional exemptions from the requirements of appendix R. These additional exemption requests concerned lack of emergency lighting for the suppression pool level instrumentation and the need to pull fuses to preclude spurious component operation in order to achieve stable hot shutdown.

By letter dated November 23, 1987, the licensee revised the October 1, 1987 submittal. In its new submittal, the licensee deleted the exemption pertaining to the separation of redundant reactor pressure indication. The licensee also modified some of the wording related to emergency lighting and penetration seals.

By letter dated April 11, 1990, the licensee requested modifications in combustible loading definitions used in exemption requests submitted to the NRC on June 25, 1986. The original exemption requests were evaluated by the staff and approved in the Exemption dated August 18, 1989.

The following list briefly describes the exemptions from appendix R requested by the licensee. Details of these exemption requests and the staff's evaluation are contained in the previously mentioned letters from the licensee and the letter to the licensee dated February 25, 1991, which are located in the Public Document Room.

1. Exemptions from the technical requirements of section III.G.2.b of appendix R to the extent that 20 feet of horizontal space free of intervening combustibles and area-wide suppression is not provided within the fire area containing redundant reactor vessel level indicating instrumentation for each unit.

2. An exemption from section III.G.2.b of appendix R for lack of adequate separation between redundant suppression pool level indicators for Fire Areas RB–1 and RB–2 in Units 1 and 2, respectively. In addition, detection and suppression are not provided.

3. An exemption from section III.J of appendix R to the extent that emergency lights are not provided for the suppression pool level sight glasses for Unit 1 and Unit 2.

4. An exemption from the requirements of appendix R to the extent that fuse pulling, which could constitute a "repair," is required to prevent spurious equipment operation during hot shutdown.

5. A modification to exemption requests previously approved by the NRC by safety evaluation (SE) dated July 21, 1988. The licensee has requested that combustible loading values identified in the original request for exemption submittal dated June 25, 1986, be modified.

IV.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1), these exemptions (listed above) are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present to justify granting the exemptions; namely, that application of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of the rule. The special circumstances of each CECo exemption request was reviewed in detail by the staff's SE dated February 25, 1991. In general, the underlying purpose of the rule is to accomplish safe shutdown in the event of a single fire and to maintain the plant in a safe shutdown condition. These goals are achieved by assuring that sufficient undamaged equipment is available to support safe shutdown in the event of a fire within the area of concern. In the areas for which an exemption is being requested, passive as well as active fire protection features assure that any single fire will not result in the loss of safe shutdown capability. These features include manual actions, automatic suppression, and early detection of fires in their incipient stages. The fire protection features, in conjunction with low combustible loadings, provide a high degree of assurance that a single fire will not result in a loss of safe shutdown capability. In addition, the special circumstances of 10 CFR 50.12(a)(2)(iii) apply in that compliance would result in costs that significantly exceed those contemplated when the regulation was adopted. Providing additional protection features, as would be required to meet the regulations, would not result in a significant increase in the level of protection and would result in undue costs and resource expenditures for the licensee in additional engineering, procurement of materials, fabrication, and installation. Accordingly, the Commission hereby grants exemptions for the conditions listed in Section III above.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the quality of the human environment (56 FR 8371).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland this 21st day of May 1991.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Director, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91–12738 Filed 5–29–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–368]

Entergy Operations, Inc.; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Entergy Operations, Inc. (the licensee) to withdraw its September 17, 1987, application for proposed amendment to Facility Operating License No. NFP–6 for the Arkansas Nuclear One, Unit No. 2, located in Russellville, Arkansas.

The proposed amendment would have revised the Technical Specifications relating to change out of station batteries and changes in the battery tests.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on December 21, 1987 (52 FR 48348). However, by letter dated May 15, 1991, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated September 17, 1987, as amended July 22, 1988, August 23, 1989, and May 22, 1990, and the licensee's letter dated May 15, 1991, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Dated at Rockville, Maryland this 22d day of May, 1991.

For the Nuclear Regulatory Commission.

Sheri R. Peterson,

Project Manager, Project Directorate IV–1, Division of Reactor Projects III, IV, and V, Office of Nuclear Reactor Regulation.

[FR Doc. 91–12740 Filed 5–29–91; 8:45 am]

BILLING CODE 7590–01–M

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[Docket No. 70-3070-ML; ASLBP No. 91-641-02-ML]

Louisiana Energy Services, L.P.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the Federal Register, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding, to rule on petitions for leave to intervene, and to conduct an adjudicatory hearing on the record.

Louisiana Energy Services, L.P.

Claiborne Enrichment Center
Special Nuclear Material License

This Board is being established pursuant to an Order issued by the Commission on May 15, 1991 (56 FR 23310, published May 21, 1991), entitled "Notice of Receipt of Application for License, Notice of Availability of Applicant's Environmental Report, Notice of Consideration of Issuance of License, and Notice of Hearing and Commission Order." The proposed license would authorize Louisiana Energy Services, L.P. (LES or Licensee), to possess and use byproduct, source, and special nuclear material and to enrich natural uranium to a maximum of 5 percent U-235 by the gas centrifuge process. The plant, to be known as the Claiborne Enrichment Center (CEC), would be constructed near Homer, Louisiana, in Claiborne Parish, Louisiana. The Applicant and the NRC Staff shall be parties to the proceeding.

The Atomic Safety and Licensing Board will conduct an adjudicatory hearing on the record under the authority of sections 53, 63, 189, 191, and 193 of the Atomic Energy Act of 1954, as amended, in accordance with 10 CFR part 2, Rules of Practice for Domestic Licensing Proceedings.

The Board is comprised of the following administrative judges:

Morton B. Margulies, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Frederick J. Shon, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

All correspondence, documents and other materials shall be filed with the Judges in accordance with 10 CFR 2.701.

Issued at Bethesda, Maryland, this 23rd day of May 1991.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 91-12743 Filed 5-29-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30-12319-CivP; ASLBP No. 90-618-03-CivP]

Tulsa Gamma Ray, Inc., (Material License No. 35-17178-01, EA No. 89-223); Hearing Notice

May 22, 1991.

Please Take Notice that an evidentiary hearing will be held in the captioned proceeding commencing at 9:30 a.m. o'clock, local time, on June 25, 1991 in room 411 (Grand Jury Room), U.S. Courthouse, 333 West 4th Street, Tulsa, Oklahoma 74103.

It is so *Ordered.*

For the Atomic Safety and Licensing Board.

Dated: May 22, 1991.

Morton B. Margulies,

Chairman, Administrative Law Judge.

[FR Doc. 91-12742 Filed 5-29-91; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, July 11, 1991, Thursday, August 1, 1991, Thursday, August 15, 1991, Thursday, September 12, 1991, Thursday, September 26, 1991.

The meetings will start at 10:45 a.m. and will be held in room 5A06A, Office of Personnel Management Building, 1900 E Street NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issued discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, room 1340, 1900 E Street NW., Washington, DD 20415 (202) 606-1500.

Dated: May 15, 1991.

Anthony F. Ingrassia,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 91-12731 Filed 5-29-91; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-6894; 34-29226; International Series Release No. 274; File No. S7-14-91]

American Depositary Receipts

AGENCY: Securities and Exchange Commission.

ACTION: Advance notice of possible commission action and request for information and public comment.

SUMMARY: In light of increasing interest by U.S. investors in the securities of foreign issuers, the Securities and Exchange Commission (the "Commission") is undertaking a review of the American depositary receipt ("ADR") marketplace. Information and comment are being sought with regard to the functioning and characteristics of the ADR marketplace as well as with regard to various regulatory issues under the federal securities laws. As part of this review, the Commission will study the information and comments received in response to this release and will determine whether rulemaking or other action is necessary or appropriate.

DATES: Comments should be received by September 30, 1991.

ADDRESSES: Comment letters should refer to File No. S7-14-91 and be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. The Commission will make all comments available for public inspection and copying in its Public Reference Room at the same address.

FOR FURTHER INFORMATION CONTACT: Anita Klein or Paul Dudek, Office of International Corporate Finance, (202) 272-3246, or Angela Yeats, (202) 272-3303, Division of Corporation Finance, or Eugene Lopez, Office of Automation & International Markets, (202) 272-2828, Division of Market Regulation.

I. Introduction

In recent years, investment in foreign securities by United States investors has increased dramatically and, as technological advances and regulatory initiatives bring about more globalized securities markets, such investment can be expected to continue to increase.[1] One of the principal means used by U.S. investors to hold foreign equity securities (other than Canadian issuers' securities) is the American depositary receipt ("ADR").[2] The Commission is undertaking a review of the ADR market and of the manner in which such market is and should be regulated. The Commission's review has been prompted by certain practices and developments relating to ADRs which have come to its attention, including the proposed establishment of sponsored and unsponsored ADR facilities for the securities of the same issuer.

As a part of this review, the Commission today is soliciting public comment on a variety of issues relating to ADRs and ADR market participants which arise under the Securities Act of 1933 (the "Securities Act")[3] and the Securities Exchange Act of 1934 (the "Exchange Act"), including the effect of any changes in the regulatory scheme on the operation of both the primary and secondary ADR markets.[4] In addition to responding to the questions presented in this release, the Commission encourages commenters to provide any information to supplement, or correct, the information and assumptions contained herein regarding the functioning of the ADR market, the roles of market participants, the advantages and disadvantages of duplicate ADR facilities, the nature and expectations of ADR investors, and the other matters discussed. The Commission particularly welcomes the views of foreign issuers and U.S. and foreign investors.

II. Background

A. Description of ADRs

An ADR [5] represents an ownership interest in a specified number of securities that have been deposited with a depositary by the holder of such securities.[6] The securities that are so deposited ("deposited securities") are typically equity securities of a foreign issuer,[7] and the depositary is typically a U.S. bank or trust company.[8] In exchange for the deposited securities, the depositary issues a negotiable certificate representing the ADRs.

The ADR arrangement provides several benefits to U.S. investors in foreign securities over owning securities directly, including facilitation of share transfers and conversion of dividends paid in a foreign currency.[9] In the past few years, new applications for the ADR arrangement have been developed. ADRs have been used in connection with mergers and acquisitions,[10] restructurings,[11] foreign government debt offerings [12] and funding of employee benefit and compensation plans.[13] In addition, offerings of ADRs have been made under Rule 144A.[14]

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[1] It is estimated that in 1990, U.S. investors purchased approximately $130.9 billion, and sold approximately $122.5 billion, of foreign equity securities. U.S. Treasury Bulletin p.88 (Mar. 1991). In 1990, U.S. investors purchased approximately $10.6 billion, and sold approximately $7.9 billion, of foreign equity securities. U.S. Treasury Bulletin (various issues).

[2] It is estimated that the total dollar volume of ADR trading in 1990 was approximately $125 billion. The Bank of New York, 1990 ADR Market Review and Year End Newsletter (Feb. 1991). The estimated dollar volume in 1983 was approximately $1.6 billion. Kesler, The ADR Weathers the Storm, Euromoney Spec. Supp. 1 (Feb. 1986).

[3] 15 U.S.C. 77a *et seq.*

[4] 15 U.S.C. 78a *et seq.*

[5] Since 1983, the Commission's regulations have made a distinction between ADRs and American depositary shares ("ADSs"). Under this distinction, an ADR is the physical certificate that evidences ADSs (in much the same way a stock certificate evidences shares of stock), and an ADS is the security that represents an ownership interest in deposited securities (in much the same way a share of stock represents an ownership interest in a corporation). Although conceptually accurate, some confusion has resulted from this distinction, and it appears that ADR market participants largely do not differentiate between ADRs and ADSs. As a result, it appears appropriate to eliminate the ADR/ADS distinction. In this release, the term "ADS" is not used, and the term "ADR" may, depending on its context, refer to either the physical certificate or the security evidenced by such certificate.

[6] An ADR may represent one security of a foreign issuer or fractions or multiples of a security of a foreign issuer. The ratio of such securities represented by one ADR (referred to by market participants as the "multiple") is intended to compensate for differences between traditional pricing levels between U.S. and foreign markets. For example, ADRs will often represent two or more securities of a U.K. issuer because sales prices on a per share basis for such securities are generally lower than comparable U.S. securities. Likewise, ADRs will often represent a fraction of one security of a Japanese issuer because sales prices on a per share basis for such securities are generally higher than comparable U.S. securities.

[7] ADRs may also be issued in respect of debt securities.

[8] The Bank of New York, Bankers Trust Company, Citibank N.A., Morgan Guaranty Trust Company of New York, and Security Pacific National Trust Company (New York) are the only depositaries known to be active at this time. Although all of those entities are banks, the Commission does not require that a depositary be a bank.

[9] See Loos, Deflecting the Raging Bull, Euromoney Spec. Supp. 21 (Feb. 1986); Moxley, The ADR: An Instrument of International Finance and a Tool of Arbitrage, 6 Vill. L. Rev. 19 (1962).

[10] Recent examples of mergers and acquisitions involving the issuance of ADRs include the acquisition of AVX Corporation by Kyocera Corporation, the merger of Hanson Trust PLC and Kidde Inc., the acquisition by Reuters PLC of Rich Co. and of Instinet Corp., the acquisition by Reuters Group PLC of Kay Jewelers, Inc. and the acquisition by British Petroleum PLC of The Standard Oil Company of Ohio. See McGoldrick, ADRs as Acquisition Currency, Global Fin. Magazine Spec. Rep. (1989); Dugan, Your Flexible Friend From the States, Euromoney 71 (Dec. 1989); Oldfield, ADRs: An Emerging Force in Cross-Border Deals, 23 Int'l M&A 57 (Jan./Feb. 1989); Loos, New Addition to the M&A Armoury, Euromoney Spec. Supp. 28 (Feb. 1988).

[11] For example, Racal Electronics spun off its cellular telephone subsidiary, Racal Telecom, in a 4.5 million ADR issue valued at $150 million. See McGoldrick, For ADRs, It Pays to Get Into Debt, Euromoney 103, 104 (Dec. 1988).

[12] See, e.g., R. Cooper and J. Burton, French Sow Their OATs in the U.S., Euromoney 85 (Oct. 1988).

[13] For example, an ADR-funded benefit plan is said to help British Airways maintain favorable relations with U.S. employees by ensuring equal treatment with U.K. employees. Loos, *supra* n. 9 at 25.

[14] Information obtained by the Division of Corporation Finance indicates that, as of May 1, 1991, at least 8 out of 22 equity offers by foreign issuers undertaken under Rule 144A involved the issuance of ADRs.

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Of the approximately 1,550 foreign issuers that as of the end of 1990 were filing or submitting reports under the Exchange Act, there were approximately 502 issuers whose securities were traded through unsponsored ADR facilities registered with the Commission, and 302 issuers whose securities were traded through registered sponsored ADR facilities.[15] These facilities relate to shares of companies in numerous and diverse countries ranging from Australia to Zambia. The preponderance of trading, however, occurs in ADRs for companies incorporated in Western Europe and Japan.

ADRs are not held only by U.S. investors; to some extent non-U.S. investors also hold them. In addition to ADRs, International depositary receipts, Continental depositary receipts and European depositary receipts also trade in the international markets. International depositary receipts are used by non-U.S. traders and investors for investment in non-U.S. markets. European depositary receipts primarily are used to facilitate the trading of Japanese companies' securities in European markets. The Commission requests comment on the development of these instruments, their effect on the ADR market, and the nature of the regulatory scheme applicable to such instruments.[16]

B. Unsponsored and Sponsored ADR Facilities

ADR facilities may be established as either "unsponsored" or "sponsored." While ADRs issued under these two types of facilities are in some respects similar (for example, each ADR represents a fixed number of securities on deposit with a depositary), there are distinctions between them relating to the rights and obligations of ADR holders and the practices of market participants.[17]

1. Unsponsored Facilities

"Unsponsored" ADR facilities generally are created in response to a combination of investor, broker-dealer and depositary interest. Most often, a depositary is the principal initiator of a facility because it perceives U.S. investor interest in a particular foreign security and recognizes the potential income which may be derived from a facility. In other cases, one or more brokers familiar with U.S. investor interest and U.S. trading activity in a foreign issuer's securities may request that a depositary create a facility in order to facilitate trading.[18]

A depositary may establish an unsponsored facility without participation by (or even necessarily the acquiescence of) the issuer of the deposited securities, although typically the depositary, to promote good issuer relations, requests a letter of non-objection from such issuer prior to the establishment of the facility. If the issuer is neither a reporting issuer under the Exchange Act, nor exempt from such reporting pursuant to the "information supplying" exemption provided thereunder, the depositary requests that the issuer establish such exemption.[19] If the issuer does so, thereafter the depositary files a registration statement on Form F-6 for the ADRs. Once the registration statement becomes effective, the depositary begins to accept deposits of securities of the foreign issuer and to issue ADRs against such deposits. Deposited securities are usually held by a custodian appointed by the depositary (often a bank) in the country of incorporation of the foreign issuer.

Holders of unsponsored ADRs generally bear all the costs of such facilities. The depositary usually charges fees upon the deposit and withdrawal of deposited securities, the conversion of dividends into U.S. dollars, the disposition of non-cash distributions, and the performance of other services.[20] The depositary of an unsponsored facility frequently is under no obligation to distribute shareholder communications received from the issuer of the deposited securities or to pass through voting rights to ADR holders in respect of the deposited securities.

2. Sponsored Facilities

A "sponsored" ADR facility is established jointly by an issuer and a depositary.[21] Sponsored ADR facilities are created in generally the same manner as unsponsored facilities, except that the issuer of the deposited securities enters into a deposit agreement with the depositary [22] and signs the Form F-6 registration statement. The deposit agreement sets out the rights and responsibilities of the issuer, the depositary and the ADR holders. Like unsponsored ADR facilities, sponsored ADR facilities usually involve the use of a foreign custodian to hold the deposited securities.

With sponsored facilities, the issuer of the deposited securities generally will bear some of the costs relating to the facility (such as dividend payment fees of the depositary), although ADR holders continue to bear certain other costs (such as deposit and withdrawal fees).[23] Under the terms of most sponsored arrangements, depositaries agree to distribute notices of shareholder meetings and voting instructions, thereby ensuring that ADR holders will be able to exercise voting rights through the depositary with respect to the deposited securities. In addition, the depositary usually agrees to provide shareholder communications and other information to the ADR holders at the request of the issuer of the deposited securities. Although the terms of deposit for sponsored ADR facilities differ from those for unsponsored facilities, sponsorship in and of itself does not result in different reporting or registration requirements with the Commission.

3. Duplication of ADR Facilities

Unsponsored ADR facilities are frequently duplicated; that is, after one depositary has established a facility for a particular deposited security, other depositaries establish their own facilities for the same deposited security. Such duplication can occur without the approval of either the foreign issuer or the original depositary. Duplicate facilities exist for the securities of approximately 77% of foreign issuers with securities represented by unsponsored ADR facilities in the U.S. market.[24] In many cases, several depositaries have duplicated the original unsponsored facility.[25] When unsponsored ADR facilities are duplicated, the duplicate ADRs are assigned the same CUSIP number [26] given to the original unsponsored ADRs and, as discussed below, all such ADRs generally are considered fungible with each other and trade without regard to the identity of the depositary.

While the Commission has raised no objection to duplication of unsponsored ADR facilities since at least the early 1970s, the Commission staff has discouraged the creation of multiple ADR facilities when the result would be a disorderly trading market or confusion among investors.[27] The Commission staff and, until recently, ADR market participants have taken the position that an unsponsored facility could not co-exist with a sponsored ADR facility for the same deposited securities because of resulting market disorder or confusion. Thus, if a sponsored facility existed, no other depositary could create another facility for the same securities. Similarly, if a sponsored facility were created after the establishment of one or more unsponsored ADR facilities, the depositaries of the unsponsored facilities would effect a transfer of the deposited securities and the related ADR holders to the new sponsored facility and terminate their unsponsored facilities.[28]

On March 12, 1990, however, a registration statement on Form F-6 was filed with the Commission to register ADRs representing ordinary shares, (Aus)$0.25 par value per share, of Sons of Gwalia N.L., an Australian company.[29] By that filing, the depositary intended to create an unsponsored facility duplicating an existing sponsored ADR facility of another depositary. Since the time of the Sons of Gwalia filing, a number of letters have been received commenting on the proposed duplication and Commission staff has had discussions with ADR market participants with respect to the consequences of unsponsored duplication of sponsored facilities.[30] Strong views both in favor of and in opposition to such duplication have been expressed. Proponents of permitting such duplication have argued that duplication would be beneficial to investors and issuers because it would have the effect of increasing competition and lowering fees. In addition, they question the basis for not allowing duplication, claiming that unsponsored ADR facilities can be structured to provide all of the rights and privileges to ADR holders that a sponsored facility provides and thereby minimize any potential for market disorder or confusion. Opponents of duplication have argued that market confusion and disruption would result from the co-existence of sponsored and unsponsored facilities, and that by their very nature sponsored and unsponsored facilities cannot confer the identical rights to ADR holders. They have also stated that foreign companies will become reluctant to create sponsored facilities or even to enter or remain in the U.S. capital markets if they cannot maintain control over which entity handles ADRs representing their securities.[31]

C. The ADR Market

ADRs are traded in the United States in substantially the same manner as domestic issuers' equity securities. Some foreign issuers, seeking to increase visibility, improve liquidity and increase access to U.S. capital markets, choose to list their ADRs on the New York Stock Exchange (the "NYSE"), the American Stock Exchange (the "Amex") or another national securities exchange, or to have their ADRs quoted on NASDAQ.[32] Other foreign issuers choose to have trading in their ADRs conducted in the U.S. over-the-counter ("OTC") market. ADRs are traded in the OTC market through market makers that publish quotations or indications of interest in the "Pink Sheets," a daily listing of market maker quotations operated by the Commerce Clearing House/National Quotation Bureau, or through the OTC Bulletin Board Service ("Bulletin Board"), an electronic service operated by the National Association of Securities Dealers, Inc. ("NASD").[33]

The rules of the NYSE and the Amex require that ADRs listed on those exchanges be sponsored.[34] Similarly, NASDAQ has for several years strongly recommended to issuers of deposited securities that they sponsor an ADR

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[15] Bankers Trust Co., The ADR Universe (Jan. 1991). Canadian companies constitute approximately 61% of foreign issuers that file or submit reports under the Exchange Act. However, the securities of Canadian companies generally are not represented by ADRs.

[16] Some ADR market participants have predicted that international receipts might eventually replace ADRs. See Keslar, Taking American Out of ADR? Euromoney Spec. Supp. 8 (Feb. 1988).

[17] Some of these differences are inherent to the two different ADR types; *i.e.*, they are a function of the different levels of issuer involvement. Other differences are attributable largely to industry custom and practice. For example, the fact that proxy and other corporate information is not passed on to unsponsored ADR holders but is passed on to sponsored ADR holders is not an inherent difference. The differences between sponsored and unsponsored facilities may raise issues in the event of duplication of sponsored facilities by unsponsored facilities. See *infra* sections II.B.3. and III.C.

[18] Several broker-dealers active in the ADR market have informed the Commission's staff that unsponsored facilities are increasingly being initiated by the depositaries themselves, and that broker-dealer involvement in the creation of unsponsored ADRs is minimal.

[19] See Rule 12g3-2(b), 17 CFR 240.12g3-2(b). See also *infra* section II.D.1 for a description of the requirements relating to registration of ADRs under the Securities Act.

[20] Both depositaries and brokers-dealers have noted in discussions with the Commission's staff, however, that in unsponsored arrangements, depositaries are less likely to charge fees to brokers for issuance of ADRs where another facility for the same deposited securities exists. Indeed, according to some market participants, it is not atypical for a depositary to pay brokers a rebate in order to encourage the deposit of securities in such facilities.

[21] Certain depositaries describe sponsored facilities in terms of three categories, based on the extent to which the issuer of the deposited securities has accessed the U.S. securities market. A "Level 1 facility" is a sponsored facility the ADRs of which trade in the "Pink Sheets." (See *infra* n. 33 and accompanying text.) Level 2 refers to ADRs quoted on the National Association of Securities Dealers' Automated Quotation system ("NASDAQ") or listed on a national securities exchange when the ADRs have not been offered in a U.S. public offering. Level 3 denotes ADRs quoted on NASDAQ or listed on a national securities exchange after a U.S. public offering of ADRs. Levels 1, 2 and 3 generally indicate lower to higher degrees of issuer involvement with the facility and lower to higher amounts of information made available by the issuer to the public.

[22] Each ADR holder also becomes a party to such agreement through its acceptance of the ADR. See infra n. 63 and accompanying text.

[23] The allocation of responsibility for fees is a matter of contract between the issuer, the depositary and the ADR holders and is set forth in the deposit agreement. Also, see Evans, Banks Vie to Sponsor Foreign Stock, 155 American Banker 16 (June 20, 1990) (regarding the willingness of some depositaries to pay foreign issuers for the right to handle a sponsored facility).

[24] Bankers Trust Co., The ADR Universe (Jan. 1991).

[25] As a result, there are many more unsponsored ADR facilities in existence than there are issuers whose securities are represented by unsponsored ADR facilities. One bank estimates that there are over 1,400 unsponsored ADR facilities in existence. Bankers Trust Co., The ADR Universe (Jan. 1991).

[26] To enable automated recordkeeping of ownership interests, uniform identification procedures have been developed by the Committee on Uniform Security Identification Procedures ("CUSIP"), a committee of the American Bankers Association ("ABA"). CUSIP has developed a system of identifying securities issues by assigning to each individual issue a unique CUSIP number. Operating under a contract with the ABA, Standard and Poor's Corporation assigns a CUSIP number to a security based on uniform criteria for their issuance.

[27] *See* Division of Corporation Finance staff letter to Dean Egly, Morgan Guaranty Trust Company Co. (Sept. 12, 1972). In discussing the circumstances under which the duplication of unsponsored facilities would be permitted under Form F-6, a December 30, 1983 staff letter of the Division of Corporation Finance noted in passing that the attempted duplication of a sponsored ADR facility on an unsponsored basis could result in the type of market disorder and investor confusion that the Commission would wish to prevent, and that therefore such duplication was discouraged.

[28] In the latter case, negotiated fees for cancellation generally are paid by the issuer of the deposited securities (or sometimes the depositary of the new sponsored facility) to the depositaries of the unsponsored facilities.

[29] See Commission file number 33-33617.

[30] The staff of the Divisions of Corporation Finance and Market Regulation have met or spoken with representatives of: The American Stock Exchange, Axe Core Investors Inc., the Bank of New York, Bankers Trust, Chemical Bank, Citibank, The Depository Trust Company, Merrill Lynch, Morgan Guaranty, Morgan Stanley, the National Association of Securities Dealers, the New York Stock Exchange, Salomon Brothers, Security Pacific, and Shearson Lehman.

[31] See *infra* section III.C. Depositaries have indicated to the Commission that a significant duplication effort is likely to be undertaken.

[32] In 1989, the dollar volume for ADRs traded on the NYSE was $40.8 billion, representing the trading of 1.2 billion ADRs. NYSE Fact Book, March 1990. NASDAQ reported that in 1989 for 92 ADR issues quoted on NASDAQ, share volume was 1.8 billion shares, with a dollar volume of $17.4 billion. NASDAQ Fact Book, 1990, at 17.

[33] In the Bulletin Board, the quotations for unsponsored ADRs are displayed in static form and may be updated only twice daily. Brokers for investors wanting to trade in securities quoted in the Pink Sheets or on the Bulletin Board generally contact one of the listed market makers in the securities.

[34] See NYSE Constitution and Rules, "Listing and Delisting of Securities," § 103.04; Amex Constitution and Rules, "Listing Standards and Requirements," section 220.

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facility before NASDAQ includes their ADRs for quotation.[35] Both sponsored and unsponsored ADRs trade in the OTC market. At the end of 1990, of the 336 sponsored ADR facilities, 66 were listed on NYSE, 4 were listed on Amex, and 55 were quoted on NASDAQ.[36]

The recent trend in the creation of ADR facilities has been away from unsponsored arrangements toward sponsorship. One depositary estimates that the overall percentage of sponsored facilities in the U.S. markets has grown from 12% in 1986 to 38% in June 1990.[37]

1. Trading of ADRs and Deposited Securities

Purchasers and sellers of ADRs include retail customers, institutional investors, arbitrageurs and brokers.[38] According to market participants, under typical circumstances, approximately 90% of the activity in the ADR market involves purchases and sales of existing ADRs in the U.S. trading markets.[39] The remaining activity involves either the purchase of foreign securities and the deposit of those securities into a facility to create new ADRs, or the surrender of ADRs and the withdrawal of deposited securities from a facility. In thinly traded issues, however, the extent to which ADRs need to be created or surrendered to meet market demand may be higher. Broker-dealers, acting in response to customer or proprietary orders to purchase or sell the securities of a specific foreign issuer, appear to be the ADR market participants principally involved in the creation and surrender of ADRs.

The costs of creating or surrendering ADRs and of trading the deposited securities directly in the foreign market discourage the ready deposit and withdrawal of deposited securities.[40] The depositary may charge a fee for the issuance of new ADRs and the surrender of existing ADRs. In addition, the purchase or sale of a security in a foreign market may entail other costs, such as a transaction tax, a local brokerage commission or a custodian fee. Taken together, these costs tend to make it too expensive to create or surrender ADRs on an ad hoc basis.

2. Trading Prices for ADRs

The prices at which ADRs trade on an exchange and in the NASDAQ and OTC markets reflect several variables. The value of the deposited security as determined by the issuer's performance, the price of the deposited security in its primary foreign market and the overall performance of such market are some of the variables. The ADR trading price is also a function of foreign currency exchange rates and the attendant costs in carrying a position that may be affected by adverse currency changes during the period an investor holds the ADR. The costs involved in the establishment, trading, and administration of the facility also affect ADR trading prices. According to broker-dealers involved in the ADR market, the trading price of an ADR typically reflects the average costs involved in the creation of ADRs and the withdrawal of deposited securities. In certain situations brokers may receive some form of a rebate from a depositary, although the price to the investor purchasing the ADR may or may not reflect a net price of costs less any rebate.[41]

When sufficient spreads develop between prices for deposited securities in foreign markets and prices for ADRs in the United States because of, for example, inefficient market dissemination of news about the issuer of the deposited securities, arbitrage opportunities arise. Active traders sell ADRs if, after taking into account transaction costs, such ADRs are trading at a premium to the deposited security. Similarly, if the ADR is trading at a discount to the deposited security after taking into account transaction costs, arbitrageurs purchase the ADRs in the United States, withdraw the deposited securities from the ADR facility, and then sell the deposited securities at a profit in a foreign market. This arbitrage activity limits the degree to which ADR prices in the U.S. markets can be expected to diverge from prices in foreign markets for the deposited security.

3. Custody, Clearance and Settlement for ADRs

The clearance and settlement process for ADRs generally is the same as for other domestic securities that are traded in U.S. markets.[42] Indeed, one of the chief attractions of ADRs is that investors can own an interest in securities of foreign issuers while holding securities that can trade, clear and settle within automated U.S. systems and within U.S. time periods. If investors directly held foreign securities instead of holding ADRs, their transactions in those securities would be subject to the unfamiliar and sometimes less prompt clearance and settlement processes in the security's foreign trading market.

Like other equity securities, ADRs generally are eligible for deposit at U.S. clearing agencies that provide centralized custody and book-entry delivery facilities for their participants (*i.e.*, member banks and broker-dealers). Although some ADRs are held in custody elsewhere, the Commission's staff has been told that the large majority of ADRs in the U.S. markets are held in custody at DTC, a registered clearing agency that is the largest securities depository in the United States. DTC maintains securities in custody in its vaults on a fungible basis, and makes computerized bookkeeping entries of movements of securities between accounts of DTC participants. Such a custody and book-entry recordkeeping arrangement permits transactions in securities deposited at DTC to settle without the need for physical handling and delivery of receipts.

At DTC, sponsored ADRs are treated the same as ordinary U.S. equity securities. ADR certificates are sent to the depositary (or other transfer agent) for registration in DTC's nominee name, deposited into DTC, and kept in custody by DTC on a fungible basis. All dividends are received from the one depositary, and shareholder communications are received from that depositary or the issuer of the deposited securities and are easily distributed to those DTC participants who are the record ADR holders on DTC's books. Sponsored ADRs are eligible for DTC's Fast Automated Transfer ("FAST") service, which expedites the transfer process when participants seek to withdraw securities from their DTC accounts in their own names or in the names of their customers.[43]

Duplicate unsponsored ADR issues have been viewed as having sufficiently similar terms of deposit that they are assigned the same CUSIP number and treated as fungible securities for clearing agency processing. Nevertheless, duplicate unsponsored ADRs do require special processing treatment at clearing agencies. For example, DTC has adopted special procedures for the deposit and safekeeping of unsponsored ADRs. DTC requires its participants to identify the depositary named on the ADR certificate at the time participants deposit ADRs into DTC. DTC sends those receipts to the appropriate depositary for reissuance in DTC's nominee name and DTC maintains custody of those certificates in safekeeping. Because all unsponsored duplicate ADRs for the same class of deposited security bear the same CUSIP number, DTC does not record ownership interests in a specific depositary's receipts. When a participant submits a withdrawal request to DTC, DTC generally delivers any receipt with that CUSIP number in its vault without regard to the issuing depositary, unless the participant making the withdrawal request is one of the depositaries. In the latter case, DTC uses its best efforts to deliver that depositary's receipts.

The rights of participants and their customers who keep ADRs in accounts at clearing agencies can be affected by the clearing agencies' manner of dealing with duplicate facilities for the same class of deposited securities.[44] First, because the depositary usually acts as transfer agent for ADRs, the clearing agency (such as DTC) receives dividend and other distribution payments from multiple transfer agents. In the case of cash dividends, each depositary separately receives a dividend payment in foreign currency from the issuer of the deposited securities and then converts that payment into U.S. currency. Because the payments and conversions may occur at different times and at different rates, DTC may receive different dividend payments from each depositary. In the case of distributions other than cash dividends, it would not be uncommon for amounts paid to DTC by each depositary to vary, based on the differing sale proceeds each depositary is able to obtain and on the differing amounts for fees and expenses each depositary deducts. Because the ADRs are held in a fungible bulk and no DTC participant is identified as owning the ADRs of any particular depositary, DTC cannot allocate distributions based on ownership of a specific depositary's ADRs. Accordingly, for distributions other than cash dividends, DTC has adopted a policy of "blending" or averaging the payments received and paying all holders at the same rate. According to DTC, however, development by the depositaries of standard exchange rates for converting such distributions has reduced the need for blending payments. With respect to the distribution of cash dividends, the Commission's staff has been informed that depositaries generally are paying the same amounts to DTC and blending therefore is not necessary.

Second, substantial concerns about the effect on clearing agency customer's rights may arise to the extent depositaries refuse to accept ADRs of other depositaries with duplicate facilities in connection with the withdrawal of deposited securities by ADR holders. Various ADR market participants have indicated that where there are duplicate unsponsored facilities, depositaries have traditionally treated all ADRs as fungible and permit deposited securities to be withdrawn from their facilities against the surrender of ADRs issued by other depositaries.[45] Some depositaries, however, have indicated to the Commission's staff that they no longer accept in all circumstances the ADRs of other depositaries. Because persons holding ADRs through clearing agencies are not entitled to the delivery of ADRs of any specific depositary, such persons may be placed in a position of effecting withdrawals of deposited securities through depositaries not of their choosing. Such persons also may be unaware of the increased difficulty of withdrawal arising from this non-fungible treatment of ADRs.

Third, processing times for withdrawal requests of duplicate unsponsored ADRs can take longer than for withdrawals of sponsored ADRs. Because of the existence of several depositaries, each acting as transfer agent for the ADRs issued under its facilities, withdrawals of duplicate unsponsored ADRs from the clearing agencies are not eligible for the expedited FAST transfer system. When a withdrawal request for duplicate unsponsored ADRs is made, DTC must physically remove certificates from its safekeeping facilities and send them to the depositary for registration in the withdrawing participant's name.

Fourth, potential processing difficulties arise if there is disagreement over ADR cancellation fees among depositaries when one depositary is selected by the issuer of the deposited securities to provide a sponsored ADR facility. When a sponsored facility is created after the establishment of unsponsored facilities, the unsponsored ADRs are exchanged for sponsored ADRs.[46] The depositaries with unsponsored facilities charge the issuer or the depositary that will be handling the sponsored ADR a cancellation fee. Sometimes those fees have been disputed and the processing of withdrawal requests and establishment

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[35] NASDAQ has no specific rule requiring that ADRs be sponsored for inclusion on NASDAQ.

[36] See Bankers Trust Co., The ADR Universe (Jan. 1991) for information about the total sponsored facilities. Information with respect to listing and quotation was obtained directly from representatives of the exchanges identified and NASDAQ. The percentage of ADR facilities listed on a national securities exchange or quoted on NASDAQ has not been changing significantly. In 1989, approximately 282 of 1,757 facilities (16%) were listed or quoted; in 1990, approximately 293 of 1795 facilities (16%) were listed or quoted. In order for an ADR facility to be listed on a national securities exchange or quoted on NASDAQ, the foreign issuer is required to be a reporting issuer under the Exchange Act. (See *infra* n. 66 and accompanying text.) An exception has been made, however, with respect to ADRs so listed or quoted prior to the effectiveness of such requirement. As a result, ADRs for securities of three foreign issuers are listed on the Amex, and ADRs for securities of approximately 38 foreign issuers are quoted on NASDAQ, even though such issuers are not reporting. All of these ADRs are unsponsored.

[37] Letter dated October 15, 1990 to Linda Quinn, Director, Division of Corporation Finance from Kenneth Lopian, Vice-President, The Bank of New York.

[38] The staff has obtained no specific numbers indicating the composition of investors in the ADR market. Based on conversations with brokers and depositaries, however, it appears that 15% to 20% of the ADR market is made up of retail investors and the remainder is made up of institutions or brokers. Typically, brokers are engaged in arbitrage.

[39] The Commission's staff was informed by depositaries and several broker-dealers active in the trading of ADRs.

[40] At least one broker has noted, however, that certain customers may find it economically advantageous to purchase the securities in the foreign market, absorb the attendant costs, and cause the creation of new ADRs for trading. As explained below, the arbitrage possibilities presented when the price of the ADR diverges from that of the deposited securities may make it economically advantageous for an investor to seek creation of additional ADRs in a particular facility.

[41] Reportedly, where there is competition among depositaries caused by duplication of facilities, the depositary does not always charge a fee for issuance of unsponsored ADRs and sometimes will pay a rebate (in the $.03 to $.05 per share range) for deposits. On the other hand, in sponsored arrangements, generally there is no waiver of the issuance fee by the depositary. Fees for withdrawal of deposited securities from sponsored and unsponsored facilities usually range within $.03 to $.05 per share.

[42] Generally, "regular-way" transactions in equity securities settle on the fifth business day after the date of the trade. Transactions among broker-dealers executed on exchanges, through NASDAQ, or in the OTC market settle through clearing corporations (such as National Securities Clearing Corporation) on a net basis with deliveries on the books of a securities depository (such as The Depository Trust Company, or "DTC"). Delivery of securities and payment of funds between a broker-dealer and its customer generally occur through the mail or face-to-face (for retail customers) or by debit and credit to accounts at securities depositories where the customer's custodian bank and the broker-dealer maintain accounts for that purpose (for institutional customers).

[43] Under FAST, DTC's position in an issue of ADRs is held in a jumbo certificate at the transfer agent for the ADRs (usually the depositary). When DTC notifies the transfer agent that a transfer should take place, the transfer agent issues a new certificate against the jumbo certificate, eliminating the need for DTC to withdraw certificates physically from its safekeeping facilities and surrender them.

[44] Indeed, the rights of participants or their customers could be affected in any circumstance where a custodian cannot record ownership of specific certificates with the same CUSIP number. As a result, similar concerns would be likely to exist with respect to any duplicate ADR facilities. See infra section III.C.

[45] Subsequently, the depositary that had accepted such ADRs would present them to the issuing depositary, and an appropriate number of deposited securities would be transferred from the issuing depositary to the accepting depositary.

[46] See *supra* n. 28 and accompanying text.

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of the sponsored facility are delayed until negotiations are concluded.

Finally, because clearing agencies do not distinguish between ADRs of different duplicate unsponsored facilities, a depositary cannot effect a distribution of shareholder communications received from the issuer of the deposited securities unless such depositary provides a sufficient number of copies of such communications for distribution to all ADR holders (including holders of ADRs issued by other depositaries). Also, the fungibility of ADRs causes difficulties in respect of the distribution and tabulation of proxy cards. Although DTC indicates that it has established arrangements for proxy voting on occasion whereby DTC sends an omnibus proxy to the largest depositary, which in turn sends the appropriate parts to the other depositaries, such procedure does not necessarily assure the pass-through of voting rights to the ultimate ADR holders.

4. Securities Lending

Settlement practices and periods involved in the purchase of foreign securities vary significantly from market to market and as compared with U.S. practices and periods. Because of such differences (particularly the length of time that settlement often takes in certain foreign markets), depositaries indicate that significant problems and delays could arise in the ADR trading process if the issuance of an ADR were always delayed until the deposit of the foreign security. One resulting practice of depositaries which has come to the Commission's attention is that of lending deposited securities. Securities lending by depositaries appears to take two forms. In the first form, straight lending of deposited securities is made in return for collateral, the borrower's commitment to return deposited securities at a later date, and a fee. Such lending, reportedly, is limited. The other form of lending practiced by depositaries occurs when an ADR is issued and delivered to a person who has not yet delivered to the depositary the "deposited" securities. This "pre-release lending," which appears to be an industry-wide practice, often occurs where the securities to be deposited have been purchased in a foreign market but clearance and settlement have not taken place yet. Although the effect of this type of lending may be similar to that of straight lending, pre-release lending appears to be more common.

Certain depositaries have established guidelines as to the amount of pre-release lending they will undertake, *e.g.*, 15% to 20% of the total amount of ADRs outstanding in the facility, although such limitations are not absolute. At least some depositaries undertake pre-release lending only upon the deposit of collateral that is marked to market daily and after certification from the borrower that it has purchased the securities and will deposit them upon settlement. While some depositaries provide the right to demand the return of an ADR issued in a pre-release lending situation (either after a pre-determined period or after notice), few appear to prevent the borrower from transferring the pre-released ADR or withdrawing the not yet "deposited" security before it has been deposited. Withdrawal requests in that case presumably are satisfied by delivery of a security deposited by another ADR holder.

Since no regulatory limitations are imposed on the amount of ADRs that may be issued on a pre-released basis, pre-release lending can reach levels far in excess of the self-imposed guidelines described above. For example, according to some depositaries, pre-release lending has reached on some occasions a level greater than 100% of the amount of shares deposited in a facility. As a result, it is possible that investors who have in fact delivered securities to a depositary would be unable to withdraw them from a facility because the depositary had delivered all deposited securities to holders surrendering pre-released ADRs. Although the depositary may have the right under pre-release arrangements to foreclose on collateral securing the pre-release loan and to demand delivery of deposited securities from the person to whom it made the pre-release loan, the exercise of such remedies does not assure the investor seeking withdrawal of deposited securities that he or she will be able to receive prompt delivery of such securities as required by Form F-6.

D. Regulatory Treatment

1. Securities Act Registration

For purposes of the Securities Act, ADRs and deposited securities are considered separate securities, each subject to the registration requirements unless an exemption is available. When a foreign issuer or its affiliate is selling securities to the public in the United States, the securities must be registered with the Commission.[42] While the issuer may choose to sell such securities in ADR form, the use of ADRs to facilitate a public offering does not affect the registration requirement with respect to the foreign issuer's securities. As a result, when there is a public offering of securities in ADR form, both the ADRs and the deposited securities must be registered.

ADRs also may be issued, however, when neither the issuer nor an affiliate is engaging in a public offering of the deposited securities.[43] In that case, registration of the deposited securities is not required. For example, when a person who purchased securities of a foreign issuer in the secondary markets decides to deposit them in an ADR facility, an exemption is ordinarily available for that transaction with respect to the deposited securities.[44] In contrast, the issuance of ADRs upon such a deposit constitutes a public offering of the ADRs which must be registered.

In 1983, the Commission adopted Form F-6 specifically for the registration of ADRs under the Securities Act.[45] Form F-6 provides that the issuer of the ADRs for purposes of the Securities Act is the "legal entity created by the agreement for the issuance of ADRs."[46] Under Form F-6, the depositary signs the registration statement on behalf of that entity, but a depositary signing in that capacity is not deemed to be an issuer, a person signing the registration statement or a person controlling the issuer. If the registration statement relates to a sponsored facility, it must also be signed by the issuer of the deposited securities, its principal officers, a majority of its board of directors and its authorized representative in the United States.

a. *Eligibility requirements for use of Form F-6.* To register ADRs on Form F-6, the deposited securities must be registered or exempt from registration under the Securities Act.[47] In addition, an ADR holder must be able to withdraw the deposited securities evidenced by its ADR at any time, subject only to certain enumerated limitations.[48] Further, Form F-6 may be used for the registration of ADRs only if, as of the filing date of the Form F-6 registration statement, the issuer of the deposited securities either is (or is concurrently becoming) a reporting issuer under the Exchange Act, or is exempt from the reporting requirements of the Exchange Act by virtue of rule 12g3-2(b) thereunder. Rule 12g3-2(b) provides an exemption from the reporting requirements under the Exchange Act for foreign private issuers that furnish to the Commission material information that they publicly file or publish abroad pursuant to law or stock exchange requirements or that they distribute to their security holders.[49]

This last eligibility requirement was not a condition to use of prior forms for the registration of ADRs.[50] As a result, in recognition of the immediate competitive disadvantages to depositaries that would be unable to duplicate previously registered unsponsored facilities, the Commission's staff issued a conditional waiver with respect to such requirement shortly after the adoption of Form F-6. Such waiver applied only to ADR facilities duplicating facilities that had been established prior to the adoption of Form F-6.[51] This waiver was withdrawn in September 1989 because the Commission staff believed that sufficient time had passed to eliminate the earlier concerns.[52] At the request of depositaries claiming that those concerns continued to exist and that market disruptions would occur in the absence of a waiver, the Commission's staff created a new waiver based upon a depositary providing to the Commission on a continuous basis information regarding the issuer of the deposited securities that is substantially equivalent to that which would be provided by the issuer under rule 12g3-2(b).[53]

b. *Disclosure Required by Form F-6.* Pursuant to Form F-6, the registrant must provide in the prospectus a description of the ADRs being registered.[54] The registrant also must disclose the availability at the Commission's offices of information about the issuer of the deposited securities pursuant to the periodic reporting requirements of the Exchange Act or pursuant to the Rule 12g3-2(b) exemption.[55] In addition, all fees and charges imposed on the ADR holder must be described.[56] The depositary may omit such fee information if it provides a general description of the fees and undertakes to provide a separate fee schedule upon request.[57] The disclosures required by Form F-6 are virtually always set forth in the ADR certificate, and such certificate serves as a prospectus. In addition, certificates for unsponsored ADRs contain the full contractual terms of the ADRs, not just a description of such terms. The ADR certificate is, in essence, a contract between the depositary and each holder of ADRs represented thereby, as well as a prospectus.[58]

Among the exhibits that must be filed with a Form F-6 registration statement are the deposit agreement (if any), other agreements relating to the custody of the deposited securities or the issuance of the ADRs, material contracts between the depositary and the issuer of the deposited securities relating to such securities, and an opinion of counsel regarding the legality of the ADRs.[59] In addition, a depositary must furnish the name of each dealer who has deposited shares against the issuance of ADRs within the past six months, proposes to deposit shares, or participated in the creation of the ADR plan of issuance.[60]

2. Exchange Act Reporting

When a foreign private issuer lists ADRs on a national securities exchange or has ADRs quoted on NASDAQ, it becomes subject to the periodic reporting requirements under the Exchange Act.[61] As a result, such issuer

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[42] ADRs are registered on Form F-6 and the deposited securities are usually registered on Form F-1, F-2, F-3 or F-4.

[43] In 1990, approximately 232 initial registration statements on Form F-6 were filed to register ADRs that did not involve the concurrent registration of deposited securities, and approximately 6 such registration statements were filed that did involve the concurrent registration of deposited securities.

[44] See *e.g.*, section 4(1), 15 U.S.C. 77d(1), which exempts from registration transactions by persons other than the issuer, underwriter or dealer, and Section 4(3), 15 U.S.C. 77d(3), which exempts from registration certain transactions by dealers following a distribution.

[45] Securities Act Release No. 6459 (March 24, 1983) [48 FR 12348]. Form F-6 consolidated and replaced former Forms S-12 and C-3, which also were forms adopted specifically for the registration of ADRs.

[46] Form S-12 also provided that the issuer of ADRs for purposes of the Securities Act would be the legal entity created by the agreement for the issuance of the ADRs. Securities Act Release No. 3593 (November 17, 1955) [20 FR 8066].

[47] Form F-6, General Instruction I.A.(2).

[48] Form F-6, General Instruction I.A.(1). The ability to withdraw the deposited securities may be limited only by: (i) Temporary delays caused by closing the transfer books or the deposit of shares in connection with voting at a shareholders' meeting or the payment of dividends; (ii) payment of fees, taxes or similar charges; and (iii) compliance with laws relating to ADRs or the withdrawal of deposited securities.

[49] 17 CFR 240.12g3-2(b).

[50] Form F-6, General Instruction I.A.(3). Under former Form S-12, there were no requirements intended to assure that the issuer of the deposited securities would make available to ADR investors current information with respect to its business and operations. Former Form S-12 required that the latest available annual report to stockholders of the issuer of the deposited securities be submitted as an exhibit to registration statements on such form. In addition, depositaries were required to undertake to furnish to the Commission copies of stockholder reports and other communications from the issuer of the deposited securities received by such depositaries in their capacity as holders of the deposited securities.

[51] Division of Corporation Finance staff letter to ADR depositaries (Dec. 30, 1983). Included in the conditions for the waiver were requirements that: (i) The duplicating depositary make reasonable efforts to cause the issuer of the deposited securities to comply with rule 12g3-2(b) and so represent in the Form F-6 registration statement, (ii) the duplicating depositary furnish to the Commission whatever information it received as holder of the deposited securities and so undertake in the Form F-6 registration statement, (iii) unless at that time General Instruction I.A.(3) was met, the waiver terminate and the remaining shares in the duplicating facility be deregistered at the time of exhaustion of the securities registered in the duplicated facility (*i.e.*, the time when all securities registered under such facility have been issued) and the duplicating depositary so undertake in the Form F-6 registration statement, and (iv) rule 466 [17 CFR 230.466] not be used in connection with the F-6 registration statement.

[52] Division of Corporation Finance staff memorandum to ADR depositaries (Sept. 28, 1989).

[53] See Security Pacific National Trust Company (Mar. 28, 1990) and Chemical Bank (Nov. 28, 1990). Other conditions for the waiver were requirements that: (i) The duplicated facility have been established prior to the adoption of Form F-6 and not be exhausted, (ii) the depositary make certain specified efforts to have the issuer of the deposited securities register its securities under the Exchange Act or establish the Rule 12g3-2(b) exemption which then result in the refusal of such issuer to do so, (iii) the ADR certificate disclose the above matters and that the depositary is furnishing certain information to the Commission, (iv) Rule 466 not be used in connection with the F-6 registration statement and (v) the depositary undertake to deregister unsold ADRs when the duplicating facility becomes exhausted. The staff has temporarily eliminated the conditions relating to exhaustion pending the Commission's review of ADRs. See Chemical Bank (Sept. 24, 1990).

[54] See Form F-6, Item 1. The description must comply with Item 202(f) of Regulation S-K [17 CFR 229.202(f)] which requires disclosure of the terms of deposit, including procedures for voting, dividend collection and distribution, transmission of notices, reports and proxy soliciting materials, and restrictions upon the right to withdraw and deposit the underlying securities.

[55] Form F-6, Item 2.

[56] Form F-6, Item 1. The type of service for which a fee is charged, and the amount and recipient of such fee must be described. Regulation S-K, Item 202(f)(3) [17 CFR 229.202(f)(3)].

[57] Form F-6, Item 4(c) and Instruction I.B. Former Form S-12 required the depositary to print the fee schedule on the ADR. The Commission revised the requirement to facilitate changes in fees. Securities Act Release No. 6459, *supra* n. 50. ADR holders must be notified thirty days in advance of any change in fees.

[58] In the case of sponsored facilities, the deposit agreement constitutes the contract between the issuer of the deposited securities, the depositary and the holders of ADRs. ADR holders are deemed to have agreed to all terms in the deposit agreement by their acceptance and holding of ADRs.

[59] Form F-6, Item 3.

[60] Form F-6, Item 3. Pursuant to Item 4 of Form F-6, the depositary must undertake to update this information semi-annually.

[61] Section 13(a) of the Exchange Act, 15 U.S.C. 78m(a). When ADRs are listed on a national securities exchange, both the ADRs and the deposited securities are required to be registered under section 12(b) of the Exchange Act, 15 U.S.C. 78l(b). When ADRs are to be quoted on NASDAQ, under Form F-6 and Rule 12g3-2(d)(3), only the deposited securities are required to be registered under Section 12(g) of the Exchange Act, 15 U.S.C. 78*l*(g). In both cases, such registration gives rise to the periodic reporting requirements.

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will be required to file annual reports in accordance with the Commission's Form 20–F (which requires financial statements reconciled to U.S. generally accepted accounting principles) and to submit other materials to the extent such materials are required to be prepared pursuant to home market regulations. When a foreign private issuer has ADRs traded in the OTC market, it may either (a) comply with the periodic reporting requirements or (b) establish and maintain an exemption from such requirements by furnishing to the Commission in accordance with rule 12g3–2(b) such annual reports, shareholder communications and other materials as are required to be prepared pursuant to home market regulations. So long as the ADRs are not listed on a U.S. securities exchange or quoted on NASDAQ and so long as an issuer maintains its exemption under rule 12g3–2(b), a sponsored ADR facility will not by itself result in a foreign issuer having to comply with the periodic reporting requirements.[67]

Most foreign private issuers, whether or not subject to the periodic reporting requirements, are exempt from the Commission's proxy regulations,[68] and their directors, officers and 10 percent shareholders are not subject to the stock ownership reporting requirements and short-swing profit recapture provisions.[69]

Any foreign or U.S. person who acquires, either directly or through ADRs, more than five percent of the equity securities of a foreign issuer that is subject to the periodic reporting requirements must report such acquisition to the issuer and the Commission and must otherwise comply with the Commission's regulations under sections 13(d) and 13(g) of the Exchange Act.[70] For purposes of calculating beneficial ownership of securities for these purposes, ADRs are not considered a separate class of equity securities. A reporting obligation under section 13(d) is determined by ownership of the class of deposited securities, including ownership of those securities through ADRs. Any foreign or U.S. person who makes a tender offer for ADRs or deposited securities of a reporting foreign issuer is subject to the Commission's tender offer regulations.[71] Acquisitions of and tender offers for securities of foreign private issuers which have established and maintain the exemption under rule 12g3–2(b), or which are reporting solely pursuant to section 15(d) of the Exchange Act, are not subject to such regulations.

[67] Whether or not a sponsored or unsponsored ADR facility for an issuer's securities exists, a foreign private issuer may become subject to the periodic reporting requirements under the Exchange Act if it has not established and maintained an exemption under Rule 12g3–2(b) and it has more than 500 shareholders worldwide, 300 or more shareholders in the United States, and $5 million in total assets worldwide. Rules 12g–2 and 12g3–2(a), 17 CFR 240.12g–2 and 240.12g3–2(a).

[68] Section 14(a) of the Exchange Act, 15 U.S.C. 78n(a).

[69] See Section 16 of the Exchange Act, 15 U.S.C. 78p. Rule 3a12–3, 17 CFR 240.3a12–3. Canadian foreign private issuers are not always eligible for such exemption. The Commission has proposed extending this exemption to all Canadian foreign private issuers. Securities Act Release No. 6879 (Oct. 22, 1990) [55 FR 45898, 45906].

[70] 15 U.S.C. 78m(d) and 78m(g).

[71] Sections 13(e), 14(d) and 14(e) of the Exchange Act, 15 U.S.C. 78m(e), 78n(d) and 78n(e).

III. Request for Comment

A. Are Any Changes Necessary or Appropriate to the Registration Process?

There follows three principal areas of inquiry in relation to the existing registration process for ADRs under the Securities Act. First, is the substantive disclosure required by Form F–6 sufficient for the protection of investors? Second, should depositaries and/or issuers of deposited securities be required to assume responsibility for the disclosures in a Form F–6 registration statement and to accept certain liabilities under the Securities Act in respect thereof? Third, what information regarding ADRs, if any, should investors receive or have access to in connection with purchases of ADRs, and which market participants should be responsible for the provision or continued holding of such information?

As to each of these principal areas, the Commission is concerned that commenters address: (1) The effectiveness of disclosure (as presently required or as proposed by the commenters to be amended) vis-a-vis substantive regulation to achieve the results suggested by the commenters, (2) the impact on characteristics of the ADR market (as developed to date or as proposed by the commenters to be developed), particularly liquidity, ease of entry, competitiveness, and breadth of participation in the ADR market, and (3) the costs, and the allocation of costs among market participants, added to or removed from the ADR market as a result of the commenters' suggestions.

1. Registration Under the Securities Act

a. *Information about the issuer of the deposited securities.* As presently structured, the prospectus contained in a Form F–6 registration statement need disclose only information regarding the depositary arrangement. No information about the issuer of the deposited securities (other than its identity) need be included in the prospectus. However, as previously noted, Form F–6 requires that the issuer of the deposited securities be reporting under the Exchange Act or furnishing to the Commission certain information it makes public in its home country.[72] Comment is requested as to whether information about the issuer of the deposited securities should continue to be made indirectly available to investors through the Form F–6 eligibility requirement or whether information should be made directly available to investors by a requirement that it be contained in the prospectus itself. If the latter is required, what type of information should be provided, and would incorporation by reference to material available through the Commission be appropriate? What would be the advantage of such incorporation by reference as compared to reliance on the Form F–6 eligibility requirement? Commenters should estimate the cost of provision of information for direct F–6 availability or (if additional cost is involved) for incorporation by reference.

b. *Information about the deposited securities.* Form F–6 does not require prospectus disclosure of information regarding the deposited securities. While procedures for passing through voting and other rights are required to be disclosed, a description of such rights with respect to the deposited securities is not specifically required. For instance, information regarding limitations on foreign ownership of deposited securities, foreign currency exchange controls and other limitations affecting ADR holders are not items of disclosure required by Form F–6. Such disclosure may currently be available from other sources. For example, where the deposited securities are being registered concurrently under the Securities Act, investors would receive a prospectus that includes such disclosure. Such information also may be available through the Commission in a document filed under the Exchange Act.

Comment is requested regarding whether Form F–6 should be amended so that the rights arising from ownership of the deposited securities must be disclosed when such disclosure is not included in other documents filed with or submitted to the Commission. If so, what information about the deposited securities should be required by Form F–6?

[72] See *supra* n. 54 and accompanying text.

c. *Sponsored and unsponsored facilities.* Form F–6 disclosure requirements do not vary based upon whether the ADR facility is sponsored or unsponsored. Comment is solicited regarding whether the involvement or non-involvement of the issuer of the deposited securities should be prominently disclosed in the ADR and whether the consequences of such involvement or lack thereof should be disclosed. Should a higher degree of information regarding the deposited securities and their issuer be required if such issuer participates in the formation of the facility, regardless of whether a public offering of the deposited securities is being undertaken? Should summary information about other existing facilities relating to the same class of deposited securities be disclosed in the F–6 or in the ADR?

d. *Rights of ADR holders.* Currently depositaries [73] have few absolute obligations with respect to ADR holders. In a typical unsponsored ADR facility, the depositary has complete discretion with respect to the exercise of voting rights. The depositary is not obligated to notify ADR holders about any meeting of holders of the deposited securities or to distribute to ADR holders the proxy information, annual reports or other materials it receives from the issuer of the deposited securities. While Form F–6 mandates that the depositary undertake to make available at its principal office information that it receives as record holder of the deposited securities, the depositary does not agree to distribute to unsponsored ADR holders any shareholder communications.

Should Form F–6 continue to allow registration of ADRs whose depositaries are obligated to afford holders only the right of prompt withdrawal of the deposited securities, or should it be amended to allow registration of ADRs only when ADR holders are granted certain rights in addition to the right of prompt withdrawal? Commenters favoring additional requirements for registration should provide examples of detriment to ADR holders, and all commenters should estimate the anticipated impact, if any, on continuous development of the ADR market as a result of their positions. Comment is also solicited with respect to whether the Commission should mandate that ADR holders be given the opportunity to exercise voting rights with respect to the deposited securities. If so, in what manner should the depositary be required to facilitate the ADR holders' voting? To what extent would the imposition of such requirements deter issuers from sponsoring ADR facilities or deter entities from acting as depositaries? Also, should the depositary be required to distribute all shareholder communications to ADR holders? To what extent are shareholder communications provided only in a foreign language, does this result in problems or concerns for ADR holders, and what action, if any, should the Commission take to address such problems or concerns? Again, commenters favoring imposition of additional requirements on depositaries should provide examples of benefit or detriment to ADR holders, should estimate the cost of fulfilling such requirements, and should suggest how such cost should be allocated among market participants, and all commenters should estimate the anticipated impact on continued development of the ADR market as a result of their positions.

Comment is also sought as to the differences between the structure, operation and regulation of ADRs and the structure, operation and regulation of International depositary receipts, Continental depositary receipts, European depositary receipts and other foreign counterparts of ADRs.

e. *Distributions.* Generally, after deductions for fees, expenses and taxes, an unsponsored ADR holder, as the beneficial owner of the deposited security, is entitled to distributions of cash, securities and other property with respect to the deposited securities if such distributions are consistent with the Securities Act and other laws. With respect to distributions of rights, some unsponsored facilities provide that warrants for such rights will be distributed if such distribution is consistent with applicable law, while other unsponsored facilities leave such distribution entirely to the discretion of the depositary. When non-cash distributions are received by the depositary with respect to the deposited securities, if the depositary determines that it is not feasible or lawful to pass through such distribution to ADR holders in kind, the depositary may either sell the securities or property so received and distribute the proceeds to ADR holders, or retain for the benefit of ADR holders the securities or property received. Depositaries generally have complete discretion as to the action taken.

With respect to the blending of distribution payments to ADR holders by clearing agencies, as described above, [74] comment is solicited with regard to whether such blending has damaged or benefitted ADR holders in the past or whether such blending should be regulated, with suggestions as to the method, cost and allocation of cost of regulation. For example, should different CUSIP numbers for the ADRs of each depositary be required? Should clearing agencies record ownership interests in ADRs on a depositary-by-depositary basis and pass through all distributions to ADR holders based on the amount paid by the depositary issuing each ADR? Alternatively, should the ADR facility simply disclose the potential for differences in distributions and the possibility of blending? Commenters are requested to address these issues both in terms of existing duplicate unsponsored facilities and in terms of unsponsored facilities that duplicate sponsored facilities. Commenters should also address the impact of their positions in terms of liquidity in the ADR market.

f. *Fees and expenses.* The disclosure required by Form F–6 in connection with the fees and expenses charged by depositaries [75] is usually stated in terms of the maximum fee that could be charged. From discussions with depositaries and others, it appears that in practice the fees for deposit and withdrawal of deposited securities vary widely from no fee at all to the stated maximum fee. Particularly in the case of deposits and withdrawals through brokers, fees are often negotiated on a case-by-case basis. Further, it appears that when dividends or other distributions are paid, there is no disclosure of the currency conversion rate used or the fees and expenses deducted by the depositary or others before payment. As a result of the general nature of the depositaries' fee disclosure or the absence of such disclosure, ADR holders may have limited awareness of both the types and the amounts of charges.[76] Comment is

[73] In a typical sponsored facility, the depositary undertakes at the request of the issuer of the deposited securities to arrange for the exercise of voting rights, the distribution of proxy information and the forwarding of shareholder communications to the ADR holders.

[74] See *supra* text accompanying nn. 44–46.

[75] See *supra* section II.D.1.b. for a description of the disclosure requirements of Form F–6.

[76] See, *e.g.*, R. Piper, Euromoney Stops the Rip-Off, Euromoney at 47 (Feb. 1989). According to this article, at least in unsponsored facilities, a fee is charged at most stages of the process of remittance of cash dividends from the custodian to the depositary (which allegedly charges for currency conversion and for handling the payment, while also benefiting from holding the money interest-free for 10 to 14 days), from the depositary to DTC, from DTC to the brokers who are the record holders, from the brokerage house to its local branch, and from the branch to the beneficial holder or its nominee.

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sought as to the extent to which such rates, fees and expenses are not known to ADR holders. Comment also is solicited on whether there is a need for more specific prospectus or other disclosure about fees. If more disclosure is deemed necessary, should the focus be on identification of every event that would result in a fee or expense deduction, or should the disclosure also include more specific estimates of the amount being charged? To the extent that such fees or charges are imposed by persons other than depositaries, should the depositaries be responsible for disclosing them? What consideration should be given to the practice of individual negotiation of fees?

g. *Depositaries' semi-annual reports.* The Commission also is seeking comment with respect to the semi-annual reports depositaries undertake to furnish to the Commission beginning six months after the effective date of a Form F-6 registration statement.[77] Information regarding the issuance and retirement of ADRs (among other things) is required in such reports. An examination of Commission records with respect to these reports suggests an inattention to these undertakings.[78] The information also appears to be of limited utility.[79]

Comment is solicited with respect to whether the Commission should continue to collect information about the operation of ADR facilities following effectiveness of the registration statement, and with what frequency. Is it appropriate or necessary for the Commission to monitor the number of ADRs issued by depositaries when depositaries are themselves responsible for maintaining issuance and withdrawal records? Is there other information easily available to depositaries and useful to ADR holders that the Commission should collect?

h. *Information regarding the issuer in grandfathered ADR facilities.* The Commission's staff has waived the Form F-6 information provision eligibility requirement for new ADR facilities that duplicate a facility created prior to adoption of Form F-6,[80] thereby expanding the number of facilities where investors have no assured access to information about the issuer of the deposited securities.[81] Commenters are requested to address how the Commission should balance the competing interests of furthering investor protection by providing for availability of information about the issuer of the deposited securities and accommodating depositaries' desire to establish facilities to compete with those created prior to adoption of Form F-6 that imposed an information availability requirement. Should the Commission discontinue the waiver of the Form F-6 eligibility requirement? Should the waiver be provided if the depositary or one or more other persons or entities interested in the facility undertakes to provide information substantially equivalent to that which an issuer would provide under rule 12g3-2(b)? Are there circumstances, as (for example) where the extent and transparency of the principal markets for the deposited securities overseas reflect issuer-oriented information that is widely available to U.S. investors even if not formally provided to the Commission, in which the waiver should be provided regardless of the absence of such an undertaking?

2. Should Depositaries or Issuers Assume Responsibility for the Registration Statement?

Market participants appear to have accepted the arrangement under which the legal entity created by the agreement for the issuance of ADRs is deemed the "issuer" of the ADRs and the registrant under Form F-6. In essence, no person or entity has the liability of an issuer under Section 11.[82] Does it continue to be appropriate that neither the depositary nor the issuer of the deposited securities assumes responsibility for the content of the registration statement? Should the issuer of the deposited securities expressly assume liability as "issuer" of the ADRs if the issuer of the deposited securities sponsors the ADR program? Should the depositary assume section 11 liability, either as "issuer" or as another signatory to the registration statement, for the entire registration statement or for specified portions of the registration statement? Commenters favoring change should give examples of detriment to ADR holders from the absence of such responsibility. Would full or partial assumption of liability significantly affect the manner in which issuers of deposited securities and depositaries approach the ADR marketplace? Is there a cost associated with such assumption of liability, and how is that cost anticipated to be allocated among participants in the ADR market?

3. What Information Should ADR Investors Receive?

It appears that purchasers of ADRs do not receive uniform levels of information regarding their investments. For example, some investors may not be aware that they have purchased ADRs in lieu of direct purchases of the securities of a foreign issuer nor may they be aware of the differences among duplicate facilities.[83] Some purchasers may not be fully apprised of the factors that determine the price of an ADR. Moreover, regarding the fees that influence the pricing of ADRs, certain institutional investors may be able to obtain ADRs at a lower cost than other investors, with the price of the ADR to such institutional investors reflecting all or a portion of the rebates that a broker-dealer may receive from a depositary.

Reportedly, under certain circumstances, broker-dealers may receive a discount either on the fees normally charged for the issuance of ADRs or on other fees associated with an ADR facility. Further, there apparently have been instances when depositaries have paid broker-dealers to deposit foreign issuer shares into their particular facilities instead of a competing facility for the same shares. The Commission is soliciting information regarding how frequently and under what circumstances depositaries make such concessions on fees, the dollar amount of such concessions, and whether such concessions are made to market participants other than broker-dealers. Further, the Commission seeks comment on the extent to which such concessions are calculated into or otherwise affect the purchase and sales prices of ADRs quoted and charged to investors and the frequency and manner in which investors are informed of these concessions. Finally, the Commission seeks comment on whether current practices regarding fee concessions are appropriate; is there any need for regulation by the Commission or a self-regulatory organization? If such regulation is deemed necessary or appropriate, the nature of such regulation should be described. Is the proposed entry of additional depositaries into the marketplace, and the proposed duplication of ADR facilities, likely to affect the competitive environment of the ADR marketplace in a manner detrimental or beneficial to ADR holders with respect to these matters?

Should ADR investors routinely be given or be entitled to receive either specific or general information regarding ADRs and the ADR marketplace? If so, what forms of written or oral disclosures should be required to be made or to be available to investors, which characteristics of ADRs should be the subject of such disclosure, and which ADR market participants should be responsible for the dissemination of such disclosure? Have there been examples of market failure or market adaptation arising out of the absence or presence of disclosure information? Would it be appropriate to differentiate between investors in terms of investment expertise or other criteria in determining the form and content of the disclosure to be provided? Commenters should estimate the additional cost inherent in their positions, and should suggest how such cost is likely to be allocated among market participants.

B. Should the Exchange Act Treatment of ADRs Be Modified?

Under current regulations, ADRs that are traded on NASDAQ or in the OTC market are not necessarily subject to a separate reporting requirement under the Exchange Act,[84] but ADRs that are listed on a national securities exchange are subject to such a separate requirement.[85] There appears to be little practical significance in this separate requirement. Although listed ADRs are not the securities of the foreign issuer but rather of the legal entity created by the depositary, it appears to be common practice for the reports of foreign issuers to satisfy the reporting requirements for both the deposited securities and listed ADRs.

The Commission is soliciting comment on whether the reporting exemption applicable to non-listed ADRs should be extended to listed ADRs. Alternatively, the exemption applicable to non-listed ADRs could be eliminated, and the Commission could require periodic reporting with respect to all ADRs. In this connection, comment is requested with respect to whether information other than that currently required to be included in depositaries' semi-annual reports should be required to be included in such reports.[86] If periodic reporting is required, should depositaries, issuers of deposited securities or some other persons be responsible for compliance, and should different reporting requirements be applicable to sponsored and unsponsored facilities?

C. Duplication of Facilities

A great deal of concern has been expressed over the potential impact on the ADR market of duplication of sponsored facilities by unsponsored facilities. After preliminary study, it appears to the Commission that the unsponsored duplication of sponsored ADR facilities would not, in and of itself, create a risk of market disorder and investor confusion different from that presented by duplication of unsponsored ADRs, provided the unsponsored ADRs provide rights equivalent to those provided by the sponsored ADRs and are viewed by the market as fungible. The basic issues to be addressed therefore seem to be: what would constitute non-fungible ADRs, what are the consequences to the market of the development of non-fungible ADRs for the same deposited security, and what are the responsibilities of depositaries, market intermediaries, the Commission and self-regulatory organizations in dealing with non-fungible securities.

In light of the sharp disagreement among ADR market participants, comment is requested regarding whether a sponsored facility and an unsponsored facility for the same deposited security would inherently result in non-fungible securities, or whether the duplicating facility could be structured so that the material terms of deposit, such as timing and amount of dividends, distribution of shareholder communications and pass-through of voting rights and securities distributions, are so similar that sponsored and unsponsored ADRs should be viewed by investors as, and should be traded, cleared and settled as, fungible securities. Should exchange or NASDAQ trading of a sponsored ADR be viewed as a *per se* material difference that would render the unsponsored ADR trading in a different market non-fungible? [87] Are there other examples of material differences in rights or privileges that would result in non-fungibility, such as: Access to a closed foreign currency exchange market only for holders of the sponsored ADRs, extension of a dividend reinvestment plan only to holders of the sponsored ADRs, and dividend withholding benefits under foreign tax laws only for holders of the sponsored ADRs? Are there limitations imposed by law on foreign ownership of an issuer's securities that could result in unique aspects of a sponsored facility that would constitute material differences from an unsponsored one and thus require non-fungible treatment?

The Commission requests comment on what other factors would bear on whether duplicate facilities result in fungible or non-fungible ADRs, whether sponsored or unsponsored. Could the identities or practices of the depositaries potentially be a material difference causing non-fungibility? While the choice of any one of the depositaries currently active in the ADR market might not result in such a determination, absent eligibility requirements for persons wishing to act as ADR depositaries is it likely that an assessment of the relative financial stability of the depositaries could become a factor in the determination?

ADR market participants also disagree on how the unsponsored duplication of sponsored ADRs (on either a fungible or non-fungible basis) would affect the market. Comment therefore is being solicited with regard to what the effects on the ADR market would be if such duplication proceeded, including implications (positive or negative) for liquidity, ease of entry, competitiveness and breadth of participation in the ADR market. Does the effect differ based upon whether the duplicate ADRs are fungible? What effect would either fungible or non-fungible duplication have on foreign

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[77] See item 4(a) of Form F-6.

[78] A staff survey of such reports for the period from 1987 through 1990 indicated timely compliance for less than 20% of registered ADR facilities.

[79] The reports must include information regarding: The number of ADRs issued and the number of ADRs retired during the period covered by the report, the amount of ADRs outstanding and the number of ADR holders as of the last day of such period, and the name of each dealer known to be depositing securities to acquire ADRs. None of this data, however, is reported on a cumulative basis.

[80] A recent staff survey indicates that approximately 43% of the foreign issuers with securities represented by ADRs are not reporting or otherwise providing current information to the Commission.

[81] It appears that approximately 25% of foreign issuers with securities currently represented by ADRs had sponsored or unsponsored facilities established prior to the adoption of Form F-6.

[82] "This altogether laudable demonstration of administrative flexibility means that nobody has the liability of an 'issuer' under section 11 so far as Form F-6 is concerned." Loss & Seligman, Securities Regulation, p. 775, n. 74 (3d ed. 1989).

[83] See *supra* text accompanying nn. 44–46.

[84] ADRs (other than listed ADRs) are exempt from the registration requirements under section 12(g) of the Exchange Act. Rule 12g3-2(c) [17 CFR 240.12g3-2(c)]. Consequently, such ADRs are also exempt from the reporting requirements under the Exchange Act. A reporting obligation may arise under Section 15(d) of the Exchange Act [15 U.S.C. 78p(d)], although such obligation is suspended if the depositary furnishes all semi-annual reports required under Form F-6. Rule 15d-6 [17 CFR 240.15d-3].

[85] Under section 12(b), all securities listed on a national securities exchange are required to be registered under the Exchange Act and are thus subject to the reporting requirements under the Exchange Act. There is no exemption similar to rule 12g3-2(c) for listed ADRs.

[86] See *supra* Section III.A.1.g.

[87] Section 12(f) of the Exchange Act provides a legal basis for rulemaking to govern the duplication on a non-fungible basis of a sponsored facility whose ADRs and deposited securities are quoted on NASDAQ or listed on an exchange. That section provides generally that it is unlawful for an issuer with a class of securities registered under section 12 to issue any securities in a form which contravenes such rules and regulations as the Commission may prescribe as necessary or appropriate for the prompt and accurate clearance and settlement of transactions in securities.

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issuers that currently maintain sponsored facilities or that may in the future enter the U.S. capital markets through a sponsored facility?

What steps, if any, should be taken by the Commission and the self regulatory organizations to address the issues raised by duplicate non-fungible ADRs for the same underlying security? Should duplicate unsponsored ADRs that are not fungible with sponsored ADRs trade in the same U.S. securities market (i.e., on the same securities exchange, on NASDAQ or in the OTC market) as the sponsored ADRs? [88] What disclosures are necessary or appropriate in a registration statement relating to such non-fungible duplicate ADR's?

Additionally, should the Commission adopt requirements as to how non-fungible duplicate ADRs must be distinguished? One such potential method would be for the non-fungible ADRs to bear different CUSIP numbers. In such case, ADRs of one depositary would not be deemed "good delivery" for ADRs of another. The use of different CUSIP numbers could bring with it some disadvantages. While the CUSIP numbers indicate differences, they do not give an indication of the nature of such differences. In addition, many market participants have expressed a strong belief that requiring different CUSIP numbers would itself stop trading of one or both of the facilities' ADRs as well as create an undesirable level of market confusion, particularly in the area of clearance and settlement. They do not believe the confusion would be mitigated in practice by informing ADR investors of the differences between facilities. Comment is solicited with respect to whether the use of different CUSIP numbers would result in market confusion, and if so, the most likely sources of such confusion.

Under the CUSIP number method of distinguishing duplicate facilities, the question arises as to who should determine fungibility and on what basis. Should a foreign issuer be able to insist on a different CUSIP number or other means of assuring non-fungibility for a sponsored facility?

The required use of different ADR multiples for duplicate facilities has been suggested as another method for distinguishing non-fungible facilities. While different multiples may distinguish such facilities for some purposes, this alternative may not distinguish them in all cases. [89] Clearing agencies at present distinguish between securities only on the basis of CUSIP numbers. If duplicate ADRs had different multiples but nonetheless had the same CUSIP number, difficulties could arise because clearing agencies could not determine which ADR a holder owns. In cases where depositaries pay different dividend amounts, or otherwise treat ADR holders differently, it may not be possible for clearing agencies to determine which rights apply to specific holders. Comment is solicited with regard to alternative methods for distinguishing among non-fungible ADR facilities.

The Commission invites comment on whether investors, broker-dealers, depositaries, clearing agencies, self-regulatory organizations, and issuers would be able to distinguish consistently among non-fungible ADRs for the same deposited security under the CUSIP method or any other alternative. Would they be able to identify the differences between such ADRs?

It appears that the co-existence of duplicate sponsored and unsponsored facilities could give rise to the same processing practices and effects on ADR holders that occur when duplicate unsponsored facilities co-exist, [90] such as the potential need for blending distribution payments and special safekeeping procedures by clearing agencies? If so, should the Commission require duplicating depositaries to adopt procedures to address these concerns? Should the Commission require clearing agencies to establish specific procedures for determining which of their participants own ADRs of a particular depositary where the ADRs of several depositaries have been assigned the same CUSIP number and subsequently different CUSIP numbers are assigned to such ADRs because a material difference resulting in non-fungibility has developed between the ADRs of the various depositaries?

As noted at the outset of this subsection, the issues regarding duplication of ADR facilities appear to apply similarly to unsponsored and sponsored ADR facilities. Traditionally, the market has treated duplicate unsponsored ADR facilities as fungible. However, some market participants have suggested that this may be eroding to some degree. Do material differences in those multiple unsponsored facilities exist such that they should no longer be considered fungible? Are investors adequately protected if these duplicate ADRs continue to be traded as the same security?

Finally, should depositaries, brokers, dealers and clearing agencies be required to include the designation of an ADR as sponsored or unsponsored in the name of the security, including in confirmations and account statements? Are there other responsibilities that depositaries, broker-dealers and clearing agencies should bear with respect to informing the investor community about the non-fungible duplicate ADRs?

D. Should the Commission Regulate the Activities of Depositaries?

There are currently no Commission rules that regulate the conduct or operations of depositaries as such. The relationship between a depositary and holders of ADRs is based on the contract embodied in the ADR certificate (and in the case of sponsored facilities the deposit agreement with the issuer of the deposited securities). As discussed above, other than provisions relating to holders' rights to withdraw deposited securities, the Commission does not require that such contract contain any specific protections or rights in favor of ADR holders. Other regulatory agencies may provide a degree of oversight in respect of the activities of existing depositary banks. In view of the fact that such other regulatory agencies' concerns focus on the protection of constituencies other than ADR investors, and given that unregulated foreign or domestic entities may seek to act as depositaries, is there a need for greater oversight of depositaries' activities? Do certain depositary practices (such as securities lending [91] and discretion as to distributions [92]) have such potential to result in market disruption and investor harm as to justify Commission regulation? Are there examples of disruption or investor harm? What are the likely costs of such regulation, and how are they likely to be allocated among ADR market participants?

There are also currently no Commission rules providing for the qualification or registration of entities

[88] As discussed *infra* at n. 36, some unsponsored facilities are listed on a national securities exchange or are quoted on NASDAQ. The exchanges generally permit only sponsored facilities to be listed. The NASD encourages ADR facilities quoted in NASDAQ to be sponsored. Commenters are requested to address whether such facilities should continue to remain so listed or quoted when the issuer of the deposited securities seeks to establish a non-fungible sponsored facility that will be so listed or quoted.

[89] For instance, how much distinction would be made when an investor wishes to buy ADRs representing 100 deposited shares if one facility has a multiple of 5 and the other facility has a multiple of 10?

[90] See *supra* Section II.C.3.

[91] See *supra* Section II.C.4.

[92] See *supra* Section III.A.1.a.

that act as depositaries. Although the traditional functions of a depositary come within the definition of "transfer agent" under the Exchange Act, [93] and although all entities currently acting as depositaries with respect to publicly traded ADRs are registered with the Commission or other appropriate regulatory agencies as transfer agents, [94] entities which act as depositaries are not necessarily required to be so registered. [95] Thus, under the Commission's regulations, any foreign or U.S. person may act as a depositary, may cause the legal entity to sign and file a registration statement on Form F-6, and may issue ADRs against the deposit of shares.

It appears that the transfer agent functions generally have been performed at least as well for ADRs as they have been performed for other equity securities. This appears true at least in part because the existing depositaries are large banks that are transfer agents familiar with those functions and not because of any legal requirement. The Commission requests comment on the need to require that ADRs be handled by a registered transfer agent. Many of the same concerns that led to registration and regulation of transfer agents under the Exchange Act could potentially be raised with respect to transfer agents for ADRs. [96] For example, transfer delays can lead to delay in transaction processing, loss of records and positions, financial loss, and loss of investor confidence in the markets. [97]

The Commission requests that commenters address whether the Commission should directly regulate depositaries. In particular, the Commission seeks commenters' views with respect to the following matters. Should the Commission regulate the operations or practices of depositaries? Should the Commission require depositaries to be registered as transfer agents? Alternatively or supplementally, should the Commission develop qualification standards or registration procedures applicable to depositaries as such, and if so, what should such standards or procedures be? Should Form F-6 require disclosure of the financial condition of the depositary?

The Commission also solicits comment as to whether any of the securities lending activities of depositaries should be subject to limitation or regulation. Should lending be subject to defined conditions, such as the maintenance of a specified level of collateral consisting of only certain permitted types of liquid securities? Should a distinction be drawn between pre-release lending and other forms of securities lending? Is regulation or limitation needed if full disclosure of the lending practices of the depositary is made in the prospectus?

E. Costs and Benefits of Modifications to the Regulatory System

The Commission invites commenters to provide views and data as to the costs and benefits associated with possible changes discussed herein in comparison to the costs and benefits of the existing regulatory framework for ADRs.

Dated: May 23, 1991.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-12680 Filed 5-29-91; 8:45 am]

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[93] Section 3(a)(25) of the Exchange Act [17 U.S.C. 78c(a)(25)] defines a transfer agent as "any person who engages on behalf of an issuer of securities or on behalf of itself as an issuer of securities in (A) countersigning such securities upon issuance; (B) monitoring the issuance of such securities with a view to preventing unauthorized issuance, a function commonly performed by a person called a registrar; (C) registering the transfer of such securities; (D) exchanging or converting such securities; or (E) transferring record ownership of securities by bookkeeping entry without physical issuance of securities certificates."

[94] Section 17A(c) of the Exchange Act [17 U.S.C. 78q-1(c)].

[95] The registration obligation applicable to transfer agents does not extend to those entities that perform transfer agent functions solely with respect to securities which are not required to be registered under section 12 of the Exchange Act (subject to certain exceptions). As discussed *supra* at nn. 84-85, ADRs that are not listed on a national securities exchange are not required to be so registered. Also, in the case of ADRs which are registered under Section 12, a depositary may avoid registration as a transfer agent if such depositary employs a registered transfer agent to undertake the transfer agency functions with respect to the ADRs issued by such depositary.

[96] In the early 1970s, Congress held extensive hearings to investigate the securities industry's paperwork problems, including transfer problems, and ultimately enacted the Securities Act Amendments of 1975 (Pub. L. No. 94-29, 89 Stat. 97 (1975)), which includes provisions for the registration and regulation of transfer agents and clearing agencies under section 17A. See, *e.g.*, Clearance and Settlement of Securities Transactions, Hearings on S.3412, S.3297, and S.2551 Before the Subcom. on Banking, Housing and Urban Affairs, 92d Cong., 2d Sess. (1972).

[97] See, *e.g.*, Securities Exchange Act Release No. 13636 (June 16, 1977) [42 FR 32404] and Securities Exchange Act Release No. 19860 (June 10, 1983) [48 FR 28231].

[Release No. 34- 29215; File No. S7-6-90]

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Amendment to the National Market System Plan

Pursuant to rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on May 13, 1991, the Options Price Reporting Authority ("OPRA") submitted to the Securities and Exchange Commission ("Commission") an amendment to its National Market System Plan to reflect changes to OPRA's existing News Service Direct Connection Agreement. The Commission is publishing this notice to solicit comments from interested persons on the amendment.

I. Description and Purpose of the Amendment

Previously, all new services have received OPRA data directly from OPRA's processor in New York City, and have paid the related direct access charge. Now, at least one news service has proposed accessing OPRA data indirectly, via a data feed from an OPRA vendor. In order to accommodate such indirect access, OPRA has changed the designation of its former "News Service Direct Connection Agreement" to "News Service Agreement," has added provisions expressly authorizing a news service to receive OPRA data from a vendor, and has adopted a new News Service Pass-Through Fee payable by indirect access new services in lieu of, and equal in amount to, the direct access fee. OPRA has characterized the other amendments to the Agreement as being for purposes of making updating changes or editorial and not substantive in nature.

II. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 553, will be available for inspection and copying in the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549. Copies of such

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filing also will be available at the principal office of OPRA. All submissions should refer to File No. S7–8–90 and should be submitted by June 20, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 22, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–12677 Filed 5–29–91; 8:45 am]

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[Release No. 34–29214; File No. S7–8–90]

Options Price Reporting Authority; Notice of Filing and Summary Effectiveness of Amendment to its National Market System Plan to Establish Fee for Radio Paging Market Data Service and Rider to Vendor Agreement to be Used in Connection with the New Fee

Pursuant to Rule IIAa3–2 under the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on May 9, 1991,[1] the Options Price Reporting Authority ("OPRA") submitted to the Securities and Exchange Commission ("Commission") an amendment to its national market system plan that would establish a new fee for vendors who wish to offer a radio paging market data service, and a rider to OPRA's vendor agreement to be used in connection with the new fee.[2]

I. Description and Purpose of the Amendment

OPRA has authorized the establishment of a fee to be paid by vendors who furnish a radio paging market data service to the customers of radio paging companies or their own customers via text display radio pagers. The radio paging market data service fee is proposed to be established at a monthly rate of $1.00 for each text display paging device that is enabled to receive the service.

The purpose of the new fee is to permit vendors to offer to their customers a service whereby a limited amount of options market data may be transmitted via radio paging companies to text display pagers. Since only limited information can be transmitted to text display pagers as a result of bandwidth constraints, OPRA has determined not to require persons who have access to such pagers to become OPRA subscribers and pay subscriber fees to OPRA. Instead, OPRA intends to charge vendors who offer this service at the monthly rate of $1.00 per device. The fees OPRA will receive on this basis are estimated to be substantially below the aggregate subscriber fees that would be payable if a radio paging market data service could be offered only to OPRA subscribers.

II. Summary Effectiveness of the Amendments

Pursuant to rule 11Aa3–2(c)(4) under the Act, the Commission may, upon publication of notice of the amendment in the Federal Register, summarily put into effect on a temporary basis not to exceed 120 days an amendment to a national market system plan. The Commission must first determine, however, that such action is necessary or appropriate in the public interest, for the protection of investors and maintenance of fair and orderly markets, to remove impediments to and perfect the mechanisms of a National Market System, or otherwise in furtherance of the purposes of the Act. The Commission believes the amendment meets these standards.

The amendment will serve the public interest by increasing the availability of market information to brokers, dealers and investors. Approving it summarily will make information available sooner to vendors that have already expressed an interest in the service and have worked closely with OPRA to develop the fee and the rider that are the subject of the filing. The amendment simply provides an additional means of obtaining OPRA data that customers may elect to receive.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 553, will be available for inspection and copying in the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available at the principal office of OPRA. All submissions should refer to File No. S7–8–90 and should be submitted by June 20, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 22, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–12678 Filed 5–29–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–29216; File No. S7–8–90]

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Amendment to the Dial-Up Market Data Service Rider to OPRA's Vendor Agreement

Pursuant to rule 11Aa3–2 under the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on April 29, 1991, the Options Price Reporting Authority ("OPRA") submitted to the Securities and Exchange Commission ("Commission") an amendment to the Dial-Up Market Data Service Rider to OPRA's Vendor Agreement.

OPRA has designated this proposal as involving solely technical or ministerial matters, permitting it to become effective upon filing, pursuant to the terms of rule 11Aa3–2(c)(3)(iii) under the Act. The Commission is publishing this notice to solicit comments from interested persons on the amendment.

I. Description and Purpose of the Amendment

The Dial-Up Market Data Service Rider to OPRA's Vendor Agreement was initially filed under rule IIAa3–2 at the time OPRA first authorized the dial-up computer market data service fee in November, 1986. In its filing, OPRA stated that the purpose of this amendment is: (1) To eliminate references to the 300-baud printer service, which was originally the subject of a separate fee and rider that was incorporated into the dial-up computer fee and rider in November 1986, but which is no longer offered or proposed to be offered by any vendor; (2) to shorten the required record retention period from six to three years; and (3) to make certain non-substantive, technical editorial changes to certain provisions

[1] The amendment was originally filed on April 9, 1991. The original filing was withdrawn by the subsequent filing.

[2] OPRA has requested that the radio aging service be put into effect summarily pursuant to rule 11Aa3–2(c)(4) under the Act. That section empowers the Commission to summarily put into effect on a temporary basis a Plan amendment "if the Commission finds that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act."

that discuss OPRA's and the participant market's liability.

II. Solicitation of Comments

Pursuant to rule 11Aa3–2(c)(3) under the Act, the amendment became effective upon filing with the Commission. The Commission may summarily abrogate the amendment within 60 days of its filing and require refiling and approval of the amendment by Commission order pursuant to rule 11Aa3–2(c)(2), if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors and maintenance of fair and orderly markets, to remove impediments to and perfect the mechanisms of a National Market System, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 553, will be available for inspection and copying in the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available at the principal office of OPRA. All submissions should refer to File No. S7–8–90 and should be submitted by June 20, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 22, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–12679 Filed 5–29–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–29227; File No. SR–CSE–91–02]

Self-Regulatory Organizations; Cincinnati Stock Exchange; Order Approving Proposed Rule Change Relating to Public Agency Order Guarantees at Opening

On March 20, 1991, the Cincinnati Stock Exchange ("CSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] a proposed rule change to amend CSE rules 11.9(c)(v) and 11.9(n)(1) of the Exchange's National Securities Trading System[3] rules relating to public agency guarantees at the opening.

The proposed rule change was noticed in Securities Exchange Act Release No. 29036 (April 1, 1991), 56 FR 14405 (April 9, 1991). No comments were received on the proposal.

The CSE proposes to amend its rule 11.9(c)(v), which describes the functions of a Designated Dealer,[4] by adding the words "up to 2,099 shares" in the paragraph describing the obligation of the Dealer of the Day[5] to execute opening public agency and marketable limit orders at the national best bid or offer. Amended Rule 11.9(c)(v) would require Designated Dealers to guarantee the execution, up to 2,099 shares, at the opening price (the Intermarket Trading System best bid or offer) of CSE opening public agency market orders and limit orders which are priced better than such opening price.

The CSE also proposes to amend its rule 11.9(n)(1) governing Public Agency Guarantees, by adding the words "up to 2,099 shares" in the paragraph describing public agency opening market orders and limit orders better than the opening price. Amended rule 11.9(n)(1) would provide that public agency opening market orders and limit orders better than the opening price which are entered prior to the opening, up to 2,099 shares, shall be executed at the opening price.

The Exchange states that the purpose of the proposed rule change is to make explicit that a Designated Dealer's obligation, as Dealer of the Day, to guarantee the execution of public agency market and marketable limit orders extends only to orders of 2,099 shares or less. The Exchange states that although this requirement has been assumed to be the general rule for public agency guarantees and is explicit in the paragraph dealing with intra-day guarantees,[6] it is not explicit in the paragraphs on opening orders.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, and in particular with section 6(b)(5), in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6(b)(5) of the Act.[7] Section 6(b)(5) of the Act requires, among other things, that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission believes that the proposed amendments should further the objectives of section 6(b)(5) by clarifying that a Designated Dealer's obligation to guarantee execution of public agency market and marketable limit orders at the opening extends to 2,099 shares or less. The proposed amendments should remove any ambiguity in existing rules 11.9(c)(v) and 11.9(n)(1) with respect to a Designated Dealer's obligations. This proposal should result in clear and consistent guidelines for Designated Dealers and provide notice to the public of the extent of a Designated Dealer's obligation to public agency guarantees at the opening.

The Commission notes that the proposal's 2,099 share obligation for Designated Dealers at the opening conforms CSE rules 11.9(c)(v) and 11.9(n)(1) with the 2,099 share obligation for Designated Dealers in the CSE's other National Securities Trading System rules. First, CSE rule 11.9(n)(2) provides that public agency market orders and marketable limit orders of 2,099 shares or less entered after the

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1990).

[3] The National Securities Trading System is an electronic securities communication and execution facility through which bids and offers of competing dealers and public orders are consolidated for review and execution by Exchange members of approved dealers. *See* CSE rule 11.9(s).

[4] A Designated Dealer is a proprietary member who maintains a minimum net capital of at least the greater of $100,000 or the amount required under Rule 15c3–1 of the Act, and who has been approved by the Exchange's Securities Committee to perform market functions by entering bids and offers for securities designated by the Securities Committee to be traded in the CSE's National Securities Trading System ("designated issues") into that System. See CSE rule 11.9(a)(3).

[5] The CSE's Rules provide that if there are two or more Designated Dealers in a designated issue, unless the Exchange's Securities Committee has approved one member as a primary Designated Dealer, the guarantee obligations under the Rules rotate among such Designated Dealers on a daily basis. See CSE rule 11.9(c)(iv).

[6] See CSE rule 11.9(c)(iv).

[7] 15 U.S.C. 78f (1988).

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opening are guaranteed execution. Second, CSE rule 11.9(n)(3) requires that a Designated Dealer of the Day accept and guarantee executions on all public agency market orders and marketable limit orders for 2,099 shares or less in accordance with the CSE's rules. Similarly, rule 11.9(c)(iv) requires a Designated Dealer to guarantee the execution of 2,099 shares of public agency market orders and marketable limit orders in designated issues for which he or she is the Designated Dealer. The Commission, therefore, believes that the proposed amendments should contribute to the overall consistency of a Designated Dealer's obligations in the National Securities Trading System rules and may result in improved execution of public customer orders.

It Therefore is Ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Dated: May 23, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-12733 Filed 5-29-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29228; File No. SR-NASD-91-24]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Compensation in Connection With Roll-Ups of Direct Participation Programs

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 20, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change [1] as described in items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30-3(a)(12) (1990).

[1] The NASD submitted an amendment to the proposed rule change which edits the discussion of solicitation expenses. This notice has been amended to reflect the change. See letter from Suzanne E. Rothwell, Associate General Counsel, NASD to Katherine A. England, Branch Chief, SEC, dated May 21, 1991. The amendment is available for inspection and copying in the Public Reference Room.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend appendix F to article III, section 34 of the NASD Rules of Fair Practice ("Appendix F") to prohibit members from, *inter alia,* receiving differential compensation in connection with the solicitation of roll-up transactions. Below is the text of the proposed rule change. Proposed new language is italicized.

Proposed Amendments to Article III, Section 34

Appendix F

Sec. 1

Application of Appendix F

No member or person associated with a member shall participate in a public offering of a direct participation program or a roll-up of a direct participation program except in accordance with this Appendix.

Sec. 6

Solicitation of Consents

(a) No member shall receive compensation for soliciting votes or tenders from limited partners in connection with a roll-up of a direct participation program or programs, irrespective of the form of entity resulting from the roll-up (i.e., a partnership, real estate investment trust or corporation), unless such compensation: (i) is payable and equal in amount regardless of whether the limited partners votes affirmatively or negatively on the proposed roll-up; (ii) in the aggregate, does not exceed 2% of the exchange value of the newly created securities; and (iii) is paid regardless of whether the limited partners reject the proposed roll-up.

(b) No member or person associated with a member shall participate in the solicitation of votes or tenders in connection with the roll-up of a direct participation program unless the general partner or sponsor proposing the roll-up agrees to pay all solicitation expenses related to the roll-up, including all preparatory work related thereto, in the event the roll-up is not approved.

(c) For purposes of Appendix F, a "roll-up" or "roll-up of a direct participation program" is a transaction involving an acquisition, merger or consolidation of at least one direct participation program, not currently listed on a registered national securities exchange or the Nasdaq System, into another public direct participation program or a public corporation or public trust.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) On October 3, 1990, the House Subcommittee on Telecommunications and Finance opened hearings in Washington, D.C. to determine whether legislative or regulatory action is necessary to curb perceived abuses in the roll-up area that include customer protection, aftermarket performance, fairness, and disclosure concerns. The NASD has undertaken a review of issues relating to the participation by members in roll-ups of existing limited partnerships into new limited partnerships, real estate investment trusts, or corporations. The NASD has determined that most roll-up arrangements only permit NASD members soliciting limited partners in a roll-up to receive a commission when the investor votes "yes" on the proposed transaction. The NASD has also found that the arrangements prohibit members from receiving any compensation for soliciting "yes" votes unless a sufficient number of "yes" votes are received to consummate the transaction. The NASD is concerned regarding the foregoing compensation arrangements on the basis that they create a conflict of interest for the member, or the appearance of a conflict of interest, since such compensation arrangements may give members an unwarranted incentive to recommend approval of the transaction.

Request for Member Comments

The NASD issued Notice to Members 90-79 (December 1990) for membership comment on a proposed amendment to appendix F that would prohibit differential compensation. A copy of the Notice was filed with the proposed rule change as exhibit 2. Comments were

requested on the arrangements described above, as well as on several unresolved issues relating to the amendment proposed in the Notice and roll-ups generally. Comment was requested on whether a 2% commission creates a conflict of interest sufficient to sway members to solicit "yes" votes when the member believes the roll-up transaction is inappropriate or disadvantageous to clients. Second, specific comment was requested on whether payments to members should be permitted to be contingent on a sufficient number of "yes" votes being received to complete the transaction. Third, members were asked to suggest any other viable alternatives that would address differential compensation concerns short of a prohibition.

The NASD received fifty-four comment letters in response to Notice to Members 90-79. A copy of the comment letters and an alphabetical list of the commentators was attached to the rule filing as exhibit 3. Eighty-nine percent of the commentators (48 of the 54) believe that the practice of paying brokers only for "yes" votes is unfair and should be prohibited. The commentators agreed that differential compensation creates in actual or perceived conflict of interest for the member while virtually guaranteeing that the roll-up will be approved, potentially to the detriment of the limited partner investors. Commentators indicated that the general partners' ability to pay only for "yes" votes is their principal tool in gaining approval of roll-up transactions.

Commentators stated that differential compensation arrangements restrict participation in the solicitation to only those firms that will recommend approval of the roll-up, thus denying investors objective advice on how to vote. Commentators also stated that investors should have access to impartial advice and analysis of the proposed roll-up, particularly from the member where they maintain their account. Members who originally sold the limited partnership interests are excluded from soliciting if they are unwilling to recommend a "yes" vote, and their clients are subject to a barrage of telephone calls from other members soliciting their "yes" vote. Commentators also stated that differential compensation arrangements damage the credibility of members, place a "bounty" on the heads of limited partners and establish an unfair bias toward approval of the transaction.

The commentators also indicated that the amendment proposed in Notice to Members 90-79 prohibiting differential compensation should be extended to also prohibit arrangements which provide that payment of solicitation compensation is contingent on approval of the transaction by limited partners. They believe that this arrangement is tantamount to paying for "yes" votes because a monetary incentive still exists to recommend only a "yes" vote.

Commentators also noted that if members are required to be paid for any vote, there would most likely be a greater number of roll-ups that are not approved and, yet, the limited partners would bear the costs of the transaction. A large number of commentators argued that if the transaction is not approved by the limited partners, the general partner or sponsor proposing the transaction should bear the costs of the solicitation. The commentators believe that the general partner and sponsor will have a strong incentive to propose roll-up transactions that are structured fairly and can be endorsed by NASD members if the general partner and sponsor is required to bear the cost of solicitation if the transaction is not consummated.

Description of Proposed Rule Change to Appendix F

Based on the comments received in response to Notice to Members 90-79 (December 1990), the NASD is hereby proposing to amend appendix F to add new section 6 to regulate the receipt of compensation by members in connection with a roll-up of a direct participation program.

Definition of Roll-Up. The NASD is proposing to define the term "roll-up" and "roll-up of a direct participation program" in new section 6(c) to appendix F. The proposal specifies that a "roll-up" is an "acquisition, merger or consolidation of at least one direct participation program, not currently listed on a registered national securities exchange or the NASDAQ System into another public direct participation program or a public corporation or a public trust." The proposed rule change would only apply to roll-ups of one or more direct participation programs that are not publicly-traded, since investors in publicly traded partnerships have the ability to sell their units if they disagree with the proposed roll-up. Further, the proposed rule change would not apply to roll-ups of direct participation programs in a transaction in which the securities of the resulting entity were issued in a private placement under section 4(2) of the Securities Act of 1933 and are, therefore, restricted. The proposed rule change is intended to only be applicable to the roll-up of one or more direct participation programs, whether or not the limited partnership interests are restricted or publicly-tradeable. Moreover, the proposed rule change would apply to a roll-up of different types of entities so long as one of the entities is a direct participation program, e.g. the roll-up of a real estate investment trust and a direct participation program into another entity.

Limitation on Compensation. Subsection (a) to proposed section 6 to appendix F establishes restrictions on the manner in which a member may receive compensation for soliciting votes or tenders from limited partners in connection with a roll-up. First, under subprovision (i), a member may only receive solicitation compensation if such compensation is payable to the member regardless of whether the member receives affirmative or negative votes on the proposed roll-up. Second, also under subprovision (i), a member may only receive solicitation compensation if such compensation is the same for both affirmative and negative votes by limited partners on the proposed roll-up.

Third, under subprovision (ii), the solicitation compensation may not exceed 2 percent of the exchange value of the newly created securities. It is important to note, that this limitation only applies to that compensation paid to a member for soliciting votes. A member may be paid fees and be reimbursed for expenses in addition to receiving the 2% solicitation fee, so long as the aggregate of all compensation paid to members participating in the offering does not exceed the 10% guideline, plus 0.5% for due diligence, as required under section 5(b) to appendix F. The NASD does not, however, anticipate that total compensation paid to members will approach the 10% compensation guideline and, in accordance with its usual procedures, would request support for any unusual fee or reimbursement of expenses to ensure that the 2% limitation on solicitation fees is not circumvented.

Third, subprovision (iii) to subsection 6(a) would require that solicitation compensation be paid to members regardless of whether the limited partners approve or reject the proposed roll-up. As set forth above, this provision is intended to ensure that payment of the solicitation fees to a member is not contingent on approval of the roll-up by limited partners which would provide an incentive to members to solicit only "yes" votes.

Allocation of Solicitation Expenses. Proposed subsection (c) to section 6 to appendix F would prohibit a member from participating in the solicitation of votes or tenders in connection with a

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roll-up of a direct participation program unless the general partner or sponsor had agreed to pay all solicitation expenses incurred in connection with the transaction in the event the roll-up is not approved. The rule also specifies that the expenses include all preparatory work related to the solicitation. Thus, such expenses would include all expenses normally incurred by a member in soliciting votes, consents or tenders in connection with a roll-up, regardless of whether the member, sponsor or general partner paid the expense. Solicitation expenses would include direct marketing expenses such as postage and telephone costs, broker-dealer fact sheets, and legal and other fees relating to the solicitation but would not include other expenses normally paid by the issuer such as issuer's counsel, accounting fees and printing costs not related to the solicitation.

Conforming Rule Change

Section 1 to appendix F sets forth the scope of the application of appendix F. The section provides that Appendix F only applies to public offerings of a direct participation program in which a member participates. The NASD is proposing to amend section 1 to expand the scope of appendix F to include participation by a member in a roll-up of a direct participation program. As set forth above, the terms "roll-up" and "roll-up of a direct participation program" are defined in proposed subsection 6(c).

(b) The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act, in that the proposed rule change will promote just and equitable principals of trade and contribute to the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. One comment was received in response to Notice to Members 90-79 (December 1990) that the proposed rule change would unfairly discriminate against direct participation program roll-ups. The comment is discussed in item C below.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or others

The proposed rule change was published for comment in Notice to Members 90-79 (December 1990). 54 comments were received in response thereto. Of the 54 comment letters received, 48 were in favor of the proposed rule change and 6 were opposed. The views of commentators in favor of the proposed rule change and those that made comments in response to the NASD's request for comment on three unresolved issues are discussed above in item A. Following is a disucssion of the six negative comments received from the American Bar Association, D. A. Davidson & Co., the Robert A. Stanger Company, the Investment Program Association, Krupp Securities Corporation, and W.P. Carey & Co., Inc.

The commentators in opposition to the proposed rule change to prohibit differential compensation for the solicitation of votes and tenders in roll-ups of direct participation programs believe that the proposed amendment unreasonably discriminates against roll-ups since payment for "yes" vote arrangements are used for other transactions such as debt restructurings and exchange offers. They suggest instead: (1) Enhanced disclosure; (2) use of a "qualified independent soliciting dealer" who has no material affiliation with the partnerships being combined or the entity to be created by the roll-up; (3) elimination of all compensation for votes; or (4) a prohibition on payments for "yes" votes only for those transactions determined to be unfair to investors.

With respect to the first comment—that the proposed prohibition on differential solicitation compensation is discriminatory against roll-ups—the NASD believes that the hearings of the House Subcommittee on Telecommunications and Finance have indicated that there are abuses in connection with the roll-ups of direct participation programs, although there has not been an empirical study of roll-ups as to whether such abuses do, in fact, exist. The NASD notes, however, that the direct participation program interests that are subject to the rule change are illiquid, limited life investments, with voting rights, and the program is structured for a specific payout to the general partner under specific circumstances. When a roll-up occurs, it is generally to a corporate entity with unlimited life, the voting rights of the limited partners may be changed, and frequently there is an acceleration of the payment of cash flow to the general partners. Thus, roll-up transactions frequently involve a significant change in the character and structure of the investment.

With respect to the suggestions for enhanced disclosure, the NASD determined that the need for additional disclosure of the risks of the roll-up is a matter that is within the jurisdiction of the Securities and Exchange Commission's rules and regulations. With respect to the suggestion to not limit differential compensation but, instead, to require the participation of a "qualified independent soliciting dealer," the NASD believes that the proposed rule change is a better solution to the potential abuses that result from the payment of differential compensation for solicitation of votes in connection with a roll-up.

The NASD does not believe that it would be appropriate or in the interest of investors to prohibit members from receiving any compensation in connection with soliciting roll-up votes. The result of such a prohibition would be that no member would participate in the solicitation, potentially depriving investors of independent advice regarding the terms of the roll-up and leaving the solicitation to entities that are not regulated by the NASD.

Finally, with respect to the recommendation that the NASD only prohibit solicitatioin fees for "yes" votes where it determines the structure of the roll-up is unfair to investors, the NASD has determined not to adopt this recommendation. The NASD believes that payment only for "yes" votes regardless of the merits of the roll-up can lead to abuses. The investor should be able to obtain the independent advice of the soliciting broker/dealer.

The issue of payment only for "yes" votes, moreover, appears to the NASD to be separate from the issue of whether members should participate in the solicitaion of any votes in connection with a roll-up that is inherently unfair to investors. Other comments were received from commentators that suggested that the NASD address other roll-up arrangements, including payment of a fee for the fairness opinion that is contingent on the success of the roll-up. The NASD has been and will continue to review the structure of roll-up transactions to determine whether members should participate in soliciting votes in connection with roll-up structures that are inherently unfair to investors. The NASD will address any other issues raised by commentators as part of this review.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: A. By order approve such proposed rule change, or B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number, SR-NASD-91-24, and should be submited by June 14, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: May 23, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-12732 Filed 5-29-91; 8:45 am]

BILLING CODE 8010-01-M

TENNESSEE VALLEY AUTHORITY

Privacy Act of 1974; Proposed New Routine Uses

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Proposed new routine use for TVA-2, "Personnel Files—TVA."

SUMMARY: This publication gives notice, as required by the Privacy Act, of TVA's intention to establish a new routine use for the system of records entitled TVA-2, "Personnel Files—TVA." Details of the proposed new routine use are described below. The full text of TVA-2 appears at 55 FR 34817-18 (August 24, 1990), 56 FR 19137 (April 25, 1991), and 56 FR 22902, May 17, 1991.

DATES: Comments must be received by July 1, 1991.

ADDRESSES: Comments should be sent to Ronald E. Brewer, Privacy Act Officer, Tennessee Valley Authority, 1101 Market Street (EB 4B), Chattanooga, TN 37402-2801.

FOR FURTHER INFORMATION CONTACT: Ronald E. Brewer, 615-751-2520.

TVA-2

SYSTEM NAME:

Personnel Files—TVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information related to education; qualifications; work history; interests and skills; test results; performance evaluation; career counseling; personnel actions; job description; salary and benefit information; service dates, including other Federal and military service; replies to congressional inquiries; medical data; and security investigation data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831-831dd; Executive Order 10577; Executive Order 10450; Executive Order 11478; Executive Order 11222; Veterans' Preference Act of 1944, 58 Stat. 387, as amended; Equal Employment Opportunity Act of 1972, Pub. L. 92-261, 86 Stat. 103; various sections of title 5 of the United States Code related to employment by TVA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To contractors and subcontractors engaged at TVA's direction in providing support services to TVA in connection with mailing materials to TVA employees or other related services.

Louis S. Grande,

Vice President, Information Services.

[FR Doc. 91-12671 Filed 5-29-91; 8:45 am]

BILLING CODE 8120-08-M

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

Transportation for Individuals With Disabilities; Advisory Committee Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Urban Mass Transportation Administration announces the following committee meeting.

Name: The Americans With Disabilities Act Federal Advisory Committee.

Time and Dates: 9 a.m.-5 p.m., June 19-22.

Place: Department of Transportation, room 2230, 400 Seventh Street, SW., Washington DC, 20590.

Status: The meeting is open to the public.

Purpose: The purpose of this committee is to advise the Secretary of the Department of Transportation and the Administrator of the Urban Mass Transportation Administration on a rulemaking to be conducted by them to implement the Americans With Disabilities Act of 1990 (ADA).

Matters to be Discussed: The committee will discuss various issues raised by the Department of Transportation in its April 4, 1991, Notice of Proposed Rulemaking implementing the ADA (56 FR 13856), as well as comments submitted to the Department in response to the proposed rule. During the four-day meeting, the Advisory Committee may break up into smaller discussion groups to enhance discussion of specific issues, as well as meet as a committee of the whole.

Specific topics to be covered may include:

Paratransit as a complement to fixed route service. This includes defining who is eligible for service and comparability of the paratransit service, identification of service criteria, circumstances under which a transportation provider can request a waiver from requirements based on undue financial burden, contents and review of the plan, and possible phase-in of the plans' requirements.

Rail service, including the requirement for one-car per train to be accessible, retrofitting of key stations, and requirements when altering a station.

The definition of accessible vehicles.

Operational requirements.

Contact Persons for More Information: Office of the Secretary: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 Seventh St., SW., room 10424, Washington, DC 20590. Telephone 202-366-9306 (voice); 202-755-7687 (TDD). UMTA: Susan E. Schruth, Office of the Chief Counsel, UMTA, DOT, 400 Seventh St., SW., room 9316, Washington, DC 20590, 202, 366-4011. A taped copy of this notice is available upon request.

Dated: May 24, 1991.

Brian W. Clymer,

Administator.

[FR Doc. 91-12725 Filed 5-29-91; 8:45 am]

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Sunshine Act Meetings

Federal Register
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Thursday, May 30, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEPARTMENT OF ENERGY
FEDERAL ENERGY REGULATORY COMMISSION

May 22, 1991.

The following notice of meeting is pubished pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-49), U.S.C. 552B:

DATE AND TIME: May 29, 1991, 10:00 a.m.
PLACE: 825 North Capitol Street, N.E., Room 9308, Washington, D.C. 20426.
STATUS: Open.
MATTERS TO BE CONSIDERED: Agenda.

Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208-0400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 838th Meeting—May 29, 1991, Regular Meeting (10:00 a.m.)

CAH-1.
Docket No. EL88-24-002, Saco River Salmon Club
CAH-2.
Project No. 4669-025, Rancho Riata Hydro Partners
CAH-3.
Project No. 3574-003, Continental Hydro Corporation
CAH-4.
Omitted
CAH-5.
Project No. 2516-014, Potomac Edison Company
CAH-6.
Omitted
CAH-7.
Project No. 9711-002, Inghams Corporation
CAH-8.
Project No. 9712-002, Beardslee Corporation
CAH-9.
Project Nos. 6786-015 and 6962-014, Yankee Hydro Corporation
Project No. 9694-008, Power Resources Development Corporation
CAH-10.
Project No. 9558-002, Cary Falls Corporation
CAH-11.
Project No. 2370-000, Pennsylvania Electric Company

Consent Agenda—Electric

CAE-1.
Docket Nos. ER91-166-000 and ER91-173-000, Nantahala Power and Light Company
CAE-2.
Docket No. ER91-351-000, Montana Power Company
Docket No. EL90-10-000, Central Montana Electric Power Cooperative, Inc. v. Montana Power Company
CAE-3.
Docket No. ER90-567-000, Nevada Power Company
CAE-4.
Docket No. ER91-323-000, Southern Companies
CAE-5.
Omitted
CAE-6.
Docket No. EF90-5161-000, United States Department of Energy—Western Area Power Administrative
CAE-7.
Docket Nos. ER91-143-003, Public Service Company of New Hampshire
Docket No. ER91-235-001, New England Power Company
CAE-8.
Docket Nos. E-7777-000, 013 (Phase II) and ER76-296-001, Pacific Gas and Electric Company
Project Nos. 2735-027, 1988-015 and 233-003, Pacific Gas and Electric Company
CAE-9.
Docket No. EL90-40-001, Gulf Power Company
CAE-10.
Omitted
CAE-11.
Docket No. EL90-42-000, Ohio Power Company, Complainant v. American Municipal Power-Ohio, *et al.*, Respondents
Docket No. EL91-1-000, American Municipal Power Company-Ohio, Inc., *et al.* Complainants v. Ohio Power Company and American Electric Power Company, Inc., Respondents
CAE-12.
Docket No. QF90-175-001, West Financial Services, Inc.
CAE-13.
Docket No. QF85-312-001, Inter-Power of New York, Inc.

Consent Agenda—Oil and Gas

CAG-1.
Docket No. RP91-140-000, Questar Pipeline Company
CAG-2.
Docket No. RP91-143-000, Great Lakes Gas Transmission Limited Partnership
CAG-3.
Docket No. RP91-144-000, Great Lakes Gas Transmission Limited Partnership
CAG-4.
Docket No. RP91-148-000, Great Lakes Gas Transmission Limited Partnership
CAG-5.
Docket No. TA91-1-55-000, Questar Pipeline Company
CAG-6.
Docket No. RP91-150-000, Northwest Pipeline Corporation
CAG-7.
Docket No. RP91-131-000, Northern Natural Gas Company
CAG-8.
Docket No. RP91-138-000, Florida Gas Transmission Company
CAG-9.
Docket No. RP91-145-000, Florida Gas Transmission Company
CAG-10.
Docket No. RP91-141-000, Williston Basin Interstate Pipeline Company
CAG-11.
Docket No. RP91-142-000, CNG Transmission Corporation
CAG-12.
Docket No. RP86-136-017, National Fuel Gas Supply Corporation
CAG-13.
Docket Nos. RP86-169-018, RP86-105-019 and RP87-25-007, ANR Pipeline Company
CAG-14.
Docket No. RP91-146-000, Algonquin Gas Transmission Company
CAG-15.
Docket Nos. RP91-147-000 and GT91-26-000, Transcontinental Gas Pine Line Corporation
CAG-16.
Docket No. TM91-6-43-000, Williams Natural Gas Company
Docket Nos. TM91-5-22-000 and RP91-51-003, CNG Transmission Corporation
CAG-18.
Docket No. TM91-6-26-000, Natural Gas Pipeline Company of America
CAG-19.
Docket No. TM91-3-34-000, Florida Gas Transmission Company
CAG-20.
Docket No. TQ91-3-28-000, Panhandle Eastern Pipe Line Company
CAG-21.
Docket Nos. RP88-27-024, 025, RP88-264-020, 021, RP89-138-009 and 010, United Gas Pipe Line Company
CAG-22.
Docket Nos. TA91-1-59-000, 001, 003 and TM91-2-59-000, Northern Natural Gas Company
CAG-23.
Docket No. TA90-1-29-000, Transcontinental Gas Pipe Line Corporation
CAG-24.
Docket Nos. TA91-1-9-000, TM91-3-9-000 and RP91-16-000, Tennessee Gas Pipeline Company
CAG-25.

Docket Nos. RP86-267-011 and 008, South Georgia Natural Gas Company
CAG-26.
Docket No. RP91-49-000, Arkla Energy Resources
CAG-27.
Docket No. GT91-25-000, Viking Gas Transmission Company
CAG-28.
Docket Nos. GT91-13-000 and 001, Algonquin Gas Transmission Company
CAG-29.
Docket Nos. IS91-29-000 and 001, Point Arguello Pipe Line Company
CAG-30.
Docket No. PR91-13-000, Transco-Louisiana Intrastate Pipeline Company
CAG-31.
Docket No. RP91-29-000, Tennessee Gas Pipeline Company
CAG-32.
Docket No. RP91-107-002, Williams Natural Gas Company
CAG-32.
Docket Nos. RP91-104-001 and RP91-106-001, Transwestern Pipeline Company
CAG-34.
Docket No. RP91-111-002, North Penn Gas Company
CAG-35.
Docket Nos. RP91-96-001 and RP91-51-004, CNG Transmission Corporation
CAG-36.
Docket Nos. RP88-67-045 and CP90-186-003, Texas Eastern Transmission Corporation
CAG-37.
Docket No. RP91-66-004, Penn-York Energy Corporation
CAG-38.
Docket Nos. RP87-62-012 and RP86-148-008, Pacific Gas Transmission Company
CAG-39.
Docket No. TA91-1-37-003, Northwest Pipeline Corporation
CAG-40.
Docket No. TA91-1-31-003, Arkla Energy Resources
CAG-41.
Docket No. TQ91-2-1-003, Alabama-Tennessee Natural Gas Company
CAG-42.
Docket Nos. TM91-4-16-001 and RP91-47-003, National Fuel Gas Supply Corporation
CAG-43.
Docket No. RM87-34-066, Regulation of Natural Gas Company Pipelines After Partial Wellhead Decontrol
CAG-44.
Docket Nos. RP86-10-010 and CP86-110-002, Williston Basin Interstate Pipeline Company
CAG-45.
Docket Nos. TQ90-4-49-002 and RP90-113-002, Williston Basin Interstate Pipeline Company
CAG-46.
Docket Nos. TA91-1-17-002 and TM91-1-17-001, Texas Eastern Transmission Corporation
CAG-47.
Docket Nos. RP90-132-001 and 004, United Gas Pipe Line Company
CAG-48.
Docket Nos. RP89-97-001 and TM90-3-37-002, Northwest Pipeline Corporation
CAG-49.
Docket Nos. RP91-82-002 and RP90-106-009, Columbia Gas Transmission Corporation
Docket No. RP90-107-008, Columbia Gulf Transmission Corporation
CAG-50.
Docket No. RP90-182-004, Texas Gas Transmission Corporation
CAG-51.
Docket Nos. RP89-119-000, 005, 007, RP89-208-000, 001, 003, 005, RP90-58-000, 001, RP90-64-000, 001, RP91-000, 001, TM90-3-18-001 and TM91-2-18-000, Texas Gas Transmission Corporation
CAG-52.
Docket No. CP89-1119-001, Texas Gas Transmission Company
CAG-53.
Docket No. RM91-2-006, Mechanisms for Passthrough of Pipeline Take-or-Pay Buyout and Buydown Costs
Docket Nos. RP86-119-017, TA84-2-9-018 and TA85-1-6-006, Tennessee Gas Pipeline Company, a Division of Tenneco, Inc.
CAG-54.
Docket No. RP91-8-000, Olympic Pipeline Company
CAG-55.
Omitted.
CAG-56.
Docket No. RP90-86-000, MIGC, Inc.
CAG-57.
Docket No. RP84-53-000, 010, 011, 012 and 013, Ozark Gas Transmission System
CAG-58.
Docket No. RP88-259-031 and RP89-136-016, Northern Natural Gas Company
CAG-59.
Docket No. GP90-7-000, Barbara T. Fasken
CAG-60.
Docket Nos. GP91-3-000 and GP91-4-000, Meridian Oil, Inc.
CAG-61.
Omitted.
CAG-62.
Omitted.
CAG-63.
Docket No. CP91-1278-001, Pittsburgh Corning Corporation
CAG-64.
Docket Nos. CP87-115-002, RP88-228-001, RP88-249-001, RP89-4-002, RP89-29-001, RP89-84-001, RP89-149-001 and RP87-26-001, Tennessee Gas Pipeline Company
CAG-65.
Docket No. CP90-1317-001, Tennessee Gas Pipeline Company
CAG-66.
Docket No. CP91-534-001, Panhandle Eastern Pipe Line Company
CAG-67.
Docket Nos. CP89-637-000, 001, 002, 004, 005 and 006, ANR Pipeline Company
Docket Nos. CP88-178-002, Trunkline Gas Company
Docket Nos. CP90-1726-000 and 001, Great Lakes Gas Transmission Company
Docket Nos. CP90-687-000, 001, 002 and 003, Transcontinental Gas Pipe Line Corporation
Docket Nos. CP89-638-000, 001, 002 and 003, CNG Transmission Corporation
Docket Nos. CP90-688-000, 001 and 002, Texas Gas Transmission Company
CAG-68.
Docket No. CP91-1027-001, Transcontinental Gas Pipe Line Corporation
CAG-69.
Omitted
CAG-70.
Docket No. CP91-1985-000, Tennessee Gas Pipeline Company
CAG-71.
Docket No. CP91-1949-000, Black Marlin Pipeline Company
CAG-72.
Docket No. CP91-1945-000, Algonquin Gas Transmission Company
CAG-73.
Docket No. CP91-1938-000, Viking Gas Transmission Company
CAG-74.
Docket No. CP91-1918-000, Trunkline Gas Company
CAG-75.
Docket No. CP90-1297-000, Williams Natural Gas Company
CAG-76.
Docket No. CP90-262-000, Northern Natural Gas Company
CAG-77.
Docket No. CP90-1105-000, Panhandle Eastern Pipeline Company
Docket No. CP90-1073-000, MIGC, Inc.
CAG-78.
Docket No. CP90-2281-000, Pontchartrain Natural Gas Company
Docket No. CP90-2282-000, Bayou Interstate Pipeline System
CAG-79.
Docket No. CP90-2310-000, Southern Natural Gas Company
CAG-80.
Docket No. CP91-454-000, Ohio River Pipeline Corporation
Docket No. CP91-455-000, Ohio River Pipeline Corporation and Indiana Gas Company, Inc.
CAG-81.
Omitted
CAG-82.
Docket No. CP91-1546-000, American Distribution Company (Alabama Division)
CAG-83.
Docket No. CP88-557-001, Koch Hydrocarbon Company
CAG-84.
Docket No. CP90-1567-000, National Fuel Gas Supply Corporation
CAG-85.
Docket Nos. RP88-227-001, CP90-767-002 and CP78-221-005, Paiute Pipeline Company
Docket No. CP90-848-002, Northwest Pipeline Corporation
CAG-86.
Docket No. RP90-104-008, Texas Gas Transmission Corporation
CAG-87.
Docket Nos. CR91-126-000, 001, CP91-1669-000, CP91-1670-000, CP91-1671-000, CP91-1672-000 and CP91-1673-000, United Gas Pipe Line Company
CAG-88.
Docket No. RP91-83-001, United Gas Pipe Line Company

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Hydro Agenda

H-1.
Reserved.

Electric Agenda

E-1.
Docket No. ER91-243-000, Edgar Electric Energy Company and Boston Edison Company. Order on rate filing.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR-1.
Omitted.

PR-2.
Docket Nos. CP89-1281-010, and TA90-1-28-003, Natural Gas Pipeline Company of America. Order on rehearing.

II. Producer Matters

PF-1.
Reserved

III. Pipeline Certificate Matters

PC-1.
Docket Nos. CP88-570-000 and 003, Mobile Bay Pipeline Project
Docket No. CP87-415-002, Florida Gas Transmission and Southern Natural Gas Company
Docket No. CP88-437-000, Tennessee Gas Pipeline Company
Docket No. CP89-464-000, Florida Gas Transmission Company, Southern Natural Gas Company and Tennessee Gas Pipeline Company
Docket No. CP89-511-000, Texas Eastern Transmission Corporation and ANR Pipeline Company
Docket No. CP89-512-000, Texas Eastern Transmission Corporation
Docket Nos. CP89-513-000 and CP89-517-000, Southern Natural Gas Company
Docket No. CP89-523-001-Transcontinental Gas Pipe Line Corporation, Florida Gas Transmission Company, Tennessee Gas Pipeline Company, Texas Eastern Transmission Corporation and ANR Pipeline Company
Docket No. CP89-522-000, *et al.*, Transcontinental Gas Pipe Line Corporation and Florida Gas Transmission Company
Docket No. CP89-523-000, *et al.*, Tennessee Gas Pipeline Company, Southern Natural Gas Company, ANR Pipeline Company and Texas Eastern Transmission Corporation
Docket No. CP88-474-000, Texas Eastern Transmission Corporation. Order on settlement and certificate applications.

PC-2.
Docket No. CP89-471-000, 001, 002, CP88-393-000 and CP88-394-000, Gateway Pipeline Company. Order on certificate application.

Lois D. Cashell,
Secretary.
[FR Doc. 91-12843 Filed 5-24-91; 4:33 pm]
BILLING CODE 6717-01-M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 91-11851.
PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, May 23, 1991, 10:00 a.m.

The following item was continued to the meeting of May 23, 1991:

Presidential Primary and General Election Regulations: Final Rules and Explanation and Justification.

DATE AND TIME: Tuesday, June 4, 1991, 10:00 a.m.
PLACE: 999 E Street, NW., Washington, DC.
STATUS: This meeting will be closed to the public.
ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, June 6, 1991, 10:00 a.m..
PLACE: DATE: 999 E Street, NW., Washington, DC. (Ninth floor).
STATUS: This meeting will be closed to the public.
ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Advisory Opinions:
1991-14: Kentucky Republican Party
1991-15: Georgia Democratic Party
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 376-3155.

Delores Harris,
Administrative Assistant, Office of the Secretariat.
[FR Doc. 91-12959 Filed 5-28-91; 3:13 pm]
BILLING CODE 6715-01-M

FEDERAL LABOR RELATIONS AUTHORITY

TIME AND DATE: 10 a.m., Tuesday, June 4, 1991.
PLACE: 500 C Street, SW., Washington, D.C., Room 208.
STATUS OF MEETING: Open to the public.
MATTER TO BE CONSIDERED:

Oral argument in proceedings on remand in:
National Treasury Employees Union and U.S. Department of the Treasury, Internal Revenue Service, Case No. 0-NG-1350, 27 FLRA 976 (1987)

CONTACT PERSON FOR MORE INFORMATION: Alicia N. Columna, Director, Case Control Office, Federal Labor Relations Authority, (202) 382-0748.

Dated: May 28, 1991.
Solly Thomas,
Executive Director.
[FR Doc. 91-12965 Filed 5-28-91; 4:05 pm]
BILLING CODE 6727-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings.
"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [56 FR 22512 May 15, 1991].
STATUS: Closed meeting.
PLACE: 450 Fifth Street, NW., Washington, DC.
DATE PREVIOUSLY ANNOUNCED: Monday, May 13, 1991.
CHANGE IN THE MEETING: Additional item.

The following additional item was considered at a closed meeting on Tuesday, May 21, 1991, at 2:30 p.m.

Institution of injunctive action.

Commissioner Fleischman, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Ronald Mueller at (202) 272-2200.

Dated: May 22, 1991.
Jonathan G. Katz,
Secretary.
[FR Doc. 91-12389 Filed 5-24-91; 4:56 pm]
BILLING CODE 8010-01-M

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federal register

Thursday
May 30, 1991

Part II

Environmental Protection Agency

40 CFR Part 268

Land Disposal Restrictions; Potential Treatment Standards for Newly Identified and Listed Wastes and Contaminated Debris; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[FRL-3959-1]

Land Disposal Restrictions; Potential Treatment Standards for Newly Identified and Listed Wastes and Contaminated Debris

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking (ANPRM) and request for comment and data.

SUMMARY: The Agency today is requesting data and comments on possible BDAT and treatment capacity for many wastes that have been identified and listed as hazardous since the enactment of the Hazardous and Solid Waste Amendments (HSWA) in November 1984. These include newly listed wastes generated from the production of ethylene dibromide (EDB), ethylenebisdithiocarbamic acid (EBDC), methyl bromide, dinitrotoluene, toluenediamine, unsymmetrical dimethylhydrazine (UDMH), ortho-toluidine (U328), para-toluidine (U353), and 2-ethoxyethanol (U359). The Agency, in addition, is soliciting data and comment on potential approaches for developing treatment standards for two newly listed wastes from petroleum refining (i.e., F037 and F038), and for contaminated debris. The Agency also is soliciting comment on possible modifications to existing land disposal restriction (LDR) provisions that may simplify the implementation of the BDAT treatment standards; potential universal treatment standards for various categories of wastes; conversion of treatment standards for various F and K wastes from standards based on scrubber waters to those based on conventional wastewater treatment; modifications to the treatment standards for F001–F005 solvent wastes; modifications of treatment standards for lab packs; and potential concentration-based treatment standards based on recovery of chromium from various hazardous wastes.

The Agency specifically is soliciting comment and data on the following as they pertain to the wastes identified in today's notice: state-of-the-art treatment and recycling technologies; waste characterization; waste minimization (as demonstrated both here and abroad); factors affecting treatment performance that should be considered by the Agency during sampling/analysis efforts; on-site and off-site treatment capacity requirements; and information on the costs for setup and operation of any current and alternative treatment technologies for these wastes.

DATES: The comment period on waste minimization and issues presented in section III A.–D. of today's notice ends July 29, 1991. Comments on all other aspects of today's notice must be submitted on or before July 1, 1991.

ADDRESSES: The public must send an original and two copies of their comments to EPA RCRA Docket (OS-305), U.S. Environmental Protection Agency, room M2427, 401 M Street SW., Washington, DC 20460. Place the Docket Number F–91–CDP–FFFFF on your comments. The EPA RCRA Docket is located at the above address, and is open from 9 a.m. to 4 p.m. Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling (202) 475–9327. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $.20 per page.

EPA is asking prospective commenters to voluntarily submit one additional copy of their comments on labeled personal computer diskettes in ASCII (TEXT) format or a word processing format that can be converted to ASCII (TEXT). It is essential to specify on the disk label the word processing software and version/edition as well as the commenter's name. This will allow EPA to convert the comments into one of the word processing formats utilized by the Agency. Please use mailing envelopes designed to physically protect the submitted diskettes. EPA emphasizes that submission of comments on diskettes is not mandatory, nor will it result in any advantage or disadvantage to any commenter. Rather, EPA is experimenting with this procedure solely as an attempt to expedite our internal review and response to comments. For further information on the submission of diskettes, contact the Waste Treatment Branch at the phone number listed below.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 (toll-free) or (703) 920–9810 locally. For technical information on BDAT, contact the Waste Treatment Branch, Office of Solid Waste (OS–322–W), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (703) 308–8434. For technical information on capacity analyses, contact the Capacity Branch, Office of Solid Waste (OS–321–W) (703) 308–8440.

SUPPLEMENTARY INFORMATION:

Outline

I. Background
  A. Statutory/Regulatory Requirements
  B. Development and Identification of BDAT
II. Requests for General Comments and Data
  A. Request for Comment and Data on Pollution Prevention for Newly Identified Wastes
  B. General Approach to the Development of BDAT for Newly Identified Wastes
  C. General Approach to the Analysis of Capacity for Newly Identified Wastes
  D. Newly Identified Mixed Radioactive Hazardous Wastes
III. Potential Modifications to Existing BDAT
  A. Potential for Establishing Universal BDAT Standards
  B. Conversion of Wastewater Standards Based on Scrubber Waters
  C. Potential Revisions to the F001–F005 Spent Solvent Treatment Standards
  D. Potential Modifications to Existing Treatment Standards for Lab Packs
  E. Recovery as BDAT for Concentrated Metal-bearing Wastes
IV. Potential BDAT for Contaminated Debris
  A. Relationship of Today's Notice to EPA's "Contaminated Media Cluster"
  B. Applicability of Existing Land Disposal Restriction Treatment Standards and Superfund 6A and 6B Guides
  C. Development of Potential Regulatory Definitions for Debris
  D. Potential Regulatory Structure for Treatment Standards
  E. Development of BDAT for Contaminated Debris
  F. Analysis of Capacity Data for Debris
V. Potential BDAT for Specific F, K, and U Listed Wastes Promulgated After 1984
  A. Additional Organic U Wastes
  B. Recent Petroleum Refining Wastes (F037 and F038)
  C. Wastes from the Production of Unsymmetrical Dimethylhydrazine (K107, K108, K109, and K110)
  D. Waste from the Production of Dinitrotoluene and Toluenediamine (K111 and K112)
  E. Wastes from the Production of Ethylene Dibromide (K117, K118, and K136)
  F. Wastes from the Production of Ethylenebisdithiocarbamic Acid (K123, K124, K125, and K126)
  G. Wastes from the Production of Methyl Bromide (K131 and K132)

I. Background

A. Statutory/Regulatory Requirements

The Hazardous and Solid Waste Amendments (HSWA), enacted on November 8, 1984, specify dates when particular groups of hazardous wastes are prohibited from land disposal unless "* * * it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous" (RCRA section 3004 (d)(1), (e)(1), (g)(5); 42 U.S.C. 6924 (d)(1), (e)(1), (g)(5)).

The amendments also require the Agency to set "* * * levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized" (RCRA section 3004(m)(1), 42 U.S.C. 6924(m)(1)). Wastes that meet the treatment standards established by EPA are not prohibited and may be land disposed.

The land disposal restrictions (LDRs) are effective when promulgated unless the Administrator grants a national capacity variance from the otherwise applicable date and establishes a different date (not to exceed two years beyond the statutory deadline) based on "* * * the earliest date on which adequate alternative treatment, recovery, or disposal capacity which protects human health and the environment will be available" (RCRA section 3004(h)(2), 42 U.S.C. 6924(h)(2)). The Administrator may also grant a case-by-case extension of the effective date for up to one year, renewable once for up to one additional year, when an applicant successfully makes certain demonstrations (RCRA section 3004(h)(3), 42 U.S.C. 6924(h)(3)). A case-by-case extension can be granted whether or not a national capacity variance has been granted.

In response to these requirements, EPA promulgated five regulations; Solvents and Dioxins, November 7, 1986 (51 FR 40572); California List, July 8, 1987 (52 FR 25760); First Third, August 17, 1988 (53 FR 31138); Second Third, June 23, 1989 (54 FR 26594); and Third Third, June, 1, 1990 (55 FR 22520). These rulemakings set treatment standards for all hazardous wastes that were identified and listed in 40 CFR 261.21, .22, .23, .24, .31, .32, and .33 prior to November, 1984. Land disposal of these wastes in underground injection wells was regulated in separate rules for Solvents and Dioxins, California List, and First Third wastes (see 53 FR 28188, 53 FR 30908, and 54 FR 25416, respectively).

RCRA further requires the Agency to make land disposal prohibition determinations for hazardous wastes that are newly identified or listed in 40 CFR part 261 after November 8, 1984, within six months of the date of identification or listing (RCRA section 3004(g)(4), 42 U.S.C. 6924(g)(4)). The statute does not, however, provide for an automatic prohibition (referred to as a "hard hammer") of land disposal of such wastes if EPA fails to meet this deadline.

The Third Third rule, promulgated on May 8, 1990, set treatment standards for five newly identified wastes. Today's notice suggests possible treatment standards for approximately twenty more newly listed hazardous wastes, and for contaminated debris, and requests comments and data. (Other newly identified and listed hazardous wastes along with a discussion of potential standards for contaminated soil will be addressed in a forthcoming ANPRM in the Federal Register.)

B. Development and Identification of BDAT

A general overview of the Agency's approach in performing analysis of BDAT for hazardous wastes can be found in section III.A.1. of the preamble to the final rule for Third Third wastes (55 FR 22535, June 1, 1990). The framework for the development of the entire Land Disposal Restrictions program was promulgated in the Solvents and Dioxins rule (51 FR 40572 (November 7, 1986)).

The following steps outline the general procedures that EPA follows in the development of waste code-specific treatment standards:

(1) Characterize and divide the wastes to be regulated into treatability groups (by waste code) based on similarities in physical and chemical properties of the wastes and constituents.

(2) Screen all applicable technologies to identify potential BDAT for each treatability group.

(3) Screen the treatment data from "demonstrated" "available" technologies with regard to the design and operation of the equipment, the quality assurance/quality control (QA/QC) analyses of the performance and operating data, and the accuracy and precision of the analytical tests used to assess treatment performance.

(4) Statistically evaluate the individual performance data for each of the various treatment technologies (where data from more than one technology are available) to determine the "best." Where data exist for only one technology, the Agency uses best engineering judgment to assess whether that technology represents the best applicable technology for that particular waste and whether the data indicate that the treatment system was well-designed and well-operated.

(5) Determine which constituents to regulate such that the technologies will be well-operated, thus assuring consistent achievement of best treatment.

(6) Develop the waste code-specific treatment standards accounting for all QA/QC measures.

Treatment standards are expressed either as maximum constituent-specific concentrations allowed in the waste (or in an extract of the treated waste), as a specific technology (or group of technologies), or as a combination of these. Although the statute provides discretion to establish treatment standards as either levels or methods of treatment, EPA would rather set concentration-based treatment standards whenever possible, because they provide the regulated community with flexibility in choosing treatment technologies, and encourage the investigation and development of new and alternative technologies. (This does not, however, supersede the prohibitions on dilution to achieve the concentration-based treatment standard. See, for example, 55 FR 22658.) In addition, establishing concentration-based standards provides a means of ensuring that treatment technologies are consistently operated at conditions that will result in the best demonstrated performance.

In section III.A.1. of the Third Third final rule (55 FR 22535–22542 (June 1, 1990)), EPA discussed several additional issues that are important in determining compliance with the treatment standards, including: The applicability of treatment standards to treatment residues identified as "derived-from" wastes and to waste mixtures; impermissible switching of wastewater and nonwastewater standards (with specific discussions of issues associated with characteristic wastes); placing facility-specific monitoring and compliance requirements in waste analysis plans; and the relationship of concentration-based standards to detection limits and practical quantitation limits (PQLs).

II. Requests for General Comments and Data

In previous notices, the Agency promulgated listings for certain wastes as hazardous under 40 CFR part 261. Although data on waste characteristics and current management practices have been gathered as part of the administrative record for each listing rule, the Agency has not completed its evaluation of the usefulness of these data for developing specific BDAT treatment standards or assessing the capacity to treat (or recycle) these newly listed wastes. As a result, EPA is soliciting comments on the completeness of the existing listing data (as found in the administrative record for the notices for the proposed and final listing actions for each waste) and is requesting

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additional data and information with respect to treatment and capacity.

In order to expedite EPA's review of all comments and data submitted in response to this notice, EPA is requesting that the comments and data be voluntarily identified by the section headings and subheadings (or numbers) of today's notice. For example, comments on the "potential modifications to existing treatment standards for lab packs" could be identified by that title or by "III.D.", its subheading number. EPA recognizes that many comments may actually apply to several headings or subheadings (e.g., a comment on lab packs of debris could be identified as a comment for either III.D., lab packs, or IV., debris). In this case, the commenter should select the identification that they deem most appropriate, or simply identify the comment as a "general comment". While EPA does screen all comments for applicability to all areas discussed in today's notice, this identification procedure is expected to significantly expedite EPA's review process, particularly when coupled with the voluntary submission of comments on computer diskettes (as requested in the **ADDRESSES** section of today's notice).

A. Request for Comment and Data on Pollution Prevention for Newly Identified Wastes

EPA has made substantial progress over the years in improving environmental quality through its media-specific pollution control programs. Standard industrial practice for pollution control has concentrated largely on "end-of-pipe" treatment or land disposal of hazardous and nonhazardous wastes. HSWA established, however, a national policy of reducing or eliminating wastes as expeditiously as possible (RCRA Section 1003(b)). EPA also realizes that programs emphasizing management of pollutants after they have been generated have limitations. EPA believes that reducing or eliminating discharges and/or emissions to the environment through the implementation of cost-effective source reduction and environmentally sound recycling practices can produce additional environmental benefits. Many businesses are already incorporating pollution prevention programs into their strategic planning. Such programs may decrease the volume and/or toxicity of wastes by altering production to incorporate source reduction or recycling.

Under Sections 3002(b) and 3005(h) of HSWA, hazardous waste generators are required to certify that they have a program in place to reduce the volume or quantity and toxicity of hazardous waste to the degree determined by the generator to be economically practicable. EPA encourages generators to pursue source reduction and environmentally sound recycling wherever possible to reduce the need for the costs of subsequent treatment, storage, and disposal. Waste minimization planning programs have been suggested by EPA and mandated by some States.

To aid the regulated community, EPA has produced documents such as Draft Guidance to Hazardous Waste Generators on the Elements of a Waste Minimization Program; Notice and Request for Comment (54 FR 111 (June 12, 1989)) and The EPA Manual for Waste Minimization Opportunity Assessments (EPA 600/2–88/025, April 1988). Several States also have enacted waste minimization legislation (e.g., Massachusetts Toxics Use Reduction Act of 1989; Oregon Toxics Use Reduction and Hazardous Waste Reduction Act, House Bill 3515, July 2, 1989). Additional States have legislation pending that will mandate some type of pollution prevention program and/or facility planning, and many others offer technical assistance to companies that seek alternatives to treatment, storage, and disposal of waste.

Successful reduction in waste generation often does not require complex and/or expensive process changes. There are many relatively simple and easily implemented engineering solutions that will achieve this goal. Evaluation of adherence to existing process control measures, along with slight modifications of these measures, can often result in significant volume reduction. These evaluations also may point out the need for more complex engineering evaluations (e.g., mixing effectiveness, process temperatures and pressures, and reagent grade selection). Simple physical audits of current waste generation and in-plant management practices for the wastes can also yield positive results. These audits often turn up simple, easily implemented practices that do not involve complicated engineering analyses. They may point out, for example, the need for the repair and/or replacement of leaking pipes, valves, and simple equipment. In addition, they may identify the need to modify inspection and/or maintenance schedules.

Waste minimization opportunities for the manufacturing processes generating the wastes identified in today's notice may result in significant reductions in waste generation and, thus, considerable cost savings for industry. The Agency is interested in comments and data on such opportunities, including both successful and unsuccessful attempts to reduce waste generation, volume, or toxicity. It is also possible that, owing to previous implementation of waste minimization procedures, some facilities or specific processes have little potential for decreases in waste generation rates or toxicity.

For the wastes identified in today's notice, the Agency is particularly interested in such specific information as: Data on the quantities of wastes that have been or could be reduced; a way to calculate achievable percentage reductions (accounting for changes in production rates); potential reduction in toxicity of the wastes; the results of waste audits; and potential cost savings that can be (or have been) achieved.

EPA is currently investigating new approaches that would incorporate waste minimization techniques into the BDAT process. BDAT standards could potentially be developed that somehow use source reduction and recycling technologies as the methods for controlling hazardous constituents in the waste. One approach could involve the use of alternative mass-balance limitations for some constituents as they remain in the treatment residuals after application of best available source reduction and/or recycling techniques. For example, the concentration of heavy metals and total cyanides in electroplating wastewater treatment sludges (e.g., F006 wastes) have been demonstrated to be reducible through the use of various source reduction and recycling techniques implemented in the manufacturing process prior to treatment. Thus, implementation of waste minimization practices prior to generation and subsequent stabilization of the wastewater treatment sludges would significantly reduce not only the total mass of hazardous constituents, but also the total volume of wastes destined for land disposal units. Such a result would accord well with the mandate of section 3004(m) to promulgate standards that reduce waste toxicity or mobility in a way that "minimizes" threats to human health and the environment. (Data currently available indicate that stabilization can often result in a significant increase in total waste volume when complying with current BDAT treatment standards.) In addition, there may be situations where specifying the use of a treatment or recovery technology might provide more effective protection than relying on concentration-based or mass-based treatment standards.

All of this is not to say that the Agency will require waste minimization as BDAT, especially by identifying a specific technology that must be used. While the Agency believes that waste minimization is important, we also believe that there should be flexibility in the program in order to encourage innovation so as to find new and better methods to control hazardous wastes. Thus, the Agency welcomes comments on whether, and if so, how waste minimization could be factored into the development of BDAT.

B. General Approach to the Development of BDAT for Newly Identified and Listed Wastes

While the Agency has established a waste management hierarchy that favors source reduction, recycling, and recovery over conventional treatment, it is inevitable that some wastes will be generated. (See EPA's Pollution Prevention Strategy, January 1991.) Thus, standards based on treatment using BDAT will need to be developed for these wastes. The Agency recognizes that there may be some special situations where the generation of a particular waste can be totally eliminated, but this is unlikely for most wastes.

The Agency intends to develop BDAT treatment standards for newly identified and listed wastes based on the transfer of performance data from the treatment of wastes with similar chemical and physical characteristics or similar concentrations of hazardous constituents. It also is likely that the treatment standards for these wastes will be established for both wastewater and nonwastewater forms and on a constituent-specific basis. These constituents are not necessarily limited to those identified as present in the wastes in today's notice.

The technologies forming the basis of the treatment standards, in general, are determined by whether the wastes contain organics and/or metals. For wastes containing primarily organics, the Agency has found that incineration and other thermal destruction techniques can destroy most organics to concentrations at or near the limit of detection as measured in the ash residues. Many people are concerned about environmental impacts of incinerating hazardous wastes, however, and prefer that alternative treatment technologies be used for wastes that must be treated. While the Agency believes that incineration and other thermal destruction technologies achieve a level of relatively complete destruction of organics, EPA typically establishes concentration-based standards based on these data rather than requiring the wastes to be incinerated. Thus, any alternative technologies that can achieve these levels may be used, unless otherwise restricted. In fact, where alternative destruction or removal technologies cannot achieve these levels, but achieve reasonably comparable results, the Agency may promulgate adjusted treatment standards achievable by both incineration and these technologies (e.g., the promulgated treatment standards for petroleum refinery wastes (K048–K052) are achievable by critical fluid extraction, thermal desorption, or incineration).

Since metals are never destroyed, any wastes containing metals must be directly reused, extracted for recovery, chemically stabilized, or generated such that the metals are in a chemical state where the metals are substantially immobile or otherwise rendered less toxic. Wastes containing both organics and metals are usually first subject to some destruction technology, and since metals typically concentrate in the ash and/or scrubber water sludges, these additional residues may have to be chemically stabilized.

Wherever feasible, the Agency is considering transferring BDAT treatment standards for both wastewater and nonwastewater forms of the newly identified and listed wastes from the list of treatment standards in F039, the listing for multi-source leachate, promulgated in the Third Third final rule (see 40 CFR 268.41 and 43 for standards applicable to F039 wastes). These treatment standards were developed not only for F039 but also for the corresponding U and P wastes and for many of the F and K wastes. The standards were based on the use of several treatment technologies performed on a wide variety of waste matrices, thus ensuring that the treatment standards are achievable for a wide variety of wastes. The standards for the nonwastewater forms of F039 are known to be achievable by thermal destruction techniques, such as incineration, or burning in boilers or industrial furnaces, while those for the F039 wastewaters are achievable by multiple wastewater treatment technologies. If a newly identified or listed waste or a new waste contains chemicals that are not currently regulated in F039 wastes, EPA will develop treatment standards for these constituents and may then propose to add them to the treatment standards for F039. (The Final BDAT Background Document for U and P Wastes/Multi-source Leachate is available from NTIS (National Technical Information Service), 5285 Port Royal Road, Springfield, Virginia 22161, (703) 487–4600. The NTIS numbers for the three-volume set are PB90–234337, PB90–234345, and PB90–234352.)

A similar situation may apply to lab packs intended for land disposal. In the Third Third final rule, EPA promulgated regulations allowing generators to dispose of small quantities of U and P wastes (commercial chemical products) in either "organometallic" or "appendix IV" lab packs, or in "organic" or "appendix V" lab packs, depending on the particular material being disposed. If a waste that is newly identified or listed is not already included in either appendix IV or V, EPA anticipates proposing to add the new waste code to the appropriate appendix.

In order to determine whether existing treatment standards such as those established for F039 can be transferred, the Agency is soliciting the following data and information on these newly identified and listed wastes; technical descriptions of the treatment systems that are currently used for these wastes; descriptions of alternative technologies that might be currently available or anticipated as applicable; performance data for the treatment of these wastes (in particular, constituent concentrations in both treated and untreated wastes, as well as information on the equipment design and optimum operating conditions); information on known or perceived difficulties in analyzing treatment residues or specific constituents; quality assurance/control information for all data submissions; and information on the costs for setup and operation of any current and alternative treatment technologies for these wastes.

C. General Approach to the Analysis of Capacity for Newly Identified and Listed Wastes

1. Data Availability

In determining whether to make land disposal prohibitions for a given waste immediately effective, EPA must evaluate the availability of capacity to treat that waste. The Agency performs capacity analyses to determine the amount of alternative treatment or recovery capacity available to accommodate the volumes of waste that will be affected by the land disposal prohibition. If adequate capacity exists, the waste is restricted from further land disposal. If adequate capacity does not exist, EPA may grant a national capacity variance for the waste for up to two

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years, or until adequate alternative treatment capacity becomes available, whichever is sooner. To perform the necessary capacity analyses, the Agency needs reliable data on current waste generation, waste management practices, available alternative treatment capacity, and planned treatment capacity.

For previous land disposal restriction rules, the Agency performed capacity analyses using data from national surveys, including the 1981 Mail Survey, the 1986 National Screening Survey, the 1987 National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities (the TSDR Survey), and the 1987 National Survey of Hazardous Waste Generators (the Generator Survey). The Agency conducted the TSDR Survey to obtain comprehensive data on the nation's capacity for managing hazardous waste and on the volumes of hazardous waste being land disposed. The Generator Survey includes data on waste generation, waste characterization, and hazardous waste treatment capacity in units exempt from RCRA permitting. Data from the TSDR and Generator Surveys were use in capacity analyses for the First Third, Second Third and Third Third LDR rules.

Although the TSDR and Generator Surveys were conducted in 1987, data from these surveys reflect 1986 waste generation and waste management practices. These surveys cannot be used to determine the volumes of newly listed and identified waste requiring treatment, since the majority of these wastes were not listed as hazardous until after 1986 and, therefore, were not included in the surveys. In addition, these surveys may not contain adequate information on currently available capacity to treat newly listed and identified wastes because the data reflect 1986 capacity and do not include facility expansions or closures that have occurred since then. Although adjustments have been made to these data to account for changes in waste management through 1990, this was not done on a consistent basis across all waste management practices. For these reasons, the Agency requests data on currently available treatment capacity to determine whether adequate capacity exists to treat newly listed and identified wastes.

EPA has compiled data from available sources including proposed and final listing rules, regulatory impact analyses (RIAs), background information documents (BIDs), the National Survey of Solid Waste from Mineral Processing Facilities, and the Petroleum Refining Data Base. Even with these sources, however, gaps in the capacity-related data for newly listed and identified wastes remain. Much of the data are several years old and may not reflect current waste generation and management practices. In particular, data from the proposed and final listing rules are often incomplete, and, in some cases, no data on waste generation or management are included, since these rules focus on the characteristics that render a waste hazardous, rather than on waste generation and management. The RIAs and BIDs frequently use estimated data based on assumptions rather than on data collected directly from generators. The National Survey of Solid Waste from Mineral Processing Facilities does contain data for some of the mineral processing wastes; however, not all mineral processing wastes were included in the survey. The Petroleum Refining Data Base reflects 1983 data and does not include all petroleum refineries. For these reasons, EPA requests additional data on the waste generation and management of newly listed and identified wastes to perform capacity analyses for these wastes.

2. Waste Management Practices

To perform capacity analyses, the Agency needs to determine the volumes of hazardous waste that will require treatment prior to land disposal. The volumes of waste requiring treatment depend, in turn, on the waste management practices employed by the hazardous waste generators. Hazardous waste that is currently treated to LDR standards on-site does not require additional commercial treatment capacity. Hazardous waste generators may also manage their waste using practices exempt from RCRA regulations. For example, hazardous wastes discharged to POTWs or navigable waters without any intervening land disposal are not subject to the LDR treatment standards (i.e., they are restricted and not prohibited, and therefore subject only to recordkeeping requirements. See, e.g., 55 FR 22662.) Some generators may manage their waste entirely in RCRA-exempt tanks and thus likewise may not be affected by the treatment standards; others may recycle their waste immediately after generation and not land dispose it.

Other waste management practices can also affect capacity analyses. Generators may co-manage hazardous waste with nonhazardous waste or may dewater hazardous waste, thus changing the volume of waste requiring treatment. Newly listed and identified wastes mixed with regulated hazardous waste may currently undergo treatment and, thus, have been accounted for in the capacity analyses for past rulemakings. Additionally, the hazardous waste treatment technologies may generate additional wastes in the form of residuals that also will be subject to the LDRs.

As stated above, some generators already treat their hazardous waste on-site. Other generators may decide to construct on-site treatment capacity, if it is economically feasible. Since capacity analyses determine the availability of commercial treatment, wastes that are treated on-site are not included in the estimate of the volumes requiring commercial alternative treatment capacity. Nevertheless, the Agency must still obtain information on the volumes of waste that are or will be treated on-site. However, to the extent that residuals from the treatment of hazardous waste are generated, the Agency also needs to account for these residuals in its capacity analysis. EPA requests information on the volumes of waste that are or will be treated on-site or at captive facilities, the residuals generated from treatment, as well as any planned changes in on-site capacity.

Much of the data on waste management practices for newly listed and identified wastes were collected prior to the listing of those wastes. The added costs of managing a regulated hazardous waste may have induced generators to minimize or recycle their waste or otherwise alter their management practices. Any change in management practices will affect the volumes of waste requiring commercial treatment capacity.

As can be seen from the above discussion, to perform capacity analyses, EPA requests information on current and future waste management practices for newly listed and identified wastes, including the volumes of waste that are recycled, mixed with or co-managed with other waste, discharged under Clean Water Act provisions, injected underground via a regulated unit, and the volumes and types of residuals that are generated by the various management practices applicable to newly listed and identified wastes (e.g., treatment residuals).

3. Availability of Treatment

The availability of adequate commercial treatment capacity for wastes not otherwise treated determines whether or not a waste is granted a national capacity variance. The commercial hazardous waste management industry is extremely dynamic. National commercial

treatment capacity changes as new facilities come on-line, as new units and new technologies are added at existing facilities, and as facilities expand existing units. The available capacity at commercial facilities also changes as facilities change their commercial status (e.g., changing from a fully commercial to a limited commercial or captive facility). In addition, the amount of utilized treatment capacity changes as variances granted for previous LDR rules expire and as economic and regulatory conditions change the baseline demand for various treatment technologies. To determine the availability of capacity for treating newly listed and identified wastes, the Agency needs to consider currently available capacity, as well as the timing of any future changes in available capacity.

Commercial combustion capacity for sludges and solids is an important and extremely dynamic component of the nation's hazardous waste management system. Previous LDR rules have substantially increased demand for this technology. Historically, there has been a shortage of capacity for this treatment; however, the increased demand for sludge/solid combustion has encouraged this sector to expand. EPA requests current data on the availability of sludge/solid combustion capacity as well as any planned expansions at combustion facilities in order to determine whether adequate capacity will be available for those newly listed and identified wastes that may require sludge/solid combustion.

Waste characteristics such as pH level, BTUs, anionic character, and physical form may also limit the availability of certain treatment technologies. For these reasons, the Agency requests data and comments on waste characteristics that might limit or preclude the use of any treatment technologies.

EPA requests data from facilities capable of treating hazardous wastes on their current treatment capacity and information on any plans they may have in the future to expand or reduce existing capacity. The Agency also is requesting comments from companies that may be considering developing new hazardous waste treatment capacity. Specifically, EPA requests information on the determining factors involved in making decisions to build new treatment capacity.

4. EPA's Current Plans Concerning Capacity

In cases where important information for conducting capacity analysis for newly listed and identified wastes is not currently available, EPA may conduct additional data collection efforts to obtain the necessary data. The Agency could target the facilities generating large volumes of newly listed or identified wastes to obtain additional capacity-related data. The Agency may also collect additional information from the hazardous waste management industry on currently available treatment capacity.

The Agency is using this notice to present available data on newly listed and identified wastes. Whenever possible, the sources of the data are indicated. In this notice, EPA also presents key issues and preliminary assessments of capacity for newly listed and identified wastes. In addition, this notice presents a wide variety of potential approaches and assumptions the Agency could evaluate to develop capacity assessments for newly listed and identified wastes. EPA is requesting specific data and comments on currently available data and the possible approaches to capacity analyses from generators of newly listed and identified wastes. The data submitted to the Agency will be used in the LDR capacity analyses for newly listed and identified wastes and to corroborate case-by-case variance determinations, as well as for other types of analyses (e.g., economic and cost impact analyses, regulatory impact analyses, market studies).

As noted, capacity information is important for many decisions and policies. To ensure the quality of this information, EPA must collect and validate the relevant data, and otherwise develop the pertinent data base, prior to analysis. This often is an iterative process which can be lengthy. EPA stresses that all knowledgeable parties should provide us with their data, comments and concerns as early as possible for the wastes and issues addressed by this notice.

D. Newly Identified Mixed Radioactive Hazardous Wastes

Radioactive mixed wastes (RMW) are unique hazardous wastes because of dual regulation by the Atomic Energy Act (AEA) for the radioactive components and by RCRA for the hazardous waste components. The hazardous waste components of RMW must meet all applicable treatment standards for each waste code prior to its disposal, unless the wastes are managed in land disposal units that have been granted a no-migration petition. Treating RMW presents, however, a major difficulty: Achieving the treatment standards for hazardous wastes while at the same time ensuring that the AEA safety and handling requirements for radioactive materials are met. In some instances, this may be resolved by establishing specific treatment standards for specific types of RMW, as the Agency did in the Third Third rule (see 40 CFR 268.42, table 3), or by establishing site-specific variances for the waste.

RMW consists of hazardous waste mixed with high-level radioactive wastes, transuranic (TRU) wastes, or low-level radioactive wastes. High-level radioactive wastes are spent fuel from commercial nuclear reactors or wastes from the production of atomic weapons. TRU wastes contain elements with atomic numbers greater than 92 (the atomic number for uranium) and pose greater radioactive hazards than the low-level wastes because they contain long-lived alpha radiation emitters. Low-level radioactive wastes include radioactive wastes that are not classified as high-level or TRU wastes.

All treatment standards that have been promulgated to date for RMW were in the Third Third final rule. Except for four specific types of RMW that have unique BDAT treatment standards, all promulgated treatment standards for RCRA listed and characteristic wastes also apply to the corresponding RMW. The Agency specifically is requesting comment on difficulties the regulated community has encountered with the treatment standards for RMW. EPA particularly is interested in resolving these issues on a more generic basis rather than relying solely on the use of the variance process.

While the Agency does not specifically expect that many of the newly listed F and K wastes listed in today's rule are generated as RMW, the Agency does anticipate that many radioactive wastes will now qualify as hazardous wastes (i.e., RMW) due to the recent toxicity characteristic (TC) rule. In addition, the development of new treatment standards for contaminated debris are expected to be applicable to some RMW. The Agency, therefore, is requesting comment and data about specific RMW that are TC wastes and are considered debris. (Since the TC wastes and contaminated soil will be covered in a forthcoming ANPRM, the 30-day comment period provided in this notice only applies to debris and those specific F, K, and U wastes listed in today's notice.) In addition, EPA requests information and suggestions on special decontamination procedures that have been developed (or may be required) specifically for the removal of the radioactive components of contaminated debris. (These may affect

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the selection of appropriate management practices for these wastes.) EPA, therefore, is requesting that readers carefully review today's notice in its entirety for its potential applicability to RMW with respect to generation, treatment, and capacity for all wastes discussed in today's notice.

III. Potential Modifications to Existing BDAT

Section 2002(b) of RCRA authorizes the Administrator to revise, not less frequently than every three years, each regulation promulgated under HSWA. Section 3004(m)(1) likewise directs EPA to revise existing treatment standards "as appropriate." As a result of this authority and a desire for a simplified regulatory framework, EPA is considering whether to propose regulations that would revise treatment standards and/or reduce administrative requirements.

A. Potential for Establishing Universal BDAT Standards

1. Concentration-based Standards for Organics

Facilities that land dispose organic wastes today typically must comply with individual treatment standards that, in some instances, impose slightly different concentration limits. As a possible alternative, EPA is soliciting comment on the concept of establishing universal sets of treatment standards for all organic constituents—one set for wastewaters and a different set for nonwastewaters. These universal sets of organic standards are being considered as a means to simplify owner and operator compliance as well as the Agency's enforcement and compliance monitoring efforts. The universal treatment standards will be particularly helpful where mixtures of wastes are encountered at both on-site and off-site hazardous waste treatment facilities.

Under a universal set of standards, the same organic constituent would have the same concentration standard, no matter what waste code it is in, and the selection of the regulated constituents would become the primary concern of enforcement and compliance monitoring. The applicable concentrations (i.e., standards) would then be limited to those found in the universal sets (depending on whether the wastes were wastewaters or nonwastewaters). This approach is also consistent with the fact that many wastes that are treatable by similar technologies are often appropriately comingled prior to treatment. The development of universal sets of standards would not be intended to modify current restrictions on the comingling of incompatible wastes, impermissible switching of treatability groups, or impermissible dilution and the Agency is not reopening these issues during consideration of whether to pursue universal treatment standards.

EPA solicits comment on the advantages and disadvantages to the establishment of universal treatment standards for organics. Among the potential advantages are that they would provide the regulated community with concentration goals on a constituent-by-constituent basis for which the facility can develop alternative treatment technologies and to direct waste minimization investigations. Universal standards would also provide EPA with a mechanism to streamline the development of BDAT treatment standards for future listing of hazardous wastes under 40 CFR part 261. New listings could be assumed to be treatable to the levels found in the universal set of standards. Facilities could then rebut these assumptions during the rulemaking for the listing of the wastes. This could also provide a mechanism for the Agency to comply with the statutory mandate to develop BDAT within six months of the final listing.

The majority of the existing waste-code specific nonwastewater standards for organics have been established based on data from some form of thermal destruction, typically incineration. This is primarily due to the ability of these thermal devices to destroy organics to levels at or near the detection limit (as measured in the ash). In fact, incineration has been determined to be BDAT for most of the wastes containing organics. The majority of the existing treatment standards for organic constituents in wastewaters have been based on a variety of conventional wastewater treatment technologies. (See also section III.B. of today's notice for a discussion of concentration-based standards for wastewaters and scrubber waters.)

In determining whether to pursue universal treatment standards, the Agency would consider whether to transfer the numerical levels for these universal organic standards from those established for wastewater and nonwastewater forms of F039 multisource leachate. These standards were established based on the premise that they might be used for universal standards. They include over 200 constituent-specific standards which account for all of the organics that can be analyzed consistently in treatment residuals and that are regulated in all of the other waste codes. (See also the discussions in subsequent sections of today's notice concerning potential adjustments to F001–F005 solvents standards.)

2. Potential Establishment of Technology-Based Standards as Alternatives for Many Wastes Containing Hazardous Organics

EPA is contemplating whether to propose a modified technology-specific treatment standard of incineration (currently coded as INCIN in 40 CFR 268.42, table 1) as an alternative treatment standard for most organic-bearing nonwastewaters currently required to comply with the constituent-specific treatment standards listed under 40 CFR 268.43. EPA is considering whether to modify the INCIN standard to require that the incineration unit be operated in compliance with the updated technical operating requirements that were recently promulgated in the Final Rule for Burning of Hazardous Wastes in Boilers and Industrial Furnaces, (55 FR 7134), February 21, 1991. EPA is particularly interested in the possibility of adding to INCIN requirements for monitoring carbon monoxide and hydrocarbons along with metals. These requirements would only apply to those units where INCIN would be applied as an alternative standard.

As another alternative standard, EPA could propose a modified technology-specific treatment standard of fuel substitution (currently coded as FSUBS in 40 CFR 268.42, table 1) as a method of treatment. This would be limited to those organic wastes for which the constituents of concern contain only carbon, oxygen, and hydrogen in their elemental structure. This is based primarily on the lack of air pollution control devices on fuel substitution units that would remove air emissions expected from the combustion of organic constituents with other elements present (such as bromine, fluorine, phosphorus, sulfur, nitrogen and/or metals). The potential establishment of limitations on the concentrations of these other elements is, however, being considered as part of the modifications to the alternative FSUBS standard.

None of the standards mentioned above would be intended to replace the existing concentration-based standards. They would only act as alternatives. That is, if the facility complied with the modified INCIN or FSUBS standards, the current concentration-based standards (as measured in the ash) would no longer be applicable for these wastes. The concentration-based

standards, however, would still apply to residuals treated by methods other than incineration or fuel substitution. EPA, however, is soliciting comment on whether both of these possible alternative standards should include a requirement for the analysis of a significantly reduced number of constituent-specific treatment standards that could serve as surrogates for confirming proper operation of the incineration or fuel substitution unit.

The existing concentration-based standards were developed as a means of ensuring that the incineration or fuel substitution unit was operated properly for the constituents of concern in each waste on a waste code-basis. The concentration-based standards were also established because they provide a greater amount of flexibility in use of alternative technologies compared to technology-specific standards. The existing technology-specific standards of INCIN and FSUBS were intended to accomplish this same goal, but were only established for waste codes where concentration-based standards were not possible.

Comments received during the development of the LDR regulations suggest that some of the BDAT concentration-based standards may be too low to be verified by existing analytical equipment (as indicated by certain commercial facilities). EPA addressed these issues in the Third Third final rule and is not reopening these issues for comment. EPA, however, is currently investigating whether these perceptions are causing wastes to go untreated (i.e., commercial facilities refusing to accept certain wastes for treatment because they cannot detect the residuals at or below the treatment standard). If so, the Agency may propose revisions to the existing BDAT treatment standards on a waste code-basis in order to ensure that these wastes are treated. In general, waste generation and management data on the majority of these wastes appear to indicate that this is not the situation.

These modified technology-based standards could potentially lead to a generic procedure for delisting of ash residues from incineration or fuel substitution units. This generic delisting procedure for ash from hazardous waste incineration must, however, address concerns about the potential presence, in the ash, of leachable toxic metals and toxic organic products formed during the incineration of halogenated organics. One approach to addressing these concerns that could, at the same time, simplify recordkeeping, compliance monitoring, and enforcement, is for the Agency to develop new waste codes for ash, based on the analysis of hazardous constituents in ash prior to stabilization, or possibly based on the type of waste incinerated (e.g., halogenated or nonhalogenated).

3. Concentration-Based Standards for Types of Metal Wastes

The Agency also is considering options for establishing one or more universal sets of TCLP metals standards based on general types of metal-bearing wastes (e.g., metal hydroxide sludges, metal sulfide sludges, slags, ash, and brine salts/sludges) rather than on a waste code basis. The basic physical-chemical composition of the waste (as given by the above examples) is a key factor in determining the level of achievability of treatment. This could potentially allow the establishment of standards (with some potentially below the characteristic levels) that are based on what treatment can consistently achieve for that waste subcategory. All other metal-bearing wastes that would not fit into these metal subcategories would have to be treated to the corresponding existing standards on a waste code-specific basis.

As an example, one set of metal standards could be established for the stabilization of wastewater treatment sludges that consisted of primarily metal hydroxides prior to stabilization—even though facilities could have identified these sludges as combinations of D004 through D011, F006, or derived-from F, K, U, or P wastes. Since one metal may be regulated at different levels depending on the waste code, and since not all metals are regulated for each waste code, a universal set of applicable metal standards could ease the difficulty of sorting out the appropriate treatment standards.

At the same time, there may be certain metals (such as arsenic, mercury, and/or chromium) or waste types (such as brine sludges, glassified slags, refractory bricks, or scrap metal materials) that cannot achieve the levels of treatment achievable in metal hydroxide sludges and, therefore, may need higher treatment standards. This was one of the main reasons EPA could not establish treatment standards for D004 through D011 wastes below the corresponding characteristic levels (i.e., while data indicated that the majority of metal-bearing wastes apparently could be treated to below the characteristic metal levels, there was always at least one waste type per metal that couldn't reach the lower levels that the other data seemed to suggest were achievable). The Agency, thus, is soliciting treatment data and comment on specific subcategories of metal-bearing wastes and treatment standards that could be developed for these subcategories.

Establishment of some sets of treatment standards could potentially lead to the establishment of a simplified generic delisting procedure for certain types of metal-bearing wastes, such as incinerator ash, residues from high temperature metals recovery, and possibly certain stabilized waste types. These standards would probably place certain restrictions on types (or levels) of metals and/or waste types that could be co-treated. These standards may also require analysis for all metals and would have to require analysis for other constituents that might reasonably be expected per metal type. In doing so, the likelihood of sham treatment through improper co-mingling of waste types or constituents could be reduced. See also the discussion of generic delisting for nonwastewater residuals from HTMR processes in section III.E.3. of today's notice.

4. Potential Regulatory Mechanisms to Encourage Development of Alternative Technologies

The Agency is soliciting information and data on the achievability of the existing incineration-based treatment standards utilizing other technologies. In particular, the Agency is interested in biological treatment data for wastes on a waste code-basis.

It is important to emphasize that a universal set of BDAT treatment standards for organics could encourage (but not force) the development of alternative technologies, in that the goals of treatment would be very clear. A further mechanism could be established to encourage alternative technology development by allowing compliance with the concentration-based standards using destructive technologies (chemical, biological, or thermal) that can achieve non-detect levels reasonably close to these "universal" standards. The Agency is soliciting comment and data that could be used to establish a BDAT regulatory procedure that would thus encourage the development of alternative treatment technologies.

B. Conversion of Wastewater Standards Based on Scrubber Waters

On November 22, 1989 (54 FR 48372), EPA proposed as part of the Third Third rule concentration-based treatment standards for numerous listed wastes based on the performance of incineration. For the wastewaters, the treatment standards were based on the

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concentration of the constituents of concern in incineration scrubber waters. In the final rule (55 FR 22520), however, EPA altered its approach to setting these standards and promulgated BDAT treatment standards for wastewaters based on actual wastewater treatment data for the constituents of concern. This change was adopted for a number of reasons.

First, it was stated in the final rule for the Second Third wastes (54 FR 26629) and reiterated in the final rule for Third Third wastes (55 FR 22577) that when the Agency had appropriate wastewater treatment data from well-designed and well-operated wastewater treatment units, it preferred to use those data rather than scrubber water data to develop wastewater treatment standards. This is because incineration is not a normal treatment method for wastewaters. In addition, alternative standards were proposed in the Third Third notice for multisource leachate (F039) wastewaters based on a transfer of performance data from various sources, including: the Office of Water's Industrial Technology Division (ITD) and National Pollution Discharge Elimination System (NPDES) data (specifically from the Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) database); the Hazardous Waste Engineering Research Laboratory (HWERL) database (HWERL is the former name of EPA's Risk Reduction Engineering Laboratory); the Office of Solid Waste's BDAT data (from previous land disposal restriction rules); and additional wastewater treatment data from articles on wet air oxidation (WAO) and powdered activated carbon treatment (PACT).

Second, commenters on the proposed Third Third rule had urged the Agency to develop treatment standards for wastewater forms based on residues from wastewater treatment technologies rather than incineration scrubber waters. Commenters on previous rules had also stated that they felt EPA had performance data from technologies treating wastewaters containing the same or similar constituents that EPA could use to develop BDAT treatment standards. Commenters emphasized that these performance data represented the treatment of organic-containing wastewaters better than incineration scrubber waters alone. Finally, commenters on the proposed rules for the First Third, Second Third, and Third Third wastes almost unanimously supported the option of promulgating wastewater treatment standards based on the performance of specific wastewater treatment rather than incinerator scrubber water constituent levels.

The Agency reviewed all of the aforementioned data during the Third Third comment period to determine whether it could be considered BDAT. In reviewing these data, the Agency considered influent concentrations of the treated constituent, whether the treated stream was representative of that U, P, F, or K wastewater, and how achievable the detection limit was in similar or other matrices based on other data received. Upon conclusion of these analyses, the Agency revised the proposed wastewater standards for most of the Third Third F, K, U and P wastes based on the data received prior to proposal: Constituent-specific concentration-based standards as found in F039 wastewaters. Detailed information on the development of the wastewater treatment standards can be found in the amendment to the background document titled "Final Best Demonstrated Available Technology (BDAT) Background Document for U and P Wastes and Multi-Source Leachates (F039)," Volume A: Wastewater Forms of Organic U and P Wastes and Multi-Source Leachates (F039) for Which There Are Concentration-Based Treatment Standards." (This document can be found in the RCRA docket for the Third Third final rule.)

As part of the First Third and Second Third rules, EPA promulgated treatment standards for wastewater forms of 24 K and U wastes (i.e., K015, K016, K018, K019, K020, K023, K024, K028, K030, K043, K048, K049, K050, K051, K052, K087, K093, K094, U028, U069, U088, U102, U107 and U190). These wastewater treatment standards were based on data from incineration scrubber waters. The Agency is presently analyzing these data to determine whether EPA should modify the concentration-based treatment standards for these wastewaters. The wastes affected by this change come primarily from three general treatability groups: Chlorinated organics, petroleum wastes, and phthalate wastes. The Agency is today providing an opportunity to comment on this possible change, and to submit data.

C. Potential Revisions to the F001–F005 Spent Solvent Treatment Standards

The Agency is investigating the benefits of revisions to the treatment standards for organic constituents in both the nonwastewater and wastewater forms of F001–F005 wastes. The Agency is soliciting comments on possible ways to change the standards as well as any treatment data that may be available to assist in further refinement of the treatment standards. The existing standards, currently listed in 40 CFR 268.41, include concentrations for 25 solvent constituents.

1. Nonwastewater Standards Based on Total versus TCLP Analysis

The Agency is looking at the issue of conversion of nonwastewater treatment standards for organic constituents in F001–F005 spent solvents from the existing TCLP standards to standards based on analysis of total concentrations. The existing treatment standards for nonwastewater forms of F039 (multi-source leachate) would be potential candidates for transfer. Any new F001–F005 standards, however, would not modify the standards for the four solvents that were added to the solvents listings since 1984: Benzene, 2-ethoxyethanol, and 2-nitropropane to F005, and 1,1,2-trichloroethane to F002. Treatment standards for these solvent constituents were promulgated in the Third Third rule and, for the most part, are already based on analysis for total concentrations rather than TCLP.

The Agency also is considering establishing the treatment standards based on the analysis of total constituent concentrations as an option for compliance with the existing F001–F005 leachate standards. Thus, in the course of treating mixtures of other hazardous wastes and F001–F005 solvents, the facility could be considered to be in compliance with the TCLP treatment standards for F001–F005 by demonstrating compliance with the F001–F005 total numbers. This would be consistent with the concept of universal standards as discussed previously in section III.A. of today's notice, and could reduce unnecessary and extra laboratory analysis (i.e., using both TCLP leachate analysis and total analysis for the same constituents).

2. Consistency with Universal Wastewater Standards

In order to be consistent with the concept of universal wastewater treatment standards discussed earlier in section III.A. and B., EPA would also consider whether to convert the existing standards for wastewater forms of F001–F005 to those established for F039 wastewaters. This would result in increases in the concentrations for approximately half of the F001–F005 constituent-specific standards. The majority of these compounds are low-toxicity, water-soluble compounds for which detection limits have been purportedly difficult to achieve at the existing standards (e.g., ethyl ether, ethyl benzene, acetone, and n-butanol). Some of the increases are relatively insignificant (e.g., ethyl benzene may increase from 50 ppb to 57 ppb). For approximately half of the F001–F005 constituents, the standards would be lowered. These compounds are typically the more toxic of the 25 solvent constituents and tend to be halogenated.

3. Revisions to the Standards for Cresols

In the Solvents and Dioxins rule, the Agency promulgated BDAT treatment standards for "cresols" (a regulated constituent in the F001–F005 treatment standards), but did not distinguish between the various isomers present in cresols. Hence, the Agency determined the concentration-based treatment standard for cresol wastewaters to be 2.82 mg/1 based on the performance of activated carbon adsorption treatment of cresols. For nonwastewaters, the Agency had no data on TCLP extracts of residues from the incineration of cresols (cresylic acid) to use in the derivation of the BDAT treatment standard. EPA used, in part, comparable chemical structure as the basis for transferring treatment data to cresols (cresylic acid) in the spent solvents. The data on which the treatment standard was based was from the incineration of methyl ethyl ketone. The treatment standard of 0.75 mg/1 for nonwastewaters is based on the transferred data.

The Agency also is investigating whether there is merit in a change to the current treatment standards for the constituent "cresols" in F001–F005 wastes. In the Third Third rule, EPA promulgated treatment standards for U052 wastes. U052 is listed as "cresols (cresylic acid)." Cresylic acid is the name given to a mixture of three isomeric cresols (i.e., ortho-cresol, meta-cresol and para-cresol) in which meta-cresol predominates. Analytical methods are usually reported for o-cresol (CAS No. 95–48–7) and a combination of m- and p-cresols because m-cresol and p-cresol cannot be distinguished by the analytical methods. Thus, the Agency promulgated concentration-based standards for U052 based on an analysis for o-cresol and the mixture of m-cresol and p-cresol. The Agency, therefore, is considering whether to transfer the wastewater and nonwastewater treatment standards from U052 wastes to F001–F005 wastes.

4. Modification to the Regulatory Placement of F001–F005 Standards

The Agency also is considering the issue of placement of the F001–F005 treatment standards as they appear in the regulatory tables. The Agency has identified an error in the current placement that often provides confusion in locating the standards. Currently, the standards for F001–F005 nonwastewaters and wastewaters are both found in Table CCWE—Constituent Concentrations in Waste Extract (40 CFR 268.41). The wastewater standards should be in 40 CFR 268.43, Table CCW—Constituent Concentrations in Wastes, because they are based on total analysis and not a TCLP analysis. Furthermore, if the Agency alters the nonwastewater treatment standards from a TCLP standard to a standard based on total waste analysis, the standards will also be in 40 CFR 268.43, Table CCW—Constituent Concentrations in Wastes.

D. Potential Modifications to Existing Treatment Standards for Lab Packs

Potential changes to 40 CFR 268.42 for lab packs are also being examined. In the January 31, 1991 technical amendment to the Third Third final rule (55 FR 3864), the Agency corrected many typographical errors in appendix IV and appendix V of 40 CFR part 268. EPA also noted some inconsistencies in the conceptual placement of these wastes into the appendices. Today's notice provides information on potential modifications in order to simplify the use of the appendices.

1. Potential Limits on Organo-metallic Lab Packs

Appendix IV of 40 CFR part 268 identifies waste codes that may be placed in an organometallic lab pack, while appendix V identifies waste codes that may be placed in an organic lab pack. These two categories of lab packs were established to distinguish those wastes needing chemical stabilization after incineration from those needing only incineration. The current regulation not only requires incineration, but also requires in 40 CFR 268.42(c)(4) that the residues from either type of lab pack must no longer be characteristic for the majority of toxic metals (i.e., they must comply with the treatment standards for D004–D008, D010, and D011) prior to land disposal. Since it is necessary to address the potential presence of metals in the incinerator ash for both appendices, there is little practical difference in application of the standards for the two appendices. EPA is soliciting ideas on regulatory modifications that could simplify the application of these appendices.

Appendix IV allows seven of the eight characteristic metal wastes and F006 wastes (wastewater treatment sludge from certain electroplating operations) to be placed in organometallic lab packs. These wastes may or may not contain organics. Although the Agency intended that these wastes be organometallic, there is no regulatory definition of what constitutes an organometallic. The Agency therefore is investigating whether a regulatory definition of organometallics is necessary, or whether other regulatory requirements should be developed to prevent potential misuse of the existing appendix IV lab pack requirements.

The Agency also is considering requirements that would limit the quantity of organics and metals that lab packs may contain, or, as another option, combining appendix IV and V into one appendix and requiring incineration with subsequent stabilization of the residual incinerator ash to meet the characteristic metals treatment standards.

The Agency also is investigating a limit on total arsenic placed in organometallic lab packs. After incineration of a lab pack containing arsenic, some of this metal may either remain in the incinerator ash or become trapped in the ash in a toxic inorganic form. Although volatile arsenic can be controlled by appropriate air pollution control devices, there is concern regarding the effectiveness of conventional pozzolanic stabilization processes for ash that contains significant amounts of arsenic.

2. Lab Packs from Treatability Studies

In addition to the above issues, the Agency is aware of two other areas (discussed in this and the next subsection) where the development of alternative treatment standards for other types of lab packs could simplify implementation of the land disposal restrictions.

One situation arises for certain lab packs containing residues from hazardous waste treatability studies. These studies take samples of treated and untreated hazardous wastes for analysis of hazardous constituents in order to determine the effectiveness of treatment. There are likely to be residues from the analysis of the wastes (both treated and untreated) that do not represent optimum treatment (i.e., they may fail the treatment standards by only slight amounts, and perhaps for only one constituent), and from samples that were spiked for recovery studies that may be above the promulgated treatment standard.

These samples are usually relatively small. Before the land disposal restrictions, they were disposed of in lab packs. Current regulations require these samples to be treated to below the treatment standards. This typically

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means that these samples must be segregated, possibly ground, and most likely mixed with larger batches of untreated wastes. Since there is such a small quantity, there is some logic in mixing these with other wastes in lab packs that are going to be incinerated and/or stabilized. However, as with other lab packs, difficulties arise in verifying concentration-based treatment standards because of the difficulties in obtaining representative samples of the wastes in the treated lab packs.

The Agency is soliciting comment on provisions that might be established for these wastes. One approach for metal-bearing wastes from treatability studies, for example, could be to establish stabilization as a method of treatment with limitations on one or more of the following: A minimum amount of stabilization reagents, a maximum amount of interfering compounds such as organics, or limitations based on the amount or type (i.e., treatability group) of metals or waste codes present. The Agency is interested in comment on this and any other feasible approaches.

3. Lab Packs from Hospitals and Laboratories

In a similar situation, many analytical laboratories and hospitals generate lab packs containing heterogeneous mixtures of debris-like materials, such as broken glass, gloves, syringes, protective gear, empty analytical vials, wipe samples, and broken thermometers. These materials usually are contaminated with small amounts of many wastes and/or chemicals. Since some of these may be wastes or chemicals that otherwise would be prohibited from placement in lab packs, some laboratories may not be able to take advantage of the alternative treatment standards for appendices IV and V. While the treatment standards being developed for contaminated debris may resolve this issue, the Agency also is soliciting comments on regulatory modifications that could be developed.

4. Potential Automatic System for Incorporating Newly Identified and Listed Wastes into Alternative Treatment Standards for Lab Packs

The Agency also is considering ways to establish an automatic system for incorporation of newly identified and listed wastes into appendices IV and V (or a composite version of these). Thus, if the newly identified or listed waste contains organics and metals, then it could be automatically included in appendix IV. If, on the other hand, the waste contains only organics, it could be included automatically in appendix V. The present plan calls for making these decisions during the regulatory determination for listing the wastes.

E. Recovery as BDAT for Concentrated Metal-bearing Wastes

The Agency is soliciting general information on types or subcategories of metal-bearing wastes that are currently amenable to various metals recovery technologies. Preliminary discussions with several commercial recovery vendors appear to indicate that a wide variety of metal-bearing wastes can be technically and economically recovered with existing technologies. These processes typically involve various combinations of pyro-, hydro- and/or electro-metallurgical principles.

The Agency is currently investigating mechanisms that could be used to encourage the use of these processes as alternatives to stabilization and land disposal. One potential mechanism is for the Agency to revise the existing concentration-based metal standards based on stabilization to new concentration-based standards based on the analysis of recovery residues, such as those from high temperature metals recovery (HTMR). The following section of today's notice illustrates how this might work for certain K061 wastes.

1. Potential Revisions to K061 Nonwastewaters in the Low Zinc Subcategory that Contain High Chromium/Nickel

K061 wastes are defined in 40 CFR 261.32 as emission control dust/sludge from the primary production of steel in electric furnaces. While many of the K061 wastes generated from the primary production of steel are generally low in chromium, K061 wastes that specifically are generated from the primary production of stainless and specialty steel typically are rich in chromium and low in zinc (i.e., they are in the K061 low zinc subcategory). This type of K061 waste is one of the easiest materials from which to recover chromium and nickel by HTMR.

On April 12, 1991, the Agency published a notice of a proposed rule for K061 wastes in the high zinc subcategory (56 FR 15020). In this notice, the Agency proposed concentration-based treatment standards based on the analysis of residues from HTMR processes from which zinc was being recovered. The Agency has preliminary data and information on another high temperature metals recovery (HTMR) process consisting of a rotary hearth furnace followed by an electric furnace that can recover chromium and nickel from other K061 wastes (i.e., those in the low zinc subcategory) as well as from a variety of other hazardous wastes.

These other wastes include: K062 (spent pickle liquor), F006 (wastewater treatment sludges from certain electroplating operations), and characteristic wastes such as D002 acid wastes and D007 chromium wastes. These characteristic wastes typically include wastes identified as pickling solutions (acids), plating solutions, batteries, catalysts, chrome-magnesite refractories (i.e., bricks), spent chromic acid, and other air pollution control device (APCD) baghouse dusts that are similar to K061. In order to recover chromium and nickel from these wastes, the wastes typically must meet the following specifications: A minimum of 1.5% (by weight) nickel and chromium, in combination; a maximum of 0.03% total phosphorus, 2.0% copper, 2.0% sodium or potassium chlorides, 5.0% sulfur (10% for lime neutralized and precipitated solids), and 250 ppm total cyanide; and a minimum of 20% solids content with no free liquids.

The Agency is soliciting comment on the potential for establishing concentration-based treatment standards based on the analysis of residues from high temperature metals recovery (HTMR) units recovering chromium and nickel. At the time of this notice, specific concentration-based standards based on this process have not been completely developed, but are expected to be similar to those proposed for K061 wastes in the high zinc subcategory except for nickel and chromium. (See discussion of high chromium/high zinc K061 wastes in the April 12, 1991 proposed rule.) The Agency is considering proposing such standards for K061 wastes in the low zinc subcategory (see the following discussion on applicability to these K061 wastes) and solicits comment on expanding the applicability of these standards to the K062, F006, and characteristic wastes meeting the criteria described above.

For reasons outlined in the April 12, 1991 proposed rule, the concentration-based treatment standards for K061 wastes in the high zinc subcategory were proposed as applicable to 14 metals rather than to only those currently regulated in the low zinc subcategory. The Agency specifically is soliciting information on the applicability of these proposed standards to K061 wastes in the low zinc subcategory. The Agency also is soliciting comment on whether these levels also may be applicable to wastes from HTMR of high chromium/nickel K061 wastes, as well as other hazardous wastes, such as F006 and K062, that may be treated using these technologies

(provided they meet the specifications identified above).

2. Currently Available Capacity Information for K061 Wastes

The American Iron and Steel Institute (AISI) estimated the total 1989 generation of K061, from both stainless and carbon steel production, to be 353,000 tons per year. According to AISI, stainless steel accounts for 19 percent of total steel production; therefore, 1989 high chromium K061 generation is approximately 67,000 tons per year. In the First Third rule, EPA used data from the TSDR Survey to estimate the total generation of K061 to be 345,000 tons per year. The Agency assumed that 75 percent of the K061 volume is from carbon steel. Thus, the remaining 25 percent was assumed to be from stainless steel production, which yields 86,000 tons of high chrome K061 per year. The Agency recently received an estimate from an industry source indicating that 1990 stainless steel K061 generation ranged from 83,000 to 86,000 tons. The Agency needs to confirm the volume of high chromium K061 that is generated.

Indications are that most high chromium K061 potentially could be recycled to recover chromium. The Agency has received information that chromium recovery can be achieved by HTMR and hydrometallurgical/electrometallurgical metals recovery. One HTMR facility is currently processing high chromium K061, and is capable of processing 52,000 tons per year. A hydrometallurgical/electrometallurgical metals recovery facility, which began operations in 1990, may be capable of processing 300 tons of stainless steel K061 per year.

The Agency requests comments on the current high chromium K061 processing capacity, and on any physical, chemical, or materials handling constraints associated with high temperature or hydrometallurgical/electrometallurgical recovery for this waste.

3. Potential Generic Delisting Option for BDAT Nonwastewaters Residues

EPA is considering the idea of a generic delisting for K061 wastes in the low zinc subcategory (and possibly for F006 and K062) that contain recoverable amounts of chromium and/or nickel. This generic delisting, based on compliance with treatment standards for 14 metals, could be proposed as applicable only to nonwastewater residues generated from HTMR processes rather than to those from chemical stabilization. The rationale for limiting this potential action to HTMR residues is that the chemical bonding that occurs under the high temperature and oxidation/reduction conditions within the HTMR units is inherently different from the bonding that forms the basis of cementitious and pozzolanic stabilization. In addition, the kinetics of the reaction forming the bonds in these HTMR processes are superior to the kinetics for bond formation in cementitious reactions. (Cement is not typically considered set for a minimum of 72 hours, and often not considered fully cured until after 28 days.) Stabilization has also been documented as a process that is highly matrix-dependent and prone to chemical interferences. Most commercial stabilization facilities have to develop special mixes for each waste type by selecting additives that will enhance curing time and/or structural integrity (often measured by compressive strength).

While the Agency recognizes some advantages of HTMR recovery of chromium and/or nickel over stabilization, stabilization does provide treatment for the metal-bearing wastes that must be land disposed and cannot be economically recovered. In fact, should the Agency propose or promulgate generic delisting and new treatment standards based on HTMR for K061 wastes in the low zinc subcategory, site-specific delisting still would remain a viable option for stabilized K061 wastes. However, due to the inherent differences between HTMR and stabilization stated above, and the fact that insufficient data currently exists to propose a generic delisting for stabilized wastes, generic delisting levels for HTMR nonwastewater residues would not appropriately be applicable to stabilized K061 residues that have not undergone HTMR. More individualized consideration of stabilization processes is warranted before residues from the process are generically delisted.

Generic delisting for these recovery residues could encourage the use of HTMR as well as other recovery processes. In addition, the Agency believes that HTMR and other recovery processes offer an advantage over stabilization technologies for some metal-bearing wastes, with respect to their resource recovery and the large differences in volumes of treated wastes that require disposal versus the generation of delisted, nonhazardous wastes. The Agency is soliciting comment on all facets of these issues.

IV. Potential BDAT for Contaminated Debris

This section of today's notice presents a discussion of the data currently available to the Agency on contaminated debris, the status of ongoing treatment evaluations, and the approach and options that the Agency is considering for establishing revised treatment standards for contaminated debris. (Today's notice does not involve contaminated soil. A discussion of data and the Agency's approach to develop treatment standards for contaminated soil will be addressed in a forthcoming advanced notice of proposed rulemaking.)

Commenters submitting treatment performance data should include a description of the contaminated debris, complete chemical and physical analysis of the wastes and treatment residuals, and technical descriptions of the treatment method or management practice (including optimum operating conditions). Those planning new tests with the intent of submitting data to EPA are urged to communicate with EPA before testing to confirm that the data developed will meet EPA's QA/QC requirements.

The Agency also is soliciting information on the costs associated with treatment of contaminated debris in order to prepare the regulatory impact analysis. Of interest are technical reports on any of the treatment technologies, with particular emphasis on treatment efficiencies, end concentrations reached and their dependence on untreated concentrations, and costs for set up and operation of the treatment technology.

A. Relationship of Today's Notice to EPA's "Contaminated Media Cluster"

As this notice goes to press, the Agency has begun a broader consideration of contaminated media issues that will have some influence on the issues raised here. In order to improve the overall quality of its regulatory decision making, the Agency has begun to look at groups or clusters of regulations in order to develop more integrated approaches to various environmental problems. One of these regulatory clusters, the "contaminated media cluster", is designed to develop a more integrated Agency approach for its policies and regulations dealing with its waste remediation programs. Over the next several months, the contaminated media cluster project will gather information to develop a comprehensive view of the quantities and types of waste needing remediation, the types of risks they represent, the current statutory and regulatory framework, elements of an effective cleanup process, and the costs and benefits of cleanup. The culmination of that work

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will be a regulatory strategy that will include a set of objectives and operating principles for the Agency's remediation programs. The land disposal restrictions (LDR) regulatory effort and the resolution of issues on contaminated debris will be closely coordinated with the regulatory cluster on contaminated media.

B. Applicability of Existing Land Disposal Restriction Treatment Standards and Superfund 6A and 6B Guides

In promulgating LDRs, including treatment standards for solvents and dioxins, California list wastes, and the First, Second, and Third Third wastes, the Agency regulated debris contaminated with these restricted wastes. The land disposal restrictions in 40 CFR part 268 thus generally apply to contaminated debris, including such debris generated from corrective actions and closures at RCRA-regulated land disposal sites, remedial and removal actions at CERCLA (Superfund) sites, and private-party cleanups.

Under the Agency's "contained-in" policy, contaminated media (i.e., debris, soil, groundwater, sediments) that contain RCRA wastes must be managed as if they were hazardous waste until the media no longer contain the hazardous waste (i.e., until decontaminated) or until they are delisted. To date, the Agency has not issued any definitive guidance as to when, or at what levels, environmental media contaminated with hazardous waste no longer contain the hazardous waste. Until such guidance is issued, the Regions or authorized States may determine these levels on a case-specific basis. The Agency also suggests that when making a determination as to when contaminated media no longer contains a hazardous waste that a risk assessment approach be used that addresses the public health and environmental impacts of the hazardous constituents remaining.

The Agency has determined, however, that contaminated debris generally is more difficult to treat than RCRA industrial wastes. Special treatability variance procedures were established for contaminated debris based on the available treatment data that existed at the time. These data were used to develop interim guidance treatment levels (Superfund LDR Guides #6A and #6B, i.e., OSWER Directives 9347.3–06FS and 9347.3–07FS, respectively) for assessing these treatability variances. (Copies of the 6A and 6B guides can be obtained by calling the RCRA Hotline at 1–800–424–9346.)

C. Development of Potential Regulatory Definitions for Debris

The Agency has previously developed definitions for debris that serve as guides in applying the treatment standards. The Agency now is considering and requesting comment on whether regulatory definitions for debris and contaminated debris are necessary or could provide a means of simplifying the implementation of treatment standards. These definitions could be placed either in 40 CFR 260.10 for general application, or in 40 CFR 268.2 for application only to the land disposal restrictions. The Agency has developed preliminary regulatory definitions for debris and contaminated debris that are given below. (The presentation of these suggested definitions in today's notice should not be construed as replacing definitions that appear in other regulatory form.)

Debris means solid material that: (1) Has been originally manufactured or processed, except for solids that are listed wastes or can be identified as being residues from treatment of wastes and/or wastewaters, or air pollution control devices; or (2) is plant and animal matter; or (3) is natural geologic material exceeding a 9.5 mm sieve size including gravel, cobbles, and boulders (sizes as classified by the U.S. Soil Conservation Service), or is a mixture of such materials with soil or solid waste materials, such as liquids or sludges, and is inseparable by simple mechanical removal processes.

Contaminated Debris means debris which contains RCRA hazardous waste(s) listed in 40 CFR part 261, subpart D, or debris which otherwise exhibits one or more characteristics of a hazardous waste (as a result of contamination) as defined in 40 CFR part 261, subpart C.

When soil is agglomerated on debris or compacted/contained inside the nooks and crannies of crumpled debris, it is difficult to separate; this soil typically is separated during the treatment of the debris, however, and may require additional treatment, depending on the process utilized for the treatment of the debris. Any separated soil will be subject to treatment standards for soil.

D. Potential Regulatory Structure for Treatment Standards

Existing treatment standards for most RCRA hazardous wastes are presented on a waste code-basis as leachate concentrations in 40 CFR 268.41, as specified treatment methods in 40 CFR 268.42, and as total constituent concentrations in 40 CFR 268.43. As a result, any revised treatment standards for contaminated debris might logically fall under these regulations. However, the Agency may consider placing new treatment standards for contaminated debris in a new regulatory section or appendix within 40 CFR part 268.

The Agency has identified two key questions concerning any potential regulatory construct. The first is: Should contaminated debris be subcategorized into additional treatability groups? The second is: Should contaminated debris be a separate waste code? Integral to answering these questions is the concept that the hazardous waste is contained on the debris in some manner. The separation of the hazardous waste from the debris becomes, therefore, the primary goal of treatment. While complete separation would logically result in nonhazardous debris, difficulties can arise in ascertaining complete separation. The regulatory construction of treatment standards for debris, thus, may not guarantee a nonhazardous debris, but can provide compliance with the statutory mandate to treat all hazardous waste prior to land disposal in a way that significantly reduces waste toxicity and mobility. The remaining debris would then be considered treated and could be land disposed.

Residues derived from the separation of the hazardous waste from the contaminated debris (except for separated soil residues) could logically carry the waste code or codes of the waste originally contaminating the debris. In an effort to simplify the treatment standards, however, the Agency is considering establishing a few new waste codes specifically for the residues from the treatment of debris.

A similar situation arose for multi-source leachate which, theoretically, could be derived from any combination of waste codes. As a regulatory solution, the Agency created a new listing for multi-source leachate identified as F039 and established treatment standards for approximately 200 constituents for F039.

EPA thus is considering four categories of standards for both contaminated soil and debris: (1) Those for the treated soils; (2) those for the treated debris; (3) those for the nonwastewater residues derived from the treatment of contaminated soil and debris (i.e., residues that are neither soil or debris); and (4) those for wastewater residues derived from the treatment of contaminated soil and debris. (The regulatory structure being considered for contaminated soils will be discussed in a forthcoming advance notice of proposed rulemaking (ANPRM).) The regulatory structure being considered for the treated debris will be discussed later in this section.

Depending upon the separation process that is applied to the contaminated debris, non-debris nonwastewater residues from the separation process may need further treatment. (For example, solvent extraction of a debris material will probably result in a solvent residue that contains the hazardous organics constituents.) The matrix of these residues should be less complex than that of contaminated debris, and could be comprised of any of the BDAT constituents over a range of concentrations. Since the separated materials are actually derived from the hazardous waste that originally was contaminating the debris, one option for developing treatment standards for these residues would be to simply apply the existing applicable treatment standard for that hazardous waste code (if identifiable). One other option is to establish one set of concentration-based treatment standards for such residues (as introduced in the above discussion on the applicability of F039 standards).

In a similar manner, the wastewaters that result from the decontamination of debris also may have to be treated before they can be land disposed. It is intuitively obvious that these wastewaters are significantly less difficult to treat than the contaminated debris, and may be treatable to concentrations similar to the wastewater treatment standards for F039. Again, a transfer of the treatment standards for F039 (except this time, the wastewater standards) for the wastewaters from treating debris could be appropriate because these wastewaters could contain any of the regulated BDAT constituents.

Based on the technical theory behind the development of the treatment standards for multi-source leachate (F039) and the U and P chemicals, one set of wastewater and one set of nonwastewater standards are also a potential solution.

E. Development of BDAT for Contaminated Debris

The physical and chemical characteristics of debris itself suggest that treatability groups may have to be established based on technical limitations on the degree of decontamination that can be achieved. For example, permeable debris that absorbs contamination into its pore spaces may be more difficult to decontaminate than debris that is impermeable. Based on a review of 222 hazardous waste sites that reported debris on the site, the Agency has developed eight preliminary subcategories of debris that may pose different problems in treatment: (1) metallics; (2) brick, concrete, and rock; (3) wood; (4) paper and cloth; (5) rubber and plastics; (6) glass; (7) equipment and structures; and (8) asbestos. The Agency also recognizes that many debris wastes, such as lab packs, are combinations of these subcategories, and pose additional complications in establishing BDAT. (See also a discussion of potential BDAT for lab packs in section III.D. above.)

The treatability of debris is also affected by the physical and chemical characteristics of the chemical contaminants on the debris, and their respective concentrations. For example, it may be reasonable to incinerate a debris material contaminated with high concentrations of toxic organics and low concentrations of metals. Incineration of the same debris material with somewhat higher concentrations of metals, however, may be undesirable because of the anticipated increase in air emissions of metals. A debris material with low concentration of organics and high concentrations of leachable metals may be a good candidate for stabilization (provided it is reasonably friable in the first place). If, however, the organics are too high or one of the metals is arsenic or mercury, conventional stabilization may not be effective, and specialized reagents may be needed. The selection of appropriate technologies, thus, will depend on the interrelationship of the constituent types, their respective concentrations, and the physical subcategories of debris.

The Agency is soliciting comment on these potential debris subcategories with respect to the following: The inclusiveness of these subcategories; the ability to distinguish and separate debris into these subcategories; the quantities of debris encountered in each of the subcategories; and the types of contamination encountered.

1. Treatment Technologies for Contaminated Debris

The single most important issue in establishing concentration-based treatment standards for contaminated debris arises from the effectiveness of obtaining representative samples for analysis. There is a significant potential for error in choosing how and where to sample, and although many debris wastes have been sampled and analyzed, the procedures for both sampling and analyzing (including QA/QC procedures) contaminated debris have not been standardized.

There is a paucity of constituent-specific treatment data for contaminated debris. When it is available, these data show decontamination of debris, but they generally lack sufficient QA/QC information. This lack of QA/QC data probably directly results from complications arising from difficulties in measuring recovery from debris materials.

The Agency is investigating three general categories of treatment for contaminated debris that fulfill the goal of treating debris: to remove or destroy the contaminants or otherwise render the waste less hazardous. The three categories are extraction, destruction, and immobilization.

Extraction technologies are intended to remove the hazardous constituents from the surface or pores of the debris materials and typically rely on physical properties of the contaminant, such as solubility and volatility, and the physical properties of the debris material. Extraction technologies often include physical agitation and removal of contaminated layers of the debris material. EPA currently is investigating the following extraction technologies: Grit blasting, hydroblasting, scarification, drilling and spalling, solvent washing, steam cleaning, vapor-phase solvent extraction, washing, rinsing, soaking, vacuuming, wiping, vibratory finishing, and low-temperature thermal desorption. These technologies are then followed by destructive technologies applied to the extracted materials or extracting media. The decontaminated debris could be disposed of in a hazardous waste (subtitle C) landfill.

Destructive technologies rely on chemical, biological, or thermal oxidation or reduction of the contaminant to a less hazardous compound or form. These technologies are commonly applied directly to debris material and often involve some degree of extraction. EPA currently is investigating the following destructive technologies: Acid etching, bleaching, microbial degradation, photochemical degradation, chemical treatment, electropolishing, flaming, and incineration.

Immobilization technologies rely on the use of a sealant of some sort that prevents leaching of the hazardous constituents by entrapment. Typically, these immobilization technologies involve macroencapsulation rather than microencepsulation, implying a reliance on primarily physical entrapment; however, there is some evidence that some chemical reactions occur which provide the entrapment (particularly with pozzolanic stabilization of metal contaminants). EPA currently is investigating the following immobilization technologies: asbestos

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abatement techniques, macroencapsulation, chemical sealing (e.g., K-20 sealant), and pozzolanic stabilization.

Immobilization technologies may require preprocessing of some debris materials by crushing or grinding. The Agency is investigating the following with respect to grinding: The existence and capabilities of machinery for crushing and grinding; limitations that potentially could be established for these operations; limitations on feed composition of the debris materials (i.e., by debris types); and potential for air emissions (including dust, metals, and volatile organics) and/or controls that may be required. In addition, the Agency is investigating the need for limitations on waste/binder ratios for stabilizing debris.

2. Options for Contaminated Debris Treatment Standards

Establishing the use of specific technologies as the treatment standards for contaminated debris under 40 CFR 268.42 would appear to solve the major issues in sampling and analysis of treated debris by eliminating the need for constituent specific analysis of the treated debris. The Agency is requesting comment on the following definitions for treatment standards that the Agency is considering to establish for contaminated debris:

DSTRC (Destruction) means compliance with the requirements of chemical oxidation (CHOXD), chemical reduction (CHRED), biodegradation (BIODG) or incineration (INCIN) identified in 40 CFR 268.42 Table 1; or the use of an equivalent destruction technology that provides sufficient agitation, temperature, and exposure time that a surrogate compound or indicator parameter has been substantially reduced in concentration (e.g., Total Organic Carbon can often be used as an indicator parameter for destruction of many organic constituents that cannot be directly analyzed).

EXTRC (Extraction) means the use of an extraction technology (such as acid washing, liquid-phase solvent extraction, abrasive blasting, drilling and spalling, scarification and grinding, water washing and spray, etc.) with sufficient agitation, temperature, partitioning, exposure time, and/or appropriate solvent/chemical such that the majority of RCRA hazardous contaminants have been significantly reduced in concentration from the surface or pores of the material.

IMMBL (Immobilization) means the use of an immobilization technology (such as macroencapsulation, stabilization and solidification, sealing, etc.) with sufficient curing time, and appropriate chemicals such that the mobility of a majority of RCRA hazardous contaminants has been significantly reduced.

These standards would appear in 40 CFR 268.42 Table 1. As discussed at the introduction of this section on debris, the actual selection of a best technology for any given waste would be highly dependent on the type of debris, type of contaminant, and the concentrations of the contaminant in the debris. The regulated community would then select recommended technologies from a guidance manual or an appendix (yet to be developed) based on contaminant type, debris type, and technology. The key to the use of the specific technology is built into the definitions of the three standards of EXTRC, DSTRC, and IMMBL. The selection of the most appropriate extraction, destruction or immobilization technology would be based on a demonstration of its efficiency through the use of surrogate analysis or engineering judgment that takes into account the type of waste and contaminant as they relate to the type of debris.

These treatment standards for contaminated debris would potentially be applied to the untreated debris. The residual debris after treatment could be land disposed and any extracted media or materials would comply with concentration standards for the respective waste code (or a new set of numbers that could be similar to those for multi-source leachate nonwastewaters). As with all existing BDAT treatment standards, all treatment residues would have to be evaluated for their degree of hazard. Complete removal or decontamination is not necessarily guaranteed through the use of any of these three treatment technologies unless specifically stated in the regulations. (Standards for the residues from treatment of the contaminated debris have been discussed earlier.)

3. Additional Issues with Three Specific Debris Types

In a preliminary assessment, three treatability groups have been identified that may require special consideration: Contaminated asbestos, PCB contaminated debris, and debris with inherent content that causes it to exhibit hazardous characteristics after removal of the contaminating waste.

Asbestos removal and disposal are regulated under 40 CFR part 763, subpart E, appendix D, 40 CFR 763.121 and 40 CFR part 61, subpart M. In the development of the LDR rules, the Agency is considering adopting this approach—that is, contaminated asbestos debris will have the additional requirement that disposal be in a subtitle C facility, provided the waste is otherwise hazardous under RCRA. The Agency is requesting comment on this possible approach.

Decontamination of debris contaminated with PCBs is regulated under 40 CFR 761.60, and surfaces contaminated by PCB spills are regulated under 40 CFR 761.125. In the development of the LDR rules, the Agency is considering this avenue for applicability to debris contaminated with PCBs. The Agency is requesting comment on this approach.

Where debris materials have an inherent composition that is metallic, it may be difficult to demonstrate removal of hazardous metal constituents even after decontamination, particularly for TCLP analysis. For example, chrome-plated fixtures contaminated with a hazardous waste containing metals may be free of surface contamination after the use of an extraction technology but may leach (by the TCLP test) some of the chromium inherent to its composition. Likewise, structural materials painted with lead-based paint may be treated to remove the lead-based paint but may then leach other metals inherent to the material.

Other wastes such as refractory bricks, however, are hazardous primarily because they leach chromium that is inherent to their structure and not necessarily because they are contaminated with other hazardous wastes. (The physical and chemical properties of certain chromium compounds, in conjunction with those of the other inorganics in the brick, form the technical basis of the refractory brick's structural and thermal properties.) Due to the high concentration of metals (some brick contain up to 40% chromium), it may not be possible to treat these materials to nonhazardous levels without adding a tremendous amount of stabilization reagents. EPA is soliciting data on this type of waste that are currently available on the sequential addition of stabilization reagents that might indicate an appropriate cut-off point for addition of reagents such that a significant reduction in leachability of metals could be assured. See also section III.E. of today's notice discussing high temperature thermal recovery of chromium as a potential option for establishing treatment standards for metal-bearing wastes of this type.

The Agency is considering several options for dealing with contaminated debris that are also hazardous due to their inherent metallic content. One alternative is to perform an appropriate extraction of the constituents and wastes that are contaminating the debris and then either macroencapsulate the remaining debris before land disposal or consider the debris treated for purposes of the land disposal restrictions. Another alternative is to require that certain types of treated debris, e.g., lead pipe or chrome-plated fixtures, be recycled as scrap metal. The Agency is requesting comment on these approaches and on other approaches that may arise due to other types of debris materials captured in the hazardous waste management operations because of their inherent content.

F. Analysis of Capacity Data for Debris

EPA needs to determine the volume of debris contaminated with newly listed and identified wastes that currently are land disposed, in order to assess whether adequate alternative treatment capacity exists to treat these wastes. The Agency has already set LDR effective dates for debris contaminated with solvents and dioxin wastes, California list wastes, and First Third, Second Third, and Third Third wastes. However, the Agency will have to collect and evaluate all data on contaminated debris because EPA's current information is limited.

A comprehensive data base on the generation volumes and characteristics of contaminated debris, and the capacity of treatment technologies is important for the following reasons: To determine the volumes of debris contaminated with newly listed and identified wastes that may require alternative treatment; to assess the available capacity of treatment technologies suitable for debris contaminated with these wastes; and to identify the total volume of affected contaminated debris, which may include debris contaminated with regulated wastes in addition to newly listed and identified wastes.

Given current definitions, a wide range of products, materials, and items can constitute debris. Contaminated debris is generated at hazardous waste site remedial actions. However, the universe of contaminated debris is broader than that of contaminated soil, in that debris is generated by many industries and through many types of activities. The generation of contaminated debris can be classified into three broad categories:

(1) Debris from remedial actions (e.g., Superfund sites, RCRA corrective actions);

(2) Routinely-generated debris (e.g., refractory bricks, discarded drums and containers); and

(3) sporadically-generated debris (e.g., demolition of buildings).

Much of the contaminated debris requiring alternative treatment as a result of the LDRs is likely to be generated at sites other than those where remedial actions are undertaken. Therefore, data available on these sites (e.g., Superfund RODs, RFIs and RFAs) may be of limited use. EPA requests data from any source generating debris that may meet the definitions of contaminated debris.

Data on the generation and management of contaminated debris are generally scarce. In comments to the Third Third proposed rule (54 FR 48372), six commenters submitted data on the generation of contaminated debris from sources other than remedial actions. Specifically, Chemical Waste Management submitted a list of debris wastes it had received and found unsuitable for stabilization. Other reports listing various types of debris are available; however, no volume data are included in these reports other than data from debris at Superfund sites.

The National Survey of Treatment Storage and Recycling Facilities (TSDR Survey) and the National Survey of Hazardous Waste Generators (Generator Survey) contain data on the volumes of contaminated debris reported at RCRA facilities. However, these data are generally incomplete and have limited applicability.

The number and types of allowable management practices specified for contaminated debris will add complexity to the Agency's capacity analysis for contaminated debris. The Agency will be developing a method for measuring the available capacity for such treatment technology groups as destruction, extraction, and immobilization which may be used as general treatment standards for contaminated debris.

For previous capacity analyses, the Agency has examined full-scale, commercially available technologies. For contaminated debris, however, there are several innovative technologies being developed that are under Agency review. In particular, Superfund's ongoing SITE program has developed a number of technologies specifically designed for the treatment of contaminated debris. The Agency requests information on the availability and technical constraints of innovative technologies that can treat contaminated debris.

The Agency plans to consider contaminated debris from various sources other than remedial action sites. The Agency is currently identifying the various items that may meet the definition of debris and the industries and processes by which these items are generated. The volumes affected and the treatment technologies for these debris will determine the extent of the need for alternative treatment for contaminated debris. Thus, the Agency is requesting data on the volumes of routinely generated debris and sporadically-generated debris.

While the Agency plans to focus its capacity analysis of contaminated debris on volumes generated outside of remedial actions, readily available data from Superfund RODs were examined to characterize the volumes of contaminated debris from Superfund sites that may require treatment under the LDRs. The facilities reviewed included both Fund Lead remedial actions and Private Party Lead remedial actions. A significant number of RODs did not distinguish volumes of contaminated soil from contaminated debris. In addition, in recommending remedial technologies, RODs rarely indicated the relative quantities of contaminated debris that would be assigned to each technology. These data indicate that a high percentage of the total contaminated debris volume reported at Superfund sites is generated by relatively few facilities. If the majority of contaminated debris remains within the area of contamination, the LDRs may not be triggered.

The total volume of contaminated debris reported at Superfund sites for which RODs were signed in 1988 and 1989 is approximately 280,000 tons. This volume is likely to underestimate the total volume of contaminated debris generated at these sites. The Agency requests comments on this analysis. The Agency also requests data on contaminated debris subject to remediation at Superfund and RCRA Corrective Action sites including data on the actual volume of contaminated debris at each site; current and planned treatment technologies for contaminated debris; and the starting date and projected duration of cleanup actions involving contaminated debris.

V. Potential BDAT for Specific F, K, and U Listed Wastes Promulgated After 1984

EPA has promulgated a number of hazardous waste listings under 40 CFR 261.31, .32, and .33 since the enactment of HSWA in 1984. This section of today's notice describes the treatment and/or recycling technologies that have been identified for preliminary consideration as BDAT for twenty of these listings. The Agency also identifies potential transfers of existing treatment standards and provides preliminary capacity information that currently is available for these wastes. The Agency emphasizes that these determinations are preliminary in nature, and that any data submitted will be carefully

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examined in preparing any proposed BDAT.

This section does not describe EPA's activities for all wastes that have been promulgated since 1984. A forthcoming advance notice of proposed rulemaking will describe EPA's activities for other newly identified and newly listed wastes including: Those recently listed under the TC rule (D018–D043); characteristic wastes from mining and mineral processing; spent potliners from aluminum manufacturing (K088); and listed wastes from wood preserving (F032, F034, and F035). Several wastes from coking operations and chlorotoluene production that currently are being considered for proposal as hazardous also may be addressed in this forthcoming notice.

A. Additional Organic U Wastes

This section addresses the investigation of BDAT and capacity for three specific wastes listed under 40 CFR 261.33 since November, 1984. These are identified with alphanumeric waste codes that start with a "U".

1. Ortho-toluidine and Para-toluidine (U328 and U353)

Ortho-toluidine and para-toluidine, which when discarded become U328 and U353, are manufactured from processes similar to those manufacturing dinitrotoluene and toluenediamine. U328 and U353, thus, may be similar to wastes identified as K111 and K112. The textiles industry and the dyes and pigments industry generate o-toluidine and p-toluidine as intermediates and reagents for printing textiles and making colors fast to acids in the dyeing process. Both compounds also are components in ion exchange column preparation, used as antioxidants in rubber manufacturing, and used as lab reagents in medical glucose analyses.

EPA is considering regulating U328 and U353 wastewaters and nonwastewaters by setting methods of treatment as standards. These methods of treatment appear to be the most appropriate type of treatment standard for these wastes, because the organic compounds for which the wastes are listed are considered to be relatively unstable in water and difficult to quantify. In addition, these two organic compounds resemble other organic compounds, namely 4-chloro-o-toluidine (U049) and o-toluidine hydrochloride (U222) for which similar standards have been promulgated.

The Agency, therefore, is considering the possibility of specifying incineration or thermal destruction as required methods of treatment for the nonwastewater forms of these wastes, and chemical oxidation followed by either biological treatment or carbon adsorption for the wastewater forms of these wastes. (While not a primary technology for wastewaters, incineration could be proposed as an alternative method of treatment for wastewaters.) Because these compounds may be considered to be relatively unstable in water, consistent quantification of o-toluidine and p-toluidine in raw wastes and treated residuals may preclude the development of a concentration-based standard for these wastes, i.e., the alternative to specifying methods of treatment.

EPA solicits detailed comment about: The compositions of these U waste streams, including both organic and possible inorganic components, the need for a dual set of treatment standards (i.e. methods of treatment for organic constituents and concentration-based standards for metals, if present), performance data demonstrating the treatability of these waste streams or similar waste streams by thermal, biological or other treatment processes, and analytical complications encountered or anticipated in quantifying constituents in these wastes.

2. 2-Ethoxyethanol (U359)

Since 2-ethoxyethanol is used in the printing, organic chemical manufacturing, and leather/tanning industries, it is likely that these industries may be generators of U359 wastes. It is used by these industries in various removers, cleansing solutions, and dye baths, as well as a solvent for inks, duplicating fluids, nitrocellulose, lacquers and other substances, and also is a chemical intermediate in 2-ethoxyacetate manufacturing. EPA anticipates that U359 is typically co-treated and co-disposed with F005 solvent wastes that are listed for 2-ethoxyethanol.

EPA is considering regulating U359 wastes by specifying incineration or thermal destruction for U359 nonwastewaters, and chemical oxidation followed by either biological treatment or carbon adsorption for U359 wastewaters. This is primarily because 2-ethoxyethanol is relatively unstable in water and thus particularly difficult to quantify. In the absence of an SW–846 method demonstrated to quantify 2-ethoxyethanol in complex waste matrices, methods of treatment standards are arguable more appropriate than concentration-based standards.

Since F005 wastes that are listed for 2-ethoxyethanol are expected to be similar to U359, the Agency also is considering establishing the standards established for F005 wastes to be the standards for U359. EPA solicits comment on any perceived differences in treatability of F005 wastes and U359, and whether the standards already established for F005 (2-ethoxyethanol) are appropriate for U359.

EPA solicits detailed comment about: The composition of these waste streams, including both organic and possible inorganic components, the need for a dual set of treatment standards (i.e., methods of treatment for organic constituents and concentration-based standards for metals, if present), performance data demonstrating the treatability of these or similar waste streams by thermal, biological or other treatment processes, and analytical complications encountered or anticipated in quantifying constituents of these wastes.

3. Currently Available Capacity Data for U328, U353, and U359

The Agency currently does not have data on the volumes of U328, U353, and U359 generated. The Agency believes that these chemicals are rarely discarded due to their value, and has assumed that these U wastes are not being discarded in significant quantities nor are they being discarded on a continuous basis. Based on these assumptions, there may be sufficient incineration or thermal destruction capacity to treat these wastes, provided incineration is selected as the BDAT. The Agency requests comments on these assumptions. Specifically, the Agency requests data on the generation and management of these wastes as both nonwastewaters and as wastewaters.

B. Recent Petroleum Refining Wastes (F037 and F038)

On November 2, 1990 (55 FR 46354), EPA expanded the list of hazardous wastes generated by the petroleum refining industry to include wastes identified as F037 and F038. These two newly listed wastes are generated from waste management units that produce primary and secondary sedimentation sludges. These sludges have waste characteristics similar to other petroleum refining waste identified as K048 and K051. For a more detailed description of all of these petroleum refining wastes, please refer to the appropriate final rules and listing background documents.

1. Characterization Data

The Agency has two sets of waste characterization data for untreated F037 and F038 wastes. One data set is a compilation of data submitted by members of the regulated community in response to EPA's February 11, 1985, Notice of Data Availability (50 FR 5637). The other data set consists of waste characterization data collected by EPA and contained in an April 13, 1985, Notice of Data Availability (53 FR 12182).

The majority of the industry-submitted data did not contain enough site-specific information to determine whether each sludge would be classified as either F037 or F038. Therefore, these data were combined and viewed by EPA as waste characterization data for a combination of F037/F038 sludges. The characterization data generated by the Agency were summarized in a final report entitled "Summary of Data and Engineering Analysis Performed for Petroleum Refining Wastewater Treatment Sludges, Final Report." (This document is available in the RCRA docket for the April 13, 1985, Notice of Data Availability (53 FR 12182).) Facility site-specific information, such as schematics of the waste treatment units, were provided in this report. Using this information, each F037 and F038 sludge sample is identified and the corresponding waste characterization data is tabulated and documented.

The characterization data for F037 and F038 indicate that the wastes have not been tested for several organic constituents that are typically present in K048 and K051 (e.g., acenaphthene and anthracene). EPA requests additional characterization data for all organic constituents present in F037 and F038.

2. Potential BDAT

Since F037 and F038 are generated by the petroleum refining industry, and are generated by units similar in design and purpose to API separators and DAF float units generating K048 and K051, all of the applicable and demonstrated technologies for K048 and K051 wastes presumably would be applicable to F037 and F038. EPA, therefore, is examining the feasibility of transferring existing performance data for K048 and K051 to these wastes in order to develop treatment standards. These wastes not only come from similar waste generation operations, but they result from similar raw materials and, thus, are likely to contain similar treatability characteristics. In addition, these waste are often commingled and treated with K048 and K051 and are thus likely to be amenable to the same treatment to approximately the same levels.

EPA utilized data from solvent extraction, thermal desorption, and incineration in order to promulgate treatment standards for organics in the nonwastewater forms of K048 through K052. For the nonwastewater metals in those wastes, BDAT was determined to be stabilization. These technologies likely would be considered BDAT for F037 and F038 nonwastewaters.

Treatment standards for K048 and K051 wastewater organics are based on incinerator scrubber water data. However, for the reasons stated earlier, the Agency is requesting comments on the transferability of multi-source leachate wastewater performance data to F037 and F038. See also the discussion of potential universal treatment standards and the conversion of wastewater treatment standards based on scrubber waters in section III.A. and B. of today's notice, respectively. EPA specifically requests comments documenting the treatment of organics in wastewater forms of F037 and F038 by biological treatment, carbon adsorption, PACT treatment, and wet air oxidation. Based on the multi-source leachate data available on the constituents known to be present in F037 and F038 wastewaters, biological treatment would presumably be able to treat the organics potentially present in F037 and F038. For metals in wastewater forms of K048 through K052, BDAT was determined to be chemical precipitation with lime and sulfide followed by vacuum filtration.

In establishing BDAT for F037 and F038, EPA will be evaluating data and information on the potential impact on the performance of a given treatment technology due to expected variations in the chemical and physical composition of F037 and F038 wastes. The waste characteristics being examined include oil and grease content, heat content (BTU/pound), total suspended solids, total dissolved solids, total organic carbon, pH, fluorides, sulfides, chlorides, water content, and the concentrations of the hazardous constituents. Commenters submitting data on the effects of these parameters should clearly indicate the technologies used, the design and operation parameters used to account for these constituents, and waste characterization data for both untreated or treated wastes.

3. Currently Available Capacity Information

Available data on the quantities of F037 and F038 are derived from the Petroleum Refinery Data Base (PRDB) that was compiled from industry responses to a RCRA Section 3007 request for information. This data base contains unit processes, wastewater treatment, and waste generation data from 1983, for 182 of the 220 petroleum refineries listed in the 1984 Oil and Gas Journal Refining Survey. EPA has information that 204 refineries were operating at the beginning of 1989; of this total, EPA estimates that 149 of the refineries accounted for in the PRDB are expected to generate F037 and F038. This data base, however, provides limited information on management practices.

In the Regulatory Impact Analysis (RIA) for the final F037 and F038 listing, the Agency estimated that 40 to 75 percent of the refineries that generate non-K048 and non-K051 primary wastewater treatment sludge will be affected by the new listing, and that the remaining refineries will be affected by the Toxicity Characteristic (TC) final rule (55 FR 11798). From the PRDB, the Agency estimated that approximately 450,000 tons of non-K048 and K051 primary and secondary sedimentation wastewater treatment sludges are generated each year. Of this quantity, 170,000 to 330,000 tons per year, as generated (based on an average water content of 82 percent) might be affected by the new listing, and 120,000 to 280,000 tons per year might be affected by the TC rule. As with the number of affected refineries, the quantities of sludges affected by the new listing as opposed to the TC rule is uncertain.

4. Potential Overlap with the TC

The rule expanding the universe of wastes exhibiting the toxicity characteristic (TC) was promulgated on March 29, 1990 (55 FR 11798), and became effective on September 25, 1990, for large quantity generators and treatment, storage, and disposal facilities. The rule became effective on March 29, 1991, for small quantity generators. Because a sizeable fraction of the F037 and F038 sludges and/or the wastewaters from which these sludges are generated also may exhibit the TC characteristic, some of these wastes will be regulated as hazardous under the TC rule before the F037 and F038 listing rule becomes effective. The percentage of waste that will exhibit the TC is uncertain, and depends largely on the behavior of oily waste in the Toxicity Characteristic Leaching Procedure (TCLP).

EPA believes that some refineries may respond to the TC rule and the F037 and F038 listing by re-configuring their wastewater treatment process so as to generate sludge in API separators and DAF units. When sludge is generated in these units, it carries the K048 or K051 waste code and is subject to the LDR treatment standards for those wastes (effective November 8, 1990). The exact

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quantities of newly identified F037 and F038 sludge that will be handled in this way is unclear, as is the amount of treatment capacity that will be required by the additional quantities of K048 and K051, which were not accounted for previously.

5. Additional Capacity Issues

EPA estimated the average water content of the F037 and F038 sludges as generated to be 82 percent, based on the water content of DAF sludges. Because of their high water content these wastes could be dewatered, which would result in significantly lower volumes requiring treatment. Some of the added dewatering capacity for K048–K052 also may be available for F037 and F038 wastes. Preliminary estimates suggest that standard filter presses can reduce water content to 50 to 60 percent. Additional thermal drying could reduce water content to as little as 4 percent.

The extent of dewatering can significantly effect the volumes of F037 and F038 sludges requiring treatment. For example, if EPA assumes the RIA estimated generation volumes for F037 and F038 sludges and further assumes dewatering to a 50 percent water content, the quantities of newly regulated sludges annually requiring on-site and off-site treatment could be reduced to a range of 104,000 to 201,000 tons. EPA needs updated data on the volumes of these sludges both as generated and after dewatering in order to conduct its capacity analysis.

In addition to the quantities of sludge generated annually, a number of refineries have accumulated large quantities of primary wastewater treatment sludge in surface impoundments. If after the effective date of the F037 and F038 listing the accumulated sludge is removed from the surface impoundments and re-managed by land disposal, it will be subject to regulation as hazardous waste and also subject to the pertinent LDRs after the treatment standards become effective. The Agency estimated in the RIA that about 474,000 tons (based on a water content of 55 percent for sludge sediments accumulated in impoundments) were accumulated in surface impoundments. The quantity of accumulated sludge that will be re-managed by land disposal is uncertain. Further analyses on timing of surface impoundment closures are needed to determine the impact on treatment capacity.

In response to the LDRs for K048 and K051, EPA has been advised that refineries are seeking additional waste treatment alternatives. However, it is unclear whether refineries have planned far enough in advance to develop sufficient capacity to account for F037 and F038 wastes as well (which may have the same BDAT as K048 and K051). Furthermore, EPA does not know whether this increased demand for capacity will be available on-site, off-site, at captive facilities, or how much of it will be for combustion as opposed to solvent extraction and high-temperature thermal distillation. EPA anticipates, however, that facilities whose industrial furnaces and boilers comply with the new provisions finalized in the Federal Register in the Boilers and Industrial Furnaces (BIF) Rule, 55 FR 7134 (February 21, 1991), also will be able to provide treatment capacity to treat these wastes.

F037 and F038 wastes are generated in units similar to those that generate K048 and K051. Therefore, the treatment technologies specified for K048 and K051 would probably be applicable to F037 and F038. EPA requests comments on the issues raised in this discussion. Specifically, the Agency requests data on the volumes of F037, F038, K048, and K051 that are being generated and will be generated in the future; the volumes of F037 and F038 which exhibit the TC; the average water content of these wastes as generated and as managed; on-site available or planned de-watering capacity; the current and planned management practices for these wastes; and the accumulated volumes of F037 and F038 in surface impoundments as well as the management plans for these sludges.

C. Wastes from the Production of Unsymmetrical Dimethylhydrazine (K107, K108, K109, and K110)

Four wastes generated in the production of 1,1dimethylhydrazine (UDMH) salts from carboxylic acid hydrazides were listed as hazardous on May 2, 1990 (55 FR 18496). For a detailed description of wastes K107 through K110, refer to the final rule listing these wastes as hazardous.

The Agency also proposed to list two additional wastes, K137 and K138, generated in the production of 1,1-dimethylhydrazine (UDMH) salts from carboxylic acid hydrazides as hazardous on May 2, 1990 (55 FR 18507). These two additional wastes were proposed for listing on the basis of comments received in response to the proposed listings of K107–K110 (49 FR 49556). For a detailed description of K137 and K138, refer to the Federal Register notice proposing to list these wastes as hazardous (55 FR 18507).

1. Potential BDAT

EPA is considering establishing BDAT for wastes from the production of UDMH by setting methods of treatment as the standard consistent with the Third Third final rule decision to regulate U098, 1,1-dimethylhydrazine. This decision established incineration as the method for nonwastewater forms of U098, and incineration or chemical oxidation with carbon adsorption for the wastewater form of U098. Treatment methods may be appropriate standards for these wastes because information developed in the Third Third rulemaking (available in the Third Third BDAT Background Document for U and P Wastes and Multi-source Leachate, Volume B) suggests that 1,1-dimethylhydrazine, a principal organic component of these wastes, is unstable in water and, thus, particularly difficult to quantify.

However, EPA also is considering setting concentration-based standards for UDMH wastewater and nonwastewater streams if they turn out to contain significant concentrations of other organic components that are analyzable and can act as surrogates for the dimethylhydrazine compounds by virtue of being more difficult to treat.

In addition to comments evaluating these possible regulatory options, EPA solicits information and comment regarding: The compositions of these waste streams, including both organic and possible inorganic components; the need for a dual set of treatment standards (i.e. methods of treatment for organic constituents and concentration-based standards for metals, if present); performance data demonstrating the treatability of these or similar waste streams by thermal, biological or other treatment processes; and analytical complications encountered or anticipated in quantifying constituents of these wastes. EPA will incorporate these data into any proposal to establish BDAT for these wastes.

2. Currently Available Capacity Data

Data available to the Agency suggest that these wastes are no longer being generated (see 55 FR 18496, May 2, 1990). Wastes K107–Kl10 and K137–K138 are generated when UDMH is produced using a specific production process. However, the only manufacturer using this process reportedly is not producing UDMH, as of May, 1990. EPA requests additional information on whether any generation of K137 and K138 currently is occurring and, if so, what waste volumes are generated and how the wastes are managed.

In addition, if K107 and K108 are being generated, some K107 waste may meet the EPA's definition of D002 corrosive waste (40 CFR 261.22) and some K108 waste may meet the EPA's definition of D001 ignitable waste (40 CFR 261.21). EPA promulgated treatment standards and made capacity determinations for D002 corrosive and D001 ignitable wastes in the Third Third rule (55 FR 22546, 22549), and all K107 and K108 wastes exhibiting those characteristics are presently subject to the D001 and D002 treatment standards.

D. Waste from the Production of Dinitrotoluene and Toluenediamine (K111 and K112)

On October 23, 1985, six wastes (K111 through K116) generated in the production of dinitrotoluene (DNT), toluenediamine (TDA), and toluene diisocyanate (TDI) were listed as hazardous (50 FR 42936). For a detailed description of the wastes, refer to the final rule listing these wastes as hazardous. Treatment standards for four of the six wastes, K113 through K116, were promulgated in the Second Third final rule (54 FR 26623). The Agency is planning to develop treatment standards for the two remaining wastes, K111 and K112.

K111, product wash waters from the production of dinitrotoluene via nitration of toluene, is generated at facilities engaged in manufacturing inorganic chemicals, dyes and pigments, explosives, and organic chemicals in the course of organic synthesis operations. K112, reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene, occurs in intermediate processes at facilities engaged in manufacturing photographic chemicals, plastics and resins, organic chemicals, and textiles and polyurethane, as well as in the production of toluenediamine as an end product.

1. Potential BDAT

EPA is considering how to regulate K111 and K112 wastewaters and nonwastewaters. Setting methods of treatment as standards is one approach, given that the major organic constituents of K111 and K112 (the dinitrotoluenes and toluidines) are relatively unstable in water, and SW–846 (and equivalent) test methods cannot quantify them reliably in order to require the regulated community to do so on a routine basis to prove compliance.

Characterization information indicates that K111 wastes are aqueous liquids with significant quantities of sulfuric and nitric acids, and are likely to be corrosive. Other organic components that could be present and potentially used as surrogates for concentration-based standards are dinitrotoluenes, nitrocresols, nitrophenols, and nitrobenzoic acid. K112 is an aqueous liquid with small quantities of toluenediamines. K111 and K112 wastes also may include metals such as nickel (from catalysts). EPA solicits comment on all possible treatment standards, including a treatment standard where a method such as incineration or chemical oxidation would be specified to ensure treatment of the organics, and concentration-based standards would be specified for the metals. The Agency also solicits analytical composition data for both the organic and metal constituents in the K111/K112 streams.

Incineration for nonwastewaters, and incineration or chemical oxidation followed by activated carbon adsorption for wastewaters are among possible treatment standards for K111 and K112 wastes. However, since information suggests that these wastes are currently treated by biological processes, with or without subsequent activated carbon treatment, EPA particularly is requesting data characterizing the treatability of these wastes in biological systems.

The alternative to establishing treatment standards expressed as required methods is to develop concentration-based standards. Concentration-based standards for the organics in K111 and K112 wastes would be appropriate if the toxic organics anticipated to be present are amenable to quantification in complex matrices. If surrogate organics can be identified that can be reduced significantly through wastewater treatment systems and data demonstrate that these organics are as difficult to treat, EPA may propose concentration-based standards for these wastes. EPA, therefore, solicits analytical data on the composition of these streams, in order to determine whether they contain constituents that can act as analytical surrogates to verify destruction of the organic constituents of concern.

2. Currently Available Capacity Information

The background documents for the proposed rule for the listing of these wastes estimated the annual generation of these wastes to be approximately 470,000 tons of K111 wastewater and 215,000 tons of K112 wastewater. Over 70 percent of the K111 and 75 percent of the K112 wastewaters are treated and discharged under Clean Water Act provisions. The remaining 140,000 tons of K111 and 54,000 tons of K112 are either land disposed or undergo other management practices that are currently unidentified. In the absence of information on the generation of K111 and K112, the Agency may use 195,000 tons as an "upper bound" estimate of the volumes of K111 and K112 wastewaters that are generated annually.

EPA currently does not have information regarding the availability of on-site treatment capacity for these TDI wastes (K111 and K112). In addition, the Agency currently does not have data on the volumes or characteristics of K111 and K112 residuals that may be generated during the treatment of K111 and K112 wastewaters. However, the Agency believes that nonwastewater residuals generated from biological treatment may not require further treatment prior to land disposal; EPA requests comments on this assumption.

Currently available data indicate that 195,000 tons of K111 and K112 wastewaters are generated annually and may require treatment prior to land disposal. The Agency requests additional data on the generation and management of K111 and K112 wastes, on available on-site treatment capacity at generating facilities, and on the volumes of wastewater residuals currently generated.

E. Wastes from the Production of Ethylene Dibromide (K117, K118, and K136)

Three wastes generated in the production of ethylene dibromide (EDB) were listed as hazardous on February 13, 1986 (51 FR 5327). For a detailed description of K117, K118, and K136, refer to the final rule listing these wastes as hazardous. Although EPA banned the use of ethylene dibromide (EDB) in the U.S., EPA believes that EDB wastes may still be generated by pesticide manufacturers intending to sell EDB overseas.

K117 is a liquid stream containing ethylene dibromide, bromoethane, bromochloroethane and chloroform. K118 is a solid waste consisting of spent adsorbents saturated with ethylene dibromide, 1,1,2-tribromomethane, bromochloroethane, bromomethane and bis(2-bromo)ethyl ether. K136 is an organic liquid with high concentrations of ethylene dibromide.

1. Potential BDAT

The EDB wastes K117 and K118 resemble very closely the organobromine wastes U029, U030, U066, U067, U068 and U225 regulated in the Third Third final rule. One standard for these wastes could be the concentration-based standards

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developed from the data used to calculate the U029 (bromomethane), U030 (4-bromophenyl phenyl ether), U066 (1,2-dibromo-3-chloropropane), U067 (ethylene dibromide, EDB), U068 (dibromomethane) and U225 (bromoform) Third Third standards, since these data came from incineration of EDB wastes performed and monitored by EPA's Office of Toxic Substances.

Incinerating brominated organic compounds raises the issue of preventing emissions of molecular bromine (Br_2) from the incinerator by shifting the combustion reaction product equilibrium to favor the formation of hydrogen bromide (HBr). Limited data available to EPA suggest that adding sulfur to the combustion mixture prevents generation and subsequent emissions of molecular bromine.

However, EPA realizes that organobromine wastes offer unique opportunities for recycling—at least one facility is known to recover bromine from brominated wastes by thermal processing. Therefore, EPA requests documentation describing attempts at processing discarded organobromine compounds into commercial products. In addition, EPA solicits information documenting attempts, successful and otherwise, to incinerate brominated organic compounds while controlling bromine and bromide emissions from the incinerator stack.

In addition to comments evaluating these possible regulatory options, EPA solicits comment on the following issues: The compositions of these waste streams, including both organic and possible inorganic components; performance data demonstrating the treatability of these or similar waste streams by thermal, biological or other treatment processes; and analytical complications encountered or anticipated in quantifying constituents of these wastes.

2. Currently Available Capacity Information

In the proposed rule for the listing of EDB wastes, the Agency estimated the annual generation of K117 wastewaters to be approximately 26,000 tons, and 150 tons of K118 nonwastewater. The proposed rule does not provide an estimate of the volume of K136 nonwastewater that is generated. EPA's data on the generation of K117 and K118 reflects 1984 production levels of EDB. However, as already indicated, in 1984, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) banned the use of EDB as a fumigant. Therefore, the production of EDB may have decreased since 1984.

EPA lacks information on the generation of waste K136. However, the Agency believes that this waste, still bottoms from the purification of EDB, is not generated in significant quantities. The Agency also does not have data currently on the volumes of K117, K118, and K136 residuals that may be generated during treatment of EDB wastes.

Data available to EPA indicate that, in 1984, 26,000 tons of K117 and K118 wastes were generated annually. Given the low generation volumes of these wastes, it appears that there is likely to be sufficient capacity to treat K117 and K118. Although there is no volume data for waste K136, the Agency believes that this waste is not generated in large quantities, and that there probably is sufficient capacity to treat this waste if incineration is required. EPA requests comments on its current data and requests additional information on the generation and management of K117, K118, and K136 wastes.

F. Wastes from the Production of Ethylenebisdithiocarbamic Acid (K123, K124, K125, and K126)

Four wastes generated in the production and formulation of the fungicide ethylenebisdithiocarbamic acid (EBDC) and its salts were listed as hazardous on October 24, 1986 (51 FR 37725). For a detailed description of K123 through K126, refer to the final rule listing these wastes as hazardous.

In general, waste characterization information indicate that K123 wastes are aqueous liquids, K124 wastes are caustic aqueous liquids, K125 wastes are filtration and distillation solids, and K126 wastes are dry dust-like solids. Ethylene thiourea appear to be the primary organic component of all four wastes.

1. Potential BDAT

A potential means of establishing treatment standards for K123, K124, K125, and K126 wastes is to specify methods of treatment as BDAT. Methods of treatment may be appropriate for these wastes because the principal organic components of these wastes are ethylenebisdithiocarbamic acid (EBDC) and ethylene thiourea, both of which are relatively unstable in water and thus may be particularly difficult to quantify. EBDC, as U114, and ethylene thiourea, as U116, were regulated in the Third Third rulemaking, both with methods of treatment as standards. The methods of treatment which appear particularly appropriate for K123 through K126 wastes are incineration or thermal destruction for nonwastewaters, and incineration, thermal destruction, or chemical oxidation with activated carbon for wastewaters.

Concentration-based standards are alternatives to specifying treatment methods. EPA will only set concentration-based standards for organics in K123 through K126 wastes provided the wastes contain significant concentrations of the organics that are consistently amenable to quantification in complex matrices (i.e., the treatment residues) or provided surrogate treatment parameters can be identified. Available data suggest that none of the hazardous organic constituents of concern in K123 through K126 wastes are easily quantified in treatment residues from treatment of other types of wastes. Nevertheless, to determine whether concentration-based standards are appropriate for the organics in these four wastes, EPA solicits analytical data on their composition in both treated and untreated wastes. If other constituents or parameters can be identified that can act as analytical surrogates (i.e., indicators to verify destruction of the organic constituents of the stream that are difficult to analyze), EPA may be able to propose concentration-based standards using these surrogates. EPA also requests treatment performance data from attempts to treat these or similar wastes by thermal, biological or other processes. Furthermore, EPA requests composition and treatability data about all metal components of this waste.

2. Currently Available Capacity Information

K124 may meet EPA's definition of corrosive waste (40 CFR 261.22) and, therefore, may be a D002 characteristic waste. The Agency promulgated treatment standards and made capacity determinations for D002 corrosive waste in the Third Third rule (55 FR 22549). K124 waste that is also a D002 waste already may undergo neutralization or other treatment prior to land disposal.

The proposed rule for the listing of these wastes estimated the 1982 generation of EBDC wastes to be approximately 35,000 tons of K123 wastewater, 1,500 tons of K124 wastewater, 500 tons of K125 nonwastewater, and 15 tons of K126 nonwastewater. In the absence of more current data on waste generation, the Agency is likely to use the 1982 generation rates to make a preliminary assessment of capacity. In addition, in the absence of data on waste management practices, the Agency may use the entire volume of waste generated as an "upper bound" estimate

of the volume of waste that will be land disposed and, therefore, require treatment.

Data from the proposed rule for the listing of these wastes indicate that 35,000 tons of K123 and 1,500 tons of K124 wastewaters may require treatment annually. In the Third Third final rule (55 FR 22835, 22647), the Agency estimated that approximately 190,000 tons of biological treatment capacity and 65,000 tons of incineration capacity for liquids was available. Therefore, it appears that there may be sufficient capacity to treat K123 and K124 if biological treatment or incineration is chosen as BDAT.

Data from the proposed rule for the listing of these wastes indicate that 500 tons of K125 and 15 tons of K126 may require treatment annually. The Agency believes that residuals generated from the treatment of K123 and K124 wastewaters are not likely to require further treatment prior to disposal. Therefore, the volume of K123-K126 nonwastewaters requiring sludge or solid combustion may be 515 tons. It appears that there is sufficient capacity to treat these wastes. The Agency requests comments on this analysis and requests additional data on the generation and management of EBDC wastes.

G. Wastes from the Production of Methyl Bromide (K131 and K132)

Two wastes generated during the production of methyl bromide were listed as hazardous on October 6, 1989 (54 FR 41402). For a detailed description of wastes K131 and K132, please refer to the final rule for the listing of these wastes and the listing background documents. K131 wastes are acidic aqueous liquids containing methyl bromide, dimethyl sulfate and sulfuric acid, plus other brominated ethanes and methane- and ethane-based alcohols and ethers. K132 wastes consist of adsorbent solids saturated with liquids containing methyl bromide.

1. Potential BDAT

Methyl bromide and the compounds expected to be contained in the wastes resemble the organobromine compounds that were regulated as U wastes in the Third Third final rule. Appropriate standards for these wastes may be concentration-based standards developed from the data used to calculate the U029 (bromomethane), U030 (4-bromophenyl phenyl ether), U066 (1,2-dibromo-3-chloropropane), U067 (ethylene dibromide, EDB), U068 (dibromomethane) and U225 (bromoform) Third Third standards, particularly considering that this data came from incineration of EDB wastes.

Section V.E., above, discusses issues associated with incinerating and recycling brominated organic compounds. EPA solicits comments on those issues for brominated methane wastes such as these.

In addition to comments evaluating these possible regulatory options, EPA solicits information regarding: The composition of these waste streams, including both organic and possible inorganic components; performance data demonstrating the treatability of these or similar waste streams by thermal, biological or other treatment processes; and analytical complications encountered or anticipated in quantifying constituents of these wastes.

2. Currently Available Capacity Information

In the proposed rule for the listing of these wastes, EPA estimated the annual generation of methyl bromide wastes at maximum capacity to be approximately 14,000 tons of K131 wastewater and 150 tons of K132 nonwastewater.

K131 may meet EPA's definition of corrosive waste (40 CFR 261.22) and, therefore, may be a D002 characteristic waste. The Agency already has promulgated treatment standards and made capacity determinations for D002 corrosive waste in the Third Third rule (55 FR 22549). K131 waste that is also a D002 waste already may undergo neutralization or other treatment prior to land disposal. The Agency does not have any data indicating what fraction of K131 is also D002 characteristic or whether waste treated for corrosivity will require further treatment for organics.

In the absence of data on the current waste management practices for these wastes, the Agency is likely to use the entire volume generated as an "upper bound" estimate of the volume of waste requiring alternate treatment. The Agency does not have data currently on the volumes or characteristics of K131 residual wastes that may be generated during treatment of this waste. However, based on professional judgment, the Agency believes that treatment residuals may not require alternate treatment prior to land disposal.

Data currently available indicate that 14,000 tons of K131 wastewater are generated annually and may require treatment. Data from the proposed rule for the listing of these wastes indicate that 150 tons of K132 is generated annually. Given the relatively low generation volumes, it appears that there is likely to be sufficient capacity to treat both K131 and K132 wastewaters and nonwastewater residuals. The Agency requests comments on this analysis and specifically requests data on the current generation volumes of methyl bromide wastes, and off-site and on-site management practices for these wastes.

Dated: May 20, 1991.

William K. Reilly,

Administrator.

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Part III

Environmental Protection Agency

40 CFR Parts 51, 52 and 60
Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills; Proposed Rule, Guideline and Notice of Public Hearing

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 52 and 60

[AD-FRL-3780-9]

RIN 2060-AC42

Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and guideline and notice of public hearing.

SUMMARY: This proposal would add subpart WWW to 40 CFR part 60 for control of new sources and would propose emission guidelines and compliance schedules for existing sources under subpart C.

Subpart WWW would limit emissions from certain new and modified municipal solid waste (MSW) landfills. The proposed standards implement section 111(b) of the Clean Air Act (CAA) and are based on the Administrator's determination that emissions from MSW landfills cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The intent of the proposed standards is to require certain new MSW landfills to control emissions to the level achievable by applying the best demonstrated system of continuous emission reduction considering costs, nonair quality health and environmental impacts, and energy requirements.

The proposed emission guidelines implement Section 111(d) of the CAA which requires the Administrator to prescribe regulations under which the States will submit plans for the control of existing emissions of certain air pollutants for which new source performance standards (NSPS) have been established. The intent of the emission guidelines is to initiate State action to develop State regulations controlling air emissions from certain existing MSW landfills to the level achievable by applying the best demonstrated system of continuous emission reduction, considering costs, nonair quality health and environmental impacts, and energy requirements.

If requested, a public hearing will be held to provide interested parties an opportunity for oral presentations of data, views, or arguments concerning the proposed standards and emission guidelines.

DATES: *Comments.* Comments must be received on or before August 1, 1991.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by June 21, 1991, a public hearing will be held on July 2, 1991, beginning at 10:00 a.m. Persons wishing to present oral testimony must contact Ms. Julia Stevens of EPA at (919) 541-5578 by June 21, 1991. Persons interested in attending the hearing should call Ms. Stevens at the same number to verify that a hearing will be held.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Air Docket (LE-131), Attention Docket No. A-88-09, Room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Julia Stevens, Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5578.

Background Information Document. The background information document (BID), entitled "Air Emissions from Municipal Solid Waste Landfills—Background Information for Proposed Standards and Emission Guidelines," may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Refer to EPA-450/3-90-011(a). The discussion of the proposed section 111(d) emission guidelines in this BID satisfies the requirements of 40 CFR 60.22(b) that information be provided to States on the implementation of the guidelines. Throughout the preamble, this document will be referred to as the BID.

A regulatory impact analysis, entitled "Regulatory Impact Analysis of Air Pollutant Emission Standards and Guidelines for Municipal Solid Waste Landfills" was prepared as required by Executive Order (E.O.) 12291, and is available for review at the EPA's Air Docket Section, 401 M St. SW., Room M1500, Washington, DC.

Docket. Docket No. A-88-09, containing supporting information used in developing the proposed standards and guidelines, is available for public inspection and copying between 8:00 a.m. and 3:30 p.m., Monday through Friday, at the EPA's Air Docket, Waterside Mall, Room M1500, 1st Floor, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information on the regulation of MSW landfills, contact Ms. Alice H. Chow, Standards Development Branch, Emission Standards Division (MD-13), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5626.

For technical information, contact Mr. Mark Najarian, telephone number (919) 541-5393, Chemicals and Petroleum Branch, Emission Standards Division (MD-13), at the above address.

SUPPLEMENTARY INFORMATION: The following outline is provided to aid in reading the preamble to the proposed standards and emission guidelines.

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I. Introduction

A. Summary of Action

This notice proposes standards of performance for new MSW landfills under section 111(b) of the CAA and emission guidelines for existing MSW landfills under section 111(d). The standards and guidelines would require MSW landfills emitting greater than 150 megagrams per year (Mg/yr) (about 167 tons per year (tpy)) of nonmethane organic compounds (NMOC's) to design and install gas collection systems and then combust (with or without energy recovery) the captured landfill gases. This action addresses air emissions from MSW landfills which contribute to ambient ozone problems, air toxic concerns, and potential explosion hazards. The EPA has developed an overall agenda (see "The Solid Waste Dilemma: An Agenda for Action"; EPA/530-SW-89-019; February 1989) to address MSW disposal issues, and today's air emission standards and guidelines are just one component of this agenda. This rule will also have the ancillary benefit of reducing global loadings of methane, a gas under discussion by the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change convened by the United Nations.

B. New Source Performance Standards—General Goals

New source performance standards (NSPS or "standards") implement section 111(b) of the CAA, and are issued for categories of sources which cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. Today's standards would affect MSW landfills whose construction, modification, or reconstruction begins after a standard is proposed. An NSPS requires these sources to control emissions to the level achievable by "best demonstrated technology" (BDT) considering costs and any nonair quality health and environmental impacts and energy requirements. If it is not feasible to prescribe or enforce an emission limit, the CAA authorizes the Administrator to promulgate a design, equipment, or work practice or operational standard, or combination thereof.

C. Emission Guidelines—General Goals

The EPA develops emission guidelines under section 111(d) of the CAA for certain sources covered by NSPS. When an NSPS has been promulgated under section 111(b) for a category of sources, section 111(d) of the CAA requires that States submit plans which establish emission standards for existing sources and provide for implementation and enforcement of emission standards for the designated pollutant. In general, a designated pollutant is one that may cause or contribute to endangerment of public health or welfare but is not "hazardous" within the meaning of section 112 of the CAA and is not controlled under sections 108 through 110 of the CAA. For ease of discussion, existing facilities which emit designated pollutants are considered to be "designated facilities."

The EPA requires that States adopt and submit to the Administrator a plan implementing the section 111(d) guidelines within 9 months after the promulgation of the guidelines. The CAA further requires that the procedure for State submission of a plan shall be similar to the procedure for submission of State implementation plans (SIP's) under section 110 and mandates that EPA shall prescribe a plan according to procedures similar to those in section 110(c) if the State fails to submit a "satisfactory plan."

Section 111(d) requires EPA to approve State emission standards only if they reflect application of the best systems of emission reduction that are reasonably available for designated facilities. Accordingly, EPA has published a BID (Docket No. A-88-09, Item No. III-B-1) for the guidelines which describes available systems of emission control, identifies the best demonstrated systems considering costs, nonair quality health and environmental impacts, and energy requirements, and identifies the emission limitations that reflect the application of such systems. State plans will be approved if they include an emission standard equal to or more stringent than that specified in the guidelines. For health-related pollutants, as is the case for MSW landfill emissions, State emission standards must ordinarily be at least as stringent as the corresponding EPA guidelines to be approved (§ 60.24(c)).

The EPA recognizes, however, that a State may find application of today's proposed guidelines to be unreasonable in some situations and appropriate adjustments may be necessary on a case-by-case basis. The guidelines reflect the EPA's judgment of the degree of control that can be attained by various classes of sources taking into consideration the cost of achieving such emission reductions, nonair quality health and environmental impacts and energy requirements.

The development of the emission guidelines are carried out in the context of a nationwide program encompassing an entire class of sources without consideration of the local air quality conditions that must be considered in nonattainment areas or in prevention of significant deterioration (PSD) in accordance with permitting activities associated with the CAA. In some cases, State standards may be more stringent than these guidelines in order to address concerns which are specific to a particular localized air quality situation. Moreover, States that believe additional control is necessary or desirable would be free to do so under Section 116 of the CAA.

D. Overview of This Preamble

This preamble will:

1. Summarize the important features of these proposed standards and guidelines by discussing the conclusions reached with respect to each of the elements in the decision summary.
2. Describe the environmental, energy, and economic impacts of the standards and guidelines.
3. Present a rationale for each of the decisions in the decision summaries for the standards and guidelines.
4. Discuss administrative requirements relevant to these actions.

II. Summary of the Proposed Standards and Guidelines

A. Source Category To Be Regulated

Today's proposed standards and guidelines would apply to certain new and existing MSW landfills. For purposes of these proposed regulations, an MSW landfill is defined as an entire disposal facility in a contiguous geographical space where household waste is placed on or in land. An MSW landfill may receive other types of waste as well.

The proposed NSPS would control air emissions from certain new MSW landfills. A new MSW landfill is defined as a landfill for which construction, modification, or reconstruction commences on or after today's date. The affected facility under the proposed NSPS is each new MSW landfill.

The proposed guidelines would require control for certain existing MSW landfills. An existing MSW landfill is defined as a landfill for which construction commenced prior to today's date. An existing MSW landfill may be active, i.e., currently accepting waste, or having additional capacity available to accept waste, or may be closed, i.e., no longer accepting waste nor having available capacity for future waste

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deposition. The designated facility under the proposed guidelines is each existing MSW landfill that has accepted waste since November 8, 1987, or that has capacity available for future use.

B. Pollutant To Be Regulated

The pollutant to be regulated under the proposed standards and guidelines is "MSW landfill emissions." Municipal solid waste landfill emissions, also commonly referred to as "landfill gas," is a collection of air pollutants, including methane and NMOC's, some of which are toxic. The composite pollutant is proposed to be regulated under section 111(b), for new facilities, and is proposed to be the designated pollutant under section 111(d), for existing facilities. In order to reduce the burden and complexity of measuring and monitoring the various constituents of landfill gas, NMOC's are being specified as a surrogate for measurement purposes.

C. Best Demonstrated Technology

The proposed standards for new MSW landfills are based on the conclusion that BDT would require reducing MSW landfill emissions from new MSW landfills emitting 150 Mg/yr (167 tpy) of NMOC's or more with: (1) A well-designed and well-operated gas collection system and (2) a control device capable of reducing NMOC's in the collected gas by 98 weight-percent. The BDT does not specify collection and control systems for new landfills emitting less than 150 Mg/yr (167 tpy) of NMOC's.

The proposed guidelines for existing MSW landfills are based on the conclusion that BDT would require reducing air emissions of existing MSW landfills emitting 150 Mg/yr (167 tpy) of NMOC's or more with the same collection and control devices as required for new landfills. The BDT does not include collection and control systems for existing landfills emitting less than 150 Mg/yr (167 tpy) of NMOC's.

A well-designed and well-operated collection system would, at a minimum: (1) Be capable of handling the maximum gas generation rate, (2) have a design capable of monitoring and adjusting the operation of the system, (3) be able to collect gas effectively from all areas of the landfill that warrant control, and (4) be able to expand by the addition of further collection system components to collect gas from new areas of the landfill as they require control.

The control device included as part of BDT is an open flare capable of reducing NMOC emissions by 98 weight-percent. Open flares are applicable to all affected and designated facilities regulated by the proposed standards and emissions guidelines, respectively.

D. Format for the Standards and Guidelines

The format for the proposed standards and guidelines is a design and operational standard (or guideline) for the gas collection system, and a percent reduction requirement for the control device.

E. Proposed Standards and Guidelines

The major provisions of the proposed standards and guidelines are identical. The proposed standards and guidelines for MSW landfill emissions would require the periodic calculation of the annual NMOC emission rate at each affected or designated facility with a maximum design capacity or 100,000 Mg (111,000 tons) or more. At each facility where the calcualted emission rate is equal to or exceeds the regulatory cutoff of 150 Mg/yr (167 tpy) of NMOC's, the proposed standards and guidelines specify the installation of a well-designed gas collection system and one of several effective control devices to either recover or destroy the collected landfill emissions.

The proposed standards and guidelines are based on the use of active collection systems and open flares operated in accordance with the General Provisions for control devices (40 CFR 60.18). The EPA has also identified several other control devices which may be used to satisfy the 98-percent destruction criterion. The proposed standards and guidelines would allow the use of these control devices as well.

F. Performance Testing and Monitoring

Applicability. All affected and designated facilities would periodically calculate the NMOC emission rate in order to determine if the installation of collection and control systems would be required. The calculation is performed using default values provided in the proposed standards and guidelines. The calculation may also be performed using site-specific data. Proposed Method 25C provides instruction on site-specific sampling of the landfill gas, and is used to determine the concentration of NMOC's. Those landfills emitting less than the regulatory cutoff of 150 Mg/yr (167 tpy) of NMOC's would not need to install control equipment under the proposed standards and guidelines, and would therefore not need to perform additional testing or monitoring.

Compliance Demonstrations. For those landfills that are required to install collection and control systems, compliance with the proposed standards or guidelines for the gas collection system includes calculation of: (1) The maximum expected gas generation rate within the landfill in order to demonstrate that the system is designed to handle this flowrate and (2) the total area of influence of all the extraction wells within the landfill in order to demonstrate that this area equals the total landfill area warranting collection. Compliance also includes maintaining a negative pressure at the point where each extraction component (from the well or trench) is connected to the gas collection header. The EPA is proposing two additional test methods to use in these compliance demonstrations for the collection system. Method 3C would be used to measure nitrogen (N_2) in landfill gas, in order to determine if excessive air infiltration has occurred. Method 2E would be used to determine the landfill gas flowrate from the landfill.

Compliance demonstrations for open flares used in control of landfill emissions are specified in 40 CFR 60.18. If a control device other than an open flare conforming to § 60.18 is used, then the landfill owner or operator would demonstrate compliance with the proposed standards or guidelines by testing to demonstrate 98 percent emission reduction or an outlet NMOC concentration of 20 parts per million volume, dry (ppmvd), at 3 percent oxygen (O_2), using Method 25, to ensure continued compliance. The landfill owner or operator would provide to the Administrator or State agency information on: (1) The operation of the control device and (2) the process parameters that would indicate whether the device is properly operated and maintained. The Administrator may request additional information if warranted.

Monitoring Requirements. Monitoring requirements for the gas collection system would include monthly measurements of gauge pressure in the gas collection header. For the control or recovery system, monitoring would be required of parameters that indicate the gas stream is being continuously routed for destruction or recovery and that 98 percent emission reduction of NMOC's, or 20 ppmvd for enclosed combustors, is being continuously achieved.

G. Reporting and Recordkeeping Requirements

The proposed standards and guidelines include initial notification provisions. In addition, if the maximum design capacity of a landfill equals or exceeds 100,000 Mg (111,000 tons), the owner or operator would periodically report the NMOC emission rate until such time that either the collection and control systems are installed, or the landfill closes permanently.

Under either the proposed standards or guidelines, there are specific reporting requirements addressing the design and installation of the collection and control systems. If a collection system is designed following the specifications in § 60.758, a notification of intent to install the system would be required within 1 year of the date when the NMOC emission rate reaches 150 Mg/yr (167 tpy). If an operator wishes to install a collection system based on the guidance provided in chapter 9 of the BID, but not conforming in all points to the specifications in § 60.758, a collection system design plan must be submitted for review within 1 year of the date when the NMOC emission rate reaches 150 Mg/yr (167 tpy).

After the installation of collection and control systems, a report of the initial performance test and semiannual reports would be required to verify proper design, operation, and monitoring of the collection and control systems. For those owners or operators installing a collection system based on the specifications provided in § 60.756, the initial performance test report would include the provisions and time table for adding wells as waste accumulates.

The proposed regulations would also require (and the proposed guidelines would specify) that the following records be maintained: The accumulated refuse in place; the periodic calculation of the NMOC emission rate; the collection system design (when applicable), including present and future well or trench locations, depths and spacing; the control device vendor specifications; the initial performance test results; and the monitoring parameters established during the initial performance test of the control device.

H. Compliance Times for the Guidelines

The proposed emission guidelines would stipulate that existing MSW landfills emitting above the regulatory cutoff of 150 Mg/yr (167 tpy) of NMOC's should achieve compliance with the guidelines for collection and control systems within 3 years from the time of promulgation of State regulations. The 3-year time period allows 90 days for the initial report; 2½ years for further site-specific testing (if elected by the owner or operator); preparation and review of a collection system design plan; installation of the collection and control system; and 90 days for a performance test. Some MSW landfills may already have collection and control systems in place, and may already be in compliance with the guidelines or may not require 3 years to bring their systems into compliance, but in most cases 3 years is expected to be required. In the case of existing MSW landfills whose NMOC emission rates reach the regulatory level of 150 Mg/yr (167 tpy) of NMOC's and whose owner or operator elected to perform site-specific testing in determining the NMOC emission rate, 2 years and 9 months would be required to achieve compliance and conduct a performance test, after the date of the first periodic report documenting emissions of 150 Mg/yr (167 tpy) or more. Some landfills could achieve compliance sooner, if the owner or operator elects to install collection and control systems without first performing all the site-specific testing available for the emission rate calculation, or if the testing, design, or installation activities were completed more quickly than expected. But in many cases, about 2½ years would be needed to conduct site-specific testing, design and install the systems, and another 90 days would be needed for a performance test.

The 3-month difference above is the result of what each time period includes. In the first case, the NMOC emission rate of the existing landfill is already greater than 150 Mg/yr (167 tpy) when the State regulations are promulgated. After promulgation, 3 months are allowed for the submittal of the first NMOC emission rate calculation, followed by 2 years and 9 months to complete the installation and testing of the system. In the second case, the NMOC emission rate has not reached 150 Mg/yr (167 tpy), and therefore the landfill would be filing NMOC emission rate reports periodically. The first report is required 3 months after the promulgation of the State regulations. Reporting would continue until the rate reaches 150 Mg/yr (167 tpy), and then 2 years and 9 months are also allowed after the report is filed to complete the installation and testing of the system. Since emissions at existing landfills will increase at varying rates, the period of time between the promulgation of the State regulations and the emission rate report that "triggers" the 2 years and 9 months will also vary from landfill to landfill.

III. Impacts of the Proposed Standards and Guidelines

Environmental, energy, and economic impacts of NSPS or guidelines are normally expressed as incremental differences between facilities complying with the standards or guidelines as proposed and those same facilities if no NSPS or guidelines were in effect. The level that assumes no NSPS or emission guidelines is in place is referred to as the baseline. At present, very few States or local air pollution control agencies have landfill regulations that address NMOC air emissions. Since few new landfills would be affected by these State or local regulations, air emissions from MSW landfills are assumed to be uncontrolled in the baseline. The environmental, energy, and economic impacts were computed relative to this baseline.

For most NSPS and emission guidelines, impacts are expressed in annual terms. In the case of the NSPS and guidelines for landfills, the proposed regulations require controls at a given landfill only after the increasing NMOC emission rate reaches the level of the regulatory cutoff. Additionally, the proposed regulations allow the collection and control devices to be shut down at each landfill after certain criteria are met. Therefore, at two different points in time, even though those points may be only a year or two apart, control may or may not be required at a given landfill. Controls would not be required over the same time period for all landfills. The impacts are a direct result of control; therefore, the annualized numbers for any impact change from year to year.

Because of the variability of impacts of the proposed standards and guidelines over time, EPA has judged that the net present value (NPV) of an impact is a more valuable tool in the decision process for landfills. The use of NPV allows for the evaluation of nationwide costs and benefits which occur over discrete time periods for individual sources. Thus, the impacts presented include both annualized estimates (and fifth year annualized impacts) and estimates expressed in terms NPV in 1992. The use of NPV is noted in the text.

A. Air

For new landfills (i.e., those projected to begin construction after today's date), the undiscounted NMOC emission reduction achievable under the proposed standards is estimated to be 4,080 Mg/yr (4,510 tpy) in 1997, which reflects reductions from baseline emissions of 9,250 Mg/yr (10,200 tpy) from refuse estimated to be in place in new landfills built between 1992 and 1997. Control of 87,800 Mg/yr (96,700 tpy) methane is also achieved from a baseline of 471,000 Mg/yr (519,000 tpy).

For existing landfills, the undiscounted NMOC emission reduction achievable under the proposed guidelines is estimated to be 404,600 Mg/yr (446,000 tpy) in 1997, a 79 percent

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reduction from a baseline of 506,000 Mg/yr (557,000 tpy) with the methane reduction estimated to be 9,600,000 Mg/yr (10,500,000 tpy). Baseline methane emissions are estimated to be 18,100,000 Mg/yr (19,900,000 tpy) in 1997. As existing landfills are filled, closed, and replaced by new landfills, the emissions reductions achieved by the guidelines will decrease, while the reductions achieved by the standards will rise proportionately. These emissions reductions are summarized in Table 1.

TABLE 1.—SUMMARY OF NATIONWIDE COST ESTIMATES AND ENERGY IMPACTS FOR COLLECTION AND CONTROL OF AIR EMISSIONS FROM NEW AND EXISTING MSW LANDFILLS AT A STRINGENCY LEVEL OF 150 Mg/Yr [a]

	New landfills	Existing landfills
Potential emissions reduction:		
Net present value (10^6 Mg NMOC)	0.76	11
5th year annualized value (10^6 Mg NMOC)	30	183
Nationwide cost of collection/control (flare):		
Net present value (10^6)	776	5,871
5th year annualized value (10^6)	26	246
Nationwide net energy impacts:		
Energy required—flares: Net present value (10^6 Btu)	109,000	810,000
Energy Recovery—Gas Turbines: Net present value (10^6 Btu)	5.7×10^5	4.2×10^6

[a] Net present value is presented in 1992 terms. The 5th year is assumed to be 1997, if these standards are promulgated in 1992. One Mg equals 1.11 tons.

In comparison to the President's proposed initiative of planting a billion trees a year in response to climate change, based on carbon dioxide (CO_2) emissions, EPA has roughly estimated (in 1992 dollars) that 1.1 to 2.0 billion trees would need to be planted at a cost of 0.57 to 1.1 billion dollars in order to achieve an equivalent reduction in CO_2 as achieved by today's proposal. While EPA has attempted to quantify the relationship between the President's tree planting initiative and the equivalent CO_2 reduction achievable in this proposal, it should be noted that ancillary benefits associated with planting trees (such as the establishment of shade and wildlife habitat) could not be quantified.

Carbon dioxide is also an important greenhouse gas contributing to climate change. Under the proposed standard, annual CO_2 emissions would increase, proportional to the relative use of flares compared to energy recovery for control. It should be noted, however, that methane contributes considerably more to climate change on a weight basis than CO_2. Thus, the reduction of methane emissions is expected to have a positive impact on global climate change.

Many constitutents of MSW landfill emissions are carcinogenic or can cause other adverse health effects. The reduction in landfill emissions would result in a reduction of these risks from exposure to these constituents.

The use of energy recovery devices for the control of MSW landfill emissions has the potential to reduce secondary air impacts at coal-fired utility plants. This is because the air impacts of coal-fired energy generation are larger than those of landfill gas-fired energy generation. Since EPA cannot reliably predict how many owners or operators would elect to use energy recovery, the magnitude of this potential impact cannot be quantified at this time.

Certain by-product emissions, such as nitrogen oxides (NO_x), carbon monoxide (CO), NMOC's, sulfur oxides (SO_x), and particulates, may be generated by the combustion devices used to reduce air emissions from MSW landfills. The types and quantities of these by-product emissions vary depending on the control device. However, by-product emissions are very low compared to the achievable NMOC and methane emission reductions. Chapters 4 and 6 of the BID present additional information about the magnitude of potential secondary air impacts.

B. Other Environmental Impacts

Water. Landfill leachate is the primary potential source of water pollution from an uncontrolled landfill. Although there is no data on the effect of gas collection on leachate composition, the amount of water pollution present as NMOC's in the leachate may be reduced under these standards and guidelines.

When landfill gas is collected, organics and water are condensed inside the header pipes of the gas collection system. This waste also contains NMOC's and various toxic substances present in the landfill gas. The pH of this condensate is normally adjusted by adding caustic at the landfill and then routing it to a public treatment facility. This does increase the amount of these substances entering the public water supply. There is insufficient data available to quantify this effect at this time.

Solid Waste. The proposed standards and guidelines will likely have little impact on the quantity of solid waste generated nationwide. The required controls do not generate any solid waste. However, the increased cost of landfill operation resulting from the proposed control requirements may cause greater use of waste recycling and other alternatives to landfill disposal, but quantification of such an impact is not possible at this time.

Implications of the Rulemaking for Superfund. Municipal solid waste landfill sites comprise approximately 20 percent of the sites placed by EPA on the National Priorities List (NPL). Often, remedial actions selected at these sites include venting methane and volatile organic contaminants, and airborne emissions are treated if determined necessary to protect human health and the environment.

The emission standards and guidelines in this rule may affect remedial actions under Superfund for MSW landfills. Section 121(d)(2) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) requires compliance with the substantive standards of applicable or relevant and appropriate requirements (ARAR's) of certain provisions in other environmental laws when selecting and implementing on-site remedial actions. "Applicable" requirements specifically address a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance at a Superfund site. "Relevant and appropriate" requirements are not legally applicable, but may address problems or situations sufficiently similar to those encountered so that their use is well suited to a particular site. See 40 CFR 300.5 (55 FR 8814, 8817, March 8, 1990).

As stated in this preamble, the air emission regulations will apply to new MSW landfills, as well as to those facilities that have accepted waste since November 8, 1987, or that have capacity available for future use. For CERCLA municipal landfill remediations, these requirements would be potential ARAR's for all Records of Decision (ROD's) signed after the rules' promulgation date. The standards and guidelines in this rulemaking, once promulgated, will be applicable for those municipal landfill sites on the NPL that accepted waste on or after November 8, 1987, or that are operating and have capacity for future use. The standards may be determined relevant and appropriate for sites that accepted wastes prior to November 8, 1987. The determination of relevance and appropriateness is made on a site-specific basis pursuant to 40 CFR 300.400(g) (55 FR 8841, March 8, 1990).

Energy. Regulated landfills with NMOC emission rates of 150 Mg/yr (167 tpy) or more would be required to install a gas collection system and control device. The gas collection system would require a relatively small amount of energy to run the blowers and the pumps. If a flare is used for control, auxiliary fuel should not be necessary because of the high heat content of landfill gas, commonly 1.86×10^7 Joules per standard cubic meter (J/scm) [500 British thermal units per standard cubic foot (Btu/scf)] or more. If a recovery device such as a gas turbine is used, an energy savings would result.

The EPA evaluated the overall energy impacts resulting from the use of flares or gas turbines for control of collected emissions at all affected landfills. The results of this analysis are presented below. The impacts are expressed as NPV in 1992.

If all new landfills opening between 1992 and 1997 requiring control use flares, the annualized energy requirements would be equivalent to about 543 barrels per year of No. 6 fuel oil. If all new controlled landfills are equipped with gas turbines, the energy to run the blowers and pumps would be offset by the recovery of the methane, resulting in annualized energy savings of approximately 2.8 million barrels per year of No. 6 fuel oil.

If all existing controlled landfills use flares, the annualized energy requirements would be equivalent to about 4,030 barrels per year of No. 6 fuel oil. If all existing controlled landfills are equipped with gas turbines, the annualized energy savings is approximately 21 million barrels per year of No. 6 fuel oil.

The actual energy impact for either new or existing landfills would be somewhere between the values for flares and gas turbines. Even the worst-case scenario results in a very small energy requirement, considering that domestic oil use is currently in the range of 15 to 20 million barrels per day or 5 to 7 billion barrels per year.

C. Control Costs and Economic Impacts

Nationwide annualized costs estimates for collection and control of air emissions from new MSW landfills are estimated to be $28 million. The nationwide cost of the proposed guidelines would be approximately $240 million. In comparison to other solid waste-related proposals, the nationwide costs of the recently proposed RCRA Subtitle D rule are estimated to range from $691 per year to $880 million per year and the estimated nationwide costs of the recently promulgated MWC rules are estimated to be $170 million per year for new combustors and $302 million per year for existing combustors.

Preliminary economic analysis indicates that the annual cost of waste disposal may increase by an average of less than $1 per ton for the proposed NSPS and the proposed guidelines. Costs per household would increase less than $3 to $5, when the household is served by a new or existing landfill, respectively. Additionally, less than 10 percent of the households would face annual increases of $30 or more per household as a result of the proposed NSPS and guidelines. However, EPA anticipates that many landfills will elect energy recovery systems, and costs per household for those areas would be less. The EPA has concluded that no households would incur severe economic impacts. For additional information, please refer to the regulatory impact analysis (Docket No. A–88–09, Item No. II–F–1).

IV. Rationale for the Standards and Guidelines for Municipal Solid Waste Landfill Emissions

A. Background

The regulation of MSW landfill emissions originally was considered during deliberations under a RCRA Subtitle D rulemaking. In 1987, the Administrator decided to regulate these emissions under the authority of the CAA. This decision was announced in the Federal Register on August 30, 1988 (53 FR 33314).

Today's action proposes standards under the regulatory authority of section 111(b), which will regulate new landfills which commence construction after today's date, and emissions guidelines under the authority of section 111(d), which will regulate existing landfills. The source of landfill emissions is essentially the same at both new and existing landfills; therefore, in general, the control of these emissions would be the same as well. Throughout this preamble, where clear distinctions arise, the rationales for the EPA actions affecting new and existing landfills are discussed separately. Otherwise, the discussion applies to the proposed standards and emission guidelines.

B. Selection of the Source Category

The EPA is proposing to list MSW landfills as a source category which causes, or contributes to, air pollution that endangers public health or welfare. This decision is based on evidence from EPA and State studies that MSW landfills release air pollutants that have adverse effects on both public health and welfare. In this section of the preamble, EPA discusses this evidence.

Municipal solid waste landfill emissions consist primarily of methane and CO_2, with trace amounts of more than 100 different NMOC's such as ethane, toluene, and benzene. These emissions, commonly called "landfill gas," are formed from the anaerobic decomposition of the refuse in MSW landfills. The landfill gas is generated by naturally occurring methanogens that decompose complex organic materials into organic compounds of lower molecular weight. The methane in the landfills acts as a stripping (or transport) gas, moving the NMOC's present in the landfills through the landfill to the atmosphere. There are several concerns for public health and welfare associated with emissions from MSW landfills. These landfill gas emissions have adverse health and welfare effects resulting from NMOC's. These NMOC's contribute to ozone formation; some are known or suspected carcinogens or cause other noncancer health effects. The NMOC's in landfill gas emissions can cause an odor nuisance and the methane has caused explosions and fires resulting from its migration to on- and off-site structures or enclosures. In addition, the proposed rule will have the ancillary benefit of reducing methane, a gas under discussion by the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change, convened by the United Nations.

Emission Estimates. Estimates taken from "The Office of Solid Waste Survey of Municipal Landfills" (Docket No. A–88–09, Item No. II–A–25), a database developed from a MSW landfill survey conducted in 1986, indicate that there were approximately 6,000 active MSW landfills nationwide in 1987. The EPA estimates that NMOC emissions from these landfills total approximately 255,000 Mg/yr (283,000 tpy). The NMOC's are primarily volatile organic compounds (VOC's) contributing to the ambient ozone problem. Roughly 1.0 percent of the NMOC emissions from stationary sources nationwide are emitted by MSW landfills. Additionally, methane emissions from MSW landfills nationwide total approximately 10.5 million Mg/yr (12 million tpy).

The EPA predicts that in the first 5 years after the NSPS goes into effect, about 940 new landfills will be built to accommodate increasing waste production and replace existing landfills that reach capacity and close. Total NMOC emissions from these new landfills would be over 52,000 Mg/yr

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(58,000 tpy) when they are filled to design capacity. While it is difficult to project the actual number of new landfills, the emission estimate is mainly a function of the amount of waste generated. Therefore, uncertainty about the number of new landfills does not greatly affect the estimate of the quantity of emissions.

Health Effects. The NMOC's present several hazards to human health. The NMOC's participate in chemical reactions leading to the formation of ozone, which causes health effects. Also, certain NMOC's have cancer risks and cause noncancer health effects.

Ozone is created by sunlight acting on NO_x and NMOC's in ambient air. Ozone leads to alterations in pulmonary function, aggravation of pre-existing respiratory disease, damage to lung structure, and adverse effects on blood enzymes, the central nervous system, and endocrine systems. Ozone also warrants control due to its welfare effects, specifically, reduced plant growth, decreased crop yield, necrosis of plant tissue, and deterioration of certain synthetic materials such as rubber (Docket No. A–88–09, Item Nos. II–A–26, II–I–16, etc.).

There is also concern about cancer risks from landfill NMOC emissions. In reviewing limited emissions data from MSW landfills, EPA identified both known and suspected carcinogens such as benzene, carbon tetrachloride, chloroform, ethylene dichloride, methylene dichloride, perchloroethylene, trichloroethylene, vinyl chloride, and vinylidene chloride. However, toxics emissions data were not available from most MSW landfills. The EPA attempted to apply statistical methods to the limited data to generate the average annual increased cancer incidence and the maximum individual risk (MIR). In evaluating the results of the calculations for annual incidence and MIR, EPA could not determine reasonable estimates of either an annual incidence or the MIR. The EPA believes the uncertainties in the database are too great to calculate credible estimates of the cancer risks associated with MSW landfills.

At least 12 pollutants, such as benzene, chloroform, and ethylene dichloride, contained in MSW landfill emissions, have the potential to produce health effects other than cancer. Noncancer health effects associated with these pollutants include adverse effects on the kidneys, liver, and central nervous system. A qualitative discussion of noncancer health effects is presented in chapter 2 of the BID. However, due to limitations in the data describing the link between emissions and these effects, EPA is unable to quantify the noncancer health effects at this time.

After considering what statutory approach to use in regulating MSW landfill emissions, EPA announced the decision to regulate these emissions under section 111 of the CAA in the Federal Register on August 30, 1988 (53 FR 33314). When this decision was made, EPA was cognizant that section 112 of the CAA (which can be used to develop NESHAP) could have been used. However, given the uncertainty and difficulty in setting standards under section 112, EPA decided to proceed with standards development under section 111. Now that EPA is proposing standards to regulate MSW landfills, EPA has found no reason to change that initial decision to regulate these emissions under section 111 of the CAA.

Fire and Explosion. A third reason MSW landfill emissions warrant control is the well-documented danger of fires and explosions, both on- and off-site. Decomposition of the wastes in landfills produces explosive methane gas. If this methane migrates and accumulates in structures or pockets, such as basements, crawl-spaces, utility closets, or false ceilings, fires and/or explosions can result. The EPA has documented many cases of acute injury and death caused by explosions and fires related to municipal landfill gas emissions. In addition to these health effects, the associated property damage is a welfare effect. Furthermore, when the migration of methane and the ensuing hazard are identified, adjacent property values can be adversely affected (Docket No. A–88–09, Item Nos. II–I–6, II–I–7, etc.). Subtitle D of RCRA will require owners and operators of MSW landfills to monitor for methane to ensure that the concentration of methane gas does not exceed either: (1) 25 percent of the lower explosive limit in facility structures, or (2) the lower explosive level as the property border. If either level is exceeded, the owner or operator would be required to develop and implement a methane reduction plan. The control of air emissions under the CAA, which will result in reduced levels of methane, thus reducing the potential for fires and explosions, will complement the RCRA provisions. The risk of fire or explosion has not been quantified due to the difficulty in describing emission levels which can be causally linked to these effects. Chapter 2 of the BID describes these effects in greater detail (Docket No. A–88–09, Item No. III–B–1).

Odor. Another aspect of MSW landfill emissions is the offensive odor associated with landfills. While the nature of the wastes themselves contribute to the problem of odor, the gaseous decomposition products are often characteristically malodorous and unpleasant. Various welfare effects may be associated with odors, but due to the subjective nature of the impact and perception of odor, it is difficult to quantify these effects. Studies indicate that unpleasant odors can discourage capital investment and lower the socioeconomic status of an area. Odors have been shown to interfere with daily activities, discourage facility use, and lead to a decline in property values, tax revenues, and payrolls (Docket No. A–88–09, Item Nos. 11–I–6, 11–I–7, etc.).

Global Climate Change. An ancillary benefit from regulating air emissions from MSW landfills is a reduction in the contribution of MSW landfill emissions to global emissions of methane. Methane is a major greenhouse gas, and is 20 to 30 times more potent than CO_2 on a molecule-per-molecule basis. This is due to the radiative characteristics of methane and other effects methane has on atmospheric chemistry.

There is a general concern within the scientific community that the increasing emissions of greenhouse gases could lead to climate change, although the rate and magnitude of these changes are uncertain. Efforts to reduce the uncertainties regarding the science of global climate change are ongoing within EPA and within the international community. This rule produces the ancillary benefit of reducing methane emissions, a gas under discussion by the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change convened by the United Nations, whether landfill owners and operators comply with the proposed standards through the use of control processes based on combustion or based on recovery.

Conclusion. In light of the level of emissions and potential public health and welfare effects described above, EPA proposes to list MSW landfills as a source category under section 111(b)(1)(A) of the CAA.

C. Selection of the Designated Pollutant

Today's notice designates air emissions from MSW landfills, hereafter referred to as "MSW landfill emissions," as the air pollutant to be controlled. The EPA views these emissions as a complex aggregate of pollutants which together pose a threat to public health and welfare based on the combined adverse effects of the various components. As previously stated, these components are methane and NMOC's, including various toxic substances. A number of factors determine the specific proportion of each constituent of MSW landfill emissions, such as the composition, age, and amount of waste in the landfill, moisture content and pH of the refuse, climate, and the presence of nutrients and/or toxic substances in the landfill. Landfill management practices, such as waste segregation, may also affect the composition of the emissions generated. Given the variability of these factors, the exact composition of MSW landfill emissions can vary significantly from landfill to landfill and over time. Although the types of compounds are typically the same, the complex mixture cannot be characterized quantitatively in terms of single pollutants. The EPA thus views the complex air emission mixture from landfills to constitute a single designated pollutant.

The EPA has determined that this mixture, MSW landfill emissions, will be designated and regulated under sections 111(b) and 111(d) of the CAA. Section 111 standards can address a broad range of sources and pollutants "* * * which may reasonably be expected to endanger public health or welfare." Municipal solid waste landfill emissions are designated on the basis of both the health and welfare impacts described in the previous section. Although different effects may result from different individual constituents of the landfill gas, the constituents are emitted together and the same control technologies will control all the constituents of MSW landfill emissions. Therefore, control of these constituents can be achieved through regulation of "MSW landfill emissions." Furthermore, MSW landfill emissions may contain 100 or more individual compounds. Although it would be theoretically possible to measure all of the components, such a task would be extremely burdensome, expensive, and impractical. The standards and guidelines EPA is proposing provide a high level of control of total MSW landfill emissions, and avoid the administrative burden and expense of measuring all components of MSW landfill emissions by using NMOC concentration as a surrogate measure.

In conclusion, today's notice proposes to regulate air emissions from MSW landfills as a designated pollutant by the addition of subpart WWW to 40 CFR part 60. This action is warranted by the potential for adverse health and welfare effects posed by MSW landfill emissions as described above under section B, "Selection of the Source Category."

D. Selection of the Affected and Designated Facilities

In summary, EPA is proposing that the affected facility for regulating new sources under section 111(b) of the CAA is each MSW landfill that commences construction on or after today's date. Additionally, today's notice proposes that the designated facility for regulating existing sources under section 111(d) is each existing MSW landfill (i.e., landfill that commenced construction before today's date), if it was receiving waste at any time since November 8, 1987, or has additional capacity which may be filled in the future.

Landfills are also regulated under subtitles C and D of the Resource Conservation and Recovery Act (RCRA). Hazardous waste is regulated under subtitle C, and in general, household and nonhazardous wastes are regulated under subtitle D. The proposed NSPS, however, has been developed under the authority of the CAA. Under RCRA, a landfill means an area of land or an excavation in which wastes are placed for permanent disposal, and which is not a land application unit, surface impoundment, injection well, or waste pile. The Resource Conservation and Recovery Act further defines an MSW landfill as any landfill or landfill unit that receives household waste. This landfill may also receive other types of subtitle D wastes, such as commercial waste, nonhazardous sewage sludge from publicly owned treatment works, construction/demolition waste, and industrial solid waste.

In defining the affected facility as part of an NSPS for an industrial source category, EPA typically determines which emission point or group of points is the appropriate unit (the source) for separate emissions standards in the particular industrial context involved. Today's proposal defines the affected facility as the entire landfill rather than any subdivision of the landfill such as an individual cell. An "entire landfill" is the total landfill property designated for solid waste disposal irrespective of subdividing access roads or multiple ownership. The entire landfill is appropriately covered by the proposed standard because the emissions potential of the landfill, and the magnitude of the associated health and welfare effects, are determined by the total area in which refuse is deposited. Additionally, the controls and their costs estimated for this proposal are also associated with the entire landfill rather than with any smaller subdivision.

In establishing 111(d) guidelines for existing sources, EPA typically defines "designated facilities" (see 40 CFR 60.21(b)). For the same reasons described in selection of the affected facility, the designated facility is the entire landfill. In considering how to define the designated facility under section 111(d), EPA specifically evaluated the applicability of the guideline to inactive landfills. Unlike manufacturing facilities, which typically cease emissions once they have closed, a landfill will generate landfill gas long after closure, in some cases as long as 100 years. During the development of today's proposed standards and guidelines, EPA found that a typical landfill is likely to generate landfill gas at a maximum rate at, or soon after, closure and that the generation rate would steadily decline thereafter. At some time after closure, emissions will no longer be a concern.

Control of closed landfills would pose a number of administrative issues. Based on available information, EPA estimates that there are over 32,000 closed solid waste disposal facilities across the country (53 FR 33324, August 30, 1988). Many of these would be classified as MSW landfills because household waste was deposited in them. The histories of many of these landfills may not be documented by State regulatory programs and would be difficult to locate. An additional concern would be the difficulty in establishing accountability and financial responsibility for the installation and operation of controls at closed facilities for which ownership may be uncertain.

The retroactive application of operating requirements to closed facilities also raises policy concerns. The EPA generally does not require owners of closed sources to implement controls. These sources were presumably operating in compliance with applicable regulations prior to closure and establishing post-closure requirements may place undue burdens on these facilities.

Faced with the administrative and policy complexities of regulating closed facilities, EPA looked for an approach that was likely to lead to reasonable success in reducing emissions without establishing unreasonable requirements. The Hazardous and Solid Waste Amendments to RCRA of 1984 required States to establish a permit program or other system of prior approval to ensure that facilities that receive household hazardous waste or small quantity generator hazardous waste are in compliance with 40 CFR part 257, "Criteria for Classification of Solid

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Waste Disposal Facilities and Practices." This permit program was to be established by November 8, 1987. This date was selected as the regulatory cutoff in the emission guidelines for landfills that are no longer receiving wastes because EPA judged States would be able to identify active facilities as of this date. The EPA views this permit program as a readily available resource for States to use in implementing today's guidelines and compliance schedules under section 111(d). Therefore, EPA is proposing to define a designated facility as an existing landfill that received waste on or after November 8, 1987, or has additional capacity which may be filled in the future.

The EPA is requesting comment about the ability of States to identify those landfills which may have closed after November 8, 1987, and the appropriateness of this date as a cutoff for applicability. The EPA typically does not establish operating standards through section 111(d) of the CAA for sources no longer operating. Further, since landfill emissions decline after closure, would it be more appropriate to limit the regulation to those facilities operating on the date of proposal? What additional emissions would occur if the applicability date was moved from November 8, 1987 to the date of proposal? The EPA also requests comments on the model used to estimate landfills emissions and the assumed emission profile.

E. Selection of Best Demonstrated Technology

Introduction. Under section 111(b), EPA proposes that new MSW landfills with annual emissions of NMOC's equal to or greater than 150 Mg/yr (167 tpy) would be required to be controlled through the use of gas collection systems and combustion devices (or equivalent systems). Under section 111(d), EPA would establish guidelines for existing MSW landfills that received refuse on or after November 8, 1987. The guidelines would specify that landfills with annual NMOC emissions equal to or greater than 150 Mg/yr (167 tpy) have collection and control systems. The same level of control has been selected as BDT for new and existing landfills.

Section 111(a)(1)(b) of the CAA requires that standards of performance for new sources reflect the—

> * * * degree of emission limitation and the percentage reduction achievable through application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.

Similarly, section 111(a)(1)(c) requires emission guidelines for existing sources to reflect the—

> * * * degree of emission reduction achievable through the application of the best system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated for that category of sources.

These systems are referred to as BDT for new and existing sources.

This section presents the rationales for selection of BDT for new and existing sources. Subsection 1 describes the gas collection and control technologies EPA evaluated in selecting BDT. The second subsection describes the analyses of regulatory alternatives for new and existing landfills. The rationales for selection of BDT for new and existing sources are presented in subsection 3. Finally, Subsection 4 describes the selection of the format of the standards and guidelines.

1. Discussion of Demonstrated Technologies

Today's standards and guidelines are based on gas collection and add-on control devices or systems. Today's proposed standards and guidelines would require that the air emissions from MSW landfills be collected and directed through an emission control device that achieves recovery or destruction of the NMOC's by at least 98 percent by weight. In selecting BDT for new and existing sources, EPA considered various technologies associated with gas collection and the control devices used to destroy the collected gas. The technologies described below would be equally applicable to both new and existing landfills.

Gas Collection. Typical landfill practices include application of a daily 0.15 meter (m) [6-inch (in.)] earthen cover over newly received refuse and a final cover of up to 0.6 m [2 feet (ft)] in thickness. This practice alone is inadequate to prevent release of MSW landfill emissions which continue through the cover long after the landfill is closed. There is no evidence that thicker final covers do any more than retard the emissions for a short period of time, with little or no effect on the overall mass emissions. In addition, MSW landfill emissions have the potential to migrate through the sides of the landfill or from places where the cover has been eroded over time. Thus, the emissions must be collected and destroyed to prevent release to the air.

One type of gas collection system presently in use is the passive collection system. Passive systems consist primarily of gas extraction wells, each of which may or may not be connected to a flare. However, passive wells are frequently vented to the atmosphere uncontrolled. Uncontrolled passive wells serve primarily to prevent gas migration and reduce fire and explosion hazard. Other public health and welfare concerns are not reduced by uncontrolled passive collection systems. The EPA believes that because these emissions are not reduced by uncontrolled passive collection systems, these systems are an ineffective control technology, and EPA therefore did not consider uncontrolled passive systems further during the selection of BDT.

Theoretically, a passive system could be as effective as an active system if each well or trench were equipped with an effective control device, and if the well or trench spacing were adequate to effectively collect gas from all areas of the landfill. However, due to their shorter radius of influence, an effective passive well system would need many more wells in a given area. The additional wells would result in higher overall costs. The EPA considers such passive well systems as being less cost effective than active systems for compatible volumes of collected gas.

Active collection systems are presently in use at more than 100 landfills and consist of two major components, gas extraction wells and/or trenches, and gas moving components. These systems employ mechanical blowers or compressors to create a pressure gradient, thereby extracting the MSW landfill emissions. The configuration of the wells or trenches and gas moving equipment, and the pressure gradient necessary to collect the emissions effectively without air infiltration from the surface and sides of the landfill, are affected by many site-specific factors. These factors include the gas generation rate, size and depth of the landfill, and refuse and cover permeability. A gas collection header system conveys the emissions to the control device(s).

Well-designed and well-operated gas collection systems, at a minimum, include the following capabilities: (1) The ability to handle the maximum gas generation rate predicted over the life of the equipment; (2) the ability to monitor and adjust the operation of the system as gas generation varies; and (3) the ability to be expanded as needed (i.e., to collect gas from all areas of the landfill in which refuse has been or will have been deposited for at least 2 years). Chapters 4 and 9 of the BID discuss the considerations necessary in designing an effective gas collection system (Docket No. A–88–09, Item No. III–B–1).

Active collection systems are capable of conveying the emissions to a control device, which destroys or removes the NMOC's and methane, thereby reducing the public health and welfare concerns. Other systems have not been demonstrated to accomplish these goals. Therefore, well-designed and operated active collection systems were considered as an essential component in selection of BDT for MSW landfill emissions. The emission reduction, cost, and other impacts of applying active collection systems, along with control systems, to new and existing landfills are estimated in Subsection 2, "Analysis of Regulatory Alternatives."

Control devices. Gas treatment or control devices are the other major part of a control system for air emissions from MSW landfills. Gas treatment can be performed either by systems that burn the collected gas or by systems that purify the emissions by the removal of the CO_2 and other contaminants to produce pipeline quality gas. Control (treatment) systems that burn the emissions can be further divided into those based on destruction, such as flares and incinerators, and those based on energy recovery, such as boilers, turbines, and internal combustion (I.C.) engines.

Gas purification techniques are used to upgrade landfill gas to pipeline quality natural gas by the removal of water, condensible NMOC's, and CO_2. Since standard natural gas pipelines may not accept gas containing halogenated compounds and sulfur derivatives, removal of these compounds can be a part of a purification process design. Compounds that are removed are often vented to the air. In such cases, the purification system would not reduce the public health and welfare impacts of landfill emissions. The landfill gas generation rate, availability of customers, and local environmental issues are important limiting factors in the decision to install purification systems at MSW landfills. These systems would not be economically feasible for all landfills. Thus, EPA has not used gas purification techniques as a candidate BDT control device. However, even though they are not applicable to all MSW landfills, today's proposed standards and guidelines allow purification processes to be used to control landfill emissions, if gaseous vent streams from purification systems at MSW landfills are routed to control devices where a 98-percent overall reduction in NMOC's is achieved.

Flares are currently being used to control air emissions from MSW landfills. Good combustion in a flare is governed by flame temperature, residence time of NMOC's in the combustion zone, turbulent mixing of the combustion zone, and the amount of oxygen (O_2) available for combustion.

There are basically two types of flares: Open flares (i.e., flame is exposed), and enclosed flares. Open flares generally have one burner tip and can be located at ground level or can be elevated. Enclosed flares are usually composed of multiple gas burner heads and are staged to operate at a wide range of flowrates. They are often located at ground level. Good mixing in enclosed flares is the result of high velocity of the fuel gas at the burner nozzles. The enclosure reduces luminosity, noise, and heat radiation. Chapter 4 of the BID provides additional information about the design, combustion efficiency, by-product emissions, and available test data for flares.

The EPA has established criteria (40 CFR 60.18) to assure (specifying when) open flares achieve at least 98 percent destruction efficiency. This efficiency can be achieved only under certain design and operating parameters, as specified in 40 CFR 60.18. The EPA reviewed data on the flaring of MSW landfill gas using enclosed flares. These data were collected through State and local regulatory agencies. The EPA concluded that properly designed and operated flares, both open and enclosed, can achieve this efficiency with landfill gas. Additionally, flares can consistently achieve a 98-percent or higher destruction efficiency at a lower cost than the other nonrecovery combustion control systems considered. (Cost impacts and economic feasibility of the application of flares are presented in the analysis of regulatory alternatives in Subsection 2.) Thus, EPA has concluded that open flares as an add-on control device are a demonstrated technology for control of landfill emissions and will be considered, along with collection systems, as a basic component in the selection of BDT.

Several other control systems that EPA has determined have the potential to meet the 98-percent destruction criterion are discussed below. While these other techniques may not be technically or economically feasible at all landfills, and are, therefore, not the basis of BDT, they have been demonstrated to reduce emissions and could be used to meet the requirements of the standards or guidelines in cases where they are feasible. At some landfills, use of these techniques rather than flares could reduce the costs of compliance.

A second control method utilizing combustion without energy recovery for control of collected emissions is incineration. Incinerators have been demonstrated to achieve 98 percent or greater reduction, the same control level as flares. Incineration may be more or less expensive than flares, depending on site-specific factors (Docket No. A–88–09, Item No. II–A–16), but in general they are likely to be more expensive than flares and may not be economically feasible in all cases. Therefore, while EPA would allow the use of incinerators, EPA has not based the calculation of the impacts of BDT on incinerators.

Energy recovery systems have also been demonstrated to achieve 98 percent emission control at landfills where their use is feasible. Energy recovery systems currently used to combust landfill emissions include I.C. engines, gas turbines, and steam-generating boilers. Power produced by these systems may be used to generate electricity or for heating. Each of these is briefly discussed below. Chapter 4 of the BID provides additional details of the operation, by-product emissions, and applicability of each of these systems to the control of MSW landfill emissions. Energy recovery systems have the potential to offset the cost of control. However, the capital cost for these systems is higher than for flares, and a site-specific study would be needed to determine the technical and economical feasibility of installing an energy recovery system for a given landfill. The EPA cannot predict the recovery potential with confidence for all existing or future MSW landfills without performing site-specific analyses. Additionally, EPA believes that landfill operators will themselves select recovery systems when it would make sense economically to do so. Therefore, EPA concluded that it would be inappropriate to further consider these systems in the selection of BDT. The BID for today's proposed standards and guidelines provides additional information that will be useful to landfill owners and operators in making decisions concerning energy recovery. In addition, this topic is discussed in Section K below, "Additional Considerations and Solicitation of Comments."

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Internal combustion engines are in use at about 40 landfills. The type of engine used to recover energy from landfills is usually a 4-cycle, spark-ignited engine similar in design to the common gasoline engine. The I.C. engine is being used for landfills because of its short construction time, ease of installation, and operational capacity over a wide range of speeds and loads. Internal combustion engines can be operated to achieve a destruction efficiency of 98 percent or better.

Gas turbines, which generally achieve a destruction efficiency of 98 percent, are in use to recover energy at 18 U.S. landfills (Docket No. A–88–09, Item No. II–B–24). A gas turbine is a heat engine that converts fuel energy into work using compressed hot gas as the working medium. Gas turbines take large amounts of air from the atmosphere, compress it, burn fuel to heat it, then expand it in the power turbine to develop shaft horsepower. Ambient air is compressed and combined with fuel in the combustor. The combustor exhaust stream flows to the power turbine which converts some of the stream's fuel energy to rotary shaft power. This shaft power drives the inlet compressor and an electrical generator. The applicability of gas turbines to a given landfill will depend on the quantity of landfill gas generated, the availability of customers, the price of electricity, and local environmental issues.

At a few landfills, energy recovery is achieved with industrial boilers, i.e., a boiler with a heat input of 2.9 to 29 megawatts (MW) (10 to 100 million Btu/hr), of the watertube design. In a watertube boiler, hot combustion gases contact the outside of heat transfer tubes, which contain hot water and steam. Heat is transferred via these tubes to collection drums, which collect and store the heated water and steam. Landfill gas-fired boilers may be utilized in two ways. On-site landfill gas may be routed to an on-site boiler to produce heat or hot water, or to produce steam, which in turn is fed to a steam turbine to generate electricity. The landfill gas may alternatively be piped and sold to an off-site boiler. Three of the five landfill gas-fired boilers presently operating are utilized as simple heat or hot water sources. There are at least two landfill gas-fired boiler-to-steam turbine facilities currently operating in the United States (Docket No. A–88–09, Item No. II–B–24).

2. Analysis of Regulatory Alternatives

Introduction. The "Discussion of Control Technologies" section indicates that there is basically one approach to reducing landfill emissions—gas collection and control. However, EPA recognizes that not all landfills warrant control, especially given the variability in the quantity of landfill emissions from a specific landfill and the cost of reducing these emissions. In addition, EPA recognizes that landfill emissions increase in quantity as more MSW is added to the landfill and that, after closure of the landfill, emissions decrease to the point that they no longer warrant control. Accordingly, EPA structured its regulatory analysis to decide *if* the installation of controls is warranted and *when* the controls are no longer warranted on a national basis and therefore could be removed. The EPA considered the results of this analysis in selecting BDT for new and existing landfills.

The Database. The EPA developed a database from which the impacts of applying the control technologies discussed above to new and existing landfills. In 1986, EPA sent municipal landfill survey questionnaires to 1,250 of the estimated 6,034 active MSW landfills in the United States. From this survey, EPA received responses for a total of 1,174 active MSW landfills (Docket No. A–88–09, Item No. II–A–25). Of the 1,174 landfills responding, the information provided on location, annual waste acceptance rate, refuse in place, age, depth, and design capacity were complete for 931 landfills. However, site-specific emission rates were not known and, therefore, were not reported to EPA. Because EPA needed emission rate information, it gathered gas generation rate and NMOC concentration information from literature, State and local air pollution control agencies, and industry test reports obtained through the authority of section 114 of the CAA.

The information from the 931 landfills was used with gas generation rate factors and NMOC concentrations to create two subsets of landfills: existing and new landfills. The existing landfills subset comprised all those landfills not closing prior to 1987. The new landfill subset was created by assuming existing landfills that will close between 1992 and 1997 are replaced by new landfills with similar characteristics. Each subset of landfills was evaluated for potential nationwide emission reduction under the regulatory alternatives discussed in the next section of this preamble. An algorithm was developed to track the landfill characteristics on an annual basis: determine annual emission rates; and determine, based on specific regulatory alternatives, if controls would be required and when they could be removed. The algorithm also estimated capital expenditures for initial placement of controls (i.e., flares) and routine equipment replacement, as well as operating and maintenance costs every year controls were in place. This tool allowed the development of regulatory alternatives and an estimation of the number of landfills affected by various regulatory alternatives, the potential emission reduction, and the cost of controlling the affected landfills. The impacts and trends presented in the remainder of this section are derived from this algorithm, and were scaled up from the 931 landfills in the database to estimate the number of landfills nationwide. Additional discussion of this algorithm is provided in Chapter 3 of the BID.

Regulatory Alternatives. Three regulatory alternatives were considered in selecting the standards for new landfills. The same alternatives were also considered in selecting the emission guidelines for existing sources. Each alternative was based on the use of estimated annual NMOC emission rates as the parameter for determining whether control would be required. Under each alternative, demonstrated gas collection and control systems would apply to landfills with annual NMOC emission rates higher than a specified level for that alternative. Annual emission rates were chosen as the cutoff parameter because, in general, it is the most practical way to select and implement the appropriate application of gas collection and control systems to MSW landfills. (See Subsection 4 below, "Selection of the Format of the Standards and Guidelines" for further discussion on this topic.)

Emission rates from a given landfill vary over time. After a landfill opens, emissions gradually increase as more waste is added. At some point in time, emissions may increase enough to warrant the use of gas collection and control devices. Emissions peak at or shortly after closure and then gradually decrease over time. Eventually, as emissions decline, emission reduction benefits of control are reduced and controls are no longer warranted. Therefore, under the regulatory alternatives, EPA would not only be determining the annual emission rate used to affect MSW landfills, but also would be implicitly determining when control systems must be installed and when they may be removed. This is also discussed in Subsection 4 below, and the following section entitled, "Selection of Requirements to Implement Best Demonstrated Technology."

The emission rate cutoff levels specified in Regulatory Alternatives 1, 2, and 3 are 25, 150, and 250 Mg/yr (28, 167, and 278 tpy) of NMOC's, respectively. In selecting regulatory alternatives, EPA performed a preliminary evaluation of many different emission rate cutoffs, ranging from 25 to 500 Mg/yr (28 to 555 tpy) (Docket No. A–88–09, Item No. II–B–32). As the cutoff level is lowered, the emission reduction, cost impact, and number of landfills at which controls must be installed increase. The three levels selected for further analysis (25, 150, and 250 Mg/yr (28, 167, and 278 tpy)) represent values in the high, middle, and low end of the range of impacts.

The emission and cost impacts in the tables are expressed in terms of NPV. Net present value is the value at one point in time of a flow of values across time. For this study, EPA used 1992 NPV's to allow comparison among alternatives with uneven flows of values. In the case for MSW landfills, both control costs and emission reductions vary year by year. Therefore, comparisons of alternative stringency levels include comparisons of net present values for both control costs and emission reductions.

For each regulatory alternative, the number of landfills controlled, national emission reduction, costs, and cost effectiveness were estimated. The costs are based on application of active gas collection systems and flares to those landfills above the specified emission level cutoffs. As described under "Control Devices," these control systems are demonstrated and would reduce emissions by 98 percent when applied to new or existing landfills.

Table 2 presents the number of new landfills at which control would be required and the emissions reductions EPA has predicted would result if the standard is set at 25, 150 or 250 Mg/yr (28, 167, or 278 tpy) for new landfills. The emission reductions for both NMOC's and methane are presented. Table 3 presents the national net annualized cost and cost effectiveness of each regulatory alternative for new landfills, in terms of cost per Mg (ton) of NMOC emission reduction. The incremental cost effectiveness, which compares each alternative to the next less stringent alternative, is also presented. Table 4 presents the number and distribution of new landfills, by capacity, that would be required to install controls under each alternative.

TABLE 2.—EMISSION REDUCTION ACHIEVED AT NEW MSW LANDFILLS FOR THREE REGULATORY ALTERNATIVES[a]

Regulatory alternative	Emission rate cutoff (Mg NMOC/yr)	Number of landfills affected	NMOC emission reduction[b]		CH_4[c] emission reduction[b]	
			Million Mg NMOC	Percent reduction	Million Mg CH_4	Percent reduction
1	25	247	0.99	90	51	82
2	150	87	0.76	69	36	57
3	250	41	0.63	57	27	43

[a] New landfills means those landfills constructed and opened in the first 5 years of the NSPS (between 1992 and 1997) to replace those existing landfills which will close during the same time period.
[b] All emission reductions are expressed as NPV (1992). The numbers presented have been rounded to two significant figures. The actual reduction potentials are given in the text. One Mg equals 1.11 tons.
[c] Methane.
Note: Baseline emissions for new MSW landfills are 1.1 million Mg NMOC and 63 million Mg methane. (NPV 1992.)

TABLE 3.—AVERAGE AND INCREMENTAL COST EFFECTIVENESS AT NEW MSW LANDFILLS FOR THREE REGULATORY ALTERNATIVES

Regulatory alternative	Emission rate cutoff (Mg NMOC/yr)	National annualized cost of control (million/yr)	Average cost effectiveness[a] ($/Mg NMOC)	Incremental cost effectiveness[b] ($/Mg NMOC)
1	25	45.2	1,418	[c] 2,731
2	150	26	1,020	[d] 1,586
3	250	19	867	[e] 867

[a] The average cost effectiveness for each alternative is calculated using the following formula:
$ACE = P_c/P_{ER}$
where:
ACE = average cost effectiveness
P_c = NPV of Operating + Capital Costs
P_{ER} = NPV of NMOC emission reduction
[b] The incremental cost effectiveness of going from one alternative to the next stringent alternative
$ICE = (P_o + P_{Cl})_A - (P_O + P_{Cl})_B / P_{ER}A - P_{ER}B$
where:
ICE = incremental cost effectiveness
P_o = NPV of operating costs
P_c = NPV of capital costs
P_{ER} = NPV of NMOC emission reduction
A = more stringent regulatory alternative
B = less stringent regulatory alternative
[c] Incremental cost effectiveness between Options 2 and 1.
[d] Incremental cost effectiveness between Options 3 and 2.
[e] Incremental cost effectiveness between Option 3 and baseline.
NPV = net present value.

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TABLE 4.—DISTRIBUTION OF CONTROLLED NEW LANDFILLS FOR THREE REGULATORY ALTERNATIVES

Design capacity of affected landfills	Regulatory alternative		
	1	2	3
<1 million Mg	56	0	0
1–5 million Mg	121	32	10
5–10 million Mg	29	19	14
>10 million Mg	39	36	17
Total number of affected landfills	247	87	41

Note: One million Mg equals 1.11 million tons.

Tables 5, 6, and 7 present the same information about existing landfills.

TABLE 5.—EMISSION REDUCTION ACHIEVED AT EXISTING MSW LANDFILLS FOR THREE REGULATORY ALTERNATIVES[a]

Regulatory alternative	Emission rate cutoff (Mg NMOC/yr)	Number of landfills affected	NMOC Emission reduction[b]		CH_4[c] Emission Reduction[b]	
			Million Mg NMOC	Percent reduction	Million Mg CH_4	Percent reduction
1	25	1,884	13	92	411	81
2	150	621	10.6	79	266	52
3	250	386	9.6	71	200	39

NOTE: Baseline emissions for existing MSW landfills are 13.6 million Mg NMOC and 509.2 million Mg methane. (NPV 1992.)
[a] EPA projects that some 1,100 of the 6,000 existing active landfills, all of which were receiving wastes in 1992, will close prior to promulgation.
[b] NPV. The numbers presented have been rounded to two significant figures. See the text for the actual reductions potential. One Mg equals 1.11 tons.
[c] Methane.

TABLE 6.—AVERAGE AND INCREMENTAL COST EFFECTIVENESS AT EXISTING MSW LANDFILLS FOR THREE REGULATORY ALTERNATIVES

Regulatory alternative	Emission rate cutoff (Mg NMOC/yr)	National Annualized cost of control (million/yr)	Average cost Effectiveness[a] ($/Mg NMOC)	Incremental cost effectiveness[b] ($/Mg NMOC)
1	25	416	927	2,894[c]
2	150	240	555	2,075[d]
3	250	150	407	407[e]

[a] The average cost effectiveness for each alternative is calculated using the following formula:
$ACE = P_C/P_{EE}$
where:
ACE = average cost effectiveness
P_C = NPV of Operating + Capital Costs
P_{EE} = NPV of NMOC emission reduction
[b] The incremental cost effectiveness of going from one alternative to the next stringent alternative
$ICE = (P_O + P_C)_A - (P_O + P_C)_B / {}^TER_A - {}^TER_B$
where:
ICE = incremental cost effectiveness
P_O = NPV of operating costs
P_C = NPV of capital costs
P_{EE} = NPV of NMOC emission reduction
A = more stringent regulatory alternative
B = less stringent regulatory alternative
[c] Incremental cost effectiveness between Options 2 and 1.
[d] Incremental cost effectiveness between Options 3 and 2.
[e] Incremental cost effectiveness between Option 3 and baseline.
NPV = net present value.

TABLE 7.—DISTRIBUTION OF CONTROLLED EXISTING LANDFILLS FOR THREE REGULATORY ALTERNATIVES

Design capacity of affected landfills	Regulatory alternative		
	1	2	3
<1 million Mg	514	59	22
1–5 million Mg	837	266	181
5–10 million Mg	295	111	48
>10 million Mg	238	185	135
Total number of affected landfills	1,884	621	386

Note: One million Mg equals 1.11 million tons.

3. Selection of Best Demonstrated Technology

In the selection of BDT, EPA must weigh the emission reduction associated with application of a control system along with the costs, nonair quality health and environmental impacts and energy requirements associated with these systems. The decision is made separately in this section of the preamble for new and existing landfills, considering the impacts of the regulatory alternatives presented in the previous section and other relevant factors. The decision for new MSW landfills concerns defining BDT for landfills affected by section 111(b); the decision for existing MSW landfills concerns defining BDT for landfills affected by section 111(d). These are separate and distinct decisions.

In the analysis of regulatory alternatives presented below, EPA acknowledges that the discussion is atypical in that there is only one control technology to consider, i.e., the installation of collection systems which convey the collected gases to a control device. The discussion revolves around the question of when it is reasonable to require collection and control systems at a given landfill and when it is not.

However, because of the unique emission characteristics of landfills when compared to more traditional emission units, regulatory alternatives can be created by considering alternative emission levels at which to require the installation of BDT. The installation of BDT at varying NMOC emission levels results in a range of emission reductions, costs and cost-effectiveness values which may be compared and contrasted much as is done in the selection of BDT from among different control technologies.

In considering which alternative to propose as BDT, EPA decided to consider both NMOC's and methane reductions. However, these alternatives presented below are being evaluated and implemented using NMOC's as the engineering basis for the regulatory cutoff. This means that the cost-effectiveness numbers presented do not reflect a dollar value for the reduction of methane. Rather, EPA qualitatively considered the anticipated methane reduction when selecting the regulatory cutoff.

However, the EPA's Division of Global Climate is studying the problem of methane emissions, primarily in relation to the phenomenon of global climate change, and is developing strategies for reducing these emissions. This rulemaking presents considerable potential for methane reductions, resulting in benefits such as the abatement of global warming, reductions in odor nuisance, and potential energy savings resulting from the selection of energy recovery devices to meet the control requirements of the standard and guidelines. As global climate change policy develops, these benefits could lead to the direct consideration of methane reductions along with NMOC reductions in setting these standards and guidelines. In that case, the resultant incremental cost effectiveness, emission reductions and potential energy savings might indicate that a more stringent threshold emission level (using NMOC concentration as the engineering basis) is warranted. Such benefits as reduced global climate change and energy savings are not considered in the following discussion of the regulatory alternatives. Although EPA has decided to consider methane reductions only as an ancillary benefit in this proposal, EPA is soliciting comments on the pros and cons of selecting the threshold emission level based on the direct consideration of both NMOC and methane reductions.

New Landfills. As shown in Table 2, the NMOC emission reduction for new MSW landfills under Regulatory Alternative 3, the least stringent alternative, would be 0.63 million Mg (0.7 million tons), or a 57-percent reduction relative to baseline emissions, on a NPV basis. Regulatory Alternative 2 would result in an additional reduction of 0.13 million Mg (0.14 million tons), while Regulatory Alternative 1 would reduce emissions by another 0.23 million Mg (0.25 million tons) compared with Regulatory Alternative 2. These emission reduction impacts demonstrate that as expected, as the stringency increases (i.e., as the cutoff level becomes smaller) the NMOC emission reductions obtainable increases. Methane emission reductions shown in Table 2 follow the same trend. Under Regulatory Alternative 3, a methane reduction of 27 million Mg (30 million tons) would be achieved, with additional reductions of 9 and 15 million Mg (10 and 17 million tons) achieved by Regulatory Alternatives 2 and 1, respectively. With this in mind, EPA considered the number of landfills and cost and economic impacts of achieving these emission reductions in selecting among the regulatory alternatives.

The EPA first compared Regulatory Alternatives 1 and 2. The EPA found a large increase in the number of affected landfills and the incremental costs for Regulatory Alternative 1 when going from Regulatory Alternative 2 to Regulatory Alternative 1. Regulatory Alternative 1 affects nearly three times as many landfills as Regulatory Alternative 2 while obtaining proportionately smaller NMOC and methane emission reductions. For example, the average emission reduction achieved per landfill (i.e., total additional emission reduction/number of additional landfills controlled) under Regulatory Alternative 1 is approximately one half that achieved on average by the landfills controlled under Regulatory Alternative 2. Furthermore, the majority of the increase in costs is associated with landfills with design capacities <5 million Mg (<5.6 million tons), 25 percent of which have design capacities <1 million Mg (<1.11 million tons), that would only be affected under Regulatory Alternative 1. The national incremental cost effectiveness for Regulatory Alternative 1 would be about $2,731/Mg ($2,452/ton). However, this figure does not include the ancillary bvenefits of methane control, such as the abatement of global climate change, odor reductions, or energy savings resulting from the use of energy recovering control devices, which could be realized under Regulatory Alternative 1. Additionally, more than 30 percent of households served by new MSW landfills installing collection and control systems as a result of Regulatory Alternative 1 would incur annual costs in excess of $10. The EPA believes that the additional cost and the administrative burden of controlling this many additional landfills (particularly, many smaller landfills having design capacities <1 million Mg [<1.11 million tons]) may be unreasonable based on the consideration of NMOC's alone given the relatively small incremental emission reductions achieved. Although EPA has selected Regulatory Alternative 2 for proposal, EPA solicits comments on the pros and cons of Regulatory Alternative 1 in light of the additional environmental benefits that can be achieved by reducing greenhouse gases. The EPA may elect to promulgate such a standard, or a standard incorporating an intermediate alternative, should evolving global climate change policies indicate more control is warranted.

Next, EPA compared Regulatory Alternatives 2 and 3, which would require control at 67 and 41 new landfills, respectively. Regulatory Alternative 2 provides a proportional 21 percent increase in NMOC emission reduction and a proportional 33 percent increase in methane reduction in comparison to Regulatory Alternative 3. These reductions are achieved at costs per unit of NMOC emission reduction comparable to previous decisions of VOC control under Section 111 in cases where cocontrol of air toxics and other concerns are evident. Additionally, the average and incremental cost effectivenesses for NMOC's emission reduction shown in Table 3 do not consider the ancillary benefits of methane reduction, such as global warming abatement, reduction in explosion hazard, and reduction in odor nuisance. Nor do they include any consideration of the potential for energy savings, which would result in cost savings. Although these benefits have not been quantified, they support qualitatively the judgment that the incremental costs of Regulatory Alternative 2 are reasonable. As shown in Table 4, while Regulatory Alternative 2 affects about 46 more landfills than Regulatory Alternative 3, many of those additional landfills have design capacities of 1 million Mg (1.11 million tons) or more. Regulatory Alternative 3 would control about 40 landfills, but would not require control of several very large landfills which emit relatively large quantities of NMOC's (e.g., quantities greater than 150 Mg/yr [167 tpy]), which could pose significant health and welfare risks. Based on economic impact analysis, EPA believes

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that neither Regulatory Alternative 2 nor Regulatory Alternative 3 should result in any households served by MSW landfills intalling collection and control systems incurring annual costs greater than $10. Based on this analysis, and considering the ancillary benefits of the significant methane reductions achieved, EPA concludes that Regulatory Alternative 2, and NMOC emission rate cutoff of 150 Mg/yr (167 tpy), results in reasonable economic impacts. Based on these considerations, EPA proposes an NMOC emission rate cutoff of 150 Mg/yr (167 tpy) as BDT (Regulatory Alternative 2) for new landfills.

In selecting Regulatory Alternative 2, EPA judged the application of well-designed gas collection systems and 98 percent efficient recovery/destruction control systems to landfills emitting more than 150 Mg/yr (167 tpy) of NMOC's to represent BDT for new landfills. The EPA finds that this is the best demonstrated technological system of continuous emission reduction for MSW landfills, taking into consideration costs and other relevant factors. Collection systems and control systems with 98 percent efficiency are demonstrated at about 25 landfills, and their application to those new landfills emitting 150 Mg/yr (167 tpy) of NMOC's or more will significantly reduce emissions without causing any unreasonable cost, environmental, or energy impacts.

The EPA believes that these controls are technologically feasible for landfills emitting less than 150 Mg/yr (167 tpy) of NMOC's. In light of growing concerns about global climate change, a more stringent regulatory option may well be reasonable in the future. For instance, if Regulatory Alternative 2 were set at 100 Mg/yr (111 tpy), an additional 6 percent reduction in NMOC's emissions could be achieved (methane emissions would decrease by an additional 9 percent). Only 17 additional new landfills, or a total of 104, would require control. The incremental cost effectiveness would increase only slightly when compared to 150 Mg/yr, from $1,588/Mg to $1,650/Mg. The EPA is still considering whether or not the additional benefits obtained under a stringency level of 100 Mg/yr are reasonable. However, for administrative and financial reasons, regulating to a more stringent level, such as Regulatory Alternative 1, 25 Mg/yr (28 tpy), may or may not be worthwhile. The EPA seeks comments on the pros and cons of a more stringent threshold level.

Existing Landfills. The NMOC emission reduction for existing landfills under Regulatory Alternative 3, the least stringent alternative, would be 9.6 million Mg (10.7 million tons), or a 71-percent reduction relative to baseline emissions. Regulatory Alternative 2 would result in an additional reduction of 1.0 million Mg (1.1 million tons), while Regulatory Alternative 1 would reduce emissions by another 2.4 million Mg (2.6 million tons) compared with Regulatory Alternative 2. As with new landfills, EPA found that these emission reduction impacts demonstrate that as the stringency increases (i.e., as the cutoff level increases) the NMOC emission reductions obtainable also increase. The methan reductions follow the same trend as the NMOC reductions, beginning with a reduction of 200 million Mg (222 million tons) under Regulatory Alternative 3, followed by cumulative reductions of 266 million Mg (295 million tons), and 411 million Mg (456 million tons) under Regulatory Alternative 2 and under Regulatory Alternative 1, respectively.

The number of landfills at which controls would be required, cost, and economic impacts of achieving these emission reductions were then considered in selecting among the three regulatory alternatives.

The EPA first compared Regulatory Alternatives 1 and 2. The EPA found a large increase in the number of affected landfills and the incremental costs for Regulatory Alternative 1 when going from Regulatory Alternative 2 to Regulatory Alternative 1. As was the case for new landfills, Regulatory Alternative 1 affects more than three times as many landfills as Regulatory Alternative 2 while obtaining proportionately smaller NMOC and methane emission reductions. Furthermore, the majority of the increase in cost is associated with landfills with design capacities <5 million Mg (<5.6 million tons) that would only be effected under Regulatory Alternative 1. Nearly nine times as many landfills with design capacities below 1 million Mg (1.11 million tons) would be required to install controls under Regulatory Alternative 1 than under Regulatory Alternative 2. The national incremental cost effectiveness for Regulatory Alternative 1 would be about $2,800/Mg NMOC's ($2,610/ton). However, this figure does not directly consider the ancillary benefits of methane control realized under Regulatory Alternative 1, such as global warming abatement, the reduction of odor nuisance, or the potential for energy savings resulting from the use of energy recovery control devices. Additionally, based on the economic impact analysis presented in BID Chapter 6, EPA believes that as many as 16 percent of the households served by MSW landfills installing collection and control systems in compliance with emission guidelines based on Regulatory Alternative 1 would incur annual costs in excess of $30. The EPA believes that the additional cost and the administrative burden of controlling this many additional landfills (particularly, many smaller landfills, having design capacities <1 million Mg [<1.11 million tons]) may be unreasonable based on the consideration of methane alone, given the relatively small incremental emission reductions achieved. Although EPA selected Regulatory Alternative 2 for proposal, EPA solicits comment on the pros and cons of this alternative, in light of the additional environmental benefits that may be achieved by reducing greenhouse gases. The EPA may elect to promulgate such guidelines, or an intermediate alternative, should evolving global climate change policies indicate that more control is warranted.

Next, EPA compared Regulatory Alternatives 2 and 3. Regulatory Alternative 2 provides a proportional 11 percent increase in NMOC emission reduction and a proportional 33 percent increase in methane reduction in comparison to Regulatory Alternative 3. These reductions are achieved at a per unit cost of emission reduction comparable to previous decisions for VOC control under Section 111 where cocontrol and other concerns are evident. The average and incremental cost effectiveness for NMOC emission reduction (shown in Table 6) do not include the ancillary benefits of methane reduction such as global warming abatement, and reductions of toxic compounds, explosion hazard and odor nuisance. Nor do they include any consideration of the potential energy savings (leading to cost savings) resulting from the selection of energy recovering control devices. Although these benefits have not been quantified, they support qualitatively the judgment that the incremental costs of Regulatory Alternative 2 are reasonable. As shown in Table 7, Regulatory Alternative 2 affects roughly 60 percent more landfills than Regulatory Alternative 3. Of these additional landfills, nearly 65 percent are greater than 1 million Mg (1.11 million tons) in design capacity, and 113 of them, roughly 50 percent, have design capacities in excess of 5 million Mg (5.6 million tons). Regulatory Alternative 3 would not require control at these larger landfills which emit relatively large quantities of NMOC's (between 150 and 250 Mg/yr [167 and 278 tpy]), which could pose significant health and welfare risks. Based on economic impact analysis, roughly less than 10 percent of the households served by existing MSW landfills installing controls in compliance with Regulatory Alternative 2 would incur annual costs of $30 or more. These costs are based on the use of flares for control, and will be lessened by the selection of energy recovery for control. Based on this analysis, and considering the ancillary benefits of the methane reductions, EPA concludes that Regulatory Alternative 2 would result in reasonable economic impacts. Based on these considerations, EPA proposes Regulatory Alternative 2 (an emission level cutoff of 150 Mg/yr [167 tpy] NMOC) as BDT for existing landfills.

In selecting Regulatory Alternative 2, EPA judged the application of well-designed gas collection systems and 98 percent efficient recovery/destruction control systems to landfills emitting more than 150 Mg/yr (167 tpy) of NMOC's to represent BDT for existing landfills. The EPA finds that this is the best demonstrated technological system of continuous emission reduction for MSW landfills, taking into consideration costs and other relevant factors. The application of collection and control systems to those existing landfills emitting 150 Mg/yr (167 tpy) of NMOC's or more will significantly reduce emissions without causing any unreasonable cost, environmental, or energy impacts.

The EPA believes that these controls are technologically feasible for landfills emitting less than 150 Mg/yr (167 tpy) of NMOC's. However, as stated above, EPA qualitatively considered the estimated methane reduction when selecting the regulatory cutoff. The EPA solicits comments on whether and how to consider reductions of methane more directly in the regulatory decision. For instance, if Regulatory Alternative 2 were set at 100 Mg/yr (111 tpy), an additional 3 percent reduction in NMOC emissions could be achieved, and methane emissions could be reduced by an additional 8 percent. An additional 41 existing landfills, or a total of 307, would require control. The EPA is still considering whether the additional benefits obtained under a stringency level of 100 Mg/yr are reasonable. The EPA seeks comments on the pros and cons and benefits and costs of regulating to a more stringent level, such as Regulatory Alternative 1, 25 Mg/yr (28 tpy) of NMOC.

4. Selection of the Format of the Standards and Guidelines

In developing this rulemaking, the format for the standards and guidelines was determined prior to the selection of BDT. This section describes in greater detail how this format was selected. The format of today's proposed standards and guidelines was selected considering the unique nature of MSW landfills as a source category. The formats for the proposed standards for new sources and the proposed guidelines for existing sources are identical. This is reasonable because BDT is the same for new and existing landfills. Also, since collection and control systems would always be installed at an MSW landfill after a certain amount of refuse has been landfilled and emissions reach a certain level, there would be little difference in the feasibility of installation of controls at new and existing facilities.

This section will present the rationale for each of two formats for the proposed standards and guidelines, one for determining applicability, and one for the specific requirements of the standards.

Format for Applicability. The EPA determined that a format for determining applicability would be necessary because MSW landfill emissions change over time due to the volume of refuse in place, the age of refuse, whether or not the landfill is still accepting waste, and other factors discussed elsewhere. The format for the applicability of the standards proposed today includes both the determination of when controls are to be put in place, and the determination of when controls are no longer required. That is, it is reasonable to collect and control emissions at a given landfill after a certain emission level (or some other criteria such as volume of waste in place) is reached; but it is not reasonable to continue control long after the level of emissions has declined significantly. Establishing an initial applicability criterion focuses control efforts on those landfills with the greatest potential emissions, and associated health and welfare hazards. It avoids large expenditures for control of landfills where emissions are very low and where costs are unreasonable relative to the potential emission reduction achievable. Establishing criteria for removal of controls is also reasonable because, as previously noted, the emission rate and associated health and welfare hazards decline over time after a landfill is closed. At some point, emissions are so low that they pose relatively reduced public health and welfare impacts and the cost of control would no longer be warranted.

The EPA evaluated several parameters in order to establish an appropriate criteria upon which to make the applicability determination. Four options were evaluated in order to determine what parameter or parameters should be used to identify the landfills to be controlled, when controls should be applied, and when they are no longer needed. These options are: (1) Installations based on the amount of refuse in place, with removal based on number of years since closure; (2) both installation and removal based on consideration of costs and emission reductions; (3) both installation and removal based on NMOC emission rate; and (4) installation based on NMOC emission rate, and removal based on consideration of costs and emission reductions. The advantages and disadvantages, as well as the relative effectiveness of each of these options, are discussed below.

The amount of refuse in place is considered to be the easiest of the four options to implement in the proposed standards because it requires a minimum of calculations and requires no projections of future levels of refuse acceptance or emissions. When to remove controls is less straightforward. For this analysis, the number of years after closure was selected.

The refuse in place option costs more than any of the other three options to achieve the same emission reduction. This option also required controls to be installed at more than twice as many landfills as any other option, but did not produce greater emission reduction overall. Thus, EPA discarded this option.

The second option is consideration of cost and emission reductions on a site-by-site basis. This option was the most complex and burdensome of the four, and achieved only marginally more emissions reductions than the next option, which is based on the NMOC emission rate. Although this option has the advantage of being the most cost effective, this option is very difficult to implement. The calculation of cost per unit of emission reduction involves projections of both future emission levels and operating costs. The capital costs of the system are amortized over the useful life of the system, which impacts the cost per unit of emission reduction. Controls are installed when the capital and operating costs per Mg ($/Mg [$/ton]) NMOC reduction meet a certain dollar criterion. The system is later removed when the cost per Mg (ton) falls below the criterion again. The

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projections and calculations needed are complex and uncertain, and may involve iterations of this calculation to arrive at a mathematical solution to define the appropriate dollar criterion. In addition to the burden on the owner or operator to make the projections and perform the "real world" calculations, the permit authority would be obligated to judge the projections as well. A variation from the applicant's assumptions would require that all the calculations be repeated, and a very different answer could result. This could introduce inequities in the application of the standards. Finally, for many owners and operators the sophistication of the projections and calculations may necessitate hiring a contractor to prepare the annual compliance report, thereby increasing the cost.

The third option considered in selecting the format for the standards and guidelines was the NMOC emission rate which was previously discussed. The major advantage with this option is that the emission rate cutoff above which controls are required can be selected to maximize the overall emission reduction while avoiding excessive costs. Another advantage to using this option is its close correlation with emission reduction. Although this option is slightly more costly than the cost-effectiveness option for a comparable amount of emission reduction, the difference is not significant. In addition, controls are generally required at fewer landfills under this option, compared to the cost-effectiveness option, while emissions reductions are similar. A final advantage of this option is the relative ease with which it could be developed and implemented. Calculation of emission rate is feasible and less complex and burdensome than calculation of cost per unit of emission reduction.

The final option in this comparison was a combination requiring installation of controls at a given emission rate, and allowing removal based on consideration of cost and emission reduction. Although this combination in theory could combine the advantages of each option, in this evaluation it cost more than the second option, and obtained less emission reduction overall than the third (NMOC emission rate) option. Even though consideration of cost and emission reduction is only used to determine when to remove controls, this option would require almost immediate projections and calculations in order to determine for how long the cost per unit of emission reduction will be reasonable, and when controls can be removed. The complexity and burden this introduces parallels that of the second option.

The Administrator has selected the NMOC emission rate as the parameter to be used to determine when to install and remove controls for these standards and guidelines. This parameter was selected based on its clarity and ease of implementation, its ability to maximize emission reduction, its cost, and the number of landfills which would require control compared to the emission reduction achieved.

Specific Requirements. The format of the standards and guidelines proposed today is a combination of a design and operation standard for the gas collection system, and a percent reduction requirement for the control device. Today's proposed standards require properly designed and operated gas collection systems, and include specifications that are used to evaluate the design and operation of these systems. The standards proposed for the control device require the use of an open flare in compliance with 40 CFR 60.18 or a reduction of the NMOC's by 98 percent by weight.

Section 111 of the CAA requires that performance standards, or emission limits, be prescribed unless, in the judgment of the Administrator, it is not feasible to prescribe or enforce such standards. Specifically, paragraph 111(h)(1) states that

"* * * if in the judgment of the Administrator, it is not feasible to prescribe or enforce a standard of performance, he may instead promulgate a design, equipment, work practice, or operational standard, or combination thereof, which reflects the best technological system of continuous emission reduction * * *"

Paragraph (2) of section 111(h) defines the phrase "not feasible to prescribe or enforce a standard of performance" to mean any situation where the Administrator determines that

"* * * (A) a pollutant or pollutants cannot be emitted through a conveyance designed and constructed to emit or capture such a pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State or local law, or (B) the application of measurement technology to a particular class of sources is not practicable due to technological or economic limitations."

For MSW landfills, BDT consists of a gas collection system and an effective control device, achieving 98 percent reduction of landfill emissions for landfills with an NMOC emission potential equal to or greater than 150 Mg/yr (167 tpy). In order to set a performance standard for the gas collection system (e.g., collection efficiency), it would be necessary to quantify the landfill gas available for collection in comparison to the amount collected. It is not technically feasible to measure the amount of gas available for collection, only to *estimate* how much is produced, so a collection efficiency cannot be measured. Emission limits are not applicable to gas collection systems. For this reason the Administrator has proposed design, operational, and work practice standards for collection systems. Design features are required that would ensure effective collection of MSW landfill emissions. The standards and guidelines specify that collection systems must be designed and operated to handle that maximum gas generation rate and to collect gas effectively from all areas of the landfill warranting control and require monitoring and appropriate operation of the collection system. Control is warranted within 2 years of initial waste placement for each area or cell in which refuse has been placed.

In the case of the control device, however, percent reduction is directly measurable for most control devices applicable to air emissions of MSW landfills, and the control efficiencies are well-documented (Chapter 4 of the BID, Docket No. A-88-09, Item No. III-B-1). Although flare outlet concentration is infeasible to measure, EPA acknowledges that reduction beyond 98 percent is not only achievable, but common, and has used open (i.e., elevated) flares in the selection of BDT. For this reason, the Administrator has prescribed that control devices must achieve 98 percent reduction efficiency. If flares are used to meet the standards and guidelines they must meet the specifications in 40 CFR 60.18, since percent reduction is not measurable. Refer to the Subsection 1 above, "Discussion of Demonstrated Technologies" for a discussion of control devices EPA believes can achieve the 98-percent reduction requirement. Owners or operators of MSW landfills intending to use other controls are required to demonstrate the same level of emission reduction.

The standards proposed today include provisions allowing an owner or operator to submit a plan to use an alternative collection system and/or control device, provided that the owner or operator is able to demonstrate that such system and/or device is able to achieve an equivalent level of control and emission reduction.

F. Selection of Requirements To Implement the Best Demonstrated Technology

1. Introduction

This section describes in detail how the proposed standards and guidelines would be implemented. As discussed in the previous section, EPA has selected as BDT active collection systems and control systems able to reduce NMOC content of the collected gas by 98 percent. These systems are to be installed when the NMOC emission rate at a given landfill is 150 Mg/yr (167 tpy) or more.

First, this section reviews the applicability of the standards and the guidelines, followed by an explanation of the procedures used to determine the site-specific NMOC emission rate. The EPA has developed a tiered method of calculations for determining which affected landfills are required to control, and when to install and remove controls. Conservative defaults were developed for the tiered approach. The discussion of the approach focuses on the defaults generated for Regulatory Alternative 2, 150 Mg/yr (167 tpy) NMOC. Should EPA consider a more stringent cutoff level [i.e., less than 150 Mg/yr [167 tpy]], new defaults will be calculated for that level, using the same methods employed in developing the defaults for Regulatory Alternative 2. The explanation for the method and the differences between the tiers are also presented below. The EPA then presents design considerations for the collection system, and the specifications for the various control devices EPA has determined can be used to demonstrate compliance with the standards or guidelines. Also this section discusses how to use alternative means of emission limitation to comply with the standards and guidelines. The section concludes with a discussion of the requirements and considerations specific to the guidelines proposed under Section 111(d) of the CAA.

Review—Affected Facility (New Source Performance Standards) and Designated Facility (Guidelines). The definition of affected facility under the proposed NSPS is identical to the definition of the designated facility under the proposed guidelines except for the date when construction or modification commences. For the purposes of today's actions, a "municipal solid waste landfill" or "MSW landfill" means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive commercial waste, sludges, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned.

An MSW landfill is regulated as an entire unit (i.e., the landfill is considered either new and is subject to the NSPS or existing and subject to the guidelines) because the total emission potential and associated environmental impacts are determined by the entire landfill. A single landfill would not have portions subject to the NSPS and portions subject to the guidelines.

Applicability of the New Source Performance Standards to New Municipal Solid Waste Landfills. Any MSW landfill on which construction or modification began on or after today's date would be regulated under the NSPS. Although portions of a new landfill may subsequently be closed, the entire landfill will be viewed as one landfill for purposes of determining the design capacity and the NMOC emission rate. If installation of collection and control systems is warranted, these systems are to be installed in all areas as well.

The EPA considered the effect of modifications to existing MSW landfills. By definition, a modification is a "physical or operational change to an existing facility which results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies" (40 CFR 60.14). An existing landfill that is modified is subject to the NSPS. Further, changes to an existing facility already subject to the NSPS that result in an increase in the emission rate may make the facility subject to more stringent control requirements under the standard.

The only physical or operational changes under the control of the owner or operator that EPA has determined may increase emissions are increases in the design capacity of a landfill. The EPA considered other possible physical or operational changes that may constitute a modification, but none were identified that would result in a modification pursuant to § 60.14. For example, if an MSW landfill increased its waste acceptance rate, such a change would be analogous to an increase in production rate at a manufacturing facility. Under § 60.14(e)(2), if "an increase in production rate of an existing facility, * * * can be accomplished without a capital expenditure on that facility" it would not be considered a modification, even if the emission rate of the unit increased.

If modification is defined as an increase in design capacity, then the applicability of this definition to existing landfills is important. The EPA knows of no environmental or administrative reason to subject an MSW landfill to both the proposed standards and emission guidelines. The question raised, then, is under what circumstances changes at an existing MSW landfill trigger the NSPS. The EPA considered two situations:

1. If an existing MSW landfill that is less than 100,000 Mg (111,000 tons) and was not previously affected by either the standards or guidelines increased its design capacity above the 100,000 Mg (111,000 tons); and

2. If an existing MSW landfill affected by the emission guidelines expands its design capacity.

The EPA decided the first case would be a modification and trigger the control requirements of 60.752(b) of the proposed NSPS because the existing MSW landfill was never affected by the standards or emission guidelines. If such a landfill is now affected by the standard, there is no dual coverage. In the second case, since the MSW landfill is already affected by the emission guidelines, to trigger the NSPS in addition to the guidelines would be confusing and inappropriate since BDT is the same for both. Therefore, EPA is proposing that once an existing landfill is covered under the emission guidelines, the landfill remains covered under the guidelines. Changes in the design capacity at the affected landfill do not constitute a modification.

Applicability of the Guidelines to Existing Municipal Solid Waste Landfills. Any existing MSW landfill (i.e., a landfill that commenced construction before today's date) that accepted waste on or after November 8, 1987, or has the potential to accept additional waste and has not documented that it is permanently closed, would be a designated facility subject to State regulations under the guidelines proposed under section 111(d). Although portions of an existing landfill may be closed, all portions of the landfill are subject to the guidelines if any portion of the landfill accepted waste on or after November 8, 1987. This means that all areas of the landfill are to be included in the calculation of the design capacity. When the NMOC emission rate is calculated, however, the regulation would allow the exclusion of any areas of the landfill which can be shown to be producing virtually no gas. Collection and control systems are to be installed in all other areas of the landfill except where asbestos deposits are documented.

Control Requirements of the Standards and Guidelines. The emission

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control levels of today's proposed standards for new landfills and proposed guidelines for existing facilities are identical. Both new and existing landfills emitting 150 Mg/yr (167 tpy) of NMOC's or more, would be required to install collection and control systems that meet the standard. The determination of whether a landfill emits 150 Mg/yr (167 tpy) or more and must install controls is described below. There are separate requirements for small and large landfills.

Municipal Solid Waste Landfills with Design Capacities Less than 100,000 Mg. Because small landfills are very unlikely to emit 150 Mg/yr (167 tpy) of NMOC's, they would be exempt from control requirements. The only requirements for affected (new) and designated (existing) MSW landfills with design capacities less than 100,000 Mg (111,000 tons) are to file an initial design capacity report, and to report any changes in capacity. These landfills would not be required to perform the more detailed calculations (the tiered approach) to determine their NMOC emission rate. This minimizes the regulatory burden on owners or operators of small MSW landfills.

In establishing the 100,000 Mg (111,000 tons) design capacity exemption, EPA analyzed various factors that could be used to characterize those landfills that EPA considers will be highly unlikely to ever produce NMOC emissions at a rate of 150 Mg/yr (167 tpy) or more. Design capacity and acceptance rate both correlated well with NMOC emission rate. Therefore, these two factors were evaluated as potential criteria upon which to base an exemption.

The exemption in today's standards and guidelines is based on design capacity and not acceptance rate for several reasons. Design capacity is closely related to NMOC emission rate, information on design capacity of landfills is generally available, and it does not change frequently. Design capacity is generally documented in a RCRA or State permit, and any change in design capacity is usually accompanied by a permit revision. An exemption based on acceptance rate would be impractical to implement. Acceptance rate is a less stable statistic than design capacity, and typically fluctuates over time due to changes in demand for landfill space.

The 100,000 Mg (111,000 tons) level was selected as the appropriate level for the design capacity exemption based on an EPA analysis of the data relating capacity to NMOC emissions. This level will relieve many owners and operators of small landfills that will never emit 150 Mg/yr (167 tpy) of the requirement to determine and report the NMOC emission rate annually. The EPA solicits comment providing additional data relating design capacity or refuse in place to NMOC emission rates.

Municipal Solid Waste Landfills with Design Capacities Equal to or Greater than 100,000 Mg. New and existing MSW landfills with design capacities equal to or greater than 100,000 Mg (111,000 tons) would install collection and control systems if their calculated NMOC emissions are over 150 Mg/yr (167 tpy). Landfills with capacities of 100,000 Mg (111,000 tons) or more would calculate and report their NMOC emission rate periodically until closure, or until a complying collection and control system is required and installed. Periodic calculation is required because landfill emissions at active sites tend to increase as refuse in place increases and the organic matter generates additional landfill gas. In lieu of an annual report, owners or operators may elect to submit an estimate of the NMOC emission rate for each of the next 5 years, based on the current amount of refuse in place and the estimated waste acceptance rate for each of the 5 years, provided that the estimated NMOC emission rate is less than 150 Mg/yr (167 tpy) for each of the 5 years reported. The 5-year estimate would be updated and resubmitted at least every 5 years. The standards and guidelines provide a formula and procedures for these calculations, which are discussed in the next subsection. Municipal solid waste landfills with calculated NMOC emission rates equal to or greater than 150 Mg/yr (167 tpy) would install collection and control systems within 2½ years, in compliance with specific design and operating criteria. The periodic calculation of emissions is not required while such collection and control systems are operating.

After closure, emissions from landfills decline as the organic matter that generates landfill gas decomposes. At some point continued operation of the collection and control system is not warranted. Both the standards and the guidelines specify removal of controls would be permitted only after all three of the following conditions are satisfied: (1) The collection and control devices must have been in operation for a minimum of 15 years; (2) the landfill would have to be permanently closed, and (3) the calculated NMOC emission rate must be less than 150 Mg/yr (167 tpy) on three successive test dates which are no closer than 3 months apart, and no longer than 6 months apart. The rationale for these conditions is provided below.

Although EPA has decided that equipment installation and removal should be based principally on the NMOC emission rate, for some landfills this may mean removal could occur relatively soon after installation. This does not make sense when the capital cost has already been incurred and the equipment is still useful, and could be further reducing emissions. These further reductions are obtained for less cost than an equivalent amount of reduction at a new site where capital must be invested "up front." The EPA concluded that after collection and control systems are installed, the systems should be maintained and operated over their entire useful life. Based on engineering/costing principles, the equipment life of control systems was conservatively estimated to be 15 years or more. Based on an EPA study of the impact of a minimum control period, EPA predicts only a small portion of controlled landfills would ever be both closed and emitting below 150 Mg/yr (167 tpy) within 15 years of equipment life. Therefore, both the standards and the guidelines would specify a minimum control period of 15 years.

The EPA analyzed the nature of gas generation from MSW landfills and concluded that emission "peak" at or near the time of permanent closure. Therefore, permanent closure of the entire landfill is also required before collection and control devices could be removed. For purposes of the standards and guidelines, a landfill is considered closed if it meets the RCRA definition of a closed landfill and files a closure report. The recent RCRA proposal (53 FR 33314, August 30, 1988) has defined "closed" as no longer accepting waste and having completed the closure procedures noted in the landfill's closure plan for each cell of a landfill as it closes. The RCRA proposal would also require that a landfill file a permanent record at final closure, such as an attachment to the property deed. The RCRA proposal (53 FR 33314, August 30, 1988) would require a 30-year post-closure period that includes a gas monitoring system. The gas monitoring system proposed under RCRA is different from the gas collection and control system proposed in this action. For existing MSW landfills, the States would have to establish a means of certifying closure when closure has preceded the effective date of the RCRA program.

The third condition for removal of controls is calculations showing that the NMOC emission rate is below 150 Mg/yr (167 tpy). Since the NMOC emission rate at a given landfill may fluctuate seasonally with changes in temperature, moisture, and other factors, a series of NMOC calculations over three successive time periods would be required. The 3- to 6-month time intervals provide a representation of at least two seasons. This provision helps to assure that collection and control will not be suspended based on one isolated test that may not be representative of the annual emission rate and provides confirmation that the NMOC emission rate has declined to below the cutoff of 150 Mg/yr (167 tpy).

2. Calculation of the Nonmethane Organic Compounds Emission Rate Tiered Approach.

The standards and guidelines provide a tiered system for calculating the NMOC emission rate to determine if the NMOC emission rate is equal to or greater than 150 Mg/yr (167 tpy). A flow diagram of the three tiers is provided in Figure 1. Emission rates vary widely from landfill to landfill and can be established with a high degree of certainty only through testing. Alternatively, a conservative emission model can be used to provide a less precise, yet less costly approach. While such a model would overestimate emissions, the extra precision afforded by source testing it not always warranted. For example, in cases where conservative estimation results in an NMOC emission rate which falls below the 150 Mg/yr (167 tpy) emission rate, testing would not be warranted. Likewise, testing would not be warranted if modeled emissions were substantially above 150 Mg/yr (167 tpy).

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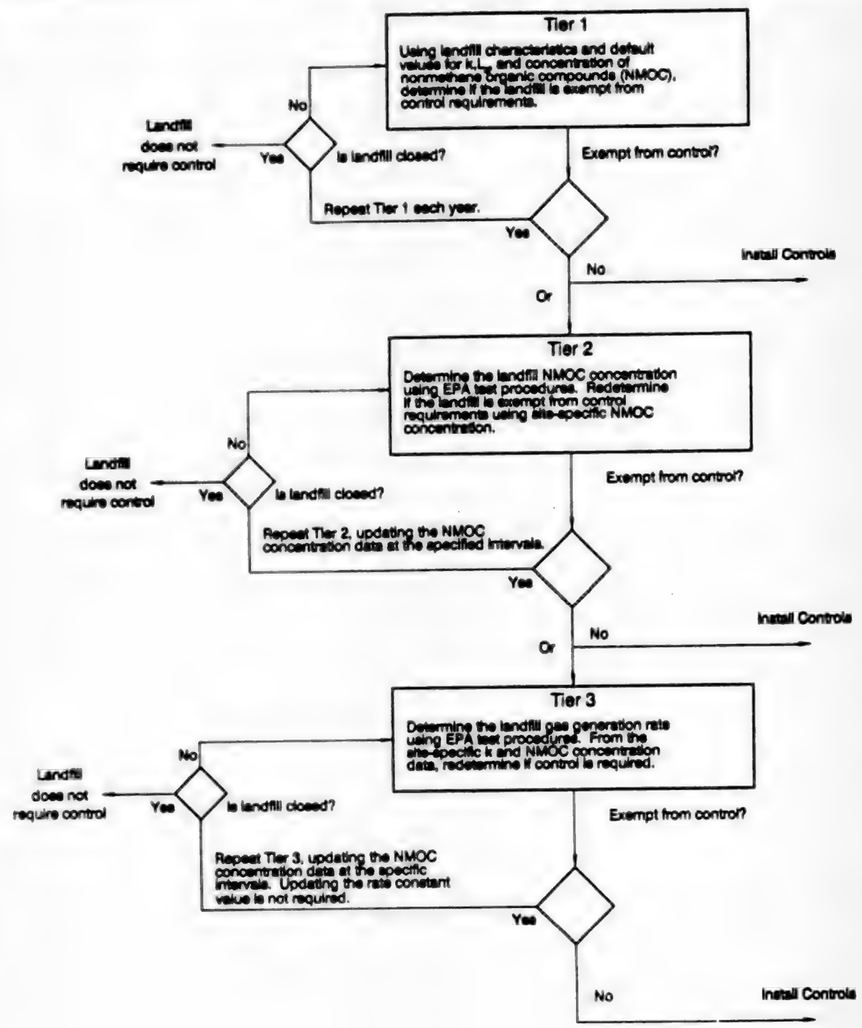

Figure 1. Overall three-tiered approach for determination of control requirements.

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The tiered method of NMOC emission rate calculation was developed to provide landfill owners or operators with the flexibility to choose among several options, each with a different level of precision and cost. The goals of the tiered method are to identify those MSW landfills that are emitting at least 150 Mg/yr (167 tpy) of NMOC's, to reduce the cost and burden of this determination as much as reasonably possible, to allow the use of site-specific data derived from testing, and to permit facilities which exceed the 150 Mg (167 tpy) cutoff to install collection and control systems at any point without being required to complete all the available levels of testing.

All three tiers are based on the calculation of the NMOC emission rate using a first order decomposition rate equation. The model uses site-specific information on landfill age and waste acceptance rate. Three critical emission parameters are combined in the model: k (the refuse decay rate), L_o (the refuse methane generation potential), and the NMOC concentration. The three tiers differ in how the values for these three variables are obtained. The equation is provided in the regulation under § 60.753, "Test Methods and Procedures."

Tier 1. Under Tier 1, the landfill owner or operator combines readily available data about a given landfill with conservative default values for k, the NMOC concentration in the landfill gas, and L_o. The default values for these three variables are specified in the standards and guidelines. These values were established as a result of an EPA analysis of 931 landfills that took part in the Office of Solid Waste (OSW) landfill survey (Docket No. A–88–09, Item No. II–A–25). The objective of the analysis was to produce a set of default values which would distinguish between landfills warranting additional testing or control and those landfills not emitting above 150 Mg/yr (167 tpy). The rationale and approach used in the analysis are presented in the docket (see "Rationale for Selecting Tier 1 Default Values" and "Applicability of Selected Tier 1 Default Values to the 150 Mg/yr Stringency Level" [Docket No. A–88–09, Item Nos. II–B–32 and II–B–40]). Because conservative values for k, L_o, and NMOC concentration are used, Tier 1 would be highly likely to overestimate the NMOC emission rate. For those landfills where the Tier 1 calculation results in an emission estimate below 150 Mg/yr (167 tpy) of NMOC's, collection and control systems would not be installed, but calculations would be repeated periodically, as previously described. For those landfills whose Tier 1 calculations result in an NMOC emission rate equal to or greater than 150 Mg/yr (167 tpy), the owner or operator may either install collection and control systems, or may perform the field measurement procedures detailed in Tier 2 to determine emissions more precisely.

Tier 2. The equation used to calculate NMOC emissions in Tier 2 is the same as in Tier 1, but the landfill owner or operator conducts sampling to determine a site-specific NMOC concentration to substitute for the default value in the equation. Measurement of the NMOC concentration was chosen for Tier 2 because it is variable from landfill to landfill and over time, and the more precise value obtained by sampling and analysis will affect the results of the emissions calculation. Furthermore, NMOC concentration is easier and less expensive to determine than k. Sampling procedures for NMOC concentration are provided in the standards and guidelines, and the samples are analyzed using Method 25C. If the average NMOC concentration from the samples results in a calculated NMOC emission rate below the cutoff of 150 Mg/yr (167 tpy), the owner or operator must demonstrate that there is statistically at least an 80-percent confidence level that the true value is below 150 Mg/yr (167 tpy). The procedures for this demonstration are adapted from standard EPA procedures. If an 80-percent confidence level can be demonstrated, controls would not need to be installed. The EPA judged that an 80-percent confidence level was sufficient because the k and L_o used in Tier 2 will still produce a conservative NMOC emission rate. If the resulting NMOC emission rate is equal to or greater than 150 Mg/yr (167 tpy), the owner or operator may install controls or may perform the field testing procedures detailed in Tier 3 to determine NMOC emissions more precisely.

The EPA has determined that a one-time assessment of the NMOC concentration is inadequate for making a finding that emissions are below 150 Mg/yr (167 tpy) using the Tier 2 approach. The limited data available indicate that of the three parameters effecting NMOC emission rate, k, L_o and NMOC concentration, the NMOC concentration is most likely to vary at a given landfill over time. The standards and guidelines, therefore, specify periodic confirmation of NMOC concentration levels. Two different retest frequencies were chosen so that a landfill whose level of emissions is far below the cutoff of 150 Mg/yr (167 tpy) is not required to retest as frequently as a landfill whose emission rate is close to the cutoff. The testing must be repeated every 5 years for those landfills whose average NMOC mass emission rate is within two standard deviations (95 percent confidence interval) of the 150 Mg/yr (167 tpy) of NMOC's cutoff. However, landfills whose NMOC emission rates are far below the cutoff (i.e., more than two coefficients of variation below the cutoff) would be required to retest only every 10 years. The EPA believes that extreme changes in NMOC concentrations are not likely over periods less than 5 years. While testing of NMOC concentrations is required only every 5 or 10 years, periodic calculation of NMOC emissions would be required as previously described.

Tier 3. If calculated emissions are over 150 Mg/yr (167 tpy) using the site-specific NMOC concentration determined in Tier 2, the owner or operator again has the option of installing controls or proceeding to Tier 3. Under Tier 3, the site-specific MSW landfill methane generation rate constant k, is determined by gas flow testing. Tier 3 distinguishes between MSW landfills with known histories of where and when MSW was deposited and those with little known history. Cluster wells may be used when the history is known, and equal-volume wells when history is not known. (Cluster wells are groupings of three wells fairly close together whereas equal-volume wells are evenly spaced throughout the landfill.) For landfills with known histories, guidance is provided on where to locate cluster wells to provide good estimates of k. For these landfills, the cluster well method allows k to be estimated with greater statistical confidence, and is less expensive than locating equal-volume wells throughout the landfill. However, if landfill history is not known, the equal-volume well method produces estimates with greater statistical confidence. Tier 3 testing is performed using Method 2E, which is proposed to be included in appendix A of 40 CFR part 60 (see proposed Method 2E at the end of this notice).

Calculation of the Nonmethane Organic Compounds Emission Rate for Previously Installed Collection Equipment. For landfills which have a collection system already installed, landfill owners or operators could either use the tier system or sample directly from their existing collections systems to determine the NMOC emission rate.

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The standards and guidelines provide formulas and procedures for calculating NMOC emissions using samples and gas flow data obtained from an existing collection system. The EPA has determined that the most accurate estimation of the NMOC emission rate would be obtained by such direct sampling, provided correct procedures are used. Additionally, determining the NMOC emission rate after controls are in place is easier, because it is simpler to obtain the samples and gas flow data. Landfill owners or operators using direct sampling would have to demonstrate that there is not excessive air infiltration into their system, and that there was not positive pressure at any well head when sampling and gas flow tests are performed. The landfill owner or operator must also be able to document that the collection system is effectively collecting landfill gas from all gas producing areas of the landfill. These provisions ensure that the flowrate obtained is accurate. Air infiltration would result in an overestimation, while positive pressure would result in an underestimation.

While this method is optional for determining applicability of the standards or guidelines, it is the only method permitted for determining whether control systems can be removed. As discussed in the preceding section, three conditions must be met in order to remove a collection and control system that is operating in compliance with the standards or guidelines. One of these conditions is that the NMOC emission rate must be below 150 Mg/yr (167 tpy). The formula and procedures for sampling and determining the gas flow directly from the system must be used when calculating the NMOC emission rate for this purpose. The tiered approach is not permitted. These direct sampling procedures provide the most accurate estimate of the NMOC emission rate. It is, therefore, reasonable to require this method of calculation prior to permanent removal of collection and control equipment.

3. Collection System Design

As discussed previously under "Selection of Best Demonstrated Technology," BDT for the collection of MSW landfill emissions is the installation of an effective collection system when the calculated NMOC emission rate equals or exceeds 150 Mg/yr (167 tpy). An effective collection system has the following capabilities: (1) Wells or trenches located to effectively collect gas from all areas of the landfill; (2) gas moving equipment able to handle the maximum landfill gas generation rate predicted over the life of the equipment if an active system is used; (3) design provisions for monitoring and adjusting the operation of individual wells and trenches, if an active system is used; and (4) the ability to expand as new areas require collection.

The proposed standards and guidelines included in today's notice would require a landfill owner or operator to construct the collection and control system according to design specifications stated in the regulations, or according to a collection system design plan that is submitted to EPA or to the State, as appropriate, for review. In addition to these provisions, landfill owners or operators can use Section 111(h)(3) of the CAA to request approval of gas collection systems that provide equivalent control but do not comply with either the specifications in the regulation or with the plan development and review requirements. The plan would be submitted to the appropriate air program office to allow a review of the plan and requests under section 111(h)(3) would be submitted to EPA for consideration.

The EPA realizes that landfill owners or operators that have no experience with gas collection system design may need very detailed specifications on how to design an acceptable system. Therefore, EPA has identified the key attributes of a good collection system and developed detailed specifications on how to design an approvable system. The EPA considered including only extensive design specifications in the regulation itself. However, in order to allow owners and operators flexibility in choosing the most effective collection and control system and to encourage innovation, EPA decided to adopt an approach that gives the owner or operator the option of following exact specifications to demonstrate compliance with the standards. Alternatively, the regulations also allow innovation through a system of design plan submittal and review. These design plans are required to include enough information to ensure that the collection and control system has been properly designed, thus eliminating the need for using the regulatory equivalency provisions of section 111(h)(3) of the CAA. The technology of landfill gas extraction is continuing to evolve, with new and more sophisticated methods of optimizing gas extraction being developed by both landfill owners and developers who are specializing in gas recovery at landfills. Providing only rigid design specifications or requiring the use of section 111(h)(3) would tend to limit this creativity, and prohibit the introduction of innovative systems currently under development.

In the case where the specifications in § 60.758 are not followed, the design plans would be used to ensure that BDT had been designed and would be installed. For active collection systems, this plan would be required to include: (1) A calculation of the maximum expected gas flow over the life of the landfill; (2) specifications for the gas moving equipment, including any future capacity increases planned; (3) a description of the design provisions for future expansion, if the landfill is still accepting waste; (4) the well head or trench vacuum; (5) the radii of influence used for well/trench spacing; (6) the well/trench specifications; and (7) a plot plan of the landfill showing the locations of each well/trench. For passive collection systems, the plan would be required to include: (1) The liner system design and specifications; (2) the landfill pressure determined using portions of Method 2E; (3) a description of the design provisions for future expansion, if the landfill is still accepting waste; (4) the collection/control system pressure drop; (5) the estimated radii of influence; (6) the well specifications, including the liner seal; and (7) a plot plan of the landfill showing the location of each well.

Section 60.758 provides design specifications for active vertical systems only. If these specifications are followed, the submittal of a design plan is not required. The selection of an active horizontal system or a passive system, or the design of an active vertical system not based on the specifications provided in § 60.758, would require that a plan be submitted and reviewed. Design specifications are outlined below for active vertical collection systems and also for active horizontal and passive vertical collection systems to aid landfill owners and operators in developing plans, if they choose not to install an active vertical system using the specifications in § 60.758. They are discussed further in chapter 9 of the BID. Although the collection systems designed under this system may vary considerably, systems are expected, at a minimum, to meet the criteria outlined below and in chapter 9 of the BID in order to demonstrate compliance, unless adequate site-specific justification is provided.

The EPA has provided these specifications in order to assist owners and operators in designing successful systems. The specifications were developed with substantial comment and technical data on alternative designs, materials, and engineering

practices which are being used in designing landfill gas collection systems by representatives from the waste disposal and gas recovery industries. The Agency is interested in additional information about designs and materials which are presently in use at successful sites.

Selection of the collection system type depends on the landfill characteristics and landfill operating practices. The following sections present design considerations and specifications for an active vertical collection system, which EPA has evaluated and determined can most effectively satisfy the criteria above. The standards and guidelines require an active collection system unless the owner or operator can demonstrate that the passive system is capable of achieving a comparable level of collection. Some of the design considerations for active horizontal and passive collection systems are presented as well. An active horizontal trench collection system may be preferred when a landfill employs a layer-by-layer landfilling method. However, considerations such as the presence of a high water table would decrease the collection efficiency for this system. Additional information is provided in chapter 9 of the BID.

Active collection systems. Active collection systems employ mechanical blowers or compressors to create a pressure gradient and extract the landfill gas. Active collection systems consist of various configurations of gas extraction wells and/or trenches and gas moving equipment such as header piping and blowers. Active collection systems can be further categorized as vertical well systems and horizontal trench systems. In vertical systems, extraction wells are installed in the landfill refuse and in the perimeter of the landfill, while in horizontal trench systems, trenches are installed horizontally in layers starting at or near the base of the landfill.

Gas extraction wells or trenches must be configured to collect gas effectively from all areas that warrant collection. For the purposes of today's proposed regulation, any area or cell where refuse has been deposited for at least 2 years warrants control, with two exceptions. Areas where asbestos has been deposited should be excluded, and the regulation provides a method for excluding areas with very low gas generation. Otherwise, extraction wells must be placed throughout the landfill. Each extraction well or trench has a radius of influence within which landfill gas can be effectively collected. The radius of influence determines the spacing between extraction wells or location of trenches. For active systems the well spacing must be adequate to collect the gas generated without overdraw of air into the landfill.

Vertical collection systems. Today's proposed standards and guidelines recommend that EPA Method 2E be used to determine the radius of influence to use in determining vertical well spacing. The method distinguishes between perimeter and interior wells. Wells placed along the perimeter of the landfill are to be placed in the refuse but no more than one perimeter radius of influence from the perimeter of the landfill, and no more than two times the perimeter radius of influence apart. Interior wells are to be placed no more than two times the interior radius of influence apart, and to be positioned in such a way as to cover all areas of the landfill where refuse is placed. The design specifications in § 60.758 provide an alternative method for determining an appropriate radius of influence to use in spacing wells for those owners or operators who have not performed EPA Method 2E. Chapter 9 of the BID provides additional guidance on siting active vertical extraction wells.

Vertical extraction wells for active collective systems are to be constructed of polyvinyl chloride (PVC), high density polyethylene (HDPE) pipe, fiberglass, stainless steel, or a similar nonporous material, at least 0.075 m (3 in.) in diameter. Wells should extend to at least 75 percent of the landfill depth, but should not be deeper than the landfill in order to protect the integrity of the landfill liner. The bottom two-thirds are to be perforated. A minimum requirement for perforations is slots or holes with an open area equivalent to four 0.01 m (½ in.) diameter holes spaced at 90 degrees every 0.1 to 0.2 m (4 to 8 in.). If slotted pipe is used, the width of the slots should not exceed the size of the gravel in which it is placed. The pipe is placed in the center of a 0.6 m (2 ft) diameter bore and the bore is then backfilled with gravel to a level at least 0.3 m (1 ft) above the perforated section. The remainder of the bore is filled with at least 1.2 m (4 ft) of backfill material, then at least 0.9 m (3 ft) of bentonite, and finally material of equal or lower permeability than the cover.

Each well is connected to the collection header pipes by a well head. The well head and assembly must be equipped to allow monitoring and adjustment of the gas flow and the collection of gas samples. Chapter 9 of the BID and EPA Method 2E (at the end of this notice) provide both diagrams and specifications for the well head and assembly.

Landfill gas is conveyed through a gas collection header system by a blower or compressor to the control device. In designing adequate gas moving equipment, blowers or compressors and header pipes need to be sized to handle the maximum landfill gas generation rate expected over the life of the control equipment (normally 15 years). The size and type of compressor or blower depends on total gas flowrate, total system pressure drop, and vacuum requirements. The proposed standards and guidelines give a formula for calculating the maximum expected gas flowrate based on the age of the landfill and the average annual refuse acceptance rate.

The gas collection header system must be designed to handle the addition of new wells as new areas of the landfill require control. Today's standards and guidelines require that additional wells are to be installed in each area of the landfill within 2 years of the first deposition of refuse in that area.

Operation of the active vertical collection system. Gas generation at a given well may vary slightly over time. The EPA has determined that the following monitoring and adjustments are necessary to maximize collection, while minimizing air infiltration. Excessive air infiltration poses a safety hazard, because too much air may lead to an explosion or landfill fire. Nitrogen concentration is used as a surrogate measure for air infiltration. Based on these safety concerns, EPA has determined that N_2 concentration should be maintained under 1 percent by volume. When the N_2 concentration at a well head exceeds 1 percent, a slight closing of the valve at the well head assembly would decrease the flow from that well, which will decrease the vacuum, and should decrease air infiltration.

If the pressure at the well head is positive, the valve should also be opened. If the valve has been fully opened and the measured pressure is still positive, additional wells must be installed and added to the collection system. It should be noted that some systems may exhibit positive pressure at the well head during initial startup. These systems should reach equilibrium within 30 to 60 days.

The EPA is aware of an alternative method used by the South Coast Air Quality Management District (SCAQMD) to determine if a collection system is adequately collecting the landfill gas or if additional wells are required. In this method, surface

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emissions are tested for the presence of methane across the landfill. If the concentration is above 50 ppmv, the collection system is considered to be inadequate for that area of the landfill and additional wells or increased suction is required. The EPA has not incorporated this testing method into the standards at this time due to the uncertain concentration at which additional wells would be warranted. Additionally, this method may not detect the lateral migration of the landfill gas. If, however, more data were available to resolve these concerns, EPA would consider the appropriate use of this method in the final standards. The EPA therefore requests technical comments providing additional information and data about the effectiveness of this method for making flowrate adjustment and for determining the need for additional wells.

An additional consideration in the design of an active vertical collection system is condensation of water and organic compounds which may occur in the header pipes due to the cooler temperatures above the surface of the landfill. This condensate should be handled according to RCRA Subtitle D requirements.

Active horizontal collection systems. Although EPA Method 2E is based on a vertical well test, the results of this method can be used to determine the radii of influence in the horizontal direction. Additionally, the design specifications in § 60.758 provide an alternative method for determining an appropriate radius of influence to use for trench spacing in situations where EPA Method 2E has not been performed. Active horizontal trenches should be positioned no more than two times the radius of influence apart in the horizontal direction. Since compaction of the refuse causes refuse permeability to be lower in the vertical direction, EPA recommends a vertical spacing of one-fourth the horizontal spacing.

Horizontal trenches may be constructed of slotted or perforated PVC, HDPE, corrugated steel piping, or a similar suitable nonporous material. Each layer of trenches should be connected to a common header leg that extends to the surface, and connects to the gas header pipes in the same way as active vertical collection systems. One design consideration is whether to pull the vacuum (i.e., actively collect landfill gas) from only one or both ends of the trench. When the vacuum is pulled at only one end, there will be a pressure drop along the length of the trench. The effective length of the trench will be limited by this pressure drop.

The sizing of gas moving equipment for active horizontal systems is evaluated in the same maner as for active vertical systems. Monthly testing of pressure and air content is performed at the common header leg and the adjustments are made at the valve in the header leg. Additional information about horizontal systems is provided in chapter 9 of the BID.

Passive collection systems. Passive gas collection systems rely on the natural pressure gradient (i.e., internal landfill pressure created due to landfill gas generation) or the concentration gradient to convey the landfill gas to the collection system. While EPA believes that active collection systems are the most effective means of collecting landfill gas, passive systems will be allowed when the following two conditions are met: (1) The owner or operator can demonstrate that the well spacing is adequate to effectively collect gas from all areas of the landfill and (2) the landfill is contained by synthetic liners on all sides, including top and bottom. Liners help to prevent lateral gas migration and, thus, increase the volume of gas collected.

Passive wells must be spaced based on field testing to determine the static landfill pressure, and the pressure drop across the control device (typically a flare), flame arrester, and collection header piping. Chapter 9 of the BID provides a diagram to determine the radius of influence after subtracting the pressure drop from the static landfill pressure. This radius of influence is used to space the wells so that gas is collected from every area of the landfill, and the distance between the wells is no more than two times the radius of influence.

The wells must also meet prescribed design criteria (i.e., constructed of PVC or HDPE or other suitable nonporous material, provided with a tight seal around the cap to maintain integrity of the cover). These design criteria are detailed in chapter 9 of the BID.

Monitoring and adjustments are not necessary for passive wells because the wells are under positive pressure and air infiltration is not a concern. Good containment is the principal concern in operating an effective passive collection system.

4. Specifications for Control Systems

As noted previously, for effective control of landfill air emissions, collected landfill gas must be directed through an emission control device that achieves destruction of NMOC's by 98 percent by weight, except for lean-burn I.C. engines, which are discussed below. The EPA has determined that the following control devices are capable of achieving this destruction efficiency and can be used to comply with the standards and guidelines if the specifications described below are met.

Open flares. The selection of BDT for the control device was based on the use of open flares, meeting the specifications in 40 CFR 60.18. Because emissions from open flares cannot be easily measured, the conditions necessary to achieve 98 percent reduction have been detailed in 40 CFR 60.18, and flares meeting those specifications will be acceptable for the purposes of the proposed standards and guidelines.

Enclosed combustion devices. The EPA will also allow the use of enclosed ground flares, which are currently in use at several MSW landfills. These flares are positioned at ground level and are closely enclosed with a shell of fire-resistant walls which extend above the top of the flame. The EPA characterizes enclosed ground flares as "enclosed" combustors. Other kinds of enclosed combustion devices that can be used to comply with the standards and guidelines include boilers, gas turbines, I.C. engines, and incinerators. These enclosed combustors can be used only if they can be shown to meet the 98-percent destruction requirement or to result in an NMOC outlet concentration of 20 ppmvd, as hexane, at 3 percent O_2. Method 25 must be used to measure NMOC concentration for either demonstration.

The EPA is aware that lean-burn I.C. engines are currently in use in NO_x nonattainment areas. However, these engines may not be able to achieve the 98-percent destruction efficiency required in the proposed standard under typical operating conditions. The EPA requests comment about the appropriateness of the use of low-NO_x, lean-burn I.C. engines at MSW landfills in nonattainment areas, and if so, at what destruction efficiency.

Purification systems. Various purification systems can also be used to meet the standards and guidelines. These systems market the purified methane gas. Such systems would comply with the standards or guidelines only if vent streams from the system are routed to any of the control devices above, meeting the same specifications. Alternatively, a demonstration that a total of at least 98 percent destruction of NMOC's is achieved by the control of some portion of the vent streams will be permitted. This second option was developed in consideration that the control of some very minor vents is not warranted when a net reduction of 98 percent can be achieved through the control of the bulk of the vent streams.

5. Implications of the Guidelines for Municipal Solid Waste Landfills With Pre-existing Systems

The EPA is aware that over 100 MSW landfills already have some form of collection and/or control systems in place. Any of these landfills that are subject to the proposed emission guidelines may be required to upgrade their system in order to achieve compliance. In this section the evaluation and upgrading of existing systems is discussed.

Existing collection systems. Today's proposed guidelines would not require that existing collection systems meet all of the design specifications for newly installed systems; however, operating guidelines for existing collection systems are specified by the guidelines. These operating guidelines are designed to insure effective collection of landfill gas from all areas of the landfill and that air infiltration will not exceed safe levels. Under the proposed guidelines, N_2 is used as a measurement surrogate for air infiltration. The guideline specifies that the N_2 content of the collected gas be monitored, and adjustments be made in the flow to maintain the N_2 content slightly below 1 percent. This is to prevent explosions and fires, and is considered a reasonable and necessary requirement for existing as well as new collection systems.

Under the proposed guidelines, the installation of additional wells would occur under either of two conditions. The first condition is the detection of positive pressure at any well head even after the flow is increased as much as possible. Positive pressure indicates that the number of wells is inadequate to collect the total volume of gas that is being generated. The second condition is when wells have not been placed in all areas of the landfill where waste has been deposited for at least 2 years. The wells or trenches already in place could be used, along with pressure probes, to calculate the radius of influence of the wells in the current collection system. The owner or operator could use this radius of influence along with the guidance provided in Chapter 9 of the BID to site additional wells. New wells added to an existing system would have to comply with the design specifications provided in the guidelines. Owners or operators who find they must replace or add additional wells should submit a description of the number and location of additional wells they plan to install to the appropriate State agency along with a schematic of the existing system.

During the development of the proposed guidelines, EPA considered whether or not requiring such upgrades adversely impacts those owners or operators who have already invested in collection systems. However, the cost of upgrading the collection system by the addition of wells is small relative to the cost for a complete system, and was judged reasonable and necessary when the existing wells are inadequate to handle the gas being generated. It is reasonable to expect that landfills that already have systems in place are already paying staff to operate and monitor the equipment. Labor costs are a significant component of the overall collection costs. Thus, EPA does not expect that the replacement or addition of wells would result in significant additional operating costs due to labor.

In those situations where collection systems exist, but the collected emissions are vented to the atmosphere uncontrolled, the collection system must first be evaluated and upgraded if necessary, and then control devices meeting BDT for control devices must be added on. Such a requirement is reasonable because without control, emission reduction does not occur.

Existing control systems. For those MSW landfills where control systems are already in place, but the emission reduction achieved by the current system does not meet the level of emission reduction in the proposed guideline for control devices, the guideline would require the owner or operator to either upgrade or replace the control system to improve the destruction efficiency to meet the State's approved emission limitation.

As explained in Section I below, State emission standards developed pursuant to the guidelines must ordinarily be at least as stringent as the guidelines. However, State standards may be less stringent on a case-by-case basis where compelling justification can be demonstrated in each case. The level of control already achieved at a particular landfill and site-specific economic factors can be considered by the States in developing their standards.

G. Test Methods and Procedures

Test methods proposed in this notice are Method 25C, Method 3C, and Method 2E. Method 25C provides instruction on sampling the landfill gas and is used to determine the NMOC concentration of landfill gas. Method 3C is used to measure the concentration of N_2 in landfill gas and Method 2E is used to determine the flowrate of landfill gas from the landfill.

The proposed methods may be found at the end of this notice. Although these methods were developed with input from many landfill operators who are already involved in some form of landfill gas collection and control, EPA recognizes that some additional parties may have useful input to offer. Therefore, EPA requests technical comments and data, where applicable, on these methods.

Method 25C. A sampling probe is perforated at one end and driven or augured to a depth of 0.9 m (3 ft) below the bottom of the landfill cover. Sampling from the probe is done similarly to Method 25, except that there is no cold trap to collect the moisture. Landfill gas is extracted from the probe with an evacuated cylinder at the rate of 100 milliliters per minute (ml/min) [6.1 ± 0.6 cubic inches per minute (in.³/.min)], and the carrier gas bypass valve is used to pressurize the cylinder with helium to approximately 1.060 millimeters (mm) mercury [567 in. water (H_2O)] absolute pressure.

The analysis for the cylinder gas is the same as Method 25, that is, the NMOC content of the sample gas is determined by injecting a portion of the gas into a gas chromatographic column to separate the NMOC from CO, CO_2, and methane. The NMOC are then oxidized to CO_2, reduced to methane, and measured by a flame ionization detector (FID). In this manner, the variable response of the FID associated with different types of organics is eliminated.

The cold trap is excluded from Method 25C because landfill gas is not expected to contain enough water to condense in the cylinder and cause analytical problems.

Method 3C. Method 3C is used to determine the N_2 concentration in landfill gas samples by injecting a portion of the gas into a gas chromatograph (GC) and determining the N_2 concentration by a thermal conductivity detector (TCD) and integrator. The concentrations of methane, CO_2, and O_2 can also be determined.

In Tier 2, when the NMOC concentration in the landfill gas is determined by Method 25C, Method 3C is used as a check on the integrity of the sample. Nitrogen is used as a surrogate for air, and N_2 concentrations of greater than 1 percent in the sample indicate improper sampling probe installation or sampling technique.

In Tier 3, when Method 2E is used to determine the flowrate of landfill gas from the landfill, Method 3C is used to determine the presence of N_2 in a landfill gas sample, which is an indication of infiltration of air into the landfill.

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Method 3C is also used to leak check the above ground extraction well apparatus. The landfill gas is extracted from the landfill by a blower and the flowrate is measured by an orifice meter. Leaks in the well piping may affect the flowrate measured by the orifice meter significantly. The concentration of N_2 is measured at the well head sample port and at the outlet sample port, and a difference of greater than 10,000 ppm indicates a leak.

Method 2E. In Tier 3, the landfill owner or operator determines the landfill gas flowrate from the landfill with Method 2E by installing a single cluster of three extraction wells or five wells equally spaced over the landfill. The cluster wells are recommended but may be used only if the composition, age of the refuse, and the landfill depth of the test area can be determined. The construction of the extraction well is specified in the method.

Pressure probes are located along three radial arms 120° apart at distances of 3, 15, 30, and 45 m (10, 50, 100, and 150 ft) from each extraction well. The probes 15, 30, and 45 m (50, 100, and 150 ft) from each well are called deep probes and they extend to a depth equal to one-third the depth of the extraction wells. The three probes located 3 m (10 ft) from the well are called shallow probes and extend to a depth equal to one-sixth of the depth of the extraction wells. The method specifies that the bottom two-thirds of the pressure probes are to be perforated, with the area of the perforations specified in the method. The EPA is aware that alternative perforation patterns or areas are in use and may be applicable to these pressure probes. The EPA is also aware that some landfill gas collection systems are currently designed based on tests using shallow uniform pressure probes with a depth of 3 m (10 ft), rather than a depth which is site-specific. The EPA welcomes comment on alternative designs for effective pressure probes as well as on the relative merits of uniform shallow pressure probe depth versus pressure probe depth determined by the depth of the test well.

After the wells have been installed and the static flowrate of the landfill gas from the wells has been measured, short-term testing is done on each extraction well to determine: (1) The maximum vacuum that can be applied by a blower to the wells without infiltration of air into the landfill and (2) the maximum radius of influence associated with the maximum blower vacuum. The radius of influence is the distance from the extraction well affected by the blower.

A leak check is required to ensure accurate flowrate and safety, using proposed Method 3C. The EPA is aware that portable oxygen meters have been used in similar applications. Therefore, EPA requests comment about the appropriateness of portable oxygen meters, or the use of an alternative chemical species for leak detection in the header system.

Maximum blower vacuum is determined by increasing the vacuum and testing for infiltration of air into the landfill. Infiltration is considered to have occurred when the landfill gas N_2 concentration is greater than 1 percent (using Method 3C) or when one of the shallow probes has a negative gauge pressure. Once infiltration is indicated, the maximum blower vacuum is determined by reducing the blower vacuum until the N_2 concentration is less than 1 percent and the gauge pressures of all of the shallow probes are positive.

The maximum radius of influence is the radial distance from the extraction well affected by the maximum blower vacuum. The deep pressure probes are used to determine this distance.

Once the maximum blower vacuum and the maximum radius of influence have been established, long-term testing begins. Long-term testing consists of withdrawing landfill gas until two void volumes have been extracted. A void volume is the amount of landfill gas in a cylindrical volume defined around the extraction well with a radius equal to the maximum radius of influence.

During the long-term testing, a stabilized flowrate is established and used to determine k, the landfill gas generation constant. The landfill NMOC concentration is determined using Method 25C and then the NMOC mass emission rate is determined by equations in Method 2E.

H. Reporting and Recordkeeping Requirements—New Municipal Solid Waste Landfills

The proposed standards would require owners and operators of all affected facilities to submit notifications of construction or reconstruction as required under the General Provisions (40 CFR 60.7). This notification would include the maximum design capacity of the landfill, data of anticipated start-up, and the anticipated refuse acceptance rate. For the purposes of this proposed standard, startup means the date upon which initial acceptance of waste occurs.

Although an MSW landfill may start up, (i.e., accept refuse) under today's proposed standards and guidelines, the requirement to install collection and control systems will not occur until such time that the calculated NMOC emission rate equals or exceeds 150 Mg/yr (167 tpy). Therefore, the recordkeeping and reporting requirements of today's proposed standards are tailored to this unique characteristic of this source category.

Notifications of construction from MSW landfills with initial design capacities less than 100,000 Mg (111,000 tons) would fulfill all of the recordkeeping and reporting requirements for these landfills. This is because EPA has determined that MSW landfills with a maximum design capacity of 100,000 Mg (111,000 tons) would be highly unlikely to ever emit NMOC's at 150 Mg/yr (167 tpy), the level at which collection and control systems would be required. Changes in the design capacity would have to be reported in an amended design capacity report.

Those landfills with initial or amended design capacities greater than 100,000 Mg (111,000 tons) must submit additional reports, based on the additional requirements of the proposed standard. Each owner or operator of an MSW landfill with a design capacity equal to or greater than 100,000 Mg (111,000 tons) must submit an annual calculation of the NMOC emission rate. Alternatively, the owner or operator could elect to provide an estimate of the NMOC emission rate for each of the next 5 years using the Tier 1 formula and an estimate of the refuse acceptance rate for each of the 5 years, provided that the estimated NMOC emission rate does not exceed 150 Mg/yr (167 tpy) in any of the 5 years reported. The initial annual NMOC emission rate report or the 5-year estimate must be submitted within 90 days of start-up, i.e., refuse acceptance.

The owner or operator must also update and submit the 5-year estimate within at least 5 years of submittal of the first 5-year estimate. If the actual waste acceptance rate exceeds the estimated waste acceptance rate in any of the 5 years for which an estimated NMOC emission rate was reported, a revised estimate must be submitted. The 5-year period reported in the revised 5-year estimate would commence with the year in which the actual waste acceptance rate exceeded the estimated waste acceptance rate. This provision requires the owner or operator to keep track of how quickly the landfill is approaching the level where actual annual calculation and reporting of the emission rate are warranted.

These provisions are intended to prevent the owner or operator from having to submit an NMOC emission report annually until such time as the landfill NMOC emission rate is actually approaching the level at which collection and control will be required. The EPA's evaluation of landfill emissions indicate that the emission rate increases as refuse accumulates in the landfill, but that the rate is not just a function of landfill mass, but is also affected by how fast the refuse accumulates, as well as the other factors already discussed. Tier 1 provides a conservative estimate of the NMOC emission rate which takes both time and amount of refuse in place into account. By using the Tier 1 formula and these two factors to estimate when collection and control may be warranted, the landfill owner or operator may choose to avoid the annual submittal of the NMOC emission rate calculation until the time approaches when controls will be required.

After the NMOC emission rate calculated using Tier 1 equals or exceeds 150 Mg/yr (167 tpy), the proposed standards would require the submission of a notification of intent to install a collection and control system based on the design specifications in section 60.758, or a collection system design plan for review, within a year. If the landfill owner or operator elects to perform the Tier 2 sampling or Tier 3 testing in order to generate a site-specific NMOC concentration or gas generation rate to use for the calculation of a more precise NMOC emission rate, the recalculated emission rate must be reported within 1 year of the initial Tier 1 calculation as well. If the recalculated emission rate still equals or exceeds 150 Mg/yr (167 tpy), the notification of intent or collection system design plan must also be submitted within the same 1-year time period since the Tier 1 calculation which equaled or exceeded 150 Mg/yr (167 tpy).

In the case of the design plan, EPA or the delegated agency would review and propose any amendments to the design plan. It is expected that such review should be completed and any amendments proposed within 6 months. After final review, 1 year would be permitted for installation, with an additional 90 days allowed for the submission of the initial performance test. Owners or operators electing to design and install a collection system based on the specifications provided in § 60.758 would be allowed 16 months to install the system, and an additonal 90 days for the submission of the initial performance test.

The EPA believes that this time schedule is reasonable because of the nature of the individual tiers. Tier 2 sampling to determine NMOC concentration would require about 6 months to complete, and based on the EPA's evaluation of landfill emissions, is more likely to result in an estimation of NMOC emission rate below the regulatory cutoff. This is because available information on the NMOC concentration and landfill gas flowrate indicate that the NMOC concentration is more variable. Therefore, it is more likely that the default NMOC concentration provided in Tier 1 differs substantially from the NMOC concentration resulting from the performance of Tier 2. However, since EPA believes that the length of time necessary to collect and analyze the samples in some cases may exceed 6 months, a full year from the submission of the Tier 1 calculation will be allowed for submittal of the Tier 2 calculation and design plan, if necessary. In fairness to those owners or operators who begin to design a system after Tier 1 or 2, EPA has not extended the time period allowed for submission of the design plan when owners or operators elect to perform Tier 3 testing. While Tier 3 testing will also require about 6 months, the EPA's analysis indicates that only a few landfills electing to perform the Tier 3 tests will actually obtain a final NMOC emission rate less than 150 Mg/yr (167 tpy). For this reason EPA recommends that those owners or operators performing Tier 3 testing begin to design a collection and control system while the testing proceeds. The Tier 3 test will have value for even those landfills that will still need to install collection systems, because the flowrates obtained may be used in designing the collection system. Additionally, the test wells can serve as collection wells.

After the collection and control systems have been installed and the initial performance test has been completed and submitted, the proposed regulation would require the submission of semiannual compliance reports. These reports would include: (1) Any period in which the value of any of the monitored operating parameters falls outside the ranges identified in the initial performance test, (2) results of all annual performance tests, (3) identification of any periods for which data were excluded from these calculations, and (4) any period when air pollution control equipment malfunction occurred.

The proposed NSPS would also require that certain types of records be maintained. Records of the accumulated refuse in place, collection system design (including proposed and subsequent well or trench spacing), control device vendor specifications, the initial performance test results, and the monitoring parameters established during the initial performance test, must be maintained on site as long as the collection system and control devices are required to be operated.

Any replacement of system components which results in a change in the level of any parameter that is monitored in order to demonstrate 98 percent NMOC destruction efficiency must be entered into this permanent record, and reported in the next semiannual compliance report. Monitoring records and all data and calculations from each semiannual and annual compliance report would be maintained for 2 years following the date of such records, after which they may be discarded.

The reporting and recordkeeping requirements in the proposed standards are necessary to inform enforcement personnel of the compliance status of new MSW landfills that initiate operation. The EPA predicts that the design capacity calculation required to be included in the notification of construction report will exclude a large majority of all new MSW landfills from the further provisions of the proposed standards, and will alert enforcement personnel to the remaining population of landfills that may be required to install collection and control systems in the future.

The annual NMOC emission rate report will serve as a compliance demonstration for all MSW landfills approaching the cutoff NMOC emission rate, and will verify that collection and control systems are not yet warranted at these landfills. This report will not impose an unreasonable burden on MSW landfill owners or operators, amounting to about 2 hours per reporting landfill annually. The EPA analysis of landfill emission factors indicate that gas generation and NMOC concentrations may increase significantly over relatively short periods of time. Therefore, EPA has judged annual reporting of NMOC emission rate is warranted. The alternative of estimates at set intervals as a landfill's emissions increase toward the regulatory cutoff provides relief for landfills emitting at rates well below the cutoff. The inclusion of the anticipated acceptance rate and the 5-year estimate of the NMOC emission rate will help enforcement personnel keep track of when specific landfills are likely to warrant control.

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The submission of the collection system design plan, the initial performance test for the control device(s), and subsequent semiannual compliance reports would provide the data and information necessary to ensure continued compliance of controlled MSW landfills with the proposed standards. At the same time, these requirements would not impose an unreasonable burden on MSW landfill owners or operators.

I. Reporting and Recordkeeping Guidelines—Existing Municipal Solid Waste Landfills

As explained previously, the proposed guidelines would achieve the same level of control for existing MSW landfills which have accepted waste at any time since November 8, 1987, or which intend to accept additional waste in the future, as is required for new MSW landfills under the proposed standards. Therefore, State agencies will need the same kinds of information to implement their plans under the proposed guidelines. The minor differences in the requirements necessitated by the differences between new and existing MSW landfills are explained below.

In the case of an existing landfill, the notification of the date of construction would be replaced by the submittal of an initial design capacity report, which would contain the amount of refuse in place in addition to the acceptance rate. This report will fulfill all the reporting and recordkeeping requirements of the guidelines for those existing MSW landfills whose design capacities are less than 100,000 Mg (111,000 tons). For existing MSW landfills whose design capacities are equal to or greater than 100,000 Mg (111,000 tons), this report must also include either the first annual NMOC emission rate report, or an estimate of the NMOC emission rates for the next 5 years. This notification must be submitted within 90 days of the effective date of the EPA-approved State plan.

J. Compliance Times

Demonstrations of compliance for new and existing landfills under the proposed standards and emission guidelines involve two parts. The first is the timely submission of annual or periodic NMOC emission rate reports for affected and designated landfills with NMOC emission rates below 150 Mg/yr (167 tpy). The second aspect of compliance for affected and designated landfills with NMOC emission rates of 150 Mg/yr (167 tpy) or greater involves the timely submission of a notification of intent to install a collection system designed in accordance with the specifications in § 60.758, or submission of a collection system design plan for review, and subsequent installation of a complying collection system. A discussion of the rationale for the frequency of the NMOC emission rate reports was presented under the previous sections on reporting and recordkeeping requirements, and will not be repeated here. After a brief review of the schedule for the NMOC emission rate reports, a discussion of the compliance times for the design and installation of collection and control systems will be presented. Since there is little difference between the design and installation of collection and control systems for new and existing landfills, EPA believes that State plans developed in response to the proposed guidelines should be based on the same overall time intervals.

The first annual NMOC emission rate report must be submitted within 90 days of initial refuse acceptance for new landfills. For existing landfills the first annual NMOC emission rate report should be submitted within 90 days of the date of promulgation of the State emission standard. The initial report may include an estimate of the NMOC emission rate for each of the next 5 years, provided that each of the five estimates is less than 150 Mg/yr (167 tpy). This estimate would permit the owner or operator to report the NMOC emission rate less frequently than annually. Landfills which submit either the annual NMOC emission rate reports or the 5-year estimates in a timely manner are in compliance with the standards until the NMOC emission rate using the EPA's Tier 1 formula and default values reaches 150 Mg/yr (167 tpy).

The time necessary for the installation of collection and control systems proposed under both the standards and the guidelines includes four components. These are: (1) The time between an initial Tier 1 determination that a landfill is emitting above the regulatory cutoff of 150 Mg/yr (167 tpy) of NMOC's and the completion of any additional site-specific sampling or testing to verify this determination, (2) the time needed to prepare and submit a notification of intent to install a collection system designed in accordance with § 60.758 or a collection and control system design plan for review, (3) the time necessary for the design plan (if one has been submitted for review) to be reviewed, and (4) the time necessary to actually install the approved system. The proposed standards and guidelines allow 2½ half years for this combined process. The rationale for this time period is provided below.

Once a 150 Mg/yr (167 tpy) emission rate has been reported using the Tier 1 formulas and defaults, the owner or operator would be required to submit a notice of intent to install a collection system designed in accordance with § 60.758, or a collection system design plan, or data and calculations demonstrating that the site's NMOC emission rate is actually below 150 Mg/yr (167 tpy) using the Tier 2 procedures If further sampling and testing are selected, the site-specific NMOC concentration to use in the Tier 2 calculation of the NMOC emission rate is determined through on-site sampling using Method 25C. The EPA has analyzed how much time would be needed to perform this sampling, and as a result of possible delays in the analysis of the samples, believes that as much as 6 months may be necessary to complete the sampling and analysis, and to submit a revised NMOC emission rate report.

The resulting emission rate may be below the level of the regulatory cutoff, and collection and control systems would not be required at that time. If the revised annual NMOC emission rate still exceeds the regulatory cutoff of 150 Mg/yr (167 tpy) of NMOC's, the owner or operator may again decide to forego further testing and begin to design a collection and control system. Alternatively, the owner or operator may elect to perform Tier 3 testing using Method 2E to determine a site-specific landfill gas flowrate to use in the calculation of the NMOC emission rate. The EPA has determined that Method 2E will also take up to 6 months to complete. Therefore, the proposed standards allow up to 1 year for the performance of site-specific testing and sampling to verify the NMOC emission rate.

Since EPA believes that the majority of owners and operators performing Method 2E to make Tier 3 calculations will actually be required to install collection and control systems either immediately or in the near future, EPA believes that the collection system design phase should coincide with the performance of Method 2E. The EPA has determined that up to 6 months may be needed to produce a design plan of the collection system meeting the specifications of the proposed standards. Therefore, the proposed standards will require the submittal of both the revised NMOC emission rate report and the collection system design plan within 6 months of the earlier NMOC emission rate report revised on the basis of the NMOC concentration (Tier 2). This would be 1 year after the first Tier 1 emission calculation report with an NMOC emission rate above 150 Mg/yr (167 tpy). Those owners or operators whose Method 2E testing results in an NMOC emission rate below the regulatory cutoff would need to submit the revised NMOC emission rate report including the test results upon which the revised emission rate is based. Subsequent annual NMOC emission rate reports would utilize the landfill gas flowrate obtained through the performance of Method 2E.

The EPA has not required that site-specific sampling and testing be performed by each owner or operator, and cannot predict to what extent owners or operators will elect to sample or test. The sampling and testing would result in a more accurate NMOC emission rate, but are time consuming and may be costly. The compliance times proposed under both the standards and the guidelines reflect the situation in which the owner or operator elect to perform all the site-specific sampling and testing which is permitted.

As detailed below, 6 months are expected for State agency review of those plans submitted for review. Although owners or operators electing to install systems based on the design specifications provided in § 60.758 will not be delayed by the review process, the design and installation of a system installed without review may be more involved than installation of a system installed after review. For this reason, owners or operators electing to design and install systems based on the specifications provided in § 60.758 will be given the same total amount of time between the submission of the notification of intent and the initial performance test report that is given operators submitting designs for review between design submittal and the initial performance test report.

After submittal of the design plan, review and negotiations resulting in changes to the plan may occur. The proposed standards anticipate a total of 180 days (6 months) for the completion of review of the collection system design plan. This period of time could be necessary because the reviewing agency may require the submission of additional data, or revisions to the plan which may require time to resolve. The 180 days are the sum of 60 days for initial review and comment, 60 days for the owner or operator response and design amendment, and 60 days for final review. The EPA acknowledges that this time period may be longer than generally necessary, but since a finding of noncompliance may result if the collection and control systems are not put into place within the specified time periods, EPA wishes to be conservative in its estimation of compliance times. Comment is requested from interested parties, especially States and other agencies likely to be responsible for reviewing the design plans.

Based on limited information from existing landfills at which collection and control systems have already been installed, EPA believes the systems may be installed within 1 year of final plan review. Therefore, the proposed standards allow an additional year after review and approval of the system design for the installation and startup of the system. The EPA believes that 1 year is adequate because the owner or operator would have to consult vendors and suppliers in order to submit the design plan. Therefore, only the time for actual ordering, delivery, or installation of collection and control systems is included, not the time for and possible difficulties in locating vendors. An additional 90 days would be allowed for the submission of the initial performance test of the control system.

The total time permitted for the collection and control system installation and compliance demonstration is, therefore, 3 years. This includes 90 days for the initial Tier 1 calculation and report of an NMOC emission rate of 150 Mg/yr (167 tpy) or more, 1 year for additional site-specific testing and calculations (if elected by the owner or operator) and collection and control system design, 6 months for State or EPA approval of the design plan, 1 year to order and install the collection and control system, and 90 days to conduct a performance test. This 3-year time period is appropriate for existing as well as new landfills. Since, in both cases, controls are installed after refuse is in place, there would not be significant retrofit delays for existing landfills.

K. Additional Considerations and Solicitation of Comments

During the development of today's proposed standards, EPA considered three additional alternatives. These involve the adoption of materials separation requirements in the standards, development of a methane emission limitation, and inclusion of specific energy recovery provisions. These three alternatives are associated with the EPA's goals of pollution prevention as well as providing a direct regulatory approach that responds to broader environmental concerns. The outcome of the EPA's consideration of these alternatives would affect the selection of BDT for MSW landfills. The EPA is not proposing any specific requirements in today's action based on these alternatives. Nevertheless, EPA is specifically requesting comment and information on these alternatives and will consider all comments in the final decisions.

1. Should materials separation requirements be adopted for municipal solid waste landfills under the Clean Air Act?

Materials separation of 25 percent of the solid waste stream had been proposed in the rulemaking for municipal waste combustors (MWC's) (54 FR 52255, December 20, 1989) and public comment was solicited on the requirements. However, due to the wide range of potential economic impacts, and other uncertainties, EPA elected not to include materials separation in the MWC standards at promulgation (56 FR 5488 and 56 FR 5514; February 11, 1991).

During the development of today's proposed standards and guidelines, EPA considered adding a similar requirement for source separation. However, EPA has decided not to include such a requirement in this proposal because the Agency is planning to propose a source separation requirement under the authority of RCRA for MSW landfills. The Agency believes that RCRA is the appropriate vehicle to address the wide-ranging issues associated with solid waste management for landfills.

The EPA requests comments and information on any direct or indirect linkage of materials separation efforts and reduction of air emissions for MSW landfills and any nonair quality health and environmental impacts that can be discerned. In addition, EPA requests comments on using RCRA Subtitle D authority instead of the CAA to address materials separation.

2. Should Best Demonstrated Technology Be Selected Explicitly for Methane?

Estimates of methane emission rates from MSW landfills in the United States are uncertain, but are believed to range from 8 to 18 million Mg/yr (8.9 to 20 million tpy) and are expected to increase annually as solid waste generation increases (Docket No. A–88–09, Item No. II–B–31). This estimate is approximately 7 percent of the total estimated global methane emission rate. In light of the contribution of methane to possible global warming, EPA considered whether to develop standard that would directly achieve additional methane control—selecting a regulatory alternative to require control at all

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landfills above a prescribed annual methane emission level.

The designated pollutant being proposed today is MSW landfill emissions. This designation represents a collection of air pollutants, including methane and NMOC's . As a surrogate measure for MSW landfill emissions, NMOC's were selected to determine which landfills must install gas collection and control systems. The selection of the NMOC emission level, above which control is required, places the greatest emphasis on nonmethane emissions (the fraction that includes toxic compounds), but also specifically achieves significant methane reductions. Under this approach, a 60-percent emission reduction of methane will be achieved from existing MSW landfills by regulating 12 percent of the existing landfills. To achieve additional methane emission reduction, EPA considered whether to select a separate regulatory cutoff for methane alone, which is discussed below.

Adopting a separate methane emission requirement would address one of the many sources of global warming gases. On the other hand, there are several reasons not to establish a separate methane requirement at this time. First, while EPA believes global warming is a potential public health and welfare concern and that methane is a greenhouse gas, there is still uncertainty as to the rate and magnitude of possible global climate change and the resulting effects. However, as the international community moves toward the Climate Change Convention in 1992, the state of knowledge may change over the next 2 years. In addition, the cost of methane control increases as controls are extended beyond the landfills affected by today's proposed standards to more, and generally smaller, landfills with lower methane emission potential. Third, because methane emissions occur from many sources, EPA believes that any methane control strategy should consider the total problem and all control options. Until this is done, and due to the uncertainties of the estimates and the potentially high cost involved, EPA has no basis at this time for selecting a level of control for landfill methane that would be reasonable relative to other methane sources. It would be inappropriate to focus solely on only one source under the CAA or other statutory framework without the benefit of an overall stragegy. As a result of these considerations, EPA decided not to develop a separate methane emission level for this action.

The EPA requests comment and information on the control of methane in light of the continuing scientific discussion on global warming, the significance of MSW landfills to methane emissions, and suggestions on an overall strategy for control of methane (and other global warming air pollutants).

3. Should Specific Energy Recovery Requirements Be Included?

The EPA considered using energy recovery as a basis for the selection of BDT. Energy recovery at MSW landfills involves collecting and routing gas to energy recovery systems (i.e., I.C. engines, gas turbines, boilers) that could generate electricity, heat, or steam, and therefore, has a positive energy benefit. The use of such systems would further the goal of pollution prevention, since these energy recovery systems can offset some particulate, CO_2, and NO_x emissions from utilties while using an otherwise lost resource. Such offsets do not result when flares are used.

There are currently about 100 MSW landfills using energy recovery in the United States and the number has been growing. In developing these standards, EPA received and reviewed information from numerous MSW landfills currently recovering the landfill gas for energy production. The EPA has concluded, however, that choosing energy recovery for MSW landfills should be a site-specific decision. There are two major reasons for this decision. First, some landfills may not have a market available for the recovered energy. Second, there are many factors that affect the generation of landfill gas and these cannot be predicted with certainty. Therefore, developers of landfill gas energy recovery systems accept risks similar to those of oil and natural gas developers. It is possible for an individual MSW landfill to install energy recovery systems and discover later that the landfill's gas generation does not meet the initial predictions. Such mistakes are costly.

The EPA visited an MSW landfill located in Raleigh, North Carolina, where landfill gas is being collected and routed to a steam-generating boiler offsite. This landfill currently has approximately 2.7 million Mg (3 million tons) of waste in place with 10 years active waste acceptance life remaining. The collection system contains 48 wells and produces 0.034 million cubic meters per day (m^3/day) [1.2 million cubic feet per day (ft^3/day)] of landfill gas. Since its startup, the energy recovery system has been successful and has paid the City of Raleigh a percentage of its revenue.

On the other hand, EPA also visited an MSW landfill located in Greensboro, North Carolina, where a system was installed to purify the landfill gas to high Btu quality for residential use. This landfill, in an area with an expected rainfall similar to that in Raleigh, has approximately 2.7 million Mg (3 million tons) of waste in place since receiving its permit in 1978. The landfill has 15 to 20 years of active waste acceptance life remaining. The collection system contains 46 wells and was designed for flowrates between 0.028 and 0.084 million m^3/day (between 1 and 3 million ft^3/day) of landfill gas. After the start-up of this system, actual landfill gas generation never matched the initial predicted quantities, due in part to low moisture content. Subsequently, the energy recovery project has been suspended.

The EPA considered four options involving energy recovery in the standard. Option I would not require energy recovery in the standard itself, but would provide information to enable the landfill owners or operators to make their own decisions based on site-specific considerations. Option II would require owners or operators to undertake an analysis of energy recovery potential and present the result and decision on energy recovery for comment at a public meeting. Option III would require the owners or operators to perform the analysis following the EPA procedures and require energy recovery for affected landfills if the net costs are projected to break even (i.e., equal to or less than the flaring costs). Option IV would require owners or operators to perform the analysis following the EPA procedures and require energy recovery if the net cost projected is less than a specific amount (i.e., $/Btu) to be determined by EPA.

While all four options further pollution prevention and energy goals, Option II through IV would provide more assurance of the use of energy recovery and pollution prevention. Additionally, Options II through IV would result in significant reductions in methane, a greenhouse gas. However, these options, especially Options III and IV, involve significant financial risks. The EPA's ability to provide formulas for determining where or when net benefits occur for energy recovery is limited. The capability to predict energy recovery for MSW landfills is still developing, a venture that can be risky in light of many factors that affect the amount of gas that can be generated by an MSW landfill. The EPA believes many large MSW landfills will recover energy based on their own initiative. It is expected that both publicly and privately owned MSW landfills, with the help of consulting firms involved in landfill gas development, will select the least-cost approach—especially where energy recovery would be less costly than flaring.

As a result of considering the factors associated with this alternative, EPA decided not to propose to use energy recovery as the basis for the selection of BDT in this action, but to provide information to assist in these decisions (Option I). However, EPA will continue to consider the remaining options and solicits comment on any of the options and rationales discussed and any preferences for the options, on the problem of MSW landfills with no markets for recovered energy, and on the basis of the reasoning that both publicly and privately owned MSW landfills would recover energy on their own initiative.

4. Should EPA Consider Developing an Alternate Regulatory Cutoff Format?

The EPA selected an annual mass emission rate of NMOC's as the basis of the regulatory format. Specifically, landfills emitting more than 150 Mg/yr of NMOC's must control their landfill gas emissions with an active gas collection system and an add-on control device. Landfills can discontinue the operations of controls only after (1) the annual mass emissions are less than 150 Mg/yr; (2) the landfill is closed; and (3) the controls are in place for at least 15 years. The regulatory format is based on using 150 Mg/yr NMOC as the same regulatory cutoff for both the placement of controls and the "removal" of controls.

During development of the standards and guidelines, questions were raised about having separate annual mass emission rates for the placement and removal of controls. It would be possible to consider having a less stringent emission rate cutoff for the placement of controls and, once the controls are in place, to use a more stringent (or lower) cutoff for the removal of the controls. This approach is based on the assumption that most of the capital (for design plans and construction of active collection systems and control devices) is spent initially. If capital is spent "up front" then the marginal costs of control in the future is less. If it costs less to control future emissions once the system is in place, then the regulatory cutoff associated with the period of control can then be extended by setting a separate and lower regulatory cutoff for the removal of controls, obtaining additional reductions in emissions.

The EPA's approach calls for the same annual emission rate for both placement and removal of controls. In making this decision, EPA modeled the emissions (as dicussed in IV.E.2.) and costs of control for MSW landfills. This model predicts that emissions increase as waste is placed and decrease overtime after closure. The costs, while initially relatively large, are spread out over time reflecting what landfill operators will experience. Based on this modeling, EPA determined that the most efficient means of establishing a cutoff is to use the same emission cutoffs for both placement and removal of controls. Second, the EPA does not disagree that using a less stringent level for placement of controls and a more stringent level for removal of controls may get more emissions reduction. However, if the goal is to get more emission reduction in a cost effective manner, EPA believes, based on its current modeling, that it may make more sense to use a slightly more stringent level for both the placement and removal of controls to maximize emission reduction than to only tighten the requirements for removing the controls.

In EPA's modeling effort, initial costs of controls and costs of replacement of controls (control device, blowers, headers) are calculated every 15 years throughout the period of control. Controls for affected landfills can be placed at any point along the emission profile. For landfills with short control periods, for example, less than 10 years, the cost of control is spent up front with no replacement costs. The EPA expects very few MSW landfills to have very short control periods. For landfills estimated with long periods of control, for example, greater than 50 years, the replacement costs would be needed at least 3 times along with typical operation and maintenance costs for the duration of the control period. In this case, the marginal costs for future control are not necessarily small. The argument to have a lower regulatory cutoff for removal of controls due to lower future control costs would not be met in this case.

Given the complexity of analyzing, selecting, and then implementing separate regulatory cutoffs, the EPA elected to use the same emission rate for both placement and removal of controls. However, given the uncertainty of our analysis, the EPA would consider comments on establishing separate emission cutoffs for the placement and removal of controls.

V. Considerations for Prevention of Significant Deterioration

Today's rulemaking under section 111(b) would establish a new classification of pollutants subject to regulation under the Act: "MSW landfill emissions." A consequence of this action is that PSD rules will now apply to all subject major stationary sources which would have significant increases in this pollutant. Absent any significance levels in the regulations to exempt *de minimis* situations, PSD review would be triggered by any increase in MSW landfill emissions. In order to maintain a manageable review process which focuses resources on environmental priorities, EPA is today proposing significance thresholds for this pollutant.

Today's notice proposes that emissions of NMOC be measured as a surrogate for overall MSW landfill emissions. Further NMOC constitutes a small fraction of overall emissions. Available data on the composition of NMOC is sparse and indicates a high degree of variability. These factors combine to make the selection of *de minimis* difficult. Vinyl chloride, for example, is one component of NMOC and was previously given a 0.9 Mg/yr (1 tpy) *de minimis* level. Some componentr of NMOC include that overall class of compounds typically referred to as VOC's and these also include various toxic chemicals. For the purpose of controlling ozone formation, EPA has previously established the *de minimis* for VOC at 36 Mg/yr (40 tpy). At this time, EPA proposes a *de minimis* of 36 Mg/yr (40 tpy) MSW landfill emissions expressed as NMOC. In effect this level is more stringent than that chosen for VOC, because NMOC includes photochemically unreactive compounds and less stringent than that chosen for toxics such as vinyl chloride, since NMOC contains many nontoxic compounds. Public comment on the reasonableness of this selection is requested.

In the August 1980 **Federal Register**, EPA provided exemptions from the otherwise required PSD air quality analyses for those sources which could demonstrate that their maximum expected air quality impact could be less that the values indicated (45 FR 52676, 52709). Those air quality values were generally set at levels reflecting a multiple of the lowest detectable ambient concentration that could be measured by available monitoring equipment. The MSW landfill emissions being regulated today present a somewhat different situation in that no ambient monitoring methods exist to measure this specific classification of pollutant. For this reason, the Administrator will not at this time require PSD permit applicants to monitor MSW landfill emissions concentrations, and therefore, no

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exemption from this requirement is needed. Applications for permits will, of course, continue to be responsible for performing appropriate monitoring for other pollutants.

The EPA recognizes that the determination of significance thresholds for review of increases in MSW landfill emissions is important. Comment on the proposed threshold and approach used to determine the significance threshold is therefore solicited and will be carefully reviewed.

VI. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed standards and guidelines in accordance with section 307(d)(5) of the CAA. Persons wishing to make oral presentations should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket Section address given in the **ADDRESSES** section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at the EPA's Air Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) to allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review (except for interagency review materials [Section 307(d)(7)(A)]).

C. Clean Air Act Procedural Requirements

1. Administrator Listing—Section 111

As prescribed by Section 111 of the CAA, as amended, establishment of standards of performance and emission guidelines for MSW landfills is accompanied in this notice by the Administrator's determination that these sources contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. The rationale for this determination appears elsewhere in this notice.

2. Periodic Review—Section 111

These regulations will be reviewed 4 years from the date of promulgation as required by the CAA. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements.

3. External Participation—Section 117

In accordance with Section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. In addition, numerous discussions were held with industry representatives and trade associations during development of the proposed standards and guidelines. The Administrator will welcome comments on all aspects of the proposed regulations, including economic and technological issues.

4. Economic Impact Assessment—Section 317

Section 317 of the CAA requires the Administrator to prepare an economic impact assessment for any new source performance standard promulgated under section 111(b) of the Act. An economic impact assessment was prepared for the proposed regulations and guidelines and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the proposed standards and guidelines to ensure that today's proposal would represent the best system of continuous emission reduction considering costs. The economic impact assessment is included in Chapter 8 of the BID.

D. Office of Management and Budget Reviews

1. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq*. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked "Attention: Desk Officer for EPA," as well as to EPA. The final rule will respond to any OMB or public comments on the information collection requirements.

2. Executive Order 12291 Review

Executive Order 12291 requires each Federal agency to determine if a regulation is a "major rule" as defined by the order and "to the extent permitted by law," to prepare and consider a Regulatory Impact Analysis (RIA) in connection with every major rule. Major rules are defined as those likely to result in:

1. An annual cost to the economy of $100 million or more; or

2. A major increase in costs or prices for consumers or individual industries; or

3. Significant adverse effects on competition, employment, investment, productivity, innovation, or international trade.

The EPA has judged the proposed standards and guidelines to limit air emissions from MSW landfills to be major rules based on estimated national control costs (i.e., annualized costs in excess of $100 million). The EPA has prepared a draft RIA that includes estimates of costs, benefits, and net benefits associated with three stringency levels (25, 100, and 250 Mg/yr [28, 111, and 278 tpy] of NMOC). The draft analysis, titled "Regulatory Impact Analysis of Air Pollutant Emission Standards and Guidelines for Municipal Solid Waste Landfills," is available in the docket.

The standards will cost the nation approximately $26 million annually, and the guidelines about $240 million annually. If the costs to individual controlled MSW landfills were added to landfill tipping fees, the results for most affected new landfills would be increases of less than $10 per household per year. For the guidelines the increase for most affected existing landfills would be less than $15 per household per year. These numbers are based on the flare option and on the selection of a regulatory emissions cutoff of 150 Mg/yr (167 tpy) of NMOC for the standards and the guidelines.

The economic impacts of the standards and guidelines are expected to be small. Privately owned landfills that are already closed and must install emissions controls may be significantly impacted by the regulatory alternatives, because they have no easy way of recovering compliance costs. However, there are few closed, privately owned landfills that are affected under any of the regulatory alternatives. All of the regulatory alternatives will stimulate the adoption of energy recovery technologies at affected landfills.

The absence of sufficient exposure-response and valuation information precludes a comprehensive benefits analysis at this time. However, a surrogate benefits analysis indicates that substantial benefits from the regulation are probable.

The draft RIA has been submitted to OMB for review under E.O. 12991. Any written comments from OMB to EPA and any response to these comments will be included in Docket No. A-88-09. This docket is available for public inspection at the EPA's Air Docket Section, which is listed under the **ADDRESSES** section of this notice. A final RIA will be issued at the time of promulgation of the final rulemaking.

E. Regulatory Flexibility Act Compliance

The Regulatory Flexibility Act (RFA) requires consideration of the impacts of proposed regulations on small entities including small businesses, organizations, and jurisdictions. A small business is defined as any business concern which is independently owned and operated and not dominant in its field as defined by the Small Business Administration regulations under Section 3 of the Small Business Act (SBA). Similarly, a small organization is defined by the SBA as a not-for-profit enterprise, independently owned and operated, and not dominant in its field. A small jurisdiction is defined as any government district with a population of less than 50,000 people.

Pursuant to the Provisions of 5 U.S.C. 605(b), I hereby certify that these rules, if promulgated, will not have a significant economic impact on a substantial number of small business entities because the number of small entities that would be affected, if any, is not substantial.

List of Subjects

40 CFR Parts 51 and 52

Air pollution control, Reporting and recordkeeping requirements.

40 CFR Part 60

Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Municipal solid waste landfills.

Dated: May 16, 1991.

William K. Reilly,

Administrator.

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION AND SUBMITTAL OF IMPLEMENTATION PLANS

For reasons set forth in the preamble, it is proposed that parts 51, 52, and 60, chapter I, title 40 of the Code of Federal Regulations be amended as follows:

1. The authority citation for part 51 continues to read as follows:

Authority: Secs. 101(b)(1), 160–169, 171–178, and 301(a) of the Clean Air Act, 42 U.S.C. 7401(b)(1), 7410(b)(1), 7410, 7470–7479, 7501–7508, and 7601(a).

2. Section 51.166 is amended by revising paragraph (b)(23)(i) to read as follows:

§ 51.166 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(23)(i) *Significant* means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emission that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide:
100 tons per year (tpy)
Nitrogen oxides:
40 tpy
Sulfur dioxide:
40 tpy
Particulate matter:
25 tpy of particulate matter emissions
15 tpy of PM_{10} emissions
Ozone:
40 tpy of volatile organic compounds
Lead:
0.6 tpy
Asbestos:
0.007 tpy
Beryllium:
0.0004 tpy
Mercury:
0.1 tpy
Vinyl Chloride:
1 tpy
Fluorides:
3 tpy
Sulfuric acid mist:
7 tpy
Hydrogen sulfide (H_2S):
10 tpy
Total reduced sulfur (including H_2S):
10 tpy
Reduced sulfur compounds (including H_2S):
10 tpy
Municipal solid waste landfills emissions:
40 tpy of nonmethane organic compounds (as measured by Method 25C)

* * * * *

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.21 is amended by revising paragraph (b)(23)(i) to read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(23)(i) *Significant* means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emission that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide:
100 tons per year (tpy)
Nitrogen oxides:
40 tpy
Sulfur dioxide:
40 tpy
Particulate matter:
25 tpy of particulate matter emissions
15 tpy of PM_{10} emissions
Ozone:
40 tpy of volatile organic compounds
Lead:
0.6 tpy
Asbestos:
0.007 tpy
Beryllium:
0.0004 tpy
Mercury:
0.1 tpy
Vinyl Chloride:
1 tpy
Fluorides:
3 tpy
Sulfuric acid mist:
7 tpy
Hydrogen sulfide (H_2S):
10 tpy
Total reduced sulfur (including H_2S):
10 tpy
Reduced sulfur compounds (including H_2S):
10 tpy
Municipal solid waste landfills emissions:
40 tpy of nonmethane organic compounds (as measured by Method 25C)

* * * * *

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, and 7601.

2. Part 60 is amended by adding a new Subpart WWW to read as follows:

Subpart WWW—Standards of Performance for Municipal Solid Waste (MSW) Landfills

Sec.

60.750 Applicability and designation of affected facility.
60.751 Definitions.
60.752 Standards for air emissions from MSW landfills.
60.753 Test methods and procedures.
60.754 Compliance provisions.
60.755 Monitoring of operations.
60.756 Reporting requirements.
60.757 Recordkeeping requirements.
60.758 Design specifications for active vertical collection systems.

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Subpart WWW—Standards of Performance for Municipal Solid Waste (MSW) Landfills

§ 60.750 Applicability and designation of affected facility.

The provisions of this subpart apply to each municipal solid waste (MSW) landfill that began accepting waste on or after May 30, 1991.

§ 60.751 Definitions.

(a) As used in this subpart, all terms not defined herein shall have the meaning given them in the Act or in subpart A of this part.

Closed landfill means a landfill in which refuse is no longer being placed, and in which no additional wastes will be placed without first filing a notification of modification as prescribed under § 60.14.

Commercial solid waste means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding residential and industrial wastes.

Controlled landfill means any landfill at which collection and control systems are required as a result of the NMOC emission rate. The landfill is considered controlled at the time a collection and control system design plan is submitted in compliance with § 60.752(b)(2)(i).

Design capacity means the maximum amount of waste landfill can accept, as specified in the construction permit issued by the county or State agency responsible for regulating the landfill.

Household waste means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

Industrial solid waste means solid waste generated by manufacturing or industrial processes, that is not a hazardous waste regulated under subtitle C of the Resource Conservation and Recovery Act. Such waste may include, but is not limited to, the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

Landfill means an area of land or an excavation in which wastes are placed for permanent disposal, and which is not a land application unit, surface impoundment, injection well, or waste pile.

Municipal solid waste landfill or *MSW landfill* means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive commercial waste, sludges, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned.

Muncipal solid waste landfill emissions or MSW landfill emissions means any gas derived through a natural process through the decomposition of organic waste deposited in an MSW waste disposal site or from the evolution of volatile organic species in the waste.

NMOC or *NMOC's* means nonmethane organic compounds, as measured according to the provisions of § 60.753.

Sludge means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatement plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

Solid waste means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit requirements under 33 U.S.C. 1342, or sources of special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

§ 60.752 Standards for air emissions from MSW landfills.

(a) Each owner or operator of an MSW landfill having a maximum design capacity less than 100,000 megagrams (Mg) (111,000 tons), shall submit an initial design capacity report to the Administrator as provided for in § 60.756. This report shall fulfill the requirements of this regulation except as provided for in paragraphs (a) (1) and (2) of this section.

(1) An amended design capacity report as provided for in § 60.758(a)(2) is required providing notification of any increase in the design capacity of a landfill subject to the provisions of this subpart, whether the increase results from an increase in the area or depth of the landfill, a change in the operating procedures of the landfill, or any other means.

(2) Any increase in the maximum design capacity of a landfill exempted from the additional provisions of this subpart on the basis of the design capacity cutoff in paragraph (a) of this section, which results in a maximum design capacity equal to or greater than 100,000 Mg (111,000 tons), shall nullify the exemption and subject the owner or operator to the provisions of paragraph (b) of this section.

(b) Each owner or operator of an MSW landfill having a design capacity equal to or greater than 100,000 Mg (111,000 tons) shall calculate an NMOC emission rate for the landfill using the procedures provided in § 60.753. The NMOC emission rate shall be recalculated annually, except as provided for in § 60.756(b)(1)(ii) below. Each owner or operator shall compare the calculated NMOC emission rate to 150 Mg/yr (167 tpy) NMOC.

(1) If the calculated NMOC emission rate is less than 150 Mg/yr (167 tpy), the owner or operator shall:

(i) Submit an annual emission report to the Administrator, except as provided for in § 60.756(b)(1)(ii); and

(ii) Recalculate the NMOC emission rate periodically as provided for § 60.756(b)(1)(ii) until such time as the calculated NMOC emission rate is equal to or greater than 150 Mg/yr (167 tpy) and a collection and control system is installed, or the landfill is closed.

(A) If the calculated NMOC emission rate is equal to or greater than 150 Mg/yr (167 tpy) on any subsequent calculation, the owner or operator shall install a collection and control system in compliance with paragrah (b)(2) of this section.

(B) If the landfill is permanently closed, a closure notification shall be submitted to the Administrator as provided for in § 60.756.

(2) If the calculated NMOC emission rate is equal to or greater than 150 Mg/yr (167 tpy), the owner or operator shall:

(i) Submit either (A) or (B) paragraph (b)(2)(i) of this section:

(A) A notification of intent to install a collection and control system conforming to the specifications provided in § 60.758 below.

(B) A collection and control system design plan to the Administrator or designated reviewing Agency. The collection and control system shall be designed in conformance to the guidance provided in Chapter 9 of the background information document (BID), EPA–450/3–90–011(a), and shall effectively address the design parameters provided in paragraph (b)(a)(ii) of this section.

(ii) Install a collection and control system within 1½ years of the submittal of the design plan or notification of intent. The collection system shall effectively capture the gas that is generated within the landfill. The collection system shall:

(A) Be designed to handle the maximum expected gas flowrate over the lifetime of the gas control or treatment system equipment from the entire area of the landfill that warrants control over the equipment lifetime;

(B) Collect gas from each area, cell, or group of cells in the landfill in which refuse has been placed for a period of 2 years or more.

(C) Collect gas at a sufficient extraction rate.

(iii) Route the collected gas to a control or treatment system in compliance with paragraph (b)(2)(iii) (A), (B) or (C) of this section.

(A) Route the collected gas to an open flare designed and operated in accordance with 40 CFR 60.18.

(B) Route the collected gas to a control system designed and operated within the parameters demonstrated in the performance test to reduce NMOC's by 98 weight-percent. When an enclosed combustor is used for control, reduction of the outlet NMOC concentration to 20 ppmvd as hexane at 3 percent oxygen shall fulfill this requirement. The ppmvd shall be established by Method 25.

(C) Route the collected gas to a treatment system that processes the collected gas for subsequent sale or use. The sum of all emissions from any atmospheric vent from the gas treatment system shall be subject to the requirements of paragraph (b)(2)(ii)(A) of this section.

(iv) Operate the collection and control device in compliance with §§ 60.754 and 60.755 of this subpart.

(v) The collection and control system may be capped or removed provided the conditions of each of paragraphs (b)(2)(v) (A), (B), and (C) of this section are met:

(A) The landfill must be no longer accepting waste and be permanently closed. A closure report must be submitted to the Administrator as provided for in § 60.766;

(B) The collection and control system must have been in continuous operation a minimum of 15 years; and

(C) Following the procedures in § 60.753(b), the calculated NMOC emission rate must be less than 150 Mg/yr (167 tpy) on three successive test dates. The test dates must be no closer than 3 months apart, and no longer than 6 months apart.

§ 60.753 Test methods and procedures.

(a) The landfill owner or operator shall estimate the NMOC emission rate using either the equation provided in paragraph (a)(1)(i) of this section or the equation provided in paragraph (a)(1)(ii) of this section.

(1)(i) The following equation shall be used if the actual year-to-year acceptance rate is known.

$$Q_T = \sum_{i=1}^{n} 2\,k\,L_o\,M_i\,(e^{-kt_i})\,(C_{NMOC})\,(3.595 \times 10^{-9})$$

where,

Q_T = Total NMOC emission rate from the landfill, Mg/yr

k = landfill gas generation constant, 1/yr

L_o = methane generation potential, m^3/Mg

M_i = mass of refuse in the i^{th} section, Mg

t_i = age of the i^{th} section, yrs

C_{NMOC} = concentration of NMOC, ppmv

3.595×10^{-9} = conversion factor

The NMOC emission rate is the sum of each NMOC emission rate for each yearly submass.

(ii) The following equation shall be used if the actual year-by-year refuse acceptance rate is unknown.

$$M_{NMOC} = 2L_o\,R\,(1 - e^{-kt})\,(C_{NMOC})\,(3.595 \times 10^{-9})$$

where,

M_{NMOC} = mass emission rate of NMOC, Mg/yr

L_o = refuse methane generation potential, m^3/Mg refuse

R = average annual acceptance rate, Mg/yr

k = methane generation rate constant, 1/yr

t = age of landfill, yrs

C_{NMOC} = concentration of NMOC, ppmv as hexane

3.595×10^{-9} = conversion factor

In the absence of site-specific data, the values to be used for k, L_o, and NMOC concentration are 0.02/yr, 230 m^3/Mg, and 8,000 ppmv as hexane, respectively.

(2) The owner or operator shall compare the calculated NMOC mass emission rate to the standard of 150 Mg/yr (167 tpy).

(i) If the calculated NMOC emission rate is less than 150 Mg/yr (167 tpy), then the landfill owner shall submit an emission rate report as provided in § 60.756(b)(1), and shall recalculate the NMOC mass emission rate periodically.

(ii) If the calculated NMOC emission rate is equal to or greater than 150 Mg/yr (167 tpy), then the landfill owner shall either install controls in compliance with § 60.752(b)(2), or determine a site-specific NMOC concentration using the procedures provided in paragraph (a)(3) of this section.

(3) The landfill owner or operator shall estimate the NMOC mass emission rate using the following sampling procedure. The landfill owner or operator shall install a minimum of five sample probes. The owner shall collect and analyze at least one sample of landfill gas from each probe for NMOC concentration using Method 25C. The landfill owner shall recalculate the NMOC mass emission rate using the average NMOC concentration from the collected samples instead of the default value in the equation provided in paragraph (a) of this section.

(i) If the resulting mass emission rate is equal to or greater than 150 Mg/yr (167 tpy), then the landfill owner or operator shall install controls in compliance with § 60.752(b)(2), or determine the site-specific gas generation rate constant using the procedure provided in paragraph (a)(4) of this section.

(ii) If the resulting NMOC mass emission rate is less than 150 Mg/yr (167 tpy), then the landfill owner or operator shall demonstrate that the NMOC mass emission rate is below the level of the standard with 80 percent confidence.

(A) The owner or operator shall use the following equation to determine the number of samples required to show 80 percent confidence:

$$n = \frac{(t_{.80})^2\,s^2}{D^2}$$

where,

n = number of samples required to demonstrate 80 percent confidence.

$t_{.80}$ = student-t value for a two-tailed confidence interval and a probability of .20.

s = standard deviation of the initial set of samples, ppmv.

The landfill owner shall install the required number of probes or 50 probes, whichever is less. At least one sample of landfill gas from each probe must be collected and analyzed using Method 25C.

(B) The landfill owner or operator shall recalculate the NMOC mass emission rate using the new average NMOC concentration in the formula provided in § 60.753(a).

(iii) The landfill owner or operator shall compare the NMOC mass emission rate obtained in paragraph (a)(3)(ii)(B) of this section to the standard of 150 Mg NMOC/yr (167 tpy).

(A) If the NMOC mass emission rate is equal to or greater than 150 Mg/yr (167 tpy), then the owner or operator

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shall install controls in compliance with § 60.752(b)(2), or proceed to paragraph (a)(4) of this section.

(B) If the NMOC emission rate is less than 150 Mg/yr (167 tpy), the owner or operator shall submit an annual, or a 5-year estimate of the emission rate report as provided in § 60.756(b)(1)(ii) and shall update the site-specific NMOC concentration using the procedures provided in § 60.753(a)(3) every 5 or 10 years. If the average NMOC mass emission rate plus two standard deviations is less than 150 Mg/yr (167 tpy), the owner or operator shall update the site-specific NMOC concentration every 10 years. If the average NMOC mass emission rate plus two standard deviations is greater than 150 Mg/yr (167 tpy), then the owner or operator shall update the site-specific NMOC concentration every 5 years.

(4) The landfill owner or operator shall estimate the NMOC mass emission rate using a site-specific landfill gas generation rate constant, k. The site-specific landfill gas generation rate constant and the resulting NMOC mass emission rate shall be determined using the procedures provided in Method 2E, which is incorporated by reference. The landfill owner or operator shall compare the resulting NMOC mass emission rate to the standard of 150 Mg/yr (167 tpy).

(i) If the NMOC mass emission rate is equal to or greater than 150 Mg/yr (167 tpy), then the owner or operator shall install controls in compliance with § 60.752(b)(2).

(ii) If the NMOC mass emission rate is less than 150 Mg/yr (167 tpy), then the owner or operator shall submit an annual emission rate report as provided in § 60.756(b) and shall recalculate the NMOC mass emission rate annually, using the site-specific landfill gas generation rate constant and NMOC concentration obtained in paragraph (a)(2) of this section. The calculation of the landfill gas generation rate constant is performed only once, and the value obtained is used in all subsequent annual NMOC emission rate calculations.

(b) After the installation of a collection and control system in compliance with § 60.752(b)(2), the owner or operator shall estimate the NMOC emission rate using the equation below.

$$M_{NMOC} = 1.89 \times 10^{-3} Q_{LFG} C_{NMOC}$$

where,

M_{NMOC} = mass emission rate of NMOC, Mg/yr
Q_{LFG} = flowrate of landfill gas, m^3/min
C_{NMOC} = NMOC concentration, ppmv

(1) The flowrate of landfill gas, Q_{LFG}, shall be obtained by measuring the total landfill gas flowrate at the common header pipe that leads to the control device using an orifice meter as described in Method 2E.

(2) The average NMOC concentration, C_{NMOC}, shall be determined by collecting and analyzing landfill gas sampled from the common header pipe using Method 25C.

§ 60.754 Compliance provisions.

(a) The following methods shall be used to determine whether the gas collection system is in compliance with § 60.752(b)(2)(ii).

(1) For the purposes of calculating the maximum expected gas generation flowrate from the landfill to determine compliance with § 60.752(b)(2)(ii)(A), the following equation shall be used:

$$Q_m = 2L_o R (1 - e^{-kt})$$

where,

Q_m = maximum expected gas generation flow rate, m^3/yr
L_o = refuse methane generation potential, m^3/Mg refuse
R = average annual acceptance rate, Mg/yr
k = methane generation rate constant, 1/yr
t = age of the landfill plus the gas mover equipment life or active life of the landfill, whichever is less, in years.

A value of 230 m^3/Mg shall be used for L_o. If Method 2E has been performed, the value of k determined from the test shall be used: if not, a value of 0.02 $years^{-1}$ shall be used. A value of 15 years shall be used for gas mover equipment life. The active life of the landfill is the age of the landfill plus the estimated number of years until closure.

(2) For the purposes of calculating the area of influence of the gas collection system to determine compliance with § 60.752(b)(2)(ii)(B), the owner or operator should use Method 2E.

(3) For the purpose of demonstrating whether the gas collection system flowrate is sufficient to determine compliance with § 60.752(b)(2)(ii)(C), the owner/operator shall measure gauge pressure in the gas collection header. If a positive pressure exists, the gas collection system flowrate shall be increased until a negative pressure is measured.

(4) If the gauge pressure at a wellhead is positive, the valve shall be opened to restore negative pressure. If negative pressure cannot be achieved, an additional well shall be added.

(b) To determine whether the control device designed and operated according to the parameters established in § 60.18 (for open flares), or for other control devices the parameters in the performance test to reduce NMOC's by 98 weight-percent, is in compliance with § 60.752(b)(2)(iii), the parameters shall be monitored provided in § 60.755.

(c) An owner or operator seeking to demonstrate compliance with § 60.752(b)(2)(iii) using a device other than an open or enclosed flare, boiler, gas turbine, incinerator or I.C. engine shall provide to the Administrator information demonstrating that the standards can be continuously achieved.

§ 60.755 Monitoring of operations.

(a) Each owner or operator seeking to comply with § 60.752(b)(2)(ii) for the gas collection system shall install a sampling port at each well and measure the gauge pressure in the gas collection header on a monthly basis.

(b) Each owner or operator seeking to comply with § 60.752(b)(2)(iii) using an enclosed combustion device shall monitor the residence time and temperature established during the initial performance test to reduce NMOC's by 98 percent. Each owner or operator shall calibrate, maintain, and operate according to the manufacturer's specifications, the following equipment:

(1) A temperature monitoring device equipped with a continuous recorder and having an accuracy of ±1 percent of the temperature being measured expressed in degrees Celsius or ±0.5°C, whichever is greater.

(2) A flow indicator that provides a record of gas flow to the control device at intervals of every 15 minutes.

(c) Each owner or operator seeking to comply with § 60.752(b)(2)(iii) using an open flare shall install, calibrate, maintain, and operate according to the manufacturer's specifications the following equipment:

(1) A heat sensing device, such as an ultraviolet beam sensor or thermocouple, at the pilot light to indicate the continuous presence of a flame.

(2) A flow indicator that provides a record of gas flow to the flare at intervals of every 15 minutes.

(d) Each owner or operator seeking to demonstrate compliance with § 60.752(b)(2)(iii) using a device other than an open flare or a closed combustion device shall provide to the Administrator information describing the operation of the control device and the operating parameters that would indicate proper performance. The Administrator will specify appropriate monitoring procedures.

§ 60.756 Reporting requirements.

(a) Each owner or operator subject to the requirements of this subpart shall submit an initial design capacity report to the Administrator. The initial design capacity report must be submitted within 90 days of the issuance of the

construction or operating permit, or within 30 days of the date construction, or reconstruction as defined under § 60.15, of an affected facility commences, or initial acceptance of refuse, whichever is earlier. The initial design capacity report shall fulfill the requirements of the notification of the date construction is commenced as required under § 60.7(a)(1).

(1) The initial design capacity report shall contain the following information:

(i) A map or plot of the landfill, providing the size and location of the landfill, and identifying all areas where refuse may be landfilled according to the provisions of the State or county permit;

(ii) The maximum design capacity of the landfill. Where the maximum design capacity is specified in the State or county construction or RCRA permit, a copy of the permit specifying the maximum design capacity may be submitted. If the maximum design capacity of the landfill is not specified in the permit, the maximum design capacity must be calculated using good engineering principles. The calculations must be provided, along with such parameters as depth of refuse, refuse acceptance rate, and compaction practices. The State, county, or Administrator may request other reasonable information as may be necessary to verify the maximum design capacity of the landfill.

(2) An amended design capacity report must be submitted to the Administrator, providing notification of any increase in the size of the landfill, whether the increase results from an increase in the permitted area or depth of the landfill, a change in the operating procedures, or any other means which results in an increase in the maximum design capacity of the landfill. The amended design capacity report must be submitted within 90 days of the issuance of an amended construction or operating permit, or the actual use of additional land, or the change in operating procedures which will result in an increase in maximum design capacity, whichever comes first.

(b) Each owner or operator subject to the requirements of this subpart shall submit an annual NMOC emission rate report to the Administrator, except as provided for in paragraph (b)(1)(ii) of this section. The State or county agency or the Administrator may request such additional information as may be reasonably necessary to verify the reported NMOC emission rate.

(1) The annual, or 5-year estimate of the NMOC emission rate shall be calculated using the formula and procedures provided in § 60.753.

(i) The initial NMOC emission rate report shall be submitted within 90 days of the date waste acceptance commences and may be combined with the initial design capacity report required in paragraph (a) of this section. Subsequent NMOC emission rate reports shall be submitted annually thereafter, except as provided for in paragraphs (b)(1) (ii) and (iii) of this section.

(ii) The owner/operator may elect to submit an estimate of the NMOC emission rate for the next 5 years in lieu of the annual report, provided that the estimated NMOC emission rate in each of the 5 years is less than 150 Mg/yr (167 tpy). This estimate must include the current amount of refuse-in-place and the estimated waste acceptance rate for each of the 5 years for which an NMOC emission rate is estimated. All data and calculations upon which this estimate is based must be provided. This estimate must be revised at least every 5 years.

(iii) If the actual waste acceptance rate exceeds the estimated waste acceptance rate in any year reported in the 5-year estimate, a revised 5-year estimate must be submitted. The revised estimate shall cover the five years beginning with the year in which the actual waste acceptance rate exceeded the estimated waste acceptance rate.

(2) The annual, or 5-year estimate of the NMOC emission rate report shall include all the data, calculations, sample reports and measurements used.

(3) Each owner or operator subject to the requirements of this subpart is exempted from the requirements of paragraph (b) of this section after the installation of collection and control systems in compliance with § 60.752(b)(2) during such time as the collection and control system is in continuous operation and in compliance with § 60.754.

(c) Each owner or operator of a controlled landfill shall submit a closure report to the Administrator. For the purposes of this subpart, closure means that refuse is no longer being placed in the landfill, and that no additional wastes will be placed into the landfill without filing a notification of modification as prescribed under § 60.14. The Administrator may request such additional information as may be reasonably necessary to verify that permanent closure has taken place.

(d) Each owner or operator of a controlled landfill shall submit an equipment removal report to the Administrator prior to removal or cessation of operation of the control equipment.

(1) The equipment removal report shall contain the following items:

(i) A copy of the closure report submitted in accordance with paragraph (c) of this section;

(ii) A copy of the initial performance test report demonstrating the 15 year minimum control period has expired;

(iii) Dated copies of the three successive NMOC emission rate reports demonstrating that the landfill is no longer emitting above the level of the standard.

(2) The Administrator may request such additional information as may be reasonably necessary to verify that all of the conditions for removal in § 60.752(b)(2)(v) have been met.

(e) Each owner or operator of a controlled landfill shall submit to the Administrator semiannual reports of the following recorded information. The initial report shall be submitted within 90 days of installation and startup of the collection and control system, and shall include the initial performance test report required under § 60.8.

(1) Exceedance of parameters monitored under § 60.755 (a) and (b)(1).

(2) All periods when the gas stream is diverted from the control device or has no flowrate.

(3) All periods when the control device was not operating.

(4) For control devices using open or enclosed flares, all periods when the pilot flame of the flare was absent.

(f) Each owner or operator seeking to comply with § 60.752(b)(2)(i)(A) shall include the following with the initial performance test report required under § 60.8:

(1) A diagram of the collection system showing vertical extraction well spacing, including the locations of any areas excluded from collection and the proposed sites for the future addition of wells;

(2) The data upon which the radii of influence and the gas mover sizing are based;

(3) The documentation of the presence of asbestos for each area from which collection wells have been excluded based on the presence of asbestos;

(4) The sum of the gas generation rates for all areas from which collection wells have been excluded based on the presence of nondegradable materials and the calculations of gas generation rate for each excluded area; and

(5) The provisions for increasing gas mover capacity with increased gas generation rate, if the present gas mover is inadequate to move the maximum flowrate expected over the life of the landfill.

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§ 60.757 Recordkeeping requirements.

(a) Each owner or operator of an MSW landfill subject to the provisions of § 60.752(b) shall keep up-to-date, readily accessible records of the maximum design capacity, the current amount of refuse-in-place, and the year-by-year waste acceptance rate.

(b) Each owner or operator of a controlled landfill shall keep up-to-date, readily accessible records of the following data measured during the initial performance test/compliance determination for the life of the control equipment. Records of subsequent tests must be maintained for a minimum of 2 years.

(1) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 60.752(b)(2)(ii):

(i) The calculated maximum expected gas generation flowrate using Method 2E.

(ii) The calculated area of influence of the extraction wells.

(iii) Gauge pressure in the gas collection header at the point where each well is connected to the gas collection header pipe.

(2) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 60.752(b)(2)(iii) through use of an enclosed combustion device:

(i) The average combustion temperature measured every 15 minutes and averged over the same time period of the performance testing.

(ii) The percent reduction of NMOC determined as specified in § 60.754(b) achieved by the control device.

(3) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 60.752(b)(2)(iii) through use of a boiler:

(i) A description of the location at which the process vent stream is introduced into the boiler or process heater, and

(ii) The average combustion temperature of the boiler or process heater with a design heat input capacity of less than 44 MW (150 million Btu/hr) measured at least every 15 minutes and averaged over the same time period of the performance testing.

(4) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 60.752(b)(2)(iii) through use of an open flare, the flare type (i.e., steam-assisted, air-assisted, or nonassisted), all visible emission readings, heat content determination, flowrate measurements, and exit velocity determinations made during the performance test, continuous records of the flare pilot flame monitoring, and records of all periods of operations during which the pilot flame is absent.

(c) Each owner or operator of a controlled landfill subject to the provisions of this subpart shall keep up-to-date, readily accessible continuous records of the equipment operating parameters specified to be monitored under § 60.755 as well as up-to-date, readily accessible records for periods of operation during which the parameter boundaries established during the most recent performance test are exceeded.

(1) For enclosed combustion devices except for boilers and process heaters with design heat input capacity of 44 MW (150 million Btu/hour) or greater and nonenclosed flares, all 3-hour periods of operation during which the average combustion temperature was more than 28°C (50°F) below the average combustion temperature during the most recent performance test at which compliance with § 60.752(b)(2)(iii) was determined.

(2) For boilers or process heaters, whenever there is a change in the location at which the vent stream is introduced into the flame zone as required under § 60.757(b)(3)(i).

(3) Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible continuous records of the indication of flow specified under § 60.755, as well as up-to-date, readily accessible records of all periods when the gas stream is diverted from the control device or has no flowrate.

(4) Each owner or operator subject to the provisions of this subpart who uses a boiler or process heater with a design heat input capacity of 44 MW or greater to comply with § 60.752(b)(2)(iii) shall keep an up-to-date, readily accessible record of all periods of operation of the boiler or process heater. (Examples of such records could include records of steam use, fuel use, or monitoring data collected pursuant to other State or Federal regulatory requirements.)

(5) Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible continuous records of the flare pilot flame monitoring specified under § 60.754(c)(1), as well as up-to-date, readily accessible records of all periods of operation in which the pilot flame is absent.

§ 60.758 Design specifications for active vertical collection systems.

(a) Each owner or operator seeking to comply with § 60.752(b)(2)(i)(A) shall site active vertical collection wells throughout all gas producing areas of the landfill that contain refuse that is at least 2 years old using the following procedures:

(1) The interior and perimeter radii of influence shall be determined using field test data as provided in paragraphs (a)(1) (i) and (ii) of this section or using theoretical concepts as provided in paragraph (a)(1)(iii) of this section.

(i) If EPA Method 2E has been performed during the determination of the NMOC emission rate, the radius of influence for the perimeter well determined during the long-term extraction test in Method 2E shall be used in siting perimeter wells. The average of the radii of influence of all interior wells determined during the long-term extraction test in Method 2E shall be used in siting interior collection wells.

(ii) If EPA Method 2E was not performed during the determination of the NMOC emission rate, EPA Method 2E may be performed and the perimeter and interior radii of influence from the field test data shall be used in siting collection wells as provided in paragraph (A) above.

(iii) If EPA Method 2E has not been performed, a single radius of influence may be determined by determining the maximum well vacuum using Figure 1 below by locating the intersection of the landfill depth with the appropriate curve for the cover material used. The proposed well vacuum is compared to the maximum blower vacuum provided for the cover material selected in Figure 1. Using the smaller of the proposed or maximum blower vacuum from Figure 1, the corresponding estimated radius of influence is determined from Figure 2. This radius shall be used in siting both perimeter and interior wells.

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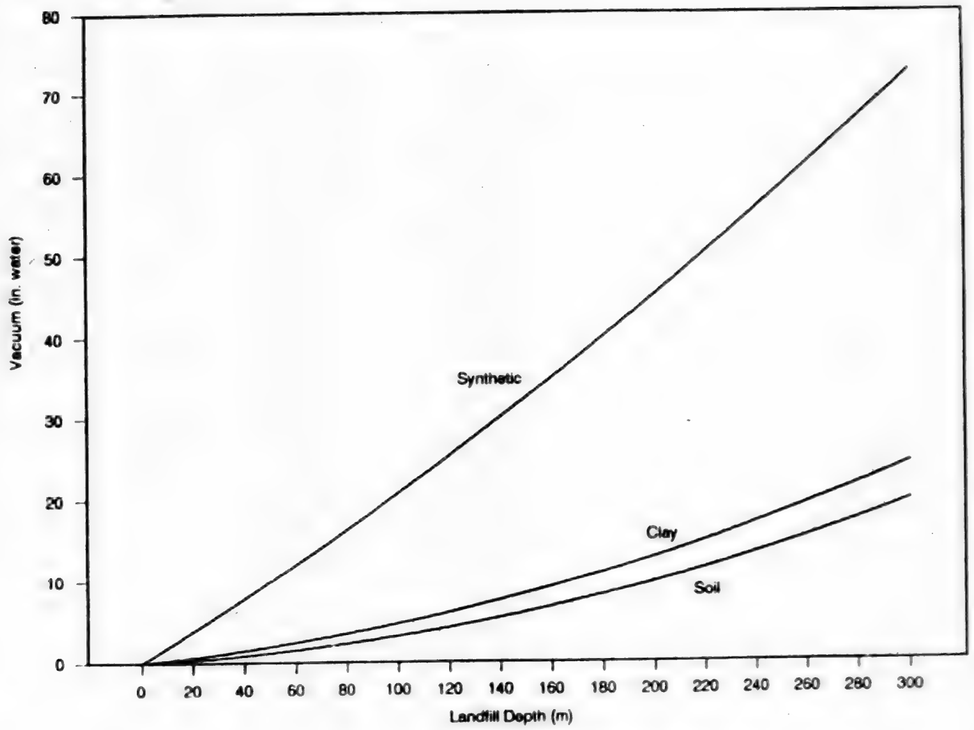

Figure 1 Maximum blower vacuum as a function of landfill depth for three cover types.

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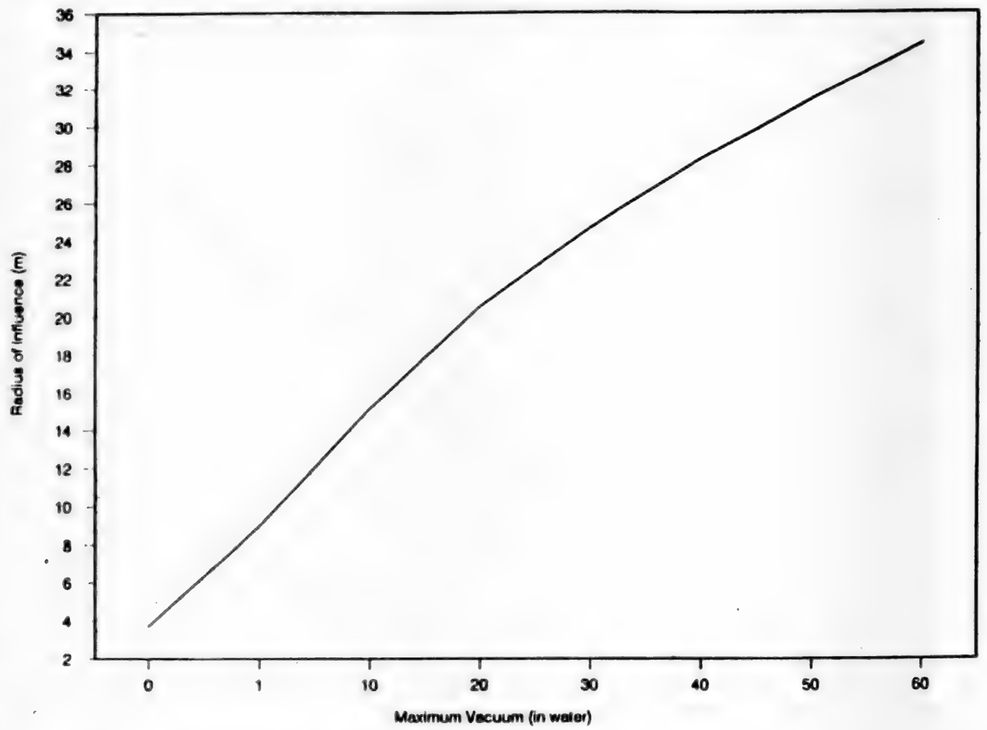

Figure 2. Estimated radius of influence as a function of blower vacuum.

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(2) The radii of influence determined in paragraph (a)(1), of this section, shall be used to site wells along the perimeter of all gas producing areas of the landfill, at a distance no greater than the perimeter radius of influence from the perimeter and no greater than two times the perimeter radius of influence apart.

(3) After siting the perimeter wells, the interior radius of influence determined in paragraph (a)(1), of this section, shall be used to site the interior wells at distances no greater than two times the interior radius of influence apart, and staggered such that essentially all gas producing areas of the landfill containing refuse at least 2 years old are covered by the radii of influence, except as provided by paragraphs (a)(3) (i) and (ii).

(i) Any area of refuse for which documentation of asbestos deposition exists shall be excluded from collection. The documentation must provide the date, location and approximate amount of asbestos deposited in the landfill, and must be provided to the regulatory agency upon request.

(ii) Any nondegradable area of the landfill may be excluded from collection, provided that the total of all excluded areas can be shown to contribute less than one percent of the total amount of emissions from the landfill. A separate emissions estimate shall be made for each section proposed for exclusion, and the sum of all such sections compared to the emissions estimate for the entire landfill. Emissions from each section shall be computed using the following equation:

$$Q_i = 2\,k\,L_o\,M_i\,(e^{-kt_i})\,(C_{NMOC})\,(3.595\times10^{-9})$$

where:

Q_i = NMOC emission rate from the i^{th} section, Mg/yr

k = landfill gas generation constant, 1/yr

L_o = methane generation potential, m^3/Mg

M_i = mass of the degradable refuse in the i^{th} section, Mg

t_i = age of the refuse in the i^{th} section, yrs

C_{NMOC} = concentration of NMOC, ppmv

3.595×10^{-9} = conversion factor

The values for k, L_o, and C_{NMOC} determined in field testing shall be used, if field testing has been performed in determining the NMOC emission rate or the radii of influence. If field testing has not been performed, the default values for k, L_o and C_{NMOC} provided in Tier 1 of the NMOC emission rate determination shall be used. The mass of nondegradable refuse contained within the given section shall be subtracted from the total mass of the section when estimating emissions.

(b) Each owner or operator seeking to comply with § 60.752(b)(2)(i)(A) shall construct each vertical well using the following equipment or procedures:

(1) The landfill gas extraction well shall be constructed of polyvinyl chloride (PVC), high density polyethylene (HDPE) pipe, fiberglass, stainless steel, or other suitable nonporous material, at least 0.075 m (3 in.) diameter. The pipe shall be the lesser of 75 percent of the depth of the refuse or the depth to the water table in length. The bottom two-thirds of the pipe shall be perforated with a minimum of four 0.012 m (½ in.) diameter holes, or other perforations spaced 90 degrees apart every 0.1 to 0.2 m (4 to 8 in.).

(2) A well drilling rig shall be used to dig a 0.60 m (24 in.) diameter hole in the landfill to a depth equal to a minimum of 75 percent of the landfill depth or the pipe length. The extraction well shall be placed in the center of the hole and the hole shall be backfilled with gravel to a level at least 0.3 m (1 ft) above the perforated section. A layer of backfill material at least 1.2 m (4 ft) thick shall be added on top of the gravel. A layer of bentonite at least 0.9 m (3 ft) thick shall be added on top of the backfill material, and the remainder of the hole shall be backfilled with cover material or material equal to the permeability to the existing cover material. A schematic of extraction well installation is shown in Figure 3.

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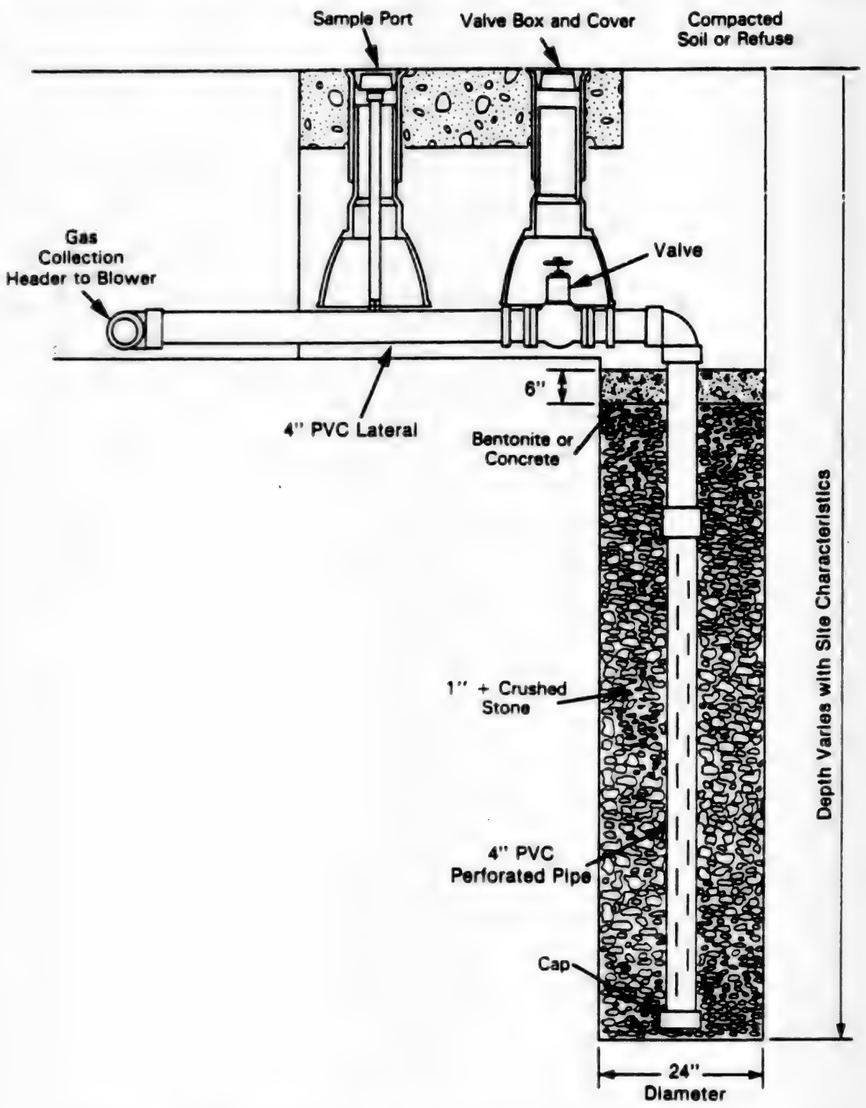

Figure 3. Gas extraction well and well head assembly.

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(3) The well head may be connected to the collection header pipes below or above the landfill surface. The well head assembly shall include a PVC ball or butterfly valve, flanges, gaskets, connectors, access couplings and at least one sampling port. The cap and header pipe shall be constructed of PVC or HDPE. A schematic of the extraction well and well head assembly is illustrated in Figure 3.

(c) Each owner or operator seeking to comply with § 60.752(b)(2)(i)(a) shall convey the landfill gas to a control system in compliance with § 60.752(b)(2)(iii) through the collection header pipe(s). The gas mover (i.e., fan, blower, or compressor) system shall be sized to handle the maximum landfill gas flowrate expected over the life of the gas moving equipment. This maximum flowrate shall be projected using the following equation:

$$\text{Peak Flow } [m^3/yr] = 2L_o R (1 - e^{-kt})$$

where,

L_o = refuse methane generation potential, m^3/Mg refuse

R = average annual acceptance rate, Mg/yr

k = methane generative rate constant, 1/yr

t = age of the landfill plus the gas mover equipment life or active life of the landfill, whichever is less, in years

A value of 230 m^3/Mg shall be used for L_o. If Method 2E has been performed, the value of k determined from the test should be used; if not, a value of 0.2 $years^{-1}$ shall be used.

3. Section 60.30 is amended by adding paragraph (c) to read as follows:

§ 60.30 Scope.

* * * * *

(c) Subpart Cc—Municipal Solid Waste Landfills.

4. Part 60 is further amended by adding the following subpart:

Subpart Cc—Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills

Sec.

60.30c Scope.
60.31c Definitions.
60.32c Designated facilities.
60.33c Emission guidelines for MSW landfill emissions.
60.34c Test methods and procedures.
60.35c Reporting and recordkeeping guidelines.

Subpart Cc—Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills

§ 60.30c Scope.

This subpart contains emission guidelines and compliance times for the control of certain designated pollutants from certain designated municipal solid waste (MSW) landfills in accordance with section 111(d) of the Act and subpart B.

§ 60.31c Definitions.

Terms used but not defined in this subpart have the meaning given them in the Act and in Subparts A, B, and WWW of this part.

MSW landfill means an entire disposal facility in a contiguous geographical space where household waste is placed on land, and for which construction or modification is commenced before May 30, 1991. In the event no construction activity has occurred prior to initial placement of waste in the landfill, initial waste placement shall be viewed as *commenced construction.*

§ 60.32c Designated facilities.

(a) The designated facility to which the guidelines apply is each existing MSW landfill for which construction or modification is commenced before May 30, 1991.

(b) Physical or operational changes made to an existing MSW landfill to comply with the emission guideline are not considered a modification or reconstruction and would not bring an existing MSW landfill under the provisions at Subpart WWW [see § 60.750].

§ 60.33c Emission guidelines for MSW landfill emissions.

(a) For approval, a State plan shall include control of MSW landfill emissions at each MSW landfill meeting the following three conditions:

(1) The landfill has accepted waste at any time since November 8, 1987, or has additional capacity available for future waste deposition;

(2) The landfill has a design capacity of 100,000 Mg (111,000 tons) or greater; and

(3) The landfill has a nonmethane organic compound (NMOC) emission rate of 150 megagrams per year (Mg/yr) [167 tons per year (tpy)] or more.

(b) For approval, a State plan shall include the installation of a well-designed gas collection and control system at each MSW landfill meeting the conditions in paragraph (a) of this section. The State plan shall include a process for State review and approval of the site-specific design plans for the gas collection and control system(s).

(c) For approval, a State plan shall include provisions for the control of collected MSW landfill emissions through the use of control devices meeting the provisions of paragraph (c)(1), (2), or (3) of this section, except as provided in § 60.24.

(1) An open flare designed and operated in accordance with the parameters established in 40 CFR 60.18.

(2) A control system designed and operated so as to reduce NMOC by 98 percent; or

(3) An enclosed combustor designed and operated to reduce the outlet NMOC concentration to 20 ppmvd at 3 percent oxygen, or less.

§ 60.34c Test methods and procedures.

For approval, a State plan must include provisions for the calculation of the landfill NMOC emission rate listed in § 60.753, as applicable, to determine whether the landfill meets the condition in § 60.33c(a)(3).

§ 60.35c Reporting and recordkeeping guidelines.

For approval, a State plan shall include the recordkeeping and reporting provisions listed in §§ 60.756 and 60.757, as applicable, except as provided under § 60.24.

§ 60.36c Compliance times.

(a) Except as provided for under paragraph (b) of this section, planning, awarding of contracts, and installation of MSW landfill air emission collection and control equipment capable of meeting the emission guidelines established under § 60.33c can be accomplished within 30 months after the effective date of a State emission standard for MSW landfills.

(b) For each existing MSW landfill meeting the conditions in § 60.33c(a)(1) and § 60.33c(a)(2) whose NMOC emission rate is less than 150 Mg/yr (167 tpy) on the effective date of the State emission standard, installation of collection and control systems capable of meeting emission guidelines in § 60.33c can be accomplished within 30 months of the date when the condition in § 60.33c(a)(3) is met (i.e., the date of the first annual NMOC emission rate which equals or exceeds 150 Mg/yr [167 tpy]).

5. Part 60 is further amended by adding Methods 2E, 3C and 25C to appendix A to read as follows:

Appendix A—Reference Methods

* * * * *

Method 2E—Determination of Landfill Gas Gas Production Flow Rate

1. *Applicability and Principle*

1.1 Applicability. This method applies to the measurement of landfill gas (LFG) production flow rate from municipal solid waste landfills and is used to calculate the flow rate of nonmethane organic compounds (NMOC) from landfills.

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1.2 Principle. Extraction wells are installed either in a cluster of three or at five dispersed locations in the landfill. A blower is used to extract LFG from the landfill. LFG composition, landfill pressures, and orifice pressure differentials from the wells are measured and the landfill gas production flow rate is calculated.

2. *Apparatus*

2.1 Well Drilling Rig. Capable of boring a 0.6–m (24-in.) diameter hole into the landfill to a minimum of 75 percent of the landfill depth. The depth of the well shall not exceed the bottom of the landfill or the liquid level.

2.2 Gravel. No fines. Gravel diameter should be appreciably larger than perforations stated in 2.10 and 3.2.

2.3 Bentonite.

2.4 Backfill Material. Clay, soil, and sandy loam have been found to be acceptable.

2.5 Extraction Well Pipe. Polyvinyl chloride (PVC), high density polyethylene (HDPE), fiberglass ‹tainless steel or other suitable nonporous material capable of transporting landfill gas with a minimum diameter of 3 in.

2.6 Well Assembly. Valve capable of adjusting gas flow, such as a gate, ball or butterfly valve, sampling ports at the well head and outlet and a flow measuring device, such as an in-line orifice meter or pitot tube. A schematic of the well head assembly is shown in Figure 1.

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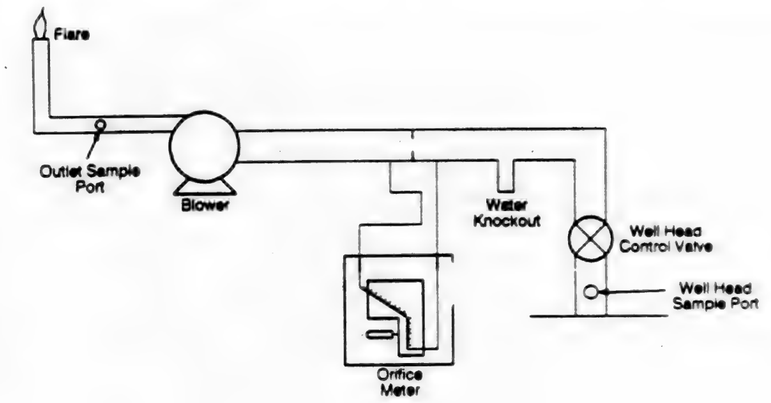

Figure 1. Schematic of above ground assembly.

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2.7 Cap. PVC or HDPE.

2.8 Header Piping. PVC or HDPE.

2.9 Auger. Capable of boring a 0.15- to 0.23-m (6- to 9-in.) diameter hole to a depth equal to the top of the perforated section of the extraction well, for pressure probe installation.

2.10 Pressure Probe. PVC or stainless steel (316), 0.025-m (1-in.). Schedule 40 pipe. Perforate the bottom two thirds. A minimum requirement for perforations is slots or holes with an open area equivalent to four 0.006-m (¼-in.) diameter holes spaced 90° apart every 0.15 m (6 in.).

2.11 Blower and Flare Assembly. Explosion-proof blower, capable of extracting LFG at a flow rate of 8.5 m^3/min (300 ft^3/min), a water knockout, and flare or incinerator.

2.12 Standard Pitot Tube and Differential Pressure Gauge for Flow Rate Calibration with Standard Pitot. Same as Method 2, Sections 2.7 and 2.8.

2.13 Orifice Meter. Orifice plate, pressure tabs, and pressure measuring device to measure the LFG flow rate.

2.14 Barometer. Same as Method 4, Section 2.1.5.

2.15 Differential Pressure Gauge. Water-filled U-tube manometer or equivalent, capable of measuring within 0.02 mm Hg (0.01 in. H_2O), for measuring the pressure of the pressure probes.

3. *Procedure*

3.1 Placement of Extraction Wells. The landfill owner or operator may install a single cluster of three extraction wells in a test area or space five wells over the landfill. The cluster wells are recommended but may be used only if the composition, age of the refuse, and the landfill depth of the test area can be determined. CAUTION: Since this method is complex, only experienced personnel should perform the test. Landfill gas contains methane, therefore explosive mixtures may exist at or near the landfill. It is advisable to take appropriate safety precautions when testing landfills, such as refraining from smoking and installing explosion-proof equipment.

3.1.1 Cluster Wells. Consult landfill site records for the age of the refuse, depth, and composition of various sections of the landfill. Select an area near the perimeter of the landfill with a depth equal to or greater than the average depth of the landfill and with the average age of the refuse between 2 and 10 years old. Avoid areas known to contain nondecomposable materials, such as concrete and asbestos. Locate wells as shown in Figure 2.

3.1.1.1 The age of the refuse in a test area will not be uniform, so calculate a weighted average to determine the average age of the refuse as follows:

$$A_{avg} = \frac{\sum_{i=1}^{n} f_i A_i}{}$$

where,

A_{avg} = Average age of the refuse tested, yr.

f_i = Fraction of the refuse in the i^{th} section.

A_i = Age of the ith fraction, yr.

3.1.2 Equal Volume Wells. Divide the sections of the landfill that are at least 2 years old into five areas representing equal volumes. Locate an extraction well near the center of each area.

3.2 Installation of Extraction Wells. Use a well drilling rig to dig a 0.6-m (24-in.) diameter hole in the landfill to a minimum of 75 percent of the landfill depth, not to exceed the bottom of the landfill or the liquid level. Perforate the bottom two thirds of the extraction well pipe. A minimum requirement for perforations is holes or slots with an open area equivalent to 0.01-m (½-in.) diameter holes spaced 90° apart every 0.1 to 0.2 m (4 to 8 in.). Place the extraction well in the center of the hole and backfill with gravel to a level 0.30 m (1 ft) above the perforated section. Add a layer of backfill material 1.2 m (4 ft) thick. Add a layer of bentonite 0.9 m (3 ft) thick, and backfill the remainder of the hole with cover material or material equal in permeability to the existing cover material. The specifications for extraction well installation are shown in Figure 3.

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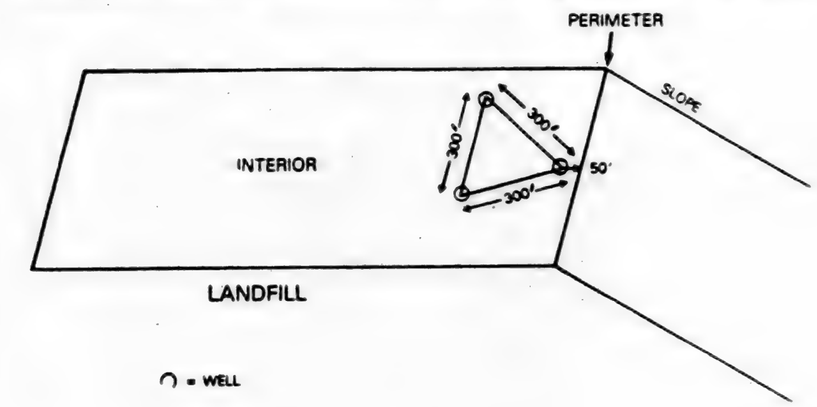

Figure 2. Cluster well placement.

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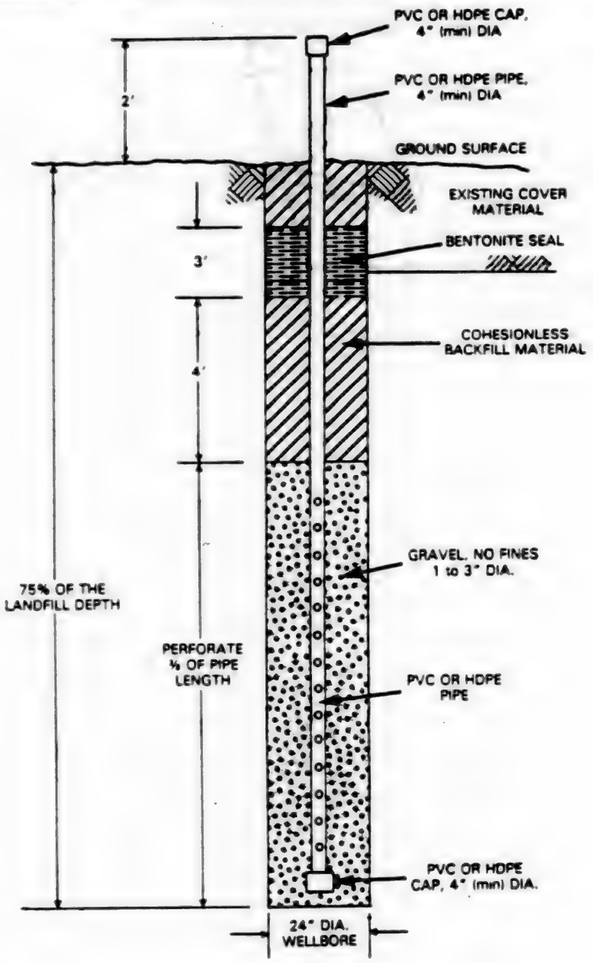

Figure 3. Gas extraction well.

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3.3 Pressure Probes. Locate pressure probes along three radial arms approximately 120° apart at distances of 3, 15, 30, and 45 m (10, 50, 100, and 150 ft) from the extraction well. The tester has the option of locating additional pressure probes at distances every 15 m (50 feet) beyond 45 m (150 ft). Example placements of probes are shown in Figure 4. The 15, 30, and 45 m. (50, 100, and 150 ft) probes from each well, and any additional probes located along the three radial arms (deep probes), shall extend to a depth equal to the top of the perforated section of the extraction wells. All other probes (shallow probes) shall extend to a depth equal to half the depth of the deep probes.

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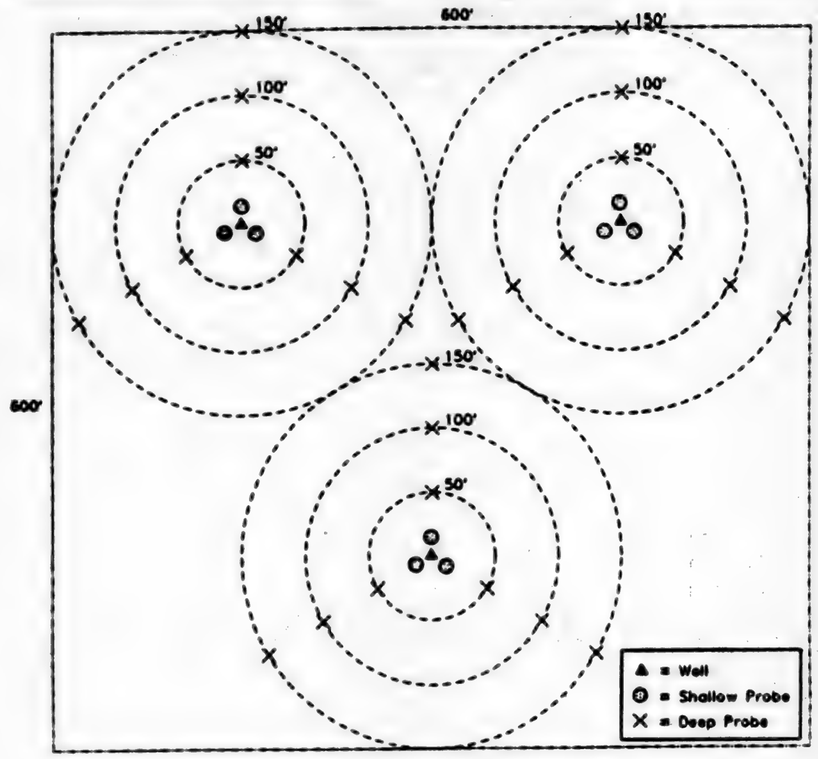

Figure 4. Cluster well configuration

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3.3.1 Use an auger to dig a hole, 0.15- to 0.23-m (6- to 9-in.) in diameter, for each pressure probe. Perforate the bottom two thirds of the pressure probe. A minimum requirement for perforations is holes or slots with an open area equivalent to four 0.006-m (1/4-in.) diameter holes spaced 90° apart every 0.15 m (6 in.). Place the pressure probe in the center of the hole and backfill with gravel to a level 0.30 m (1 ft) above the perforated section. Add a layer of backfill material at least 1.2 m (4 ft) thick. Add a layer of bentonite at least 0.3 m (1 ft) thick, and backfill the remainder of the hole with cover material or material equal in permeability to the existing cover material. The specifications for pressure probe installation are shown in Figure 5.

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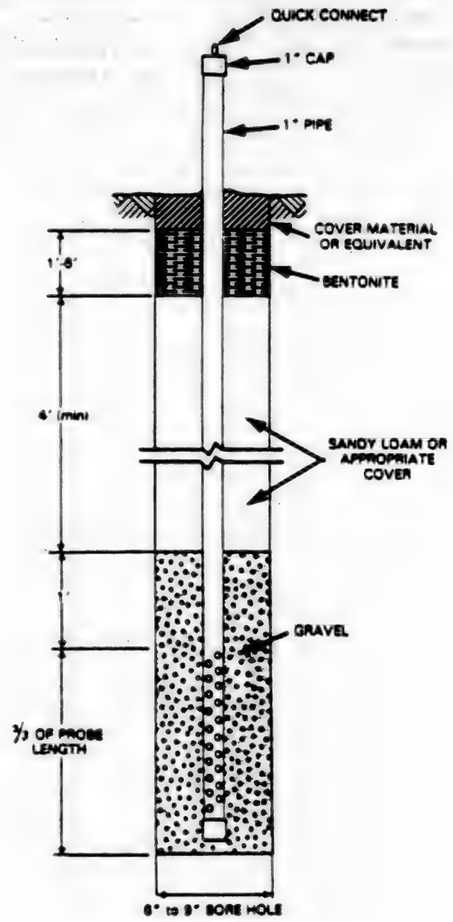

Figure 5. Pressure probe.

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3.4 LFG Flow Rate Measurement. Locate flow measurement device, such as an orifice meter, as shown in Figure 1. Attach the wells to the blower and flare assembly. The individual wells may be ducted to a common header so that a single blower and flare assembly and flow meter may be used. Use the procedures in Section 4.1 to calibrate the flow meter.

3.5 Leak Check. A leak check of the above ground system is required for accurate flow rate measurements and for safety. Sample LFG at the well head sample port and at the outlet sample port. Use Method 3C to determine nitrogen (N_2) concentrations. Determine the difference by using the formula below.

$$\text{Difference} = C_o - C_w$$

where,

C_o = Concentration of N_2 at the outlet, ppmv.

C_w = Concentration of N_2 at the wellhead, ppmv.

The system passes the leak check if the differences is less than 10,000 ppmv.

3.6 Static Testing. Close the control valves on the wells during static testing. Measure the gauge pressure (P_g) at each deep pressure probe and the barometric pressure (P_{bar}) every 8 hrs. for 3 days. Convert the gauge pressure of each deep pressure probe to absolute pressure by using the following equation. Record as P_i.

$$P_i = P_{bar} + P_g$$

3.6.1 For each probe, average all of the 8-hr deep pressure probe readings and record as P_{sa}. P_{sa} is used in Section 3.7.6 to determine the maximum radius of influence.

3.6.2 Measure the static flow rate of each well once during static testing.

3.7 Short Term Testing. The purpose of short term testing is to determine the maximum vacuum that can be applied to the wells without infiltration of air into the landfill. The short term testing is done on one well at a time. Burn all LFG with a flare or incinerator.

3.7.1 Use the blower to extract LFG from a single well at a rate at least twice the static flow rate of the respective well measured in Section 3.6.2. If using a single blower and flare assembly and a common header system, close the control valve on the wells not being measured. Allow 24 hrs. for the system to stabilize at this flow rate.

3.7.2 Test for infiltration of air into the landfill by measuing the gauge pressures of the shallow pressure probes and using Method 3C to determine the LFG N_2 concentration. If the LFG N_2 concentration is less than 1 percent and all of the shallow probes have a positive gauge pressure, increase the blower vacuum by 3.7 mm Hg (2 in. H_2O), wait 24 hr, and repeat the tests for infiltration. Continue the above steps of increasing blower vacuum by 3.7 mm Hg (2 in. H_2O), waiting 24 hr, and testing for infiltration until the concentration of N_2 exceeds 1 percent or any of the shallow probes have a negative gauge pressure, at which time reduce the blower vacuum so that the N_2 concentration is less than 1 percent and the gauge pressures of the shallow probes are positive.

3.7.3 At this blower vacuum, measure P_{bar} every 8 hr for 24 hr and record the LFG flow rate as Q_s and the probe gauge pressures for all of the probes as P_f. Convert the gauge pressures of the deep probes to absolute pressures for each 8 hr reading at Q_s as follows.

$$P = P_{bar} + P_f$$

3.7.4 For each probe, average the 8-hr deep pressure probe readings and record as P_{fa}.

3.7.5 For each probe, compare the initial average pressure (P_{sa}) from Section 3.6.1 to the final average pressure (P_{fa}). Determine the furthermost point from the well head along each radial arm where $P_{fa} \leq P_{sa}$. This distance is the maximum radius of influence, which is the distance from the well affected by the vacuum. Average these values to determine the average maximum radius of influence (R_{max}).

3.7.6 Calculate the depth (D_{st}) affected by the extraction well during the short term test as follows. If the computed value of D_{st} exceeds the depth of the landfill, set D_{st} equal to the landfill depth.

$$D_{st} = WD + R_{max}^2$$

where,

WD = Well depth, m.

3.7.7 Calculate the void volume for the extraction well (V) as follows.

$$V = 0.40\pi R_{max}^2 D_{st}$$

3.7.8 Repeat the procedures in Section 3.7 for each well.

3.8 Calculate the total void volume of the test wells (V_v) by summing the void volumes (V) of each well.

3.9 Long Term Testing. The purpose of long term testing is to extract two void volumes of LFG from the extraction wells. Use the blower to extract LFG from the wells. If a single blower and flare assembly and common header system are used, open all control valves and set the blower vacuum equal to the highest stabilized blower vacuum demonstrated by any individual well in Section 3.7. Every 8 hr, sample the LFG from the well head sample port, measure the gauge pressures of the shallow pressure probes, the blower vacuum, the LFG flow rate, and use the criteria for infiltration in Section 3.7.2 and Method 3C to test for infiltration. If infiltration is detected, do not reduce the blower vacuum, but reduce the LFG flow rate from the well by adjusting the control valve on the well head. Adjust each affected well individually. Continue until the equivalent of two total void volumes (V_v) have been extracted, or until $V_t = 2\,V_v$.

3.9.1 Calculate V_t, the total volume of LFG extracted from the wells, as follows.

$$V_t = \sum_{i=1}^{n} 60\, Q_i\, t_{ti}$$

where,

V_t = Total volume of LFG extracted from wells, m^3.

Q_i = LFG flow rate measured at orifice meter at the i_{th} interval, m^3/min.

t_{ti} = Time of the i_{th} interval (usually 8), hr.

3.9.2 Record the final stabilized flow rate as Q_f. If, during the long term testing, the flow rate does not stabilize, calculate Q_f by averaging the last 10 recorded flow rates.

3.9.3 For each deep probe, convert each gauge pressure to absolute pressure as in Section 3.7.4. Average these values and record as P_{fa}. For each probe, compare P_{fa} to P_{sa}. Determine the furthermost point from the well head along each radial arm where $P_{fa} \leq P_{sa}$. This distance is the stabilized radius of influence. Average these values to determine the average stabilized radius of influence (R_{stab}).

3.10 Determine the NMOC mass emission rate using the procedures in Section 5.

4. *Calibrations*

4.1 Orifice Calibration Procedure. Locate a standard pitot tube in line with an orifice meter. Use the procedures in Section 3 of Method 2 to determine the average dry gas volumetric flow rate for at least five flow rates that bracket the expected LFG flow rates, except in Section 3.1, use a standard pitot tube rather than a Type S pitot tube. Method 3C may be used to determine the dry molecular weight. It may be necessary to calibrate more than one orifice meter in order to bracket the LFG flow rates. Construct a calibration curve by plotting the pressure drops across the orifice meter for each flow rate versus the average dry gas volumetric flow rate in m^3/min of the gas.

5. *Calculations*

5.1 Nomenclature.

A_{avg} = Average age of the refuse tested, yr.

A_i = Age of refuse in the i_{th} fraction, yr.

A = Age of landfill, yr.

A_r = Acceptance rate, Mg/yr.

C_{NMOC} = NMOC concentration, ppmv as hexane ($C_{NMOC} = C_t/6$).

C_t = NMOC concentration, ppmv (carbon equivalent) from Method 25C.

D = Depth affected by the test wells, m.

D_{st} = Depth affected by the test wells in the short term test, m.

f = Fraction of decomposable refuse in the landfill.

f_i = Fraction of the refuse in the i^{th} section.

k = Landfill gas generation constant, yr^{-1}.

L_o = Methane generation potential, m^3/Mg.

L_o' = Revised methane generation potential to account for the amount of nondecomposable material in the landfill, m^3/Mg.

M_i = Mass of refuse of the ith section, Mg.

M_r = Mass of decomposable refuse affected by the test well, Mg.

P_{bar} = Atmospheric pressure, mm Hg.

P_g = Gauge pressure of the deep pressure probes, mm Hg.

P_i = Initial absolute pressure of the deep pressure probes during static testing, mm Hg.

P_{sa} = Average initial absolute pressure of the deep pressure probes during static testing, mm Hg.

P_f = Final absolute pressure of the deep pressure probes during short term testing, mm Hg.

P_{fa} = Average final absolute pressure of the deep pressure probes during short term testing, mm Hg.

P_f = Final absolute pressure of the deep pressure probes during long term testing, mm Hg.

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P_{av} = Average final absolute pressure of the deep pressure probes during long term testing, mm Hg.
Q_f = Final stabilized flow rate, m^3/min.
Q_i = LFG flow rate measured at orifice meter during the ith interval, m^3/min.
Q_x = Maximum LFG flow rate at each well determined by short term test, m^3/min.
Q_t = NMOC mass emission rate, m^3/min.
R_{av} = Maximum radius of influence, m.
R_{max} = Average maximum radius of influence, m.
R_x = Stabilized radius of influence for an individual well, m.
R_{av} = Average stabilized radius of influence, m.
t_i = Age of section i, yr.
t_t = Total time of long term testing, yr.
V = Void volume of test well, m^3.
V_e = Volume of refuse affected by the test well, m^3.
V_t = Total volume of refuse affected by the long term testing, m^3.
V_v = Total void volume affected by test wells, m^3.
WD = Well depth, m.
ρ = refuse density, m^3 (Assume 0.64 Mg/m^3 if data are unavailable).

5.2 Use the following equation to calculate the depth affected by the test well. If using cluster wells, use the average depth of the wells for WD. If the value of D is greater than the depth of the landfill, set D equal to the landfill depth.

$D = WD + R_{av}$

5.3 Use the following equation to calculate the volume of refuse affected by the test well.

$V_t = R_{av} \pi D$

5.4 Use the following equation to calculate the mass affected by the test well.

$M_t = V_t \rho$

5.5 Modify L_o to account for the nondecomposable refuse in the landfill.

$L_o' = f L_o$

5.6 In the following equation, solve for k by iteration. A suggested procedure is to select a value for k, calculate the left side of the equation, and if not equal to zero, select another value for k. Continue this process until the left hand side of the equation equals zero, ±0.001.

$$k_x^{-1} A_{xx} - \left[\frac{Q_t}{2 L_o' M_t} \right] = 0$$

5.7 Use the following equation to determine landfill NMOC mass emission rate if the yearly acceptance rate of refuse has been consistent (±10 percent) over the life of the landfill.

$Q_t = 2 L_o' A_x (1 - e^{-k A}) C_{NMOC} (3.595 \times 10^{-7})$

5.8 Use the following equation to determine landfill NMOC mass emission rate if the acceptance rate has not been consistent over the life of the landfill.

$$Q_t = 2 k L_o' C_{NMOC} (3.595 \times 10^{-7}) \sum_{i=1}^{n} M_i e^{-kt_i}$$

6. *Bibliography*

1. Same as Method 2, Appendix A, 40 CFR part 60.

2. Emcon Associates, Methane Generation and Recovery from Landfills. Ann Arbor Science, 1982.

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4. Mandeville and Associates, Procedure Manual for Landfill Gases Emission Testing.

5. Letter and attachments from Briggum, S., Waste Management of North America, to Thorneloe, S., EPA. Response to July 28, 1988 request for additional information. August 16, 1988.

6. Letter and attachments from Briggum, S., Waste Management of North America, to Wyatt, S., EPA. Response to December 7, 1988 request for additional information. January 16, 1989.

* * * * *

Method 3C—Determination of Carbon Dioxide, Methane, Nitrogen, and Oxygen from Stationary Sources

1. *Applicability and Principle*

1.1 Applicability. This method applies to the analysis of carbon dioxide (CO_2), methane (CH_4), nitrogen (N_2), and oxygen (O_2) in samples from municipal landfills and other sources when specified in an applicable subpart of the regulations.

1.2 Principle. A portion of the sample is injected into a gas chromatograph (GC) and the CO_2, CH_4, N_2, and O_2 concentrations are determined by using a thermal conductivity detector (TCD) and integrator.

2. *Range and Sensitivity*

2.1 Range. The range of this method depends upon the concentration of samples. The analytical range of TCD's is generally between approximately 10 ppmv and the upper percent range.

2.2 Sensitivity. The sensitivity limit for a compound is defined as the minimum detectable concentration of that compound, or the concentration that produces a signal-to-noise ratio of three to one. For CO_2, CH_4, N_2, and O_2, the sensitivity limit is in the low ppm range.

3. *Interferences*

Since the TCD exhibits universal response and detects all gas components except the carrier, interferences may occur. Choosing the appropriate GC or shifting the retention times by changing the column flow rate may help to eliminate resolution interferences.

To assure consistent detector response, helium is used to prepare calibration gases. Frequent exposure to samples or carrier gas containing oxygen may gradually destroy filaments.

4. *Apparatus*

4.1 Gas Chromatograph. GC having at least the following components:

4.1.1 Separation Column. Appropriate column(s) to resolve CO_2, CH_4, N_2, O_2, and other gas components that may be present in the sample. One column that has been advertised to work in this case is column CTR I available from Alltech Associates Inc., 2051 Waukegan Road, Deerfield, Illinois 60015. NOTE: Mention of trade names or specific products does not constitute endorsement or recommendation by the U.S. Environmental Protection Agency.

4.1.2 Sample Loop. Teflon or stainless steel tubing of the appropriate diameter. Note: Mention of trade names or specific products does not constitute endorsement or recommendation by the U.S. Environmental Protection Agency.

4.1.3 Conditioning System. To maintain the column and sample loop at constant temperature.

4.1.4 Thermal Conductivity Detector.

4.2 Recorder. Recorder with linear strip chart. Electronic integrator (optional) is recommended.

4.3 Teflon Tubing. Diameter and length determined by connection requirements of cylinder regulators and the GC.

4.4 Regulators. To control gas cylinder pressures and flow rates.

4.5 Adsorption Tubes. Applicable traps to remove any O_2 from the carrier gas.

5. *Reagents*

5.1 Calibration and Linearity Gases. Standard cylinder gas mixtures for each compound of interest with at least three concentration levels spanning the range of suspected sample concentrations. The calibration gases shall be prepared in helium.

5.2 Carrier Gas. Helium, high-purity.

6. *Analysis*

6.1 Sample Collection. Use the sample collection procedures described in Methods 3 or 25C to collect a sample of landfill gas (LFG).

6.2 Preparation of GC. Before putting the GC analyzer into routine operation, optimize the operational conditions according to the manufacturer's specifications to provide good resolution and minimum analysis time. Establish the appropriate carrier gas flow and set the detector sample and reference cell flow rates at exactly the same levels. Adjust the column and detector temperatures to the recommended levels. Allow sufficient time for temperature stabilization. This may typically require 1 hour for each change in temperature.

6.3 Analyzer Linearity Check and Calibration. Perform this test before sample analysis. Using the gas mixtures in Section 5.1, verify the detector linearity over the range of suspected sample concentrations with at least three points per compound of interest. This initial check may also serve as the initial instrument calibration. All subsequent calibrations may be performed using a single-point standard gas provided the calibration point is within 20 percent of the sample component concentration. For each instrument calibration, record the carrier and detector flow rates, detector filament and block temperatures, attenuation factor, injection time, chart speed, sample loop volume, and component concentrations. Plot a linear regression of the standard concentrations versus area values to obtain the response factor of each compound. Alternatively, response factors of uncorrected component concentrations (wet basis) may be generated using instrumental integration. NOTE: Peak height may be used instead of peak area throughout this method.

6.4 Sample Analysis. Purge the sample loop with sample, and allow to come to atmospheric pressure before each injection. Analyze each sample in duplicate, and calculate the average sample area (A). The results are acceptable when the peak areas for two consecutive injections agree within five percent of their average. If they do not agree, run additional samples until consistent area data are obtained. Determine the tank sample concentrations according to Section 7.2.

7. *Calculations*

Carry out calculations retaining at least one extra decimal figure beyond that of the acquired data. Round off results only after the final calculation.

7.1 Nomenclature.

A = Average sample area.
B_w = Moisture content in the sample, fraction.
C = Component concentration in the sample, dry basis, ppmv.
C_t = Calculated NMOC concentration, ppmv C equivalent.
C_{tm} = Measured NMOC concentration, ppmv C equivalent.
P_{bar} = Barometric pressure, mm Hg.
P_{if} = Gas sample tank pressure after evacuation, mm Hg absolute.
P_i = Gas sample tank pressure after sampling, but before pressurizing, mm Hg absolute.
P_{tf} = Final gas sample tank pressure after pressurizing, mm HG absolute.
P_w = Vapor pressure of H_2O (from Table 3C–1), mm Hg.
T_{if} = Sample tank temperature before sampling, °K.
T_i = Sample tank temperature at completion of sampling, °K.
T_{tf} = Sample tank temperature after pressurizing, °K.
r = Total number of analyzer injections of sample tank during analysis (where j = injection number, 1 * * * r).
R = Mean calibration response factor for specific sample component, area/ppmv.

7.2 Concentration of Sample Components. Calculate C for each compound using Equations 3C–1 and 3C–2. Use the temperature and barometric pressure at the sampling site to calculate B_w. If the sample was diluted with helium using the procedures in Method 25C, use Equation 3C–3 to calculate the concentration.

$$B_w = \frac{P_w}{P_{bar}} \quad 3C\text{–}1$$

$$C = \frac{A}{R(1 - B_w)} \quad 3C\text{–}2$$

$$C = \left[\frac{\frac{P_{tf}}{T_{tf}}}{\frac{P_t}{T_t} - \frac{P_{ti}}{T_{ti}}} \right] \frac{A}{R(1 - B_w)}$$

3C-3

8. *Bibliography*

1. McNair, H.M., and E.J. Bonnelli. Basic Gas Chromatography. Consolidated Printers. Berkeley, CA. 1969.

TABLE 3C–1.—MOISTURE CORRECTION

Temperature, °C	Vapor pressure of H_2O, mm Hg
4	6.1
6	7.0
8	8.0
10	9.2
12	10.5
14	12.0
16	13.6
18	15.5
20	17.5
22	19.8
24	22.4
26	25.2
28	28.3
30	31.8

* * * * *

Method 25C—Determination of Nonmethane Organic Compounds (NMOC) in Landfill Gases

1. *Applicability and Principle*

1.1 Applicability. This method is applicable to the sampling and measurement of nonmethane organic compounds (NMOC) as carbon in landfill gases.

1.2 Principle. A sample probe that has been perforated at one end is driven or augered to a depth of 0.9 m [3 feet (ft)] below the bottom of the landfill cover. A sample of the landfill gas is extracted with an evacuated cylinder. The NMOC content of the gas is determined by injecting a portion of the gas into a gas chromatographic column to separate the NMOC from carbon monoxide (CO), carbon dioxide (CO_2), and methane (CH_4); the NMOC are oxidized to CO_2, reduced to CH_4, and measured by a flame ionization detector (FID). In this manner, the variable response of the FID associated with different types of organics is eliminated.

2. *Apparatus*

2.1 Sample Probe. Stainless steel, with the bottom third perforated. The sample probe shall be capped at the bottom and shall have a threaded cap with a sampling attachment at the top. The sample probe shall be long enough to go through and extend no less than 0.9 m (3 ft) below the landfill cover. If the sample probe is to be driven into the landfill, the bottom cap should be designed to facilitate driving the probe into the landfill.

2.2 Sampling Train.

2.2.1 Rotameter with Flow Control Valve. Capable of measuring a sample flowrate of 100±10 ml/min. The control valve shall be made of stainless steel.

2.2.2 Sampling Valve. Stainless steel.

2.2.3 Pressure Gauge. U-tube mercury manometer, or equivalent, capable of measuring pressure to within 1 mm Hg in the range of 0 to 1,100 mm Hg.

2.2.4 Sample Tank. Stainless steel or aluminum cylinder, with a minimum volume of 4 liters and equipped with a stainless steel sample tank valve.

2.3 Vacuum Pump. Capable of evacuating to an absolute pressure of 10 mm Hg.

2.4 Purging Pump. Portable, explosion proof, and suitable for sampling NMOC.

2.5 Pilot Probe Procedure. The following are needed only if the tester chooses to use the procedure described in Section 4.2.1.

2.5.1 Pilot Probe. Tubing of sufficient strength to withstand being driven into the landfill by a post driver and an outside diameter of at least 0.006 m (0.25 in.) smaller than the sample probe. The pilot probe shall be capped on both ends and long enough to go through the landfill cover and extend no less than 0.9 m (3 ft) into the landfill.

2.5.2 Post Driver and Compressor. Capable of driving the pilot probe and the sampling probe into the landfill. The Kitty Hawk portable post driver has been found to be acceptable. NOTE: Mention of trade names or specific products does not constitute endorsement by the Environmental Protection Agency.

2.6 Auger Procedure. The following are needed only if the tester chooses to use the procedure described in Section 4.2.2.

2.6.1 Auger. Capable of drilling through the landfill cover and to a depth of no less than 0.9 m (3 ft) into the landfill.

2.6.2 Pea Gravel.

2.6.3 Bentonite.

2.7 NMOC Analyzer, Barometer, Thermometer, and Syringes. Same as in Sections 2.3, 2.4.1, 2.4.2, 2.4.4, respectively, of Method 25.

3. *Reagents*

3.1 NMOC Analysis. Same as in Method 25, Section 3.2.

3.2 Calibration. Same as in Method 25, Section 3.4, except omit Section 3.4.3.

4. *Procedure*

4.1 Sample Tank Evacuation and Leak Check. Conduct the sample tank evacuation and leak check either in the laboratory or the field. Connect the pressure gauge and sampling valve to the sample tank. Evacuate the sample tank to 10 mm Hg absolute pressure or less. Close the sampling valve, and allow the tank to sit for 60 minutes. The tank is acceptable if no change is noted. Include the results of the leak check in the test report.

4.2 Sample Probe Installation. The tester may use the procedure in Sections 4.2.1 or

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4.2.2 CAUTION: Since this method is complex, only experienced personnel should perform this test. LFG contains methane, therefore explosive mixtures may exist on or near the landfill. It is advisable to take appropriate safety precautions when testing landfills, such as refraining from smoking and installing explosion-proof equipment.

4.2.1 Pilot Probe Procedure. Use the post driver to drive the pilot probe at least 0.9 m (3 ft) below the landfill cover. Alternative procedures to drive the probe into the landfill may be used subject to the approval of the Administrator.

4.2.1.1 Remove the pilot probe and drive the sample probe into the hole left by the pilot probe. The sample probe shall extend at least 0.9 m (3 ft below) the landfill cover and shall protrude about 0.3 m (1 ft) above the landfill cover. Seal around the sampling probe with bentonite and cap the sampling probe with the sampling probe cap.

4.2.2 Auger Procedure. Use an auger to drill a hole through the landfill cover and to at least 0.9 m (3 ft) below the landfill cover. Place the sample probe in the hole and backfill with pea gravel to a level 0.6 m (2 ft) from the surface. The sample probe shall protrude at least 0.3 m (1 ft) above the landfill cover. Seal the remaining area around the probe with bentonite. Allow 24 hours for the landfill gases to equilibrate inside the augered probe before sampling.

4.3 Sample Train Assembly. Just before assembly, measure the tank vacuum using the pressure gauge. Record the vaccum, the ambient temperature, and the barometric pressure at this time. Assemble the sampling probe purging system as shown in Figure 1.

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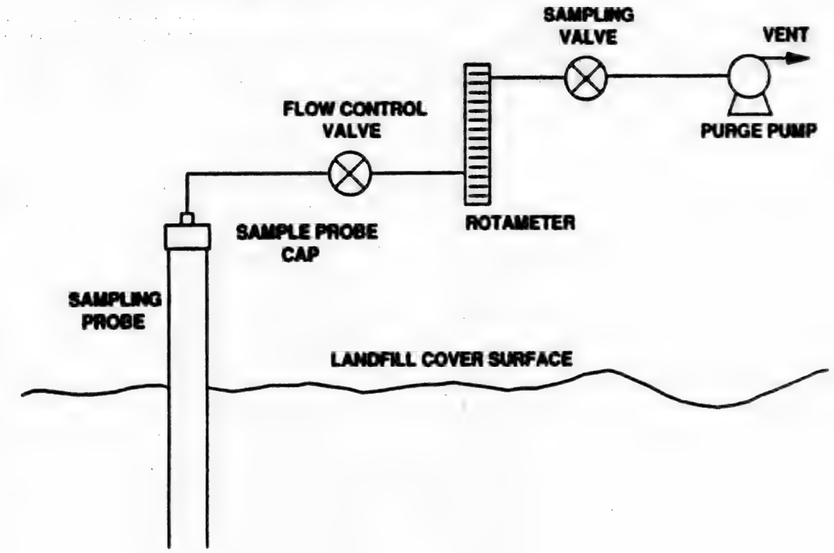

Figure 1. Schematic of sampling probe purging system.

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4.4 Sampling Procedure. Open the sampling valve and use the purge pump and the flow control valve to evacuate at least two sample probe volumes from the system at a flow rate of 100±10 ml/min (6.1+0.6 in^3/min). Close the sampling valve and replace the purge pump with the sample tank apparatus as shown in Figure 2. Open the sampling valve and the sample tank valves and, using the flow control valve, sample at a flow rate of 100±10ml/min (6.1+0.6 in^3/min) until the sample tank gauge pressure is zero. Disconnect the sampling tank apparatus and use the carrier gas bypass valve to pressurize the sample cylinder to approximately 1,080 mm Hg (567 in.H_2O) absolute pressure with helium and record the final pressure. Alternatively, the sample tank may be pressurized in the lab. If not analyzing for N_2, the sample cylinder may be pressurized with zero air.

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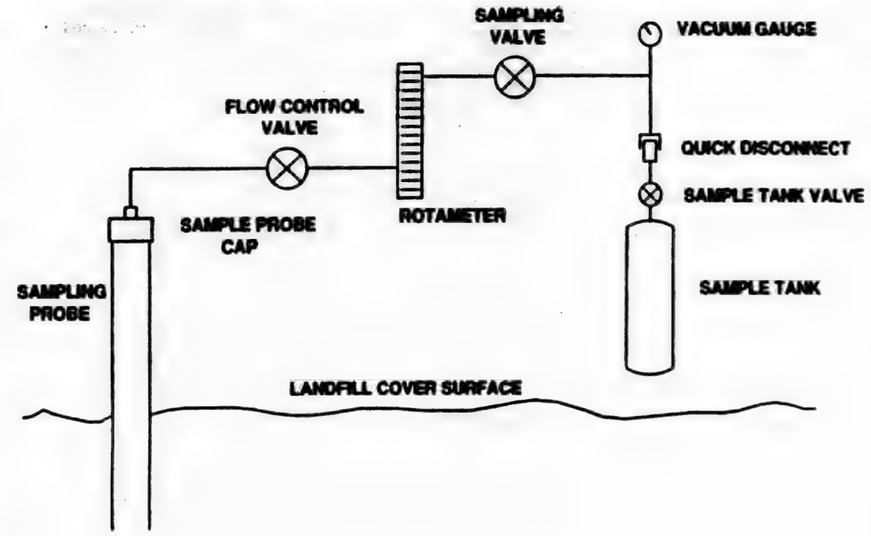

Figure 2. Schematic of sampling train.

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4.4.1 Use Method 3C to determine the percent N_2 in the sample. Presence of N_2 indicates infiltration of ambient air into the gas sample. The lanfill sample is acceptable if the concentration of N_2 is less than one percent.

4.5 Analysis. The oxidation, reduction, and measurement of NMOC's is similar to Method 25. Before putting the NMOC analyzer into routine operation, conduct an initial performance test. Start the analyzer, and perform all the necessary functions in order to put the analyzer into proper working order. Conduct the performance test according to the procedures established in Section 5.1. Once the performance test has been successfully completed and the NMOC calibration response factor has been determined, proceed with sample analysis as follows:

4.5.1 Daily Operations and Calibration Checks. Before and immediately after the analysis of each set of samples or on a daily basis (whichever occurs first), conduct a calibration test according to the procedures established in Section 5.2. If the criteria of the daily calibration test cannot be met, repeat the NMOC analyzer performance test (Section 5.1) before proceeding.

4.5.2 Operating Conditions. Same as in Method 25, Section 4.4.2.

4.5.3 Analysis of Sample Tank. Purge the sample loop with sample, and then inject the sample. Under the specified operating conditions, the CO_2 in the sample will elute in approximately 100 seconds. As soon as the detector response returns to baseline following the CO_2 peak, switch the carrier gas flow to backflush, and raise the column oven temperature to 195°C as rapidly as possible. A rate of 30°C/min has been shown to be adequate. Record the value obtained for any measured NMOC. Return the column oven temperature to 85°C in preparation for the next analysis. Analyze each sample in triplicate, and report the average as C_{tm}.

4.6 Audit Samples. Same as in Method 25, Section 4.5.

5. *Calibration and Operational Checks*

Maintain a record of performance of each item.

5.1 Initial NMOC Analyzer Performance Test. Same as in Method 25, Section 5.2, except omit the linearity checks for CO_2 standards.

5.2 NMOC Analyzer Daily Calibration.

5.2.1 NMOC Response Factors. Same as in Method 25, Section 5.3.2.

5.3 Sample Tank Volume. The volume of the gas sampling tanks must be determined. Determine the tank volumes by weighing them empty and then filled with deionized water; weigh to the nearest 5 g, and record the results. Alternatively, measure, to the nearest 5 ml, the volume of water used to fill them.

6 *Calculations*

All equations are written using absolute pressure; absolute pressures are determined by adding the measured barometric pressure to the measured gauge of manometer pressure.

6.1 Nomenclature.

B_w = Moisture content in the sample, fraction.
C_t = Calculated NMOC concentration, ppmv C equivalent.
C_{tm} = Measured NMOC concentration, ppmv C equivalent.
P_b = Barometric pressure, mm Hg.
P_{ti} = Gas sample tank pressure after evacuation, mm Hg absolute.
P_t = Gas sample tank pressure after sampling, but before pressurizing, mm Hg absolute.
P_{tf} = Final gas sample tank pressure after pressurizing, mm Hg absolute.
P_w = Vapor pressure of H_2O (from Table 25C–1), mm Hg.
T_{ti} = Sample tank temperature before sampling, °K.
T_t = Sample tank temperature at completion of sampling, °K.
T_{tf} = Sample tank temperature after pressurizing, °K
r = Total number of analyzer injections of sample tank during analysis (where j = injection number, 1 • • • r).

TABLE 25C–1.—MOISTURE CORRECTION

Temperature, °C	Vapor pressure of H_2O, mm Hg
4	6.1
6	7.0
8	8.0
10	9.2
12	10.5
14	12.0
16	13.6
18	15.5
20	17.5
22	19.8

TABLE 25C–1.—MOISTURE CORRECTION—Continued

Temperature, °C	Vapor pressure of H_2O, mm Hg
24	22.4
26	25.2
28	28.3
30	31.8

6.2 Water Correction. Use Table 25C–1, the LFG temperature, and barometric pressure at the sampling site to calculate B_w.

$$B_w = \frac{P_w}{P_b}$$

6.3 NMOC Concentration. Use the following equation to calculate the concentration of NMOC for each sample tank.

$$C_t = \left[\frac{\frac{P_{tf}}{T_{tf}}}{\frac{P_t}{T_t} - \frac{P_{ti}}{T_{ti}}}\right]\left[\frac{1}{(1-B_w)\,r}\sum_{j=1}^{r} C_{tm(j)}\right]$$

7. *Bibliography*

1. Salo, Albert E., Samuel Witz, and Robert D. MacPhee. Determination of Solvent Vapor Concentrations by Total Combustion Analysis: A Comparison of Infrared with Flame Ionization Detectors. Paper No. 75–33.2. (Presented at the 68th Annual Meeting of the Air Pollution Control Association. Boston, Massachusetts. June 15–20, 1975.) 14 p.

2. Salo, Albert E., William L. Oaks, and Robert D. MacPhee. Measuring the Organic Carbon Content of Source Emissions for Air Pollution Control. Paper No. 74–190. (Presented at the 67th Annual Meeting of the Air Pollution Control Association. Denver, Colorado. June 9–13, 1974.) 25 p.

[FR Doc. 91–12290 Filed 5–29–91; 8:45 am]
BILLING CODE 6560–50–M

federal register

Thursday
May 30, 1991

Part IV

Department of Housing and Urban Development

Office of Housing

Submission of Proposed Information Collection to the Office of Management and Budget; Notices

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Housing

[Docket No. N-91-3271]

Submission of Proposed Information Collection to the Office of Management and Budget

AGENCY: Office of Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) as required by the Paperwork Reduction Act.

ADDRESS: Interested persons may submit comments regarding the paperwork request by referring to the proposal by name and sending them to: Wendy Sherwin Swire, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed application and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). It also is requested that OMB complete its review within twenty one (21) days.

This Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new, an extension, or reinstatement; and (9) the telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 21, 1991.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

Proposal: Collecting Information from Applicants for section 811 Housing Projects for Persons with Disabilities.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: This information will enable HUD to determine whether applicants are eligible, able and capable of sponsoring housing projects for persons with disabilities.

Form Number: New request.

Respondents: Nonprofit organizations applying for Fund Reservations under the Notice of Fund Availability for section 811 Housing for Persons with Disabilities.

Frequency of Submission: One time.

Reporting burden:

	Number of respondents	×	Frequency of response	×	Hrs. per response	=	Burden hours
811 Application	350		1		50.7		15,725

Status: New request.

Contact: Sharon Mizell, HUD (202) 708-2866, Wendy Sherwin, OMB (202) 395-6880.

Date: May 21, 1991.

SECTION 811—APPLICATION SUBMISSION REQUIREMENTS

A. Supporting Statement

Background

Section 202 of the Housing Act of 1959 which provided direct loans for the development of housing for the elderly or handicapped was amended by section 162 of the Housing and Community Development Act of 1987 as it applied to housing for handicapped people. The section 202 program of housing for handicapped people is now replaced by the section 811 program of Supportive Housing for Persons with Disabilities, authorized by the National Affordable Housing Act (NAHA) of 1990. The section 811 program provides capital advances to private nonprofit organizations to expand the supply of supportive housing for persons with disabilities. The section 202 program of housing for the elderly was amended by section 801 of the NAHA and provides capital advances to expand the supply of supportive housing for the elderly. Although section 162 resulted in a separate application package for applicants pursuing the development of housing for handicapped people under the section 202 program, the information collection requirements approved by OMB (OMB clearance 2502-0267) were included in one submission for both segments (elderly and handicapped) of the section 202 program.

Now that section 811 is a separate and distinct program for housing for persons with disabilities, the Department is submitting a separate request for approval of the information collection requirements as they pertain solely to the section 811 program. Since the section 811 program closely resembles the section 202 program for handicapped people, as amended by section 162, in terms of the application submission requirements, the annual burden for the section 811 program will be compared with that portion of the annual burden approved by OMB applicable to the section 202 program (as amended by section 162). The Department is also requesting a separate OMB clearance number for the section 811 program from that approved for the section 202 program.

1. Need for Information

In order to ensure that only eligible private nonprofit organizations are selected, it is important to obtain information from prospective applicants to assist HUD in determining if they have the financial and administrative capacity to develop such a project, whether the proposed population is eligible, and whether the project design and supportive services plan meets the needs of the residents.

These factors are critical in meeting statutory requirements and in protecting the Department's financial interest in projects funded under this program.

Based on our previous years' experience, the Department receives far more applications than available resources can fund. In Fiscal Year (FY) 1990, the Department received 296 applications requesting some 4,418 units of housing and selected 173 applications for some 2,193 units of housing. Because the program has been changed from a loan to a capital advance program, it is anticipated that the number of applications received will exceed those received in FY 1990. In view of the highly competitive nature of the Section 811 program, it is necessary to have the responses comply with prescribed application requirements in order to form a basis for HUD's evaluation in selecting applications.

The application submission requirements, summarized below, were developed to minimize the front-end expenditure of financial resources by the nonprofit applicants. This is important because only a small percentage of the universe of applications received ultimately are funded.

Contents of Application Requirements: The Application for a section 811 Fund Reservation consists of seven parts with a total of 30 Exhibits. Included with the 30 Exhibits are nine prescribed forms. Six of the nine forms are required, the balance of the forms are either instructions or guide formats for assisting applicants in responding to the Exhibits. The seven components of the application submission requirements are:

Part 1—General
Part 2—Evidence of Ability to Develop and Operate the Housing on a Long-term Basis
Part 3—Financial Capacity and Ability to Develop a Project
Part 4—Need for Supportive Housing in the Area to be Served
Part 5—Preliminary Project Site and Design Information
Part 6—Provision of Supportive Services
Part 7—Certifications and Special Submission Requirements

All of the required application exhibits are specifically identified in § 890.265 of the regulations.

2. The section 811 application submission requirements are necessary to assist HUD in determining an applicant's eligibility and capacity to develop housing for persons with disabilities consistent with prescribed statutory and program criteria. A thorough evaluation of an applicant's qualifications and capabilities is critical in protecting the Federal government's financial interest and to mitigate any possibility of fraud, waste or mismanagement of public funds.

The procedures for information collection require the prospective applicant to submit its section 811 application to the appropriate HUD Field Office by the nationally established deadline date (usually between April and June). HUD Field/Regional Offices evaluate applications based on established criteria (identified in § 890.300 of the regulations), rate the applications and make selection recommendations to Headquarters (usually by the first week of September). Applicants are notified of selection or nonselection by September 30.

The purpose and use of the seven components of the application exhibits are briefly described below:

(a) Part 1—General

Exhibit 1: This Exhibit requires applicants to submit Pages 1 and 3 of the Form HUD-92013, Application for Multifamily Housing Project. The OMB control number for this form is 2502-0029. This Form collects basic information with regard to the proposed project's characteristics. The Form HUD-92013 has been modified to collect two items that are necessary for program operation, but not presently required by the Form. The items are: Metro/nonmetro classification and minority classification. The Form will not be changed, however, the instruction will indicate the following:

(1) Section B—Purpose of Application: Block 3 will be checked as well as the block for Mortgage Insurance. However, the applicant must mark through Mortgage Insurance and write in Section 811 Capital Advance Program. In addition to identifying the capital advance amount under Mortgage/Loan Amount, applicants must identify if funds are to be used in a metro or nonmetro area.

(2) Section K—Names, Addresses and Telephone Numbers: Completed by all Applicants. Information on the Sponsor should be provided in Item 1. Item 2 is reserved for the Owner when it is formed.

In addition, the Sponsor must identify if it is a minority or nonminority organization. A minority organization is one in which more than 50 percent of the board members are minority (i.e., Black, Hispanic, Native American, Asian Pacific, Asian Indian, or Hasidic Jewish).

If members of the development team (i.e., attorney, architect, contractor) are identified, complete where applicable.

The minority classification is necessary to evaluate program effectiveness in meeting the Department's Minority Business Entrepreneurship (MBE) goals and the President's goals expressed in Executive Order 12432.

Exhibit 2: Information requested on Form HUD 92531A-EH, resume of the Housing Consultant and Identity of Interest and Disclosure Certificate are to be submitted if a Consultant is to be involved in the project. The Form provides a suggested format for the Housing Consultant's contract.

Exhibit 3: This Exhibit requests a narrative description of the Sponsor's legal status as a nonprofit entity and includes submission of organizational documents, IRS tax exemption ruling, certified list of all officers and Directors, and a Resolution concerning Conflict of Interest to assure that no officer or director has a financial interest in the project.

Exhibit 4: This Exhibit requests evidence of the Sponsor's legal authority to sponsor the project, to form an Owner after issuance of a fund reservation and to provide sufficient resources to ensure development and long-term operation of the project.

(b) Part 2—Evidence of Ability To Develop and Operate the Housing on a Long-term Basis

Exhibits 5 through 11: These Exhibits request narrative descriptions of the Sponsor's experience in HUD programs by having the Sponsor file a Form-2530, Previous Participation Certificate (OMB number is 2502-0118). As part of this section, the applicant is also required to complete narrative responses in the Exhibits concerning information which will assist HUD in determining the applicant's over-all experience and capacity to carry through with the proposed development over an extended period of time.

In addition, in order to determine the nonprofit organization's ties to the community, including the disabled minority community, in which the proposed project is to be built, the applicant is required to submit a statement evidencing its local community base.

Information regarding any financial defaults or legal action pending against the Sponsor, as well as a certified Board resolution, acknowledging responsibility and pledging support for the project, also is required.

(c) Part 3—Financial Capacity and Ability to Develop a Project

Exhibits 12-14: Information submitted in response to these Exhibits is necessary for an accurate assessment of the Sponsor's financial condition and ability to meet the financial requirements of the program. Under the Section 811 Capital Advance Program, Sponsors are required to provide a Minimum Capital Investment of 0.5 percent of one percent of the approved capital advance amount, not to exceed

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$10,000 (required under § 890.250). To this end, a narrative financial history on the Sponsor, as well as copies of financial statements for each of the past three years the Sponsor has been in operation, must be submitted. The Sponsor must also submit a certified Board Resolution indicating its willingness to provide any funds necessary to ensure development of the project.

Finally, if the applicant is applying for funds under HUD's Section 106(b) seed money loan program, the Form HUD–92290 (OMB number 2502–0187) must be submitted.

(d) Part 4—Need for Supportive Housing in the Area To Be Served

Exhibit 15: This Exhibit requests information pertaining to the need for the housing and whether there is a market for the housing in the area to be served.

(e) Part 5—Preliminary Project Site and Design Information

Exhibits 16 and 17: These Exhibits request information necessary to assure that the proposed site is acceptable for the intended use and that the Sponsor has control of the site or has identified the site for which it feels confident it can gain control of within six months of fund reservation notification. This information also indicates whether the Sponaor can obtain proper zoning and whether relocation will be required.

(f) Exhibit 18

This Exhibit requires the Sponsor to describe the proposed housing in terms of the development method, the number and type of projects, number of units and number of residents and whether there will be any residential staff. The Sponsor must also provide a list of all amenities (e.g., air conditioning, carpets, etc.), special spaces (e.g., libraries, game rooms, etc.) and community spaces proposed for the project. If the Sponsor proposes a group home of more than 8 residents, it must submit justification for the increased number of people. This information is evaluated to determine if a project of the size proposed is compatible with and can be integrated into the surrounding neighborhood, is marketable and the increased number of people is necessary for the economic feasibility of the project.

(g) Exhibit 19

This Exhibit requires the Sponsor to submit a schematic drawing of each floor of the project noting the location of special design features and community space, as well as a typical bedroom in a group home and a typical unit in an independent living facility. This information is evaluated to determine if the project is designed to meet the needs of the population to be served.

(h) Part 6—Provision of Supportive Services

Exhibit 20: This Exhibit requires the Sponsor to submit: a narrative description of the disability of the persons to be housed, the need of the proposed occupants, the supportive services to be provided (Form HUD–92013E, Supplemental Application Processing Form, OMB number 2502–0232), how the services will be provided, who will provide them and how they will be funded. The Sponsor must provide evidence of a commitment of funds for the provision of the services. This information is evaluated to determine: whether the Sponsor is proposing to serve an eligible population, whether the Sponsor accurately assessed the needs of the proposed residents; if the plan for the provision of services (staffing and funding) is sufficient; and, if the services will meet the identified needs of the residents.

(i) Part 7—Certifications and Special Submission Requirements

Exhibits 21 through 29: These Exhibits require the Sponsor to submit certifications required by Governmental actions, such as Executive Orders, etc.

Exhibit 30: This Exhibit requires Sponsors proposing group homes to be licensed as intermediate care facilities to provide information regarding the type of services to be provided, their frequency and location; the medical training of staff; a description of any special design features that would not be common to other Section 811 group homes; a statement certifying that residents will participate in an out-of-the-home activity for at least six hours each weekday; and written evidence from the State Medicaid Office that it recognizes the need for a tenant contribution and has agreed to include such in the Medicaid payment to the Sponsor. This information is used to ensure that the ICF will provide primarily housing rather than be a medical facility and that the State Medicaid Agency has agreed to include the tenant contribution in the Medicaid payment to the Sponsor.

In the absence of collecting the above information, the Department would not be able to assess the worthiness of the applications or make sound judgements regarding the potential risk to the Government.

3. Each fiscal year (near the beginning of the funding cycle), HUD issues a Notice pertaining to application submission requirements. Because the Program has changed from prior years, parts of the Application Package had to be revised. In revising the Package, consideration was given to modifying it to require the minimum of information needed by HUD to conduct the program in accordance with the NAHA, statutory and regulatory requirements, and to establish a selection system which is equitable to all participants. The information described under Item 2 above represents the minimum information acceptable to HUD.

4. No duplication exists, as there are no other forms or exhibits used for the purposes specified under Item 2 herein. Also, as mentioned in Item 3 above, HUD reviewed and modified the application submission requirements to assure that only necessary information is being requested of Sponsors.

5. Not applicable. Individual applications are evaluated and rated by HUD on the merits of the responses submitted with the application. Each application is unique. The information contained in each application relates to a particular Sponsor proposing a specific project, design, unit composition, site, etc., and, as such, the information collected from Sponsors will be significantly different per application.

6. Due to the highly competitive nature of the Section 811 program, the application submission requirements were developed in a way to minimize the front-end cost to the nonprofit Sponsor and only require the minimum amount of information needed in HUD's evaluation. This is important due to the fact that only a small percentage of the universe of applications received ultimately get selected. For example, formation of the Owner corporation is no longer required at the Fund Reservation stage, but only for those projects that are funded. Also, the Form HUD–92013 is not required to be completed in its entirety. This Form is the standard form to make an application for a multifamily housing project. If the Sponsor were required to complete the Form in its entirety, a contractor and other development team participants would have to be obtained. Additionally, HUD recognizes that some Sponsors, who are sincerely interested in providing housing, may lack the staff and other facilities to develop such a project. Therefore, in recognition of the need for these Sponsors to use the services of professional housing consultants, HUD permits a reasonable fee for consultant's services to be included in the Section 811 capital advance. The consultant may assist the Sponsor in preparation of the Application Package to request a Section 811 Capital Advance and throughout the final development of the project should the Sponsor be selected for funding.

7. Currently, the information collection activities occur annually to coincide with the receipt of annual fiscal year appropriations for the program. Each year, Congress appropriates funds with which to select new applications. HUD, in turn, invites applications and makes selections based on the funds available for the year. These funds are normally exhausted at the end of each fiscal year. The section 811 regulations require HUD to publish a Notice of Fund Availability (NOFA) in the **Federal Register** when such funds are made available by Congress. The regulations also require HUD to publish Invitations for Applications which specify, among other things, a deadline date for receipt of applications. In order for HUD to accept an application, the application must have been submitted in response to a specific Invitation requesting such an application and by the closing date stated in the Invitation. As the funding cycle for the program occurs annually, including the Invitations for Applications, it is not possible to require the submission of this information less frequently.

8. Part 5 CFR 1320.8 lists 10 items that OMB will not approve for information collection, unless it can be demonstrated that the collection of information is necessary to satisfy statutory requirements or other substantial need.

This request for information is consistent with the guidelines under 5 CFR 1320.6 with the exception of one item. Subparagraph (c) of the above CFR indicates OMB's disapproval of requiring respondents to submit more than an original and two copies of any document. With respect to the Section 811 program, HUD requires Sponsors to submit an original and six copies of the Application. As the program is administered on an annual basis, processing of the application must be accomplished in an expeditious manner in order that decisions regarding selections of applications and reservations of funds can be made prior to the end of the fiscal year (September 30).

During the course of processing the applications, nine HUD technical disciplines are involved in the review process: Staff from Mortgage Credit, Valuation, Architectural and Engineering, Housing Management, Fair Housing and Equal Opportunity, Economic and Market Analysis, Community Planning and Development, the Multifamily Housing Representative and the Field Office Counsel. These HUD staff members are required to comment on the approvability of each application received.

Because of the (1) various HUD staff involved in the review process, (2) tremendous volume of applications received each fiscal year, and (3) the need to obligate funds by the fiscal year-end, HUD requires concurrent reviews of the applications by the aforementioned HUD staff to assure prompt processing with minimum interruption. For example, additional information or clarification is often needed from Sponsors to permit HUD to make a fair and complete review. The requirement for simultaneous reviews promotes a more efficient, time-saving method to provide applicants a single notification regarding all deficiencies noted as a result of a full review from each HUD technical discipline.

HUD needs more than an original and two copies of the application in order to carry out the above procedures for concurrent reviews.

9. Inasmuch as the application submission requirements are contained in outstanding regulations (24 CFR 890.265), the promulgation procedure for regulations allowed sufficient participation by outside agency contacts to review and comment on the application material.

10. HUD does not assure confidentiality.

11. The application submission requirements do not contain any sensitive questions.

12. Provide estimates of annualized cost to the Federal Government and to the respondents.

(a) *Estimate of Cost to Federal Government:* Inasmuch as the majority of the work involved in reviewing the applications is performed at the HUD Field Office level, the significant costs attributable to the promulgation of the application requirements will be the cost involved in reviewing the information submitted by applicants. Outstanding program procedures require the following reviews performed by the various Field Office staff:

Reviews

Function	Total time per application (hours)
Multifamily Housing Rep.	2
Mortgage Credit	3
Architectural	1
Valuation	2
Economic and Market Analysis	1
Fair Housing & Equal Opport.	1
Housing Management	1
Community Planning & Devel.	1
Field Office Counsel	3
Total	15

Cost	Amount
Clerical (12 hrs. × $10/hr.) at $20/hr.	$2,400
Printing	100
Mailing	50
Total Estimated Cost Per Application	$2,550

(b) *Estimate of Cost to Respondents:* In estimating the cost to the Sponsors, it should be noted that in order to comply with the program requirements, the Sponsor usually retains an attorney. In addition, as many nonprofit organizations do not have in-house expertise to develop an application, a housing consultant is usually hired by the Sponsor. In view of this, the following illustrates the estimated cost to the public:

Housing Consultant ($40 per hour)	$800
Sponsor	Probono
Attorney	1,000
Total	$1,800

It should be noted that many professionals work on a retainer basis and if the application does not obtain HUD approval, they do not collect a fee. The figures presented above are based on our own experience, as well as consultation with housing professionals in the field.

13. Although for Fiscal Years 1989 and 1990, HUD received approximately 297 and 298 applications for housing for the nonelderly handicapped, respectively, it is anticipated that because funding under the program has changed from loans to capital advances, the number of applicants will increase. However, the number will not increase as much as it would have without the new requirement that a Sponsor must submit either evidence of site control or an identification of a site. It is anticipated that the level of activity will average 350 applications annually over the next three years. Although the program funding cycle is on an annual basis, each prospective Sponsor could submit more than one application. However, our estimate of time involved is based on one application per applicant. Using the categories presented in the

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illustration in Item 12(b) above, the estimated amount of hours involved in developing a complete application submission:

Housing Consultant	28.4
Attorney	2
Sponsor	20.3
Total	50.7

Although the section 811 program is very similar to the section 202 program for the elderly in terms of the application submission requirements; there are some differences. The major exceptions are that under the section 202 program, evidence of site control is a requirement whereas under the section 811 program Sponsors have the option of submitting evidence of site control or an identification of a site which is not as time consuming. Furthermore, since site control is not a requirement under the section 811 program, site and floor plans are not required. However, the section 811 program requires a more extensive supportive services plan than is required for the section 202 program. Thus, due to the variations in time necessary to complete several of the exhibits between the section 811 and the section 202 programs, the total figure for the section 811 program is 50.7 hours compared with 55.2 hours for the section 202 program. The previous figure of 27 hours for the section 202 program for the handicapped (revised by section 162) was underestimated.

These figures are based on HUD's experience with the section 202 program for the elderly where evidence of site control has always been required, as well as consultation with housing professionals in the field.

A tabulation of Annual Reporting Burden is shown in Table 1. It should be noted that Exhibits 1, 6, 14, 17, 20, and 25 already have OMB clearance as shown in the Table. These information collections are common to many of our programs and our request for clearance was calculated to include the burden associated for all programs uses. The burden shown in Table 1 for Exhibits 1, 6, 14, 17, 20 and 25, therefore, reflects our estimate for application to the section 811 program. No adjustment to the previously cleared Exhibits 1, 6, 14, 17, 20 and 25 will be required.

Note: For Fiscal Year 1991, Exhibit 22 will not be required, therefore, the burden hours will be reduced by 140. However, Exhibit 22 will be required beginning in Fiscal Year 1992.

14. Although the total number of annual responses has decreased from 450 to 350 based on HUD's experience during the past two years with the number of applications that were submitted for the Section 202 Program of Housing for Handicapped People (revised by section 162), the total number of hours has increased by 3,575 due to the more accurate estimate of the number of hours per response and the new site requirement described in 13. above.

15. Not applicable.

B. Collections of Information Employing Statistical Methods

Not applicable.

TABLE 1.—TABULATION OF ANNUAL REPORTING BURDEN

Description of information collection (application submission requirements)	Section of CFR affected	No. of respondents	No. of respondents per respondent	Total annual responses	Hours per response	Total hours[1]
Part 1:						
Exhibit 1, Form HUD–92013 (OMB 2502–0029).	890.265(b)	350	1	350	1.0	350
Exhibit 2, Information on consultant		Not subject to OMB approval per OMB 5/1/84				
Exhibit 3, Evidence of Sponsor's nonprofit status.	890.265(c)(2)	350	1	350	2.0	700
Exhibit 4, Evidence of Sponsor's authority to sponsor project.	890.265(c)(3)	350	1	350	1.0	350
Part 2:						
Exhibit 5, Description of community ties	890.265(c)(4)	350	1	350	0.5	175
Exhibit 6, Form HUD–2530 (OMB 2502–0118).	890.265(c)(5)	350	1	350	0.6	210
Exhibit 7, Description of legal actions against Sponsor.	890.265(c)(6)	350	1	350	0.5	175
Exhibit 8, Description of experience providing housing.	890.265(c)(7)	350	1	350	3.0	1,050
Exhibit 9, Description of past involvement	890.265(c)(8)	350	1	350	3.0	1,050
Exhibit 10, Board Resolution to support project.	890.265(c)(9)	350	1	350	0.4	140
Exhibit 11, Description of experience serving minorities.	890.265(c)(10)	350	1	350	1.0	350
Part 3:						
Exhibit 12, Statement on other 811 or 202 applications submitted.	890.265(c)(11)	350	1	350	2.0	700
Exhibit 13, Estimate of start-up expenses	890.265(c)(12)	350	1	350	4.0	1,400
Exhibit 14, Evidence of ability to provide funds for project (HUD–92290 OMB 2502–0180).	890.265(c)(13)	350	1	350	4.0	1,400
Exhibit 17, Statement on relocation (OMB 2502–0433).	890.265(c)(14)(i)(A)(4)	[3] 15	1	15	4.0	60
Part 5:						
Exhibit 18, Description of proposed design of project.	890.265(c)(14)(v)	350	1	350	4.0	1,400
Exhibit 19, Schematic drawings	890.265(c)(14)(v)	350	1	350	2.0	700
Part 6:						
Exhibit 20, Description of residents and supportive services (HUD–92013E OMB 2502–0232).	890.265(c)(15) & (16)	350	1	350	8.0	2,800
Part 7:						
Exhibit 21, Equal Opportunity certifications		Exempt per 5 CFR Part 1320				

TABLE 1.—TABULATION OF ANNUAL REPORTING BURDEN—Continued

Description of information collection (application submission requirements)	Section of CFR affected	No. of respondents	No. of respondents per respondent	Total annual responses	Hours per response	Total hours
Exhibit 22, CHAS certification from local public official.	890.265(c)(19)	[2] 350	1	350	0.4	140
Exhibit 23, Certification on provision of services.	890.265(c)(20)	350	1	350	0.4	140
Exhibit 24, Certification on E.O. 12372	890.265(c)(21)	350	1	350	0.4	140
Exhibit 25–29, Certifications (SF–424 OMB 0348–0043).		Exempt per 5 CFR Part 1320				
Exhibit 30, Information on Intermediate Care Facilities.	890.265(c)(14)(v)	[4] 10	1	10	2.0	20
Totals		350	1	350	50.7	15,725

[1] Based on experience, no more than 5 percent of the applications will involve relocation.
[2] For Fiscal Year 1991, the certification from the local public official will not be required. The respondent will only be required to state, "Not applicable". The certification will be required beginning in Fiscal Year 1992.
[3] Based on experience, no more than 3 percent of the applications will propose ICFs.

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OMB Approval No 2502-0118 (exp. 5/31/92)

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
HOUSING - FEDERAL HOUSING COMMISSIONER AND
U.S. DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION

PREVIOUS PARTICIPATION CERTIFICATION

PART I - CERTIFICATE *(To be completed by Principals of Multifamily Projects.)*

1. TO: *(Name and City of HUD Area Office or USDA-FmHA District Office where the Application is Filed.)*	2. PROJECT NAME, I.D., OR PROJECT NUMBER AND CITY, STATE CONTAINED IN THE APPLICATION ALSO: SECTION 8 CONTRACT NUMBER	
3. LOAN OR CONTRACT AMOUNT $	4. NUMBER OF UNITS OR BEDS	5. SECTION OF ACT *(If known)*

6. TYPE OF PROJECT *(Check One)*
☐ Existing ☐ Rehabilitation
☐ Proposed *(New)*

LIST OF ALL PROPOSED PRINCIPAL PARTICIPANTS

7. Alphabetical List of the Full Names *(last name first)* and Address of all known principals and affiliates *(people, businesses and organizations)* proposing to participate in the project described above.	8. Role of Each Principal	9. Expected % Interest in Ownership	10. Social Security or IRS Employer Number

CERTIFICATION

I *(meaning the individual who signs as well as the corporations, partnerships or other parties listed above who certify)* hereby apply to HUD or USDA - FmHA, as the case may be, for approval to participate as a principal in the role and project listed above based upon my following previous participation record and this Certificate.

I certify that all the statements made by me are true, complete and correct to the best of my knowledge and belief and are made in good faith, including the data contained in Schedule A and Exhibits signed by me and attached to this form.

A. I further certify that:

1. Schedule A contains a listing of every assisted or insured project of HUD, USDA-FmHA and State and Local Government housing finance agencies in which I have been or am now a principal.
2. For the period beginning 10 years prior to the date of this certification and except as shown by me on the certificate,
   a. No mortgage on a project listed by me has ever been in default, assigned to the Government or foreclosed, nor has mortgage relief by the mortgagee been given.
   b. I have not experienced defaults or noncompliance under any Conventional Contract or Turnkey Contract of Sale in connection with a public housing project;
   c. To the best of my knowledge, there are no unresolved findings raised as a result of HUD audits, management reviews or other Governmental investigations concerning me or my projects.
   d. There has not been a suspension or termination of payments under any HUD assistance contract in which I have had a legal or beneficial interest attributable to my fault or negligence.
   e. I have not been convicted of a felony and am not presently, to my knowledge, the subject of a complaint or indictment charging a felony. *(A felony is defined as any offense punishable by imprisonment for a term exceeding one year, but does not include any offenses classified as a misdemeanor under the laws of a State and punishable by imprisonment of two years or less)*
   f. I have not been suspended, debarred or otherwise restricted by any Department or Agency of the Federal Government or of a State Government from doing business with such Department or Agency.
3. All the names of the parties, known to me to be principals in this project(s) in which I propose to participate, are listed above.
4. I am not a HUD/FmHA employee or a member of a HUD/FmHA employee's immediate household as defined in HUD's Standard of Conduct in 24 CFR 0.735-208(a)(2)/USDA's Standard of Conduct in 7 CFR Part 0 Subpart B.
5. I am not a principal participant in an assisted or insured project this date on which construction has stopped for a period in excess of 20 days or which has been substantially completed for more than 90 days and documents for closing, including final cost certification have not been filed with HUD or FmHA.
6. To my knowledge I have not been found by HUD or FmHA to be in noncompliance with any applicable civil rights laws.

B. *(APPLICABLE TO GENERAL PARTNERS OR PROJECT OWNERS ONLY)*
All the parties who are principals or who are proposed as principals here are listed above and no principals or identities of interest are concealed or omitted.

C. I am not a Member of Congress or a Resident Commissioner nor otherwise prohibited or limited by law from contracting with the Government of the United States of America.

D. Statements above *(if any)* to which I cannot certify have been deleted by striking through the words with a pen. I have initialed each deletion *(if any)* and have attached a true and accurate signed statement *(if applicable)* to explain the facts and circumstances which I think helps to qualify me as a responsible principal for participation in this project.

Typed or Printed Name of Principal	Signature of Principal	Title, Role or Capacity	Date	Area Code and Telephone No.

WARNING It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code, Section 1001 and Section 1010.

THIS FORM WAS PREPARED BY *(Please print name)* | AREA CODE & TELEPHONE NO.

REPORT OF INSPECTOR GENERAL - INTERNAL PROCESSING ONLY

THE INDICES OF THE INSPECTOR GENERAL'S OFFICE HAVE BEEN CHECKED FOR THE NAMES OF THE PRINCIPALS LISTED IN PART I ABOVE

AND: ☐ a. WE HAVE NO INFORMATION; OR ☐ b. WE HAVE INFORMATION AND A REPORT IS ATTACHED

DATE	TITLE	SIGNATURE

SCHEDULE A - LIST OF PREVIOUS PROJECTS AND SECTION 8 CONTRACTS

By my name below is the complete list of my previous projects and my participation history as a principal in Multifamily Housing programs of HUD/USDA-FmHA, State and Local Housing Finance Agencies.

NOTE: Read and follow the attached instructions sheet carefully, Abbreviate where possible. Make full disclosure. Add extra sheets if you need more space. Double check for accuracy. If you have no previous projects write by your name - "No previous participation - First Experience.

1. List each Principal's Name (List in Alphabetical Order, Last Name First)	2. List Previous Projects (Give the I.D. Number, Project Name, City of Location, Government Agency involved and Number of Units in the Project)	3. List Principal's Participation Role and Interest - Give Month and Year Participation began and ended.	4. Disclose Defaults, Mortgage Relief, Assignments, Foreclosures. If None, write "None."	5. RESERVED FOR HUD PROCESSING

PART II - INTERNAL PROCESSING ONLY

1. Received by the Field Office, checked by me for accuracy and completeness and found ready for processing:

DATE | FTS TELEPHONE NUMBER

SUPERVISOR, PROCESSING CONTROL AND REPORTS UNIT

2. TO: Department of Housing and Urban Development, Multifamily Participation Review Committee, Washington, D.C.
A review of the records and project files of this office relative to the above listed parties and projects reveals:

☐ A. No adverse information, Form HUD-2530 approval is recommended; ☐ B. Problems exist, my memorandum on them is attached.

DIRECTOR OF HOUSING

PROCESSING IS AUTHORIZED

DATE | NAME OF AREA MANAGER

Page 2 of 3 pages

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INSTRUCTIONS FOR COMPLETING THE PREVIOUS PARTICIPATION CERTIFICATE, FORM HUD-2530

(Effective January 1, 1981 for HUD Assisted Multifamily Housing Projects.)

PURPOSE -

Form HUD-2530 must be completed and signed by all persons applying to become principal participants in HUD multifamily housing projects. The purpose of this form is to provide HUD with a standard report of all previous participation in HUD multifamily housing projects by those parties making application for additional participation in another HUD MFH project. The form must also be completed by those who have not previously participated in HUD MFH projects.

Before filling this form with the HUD Area or Service office where your project application will be processed, these instructions and the regulations that apply to this form should be read carefully. A copy of those regulations published at 24 CFR 200.210 to 200.245 can be obtained from the Multifamily Housing Representative at any HUD Area or Service office.

The information requested in this form is necessary in order for HUD to determine if you meet the standards established to ensure that all principal participants in HUD projects will honor their legal, financial and participation obligations and are acceptable risks from the underwriting standpoint of an insurer, lender or governmental agency.

To assist in this determination, HUD requires that you carefully view your record of previous participation in HUD projects by completing and signing this form, before your project application or participation can be approved. HUD approval of your certification is a necessary precondition for your participation in the project and in the capacity that you propose.

If you do not file this certificate, do not furnish the information requested accurately, or do not meet established standards, you will not be approved and you will not be able to participate in the project as you had planned. Alternatively, approval may be withheld for up to 120 days if HUD feels more information is necessary to make an accurate decision.

Note that approval of your certification does not obligate HUD to approve your project application, and it does not satisfy all other HUD program requirements relative to your qualifications.

WHO MUST SIGN AND FILE FORM HUD-2530 -

Form HUD-2530 must be signed and filed by all principals and their affiliates who propose participating in the HUD project. Principals may all use, sign, and file on the same form or they may elect to file separate forms if that is more convenient. Late comers must file when they decide to join principals who have already filed.

Principals include all individuals, joint ventures, partnerships, corporations, trusts, nonprofit organizations or any other public or private entity that will participate in the proposed project as a sponsor, owner, prime contractor, turnkey developer, or managing agent. In addition, principals include consultants, advisors, and real estate individuals or firms providing advisory services in connection with the financing or administration of a project, or with meeting any related HUD requirements. Architects and attorneys who have any interest in the project other than an arms length fee arrangement for professional services are also considered principals by HUD.

In the case of partnerships, all general partners regardless of their percentage interest and limited partners having a 25 percent or more interest in the partnership are considered principals. In the case of public or private corporations or governmental entities, principals include the chief executive officer, secretary, treasurer, and all other executives officers who are directly responsible to the board of directors, or any equivalent governing body, as well as all directors and each stockholder having a 10 percent or more interest in the corporation.

Affiliates are defined as any person or business concern that directly or indirectly controls the policy of a principal or has the power to do so. A holding or parent corporation would be an example of an affiliate if one of its subsidiaries was a principal.

EXCEPTION FOR CORPORATIONS - ALL PRINCIPALS AND AFFILIATES MUST PERSONALLY SIGN THE CERTIFICATE EXCEPT IN THE FOLLOWING SITUATION: WHEN A CORPORATION OR PUBLIC AGENCY IS A PRINCIPAL, ALL OF ITS OFFICERS, DIRECTORS, COMMISSIONERS, TRUSTEES AND STOCKHOLDERS WITH 10 PERCENT OR MORE OF THE COMMON (VOTING) STOCK NEED NOT SIGN PERSONALLY IF THEY ALL HAVE THE SAME RECORD TO REPORT. THE OFFICER WHO IS AUTHORIZED TO SIGN FOR THE CORPORATION OR AGENCY WILL LIST THE NAMES AND TITLE OF THOSE WHO ELECT NOT TO SIGN. HOWEVER, ANY PERSON WHO HAS A RECORD OF PARTICIPATION IN HUD PROJECTS THAT IS SEPARATE FROM THAT OF HIS OR HER ORGANIZATION MUST REPORT THAT ACTIVITY ON THIS FORM AND SIGN HIS OR HER NAME.

EXEMPTIONS - The names of the following parties do not need to be listed on Form HUD-2530: Public Housing Agencies, tenants, owners of less than five condominium or cooperative units and all others tenancies acquired by inheritance or court order.

WHERE AND WHEN FORM HUD-2530 MUST BE FILED -

This form must be filed with the HUD Area or Service office where your project application will be processed at the same time you file your project application.

This form must be filed with applications for projects, or when otherwise required in the situations listed below:

- Projects to be financed with mortgages insured under the National Housing Act (FHA).
- Projects to be financed according to Section 202 of the Housing Act of 1959 (Elderly and Handicapped).
- Public Housing projects to be financed according to the United States Housing Act of 1937.
- Projects in which 20 persons or more of the units are to receive a subsidy as described in 24 CFR 200.213.
- Purchase of a project subject to a mortgage insured or held by the Secretary of HUD.
- Purchase of a Secretary-owned project.
- PROPOSED SUBSTITUTION OR ADDITION OF A PRINCIPAL OR PRINCIPAL PARTICIPATION IN A DIFFERENT CAPACITY FROM THAT PREVIOUSLY APPROVED FOR THE SAME PROJECT.
- PROPOSED ACQUISITION BY AN EXISTING LIMITED PARTNER OF ADDITIONAL INTEREST IN A PROJECT RESULTING IN A TOTAL INTEREST OF 25 PERCENT OR MORE, OR PROPOSED ACQUISITION BY A STOCKHOLDER OF ADDITIONAL INTEREST IN A PROJECT RESULTING IN A TOTAL INTEREST OF 10 PERCENT OR MORE.
- Projects with U.S.D.A., Farmers Home Administration, or with state or local government housing finance agencies that include rental assistance under Section 8 of the Housing Act of 1937. For projects of this type, Form HUD-2530 should be filed with the appropriate applications directly to these agencies.

REVIEW OF ADVERSE DETERMINATION

If approval of your participation in a HUD project is denied, withheld or conditionally granted on the basis of your record of previous participation, you will be notified by the field office. You may request reconsideration by the HUD Review Committee. Alternatively, you may request a hearing before a Hearing Officer. Either request must be made in writing within 30 days from your receipt of the notice of determination.

If you do request reconsideration by the Review Committee and the reconsideration results in an adverse determination, you may then request a hearing before a Hearing Officer. The Hearing Officer will issue a report to the Review Committee. You will be notified of the final ruling by certified mail.

INSTRUCTIONS FOR COMPLETING FORM HUD-2530 -

General Instructions - Either type or print neatly in ink when filling out this form. BE SURE TO MARK ANSWERS IN ALL BLOCKS OF THE FORM. IF THE FORM IS NOT FILLED OUT COMPLETELY, IT WILL DELAY APPROVAL OF YOUR APPLICATION.

If you need more space, attach extra sheets to the form. Be sure to type "Continued on Attachments", wherever appropriate on Form HUD-2530. Also, sign each additional page that is attached if it refers to you or your record.

Sign the certificate ONLY after you have read it carefully. File the original with the HUD Area or Service office that has jurisdiction over the project at the same time the initial project or other application forms are filed before your participation begins. You need to submit only one copy of Form HUD-2530 to HUD - additional copies are not necessary.

If you have many projects to list and expect to be receiving frequently for participation in HUD projects, you should consider filing a Master List. See Master List instructions below under "Instructions for Completing Schedule A".

Any questions you have regarding the form or how to complete it can be answered by your HUD Area or Service office Multifamily Housing Representative.

Block Instructions:

BLOCK 1 - Fill in the name of the agency to which you are applying, for example "HUD Area or Service office, Farmers Home Administration District office, or the name of a state or local housing finance agency. Below that, fill in the name of the city where the office is located.

BLOCK 2 - Fill in the name of the project, such as "Greenwood Acres." If the name has not yet been selected, write "Name unknown."

Below that, fill in the HUD contract or project identification number, the Farmers Home Administration project number, or the state or local housing finance agency project or contract number. Include ALL project or contract identification numbers that are relevant to the project.

Below that, fill in the name of the city in which the project is located, and the ZIP Code of the area location.

BLOCK 3 - Fill in the dollar amount requested in the proposed mortgage, or the annual amount of rental assistance requested.

BLOCK 4 - Fill in the number of apartment units proposed, such as "100 units." For hospital projects or nursing homes, fill in the number of beds proposed, such as "100 beds."

BLOCK 5 - If known, fill in the section of the Housing Act under which the application is filed. If unknown, write "Unknown."

BLOCK 6 - Check the appropriate box to indicate whether your application involves an EXISTING project, a REHABILITATION, or a PROPOSED new project.

BLOCK 7 - Alphabetically list the full names, last name first, of all principals (including corporations) and affiliates and their addresses. Definitions of all those who are considered principals and affiliates are given above in the section titled "Who Must Sign and File Form HUD-2530."

BLOCK 8 - Beside the name of each principal, fill in the role that each party listed will perform. The following is a list of the possible roles that the principals may perform: Sponsor, Owner, Prime Contractor, Turnkey Developer, Managing Agent, Packager, Consultant, General Partner, Limited Partner (include percentage), Executive Officer, Director, Trustee, or Major Stockholder.

Beside the name of each affiliate, write the name of the person or firm of affiliation, such as "Affiliate of Smith Construction Co."

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INSTRUCTIONS FOR COMPLETING THE PREVIOUS PARTICIPATION CERTIFICATE – FORM HUD-2530 (Continued)

BLOCK 9 - Fill in the percentage ownership in the proposed project that each principal is expected to have. Beside the name of those parties who will not be owners, write "None."

BLOCK 10 - Fill in the social security or IRS employer number of every party listed, including affiliates.

INSTRUCTIONS FOR COMPLETING SCHEDULE A -

No Previous Record - EVEN IF YOU HAVE NEVER PARTICIPATED IN A HUD PROJECT BEFORE, YOU MUST COMPLETE FORM HUD-2530. If you have no record of previous projects to list, fill in your name in Column 1 of Schedule A, and write across the form by your name - "No previous participation, first experience."

Frequent Filer's Master List System - If you expect to file this form frequently and you have a long list of previous projects to report on Schedule A, you should consider filing a Master List. By doing so, you can avoid having to list all your previous projects each time you file a new application.

To make a Master List, use Form HUD-2530. On page 1, in Block 1, you should fill in (in capital letters) the words "MASTER LIST." In Blocks 2 through 6 fill in "N.A." meaning Not Applicable. Complete Blocks 7 through 10.

In the box below the statement of certification, fill in the names of all parties who wish to file a Master List together (type or print neatly). Beside each name, every party must sign the form, in the box titled "Proposed Role," fill in "N.A." Also, fill in the date you sign the form and provide a telephone number where you can be reached during the day.

SCHEDULE A ON THE REVERSE SIDE OF THE FORM MUST BE FILLED OUT COMPLETELY ACCORDING TO THE INSTRUCTIONS BELOW UNDER "All Others." CHECK TO BE SURE THAT SCHEDULE A IS COMPLETE, ACCURATE AND THE CERTIFICATE ON THE FRONT OF FORM 2530 IS PROPERLY DATED AND SIGNED, BECAUSE IT WILL SERVE AS A LEGAL RECORD OF YOUR PREVIOUS EXPERIENCE.

File one copy of the Master List with each HUD Area or Service office where you do business and mail one copy to:

HUD-2530 MASTER LISTS
Previous Participation Branch - Housing
Department of Housing and Urban Development
451 Seventh Street, S.W.
Washington, D.C. 20410

Once you have filed a Master List, you do not need to complete Schedule A when you submit Form HUD-2530. Instead, write the name of the participant in Column 1 of Schedule A and beside that write - "See Master List on file." Also give the date that appears on the Master List that you submitted. Below that, report all changes and additions that have occurred since the date of the Master List. Be sure to include any mortgage defaults, assignments or foreclosures not listed previously.

IF YOU HAVE WITHDRAWN FROM A PROJECT SINCE THE DATE THE MASTER LIST WAS FILED, BE SURE TO NAME THE PROJECT, GIVE THE PROJECT IDENTIFICATION NUMBER, THE MONTH AND YEAR YOUR PARTICIPATION BEGAN AND/OR ENDED.

All Others - Complete Schedule A on the reverse side of Form HUD-2530. All Multifamily Housing projects in which you have previously participated as a state or local government housing finance agencies MUST be listed.

In Column 2 of Schedule A, list all of your previous projects. In addition, list the project or contract identification of each previous project. THE PROJECT OR CONTRACT IDENTIFICATION OF ALL PREVIOUS PROJECTS MUST BE INCLUDED OR YOUR CERTIFICATION CANNOT BE PROCESSED. Also give the name of all projects, the cities in which they are located and the government agency (HUD, USDA-FmHA or state or local housing finance agency) that was involved. At the end of your list of projects in Column 2 of Schedule A, draw a straight line across the page to separate your record of projects from that of others signing this form who have a different record to report.

In Column 3 of Schedule A, list your role in all previous projects (a list of all possible roles is given in the instructions to Block 8). Give the month and year your participation began and/or ended because you do not want your record confused with possible problems caused by others for which you are not responsible.

In Column 4 of Schedule A, you must indicate all defaults, mortgage reductions, assignments and foreclosures. Write "Default," "Assignment," or "Foreclosure" and give the date it occurred. If a default has been cured by payments, write the word "Cured" after the word default. If there were none of these on a project, write "None."

CERTIFICATION - AFTER YOU HAVE COMPLETED ALL OTHER PARTS OF FORM HUD-2530, INCLUDING SCHEDULE A, READ THE CERTIFICATION CAREFULLY. In the box below the statement of certification, fill in the name of all principals and affiliates (type or print neatly). Beside the name of each principal and affiliate, each party must sign the form, with the exception in some cases of individuals associated with a corporation (see "Exception for Corporations" in the section of the instructions titled "Who Must Sign and File Form HUD-2530"). Beside each signature, fill in the role of each party (the same as shown in Block 8). In addition, each person who signs the form should fill in the date that he or she signs, as well as providing a telephone number where he or she can be reached during business hours. By providing a telephone number where you can be reached, you will help to prevent any problems delay caused by mailing and processing time in the event HUD has any questions.

If you cannot certify and sign the certificate as it is printed because some statements do not correctly describe your record, do not become discouraged. On the face of the certificate cross out the statements and those parts that differ with your record, then sign and certify to that part you permitted to remain and which does describe you or your record.

Attach a signed letter, note or explanation of the times you have struck out on the certification and report the facts of your correct record. Item A(2)(a) relates to felony convictions within the past 10 years. If you have been convicted of a felony within 10 years, strike out all of A(2)(a) on the certificate and attach your statement giving your explanation. A felony conviction will not cause your participation to be disapproved unless there is a genuine reason to believe that your participation in the conduct or activity of doing business has been such that your participation in the project would make it an unacceptable risk from the underwriting standpoint of an insurer, lender or governmental agency.

PRIVACY ACT INFORMATION AND AUTHORITY

Form HUD-2530 is authorized by law (42 USC 3535(d) and 42 USC 1701 et seq.) and 24 CFR 200.217. This information is collected to evaluate your record with respect to established standards of performance, responsibility and eligibility. HUD must have your social security number (SSN) for identification of your records. HUD may use your SSN for automated processing of your records and to make requests for information about you and your previous records with other public agencies and private credit sources.

Disclosure is not mandatory but you cannot be approved for participation unless you disclose the requested information.

Information HUD has about you may be given to other Federal, State and local agencies for checking on your previous participation record for business practices, for law violations and for other lawful purposes.

Public Reporting Burden for this collection of information is estimated to average 0.6 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600; and to the Office of Management and Budget, Paperwork Reduction Project (2503-0116), Washington, D.C. 20503

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U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
HOUSING—FEDERAL HOUSING COMMISSIONER

STANDARD CONTRACT FOR HOUSING CONSULTANT SERVICES FOR NONPROFIT PROJECTS UNDER HUD PROGRAMS EXCLUSIVE OF SECTION 202 OF THE HOUSING ACT OF 1959, AS AMENDED

This Agreement made this day of , 19 , by and between , being a nonprofit entity, *(hereinafter referred to as the Sponsor)* and , *(hereinafter referred to as the Housing Consultant)*.

WHEREAS, the Sponsor has formed or intends to form a nonprofit mortgagor corporation or association *(the term "Sponsor" shall also include said mortgagor)* to construct, own, operate and maintain a rental housing project, and to make or cause to be made an application to the Secretary of Housing and Urban Development *(hereinafter referred to as Secretary)* for a commitment to insure a loan for the development of a housing project under the provisions of the National Housing Act, as amended, and the regulations issued pursuant thereto, and

WHEREAS, the Sponsor desires to avail itself of the services of a Housing Consultant to assist and counsel the Sponsor in matters affecting the initiation, processing, financing, design, construction, equipping, operation and management of the housing project.

NOW, THEREFORE, the parties mutually agree as follows:

1. The Housing Consultant agrees to provide the following services for or on behalf of the Sponsor in a manner satisfactory to Sponsor and acceptable to the Secretary, which may include guidance in the selection of other persons, firms or organizations with the capability of performing one or more of the services required to:

(a) Assist the Sponsor in making an analysis of available market reports and other pertinent data to determine the type of housing suitable for the neighborhood or area where the project is to be located, the number of units planned and appropriate to the zoning applicable to the site and the approximate rentals to be charged and in collecting all information required to establish the feasibility of the project;

(b) Assist the Sponsor in selecting a suitable site for the development of a rental housing project and obtaining, if necessary, appraisals of the land from a qualified appraiser, and obtaining an option to purchase the land or otherwise arranging suitable terms for the purchase of the real property or, where appropriate obtaining a long-term lease acceptable to the Secretary;

(c) Assist the Sponsor in negotiations with either the Local Public Agency or with the city when the site is within an approved Urban Renewal Project area or a Neighborhood Strategy Area (NSA), respectively;

(d) Assist in the conferences and discussions with the representatives of the Secretary to obtain site approval and feasibility approval of the project;

(e) Assist in the selection of a qualified architect and in the negotiations for a contract to prepare preliminary and final drawings and specifications and provide contract administration during construction;

(f) Assist in the preparation of an application for project mortgage insurance to be executed by the Sponsor and the proposed mortgagor;

(g) Assist in obtaining a construction contract, either through a competitive bidding process or negotiation, which contract will incorporate the drawings and specifications accepted by the Secretary and provide for the construction of the project within a period allowed by the Secretary;

(h) Assist in the selection of and arrangements with an attorney to render to the nonprofit Sponsor such legal services as are necessary to form an eligible nonprofit owner-mortgagor legal entity, to conclude an initial and final closing of the mortgage loan transaction;

(i) Assist in obtaining an acceptable commitment from a qualified lender or lenders to make the construction or interim loan and the permanent loan;

(j) Assist in organizing an eligible nonprofit owner-mortgagor entity to hold title to the real property, in fee or leasehold, and maintain and operate the project over the life of the mortgage in accordance with the requirements of the Secretary, the National Housing Act, as amended, and the Regulations applicable thereto;

(k) Assist the nonprofit owner/mortgagor during the construction phase of the project in matters relating to filing applications for and obtaining monthly construction funds; coordinating and implementing changes in construction; and obtaining the service of a qualified person or firm to prepare the cost certification.

(l) Assist the Sponsor in establishing sound management and operating procedures, including the selection of a qualified management agent; and

(m) Assist and counsel the Sponsor in establishing appropriate methods of keeping records and accounting procedures to meet the requirements of the Secretary.

Delete any of the above duties which are inapplicable and state on an addendum to this contract other duties which the Housing Consultant will perform.

2. (a) The Sponsor agrees to compensate the Housing Consultant by payment of a fee in the amount of $_____.

(b) The fee provided herein shall be due and payable in the following manner:

Up to sixty percent (60%) of the consultant's fee at Initial Endorsement.

During construction, up to seventy-five percent (75%), less any previous payments. This represents an additional fifteen percent (15%) to be paid during the construction period. Payment of this portion of the fee shall be made at the time construction draws are made and amount will be based on percentage of completion.

The balance remaining shall be approved for payment at Final Endorsement.

(c) If a retainer fee in the amount of $_____, as mutually agreed to between the Sponsor and the Housing Consultant, has been paid by the Sponsor to the Housing Consultant, it shall become a part of the total fee due hereunder. In the event the mortgage is insured by the Secretary, the first payment of the fee, as provided in Section 2(b) of this Contract, shall be reduced by the amount of the retainer fee already paid. In the event the application for mortgage insurance is rejected or the mortgage is not endorsed for insurance by the Secretary, the Sponsor agrees to forfeit the retainer and the Housing Consultant agrees to accept the retainer as full compensation under this Contract. This Contract will then become null and void, and the Sponsor shall have no further liability for payments due hereunder.

(d) The fee shall include all those expenses of the Housing Consultant which are reasonably related to providing the services for the Sponsor as set forth herein, including such items as travel and telephone expenses.

3. The services of the Housing Consultant are to commence upon the execution of this Contract and the work required shall be undertaken and completed in an expeditious and business-like manner. Failure to do so, or violation of any of the covenants, agreements or stipulations of this Contract by the Housing Consultant shall give the Sponsor the right to terminate this Contract provided the Housing Consultant is notified in writing five days prior to the effective termination date. If so terminated, the Sponsor shall have no further liability for payments due under this Contract. The Sponsor reserves the right to reduce the total amount of the fee, based on its determination of poor performance or nonperformance of any of the covenants, agreements or stipulations of this Contract by the Housing Consultant; provided, the Housing Consultant is notified in writing of the basis for this determination and the amount of the reduction.

4. The Housing Consultant shall periodically submit written narrative progress reports to the Sponsor.

5. The Sponsor agrees to cooperate with the Housing Consultant in carrying out the purposes of this Contract. Failure to do so, or violations of any of the covenants, agreements or stipulations of this Contract by the Sponsor shall give the Housing Consultant the right to terminate this Contract provided the Sponsor is notified in writing five days prior to the effective termination date. If so terminated, the Housing Consultant shall be entitled to reasonable compensation for all work done under this Contract in accordance with the schedule in paragraph 2.

6. If any time the Sponsor decides not to proceed with the housing project, the Sponsor shall have the right to terminate this contract provided the housing Consultant is notified in writing five days prior to the effective termination date. If so terminated, the Housing Consultant shall be entitled to reasonable compensation for all work done under this Contract in accordance with the schedule in paragraph 2.

7. The Sponsor may from time to time request changes in the scope of the services of the Housing Consultant to be performed hereunder. Such changes, including any increase or decrease in the amount of the Housing Consultant's compensation, which are mutually agreed upon by and between the nonprofit Sponsor and the Housing Consultant, and are approved by the Secretary, shall be incorporated in written amendments to this Contract.

8. To induce the Secretary to insure a mortgage loan financing the development of the project, the Housing Consultant:

(a) Agrees to avers that the statements certified to on Form HUD-92531 under date of_____ are true, correct and complete to the best of his/her knowledge and belief; and

(b) Agrees upon final payment of the fee provided above, to furnish to the Sponsor a certified receipt on Form HUD-92531-B provided by the Secretary reaffirming the statements made in the aforesaid certificate.

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9. In no event shall the parties to this Contract have or assert any claim against the Federal Government or the Secretary by reason of this Contract, or any action taken by the Federal Government with respect to the mortgage insurance application, including disapproval of the application.

10. The terms and conditions of this Contract are subject to the review and approval of the Secretary, including HUD-2530 Previous Participation review.

11. Notwithstanding the execution of this Contract by the Nonprofit Sponsor and the Housing Consultant and the fact that work has commenced hereunder, the terms and conditions may be amended upon review and approval by the Secretary.

IN WITNESS WHEREOF, the nonprofit Sponsor and the Housing Consultant have executed this Contract the date first above written.

_____
(Housing Consultant)

_____
(Nonprofit Sponsor)

(NOTE. Appropriate additional provisions may be added as required and agreed upon by the parties to the Contract and approved by the Secretary.)

WARNING

Section 1001 of Title 18 of the United States Code (Criminal Code and Criminal Procedure, 72 Stat. 967) shall apply to such statements. (18 U.S.C. 1001, among other things, provides that whoever knowingly and willfully makes our uses a document or writing containing any false, fictitious, fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.)

★ U.S. GPO: 1988-0-212-519

Section 106(b) Nonprofit Sponsor Assistance
"Seed Money" Loan Application

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB No. 2502-0160 (Exp. 03/31/91)

Public reporting burden for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0160), Washington, D.C. 20503.

No loan may be approved unless a completed application form has been received (24 C.F.R. Part 271).

1. Sponsor (Name, Address, Phone and Person to Contact)	2. Borrower (Name, Address, Phone and Person to Contact)		
3. Date	4. Section 106(b) Application No.	5. Project Number (Mortgage and Subsidy)	6. Section of Housing Act

7. Project Name and Location

8. Purpose and Amount of Financial Assistance	Amount of Assistance Required	HUD Use Only Amount Approved
Organizational Expenses	$	$
Legal Fees	$	$
Consultant Fee	$	$
Architect Fees (Design)	$	$
Preliminary Site Engineering Fees	$	$
Land	$	$
Market Analysis	$	$
Other (Itemize)	$	$
Total	$	$
Loan Amount (80 percent of Total)	$	$
Borrower's share (20 percent of Total)	$	$

PROOF

9a. Is the Borrower, Sponsor or any entity controlled by or under the control of these entities delinquent on any Federal debt?
☐ Yes ☐ No If yes, attach an explanation.

9b. Does the Borrower, Sponsor or any entity controlled by or under the control of these entities have an outstanding Nonprofit Sponsor Assistance "seed money" loan under Section 106(b) of the Housing and Urban Development Act of 1968 and/or Section 207 of the Appalachian Redevelopment Act of 1965?
☐ Yes ☐ No If yes, attach an explanation to show the loan amount, project name, project number, and indicate why the loan has not been repaid.

10a. The undersigned agrees that pursuant to the requirements of the HUD Regulations, (a) neither it nor anyone authorized to act for it will decline to sell, rent or otherwise make available any of the properties or housing in the proposed project to a prospective purchaser or tenant because of his/her race, creed, color, sex or national origin, handicap, or familial status; (b) it will comply with State and local laws of ordinances prohibiting discrimination; and (c) failure or refusal to comply with the requirements of either (a) or (b) shall be a proper basis for the Secretary to reject requests for future business with which the Borrower or Sponsor is identified or to take any other corrective action he or she may deem necessary to carry out the requirements of the HUD Regulations.

10b. The undersigned certifies that the Borrower has or will have available in cash $_____ to meet its share of the "seed money" expenses that no portion of the Borrower's share was or will be obtained from any party seeking to make a profit or monetary gain from the project as set forth in paragraph 271.15(b) of the HUD Regulations (24 CFR, Part 271); that the Borrower/Sponsor has not obtained nor will it obtain a "seed money" loan or grant for this project from any other direct or indirect Federal source; that the total Borrower's share as determined by HUD has been or will be spent for allowable "seed money" items prior to or simultaneously with each expenditure of loan proceeds; and that the information included herein is true and correct to the best of the Borrower's/Sponsor's knowledge.

By: (Signature and Title of Authorized Borrower/Sponsor Official)	Type Name	Date

11. HUD Field Office Approval (Subject to Availability of Funds)

The application is:
☐ Approved in the amount of $_____.
☐ Disapproved (If disapproved, application will be returned to Borrower/Sponsor with explanation attached.)

By: (Signature of HUD Field Office Manager)	Type Name	Date

Name and Address of HUD Field Office

Replaces Form FHA-2290, which is Obsolete.

form HUD-92290 (03/25/91)
ref. Handbook XXXX.X

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12. HUD Headquarters Reservation of Funds

Funds in the amount of $ _____ are hereby reserved.

By: (Signature of Director, General Programs Division, Office of Finance and Accounting)	Type Name	Date

Warning: Section 1001 of Title 18, United States Code, "Statements or entries generally," provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

Instructions for Preparing Application for Section 106(b) Nonprofit Sponsor Assistance "Seed Money" Loan

The Borrower shall complete form HUD-92290 and submit an original and three copies to the appropriate HUD Field Office. In support of all items listed in Block 8, the Borrower must submit supporting bills, written estimates, receipts, and/or any contracts for professional services which have been let. The Borrower must attach an itemized statement classifying all expenditures and current obligations for the line items listed in Block 8. Expenditures must be shown by check number, date, payee, amount, and purpose.

Blocks 1 through 7 — Self-explanatory.

Block 8. In the "Amount of Assistance Requested" column, enter the sum of the Borrower's share and the Federal share for each item.

(1) **Organizational Expenses:** Enter 75 percent of the Borrower's estimated expenses for telephone, postage a fidelity bond, and travel to and from the HUD Field Office for the period from inception of the project to initial closing. The amount entered for organizational expenses cannot exceed $750.

(2) **Legal Fees:** Enter 15 percent of the amount agreed to between the Borrower and the attorney for legal services, excluding any amount which may relate to title and recording expenses.

(3) **Consultant Fees:** Enter 25 percent of the amount agreed to by the Borrower and the consultant and specified in the consultant's contract. If a consultant has not yet been hired by the Borrower, but will be [illegible] Firm Com-mitment stage, the Borrower should enter 25 per[illegible] maximum fees specified in the following schedule:

Mortgage Amount	Basic Fee	Incentive Payment
Up to $1,500,000	$20,000	$5,000
From $1,500,000 to $3,500,000	$20,000 plus 1% of excess over $1,500,000	$5,000 plus 1/4 of 1% (0.25%) of excess over $1,5,00,000
Over $3,500,000	$10,000	$10,000

In no event may the entry for this item exceed $12,500 (including maximum incentive payment).

(4) **Architect Fee:** Enter 25 percent of the amount reflected in the contract between the Borrower and the architect. If an architect has not been selected, the Borrower should estimate an amount typically charged for design services for similar projects and enter 25 percent of the estimated amount.

(5) **Preliminary Site Engineering:** Enter the total estimated cost of boundary survey, topographic survey, and soil testing and investigation as supported by bills, receipts, or estimates from surveyors, engineers, soil scientists, etc.

(6) **Land:** Enter the cost to the Borrower of obtaining control of the site, e.g., cost of land options, purchase price, etc. Outright purchases of land are strongly discouraged and will only be approved under the most extenuating circumstances by HUD Headquarters. With respect to land options, options should have extension provisions covering at least two years from the date of the Section 202 or Section 811 fund reservation. Option fees must always apply to the purchase price so that they may be recovered from the Section 202 or Section 811 loan proceeds. Further, they must be reasonable and generally consistent with real estate practices in the area.

(7) **Market Analysis:** Enter any cost incurred to have an analysis conducted of the market needs for the type of housing proposed.

(8) **Other:** Enter and identify any fees and charges for mortgageable items which are eligible "seed money" expenses, but which are not covered elsewhere in this application.

In completing Block 8, the Borrower should be mindful that $62,500 is the maximum allowable seed money. The preceding instructions set forth maximums for individual line items. These items may be further limited by the $62,500 overall maximum.

Blocks 9 and 10. Self-explanatory. To be completed by the Borrower.

Block 11. To be completed by HUD.

Block 12. To be completed by HUD.

Supplemental Application and Processing Form Housing For The Elderly

See Instructions on Reverse

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0232 (exp. 11/30/92)

Public reporting burden for this collection of information is estimated to average .75 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0232), Washington, D.C. 20503.

Project Name

☐ Congregate ☐ Mixed ☐ Non-Congregate

Project Number

A. Non-Rent Congregate Living Space	Area Square Feet
1. Congregate Kitchen and Dining	
2. Lobbies	
3. Community Room	
4. Hobby Shop	
5. Infirmary or Health Facility	
6. Other	
7. Other	
8. Total Square Feet	

B. Project Composition

1. Number of Bedrooms	2. Total No. of Units	3. No. of Units With Kitchens	4. No. of Units with Kitchenettes
0-Bedroom Units			
1-Bedroom Units			
2-Bedroom Units			

C. Food Service

	Annual Expense Sponsor	HUD
1. Payroll		
Number of cooks _____ x salary $ _____	$	$
Number of waitresses _____ x salary $ _____	$	$
Number of helpers _____ x salary $ _____	$	$
2. Food Cost	$	$
3. Supplies	$	$
4. Dining Room Furniture Exp.		
a. Repl. Res: 10% x Equip. Cost $ _____	$	$
b. Int. on Inv: _____ % Int. Rate x Cost $ _____	$	$
c. Maintenance and Repairs	$	$
5. Other *(Specify)*	$	$
6. Other *(Specify)*	$	$
7 Total Food Service Expense	$	$
8. Average No. of Persons Serviced _____		
9 Proposed Charger per Person/per Month	$	$
10. No. of Meals per Person per Day _____		

D. Maid Service

	Annual Expense Sponsor	HUD
1 Payroll Number of maids _____ x salary $ _____	$	$
2. Supplies	$	$
3. Other *(Specify)*	$	$
4. Other *(Specify)*	$	$
5. Total Maid Service	$	$
6. Average Number of Units Using Service	$	$
7 Proposed Charge per Unit/ per Month	$	$

E. Health Service

	Annual Expense Sponsor	HUD
1. Nursing Payroll Number of Nurses _____ x salary $ _____	$	$
2. Equipment Expense:		
a. Repl. Res: 10% x Equipment Cost $ _____	$	$
b. Int. on Inv.: _____ % Int. Rate x Cost $ _____	$	$
c. Maintenance and Repairs	$	$
3. Medical Supplies	$	$
4. Utilities	$	$
5. Laundry Service	$	$
6. Other *(Specify)*	$	$
7. Total Health Service	$	$
8a. No. of Beds in Infirmity _____		
8b. No. of Persons Serviced _____		
9. Proposed Charge per Mo. per Patient _____ per Person _____	$	$

F. Furniture for Units

	Annual Expense Sponsor	HUD
1. Furniture Exp. when Leased	$	$
2. Furniture Exp. if Not Leased:		
a. Repl. Res: 10% x Furniture Cost $ _____	$	$
b. Int. on Inv: _____ % Int. Rate x Cost $ _____	$	$
3. Total Furniture Expense	$	$
4. Number of Units Furnished _____	$	$
5. Proposed charge per unit per month to cover furniture rent	$	$

G. Other Non-Shelter Services

	Annual Expense Sponsor	HUD
1. Program & Activities Payroll	$	$
2. Other *(Specify)*	$	$
3. Other *(Specify)*	$	$
4. Chg. per Person *(Unit)* for Item 1	$	$
4. Chg. per Person *(Unit)* for Item 2	$	$
6. Chg. per Person *(Unit)* for Item 3	$	$

Replaces FHA 2013A

form HUD-92013E (02/05/91)
ref. handbook 4571.1

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Official Use Only

H. Remarks & Signatures

The above estimates in "Sponsor" column for Sections C through G represent estimates of income and expense in non-shelter budgets.

Signed	Date	☐ Sponsor, ☐ Mortgagor, ☐ Borrower, ☐ Owner	
Valuation Processor	Date	Reviewer	Date

Instructions

General

Form HUD-92013E must accompany form HUD-92013, Application–Project Mortgage Insurance, for each project intended to provide housing for the elderly.

Preparation of the forms HUD-92013 and HUD-92013E must separate the budget for shelter (and utilities included in the rent) from other budgets concerned with supplying services other than shelter, such as food service, main service, program and recreation service, rented furniture, and any other non-shelter services which may be planned. The non-shelter budgets concerned with supplying food, furniture, maid service, and other personal services are shown on the form HUD-92013E.

All non-shelter services and amenities offered with a charge to the tenant and as a condition of occupancy must be identified on this form. Special circumstances regarding items to be included in an amenity package such as additional charges for additional persons that cannot be readily shown on this form must be explained on an addendum sheet to the form HUD-92013E.

Form HUD-92013E must accompany all requests for feasibility analysis, conditional and firm commitments.

Definitions

An elderly person is defined as one who is age 62 or over. A handicapped person is one whose physical impairment(s) is expected to be of continued indefinite duration; (b) substantially impedes his ability to live independently; and (c) is such that his ability to live independently could be improved by more suitable housing.

Congregate Housing is designed for persons, normally well and ambulatory, who prefer residential accommodations but need some assistance in day-to-day living. While not a nursing or medical facility, it offers services that protect residents and provide for their needs.

Congregate housing projects have a central dining room generally serving three meals a day, with emergency room service available. There are common areas for lounges, recreation, special activities; limited housekeeping and laundry services may be provided. Some projects have an infirmary with personnel qualified to control and administer medications.

Instructions

Projects having congregate dining facilities with only kitchenettes in the living units, are checked in the box marked "Congregate." Projects having no congregate dining facilities, but having full sized kitchens in the living units are checked in the box marked "Non-Congregate." Projects having congregate dining facilities and having some living units with complete sized kitchens, are checked in the box marked, "Mixed."

Section A. Non-Rent Congregate Living Space Areas

Enter the net area, in square feet, for various kinds of non-rent congregate living space shown, such as, congregate kitchen and dining, lobbies, community rooms, hobby shop, infirmaries, or other non-rented common buildings area. When plans are available, these net areas should be calculated from the plans. Congregate dining facilities should be large enough to serve the probable total number of diners within a single meal period, but not necessarily at a single sitting. The number of diners shall be estimated to include all of the occupants of the units having kitchenettes only, plus a reasonable portion of the occupants of units with full kitchens.

Section B. Project Composition

For each number of bedrooms enter in Column 2 the total number of units. In Column 3, enter the number of units with complete kitchens. In Column 4, enter the number of units with kitchenettes only.

Non-Shelter Income and Expense Budgets.

Sections C through G contain budgets of income and expense for furnishing various non-shelter services. The sponsor enters his estimates of items of income and expense for each budget in the column headed "Sponsor," thus using form HUD-92013E as a supplemental application form. Subsequently, copies of the same form will be used as a processing form, with HUD personnel entering estimates in the Column headed, "HUD."

Section C. Food Service: Annual Expenses.

Line C-1– Estimate the number of cooks times the average annual salary. The number of waitresses, and other employees needed to operate the dining room are also estimated to arrive at payroll, including payroll tax. When the food service operation is large or complex, a detailed explanation of kinds of staff, numbers of employees, rates of pay, payroll tax, and total payroll for food service, should be shown in an attachment. The annual food cost and cost of supplies is also entered.

Line C-4a.–Dining room furniture expense includes an annual reserve for replacement of dining room furniture and equipment. Estimate the replacement reserve by multiplying furniture cost by 10%.

Line C-4b–Return on investment in dining room furniture and equipment is [illegible] by multiplying the furniture cost by the market interest rate for similar [illegible].

Line C-4c–Enter the estimated annual allowance for maintenance and repairs to the furniture.

Line C-7–Show the total annual food service expense.

Line C-8–Estimate the probable number of tenants customarily using the congregate dining facility.

Line C-9–Enter the proposed charge per person per month for food service. This charge should be sufficient to provide an annual income at least 3% more than the total food service expense estimated in Line C-7. If a food service concessionaire is contemplated, the proposed terms of the concession shall be completely explained in an attachment.

Line C-10–Enter the number of meals per person per day covered by the proposed food service charge.

Section D. Maid Service: Annual Expense.

Line D-1–Enter the number of mains multiplied by the average annual salary to result in annual payroll.

Line D-3–Enter the annual expense for cleaning supplies.

Line D-3 and 4–If clean sheets are to be provided as part of this service, the word "Laundry" is entered after "other" followed by the annual amount of this expense. Enter other expenses of supplying maid service.

Line D-5–Enter the sum of Lines D-1 through D-4. This represents total maid service expense.

Line D-6–Enter the estimated number of units using this service.

Line D-7–Enter the proposed charge per unit to cover this service.

Section E. Health Service: Annual Expense.

Line E-1–Enter the anticipated number of nurses needed times the average salary including payroll tax. If the health service operation is large or complex, the sponsor should submit a more detailed estimate of health service payroll in an attachment.

Line E-2–Equipment expenses includes an annual reserve for replacement of beds and other furniture and equipment in the infirmary.

Line E-2– Estimate the replacement reserve by multiplying equipment cost by 10%.

Line E-2b–Return on investment in equipment is estimated by multiplying the furniture cost by the market interest rate for similar investments.

Line E-2c–Enter the estimated annual allowance for maintenance and repairs to the equipment.

Line E-3, 4, 5, and 6–Enter the annual amounts to be expended for medical supplies, utilities, laundry or linen service, and other expenses of the health service facility.

Line E–Enter the sum of lines E-1 through E-6. This represents total health service expense.

Line E-8– Enter the number of beds in the infirmary.

Line E-8–Enter the average number of patients in the infirmary.

Line E-9–Enter the proposed charge per patient or per person. Indicate method of payment.

Section F. Furniture in Living Units.

Line F-1–Indicate the amount of total a nnual payments to the leasing company when furniture for some or all of the living units is obtained by the mortgagor by leasing it

Line F-2a–The renting of furniture by tenant must be optional and not a condition of occupancy. For those units in which the project owns the furniture, furniture expense includes an annual reserve for replacement of living unit furniture Estimate the replacement reserve by multiplying furniture cost by 10%.

Line F-2b–Return on investment in furniture is estimated by multiplying furniture cost by the market interest rate for similar investments.

Line F-2–Enter the estimated annual allowance for maintenance and repairs to the furniture.

Line F-3–Enter the Total Furniture Expense.

Line F-4–Indicate the number of units furnished by the mortgagor.

Line F-5–Enter the proposed charge per unit per month to cover the furniture expense.

Section G. Other Non-Shelter Services

Line G-1–Enter the salaries of persons employed to furnish guidance and recreation during the leisure time of an elderly person's occupancy in the project.

Lines G-2 and G-3–Enter the amounts covering any other service or facility included in the proposal that would contribute to the health, comfort and recreation of elderly persons, and specify.

Lines G-4, 5 and 6–Enter the charges per person or unit for the respective service of facility.

Section H. Remarks and Signatures

Self Explanatory.

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Supplement to Application for Multifamily Housing Project

To Be Completed by Each Sponsor, and by the General Contractor

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB No. 2502-0029 (Exp. XX/XX/91)

Project Name	Project Number	Name
Address		Telephone Number

Describe Your Affiliation With Project

Credit References: Include all Bank, Finance, Trade and Supply Creditors. You may omit creditors with balances less than $200.00

Firm Name	Address		
Telephone Number	Account Number	Present Balance	Terms
Firm Name	Address		
Telephone Number	Account Number	Present Balance	Terms
Firm Name	Address		
Telephone Number	Account Number	Present Balance	Terms
Firm Name	Address		
Telephone Number	Account Number	Present Balance	Terms
Firm Name	Address		
Telephone Number	Account Number	Present Balance	Terms
Firm Name	Address		
Telephone Number	Account Number	Present Balance	Terms

Other References

Are you or have you been a defendant in any suit or legal action?	☐ Yes	☐ No
Have you ever claimed bankruptcy or made compromised settlements with creditors?	☐ Yes	☐ No
Are there judgments recorded against you?	☐ Yes	☐ No

If the answer to any of the questions above is yes, give details below

Sponsor: I certify that the foregoing, submitted by me, for the purpose of obtaining mortgage insurance under the National Housing Act, is true and correct to the best of my knowledge and belief.	Contractor: I certify that the foregoing, submitted by me, is true and correct to the best of my knowledge and belief.
Signed this day of , 19	Signed this day of , 19
Name	Name

Warning: U. S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part; "Whoever, for the purpose of . . . influencing in any way the action of such Administration . . . makes, passes, utters, or publishes any statement, knowing the same to be false, . . . shall be fined not more than $5,000 or imprisoned not more than two years, or both."

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Form HUD-92013.1 (02/01/91)
ref. Handbook 4571.1

Personal Financial and Credit Statement

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB No. 2502-0001 (Exp. 11/30/90)

Public reporting burden for this collection of information is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0001), Washington, D.C. 20503.

Privacy Act Statement: The Department of Housing & Urban Development (HUD) is authorized to collect this information by P. L. 479-48, Stat.1246, 12 USC 1701 et. seq., and the Housing and Community Development Act of 1987, 42 USC 3543, to collect the Social Security Number (SSN). This report is authorized by law (24 CFR 207.1). It will be used , as a minimum, to make a determination of the financial and credit status of the respondent. HUD may disclose this information to Federal, State and local agencies when relevant to civil, criminal, or regulatory investigations and prosecutions. It will not be otherwise disclosed or released outside of HUD, except as required and permitted by law. Providing the SSN is mandatory. Failure to provide any of the information may result in your disapproval of participation in this HUD program and/or delay action on your proposal.

Project Name	Number	Location

Name and Address of Person making this Statement	Social Security Number
	Date

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Assets			Liabilities and Net Worth	
Cash on hand in banks (Name of depository)	Balance	Total	Accounts Payable	$
			Notes Payable	$
			Debts payable in less than one year (secured by mortgages on land and buildings)	$
		$	Debts payable in less than one year (secured by chattel mortgages or other liens on assets)	$
Accounts Receivable			Other current liabilities: (describe)	
Less: Doubtful Accounts		$		
Notes Receivable				
Less: Doubtful Notes		$		
Stocks and Bonds - Market Value (Schedule A—reverse side)		$		
Other Current Assets: (Describe)			Total Current Liabilities:	$
			Debts payable in more than one year (secured by mortgages on land and buildings)	$
			Debts payable in more than one year (secured by chattel mortgages or other liens on assets)	$
Total Current Assets		$	Other liabilities (describe)	
Real Property — at net* (Schedule B — reverse side)		$		
Machinery Equipment and Fixtures — at net		$		
Life Insurance (Cash value less loans)		$		
Other Assets (describe)				
			Total Liabilities	$
			Net Worth	$
Total Assets		$	Total Liabilities and Net Worth	$

*Cost, including improvements, less depreciation.
Replaces FHA-2417 which is obsolete.

Form HUD-92417 (03/27/91)
ref. Handbook XXXX.X

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Accounts and Notes Receivable Partner (P) Employee (E) Relative (R) or other (O)*

Type (p,E,R or O)	Name	Address	Maturity Date	Amount
Type (P,E,R or O)	Name	Address	Maturity Date	Amount
Type (P,E,R or O)	Name	Address	Maturity Date	Amount

Life Insurance	Face Value	Beneficiary

Delinquencies

Type Liability	Amount	Circumstances
Type Liability	Amount	Circumstances
Type Liability	Amount	Circumstances

Accounts and Notes Payable

Type (p,E,R or O)*	Name	Address	Amount	Maturity Date
Type (P,E,R or O)*	Name	Address	Amount	Maturity Date

Pledged Assets

Type Pledged	Amount	Offsetting Liability
Type Pledged	Amount	Offsetting Liability
Type Pledged	Amount	Offsetting Liability

Legal Proceedings (If any legal proceedings have been instituted by creditors, or any unsatisfied judgments remain on record, give full details.)

Schedule A — Stocks and Bonds

Description	Current Market Value (At date of this Statement)	If Listed, Name Exchange
	PROOF	

Note: If more space is required use a separate sheet of paper.

Schedule B — Real Property (Indicate Private Residence, if any)

Location and Description of Land and Buildings Owned	Age	Original Cost	Market Value	Assessed Value	Mortgaged For	Insured For
Totals						

Title (The legal and equitable title to all pieces of the above-described real estate is solely in my name, except as follows.)

Location of Real Property	Name of Title Holders

PROOF

Bank and/or Trade References

Name and Address	Account Numbers

I hereby certify that the foregoing figures and the statements contained here, submitted to obtain mortgage insurance under the National Housing Act, are true and give a correct showing of my financial condition as of this date.

Name	Date Signed

Warning—HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. §§ 1001, 1010, 1012; 31 U.S.C. §§ 3729, 3802.)

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Application for Multifamily Housing Project

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB No. 2502-0029 (Exp. XX/XX/91)

Public reporting burden for the collection of information is estimated to average 68 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0029), Washington, D.C. 20503.

Section A – Project Identification

1. Name of Project

2. HUD Project Number (Mortgage Ins. or Sec. 202)

3. HUD Project Number (Section 8)

Section B – Purpose of Application

To: The Assistant Secretary for Housing-Federal Housing Commissioner: Application is being made pursuant to Item (a): ☐ 1, ☐ 2, ☐ 3 of Section M, Page 3 hereof. The undersigned desire(s) to participate, with respect to the Property and Program(s) described below. Therefore, it is requested that you give consideration to the information presented herein, for the purpose of loaning and/or approving:

☐ Mortgage Insurance: Section: _____
☐ a. Feasibility Letter (Rehab.)
☐ a. SAMA Letter (New Const.)
☐ a. Conditional Commitment
☐ a. Firm Commitment
☐ Direct Loan Section 202
☐ Housing Asst. Pymnts. Sec. 8
☐ a. Preliminary Proposal
☐ a. Final Proposal

Mortgagor: ☐ PM ☐ NP ☐ LD ☐ B-S Other _____
Financing: ☐ Conventional ☐ GNMA ☐ Bond ☐ State Agency
Other _____
Mortgage/Loan Amount: $ _____
Interest Rate: Permanent _____ % Construction _____ %

Section C – Location and Description of Property

1. Street Address	2. Municipality	3. County	4. State and Zip Code	5. Congressional Dist.

6. Type of Project: ☐ Proposed ☐ Rehabilitation ☐ Existing Year Built: 19

7. Number of Units: Revenue: _____ Non-Revenue: _____ Total: _____

8. List Accessory Buildings: Area Sq. Ft.

10. List Recreation Facilities: Area Sq. Ft.

11. Type of Buildings: ☐ Elevator ☐ Walkup ☐ Row (T.H.) ☐ Detached ☐ Semi-Detached

12. No. of Stories

13. No. of Elevators

14. Type of Foundation: ☐ Slab on Grade ☐ Crawl Space ☐ Partial Bsmt. ☐ Full Basement

15. Structural System	16. Floor System	17. Exterior Finish	18. Heating System	19. Air Conditioning System

Section D – Information Concerning Land or Property

1. Date	2. Price	3. Additional Cost Paid or Accrued	4. Total Cost	5. Outstanding Balance	6. Relationship Between Seller and Buyer, Business, Personal or Other
☐ Acquired ☐ Optioned / /	☐ Purchase ☐ Option $	$	$	$	

7. Site Area Sq. Ft.

8. Zoning (If recently changed, submit evidence)

9. If leasehold, show annual ground rent $; lease term, remaining years

10. Off-Site Facilities:

	Public	Comm.	At Site	Feet from Site
Water	☐	☐	☐	_____ ft.
Sewer	☐	☐	☐	_____ ft.
Paving	☐	☐	☐	_____ ft.
Gas	☐	☐	☐	_____ ft.
Electrical	☐	☐	☐	_____ ft.

11. Unusual Site Features: ☐ None ☐ Poor Drainage ☐ Cuts ☐ Retaining Walls ☐ Fill ☐ Rock Foundations ☐ Erosion ☐ High Water Table ☐ Other _____

12. Special Assessments
a. ☐ Prepayable ☐ Non-prepayable
b. Principal Balance $ _____
c. Annual Payment $ _____
d. Remaining Terms _____ years.

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Section E – Estimate of Income

Unit Type	No. of Living Units	No. of Units Assisted	Living Area (Sq. Ft.)	Composition of Units	PBE Not in Rent ($) *(Sec. F-1)	Unit Rent per Mo. ($)	Total Monthly Unit Rent ($)
Employee(s) Liv. Unit(s)							
Totals				**2. Total Estimated Monthly Rentals for All Living Units $**			

3. Number of Parking Spaces
☐ Attended
☐ Self Park
Total Spaces

4. Parking and Other Income (Not Included in Rent)
Open Spaces _____ @ $ _____ per month = $ _____
Covered Spaces _____ @ $ _____ per month = $ _____
Laundry _____ Sq. Ft. or Living Units @ _____ per month = $ _____
Other _____ per month = $ _____
Total Ancillary Income $

5. Commercial Space (Describe)
Area-Ground Level _____ sq. ft. @ $ _____ per sq. ft./month = $ _____
Other Levels _____ sq. ft. @ $ _____ per sq. ft./month = $ _____
Total Commercial $

6. **Total Estimated Monthly Gross Income at 100 Percent Occupancy $**

7. **Total Annual Rent (Item 6 times 12 months) $**

8. Gross Floor Area Sq. Ft.

9. Net Rentable Residential Area Sq. Ft.

10. Net Rentable Commercial Area Sq. Ft.

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Section F – Equipment and Services (Check Items Included in the Rent, Listed Below)

Equipment
☐ Range and Oven ☐ Carpet
☐ Microwave Oven ☐ Drapes
☐ Refrigerator ☐ Swimming Pool
☐ Laundry Facilities ☐ Air Conditioning Equip.
☐ In Common Area ☐ Trash Compactor
☐ In Living Unit ☐ Disposal
☐ L.U. Hookup Only ☐ Other

Services	Gas	Elect.	Oil
☐ Heat	☐	☐	☐
☐ Hot Water	☐	☐	☐
☐ Cooking	☐	☐	
☐ Air Conditioning	☐	☐	
☐ Lights, etc., in Units			
☐ Cold Water		☐ Parking	
☐ Other			

Section F-1 – Utilities (Not in Rent)

*Personal Benefit Expenses (PBE)
Check Utilities and Services Not Included in the Rent and Paid Directly by the Tenant.
☐ Electricity ☐ Heating ☐ Gas
☐ Decorating ☐ Repairs ☐ Water
Other

Remarks

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Section G – Estimate of Replacement Cost

Land Improvements

1. Unusual Land Improvements $ _____
2. Other Land Improvements $ _____
3. **Total Land Improvements** $ _____

Structures

4. Main Buildings $ _____
5. Accessory Buildings $ _____
6. Garage $ _____
7. All Other Buildings $ _____
8. **Total Structures** $ _____
9. **Subtotal** (Line 3 plus Line 8) $ _____
10. General Requirements (Line 9 x _____%) $ _____
11. **Subtotal** (Line 9 plus Line 10) $ _____

Fees

12. Builder's General Overhead (Line 11 x ____%) $ _____
13. Builder's Profit (Line 11 x ____%) $ _____
14. **Subtotal** (Sum of Lines 11 through 13) $ _____
15. Bond Premium $ _____
16. Other Fees $ _____
17. **Estimated Total Cost of Construction** $ _____
18. Architect's Fee–Design (Line 14 x ____%) $ _____
19. Architect's Fee–Supervisory (Line 14 x ____%) $ _____
20. **Total For All Improvements** (Sum of Lines 17 through 19) $ _____
21. Cost per Gross Square Foot $ _____ (Line 20 divided by Item 8, Section E)
22. Construction Time _____ Months Plus 2 = _____ Months

Charges and Financing During Construction

23. Interest on $ _____ @ _____% for _____ Months $ _____
24. Taxes $ _____
25. Insurance $ _____
26. HUD/FHA Mtg. Ins. Pre. (0.5%) $ _____
27. HUD/FHA Exam. Fee (0.3%) $ _____
28. HUD/FHA Insp. Fee (0.5%) $ _____
29. Financing Fee (___%) $ _____
30. FNMA/GNMA Fee (___%) $ _____
31. AMPO (2.0%) $ _____
32. Contingency (Sec. 202) (3.0%) $ _____
33. Title and Recording $ _____
34. **Total Charges and Financing** $ _____

Legal, Organization and Audit Fee

35. Legal $ _____
36. Organization $ _____
37. Cost Certification Audit Fee $ _____
38. **Total Legal, Organization and Audit Fee** $ _____
39. Builder's and Sponsor's Profit and Risk $ _____
40. Consultant Fee (Nonprofit Only) $ _____
41. Supplemental Management Fund $ _____
42. Contingency Reserve (Rehabilitation Only) $ _____
43. Relocation Expenses $ _____
44. Other $ _____
45. **Total Estimated Development Cost** (Lines 20 + 34 + 38 through 44) $ _____
46. Land (Estimated Market Price of Site) _____ sq. ft. @ $ _____ per sq. ft. $ _____
47. **Total Estimated Replacement Cost of Project** (Line 43 plus Line 44) $ _____
48. Average Cost per Living Unit $ _____ (Line 45 divided by Total in Sec. C, Item 7)

Section H – Annual Income Computations

1. Estimated Project Gross Income (Line 7, Sec. E, Pg. 2) $ _____
2. Occupancy (Entire Project) _____%
3. Effective Gross Income (Line 1 x Line 2) $ _____
4. **Total Project Expenses** (Line 30, Section 1) $ _____
5. Net Income to Project (Line 3 minus Line 4) $ _____
6. Expense Ratio (Line 4 divided by Line 3) _____%

Section I – Estimate of Annual Expense

Administrative

1. Advertising $ _____
2. Management Fee (____%) $ _____
3. Other $ _____
4. **Total Administrative** $ _____

Operating

5. Elevator Maintenance Exp. $ _____
6. Fuel – Heating $ _____
7. Fuel – Domestic Hotwater $ _____
8. Lighting and Misc. Power $ _____
9. Water $ _____
10. Gas $ _____
11. Garbage and Trash Removal $ _____
12. Payroll $ _____
13. Other $ _____
14. **Total Operating** $ _____

Maintenance

15. Decorating $ _____
16. Exterminating $ _____
17. Insurance $ _____
18. Insurance $ _____
19. Ground Expense $ _____
20. Other $ _____
21. **Total Maintenance** $ _____
22. Replacement Res.: New Const. = (.006 x Line 8, Sec. G Total Struct.) Rehab = (.004 x Mort/Loan Requested in Sec. M) $ _____
23. **Subtotal Expenses** (Sum of Lines 4, 14, 21 and 22) $ _____
24. Real Estate: Est. Assessed Value = $ _____ at $ _____ per $1000 = $ _____
25. Personal Prop. Est. Assessed Value = $ _____ at $ _____ per $1000 = $ _____
26. Employee Payroll Tax $ _____
27. Other $ _____
28. Other $ _____
29. **Total Taxes** $ _____
30. **Total Expenses** (Line 23 plus Line 29) $ _____
31. Avg. exp. per unit per annum (PUPA) (Line 30 divided by Total Item 7 Sec. C) $ _____

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Section J – Total Settlement Requirements

1. Development Costs (Line 45, Section G) $ _____
2. Cash Req. for Land Debt/Acquisition $ _____
3. **Subtotal** (Lines 1 plus 2) $ _____
4. Mortgage Amount $ _____
5. Development/Cash (Lines 3 minus 4) +/- $ _____
6. Initial Operating Deficit $ _____
7. Discount Costs $ _____
8. Interest Yield Costs $ _____
9. Working Capital (2% of Mortgage Amount) $ _____
10. Min. Capital Investment (Sec. 202) $ _____
11. Off-Site Construction Costs $ _____
12. Non-Mortgagable Relocation Expenses $ _____
13. Other $ _____
14. **Total Estimated Cash Required** (Sum of Lines 5 through 13) $ _____

Funds Available for Cash Requirements

15. Source of Cash:
    a. _____ $ _____
    b. _____ $ _____
    c. _____ $ _____
    Subtotal (a + b + c) $ _____
16. Source of Fees and Grants:
    a. _____ $ _____
    b. _____ $ _____
    c. _____ $ _____
    Subtotal (a + b + c) $ _____
17. **Total Cash, Fees and Grants** (Sum of Items 15 plus 16) $ _____

Note: Line 17 must equal or exceed Line 14

Section K – Names, Addresses and Telephone Numbers of the Following

1. ☐ Sponsor, ☐ Mortgagor, ☐ Borrower, ☐ Owner Name
Address
Telephone Number | Zip Code

2. Name
Address
Telephone Number | Zip Code

3. ☐ Consultant, ☐ Agent, ☐ Other Authorized Representative Name
Address
Telephone Number | Zip Code

4. General Contractor Name
Address
Telephone Number | Zip Code

5. Sponsor's Attorney Name
Address
Telephone Number | Zip Code

6. Architect Name
Address
Telephone Number | Zip Code

Section L – Application (SAMA and Feasibility Letter)

A. The Undersigned certifies that: (1) He/She is legally authorized to represent the entity(ies) identified below with respect to all transactions pertaining to this application and all matters related to it; (2) Any and all action(s) by the undersigned is/are legally binding on the principal(s) and the entity(ies) being represented; (3) He/She is familiar with the provisions of the regulations issued by the Department of Housing and Urban Development (HUD) pursuant to the above-identified Section (s) of the respective Housing Act(s); (4) To the best of his/her knowledge and belief, the entity(ies) identified below has/have complied, or will be able to comply, with all the requirements of the regulations which are a prerequisite with respect to participation in the program(s) selected; (5) The principal(s) of the entity(ies) identified below are familiar with the specific provisions of the Right to Financial Privacy Act of 1978; (6) the principal(s) is/are aware that disclosure of certain financial information will be required by HUD in the course of processing this application; (7) That he/she has made a physical inspection of the property and, in his/her opinion, the site plan submitted conveys a concept which can be reasonably followed in practice; (8) The proposed construction will not violate recorded zoning ordinances or restrictions; (9) To the best of his/her knowledge and belief no information or data contained herein or in the exhibits or attachments submitted herewith, are in any way false or incorrect and that they are truly descriptive of the project or property which is intended as security for the proposed mortgage loan and/or is presented for consideration with respect to the request for approval of a Housing Assistance Payments Contract.

B. The Undersigned assures and agrees that: (1) Pursuant to the regulations and the related requirements of HUD neither the entity(ies) identified below nor anyone authorized to act on its/their behalf, will decline to sell, rent or otherwise make available any of the property or housing in the project, identified herein, to a prospective purchaser or tenant because of race, color, religion, sex, or national origin; (2) The entity(ies) identified below will comply with Federal, State and local laws and ordinances prohibiting discrimination; and (3) Failure or refusal to comply with the requirements of either (1) or (2) shall constitute sufficient basis for the Commissioner to reject requests for future business with the identified entity(ies) or to take any other action that may be appropriate.

C. ☐ Herewith is a check for $_____ in payment of the required fee for a SAMA letter.

Principal Contact | Signed | Date

Telephone Number | On Behalf of: ☐ Sponsor, ☐ Mortgagor, ☐ Borrower, ☐ Owner

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Section M – To The Federal Housing Commissioner

☐ 1. **Request for Mortgage Insurance:**
Request is hereby made for a ☐ **Conditional Commitment** ☐ **Firm Commitment** to provide mortgage insurance on a loan, which will involve: ☐ Insurance of Advances During Construction ☐ Insurance Upon Completion, with respect to a principal loan of $ _____ which will bear interest at the rate of _____% on the Construction Loan and _____% on the Permanent Loan. The undersigned mortgagee requests consideration for mortgage insurance pursuant to the provisions of Section _____ of the National Housing Act, and the HUD regulations applicable thereto. Said insurance is being requested to cover a loan which is to be secured by a first mortgage on the property described herein. After examining the proposed security, the undersigned considers such project to be desirable and is interested in making a loan in the principal amount and at the interest rate stated above. The loan will require repayment of the principal over a period of _____ months (_____ years) in accordance with an amortization plan acceptable to you. It is understood and agreed that the actual financing fee (Item G-29) will not exceed _____% of your commitment amount. Presented herewith is a check for $ _____ which is in payment of the application fee required by HUD regulations.

☐ 2. **Request for Approval of Housing Assistance Payments Contract (Section 8):**
The undersigned owner requests your consideration with respect to approving a Housing Assistance Payments Contract pursuant to Section 8 of the U.S. Housing Act of 1937, as amended, and the related regulations applicable thereto. Submitted herewith is a proposal which defines the scope of the improvements and the type and quality of the housing which will be provided on the property described herein. Said property, upon completion of the improvements, will comply with the applicable standards and related regulations of the Department of Housing and Urban Development. Such proposed housing is being offered for lease, to eligible tenants at the stated contract rents, pursuant to the provisions of the regulations pertaining to the above-referenced U.S. Housing Act.

☐ 3. **Request for a Section 202 Loan:** Principal Amount $ _____ @ Permanent Interest Rate of _____%
Pursuant to Section 202 of the Housing Act of 1959, as amended, and the regulations applicable thereto, the undersigned borrower hereby requests a loan in the principal amount and at the interest rate stated above. The proceeds of the loan are to be used for development of the property described herein. The scope of the development of the property will be consistent with that information pertaining to improvements, submitted for your consideration. The loan is to be secured by a first mortgage on the property described herein. The principal amount of the loan will be repaid over a period of _____ months (_____ years) in accordance with an amortization plan acceptable to you.

Name and Address of Mortgagee		Principal Contact Telephone Number	
Signed (Proposed Mortgagee) (Use with Item 1)	Date	Signed (Owner Item 2) (Borrower Item 3)	Date

Section N – Required Exhibits: Mortgage Insurance and Section 202 Direct Loan Applications

Item Number	Exhibit Title	FNMA or Feasibility*	Conditional Commitment	Firm Commitment
1	Location Map	X		
2	Legal Description of the Property	X		
3	Evidence of Permissive Zoning	X		
4	Sketch Plan of the Site	X		
5	Evidence of Site Control (Option or Purchase)	X		
6	Evidence of Last Arms-Length Transaction and Price, including a Certification by Sponsor that Evidence Submitted in Response to this Item Reflects Last-Arms Length Purchase Price	X		
7	Form 2010 – Equal Employment Opportunity Certification	X		
8	Form 3433 – Eligibility as Nonprofit Corporation	X		
9	Form HUD-2530 – Previous Participation Certificate	X		
10	Form HUD-92013-E – Supplement to HUD-92013	X**		
11	Form FHA-2013R – Application for Project Mortgage Insurance (Rehabilitation)	X****	X	X
12	Affirmative Marketing Plan		X	
13	Management Plan and Questionnaire for the Sponsor and Managing Agent (HUD-9405A and HUD-9405B)		X	
14	Grant and/or Loan Commitment Letter (if applicable)		X	
15	Form HUD-92013-E – Supplement to HUD-92013		X**	
16	Form HUD-92013 – Supplement – For Each Sponsor and General Contractor		X***	X
17	Form HUD-92417 – Personal Financial Statement for Each Sponsor and General Contractor		X***	X
18	Personal and Commercial Credit Report for Each Sponsor and General Contractor		X***	X
19	Owner/Architect Agreement		X	
20	Architectural Exhibits – Preliminary		X	
21	Architectural Exhibits – Final			X
22	Form HUD-92329 – Contractor's and/or Mortgagor's Cost Breakdown			X
23	Form HUD-92457 and Land Survey			X
24	Form HUD-92013-E – Supplement to HUD-92013			X**
25	Management Agreement			X

* Mortgage Insurance Applications Only.
** For Handicapped and Elderly Projects Only.
*** If General Contractor is known – Otherwise submit with Firm Commitment Application
**** Submit for Rehabilitation Projects only. Complete Sections A, B, C, D, E, F, G, H and I.

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Required Exhibits: Section 8 Housing Assistance Contract Applications

The Developer Packet which applies to the specific Notification of Fund Availability (NOFA) identifies the exhibits which are required with the Preliminary and Final Proposal Applications.

The Developer Packet is available at the HUD Field Office which issued the NOFA to which the application is responding.

	For HUD Use Only					
Date Received						
Amount						
Code						
Schedule						
Received By						

Instructions for Completing Application – Multifamily Projects, Form HUD-92013

Foreword: This Application is used for rental projects to request: (a) mortgage insurance, (b) a direct loan under Section 202, or (c) a Section 8 Housing Assistance Payments Contract. For mortgage insurance there are a maximum of three stages: (1) a request for a Site Appraisal and Market Analysis letter (SAMA letter) for new construction, or a Feasibility letter for a rehabilitation project. (Application for a SAMA or Feasibility letter may be submitted directly to a HUD Area Office or Multifamily Service Office by letter or in person); (2) an application for a Conditional Commitment; and (3) for a Firm Commitment. Both (2) and (3) must be submitted by an approved mortgagee to a HUD Area Office or Multifamily Service Office. For a direct loan, under Section 202, this Application is submitted to a HUD Area Office or Multifamily Service Office at the Conditional and Firm Commitment stages of processing. If Section 8 is combined with an insured mortgage, the preliminary proposal processing may be combined with SAMA or Feasibility stages of processing. The final proposal is [illegible] with the Firm Commitment Application in mortgage insurance.

Except for Rehabilitation Proposals under Section 202, a sponsor may combine two or three stages provided he/she has plans and exhibits that are sufficiently completed.

If a stage of processing is omitted, the exhibits for that stage are submitted with those required for the subsequent stage or stages. Information for all stages must be submitted in triplicate.

HUD Area or Service Office personnel will advise and assist sponsors and potential sponsors at all stages in connection with the submission of applications.

Application Completion Requirements For:

I. Insured: **SAMA**—Complete Page 1, in its entirety. Page 2, Complete only Section G, Item 46, Land (Estimated Market Price of Site). Page 3, Sections K, L and M. **Feasibility**—A request for feasibility analysis (rehabilitation) must be submitted with this form completed in its entirety. **Conditional/Firm**—A request for conditional or firm commitment must be submitted with this form completed in its entirety.

II. Section 202 Direct Loan: This form must be complete in its entirety when a conditional or firm commitment under the Section 202 direct loan program is being requested.

III. Section 8: **Preliminary Proposal**—Complete Page 1 in its entirety, (indicate type of occupancy, i.e., Elderly (E), Handicapped (H) or Family (F) in Section E, Unit Type). Page 2, Section G, Lines 46 and 47; Section I, Line 30. Page 3, Section K (to extent known) and Section M, Item 2. **Final Proposal**—Complete this form in its entirety except for Section L.

Section A – Identification

Item 1—Enter project name.

Items 2 and 3—Enter HUD project number for mortgage insurance and/or Section 8, if known.

Section B – Purpose of Application

Indicate actions requested by checking all applicable blocks and/or making entries where appropriate. For example, if an application is being submitted for the first stage of an uninsured project with housing assistance payments under Section 8, the Housing Assistance Payments Section 8 block will be checked as well as blocks for "A Preliminary Proposal", "Conventional Financing", and "Item 2 of Section M." If mortgage insurance will eventually be used "Conventional Financing" is not checked, but instead the block "Mortgage Insurance" is checked and the Section of Act entered in the blank space. In the Section 8 Preliminary Proposal stage do not check SAMA (Site Appraisal and Market Analysis) or feasibility letter, unless SAMA letter or feasibility letter is requested at that time and the SAMA fee is paid. The appropriate block for type of mortgagor (i.e. Profit Motivated, Nonprofit, Limited Dividend, Builder-Seller, or Other) and type of financing (i.e. Conventional, GNMA, Bond, or State Agency must be checked). Also, enter the amount of the requested Mortgage and the Permanent and Interim Interest Rates in the appropriate spaces.

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Section C – Location and Description of Property

Items 1 through 4—Self-explanatory.

Item 5—Congressional District may be obtained from the Congressional Directory, Maps Of Congressional Districts.

Items 6 through 10—Self-explanatory.

Item 11—(a) Detached – A dwelling structure containing one living unit, surrounded by permanent open spaces; (b) Semi-detached – A dwelling structure containing two contiguous living units separated by a vertical division termed a common, party, or lot wall; (c) Row or Townhouse – A non-elevator structure containing three or more contiguous living units separated by a vertical division termed common, party or lot line walls. Row/townhouse units may not be enclosed on more than two sides by party or lot line walls and must have permanent open space contiguous to no fewer than two sides. Units will usually have private entrance and private interior stairs; (d) Walk-up – A multi-level structure of two or more living units which does not contain an elevator, with the units separated horizontally by floor and/or ceiling structural elements. (Note: Structures containing 2 or more dwelling units, whether one story or multi-story, which do not comply with the definitions herein of either a semi-detached/row or an elevator structure, shall be classified as "walkup"). (e) Elevator Structure – A dwelling structure, having two or more stories above finish grade and containing one or more elevators.

Items 12 through 18—Self-explanatory.

Section D – Information Concerning Land or Property

Items 1 and 2—Self-explanatory.

In Item 3 insert any cost paid, or contracted, in addition to the stipulated purchase price. If the proposed site will require demolition expense, or other preparatory expense, this should be indicated and explained on an attached sheet.

Items 4 through 8—Self-explanatory.

Item 9—If the proposed site is leased, indicate the dollar amount of annual ground rental.

Items 10 through 12—Self-explanatory.

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Section E – Estimate of Income

Item 1—Unit Type – The various unit types the proposal will have must be listed in this column. Usually the distinction will be on the basis of number of bedrooms and/or number of baths each unit will have. If there are units with the same bedroom and bathroom count but significantly different living area, or other characteristics, that would normally be reflected in rent differential, they must be listed as a separate unit type. If there are both elevator and non-elevator units, a separate identification for unit type must be made for each. Provision has been made for 5 different unit types. This can readily be doubled by dividing each of the existing lines in half. In the rare instance where additional space is needed, an additional page of another Form HUD-92013 or a plain paper listing all of the information shown in Section E for the additional unit types must be attached. (Note: If an attachment is used, a remark astensked on the original Form HUD-92013 must be made so that all parties using the application would be aware that there is an attachment involved.) Care must be exercised to secure that excessive unit types are not created on the basis of minor unit market characteristics, such as a difference of only a few square feet between units that are otherwise the same.

No. of Living Units – Enter here, for each unit type, the number of that unit type the project will have.

No. of Units Assisted – Show number of each unit type to receive Section 8 Housing Assistance Payments, if any.

Living Area (Sq. Ft.) is the area of each living unit measured from the inside faces of corridor and exterior walls and from the inside faces of partitions separating the living unit from other living or commercial areas.

Composition of Units – List here in abbreviated form, the rooms within each unit type, (i.e., L for living room, D for dining room, K for kitchen, BR for bedroom) (precede BR with number of bedrooms—e.g., 0BR, 1BR, or 2BR), B for bath (precede the B with 1 for each full bath, a 1/2 for each halfbath, or any combination appropriate), Bal. for balcony, etc.).

PBE Not in Rent (Sec. F-1) – Personal Benefit Expense (PBE), sometimes referred to as a Utility Allowance in the Section 8 program, is an estimate of the utilities or other expenses to be paid by tenants that are not included in the owner's monthly contract rent estimate. This estimate must be compatible with the entries in Item F-1, Utilities (Not in Rent).

Unit Rent Per Mo. ($) – Enter here the proposed rent for each unit type. Where [illegible] units are involved, the issue of proposed rental difference per floor, [illegible] for the market, must be addressed. Usually the midpoint rents in a high-rise structure are reflected. The dollar difference per floor, if any, must be communicated by the applicant.

Total Monthly Unit Rent is the Unit Rent Per Month ($) times the No. of Living Units of that type and represents the Gross Income that can be anticipated for those units.

Employee(s) Living Unit(s) – List the number of employee living units for which rental income will not be received, the square foot area of each unit, and its unit composition. Employee living units must be included in the total units for the project, since they affect project operating expense estimates.

Items 2 through 7—Self-explanatory.

Item 8—At SAMA or feasibility stage insert the estimated gross floor area which is the sum of all floor areas of headroom height within the exterior walls. When completing a request for Conditional or Firm Commitment, insert the gross floor area computed from the plans.

Items 9 and 10 – Net Rentable Residential Area/Net Rentable Commercial Area is the sum of all living/commercial areas within the exterior walls, measured from the interior faces of the exterior walls, corridor walls, and partitions separating the area from other living or commercial areas. Existing comparable structures should be used as a guide by the sponsor in making these estimates at SAMA stage. At the Conditional or Firm Commitment stages, these areas should be calculated from the floor plans.

Section F – Equipment and Services—Self-explanatory.

Section G – Estimate of Replacement Cost

Line 1—Unusual Land Improvements – Enter cost for unusual site preparation such as pilings, retaining walls, fill, etc.

Line 3—Other Land Improvements – Enter cost of other land improvements such as on-site utilities, landscape work, drives and walks.

Lines 3 through 9—Self-explanatory.

Line 10—General Requirements – See Uniform System for Construction Specifications, Data Filing and Cost Accounting. Pages 1.3 and 1.4.

Lines 11 through 20—Self-explanatory.

Line 21—Enter the estimated cost per gross square foot of building area (Line 20 divided by Item 8 of Section E, page 1).

Line 22—Enter the estimated period that will be reflected in the construction contract. The construction time plus the two months equals the total estimated "construction period".

Line 23—Interest is the amount estimated to accrue during the anticipated construction period. It is computed on one-half of the loan amount.

Line 24—Taxes which accrue during the construction are estimated and included as the tax amount.

Line 25—Insurance includes fire, windstorm, extended coverage, liability, and other risks customarily insured against in the community. It does not include workmen's compensation, or public liability insurance, which are included in the cost estimate.

(Note: Lines 26 through 31 are not applicable to Section 202 Direct Loan applications.)

Line 26—HUD/FHA mortgage insurance premium is the amount to be earned during the estimated construction period. The amount should be computed on the requested loan amount at 1/2 of 1% per year or fraction of a year. If the estimated construction period exceeds one year, the premium will be based on a two-year period.

Line 27—HUD/FHA examination fee is computed at $3 per $1000 of the requested loan amount.

Line 28—HUD/FHA inspection fee is computed at $5 per $1000 of the requested loan amount when the project involves new construction, and on the estimated cost of rehabilitation when the project involves the rehabilitation of an existing structure.

Line 29—Financing fee is computed at a maximum of 2% on the loan amount. It is an initial service charge. This fee is not to be confused with discounts.

Line 30—Enter FNMA/GNMA fee here. HUD Field Office personnel will advise interested sponsors and mortgagees of the current maximum allowable rate for this fee and the conditions pursuant to which such fee may be included.

Line 31—[illegible] is the Allowance to Make Project Operational and is computed [illegible] maximum Mortgage insurance amount. It is allowable in cases involving nonprofit mortgagors (not including cooperative mortgagors).

Line 32—Self-explanatory.

Line 33—Title and Recording Expenses – This is the cost typically incurred for these items, by mortgagor, in connection with a mortgage transaction. This cost generally includes such items as recording fees, mortgage and stamp taxes, cost of survey, and title insurance including all title work involved between initial and final endorsement.

Line 34—Self-explanatory.

Lines 35, 36 and 37—Legal Organizational and Cost Certification Audit Fee – This estimate is to be based upon the typical cost usually incurred for these services in the area where the project is to be located. These items must be recorded separately.

Line 38—Self-explanatory.

Line 39—Builder's and Sponsor's Profit and Risk Allowance – This is based on total estimated cost of on-site utilities, landscape work, structures, general overhead expenses, architect's fees, carrying charges, financing, legal, organizaton and audit expenses. It is allowable in 220, 221(d)(3) Limited Distribution or profit-motivated, 236 Limited Distribution, 221(d)(4), and 231 profit-motivated projects. It is in lieu of, and not in addition to, builder's profit.

Line 40—Consultant's Fee, if any, enter amount to be charged the non-profit sponsor by a qualified consultant.

Line 41—Supplemental Management Fund for subsidized living units only – Allowance must not exceed $100 per assisted unit, excluding non-revenue producing units, if any.

Line 42—Contingency Reserve – An amount allowable for rehabilitation projects only, not to exceed 10% of the sum of Line 11 in Section G.

Lines 43, 44 and 45—Self-explanatory.

Line 46—Land (Estimated Market Price of Site) – Enter sponsor's estimate of market price of site including off-site costs. If site was purchased from public body, for a specific re-use, enter purchase price plus holding cost and any other

cost that the purchaser is required to pay, pursuant to specific conditions of the contract of sale. For Rehabilitation interims the "As Is" Value of Property

Lines 47 and 48—Self-explanatory.

Section H – Annual Income Computations—Self-explanatory.

Section I – Estimate of Annual Expense

Lines 1 through 12—Self-explanatory.

Line 13—Other – Reflect expense not specifically listed, such as, project security. Contract Security if provided should include contract guard service, performed either part or full-time, in connection with project operation. If security services are performed by staff employees, their salaries are included under Line 12, Payroll expense.

Lines 14 through 39—Self-explanatory.

In housing for the Elderly, Line 23, will include only the expenses resulting from supplying tenants with shelter and utilities included in the rent. Separate income and expense budgets for supplying tenants with non-shelter services must be shown on Form HUD-92013-E, supplement to this application and used with all Elderly/Handicapped Housing proposals.

Section J – Total Settlement Requirements

Line 1—Self-explanatory.

Line 2—Enter amount required to clear title to site. If land is to be acquired, the unpaid balance of the purchase price shall be entered. If leasehold, or land owned free and clear of encumbrances, enter "none." Indebtedness against land must be supported by options, purchase agreements, pay-off balances, etc.

Line 3—Enter the sum of "Development Cost" and "Land Indebtedness."

Line 4—Enter principal amount of mortgage requested.

Line 5—Self-explanatory.

Line 6—Enter the amount required to meet operating and debt service expense from project completion until such time as income is adequate to provide a self-sustaining operation.

Line 7—Enter discount to be paid for placement of the permanent mortgage as well as any discount required by the construction lender

Line 8—Enter the maximum interest yield cost.

Line 9—Enter 2 percent of the mortgage amount requested. No entry is required for nonprofit mortgagors.

Line 10—Enter one-half of one percent (.5%) of the total loan requested or $10,000, whichever is the lesser.

Line 11—Enter the cost of required improvements beyond property lines, such as streets and utilities, etc., which will not be installed at public or utility company expense.

Line 12—Enter relocation expenses in excess of amount allowed in replacement cost.

Line 13—Other – Enter any and all cost not identified elsewhere.

Line 14—Self-explanatory.

Line 15—Enter principal(s) cash contribution.

Line 16—Identify fees waived or deferred during construction or paid by means other than cash, i.e., BSPRA, builder's profit; identify grants/loans and the respective amounts.

Line 17—Self-explanatory.

Sections K, L, M, and N—Self-explanatory.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Excerpts From Unpublished Notice of Funding Availability, Illustrating Information Collections Draft—Not Being Published for Effect

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. FR-2967]

TITLE: Notice of Fund Availability (NOFA) for Supportive Housing for Persons with Disabilities

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of fund availability for FY91.

* * * * *

FOR FURTHER INFORMATION CONTACT: The HUD Field Office for your jurisdiction.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The Department has submitted this NOFA to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. Pending approval of these collections of information by OMB and the assignment of an OMB control number, no person may be subjected to a penalty for failure to comply with these information collection requirements. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register.**

Public reporting burden for the collection of information requirements contained in this NOFA are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, Findings and Certifications. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: HUD Desk Officer, room 3001, Washington, DC 20530.

I. Purpose and Substantive Description

A. Authority

Section 811 of the National Afffordable Housing Act (the NAH Act) authorizes a new supportive housing program for persons with disabilities and replaces assistance for persons with disabilities previously covered by section 202 of the Housing Act of 1959 (section 202 continues, as amended by section 801 of the NAH Act, to authorize supportive housing for the elderly). The purpose of section 811 is to enable persons with disabilities to live with dignity and independence within their communities by expanding the supply of supportive housing that is designed to accommodate the special needs of such persons and provides supportive services that address the individual health, mental health, and other needs of such persons. The Secretary is authorized to provide assistance to private, nonprofit organizations to expand the supply of supportive housing for persons with disabilities. The assistance will be provided as capital advances and contracts for project rental assistance in accordance with the Interim Rule for part 890 also published on this date (FR).

* * * * *

Of particular interest is the Department's implementation of section 105 of the NAH Act which would require that an application for this program include a certification of consistency of the proposal with an approved Comprehensive Housing Affordability Strategy ("CHAS") for the jurisdiction in which the proposed project is to be located. See the interim rule published on February 4, 1991 (56 FR 4480). The Supportive Housing for Persons with Disabilities interim rule provides that the CHAS certification requirement will not apply for FY 1991 funding of this program. However, beginning with the FY 1992 funding round, all applications for funding under this program must include a certification from the responsible public official that the project is consistent with an approved CHAS.

For FY 1991 applications, the CHAS certification requirement is not being applied to this program, because it is not statutorily required for this year and it is not feasible due to the amount of time required of a State or locality to develop a CHAS, including the hearing necessary to obtain citizen participation, and obtain a certification of consistency for FY 1991 funding. Therefore, to be most fair to entrants in this now significantly revised program, the Department is providing transition by delaying applicability of the CHAS certification until FY 1992.

Also of special interest, is a new statutory requirement for a certification by the appropriate state or local agency that the services identified in the application are well designed to serve the needs of persons with disabilities. In order to fullfill this requirement, Sponsors must submit one copy of their application to the appropriate state or local agency identified by the Field Office in the application package simultaneously with their submission of their application to the appropriate Field Office. Also included with the application package will be a certification form that the Sponsor shall transmit to the state or local agency, along with its application, for the state or local agency to indicate that it has reviewed the supportive services plan and whether or not the services are appropriate to the needs of the proposed disabled population. Once the state or local agency completes its review of the supportive services plan, it must complete the certification form and forward it to Field Office within 30 days of the section 811 application deadline date. Unlike the Section 202 Program of Housing for Handicapped People where the appropriate state agency's review of the service plan description was optional, in the section 811 program, the state or local agency's certification that the services are appropriate is required for approval of the Sponsor's application. Applications which do not contain such a certification will not be funded.

* * * * *

D. Preliminary Evaluation and Selection Criteria

1. Preliminary Evaluation

Applications for section 811 fund reservations for housing for persons with disabilities that meet the following initial threshold requirements at preliminary evaluation will be eligible for technical processing:

(a) Application was received by HUD at the appropriate address by [60 days after publication], and was complete or was missing no more than one complete exhibit (excluding exhibits which are certifications);

(b) Sponsor acceptably corrected deficiencies (including furnishing missing certifications) within 14 calendar days from the date of the notification of deficiency letter;

(c) Sponsor, proposed facilities and proposed occupants are eligible under section 811;

(d) Sponsor has experience in developing and/or operating housing, medical or other facilities and/or providing services to the disabled, families or minority groups;

(e) There is reasonable expectation that the Sponsor can meet the Minimum Capital Investment requirement and start-up expenses;

(f) Application contains evidence of control of a site or the appropriate identification of a site;

(g) The Sponsor is in compliance with civil rights laws and regulations as follows:

(1) There are no pending civil rights suits against the Sponsor instituted by the Department of Justice;

(2) There are no outstanding findings of noncompliance with civil rights statutes, Executive Orders or regulations as a result of formal administrative proceedings, or where the Secretary has issued a charge under the Fair Housing Act, unless the Sponsor is operating under a compliance agreement designed to correct the areas of non-compliance;

(3) There has not been a deferral of the processing of applications from the Sponsor imposed by HUD under title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3), and the HUD title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1).

(h) Even without a site visit, it is reasonable to expect the proposed site meets site and neighborhood standards, including minority disabled concentration considerations, and is not in a floodway or Coastal High Hazard Area;

(i) There is sufficient market demand for the number and type of units proposed based on preliminary review;

(j) Application included a supportive services plan meeting the requirements of § 890.265(c)(15); and

(k) Application was responsive to the Field Office Invitation.

* * * * *

II. Application Process

All applications for section 811 fund reservations submitted by eligible Sponsors must be filed with the appropriate HUD Field Office and must contain all exhibits required by this NOFA.

Immediately upon publication of this NOFA, Field Offices shall notify minority organizations within their jurisdiction involved in housing and community development and groups with special interest in housing for disabled households.

Within three weeks of the date of this Notice, HUD Field Offices will publish a one-time Invitation as required by § 890.205(b) of the Interim Rule, in newspapers of general circulation, and in any minority newspapers serving the Field Office jurisdiction. Field Offices will accept applications after publication of the Invitation. No application will be accepted after the regular closing time of the appropriate Field Office on [60 days after publication], unless that time is extended by a Notice published in the **Federal Register.** Applications received after that date and time will not be accepted, even if postmarked by the deadline date. Applications submitted by facsimile are not acceptable.

Organizations interested in applying for a section 811 fund reservation should provide the appropriate Field Office with their names, addresses and telephone numbers, and advise the Field Office whether they wish to attend the workshop described below. HUD encourages minority organizations to participate in this program as Sponsors. Field Offices, at the date and time specified in the Invitations, will conduct workshops to explain the Section 811 Program and the Seed Money Loan Program under section 106(b) of the Housing and Urban Development Act of 1968. Under this latter program, HUD makes direct, interest-free loans to approved nonprofit section 811 eligible Owners to cover certain start-up expenses. Section 106(b) applications should be submitted simultaneously with the section 811 application. HUD will consider section 106(b) applications with the section 811 applications.

HUD strongly recommends that prospective applicants attend the local Field Office workshop. More detailed information covering the time and place of the particular workshops will be set out in the Field Office Invitation. Interested persons with disabilities should contact the Field Office to assure that any necessary arrangements can be made for them to enable their attendance and participation in the workshop. While strongly urged to do so, if Sponsors cannot attend a workshop, application packages and handbooks can also be obtained from the Field Offices. Contact the appropriate Field Office with any questions regarding the submission of applications.

At the workshops, application packages will be distributed, application procedures and requirements (including the Department's equal opportunity, environmental, design and cost requirements and required exhibits) will be explained. Also, concerns such as local market conditions, building codes, historic preservation, floodplain management, displacement and relocation, zoning, housing costs, and states' positions on funding supportive services to group home residents will be addressed.

III. Application Submission Requirements

A. Application

Each application shall include all of the information, materials, forms, and exhibits listed in paragraph 2 of this section and must be indexed and tabbed. The Field Office will base its determination of the eligibility of the Sponsor for a reservation of section 811 capital advance funds on the information provided in the application.

In preparing applications, applicants will be able to utilize information and exhibits previously prepared for prior section 202 applications or for applications for other funding programs. Examples of exhibits that may be readily adapted or amended to decrease the burden of application preparation include among others those on previous participation in the section 202 program; applicant experience in housing and services; financial capacity; supportive services plan; community ties, and experience serving minorities.

1. Application contents.

(a) Each applicant (Sponsor) shall include on a Form HUD–92013, Application for Multifamily Housing Project:

(1) The name, address, and telephone number of the Sponsor(s);

(2) The name, title, address, and telephone number of the officer or director of the Sponsor's Board of Directors to whom communications should be addressed;

(3) The following specific information regarding the project:

(i) number of units requested by bedroom type and the number of residents (if independent living facility) or the number of bedrooms and number of residents to be housed in each group home;

(ii) dollar amount of the capital advance requested;

(iii) estimated land cost;

(iv) number and type of structures;

(v) number of stories planned and whether an elevator will be included; and

(vi) development method (new construction, rehabilitation, or acquisition (group homes and RTC properties)).

(b) Additional exhibits must include:

(1) A Housing Consultant's Resume, Contract (Form HUD 92531A–EH), and an Identity of Interest and Disclosure

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Certification (if the Sponsor has employed a project consultant).

(2) Evidence of each Sponsor's legal status as a private nonprofit organization, including the following:

(i) Articles of incorporation, constitution, or other organizational documents;

(ii) Bylaws;

(iii) A typed incumbency certificate, listing all officers and directors, title, beginning date of each person's term and when that term expires. It must be certified by an officer of the Sponsor that it constitutes all duly qualified and sitting officers and directors as of the date the application is filed with HUD;

(iv) IRS tax exemption ruling (this must be submitted by all Sponsors, including churches). A nonprofit organization organized in the Commonwealth of Puerto Rico and exempt from income taxation under Puerto Rico law, has never been liable for payment of Federal income taxes, and does not pay patronage dividends may be exempt from the requirement set out in the previous sentence if they are not eligible for tax exemption; and

(v) Resolution of the board, duly certified by an officer, that no officer or director of the Sponsor or Owner has or will have any financial interest in any contract with the Owner or in any firm or corporation which has or will have a contract with the Owner.

(3) Satisfactory evidence that the Sponsor:

(i) has the necessary legal authority to sponsor the project and to assist the Owner to finance, acquire, construct, or rehabilitate and maintain the project; and

(ii) will form an Owner (as defined in § 890.105) after the issuance of the fund reservation, will cause the Owner to file a request for determination of eligibility and a request for a capital advance under § 890.300, and will provide sufficient resources to the Owner to ensure the development and long-term operation of the project.

(4) A description of the Sponsor's ties to the community, including the minority community, and any statements of support for the project by members of the community in which the project is to be located and state and local organizations familiar with the needs of disabled individuals proposed to be housed.

(5) Evidence of previous participation in HUD programs, by the Sponsor, its officers or directors, on Form HUD 2530. If none, forms must be submitted indicating "No previous experience."

(6) A description of any financial default, modification of terms and conditions of financing, or legal action taken or pending against the Sponsor or its officers, directors, or trustees in their corporate capacity.

(7) A description of the following:

(i) any other rental housing projects, medical and/or other facilities sponsored, owned or operated by the Sponsor, including a description of experience in providing housing, medical and/or other facilities to persons with disabilities and/or to families; and

(ii) the Sponsor's experience in providing housing, medical or other facilities and/or services to minority persons or families and in contracting with minority and women-owned business enterprises.

(8) A description of the Sponsor's past or current involvement in any programs other than housing (including its provision of services) that demonstrates the Sponsor's management capabilities and experience, including a description of the Sponsor's experience in serving disabled persons and/or families.

(9) A certified Board Resolution, acknowledging responsibilities of sponsorship, long-term support of the project(s), willingness of Sponsor to assist the Owner to develop, own, manage and ensure the provision of appropriate services in connection with the proposed project, and that it reflects the will of its membership.

(10) A list of the applications, if any, the Sponsor has submitted or is planning to submit to any other Field Office in response to the current Invitations under this NOFA, the NOFA for Supportive Housing for Persons Disabled as a result of Infection with HIV (FR , May , 1991), and the NOFA for Supportive Housing for the Elderly (FR , May , 1991). Indicate by Field Office, the proposed location by city and state, the number of units requested, and the financial commitments related to each application.

(11) An estimate of start-up expenses for the project and the source of funds to meet these expenses. If the Sponsor plans to use a section 106(b) seed money loan, an application (Form HUD–92290) for such loan must be submitted with required attachments.

(12) Evidence, in the form of a certified Board Resolution, of the Sponsor's willingness to fund the Minimum Capital Investment, estimated start-up expenses, and any associated development or operating costs related to items not covered by the capital advance under § 890.240 and to ensure the development and long-term operation of the project. Also, as evidence of the Sponsor's financial ability to cover these costs, include:

(i) A brief narrative description of financial history;

(ii) copies of balance sheets and statements of income and expenses for each of the past three years that the Sponsor has operated. The financial statements, at a minimum, must include the information contained in Form HUD–92417, and a certification pursuant to the criminal warning provided in U.S. Criminal Code, Section 1001, Title 18 U.S.C.;

(iii) Form HUD–2013 Supplement, Application for Project Mortgage Insurance, listing current bank and trade references; and

(iv) a list of all FY 1990 and prior year projects to which the Sponsor(s) is a party, identified by project number, Field Office, funding year and month and year of initial closing, current status, (if finally closed, indicate month and year), and financial requirements for closing.

(13) A narrative description of the proposed housing including:

(i) Evidence of control of an approvable site, or identification of a site for which the Sponsor provides reasonable assurances that it will obtain control within 6 months from the date of fund reservation (if Sponsor is approved for funding);

(A) If the Sponsor has control of the site, it must submit the following information:

(1) Evidence that the Sponsor has entered into a legally binding option agreement to purchase or lease the proposed site; or has a copy of the contract of sale for the site, a deed, long-term leasehold or other evidence of legal ownership of the site (including properties to be acquired from the RTC). The option agreement period should extend through the end of the current fiscal year and contain a renewal provision to guarantee site availability through the subsequent stage of processing. The Sponsor must also identify any restrictive covenants. In the case of a site to be acquired from a public body, evidence that the public body possesses clear title to the site, and has entered into a legally binding agreement to lease or convey the site to the Sponsor after it receives and accepts a notification of section 811 fund reservation and identification of any restrictive covenants. However, in localities where HUD determines the time constraints of the funding round will not permit all of the required official actions (*e.g.*, approval of Community Planning Boards) which are necessary to convey publicly-owned sites, a letter in the application from the Mayor or Director of the appropriate local agency indicating their approval of conveyance of the site contingent upon the necessary approval action is acceptable and may be approved by the Field Office if it has satisfactory experience with timely conveyance of sites from that public body. In such cases, documentation shall also include a copy of the public body's evidence of ownership and whether there are any restrictive covenants. [NOTE: A proposed project site may not be acquired or optioned from a general contractor (or its affiliate) which will construct the section 811 project or from any other development team member.]

(2) A map showing the location of the site and the racial composition of the neighborhood, with any area of racial concentration delineated;

(3) Evidence that the project as proposed is permissible under applicable zoning ordinances or regulations, or a statement of the proposed action required to make the proposed project permissible and the basis for the belief that the proposed action will be completed successfully before the receipt of the conditional commitment application (*e.g.*, a summary of the results of any recent requests for rezoning on land in similar zoning classifications and the time required for such rezoning, preliminary indications of acceptability from zoning bodies, *etc.*);

(4) A statement that (a) identifies all persons (families, individuals, businesses and nonprofit organizations (identified by race/minority group, and status as owners or tenants) occupying the property on the date of submission of the application for fund reservation (or date of initial site control, if later); (b) indicates the estimated cost of relocation payments and other services, and (c) identifies the staff organization that will carry out the relocation activities.

NOTE: If any of the relocation costs will be funded from sources other than the section 811 captial advance, the sponsor must provide evidence of a firm commitment of these funds. Due to potentially high relocation costs, sponsors are encouraged to utilize sites which involve minimal or no relocation costs.

(5) An indication as to whether the Sponsor is willing to seek a different site if the preferred site is unapprovable, and if so, a reasonable assurance that site control will be obtained within 6 months of fund reservation.

(B) If the Sponsor has identified a site, but does not have it under control, it must submit the following information:

(1) A description of the location of the site, neighborhood/community characteristics (to include racial and ethnic data) and amenities, and adjacent housing and/or facilities;

(2) A description of the activities undertaken to identify the site as well as what actions must be taken to obtain control of the site, if approved for funding;

(3) An indication as to whether the site is properly zoned. If it is not, an indication of the actions/time necessary for proper zoning; and

(4) A status of the sale of the site.

(5) An indication as to whether the site would involve relocation.

(ii) If and how the project will promote energy efficiency and if applicable, innovative construction or rehabilitation methods or technologies to be used that will promote efficient construction.

(iii) An identification of all community spaces, amenities or features planned for the housing. A description of how the spaces will be utilized also must be included. If these community spaces, amenities, or features would not comply with the design and cost standards of § 890.220, the Sponsor must demonstrate its ability and willingness to contribute both the incremental development cost and continuing operating cost associated with the community spaces, amenities or features.

(iv) A written description of the design of the proposed housing including any special design features and community space necessary to accommodate the physical needs of the proposed residents and the provision of supportive services. Included with the written description must also be a schematic drawing of each floor of the project noting the location of any special design features as well as a typical bedroom in a group home or a typical unit in an independent living facility with approximate dimensions, and community space for the provision of supportive services.

(v) For group homes to be licensed as intermediate care facilities (in which funding for the intermediate care is provided under Title XIX of the Social Security Act) that serve persons with developmental disabilities, the following must be submitted:

(a) Evidence demonstrating that the proposed project will primarily provide housing rather than medical facilities, is or will be licensed by appropriate State agencies;

(b) written evidence that the State Medicaid Office recognizes the need for a tenant contribution to rent and has agreed to pay the cost of the tenant contribution in the Medicaid payment to the Sponsor;

(c) description of the medical training of the staff of the proposed facility and any nursing services that will be required by the residents on-site;

(d) description of the services that will be funded by Medicaid for residents of the proposed project, including their nature, frequency and where the services are to be provided;

(e) description of any special design features in the application that are not common to other section 811 group homes for the proposed population and the Sponsor's rationale for including them; and,

(f) statement certifying that the Individual Program Plan for each resident will include participation in an out-of-the-home activity program for at least six hours each weekday.

(14) A narrative description of the anticipated occupancy. The Sponsor must limit occupancy of the proposed project to one or more of the following categories: Persons with chronic mental illness, developmental disabilities, or physical disabilities. In accordance with the Congressional directive that 500 of the 2,000 units shall be used for projects for persons disabled as a result of infection with the human acquired immunodeficiency virus (HIV), a Sponsor may propose a project to serve this disabled population. NOTE: Persons disabled as a result of infection with the HIV are also eligible for occupancy in a project for the physically disabled, developmentally disabled or chronically mentally ill, depending upon the nature of the person's disability. The Sponsor may, with the approval of the Secretary, restrict occupancy of a project to persons with disabilities who have similar disabilities and who require a similar set of supportive services. The Sponsor must demonstrate a capacity to serve the proposed occupancy group(s).

(15) A supportive services plan that includes:

(i) A detailed description of whether the housing is intended to serve the physically disabled, developmentally disabled, or chronically mentally ill. Include how and from where persons will be referred and admitted to the project.

(ii) A detailed description of the needs of persons with disabilities that the housing is expected to serve.

(iii) A *detailed description of the supportive services* proposed to be provided to the anticipated occupancy, including:

(A) The name(s) of the agency(s) which will be responsible for providing supportive services and evidence of the service provider's capability and experience in providing such supportive services;

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(B) The manner in which such services will be provided; i.e., how, when and how often, where (on/off-site), including assurances that the proposed residents will receive supportive services based on their individual needs.

(C) The staffing plan, including a description of the qualifications of residential staff, if any, and other staff necessary to provide the proposed services.

(iv) Identification of the extent of state and local funds available to assist in the provision of supportive services.

(v) A letter of intent from each agency that will provide the supportive services (if other than the Sponsor), indicating the source and extent of commitment to provide funding for the supportive services.

(vi) If any state or local government funds will be provided, a description of the state/local agency's philosophy/policy concerning residential facilities for the population to be served as well as a demonstration by the Sponsor that the application is consistent with state or local plans and policies governing the development and operation of facilities to serve individuals of the proposed occupancy category.

(16) Evidence demonstrating that there is effective demand for the proposed housing in the area to be served by the project and demonstrating that this demand is likely to continue throughout the life of the project.

(17) Signed certifications of the Sponsor(s)' intent to comply with title VI of the Civil Rights Act of 1964, the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Executive Orders 11063 and 11246, section 3 of the Housing and Urban Development Act of 1968, and the affirmative fair housing marketing requirements at 24 CFR part 200, subpart M.

(18) A certification from the appropriate state or local agency that it has reviewed the supportive services plan in the Sponsor's application and that the provision of services identified in the application is well designed to serve the special needs of persons with disabilities to be served by the proposed project(s).

Note: *The certification will not be included in the Sponsor's application submission to the Field Office. The state or local agency shall complete the certification found in the Sponsor's submission to the agency and forward it to the Field Office within 30 days of the application deadline date.*

(19) A certification of the Sponsor(s) that the appropriate state agency (single point of contact) under Executive Order 12372, Intergovernmental Review, has been contacted to determine if the Section 811 Program is covered under the state review process and, if applicable, the date the application was submitted to the State.

(20) A certification on SF–424, Application for Federal Assistance, that the Sponsor(s) is not delinquent on the repayment of any Federal debt.

(21) A certification by the Sponsor(s) that the section 811 funds will not be used to lobby the Executive or Legislative branches of the Federal government.

(22) A certification that the Sponsor(s) will comply with the requirements of the Drug-Free Workplace Act.

(23) A certification that the project will comply with HUD's design and cost standards, the Uniform Federal Accessibility Standards and HUD's implementing regulations at 24 CFR part 40, section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8, and for new construction multifamily housing projects (independent living facilities), the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100.

(24) A certification by the Sponsor(s) that it will comply (or has complied) with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR part 24, and 24 CFR § 890.260(e).

* * * * *

Authority: Section 811, National Affordable Housing Act, Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

[END]

Office of Housing

[Docket No. N–91–3272]

Submission of Proposed Information Collection to the Office of Management and Budget

AGENCY: Office of Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) as required by the Paperwork Reduction Act.

ADDRESS: Interested persons may submit comments regarding the paperwork request by referring to the proposal by name and sending them to: Wendy Sherwin Swire, OMB Desk Officer, Office of Management and Budget, New Excutive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed application and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). It also is requested that OMB complete its review within twenty one (21) days.

This Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new, an extension, or reinstatement; and (9) the telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 21, 1991.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

Proposal: Collecting Information from Applicants for Section 202 Housing Projects for the Elderly.

Office: Housing.

Description of the need for the information and its proposed use: This information will enable HUD to determine whether applicants are eligible, able and capable of sponsoring housing projects for the elderly.

Form Number: 2502–0267 (including 2502–0433).

Respondents: Nonprofit organizations and nonprofit consumer cooperatives applying for Fund Reservations under the Notice of Fund Availability for Section 202 Housing for the Elderly.

Frequency of Submission: One time.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hrs. per response	=	Burden hours
202 Application	800		1		51.2		40,960
	40		1		4.0		160
					55.2		41,120

Status: Revision.

Contact: Aretha Williams, HUD (202) 708–2866, Wendy Sherwin, OMB (202) 395–6880.

Dated: May 21, 1991.

SECTION 202 APPLICATION SUBMISSION REQUIREMENTS OMB NO. 2502–0267

A. Supporting Statement

1. Need for Information

The section 202 program, amended by the Cranston-Gonzalez National Affordable Housing Act (NAHA) of 1990, provides capital advances to private nonprofit organizations and nonprofit consumer cooperatives to expand the supply of supportive housing for the elderly. In order to insure that only eligible private nonprofit organizations and nonprofit consumer cooperatives are selected, it is important to obtain information from prospective applicants to assist HUD in determining if they have the financial and administrative capacity to develop such a project and whether the project design meets the needs of the residents. These factors are critical in meeting, statutory requirements and in protecting the Department's financial interest in projects funded under this program.

Based on our previous years' experience, the Department receives far more applications than available resources can fund. In Fiscal Year (FY) 1990, the Department received 358 applications requesting some 20,898 units of housing and selected 91 applications for some 5,110 units of housing. Because the program has been changed from a loan to a capital advance program, it is anticipated that the number of applications received will exceed those received in FY 1990. In view of the highly competitive nature of the section 202 program, it is necessary to have the responses comply with prescribed application requirements in order to form a basis for HUD's evaluation in selecting applications.

The application submission requirements, summarized below, were developed to minimize the front-end expenditure of financial resources by the nonprofit applicants. This is important because only a small percentage of the universe of applications received ultimately are funded.

Contents of Application Requirements: The Application for a section 202 Fund Reservation consists of seven parts with a total of 29 Exhibits. Included with the 29 Exhibits are nine prescribed forms. Six of the nine forms are required, the balance of the forms are either instructions or guide formats for assisting applicants in responding to the Exhibits. The seven components of the application submission requirements are:

Part 1—General
Part 2—Evidence of Ability to Develop and Operate the Housing on a Long-term Basis
Part 3—Financial Capacity and Ability to Develop a Project
Part 4—Need for Supportive Housing and Desirability of the Proposed Site
Part 5—Design of the Project
Part 6—Provision of Supportive Services
Part 7—Certifications

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All of the required application exhibits are specifically identified in Section 889.270 of the regulations.

2. The section 202 application submission requirements are necessary to assist HUD in determining an applicant's eligibility and capacity to develop housing for the elderly consistent with prescribed statutory and program criteria. A thorough evaluation of an applicant's qualifications and capabilities is critical in protecting the Federal government's financial interest and to mitigate any possibility of fraud, waste or mismanagement of public funds.

The procedures for information collection requires the prospective applicant to submit its section 202 application to the appropriate HUD Field Office by the nationally established deadline date (usually between April and June). HUD Field/ Regional Offices evaluate applications based on established criteria (identified in Section 889.300 of the regulations), rate the applications and make selection recommendations to Headquarters (usually by the first week of September). Applicants are notified of selection or nonselection by September 30.

The purpose and use of the seven components of the application exhibits are briefly described below:

(a) Part 1—General

Exhibit 1: This Exhibit requires applicants to submit Pages 1 and 3 of the Form HUD–92013, Application for Multifamily Housing Project. The OMB control number for this form is 2502–0029. This Form collects basic information with regard to the proposed project's characteristics and is used by HUD staff to obtain basic information regarding the proposed project. The Form HUD–92013 has been modified to collect two items that are necessary for program operation, but not presently required by the Form. The items are: metro/ nonmetro classification and minority classification.

The Form will not be changed, however, the instruction will indicate the following:

(1) Section B—Purpose of Application: Block 3 will be checked as well as the block for Mortgage Insurance. However, the applicant must mark through Mortgage Insurance and write in Section 202 Capital Advance Program. In addition to identifying the Mortgage/ Loan Amount, applicants must identify if funds are to be used in a metro or nonmetro area.

(2) Section K—Names, Addresses and Telephone Numbers: Completed by all Applicants. Information on the Sponsor should be provided in Item 1. Item 2 is reserved for the Owner when it formed.

In addition, identify if Sponsor organization is minority or nonminority. A minority organization is one in which more than 50 percent of the board members are minority (i.e., Black, Hispanic, Native American, Asian Pacific, Asian Indian, or Hasidic Jewish).

If members of the development team (i.e., attorney, architect, contractor) are identified, complete where applicable.

The metro/nonmetro classification is necessary in order to adhere to the statutory requirement of Section 801(l)(3) of the NAHA Act which requires that not less than 20 percent of the funds shall be allocated on a national basis for nonmetro areas. The minority classification is necessary to evaluate program effectiveness in meeting the Department's Minority Business Entreprenuership (MBE) goals and the President's goals expressed in Executive Order 12432.

Exhibit 2: Information requested on Form HUD 92531A—EH, resume of the Housing Consultant and Identity of Interest and Disclosure Certificate are to be submitted if a Consultant is to be involved in the project. The Form provides a suggested format for the Housing Consultant's contract.

Exhibit 3: This Exhibit requests' a narrative description of the Sponsor's legal status as a nonprofit entity or consumer cooperative and includes submission of organizational documents, IRS tax exemption ruling, certified list of all officers and Directors, and a Resolution concerning Conflict of Interest to assure that no officer or director has a financial interest in the project.

Exhibit 4: This Exhibit requests evidence of the Sponsor's legal authority to sponsor the project, to form an Owner after issuance of a fund reservation and to provide sufficient resources to ensure development and long-term operation of the project.

(b) Part 2—Evidence of Ability to Develop and Operate the Housing on a Long-term Basis

Exhibits 5 through 11: These Exhibits request narrative descriptions of the Sponsor's experience in HUD programs by having the Sponsor file a Form-2530, Previous Participation Certificate (OMB number is 2502–0118). As part of this section, the applicant is also required to complete narrative responses in the Exhibits concerning information which will assist HUD in determining the applicant's over-all experience and capacity to carry through over an extended period with the proposed development.

In addition, in order to determine the nonprofit organization's ties to the community, including the elderly minority community, in which the proposed project is to be built, the applicant is required to submit a statement evidencing its local community base.

Information regarding any financial defaults or legal action pending against the Sponsor, as well as a certified Board resolution, acknowledging responsibility and pledging support for the project, also is required.

(c) Part 3—Financial Capacity and Ability to Develop a Project

Exhibits 12–14: Information submitted in response to these Exhibits is necessary for an accurate assessment of the Sponsor's financial condition and ability to meet the financial requirements of the program. Under the section 202 Capital Advance Program, Sponsors are required to provide a Minimum Capital Investment of 0.5 percent of 1.0 percent of the approved capital advance amount, not to exceed $25,000 (required under § 889.250). To this end, a narrative financial history on the Sponsor, as well as copies of financial statements for each of the past three years the Sponsor has been in operation, must be submitted. The Sponsor must also submit a certified Board Resolution indicating their willingness to provide any funds necessary to ensure development of the project.

Finally, if the applicant is applying for funds under HUD's section 106(b) seed money loan program, the Form HUD–92290 (OMB number 2502–0187) must be submitted.

(d) Part 4—Need for Supportive Housing and Desirability of the Proposed Site

Exhibits 15–17: These Exhibits request information pertaining to the proposed site and the need for the housing. This information is necessary in order to assure that the proposed site is acceptable for the intended use and the Sponsor has control of the site as well as can obtain proper zoning. Also, the information is needed to determine if there is a market for the housing in the area identified and whether relocation will be required.

(e) Part 5—Design of the Project

Exhibits 18 and 19: These two Exhibits require the Sponsor to provide a list of all amenities (e.g., air conditioning, carpets, etc.), special spaces (e.g., libraries, game rooms, etc.) and community spaces proposed for the project. The Sponsor is also requested to submit typical unit floor plans and floor plans for all floors providing community spaces. This information is evaluated to determine if the project is designed to meet the needs of the population to be served.

(f) Part 6—Provision of Supportive Services

Exhibit 20: This Exhibit requires the Sponsor to submit: a narrative description of the persons to be housed, the supportive services to be provided (Form HUD–92013E, Supplemental Application Processing Form, OMB number 2502–0232), and how those services will be provided. This information is evaluated to determine: the extent of need for such housing; whether the Sponsor accurately assessed the needs based on the proposed residents; if the plan for the provision of services (staffing and funding) is sufficient; and, if the services will meet the identified needs.

(g) Part 7—Certifications

Exhibits 21 through 29: These Exhibits require the Sponsor to submit certifications required by Governmental actions, such as Executive Orders, etc.

In the absence of collecting the above information, the Department would not be able to assess the worthiness of the applications or make sound judgements regarding the potential risk to the Government.

3. Each fiscal year (near the beginning of the funding cycle), HUD issues a Notice pertaining to application submission requirements. Because the Program has changed drastically from the prior years, the Application Package had to be revised. In revising the Package, consideration was given to modifying it to require the minimum of information needed by HUD to conduct the program in accordance with the NAHA, statutory and regulatory requirements, and to establish a selection system which is equitable to all participants. The information described under Item 2 above represents the minimum information acceptable to HUD.

4. No duplication exists, as there are no other forms or exhibits used for the purposes specified under Item 2 herein. Also, as mentioned in Item 3 above, HUD reviewed and modified the application submission requirements to assure that only necessary information is being requested of Sponsors.

5. Not applicable. Individual applications are evaluated and rated by HUD on the merits of the responses submitted with the application. Each application is unique. The information contained in each application relates to a particular Sponsor proposing a specific project, design, unit composition, site, etc., and, as such, the information collected from Sponsors will be significantly different per application.

6. Due to the highly competitive nature of the section 202 program, the application submission requirements were developed in a way to minimize the front-end cost to the nonprofit Sponsor and only, require the minimum amount of information needed in HUD's evaluation. This is important due to the fact that only a small percentage of the universe of applications received ultimately get selected. For example, formation of the Owner corporation is no longer required at the Fund Reservation stage, but only for those projects that are funded. Also, the Form HUD–92013 is not required to be completed in its entirety. This Form is the standard form to make an application for a multifamily housing project. If the Sponsor were required to complete the Form in its entirety, a contractor and other development team participants would have to be obtained. Additionally, HUD recognizes that some Sponsors, who are sincerely interested in providing housing, may lack the staff and other facilities to develop such a project. Therefore, in recognition of the need for these Sponsors to use the services of professional housing consultants, HUD permits a reasonable fee for consultant's services to be included in the section 202 capital advance. The consultant may assist the Sponsor in preparation of the Application Package to request a section 202 Capital Advance and throughout the final development of the project should the Sponsor be selected for funding.

7. Currently, the information collection activities occur annually to coincide with the receipt of annual fiscal year appropriations for the program. Each year, Congress appropriates funds with which to select new applications. HUD, in turn, invites applications and makes selections based on the funds available for the year. These funds are normally exhausted at the end of each fiscal year. The section 202 regulations require HUD to publish a Notice of Fund Availability (NOFA) in the **Federal Register** when such funds are made available by Congress. The regulations also require HUD to publish Invitations for Applications which specify, among other things, a deadline date for receipt of applications. In order for HUD to accept an application, the application must have been submitted in response to a specific Invitation requesting such an application and by the closing date stated in the Invitation. As the funding cycle for the program occurs annually, including the Invitations for Applications, it is not possible to require the submission of this information less frequently.

8. Part 5 CFR 1320.6 lists 10 items that OMB will not approve for information collection, unless it can be demonstrated that the collection of information is necessary to satisfy statutory requirements or other substantial need.

This request for information is consistent with the guidelines under 5 CFR 1320.6 with the exception of one, item. Subparagraph (c) of the above CFR indicates OMB's disapproval of requiring respondents to submit more than an original and two copies of any document. With respect to the section 202 program, HUD requires Sponsors to submit an original and six copies of the Application. As the program is administered on an annual basis, processing of the application must be accomplished in an expeditious manner in order that decisions regarding selections of applications and reservations of funds can be made prior to the end of the fiscal year (September 30).

During the course of processing the applications, nine HUD technical disciplines are involved in the review process: staff from Mortgage Credit, Valuation, Architectural and Engineering, Housing Management, Fair Housing and Equal Opportunity, Economic and Market Analysis, Community Planning and Development, the Multifamily Housing Representative and the Field Office Counsel. These HUD staff members are required to comment on the approvability of each application received.

Because of the (1) various HUD staff involved in the review process, (2) tremendous volume of applications received each fiscal year, and (3) the need to obligate funds by the fiscal year-end, HUD requires concurrent reviews of the applications by the aforementioned HUD staff to assure prompt processing with minimum interruption. For example, additional information or clarification is often needed from Sponsors to permit HUD to make a fair and complete review. The requirement for simultaneous reviews promotes a more efficient, time-saving method to provide applicants a single notification regarding all deficiencies noted as a result of a full review from each HUD technical discipline.

HUD needs more than an original and two copies of the application in order to carry out the above procedures for concurrent reviews.

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9. Inasmuch as the application submission requirements are contained in outstanding regulations (24 CFR 889.270), the promulgation procedure for regulations allowed sufficient participation by outside agency contacts to review and comment on the application material.

10. HUD does not assure confidentiality.

11. The application submission requirements do not contain any sensitive questions.

12. *Provide estimates of annualized cost to the Federal Government and to the respondents.*

(a) *Estimate of Cost to Federal Government:* Inasmuch as the majority of the work involved in reviewing the applications is performed at the HUD Field Office level, the significant costs attributable to the promulgation of the application requirements will be the cost involved in reviewing the information submitted by applicants. Outstanding program procedures require the following reviews performed by the various Field Office staff:

Reviews

Function	Total time per application (hours)
Multifamily Housing Rep	2
Mortgage Credit	3
Architectural	2
Valuation	3
Economic and Market Analysis	1
Fair Housing & Equal Opport	1
Housing Management	1
Community Planning & Devel	1
Field Office Counsel	3
Total	17

	Cost
Clerical (12 Hrs. × $10/hr.) at $20/hr.	$2,400
Printing	100
Mailing	50
Total estimated cost per application	$2,550

(b) *Estimate of Cost to Respondents:* In estimating the cost to the Sponsors, it should be noted that in order to comply with the program requirements, the Sponsor usually retains an attorney and architect. In addition, as many nonprofit organizations do not have in-house expertise to develop an application, a housing consultant is usually hired by the Sponsor. In view of this, the following illustrates the estimated cost to the public:

Housing consultant ($40 per hour)	$1,208
Architect (fee for preliminary project drawings)	1,000
Sponsor	Probono
Attorney	1,000
Total	$3,208

It should be noted that many professionals work on a retainer basis and if the application does not obtain HUD approval, they do not collect a fee. The figures presented above are based on our own experience, as well as consultation with housing professionals in the field.

13. Although for Fiscal Years 1989 and 1990, HUD received approximately 392 and 358 housing for the elderly applications, respectively, it is anticipated that because funding under the program has changed from loans to capital advances, the number of applicants will increase substantially. It is anticipated that the level of activity will average 800 applications annually over the next three years. Although the program funding cycle is on an annual basis, each perspective Sponsor could submit more than one application. However, our estimate of time involved is based on one application per applicant. Using the categories presented in the illustration in Item 12(b) above, the estimated amount of hours involved in developing a complete application submission:

	Hours
Housing consultant	30.2
Architect	8.0
Attorney	2.0
Sponsor	17.0
Total	55.2

These figures are based on HUD's experience, as well as consultation with housing professionals in the field. The previous requested hours apparently were over estimated.

A tabulation of Annual Reporting Burden is shown in Table 1. It should be noted that Exhibits 1, 6, 14, 17, 20, and 25 already have OMB clearance as shown in the Table. These information collections are common to many of our programs and our request for clearance was calculated to include the burden associated for all programs uses. The burden shown in Table 1 for Exhibits 1, 6, 14, 17, 20 and 25, therefore, reflects our estimate for application to the section 202 program. No adjustment to the previously cleared Exhibits 1, 6, 14, 17, 20 and 25 will be required.

Note: For Fiscal Year 1991, Exhibit 22 will be required, therefore, the burden hours will be reduced by 320 hours. However, Exhibit 22 will be required beginning in Fiscal Year 1992.

14. The primary reduction in burden hours (57,861) is due to a decrease in the number of proposed applicants (from 1,300 to 800), and a change in information requested in the application, namely: a reduction in the architectural submission by requesting only typical unit designs and a certification that the project will meet HUD's design and cost standards. Additionally, the previous burden hours approved included the hours (about 25,000) required to prepare an application for housing for disabled people. A separate request for paperwork clearance is being submitted to OMB for approval of the burden hours required to prepare an application for housing for disabled people under section 811 of the NAHA of 1990.

Further, the burden of 265 hours reflected under OMB clearance 2502–0433 is being included under OMB 2502–0267. Therefore, approval for request of information under 2502–0433 will no longer be requested.

15. Not applicable.

B. Collections of Information Employing Statistical Methods—Not applicable.

TABLE 1.—TABULATION OF ANNUAL REPORTING BURDEN

Description of information collection (application submission requirements) (2502–0267)	Section of CRF affected	No. of respondents	No. of responses per respondent	Total annual responses	Hours per response	Total hours
Part 1:						
Exhibit 1, Form HUD–92013 (OMB 2502–0029).	889.270(b)(a)	800	1	800	1.0	800
Exhibit 2, Information on Consultant	Not subject to OMB approval per OMB 5/1/84					
Exhibit 3 Evidence of Sponsor's nonprofit status	889.270(c)(2)	800	1	800	2.0	1,600
Exhibit 4, Evidence of Sponsor's authority to sponsor project.	889.270(c)(3)	800	1	800	1.0	800
Part 2:						
Exhibit 5, Description of community ties	889.270(c)(4)	800	1	800	0.5	400
Exhibit 6, Form HUD–2530 (OMB 2502–0118).	889.270(c)(5)	800	1	800	0.6	480
Exhibit 7, Description of legal actions against Sponsor.	889.270(c)(6)	800	1	800	0.5	400
Exhibit 8, Description of experience providing housing.	889.270(c)(7)	800	1	800	3.0	2,400
Exhibit 9, Description of past involvement	889.270(c)(8)	800	1	800	3.0	2,400
Exhibit 10, Board Resolution to support project.	889.270(c)(9)	800	1	800	0.4	320
Exhibit 11, Description of experience serving minorities.	889.270(c)(10)	800	1	800	1.0	800
Part 3:						
Exhibit 12, Statement on other 202 or 811 applications submitted.	889.270(c)(11)	800	1	800	2.0	1,600
Exhibit 13, Estimate of start-up expenses	889.270(c)(12)	800	1	800	4.0	3,200
Exhibit 14, Evidence of ability to provide funds for project (HUD–92290 OMB 2502–0180).	889.270(c)(13)	800	1	800	4.0	3,200
Part 4:						
Exhibit 15, Need for supportive housing	889.270(c)(13)	800	1	800	3.0	2,400
Exhibit 16, Description of site and evidence of site control.	889.270(c)(14)	800	1	800	7.0	5,600
Exhibit 17, Statement on relocation (OMB 2502–0433).	889.270(c)(15)	[1] 40	1	40	4.0	160
Part 5:						
Exhibit 18, Description of proposed design of project.	889.270(c)(16)	800	1	800	8.0	6,400
Exhibit 19, Floor plans	889.270(c)(17)	800	1	800	5.0	4,000
Part 6:						
Exhibit 20, Description of residents and supportive services (HUD–92013E OMB 2502–0232).	889.270(c)(18)	800	1	800	4.0	3,200
Part 7:						
Exhibit 21, Equal Opportunity certifications	Exempt per 5 CFR Part 1320					
Exhibit 22, CHAS certification from local public official.	889.270(c)(20)	[2] 800	1	800	0.4	320
Exhibit 23, Certification on provision of services.	889.270(c)(21)	800	1	800	0.4	320
Exhibit 24, Certification on E.O. 12372	889.270(c)(22)	800	1	800	0.4	320
Exhibits 25–29, Certifications (SF–424 OMB 0348–0043).	Exempt per 5 CFR Part 1320					
Totals		800	1	800	55.2	41,120

[1] Based on experience, no more than 5 percent of the proposals will involve relocation.
[2] For Fiscal Year 1991, the certification from the local public official will not be required. The respondent will only be required to state, not applicable. The certification will be required beginning in Fiscal Year 1992.

SECTION 202 APPLICATION PACKAGE

Introduction

You have indicated an interest in constructing or rehabilitating housing for the elderly to be financed under the section 202 capital advance program pursuant to the Housing Act of 1959, as amended by section 801 of the National Affordable Housing Act (NAHA) of 1990, and to be assisted by project rental assistance payments. This package and enclosure constitute the section 202 Application Package.

An original and six (6) copies of an Application for a section 202 Fund Reservation must be submitted in response to the Invitation published by this Office, in conformance with Section II—Submission Requirements for a section 202 Fund Reservation of this Application Package. Copies of the completed Application must be submitted to this Office, either by hand, delivery service or by certified mail, by the deadline date and time set forth in the Invitation. Applications received after that date will not be accepted, even if postmarked by the deadline date.

Before preparing your Application, you should carefully review the requirements of the Regulations (24 CFR part 889) and general program instructions set forth in Handbook 4571.3, section 202 Capital Advance Program for Housing the Elderly, Chapter 3, and Housing Notice H 91–9.

Note: Section 1001 of title 18 of the United States Code (Criminal Code and Criminal Procedure, 72 Stat. 967 shall apply to all information supplied in the application submission.

(18 U.S.C. 1001, among other things, provides that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.)

This Application Package consists of three sections and an Application Checklist which are summarized below:

Section I: *Project Development Requirements*

The HUD Field Office will complete this part which sets forth information

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pertaining to applicable operating cost standards, Comprehensive Housing Affordability Strategies, Uniform Relocation Act, and other special requirements the Field Office deems necessary.

Section II: *Submission Requirements for a Section 202 Fund Reservation*

The Application for a section 202 Fund Reservation consists of seven parts, and must be accompanied by the materials, forms and exhibits listed herein (see pages 3 thru 9 below, for a description of the exhibits). Acceptable racial and ethnic categories are defined in the instructions for completing Form HUD–92013 (Attachment 1, Page 10). The submission must have a table of contents and be indexed and tabbed accordingly.

Section III: *General Program Requirements and Attachments*

Self-explanatory.

Application Checklist: A checklist to ensure that the application submission is complete.

Format for Section I—Project Development Requirements

1. Allocation Area:
2. Number [1] and size of Units:
3. Operating Cost Standards:
4. The local/State Comprehensive Housing Affordability Strategy (CHAS) requires: [2]
5. The local/State CHAS sets forth the following preference with respect to the location: [2]
6. Inquiries related to the local/State CHAS should be addressed to: [2]
7. Special requirements for location, density and site planning are:
8. Other requirements:

Acceptable Amenities:

SECTION II—Submission Requirements for a Section 202 Fund Reservation for Housing for the Elderly

Part 1—General

Exhibit 1: Form HUD–92013, Application for Multifamily Housing Project (attached). Complete only specific portions of this form as outlined on pages 11 and 12 of these requirements. No item on page 2 of Form HUD–92013 is required.

Exhibit 2: A Housing consultant's Resume, Contract (Form HUD–92531A–EH) and an Identity of Interest and Disclosure Certification.

Exhibit 3: Evidence of each Sponsor's legal status as a nonprofit entity of nonprofit consumer cooperative, including:

a. Articles of Incorporation, constitution or other organizational documents;

b. By-laws;

c. A typed incumbency certificate, lisitng all officers and directors, title, beginning date of each person's term and when that term expires. It must be certified by an officer of the sponsor that it constitutes all duly qualified and sitting officers and directors as of the date the application is filed with HUD;

d. IRS tax exemption ruling (required for all sponsors including CHURCHES);

e. Resolution of the board, duly certified by an officer, that no officer or director has or will have any contract with the Owner or in any firm or corporation which has or will have a contract with the Owner.

Exhibit 4: Satisfactory evidence that the Sponsor:

a. Has the necessary legal authority to sponsor the project and to assist the Owner to finance, acquire, construct, reconstruct or rehabilitate and maintain the project, and

b. Will form a Owner after the issuance of the fund reservation, cause the Owner to file a request for a capital advance, and provide sufficient resources to the Owner to ensure the development and long-term operation of the project.

Part 2—Evidence of Ability to Develop and Operate the Housing on a Long-Term Basis

Exhibit 5: Description of the Sponsor's ties to the community and support from local community groups.

Exhibit 6: Evidence of any previous participation in HUD programs by the Sponsor, its officers or directors, on Form HUD–2530. If none, form mustr be submitted indicating "No previous experience".

Exhibit 7: A description of any financial default, modification of terms and conditions of financing, or legal action taken or pending against the Sponsor or its officers, directors or trustees in their corporate capacity.

Exhibit 8: A description of any rental housing projects and/or medical facilities sponsored, owned and operated by the Sponsor including a description of experience in providing housing and/medical facilities to the elderly and/or families.

Exhibit 9: A description of the Sponsor's past or current involvement in any programs other than housing (including its provision of service) that demonstrates the Sponsor's management capabilities and experience.

Exhibit 10: A certified Board resolution, acknowledging responsibilities of sponsorship, long-term support of the project(s), willingness to sponsor, to assist the Owner to develop, own, manage and provide appropriate services in connection with the proposed project, and that it reflects the will of its membership.

Exhibit 11: A description of the Sponsor's experience in providing housing and/or services to minority persons or families and in contracting with minority- and women-owned business enterprises.

Part 3—Financial Capacity and Ability To Develop a Project

Exhibit 12: A list of the applications, if any, the Sponsor has submitted or is planning to submit to any other field office in response to the current Invitations. Indicate by field officer, the proposed location by city and State, the number of units requested and financial commitments related to each application.

Exhibit 13: An estimate of start-up expenses and the source of funds to meet these expenses. If the Sponsor plans to use a section 106(b) seed money loan, an application (Form HUD–92290) for such loan must be submitted with required attachments.

Exhibit 14: Evidence, in the form of a certified Board Resolution, of the Sponsor's willingness to fund the Minimum Capital Investment, estimated start-up expenses, and any associated development or operating costs related to items not covered by the capital advances and to ensure the development and long-term operation of the project. Also, as evidence of the Sponsor's financial ability to cover these costs, include: (1) a brief narrative description of financial history; (2) copies of balance sheets and statements of income and expenses for each of the past three years that the Sponsor has operated. (The financial statements at a minimum must include the information contained in Form HUD–92417 and a certification pursuant the criminal warning provided in U.S. Criminal Code, Section 1001, Title 18 U.S.C.); (3) a Form HUD–2013 Supplement, Application for Project Mortgage Insurance, listing current bank and trade references; and, (4) a list of all Fiscal Year 1990 and prior year projects to which the Spsonsor(s) is a party, identified by project number, Field Office, funding year, month and year of initial closing, current status (if finally closed, indicate month and year) and financial requirements for closing.

Part 4—Need for Supportive Housing and Desirability of the Proposed Site

Exhibit 15: Evidence of need for supportive housing for the elderly in the area to be served such as:

a. State or local needs assessments indicating the extent of need in the locality for the proposed project.

b. Letters from local agencies (i.e., housing, services) indicating the extent of need for supportive housing for the elderly in the area to be served.

Exhibit 16: The following additional information with respect to the proposed project site:

a. Evidence that the Sponsor has entered into a legally binding option agreement to buy or lease the proposed site; or has a copy of the contract of sale for the site, a deed, long-term leasehold or other evidence of ownership for the site (including properties to be acquired from the Resolution Trust Corporation). The option agreement period should extend through the end of the current fiscal year and contain a renewal provision to guarantee site availability through the subsequent stage of processing. The Sponsor must also identify any restrictive covenants. In the case of a site to be acquired from a public body, evidence that the public body possesses clear title to the site, has entered into a legally binding agreement to lease or convey the site to the Sponsor after it receives and accepts a notice of section 202 fund reservation and identified any restrictive covenants. However, in localities where HUD determines the time constraints of the funding round will not permit all of the required official actions (e.g., approval of Community Planning Boards as required by New York City) necessary to convey publicly-owned sites, a letter in the application from the Mayor or Director of the appropriate local agency indicating approval of conveyance of the site, contingent upon the necessary approval action, is acceptable and may be approved by the Field Office if it has had satisfactory experience with timely conveyance sites from that public body. In such cases, documentation shall also include a copy of the public body's evidence of ownership and identification of any restrictive covenants.

b. A map showing the location of the sites and the racial composition of the neighborhood, with the area of racial concentration delineated.

c. A sketch of the site plan showing the general development of the site including the proposed location of the building(s), streets, parking areas and drives, service areas, and unusual site features.

d. Evidence that the project as proposed is permissible under applicable zoning ordinances or regulations, or a statement of the proposed action to make the proposed project permissible and the basis for belief that the proposed action will be completed successfully before the receipt of the conditional application (e.g., a summary of the results of any recent requests for rezoning on land in similar zoning classifications and the time required for such rezoning, preliminary indications of acceptability from zoning bodies, etc.).

Exhibit 17: A statement that:

a. Identifies all persons (families, individuals, businesses and nonprofit organizations (identified by race/minority group and status as owners or tenants) occupying the property on the date of submission of the application for a section 202 fund reservation (or date of initial site control, if later);

b. Indicates the estimated cost of relocation payments and other services; and

c. Identifies the staff organization that will carry out the relocation activities.

Note: If any of the relocation costs will be funded from sources other than the section 202 capital advance, the Sponsor must provide evidence of a firm commitment of these funds. Due to potentially high relocation costs, sponsors are encouraged to utilize sites which involve minimal or no relocation costs.

Part 5—Design of the Project

Exhibit 18: A narrative description of the proposed housing consistent with section 889.270(b)(4), including:

a. If the project will be developed using innovative construction or rehabilitation methods or technologies, identify them and describe how they will promote efficient construction or energy efficiency.

b. Identification and description of all community spaces, special amenities or features planned for the housing. A description of how the space will be utilized also must be included. If these amenities, features or community spaces would not comply with the design and cost standards, the Sponsor must demonstrate its ability and willingness to contribute both the increment development cost and continuing operating cost associated with the community spaces, features or amenities.

Exhibit 19: Typical unit plans and floor plans of all floors providing community space, indicating dimensions to be used for the provision of supportive services.

Part 6—Provision of Supportive Services

Exhibit 20: A description of:

a. The category or categories of elderly persons the housing is intended to serve;

b. On a Form HUD 92013E, Supplemental Application Processing Form—Housing for the Elderly, identify all supportive services; if any, to be provided to the persons occupying such housing;

c. The manner in which such services will be provided to such persons (i.e., on or off-site) including, whether a service coordinator will facilitate the adequate provision of such services; and

d. The public or private sources of assistance that may reasonably be expected to fund or provide such services.

Part 7—Certifications

Exhibit 21: Signed certifications of the Sponsor(s)' intent to comply with Title VI of the Civil Rights Act of 1964, the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Executive Orders 11063 and 11246, section 3 of the Housing and Urban Development Act of 1968 and affirmative fair housing marketing requirements at 24 CFR part 200, subpart M.

Exhibit 22: In accordance with section 105 of the NAHA, a certification from the public officials responsible for submitting a housing strategy, for the jurisdiction to be served; that, the proposed activities are consistent with the approved Comprehensive Affordable Housing Strategy (CHAS) of the State or unit of general local government within which the site is located.

Note: The requirement for the CHAS certification will not be effective until Fiscal Year 1992. For Fiscal Year 1991, the response to the Exhibit should be: Not Applicable.

Exhibit 23: A certification from the appropriate State or local agency that the provision of services identified in the application is well designed to serve the special needs of the category or categories of elderly persons the housing is intended to serve.

Exhibit 24: A certification of the Sponsor(s) that the appropriate State agency (point of contact) has been contacted to determine if the section 202 program is covered under that State s

[1] **Note:** Any nonrevenue-producing units proposed for a project must be included within the total units advertised. Applications will be rejected which exceed the limits set forth in the invitation. For example, if a project is 100 units, and if a nonrevenue unit (i.e., resident manager's unit) is planned, the configuration is 99 units, plus one nonrevenue unit. Adding nonrevenue units at later processing stages will not be accepted.

[2] **Note:** The CHAS certification is not required for applications submitted for Fiscal Year 1991 funding.

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review process, under Executive Order 12372, and, if applicable, the date the application was submitted to the State.

Exhibit 25: A certification on SF–424, Application for Federal Assistance, that the Sponsor(s) is not delinquent on the repayment of any Federal debt.

Exhibit 26: A certification by the Sponsor(s) that the section 202 and Project Rental Assistance funds will not be used to lobby the Executive or Legislative branches of the Federal Government.

Exhibit 27: A certification that the Sponsor(s) will comply with the requirements of the Drug-Free Workplace Act.

Exhibit 28: A certification that the project will comply with HUD's design and cost standards, the Uniform Federal Accessibility Standards and HUD's implementing regulations at 24 CFR part 40, section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8, and for new construction projects, the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100.

Exhibit 29: A certification by the Sponsor(s) that it will comply (or has complied) with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), as amended, and implementing regulations at 49 CFR part 24 and 24 CFR section 880.264.

Section III—General Program Requirements and Forms

1. All projects/sites are subject to HUD environmental regulations 24 CFR Part 50, Protection and Enhancement of Environmental Quality, implementing Section 102(2) of the National Environmental Policy Act. These regulations also include, in 24 CFR 50.4, other applicable environmental statutes, Executive Orders and HUD regulations (e.g., National Historic Preservation Act, Executive Order 11988 on Floodplain Management, etc.).

Note: The Environmental Clearance Officer in the HUD Field Office will provide guidance with these requirements.

2. Title VI of the Civil Rights Act of 1964, Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Executive Orders 11063 and 11246, Section 3 of the Housing and Urban Development Act of 1968 and Affirmative Fair Housing Marketing Requirements at 24 CFR Part 200, Subpart M and all implementing rules, regulations and requirements pertaining to these laws and Executive Orders.

Residency preferences will be permitted only to the extent the preference is not inconsistent with the objectives of the Affirmative Fair Housing Marketing (AFHM) Regulations and the provisions of the AFHM Plan.

Note: The Equal Opportunity staff in the HUD Field Office will assist in resolving any questions concerning the rules, regulations and requirements pertaining to the laws and Executive Orders described above.

3. The Davis-Bacon Requirements and the Contract Work Hours and Safety Standards Act.

Note: The Labor Relations staff in HUD Field Office will provide guidance in this area.

4. Comprehensive Housing Affordability Strategies and Relocation Requirements.

Note: Community Planning and Development staff in the HUD Field Office will provide guidance in these areas.

5. HUD Minimum Property Standards, local building codes, Uniform Federal Accessibility Standards (UFAS) (A117.1) and HUD's implementing regulations at 24 CFR part 40, section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8, and for new construction projects, the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100.

6. *Forms.* Certifications for lobbying, drug-free workplace, supportive services, Executive Order 12372, relocation, HUD's design and cost standards and Standard Form–LLL are Attachments of Notice 91–9. The following forms as required by Part II of this Package are attached for your convenience in preparing the application.

—Form HUD–92013 (Instructions for completing this form are discussed below.)
—Form HUD–92531A–EH
—Form HUD–2530
—Form HUD–92290
—Form HUD–92417
—Form HUD–2013 Supplement
—Form HUD–92013E
—Form SF–424 (revision dated 4/88 must be used)

Instructions for Completing form HUD–92013

For purposes of submitting an application for a Section 202 Fund Reservation, pages 1 and 3 as noted below shall be completed by all applicants. It should be noted that two items (i.e., metropolitan/nonmetropolitan classification and minority classification) are not contained on the form. The instructions indicate the applicable places to identify this information on the Form HUD–92013.

Section A—Project Identification: Complete Item 1. Items 2 and 3 will be completed by the HUD Field Office.

Section B—Purpose of Application: Check Block 3, as well as the Block for Mortgage Insurance. However, mark through "Mortgage Insurance" and write in Section 202 Capital Advance Program. In addition to identifying the Capital Advance amount, applicants must identify if funds are to be used in a metro or nonmetro area.

Section C—Location and Description of Property: Complete in entirety.

Section D—Information Concerning Land or Property: Complete, except for Item 8 which is satisfied by the response to Exhibit 15.

Section E—Estimate of Income: All items, except 2, 6 and 7.

Section F—Equipment and Services and Section F–1: Complete, as applicable.

Section K—Names, Addresses and Telephone Numbers: Complete in entirety. In addition, identify if SPONSOR is minority or nonminority. A minority organization is one in which more than 50 percent of the board members are minority (i.e., Black, Hispanic, Native American, Asian Pacific, Asian Indian, or Hasidic Jewish). The "other" category is not acceptable.

If development team members (i.e., architect, attorney, contractor) are identified, complete where applicable.

Section L—Application (SAMA and Feasibility Letter): Not applicable.

Section M: All applicants check Block 3 and an authorized officer of the SPONSOR must sign and date. The following certification must be submitted with the application and signed by an authorized officer of the applicant:

The SPONSOR certifies that the Form HUD–92013 and Exhibits in this Application Request are true and correct:

_____

(Legal Name of Sponsor)

By: _____

(Authorized Officer of Sponsor)

_____

(Title)

Date: _____

Sponsor's Fund Reservation Application Checklist

The following checklist is a summary of the steps and exhibits involved in the application process for a section 202 Capital Advance for housing for the elderly. The checklist is a guide for determining whether your application is completed and properly submitted. All exhibits must be completed according to instructions in the application package.

Application Process

Steps in the application process	Completed
1. Obtained copy of application package.	____
2. Attempted Field Office Workshop.	____
3. Completed all exhibits of application.	____
4. Submitted application to Field Office by _____	____

Application Requirements

Exhibit number	Description	Included in application
1	Form HUD–92013	____
2	Form HUD–92531A	____
	Consultant's Resume	____
	Identity of Interest & Disclosure Certification	____
3	Articles of Incorporation, Constitution, etc	____
	By-Laws	____
	Incumbency Certificate	____
	IRS Tax Exemption Ruling	____
	Conflict of Interest Resolution	____
4	Narrative—Legal authority to sponsor project & assist Owner	____
	Narrative—Will form Owner	____
5	Narrative—Community ties	____
6	Form HUD–2530	____
7	Narrative—Financial & legal actions taken or pending	____
8	Narrative—Description of previous housing experience	____
9	Narrative—Description of management experience	____
10	Board Resolution of support	____
11	Narrative—Experience serving minorities & with minority business	____
12	List of other applications submitted	____
13	Estimate of start-up expenses	____
	Form HUD–92290 (If 106(b) applicable)	____
14	Certified Board Resolution committing funds	____
	Narrative—Financial history	____
	Financial statements for past three years	____
	Form HUD–2013 Supplement	____
	List of prior year projects	____
15	Narrative—Need for supportive housing	____
16	Evidence of site control	____
	Map showing site location	____
	Sketch of site plan	____
	Evidence of permissive zoning	____
17	Narrative—Persons to be relocated	____
	Estimated cost of relocation	____
	Narrative—Relocation staff	____
18	Narrative—Description of proposed housing	____
19	Unit & floor plans	____
20	Narrative—Description of elderly persons to be served	____
	Form HUD–92013E	____
	Narrative—Description of how services will be provided	____
	Narrative—Description of funding for services	____
21	Civil Rights, Equal Opportunity, etc. certifications	____
22	CHAS certification (Not Applicable for FY 1991)	____
23	Agency on Aging certification	____
24	Certification of conformance with EO 12372	____
25	SF–424	____
26	Lobbying Certification	____
27	Drug-free Workplace Certification	____
28	Design & Cost Standards Certification	____
29	Uniform Relocation Certification	____

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OMB Approval No. 2502-0118 (exp. 5/31/92)

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
HOUSING - FEDERAL HOUSING COMMISSIONER AND
U.S. DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION

PREVIOUS PARTICIPATION CERTIFICATION

PART I - CERTIFICATE *(To be completed by Principals of Multifamily Projects.)*

1. TO: *(Name and City of HUD Area Office or USDA-FmHA District Office where the Application is Filed.)*	2. PROJECT NAME, I.D., OR PROJECT NUMBER AND CITY, STATE CONTAINED IN THE APPLICATION ALSO: SECTION 8 CONTRACT NUMBER	
3. LOAN OR CONTRACT AMOUNT $	4. NUMBER OF UNITS OR BEDS	5. SECTION OF ACT *(If known)*	6. TYPE OF PROJECT *(Check One)* ☐ Existing ☐ Rehabilitation ☐ Proposed *(New)*

LIST OF ALL PROPOSED PRINCIPAL PARTICIPANTS

7. Alphabetical List of the Full Names *(last name first)* and Address of all known principals and affiliates *(people, businesses and organizations)* proposing to participate in the project described above.	8. Role of Each Principal	9. Expected % Interest in Ownership	10. Social Security or IRS Employer Number

CERTIFICATION

I *(Imposing the individual who signs as well as the corporations, partnerships or other parties listed above who certify)* hereby apply to HUD or USDA - FmHA, as the case may be, for approval to participate as a principal in the role and project listed above based upon my following previous participation record and this Certificate.

I certify that all the statements made by me are true, complete and correct to the best of my knowledge and belief and are made in good faith, including the data contained in Schedule A and Exhibits signed by me and attached to this form.

A. I further certify that

1. Schedule A contains a listing of every assisted or insured project of HUD, USDA FmHA and State and Local Government housing finance agencies in which I have been or am now a principal.
2. For the period beginning 10 years prior to the date of this certification and except as shown by me on this certificate -
   a. No mortgage on a project listed by me has ever been in default, assigned to the Government or foreclosed, nor has mortgage relief by the mortgagee been given.
   b. I have not experienced defaults or noncompliances under any Conventional Contract or Turnkey Contract of Sale in connection with a public housing project.
   c. To the best of my knowledge, there are no unresolved findings raised as a result of HUD audits, management reviews or other Governmental investigations concerning me or my projects.
   d. There has not been a suspension or termination of payments under any HUD assistance contract in which I have had a legal or beneficial interest attributable to my fault or negligence.
   e. I have not been convicted of a felony and am not presently, to my knowledge, the subject of a complaint or indictment charging a felony. *(A felony is defined as any offense punishable by imprisonment for a term exceeding one year, but does not include any offense classified as a misdemeanor under the laws of a State and punishable by imprisonment of two years or less)*
   f. I have not been suspended, debarred or otherwise restricted by any Department or Agency of the Federal Government or of a State Government from doing business with such Department or Agency.
   g. I have not defaulted on an obligation covered by a surety or performance bond and have not been the subject of a claim under an employee fidelity bond.
3. All the names of the parties, known to me to be principals in this project(s) in which I propose to participate, are listed above.
4. I am not a HUD/FmHA employee or a member of a HUD/FmHA employee's immediate household as defined in HUD's Standard of Conduct, in 24 CFR 0.735.205(a)(2)/USDA's Standard of Conduct in 7 CFR Part 0, Subpart B.
5. I am not a principal participant in an assisted or insured project this date on which construction has stopped for a period in excess of 20 days or which has been substantially completed for more than 90 days and documents for closing, including final cost certification have not been filed with HUD or FmHA.
6. To my knowledge I have not been found by HUD or FmHA to be in noncompliance with any applicable civil rights laws.

B. *(APPLICABLE TO GENERAL PARTNERS OR PROJECT OWNERS ONLY)*
All the parties who are principals or who are proposed as principals here are listed above and no principals or identities of interest are concealed or omitted.

C. I am not a Member of Congress or a Resident Commissioner nor otherwise prohibited or limited by law from contracting with the Government of the United States of America.

D. Statements above *(If any)* to which I cannot certify have been deleted by striking through the words with a pen. I have initialed each deletion *(If any)* and have attached a true and accurate signed statement *(If applicable)* to explain the facts and circumstances which I think helps to qualify me as a responsible principal for participation in this project.

Typed or Printed Name of Principal	Signature of Principal	Title, Role or Capacity	Date	Area Code and Telephone No.

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code, Section 1001 and Section 1010.

THIS FORM WAS PREPARED BY *(Please print name)* | AREA CODE & TELEPHONE NO.

REPORT OF INSPECTOR GENERAL - INTERNAL PROCESSING ONLY

THE INDICES OF THE INSPECTOR GENERAL'S OFFICE HAVE BEEN CHECKED FOR THE NAMES OF THE PRINCIPALS LISTED IN PART I ABOVE AND: ☐ a. WE HAVE NO INFORMATION, OR ☐ a. WE HAVE INFORMATION AND A REPORT IS ATTACHED

DATE	TITLE	SIGNATURE

SCHEDULE A - LIST OF PREVIOUS PROJECTS AND SECTION 8 CONTRACTS

By my name below is the complete list of my **previous** projects and my participation history as a principal in Multifamily Housing programs of HUD/USDA-FmHA, State and Local Housing Finance Agencies.

NOTE: Read and follow the attached instructions sheet carefully, Abbreviate where possible. Make full disclosure. Add extra sheets if you need more space. Double check for accuracy. If you have no previous projects write by your name - "No previous participation - First Experience.

1. List each Principal's Name *(List in Alphabetical Order, Last Name First)*	2. List Previous Projects *(Give the I.D. Number, Project Name, City of Location, Government Agency involved and Number of Units in the Project)*	3. List Principal's Participation Role and Interest - Give Month and Year Participation began and ended.	4. Disclose Defaults, Mortgage Relief, Assignments, Foreclosures. If None, write "None."	5. RESERVED FOR HUD PROCESSING

PART II - INTERNAL PROCESSING ONLY

1. Received by the Field Office, checked by me for accuracy and completeness and found ready for processing:

DATE | FTS TELEPHONE NUMBER

SUPERVISOR, PROCESSING CONTROL AND REPORTS UNIT

2. TO: Department of Housing and Urban Development, Multifamily Participation Review Committee, Washington, D.C.
A review of the records and project files of this office relative to the above listed parties and projects reveals:

☐ A. No adverse information, Form HUD-2530 approval is recommended; ☐ B. Problems exist, my memorandum on them is attached.

DIRECTOR OF HOUSING

PROCESSING IS AUTHORIZED

DATE | NAME OF AREA MANAGER

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INSTRUCTIONS FOR COMPLETING THE PREVIOUS PARTICIPATION CERTIFICATE, FORM HUD-2530

(Effective January 1, 1981 for HUD Assisted Multifamily Housing Projects.)

PURPOSE -

Form HUD-2530 must be completed and signed by all parties applying to become principal participants in HUD multifamily housing projects. The purpose of this form is to provide HUD with a certified report of all previous participation in HUD multifamily housing projects by those parties making application for additional participation in another HUD MF H project. This form must also be completed by those who have not previously participated in HUD MFH projects.

Before filing this form with the HUD Area or Service office where your project application will be processed, these instructions and the regulations that apply to this form should be read carefully. A copy of these regulations published at 24 CFR 200.210 to 200.246 can be obtained from the Multifamily Housing Representative at any HUD Area or Service office.

The information requested in this form is necessary in order for HUD to determine if you meet the standards established to ensure that all principal participants in HUD projects will honor their legal, financial and contractual obligations and are acceptable risks from the underwriting standpoint of an insurer, lender or governmental agency.

To assist in this determination, HUD requires that you certify your record of previous participation in HUD projects by completing and signing this form, before your project application or participation can be approved. HUD approval of your certification is a necessary precondition for your participation in the project and in the capacity that you propose.

If you do not file this certificate, do not furnish the information requested accurately, or do not meet established standards, you will not be approved and you will not be able to participate in the project as you had planned. Alternatively, approval may be withheld for up to 120 days if HUD feels more information is necessary to make an accurate decision.

Note that approval of your certification does not obligate HUD to approve your project application, and it does not satisfy all other HUD program requirements relative to your qualifications.

WHO MUST SIGN AND FILE FORM HUD-2530 -

Form HUD-2530 must be signed and filed by all principals and their affiliates who propose participating in the HUD project. Principals may all use, sign, and file on the same form or they may elect to file separate forms if that is more convenient. Late comers must file when they decide to join principals who have already filed.

Principals include all individuals, joint ventures, partnerships, corporations, trusts, nonprofit organizations or any other public or private entity that will participate in the proposed project as a sponsor, owner, prime contractor, turnkey developer, or managing agent. In addition, principals include packagers and consultants, defined as individuals or firms providing advisory services in connection with the financing or construction of a project, or with meeting any related HUD requirements. Architects and attorneys who have any interest in the project other than an arms length fee arrangement for professional services are also considered principals by HUD.

In the case of partnerships, all general partners regardless of their percentage interest and limited partners having a 25 percent or more interest in the partnership are considered principals. In the case of public or private corporations or governmental entities, principals include the president, vice president, secretary, treasurer and all other executive officers who are directly responsible to the board of directors, or any equivalent governing body, as well as all directors and each stockholder having a 10 percent or more interest in the corporation.

Affiliates are defined as any person or business concern that directly or indirectly controls the policy of a principal or has the power to do so. A holding or parent corporation would be an example of an affiliate if one of its subsidiaries was a principal.

EXCEPTION FOR CORPORATIONS - ALL PRINCIPALS AND AFFILIATES MUST PERSONALLY SIGN THE CERTIFICATE EXCEPT IN THE FOLLOWING SITUATION. WHEN A CORPORATION OR PUBLIC AGENCY IS A PRINCIPAL, ALL OF ITS OFFICERS, DIRECTORS, COMMISSIONERS, TRUSTEES AND STOCKHOLDERS WITH 10 PERCENT OR MORE OF THE COMMON (VOTING) STOCK NEED NOT SIGN PERSONALLY IF THEY ALL HAVE THE SAME RECORD TO REPORT. THE OFFICER WHO IS AUTHORIZED TO SIGN FOR THE CORPORATION OR AGENCY WILL LIST THE NAMES AND TITLE OF THOSE WHO ELECT NOT TO SIGN. HOWEVER, ANY PERSON WHO HAS A RECORD OF PARTICIPATION IN HUD PROJECTS THAT IS SEPARATE FROM THAT OF HIS OR HER ORGANIZATION MUST REPORT THAT ACTIVITY ON THIS FORM AND SIGN HIS OR HER NAME.

EXEMPTIONS - The names of the following parties do not need to be listed on Form HUD-2530: Public Housing Agencies, tenants, owners of less than five condominium or cooperative units and all others interests acquired by inheritance or court order.

WHERE AND WHEN FORM HUD-2530 MUST BE FILED -

This form must be filed with the HUD Area or Service office where your project application will be processed at the same time you file your project application.

This form must be filed with applications for projects, or when otherwise required in the situations listed below:

- Projects to be financed with mortgages insured under the National Housing Act (FHA).
- Projects to be financed according to Section 202 of the Housing Act of 1959 (Elderly and Handicapped).
- Public Housing projects to be financed according to the United States Housing Act of 1937.
- Projects in which 20 percent or more of the units are to receive a subsidy as described in 24 CFR 200.213.
- Purchase of a project subject to a mortgage insured or held by the Secretary of HUD.
- Purchase of a Secretary-owned project.
- PROPOSED SUBSTITUTION OR ADDITION OF A PRINCIPAL OR PRINCIPAL PARTICIPATION IN A DIFFERENT CAPACITY FROM THAT PREVIOUSLY APPROVED FOR THE SAME PROJECT.
- PROPOSED ACQUISITION BY AN EXISTING LIMITED PARTNER OF ADDITIONAL INTEREST IN A PROJECT RESULTING IN A TOTAL INTEREST OF 25 PERCENT OR MORE, OR PROPOSED ACQUISITION BY A STOCKHOLDER OF ADDITIONAL INTEREST IN A PROJECT RESULTING IN A TOTAL INTEREST OF 10 PERCENT OR MORE.
- Projects with U.S.D.A., Farmers Home Administration, or with state or local government housing finance agencies that include rental assistance under Section 8 of the Housing Act of 1937. For projects of this type, Form HUD-2530 should be filed with the appropriate applications directly to these agencies.

REVIEW OF ADVERSE DETERMINATION

If approval of your participation in a HUD project is denied, withheld or conditionally granted on the basis of your record of previous participation, you will be notified by the field office. You may request reconsideration by the HUD Review Committee. Alternatively, you may request a hearing before a Hearing Officer. Either request must be made in writing within 30 days from your receipt of the notice of determination.

If you do request reconsideration by the Review Committee and the reconsideration results in an adverse determination, you may then request a hearing before a Hearing Officer. The Hearing Officer will issue a report to the Review Committee. You will be notified of the final ruling by certified mail.

INSTRUCTIONS FOR COMPLETING FORM HUD-2530 -

General Instructions - Either type or print neatly in ink when filling out this form. BE SURE TO MARK ANSWERS IN ALL BLOCKS OF THE FORM. IF THE FORM IS NOT FILLED OUT COMPLETELY, IT WILL DELAY APPROVAL OF YOUR APPLICATION.

If you need more space, attach extra sheets to the form. Be sure to type "Continued on Attachments" wherever appropriate on Form HUD-2530. Also, sign each additional page that is attached if it refers to you or your record.

Sign the certificate ONLY after you have read it carefully. File the original with the HUD Area or Service office that has jurisdiction over the project at the same time the original project or other application forms are filed before your participation begins. You need to submit only one copy of Form HUD-2530 to HUD - additional copies are not necessary.

If you have many projects to list and expect to be applying frequently for participation in HUD projects, you should consider filing a Master List. See Master List instructions below under "Instructions for Completing Schedule A".

Any questions you have regarding the form or how to complete it can be answered by your HUD Area or Service office Multifamily Housing Representative.

Block Instructions:

BLOCK 1 - Fill in the name of the agency to which you are applying, for example: HUD Area or Service office, Farmers Home Administration District office, or the name of a state or local housing finance agency. Below that, fill in the name of the city where the office is located.

BLOCK 2 - Fill in the name of the project, such as "Greenwood Apts." If the name has not yet been selected, write "Name unknown."

Below that, fill in the HUD contract or project identification number, the Farmers Home Administration project number, or the state or local housing finance agency project or contract number. Include ALL project or contract identification numbers that are relevant to the project.

Below that, fill in the name of the city in which the project is located, and the ZIP Code of the site location.

BLOCK 3 - Fill in the dollar amount requested in the proposed mortgage, or the annual amount of rental assistance requested.

BLOCK 4 - Fill in the number of apartment units proposed, such as "50 units." For hospital projects or nursing homes, fill in the number of beds proposed, such as "100 beds."

BLOCK 5 - If known, fill in the section of the Housing Act under which the application is filed. If unknown, write "Unknown."

BLOCK 6 - Check the appropriate box to indicate whether your application involves an EXISTING project, a REHABILITATION, or a PROPOSED new project.

BLOCK 7 - Alphabetically list the full names, last name first, of all principals (including corporations) and affiliates and their addresses. Definitions of all those who are considered principals and affiliates are given above in the section titled "Who Must Sign and File Form HUD-2530."

BLOCK 8 - Beside the name of each principal, fill in the role that each party listed will perform. The following is a list of the possible roles that the principals may perform: Sponsor, Owner, Prime Contractor, Turnkey Developer, Managing Agent, Packager, Consultant, General Partner, Limited Partner (include percentage), Executive Officer, Director, Trustee, or Major Stockholder.

Beside the name of each affiliate, write the name of the person or firm of affiliation, such as "Affiliate of Smith Construction Co."

HUD-2530 (3-87)
HB 4571.1 Rev

INSTRUCTIONS FOR COMPLETING THE PREVIOUS PARTICIPATION CERTIFICATE – FORM HUD-2530 *(Continued)*

BLOCK 9 - Fill in the percentage ownership in the proposed project that each principal is expected to have. Beside the name of those parties who will not be owners, write "None."

BLOCK 10 - Fill in the social security or IRS employer number of every party listed, including affiliates.

INSTRUCTIONS FOR COMPLETING SCHEDULE A -

No Previous Record - EVEN IF YOU HAVE NEVER PARTICIPATED IN A HUD PROJECT BEFORE, YOU MUST COMPLETE FORM HUD-2530. If you have no record of previous projects to list, fill in your name in Column 1 of Schedule A, and write across the form by your name - "No previous participation, first experience."

Frequent Filer's Master List System - If you expect to file this form frequently and you have a long list of previous projects to report on Schedule A, you should consider filing a Master List. By doing so, you will avoid having to list all your previous projects each time you file a new application.

To make a Master List, use Form HUD-2530. On page 1, in Block 1, you should fill in (in capital letters) the words "MASTER LIST." In Blocks 2 through 9 fill in "N.A." meaning Not Applicable. Complete Blocks 7 through 10.

In the box below the statement of certification, fill in the names of all parties who wish to file a Master List together (type or print neatly). Beside each name, every party must sign the form. In the box titled "Proposed Role," fill in "N.A." Also, fill in the date you sign the form and provide a telephone number where you can be reached during the day.

SCHEDULE A, ON THE REVERSE SIDE OF THE FORM MUST BE FILLED OUT COMPLETELY ACCORDING TO THE INSTRUCTIONS BELOW UNDER "All Others." CHECK TO BE SURE THAT SCHEDULE A IS COMPLETE, ACCURATE AND THE CERTIFICATE ON THE FRONT OF FORM 2530 IS PROPERLY DATED AND SIGNED, BECAUSE IT WILL SERVE AS A LEGAL RECORD OF YOUR PREVIOUS EXPERIENCE.

File one copy of the Master List with each HUD Area or Service office where you do business and mail one copy to:

HUD-2530 MASTER LISTS
Previous Participation Branch - Housing
Department of Housing and Urban Development
451 Seventh Street, S.W.
Washington, D.C. 20410

Once you have filed a Master List, you do not need to complete Schedule A when you submit Form HUD-2530. Instead, write the name of the participant in Column 1 of Schedule A and beside that write - "See Master List on file." Also give the date that appears on the Master List that you submitted. Below that, report all changes and additions that have occurred since the date of the Master List. Be sure to include any mortgage defaults, assignments or foreclosures not listed previously.

IF YOU HAVE WITHDRAWN FROM A PROJECT SINCE THE DATE THE MASTER LIST WAS FILED, BE SURE TO NAME THE PROJECT. GIVE THE PROJECT IDENTIFICATION NUMBER, THE MONTH AND YEAR YOUR PARTICIPATION BEGAN AND/OR ENDED.

All Others - Complete Schedule A on the reverse side of Form HUD-2530. All Multifamily Housing projects in which you have previously participated as a state or local government housing finance agencies MUST be listed.

In Column 2 of Schedule A, list all of your previous projects. In addition, list the project or contract identification of each previous project. THE PROJECT OR CONTRACT IDENTIFICATION OF ALL PREVIOUS PROJECTS MUST BE INCLUDED OR YOUR CERTIFICATION CANNOT BE PROCESSED. Also give the name of all projects, the cities in which they are located and the government agency (HUD, USDA-FmHA or state or local housing finance agency) that was involved. At the end of your list of projects in Column 2 of Schedule A, draw a straight line across the page to separate your record of projects from that of others signing this form who have a different record to report.

In Column 3 of Schedule A, list your role in all previous projects (a list of all possible roles is given in the instructions to Block 8). Give the month and year your participation began and/or ended because you do not want your record confused with possible problems caused by others for which you are not responsible.

In Column 4 of Schedule A, you must indicate all defaults, mortgage relief, assignments and foreclosures. Write "Default," "Assignment," or "Foreclosure" and give the date it occurred. If a default has been cured by payment, write the word "Cured" after the word default. If there were none of these on a project, write "None."

CERTIFICATION - AFTER YOU HAVE COMPLETED ALL OTHER PARTS OF FORM HUD-2530, INCLUDING SCHEDULE A, READ THE CERTIFICATION CAREFULLY. In the box below the statement of certification, fill in the name of all principals and affiliates (type or print neatly). Beside the name of each principal and affiliate, each party must sign the form, with the exception in some cases of individuals associated with a corporation (see "Exception for Corporations" in the section of the instructions titled "Who Must Sign and File Form HUD-2530"). Beside each signature, fill in the role of each party (the same as shown in Block 8). In addition, each person who signs the form should fill in the date that he or she signs, as well as providing a telephone number where he or she can be reached during business hours. By providing a telephone number where you can be reached, you will help to prevent any possible delay caused by mailing and processing time in the event HUD has any questions.

If you cannot certify and sign the certificate as it is printed because some statements do not correctly describe your record, do not become discouraged. On the face of the certificate use a pen and strike through those parts that differ with your record, then sign and certify to that part you permitted to remain and which does describe you or your record.

Attach a signed letter, note or explanation of the times you have struck out on the certification and report the facts of your correct record. Item A(2)(e) relates to felony convictions within the past 10 years. If you have been convicted of a felony within 10 years, strike out all of A(2)(e) on the certificate and attach your statement giving your explanation. A felony conviction will not cause your participation to be disapproved unless there is a criminal record or other evidence that your previous conduct or method of doing business has been such that your participation in the project would make it an unacceptable risk from the underwriting standpoint of an insurer, lender or governmental agency.

PRIVACY ACT INFORMATION AND AUTHORITY.

Form HUD-2530 is authorized by law (42 USC 3535(d) and 42 USC 1701 et. seq.) and 24 CFR 200.217. This information is collected to evaluate your record with respect to established standards of performance, responsibility and eligibility. HUD must have your social security number (SSN) for identification of your records. HUD may use your SSN for automated processing of your records and to make requests for information about you and your previous records with other public agencies and private sector sources.

Disclosure is not mandatory but you cannot be approved for participation unless you disclose the requested information.

Information HUD has about you may be given to other Federal, State and local agencies for checking on your previous participation record for business practices, for law violations and for other lawful purposes.

Public Reporting Burden for this collection of information is estimated to average 0.6 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600, and to the Office of Management and Budget, Paperwork Reduction Project (2502-0118), Washington, D.C. 20503.

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U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
HOUSING—FEDERAL HOUSING COMMISSIONER

STANDARD CONTRACT FOR HOUSING CONSULTANT SERVICES FOR NONPROFIT PROJECTS UNDER HUD PROGRAMS EXCLUSIVE OF SECTION 202 OF THE HOUSING ACT OF 1959, AS AMENDED

This Agreement made this day of , 19 , by and between , being a nonprofit entity, *(hereinafter referred to as the Sponsor)* and , *(hereinafter referred to as the Housing Consultant)*.

WHEREAS, the Sponsor has formed or intends to form a nonprofit mortgagor corporation or association *(the term "Sponsor" shall also include said mortgagor)* to construct, own, operate and maintain a rental housing project, and to make or cause to be made an application to the Secretary of Housing and Urban Development *(hereinafter referred to as Secretary)* for a commitment to insure a loan for the development of a housing project under the provisions of the National Housing Act, as amended, and the regulations issued pursuant thereto, and

WHEREAS, the Sponsor desires to avail itself of the services of a Housing Consultant to assist and counsel the Sponsor in matters affecting the initiation, processing, financing, design, construction, equipping, operation and management of the housing project.

NOW, THEREFORE, the parties mutually agree as follows:

1. The Housing Consultant agrees to provide the following services for or on behalf of the Sponsor in a manner satisfactory to Sponsor and acceptable to the Secretary, which may include guidance in the selection of other persons, firms or organizations with the capability of performing one or more of the services required to:

(a) Assist the Sponsor in making an analysis of available market reports and other pertinent data to determine the type of housing suitable for the neighborhood or area where the project is to be located, the number of units planned and appropriate to the zoning applicable to the site and the approximate rentals to be charged and in collecting all information required to establish the feasibility of the project;

(b) Assist the Sponsor in selecting a suitable site for the development of a rental housing project and obtaining, if necessary, appraisals of the land from a qualified appraiser, and obtaining an option to purchase the land or otherwise arranging suitable terms for the purchase of the real property or, where appropriate obtaining a long-term lease acceptable to the Secretary;

(c) Assist the Sponsor in negotiations with either the Local Public Agency or with the city when the site is within an approved Urban Renewal Project area or a Neighborhood Strategy Area (NSA), respectively;

(d) Assist in the conferences and discussions with the representatives of the Secretary to obtain site approval and feasibility approval of the project;

(e) Assist in the selection of a qualified architect and in the negotiations for a contract to prepare preliminary and final drawings and specifications and provide contract administration during construction;

(f) Assist in the preparation of an application for project mortgage insurance to be executed by the Sponsor and the proposed mortgagee;

(g) Assist in obtaining a construction contract, either through a competitive bidding process or negotiation, which contract will incorporate the drawings and specifications accepted by the Secretary and provide for the construction of the project within a period allowed by the Secretary;

(h) Assist in the selection of and arrangements with an attorney to render to the nonprofit Sponsor such legal services as are necessary to form an eligible nonprofit owner-mortgagor legal entity, to conclude an initial and final closing of the mortgage loan transaction;

(i) Assist in obtaining an acceptable commitment from a qualified lender or lenders to make the construction or interim loan and the permanent loan;

(j) Assist in organizing an eligible nonprofit owner-mortgagor entity to hold title to the real property, in fee or leasehold, and maintain and operate the project over the life of the mortgage in accordance with the requirements of the Secretary, the National Housing Act, as amended, and the Regulations applicable thereto;

(k) Assist the nonprofit owner/mortgagor during the construction phase of the project in matters relating to filing applications for and obtaining monthly construction funds; coordinating and implementing changes in construction; and obtaining the service of a qualified person or firm to prepare the cost certification.

(l) Assist the Sponsor in establishing sound management and operating procedures, including the selection of a qualified management agent; and

(m) Assist and counsel the Sponsor in establishing appropriate methods of keeping records and accounting procedures to meet the requirements of the Secretary.

Delete any of the above duties which are inapplicable and state on an addendum to this contract other duties which the Housing Consultant will perform.

2. (a) The Sponsor agrees to compensate the Housing Consultant by payment of a fee in the amount of $_____.

(b) The fee provided herein shall be due and payable in the following manner:

Up to sixty percent (60%) of the consultant's fee at Initial Endorsement.

During construction, up to seventy-five percent (75%), less any previous payments. This represents an additional fifteen percent (15%) to be paid during the construction period. Payment of this portion of the fee shall be made at the time construction draws are made and amount will be based on percentage of completion.

The balance remaining shall be approved for payment at Final Endorsement.

(c) If a retainer fee in the amount of $_____, as mutually agreed to between the Sponsor and the Housing Consultant, has been paid by the Sponsor to the Housing Consultant, it shall become a part of the total fee due hereunder. In the event the mortgage is insured by the Secretary, the first payment of the fee, as provided in Section 2(b) of this Contract, shall be reduced by the amount of the retainer fee already paid. In the event the application for mortgage insurance is rejected or the mortgage is not endorsed for insurance by the Secretary, the Sponsor agrees to forfeit the retainer and the Housing Consultant agrees to accept the retainer as full compensation under this Contract. This Contract will then become null and void, and the Sponsor shall have no further liability for payments due hereunder.

(d) The fee shall include all those expenses of the Housing Consultant which are reasonably related to providing the services for the Sponsor as set forth herein, including such items as travel and telephone expenses.

3. The services of the Housing Consultant are to commence upon the execution of this Contract and the work required shall be undertaken and completed in an expeditious and business-like manner. Failure to do so, or violation of any of the covenants, agreements or stipulations of this Contract by the Housing Consultant shall give the Sponsor the right to terminate this Contract provided the Housing Consultant is notified in writing five days prior to the effective termination date. If so terminated, the Sponsor shall have no further liability for payments due under this Contract. The Sponsor reserves the right to reduce the total amount of the fee, based on its determination of poor performance or nonperformance of any of the covenants, agreements or stipulations of this Contract by the Housing Consultant; provided, the Housing Consultant is notified in writing of the basis for this determination and the amount of the reduction.

4. The Housing Consultant shall periodically submit written narrative progress reports to the Sponsor.

5. The Sponsor agrees to cooperate with the Housing Consultant in carrying out the purposes of this Contract. Failure to do so, or violations of any of the covenants, agreements or stipulations of this Contract by the Sponsor shall give the Housing Consultant the right to terminate this Contract provided the Sponsor is notified in writing five days prior to the effective termination date. If so terminated, the Housing Consultant shall be entitled to reasonable compensation for all work done under this Contract in accordance with the schedule in paragraph 2.

6. If any time the Sponsor decides not to proceed with the housing project, the Sponsor shall have the right to terminate this contract provided the housing Consultant is notified in writing five days prior to the effective termination date. If so terminated, the Housing Consultant shall be entitled to reasonable compensation for all work done under this Contract in accordance with the schedule in paragraph 2.

7. The Sponsor may from time to time request changes in the scope of the services of the Housing Consultant to be performed hereunder. Such changes, including any increase or decrease in the amount of the Housing Consultant's compensation, which are mutually agreed upon by and between the nonprofit Sponsor and the Housing Consultant, and are approved by the Secretary, shall be incorporated in written amendments to this Contract.

8. To induce the Secretary to insure a mortgage loan financing the development of the project, the Housing Consultant:

(a) Agrees to avers that the statements certified to on Form HUD-92531 under date of_____ are true, correct and complete to the best of his/her knowledge and belief; and

(b) Agrees upon final payment of the fee provided above, to furnish to the Sponsor a certified receipt on Form HUD-92531-B provided by the Secretary reaffirming the statements made in the aforesaid certificate.

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9. In no event shall the parties to this Contract have or assert any claim against the Federal Government or the Secretary by reason of this Contract, or any action taken by the Federal Government with respect to the mortgage insurance application, including disapproval of the application.

10. The terms and conditions of this Contract are subject to the review and approval of the Secretary, including HUD-2530 Previous Participation review.

11. Notwithstanding the execution of this Contract by the Nonprofit Sponsor and the Housing Consultant and the fact that work has commenced hereunder, the terms and conditions may be amended upon review and approval by the Secretary.

IN WITNESS WHEREOF, the nonprofit Sponsor and the Housing Consultant have executed this Contract the date first above written.

_____
(Housing Consultant)

_____
(Nonprofit Sponsor)

(NOTE: Appropriate additional provisions may be added as required and agreed upon by the parties to the Contract and approved by the Secretary.)

WARNING

Section 1001 of Title 18 of the United States Code (Criminal Code and Criminal Procedure, 72 Stat. 967) shall apply to such statements. (18 U.S.C. 1001, among other things, provides that whoever knowingly and willfully makes any false fictitious, fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.)

GPO 848-01

HUD-92531-A (6-91)

Section 106(b) Nonprofit Sponsor Assistance
"Seed Money" Loan Application

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB No. 2502-0160 (Exp. 03/31/91)

Public reporting burden for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0160), Washington, D.C. 20503.

No loan may be approved unless a completed application form has been received (24 C.F.R. Part 271).

1. Sponsor (Name, Address, Phone and Person to Contact)	2. Borrower (Name, Address, Phone and Person to Contact)

3. Date	4. Section 106(b) Application No.	5. Project Number (Mortgage and Subsidy)	6. Section of Housing Act

7. Project Name and Location

8. Purpose and Amount of Financial Assistance	Amount of Assistance Required	HUD Use Only Amount Approved
Organizational Expenses	$	$
Legal Fees	$	$
Consultant Fee	$	$
Architect Fees (Design)	$	$
Preliminary Site Engineering Fees	$	$
Land	$	$
Market Analysis	$	$
Other (Itemize)	$	$
Total	$	$
Loan Amount (80 percent of Total)	$	$
Borrower's share (20 percent of Total)	$	$

PROOF

9a. Is the Borrower, Sponsor or any entity controlled by or under the control of these entities delinquent on any Federal debt?
☐ Yes ☐ No If yes, attach an explanation.

9b. Does the Borrower, Sponsor or any entity controlled by or under the control of these entities have an outstanding Nonprofit Sponsor Assistance "seed money" loan under Section 106(b) of the Housing and Urban Development Act of 1968 and/or Section 207 of the Appalachian Redevelopment Act of 1965?
☐ Yes ☐ No If yes, attach an explanation to show the loan amount, project name, project number, and indicate why the loan has not been repaid.

10a. The undersigned agrees that pursuant to the requirements of the HUD Regulations, (a) neither it nor anyone authorized to act for it will decline to sell, rent or otherwise make available any of the properties or housing in the proposed project to a prospective purchaser or tenant because of his/her race, creed, color, sex or national origin, handicap, or familial status; (b) it will comply with State and local laws of ordinances prohibiting discrimination; and (c) failure or refusal to comply with the requirements of either (a) or (b) shall be a proper basis for the Secretary to reject requests for future business with which the Borrower or Sponsor is identified or to take any other corrective action he or she may deem necessary to carry out the requirements of the HUD Regulations.

10b. The undersigned certifies that the Borrower has or will have available in cash $_____ to meet its share of the "seed money" expenses that no portion of the Borrower's share was or will be obtained from any party seeking to make a profit or monetary gain from the project as set forth in paragraph 271.15(b) of the HUD Regulations (24 CFR, Part 271); that the Borrower/Sponsor has not obtained nor will it obtain a "seed money" loan or grant for this project from any other direct or indirect Federal source; that the total Borrower's share as determined by HUD has been or will be spent for allowable "seed money" items prior to or simultaneously with each expenditure of loan proceeds; and that the information included herein is true and correct to the best of the Borrower's/Sponsor's knowledge.

By: (Signature and Title of Authorized Borrower/Sponsor Official)	Type Name	Date

11. HUD Field Office Approval (Subject to Availability of Funds)

The application is:
☐ Approved in the amount of $_____.
☐ Disapproved (If disapproved, application will be returned to Borrower/Sponsor with explanation attached.)

By: (Signature of HUD Field Office Manager)	Type Name	Date

Name and Address of HUD Field Office

Replaces Form FHA-2290, which is Obsolete.

form HUD-92290 (03/25/91)
ref. Handbook XXXX.X

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12. HUD Headquarters Reservation of Funds

Funds in the amount of $ _____ are hereby reserved.

By: (Signature of Director, General Programs Division, Office of Finance and Accounting)	Type Name	Date

Warning: Section 1001 of Title 18, United States Code, "Statements or entries generally," provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

Instructions for Preparing Application for Section 106(b) Nonprofit Sponsor Assistance "Seed Money" Loan

The Borrower shall complete form HUD-92290 and submit an original and three copies to the appropriate HUD Field Office. In support of all items listed in Block 8, the Borrower must submit supporting bills, written estimates, receipts, and/or any contracts for professional services which have been let. The Borrower must attach an itemized statement classifying all expenditures and current obligations for the line items listed in Block 8. Expenditures must be shown by check number, date, payee, amount, and purpose.

Blocks 1 through 7 — Self-explanatory.

Block 8. In the "Amount of Assistance Requested" column, enter the sum of the Borrower's share and the Federal share for each item.

(1) **Organizational Expenses:** Enter 75 percent of the Borrower's estimated expenses for telephone, postage a fidelity bond, and travel to and from the HUD Field Office for the period from inception of the project to initial closing. The amount entered for organizational expenses cannot exceed $750.

(2) **Legal Fees:** Enter 15 percent of the amount agreed to between the Borrower and the attorney for legal services, excluding any amount which may relate to title and recording expenses.

(3) **Consultant Fees:** Enter 25 percent of the amount agreed to by the Borrower and the consultant and specified in the consultant's contract. If a consultant has not yet been hired by the Borrower, but will be [illegible] Firm Commitment stage, the Borrower should enter 25 percent of the maximum fees specified in the following schedule:

Mortgage Amount	Basic Fee	Incentive Payment
Up to $1,500,000	$20,000	$5,000
From $1,500,000 to $3,500,000	$20,000 plus 1% of excess over $1,500,000	$5,000 plus 1/4 of 1% (0.25%) of excess over $1,5,00,000
Over $3,500,000	$10,000	$10,000

In no event may the entry for this item exceed $12,500 (including maximum incentive payment).

(4) **Architect Fee:** Enter 25 percent of the amount reflected in the contract between the Borrower and the architect. If an architect has not been selected, the Borrower should estimate an amount typically charged for design services for similar projects and enter 25 percent of the estimated amount.

(5) **Preliminary Site Engineering:** Enter the total estimated cost of boundary survey, topographic survey, and soil testing and investigation as supported by bills, receipts, or estimates from surveyors, engineers, soil scientists, etc.

(6) **Land:** Enter the cost to the Borrower of obtaining control of the site, e.g., cost of land options, purchase price, etc. Outright purchases of land are strongly discouraged and will only be approved under the most extenuating circumstances by HUD Headquarters. With respect to land options, options should have extension provisions covering at least two years from the date of the Section 202 or Section 811 fund reservation. Option fees must always apply to the purchase price so that they may be recovered from the Section 202 or Section 811 loan proceeds. Further, they must be reasonable and generally consistent with real estate practices in the area.

(7) **Market Analysis:** Enter any cost incurred to have an analysis conducted of the market needs for the type of housing proposed.

(8) **Other:** Enter and identify any fees and charges for mortgageable items which are eligible "seed money" expenses, but which are not covered elsewhere in this application.

In completing Block 8, the Borrower should be mindful that $62,500 is the maximum allowable seed money. The preceding instructions set forth maximums for individual line items. These items may be further limited by the $62,500 overall maximum.

Blocks 9 and 10. Self-explanatory. To be completed by the Borrower.

Block 11. To be completed by HUD.

Block 12. To be completed by HUD.

Supplemental Application and Processing Form Housing For The Elderly

See Instructions on Reverse

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0232 (exp. 11/30/92)

Public reporting burden for this collection of information is estimated to average .75 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0232), Washington, D.C. 20503.

Project Name ☐ Congregate ☐ Mixed ☐ Non-Congregate Project Number

A. Non-Rent Congregate Living Space	Area Square Feet
1. Congregate Kitchen and Dining	
2. Lobbies	
3. Community Room	
4. Hobby Shop	
5. Infirmary or Health Facility	
6. Other	
7. Other	
8. Total Square Feet	

B. Project Composition

1. Number of Bedrooms	2. Total No. of Units	3. No. of Units With Kitchens	4. No. of Units with Kitchenettes
0-Bedroom Units			
1-Bedroom Units			
2-Bedroom Units			

C. Food Service	Annual Expense Sponsor	HUD
1. Payroll		
Number of cooks _____ x salary $ _____	$	$
Number of waitresses _____ x salary $ _____	$	$
Number of helpers _____ x salary $ _____	$	$
2. Food Cost	$	$
3. Supplies	$	$
4. Dining Room Furniture Exp.		
a. Repl. Res: 10% x Equip. Cost $ _____	$	$
b. Int. on Inv: _____ % Int. Rate x Cost $ _____	$	$
c. Maintenance and Repairs	$	$
5. Other *(Specify)*	$	$
6. Other *(Specify)*	$	$
7. Total Food Service Expense	$	$
8. Average No. of Persons Serviced _____		
9. Proposed Charger per Person/per Month	$	$
10. No. of Meals per Person per Day _____		

D. Maid Service	Annual Expense Sponsor	HUD
1. Payroll Number of maids _____ x salary $ _____	$	$
2. Supplies	$	$
3. Other *(Specify)*	$	$
4. Other *(Specify)*	$	$
5. Total Maid Service	$	$
6. Average Number of Units Using Service	$	$
7. Proposed Charge per Unit/ per Month	$	$

E. Health Service	Annual Expense Sponsor	HUD
1. Nursing Payroll Number of Nurses x salary $ _____	$	$
2. Equipment Expense:		
a. Repl. Res: 10% x Equipment Cost $ _____	$	$
b. Int. on Inv.: _____ % Int. Rate x Cost $ _____	$	$
c. Maintenance and Repairs	$	$
3. Medical Supplies	$	$
4. Utilities	$	$
5. Laundry Service	$	$
6. Other *(Specify)*	$	$
7. Total Health Service	$	$
8a. No. of Beds in Infirmiry _____		
8b. No. of Persons Serviced _____		
9. Proposed Charge per Mo. per Patient _____ per Person _____	$	$

F. Furniture for Units	Annual Expense Sponsor	HUD
1. Furniture Exp. when Leased	$	$
2. Furniture Exp. if Not Leased:		
a. Repl. Res: 10% x Furniture Cost $ _____	$	$
b. Int. on Inv: _____ % Int. Rate x Cost $ _____	$	$
3. Total Furniture Expense	$	$
4. Number of Units Furnished _____	$	$
5. Proposed charge per unit per month to cover furniture rent	$	$

G. Other Non-Shelter Services	Annual Expense Sponsor	HUD
1. Program & Activities Payroll	$	$
2. Other *(Specify)*	$	$
3. Other *(Specify)*	$	$
4. Chg. per Person *(Unit)* for Item 1	$	$
4. Chg. per Person *(Unit)* for Item 2	$	$
6. Chg. per Person *(Unit)* for Item 3	$	$

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H. Remarks & Signatures

The above estimates in "Sponsor" column for Sections C through G represent estimates of income and expense in non-shelter budgets.

Signed	Date	☐ Sponsor, ☐ Mortgagor, ☐ Borrower, ☐ Owner	
Valuation Processor	Date	Reviewer	Date

Instructions

General

Form HUD-92013E must accompany form HUD-92013, Application–Project Mortgage Insurance, for each project intended to provide housing for the elderly.

Preparation of the forms HUD-92013 and HUD-92013E must separate the budget for shelter (and utilities included in the rent) from other budgets concerned with supplying services other than shelter, such as food service, main service, program and recreation service, rented furniture, and any other non-shelter services which may be planned. The non-shelter budgets concerned with supplying food, furniture, maid service, and other personal services are shown on the form HUD-92013E.

All non-shelter services and amenities offered with a charge to the tenant and as a condition of occupancy must be identified on this form. Special circumstances regarding items to be included in an amenity package such as additional charges for additional persons that cannot be readily shown on this form must be explained on an addendum sheet to the form HUD-92013E.

Form HUD-92013E must accompany all requests for feasibility analysis, conditional and firm commitments.

Definitions

An elderly person is defined as one who is age 62 or over. A handicapped person is one whose physical impairment (a) is expected to be of continued and indefinite duration; (b) substantially impedes his ability to live independently, and (c) is such that his ability to live independently could be improved by more suitable housing.

Congregate Housing is designed for persons, normally well and ambulatory, who prefer residential accommodations but need some assistance in day-to-day living. While not a nursing or medical facility, it offers services that protect residents and provide for their needs.

Congregate housing projects have a central dining room generally serving three meals a day, with emergency room service available. There are common areas for lounges, recreation, special activities; limited housekeeping and laundry services may be provided. Some projects have an infirmary with personnel qualified to control and administer medications.

Instructions

Projects having congregate dining facilities with only kitchenettes in the living units, are checked in the box marked "Congregate." Projects having no congregate dining facilities, but having full sized kitchens in the living units are checked in the box marked "Non-Congregate." Projects having congregate dining facilities and having some living units with complete sized kitchens, are checked in the box marked, "Mixed."

Section A. Non-Rent Congregate Living Space Areas

Enter the net area, in square feet, for various kinds of non-rent congregate living space shown, such as, congregate kitchen and dining, lobbies, community rooms, hobby shop, infirmaries, or other non-rented common buildings area. When plans are available, these net areas should be calculated from the plans. Congregate dining facilities should be large enough to serve the probable total number of diners within a single meal period, but not necessarily at a single sitting. The number of diners shall be estimated to include all of the occupants of the units having kitchenettes only, plus a reasonable portion of the occupants of units with full kitchens.

Section B. Project Composition

For each number of bedrooms enter in Column 2 the total number of units. In Column 3, enter the number of units with complete kitchens. In Column 4, enter the number of units with kitchenettes only.

Non-Shelter Income and Expense Budgets.

Sections C through G contain budgets of income and expense for furnishing various non-shelter services. The sponsor enters his estimates of items of income and expense for each budget in the column headed "Sponsor," thus using form HUD-92013E as a supplemental application form. Subsequently, copies of the same form will be used as a processing form, with HUD personnel entering estimates in the Column headed, "HUD."

Section C. Food Service: Annual Expenses.

Line C-1– Estimate the number of cooks times the average annual salary. The number of waitresses, and other employees needed to operate the dining room are also estimated to arrive at payroll, including payroll tax. When the food service operation is large or complex, a detailed explanation of kinds of staff, numbers of employees, rates of pay, payroll tax, and total payroll for food service, should be shown in an attachment. The annual food cost and cost of supplies is also entered.

Line C-4a.–Dining room furniture expense includes an annual reserve for replacement of dining room furniture and equipment. Estimate the replacement reserve by multiplying furniture cost by 10%.

Line C-4b–Return on investment in dining room furniture and equipment is estimated by multiplying the furniture cost by the market interest rate for similar investments.

Line C-4c–Enter the estimated annual allowance for maintenance and repairs to the furniture.

Line C-7–Show the total annual food service expense.

Line C-8–Estimate the probable number of tenants customarily using the congregate dining facility.

Line C-9–Enter the proposed charge per person per month for food service. This charge should be sufficient to provide an annual income at least 3% more than the total food service expense estimated in Line C-7. If a food service concessionaire is contemplated, the proposed terms of the concession shall be completely explained in an attachment.

Line C-10–Enter the number of meals per person per day covered by the proposed food service charge.

Section D. Maid Service: Annual Expense.

Line D-1–Enter the number of mains multiplied by the average annual salary to result in annual payroll.

Line D-3–Enter the annual expense for cleaning supplies.

Line D-3 and 4–If clean sheets are to be provided as part of this service, the word "Laundry" is entered after "other" followed by the annual amount of this expense. Enter other expenses of supplying maid service.

Line D-5–Enter the sum of Lines D-1 through D-4. This represents total maid service expense..

Line D-6–Enter the estimated number of units using this service.

Line D-7–Enter the proposed charge per unit to cover this service.

Section E. Health Service: Annual Expense.

Line E-1–Enter the anticipated number of nurses needed times the average salary including payroll tax. If the health service operation is large or complex, the sponsor should submit a more detailed estimate of health service payroll in an attachment.

Line E-2–Equipment expenses includes an annual reserve for replacement of beds and other furniture and equipment in the infirmary.

Line E-2– Estimate the replacement reserve by multiplying equipment cost by 10%.

Line E-2b–Return on investment in equipment is estimated by multiplying the furniture cost by the market interest rate for similar investments.

Line E-2c–Enter the estimated annual allowance for maintenance and repairs to the equipment.

Line E-3, 4, 5, and 6–Enter the annual amounts to be expended for medical supplies, utilities, laundry or linen service, and other expenses of the health service facility.

Line E–Enter the sum of lines E-1 through E-6. This represents total health service expense.

Line E-8– Enter the number of beds in the infirmary.

Line E-8–Enter the average number of patients in the infirmary.

Line E-9–Enter the proposed charge per patient or per person. Indicate method of payment.

Section F. Furniture in Living Units.

Line F-1–Indicate the amount of total a nnual payments to the leasing company when furniture for some or all of the living units is obtained by the mortgagor by leasing it

Line F-2a–The renting of furniture by tenant must be optional and not a condition of occupancy. For those units in which the project owns the furniture, furniture expense includes an annual reserve for replacement of living unit furniture. Estimate the replacement reserve by multiplying furniture cost by 10%.

Line F-2b–Return on investment in furniture is estimated by multiplying furniture cost by the market interest rate for similar investments.

Line F-2–Enter the estimated annual allowance for maintenance and repairs to the furniture.

Line F-3–Enter the Total Furniture Expense.

Line F-4–Indicate the number of units furnished by the mortgagor.

Line F-5–Enter the proposed charge per unit per month to cover the furniture expense.

Section G. Other Non-Shelter Services

Line G-1–Enter the salaries of persons employed to furnish guidance and recreation during the leisure time of an elderly person's occupancy in the project.

Lines G-2 and G-3–Enter the amounts covering any other service or facility included in the proposal that would contribute to the health, comfort and recreation of elderly persons, and specify.

Lines G-4, 5 and 6–Enter the charges per person or unit for the respective service of facility.

Section H. Remarks and Signatures

Self Explanatory.

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Supplement to Application for Multifamily Housing Project

To Be Completed by Each Sponsor, and by the General Contractor

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB No. 2502-0029 (Exp. XX/XX/91)

Project Name	Project Number	Name
Address		Telephone Number

Describe Your Affiliation With Project

Credit References: Include all Bank, Finance, Trade and Supply Creditors. You may omit creditors with balances less than $200.00

Firm Name	Address		
Telephone Number	Account Number	Present Balance	Terms
Firm Name	Address		
Telephone Number	Account Number	Present Balance	Terms
Firm Name	Address		
Telephone Number	Account Number	Present Balance	Terms
Firm Name	Address		
Telephone Number	Account Number	Present Balance	Terms
Firm Name	Address		
Telephone Number	Account Number	Present Balance	Terms

PROOF (sent)

Other References

Are you or have you been a defendant in any suit or legal action?	☐ Yes	☐ No
Have you ever claimed bankruptcy or made compromised settlements with creditors?	☐ Yes	☐ No
Are there judgments recorded against you?	☐ Yes	☐ No

If the answer to any of the questions above is yes, give details below

Sponsor: I certify that the foregoing, submitted by me, for the purpose of obtaining mortgage insurance under the National Housing Act, is true and correct to the best of my knowledge and belief.	**Contractor:** I certify that the foregoing, submitted by me, is true and correct to the best of my knowledge and belief.
Signed this day of , 19	Signed this day of , 19
Name	Name

Warning: U. S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration . . . makes, passes, utters, or publishes any statement, knowing the same to be false, . . . shall be fined not more than $5,000 or imprisoned not more than two years, or both."

form HUD-92013.1 (02/01/91)
ref. Handbook 4571.1

Personal Financial and Credit Statement

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB No. 2502-0001 (Exp. 11/30/90)

Public reporting burden for this collection of information is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0001), Washington, D.C. 20503.

Privacy Act Statement: The Department of Housing & Urban Development (HUD) is authorized to collect this information by P.L. 479.48, Stat.1246, 12 USC 1701 et. seq.; and the Housing and Community Development Act of 1987, 42 USC 3543, to collect the Social Security Number (SSN). This report is authorized by law (24 CFR 207.1). It will be used , as a minimum, to make a determination of the financial and credit status of the respondent. HUD may disclose this information to Federal, State and local agencies when relevant to civil, criminal, or regulatory investigations and prosecutions. It will not be otherwise disclosed or released outside of HUD, except as required and permitted by law. Providing the SSN is mandatory. Failure to provide any of the information may result in your disapproval of participation in this HUD program and/or delay action on your proposal.

Project Name	Number	Location

Name and Address of Person making this Statement	Social Security Number
PROOF	Date

Assets			Liabilities and Net Worth		
Cash on hand in banks (Name of depository)	Balance	Total	Accounts Payable		$
			Notes Payable		$
			Debts payable in less than one year (secured by mortgages on land and buildings)		$
		$	Debts payable in less than one year (secured by chattel mortgages or other liens on assets)		$
Accounts Receivable			Other current liabilities: (describe)		
Less: Doubtful Accounts		$			
Notes Receivable					
Less: Doubtful Notes		$			
Stocks and Bonds - Market Value (Schedule A—reverse side)		$			
Other Current Assets: (Describe)			Total Current Liabilities:		$
			Debts payable in more than one year (secured by mortgages on land and buildings)		$
			Debts payable in more than one year (secured by chattel mortgages or other liens on assets)		$
Total Current Assets		$	Other liabilities (describe)		
Real Property — at net* (Schedule B — reverse side)		$			
Machinery Equipment and Fixtures — at net		$			
Life Insurance (Cash value less loans)		$			
Other Assets (describe)					
			Total Liabilities		$
			Net Worth		$
Total Assets		$	Total Liabilities and Net Worth		$

*Cost, including improvements, less depreciation.
Replaces FHA-2417 which is obsolete.

form HUD-92417 (03/27/91)
ref. Handbook XXXX.X

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Accounts and Notes Receivable Partner (P) Employee (E) Relative (R) or other (O)*

Type (P,E,R or O)	Name	Address	Maturity Date	Amount
Type (P,E,R or O)	Name	Address	Maturity Date	Amount
Type (P,E,R or O)	Name	Address	Maturity Date	Amount

Life Insurance	Face Value	Beneficiary

Delinquencies

Type Liability	Amount	Circumstances
Type Liability	Amount	Circumstances
Type Liability	Amount	Circumstances

Accounts and Notes Payable

Type (p,E,R or O)*	Name	Address	Amount	Maturity Date
Type (P,E,R or O)*	Name	Address	Amount	Maturity Date

Pledged Assets

Type Pledged	Amount	Offsetting Liability
Type Pledged	Amount	Offsetting Liability
Type Pledged	Amount	Offsetting Liability

Legal Proceedings (If any legal proceedings have been instituted by creditors, or any unsatisfied judgments remain on record, give full details.)

Schedule A — Stocks and Bonds

Description	Current Market Value (At date of this Statement)	If Listed, Name Exchange
	PROOF	

Note: If more space is required use a separate sheet of paper.

Schedule B — Real Property (Indicate Private Residence, if any)

Location and Description of Land and Buildings Owned	Age	Original Cost	Market Value	Assessed Value	Mortgaged For	Insured For
Totals						

Title (The legal and equitable title to all pieces of the above-described real estate is solely in my name, except as follows.)

Location of Real Property	Name of Title Holders

PROOF

Bank and/or Trade References

Name and Address	Account Numbers

I hereby certify that the foregoing figures and the statements contained here, submitted to obtain mortgage insurance under the National Housing Act, are true and give a correct showing of my financial condition as of this date.

Name	Date Signed

Warning—HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. §§ 1001, 1010, 1012; 31 U.S.C. §§ 3729, 3802.)

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Application for Multifamily Housing Project

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB No. 2502-0029 (Exp. XX/XX/91)

Public reporting burden for this collection of information is estimated to average 68 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0029), Washington, D.C. 20503.

Section A – Project Identification

1. Name of Project

2. HUD Project Number (Mortgage Ins. or Sec. 202)

3. HUD Project Number (Section 8)

Section B – Purpose of Application

To: **The Assistant Secretary for Housing-Federal Housing Commissioner:** Application is being made pursuant to Item (a): ☐ 1, ☐ 2, ☐ 3 of Section M, Page 3 hereof. The undersigned desire(s) to participate, with respect to the Property and Program(s) described below. Therefore, it is requested that you give consideration to the information presented herein, for the purpose of loaning and/or approving:

☐ Mortgage Insurance: Section: _____
☐ a. Feasibility Letter (Rehab.) ☐ Direct Loan Section 202
☐ a. SAMA Letter (New Const.) ☐ Housing Asst. Pymnts. Sec. 8
☐ a. Conditional Commitment ☐ a. Preliminary Proposal
☐ a. Firm Commitment ☐ a. Final Proposal

Mortgagor: ☐ PM ☐ NP ☐ LD ☐ B-S Other _____
Financing: ☐ Conventional ☐ GNMA ☐ Bond ☐ State Agency
Other _____
Mortgage/Loan Amount: $_____
Interest Rate: Permanent _____ % Construction _____ %

Section C – Location and Description of Property

1. Street Address	2. Municipality	3. County	4. State and Zip Code	5. Congressional Dist.

6. Type of Project:
☐ Proposed ☐ Rehabilitation
☐ Existing Year Built: 19

7. Number of Units:
Revenue: _____
Non-Revenue: _____
Total: _____

8. No. of Buildings

9. List Accessory Buildings
Area Sq. Ft.

10. List Recreation Facilities
Area Sq. Ft.

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11. Type of Buildings
☐ Elevator ☐ Walkup ☐ Row (T.H.)
☐ Detached ☐ Semi-Detached

12. No. of Stories

13. No. of Elevators

14. Type of Foundation
☐ Slab on Grade ☐ Crawl Space ☐ Partial Bsmt.
☐ Full Basement

15. Structural System	16. Floor System	17. Exterior Finish	18. Heating System	19. Air Conditioning System

Section D – Information Concerning Land or Property

1. Date	2. Price	3. Additional Cost Paid or Accrued	4. Total Cost	5. Outstanding Balance	6. Relationship Between Seller and Buyer, Business, Personal or Other
☐ Acquired ☐ Optioned / /	☐ Purchase ☐ Option $	$	$	$	

7. Site Area Sq. Ft.

8. Zoning (If recently changed, submit evidence)

9. If leasehold, show annual ground rent $; lease term, remaining years

10. Off-Site Facilities:	Public	Comm.	At Site	Feet from Site
Water	☐	☐	☐	_____ ft.
Sewer	☐	☐	☐	_____ ft.
Paving	☐	☐	☐	_____ ft.
Gas	☐	☐	☐	_____ ft.
Electrical	☐	☐	☐	_____ ft.

11. Unusual Site Features
☐ None ☐ Poor Drainage
☐ Cuts ☐ Retaining Walls
☐ Fill ☐ Rock Foundations
☐ Erosion ☐ High Water Table
☐ Other _____

12. Special Assessments
a. ☐ Prepayable ☐ Non-prepayable
b. Principal Balance $_____
c. Annual Payment $_____
d. Remaining Terms _____ years.

Section E – Estimate of Income

Unit Type	No. of Living Units	No. of Units Assisted	Living Area (Sq. Ft.)	Composition of Units	PBE Not to Rent ($) *(Sec. F-1)	Unit Rent per Mo. ($)	Total Monthly Unit Rent ($)
Employee(s) Liv. Unit(s)							
Totals				2. Total Estimated Monthly Rentals for All Living Units $			

3. Number of Parking Spaces
☐ Attended
☐ Self Park
Total Spaces

4. Parking and Other Income (Not Included in Rent)
Open Spaces _____ @ $ _____ per month = $ _____
Covered Spaces _____ @ $ _____ per month = $ _____
Laundry _____ Sq. Ft. or Living Units @ _____ per month = $ _____
Other _____ per month = $ _____
Total Ancillary Income $

5. Commercial Space (Describe)
Area-Ground Level _____ sq. ft. @ $ _____ per sq. ft./month = $ _____
Other Levels _____ sq. ft. @ $ _____ per sq. ft./month = $ _____
Total Commercial $

6. Total Estimated Monthly Gross Income at 100 Percent Occupancy $

7. Total Annual Rent (Item 6 times 12 months) $

8. Gross Floor Area Sq. Ft.

9. Net Rentable Residential Area Sq. Ft.

10. Net Rentable Commercial Area Sq. Ft.

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Section F – Equipment and Services (Check items included in the Rent or Lease)

Equipment		Services	Gas	Elect.	Oil
☐ Range and Oven	☐ Carpet	☐ Heat	☐	☐	☐
☐ Microwave Oven	☐ Drapes	☐ Hot Water	☐	☐	☐
☐ Refrigerator	☐ Swimming Pool	☐ Cooking	☐	☐	
☐ Laundry Facilities	☐ Air Conditioning Equip.	☐ Air Conditioning	☐	☐	
☐ In Common Area	☐ Trash Compactor	☐ Lights, etc., in Units			
☐ In Living Unit	☐ Disposal	☐ Cold Water ☐ Parking			
☐ L.U. Hookup Only	☐ Other	☐ Other			

Section F-1 – Utilities (Not in Rent)

*Personal Benefit Expenses (PBE)
Check Utilities and Services Not Included in the Rent and Paid Directly by the Tenant.
☐ Electricity ☐ Heating ☐ Gas
☐ Decorating ☐ Repairs ☐ Water
Other

Remarks

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Section G – Estimate of Replacement Cost

Land Improvements

1. Unusual Land Improvements $ _____
2. Other Land Improvements $ _____
3. **Total Land Improvements** $ _____

Structures

4. Main Buildings $ _____
5. Accessory Buildings $ _____
6. Garage $ _____
7. All Other Buildings $ _____
8. **Total Structures** $ _____
9. **Subtotal** (Line 3 plus Line 8) $ _____
10. General Requirements (Line 9 x _____%) $ _____
11. **Subtotal** (Line 9 plus Line 10) $ _____

Fees

12. Builder's General Overhead (Line 11 x _____%) $ _____
13. Builder's Profit (Line 11 x _____%) $ _____
14. **Subtotal** (Sum of Lines 11 through 13) $ _____
15. Bond Premium $ _____
16. Other Fees $ _____
17. **Estimated Total Cost of Construction** $ _____
18. Architect's Fee–Design (Line 14 x _____%) $ _____
19. Architect's Fee–Supervisory (Line 14 x _____%) $ _____
20. **Total For All Improvements** (Sum of Lines 17 through 19) $ _____
21. Cost per Gross Square Foot $ _____ (Line 20 divided by Item 8, Section E)
22. Construction Time _____ Months Plus 2 = _____ Months

Charges and Financing During Construction

23. Interest on $ _____ @ _____% for _____ Months $ _____
24. Taxes $ _____
25. Insurance $ _____
26. HUD/FHA Mtg. Ins. Pre. (0.5%) $ _____
27. HUD/FHA Exam. Fee (0.3%) $ _____
28. HUD/FHA Insp. Fee (0.5%) $ _____
29. Financing Fee (___%) $ _____
30. FNMA/GNMA Fee (___%) $ _____
31. AMPO (2.0%) $ _____
32. Contingency (Sec. 202) (3.0%) $ _____
33. Title and Recording $ _____
34. **Total Charges and Financing** $ _____

Legal, Organization and Audit Fee

35. Legal $ _____
36. Organization $ _____
37. Cost Certification Audit Fee $ _____
38. **Total Legal, Organization and Audit Fee** $ _____
39. Builder's and Sponsor's Profit and Risk $ _____
40. Consultant Fee (Nonprofit Only) $ _____
41. Supplemental Management Fund $ _____
42. Contingency Reserve (Rehabilitation Only) $ _____
43. Relocation Expenses $ _____
44. Other $ _____
45. **Total Estimated Development Cost** (Lines 20 + 34 + 38 through 44) $ _____
46. Land (Estimated Market Price of Site) _____ sq. ft. @ $ _____ per sq. ft. $ _____
47. **Total Estimated Replacement Cost of Project** (Line 43 plus Line 44) $ _____
48. Average Cost per Living Unit $ _____ (Line 45 divided by Total in Sec. C, Item 7)

Section H – Annual Income Computations

1. Estimated Project Gross Income (Line 7, Sec. E, Pg. 2) $ _____
2. Occupancy (Entire Project) _____%
3. Effective Gross Income (Line 1 x Line 2) $ _____
4. **Total Project Expenses** (Line 30, Section I) $ _____
5. Net Income to Project (Line 3 minus Line 4) $ _____
6. Expense Ratio (Line 4 divided by Line 3) _____%

Section I – Estimate of Annual Expense

Administrative

1. Advertising $ _____
2. Management Fee (_____%) $ _____
3. Other $ _____
4. **Total Administrative** $ _____

Operating

5. Elevator Maintenance Exp. $ _____
6. Fuel – Heating $ _____
7. Fuel – Domestic Hotwater $ _____
8. Lighting and Misc. Power $ _____
9. Water $ _____
10. Gas $ _____
11. Garbage and Trash Removal $ _____
12. Payroll $ _____
13. Other $ _____
14. **Total Operating** $ _____

Maintenance

15. Decorating $ _____
16. Repairs $ _____
17. Contracting $ _____
18. Insurance $ _____
19. Ground Expense $ _____
20. Other $ _____
21. **Total Maintenance** $ _____
22. Replacement Res.: New Const. = (.006 x Line 8, Sec. G Total Struct.) Rehab = (.004 x Mort/Loan Requested in Sec. M) $ _____
23. **Subtotal Expenses** (Sum of Lines 4, 14, 21 and 22) $ _____
24. Real Estate: Est. Assessed Value = $ _____ at $ _____ per $1000 = $ _____
25. Personal Prop. Est. Assessed Value = $ _____ at $ _____ per $1000 = $ _____
26. Employee Payroll Tax $ _____
27. Other $ _____
28. Other $ _____
29. **Total Taxes** $ _____
30. **Total Expenses** (Line 23 plus Line 29) $ _____
31. Avg. exp. per unit per annum (PUPA) (Line 30 divided by Total Item 7 Sec. C) $ _____

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Section J – Total Settlement Requirements

1. Development Costs (Line 45, Section G) $ _____
2. Cash Req. for Land Debt/Acquisition $ _____
3. **Subtotal** (Lines 1 plus 2) $ _____
4. Mortgage Amount $ _____
5. Development/Cash (Lines 3 minus 4) +/- $ _____
6. Initial Operating Deficit $ _____
7. Discount Costs $ _____
8. Interest Yield Costs $ _____
9. Working Capital (2% of Mortgage Amount) $ _____
10. Min. Capital Investment (Sec. 202) $ _____
11. Off-Site Construction Costs $ _____
12. Non-Mortgagable Relocation Expenses $ _____
13. Other $ _____
14. **Total Estimated Cash Required** (Sum of Lines 5 through 13) $ _____

Funds Available for Cash Requirements

15. Source of Cash:
    a. _____ $ _____
    b. _____ $ _____
    c. _____ $ _____
    Subtotal (a + b + c) $ _____
16. Source of Fees and Grants:
    a. _____ $ _____
    b. _____ $ _____
    c. _____ $ _____
    Subtotal (a + b + c) $ _____
17. **Total Cash, Fees and Grants** (Sum of Items 15 plus 16) $ _____

Note: Line 17 must equal or exceed Line 14

Section K – Names, Addresses and Telephone Numbers of the Following

1. ☐ Sponsor, ☐ Mortgagor, ☐ Borrower, ☐ Owner Name	2. Name
Address	Address
Telephone Number / Zip Code	Telephone Number / Zip Code
3. ☐ Consultant, ☐ Agent, ☐ Other Authorized Representative Name	4. General Contractor Name
Address	Address
Telephone Number / Zip Code	Telephone Number / Zip Code
5. Sponsor's Attorney Name	6. Architect Name
Address	Address
Telephone Number / Zip Code	Telephone Number / Zip Code

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Section L – Application (SAMA and Feasibility Letter)

A. The Undersigned certifies that: (1) He/She is legally authorized to represent the entity(ies) identified below with respect to all transactions pertaining to this application and all matters related to it; (2) Any and all action(s) by the undersigned is/are legally binding on the principal(s) and the entity(ies) being represented; (3) He/She is familiar with the provisions of the regulations issued by the Department of Housing and Urban Development (HUD) pursuant to the above-identified Section (s) of the respective Housing Act(s); (4) To the best of his/her knowledge and belief, the entity(ies) identified below has/have complied, or will be able to comply, with all the requirements of the regulations which are a prerequisite with respect to participation in the program(s) selected; (5) The principal(s) of the entity(ies) identified below are familiar with the specific provisions of the Right to Financial Privacy Act of 1978; (6) the principal(s) is/are aware that disclosure of certain financial information will be required by HUD in the course of processing this application; (7) That he/she has made a physical inspection of the property and, in his/her opinion, the site plan submitted conveys a concept which can be reasonably followed in practice; (8) The proposed construction will not violate recorded zoning ordinances or restrictions; (9) To the best of his/her knowledge and belief no information or data contained herein or in the exhibits or attachments submitted herewith, are in any way false or incorrect and that they are truly descriptive of the project or property which is intended as security for the proposed mortgage loan and/or is presented for consideration with respect to the request for approval of a Housing Assistance Payments Contract.

B. The Undersigned assures and agrees that: (1) Pursuant to the regulations and the related requirements of HUD neither the entity(ies) identified below nor anyone authorized to act on its/their behalf, will decline to sell, rent or otherwise make available any of the property or housing in the project, identified herein, to a prospective purchaser or tenant because of race, color, religion, sex, or national origin; (2) The entity(ies) identified below will comply with Federal, State and local laws and ordinances prohibiting discrimination; and (3) Failure or refusal to comply with the requirements of either (1) or (2) shall constitute sufficient basis for the Commissioner to reject requests for future business with the identified entity(ies) or to take any other action that may be appropriate.

C. ☐ Herewith is a check for $_____ in payment of the required fee for a SAMA letter.

Principal Contact	Signed	Date
Telephone Number	On Behalf of: ☐ Sponsor, ☐ Mortgagor, ☐ Borrower, ☐ Owner	

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Section M – To The Federal Housing Commissioner

☐ 1. **Request for Mortgage Insurance:**
Request is hereby made for a ☐ **Conditional Commitment** ☐ **Firm Commitment** to provide mortgage insurance on a loan, which will involve: ☐ Insurance of Advances During Construction ☐ Insurance Upon Completion, with respect to a principal loan of $ _____ which will bear interest at the rate of _____% on the Construction Loan and _____% on the Permanent Loan. The undersigned mortgagee requests consideration for mortgage insurance pursuant to the provisions of Section _____ of the National Housing Act, and the HUD regulations applicable thereto. Said insurance is being requested to cover a loan which is to be secured by a first mortgage on the property described herein. After examining the proposed security, the undersigned considers such project to be desirable and is interested in making a loan in the principal amount and at the interest rate stated above. The loan will require repayment of the principal over a period of _____ months (_____ years) in accordance with an amortization plan acceptable to you. It is understood and agreed that the actual financing fee (Item G-29) will not exceed _____% of your commitment amount. Presented herewith is a check for $ _____ which is in payment of the application fee required by HUD regulations.

☐ 2. **Request for Approval of Housing Assistance Payments Contract (Section 8):**
The undersigned owner requests your consideration with respect to approving a Housing Assistance Payments Contract pursuant to Section 8 of the U.S. Housing Act of 1937, as amended, and the related regulations applicable thereto. Submitted herewith is a proposal which defines the scope of the improvements and the type and quality of the housing which will be provided on the property described herein. Said property, upon completion of the improvements, will comply with the applicable standards and related regulations of the Department of Housing and Urban Development. Such proposed housing is being offered for lease, to eligible tenants at the stated contract rents, pursuant to the provisions of the regulations pertaining to the above-referenced U.S. Housing Act.

☐ 3. **Request for a Section 202 Loan:** Principal Amount $ _____ @ Permanent Interest Rate of _____%
Pursuant to Section 202 of the Housing Act of 1959, as amended, and the regulations applicable thereto, the undersigned borrower hereby requests a loan in the principal amount and at the interest rate stated above. The proceeds of the loan are to be used for development of the property desribed herein. The scope of the development of the property will be consistent with that information pertaining to improvements, submitted for your consideration. The loan is to be secured by a first mortgage on the property described herein. The principal amount of the loan will be repaid over a period of _____ months (_____ years) in accordance with an amortization plan acceptable to you.

Name and Address of Mortgagee	Principal Contact Telephone Number

Signed (Proposed Mortgagee) (Use with Item 1)	Date	Signed (Owner Item 2) (Borrower Item 3)	Date

Section N – Required Exhibits: Mortgage Insurance and Section 202 Direct Loan Applications

Item Number	Exhibit Title	FNMA or Feasibility*	Conditional Commitment	Firm Commitment
1	Location Map	X		
2	Legal Description of the Property	X		
3	Evidence of Permissive Zoning	X		
4	Sketch Plan of the Site	X		
5	Evidence of Site Control (Option or Purchase)	X		
6	Evidence of Last Arms-Length Transaction and Price, including a Certification by Sponsor that Evidence Submitted in Response to this Item Reflects Last Arms Length Purchase Price	X		
7	Form 2010 – Equal Employment Opportunity Certification	X		
8	Form 3433 – Eligibility as Nonprofit Corporation	X		
9	Form HUD-2530 – Previous Participation Certificate	X**		
10	Form HUD-92013-E – Supplement to HUD-92013	X****	X	X
11	Form FHA-2013R – Application for Project Mortgage Insurance (Rehabilitation)		X	
12	Affirmative Marketing Plan		X	
13	Management Plan and Questionnaire for the Sponsor and Managing Agent (HUD-9405A and HUD-9405B)		X	
14	Grant and/or Loan Commitment Letter (If applicable)		X**	
15	Form HUD-92013-E – Supplement to HUD-92013		X***	X
16	Form HUD-92013 – Supplement – For Each Sponsor and General Contractor		X***	X
17	Form HUD-92417 – Personal Financial Statement for Each Sponsor and General Contractor		X***	X
18	Personal and Commercial Credit Report for Each Sponsor and General Contractor		X	
19	Owner/Architect Agreement		X	
20	Architectural Exhibits – Preliminary			X
21	Architectural Exhibits – Final			X
22	Form HUD-92329 – Contractor's and/or Mortgagor's Cost Breakdown			X
23	Form HUD-92457 and Land Survey			X**
24	Form HUD-92013-E – Supplement to HUD-92013			X
25	Management Agreement			

* Mortgage Insurance Applications Only.
** For Handicapped and Elderly Projects Only.
*** If General Contractor is known – Otherwise submit with Firm Commitment Application
**** Submit for Rehabilitation Projects only. Complete Sections A, B, C, D, E, F, G, H and I.

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Required Exhibits: Section 8 Housing Assistance Contract Applications

The Developer Packet which applies to the specific Notification of Fund Availability (NOFA) identifies the exhibits which are required with the Preliminary and Final Proposal Applications.

The Developer Packet is available at the HUD Field Office which issued the NOFA to which the application is responding.

For HUD Use Only						
Date Received						
Amount						
Code						
Schedule						
Received By						

Instructions for Completing Application – Multifamily Projects, Form HUD-92013

Foreword: This Application is used for rental projects to request: (a) mortgage insurance, (b) a direct loan under Section 202, or (c) a Section 8 Housing Assistance Payments Contract. For mortgage insurance there are a maximum of three stages: (1) a request for a Site Appraisal and Market Analysis letter (SAMA letter) for new construction, or a Feasibility letter for a rehabilitation project. (Application for a SAMA or Feasibility letter may be submitted directly to a HUD Area Office or Multifamily Service Office by letter or in person); (2) an application for a Conditional Commitment; and (3) for a Firm Commitment. Both (2) and (3) must be submitted by an approved mortgagee to a HUD Area Office or Multifamily Service Office. For a direct loan, under Section 202, this Application is submitted to a HUD Area Office or Multifamily Service Office at the Conditional and Firm Commitment stages of processing. If Section 8 is combined with an insured mortgage, the preliminary proposal processing may be combined with SAMA or Feasibility stages of processing. The final proposal is [illegible] essed with the Firm Commitment Application in mortgage insurance.

Except for Rehabilitation Proposals under Section 202, a sponsor may combine two or three stages provided he/she has plans and exhibits that are sufficiently completed.

If a stage of processing is omitted, the exhibits for that stage are submitted with those required for the subsequent stage or stages. Information for all stages must be submitted in triplicate.

HUD Area or Service Office personnel will advise and assist sponsors and potential sponsors at all stages in connection with the submission of applications.

Application Completion Requirements For:

I. Insured: **SAMA**—Complete Page 1, in its entirety. Page 2, Complete only Section G, Item 46, Land (Estimated Market Price of Site). Page 3, Sections K, L and M. **Feasibility**—A request for feasibility analysis (rehabilitation) must be submitted with this form completed in its entirety. **Conditional/Firm**—A request for conditional or firm commitment must be submitted with this form completed in its entirety.

II. Section 202 Direct Loan: This form must be complete in its entirety when a conditional or firm commitment under the Section 202 direct loan program is being requested.

III. Section 8: **Preliminary Proposal**—Complete Page 1 in its entirety, (indicate type of occupancy, i.e., Elderly (E), Handicapped (H) or Family (F) in Section E, Unit Type). Page 2, Section G, Lines 46 and 47; Section I, Line 30. Page 3, Section K (to extent known) and Section M, Item 2. **Final Proposal**—Complete this form in its entirety except for Section L.

Section A – Identification

Item 1—Enter project name.

Items 2 and 3—Enter HUD project number for mortgage insurance and/or Section 8, if known.

Section B – Purpose of Application

Indicate actions requested by checking all applicable blocks and/or making entries where appropriate. For example, if an application is being submitted for the first stage of an uninsured project with housing assistance payments under Section 8, the Housing Assistance Payments Section 8 block will be checked as well as blocks for "A Preliminary Proposal", "Conventional Financing", and "Item 2 of Section M." If mortgage insurance will eventually be used "Conventional Financing" is not checked, but instead the block "Mortgage Insurance" is checked and the Section of Act entered in the blank space. In the Section 8 Preliminary Proposal stage do not check SAMA (Site Appraisal and Market Analysis) or feasibility letter, unless SAMA letter or feasibility letter is requested at that time and the SAMA fee is paid. The appropriate block for type of mortgagor (i.e. Profit Motivated, Nonprofit, Limited Dividend, Builder-Seller, or Other) and type of financing (i.e. Conventional, GNMA, Bond, or State Agency must be checked). Also, enter the amount of the requested Mortgage and the Permanent and Interim Interest Rates in the appropriate spaces.

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Section C – Location and Description of Property

Items 1 through 4—Self-explanatory.

Item 5—Congressional District may be obtained from the Congressional Directory, Maps Of Congressional Districts.

Items 6 through 10—Self-explanatory.

Item 11—(a) Detached – A dwelling structure containing one living unit, surrounded by permanent open spaces; (b) Semi-detached – A dwelling structure containing two contiguous living units separated by a vertical division termed a common, party, or lot wall; (c) Row or Townhouse – A non-elevator structure containing three or more contiguous living units separated by a vertical division termed common, party or lot line walls. Row/townhouse units may not be enclosed on more than two sides by party or lot line walls and must have permanent open space contiguous to no fewer than two sides. Units will usually have private entrance and private interior stairs; (d) Walk-up – A multi-level structure of two or more living units which does not contain an elevator, with the units separated horizontally by floor and/or ceiling structural elements. (Note: Structures containing 2 or more dwelling units, whether one story or multi-story, which do not comply with the definitions herein of either a semi-detached/row or an elevator structure, shall be classified as "walkup"). (e) Elevator Structure – A dwelling structure, having two or more stories above finish grade and containing one or more elevators.

Items 12 through 19—Self-explanatory.

Section D – Information Concerning Land or Property

Items 1 and 2—Self-explanatory.

In Item 3 insert any cost paid, or contracted, in addition to the stipulated purchase price. If the proposed site will require demolition expense, or other preparatory expense, this should be indicated and explained on an attached sheet.

Items 4 through 8—Self-explanatory.

Item 9—If the proposed site is leased, indicate the dollar amount of annual ground rental.

Items 10 through 12—Self-explanatory.

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Section E – Estimate of Income

Item 1—Unit Type – The various unit types the proposal will have must be listed in this column. Usually the distinction will be on the basis of number of bedrooms and/or number of baths each unit will have. If there are units with the same bedroom and bathroom count but significantly different living area, or other characteristics, that would normally be reflected in rent differential, they must be listed as a separate unit type. If there are both elevator and non-elevator units, a separate identification for unit type must be made for each. Provision has been made for 5 different unit types. This can readily be doubled by dividing each of the existing lines in half. In the rare instance where additional space is needed, an additional page of another Form HUD-92013 or a plain paper listing all of the information shown in Section E for the additional unit types must be attached. (Note: If an attachment is used, a remark asterisked on the original Form HUD-92013 must be made so that all parties using the application would be aware that there is an attachment involved.) **Care must be exercised to assure that excessive unit types are not created on the basis of minor unit market characteristics**, such as a difference of only a few square feet between units that are otherwise the same.

No. of Living Units – Enter here, for each unit type, the number of that unit type the project will have.

No. of Units Assisted – Show number of each unit type to receive Section 8 Housing Assistance Payments, if any.

Living Area (Sq. Ft.) is the area of each living unit measured from the inside faces of corridor and exterior walls and from the inside faces of partitions separating the living unit from other living or commercial areas.

Composition of Units – List here in abbreviated form, the rooms within each unit type, (i.e., L for living room, D for dining room, K for kitchen, BR for bedroom) (precede BR with number of bedrooms—e.g., 0BR, 1BR, or 2BR), B for bath (precede the B with 1 for each full bath, a 1/2 for each halfbath, or any combination appropriate), Bal. for balcony, etc.).

PBE Not In Rent (Sec. F-1) – Personal Benefit Expense (PBE), sometimes referred to as a Utility Allowance in the Section 8 program, is an estimate of the utilities or other expense to be paid by tenants that are not included in the owner's monthly contract rent estimate. This estimate must be compatible with the entries in Item F-1, Utilities (Not in Rent).

Unit Rent Per Mo. ($) – Enter here the proposed rent for each unit type. If [illegible] units are involved, the issue of proposed rental difference per floor, if appropriate, for the market, must be addressed. Usually the midpoint rents in a high-rise structure are reflected. The dollar difference per floor, if any, must be communicated by the applicant.

Total Monthly Unit Rent is the Unit Rent Per Month ($) times the No. of Living Units of that type and represents the Gross Income that can be anticipated for those units.

Employee(s) Living Unit(s) – List the number of employee living units for which rental income will not be received, the square foot area of each unit, and its unit composition. Employee living units must be included in the total units for the project, since they affect project operating expense estimates.

Items 2 through 7—Self-explanatory.

Item 8—At SAMA or feasibility stage insert the estimated gross floor area which is the sum of all floor areas of headroom height within the exterior walls. When completing a request for Conditional or Firm Commitment, insert the gross floor area computed from the plans.

Items 9 and 10 – Net Rentable Residential Area/Net Rentable Commercial Area is the sum of all living/commercial areas within the exterior walls, measured from the interior faces of the exterior walls, corridor walls, and partitions separating the area from other living or commercial areas. Existing comparable structures should be used as a guide by the sponsor in making these estimates at SAMA stage. At the Conditional or Firm Commitment stages, these areas should be calculated from the floor plans.

Section F – Equipment and Services—Self-explanatory.

Section G – Estimate of Replacement Cost

Line 1—Unusual Land Improvements – Enter cost for unusual site preparation such as pilings, retaining walls, fill, etc.

Line 2—Other Land Improvements – Enter cost of other land improvements such as on-site utilities, landscape work, drives and walks.

Lines 3 through 9—Self-explanatory.

Line 10—General Requirements – See Uniform System for Construction Specifications, Data Filing and Cost Accounting. Pages 1.3 and 1.4.

Lines 11 through 20—Self-explanatory.

Line 21—Enter the estimated cost per gross square foot of building area (Line 20 divided by Item 8 of Section E, page 1).

Line 22—Enter the estimated period that will be reflected in the construction contract. The construction time plus the two months equals the total estimated "construction period".

Line 23—Interest is the amount estimated to accrue during the anticipated construction period. It is computed on one-half of the loan amount.

Line 24—Taxes which accrue during the construction are estimated and included as the tax amount.

Line 25—Insurance includes fire, windstorm, extended coverage, liability, and other risks customarily insured against in the community. It does not include workmen's compensation, or public liability insurance, which are included in the cost estimate.

(Note: Lines 26 through 31 are not applicable to Section 202 Direct Loan applications.)

Line 26—HUD/FHA mortgage insurance premium is the amount to be earned during the estimated construction period. The amount should be computed on the requested loan amount at 1/2 of 1% per year or fraction of a year. If the estimated construction period exceeds one year, the premium will be based on a two-year period.

Line 27—HUD/FHA examination fee is computed at $3 per $1000 of the requested loan amount.

Line 28—HUD/FHA inspection fee is computed at $5 per $1000 of the requested loan amount when the project involves new construction, and on the estimated cost of rehabilitation when the project involves the rehabilitation of an existing structure.

Line 29—Financing fee is computed at a maximum of 2% on the loan amount. It is an initial service charge. This fee is not to be confused with discounts.

Line 30—Enter FNMA/GNMA fee here. HUD Field Office personnel will advise interested sponsors and mortgagees of the current maximum allowable rate for this fee and the conditions pursuant to which such fee may be included.

Line 31—[illegible] is the Allowance to Make Project Operational and is computed [illegible] maximum Mortgage insurance amount. It is allowable in cases involving nonprofit mortgagors (not including cooperative mortgagors).

Line 32—Self-explanatory.

Line 33—Title and Recording Expenses – This is the cost typically incurred for these items, by mortgagor, in connection with a mortgage transaction. This cost generally includes such items as recording fees, mortgage and stamp taxes, cost of survey, and title insurance including all title work involved between initial and final endorsement.

Line 34—Self-explanatory.

Lines 35, 36 and 37—Legal Organizational and Cost Certification Audit Fee – This estimate is to be based upon the typical cost usually incurred for these services in the area where the project is to be located. These items must be recorded separately.

Line 38—Self-explanatory.

Line 39—Builder's and Sponsor's Profit and Risk Allowance – This is based on total estimated cost of on-site utilities, landscape work, structures, general overhead expenses, architect's fees, carrying charges, financing, legal, organization and audit expenses. It is allowable in 220, 221(d)(3) Limited Distribution or profit-motivated, 236 Limited Distribution, 221(d)(4), and 231 profit-motivated projects. It is in lieu of, and not in addition to, builder's profit.

Line 40—Consultant's Fee, if any, enter amount to be charged the non-profit sponsor by a qualified consultant.

Line 41—Supplemental Management Fund for subsidized living units only – Allowance must not exceed $100 per assisted unit, excluding non-revenue producing units, if any.

Line 42—Contingency Reserve – An amount allowable for rehabilitation projects only, not to exceed 10% of the sum of Line 11 in Section G.

Lines 43, 44 and 45—Self-explanatory.

Line 46—Land (Estimated Market Price of Site) – Enter sponsor's estimate of market price of site including off-site costs. If site was purchased from public body, for a specific re-use, enter purchase price plus holding cost and any other

cost that the purchaser is required to pay, pursuant to specific conditions of the contract of sale. For Rehabilitation interline the "As Is" Value of Property.

Lines 47 and 48—Self-explanatory.

Section H – Annual Income Computations—Self-explanatory.

Section I – Estimate of Annual Expense

Lines 1 through 13—Self-explanatory.

Line 13—Other – Reflect expense not specifically listed, such as, project security. Contract Security if provided should include contract guard service, performed either part or full-time, in connection with project operation. If security services are performed by staff employees, their salaries are included under Line 12, Payroll expense.

Lines 14 through 30—Self-explanatory.

In housing for the Elderly, Line 23, will include only the expenses resulting from supplying tenants with shelter and utilities included in the rent. Separate income and expense budgets for supplying tenants with non-shelter services must be shown on Form HUD-92013-E, supplement to this application and used with all Elderly/Handicapped Housing proposals.

Section J – Total Settlement Requirements

Line 1—Self-explanatory.

Line 2—Enter amount required to clear title to site. If land is to be acquired, the unpaid balance of the purchase price shall be entered. If leasehold, or land owned free and clear of encumbrances, enter "none." Indebtedness against land must be supported by options, purchase agreements, pay-off balances, etc.

Line 3—Enter the sum of "Development Cost" and "Land Indebtedness."

Line 4—Enter principal amount of mortgage requested.

Line 5—Self-explanatory.

Line 6—Enter the amount required to meet operating and debt service expense from project completion until such time as income is adequate to provide a self-sustaining operation.

Line 7—Enter discount to be paid for placement of the permanent mortgage as well as any discount required by the construction lender.

Line 8—Enter the maximum interest yield cost.

Line 9—Enter 2 percent of the mortgage amount requested. No entry is required for nonprofit mortgagors.

Line 10—Enter one-half of one percent (.5%) of the total loan requested or $10,000, whichever is the lesser.

Line 11—Enter the cost of required improvements beyond property lines, such as streets and utilities, etc., which will not be installed at public or utility company expense.

Line 12—Enter relocation expenses in excess of amount allowed in replacement cost.

Line 13—Other – Enter any and all cost not identified elsewhere.

Line 14—Self-explanatory.

Line 15—Enter principal(s) cash contribution.

Line 16—Identify fees waived or deferred during construction or paid by means other than cash, i.e., BSPRA, builder's profit; identify grants/loans and the respective amounts.

Line 17—Self-explanatory.

Sections K, L, M, and N—Self-explanatory.

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Office of Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. FR2986]

Excerpts from Unpublished Notice of Funding Availability, Illustrating Information collections. [Draft—Not Being Published for Effect]

TITLE: Notice of Fund Availability (NOFA) for Supportive Housing for the Elderly;

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of fund availability for FY91.

* * * * *

FOR FURTHER INFORMATION CONTACT: The HUD Field Office for your jurisdiction.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The Department has submitted this NOFA to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. Pending approval of these collections of information by OMB and the assignment of an OMB control number, no person may be subjected to a penalty for failure to comply with these information collection requirements. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

Public reporting burden for the collection of information requirements contained in this NOFA are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Findings and Certifications*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, S.W., room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20530.

I. Purpose and Substantive Description

A. Authority

Section 801 of the National Affordable Housing Act (the NAH Act) amended section 202 of the Housing Act of 1959. It authorizes the Secretary to provide assistance to private nonprofit organizations and nonprofit consumer cooperatives to expand the supply of supportive housing for the elderly. The assistance will be provided as capital advances and contracts for project rental assistance in accordance with the Interim Rule for part 889 also published on this date (FR).

* * * * *

Of special interest is the Department's implementation of section 105 of the NAH Act which requires for this program that the application include a certification of consistency of the proposal with an approved housing strategy for the jurisdiction in which the proposed project will be located. It was announced in the preamble to the Comprehensive Housing Affordability Strategies ("CHAS") interim rule published on February 4, 1991 (56 FR 4480) that applications for FY 1991 funding under this program would include the certification based on an assumption that a CHAS could be prepared by April, in advance of a June application period. However, the body of the rule (Section 91.1(b)(2)) refers to individual program regulations as the authority for transition provisions. This program rules reverses the prior decision to apply the CHAS certification requirement for FY 1991 funding of this program. As stated in the body of the Interim Rule for Part 889, beginning in FY 1992, all applications for funding under this program must include a certification from the responsible public official that the project is consistent with an approved CHAS.

For FY 1991 applications, the CHAS certification requirement is not to be applied to this program, because it is not strictly required or feasible. The NAH Act did not require implementation of this program until FY 1992. However, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1991, suggested conversion to this new program in FY 1991, not mentioning the applicability of any CHAS certification. In order to permit the funding of this program in FY 1991 and maximize accomplishment of the purposes of both the NAH Act and the appropriations, the Department decided to implement this program in FY 1991. But the authorization statute which contemplated implementation of this program in FY 1992 did not address the issue of applicability of the CHAS requirement before that date.

In reviewing the schedule for FY 1991 implementation, the Department has considered the amount of time required of a State or locality to develop as CHAS, including the hearing necessary to obtain citizen participation. The Department has determined that the April projection for completion of that process is now infeasible. Moreover, HUD's own role of announcing the availability of funding, conducting workshops and training, approving a housing strategy, and preparing, accepting and reviewing applications makes it unlikely that it could approve CHASes in time to permit Sponsors (applicants) to receive timely CHAS certifications. Neither the authorization statute nor the appropriation statute compels the requirement of a CHAS certification in FY 1991. Therefore, to be most fair to entrants in this new significantly revised program, the Department is providing transition by delaying applicability of the CHAS certification until FY 1992.

Also of special interest is a new statutory requirement for a certification by the appropriate State or local agency (typically the Area Agency on Aging) that the services identified in the application are well designed for the category or categories of elderly persons the housing is intended to serve. Therefore, the Sponsor must develop and submit its service plan to the appropriate agency to obtain the required certification. In view of the short timeframe in this fiscal year for submission of applications to HUD, this certification will be accepted even if not signed and submitted to the Field Office by the application deadline date, if it is received by the Field Office within 30 days following the application deadline date.

* * * * *

D. Preliminary Evaluation and Selection Criteria

1. Preliminary Evaluation

Applications for section 202 Fund Reservations for housing for the elderly that meet the following initial threshold requirements at preliminary evaluation will be eligible for technical processing:

(a) Application was received by HUD at the appropriate address by June 17, 1991 and was complete or is missing no more than one complete exhibit (excluding exhibits which are certifications);

(b) Sponsor acceptably corrected deficiencies (including furnishing missing certifications) within 14 calendar days from the date of the notification letter;

(c) Sponsor, proposed facilities and proposed occupants are eligible under section 202;

(d) Sponsor has experience in developing and/or operating housing, medical or other facilities and/or providing services to the elderly, families or minority groups;

(e) There is reasonable expectation that the Sponsor can meet the Minimum Capital Investment requirement and start-up expenses;

(f) Sponsor provided evidence of legally-binding site control;

(g) The Sponsor is in compliance with civil rights laws and regulations as follows:

(i) There are no pending civil rights suits against the Sponsor instituted by the Department of Justice;

(ii) There are no outstanding findings of noncompliance with civil rights statutes, Executive Orders or regulations as a result of formal administrative proceedings, or where the Secretary has issued a charge under the Fair Housing Act, unless the Sponsor is operating under a compliance agreement designed to correct the areas of noncompliance;

(iii) There has not been a deferral of the processing of applications from the Sponsor imposed by HUD under Title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3), and the HUD Title VI regulations (24 CFR 1.6) and procedures (HUD Handbook 8040.1).

(h) Even without a site visit, it is reasonable to expect the proposed site meets site and neighborhood standards, including minority elderly concentration considerations, and is not in a floodway;

(i) There is sufficient market demand for the number of units proposed based on preliminary review; and

(j) Application was responsive to the Field Office Invitation (*i.e.*, did not request more units than advertised);

* * * * *

II. Application Process

All applications for Section 202 Fund Reservations submitted by eligible Sponsors must be filed with the appropriate HUD Field Office receiving an allocation and must contain all exhibits required by this Notice.

Immediately upon publication of this NOFA, Field Offices shall notify minority organizations within their jurisdiction involved in housing and community development and groups with special interest in housing for elderly households.

Within three weeks of the date of this Notice, HUD Field Offices will publish a one-time Invitation as required by § 889.205(b) of the Interim Rule, in newspapers of general circulation, and in any minority newspapers serving the Field Office jurisdiction. Field Offices will accept applications after publication of the Invitation. No application will be accepted after the regular closing time of the appropriate Field Office on June 17, 1991, unless that time is extended by a Notice published in the **Federal Register**. Applications received after that date and time will not be accepted, even if postmarked by the deadline date.

Organizations interested in applying for a section 202 Fund Reservation should provide the appropriate Field Office with their names, addresses and telephone numbers, and advise the Field Office whether they wish to attend the workshop described below. HUD encourages minority organizations to participate in this program as Sponsors. Field Offices, at the date and time specified in the Invitations, will conduct workshops to explain the Section 202 Program and the Seed Money Loan Program under section 106(b) of the Housing and Urban Development Act of 1968. Under this latter program, HUD makes direct, interest-free loans to approved nonprofit section 202 eligible Owners to cover certain start-up expenses.

Note: HUD has proposed rescission of the fund allotted for the Section 106(b) program in FY 1991 and is not requesting any funding for FY 1992. Although funds may not be available because of the proposed rescission, applications should still be submitted simultaneously with the section 202 application. In the event the rescission is not approved, HUD will consider section 106(b) applications with the section 202 applications.

HUD strongly recommends that prospective applicants attend the local Field Office workshop. More detailed information covering the time and place of the particular workshops will be set out in the Field Office invitation. Interested persons with disabilities should contact the Field Office to assure that any necessary arrangements can be made for them to enable their attendance and participation in the workshop. While strongly urged to do so, if Sponsors cannot attend a workshop, Application Packages and handbooks can also be obtained from the Field Offices. Contact the appropriate Field Office with any questions regarding the submission of applications.

At the workshops, Application Packages will be distributed, application procedures and requirements (including the Department's equal opportunity, environmental, design and cost standards and required exhibits) will be explained. Also, concerns such as local market conditions, building codes, historic preservation, floodplain management, displacement and relocation, zoning and housing costs will be addressed.

III. Application Submission Requirements

1. Application

Each application shall include all of the information, materials, forms, and exhibits listed in paragraph 2 of this section and must be indexed and tabbed. The Field Office will base its determination of the eligibility of the Sponsor for a reservation of section 202 capital advance funds on the information provided in the application.

2. Application Contents

(a) Each applicant (Sponsor) shall include on a Form HUD–92013, Application for Multifamily Housing Project:

(1) The name, address, and telephone number of the Sponsor(s);

(2) The name, title, address, and telephone number of the officer or director of the Sponsor's Board of Directors to whom communications should be addressed;

(3) The following specific information regarding the project:

(i) number of units requested by size (efficiency, one-bedroom or two-bedroom),

(ii) dollar amount of the capital advance requested;

(iii) estimated land cost;

(iv) number and types of structures;

(v) number of stories planned and whether an elevator will be included; and

(vi) development method (new construction, rehabilitation or acquisition from the RTC).

(b) Additional exhibits must include:

(1) A Housing Consultant's Resume, Contract (Form HUD 92531–EH) and an Identity of Interest and Disclosure Certification (if the Sponsor has employed a project consultant).

(2) Evidence of each Sponsor's legal status as a private, nonprofit organization or nonprofit consumer cooperative, including the following:

(i) Articles of Incorporation, constitution, or other organizational documents;

(ii) By-laws;

(iii) A typed incumbency certificate, listing all officers and directors, title, beginning date of each person's term and when that term expires. It must be certified by an officer of the Sponsor that it constitutes all duly qualified and sitting officers and directors as of the date the application is filed with HUD;

(iv) IRS tax exemption ruling (this must be submitted by all Sponsors,

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including churches). A nonprofit organization organized in the Commonwealth of Puerto Rico and exempt from income taxation under Puerto Rico law, or a consumer cooperative that is tax exempt under State law, has never been liable for payment of Federal income taxes, and does not pay patronage dividends may be exempt from the requirement set out in the previous sentence if they are not eligible for tax exemption; and

(v) Resolution of the board, duly certified by an officer, that no officer or director of the Sponsor or Owner has or will have any financial interest in any contract with the Owner or in any firm or corporation which has or will have a contract with the Owner.

(3) Satisfactory evidence that the Sponsor:

(i) Has the necessary legal authority to sponsor the project and to assist the Owner to finance, acquire, construct, or rehabilitate and maintain the project; and

(ii) will form an Owner (as defined in § 889.105) after the issuance of the fund reservation, will cause the Owner to file a request for determination of eligibility and a request for a capital advance under § 889.300, and will provide sufficient resources to the Owner to ensure the development and long-term operation of the project.

(4) A description of the Sponsor's ties to the community, including the minority community, and support from local community groups.

(5) Evidence of any previous participation in HUD programs by the Sponsor, its officers or directors, or Form HUD 2530. If none, forms must be submitted indicating "No previous experience."

(6) A description of any financial default, modification of terms and conditions of financing, or legal action taken or pending against the Sponsor or its officers, directors, or trustees in their corporate capacity.

(7) A description of any other rental housing projects and/or medical facilities, sponsored, owned and operated by the Sponsor including a description of experience in: providing housing and/or medical facilities to the elderly and/or families.

(8) A description of the Sponsor's past or current involvement in any programs other than housing (including its provision of services) that demonstrates the Sponsor's management capabilities and experience, including a description of the Sponsor's experience in serving the elderly and/or families.

(9) A certified Board Resolution, acknowledging responsibilities of sponsorship, long-term support of the project(s), willingness of Sponsor to assist the Owner to develop, own, manage and provide appropriate services in connection with the proposed project, and that it reflects the will of its membership.

(10) A description of the Sponsor's experience in providing housing, medical facilities and/or related services to minority persons or families and in contracting with minority and women-owned business enterprises.

(11) A list of the applications, if any, the Sponsor has submitted or is planning to submit to any other Field Office in response to the current Invitations for Supportive Housing for Persons with Disabilities and Supportive Housing for the Elderly. Indicate by Field Office, the proposed location by city and State, and the number of units requested, and the financial commitments related to each application.

(12) An estimate of start-up expenses for the project and the source of funds to meet these expenses. If the Sponsor plans to use a section 106(b) seed money loan, an application (Form HUD–92290) for such loan must be submitted with required attachments.

(13) Evidence, in the form of a certified Board Resolution, of the Sponsor's willingness to fund the Minimum Capital Investment, estimated start-up expenses, and any associated development or operating costs related to items not covered by the capital advances under § 889.240 and to ensure the development and long-term operation of the project. Also, as evidence of the Sponsor's financial ability to cover these costs, include:

(i) A brief narrative description of financial history;

(ii) Copies of balance sheets and statements of income and expenses for each of the past three years that the Sponsor has operated. The financial statements, at a minimum, must include the information contained in Form HUD–92417 and a certification pursuant to the criminal warning provided in U.S. Criminal Code, Section 1001, Title 18 U.S.C.;

(iii) Form HUD–2013 Supplement, Application for Project Mortgage Insurance, listing current bank and trade references; and

(iv) a list of all FY 1990 and prior year projects to which the Sponsor(s) is a party, identified by project number, Field Office, funding year and month and year of initial closing, current status (if finally closed, indicate month and year) and financial requirements for closing.

(14) The following additional information with respect to the proposed project:

(i) A description of the category or categories of elderly persons the housing is intended to serve and the need for supportive housing for that population in the area to be served.

(ii) Evidence that the Sponsor has entered into a legally binding option agreement to buy or lease the proposed site; or has a copy of the contract of sale for the site, a deed, long-term leasehold or other evidence of legal ownership of the site (including properties to be acquired from the Resolution Trust Corporation). The option agreement period should extend through the end of the current fiscal year and contain a renewal provision to guarantee site availability through the subsequent stage of processing. The Sponsor must also identify any restrictive covenants. In the case of a site to be acquired from a public body, evidence that the public body possesses clear title to the site, and has entered into a legally binding agreement to lease or convey the site to the Sponsor after it receives and accepts a notice of section 202 fund reservation and identification of any restrictive convenants. However, in localities where HUD determines the time constraints of the funding round will not permit all of the required official actions (*e.g.*, approval of Community Planning Boards) which are necessary to convey publicly-owned sites, a letter in the application from the Mayor or Director of the appropriate local agency indicating approval of conveyance of the site contingent upon the necessary approval action is acceptable and may be approved by the Field Office if it has had satisfactory experience with timely conveyance of sites from that public body. In such cases, documentation shall also include a copy of the public body's evidence of ownership and identification of any restrictive covenants.

Note: A proposed project site may not be acquired or optioned from a general contractor (or its affiliates) which will construct the Section 202 project or from any other development team member.

(iii) A map showing the location of the site and the racial composition of the neighborhood, with the area of racial concentration delineated.

(iv) A sketch of the site plan showing the general development of the site including the proposed location of the proposed building(s), streets, parking areas and drives, service areas, and unusual site features.

(v) Evidence that the project as proposed is permissible under applicable zoning ordinances o. regulations, or a statement of the

proposed action required to make the proposed project permissible and the basis for belief that the proposed action will be completed successfully before the receipt of the conditional commitment application (*e.g.*, a summary of the results of any recent requests for rezoning on land in similar zoning classifications and the time required for such rezoning, preliminary indications of acceptability from zoning bodies, *etc.*).

(15) A statement that (a) identifies all persons (families, individuals, businesses and nonprofit organizations (identified by race/minority group, and status as owners or tenants) occupying the property on the date of submission of the application for fund reservation (or date of initial site control, if later); (b) indicates the estimated cost of relocation payments and other services, and (c) identifies the staff organization that will carry out the relocation activities.

Note: If any of the relocation costs will be funded from sources other than the section 202 capital advance, the sponsor must provide evidence of a firm commitment of these funds. Due to potentially high relocation costs, sponsors are encouraged to utilize sites which involve minimal or no relocation costs.

(16) A narrative description of the proposed housing consistent with § 889.270(c), including:

(i) If the project will be developed using innovative construction or rehabilitation methods or technologies, identify them and describe how they will promote efficient construction or energy efficiency.

(ii) Identification and description of all community spaces, special amenities or features planned for the housing. A description of how the spaces will be utilized also must be included. If these amenities, features, or community spaces would not comply with the design and cost standards, the Sponsor must demonstrate its ability and willingness to contribute both the incremental development cost and continuing operating cost associated with the community spaces, features or amenities.

(17) Typical unit plans and floor plans of all floors providing community space, indicating dimensions of spaces to be used for the provision of supportive services.

(18) Identify on a Form HUD 92013E, Supplemental Application Processing Form—Housing for the Elderly, all supportive services, if any, to be provided to the persons occupying such housing; and describe (a) the manner in which such services will be provided to such persons (*i.e.*, on or off-site), including, whether a service coordinator will facilitate the adequate provision of such services, and (b) the public or private sources of assistance that may reasonably be expected to fund or provide such services.

(19) Signed certifications of the Sponsor(s)' intent to comply with Title VI of the Civil Rights Act of 1964, the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Executive Orders 11063 and 11246, section 3 of the Housing and Urban Development Act of 1968, and the affirmative fair housing marketing requirements at 24 CFR part 200, subpart M.

(20) A certification from the appropriate State or local agency that the provision of services identified in the application is well designed to serve the special needs of the category or categories of elderly persons the housing is intended to serve.

(21) A certification of the Sponsor(s) that the appropriate State agency (single point of contact) under Executive Order 12372, Intergovernmental Review, has been contacted to determine if the Section 202 Program is covered under the State review process and, if applicable, the date the application was submitted to the State.

(22) A certification on SF–424, Application for Federal Assistance, that the Sponsor(s) is not delinquent on the repayment of any Federal debt.

(23) A certification by the Sponsor(s) that the section 202 funds will not be used to lobby the Executive or Legislative branches of the Federal government.

(24) A certification that the Sponsor(s) will comply with the requirements of the Drug-Free Workplace Act.

(25) A certification that the project will comply with HUD's design and cost standards, the Uniform Federal Accessibility Standards and HUD's implementing regulations at 24 CFR Part 40, Section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8, and for new construction multifamily housing projects, the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100.

(26) A certification by the Sponsor(s) that it will comply (or has complied) with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), implemented by regulations at 49 CFR part 24, and 24 CFR § 889.285(e).

* * * * *

Authority: Section 202, Housing Act of 1959, as amended (12 U.S.C. 1701q), Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

[END]

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Part V

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 9

Enforcement of Nondiscrimination on Basis of Handicap in Programs or Activities Conducted by Department of Housing and Urban Development; Notice of Proposed Rulemaking

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 9

[Docket No. R-91-1510; FR-2163-P-03]

RIN 2501-AB04

Enforcement of Nondiscrimination on Basis of Handicap in Programs or Activities Conducted by Department of Housing and Urban Development

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 504 of the Rehabilitation Act of 1973, as amended, prohibits discrimination on the basis of handicap. This proposed rule provides for the enforcement of Section 504 as it applies to programs or activities conducted by the Department of Housing and Urban Development (HUD). This proposed rule is distinguished from the rule at 24 CFR part 8, which applies to private, State or local programs or activities receiving Federal financial assistance from HUD. The proposed rule establishes standards for what constitutes discrimination on the basis of mental or physical handicaps; provides a definition of individuals with handicaps and qualified individuals with handicaps, and establishes a complaint procedure for resolving allegations of discrimination. The proposed rule incorporates changes concerning illegal drug use based on the Americans with Disabilities Act.

DATES: Comment Due Date: July 29, 1991.

ADDRESSES: Interested persons are invited to submit written comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title and to the specific sections in the regulation. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address. Copies of this notice will be made available on tape for those with impaired vision who request them. They may be obtained at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708-4337. (This is not a toll-free number.) Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk at (202) 708-3084 or (202) 708-3259 (TDD). These are not toll-free numbers.

FOR FURTHER INFORMATION CONTACT: Mary-Jean Moore, Office of Fair Housing and Equal Opportunity, Room 5230, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-5000, telephone (202) 708-0015 (voice/TDD). This is not a toll free number.

SUPPLEMENTARY INFORMATION:

Background

Section 504 of the Rehabilitation Act of 1973, as amended (Section 504), states in pertinent part that:

> No otherwise qualified individual with handicaps in the United States, * * * shall, solely by reason of her or his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.*
>
> (29 U.S.C. 794 (1978 amendment italicized)).

The purpose of this proposed rule is to provide for the enforcement of section 504 as it applies to programs and activities conducted by the Department of Housing and Urban Development (HUD).

The substantive nondiscrimination obligations of the agency, as set forth in this proposed rule, are adapted from, and are very similar to, those established by HUD's regulation for programs or activities receiving Federal financial assistance from HUD. See 24 CFR part 8; see also 28 CFR part 41 (Section 504 coordination regulation for federally assisted programs). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in House floor debate, including its sponsor, U.S. Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) id.; 124 Cong. Rec. 13,897 (remarks of Rep. Brademas); Id. at 38,552 (remarks of Rep. Sarasin).

There are, however, some differences between this proposed rule and the Department of Justice's section 504 coordination regulations for federally assisted programs, as well as many other agencies' implementing regulations. Many of these changes are based on the Supreme Court's decision in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979) (Davis), and the subsequent circuit court decisions interpreting *Davis* and Section 504. *See Dopico* v. *Goldschmidt*, 687 F.2d 644 (2d Cir. 1982) *(Dopico); American Public Transit Association* v. *Lewis*, 655 F.2d 1272 (D.C. Cir. 1981) *(APTA); see also Rhode Island Handicapped Action Committee* v. *Rhode Island Public Transit Authority*, 718 F.2d 490 (1st Cir. 1983).

These language differences are also supported by the decision of the Supreme Court in *Alexander* v. *Choate*, 469 U.S. 287 (1985), in which the Court held that the regulations for federally assisted programs did not require a recipient to modify its durational limitation on Medicaid coverage of inpatient hospital care for handicapped persons. Clarifying its *Davis* decision, the Court explained that Section 504 requires only "reasonable" modifications, id. at 300, and explicitly noted that "(t)he regulations implementing Section 504 (for federally assisted programs) are consistent with the view that reasonable adjustments in the nature of the benefit offered must at times be made to assure meaningful access." *Id.* at n.21 (emphasis added).

HUD's regulations for federally assisted programs (24 CFR part 8) have incorporated these changes. Incorporation of the changes here as well makes this proposed rule implementing section 504 for federally conducted programs consistent with other Federal agencies' regulations implementing section 504 for federally assisted programs as interpreted by the Supreme Court and by the various circuit courts. Of course, these regulations for federally assisted programs must be interpreted to reflect Federal case law. Hence, there are no significant differences between this proposed rule for federally conducted programs, HUD's section 504 rule for federally assisted programs, and the interpretation of section 504 regulations for federally assisted programs by the Federal government as a whole.

Section-by-Section Analysis

Section 9.101 Purpose

Section 9.101 states that the purpose of the proposed rule is to implement section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978. Section 119 amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

Section 9.102 Application

The proposed regulation would apply to all programs or activities conducted by HUD. Under this section, a federally conducted program or activity is, in simple terms, anything a Federal agency does. Aside from employment, there are two major categories of federally conducted programs or activities covered by this proposed regulation: those involving general public contact as part of ongoing agency operations, and those directly administered by the agencies for program beneficiaries and participants. Activities in the first category include communications with the public (telephone contacts, office walkins, or interviews) and the public's use of the agency's facilities. Activities in the second category include programs that provide Federal services or benefits (*e.g.*, agency-owned or agency-operated housing, training at both HUD and outside facilities, contracting, and policy development). HUD does not construct housing. Generally, HUD helps to provide housing either by providing financial assistance or by endorsing the mortgage on a house or the mortgage note on a housing project (or both) for insurance. Where HUD provides financial assistance to the project, the project is covered by HUD's section 504 regulation covering federally assisted programs (24 CFR part 8). Projects with HUD-insured mortgages are not subject to section 504 unless the project otherwise receives Federal financial assistance as defined in 24 CFR 8.3. Mortgage insurance does not constitute "Federal financial assistance" for purposes of 24 CFR part 8 or part 9. However, in some cases HUD takes possession of and control over or title to a federally assisted or insured project (*e.g.*, after default and foreclosure). When HUD takes title to or assumes possession and control over a project, it becomes a federally conducted program or activity and is subject to this part 9 until HUD disposes of the project in accordance with the regulations governing property disposition, codified at 24 CFR parts 290, 291 (the Property Disposition Programs). When HUD takes possession of a project and operates it, either directly or indirectly, to preserve and protect HUD's security interest in the property, HUD is referred to as the mortgagee in possession. Mortgagee in possession does not refer to the situation in which HUD is assigned a mortgage by a lender and merely accepts payment from the borrower.

This regulation would not apply to programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

Section 9.103 Definitions

Accessible. When used with respect to the design, construction, or alteration of a facility or a portion of a facility, other than an individual dwelling unit, "accessible" would mean that the facility or portion of the facility, when designed, constructed or altered, can be approached, entered, and used by individuals with physical handicaps. The phrase "accessible to and usable by" would be synonymous with accessible. A facility that complies with the standards prescribed by 24 C.F.R. 8.32, the Uniform Federal Accessibility Standards (UFAS), would satisfy this definition of the term accessible. UFAS is not the sole means by which recipients can achieve compliance with the requirement that new construction and alterations be accessible.

Accessible. When used with respect to the design, construction, or alteration of an individual dwelling unit, "accessible" would mean that the unit is located on an accessible route and, when designed, constructed, altered or adapted, can be approached, entered, and used by individuals with physical handicaps. A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards set forth in § 9.152 would be "accessible" within the meaning of this definition. When a unit in an existing facility that is being made accessible as a result of alterations is intended for use by a specific qualified individual with handicaps (*e.g.*, a current occupant of such unit or of another unit under the control of the agency, or an applicant on a waiting list), the unit would be deemed accessible if it meets the requirements of applicable standards that address the particular disability or impairment of such person.

Accessible route. Accessible route would mean a continuous unobstructed path connecting accessible elements and spaces in a building or facility that complies with the space and reach requirements of applicable standards prescribed by § 9.152(d). An accessible route that serves only accessible units occupied by persons with hearing or vision impairments would not be required to comply with those requirements intended to effect accessibility for persons with mobility impairments.

Adaptability. "Adaptability" would mean the ability of certain elements of a dwelling unit, such as kitchen counters, sinks, and grab bars, to be added to, raised, lowered, or otherwise altered, to accommodate the needs of persons with or without handicaps, or to accommodate the needs of persons with different types or degrees of disability. For example, in a unit adaptable for a hearing-impaired person, the wiring for visible emergency alarms may be installed but the alarms need not be installed until such time as the unit is made ready for occupancy by a hearing-impaired person.

Agency. "Agency" would mean the Department of Housing and Urban Development.

Agency-owned housing facility. An agency-owned housing facility would mean property in the possession or control of the agency whether or not the agency has acquired title to the property and includes property with respect to which the agency is the mortgagee in possession. A housing project is a facility under this proposed regulation. Thus, if HUD is mortgagee in possession of a housing project, the project would be an "agency-owned" housing facility, as defined in the proposed rule, even though HUD has not acquired title to the project. The proposed definition of "agency-owned" extends to properties in HUD's possession or control because this part covers all programs or activities conducted by HUD. A HUD-operated property is included within the term "agency-owned housing facility" even if the property is being managed by a contractor. Once a property is within HUD's possession or control it is a HUD-conducted program or activity, whether or not HUD has title to the facility.

Alteration. "Alteration" would be defined as any change in a facility or its permanent fixtures or equipment. The term would include, but would not be limited to, remodeling, renovation, rehabilitation, reconstruction, changes or rearrangements in structural parts and extraordinary repairs. It would exclude normal maintenance or repairs, re-roofing, interior decoration, or changes to mechanical systems.

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Assistant Attorney General. "Assistant Attorney General" would refer to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Assistant Secretary. "Assistant Secretary" would refer to the Assistant Secretary of HUD for Fair Housing and Equal Opportunity.

Auxiliary aids. "Auxiliary aids" would be defined as services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the agency's programs or activities. The definition includes examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § 9.160(a)(1), they may also be necessary to meet other requirements of the proposed regulation.

Complete complaint. "Complete complaint" would be defined to include all the information necessary to enable the agency to investigate the complaint. The definition is necessary because the 180-day period for the agency's investigation (see § 9.170(g)(1)) begins when the agency receives a complete complaint.

Current illegal use of drugs. The phrase "current illegal use of drugs" is used in § 9.131. Its meaning is discussed in the preamble for that section.

Drug. The definition of the term "drug" is taken from Section 512(b) of the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336) (ADA).

Facility. The proposed definition of "facility" is similar to that in the section 504 coordination regulation for Federally assisted programs (28 CFR 41.3(f)), except that the term "rolling stock or other conveyances" would be added and the phrase "or interest in such property" would be deleted because the term "facility," as used in this regulation, refers to structures and not to intangible property rights. The regulation, however, would apply to all programs and activities conducted by HUD regardless of whether the facility in which they are conducted is owned, leased, or in some other way used by HUD. The proposed definition of "facility" is identical to the definition in HUD's regulation for federally assisted programs. See 24 CFR 8.3. The term "facility" is used in §§ 9.149, 9.150 and 9.170(f).

Historic properties. Under the proposed rule, historic properties are those properties either that are listed or are eligible for listing in the National Register of Historic Places or that are designated as historic under a statute of the appropriate State or local government body.

Illegal use of drugs. The definition of "illegal use of drugs" is taken from section 512(b) of the ADA and clarifies that the term includes the illegal use of one or more drugs.

Individual with handicaps. The definition of "individual with handicaps" is identical to the definition of "handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31), except that it reflects the amendment made by the ADA, which provides that the term does not include an individual who is currently illegally using drugs, when the agency acts on the basis of such use. The phrase "current illegal use of drugs" is explained in § 9.131, which effectuates the substantive provisions of the ADA amendment.

The proposed definition of "individual with handicaps" is identical to the definition appearing in the section 504 regulation for HUD-assisted programs (24 CFR 8.3) with one exception. Section 103(d) of the Rehabilitation Act Amendments of 1986 changed the statutory term "handicapped individual" to "individual with handicaps." This statutory change is reflected in this proposed rule and HUD's rule governing federally assisted programs. The legislative history of this amendment indicates that no substantive change was intended. Although the term refers to "handicaps" in the plural, it would not exclude persons who have only one handicap.

Multifamily housing project. A "multifamily housing project" would be defined as a project containing five or more dwelling units. A "project" would include the whole of one or more residential structures and appurtenant structures, equipment, roads, walks and parking lots which are treated as a whole by the agency for processing purposes, whether or not located on a common site. For example, three separate two-family structures (*i.e.*, six dwelling units) which are treated as a whole for processing purposes, whether or not they are located on a common site, would constitute a multifamily housing project. The same definition is also in 24 CFR 8.3.

Qualified individual with handicaps. Paragraph (a) of the proposed definition of "individual with handicaps" is taken from the Department of Justice prototype rule for federally conducted programs. Paragraph (a) would define "qualified individual with handicaps" with regard to any non-employment program under which a person is required to perform services or to achieve a level of accomplishment. It should be noted that HUD does not conduct programs under which a person is required to perform services or achieve a level of accomplishment as a part of his or her participation in a particular program or activity. As explained below, an example of this sort of program would be an educational program of the type usually conducted by a college or university. Nevertheless, paragraph (a) has been included in this proposed rule so that this regulation will cover all programs or activities conducted by the Department now and in the future and so that HUD's regulation will be consistent with the Department of Justice's prototype regulation and the regulations of other Federal agencies.

In a non-employment program or activity under which a person is required to perform services or achieve a level of accomplishment, a "qualified individual with handicaps" would be defined as an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature. This proposed definition reflects the Supreme Court's decision in *Davis* that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" (now a "qualified individual with handicaps") because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." 442 U.S. at 410. The Court also found that "the purpose of (the) program was to train persons who could serve the nursing profession in all customary ways," *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

HUD has incorporated the Court's language in *Davis* into the proposed definition of "qualified individual with handicaps" in order to make clear that such a person must be able to participate in the program offered by the agency. Although the agency would be required to make modifications in order to enable an applicant with handicaps to participate, it would not be required

to offer a program of a fundamentally different nature. The test would be whether, with appropriate modifications, the applicant can achieve the purpose of the program offered—not whether the applicant could benefit or obtain results from some other program that the agency does not offer. Although the proposed definition allows exclusion of some individuals with handicaps from some programs, it requires that an individual with handicaps who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

The agency would have the burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity. Furthermore, the agency would be required to follow the procedures established in §§ 9.150(a), 9.155(b), and 9.160(d) for demonstrating that an action would result in undue financial and administrative burdens. (That is, the decision must be made by the Secretary (or his or her designee) in writing after consideration of all resources available for the program or activity and must be accompanied by an explanation of the reasons for the decision. If the Secretary determines that an action would result in a fundamental alteration, the agency would have to consider options that would enable the individual with handicaps to achieve the purpose of the program but would not result in such an alteration.)

For other agency non-employment programs or activities that do not fall under paragraph (a), paragraph (b) adopts the third definition of "qualified individual with handicaps" found in the Department's rule governing federally assisted programs (24 CFR 8.3). Under this definition, a qualified individual with handicaps would be an individual with handicaps who meets the essential eligibility requirements for participation in the program or activity. This proposed definition clarifies the term "essential eligibility requirements", particularly with respect to multifamily housing projects owned by HUD.

Paragraph (c) would explain that "qualified individual with handicaps" means "qualified handicapped person" as that term is defined for purposes of employment in the Equal Employment Opportunity Commission's regulation at 29 CFR 1613.702(f), which would be made applicable to this part by § 9.140. Nothing in this part changes existing regulations applicable to employment.

Replacement cost of the completed facility. This proposed term, which is used in § 9.152 ("Program accessibility: Alterations of agency-owned multifamily housing facilities"), is identical to the definition in 24 CFR 8.3. The term would be defined as the current cost of construction and equipment for a newly constructed housing facility of the size and type being altered. Construction and equipment costs do not include the cost of land, demolition, site improvements, non-dwelling facilities and administrative costs for project development activities.

Secretary refers to the Secretary of HUD.

Section 504. This definition would clarify that, as used in this part, "section 504" applies only to programs or activities conducted by the agency and not to programs or activities for which it provides Federal financial assistance. HUD's rule implementing section 504 applicable to federally assisted programs is at 24 CFR part 8.

Substantial impairment. This term, which refers to alterations of historic properties, would mean a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration. The term is used in § 9.150(a)(2), which relates to historic facilities.

Section 9.110 Self-evaluation

HUD would conduct a self-evaluation of its compliance with section 504 within one year of the effective date of the regulation. The self-evaluation requirement is present in the Department of Justice's section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)), and in HUD's section 504 regulation for HUD-assisted programs (24 CFR 8.51). The self-evaluation process is a valuable means of establishing a working relationship with individuals with handicaps. It promotes effective and efficient implementation of section 504.

In the self-evaluation, the Department would, within one year of the effective date of this rule, review its policies, practices and program regulations to determine whether they need to be revised or amended to be consistent with the final rule. If, through self-evaluation, it is determined that modification of policies, practices or programs is necessary to meet the requirements of the rule and section 504, the Department would proceed to take the appropriate corrective steps.

Section 9.111 Notice

Section 9.111 would require the agency to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons, including those with impaired vision or hearing, to apprise them of the rights and protections afforded by section 504 and this regulation. Methods of providing this information include the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the agency's programs and activities; the display of informative posters in service centers and other public places; the broadcast of information by television or radio; and the use of interpreters, readers and taped or Braille materials. All publications and recruitment materials would contain a statement that the agency does not discriminate on the basis of handicap. This notice would include the name of the person or office responsible for section 504 and to whom questions regarding section 504 should be addressed. Notice would be provided within 120 days of the implementation of the regulation.

Section 9.130 General prohibitions against discrimination

Section 9.130 is an adaptation of the corresponding section of both the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51) and HUD's section 504 regulation for HUD-assisted programs (24 CFR 8.10).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 9.130 would establish the general principles for analyzing whether a particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. Thus, if the agency violates a provision in any of the subsequent sections, it would also violate one of the general prohibitions found in § 9.130. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) would prohibit overt denials of equal treatment of individuals with handicaps. Under the proposed rule, the agency could not refuse to provide an individual with handicaps with an equal opportunity to participate in, or benefit from, its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (*e.g.*, epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities

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without regard to an individual's actual ability to participate. Use of an irrebuttable presumption would be permissible only when—in all cases—a physical condition, by its very nature, would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question.

Section 504, however, prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Under paragraph (b)(1)(iii), therefore, the opportunity to participate or benefit that is afforded to an individual with handicaps must be as effective as that afforded to others. The later sections on program accessibility (§§ 9.149–9.155) and communications (§ 9.160) are specific applications of this principle.

Paragraph (d) would require the agency to administer its programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps. However, paragraph (b)(1)(iv), in conjunction with paragraph (d), would permit the agency to develop separate or different housing, aids, benefits, or services when necessary to provide individuals with handicaps with an equal opportunity to participate in or benefit from the agency's programs or activities. Paragraph (b)(1)(iv) would require that different or separate housing, aids, benefits, or services be provided only when necessary to ensure that the housing, aids, benefits, or services are as effective as those provided to others. Even when separate or different housing, aids, benefits, or services would be more effective, proposed paragraph (b)(3) provides that a qualified individual with handicaps still has the right to choose to participate in the program that is not designed to accommodate individuals with handicaps.

Paragraph (b)(1)(v) would prohibit the agency from denying a qualified individual with handicaps the opportunity to participate as a member of a planning or advisory board.

Paragraph (b)(1)(vi) would prohibit the agency from denying a dwelling to an otherwise qualified buyer or renter because of the handicap of that buyer or renter or of a person residing in or intending to reside in that dwelling after it is sold, rented or made available. This provision clarifies that the agency may not refuse to rent or sell to an otherwise qualified individual because that individual resides, or intends to reside, with a person who is handicapped. In addition, a real estate agent who handles the sale or lease of a dwelling on behalf of HUD is a contractor of the agency and, thus, would be subject to the requirements of part 9. This provision is similar to that in HUD's section 504 regulation for HUD-assisted programs (24 CFR 8.4(b)(1)(vii)).

Paragraph (b)(1)(vii) would prohibit the agency from limiting a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any housing, aid, benefit, or service.

Proposed paragraph (b)(2) explains that, for purposes of this part, housing, aids, benefits and services, to be equally effective, are not required to produce the identical result or level of achievement for individuals with handicaps and nonhandicapped persons, but such housing, aids, benefits and services must afford individuals with handicaps equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement.

Paragraph (b)(4) would prohibit the agency from utilizing criteria or methods of administration that deny individuals with handicaps access to the agency's programs or activities. The phrase "criteria or methods of administration" refers to official written agency policies and the actual practices of the agency. This paragraph addresses blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but that deny individuals with handicaps an effective opportunity to participate.

Proposed paragraph (b)(5) specifically applies the prohibition enunciated in § 9.130(b)(4) to the process of selecting sites for construction of new facilities or selecting existing facilities to be used by HUD. Paragraph (b)(5) does not apply to the construction of additional buildings at an existing site.

Paragraph (b)(6) would prohibit the agency, in the selection of procurement contractors, from using criteria that subject qualified individuals with handicaps to discrimination based on those handicaps.

Proposed paragraph (b)(7) prohibits the agency from administering a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap. A person is a "qualified individual with handicaps" with respect to licensing or certification if he or she can meet the essential eligibility requirements for receiving the license or certification (see § 9.103). In addition, the agency would be prohibited from establishing requirements for the programs or activities of certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap.

Paragraph (b)(7) would not extend section 504 directly to the programs or activities of licensees or certified entities themselves. The programs or activities of Federal licensees or certified entities are not themselves federally conducted programs or activities, nor are they programs or activities receiving Federal financial assistance merely by virtue of the Federal license or certificate. However, section 504 may affect the content of the rules established by the agency for the operation of the program or activity of the licensee or certified entity, and thus indirectly affect limited aspects of their operations.

Paragraph (c)(1) would state that programs conducted under a Federal statute or Executive order that are designed to benefit only individuals with handicaps or a given class of individuals with handicaps may be limited to those individuals with handicaps.

Certain agency programs operate under statutory definitions of "handicapped persons" that are more restrictive than the definition of "individual with handicaps" contained in § 9.103. Paragraph (c)(2) would state that these definitions are not superseded or otherwise affected by this regulation.

Paragraph (d), discussed above, would provide that the agency must administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, *i.e.*, in a setting that enables individuals with handicaps to interact with nonhandicapped persons to the fullest extent possible.

Paragraph (e) would state that the obligation to comply with the proposed rule is not obviated or alleviated by any State or local law or other requirement that, based on handicap, imposes inconsistent or contradictory prohibitions or limits upon the eligibility of qualified individuals with handicaps to receive services or to practice any occupation or profession.

Paragraph (f) states that the enumeration of specific forms of prohibited discrimination in paragraphs (b) and (d) of proposed § 9.130 would not limit the general prohibition in paragraph (a) of the section.

Section 9.131 Illegal Use of Drugs

Section 9.131 effectuates section 512 of the Americans with Disabilities Act, which amended Title V of the Rehabilitation Act to clarify its application to people who use drugs illegally. Paragraph (a) provides that this part does not prohibit discrimination based on an individual's current illegal use of drugs.

As amended, the Act and the regulation distinguish between illegal use of drugs and the legal use of substances, whether or not those substances are "controlled substances," as defined in the Controlled Substances Act (21 U.S.C. 812). Alcohol is not a controlled substance, so use of alcohol is not affected by § 9.131 (although alcoholics are individuals with disabilities subject to the protections of the statute). Section 9.131 also does not affect use of controlled substances pursuant to a valid prescription, or other use that is authorized by the Controlled Substances Act or any other provision of Federal law. It is the use of the substance, rather than the substance itself, that is illegal.

A distinction is also made between the of a substance and the status of being addicted to that substance. Addiction is a disability, and addicts are individuals with disabilities protected by the Act. The protection, however, does not extend to actions based on the illegal use of the substance. In other words, an addict cannot use the fact of his or her addiction as a defense to an action based on illegal use of drugs. This distinction is not artificial. Congress intended to deny protection to people who engage in the illegal use of drugs, whether or not they are addicted, but to provide protection to addicts so long as they are not currently using drugs.

A third distinction is the difficult one between current use and former use. The definition of "current illegal use of drugs" in § 9.103, which is based on the report of the Conference Committee on the ADA, is "illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem."

Paragraph (a)(2)(i) specifies that an individual who has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully and who is not engaging in current illegal use of drugs is protected. Paragraph (a)(2)(ii) clarifies that an individual who is currently participating in a supervised rehabilitation program and is not engaging in current illegal use of drugs is protected. Paragraph (a)(2)(iii) provides that a person who is erroneously regarded as engaging in current illegal use of drugs, but who is not engaging in such use is protected.

Paragraph (b) provides a limited exception to the exclusion of current illegal users of drugs from the protections of the Act. It prohibits denial of health services, or services provided under titles I, II, and III of the Rehabilitation Act on the basis of current illegal use of drugs, if the individual is otherwise entitled to such services.

Paragraph (c) expresses Congress' intention that the Act be neutral with respect to testing for illegal use of drugs. This paragraph implements the provision in section 512 of the ADA that allows entities "to adopt or administer reasonable policies or procedures, including but not limited to drug testing," that ensure an individual who is participating in a supervised rehabilitation program, or who has completed such a program or otherwise been rehabilitated successfully, is no longer engaging in the illegal use of drugs.

Paragraph 9.131(c) clarifies that it is not a violation of this part to adopt or administer reasonable policies or procedures to ensure that an individual who formerly engaged in the illegal use of drugs is not currently engaging in illegal use of drugs. Any such policies or procedures must, of course, be reasonable, and must be designed to identify accurately the illegal use of drugs. This paragraph does not authorize inquiries, tests, or other procedures which would disclose use of substances that are not controlled substances or are taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law, because such uses are not included in the definition of "illegal use of drugs."

Sections 9.132–9.139 [Reserved]

Sections 9.132–9.139 are proposed to be reserved.

Section 9.140 Employment

Section 9.140 addresses discrimination on the basis of handicap in employment by the agency. Courts have held that section 504 covers employment practices of Executive agencies. *Gardner* v. *Morris*, 752 F.2d 1271, 1277 (8th Cir. 1985); *Smith* v. *United States Postal Service*, 742 F.2d 257, 259–260 (6th Cir. 1984); *Prewitt* v. *United States Postal Service*, 662 F.2d 292, 302–04 (5th Cir. 1981). *Contra McGuiness* v. *United States Postal Service*, 744 F.2d 1318, 1320–21 (7th Cir. 1984); *Boyd* v. *United States Postal Service*, 752 F.2d 410, 413–14 (9th Cir. 1985).

Courts uniformly have held that, to give effect to section 501 of the Rehabilitation Act, which covers Federal employment, the administrative procedures of section 501 must be followed in processing complaints of employment discrimination under section 504. *Morgan* v. *United States Postal Service*, 798 F.2d 1162, 1164–65 (8th Cir. 1986); *Smith*, 742 F.2d at 262; *Prewitt*, 662 F.2d at 304. Accordingly, § 9.140 (*"Employment"*) would adopt the definitions, standards, requirements, and procedures of section 501 of the Rehabilitation Act, as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR part 1613. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (43 FR 28967, 3 CFR 1978 Comp., p. 206). Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap.

The EEOC regulations define "handicapped persons" for purposes of this section. See 29 CFR 1613.702(a). In 1978, the Rehabilitation Act was amended by section 122(a) of the Rehabilitation, Comprehensive Services and Development Disabilities Amendment Act, 29 U.S.C. 706(7)(B). For the purposes of sections 503 and 504 relating to employment, the term "handicapped person" does not include an alcoholic or drug abuser who cannot perform the duties of the job or who poses a threat to the safety of others.

The Rehabilitation Act also was amended by section 9 of the Civil Rights Restoration Act of 1987 (Pub. L. No. 100–259, approved March 22, 1988) to modify the definition of "individual with handicaps" with respect to individuals with contagious diseases and infections. The amendment provided that the term "individual with handicaps" does not include an individual who has a currently contagious disease or infection and whose employment would constitute a direct threat to the health or safety of other individuals or who is unable to perform the duties of the job.

Congress specifically limited both amendments to sections 503 and 504 and did not extend them to section 501 of the Act. Thus, the EEOC's section 501 regulations do not contain similar language. Section 9.140 ("Employment") would adopt the definitions in the EEOC's section 501 regulations. The Department of Justice, which has coordination responsibility for section 504, and the EEOC have agreed that there should be consistent application of the EEOC's section 501 regulations in federally conducted programs and activities to assure a uniform standard for all federal employees. Consistent application of section 501 standards will

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avoid having one definition under section 501 and another under section 504 when the same group of employees are involved.

The application of the EEOC's section 501 regulatory definition would lead to a result substantively identical to the application of standards contained in the 1978 and 1987 amendments. Section 1614.702(f) of the EEOC's regulations defines the term "qualified handicapped person" to mean a "handicapped person who, with or without reasonable accommodation, *can perform the essential functions of the position in question without endangering the health and safety of the individual or others.*" (emphasis added). Under this standard, it is unlikely that an alcoholic, drug abuser, or person with a contagious disease, who cannot perform the duties of his or her job or whose employment would constitute a direct threat to the safety of others, would be considered a "qualified individual with handicaps," and thus be entitled to the protection of the Act. Therefore, the application of the EEOC's regulatory definitions should achieve the same result as the standards set forth by the amendments, while maintaining a single uniform standard for Federal employees.

Section 9.149 Program Accessibility: Discrimination Prohibited

Proposed § 9.149 states the general nondiscrimination principle underlying the program accessibility requirements of §§ 9.150, 9.151 and 9.152.

Section 9.150 Program Accessibility: Existing Facilities

This regulation would adopt the program accessibility concept found in the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.57), with certain modifications. Thus, § 9.150 would require that, except as otherwise provided with respect to the Property Disposition Programs in § 9.150(e), each agency program or activity, when viewed in its entirety, must be readily accessible to, and usable by, individuals with handicaps. Under the proposed rule, the agency is not required to make each of its existing facilities accessible (§ 9.150(a)(1)). However, § 9.150, unlike 28 CFR 41.57, places explicit limits on the agency's obligation to ensure program accessibility (§ 9.150(a)(3)).

Paragraph (a)(2) would provide that, in meeting the accessibility requirements of this part, the agency is not required to take any action that would result in a substantial impairment of significant historic features of an historic property.

Paragraph (a)(3) would currently codify recent case law that defines the scope of the agency's obligation to ensure program accessibility. This proposed paragraph provides that, in meeting the program accessibility requirements, the agency is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. Similar limitations are provided in §§ 9.152(b), 9.155(b), and 9.160(d). These provisions are based on the Supreme Court's holding in *Davis* that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts of appeals have applied this limitation on a showing that only one of the two "undue burdens" (*i.e.*, fundamental alterations or financial and administrative burdens) would be created as a result of the modification sought to be imposed under section 504. *See, e.g., Dopico*, 687 F.2d 644; *APTA* 655 F.2d 1272.

Paragraphs (a)(3) and 9.160(d) are also supported by the Supreme Court's decision in *Alexander* v. *Choate*, 469 U.S. 287 (1985). *Alexander* involved a challenge to the State of Tennessee's reduction of inpatient hospital care coverage under Medicaid from 20 days to 14 days per year. Plaintiffs argued that this reduction violated section 504 because it had an adverse impact on individuals with handicaps. The Court assumed, without deciding, that section 504 reaches at least some conduct that has an unjustifiable disparate impact on individuals with handicaps, but it held that the reduction was not "the sort of disparate impact" discrimination that might be prohibited by section 504 or its implementing regulation. *Id.* at 299.

Relying on *Davis*, the Court said that section 504 guarantees qualified handicapped persons "meaningful access to the benefits that the grantee offers," *id.* at 301, and that "*reasonable adjustments* in the nature of the benefit being offered must at times be made to assure meaningful access." *Id.* at n.21 (emphasis added). However, section 504 does not require " 'changes,' 'adjustments,' or 'modifications' to existing programs that would be 'substantial' * * * or that would constitute 'fundamental alteration(s) in the nature of a program'." *Id.* at n.20 (citations omitted). *Alexander* supports the position, based on *Davis* and earlier, lower court decisions, that in some situations, certain accommodations for an individual with handicaps may so alter an agency's program or activity, or may entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. Thus, failure to include such an "undue burdens" provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

Paragraph (a)(3) of § 9.150, however, would not establish an absolute defense and it would not relieve the agency of all obligations to individuals with handicaps. Although the agency would not be required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless would be required to take any other steps necessary to ensure that individuals with handicaps receive the benefits and services of the federally conducted program or activity.

The Department has concluded that, in most cases, compliance with § 9.150(a) would not result in undue financial and administrative burdens on the agency. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § 9.150(a) would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the Secretary or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. See § 9.150. Any person who believes that he or she or any specific class of persons has been injured by the Secretary's decision or failure to make a decision could file a complaint under the compliance procedures established in § 9.170.

Proposed paragraph (b) sets forth a number of means by which program accessibility may be achieved, including redesigning equipment, reassigning services to accessible buildings, and providing aides. In choosing among methods, HUD would give priority to methods that are consistent with the provision of services in the most integrated setting appropriate to the needs of individuals with handicaps. Structural changes in existing facilities would be required only when there is no other feasible way to make the agency's program accessible. ("Structural changes" would include all physical changes to a facility and would not be limited to structural features, such as removal of or alteration to a load-bearing structural member.) The agency would be permitted to comply with the program accessibility requirement by delivering services at alternate accessible sites or by making home visits as appropriate.

Paragraphs (c) and (d) would establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the agency would be required to make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan would be developed within six months of the effective date of the regulation. Except for structural changes, all other necessary steps to achieve compliance would be taken within sixty days.

Paragraph (e) provides that paragraphs (a), (b) and (c) of § 9.150 would apply to the Property Disposition Programs. Under the Property Disposition Programs, HUD may either take title to, or assume possession and control of, single and multi-family housing properties purchased with HUD-insured mortgages or direct loans from HUD. When a borrower defaults on a HUD-insured loan, the approved lender may elect to file a claim for insurance benefits with HUD and HUD will process such claim to settlement. This procedure may entail acquisition of the defaulted mortgage and/or title to the property. HUD may also act as a mortgagee in possession of a housing property; in this instance, although the borrower retains title to the facility, HUD controls and manages the property through a contractor. HUD generally retains title to or control of these properties for only short periods of time.

Paragraph (e) would not, however, require HUD to make alterations to housing facilities that are part of the Property Disposition Programs unless two factors are present: (1) The alterations are necessary to meet the needs of a current or prospective tenant during the period that HUD expects to retain legal possession of the facilities, and (2) no alternative means exist to meet the needs of such tenant. HUD would not be required to make alterations to facilities to render them accessible to individuals with handicaps who are not expected to occupy such facilities until after HUD relinquishes legal possession of the property.

The traditional approach to program accessibility with respect to existing facilities is not appropriate for the Property Disposition Programs because HUD holds the properties only temporarily and for an unpredictable amount of time. Since HUD does not know how long it will be in possession of the property, the agency cannot identify a time period within which it can assess the needs of those who might wish to live there in the future. For example, it would be unrealistic for HUD to attempt to assess the predicted needs of persons with handicaps during the next five years, when HUD may only be in possession of the property for six months. Similarly, HUD could not plan to undertake alterations for program accessibility for an anticipated number of tenants with handicaps, when such alterations might take up to three years to complete and HUD may only be in possession of the property for a few months. Thus, the rule does not require HUD to undertake alterations for this purpose or to prepare a transition plan.

HUD recognizes, however, that during the time that the agency retains possession of a housing property under this program, HUD provides a housing service to the residents and also has a section 504 obligation to those who apply for housing in the facility. Thus, § 9.110 would require HUD to complete a self-evaluation with respect to the Property Disposition Programs, and § 9.150(e) would require HUD to make necessary alterations to an individual dwelling unit for an eligible person with handicaps, within the framework of the rule's provision concerning undue financial and administrative burdens.

Section 9.151 Program Accessibility: New Construction and Alterations

Section 504 and the Architectural Barriers Act of 1968, as amended (ABA) (42 U.S.C. 4151–4157), provide overlapping coverage for new construction. Section 9.151 would provide that buildings that are constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed or altered to be readily accessible to and usable by individuals with handicaps in accordance with 24 CFR 40.1 to 40.6 for residential structures and 41 CFR 101–19.600 to 101–19.607 for non-residential structures. These standards were promulgated under the ABA. It is appropriate to adopt the existing ABA standards for section 504 compliance because new and altered buildings, including publicly owned residential structures, subject to the proposed regulation, are also subject to the ABA, and because adoption of the ABA accessibility standard will avoid duplicative and inconsistent standards.

Existing buildings leased by the agency after the effective date of this regulation would not be required to meet accessibility standards by virtue of the lease. They would, however, be subject to the program accessibility standard for existing facilities in § 9.150. To the extent that the buildings are newly constructed or altered, they would also be required to meet the new construction and alteration requirements of § 9.151.

Federal practice under section 504 has subjected newly leased buildings to the existing facility program accessibility standard. Unlike the construction of new buildings where architectural barriers can be avoided at little or no cost, the application of new construction standards to an existing building being leased raises the same prospect of retrofitting buildings as the use of an existing Federal facility. Accordingly, the same program accessibility standard must apply to both owned and leased existing buildings.

In *Rose* v. *United States Postal Service*, 774 F.2d 1355 (9th Cir. 1985), the Ninth Circuit held that the Architectural Barriers Act requires accessibility at the time of lease. The *Rose* court did not address the issue of whether section 504 likewise requires accessibility as a condition of lease, and the case was remanded to the District Court for, among other things, consideration of that issue.

One major development has occurred in Federal policy and practice for leasing activities. The Architectural and Transportation Barriers Compliance Board (ATBCB) amended in 1988 its minimum guidelines and requirements, which preceded the establishment of the UFAS, to establish requirements for standards for buildings leased by the Federal government. See 36 CFR 1190.34 (1990). The minimum guidelines and requirements apply to leased buildings even if they are not altered. Section 1190.34(a) requires that any building or facility that is to be leased by the Federal government, without having been designed or constructed in accordance with its specifications, comply with the standards for new construction (§ 1190.31), incorporate the features listed in the standards for alterations (§ 1190.33(c)), or, if no such space is available, be altered to include certain accessible elements and spaces. HUD will revise the UFAS to include these leasing requirements.

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Section 9.152 Program Accessibility: Alterations of Agency-Owned Multifamily Housing

Section 9.152 would impose accessibility requirements on the agency when it alters agency-owned multifamily housing. Specifically, this section would apply to alterations of housing projects in the Property Disposition Programs. Section 9.152 is a close adaptation of 24 CFR 8.23, which imposes accessibility requirements on HUD recipients when existing housing facilities are altered. As previously explained, HUD believes that Congress intended agencies to have the same section 504 obligation as their recipients. Section 9.152 has limited applicability because HUD generally does not alter multifamily housing.

Paragraph (a) of § 9.152 would provide that if the agency undertakes to alter a project that has 15 or more units and the cost of the alterations is 75 percent or more of the replacement cost of the completed facility, then the project must be designed and altered to be readily accessible to and usable by individuals with handicaps. If the 15 unit/75 percent threshold is met, then, subject to paragraph (c) of § 9.152, a minimum of five percent of the dwelling units, or at least one unit, whichever is greater, would be made accessible for persons with mobility impairments. A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards specified in paragraph (d) (*i.e.*, UFAS) would be accessible under this section. If the 15 unit/75 percent threshold is met, then an additional two percent of the units (but not less than one unit) would have to be made accessible for persons with hearing or vision impairments. If state or local requirements for alterations require greater action than this part, those requirements shall prevail.

Paragraph (b) of § 9.152 would state that, subject to paragraph (c), alterations to dwelling units in a HUD-owned multifamily housing project shall, to the maximum extent feasible, be made to be readily accessible to and usable by individuals with handicaps. If alterations of single elements or spaces of a dwelling unit, when considered together, amount to alteration of a dwelling unit, the entire dwelling unit would have to be made accessible. However, once five percent of the dwelling units in a project are readily accessible to and usable by individuals with mobility impairments, then no additional elements of dwelling units, or entire dwelling units would be required to be accessible under § 9.152(b). Alterations to common areas or parts of facilities that affect accessibility of existing housing facilities would, to the maximum extent feasible, have to be made accessible to and usable by individuals with handicaps. Under paragraph (b)(1), the phrase "to the maximum extent feasible" would not require HUD to make a dwelling unit, common area, facility or element accessible, if undue financial and administrative burdens would be imposed on the operation of the multifamily housing project.

Paragraph (c) would provide that the agency may prescribe a higher percentage or number than that prescribed in paragraphs (a) or (b) of § 9.152 if the agency determines that there is a need for a higher percentage or number based upon census data or other available current data. In making this determination, HUD would take into account the expected needs of eligible persons with and without handicaps.

Paragraph (d) provides that the definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), 24 CFR part 40, would apply to agency-owned multifamily housing projects covered by this section.

Section 9.153 Distribution of Accessible Dwelling Units

Under proposed § 9.153, accessible units required by § 9.152 must, to the maximum extent feasible, and subject to reasonable health and safety requirements, be distributed throughout projects and sites, and be available in a sufficient range of sizes and amenities so that a qualified individual with handicaps' choice of living arrangements is, as a whole, comparable to that of other persons eligible for housing assistance under the same agency conducted program. This section would not require—but would certainly allow—the provision of an elevator in any multifamily housing project solely to permit the location of accessible units above or below the accessible grade level (*i.e.*, units that may not be reached without steps or an elevator). Section 9.153 would impose the same requirements on HUD as 24 CFR 8.26 ("Distribution of accessible dwelling units") imposes on HUD recipients.

Section 9.154 Occupancy of Accessible Dwelling Units

Section 9.154 would require HUD to adopt suitable means to assure that information regarding the availability of agency-owned accessible units reaches eligible individuals with handicaps. The agency would also be required to take reasonable nondiscriminatory steps to maximize the utilization of accessible units by eligible individuals whose disability requires the accessibility features of the particular unit. To this end, when an accessible unit becomes vacant, § 9.154 would first require the agency (or its management agent) to offer the unit to an individual who: (1) Occupies another unit of the same project or a comparable agency-owned project; (2) has handicaps requiring the accessibility features of the vacant unit; and (3) occupies a unit not having such features. If no such occupant exists, the accessible unit would be offered to an eligible qualified applicant on the waiting list who has a handicap requiring the accessibility features of the vacant unit. If no such applicant exists, the unit would be offered to a non-handicapped applicant.

Under paragraph (b) of § 9.154, the agency (or its management agent), when offering an accessible unit to an applicant who does not have handicaps requiring the accessibility features of the unit, may require the applicant to agree to move to a non-accessible unit when such a unit becomes available. Such an agreement may be incorporated into the lease.

Section 9.154 is a close adaptation of the comparable provision of HUD's section 504 rule governing HUD-assisted programs. See 24 CFR 8.27.

Section 9.155 Housing Adjustments

Section 9.155 clarifies HUD's section 504 obligations for HUD-owned housing. Section 9.155 would require HUD to make such modifications to its housing policies and practices as are necessary to ensure that they do not discriminate, on the basis of handicap, against otherwise qualified individuals with handicaps in HUD-owned housing. In certain circumstances, it may be necessary for the agency to adjust its policies and practices in a project in order to meet its section 504 obligations. For example, HUD might need to transfer a tenant with a heart condition in a HUD-owned housing project to a ground floor apartment if medical reasons require such a transfer to keep available the benefits of the housing. Similarly, HUD could install light signals so that a tenant with a hearing impairment can be notified of a caller and can answer the door. In all cases, housing adjustments that can be demonstrated by the agency to be essential to its housing program would not have to be made if the adjustments would result in a fundamental alteration in the nature of a program or undue financial and administrative burdens.

Section 9.155 was adapted from 24 CFR 8.33, the comparable provision in

HUD's section 504 rule for federally assisted programs.

Section 9.160 Communications

Section 9.160 would require the agency to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps would include procedures for determining when auxiliary aids are necessary under § 9.160(a)(1) to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, the agency's program or activity. They would also include an opportunity for individuals with handicaps to request the auxiliary aids of their choice. The expressed choice would be given primary consideration by the agency (§ 9.160(a)(1)(i)). The agency would be required to honor the choice unless it can demonstrate that another effective means of communication exists, or that use of the means chosen would not be required under § 9.160(d). That paragraph would limit the obligation of the agency to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (*see supra* preamble discussion of § 9.150(a)(2)). Unless not required by § 9.160(d), the agency would be required to provide auxiliary aids at no cost to the individual with handicaps.

The discussion of § 9.150(a) ("Program accessibility: Existing facilities"), regarding the determination of undue financial and administrative burdens, would also apply to this section and should be referred to for a complete understanding of the agency's obligation to comply with § 9.160.

In some circumstances, a note pad and written materials may be sufficient to permit effective communication with a person with hearing impairments. In many circumstances, however, such materials may not be sufficient, particularly when the information to be communicated is complex or is exchanged over a lengthy period of time (*e.g.*, a meeting) or when the applicant or participant with hearing impairments is not skilled in spoken or written language. In these cases, a sign language interpreter may be appropriate. For persons with vision impairments, effective communication might be achieved by several means, including readers and audio recordings. In general, HUD intends to inform the public of (1) the communications services it offers to afford individuals with handicaps an equal opportunity to participate in or benefit from its programs or activities; (2) the opportunity to request a particular mode of communication; and (3) the agency's preferences regarding auxiliary aids, if it can demonstrate that several different modes are effective.

The agency would be required to ensure effective communication with persons with impaired vision or hearing who are involved in hearings conducted by the agency. Auxiliary aids would be required when necessary to ensure effective communication at the proceedings. If a sign language interpreter is necessary, the agency may require that it be given reasonable notice of the need for such an interpreter prior to the proceeding. Moreover, the agency would not be required to provide devices of a personal nature such as individually prescribed devices, readers for personal use or study, or other personalized aids. For example, the agency need not provide eyeglasses or hearing aids to applicants or participants in its programs. Similarly, the regulation would not require the agency to provide wheelchairs to persons with mobility impairments.

Paragraph (b) would require the agency to provide information to individuals with handicaps concerning accessible services, activities, and facilities. Paragraph (c) would require the agency to provide signs at inaccessible facilities that direct users to locations with information about accessible facilities.

Section 9.170 Compliance Procedures

Paragraph (a) specifies that paragraphs (c) through (l) of proposed § 9.170 would establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR part 1613) under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

Paragraph (c) would vest in the Responsible Official the responsibility for the overall management of the section 504 compliance program. "Responsible Official" or "Official," as defined in § 9.103, refers to the Assistant Secretary of HUD for Fair Housing and Equal Opportunity, who is designated as the official responsible for coordinating implementation of compliance procedures set forth in § 9.170.

Paragraph (d) would require the agency to accept and investigate all complete complaints. If the agency determines that it does not have jurisdiction over a complaint, paragraph (e) requires the agency to promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal Government.

Paragraph (f) would require the agency to notify the Architectural and Transportation Barriers Compliance Board upon receipt of a complaint alleging that a building or facility subject to the Architectural Barriers Act was designed, constructed, or altered in a manner that does not provide ready access to and use by individuals with handicaps.

Paragraph (g) would require that, within 180 days, the Office of Fair Housing and Equal Opportunity or the person designated by the Secretary to investigate a complaint against the Office of Fair Housing and Equal Opportunity shall complete the investigation of the complaint and shall attempt to resolve the complaint informally. If the Assistant Secretary is unable to resolve the complaint informally, he or she would be required to provide to the complainant written findings of fact and conclusions of law, specifying the relief granted, if noncompliance is found, and notice of the right to appeal.

HUD is considering adopting hearing procedures upon appeal of the Assistant Secretary's determination. This hearing would be before an Administrative Law Judge. Public comment is requested regarding this issue and the hearing procedures that may be adopted.

Paragraph (h) would provide complainants an opportunity to appeal the determination on their complaint, and paragraph (i) would provide for agency notification to the complainant of its determination on the appeal.

Paragraph (k) permits the agency to delegate its authority for investigating complaints to other Federal agencies. However, the statutory obligation of the agency to make a final determination of compliance or noncompliance may not be delegated.

Other Information

Coordination. This proposed regulation has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298) and distributed to Executive agencies. This proposed regulation also has been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206).

Environment. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24

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CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk at the above address.

Major Rule. This proposed rule would not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility. In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this proposed rule does not have a significant economic impact on small entities. The purpose of this rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973 as it applies to programs or activities conducted by the Department. Accordingly, any impact on small businesses would be incidental.

Executive Order 12612, Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule would not, if implemented, have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, the requirements of this proposed rule are directed to HUD programs and activities, and do not impinge upon the relationship between the Federal government and State and local governments. Accordingly, the rule is not subject to review under the Order.

Executive Order 12606, the Family. The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this proposed rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule establishes requirements prohibiting discrimination against the handicapped in HUD programs and activities. Consequently, any effect on the family would likely be indirect and insignificant.

Semiannual agenda of regulations. This rule was listed as Item No. 1215 in the Department's semiannual Agenda of Regulations published on April 22, 1991 (56 FR 17360, 17369) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Lists of Subjects in 24 CFR Part 9

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped.

Accordingly, Title 24 of the Code of Federal Regulations would be amended by adding a new part 9 to read as follows:

PART 9—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Sec.

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9.150 Program accessibility: Existing facilities.
9.151 Program accessibility: New construction and alterations.
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9.153 Distribution of accessible dwelling units.
9.154 Occupancy of accessible dwelling units.
9.155 Housing adjustments.
9.160 Communications.
9.170 Compliance procedures.

Authority: Sec. 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 9.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 9.102 Application.

This part applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ 9.103 Definitions.

For purposes of this part:

Accessible, when used with respect to the design, construction, or alteration of a facility or a portion of a facility other than an individual dwelling unit, means that the facility or portion of the facility when designed, constructed or altered, can be approached, entered, and used by individuals with physical handicaps. The phrase "accessible to and usable by" is synonymous with accessible.

Accessible, when used with respect to the design, construction, or alteration of an individual dwelling unit, means that the unit is located on an accessible route and, when designed, constructed, altered or adapted can be approached, entered, and used by individuals with physical handicaps. A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards set forth in § 9.151 is "accessible" within the meaning of this paragraph. When a unit in an existing facility which is being made accessible as a result of alterations is intended for use by a specific qualified individual with handicaps (e.g., a current occupant of such unit or of another unit under the control of the same agency, or an applicant on a waiting list), the unit will be deemed accessible if it meets the requirements of applicable standards that address the particular disability or impairment of such person.

Accessible route means a continuous unobstructed path connecting accessible elements and spaces in a building or facility that complies with the space and reach requirements of applicable standards prescribed by § 9.152(d). An accessible route that serves only accessible units occupied by persons with hearing or vision impairments need not comply with those requirements intended to effect accessibility for persons with mobility impairments.

Adoptability means the ability of certain elements of a dwelling unit, such as kitchen counters, sinks, and grab bars, to be added to, raised, lowered, or otherwise altered, to accommodate the needs of persons with or without handicaps, or to accommodate the needs of persons with different types or degrees of disability. For example, in a unit adaptable for a person with impaired hearing, the wiring for visible emergency alarms may be installed but the alarms need not be installed until such time as the unit is made ready for occupancy by a person with impaired hearing.

Agency means the Department of Housing and Urban Development.

Agency-owned housing facility means property in the possession or control of the agency, even though the agency has not acquired title to the property, including instances in which the agency is the mortgagee in possession of a property. HUD operated properties are included within the term "agency-owned housing facilities." A property being managed for the agency by a contractor or management agent is deemed to be in the possession or control of the agency.

Alteration means any change in a facility or its permanent fixtures or equipment. It includes, but is not limited to, remodeling, renovation, rehabilitation, reconstruction, changes or rearrangements in structural parts and extraordinary repairs. It does not include normal maintenance or repairs, re-roofing, interior decoration, or changes to mechanical systems.

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Assistant Secretary means the Assistant Secretary of Housing and Urban Development for Fair Housing and Equal Opportunity.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, note takers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Current illegal use of drugs means illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem.

Drug means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Historic properties means those properties that are listed or are eligible for listing in the National Register of Historic Places, or such properties designated as historic under a statute of the appropriate State or local government body.

Illegal use of drugs means the use of one or more drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). The term "illegal use of drugs" does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(a) *Physical or mental impairment* includes:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

(b) *Physical or mental impairment* does not include:

(1) An individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job.

(2) For purposes of employment, the term "individual with handicaps" does not include one who is an alcoholic whose current use of alcohol prevents her or him from performing the duties of the job in question or whose employment would constitute a direct threat to property or the safety of others by reason of her or his current alcohol abuse.

(c) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(d) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(e) *Is regarded as having an impairment* means—

(1) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(3) Has none of the impairments defined in paragraph (a) of this definition but is treated by the agency as having such an impairment.

Multifamily housing project means a project containing five or more dwelling units.

Official or *Responsible Official* means the Assistant Secretary of HUD for Fair Housing and Equal Opportunity.

Project means the whole of one or more residential structures and appurtenant structures, equipment, roads, walks, and parking lots which are covered by a single mortgage or contract or otherwise treated as a whole by the agency for processing purposes, whether or not located on a common site.

Qualified individual with handicaps means:

(a) With respect to any agency non-employment program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can

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achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; or

(b) With respect to any other agency non-employment program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

"Essential eligibility requirements" include stated eligibility requirements such as income, as well as other explicit or implicit requirements inherent in the nature of the program or activity, such as requirements that an occupant of an agency-owned multifamily housing facility be capable of meeting selection criteria and be capable of complying with all obligations of occupancy with or without supportive services provided by persons other than the agency. For example, a person whose particular condition poses a significant risk of substantial interference with the safety or enjoyment of others or with his or her own health or safety in the absence of necessary supportive services may be "qualified" for occupancy in a project where such supportive services are provided as part of the program. The person may not be "qualified" for a project lacking such services unless the person can provide the services on his own.

(c) *Qualified handicapped person* as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 9.140.

Replacement cost of the completed facility means the current cost of construction and equipment for a newly constructed housing facility of the size and type being altered. Construction and equipment costs do not include the cost of land, demolition, site improvements, non-dwelling facilities and administrative costs for project development activities.

Secretary means the Secretary of Housing and Urban Development.

Section 504 means section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794. As used in this part, section 504 applies only to programs or activities conducted by the agency and not to federally assisted programs.

Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§ 9.110 Self-evaluation.

(a) The agency shall, within one year of the effective date of this part, evaluate its current policies and practices, and the effects of those policies and practices, including regulations, handbooks, notices and other written guidance, that do not or may not meet the requirements of this part. To the extent modification of any such policies is required, the agency shall take the necessary corrective actions.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, for at least three years following the completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A list of interested persons;

(2) A description of the areas examined and any problems identified, and

(3) A description of any modifications made or to be made.

§ 9.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency. The agency shall make such information available to such persons in such manner as the Secretary finds necessary to apprise them of the protections against discrimination assured them by section 504 and this part. All publications and recruitment materials distributed to participants, beneficiaries, applicants or employees shall include a statement that the agency does not discriminate on the basis of handicap. The notice shall include the name of the person or office responsible for the implementation of section 504.

§ 9.130 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any housing, aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the housing, aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the housing, aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with any housing, aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate housing, aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with housing, aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards;

(vi) Deny a dwelling to an otherwise qualified buyer or renter because of a handicap of that buyer or renter or a person residing in or intending to reside in that dwelling after it is sold, rented or made available; or

(vii) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the housing, aid, benefit, or service.

(2) For purposes of this part, housing, aid, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for individuals with handicaps and non-handicapped persons, but must afford individuals with handicaps equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement.

(3) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of programs or activities that are permissibly separate or different for handicapped persons.

(4) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would:

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would:

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(6) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(7) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c)(1) Notwithstanding any other provision of this part, non-handicapped persons may be excluded from the benefits of a program if the program is limited by Federal statute or Executive order to individuals with handicaps. A specific class of individuals with handicaps may be excluded from a program if the program is limited by Federal statute or Executive order to a different class of individuals.

(2) Certain agency programs operate under statutory definitions of "handicapped persons" that are more restrictive than the definition of "individual with handicaps" contained in § 9.103. Those definitions are not superseded or otherwise affected by this regulation.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

(e) The obligation to comply with this part is not obviated or alleviated by any State or local law or other requirement that, based on handicap, imposes inconsistent or contradictory prohibitions or limits upon the eligibility of qualified individuals with handicaps to receive services or to practice any occupation or profession.

(f) The enumeration of specific forms of prohibited discrimination in paragraphs (b) and (d) of this section does not limit the general prohibition in paragraph (a) of this section.

§ 9.131 Illegal Use of Drugs.

(a) *General.* (1) Except as provided in paragraph (b) of this section, this part does not prohibit discrimination against an individual based on that individual's current illegal use of drugs.

(2) The agency shall not discriminate on the basis of illegal use of drugs against an individual who is not engaging in current illegal use of drugs and who—

(i) Has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully;

(ii) Is participating in a supervised rehabilitation program; or

(iii) Is erroneously regarded as engaging in such use.

(b) *Health and rehabilitation services.* The agency shall not deny health services or services provided under Titles I, II, and III of the Rehabilitation Act to an individual on the basis of that individual's current illegal use of drugs, if the individual is otherwise entitled to such services.

(c) *Drug testing.* (1) This part does not prohibit the agency from adopting or administering reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual who formerly engaged in the illegal use of drugs is not now engaging in current illegal use of drugs.

(2) Nothing in this paragraph shall be construed to encourage, prohibit, restrict, or authorize the conduct of testing for illegal use of drugs.

§§ 9.132 to 9.139 [Reserved]

§ 9.140 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613 (subpart G), shall apply to employment in federally conducted programs or activities.

§§ 9.141 to 9.148 [Reserved]

§ 9.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 9.150, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 9.150 Program accessibility: Existing facilities.

(a) *General.* Except as otherwise provided in paragraph (e) of this section, the agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2) In the case of historic properties, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 9.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Secretary or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals

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with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by *sixty days after the effective date of this part,* except that where structural changes in facilities are undertaken, such changes shall be made by *three years after the effective date of this part,* but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by *six months after the effective date of this part,* a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

(e) The requirements of paragraphs (a), (b), and (c) of this section shall apply to the Property Disposition Programs. However, this section does not require HUD to make alterations to existing facilities that are part of the Property Disposition Programs unless such alterations are necessary to meet the needs of a current or prospective tenant during the time when HUD expects to retain legal possession of the facilities, and there is no alternative method to meet the needs of that current or prospective tenant. Nothing in this section shall be construed to require alterations to make facilities accessible to persons with handicaps who are expected to occupy the facilities only after HUD relinquishes legal possession.

§ 9.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 24 CFR 40.1 to 40.6 and 41 CFR 101.19–600 to 101.19–607, apply to buildings covered by this section.

§ 9.152 Program accessibility: Alterations of agency-owned multifamily housing facilities.

(a) If the agency undertakes alterations to an agency-owned multifamily housing project that has 15 or more units and the cost of the alterations is 75 percent or more of the replacement cost of the completed facility, then the project shall be designed and altered to be readily accessible to and usable by individuals with handicaps. Subject to paragraph (c) of this section, a minimum of five percent of the total dwelling units, or at least one unit, whichever is greater, shall be made accessible for persons with mobility impairments. A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards set forth in paragraph (d) of this section is accessible for purposes of this section. An additional two percent of the units (but not less that one unit) in such a project shall be accessible for persons with hearing or vision impairments. If state or local requirements for alterations require greater action than this paragraph, those requirements shall prevail.

(b) Subject to paragraph (c) of this section, alterations to dwelling units in an agency-owned multifamily housing project shall, to the maximum extent feasible, be made to be readily accessible to and usable by individuals with handicaps. If alterations of single elements or spaces of a dwelling unit, when considered together, amount to an alteration of a dwelling unit, the entire dwelling unit shall be made accessible. Once five percent of the dwelling units in a project are readily accessible to and usable by individuals with mobility impairments, then no additional elements of dwelling units, or entire dwelling units, are required to be accessible under this paragraph. Alterations to common areas or parts of facilities that affect accessibility of existing housing facilities, shall, to the maximum extent feasible, be made to be accessible to and usable by individuals with handicaps. For purposes of this paragraph, the phrase "to the maximum extent feasible" shall not be interpreted as requiring that the agency make a dwelling unit, common area, facility or element thereof accessible if doing so would impose undue financial and administrative burdens on the operation of the multifamily housing project.

(c) The agency may establish a higher percentage or number than that prescribed in paragraphs (a) or (b) of this section if the agency determines that there is a need for a higher percentage or number, based on census data or other available current data. In making such a determination, HUD shall take into account the expected needs of eligible persons with and without handicaps.

(d) The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 24 CFR part 40 apply to agency-owned multifamily housing projects covered by this section.

§ 9.153 Distribution of accessible dwelling units.

Accessible dwelling units required by § 9.152 shall, to the maximum extent feasible and subject to reasonable health and safety requirements, be distributed throughout projects and sites and shall be available in a sufficient range of sizes and amenities so that a qualified individual with handicaps' choice of living arrangements is, as a whole, comparable to that of other persons eligible for housing assistance under the same agency conducted program. This provision shall not be construed to require (but does allow) the provision of an elevator in any multifamily housing project solely for the purpose of permitting location of accessible units above or below the accessible grade level.

§ 9.154 Occupancy of accessible dwelling units.

(a) The agency shall adopt suitable means to assure that information regarding the availability of agency-owned accessible units reaches eligible individuals with handicaps, and shall take reasonable nondiscriminatory steps

to maximize the utilization of such units by eligible individuals whose disability requires the accessibility features of the particular unit. To this end, when an accessible unit becomes vacant, the agency (or its management agent) before offering such units to a non-handicapped applicant shall offer such unit:

(1) First, to a current occupant of another unit of the same project, or comparable projects under common control, having handicaps requiring the accessibility features of the vacant unit and occupying a unit not having such features, or, if no such occupant exists, then

(2) Second, to an eligible qualified applicant on the waiting list having a handicap requiring the accessibility features of the vacant unit.

(b) When offering an accessible unit to an applicant not having handicaps requiring the accessibility features of the unit, the agency may require the applicant to agree (and may incorporate this agreement in the lease) to move to a non-accessible unit when available.

§ 9.155 Housing adjustments.

(a) The agency shall modify its housing policies and practices as they relate to agency-owned housing to ensure that these policies and practices do not discriminate, on the basis of handicap, against a qualified individual with handicaps. The agency may not impose upon individuals with handicaps other policies, such as the prohibition of assisting devices, auxiliary alarms, or guides in housing facilities, that have the effect of limiting the participation of tenants with handicaps in any agency conducted housing program or activity in violation of this part. Housing policies that the agency can demonstrate are essential to the housing progran or activity will not be regarded as discriminatory within the meaning of this section if modifications would result in a fundamental alteration in the nature of the program or activity or undue financial and administrative burdens.

(b) The decision that compliance would result in such alteration or burdens must be made by the Secretary or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§ 9.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries or members of the public by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with this section would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Secretary or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with § 9.160 would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§ 9.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Responsible Official shall coordinate implementation of this section.

(d) Persons may submit complete complaints to the Assistant Secretary for Fair Housing and Equal Opportunity, 451 Seventh St. SW., Washington, DC 20410, or to any HUD Regional Office. The agency shall accept and investigate all complete complaints for which the agency has jurisdiction. All complete complaints shall be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause. For purposes of determining when a complaint is filed, a complaint mailed to the agency shall be deemed filed on the date it is postmarked. Any other complaint shall be deemed filed on the date it is received by the agency. The agency shall acknowledge all complaints, in writing, within ten (10) working days of receipt of the complaint.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps. The agency shall delete the identity of the

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complainant from the copy of the complaint.

(g)(1) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the Office of Fair Housing and Equal Opportunity shall complete the investigation of the complaint, attempt informal resolution, and if no informal resolution is achieved, issue a letter of findings. If a complaint is filed against the Office of Fair Housing and Equal Opportunity, the Secretary or a designee of the Secretary shall investigate and resolve the complaint through informal agreement or letter of findings.

(2) If a complaint is resolved informally, the terms of the agreement shall be reduced to writing and made part of the complaint file, with a copy of the agreement provided to the complainant and the agency. The written agreement may include a finding on the issue of discrimination and shall describe any corrective action to which the complainant and the respondent have agreed.

(3) If a complaint is not resolved informally, the Office of Fair Housing and Equal Opportunity or a person designated under this paragraph shall notify the complainant of the results of the investigation in a letter containing—

(i) Findings of fact and conclusions of law;

(ii) A description of a remedy for each violation found;

(iii) A notice of the right to appeal to the Secretary;

(iv) A notice of the right of the complainant to request a hearing.

(h)(1) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 9.170(g). The Assistant Secretary or the person designated by the Secretary to decide an appeal of a complaint filed against the Office of Fair Housing and Equal Opportunity may extend this time for good cause.

(2) Timely appeals shall be accepted and processed by the Assistant Secretary. Decisions on an appeal shall not be issued by the person who made the initial determination.

(i) The Assistant Secretary or the person designated by the Secretary to decide an appeal of a complaint filed against the Office of Fair Housing and Equal Opportunity shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the agency determines that it needs additional information from the complainant, it shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(j) The time limits cited in paragraphs (g) and (i) of this section may be extended with the permission of the Assistant Attorney General.

(k) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

Dated: May 3, 1991.

Alfred A. DelliBovi,

Deputy Secretary.

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Part VI

Department of Housing and Urban Development

Office of the Assistant Secretary

24 CFR Parts 203 and 204

Single Family Mortgage Insurance Premiums; Interim Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 203 and 204

[Docket No. R-91-1515; FR-2936-I-01]

RIN No. 2502-AF17

Single Family FHA Mortgage Insurance Premiums

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: This rule implements certain provisions in the Omnibus Budget Reconciliation Act of 1990 which establish new premium requirements for FHA single family mortgage insurance. The act establishes a revised premium payment structure for FHA insured single family mortgages which are obligations of the Mutual Mortgage Insurance Fund. The section consists of both permanent and transition provisions.

DATES: Effective date: July 1, 1991. Comment due date: July 29, 1991.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Stephen A. Martin, Director, Office of Insured Single Family Housing, room 9266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000, telephone: Voice (202) 708-3046, TDD (202) 708-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 2103 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508, approved Nov. 5, 1990) is identical to, but supersedes section 325 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101-625 approved November 28, 1990). The new law establishes a revised premium payment structure for FHA insured single family mortgages which are obligations of the Mutual Mortgage Insurance Fund. The section consists of both permanent and transition provisions.

Permanent Provisions

For FHA-insured single family mortgages executed on or after October 1, 1991, the law requires HUD to establish and collect (1) an up-front mortgage insurance premium (MIP) payment equal to 2.25% of the amount of the principal obligation of the mortgage, of which the unearned portion shall be refunded upon prepayment; and (2) annual periodic premium payments of 0.5% of the remaining insured principal balance for (i) the first 11 years of the mortgage term where the original principal balance is less than 90% of the appraised value of the property; and (ii) the first 30 years of the mortgage term where the original principal obligation is at least 90% of the appraised value of the property, except that where the original principal obligation is more than 95% of the appraised value, the annual premium shall be .55% of the remaining insured principal balance.

Transition Provisions

For FHA-insured single family mortgages executed during fiscal years 1991 and 1992 (but after the effective date of this rule) HUD is required to establish and collect (1) an up-front MIP payment equal to 3.80% of the amount of the principal obligation of the mortgage; and (2) annual periodic premium payments of 0.50% of the remaining insured principal balance for (i) the first 5 years of the mortgage term where the original principal obligation is less than 90% of the appraised value of the property; (ii) the first 8 years where the original principal obligation is at least 90% of the appraised value of the property but no more than 95%; and (iii) the first 10 years where the original principal obligation is greater than 95%. For FHA-insured single family mortgages executed during fiscal year 1993 and 1994, HUD shall establish and collect (1) at time of insurance, an up-front payment of 3.0% of the amount of the principal obligation of the mortgage; and (2) annual periodic premium payments of 0.50% of the remaining insured principal balance for (i) the first 7 years of the mortgage term where the original principal obligation is less than 90% of the appraised value of the property; (ii) the first 12 years where the original principal obligation is at least 90% of the appraised value of the property but no more than 95%; and (iii) the first 30 years where the original principal obligation is greater than 95%.

With respect to mortgages covered by this new section 325, the Commissioner will refund all of the unearned up-front mortgage insurance premium (UFMIP) upon termination of insurance by voluntary agreement or upon payment in full of the entire principal obligation of the mortgage prior to the maturity date.

These MIP changes are applicable to mortgages insured under the Mutual Mortgage Insurance Fund, i.e., National Housing Act sections 203(b), 203(h), 203(i) and 203(n). This includes mortgages insured under section 203(b) pursuant to sections 244 (coinsurance), 245 (graduated payment mortgages and growing equity mortgages) and 251 (adjustable rate mortgages). Excluded are condominiums GPMs, GEMs and ARMs which are not insured under section 203(b). Also excluded are any section 203(b) mortgages insured pursuant to sections 223(e) (older declining areas), 238(c) (military impacted areas), 247 (Indian reservations) and 248 (Hawaiian home lands), since those mortgages are not obligations of the Mutual Mortgage Insurance Fund. Because mortgages insured under the section 244 coinsurance program do not currently have an UFMIP, HUD's regulations at 24 CFR part 204 are revised in this rule to require the UFMIP. The full amount of any such UFMIP will be credited to the Mutual Mortgage Insurance Fund. No portion of such amount will be credited to the Annual Coinsurance Reserve established by § 204.270.

With respect to charges on open-end advances in connection with previously insured mortgages (24 CFR 203.44) current regulations are revised at § 203.270 to provide for an insurance charge equal to .50 percent per-annum of the outstanding principal obligation of the open-end advance. This charge is the same as that currently applying to mortgages subject to a one-time MIP pursuant to § 203.280 and is consistent with the overall policy of charging an annual .50 percent MIP under the new mortgage insurance premium schedule set forth in this rule.

The following table illustrates the operation of this new premium payment for each fiscal year.

Fiscal year	Up front	Loan-to-value	Annual premium	Period
1991 + 1992	3.80%	89.99 + Under	.50	5 Years.
		90.00-95.00	.50	8 Years.
		95.01 + Over	.50	10 Years.
1993 + 1994	3.00%	89.99 + Under	.50	7 Years.
		90.00-95.00	.50	12 Years.
		95.01 + Over	.50	30 Years.
1995 +	2.25%	89.99 + Under	.50	11 Years.
		90.00-95.00	.50	30 Years.
		95.01 + Over	.55	30 Years.

For purposes of this rule, the loan to value is calculated by dividing the loan amount (excluding the up-front premium) by the appraised value of the property (excluding closing costs).

The interim rule will affect all mortgages executed after the effective date of the interim rule, regardless of whether a firm commitment to insure has previously been issued by HUD. This is a deviation from the normal approach stated in § 203.499, under which amendments to subpart B of part 203 shall not adversely affect the interests of a mortgagee on any mortgage on which the HUD has issued a commitment. The new MIP requirements could adversely affect the interests of a mortgagee since they will increase the monthly payments for a mortgagor and thereby increase the possibility of payment defaults. However, the statute specifically requires that the new MIP requirements apply based on the date of execution of mortgages rather than the date of firm commitments and HUD has not discretion to proceed otherwise. In Mortgagee Letter 91-1 dated January 10, 1991, the Department advised lenders of these prospective MIP changes. To the extent that § 203.499 would require a different result, it has been superseded by the statute.

Justification for Interim Rule

It is the policy of the Department to publish rules for public comment before developing a rule for effect. However, in a particular case where notice and public comment are not required by statute, the procedure for advance public comment may be omitted if the Department determines it is impracticable, unnecessary or contrary to the public interest. In this case, section 2103 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508, approved Nov. 5, 1990) directs the Secretary of HUD to issue regulations to carry out these new MIP provisions within 90 days beginning on the date of enactment of that Act. It further provides that the new provisions will apply to mortgages executed after the effective date of these regulations.

Another statute restricts the Department's rule making process, however, requiring an opportunity for Congress to review any rule before it is published for comment, and requiring that the effectiveness of any rule be delayed for thirty calendar days after the date of publications (section 7(o) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(o)).

The Department finds that it is impracticable and contrary to the public interest to solicit public comment before issuing this rule. If the Department were to develop a proposed rule, wait for the receipt of public comments, and then formulate a final rule after considering the comments, that process along with the statutorily mandated delays, would preclude the Department from implementing this revision in MIP payments within a period reasonably close to the required 90 days.

Obviously, this statutory 90-day deadline has been missed. This was due to (1) the scope and complexity of the new MIP scheme to be implemented and (2) issues which arose in consideration of the rule involving specific details of its administration.

One issue which surfaced is that, under the new MIP structure, the Department will have to account for the new mortgages on a case level basis. Effective internal and accounting controls under the new structure will exist only if HUD is able tie a premium due and a premium collected, or not collected, to a particular insured mortgage. It should be emphasized that the overriding purpose behind establishment of this new premium structure was to ensure and improve the financial viability of the Mutual Mortgage Insurance Fund and this purpose cannot be attained unless effective accounting controls are put in place at the outset.

When one considers the sheer volume of single family FHA cases the Department anticipates that this new MIP schedule will be covering and adds to this the facts that (1) FHA mortgage notes are bought and sold with great rapidity and frequency, (2) there will be a need to account for these notes on a case level basis, and (3) it takes time for mortgagee portfolio information to be communicated to HUD for HUD to reconcile the various portfolios, the complexity of the implementation task confronting the Department becomes apparent. There must be a basic shift from the use of statistical tolerances as an accounting control tool (essentially the case under the current procedure) to what is essentially a case level accounting procedure.

To make this change it will be necessary for the Department have mortgagees and servicers provide more detailed and specific information concerning the mortgages held in it portfolio. A Mortgagee Letter setting forth these new information requirements is currently in preparation. We have every reason to believe that this Mortgagee Letter will be issued sufficiently in advance of the first date mortgagees will be required to provide the necessary information. This will provide all mortgagees and servicers reasonable notice of these requirements.

Because of the urgent and overriding purpose of these new MIP schedules, i.e., maintaining and improving the financial stability of the Mutual Mortgage Insurance Fund, the Department is publishing this document as an interim rule to take effect on July 1, 1991. The Department does however, invite public comments on the rule and comments received within a sixty-day comment period will be considered during development of a final rule that will supersede this interim rule.

Technical Provisions

The rule contains a number of technical provisions either incorporating by reference or adapting existing regulatory language in part 203 relating to MIP.

It is necessary to state in the rule that annual MIP is based on the original amortization schedule. This is being done by cross referencing the existing § 203.261.

The rule needs a clear statement of when HUD must receive the MIP and when any late charge starts. Paragraphs

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203.284 (d) and (e) in the rule cover this and are based upon part of existing §§ 203.284 and 203.285. In addition § 203.284 is incorporated in its entirety.

Section 203.287 and part of § 203.288 dealing respectively with events ending the obligation to pay periodic MIP and prorata payments of periodic MIP are cross referenced in the rule.

Finally §§ 203.280 and 203.282 dealing respectively with the timing of the payment of, and any late changes and interest on, one-time (up-front) MIP are cross referenced in the rule.

Procedural Matters

This rule would constitute a "major rule"as that term is defined in section 1(b) of the Executive order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it would, as defined by that order, have an annual effect on the economy of $100 million or more. Accordingly, a regulatory impact analysis has been prepared and is available for review and inspection in room 10276, Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule implements a specific-congressional mandate that revises the premium structure for single family FHA mortgage insurance. Though the changes made may be significant for some homebuyers, they are the result of thoroughly debated compromise reached by the Congress. The effects of the rule are the result of legislation and there are no means available to the Department to alter their impact.

A Finding of No Significant Impact with a respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2) of the National Environment Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket clerk at the above address.

This rule was listed as item 1295 in the Department's Semiannual Agenda of Regulations published on April 22, 1991 (56 FR 17360, 17387) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the order. The rule is limited to revising certain specific premium payment requirements in connection with FHA mortgage insurance. The revisions are mandated by statute and do not alter the established roles of HUD, the States and local governments.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. The rule involves requirements for payment of premiums on FHA insured mortgages. The changes from the existing premium structure are specifically mandated by the Congress and reflect its effort to ensure the financial soundness of the Mutual Mortgage Insurance Fund while, to the maximum extent feasible, continuing FHA program affordability for first time homebuyers.

The Catalog of Federal Domestic Assistance program number(s) are 14.117, 14.112, 14.121, 14.122, 14.132, and 14.133.

List of Subjects

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians: Lands Loan programs: Housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 204

Mortgage insurance.

Accordingly, 24 CFR parts 203 and 204 are amended as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: Secs. 203, 211, National Housing Act (12 U.S.C. 1709, 1715b); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Subpart C is also issued under sec. 230, National Housing Act (12 U.S.C. 1715u).

2. Section 203.18c is revised to read as follows:

§ 203.18c One-time or up-front mortgage insurance premium excluded from limitations on maximum mortgage amounts.

After determining any maximum insurable mortgage amount under the provisions of this subpart, the maximum insurable amount of any mortgage may be increased by the amount of any one-time or up-front mortgage insurance premium that will be financed as part of the mortgage.

3. Section 203.259a is revised to read as follows:

§ 203.259a Scope.

(a) The Commissioner shall charge a one-time MIP pursuant to § 203.280 for mortgages that:

(1) Are insured pursuant to § 203.43i; or

(2)(i) Are obligations of the Mutual Mortgage Insurance Fund under this part (except insured open-end advances as provided by § 203.270);

(ii) Are insured pursuant to:

(A) An application for a conditional commitment received on or after September 1, 1983; or

(B) An application for mortgage insurance endorsement under the single family Direct Endorsement program as provided in § 203.255, where the property appraisal report is signed by the mortgagee's approved underwriter on or after September 1, 1983; and

(iii) Are executed on or before July 1, 1991.

(b) The Commissioner shall charge an up-front MIP pursuant to § 203.284 for mortgages that are executed after July 1, 1991, that are obligations of the Mutual Mortgage Insurance Fund.

(c) The periodic MIP provisions of §§ 203.260 through 203.268 shall not apply to mortgages referred to in paragraph (a) of this section nor shall they apply to mortgages to which the provisions of § 203.284 apply.

4. Paragraph (c) of § 203.270 is revised to read as follows:

§ 203.270 Open-end insurance charges.

* * * * *

(c) *Payment of charge for mortgages with one-time or up-front MIP.* In the case of a mortgage with a one-time or up-front MIP pursuant to § 203.280 or § 203.284, the insurance charge shall be in an amount equal to ½ percent per annum of the outstanding principal obligation of the open-end advance. Sections 203.260 through 203.268 shall apply to the open-end charge on a mortgage with a one-time or up-front MIP, except that all references to amortization dates shall refer to amortization dates of the open-end advance, references to MIP shall refer to the open-end insurance charge, and references to outstanding principal obligation of the open-end advance.

* * * * *

5. Subpart B of 24 CFR part 203 is amended by adding a new undesignated center heading preceding a new § 203.284 to read as follows:

Calculation of Mortgage Insurance Premium after July 1, 1991

§ 203.284 Calculation of up-front MIP after July 1, 1991.

(a) *Permanent Provisions.* Any mortgage executed on or after October 1, 1994, that is an obligation of the Mutual Mortgage Insurance Fund shall be subject to the following requirements:

(1) *Up-Front.* The Commissioner shall establish and collect a single premium payment in an amount equal to 2.25 percent of the amount of the original insured principal obligation of the mortgage. Upon payment in full of the principal obligation of a mortgage prior to the maturity date of the mortgage or upon termination of insurance by voluntary agreement, the Commissioner shall refund all the unearned premium charges paid on the mortgage pursuant to this paragraph (a)(1).

(2) *Annual.* In addition to the premium under paragraph (a)(1) of this section, the Commissioner shall establish and collect annual premium payments in an amount equal to 0.50 percent of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under paragraph (a)(1) of this section for the following periods:

(i) For any mortgage involving an original principal obligation (excluding any premium collected under paragraph (a)(1) of this section) that is less than 90 percent of the appraised value of the property (as of the date the mortgage is accepted for insurance), for the first 11 years of the mortgage term.

(ii) For any mortgage involving an original principal obligation (excluding any premium collected under paragraph (a)(1) of this section) that is greater than or equal to 90 percent of such value, for the lesser of the mortgage term or the first 30 years of the mortgage term; except that for any mortgage involving an original principal obligation (excluding any premium collected under paragraph (a)(1) of this section) that is greater than 95 percent of such value, the annual premium collected during the period determined under this clause shall be in an amount equal to 0.55 percent of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under paragraph (a)(1) of this section).

(b) *Transition Provisions.* Mortgage insurance premiums on mortgages executed during fiscal year 1991 through 1994 that are obligations of the Mutual Mortgage Insurance Fund shall be subject to the following requirements:

(1) *1991 and 1992*—For mortgages executed during fiscal years 1991 and 1992 but after July 1, 1991 the Commissioner shall establish and collect the following premiums:

(i) *Up-Front*—A single premium payment in an amount equal to 3.80 percent of the amount of the original insured principal obligation of mortgage.

(ii) *Annual*—In addition to the premium under paragraph (b)(1)(i) of this section, annual premium payments in an amount equal to 0.50 percent of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under paragraph (b)(1)(i) of this section) for any mortgage involving an original principal obligation (excluding any premium collected under paragraph (b)(1)(i) of this section) that is—

(A) Less than 90 percent of the appraised value of the property (as of the date the mortgage is accepted for insurance), for the first 5 years of the mortgage term;

(B) Greater than or equal to 90 percent of such value, but equal to or less than 95 percent of such value, for the first 8 years of the mortgage term; and

(C) Greater than 95 percent of such value, for the first 10 years of the mortgage term.

(2) *1993 and 1994*—For mortgages executed during fiscal years 1993 and 1994 the Commissioner shall establish and collect the following premiums:

(i) *Up-Front*—A single premium payment in an amount equal to 3.00 percent of the amount of the original insured principal obligation of mortgage.

(ii) *Annual*—In addition to the premium under paragraph (b)(2)(i) of this section, annual premium payments in an amount equal to 0.50 percent of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under paragraph (b)(2)(i) of this section) for any mortgage involving an original principal obligation (excluding any premium collected under paragraph (b)(2)(i) of this section) that is—

(A) Less than 90 percent of the appraised value of the property (as of the date the mortgage is accepted for insurance), for the first 7 years of the mortgage term;

(B) Greater than or equal to 90 percent of such value, but equal to or less than 95 percent of such value, for the first 12 years of the mortgage term; and

(C) Greater than 95 percent of such value, for the lesser of the mortgage term or the first 30 years of the mortgage term.

(c) *Refunds.* With respect to any mortgage subject to premiums under this section, the Commissioner shall refund all of the unearned premium charges paid on a mortgage pursuant to paragraphs (b)(1)(i) or (b)(2)(i) of this section upon termination of insurance by voluntary agreement or upon payment in full of the principal obligation of the mortgage prior to the maturity date.

(d) *Payment of annual MIP.* The full annual MIP collectible by the Commissioner under this section shall be due on the anniversary date of the beginning of amortization and payable not later than ten days after such date even if not collected by the mortgagee from the mortgagor.

(e) *Mortgagee's late charge and interest.* Annual MIP which is remitted to the Commissioner after the payment date prescribed by paragraph (d) of this section and § 203.264 shall include a late charge of four percent of the amount paid. In addition to this late charge the mortgagee shall pay interest on any annual MIP which is remitted to the Commissioner more than 20 days after the payment date prescribed in paragraph (d) of this section. Such interest rate shall be paid at a rate set in conformity with the Treasury Fiscal Requirements Manual.

(f) *Applicability of other sections.* The provisions of §§ 203.261, 203.264, 203.266, 203.267, 203.268(a)(1), 203.280 and 203.282 are applicable to mortgages subject to premiums under this section.

(g) *Definition.* As used in this section the term "remaining insured principal balance" means the average outstanding principal obligation of the mortgage for the first year of amortization, or for a 12-month period preceding a subsequent anniversary date of the beginning of amortization.

PART 204—COINSURANCE

6. The authority citation for 24 CFR Part 204 continues to read as follows:

Authority: Secs. 244, 211, National Housing Act (12 U.S.C. 1715z–9, 1715(b)); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

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7. Section 204.260 is revised to read as follows:

§ 204.260 Mortgage insurance premiums for coinsured mortgages.

The provisions of §§ 203.260 through 203.268 or the provisions of § 203.284, as appropriate, concerning mortgage insurance premiums with respect to mortgages insured under 203(b) of the National Housing Act, apply to mortgages covering one- to four-family dwellings to be insured under this part.

8. The undesignated heading immediately before § 204.270 and paragraph (a) of § 204.271 are revised to read as follows:

Annual Mortgage Insurance Premiums and Coinsurance Reserve

§ 204.271 Credits to reserve.

(a) There shall be credited to each Annual Coinsurance Reserve on the date of receipt of an annual mortgage insurance premium, as follows: 28 percent of the initial (annual) MIP, 23 percent of the first annual MIP, 19 percent of the second annual MIP, and 15 percent of the third annual MIP.

* * * * *

9. Part 204 is amended by adding a new undesignated heading preceding a new § 204.276 to read as follows:

Up-Front Premiums

§ 204.276 Up-front premiums.

The full amount of all up-front premiums collected pursuant to the provisions of § 203.284 on mortgages insured under this part shall be credited to the Mutual Mortgage Insurance Fund. No portion of such amount shall be credited to the Annual Coinsurance Reserve established by § 204.270.

Dated: April 23, 1991.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 91-12707 Filed 5-29-91; 8:45 am]

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Thursday
May 30, 1991

Part VII

Department of Housing and Urban Development

Office of the Assistant Secretary
24 CFR Part 203, et al.
Minimum Mortgagor Equity Applicable to Most FHA Single Family Mortgages; Interim Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR 203, 204, 222, 226, 234 and 240

[Docket No. R-91-1517; FR-2939-I-01]

[RIN 2502-AF18]

Minimum Mortgagor Equity Applicable to Most FHA Single Family Mortgages

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule with request for comments.

SUMMARY: This rule implements section 2101 of the Omnibus Budget Reconciliation Act of 1990. That section establishes a minimum mortgagor equity requirement applicable to most FHA single family mortgages.

EFFECTIVE DATE: July 1, 1991.

DATES: *Comment Due Date:* July 29, 1991.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708-4337. Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk ((202) 708-2084). These are not toll-free numbers.)

FOR FURTHER INFORMATION CONTACT: Stephen A. Martin, Director, Office of Insured Single Family Housing, room 9266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-3046. A telecommunications device for deaf persons (TDD) is available at (202) 708-4594. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: Section 2101 of the Omnibus Budget Reconciliation Act of 1990 prohibits FHA-insured single family mortgages from involving a principal obligation (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) that exceeds 98.75% of the appraised value of the property (97.75% where the appraised value exceeds $50,000), plus the amount of the mortgage insurance premium paid at time of insurance. The section defines "appraised value" as the amount set forth in the written statement required under section 220 of the National Housing Act, or a similar amount determined by HUD if section 226 does not apply. (Section 226 requires the seller of a single family home approved for mortgage insurance to deliver to the buyer, prior to sale a written statement setting forth the FHA appraised value of the property. A statement of FHA replacement cost may be substituted where applicable). This rule revises 24 CFR 203.18 and 234.27 to reflect this new requirement.

The effect of Section 2101 is to establish a maximum loan-to-value ratio that is generally applicable to FHA single family housing. There are, however, in the law further, specific maximum loan-to-value ratios which also must be met. These old loan-to-value ratios are set forth in 24 CFR 203.18 and 234.27.

HUD, historically, has permitted mortgages to include 100% of certain closing costs as part of appraised value for purposes of the old loan-to-value calculation. While the new loan-to-value test will have the effect of limiting the financing of closing costs, the effect will vary depending on the specifics of the loan and the prevailing closing cost in the jurisdiction. Some loans could continue to include most closing costs while others would only include a small percentage of closing costs. The Department is concerned that permitting the financing of most closing costs in a mortgage would continue the problem which the statutory provision was intended to address: excessive mortgage balance in comparison to actual home value. Further, the assessment of the new statutory provisions that Price-Waterhouse performed for the Department assumed that no more than 57.25% of closing costs would be financed through the insured mortgage. Although this assumption is not explicitly set forth in the statute, it served as the basis of discussions between representatives of Congress and the Department and was part of the Department's justification for accepting the statutory reform package in its final form. The Department has no basis for concluding that the statutory reforms will achieve their intended effect of regaining actuarial soundness for the Mutual Mortgage Insurance Fund, including a capital ratio of at least 1.25% within 24 months, if the Department continues to insure mortgages with a high percentage of financed closing costs.

Therefore, the Department proposes to end its practice of permitting mortgagees to include 100% of allowable closing costs as part of appraised value when applying the old loan-to-value ratio. The regulation would permit HUD to adjust the percentage to be financed when HUD gained further experience regarding the overall effect of the statutory reforms. Until HUD has such experience, HUD proposes to apply a maximum of 57% for closing costs included in appraised value for the old loan-to-value calculation set forth at 24 CFR 203.18 (a) through (f) and 234.27 (a) through (d). (As noted above, 0% would be included for the new calculation to be carried out under this rule.) The two methods of calculations and examples are provided below. In each of the examples it is assumed that the maximum mortgage limit for the area is not exceeded.

1. The first calculation will be the current 97 percent of the first $25,000 of the lesser of (i) sales price (as adjusted for seller paid closing costs) plus 57% of closing costs or (ii) value plus 57% of closing costs. To this may be added 95 percent of the remaining amount (97 percent for modestly priced homes of $50,000 or less).

2. The second calculation will determine if the mortgage amount must be further reduced to meet the 98.75 percent or 97.75 percent loan-to-value limits of the 1990 legislation. To determine this the mortgagee must multiply the appraiser's estimate of value by 98.75 percent if the value is $50,000 or less or by 97.75 percent if the value is in excess of $50,000.

Exhibit I

A. Example for a property with a value and sales price of $90,000 and total allowable closing costs are $2,000:

First Calculation

$90,000	Lesser of sales price or appraised value.
+1,140	Add 57% of total allowable closing costs.
$91,140	
−25,000 ×	97%=$24,250
66,140 ×	95%=$62,833
	$87,083

Second Calculation

$90,000	Appraised value.
×97.25%	Do not add closing costs.
$87,975	

In this example, the maximum mortgage is $87,083 ($87,050 if condominium) because it is the lesser of the two calculations.

B. Example for a property with a value and sales price of $48,000 and total allowable closing costs are $800:

First Calculation

$48,000	Lesser of sales price or appraised value.
+456	Add 57% of total allowable closing costs.
$48,456	
×97%	
47,002	

Second Calculation

$48,000	Appraised value.
×98.75%	Do not add closing costs.
$47,400	

In this example, the maximum mortgage is $47,002 ($47,000 if a condominium) because it is the lesser of the two calculations.

C. Examples for a property with a value and sales price of $100,000 and total allowable closing costs of $3,000. In the first example, the seller is paying $1,500 of the borrower's allowable costs. Also shown is the borrower's required downpayment. In the second example, the borrower pays all of the closing costs. These examples show that seller payment of the borrower's closing costs does not significantly reduce the amount of the borrower's cash investment in the property.

Example No. 1

First Calculation

$100,000	Lesser of sales price or appraised value.
−1,500	Subtract seller paid portion of closing costs.
$98,500	
+1,710	Add allowable closing costs (57% of $3,000).
$100,210	
$100,210	Mortgage basis
−25,000 ×	97%+$24,250
$75,210 ×	95%=71,449
	$95,699

Second Calculation

$90,000	Appraised value.
×97.25%	Do not add closing costs.
$87,975	

In this example, the maximum mortgage is $87,083 ($87,050 if condominium) because it is the lesser of the two calculations.

B. Example for a property with a value and sales price of $48,000 and total allowable closing costs are $800:

First Calculation

$48,000	Lesser of sales price or appraised value.
+456	Add 57% of total allowable closing costs.
$48,456	
×97%	
47,002	

Second Calculation

$48,000	Appraised value.
×98.75%	Do not add closing costs.
$47,400	

In this example, the maximum mortgage is $47,002 ($47,000 if a condominium) because it is the lesser of the two calculations.

C. Examples for a property with a value and sales price of $100,000 and total allowable closing costs of $3,000. In the first example, the seller is paying $1,500 of the borrower's allowable costs. Also shown is the borrower's required downpayment. In the second example, the borrower pays all of the closing costs. These examples show that seller payment of the borrower's closing costs does not significantly reduce the amount of the borrower's cash investment in the property.

Example No. 1

First Calculation

$100,000	Lesser of sales price or appraised value.
−1,500	Subtract seller paid portion of closing costs.
$98,500	
+1,710	Add allowable closing costs (57% of $3,000).
$100,210	
$100,210	Mortgage basis
−25,000 ×	97%+$24,250
$75,210 ×	95%=71,449
	$95,699

The first calculation for the mortgage amount is based on the lesser of the acquisition cost or value plus closing costs.

Second Calculation

$100,000	Appraised value.
	Do not subtract seller or third party paid portion of closing costs.
×97.75%	
97,750	

In this example, the maximum mortgage is $95,699 ($95,650 for a condominium) because it is the lesser of the two calculations.

Required investment:

$101,500	Total acquisition.
−95,699	Maximum mortgage amount.
$5,801	Required cash investment.

The same process applies to properties with a sales price or value of $50,000 or less (modestly priced homes) when the seller or any third party pays a portion or all of the closing costs.

Example No. 2

In this example, the buyer if financing 57% of all allowable closing costs, and total allowable borrower closing costs are $3,000.

First Calculation

$100,000	Lesser of sales price or appraised value.
+1,710	Add allowable closing costs (57% of $3,000).
$101,710	Mortgage basis
−25,000 ×	97%=24,250
$76,710 ×	95%=72,874
	97,124

Second Calculation

$100,000	Appraised value.
	Do not add closing costs
×97.75%	
97,750	

In this example, the maximum mortgage is $97,124 because it is the lesser of the two calculations.

Required investment:

$103,000	Acquisition costs.
97,124	Maximum mortgage amount.
$5,876	Required cash investment.

The new 98.75 percent and 97.75 percent maximum loan-to-value ratios apply to mortgages insured pursuant to firm commitments issued by HUD or borrower approvals issued by Direct Endorsement lender (underwriter signs mortgage credit worksheet-Form HUD 92900 WS) on or after July 1, 1991. The maximum 98.75 percent 97.75 percent loan-to-value ratios must be applied to mortgages insured under the following sections of the National Housing Act: 203(b), 222 (Service members), 223(e) (Miscellaneous Housing Insurance), 234(c) (Condominiums), 238(c) Military Impact Areas), 244 (Coinsurance), 245 (GPM/GEM), 251 (Adjustable Rate) and 809 (Armed Services Housing—Civilian Employees). This rule revises 24 CFR 203.18 and 234.27 to reflect this new loan to value requirement.

Justification of Interim Rule

It is the policy of the Department to publish rules for public comment before developing a rule for effect. However, in a particular case where notice and public comment are not required by statute, the procedure for advance public comment may be omitted if the Department determines that it is impracticable, unnecessary, or contrary to the public interest. In this case, Section 2101 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508, approved Nov. 5, 1990) clearly limits the maximum principal obligation on FHA-insured single family mortgages to 98.75 percent of appraised value (97.75 percent if appraised value exceeds $50,000). The Department cannot change these limits in response to public comments because of the specificity of the statute. Furthermore, section 2105 of the above cited legislation directs the Secretary of HUD to ensure that the Mutual Mortgage Insurance Fund attains a capital ratio of not less than 1.25 percent with 24 months after the date of enactment of the law. In its assessment for the Department of the new statutory provisions, Price Waterhouse determined that the 1.25 percent capital target could be met if the Secretary limited the financing of closing costs to 57 percent of the amount currently allowed.

If the Department were to accept and review public comments before implementation of these two provisions, the achievement of the statutory capital target would be jeopardized. Current

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laws and policies on the rulemaking process could delay implementation for months beyond the effective date of this interim rule. The effect of such a delay would be to allow significant numbers of mortgages to be insured with lower equity levels than assumed by Price Waterhouse in its analysis. (Both the statutory limit on loan-to-value ratio and the limit on the financing of closing costs have the effect of raising the minimum equity requirement for FHA mortgages.) The Price Waterhouse report confirms the findings of other researchers that low equity levels increase the incidence of default and insurance claims, thereby reducing the net worth, or capital, of the Fund. Thus, an advance review of public comments would jeopardize the achievement of the capital target; hence, the Department believes an interim rulemaking process is in the public interest.

As further justification for the use of the interim rulemaking processing, the Department notes that the financing of closing costs has historically been permitted by administrative decision of the Secretary. Even under current administrative policy, there are closing costs that are ineligible for inclusion in an FHA mortgage. Private mortgage insurers, by way of comparison, do not permit the inclusion of any closing costs in the mortgage. The Department has chosen to announce the change in policy on closing costs in the Preamble to this interim rule not because it is required to do so, but because it seeks public comment. However, the achievement of the statutory capital target for the Mutual Mortgage Insurance Fund requires that the change be implemented before the time period required for the collection and evaluation of comments.

Technical Provisions

There are a number of cross references either to or within the new paragraph 203.18(g) set forth in the rule which operate to either apply or not apply the new mortgagor equity requirements to various mortgage insurance programs. In order to include National Housing Act programs under section 203(n) (insurance of units in cooperatives), section 222 (serviceman's mortgage insurance), section 240 (loans for fee title purchase), and section 809 (armed services housing-civilian employees) amendments are made in 24 CFR parts 203, 222, 240 and 226 respectively cross referencing the new § 203.18(g). Within § 203.18(g) itself, reference is made to §§ 203.18(e) (disaster housing) and § 203.50(f) (rehabilitation loans) in order to expressly exclude those programs from coverage.

In addition, the rule corrects some existing errors in certain sections relating to calculation of maximum mortgage amounts.

Under current regulations, in §§ 204.1 (coinsurance) and 203.45(g) (graduated payment mortgages), § 203.18(f) is excluded from incorporation by reference. This made sense when the subject matter in § 203.18(f) related to seasonal homes. The old seasonal home language was deleted in 1988 however and new language on definitions was substituted. The new definition language should apply to coinsurance and GPM's therefore §§ 204.1 and 203.45(g) are revised to incorporate § 203.18(f) by reference.

In § 203.18b(a)(1)(B), the words "may be" were supposed to appear at the beginning so that (B) reads: "may be an area for which * * *." The sense is somewhat distorted without these words. During 1988 revisions of this paragraph some last-minute rewording occurred but came out garbled. The rule corrects this error.

Finally, § 203.15 (certification of appraisal amount) is revised to extend its coverage by deleting its reference to 1 and 2 family dwellings. The effect of the deletion is to apply the requirement that a certification of FHA appraisal amount be delivered to the purchaser prior to sale in connection with *all* FHA single family properties—3 and 4 as well as 1 and 2 family. The expansion makes the coverage of § 203.15 consistent with the coverage of the new mortgagor minimum equity requirement established by this rule.

Procedural Matters

This rule would constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it would, as defined by that order, have an annual effect on the economy of $100 million or more. Accordingly, a preliminary regulatory impact analysis has been prepared and is available for review and inspection in room 10276, Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule does have the effect of raising FHA downpayment requirements. This result, however, is mandated by the Congress and does not involve an exercise of administrative discretion.

This rule was listed in the Department's Semiannual Agenda of Regulations published on April 22, 1991 (56 FR 17360, 17387) pursuant to Executive Order 12291 and the Regulatory Flexibility Act at sequence number 1296, Office of Housing (H-3-91).

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule does raise FHA downpayment requirements. This is, however, in compliance with a Congressional mandate and does not involve any exercise of administrative discretion.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have Federalism implications when implemented and, thus, are subject to review under the Order. The rule does not change in any way existing relationships between HUD, the states and local governments.

The Catalog of Federal Domestic Assistance program numbers are 14.117, 14.120, 14.121, 14.123.

List of Subjects

24 CFR Part 203

Home improvement, Loan programs—housing and community development, Mortgage insurance, Solar energy.

24 CFR 204

Mortgage insurance.

24 CFR 222

Condominiums, Mortgage insurance.

24 CFR Part 226

Government employees, mortgage insurance.

24 CFR Part 234

Condominiums, Mortgage insurance, Homeownership, Projects, Units.

24 CFR Part 240

Mortgage insurance.

Accordingly, 24 CFR parts 203, 204, 222, 226, 234, and 240 are amended as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: Secs. 203, 211, National Housing Act (12 U.S.C. 1709, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Subpart C is also issue under sec. 230, National Housing Act (12 U.S.C. 1715u).

2. Section 203.15 is revised to read as follows:

§ 203.15 Certification of appraisal amount.

An application with respect to insurance of mortgages must be accompanied by an agreement satisfactory to the Commissioner, executed by the seller, builder or such other person as may be required by the Commissioner whereby such person agrees that prior to any sale of the dwelling the said person will deliver to the purchaser of such property a written statement in a form satisfactory to the Commissioner setting forth the amount of the appraised value of the property as determined by the Commissioner.

3. A new paragraph (f)(4) and a new paragraph (g) are added to § 203.18 to read as follows:

§ 203.18 Maximum mortgage amounts.

* * * * *

(f) * * *

(4) *Appraised value* means the sum of:

(i) The lesser of sales price (with any adjustments required by the Secretary) or the amount set forth in the written statement required under § 203.15; and

(ii) Closing costs to the extent allowed by the Secretary, provided that neither sales price nor closing costs shall apply for purposes of paragraph (g) of this section.

(g) *Maximum principal obligation.* Except for mortgages meeting the requirements of § 203.18(e) or § 203.50(f) and notwithstanding any other provision of this section, a mortgage may not involve a principal obligation in excess of 98.75 percent of the appraised value of the property (97.75 percent, in the case of a mortgage with an appraised value in excess of $50,000), plus the amount of the mortgage insurance premium paid at the time the mortgage is insured.

4. Paragraph (g) in § 203.43c is revised to read as follows:

§ 203.43c Eligibility of mortgages involving a dwelling unit in a cooperative housing development.

* * * * *

(g) The mortgage shall not exceed the balance remaining after subtracting from the amount determined under §§ 203.18(a), 203.18(g), 203.18a, and 203.18b of this part an amount equal to the portion of the unpaid balance of the blanket mortgage covering the cooperative development which is attributable to the dwelling unit the mortgagor is entitled to occupy as of the date the mortgage is accepted for insurance.

* * * * *

PART 204—COINSURANCE

5. The authority citation for part 204 continues to read as follows:

Authority: Secs. 244, 211, National Housing Act (12 U.S.C. 1715z-9, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

6. Section 204.1 is revised to read as follows:

§ 204.1 Cross-reference.

All of the provisions of subpart A, part 203 of this chapter concerning eligibility requirements of mortgage under section 203(b) of the National Housing Act apply to mortgages covering one- to four-family dwellings to be insured under section 203(b) pursuant to the coinsurance authority of section 244 of the National Housing Act except the following provisions:

Section	
203.18 (c), (d), and (e)	Maximum mortgage amounts.
203.43	Eligibility of miscellaneous-type mortgages.
203.43a	Eligibility of mortgages covering housing in certain neighborhoods.
203.43b	Eligibility of mortgages covering housing intended for seasonal occupancy.
203.43h	Eligibility of mortgages on Indian land insured pursuant to section 248 of the National Housing Act.
203.43i	Eligibility of mortgages on Hawaiian home lands insured pursuant to section 247 of the National Housing Act.
203.43j	Eligibility of mortgages on Allegany Reservation of Seneca Nation of Indians.
203.44	Eligibility of open-end advances.
203.50	Eligibility of rehabilitation loans.

PART 222—SERVICEMEN'S MORTGAGE INSURANCE

7. The authority citation for part 222 continues to read as follows:

Authority: Secs. 211, 222, National Housing Act (12 U.S.C. 1715b, 1715m); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

8. Section 222.4 is amended by adding a new paragraph (c) to read as follows:

§ 222.4 Maximum mortgage amount; ratio of loan-to-value limitation.

* * * * *

(c) Notwithstanding any other provision of this section a mortgage may not involve a principal obligation in excess of 98.75 percent of the appraised value of the property (97.75 percent, in the case of a mortgage with an appraised value in excess of $50,000), plus the amount of the mortgage insurance premium paid at the time the mortgage is insured.

PART 226—ARMED SERVICES HOUSING—CIVILIAN EMPLOYEES (SEC. 809)

9. The authority citation for part 226 continues to read as follows:

Authority: Secs. 211, 807, 809, National Housing Act (12 U.S.C. 1715b, 1748f, 1748h-1); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

10. Section 226.5 is amended by adding a new paragraph (c) to read as follows:

§ 226.5 Maximum mortgage amount; loan-to-value limitation.

* * * * *

(c) Notwithstanding any other provision of this section, a mortgage may not involve a principle obligation in excess of 98.75 percent of the appraised value of the property (97.75 percent, in the case of a mortgage with an appraised value in excess of $50,000), plus the amount of the mortgage insurance premium paid at the time the mortgage is insured.

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

11. The authority citation for part 234 continues to read as follows:

Authority: Secs. 211, 234, National Housing Act (12 U.S.C. 1715b, 1715y); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

12. In § 234.27, a new paragraph (e)(4) and a new paragraph (f) are added to read as follows:

§ 234.27 Maximum mortgage amounts.

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(e) * * *

(4) *Appraised value* means the sum of:

(i) The lesser of sales price (with any adjustments required by the Secretary) or the amount set forth in the written statement required under § 234.14; and

(ii) Closing costs to the extent allowed by the Secretary, provided that neither sales price nor closing costs shall apply for purposes of paragraph (f) of this section.

(f) Notwithstanding any other provision of this section, a mortgage may not involve a principle obligation in excess of 98.75 percent of the appraised value of the property (97.75 percent, in the case of a mortgage with an appraised value in excess of $50,000), plus the amount of the mortgage insurance premium paid at the time the mortgage is insured.

PART 240—MORTGAGE INSURANCE ON LOANS FOR FEE TITLE PURCHASE

13. The authority citation for part 240 continues to read as follows:

Authority: Secs. 211, 240, National Housing Act (12 U.S.C. 1715b, 1715z–5); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

14. Paragraph (b) of § 240.5 is revised to read as follows:

§ 240.5 Maximum loan amounts.

* * * * *

(b) An amount which when added to any outstanding indebtedness related to the property, as determined by the Commissioner, creates a total outstanding indebtedness which does not exceed the limits prescribed in §§ 203.18(a)(1), (b), (c), and (g), 203.18a, and 203.18b of this chapter as applicable.

Dated: April 12, 1991.

Arthur J. Hill,

Acting Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 91–12706 Filed 5–29–91; 8:45 am]

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federal register

Thursday
May 30, 1991

Part VIII

Department of Education

Grants and Cooperative Agreements; Availability, Indian Vocational Education Program; Notice

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DEPARTMENT OF EDUCATION

[CFDA No: 84.101]

Indian Vocational Education Program; Office of Vocational and Adult Education; Inviting Applications for New Awards Fiscal Year (FY) 1992

Notice to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program including, the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: To provide financial assistance to Indian tribes and certain schools funded by the Department of the Interior to plan, conduct, and administer projects, or portions of projects, that are authorized by and consistent with the Carl D. Perkins Vocational and Applied Technology Education Act.

Eligible Applicants: The following entities are eligible for an award under this program:

(a) A tribal organization of any Indian Tribe which is eligible to contract with the Secretary of the Interior under the Indian Self-Determination and Education Assistance Act or under the Act of April 16, 1934.

(b) A Bureau-funded school offering a secondary program.

(c) Any tribal organization or Bureau-funded school described in paragraphs (a) or (b) above may apply individually or as part of a consortium with another eligible tribal organization or school.

(i) A consortium shall enter into an agreement signed by all members of the consortium and designating one member of the consortium as the applicant and grantee.

(ii) The agreement must detail the activities each member of the consortium plans to perform, and must bind each member to every statement and assurance made in the application.

(iii) The applicant shall submit the agreement with its application.

Deadline for Transmittal of Applications: July 15, 1991.

Available Funds: $3,340,944.

Estimated Range of Awards: $50,000 to $500,000.

Estimated Average Size of Awards: $290,000.

Estimated Number of Awards: 12.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants to Higher Education, Hospitals and Nonprofit Organizations), part 75 (Direct Grant Programs), part 77 Definitions that Apply to Department Regulations), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 81 (General Education Provisions Act—Enforcement), part 85 (Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)); part 86 (Drug-Free Schools and Campuses); and (b) the regulations for this program 34 CFR part 410.

Definitions

"ACT OF APRIL 16, 1934" means the Federal law commonly known as the "Johnson-O'Malley Act," that authorizes the Secretary of the Interior to make contracts for the education of Indians and other purposes.

"Bureau" means the Bureau of Indian Affairs, Department of the Interior.

"Bureau-Funded School" means—

(1) A Bureau-operated elementary or secondary day or boarding school or a Bureau-operated dormitory for students attending a school;

(2) An elementary or secondary school or a dormitory that receives financial assistance for its operation under a contract or agreement with the Bureau under section 102, 104(1), or 208 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f, 450h(1), and 458(d); or

(3) A school for which assistance is provided under the Tribally Controlled Schools Act of 1988.

"Indian Tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) that is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

"Tribal organization" means the recognized governing body of any Indian tribe or any legally established organization of Indians that is controlled, sanctioned, or chartered by the governing body of any Indian tribe or any legally established organization of Indians that is controlled, sanctioned, or chartered by the governing body or that is democratically elected by the adult members of the Indian community to be served by the organization and that includes the maximum participation of Indians in all phases of its activities. Provided, that in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant.

Invitational Priority

The Secretary is particularly interested in applications that meet the following invitational priority. Projects that propose a plan for student support that will compensate in some degree, for the loss of the authorization to provide stipends under the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990. The plan should describe sources, eligibility requirements, and the procedures to be followed for obtaining the above support. Some examples of sources are Pell Grants, Job Training Partnerships Act, Job Opportunities and Basic Skills Training, and Private Scholarships.

(However under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications).

Selection Criteria

The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

The maximum score for all 8 of these criteria is 100 points.

The maximum score for each criterion is indicated in parentheses.

The Secretary assigns the 15 points reserved in 34 CFR 410.30(d) as follows: 5 points to the Selection Criterion (a)—Need—in 34 CFR 410.31(a) for a total of 20 points for that criterion; 5 points to the Selection Criterion (b)—Plan of Operation—in 34 CFR 410.31(b) for a total of 25 points for that criterion; and 5 points to the Selection Criterion (e)—Evaluation Plan—in 34 CFR 410.31(e) for a total of 10 points for that criterion.

(a) *Need.* (20 points)

(1) The Secretary reviews each application for information that shows the need for the proposed project.

(2) The Secretary looks for information that shows—

(i) Specific evidence of the need for the proposed activity;

(ii) Information which shows how the need will be met; and

(iii) Ongoing and planned activities in the community which pertain to the need, where appropriate.

(b) *Plan of Operation.* (25 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program; and

(iv) The way the applicant plans to use its resources and personnel to achieve such objective.

(c) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The time that each person referred to in paragraphs (3)(ii) (A) and (B) will commit to the project.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-Reference. See 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(f) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(g) *Private sector involvement.* (10 points)

(1) The Secretary reviews each application for information that shows the involvement of the private sector.

(2) The Secretary looks for information that shows—

(i) The private sector involvement in the planning of the project; and

(ii) The private sector involvement in the operation of the project.

(h) *Employment opportunities.* (10 points)

(1) The Secretary looks for information and documentation concerning potential employer's commitment to hire participants and the extent to which, the trainees, upon completing this program, will be employed in jobs relating to their training, or will be pursuing additional training related to their training under this program.

(2) The Secretary looks for information which shows the extent of involvement, coordination or encouragement of tribal economic development planning.

(Approved by OMB Control No. 1830-0013)

Special Consideration

In addition to the 100 points to be awarded based on the selection criteria, the Secretary may award:

(a) Up to 5 points to applications proposing projects that involve, coordinate with, or encourage tribal economic development plans; and

(b) Five points to applications from tribally controlled community colleges that—

(1) Are accredited or are candidates for accreditation by a nationally recognized accreditation organization as an institution of postsecondary vocational education; or

(2) Operate vocational education programs that are accredited or are candidates for accreditation by a nationally recognized accreditation organization and issue certificates for completion of vocational education programs.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Services, attention: (CFDA #84.101), Washington, DC 20202-4725; or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, attention: (CFDA #84.101), room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: (1) The U.S. Postal Service does not uniformly provide a date postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 732-2495.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4-88) and instructions.

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Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification regarding Debarment, Lobbying, Suspension, and Other Responsibility Matters: Primary Covered Transactions (ED Form 80-0013) and instructions.

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80-0014) and instructions.

(Note: ED Form 80-0014 is intended for the use of grantees and should not be transmitted to the Department.)

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

For Further Information Contact: Harvey Thiel, Special Programs Branch, Division of National Programs, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW. (room 4512, Mary E. Switzer Building), Washington, DC 20202-7242. Telephone (202) 732-2380 or 732-2379.

Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 Area Code, telephone 708-0300) between 8 a.m. and 7 p.m. Eastern time.

Program Authority: 20 U.S.C. 5101 through 5106.

Dated: May 22, 1991.

Betsy Brand,

Assistant Secretary, Office of Vocational and Adult Education.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED — Applicant Identifier

1. TYPE OF SUBMISSION: Application ☐ Construction ☒ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction

3. DATE RECEIVED BY STATE — State Application Identifier

4. DATE RECEIVED BY FEDERAL AGENCY — Federal Identifier

5. APPLICANT INFORMATION

Legal Name: — Organizational Unit:

Address (give city, county, state, and zip code): — Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): — —

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify): _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify): _____

9. NAME OF FEDERAL AGENCY: U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 1 0 1
TITLE: Indian Vocational Education

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date; Ending Date

14. CONGRESSIONAL DISTRICTS OF: a. Applicant; b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative — b. Title — c. Telephone number

d. Signature of Authorized Representative — e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV. 4-88)
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

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Part II—Budget Information Instruction for the SF–424A

General Instructions

This form is designed so that application can be made for funds from the Indian Vocational Education program. Sections A and B should provide the budget for the first year of the project and section E should present the need for Federal assistance in subsequent years. (Note: Section C and D need not be completed to apply for these programs.) All applications should contain a breakdown by the object class categories shown in section B, lines 6a through 6j.

Section A. Budget Summary

Line 1, columns (a) through (g)—Enter on line 1 the catalog program title in column (a) and the catalog program number in column (b). Leave columns (c), (d) and (f) blank. Enter in columns (e), and (g) the appropriate amounts of Federal funds needed to support the project, as appropriate.

Section B. Budget Categories

Line 6a through 6i—Fill in the total requirements for Federal funds by object class categories for the first year of the project.

Line 6a—Personnel: Show salaries and wages to be paid to personnel employed in the project. Fees and expenses for consultants must be included in line 6f.

Line 6b—Fringe Benefits: Include contributions for Social Security, employee insurance, pension plans, etc. Leave blank if fringe benefits to personnel are treated as part of the indirect cost rate.

Line 6c—Travel: Indicate the amount requested for travel of employee.

Line 6d—Equipment: Indicate the cost of nonexpendable personal property which has a useful life of more than two years and an acquisition cost of $5,000 or more per unit.

Line 6e—Supplies: Include the cost of consumable supplies to be used in this project. These should be items which cost less than $5,000 per unit with a useful life of less than two years.

Line 6f—Contractual: Show the amount to be used for: (a) Procurement contracts (except those which belong on other lines such as supplies and equipment listed above); and (b) payments for consultants and secondary recipient organizations such as affiliates, cooperating institutions, delegate agencies, etc.

Line 6g—Construction: Construction expenses are allowable under the Vocational Education Indian Program (CFDA No. 84.101).

Line 6h—Other: Indicate all direct costs not clearly covered by lines 6a through 6g.

Line 6i—Total Direct Charges: Show total of lines 6a through 6h.

Line 6j—Show the amount of indirect cost to be charged to the project.

(Note: Except for grants to Federally recognized Indian tribes, the indirect cost rate for training projects cannot exceed eight percent of total direct charges).

Line 6k—Enter the total of the amounts on lines 6i and 6j.

Section E—Budget Estimates of Federal Funds Needed for Balance of the Project

Line 16—Enter in Column (a) the catalog program title. In columns (c) and (d), as appropriate, enter the amounts of Federal funds which will be needed to complete the project over the succeeding funding period(s) (usually in years).

Section F. Other Budget Information

Prepare a detailed Budget Narrative that explains, justifies, and/or clarifies the budget figures shown in sections A, B, and E.

Instructions for Part III—Application Narrative

All applicants are urged to submit Application Narratives which are concise and clearly written. Before preparing the Application Narrative, applicants should read and become familiar with the law and the regulations covering the program to which they are applying.

Applicants should use the selection criteria for a program as an outline for preparing their Application Narrative, addressing the selection criteria in the order the criteria are listed. Applicants are encouraged to provide a table of contents and to number the pages of the Application Narrative. The Application Narrative should not exceed 25 double-space typed pages (on one side only). Supporting documentation (e.g., letters of support, footnotes, resumes, etc.) may be submitted as Applicants are advised that:

(1) Under 34 CFR, § 75.112 of the Education Department General Administrative Regulations (EDGAR):

(a) An application must propose a project period for the project.

(b) An application must describe when, in each budget period of the project, the applicant plans to meet each objective of the project.

(2) Under 34 CFR, § 75.117 of the Education Department General Administrative Regulations (EDGAR), an applicant that proposes a multi-year project shall include in its application:

(a) Information that shows why a multi-year project is needed;

(b) A budget for the first budget period of the project; and

(c) An estimate of the Federal funds needed for each budget period of the project after the first budget period.

(3) Under 34 CFR, § 75.217 of the Education Department General Administrative Regulations (EDGAR), the Department considers only information contained in the application in ranking applications for funding consideration. Letters of support sent separately from the formal application package are not considered in the review by the technical review panels.

(4) In reviewing applications, the technical review panel evaluates each application solely on the basis of the established selection criteria. Letters of support contained in the application will strengthen the application only insofar as they contain commitments which pertain to the established selection criteria, such as commitment of resources and placement of successful completers.

Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden for this collection of information. Public reporting burden for this collection of information is estimated to average 90 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Paperwork Reduction Project, OMB Control Number: 1830–0013, Office of Management and Budget, Washington, DC 20503. (Information collection approved under OMB Control Number 1830–0013).

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ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

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CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted–

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90, and ED 80-0011, 5/90, which are obsolete)

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Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion–Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

[FR Doc. 91-12720 Filed 5-29-91; 8:45 am]
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federal register

Thursday
May 30, 1991

Part IX

Department of Labor

Employment and Training Administration
Wage and Hour Division

20 CFR Part 655
29 CFR Part 506

Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports; Interim Final Rule and Request for Comments

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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205–AA90

Wage and Hour Division

29 CFR Part 506

RIN 1215–AA

Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

AGENCIES: Employment and Training Administration, Labor; and Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Interim final rule; request for comments.

SUMMARY: The Employment and Training Administration (ETA) and the Employment Standards Administration (ESA) of the Department of Labor (DOL or Department) are promulgating regulations governing the filing and enforcement of attestations by employers seeking to use alien crewmembers to perform longshore work at U.S. ports. Under the Immigration and Nationality Act, as amended by the Immigration Act of 1990 (IA), employers are, in certain circumstances, required to submit these attestations to DOL in order to be allowed by the Immigration and Naturalization Service (INS) to use alien crewmembers to perform specified longshore activity(ies) at U.S. ports. The attestation process is to be administered by ETA, while complaints and investigations regarding the attestations are to be handled by ESA.

DATES: *Effective dates:* May 28, 1991, through December 31, 1991. DOL will issue a final rule on or before the last effective date of this interim final rule and after it has had an opportunity to review public and agency comments. *Comments:* Written comments on the interim final rule are invited from interested parties. Comments shall be received by July 29, 1991.

ADDRESSES: Submit comments to: Roberts T. Jones, Assistant Secretary, Employment and Training Administration, Department of Labor, 200 Constitution Avenue, NW., Washington DC 20210, Attention: Immigration Task Force room N–4470.

FOR FURTHER INFORMATION CONTACT: On 20 CFR part 655, subpart F, and 29 CFR part 506, subpart F, contact David O. Williams, Chair, Immigration Task Force, Employment and Training Administration, Department of Labor, room N–4470, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202–535–0174 (this is not a toll-free number).

On 20 CFR part 655, subpart G, and 29 CFR part 506, subpart G, contact Mr. Solomon Sugarman, Chief, Farm Labor Programs, Wage and Hour Division, Employment Standards Administration, Department of Labor, room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202–523–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The information collection requirements contained in the rule have been submitted to the Office of Management and Budget for clearance under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control No. 1205–

ETA estimates that approximately 5,000 employers per year will be submitting attestations. The public reporting burden for this collection of information is estimated to average 3–4 hours per response, including the time for reviewing instructions, searching existing information/data sources, gathering and maintaining the information/data needed, and completing and reviewing the attestation. It is likely that the burden will be considerably less in the second and subsequent years in which an employer submits an attestation.

Written comments on the collection of information requirements should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Employment and Training Administration, Washington, DC 20503.

II. Background

A. Introduction

On November 29, 1990, the Immigration Act of 1990 (IA), Pub. L. 101–649, 104 Stat. 4978, was enacted. The Act amends the Immigration and Nationality Act (INA) (8 U.S.C. 1101 *et seq.*) and assigns responsibility to the Department of Labor (Department or DOL) for the implementation of several provisions relating to the entry of certain categories of employment-based immigrants and to the temporary employment of certain categories of nonimmigrants. One of the new provisions of the INA the Department is charged with implementing is Section 258, which places limitations on the performance of longshore work by alien crewmembers in U.S. ports.

The loading and unloading of vessels has been traditionally performed by U.S. longshore workers. However, until now, alien crewmembers had also been allowed (by Immigration and Naturalization Service regulation) to do this kind of work in U.S. ports, because longshore work was considered to be within the scope of permitted employment for alien crewmembers. The Immigration Act of 1990 has limited this practice in order to provide greater protection to U.S. longshore workers.

Section 258 of the INA prohibits alien crewmembers admitted with D-visas from performing longshore work except in four specific instances: (a) Where the vessel's country of registration does not prohibit U.S. crewmembers from performing longshore work in that country's ports and nationals of a country which does not prohibit U.S. crewmembers from performing longshore work in that country's ports hold a majority of the ownership interest in the vessel; (b) where there is in effect in a local port one or more collective bargaining agreement(s), each covering at least 30 percent of the longshore workers at a particular port and each permitting the activity to be performed by alien crewmembers; (c) where there is no collective bargaining agreement covering at least 30 percent of the longshore workers and an attestation has been filed with the Department which states that the use of alien crewmembers to perform longshore work is permitted under the prevailing practice of the port, that the use of alien crewmembers is not during a strike or lockout, that such use is not intended or designed to influence the election of a collective bargaining representative, and that notice has been provided to longshore workers at the port; and (d) where the activity is performed with the use of automated self-unloading conveyor belts or vacuum-actuated systems; *provided that,* the Secretary of Labor has not found that an attestation is required because it was not prevailing practice to utilize alien crewmembers to perform the activity or because the activity was performed during a strike or lockout or in order to influence the election of a collective bargaining representative. The term "longshore work" does not include the loading or unloading of hazardous cargo, as determined by the Secretary of Transportation, for safety and environmental protection and no attestations are necessary for the loading and unloading of such cargo.

B. Comments on Proposed Rule

On April 19, 1991, a proposed rule was published in the **Federal Register** to implement the Department's responsibilities relating to attestations by employers seeking to employ alien crewmembers, with a comment period ending May 3, 1991.

Comments were received from sixteen entities, twelve of which represent the shipping industry and businesses employing international personnel. These commenters generally assert that the proposed regulations need to be relaxed (*e.g.,* via expanded exceptions and a less stringent definition of "prevailing practice") in order that the attestation process not impose an undue burden on the shipping industry.

Comments were jointly submitted by the two major labor organizations of the International Longshoremen's Association (ILA) and the International Longshoremen's and Warehousemen's Union (ILWU). These comments generally countered those of the shipping industry, seeking to restrict exceptions and require a tougher standard for "prevailing practice."

Two of the remaining comments were received from ETA Regional Offices, and generally addressed procedural and jurisdictional issues regarding their role in the attestation process. In addition, comments from a professional legal organization were received which asserted general support for the proposed rule, and offered an array of recommendations to further protect both employers of alien crewmembers and members of labor organizations.

All of these comments have been reviewed and considered in preparing the interim final rule. A number of changes to the proposed regulations, discussed below, have been made as a result of this review.

While the comments received during the comment period on the proposed rule will be further considered, DOL is publishing these regulations on an interim final basis, with a comment period to end 60 days from the time of publication. A final rule will be published at a later date. The preamble to that final rule will discuss fully the comments received on the proposed rule and the interim final rule, and, where appropriate, the interim final rule will be amended.

C. Changes in Interim Final Rule

1. Definition of "Port"

The proposed rule defined a "port" as "a place * * * where ships * * * stop for the purpose of loading and unloading cargo." Labor organization commenters urged a change to clarify that a "port" refers to a conglomeration of terminals, to preclude the interpretation of individual terminals or docks as "ports." In drafting the proposed rule, the Department did not intend that "port" could be construed as a dock, pier, terminal or other "place," but that it encompass the commonly held view that a port is comprised of many docking places. Several commenters from the shipping industry strongly supported the proposed definition as they interpreted it to mean "dock," "pier," "terminal," or other "place," and even urged a definition that explicitly permitted an individual dock or terminal to be considered a port. DOL believes the conglomeration definition is the most reflective of Congressional intent. Moreover, various government agencies, including the U.S. Coast Guard, U.S. Army Corps of Engineers, and the Maritime Administration's Office of Port and Intermodal Development, utilize a definition that supports the "conglomeration" definition. Finally, the legislation itself uses the phrase "in and about the local port," implying a definition broader than an individual dock or terminal. Accordingly, the interim final rule redefines "port" as "a geographic area, either on a seacoast, lake, river or any other navigable body of water, which contains one or more publicly or privately owned terminals, piers, docks, or maritime facilities, which is commonly thought of as a port by other government maritime-related agencies, such as the Maritime Administration. U.S. ports include, but are not limited to, those listed in Appendix I to this subpart."

2. Automated Vessel Exception

Five commenters addressed the "Automated Vessel Exception," advocating a clarification to the requirements for using the exception, and for determining that a prevailing practice exists for such vessels when a complaint is filed. Commenters presented persuasive information that Congress intended to create a "presumption" that a prevailing practice exists regarding certain automated vessels, and that this practice should be allowed to continue under its own, separate exception. One business commenter suggested adding a statement that shifts the burden of proof to the complainant in the case of an automated vessel consistent with legislative history and language—i.e., "evidence which may be submitted by any interested party that the performance of such particular activity is not * * *" the prevailing practice. After further review, the DOL concurs with the proposition that the burden of proof is not on the employer. The presumption is created in the legislation that using alien crewmembers on automated vessels is the prevailing practice. To give this presumption effect, DOL has determined that in the case of automated vessels, the burden for determining the prevailing practice must not rest with the employer who is using the exception. Rather, in such cases, it must be shown by the preponderance of the evidence submitted by any interested party, that the use of alien crewmembers for a particular longshore activity at a particular port is not the prevailing practice. However, where a complainant has successfully challenged an employer's use of the automated vessel exception, and the employer has filed an attestation under the prevailing practice exception, the burden of proof shifts to the employer to show that a particular practice does, in fact, prevail at the particular port. Clarifying statements have been added to the interim final rule to reflect this shifting of burden.

3. Definition of "Longshore Work"

Labor organizations correctly pointed out a discrepancy between the definition of "Longshore Work" as it appears in § _____.502 and elsewhere in the proposed rule. The correct definition is in § _____.502, where it is defined as "any activity relating to the loading or unloading of cargo * * *" The interim final rule reflects this definition throughout.

4. Criteria for showing "Prevailing Practice"

Several commenters, representing both labor organizations and the shipping industry, recommended the deletion of "tonnage" as a criterion for determining "prevailing practice." Commenters argued persuasively that there is no demonstrable relationship between respective cargo volumes and the establishment of a "prevailing practice." DOL concurs with this position, and this criterion has been deleted from the interim final rule.

5. The 14-Day Filing Requirement

Because of the inherent impossibility of complying with the 14-day filing requirement for the first two weeks that the interim final rule is in effect, DOL will waive this requirement pursuant to the "unanticipated emergency" clause in § _____.510(b)(2). That is, all attestations received for longshore work scheduled to begin on or before [insert date 16 days after publication] will not be subject to this advance filing

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requirement, and will be deemed, therefore, "on time."

In addition, the DOL received various comments indicating confusion about the application of the 14-day filing requirement. Commenters were concerned that, under this rule, an attestation has to be filed each time a vessel arrives in a port. To clarify, an attestation is filed only once per year for each port at which alien crewmembers will be used. Therefore, the 14-day filing requirement applies only to the first performance of longshore work after the attestation is filed. Subsequent arrivals to the same U.S. port in the same year do not require that an additional attestation be filed. Changes to the interim final rule seek to clarify this point.

6. Reciprocity Exception

Several commenters pointed out that the "Reciprocity Exception" is incorrectly defined as a case "where the ship's country of registration permits U.S. crewmembers to perform longshore work in that country's ports. * * *" To accurately represent the legislation, this exception should read "where the vessel's country of registration does not prohibit U.S. crewmembers from performing longshore work in that country's ports * * *" In addition, in response to advice from the Department of State, a second requirement has been incorporated: "and nationals of a country (or countries) which does not prohibit U.S. crewmembers from performing longshore work in that country's ports hold a majority of the ownership interest in the vessel, as determined by the Secretary of State." These changes are reflected in the interim final rule.

7. Cease and Desist Order

One commenter suggested that when the Administrator notifies the employer that particular evidence from prior investigation(s) concerning the same or similar matter will be considered by the Administrator in determining whether to enter a requested cease and desist order, such evidence should be made available to the complaining party, as well as to the employer, as the proposed regulation provided. The Department concurs with the commenter's view, and the regulation has been changed to allow the complaining party to examine such evidence at the appropriate Wage and Hour Division office.

8. Administrative Law Judge Hearing

Commenters objected to the short time frames in the ALJ hearing procedure and, in particular, suggested that more preparation time be allowed before the hearing date and that the ALJ be given more flexibility in granting extensions of the hearing date. Despite the extremely compressed time frames specified in the Act, the Department concurs with the commenters to a certain extent, and the regulation has been changed in two particulars: The ALJ is required to give 14 (rather than 5) days notice of the hearing, so that the parties have more time for preparation; the ALJ is permitted to grant extensions of the hearing date within the 60-day statutory period, based on compelling reasons, and the consent of all the parties is required only where an extension beyond the 60-day statutory period is requested.

D. Changes Considered But Not Made

Four issues raised by a number of commenters appeared to merit special consideration for possible changes in the interim final rule, but after careful deliberation the proposed rule was left unchanged with respect to these issues.

1. Percentage Threshold for Establishing "Prevailing Practice"

Two commenters representing the shipping industry commented that the percentage necessary for establishing "prevailing practice" should be lowered from 50 percent to 30 percent. They argued that this lower threshold should be used because it equates to the requirement regarding coverage by a collective bargaining agreement. Two other commenters, including one employer, endorsed the 50 percent standard as prevailing. While DOL shares the shipping industry's concern for consistency, it believes in this case the appropriate basis for comparison should be other DOL programs where the concept is used. Accordingly, this definition is unchanged in the interim final rule.

2. Statutory Precondition to Filing of Attestations

Labor commenters sought to add an element to the attestation, requiring an employer to assert that no collective bargaining agreement exist covering 30 percent or more of the individuals involved in longshore work at the port. DOL reaffirms its position that the non-existence of a collective bargaining agreement is a statutory precondition to filing an attestation and is not specified in the statute as an element to be attested to by an employer. DOL believes that the INS has the enforcement responsibility to ensure that when an employer seeks to use alien crewmembers to perform longshore activity(ies) in a U.S. port (either pursuant to an attestation or under the automated vessel exception), this statutory precondition regarding collective bargaining agreements has been met.

3. Clarification of Hazardous Cargo Exception

Four commenters requested clarification regarding how to determine which vessels carrying hazardous cargo will be excepted from the filing of an attestation. Since this issue does not fall within DOL's jurisdiction, such clarification should be sought from the Department of Transportation.

4. Changes to the 14-day Filing Requirement

Three commenters representing the shipping industry sought to reduce or eliminate the 14-day filing requirement, as it prohibits last-minute changes in shipping schedules. By contrast, an ETA Regional Office recommended increasing the number of days required to allow for complications in processing. DOL has no flexibility in interpreting this requirement. The legislation explicitly requires 14-day advance filing.

III. Attestation Process and Requirements

An employer seeking to employ alien crewmembers for a particular activity of longshore work under the prevailing practice exception shall submit an attestation. An attestation is required for each port at which the employer intends to use alien crewmembers for longshore work and is valid for a period of twelve months from the time of its acceptance by DOL.

A. When and Where to File

The interim final rules requires that any attestation received less than 14 days prior to the first performance of longshore activity by alien crewmembers will be returned to the employer as unacceptable, unless the delay is due to an unanticipated emergency. An attestation is filed only once per year for each port at which alien crewmembers will be used. Therefore, this 14-day filing requirement applies only to the first performance of longshore work after the attestation is filed. Subsequent arrivals to the same U.S. port in the same year do not require that an additional attestation be filed. The Department will require that crewmember attestations be submitted to and accepted by the Chicago and Dallas regional offices since it is anticipated that employers using ports on the Great Lakes and the Gulf of Mexico will utilize alien crewmembers for this activity.

The ETA shall make available for public examination in Washington, DC, a list of employers which have filed attestations, and for each such employer, a copy of the employer's attestation and accompanying documentation in a timely manner after the acceptance of the attestation.

B. Acceptance for Filing

In accepting an attestation for filing, the interim final rule requires: That the application be received by ETA at least 14 days before the first performance of the longshore activity (unless an unanticipated emergency exists as defined herein); that the Department review an attestation only to ensure that it is completed properly, that it is accompanied by the required documentation specified in the regulations, that the documentation is not, on its face, inconsistent with the attestation, and the attestation does not involve a port or an employer for which the Department has previously made a determination which would preclude its acceptance.

Level of Federal Review of Attestations

In determining the Department's general approach to its review of employer attestations, the Department considered various approaches, ranging from the filing of all attestations with no review for completeness or compliance to a thorough review of each attestation and the accompanying documentation to determine whether the facts and evidence submitted are sufficient to prove each attestation element. The Department will review an attestation to ensure that it is received at least 14 days prior to the first performance of the longshore activity, unless due to an unanticipated emergency, that it is completed properly, that it has accompanying documentation for each element attested to, and that the documentation is not, on its face, inconsistent with the attestation. In addition, the Department will review attestations to determine the following: (1) Whether the Administrator, Wage and Hour Division, has found that it is not a prevailing practice to use alien crewmembers for a particular activity of longshore work for a port; (2) whether the Administrator has advise ETA that it has issued a cease and desist order currently in effect that would affect the attesting employer; (3) whether the Administrator has advised ETA of a determination that an employer has misrepresented or failed to comply with an attestation previously submitted and accepted for filing, requiring the Attorney General to bar the employer from entry to any U.S. port for up to one year; and (4) whether the Administrator has advised ETA that the employer has failed to comply with any penalty or remedy assessed.

Statutory Precondition

The Act provides that attestations can only be filed where "there is no collective bargaining agreement in effect in the local port covering at least 30 percent of the number of individuals employed in performing longshore work * * *." Similarly, an employer cannot avail itself of the automated vessel exception if there is a collective bargaining agreement in effect covering 30 percent or more of the individuals employed in longshore work at the port.

It appears to the Department that this statutory precondition to filing an attestation to use the prevailing practice exemption is not specified in the statute as an element to be attested to by an employer. Thus it is the Department's view that in those ports where a collective bargaining agreement covering 30 percent or more of the longshore workers is in effect, the INS alone has the enforcement responsibility pertaining to the use of alien crewmembers for longshore work. Therefore, any complaints that the statutory precondition is not met must be referred to and handled by the INS (not the Department of Labor). Such employers would, consequently, be subject only to remedies/sanctions available to INS (not to those remedies/sanctions provided in the section of the INA regarding attestations administered and enforces by the Department of Labor).

Appeals Process

The interim final rule does not include an administrative appeal process related to attestations. When an attestation is returned because it is untimely, improperly completed, or lacking proper documentation an employer may resubmit another attestation to the Department. Attestations which are accepted by ETA may be objected to by an aggrieved party through the complaint process in subpart G, and procedures for investigation, hearing and appeal are provided therein. Where the Administrator makes a finding regarding a prevailing practice issue, a **Federal Register** notice will be published to afford appeal rights to all potentially affected parties. The Department believes that this is consistent with the statute's intent for a streamlined attestation system for filing and a complaint-driven process for the enforcement of the statute's requirements.

C. Attestation Elements

Prevailing Practice

The interim final rule relies on employer certification and documentation of prevailing practice for the particular activity of longshore work performed. Longshore Work is defined in the statute as any activity (except safety and environmental protection work as described in section 258(b)(2) of the INA) relating to: (1) Loading of cargo; (12) unloading of cargo; (3) operation of cargo-related equipment (whether or not integral to the vessel), or (4) handling of mooring lines on the dock when a vessel is made fast or let go.

Under this interim final rule, the employer must submit facts and evidence with the attestation to show that in the year preceding the filing of the attestation one of the following conditions existed: (1) Over 50 percent of vessels docking at the port used alien crewmembers for the longshore activity; or (2) alien crewmembers made up over 50 percent of the workers who engaged in the activity.

Facts and evidence to support the prevailing practice exception shall include affidavits or summary statements of items like: Prevailing practice surveys of ship masters' experience and written statements from the port authority regarding port practice. Statements from collective bargaining representatives or shipping agents, etc., with knowledge of practices in the port in question may also be pertinent. In the event a complaint is filed with the Department on an attestation, the employer must have sufficient documentation available on file at the place of business of its U.S. agent to meet the burden of proof for the validity of each attestation element. Documentation submitted or retained pursuant to this part shall either be in English or be accompanied by an English translation.

The Department also considered what entity should be responsible for making determinations of prevailing practice, the type of data that should be used, and the type of documentation required to support such a determination. The legislative history suggests, and the Department proposes, a process which would rely on employer certification of prevailing practice. The consequence, however, is that if the Administrator determines that an employer erroneously attests as to port practice, the statute mandates that the employer be barred by the Attorney General from entering U.S. ports for up to one year. DOL will recommend to the Attorney General that a lesser period be imposed

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where an employer has attested in good faith, with a reasonable belief that the documentation available is indicative that the attested longshore activity(ies) prevail. In addition, the interim final rule provides that if, under such circumstances, an employer withdraws an attestation prior to performance of the activity(ies) in the port, the Administrator will not find reasonable cause to conduct an investigation unless it is alleged and reasonable cause is indicated that an employer made misrepresentations or did not give the required notice.

Strike, Lockout, Election

The employer must also attest that, at the time of submitting the attestation, there is not a strike or lockout in the course of a labor dispute in the port relating to the employer's longshore activity, and that it will not use alien crewmembers during a strike or lockout during the validity period of the attestation. To substantiate this requirement, an employer may submit a statement which indicates that, prior to submitting its attestation, the employer made a good faith effort to determine whether there is a strike or lockout at the particular port, as for example, by contacting the port authority or the collective bargaining representative(s) for longshore workers at the particular port.

Notice

Lastly, an employer of alien crewmembers must attest that at the time of filing the attestation, notice of the filing has been provided to the bargaining representative(s), or where there is no such bargaining representative(s), notice of the filing has been provided to longshore workers employed at the local port. After considering a variety of approaches for providing notice to longshore workers where there is no bargaining representation, including public advertisements in newspapers and/or radio, the interim final rule requires that employers deliver a copy of the notice to the local port authority for public distribution on request. In addition, employers are required to post the notice in conspicuous locations at the port where U.S. longshore workers can readily see the notice on their way to perform their longshore duties. The notice shall include a copy of the Form ETA 9033, shall state that the attestation with accompanying documentation has been filed and is available at the national office of ETA for review by interested parties, and shall explain where complaints can be filed with respect to employer attestations. DOL believes appropriate places for posting such notices include locations where other announcements and legally required notices, such as mandatory Fair Labor Standards Act wage and hour notices and Occupational Safety and Health Act notices, are posted. In addition, the Department shall periodically publish in the Federal Register a list of employers who have submitted attestations.

IV. Complaints, Investigations, and Dispositions

The Act provides that the Secretary shall establish complaint, investigation, and hearing procedures and authorizes the Secretary to issue cease and desist orders against employers. The Secretary's enforcement responsibilities are assigned to the Administrator, Wage and Hour Division, of the Employment Standards Administration.

A. Complaint, Investigation and Hearing

Section 258(c)(4) requires that the Secretary establish a system to conduct investigations where a complaint presents reasonable cause to believe that an attesting employer failed to meet a condition attested to or misrepresented a material fact in its attestation, or that a non-attesting employer claiming the automated vessel exception was not qualified for the exception because the performance of the associated longshore activity does not prevail in the port, or because the activity was performed during a strike or lockout or to influence the election of a collective bargaining representative. The interim final rule provides that the Wage and Hour Administrator may conduct investigations of potential violations of the law only pursuant to a complaint. The Department believes, based on the legislative history, that this carries out Congressional intent that the enforcement of the statute should be exclusively complaint-driven. The investigative process is to be completed and a determination issued in a 180-day period, or a longer period for good cause shown. Any aggrieved person may file a complaint.

The interim final rule provides that, after determining that there is reasonable cause to believe that an investigation is warranted, the Wage and Hour Division will conduct an investigation in which appropriate consideration is given to any previous and relevant Departmental determination as to the prevailing practice for the particular longshore activity(ies) and U.S. port at issue. Further, the interim final rule provides that, in investigating an attesting employer, the Administrator shall consider the employer's statutory burden to present and retain facts and evidence to show the matters attested. The regulations also require that the employer cooperate in the investigation and take no retaliatory action against persons who file complaints, assist in the investigation, or participate in administrative proceedings.

The interim final rule provides that, after the investigation is complete and a determination is made only with respect to an issue of the prevailing practice for using (or not using) alien crewmembers to perform particular longshore activity(ies) at a particular port (whether the investigation involves an attesting employer, or an employer claiming the automated vessel exception), the Department shall publish a Federal Register notice to advise any interested party(ies) of the Department's determination about the prevailing practice at issue and to provide any interested party(ies) the opportunity to request a hearing on the determination before an administrative law judge (ALJ). If no timely request for hearing is filed, or after an ALJ decision is issued which reverses the Administrator's determination or which establishes that the use of alien crewmembers is not the prevailing practice for particular longshore activity(ies) at the particular port (whether or not the later ALJ decision is a reversal of the Administrator's determination), the Department will publish a second Federal Register notice advising of the disposition of the prevailing practice issue. Should an ALJ's decision be further appealed to the Secretary, and the Secretary reverse the ALJ decision, the Department will publish a third notice in the Federal Register announcing the Secretary's decision and its effect for the prevailing practice for the activity(ies) and port in question.

Under the interim final rule, the second Federal Register notice will constitute formal advice to the public. Effective upon publication of the second Federal Register notice, ETA will no longer accept an attestation from any employer which attests to a prevailing practice that is contrary to the published determination by the Department. Additionally, as provided in subpart F, ETA will review attestations previously accepted for filing from other employers to determine if a heretofore accepted attestation of prevailing practice would clearly be nullified by the Department's published determination. Where it is easily identified that the employer's attestation regards the subject prevailing practice, ETA will either suspend or invalidate the attestation and so notify the employer. Where it is unclear whether the employer's accepted attestation regards the subject prevailing practice, the employer will need to make a determination, based upon the second Federal Register notice, whether to withdraw its valid attestation. Also effective upon publication of the second Federal Register notice, INS will not permit the use of alien crewmembers to perform the specified activity(ies) at the port (whether the employer asserts that it has an attestation on file with ETA for such activity(ies) at such port, or claims to be entitled to the automated vessel exception). In addition, in any subsequent investigation of any employer regarding the prevailing practice for the particular activity(ies) at the port specified in the second Federal Register notice, the Administrator shall give conclusive effect to the determination that the prevailing practice does not permit the use of alien crewmembers. This regulatory provision was deemed necessary because, in the Department's view, to do otherwise would condone illegal activity, since the illegal use of alien crewmembers would be the only manner in which the prevailing practice could have subsequently changed (unless a collective bargaining agreement covering more than 30 percent of the longshore workers at the port came into effect and permitted such use of alien crewmembers, in which case the attestation and automated vessel exceptions would no longer be applicable).

B. Administrative Law Judge Hearing and Discretionary Review by the Secretary

Section 258(c)(4)(D) requires that the Secretary provide interested parties an opportunity for a hearing within 60 days of the date of the investigative determination.

Because of this compressed time frame, the interim final rule requires that a request for hearing be filed directly with the Chief Administrative Law Judge no later than 15 days from the date of the Administrator's determination. Further, because of the problems of proof to be anticipated in an administrative hearing on factual issues of prevailing practice which may be virtually impossible to address except through hearsay reports of surveys, or for which crucial witnesses and other evidence may be unavailable except through hearsay since, for example, the witnesses are located outside the U.S., the interim final rule specifies that the Department's rules of evidence for ALJ proceedings shall not apply. In addition, the interim final rule incorporates the statutory imposition of the burden of proof on the attesting employer to establish the truth of the attestation elements.

An opportunity for discretionary review by the Secretary is afforded by the interim final rule, with short deadlines in accordance with the statutory intent for expedited dispositions. Any interested party may request such review, and the Secretary shall determine what matters, if any, will be reviewed.

C. Cease and Desist Order

Section 258(c)(4)(C) authorizes the Secretary, at the request of a complainant, to issue a cease and desist order against an attesting employer or against a non-attesting employer claiming the automated vessel exception. The complainant's request may be made when the Secretary has determined there is reasonable cause to conduct an investigation. The Act specifies that, if a complainant requests such an order, the employer will be notified and given 14 days within which to respond. The Secretary is then required to determine whether the preponderance of the evidence submitted supports the complainant's position and, if it does, to order that the employer cease and desist the activity(ies) at issue. The order remains in effect throughout the hearing process for the attesting employer; for the non-attesting employer claiming the automated vessel exception, the order remains in effect throughout the hearing process unless ETA accepts for filing an attestation from that employer for the activity(ies) and port which the cease and desist order affects.

The interim final rule provides that the complainant who desires a cease and desist order must submit two complete copies of the request and the evidence to substantiate the allegations (the second copy of the request and evidence will be provided to the employer). The Administrator's notice to the employer shall include copies of the complaint, the cease and desist order request and supporting evidence, and any other pertinent evidence from an investigation of the same or a closely related matter which the Administrator incorporates into the record. The employer will, thus, be fully informed as to the allegations and evidence. The Administrator's notice also shall specify that, during the 14 day response period specified by the Act, the Administrator will provide, at the employer's request, an opportunity for a meeting with a Wage and Hour Division official to give the employer's views on the evidence and issues. This meeting shall be informal, shall not be subject to any procedural rules, and shall include the complainant if the complainant so desires.

The interim final rule specifies that the cease and desist order will remain in effect unless and until withdrawn by the Administrator because the employer's position is determined to have been correct or a final determination is made which results in resolution of the matter under investigation, or—in the case of the automated vessel exception—an attestation relating to the longshore activity(ies) is accepted for filing by ETA.

D. Penalties

A violation of the Act or these regulations by an attesting employer may result in the imposition of administrative remedy(ies), such as a civil money penalty not to exceed $5,000 per alien crewmember illegally employed. Upon notice of the violation(s), the Attorney General shall thereafter not permit the vessels owned or chartered by the employer to enter any port of the U.S. during a period of up to one year. Additionally, ETA will be notified and shall thereafter not accept any attestation from the employer for any activity(ies) at any U.S. port for one year (or for a shorter period, if such period is specified by INS).

Upon the Department's final determination that an employer improperly claimed the automated vessel exemption, the Attorney General will be notified and shall thereafter require that, before using alien crewmembers, the employer must have on file with ETA an attestation for the activity(ies) and the port at issue.

V. Summary

The Department welcomes comments on these and any other issues addressed in the regulations and on any issues not addressed that commenters believe need to be addressed.

Regulatory Impact and Administrative Procedure

E.O. 12291: The rule does not have the financial or other impact to make it a major rule and, therefore, the preparation of a regulatory impact analysis is not necessary. See Executive Order 12291, 3 CFR, 1981 Comp., Page 127, 5 U.S.C. 601 note.

Regulatory Flexibility Act: The Department of Labor has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), that

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the rule does not have a significant economic impact on a substantial number of small entities.

Nevertheless, interested parties are requested to submit, as part of their comments on this rule, information on the potential economic impact of the rule.

Effective Date: The interim final rule is effective May 28, 1991, under Public Law 101-649, 104 Stat. 4978 (November 29, 1990), absent a final rule for attestations under this program, employers would be precluded from using alien crewmembers for longshore work after that date. For that reason, the Department of Labor finds that a delay in the effective date would be impracticable and contrary to the public interest.

Catalog of Federal Domestic Assistance Number

This program is not yet listed in the *Catalog of Federal Domestic Assistance.*

List of Subjects

20 CFR Part 655

Administrative practice and procedure, Agriculture, Aliens, Crewmembers, Employment, Enforcement, Forest and forest products, Guam, Health professions, Immigration, Labor, Longshore work, Migrant labor, Nurse, Penalties, Registered nurse, Reporting and recordkeeping requirements, Wages.

29 CFR Part 508

Administrative practice and procedures, Aliens, Crewmembers, Employment, Enforcement, Immigration, Labor, Longshore work, Penalties, Reporting and recordkeeping requirements.

Text of the Interim Final Joint Rule

The text of the interim final joint rule as proposed by ETA and the Wage and Hour Division, ESA, in this document appears below:

Subpart F—Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

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Subpart F—Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

§ ____.500 Purpose, procedure and applicability of subparts F and G of this part.

(a) *Purpose.* Section 258 of the Immigration and Nationality Act prohibits nonimmigrant alien crewmembers admitted to the United States on D-visas from performing longshore work at U.S. ports except in four specific instances:

(1) Where the vessel's country of registration does not prohibit U.S. crewmembers from performing longshore work in that country's ports and nationals of a country (or countries) which does not prohibit U.S. crewmembers from performing longshore work in that country's ports hold a majority of the ownership interest in the vessel, as determined by the Secretary of State;

(2) Where there is in effect in a local port one or more collective bargaining agreement(s), each covering at least thirty percent of the longshore workers, and each permitting the activity to be performed under the terms of such agreement(s);

(3) Where there is no collective bargaining agreement covering at least thirty percent of the longshore workers at the particular port and an attestation with accompanying documentation has been filed with the Department of Labor attesting that, among other things, the use of alien crewmembers to perform a particular activity of longshore work is permitted under the prevailing practice of the particular port (henceforth referred to as the "prevailing practice exception"); or

(4) Where the longshore work involves an automated self-unloading conveyor belt or vacuum-actuated system on a vessel and the Administrator has not previously determined that an attestation must be filed pursuant to this part as a basis for performing those functions (hereforth referred to as the "automated vessel exception").

The term "longshore work" does not include the loading or unloading of hazardous cargo, as determined by the Secretary of Transportation, for safety and environmental protection. The Department of Justice, through the Immigration and Naturalization Service (INS), determines whether an employer may use alien crewmembers for longshore work at U.S. ports. In those cases where an employer must file an attestation in order to perform such work, the Department of Labor shall be responsible for accepting the filing of such attestations. Subpart F of this part sets forth the procedure for filing attestations with the Department of Labor for employers proposing to use alien crewmembers for longshore work at U.S. ports under the prevailing practice exception and where it has been determined that an attestation is required under the automated vessel except listed in paragraph (a)(4) of this section. Subpart G of this part sets forth complaint, investigation, and penalty provisions with respect to such attestations.

(b) *Procedure.* Under the prevailing practice exception in section 258(c) of the Act, and in those cases where it has been determined that an attestation is required under the automated vessel exception, the procedure involves filing an attestation with the Department of Labor attesting that:

(1) The use of alien crewmembers for a particular activity of longshore work is the prevailing practice at the particular port;

(2) The use of alien crewmembers is not during a strike or lockout nor designed to influence the election of a collective bargaining representative; and

(3) Notice of the attestation has been provided to the bargaining representative of longshore workers in

the local port, or, where there is none, notice has been provided to longshore workers employed at the local port.

Under the automated vessel exception in section 258(c) of the Act, no attestation is required in cases where longshore activity consists of the use of an automated self-unloading conveyor belt or vacuum-actuated system on a vessel. The legislation creates a rebuttable presumption that the use of alien crewmembers for the operation of such automated systems is the prevailing practice. In order to overcome such presumption, it must be shown by the preponderance of the evidence submitted by any interested party, that the use of alien crewmembers for such activity is not the prevailing practice at the particular port, that it is during a strike or lockout, or that it is intended or designed to influence an election of a bargaining representative for workers in the local port.

(c) *Applicability.* Subparts F and G of this part apply to all employers who seek to employ alien crewmembers for longshore work at U.S. ports under the prevailing practice exception, to all employers claiming the automated vessel exception, and to those cases where it has been determined that an attestation is required under the automated vessel exception.

§ ____.501 Overview of responsibilities.

This section provides a context for the attestation process, to facilitate understanding by employers that may seek to employ alien crewmembers for longshore work under the prevailing practice exception and in those cases where an attestation is necessary under the automated vessel exception.

(a) *Department of Labor's responsibilities.* The United States Department of Labor (DOL) administers the attestation process. Within DOL, the Employment and Training Administration (ETA) shall have responsibility for setting up and operating the attestation process; the Employment Standards Administration's Wage and Hour Division shall be responsible for investigating and resolving any complaints filed concerning such attestations.

(b) *Employer attestation responsibilities.* Each employer seeking to use alien crewmembers for longshore work at a local U.S. port pursuant to the prevailing practice exception, or where an attestation is required under the automated vessel exception shall, as the first step, submit an attestation on Form ETA 9033, as described in § ____.510 of this part, to ETA at the address set forth at § ____.510(b) of this part. If ETA accepts the attestation for filing, pursuant to § ____.510 of this part, ETA shall return the cover form of the accepted attestation to the employer, and, at the same time, shall notify the Immigration and Naturalization Service (INS) of the filing.

(c) *Complaints.* Complaints concerning misrepresentation in the attestation, failure of the employer to carry out the terms of the attestation, or complaints that an employer is required to file an attestation under the automated vessel exception, may be filed with the Wage and Hour Division, according to the procedures set forth in subpart G of this part. Complaints of "misrepresentation" may include assertions that an employer has attested to the use of alien crewmembers only for a particular activity of longshore work and has thereafter used such alien crewmembers for another activity of longshore work. If the Division determines that the complaint presents reasonable cause to warrant an investigation, the Division shall then investigate, and, where appropriate, after an opportunity for a hearing, assess sanctions and penalties. Subpart G further provides that interested parties may obtain an administrative law judge hearing on the Division's determination after an investigation and may seek the Secretary's review of the administrative law judge's decision. Subpart G also provides that a complainant may request that the Wage and Hour Administrator issue a cease and desist order in the case of either alleged violation(s) of an attestation or longshore work by alien crewmember(s) employed by an employer allegedly not qualified for the claimed automated vessel exception. Upon the receipt of such a request, the Division shall notify the employer, provide an opportunity for a response and an informal meeting, and then rule on the request, which shall be granted if the preponderance of the evidence submitted supports the complainant's position.

§ ____.502 Definitions.

For the purposes of subparts F and G of this part:

Accepted for filing means that a properly completed attestation including accompanying documentation for each of the requirements in § ____.510(d) through (f) of this part submitted by the employer or its designated agent or representative has been received and filed by the Employment and Training Administration of the Department of Labor (DOL). (Unacceptable attestations are described at § ____.510(g)(2) of this part.)

Act and *INA* mean the Immigration and Nationality Act, as amended, 8 U.S.C. 1101 *et seq.*

Activity means any activity relating to loading cargo; unloading cargo; operation of cargo-related equipment; or handling of mooring lines on the dock when a vessel is made fast or let go.

Administrative law judge means an official appointed pursuant to 5 U.S.C. 3105.

Administrator means the Administrator of the Wage and Hour Division, Employment Standards Administration, Department of Labor, or such authorized representatives as may be designated to perform any of the functions of the Administrator under subparts F and G of this part.

Attestation means documents submitted by an employer attesting to and providing accompanying documentation to show that the use of alien crewmembers for a particular activity of longshore work at a particular U.S. port is the prevailing practice, and is not during a strike or lockout nor intended to influence an election of a bargaining representative for workers; and that notice of the attestation has been provided to the bargaining representative, or, where there is none, to the longshore workers at the local port.

Attesting employer means an employer who has filed an attestation.

Attorney General means the chief official of the U.S. Department of Justice or the Attorney General's designee.

Automated vessel means a vessel equipped with an automated self-unloading conveyor belt or vaccum-actuated system which is utilized for loading or unloading cargo between the vessel and the dock.

Certifying Officer means a Department of Labor official who makes determinations about whether or not to accept attestations:

(1) A regional Certifying Officer designated by a Regional Administrator, Employment and Training Administration (RA) makes such determinations in a regional office of the Department;

(2) A national Certifying Officer makes such determinations in the national office of the USES.

Chief Administrative Law Judge means the chief official of the Office of the Administrative Law Judges of the Department of Labor or the Chief Administrative Law Judge's designee.

Chief, Division of Foreign Labor Certifications, USES means the chief official of the Division of Foreign Labor Certifications within the United States Employment Service, Employment and

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Training Administration, Department of Labor, or the designee of the Chief, Division of Foreign Labor Certifications, USES.

Crewmember means any nonimmigrant alien admitted to the United States to perform services under sec. 101(a)(15)(D)(i) of the Act (8 U.S.C. 1101(a)(15)(D)(i)).

Date of filing means the date an attestation is "accepted for filing" by ETA.

Department and *DOL* mean the United States Department of Labor.

Director means the chief official of the United States Employment Service (USES), Employment and Training Administration, Department of Labor, or the Director's designee.

Division means the Wage and Hour Division of the Employment Standards Administration, DOL.

Employer means a person, firm, corporation, or other association or organization, which suffers or permits, or proposes to suffer or permit, alien crewmembers to perform longshore work at a port within the U.S.

Employment and Training Administration (ETA) means the agency within the Department of Labor (DOL) which includes the United States Employment Service (USES).

Employment Standards Administration (ESA) means the agency within the Department of Labor (DOL) which includes the Wage and Hour Division.

Immigration and Naturalization Service (INS) means the component of the Department of Justice which makes the determination under the Act on whether an employer of alien crewmembers may use such crewmembers for longshore work at a U.S. port.

Lockout means a labor dispute involving a work stoppage, wherein an employer withholds work from its employees in order to gain a concession from them.

Longshore work means any activity (except safety and environmental protection work as described in section 258(b)(2) of the Act) relating to the loading or unloading of cargo, the operation of cargo related equipment (whether or not integral to the vessel), or the handling of mooring lines on the dock when the vessel is made fast or let go, in the United States or the coastal waters thereof.

Longshore worker means a U.S. worker who performs longshore work.

Port means a geographic area, either on a seacoast, lake, river or any other navigable body of water, which contains one or more publicly or privately owned terminals, piers, docks, or maritime facilities, which is commonly thought of as a port by other government maritime-related agencies, such as the Maritime Administration. U.S. ports include, but are not limited to, those listed in appendix I to this subpart.

Regional Administrator, Employment and Training Administration (RA) means the chief official of the Employment and Training Administration (ETA) in a Department of Labor (DOL) regional office.

Secretary means the Secretary of Labor or the Secretary's designee.

Strike means a labor dispute wherein employees engage in a concerted stoppage of work (including stoppage by reason of the expiration of a collective-bargaining agreement) or engage in any concerted slowdown or other concerted interruption of operations.

Unanticipated emergency means an unexpected and unavoidable situation, such as one involving severe weather conditions, natural disaster, or mechanical breakdown, where cargo must be immediately loaded on, or unloaded from, a vessel.

United States Employment Service (USES) means the agency of the Department of Labor, established under the Wagner-Peyser Act, which is charged with administering the national system of public employment offices.

United States (U.S.) worker means a worker who is a U.S. citizen, a U.S. national, a permanent resident alien, or any other worker legally permitted to work infinitely in the United States.

United States is defined at 8 U.S.C. 1101(a)(38).

§ ____.510 Employer attestations.

(a) *Who may submit attestations?* An employer (or the employer's designated U.S. agent or representative) seeking to employ alien crewmembers for a particular activity of longshore work under the prevailing practice exception shall submit an attestation, provided there is not in effect in the local port any collective bargaining agreement covering at least 30 percent of the longshore workers. An attestation is required for each port at which the employer intends to use alien crewmembers for longshore work. The attestation shall include: a completed Form ETA 9033, which shall be signed by the employer (or the employer's designated agent or representative); and facts and evidence prescribed in paragraphs (d) through (f) of this section.

(b) *Where and when should attestations be submitted?* (1) Attestations must be submitted, by U.S. mail, private carrier, or facsimile transmission to the U.S. Department of Labor ETA Regional Office(s) which are designated by the Chief, Division of Foreign Labor Certifications, USES. Attestations must be received and date-stamped by DOL at least 14 calendar days prior to the date of the first performance of the intended longshore activity, and shall be accepted for filing or returned by ETA in accordance with paragraph (g) of this section within 14 calendar days of the date received by ETA. An attestation which is accepted by ETA solely because it was not reviewed within 14 days is subject to subsequent invalidation pursuant to paragraph (i) of this section. Every employer filing an attestation shall have an agent or representative with a United States address. Such address shall be clearly indicated on the Form ETA 9033. In order to ensure that an attestation has been accepted for filing prior to the date of the performance of the longshore activity, employers are advised to take mailing time into account to make sure that ETA receives the attestation at least 14 days prior to the first performance of the longshore activity.

(2) *Unanticipated Emergencies.* ETA may accept for filing attestations received after the 14-day deadline when due to an unanticipated emergency, as defined in § ____.502 of this part. When an employer is claiming an unanticipated emergency, it shall submit documentation to support such a claim. ETA shall then make a determination on the validity of the claim, and shall accept the attestation for filing or return it in accordance with paragraph (g) of this section. ETA shall in no case accept an attestation received later than the date of the first performance of the activity.

(c) *What should be submitted?*—(1) *Form ETA 9033 with accompanying documentation.* For each port, a completed and dated original Form ETA 9033, containing the required attestation elements and the original signature of the employer (or the employer's designated agent or representative), shall be submitted, along with two copies of the completed, signed, and dated Form ETA 9033. (Copies of Form ETA 9033 will be available at all Department of Labor ETA Regional Offices and at the National Office). In addition, the employer shall submit facts and evidence to show compliance with each of the attestation elements as prescribed by the regulatory standards in paragraphs (d) through (f) of this section. In the case of an investigation pursuant to subpart G of this part, the employer shall have the burden of proof to establish the validity of each attestation. The employer shall maintain in its records at the office of its U.S. agent, for a period of at least 3 years from the date of filing, sufficient documentation to meet its burden of proof and shall make the documents available to Department of Labor officials upon request. Whenever any document is submitted to a Federal agency or retained in the employer's records pursuant to this part, the document either shall be in the English language or shall be accompanied by a written translation into the English language certified by the translator as to the accuracy of the translation and his/her competency to translate.

(2) *Attestation elements.* The attestation elements referenced in paragraph (c)(1) of this section are mandated by section 258(c)(1)(B) of the Act (8 U.S.C. 1288(c)(1)(B)). Section 258(c)(1)(B) of the Act requires employers who seek to have alien crewmembers engage in a longshore activity to attest as follows:

(i) The performance of the activity by alien crewmembers is permitted under the prevailing practice of the particular port as of the date of filing of the attestation;

(ii) The use of the alien crewmembers for such activity is not during a strike or lockout in the course of a labor dispute, and is not intended or designed to influence an election of a bargaining representative for workers in the local port; and

(iii) Notice of the attestation has been provided by the owner, agent, consignee, master, or commanding officer to the bargaining representative of longshore workers in the local port, or, where there is no such bargaining representative, notice has been provided to longshore workers employed at the local port.

(d) *The first attestation element: prevailing practice.* For an employer to be in compliance with the first attestation element, it is required to have been the prevailing practice during the 12-month period preceding the filing of the attestation, for a particular activity of longshore work at the particular port to be performed by alien crewmembers. For each port, a prevailing practice can be established for any activity relating to each of four different types of longshore work: Loading of cargo, unloading of cargo, operation of cargo-related equipment, or handling of mooring lines. It is thus possible that at a particular port is the prevailing practice for alien crewmembers to unload vessels but not the prevailing practice to load them. An employer shall indicate on the attestation which of the four activities it is claiming is the prevailing practice to be performed by alien crewmembers.

(1) *Establishing a prevailing practice.* In establishing that a particular activity of longshore work is the prevailing practice at a particular port, an employer shall submit facts and evidence to show that in the 12-month period preceding the filing of the attestation, one of the following conditions existed:

(i) Over fifty percent of vessels docking at the port used alien crewmembers for the activity (for purposes of this subparagraph, a vessel shall be counted each time it docks at the particular port); or

(ii) Alien crewmembers made up over fifty percent of the workers in the port who engaged in the activity. For purposes of this paragraph (d), automated vessels shall not be included in counting the number of vessels which dock at the port. For establishing a prevailing practice under the automated vessel exception see § ____.520 of this subpart.

(2) *Documentation.* In assembling the facts and evidence required by paragraph (d)(1) of this section, the employer may consult with the port authority which has jurisdiction over the local port, the collective bargaining representative(s) of longshore workers at the local port, other employers, or any other entity which is familiar with the practices at the port. Such documentation shall include a written summary of a survey of the experience of shipmasters who entered the local port in the previous year; or a letter, affidavit, or other written statement from an appropriate local port authority regarding the use of alien crewmembers to perform the longshore activity at the port in the previous year; or other documentation of comparable weight. Written statements from collective bargaining representatives and/or shipping agents with direct knowledge of practices regarding the use of alien crewmembers in the local port may also be pertinent. Such documentation shall accompany the Form ETA 9033, and any underlying documentation which supports the employer's burden of proof shall be maintained in the employer's records at the office of the U.S. agent as required by paragraph (c)(1) of this section.

(e) *The second attestation element: no strike or lockout; no intention or design to influence bargaining representative election.* (1) The employer shall attest that, at the time of submitting the attestation, there is not a strike or lockout in the course of a labor dispute covering the employer's activity, and that it will not use alien crewmembers during a strike or lockout after filing the attestation. The employer shall also attest that the employment of such aliens is not intended or designed to influence an election for a bargaining representative for workers in the local port. Labor disputes for purposes of this attestation element relate only to those involving longshore workers at the port of intended employment. This attestation element applies to strikes and lockouts and elections of bargaining representatives at the local port where the use of alien crewmembers for longshore work is intended.

(2) *Documentation.* As documentation to substantiate the requirement in paragraph (e)(1) of this section, an employer may submit a statement of the good faith efforts made to determine whether there is a strike or lockout at the particular port, as, for example, by contacting the port authority or the collective bargaining representative for longshore workers at the particular port.

(f) *The third attestation element: notice of filing.* The employer of alien crewmembers shall attest that at the time of filing the attestation, notice of filing has been provided to the bargaining representative of the longshore workers in the local port, or, where there is no such bargaining representative, notice of the filing has been provided to longshore workers employed at the local port through posting in conspicuous locations and through other appropriate means.

(1) *Notification of bargaining representative.* No later than the date the attestation is received by DOL to be considered for filing, the employer of alien crewmembers shall notify the bargaining representative (if any) of longshore workers at the local port that the attestation is being submitted to DOL. The notice shall include a copy of the Form ETA 9033, shall state the activity(ies) for which the attestation is submitted, and shall state in that notice that the attestation and accompanying documentation are available at the national office of ETA for review by interested parties. The employer may have its owner, agent, consignee, master, or commanding officer provide such notice. Notices under this paragraph (f)(1) shall include the following statement: "Complaints alleging misrepresentation of material facts in the attestation and/or failure to comply with the terms of the attestation may be filed with any office of the Wage and Hour Division of the United States Department of Labor."

(2) *Posting notice where there is no bargaining representative.* If there is no bargaining representative of longshore workers at the local port when the employer submits an attestation to ETA,

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the employer shall provide written notice to the port authority for distribution to the public on request. In addition, the employer shall post one or more written notices at the local port, stating that the attestation with accompanying documentation has been submitted, the activity(ies) for which the attestation has been submitted, and that the attestation and accompanying documentation are available at the national office of ETA for review by interested parties. Such posted notice shall be clearly visible and unobstructed, and shall be posted in conspicuous places where the longshore workers readily can read the posted notice on the way to or from their duties. Appropriate locations for posting such notices include locations in the immediate proximity of mandatory Fair Labor Standards Act wage and hour notices and Occupational Safety and Health Act occupational safety and health notices. The notice shall include a copy of the Form ETA 9033 filed with DOL, shall provide information concerning the availability of supporting documents for examination at the national office of ETA, and shall include the following statement: "Complaints" alleging misrepresentation of material facts in the attestation and/or failure to comply with the terms of the attestation may be filed with any office of the Wage and Hour Division of the United States Department of Labor."

(3) *Documentation.* The employer shall provide a statement setting forth the name and address of the person to whom the notice was provided and where and when the notice was posted and shall attach a copy of the notice.

(g) *Actions on attestations submitted for filing.* Once an attestation has been received from an employer, a determination shall be made by the regional Certifying Officer whether to accept the attestation for filing or return it. The regional Certifying Officer may request additional explanation and/or documentation from the employer in making this determination. An attestation which is properly filled out and which includes accompanying documentation for each of the requirements set forth at § ____.510 (d) through (f) shall be accepted for filing by ETA on the date it is signed by the regional Certifying Officer unless it falls within one of the categories set forth in paragraph (g)(2) of this section. Once an attestation is accepted for filing, ETA shall then follow the procedures set forth in paragraph (g)(1) of this section. Upon acceptance of the employer's attestation by ETA, the attestation and accompanying documentation will be forwarded and shall be available in a timely manner for public examination at the ETA national office. ETA shall not consider information contesting an attestation received by ETA prior to the determination to accept or return the attestation for filing. Such information shall not be made part of ETA's administrative record on the attestation, but shall be referred to ESA to be processed as a complaint pursuant to subpart G of this part if the attestation is accepted by ETA for filing.

(1) *Acceptance.* (i) If the attestation is properly filled out and includes accompanying documentation for each of the requirements at § ____.510 (d) through (f) of this subpart, and does not fall within one of the categories set forth at paragraph (g)(2) of this section, ETA shall accept the attestation for filing, notify the Attorney General in writing of the filing, and return to the employer, or the employer's agent or representative at a U.S. address, one copy of the attestation form submitted by the employer, with ETA's acceptance indicated thereon. The employer may then use alien crewmembers for the particular activity of longshore work at the U.S. port cited in the attestation in accordance with INS regulations.

(ii) DOL is not the guarantor of the accuracy, truthfulness or adequacy of an attestation accepted for filing.

(2) *Unacceptable Attestations.* ETA shall not accept an attestation for filing and shall return such attestation to the employer, or the employer's agent or representative at a U.S. address, when one of the following conditions exists:

(i) When the Form ETA 9033 is not properly filled out. Examples of improperly filled out Form ETA 9033's include instances where the employer has neglected to check all the necessary boxes, or where the employer has failed to include the name of the port where it intends to use the alien crewmembers for longshore work, or when the employer has failed to sign the attestation or to designate an agent in the United States;

(ii) When the Form ETA 9033 with accompanying documentation is not received by ETA at least 14 days prior to the date of performance of the first activity indicated on the Form ETA 9033; unless the employer is claiming an unanticipated emergency, has included documentation which supports such claim, and ETA has found the claim to be valid;

(iii) When the Form ETA 9033 does not include accompanying documentation for each of the requirements set forth at § ____.510 (d) through (f);

(iv) When the accompanying documentation required by paragraph (c) of this section submitted by the employer, on its face, is inconsistent with the requirements set forth at § ____.510 (d) through (f). Examples of such a situation include instances where the Form ETA 9033 pertains to one port and the accompanying documentation to another; where the Form ETA 9033 pertains to one activity of longshore work and the accompanying documentation obviously refers to another; or where the documentation clearly indicates that only thirty percent, instead of the required fifty percent, of the activity attested to is performed by alien crewmembers;

(v) When the Administrator, Wage and Hour Division, has notified ETA, in writing, after an investigation pursuant to subpart G of this part, that the particular activity of longshore work which the employer has attested is the prevailing practice at a particular port, is not, in fact, the prevailing practice at the particular port;

(vi) When the Administrator, Wage and Hour Division, has notified ETA, in writing, that a cease and desist order has been issued pursuant to subpart G, with respect to the attesting employer's performance of the particular activity and port, in violation of a previously accepted attestation;

(vii) When the Administrator, Wage and Hour Division, has notified ETA, in writing, after an investigation pursuant to subpart G of this part, that the particular employer has misrepresented or failed to comply with an attestation previously submitted and accepted for filing, but in no case for a period of more than one year after the date of the Administrator's notice and provided that INS has not advised ETA that the prohibition is in effect for a lesser period; or

(viii) When the Administrator, Wage and Hour Division, has notified ETA, in writing, that the employer has failed to comply with any penalty, sanction, or other remedy assessed in a final agency action following an investigation by the Wage and Hour Division pursuant to subpart G of this part.

(3) *Resubmission.* If the attestation is not accepted for filing pursuant to the categories set forth in paragraph (g)(2) of this section, ETA shall return to the employer, or the employer's agent or representative, at a U.S. address, the attestation form and accompanying documentation submitted by the employer. ETA shall notify the employer, in writing of the reason(s) that the attestation is unacceptable. When an attestation is found to be unacceptable pursuant to paragraphs (g)(2) (i) through (iv) of this section, the employer may resubmit the attestation with the proper documentation. When an attestation is found to be unacceptable pursuant to paragraphs (g)(2) (v) through (viii) of this section and returned, such action shall be the final decision of the Secretary of Labor.

(h) *Effective date and validity of filing attestations.* An attestation is filed and effective as of the date it is accepted and signed by the regional Certifying Officer. Such attestation is valid for the 12-month period beginning on the date of acceptance for filing, unless suspended or invalidated pursuant to subpart G of this part or paragraph (i) of this section. The filed attestation expires at the end of the 12-month period of validity.

(i) *Suspension or invalidation of filed attestations.* Suspension or invalidation of an attestation may result from enforcement action(s) under subpart G of this part (i.e., investigation(s) conducted by the Administrator or cease and desist order(s) issued by the Administrator regarding the employer's misrepresentation in or failure to carry out its attestation); or from a discovery by ETA that it made an error in accepting the attestation because such attestation falls within one of the categories set forth in paragraph (g)(2) of this section.

(1) *Result of Wage and Hour Division action.* Upon the determination of a violation under subpart G of this part, the Administrator shall, pursuant to § ____.660(b), notify the Attorney General of the violation and of the Administrator's notice to ETA.

(2) *Result of ETA action.* If, after accepting an attestation for filing, ETA finds that the attestation is unacceptable because it falls within one of the categories set forth at paragraph (g)(2) of this section, and as a result, ETA suspends or invalidates the attestation, ETA shall notify the Attorney General of such suspension or invalidation and shall return a copy of the attestation form to the employer, or the employer's agent or representative, at a U.S. address. ETA shall notify the employer, in writing, of the reason(s) that the attestation is suspended or invalidated. When an attestation is found to be suspended or invalidated pursuant to paragraphs (g)(2) (i) through (iv) of this section, the employer may resubmit the attestation with the proper documentation. When an attestation is suspended or invalidated because it falls within one of the categories in paragraphs (g)(2) (v) through (viii) of this section, such action shall be the final decision of the Secretary of Labor,

except as set forth in subpart G of this part.

(j) *Withdrawal of accepted attestations.* (1) An employer who has submitted an attestation which has been accepted for filing may withdraw such attestation at any time before the 12-month period of its validity terminates, unless the Administrator has found reasonable cause under subpart G to commence an investigation of the particular attestation. Such withdrawal may be advisable, for example, when the employer learns that the particular activity(ies) of longshore work which it has attested is the prevailing practice to perform with alien crewmembers may not, in fact, have been the prevailing practice at the particular port at the time of filing. Request for such withdrawals shall be in writing and shall be directed to the regional Certifying Officer.

(2) Withdrawal of an attestation shall not affect an employer's liability with respect to any failure to meet the conditions attested to which took place before the withdrawal, or for misrepresentations in an attestation. However, if an employer has not yet performed the particular longshore activity(ies) at the port in question, the Administrator will not find reasonable cause to investigate unless it is alleged, and there is reasonable cause to believe, that the employer has made misrepresentations in the attestation or documentation thereof, or that the employer has not in fact given the notice attested to.

§ ____.520 Special provisions regarding automated vessels.

In general, an attestation is not required in the case of a particular activity of longshore work consisting of the use of automated self-unloading conveyor belt or vacuum-actuated systems on a vessel. The legislation creates a rebuttable presumption that the use of alien crewmembers for the operation of such automated systems is the prevailing practice. In order to overcome such presumption, it must be shown by the preponderance of the evidence submitted by any interested party, that the use of alien crewmembers for such activity is not the prevailing practice. Longshore work with such equipment shall be exempt from the attestation requirement only if it consists of using that equipment. If the automated equipment is not used in the particular activity of longshore work, an attestation is required as described under § ____.510 of this part.

When the automated equipment is used in the particular activity of longshore work, an attestation is required only if the Administrator finds, based on a preponderance of the evidence which may be submitted by any interested party, that the performance of the particular activity is not the prevailing practice at the port, or was during a strike or lockout or intended to influence an election of a bargaining representative for workers in the local port, or if the Administrator issues a cease and desist order against use of the automated equipment without such attestation.

(a) *Procedure when attestation is required.* If it is determined pursuant to subpart G of this part that an attestation is required for longshore work consisting of the use of automated equipment, the employer shall comply with all the requirements set forth at § ____.510 of this part except paragraph (d) of § ____.510. In lieu of complying with § ____.510(d) of this part, the employer shall comply with paragraph (b) of this section.

(b) *The first attestation element: prevailing practice for automated vessels.* For an employer to be in compliance with the first attestation element, it is required to have been the prevailing practice that over fifty percent (as described in paragraph (b)(1) of this section) of a particular activity of longshore work which was performed through the use of automated self-unloading conveyor belt or vacuum-actuated equipment at the particular port during the 12-month period preceding the filing of the attestation, was performed by alien crewmembers.

(1) *Establishing a prevailing practice.* In establishing that use of alien crewmembers to perform a particular activity of longshore work consisting of the use of self-unloading conveyor belt or vacuum-actuated systems on a vessel is the prevailing practice at a particular port, an employer shall submit facts and evidence to show that in the 12-month period preceding the filing of the attestation, one of the following conditions existed:

(i) Over fifty percent of the automated vessels docking at the port used alien crewmembers for the activity (for purposes of this paragraph (b)(1), a vessel shall be counted each time it docks at the particular port); or

(ii) Alien crewmembers made up over fifty percent of the workers who performed the activity with respect to such automated vessels.

For purposes of this paragraph (b), only automated vessels shall be included in counting the number of vessels which dock at the port.

(2) *Documentation.* In assembling the documentation described in paragraph (b)(1) of this section, the employer may

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consult with the port authority which has jurisdiction over the local port, the collective bargaining representative(s) of longshore workers at the local port, other employers, or any other entity which is familiar with the practices at the port. The documentation shall include a written summary of a survey of the experience of shipmasters who entered the local port in the previous year; or a letter, affidavit, or other written statement from an appropriate local port authority regarding the use of alien crewmembers to perform the longshore activity at the port in the previous year; or other documentation of comparable weight. Written statements from collective bargaining representatives and/or shipping agents with direct knowledge of practices regarding the use of alien crewmembers may also be pertinent. Such documentation shall accompany the Form ETA 9033, and any underlying documentation which supports the employer's burden of proof shall be maintained in the employer's records at the office of the U.S. agent as required under § ____.510(c)(1) of this part.

§ ____.550 Public access.

(a) *Public examination at ETA.* ETA shall make available for public examination in Washington, DC, a list of employers which have filed attestations, and for each such employer, a copy of the employer's attestation and accompanying documentation it has received.

(b) *Notice to public.* ETA periodically shall publish a list in the **Federal Register** identifying employers which have submitted attestations; employers which have attestations on file; and employers which have submitted attestations which have been found unacceptable for filing.

Subpart G—Enforcement of the Limitations Imposed on Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

§ ____.600 Enforcement authority of Administrator, Wage and Hour Division.

(a) The Administrator shall perform all the Secretary's investigative and enforcement functions under section 258 of the INA (8 U.S.C. 1288) and subparts F and G of this part.

(b) The Administrator, pursuant to a complaint, shall conduct such investigations as may be appropriate and, in connection therewith, enter and inspect such places and such records (and make transcriptions or copies thereof), question such persons and gather such information as deemed necessary by the Administrator to determine compliance regarding the matters which are the subject of the investigation.

(c) An employer being investigated shall make available to the Administrator such records, information, persons, and places as the Administrator deems appropriate to copy, transcribe, question, or inspect. No employer subject to the provisions of section 258 of the INA (U.S.C. 1288) and subparts F and G of this part shall interfere with any official of the Department of Labor performing an investigation, inspection or law enforcement function pursuant to 8 U.S.C. 1288 or subpart F or G of this part. Any such interference shall be a violation of the attestation and subparts F and G of this part, and the Administrator may take such further actions as the Administrator considers appropriate.

(Note: Federal criminal statutes prohibit certain interference with a Federal officer in the performance of official duties. 18 U.S.C. 111 and 18 U.S.C. 1114.)

(d) An employer subject to subparts F and G of this part shall at all times cooperate in administrative and enforcement proceedings. No employer shall intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any person because such person has:

(1) Filed a complaint or appeal under or related to section 258 of the INA (8 U.S.C. 1288) or subpart F or G of this part;

(2) Testified or is about to testify in any proceeding under or related to section 258 of the INA (8 U.S.C. 1288) or subpart F or G of this part;

(3) Exercised or asserted on behalf of himself or herself or others any right or protection afforded by section 258 of the INA (8 U.S.C. 1288) or subpart F or G of this part.

(4) Consulted with an employee of a legal assistance program or an attorney on matters related to section 258 of the Act or to subpart F or G of this part or any other DOL regulation promulgated pursuant to 8 U.S.C. 1288.

In the event of such intimidation or restraint as are described in this section, the conduct shall be a violation of the attestation and these regulations, and the Administrator may take such further actions as the Administrator considers appropriate.

(e) The Administrator shall, to the extent possible under existing law, protect the confidentiality of any person who provides information to the Department in confidence in the course of an investigation or otherwise under subpart F or G of this part. However, confidentiality will not be afforded to the complainant or to information provided by the complainant.

§ ____.605 Complaints and investigative procedures.

(a) The Administrator, through an investigation, shall determine whether a basis exists to make a finding that:

(1) An attesting employer has—

(i) Failed to meet conditions attested to; or

(ii) Misrepresented a material fact in an attestation.

(Note: Federal criminal statutes provide penalties of up to $10,000 and/or imprisonment of up to 5 years for knowing and willful submission of false statements to the Federal Government. 18 U.S.C. 1001; see also 18 U.S.C. 1546.); or

(2) In the case of an employer operating under the automated vessel exception to the prohibition on utilizing alien crewmembers to perform longshore activity(ies) at a U.S. port, the employer—

(i) Is utilizing alien crewmember(s) to perform longshore activity(ies) at a port where the prevailing practice has not been to use such workers for such activity(ies); or

(ii) Is utilizing alien crewmember(s) to perform longshore activities:

(A) during a strike or lockout in the course of a labor dispute at the U.S. port and/or

(B) with intent or design to influence an election of a bargaining representative for workers at the U.S. port; or

(3) An employer failed to comply in any other manner with the provisions of subpart F or G of this part.

(b) Any aggrieved person or organization may file a complaint of a violation of the provisions of subpart F or G of this part.

(1) No particular form of complaint is required, except that the complaint shall be written or, if oral, shall be reduced to writing by the Wage and Hour Division official who receives the complaint.

(2) The complaint shall set forth sufficient facts for the Administrator to determine—

(i) whether, in the case of an attesting employer, there is reasonable cause to believe that particular part or parts of the attestation or regulations have been violated; or

(ii) whether, in the case of an employer claiming the automated vessel exception, the preponderance of the evidence submitted by any interested party shows that conditions exist that would require the employer to file an attestation.

(3) The complaint may be submitted to any local Wage and Hour Division office; the addresses of such offices are found in local telephone directories. The office or person receiving such a complaint shall refer it to the office of the Wage and Hour Division administering the area in which the reported violation is alleged to have occurred.

(c) The Administrator shall determine whether there is reasonable cause to believe that the complaint warrants investigation. If the Administrator determines that the complaint fails to present reasonable cause for an investigation, the Administrator shall so notify the complainant, who may submit a new complaint, with such additional information as may be necessary. There shall be no hearing pursuant to § ____.625 for the Administrator's determination not to conduct an investigation. If the Administrator determines that an investigation on the complaint is warranted, the investigation shall be conducted and a determination issued within 180 calendar days of the Administrator's receipt of the complaint, or later for good cause shown.

(d) In conducting an investigation, the Administrator may consider and make part of the investigation file any evidence or materials that have been compiled in any previous investigation regarding the same or a closely related matter.

(e) In conducting an investigation under an attestation, the Administrator shall take into consideration the employer's burden to provide facts and evidence to establish the matters asserted. In conducting an investigation regarding an employer's eligibility for the automated vessel exception, the Administrator shall not impose the burden of proof on the employer, but shall consider all evidence from any interested party in determining whether the employer is not eligible for the exception.

(f) In an investigation regarding the use of alien crewmembers to perform longshore activity(ies) in a U.S. port (whether by an attesting employer or by an employer claiming the automated vessel exception), the Administrator shall accept as conclusive proof a previous Departmental determination, published in the **Federal Register** pursuant to § ____.670, establishing that such use of alien crewmembers is not the prevailing practice for the activity(ies) and U.S. port at issue. The Administrator shall give appropriate weight to a previous Departmental determination published in the **Federal Register** pursuant to § ____.670, establishing that at the time of such determination, such use of alien crewmembers was the prevailing practice for the activity(ies) and U.S. port at issue.

(g) When an investigation has been conducted, the Administrator shall, within the time period specified in paragraph (c) of this section, issue a written determination as to whether a basis exists to make a finding stated in paragraph (a) of this section. The determination shall be issued and an opportunity for a hearing shall be afforded in accordance with the procedures specified in § ____.625(d) of this part.

§ ____.610 Automated vessel exception to prohibition on utilization of alien crewmember(s) to perform longshore activity(ies) at a U.S. port.

(a) The Act establishes a rebuttable presumption that the prevailing practice in U.S. ports for automated vessels (i.e., vessels equipped with automated self-unloading conveyor belts or vacuum-actuated systems) to use alien crewmembers to perform longshore activity(ies) through the use of the self-unloading equipment. An employer claiming the automated vessel exception does not have the burden of establishing eligibility for the exception.

(b) In the event of a complaint asserting that an employer claiming the automated vessel exception is not eligible for such exception, the Administrator shall determine whether the preponderance of the evidence submitted by an interested party shows that:

(1) It is not the prevailing practice at the U.S. port to use alien crewmember(s) to perform the longshore activity(ies) through the use of the self-unloading equipment; or

(2) The employer is using alien crewmembers to perform longshore activity(ies)—

(i) During a strike or lockout in the course of a labor dispute at the U.S. port and/or

(ii) With intent or design to influence an election of a bargaining representative for workers at the U.S. port.

(c) In making the prevailing practice determination required by paragraph (b)(1) of this section, the Administrator shall determine whether, in the 12-month period preceding the date of the Administrator's receipt of the complaint, one of the following conditions existed:

(1) Over fifty percent of the automated vessels docking at the port used alien crewmembers for the activity (for purposes of this paragraph (b)(1), a vessel shall be counted each time it docks at the particular port); or

(2) Alien crewmembers made up over fifty percent of the workers who performed the activity with respect to such automated vessels.

(d) An interested party, complaining that the automated vessel exception is not applicable to a particular employer, shall provide to the Administrator evidence such as:

(1) A written summary of a survery of the experience of masters of automated vessels which entered the local port in the previous year, describing the practice in the port as to the use of alien crewmembers;

(2) A letter, affidavit, or other written statement from an appropriate local port authority regarding the use of alien crewmembers to perform the longshore activity at the port in the previous year;

(3) Written statements from collective bargaining representatives and/or shipping agents with direct knowledge of practices regarding the use of alien crewmembers at the port in the previous year.

§ ____.615 Cease and desist order.

(a) If the Administrator determines that reasonable cause exists to conduct an investigation with respect to an attestation, the complainant may request that the Administrator enter a cease and desist order against the employer against whom the complaint is lodged.

(1) The request for a cease and desist order may be filed along with the complaint, or may be filed subsequently. The request, including all accompanying documents, shall be filed in duplicate with the same Wage and Hour Division office that received the complaint.

(2) No particular form is prescribed for a request for a cease and desist order pursuant to this paragraph (a). However, any such request shall:

(i) Be dated;

(ii) Be typewritten or legibly written;

(iii) Specify the attestation provision(s) with respect to which the employer allegedly failed to comply and/or submitted misrepresentation(s) of material fact(s);

(iv) Be accompanied by evidence to substantiate the allegation(s) of noncompliance and/or misrepresentation;

(v) Be signed by the complaining party making the request or by the authorized representative of such party;

(vi) Include the address at which such complaining party or authorized representative desires to receive further communications relating thereto.

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(3) Upon receipt of a request for a cease and desist order, the Administrator shall promptly notify the employer of the request. The Administrator's notice shall:

(i) Inform the employer that it may respond to the request and meet with a Wage and Hour Division official within 14 calendar days of the date of the notice;

(ii) Be served upon the employer by facsimile transmission, in person, or by certified or regular mail, at the address of the U.S. agent stated on the employer's attestation;

(iii) Be accompanied by copies of the complaint, the request for a cease and desist order, the evidence submitted by the complainant, and any evidence from other investigation(s) of the same or a closely related matter which the administrator may incorporate into the record. (Any such evidence from other investigation(s) shall also be made available for examination by the complaining party at the Wage and Hour Division office which issued the notice.)

(4) No particular form is prescribed for the employer's response to the complaining party's request for a cease and desist order under this paragraph (a). However, any such response shall:

(i) Be dated;

(ii) Be submitted by facsimile transmission, in person, by certified or regular mail, or by courier service to the Wage and Hour Division office which issued the notice of the request;

(iii) Be received by the appropriate Wage and Hour Division office no later than 14 calendar days from the date of the notice of the request;

(iv) Be typewritten or legibly written;

(v) Explain, in any detail desired by the employer, the employer's grounds or reasons as to why the Administrator should deny the requested cease and desist order;

(vi) Be accompanied by evidence to substantiate the employer's grounds or reasons as to why the Administrator should deny the requested cease and desist order;

(vii) Specify whether the employer desires an informal meeting with a Wage and Hour Division official;

(viii) Be signed by the employer or its authorized representative;

(ix) Include the address at which the employer or its authorized representative desires to receive further communications relating thereto, if such address is different from the address of the U.S. agent stated on the attestation.

(5) In the event the employer requests a meeting with a Wage and Hour Division official, the Administrator shall provide the employer and the complaining party, or their authorized representatives, an opportunity for such a meeting to present their views regarding the evidence and arguments submitted by the parties. This shall be an informal meeting, not subject to any procedural rules. The meeting shall be held within the 14 calendar days permitted for the employer's response to the request for the cease and desist order, and shall be held at a time and place set by the Wage and Hour Division official, who shall notify the parties.

(6) After receipt of the employer's timely response and after any informal meeting which may have been held with the parties, the Administrator shall promptly issue a written determination, either denying the request or issuing a cease and desist order. In making the determination, the Administrator shall consider all the evidence submitted, including any evidence from the same or a closely related matter which the Administrator has incorporated into the record and provided to the employer. If the Administrator determines that the complaining party's position is supported by a preponderance of the evidence submitted, the Administrator shall order that the employer cease the activities specified in the determination, until the completion of the Administrator's investigation and any subsequent proceedings pursuant to § ____625 of this part, unless the prohibition is lifted by subsequent order of the Administrator because it is later determined that the employer's position was correct. While the cease and desist order is in effect, ETA shall suspend the subject attestation and shall not accept any subsequent attestation from the employer for the activity(ies) and U.S. port at issue.

(7) The Administrator's cease and desist order shall be served on the employer at the address of its designated U.S. based representative or at the address specified in the employer's response, by facsimile transmission, personal service, or certified mail.

(b) If the Administrator determines that reasonable cause exists to conduct an investigation with respect to a complaint that a non-attesting employer is not entitled to the automated vessel exception to the requirement for the filing of an attestation, a complaining party may request that the Administrator enter a cease and desist order against the employer against whom the complaint is lodged.

(1) The request for a cease and desist order may be filed along with the complaint, or may be filed subsequently. The request, including all accompanying documents, shall be filed in duplicate with the same Wage and Hour Division office that received the complaint.

(2) No particular form is prescribed for a request for a cease and desist order pursuant to this paragraph. However, any such request shall:

(i) Be dated;

(ii) Be typewritten or legibly written;

(iii) Specify the circumstances which allegedly require that the employer be denied the use of the automated vessel exception;

(iv) Be accompanied by evidence to substantiate the allegation(s);

(v) Be signed by the complaining party making the request or by the authorized representative of such party;

(vi) Include the address at which such complaining party or authorized representative desires to receive further communications relating thereto.

(3) Upon receipt of a request for cease and desist order, the Administrator shall notify the employer of the request. The Administrator's notice shall:

(i) Inform the employer that it may respond to the request and meet with a Wage and Hour Division official within 14 calendar days of the date of the notice;

(ii) Be served upon the employer by facsimile transmission, in person, or by certified or regular mail, at the employer's last known address.

(iii) Be accompanied by copies of the complaint, the request for a cease and desist order, the evidence submitted by the complainant, and any evidence from other invesigation(s) of the same or a closely related matter which the Adminstrator may incorporate into the record. (Any such evidence from other investigation(s) shall also be made available for examination by the complaining party at the Wage and Hour Division office which issued the notice.)

(4) No particular form is prescribed for the employer's response to the complaining party's request for a cease and desist order under this paragraph (b). However, any such response shall:

(i) Be dated;

(ii) Be submitted by facsimile transmission, in person, by certified or regular mail, or by courier service to the Wage and Hour Division office which issued the notice of the request;

(iii) Be received by the appropriate Wage and Hour Division office no later than 14 calendar days from the date of the notice of the request;

(iv) Be typewritten or legibly written;

(v) Explain, in any detail desired by the employer, the employer's grounds or reasons as to why the Administrator

should deny the requested cease and desist order;

(vi) Be accompanied by evidence to substantiate the employer's grounds or reasons as to why the Administrator should deny the requested cease and desist order;

(vii) Specify whether the employer desires an informal meeting with a Wage and Hour Division official;

(viii) Be signed by the employer or its authorized representative;

(ix) Include the address at which the employer or its authorized representative desires to receive further communications relating thereto.

(5) In the event the employer requests a meeting with a Wage and Hour Division official, the Administrator shall provide the employer and the complaining party, or their authorized representatives, an opportunity for such a meeting to present their views regarding the evidence and arguments submitted by the parties. This shall be an informal meeting, not subject to any procedural rules. The meeting shall be held within the 14 calendar days permitted for the employer's response to the request for the cease and desist order, and shall be held at a time and place set by the Wage and Hour Division official, who shall notify the parties.

(6) After receipt of the employer's timely response and after any informal meeting which may have been held with the parties, the Administrator shall promptly issue a written determination, either denying the request or issuing a cease and desist order. If the Administrator determines that the complaining party's position is supported by a preponderance of the evidence submitted, the Administrator shall order that the employer cease the use of alien crewmembers to perform the longshore activity(ies) specified in the order. In making the determination, the Administrator shall consider all the evidence submitted, including any evidence from the same or a closely related matter which the Administrator has incorporated into the record and provided to the employer. The order shall remain in effect until the completion of the investigation and any subsequent hearing proceedings pursuant to § ____625 of this part, unless the employer files and maintains on file with ETA an attestation pursuant to § ____520 of this part or unless the prohibition is lifted by subsequent order of the Administrator because it is later determined that the employer's position was correct.

(7) The Administrator's cease and desist order shall be served on the employer or its designated representative by facsimile transmission, personal service, or by certified mail at the address specified in the employer's response or, if no such address was specified, at the employer's last known address.

§ ____630 Civil money penalties and other remedies.

(a) The Administrator may assess a civil money penalty not to exceed $5,000 for each alien crewmember with respect to whom there has been a violation of the attestation or subpart F or G of this part. The Administrator may also impose appropriate remedy(ies).

(b) In determining the amount of the civil money penalty to be assessed, the Administrator shall consider the type of violation committed and other relevant factors. The factors which may be considered include, but are not limited to, the following:

(1) Previous history of violation, or violations, by the employer under the Act and subpart F or G of this part;

(2) The number of workers affected by the violation or violations;

(3) The gravity of the violation or violations;

(4) Efforts made by the violator in good faith to comply with the provisions of 8 U.S.C. ____ and subparts F and G of this part;

(5) The violator's explanation of the violation or violations;

(6) The violator's commitment to future compliance; and

(7) The extent to which the violator achieved a financial gain due to the violation, or the potential financial loss, potential injury or adverse effect with respect to other parties.

(c) The civil money penalty, and any other remedy determined by the Administrator to be appropriate, are immediately due for payment or performance upon the assessment by the Administrator, or the decision by an administrative law judge where a hearing is requested, or the decision by the Secretary where review is granted. The employer shall remit the amount of the civil money penalty, by certified check or money order made payable to the order of "Wage and Hour Division, Labor." The remittance shall be delivered or mailed to the Wage and Hour Division office for the area in which the violations occurred. The performance of any other remedy prescribed by the Administrator shall follow procedures established by the Administrator. The employer's failure to pay the civil money penalty, or to perform any other remedy prescribed by the Administrator, shall result in the rejection by ETA of any future attestation submitted by the employer, until such payment or performance is accomplished.

§ ____625 Written notice, service and Federal Register publication of Administrator's determination.

(a) The Administrator's determination, issued pursuant to § ____605 of this part, shall be served on the complainant, the employer, and other known interested parties by personal service or by certified mail at the parties' last known addresses. Where service by certified mail is not accepted by the party, the Administrator may exercise discretion to serve the determination by regular mail.

(b) Where the Administrator determines the prevailing practice regarding the use of alien crewmember(s) to perform longshore activity(ies) in a U.S. port [whether the Administrator's investigation involves an employer operating under an attestation, or under the automated vessel exception), the Administrator shall, simultaneously with issuance of the determination, publish in the **Federal Register** a notice of the determination. The notice shall identify the activity(ies), the U.S. port, and the prevailing practice regarding the use of alien crewmembers. The notice shall also inform interested parties that they may request a hearing pursuant to § ____630 of this part, within 15 days of the date of the determination.

(c) The Administrator shall file with the Chief Administrative Law Judge, U.S. Department of Labor, a copy of the complaint and the Administrator's determination.

(d) The Administrator's written determination required by § ____605 of this part shall:

(1) Set forth the determination of the Administrator and the reason or reasons therefor, and in the case of a finding of violation(s) by an attesting employer, prescribe any remedies, including the amount of any civil money penalties assessed and the reason therefor, and/or any other remedies required for compliance with the employer's attestation.

(2) Inform the interested parties that they may request a hearing pursuant to § ____625 of this part.

(3) Inform the interested parties that in the absence of a timely request for a hearing, received by the Chief Administrative Law Judge within 15 calendar days of the date of the determination, the determination of the Administrator shall become final and not appealable.

(4) Set forth the procedure for requesting a hearing, and give the

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address of the Chief Administrative Law Judge.

(5) Inform the parties that, pursuant to § ____.665, the Administrator shall notify ETA and the Attorney General of the occurrence of a violation by the attesting employer or of the non-attesting employer's ineligibility for the automated vessel exception.

§ ____.630 Request for hearing.

(a) Any interested party desiring to request an administrative hearing on a determination issued pursuant to §§ ____.605 and ____.625 of this part shall make such request in writing to the Chief Administrative Law Judge at the address stated in the notice of determination.

(b) Interested parties may request a hearing in the following circumstances:

(1) The complainant or any other interested party may request a hearing where the Administrator determines, after investigation, that there is no basis for a finding that an attesting employer has committed violation(s) or that the employer is eligible for the automated vessel exception. In such a proceeding, the requesting party and the employer shall be parties; the Administrator may intervene as a party or appear as *amicus curiae* at any time in the proceeding, at the Administrator's discretion.

(2) The employer or any other interested party may request a hearing where the Administrator determines, after investigation, that there is a basis for a finding that an attesting employer has committed violation(s) or that a non-attesting employer is not eligible for the automated vessel exception. In such a proceeding, the Administrator and the employer shall be parties.

(c) No particular form is prescribed for any request for hearing permitted by this section. However, any such request shall:

(1) Be dated;

(2) Be typewritten or legibly written;

(3) Specify the issue or issues stated in the notice of determination giving rise to such request;

(4) State the specific reason or reasons why the party requesting the hearing believes such determination is in error;

(5) Be signed by the party making the request or by an authorized representative of such party; and

(6) Include the address at which such party or authorized representative desires to receive further communications relating thereto.

(d) The request for such hearing must be received by the Chief Administrative Law Judge, at the address stated in the Administrator's notice of determination, no later than 15 calendar days after the date of the determination.

(e) The request may be filed in person, by facsimile transmission, by certified or regular mail, or by courier service. For the requesting party's protection, if the request is by mail, it should be by certified mail.

(f) Copies of the request for a hearing shall be sent by the requester to the Administrator and all known interested parties.

§ ____.635 Rules of practice for administrative law judge proceedings.

(a) Except as specifically provided in this subpart, and to the extent they do not conflict with the provisions of this subpart, the "Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges" established by the Secretary at 29 CFR part 18 shall apply to administrative proceedings under this subpart.

(b) As provided in the Administrative Procedure Act, 5 U.S.C. 556, any oral or documentary evidence may be received in proceedings under this part. The Federal Rules of Evidence and subpart B of the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges (29 CFR part 18, subpart B) shall not apply, but principles designed to ensure production of relevant and probative evidence shall guide the admission of evidence. The administrative law judge may exclude evidence which is immaterial, irrelevant, or unduly repetitive.

§ ____.640 Service and computation of time.

(a) Under this subpart, a party may serve any pleading or document by regular mail. Service on a party is complete upon mailing to the last known address or, in the case of the attesting employer, to the employer's designated representative in the United States. No additional time for filing or response is authorized where service is by mail. In the interest of expeditious proceedings, the administrative law judge may direct the parties to serve pleadings or documents by a method other than regular mail.

(b) Two (2) copies of all pleadings and other documents in any administrative law judge proceeding shall be served on the attorneys for the Administrator. One copy shall be served on the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, and one copy on the attorney representing the Administrator in the proceeding.

(c) Time will be computed beginning with the day following the action and includes the last day of the period unless it is a Saturday, Sunday, or federally-observed holiday, in which case the time period includes the next business day.

§ ____.645 Administrative law judge proceedings.

(a) Upon receipt of a timely request for a hearing filed pursuant to and in accordance with § ____.630 of this part, the Chief Administrative Law Judge shall promptly appoint an administrative law judge to hear the case.

(b) Within seven calendar days following the assignment of the case, the administrative law judge shall notify all interested parties of the date, time and place of the hearing. All parties shall be given at least fourteen calendar days notice of such hearing.

(c) The date of the hearing shall be not more than 60 calendar days from the date of the Administrator's determination. Because of the time constraints imposed by the Act, no requests for postponement shall be granted except for compelling reasons. Even if such reasons are shown, no extension of the hearing date beyond 60 days from the date of the Administrator's determination shall be granted except by consent of all the parties to the proceeding.

(d) The administrative law judge may prescribe a schedule by which the parties are permitted to file a prehearing brief or other written statement of fact or law. Any such brief or statement shall be served upon each other party in accordance with § ____.640 of this part. Posthearing briefs will not be permitted except at the request of the administrative law judge. When permitted, any such brief shall be limited to the issue or issues specified by the administrative law judge, shall be due within the time prescribed by the administrative law judge, and shall be served on each other party in accordance with § ____.640 of this part.

(e) In reaching a decision, the administrative law judge shall, in accordance with the Act, impose the following burden of proof—

(1) The attesting employer shall have the burden of producing facts and evidence to establish the matters required by the attestation-at issue;

(2) The burden of proof as to the applicability of the automated vessel exception shall be on the party to the hearing who is asserting that the employer is not eligible for the exception.

(f) The administrative law judge proceeding shall not be an appeal or review of the Administrator's ruling on a request for a cease and desist order pursuant to § ____.615.

§ ____.650 Decision and order of administrative law judge.

(a) Within 90 calendar days after receipt of the transcript of the hearing, the administrative law judge shall issue a decision.

(b) The decision of the administrative law judge shall include a statement of findings and conclusions, with reasons and basis therefor, upon each material issue presented on the record. The decision shall also include an appropriate order which may affirm, deny, reverse, or modify, in whole or in part, the determination of the Administrator; the reason or reasons for such order shall be stated in the decision. The administrative law judge shall not render determinations as to the legality of a regulatory provision or the constitutionality of a statutory provision.

(c) The decision shall be served on all parties in person or by certified or regular mail.

§ ____.655 Secretary's review of administrative law judge's decision.

(a) The Administrator or any interested party desiring review of the decision and order of an administrative law judge shall petition the Secretary to review the decision and order. To be effective, such petition shall be received by the Secretary within 30 calendar days of the date of the decision and order. Copies of the petition shall be served on all parties and on the administrative law judge.

(b) No particular form is prescribed for any petition for Secretary's review permitted by this subpart. However, any such petition shall:

(1) Be dated;

(2) Be typewritten or legibly written;

(3) Specify the issue or issues stated in the administrative law judge decision and order giving rise to such petition;

(4) State the specific reason or reasons why the party petitioning for review believes such decision and order are in error;

(5) Be signed by the party filing the petition or by an authorized representative of such party;

(6) Include the address at which such party or authorized representative desires to receive further communications relating thereto; and

(7) Attach copies of the administrative law judge's decision and order, and any other record documents which would assist the Secretary in determining whether review is warranted.

(c) Whenever the Secretary determines to review the decision and order of an administrative law judge, a notice of the Secretary's determination shall be served upon the administrative law judge and upon all parties to the proceeding within 30 calendar days after the Secretary's receipt of the petition for review.

(d) Upon receipt of the Secretary's notice, the Office of Administrative Law Judges shall within fifteen calendar days forward the complete hearing record to the Secretary.

(e) The Secretary's notice may specify;

(1) The issue or issues to be reviewed;

(2) The form in which submissions shall be made by the parties (e.g., briefs);

(3) The time within which such submissions shall be made.

(f) All documents submitted to the Secretary shall be filed with the Secretary of Labor, U.S. Department of Labor, Washington, DC 20210, Attention: Executive Director, Office of Administrative Appeals, room S-4309. An original and two copies of all documents shall be filed. Documents are not deemed filed with the Secretary until actually received by the Secre' ry. All documents, including documents filed by mail, shall be received by the Secretary either on or before the due date.

(g) Copies of all documents filed with the Secretary shall be served upon all other parties involved in the proceeding. Service upon the Administrator shall be in accordance with § ____.640(b) of this part.

(h) The Secretary's final decision shall be issued within 180 calendar days from the date of the notice of intent to review. The Secretary's decision shall be served upon all parties and the administrative law judge.

(i) Upon issuance of the Secretary's decision, the Secretary shall transmit the entire record to the Chief Administrative Law Judge for custody pursuant to § ____.660 of this part.

§ ____.660 Administrative record.

The official record of every completed administrative hearing procedure provided by subparts F and G of this part shall be maintained and filed under the custody and control of the Chief Administrative Law Judge. Upon receipt of a complaint seeking review of the final agency action in a United States District Court, the Chief Administrative Law Judge shall certify the official record and shall transmit such record to the clerk of the court.

§ ____.665 Notice to the Attorney General and the Employment and Training Administration.

(a) The Administrator shall promptly notify the Attorney General and ETA of the entry of a cease and desist order pursuant to § ____.615 of this part. The order shall remain in effect until the completion of the Administrator's investigation and any subsequent proceedings pursuant to § ____.630 of this part, unless the Administrator notifies the Attorney General and ETA of the entry of a subsequent order lifting the prohibition.

(1) The Attorney General, upon receipt of notification from the Administrator that a cease and desist order has been entered against an employer;

(i) Shall not permit the vessels owned or chartered by the attesting employer to use alien crewmembers to perform the longshore activity(ies) at the port specified in the cease and desist order;

(ii) Shall, in the case of an employer seeking to utilize the automated vessel exception, require that such employer not use alien crewmembers to perform the longshore activity(ies) at the port specified in the cease and desist order, without having on file with ETA an attestation pursuant to § ____.520 of this part.

(2) ETA, upon receipt of the Administrator's notice shall, in the case of an attesting employer, suspend the employer's attestation for the activity(ies) and port specified in the cease and desist order.

(b) The Administrator shall notify the Attorney General and ETA of the final determination of a violation by an attesting employer or of the ineligibility of an employer for the automated vessel exception, upon the earliest of the following events:

(1) Where the Administrator determines that there is a basis for a finding of violation by an attesting employer or a finding of nonapplicability of the automated vessel exception, and no timely request for hearing is made pursuant to § ____.630 of this part;

(2) Where, after a hearing, the administrative law judge issues a decision and order finding a violation by an attesting employer or finding inapplicable the automated vessel exception; or

(3) Where the administrative law judge finds that there was no violation by an attesting employer or that the automated vessel exception does apply.

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and the Secretary, upon review, issues a decision pursuant to § ____.655 of this part, holding that a violation was committed by an attesting employer or holding that the automated vessel exception does not apply.

(c) The Attorney General, upon receipt of notification from the Administrator pursuant to paragraph (b) of this section:

(1) Shall, in the case of an employer determined to be ineligible for the automated vessel exception, thereafter require that such employer not use alien crewmembers(s) to perform the longshore activity(ies) at the specified port without having on file with ETA an attestation pursuant to § ____.520 of this part.

(2) Shall, in the event that the Administrator's notice constitutes a conclusive determination (pursuant to § ____.670) that the prevailing practice at a particular U.S. port does not permit the use of nonimmigrant alien crewmembers for particular longshore activity(ies), thereafter permit no employer to use alien crewmembers for the particular longshore activity(ies) at that port.

(d) ETA, upon receipt of the Administrator's notice pursuant to paragraph (b) of this section:

(1) Shall, in the case of an attesting employer, suspend the employer's attestation for the port at issue and for any other U.S. port, and shall not accept for filing any attestation submitted by the employer for a period of 12 months or for a shorter period if such is specified for that employer by the Attorney General;

(2) Shall, if the Administrator's notice constitutes a conclusive determination (pursuant to § ____.670) that the prevailing practice at a particular U.S. port does not permit the use of alien crewmembers for the longshore activity(ies), thereafter accept no attestation from any employer for the performance of the activity(ies) at that port, and shall invalidate any current attestation for any employer for the performance of the acitvity(ies) at that port.

§ ____.670 Federal Register notice of determination of prevailing practice.

(a) Pursuant to § ____.625(b), the Administrator shall publish in the **Federal Register** a notice of the Administrator's determination of any investigation regarding the prevailing practice for the use of alien crewmembers for particular longshore activity(ies) in a particular U.S. port (whether under an attestation or under the automated vessel exception). Where the Administrator has determined that the prevailing practice in that U.S. port does not permit such use of alien crewmembers, and no timely request for a hearing is filed pursuant to § ____.630, the Administrator's determination shall be the conclusive determination for purposes of the Act and subparts F and G of this port; the Attorney General and ETA shall, upon notice from the Administrator, take the actions specified in § ____.665. Where the Administrator has determined that the prevailing practice in that U.S. port at the time of the investigation permits such use of alien crewmembers, the Administrator shall, in any subsequent investigation, give that determination appropriate weight, unless the determination is reversed in proceedings under §§ ____.630 or ____.655.

(b) Where an interested party, pursuant to § ____.630, requests a hearing on the Administrator's determination, the Administrator shall, upon the issuance of the decision of the administrative law judge, publish in the **Federal Register** a notice of the judge's decision as to the prevailing practice for the longshore activity(ies) and U.S. port at issue, if the Administrative Law Judge:

(1) Reversed the determination of the Administrator published in the **Federal Register** pursuant to paragraph (a) of this section; or

(2) Determines that the prevailing practice for the particular activity in the port does not permit the use of alien crewmembers.

(c) If the administrative law judge determines that the prevailing practice in that port does not permit such use of alien crewmembers, the judge's decision shall be the conclusive determination for purposes of the act and these regulations (unless and until reversed by the Secretary on discretionary review pursuant to § ____.655). The Attorney General and the ETA shall upon notice from the Administrator, take the actions specified in § ____.665.

(d) In the event that the Secretary, upon discretionary review pursuant to § ____.655, issues a decision that reverses the administrative law judge on a matter on which the Administrator has published notices in the **Federal Register** pursuant to paragraphs (a) and (b) of this section, the Administrator shall publish in the **Federal Register** a notice of the Secretary's decision and shall notify the Attorney General and ETA.

(1) Where the Secretary reverses the administrative law judge and determines that, contrary to the judge's decision, the prevailing practice for the longshore activity(ies) in the U.S. port at issue does not permit the use of alien crewmembers, the Secretary's decision shall be the conclusive determination for purposes of the Act and these regulations. Upon notice from the Administrator, the Attorney General and ETA shall take the actions specified in § ____.665.

(2) Where the Secretary reverses the administrative law judge and determines that, contrary to the judge's decision, the use of alien crewmembers is permitted by the prevailing practice for the longshore activity(ies) in the U.S. port at issue, the judge's decision shall no longer have the conclusive effect specified in paragraph (b) of this section. Upon notice from the Administrator, the Attorney General and ETA shall cease the actions specified in § ____.665.

§ ____.675 Non-applicability of the Equal Access to Justice Act.

A proceeding under subpart G of this part is not subject to the Equal Access to Justice Act, as amended, 5 U.S.C. 504. In such a proceeding, the administrative law judge shall have no authority to award attorney fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act.

Adoption of the Interim Final Joint Rule

The agency specific adoption of the joint rule, which appears at the end of the common preamble, appears below:

TITLE 20—EMPLOYEES' BENEFITS

CHAPTER V—EMPLOYMENT AND TRAINING ADMINISTRATION, DEPARTMENT OF LABOR

Accordingly, chapter V of title 20, Code of Federal Regulations, is amended as follows:

PART 655—[AMENDED]

1. The Authority citation for part 655 is revised to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(H) and 1184; 29 U.S.C. 49 *et seq.*; §§ 655.0, 655.00, and 655.000 also issued under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m), and 1188, and 8 CFR 214.2(h)(4)(i); Subparts A and C also issued under 8 CFR 214.2(h)(4)(i); Subpart B also issued under 8 U.S.C. 1188; Subparts D and E also issued under 8 U.S.C. 1101(a)(15)(H)(i)(a) and 1182(m) and Pub. L. 101–238, sec. 3(c)(1), 103 Stat. 2099, 2103; Subparts F and G also issued under 8 U.S.C. 1288(c).

Part 655—TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES

§ 655.0 [Amended]

2. Section 655.0 is amended by redesignating paragraph (c) as paragraph (a)(3), and by adding a new paragraph (c), to read as follows:

§ 655.0 Scope and purpose of part.

* * * * *

(c) *Subparts F and G.* Subparts F and G of this part set forth the process by which employers can file attestations with the Department of Labor for the purpose of employing alien crewmembers in longshore work under D-visas and enforcement provisions relating thereto.

§ 655.000 [Amended]

3. Section 655.000 is amended in paragraph (a) by removing the period at the end of the first sentence therein and by adding in lieu thereof the words ", and with respect to employment of nonimmigrant (D-visa) crewmembers in longshore work under Subpart F of this part."

4. Part 655 is amended by adding new subparts F and G as set forth in this document.

Subpart F—Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

Sec.
655.500 Purpose, procedure, and applicability of subparts F and G of this part.
655.501 Overview of responsibilities.
655.502 Definitions.
655.510 Employer attestations.
655.520 Special provisions regarding automated vessels.
655.550 Public access.

Subpart G—Enforcement of the Limitations Imposed on Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

Sec.
655.600 Enforcement authority of Administrator, Wage and Hour Division.
655.605 Complaints and investigative procedures.
655.610 Automated vessel exception to prohibition on utilization of alien crewmembers to perform longshore activity(ies) at a U.S. port.
655.615 Cease and desist order.
655.620 Civil money penalties and other remedies.
655.625 Written notice, service and **Federal Register** publication of Administrator's determination.
655.630 Request for hearing.
655.635 Rules of practice for administrative law judge proceedings.
655.640 Service and computation of time.
655.645 Administrative law judge proceedings.
655.650 Decision and order of administrative law judge.
655.655 Secretary's review of administrative law judge's decision.
655.660 Administrative record.
655.665 Notice to the Attorney General and the Employment and Training Administration.
655.670 **Federal Register** notice of determination of prevailing practice.
655.675 Non-applicability of the Equal Access to Justice Act.

Authority: 8 U.S.C. 1101(a)(15)(H) and 1184; 29 U.S.C. 49 *et seq.*; §§ 655.0, 655.00, and 655.000 also issued under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m), and 1188, and 8 CFR 214.2(h)(4)(i); Subparts A and C also issued under 8 CFR 214.2(h)(4)(i); Subpart B also issued under 8 U.S.C. 1188; Subparts D and E also issued under 8 U.S.C. 1101(a)(15)(H)(i)(a) and 1182(m) and Pub. L. 101–238, sec. 3(c)(1), 103 Stat. 2099, 2103; Subparts F and G also issued under 8 U.S.C. 1288(c).

Signed at Washington, DC, this 23rd day of May, 1991.

Roberts T. Jones,

Assistant Secretary for Employment and Training.

Samuel D. Walker,

Acting Assistant Secretary for Employment Standards.

Lynn Martin,

Secretary of Labor.

TITLE 29—LABOR

CHAPTER V—WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR

Accordingly, title 29, Code of Federal Regulations, is amended by adding a new part 506 to read as follows, and subparts F and G are added to new part 506 as set forth in this document:

PART 506—ATTESTATIONS BY EMPLOYERS USING ALIEN CREWMEMBERS FOR LONGSHORE ACTIVITIES IN U.S. PORTS

Subparts A, B, C, D, and E [Reserved]

Subpart F—Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

Sec.
506.500 Purpose, procedure, and applicability of subparts F and G of this part.
506.501 Overview of responsibilities.
506.502 Definitions.
506.510 Employer attestations.
506.520 Special provisions regarding automated vessels.
506.550 Public access.

Subpart G—Enforcement of the Limitations Imposed on Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

Sec.
506.600 Enforcement authority of Administrator, Wage and Hour Division.
506.605 Complaints and investigative procedures.
506.610 Automated vessel exception to prohibition on utilization of alien crewmembers to perform longshore activity(ies) at a U.S. port.
506.615 Cease and desist order.
506.620 Civil money penalties and other remedies.
506.625 Written notice, service and **Federal Register** publication of Administrator's determination.
506.630 Request for hearing.
506.635 Rules of practice for administrative law judge proceedings.
506.640 Service and computation of time.
506.645 Administrative law judge proceedings.
506.650 Decision and order of administrative law judge.
506.655 Secretary's review of administrative law judge's decision.
506.660 Administrative record.
506.665 Notice to the Attorney General and the Employment and Training Administration.
506.670 **Federal Register** notice of determination of prevailing practice.
506.675 Non-applicability of the Equal Access to Justice Act.

Authority: 8 U.S.C. 1288(c).

Signed at Washington, DC, this 23rd day of May, 1991.

Roberts T. Jones,

Assistant Secretary for Employment and Training.

Samuel D. Walker,

Acting Assistant Secretary for Employment Standards.

Lynn Martin,

Secretary of Labor.

Appendix 1—U.S. Seaports

The list of 206 seaports includes all major and most smaller ports serving ocean and Great Lakes commerce.

North Atlantic Range

Bucksport, ME	Gloucester City, NJ
Eastport, ME	Chester, PA
Portland, ME	Philadelphia, PA
Searsport, ME	Marcus Hook, PA
Portsmouth, NH	Wilmington, DE
Boston, MA	Delaware City, DE
Fall River, MA	Baltimore, MD
New Bedford, MA	Cambridge, MD
Providence, RI	Alexandria, VA
New London, CT	Hopewell, VA
New Haven, CT	Richmond, VA
Bridgeport, CT	Newport News, VA
Albany, NY	Norfolk, VA
New York, NY/NJ	Portsmouth, VA
Camden, NJ	Chesapeake, VA
Paulsboro, NJ	

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South Atlantic Range

Morehead City, NC
Wilmington, NC
Georgetown, SC
Charleston, SC
Port Royal, SC
Savannah, GA
Brunswick, GA
Fernandina Beach, FL
Fort Pierce, FL
Jacksonville, FL
Port Canaveral, FL
Palm Beach, FL
Port Everglades, FL
Miami, FL
Agadilla, PR
Humacao, PR
San Juan, PR
Ponce, PR
Mayagues, PR
Jobos, PR
Guayanilla, PR
Guanica, PR
Yabucoa, PR
Charlotte Amalie, VI
Christiansted, VI
Frederiksted, VI
Aiucroix, VI
Limetree Bay, VI

North Pacific Range

Rainier, OR
St. Helens, OR
Coos Bay, OR
Newport, OR
Reedsport, OR
Astoria, OR
Portland, OR
Longview, WA
Kalama, WA
Vancouver, WA
Raymond, WA
Willapa Harbor, WA
Grays Harbor, WA
Everett, WA
Port Angeles, WA
Port Townsend, WA
Winslow, WA
Portage, WA
Olympia, WA
Tacoma, WA
Anacortes, WA
Point Wells, WA
Seattle, WA
Edmonds (Edwards Point), WA
Friday Harbor, WA
Bellingham, WA
Ferndale, WA
Ketchikan, AK
Wrangell, AK
Petersburg, AK
Sitka, AK
Juneau, AK
Haines, AK
Skagway, AK
Cordova, AK
Valdez, AK
Whittier, AK
Seward, AK
Homer, AK
Nikiniska, AK
Kenai, AK
Anchorage, AK
Kodiak, AK
Unalaska, AK
Metlakatla, AK
Dutch Harbor, AK

Great Lakes Range

Silver Bay, MN
Duluth, MN
Superior, WI
Kenosha, WI
Green Bay, WI
Manitowoc, WI
Milwaukee, WI
Sheboygan, WI
Marine City, MI
Muskegon, MI
Essexville, MI
Bay City, MI
Saginaw, MI
Detroit, MI
Presque Isle, MI
Alpena, MI
Ferrysburg, MI
Rogers City, MI
De Tour Village, MI
Sault Ste Marie, MI
Grand Haven, MI
Port Huron, MI
Chicago, IL
Toledo, OH
Sandusky, OH
Huron, OH
Lorain, OH
Cleveland, OH
Fairport, OH
Ashtabula, OH
Conneaut, OH
Erie, PA
Buffalo, NY
Rochester, NY
Oswego, NY
Odgensburg, NY
Burns Harbor, IN
Gary, IN
E. Chicago, IN

Gulf Coast Range

Tampa, FL
Port Manatee, FL
Port St. Joe, FL
Panama City, FL
Pensacola, FL
Mobile, AL
Pascagoula, MS
Gulfport, MS
New Orleans, LA
Louisiana Offshore Oil Port, LA
Baton Rouge, LA
Lake Charles, LA
Beaumont, TX
Port Neches, TX
Port Arthur, TX
Orange, TX
Houston, TX
Texas City, TX
Galveston, TX
Freeport, TX
Corpus Christi, TX
Brownsville, TX
Port Lavaca, TX
Sabine, TX

South Pacific Range

San Diego, CA
Carlsbad, CA
Huntington Beach, CA
Long Beach, CA
Los Angeles, CA
El Segundo, CA
Port Hueneme, CA
Mandalay Beach, CA
Ventura, CA
Carpinteria, CA
Goviota, CA
Port Sant Louis, CA
Estero Bay, CA
Moss Landing, CA
Redwood City, CA
San Francisco, CA
Alameda, CA
Oakland, CA
Selby, CA
Richmond, CA
Crockett, CA
Port Costa, CA
Vallejo, CA
Benicia, CA
Pittsburg, CA
Antioch, CA
Stockton, CA
Secramento, CA
Eureka, CA
Martinez, CA
Hilo, HI
Kawaihae, HI
Kahului, HI
Kaunakakai, HI
Honolulu, HI
Barbers Point, HI
Nawiliwili, HI
Port Allen, HI

BILLING CODE 4510-30-M; 4510-27-M

Attestation by Employers Using Alien Crewmembers for Longshore Activities at U.S. Ports

U.S. Department of Labor
Employment and Training Administration
U.S. Employment Service

OMB Approval No. 1205-0309
Expiration Date: 12/31/91

1. Full Legal Name of Company

2. Headquarters Address
(No., St., City, Town, State, Zip Code, Country)

3. Telephone (Area Code and Number)

4. Name of Chief Executive Officer

5. Name of U.S. Agent

6. U.S. Business Address of Agent
(No., St., City, Town, State, Zip Code, Country)

7. Telephone (Area Code and Number)

Fax (Area Code and Number)

8. EMPLOYER ATTESTATION (If accompanying documentation supporting each one of the following three attestation elements (8(a), 8(b), and 8(c)) is not attached, attestation will be deemed incomplete and will be returned without action.)

☐ (a) Alien crewmembers will be used beginning _____ (Month/Day/Year) to perform the following activities of longshore work at the port of _____ (Name of Port, City, and State), and it is the prevailing practice to use alien crewmembers for each of the following activities to be performed at this port, i.e., those marked "Yes" (a "Yes" or "No" box must be checked for each activity):

Yes	No		
☐	☐	(i)	Loading cargo
☐	☐	(ii)	Unloading cargo
☐	☐	(iii)	Operation of cargo-related equipment
☐	☐	(iv)	Handling of mooring lines
☐		(v)	Check this box if claiming an unanticipated emergency (include documentation to support claim).

☐ (b) On the date this attestation is signed and submitted, there is not a strike or lockout in the course of a labor dispute at this port and, during the period of this attestation's validity, I will not use alien crewmembers in my employ to perform any longshore activity during a strike or lockout; and the employment of such aliens is not intended or designed to influence an election for a bargaining representative for longshore workers at the port.

☐ (c) As of this date, notice of this attestation has been provided to longshore workers in the port by (check appropriate box):

☐ (i) Notice of this filing has been provided to the bargaining representative of longshore workers in the port (include copy of actual notice); or

☐ (ii) Where there is no such bargaining representative, notice of this filing has been provided to the port authority, and to longshore workers employed at the port through posting in conspicuous locations (include copy of actual notice posted).

9. DECLARATION OF EMPLOYER:

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the information provided on this form and accompanying documentation is true and correct. In addition, I declare that I will comply with the Department of Labor regulations governing this program and, in particular, that I will make this attestation, supporting documentation, and other records, files and documents available to officials of the Department of Labor, upon such official's request, during any investigation under this attestation or the immigration and Nationality Act.

Signature of Chief Executive Officer (or such Officer's U.S. Agent or Designee) _____ Date _____

FOR U.S. GOVERNMENT AGENCY USE ONLY: By virtue of my signature below, I acknowledge that this attestation is accepted for filing on _____ (date) and will be valid for the longshore activities herein attested to through _____ (date twelve months from the date it is accepted for filing).

Signature of Authorized DOL Official _____ ETA Case No. _____

Subsequent DOL action: Suspended _____ Invalidated _____ Withdrawn _____

The Department of Labor is not the guarantor of the accuracy, truthfulness or adequacy of an attestation accepted for filing.

Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management, Department of Labor, Room N1301, 200 Constitution Avenue, N.W., Washington, D.C. 20210; and to the Office of Management and Budget, Paperwork Reduction Project (1205-0309) Washington, D.C. 20503.

ETA 8023 (May 1991)

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INSTRUCTIONS FOR COMPLETING FORM ETA 9033
ATTESTATION BY EMPLOYERS USING ALIEN CREWMEMBERS
FOR LONGSHORE ACTIVITIES AT U.S. PORTS

IMPORTANT: READ CAREFULLY BEFORE COMPLETING FORM

An employer may file an attestation only when there is no collective bargaining agreement in effect in the local port covering at least 30 percent of the number of individuals employed in performing longshore work. Submit the completed original Form ETA 9033 along with two copies of the form and all documentation. Attestations must be received by the Department of Labor no later than 14 days prior to the first performance of the longshore activity unless the employer is claiming an unanticipated emergency. Attestations pertaining to ports on the West Coast and the Gulf of Mexico must be submitted to the Department's ETA Dallas regional office at Federal Building, Rm. 317, 525 Griffin Street, Dallas, Texas 75202. Attestations pertaining to ports on the East Coast and the Great Lakes must be submitted to the Department's ETA Chicago regional office at 230 S. Dearborn St., Rm. 605, Chicago, Illinois 60604.

To knowingly furnish any false information in the preparation of this form and any supporting documentation thereto, or to aid, abet or counsel another to do so is a felony, punishable by $10,000 fine or five years in the penitentiary, or both (18 U.S.C. 1001). Other penalties apply as well to fraud and misuse of this immigration document (18 U.S.C. 1546) and to perjury with respect to this form (18 U.S.C. 1546 and 1621).

Print legibly in ink or use a typewriter. Sign and date one form in original signature. Citations below to "regulations" are citations to the identical provisions at 20 CFR Part 655, Subparts F and G, and at 29 CFR Part 506, Subparts F and G.

Item 1. Name of Company. Enter full legal name of business, firm or organization, or, if an individual, enter name used for legal purposes on documents.

Item 2. Address of Company. Self explanatory.

Item 3. Telephone Number. Include area code or international calling code.

Item 4. Name of Chief Executive Officer. Self explanatory.

Item 5. Name of U.S. Agent. Self explanatory.

Item 6. Address of Agent. This address must be in the U.S.

Item 7. Telephone Number. Include fax number, if available.

Item 8. Employer Attestation. In order to be eligible to use alien crewmembers for longshore activities at a U.S. port, an employer must attest to the conditions listed in elements (a) through (c). The attestation will only be accepted for filing if the required documentation supporting these elements is attached to the Form ETA 9033. See §___.510(d) through (f) of the regulations for guidance on the documentation that must be attached to the Form ETA 9033 to support each of the elements.

Item 8(a). Prevailing Practice. The employer must attest that it is the prevailing practice to use alien crewmembers for a particular activity of longshore work at the U.S. port where the employer intends to employ alien crewmembers. The employer must include the date of the first performance of the longshore activity. If claiming an unanticipated emergency, the appropriate box must be checked. The employer must also include the name of the port, and the city and state in which it is located. Longshore work is defined as (1) loading of cargo, (2) unloading of cargo, (3) operation of cargo-related equipment, and (4) handling of mooring lines on the dock when a vessel is made fast or let go. For each activity, the employer must check either the "Yes" or "No" box, depending on whether the employer intends to perform such activity. The employer must attach documentation to support each activity it intends to perform under this attestation element. See §___.510(d) for detailed explanation.

Item 8(b). No Strike or Lockout; No Intention or Design to Influence Bargaining Representative Election. The employer must attest that, at the time of submitting the attestation, there is not a strike or lockout in the course of a labor dispute covering the employer's activity, and that it will not use alien crewmembers during a strike or lockout after filing the attestation. The employer must also attest that the employment of such aliens is not intended or designed to influence an election for a bargaining representative for workers in the local port. The employer must attach documentation to support this attestation element. See §___.510(e) for detailed explanation.

Item 8(c). Notice of Filing. The employer must attest that at the time of filing the attestation, notice of filing has been provided to the bargaining representative of the longshore workers in the local port, or, where there is no such bargaining representative, notice of the filing has been provided to longshore workers employed at the local port through posting in conspicuous locations and through other appropriate means. The employer must check the appropriate box under 8(c). The employer must attach documentation to support this attestation element. See §___.510(f) for detailed explanation.

Item 9. Declaration of Employer. One copy of this form must bear the original signature of the chief executive officer (or the chief executive officer's designee). By signing this form, the chief executive officer is attesting to the conditions listed in items 8(a) through (c) and to the accuracy of the information provided elsewhere on the form and in the supporting documentation. False statements are subject to Federal criminal penalties, as stated above.

If the attestation bears the necessary entries of information and documentation, the Department of Labor may accept the attestation for filing and shall document such acceptance on each of the three Form ETA 9033's submitted. A copy of the attestation form indicating the Department's acceptance, or notification of nonacceptance, will be returned to the employer. The employer may then use alien crewmembers for longshore work at the port for which this attestation has been accepted in accordance with Immigration and Naturalization Service regulations, unless the Department subsequently acts to suspend or invalidate the attestation.

A copy of this attestation, along with accompanying documentation, will be available for public inspection at the Division of Foreign Labor Certifications, United States Employment Service, Room N-4456, 200 Constitution Avenue, NW., Washington, D.C. 20210.

[FR Doc. 91-12718 Filed 5-29-91; 8:45 am]

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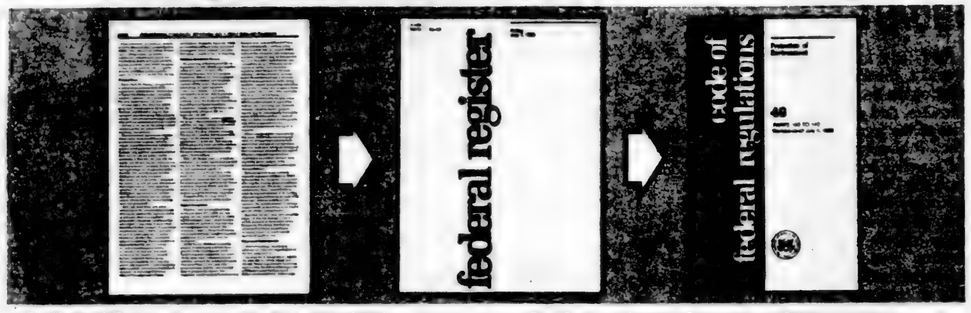

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WHO: The Office of the Federal Register.

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: June 25, at 9:00 am
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: 202–523–5240

NEW ORLEANS, LA

WHEN: July 23, at 9:00 am
WHERE: Federal Building, 501 Magazine St. Conference Room 1120, New Orleans, LA
RESERVATIONS: Federal Information Center 1–800–366–2998

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

[CN-91-006]

Revisions of User Fees for Cotton Classification, Testing and Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is making final without change the increases in user fees charged for cotton classification and testing services proposed in the regulatory revision published in the Federal Register on April 30, 1991. The 1991 user fee charged to producers for classification services under the Cotton Statistics and Estimates Act will be maintained at the 1990 level. The user fee increases in other services are needed to cover the costs of providing these services. The new fees will be effective on July 1, 1991, so that they may cover the beginning of the classing season.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Ronald H. Read, 202-447-2145.

SUPPLEMENTARY INFORMATION: A proposed rule detailing the user fee charges for cotton classification, testing, and standards was published on April 30, 1991, in the **Federal Register** (56 FR 19815). A 15-day comment period was provided for interested persons to respond to the proposed rule; no comments were received.

Therefore, AMS is making final these user fees as proposed.

This final rule has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be "non-major" since it does not meet the criteria for a major regulatory action as stated in the Order.

The Administrator, Agricultural Marketing Service (AMS), has certified that this action will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because: (1) The fee increases merely reflect a minimal increase in the cost-per-unit currently borne by those entities utilizing the services; (2) the cost increase will not affect competition in the marketplace; and (3) the use of classification and testing services and the purchase of standards is voluntary.

The information collection requirements contained in this final rule have been previously approved by the Office of Management and Budget and assigned OMB control numbers under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

These changes will be effective July 1, 1991.

Fees for Classification Under the Cotton Statistics and Estimates Act of 1927

The user fee charged to cotton producers for manual classification services under the Cotton Statistics and Estimates Act (7 U.S.C. 473a) was $1.23 per bale (sample) during the 1990 harvest season (54 FR 23449) as determined using the formula provided in the Uniform Cotton Classing Fees Act of 1987. The charges cover salaries, cost of equipment and supplies, and other overhead and include administrative and supervisory costs. This final rule maintains the user fee for manual classification charged to producers at $1.23 per bale. This fee was calculated by adjusting the 1990 base fee for the rate of inflation and the projected size of the crop and adding a surcharge necessary to maintain a minimum operating reserve as required by the Act. The 1990 base fee is $1.25 per bale. A 4.3 percent, or five cents per bale, increase due to the Implicit Price Deflator of the Gross National Product is added to the $1.25 resulting in a 1991 base fee of $1.30 per bale. The 1991 crop is currently estimated at 16,490,000 running bales. The base fee is decreased 15 percent based on the estimated size of the crop (one percent for every 100,000 bales or portion thereof above the base of 12,500,000 bales, limited to a maximum adjustment of 15 percent). This percentage factor amounts to a 20 cents per bale reduction and is subtracted from the base fee of $1.30 per bale resulting in a fee of $1.10 per bale.

A five cents surcharge is added to the $1.10 per bale fee since the projected operating reserve is less than 25 percent. The five cents surcharge results in a 1991 season fee of $1.15 per bale. Assuming a fee of $1.15, the projected operating reserve is six percent. An additional 8 cents per bale must be added to provide an ending accumulated operating reserve for the fiscal year of at least 10 percent of the projected cost of operating the program. This establishes the 1991 season fee at $1.23 per bale, the same as for 1990. Accordingly, no change to the language that appears in § 28.909 (b) is necessary.

The additional fee for High Volume Instrument (HVI) classification remains 50 cents per bale. Thus, the fee for HVI classification during the 1991 harvest season remains at $1.73 per bale. As provided for in the Uniform Cotton Classing Fees Act of 1987, a five cent per bale discount continues to be applied to voluntary centralized billing and collecting agents.

The fee for a manual review classification in § 28.911 also remains at $1.23 per bale since the fee for review classification is the same as the original classification fee. Likewise, the fee for HVI review classification remains at $1.73 per bale. Accordingly, since the 1991 harvest season fees for manual and HVI classification and review classification is the same as the current fees, no change to the language of §§ 28.909 and 28.911 concerning classification fees is needed.

Printed cards that are both eye readable and machine scannable are added to the current alternative methods of issuing classification data in § 28.910. There is no additional fee if only one method of receiving data is requested. If the issuance of classification data is requested on printed cards as well as by another method, the fee for printed cards is one cent per card issued, with a minimum fee of $10.00 per gin per season. The Cotton Division will provide computer punch cards that are both eye and machine readable for data issuance for cotton classed from the 1991 crop. Computer punch cards will not be provided for the 1992 and subsequent crops, due to the obsolescence of card

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punch equipment. Also in § 28.910, the fee for a new memorandum increases from $4.50 per sheet to a minimum of $5.00 per sheet or 15 cents per bale. The fee for returning samples after classification in § 28.911 increases from 30 cents per sample to 35 cents per sample.

Fees for Classification Services Under the United States Cotton Standards Act

Certain cotton classification services are conducted under the United States Cotton Standards Act. Fees for these services have been reviewed. In order to recover increased costs, including supervision and overhead, the fees for classification of cotton or samples in § 28.116 are increased. The current additional fee of 30 cents per sample increases to 35 cents per sample unless the sample becomes Government property immediately after classification.

The fee in § 28.117 for each new memorandum or certificate issued in substitution for a prior one increases from 10 cents per bale to 15 cents per bale. The minimum fee increases from $4.75 per sheet to $5.00 per sheet.

The specific fee prescribed in §§ 28.120 and 28.149 for Form C determinations is removed. Industry requests for this service have been very rare.

The portion of the practical classing examination for staple length will no longer be offered since most all USDA length measurements are not determined by HVI. The fee is § 28.122 for the practical classing examination for grade reduces from $140.00 to $100.00.

Fees for Cotton Standards

Practical forms of the cotton standards are prepared and sold by the Cotton Division offices in Memphis, Tennessee, under the authority of the United States Cotton Standards Act (7 U.S.C. 51 *et seq.*). The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) directs that the price for standards will cover, as nearly as practicable, the costs of providing the standards.

This final rule increases the fees listed in §§ 28.123 and 28.151 for practical forms of the cotton standards, including both grade and staple standards for American Upland cotton, American Pima cotton and for cotton linters. The fees need to be adjusted due to increased costs for salaries, preparation and delivery, and postage of the standards.

The fees of American Upland cotton grade standards increases from $110.00 to $120.00 f.o.b. Memphis, Tennessee, or overseas air freight collect. The price increases from $114.00 to $125.00 for domestic surface delivery and from $150.00 to $160.00 for overseas air parcel post delivered. The fee for American Upland staple standards f.o.b. Memphis or overseas air freight collect increases from $16.00 to $18.00. The domestic surface delivered fee increases from $18.00 to $21.00 and the overseas air parcel post delivered fee increases from $30.00 to $32.00. The fees for American Pima grade standards increases from $140.00 to $155.00 f.o.b. Memphis or overseas air freight collect. The price increases from $144.00 to $160.00 for domestic surface delivered and from $180.00 to $195.00 for overseas air parcel post delivered. Fees for American Pima staple standards increase from $17.00 to $19.00 for f.o.b. Memphis and overseas air freight collect. The domestic surface delivered fee increases from $19.00 to $22.00 and the overseas air parcel post delivered fee increases from $31.00 to $33.00. The fees for linters grade standards increase from $110.00 to $120.00 f.o.b. Memphis or overseas air freight collect. The price for domestic surface delivery increases from $114.00 to $125.00 and the price for overseas air parcel post delivery increases from $150.00 to $160.00 The f.o.b. Memphis or overseas air freight collect fees for linters staple standards increases from $18.00 to $20.00. The delivered price increase from $20.00 to $23.00 for domestic and from $32.00 to $34.00 for overseas air parcel post.

Testing Services

Cotton testing services are provided by the USDA Laboratory in Clemson, South Carolina, under the authority of the Cotton Statistics and Estimates Act of 1927 (7 U.S.C 471–478). The tests are available, upon request, to private sources on a fee basis. The Cotton Service Testing Amendment (7 U.S.C. 473d) specifies that the fees for the services by reasonable and cover as nearly as practicable the costs of rendering the services. The cost of providing these services has increased since the last fee increases in 1980 due to higher costs for salaries and miscellaneous overhead costs including supplies and materials. The fees for fiber and processing tests in § 28.956 are increased.

AMS revises the instrument calibration and check materials listed in § 28.956. An instrument check program for High Volume Instrument (HVI) Systems is added as item 1.1. Two samples will be sent to a participant for testing each month. The test results will be returned to the Cotton Division for summarization and report preparation. The summary report will show the averages of all participants for each measured property of each sample tested. An individualized report will show the deviations from the averages for a participant and will be provided to that participant only. The fees for this monthly service are $156.00 for surface delivery within the continental United States and $312.00 for air parcel post delivery outside the continental United States.

Item 3.0 is revised by removing the reference to Nickerson-Hunter Cotton Colormeters and the master diagram. Fees for furnishing the set of standard color tiles are increased to $115.00 f.o.b. Memphis, Tennessee. AMS revises the fee structure to include the costs of delivery for these materials. The fee for a set of standard color tiles surface delivered within the continental United States is $120.00. The fee for air freight collect outside the continental United States is $115.00. The fee for air parcel post delivery of a set of standard color tiles outside the continental United States is $155.00. AMS revises item 3.1 to provide for furnishing a single title for use as a replacement in a set described in item 3.0 or as a calibration device for certain colormeters. The fee for the single tile is increased to $21.00 f.o.b. Memphis, Tennessee. The fee for surface delivery within the continental United States is $24.00. The fee for air freight collect outside the continental United States is $21.00. The fee for air parcel post delivery outside the continental United States is $34.00.

Item 4.0 is revised to make the calibration box applicable to all cotton colormeters. The fee structure is revised to provide for the recovery of transportation charges applicable to the delivery of the box. The fee for a box f.o.b. Memphis, Tennessee, is increased to $40.00 each. The fee for surface delivery of a box in the continental United States is $45.00. The fee for air freight collect outside the continental United States is $40.00. The fee for air parcel post delivery of a box outside of the continental United States is $80.00. The current item 4.1 will no longer be available. Supplying new readings for samples in colormeter calibration boxes is unsatisfactory because the samples are in poor condition by the time new readings are needed. Further, only one client has requested this service in recent years. Elimination of this service will have no appreciable impact on the cotton industry. AMS adds as a revised item 4.1 a calibration sample box for trashmeters containing six cotton samples with trash readings in percent area. The fees for this item are $40.00 f.o.b. Memphis, Tennessee; $45.00 surface delivered in the continental United States; $40.00 air freight collect outside the continental United States; and $80.00 delivered by air parcel post to destinations outside the continental United States.

AMS adds additional tests in § 28.956. A single strand yarn strength test is added as item 27.1 One hundred single strand strength determinations of a yarn sample will be made on the Statimat Tester and the average strength, elongation and coefficients of variation reported. The Fee for this test is $6.00 per sample. Imperfections in yarn is added as item 28.2. Four tests per sample will be made on the Uster Eveness Tester and the averages of percent coefficients of variation and the thick places, thin places and neps, yarn imperfections, reported. The fee for this test is $6.00 per sample.

AMS will speed the dissemination of reports. Additional copies of a test report routinely furnished with a test item will be sent by facsimile (FAX). The fee for item 33.2, facsimile transmission of reports within the continental United States is $2.00 per page and outside the continental United States is $5.00 per page. AMS requires a minimum fee of $6.00 when furnishing additional copies of test data reports.

Equipment for conducting the open-end spinning test is no longer available. Item 20.1, Cotton Carded yarn spinning test (open-end) for short staple cottons is being removed. Test data are being calculated by computer and individual observations and calculations are no longer available. Item 31.0, Furnishing copies of test data worksheets, is being removed.

The fees for fiber and processing tests in § 28.956, except items. 5.0, 10.0, 10.1, and 18.0 are increased. The fees and new services are as follows:

Item No.	New service	Fee	
		Current	Proposed
1.0a		84.00	90.00
b		88.00	95.00
c		84.00	90.00
d		124.00	130.00
	1.1a		156.00
	b		312.00
2.0a		17.00	19.00
b		16.00	21.00
c		17.00	19.00
d		27.00	29.00
2.1a		25.00	27.00
b		27.00	30.00
c		25.00	27.00
d		39.00	41.00
3.0a		105.00	115.00
	3.0b		120.00
	c		115.00
	d		155.00
3.1a		17.00	21.00
	3.1b		24.00
	c		21.00
	d		34.00

Item No.	New service	Fee	
		Current	Proposed
4.0a		30.00	40.00
	4.0b		45.00
	c		40.00
	d		80.00
	4.1a		40.00
	b		45.00
	c		40.00
	d		80.00
5.0		1.65	1.65
6.0		1.10	1.20
7.0		8.50	9.00
7.1		5.50	5.75
8.0		8.75	9.25
8.1		5.50	5.75
9.0a		8.75	9.25
b		6.50	7.00
c		5.50	5.75
10.0		.65	.65
10.1		.35	.35
11.0		12.00	15.00
Minimum		60.00	75.00
12.0		6.50	7.00
13.0a		70.00	74.00
b		108.00	113.00
c		130.00	136.00
13.1a		52.00	54.00
b		74.00	78.00
c		101.00	106.00
13.2		122.00	130.00
14.0a		24.00	25.00
b		29.00	30.00
c		34.00	35.00
15.0a		7.50	8.00
b		13.00	14.00
16.0		15.00	16.00
17.0		5.00	5.25
Minimum		25.00	26.25
18.0		25.00	25.00
19.0		80.00	84.00
20.0		110.00	115.00
21.0		100.00	105.00
22.0		145.00	152.00
23.0		210.00	220.00
24.0		230.00	240.00
25.0		31.00	33.00
25.1		42.00	45.00
26.0a		80.00	84.00
b		23.00	24.00
27.0		12.00	13.00
	27.1		6.00
28.0		5.00	5.50
28.1		7.50	9.00
	28.2		6.00
29.0		18.00	19.00
29.1		31.00	33.00
30.0		14.00	15.00
Minimum		42.00	45.00
31.0 (remove)		3.00	
32.0		3.50	4.00
33.0		1.25	1.50
	Minimum		6.00
33.1		15.00	16.00
	33.2a		2.00
	b		5.00
	Minimum		6.00

List of Subjects in 7 CFR Part 28

Administrative practice and procedures, Cotton, Reporting and recordkeeping requirements, Warehouses, Cotton samples, Standards, Cotton Linters, Grades, Staples, Market news, Testing.

For the reasons set forth in the preamble, 7 CFR part 28 is amended as follows:

PART 28 [AMENDED]

1. The authority citation for subpart A of part 28 continues to read as follows:

Authority: Sec. 5, 50 Stat. 62, as amended (7 U.S.C. 55); Sec. 10, 42 Stat. 1519 (7 U.S.C. 61).

2. Section 28.116 is amended by revising paragraph (c) to read as follows:

§ 28.116 Amounts of fees for classification; exemption.

* * * * *

(c) An additional fee of 35 cents per sample shall be assessed for services described in paragraphs (a)(1), (2), and (3) and (b) of this section unless the request for service is so worded that the samples become Government property immediately after classification.

* * * * *

3. Sections 28.117, 28.120, 28.122, 28.123, 28.149, and 28.151 is revised to read as follows:

§ 28.117 Fee for new memorandum or certificate.

For each new memorandum or certificate issued in substitution for a prior memorandum or certificate at the request of the holder, thereof, on account of the breaking or splitting of the lot of cotton covered thereby or otherwise for his business convenience, the person requesting such substitution shall pay a fee of 15 cents per bale or a minimum fee of $5.00 per sheet. If the memorandum is provided by means of a computer diskette, the fee for each diskette shall be the higher of $10.00 or 10 cents per bale. The cost of any diskette not returned to the Division will be billed to the requestor.

§ 28.120 Expenses to be borne by party requesting classification.

For any samples submitted for Form A, Form C, or Form D determinations, the expenses of inspecting and sampling, or supervising the sampling, and the preparation of the samples and delivery of such samples to the classification room or other place specifically designated for the purpose by the Director shall be borne by the party requesting classification.

§ 28.122 Fee for practical classing examination.

The fee for the practical classing examination for cotton or linters shall be $100.00. Any applicant who passes the examination may be issued a certificate indicating this accomplishment. Any person who fails to pass the examination may be reexamined. The fee for this practical reexamination is $80.00.

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§ 28.123 Cost of practical forms of cotton standards.

The costs of practical forms of the cotton standards of the United States shall be as follows:

Effective date July 1, 1991	Dollars each box or roll			
	Domestic shipments		Shipments delivered outside the continental United States	
	f.o.b. Memphis, TN	Surface delivery	Air freight collect	Air parcel post delivered
Grade standards:				
American Upland	$120.00	$125.00	$120.00	$160.00
American Pima	155.00	160.00	155.00	195.00
Standards for length of staple:				
American Upland (prepared in one pound rolls for each length)	18.00	21.00	18.00	32.00
American Pima (prepared in one pound rolls for each length)	19.00	22.00	19.00	33.00

§ 28.149 Fees and costs; Form C determinations.

For samples submitted for Form C determinations, the party requesting the classification shall pay the fees and costs of supervising the sampling incurred on account of each request.

§ 28.151 Cost of practical forms for linters, period effective.

Practical forms of the official cotton linters standards of the United States will be furnished to any person subject to the applicable terms and conditions specified in § 28.105; *Provided*, That no practical form of any of the official cotton linters standards of the United States for grade shall be considered as representing any such standards after the date of its cancellation in accordance with this subpart, or, in any event, after the expiration of 12 months following the date of its certification. The cost of the practical forms of cotton linters standards of the United States shall be as follows:

Effective date July 1, 1991	Dollars each box or roll			
	Domestic shipments		Shipments delivered outside the continental United States	
	f.o.b. Memphis, TN	Surface delivery	Air freight collect	Air parcel post delivered
Linters Grade Standards (6 sample box for each grade)	$120.00	$125.00	$120.00	$160.00
Linters Staple Standards (prepared in one pound rolls for each length)	20.00	23.00	20.00	34.00

4. The authority citation of subpart D of part 28 continues to read as follows:

Authority: Sec. 3a, 50 Stat. 62, as amended (7 U.S.C. 473a); Sec. 3c, 50 Stat. 62 (7 U.S.C. 473c); unless otherwise noted.

5. Sections 28.910 and 28.911 are revised to read as follows:

§ 28.910 Classification of samples and issuance of classification data.

(a) The samples submitted as provided in this subpart shall be classified by employees of the Division and classification memoranda showing the official quality determination of each sample according to the official cotton standards of the United States will be issued as computer punch cards that are both eye and machine readable. These cards will be returned by the Division to the ginner or to the agent designated by the ginner to receive the classification data. In lieu of punch cards, ginners or the ginners' designated agents may select any one of the following alternative methods of receiving data at no additional charge.

(1) Classification data for all bales from a gin may be transferred by electronic telecommunication equipment. If the issuance of classification data is requested by telecommunications transfer as well as by another method, the fee for telecommunication transfer shall be one cent per bale ginned. All long distance telephone line charges will be paid by the receiver of data.

(2) Classification data for all bales from a gin may be issued on a computer tape or diskette. If the issuance of classification data is requested on tape or diskette as well as by another method, the fee for each tape or diskette shall be the higher of $10.00 or one cent per bale. The cost of any tape or diskette not returned to the Division will be billed to the requestor.

(3) Classification data for all bales from a gin may be issued as printed cards that are both eye readable and machine scannable. If the issuance of classification data is requested on printed cards as well as by another method, the fee for printed cards shall be one cent per card issued, with a minimum fee of $10.00 per gin per season.

(b) Upon request of an owner of cotton for which classification memoranda have been issued under this subpart, a new memorandum shall be issued for the business convenience of such owner without the reclassification of the cotton. Such rewritten memorandum shall bear the date of its issuance and the date or inclusive dates of the original classification. The fee for a new memorandum shall be 15 cents per bale or a minimum of $5.00 per sheet.

§ 28.911 Review classification.

A producer may request one manual or one High Volume Instrument (HVI) review classification for each bale of eligible cotton. The fee for manual review classification is $1.23 per sample. The fee for HVI review classification is $1.73 per sample. Samples for review classification must be drawn by gins of warehouses licensed pursuant to §§ 28.20–28.22, or by employees of the United States Department of Agriculture. Each sample for review classification shall be taken, handled, and submitted according to § 28.908 and to supplemental instructions issued by the Director or an authorized representative of the Director. Costs incident to sampling, tagging, identification, containers, and shipment for samples for review classification shall be assumed by the producer. After classification, the samples shall become the property of the Government unless the producer requests the return of the samples. The proceeds from the sale of samples that become Government property shall be used to defray the costs of providing the services under this subpart. Producers who request return of their samples after classing will pay a fee of 35 cents per sample in addition to the fee established above in this section.

6. The authority citation for subpart E of part 28 continues to read as follows:

Authority: Sec. 3c, 50 Stat. 62; 7 U.S.C. 473c; Sec. 3d, 55 Stat. 131 (7 U.S.C. 473d).

7. Section 28.956 is revised to read as follows:

§ 28.956 Prescribed fees.

Fees for fiber and processing tests shall be assessed as listed below:

Item No.	Kind of test	Fee per test
1.0	Calibration cotton for use with High Volume Instruments, per 5 pound package:	
	a. f.o.b. Memphis, Tennessee	$90.00
	b. By surface delivery within continental United States.	95.00
	c. By air freight collect outside continental United States.	90.00
	d. By air parcel post delivery outside continental United States.	130.00
1.1	High Volume Instrument (HVI) System Check Level. Furnishing two samples per month for HVI determinations, summarizing returned data, and reporting deviations from average of all laboratories for measurements taken, per 12 months:	
	a. f.o.b. Memphis, Tennessee	156.00
	b. By air parcel post delivery outside continental United States.	312.00
2.0	Furnishing international calibration cotton standards with standard values for micronaire reading and fiber strength at zero and ⅛-inch gage and Fibrograph length:	
	a. f.o.b. Memphis, Tennessee ½-lb. sample.	19.00
	b. By surface delivery within continental United States, ½-lb sample.	21.00
	c. By air freight collect outside continental United States, ½-lb sample.	19.00
	d. By air parcel post delivery outside continental United States, ½-lb sample.	25.00
2.1	Furnishing international calibration cotton standards with standard values for micronaire reading only:	
	a. f.o.b. Memphis, Tennessee, 1-lb sample.	27.00
	b. Surface delivery within continental United States, 1-lb sample.	30.00
	c. By air freight collect outside continental United States, 1-lb sample.	27.00
	d. By air parcel post delivery outside continental United States, 1-lb sample.	41.00
3.0	Furnishing standard color tiles for calibrating cotton colormeters, per set of five tiles including box:	
	a. f.o.b. Memphis, Tennessee	115.00
	b. Surface delivery within continental United States.	120.00
	c. By air freight collect outside continental United States.	115.00
	d. By air parcel post delivery outside continental United States.	155.00
3.1	Furnishing single color calibration tiles for use with specific instruments or as replacements in above sets, each tile:	
	a. f.o.b. Memphis, Tennessee	21.00
	b. Surface delivery within continental United States.	24.00
	c. By air freight collect outside continental United States.	21.00
	d. By air parcel post delivery outside continental United States.	34.00
4.0	Furnishing a colormeter calibration sample box containing six cotton samples with color values Rd and +b for each sample, per box:	
	a. f.o.b. Memphis, Tennessee	40.00
	b. Surface delivery within continental United States.	45.00
	c. By air freight collect outside continental United States.	40.00
	d. By air parcel post delivery outside continental United States.	60.00
4.1	Furnishing a trashmeter calibration sample box containing six cotton samples with trashmeter percent area readings for each sample, per box:	
	a. f.o.b. Memphis, Tennessee	40.00
	b. Surface delivery within continental United States.	45.00
	c. By air freight collect outside continental United States.	40.00
	d. By air parcel post delivery outside continental United States.	60.00
5.0	High Volume Instrument (HVI) measurement. Reporting micronaire, length, length uniformity, ⅛-inch gage strength, color and trash content. Based on a 6 oz. (170 g) sample, per sample.	1.65
6.0	Color of ginned cotton lint. Reporting data on the reflectance and yellowness in terms of Rd and +b values as based on the Nickerson-Hunter Cotton Colorimeter on samples which measure 5 x 6-½ inches and weigh approximately 50 grams, per sample.	1.20
7.0	Fiber length of ginned cotton lint by Fibrograph method. Reporting the average length and average length uniformity as based on 4 specimens from a blended sample, per sample.	9.00
7.1	Fiber length of ginned cotton lint by Fibrograph method. Reporting the average length and average length uniformity as based on 2 specimens from each unblended sample.	5.75
8.0	Pressley strength of ginned cotton lint by flat bundle method for either zero or ⅛-inch gage as specified by applicant. Reporting the average strength as based on 6 specimens from a blended sample, per sample.	9.25
8.1	Pressley strength of ginned cotton lint by flat bundle method for either zero or ⅛-inch gage as specified by applicant. Reporting the strength as based on 2 specimens for each unblended sample, per sample.	5.75
9.0	Stelometer strength and elongation of ginned cotton lint by the flat bundle method for ⅛-inch gage. Reporting the average strength and elongation:	
	a. Based on 6 specimens from each blended sample, per sample.	9.25
	b. Based on 4 specimens from each blended sample, per sample.	7.00
	c. Based on 2 specimens from each blended sample, per sample.	5.75
10.0	Micronaire readings on ginned lint. Reporting the micronaire based on 2 specimens per sample.	0.65
10.1	Micronaire reading based on 1 specimen per sample.	0.35
11.0	Fiber maturity and fineness of ginned cotton lint by the Causticaire method. Reporting the average maturity, fineness, and micronaire reading as based on 2 specimens from a blended sample, per sample.	15.00
	Minimum fee	75.00

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Item No.	Kind of test	Fee per test
12.0	Fiber fineness and maturity of ginned cotton lint by the IC-Shirley Fineness/Maturity Tester method, reporting the average micronaire, maturity ratio, percent mature fibers and fineness (linear density) based on 2 specimens from a blended sample, per sample.	7.00
13.0	Fiber length array fo cotton samples. Reporting the average percentage of fibers by weight in each ½-inch group, average length and average length variability as based on 3 specimens from a blended sample:	
	a. Ginned cotton lint, per sample.	74.00
	b. Cotton comber noils, per sample.	113.00
	c. Other cotton wastes, per sample.	136.00
13.1	Fiber length array of cotton samples. Reporting the average percentage of fibers by weight in each ½-inch group, average length, and average length variability as based on 2 specimens from a blended sample:	
	a. Ginned cotton lint, per sample.	54.00
	b. Cotton comber noils, per sample.	78.00
	c. Other cotton wastes, per sample.	106.00
13.2	Fiber length array of cotton samples, including purified or absorbent cotton. Reporting the average percentage of fibers by weight in each ½-inch group, average length and average length variability as based on 3 specimens from a blended sample, per sample.	130.00
14.0	Fiber Length and Length Distribution of cotton samples by the Almeter method. Reporting the upper 25 percent length, mean length, coefficient of variation, and short fiber percentages by weight, number or tuft in each ½-inch group, as based on 2 specimens from a blended sample:	
	a. Report percentages of fiber by weight only.	25.00
	b. Report percentages of fiber by weight and numer of tuft.	30.00
	c. Report percentages of fiber by weight, number and tuft.	35.00
15.0	Foreign matter content of cotton samples. Reporting data on the non-lint content as based on the Shirley Analyzer separation of lint and foreign matter:	
	a. For samples of ginned lint or comber noils, per 100-gram specimen.	8.00
	b. For samples of ginning and processing wastes other than comber noils, per 100-gram specimen.	14.00
16.0	Neps content of ginned cotton lint. Reporting the neps per 100 square inches as based on the web prepared from a 3-gram specimen by using accessory equipment with the mechanical fiber blender, per sample.	16.00
17.0	Sugar content of cotton. Reporting the percent sugar content as based on a quantitative analysis of reducing substances (sugars) on cotton fibers, per sample.	5.25
	Minimum fee	26.25
18.0	Miniature carded cotton spinning test. Reporting data on tenacity (centinewtons per tex) of 22's yarn and HVI data (see item 5.0). Based on the processing of 50 grams of cotton in accordance with special procedures per sample.	25.00
19.0	Two-pound cotton carded yarn spinning test available to cotton breeders only. Reporting data on yarn skein strength, yarn appearance, yarn neps and the classification and the fiber length of the cotton as well as comments on any unusual processing performance as based on the processing of 2 pounds of cotton in accordance with standard procedures into two standard carded yarn numbers employing a standard twist multiplier, per sample.	84.00
20.0	Cotton carded yarn spinning test. Reporting data on waste extracted, yarn skein strength, yarn appearance, yarn neps and classification, and fiber length as well as comments summarizing any unusual observations as based on the processing of 8 pounds of cotton in accordance with standard laboratory procedures at one of the standard rates of carding of 6½, 9½, or 12½ pounds-per-hour into two of the standard carded yarn number of 8s, 14s, 22s, 36s, 44s, or 50s, employing a standard twist multiplier unless otherwise specified, per sample.	115.00
21.0	Spinning potentials test. Determining the finest yarn which can be spun with no ends down and reporting spinning potential yarn number. This test requires an additional 4 pounds of cotton, per sample.	105.00
22.0	Cotton combed yarn spinning test. Reporting data on waste extracted, yarn skein strength, yarn appearance, yarn neps, and classification and fiber length as well as comments summarizing any unusual observations as based on the processing of 8 pounds of cotton in accordance with standard procedures at one of the standard rates of carding of 4½, 6½, or 9½ pounds per hour into two of the standard combed yarn numbers of 22s, 36s, 44s, 50s, 60s, 80s, or 100s employing a standard twist multiplier unless otherwise specified per sample.	152.00
23.0	Cotton carded and combed yarn spinning test. Reporting the results as based on the processing of 10 pounds of cotton into two of the standard carded and two of the standard combed yarn numbers employing the same carding rate and the same yarn numbers for both the carded and the combed yarns, per sample.	220.00
24.0	Cotton carded and combed yarn spinning test. Reporting the results as based on the processing of 9 pounds of cotton into two of the standard combed yarn numbers employing different carding rates and/or yarn numbers for the carded and combed yarns, per sample.	240.00
25.0	Processing and testing of additional yarn. Any carded or combed yarn number processed in connection with spinning tests including either additional yarn numbers or additional twist multipliers employed on the same yarn numbers, per additional lot of yarn.	33.00
25.1	Processing and furnishing of additional yarn: Any yarn number processed in connection with spinning tests. Approximately 300 yards on each of 16 paper tubes for testing by the applicant, per additional lot of yarn.	45.00
26.0	Twist in yarns by direct-counting method. Reporting direction of twist and average turns per inch of yarn:	
	(a) Single yarns based on 40 specimens per lot of yarn.	84.00
	(b) Plied or cabled yarns based on 10 specimens, per lot of yarn.	24.00
27.0	Skein strength of yarn. Reporting data on the strength and the yarn numbers based on 25 skeins from yarn furnished by the applicant per sample.	13.00
27.1	Single Strand Yarn Strength Test. Measuring 100 strands on a Stelmat Tester and reporting yarn strength, elongation and coefficient of variation, per test.	6.00
28.0	Appearance grade of yarn furnished on bobbins by applicant. Reporting the appearance grade in accordance with ASTM standards as based on yarn wound from one bobbin, per bobbin.	5.50
28.1	Furnishing yarn wound on boards in connection with yarn appearance tests.	9.00
28.2	Yarn Imperfections Test. Measuring yarn on the Uster Evenness Tester and reporting the yarn imperfections, thick places, thin places, and neps, and the percent coefficient of variation, per sample.	6.00
29.0	Strength of cotton fabric. Reporting the average warp and filling strength by the grab method as based on 5 breaks for both warp and filling of fabric furnished by the applicant, per sample.	19.00
29.1	Cotton fabric analysis. Reporting data on the number of warp and filling threads per inch and weight per yard of fabric as based on at least three (3) 6 × 6-inch specimens of fabric which were processed or furnished by the applicant, per sample.	33.00
30.0	Chemical finishing tests on finished drawing silver. The Ahiba Texomat Dyer is used for scouring, bleaching and dyeing of a 3-gram sample. Color measurements are made on the unfinished, bleached and dyed cotton samples, using a Hunterlab Colorimeter, Model 25 M-3. The color values are reported in terms of reflectance (Rd), yellowness (+b) and blueness (−b).	15.00
	Minimum fee	45.00
32.0	Furnishing identified cotton samples. Includes samples of ginned lint stock at any stage of processing or testing, waste of any type, yarn or fabric selected and identified in connection with fiber and/or spinning tests, per identified sample.	4.00
33.0	Furnishing additional copies of test reports. Including extra copies in addition to the two copies routinely furnished in connection with each test item, per additional sheet.	1.50
	Minimum fee	6.00
33.1	Furnishing a certified relisting of test results. Includes samples or sub-samples selected from any previous tests, per sheet.	16.00
33.2	Sending copies of test reports by facsimile (FAX), per sheet:	
	a. Within continental United States.	2.00
	b. Outside continental United States.	5.00
	Minimum fee (additional copies).	6.00
34.0	Classification of ginned cotton lint is available in connection with other fiber tests, under the provisions of 7 CFR 28, § 28.56, at the fees prescribed by 7 CFR 28, § 28.116. Classification includes grade, staple, and micronaire reading based on a 6 oz. (170g) sample.	

Dated: May 29, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91-13047 Filed 5-30-91; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 905

[Docket No. FV-91-248FR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Redistricting of Citrus Districts and Reapportionment of Grower Members

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting as a final rule, with an appropriate correction, an interim final rule which redefined districts in the production area for Florida citrus and reapportioned Citrus Administrative Committee (CAC) membership established under Marketing Order No. 905. The CAC is comprised of nine grower members apportioned among the four districts within the Florida citrus production area. The interim final rule more accurately apportioned the grower members among the districts in accordance with their proportionate quantities of shipments, production, and acreage of Florida citrus.

EFFECTIVE DATE: May 31, 1991.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone (202) 475-3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 90 Florida citrus handlers subject to regulation under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida, and about 12,000 producers of these citrus fruits in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A minority of these handlers and a majority of the producers may be classified as small entities.

An interim final rule was issued February 28, 1991, and published in the **Federal Register** (56 FR 8684, March 1, 1991), with a 30-day comment period ending April 1, 1991. No comments were received. However, that rule contained an inadvertent error which is being corrected in this final rule. The correction changes language in paragraph (b) of § 905.114 to specify that Citrus District Two shall be represented by two grower members rather than three members as incorrectly specified in the interim final rule.

Section 905.114 of the order's rule and regulations defines the four citrus districts into which the production area is currently divided. That section also outlines the apportionment of nine grower members on the CAC, each with an alternate, among these districts. Prior to issuance of the interim final rule, Citrus Districts One, Two, and Three each had two grower members, while Citrus District Four had three grower members.

Section 905.14 of the order authorizes the CAC, with the approval of the Secretary, to redefine the districts into which the production area is divided and reapportion or otherwise change the grower membership of the districts. The objective is to align the districts and apportion the grower membership in accordance with proportionate quantities of shipments, production, and citrus acreage in the production area in Florida.

Section 905.14 requires that the number of members from each district be based, insofar as practicable, upon the respective averages for the immediately preceding five fiscal periods of: (1) The volume of fruit shipped from each district; (2) the volume of fruit produced in each district; and (3) the total number of acres of citrus in each district. That section also requires that the CAC consider such redistricting and reapportionment during this fiscal period (1990-91) and that it be announced on or before March 1, 1991. With a nine-member committee, each member represents about 11 percent of the acreage, production, and shipments.

The CAC recommended, based on an analysis of these factors, that one grower member position be moved from Citrus District One to Citrus District Three. In addition, the CAC recommended that the District boundaries be changed by moving Osceola County from Citrus District One to Citrus District Two. As

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reapportioned, Citrus District One is represented by one member, Citrus District Two by two members, and Citrus Districts Three and Four by three members each.

The CAC reports that these changes reflect shifts in production from the northern to the southern part of the Florida citrus producing area over the past five year period. The CAC also reports that, during the five year period (1986–90), the combined average percentages used as the basis for this reapportionment and redistricting were as follows: Citrus District One, 12.0 percent; Citrus District Two, 20.9 percent; Citrus District Three, 32.5 percent; and Citrus District Four, 34.7 percent.

This action reflects the CAC's and the Department's appraisal of the need to make the specified changes. The Department's view is that these changes will have a beneficial impact on producers and handlers since it more accurately aligns the districts and apportions the CAC membership in accordance with their proportionate quantities of shipments, production, and acreage of Florida citrus.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the CAC, and other information, it is found that finalizing the interim final rule, as published in the **Federal Register** (56 FR 8684, March 1, 1991), with the corrections herein specified, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This final rule maintains changes in the rules and regulations under the order which provided more equitable representation on the CAC by bringing representation more in line with the citrus acreage within the districts of the production area in Florida, and the quantities of citrus produced and shipped from this area; (2) Florida grapefruit growers and handlers are aware of these changes, which were recommended by the CAC at a public meeting; (3) the interim final rule provided a 30-day comment period and no comments were received; and (4) no useful purpose would be served by delaying the effective date until 30 days after publication.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Accordingly, the interim final rule amending the provisions of § 905.114, which was published in the **Federal Register** (56 FR 8684, March 1, 1991), is adopted as a final rule with the following change in § 905.114 paragraph (b), which is revised to read as follows:

Note: This section will appear in the annual Code of Federal Regulations.

Section 905.114 Redistricting of citrus districts and reapportionment of grower members.

* * * * *

(b) Citrus District Two shall include the Counties of Polk and Osceola. This district shall have two grower members and alternates.

* * * * *

Dated: May 28, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–12918 Filed 5–30–91; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 981

[FV–91–234FR]

Handling of Almonds Grown in California; Salable and Reserve Percentages for the 1990–91 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service is adopting, without modification, as a final rule the provisions of an interim final rule which further revised the salable and reserve percentages for California almonds received by handlers during the 1990–91 crop year. The 1990–91 crop year commenced on July 1, 1990. The interim final rule revised the salable percentage from 70 to 80 percent and the reserve percentage from 30 to 20 percent for California almonds received by handlers during the 1990–91 crop year. The Almond Board of California (Board), the agency which locally administers the almond marketing order, unanimously recommended at its February 21, 1991, meeting the revision of the salable and reserve percentages while keeping the export percentage the same at 0 percent. This final rule is authorized under the marketing order for almonds grown in California. This action is necessary to provide a sufficient quantity of almonds to meet trade demand and carryover needs.

EFFECTIVE DATE: May 31, 1991.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, F&V, AMS, USDA, room 2524–S, P.O. Box 96456, Washington, DC, 20090–6456; telephone (202) 475–3861.

SUPPLEMENTARY INFORMATION: This final rule is issued under marketing agreement and Order No. 981 (7 CFR part 981), both as amended, hereinafter referred to as the order, regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 105 handlers of almonds who are subject to regulation under the order and approximately 7,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

The 1990–91 almond salable, reserve, and export percentages were established in a final rule published in the **Federal Register** on September 21, 1990 (55 FR 38793). The initial salable percentage was 65 percent, the reserve percentage was 35 percent, and the export percentage was 0 percent. These percentages were established on the basis of two Board recommendations, on June 27 and July 25, 1990, pursuant to sections 981.47 and 981.49 of the almond marketing order. The Board based its recommendations on the then current estimates of marketable supply and combined domestic and export trade demand for the 1990–91 crop year.

However, on December 3, 1990, the Board met to review the salable and reserve percentages that had been established for the 1990–91 crop year and the supply and demand estimates from which those percentages were derived. At that meeting, the Board unanimously recommended to revise the salable and reserve percentages. Pursuant to section 981.48 of the almond marketing order, the Board arrived at its recommendation for revising the salable and reserve percentages by reviewing its estimates of marketable supply and combined domestic and export trade demand for the 1990–91 crop year. Subsequently, an interim final rule revising the salable percentage from 65 to 70 percent and revising the reserve percentage from 35 to 30 percent was published in the **Federal Register** on February 11, 1991 (56 FR 5308). The interim final rule provided interested persons an opportunity to submit comments through March 13, 1991.

At its February 21, 1991, meeting the Board again reviewed the 1990–91 crop year salable and reserve percentages and the supply and demand estimates from which those percentages were derived. At that meeting, pursuant to section 981.48 of the almond marketing order, the Board unanimously recommended to further revise the almond salable and reserve percentages for the 1990–91 crop year. A second interim final rule, which further revised the salable percentage from 70 to 80 percent and further revised the reserve percentage from 30 to 20 percent, was published in the March 19, 1991 (56 FR 11499) issue of the **Federal Register**. This interim final rule revised the February 11, 1991, interim final rule by further relaxing restrictions on almond handlers.

This action finalizes the March 19 interim final rule which decreased the quantity of California almonds which handlers must withhold from normal, competitive markets to meet their reserve obligations under the marketing order for the 1990–91 crop year. Therefore, this action will not impose any additional burden or costs on handlers.

The estimates used by the Board on February 21, 1990, in reviewing the salable and reserve percentages are shown below. The Board's July 25, 1990, and December 3, 1990, estimates are shown as a basis for comparison.

MARKETING POLICY ESTIMATES—1990 CROP

[Kernelweight basis in millions of pounds]

	7/25/90 Initial estimates	12/3/90 Revised estimates	2/21/91 Revised estimates
Estimated Production:			
1. 1990 Production	655.0	655.0	655.0
2. Loss and Exempt—4.0%	26.0	26.0	26.0
3. Marketable Production	629.0	629.0	629.0
Estimated Trade Demand:			
4. Domestic	190.0	190.0	205.0
5. Export	375.0	375.0	410.0
6. Total	565.0	565.0	615.0
Inventory Adjustment:			
7. Carryin 7/1/90	215.0	202.0	202.0
8. Desirable Carryover, 6/30/91	59.0	77.2	90.1
9. Adjustment (Items 8 minus Item 7)	(156.0)	(124.8)	(111.9)
Salable/Reserve:			
10. Adjusted Trade Demand (Items 6 plus item 9)	409.0	440.2	503.1
11. Reserve (Item 3 minus Item 10)	220.0	188.8	125.9
12. Salable Percentage (Item 10 divided by Item 3 × 100)	65%	70%	80%
13. Reserve Percentage (100 percent minus Item 12)	35%	30%	20%

Estimated 1990 crop production remained a 655.0 million kernelweight pounds. Estimated weight losses resulting from the removal of inedible kernels by handlers and losses during manufacturing also stayed the same at 26.0 million kernelweight pounds. Therefore, marketable production remained at 629.0 million kernelweight pounds.

The Board's estimate of domestic trade demand increased from 190.0 to 205.0 million kernelweight pounds. Estimated 1990–91 crop year export trade demand increased from 375.0 to 410.0 million kernelweight pounds. Therefore, total estimated trade demand increased from 565.0 to 615.0 million kernelweight pounds.

The Board's estimate of carryin on July 1, 1990, remained unchanged at 202.0 million kernelweight pounds. The Board's revised estimated included an increase in desirable carryover from 77.2 million kernelweight pounds to 90.1 million kernelweight pounds. The desirable carryover is the quantity of salable almonds deemed desirable to be carried out on June 30, 1991, for early season shipment during the 1991–92 crop year until the 1991 crop is available for market. After taking carryin and desirable carryover into account, the adjusted trade demand increase from 440.2 million kernelweight pounds to 503.1 million kernelweight pounds. The increase in the salable percentage from 70 to 80 will meet the higher trade demand needs.

The remaining 20 percent (125.9 million kernelweight pounds) of the 1990 crop marketable production will be withheld by handlers to meet their reserve obligations. All or part of these almonds could be released to the salable category if it is found that the supply made available by the salable percentage is sufficient to satisfy 1990–91 trade demand needs, including desirable carryover requirements for use during the 1991–92 crop year. The Board

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is required to make any additional recommendations to the Secretary to increase the salable percentage prior to May 15, 1991. Alternatively, all or a portion of the reserve almonds would be sold by the Board, or by handlers under agreement with the Board, to governmental agencies or charitable institutions or for diversion into almond oil, almond butter, animal feed, or other outlets which the Board finds are noncompetitive with existing normal markets for almonds.

The order permits the Board to include normal export requirements with domestic requirements in its estimate of trade demand when recommending the establishment of salable, reserve, and export percentages for any crop year. For the 1990–91 crop year, estimated exports are included in the trade demand. Thus, an export percentage of 0 percent was established by the final rule published in the **Federal Register** on September 21, 1990 (55 FR 38793). Therefore, reserve almonds are not eligible for export to normal export outlets. However, handlers may ship their salable almonds to export markets. The export percentage is not changed as a result of this action.

Three comments were received in response to the February 11 and March 19 interim final rules. Comments supporting the further revision of salable and reserve percentages for the 1990–91 crop year were submitted by Valley Almond and California Grown Nut Company. Valley Almond and California Grown Nut Company encouraged the Secretary to approve the Board's recommendation to release an additional 10 percent of reserve almonds. In support of the release, California Grown Nut Company stated that the release would benefit producers, who would receive additional funds due to the increase in the salable percentage of almonds and handlers, who would handle and sell a higher percentage of salable almonds in any market.

The third comment, submitted by Panoche Creek Packing Corporation (Panoche), did not clearly state whether it supported or opposed the interim final rule. Panoche correctly commented that the Board's recommendation was based on an estimated increase in trade demand from 565 million pounds to 615 million pounds.

Panoche also stated that shipment statistics provided by the Board show that the industry would be shipping less than the Board's original estimate of 565 million pounds. Panoche pointed out that 530 million pounds were shipped during the 1988–89 crop year and that shipments as of February during the 1988–89 crop year were ahead by more than 13 million pounds of shipments as of February during the 1990–91 crop year.

However, the Board's March 1991 almond industry report shows that, as of March 31, the combined domestic and export salable shipments by handlers total 432 million pounds and the combined domestic and export commitments (salable almonds sold but not delivered) total 184 million pounds, which bring both totals to 607 million kernelweight pounds. This is 42 million pounds above the Board's original estimate of 565 million kernelweight pounds. Further, shipments as of February during the 1990–91 crop year (this season) were more than 34 million pounds greater than shipments as of February for the 1989–90 crop year (last season).

Lastly, Panoche commented that another factor working against the shipments will be the increase in duty rates from 2 percent to 7 percent for all almonds exported to the European Economic Community (EEC). First, the increase of duty rates for the export of almonds from 2 percent to 7 percent has occurred every year since the enactment of the Beef and Citrus Agreement of 1989 whenever the exportation of almonds has reached a level of 45,000 tons. Second, since the Beef and Citrus Agreement of 1989 was implemented, almond monthly industry statistics indicate a steady increase of almonds exported to EEC countries even after the 7 percent duty rate became effective. This demonstrates that the increase in duty rates has not reduced shipments to EEC countries.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the Board's recommendation, and other available information, it is found that the revision of § 981.237 so as to change the salable and reserve percentages for almonds during the crop year beginning on July 1, 1990, to 80 percent and 20 percent, respectively, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because this final action adopts, without modification, an interim final rule which relaxed restrictions and was effective on March 19, and handlers need no additional time to comply.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Accordingly, the interim final rule revising § 981.237, which was published at 56 FR 11499 on March 19, 1991, is adopted as a final rule without change.

Dated: May 28, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–12916 Filed 5–30–91; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Part 1945

Revisions to the Insured Emergency Loan Instructions to Implement Administrative Decisions Pertaining to Applicant Eligibility and Sale of Nonessential Assets

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to revise the definition of single enterprise to include single crops which constitute a basic part of an applicant's farming operation, and to base eligibility on such single enterprises having sustained a 30 percent loss as the result of a natural disaster. Regulations are also revised to eliminate the requirement that a borrower sell all nonessential assets. The FmHA will require that such assets be pledged as security for the loan.

Farmers who have suffered severe production losses are in dire need of disaster program assistance to repay creditors and suppliers annual production loans, open supplier accounts, and installments due on intermediate and long term debts and to otherwise repair and continue their farming and ranching operations.

The changes incorporated in this interim rule ease the requirements for obtaining assistance under this program.

DATES: Interim rule effective May 31, 1991. Written comments must be submitted on or before July 1, 1991.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: David R. Smith, Senior Loan Officer, Farmer Programs Loan Making Division, Farmers Home Administration, USDA, South Building, 14th Street and Independence Avenue SW., Washington, DC 20250, telephone (202) 475–4018.

SUPPLEMENTARY INFORMATION:

Classification

This action was reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be nonmajor because it will not result in an annual effect on the economy of $100 million or more. In FY 1989, 2,806 EM loans were made for a total of approximately $73 million. In FY 1990, 2,609 EM loans were made for a total of approximately $102 million.

Intergovernmental consultation

For the reasons set forth in the final rule related to Notice, 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency Loans are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Programs affected

These changes affect the following FmHA program as listed in the Catalog of Federal Domestic Assistance: 10.404—Emergency Loans.

Environmental impact statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Discussion of the interim rule

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption of 5 U.S.C. 553 with respect to such rules. However, FmHA is making this action effective immediately upon publication in the **Federal Register** without prior public comment. In this situation, the Agency has concluded that the need to provide immediate assistance to farmers who have suffered severe production losses as a result of natural disasters, and who would not otherwise qualify for assistance under current regulations, satisfies the Act's exception to notice and comment rule making for emergency cases.

Farmers who have suffered severe production losses are in dire need of disaster program assistance to repay creditors and suppliers annual production loans, open supplier accounts, and installments due on intermediate and long term debts and to otherwise repair and continue their farming and ranching operations.

The changes incorporated in this interim rule ease the requirements for obtaining assistance under this program. By implementing these regulations immediatley, assistance can be provided to many needy farmers and ranchers who, without this assistance, will be unable to continue their operations. Solicited comments will be considered carefully and taken into account before publication of a final rule.

Background

The making, supervision and servicing of farm loans to FmHA borrowers is governed primarily by the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1921 et seq.). In particular, 7 U.S.C. 1970 provides in part, that the Secretary, and through delegation FmHA, extend emergency loans "to any applicant seeking assistance based on production losses if the applicant shows that a single enterprise which constitutes a basic part of the applicant's farming, ranching, or aquaculture operation has sustained at least a 30 per centum loss of normal per acre or per animal production * * *." Although Congress did not include a definition of "single enterprise" in the statute itself, the legislative history does provide a detailed explanation of the term. While the legislative history itself is not law, in this case the Agency originally promulgated regulations defining "single enterprise" in a manner that closely tracked the legislative history.

The existing emergency (EM) loan regulations state that applicant loan eligibility will be based on a 30 percent production loss to a single enterprise, which is defined as: All cash field crops—All cash vegetable crops—All cash fruit and nut crops—All feed crops fed to applicant's own livestock—Beef operations—Dairy operations—Hog operations—Poultry operations—Aquaculture operations—All other operations. Each single crop or fruit enterprise could be made up of one or more crops. For example, the single enterprise cash crop category for a typical midwestern farm may include corn, soybeans and wheat. Under current regulations, therefore, eligibility for obtaining an emergency production loss loan is determined when a single enterprise which is considered a basic part of the farming operation (e.g., the *net* loss of *all* cash crops) suffered a 30 percent loss due to the disaster. Once eligibility is established, then all single enterprises showing a production loss are considered in the calculation to determine the maximum loss loan entitlement.

Although this regulatory framework closely follows legislative history, the Agency has concluded that modifications to the current provisions are in order. In the 15 years that FmHA has employed the "single enterprise" requirement for determining eligibility, there have been numerous instances where producers have suffered qualifying losses to single crops, yet are deemed ineligible for an emergency loan only because other crops must be factored into the loss calculations. Based on this experience, it is the Agency's opinion that by strictly complying with legislative history, the ability of FmHA to carry out the underlying intent of the program—to provide loans to farmers who have suffered losses due to natural disasters and who cannot obtain credit from private sources—has been seriously hindered. For this reason, the Agency has concluded that it can best serve these farmers, and thereby meet the overriding goals of the program, by revising its regulations in a manner that still complies with the statutory requirements of 7 U.S.C. 1970, but that does not strictly follow nonbinding legislative history. The Agency makes these changes with the sincere belief that more farmers in need will be assisted, while at the same time

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preserving a prudent loan making program.

The Agency is revising the definition of "single enterprise" to provide that any individual crop which constitutes a basic part of the applicant's total farming operation will be considered a single enterprise. Loan eligibility will be based on a 30 percent loss to an individual enterprise. The maximum loss loan entitlement will be the sum of production losses to all enterprises.

This change is necessary to respond to the extreme financial stress of many farmers affected by repetitive natural disasters. By basing the determination of loan eligibility on single crops, more applicants will be permitted to qualify for loan assistance.

The Agency is also relaxing the requirement for the handling of nonessential assets. The existing EM Instructions require that such assets be mortgaged and/or assigned to FmHA and sold no later than one year from the date of loan closing, if not sold prior to loan closing. The intent of this requirement was to reduce the amount of loan assistance needed by applying the sale proceeds to the loan account when the assets were sold.

The Agency is revising the nonessential asset section of the regulations by removing the requirement that borrowers sell nonessential assets. The revision will require applicants to pledge such assets as security for the emergency loans. Historically the requirement to sell nonessential assets has been difficult to administer. The Agency has concluded that the elimination of this requirement would not harm the Government, but instead would benefit the public by reducing the administrative cost associated with requiring the liquidation of nonessential assets.

List of Subjects in 7 CFR Part 1945

Agriculture, Disaster assistance.

Therefore, chapter XVIII, title 7, Code of Federal Regulations, is amended as follows:

PART 1945—EMERGENCY

1. The authority citation for part 1945 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart D—Emergency Loan Policies, Procedures and Authorizations

2. Section 1945.154 is amended by revising the first sentence in paragraph (a)(13)(i), revising paragraphs (a)(13)(i)(A) through (a)(13)(i)(C), redesignating paragraphs (a)(13)(i)(D) through (a)(13)(i)(J) as (a)(13)(i)(E) through (a)(13)(i)(K), adding a new paragraph (a)(13)(i)(D), and revising newly redesignated paragraphs (a)(13)(i)(E), (J) and (K) to read as follows:

§ 1945.154 Definitions and abbreviations.

(a) * * *

(13) * * *

(i) *Single enterprise.* Any single crop or livestock enterprise which constitutes a basic part of an applicant's total farming operation. * * *

(A) Individual cash crops, i.e., wheat is an individual crop, corn is an individual crop, and soybeans is an individual crop.

(B) Individual vegetable crops, i.e., carrots is an individual crop, tomatoes is an individual crop, and radishes is an individual crop.

(C) Individual fruit crops, i.e., apples is an individual crop, oranges is an individual crop, and grapefruit is an individual crop.

(D) Individual nut crops, i.e., walnuts is an individual crop, almonds is an individual crop, and pecans is an individual crop.

(E) Individual feed crops, i.e., alfalfa is an individual feed crop, and corn is an individual feed crop when fed to an applicant's own livestock. A livestock enterprise must be a basic part of the farming operation in order for the feed crops to be considered as a basic enterprise in determining eligibility based on production losses to feed crops.

* * * * *

(J) Any aquaculture operation; and

(K) Any other operations (i.e., trees grown for timber).

* * * * *

3. Section 1945.156 is amended by revising paragraph (b)(3) to read as follows:

§ 1945.156 The test for credit and certification requirements for availability of credit elsewhere.

* * * * *

(b) * * *

(3) *Use of nonessential assets (both farm and nonfarm) when seeking other credit.* When an EM loan(s) will be made, after other lenders have declined to provide needed credit to the applicant, the County Supervisor will, as a condition of loan approval, require the applicant, and the owner(s) of the entity to list all assets (both essential and nonessential) and to pledge the nonessential assets to FmHA as security for the proposed loan. This security will be in addition to the security required pursuant to § 1945.169 of this subpart.

4. Section 1945.163 is amended by revising the first sentence of paragraph (a)(2)(iv) to read as follows:

§ 1945.163 Determining qualifying losses, eligibility for EM loan(s) and the maximum amount of each.

* * * * *

(a) * * *

(2) * * *

(iv) The gross dollar value of production losses will be computed for all crops and all livestock enterprises that suffered losses due to the disaster, by calculating the value of the disaster year's production and subtracting that amount from the calculated value of the normal production. * * *

5. Section 1945.200 is revised to read as follows:

§ 1945.200 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0090. Public reporting burden for this collection of information is estimated to vary from 10 minutes to 1 hour per response, with an average of .58 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project [OMB #0575–0090), Washington, DC 20503.

Dated: May 21, 1991.

David T. Chen,

Acting Administrator, Farmers Home Administration.

[FR Doc. 91–13016 Filed 5–30–91; 8:45 am]

BILLING CODE 3410–07–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 110

RIN 3150–AD 95

Return of Topaz Reactor to Soviet Union

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations pertaining to import and export of nuclear equipment and material to permit the return of the Topaz II Reactor System to the Union of Soviet Socialist Republics (USSR). The Topaz II was imported into the United States pursuant to an import license issued by the NRC on January 4, 1991. This rulemkaing action permits the export of Topaz II, which is owned by the Government of the USSR, without issuance of a license by the NRC.

EFFECTIVE DATE: May 31, 1991.

FOR FURTHER INFORMATION CONTACT: Joseph F. Scinto or Joanna M. Becker, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Telephone (301) 492–1740.

SUPPLEMENTARY INFORMATION: In January 1991, the Topaz II Reactor System, a space reactor developed and owned by the USSR, was imported into the United States under an NRC import license, at the behest of the Department of Defense (DOD), for exhibit at a Space Nuclear Power Symposium in Albuquerque, New Mexico, and inspection and study by DOD. The reactor was imported without fuel, coolant or moderator and is non-operating. It is possessed in the United States by Sandia National Laboratory, a prime contractor of the Department of Energy exempt from facility license requirements by NRC regulations in 10 CFR 50.11.

The Topaz II Reactor System, while in the United States, is subject to the provisions of those sections of the Atomic Energy Act applicable to utilization facilities, including sections 101 and 104.

Section 101 reads as follows:

> Sec. 101. Licensed Required.—It shall be unlawful, except as provided in section 91, for any person within the United States to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import, or export any utilization or production facility except under and in accordance with a license issued by the Commission pursuant to section 103 or 104.

Section 104d. provides, in pertinent part:

> Sec. 104 *Medical Therapy and Research and Development*
>
> * * * * *
>
> d. No license under this section may be given to any person for activities which are not under or within the jurisdiction of the United States, except for the export of production or utilization facilities under terms of an agreement for cooperation arranged pursuant to section 123 or except under the provisions of section 109. * * *

Section 11.cc. of the Atomic Energy Act of 1954, as amended, defines "utilization facility", in pertinent part, as

> Any equipment or device, except an atomic weapon, determined by rule of the Commission to be capable of making use of special nuclear material in such quantity as to be of significance to the common defense and security, or in such a manner as to affect the health and safety of the public, or peculiarly adapted for making use of atomic energy in such quantities as to be of significance to the common defense and security or in a manner as to affect the health and safety of the public. * * *

Commission regulations in 10 CFR 50.2 define "utilization facility" as

> Any nuclear reactor other than one designed or used primarily for the formation of plutonium or U–233.

Commission regulations in 10 CFR 110.2 define "utilization facility" as

> Any nuclear reactor, "other than one that is a production facility, and the following major components of a nuclear reactor * * *

Although presently unfueled, the Topaz II Reactor is a reactor peculiarly adapted to making use of atomic energy and was imported under NRC import license No. IR 90002, issued January 4, 1991. This license contained a condition to the effect that it would "become effective only upon written acknowledgement, by an authorized representative of the Union of Soviet Socialist Republics, that any export from the United States of the TOPAZ II Reactor System must meet the requirements of the U.S. Atomic Energy Act of 1954, as amended. Under the law, at present, these requirements include the need for an Agreement for Cooperation in the Peaceful Uses of Atomic Energy." The authorized representative of the USSR acknowledged this condition. There is currently no such Agreement for Cooperation. However, the Soviet agency which developed and owns the Topaz II Reactor System desires its return to the Soviet Union.

Although capable of making use of special nuclear material and peculiarly adapted for making use of atomic energy, taking into account the absence of fuel, moderator or coolant, the intended short stay and limited use as a model for exhibition purposes in the United States, and its return in the near future to the country of origin, the Commission has determined that, in connection with the export of the device, the Topaz II Reactor System imported under NRC License No. IR90002 is not a "utilization facility" and is amending the definition of that term in 10 CFR 110.2. Thus, this device may be exported without issuance of a Commission export license.

Since this matter involves a device which is the property of the Soviet Government transferred for exhibition purposes to the Department of Energy and involves a matter of interest to the Department of Defense and the Department of State, the Commission has determined that this amendment involves a foreign affairs function of the United States. Thus, the notice and comment provisions of the Administrative Procedure Act do not apply, pursuant to 5 U.S.C. 553(a)(1).

Environmental Impact: Categorical Exclusion

The NRC has determined that, pursuant to §§ 51.10 and 51.22(c)(1) of this chapter, the amendments to part 110 which follow require neither an environmental impact statement nor an environmental assessment.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget under approval number 3150–0036.

Regulatory Analysis

Adoption of these amendments is necessary in order to enable return of the Topaz II Reactor System to the Soviet Union. No other NRC regulatory actions or alternative actions by other agencies, to the best of the Commission's knowledge, address this matter nor, in view of the desired time frame, are any alternative courses of action feasible. It is not expected to result in any increased regulatory burden.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. The final rule does not impose additional obligations on the public.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule, and, therefore, a backfit analysis is not required for this final rule because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

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List of Subjects in 10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalty, Export, Import, Incorporation by reference, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 110.

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

1. The authority citation for part 110 continues to read as follows:

Authority: Secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 161, 181, 182, 183, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended, (42 U.S.C. 2071, 2073, 2074, 2077, 2092–2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154–2158, 2201, 2231–2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 110.1(b)(2) also issued under Pub. L. 96–92, 93 Stat. 710 (22 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c and 57d., 88 Stat. 473, 475 (U.S.C. 2074). Section 110.27 also issued under sec. 309(a), Pub. L. 99–440. Section 110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 110.52 also issued under sec. 188, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80–110.113 also issued under 5 U.S.C. 552, 554. Sections 110.30–110.35 also issued under 5 U.S.C. 553.

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 110.20–110.29, 110.50, and 110.120–110.129 also issued under secs. 161 b and i, 68 Stat. 948, 949, as amended (42 U.S.C. 2201 (b) and (i); and §§ 110.7a and 110.53 are also issued under sec. 161(o), 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. The definition of "utilization facility" in § 110.2 is revised to read as follows:

§ 110.2 Definitions.

* * * * *

Utilization facility means any nuclear reactor, other than one that is a production facility, and the following major components of a nuclear reactor:

(1) Pressure vessels designed to contain the core of a nuclear reactor;

(2) Primary coolant pumps;

(3) Fuel charging or discharging machines; and

(4) Control rods.

A utilization facility does not include the steam turbine generator portion of a nuclear power plant. For purposes of export from the United States under the jurisdiction of the Nuclear Regulatory Commission, a utilization facility does not include the Topaz II Reactor System owned by the Union of Soviet Socialist Republics and imported into the United States pursuant to NRC License No. IR90002, issued January 4, 1991.

3. Section 110.5 is revised to read as follows:

§ 110.5 Licensing requirements.

Except as provided under subpart B of this part and the definition of utilization facility in § 110.2 of this part, no person may export any nuclear equipment or material listed in § 110.8 and § 110.9, or import any nuclear equipment or material listed in § 110.9a, unless authorized by a general or specific license issued under this part.

Dated at Rockville, MD, this 24th day of May, 1991.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 91–12908 Filed 5–30–91; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D. 91–47]

Changes in the Customs Service Field Organization; Apalachicola, Carrabelle, and Port St. Joe, FL

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule, correction.

SUMMARY: In T.D. 91–47, published on May 16, 1991 (56 FR 22641), 19 CFR part 101 was amended to remove Apalachicola and Carrabelle, Florida from the list of ports of entry, and to change Port St. Joe, Florida from a port of entry to a Customs station. This document corrects errors which appeared in the Authority citation as well as a typographical error in that document.

EFFECTIVE DATE: July 15, 1991.

FOR FURTHER INFORMATION CONTACT: Joseph O'Gorman, Office of Inspection and Control, 202–566–9425.

PART 101—GENERAL PROVISIONS [CORRECTED]

In FR Doc. 91–11634, on page 22642, in the first column the following corrections are made.

1. **Authority:** The Authority citation for part 101 should read "**Authority:** 5 U.S.C. 301, 19 U.S.C. 2, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States) 1623, 1624."

§ 101.3 [Corrected]

2. The date of issuance of E.O. 7818 relating to Port St. Joe, Florida, should read "Feb. 17, 1938" instead of "Feb. 17, 1983."

Dated: May 24, 1991.

Kathryn C. Peterson,

Chief, Regulations and Disclosure Law Branch.

[FR Doc. 91–12825 Filed 5–30–91; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Docket Nos. 88p–0179, 88p–0173, 88p–0136]

Food and Drug Administration

21 CFR PART 878

Medical Devices; Reclassification and Codification of Nonabsorbable Poly (Ethylene Terephthalate) Surgical Suture, Nonabsorbable Polypropylene Surgical Suture, and Nonabsorbable Polyamide Surgical Suture

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it has issued orders in the form of letters to a manufacturer reclassifying the nonabsorbable poly(ethylene terephthalate) surgical suture, nonabsorbable polypropylene surgical suture, and nonabsorbable polyamide surgical suture, from class III to class II. The orders are being codified in the Code of Federal Regulations as specified herein.

DATES: The reclassifications were effective February 15, 1990, for the nonabsorbable polyamide surgical suture, and July 5, 1990, for the nonabsorbable poly(ethylene terephthalate) surgical suture and the nonabsorbable polypropylene surgical suture. These codifications beome effective (July 1, 1991).

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4874.

SUPPLEMENTARY INFORMATION: On May 4 and 10, 1988, and April 7, 1988, FDA

filed the reclassification petitions submitted by Advanced Biosearch Associates, Danville, CA 94526–4617, on behalf of United States Surgical Corp. (U.S. Surgical), Norwalk, CT 06856, requesting reclassification of the nonabsorbable poly(ethylene terephthalate) surgical suture, nonabsorbable polyamide surgical suture, and the nonabsorbable polypropylene surgical suture from class III to class II.

FDA consulted with the General and Plastic Surgery Devices Panel (the Panel). The Panel, during an open public meeting on October 20, 1988, recommended that FDA reclassify nonabsorbable polypropylene surgical suture and the nonabsorbable poly(ethylene terephthalate) surgical suture from class III into class II.

On June 24, 1988, the Panel recommended that FDA reclassify the nonabsorbable polypropylene surgical suture from class III into class II. FDA fully considered the Panel's recommendation, and reviewed various statements offered by persons who opposed U.S. Surgical's petitions for reclassification of the nonabsorbable polypropylene surgical suture, the nonabsorbable poly(ethylene terephthalate) surgical suture, and the nonabsorbable polypropylene surgical suture. FDA concluded that these generic types of devices, and all devices substantially equivalent to them should be reclassified from class III to class II.

After reviewing all data in the petition and presented before the Panel, and after considering the Panel's recommendation, FDA, based on the information set forth, ordered the reclassification of the nonabsorbable polypropylene surgical suture, the nonabsorbable poly(ethylene terephthalate) surgical suture, and the nonabsorbable polypropylene surgical suture from class III to class II. On July 5, 1990, FDA sent to the petitioner letters (orders) which reclassified the nonabsorbable polypropylene surgical suture and the poly(ethylene terephthalate) surgical suture, and substantially equivalent devices of these generic types, from class III to class II. On February 15, 1990, FDA sent the petitioner a letter (order) which reclassified the nonabsorbable polyamide surgical suture, and substantially equivalent devices within the reclassified generic type, from class III to class II. As required by 21 CFR 860.134 (b)(6) and (b)(7) of the regulations, FDA is announcing the reclassification of these generic types. In addition, FDA is codifying the reclassification of these devices by adding §§ 878.5000, 878.5010, and 878.5020 to subpart E.

The agency has determined under 21 CFR 25.24 (a)(8) and (e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

After considering the economic consequences of approving this reclassification, FDA certifies that this final rule requires neither a regulatory impact analysis as specified in Executive Order 12291 nor an analysis under the Regulatory Flexibility Act (Pub. L. 96–354). This reclassification will not have a significant economic impact on a substantial number of small entities. All manufacturers of nonabsorbable poly(ethylene terephthalate) surgical suture, nonabsorbable polypropylene surgical suture, and nonabsorbable polyamide surgical suture will no longer be required to comply with the premarket approval requirement in section 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e) and, therefore, will not be subject to the costs of such compliance.

There are no offsetting costs that manufacturers would incur from reclassification into class II other than those associated with meeting a standard, once established. The magnitude of the economic savings attributable to this reclassification is dependent upon the number of premarket approval studies that would have been required of the manufacturers had reclassification not occurred. This savings may not be reliably calculated to permit an accurate quantification of the economic savings.

List of Subjects in 211 CFR Part 878

Medical devices.

Therefore, under this Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 part 878 is amended as follows:

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

1. The authority citation for 21 CFR part 878 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. New §§ 878.5000, 878.5010, and 878.5020 are added to subpart E to read as follows:

§ 878.5000 Nonabsorbable poly(ethylene terephthalate) surgical suture.

(a) *Identification.* Nonabsorbable poly(ethylene terephthalate) surgical suture is a multifilament, nonabsorbable, sterile, flexible thread prepared from fibers of high molecular weight, long-chain, linear polyesters having recurrent aromatic rings as an integral component and is indicated for use in soft tissue approximation. The poly(ethylene terephthalate) surgical suture meets U.S.P. requirements as described in the U.S.P. Monograph for Nonabsorbable Surgical Sutures; it may be provided uncoated or coated; and it may be undyed or dyed with an appropriate FDA listed color additive. Also, the suture may be provided with or without a standard needle attached.

(b) Classification. Class II.

§ 878.5010 Nonabsorbable polypropylene surgical suture.

(a) *Identification.* Nonabsorbable polypropylene surgical suture is a monofilament, nonabsorbable, sterile, flexible thread prepared from long-chain polyolefin polymer known as polypropylene and is indicated for use in soft tissue approximation. The polypropylene surgical suture meets United States Pharmacopeia (U.S.P.) requirements as described in the U.S.P. Monograph for Nonabsorbable Surgical Sutures; it may be undyed or dyed with an FDA approved color additive; and the suture may be provided with or without a standard needle attached.

(b) *Classification.* Class II.

§ 878.5020 Nonabsorbable polyamide surgical suture.

(a) *Identification.* Nonabsorbable polyamide surgical suture is a nonabsorbable, sterile, flexible thread prepared from long-chain aliphatic polymers Nylon 6 and Nylon 6,6 and is indicated for use in soft tissue approximation. The polyamide surgical suture meets United States Pharmacopeia (U.S.P.) requirements as described in the U.S.P. monograph for nonabsorbable surgical sutures; it may be monofilament or multifilament in form; it may be provided uncoated or coated; and it may be undyed or dyed with an appropriate FDA listed color additive. Also, the suture may be provided with or without a standard needle attached.

(b) *Classification.* Class II.

Dated: May 20, 1991.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 91–12954 Filed 5–30–91; 8:45 am]

BILLING CODE 4160–01–M

VOL 56 ISS 105 MY 31 1991 UMI

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket Nos. H-004E, F, G, H, I, and J]

Occupational Exposure to Lead

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final Rule; corrections.

SUMMARY: On November 14, 1978, the Occupational Safety and Health Administration (OSHA) published a final rule in the **Federal Register** on occupational exposure to lead (29 CFR 1910.1025, 43 FR 52952). This document makes administrative corrections and amendments to 29 CFR 1910.1025, based on the lifting of a judicial stay which had been in effect on the effective date of the final standard.

EFFECTIVE DATE: May 31, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, U.S. Department of Labor, room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION: OSHA promulgated the lead standard on November 14, 1978 (43 FR 52952). Immediately after promulgation, the lead standard was challenged by both industry and labor in several U.S. Courts of Appeals. All cases were transferred and consolidated in the U.S. Court of Appeals for the District of Columbia Circuit. On March 1, 1979, the U.S. Court of Appeals for the DC Circuit stayed a number of the standard's provisions, including the reqirement of paragraph (e)(1) that employers implement engineering and work practice controls to achieve the permissible exposure limit (PEL). On August 15, 1980, the Court issued its decision upholding the standard in most respects. With that decision, the Court lifted the stay with regard to all provisions of the standard except paragraph (e)(1) as it applied to certain lead industries. Thus, as of that date every other provision of the lead standard was in effect in all the lead industries. However, on December 8, 1980, pending the filing and disposition of industry petitions for certiorari, the U.S. Supreme Court issued a stay of the same provisions that had been stayed by the DC Circuit in March 1979. With its denial of the petition of certiorari on June 29, 1981, the Supreme Court dissolved its stay, leaving in effect only the partial stay by the DC Circuit of paragraph (e)(1). Thus, as of June 29, 1981 and since then, every other provision of the lead standard has been in effect in all the lead industries. *United Steelworkers of America* v. *Marshall*, 647 F.2d 1189 (1980), *cert. denied*, 453 U.S. 913 (1981).

The Appendices to the lead standard in 29 CFR 1910.1025 contain specific references to certain requirements of the lead standard that are said to be judicially stayed. The Court's 1981 action in lifting the stay has made those references obsolete and incorrect. This document deletes those references to the judicial stay where they appear in the Appendices of the lead standard.

Authority and Signature

This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington DC 20210.

This action is taken pursuant to section 6(b) and 6(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1597, 1599; 29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 1-90 (55 FR 9033) and 29 CFR part 1911, and 33 U.S.C. 941. Part 1910, title 29, Code of Federal Regulations, is hereby amended, for the reasons set forth in the preamble, by revising appendices A, B, and C of § 1910.1025.

List of Subjects in 29 CFR Part 1910

Lead, Occupational safety and health.

Gerard F. Scannell,

Assistant Secretary of Labor for Occupational Safety and Health.

PART 1910—[AMENDED]

1. The authority citation for subpart Z of part 1910 continues to read as follows:

Authority: Secs. 6, 8 Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders 12-71 (36 FR 8754, 8-76 (41 FR 25059), or 9-83 (48 FR 35736) as applicable; and 29 CFR Part 1911.

Section 1910.1000 Tables Z-1, Z-2, Z-3 also issued under 5 U.S.C. 553.

Section 1910.1000 not issued under 29 CFR Part 1911, except for "Arsenic" and "Cotton Dust" listing in Table Z-1.

Section 1910.1001 also issued under Sec. 107 of Contract Work Hours and Safety Standards Act, 40 U.S.C. 333.

Section 1910.1002 not issued under 29 U.S.C. 655 or 29 CFR Part 1911; also issued under 5 U.S.C. 553.

Section 1910.1003 through 1910.1018 also issued under 29 U.S.C. 653.

Section 1910.1025 also issued under 29 U.S.C. 653 and 5 U.S.C. 553

Section 1910.1028 also issued under 29 U.S.C. 653.

Section 1910.1043 also issued under 5 U.S.C. 551 *et seq.*

Section 1910.1045 and 1910.1047 also issued under 29 U.S.C. 653.

Section 1910.1048 also issued under 29 U.S.C. 653.

Section 1910.1200, 1910.1499 and 1910.1500 also issued under 5 U.S.C. 553.

§ 1910.1025 Lead [Amended]

2. Part 1910 of title 29 of the Code of Federal Regulations is hereby amended in § 1910.1025 as follows:

A. Appendix A to § 1910.1025 is amended by removing the last sentence of that appendix.

B. Appendix B to § 1910.1025 is amended by removing the following:

(1) The second paragraph.

(2) Under Section III. Methods of Compliance—Paragraph (E), the entire text, except for the first two sentences.

(3) Under Section IV. Respiratory Protection—Paragraph (F), the words "but this requirement has been stayed as part of the pending litigation" in the last sentence of the second paragraph.

(4) Under Section VII. Hygiene Facilities and Practices—Paragraph (I), the second sentence, the words "and these facilities are made available, however," in the next (third) sentence, and the words "if available," in the fourth sentence.

(5) Under Section VIII. Medical Surveillance—Paragraph (J), the words "but this test has been temporarily stayed by the Court" in the second sentence of the fourth paragraph and the next (third) sentence of that paragraph. Also, the words "As a result," in the seventh sentence of the eighth paragraph.

(6) Under Section XI. Signs—Paragraph (M), the last sentence.

C. Appendix C to § 1910.1025 is amended by removing the following:

(1) Under Section I. Medical Surveillance and Monitoring Requirements for Lead Workers Exposed to Inorganic Lead, the last two sentences of the second paragraph and the last sentence of the eleventh paragraph.

(2) Under Section III. Medical Evaluation, the words "(This requirement is currently not in effect due to the pending litigation, but is recommended nonetheless)" in the last sentence (item 6) of the thirteenth paragraph.

(3) Under Section IV. Laboratory Evaluation, the words "which" and "is, due to the pending litigation, not required under the standard" in the second sentence.

[FR Doc. 91-12862 Filed 5-30-91; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

Pennsylvania Regulatory Program; Regulatory Reform

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval, with certain exceptions, of a proposed amendment to the Pennsylvania regulatory program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment is intended to revise a substantial number of Pennsylvania rules in various subject areas for the purpose of maintaining consistency with revised Federal requirements and to improve the operational efficiency of the Pennsylvania program.

EFFECTIVE DATE: May 31, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, Third Floor, suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101; Telephone: (717) 782-4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Pennsylvania Program

The Secretary of the Interior conditionally approved the Pennsylvania program on July 31, 1982. Information on the background of the Pennsylvania program including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982 **Federal Register** (47 FR 33050). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 938.11, 938.15 and 938.16.

II. Submission of Amendment

By letter dated August 14, 1986 (Administrative Record Number PA 610), the Director of OSM notified Pennsylvania that the Pennsylvania rules corresponding to a number of Federal regulations promulgated between July 31, 1982, and October 1, 1983 (Regulatory Reform I), are less effective than the new Federal counterparts. By letter dated July 9, 1986 (Administrative Record Number PA-646), the Director of OSM informed Pennsylvania of certain Pennsylvania rules that are less effective than the counterpart Federal regulations. These rules concern offsite disturbance involving the construction of roads between permitted areas to move mining equipment. Additionally, final Federal rules published on May 19, 1986 (51 FR 18314), require Pennsylvania to amend certain anthracite prime farmland rules, chapter 88.

In response to the OSM requirements of May 19, 1986, August 14, 1986, and July 9, 1986, Pennsylvania submitted a State program amendment package to OSM by letter dated December 22, 1989 (Administrative Record Number PA 790.00).

The amendment package submitted to OSM consists of 109 rule revisions as proposed in Volume 18, *Pennsylvania Bulletin*, 3621, August 13, 1988 and 40 rule revisions based on public comments and internal review of the 109 revisions. Following public comment, Pennsylvania published the final amendments in the *Pennsylvania Bulletin*.

The proposed amendments address Regulatory Reform I, unpermitted roads used to move equipment, and prime farmlands in the anthracite coal fields. In addition, the proposed amendment includes rules to implement amendments to the Surface Mining Conservation and Reclamation Act, as found in Act 181 (1984), Act 171 (1986), and Senate Resolution 100. Rules based on recommendations from the Coal Work Group (CWG) are also included. The CWG is a group of legislators and industry representatives established by the Department to recommend ways to streamline the Department's coal regulatory program.

OSM announced receipt of the proposed amendments in the February 26, 1990, **Federal Register** (55 FR 6647), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendments. The comment period closed on March 28, 1990. Based on a request of several individuals for a public hearing, the comment period was extended, on March 21, 1990 (55 FR 10469), to April 6, 1990, and a pubic hearing was held on April 3, 1990.

On January 4, 1991 (56 FR 399), OSM reopened the public comment period for the purpose of correcting a description of a specific section in the Proposed Rule as set out in the February 26, 1990, **Federal Register** notice. The comment period ended on January 22, 1991. The scheduled public hearing was not held as no one requested an opportunity to testify.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.17 are the Director's findings concerning the proposed amendments to the Pennsylvania program. Any revisions not specifically discussed below are found to be no less stringent than SMCRA and no less effective than the Federal regulations. Revisions which are not discussed below contain nonsubstantive wording changes, or revise cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Revisions to Pennsylvania's Regulations that are Substantively Identical to the Applicable Provisions of Counterpart Federal Regulations

State Regulation, 25 Pa. Code	Subject	Federal Counterpart, 30 CFR
Chapter 86. Surface and Underground Coal Mining: General		
86.34(b)	Informal Conference	773.13(c).
86.34(e)	Informal Conference	773.15(a)(1).
86.39(a)(2)(ii)	Final Permit Action	773.15(a)(1).
86.39(b)(1)	Final Permit Action	773.19(b).
86.52(a)(1)	Permit Revisions	774.13(a).
86.70	Proof of Publication	778.21.
86.83(a)(3)	Eligibility for Assistance	795.6(a)(3).
86.92(a)(6)	SOAP: Lab Qualification	795.10(a)(4).

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State Regulation, 25 Pa. Code	Subject	Federal Counterpart, 30 CFR
86.101	Areas Unsuitable for Mining	761.5.
86.102(12)	Areas Unsuitable for Mining	816.57(a)(1).
86.123(c)(2)	Areas Unsuitable for Mining	764.13(b)(1).
86.123(c)(4)	Areas Unsuitable for Mining	764.13(b)(1)(i).
86.143(c)	Requirement to File Bond	800.11(b)(1).
86.150(a)	Bond Amount	800.14(b).
86.152(b)&(c)	Bond Adjustment	800.15(c).
86.157(8)	Surety Bonds	800.20(a).
86.157(9)	Surety Bonds	800.50(a)(2)(ii).
86.160	Form of Bond	800.12.
86.165(b)	Terms & Conditions of Bonds	800.16(e)(2).
86.166(a)	Replacement of Bonds	800.30(a).
86.171(f)(2)	Bond Release	800.40(b)(2).
86.182(a)(3)	Bond Forfeiture Procedures	800.50(b)(1).
86.192	Civil Penalties: Assessments	846.12(a).
86.211(b)(3)	Enforcement—General	843.12(f)(2).
	Chapter 87. Surface Mining of Coal	
87.1	Definition:	701.5.
	Coal Processing Wastes	701.5
	Noxious Plants	780.16(a).
87.50	Fish and Wildlife	785.17(c)(1)(ii).
87.53(d)(1)	Prime Farmland Investigations	779.24 & 779.25.
87.54(a)	Maps, Plans and Cross Sections	779.25(b).
87.54(b)	Maps, Plans and Cross Sections	780.14(b)(2).
87.62(3)	Operational Information	816.61(d)(4).
87.64(b)	Blasting	780.14(b)(3).
87.65(a)(4)	Maps and Plans	780.14(c).
87.65(b)	Maps and Plans	785.17(c)(1)(ii).
87.83(7)	Prime Farmland Investigation	780.16(b).
87.84(a)	Fish and Wildlife Protection	40 CFR 434.45.
87.102(c)(2)	Effluent Limitations (exceptions)	40 CFR 434.61.
87.102(d)	Effluent Limitations	816.43(b)(4).
87.104(b)(3)	Diversions	816.49(a)(10)(i).
87.112(d)	Impoundments: Inspections	816.49(a)(12).
87.112(e)	Impoundments: Emergency Procedures	816.61(c)(4)(i).
87.124(e)	Blasting: General	816.62(e).
87.125(d)	Preblast Survey	816.67(b)(1)(i).
87.127(e)(1)	Airblast Levels	816.67(b)(2)(i).
87.127(e)(3)	Airblast Levels	816.61(d)(2).
87.127(o)(1)	Surface Blasting Requirements	816.62(a)&(d).
87.127(o)(2)	Surface Blasting Requirements	816.64(b)(1).
87.127(o)(3)	Surface Blasting Requirements	816.68(g).
87.129(17)	Blasting Records	816.68(o)(1).
87.129(19)	Blasting Records	816.68(o)(5).
87.129(19)(i)	Blasting Records	816.68(p).
87.129(20)	Blasting Records	816.71(h)(3)(i) & (iii).
87.131(q)(4)	Disposal of Excess Spoil	816.97(e)(3).
87.136(a)(9)	Protection of Fish and Wildlife	816.97(e)(4).
87.136(a)(10)	Protection of Fish and Wildlife	816.97(b).
87.136(b)	Protection of Fish and Wildlife	816.97(b).
87.136(d)	Protection of Fish and Wildlife	816.102(k)(3)(i).
87.141(a)	Backfilling and Grading	
	Chapter 88. Anthracite Coal	
88.1	Definitions:	701.5.
	Coal Processing Waste	701.5.
	Disturbed Area	
88.31(b)	Maps and Plans	779.25(b).
88.33	Fish and Wildlife, Information	780.16(a).
88.44(b)	Maps and Plans	780.14(c).
88.62(a)	Fish and Wildlife Protection	780.16(b).
88.92(c)(2)	Effluent Limitations (exceptions)	40 CFR 434.45.
88.92(d)	Effluent Limitations	40 CFR 434.61.
88.187(c)(2)	Effluent Limitations (exceptions)	40 CFR 434.45.
88.187(d)	Effluent Limitations	40 CFR 434.61.
88.292(c)(2)	Effluent Limitations (exceptions)	40 CFR 434.45.
88.292(d)	Effluent Limitations	40 CFR 434.61.
88.492(j)(3)	Maps and Plans	780.14(c).
88.492(n)	Protection of Fish and Wildlife	784.21(b).
	Chapter 89. Underground Mining of Coal and Coal Preparation Facilities	
89.33(b)	Geology: Overburden Analysis	784.22(d).
89.52(e)(2)	Effluent Limitations (exceptions)	40 CFR 434.45.
89.52(f)	Effluent Limitations	40 CFR 434.61.
89.56(b)(3)	Diversions	817.43(b)(4).
89.74(a)&(b)	Fish and Wildlife, Information	784.21(a)&(b).
89.82(n)	Fish and Wildlife Protection	817.97(b).
89.82(c)(4)	Fish and Wildlife Protection	817.97(e)(3).
89.82(c)(5)	Fish and Wildlife Protection	817.97(e)(4).

State Regulation, 25 Pa. Code	Subject	Federal Counterpart, 30 CFR
89.82(e)	Fish and Wildlife Protection	817.97(b).
89.86(a)(2)(ii)	Revegetation: General	817.111(b)(2).
89.101(b)	Impoundments: Inspections	817.49(a)(10)(i).
89.101(c)	Impoundments: Emergency Procedures	817.49(a)(12).
89.122(b)(1)	Prime Farmland Investigations	785.17(c)(1)(ii).
89.142(a)	Subsidence Control: Maps	783.25(b).
	Chapter 90. Coal Refuse Disposal	
90.1	Definitions:	701.5.
	Coal Processing Waste	701.5.
	Disturbed Area	701.5.
	Noxious Plants	
90.18	Fish and Wildlife, Information	780.16(a).
90.21(b)	Maps, Plans and Cross Sections	779.25(b).
90.22(d)(1)	Prime Farmland Investigation	785.17(c)(1)(ii).
90.39(a)(1)	Ponds, Impoundments, etc.	780.25(a)(2)(i)&(3)(i).
90.45(7)	Prime Farmland	785.17(c)(1)(ii).
90.46(3)	Maps, Plans and Cross Section	780.14(c).
90.48(a)	Fish and Wildlife Protection	780.16(b).
90.102(c)(2)	Effluent Limitations (exceptions)	40 CFR 434.45.
90.102(d)	Effluent Limitations	40 CFR 434.61.
90.105(b)(3)	Diversions	816.43(b)(4).
90.112(e)	Impoundments: Emergency Procedures	816.49(a)(12).
90.124(a)	Coal Refuse Disposal: Inspection	816.83(d).
90.124(d)	Coal Refuse Disposal: Inspection	816.83(d)(3).
90.150(a)(9)	Fish and Wildlife Protection	816.97(e)(3).
90.150(a)(10)	Fish and Wildlife Protection	816.97(e)(4).
90.150(b)	Fish and Wildlife Protection	816.97(b).
90.150(d)	Fish and Wildlife Protection	816.97(b).

Because the above proposed revisions are identical in meaning to the corresponding Federal regulations, the Director finds that the Pennsylvania proposed rules are no less effective than the Federal regulations.

B. Revisions to Pennsylvania's Rules that are not Substantively Identical to the Corresponding Federal Regulations

1. Section 86.1, 87.1. Definitions: Surface Mining Activities. Pennsylvania proposes to amend the definition of "surface mining activities" to include "substantial disturbance resulting from the construction of a pathway to move surface mining equipment to a new permit area." This revision is proposed as a result of OSM's oversight of the Pennsylvania program that identified a condition where a road, constructed to move mining equipment between two permitted areas, was not permitted. OSM notified the State on July 9, 1986, pursuant to § 732.17(e)(3) that the State's position that such activities need not be permitted is inconsistent with the minimum requirements of SMCRA (Administrative Record No. PA–646). In the letter, the Director stated that the State "shall make it unequivocally clear that the construction of any road or similar disturbance outside a permit area for any purpose related to a surface mining activity, including that of moving a dragline and similar equipment, shall be deemed a surface mining activity."

The amended language proposed by the State does not make it unequivocally clear that land used as a road for moving mining equipment between areas (permitted or not) must itself be permitted. Specifically, the State's use of the term "pathway" does not make it clear that such disturbances would include roads. Additionally, the amendment requires that only pathways whose construction constitutes a substantial disturbance be covered by the definition of surface mining activity. Such qualifiers as "pathways" and "substantial" are not authorized by the Federal definition of surface coal mining operations at 30 CFR 700.5 and serve to limit the effectiveness of the definition. The Federal definition of surface mining operations specifically includes all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the sites of surface mining activities.

The Director finds that the proposed revisions to the definition of "surface mining activities" are less effective than the Federal definition of "surface coal mining operations" at 30 CFR 700.5. The Director is requiring the State to amend the definition of surface mining activities to make it unequivocally clear that the construction of any road or similar disturbance outside a permit area for any purpose related to a surface mining activity, including that of moving or "walking" a dragline or other equipment, or for the assembly or disassembly or staging of equipment shall be deemed a surface mining activity and will be regulated.

2. Section 86.17. Permit and reclamation fees. a. Pennsylvania is proposing to amend § 86.17 by replacing existing language in subsection (b) concerning the requirement to submit a $50 per acre permit fee with revised language in subsection (e). The proposed revision includes: Clarification that the $50 fee is a reclamation fee which is required in addition to the bond required under §§ 86.145, 86.149 and 86.150; language to exempt the surface effects of underground mining from the requirement to pay the $50 reclamation fee; a statement that the reclamation fee may be paid, as acreage within the mining permit is authorized for mining; and the requirement that the reclamation fee deposited in the Surface Mining Conservation and Reclamation Fund shall only be used for reclaiming mining operations which have defaulted on their obligation to reclaim.

Under 30 CFR 800.11(e), the Director may approve an alternative bonding system provided the State has demonstrated that the alternative bonding system will have available sufficient funds to complete the reclamation plan for any areas which may be in default at any time. The proposed revisions raise questions concerning the ability of Pennsylvania's alternative bonding system to meet the requirements of 30 CFR 800.11(e). Specifically, the proposed revisions exempt underground mining operations from the requirement to submit the $50 reclamation fee without also excluding

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the use of the funds generated from the fee to reclaim the surface effects of underground mines that default on their obligation to reclaim.

In addition, but separate from this rule making, the Director has expressed to Pennsylvania on January 15, 1991, (Admin. Rec'd. No. 799.00) the following:

> Concerns regarding the alternative bonding system have been cited in the last two OSM annual reports on the Pennsylvania program. In addition, * * * bond adequacy is the subject of longstanding litigation * * *. Specifically, the alternative bonding system must be modified to provide the resources needed to reclaim existing permanent program forfeiture sites within a reasonable timeframe and to ensure that future forfeiture sites will be reclaimed in a timely manner. These resources must be sufficient to complete the reclamation plan approved in the permit.

Pennsylvania responded, by letter dated February 27, 1991 (Administrative Record Number 779.01), with information pertaining to the State's alternative bonding system. The response reported that analysis of the solvency of the alternative bonding system for 1989 and 1990 showed a deficit in the fund in both years. Pennsylvania also noted that all adjudicated and final forfeitures have been or are in the contracting process, and that the regulatory authority is taking action to eliminate the deficit.

Therefore, because of the concerns regarding the effect of the proposed revision to exempt underground mines from payment of the $50 reclamation fee on the ability of the Surface Mining Conservation and Reclamation Fund to meet the requirements of 30 CFR 800.11(e), and in consideration of the State's findings regarding the solvency of this Fund, the Director is conditionally approving the proposed amendment. The approval is conditioned upon a demonstration by Pennsylvania that the revenues generated through collection of the reclamation fees will assure that the Surface Mining Conservation and Reclamation Fund can be operated in a manner that will meet the requirements of 30 CFR 800.11(e). This could be demonstrated through an actuarial study showing the Surface Mining Conservation and Reclamation Fund's soundness and financial solvency. In addition, the Director is requiring Pennsylvania to clarify both the procedures for bonding the surface impacts of underground mines and the procedures to reclaim underground mining permits where the operator has defaulted on the obligation to reclaim.

b. Pennsylvania is also proposing to renumber and revise existing subsection (d) as subsection (c). The revised language clarifies that the renewal application fee is due whether the site has not yet been activated or where coal is being extracted The amendment also adds that a renewal application for reclamation activities does not require the application fee. The Federal regulations at 30 CFR 777.17 provide the regulatory authority with the responsibility of determining permit application fees. The Director finds that proposed amendment and the decision to not require a fee for permit renewal applications for reclamation activities are reasonable, and will not render the State rules inconsistent with the cited Federal regulations.

3. Section 86.34. Informal conference. a. Pennsylvania is proposing to add regulations under subsection (f) that require the regulatory authority within 60 days of the informal conference to notify the permit applicant of its decision to approve, disapprove, or of its intent to disapprove the application subject to the submission of additional information to resolve deficiencies. Counterpart Federal regulations under 30 CFR 773.15(a)(1) require that the regulatory authority shall make a decision on the permit application within 60 days of the close of an informal conference. The requirement for the regulatory authority to issue written notification of its decision is found under 30 CFR 773.19(b)(1). These regulations taken together require the regulatory authority to issue written findings to the applicant within 60 days of its decision to approve, deny in whole or in part the permit application. The Federal counterpart regulations at 30 CFR 773.15(a) are similar except that the Federal regulations provide an exception to the 60 day time limit when additional time is needed to provide an opportunity for the operator to demonstrate that a violation is either in the process or being corrected, or will be resolved pending outcome of an administrative appeal of the validity of the current violation. Although the State proposed rules provide for an extension under less specific circumstances than the Federal regulations, the Director finds that the additional time for the permittee to correct deficiencies within the permit will provide the opportunity for better permits and that the revised rules at 86.34(f) will not render the States rules inconsistent with the cited Federal counterparts.

4. Section 86.37(a)(16). Criteria for Permit Approval or Denial. Pennsylvania proposes to add this subsection which would require a written finding by the regulatory authority, prior to permit issuance, that the applicant has submitted a statement that State and Federal civil penalty assessments have been paid. Although there is no direct Federal counterpart to this provision, the Director finds the proposed amendment is consistent with the Federal regulations at 30 CFR 773.15(b) concerning the review of violations prior to issuance of a permit.

5. Section 86.39. Final permit action. Pennsylvania is proposing to revise paragraph (a)(2)(i) by adding to the requirements that the regulatory authority will approve or deny a permit application within 60 days following an informal conference or a public hearing, unless additional time is required for the applicant to submit additional information to resolve remaining deficiencies in the permit. Federal counterpart regulations at 30 CFR 773.15(a) are similar except that the Federal regulations provide an exception to the 60 day time limit when additional time is needed to provide an opportunity for the operator to demonstrate that a violation is either in the process or being corrected, or will be resolved pending outcome of an administrative appeal of the validity of the current violation. Although the State proposed rules provide for an extension under less specific circumstances than the Federal regulations, the Director finds that the additional time for the permittee to correct deficiencies within the permit will not render the States rules inconsistent with the cited Federal counterparts.

6. Section 86.52(a)(1). Permit Revisions. Pennsylvania is proposing to amend this subsection concerning the requirement to submit a permit revision for a change to the coal mining activities. The proposed revision deletes the term "coal mining activities" and requires submittal of a revision for a change to the operation plan, reclamation plan or subsidence control plan. The Federal counterpart to the proposed rule, 30 CFR 744.13(a), does not specify what types of changes require a permit revision, but instead states that the permittee may submit an application to the regulatory authority for a revision of the permit. The preamble to this Federa' rule, published on September 28, 1983 (48 FR 44377), clarifies the requirement and states that a permit revision is required if, in its absence, the permittee would be operating in violation of the terms of their permit. Therefore, a revision is required if the permittee proposes to make a change in the conduct of the mining or the reclamation that is described in the approved permit. Since the State's proposed amendment

requires a permit revision whenever there are changes to the permittee's mining, reclamation, or subsidence control plans, the Director finds that the proposed revision is consistent with section 511 of SMCRA and the cited Federal regulation.

7. Section 86.54. Public Notice of Permit Revision. Pennsylvania is proposing to revise section 86.54 to specify the circumstances under which an application for a permit revision must comply with public notice procedures under § 86.31. The proposed amendment in subsection (1) requires public notice of surface mining permit revisions for changes in water discharge treatment techniques not identified as Best Available Technology Economically Achievable (BAT); addition of fly ash disposal or sewage sludge; physical changes in mine configuration, and the addition of blasting to the operation. Revisions to underground mining operations in subsection (2) which require public notice include: discharging to a different watershed, use of other discharge treatment techniques not identified as BAT, elimination of public roads and change to postmining land use. The circumstances for coal refuse disposal activities in subsection (3) are revised to include discharging to different watershed, use of non-BAT treatment techniques, additional discharge points, changes to stream diversion structures, new or expanded road systems, and elimination of public roads.

The Director finds that the proposed revisions to section 86.54 are not inconsistent with the Federal regulations at 30 CFR 774.13(b)(2) which provides the regulatory authority with the responsibility to establish the scale or extent of permit revisions for which public notice procedures apply, and, therefore, is approving the amendment as proposed.

8. Section 86.64. Right of Entry. Subsection (c) is amended by deleting and adding language concerning exceptions to the requirement that a permit application include specified right of entry documentation. The proposed language would except from the subsection (c) requirements permit applications based on leases in existence on January 1, 1964, for bituminous coal surface mines, or leases in existence on January 1, 1972, for anthracite coal surface mining operations or permit applications for coal refuse disposal areas, coal preparation facilities which are not situated on a surface mining permit area, and the surface activities of underground mines.

Specific right of entry requirements concerning the bituminous and anthracite coal leases, and the refuse disposal areas, preparation facilities, and the surface activities of underground mines that were excepted from compliance at subsection (c) are specified at amended subparagraph (c)(1) and new paragraph (c)(1)(ii), and new subparagraph (c)(2), respectively.

The Federal regulations concerning right of entry at 30 CFR 778.15 specify that a permit application shall contain a description of the documents upon which the applicant bases their legal right to enter and begin surface coal mining and reclamation operations in the permit area. The Federal regulation also identifies additional required information if the private mineral estate to be mined has been severed from the private surface estate. The Director finds that, with the proposed amendments, section 86.64 contains all the elements of the Federal provisions and is, therefore, no less effective than 30 CFR 778.15. The Director also finds the additional provisions at subsection (c)(2) concerning the right of entry of the regulatory authority and the assessment of reasonable legal fees, although without Federal counterpart, are not inconsistent with SMCRA or the Federal regulations and can be approved.

9. Section 86.83. Eligibility for Assistance. a. *Production limit.* The proposed amendment revises 86.83(a)(2) which currently requires that an applicant, to be eligible for assistance, establish that the applicant's probable total and attributed production for each year of the intended permit will not exceed 100,000 tons. Proposed for deletion is language that states "of the applicant for each year of the intended permit will not exceed 100,000 tons." In its place is added language that states "from the applicant's operations during a consecutive 12-month period, either during the term of the permit or during the first 5 years after the issuance of the permit, whichever is shorter, will not exceed 100,000 tons."

The proposed new language is substantially identical to the counterpart Federal regulation at 30 CFR 795.6(a)(2) except that the proposed language uses the word "a" where the Federal regulation uses the word "any." The Federal regulation requires that probable total actual and attributed production from all locations during "any" consecutive 12-month period be considered. In effect, the Federal regulations require that any and all consecutive 12-month periods be considered. By use of the word "a" where the Federal regulations uses "any" the proposed rule could be interpreted to allow consideration of only one ("a") consecutive 12-month period in the determination of eligibility for assistance. This interpretation would render the proposed rule less effective than the Federal regulations.

The Director finds that the proposed rule is no less effective than the Federal regulations except to the extent that the proposed language limits or prohibits consideration of any and all consecutive 12-month periods in the determination of eligibility for assistance. In addition, the Director is requiring that Pennsylvania amend the language of this rule to make it clear that any and all consecutive 12-month periods must be considered in the determination of eligibility for assistance.

b. *Coal produced by relatives.* The proposed rule added at § 86.83(b)(5) requires that coal production attributed to the applicant shall include coal produced by members of the applicant's family and relatives unless the applicant demonstrates that there is no direct or indirect business relationship among them. The proposed rule is substantively identical to the counterpart Federal regulation at 30 CFR 795.6(a)(2)(iv), except that the Federal regulation attributes coal produced at "operations owned" by members of the applicant's family and the applicant's relatives whereas the proposed rule lacks the operation ownership requirement. The proposed amendment fails to clarify that all coal produced by individual family members and relatives and by their operations must be counted toward the 100,000 ton limitation. The Director is approving the proposed rule at § 86.83(b)(5), but is also requiring that Pennsylvania further amend its program to be no less effective than 30 CFR 795.6(a)(2)(iv) by clarifying that all coal produced by operations owned by the applicant's individual family members and relatives must also be counted toward the 100,000 ton limitation.

10. Section 86.94. Applicant Liability. Pennsylvania is proposing to amend this section concerning the conditions under which an applicant for assistance under the SOAP program will be required to reimburse the regulatory authority for cost of laboratory services performed.

a. Pennsylvania is proposing to revise subsection (a) to require a SOAP applicant to reimburse the regulatory authority for the interest on the cost of laboratory services performed under the SOAP program from the date the regulatory authority requested reimbursement. Although the Federal counterparts at 30 CFR 795.12(a) do not specifically discuss the interest on the

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amount paid for laboratory services it is reasonable to account for this interest as part of the cost to the SOAP program. Therefore the Director finds that this revision will not render the State rules inconsistent with the cited Federal regulations.

b. Pennsylvania is proposing to revise subsections (a)(2) and (c) and to add subsections (a)(5) and (a)(6) to specify the conditions under which the regulatory authority will require reimbursement and to add subsection (d) and (d)(1)–(3) to specify when the regulatory authority may waive reimbursement requirements. The Federal counterparts under 30 CFR 795.12(a), although not as detailed as the State's proposed rules, contain similar conditions under which reimbursement of SOAP funds for laboratory costs must be required and may be waived. Therefore, the Director finds that the proposed revision will not render the State's rules less effective than the cited Federal counterparts.

However, consistent with the Director's finding at § 86.83(a)(2) concerning the use of the word "a" where the Federal regulations uses the word "any", he is requiring that Pennsylvania amend the language of § 86.94(a)(5) to make it clear that any and all consecutive 12-month periods must be considered in the determination of production totals of the transferee.

11. Section 86.123. Areas Designated Unsuitable for Mining: Procedure. Pennsylvania is proposing to amend its regulations at 86.123 (a) and (d) by adding provisions which stipulate that only persons who have an interest which is, or may be, adversely affected may petition the regulatory authority to have an area designated as unsuitable for surface mining or to have an existing designation terminated. Counterpart Federal regulations at 30 CFR 764.13 are similar but further require the petitioner to demonstrate how he or she meets an "injury in fact" test. The "injury in fact" test requires the petitioner to demonstrate that he or she is among the injured and how the alleged adverse impact will directly affect him or her. In the preamble to the Federal rule (48 FR 41328, September 14, 1983) OSM provided additional explanation that the "injury in fact" test requires more than an injury to a cognizable interest. It requires that the party seeking review to be himself among the injured.

Pennsylvania's proposed revisions to these regulations do not specify that the petitioner pass an "injury in fact" test. However, related provisions of this rule, specifically subsections (c) (3) and (5), and (d)(4), require the petitioner to provide information to the regulatory authority, containing a description of how mining of the area or continuation of the unsuitability designation has affected or may adversely affect people, land, air, or other resources and the identification of the petitioner's interest which is or may be adversely affected.

The Director finds that the revisions to § 86.123 (a) and (d), when considered in conjunction with the requirements of subsections (c) (3) and (5) and paragraph (d)(4), respectively, require that a petitioner demonstrate an injury in fact. Therefore, the Director finds that the proposed rules are no less effective than the Federal regulations and is approving the amendments.

12. Section 86.124. Areas Unsuitable for Mining. Procedures: Initial Processing, Recordkeeping and Notification Requirements. Pennsylvania is proposing to revise subsection (a)(1) by replacing the word "mineral" with the word "coal" in reference to the regulatory authority's responsibility to determine whether identified coal resources exist in an area contained in a petition to declare an area unsuitable for mining. The proposed revision is substantively identical to the Federal counterparts at 30 CFR 764.15(a)(2). In addition, Pennsylvania is proposing to make several nonsubstantive grammatical changes to paragraphs (a) and (a)(6) which do not affect the meaning of this section. Therefore, the Director finds that the proposed revisions to § 86.124 will not render the State's rules less effective than the Federal rules at 30 CFR 764.15 and is approving the amended language as proposed.

13. Section 86.143. Requirement to File a Bond. a. Pennsylvania is proposing to revise paragraphs (a) and (b) of this section to eliminate the concept of phased operations by deleting the phrase in (a) "or permission to expand mining or reclamation operations within a permit area which has been limited to a portion or phase of the entire area shall" and the phrase in (b) "or incremental phase approval." Pennsylvania also proposes to make additional nonsubstantive grammatical changes to the cited paragraphs. The Federal counterpart at 30 CFR 800.13(a)(2) provides that the regulatory authority may accept a bond to be posted to guarantee specific phases of reclamation. In the discussion regarding phase bonding in the preamble to the final rule published in the **Federal Register** on July 19, 1983 (48 FR 32938), OSM makes it clear that "If the regulatory authority does not wish to allow phase bonding, it is under no obligation to do so." Therefore, the Director finds that the proposed deletion of provisions for phased bonding and the proposed grammatical changes will not render the State's rules inconsistent with the cited Federal regulations at 30 CFR 800.13(a)(2).

14. Section 86.145(c). Bonding and Insurance Requirements: Department Responsibilities. Pennsylvania is proposing to amend subsection (c) concerning the regulatory authority's responsibility to establish bonding amount rate guidelines. The proposed revision adds cross reference to § 86.149(b) which contains the site specific factors to be used to determine the bond amount necessary to assure reclamation if the regulatory authority has to complete the reclamation plan. Since the proposed revision only clarifies the authority contained in the existing State rules pertaining to the determination of bond amount, the Director finds that the proposed revision will not render the State rule inconsistent with the Federal requirements of 30 CFR 800.4(c).

15. Section 86.149(a). Determination of Bond Amount. Pennsylvania is proposing to revise subsection (a) to include a cross reference to § 86.145(c) pertaining to the establishment of bond amount rate guidelines. The proposed revision clarifies that the regulatory authority may establish bond rate guidelines which utilize the factors contained in §§ 86.145(c) and 86.149(b). Since this revision only clarifies the authority contained in the existing State rules pertaining to the determination of bond amount, the Director finds that the revision is nonsubstantive in nature and that the addition of the cross reference to § 86.145(c) will not render the State rules inconsistent with the Federal regulations at 30 CFR 800.14 (a) and (b).

16. Section 86.150. Minimum Amount (of Bond). a. Pennsylvania is proposing to revise § 86.150(a) to clarify that the minimum amount of bond for anthracite coal refuse operations is $10,000. The Director finds that the proposed revision is consistent with the Federal regulations at 30 CFR 800.70 and 800.14(b).

b. Pennsylvania is proposing to revise § 86.150(b) concerning the minimum amount of bond that must be posted for a permit area. The State is proposing to delete the existing language which applies a $5,000 minimum to: "Operations of all other minerals * * *" and to add language to apply this minimum only to "anthracite coal mining activities—except anthracite coal refuse disposal operations." The Director finds that the proposed revision is consistent with the Federal regulations at 30 CFR 800.70(a)(1) which authorizes the regulatory authority to specify bond limits for anthracite operations.

17. Section 86.156(b). Form of the Bond. Pennsylvania is proposing to revise its regulations at § 86.156(b) to delete the existing language and to add language requiring banks or other institutions which issue letters of credit or certificates of deposits, and surety companies which execute surety bonds to immediately notify the regulatory authority and the permittee, if permissible under law, of an action filed alleging the insolvency or bankruptcy of the bank or institution, or the surety company or alleging violations which would result in the suspension or revocation of the surety, bank charter, or license to do business. The Federal regulations at § 800.16(e)(1) contain similar provisions but they do not contain the exclusion found in the Pennsylvania proposed regulation that limits notification of the Department and the permittee of any actions alleging insolvency, bankruptcy, or violations only "if permissible under the law." The proposed exclusion could result in situations where the regulatory authority and the permittee may not receive the prompt notification as required by Federal regulations. However, the Director recognizes the possibility of the existence of Federal law which may render such actions confidential.

The counterpart Federal regulations at 30 CFR 800.16(e)(1) also require that the regulatory authority and the permittee be notified of any action filed alleging the insolvency or bankruptcy of the permittee. The proposed rule lacks this requirement and is, therefore, less effective than the Federal regulations at 30 CFR 800.16(e)(1).

Since the proposed rule contains language substantively identical to the Federal regulations at 30 CFR 800.16(e)(1), the Director is approving the proposed rule to the extent that the phrase "if permissible under the law" recognizes the possibility that Federal law may, in some cases, prohibit disclosure of the existence of an action filed alleging the bankruptcy or insolvency of the bank or institution. In addition, the Director is requiring that the rule be further amended to require that notice be given to the regulatory authority of any action filed alleging the insolvency or bankruptcy of the permittee.

18. Section 86.158. Special Terms and Conditions for Collateral Bonds. a. Pennsylvania is proposing to amend this section to add detailed information for valuing collateral bonds. The existing language in old subsection (b) is deleted and relocated to new subsection (b)(1) and new language is added which states that collateral bonds pledging negotiable government securities are subject to subsections (b)(1) through (b)(4). Subsection 85.158(b)(1) has been added to provide a procedure for determining the value of government securities, pledged as collateral bonds. The corresponding Federal Regulations at § 800.21(a)(2) contain a similar provision but specify that the regulatory authority "shall" value all collateral at its current market value. The proposed Pennsylvania rule, however, states that the regulatory authority "may" determine the current market value of securities for the purpose of establishing the value of securities for bond deposit. The Director finds that the proposed rule is no less effective than the Federal regulation at 30 CFR 800.21(a)(2) except to the extent that the determination of the current market value of securities for bond deposit is optional rather than mandatory as is required by the Federal regulations. In addition, the Director is requiring that Pennsylvania further amend § 86.158(b)(1) to require that the value of all government securities pledged as collateral bond "shall" be determined using the current market value.

b. Pennsylvania is also proposing to add subparagraph (b)(2) that requires the current market value of collateral bonds pledging negotiable securities to be at least equal to the amount of the required bond amount. The counterpart Federal regulation at § 800.21(e)(1) stipulates that the estimated bond value of all collateral bonds shall be subject to a margin which is the ratio of bond value to market value, as determined by the regulatory authority. Furthermore, the Federal regulations require that the calculation of the margin take into consideration legal and liquidation fees, as well as value depreciation, marketability, and fluctuations which may lessen the actual amount of cash available to the regulatory authority to complete reclamation. While similar, the State proposed rule does not take into account those factors which may affect the overall value of the posted collateral. As a result, the cash value of the security may be reduced to below the bond value. The Director is approving the proposed revision except to the extent that the value of the collateral bond may equal the overall bond value without taking into consideration the effects of depreciation, marketability and other factors on the amount of cash available from the bond. In addition, the Director is requiring Pennsylvania to further amend its provisions related to valuation of collateral bonds to require that the estimated bond value of all collateral be subject to a margin, which is the ratio of the bond value to the market value and which accounts for legal and liquidation fees, as well as value depreciation, marketability, and fluctuations which might affect the net cash available to the regulatory authority in case of forfeiture.

c. Pennsylvania is proposing to add provisions in subparagraph (b)(3) allowing the regulatory authority to periodically revalue negotiable government securities, and, if necessary, to require additional amounts if the current market value is less than the required bond amount. The counterpart Federal regulations at § 800.21(e)(2) contain similar provisions for periodical evaluation of the bond value of collateral, but the Federal regulations also stipulate that bonds shall be evaluated as part of the regulatory authority's review of a permit renewal application. The Federal regulations at 30 CFR 800.21(e)(2) applies to all collateral bonds and not just those pledging 7negotiable government securities as contained in the State's rules for collateral bonds under § 86.158. The Director finds that the proposed revisions to § 86.158(b)(3) are no less effective than the cited Federal rules except to the extent that subparagraph (b)(3), and § 86.158 in general, do not require that the bond value of all collateral bonds be evaluated at a minimum as part of the permit renewal process. In addition, the Director is requiring Pennsylvania to further amend its rules to ensure that the bond value of all collateral bonds be evaluated during the permit renewal process to ensure that collateral bonds are sufficient to satisfy the bond amount requirements.

d. Pennsylvania is proposing to add subparagraphs (b)(4) and (c)(8) to § 86.158 concerning the provisions for the release of any interest that has accrued on governmental securities or certificates of deposit posted as collateral bond if requested by the operator and approved by the regulatory authority. The counterpart Federal regulations at 30 CFR 800.21(d)(2) provide the regulatory authority the option of whether or not to return to the operator the interest accruing on cash accounts, but say nothing about other types of collateral bonds. However, Pennsylvania's rules governing return of interest on negotiable government securities and certificates of deposit are not inconsistent with 30 CFR 800.21(d)(2). While similar to the Federal regulations, the State's proposed amendment also provides that the

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regulatory authority will not make interest payments to the operator for interest which has accrued on certificates of deposit and negotiable government securities after forfeiture and during any appeals, and after resolution of the appeals, when the forfeiture is adjudicated and decided in favor of the State. The Federal regulations are silent concerning the interest which accrues post forfeiture. However, the Federal rules at 30 CFR 800.50(b)(2) authorize the use of funds collected from bond forfeiture to complete the reclamation. Included in these funds, at Pennsylvania's discretion, would be the interest accrued after declaration of forfeiture but before actual collection. Therefore, the Director finds that Pennsylvania's proposed rules at § 86.158 (b)(4) and (c)(8) are not inconsistent with the Federal regulations under 30 CFR 800.21 and 800.50.

e. Pennsylvania is proposing to revise section 86.158(d) concerning the conditions pertaining to collateral bonds pledging a letter of credit. The State is proposing to revise subparagraph (d)(1) to clarify that a letter of credit shall be a stand-by letter of credit issued by a Federally insured or equivalently protected bank or banking institution, chartered or authorized to do business in the United States and which agrees to the jurisdiction of the Commonwealth of Pennsylvania. In addition, Pennsylvania is proposing to revise its provisions for letter of credit in paragraph (d)(5) of this section to further state the requirements specific to Pennsylvania laws under which a letter of credit written by banks both within or outside of Pennsylvania shall be governed.

The counterpart Federal regulation at 30 CFR 800.21(b)(1) is similar to the proposed rule except that the Federal regulation does not specify that the letter of credit shall be a "standby" letter of credit issued by a Federally-insured or equivalently protected bank or banking institution. In addition, the Federal counterparts do not specifically require that the bank issuing the letter of credit agree to the jurisdiction of the State in which the document is issued.

The term "stand-by letter of credit" means a letter of credit under which drafts are payable when the customer has defaulted in performance of a duty, liability, or obligation and is consistent with the meaning of letter of credit in the Federal regulations. Since the additional requirements imposed by the State on the use of a letter of credit as a collateral bond provide the regulatory authority with additional security and control over the banks issuing such documents, the Director finds that the proposed revision is not inconsistent with the Federal regulations at 30 CFR 800.21(b)(1).

f. Pennsylvania is proposing to further revise § 86.158 by adding paragraph (e) concerning the requirements that all collateral shall be assigned to the regulatory authority free and clear until released in accordance with the approved bond release provisions regardless of any financial incapacity of the operator, as allowed by law. Although the Federal counterparts at 30 CFR 800.21(c) do not contain similar requirements, the Director finds that the proposed revisions are not inconsistent with the Federal regulations in general.

19. Section 86.171. Procedures for Seeking Release of Bond. Pennsylvania is proposing to amend subparagraph (a)(3) of this section by adding provisions to permit the regulatory authority to return an application for bond release without further action if the applicant has not submitted proof of publication of the advertisement of the application for bond release within 60 days of submitting the application to the regulatory authority. The Federal counterparts at 30 CFR 800.40(a)(2) do not discuss the regulatory authority's actions if the proof of publication is not submitted within the time frame required. The Director finds, however, that the State's proposed rules stipulating the regulatory authority will discontinue processing the application for bond release and will return the application to the applicant is not inconsistent with the Federal rules since the Federal rules require such public notice and the submittal of a copy of the advertisement to the regulatory authority. Therefore, the Director is approving the proposed revisions to § 86.171(a)(3).

20. Section 86.172. Criteria for Release of Bond

Pennsylvania is proposing to revise § 86.172 by deleting old subsections (a), (b) and (d) concerning bond release and moving and recodifying the provisions for the bond release schedule at proposed §§ 86.174 and 86.175, and by adding provisions to § 86.172 concerning the criteria the regulatory authority must consider in releasing performance bonds. The State is also proposing to amend the remaining provisions of this section by adding § 86.172(b) which specifies that the release or adjustment of a bond or a portion of a bond does not relieve the operator of further reclamation liability on the permit area. The proposed revision is consistent with the interpretation put forth by the District Court in *National Wildlife Federation et. al.* v. *Lujan*, Nos. 88-2416, 88-3345, 88-3589, 88-3635, 89-0039, 89-0136 and 89-0141 (consolidated) (D.D.C. August 30, 1990). In its decision, the Court interpreted sections 521(a)(1) and (a)(2) of SMCRA as imposing an on-going duty upon OSM and the regulatory authority to inspect and enforce, whenever an apparent violation of SMCRA was noticed, no matter how long after mining. The Court's ruling, in effect, serves to maintain the operator's reclamation liability even after the bond for the permit has been fully released. Therefore, the Director finds that the proposed revision does not render the State's rules inconsistent with the intent of SMCRA as interpreted by the District Court for the District of Columbia.

21. Section 86.174. Standards for Release of Bonds

a. Pennsylvania is proposing to revise its provision pertaining to the standards for the release of bonds by deleting the current provisions at § 86.172(d) concerning the criteria for release of bond, and by adding new § 86.174(a) through (c) concerning standards for release of bonds. Since the proposed new § 86.174(a) through (c) is substantively identical to the existing rules, the Director finds that the proposed renumbering of the bond release standards will not render the approved Pennsylvania program less effective than the Federal regulation at 30 CFR 800.40(c).

However, the Director notes that Pennsylvania inadvertently omitted the cross reference to chapter 88 in subsection (b)(3) concerning the requirement that if prime farmlands are present, the soil productivity be returned to the required level of yield when compared with nonmined prime farmland in the surrounding area, to be determined from the soil survey performed under the approved reclamation plan prior to approval for Stage II bond release. Accordingly, the Director is requiring Pennsylvania further amend its rules to include the necessary reference to Chapter 88.

b. Pennsylvania is proposing to add provisions to the new § 86.174 at subsection (d) concerning standards for bond release for underground mining operations. The new regulations under paragraph (d)(1) propose to allow for the release of bond amounts posted for the removal of buildings, facilities, or other equipment constructed or used to facilitate underground mining upon the removal of the structures or equipment and upon approval by the regulatory authority. Additionally, Pennsylvania is proposing to allow for release of bond amounts posted for the sealing of drifts, shafts, or other mine openings upon demonstration by the permittee that the sealing is effective. The counterpart Federal regulations at 30 CFR 800.17(b)(1) require the period of liability for bonds covering long-term surface facilities and structures, and areas disturbed by surface impacts incident to underground mine shall extend until all reclamation, restoration, and abatement work under the permit has been completed and the bond is released under the provisions under the bond release schedule for reclamation of phase I, II, and III. In effect, the proposed regulations would provide for release of bonds for the reclamation of surface disturbances from underground mining activities outside of the established bond release schedules at § 86.175. The proposed rule would also permit the release of more than 60 percent of the bond for the area upon completion or removal of the structures of stage 1 reclamation.

Pennsylvania has asserted that the amount of bond to be released under the proposed paragraph (d)(1) would include only the additional bond required for the demolition of the structures or removal of the equipment. However, the counterpart Federal regulations at 30 CFR 800.40 concerning release of performance bonds, and section 516 of SMCRA concerning the surface effects of underground mining, do not provide for special bond release schedules for removal of underground mining surface structures. That is, bond releases must be conducted in accordance with the provisions of 30 CFR 800.40. Therefore, the Director is not approving Pennsylvania's proposed amendment to paragraph (d)(1) of § 86.174 as its addition would render the Pennsylvania rules less effective than the Federal counterpart regulations at 30 CFR 800.17 and 800.40(c).

c. Pennsylvania is also proposing to add paragraph (d)(2) concerning the release of bonds posted for mine subsidence 10 years after the completion of the underground mining and reclamation. There are no Federal counterparts to the Pennsylvania requirement that bonds be posted for mine subsidence. However, the addition of regulations imposing a 10-year schedule for the release of subsidence bonds is not inconsistent with the Federal regulations at 30 CFR 817.121 concerning subsidence control and 30 CFR 800.17 and 800.40 concerning bonding requirements for underground coal mines and bond release requirements, respectively. Therefore, the Director finds that the addition of § 86.174(d)(2) will not render Pennsylvania's rules less effective than the Federal rules.

22. Section 86.175. Schedule for Release of Bond

a. Pennsylvania is proposing to amend its regulations regarding bond release schedules by deleting the procedures at §§ 86.172(a) and 86.172(b) concerning criteria for bond release, and adding a new § 86.175, "Schedule for release of bond." The proposed regulations at § 86.175 describe the procedures to be used to calculate the maximum amount of bond that may be released on acreage achieving stage 1, 2, and 3 reclamation standards. Specifically, the proposed amendment would allow those portions of the permit achieving stage 1 reclamation standards the release of an amount calculated by multiplying 60 percent by the acreage achieving stage 1 reclamation standards, multiplied by the open pit bond rate. For those areas of the permit meeting stage 2 reclamation standards, an additional amount can be released. The total amount of the original bond that can be released at stage 2 is calculated by multiplying the acreage achieving stage 2 reclamation standards by 85 percent multiplied by the open pit bond rate. This means that the maximum amount that may be released for successful stage 2 reclamation is 25 percent of the original bond posted. For example, if a hypothetical open pit bond rate is $4,000 per acre and the area to be reclaimed is 25 acres, the total bond would be $100,000. Upon successful completion of stage 1, $60,000 may be released, calculated as follows:

60% × $4,000/acre × 25 acres = $60,000.

Upon successful completion of stage 2 reclamation, the amount of the original bond that may be released can be shown as follows:

85% × $4,000/acre × 25/acres = $85,000.

Using this method, upon successful completion of stage 1 and 2 for the entire permit area, $100,000 − $85,000 = $15,000 will be held for stage 3 reclamation.

The counterpart Federal regulations at 30 CFR 800.40(c)(2) differ in the method used to calculate the amount that can be released upon completion of phase II reclamation. Federal regulations at 30 CFR 800.40(c)(2) specify that the regulatory authority may release an additional amount of bond upon successful completion of phase II (stage 2) reclamation, but must retain sufficient funds to cover the cost for the reestablishment of revegetation over the 5-year liability period. On July 19, 1983, OSM eliminated its requirement that a maximum of 25 percent of the original bond may be released upon successful phase 2 reclamation. The preamble to this revision explains that the establishment of the 25 percent phase II maximum bond release amount was arbitrary and that its elimination better ties the setting of the remaining bond amount to the actual projected remaining reclamation involved (48 FR 32953, July 19, 1983).

The proposed standards for stage 2 release do not include the requirement contained in the existing regulations at § 86.172 that are proposed to be deleted which require the regulatory authority to retain an amount of bond sufficient to reestablish vegetation and reconstruct drainage structures on the entire permit area. Pennsylvania has indicated that the requirement of § 86.172(c) provides for this requirement by prohibiting the release or adjustment of a bond if the release or adjustment would reduce the amount of bond remaining to less than that necessary to complete the approved reclamation plan. The Director agrees that the State-approved rule at § 86.172(c) requires the regulatory authority to retain sufficient bond for the regulatory authority to complete reclamation, including the reestablishment of revegetation, if necessary by a third party.

Accordingly, the Director finds that Pennsylvania's proposed deletion of existing regulations at § 86.172 (a) and (b) and replacement with revised standards for bond release at § 86.175, specifically limiting stage 1 bond release to 60 percent of the original bond amount and stage 2 release to a maximum total of 85 percent of the original bond amount, will not render the State program less effective than the Federal regulations at 30 CFR 800.40(c)(2).

b. Pennsylvania is also proposing to add at new paragraphs 86.175 (1), (2) and (3), language to exclude supplemental bond posted for an oversized surface mining pit in the bond release calculation. Under the Pennsylvania program, when a surface mine (i.e., open pit) is planned for depth greater than 85 feet, the regulatory authority assesses an additional amount of bond for that area to cover the additional cost of reclamation of the larger pit. Under this proposed revision, the additional bond amount, the oversized pit supplement would be returned to the operator/permittee upon backfilling the open pit to a size which is less than that which requires the oversized pit supplement. In effect, the proposed Pennsylvania rule would allow an adjustment to be made to the bond

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amount upon the partial completion of stage 1 reclamation.

Counterpart Federal regulations at 30 CFR 800.14 do not contain provisions for oversized pit supplements. Instead, 30 CFR 800.14 requires the regulatory authority to require bond in an amount which reflects the probable difficulty of reclamation, and sufficient to assure the completion of the reclamation if the work has to be performed by the regulatory authority. However, the Federal regulations do not permit the release of bond for partial completion of reclamation as is proposed by Pennsylvania.

Pennsylvania has indicated that once the area for which the oversized pit supplement was posted is backfilled to within the normal pit size, the supplemental bond is no longer needed for ensuring adequate reclamation and, therefore, the bond would be adjusted and the excess bond returned to the operator. Section 509(e) of SMCRA provides that the bond amount shall be adjusted as affected land acreage increases or decreases or the cost of future reclamation changes. The Federal rules at 30 CFR 800.15 repeat this language and, in paragraph (c), further provide that a permittee may request reduction of the bond amount by submitting evidence to the regulatory authority proving that changes in the method of operation or other circumstances have reduced the estimated cost to the regulatory authority of reclaiming the bonded area in the event of forfeiture. The preamble to the Federal regulations at 30 CFR 800.15 clearly states that the bond adjustment provisions are intended to be used to reduce bond amounts only if the acreage to be affected decreases, technological advances reduce the unit costs of reclamation, or changes in the mining plan (such as a decision not to remove the lowest coal seam) result in an operation of more limited extent than originally approved and bonded. This interpretation is reinforced by section 519 of SMCRA, which establishes criteria and schedules defining when and how bond may be released to ...wing the completion of specified reclamation activities. If the bond adjustment provisions of section 509 were interpreted as allowing bond reduction because the operator completed a portion of their reclamation obligations, section 519 would be rendered meaningless.

The preamble to the bond adjustment provisions of 30 CFR 800.15(c) at 48 FR 32945 (July 19, 1983) states that:

> OSM has not included in the final rule any provision characterizing as an adjustment any reduction in bond amount for reclamation work performed on disturbed areas since bond for disturbed areas can only be released or reduced through the formal release procedures of (30 CFR) 800.40.

To be approved under the bond adjustment provisions of 30 CFR 800.15(c), a proposed bond reduction must be justified solely upon either changes in the acreage to be affected (not the acreage remaining to be reclaimed) or a demonstration that the reclamation cost estimates upon which the current bond amount is based are no longer valid for reasons other than the performance of reclamation work. Any bond reduction requested as a result of reclamation work performed must be processed as an application for bond release under 30 CFR 800.40; the request cannot be approved unless the criteria specified in 30 CFR 800.40(c) and section 519(c) of SMCRA, or, in Pennsylvania's case, revised § 86.175, are satisfied. The remaining bond amount must meet the minimum levels established in these program provisions.

Therefore, the Director is not approving the proposed provisions under § 86.175 for excluding the additional bond submitted as oversized pit supplements from the bond release calculations in paragraphs (1), (2) and (3) as these provisions would constitute an adjustment to the bond for reclamation work completed and would render Pennsylvania's rule less effective than the Federal regulations.

23. Section 86.182. Bond Forfeiture Procedures

Pennsylvania is proposing to revise its bond forfeiture procedures at § 86.182 by adding paragraph (d) concerning the collection of collateral funds, in cases where the Department declares a collateral bond forfeited. Upon receipt of the collateral funds the Department will pay, or direct the State Treasurer to pay, the funds into the Surface Mining Conservation and Reclamation Fund. In addition, the added paragraph stipulates that the regulatory authority will take appropriate steps to collect the proceeds from a forfeited collateral bond if the banking institution or other person or municipality which issued the collateral refuses to pay the regulatory authority the proceeds of the collateral bond. The counterpart Federal regulations at 30 CFR 800.50 (b)(1) and (b)(2) require the regulatory authority to proceed to collect the amount of the forfeited bond as provided by applicable laws for the collection of defaulted bonds, and that these funds be used to complete the reclamation plan on the permit area to which bond coverage applies. While similar to the Federal regulations, the proposed rules do not specify that the collateral funds collected will be used to complete the reclamation plan on the permit to which the bond coverage applies. The Director is approving the proposed provisions except to the extent that the proposed rules do not require that the funds paid to the Surface Mining Conservation and Reclamation Fund will be used on the site to which the bond coverage applies. In addition, the Director is requiring that the rule be amended to require that funds paid to the Surface Mining Conservation and Reclamation Fund be used on the site to which the bond coverage applies.

24. Section 86.193(h). Penalty Assessment

Pennsylvania has added this provision to state that the regulatory authority may, when appropriate, assess a penalty against corporate officers, directors or agents as an alternative to, or in combination with, other penalty actions. The Federal counterpart regulation at § 846.12(a) states that an individual civil penalty may be assessed against any corporate director, officer or agent of a corporate permittee who knowingly and willfully authorized, ordered or carried out a violation, failure or refusal.

The proposed Pennsylvania rule is consistent with the Federal regulation in that it authorizes the regulatory authority to assess individual civil penalties. The proposed rule does not, however, make it clear that individual civil penalties are never a substitute for mandatory civil penalties, nor does the rule clarify when the assessment of an individual civil penalty may be appropriate. The Director is approving the proposed rule to the extent that it authorizes the assessment of individual civil penalties. However, the Director is requiring that Pennsylvania further amend the rule to clarify that an individual civil penalty is not a substitute for mandatory civil penalties and to clarify when the assessment of an individual civil penalty may be appropriate.

25. Section 86.211. Enforcement—General

Pennsylvania is proposing to amend this section by adding subsection (b)(4) concerning the circumstances under which the regulatory authority may approve an extension to the 90-day period for the abatement of a violation at a surface mining operation. The added subsection would allow such an extension if the permittee cannot abate the violation within 90 days due to a labor strike. The Federal regulations at 30 CFR 843.12(f)(3) also contain such a provision. However, the State rule does not allow this extension if the violation is causing or has the potential to cause off permit impacts such as environmental harm to air, water, or land resources or danger to the public health or safety. Since the Federal counterpart provides the regulatory authority with the option of granting extensions, Pennsylvania is free to limit the circumstances under which it grants extensions in any manner it deems appropriate, so long as it does not provide extensions for reasons other than those contained in 30 CFR 843.12(f). Further, Pennsylvania's rationale for disallowing extensions due to labor strikes when the violation can cause harm to the public or the environment is supported by the Federal regulations under 30 CFR 840.13(b) and 843.11(a) which require that the regulatory authority must order a cessation of surface mining activities if conditions exist which create an imminent danger to public health or safety and which are causing or can reasonably be expected to cause significant environmental harm. Therefore, the Director finds that the State's proposed revision is not inconsistent with the Federal regulations.

26. Sections 87.1, 88.1 and 90.1. Definitions: Land Use—Recreation

Pennsylvania is proposing to revise the current definition of recreational land, which is substantively identical to the existing Federal definition at 30 CFR 701.5, by deleting the reference to land used for public or leisure-time use including amusement areas as well as areas for less intensive uses such as hiking, canoeing and other undeveloped recreational uses. The proposed revision defines recreational land use as "land used for developed recreational uses." The Director cannot discern any potential environmental harm resulting from the proposed amendment, since the revision will require the permit applicant to categorize land used prior to mining for hiking, canoeing or other undeveloped recreational uses according to the other defined types of land use in § 87.1 and related sections. In addition, since the other defined land uses do not include a category for undeveloped land, the permittee will be required to achieve a postmining land use in accordance with the reclamation standards for the land uses defined by the approved program. Therefore, the Director finds that the proposed revision is not inconsistent with the cited Federal regulations.

27. Sections 87.46(b)(3)(i), 88.491(d)(2)(ii)(A), and 90.14(b)(3)(i). Surface Water Information

Pennsylvania has proposed to revise its regulations concerning surface water information requirements by specifying that applicable water monitoring requirements may be met by measuring specific conductance in micromhos per centimeter. The corresponding Federal regulations at 30 CFR 780.21(b)(2) contain a similar provision but require measurement of specific conductance to be corrected to 25 degrees Centigrade (25°C). Failure to require measurements of specific conductance in micromhos to be corrected to 25°C could result in inaccurate measurements.

In response to questions from OSM, Pennsylvania has stated that although their regulations do not specifically require the correction to 25°C, such conversion is generally accepted as a standard practice for measurements of specific conductance. In addition, the State noted that Pennsylvania's approved mining permit application, Module 8.1, requires specific conductance to be corrected to 25°C. Based upon Pennsylvania's interpretation that correcting specific conductance measurements to 25°C is the accepted standard procedure and that this requirement is contained in the permit application, the Director finds that the lack of a requirement to correct specific conductance measurements to 25°C does not render the Pennsylvania program less effective than the Federal regulations and is approving the proposed revisions to §§ 87.46(b)(3)(i), 88.491(d)(2)(ii)(A), and 90.14(b)(3)(i).

28. Section 87.73(c)(1), Dams, Ponds, Embankments and Impoundments

Pennsylvania has proposed to revise its regulations at § 87.73(c)(1) to require that detailed design plans for impounding structures that do not require a permit under chapter 105 of the Pennsylvania program shall be prepared by or under the direction of, and certified by a qualified registered professional engineer or a qualified registered land surveyor. A permit under chapter 105 is required when the greatest depth of water measured at the upstream toe of the dam at maximum storage elevation exceeds 15 feet, or when the impounding capacity at maximum storage elevation exceeds 50 acre-feet. The counterpart Federal regulations at 30 CFR 780.25(a)(3)(i) are substantively identical, except that they apply the MSHA size classification at 30 CFR 77.216(a) which provides that design plans for impoundments greater than 20 feet in height or which have a storage capacity of 20 acre-feet or more must be prepared by or under the direction of, and certified by a qualified registered professional engineer. In effect, the Pennsylvania regulations could allow a land surveyor to design and certify impoundments with a storage volume greater than the 20 acre-feet allowed using the MSHA size classification, but less than the 50 acre-feet under chapter 105 of the Pennsylvania program. In the approval of the Pennsylvania program as published in the **Federal Register** on July 30, 1982 (47 FR 33077) the Secretary noted the inconsistencies between Pennsylvania's and MSHA's impounding structures size classifications and reasoned that these inconsistencies were minor due to the overlapping coverage of impoundments by both agencies. However, the inconsistencies continue to create confusion concerning which standards apply to what size impoundments.

The Director finds that the proposed revisions at § 87.73(c)(1) are no less effective than the cited Federal regulations except to the extent that impoundments with a storage capacity of more than 20 acre-feet but less than 50 acre-feet may be designed by or under the direction of, and certified by a land surveyor. However, the Director is requiring Pennsylvania to further amend its program to clarify that all impoundments with a storage volume of 20 acre-feet or more must be designed by or under the direction of, and certified by, a qualified registered professional engineer with assistance from experts in related fields such as geology, land surveying and landscape architecture.

29. Sections 87.84, 88.62, 89.74, and 90.48. Fish and Wildlife Resource Information and Protection and Enhancement Plans

Pennsylvania is proposing to add subsection (b) of §§ 87.84, 88.62, and 90.48, and subsection (c) of § 89.74. These new sections require the regulatory authority to provide certain information submitted with a permit, including fish and wildlife resource information and the protection and enhancement plan, to the United States Fish and Wildlife Service (USFWS) upon request "during the comment period." Although the corresponding Federal regulations at 30 CFR 780.16(c) and 784.21(c) do not include the phrase "during the comment period," the Federal regulations are intended to assure the USFWS an opportunity to review and comment on these specific aspects of the permit application in accordance with provisions established

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at 30 CFR 773.13(b)(1) pertaining to the submittal of written comments or objections by State and Federal fish and wildlife agencies. Indeed, the public comment period is the only appropriate time for such requests because the information may not be available until a permit is administratively complete and available for comment, and post-comment period requests are untimely because it may be too late to influence permitting decisions. The Director notes, however, that Pennsylvania will honor any early requests (pre-comment period) by the USFWS whenever possible. The Director finds that the proposed "during the comment period" requirement is reasonable and, therefore, the proposed regulations are consistent with the cited Federal rules at 30 CFR 780.16(c) and 784.21(c).

30. Section 87.101(e). Hydrologic Balance: General Requirements

Pennsylvania is proposing to add subsection (e) to require that surface mining activities be planned and conducted to minimize the accumulation of water in the pit, and that all pit water be collected and pumped to approved water treatment facilities. The amended rule also prohibits the discharge of pit water from the surface mining activity by gravity drains. Since the proposed rules will minimize the formation of acid or toxic water in the pit area and prohibit the discharge of this water prior to treatment to meet effluent limitations, the Director finds that the addition of subsection (e) is consistent with the requirements of the Federal regulations at 30 CFR 780.21(h), 816.41, and 816.42.

31. Sections 87.102, 88.92, 88.187, 88.292, 89.52, and 90.102. Hydrologic Balance: Effluent Standards

a. Pennsylvania is proposing to revise § 87.102(b)(2) and related sections to replace "operator" with "permittee" to clarify that a permittee conducting mining activities must demonstrate the factors set forth in § 87.103 in order to be entitled to the alternative effluent limitations in § 87.102(b) and to make these sections grammatically correct. The Director finds that the proposed revisions will not change the requirements to comply with effluent limitations specified in the State's rules and therefore does not render the State's rules inconsistent with the Federal regulations at 30 CFR 816/817.42.

b. Pennsylvania is proposing to revise § 89.52(h) to replace the word "operator" with the word "permittee" to make it clear that a permittee is permanently responsible for all discharges which are encountered or are in any way affected by or connected with the mining or reclamation activities. The Director finds that the proposed revision is consistent with the requirements of 30 CFR 773.17(c).

c. Pennsylvania is also proposing to replace its existing effluent standards for the discharge of water from areas disturbed by surface and underground mining activities, §§ 87.102(a), 88.92(a), 88.187(a), 89.52(c), and areas disturbed by coal refuse disposal activities, §§ 88.292(a) and 90.102(a), with more detailed effluent limitations grouped according to discharges resulting from specified precipitation events. The new rules are contained in two paragraphs, (a) and (b), for §§ 87.102, 88.92, 88.187, 88.292, and 90.102, and (c) and (d) for § 89.52. Both new paragraphs must be considered in concert to evaluate their effectiveness relative to the counterpart Federal regulations. The counterpart Federal regulations at 30 CFR 816.42, include by reference, effluent limitations for coal mining point sources as established by the Environmental Protection Agency (EPA) under 40 CFR part 434. Although the State's effluent standards have been completely reorganized, the proposed effluent standards do contain counterparts to each EPA standard detailed at 40 CFR part 434, and the proposed Pennsylvania standards are no less effective than the EPA standards. However, because of the differences in the format of the proposed Pennsylvania standards and the format of EPA standards, discussion is provided below to assist the reader in understanding the Director's findings.

The proposed standards at Group A contain the effluent limitations under dry weather flow conditions, specified as a 30-day average, a daily maximum, and an instantaneous maximum for total iron, manganese, total suspended solids and pH for all areas disturbed by bituminous and anthracite surface and underground mining activities.

The precipitation event criteria for anthracite and bituminous coal refuse disposal activities, §§ 88.292(a) and 90.102(a), respectively, are slightly different and require that Group A effluent limitations be applied to water discharges resulting during dry weather flow up to and including precipitation occurring from the 1-year, 24-hour precipitation event. Dry weather flow is defined by the State program as the base flow of surface water discharges from an area or treatment facility which occurs immediately prior to a precipitation event and which resumes 24 hours after precipitation event. The proposed Group A effluent limitations are substantively identical to the EPA new source performance standards at 30 CFR 434.25, 434.35, and 434.45, with one exception. Group A contains an additional effluent limitation for instantaneous maximum concentrations for total iron of 7.0 milligrams per liter (mg/l). This additional standard will provide additional protection against iron pollution. The Director finds, therefore, that the Group A standards are no less effective than the cited Federal regulations.

The proposed standards at Group B specify the effluent limitations for precipitation events greater than dry weather flow but less than a 10-year, 24-hour precipitation event, for areas disturbed by surface and underground mining activities. Group B effluent limitations for anthracite and bituminous coal refuse disposal activities are specified for precipitation greater than the 1-year, 24-hour event and less than or equal to the 10-year, 24-hour event. The counterpart Federal regulations at 40 CFR 434.63 (a), (b), and (c) also prescribe exemptions from the more stringent effluent limitations for substantially identical precipitation events. The proposed Pennsylvania Group B effluent limitations are substantively identical to the cited Federal counterparts, except that the proposed Pennsylvania standards prescribe instantaneous maximum concentrations for total iron and total manganese where the EPA standards specify only the maximum concentration for any one day. Since the State's proposed standards provide for additional protection of the surface water, the Director finds that they are no less effective than the regulations cited in the Federal EPA standards.

Pennsylvania is also proposing to establish exemptions from Group A and B effluent limitations for the occurrence of precipitation events greater than the 10-year, 24-hour events. The proposed exemptions, known as Group C, are substantively identical to exemptions in the counterpart Federal standards at 40 CFR 434.63(d).

The proposed rules at §§ 87.102(b), 88.92(b), 88.187(b), 88.292(b), 89.52(d), and 90.102(b) specify which group of effluent limitations apply to specific types of discharges. The types of discharges include discharges of pit water, surface runoff during active mining, surface runoff from areas achieving stage II reclamation and all other discharges. The counterpart Federal regulations at 40 CFR part 434 specify effluent limitations for active mining and refuse disposal activities and for post mining or "reclamation areas." Therefore, the proposed Pennsylvania regulations contain

counterparts to each of the Federal standards and are no less effective than the Federal regulations at 40 CFR part 434.

Although Pennsylvania's proposed rules are organized in a markedly different fashion that the cited Federal counterparts, the Director finds that the proposed alternate effluent limitations when considered together are substantively identical to and, therefore, no less effective than the Federal regulations at 40 CFR part 434.

32. Sections 87.103, 88.93, 88.188, 88.293, 89.53 and 90.103. Precipitation Event Exemption

Pennsylvania is proposing to amend § 87.103(a) and related sections listed above to clarify that the permittee must demonstrate to the regulatory authority's satisfaction that a precipitation event has occurred to establish that the effluent limitations of Group B or C in § 87.102(a) and similar sections should apply. The proposed revisions also prohibit the application of the precipitation exemptions if more stringent water quality based effluent limitations are specified in the approved permit. The counterpart Federal regulations at 40 CFR 434.63(e) state that the operator shall have the burden of proof to establish that the effluent limitations exemptions for a precipitation event should be applied.While similar to the proposed Pennsylvania rule, the Federal counterpart does not exclude any more stringent effluent limitations from application of the precipitation event exceptions. Since this provision in the proposed State's rules will afford a greater level of protection of surface waters receiving discharge from the mining areas, the Director finds that its addition will not render the State rules less effective than the cited Federal regulations at CFR 434.63(e).

Pennsylvania is also proposing to modify the listing of the level of precipitation (rainfall) in inches, for specific counties in Pennsylvania that represents events in excess of the 10-year, 24-hour rainfall event in §§ 88.93(b), 88.188(b), 88.293(b), 89.53(b), and 90.103(b) and has added the 1-year, 24-hour precipitation event values in §§ 88.293(b) and 90.103(b). The Federal counterpart at 40 CFR 434.11(n) states that the rainfall amounts for each precipitation event are to be established as defined by the National Weather Service or equivalent regional or rainfall probability information developed therefrom. Since Pennsylvania revised and incorporated the rainfall amounts from the National Weather Service information, the Director finds the revisions to be consistent with the requirements of 30 CFR 816.42 and 40 CFR 434.11(n).

Pennsylvania is proposing to revise §§ 87.103 (c), (d), (e); 88.93 (c), (d), (e); 88.188 (c), (d), (e); 88.293 (c), (d), (e); 89.53 (c), (c)(1), (c)(2), (d), (e); and 90.103 (c), (c)(1), (c)(2), (d), (e) concerning demonstration of the occurrence of a precipitation event. In addition to making several nonsubstantive word changes to clarify and make consistent that only the permittee may apply for a precipitation event exemption, Pennsylvania is proposing to add language to paragraph (c) of each section to clarify that the permittee may apply Group B alternative effluent limitations by demonstrating that dry weather conditions did not exist. Since the alternative effluent limitations for Group B are defined as precipitation greater than dry weather flow but less than the 10-year, 24-hour precipitation event, the Director finds that this change will not render the State's rules less effective than the Federal regulations at 40 CFR 434.63.

33. Sections 87.112 (b) & (f), 88.102(b), 88.197(b), 88.302(b), 89.101(a) & (d), 89.112, 90.112(b), (d) & (f). Hydrologic Balance: Dams, Ponds, and Embankments—Design, Construction and Maintenance.

a. Pennsylvania is proposing to amend §§ 87.112(b), 88.102(b), 88.197(b), 88.302(b), 89.112, and 90.112(b) by adding a reference to the United States Soil Conservation Service's (SCS) Pennsylvania Field Office Technical Guide, Section IV Standards 350 "Sediment Basin" to supplement the existing reference to the SCS's Pennsylvania Field Office Technical Guide, Section IV, Standard 378, "Pond." Standards 350 applies to small impoundments with an expected life of less than 5 years. When OSM revised the counterpart Federal regulations on September 26, 1983 at 30 CFR 816/817.49 (48 FR 43997), it did not reference the SCS design standards for impounding structures, but instead, listed certain requirements contained in the SCS document (48 FR 43997). OSM conducted an evaluation of this supplemental document and found that it contains design standards consistent with SMCRA and no less effective than the Federal requirements at 30 CFR 816/817.49 (Administrative Record Number 790.24) except that Standards 350 does not require a minimum static safety factor for the impounding structure. The Director understands that the State is now preparing further revision to the program to include a static safety factor for small impoundments and, therefore, this item will not be addressed in this amendment. Accordingly, the Director finds that the proposed addition of Standards 350 will not render the State's rules less effective than the cited Federal rules at 30 CFR 816/817.49.

b. Pennsylvania is proposing to revise paragraph (b) of §§ 87.112 and 90.112 concerning the design, construction, and maintenance of impounding structures, by deleting the phrase "that are not of the class of subsection (a)." Section 89.112 is similarly revised to delete the phrase "Impoundments not subject to the criteria of § 89.111(b) (relating to large impoundments)." Both §§ 87.112(a) and 90.112(a) and § 89.111(b) describe the size classification for large impoundments in accordance with chapter 105 of the State program. By deleting the identified phrases in §§ 87.112, 89.112, and 90.112, the proposed revisions require that all impoundments shall achieve the minimum design criteria contained in the SCS's Pennsylvania Field Office Technical Guide, Section IV, Standards 350 "Sediment Basins" and 378, "Ponds" (for small impoundments), or SCS Technical Release No. 60, "Earth Dams and Reservoirs," (pertaining to large impoundments), whichever is applicable. Since the revisions to §§ 87.112(b), 89.112 and 90.112(b) require the SCS design standards for large and small impoundments be applied to all impoundments, whichever is applicable, therefore making the requirements more inclusive, the Director finds that the revised rules are no less effective than the Federal regulations at 30 CFR 816/817.49.

However, Pennsylvania is also proposing to delete the language in §§ 88.102(b), 88.197(b) and 88.302(b) concerning impoundments at anthracite mines. This deletion will result in application of the SCS minimum design standards for small impoundments, contained in the SCS's Standards 350 and 378, to both large and small impoundments. OSM has approved the inclusion by reference of the SCS design standards for impoundments, but only to the extent that small impoundments apply the standards for SCS's Standards 350 and 378, and that large impoundments apply the more restrictive design standards contained in SCS Technical Release No. 60, "Earth Dams and Reservoirs." Since the existing rules at §§ 88.102(b), 88.197(b) and 88.302(b) do not contain a reference to the SCS's Technical Release No. 60, the deletion of the language that limits the applicability of these subsections to small impoundments inappropriately applies the less restrictive design

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standards to the design standards for large impoundments. Therefore, the Director is not approving the proposed revision to delete the phrase "that are not of the class of subsection (a)" in §§ 88.102(b), 88.197(b) and 88.302(b) to make it clear that the design standards for small impoundments as contained in SCS 350 "Sediment Basin" and SCS 378, "Ponds" are not applied to the design, construction and maintenance of large impoundments.

c. Pennsylvania is also proposing to revise §§ 87.112(b)(1) and 89.101(a) to include provisions that small impoundments, those designed such that the greatest depth of water measured at the upstream toe of the dam at maximum storage elevation will not exceed 15 feet, or when the impounding capacity at maximum storage elevation is less than 50 acre-feet, may be designed and certified by a qualified registered land surveyor. The revised section has retained the requirement that large impoundments must be designed and certified by a qualified registered professional engineer. The Federal counterpart regulations at 30 CFR 780.25(a)(3)(i) and 784.16(a)(3)(i) allow detailed design plans for an impounding structure that does not meet the size or other criteria of the Mine Safety and Health Administration (MSHA), at 30 CFR 77.216, to be prepared by, or under the direction of, and certified by a qualified registered professional land surveyor. Under the MSHA size classification, structures that can impound water to an elevation of 20 feet or more above the upstream toe of the structure, or that can have a storage volume of 20 acre-feet or more are classified as large impoundments. Such large impoundments must be designed by or under the direction of, and certified by a qualified registered professional engineer. The important difference between the Pennsylvania and the MSHA size provisions is the storage volume of large impoundments. Under the Pennsylvania classification, a land surveyor may prepare or direct the preparation of the detailed design for, and may certify an impoundment that can impound greater than 20 acre-feet of water but less than 50 acre-feet. This is beyond the authority accorded land surveyors under the counterpart Federal regulations. Therefore, the Director is approving the revision to §§ 87.112(b)(1) and 89.101(a) except to the extent that the proposed revisions do not require that the detailed designs of impoundments with a storage capacity of more than 20 acre-feet must be prepared by or under the direction of, and certified by a qualified registered professional engineer. In addition, the Director is requiring Pennsylvania to further amend its rules to require that all impoundments which meet or exceed the MSHA size classification of 30 CFR 77.216 are designed and certified by or under the direction of a qualified registered professional engineer.

d. Pennsylvania is also proposing to revise subsection (b)(1) of both §§ 87.112 and 90.112 by deleting the requirement that each impoundment be certified that the pond was constructed as approved in the permit application. The counterpart Federal regulations at 30 CFR 816/817.49(a)(10)(ii) require all impoundments to be certified that the impoundment has been constructed and/or maintained as designed and in accordance with the approved plan and the performance standards of the applicable chapter. Pennsylvania's existing regulations at §§ 87.112(d) and 90.112(d) require that each impoundment be inspected during construction and certified after construction and annually thereafter. However, Pennsylvania rules do not require certification that the impoundment has been constructed "and or maintained" as approved in the permit "and in accordance with applicable performance standards." Therefore, the Director is approving the revision to §§ 87.112(b)(1) and 90.112(b)(1) except to the extent that they do not require that each impoundment be certified that the impoundment has been constructed and/or maintained as approved in the permit and in accordance with all applicable performance standards. In addition, the Director is requiring that Pennsylvania further amend its program to require that all impoundments be certified that the impoundment has been constructed and is being maintained as designed and in accordance with the approved plan and all applicable performance standards. The Director is also requiring that §§ 89.101 and 89.112 also be amended to require that all impoundments shall be similarly certified.

e. Pennsylvania is proposing to revise § 90.112(d), concerning the inspection and annual certification requirements of impounding structures located on coal refuse disposal areas to add the phrase "until removal of the structure or release of the performance bond." The counterpart Federal regulations at 30 CFR 816/817.63(c)(3) and 816/817.84(b)(1) specifically state that impounding structures may not be retained permanently as part of the approved postmining land use. Therefore, the Director finds that the addition of the phrase "until removal of the structure" will not render the State rules less effective than the cited Federal regulations. However, the Director is not approving the addition of the phrase "or release of the performance bond" as it will render the State rules less effective than the cited Federal counterparts.

f. Pennsylvania is proposing to amend §§ 87.112(f), 89.101(d) and 90.112(f) which provide that the regulatory authority may accept the MSHA's approval for MSHA size impoundments in lieu of the design, construction and maintenance requirements of the sections 87, 89 and 90, as applicable. Pennsylvania is proposing to revise 87.112(f), 89.101(d), and 90.112(f) to require duplicate plans for all MSHA size impoundments be submitted to MSHA and to the regulatory authority. In addition, Pennsylvania is proposing to revise these paragraphs to state that the regulatory authority may accept MSHA approval for impoundments in lieu of the requirements of paragraph (a) if the dam is of size classification C and hazard potential 3 as defined in chapter 105, provided all other requirements of the applicable chapters (87, 89, and 90, respectively) are met. Sections 87.112(a), 89.111(b) and 90.112(a) each require that all impoundments that meet or exceed the size criteria of chapter 105 shall be designed, constructed and maintained in accordance with chapter 105. Size classification C applies to impoundments with a storage volume equal to or less than 1000 acre-feet and with a dam height equal to or less than 40 feet. Hazard potential 3 applies to impoundments located where failure would not result in loss of life or where no permanent structures for human habitation are located and where failure would result in minimal economic loss and no significant effect on public convenience.

The Federal counterpart regulations at 30 CFR 780.25(c)(2) require that each plan required to be submitted to the District Manager of MSHA under § 77.216 shall be submitted to the regulatory authority as part of the permit application. However, the Federal rules do not authorize regulatory authority acceptance of MSHA approval in lieu of State requirements. OSM proposed revisions to the Federal regulations in the **Federal Register** on June 21, 1982 (47 FR 26754) which would have allowed MSHA the primary responsibility for impoundment design review and emergency action. However, OSM did not adopt this provision in the final rule as published in the **Federal Register** on September 28, 1983 (48 FR 43994). Instead, OSM implemented

regulations to require independent regulatory authority responsibility under section 515, 506, 507, 508, 510 of the Act for permitting and ensuring operator compliance with the performance standards found in section 515(b)(8) of the Act and with Public Law 83–568. In the preamble to the final rule, OSM stated that MSHA's approval of the design and construction of impoundments subject to the Act will not satisfy the requirement for approval by the regulatory authority. Instead, the regulatory authority must review and approve plans for impoundments to ensure that the structures are designed to be in compliance with appropriate approved standards. Therefore, the proposed Pennsylvania revision to allow the regulatory authority to accept MSHA approval in lieu of the regulatory authority's own review and approval of the design and construction of impoundments would render the Pennsylvania program inconsistent with the requirements of SMCRA and less effective than the Federal regulations.

Therefore, the Director is approving the proposed revisions at §§ 87.112(f), 89.101(d) and 90.112(f) except to the extent that the regulatory authority may accept MSHA approval in lieu of the requirements of §§ 87.112(a), 89.111(b) and 90.112(a) for MSHA size impoundments. The Director is requiring that Pennsylvania further amend its rules to clarify that the regulatory authority may consider MSHA's action on plans for impoundments, but that the regulatory authority is independently charged to make its own findings with regard to plan approvals.

34. Sections 87.118 ad 90.117. Hydrologic Balance Transfer of Wells.

Pennsylvania is proposing to delete these sections concerning the transfer of exploratory or monitoring wells used by the person conducting surface mining activities to the surface owner of the land for future use as water wells. Counterpart Federal regulations at 30 CFR 816.41(g) contain provision for the transfer of such wells provided the permittee of the surface mining operation shall remain responsible for the proper management of the well until final bond release. Pennsylvania rules at §§ 87.93 and 90.93 contain the requirements that all drilled holes will be cased, sealed or otherwise managed as approved by the regulatory authority in order to prevent contamination of ground or surface waters, prevent disturbance to the prevailing hydrologic balance, ensure safety of public, property, livestock, and fish and wildlife in the area and prevent water from entering underground mine workings. Deletion of the provisions for the transfer of exploratory or monitoring wells at §§ 87.118 and 90.117 will not adversely affect the requirements for the operator to properly manage exploratory or monitoring wells. Therefore, the Director finds that the deletion of §§ 87.118 and 90.117 does not render the Pennsylvania program less effective than the Federal regulations.

35. Section 87.125(a). Use of Explosives. Preblast Survey.

Pennsylvania is proposing to amend subsection (a) of this rule to require that, at least 30 days prior to the initiation of blasting, the operator shall notify, in writing, all residents or owners of dwellings or other structures located within one-half mile of the permit area where blasting will occur of the right to a preblast survey. In addition, Pennsylvania is proposing to revise the existing language of subsection (a) by replacing the word "any" with "a" concerning the requirement that a preblast survey shall be conducted promptly upon receipt of a request by a resident within one-half mile of "a" part of the permit area where blasting will occur. The counterpart Federal regulations at 30 CFR 816.62(a) and (b) contain similar requirements except that the Federal regulations require that any resident or owner of a dwellings or other structures within one-half mile of any part of the permit area shall be notified by the operator of the procedures for requesting a preblast survey and may request and promptly receive such a survey. Furthermore, the preamble to the Federal regulations on March 8, 1983, explains that OSM adopted the regulatory provisions to be consistent with section 515(b)(15)(E) of SMCRA which gives all owners and residents within one-half mile of any portion of the permitted area the opportunity to receive a preblasting survey before blasting begins on any portion of the permit area (48 FR 9793).

The Director is approving the proposed revisions except to the extent that the proposed language would limit the opportunity to receive a preblasting survey to residents or owners of dwellings within one-half mile of the blasting site within the permit area rather than to one-half mile of any part of the permit area. In addition, the Director is requiring Pennsylvania to further amend its rules to provide the opportunity to request a preblasting survey to every resident or owner of a man-made structure or dwelling within one-half mile of any part of the permit area.

36. Section 87.127. Surface Blasting Requirement.

a. Pennsylvania is proposing to amend the provisions of § 87.127(e)(2) by adding language which states that Pennsylvania may, if necessary to prevent damage, specify lower maximum allowable airblast levels than those specified in § 87.127(e). The counterpart Federal regulation at 30 CFR 816.67(b)(1)(ii) contains a similar provision. However, the Federal regulation requires that the regulatory authority must specify lower maximum allowable airblast levels if necessary to prevent damage, whereas the proposed Pennsylvania rule states that the regulatory authority "may" specify lower maximum allowable airblast levels. By specifying that the setting of lower airblast limits may be applied, the proposed rule could be interpreted that the setting of lower airblast limits is optional rather than mandatory in cases where such action is necessary to prevent damage.

The Director is approving the proposed rule at § 87.127(e)(2) except to the extent that the rule would allow the regulatory authority not to specify lower blasting limits where such limits are necessary to prevent damage. In addition, the Director is requiring Pennsylvania to further amend § 87.127(e)(2) to require that, if necessary to prevent damage, the regulatory authority shall specify lower maximum allowable airblast levels than those specified in § 87.127(e).

b. The approved § 87.127(h) currently reads, "In all blasting operations * * * the maximum peak particle velocity shall not exceed one inch per second at the location of any dwelling, public building, school, church, or commercial or institutional building." Pennsylvania proposes to amend the rule to add the words "or other structure designated by the Department." The corresponding Federal regulations at 30 CFR 816.67(d)(1) require that "all structures" in the vicinity of the blasting area must be protected from damage by establishment of a maximum allowable limit on ground vibration, submitted by the operator in the blasting plan and approved by the regulatory authority. While the proposed Pennsylvania amendment would require the regulatory authority to designate the structures in the vicinity of the blasting area to be protected, the proposed amendment does not make it clear that all such structures must be so protected.

The Director finds that Pennsylvania's proposed regulation at § 87.127(h) is no less effective than the Federal

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regulations at 30 CFR 816.67(d)(1) except to the extent that the rule does not require that all structures in the vicinity of the blasting area be protected from damage. In addition, the Director is requiring that Pennsylvania further amend its program to require that all structures in the vicinity of the blasting area be protected from damage by establishment of a maximum allowable limit on the ground vibration.

c. Pennsylvania is proposing to revise its blasting requirements at §§ 87.127(j) by adding the requirement for the development of the modified scaled-distance factor that may be authorized by the operator. The Director finds that the amended provision is substantively identical to the Federal regulations at 30 CFR 816.67(d)(3)(ii). However, the Director is requiring that Pennsylvania correct an apparent typographical error in the cross-reference portion of the rule. To be no less effective than the Federal regulations, Pennsylvania must replace the reference to subsection (o) with one to subsection (n).

d. Pennsylvania is proposing to add at § 87.127(n) a table specifying the maximum ground vibrations at the locations of a dwelling, public building, school, church or community or institutional building outside the permit area. The table is substantively identical to the table of maximum ground vibrations at 30 CFR 816.67(d) and the Director, therefore, finds the proposed rule to be no less effective than the Federal regulations at 30 CFR 816.67(d). However, the Director has noted and is requiring that Pennsylvania correct two typographical errors in the table and accompanying footnotes. The table for maximum peak particle velocity should use "5.001 and beyond" for the last category under "Distance (D), from the blasting site, in feet," instead of the "5.000 and beyond" as shown in the proposed amendment. In addition, Footnote 2 should reference subsection (j) instead of subsection (k).

37. Section 87.131(n). Disposal of Excess Spoil.

Pennsylvania is proposing to revise subsection (n) to provide that only a qualified registered professional engineer or other qualified professional specialist working under the direction of a qualified registered professional engineer shall inspect excess spoil fills for stability. The revision also requires that the qualified registered professional engineer must provide to the regulatory authority a certified report that the fill has been constructed as specified in the approved design. The proposed revisions are substantively identical to the counterpart Federal regulations at 30 CFR 816.71(h)(2), except that the Federal regulations also require that the qualified registered professional engineer certify that the fill is being maintained as designed in the approved plan and in accordance with all performance standards applicable to excess spoil fills. Also, the Federal rule requires that the report include appearances of instability, structural weakness, and other hazardous conditions. Therefore, the Director finds that the proposed revisions to § 87.131(n) are no less effective than the cited Federal counterpart except to the extent that the proposed rule does not require the qualified registered professional engineer to certify that the fill is being maintained in accordance with the approved plan and applicable performance standards and to the extent that the report does not include appearances of instability, structural weakness, and other hazardous conditions. Accordingly, the Director is requiring that Pennsylvania further amend § 87.131(n) to require that the qualified registered professional engineer provide a certified report to the regulatory authority that the impoundment has been both constructed and maintained in accordance with the approved design plan and in accordance with all applicable performance standards, and that the report include appearances of instability, structural weakness, and other hazardous conditions.

38. Sections 87.135 and 88.54. Protection of Underground Mining.

a. Pennsylvania is proposing to revise its regulations at § 87.135(a) by adding an exception which would exempt support facilities from the prohibition of conducting surface mining activities within 500 feet of either an active or abandoned underground mine. The counterpart Federal regulations at 30 CFR 816.79 prohibit surface mining activities within 500 feet of either an active or abandoned underground mine. The Federal regulations at 30 CFR 701.5 define surface mining activities as those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam, before recovering the coal, by auger coal mining, or by recovery of coal from a deposit that is not in its original geologic location. Therefore, the prohibition against surface mining activities as used in 30 CFR 816.79 includes a prohibition against mining operations involving the excavation of coal and overburden, but does not include a prohibition against the use of support facilities within 500 feet of an underground mine.

Pennsylvania's definition of surface mining activities includes all aspects of the active mining phase of surface mining including support activities and is consistent with the Federal definition of surface mining operations at 30 CFR 700.5. Therefore, Pennsylvania's proposed exception for support facilities is consistent with the Federal definition of surface mining activities at 30 CFR 701.5 and with 30 CFR 816.79 concerning the prohibition of conducting surface mining activities as discussed above. Accordingly, the Director is approving the proposed revision to except support facilities from the prohibition from mining within 500 feet of an underground mine.

b. Pennsylvania is proposing to revise §§ 87.135(a) and 88.54 to replace the word "any" with "a" pertaining to the prohibition of mining closer than 500 feet to a point of either an active or abandoned underground mine. The proposed language is substantively identical to the counterpart Federal regulation at 30 CFR 816.79 except that the proposed language uses "a" where the Federal regulation uses "any."

The Federal regulation prohibits surface mining activities conducted closer than 500 feet to "any" point of an underground mine. In effect, the Federal regulation limits surface mining activities within 500 feet from any and all points of an underground mine. By use of "a" the proposed State rule could be interpreted to allow designation of only one ("a") point of an underground mine in determining the distance to the underground mine within which surface mining activities may be conducted. Therefore, the Director is approving the proposed language except to the extent that the rule could be interpreted not to limit surface mining activities within 500 feet from any and all points of either an active or abandoned underground mine. In addition, the Director is requiring that Pennsylvania further amend its rules to make it clear that the surface mining activities are prohibited within 500 feet of any point of either an active or abandoned underground mine.

c. Pennsylvania is proposing to revise § 87.135(a)(1) to require the approval of both the regulatory authority and MSHA as a prerequisite for operations that propose to mine closer than 500 feet of an active underground mine. This proposed revision is substantively identical to and no less effective than the Federal regulations at 30 CFR 816.79(b). Therefore, the Director is approving the proposed revision.

Pennsylvania is also proposing to further amend this subsection by adding a requirement that operations that propose to mine closer than 500 feet of an abandoned underground mine obtain the approval of the regulatory authority of the nature, timing, and sequence of the proposed operations. Although the corresponding Federal rules at 30 CFR 816.79(b) do not contain a similar provision, the preamble to the Federal rule (48 FR 24648, June 1, 1983) provides clarification that regulatory authority approval is required for surface mining activities proposed to occur within 500 feet of an abandoned underground mine. Therefore, the Director finds that Pennsylvania's proposed revision is not inconsistent with SMCRA and the Federal regulations and can be approved.

d. Pennsylvania has proposed to revise § 88.54 concerning the restrictions for surface mining activities in proximity to active or abandoned underground anthracite mines by adding language requiring that if coal removal, blasting or drilling is proposed to be conducted close to a point of an active or abandoned underground mine, the operation plan shall describe the measures to be used to comply with §§ 88.113 and 88.204 (relating to protection of underground mining) and applicable State and Federal Laws. Although there is no direct Federal counterpart to § 88.54, the Director finds that these revisions are consistent with the performance standards for anthracite mining contained at 30 CFR 820.11 and 765.11(b)(1), and, therefore, is approving the revision to § 88.54 as proposed.

39. Sections 87.138, 89.82 and 90.150. Protection of Fish, Wildlife and Related Environmental Values.

Pennsylvania has revised its fish and wildlife performance standards by adding §§ 87.138(c), 89.82(d) and 90.150(c) to prohibit any surface mining activities that would be conducted in a manner which would result in the unlawful taking of a bald or golden eagle, its nest or its eggs. The rules also require that an operator promptly report to the Department any bald or golden eagle nest found within the permit area of which the operator becomes aware. The proposed rule also requires the Department, upon notification, to consult with specified agencies, if appropriate, and identify whether, and under what conditions, the operator may proceed.

The counterpart Federal regulations at 30 CFR 816/817.97 contain similar provisions, but also specify that the regulatory authority, upon notification, must consult with the U.S. Fish and Wildlife Service (USFWS) and, where appropriate, the State fish and wildlife agency, to identify whether, and under what conditions the operator may then proceed. That is, consultation with the USFWS is mandatory. The proposed Pennsylvania rule differs from the Federal regulations in that the Pennsylvania rule requires consultation with the USFWS only "if appropriate." The proposed rules does not make it clear under what circumstances the State would consult with the USFWS.

Therefore, the Director finds that Pennsylvania proposed rules at §§ 87.138(c), 89.82(d) and 90.150(c) are no less effective than the Federal regulations except to the extent that the regulatory authority is not required to consult with the USFWS upon notification of the presence of any bald or golden eagle nest found within a permit area. In addition, the Director is requiring that Pennsylvania further amend its program to require consultation with the USFWS upon notification by an operator of the presence of any golden or bald eagle nest within the permit area.

40. Section 87.141. Backfilling and Grading: General Requirements

Pennsylvania is proposing to amend § 87.141 concerning backfilling and grading reclamation requirements. In addition to nonsubstantive revisions to subsection (a), Pennsylvania is proposing to revise subsections (c) (1) and (2) to provide that the regulatory authority may approve alternative time and pit width requirements in the operation and reclamation plan. The Director finds that these revisions are not inconsistent with the requirements of section 515(b)(16) of SMCRA which require that backfilling and grading shall occur as contemporaneously as practicable with mining operations.

41. Section 87.142. Backfilling and Grading: Reaffecting Previously Mined Areas

Pennsylvania is proposing to amend the first paragraph of this section by deleting the words "or other" and by making grammatical changes as a consequence of this deletion. With this change, terracing is the only alternative to approximate original contouring which the state would approve subject to the provisions at (1) through (6). The Director finds that proposed changes clarify the existing rule, and the proposed changes do not render the rules less effective than the counterpart Federal regulations at 30 CFR 816.106.

42. Section 87.143. Backfilling and Grading: Alternatives to Contouring or Terracing

Pennsylvania is proposing to delete § 87.143 concerning the regulatory authority's discretion to grant variances approving alternatives to contouring or terracing when backfilling and grading. The Director finds the proposed deletion is consistent with the suspension in *In Re: Permanent Surface Mining Regulation Litigation (II)*, 620 F. Supp. 1519 at 1577, 1578 (D.D.C. 1985) *aff'd in part and rev'd in part, National Wildlife Federation* v. *Hodel*, 839 F2d 694 (D.C.Cir. 1988) of 30 CFR 785.16 and 816/817.133(d) insofar as these regulations authorize any variance from approximate original contour for surface coal mining operations in any area which is not a steep slope area. Therefore, the Director finds that Pennsylvania's proposed deletion of § 87.143 does not render the Pennsylvania rules less effective than the Federal regulations.

43. Sections 87.146 and 89.87(b). Regrading or Stabilizing Rills and Gullies

Pennsylvania is proposing to revise these sections, in addition to several nonsubstantive grammatical changes, to include the requirements for the regrading or stabilization of rills and gullies which have developed on areas that have been backfilled and graded. For those rills and gullies that form when erosion and sedimentation controls are still in place, the operator will be required to repair and reseed the rills and gullies during the first normal period for favorable planting. For those rills and gullies that develop after erosion and sedimentation controls have been removed or that may contribute to impacts outside the permit area, the operator is required to stabilize such areas immediately. The Federal counterparts at 30 CFR 816/817.95(b) are similar, except that they do not specify a time period within which the rills and gullies must be stabilized. The Director finds that since the time periods specified by the proposed revisions are reasonable and practicable and will provide sufficient protection of the environment, the State's proposed rules will not render the State rules inconsistent with the Federal counterparts at 30 CFR 816/817.95(b) and can be approved.

44. Section 87.148. Revegetation Timing

a. Pennsylvania is proposing to revise paragraph (e) of this rule by adding language concerning when the operator is required to seed and plant areas

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following backfilling and grading. Specifically, the revised provisions require that disturbed areas be seeded and planted prior to the end of the first full normal period for favorable planting after backfilling and grading. The State has included this language to provide clarification when planting would be required in situations where backfilling and grading is completed very near the end of the normal period for favorable planting, and when it would be impracticable for the operator to complete planting within the specified periods. The Pennsylvania program at § 87.148(a) (1) and (2) specify the normal periods for favorable planting as: Early spring until May 30 and August 10 until September 15 for permanent herbaceous species, and early spring until May 20 for woody species. Under the proposed regulations, an operator who completed backfilling and grading and replacement of the topsoil medium on May 20 could plant the area during the following normal period beginning August 10. Under the State's existing rules, in situations where an extension is allowed, the operator would be required to control erosion under § 87.148(b) by planting a temporary cover on the reclaimed area and/or § 87.153(a) by applying adequate mulch to all regraded and topsoiled areas.

The counterpart Federal rules at 30 CFR 816.113 require disturbed areas to be planted during the first normal period for favorable planting conditions after replacement of the plant's growth medium. While the proposed rule is similar to the Federal regulation, the Federal regulation does not require that planting be conducted "prior to the end of the next full normal period for favorable planting." However, the Director believes it to be a prudent agronomic practice to allow for a delay in the planting of the permanent vegetative cover if such a delay is necessary to help assure successful revegetation, and if all regraded and resoiled areas are protected to control erosion. The Director notes that the approved Pennsylvania rules at §§ 87.148(b) and 87.153(a) require that disturbed areas be protected from erosion through the planting of a temporary cover and/or the application of adequate mulch. In any event, the Federal regulation does not clearly require planting of disturbed areas during the same normal favorable planting period in which the plant's growth medium is established, but requires planting during the first normal period after replacement of the plant-growth medium. Therefore, the Director finds that the proposed rule, in concert with the approved rules at §§ 87.148(b) and 87.153(a), is no less effective than the Federal regulations at 30 CFR 816.113 and can be approved.

b. Pennsylvania is proposing to add subsection (c) which permits the regulatory authority to extend the established normal periods for planting when abnormal weather conditions or excessive soil moisture conditions exist which prohibit seeding and planting within the normal period, or when weather conditions allow for favorable planting outside the normal periods. The corresponding Federal regulations at 30 CFR 816.113 do not contain variances for conditions which would prohibit seeding and planting within the normal period for favorable planting. However, the Federal regulations do provide that the normal period for favorable planting is that planting time generally accepted locally. Therefore, the identification of the normal period of favorable planting should be accomplished by the regulatory authority. In addition, it is reasonable to allow that the regulatory authority and the rules it establishes should be flexible enough to account for abnormal weather conditions that may occur from year to year. Therefore, the Director finds that Pennsylvania's proposal to add § 87.148(c) to the State's rules is reasonable and not inconsistent with the cited Federal rule.

45. Section 87.157. Cessation of Operations: Temporary

The approved Pennsylvania rule at paragraph (b) states that temporary cessation of operations shall not exceed 90 days unless the regulatory authority approves a longer period for reasons of seasonal shutdown or labor strike. Pennsylvania is proposing to amend paragraph (b) to state that a temporary cessation of an operation may not exceed 90 days, unless the regulatory authority approves a longer period not to exceed 180 days or unless the regulatory authority approves a longer period for reasons of seasonal shutdown or labor strike.

The counterpart Federal regulations at 30 CFR 816.131 require that surface facilities be secured in areas in which there are no current operations, but in which operations are to be resumed under an approved permit. The Federal regulation does not contain provisions similar to the proposed amendments which limit the length of a temporary cessation. Such limits as proposed by Pennsylvania are not, however, prohibited by 30 CFR 816.131. The Director finds, therefore, that the proposed revisions are not inconsistent with the Federal regulations at 30 CFR 816.131 concerning temporary cessation of operations.

46. Section 87.176. Auger Mining

a. Pennsylvania is proposing to amend § 87.176 by deleting subsection (b) containing specific spacing requirements for auger mining. The Federal counterpart regulations at 30 CFR 819.13(c) do not contain specific spacing requirements and require only that each person who conducts auger mining operations shall leave areas of undisturbed coal, as approved by the regulatory authority, to provide access for future underground mining activities to coal reserves remaining after auger mining is completed. Since the State's rules retain substantively identical requirements in subsection (a), the Director finds that the proposed deletion of subsection (b) will not render § 87.176 less effective than the cited Federal regulations.

b. Pennsylvania is proposing to revise paragraph (c) of this rule to require the plugging of all auger holes within 72 hours after completion if the holes are discharging acid or toxic water. The proposed revision is substantively identical to the counterpart Federal requirement at 30 CFR 819.15(b)(1). The Federal regulations at 30 CFR 819.15(b)(1) further require that if plugging is not possible within 72 hours, the discharge must be treated within this time frame to meet applicable effluent limitations and water-quality standards until the auger holes are sealed. Pennsylvania's current rule in paragraph (d) of this section requires the operator proposing to conduct auger mining operations to demonstrate to the regulatory authority's satisfaction that drainage from the auger holes will not pose a threat of pollution to surface water and will comply with the established effluent limitations. In this way, the regulatory authority will ensure that discharge from the auger mining operation will not violate effluent limitations and water-quality standards. Therefore, the Director finds that Pennsylvania's proposed revisions at paragraph (c), in conjunction with the existing requirements of paragraph (d), are no less effective than the cited Federal counterparts at 30 CFR 819.15(b)(1).

47. Section 88.24(b)(4). Geology

Pennsylvania is proposing to revise the informational requirements for anthracite coal mining activities pertaining to geological information by deleting and replacing the existing language in paragraph (b)(4) that requires an analysis of the coal, including analysis of the sulfur and pyrite content, when requested by the regulatory authority. The proposed replacement language requires that a chemical analysis of the coal and overburden shall be provided when deemed appropriate by the regulatory authority for evaluation of the effect of the proposed activity on the hydrologic balance. Counterpart Federal regulations at 30 CFR 780.22(d) do not provide for a waiver of the coal and overburden analyses unless the applicant requests the waiver and the regulatory authority finds in writing that the collection and analysis of such data are unnecessary because other equivalent information is available to the regulatory authority in a satisfactory form. In addition, the Federal regulations at 30 CFR 780.22(b)(2)(ii) require that the chemical analysis of the overburden identify the acid- or toxic-forming, or alkalinity-producing materials and to determine their content, except that the regulatory authority may find that the analysis for alkalinity material is unnecessary. The Federal regulations at 30 CFR 780.22(b)(2)(iii) require a chemical analysis of the coal seam for acid- or toxic-forming materials, including the total sulfur and pyritic sulfur, except that the regulatory authority may find that the analysis of pyritic sulfur content is unnecessary. The revised State regulations would replace the requirement for the analysis of the sulfur and pyrite content of the coal with a more general requirement for the chemical analysis of the coal and overburden. However, the proposed Pennsylvania rule fails to identify what analyses will be included as part of the chemical analyses of the coal and overburden.

The Director is approving the proposed revision to require chemical analyses of both the coal and overburden except to the extent that: (1) It would permit the waiver of the chemical analysis of the coal and overburden when deemed appropriate by the regulatory authority without a request from the operator and without making a finding in writing by the regulatory authority that the analyses are not necessary because other equivalent information is available to the regulatory authority in a satisfactory form; and (2) the regulatory authority does not require, at a minimum, chemical analysis of the overburden for acid- or toxic-forming materials and chemical analysis of the coal for total sulfur content. In addition, the Director is requiring Pennsylvania to further amend its program to provide that the requirements for chemical analysis of the coal and overburden can only be waived after the regulatory authority makes a finding in writing. The Director is also requiring that Pennsylvania amend the rule to clearly require that when not waived, the chemical analyses for overburden and coal must identify, at a minimum, those strata that contain acid- or toxic-forming materials and to determine their content, as specified in the Federal regulations at 30 CFR 780.22(b) (2) (ii) and (iii).

48. Sections 88.32(b)(4) and (e), and 88.491(k). Prime Farmland Investigation

a. Pennsylvania is proposing to delete § 88.32(b)(4) concerning a criterion for an exception from prime farmland requirements as it applies to surface anthracite operations. On April 24, 1985, OSM notified Pennsylvania that it had found the exemption from prime farmland at § 88.32(b)(4) to be inconsistent with SMCRA and Federal regulations (Administrative Record Number PA–553). This provision provided that land shall not be considered prime farmland if the applicant can demonstrate that the area of prime farmland is minimal in size (less than 5 acres) and has been or will be in use for an extended period of time (more than 10 years). Counterpart Federal regulations at 30 CFR 823.11(a) provide an exemption from prime farmland performance standards for coal preparation plants, support facilities and roads of surface and underground mines that are used over extended periods of time and affect a minimal amount of land. However, the Director suspended 30 CFR 823.11(a) "insofar as it excludes from the requirements of part 823 those coal preparation plants, support facilities, and roads that are surface mining activities" pursuant to 30 CFR 701.5 (50 FR 7278, February 21, 1985).

With this action, Pennsylvania has satisfied the required amendment, published in the Federal Register on May 19, 1986 (51 FR 18314) and codified in the Federal regulations at 30 CFR 938.16(c). The required amendment specifies that to be no less effective than 30 CFR 823.11(a), as partially suspended on February 21, 1985, the State must delete the language at § 88.32(b)(4) which provides an exemption to the prime farmland requirements if "the area of prime farmland is minimal in size (less than 5 acres) and has been or will be in use for an extended period of time (more than 10 years)." Therefore, the Director is approving the proposed amendment and is removing the requirement at 30 CFR 938.16(c).

b. Pennsylvania is proposing to revise its rules §§ 88.32(e) and 88.491(k) to add the specific requirement that the use of alternative soil profile descriptions of prime farmland soils for inclusion in the permit application must be approved by the U.S. Department of Agriculture Soil Conservation Service (SCS). In its April 24, 1985, letter to Pennsylvania, OSM notified the State that its rules at §§ 88.32(e) and 88.491(k) did not explicitly require SCS approval of prime farmland informational requirements and reconstruction plans. The Federal counterpart at 30 CFR 785.17(c)(1)(ii) provides that other representatives soil-profile descriptions from the locality may be used if their use is approved by the State Conservationist, U.S. Soil Conservation Service.

With this action, Pennsylvania has satisfied the required amendment, published in the Federal Register on May 19, 1986 (51 FR 18314) and codified in the Federal Regulations at 30 CFR 938.16(d). The required amendment specifies that the State must amend its program by requiring approval by the SCS of alternative soil profile descriptions for prime farmland soils included in the permit application. Therefore, the Director is approving the proposed amendment and is removing the requirement at 30 CFR 938.16(d).

49. Section 88.61(b). Prime Farmland

a. OSM informed Pennsylvania in the April 24, 1985, letter (Administrative Record Number PA–553), that its rule at § 88.61 is less effective than the Federal counterparts 30 CFR 785.17(c)(2), (3), and (4). To correct the deficiency Pennsylvania must: (1) Establish criteria for evaluating the applicant's operation and reclamation plan to determine whether the productivity standard for mined prime farmland set forth under chapter 88 can be achieved following mining; (2) require the applicant to submit a plan to establish its technological capability to comply with the requirements for restoring prime farmland productivity; and (3) require the applicant to submit information on the productivity prior to mining.

In response, Pennsylvania is proposing to revise its regulations at § 88.61 to require the applicant's operation and reclamation plan for prime farmland to include: (1) A plan containing a soil survey with descriptions of soil mapping units and representative soil survey profile with sufficient information to establish that the operator has the technological capabilities to restore the prime farmland within the permit area and the productivity prior to mining; (2) a plan for soil reconstruction, replacement and stabilization, scientific data for areas

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with comparable soils, climate and management that demonstrate that the proposed method of reclamation will achieve within a reasonable time equivalent or higher levels of yield as nonaffected prime farmland in the surrounding area under equivalent levels of management; and (3) the productivity prior to mining, including the average yield of food, fiber, forage or wood products obtained under a high level of management.

With this proposed amendment, Pennsylvania has satisfied the required program amendment, published in the **Federal Register** on May 19, 1986 (51 FR 18314), and codified at 30 CFR 938.16(e). The Director finds that the proposed amendment is substantively identical to and no less effective than the Federal regulations at 30 CFR 785.17(c)(2), (3), and (4). Therefore, the Director is removing the requirement at 30 CFR 938.16(e).

b. Proposed § 88.61(b)(1) contains an apparent typographical error in the cited reference to § 88.32(d)(1). Therefore, the Director is requiring Pennsylvania to correct the cited reference to § 88.32(d).

50. Section 88.491(j). Maps and Plans

This rule has been revised to add that qualified registered professional land surveyors, in addition to qualified professional engineers and geologists, may prepare maps, plans, and cross sections to be included in a permit application. The counterpart Federal regulation at 30 CFR 779.25(b) is similar, except the Federal regulation also requires that such preparations be accomplished with assistance from experts in related fields such as landscape architecture. The Pennsylvania rule lacks this requirement.

The Director finds that the proposed amendment authorizing land surveyors to prepare and certify cross sections, maps and plans for permit applications is no less effective than the Federal regulations at 30 CFR 779.25(b). However, since the Pennsylvania rule lacks the requirement that the preparation of cross sections, maps and plans be prepared with assistance from experts in related fields such as landscape architecture, the Director is requiring that Pennsylvania further amend this rule to require such assistance and render the State program no less effective than the Federal regulations.

51. Sections 88.492 and 89.71. Reclamation Plan Requirement

Pennsylvania is proposing to delete §§ 88.492(c)(4) and 89.71(d) which require the reclamation plan to contain a copy of the comments concerning the proposed land use following reclamation from the owner of the surface areas to be affected by surface operations for facilities within the proposed permit area, and from the State and local government agencies which would have to initiate, implement, approve or authorize the proposed use of the reclaimed land. The Director is not approving the proposed revision to §§ 88.492(c)(4) and 89.71(d) as the deletion would render the State rules less effective than the Federal counterpart regulations at 30 CFR 784.15(b) which requires that such comments be obtained and included with the reclamation plan.

52. Section 89.7. Applicability

Pennsylvania is proposing to amend subsection (b) by adding the term "coal preparation activities" to clarify the applicability of Chapter 89 to these activities. Although, the Federal counterpart regulations for coal preparation activities are not included with the requirements for underground mining operations, the Director finds that the proposed revision will not render the State rules inconsistent with the general permit requirements for coal preparation activities under 30 CFR 785.21.

53. Section 89.32(3). General Description of Underground Mining Activities

Pennsylvania is proposing to amend this section to add to the information required to be submitted as part of the operation plan the identification of the coal seam(s) to be mined. Since identification of the coal seam(s) to be mined would assist the regulatory authority in evaluating the permit application, the Director finds that this requirement is not inconsistent with the requirements of 30 CFR 784.11(a).

54. Section 89.56(a)(1). Stream Channel Diversions

Pennsylvania is proposing to amend subsection (a)(1) concerning stream channel diversion regulations by deleting the existing provision that the operator shall demonstrate beyond a reasonable doubt that there will be no adverse hydrologic or water quality impacts as a result of the diversion. The new language allows the diversion of perennial or intermittent streams if it will not adversely affect, during and after mining, the water quantity and quality of the stream. The Federal counterpart at 30 CFR 817.43(b)(1) requires that the regulatory authority may permit the diversion of streams after making a finding relating to stream buffer zones 30 CFR 817.57 that the diversions will not adversely affect the water quantity and quality and related environmental resources of the stream. Pennsylvania rules at § 86.102(12) (relating to areas where mining is prohibited or limited) as revised in this program amendment, prohibit mining within 100 feet of the bank of a perennial or intermittent stream unless the regulatory authority approves a variance based upon a demonstration that there will be no adverse hydrologic impacts, water quality impact or other environmental resource impacts as a result of the variance. Although § 89.56(a)(1) and related sections do not cross reference the findings required under § 86.102(12), the Director finds that these sections when considered together will sufficiently ensure that a variance relating to stream buffer zones will only be approved if the diversion will not adversely affect the water quantity and quality and related environmental resources of the stream and are therefore, no less effective than the Federal counterparts under section 816/817.43(b)(1).

55. Sections 89.59 and 89.34. Surface and Groundwater Monitoring

a. Pennsylvania is proposing to revise § 89.59(a) (1) and (2) to specify the conditions to be measured in the groundwater monitoring plan for underground mining activities. Pennsylvania has included requirements for periodic monitoring of groundwater levels, subsurface flows, storage characteristics, and chemical analyses of water from aquifers to adequately measure changes in groundwater quality resulting from underground mining operations. In addition, Pennsylvania proposes to add a cross reference to § 89.59 in § 89.34(a)(1)(iii) pertaining to hydrologic information contained in the operation's plan.

The proposed provisions are substantively identical to the groundwater monitoring plan requirements in 30 CFR 784.14 (g) and (h)(1) of the counterpart Federal regulations. However, paragraph (h)(1) of 30 CFR 784.14 also specifies that, at a minimum, the monitoring plan include measurements of total dissolved solids or specific conductance corrected to 25° C, pH, total iron, total manganese, and that water levels must be monitored and the data submitted to the regulatory authority at least quarterly for each monitoring location. The proposed revisions do not include similar specific requirements and, instead, contain the general requirements in paragraph (a)(1) that groundwater shall be monitored in a manner approved by the regulatory authority, and in paragraph (a)(2) that monitoring shall be adequate to plan for the modification of underground mining activities.

The Director is approving the proposed revisions except to the extent that they do not specify the minimum parameters to be monitored and do not specify the frequency for the reporting of monitoring data to the regulatory authority. In addition, the Director is requiring Pennsylvania to further amend § 89.59(a) to require the monitoring plan to specify that, at a minimum, the total dissolved solids or specific conductance, pH, total iron, total manganese, and water levels shall be monitored and data submitted to the regulatory authority at least every 3 months for each monitoring location.

b. Pennsylvania is also proposing to add paragraph 89.59(a)(3) concerning the performance standards for surface water monitoring and reporting requirements, and to include a cross reference to this new paragraph in the hydrology informational requirements in § 89.34(a)(2)(ii). The proposed addition requires that surface waters shall be monitored to accurately measure and record the water quality and quantity of the discharges from the permit area and the effect of the discharge on the receiving waters. The combined provisions of § 89.34(a)(2)(ii) and proposed § 89.59(a)(3) are substantively identical to the counterpart Federal regulations for surface water monitoring plans at 30 CFR 784.14 (g) and (i). However, 30 CFR 784.14(i) (1)–(3) also requires the surface water monitoring plan to provide for the monitoring of parameters that relate to the suitability of the surface water for current and approved postmining land use; requires the plan to identify sampling frequency and site locations; and to require that monitoring reports to be submitted every 3 months. The Director is approving the proposed revision except to the extent that Pennsylvania does not require the surface water monitoring plan to contain the information specified by 30 CFR 784.14(i). In addition, the Director is requiring that Pennsylvania further amend § 89.59(a)(3) to require the surface water monitoring plan to provide for the monitoring of parameters that relate to the suitability of the surface water for current and approved postmining land use, to identify sampling frequency, site locations, and to require that monitoring reports be submitted quarterly.

56. Section 89.83(d). Closing of Underground Mine Openings

Pennsylvania is proposing to amend § 89.83 by adding provisions in subsection (d) to prevent the sealing of an underground mine receiving and treating discharge from another coal mine under § 89.60 until the permittee of the other coal mining activity has received approval from the regulatory authority of an alternate means of handling its discharge. The Director finds this amendment to be consistent with the State's requirements to protect the hydrologic balance under § 89.36. Therefore, the Director finds that the proposed rule will not render the State rules less effective than the requirements of the Federal regulations at 30 CFR 817.41.

57. Section 89.142. Subsidence Control: Maps

a. Pennsylvania is proposing to amend this section to add the requirement in subsection (a)(7) that maps submitted as part of underground mine permit applications identify areas over the proposed mine where the overburden is less than 100 feet. The Federal regulations at 30 CFR 784.20(c) do not contain a direct counterpart, but do require that the subsidence control plan include the identification of the depth of cover. In addition, this amendment is consistent with the requirements of § 89.143(a)(3) concerning the prohibition for underground mining where the depth of cover is less than 100 feet. Therefore, the Director finds that the proposed rule is no less effective than the more general requirements of § 784.20(c).

b. Pennsylvania is also proposing to amend this section to add provisions in subsection (b)(2) to allow a qualified registered professional land surveyor to prepare and certify the 6-month mining map required by this subsection. Although the Federal counterparts under 30 CFR 784.23 do not require submittal of a 6-month mine map, the provision of subsection (c) of this Federal rule permits qualified, registered, professional land surveyors to design and certify maps. Therefore, the Director finds the proposed amendment to subsection (b)(2) of this rule will not render the State rules less effective than the cited Federal regulations.

58. Section 89.143. Subsidence Control: Performance Standards

Pennsylvania is proposing to restructure, for the sake of clarity, the general requirements of § 89.143 for the performance standards for underground mining. The existing requirements to comply with the subsidence control plan, and to be consistent with the postmining land uses and the prohibition against mining beneath structures where the cover is less than 100 feet, have been put in paragraph form and enumerated. In addition, a subsection (2) has been added to make it clear that the operator must comply with subsidence related performance standards at § 89.143(b)–(f). Finally, subsection (4) has been added to require the operator to adopt and describe to the regulatory authority in the permit application measures to maximize mine stability. Pennsylvania also proposes to delete old subsection (a)(1) which required that underground mining activities shall be planned and conducted using extraction techniques which provide for subsidence in a predictable and controlled manner, and old subsection (2) which required support techniques which are designed to prevent subsidence damage to features identified in subsection (b). The essence of both of these deleted subsections is incorporated in new paragraphs (a) (2) and (4).

The proposed revisions are substantively identical to the Federal regulations at 30 CFR 817.121 except that the Federal counterparts at § 817.121(a) also require that the operator shall either: (1) Adopt measures consistent with known technology which prevent subsidence from causing material damage to the extent technology and economically feasible; (2) maximize mine stability; and (3) maintain the value and reasonable foreseeable use of surface lands; or alternatively, the operator may adopt mining technology which provides for planned subsidence in a predictable and controlled manner. Pennsylvania's proposed provision at (a)(4) requires an operator to adopt and describe in the permit application measures to maximize mine stability. Proposed new subsection (a)(4) also authorizes planned subsidence in a predictable and controlled manner. However, the Pennsylvania rule lacks specific counterparts to the Federal regulation at 30 CFR 817.121(a) concerning preventing subsidence from causing material damage, and maintaining the value and use of surface lands. Pennsylvania's interpretation of the requirement at (a)(4), that an operator adopt and describe in the permit application measures to maximize mine stability, is explained in the preamble to the *Pennsylvania Bulletin*, June 16, 1990 (Pa. B. 3384):

> The issue of mine stability is difficult because neither the BMSLCA [Pennsylvania's Bituminous Mine Subsidence and Land Conservation Act] nor the Federal SMCRA contain an explicit definition for "maximum mine stability." The term appears in both laws together with two related objectives. The three objectives are: (1) To prevent

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subsidence causing material damage to the extent technologically and economically feasible. (2) To maximize mine stability. (3) To maintain the value and reasonable foreseeable use of the surface land. Since the three objectives must be construed together, the purpose of maximizing mine stability is to reduce the likelihood that subsidence will either result in material damage or will not maintain the value and reasonable foreseeable uses of the surface land. Thus, determining whether the measures proposed by the operator will "maximize" mine stability depends on two factors, the nature of the mining techniques being employed and the operator's obligation to prevent damage and/or maintain the surface lands' value and reasonable foreseeable uses.

It is clear, therefore, that Pennsylvania interprets the requirement at (a)(4) concerning adopting and describing measures to maximize mine stability to include the two related objectives required by 30 CFR 817.121(a): (1) To prevent subsidence from causing material damage to the extent technologically and economically feasible; and, (2) to maintain the value and reasonable foreseeable use of the surface land.

Therefore, the Director finds that the proposed revisions to § 89.143, including the requirement at (a)(4), requiring the mine operator to adopt and describe in the permit application the measures to maximize mine stability, are consistent with and no less effective than the Federal regulations at 30 CFR 817.121.

59. Section 89.144. Public Notice

Pennsylvania is proposing to amend this section concerning underground mine operators' responsibility to send notice to each owner and each resident of each structure, at least 6 months but not more than 5 years, prior to mining beneath that property or structure. The State proposes to add provisions to this section to require that each political subdivision is also notified within the 6 month to 5 year time, prior to mining beneath the political subdivision. The Federal counterpart under 30 CFR 817.122 does not require notification of the political subdivision. Since the proposed amendment provides for public notice in addition to that required by the Federal regulations, the Director finds that the proposed amendment will not render the State rules inconsistent with the cited Federal regulations.

60. Sections 89.171, 89.172, and 89.173. Coal Preparation Activities: General Requirements: Information Requirements: Performance Standards

a. Pennsylvania is proposing to add § 89.171 to require persons who intend to conduct coal preparation activities outside the permit area of a surface or underground coal mine or coal refuse disposal area, other than the activities which are located at the site of ultimate coal use, to obtain a permit from the regulatory authority under chapter 86 (relating to surface and coal mining: general) and subchapter A of chapter 89 (relating to erosion and sedimentation controls).

The counterpart Federal regulations at 30 CFR 785.21 contain similar requirements that persons operating or who intend to operate a coal preparation plant outside the permit must obtain a permit from the regulatory authority. However, the Federal counterpart does not contain the same limiting language as the proposed State rule to exclude facilities "at the site of ultimate coal use." The Federal regulation was revised on November 22, 1988 (53 FR 47384) by deleting the exclusionary language concerning facilities at the site of ultimate coal use and replaced that language with the requirement to obtain a permit for coal preparation plants not located within the permit area of a mine, if a facility is operated "in connection with a coal mine but outside the permit area for a specific mine." The preamble to this revision stated that OSM amended this language to make it clear that the permitting requirements for off-site preparation plants apply only to off-site coal preparation that is "in connection with" a coal mine. OSM further stated that this limitation necessarily excludes facilities at the site of ultimate use, since such facilities are not operated "in connection with" a coal mine, and that the phrase "other than such plants which are located at the site of ultimate coal use" was redundant (53 FR 47385). In *National Wildlife Federation* v. *Lujan*, nos. 88–2416, 88–3345, 88–3586, 88–3635, 89–0039, 89–0136, 89–0141 (Consolidated) (D.D.C. August 30, 1990), Judge Flannery remanded the 1988 amendment to 30 CFR 785.21 to the Secretary of the Department of the Interior (Secretary) so that he could make clear that "proximity may not be the decisive factor" as to whether an off-site coal preparation plant is operated "in connection with" a mine. *Id*, Slip Op. at 24. The former language of CFR 785.21 had exempted from permitting and other requirements only those coal preparation plants "located at the site of ultimate coal use." This former standard, promulgated in 1983 (48 FR 20401), did not explicitly employ the "in connection with" test.

Pennsylvania has chosen to mirror the 1983 version of 30 CFR 785.21, and exempt only those preparation plants "at the site of ultimate coal use" from regulation. The Pennsylvania rule, therefore, does not use the "in connection with" test, the interpretation of which led to the partial remand of 785.21. *Id. at 24*. Because the Secretary continues to recognize that preparation plans located "at the site of ultimate coal use" are exempt from permitting and other requirements, the Director finds that the proposed revision to § 89.171 is no less effective than the Federal regulation at 30 CFR 785.21(a).

b. Pennsylvania is proposing to revise its regulations by adding § 87.172(a) which specifies that an application for a coal preparation activity shall contain: (a)(1) An erosion and sedimentation control plan under subchapter A of chapter 89; (a)(2) an operation plan which specifies plans for the construction operation and maintenance of the preparation plant; (a)(3) a reclamation plan which specifies plans for the removal of the preparation activities, and reclamation of the affected area; and (a)(4) the information requirements relating to prime farmlands, subchapter E, where applicable.

The proposed Pennsylvania rules are substantively identical to the Federal regulations at 30 CFR 785.21(b), except that the Federal counterparts do not contain specific requirements for an erosion and sedimentation control plan and information requirements for prime farmland, where applicable. However, Pennsylvania is free to require findings beyond 30 CFR 785.21(c), and, therefore, the proposed rule is no less effective than the cited Federal counterpart.

c. Pennsylvania is proposing to add paragraph (b) to § 89.172 to require that an application for a coal preparation activity must require that the coal preparation activity be conducted in compliance with the performance standards of subchapter H, Coal Preparation Activities. This proposed provision is substantively identical to the Federal regulations at 30 CFR 785.21(b). However, the counterpart Federal regulations at § 785.21(c) also require that no permit shall be issued for a coal preparation plant unless the regulatory authority finds in writing that the operation will be conducted in compliance with the performance standards for coal preparation plants at 30 CFR 827.12. The proposed Pennsylvania rules do not contain a requirement that the regulatory authority issue a written finding that the proposed coal preparation operation will be conducted in compliance with the performance standards contained in proposed § 89.173. The Director finds that § 89.172(b) is no less effective than the cited Federal counterparts except to the extent that the proposed rules do not require the regulatory authority to issue a written finding that the operation will be conducted in compliance with the performance standards specified in § 89.173. In addition, the Director is requiring Pennsylvania to further amend its program to require such a finding.

d. Pennsylvania is proposing to add § 89.173 to identify the specific performance standards which must be complied with in the construction, operation, maintenance, removal and reclamation of coal preparation activities. The proposed additions are substantively identical to the performance standards contained in the counterpart Federal rules at 30 CFR 827.12, except that the proposed Pennsylvania rules do not include reference to the specific performance standards for roads at paragraph (h) and for the control of air pollution attendant to erosion at paragraph (j) of the cited Federal counterpart. However, the proposed rules at §§ 89.171 and 89.172(a)(1) both require compliance with subchapter A of chapter 89 which includes requirements for roads, under § 89.26, and for control of air pollution under § 89.13. In addition, the proposed rule at § 89.172(a)(1) requires an erosion and sedimentation plan under subchapter A. Therefore, the Director finds that the proposed performance standards at § 89.173 and the requirements of §§ 89.171 and 89.172(b) taken together are no less effective than the cited Federal counterparts at 30 CFR 827.12.

61. Section 90.4. General Requirements: Applications

Pennsylvania is proposing to delete § 90.4 concerning the provisions that an application for a coal refuse disposal permit may be submitted in two parts or together. Since the deletion will not affect the requirement at § 90.2 that each person who proposes to conduct a coal refuse disposal operation shall comply with the rules and procedures in chapter 86 (relating to the requirements to obtain a permit), the Director finds that the proposed deletion will not render the State rules inconsistent with the requirements of 30 CFR 773.11.

62. Section 90.122. Coal Refuse Disposal

a. Pennsylvania is proposing to revise its regulations at § 90.122(b) by adding the requirement that the registered professional engineer be qualified to design and certify fills for coal refuse disposal. Corresponding Federal regulations at 30 CFR 817.81(c) are similar, but also require that the qualified registered professional engineer be experienced in the design and construction of similar earth and waste structures. Under Pennsylvania's Professional Engineers Law of July 12, 1919 (Pub. L. 933, No. 369), engineers are to exhibit "responsible charge" and "not practice in any field of engineering in which the registrant is not proficient." Since this requirement will provide similar assurance that the qualified registered professional engineer will have the necessary experience, the Director finds that State's rules are not inconsistent with the cited Federal counterparts.

b. Pennsylvania is proposing to revise subsection (j) of this section by replacing the 100-foot elevation limit on refuse piles with provisions for the regulatory authority to approve fills designed to exceed the approximate elevation of the surrounding ridgeline provided the final configuration of the fill will be suitable for the approved postdisposal land use and that it will blend into the local surroundings. Counterpart Federal regulations at 30 CFR 816/817.71(a)(3) and 816/817.81(a)(3) contain similar requirements that the coal mine waste shall be reclaimed to be compatible with the natural surroundings and the approved postmining land use but do not impose elevation limitations. The Director finds that there is sufficient flexibility in the Federal rules to allow coal waste disposal areas to exceed the surrounding ridgeline elevations, on a case-by-case basis, provided the regulatory authority has determined that the final configuration will be suitable for the approved postdisposal land use and that it will blend into the local surroundings. Accordingly, he finds that the revisions will not render the State rules at 90.122(j) less effective than the Federal counterpart regulations at 30 CFR 816/817.71(a)(3) and 816/817.81(a)(3).

63. Section 90.125. Coal Refuse Disposal: Construction Requirements

a. Pennsylvania is proposing to revise subsection (b)(2) concerning the compaction requirements for coal refuse disposal sites. Specifically, the State proposes a technical clarification which specifies that the disposal area be compacted to attain a minimum 90% of the maximum dry density as determined by the Modified Proctor test, or 95% of the maximum dry density as determined by the Standard Proctor Test. The Federal counterparts at 30 CFR 816/817.81(c)(2) do not contain a direct counterpart, but, instead, require that the disposal areas shall attain a minimum long-term static safety factor of 1.5, and that the foundation and abutments must be stable under all conditions of construction. Pennsylvania's current rules contain substantively identical requirements at § 90.122 (c) and (d). Therefore, the Director finds that the proposed revision to § 90.125(b)(2), when considered with the rules at § 90.122 (c) and (d), will not render the State's rules less effective than the cited Federal regulations.

b. Pennsylvania has revised its regulations by deleting subsection (b)(3) in § 90.125 that permitted variations from the requirements of this section for the disposal of dewatered fine coal processing waste (minus 23 sieve size). Since a variation based upon coal processing waste size is not permitted under 30 CFR 816.81(c), the Director finds that the deletion of § 90.125(b)(3) will not render the Pennsylvania rule less effective than the cited Federal counterpart.

c. Pennsylvania is proposing to amend subsection (c) concerning the requirement to cover the coal refuse pile, following final grading, with a final layer of nontoxic, noncombustible material. Specifically, Pennsylvania proposes to add requirements substantively identical to the counterpart Federal regulations at 30 CFR 816/817.83(c)(4) that the site be covered with a minimum combined thickness of 4 feet of nontoxic, noncombustible material. However, the State's proposed regulations also contain provisions to waive the minimum 4 feet of cover requirement for coal refuse disposal areas permitted prior to the date of enactment of this amendment package, if the revegetation requirements can be met or if the permittee has demonstrated that a lesser combined thickness is as effective as 4 feet in meeting the applicable performance standards. Corresponding Federal regulations contain a similar waiver that allows the regulatory authority to approve less than 4 feet of cover material when physical and chemical analyses demonstrate that applicable revegetation standards will be met. Since Pennsylvania's proposed rule requires that, in all cases, a demonstration that revegetation standards will be met, the Director finds the proposed revisions will not render the State's rules inconsistent with the Federal regulations at 30 CFR 816/817.83(c)(4).

The proposed State revisions to § 90.125 also differ from the Federal regulations at 30 CFR 816/817.83(c)(4) by not specifically including the requirement that the cover material be placed in such a manner that it does not impede drainage from the underdrains. However, the Director finds that the

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State's rules at § 90.124(a) which require that the coal refuse disposal area be inspected and certified by a qualified registered professional engineer at least quarterly and during placement of underdrains and protective filter systems, installation of surface drainage systems, the placement and compaction of fill materials, and revegetation, will provide sufficient assurance that the underdrains will not be obstructed by the placement of the cover material. Therefore, the Director finds that the State's rules are no less effective than the cited Federal counterparts.

64. Section 90.133. Disposal of Noncoal Wastes

Pennsylvania is proposing to amend this section to prohibit the disposal of flammable waste material including, but not limited to wood, cloth, waste paper, oil, grease and garbage near a coal refuse pile. Although the counterpart Federal regulations do not contain identical language, the director finds that the proposed revision is consistent with the Federal requirements at 30 CFR 816.89(a) that flammable materials shall be placed in a manner to prevent fires.

C. Revisions to Pennsylvania's Rules With No Corresponding Federal Regulations

1. Section 86.3. Use of the Coal Refuse Disposal Control Fund

Pennsylvania is proposing to add a provision under this section concerning § 30.64 of the The Coal Refuse Disposal Control Act, (52 P.S. 30.51–30.66), which was approved as part of the original approval of the Pennsylvania program on July 30, 1982 (47 FR 33050). Section 30.64 created the Coal Refuse Disposal Fund (Fund) and sets forth the purposes for which moneys from the Fund may be spent. Proposed § 86.3 repeats those purposes verbatim, and adds reclamation as well as the conduct of scientific studies and research. Since studies and research are authorized by the Coal Refuse Disposal Control Act (30.53.1) and reclamation is its ultimate purpose, addition of these uses of the Fund is consistent with the goals of the Coal Refuse Disposal Control Act. This proposed rule implements part of the original approved program for which there is no Federal counterpart. The Director finds, however, that the addition of the proposed amendments will not render the State rules inconsistent with SMCRA or the general Federal regulations.

2. Section 86.11. General Requirements for a Permit

Pennsylvania is proposing to revise § 86.11(c) to add the requirement for an authorization to mine, in addition to requiring a valid permit, before the permittee can carry out any coal mining activities. Although there is not a Federal counterpart to require a permit applicant to receive an authorization to mine in addition to a valid permit, the Director finds that the addition of this requirement is not inconsistent with the provisions of SMCRA or the Federal regulations.

3. Section 86.31(d)(8). Public Notices of Filing of Permit Applications

The approved Pennsylvania rules at § 86.31(c) require that the State notify specified parties upon its receipt of a complete application. Approved paragraph (d) specifies the content of the required notice. Pennsylvania proposes to add a new requirement at (d)(8) that the notice must contain a statement that the application pertains to a new permit, a renewal of an existing permit or the transfer of an existing permit to a new operator. Although SMCRA and the Federal regulations do not require that the notice announcing receipt of a complete application contain such a statement, the proposed requirement does not conflict with the Federal requirements for public participation in permit processing. Therefore, the Director finds that the proposed amendment is not inconsistent with the Federal regulations at 30 CFR 773.13.

4. Section 86.32. Opportunity for Submission of Written Comments or Objections on the Permit Application

Pennsylvania is proposing to revise subsection (a) of this regulation to include the statement that the Department will also publish notice of permit application in the *Pennsylvania Bulletin*. This requirement is in addition to the State's requirements under § 86.31(c) that require the regulatory authority to send notice of a permit application to applicable Federal, State and local agencies and has no Federal counterpart. However, the Director finds that the proposed notification requirements are not inconsistent with the Federal regulations at 30 CFR 773.13(a)(3).

5. Section 86.156(c). Form of the Bond

Pennsylvania is proposing to add subsection (c) to require that a permittee executing a bond shall certify in writing to the regulatory authority that it will immediately notify the regulatory authority, if permissible under the law, of an action filed alleging the insolvency or bankruptcy of the permittee. While there is no direct Federal counterpart to this provision, the Federal regulations at 30 CFR 800.16(e)(1) require that the bond shall provide a mechanism for a bank or surety company to give prompt notice to the regulatory authority and the permittee of any action filed alleging the insolvency or bankruptcy of the permittee. The Director finds, therefore, that the proposed provision is not inconsistent with the Federal regulations at 30 CFR 800.16(e)(1) and can be approved.

6. Section 86.161 Phased Deposits of Collateral

Pennsylvania is proposing to revise its provisions at § 86.161 concerning the phased deposit of collateral for long-term mining operations or facilities to eliminate deposits of bond for designated phases of the permit area. In addition, the State is proposing to add requirements for the phased deposits of collateral to specify terms for payment of remaining amount of bond as collateral; to provide for additional bonding where necessary; to specify under what conditions the regulatory authority may require payment of the full amount of the bond for the long-term operation or facility; and to specify under what conditions the department will not accept phased deposits of collateral. The Federal regulations do not contain similar provisions for the phased deposits of collateral. The rule for the phased deposits of collateral was approved as being consistent with 30 CFR chapter VII, subchapter J (Performance Bonds) in the Secretary of the Interior's original approval of the Pennsylvania program on July 30, 1982 (47 FR 33056). The Director finds the proposed revisions will not adversely affect the Secretary's findings under 30 CFR 732.15(b)(6) and are not inconsistent with SMCRA and the Federal regulations.

7. Section 86.166(c). Replacement of Bonds.

Pennsylvania is proposing to amend this subsection concerning the replacement of existing surety or collateral bonds with phased deposits of collateral bonds. Pennsylvania proposes to add the requirement that a permittee may replace an existing surety or collateral bond with phased deposits of collateral bonds only if the first payment is equal to the bond being replaced and that it meets the requirements of § 86.161 (relating to phased deposits of collateral). Although the Federal regulations do not contain a direct counterpart to the State's provisions for phased deposits of collateral, the Director finds that the proposed revision is consistent with the provision under 30 CFR 800.30(a) which allows the regulatory authority the authority to approve the replacement of existing bonds with other bonds that provide equivalent coverage.

8. Section 86.168. Terms and Conditions for Liability Insurance.

Pennsylvania is proposing to revise § 86.168 to add subsection (g) that provides that a bond or an individual insurance policy may be provided in lieu of liability insurance to cover replacement or restoration of water supplies for each permit as required under subsection (c) of this section. The Federal counterparts at 30 CFR 800.60 contain similar requirements for a liability insurance policy for each permit. However, the Federal counterparts do not include specific provisions for insurance to cover the cost of replacement or restoration of water supplies that may be damaged by surface mining and reclamation operations. The Director finds that the proposed provision would continue to provide for the protection required by § 86.168(c) concerning the loss or diminution in quantity or quality of public or private sources of water, and that the proposed rule is not inconsistent with 30 CFR 800.60.

9. Section 86.173. Bond Release for Noncoal Mining Activities.

Pennsylvania is proposing to delete this section concerning the release of bonds for noncoal mining activities. Since SMCRA is concerned only with regulation of surface coal mining operations, the Director finds that the deletion of this section will not render the State rules less stringent than SMCRA nor less effective than the Federal regulations.

10. Sections 87.1, 88.1, 88.462, 89.5 and 90.1. Definitions: Dry Weather Flow.

Pennsylvania proposes to add the definition of "dry weather flow" to mean the base flow or surface discharge from an area or treatment facility which occurs immediately prior to a precipitation event and which resumes 24 hours after the precipitation event ends. While there is no Federal counterpart to the proposed definition, the Director finds that the definition is consistent with the generally accepted definition of base flow (water entering drainage systems from underground sources), and is not inconsistent with SMCRA and the Federal regulations.

11. Section 87.17, and 87.18. Surface Mining Operator's License: Criteria for Approval and Renewal.

Pennsylvania is proposing to amend its rules concerning the issuance, renewal, or amendment of the surface mining operator's license to conduct mining operations. The amendment proposes to revise the circumstances under which the regulatory authority will not issue, renew or amend a surface mining license. The amendment also proposes to add a requirement which specifies that the burden of proof is on those persons opposing licensing decisions, and to add a definition of "adjudicated proceedings." Pennsylvania is also proposing to revise its license renewal requirements under § 87.18 to establish a minimum 60-day period under which an applicant must file for renewal before expiration of an existing surface mining operator's license. The licensing requirements are included as part of the approved Pennsylvania program and are required in addition to the Pennsylvania program's approved permit application review and approval requirements. Although Federal regulations do not contain such licensing requirements, the Director finds that they do not affect the State's permit application review and approval requirements and are not inconsistent with the Federal permit application review and approval requirements under subchapter G of title 30, chapter VII and can be approved. The Director finds that the proposed revisions will not render the State program inconsistent with the Federal regulations under subchapter G.

12. Sections 87.207(b) and 88.507(b). Treatment of Discharges.

These sections outline minimum requirements concerning the treatment of preexisting pollutional discharges not encountered during the remining of areas that have been affected by pre-SMCRA mining operations. In addition to a nonsubstantive grammatical change, the State proposes to add the following language to the rule: "If the baseline pollution load when expressed as a concentration for a specific parameter satisfies the effluent limitations at § 87.102 (relating to hydrologic balance: Effluent standards) for that parameter, the operator shall treat the preexisting discharge for that parameter to comply with either effluent limitations established by best professional judgment or the effluent limitations at § 87.102."

While SMCRA and the implementing Federal regulations do not have specific requirements concerning remining operations, the Federal performance standards at 30 CFR 816/817.42 do require that discharges of water from areas disturbed by surface or underground mining activities be made in compliance with all applicable State and Federal water quality laws and regulations and with the National Pollutant Discharge Elimination System (NPDES) effluent limitations for coal mining as promulgated by the Environmental Protection Agency (EPA) at 40 CFR part 434. The EPA rules also contain no distinction between mining and remining.

However, as enacted on February 4, 1987, Public Law 100–4 added section 301(p) of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1311(p)) to authorize the issuance of NPDES permits with modified effluent limitations for pH, iron and manganese on previously mined sites with preexisting discharges, defined as those discharges in existence at the time of permit application. Section 301(p) also requires that the applicant must demonstrate that the remining operation has the potential of improving the quality of the preexisting discharges. Any modified effluent limitations would apply only to discharges from remined areas on which coal mining was conducted before the effective date of SMCRA (August 3, 1977) and which were not reclaimed in accordance with the requirements of the Pennsylvania program. No NPDES permit may allow discharges of pollutants in excess of those being discharged prior to the remining operation. In addition, no discharge from or affected by the remined area may exceed State water quality standards.

The Director has sought and received general concurrence in this proposed amendment from the Environmental Protection Agency (EPA), in accordance with 30 CFR 732(h)(11)(ii) (Administrative Record Number PA–790.22). The EPA concurrence does not, however, specifically state whether the amended language quoted above is consistent with section 301(p)(2) of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1311(p)). The Director has requested that the EPA render such a determination, and is currently awaiting that agency's response. Therefore, the Director has elected to defer his decision as to Pennsylvania's proposed amendments to §§ 87.207(b) and 88.507(b) until such time as the EPA renders its determination. When the Director is notified of the EPA determination, he will publish his finding either approving or not approving the amendments to

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§§ 87.207(b) and 88.507(b) in the **Federal Register**.

13. Sections 88.103, 88.198, and 88.303. Hydrologic Balance: Dams, Ponds, Embankments and Impoundments—Design, Construction and Maintenance.

Pennsylvania is proposing to revise these sections to incorporate the complete title of the U.S. Department of Agriculture Soil Conservation Service reference in which the design standards concerning impoundments are contained. The amendment also requires that the criteria of both chapter 105 (relating to dam safety and waterway management) and the U.S. Soil Conservation Service's technical guide be met as applicable. Although there are no direct Federal counterpart regulations, the amendment is not inconsistent with the Federal requirements concerning coal mine waste impounding structures and can be approved.

14. Sections 88.492(c)(1)(i) and (ii) and 89.71(a)(1) and (2). Reclamation Plan Requirements.

Pennsylvania is proposing to amend §§ 88.492(c)(1) (i) and (ii) and 89.71(a) (1) and (2) to delete provisions which allow underground mining operations anticipating permanent cessation after 5 years from the date of application to submit reclamation plan information 3 years prior to permanent cessation of the mining operation. As a consequence of the proposed deletion, the reclamation plan information would always be submitted with the permit application and the information would, therefore, be available for use when considering permit approval or denial. Although the Federal regulations at 30 CFR 784.13 do not contain a counterpart to these provisions, the Director finds that the proposed deletion will not render the State less effective than the cited Federal regulations.

15. Section 88.494. In Situ Processing of Anthracite Coal.

Subsection (b) has been amended to specifically prohibit the underground burning of anthracite coal. Although there is no direct Federal counterpart to this provision, the Director finds that the amendment is not inconsistent with any SMCRA provision or the Federal regulations and can be approved.

16. Sections 90.128(c) and 90.129(b). Coal Refuse Disposal: Active Surface Mines and Abandoned Unreclaimed Surface Mines.

Pennsylvania is proposing to amend § 90.128 by combining subsection (c) and (e) and 90.129 by adding 90.129(b) concerning the requirement that coal refuse shall be disposed at a minimum of least 10 feet above the pit floor "or the seasonal high water table whichever is higher." Although the Federal regulations at § 816.81(a)(1) do not contain a direct counterpart, the Director finds that the proposed amendment is consistent with the intent of the cited Federal regulation which requires that coal mine waste shall be placed to minimize adverse effects on ground water quality.

IV. Summary and Disposition of Comments.

Public Comments

The public comment period and opportunity to request a public hearing was announced for the initial submittal of this amendment in the February 26, 1990, **Federal Register** (55 FR 6647). The initial comment period closed on March 28, 1990 and several comments were received.

The comment period was extended and the opportunity to request a public hearing was announced in the March 21, 1990, **Federal Register** (55 FR 10469) based on the requests of several individuals for a public hearing and for a location change for that hearing. The reopened comment period was extended to April 8, 1990 and the hearing date and location were changed to April 3, 1990.

During OSM's preparation of final rulemaking, questions were raised concerning the clarity of the narrative describing the changes to § 89.143(a)(1)–(4). To resolve any possible misinterpretations and to provide full opportunity to comment on the proposed changes, a reopening of the public comment period was announced in the January 4, 1991 **Federal Register** (56 FR 399). The reopened comment period ended on January 22, 1991. No comments were received and no one requested an opportunity to testify at the scheduled public hearing and no hearing was held.

All substantive comments received during both comment periods which pertain to amendments being proposed by Pennsylvania are discussed below. Written comments were received from the Pennsylvania Coal Association (PCA), the Pennsylvania Sierra Club, the Protect Our Water and Environmental Resources—Western Pennsylvania, and the Pennsylvania Historical and Museum Commission (PHMC). Comments were also received at the public hearing from the Citizens Against Water Loss from Mining (CAWLM) Committee, a group of residents and property owners in rural areas of Western Pennsylvania, ICARE, a group of concerned citizens located outside of Ebensburg in Cambria Township, Pennsylvania, and a concerned citizen expressing her own interest. Several of the comments submitted do not pertain to the specific changes Pennsylvania has proposed as part of this amendment and, therefore, will not be addressed here.

1. The PCA commented that amended § 86.11 will require underground mines and coal refuse disposal operations to obtain authorization from the Department prior to mining. PCA contends that since authorization is used as confirmation of bond approval and notice to proceed on additional acreage within the permit boundaries, that it serves no purpose for underground mining or coal refuse disposal permits. As stated in finding C–2, the State's proposal to require an authorization to mine, in addition to a valid permit is not inconsistent with SMCRA and the Federal regulations.

2. The PCA objects to the amendments to § 86.52(a)(1) which require that a permit revision shall be obtained for a change to the operation plan, reclamation plan and subsidence control plan. PCA states that the changes are too broad and unlimited. PCA contends that minor changes to the operation and reclamation plan, such as changes in equipment used or the sequence of mining, would be treated as a permit revision and would therefore require a revised application including maps, plans, and notarized proof of publication. The Director disagrees that this is always the case. The provisions of § 86.52 require that a permit revision be obtained for changes to the operation plan, reclamation plan, or subsidence control plan. However, the State's rules only require the application for a revision be accompanied by "appropriate" maps and plans, i.e. where such maps or plans are necessary to demonstrate compliance with the provision of the act and chapter 86 of the regulations; also, a notarized proof of publication is needed only for significant revisions as defined in § 86.54.

3. The PCA commented that the proposed amendment to § 86.54(1)(vi), which requires public notice of the addition of blasting to an existing permit, is redundant because similar requirements are contained in § 87.126 and should not be included under this section. The Director disagrees. The Federal counterpart at 30 CFR 774.13(b)(2) provides the regulatory authority with the discretion to establish the scale or extent of a revision for which public notice procedures shall apply. The State's inclusion of the addition of blasting to an operations plan is within this discretionary authority.

4. The PCA commented that the proposed rules at § 86.64(c)(2) inappropriately extend liability for legal expenses incurred by the regulatory authority to gain access to surface lands (for case of permits for coal refuse disposal areas, coal preparation facilities which are not situated within a permit area, and surface areas of underground mines) to the holder of the subsurface rights. PCA specifically objects that in cases where the mineral estate has been severed from the surface estate, the subsurface owner could be financially liable in cases where surface owner refused access.

As discussed in Finding B–8, the Director has determined that the prepared provision upon which the PCA has commented is not inconsistent with SMCRA or the Federal regulations. Therefore, the Director has approved the amendments.

5. The PCA commented that the proposed revisions to § 86.83(b)(5) inappropriately shift the burden of proof to the applicant to demonstrate that there is no direct or indirect business relationship between members of the applicant's family for the purpose of determining eligibility for assistance under the Small Operator Assistance Program (SOAP). The Director disagrees. The counterpart Federal regulations at 30 CFR 795.6(a) place the burden of proof on the SOAP applicant to establish that he or she meets the criteria for eligibility for assistance under SOAP. The Director can discern no meaningful difference between the term "demonstrate" and the term "establish" insofar as burden of proof is concerned. Therefore, the State rules are no less effective than the Federal regulations in requiring the applicant to establish that there is no direct or indirect business relationship between members of the applicant's family.

6. PCA objects to the change of terms in § 86.102 from surface mining "operations" to "activities," stating that it greatly expands the impact of subchapter D of Pennsylvania's rules concerning areas where mining is prohibited. PCA ties this in with the use of the "all permits tests" to establishing valid existing rights (VER) (defined § 86.1) as more stringent than the Federal regulations and as being contrary to the Pennsylvania SMCRA § 4.5(g) which ties the definition of VER to the Federal SMCRA which does not incorporate an "all permits test."

The Director disagrees. The approved Pennsylvania definition of surface mining activities at § 86.101 has not been amended except for the addition of the word activities to the term surface mining. The referenced definition of VER is also unchanged. Therefore, the scope and impact of the definition remains unchanged.

7. PCA commented on the revision to § 86.123, and stated that it does not include a requirement for a demonstration of how the petitioner meets the "injury in fact test." The Director disagrees. As discussed in Finding B–11 the language of the State's rule includes requirements that are no less effective than the "injury in fact test" requirement at 30 CFR 764.13 (a) and (b)(iii).

8. The PCA commented that the language in the proposed State rule at § 86.157 that the "surety shall have no right to cover or perform the principal's obligation on the bond" prevents the surety from reclaiming a forfeited site. The PCA stated that the surety should have the right to complete reclamation and that no environmental purpose is served by preventing a surety's reclamation of a forfeited site. The Director disagrees that the proposed rule prevents a surety from reclaiming a site. In addition to the quoted language, § 86.157 also states that the regulatory authority may allow a surety to complete reclamation in lieu of enforcing a forfeiture or collecting a bond. The State's provisions are no less effective than the counterpart Federal regulations at 30 CFR 800.50(a)(2)(ii) which also provide that the regulatory authority "may" allow a surety to complete reclamation.

9. The PCA comments that there are no environmental or administrative reasons for the provision at § 86.161(6)(i) which include the following reason for not accepting phased deposits of collateral: The failure of the applicant to pay permit or reclamation fees, fines, penalties, or other payments or failure to deposit bond amounts when due. The Director does not agree. The issuance of a permit is contingent upon the submittal of a bond made payable to the regulatory authority and conditioned upon the faithful performance of all the requirements of the Act, the regulatory program, the permit and the reclamation plan. Such requirements include the payment of fees, fines and penalties due the Department of Environmental Resources. Therefore, it is prudent for the State to require an applicant to have paid such fees and fines when due as a prerequisite to accepting phased deposit of collateral for a long term operation. Also, as discussed in Finding C–6, the proposed changes to the rules at § 86.161(6) are not inconsistent with SMCRA and the Federal regulations.

10. The PCA commented on § 86.174(d)(2) concerning the reclamation that must be performed to secure the release of a subsidence bond. The PCA contends that the release of the subsidence bond should occur automatically, ten years after mining is complete. The Director disagrees. As discussed in Finding B–21(c), the State's rules are consistent with the Federal requirements at 30 CFR 800.17 which require that bond shall not be released until reclamation of surface impacts incident to underground mining.

11. The PCA questioned the meaning of the phrase "exclusive of oversized pit supplement" as used in § 86.175. As discussed in Finding B–22(b), the Director is not approving the phrase "exclusive of oversized pit supplement" as it is inconsistent with the bond release limitations under 30 CFR 800.40.

12. The PCA objected to inclusion of the caveat "except for any violation that is causing or has the potential to cause off permit impacts" at § 86.211(b)(4) because it could force an operator to order employees to cross a picket line which could lead to violence. As discussed in Finding B–25, the Director finds that the State's proposed rule is not inconsistent with the Federal regulations at 30 CFR 843.12(f)(3) as the State may limit the circumstances under which it grants extensions, so long as it does not provide extensions for reasons other than those contained 30 CFR 843.12(f).

13. The PCA expressed concern that the use of the phrase "surface mining operation" in the second sentence of § 87.101(e) will be interpreted to prohibit discharge from the permit area by gravity drains. The PCA suggests amending the provision to state that "gravity drains from pit areas are prohibited." The Director disagrees. The proposed language of this section makes it adequately clear that the prohibition applies to the discharge of pit water by gravity drains.

14. The PCA objects to deletion of the option to transfer wells to land owners from § 87.116, as it is allowed by Federal regulations. As discussed in Finding B–34, the State's proposed deletion of this option is consistent with the Federal requirements at 30 CFR 816.41(g) which only provides that the regulatory authority may, but is not required, to allow the transfer of such wells for future use prior to bond release.

15. The PCA commented on the language of § 87.127(h) that limits the maximum peak particle velocity to 1 inch per second at "other structures as designated by the Department." PCA suggested that the revised rule should

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more closely track the Federal regulations at 30 CFR 816.67(d)(1) which provides that all the structures, other than those specifically listed by regulation, shall be protected from damage by establishment of a maximum allowable limit on ground vibration, submitted by the operator and approved by the regulatory authority. As discussed in Finding B–36(b), the Director is requiring the State to further amend its program to ensure that all structures in the vicinity of blasting be protected from damage resulting from blasting.

16. The PCA commented that the proposed rules at § 89.59(a)(1), (2), and (3) are largely duplicative of §§ 89.34, 89.35 and 89.36 and are therefore unnecessary and not required by Federal regulations. In addition, the PCA commented that the monitoring requirements and standards have been expanded to the point of being operational requirements as opposed to performance standards. The Director disagrees. Although the distinction between the information requirements of §§ 89.34, 89.35 and 89.36 and the operation performance standards of § 89.59 is not explicitly clear, the requirements of these sections when taken together contain requirements similar to the Federal regulations at § 816.41. However, as discussed in Finding B–55, the Director is requiring Pennsylvania to further amend its program to better reflect the performance standards in the cited Federal regulation.

17. The PCA objected to the deletion, in § 90.125(b)(3), of the provision which provides for variations in the disposal requirements for dewatered fine coal waste. The Director disagrees. The Federal regulations at 30 CFR 816.81(c)(2) require that all coal refuse disposal facilities shall be designed to attain a minimum long-term static safety factor of 1.5. Provisions for variations from these design standards based on size are not contained in the Federal regulations. As discussed in Finding B–63(b), the Director finds that the deletion of this provision renders the State rules no less effective than 30 CFR 816.81(c)(2).

18. The Sierra Club and CAWLM expressed concerns about the difference in Pennsylvania's definitions of surface mining activities in §§ 86.1 and 86.101. The commenters suggested that both definitions should conform to the definition of "surface operations and impacts incident to an underground coal mine" in 30 CFR 761.5, subchapter F (Areas Unsuitable for Mining). In response, the Director notes that the Pennsylvania definition of surface mining activities at § 86.101 pertains to Pennsylvania subchapter D concerning areas where mining is prohibited or limited. The currently approved definition is substantively identical to the Federal definition at 30 CFR 761.5 and includes all surface activity connected with surface or underground coal mining. In addition, although the State has chosen to use the term "surface mining activities" in both §§ 86.1 and 86.101, § 86.102 makes it clear that the use of the term surface mining activities pertains to the definition at § 86.101. Indeed, the definition does not delete the surface effects of underground mining, but includes all activities involved in or related to underground coal mining which are either conducted on the surface of the land, produce changes in the land surface, or disturb the surface, air or water resources of the area. In any event, the definitions at §§ 86.1 and 86.101 have not been changed in any substantive manner, with regard to surface effects of underground mining.

19. The Sierra Club and CAWLM commented on proposed § 89.143(a). CAWLM stated that proposed § 89.143(a)(4) ignores the Federal requirement at 30 CFR 817.121(a) to prevent material damage as much as is technologically and economically feasible. The Sierra Club opposed the proposed revisions to § 89.143(a) stating that surface owner protection and natural resource protection will be diminished by deleting the general requirements that all underground mining activity must utilize mining techniques which prevent subsidence damage or provide for planned subsidence. The Sierra Club suggests that since the Federal requirements for preventing, avoiding, or minimizing damage have not been changed that such wording should be included in Pennsylvania's regulations.

In response, the Director notes that the proposed Pennsylvania rule at § 89.143(a)(4) requires all underground mining operators to adopt and describe to the regulatory authority, in the permit application, measures to maximize mine stability. As discussed in Finding B–58, Pennsylvania has explained that the concept of maximizing mine stability includes the three objectives required by 30 CFR 817.121(a): (1) To prevent subsidence causing material damage to the extent technologically and economically feasible, (2) To maximize mine stability, and (3) To maintain the value and reasonable foreseeable use of the surface land. Pennsylvania has also acknowledged in the *Pennsylvania Bulletin*, June 16, 1990 (Pa. B. 3385) that when applied in the context of protecting structures or features which might be damaged by mine subsidence, mine stability takes on a necessary time dimension to insure the long-term protection of the structure or feature. Pennsylvania further stated that since January 1, 1986, the regulatory authority has been reviewing permit applications for new mines to insure that adequate measures have been adopted to maximize mine stability throughout the mine. Therefore, considering Pennsylvania's interpretation of the concept of maximizing mine stability as described above, the Director has approved the proposed amendment.

20. The PHMC supported the revisions to § 86.37(a)(16) requiring a statement from the applicant that all State and Federal final and civil penalty assessments have been paid. As noted in Finding B–4, the Director is approving this provision.

21. The PHMC opposed the addition of the language to § 86.123(a) which states that a person "who has an interest which is, or may be adversely affected has" the right to petition to have an area designated for surface mining. The PHMC stated that the added language put additional constraints on who may file a petition and suggested that any person should have the right to petition.

As discussed in Finding B–11, the proposed language is no less effective than the counterpart Federal regulations at 30 CFR 764.13 and is consistent with the requirements of § 601(c) of SMCRA and, therefore, the Director is approving that language.

22. PHMC requested clarification of the term "interest" as it is used at § 86.123 (a) and (d), because of its concern that the term could be limited to mean economic interest and thereby exclude other interest such as natural, scenic, and cultural. The term "interest" as used in the Pennsylvania rules at § 86.123 (a) and (d) is not limited to only mean economic interests. The approved Pennsylvania rule at § 86.123(c)(3) makes it clear that the term "interest" is wide in scope and pertains to people, land, air, water, or other resources.

23. The PHMC commented that § 86.103(e) should continue to use the word "shall" instead of adopting the word "will" in its place. Also, the PHMC stated that the provision should include a phrase that states "eligible for listing in the National Register." In response, the Director sees no substantive difference between the use of "shall" or "will" in this rule, and the use of "will" will not render the rule less effective than 30 CFR 761.12(f)(1). In addition, the Federal regulation at 30 CFR 761.12(f)(1) does not include the requirement "eligible for listing in the National Register." Therefore, a lack of those words at § 86.103(e) does not render the Pennsylvania rule less effective than the Federal regulations.

24. The PHMC commented that the phrase "contemporary mining practices" proposed for addition to § 86.123(c)(2) is vague and incapable of definition. The Director notes that the proposed language is substantively identical to and no less effective than the counterpart Federal requirement at 30 CFR 764.13(b)(1)(v).

25. The PHMC recommended that in § 87.125(a) operators be required to notify in writing, residents or owners of dwellings or other structures located within one mile, and that preblast surveys should be conducted for structures within one mile of the proposed blasting upon written request. In response, the Director notes that the Federal standard for preblasting surveys at 30 CFR 816.62 is one-half mile. Therefore, Pennsylvania's use of a one-half mile standard is consistent with the Federal regulations. See Finding B–35 for more information.

26. The PHMC recommended that Pennsylvania lower the maximum peak particle velocity allowed from 1 inch per second to .5 inch per second and also that a .25 inch per second maximum peak particle velocity be adopted for historic structures listed on or eligible for listing on the National Register of Historic Places. As discussed in Finding B–36(b), the Director is requiring the State to further amend § 87.127(h) to require that the approved blasting plan establish the maximum allowable limits on ground vibration necessary to protect all structures within the blasting area. To the extent that this provision would require the establishment of a maximum peak particle velocity below 1 inch per second, the existing Pennsylvania program contains provisions for the regulatory authority to reduce the maximum peak particle velocity allowed, if it determines that a lower standard is necessary to protect structures based upon site specific circumstances.

In addition the PHMC recommended that Pennsylvania adopt blasting standards developed by the American National Standards Institute (ANSI) in lieu of those proposed at § 87.127 (n) and (o). In response, the Director notes that the proposed Pennsylvania standards are substantively identical to and no less effective than the counterpart Federal standards at 30 CFR 816.67(d)(2).

Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were also solicited from various Federal agencies. Comments were received from the U.S. Department of Labor, Mine Safety and Health Administration (MSHA) and the U.S. Environmental Protection Agency (EPA). The comments submitted by MSHA do not pertain to the specific provision of the State's rules that are revised as part of this amendment package, and, therefore, will not be discussed here. The comments submitted by EPA are discussed below under "EPA Concurrence."

V. Director's Decision.

Based on the findings discussed above, the Director is approving Pennsylvania's Regulatory Reform I program amendment as submitted on December 22, 1989, with the exceptions noted below. In addition, as discussed in Finding B–56, the Director is approving the proposed amendments to § 89.143 with the understanding that Pennsylvania will implement proposed subsection (a)(4) in a manner consistent with the explanation provided in the preamble to the *Pennsylvania Bulletin*, June 16, 1990 (Pa. B. 3384).

As discussed in Finding B–1, the Director is not approving the amendments to the definition of "surface mining activities" at §§ 86.1 and 87.1, and the Director is requiring that the State amend the definition to make it unequivocally clear that the construction of any road, or similar disturbance such as a pathway, outside the permit area for any purpose related to a surface mining activity, including that of moving or "walking" a dragline or other equipment, or for the assembly, disassembly or staging of equipment, shall be deemed a surface mining activity and will be regulated.

As discussed in Finding B–2(a), the Director is conditionally approving § 86.17(e), and the Director is requiring the State to demonstrate that the revenues generated by the collection of the reclamation fee will be sufficient to assure that the Surface Mining Conservation and Reclamation Fund can be operated in a manner that will meet the requirements of 30 CFR 800.11(e). Pennsylvania could provide such a demonstration through an actuarial study showing the soundness and financial solvency of this Fund. In addition, the Director is requiring Pennsylvania to clarify both the procedures for bonding the surface impacts of underground mines and the procedures to reclaim underground mining permits where the operator has defaulted on the obligation to reclaim.

As discussed in Finding B–9(a), the Director is approving § 86.83(a)(2) except to the extent that the proposed language limits or prohibits consideration of any and all consecutive 12-month periods in the determination of eligibility for assistance. In addition, the Director is requiring that the rule be amended to make it clear that any and all consecutive 12-month periods shall be considered.

As discussed in Finding B–9(b), the Director is requiring that the Pennsylvania program at § 86.63(b)(5) be amended to clarify that all coal produced by operations owned by the applicant's individual family members and relatives must also be counted toward the 100,000 ton limitation.

As discussed in Finding B–10(b) the Director is requiring that the Pennsylvania program at § 86.94(a)(5) be amended to clarify that if the permit is sold, transferred, or assigned to another person and that transferee's total actual and attributed production exceeds the 100,000-ton annual production limit during "any" consecutive 12-month period of the remaining term of the permit, that the applicant and its successor are jointly and severally obligated to reimburse the regulatory authority for the cost of laboratory services.

As discussed in Finding B–17, the Director is requiring that § 86.156(b) be amended to require that notice be given to the State of any action filed alleging the insolvency or bankruptcy of the permittee.

As discussed in Finding B–18(a), the Director is approving § 86.158(b)(1) except to the extent that the determination of the current market value of securities is optional rather than mandatory. In addition, the Director is requiring that the rule be further amended to require that the value of all government securities pledged as collateral bond shall be determined using the current market value.

As discussed in Finding B–18(b), the Director is approving § 86.158(b)(2) except to the extent that the value of the collateral bond may equal the overall bond value without taking into consideration the effects of depreciation, marketability, and other factors on the amount of cash available from the bond. In addition, the Director is requiring that the rules related to valuation of collateral bonds be amended to be subject to a margin, which is the ratio of the bond value to the market value, and which accounts

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for legal and liquidation fees, as well as value depreciation, marketability, and fluctuations which might affect the net cash available to the regulatory authority in case of forfeiture.

As discussed in Finding B–18(c), the Director is approving § 86.158(b)(3) except to the extent that subparagraph (b)(3) and § 86.158 do not require that the bond value of all collateral bonds be evaluated, at a minimum, as part of the permit renewal process. In addition, the Director is requiring that the rule be further amended to ensure that the bond value of all collateral bonds be evaluated during the permit renewal process to ensure that the collateral bond is sufficient to satisfy the bond amount requirements.

As discussed in Finding B–21(a), the Director is requiring that Pennsylvania further amend § 86.174(b)(3) to include the necessary reference to chapter 88 regarding soil productivity on reclaimed prime farmland.

As discussed in Finding B–21(b), the Director is not approving the language of § 86.174(d)(1) which would allow for the release of the bond posted for the removal of buildings, facilities or other equipment upon completion of the removal and approval by the Department, and which would allow the release of bond posted for the sealing of drifts, shafts or other mine openings upon demonstration by the permittee that the sealing is effective.

As discussed in Finding B–22(b), the Director is not approving the language of § 86.175(1), (2) and (3) which exclude the supplemental bond posted for oversized pits from the bond release calculation requirements of § 86.175.

As discussed in Finding B–23, the Director is approving § 86.182(d) except to the extent that the proposed rule does not require that the funds paid to the Surface Mining Conservation and Reclamation Fund will be used on the site to which the bond coverage applies. In addition, the Director is requiring that the rule be amended to require that the rule be so interpreted.

As discussed in Finding B–24, the Director is requiring that § 86.193(h) be further amended to clarify that an individual civil penalty is not a substitute for mandatory civil penalties, and to clarify when the assessment of an individual civil penalty may be appropriate.

As discussed in Finding B–28, the Director is approving § 87.73(c)(1) except to the extent that impoundments with a storage capacity of more than 20 acre-feet but less than 50 acre-feet may be designed by or under the direction of, and certified by a land surveyor. In addition, the Director is requiring the State to further amend the Pennsylvania program to clarify that all impoundments with a storage volume of 20 acre-feet or more must be designed by or under the direction of, and certified by, a qualified registered professional engineer with assistance from experts in related fields.

As discussed in Finding B–33(b), the proposed amendments to §§ 88.102(b), 88.197(b), and 88.302(b) which would delete the words "that are not of the class of subsection (a)" are not approved.

As discussed in Finding B–33(c), the Director is approving §§ 87.112(b)(1) and 89.101(a) except to the extent that the proposed revisions do not require that the detailed designs of impoundments with a storage capacity of more than 20 acre-feet must be prepared by or under the direction of, and certified by a qualified registered professional engineer. In addition, the Director is requiring that Pennsylvania require that all impoundments which meet or exceed the MSHA size classification of 30 CFR 77.216 are designed by or under the direction of and certified by a qualified registered professional engineer.

As discussed in Finding B–33(d), the Director is approving §§ 87.112(b)(1) and 90.112(b)(1) except to the extent that they do not require that each impoundment be certified that the impoundment has been constructed and/or maintained as approved in the permit and in accordance with all applicable performance standards. In addition, the Director is requiring that Pennsylvania amend its rules to require that all impoundments be certified that the impoundment has been constructed and is being maintained as designed and in accordance with the approved plan and all applicable performance standards. The Director is also requiring that §§ 89.101 and 89.112 also be amended to require that all impoundments shall be similarly certified.

As discussed in Finding B–33(e), the Director is not approving the proposed language at § 90.112(d) that states "or release of the performance bond."

As discussed in Finding B–33(f), the Director is approving §§ 87.112(f), 89.101(d) and 90.112(f) except to the extent that the regulatory authority may accept MSHA approval in lieu of the requirements of §§ 87.112, 89.111(b) and 90.112(a) for MSHA size impoundments. In addition, the Director is requiring that Pennsylvania further amend its rules to clarify that the State may consider MSHA's action on plans for impoundments, but that the State is independently charged to make its own findings with regard to plan approvals.

As discussed in Finding B–35, the Director is approving § 87.125(a) except to the extent that the proposed language would limit the opportunity to receive a preblasting survey to one-half mile of the blasting site within the permit area rather than to one-half mile of any part of the permit area. In addition, the Director is requiring Pennsylvania to further amend its rules to provide the opportunity to request a preblasting survey to every resident or owner of property within one-half mile of any part of the permit area.

As discussed in Finding B–36(a), the Director is approving § 87.127(e)(2) except to the extent that the rule would allow the State not to specify lower blasting limits where such limits are necessary to prevent damage. In addition, the Director is requiring the State to further amend the rule to require that, if necessary to prevent damage, the State shall specify lower maximum allowable airblast levels than those specified in § 87.127(e).

As discussed in Finding B–36(b), the Director is approving § 87.127(h) except to the extent that the rule does not require that all structures in the vicinity of the blasting area shall be protected from damage. In addition, the Director is requiring the Pennsylvania program be amended to require that all structures in the vicinity of the blasting area be protected from damage by establishment of a maximum allowable limit on the ground vibration.

As discussed in Finding B–36(c), the Director is requiring the State to correct an apparent typographical error at § 87.127(j) by replacing the reference to subsection (o) with one to subsection (n).

As discussed in Finding B–36(d), the Director is requiring that the State correct two typographical errors at § 87.127(n) by changing "5,000 and beyond" to read "5001 and beyond" and by changing the reference in Footnote 2 to read subsection "(j)" rather than "(k)."

As discussed in Finding B–37, the Director is approving § 87.131(n) except to the extent that the excess spoil fill is not certified by the qualified registered professional engineer in the report to the regulatory authority that the fill has been maintained in accordance with the approved plan and applicable performance standards, and the report does not include appearances of instability, structural weakness and other hazardous conditions. In addition, the Director is requiring that Pennsylvania further amend § 87.131(n) to require the report to contain such certifications and observations.

As discussed in Finding B–38(b), the Director is approving proposed changes to § 87.135(a) except to the extent that the rule could be interpreted not to limit surface mining activities within 500 feet from any and all points of either an active or abandoned underground mine. In addition, the Director is requiring the State to amend the rule to clarify that surface mining activities are prohibited within 500 feet of any point of either an active or abandoned underground mine.

As discussed in Finding B–39, the Director is approving proposed changes to §§ 87.138, 89.82, and 90.150 except to the extent that the regulatory authority is not required to consult with the USFWS upon notification of the presence of bald or golden eagle nests found within a permit area. In addition, the Director is requiring that the Pennsylvania program be amended to require such notification.

As discussed in Finding B–47, the Director is approving proposed changes to § 88.24(b)(4) except to the extent that: (1) The rule would permit the State to waive the chemical analysis requirement without a request from the operator and without making a finding, in writing, that the analyses are not necessary because other equivalent information is available to the State in a satisfactory form; and (2) the regulatory authority does not require, at a minimum, chemical analysis of the overburden for acid- or toxic-forming materials and total sulfur content. In addition, the Director is requiring that the State amend the Pennsylvania program to include provisions that the requirements for chemical analysis of the coal and overburden can only be waived after the State makes a finding in writing, that the analyses are not necessary because other equivalent information is available to the regulatory authority in a satisfactory form.

Also as discussed in Finding B–47, the Director is not approving the proposed revisions to § 88.24(b)(4) to the extent that the State does not specify that, when required, the chemical analysis of the coal and overburden shall analyze, at a minimum, those strata that may contain acid- or toxic-forming materials, and to determine their sulfur content. In addition, the Director is requiring that the State amend the rule to clearly require the chemical analyses for overburden and coal specified in the Federal regulations at 30 CFR 780.22(b)(2) (ii) and (iii).

As explained in Findings B–48 (a) and (b), and B–49(a), the amendments to §§ 88.32, 88.491, and 88.61 satisfy the requirements of 30 CFR 938.16 (c), (d) and (e). Therefore, the Director is revising the Federal rules to remove these requirements.

As discussed in Finding B–49(b), the Director is requiring that the State amend § 88.61(b)(1) by replacing the reference to § 88.32(d)(1) with one to 88.32(d).

As discussed in Finding B–50, the Director is requiring that the State amend § 88.491(j) to add a requirement that the preparation of cross sections, maps and plans be prepared with assistance from experts in related fields such as landscape architecture.

As discussed in Finding B–51, the Director is not approving the deletion of §§ 88.492(c)(4) and 89.71(d) which require the description in the reclamation plan to be accompanied by a copy of the comments concerning the proposed land use from the legal or equitable owner of record of the surface areas to be affected by surface operation of facilities within the proposed permit area, and from the State and local government agencies which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

As discussed in Finding B–55(a), the Director is approving the proposed changes to §§ 89.59(a) (1) and (2) and 89.34(a)(1) except to the extent that they do not specify the minimum parameters to be monitored, and do not specify the frequency for the reporting of monitoring data to the State. In addition, the Director is requiring the State to further amend § 89.59(a) (1) and (2) to require the monitoring plan to specify that, at a minimum, the total dissolved solids or specific conductance, pH, total iron, total manganese, and water levels shall be monitored and data submitted to the State at least every three months for each monitoring location.

As discussed in Finding B–55(b), the Director is approving the proposed changes to §§ 89.59(a)(3) and 89.34(a)(2)(ii) except to the extent that the State does not require the surface water monitoring plan to contain the information specified by 30 CFR 784.14(i). In addition, the Director is requiring that the State amend § 83.59(a)(3) to require the surface water monitoring plan to provide for the monitoring of parameters that relate to the suitability of the surface water for current and approved postmining land use, and require the plan to identify sampling and monitoring report frequency and site locations.

As discussed in Finding B–60(c), the Director is approving the amendment to § 89.172(b) except to the extent that the proposed rule does not require the regulatory authority to issue a written finding that the operation will be conducted in compliance with the performance standards of § 89.173. In addition, the Director is requiring Pennsylvania to further amend its rules at § 89.172(b) to require that a permit will not be issued until the regulatory authority makes a finding, in writing, that the activity will be conducted in compliance with all applicable performance standards.

As discussed in Finding C–12, the Director is deferring action on the proposed amendments to §§ 87.207(b) and 88.507(b) until receipt from the EPA of a specific determination that these amendments are consistent with section 301(p) of the FWPCA.

The Federal regulations at 30 CFR part 938 codifying decisions concerning Pennsylvania's program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Pennsylvania program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Pennsylvania of only such provisions.

EPA Concurrence

Sections 503(b)(2) of SMCRA and 30 CFR 732.17(h)(11)(ii) require that the Administrator of the EPA concur with all State provisions relating to water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*). Since the proposed amendment would alter effluent limitations established pursuant to the Clean Water Act (also known as the Federal Water Pollution Control Act) and its implementing regulations, EPA's concurrence is required before the Director may approve this amendment.

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OSM solicited EPA's concurrence with the proposed amendments by letter dated January 18, 1990. By letter dated March 4, 1991 (Administrative Record Number PA-790.22), EPA provided concurrence with the understanding that the proposed modifications will be implemented to fully comply with all applicable Clean Water Act requirements. Specifically, EPA's concurrence on the sections dealing with potential point source discharges of pollutants into waters of the United States is based on the understanding that Pennsylvania's regulations require implementation consistent with applicable CWA requirements and do not themselves provide full authorization for instream treatment of point source discharges. However, as discussed in Finding C-12, the EPA did not specifically state whether the proposed revisions to §§ 87.207 and 88.507 are consistent with section 301(p)(2) of the FWPCA (33 U.S.C. 1311(p)). Therefore, the Director is deferring his decision until such time as the EPA renders its decision.

VI. Procedural Determinations.

National Environmental Policy Act:

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act:

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act:

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 22, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 938—PENNSYLVANIA

1. The authority citation for part 938 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 938.15, a new paragraph(s) is added to read as follows:

§ 938.15 Approval of regulatory program amendments.

* * * * *

(s) With the exception of those provisions identified herein, the amendment submitted to OSM on December 22, 1989 (Regulatory Reform I), is approved effective May 31, 1991, provided Pennsylvania promulgates these regulations and enacts these statutory revisions in a form identical to that submitted to OSM.

Sections 86.1 and 87.1, concerning the definition of "surface mining activity," are not approved.

Section 86.17(e) is conditionally approved pending a demonstration by Pennsylvania that the revenues generated by collection of the reclamation fee will be sufficient to assure that the Surface Mining Conservation and Reclamation Fund can be operated in a manner that will meet the requirements of 30 CFR 800.11(e).

Section 86.83(a)(2) is approved except to the extent that the proposed language limits or prohibits consideration of any and all consecutive 12-month periods in the determination of eligibility for SOAP assistance.

Section 86.158(b)(1) is approved except to the extent that the determination of the current market value of securities is optional rather than mandatory.

Section 86.158(b)(2) is approved except to the extent that the value of the collateral bond may equal the overall bond value without taking into consideration the effects of depreciation, marketability, and other factors on the amount of cash available from the bond.

Section 86.158(b)(3) is approved except to the extent that subparagraph (b)(3) and § 86.158 do not require that the value of all collateral bonds be evaluated, at a minimum, as part of the permit renewal process.

Section 86.174(d)(1)—language which would allow for the release of the bond posted for the removal of buildings, facilities or other equipment upon completion of the removal and approval by the Department, and which would allow the release of bond posted for the sealing of drifts, shafts or other mine openings upon demonstration by the permittee that the sealing is effective is not approved.

Section 86.175 (1), (2) and (3)—language which would allow the exclusion of the supplemental bond posted for oversized pits from the bond release calculation requirements of § 86.175 is not approved.

Section 86.182(d) is approved except to the extent that the proposed rule does not require that the funds paid to the Surface Mining Conservation and Reclamation Fund will be used on the site to which the bond coverage applies.

Section 87.73 is approved except to the extent that impoundments with a storage capacity of more than 20 acre-feet but less than 50 acre-feet may be designed by or under the direction of, and certified by a land surveyor.

Sections 88.102(b), 88.197(b), and 88.302(b)—the proposed deletions of the words "that are not of the class of subsection (a)" are not approved.

Sections 88.112(b)(1) and 89.101(a) are approved except to the extent that the proposed revisions do not require that the detailed designs of impoundments with a storage capacity of more than 20 acre-feet must be prepared by or under the direction of, and certified by, a qualified registered professional engineer.

Sections 87.112(b)(1) and 90.112(b)(1) are approved except to the extent that they do not require that each impoundment be certified that the impoundment has been constructed and/or maintained as approved in the permit and in accordance with all applicable performance standards.

Sections 87.112(f), 89.101(d) and 90.112(f) are approved except to the extent that the regulatory authority may accept MSHA approval in lieu of the requirements of §§ 87.112(f), 89.111(b) and 90.112(a) for MSHA size impoundments.

Section 87.125(a) is approved except to the extent that the proposed language would limit the opportunity to receive a preblasting survey to one-half mile of the blasting site rather than to one-half mile of any part of the permit area.

Section 87.127(e)(2) is approved except to the extent that the rule would allow the State not to specify lower

blasting limits where such limits are necessary to prevent damage.

Section 87.127(h) is approved except to the extent that the rule does not require that all structures in the vicinity of the blasting area shall be protected from damage.

Section 87.131(n) is approved except to the extent that the excess spoil fill is not certified by the qualified registered professional engineer in the report to the regulatory authority that the fill has been maintained in accordance with the approved plan and applicable performance standards, and the report does not include appearances of instability, structural weakness and other hazardous conditions.

Section 87.135(a) is approved except to the extent that the rule could be interpreted not to limit surface mining activities within 500 feet from any and all points of either an active or abandoned underground mine.

Sections 87.138, 89.82, and 90.150 are approved except to the extent that the regulatory authority is not required to consult with the USFWS upon notification of the presence of bald or golden eagle nests found within a permit area

Action is deferred on §§ 87.207(b) and 88.507(b) pending receipt from the EPA of a specific determination that the amendments to these sections are consistent with section 301(p) of the FWPCA.

Section 88.24(b)(4) is approved except to the extent that: (1) The rule would permit the State to waive the chemical analysis requirement without a request from the operator and without making a finding in writing that the analyses are not necessary because other equivalent information is available to the State in a satisfactory form, and (2) the State does not require that, at a minimum, the required chemical analysis of the overburden shall analyze those strata that may contain acid- or toxic-forming materials, and to determine their content including sulfur content.

Sections 88.492(c)(4) and 89.71(d)—deletion of language which requires the description in the reclamation plan to be accompanied by a copy of the comments concerning the proposed land use from the legal or equitable owner of record of the surface areas to be affected by surface operation of facilities within the proposed permit area, and from the State and local government agencies which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation is not approved.

Sections 89.59(a) (1) and (2) and 89.34(a)(1) are approved except to the extent that they do not specify the minimum parameters to be monitored, and do not specify the frequency for the reporting of monitoring data to the State.

Sections 89.59(a)(3) and 89.34(a)(2)(ii) are approved except to the extent that the State does not require the surface water monitoring plan to contain the information specified by 30 CFR 784.14(i).

Section 89.172(b) is approved except to the extent that the proposed rule does not require the regulatory authority to issue a written finding that the operation will be conducted in compliance with the performance standards of section 89.173.

Section 90.112(d)—language which states "or release of the performance bond" is not approved.

3. In Section 938.16, the section heading is revised, paragraphs (c), (d) and (e) are removed and reserved and new paragraphs (g) through (jj) are added to read as follows:

§ 938.16 Required regulatory program amendments

* * * * *

(c) [Reserved]
(d) [Reserved]
(e) [Reserved]

* * * * *

(g) By November 1, 1991, Pennsylvania shall amend the definition of "surface mining activities" at §§ 86.1 and 87.1 or otherwise amend its program to be no less effective than the Federal definition at 30 CFR 700.5 to make it unequivocally clear that the construction of any road, or similar disturbance such as a pathway, outside the permit area for any purpose related to a surface mining activity, including "walking" a dragline or other equipment, or for the assembly or disassembly, or staging of equipment, shall be deemed a surface mining activity and will be regulated.

(h) By November 1, 1991, Pennsylvania shall submit information, sufficient to demonstrate that the revenues generated by the collection of the reclamation fee, as amended in § 86.17(e), will assure that the Surface Mining Conservation and Reclamation Fund can be operated in a manner that will meet the requirements of 30 CFR 800.11(e). Pennsylvania could provide such a demonstration through an actuarial study showing the Fund's soundness or financial solvency. In addition, Pennsylvania shall clarify the procedures to be used for bonding the surface impacts of underground mines and the procedures to reclaim underground mining permits where the operator has defaulted on the obligation to reclaim.

(i) By November 1, 1991, Pennsylvania shall amend its rules at § 86.83(a)(2) or otherwise amend its program to be no less effective than 30 CFR 795.6(a)(2) by making it clear that any and all consecutive 12-month periods shall be considered in the determination of eligibility for assistance.

(j) By November 1, 1991, Pennsylvania shall amend its rules at § 86.83(b)(5)(b) or otherwise amend its program to be no less effective than 30 CFR 795.6(a)(2)(iv) by clarifying that all coal produced by operations owned by the applicant's individual family members and relatives must also be counted toward the 100,000 ton limitation.

(k) By November 1, 1991, Pennsylvania shall amend its rules at § 86.94(a)(5) or otherwise amend its program to be no less effective than 30 CFR 795.12(a)(3) by clarifying that if the permit is sold, transferred, or assigned to another person and that transferee's total actual and attributed production exceeds the 100,000-ton annual production limit during "any" consecutive 12-month period of the remaining term of the permit, that the applicant and its successor are jointly and severally obligated to reimburse the regulatory authority for the cost of laboratory services.

(l) By November 1, 1991, Pennsylvania shall amend its rules at § 86.158(b) or otherwise amend its program to be no less effective than 30 CFR 800.16(e)(1) by requiring that notice be given to the State of any action filed alleging the insolvency or bankruptcy of the permittee.

(m) By November 1, 1991, Pennsylvania shall amend its rules at § 86.158(b)(1) or otherwise amend its program to be no less effective than 30 CFR 800.21(a)(2) by requiring that the value of all government securities pledged as collateral bond shall be determined using the current market value.

(n) by November 1, 1991, Pennsylvania shall amend § 86.158(b)(2) or otherwise amend its program to be no less effective than 30 CFR 800.21(e)(1) by requiring that the provisions related to valuation of collateral bonds be amended to be subject to a margin, which is the ratio of the bond value to the market value, and which accounts for legal and liquidation fees, as well as value depreciation, marketability, and fluctuations which might affect the net cash available to the regulatory authority in case of forfeiture.

(o) By November 1, 1991, Pennsylvania shall amend § 86.158(b)(3) or otherwise amend its program to be no less effective than 30 CFR 800.21(e)(2) to ensure that the bond value of all collateral bonds be evaluated during the

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permit renewal process to ensure that the collateral bond is sufficient to satisfy the bond amount requirements.

(p) By November 1, 1991, Pennsylvania shall amend § 86.174(b)(3), or otherwise amend its program to be no less effective than 30 CFR 800.40(c)(2) by requiring the necessary reference to chapter 88.

(q) By November 1, 1991, Pennsylvania shall amend § 86.162(d) or otherwise amend its program to be no less effective than 30 CFR 800.50 (b)(1) and (b)(2) by requiring that forfeited collateral bonds, which are paid into the Surface Mining Conservation and Reclamation Fund, be used to complete reclamation on the site to which the bond coverage applies.

(r) by November 1, 1991, Pennsylvania shall amend § 86.193(h) or otherwise amend its program to be no less effective than 30 CFR 846.12(a) by clarifying that an individual civil penalty is not a substitute for mandatory civil penalties and to clarify when the assessment of an individual civil penalty may be appropriate.

(s) By November 1, 1991, Pennsylvania shall amend § 87.73 or otherwise amend its program to be no less effective than 30 CFR 780.25(a)(3)(i) and 30 CFR 77.216(a) to clarify that all impoundments with a storage volume of 20 acre-feet or more must be designed by or under the direction of, and certified by, a qualified registered professional engineer with assistance from experts in related fields such as geology, land surveying, and landscape architecture.

(t) By November 1, 1991, Pennsylvania shall amend §§ 87.112(b)(1) and 89.101(a), or otherwise amend its program to be no less effective than 30 CFR 780.25/784.16(a)(3)(i) by requiring that all impoundments which meet or exceed the MSHA size classification of 30 CFR 77.216 are designed and certified by or under the direction of, a qualified registered professional engineer.

(u) By November 1, 1991, Pennsylvania shall amend §§ 87.112(b)(1) and 90.112(b)(1) or otherwise amend its program to be no less effective than 30 CFR 816/817.49(a)(10)(ii) by requiring that all impoundments be certified that they have been constructed and are being maintained as designed and in accordance with the approved plan and all applicable performance standards. Pennsylvania shall also amend §§ 89.101 and 89.112 to require that all impoundments shall be similarly certified.

(v) By November 1, 1991, Pennsylvania shall amend §§ 87.112(f), 89.101(d) and 90.112(f), or otherwise amend its program to be no less effective than 30 CFR 780.25(c)(2) by requiring that the State may consider MSHA's action on plans for impoundments, but that the State is independently charged to make its own findings with regard to plan approvals.

(w) By November 1, 1991, Pennsylvania shall amend §§ 87.125(a), or otherwise amend its program to be no less stringent than section 515(b)(15)(E) of SMCRA to provide the opportunity to request a preblasting survey to every resident or owner of a man-made structure or dwelling within one-half mile of any part of the permit area.

(x) By November 1, 1991, Pennsylvania shall amend §§ 87.127(e)(2) or otherwise amend its program to be no less effective than 30 CFR 816.67(b)(1)(ii) by requiring that, if necessary to prevent damage, Pennsylvania shall specify lower maximum allowable airblast levels than those specified in § 87.127(e).

(y) By November 1, 1991, Pennsylvania shall amend § 87.127(h) or otherwise amend its program to be no less effective than 30 CFR 816.67(d)(1) by requiring that all structures in the vicinity of the blasting area be protected from damage by establishment of a maximum allowable limit on the ground vibration.

(z) By November 1, 1991, Pennsylvania shall amend § 87.1279(j) to correct an apparent typographical error by replacing the reference to subsection (o) with one to subsection (n).

(aa) By November 1, 1991, Pennsylvania shall amend § 87.127(n) to correct two typographical errors by changing "5,000 and beyond" to read "5,001 and beyond" and by changing the reference in Footnote 2 to read subsection "(j)" rather than "(k)."

(bb) By November 1, 1991, Pennsylvania shall amend § 87.131(n), or otherwise amend its program to be no less effective than 30 CFR 816.71(h)(2) by requiring that the qualified registered professional engineer provide a certified report that the excess spoil fill has been constructed and maintained in accordance with the approved design plan and in accordance with all applicable performance standards, and that the report include appearances of instability, structural weakness and other hazardous conditions.

(cc) By November 1, 1991, Pennsylvania shall amend § 87.135(a) or otherwise amend its program to be no less effective than 30 CFR 816.79 by making it clear that surface mining activities are prohibited within 500 feet of "any" point of either an active or an abandoned underground mine.

(dd) By November 1, 1991, Pennsylvania shall amend §§ 87.136(c), 89.62(d), and 90.150(c) or otherwise amend its program to be no less effective than 30 CFR 816/817.97 to require consultation with the USFWS upon notification by an operator of the presence of any golden or bald eagle nests within the permit area.

(ee) By November 1, 1991, Pennsylvania shall amend § 88.24(b)(4) or otherwise amend it program to be no less effective than 30 CFR 780.22(d) by including provisions that the requirements for chemical analysis of the coal and overburden can only be waived after Pennsylvania makes a finding in writing that such analyses are not necessary because other equivalent information is available. In addition, Pennsylvania shall amend § 88.24 or otherwise amend its program to clearly require the minimum chemical analyses for overburden and coal specified in the Federal regulations at 30 CFR 780.22(b)(2) (ii) and (iii).

(ff) By November 1, 1991, Pennsylvania shall amend § 88.61(b)(1) to correct an apparent typographical error by replacing the reference to § 88.32(d)(1) with § 88.32(d).

(gg) By November 1, 1991, Pennsylvania shall amend § 88.491(j) or otherwise amend its program to require that the preparation of cross-sections, maps and plans be prepared with assistance from experts in related fields such as landscape architecture.

(hh) By November 1, 1991, Pennsylvania shall amend § 89.59(a)(1) and (2) or otherwise amend its program to be no less effective than 30 CFR 784.14(h)(1) to require the monitoring plan to specify that, at a minimum, the total dissolved solids or specific conductance, pH, total iron, total manganese, and water levels shall be monitored and data submitted to Pennsylvania at least every three months for each three months for each monitoring location.

(ii) By November 1, 1991, Pennsylvania shall amend § 89.59(a)(3) or otherwise amend its program to be no less effective than 30 CFR 784.14(i) (1) and (2) to require the surface water monitoring plan to provide for the monitoring of parameters that relate to the suitability of the surface water for current and approved postmining land use, and require the plan to identify sampling and monitoring report frequency and site locations.

(jj) By November 1, 1991, Pennsylvania shall amend its rules at § 89.172(b) or otherwise amend its program to be no less effective than 30 CFR 785.21(c) by requiring that a permit will not be issued until the regulatory authority makes a finding, in writing, that the activity will be conducted in compliance with all applicable performance standards.

[FR Doc. 91-12721 Filed 5-30-91; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD1 91-051]

Special Local Regulations: Newburyport Grand Prix, Newburyport, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special local regulations are being adopted for the Newburyport Grand Prix, a powerboat race to be held in Ipswich Bay off of Plum Island. This event will be held from 11 a.m. to 3 p.m. on June 15, 1991. If weather conditions preclude racing on June 15th, the regulations will be in effect from 11 a.m. to 3 p.m. the following day. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: This temporary regulation becomes effective on June 15, 1991 from 11 a.m. to 3 p.m. In the event of inclement weather, these regulations will be in effect for the same time period on June 16, 1991.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Eric G. Westerberg, U.S. Coast Guard, (617) 223-8310.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold the event was not received by this office until April 29, 1991 and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this notice are Lieutenant (junior grade) E.G. Westerberg, U.S. Coast Guard, Project Officer, Boating Safety Office and Lieutenant R.E. Korroch, U.S. Coast Guard, Project Attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The Newburyport Grand Prix is a high speed powerboat race event which is held annually in Ipswich Bay off of Plum Island, MA. Regulated areas will be the race course and a 200 yard regulated area around the perimeter of the race course. No vessel other than participants or those vessels authorized by either the sponsor or the Coast Guard Patrol Commander shall enter the regulated area. There will be a designated area inside the regulated area for spectator boats. The regulated area will be patrolled by the Coast Guard, Coast Guard Auxiliary, sponsor provided patrols and state and local law enforcement officials.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section, 100.35-T9151 is added to read as follows:

§ 100.35-T9151 Newburyport Grand Prix, Newburyport, MA.

(a) *Regulated Area:* The race course is a triangular area in Ipswich Bay off of Plum Island bounded by the following:

Turn 1: Longitude 42-42-36 North, Latitude 070-43-00 West.

Turn 2: Longitude 42-45-12 North, Latitude 070-42-06 West.

Turn 3: Longitude 42-48-06 North, Latitude 070-46-00 West.

The area two hundred yards around the perimeter of the race course will also be a regulated area.

(b) *Special Local Regulations:* (1) The regulated area shall be closed to all vessel traffic during the effective period, except as may be allowed by the Coast Guard Patrol Commander.

(2) No person or vessel shall enter or remain in the regulated area while it is closed unless participating in or authorized by the event sponsor or Coast Guard patrol personnel.

(3) All persons or vessels not registered with the sponsor as participants or not part of the regatta patrol are considered spectators. Spectator vessels should be at anchor within the designated spectator area. The spectator area will be between turn points 1 and 3 in the 200 yard regulated area and will be marked by two Coast Guard cutters. Spectators not in the spectator area shall remain 200 yards from the perimeter of the race course.

(4) The race committee will provide the following vessels: 3 turn boats, 6 crash boats and 3 medical boats. All race committee vessels will be identified by an orange, red, yellow or red cross flag.

(5) The competing vessels will assemble at the milling area located adjacent to turn point #3. The Coast Guard will escort the race boats from the marina to the milling area. Race boats will remain in the milling area until permission to start the race has been granted by the Patrol Commander. The race will run in a counterclockwise direction around the race course.

(6) A start boat will lead all the vessels from the military area to the start/finish line.

(7) The drivers must remain on the course when racing. If they stray off of the course they must come off plane and return to the course at bare steerageway. Only disabled race boats will be allowed to enter the spectator area. If a contestant enters the spectator area for any other reason they will be automatically disqualified and the race may be terminated.

(8) The Patrol Commander reserves the right to cancel the race in its entirety or to suspend the race for safety violations at any time including during the race.

(9) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(c) *Effective dates:* This regulation will be effective from 11 a.m. to 3 p.m. on June 15, 1991. In case of inclement weather this regulation will be effective from 11 a.m. to 3 p.m. on June 16, 1991.

Dated: May 16, 1991.

R. I. Rybacki,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 91-12806 Filed 5-30-91; 8:45 am]

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33 CFR Part 117

[CGD 91-036]

Drawbridge Operation Regulations; Apponagansett River, MA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Town of Dartmouth, the Coast Guard is changing the regulations governing the Padanaram (Gulf Road) drawbridge across the Apponagansett River, at mile 1.0, at Dartmouth, Massachusetts by permitting scheduled openings on the hour and half hour from May 1 through October 31 from 5 a.m. to 9 p.m., and by requiring the installation of clearance gauges on the bridge piers to minimize bridge openings. This change is being made in an effort to reduce marine and vehicular traffic delays caused by present restriction that created frequent and long openings of the bridge. This action will accommodate the current needs of vehicular traffic, and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective July 1, 1991.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, at (212) 668-7170.

SUPPLEMENTARY INFORMATION: On January 22, 1991 the Coast Guard published proposed rules Volume 56 FR 2156 concerning this amendment. The Commander, First Coast Guard District, also published the proposal as a Public Notice dated January 21, 1991. In each notice interested persons were given until March 8, 1991, to submit comments.

Drafting Information

The drafters of this notice are Jose M. Arca, Jr., project officer, and LT. John B. Gately, project attorney.

Discussion of Comments

No comments were received. The Coast Guard decided to issue the regulation after considering all available information. The regulation will be less restrictive to the mariner and will permit a more orderly flow of vehicular traffic. This change also incorporates operating procedures that had already been unofficially implemented by the Town of Dartmouth.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This determination is based on the fact that the proposed scheduled bridge openings will permit more frequent, and evenly distributed opening times for both vehicular and marine traffic with less disruption to the other mode of transportation. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Federalism Implication Assessment

This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that this regulation will not have sufficient federalism implications to warrant preparation of a federal assessment.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.587 is revised to read as follows:

§ 117.587 Apponagansett River.

(a) The following requirements apply to all bridges across the Apponagansett River:

(1) Public vessels of the United States, state and local vessels used for public safety and vessels in distress shall be passed as soon as possible. The opening signal from these vessels is four or more short blasts of a whistle or horn or a radio request.

(2) Mooring facilities shall be maintained at bridge piers or fenders for vessels to make fast to while waiting for the draw to open.

(3) The bridge owners shall provide and keep in good legible condition clearance gauges with figures not less than 10 inches high designed, installed and maintained in accordance with the provisions of § 118.160 of this chapter.

(b) The draw of the Padanaram Highway (Gulf Road) drawbridge, mile 1.0 at South Dartmouth, except as provided in (a)(1) above, shall open as follows:

(1) From 1 May to 31 October from 5 a.m. to 9 p.m. daily need open, on signal, only on the hour and half hour.

(2) At all other times, on signal if at least six hours notice is given.

Dated: May 22, 1991

R.I. Rybacki,

RADM, USCG, Commander 1st Coast Guard District.

[FR Doc. 91-12809 Filed 5-30-91; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3960-7]

Reconsideration of Certain Federal RACT Rules for Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rule; partial stay and reconsideration.

SUMMARY: On January 4, 1991 (56 FR 460), USEPA announced a three-month partial stay reconsideration of certain federal rules requiring reasonably available control technology (RACT) to control volatile organic compound (VOC) emissions in the Illinois portion of the Chicago ozone nonattainment area. That action was taken pursuant to Clean Air Act (CAA) 307(d)(7)(B), 42 U.S.C. 7607(d)(7)(B), which authorizes the Administrator to stay the effectiveness of a rule during reconsideration. Elsewhere in the January 4, 1991 **Federal Register** (at 56 FR 463) USEPA proposed to extend the stay beyond the three-month period, if and as necessary to complete reconsideration of the subject rules (including any appropriate regulatory action), pursuant to the Agency's authority to revise a Federal Implementation Plan by following rulemaking procedures in CAA 110(c) and 301(a)(1), 42 U.S.C. 7410(c) and 7601(a)(1). Public comment was solicited on USEPA's proposed extension of the stay and an opportunity for requesting a public hearing was provided.

Today's rulemaking responds to the public comments received. It also announces USEPA's final rule imposing a stay for the rules under reconsideration, but only if and as necessary to complete reconsideration of these rules.

EFFECTIVE DATE: July 1, 1991.

ADDRESSES: The docket for this action (Docket No. 5A-91-1) which contains the public comments, is located for public inspection and copying at the following addresses. We recommend that you contact Randolph O. Cano before visiting the Chicago location and Gloris Butler before visiting the Washington, DC location. A reasonable fee may be charged for copying.

U.S. Environmental Protection Agency, Region V, Regulation Development Branch, Twenty Sixth Floor, Northeast, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6036.

U.S. Environmental Protection Agency, Docket No. 5A-91-1, Public Information Reference Unit (pm-211D) room 2904, Waterside Mall, 401 M Street SW, Washington, DC 20460, (202) 245-3639.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Regulation Development Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6036.

SUPPLEMENTARY INFORMATION: On January 4, 1991 (56 FR 463), USEPA proposed to extend a three-month stay imposed on January 4, 1991 (56 FR 460) for the following RACT rules, including the applicable compliance dates being reconsidered: (1) The emission limitations and standards for "top coat" and "final repair coating" operations only as applied to General Motors Corporation at their diesel-electric locomotive coating lines in Cook County, Illinois (55 FR at 26868-9), codified at 40 CFR 52.741(e)(1)(i)(M) (*2*) and (*3*), as well as the July 1, 1991, compliance date (55 FR 26872), codified at 40 CFR 52.741(e)(5); (2) the emission limitations and standards for miscellaneous fabricated product manufacturing processes and miscellaneous formulation manufacturing processes only as applied to Viskase Corporation's cellulose food casing manufacturing facility in Bedford Park, Illinois (55 FR 26883-4), codified at 40 CFR 52.741 (u) and (v), as well as the July 1, 1991, compliance date (55 FR 26883-4), codified at 40 CFR 52.741 (u)(4) and (v)(4); and (3) the emission limitations and standards for miscellaneous fabricated product manufacturing processes only as applied to Allsteel, Incorporated's adhesive lines at their metal furniture manufacturing operations in Kane County, Illinois (55 FR 25883), codified at 40 CFR 54.741(u), as well as the July 1, 1991, compliance date (55 FR 26883), codified at 40 CFR 52.741(u)(4).

The proposed temporary stay beyond the three months expressly provided in section 307(d)(7)(B) was to remain in effect until withdrawn by a subsequent rule, but only if and as necessary to complete USEPA's rulemaking on the reconsidered actions. The notice proposed to issue the stay pursuant to CAA §§ 110(c) and 301(a)(1), 42 U.S.C. 7410(c) and 7601(a)(1).

Response to the Public Comments

Two public comments were received in support of USEPA's proposed extension of the partial stay. Both cited the complex issues involved as support for the indefinite stay. In addition, one of the commentors pointed out an error in the notice announcing the three-month stay. Specifically at 56 FR 460 (col. 1), the citation of 40 CFR 52.741(u) was incorrectly referred to as 40 CFR 54.41(u). Elsewhere in the proposed rule, the section is correctly referred to as 40 CFR 52.741(u). USEPA regrets any inconvenience or confusion that this error may have caused. No comments requested an opportunity for the oral presentation of comments.

Final Rulemaking Action

Based on the public comments received in support of USEPA's proposed rulemaking action to extend the stay beyond the three months provided in section 307(d)(7)(B) of the CAA, USEPA announces an extension of the stay, but only if and as long as necessary to complete reconsideration of the rules identified in the proposal. At that time, USEPA will publish a rule in the **Federal Register** notifying the public of the withdrawal of this stay.

USEPA intends to complete its reconsideration of the rules and, following the notice and comment procedures of section 307(d) of the CAA, take appropriate action. If the reconsideration results in emission limitations and standards which are stricter than the existing and applicable Illinois rules, USEPA will propose a compliance period of one year from the date of final action on reconsideration. Note that a one year compliance period was the general compliance period provided in the federal RACT rules (55 FR at 26814). Like the rules themselves, any USEPA proposal regarding the appropriate compliance period would be subject to the notice and comment procedures of CAA 307(d).

USEPA recognizes the interests of the State of Wisconsin in this matter. The regulatory requirements that are affected by today's proposal were undertaken in the context of a settlement agreement between USEPA and the States of Wisconsin and Illinois. In recognition of those obligations, USEPA will reconsider the rules in question as expeditiously as practicable. Under Executive Order 12291 this action is not "major". It has been submitted to the Office of Management and Budget for review.

List of Subjects in 40 CFR Part 52

Air pollution contol, Ozone.

Dated: May 21, 1991.

William K. Reilly,

Administrator.

Identification of Action: Final Rule approving an extended Stay of portions of the Chicago Federal Ozone Plan as applied to General Motors Corporation's Electromotive Division, Viskase Corporation and Allsteel, Incorporated (IL 12-2-5129).

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

Subpart O—Illinois

2. Section 52.741, is amended by revising paragraph (z) to read as follows:

§ 52.741 Control Strategy: Ozone Control Measures for Cook, DuPage, Kane, Lake, McHenry and Will Counties.

* * * * *

(z) *Rules Stayed.* Not withstanding any other provision of this subpart, the effectiveness of the following rules is stayed as indicated below.

(1) The following rules are stayed from January 4, 1991 until USEPA completes its reconsideration as indicated (i) 40 CFR 52.741(e)(1)(i)(M) (2) and (3), and 40 CFR 52.741(e)(5); (ii) 40 CFR 52.741 (u) and (v), including 40 CFR 52.741 (u)(4) and (v)(4) only as applied to Viskase Corporation's cellulose food casing manufacturing facility in Bedford Park, Illinois; and (iii) 40 CFR 54.741(u), including 40 CFR 52.741(u)(4), only as applied to Allsteel, Incorporated's adhesive lines at its metal furniture manufacturing operations in Kane County, Illinois.

* * * * *

[FR Doc. 91-12890 Filed 5-30-91; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 901246-1100]

RIN 0648-AC88

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; interim final rule and request for comments.

SUMMARY: NOAA issues this final rule to implement amendment 4 (Amendment) to the Fishery Management Plan for the Northeast Multispecies Fishery (FMP). This rule: (1) Closes the Southern New England yellowtail area for the time period March through May and imposes mesh regulations when the area is open; (2) modifies the Exempted Fisheries Program to include enhanced reporting requirements, changes to target species allowances, and facilitation of sea sampling; (3) provides authority for gear restriction modifications in the northern shrimp fishery; (4) regulates the stowage of nets and mesh; (5) establishes a fishery for silver hake on Cultivator Shoals in the Regulated Mesh Area; and (6) modifies the management unit to include silver hake, red hake, and ocean pout. The interim final rule requires that nets with small mesh stowed below deck be secured in a manner consistent with what is required for nonconforming nets and mesh stowed on deck—specifically, that they be fan-folded (flaked) and bound around their circumferences. Because this specific requirement was not included in the proposed rule (56 FR 979, January 10, 1991), public comment on it is requested. The intended effect is to improve the overall effectiveness of existing management measures and enhance the conservation of the groundfish stocks. The proposed measure to implement a minimum mesh size of 2½ inches (6.35 cm) and the proposed measure to establish framework measures to protect yellowtail flounder and Atlantic cod were disapproved by the Secretary of Commerce (Secretary) and are not included in this final rule.

DATES: *Effective Date:* June 27, 1991. Written comments on the stowage requirement contained in § 651.20(f)(1)(iii) will be considered if received on or before June 12, 1991.

ADDRESSES: Copies of the Amendment, Environmental Assessment (EA), and Regulatory Impact Review (RIR), and other supporting documents are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01960. Comments on the small mesh stowage requirement, contained in § 651.20(f)(1)(iii), should be sent to Richard B. Roe, Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Jack Terrill (NMFS, Resource Policy Analyst), 508-281-9252.

SUPPLEMENTARY INFORMATION: Amendment 4, which this rule implements, was prepared by the New England Fishery Management Council (Council) under the provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act), as amended, 16 U.S.C. 1801 *et seq.* A notice of availability of amendment 4 was published on December 7, 1990 (55 FR 50572), and the proposed rule was published on January 10, 1991 (56 FR 979).

Approved Measures

The Secretary has approved six of the eight measures proposed by the Council in amendment 4. The Secretary approved, and this final rule implements: (1) An expansion of the Southern New England/Mid-Atlantic Region yellowtail closure area and a 5½ inch (13.97 cm) minimum mesh size requirement when the area is open; (2) changes to the Exempted Fisheries Program to include modified reporting requirements, a requirement to carry a sea sampler if requested, redesignation of the target species; (3) provisions that allow gear restriction modifications in the northern shrimp fishery to minimize bycatch of regulated species; (4) requirements for the stowage of small mesh nets when in the Regulated Mesh Area; (5) a fishery for silver hake on Cultivator Shoals and impose time, area, mesh size, reporting, and sea sampler requirements; and (6) the inclusion of silver hake, red hake, and ocean pout in the management unit.

Disapproved Measures and the Reasons for Disapproval

Two additional measures that had been proposed by the Council in amendment 4 have been disapproved by the Secretary. The measure that proposed a minimum mesh size of 2½ inches (6.35 cm) was determined to be inconsistent with National Standard 1 of the Magnuson Act. National Standard 1 states that "conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry." The retention characteristics of the proposed mesh size would be virtually the same as is currently in use, as indicated by a mesh selectively curve presented in the Amendment. As a result, the proposed mesh size would do little to prevent overfishing. Accordingly, the benefits of going from 2 inch (5.08 cm) to 2½ inch (6.35 cm) mesh were overstated in the Amendment. The many exemptions to the 2½ inch (6.35 cm) mesh further reduce any likely benefits.

The Amendment failed to provide an analysis showing any increase in percent maximum spawning potential (% MSP) for silver hake resulting from this measure. The Council has defined overfishing as occurring when the % MSP target levels are not achieved. Further, there is no evidence that the proposed mesh size would reduce fishing mortality rather than shift it to other age classes.

The economic analysis of the proposed measure failed to demonstrate any benefit over a 10-year period, inconsistent with Executive Order 12291 (E.O. 12291), which requires that regulatory action not be undertaken unless the potential benefits to society outweigh the costs. The net result would have been a discounted loss of $2 million and 50 jobs. The Mid-Atlantic region would bear the major impact of this measure, a statement supported by comments on the proposed mesh size.

The second measure that was disapproved proposed a means to close quickly areas that had been determined to have high discards of sublegal (below the minimum size) multispecies finfish. The Technical Monitoring Group of the Council had previously reported to the Council that short-term, reactive time/area closures may be "inappropriate for yellowtail flounder, since juveniles are resident due to fairly well-defined nursery areas. Annual fixed closures in space and time are more sensible." For Atlantic cod this approach may be more reasonable but could be hampered by fairly rapid shifts in distribution, as well as NMFS' ability to determine rapidly that a problem exists. Given the depleted status of the yellowtail flounder resource, a 49 percent discard rate before action is taken is not acceptable. The Flexible Area Action System (FAAS) is already in place and can be implemented to handle any occurrences until a more effective procedure is developed.

The success of this measure would depend on sea sampling, which is opportunistic rather than guaranteed. Sea samplers may not be available or be in the right place to collect information needed to determine if the action is to be initiated. Short-term time/area closures may shift fishing mortality to other segments of the population or merely postpone it. Furthermore, quantification or biological benefits was done and thus, it cannot be shown that these measures prevent overfishing, which is inconsistent with National Standard 1.

Comments and Responses

Written comments were submitted by Raymond Bogan (Hrymack & Bogan), Cape Ann Vessel Association, Conservation Law Foundation of New England, Inc., Fisherman's Dock Cooperative/Belford Seafood Cooperative, The Gloucester Fishermen's Program, Gloucester Fishermen's Wives Association, Gloucester Inshore Fisheries Association, Massachusetts State Representative Bruce Tarr, Mid-Atlantic Fisheries Management Council, New Jersey Fisheries Development Commission, Joseph Seminara (Wolff, Seminara & Mitherz), West End Fishermen's Association and 103 individuals. The Cape Ann Vessel Association submitted a petition signed by 708 individuals.

Comment: Six commenters stated their opposition to the measure specifying a minimum mesh size of 2½ inches (6.35cm). They stated that the measure was unnecessary in the Mid-Atlantic because: (1) The Southern stock of silver hake has been determined to be underexploited; (2) there are no significant groundfish stocks off northern New Jersey/western Long Island, New York, resulting in little bycatch and subsequent fishing mortality; (3) the proposed mesh would result in a loss of the bycatch of squid and a loss of resultant revenues; and (4) the silver hake fishery is economically important to the ports of northern New Jersey. As an alternative, the commenters proposed a limited groundfish permit that would allow the vessel operator to fish with a minimum mesh of 2 inches (5.08cm) in an area west of 72° W. longitude from October 1 to June 30. One commenter supported the implementation of a 2½ inch (6.35cm) minimum mesh size.

Response: The measure, for the reasons stated in the preamble, has been disapproved. The measure as proposed would not prevent overfishing, and the benefits associated with its implementation would not be greater than the costs.

Comment: Numerous commenters and the signers of the Cape Ann Vessel Association petition stated their opposition to the framework measure responding to sublegal cod discards on Stellwagen Bank/Jeffreys Ledge. They opposed any closure, stating that the existing mesh size would be sufficient to eliminate discards of juvenile fish. They stated that the time period of February 1 to July 31 was too long and suggested an alternative period of from March 31 to May 31. The commenters suggested that the sea sampling be conducted weekly rather than bi-weekly and stated that the decision to take action should not reside solely with the Regional Director, but rather jointly with the Regional Director, the Council Chairman, and the Chairman of the Multispecies Committee of the Council.

Response: The measure, as stated previously, has been disapproved.

Comment: The U.S. Coast Guard made several comments of minor technical or editorial nature.

Response: These comments are addressed in the "Changes from the Proposed Rule" section below.

Comment: The U.S. Coast Guard recommended that the net stowage requirements be changed to include a requirement that vessels with nonconforming nets with small mesh stowed below deck must have them fan-folded (flaked) and secured. This change had been discussed by the Council but was not included in the amendment.

Response: The change will enhance the enforceability of the measure and is inconsistent with what is required on deck. Since it was not included in the proposed rule, NOAA is issuing this requirement as an interim final rule with request for public comment. After the comment period, NOAA will continue, discontinue, or modify the requirements, as appropriate. The change is included in the stowage requirements contained in § 651.20(f)(1)(iii).

Comment: One commenter stated that the amendment was in violation of the Magnuson Act because it was inconsistent with National Standard 1. The commenter noted that the Council has acknowledged that the major stocks have been overfished, but the amendment does not provide a program to rebuild them. The commenter stated that several of the measures would strengthen and extend the age-at-entry controls, but the amendment is insufficient to rebuild the stocks.

Response: Two of the measures were found to be inconsistent with the Magnuson Act or E.O. 12291, for the reasons stated previously. The remaining measures, although they do not constitute a complete rebuilding strategy, are steps necessary to the rebuilding program that the Council is currently developing in amendment 5 to the FMP. As listed above, the closed-area aspect of measure 1 and the modifications in measures 2, 3, and 4 will enhance information collection, facilitate enforcement, and provide greater protection to juvenile or regulated species. Measure 1 imposes a minimum mesh size of 5½ inches (13.97cm) in the Southern New England Yellowtail Closure Area. A 5½-inch (13.97cm) minimum mesh size had been previously implemented through a FAAS action intended to reduce sublegal yellowtail flounder discards with resultant mortality. However, FAAS actions can only be taken on a temporary basis. Amendment 4 imposes this minimum mesh size whenever the fishery is open.

Measure 5 established a fishery for silver hake on Cultivator Shoals that has been conducted since 1987 through the experimental fishery authority provided by the FMP. This experimental fishery, using sea samplers as observers, was shown to take a minimal bycatch of regulated species. The results of the experimental fishery were incorporated into the conditions under which this fishery will operate.

Measure 6 incorporates silver hake, red hake, and ocean pout into the management unit. These are species taken by groundfish vessels that have been regulated through the Exempted Fisheries Program. It is appropriate to include them in the multispecies management unit to prevent overfishing.

These measures in and of themselves are not expected to achieve the rebuilding goals the Council has set for this fishery, but they are designed as steps necessary to the rebuilding program to be addressed in amendment 5. As stated in the amendment, the Council has already begun efforts on an amendment specifically designed to begin the rebuilding of multispecies stocks within an established timeframe.

Comment: One commenter stated that the Exempted Fishery Program area should be expanded to include the entire range of the management unit with specific exemptions and reporting requirements.

Response: This suggestion was not proposed, had not had the benefit of public review, or been subjected to any analysis of possible impacts. Consequently, it could not be implemented at this time. It will be forwarded to the Council for their consideration.

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Comment: One commenter stated that at-sea trials be conducted in the area of implementation before any change in shrimp gear be required.

Response: The rule requires that the Council, Atlantic States Marine Fisheries Commission (ASMFC), and NMFS review information on shrimp gear technology before modifying the gear restrictions. One of the factors that will have to be considered is the effect of the gear in the area of implementation. Once a gear restriction is proposed, there will be opportunity for public comment before a final decision is made.

Comment: One commenter supported the inclusion of silver hake, red hake, and ocean pout to the management unit.

Response: The measure is part of the approved amendment.

Comment: One commenter supported the implementation of a small mesh fishery for whiting on Cultivator Shoals.

Response: The measure is part of the approved amendment.

Comment: One commenter stated that a 50 percent discard criterion for triggering action to prevent discard mortality on yellowtail flounder was too high. The commenter felt that the discards were occurring because of the use of mesh that was smaller than 5½ inches (13.97 cm).

Response: the measure has been disapproved for the reasons stated previously.

Comment: One commenter stated that a regulation that required one mesh on board a vessel was needed rather than the proposed stowage language.

Response: One mesh on board a vessel would facilitate enforcement of mesh requirements. In several of the previous amendments to the FMP, including amendment 4, not allowing nonconforming nets and mesh to be carried on board at the same time has been one of the alternatives adopted by the Council for public hearing. However, the response at public hearing favored the gear stowage alternative. The public cited costs of storage of nets on land, lack of alternatives when fishing, and safety caused by vessels having to travel greater distances to avoid large mesh areas when in possession of nonconforming nets and mesh. Based upon the public comments received, the Council chose to go with the less restrictive alternative.

Comment: One commenter stated that vessels targeting yellowtail flounder in the Southern New England Yellowtail Flounder Closed Area should be required to use a mesh size and shape that would lower retention of juvenile yellowtail flounder.

Response: One of the approved measures increases the mesh size currently in use in this area. The increase will reduce the retention of juvenile yellowtail flounder and discard mortality.

Changes From the Proposed Rule

1. The disapproval of two measures requires that the following changes be made from the proposed rule:

a. Sections 651.20, 651.21(g), 651.22(b)(iii), 651.22(c), 651.22(d), 651.23(e)(1), and Figures 5 and 6 from the proposed rule are eliminated;

b. The changes specified in the proposed rule for § 651.7 (a)(1), (b)(3), (b)(4), (b)(5), (b)(6), (b)(8), (b)(11), and (b)(12) are no longer necessary;

c. The proposed redesignation of certain sections is no longer necessary with the disapproval of the minimum mesh size measure. The minimum mesh size measure had been designated as § 651.20, which required the renumbering of succeeding sections. The numbering of these sections reverts back to its original form;

d. Figure 7 from the proposed rule is redesignated as Figure 5; and

e. The definition of biweekly is deleted from § 651.2.

2. In commenting on the Amendment, the U.S. Coast Guard made several suggested changes or corrections. These were:

a. Section 651.7(b)(14) should reference § 651.21(a)(3)(iv) rather than § 651.21(a)(i);

b. References to straight lines in area coordinates should include the "rhumb lines" at § 651.27(b); and

c. Section 651.20(f) should include the language "(iii) The net is fan-folded (flaked) and bound around its circumference." Changes (a) and (b) have been incorporated into the final rule. The third change is being issued as an interim final rule with a request for comments.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), determined that amendment 4 is necessary for the conservation and management of the Northeast multispecies fishery and that it is consistent with the Magnuson Fishery Conservation and Management Act and other applicable law.

The Assistant Administrator has determined that this rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This rule is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared an environmental assessment (EA) for the Amendment and the Assistant Administrator concluded that there will be no significant impact on the environment as a result of this rule. A copy of the assessment may be obtained from the Council (see **ADDRESSES**).

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act. the Exempted Fisheries Program information requirement in § 651.23(f) and the Cultivator Shoal Whiting Fishery information requirement in § 651.28(c)(3) have been approved by OMB. The public reporting burdens are 5 minutes per response for each submission. These collections of information were previously approved under OMB control number 0648–0212. The permitting requirement under § 651.28(c) has also been approved by OMB under control number 0648–0258. This requirement has a public reporting burden of 2 minutes. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments on the reporting burden estimates or any other aspect of the collections of information, including suggestions for reducing the burdens, to Jack Terrill, NMFS, One Blackburn Drive, Gloucester, MA 01930; and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503 (Attn: Paperwork Reduction Act Projects 0648–0212 and 0648–0258).

The Council prepared a regulatory impact review/regulatory flexibility analysis that analyzes the economic impacts of this rule and describes its effects on small business entities. A summary of those impacts and effects was included in the proposed rule and is not repeated here.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management programs of New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and North Carolina. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. Massachusetts, Connecticut, New York, New Jersey, and North Carolina agreed with the determination. None of the other States commented within the statutory time period, and, therefore, consistency is automatically inferred.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 651

Fishing, Fisheries, Vessel permits and fees.

Dated: May 24, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 651 is amended as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

1. The authority citation for part 651 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 651.2 is amended by adding a definition of *codend* and revising the definition of *Multispecies finfish* to read as follows:

§ 651.2 Definitions.

Codend means the terminal section of a trawl net in which captured fish may accumulate.

* * * * *

Multispecies finfish includes, but is not limited to, the following finfish in the Northeast portion of the Atlantic Ocean EEZ.

Gadus morhua	Atlantic cod.
Glyptocephalus cynoglossus	witch flounder.
Hippoglossoides platessoides	American plaice.
Limanda ferruginea	yellowtail flounder.
Macrozoarces americanus	ocean pout.
Melanogrammus aeglefinus	haddock.
Merluccius bilinearis	silver hake.
Pollachius virens	pollock.
Pseudopleuranectes americanus	winter flounder.
Scophthalmus aquosus	windowpane flounder.
Sebastes marinus	redfish.
Urophycis chuss	red hake.
Urophycis tenuis	white hake.

* * * * *

3. In § 651.7, the first paragraph is designated "(a)"; paragraph (b)(2) is revised, new paragraphs (b)(12), (b)(13), (b)(14) and (c) are added, and paragraph (d) is revised to read as follows:

§ 651.7 Prohibitions.

* * * * *

(b) * * *

(2) Fish within the areas described in § 651.20(a) with nets of mesh smaller than the minimum size specified in § 651.20(b), unless the vessel is certified in an exempted fishery program established under § 651.22.

* * * * *

(12) Fish within the areas described in § 651.27 without a permit issued under § 651.27(c).

(13) Violate any provisions of the Cultivator Shoals Whiting Fishery specified in § 651.27.

(14) Violate any provisions specified in § 651.20(a)(3)(iv), § 651.20(d), § 651.20(e)(2), and § 651.20(f).

(c) It is unlawful to violate any other provision of this part, the Magnuson Act, or any regulations or permit issued under the Magnuson Act.

(d) *Presumption.* The possession for sale of regulated species that do not meet the minimum sizes specified in § 651.23 for sale will be prima facie evidence that such regulated species were taken or imported in violation of these regulations. Evidence that such fish were harvested by a vessel not holding a permit under this part and fishing exclusively within state waters will be sufficient to rebut the presumption. This presumption does not apply to fish being sorted on deck.

4. Section 651.20 is amended by adding new paragraph (a)(3) and by revising paragraphs (b)(1), (b)(3), and (f) to read as follows:

§ 651.20 Regulated mesh area and gear limitations.

(a) * * *

(3) Southern New England Yellowtail Area (Figure 3):

(i) Bounded by straight lines (rhumb lines) connecting the following points in the order stated:

Point	Latitude	Longitude
A	40°33.5' N.	66°40' W.
N	40°26.5' N.	70°40' W.
O	40°40.5' N.	70°40' W.
P	40°30' N.	72°00' W.
Q	40°17.8' N.	72°00' W.
R	40°15.5' N.	72°20' W.
S	40°39.0' N.	72°20' W.
T	40°42.0' N.	72°00' W.
U	40°48.2' N.	72°00' W.
V	41°00' N.	70°48.5' W.
W	41°00' N.	70°30' W.
X	40°50' N.	70°30' W.
Y	40°50' N.	66°40' W.
A	40°33.5' N.	66°40' W.

(ii) Vessels fishing with mesh smaller than that specified in paragraphs (b) and (c) of this section may not have any yellowtail flounder stored on deck in baskets, fish boxes (totes), or other containers, or below deck in any form. Vessels with yellowtail flounder and nonconforming nets and mesh aboard must follow the regulations pertaining to the carrying of nonconforming nets and mesh specified in paragraph (f) of this section.

(b) *Trawl nets*—(1) *Diamond mesh.* Except as provided for in §§ 651.20(b)(3), 651.20(d), and 651.22, the minimum mesh size for any trawl net, including midwater trawls, or Scottish seine, used by a vessel fishing in the mesh area described in paragraphs (a)(1), (a)(2), and (a)(3) of this section, is 5½ inches (13.97 cm) throughout the entire net.

* * * * *

(3) *Selective shrimp gear.* (i) The Council, in consultation with the ASMFC and NMFS, will review information on shrimp gear technology annually.

(ii) For 1991, the Council, in consultation with ASMFC, will make a recommendation to the Regional Director by July 15, on the appropriate shrimp gear to be used. The recommendation will include an economic impact analysis prepared by the Council and will specify the type of shrimp gear that should be used to minimize the bycatch of multispecies finfish. The Regional Director will publish notice of the Council's recommendation following the procedure of paragraph (b)(3)(iv) of this section.

(iii) For 1992 and after, if a change in shrimp gear is determined to be necessary, the Council will prepare an economic impact analysis and make a recommendation to the Regional Director by July 15 of each year. This recommendation will include the economic analysis and will specify the type of shrimp gear that should be used to minimize the bycatch of multispecies finfish.

(iv) The Regional Director will publish a notice in the **Federal Register** informing the public of the Council's recommendation and making available the economic impact analysis. The notice will initiate a 30-day public comment period. Upon review of the public comments, a final notice informing the public of the Regional Director's decision to approve/disapprove the Council's recommendation and to specify the gear requirements will be published in the **Federal Register**.

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(v) The shrimp season will extend from December 1 through May 30 unless modified by the ASMFC.

* * * * *

(f) Except as provided in paragraph (d) of this section, no vessel issued a permit under § 651.4 may have available for immediate use any net, or any piece of a net, not meeting the requirements specified in paragraphs (b) and (c) of this section, or mesh that is rigged in a manner that is inconsistent with § 651.20(e)(2), while in the areas described in paragraph (a) of this section. A net that conforms to one of the following specifications and that can be shown not to have been in recent use is considered to be not "available for immediate use":

(1) A net stowed below deck, provided:

(i) It is located below the main working deck from which the net is deployed and retrieved;

(ii) The towing wires, including the "leg" wires, are detached from the net;

(iii) It is fan-folded (flaked) and bound around its circumference.

(2) A net stowed and lashed down on deck, provided:

(i) It is fan-folded (flaked) and bound around its circumference;

(ii) It is securely fastened to the deck or rail of the vessel; and

(iii) The towing wires, including the leg wires, are detached from the net.

(3) A net that is on a reel and is covered and secured, provided:

(i) The entire surface of the net is covered with canvas or other similar material that is securely bound;

(ii) The towing wires, including the leg wires, are detached from the net; and

(iii) The codend is removed from the net and stored below deck.

(4) Nets that are secured in a manner approved by the Regional Director, provided that the Regional Director has reviewed the alternative manner of securing nets and has published that alternative in the **Federal Register**.

5. Section 651.21 is amended by revising paragraph (b)(2) to read as follows:

§ 651.21 Closed areas.

* * * * *

(b) * * *

(2) The area defined in paragraph (b)(1) of this section will be regulated as follows:

(i) The area will be closed as of 0001 hours on March 1 of each year.

(ii) The entire area will be reopened at 2400 hours on May 31 of each year, or at an earlier date after May 1, by notice in the **Federal Register**, when the Regional Director, after consultation with the Council, determines that the close has achieved the appropriate spawning level for yellowtail and winter flounder.

* * * * *

6. Section 651.22, paragraphs (e) (2) and (3) and (f) are revised and a new paragraph (i) is added to read as follows:

§ 651.22 Exempted fishery program.

* * * * *

(e) * * *

(2) Participation in the exempted fisheries program is subject to:

(i) Seasonal limitations, exempted species, mesh and gear restrictions, and maximum percentage restrictions on the catch of other species as follows:

Period	June through November
Target Species	Dogfish, mackerel, red hake, silver hake, ocean pout, and squid
Restrictions	Regulated species weight may not exceed 10% for the reporting period or 25% on each trip of the total landings of dogfish, mackerel, red hake, silver hake, ocean pout, and squid.
Period	December through January
Target Species	Silver hake
Restrictions	Regulated species, other than silver hake, weight may not exceed 10% for the reporting period or 25% on each trip of the total landings of silver hake. Shrimp landings may not exceed 200 pounds (90.8 kg) on each trip during the months shrimp may be landed (see Northern Shrimp below).
Period	June through November
Target Species	Herring
Restrictions	Regulated species and silver hake weight may not exceed 1% of the total landings of herring on each trip.
Period	December through May, or as specified by ASMFC [1]
Target Species	Northern shrimp
Restrictions	Regulated species weight may not exceed 10% for the reporting period or 25% on each trip of the total landings of shrimp. Gear must comply with the shrimp gear specified according to § 651.21(b)(3).

[1] The Northern Shrimp Section of the Atlantic States Marine Fisheries Commission is responsible for the management of northern shrimp. The Section has the authority to adjust the regulatory period appropriate for the conservation of northern shrimp. The Section will consult the New England Fishery Management Council regarding recommendations to adjust the regulatory period with respect to the management of multispecies finfish.

(ii) A vessel may not participate in the exempted fishery programs for whiting and shrimp at the same time; however, participants in the Exempted Fishery Program for whiting may retain up to 200 pounds (90.7 kg) of shrimp per trip during the shrimp season.

(3) Adjustments in the seasons, species, or percentages of the exempted fisheries will be accomplished by regulatory amendment.

(f) *Recordkeeping and reporting.* The reporting period for the exempted fisheries will be equal to the participation period (from 7 to 30 calendar days). Within 1 week from the expiration of the reporting period or withdrawal from the program under paragraph (g) of this section, or receipt of a notice of revocation under paragraph (h) of this section, the participant must mail or deliver to the Regional Director a NOAA Form 88–30 "Tier Two Fishing Trip Record," listing, in pounds, all fish landed during participation in the Exempted Fishery Program on a trip-by-trip basis, or documentation that no fishing occurred. If no fish were landed, the participant must submit a document indicating no landings. In submitting NOAA Form 88–30, the participant may elect to identify the area fished by 10-minute squares instead of LORAN C coordinates, and is not required to estimate discards. The participant must provide, upon request of the Regional Director or his designee, trip landing records, kept in the normal course of business, that are certified as accurate by both the buyer and the seller for 1 year after his participation in the Exempted Fishery Program to confirm the information required on NOAA Form 88–30.

* * * * *

(i) *Sea Sampling.* (1) A participant in the Exempted Fishery Program must carry a sea sampler from the NMFS Domestic Sea Sampling Program, if requested to do so by the Regional Director.

(2) NMFS may waive the sea sampling requirement based on a finding that the facilities for housing the sea sampler or for carrying out sea sampler functions are so inadequate or unsafe that the health or safety of the sea sampler or the safe operation of the vessel would be jeopardized.

(3) The participant, master, and crew must cooperate with the sea sampler in the performance of the sea sampler's duties including:

(i) Providing adequate accommodations;

(ii) Allowing for the embarking and debarking of the sea sampler as specified by NMFS. The operator of a vessel must ensure that transfers of sea samplers at sea are accomplished in a safe manner, via small boat or raft, during daylight hours as weather and sea conditions allow, and with the agreement of the sea sampler involved;

(iii) Allowing the sea sampler access to all areas of the vessel necessary to conduct sea sampler duties;

(iv) Allowing the sea sampler access to communications equipment and navigation equipment as necessary to perform sea sampler duties;

(v) Providing true vessel locations by latitude and longitude or loran coordinates, upon request by the sea sampler;

(vi) Providing marine specimens, as requested;

(vii) Notifying the sea sampler in a timely fashion of when commercial fishing operations are to begin and end; and

(viii) Complying with other guidelines, regulations or conditions that NMFS may develop to ensure the effective deployment and use of sea samplers.

7. A new § 651.27 and Figure 5 are added to read as follows:

§ 651.27 Cultivator Shoal whiting (silver hake) fishery (Figure 5).

(a) A fishery for whiting may occur annually in the regulated mesh area (§ 651.20), subject to the conditions specified below.

(b) The Cultivator Shoal whiting fishery may occur in the area bounded by straight lines (rhumb lines) connecting the following points in the order stated:

CULTIVATOR SHOAL WHITING FISHERY

Reference point	Latitude	Longitude	Approximate	
			Loran	Coordinates
C1	42°10'N	68°10'W	13132	43970
C2	41°25'N	68°45'W	13527	43767
C3	41°05'N	68°20'W	13495	43627
C4	41°55'N	67°40'W	13074	43861

Note: Loran lines and positions are included for the convenience of fisherman.

(c) The Regional Director will issue permits to fish for whiting in the prescribed area subject to the following conditions:

(1) The trip bycatch limit under which the combined landings of regulated species [as defined in § 651.2) shall not exceed 1 percent of the landings of silver hake;

(2) The minimum mesh size of 2½ inches (6.35 cm) applied to the first 160 meshes counted form the terminus of the net must be used;

(3) A Tier Two Fishing Trip Record (NOAA FORM 88–30) must be received by NMFS for each fishing trip.

(d) The Regional Director will conduct periodic sea sampling to determine if there is a need to change the area or season designation, and evaluate the bycatch of regulated species, especially haddock.

(e) The Council will conduct an annual review of data to determine if there are any changes in area or season designation necessary, and make the appropriate recommendations to the Regional Director.

(f) Unless specified by publication of a notice in the **Federal Register**, the fishery will take place from June 15 through October 31.

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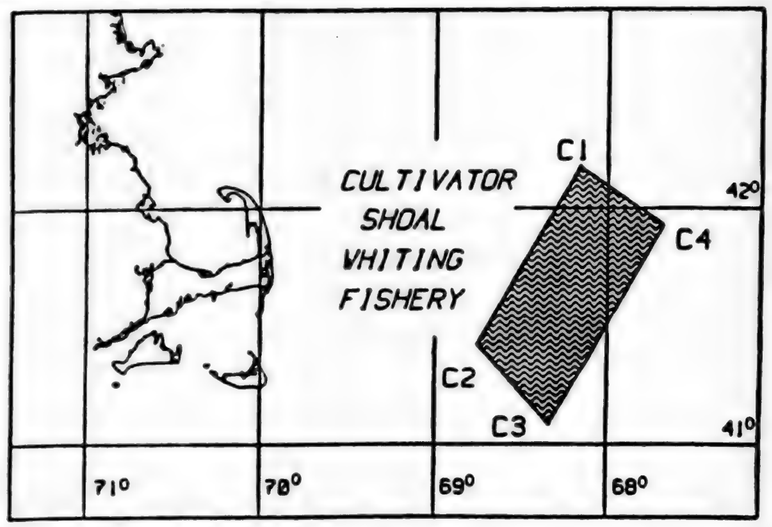

Figure 5. Cultivator Shoal Whiting Fishery. See text for details. This area is defined in §651.27.

[FR Doc. 91-12894 Filed 5-28-91; 91; 3:11 pm]
BILLING CODE 3510-22-M

50 CFR Part 663

[Docket No. 901076-0345]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of fishing restrictions, and request for comments.

SUMMARY: NOAA announces a reduction in the trip limit for sablefish caught with nontrawl gear in the groundfish fishery off Washington, Oregon and California. This action is authorized by the regulations implementing the Pacific Coast Groundfish Fishery Management Plan. The trip limit is designed to keep landings within the nontrawl quota for this species while extending the fishery as long as possible during the year.

EFFECTIVE DATE: 0001 hours (local time) May 24, 1991, through 2400 hours (local time) December 31, 1991, unless modified, superseded, or rescinded. Comments will be accepted through June 17, 1991.

ADDRESSES: Submit comments on this action to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115; or Charles E. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Northwest Region, NMFS) 206-526-6140, Rodney McInnis (Southwest Region, NMFS) 213-514-6199, or the Pacific Fishery Management Council at 503-221-6352.

SUPPLEMENTARY INFORMATION: Regulations implementing Amendment 4 to the Pacific Coast Groundfish Fishery Management Plan (FMP), published at 56 FR 736 (January 8, 1991), provide for rapid changes to specific management measures if they have been designated as "routine." This designation means that the identified management measure may be implemented and adjusted for a specified species or species group and gear type after consideration at a single meeting of the Pacific Fishery Management Council (Council), as long as the purpose of the measure is the same as originally established when the measure was designated as routine and the impacts of the measure already have been analyzed. Trip landing and frequency limits for sablefish caught with nontrawl gear are among those management measures that have been designated as routine at 50 CFR 663.23(c). This management measure falls within the scope of the impacts analyzed when Amendment 4 was implemented.

At its November 1990 meeting, the Council recommended three actions be taken in the nontrawl sablefish fishery in 1991: (1) from January 1-March 31, a 1,500 pound trip limit (for sablefish of any size); (2) on April 1, a trip limit, applicable only to sablefish smaller than 22 inches, of 1,500 pounds or 3 percent of all sablefish on board, whichever is greater; and (3) a 500 pound trip limit (for sablefish of any size), in order to stretch the nontrawl quota of 3,612 metric tons (mt) to the end of the year. The date that the 500 pound trip limit would be imposed would be determined by the Council's Groundfish Management Team (GMT), based on the best available information. These recommendations were approved by the Secretary and published in the **Federal Register** (56 FR 645) on January 8, 1991. By a regulatory amendment effective January 18, 1991, the regular season for the nontrawl sablefish fishery begins April 1 of each year (50 CFR 663.23(b)(2); January 25, 1991, 56 FR 2865).

This notice announces the effective date of the 500 pound trip limit. The GMT has projected that the total catch of sablefish caught with nontrawl gear through May 11 was approximately 3,023 mt, and that the 500 pound trip limit would need to be imposed on May 24, 1991, to avoid reaching the nontrawl sablefish quota before the end of the year. Consequently, NOAA announces that no more than 500 pounds (round weight) of sablefish of any size caught with nontrawl gear may be taken and retained, possessed, or landed after 0001 hours (local time) on May 24, 1991. All other provisions announced at 56 FR 736 (January 8, 1991) regarding sablefish caught with nontrawl gear remain in effect.

Classification

These actions are taken under the authority of, and in accordance with, the regulations implementing Amendment 4 to the FMP at 50 CFR part 663.23(c)(1)(i)(E).

This action is authorized by Amendment 4 to the FMP for which a Supplemental Environmental Impact Statement (SEIS) was prepared in accordance with the National Environmental Policy Act (NEPA). Because this action and its impacts have not changed significantly from those considered in the SEIS, this action is categorically excluded from the NEPA requirement to prepare an environmental assessment in accordance with paragraph 5a(3) of the NOAA Directives Manual 02-10.

This action is in compliance with Executive Order 12291, and is covered by the Regulatory Flexibility Analysis prepared for the authorizing regulations.

The public has had the opportunity to comment on this action. The public participated in GMT, Groundfish Advisory Subpanel, Scientific and Statistical Committee, and Council meetings in November 1990 that resulted in the recommendation to take this action. The intent to take this action was announced in the **Federal Register** on January 8, 1991, and no comments relevant to this action were received. Additional public comments will be accepted for 15 days after publication of this notice in the **Federal Register**.

List of Subjects in 50 CFR Part 663

Fisheries, fishing.

Authority: 16 U.S.C. 1601 *et seq.*

Dated: May 24, 1991.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-12801 Filed 5-31-91; 2:57 pm]
BILLING CODE 3510-22-M

50 CFR Part 685

[Docket No. 910374-1117]

RIN 0648-AD97

Pelagic Fisheries of the Western Pacific Region

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to implement Amendment 2 to the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (FMP). This rule requires longline and transshipping vessel owners to obtain permits for their vessels, and requires vessel operators to maintain and submit to NMFS logbook data on their fishing and transshipping activities. This applies to all operators of longline and transshipping vessels who conduct any part of their fishing activity shoreward of the outer boundary of the fishery management area. The rule also implements the amendment's application of the FMP to the fishery operating off the Commonwealth of the Northern Mariana Islands (CNMI), and for the management unit species to include tuna after 1991. The rule establishes a protected species zone in the Northwestern Hawaiian Islands (NWHI) and requires each vessel operator intending to fish in this zone to notify NMFS in advance and, if required by the Director, Southwest Region, NMFS (Regional Director), to carry an observer to record observations of protected species and incidents of interactions between the vessel or its gear and protected species. The rule also requires notification of the NMFS Southwest Regional Office in Honolulu, Hawaii, within 12 hours of return to port after any transshipment activity or to make a landing. In addition, this rule makes minor changes in the information to be submitted in permit applications. This is part of the Southwest Region's effort to simplify the permit process by using the same permit form for all Federal fishery permits in the region. These actions are necessary to ensure adequate monitoring of conditions in the fishery by collecting data on catch and effort, and on interactions between the fishery and marine mammals and/or endangered and threatened species. Emergency regulations are now in effect to provide these data; however, the emergency rule will expire under the time limits set by the Magnuson Fishery Conservation and Management Act (Magnuson Act). This rule will continue the requirements imposed by the emergency rule with some modifications described below.

EFFECTIVE DATE: This action is effective at 0000 hours local time May 28, 1991, except for the definition of "Protected species zone" in § 685.2, § 685.4(c), § 685.5 paragraphs (i) and (l) through (n), § 685.11, and § 685.13. The effective date for the definition of "Protected species zone" in § 685.2, and § 685.11 will be at 0000 hours local time July 16, 1991. Paragraph (c) of § 685.4, paragraphs (i) and (l) through (n) of § 685.5, and § 685.13 contain, or are associated with, collection-of-information requirements subject to the Paperwork Reduction Act (PRA); when approval from the Office of Management and Budget (OMB) is obtained, an effective date for those sections will be published in the **Federal Register**.

ADDRESSES: Copies of Amendment 2 and the environmental assessment (EA) are available from Kitty B. Simonds, Executive Director, Western Pacific Fishery Management Council, Suite 1405, 1164 Bishop Street, Honolulu, HI 96813 (808-523-1368).

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Fisheries Management Division, Southwest Region, NMFS, Terminal Island, California (213) 514-6660, or Alvin Katekaru, Pacific Area Office, Southwest Region, NMFS, Honolulu, Hawaii (808) 955-8831.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Western Pacific Fishery Management Council (Council) and approved and implemented by the Secretary of Commerce (Secretary) at a time when there were few problems in the domestic fisheries for management unit species (billfish and associated species). This is no longer the case. Due to rapid growth in the longline fishery, there are serious concerns about the

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status of the stocks, the impact of increased longline catches on other fisheries, and interactions between longline fishing and protected species such as Hawaiian monk seals. Faced with these concerns and recognizing that the information base was not sufficient to address these new concerns, the Council requested that the Secretary promulgate an emergency rule establishing permit and logbook requirements for domestic longline and transshipping vessels using the fishery management area under the FMP and requiring each vessel operator intending to fish in certain parts of the management area around the NWHI to notify NMFS in advance for possible placement of an observer to document interactions between fishing activities and protected species. This was done November 27, 1990 (55 FR 49285).

The Council then developed an amendment to the FMP to continue these measures on a permanent basis. NMFS published a proposed rule (April 3, 1991, 56 FR 13611), which described in considerable detail the basis for the emergency action as well as the reasons for the conservation and management measures proposed in the FMP amendment. That discussion will not be repeated here. This final rule will implement those measures on a permanent basis, with some changes from the emergency rule. The final rule does not differ substantially from the proposed rule.

By defining management unit species to consist of certain fish stocks throughout their range, the implementing regulations are able to effectively regulate the longline fishery and support activities that occur in or use the exclusive economic zone (EEZ) in the Council's area of concern. This broad definition is necessary to ensure that management of fishing activities in the EEZ is not negated by persons proposing they are exempt from permit and reporting requirements because they claim to operate only outside the EEZ. This definition allows NMFS to collect catch and effort data from all vessels of the United States off the coasts of the islands in the Council's area of concern, if the vessels are within the EEZ or the territorial sea, and if the vessels are being used to engage in some longline fishing activity, such as fishing for management unit species, or even possessing management unit species harvested by longline regardless of where they were caught. These data are crucial for assessing the condition of the stocks, for determining the extent to which fishing affects the stocks, the interaction between fishing inside and outside the EEZ, and the effects of potential conservation and management measures on different sectors of the pelagic species fisheries.

Any vessel of the United States using longline gear to fish for management unit species shoreward of the outer boundary of the EEZ around Hawaii or one of the other islands in the Council's area of concern, or possessing, landing, or transshipping shoreward of the outer boundary of the EEZ, around one of those islands, management unit species taken by longline gear, regardless of where the fish were caught, must obtain a permit from the Regional Director. Each operator of a permitted longline vessel must maintain and submit to the Regional Director a daily fishing logbook, recorded on forms provided by the Regional Director. Information to be recorded includes catch (by species), effort, and information on interactions with protected species. The forms must be mailed to the Pacific Area Office, Southwest Region, NMFS, within 72 hours of the end of a fishing trip unless they are picked up by an authorized agent or officer. The purpose of these requirements is to establish the potential universe of fishery participants and then monitor total effort, landings, value of landings, species composition of the landings, area of catch, and other vital information.

No longline vessel can fish within a 50-nm protected species zone around certain islands in the NWHI (Nihoa Island, Necker Island, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Islands, and Kure Island), unless the operator has provided the Regional Director with an opportunity to place an observer aboard the vessel to document whether there are any interactions with protected species, and if so, the specifics of the interactions. Observers can collect more detailed information than the vessel operators could be expected to record in the interactions section of the required fishing logbook. Biological samples may also be collected. Nihoa Island, Necker Island, and Maro Reef were inadvertently excluded from the protected species zone under the emergency rule. Also, in response to concerns about the potential impacts of the fishery on protected species of marine mammals, sea turtles, and marine birds, operators of fishing vessels will be required to attend an orientation meeting to be held by the Southwest Region, NMFS, prior to fishing in the protected species zone, to ensure knowledge about the species of concern and about measures that can and should be taken to avoid any taking of such species in the fishery. In addition, vessels must notify the NMFS Southwest Regional Office within 12 hours of an arrival in port after engaging in a transshipment activity or to make a landing.

It should be noted that an emergency rule (April 18, 1991, 56 FR 15842) has been promulgated by the Secretary to prohibit longline fishing in the waters that would constitute the protected species zone under this rule implementing Amendment 2 to the FMP. This action was requested by the Council due to evidence that adverse impacts on monk seals had resulted from interactions with longline fishing activities. The Council has indicated it will proceed with a formal amendment to effect this closure on a permanent basis. However, it is still possible that evidence will become available indicating that interactions occur beyond the area closed to longline fishing. Therefore, while the observer placement provisions of Amendment 2 are suspended during the emergency period, the rule implementing Amendment 2 is being made final to retain the authority to enlarge the size of the protected species zone beyond the 50-nm distance currently defined. The authority to place observers on vessels operating in the protected species zone is thus also retained and may be exercised in the future. These measures will not go into effect until the expiration of the current emergency rule on July 16, 1991.

Permitted vessels are required to display their official number (generally, a Certificate of Documentation number or a state vessel registration number) in a highly visible manner affixed to the deckhouse or hull. The purpose of this requirement is to aid in the identification of vessels by enforcement officers. In addition, longline gear must be marked with the official number of the vessel.

The amendment makes permanent the provisions of the emergency rule, and contains several additional provisions. The amendment defines the fishery management area as the EEZ around Hawaii, American Samoa, Guam, U.S. possessions in the Pacific Ocean area and, for the first time, includes within the definition the EEZ around the CNMI. The EEZ around the CNMI had not been included in the management area previously because the Council did not want to influence negotiations then underway concerning the extent to which the CNMI government would have fishery jurisdiction under its commonwealth status. The Council now believes it is timely to include the EEZ around the CNMI due to the migratory nature of the management unit species and the wide-ranging capabilities of the longline fleet. The final rule also provides that the Regional Director may make a determination that Federal permits and logbooks would not be required in areas where a state has in place a substantively identical permit and reporting program and agrees to share permit and logbook information with NMFS.

Amendment 2 establishes a specific requirement for receiving vessels to maintain and submit to NMFS a transshipment logbook form recording details of such transshipments. This proposed collection-of-information has been submitted to OMB for approval. This measure will become effective upon approval of the request by OMB and publication of a notice in the **Federal Register**. A receiving vessel is prohibited from receiving transfers of management unit species in the management area from a fishing vessel that does not have a valid permit.

Finally, the rule sets forth permit application information elements so that a single permit application form can be used for all Federal fishery permits in the western Pacific region.

Public Comments Received and Responses

Comment

The Marine Mammal Commission generally favored the rule but proposed four changes: (1) Make permanent the area closure now in place under an emergency rule to protect monk seals; (2) extend the protected species zone to 100-nm around the NWHI; (3) specify that permits will not be renewed for persons failing to comply with area closure and notification requirements; and (4) require satellite transmitters on all fishing vessels.

Response

(1) NMFS anticipates that the Council will submit an amendment to close the protected species zone before expiration of the emergency rule. (2) There are no data at this time to support extending the protected species zone to 100 miles around the NWHI. No incidents of injured seals have been reported since the events in January 1991, and no interactions were observed on longline vessels on which observers were placed under the emergency rule. However, this rule provides that the protected species zone can be expanded without an FMP amendment. NMFS will act accordingly if additional data demonstrate a need for such action. (3) Permits may be revoked or suspended, or permit renewal may be denied, in accordance with 15 CFR 904. The potential for revoking or suspending a permit or denying renewal will be among the options considered for any serious violations of the regulations. (4) It is premature to require satellite transmitters on all vessels as it is not clear that such a system is economically feasible in the western Pacific at this time. NMFS is undertaking a test of transponders in the fishery and expects to have results available in July 1991. The results will be used by NMFS and the Council to evaluate the benefits and costs of transponders as an enforcement tool in the future.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator) has determined that Amendment 2 to the FMP and its implementing rule are necessary for the conservation and management of the pelagic fishery resources of the western Pacific region and are consistent with the Magnuson Act and other applicable law.

The Council prepared an EA for the amendment and incorporated it into the amendment document. The Assistant Administrator has determined that there will not be a significant impact on the environment. A copy of the EA is available from the Council (see **ADDRESSES**).

The Assistant Administrator has determined that this is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. The final rule will not have a cumulative effect on the economy of $100 million or more, nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse impacts are anticipated on competition, employment, investments, productivity, innovation, of competitiveness of U.S.-based enterprises.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this rule will not have a significant effect on a substantial number of small entities. This determination is based on the regulatory impact review (RIR), which is incorporated into the amendment. The RIR demonstrates long-term benefits to the fishery under the proposed measures. The principal burden to industry is associated with the recording and submission of information. The estimated total cost to industry is about $55,000 per year, or less than $400 per year per vessel. This is a low cost relative to the total operational costs of the fishery and to the estimated exvessel revenue, which is in excess of $25 million per year. Observer program costs (salaries, meals, insurance) are almost totally borne by NMFS. The vessels involved generally are large enough that placement of an observer should not affect fishing operations nor require displacement of a crew member. Again, it should be noted that as long as the current emergency closure is in effect, there is no cost to the industry from the observer program. Therefore, a regulatory flexibility analysis was not prepared.

As described below, this rule will maintain three current collection-of-information requirements subject to the PRA, and establish two new collection-of-information requirements.

This rule will continue the information collections relative to fishing logbooks applicable to harvesting vessels to ensure the collection, processing, and analysis of data needed for sound management decisions. Harvesting vessels' return to port will be monitored to ensure compliance with logbook recordkeeping. Fishing logbooks will provide detailed information about catch and effort needed for fishery stock assessments and for estimating the impacts of different management approaches. The public reporting burden for this collection-of-information is estimated to average 50 minutes per trip, including the time to complete the daily log sheet and submit fishing logbook forms to NMFS. This reporting requirement was approved by OMB (OMB No. 0648-0214).

The second collection-of-information requirement that will be continued by this rule stems from the establishment of an observer program. Vessel operators intending to fish within the protected species zone will be required to notify the Regional Director so that NMFS will have the opportunity to place an observer aboard the vessel. The public reporting burden for this collection-of-information is estimated at 2 minutes for the pretrip notification. This reporting requirement was approved by OMB (OMB No. 0648-0214).

A third collection-of-information requirement under the permit system is continued in this rule. Information is required to be submitted by longline fishing vessel permit applicants. The form used for this collection is the same as for other Federal fishing permit applications in the western Pacific and provides the same information on the longline fishing and transshipping vessel owner, vessel operator, and vessel as a person who applies for a permit for a vessel in the precious corals.

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crustaceans, and/or bottomfish fisheries. This permit application information will enable NMFS to determine the potential number of participants in the fishery, and in subsequent economic analyses to determine the potential nature and distribution of impacts of alternative management measures. The public reporting burden for this collection-of-information is estimated to average 15 minutes per application, including the time to review the form, compile the information to complete the form, and submit it to NMFS. The permit application forms were approved by OMB in conjunction with the Southwest Region Family of Permit Forms (OMB No. 0648-0204).

Two new reporting requirements are set forth in this rule. Vessels engaged in transshipment of pelagic species taken on longline gear will be required to maintain and submit to the Regional Director a transshipment logbook form and to notify NMFS within 12 hours of each fishing trip or transshipment activity. The logbook form will indicate the name of the catcher vessel from which longline-caught fish are being transferred, the area in which the fish were harvested, and the amount, by species, of such fish transferred from the fishing vessel to the transshipping vessel. These collections of information, including the time necessary to notify NMFS of transshipment activity, are estimated to average 10 minutes. A request for approval of these information collections has been submitted to OMB as part of the Southwest Region Family of Logbook Forms (OMB No. 0648-0214). These collections will become effective upon approval from OMB and publication of a notice to that effect in the **Federal Register**.

Comments on the collections of information and/or suggestions on how to reduce the burden can be sent to the Regional Director, Southwest Region, NMFS (see **ADDRESSES**), and to the Office of Information and Regulatory Affairs, Office of Management and Budget, ATTN: Paperwork Reduction Projects 0648-0204 and 0648-0214, Washington, DC 20503.

The Council determined that this proposed rule would be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal zone management programs of the State of Hawaii, the CNMI, and the Territories of American Samoa and Guam. This determination was submitted for review by the responsible state and territorial agencies under section 307 of the Coastal Zone Management Act. The agencies did not respond; therefore, concurrence is inferred.

A biological opinion has been issued by NMFS after consultation with the Council under section 7 of the Endangered Species Act. The opinion concludes that the pelagic fishery as managed under the FMP and its implementing rules, as amended by this rule, would jeopardize the continued existence of the Hawaiian monk seal. It further concludes that the fishery will not jeopardize the continued existence of any other listed species, nor will it result in the destruction or adverse modification of the critical habitat of any other listed species. In regard to the Hawaiian monk seal, the opinion offers as a reasonable and prudent alternative the closure of certain waters in the NWHI to longline fishing. This has been done under an emergency rule, and the Council plans to complete a FMP amendment to continue the closures permanently. Additional conservation recommendations for future consideration are made in the opinion. These will be considered by NMFS and will be forwarded to the Council for inclusion in a subsequent FMP amendment.

The final rule to implement Amendment 2 will not violate the requirements of the Marine Mammal Protection Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

In order to afford maximum opportunity for public comment and participation, the Administrative Procedure Act (5 U.S.C. 553) requires that, generally, final rules be published not less than 30 days before they become effective. This 30-day period may be shortened or waived if the rulemaking agency publishes with the rule an explanation of what good cause justifies an earlier date. This rule, implementing Amendment 2 to the FMP, makes permanent with few changes certain management measures that were promulgated, with a request for comments, by emergency rule on November 27, 1990. The public has had opportunities to comment on that emergency rule as well as to participate in the development of Amendment 2. The emergency rule is effective until May 25, 1991. To prevent a lapse in the management regime, which includes urgent measures necessary to protect monk seals and assess conditions in and impacts of the fishery, this rule should be effective when the emergency rule expires. However, the public comment period on the proposed rule ended on May 13, 1991, and although this final rule has been published as expeditiously as possible, it is not possible to provide a full 30 days before the emergency rule will expire. Accordingly, good cause is found for making most provisions of this rule effective on May 26, 1991. Section 685.11 of this rule, which pertains to the protected species zone and observers, is currently suspended by an emergency rule that closes the entire zone to longline fishing, as discussed above. Therefore, NMFS does not foresee a need for making § 685.11 and the associated definition of protected species zone (§ 685.2) effective until the expiration of the emergency closure on July 16, 1991. If the emergency rule is extended for 90 days, as it may be upon agreement of the Council, then § 685.11 and the definition may be suspended again, in accordance with the provisions of that notice of extension.

List of Subjects in 50 CFR Part 685

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 24, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 685 is amended as follows:

PART 685—PELAGIC FISHERIES OF THE WESTERN PACIFIC REGION

1. The authority citation for part 685 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 685.1, paragraph (a) is revised to read as follows:

§ 685.1 Purpose and scope.

(a) The regulations in this part govern the conservation and management of management unit species seaward of Hawaii, American Samoa, Guam, the Northern Mariana Islands, and U.S. possessions in the Pacific Ocean area.

* * * * *

3. In § 685.2, the existing definitions for "Fishery management area", "Owner", and "Receiving vessel" are revised, and new definitions for "Fishing trip", "Harassment", "Longline gear", "Management unit species", "Pacific Area Office", "Protected species", "Protected species zone", "Sexual harassment", and "Transship" are added, in alphabetical order, to read as indicated below. The definition for "Protected species zone" will not become effective until 0000 hours local time July 16, 1991.

§ 685.2 Definitions.

* * * * *

Fishery management area means the exclusive economic zone off the coasts of Hawaii, American Samoa, Guam, the Northern Mariana Islands, and U.S. possessions in the Pacific Ocean area.

Fishing trip means a period of time between landings when fishing is conducted.

Harassment means any verbal or physical conduct which has the purpose or effect of substantially interfering with an observer's work performance or creating an intimidating, hostile, or offensive working environment.

* * * * *

Longline gear means a type of fishing gear consisting of a main line that exceeds one (1) nautical mile in length, is suspended horizontally in the water column either anchored, floating, or attached to a vessel and from which branch or dropper lines with hooks are attached.

Management unit species means the following species in the Pacific Ocean: Billfish, associated species, and, effective January 1, 1992, tuna.

* * * * *

Owner, as used in this part, means a person who is identified as the current owner of the vessel as described in the Certificate of Documentation (Form CG-1270) issued by the U.S. Coast Guard for a documented vessel, or in a registration certificate issued by a state or territory or the U.S. Coast Guard for an undocumented vessel.

Pacific Area Office means the Pacific Area Office, Southwest Region, National Marine Fisheries Service, 2570 Dole Street, Honolulu, HI 96822.

Protected species means an animal protected under the Marine Mammal Protection Act of 1972, as amended, listed under the Endangered Species Act of 1973, as amended, or subject to the Migratory Bird Treaty Act, as amended.

Protected species zone means an area, designated under § 685.11, measured from the center geographical positions of certain islands and reefs in the Northwestern Hawaiian Islands, as follows: Nihoa Island 23°05′ N. 161°55′ W., Necker Island 23°35′ N. 164°40′ W., French Frigate Shoals 23°45′ N. 166°15′ W., Gardner Pinnacles 25°00′ N. 168°00′ W., Maro Reef 25°25′ N. 170°35′ W., Laysan Island 25°45′ N. 171°45′ W., Lisianski Island 26°00′ N. 173°55′ W., Pearl and Hermes Reef 27°50′ N. 175°50′ W., Midway Islands 28°14′ N. 177°22′ W., and Kure Island 28°25′ N. 178°20′ W.

Receiving vessel means a vessel of the United States that possesses on board the vessel management unit species and that does not have fishing gear on board the vessel.

* * * * *

Sexual harassment means any unwelcome sexual advance, request for sexual favors, or other verbal and physical conduct of a sexual nature that has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

* * * * *

Transship means offloading or otherwise transferring management unit species or products thereof to a receiving vessel.

* * * * *

4. Section 685.4 is revised to read as indicated below. Paragraph (c) will become effective upon approval by the Office of Management and Budget and publication of a notice to that effect in the **Federal Register**.

§ 685.4 Recordkeeping and reporting.

(a) *State Reports.* Any person who is required to do so by applicable state law or regulation shall make and/or file all reports of management unit species landings containing all data and in the exact manner required by applicable state law or regulation.

(b) *Fishing Logbooks.* The operator of any vessel subject to § 685.9 must maintain on board the vessel an accurate and complete fishing logbook for each day of each fishing trip, which must include the following information:

(1) Name of fishing vessel;

(2) Permit number of fishing vessel;

(3) Date, time, latitude and longitude of the location at which the set of the longline is begun;

(4) Date, time, latitude and longitude of the location at which hauling of the longline is begun;

(5) Number of hooks set;

(6) Number of lightsticks used;

(7) Number of billfish, tuna, oceanic sharks, and associated fish (by species) caught and kept per day;

(8) Number of billfish, tuna, oceanic sharks, and associated fish (by species) caught and released per day;

(9) Number (by species) of protected species (not including marine birds) sighted in the area of the gear per day;

(10) Number (by species) of protected species released or lost alive and not apparently injured;

(11) Number (by species) of protected species released or lost alive but apparently injured;

(12) Number (by species) of protected species released or lost dead;

(13) Signature of the fishing vessel operator; and

(14) Date of signature.

(c) *Transshipment Logbooks.* The operator of any receiving vessel subject to the requirements of § 685.9 must maintain on board the vessel an accurate and complete transshipment logbook, which must include the following information:

(1) Name of transshipment vessel;

(2) Permit number of transshipment vessel;

(3) Name of the fishing vessel;

(4) Radio call sign of fishing vessel;

(5) Date of transshipment;

(6) Number of days fished by the fishing vessel;

(7) Average number of hooks fished per day by the fishing vessel;

(8) General area of catch;

(9) Number of billfish, tuna, oceanic sharks, and associated fish (by species) transshipped;

(10) Total weight of fish (by species) transshipped;

(11) Signature of the transshipment vessel operator; and

(12) Date of signature.

(d) Fishing and transshipment logbooks required by paragraphs (b) and (c) of this section must be:

(1) Prepared on forms supplied by the Pacific Area Office. All information specified on the forms must be recorded within 24 hours of hauling in longline gear or day of transshipment.

(2) Submitted, in original or duplicate, to the Pacific Area Office within 72 hours of the date of landing, unless the logbooks have been collected by any person authorized by the Regional Director to gather such forms.

(3) Made available for immediate inspection upon request of an authorized officer, or of any employee of NMFS authorized by the Regional Director to make such an inspection.

(e) If the Regional Director determines that a state has substantively identical logbook and reporting requirements and the state has entered into an agreement to provide these data to the Regional Director, then reporting in accordance with state requirements will satisfy the equivalent requirements of this part.

5. In § 685.5, existing paragraphs (m) through (p), which are effective through July 22, 1991, and (q) and (r), which are effective through July 15, 1991, are redesignated paragraphs (o) through (t); paragraph (d) is revised; and new paragraphs (e) through (n) are added, to read as indicated below. New paragraphs (l), (l), (m), and (n), will become effective upon approval by the Office of Management and Budget and publication of a notice to that effect in the **Federal Register**.

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§ 685.5 Prohibitions.

* * * * *

(d) Falsify or fail to make and/or file all reports of management unit species landings, containing all data and in the exact manner, as required by applicable State law or regulation, as specified in § 685.4(a), provided that the person is required to do so by applicable State law or regulation.

(e) Without a valid permit on board issued under § 685.9(a), possess, receive, transship, or land shoreward of the outer boundary of the fishery management area, management unit species that were taken by longline gear, regardless of the area where the fish were caught.

(f) Without a valid permit on board issued under § 685.9(a), fish for management unit species with longline gear shoreward of the outer boundary of the fishery management area.

(g) Receive on board a vessel that is shoreward of the outer boundary of the fishery management area around Hawaii management unit species from a longline vessel that does not have a valid permit on board the vessel.

(h) Transfer any permit issued under § 685.9 to another vessel or person.

(i) Fail to notify the Pacific Area Office within 12 hours following each fishing trip or transshipment activity as required under § 685.13.

(j) Falsify or fail to make, keep, maintain, or submit any logbook or logbook form or other record or report required under §§ 685.4 and 685.13.

(k) Fail to affix or maintain vessel identification and longline float markings required under §§ 685.10 and 685.12.

(l) Fail to notify the Pacific Area Office of intent to fish for pelagic species with longline gear within the protected species zone as required under § 685.11.

(m) Fish without an observer after having been directed to do so by the Regional Director under § 685.11.

(n) Forcibly assault, impede, intimidate, interfere with, or influence or attempt to influence an observer, or to harass or sexually harass an observer.

* * * * *

6. In subpart A, § 685.9(l) which was added on April 12, 1991 (56 FR 14868), to be effective until July 22, 1991, is removed, and new §§ 685.9 through 685.13 are added, to read as indicated below. Section 685.11 will become effective at 0000 hours local time July 16, 1991, and § 685.13 will become effective upon approval by the Office of Management and Budget and publication of a notice to that effect in the **Federal Register**.

§ 685.9 Permits.

(a) Any vessel of the United States shoreward of the outer boundary of the fishery management area that uses longline gear to fish for management unit species, or that possesses, receives, transships, or lands management unit species that were taken by longline gear, must have a permit issued under this section.

(b) *Application.*

(1) An application for a permit under this section must be submitted to the Pacific Area Office by the vessel owner or a designee of the owner at least 15 days before the date the applicant desires to have the permit be effective. If an incomplete or improperly completed permit application is filed, the Regional Director will notify the applicant, in writing, of the deficiency. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned.

(2) Each application must be submitted on a form that is obtained from the Pacific Area Office and must contain at least the following information:

(i) Type of application; whether the application is for a new permit or a renewal; and whether it is for fishing or transshipping;

(ii) Owner's name, social security number, mailing address, and telephone numbers (business and home);

(iii) Name of the partnership or corporation, if the vessel is owned by such an entity;

(iv) Primary operator's name, social security number; mailing address, and telephone numbers (business and home);

(v) Relief operator's name;

(vi) Name of the vessel;

(vii) Official number of the vessel;

(viii) Radio call sign of the vessel;

(ix) Principal port of the vessel;

(x) Length of the vessel;

(xi) Engine horsepower;

(xii) Approximate fish hold capacity;

(xiii) Number of crew;

(xiv) Construction date;

(xv) Date vessel purchased;

(xvi) Purchase price;

(xvii) Type and amount of fishing gear carried on board the vessel;

(xviii) Position of the applicant in the corporation, if the vessel is owned by such an entity;

(xix) Signature of the applicant; and

(xx) Date of signature.

(c) *Fees.* No fee is required for a permit under this section.

(d) *Change in application information.* Any change in the information specified in paragraph (b) of this section must be reported to the Pacific Area Office 10 days before the effective date of the change. Failure to report such changes may result in termination of the permit.

(e) *Issuance.* Within 15 days after receipt of a properly completed application, the Regional Director will determine whether to issue a permit to the applicant. A permit will not be valid for fishing in the protected species zone, however, until the applicant has attended an orientation meeting conducted by the Pacific Area Office regarding procedures for protecting endangered and threatened species, marine mammals, and/or seabirds.

(f) *Expiration.* Permits issued under this section expire at 2400 hours local time on December 31 following the effective date of the permit.

(g) *Renewal.* An application for renewal of a permit must be submitted to the Pacific Area Office in the same manner as described in § 685.9.

(h) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(i) *Replacement.* Permits may be issued to replace lost or mutilated permits. An application for a replacement permit is not considered a new application.

(j) *Transfer.* Permits issued under this section are not transferable or assignable to other vessels. A permit is valid only for the vessel for which it is issued.

(k) *Display.* Any permit issued under this section must be on board the vessel at all times while the vessel is engaged in any activity under that permit. The permit is subject to inspection upon request of any authorized officer.

(l) *Penalties.* Permits may be revoked or suspended, or renewal may be denied, in accordance with section 308(g) of the Magnuson Act.

(m) *Limited Entry Permits.* Vessels subject to a limited entry system in all or part of the fishery must have a permit issued under this section, in addition to a limited entry permit.

(n) *State permit systems.* If the Regional Director determines that a state has substantively identical permit requirements and the state has entered into an agreement to provide the necessary permit information to the Regional Director, then obtaining a permit under state requirements will satisfy these Federal requirements.

§ 685.10 Vessel identification.

(a) Each fishing vessel subject to this part must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from enforcement vessels and aircraft.

(b) The official number must be affixed to each vessel subject to this part in block Arabic numerals at least 18 inches (45.7 cm) in height for fishing vessels of 65 feet (19.8 m) in length or longer, and at least 10 inches (25.4 cm) in height for all other vessels. Markings must be legible and of a color that contrasts with the background.

(c) The official number must be clearly legible and in good repair.

(d) No part of the vessel, its rigging, or its fishing gear shall obstruct the view of the official number from an enforcement vessel or aircraft.

§ 685.11 Observers.

(a) The operator of a fishing vessel subject to the permit requirements of § 685.9 of this part shall inform the Pacific Area Office at least 72 hours (not including weekends and holidays) before leaving port of his or her intent to fish within the protected species zone. The operator shall provide this notice by contacting the Pacific Area Office, telephone (808) 955–8831. The notice must include the name of the vessel, the name of the operator, the intended departure date and location, and a telephone number at which the operator or his agent may be contacted during the business day (8 a.m. to 5 p.m. local time) to indicate whether an observer will be required on the subject fishing trip.

(b) The initial size of the protected species zone is 50 nm from the center geographical positions of Nihoa Island, Necker Island, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Islands, and Kure Island. The Regional Director may enlarge or reduce the size of the protected species zone:

(1) If the Regional Director determines that a change in the size of the zone would not result in fishing for management unit species that would adversely affect any protected species;

(2) After consulting with the Council; and

(3) Through a notice in the **Federal Register** published at least 30 days prior to the effective date or through actual notice to the permit holders.

(c) All fishing vessels subject to this part must carry an observer when directed to do so by the Regional Director.

(d) The Regional Director shall advise the vessel operator of any observer requirement within 72 hours of receipt of the notice, and if an observer is required, shall establish with the operator the terms and conditions of observer coverage, and time and place of embarkation of the observer.

(e) All observers must be provided with sleeping, toilet, and eating accommodations at least equal to that provided to a full crew member. A mattress or futon on the floor or a cot is not acceptable in place of a regular bunk. Meal and other galley privileges must be the same for the observer as for other crew members.

(f) Female observers on a vessel with an all male crew must be accommodated either in a single person cabin or, if reasonable privacy can be ensured by installing a curtain or other temporary divider, in a two-person cabin shared with a licensed officer of the vessel. If the cabin assigned to a female observer does not have its own toilet and shower facilities that can be provided for the exclusive use of the observer, then a schedule for time-sharing common facilities must be established and approved by NMFS prior to the vessel's departure from port.

§ 685.12 Longline float identification.

The official number of the vessel must be affixed on each of the deployed floats of the longline gear.

§ 685.13 Notification of landings and transshipments.

The operator of a vessel that is subject to the permit requirements of § 685.9 of this part shall contact the Pacific Area Office by telephone, at a number provided to permit holders, within 12 hours of the vessel's arrival at any port in Hawaii, Guam, American Samoa, the Northern Mariana Islands, or U.S. possessions in the Pacific Ocean area and report the name of the vessel, name of the vessel operator, and the date and time of each landing or transshipment of management unit species by the vessel since its previous report of landings and/or transshipments.

[FR Doc. 91–12800 Filed 5–24–91; 2:57 pm]
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Proposed Rules

Federal Register
Vol. 56, No. 105
Friday, May 31, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Parts 24 and 2400

Amendment of Regulations and Rules of Procedure, Agriculture Board of Contract Appeals

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed rule.

SUMMARY: The Agriculture Board of Contract Appeals (Board) proposed to amend the regulations and Rules of Procedure governing appeals before it, 7 CFR part 24, so that they properly reflect the Board's jurisdiction and underlying authority. The proposed amendment also clarifies the role of the hearing examiner, corrects minor typographical errors, and removes 7 CFR part 2400, which has been superseded.

DATES: Comments must be received by July 1, 1991.

ADDRESSES: Board of Contract Appeals, room 2912, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Marilynn M. Eaton, Vice Chair, telephone (202) 475–5710.

SUPPLEMENTARY INFORMATION:

Objectives

The objective of this proposed rule is to amend the regulations and Rules of Procedure of the Board of Contract Appeals, Department of Agriculture, 7 CFR part 24, to reflect changes in jurisdiction and underlying authority which have occurred since publication in 1982. The current regulations, at § 24.4(d), provide for appeals of debarment actions by authorized officials of (1) the Commodity Credit Corporation (CCC) under 7 CFR 1407.6(d); (2) the Department of Agriculture under 41 CFR 4–1.604–1(b); and (3) the Farmers Home Administration (FmHA) under 7 CFR chapter XVIII, part 1918, subpart C.

The Agriculture Acquisition Regulation (AGAR), at 48 CFR 409.470 authorizes the Board to hear appeals by procurement contractors from both suspension and debarment actions by the Department debarment official. The regulations of the CCC, at 7 CFR 1407.2, make the provisions of 48 CFR 409.493 *et seq.* applicable to all CCC suspension and debarment proceedings. The proposed amendment of § 24.4(d) (1) and (2) reflects the Board's jurisdiction, under the AGAR, over suspensions as well as debarments.

Forest Service regulations, at 36 CFR 223.138(b)(8), authorize the Board to hear appeals by timber purchasers from debarment actions by officials of the Forest Service. The proposed addition of § 24.4(d)(3) reflects this jurisdiction.

Section 3017.515 of the Governmentwide Debarment and Suspension (Nonprocurement) regulations, as adopted by the Department of Agricultrue, 54 FR 4729 (1989), 7 CFR part 3017, establishes jurisdiction over nonprocurement debarment and suspension appeals in the Office of Administraitve Law Judges. Accordingly, deletion of the reference to the Board's review of debarment actions by the FmHA in § 24.4(d)(3) is proposed.

Procurement contractors must appeal suspension and debarment actions by officials of the Department of Agriculture and the CCC within 90 days of their receipt of a decision to this effect. Timber purchasers must appeal debarment actions by the Forest Service within 30 days of receipt of a decision. Accordingly, the proposed amendment of § 24.5 reflects these times.

With regard to the conduct of hearings, for appeals considered under the Contract Disputes Act, Rule of Procedure 20 refers to an "examiner." Proposed § 24.3 clarifies the role of this individual. Additionally, this amendment will correct minor typographical errors and omissions.

The Board's former regulations, 7 CFR part 2400, were superseded effective September 25, 1974, but continued to be published for application to appeals pending on that date. The Board no longer has any cases pending under 7 CFR part 2400. Accordingly, deletion of that section is proposed.

Regulatory Impact

This action reflects jurisdictional changes that already have been adopted, and it is therefore exempt from the requirements of Executive Order 12291. This action is not a rule as defined by the Regulatory Flexibility Act, so it is also exempt from the provisions of that Act. This action related to delegations of authority and internal management of the Department of Agriculture, and it does not constitute a major federal action affecting the quality of the human environment. Finally, the rule will impose no additional paperwork requirements on individuals or groups who appeal to the Board of Contract Appeals.

List of Subjects in 7 CFR Part 24 and 2400

Administrative practice and procedure; Agriculture; Government contracts; Organization and functions (Government agencies).

Under the Secretary's Authority 5 U.S.C. 301, the following changes are made:

PART 24—BOARD OF CONTRACT APPEALS, DEPARTMENT OF AGRICULTURE

Part 24, title 7, Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for part 24 is revised to read as follows:

Authority: 5 U.S.C. 301; 15 U.S.C. 714b, 714g and 714h; 16 U.S.C. 551; 40 U.S.C. 486(c); 41 U.S.C. 601–613.

Subpart A—Organization and Functions

2. Section 24.3 is amended by revising the introductory text to read as follows:

§ 24.3 Presiding Administrative Judge.

The Chair acts as Presiding Administrative Judge, or designates a member of the Board or an examiner to so act, in each proceeding. The Presiding Administrative Judge or the examiner has power to:

* * * * *

3. Section 24.4 is amended by revising paragraph (d) to read as follows:

§ 24.4 Jurisdiction.

* * * * *

(d) *Suspension and debarment.* The Board shall have jurisdiction to hear and determine the issue of suspension or debarment and the period thereof, if any, on an appeal by a person suspended or debarred by (1) an authorized official of the Department of Agriculture, under 48 CFR 409.470 or (2) an authorized official of the Commodity Credit Corporation under 7 CFR part 1407. In addition, the Board shall have jurisdiction to hear and determine the issue of debarment and the period thereof, if any, on an appeal by (3) a timber purchaser debarred by an authorized official of the Forest Service under 36 CFR part 223.

4. Section 24.5 is revised to read as follows:

§ 24.5 Time for filing notice of appeal.

A notice of appeal under §§ 24.4(a), 24.4(d)(1), or 24.4(d)(2) shall be filed within 90 days from the date of receipt of a contracting officer's or suspending or debarring official's decision. A notice of appeal under § 24.4(b)(1) shall be filed within 30 days from the date of receipt of the contracting officer's decision or within such different time as may be prescribed in the contract or other applicable regulation of the Department of Agriculture. A notice of appeal under §§ 24.4(b)(2), or 24.4(d)(3) shall be filed within 30 days from the date of receipt of the contracting officer's or debarring official's decision. The time for filing a notice of appeal shall not be extended by the Board.

Subpart B—Rules of Procedure

5. Section 24.21 is amended by removing paragraph (b) and by revising paragraph (a)(2) to read as follows:

§ 24.21 Rules of Procedure of Agriculture Board of Contract Appeals—AGBCA.

(a) * * *

(2) No member of the Board or the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal submit to the Board or the Board's staff off the record any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members nor to ex parte communication concerning the Board's administrative functions or procedures.

6. Following § 24.21, immediately before the word "INDEX" add the following new heading: "RULES OF PROCEDURE APPLICABLE TO APPEALS UNDER § 24.4(a)"

7. Rule 34 is revised to read as follows:

Rule 34. *Applicability of these rules.*

These Rules of Procedure for § 24.4(a) shall apply (1) mandatorily to all appeals relating to contracts entered into on or after March 1, 1979, and (2) at the Contractor's election, to appeals relating to earlier contracts, with respect to claims pending before the contracting officer on March 1, 1979, or initiated thereafter.

8. Following Rule 34, immediately before the word "INDEX" revise the heading to read as follows: "RULES OF PROCEDURE APPLICABLE TO APPEALS UNDER §§ 24.4(b), (c) and (d)"

9. Rule 22 in the second "Index" is revised to read as follows:

Rule 22. *Withdrawal of exhibits.*

After a decision has become final the Board may, upon request and after notice to the other party, in its discretion, permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition for granting permission for such withdrawal.

CHAPTER XXIV—BOARD OF CONTRACT APPEALS, DEPARTMENT OF AGRICULTURE

PART 2400—BOARD OF CONTRACT APPEALS, DEPARTMENT OF AGRICULTURE

Part 2400, title 7, Code of Federal Regulations is removed and 7 CFR Chapter XXIV is vacated.

Done at Washington, DC, this 24th day of May, 1991.

Edward Madigan,

Secretary of Agriculture.

[FR Doc. 91–12834 Filed 5–30–91; 8:45 am]

BILLING CODE 3410–01–M

Agricultural Marketing Service

7 CFR Part 932

[Docket No. FV–91–232PR]

Olives Grown in California; Proposal Suspending Provisions Relating to Size Requirements for California Olives for Limited Uses and Establishing Grade and Size Requirements for Olives Authorized for Such Uses During the 1991–92 Season

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal would suspend, for an indefinite period, order provisions which specify minimum size requirements for California processed olives used in the production of limited use styles of olives such as wedges, halves, slices, or segments. This proposed rule would also authorize the use of smaller sized olives in the production of limited use styles during the 1991–92 crop year and establish grade and alternative minimum size requirements for such olives in the order's rules and regulations. The 1991–92 crop year begins August 1, 1991, and ends July 31, 1992. The suspension of order provisions which restrict the use of smaller size olives is necessary to permit olives smaller than those used heretofore to be authorized for use in the production of limited use styles. Olives used in limited use styles are too small to be desirable for use as whole or whole pitted canned olives because their flesh-to-pit raion is too low. However, they are satisfactory for use in the production of limited use styles. This action would help the California olive industry meet the increasing market needs of the food service industry by making smaller olives available for use in the production of limited use styles. This would increase returns to growers on smaller olives. This proposed action was unanimously recommended by the California Olive Committee (committee), which works with the Department in administering the marketing order program for olives grown in California.

DATES: Comments must be received by June 17, 1991.

ADDRESSES: Written comments concerning this rule should be submitted in triplicate to the Docket Clerk, F&V Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. All comments submitted will be made available for public inspection in the above office during regular business hours. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2530–S, Washington, DC 20090–6456; telephone (202) 475–3862.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Order No. 932 (7 CFR Part 932), as amended, regulating the handling of olives grown in California, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the

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criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has considerd the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that thay are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are six handlers of California olives subject to regulation under the order and approximately 1,350 producers in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. Most but not all of the olive producers may be classified as small entities. None of the olive handlers may be classified as small entities.

Nearly all of the olives grown in the United States are produced in California. The growing areas are scattered throughout California with most of the commercial production coming from inland valleys. In 1989, about 66 percent of the production came from the San Joaquin Valley and 34 percent from the Sacramento Valley.

Olive production has fluctuated from a low of 24,200 tons during the 1972–73 crop year to a high of 146,500 tons during the 1982–83 crop year. The committee indicated that 1989 production totaled about 116,990 tons. The various varieties of olives produced in California have alternate bearing tendencies with high production one year and low the next. The committee expects the 1990 production to be about 104,600 tons. It is too early to estimate with precision the 1991 production. However, based on past production and marketing experience, the committee believes that handlers will need smaller sized olives during the 1991–92 crop year to meet the needs for limited use styles of canned olives.

The primary use of California olives is for canned ripe whole and whole pitted olives which are eaten out of hand as hors d'oeuvres or used as an ingredient in cooking and in salads. The canned ripe olive market is essentially a domestic market. Very few California olives are exported.

Paragraph (a)(3) of § 932.51 of the order requires handlers, under the supervision of the inspection service, to dispose of olives smaller than certain sizes (specified in paragraphs (a)(3)(i) through (a)(3)(v)), and olives classified as culls (specified in paragraph (a)(3)(vi)) into noncanning uses. The sizes specified in paragraphs (a)(3)(i) through (a)(3)(iv) are the smallest sizes of olives currently permitted to be used for limited use.

Paragraph (a)(3) of § 932.52 of the order provides that processed olives smaller than the sizes prescribed for whole and whole pitted styles may be used for limited uses if recommended by the committee and approved by the Secretary. Paragraph (a)(3) also prescribes minimum sizes, by variety group, which may be authorized for use in the production of limited use styles by the Secretary. The sizes are specified in terms of minimum weights for individual olives in various size categories. The section further provides for the establishment of size tolerances.

Effective August 1, 1991, this proposal would suspend certain non-canning size disposition requirements specified in § 932.51(a)(3) and minimum sizes which may be authorized for limited use specified in § 932.52(a)(3) of the marketing order. This proposal would also authorize the use of smaller sized California processed olives in the production of limited use styles of olives during the 1991–92 crop year and establish grade and size requirements for such olives from the 1991–92 crop. These proposed changes were unanimously recommended by the committee at its December 4, 1990, meeting.

The minimum sizes which may be authorized for limited use, specified in § 932.52(a)(3), were established in a 1971 amendment to the marketing order. Olives smaller than the prescribed minimum sizes which may be authorized for limited use must be disposed of for less profitable non-canning uses such as crushing for oil. Thus, returns to producers are lower on smaller fruit used for such purposes. The use of smaller sized olives for limited uses has been authorized in all but one crop year since 1971.

Since the 1971 amendment, there have been substantial changes within the olive industry. In spite of the annual limited use authorization, in recent years the industry has not been able to meet the market demand for its products, especially the limited use styles used primarily by the food service industry. The demand for processed olives and for limited use styles is expected to continue to increase. At the same time, the industry has not been able to increase production to meet the market needs for canned ripe olives. The only alternative available at this time is to utilize a larger portion of the fruit currently available.

In light of the current situation, the committee recommended that the portion of § 932.52(a)(3) which specifies minimum sizes which may be used in limited use styles be suspended indefinitely. The language which would be suspended begins with the words "but any such" in the first proviso of the introductory text of paragraph (a)(3) and extends through paragraph (a)(3)(iv). With the provisions suspended, paragraph (a)(3) of § 932.52 would specify that: "Subject to the provisions set forth in paragraph (a)(4) of this section and 932.51(a) (1) and (2), processed olives to be used in the production of canned pitted ripe olives, other than those of the "tree-ripened" type, shall meet the same requirements as prescribed pursuant to paragraph (a)(2) of this section: *Provided*, that olives smaller than those so prescribed, as recommended annually by the committee and approved by the Secretary, may be authorized for limited use."

Suspending this language would allow the committee to recommend and the Secretary to establish minimum size requirements smaller than those currently specified. Minimum size and grade requirements would be recommended annually by the committee and approved by the Secretary along with the committee's annual recommendation to authorize the use of olives smaller than the minimum canning sizes in the production of limited use styles.

The committee also recommended that a portion of the provisions in paragraph (a)(3) of § 932.51 also be suspended indefinitely recognizing that the sizes of olives required to be disposed of into noncanning uses now could be smaller than the sizes currently specified in paragraph (a)(3)(i) through paragraph (a)(3)(iv) of § 932.51 with the proposed suspension of the provisions in § 932.52(a)(3). The language to be suspended indefinitely in § 932.51 includes all of paragraph (a)(3)(i), (a)(3)(ii), (a)(3)(iii), (a)(3)(iv), and the words "for the foregoing variety groups" in paragraph (a)(3)(v). With the provisions suspended, paragraph (a)(3) of § 932.51 would specify that: "Each handler shall, under the supervision of any such inspection service, dispose of

into noncanning use an aggregate quantity of olives, comparable in size and characteristics and equal to the quantities shown on the certification for each lot to be (v) Such other sizes as are not authorized for limited use pursuant to § 932.52; and (vi) Olives classified as culls."

The committee conducted a study during the 1990–91 crop year to determine the feasibility of utilizing smaller sized olives in the production of limited use styles and to determine which sizes could be efficiently processed into such styles. All olive handlers within the industry participated in the study and reported the results to the committee at the December 4 meeting. All handlers reported positive results and agreed that smaller sizes can be efficiently processed into limited use styles. Advanced technology in the form of better processing equipment is currently available. The new technology allows handlers to process smaller olives into limited use styles more efficiently than was possible in the past.

Upon direction from the Department, the committee conducted an informal poll of California olive growers to determine whether growers supported the suspension of these order provisions. Ballots were sent to all olive growers of record along with an explanation of the proposed suspension of order provisions. The results of the poll indicate that the majority of the growers who voted support suspension of the aforementioned order provisions so that the committee has authority to recommend smaller minimum size requirements for olives used in the production of limited use styles than currently specified.

This action would help growers and handlers meet the growing demand for limited use style olives by removing size restrictions from the order and allowing the committee to annually recommend size requirements based upon current conditions. The removal of size restrictions will allow the committee to recommend the use of sizes which currently must be disposed of for non-canning use. In turn, growers would receive a larger return from such olives than they would if the size restrictions currently contained in the order were to remain in effect. The action would also increase the amount of limited use size fruit available and thus decrease handlers' cost for fruit processed into limited use styles since handlers have been using larger size olives for limited use styles.

In conjunction with the suspension of the provisions discussed above, this proposed rule would modify § 932.153 of Subpart-Rules and Regulations (17 CFR 932.106–932.161). The modification would authorize the use of olives smaller than the sizes prescribed for whole and whole pitted styles in the production of limited use styles and establish grade and size regulations for 1991–92 crop limited use size olives. The modification would be issued pursuant to paragraph (a)(3) of § 932.52 of the order, as proposed to be suspended. The grade requirements would be the same as established last season. The proposed size requirements are based on the study authorized by the committee and conducted by all olive handlers within the California olive industry during the 1990–91 crop year. The specific sizes for the variety groups are the minimum sizes which are desirable for use in the production of limited use styles at this time.

As in past years, permitting the use of the smaller olives in the production of limited use styles would allow handlers to take advantage of the strong market for halved, segmented, sliced, and chopped canned ripe olives. Handlers would be able to market more olives than would be permitted in the absence of this relaxation in size requirements. This additional opportunity is provided to maximize the use of the available olive supply and facilitate market expansion thereby increasing returns to handlers and growers. In the absence of this action, the smaller fruit would have to be disposed of for less profitable, non-canning uses.

Based on available information, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities and that the proposal would benefit both producers and handlers of California olives.

A comment period of 15 days is deemed appropriate to alllow adequate time for any changes or modifications which may be adopted as a result of this proposal to be implemented before the beginning of the 1991 crop year (August 1, 1991).

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 932 is proposed to be amended as follows:

1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 932—OLIVES GROWN IN CALIFORNIA

§ 932.51 [Amended]

2. In § 932.51(a)(3), paragraphs (i), (ii), (iii), (iv), and the words "for the foregoing variety groups" in paragraph (v) are suspended.

§ 932.52 [Amended]

3. In § 932.52(a)(3), the words in the introductory text "but any such limited use size olives so used shall be not smaller than the following applicable minimum size: *Provided further*, That each such minimum size may also include a size tolerance (specified as a percent) as recommended by the committee and approved by the Secretary.", and paragraphs (a)(3)(i) through (a)(3)(iv) are suspended.

4. Section 932.153 is revised to read as follows:

§ 932.153 Establishment of grade and size requirements for processed 1991–92 crop year olives for limited use.

(a) *Grade.* On and after August 1, 1991, any handler may use processed olives of the respective variety group in the production of limited use styles of canned ripe olives if such olives were processed after July 31, 1991, and meet the grade requirements specified in paragraph (a)(1) of § 932.52 as modified by § 932.149.

(b) *Sizes.* On and after August 1, 1991, any handler may use processed olives in the production of limited use styles of canned ripe olives if such olives were harvested during the period August 1, 1991, through July 31, 1992, and meet the following requirements:

(1) The processed olives shall be identified and kept separate and apart from any olives harvested before August 1, 1991, or after July 31, 1992.

(2) Variety Group 1 olives, except the Ascolano, Barouni, or St. Agostino varieties, shall be of a size which individually weigh at least 1/105 pound: *Provided*, That no more than 35 percent of the olives in any lot or sublot may be smaller than 1/105 pound.

(3) Variety Group 1 olives of the Ascolano, Barouni, or St. Agostino varieties shall be of a size which individually weigh at least 1/180 pound: *Provided*, That no more than 35 percent of the olives in any lot or sublot may be smaller than 1/180 pound.

(4) Variety Group 2 olives, except the Obliza variety, shall be of a size which individually weigh at least 1/205 pound: *Provided*, That no more than 35 percent of the olives in any lot or sublot may be smaller than 1/205 pound.

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(5) Variety Group 2 olives of the Obliza variety shall be of a size which individually weigh at least 1/180 pound: *Provided,* That no more than 35 percent of the olives in any lot or sublot may be smaller than 1/180 pound.

Dated: May 28, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91-12919 Filed 5-30-91; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 985

[FV-91-264]

Spearmint Oil Produced in the Far West; Amendment of Rules and Regulations Regarding the Issuance of Additional Allotment Base to New Producers

AGENCY: Agricultural Marketing Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on the amendment of the administrative rules and regulations of the spearmint oil marketing order regarding the issuance of additional allotment base to new producers. The amendment would divide the production area into four regions for the purpose of distributing an equal portion of the additional allotment base to each of the four regions for each class of spearmint oil during a marketing year. It would provide a greater opportunity to new producers in some regions of the production area to receive allotment base. This action was unanimously recommended by the Spearmint Oil Administrative Committee (Committee), which is responsible for the local administration of the order.

DATES: Comments must be received by July 1, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2524–S, Washington, DC 20090–6456; telephone: (202) 475–3861.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 985 (7 CFR Part 985) regulating the handling of spearmint oil produced in the Far West. The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately nine handlers of spearmint oil produced in the Far West who are subject to regulation under the spearmint oil marketing order and approximately 253 producers of spearmint oil in the regulated area. Of the 253 producers, 160 hold Scotch (Class 1) spearmint oil allotment base and 136 producers hold Native (Class 3) spearmint oil allotment base. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of spearmint oil producers and handlers may be classified as small entities.

The Committee unanimously recommended at its February 27, 1991, meeting that § 985.153 of the administrative rules and regulations of the spearmint oil marketing order be amended by dividing the production area into four regions for the purpose of distributing additional allotment base to new producers. This amendment is authorized under § 985.53(d)(3) of the spearmint oil marketing order which states that the Committee may establish rules and regulations to determine the distribution of additional allotment bases.

The spearmint oil marketing order is a volume control program which authorizes the regulation of spearmint oil produced in the Far West through annual allotment percentages and salable quantities by class of spearmint oil. The salable quantity limits the quantity of each class of spearmint oil that may be marketed from each season's crop. Each producer is allotted a share of the salable quantity by applying the allotment percentage to that producer's allotment base for the applicable class of spearmint oil. Handlers may not purchase spearmint oil in excess of a producer's annual allotment, or from producers who have not been issued an allotment base under the spearmint oil marketing order.

Section 985.53(d)(1) of the spearmint oil marketing order provides that no more than 1 percent of the total allotment base for each class of spearmint oil may be issued annually and distributed equally as additional allotment base to both new and existing producers. Fifty percent of this additional allotment base is made available for existing producers and 50 percent is made available to new producers. A "new producer" is defined, under § 985.153(a)(1), as any individual who was never issued an allotment base by the Committee for a class of oil in any capacity either as an individual, or as a member of a partnership, corporation, or other business unit.

The Committee, under § 985.153(c)(1) of the spearmint oil marketing order, is authorized to place in a lot for drawing the names of all eligible new producers who have applied for additional allotment base. Each new producer whose name is drawn is issued an equal amount of the available additional allotment base.

Currently, most Far West spearmint oil is produced in portions of Washington, Idaho and Oregon. Knowledge of and interest in the production of spearmint oil by non-producers in these areas is higher than in areas containing fewer spearmint oil producers. More requests from new producers for allotment base are submitted from these areas than from other regions within the production area. Less opportunity is realized for the production of spearmint oil by potential new producers from other areas of production.

The Committee unanimously recommended that the production area be divided into four regions for the purpose of distributing additional allotment base to new producers. The production area, which includes the States of Washington, Idaho, Oregon, and portions of California, Nevada, Montana, and Utah, would be divided as follows: Region 1 would consist of those portions of Montana and Utah included in the production area; region 2 would consist of Oregon and those portions of Nevada and California included in the production area; region 3 would consist of Idaho; and region 4 would consist of Washington.

The Committee, after determining the amount of additional allotment base for each class of spearmint oil to be made available to new producers, would allocate each region one-fourth of the total additional allotment base for each class of oil. New producers in each of the four regions would submit requests for allotment base and the Committee would determine whether the new producers requesting allotment base have the ability to produce spearmint oil. Eligible producers would then be selected by lot in each region.

If a region does not have enough eligible applicants to use the available additional allotment base for that region, the undistributed quantity of additional allotment base would then be divided equally among the remaining regions.

This proposed amendment would make an equal portion of the additional allotment base available to each of the four regions for each class of spearmint oil during a marketing year. It would provide a greater opportunity to new producers in some regions of the production area, such as portions of Montana, Utah, Nevada, Central Oregon, and California, to receive allotment base and undertake the production of spearmint oil.

Based on available information, the Administrator of the AMS has determined that the issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, and Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is proposed to be amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 985.153 is proposed to be amended by revising paragraph (c)(1) to read as follows:

Subpart—Administrative Rules and Regulations

§ 985.153 Issuance of additional allotment base to new and existing producers.

* * * * *

(c) *Issuance.* (1) *New producers.* (i) For the purpose of issuing allotment base to new producers, the production area should be divided into regions as follows:

(A) *Region 1.* Those portions of Montana and Utah included in the production area.

(B) *Region 2.* The State of Oregon and those portions of Nevada and California included in the production area.

(C) *Region 3.* The State of Idaho.

(D) *Region 4.* The State of Washington.

(ii) Each year, the Committee shall determine the size of the minimum economic enterprise required to produce each class of oil. The Committee shall thereafter calculate the number of new producers who will receive allotment base under this seciton for each of oil. An equal number of grants of the additional allotment base for each class of oil that is available to new producers each marketing year shall be issued to producers within each region. The Committee shall include that information in its announcements to new producers in each region informing them when to submit requests for allotment base. The Committee shall determine whether the new producers requesting additional base have ability to produce spearmint oil. The names of all eligible new producers in each region shall be placed in a lot for drawing. A separate drawing shall be held for each region. If, in any marketing year, there are not enough requests from eligible new producers in a region to use all of the additional allotment base available for that region, such unused allotment base shall be divided equally among eligible new producers within the other regions receiving allotment base pursuant to this section. The Committee shall immediately notify each new producer whose name was drawn and issue that producer an allotment base in the appropriate amount.

* * * * *

Dated: May 28, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–12917 Filed 5–30–91; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 998

[Docket No. FV-91-262PR]

Marketing Agreement No. 146 Regulating the Quality of Domestically Produced Peanuts; Proposed Changes in the Outgoing Quality Regulation and Terms and Conditions of Indemnification for 1991 Crop Peanuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would change the outgoing quality regulations and the current terms and conditions of indemnification for 1991 crop peanuts regulated under Marketing Agreement No. 146. The outgoing regulation would be changed to allow for more efficient utilization of peanut meal resulting from the crushing of peanuts for peanut oil. The terms and conditions of indemnification would be changed to set a $9,000,000 limit on indemnification expenses (including $5,000,000 in insurance coverage) and to establish a payment schedule and criteria which would ensure that all indemnification claims are handled equitably and are paid as soon as it can be ascertained that the $9,000,000 limit will not be exceeded. The limit on indemnification expenditures is intended to ensure that indemnification expenses incurred do not exceed the Peanut Administrative Committee's (Committee) ability to cover such expenses in the event of a crop year with an unusually high incidence of aflatoxin.

DATES: Comments must be received by June 17, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–475–3862.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 146 (7 CFR part 998), regulating the quality of domestically produced peanuts, hereinafter referred

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to as the agreement. This agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674] (the Act).

This proposed rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are 68 handlers of peanuts subject to regulation under the agreement, and there are about 46,950 peanut growers in the 16 states covered under the program. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. Some of the handlers signatory to the agreement are small entities, and a majority of the growers may be classified as small entities.

There are three major peanut production areas in the United States covered under the agreement: (1) Virginia-Carolina, (2) Southeast, and (3) Southwest. These areas encompass 16 states. The Virginia-Carolina area (primarily Virginia and North Carolina) usually produces about 18 percent of the total U.S. crop. The Southeast area (primarily Georgia, Florida and Alabama) usually produces about two-thirds of the crop. The Southwest area (primarily Texas, Oklahoma, and New Mexico) produces about 15 percent of the crop. Based upon the most current information, U.S. peanut production in 1990 totalled 3.60 billion pounds, a 10 percent decrease from 1989 and 1988. The 1990 crop value is $1.26 billion, up 13 percent from 1989.

The objective of the agreement is to ensure that only wholesome peanuts enter edible market channels. Since aflatoxin was found in peanuts in the mid-1960's, the domestic peanut industry has sought to minimize aflatoxin contamination in peanuts and peanut products.

The agreement plays a very important role in the industry's quality control efforts. It has been in place since 1965 with over 90 percent of U.S. shellers (handlers) participating. The participating shellers handle about 95 percent of the crop. Under the agreement, farmers' stock peanuts with visible *Aspergillus flavus* mold (the principal source of aflatoxin) are required to be diverted to non-edible uses. Each lot of shelled peanuts for edible use must be officially sampled and chemically tested for aflatoxin by the Department or in laboratories approved by the Committee. The Committee works with the Department in administering the marketing agreement program. The inspection and chemical analysis programs are administered by the Department. A sheller who has complied with these requirements, is eligible for indemnification of losses incurred if the sheller's peanuts are deemed unsuitable for human consumption because of aflatoxin. All indemnification and administration costs are paid by assessments levied on handlers signatory to the agreement.

The incoming quality regulation specifies the quality of farmers' stock peanuts which handlers may purchase from producers. Handlers are required to purchase only good quality, wholesome peanuts for edible products. The outgoing quality regulation requires shellers to mill peanuts to meet certain quality specifications and to have them inspected before such peanuts can be sold to edible outlets. Foreign material and damaged and immature peanuts are removed in the milling operation. Each lot of milled peanuts must be sampled and the samples chemically analyzed for aflatoxin. If the chemical assay shows that the lot is positive as to aflatoxin, the lot is not allowed to go to edible channels. Lower quality peanuts are crushed for oil and meal. The end result is that only good quality peanuts end up in human consumption outlets.

On January 23–24, 1991, the Committee unanimously recommended changes in paragraphs (g)(3)(ii) and (1)(2) of § 998.200 Outgoing Regulation to require that meal produced from the crushing of all "restricted" categories of peanuts be sampled and tested for aflatoxin, as prescribed by the Committee, and that the numeric test results be shown on the certificate accompanying each shipment of meal produced from the crushing of "restricted" categories of peanuts. The Committee also recommended that the current restrictions regarding the use and disposition of meal produced from the crushing of "restricted" peanuts be removed from the regulations. Meal produced from the crushing of "unrestricted" categories of peanuts would continue to be exempt from aflatoxin testing requirements and would be eligible for feed use without testing.

Generally, restricted categories of peanuts are peanuts which were determined to be Segregation III or peanuts which contain or are likely to contain significant levels of aflatoxin. Unrestricted categories of peanuts are peanuts which have been determined to be Segregation I or II pursuant to § 998.100 or have been determined to be negative (based on the criteria applicable to non-edible quality categories) as to aflatoxin content.

Currently, meal produced from restricted categories of peanuts, unless detoxified, must be disposed of for fertilizer or other non-feed uses. The Committee reported that other Federal and State requirements or criteria for the disposition of peanut meal in certain feed outlets are less restrictive than those currently in effect under the agreement. Therefore, the regulations under the agreement restrict otherwise legitimate dispositions of peanut meal for feed use. The recommended changes would provide crushers and meal receivers with certified information as to the aflatoxin content of meal produced from restricted categories of peanuts. Receivers would then make usage determinations based upon any Federal or State regulations or requirements in effect for the desired outlet. This would allow for more efficient utilization of peanut meal, eliminate conflicts between agreement and other State or Federal regulations or requirements, and simplify the requirements in effect for the disposition of peanut meal under the agreement.

At its February 27 meeting, the Committee recommended changes in § 998.300 Terms and conditions of indemnification to limit indemnification expenses on 1991 crop peanuts to $9,000,000, including $5,000,000 of insurance coverage. The Committee's recommendation would cause payment of the applicable indemnification payment on indemnified 1991 crop peanuts to be withheld until the loan acquired for the purposes of paying indemnities on 1990 crop peanuts is repaid (by December 31, 1991). The Committee also recommended the establishment of a payment schedule, to be utilized after the loan is repaid, to allow 1991 crop indemnification payments to be made as soon as possible while ensuring that all indemnification claims are handled equitably and that the $9,000,000 limit is not exceeded. The payment schedule provides that:

—The cost of preparation, delivery and assays on Samples 2–AB and 3–AB, crushing supervision, and other indemnification costs not allocated to claims, shall be paid, without delay, in accordance with established procedures;

—Authorized costs for blanching and remilling fees, freight, and assay costs allocated to claims shall be paid pursuant to the Terms and Conditions of Indemnification, unless the Committee projects that these costs, plus the costs listed above, are likely to exceed the $9,000,000 limitation, in which case alternative rates of payment would be recommended to the Secretary;

—If not more than 800 claims for indemnification have been filed with the Committee by December 31 of the current crop year, the Committee will pay claimants for the applicable indemnification payment on indemnified peanuts covered by claims which are determined to be valid pursuant to the Terms and Conditions of Indemnification;

—If more than 800 but not more than 1300 claims for indemnification have been filed with the Committee by December 31 of the current crop year, the Committee will pay claimants at the rate prescribed in paragraph (x) of the Terms and Conditions, for "additional peanuts", on indemnified peanuts covered by claims determined to be valid pursuant to the Terms and Conditions of Indemnification;

—If more than 1300 but not more than 2500 claims for indemnification have been filed with the Committee by December 31 of the current crop year, indemnification payments for the peanuts removed in the remilling and/or blanching process will continue to be withheld until December 31 of the calendar year following the crop year (December 31, 1992), or until other action is prescribed by the Committee, with the approval of the Secretary; and

—If more than 2500 claims have been filed with the Committee on or before December 31 of the current crop year, or if projections indicate that the total claims during the crop year may be approximately 6,000 or more, or if projections indicate that the aggregate costs of the expense items referred to in proposed paragraphs (z)(i) and (z)(ii), less receipts for salvage, might exceed the $9,000,000 limit, alternative methods or rates of payment shall be prescribed by the Committee, with the approval of the Secretary.

The payment schedule is based on historical data on the receipt of indemnification claims by the Committee. Using the number of claims received by December 31 and other information, the Committee can project the number of claims likely to be received for the remainder of the current crop year and the payment levels at which all claims may be processed while remaining within the proposed limit on total indemnification expenses for the 1991 crop.

The recommended changes in the Terms and Conditions of Indemnification for 1991 crop peanuts are intended to ensure that indemnification expenses incurred do not exceed the Committee's ability to cover such expenses in the event of a crop year with an unusually high incidence of aflatoxin. Heretofore, no upper limits have been fixed on total committee indemnification expenditures for handler indemnification claims. The limit on indemnification expenditures is in response to the large number of indemnification claims on 1990 crop peanuts. Expenditures from these claims exceeded the $7.8 million which was available to cover 1990 crop indemnification expenses. This resulted in a $14 million dollar deficit in the indemnification reserve. The Committee is currently in the process of negotiating a line of credit to pay 1990 crop indemnification expenses until sufficient income is received from 1991 crop assessments. An indemnification assessment of $15.00 per ton of 1991 crop peanuts has been established to cover expenses from the 1990 crop and to continue the indemnification program. The recommended changes in the terms and conditions would protect the Committee from such unlimited liabilities in the future. This would protect handlers from unreasonably high assessment rates and help ensure the integrity of the indemnification program.

No changes were recommended in § 998.100 Incoming quality regulation for the 1991 crop. Therefore, the incoming regulation applicable to 1990 crop peanuts will be effective for 1991 crop peanuts. The section heading of that section would be changed accordingly.

Based on the above, the Administrator of the AMS has determined that the proposed changes would not have a significant economic impact on a substantial number of small entities.

The information collection requirements that are contained in the sections of these regulations proposed to be amended have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0067.

A comment period of 15 days is deemed appropriate because the 1991 crop year begins on July 1, and any changes that may be adopted in the regulations as a result of this proposal should be implemented as soon as possible.

All available information, including the Committee's recommendation, and all written comments timely received in response to this request for comments, will be considered before deciding whether or not to implement this proposal.

List of Subjects in 7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 998 is proposed to be amended as follows:

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR part 998 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 998.100 is amended by revising the section heading to read as follows:

§ 998.100 Incoming quality regulation—1991 crop peanuts.

* * * * *

3. Section 998.200 is amended by revising the section heading, revising paragraph (g)(3)(ii), adding a new paragraph (1)(2)(viii) and revising the sixth sentence of the concluding text of paragraph (1)(2) to read as follows:

§ 998.200 Outgoing quality regulation—1991 crop peanuts.

* * * * *

(g) * * *

(3) * * *

(ii) Meal produced from the crushing of loose shelled kernels, fall through, and pickouts, which have not been certified negative as to aflatoxin content, and meal produced from the crushing of other "restricted" categories of peanuts listed in paragraph (1)(2) of this section, shall be prepared for disposition in specifically identified lots not exceeding 200,000 pounds. Handlers or crushers, at their own expense, shall cause each such lot of meal to be sampled, as prescribed by the Committee, by an inspector of the Federal or Federal-State Inspection Service and tested for aflatoxin in a

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laboratory approved by the Committee or by a USDA laboratory. The numerical test result of the chemical assay shall be shown on a certificate covering each lot of meal produced from "restricted" peanuts, and a copy of the certificate shall accompany each shipment or disposition. However, meal produced from the crushing of loose shelled kernels, fall through, and pickouts, which have been certified negative as to aflatoxin content, and meal produced from the crushing of other categories of peanuts determined by paragraph (1)(1) of this regulation to be eligible for "unrestricted" crushing, shall be exempt from the aflatoxin testing requirements.

. . . . .

(1) . . .
(2) . . .
(viii) PAC indemnified peanuts.

. . . . .

. . . Meal produced from the crushing of "restricted" categories of peanuts described in this paragraph (1)(2) shall be tested and certified as to aflatoxin content pursuant to the requirements of paragraph (g)(3)(ii) of this section, applicable to such "restricted" categories of peanuts. . . .

. . . . .

4. Section 998.300 is amended by revising the section heading, and by adding a new paragraph (z) to read as follows:

§ 998.300 Terms and conditions of indemnification—1991 crop peanuts.

. . . . .

(z) Not withstanding the provisions of any other paragraph of these Terms and Conditions, the total payments for indemnification plus expenses, minus salvage received by the Committee on indemnified peanuts delivered for crushing, shall not exceed $9,000,000 in the aggregate, for the crop year. To assure that the $9,000,000 limit is not exceeded while dealing with all expenses and claims on an equitable basis, the following payment schedule shall be followed:

(i) Cost of preparation, delivery and assays on Samples 2–AB and 3–AB, as prescribed in § 998.200(c)(2), crushing supervision, and other indemnification costs not allocated to claims, shall be paid, without delay, in accordance with the procedures in this part.

(ii) Authorized costs for blanching and remilling fees, freight, and assay costs allocated to claims shall be paid pursuant to these Terms and Conditions, unless the Committee projects that these costs, plus the costs listed in paragraph (z)(i), are likely to exceed the $9,000,000 limitation.

(iii) If not more than 800 claims for indemnification have been filed with the Committee by December 31 of the current crop year, the Committee shall pay claimants for the applicable indemnification payment on indemnified peanuts covered by claims, which are determined to be valid, pursuant to these Terms and Conditions.

(iv) If more than 800 but not more than 1300 claims for indemnification have been filed with the Committee by December 31 of the current crop year, the Committee shall pay claimants at the rate prescribed in paragraph (x) of these Terms and Conditions, for "additional peanuts", on indemnified peanuts covered by claims, as determined to be valid pursuant to these Terms and Conditions.

(v) However, with respect to paragraphs (z)(iii) and (z)(iv) above, indemnification payments for the peanuts removed in the remilling and/or blanching process shall be delayed until such time as the loan acquired for the purposes of paying indemnities on 1990 crop peanuts is repaid.

(vi) If more than 1300 but not more than 2500 claims for indemnification have been filed with the Committee by December 31 of the current crop year, indemnification payments for the peanuts removed in the remilling and/or blanching process shall be delayed until December 31 of the calendar year following the current crop year, or until other action is prescribed by the Committee, with the approval of the Secretary.

(vii) If more than 2,500 claims for indemnification have been filed with the Committee on or before December 31 of the current crop year, or if projections indicate that the total number of claims during the crop year may be approximately 6,000 or more, or if projections indicate that the aggregate costs of the expense items referred to in paragraph (z)(i) and (z)(ii), minus salvage, might exceed the $9,000,000 limit, alternative methods or rates of payment shall be prescribed by the Committee, with the approval of the Secretary.

Dated: May 23, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–12746 Filed 5–30–91; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1004

[Docket No. AO–160–A65–RO–2; DA–90–003]

Milk in the Middle Atlantic Marketing Area; Recommended Decision and Opportunity to File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends changes to the Middle Atlantic Federal milk order that would incorporate into the order a plan for pricing milk on the basis of its nonfat solids content, as well as its volume and butterfat content. The differential value of milk used in Class I and Class II would be pooled to determine producers' shares of the higher-valued uses, and the value of nonfat solids used in Classes II and III would be pooled with the value of skim milk used in Class I to determine the value of nonfat solids in producer milk.

The decision is based on industry proposals considered at a public hearing held July 17–18, 1990, in Philadelphia, Pennsylvania.

DATES: Comments are due on or before June 17, 1991.

ADDRESSES: Comments (five copies) should be filed with the Hearing Clerk, room 1083, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456 (202) 447–7183.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendment(s) would promote orderly marketing of milk by producers and regulated handlers.

Prior document in this proceeding:

Notice of Hearing: Issued June 29, 1990; published July 9, 1990 (55 FR 28052).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the Middle Atlantic marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC, 20250, by the 15th day after publication of this decision in the **Federal Register**. Five copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Philadelphia, Pennsylvania, on July 17–18, 1990, pursuant to a notice of hearing issued June 29, 1990 (55 FR 28052).

The material issues on the record of hearing relate to multiple component pricing.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

A proposal that the Middle Atlantic order be amended to accommodate a multiple component plan using values of nonfat milk solids and butterfat to adjust the value of milk used in Class II and Class III products and payments to producers should be adopted. Under the component pricing plan adopted herein, handlers' obligations for producer milk used in Class I will not be affected by the nonfat solids content of the milk.

At the present time under the Middle Atlantic order, and under nearly all of the other Federal milk orders, milk received by handlers is priced according to the pounds of producer milk allocated to each class of use multiplied by the prices per hundredweight of milk testing 3.5 percent butterfat, as determined under the orders for each class of use. Adjustments for such items as overage, reclassified inventory, location and other source milk allocated to Class I are added to or subtracted from the classified use value of the milk. The resulting amount is divided by the total producer milk in the pool to calculate a price per hundredweight of milk testing 3.5 percent butterfat to be paid to producers for the approved milk they have delivered to handlers. The price paid to each producer is then adjusted according to the specific butterfat test of the producer's milk by means of a butterfat differential. The butterfat differential is computed by multiplying the wholesale selling price of Grade A (92-score) bulk butter per pound on the Chicago Mercantile Exchange, as reported for the month by the U.S. Department of Agriculture, by 0.138 and subtracting the Minnesota-Wisconsin price at test, also as reported for the month by the U.S. Department of Agriculture, multiplied by .0026.

The component pricing plan was proposed by Pennmarva Dairymen's Federation, Inc., (Pennmarva) a federation of cooperatives composed of Atlantic Dairy Cooperative, Mid-Atlantic Division of Dairymen, Inc., Maryland and Virginia Milk Producers Cooperative Association, Inc., and Valley of Virginia Cooperative Milk Producers Association. A witness for the Federation testified in favor of the proposed pricing plan on behalf of Pennmarva, Mount Joy Farmers Cooperative Association and Eastern Milk Producers Cooperative Association, Inc. The members of these organizations market 90 percent of the producer milk associated with the Middle Atlantic order.

Pennmarva's witness testified that the adoption of component pricing under the Middle Atlantic order is justified on the basis that its incorporation under the order will result in a better recognition of the economic value of all producer milk than either the order's current provisions or any existing industry-sponsored component pricing programs within the Middle Atlantic market, and thereby contribute to orderly marketing. The witness explained that under the current provisions of the order, prices vary only for differences in the butterfat component content of milk, even though it has been demonstrated that other components have value. He indicated that without multiple component pricing under the order, industry-sponsored programs, which suffer from serious economic defects, will continue to proliferate. The witness stated that under the industry-sponsored plans prices cannot be adjusted downward for milk of less than average component content. In addition, he continued, the plans generally are not available to all producers, resulting in a situation in which producers do not receive uniform prices for their milk and handlers do not pay uniform prices. As a consequence, the witness testified, producers on the Middle Atlantic market are not receiving appropriate pricing signals regarding the value of their milk.

The representative of Pennmarva testified that Pennmarva has chosen to follow the multiple component pricing plan in the Great Basin order. He stated that the plan excludes adjustments in Class I prices for the nonfat component while dividing the Class III value between the fat and nonfat solids prices. Use of the plan, according to the witness, will maintain price alignment between the Middle Atlantic market and neighboring Federal order markets because purchasers of Class II and Class III milk will experience no appreciable change in their prices. The witness maintained that the plan works well and helps maintain orderly marketing. He pointed out that the plan results in revenue neutrality. The current handler reporting structure would be maintained, he said. Finally, the witness stated, the plan prices Class II and Class III milk according to the relationship that exists between component content and product yield.

Pennmarva's witness explained that due to the U.S. Food and Drug Administration's standards of identity requiring fluid milk products to have only a minimum nonfat solids content of 8.25 percent, Pennmarva does not support having component pricing apply to Class I milk in the Middle Atlantic market. He indicated that Pennmarva does not want to create an incentive to lower the current nonfat solids content of fluid milk, which is generally somewhat higher than the required minimum. The witness stated that fluid milk handlers do not want to create a situation in which their competitors may gain a competitive advantage by paying less for Class I milk containing a lower percentage of nonfat solids. He testified further that fluid milk handlers are reluctant to pay for milk on the basis of multiple components because of a general perception that consumers are unwilling to pay a higher price for milk containing a higher-than-average percentage of nonfat solids.

Proponent witness proposed that the multiple component pricing plan used in the Great Basin Federal milk order be adapted for use in the Middle Atlantic order by making four basic modifications. The Great Basin pricing plan would be modified by incorporating the current Middle Atlantic seasonal base-excess plan, by using nonfat solids and butterfat as the components rather than protein and butterfat, by using the Class III price rather than the basic formula price to derive the nonfat solids

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price, and by deriving the nonfat solids price from the current month's nonfat solids content rather than the previous month's.

The Pennmarva witness presented several reasons for using nonfat solids instead of protein as the component for pricing producer milk and milk used in Class II and Class III by handlers. According to the witness, a preponderance of the milk pooled under the Middle Atlantic order and used in Class II and Class III is used in products whose economic value depends on the nonfat solids content of the milk rather than on the protein content. Therefore, the Pennmarva witness argued, the use of protein to determine the value of milk used by handlers in most Order 4 manufactured products would result in price variations to handlers that would exceed the value of the component in the products manufactured. Finally, the witness stated, a greater redistribution of money among producers would occur if prices to producers are adjusted on the basis of the protein content of their milk rather than on the basis of the nonfat solids content.

Pennmarva's witness further explained why Pennmarva proposes using the Class III price rather than the basic formula price to derive the nonfat solids price. According to the witness, the Middle Atlantic Class III price differs from the basic formula price due to the use of seasonal adjustments to the basic formula price. He indicated that maintaining these seasonal adjustments requires using the Class III price to derive the nonfat solids price.

Pennmarva's representative explained that use of the current month's average nonfat solids content of producer milk to derive the nonfat solids price, rather than the previous month's content, will provide a better measure of the current month's component values than using the previous month's tests. He indicated that nonfat solids tests for the current month are available at the same time as butterfat tests for the current month. The witness stated that under Pennmarva's proposal the nonfat solids prices for the current month will be announced by the 13th of the following month.

A witness appearing on behalf of Dietrich's Milk Products, Inc. (Dietrich's), a non-regulated handler under the Middle Atlantic order, testified that Dietrich's supports Pennmarva's position that the Middle Atlantic order should be amended to provide incentives to producers to produce milk that has a greater value in the marketplace. He testified that Dietrich's would prefer nonfat solids pricing to protein pricing because the handler mainly produces whole milk powder, a major manufacturing use of milk in the Middle Atlantic market. Therefore, the witness stated, nonfat solids pricing would better fit Dietrich's operations. The witness also testified that Dietrich's has found that it is more difficult to accurately determine the protein content of milk than the nonfat solids content. He observed that the Minnesota-Wisconsin price largely reflects protein values because it is primarily driven by the cheese market, and argued that since the nonfat solids price as proposed by Pennmarva would be derived from the Minnesota-Wisconsin price, the resulting nonfat solids price would include the value of protein as well as the value of nonfat solids.

However, Dietrich's witness expressed some concerns about the proposal and its impact. He indicated that Dietrich's is concerned about transfers between handlers and between markets. Specifically, he testified that Dietrich's ships fluid skim milk from its non-pool plant to pool plants under the New York-New Jersey order on an agreed-upon Class II basis. He expressed concern about the treatment of these shipments under an amended Middle Atlantic order, and about how shrinkage would be handled under the order if component pricing were adopted.

A witness representing National All-Jersey, Inc., a national organization of dairy farmers, and appearing on behalf of the American Jersey Cattle Club, the breed association for owners of Jersey cattle, stated that both organizations support Pennmarva's proposal because the current butterfat-skim milk pricing system is not equitable to dairy farmers. He explained that under the current pricing plan, producers receive the same price for the skim portion of their milk regardless of its nonfat solids content. In other words, he said, producers are paid the same price for a pound of water as for a pound of nonfat solids.

The witness for the Jersey organizations testified that the organizations also support the proposal because it would give dairy farmers more appropriate economic signals. He opined that the current milk pricing system does not give dairy farmers the proper incentives to produce the kind of milk that consumers are demanding. Through the types of dairy products they are purchasing, according to the witness, consumers are placing a greater emphasis and value on the nonfat solids portion of milk. However, the witness stated, an increase in the value of the skim portion of milk, without component pricing, only gives dairy farmers an incentive to increase the volume of milk that they produce without regard to the components or water contained in it.

A consultant for the Jersey organizations stated that their organizations' purpose in testifying is to support Pennmarva's proposal. He suggested that the most important reason for implementing a multiple component pricing plan is to reflect back to producers the fact that the value of skim milk varies depending on the percentage of solids it contains. According to the witness, differences in the value of skim milk stem from the fact that milk with higher levels of nonfat solids has a greater nutritional value and produces higher yields of manufactured products. He stated that producers cannot achieve maximum efficiency in the use of their resources in satisfying consumer wants so long as they are being paid under the present pricing system that tells them that it makes no difference what level of nonfat solids or water their milk contains.

The consultant, who also has direct experience with the pricing plan effective under the Great Basin order, further testified that differences in milk costs among fluid milk handlers on the Great Basin market would have been rather small even if the order had priced Class I milk on the basis of its protein content, because the variation in the protein content among handlers was not great. These differences would have been even less, according to the witness, if pricing had been based on the nonfat solids content of the milk. The consultant also testified that fluid milk handlers on the Great Basin market are beginning to pay much more attention to the level of solids in the skim milk that they receive. He stated that they are objecting more and more to receiving milk with lower solids.

Although the Jersey consultant testified that charging handlers for the nonfat solids content of the milk they use in Class I is feasible and economically justifiable, he stated that the Jersey organizations do not advocate that component pricing under the Middle Atlantic order apply to Class I milk at this time. Such an approach would not be appropriate, according to the witness, until handlers begin to insist on receiving higher nonfat solids milk for which they pay no more.

The witness testifying on behalf of the National Farmers Organization (NFO), a producer cooperative, stated that NFO supports the concept of multiple component pricing of milk in Federal milk orders because by pricing milk according to its values in the marketplace, component pricing makes

it possible for producers to respond to the demands of the marketplace and to be properly rewarded for their efforts. However, the witness stated that NFO supports component pricing based on protein rather than nonfat solids for several reasons. He said that NFO has found that protein is the component most demanded by handlers and the component handlers are most willing to pay for directly. Further, he stated, although protein and lactose, the major components of nonfat solids, have very different economic values, nonfat solids pricing would result in assigning them equal value.

The NFO witness testified that producers have become attuned to the protein content of their milk as part of their herd management. The witness concluded that adjoining Federal order markets with overlapping procurement areas likely will adopt multiple component pricing based on protein, with the result that a Middle Atlantic multiple component pricing plan based on nonfat solids would be isolated and out-of-step with adjacent orders. As a result, he stated, producers and handlers within the substantial area of overlapping supplies among these neighboring markets would be presented with a confusing and difficult marketing situation.

The witness for NFO also testified that the cooperative association recently negotiated a contract with a fluid milk handler in which the handler agreed to pay premiums for high protein content. According to the witness, the handler agreed to pay an incentive for high protein milk in order to procure a milk supply, not because he wanted high protein milk.

The witness representing Dean Foods Company, a non-regulated handler under the Middle Atlantic order, testified that Dean favors protein and quality pricing rather than nonfat solids pricing. However, the witness indicated that if Dean had had more time to compare the effect on Dean of nonfat solids pricing with the effect of protein pricing, Dean may have favored nonfat solids pricing. According to the witness, Dean is concerned that the adoption of nonfat solids pricing in the Middle Atlantic market and protein pricing in adjacent markets will cause milk used in the same Class II (and Class III) products to have differing costs.

The witness representing Kraft General Foods, a non-regulated handler under the Middle Atlantic order, testified that Kraft is not opposed to the concept of multiple component pricing as part of the Federal milk order system, but is opposed to Pennmarva's proposal. The witness explained that Kraft is opposed to Pennmarva's proposal because (1) nonfat solids rather than protein would be used to adjust handler and producer prices, (2) the value of the non-butterfat component would not be uniform among markets, and (3) prices would not be adjusted for somatic cell count.

Kraft's witness presented several reasons for protein to be used as a component instead of nonfat solids. In surrounding markets, the witness stated, the predominant use of surplus milk is in cheese rather than nonfat dry milk (and related products), and these markets' procurement areas overlap that of the Middle Atlantic market. The witness testified that producers in the Middle Atlantic area select herd sires on the basis of potential protein production, that voluntary multiple component pricing plans in the area use protein, and that protein is the component that gives manufactured dairy products, including nonfat dry milk, their value. He stated further that if nonfat solids are used as a basis for pricing milk, the addition of whey powder or lactose to producer milk for the purpose of enhancing producer returns may be a problem.

According to Kraft's witness, the price of components other than butterfat should be the same among markets as are butterfat prices. Otherwise, he contended, market disorder and handler inequity would result because of different raw product costs among competing handlers. The witness stated that the use of each market's average protein or nonfat solids content would result in different values for the component among markets.

Kraft's witness further testified that somatic cell counts must be included in any multiple component pricing plan. He explained that the presence of high somatic cells has a negative value on milk because it reduces cheese yields. According to the witness, other countries that use multiple component pricing adjust their prices for somatic cell count, and somatic cell count adjustments are used in most voluntary multiple component pricing plans.

The witness representing Dairylea Cooperative, a producer cooperative marketing the milk of "less than a handful" of producers under Order 4, testified that Dairylea agrees that the time has come for multiple component pricing since the value of the nonfat components of milk are greater in the marketplace than the fat component in milk. He indicated, however, that the cooperative has no position regarding multiple component pricing in the Middle Atlantic order.

In Pennmarva's brief, the cooperative federation argued that Kraft's position favoring the use of protein rather than nonfat solids as a pricing component rests upon the unsupportable supposition that intermarket alignment is more important than market characteristics, and therefore should be rejected. Pennmarva's brief stated that there is substantial record evidence concerning the characteristics of the Middle Atlantic market, but no evidence in the record that the use of nonfat solids pricing would create misalignment. Furthermore, Pennmarva contended, Kraft's data concern other marketing areas with very different market characteristics than the Middle Atlantic market. Pennmarva pointed out, for example, that while the manufacture of cheese is more substantial in the neighboring New York-New Jersey marketing area, nonfat dry milk is the principal surplus milk product manufactured in the Middle Atlantic market.

The Pennmarva brief contended that the Federal milk order program is a producer program and, absent substantial evidence of disorderly marketing as a result of proposals favored by a great majority of the market's producers, such proposals should be adopted. Pennmarva stated that the preference of Kraft, a non-pool handler utilizing approximately 4 percent of the producer milk pooled under the order, for protein pricing does not justify ignoring the fact that 90 percent of the market's producers, who would be directly affected by the provision, favor nonfat solids pricing. Pennmarva argued that handlers would not be directly affected by adoption of nonfat solids pricing because the Federation's proposal would not affect basic class price levels. Finally, Pennmarva noted that Kraft is familiar with nonfat solids pricing since Kraft operates three plants in California that are subject to such pricing and manufacture products that compete with products manufactured at plants regulated under Federal orders.

In the brief filed on behalf of the Jersey organizations, the organizations maintained that the hearing record contains abundant evidence for the Secretary to adopt Pennmarva's proposal. The brief stated that the hearing record is replete with testimony from experts and corroborating data showing the need for multiple component pricing in the Middle Atlantic market. The brief also stated that the hearing record contains several reasons for Pennmarva's proposal to be adopted. The Jersey organizations indicated that the record shows that most of the producers on the Middle

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Atlantic market support the proposal, while it is opposed by a cooperative with only about 50 producers on the market and a handler with no producers on the market. The brief conceded, however, that the opposition's position that it would be better to pay producers for the skim portion of milk based on protein rather that nonfat solids may very well prove to be a better approach in the long run. Finally, the brief indicated that while the Jersey organizations support the proposal, they believe that the multiple component pricing plan in the Great Basin order can be improved by (1) changing the method for calculating the protein or nonfat solids price, (2) providing for the same price in all orders, and (3) pricing protein or nonfat solids in Class I milk. The brief stated that the Jersey organizations do not advocate that these changes be made at this time.

In the brief filed on behalf of NFO, the cooperative association argued that the intrinsic merits of nonfat solids pricing are not superior to protein pricing, and that there are no unique conditions in the Middle Atlantic market that require nonfat solids pricing. NFO therefore opposed an action the cooperative characterized as isolating the Middle Atlantic market and placing it out of step with national dairy trends by adopting nonfat solids pricing. NFO contended that pricing milk on the basis of its nonfat solids content does not make economic sense. The cooperative stated that such a pricing plan would have the effect of assigning the same value to lactose and protein and assuming that the mineral content of milk is constant, and denigrated the choice of nonfat solids as a pricing component on the basis that it would result in less variation in producer prices than would protein.

In the brief filed on behalf of Kraft, the handler concluded that Pennmarva's proposal should not be adopted because the value of milk to manufacturers in the Middle Atlantic area results from its protein content rather than its nonfat solids content. Kraft maintained that even a protein pricing plan should not be adopted for the Middle Atlantic marketing area unless the same protein price is used in all Federal milk orders, and the resulting protein price is adjusted for somatic cell content.

Kraft's brief contained a number of proposed findings (42) that detailed the interrelationship between the Middle Atlantic market and other Federal order markets, suggested that the milk products manufactured in the separate markets be considered on a combined basis, and insisted that adoption of nonfat solids pricing for the Middle Atlantic marketing area would create disorderly marketing conditions throughout the region. In support of arguments related to intermarket competition and alignment, Kraft requested official notice be taken of the Order 2 Market Administrator's Bulletin Quarterly "D" for 1989. Accordingly, official notice of this publication is taken. The brief argued that dairy herd improvement information about sire selection offers information on the protein-transmitting ability of sires, but not on their nonfat solids-transmitting ability. Kraft's arguments included an overview of multiple component pricing plans throughout the nation, and stressed the prevalence of protein pricing in such plans in the northeastern United States. The brief also included a number of proposed findings regarding the relatively greater importance of protein over nonfat solids as a dairy product ingredient.

Kraft's brief argued that protein testing is more precise than nonfat solids testing, and that the integrity of a nonfat solids pricing plan could be compromised by the undetectable addition of low-cost dairy solids such as lactose to producer milk. The brief characterized the determination of a component price on the basis of marketwide tests and residual skim value as defective, and urged that component values be computed on the basis of the component content in the milk included in the survey from which the Minnesota-Wisconsin price is derived.

It is apparent that a multiple component pricing plan is appropriate for the Middle Atlantic milk order. The record of the proceeding shows that the level of nonfat solids or protein contained in producer milk strongly influences the quantity of manufactured dairy product obtained from the milk. In addition, it is apparent that independent pricing plans within the marketing area for nonfat solids and protein are resulting in nonuniform prices paid to producers and paid by handlers.

Notwithstanding the objections to nonfat solids pricing raised by NFO and by Kraft, the Middle Atlantic order should be amended to include nonfat solids as one of the factors used in calculating handler obligations to the marketwide pool for milk used in Class II and Class III, and in paying producers for the milk they deliver to handlers. The regulatory language by which Pennmarva proposed the multiple component pricing plan be incorporated in the order also should be adopted, with minor adjustments to accommodate other order amendments that have been adopted since the hearing in this proceeding.

Three factors should be present before the pricing of a milk component can be economically justified. First, the component should have economic value. Second, the variability of the component within milk should be of such magnitude that the economic value of the milk changes because of changes in the economic value of the component. Third, the variability of the component should be measurable.

The record in this proceeding demonstrates that industry-sponsored premium programs for both nonfat solids and protein are operating within the Middle Atlantic marketing area. The fact that handlers are paying more for milk with higher nonfat solids or protein content is sufficient to demonstrate that these components have economic value.

The record also shows that the nonfat solids and protein contents of milk can vary among individual producers to the extent that the economic value of the milk would be affected. For example, an employee of the Market Administrator of the Middle Atlantic order testified regarding a study conducted by the Market Administrator's office on what effect price adjustments to producers paid under the Middle Atlantic order for differences in the protein or nonfat solids content of each producer's milk would have on the price received by each producer. The results of the study indicated that in March 1988 differences in payments to producers would have ranged from at least minus 43 cents per hundredweight to plus 43 cents per hundredweight for both nonfat solids and protein.

The record shows that tests to measure the nonfat solids or protein content of milk are sufficiently accurate and reliable for pricing purposes. An expert witness testified that several methods for the determination of butterfat, protein, lactose, and nonfat solids are contained in the current edition of the Official Methods of Analysis of the Association of Official Analytical Chemists (AOAC). For a procedure to be recognized as an official method by the AOAC its results must be reproducible, not only in the laboratory of origin but in different laboratories, and the test must be found to be accurate. The witness indicated that the purpose of getting the AOAC's approval is to give the procedure recognition as a proven method that can be used for regulatory purposes.

The record also demonstrates that component pricing is specifically needed in the Middle Atlantic order. As previously indicated, industry-sponsored premium programs for nonfat solids and protein are operating in the market. Testimony indicates that not only do these programs differ from one to another, but that they do not apply to all producers or handlers on the market. As a result, handlers are not paying uniform prices and producers are not receiving uniform prices. Inclusion of a component pricing plan under the Middle Atlantic order will help assure that orderly marketing conditions are maintained in the Middle Atlantic market.

The four modifications to the Great Basin multiple component pricing plan proposed by the Pennmarva witness should be adopted. The plan should be adapted to incorporate the current Middle Atlantic seasonal base-excess plan. The multiple component pricing plan for the Middle Atlantic market should use nonfat solids and butterfat as the pricing components, rather than protein and butterfat, with the nonfat solids price derived from the Class III price rather than the basic formula price, and from the nonfat solids content for the current month rather than for the previous month. Use of the current month's marketwide nonfat solids test and the Class III price will assure that producer returns for a particular month are more closely related to the actual value of milk used in manufactured products during that month. The record indicates that the only opposition to the Federation's proposal was to the use of nonfat solids rather than protein as a pricing component.

In the Middle Atlantic market, a far greater quantity of milk is used in manufactured dairy products of which the yield depends on the nonfat solids content of the milk than in dairy products of which the yield depends on protein. In 1989, 1.8 billion pounds of milk were used to make condensed and powdered milk products, frozen desserts and yogurt in the Middle Atlantic market, while 0.8 billion pounds of milk were used in cottage cheese, and American, Swiss and Italian cheeses. This 2.0-to-1 1989 ratio has been relatively constant for the 1980–89 period, ranging from a high of 2.1-to-1 in 1986 to a low of 1.6-to-1 in 1984.

In Kraft's testimony and in its brief, the handler proposed that for purposes of determining how milk is used in manufactured dairy products, the uses of such milk in the Middle Atlantic market and the adjacent markets should be combined. Kraft contended that if such use were combined, cheese would be the principal use of milk used in manufactured dairy products manufactured in the region. Kraft, however, provided no persuasive reasoning for combining the manufacturing uses of milk in these three markets.

The Kraft brief also contended that protein, since it constitutes over one-third of the nonfat solids in milk, is the predominant ingredient in manufactured products made from milk pooled under the Middle Atlantic order. Kraft's approach would require combining the protein in nonfat dry milk and other products of which the yield is dependent on nonfat solids with the protein in cheese and other products in which yield is determined by protein to conclude that protein is the most important factor in manufactured products produced in the marketing area. Such an approach would make economic sense only if the protein in the milk used to produce nonfat dry milk is priced separately from other constituents of the nonfat solids contained in the milk. Since the record indicates that the nonfat constituents in nonfat dry milk are not valued individually, there is no basis for considering Kraft's contention.

According to the record, nonfat solids pricing is the principal method employed under the industry-sponsored component pricing plans operating in the Middle Atlantic market. Three producer cooperative associations qualified under the Middle Atlantic order (all of which support Pennmarva's proposal for nonfat solids pricing) charge some handlers and pay some of their producers some form of component premium. The record indicates that Atlantic Dairy Cooperative has a nonfat solids premium plan, Dairymen, Inc., had a protein premium plan but has changed to nonfat solids, and Eastern has a protein premium plan.

Although the testimony of an expert witness indicated that the protein component of the nonfat solids component of milk has a much greater nutritional, functional, and economic value than lactose, the witness also stated that protein is only rarely priced according to its intrinsic values. Conclusions based on an examination of the functional values of components do not necessarily apply to relative economic values. Except for Kraft's, most of the testimony in the record supports a conclusion that purchasers of manufactured milk products such as dry milk powder and condensed milk do not base their purchasing decisions on prices paid on the protein content of the products.

The casein and lactose prices which are part of the record are not wholesale prices for these products, and do not represent the economic values of these components in producer milk. While it might be possible to derive a producer price for these products from their wholesale prices, the record is devoid of the facts that one would need to do it.

Aside from the testimony of one witness regarding premiums paid for nonfat solids content, the record contains no testimony about the amount of premiums paid for protein and nonfat solids. It is unlikely that a price for lactose would exist at the producer level because it is impractical to separate lactose from milk other than as a byproduct of cheesemaking. Furthermore, since the issue is whether milk should be paid for on the basis of its protein or nonfat solids components, comparisons between protein and lactose have no relevance. Although nonfat solids contain both lactose and protein, such a comparison is invalid because other components are contained in the nonfat solids portion, and because nonfat solids are not simply the sum of their parts. Nonfat solids constitute a distinct component with its own economic value apart from any of its constituents.

Although the Secretary generally adopts uniform pricing provisions in orders where significant inter-market competition among handlers exists, exceptions are made when warranted by local marketing conditions. Such an exception, for example, can be found in the present Middle Atlantic order. In nearly all orders, the basic formula price is the Class III price. However, in the Middle Atlantic order, the Class III price is the basic formula price adjusted for seasonality. There is no evidence in this record that the price difference has led to disorderly marketing between the Middle Atlantic market and adjacent marketing areas.

In order to cause disorderly marketing conditions, price differences between marketing areas would have to be of a great enough magnitude to overcome inherent institutional differences such as cooperative membership and relationships between suppliers and distributors. Such differences would also have to be readily discernable.

Although the nonfat solids and protein percentages of milk vary between individual producers, the variation in component content of the milk supply purchased by individual handlers is less marked, as the milk of a number of producers is commingled. Therefore, handlers procuring milk supplies from a milkshed shared by more than one marketing area are unlikely to see much difference in the component content of

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their milk receipts. If they are paying for different components under two different orders, it is also unlikely that such differing payment bases will result in significant differences in their obligations for producer milk as long as the prices for the components are calculated from the market's lowest class use price. Handlers such as Kraft, who see a decided advantage in procuring milk high in a particular component, likely will continue to pay premiums for a supply of such milk.

In the case of neighboring producers, the substantially higher quantity of nonfat solids in a hundredweight of milk in comparison to the quantity of protein in that milk would be balanced by a lower price for nonfat solids than for protein, resulting in essentially the same total impact on an average producer's payments. In addition, the relationship of the level of nonfat solids and protein content in the milk of any individual producer can be expected to vary seasonally. It is unlikely that producers would want, or be able, to change the order under which their milk is regulated to take advantage of variations in their relative component levels from month to month.

The fact that existing information on sire selection includes the potential in cow progeny for volume of milk, butterfat and protein, rather than nonfat solids, should not be given primary consideration. There is some relationship between the levels of protein and nonfat solids in milk. In addition, 90 percent of the producers on the Middle Atlantic market are represented by the cooperative associations that proposed incorporation of nonfat solids pricing in the order for the Middle Atlantic market. To conclude that pricing producer milk on the basis of its protein content would be more appropriate for the Middle Atlantic market than nonfat solids pricing would require finding that producers are incapable of determining their own best interests. In any event, it is difficult to envision a situation where a component is specifically being priced when it had not been before, and producers respond by reducing their production of it.

It is not necessary to find that testing for nonfat solids is more accurate than protein testing in order to adopt pricing on the basis of nonfat solids. The question is not whether protein tests are more accurate than nonfat solids tests but whether nonfat solids tests are sufficiently accurate, reliable and affordable to allow nonfat solids pricing. The record indicates that while the testing procedures for any component, including butterfat, are not exact, testing procedures for nonfat solids are accurate, repeatable, and affordable for any size operation.

Kraft's concern that nonfat solids pricing would enable producers to add cheap nonfat solids such as lactose to their milk to enhance their income with little fear of detection could not be alleviated by adopting protein pricing. Under a protein pricing plan, producers would have an incentive to add cheap protein, dry whey for example, which also would be difficult to detect.

It is therefore concluded that under the multiple component pricing plan adopted for the Middle Atlantic order, prices for milk should be adjusted for the nonfat solids content of the milk rather than for the protein content. A far greater quantity of milk pooled under the order is used in manufactured dairy products of which the yield depends on the nonfat solids content of the milk than is used in products of which the yield depends on the protein content of the milk. In addition, nonfat solids pricing plans are the principal industry-sponsored component pricing plans operating in the Middle Atlantic market. It cannot be shown that the adoption of nonfat solids pricing in the Middle Atlantic market will result in disorderly marketing conditions within this market or between the Middle Atlantic and adjoining marketing areas.

Since it has been determined that nonfat solids pricing will be adopted under the Middle Atlantic order, it is not necessary to deal with the issues regarding protein pricing raised by Kraft in its testimony and brief: Namely, a uniform protein price among all orders and price adjustments for somatic cell count. This proceeding provides no basis for concluding that the presence of somatic cells affects the value of nonfat milk solids in milk in the same way that the value of the protein content is affected by somatic cells.

Incorporation of the proposed multiple component pricing plan in the Middle Atlantic order will necessitate amending provisions of the order dealing with handler reports, class (and component) prices, the computation of handler's obligations and payments to the producer-settlement fund, and the determination of payments to producers. As in the Great Basin order, the assumption is made that the nonfat solids contained in skim milk will remain evenly distributed within the skim milk portion of milk receipts. This assumption will allow the proration of nonfat solids to skim milk in the shrinkage and allocation procedures of the order.

In addition to the information that the order already requires handlers to report monthly to the Market Administrator, each handler will be required to report the average nonfat solids content of milk received from each producer during the month, the amount of nonfat solids in the handler's other receipts, except receipts of other source milk, and the nonfat solids contained in bulk transfers of milk and cream to other handlers. Partially regulated distributing plant operators will not be required to report information regarding the nonfat solids of their milk receipts unless they elect to have their obligations calculated under the provision that would determine obligations on the same basis as those of fully regulated handlers.

The amended order will contain definitions for a skim milk price, a butterfat price and a nonfat milk solids price in addition to defining the usual Class I, Class II and Class III prices, and producer prices. The skim milk price will be used to determine the value of the skim milk portion of producer milk that is allocated to Class I. Value adjustments for determining payments by handlers for milk used in Class II and Class III, and to producers, will be made by prices per pound for the butterfat and nonfat solids contained in their milk. The skim milk price, the butterfat price and the nonfat milk solids price will be derived from the Class III price and the butterfat differential.

The butterfat price in the amended order will be determined by adding the value of the butterfat differential expressed in pounds (the butterfat differential×10) to the value of skim milk per pound (the skim milk price per hundredweight divided by 100). The use of the skim milk price and the butterfat price will result in no changes from the present pricing procedures in the value of skim milk or butterfat to producers or handlers.

The nonfat solids price will be determined as proposed by Pennmarva. The value of the skim milk portion in milk priced at the Class III price, determined by subtracting from the Class III price the result of multiplying the butterfat price by 3.5, will be divided by the average pounds of nonfat solids in producer milk for the current month.

Payments to producers for deliveries of milk and the nonfat solids portion of milk will be determined through the operation of two marketwide pools. The differential pool will be used to determine the price to be paid producers for their share of the fluid milk market and the skim milk-nonfat solids pool will be used to determine the price to be paid producers for the nonfat solids in their milk. Each handler's net obligation to the two pools (and consequently the handler's payment to the producer settlement fund) will be determined by subtracting the differential and nonfat solids values due to the handler's producers from the differential and nonfat solids values of the producers' milk used by the handler. The value of butterfat used by the handler will not be pooled, but will be paid directly to the producers from which the handler received the milk in which the butterfat was contained.

The differential value of each handler's receipts of producer milk assigned to Class I and Class II will be calculated by multiplying the hundredweights of producer milk allocated to these classes by the difference between the respective class prices applicable at the location of the plant and the Class III price. In addition, the adjustments to the class values of producer milk that currently are included in determining a handler's obligation would be included in the differential value. The adjustments include the values of overage, beginning Class III inventory allocated to a higher class, other source and filled milk receipts allocated to Class I, and certain receipts from unregulated supply plants that are allocated to Class I. Each handler's differential value will be combined and then divided by the hundredweight of producer base milk in the differential pool to determine the weighted average differential price for base milk, and by the hundredweight of producer milk in the differential pool to determine the weighted average differential price.

Currently, the price for excess milk may reflect some of the value of a higher class if the volume of excess milk in the marketwide pool exceeds the amount of Class III milk. Under the amended order, all of the excess milk would be valued solely on its component basis, as derived from the Class III price. As a result, the base value of producer milk under the amended order would have the potential of exceeding the base value under the current order. The change should result in little material change in the relationship of the values of base and excess milk, and reflects the intent of proponents.

The weighted average differential price for base milk and the weighted average differential price will equal the portion of the present base price, and the uniform or blend price, respectively, that exceed the Class III price because the butterfat, skim milk and nonfat milk solids prices will be derived from the Class III price. As a result, it will be possible to compute and announce a base price and a uniform price (for informational and comparison purposes) by simply adding the weighted average differential price for base milk or the weighted average differential price to the Class III price.

Each handler's skim milk-nonfat solids value will be determined by combining the skim milk value of the handler's producer milk in Class I with the nonfat solids value of the handler's milk in Class II and Class III. The skim milk value will be determined by multiplying the skim milk in producer milk assigned to Class I by the skim milk price. The nonfat solids value will be determined by multiplying the nonfat solids in producer milk assigned to Class II and Class III by the nonfat milk solids price. The amount of nonfat solids in each class will be determined by multiplying the skim milk portion of producer milk allocated to each class by the nonfat solids content of the skim milk portion of all of the handler's producer milk. The price to be paid producers for the nonfat solids in their milk will be determined by combining the individual handler values of skim milk in Class I milk and nonfat solids in Class II and Class III milk, and dividing the resulting total by the pounds of nonfat solids in all producer milk. The resulting price will be the producer nonfat milk solids price.

As a result of the order amendments described, payments to producers will be based on three factors. First, they will receive payment for their base milk equal to the hundredweight of base milk delivered to handlers multiplied by the weighted average differential price for base milk. Second, they will be paid for the nonfat solids contained in their milk in an amount equal to the pounds of nonfat solids contained in their milk deliveries multiplied by the producer nonfat milk solids price. And third, they will be paid for the butterfat in their production in an amount determined by the pounds of butterfat contained in their milk deliveries multiplied by the butterfat price.

The concerns expressed by the Dietrich's witness do not provide an adequate basis for altering the pricing and pooling plan described herein. Sales of skim milk as Class II (or Class III) to fluid milk handlers in the New York City area would not need to be treated differently than any other Class II or Class III use under the amended order. Because the component prices are derived from the Class III price, there should not be a great deal of difference between the pool value of Class III milk at a hundredweight price and a corresponding value at component prices. Dietrich's may be concerned that its receipts of high-solids milk will result in greater costs that may not be covered by payment from Order 2 handlers at Class III prices. However, if the skim milk is delivered by Dietrich's to fluid milk handlers in the New York metropolitan area, it is unlikely that Dietrich's receives only the order's lowest class price for such sales.

The equitable treatment of handlers in shrinkage computation, a question raised by the Dietrich's witness, should present no problems. The proportion of each handler's receipts represented by nonfat solids will be presumed to be reflected in the handler's shrinkage, and the handler's classified use of milk will be determined accordingly. The record provides no basis for assigning a different percentage of nonfat solids in skim milk lost in shrinkage than the handler receives in the skim milk portion of producer receipts.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Middle Atlantic order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the

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order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions to Rulings of the Administrative Law Judge

Exceptions to four rulings by the Administrative Law Judge (the ALJ) which excluded or limited proffered evidence were filed by counsel on behalf of Kraft General Foods.

Counsel challenged the ALJ's decision not to allow cross-examination of the Atlantic Dairy Cooperative's expert witness on the Department's usual pre-hearing procedures. Counsel argued that this ruling was clearly wrong because parties were not afforded the amount of time upon which they are accustomed to rely to prepare for the hearing. Counsel contended insufficient notice adversely affected the quality of the record evidence.

The Department's review of the proceeding supports the ALJ's decision. The Department's regulations (7 CFR 900.4) set forth the requirements for the institution of proceedings to amend a marketing order. A notice of hearing must be filed with the Hearing Clerk. The time of a hearing on an amendment to a marketing order can not be less than 3 days after the notice is published in the **Federal Register**. The notice of hearing for this proceeding was published on July 9, 1990. The hearing began on July 17, 1990, more than the required 3 days after the publication date. (Tr. p. 5, Exhibit 1). Next, the Administrator is required to provide notice of the hearing to all interested parties and to the Governors of the States who, in the public interest, should be notified. Exhibits 1–4 establish that the Administrator fulfilled all the requirements of 7 CFR 900.4.

Counsel complained that the record is deficient because the notice to the parties was insufficient. There is no merit to this argument. The purpose of § 900.4 is to ensure adequate notice to all parties. Since the requirements of that section were satisfied, Counsel's suggestion that the parties did not have ample time to prepare for the hearing is of no consequence. The common practices of the Department were not an issue in this proceeding. The ALJ was correct to exclude this testimony because it was irrelevant.

Even if this inquiry had been relevant, an economist for a dairy cooperative is not the proper witness to testify about Department practices. A witness may not testify about a matter unless evidence is introduced sufficient to support a finding that he has personal knowledge of the matter. There is no evidence in the record to suggest that this witness had personal knowledge of the Department's common pre-hearing practice.

Counsel also challenged the ALJ's decision to exclude portions of Department studies because they contained opinion. The people who had prepared the studies were not present to testify at the hearing. The exhibits in question are exhibits 29, 30 and 38, entitled "Multiple Component Pricing Report" and "Industry Sponsored Multiple Component Pricing Programs Applicable to Federal Milk Order Procedures May 1989 Update", and "Upper Midwest Marketing Area Analysis of Component Levels on Individual Herd Milk at the Farm Level 1984 and 1985", respectively. The first report was prepared by a Task Force of USDA Market Administrators, the second by the Missouri Market Administrator's Office, and the third by Victor Halverson and H. Paul Kyburz of the Upper Midwest Market Administrator's Office.

Although the studies are hearsay, the ALJ admitted portions of them into evidence under the public records exception to the hearsay rule. The ALJ also ruled that the parts of the reports which stated opinions or conclusions were not admissible. This decision was correct. The opinions of the Market Administrators and their employees who prepared these studies are expert testimony. The public records exception does not extend to expert opinion testimony or evidence.

Counsel also claimed that these opinions should have been admitted into evidence under the "learned treatise" exception to the hearsay rule. The exception upon which counsel relies states that to the extent material called to the attention of an expert witness upon cross-examination or relied upon by him in direct examination, is established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice, it is admissible. The exception also states that if such publication is admitted, the statement may be read into evidence but may not be received as an exhibit. The opinions contained in these exhibits do not fit this exception. The witness through whom counsel sought to introduce these exhibits was not an expert witness. There is no evidence in the record upon which to find that he is an expert in a particular field. The exception does not extend to a non-expert witness who relies on a publication.

Counsel's third argument in favor of admitting this hearsay opinion evidence is based upon a general exception to the hearsay rule. To fit that exception, hearsay must be offered as evidence of material fact, be more probative on the point for which it is offered than any other evidence, and its admission must serve the interest of justice. This exception is not applicable to opinions contained in reports. The most probative evidence would certainly be the testimony of those experts whose opinions are sought to be introduced.

The ALJ excluded a portion of exhibit 37, "Great Basin Market Average Protein Content in Producer Milk and Average Producer Protein Price/Pound", as well. Specifically, he excluded the table entitled "Difference in Handling Cost Pricing compared to Skim Milk Under Component Pricing" located on the third page of the exhibit. In his exceptions, counsel stated that this chart was excluded because "it was specially prepared for information to the industry rather than prepared every month on a routine basis." This reason is not the one the ALJ gave for excluding the table. Rather, he excluded it because the table did not contain volume information and therefore was potentially misleading. (Tr. p. 454). This ruling was proper because without the volume information, the table's probative value was negligible.

Counsel also challenged the ALJ's ruling that summaries of statistical data concerning somatic cell count in Pennsylvania and Wisconsin DHIA herds were not admissible. The ALJ based his ruling on the fact that the document contained only conclusions. Counsel did not present a witness who could explain the exhibit or answer questions about it. This ruling was correct. Without information about how the information was collected, the sample of herds on which the information was based, and other vital information, the tables had little probative value.

Evidence related to any modification of a multiple component pricing plan to include adjustments for somatic cell counts was excluded from the record by the ALJ on the basis that such a modification was well beyond the scope of the hearing notice. Kraft's two exceptions to rulings of the ALJ on this issue are based on its assertion that

pricing adjustments for somatic cell content is generally recognized as an integral part of multiple component pricing programs.

No mention of any kind of quality adjustment was included in the hearing notice for this proceeding. The record clearly supports a finding that other parties to the hearing did not expect to address any issue related to quality adjustments in general or somatic cell counts in particular. While the question of what, if any, milk components should be included in a pricing plan for the Middle Atlantic market clearly was an issue in this proceeding, there was no basis for any parties to the proceeding to assume that quality adjustments would be considered.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended regulating the handling of milk in the Middle Atlantic marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Part 1004

Milk marketing orders.

PART 1004—[AMENDED]

1. The authority citation for 7 CFR part 1004 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 1004.30 is revised to read as follows:

§ 1004.30 Reports of receipts and utilization.

(a) On or before the eighth day after the end of each month each handler with respect to each of the handler's pool plants shall report for the month to the market administrator in the detail and on forms prescribed by the market administrator as follows:

(1) The quantities of skim milk and butterfat contained in:

(i) Receipts of producer milk (including such handler's own production) and milk received from a cooperative association for which it is a handler pursuant to § 1004.9(c), and the pounds of nonfat milk solids contained in such receipts;

(ii) Receipts of fluid milk products and bulk fluid cream products from other pool plants; and

(iii) Receipts of other source milk;

(2) The quantities of skim milk and butterfat in inventories at the beginning and end of the month of fluid milk products and products specified in § 1004.40(b)(1); and

(3) The utilization or disposition of all skim milk and butterfat required to be reported pursuant to this paragraph, showing separately in-area route disposition, except filled milk, and filled milk route disposition in the marketing area;

(b) Each handler who operates a partially regulated distributing plant shall report as required in paragraph (a) of this section, except that receipts of milk from dairy farmers shall be reported in lieu of producer milk and that the market administrator may waive the reporting of nonfat milk solids; such report shall include a separate statement showing the quantity of reconstituted skim milk in fluid milk products disposed of on routes in the marketing area;

(c) Each producer-handler and each handler pursuant to § 1004.9(e) shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe; and

(d) On or before the eighth day after the end of each month, each cooperative association and/or a federation of cooperative associations shall report with respect to milk for which it is a handler pursuant to § 1004.9(b) or (c) as follows:

(1) Receipts of skim milk, butterfat and nonfat milk solids from producers;

(2) Utilization of skim milk, butterfat and nonfat milk solids diverted to nonpool plants; and

(3) The quantities of skim milk, butterfat and nonfat milk solids delivered to each pool plant of another handler.

3. Section 1004.32 Other reports, is amended by revising paragraphs (a)(1)(iii), (a)(2) and (d)(2) to read as follows:

§ 1004.32 Other reports.

(a) * * *

(1) * * *

(iii) The average butterfat content and average nonfat milk solids content of such milk; and

* * * * * *

(2) Such other information with respect to receipts and utilization of butterfat, skim milk and nonfat milk solids as the market administrator shall prescribe.

* * * * * *

(d) * * *

(2) The total pounds of milk involved in the transaction, and the average butterfat and nonfat milk solids content of such milk; and

* * * * * *

4. Section 1004.50 Class prices, is amended by adding three new paragraphs (d)–(f), to read as follows:

§ 1004.50 Class prices.

* * * * * *

(d) *Butterfat price.* The butterfat price per pound shall be a figure computed as follows:

(1) Compute a butterfat differential per 1 percent butterfat by multiplying the simple average for the month of the daily prices per pound of Grade A (92-score) butter by 1.38, and subtract from the result an amount determined by multiplying the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, by 0.028.

The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division using the price reported each week as the daily price for that day and for each following day until the next price is reported.

(2) Multiply the butterfat differential obtained in paragraph (d)(1) of this section by 3.5, and subtract the resulting amount from the Class III price;

(3) Divide the value obtained from the calculations of paragraph (d)(2) of this section by 100; and

(4) Add to the resulting amount the butterfat differential computed in paragraph (d)(1) of this section. The sum thereof shall be the price per pound for producer butterfat for the month.

(e) *Nonfat milk solids price.* The price per pound for nonfat milk solids shall be computed by subtracting from the Class III price the butterfat price multiplied by 3.5, and dividing the result by the average percentage of nonfat milk solids in all producer milk for the month.

(f) *Skim milk price.* The skim milk price per hundredweight shall be the Class III price for the month adjusted to remove the value of 3.5 percent butterfat and rounded to the nearest cent. Such adjustment shall be computed by multiplying the butterfat differential pursuant to paragraph (d)(1) of this section by 3.5 and subtracting the result from the Class III price.

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5. Section 1004.51 Basic formula prices, is amended by revising the last sentence of paragraph (a) to read as follows: "For such adjustment the butterfat differential pursuant to § 1004.50(d)(1), rounded to the nearest cent, shall be used."

6. Section 1004.53 is amended by revising paragraph (a)(3) to read as follows:

§ 1004.53 Announcement of class prices and producer butterfat differential.

* * * * *

(a) * * *

(3) The prices for butterfat and skim milk computed pursuant to § 1004.50(d) and (f).

* * * * *

7. Section 1004.54 is revised to read as follows:

§ 1004.54 Equivalent prices or indexes.

If for any reason a price or pricing constituent required by this order for computing class prices or for other purposes is not available as prescribed in this order, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

8. The heading "Uniform Prices" before Section 1004.60 is revised to read "Differential Pool and Handler Obligations."

9. Section 1004.60 is revised to read as follows:

§ 1004.60 Handler's value of milk for computing uniform prices.

The market administrator shall compute each month for each handler defined in § 1004.9(a) with respect to each of such handler's pool plants, and for each handler defined in § 1004.9 (b) and (c), an obligation to the pool computed by adding the following values:

(a) The pounds of milk received from a cooperative association as a handler pursuant to § 1004.9(c) and allocated to Class I pursuant to § 1004.44(a)(14) and the corresponding step of § 1004.44(b), and the pounds of producer milk in Class I as determined pursuant to § 1004.44, both multiplied by the difference between the Class I price (adjusted pursuant to § 1004.52) and the Class III price;

(b) The pounds of milk received from a cooperative association as a handler pursuant to § 1004.9(c) and allocated to Class II pursuant to § 1004.44(a)(14) and the corresponding step of § 1004.44(b), and the pounds of producer milk in Class II as determined pursuant to § 1004.44, both multiplied by the difference between the Class II price and Class III price;

(c) The value of the product pounds, skim milk, and butterfat in overage assigned to each class pursuant to § 1004.44(a)(15) and the value of the corresponding pounds of nonfat milk solids associated with the skim milk subtracted from Class II and Class III pursuant to § 1004.44(a)(15), by multiplying the skim milk pounds so assigned by the percentage of nonfat milk solids in the handler's receipts of producer skim milk during the month, as follows:

(1) The hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1004.44(a)(15) and the corresponding step of § 1004.44(b), multiplied by the difference between the Class I price adjusted for location and the Class III price, plus the hundredweight of skim milk subtracted from Class I pursuant to § 1004.44(a)(15) multiplied by the skim milk price, plus the butterfat pounds of overage subtracted from Class I pursuant to § 1004.44(b) multiplied by the butterfat price;

(2) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1004.44(a)(15) and the corresponding step of § 1004.44(b) multiplied by the difference between the Class II price and the Class III price, plus the pounds of nonfat milk solids in skim milk subtracted from Class II pursuant to § 1004.44(a)(15) multiplied by the nonfat milk solids price, plus the butterfat pounds of overage subtracted from class II pursuant to § 1004.44(b) multiplied by the butterfat price;

(3) The pounds of nonfat milk solids in skim milk overage subtracted from Class III pursuant to § 1004.44(a)(15) multiplied by the nonfat milk solids price, plus the butterfat pounds of overage subtracted from Class III pursuant to § 1004.44(b) multiplied by the butterfat price;

(d) For the first month that this paragraph is effective, the value of the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1004.44(a)(10) and the corresponding step of § 1004.44(b), as follows:

(1) The value of the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1004.44(a)(10) and the corresponding step of § 1004.44(b) applicable at the location of the pool plant at the difference between the current month's Class I price and the previous month's Class III price;

(2) The value of the hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1004.44(a)(10) and the corresponding step of § 1004.44(b) at the current month's Class II–Class III price difference and the current month's nonfat milk solids and butterfat prices, less the Class III value of the milk at the previous month's Class III price;

(e) For the second and subsequent months that this paragraph is effective, the value of the produce pounds, skim milk, and butterfat subtracted from Class I or Class II pursuant to § 1004.44(a)(10) and the corresponding step of § 1004.44(b), and the value of the pounds of nonfat milk solids associated with the skim milk subtracted from Class pursuant to § 1004.44(a)(10), computed by multiplying the skim milk pounds so subtracted by the percentage of nonfat milk solids in the handler's receipts of producer skim milk during the previous month, as follows:

(1) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1004.44(a)(10) and the corresponding step of § 1004.44(b) applicable at the location of the pool plant at the current months' Class I–Class III price difference and the current month's skim milk and butterfat prices, less the Class III value of the milk at the previous month's nonfat milk solids and butterfat prices;

(2) The value of the hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1004.44(a)(10) and the corresponding step of § 1004.44(b) at the current month's Class II–Class III price difference and the current month's nonfat milk solids and butterfat prices, less the Class III value of the milk at the previous month's nonfat milk solids and butterfat prices;

(f) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1004.44(a)(8) (i) through (iv), and the corresponding step of § 1004.44(b), excluding receipts of bulk fluid cream products from another order plant, applicable at the location of the pool plant at the current month's Class I–Class III price difference;

(g) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1004.44(a)(8) (v) and (vi) and the corresponding step of § 1004.44(b) applicable at the location of the transferor-plant at the current month's Class I–Class III price difference;

(h) The value of the product pounds, skim milk and butterfat subtracted from Class I pursuant to § 1004.44(a)(12) and the corresponding step of § 1004.44(b), excluding such hundredweight in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent quantity disposed of to such plant by handlers fully regulated by any Federal order is

classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order, applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received at the current month's Class I–Class III price difference.

(i) The pounds of skim milk received from a cooperative association as a handler pursuant to § 1004.9(c) and allocated to Class I pursuant to § 1004.44(a)(14), and the pounds of producer milk in Class I as determined pursuant to § 1004.44, both multiplied by the skim milk price for the month computed pursuant to § 1004.50(f).

(j) The pounds of nonfat milk solids in skim milk in receipts allocated to Class II and Class III pursuant to § 1004.44(a)(14) and in producer milk classified as Class II and Class III pursuant to § 1004.44, computed by multiplying the skim milk pounds so assigned by the percentage of nonfat milk solids in the handler's receipts of producer skim milk during the month for each report filed, separately, the result to be multiplied by the nonfat milk solids price for the month computed pursuant to § 1004.50(e).

10. Section 1004.61 is revised to read as follows:

§ 1004.61 Computation of weighted average differential price, weighted average differential price for base milk, and producer nonfat milk solids price.

For each month the market administrator shall compute a "weighted average differential price", a "weighted average differential price for base milk" received from producers, and a "producer nonfat milk solids price", as follows:

(a) The "weighted average differential price" shall be the result of the following computations:

(1) Combine into one total:

(i) The value computed pursuant to § 1004.60(a) through (h) for all handlers who filed the reports prescribed by § 1004.30 for the month and who made the payments pursuant to § 1004.71 for the preceding month;

(ii) An amount equal to the total value of the location differentials computed pursuant to § 1004.75;

(iii) An amount equal to not less than one-half of the unobligated balance in the producer-settlement fund.

(2) Divide the total value calculated under paragraph (a)(1) of this section by the sum of the following for all handlers:

(i) The total hundredweight of producer milk pursuant to § 1004.13 represented by the value established pursuant to paragraph (a)(1)(i) of this section; and

(ii) The total hundredweight for which a value is computed pursuant to § 1004.60(h).

(3) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "Weighted average differential price."

(b) Compute the "Weighted average differential price for base milk" as follows:

(1) Subtract from the total value calculated pursuant to paragraph (a)(1) of this section an amount computed by multiplying the hundredweight of milk for which a value is computed pursuant to § 1004.60(h) by the weighted average differential price computed pursuant to paragraph (a) of this section; and

(2) Divide the result obtained in paragraph (b)(1) of this section by the total hundredweight of base milk for handlers included in the computations pursuant to paragraph (a)(1)(i) of this section and subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average differential price for base milk."

(c) The "Producer nonfat milk solids price" to be paid to all producers for the pounds of nonfat milk solids contained in their milk shall be computed by the market administrator each month as follows:

(1) Combine into one total the values computed pursuant to § 1004.60 (i) and (j) for all handlers who made reports pursuant to § 1004.30 and who made payments pursuant to § 1004.71 for the preceding month;

(2) Divide the resulting amount by the total pounds of nonfat milk solids in producer milk; and

(3) Round by subtracting a positive amount not to exceed one cent. The result is the "Producer nonfat milk solids price."

11. Section 1004.62 is revised to read as follows:

§ 1004.62 Computation of uniform price.

A uniform price for producer milk containing 3.5 percent butterfat shall be computed by adding the weighted average differential price determined pursuant to § 1004.61(a) to the Class III price.

12. A new Section 1004.63 is added to read as follows:

§ 1004.63 Announcement of weighted average differential price, weighted average differential price for base milk, nonfat milk solids price and producer nonfat milk solids price.

On or before the 13th day of each month, the market administrator shall publicly announce for the preceding month by posting in a conspicuous place in his office and by such other means as he deems appropriate, the weighted average differential price, the weighted average differential price for base milk and the producer nonfat milk solids price computed pursuant to § 1004.61, and the price for nonfat milk solids computed pursuant to § 1004.50(e).

13. Section 1004.71 is amended by revising paragraph (b) to read as follows and removing paragraph (c):

§ 1004.71 Payments to the producer-settlement fund.

* * * * *

(b) The sum of:

(1) The value of milk received by such handler from producers and from cooperative association handlers pursuant to 1004.9(c) at the applicable price(s) pursuant to § 1004.61 adjusted by applicable location differentials, less in the case of a cooperative association on milk for which it is a handler pursuant to § 1004.9(c), the amount due from other handlers pursuant to § 1004.74(d); and

(2) The value at the uniform price, computed pursuant to § 1004.62, adjusted by the applicable location differential on nonpool milk pursuant to § 1004.75(b), with respect to other source milk for which a value was computed pursuant to § 1004.60(h).

§ 1004.74 [Removed]

14. Section 1004.74 is removed. § 1004.73 is redesignated as § 1004.74 and amended by revising paragraphs (a)(2), (c), (d)(2) and (e)(2), and a new § 1004.73 is added, to read as follows:

§ 1004.73 Value of producer milk.

The total value of milk received from producers during any month shall be the sum of the following calculations:

(a) The value of a producers' base milk shall be the sum of the following:

(1) The weighted average differential price for base milk computed pursuant to § 1004.61(b) subject to the appropriate plant location adjustment times the total hundredweight of base milk received from the producer;

(2) The total nonfat milk solids contained in the producer milk received from the producer multiplied by the producer nonfat milk solids price computed pursuant to § 1004.61; and

(3) The total butterfat contained in the producer milk received from the producer times the butterfat price computed pursuant to § 1004.50(d).

(b) The value of a producer's excess milk shall be the sum of the values computed pursuant to paragraphs (a) (2)

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and (3) of this section. § 1004.74 Payments to producers and to cooperative associations.

(a) * * *

(2) On or before the 20th of the following month at not less than the total amount computed in accordance with the provisions set forth in § 1004.73 with respect to such milk, subject to the following adjustments:

* * * * *

(c) In the case of milk received by a handler from a cooperative association in its capacity as the operator of a pool plant such handler shall on or before the second day prior to the date on which payments are due individual producers, pay to such cooperative association for milk so received during the month, an amount not less than the value of such milk computed at the applicable class and/or component prices for the location of the plant of the buying handler; and

(d) * * *

(2) A final payment equal to the total value of such milk computed pursuant to § 1004.73, adjusted by the applicable differentials pursuant to § 1004.75, less the amount of partial payment on such milk.

(e) * * *

(2) The total pounds, average butterfat test and average test of nonfat milk solids of milk delivered by the producer;

* * * * *

15. Section 1004.75 is revised to read as follows:

§ 1004.75 Location differentials to producers and on nonpool milk.

(a) For milk received from producers and from cooperative association handlers pursuant to § 1004.9(c) at a plant located 55 miles or more from the city hall in Philadelphia, Pa., and also at least 75 miles from the nearer of the zero milestone in Washington, DC, or the city hall in Baltimore, Md. (all distances to be the shortest highway distance as determined by the market administrator), the weighted average differential price for base milk computed pursuant to § 1004.61(b) shall be reduced 1.5 cents for each 10 miles distance or fraction thereof that such plant is from the nearest of such basing points.

(b) For purposes of computations pursuant to §§ 1004.71 and 1004.74, the weighted average differential price computed pursuant to § 1004.61(a) shall be reduced at the rate set forth in paragraph (a) of this section applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average differential price shall not be less than zero.

16. Section 1004.76 is amended by revising the reference "1004.60(f)" in paragraph (a)(1)(i) to "1004.60(h)", and revising paragraph (b)(5) to read as follows:

§ 1004.76 Payments by a handler operating a partially regulated distributing plant.

* * * * *

(b) * * *

(5) From the value of such milk at the class I price, subtract its value at the uniform price computed pursuant to § 1004.62, and add for the quantity of reconstituted skim milk specified in paragraph (b)(3) of this section its value computed at the class I price less the value of such milk at the class III price (except that the Class I price and the uniform price shall be adjusted for the location of the nonpool plant and shall not be less than the Class III price).

17. Section 1004.86 is revised to read as follows:

§ 1004.86 Deductions for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, making payments directly to producers for milk (other than milk of his own production) pursuant to § 1004.74(a) shall deduct 5 cents per hundredweight or such lesser amount as the Secretary may prescribe and shall pay such deductions to the market administrator on or before the 20th day after the end of the month. Such money shall be expended by the market administrator to provide market information and to verify or establish the weights, samples and tests of milk of producers who are not receiving such service from a cooperative association; and

(b) In the case of producers for whom the Secretary determines a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made directly to such producer pursuant to § 1004.74(a) as are authorized by such producers on or before the 18th day after the end of each month and pay such deductions to the cooperative rendering such services.

Signed at Washington, DC, on: May 23, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91-12747 Filed 5-30-91; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 270

[INS No. 1408-91]

Penalties for Document Fraud

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule with request for comments.

SUMMARY: The Immigration and Naturalization Service ("the Service") proposes this new part 270 to implement section 544 of the Immigration Act of 1990, Public Law 101-649, 104 Stat. 4978_____ (November 29, 1990), which provides for civil penalties for certain specified acts involving document fraud. This proposed regulation merely establishes the procedures to be followed in the investigation of civil document fraud violations.

DATES: Written comments must be submitted on or before July 1, 1991.

ADDRESSES: Please submit comments in triplicate to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, room 5304, 425 I Street, NW., Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Kathy Sheehan, Coordinator, Enforcement Implementation Team, room 2108, 425 I Street, NW., Washington, DC 20536, telephone (202) 514-9612.

SUPPLEMENTARY INFORMATION: This proposed rule amends title 8 of the Code of Federal Regulations, to add part 270 relating to civil document fraud. This new part was necessitated by section 544 of the Immigration Act of 1990, Public Law 101-649 (November 29, 1990), which amended the Immigration and Nationality Act ("the Act") by adding civil penalties for document fraud.

Although criminal penalties currently exist under title 18, United States Code, for similar acts involving the manufacture and use of fraudulent documents, Congress recognized that a further reduction in this illegal activity is important to strengthen enforcement of title 8 generally and, specifically, the employer sanctions provisions contained in section 274A of the Act. To realize this reduction without negatively impacting the already overburdened federal court system, Congress created an administrative proceeding for civil document fraud.

Background

Section 544 defines four separate offenses which may result in the implementation of civil monetary penalties. Section 274C(a)(1) makes it unlawful for a person or entity to knowingly forge, counterfeit, alter, or falsely make any document for the purpose of satisfying a requirement of the Act. Section 274C(a)(2) makes it unlawful for a person or entity to knowingly use, possess, obtain, accept, or receive any forged, counterfeit, altered, or falsely made document in order to satisfy a requirement of the Act.

Section 274C(a)(3) makes it unlawful for a person or entity to knowingly use or attempt to use any document lawfully issued to a person other than the possessor (including a deceased individual) for the purpose of satisfying any requirement of the Act. Finally, section 274C(a)(4) makes it unlawful for a person or entity to knowingly accept or receive any document lawfully issued to a person other than the possessor (including a deceased individual) for the purpose of complying with section 274A(b), which sets forth the employment eligibility verification requirements.

This proposed regulation sets forth the procedures to be followed in the investigation and institution of proceedings for violations involving civil document fraud. The regulation closely parallels the procedures set forth in 8 CFR 274a.1 *et seq.*, relating to the enforcement of the employer sanctions provisions. The Service has found that the procedures established under employer sanctions are easily comprehensible by individuals against whom actions have been initiated. Since the provisions of section 544 of the Immigration Act of 1990 closely track the administrative procedures in section 274A of the Act, the provisions of 8 CFR 274a.1 *et seq.*, have been utilized to a great extent in this proposed regulation.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment pursuant to E.O. 12612.

List of Subjects in 8 CFR Part 270

Administrative practice and procedure, Aliens, Fraud, Penalties.

For the reasons set forth in the preamble, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

1. A new part 270 is added to read as follows:

PART 270—PENALTIES FOR DOCUMENT FRAUD

Sec.
270.1 Definitions.
270.2 Enforcement procedures.
270.3 Penalties.

Authority: 8 U.S.C. 1101, 1103, 1324c, Pub. L. 101-649, 104 Stat. 4978_____.

§ 270.1 Definitions.

For the purpose of this part—

Document means an instrument on which is recorded, by means of letters, figures, or marks, matter which may be evidentially used to fulfill any requirement of the Act. The term "document" includes, but is not limited to, an application required to be filed under the Act and any other accompanying document or material;

Entity means any legal entity, including, but not limited to a corporation, partnership, joint venture, agency, proprietorship or association.

§ 270.2 Enforcement procedures.

(a) *Procedures for the filing of complaints.* Any person or entity having knowledge of a violation or potential violation of section 274C of the Act may submit a signed, written complaint in person or by mail to the Service office having jurisdiction over the business or residence of the potential violator or the location where the violation occurred. The signed, written complaint must contain sufficient information to identify both the complainant and the alleged violator, including their names and addresses. The complaint should also contain detailed factual allegations relating to the potential violation including the date, time and place of the alleged violation and the specific act or conduct alleged to constitute a violation of the Act. Written complaints may be delivered either by mail to the appropriate Service office or by personally appearing before any immigration officer at a Service office.

(b) *Investigation.* The Service may conduct investigations for violations on its own initiative, and without having received a written complaint. When the Service receives a complaint from a third party, it shall investigate those complaints which, on their face, have a substantial probability of validity. If it is determined after investigation that the person or entity has violated section 274C of the Act, the Service may issue and serve upon the alleged violator a Notice of Intent to Fine. Service officers shall have reasonable access to examine any relevant evidence of any person or entity being investigated.

(c) *Issuance of Subpoena.* Prior to the initiation of proceedings before an Administrative Law Judge under the provisions of 5 United States Code 554-557, the Service may issue subpoenas pursuant to its authority under sections 235(a) and 287 of the Act, in accordance with the procedures set forth in § 287.4 of this chapter.

(d) *Notice of Intent to Fine.* The proceeding to assess administrative penalties under section 274C of the Act is commenced when the Service issues a Notice of Intent to Fine on Form I-763. Service of this Notice shall be accomplished pursuant to part 103 of this chapter. The person or entity identified in the Notice of Intent to fine shall be known as the respondent. The Notice of Intent to Fine may be issued by an officer defined in § 242.1 of this chapter an INS Port Directors designated by their District Director, with the concurrence of a Service attorney.

(e) *Contents of the Notice of Intent to Fine.* (1) The Notice of Intent to Fine will contain the basis for the charge(s) against the respondent, the statutory provisions alleged to have been violated, and the penalty that will be imposed.

(2) The Notice of Intent to Fine will provide the following advisals to the respondent:

(i) That the person or entity has the right to representation by counsel of his/her own choice at no expense to the government;

(ii) That any statement given may be used against the person or entity;

(iii) That the person or entity has the right to request a hearing before an Administrative Law Judge pursuant to 5 United States Code 554-557, and that such request must be made within 30 days from the service of the the Notice of Intent to Fine; and

(iv) That if a written request for a hearing is not timely received the Service will issue a final order in 45 days and that there will be no appeal of the final order.

(f) *Request for Hearing Before an Administrative Law Judge.* If a respondent contests the issuance of a Notice of Intent to Fine, a written request for a hearing before an Administrative Law Judge. Any written request for a hearing submitted in a foreign language must be accompanied by an English language translation. A request for a hearing is not deemed to be filed until received by the Service office designated in the Notice of Intent to Fine. In computing the 30 day period

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prescribed by this section, the day of service of the Notice of Intent to Fine shall not be included. If the Notice of Intent to Fine was served by ordinary mail, five days shall be added to the prescribed 30 day period. In the request for a hearing, the respondent may, but is not required to, respond to each allegation listed in the Notice of Intent to Fine. A respondent may waive the 30 day period in which to request a hearing before an Administrative Law Judge and ask that INS issue a final order from which there is no appeal.

(g) *Failure to File a Request for Hearing.* If the respondent does not file a written request for a hearing within 30 days of the day of service of the Notice of Intent to Fine (35 days if served by ordinary mail), the INS shall issue a final order from which there is no appeal.

(h) *Issuance of the Final Order.* A final order may be issued by an officer defined in § 242.1 of this chapter, INS Port Directors designated by their District Director, and the INS Director National Fines Office.

§ 270.3 Penalties.

(a) *Criminal penalties.* Nothing in section 274C of the Act shall be construed to diminish or qualify any of the penalties available for activities prohibited by this section but proscribed as well in Title 18, United States Code.

(b) *Civil penalties.* A person or entity may face civil penalties for a violation of section 274C of the Act. Civil penalties may be imposed by the Service or an Administrative Law Judge for violations under section 274C of the Act. In determining the level of the penalties that will be imposed, a finding of more than one violation in the course of a single proceeding or determination will be counted as a single offense. However, a single violation will include penalties for each unlawful act proscribed by section 274C of the Act.

(1) A respondent found by the Service or an Administrative Law Judge to have violated section 274C of the Act shall be subject to the following order:

(i) To cease and desist from such behavior; and

(ii) To pay a civil fine according to the following schedule:

(A) *First offense.* Not less than $250 and not more than $2,000 for each document used, accepted, or created and each instance of use, acceptance, or creation as prohibited by section 274C(a) (1)–(4); or

(B) *More than one offense.* Not less than $2,000 and not more than $5,000 for each document used, accepted, or created and each instance of use, acceptance, or creation as prohibited by section 274C(a) (1)–(4).

(2) Where an order is issued to a respondent composed of distinct, physically separate subdivisions which do their own hiring, or their own recruiting or referring for a fee for employment (without reference to the practices of, and under the control of, or common control with another subdivision), the subdivision shall be considered a separate person or entity.

Dated: May 7, 1991.

Gene McNary,

Commissioner.

[FR Doc. 91-12875 Filed 5-30-91; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 131 and 135

[Docket Nos. 89P-0208 and 89P-0444]

Yogurt Products; Frozen Yogurt, Frozen Lowfat Yogurt, and Frozen Nonfat Yogurt; Petitions To Establish Standards of Identity and To Amend the Existing Standards

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is announcing that petitions have been filed requesting that the agency: (1) Establish standards of identity for "frozen yogurt," "frozen lowfat yogurt," and "frozen nonfat yogurt" in 21 CFR part 135; (2) provide for the use of any safe and suitable sweeteners in the new standards; and (3) amend the standards of identity for yogurt (21 CFR 131.200), lowfat yogurt (21 CFR 131.203), and nonfat yogurt (21 CFR 131.206) to provide for the use of any safe and suitable sweeteners. The agency is requesting comments on whether the petitioned actions would be in the best interest of consumers.

DATES: Comments by July 30, 1991.

ADDRESSES: Written comments, data, or other information to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nannie H. Rainey, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0107.

SUPPLEMENTARY INFORMATION:

I. The Petitions

The International Ice Cream Association (IICA), 888 16th St. NW., Washington, DC 20006, a trade association representing manufacturers and distributors of ice cream and other frozen desserts, has filed a petition, dated June 19, 1989. This petition asks FDA to establish standards of identity for "frozen yogurt," "frozen lowfat yogurt," and "frozen nonfat yogurt." This petition was filed under 21 U.S.C. 371(e), which required formal rulemaking in any action for the issuance of a food standard. However, in November of 1990, the Nutrition Labeling and Education Act (NLEA) of 1990 was signed into law, and it removed food standard rulemakings, except for actions for the amendment or repeal of food standards for dairy products or maple sirup, from the coverage of 21 U.S.C. 271(e). Therefore, any action on the IICA petition is subject to notice and comment rulemaking (21 U.S.C. 371(a)).

The Calorie Control Council (Council), 5775 Peachtree-Dunwoody Rd., Atlanta, GA 30342, an international association of manufacturers of low-calorie and diet foods and beverages, including manufacturers of a variety of sweeteners and other low calorie ingredients, filed a second petition, dated October 9, 1989, that included two requests. First, the Council asked FDA to add a provision to the standards of identity for yogurt, lowfat yogurt, and nonfat yogurt (21 CFR 131.200, 131.203, and 131.206, respectively) to permit the use of any safe and suitable sweeteners, including saccharin, aspartame, and acesulfame potassium (acesulfame K), as optional ingredients. Because this part of the petition seeks amendment of an existing standard relating to dairy products, it is subject to 21 U.S.C. 371(e). Therefore, FDA will respond to this portion of the petition in a separate rulemaking. In addition, the Council requested that FDA include the same provision in any proposed standards of identity for "frozen yogurt," frozen lowfat yogurt," and "frozen nonfat yogurt." Because this part of the petition bears on new standards, it is subject to the same procedures as the IICA petition.

FDA points out that the food additive regulation in 21 CFR 172.800 does not provide for the use of acesulfame K in yogurt, ice cream, frozen yogurt, or other frozen desserts. To provide for such use under the Federal Food, Drug, and Cosmetic Act (the act), the correct course is to file a food additive petition under section 409 of the act (21 U.S.C. 348), not to seek an amendment of the standard. Therefore, to the extent that the petitions are asking for the use of acesulfame K, they are outside the scope of this rulemaking and are therefore denied.

II. Request for Comments

1. FDA is by this notice requesting that interested persons submit data and information as to the need for, and the appropriateness of, new standards for frozen yogurt products. As explained below, FDA has significant questions about the need for, and the advisability of, adopting new food standards at this time. The agency also requests comments on a number of other factors including, but not limited to, the following provisions set forth in the petitions:

(a) The names of the new foods, i.e., "frozen yogurt," "frozen lowfat yogurt," and "frozen nonfat yogurt;" FDA requests comments on whether it is appropriate to call a product with 2.0 percent milkfat "lowfat;"

(b) The minimum weight per gallon requirement;

(c) The milkfat content requirements;

(d) The minimum total nonfat milk solids requirement;

(e) The minimum titratable acidity requirement;

(f) The need to provide for any safe and suitable sweeteners, including sweeteners such as aspartame and saccharin; and

(g) The need to provide for the optional addition of vitamins A and D for consistency with the nonfrozen yogurt counterparts (21 CFR 131.200, 131.203, and 131.206).

2. FDA also points out that the limitations on the fat content in IICA's proposed standards concern only the milkfat content of the basic frozen yogurt mix. The fat content of lowfat and nonfat frozen yogurt products may be increased significantly by the fat contributed by the characterizing flavoring ingredients, such as milk chocolate, butterscotch, and nut meats, that may be added to the basic mix. The agency specifically requests comments on the need to address this issue in any standards it may propose.

3. FDA can anticipate the use of sweeteners that have not been affirmed as generally recognized as safe (GRAS) and not otherwise determined to be safe by FDA in the products covered by this notice. In order to ensure that sweeteners are not used until FDA has determined that they are safe for this use, FDA is requesting comment on the use of alternative language in any standards that may result from this proceeding. Instead of the phrase "any safe and suitable sweeteners" as suggested in the petitions, FDA believes that any standards should describe the permitted optional sweeteners as "any sweeteners that have been affirmed as GRAS or approval as a food additive for this use by the Food and Drug Administration." FDA also requests comments on whether, in the alternative, it should amend 21 CFR 130.3(d), the definition of "safe and suitable," to reflect this formulation in the description of all optional ingredients that may be used in standardized foods.

4. FDA has already received several comments on IICA's petition. The National Yogurt Association (NYA) submitted comments in support of the petition. Comments from two State governments were received in support of Federal standards of identity to insure uniform regulations for frozen yogurt products shipped from State to State. Two comments were received from industry. One of these comments supported the need for Federal standards of identity, and the other comment objected to the petition from IICA because of possible adverse impacts on the soft serve industry. In addition, two members of academia submitted comments in support of a minimum titratable acidity of 0.5 percent and higher for frozen yogurt products. The petitions and comments are on file with the Dockets Management Branch (address above).

III. Grounds for the Frozen Yogurt, Frozen Lowfat Yogurt, and Frozen Nonfat Yogurt Petition

The statement of grounds submitted in support of the IICA petition is as follows:

A. The Proposal Would Promote Honesty and Fair Dealing

In support of its petition, IICA asserted that establishing standards of identity for "frozen yogurt," "frozen lowfat yogurt," and "frozen nonfat yogurt" would promote honesty and fair dealing in the interest of consumers by providing uniform terminology and ingredient parameters for these products. IICA stated that its proposed standards of identity for frozen yogurt products would complement the current yogurt standards in 21 CFR 131.200, 131.203, and 131.206 and would ensure that consumers of frozen yogurts receive equally consistent and well-defined products as do consumers of yogurts.

IICA also stated that frozen yogurts are marketed and perceived by consumers as a separate and distinct category of food that shares the essential characteristics of yogurt but that is offered and consumed in frozen form and has a unique taste and texture. IICA continued that its proposed standards are intended to reflect current consumer expectations and responsible manufacturing practices for this class of products.

In addition, IICA noted that sales of frozen yogurt products are increasing rapidly, and that there is growing consumer interest in this class of products. IICA continued that with the proliferation of frozen yogurt products, there is a strong need for Federal standards of identity to assure consumers of consistent and high quality frozen yogurts throughout the country. In the absence of Federal standards, IICA stated that there will be increasing pressure for State and local governments to regulate this class of products which could result in inconsistent regulations, thereby creating unreasonable barriers in interstate commerce and confusion for the consumer. Under the NLEA such State standards would not be preempted where no Federal standard had been promulgated.

FDA strongly encourages comments, which should include data and other information, on whether there is a need to adopt Federal standards of identity for frozen yogurt, lowfat frozen yogurt, and nonfat frozen yogurt. Under the NLEA, both standardized and nonstandardized foods will bear full ingredient and nutrition labeling. FDA also points out that products described with these common or usual names currently are being marketed as nonstandardized foods.

FDA questions whether the suggested standards are necessary. What evidence is there that consumers are being misled or not being dealt with honestly or fairly in the current situation? Any evidence of consumers being misled or deceived by foods currently being marketed as "frozen yogurt" would be relevant on this point, as would evidence on the range of characteristics of products that are being marketed under this name. Is there any evidence that products are being marketed as "frozen yogurt" without the constituents that consumers would normally expect in such a food (e.g., dairy ingredients and bacterial cultures) or with ingredients that consumers would not expect (e.g., acids or acidogens)?

FDA also requests comments on whether adoption of standards will limit future technological developments in how frozen yogurt, frozen lowfat yogurt, and frozen nonfat yogurt are made. The agency also requests comments on IICA's claim that in the absence of

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standards, there will be increasing pressure for State and local governments to regulate this class of products, and that such regulations will create unreasonable barriers in interstate commerce and confusion for the consumer. The agency also seeks comment on the effects of the enactment of the NLEA of 1990 on this claim.

FDA notes that 22 States currently have regulations in effect for frozen yogurt products. These State regulations vary in their requirements on titratable acidity, weight per gallon, percent of milkfat, processing, and labeling. Are the differences in the current State regulations creating barriers to the marketing of frozen yogurt products? For example, some State regulations require that frozen yogurt products have a titratable acidity of 0.5 percent, which IICA maintains is too high. Are frozen yogurts generally being made to comply with a titratable acidity of 0.5 percent? Should the agency adopt a standard which, under the NLEA, will preempt all State standards that are not identical to it? Comments on the issue of State regulation versus Federal regulation should not only address individual provisions of the standards but should also address economic concerns and regional differences, preferences, or expectations for frozen yogurt products.

FDA will consider the comments that it receives on all these issues in deciding whether standards for "frozen yogurt," "lowfat frozen yogurt," and "nonfat frozen yogurt" will promote honesty and fair dealing in the interest of consumers, and thus whether IICA's petition should be granted and standards proposed.

B. The Nomenclature and Product Labeling Set Forth in the Petition is Accurate and Meaningful to Consumers

IICA stated that to satisfy reasonable consumer expectations with respect to product nomenclature that includes the term "yogurt," its requested standards would require that all frozen yogurt products undergo bacterial fermentation with yogurt culture (i.e., the lactic acid-producing bacteria *Lactobacillus bulgaricus* and *Streptococcus thermophilus*), and that no heat treatment be applied following culturing. IICA suggested this requirement to ensure that all frozen yogurts contain the essential bacteria and characteristics of bacterial fermentation that are appropriately associated with yogurts.

IICA elaborated on this issue, stating that the suggested standards would specify that the unflavored frozen yogurt must be cultured to obtain a minimum titratable acidity of 0.3 percent before the addition of flavoring. IICA noted that this requirement is necessary to ensure that frozen yogurt products have been cultured by the characterizing yogurt bacteria and possess identifiable yogurt characteristics. IICA's standard also would not permit the direct addition of food grade acids or other acidogens to raise the titratable acidity of the frozen yogurt mix to the prescribed minimum. The requested standards also provide that no chemical preservation treatment or other process, other than refrigeration, could be used to eliminate or reduce the live culture bacteria.

IICA stated that available data show that the natural buffering capacity of an uncultured frozen yogurt mix averages approximately 0.15 percent. Utilizing this average as a base, IICA explained that the 0.3 percent minimum titratable acidity requirement is intended to ensure that at least 0.15 percent titratable acidity is developed as a result of yogurt culture fermentation. IICA noted that the required 0.15 percent increase in titratable acidity is recognized by the industry as the level at which fermentation or culturing becomes identifiable as having been initiated. Furthermore, IICA maintained, the requested standards recognize and provide for the common industry practice of fully culturing a yogurt base and blending this base yogurt with pasteurized dairy ingredients. Under the requested standards, the resultant blend of this formulation must contain not less than 0.3 percent titratable acidity.

IICA also has petitioned the agency to provide an alternative for those frozen yogurts not achieving the required 0.3 percent minimum titratable acidity. The petitioner stated that, in certain instances, the apparent titratable acidity of the uncultured mix may be less than 0.15 percent, and a developed titratable acidity of 0.15 percent would not achieve the prescribed minimum 0.3 percent. In such cases, IICA suggested that the manufacturer should have the right to demonstrate compliance by making quality control records available to FDA, documenting at least a 0.15 percent increase in titratable acidity above that of the uncultured dairy ingredients. IICA recognized that FDA does not have the authority to require that manufacturers make titratable acidity records available for review. Therefore, its requested standard provides that this provision could be invoked by only manufacturers that voluntarily disclose to FDA records sufficient to establish a 0.15 percent increase in titratable acidity.

IICA, consistent with existing requirements for yogurt (21 CFR 131.200), suggested that the standard of identity for frozen yogurt require that the food contain not less than 3.25 percent milkfat and not less than 8.25 percent milk solids not fat before the addition of any bulky characterizing ingredients. To ensure adequate quality and to be consistent with existing industry practice, IICA requested that frozen yogurt contain not less than 1.3 pounds of total solids per gallon and weight not less than 4.0 pounds per gallon.

The IICA suggested requirements for "frozen lowfat yogurt" and "frozen nonfat yogurt" that are essentially identical to those in the standards of identity for frozen yogurt except for appropriate reductions in milkfat levels. The specified milkfat levels for these products would parallel the current milkfat requirements for lowfat yogurt (not less than 0.5 percent nor more than 2.0 percent; 21 CFR 131.203) and nonfat yogurt (less than 0.5 percent; 21 CFR 131.206). IICA stated that the establishment of standards of identity for lowfat and nonfat frozen yogurts would promote public health by facilitating a reduction in fat consumption and would satisfy the growing consumer demand for reduced fat alternatives to regular food products, especially dairy-based products.

IICA stated that, consistent with the approach employed in most modern food standards, the proposed standards for frozen yogurt products would permit use of any safe and suitable ingredients and would require full ingredient labeling. This approach, IICA maintained, would afford manufacturers reasonable flexibility in formulating frozen yogurt products and would provide consumers with full ingredient disclosure.

IV. Grounds for Safe and Suitable Sweetners Proposal

A. The Proposal Would Promote Public Health

In support of its petition, the Council stated that granting the petition to provide for nutritive and nonnutritive sweetners in frozen yogurt products would enhance the public health and promote honesty and fair dealing in the interest of consumers. The Council stated that Americans are being urged to consume more foods that are low in calories, sugar, and fat. It cited the statement in the Surgeon General's "Report on Nutrition and Health" (Ref. 1) that the public would benefit from the increased availability of foods and food products low in calories, total fat, saturated fat, and sugars. In addition, the Council noted that surveys routinely

demonstrate that Americans are hearing and acting upon this message by restricting their intake of specific types of foods, such as foods high in calories (Ref. 2). One of the surveys, reviewed in "Designing Foods" (Ref. 3), show that half of the respondents reported that they had decided to eat fewer foods containing certain ingredients, such as sugar. The Council also noted that its petition would enhance the public health by enabling consumers to select from a wider variety of frozen yogurt products, including frozen yogurt products that contain fewer calories from sweetners, as well as fat.

B. The Proposal Would Promote Honesty and Fair Dealing

The Council pointed out that consumers would be aware that these new products may contain alternative sweetners because both nutritive and nonnutritive sweetners used in these products would have to be declared on the label, along with all other ingredients, in the ingredient statement. In addition, the Council noted that FDA regulations in 21 CFR 105.66 require that any food marketed as useful for maintaining or reducing weight or caloric intake identify the utility of the food and bear nutrition information on the label in accordance with the regulations in 21 CFR 101.9.

In summary, the Council contended that FDA should establish standards of identity for "frozen yogurt," "frozen lowfat yogurt," and "frozen nonfat yogurt" as proposed by IICA, allowing the use of safe and suitable ingredients, including sweetners, because: (1) FDA has the authority to regulate the use of alternative sweetners, (2) FDA has determined that the use of at least one of these sweetners (aspartame) is safe for yogurt type products; and (3) consumers are interested in eating sweetened but calorie-controlled yogurt products.

V. Requested Standards

The requested new standards for "frozen yogurt," "frozen lowfat yogurt," and "frozen nonfat yogurt" submitted by the petitioners, are set forth below. With the exception of the reference to sweetners in the regulations, which has been revised to state that any sweetner used must have been "affirmed as GRAS or approved as a food additive for this use by [FDA]," and a statement that makes clear that whether an ingredient can be added before or after pasteurization may be limited by other FDA regulations (see, e.g., 21 CFR 172.804(c)(15) for aspartame), the language of the requested standards is as suggested by the petitioners.

IICA's requested standard of identity for "frozen yogurt," "frozen lowfat yogurt," and "frozen nonfat yogurt," as revised by FDA, and the Council's requested amendment to provide for nonnutritive and nutritive sweeteners read as follows:

1. Section 135._____ is added to subpart B to read as follows:

§ 135._____ Frozen yogurt.

(a) *Description.* (1) Frozen yogurt is the food produced by freezing, while stirring, a mix containing safe and suitable ingredients including, but not limited to, dairy ingredients. The mix may be homogenized, and all of the dairy ingredients shall be pasteurized or ultrapasteurized. All or a portion of the dairy ingredients shall be cultured with a characterizing live bacterial culture that shall contain the lactic acid-producing bacteria *Lactobacillus bulgaricus* and *Streptococcus thermophilus* and may contain other lactic acid-producing bacteria. After culturing, the unflavored frozen yogurt mix shall have a titratable acidity of not less than 0.3 percent, calculated as lactic acid. Where the titratable acidity of the frozen yogurt mix is less than 0.3 percent, the manufacturer may establish compliance with this section by disclosing to the Federal Food and Drug Administration (FDA) quality control records that demonstrate that as a result of bacterial culture fermentation, there has been at least a 0.15 percent increase in the titratable acidity, calculated as lactic acid, of the product above the apparent titratable acidity of the uncultured dairy ingredients in the frozen yogurt mix. The direct addition of food grade acids or other acidogens for the purpose of raising the titratable acidity of the frozen yogurt mix to comply with the prescribed minimum is not permitted, and no chemical preservation treatment or other preservation process, other than refrigeration, may be utilized that results in reduction of the live culture bacteria. Sweeteners, flavorings, color additives, and other characterizing food ingredients, unless otherwise provided in FDA's regulations may be added to the mix before or after pasteurization or ultrapasteurization, provided that any ingredient addition after pasteurization or ultrapasteurization is done in accordance with current good manufacturing practice. Any dairy ingredients added after pasteurization or ultrapasteurization shall have been pasteurized.

(2) Frozen yogurt may be sweetened with any sweetner that has been affirmed as GRAS or approved as a food additive for this use by FDA and may or may not be characterized by the addition of flavoring ingredients.

(3) Frozen yogurt, before the addition of bulky characterizing ingredients or sweeteners, shall contain not less than 3.25 percent milkfat and 8.25 percent milk solids not fat. Frozen yogurt shall contain not less than 1.3 pounds of total solids per gallon and shall weigh not less than 4.0 pounds per gallon.

(b) *Nomenclature.* The name of the food is "frozen yogurt". The name of the food shall be accompanied by a declaration indicating the presence of any characterizing flavoring as specified in § 101.22 of this chapter.

(c) *Label declaration.* (1) Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of part 101 of this chapter.

(2) If the food purports to be or is represented for special dietary use, it shall be labeled in accordance with the requirements of part 105 of this chapter.

2. Section 135._____ is added to subpart B to read as follows:

§ 135._____ Frozen lowfat yogurt.

(a) *Description.* Frozen lowfat yogurt is the food that is prepared from the same ingredients and in the same manner prescribed in § 135._____ for frozen yogurt, and complies with all of the provisions of § 135._____, except that the milkfat level is not less than 0.5 percent nor more than 2.0 percent.

(b) *Nomenclature.* The name of the food is "frozen lowfat yogurt" or, alternatively, "lowfat frozen yogurt".

3. Section 135._____ is added to subpart B to read as follows:

§ 135._____ Frozen nonfat yogurt.

(a) *Description.* Frozen nonfat yogurt is the food that is prepared from the same ingredients and in the same manner prescribed in § 135._____ for frozen yogurt, and complies with all of the provisions of § 135._____, except that the milkfat level is not less than 0.5 percent.

(b) *Nomenclature.* The name of the food is "frozen nonfat yogurt" or, alternatively, "nonfat frozen yogurt".

VI. References

The following information has been placed on file in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. U.S. Department of Health and Human Services, "Surgeon General's Report on Nutrition and Health," DHHS (PHS) Publication No. 88-50210, Washington, DC.

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U.S. Government Printing Office, GPO Stock No. 017-001-00465-1 (1988).

2. Booth Research Services, Inc., Dieting and Low-Calorie Products Survey, May, 1989. Survey conducted for the Calorie Control Council.

3. Committee on Technological Options to Improve Nutritional Attributes of Animal Products, Board of Agriculture, National Research Council, "Designing Foods: Animal Product Options in the Marketplace," National Academy Press, Washington, DC, 1988.

FDA is requesting comments on whether the petitioned actions would be in the best interest of consumers.

Interested persons may, on or before July 30, 1991, submit to the Dockets Management Branch (address above) written comments regarding this advance notice of proposed rulemaking. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 6, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-12855 Filed 5-30-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2550

Participant Directed Individual Account Plans (ERISA Section 404(c) Plans); Notice of Hearing

AGENCY: Department of Labor.

ACTION: Notice of hearing.

SUMMARY: This document provides notice of a public hearing regarding a proposed regulation under section 404(c) of title I of the Employee Retirement Income Security Act of 1974 (ERISA) relating to participant directed individual account plans. The proposed regulation was set forth in a notice of proposed rulemaking published in the **Federal Register** at 56 FR 10724 on March 13, 1991.

DATES: The hearing will be held on Thursday, July 11, 1991, and Friday, July 12, 1991, beginning at 9:15 a.m. e.s.t. on each day.

ADDRESSES: The hearing will be held in room N3437 of the Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Deborah S. Hobbs, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210, (202) 523-7901 (not a toll free number), or Daniel J. Maguire, Esq., Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210, (202) 523-9592 (not a toll free number).

SUPPLEMENTARY INFORMATION: On March 13, 1991, the Department of Labor (the Department) published a notice of proposed rulemaking in the **Federal Register** (56 FR 10724) regarding participant directed individual account plans under section 404(c) of ERISA (29 U.S.C. 1104(c)). In that notice the Department invited all interested persons to submit written comments concerning the proposed regulation on or before May 13, 1991.[1]

The Department has received a number of comments requesting a public hearing. In view of these requests, and the importance of the proposed regulation, the Department has decided to hold a hearing on the proposed regulation on Thursday, July 11, 1991, and Friday, July 12, 1991, beginning at 9:15 a.m. e.s.t. on each day, in room N3437 of the Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC.

Any interested person who wishes to be assured of an opportunity to present oral comments at the hearing should submit by 3:30 p.m. e.s.t. June 28, 1991: (1) A written request to be heard and (2) an outline (preferably seven copies) of the topics to be discussed, indicating the time allocated to each topic. The request to be heard and accompanying outline should be sent to the Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, room R-5669, U.S. Department of Labor, Washington, DC 20210, and marked "Attention: Section 404(c) Hearing." Individuals who did not file written comments regarding the proposed regulation may nonetheless submit a request to make oral comments at the hearing.

The Department will prepare an agenda indicating the order of presentation of oral comments. In the absence of special circumstances, each commentator will be allotted ten minutes in which to complete his or her presentation. Information about the agenda may be obtained on or after July 2, 1991 by telephoning Deborah S. Hobbs, Washington, DC (202) 523-7901 (not a toll free number). Individuals not listed in the agenda will be allowed to make oral comments at the hearing to the extent time permits. Those individuals who make oral comments at the hearing should be prepared to answer questions regarding their comments. The hearing will be transcribed.

Notice of Public Hearing

Notice is hereby given that a public hearing will be held on Tuesday, July 30, 1991 and Wednesday, July 31, 1991, regarding a proposed regulation (published at 56 FR 10724) under section 404(c) of ERISA relating to participant directed individual account plans. The hearing will be held beginning at 9:15 a.m. e.s.t. on each day, in room N3437 of the Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC.

Signed at Washington, DC, this 24th day of May, 1991.

Robert J. Doyle,

Director of Regulations and Interpretations, Pension and Benefits Administration, U.S. Department of Labor.

[FR Doc. 91-12947 Filed 5-30-91; 8:45 am]

BILLING CODE 4510-29-M

[1] In connection with the March 13, 1991 publication of a proposed 404(c) regulation, the Department also withdrew a prior regulation proposal under section 404(c) which had been published in the **Federal Register** on September 3, 1987 (52 FR 33508).

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AF25

Exclusions from Income

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations concerning exclusions from countable income under the Improved Pension program. This change is necessary because current regulations inappropriately exclude payments from a specific Federal program from countable income for VA purposes. The intended effect of this change is to correct that error.

DATES: Comments must be received on or before July 1, 1991. This change is proposed to be effective thirty days after the date of publication of the final rule. Comments will be available for inspection until July 10, 1991.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this change to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132, at the above address and only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until July 10, 1991.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, (202) 233-3005.

SUPPLEMENTARY INFORMATION: On December 13, 1979, 42 U.S.C. 5044(g) was amended by section 9 of the Domestic Volunteer Service Act Amendments of 1979, Public Law 96-143, 93 Stat. 1077, to provide that payments under a Domestic Volunteer Service Act (DVSA) program be excluded from consideration when determining entitlement to other governmental programs unless the Director of the ACTION Agency determines that a volunteer's payments equal or exceed the minimum wage. As a result, VA published, in the **Federal Register** of January 29, 1981 (46 FR 9579-80), an amendment to 38 CFR 3.272 which added paragraph (k) for the purposes of excluding such payments from countable income under the Improved Pension Program. That rulemaking, however, erroneously listed the Older American Community Service Program as a DVSA program. We have learned, and the ACTION Agency has confirmed, that the Older American Community Service Program is not a DVSA program. VA proposes to amend 38 CFR § 3.272(k) to correct this error.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 602-612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with Foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.105.

List of Subjects in 38 CFR Part 3

Administrative practices and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: May 1, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

PART 3—[AMENDED]

38 CFR part 3, Adjudication, is proposed to be amended as follows:

§ 3.272 [Amended]

1. In § 3.272 paragraph (k), introductory text, remove the words "and Older American Community Service Program".

(Authority: 38 U.S.C. 210(c))

[FR Doc. 91-12859 Filed 5-30-91; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-3960-6]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; RACT for S. Bent and Brothers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision establishes and requires reasonably available control technology (RACT) for S. Bent and Brothers in Gardner, Massachusetts. This revision is necessary to limit volatile organic compound (VOC) emissions from this source. The intended effect of this action is to approve a source-specific RACT determination made by Massachusetts in accordance with commitments specified in its Ozone Attainment Plan approved by EPA on November 9, 1983 (48 FR 51480). This action is being taken in accordance with section 110 of the Clean Air Act.

DATES: Comments must be received on or before July 1, 1991. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Acting Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge, (617) 565-3248; FTS 835-3248.

SUPPLEMENTARY INFORMATION: On November 2, 1990, the Massachusetts Department of Environmental Protection (DEP) submitted a final plan approval issued to S. Bent and Brothers (S. Bent) as a formal state implementation plan (SIP) revision. The plan approval establishes and requires reasonably available control technology (RACT) to control volatile organic compound (VOC) emissions from S. Bent in Gardner, Massachusetts. The SIP revision consists of a plan approval effective October 17, 1990.

Summary of SIP Revision

The DEP issued this plan approval pursuant to requirements found in 310 CMR 7.18(17), which EPA approved on November 9, 1983 (48 FR 51480) as part of Massachusetts' Ozone Attainment Plan. Massachusetts Regulation 310 CMR 7.18(17), "Reasonably Available Control Technology (RACT)," requires the DEP to determine and impose RACT on otherwise unregulated stationary sources of VOC with the potential to emit greater than or equal to 100 tons per year. On May 25, 1988, EPA issued a SIP call to Massachusetts notifying them that their ozone attainment plan was substantially inadequate to attain the ozone standard. Nevertheless, Massachusetts remains obligated to continue to control these otherwise unregulated sources of VOC and submit the RACT determinations as SIP revisions.

S. Bent and Brothers (S. Bent) manufactures and coats dining room sets including tables, chairs, china hutches, and other dining room

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furniture. The furniture is made from ash, birch and maple (all hardwoods). No control techniques guideline (CTG) document exists for wood furniture coaters at this time. Therefore, S. Bent is a miscellaneous VOC emitting source covered by 310 CMR 7.18(17). Massachusetts has determined that the use of certain spraying technology and the establishment of maximum allowable VOC emission rates for the different categories of coatings used, represent RACT for S. Bent. In determining RACT, Massachusetts and EPA investigated other source-specific RACT determinations for other wood coating operations. Several wood coating operations in other areas of the country were found to be regulated or regulations were expected soon. A discussion of these regulations can be found in the Technical Support Document prepared for this revision. The plan approval imposing RACT on S. Bent contains provisions which will enforceably insure emission reductions at the facility.

Ract Determination

S. Bent has undertaken considerable efforts to ensure that its VOC emissions were minimized. S. Bent now sprays with high pressure-low volume (HVLP) spray guns and uses low VOC coatings.

Two technologies exist which can decrease emissions dramatically at wood furniture coating facilities excluding add-on control equipment. Ultraviolet (UV) cure coatings and water-based coatings have both been studied and tested for application to wood furniture coating and can achieve considerable VOC reductions. UV coatings have been found to be very effective in cutting VOC emissions. EPA and Massachusetts investigated the possibility of using such coatings. It was found that UV coating is effective in certain wood coating applications. However, UV technology requires that the UV lamps are configured to face all of the coated product. UV coatings on chairs cannot be properly cured because of the chairs differing three dimensional shapes. The UV lamps cannot be aligned to face all surfaces. The table and case line will not work with UV technology because the shapes of the tables and cases vary go significantly that it would be impossible to align the UV lamps close enough to all surfaces for proper curing.

Water-based coatings have also become a promising technology for wood coating. However, based on discussions with coating manufacturers and Air Agencies in California which will be mandating such technology, humidity must be controlled or consistently low for proper curing. At S. Bent, such a requirement would necessitate climate controls in the application and drying areas of the plant. Because of this cost, water-based coatings were not feasible at S. Bent.

As was stated earlier, RACT at S. Bent involves the use of low-VOC coatings and certain spray technology. HVLP spray equipment must be used for all finishing operations except for the staining of chairs (which must use flow coatings), decorative hand painting, and small touch up/repair work. Further, all VOC-containing materials must be stored in covered containers which prevent evaporation. The plan approval imposing RACT on S. Bent contains several additional provisions which will enforceably insure emission reductions at the facility.

Provision A of the plan approval requires that top coats, defined as a clear coat applied as a top coat, must be at or below 4.70 pounds of VOC per gallon of coating (minus water). Over 35 percent of all gallons applied at S. Bent are top coats. S. Bent uses a catalyzed top coat and has demonstrated that it is the best low-emitting coating which fulfills their product specifications.

Provision B of the plan approval requires that all stains be at or below 6.74 pounds of VOC/gallon of coating (minus water). About 23 percent of all gallons applied at S. Bent are classified as stains. Provision C of the approval mandates that sealers, defined as the coat used to seal pores or wood grains, must be at or below 6.1 pounds of VOC/gallon of coating (minus water). Approximately 30 percent of all gallons applied at S. Bent are sealers.

Finally, provisions D and E, set emission limits for both pigmented coatings and pigmented primers. Pigmented coating must be at or below 4.35 pounds of VOC per gallon of coating (minus water) while pigmented primers, defined as the pigmented first coat applied prior to the pigmented coating, must be at or below 5.72 pounds of VOC per gallon of coating (minus water). Approximately 10 percent of coatings applied at S. Bent are classified as pigmented.

More detail is provided in the Technical Support Document on how these limitations compare to other state's requirements for wood coating. Final rulemaking will be contingent upon Massachusetts submitting information documenting that the coating limitations established for S. Bent for these processes represent the lowest VOC content reasonably available which yield acceptable quality products.

Recordkeeping and reporting requirements are contained in the plan approval and are sufficient to determine compliance with each of the above listed requirements. For example, daily records must be maintained which include the identity, quantity and VOC content of each coating as applied (see State submittal for more details). Test methods have been established and defined for each of the above requirements.

The plan approval has been written to require that RACT be imposed on S. Bent. The requirements of RACT have been shown to be the greatest level of control technologically and economically feasible. Imposition of RACT will achieve approximately a 42 percent reduction in VOCs, despite production increases. Per unit of production, approximately a 61 percent reduction was achieved. The plan approval was effective upon its issuance on October 17, 1990.

EPA is proposing to approve the Massachusetts SIP revision for S. Bent and Brothers in Gardner, Massachusetts, which was submitted on November 2, 1990. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the "**ADDRESSES**" section of this notice.

Proposed Action

EPA is proposing to approve this plan approval submitted as a SIP revision request for S. Bent. The plan approval defines and imposes RACT on S. Bent, a manufacturer and coater of wood furniture in Gardner, Massachusetts. Final rulemaking will be contingent upon the DEP providing additional technical support documenting that the limits established for S. Bent represent RACT.

EPA has reviewed this request for revision of the federally-approved State implementation plan for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. EPA has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225).

The Office of Management and Budget has exempted this action from the requirements of Section 3 of Executive Order 12291.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: May 9, 1991.

Julie Belaga,

Regional Administrator Region I.

[FR Doc. 91-12888 Filed 5-30-91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3100, 3150, 3160, 3180, 3200, 3260, 3500, 3510, 3520, 3530, 3540, 3550, 3580, 3590, 3600, 3800, 3860

[WO-770-1270-02-24 1A]

RIN 1004-AB55

Public Availability of Mineral Resources Information

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) proposes to amend its regulations in group 3000 of title 43 of the Code of Federal Regulations (CFR) addressing public availability of mineral resources information. The purpose of this proposal is to remove conflicts between the regulations implementing the Freedom of Information Act, 5 U.S.C. 552 (FOIA), in 43 CFR part 2, subpart B, and existing regulations which relate to public availability of mineral resources information. Additionally, this proposal seeks to remove inconsistencies among the various mineral resources regulations relating to release of information under FOIA.

DATES: Comments should be submitted by July 30, 1991. Comments received or postmarked after the above date may not be considered in the decisionmaking process on the final rule.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, room 5555, Main Interior Building, 1849 C Street NW., Washington, DC 20240.

Comments will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Sid Vogelpohl, BLM Albuquerque District, Division of Mineral Resources, (505) 761–4503, or Dorothy Chambers, FOIA Coordinator, (202) 653–8853.

SUPPLEMENTARY INFORMATION: Regulations relating to the BLM's management of mineral resources are found in 43 CFR group 3000. Separate regulations deal specifically with oil and gas (part 3100), geothermal resources (part 3200), coal (part 3400), solid minerals other than coal (part 3500), mineral materials (part 3600) and mining law (part 3800). Coal is also addressed in regulations at 43 CFR 2.22.

Mineral resources regulations dealing with public access to information were promulgated at different times. They differ among themselves on the important issue of public access to information and conflict in varying degrees with the FOIA regulations at 43 CFR part 2, subpart B.

Mineral resources information is received by the BLM from a myriad of industry sources involved in exploring, leasing, or mining public and Indian lands. Information held by the BLM includes exploration and mining plans, company financial information, and resource and/or reserve information. Most information held by the BLM was originally submitted to the BLM in accordance with regulatory requirements. Some information is provided on a voluntary basis. Under this proposal, Indian and Federal mineral resources information would be subject to the same FOIA disclosure and exemption requirements.

In keeping with the spirit of FOIA, industry information held by the BLM is made available to the greatest extent possible. FOIA provides nine categories of information which may be exempt from public disclosure in order to protect the rights of the individuals who submitted the information and to protect the interests of the BLM. Mineral resources information may be exempt from release to the public under several of the categories: Exemption 3 (as prescribed by another statute), exemption 4 (trade secrets and commercial or financial information), exemption 5 (inter-agency or intra-agency memoranda or letters), exemption 7 (law enforcement), or exemption 9 (geological or geophysical information concerning wells). Information falling within any of the nine exemptions is withheld from release only if (1) Disclosure is prohibited by statute or Executive Order or (2) sound grounds exist for invocation of one or more FOIA exemptions. Through judicial interpretation of exemption 4, sound grounds to withhold trade secrets and commercial or financial information that are privileged or confidential exist when disclosure is likely to (1) Cause substantial harm to the competitive position of the person from whom the information was obtained or (2) impair the BLM's ability to obtain voluntarily submitted information in the future. Under exemption 5, deliberative material (drafts, staff opinions, pre-decisional documents) may be withheld.

For the full text of the FOIA regulations and the nine statutory exemptions provided in FOIA, refer to 43 CFR part 2, subpart B.

BLM is in the process of classifying categories of mineral resources information as "public" or "non-public." The classification is being drafted as a BLM Manual. Pending finalization of the Manual, copies of the list for specific mineral commodities may be obtained by contacting one of the persons listed above under **FOR FURTHER INFORMATION CONTACT.**

Certain mineral resources information possessed by the BLM is also maintained by other agencies of the Department of the Interior, including the Bureau of Indian Affairs (BIA), the Office of Surface Mining, Reclamation and Enforcement (OSMRE), the United States Geological Survey (USGS), and the Minerals Management Service (MMS). As provided by the Department FOIA regulations at 43 CFR part 2, one of these agencies will be designated as the office of primary control, and that agency will coordinate the response to FOIA requests and issue decisions.

Information relating to Indian mineral resources, tribal and allotted, is subject to FOIA to the same extent as Federal mineral resources information. In the

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case of Indian information, when the BLM is the office of primary control for non-public information sought through FOIA for which the BLM needs confirmation of the non-public status, the BLM will contact the submitter as required by FOIA, and will also contact the Indian lessor through the BIA. As has been past Department of the Interior policy, Indian tribes or allottees or their designated representatives may have full access to information in agency files relating to their mineral ownership.

Under FOIA's exemption 3, information specifically exempted from public disclosure by a statute other than FOIA is not available to the public. The only two such statutes affecting mineral resources are the Indian Mineral Development Act of 1982 (IMDA) and the Federal Coal Leasing Amendments Act of 1976. IMDA applies solely to mineral agreements approved under the authority of IMDA after the date of the Act and does not apply to leases authorized under some other authority. The statutory exemption of IMDA applies only to the findings, such as that there will be a sufficient financial return to the Indian parties, forming the basis of the Secretary's decision to approve or disapprove an agreement, including the terms and conditions of such agreements and the agreed manner of disposition of the mineral resource. Information filed with the Department of the Interior for the exploration, production, and reclamation of mineral resources subsequent to agreement approval is not exempt from public disclosure under exemption 3, although another exemption may be applicable. Exemption 3 status applies solely to information related to Indian agreements specifically authorized by the IMDA.

The BLM proposes to revise mineral resources regulations on public availability of information to accomplish two goals: (1) To ensure that the mineral resources regulations dealing with public access to information conform with the FOIA regulations, and (2) to standardize the mineral resources regulations dealing with access to information. By this proposal, standard paragraphs would be repeated in the regulations for oil and gas, geothermal, coal, solid minerals other than coal, mineral materials and mining law.

Oil and Gas Regulations. Existing regulations dealing with public access to oil and gas information held by BLM are:

1. 43 CFR 3152.6(b)—Geophysical exploration—Alaska
2. 43 CFR 3162.6—Oil and gas operations
3. 43 CFR 3181.2—Oil and gas unit agreements
4. 43 CFR 3190.1—Cooperative agreements

The two standard paragraphs and the IMDA paragraph would be added at § 3100.4. Section 3152.6(d) would then be replaced with a statement referring to 43 CFR part 2 and proposed § 3100.4. Section 3162.8 would be entirely removed, since the functions of paragraphs (a) through (d) of that section are addressed by proposed § 3100.4, and the functions of paragraphs (e) through (g) are fully covered by existing § 3190.1. Section 3181.2 would be amended by changing the sixth sentence to refer to 43 CFR part 2 and proposed § 3100.4. Section 3190.1 would not be changed.

Geothermal. Existing regulations dealing with public access to geothermal information held by the BLM are in § 3264.4. This provision would be removed. A new § 3200.3 would be added, consisting of the standard paragraphs and the IMDA paragraph.

Coal. Existing regulations dealing with public access to coal information held by the BLM are:

1. 43 CFR 2.22—Special rules for coal
2. 43 CFR 3410.4(b)—Coal exploration license
3. 43 CFR 3420.1–2(b)—Competitive leasing
4. 43 CFR 3422.1(a)—Fair market value
5. 43 CFR 3422.3–4(g)—Lease sale consultation
6. 43 CFR 3453.2–2(g)—Lease transfers
7. 43 CFR 3481.3—General

A **Federal Register** notice proposing amendments affecting most of the regulations in 43 CFR group 3400 is expected to be published in the near future. Because it is anticipated that the sections of the regulations will be renumbered, revision of those sections to bring them into conformance with the purpose of this notice will be accomplished at the time of the proposed overall revision of the group 3400 regulations. Changes proposed at that time which address public availability of information will conform with the proposal in this notice.

Solid Minerals Other Than Coal and Oil Shale. Existing regulations dealing with public access to solid minerals other than coal information are:

1. 43 CFR 3500.5(b)—Solid minerals in general
2. 43 CFR 3514.5—Phosphate exploration license
3. 43 CFR 3524.5—Sodium exploration license
4. 43 CFR 3534.5—Potassium exploration license
5. 43 CFR 3544.5—Sulphur exploration license
6. 43 CFR 3554.5—Gilsonite exploration license
7. 43 CFR 3585.5–9—White Mountains National Recreation Area
8. 43 CFR 3590.1—Confidentiality of information

The standard paragraphs and the IMDA paragraph would be placed in new § 3500.5–2. The second sentence of each of § 3514.5, 3524.5, 3534.5, 3544.5, 3554.5, and 3585.5–9 would be replaced by a sentence referring to 43 CFR part 2 and proposed § 3500.5–2. Section 3590.1 would be removed, its function being taken over by proposed § 3500.5–2

Mineral Materials. Existing regulations dealing with public access are in 43 CFR 3602.2. A new § 3600.0–8 would consist of the two standard paragraphs applicable to public land. The fourth and fifth sentence of § 3602.2(a) would be replaced with a sentence referring to 43 CFR part 2 and proposed § 3600.0–8.

Mining Law. Existing regulations dealing with public access to information are:

1. 43 CFR 3802.6—Wilderness study areas (WSAs)
2. 43 CFR 3809.5—Lands outside WSAs

Both of these provisions would be replaced with the two standard paragraphs applicable to public land. A new § 3862.9 would consist of the two standard paragraphs applicable to public land.

The principal author of this proposed rule is Sid Vogelpohl, Assistant District Manager, Mineral Resources, BLM Albuquerque District, assisted by the staff of the BLM Division of Legislation and Regulatory Management.

It is hereby determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. An environmental assessment has been prepared and a finding of no significant impact has been determined for these proposed amendments to 43 CFR groups 3100, 3200, 3500, 3600, and 3800. The environmental assessment is available, upon written request, from the Division of Information Resources Management (770), Bureau of Land Management, U.S. Department of the Interior, Washington, DC 20240–1849. No new significant information has arisen since publication of the public-availability-of-information sections in existing 43 CFR group 3100, 3200, 3500, 3600, and 3800.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule, and under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that it will not have a significant economic impact on a sustantial number of small entities. Additionally, as required by Executive Order 12606, the Department of the Interior has determined that the rulemaking would not cause a taking of private property.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects for 43 CFR Part 3100

Oil and Gas, Public land, Indian land, Administrative practices and procedures, Classified information, Freedom of Information Act.

List of Subjects for 43 CFR Part 3150

Alaska, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

List of Subjects for 43 CFR Part 3160

Government contracts, Indians-lands, Mineral royalties, Oil and gas exploration, Penalties, Public lands-mineral resources, Reporting and recordkeeping requirements.

List of Subjects for 43 CFR Part 3180

Government contracts, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

List of Subjects for 43 CFR Part 3200

Geothermal, Public land, Indian land, Administrative practices and procedures, Classified information, Freedom of Information Act.

List of Subjects for 43 CFR Part 3260

Environment protection, Geothermal energy, Government contracts, Public lands-mineral resources, Reporting and recordkeeping requirements.

List of Subjects for 43 CFR Part 3500

Solid minerals (other than coal), Public land, Indian land, Administrative practices and procedures, Classified information, Freedom of Information Act.

List of Subjects for 43 CFR Part 3510

Government contracts, Mineral royalties, Mines, Phosphate, Public land-minerals resources, Reporting and recordkeeping requirements, Surety bonds.

List of Subjects for 43 CFR Part 3520

Government contracts, Mineral royalties, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements, Sodium, Surety bonds.

List of Subjects for 43 CFR Part 3530

Government contracts, Mineral royalties, Mines, Potassium, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

List of Subjects for 43 CFR Part 3540

Government contracts, Mineral royalties, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements, Sulphur, Surety bonds.

List of Subjects for 43 CFR Part 3550

Government contracts, Hydrocarbons (vein-type solid), Mineral royalties, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

List of Subjects for 43 CFR Part 3580

Government contracts, Mineral royalties, Mines, Public lands-mineral resources, Recreation and recreation areas, Surety bonds.

List of Subjects for 43 CFR Part 3590

Environment protection, Government contracts, Indian-lands, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements.

List of Subjects for 43 CFR Part 3600

Mineral materials, Administrative practices and procedures, Classified information, Freedom of Information Act.

List of Subjects for 43 CFR Part 3800

Mineral patents, Mining claims (Wilderness Review Program), mining claims, Administrative practices and procedures, Classified information, Freedom of Information Act.

List of Subjects for 43 CFR Part 3860

Mines, Public lands-mineral resources, Reporting and recordkeeping requirements.

For the reasons in the Preamble, and under the authority of the Freedom of Information Act as amended and supplemented (5 U.S.C. 552), it is proposed to amend parts 3100, 3150, 3160, 3180, 3200, 3260, 3500, 3510, 3520, 3530, 3540, 3550, 3580, 3590, 3600, 3800, subchapter C, chapter II, title 43 of the Code of Federal Regulations as set forth below:

PART 3100—OIL AND GAS LEASING

1. The authority citation is revised to read as follows:

Authority: Mineral Leasing Act, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359, the Alaska National Interest Lands Conservation Act, as amended (16 U.S.C. 3101 *et seq.*), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*), the Act of May 21, 1930 (30 U.S.C. 301–306), the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), the National Wildlife Refuge Administration Act of 1966 (16 U.S.C. 668dd–ee), the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a), the Freedom of Information Act (5 U.S.C. 552), the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 *et seq.*), and the Attorney General's Opinion of April 2, 1941 (40 Op.Atty.Gen. 41).

2. Section 3100.4 is added to read as follows:

§ 3100.4 Public availability of information.

(a) All data and information submitted under this group 3100 are subject to part 2 of this title, which sets forth the regulations of the Department of the Interior relating to the public disclosure of data and information contained in Department of the Interior records.

(b) Parties submitting data and information under group 3100 of this title that they believe to be exempt from disclosure shall, at the time of submission to the authorized officer, or within a reasonable time thereafter, clearly mark it "CONFIDENTIAL INFORMATION" and physically separate it from other portions of the submitted materials and mark each such page. Data and information so marked shall be kept confidential to the extent allowed by the regulations in part 2 of this title. Failure to mark data and information submitted under this Group 3100 in this manner may result in public disclosure to the full extent allowed under part 2 of this title without notice to the submitter, subject to the provisions of § 2.15(d)[4][v] of this title.

(c) All findings forming the basis of the Secretary's intent to approve or disapprove Minerals Agreements under the Indian Mineral Development Act of 1982 (IMDA), 25 U.S.C. 2101 *et seq.*), as well as all projections, studies, data, or other information possessed by the Department of the Interior regarding the terms and conditions of Minerals Agreements made pursuant to IMDA, the financial return to the Indian parties thereto, or the extent, nature, value, or disposition of the Indian mineral resources or the production, products, or proceeds thereof, will be held by the Department of the Interior as privileged proprietary information of the affected

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Indian or Indian tribe as provided in IMDA.

PART 3150—ONSHORE OIL AND GAS GEOPHYSICAL EXPLORATION

Subpart 3152—Exploration in Alaska

3. The authority citation for part 3150 is revised to read as follows:

Authority: The Mineral Leasing Act, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired lands of 1947, as amended (30 U.S.C. 351–359), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 *et seq.*), the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a), the Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6504), the Freedom of Information Act (5 U.S.C. 552), and the Department of the Interior Appropriations Act, Fiscal year 1981 (42 U.S.C. 6508).

4. Section 3152.6(b) is revised to read as follows:

§ 3152.6 Collection and submission of data.

* * * * *

(b) All informatioon submitted under this section is subject to part 2 of this title, which sets forth the rules of the Department of the Interior relating to public availability of information contained in Departmental records, as provided at § 3100.4.

PART 3160—ONSHORE OIL AND GAS OPERATIONS

5. The authority citation for part 3160 is revised to read as follows:

Authority: The Mineral Leasing Act, as amended and supplemented (30 U.S.C. 181 *et seq.*); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359); the Act of May 21, 1930 (30 U.S.C. 301–306); the Act of March 3, 1909, as amended (25 U.S.C. 396); the Act of May 11, 1938, as amended (25 U.S.C. 396a–396g); the Act of February 28, 1891 as amended (25 U.S.C. 397); the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a–398e); the Act of June 30, 1919, as amended (25 U.S.C. 399); R.S. 441 (43 U.S.C. 1457); Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41); the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 *et seq.*); the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*); the Act of December 12, 1980 (42 U.S.C. 6508); the Combined Hydrocarbon Leasing Act of 1981 (95 Stat. 1070); the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*); and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102 *et seq.*).

§ 3162.8 [Removed]

6. Section 3162.8 is removed in its entirety.

PART 3180—ONSHORE OIL AND GAS UNIT AGREEMENTS: UNPROVEN AREAS

7. The authority citation for 43 CFR part 3180 is revised to read as follows:

Authority: Mineral Leasing Act, as amended and supplemented (30 U.S.C. 181, 189, 226(e), 226(m)), and the Freedom of Information Act (5 U.S.C. 552).

§ 3181.2 [Amended]

8. Section 3181.2 is amended by removing the sixth sentence, beginning "If requested, geologic, * * *", and replacing it with the sentence: "All information submitted under this section is subject to part 2 of this title, which sets forth the rules of the Department of the Interior relating to public availability of information contained in Departmental records, as provided under this part at § 3100.4."

PART 3200—GEOTHERMAL RESOURCES LEASING: GENERAL

9. The authority citation for part 3200 is revised to read as follows:

Authority: 30 U.S.C. 1001–1027, 25 U.S.C. *et seq.*, 5 U.S.C. 552.

10. Section 3200.3 is added to read as follows:

§ 3200.3 Public Availability of information

(a) All data and information submitted under this group 3200 are subject to part 2 of this title, which sets forth the regulations of the Department of the Interior relating to the public disclosure of data and information contained in Department of the Interior records.

(b) Parties submitting data and information under group 3200 of this title that they believe to be exempt from disclosure shall, at the time of submission to the authorized officer, or within a reasonable time thereafter, clearly mary it "CONFIDENTIAL INFORMATION" and physically separate it from other portions of the submitted materials and mark each such page. Data and information so marked shall be kept confidential to the extent allowed by the regulations in part 2 of this title. Failure to mark data and information submitted under this group 3200 in this manner may result in public disclosure to the full extent allowed under part 2 of this title without notice to the submitter, subject to the provisions of § 2.15(d)(4)(v) of this title.

(c) All findings forming the basis of the Secretary's intent to approve or disapprove Minerals Agreements under the Indian Mineral Development Act of 1982 (IMDA), 25 U.S.C. 2101 *et seq.*, as well as all projections, studies, data, or other information possessed by the Department of the Interior regarding the terms and conditions of Minerals Agreements made pursuant to IMDA, the financial return to the Indian parties thereto, or the extent, nature, value, or disposition of the Indian mineral resources or the production, products, or proceeds thereof, will be held by the Department of the Interior as privileged proprietary information of the affected Indian or Indian tribe as provided in IMDA.

PART 3260—GEOTHERMAL RESOURCES OPERATIONS

11. The authority citation for part 3260 is revised to read as follows:

Authority: 30 U.S.C. 1001–1025, and Order No. 3087, dated Dec. 3, 1982, as amended on Feb. 7, 1983 (48 FR 8983).

§ 3264.4 [Removed]

12. Section 3264.4 is removed in its entirety.

PART 3500—LEASING OF SOLID MINERALS OTHER THAN COAL AND OIL SHALE

13. The authority citation for part 3500 is revised to read as follows:

Authority: Mineral Leasing Act, as amended and supplemented (30 U.S.C., 181 *et seq.*); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*); Reorganization Plan No. 3 of 1946 (5 U.S.C. Appendix); sec. 3, Act of Sept. 1, 1949 (30 U.S.C. 192c); the Act of June 30, 1950 (16 U.S.C. 508(b)); the Act of June 8, 1926 (30 U.S.C. 291–293); the Act of Mar. 3, 1933, as amended (47 Stat. 1487); sec. 10 of the Act of Aug. 4, 1939 (43 U.S.C. 387); the Act of Oct. 8, 1964 (16 U.S.C. 460n *et seq.*); the Act of Nov. 8, 1965 (16 U.S.C. 460q *et seq.*); the Act of Oct. 2, 1968 (16 U.S.C. 90c *et seq.*); the Act of Oct. 27, 1972 (16 U.S.C. 460dd *et seq.*); the Alaska National Interest Lands Conservation Act, as amended (16 U.S.C. 460mm-2-460mm-4), the Freedom of Information Act (5 U.S.C. 552), the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 *et seq.*); and the Independent Offices Appropriations Act of 1952 (31 U.S.C. 9701).

14. Section 3500.5 is amended by removing the text and revising the heading to read as follows:

§ 3500.5 Document submission and availability.

15. Section 3500.5–1 is added to read as follows:

§ 3500.5–1 Filing of documents.

All necessary documents shall be filed in the proper BLM office. A document shall be considered filed when it is received in the proper BLM office.

16. Section 3500.5–2 is added to read as follows:

§ 3500.5–2 Public availability of information.

(a) All data and information submitted under this group 3500 are subject to part 2 of this title, which sets forth the regulations of th Department of the Interior relating to the public disclosure of data and information contained in Department of the Interior records.

(b) Parties submitting data and information under group 3500 of this title that they believe to be exempt from disclosure shall, at the time of submission to the authorized officer, or within a reasonable time thereafter, clearly mark it "CONFIDENTIAL INFORMATION" and physically separate it from other portions of the submitted materials and mark each such page. Data and information so marked shall be kept confidential to the extent allowed by the regulations in part 2 of this title. Failure to mark data and information submitted under this group 3500 in this manner may result in public disclosure to the full extent allowed under part 2 of this title without notice to the submitter, subject to the provisions of § 2.15(d)(4)(v) of this title.

(c) All findings forming the basis of the Secretary's intent to approve or disapprove Minerals Agreements under the Indian Mineral Development Act of 1982 (IMDA), 25 U.S.C. 2101 *et seq.*, as well as all projections, studies, data, or other information possessed by the Department of the Interior regarding the terms and conditions of Mineral Agreements made pursuant to IMDA, the financial return to the Indian parties thereto, or the extent, nature, value, or disposition of the Indian mineral resources or the production, products, or proceeds thereof, will be held by the Department of the Interior as privileged proprietary information of the affected Indian or Indian tribe as provided in IMDA.

PART 3510—PHOSPHATE

17. The authority citation for part 3510 is revised to read as follows:

Authority: Mineral Leasing Act, as amended and supplemented (30 U.S.C., 181 *et seq.*); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*); the Act of March 3, 1933, as amended (47 Stat. 1487); Sec. 10, Act of Aug. 4, 1939 (43 U.S.C. 387); the Act of Oct. 8, 1964 (16 U.S.C. 460n *et seq.*); the Act of Nov. 8, 1965 (16 U.S.C. 460q *et seq.*); the Act of Oct. 2, 1968 (16 U.S.C. 90c *et seq.*); the Act of Oct. 27, 1972 (16 U.S.C. 460dd *et seq.*); the Alaska National Interest Lands Conservation Act, as amended (16 U.S.C. 460mm-2-460mm-4), the Freedom of Information Act (5 U.S.C. 552), and the Independent Offices Appropriations Act of 1952 (31 U.S.C. 9701).

18. Section 3514.5 is added to read as follows:

§ 3514.5 Submission of data.

The licensee shall furnish to the authorized officer copies of all data obtained during exploration. All information submitted under this section is subject to part 2 of this title, which sets forth the rules of the Department of the Interior relating to public availability of information contained in Departmental records.

PART 3520—SODIUM

19. The authority citation for part 3520 is revised to read as follows:

Authority: The Mineral Leasing Act, as amended and supplemented (30 U.S.C., 181 *et seq.*); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*); the Act of March 3, 1933, as amended (47 Stat. 1487); sec. 10 of the Act of Aug. 4, 1939 (43 U.S.C. 387); the Act of Oct. 8, 1964 (16 U.S.C. 460n *et seq.*); the Act of Nov. 8, 1965 (16 U.S.C. 460q *et seq.*); the Act of Oct. 2, 1968 (16 U.S.C. 90c *et seq.*); the Act of Oct. 27, 1972 (16 U.S.C. 460dd *et seq.*); the Alaska National Interest Lands Conservation Act, as amended (16 U.S.C. 460mm-2-460mm-4), the Freedom of Information Act (5 U.S.C. 552), and the Independent Offices Appropriations Act of 1952 (31 U.S.C. 9701).

20. Section 3524.5 is revised to read as follows:

§ 3524.5 Submission of data.

The licensee shall furnish to the authorized officer copies of all data obtained during exploration. All information submitted under this section is subject to part 2 of this title, which sets forth the rules of the Department of the Interior relating to public availability of information contained in Departmental records.

PART 3530—POTASSIUM

21. The authority citation for part 3530 is revised to read as follows:

Authority: Mineral Leasing Act, as amended and supplemented (30 U.S.C., 181 *et seq.*); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*); the Act of March 3, 1933, as amended (47 Stat. 1487); Sec. 10, Act of Aug. 4, 1939 (43 U.S.C. 387); the Act of Oct. 8, 1964 (16 U.S.C. 460n *et seq.*); the Act of Nov. 8, 1965 (16 U.S.C. 460q *et seq.*); the Act of Oct. 2, 1968 (16 U.S.C. 90c *et seq.*); the Act of Oct. 27, 1972 (16 U.S.C. 460dd *et seq.*); the Alaska National Interest Lands Conservation Act, as amended (16 U.S.C. 460mm-2-460mm-4), the Freedom of Information Act (5 U.S.C. 552), and the Independent Offices Appropriations Act of 1952 (31 U.S.C. 9701).

22. Section 3534.5 is revised to read as follows:

§ 3534.5 Submission of data.

The licensee shall furnish to the authorized officer copies of all data obtained during exploration. All information submitted under this section is subject to part 2 of this title, which sets forth the rules of the Department of the Interior relating to public availability of information contained in Departmental records.

PART 3540—SULPHUR

23. The authority citation for part 3540 is revised to read as follows:

Authority: Mineral Leasing Act, as amended and supplemented (30 U.S.C. 181 *et seq.*); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*); the Act of March 3, 1933, as amended (47 Stat. 1487); Sec. 10 of the Act of Aug. 4, 1939 (43 U.S.C. 387); the Act of Oct. 8, 1964 (16 U.S.C. 460n *et seq.*); the Act of Nov. 8, 1965 (16 U.S.C. 460q *et seq.*); the Act of Oct. 2, 1968 (16 U.S.C. 90c *et seq.*); the Act of Oct. 27, 1972 (16 U.S.C. 460dd *et seq.*); the Alaska National Interest Lands Conservation Act, as amended (16 U.S.C. 460mm-2-460mm-4), the Freedom of Information Act (5 U.S.C. 552), and the Independent Offices Appropriations Act of 1952 (31 U.S.C. 9701).

24. Section 3544.5 is revised to read as follows:

§ 3544.5 Submission of data.

The licensee shall furnish to the authorized officer copies of all data obtained during exploration. All information submitted under this section is subject to part 2 of this title, which sets forth the rules of the Department of the Interior relating to public availability of information contained in Departmental records.

PART 3550—"GILSONITE" (INCLUDING ALL VEIN-TYPE SOLID HYDROCARBONS)

25. The authority citation for part 3550 continues to read as follows:

Authority: Mineral Leasing Act, as amended and supplemented (30 U.S.C. 181 *et seq.*); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359); the Federal Land Policy and

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Management Act of 1976 (43 U.S.C. 1701 *et seq.*); the Freedom of Information Act (5 U.S.C. 552), and the Independent Offices Appropriations Act of 1952 (31 U.S.C. 9701).

28. Section 3554.5 is revised to read as follows:

§ 3554.5 Submission of data.

The licensee shall furnish to the authorized officer copies of all data obtained during exploration. All information submitted under this section is subject to part 2 of this title, which sets forth the rules of the Department of the Interior relating to public availability of information contained in Departmental records.

PART 3580—SPECIAL LEASING AREAS

27. The authority citation for part 3580 is revised to read as follows:

Authority: The Mineral Leasing Act, as amended and supplemented (30 U.S.C. 181 *et seq.*); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*); the Act of June 8, 1926 (30 U.S.C. 291–293); the Act of March 3, 1933, as amended (47 Stat. 1487); Sec. 10, Act of Aug. 4, 1939 (43 U.S.C. 387); the Act of Oct. 8, 1964 (16 U.S.C. 460n *et seq.*); the Act of Nov. 8, 1965 (16 U.S.C. 460q *et seq.*); the Act of Oct. 2, 1968 (16 U.S.C. 90c *et seq.*); the Act of Oct. 27, 1972 (16 U.S.C. 460dd *et seq.*); the Alaska National Interest Lands Conservation Act, as amended (16 U.S.C. 460mm-2-460mm-4), the Freedom of Information Act (5 U.S.C. 552), and the Independent Offices Appropriations Act of 1952 (31 U.S.C. 9701).

28. Section 3585.5–9 is revised to read as follows:

§ 3585.5–9 Submission of data.

The licensee shall furnish to the authorized officer copies of all data obtained during exploration. All information submitted under this section is subject to part 2 of this title, which sets forth the rules of the Department of the Interior relating to public availability of information contained in Departmental records.

PART 3590—SOLID MINERALS (OTHER THAN COAL) EXPLORATION AND MINING OPERATIONS

29. The authority citation for part 3590 is revised to read as follows:

Authority: The Mineral Leasing Act, as amended and supplemented (30 U.S.C. 181 *et seq.*); the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359); the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*); the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*); Reorganization Plan No. 3 of 1946 (5 U.S.C. Appendix); sec. 3 of the Act of September 1, 1949 (30 U.S.C. 192c); the Act of June 30, 1950 (16 U.S.C. 508(b); the Act of June 8, 1926 (30 U.S.C. 291–293); the Act of March 3, 1933, as amended (47 Stat. 1487); sec. 10 of the Act of Aug. 4, 1939 (43 U.S.C. 387); the Act of Oct. 8, 1964 (16 U.S.C. 460n *et seq.*); the Act of Nov. 8, 1965 (16 U.S.C. 460q *et seq.*); the Act of Oct. 2, 1968 (16 U.S.C. 90c *et seq.*); the Act of Oct. 27, 1972 (16 U.S.C. 460dd *et seq.*); the Alaska National Interest Lands Conservation Act, as amended (16 U.S.C. 460mm-2-460mm-4), the Independent Offices Appropriations Act of 1952 (31 U.S.C. 9701); the Combined Hydrocarbon Leasing Act of 1981 (95 Stat. 1070); the Act of May 27, 1908 (35 Stat. 315); the Act of March 3, 1909, as amended (25 U.S.C. 396); the Act of May 11, 1938, as amended (25 U.S.C. 396a–396g); the Freedom of Information Act (5 U.S.C. 552); and the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 *et seq.*).

§ 3590.1 [Removed]

30. Section 3590.1 is removed.

§ 3590.2 [Redesignated as § 3590.1]

31. Section 3590.2 is redesignated as § 3590.1.

PART 3600—MINERAL MATERIALS DISPOSAL: GENERAL

32. An authority citation for part 3600 is added to read as follows:

Authority: 30 U.S.C. 601 *et seq.*; 43 U.S.C. 1732, 1734; Sec. 2, Act of September 28, 1962 (76 Stat. 652); 31 U.S.C. 483a; 5 U.S.C. 552.

33. Section 3600.0–8 is added to read as follows:

§ 3600.0–8 Public availability of information.

(a) All data and information submitted under this Group 3600 are subject to part 2 of this title, which sets forth the regulations of the Department of the Interior relating to the public disclosure of data and information contained in Department of the Interior records.

(b) Parties submitting data and information under Group 3600 of this title that they believe to be exempt from disclosure shall, at the time of submission to the authorized officer, or within a reasonable time thereafter, clearly mark it "CONFIDENTIAL INFORMATION" and physically separate it from other portions of the submitted materials and mark each such page. Data and information so marked shall be kept confidential to the extent allowed by the regulations in part 2 of this title. Failure to mark data and information submitted under this Group 3600 in this manner may result in public disclosure to the full extent allowed under part 2 of this title without notice to the submitter, subject to the provisions of § 2.15(d)(4)(v) of this title.

34. Section 3602.2 is amended by removing the fourth and fifth sentences of paragraph (a), and adding a sentence to read as follows:

§ 3602.2 Sampling and testing.

(a) * * * All information submitted under this section is subject to Part 2 of this title, which sets forth the rules of the Department of the Interior relating to public availability of information contained in Departmental records, as provided under this part at 3600.0–8.

* * * * *

PART 3800—MINING CLAIMS THE GENERAL MINING LAWS

35. The Authority Citation for part 3800 is revised to read as follows:

Authority: Act of April 25, 1812 (43 U.S.C. 2); Act of September 28, 1850 (43 U.S.C. 1201); Act of July 4, 1866 (30 U.S.C. 21); Lode Law of 1866 (30 U.S.C. 22 *et seq.*); Placer Act of 1870 (30 U.S.C. 36); General Mining Law of 1872, as amended (30 U.S.C. 21 *et seq.*); Stockraising Homestead Act (43 U.S.C. 299); Act of December 22, 1928 (43 U.S.C. 1068 *et seq.*); Act of April 23, 1932 (42 U.S.C. 154); Act of June 18, 1934 (25 U.S.C. 463); Act of July 16, 1946, Reorganization Plan No. 3 (43 U.S.C. 1457); Act of April 8, 1948 (62 Stat. 162); Alaska Public Sale Act of 1949 (43 U.S.C. 687b–687b–4); Act of July 23, 1955 (30 U.S.C. 621 *et seq.*); Wilderness Act 16 U.S.C. 1131–1136; Wild and Scenic Rivers Act (16 U.S.C. 1271–1287); Mining and Minerals Policy Act of 1970 (30 U.S.C. 21a); Mining in the Parks Act of 1976 (16 U.S.C. 1901); Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*); National Materials and Minerals Policy, Research, and Development Act of 1980 (30 U.S.C. 1601); and Freedom of Information Act, 5 U.S.C. 552.

Subpart 3802—Exploration and Mining, Wilderness Review Program

36. Section 3802.6 is revised to read as follows:

§ 3602.6 Public availability of information.

(a) All data and information submitted under this Group 3800 are subject to part 2 of this title, which sets forth the regulations of the Department of the Interior relating to the public disclosure of data and information contained in Department of the Interior records.

(b) Parties submitting data and information under Group 3800 of this title that they believe to be exempt from disclosure shall, at the time of submission to the authorized officer, or within a reasonable time thereafter, clearly mark it "CONFIDENTIAL INFORMATION" and physically separate it from other portions of the submitted materials and mark each such page. Data and information so marked shall be kept confidential to the extent allowed by the regulations in part 2 of this title. Failure to mark data and information submitted under this Group 3800 in this manner may result in public disclosure to the full extent allowed under part 2 of this title without notice to the submitter, subject to the provisions of § 2.15(d)(4)(v) of this title.

Subpart 3809—Surface Management

37. Section 3809.5 is revised to read as follows:

§ 3809.5 Public availability of information.

(a) All data and information submitted under this Group 3800 are subject to part 2 of this title, which sets forth the regulations of the Department of the Interior relating to the public disclosure of data and information contained in Department of the Interior records.

(b) Parties submitting data and information under Group 3800 of this title that they believe to be exempt from disclosure shall, at the time of submission to the authorized officer, or within a reasonable time thereafter, clearly mark it "CONFIDENTIAL INFORMATION" and physically separate it from other portions of the submitted materials and mark each such page. Data and information so marked shall be kept confidential to the extent allowed by the regulations in part 2 of this title. Failure to mark data and information submitted under this Group 3800 in this manner may result in public disclosure to the full extent allowed under part 2 of this title without notice to the submitter, subject to the provisions of § 2.15(d)(4)(v) of this title.

PART 3860—MINERAL PATENT APPLICATIONS

38. The Authority Citation for part 3860 is revised to read as follows:

Authority: 30 U.S.C. 22 *et seq.*, 5 U.S.C. 552.

39. Section 3862.9 is added to read as follows:

§ 3862.9 Public availability of information.

(a) All data and information submitted under this Group 3800 are subject to part 2 of this title, which sets forth the regulations of the Department of the Interior relating to the public disclosure of data and information contained in Department of the Interior records.

(b) Parties submitting data and information under Group 3800 of this title that they believe to be exempt from disclosure shall, at the time of submission to the authorized officer, or within a reasonable time thereafter, clearly mark it "CONFIDENTIAL INFORMATION" and physically separate it from other portions of the submitted materials and mark each such page. Data and information so marked shall be kept confidential to the extent allowed by the regulations in part 2 of this title. Failure to mark data and information submitted under this Group 3800 in this manner may result in public disclosure to the full extent allowed under part 2 of this title without notice to the submitter, subject to the provisions of § 2.15(d)(4)(v) of this title.

Dated: March 26, 1991.

Jennifer A Salisbury

Assistant Secretary of the Interior

[FR Doc. 91–12728 Filed 5–30–91; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

Snapper-Grouper Fishery of the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NOAA issues notice that the South Atlantic Fishery Management Council has submitted Amendment 4 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic (FMP) for review by the Secretary of Commerce (Secretary) and is requesting comments from the public.

DATES: Comments will be accepted until July 22, 1991.

ADDRESSES: Comments should be mailed to Peter J. Eldridge, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Copies of Amendment 4 and supporting documents may be obtained from the South Atlantic Fishery Management Council, Southpark Building, suite 306, 1 Southpark Circle, Charleston, SC 29407–4699, telephone 803–571–4366.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813–893–3161.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act), as amended, requires that a council-prepared fishery management plan or amendment be submitted to the Secretary for review and approval or disapproval. The Magnuson Act also requires that the Secretary, upon receiving the document, immediately publish a notice of its availability for public inspection and comment. The Secretary will consider public comment in determining approvability of the document.

Amendment 4 to the FMP proposes to: (1) Institute an annual permit and fee system to harvest fishes in the snapper-grouper management unit in excess of the proposed bag limits (there would be income requirements to qualify for a permit); (2) initiate a reporting and data collection system for participants in the fishery; (3) institute an abbreviated procedure for modifying certain management measures; (4) establish minimum size restrictions for many of the species in the management unit; (5) prohibit the harvest of Nassau grouper; (6) establish bag limits for many components of the management unit; (7) add three species, i.e., spadefish, lesser amberjack, and banded rudderfish, to the management unit; (8) require fish other than cored greater amberjack to be landed with head and fins intact; (9) institute spawning season closures for greater amberjack and mutton snapper; (10) prohibit the use of entanglement nets (gillnets, trammel nets, etc.) in a directed fishery for species in the snapper-grouper management unit; (11) prohibit bottom longlining for wreckfish in the exclusive economic zone (EEZ) of the south Atlantic; (12) require off-loading procedures for wreckfish; (13) prohibit the use of bottom longlines for other species in the management unit in the EEZ shoreward of the 50-fathom contour; (14) prohibit the use of powerheads/bang sticks for harvesting components of the snapper-grouper management unit within designated special management zones (SMZ) off South Carolina; (15) delete the Little River Artificial Reef SMZ from the management plan; (16) authorize the Regional Director, in consultation with the Council, to designate special research zones where fishing may either be prohibited or permitted on a controlled basis; and (17) prohibit the use of fish traps in the south Atlantic EEZ, except for black sea bass traps north of Cape Canaveral, FL, which would be regulated.

Proposed regulations for Amendment 4 are scheduled for publication within 15 days.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 24, 1991.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–12866 Filed 5–28–91; 3:11 pm]

BILLING CODE 3510–22–M

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Notices

Federal Register
Vol. 56, No. 105
Friday, May 31, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

May 24, 1991.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions fo the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new propoasls, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from : Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Reinstatement

• Rural Electrification Administration. Request for Mail List Data—REA Borrowers. REA Form 87. Annually. Small businesses or organizations; 1,927 responses; 482 hours. Curtis L. Bryant (202) 382–8940.

• Farmers Home Administration. 7CFR 1945–D, Emergency Loan Policies, Procedures and Authorizations. FmHA 1940–38, 1945–15, 1945–22. On occasion. State or local government; farms; businesses or other for-profit; Small businesses or organizations; 25,340 responses; 14,738 hours. Jack Holston (202) 382–9736.

• Agricultural Stabilization and Conservation Service. 7 CFR part 760, Indemnity Payment Programs-Dairy Indemnity. Payment Program. ASCS–373 and CCC–314. Monthly. Farms; businesses or other for-profit; 960 responses; 280 hours. Clarence Domire (202) 447–7673.

New Collection

• Forest Service. Employment Interest Survey. R5–6100–135. On occasion. Individuals or households; Federal agencies or employees; 10,000 responses; 2500 hours. Floyd Thomas (415) 705–2924.

Donald E. Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 91–12915 Filed 5–30–91; 8:45 am]

BILLING CODE 3410–01–M

Animal and Plant Health Inspection Service

[Docket No. 91–072]

Receipt of Permit Applications for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that two applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, United States Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. You may obtain a copy of these documents by writing to the person listed under **"FOR FURTHER INFORMATION CONTACT."**

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Specialist, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permits, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article..

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organism	Field test location
91–107–06	Calgene, Incorporated	04–17–91	Cotton plants genetically engineered to express tolerance to the herbicide bromoxyl	Mississippi and South Carolina.
91–123–01, renewal of Permit 90–135–02, issued on 08–15–90.	Amoco Technology Company.	05–03–91	Tobacco plants genetically engineered to express an eukaryotic gene important for primary metabolism and an antibiotic resistance marker gene.	Kentucky.

Done in Washington DC, this 24th day of May 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–12914 Filed 5–30–91; 8:45 am]

BILLING CODE 3410–34–M

[Docket 91–050]

Availability of Environmental Assessments and Findings of No Significant Impact Relative to Issuance of Permits to Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that eight environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The assessments provide a basis for the conclusion that the field testing of these genetically engineered organisms will not present a risk of the introduction or dissemination of a plant pest and will not have a significant impact on the quality of the human environment. Based on these findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

DATES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Clayton Givens, Program Assistant, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612. For copies of the environmental assessments and findings of no significant impact, write Mr.Clayton Givens at this same address. The documents should be requested under the permit numbers listed below.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the

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environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing the permit applications, APHIS assessed the impact on the environment of releasing the organisms under the conditions described in the permit applications. APHIS concluded that the issuance of the permits listed below will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment.

The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of the following permits to allow the field testing of genetically engineered organisms:

Permit No.	Applicant	Date issued	Organism	Field test location
90-297-01	Calgene, Inc.	03/06/91	Cotton plants genetically engineered to express both a delta-endotoxin protein from *Bacillus thuringiensis* which is toxic to the larvae of some lepidopteran insects, and an enzyme that confers tolerance to the herbicide bromoxynil; and cotton plants genetically engineered to express an enzyme that confers tolerance to the herbicide bromoxynil.	Mississippi.
90-303-02	Calgene, Inc.	03/06/91	Cotton plants genetically engineered to express an enzyme that confers tolerance to the herbicide bromoxynil.	Alabama, Arkansas, Arizona, California, Louisiana, Mississippi, Missouri, North Carolina, Tennessee, and Texas.
90-332-04	Dekalb Plant Genetics	03/06/91	Corn plants genetically engineered to contain the *bar* gene which confers tolerance to the herbicide bialaphos.	Illinois.
90-311-01	Frito-Lay, Inc.	03/12/91	Potato plants genetically engineered to express a metabolic enzyme.	Wisconsin.
90-332-02	Dekalb Plant Genetics	03/12/91	Corn plants genetically engineered to contain the *bar* gene which confers tolerance to the herbicide bialaphos.	Hawaii.
90-351-01	United States Department of Agriculture, Agricultural Research Service.	03/15/91	Walnut plants genetically engineered to express a delta-endotoxin protein from *Bacillus thuringiensis* subsp. *kurstaki*.	California.
90-365-01	University of California, Davis.	03/19/91	Tomato plants genetically engineered to contain a transposable element from corn.	California.
90-310-01	United States Department of Agriculture, Agricultural Research Service.	03/20/91	Potato plants genetically engineered to express a modified *Galleria mellonella* larval serum protein.	Idaho, Maine, Minnesota, and North Dakota.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 24th day of May 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-12912 Filed 5-30-91; 8:45 am]

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[Docket 91-055]

Availability of Environmental Assessments and Findings of No Significant Impact Relative to Issuance of Permits to Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that five environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The assessments provide a basis for the conclusion that the field testing of these genetically engineered organisms will not present a risk of the introduction or dissemination of a plant pest and will not have a significant impact on the quality of the human environment. Based on these findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Clayton Givens, Program Assistant, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessments and findings of no significant impact, write Mr. Clayton Givens at this same address. The documents should be requested under the permit numbers listed below.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing permit applications, APHIS assessed the impact on the environment of releasing the organisms under the conditions described in the permit applications. APHIS concluded that the issuance of the permits listed below will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment.

The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of the following permits to allow the field testing of genetically engineered organisms:

Permit No.	Applicant	Date issued	Organism	Field test location
90-333-01	Crop Genetics International.	04-02-91	*Clavibacter xyli* subsp. *cynodontis* genetically engineered to express the delta-endotoxin protein from *Bacillus thuringiensis* subsp. *kurstaki*.	Maryland and Nebraska.
90-344-01	DNA Plant Technology Corporation.	04-02-91	Tobacco plants genetically engineered to express a chitinase gene for control of fungal plant pathogens.	California.
90-365-02 Renewal of Permit No. 90-088-01, Issued 07-11-90	Upjohn Company	04-02-91	Cantaloupe and squash plants genetically engineered to express the genes encoding the coat proteins of cucumber mosaic virus, papaya ringspot virus, watermelon mosaic virus 2, and zucchini yellow mosaic virus.	California, Georgia, and Michigan.
90-365-03 Renewal of Permit No. 90-088-02, Issued 07-06-90	Upjohn Company	04-02-91	Cantaloupe and squash plants genetically engineered to express the genes encoding the coat proteins of cucumber mosaic virus, papaya ringspot virus, watermelon mosaic virus 2, and zucchini yellow mosaic virus.	Georgia.
91-018-04	Monsanto Agricultural Company.	04-02-91	Cotton plants genetically engineered to express a delta-endotoxin protein from *Bacillus thuringiensis* subsp. *kurstaki*.	California and Mississippi.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) 42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC., this 24th day of May 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-12913 Filed 5-30-91; 8:45 am]

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Farmers Home Administration

Submission of Information Collection to OMB (Under Paperwork Reduction Act and 5 CFR Part 1320)

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The information collection requirement described below has been submitted to OMB for expedited clearance under 5 CFR 1320.18. The agency solicits comments on subject submission. The action is necessary in order to comply with the Consolidated Farm and Rural Development Act.

ADDRESSES: Interested persons are invited to submit comments regarding this submission. Comments should refer to the proposal by name and should be sent to: Elizabeth Harker, USDA Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David R. Smith, Senior Loan Officer, Farmer Programs Loan Making Division, Farmers Home Administration, USDA, South Agriculture Building, room 5430, 14th and Independence Avenue, SW., Washington, DC 20250. Telephone (202) 382–1645.

SUPPLEMENTARY INFORMATION: The agency has submitted the proposal for collection of information as described below to OMB for clearance as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). It is requested that OMB approve this submission within three days.

The supporting statement below explains the revision, and the need and justification for the revision, of subpart D of part 1945 of this chapter and form FmHA 1945–22.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507.

Supporting Statement, 7 CFR 1945–D, Emergency Loan Policies, Procedures and Authorizations

1. The Consolidated Farm and Rural Development Act, as amended, provides the statutory authority for the Insured Loan Programs set out in title 7 of the Code of Federal Regulations, chapter XVIII, part 1945, subpart D, and for requiring the use of forms FmHA 1945–22, 1940–38 and 1945–15. The Secretary of Agriculture is given broad discretion to impose such rules and regulations as the Secretary deems necessary to carry out the purposes of the enabling legislation (7 United States Code (U.S.C.) 1981). The Secretary is authorized to define the character, scope and frequency of information required to be collected. The information requested is needed to efficiently carry out the purpose of the enabling legislation in accordance with the policies established in the law. The Secretary has delegated this discretionary authority to the Administrator of the Farmers Home Administration (FmHA).

The reporting and recordkeeping requirements are generally no more stringent than required by lending institutions except that the law does require that FmHA verify compliance with the following policies:

a. The Agency must verify the ability of an applicant to obtain credit elsewhere without the benefit of FmHA assistance (7 U.S.C. 1922, 1941 and 1962).

b. The Agency must determine that funds are used only for those purposes authorized by law and prescribed by the Secretary (7 U.S.C. 1923, 1924 and 1963).

c. The Agency must determine sufficient repayment ability exists to certify that the applicant evidences the prospects of carrying on a successful farming operation (7 U.S.C. 1922, 1941, 1961 and 1983).

d. The Agency must determine that sufficient collateral is taken to protect the government's interest over loan terms consistent with the expectant life of the security taken, not to exceed the maximum terms prescribed by law (7 U.S.C. 1921, 1946 and 1964).

e. The Agency must determine the applicant is of good (financial) character and intends to continue farming. The use of an FmHA county committee certification that an applicant meets this criteria is required (7 U.S.C. 1982 and 1983).

f. The Agency must graduate its insured loan borrowers to other credit sources as soon as it is prudent to do so. (7 U.S.C. 1964 and 1983).

The reporting and recordkeeping requirements imposed on the public by regulations set out in 7 CFR part 1945, subpart D are necessary to administer the EM program in accordance with the statutory provisions summarized herein and consistent with commonly performed lending practices.

2. The Agency requires some of the information it collects to be reported in a standard manner. Although lending institutions generally require and collect information similar to that requested by FmHA, there is a wide diversity in reporting practices. The Agency requires some information to be reported on standard forms in order to facilitate an effective and efficient decision making process. The Agency does not impose standard reporting requirements on the format and detail of much of the information it requires such as cash flow statements, construction specifications, etc.

The Agency requires applicants for insured EM loans to present information about their past, present and projected production and financial history. The Agency also requires information about the extent of the damage caused by natural disaster conditions. The Agency uses this information to evaluate loan making or loan servicing proposals. The information is needed for FmHA to evaluate an applicant's eligibility and to determine if the operation is technically and economically feasible. The information is also needed to evaluate the market value and life expectancy of the security offered in support of the loan request. The Agency must determine whether the security offered is adequate to protect the government's interest before approving any loan request.

The Agency verifies the accuracy of the financial and security information through contact with lenders, employers and courthouse records. The Agency requires verification of the unavailability of private credit, with all assets pledged as security, prior to extending subsidized EM loan assistance. Proposals from cooperatives and corporations may require the pledge of individual security liability from the entity members prior to extending subsidized EM loan assistance.

The Agency solicits information about nonfarm income and practices. The Agency uses this information to evaluate whether such sources are essential to the success of the farming operation. Applicants must agree to sell any nonessential assets to reduce the amount of the proposed EM loan. When such assets cannot be sold prior to loan closing, the interest in such assets will be mortgaged to FmHA, and the borrower will enter into a written agreement to sell such assets within a specified period not to exceed one year from the date of loan closing. Proceeds from the sale of such assets will be applied on the borrower's FmHA loan(s). Applicants must also agree to return to private lending sources if the Agency determines they are able to return to such creditors. The Agency, therefore, requires that acceptable financial and production recordkeeping practices be maintained to enable proper evaluation and to facilitate a return to private lenders.

Compliance with local, state and federal laws is required and evidence of compliance with these laws may be required. Evidence of compliance with building codes, zoning ordinances, environmental standards governing

discharge and disposal of animal wastes, equal opportunity standards, historic preservation requirements, corporate registration requirements, historical preservation requirements, etc., may be required when warranted. Generally, evidence of compliance with local, state and federal laws is requested only if violations are suspected.

The Agency also collects some information for use in monitoring the program's effectiveness. Information about the characteristics of applicants and the planned use of loan funds is of particular concern to the Agency in evaluating the effectiveness of its programs.

The applicant normally has the required production and financial information readily available from existing farm recordkeeping sources. The Agency considers the information collected to be essential to make prudent loan making and servicing decisions.

Specifically, the burden to be cleared with this regulation is described as follows:

Reporting Requirements—Forms

Sections 1945.156(b)(1) and 1945.156(b)(2)—Form FmHA 1940–38—"Request for Lender's Verification of Loan Application"

This form is completed by the FmHA County Supervisor and the lender. It is used by County Office personnel to verify credit elsewhere and to determine the lender's willingness to consider making a loan with or without an FmHA guarantee.

The annual number of respondents is estimated to be 12,000 based on the annual number of applications. The number of applications has declined drastically in the last 5 years. (1985—21,392; 1990—5,586). This has been the direct result of the termination of FmHA's authorization to administer the major adjustment and annual production loans under the emergency loan authorization. In addition, the authorization for economic loans and emergency livestock loans has expired.

The number of annual respondents is directly related to the number of applications received annually. Consequently, the number of annual respondents has declined commensurate with the number of applications received. It is anticipated an average of 3 lenders will receive form FmHA 1940–38 for each application filed. With an average of 4,000 applications filed per year, there will be an estimated 12,000 responses. This is one-third of the responses received in 1988.

Section 1945.161(b)—Form FmHA 1945–11—"Certification of Disaster Losses"

This form is completed by the applicant and the County Supervisor. It is used by the County Office to obtain information from EM actual loss applicants pertaining to their claimed losses caused by disasters.

Current revisions to FmHA Instruction 1945–D allows farmers to now claim a physical or production loss on an individual crop, rather than only on entire enterprises. These revisions have resulted in changes to form FmHA 1945–22.

This form is being revised to delete the last sentence under the Applicant Certification section.

The Instructions to the Applicant are also being revised in items 4(5)(1) and (4)–(8), by substituting the word "Individual" for "All;" in items 4 (5) (2)–(3) by substituting the word "Individual" for "All cash;" and in items 4(5)(9)–(10) by substituting the word "Any" for "All." These changes are made to comply with the revisions to Instruction 1945–D mandated by the Secretary.

Additionally, the last sentence under item 4, Instructions to the Applicant, is revised to read, "Enter the enterprise in item (F)."

The annual number of respondents is estimated to be 4,000 based on the annual number of applications. The revisions in the matrix are directly related to the reduced application caseload. The estimated number of man-hours for applicants to complete the form is 1.0. The estimated total man-hours is 4,000.

Section 1945.175(c)(ii)—Form FmHA 1945–15—"Value Determination Worksheet"

This form is completed by the applicant and the FmHA official making the appraisal. It is used by FmHA supervisory personnel in appraising chattel property to serve as security for EM loans only.

The closing rate for EM loans is 33 percent. At a rate of 4,000 applications received annually, there will be an estimated 1,320 responses. The estimated number of man-hours for applicants to complete the form is .5.

Reporting Requirements—No Forms

Section 1945.173—Supplementary Material Required to Support an Application

This instruction is used by the applicant in determining compliance with environmental regulations.

The annual number of respondents is estimated to be 500 based on a percentage of annual number of applications. The estimated number of man-hours per response is estimated to be .25 and the estimated total man-hours is estimated to be 125.

Section 1945.189—Evidence of Applicant's Capacity to Meet FmHA's Security Requirements

This section of the instruction is used to determine that adequate and proper security is obtained and that all security instruments have been properly executed and recorded.

The annual number of respondents is estimated to be 2,500 based on the average number of loans made annually. The estimated number of man-hours per respondent is 1 with an estimated total man-hour figure of 2,500.

Section 1945.175(b)—Preparation of Monthly Budget to Schedule Disbursement of Fund Requirements

Instruction specifies that when all loan funds are not disbursed at loan closing, a monthly budget will be prepared showing the specific amount to be disbursed for each loan purpose for each month.

The annual number of respondents is estimated to be 200 based on a percent of the loans made annually. The estimated number of man-hours for applicants to complete the form is .25. The total estimated number of man-hours is 50.

Section 1945.156(b)(3)—Evidence of Compliance with the Agency's Use of Nonessential Asset Policies

This requirement is deleted from FmHA Instruction 1945–D, as directed by the Secretary. This Instruction is changed to require only that the borrower pledge all nonessential assets as security for the loan, rather than agree to sell all nonessential assets.

No paperwork burden is imposed on the public as a result of this requirement.

Section 1945.161(d)—Financial and Other Information Required of Cooperative, Corporation or Partnership Loan Applications

This section of the instruction requires evidence of a cooperative, corporation, partnership, or joint operation that it was operating as a cooperative, corporation, joint operation or partnership at the time the disaster loss occurred.

Estimated number of respondents is 400 based on a small percentage of applications received annually. The estimated total number of respondents is 400. The estimated number of man-hours per response is .5 with a total

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estimated number of man-hours to be 200.

Section 1945.168(d)—Evidence of Compliance with Borrower Graduation Requirements

This section requires written evidence by lender and applicant to determine whether he/she is able to graduate to other sources of credit.

Estimated number of applicants responding is 4,000 based on number of loans made annually. The estimated number of man-hours per response is .25 with a total estimated number of man-hours to be 1,000. Estimated number of lenders responding is 400, 10 percent of the total borrowers. The estimated number of man-hours per lender is .5 with a total estimated number of man-hours to be 200.

Section 1945.173(d)—Evidence of Compliance with National Historic Preservation Act Requirements

Instruction dictates that if there is any evidence to indicate property to be financed has historical or archaeological value, certain provisions will apply.

Estimated number of respondents is only 20 based on a very small percentage of loans made annually. The estimated number of man-hours per response is .167. The estimated total number of man-hours is 3.00.

3. The information requested by the Agency primarily consists of gathering financial and production information and verifying its content. This process cannot be performed through computer exchange of information between the Agency and private lenders, employers, and other Federal agencies.

The Agency has not identified any legal obstacles to reducing reporting burdens associated with FmHA Instruction 1945-D.

4. In specific instances where assistance is made simultaneouly with another agency or the Farm Credit System, it is possible to exchange information rather than require duplicative efforts on the part of the applicant. It is also possible to use existing financial information provided it is current. Due to the dynamic nature of an applicant's financial affairs the Agency must insist that decisions pertaining to loan making be made based upon accurate and up-to-date information.

5. Information which is comparable to that required by Agency regulations may usually be substituted in lieu of using Agency forms. The Agency also utilizes voice verification with private lending institutions and employers whenever possible to confirm the accuracy of information reported.

6. Methods to minimize the public reporting burden include the requirement that the applicant certify that the financial information is correct, rather than requiring an audited financial statement, allowing documentation of an entity's legal and/or financial status in the form of material already required by the State or the Internal Revenue Service (IRS) and the utilization of accurate and timely financial data already prepared for another agency or organization.

The Agency's reporting requirements for farming operations are sometimes considerably less than would be required by private lending institutions. The Agency's application forms, for example, solicit only eleven entries on last year's income and expenses. Many private lending institutions impose greater reporting detail in this area than does FmHA.

7. Collection of information on a reduced frequency would result in unsound loan making and/or loan servicing decisions. The Agency generally requires information to be reported only when proposals are submitted requiring a decision. The Agency also requires that borrowers be prepared to present financial and production information for annual review. Annual or more frequent reviews of year-end financial and production records are expected to be made on all new farm loans and on any loans evidencing serious problems. Reporting the disposition and use of the proceeds of FmHA security property is required for all farm loans. Reduced reporting requirements in these areas would undermine the integrity of the Agency and contribute to higher delinquencies and losses.

8. The information collection associated with this clearance action is consistent with the provisions of 7 CFR 1320.6. The public is not required to respond to any information requirement in less than 30 days. Information is not normally required to be reported more frequently than a quarterly basis. Monthly monitoring of cash flow schedules may be required for new borrowers or problem accounts. Information required does not exceed the goal of imposing no more than a maximum of one original and two copies of required information and the FmHA normally only requires the filing of an original copy of any required information.

9. The FmHA consults with its borrowers, representatives of private lending institutions, FmHA and other USDA employees, and representatives of the Farm Credit Administration on a frequent basis as a part of its coordinated assessment functions. The Agency also solicits public comments through responses to changes published in the Federal Register. The FmHA publishes all rule making actions impacting the public, including those actions imposing recordkeeping and reporting requirements in the Federal Register.

The public responses received indicate that the reporting and recordkeeping requirements associated with EM loan processing are not excessive or unduly time consuming to prepare.

(a) The following respondents have been contacted:

Farm Credit Service, Morgantown, West Virginia, Reed Judy, (304) 624–5551.

Production Credit Association, Opelousas, Louisiana, Kenneth Soileau, (318) 948–3062.

First National Bank of Lockney, Texas, Lockney, Texas, Darrel Dodds, (806) 652–3355.

(b) There were no major problems encountered.

(c) There have been no other public comments on the subject.

10. No assurances of confidentiality are provided to respondents.

11. No sensitive questions are requested.

12. The estimated cost to the Federal Government to collect this information is $418,065 which includes salaries, operational expenses, overhead and printing.

The estimated cost to the public is $191,249. This is based on 8,785 hours of burden for applicants, 6,200 hours of burden for lenders and 3 hours of burden for state and local governmental agencies. The following hourly rates were utilized in estimating the monetary expenses to the public:

Farmer respondents, $10.00/hour.

Lender respondents, 16.67/hour.

State and local government officials, 15.20/hour.

13. The attached chart provides the mathematical computations employed to arrive at the respondent's burden. Essentially, information was collected from individuals knowledgeable in emergency loan processing. Additionally, an evaluation of the time burden by respondents was assessed within the Agency by individuals directly involved with analyzing and processing respondent data. A mean man-hour response time was projected from this material and applied in the calculations.

Figures comprised to determine the actual number of respondents and forms estimated necessary are based on an actual average number of EM loan application processing activity for Fiscal Years 1987, 1988 and 1989.

14. The difference in the amount from the previous clearance has a direct correlation in the number of applications received. The number of applications has declined drastically in the last 5 years. This has been the direct result of the termination of FmHA's authorization to administer the major adjustment and annual production loans under the EM loan authorization. In addition, the authorization for economic emergency loans and emergency livestock loans has expired. Additionally, activity in the EM program is based on natural disasters. Accurate forecasts of future disaster related losses are impossible to determine.

This is a reinstatement of a previously cleared data collection. The burden requested represents projected program activity for the next 3 years.

15. There are no plans to publish information from these reports for statistical purposes.

7 CFR PART 1945 SUBPART D—EMERGENCY LOAN POLICIES, PROCEDURES AND AUTHORIZATIONS

Sect. of Regulations	Title	Form No. (if any)	Estimated No. of respondents	Reports filed annually	Total annual responses (d) x (e)	Est. No. of man-hrs. per response	Est. total manhours (f) x (g)
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
		Reporting Requirements—No Forms					
1945.173	Supplementary material required to support an application. (Information included evidence of compliance with environmental regulations, state and local laws and regulations governing obtaining options on land to be purchased, etc.).	Written Evidence	500	on occasion	500	.25	125
1945.169	Evidence of applicant's capacity to meet FmHA's security requirements.		2,500	on occasion	2,500	1	2,500
1945.175(b)	Preparation of a monthly budget to schedule disbursement of fund requirements.		200	on occasion	200	.25	50
1945.156(b)(1) and 1945.156(b)(2).	Request for Lender's Verification of Loan Application.	1940-38	12,000	on occasion	12,000	.5	6,000
1945.161(b)	Certification of Disaster Losses	1945-22	4,000	on occasion	4,000	1.0	4,000
1945.175(c)(ii)	Value Determination Worksheet	1945-15	1,320	on occasion	1,320	.5	660
1945.161(d)	Financial and other information required of cooperative, corporation or partnership loan applications.	Written Evidence	400	on occasion	400	.5	200
1945.168(d)	Evidence of compliance with borrowers graduation requirements.	Written Evidence	4,000	on occasion	4,000	.25	1,000
		(Applicant)	400	on occasion	400	.5	200
		(Lender)					
1945.173(d)	Evidence of compliance with National Historic Preservation Act Requirements.	Written Evidence	20	on occasion	20	.167	3
Docket totals				25,340			14,738

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Form FmHA 1945-22
(Rev. 5-91)

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION

FORM APPROVED
OMB NO. 0575-0090
APPROVAL EXPIRES 5/94

CERTIFICATION OF DISASTER LOSSES

A. APPLICANT'S NAME: *(First)* *(Middle)* *(Last)*

B. COMPLETE ADDRESS: *(Include Zip Code)*

C. DATE AND NATURE OF DISASTER:

D. CROP PRODUCTION FOR THE DISASTER YEAR AND THE 5 PRECEDING YEARS:

(For FmHA Use Only)

CROPS List total acres and yields per acre of all crops (Cash, Feed and Pasture).	UNITS *(tons, bush, lbs.)*	DISASTER YEAR		19		19		19		19		19	
		Acres	Yield per Acre	Acres	Yield per Acre	Acres	Yield per Acre	Acres	Yield per Acre	Acres	Yield per Acre	Acres	Yield per Acre
1. CASH CROPS													
2. FEED CROPS													
3. OTHER (list)													

SOURCE(S) FROM WHICH YIELD AND ACREAGE RECORDS WERE OBTAINED: 1☐ Own records 2☐ ASCS Proven 3☐ ASCS Established 4☐ Co. Average 5☐ Other (list)

E. LIVESTOCK AND LIVESTOCK PRODUCTS PRODUCTION FOR THE DISASTER YEAR AND THE 5 PRECEDING YEARS:

(For FmHA Use Only)

ALL TYPES OF LIVESTOCK ENTERPRISES	UNITS *(head, doz, cwt, lbs.)*	DISASTER YEAR		19		19		19		19		19	
		Number head	Production per head	Number head	Production per head	Number head	Production per head	Number head	Production per head	Number head	Production per head	Number head	Production per head

SOURCE(S) FROM WHICH PRODUCTION AND NUMBERS OF UNITS WERE OBTAINED: 1☐ Own records 2☐ ASCS Proven 3☐ ASCS Established 4☐ Co. Average 5☐ Other (list)

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575-0090), Washington, D.C. 20503. Please DO NOT RETURN this form to either of these addresses. Forward to FmHA only.

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F. APPLICANT'S IDENTIFICATION OF A SINGLE ENTERPRISE SUFFERING GREATEST DISASTER LOSSES:

The single farming enterprise which is _____ does normally generate sufficient income to be considered essential to the success of my total farming operation.

G. APPLICANT'S IDENTIFICATION OF CROP YEAR TO BE ELIMINATED IN CALCULATION OF NORMAL YEAR'S PRODUCTION: Eliminate 19___ in the calculation of my normal year's production.

H. PHYSICAL LOSSES OR DAMAGES TO PROPERTY: Describe below the kind and estimated dollar value of damages and losses to property other than growing crops and producing livestock.

1. Dwelling(s): _____
_____ Estimated dollar value of losses = $_____

2. Household Furnishings, Equipment and Personal Effects _____
_____ Estimated dollar value of losses = $_____

3. Farm Buildings *(Specify type)*: _____
_____ Estimated dollar value of losses = $_____

4. Farm Machinery and Equipment *(Specify make, model and year)*: _____
_____ Estimated dollar value of losses = $_____

5. Supplies, Harvested or Stored Crops and Livestock Products: _____
_____ Estimated dollar value of losses = $_____

6. Livestock and Poultry *(Specify type and number)*: _____
_____ Estimated dollar value of losses = $_____

7. Aquatic Organisms *(Specify type and number)*: _____
_____ Estimated dollar value of losses = $_____

8. Perennial Crops *(Specify type and number)*: _____
_____ Estimated dollar value of losses = $_____

9. Other Farm Property, e.g., Fences, Land Damage, Debris Removal: _____
_____ Estimated dollar value of losses = $_____

10. TOTAL PHYSICAL LOSSES ..... $_____

I. REMARKS: _____

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J. INSURANCE AND OTHER COMPENSATION: Itemize in detail all insurance claims and settlements, and all other compensation, e.g., ASCS disaster program payments and benefits, and FCIC settlements, received or to be received for losses incurred by the disaster.

SOURCE	CROP OR PROPERTY	DOLLAR AMOUNT
		$
Total Compensation		$

K. ASCS FARM NUMBER(S): List the ASCS farm number, county where farm is located, name of farm operator as reflected by ASCS records, and the percentage of ownership you have in the crops producted on each farm.

ASCS Farm Number	County Farm is Located	Name of Farm Operator as Reflected by ASCS Records	Operator's Share of Crops	For FmHA use only

APPLICANT CERTIFICATION: It is understood that the information shown herein and on attached sheets will be used to determine my emergency loan eligibility and I certify, subject to penalties provided by law, including any civil and criminal fraud penalties, that such information is true, correct and complete to the best of my knowledge and belief and can be supported with documented records.

(Date) (Signature of Applicant)

(APPLICANT MAY SUPPLEMENT THE ABOVE INFORMATION, IF NECESSARY, BY ATTACHING ADDITIONAL SHEETS)

INSTRUCTIONS TO THE APPLICANT

1. Please complete all spaces with the information requested or with an N/A where not applicable, except those spaces designated "For FmHA Use Only".

2. The information provided by you on this form and any supplements thereto will serve as the basis for determining your EM actual loss loan eligibility and the maximum amount of actual loss loan for which you may qualify. It is, therefore, of particular importance that the information you provide is accurate, and that the information can be supported with your own or other reliable actual farm records, e.g., accounting systems printouts, ASCS actual production history, ASCS established yields, etc.. You should check the appropriate blocks to indicate from which source(s) your records can be verified.

3. The exact date(s) and nature of the disaster, item C of form, causing the loss and/or damage must be accurately identified as it will determine whether they can be considered under the particular declared/designated/authorized disaster.

4. When your application is processed, your normal year's production will be calculated for all commodities constituting the disaster years operation. The order of priority of production records that will be used is as follows:
   (1) Your own accurate and verifiable records.
   (2) ASCS records of your established yields for all acres of each crop grown in the disaster year.
   (3) County average yields established in accordance with FmHA regulations.
   (4) When one source of records is not available for the full 5 years preceding the disaster year, combinations of record sources (1) (2) and (3) as set forth above will be used.
   (5) When the production loss is on land being developed, the FmHA State Director will establish normal year's production.

   In determining whether you sustained a qualifying loss, your individual crops and types of livestock produced in the disaster year are grouped into single enterprises as follows:
   (1) Individual cash crops, i.e., wheat is an individual crop, corn is an individual crop, soybeans is an individual crop, etc.
   (2) Individual vegetable crops, i.e., carrots is an individual crop, tomatoes is an individual crop, radishes is an individual crop, etc.
   (3) Individual fruit crops, i.e., apples is an individual crop, oranges is an individual crop, grapefruit is an individual crop, etc.
   (4) Individual nut crops, i.e., walnuts is an individual crop, almonds is an individual crop, pecans is an individual crop, etc.
   (5) Individual feed crops, i.e., alfalfa is an individual feed crop, corn is an individual feed crop when fed to an applicant's own livestock, etc. A livestock enterprise must be a basic part of the farming operation in order for the feed crops to be considered as a basic enterprise in determining eligibility based on production losses to feed crops.
   (6) Individual beef cattle operations;
   (7) Individual dairy cattle operations;
   (8) Individual hog/swine operations;
   (9) Individual poultry operations;
   (10) Any aquaculture operation; and
   (11) Any other operations (i.e., trees grown for timber, etc.).

   A single enterprise which is considered to be a basic part of the total farming operation is one which normally generates sufficient income to be considered essential to the success of the farming operation. This enterprise will be used in determining your eligibility for EM loan assistance. Enter the enterprise in item (F).

5. Your estimates for physical losses should be itemized in the appropriate categories with sufficient detail to enable ready identification of the loss or damage. The dollar value of physical losses will be established by determining the market value at the time of the disaster for property destroyed, or the cost of repair for property damaged, based on written estimates for reputable vendors.

6. All compensation you have received or expect to receive for losses or damages reported on this form will be itemized in detail as provided for in item J. FmHA officials will verify all acknowledged sources of compensation.

7. FmHA will verify all information provided on this form with FCIC and ASCS.

8. You should thoroughly understand the implications of the certification to which you are attesting at the end of this form. If you have any questions or are in need of clarification, contact your FmHA County Office.

BILLING CODE 3410-07-C

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7 CFR Part 1945, Subpart D

Dated: May 24, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91-12864 Filed 5-30-91; 8:45 am]

BILLING CODE 3410-07-M

Forest Service

Environmental Impact Statement for the Amendment of the Chugach Land and Resource Management Plan, Prince William Sound Management Areas: Chugach National Forest, AK

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement to amend the Chugach Land and Resource Management Plan (or "Forest Plan") of 1984, as amended. This amendment will be done under the provisions of the National Forest Management Act of 1976 and its implementing regulations. It will respond to the management challenges and opportunities created by the Exxon Valdez oil spill in Prince William Sound for the management of the Chugach National Forest. The amendment is intended to provide the Forest Service with additional guidance for the design and execution of projects aimed at restoration of the area. It will focus on management of the ecosystems of Prince William Sound and related areas. In so far as possible, the Forest Service intends to develop the amendment through a cooperative effort that will involve all the land managers in the area. The Forest Service will invite the active participation and cooperation of other Federal agencies, the State of Alaska, private landowners in the Sound, and interest groups and individuals.

DATES: Initial comments concerning the proposed amendment of the management direction for Prince William Sound provided by the Forest Plan should be received by August 2, 1991.

ADDRESSES: Send written comments to Bruce Van Zee, Forest Supervisor, Chugach National Forest, 201 E. Ninth Avenue, Anchorage, Alaska, 99501.

FOR FURTHER INFORMATION CONTACT: Bruce Van Zee, Forest Suprvisor (907) 271-2500.

SUPPLEMENTARY INFORMATION:

A. Introduction

Prince William Sound lies at the heart of the Chugach National Forest. Its several million acres of land and water include fiords, islands, inlets, high mountains, magnificent scenery, and large and varied populations of fish and wildlife. It is approximately 15 times larger than San Francisco Bay, and contains the northernmost large, generally ice free port in North America: The Alsaka Pipeline terminal at Valdez.

On March 24, 1989, the oil tanker T/V Exxon Valdez went aground on Bligh Reef and spilled approximately 11 million gallons of crude oil, the largest oil spill in United States history. The oil spread through Prince William Sound, the western Gulf of Alaska, and lower Cook Inlet. More than 1,200 miles of coastline were oiled, including parts of the Chugach National Forest.

Following the initial response to the oil spill, the Federal Government and the State of Alaska began an intensive program of scientific studies to determine the extent of the injuries to the natural resources of the Sound and related areas. The full extent of the injuries will not be known until the studies are completed, but a preliminary report was filed with the Federal court overseeing the proposed settlement agreement between Exxon, the Federal Government, and the State of Alaska. The preliminary report summarizes what is known so far about injuries to fish, wildlife, marine mannals, coastal habitats, subtidal habitats, and archeological and subsistence resources.

Planning for restoration of the area has also begun. The general intent of restoration is to restore injured resources to their pre-spill conditions. Restoration activities may include fish and wildlife habitat projects, work at archaeological sites, restoring or improving traditional subsistence resources, and restoring or improving scenic and recreation values. Restoration activities may also involve careful monitoring of natural recovery processes, replacement of injured resources, and the acquisition of equivalent resources (such as the purchase of similar habitat in another location). Resortation will require close coordination and cooperation among the Federal and State resource managers involved.

B. Need for the Amendment

The existing Land and Resource Management Plan for the Chugach, which was adopted in 1984 and amended in 1986, emphasizes the ecological and recreational values of Prince William Sound and related areas. It establishes objectives for maintenance and improvement of fish and wildlife, dispersed recreation, marine recreation, and landscape character. It also recommends establishment of a 1.7 million acre wilderness in the Nellie Juan and College Fiord areas.

The Forest Service believe that the existing plan is still valid, but needs to be changed to respond to the challenges and opportunities created by the Exxon Valdez oil spill. There are some activities that are permitted by the plan, such as timber haresting, that may no longer be appropriate on the National Forest land in the area. More importantly, the plan needs to be amended to provide more explicit guidance for the planning and execution of restoration activities.

The oil spill affected an entire ecosystem, not just the National Forest land in Prince William Sound. Effective restoration must consider the ecosystem as a whole: It must recognize that the needs of fish, wildlife, and marine mammals may be met in different places at different points in their life cycles, and that these places may fall under the jurisdiction of different land and resource managers. It must recognize that effective recreational use of any particular site in the Sound may depend upon environmental conditions and the level of development on land in other ownerships in the Sound. It must also recognize that the visual quality of the landscapes of the Sound is affected by the management decisions of all the land owners and land managers in the area.

The Forest Service believes that an ecosystem approach to this plan amendment will help to identify those parts of the existing plan that need to be changed. It will also provide a basis for the establishment of restoration objectives for the Forest Service.

C. Planning Process

The National Forest Management Act of 1976 provides the framework for development of Forest Plans and amendments to Forest Plans. The process described in this act, as well as the implementing regulations at 36 CFR 219, will be followed in making any changes to the Chugach Forest Plan.

D. Cooperative Planning

The Forest Service will propose that planning for the future of Prince William Sound and related areas be done as a cooperative effort among all the major land owners and land managers that are affected: the Federal Government, the State of Alaska, Alaska Native

corporations, and private parties. The Forest Service believes that a joint effort using a common data base offers a promising opportunity to use ecosystem concepts in planning.

A joint planning effort could lead to a joint management of the area. Under this concept, the area would be managed cooperatively by the land owners and land managers of the Sound. A formal agreement between the parties would set forth goals, objectives, roles, and responsibilities. Alternately, a joint planning effort could simply provide the information that each of the land owners and land managers would need in order to amend their own plans for the areas they administer. Either result is likely to yield a higher level of integration in management of the Sound, and more explicit recognition of the ecosystems involved, than the current planning and management practices.

The Forest Service will explore both of these concepts with the affected parties during the early stages of the amendment process.

E. Scoping and Issue Development

With publication of this notice of intent, the Forest Service is beginning a process intended to identify those issues that need to be addressed in preparing the amendment to the Chugach Forest Plan. Under the National Environmental Policy Act, this process is called "scoping." The results of the scoping process, along with information about how the management situation in Prince William Sound has been changed because of the oil spill, will form the basis for a "need for change" determination to guide the amendment process. The Forest Service will prepare a schedule of the activities that will take place during the scoping process. Meanwhile, the Forest Service invites public comment on the issues to be addressed and the plan amendment process to be followed.

F. Expected Time for Completion

A Draft Environmental Impact Statement is projected for issuance in July, 1992 and a Final Environmental Impact Statement is projected for November, 1992.

The responsible official for the amendment is Bruce Van Zee, Forest Supervisor, Chugach National Forest. The responsible official will consider comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies in making a decision regarding this proposed amendment. The responsible official will document the decision and rationale in a Record of Decision.

G. Comments

The comment period on the draft environmental impact statement will be 60 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in this proposed action participate at this time. To be the most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and concerns. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel, Harris*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

Dated: May 23, 1991.

Bruce Van Zee,

Forest Supervisor.

[FR Doc. 91-12921 Filed 5-30-91; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Environmental Statements; Availability, etc.; Memphis-Noxubee Watershed, Alabama

AGENCY: Soil Conservation Service-USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines [7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Memphis-Noxubee Watershed, Pickens and Sumter Counties, Alabama.

FOR FURTHER INFORMATION CONTACT: Ernest V. Todd, State Conservationist, Soil Conservation Service, 665 Opelika Road, Auburn, Alabama 36830, Telephone (205) 821-8070.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Ernest V. Todd, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection to control onsite and offsite damages caused as a result of excess erosion and sediment.

The planned works of improvement include the installation of water disposal systems, stripcropping, and/or buffer strips on 10,500 acres. An additional 4,250 acres will be treated through landowner initiative and Food Security Act compliance.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Ernest V. Todd.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: May 17, 1991.

Ernest V. Todd,

State Conservationist.

[FR Doc. 91-12804 Filed 5-30-91; 8:45 am]

BILLING CODE 3410-16-M

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DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Monthly Retail Inventory Survey.

Form Number(s): B-175(87).

Agency Approval Number: 0607-0078.

Type of Request: Revision of a currently approved collection.

Burden: 4,524 hours.

Number of Respondents: 9,970.

Avg Hours Per Response: 6 minutes.

Needs and Uses: The Bureau of the Census uses the Monthly Retail Inventory Survey (RIS) to collect monthly data on estimated end-of-month inventories, method of inventory valuation, and stock/sales ratios from a sample of retail establishments contained in the Bureau's Standard Statistical Establishment List. The Bureau of Economic Analysis incorporates RIS data in its calculations of the Gross National Product. Other government agencies and businesses use the published estimates to gauge current trends in the economy and as a tool for market analysis.

Affected Public: Businesses or other for-profit organizations, Small businesses or organizations.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 31, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-12873 Filed 5-30-91; 8:45 am]

BILLING CODE 3510-07-F

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Current Retail Sales and Inventory Surveys.

Form Number(s): B-101(92), 102, 103, 111, 112, 113, 114.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 33,063 hours.

Number of Respondents: 27,675.

Avg Hours Per Response: 15 minutes.

Needs and Uses: The Monthly Retail Trade Survey (OMB number 0607-0187) provides estimates of monthly sales of retail stores in the United States while the Monthly Retail Inventory Survey (OMB number 0607-0078) provides estimates of the value of end-of-month merchandise inventories. Currently, data for both surveys are collected independently. Starting in 1992 retail establishments will be asked to fill out one combined form which will provide data for both surveys. Testing of respondents has shown that they prefer the new reporting format. The combination will also result in a savings of time and money for both the government and respondents. We plan to use both the old and new forms for a four-month period to monitor the quality of data collected using the new format. Where overlaps occur in the sample, those respondents will receive only the new form. The current forms will be phased out by mid 1992 and replaced with the combined format. The sales and inventory data collected using the combined format will continue to be tabulated separately.

Affected Public: Businesses or other for-profit organizations, Small businesses or organizations.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 31, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-12872 Filed 5-30-91; 8:45 am]

BILLING CODE 3510-07-F

National Oceanic and Atmospheric Administration

Coastal Zone Management, Federal Consistency Appeal by the Yeamans Hall Club from an Objection by the State of South Carolina

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal and request for comments.

On September 25, 1990, the Secretary of Commerce (Secretary) received a notice of appeal from the Yeamans Hall Club (Appellant). The Appellant is appealing to the Secretary under section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA) and the Department's implementing regulations, 15 CFR part 930, subpart H. The appeal is taken from an objection by the State of South Carolina (State) to the Appellant's consistency certification that its proposal to fill 0.23 acres of wetlands for the purpose of constructing a dam in connection with the creation of a lake, for which a U.S. Army Corps of Engineers' permit must be obtained, is consistent with the State's coastal zone management program. The State has alleged that the construction of the dam would result in the flooding of an additional 2.5 acres of wetlands.

The CZMA provides that a timely objection by a state to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of National Security" (Ground II). Section 307(c)(3)(A). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121 or 930.122.

The Appellant requests that the Secretary override the State's consistency objections based on Ground I. To make the determination that the proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that: (1) The proposed activity furthers one or more of the national objectives or purposes contained in §§ 302 or 303 of the CZMA, (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest, (3) the proposed activity will not violate the Clean Air Act or the Federal Water Pollution Control Act, and (4) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with the State's coastal management program. 15 CFR 930.121.

Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121. Comments are due within 30 days of the publication of this notice and should be sent to Glenn E. Tallia, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington DC 20235. Copies of comments should also be sent to Mr. H. Stephen Snyder, Director of Planning and Certification, South Carolina Coastal Council, 4130 Faber Place, suite 300, Charleston, South Carolina 29405.

All nonconfidential documents submitted in this appeal are available for public inspection during business hours at the offices of the State and the Office of the Assistant General Counsel for Ocean Services, NOAA.

FOR ADDITIONAL INFORMATION CONTACT: Glenn E. Tallia, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, NOAA, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington, DC 20235 (202) 673-5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: May 23, 1991.

Thomas A. Campbell,

General Counsel.

[FR Doc. 91-12896 Filed 5-30-91; 8:45 am]

BILLING CODE 3510-08

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council's Ad Hoc Limited Entry Committee will hold a public meeting on June 4 and 5, 1991, at the Ramada Airport Hotel and Conference Center, 5303 West Kennedy Boulevard, Tampa, FL. The meeting will begin on June 4 at 1 p.m., and continue until 5 p.m., and will reconvene on June 5, at 8 a.m., and adjourn at 4 p.m.

The Council will: discuss the development of an Individual Transferable Quota System (ITQ) by the National Marine Fisheries Service Supported Economic Task Team, review and revise an Options Paper, and discuss a Control Date notice.

For more information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL; telephone: (813) 228-2815.

Dated: May 24, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-12837 Filed 5-30-91; 8:45 am]

BILLING CODE 3510-22-M

National Oceanic and Atmospheric Administration, National Marine Fisheries Service

Marine Fisheries Advisory Committee; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

TIME AND DATE: Meeting will convene at 8 a.m., June 18, 1991, and adjourn at 3:30 p.m., June 19, 1991.

PLACE: The Marriott Residence Inn, 800 Fairview Avenue North, Seattle, Washington.

STATUS: As required by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1982), notice is hereby given of a meeting of the Marine Fisheries Advisory Committee (MAFAC). MAFAC was established by the Secretary of Commerce on February 17, 1971, to advise the Secretary on all living marine resource matters which are the responsibility of the Department of Commerce. This Committee ensures that the living marine resource policies and programs of this Nation are adequate to meets the needs of commercial and recreational fishermen, environmental, state, consumer, academic, and other national interests.

MATTERS TO BE CONSIDERED: June 18, 1991, 8 a.m.-5:30 p.m., (1) habitat, (2) marine mammals, (3) endangered species (salmon), and (4) west coast observer program.

June 19, 1991, 8 a.m.-3:30 p.m. (1) west coast gillnets, (2) conservation engineer/bycatch, and (3) NMFS strategic planning and budget.

FOR FURTHER INFORMATION CONTACT: Ann Smith, Executive Secretary, Marine Fisheries Advisory Committee, Policy and Coordination Office, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910. Telephone (301) 427-2259.

Dated: May 24, 1991.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service NOAA.

[FR Doc. 91-12893 Filed 5-30-91; 8:45 am]

BILLING CODE 3510-01-M

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Ad Hoc Bycatch Committee and Data Committee will hold public meetings. The Bycatch Committee will meet June 3-14, 1991, beginning on June 3 at 10 a.m., at the Alaska Fisheries Science Center, 7600 Sand Point Way NE., room 2079, Building 4, Seattle, WA. The Committee will review the bycatch management alternatives for all Council-managed fisheries, except salmon.

The Council's Data Committee will meet June 5-6, 1991, beginning June 5 at 8 a.m. (at the same location mentioned above.) The Committee will review the Council's proposed user-fee system for funding its domestic observer plan.

For more information contact Brent Paine or Steve Davis, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone (907) 271-2809.

Dated: May 24, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-12836 Filed 5-30-91; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List commodities and a service to be furnished by nonprofit agencies employing the blind or other

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severely handicapped.

EFFECTIVE DATE: July 1, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On March 1, 22 and April 5, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (56 FR 8749/50, 12192/930 and 14089/90) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodities and provide the service at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and service listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the service procured by the Government.

Accordingly, the following commodities and service are hereby added to the Procurement List:

Commodities

Clamp, Loop
5340–00–103–2976
Gown, Operating, Surgical
6532–00–083–6534
6532–00–083–6535

Service

Commissary Shelf Stocking and Custodial
Defense General Supply Center
Richmond, Virginia

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 91–12940 Filed 5–30–91; 8:45 am]

BILLING CODE 6820–33–M

Procurement List Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and service to be furnished by nonprofit agencies employing the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 1, 1991.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and service listed below from nonprofit agencies employing the blind or other severly handicapped.

It is proposed to add the following commodities and service to the Procurement List:

Commodities

Roll, Tools and Accessories
5140–00–106–5671
Ion-Exchange Compound
6810–00–873–2554
Air Freshener, Deodorant, General Purpose
6840–00–932–4692
Microfiche, Federal Register
7670–00–NSH–0002
Button, Insignia
8455–00–530–3700

Service

Janitorial/Custodial
Fort Worth Federal Center
Fort Worth, Texas
For the following locations:
Warehouse #1—Section A–L
Warehouse #3—Bin Area A–F
Warehouse #8 thru #12—Office and Rest Rooms
Warehouse #14—Rest Rooms
Warehouse #23
Warehouse #24
Warehouse #50

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 91–12941 Filed 5–30–91; 8:45 am]

BILLING CODE 6820–33–M

CONSUMER PRODUCT SAFETY COMMISSION

Privacy Act of 1974; Deletions of Systems of Records

AGENCY: Consumer Product Safety Commission.

ACTION: Announcement of Deletions of Systems of Records.

SUMMARY: The Commission is deleting record systems CPSC–8 and CPSC–10 from its published Privacy Act systems of records.

EFFECTIVE DATE: May 31, 1991.

ADDRESSES: Comments should be sent to the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Joseph F. Rosenthal, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207. Telephone (301) 492–6980.

SUPPLEMENTARY INFORMATION: The Consumer Product Safety Commission has previously published notice of a system of records entitled "Employee Executive Development Records—CPSC–8" and of a system of records entitled "Employee Merit Promotion Program Files—CPSC–10." The record system described in CPSC–8 is no longer maintained by the Commission, although some of the data from that system is in other Privacy Act systems published by the Commission. The files described in CPSC–10 are maintained, but they are no longer indexed or retrieved by an individual's name or other unique identifier. Thus, CPSC–10 is no longer a system of records as defined by the Privacy Act.

Accordingly, CPSC–8 and CPSC–10 are removed and reserved.

Dated: May 23, 1991.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 91–12753 Filed 5–30–91; 8:45 am]

BILLING CODE 6355–1–M

DEPARTMENT OF DEFENSE

General Services Administration

National Aeronautics and Space Administration

[FAR Case 91–25]

OMB Clearance Request for Certification of Commercial Pricing

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Request for revision to OMB Control 9000–0105.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of a currently approved information collection requirement concerning Certification of Commercial Pricing.

DATES: Notice of intent to comment should be submitted to OMB on or before July 1, 1991.

ADDRESSES: Send comments to Ms. Maya Bernstein, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson, Office of Federal Acquisition Policy (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

This clearance covers the revised reporting requirements as required by 41 U.S.C. 253e on Certification of Commercial Pricing. The clauses at FAR 52.215–32 and 52.215–35 require that offerors/contractors certify to the best of their knowledge and belief that prices offered for certain spare or repair parts that the contractor offers for sale to the public are no higher than the lowest commercial sales price at which such parts were sold during the most recent regular monthly, quarterly, or other period for which sales data are reasonably available; provided, that in no event shall this period be less than 30 days in duration. All items for which prices offered are higher than the lowest commercial sales price discussed above must be identified and a written justification for the difference supplied. This interim rule retains requirements for acquisitions involving major systems for civilian agencies and eliminates requirements for acquisition of parts and components under DOD, NASA, and Coast Guard contracts.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 303; responses per respondent, 1; total annual responses, 303; preparation hours per response, 120; and total response burden hours, 36,360.

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, 303; hours per recordkeeper, 160; and total recordkeeping burden hours, 48,480.

Obtaining Copies of Proposals: Requester may obtain copies from the General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0105, Certification for Commercial Pricing, in all correspondence.

Dated: May 22, 1991.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 91–12805 Filed 5–30–91; 8:45 am]

BILLING CODE 6820–JC–M

Office of the Secretary of Defense

DOD Advisory Group on Electron Devices; Notice of Advisory Committee Meeting

SUMMARY: Working Group C (Mainly Opto-Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday and Wednesday, June 25 and 26, 1991.

ADDRESSES: The meeting will be held at the Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, suite 307, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 2011 Crystal Drive, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law No. 92–463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: May 24, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–12829 Filed 5–30–91; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Availability of a Final Environmental Impact Statement for the Fort Douglas, Utah, Base Closure

AGENCY: DOD, U.S. Army.

SUMMARY: Fort Douglas was recommended for closure by the Defense Secretary's Commission on Base Realignment and Closure. The Commission specifically recommended: The relocation of the Reserve Pay Input Station to Fort Carson, CO; the relocation of other major activities to leased space in Salt Lake City, UT; and the segregation and retention of a portion of Fort Douglas for reserve component activities. This document focuses upon the environmental and socioeconomic impacts and mitigations associated with the planned closure of Fort Douglas and realignment activities at Fort Carson and Tooele Army Depot, UT.

No long-term adverse environmental or socioeconomic effects at Fort Douglas are expected as a result of realignment and closure implementation. No adverse environmental or socioeconomic impacts are anticipated at either Fort Carson or Tooele Army Depot.

The public is encouraged to comment on the Final EIS. Comments received within 30 days of this notice will be considered in decisions concerning the closure of Fort Douglas. A copy of the Final EIS may be obtained by contacting Mr. Paul Cote, (916) 551–2249, or by writing to: Commander, U.S. Army Corps of Engineers, Sacramento District, 650 Capitol Mall, Sacramento, California 95814–2147.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA (I,L&E).

[FR Doc. 91–12823 Filed 5–30–91; 8:45 am]

BILLING CODE 3710–08–M

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Availability; Pueblo Depot Activity, CO

ACTION: Notice of Availability of the Draft Environmental Impact Statement for the realignment of Pueblo Depot Activity.

AGENCY: U.S. Army, Department of Defense.

SUMMARY: This Environmental Impact Statement (EIS) describes the impacts of realigning Pueblo Depot Activity, Colorado with transfers of its supply mission to Tooele Army Depot, Utah and its conventional ammunition mission to Red River Army Depot, Texas. This document considers only those actions recommended in the December 1988 Report of the Defense Secretary's Commission on Base Realignments and Closures and those related actions necessary to complete the recommendations. No alternatives to the Commission's recommendations are considered, in compliance with the Base Closure and Realignment Act of October 24, 1988 (Pub. L. 100-526). No significant impacts of realignment were found. The Army will prepare separate NEPA analyses to address the effects of construction at receiving installations and for Pueblo Depot Activity remediation, property excessing and specific reuse alternatives.

Execution of all or some of the decisions analyzed in the Draft EIS is subject to change based on the Defense Base Closure and Realignment Act of 1990. Specifically, the Secretary of Defense recommended to the newly formed Defense Base Closure and Realignment Commission that the tactical maintenance workload be transferred from Anniston Army Depot, Alabama, to Letterkenny Armyt Depot, Pennsylvania. Therefore, the proposed transfer of the Inertial Guidance Unit maintenance mission from Pueblo Depot Activity to Anniston Army Depot may be changed to Letterkenny Army Depot. This recommendation, if approved, would be subject to additional environmental impact analyses and documentation.

The public is encouraged to comment on the Draft EIS. Public notices requesting input will be issued. A copy of the Draft EIS may be obtained by contacting Mr. Gary Mick (402) 221-4602, or writing to Commander, U.S. Army Corps of Engineers, Omaha District, 215 North 17th Street, Omaha, Nebraska 68102.

Lewis D. Walker,

Deputy Assistant Secretary of the Army—(Environment, Safety and Occupational Health) OASA (I,L&E).

[FR Doc. 91-12798 Filed 5-30-91; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of the Meeting: 12 June 1991.

Time: 1500-1630 Hours.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board (ASB) C3I Issue Group on Follow-On Radio to SINCGARS will present a briefing on their study results. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as the preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91-12923 Filed 5-30-91; 8:45 am]

BILLING CODE 3710-8-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Naval Research Advisory Committee Panel on Anti-Tactical Ballistic Missile Requirements in the 2010 Timeframe will meet on June 5-7, 1991. The meeting will be held at the Convair Division, General Dynamics Corporation, Kearny Mesa Plant, San Diego, California. The meeting will commence at 8 a.m. and terminate at 5 p.m. on June 5, 6, and 7, 1991. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide technical briefings for the panel members pertaining to their assessment of the vulnerability of U.S. naval forces to to ballistic missile attack employing conventional, chemical, and nuclear munitions; and identifying the key issues related to the Navy ATBM program and the corresponding critical technology requirements. The agenda will include briefings and discussions related to current U.S. Army, Navy, and Air Force anti-tactical ballistic missile capabilities; current system architecture; Desert Storm architecture; Department of Defense and national ground, sea, and air surveillance, intelligence, and warning systems; ground-based and space-based interceptors, command, control, communications, and intelligence; and technology options in connection with the tactical ballistic missile threat. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive order. The classified and non-classified matters to be discussed asre so inextricably intertwine as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

This notice is being published late because of administrative delays which constitute an exceptional circumstance, not allowing notice to be published in the **Federal Register** at least 15 days before the date of this meeting.

For further information concerning this meeting contact: Captain Gerald Mittendorff, USN, Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000, telephone number (703) 696-4870.

Dated: 23 May 1991.

W. T. Baucino,

LT. JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 91-12925 Filed 5-30-91; 8:45 am]

BILLING CODE 3810-AE-M

Patent License; Ludwig R. Duykers

AGENCY: Department of the Navy, DOD.

ACTION: Intent to Grant Exclusive Patent License; Ludwig R. Duykers.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Ludwig R. Duykers a revocable, nonassignable, exclusive license to practice the Government-owned invention described in U.S. Patent No. 4,216,766, "Treatment of Body Tissue by Means of Internal Cavity Resonance" issued August 12, 1980.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of the Chief of Naval Research (Code OOCCIP), Arlington, Virginia 22217-5000.

DATES: May 31, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), 800 N. Quincy Street, Arlington, Virginia 22217-5000, telephone (703) 696-4001.

Dated: May 21, 1991.

Wayne T. Baucino,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 91-12926 Filed 5-30-91; 8:45 am]

BILLING CODE 3810-AE-M

Department of the Navy (Marine Corps)

Privacy Act of 1974; Amendment of System of Records

AGENCY: Department of the Navy (U.S. Marine Corps), DOD.

ACTION: Amend record system.

SUMMARY: The U.S. Marine Corps proposes to amend one record system in its inventory of record systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a)

DATES: The proposed action will be effective without further notice July 1, 1991, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Mrs. B.L. Thompson, Head, FOIA/PA Section, MI-3, Headquarters, U.S. Marine Corps, Washington, DC 20380-0001. Telephone (703) 614-4008 or Autovon 224-4008.

SUPPLEMENTARY INFORMATION: The U.S. Marine Corps record system notices for records systems subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a) were published in the **Federal Register** as follows:

50 FR 22674—May 29, 1985 (DoD Compilation, changes follow)
51 FR 35548—Oct. 6, 1986
51 FR 45932—Dec. 23, 1986
52 FR 22670—Jun. 15, 1987
53 FR 49586—Dec. 8, 1988
54 FR 14377—Apr. 11, 1989
55 FR 32948—Aug. 13, 1990
55 FR 49411—Nov. 28, 1990

The specific changes to the record system being amended are set forth below, followed by the system notice, as amended, published in its entirety. The proposed amendments are not within the purview of the provisions of the Privacy Act of 1974, as amended, 5 U.S.C. 552a(r) which requires the submission of an altered system report.

Dated: May 24, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

MFD00007

System name:

Marine Corps Financial Records System (50 FR 22681, May 29, 1985).

Changes:

* * * * *

Routine uses of records maintained in the system, including categories of users and the purpose of such uses:

Delete the entire entry and replace with "To the General Accounting Offices and the Department of Justice for collection action for any delinquent account when circumstances warrant.

To a commercial credit reporting agency for the purpose of either adding to a credit history file or obtaining a credit history file for use in the administration of debt collection.

To a debt collection agency for the purposes of collection services to recover indebtedness owed to the Department of Defense.

To any other Federal agency for the purpose of effecting salary offset procedures against a person employed by that agency when any Department of Defense creditor agency has a claim against that person.

To any other Federal agency including, but not limited to, the Internal Revenue Service and Office of Personnel Management for the purpose of effecting an administrative offset of a debt.

To the Internal Revenue Service (IRS) to obtain the mailing address of a taxpayer for the purpose of locating such taxpayer to collect or to compromise a Federal claim against the taxpayer.

Note: Redisclosure of a mailing address from the IRS may be made only for the purpose of debt collection, including to a debt collection agency in order to facilitate the collection or compromise of a Federal claim under the Debt Collection Act of 1982, except that a mailing address to a consumer reporting agency is for the limited purpose of obtaining a commercial credit report on the particular taxpayer. Any such address information obtained from the IRS will not be used or shared for any other DoD purpose or disclosed to another Federal, state or local agency which seeks to locate the same individual for its own debt collection purposes.

To any other Federal, state or local agency for the purpose of conducting an authorized computer matching program to identity and locate delinquent debtors for recoupment of debts owed the Department of Defense.

The "Blanket Routine Uses" set forth at the beginning of the Marine Corps' compilation of record system notices also apply to this sytem."

Add the following new category: "Disclosure to consumer reporting agencies:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act of 1966 (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (SSN); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report."

* * * * *

MFD00007

SYSTEM NAME:

Marine Corps Financial Records System.

SYSTEM LOCATION:

Defense Finance and Accounting Service-Kansas City (DFAS-KC), Support Accounting, Settlement, and Centralized Pay Division, 1500 E. 95th Street, Kansas City, Missouri 64197-001.

Federal Records Center, National Archives and Records Service, 2301 East Bannister Road, Kansas City, Missouri 64131-5200.

Washington National Records Center, Washington, DC 20409-0001.

National Personnel Records Center, 9700 Page Boulevard, St. Louis, Missouri 63132-5292.

Marine Corps Central Design and Programming Activity, 1500 E. 95th Street, Kansas City, Missouri 64197-0501.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Marines serving on active duty, personnel on the Marine Corps Retired List, Fleet Marine Corps Reservists, personnel discharged or separated from active duty, active and inactive Reserve personnel, deceased personnel, and Marine Corps disbursing officers concerning pay or financial matters.

CATEGORIES OF RECORDS IN THE SYSTEM:

Unit Diaries-A chronological record of daily personnel events and history of active Marine Corps activities and organized Marine Corps Reserve Units.

Substantiating Vouchers-Supporting documents to substantiate pay

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adjustment items entered on military pay accounts.

Military Payrolls-An accounting and record of appropriated funds disbursed for military pay by name, social security number, amount of payment, and check number or signature of member for cash payments.

Financial Returns-Travel vouchers, collection vouchers, public vouchers for services other than personal, and civilian payrolls.

Military Pay Cases of Separated Personnel-A history of individual pay accounts from date of entry on active duty through date of separation, including, as appropriate, replies to congressional inquiries; correspondence in connection with requests for remission and/or waiver of indebtedness; individual claims for pay and allowances including claims for travel allowances and responses thereto; records of participation in the Uniformed Services Savings Deposit Program, including personnel declared to be in a missing-in action status; information surrounding the circumstances of a former member separated in an overpaid status, thus being indebted to the government; cases contain substantiating documents such as military pay records, leave and earnings statements, documents relating to Board for Correction of Naval Records, and other records and vouchers to substantiate responses to all inquiries and payment or disapproval of claims.

Annual Separations Listing-An annual record of separation showing social security number, initials, type of separation, and the effective date of separation of Marines discharged, retired, transferred to the Fleet Marine Corps Reserve, and deceased.

Microfilm of Annual Wage and Tax Information of Active Duty Personnel-Contains cumulative totals of taxable pay earned and taxes withheld, social security wages, and taxes withheld.

Microfilm of Quarterly Social Security Wage Data-Contains social security number, name, and amount of wages reported to the Social Security Administration on a quarterly basis.

Microfilm of Master Allotment File-Contains information concerning the allotment status of active, retired, and Fleet Marine Corps Reserve (FMCR) members, such as start and stop dates, allotment purpose codes, money amounts, name and address of allottee.

Microfiche and Microfilm of Field and Alpha Locators-A record of personnel data of Marines on active duty, listed numerically by social security number and alphabetically name.

Microfiche of Marine Corps Officers Lineal List-A record of Marine Corps officers on active duty showing social security number, name, rank, date of rank, permanent rank, date of birth, date first commissioned, and pay entry base date.

Active Military Pay Cases-A file of each Marine on active duty containing military pay records opened semiannually prior to July 1, 1973 and related miscellaneous pay documents.

Uniformed Services Savings Deposit Accounts of Personnel Missing-in Action-A record of deposits and withdrawals of Marine Corps personnel in a missing-in-action status containing member's name, social security number, balance of deposits, and name and address of the designated beneficiary to whom monies are disbursed.

Federal Housing Administration (FHA)-Files contain social security number, name, FHA account number, due date of insurance premiums, and record of bills and payments.

U.S. Treasury Department, Internal Revenue Service Form 941c-A record effecting adjustment of social security wages, previously reported o: nonreported, containing the member's name, social security number, military pay group, period covered, and the monetary amount of adjustment.

Marine Corps Disbursing Officers Shortage Accounts-File contains accountability of losses, letters, and vouchers pertaining thereto.

Indebtedness Cases-Files contain the debtor's name, social security number, current mailing address, the reason for indebtedness and correspondence relating thereto, personal financial information provided by the debtor, receipts of payments, control book, cash record debt ledger, collection agent's ledger, collection vouchers, provided by credit bureau reports, indebtedness record card, debt control card accountability statements, complete military pay accounts, General Accounting Office inquiries, correspondence relating to cases certified to the U.S. Department of Justice, legal notices pertaining to bankruptcy, tax certificates, and other miscellaneous substantiating records and vouchers relating to the indebtedness.

Reserve Personnel Military Pay Cases-A history of individual pay accounts of Selected Marine Corps Reserve (SMCR), Individual Mobilization Augmentee (IMA), Individual Ready Reserve (IRR), Standby Reserve, Retired Reserve, and Fleet Marine Corps Reserve (FMCR) personnel order to temporary active duty under individual duty orders, including pay accounts of personnel attending the Platoon Leaders Class. File contains pay data in support of payments made to SMCR and IMA Reservist Assigned to Organized Marine Corps Reserve units containing drill reports, unit diaries, promotion warrants, certificate for performance of hazardous duty, pay adjustment authorizations, active duty for training orders, pension certificates, token payments payrolls, adjustment, and consolidated final settlement payrolls, and other miscellaneous documents to substantiate payments to Reserve personnel.

Reserve Manpower Management and Pay System (REMMPS)—Microform of Master Reserve Manpower Management and Pay System File—Contains information concerning pay and personnel status of Reserve personnel. Files of pay data compiled by Reserve Pay Branch, Central Pay Division, in support of payments made to Organized Marine Corps Reserve units containing unit diaries, leave and earnings statements, pay adjustment authorizations, transcripts of data extraction, travel orders and vouchers, and miscellaneous documents to substantiate payments of Reserve Personnel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Claims Collection Act of 1966, 80 Stat. 309; Pub. L. 97-365, The Debt Collection Act of 1982; Title 10 U.S.C. 5013; and Executive Order 9397.

PURPOSE(S):

To maintain records of all financial transactions on current or former Marine Corps personnel.

To permit collection of debts owed to any Department of Defense creditor agency. Records in this system are subject to use in approved computer matching programs authorized under the Privacy Act of 1974, as amended, for debt collection purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the General Accounting Office and the Department of Justice for collection action for any delinquent account when circumstances warrant.

To a commercial credit reporting agency for the purpose of either adding to a credit history file or obtaining a credit history file for use in the administration of debt collection.

To a debt collection agency for the purpose of collection services to recover indebtedness owned to the Department of Defense.

To any other Federal agency for the purpose of effecting salary offset procedures against a person employed by that agency when any Department of Defense creditor agency has a claim against that person.

To any other Federal agency including, but not limited to, the Internal Revenue Service and Office of Personnel Management for the purpose of effecting an administrative offset of a debt.

To the Internal Revenue Service (IRS) to obtain the mailing address of a taxpayer for the purpose of locating such taxpayer to collect or to compromise a Federal claim against the taxpayer.

Note: Redisclosure of a mailing address from the IRS may be made only for the purpose of debt collection, including to a debt collection agency in order to facilitate the collection or compromise of a Federal claim under the Debt Collection Act of 1982, except that a mailing address to a consumer reporting agency is for the limited purpose of obtaining a commercial credit report on the particular taxpayer. Any such address information obtained from the IRS will not be used or shared for any other DoD purpose or disclosed to another Federal, state or local agency which seeks to locate the same individual for its own debt collection purpose.

To any other Federal, state or local agency for the purpose of conducting an authorized computer matching program to identify and locate delinquent debtors for recoupment of debts owed the Department of Defense.

The "Blanket Routine Uses" set forth at the beginning of the Marine Corps' compilation of record system notices also apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act of 1966 (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (SSN); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data is recorded on magnetic records, computer printouts, microform and file folders.

RETRIEVABILITY:

Data is retrieved by social security number or taxpayer identification number.

SAFEGUARDS:

Federal Protective Security Guards. Records are maintained in areas not normally accessible to other authorized personnel.

RETENTION AND DISPOSAL:

Various types of records in the system are maintained at different lengths of time or indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant of the Marine Corps (Code FD), Headquarters, U.S. Marine Corps, Washington, DC 20380-0001; Commanding Officer, Marine Corps Finance Center, Kansas City, MO 64197-0001; Director, Marine Corps Central Design and Programming Activity, Kansas, MO 64131-0501.

NOTIFICATION PROCEDURE:

Information may be obtained from the system manager.

RECORD ACCESS PROCEDURE:

Same as notification.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in the Secretary of the Navy Instruction 5211.5; 32 CFR part 701; Marine Corps Order P5211.2; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Marine Corps activities having the responsibility of collecting data and preparing reports and documents; Headquarters, U.S. Marine Corps; credit unions; credit bureaus; insurance companies, courts, and financial institutions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 91-12830 Filed 5-30-91; 8:45 am]

BILLING CODE 3810-01

DELAWARE RIVER BASIN COMMISSION

Amendment of Comprehensive Plan and Basin Regulations: Water Code and Administrative Manual—Part III Water Quality Regulations

AGENCY: Delaware River Basin Commission.

ACTION: Final rule.

SUMMARY: At its May 22, 1991 business meeting the Delaware River Basin Commission amended its Comprehensive Plan and Article 3 of the Water Code and Administrative Manual—Part III Water Quality Regulations in relation to upgrading water use classifications and associated water quality criteria for portions of the tidal Delaware River. These amendments adopt the recommendations of the Delaware Estuary Use Attainability Assessment regarding achievement of the "swimmable" water quality goals of the federal Clean Water Act.

The amendments upgrade the reaches from near the Chesapeake and Delaware Canal upstream to near the Commodore Barry Bridge and from the Burlington-Bristol Bridge downstream to near the Tacony-Palmyra Bridge for swimming and other primary contact recreational activities. The reach between the Tacony-Palmyra Bridge and the Commodore Barry Bridge will remain classified only for boating and other secondary contact recreational activities since this reach is significantly impacted by combined sewer overflows from Philadelphia and Camden at this time.

EFFECTIVE DATE: May 22, 1991.

ADDRESSES: Copies of the Commission's Water Code and Administrative Manual—Part III Water Quality Regulations are available from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission, Telephone (609) 883-9500.

SUPPLEMENTARY INFORMATION: The Commission held public hearings on October 2 and 3, 1990 as noticed in the July 5, 1990 Federal Register, Vol. 55, No. 129, on proposed amendments to upgrade water quality standards for portions of the tidal Delaware River. Based upon testimony received and further deliberation, the Commission has amended its Comprehensive Plan, Water Code and Administrative Manual—Part III Water Quality Regulations with regard to "swimmable" water quality goals of the Clean Water Act.

The Commission's Comprehensive Plan and Article 3 of the Water Code of the Delaware River Basin and the Commission's Administrative Manual—Part III Water Quality Regulations, which are referenced in 18 CFR part 410, are amended to read as follows:

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1. In 3.30.2B.3., subsection a. is revised to read as follows:
3.30.2B.3.a. recreation;
2. In 3.30.2B.3., subsection b. is removed.
3. In 3.30.2C., subsection 8. is revised to read as follows:
3.30.2C.8. Bacteria.
a. Fecal Coliform. Maximum geometric average 200 per 100 milliliters.
b. Enterococcus. Maximum geometric average 33 per 100 milliliters.
4. In 3.30.3C., subsection 8. is revised to read as follows:
3.30.3C.8. Bacteria.
a. Fecal Coliform. Maximum geometric average 770 per 100 milliliters.
b. Enterococcus. Maximum geometric average 88 per 100 milliliters.
5. In 3.30.4B.3., subsections a. and b. are revised to read as follows:
3.30.4B.3.a. recreation—secondary contact above R.M. 81.8.
3.30.4B.3.b. recreation below R.M. 81.8;
6. In 3.30.4C., subsection 8 is revised to read as follows:
3.30.4C.8. Bacteria.
a. Fecal Coliform.
(1) Above R.M. 81.8 maximum geometric average 770 per 100 milliliters.
(2) Below R.M. 81.8 maximum geometric average 200 per 100 milliliters.
b. Enterococcus.
(1) Above R.M. 81.8 maximum geometric average 88 per 100 milliliters.
(2) Below R.M. 81.8 maximum geometric average 33 per 100 milliliters.
7. In 3.30.5B.3., subsection a. is revised to read as follows:
3.30.5B.3.a. recreation;
8. In 3.30.5B.3., subsection b. is removed.
9. In 3.30.5C., subsection 8. is revised to read as follows:
3.30.5C.8. Bacteria.
a. Fecal Coliform. Maximum geometric average 200 per 100 milliliters.
b. Enterococcus. Maximum geometric average 35 per 100 milliliters.
10. In 3.30.6C., subsection 8. is revised to read as follows:
3.30.6C.8. Bacteria.
a. Fecal Coliform. Maximum geometric average 200 per 100 milliliters.
b. Enterococcus. Maximum geometric average 35 per 100 milliliters.
c. Coliform. MPN (most probable number) not to exceed federal shellfish standards in designated shellfish areas.
11. In 3.30.6C., subsection 9. is removed.
12. Redesignate 3.30.6C.10. and 3.30.6C.11. as 3.30.6C.9. and 3.30.6C.10., respectively.

Delaware River Basin Compact, 75 Stat. 688.

Dated: May 24, 1991.

Susan M. Weisman,

Secretary.

[FR Doc. 91-12922 Filed 5-30-91; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF ENERGY

Alaska Power Administration

Wholesale Power Rates; Snettisham Project

AGENCY: Alaska Power Administration, Department of Energy.

ACTION: Notice of proposed rate adjustment, public information and comment forums and opportunity for review and comment.

SUMMARY: Alaska Power Administration (APA) is proposing to adjust the rates for the Snettisham Project. The present rate of 28.8 mills per kilowatt-hour for firm energy will expire in October 1991. APA proposes to raise the rate for firm energy to 32.1 miles per kilowatt-hour beginning October 1, 1991 for a period of up to five years. Rates for non-firm energy deliveries under both the oil displacement and wood-heat displacement programs would not change. APA will finalize the proposal giving full consideration to comment received. The final proposal may differ from the present. The proposed rates will be submitted to the Department of Energy for interim approval and to the Federal Energy Regulatory Commission for review and final approval.

DATES: Written comments will be considered on or before August 29, 1991.

Public information and comment forums are scheduled to be held June 27, 1991, at 7 p.m., at Centennial Hall and July 11, 1991 at 7 p.m. at the Mendenhall Valley Library in Juneau, Alaska.

ADDRESSES: Written comments should be submitted to: Mr. Gordon J. Hallum, Chief, Power Division, Alaska Power Administration, 2770 Sherwood Lane suite 2B, Juneau, AK 99801.

Details of the proposed rates, including supporting studies, are available for inspection at APA headquarters, 2770 Sherwood Lane suite 2B, Juneau, Alaska.

Public information and comment forums are scheduled to be held June 27, 1991, at 7 p.m. at Centennial Hall and July 11, 1991 at 7 p.m. at the Mendenhall Valley Library in Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Mr. Gordon J. Hallum, Chief, Power Division, Alaska Power Administration, 2770 Sherwood Lane suite 2B, Juneau, AK 99801 (907) 586-7405.

SUPPLEMENTARY INFORMATION: The proposed rates apply for power sold from the Snettisham Hydroelectric Project to the electric utility serving the Juneau, Alaska area and a State owned fish hatchery at the Snettisham Project.

Authorities for the proposed rate action are the 1962 Flood Control Act (Pub. L. 87-874), the 1978 Water Resources Development Act (Pub. L. 94-587) and the Department of Energy Organization Act (Pub. L. 95-91). Alaska Power Administration is developing these rates in accordance with DOE financial reporting policies, procedures and methodology (DOE Order No. RA 6120.2 (September 20, 1979), and the procedures for public participation in rate adjustments found at 10 CFR part 903 (1987) as amended.

The present firm energy rate went into effect in October 1988. In 1991, construction was completed on the Crater Lake Unit of the Snettisham Project. The Federal investment of over $66 million on this new unit will be added to the existing unpaid Federal investment of the Snettisham Project at the end 1991. Increased revenues are required to meet the repayment criteria of the project under present law. The increase in the firm energy rate is 11.5 percent at the wholesale level and approximately 3.8 percent at the retail level.

The oil displacement and wood-heat displacement rates involve interruptible sales of surplus hydro energy for resale to residential and commercial customers having dual-fuel heating capability. These interruptible sales accounted for 1.4 percent of revenues in 1990 and will remain a comparatively small part of Snettisham revenues.

The Administration continues to advocate divestiture of APA, and a legislative proposal to authorize the divestiture will be forwarded for congressional consideration soon. This proposed rate action continues present rate policies under existing law.

The proposed rate action will have no significant environmental impact within the meaning of the National Environmental Policy Act of 1969. The proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

Issued at Juneau, Alaska, May 22, 1991.

Robert J. Cross,

Administrator.

[FR Doc. 91-12902 Filed 5-30-91; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Form RW-859, "Nuclear Fuel Data"

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of proposed revision of the Form RW-859, "Nuclear Fuel Data," and solicitation of comments.

SUMMARY: The Energy Information Administration (EIA), as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1980, Pub. L. No. 96-511, 44 U.S.C. 3501 *et seq.*), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, EIA is soliciting comments concerning the proposed revisions to the Form RW-859, "Nuclear Fuel Data."

DATES: Written comments must be submitted on or before July 1, 1991. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to Ms. Kathy Gibbard, Survey Manager, Form RW-859, U.S. Department of Energy, Energy Information Administration (EI-531), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 254-5559.

FOR FURTHER INFORMATION OR TO OBTAIN COPIES OF THE PROPOSED FORM AND INSTRUCTIONS: Requests for additional information or copies of the form and instructions should be directed to Ms. Gibbard at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Nuclear Waste Policy Act (NWPA), 42 U.S.C. 10101 *et seq.*, requires that the Secretary develop and implement programs to dispose of spent nuclear fuel. The Office of Civilian Radioactive Waste Management (OCRWM) uses the information from Form RW-859 to understand and explore the specific requirements of developing and conducting programs to effectuate the purposes of the NWPA.

The EIA administers the Form RW-859, "Nuclear Fuel Data," which is used to collect data from owners of commercial nuclear power plants and owners and caretakers of spent nuclear fuel. The Federal Energy Administration Act of 1974 (15 USC 761 *et seq.*) authorizes the EIA to collect data. The current Form RW-859 collects data on every fuel assembly discharged from domestic commercial nuclear reactors, spent fuel projected to be discharged, and spent fuel storage pool inventories and capacities. The form is cleared through December 31, 1993. Major revisions necessitate the proposed form be cleared again with a new expiration date of December 31, 1994.

II. Current Actions

This notice is to solicit comments on proposed revisions to the form and the instructions. The extension request will be through December 31, 1994. The DOE is proposing to add several questions.

A summary of the proposed additions is as follows:

- Expansion of the section on maximum established site capacity.
- Storage plans for each wet and dry storage site.
- Number of assemblies that are scheduled for shipment to another site.
- The American National Standard Identification (ANSI) assembly identifier and fuel fabricator assembly identifiers are permanently and temporarily discharged assemblies, assemblies shipped to another storage site, and reinserted fuel assemblies. Current cycle data is required; historical data is optional. (The respondent will report the ANSI identifier if it is different from the Form RW-859's, and report the fuel fabricator identifier if it is different from the Form RW-859's or if it is a non-ANSI Identifier.).
- Creation of a new section on canister-specific data. This section is to quantify all canisters, all materials in canisters, i.e., failed and non-failed fuel, and all nonfuel components not attached to the assembly.
- Creation of a new section on noncanistered nonfuel components data. This section is to quantify noncanistered components in storage, projected storage for the next five cycles, length, and other dimensions.
- Creation of a new data series on reconstituted fuel.
- *Optional Question*—Assembly Identifiers Cross-Reference Table [All Historical Assemblies). For this version of the Form RW-859, the completion of this cross-reference table on historical assembly identifiers is optional. In three years, when the Form RW-859 is again revised, the DOE intends to make completion of this table a mandatory requirement. The DOE encourages respondents to submit the data now; and the EIA is available to assist in this process.

III. Request for Comments

Prospective respondents and other interested parties should comment on the proposed revisions to the form and instructions. The following general guidelines are provided to assist in the preparation of responses.

As a potential respondent:

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can data be submitted within the response time specified in the instructions?

D. Public reporting burden for this collection is estimated to average 60 hours per response. How much time, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, do you estimate it will require you to complete and submit the required form?

E. What is the estimated cost of completing this form, including the direct and indirect costs associated with the data collection? Direct costs should include all costs, such as administrative costs, directly attributable to providing this information.

F. How can the form be improved?

G. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the means of collection.

As a potential user:

A. Can you use data at the level of detail indicated on the form?

B. For what purpose would you use the data? Be specific.

C. How could the form be improved to better meet your specific needs?

D. Are there alternate sources of data and do you use them? What are their strengths and/or weaknesses?

EIA is also interested in receiving comments from persons regarding their views on the need for the information contained in the Form RW-859, "Nuclear Fuel Data."

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Comments submitted in the response to this notice will be summarized and/or included in the requests for OMB approval of the form; they also will become a matter of public record.

Statutory Authority: Sections 5(a), 5(b), 13(b), and 52 of Public Law 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b) and 790a.

Issued in Washington, DC, May 24, 1991.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 91-12903 Filed 5-30-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ID-2632-000, et al.]

William H. Bruett, Jr., et al., Electric Rate, Small Power Production, and Interlocking Directorate Filings

May 22, 1991.

Take notice that the following filings have been made with the Commission:

1. William H. Bruett, Jr.

[Docket No. ID-2632-000]

Take notice that on May 16, 1991, William H. Bruett, Jr. (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director... Green Mountain Power Corporation
Director, President, and Chief Executive Officer..... PW Trust Company

Comment date: June 10, 1991 in accordance with Standard Paragraph E at the end of this notice.

2. Southern California Edison Co.

[Docket No. ER91-461-000]

Take notice that on May 21, 1991, Southern California Edison Company (Edison) tendered for filing the following amendment, executed on May 1, 1991, by the respective parties:

Amendment No. 1 (Amendment) to Edison San Diego Interruptible Transmission Service Agreement (Matrix) Between Southern California Edison Company and San Diego Gas & Electric Company (SDG&E)

The Amendment designates the Midway Substation as an additional point of Receipt (Delivery) for interruptible transmission service between San Onofre and Midway Substation.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: June 6, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. PacifiCorp Electric Operations

[Docket No. ER91-355-000]

Take notice that PacifiCorp Electric Operations ("PacifiCorp"), on May 17, 1991, tendered for filing, an amendment to its filing of the Transmission Service and Operating Agreement ("Agreement") dated March 25, 1991 between PacifiCorp and Deseret Generation & Transmission Co-Operative ("Deseret").

PacifiCorp renews its requests, pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations that a waiver of prior notice be granted and that an effective date of April 1, 1991 be assigned. Such date is consistant with the effective date shown on the Agreement.

Copies of this filing were supplied to Deseret and the Utah Public Service Commission.

Comment date: June 6, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Southern California Edison Co.

[Docket No. ER90-348-001]

Take notice that on May 17, 1991, Southern California Edison Company tendered for filing its Refund Report in the above-referenced docket in compliance with the Commission's order issued April 2, 1991.

Comment date: June 6, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. PacifiCorp Electric Operations

[Docket No. ER91-354-000]

Take notice that PacifiCorp Electric Operations ("PacifiCorp"), on May 17, 1991, tendered for filing, an amendment to its filing of the Transmission Service and Operating Agreement ("Agreement") dated March 25, 1991 between PacifiCorp and Utah Associated Municipal Power Systems ("UAMPS").

PacifiCorp renews its requests, pursuant to 18 CFR 35.11 of the Commission's Rules of Regulations that a waiver of prior notice be granted and that an effective date of April 1, 1991 be assigned. Such date is consistent with the effective date shown on the Agreement.

Copies of the filing were supplied to Deseret and the Utah Public Service Commission.

Comment date: June 6, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Central Vermont Public Service Corporation

[Docket No. ER91-328-000]

Take notice that on May 20, 1991 Central Vermont Public Service Corporation (CVPS) tendered for filing supplemental financial information in the above docket.

CVPS requests the Commission waive its notice of filing requirements to permit the rate schedules that were filed in this docket to become effective according to its terms.

Comment date: June 6, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. Entergy Services, Inc.

[Docket No. ER91-165-000]

Take notice that on May 17, 1991, Entergy Services, Inc., as agent for Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc., tendered for filing amendments to the Interchange Agreement with Oglethorpe Power Corporation which it filed in this proceeding on December 19, 1990.

Comment date: June 6, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Gas and Electric Co.

[Docket No. ER89-49-002]

Take notice that on May 16, 1991, Pacific Gas and Electric Company (PG&E) tendered for filing its Compliance Refund Report in the above-referenced docket. Also included in its filing were revised Sheets to the Transmission Rate Schedule filed in this docket between PG&E and Sacramento Municipal Utility District.

Comment date: June 6, 1991, in accordance with Standard Paragraph E at the end of this notice.

8. Iowa-Illinois Gas and Electric Co.

[Docket No. ES91-29-000]

Take notice that on May 13, 1991, Iowa-Illinois Gas and Electric Company (Applicant) filed an application pursuant to section 204 of the Federal Power Act seeking authority to issue from time to time no more than $75 million of short-term notes with a final maturity date no later than June 30, 1993.

Comment date: June 12, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12844 Filed 5-30-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF91-147-000]

East Syracuse Generating Company L.P.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

May 24, 1991.

On May 15, 1991, East Syracuse Generating Company L.P. (Applicant), of 7475 Wisconsin Avenue, Bethesda, Maryland 20814-3422, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located adjacent to the Bristol-Myers Squibb plant in East Syracuse, New York. The facility will consist of two combustion turbine generating units, two waste heat recovery boilers and an extraction/condensing steam turbine generating unit. Steam recovered from the facility will be used in the Bristol-Myers Squibb plant for pharmaceutical processing, product sterilization and space hearing. The maximum net electric power production capacity of the facility will be 101 megawatts. The primary energy source will be natural gas. Installation of the facility will begin in or after the fourth quarter of 1991.

Any person desiring to be heard or objecting to the granting of qualifying staut should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the Federal Register and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12845 Filed 5-30-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10696-000, Virginia]

City of Danville, VA; Availability of Environmental Assessment

May 23, 1991.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for license for the Pinnacles Hydroelectric Project, located on the Dan River in Patrick County, Virginia, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the environmental impacts of the project and has concluded that approval of the project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12848 Filed 5-30-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP90-2214-000]

El Paso Natural Gas Co.; Availability of the Environmental Assessment for the El Paso Natural Gas Co.; North System Expansion Project

May 24, 1991.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared the enclosed environmental assessment (EA) on the above-referenced docket. The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that the approval of the proposed project, with the appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA asseses the potential environmental effects of the proposed construction and operation of 231.3 milies of pipeline looping on El Paso Natural Gas Company's (El Paso) existing San Juan Triangle System and San Juan Mainline System, and the addition of 34,800 horsepower of compression at four existing compressor stations. The purpose of the proposed facilities is to: (1) Add 835 million cubic feet per day (MMcf/d) of incremental pipeline capacity on its San Juan Triangle System to permit delivery of gas volumes from the San Juan Basin to markets in El Paso's California service area and to the east of El Paso's systems; (2) add 400 MMcf/d of incremental pipeline capacity on its San Juan Mainline System into the existing utility systems and/or into facilities to be constructed and operated by Mojave Pipeline Company; (3) transport 429 Mcf/d of natural gas east of the Permian-San Juan Crossover System; and (4) allow bi-directional flow of natural gas on that system. The EA also evaluates alternatives to the proposal.

Copies of the Commission's EA are being sent to the appropriate Federal and state agencies, and those other organizations, agencies, and individuals in the affected area or on the FERC service list, who responded to the staff's Notice of Intent to Prepare an Environmental Assessment for the Proposed El Paso East-End/North System Expansion Project and Request for Comments on Environmental Issues. The RA has been placed in the public files of the FERC and its available for public inspection in the FERC's Division of Public Information, room 3104, 941 North Capitol Street NE., Washington, DC 20426. Copies of the EA are available in limited quantities from the Division of Public Information.

Any peson wishing to comment on the EA may do so. Comments should be sent to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, and should reference Docket No. CP90-2214-000. Comments should be filed as soon as possible, but must be received no later than June 14, 1991, to ensure consideration prior to a Commission decision on this proposal. A copy of the comments should also be sent to Ms. Lauren O'Donnell, Project Manager, room 7312, at the same address.

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Comments will be considered by the Commission but will not serve to make the commenter a party to the proceeding. Any peson seeking to become a party to the proceeding must file a motion to intervene pursuant to rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

Additional information about this project is available from Ms. Lauren O'Donnell, Environmental Compliance and Project Analysis Branch, Office of Pipeline and Producer Regulation, telephone (202) 208-0874.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-12847 Filed 5-30-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS91-7-000]

Draco Gas Partners, L.P.; Application for Small Producer Certificate

May 23, 1991.

Take notice that on April 9, 1991, Draco Gas Partners, L.P. (Applicant) of 7666 East 61 Street, Tulsa, Oklahoma 74133, filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Commission's regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 11, 1991, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12846 Filed 5-30-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-161-000, RP89-172-000, CP90-2275-000, and CP91-687-000]

ANR Pipeline Co.; Informal Settlement Conference

May 24, 1991.

Take notice that an informal settlement conference will be convened in this proceeding on June 11 and 12, 1991, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Michael D. Cotleur at (202) 208-1076 or James A. Pederson at (202) 208-2158.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12850 Filed 5-30-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-3-2-002]

East Tennessee Natural Gas Co.; Compliance

May 23, 1991.

Take notice that on May 8, 1991, East Tennessee Natural Gas Company (East Tennessee) in compliance with the Commission's March 1, 1991 and April 25, 1991 orders submits for filing Second Substitute Second Revised Sheet No. 6 to First Revised Volume No. 1 of its FERC Gas Tariff, to be effective May 1, 1991, to track Tennessee Gas Pipeline Company's (Tennessee) May 2, 1991 filing in Docket No. RP91-29.

Tennessee states that the purpose of the instant tariff sheets is to revise East Tennessee's allocation of its fixed take-or-pay charges billed to it by its upstream pipeline supplier, Tennessee, pursuant to the Commission's April 25 order rejecting tariff sheets in Docket No. RP91-79-004. East Tennessee states that the instant filing implements the reallocation of dollars by Tennessee pursuant to the Commission's April 25, order and makes certain corrections to the allocation methodology reflected in East Tennessee's March 28, 1991 filing.

East Tennessee states that a copy of the tariff filing is being mailed to all affected customers on East Tennessee's system and state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 31, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12852 Filed 5-30-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER91-277-000]

Florida Power & Light Co.; Filing

May 24, 1991.

Take notice that on May 13, 1991, Florida Power & Light Company ("FP&L") tendered for filing its response to a deficiency letter from the Director of the Division of Applications of the Commission's Office of Electric Power Regulation. The deficiency letter was with regard to FP&L's earlier filing in this docket of the Joint Ownership Party Allocation Agreement Between FP&L and the Jacksonville Electric Authority.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before June 4, 1991. Protests will be considered by the Commission in determining the approriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-12851 Filed 5-30-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER91-156-000]

Northern Natural Gas Co; Temporary Waiver of Tariff Provision

May 23, 1991.

Take notice that on May 17, 1991, Northern Natural Gas Company, (Northern) filed a motion requesting a temporary waiver of that portion of its FERC Gas Tariff, Third Revised Volume No. 1, Sixth Revised Sheet No. 52.F.3, that requires Northern to "give a Shipper requesting firm service written confirmation within seven (7) work days after receipt of a request."

Northern states that waiver is necessary in order to be able without violating the provisions of its tariff to timely respond to an unusually large number of service requests anticipated as the result of the terms of a stipulation and agreement filed by it on March 29, 1991. Northern requests that the waiver apply to requests received from June 14 through July 3, 1991.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 18 CFR 385.214 and 3825.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 30, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12853 Filed 5-30-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER91-337-000 and EL91-31-000

Pacific Gas and Electric Co.; Initiation of Proceeding and Refund Effective Date

May 24, 1991.

Take notice that on May 22, 1991, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. E91-31-000 under section 206 of the Federal Power Act, as amended by the Regulatory Fairness Act of 1988.

The refund effective date will be 60 days after publication of this notice in the Federal Register.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12855 Filed 5-30-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-157-000]

Pan-Alberta Gas (U.S.) Inc.; Tariff Changes

May 24, 1991.

Take notice that on May 21, 1991, Pan-Alberta Gas (U.S.) Inc. ("PAG-US") (formerly NATGAS U.S. INC.), 500, 707 Eighth Avenue, SW., Calgary, Alberta, Canada T2P 3V3, tendered for filing in Docket No. RP91-157-000 Third Revised Sheet No. 4 Superceding Second Revised Sheet No. 4 to its FERC Gas Tariff Original Volume No. 2.

PAG-US states that it is submitting Third Revised Sheet No. 4 (1) to reflect an increase in demand charges during the forthcoming demand charge period (July 1, 1991 through December 31, 1991) for Canadian gas purchased by PAG-US from Northwest Alaskan Pipeline Company ("Northwest Alaskan") and resold to Northern Natural Gas Company ("Northern") under Rate Schedule X-1; and (2) to reflect a downward adjustment in its demand charges to Northern for the period September 1, 1990 through February 28, 1991.

PAG-US requests that Third Revised Sheet No. 4 become effective on July 1, 1991.

PAG-US states that a copy of this filing has been served on Northern.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice & Procedure. All such petitions or protests should be filed on or before June 3, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12854 Filed 5-30-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-140-001]

Questar Pipeline Co.; Tariff Filing

May 23, 1991.

Take notice that on May 21, 1991, pursuant to 18 CFR 154.63 Questar Pipeline Company submitted for filing and acceptance to be effective June 1, 1991, Substitute Fourteenth Revised Sheet No. 12 to Original Volume No. 1 of its FERC Gas Tariff.

Questar states that this filing revises the Statement of Rates to Original Volume No. 1 that was filed in its April 30, 1991, section 4(e) rate case by including the applicable gas cost components in the base rates reflected on that tariff sheets.

Questar Pipeline requests an effective date of June 1, 1991, for the tendered tariff sheet and states that copies of the filing were served upon the official service list on file with the Commission in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before May 28, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12856 Filed 5-30-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-6-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 24, 1991.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on May 22, 1991 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets.

Sub Alt Seventh Revised Sheet No. 60
Sub Alt Seventh Revised Sheet No. 61
Sub Alt Sixth Revised Sheet No. 62
Sub Alt Seventh Revised Sheet No. 63

Texas Eastern states that the purpose of this filing is to reflect the removal by

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Southern Natural Gas Company (Southern) of those costs flowed through by Southern to Texas Eastern which are attributable to United Gas Pipe Line Company's (United) Docket No. RP90-132 and reflect the crediting of amounts previously billed to customers by Texas Eastern for those costs related to United's Docket No. RP90-132 as flowed through by Southern in Docket No. TM90-5-7.

The proposed effective date of the tariff sheets listed above is February 15,1991, the date accepted by the Commission in its February 14, 1991 Order.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers, interested state commissions and all parties in docket No. RP91-72, *et al.*

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 4, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-12857 Filed 5-30-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-115-000, et al.]

Texas Gas Transmission Corp.; Informal Settlement Conference

May 23, 1991.

Take notice that an informal settlement conference will be convened in this proceeding on June 12, 1991, at 10:30 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The conference will continue on June 13, if necessary.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Donald A. Heydt at (202) 208-0740 or Joanne Leveque at (202) 208-5705.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12858 Filed 5-30-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Change in Filing Deadline in Special Refund Proceeding No. HEF-0591 Involving Atlantic Richfield Co.

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of extension of time for Filing Applications for Refund in Special Refund Proceeding HEF-0591, Atlantic Richfield Company.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) has extended the deadline for filing Applications for Refund from the escrow account established pursuant to a consent order entered into between the DOE and the Atlantic Richfield Company (ARCO), Special Refund Proceeding No. HEF-0591. The previous deadline was July 1, 1990. The new final deadline is July 31, 1991.

FOR FURTHER INFORMATION CONTACT: Max William Yano, Department of Energy, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6602.

SUPPLEMENTARY INFORMATION: On January 28, 1988, the Office of Hearings and Appeals of the Department of Energy issued a Decision and Order setting forth final refund procedures to distribute the monies in the oil overcharge escrow account established in accordance with the terms of a Consent Order entered into by the Department of Energy and the Atlantic Richfield Company. *See Atlantic Richfield Co.*, 17 DOE ¶ 85,069, 53 FR 3254 (February 4, 1988). That Decision established August 31, 1988, as the filing deadline for the submission of refund applications for direct restitution by purchasers of ARCO's refined petroleum products. 17 DOE at 88,155, 53 FR at 3261. On August 31, 1988, that filing deadline was extended to May 1, 1989. 53 FR 34830 (September 8, 1988). On March 12, 1990, that filing deadline was further extended to July 1, 1990. 54 FR 10284 (March 20, 1990).

Over 400 claimants have filed after the due date of July 1, 1990. Most of these filings can be attributed to the notice given in a collateral court action. On October 6, 1989, an Order Authorizing Dissemination of Class Notice was filed by the Clerk of the United States District Court for the Northern District of California with respect to the pending litigation in *Van Vranken, et al.* v. *Atlantic Richfield Company*, Civil No. C-79-0627-SW (N.D. Cal.). As a result, a Notice of Pendency of Class Action was disseminated to *Van Vranken* Litigation Class members by the Class Counsel in November 1989. The Notice, *inter alia*, gave an overview of the status of the *Van Vranken* class litigation, including the recent rejection by the U.S. Temporary Emergency Court of Appeals (TECA) of plaintiffs' attempt to file a "class" refund application with OHA in the ARCO Special Refund Proceeding (Case No. HEF-0591). In addition, the Notice specifically informed class members that because of the TECA decision, "Class Counsel will not be submitting any claims to the DOE on behalf of class members," and that class members who had not filed an individual claim with OHA should do so. Notice at 11-12. Thus, numerous potential claimants only recently became aware of their right to file an individual refund claim in this ARCO Special Refund Proceeding. As a result, more than four hundred refund applications have been filed in this proceeding after the July 1, 1990 deadline for filing. We have carefully considered the situation, and have concluded that the final date for filing applications in the proceeding should be extended once again, until July 31, 1991. Therefore, all Applications for Refund from the ARCO Consent Order fund postmarked after that final filing date of July 31, 1991, are subject to summary dismissal. Any unclaimed funds remaining after all pending claims are resolved will be made available for indirect restitution pursuant to the Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. 4501.

Dated: May 24, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91-12904 Filed 5-30-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3960-4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 13, 1991 Through May 17, 1991 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 05, 1991 (56 FR 14096).

Draft EISs

ERP No. D-AFS-L65144-OR Rating EC2, Augur Creek Timber Sale and Road Construction, Implementation, Fremont National Forest, Paisley Ranger District, Lake County, OR.

Summary

EPA expressed environmental concerns regarding the project's potential to adversely impact air quality in a Class I airshed. Additional information is needed to describe project monitoring and describe the effects of the project on biodiversity.

Final EISs

ERP No. F1-BLM-J70010-WY, Washakie Resource Area, Wilderness Study Areas (WSAs), Suitability or Nonsuitability, (5 WSA's) Honeycombs, Cedar Mountain, Medicine Lodge, Alkali Creek, Trapper Creek, Bighorn, Washaki and Hot Spring, Counties, WY.

Summary

Review of the final EIS has been completed and the project found to be satisfactory. No formal letter was sent to the agency.

Dated: May 28, 1991.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 91-12957 Filed 5-30-91; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3960-3]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed May 20, 1991 Through May 24, 1991 Pursuant to 40 CFR 1506.9.

The Notice of Availability of Environmental Impact Statements filed May 6 through May 10, 1991 which should have appeared in the May 17, 1991 **Federal Register** were inadvertently omitted from the publication. The notice appeared in the May 20, 1991 **Federal Register**. The official 45 and 30 day Comment Periods according to the Council on Environmental Quality Regulations § 1506.10 are still calculated from May 17, 1991. The 45 day draft comment period ends on July 1, 1991 and the 30 day final comment period ends on June 17, 1991.

EIS No. 910170, DRAFT EIS, BLM, OR, Lower Deschutes Wild and Scenic River Management Plan, Implementation, Jefferson, Sherman, and Wasco Counties, OR, Due: September 30, 1991, Contact: Brian Cunningham (503) 447-4115.

EIS No. 910171, FINAL EIS, UAF, AL, Anniston Army Depot On-Site Facility for Disposal of Stockpiled Chemical Agents and Munitions, Construction and Operation, Calhoun County, AL, Due: July 01, 1991, Contact: Margaret Thompson (301) 671-3633.

EIS No. 910172, DRAFT EIS, AFS, AK, Kensington Venture Underground Gold Mine Project, Development, Construction, and Operation, NPDES Permit and section 10 and 404 Permits, Tongass National Forest, Sherman Creek, City of Juneau, AK, Due: August 01, 1991, Contact: Roger Birk (907) 586-8800.

EIS No. 910173, FINAL EIS, FHW, OH, OH-297/Whipple Avenue Improvement, US-30 Interchange at Raff Road/Whipple Avenue/OH-297 to I-77 Interchange at Everhard Road, Funding, Stark County, OH, Due: July 01, 1991, Contact: Fred J. Hempel (614) 469-6896.

EIS No. 910174, DRAFT EIS, USA, CO, UT, TX, Pueblo Depot Activity Realignment, Transfers of Ammunition Mission to Red Army Depot, Bowie County Texas; Pueblo County, CO, Due: July 15, 1991, Contact: Robert Nebel (402) 221-4598.

EIS No. 910175, FINAL EIS, COE, UT, CO, MT, UT, CO, Fort Douglas Base Closure and Realignment, Relocation to Fort Carson, CO; Tooele Army Depot, UT and Fitzsimmons Medical Center, CO, Implementation, Salt Lake City, UT, CO and MT, Due: July 07, 1991, Contact: Paul Cote (916) 551-2249.

Amended Notices

EIS No. 910085, SECOND DRAFT SUPPLE, AFS, PR, Caribbean National Forest and Luquillo Experimental Forest Land and Resource Management Plan, Effects of Hurricane Hope and Updated Information, Commonwealth of Puerto Rico, Due: July 12, 1991, Contact: Jose Salinas, Jr. (809) 766-5335.

Published FR 03-29-91—Review period extended.

Dated: May 28, 1991.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 91-12956 Filed 5-30-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3960-8]

Open Meeting of the Policy Dialogue Committee on Mining Wastes

AGENCY: U.S. Environmental Protection Agency.

ACTION: Open Meeting of Federal Advisory Committee on Mining Wastes.

SUMMARY: As required by section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), we are giving notice of the second meeting of the Policy Dialogue Committee. The committee was formed to provide a forum to refine and further develop issues related to managing mining waste and to facilitate the exchange of ideas and information among the interested parties. We have determined that this is in the public interest and will assist EPA in performing its duties prescribed in the Resource Conservation and Recovery Act.

Copies of the Committee Charter are filed with the appropriate committees of Congress and the Library of Congress.

DATES: The Committee will meet on the following dates: June 17, 1991 from 1 p.m.-5 p.m. continuing on June 18, 1991 from 9 a.m.-3 p.m. July 25, 1991 from 9 a.m.-3 p.m. continuing on July 26, 1991 from 8 a.m.-12 p.m.

LOCATIONS: The June 17-18 meeting will be held at the Embassy Suites Hotel, 1881 Curtis Street, Denver, CO. The July 25-26 meeting will be held at the Sir Francis Drake Hotel, Union Square, 450 Powell Street, San Francisco, CA. Committee meetings are open to the public without need for advance registration.

The Committee's facilitator has notified interested parties of the meeting dates. The purpose of the meeting is to continue discussion of issues related to the development of EPA's mining program.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the substantive matters of the Committee should call Stephen Hoffman, Office of Solid Waste, at (703) 308-8413. Summaries of previous meetings will be made available upon written request to Patricia Whiting, Office of Solid Waste, Environmental Protection Agency, 401 M Street, SW., (OS-323W), Washington, DC 20460. Persons needing further information on Committee procedural matters should call Deborah Dalton, Regulatory Negotiation Project, at (202) 382-5495.

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SUPPLEMENTARY INFORMATION:

Background

The Policy Dialogue Committee was created to provide a forum to refine and further develop issues raised during the strawman development and comment process, and to facilitate the exchange for new ideas and information among the interested parties. It is hoped that consensus may be possible on some issues but, at a minimum, we would like to ensure that issues are thoroughly defined and that differing positions, as well as the reasons for those differences, are identified. The output of the Policy Dialogue Committee will be made available to various EPA decision-makers in the mining waste program development process.

The first meeting of the Committee was held in Washington, DC on May 15 and May 16, 1991.

Participants

Seven representatives from each of the interested parties (States, the mining industry, and public interest groups) serve as representatives on the Committee. Representatives from EPA and other Federal agencies also serve as members of the Committee. The following is a listing of representatives for the interested parties.

States—Mr. Ken Alkema, Director, Division of Environmental Health, Utah Department of Health; Mr. Fred Banta, Director, Mine Land Reclamation Division, Colorado Department of Natural Resources; Mr. Tom Fronapfel, Bureau Chief, Bureau of Mining Regulation and Reclamation, Nevada Department of Conservation and Natural Resources; Mr. Charles Gardner, State Geologist, Director of Land Resources, North Carolina Department of Health, Environment and Natural Resources; Ms. Charlene Herbst, Chief, Land Disposal Branch, California Water Resource Control Board; Mr. Jim Joy, Chief, Air Quality Control, South Carolina Department of Health and Environmental Control; Mr. Steve Priner, Director, Division of Environmental Regulation, South Dakota Department of Water and Natural Resources.

Mining Industry—Mr. Steven Barringer, Esq., Holland & Hart; Mr. David Crouch, Corporate Manager, Environmental Affairs, Homestake Mining Company; Mr. Norman Greenwald, Norman Greenwald Associates; Mr. Thomas Janeck, Vice President, Environmental Affairs, Zinc Corporation of America; Dr. Krishna Parameswaren, Senior Analyst, Government Relations, ASARCO Incorporated; Mr. William Schimming, Manager, Environmental Affairs, Texas Gulf, Inc.; Mr. Ivan Urnovitz, Manager, Government Relations, Northwest Mining Association.

Public Interest Groups—Mr. Thomas Galloway, Esq., Friends of the Earth; Mr. Philip Hocker, Mineral Policy Center; Mr. David Lennett Esq., National Audubon Society; Dr. Glenn Miller, Sierra Club; Mr. James Jensen, Montana Environmental Information Center; Mr. Wm. Paul Robinson, Southwest Research & Information Center, and Tony Mazzochi, Oil, Chemical and Atomic Workers International Union.

Federal Agency Representatives—Mr. David S. Brown, Associate Director, Information and Analysis, Bureau of Mines; Lynn Sprague, Director of Minerals and Geology Staff, U.S. Forest Service; Matthew A. Straus, Deputy Director, Waste Management Division, Office of Solid Waste, U.S. Environmental Protection Agency; Russell H. Wyer, Director, Waste Management Division, Office of Solid Waste, U.S. Environmental Protection Agency; Robert E. Walline, Mining Waste National Expert, Region 8 U.S. Environmental Protection Agency.

Dated: May 28, 1991.

Paul Lapsley,

Director, Regulation Management Division.

[FR Doc. 91-12970 Filed 5-30-91; 8:45 am]

BILLING CODE 6560-50-M

[OPP-66147; FRL 3889-5]

Notice of Receipt of Requests to Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing this notice to announce the receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn, all cancellations will be effective August 29, 1991.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (H7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Rm. 210, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-4461.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 94 pesticide registrations under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration no.	Product Name
000004-00149	Dupont Ammate X Weed and Brush Killer
000004-00171	Bonide Grass-N-Weed Killer New-Contains Dupont Ammate
000004-00304	Bonide Grass-N-Weed Killer
000059-00156	Cattle Dust Bag C
000059-00174	Cooper Dust-Pak Cattle Dust Bag Filler
000059-00175	Dn-Kil Extra
000070-00237	Rigo Enide 90W
000100-00545	Phosphamidon Technical
000100-00608	Swat Insecticide - Miticide
000352 OR-84-0031	Du Pont Benlate Fungicide Wettable Powder
000352-00339	Du Pont 50% Linuron Composition
000352-00396	Du Pont Manzate 200 Flowable Fungicide
000476 DE-84-0002	Stauffer Eptam 10.G Granules

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name
000476 FL-79-0002	Sutan + 6.7-E
000476 IA-81-0002	Eradicane 6.7-E
000476 MO-81-0003	Eradicane 6.7-E
000550-00015	Formaldehyde Solution USP
000550-00149	Formaldehyde Solution N.F. Strength
000655 NJ-89-0003	Prentox PBO 8
000707 AZ-79-0036	Kerb 50-W Selective Herbicide
000707 NY-83-0003	Kerb 50-W Herbicide (In Water Soluble Pouches)
000707 WA-78-0025	Kerb 50-W Selective Herbicide
000814-00006	Force's Poison Peanuts
000814-00008	Force's Gopher Killer
000814-00011	Force's Mole Killer
000869-00173	Green Light Tomato Bloom Spray II
000869-00206	Green Light Weed Away
000869-00207	Green Light Ready-To-Use Weed Away
001021-00020	Concentrated Dry Pyrocide
001021-00612	15% Piperonyl Butoxide Dust Concentrate F-5975
001021-01025	Pyrocide Intermediate 6925
001021-01026	Pyrocide Intermediate 6926
001258 AL-80-0010	Terrachlor Emulsifiable Soil Fungicide
001258 GA-81-0003	Terraclor 2 Lb Emulsifiable Soil Fungicide
001258 ME-79-0001	Olin Terraclor 75% Wettable Powder
001258 TX-78-0043	Mathieson Terraclor 10% Granular
001258 TX-79-0017	Olin Terraclor 75% Wettable Powder
001990-00397	2,4-D Amine Weed Killer
001990-00415	Low-Vol. 2,4-D
002382-00013	Parid Bomb
002382-00059	Pet-Guard Gel
002382-00074	Parid Plus Pressurized Spray
002382-00077	Flea Ban Spray
002382-00081	Parid-X Spray
002382-00083	Ban-Guard Dip 7.68%
002382-00085	Ban Guard Dip 1.92%
002724-00293	Zoecon RI-184 House & Kennel Fogger
002724-00297	Zoecon RI-198 Aerosol
002724-00331	Zoecon RI-278 Fogger
003222-00006	Super Pear Wraps Ethoxyquin and Copperized Protection B
003222-00007	Green Crownoil Pear Wraps Ethoxyquin Treated Basis 15
003222-00009	Crownoil Apple Wraps Ethoxyquin Treated
003486-00005	Atco Copper Preservative
005383-00004	Troysan PMA-30
005857 SD-86-0002	Furadan 4 Flowable
005887-00138	Black Leaf Lawn Edging Liquid
005905 KS-81-0033	N/A
005905 NE-82-0024	N/A
007001-00332	Zipp 6-12-12 Lawnfood with Fungus Control
007173 CO-80-0018	Rozol Tracking Powder
007173 CT-85-0002	Rozol Tracking Powder
007173 GA-78-0019	Rozol Tracking Powder
007173 ID-86-0003	Rozol Tracking Powder
007173 KY-80-0022	Rozol Tracking Powder
007173 MA-78-0008	Rozol Tracking Powder
007173 ME-77-0004	Rozol Tracking Powder
007173 MI-78-0015	Rozol Tracking Powder
007173 MT-78-0013	Rozol Tracking Powder
007173 SC-80-0025	Rozol Tracking Powder
007173 TX-79-0040	Rozol Tracking Powder
007173 WA-84-0063	Rozol Tracking Powder
007173 WY-78-0012	Rozol Tracking Powder
008590-00037	Alfalfa Spray 22E
008590-00585	Agway Home Pest Control
010182 FL-87-0012	Gramoxone Super Herbicide
010182 FL-87-0013	Gramoxone Super Herbicide
010182 FL-87-0014	Gramoxone Super Herbicide
010182 FL-87-0015	Gramoxone Super Herbicide
010182 TX-81-0025	Ordram 10-G
010182-00121	Colonel Herbicide
010827-00031	Ammo-Sol Weed and Brush Control
014775-00048	Methomyl 5G Insecticide for Use Oncorn
023543-00002	Wood Saver 4809
034704-00278	Clean Crop Methomyl 5G
040285 AL-89-0010	Degesch Fumi-Cel Plate

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TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name
040285 FL-90-0001	Degesch Fumi-Cel Plate
040810-00002	Belclene 310
040810-00004	Belclene 322
041104-00001	Mildew Stop
041978-00001	Aqua Pure 16
046473-00003	Duo-Cide Flea & Tick Spray for Dogs & Cats
046473-00004	Duo-Cide Forte
048520-00007	A.P.C. Multi-Purpose Chemical
048520-00008	Serkite 4 Algaecide

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90-day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000004	Bonide Products Inc, 2 Wurz Ave., Yorkville, NY 13495.
000059	Coopers Animal Health Inc, 1201 Douglas Ave, Kansas City, KS 66103.
000070	Wilbur-Ellis Company, Box 16458, Fresno, CA 93755.
000100	Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419.
000352	E. I. du Pont de Nemours and Company, Inc., Agricultural Products Department, Box 80038, Wilmington, DE 19880.
000476	Stauffer Chemical Company, 1200 S. 47th St, Richmond, CA 94804.
000550	Van Waters & Rogers, Inc., Subsidiary Of Univar, 2256 Junction Avenue, San Jose, CA 95131.
000655	Prentiss Drug & Chemical Company Inc, 21 Vernon St.—c.b. 2000, Floral Park, NY 11001.
000707	Rohm & Haas Company, Agricultural Chemicals, Independence Mall West, Philadelphia, PA 19105.
000814	Carsjon Chemical Company Inc., P.O. Box 167, Fremont, MI 49412.
000869	Green Light Company, P.O. Box 17985, San Antonio, TX 78217.
001021	Mc Laughlin Gormley King Co., 8810 Tenth Ave North, Minneapolis, MN 55427.
001258	Olin Corporation, Box 586, Cheshire, CT 06410.
001990	Universal Cooperatives, Inc., c/o Diana Williams, Box 450, Minneapolis, MN 55440.
002382	Virbac Inc, 2507 Gravel Dr, Fort Worth, TX 76118.
002724	Zoecon Corporation, A Sandoz Company, 12200 Denton Drive, Dallas, TX 75234.
003222	James River II, Inc., 300 Lakeside Drive - 1140, Oakland, CA 94612.
003486	American Tar Company, 1700 N Northlake Way, Seattle, WA 98103.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No.	Company Name and Address
005383	Troy Chemical Corp. Inc., c/o Pazienos Associates, 1338 G Street SE, Washington, DC 20003.
005857	Pestcon Systems, Inc., South Raymond Ave., Suite 302, Pasadena, CA 91105.
005887	Wilbur-Ellis Company, Box 9518, Fresno, CA 93792.
005905	Helena Chemical Co, 5100 Popular Avenue - Suite 3200, Memphis, TN 38137.
007001	J.R. Simplot Co., Box 198, Lathrope, CA 95330.
007173	Liphatech, Inc., 3600 W. Elm St., Milwaukee, WI 53209.
008590	Agway, Inc. Crop Services, Box 4933, Syracuse, NY 13221.
010182	ICI Americas Inc., New Murphy Road & Concord Pike, Wilmington, DE 19897.
010827	Chemical Specialties Inc., P. O. Box 312, San Marcos, TX 78666.
014775	Asgrow Florida Co, 4144 Hwy 39 N, Plant City, FL 33565.
023543	Iowa Paint Manufacturing Company Inc, 1825 Grand Ave P.O. Box 1417, Des Moines, IA 50305.
034704	Platte Chemical Company, 419 16th St. (80632) Box 667, Greeley, CO 80632.
040285	Degesch America, Inc., P.O. Box 116, Weyers Cave, VA 24486.
040810	Ciba-Geigy Corporation, Additives Division, Seven Skyline Dr., Hawthorne, NY 10532.
041104	Guardsman Products, Inc., Consumer Products Group, 2960 Lucerne Drive, SE., Grand Rapids, MI 49506.
041978	Wecco Inc, 28 Kenton Lands Road,P.O., Erlanger, KY 41018.
046473	Allerderm Inc., P.O. Drawer 277, Hurst, TX 76053.
048520	Phoenix Chemical Co, 8 Fairfield Court, Danbury, CT 06811.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before August 29, 1991. This written withdrawal of the request for cancellation must include a commitment to pay any reregistration or registration maintenance fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of the cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit registrants to continue to sell and distribute existing stocks of the cancelled products for 1 year after the date of this notice. Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of cancellation. The orders will also generally provide for use of stocks already in the hands of dealers or users until they are exhausted. Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

Dated: May 20, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 91-12765 Filed 5-30-91; 8:45 am]

BILLING CODE 6560-50-F

[PP OG3630/T606; FRL 3892-2]

Fosthiazate; Establishment of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for residues of the nematicide fosthiazate in or on the raw agricultural commodity tomatoes at 0.05 part per million (ppm).

DATES: This temporary tolerance expires March 11, 1992.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis Edwards, Product Manager (PM) 12, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703)-557-2386.

SUPPLEMENTARY INFORMATION: Ishihara Sangyo Kaisha, Ltd., Landis Associates, Inc., 3025 Madison Highway, P.O. Box 5126, Valdosta, Georgia 31603-5126, has requested in pesticide petition (PP) OG3830, the establishment of a temporary tolerance for residues of the nematicide fosthiazate (O-ethyl S-(1-methylpropyl)-(2-oxo-3-thiazolidinyl)-phosphonothioate) in or on the raw agricultural commodity tomatoes at 0.05 part per million (ppm). This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of the experimental use permits 49036-EUP-2 and 49036-EUP-3, which are being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permits and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permits.

2. Landis Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires March 11, 1992. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permits and temporary tolerance. This tolerance may be revoked if the experimental use permits are revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: May 20, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91-12762 Filed 5-30-91; 8:45 am]

BILLING CODE 6560-50-F

[OPP-66149; FRL-3887-8]

Phenylmercuric Acetate; Notice of Receipt of Request For Voluntary Cancellation From Cosan Chemical Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Voluntary cancellation notice.

SUMMARY: Cosan Chemical Corporation has requested voluntary cancellation of its conditional registration for the pesticide product Cosan PMA-100, EPA Registration No. 8489-5. In response to concerns expressed by EPA regarding the risks to human health associated with use of mercury compounds in paints and coatings, Cosan previously amended the registration for this product to eliminate use in interior paints and coatings and to add new conditions to the product registration. Among other things, the conditional registration for Cosan PMA-100 required Cosan to develop and submit specific additional data for use by EPA in evaluating the risks and benefits associated with continued use of phenylmercuric acetate in exterior paints and coatings. After Cosan failed to conform to the mandatory schedule for development and submission of this data, EPA advised Cosan of its intention to issue a notice of intent to cancel Cosan PMA-100 under FIFRA section 6(e). Cosan subsequently agreed to submit the request for voluntary cancellation which is the basis for this notice. After Cosan PMA-100 is cancelled pursuant to Cosan's request, EPA has decided to permit sale and distribution of certain stocks of Cosan PMA-100 until September 30, 1991, and to permit use of stocks of Cosan PMA-100 purchased on or before September 30, 1991, in manufacture of exterior paints and coatings.

DATES: Any comments by the public on this request for voluntary cancellation of Cosan PMA-100 should be received by EPA at the address noted below on or before July 1, 1991. EPA will grant Cosan's request for voluntary cancellation and issue a final order cancelling Cosan PMA-100 on July 1, 1991, unless Cosan withdraws its request before that time. After EPA cancels Cosan PMA-100 pursuant to this request, EPA will permit stocks of Cosan PMA-100 packaged and labeled by Cosan on or before the effective date of cancellation to be distributed and sold until September 30, 1991, and EPA will permit manufacturers of exterior paints and coatings to use all stocks of Cosan PMA-100 which were packaged and labeled by Cosan on or before the effective date of cancellation and purchased by the manufacturer on or before September 30, 1991.

ADDRESSES: Any comments on this request for voluntary cancellation may be submitted to: Beth Edwards, Special Review and Reregistration Division (H7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Beth Edwards, Special Review and Reregistration Division (H7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 3rd Floor, 2800 Jefferson Davis Highway, Arlington, VA (703) 308-8010.

SUPPLEMENTARY INFORMATION:

I. Background

Following receipt of reports concerning a 4-year old child who developed acrodynia (a rare form of mercury poisoning) after his home was painted with paint containing mercury and a followup investigation by the Centers for Disease Control and the State of Michigan of mercury levels in other homes painted with similar paint, EPA initiated a comprehensive review of the risks and benefits associated with the use of mercurial compounds in paints and coatings. After evaluating the available evidence concerning exposure to mercury resulting from use in paints and coatings, toxicity of mercury and mercury compounds, and availability of alternative biocides, EPA concluded that

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the continued use of mercurial compounds in the manufacture of interior paints and coatings would present an unreasonable risk of adverse health effects. EPA also concluded that the available data were insufficient to enable full evaluation of the risks and benefits associated with use of mercurial compounds in exterior paints and coatings, and that the registrants should be required to develop and submit additional data concerning this use.

After completing its review, EPA initiated discussions with the registrants of mercury products labeled for use in paints and coatings to determine whether the necessary changes in the legal status of such products could be achieved by voluntary action. Cosan Chemical Corporation ("Cosan") and Troy Chemical Corporation ("Troy") agreed to submit applications to conditionally amend pursuant to FIFRA section 3(c)(7)(a) the registrations for two pesticide products containing phenylmercuric acetate (PMA), Cosan PMA–100, EPA Reg. No. 8489–5 and Troysan PMA–100, EPA Reg. No. 5383–4. Cosan, Troy, and the remaining registrants requested voluntary cancellation of all other registered pesticide products containing mercurial pesticides which had been previously labeled for use in manufacture of paints and coatings. (See 55 FR 26754, June 29, 1990.)

The conditional amendments submitted by Cosan and Troy included revised labeling: (1) Prohibiting use of these products in manufacture or formulation of any paint or coating intended or labeled for interior use, (2) limiting use of these products to only those exterior paints and coatings labeled with a specific warning against interior use, and (3) specifying maximum application rates for use of these products in exterior paints and coatings.

The new conditional registrations required each registrant to develop and submit additional data pertaining to the risks and benefits associated with continued use of PMA products in exterior paints and coatings. Each registration incorporated specific conditions requiring submission of protocols, descriptions of analytical methods, draft reports, and final reports by specific dates.

Although Cosan and Troy each individually committed to develop and submit the data, EPA agreed that the registrants could elect to cooperate in fulfilling data requirements. The registrants decided to form a consortium to develop and submit the required data. The Chemical Manufacturers Association (CMA) Biocides Panel was selected by the registrants to coordinate and supervise the data development effort.

On November 5, 1990, the manager of the CMA Biocides Panel wrote a letter advising the Agency that, "On October 19, 1990, the consortium decided to withdraw from CMA but will continue to develop protocols and the required data as an ad hoc consortium." On November 2, 1990, the registrants started to miss deadlines. On November 16, 1990, Cosan wrote a letter requesting that EPA provide a 120–day extension for all remaining submissions. Then, in a letter dated November 26, 1990, Troy submitted a request for voluntary cancellation of its registered PMA product. Troy's request for voluntary cancellation is the subject of a separate **Federal Register** notice under FIFRA section 6(f)(1) published elsewhere in this issue of the **Federal Register**.

After reviewing Cosan's November 16, 1990, extension request and a subsequent submission by Cosan on January 8, 1991, EPA concluded that, except for the dermal absorption study, Cosan had not provided an explanation sufficient to justify any extension of the due dates for remaining data submissions. On March 4, 1991, EPA wrote a letter to Cosan denying all requests for extensions except for those pertaining to the dermal absorption study.

II. Request for Voluntary Cancellation

On April 1, 1991, EPA advised Cosan representatives that it intended to issue a notice of intent to cancel PMA–100 pursuant to FIFRA section 6(e), and suggested that Cosan consider requesting voluntary cancellation of PMA–100. In subsequent discussions, EPA and Cosan discussed the options available to Cosan, the scope and potential outcomes of a cancellation hearing, and the provisions for sale, distribution, and use of existing stocks to be incorporated in a cancellation order. On May 10, 1991, Cosan submitted the request for voluntary cancellation which is the basis for this notice.

III. Legal Authority

Section 6(f)(1) of FIFRA, as amended, provides that, "A registrant may, at any time, request that a pesticide registration of the registrant be canceled or amended to terminate one or more pesticide uses." EPA must publish a notice of the receipt of the request in the **Federal Register** and provide 30 days for public comment. After 30 days, EPA may grant the request and enter an order cancelling the product.

IV. Existing Stocks

FIFRA section 6(a)(1), 7 U.S.C. section 136d(a)(1), provides that EPA may permit continued sale and use of existing stocks of cancelled products for specific uses and subject to specific conditions, if EPA determines "that such sale or use is not inconsistent with the purposes of this Act and will not have unreasonable adverse effects on the environment." In the event that Cosan PMA–100 is cancelled pursuant to this notice, EPA has determined for the reasons given below that distribution, sale, and use of Cosan PMA–100 subject to the limitations described below would not be inconsistent with the purposes of FIFRA and would not have unreasonable adverse effects on the environment.

At the time that the Agency granted applications for conditional amendment of the registrations for two PMA products made by Cosan and Troy, the available data were insufficient to permit the Agency to fully evaluate the risks and benefits associated with use of PMA in exterior paints and coatings. EPA therefore decided to permit continued registration of these products during the pendency of the data development process.

If Cosan had adhered to the mandatory schedule for development and submission of additional data, all of the required data pertaining to the risks associated with use of PMA in exterior paints and coatings would have been submitted to EPA by July 29, 1991. In its discussions with Cosan, EPA stressed the need to establish existing stocks provisions in this instance which will not encourage registrants in other instances to make data development commitments which they are unwilling or unable to adhere to. However, in the event that EPA had issued a notice of intent to cancel under FIFRA section 6(e) and Cosan had requested a hearing, EPA estimates that it would have taken until September 1991, to hold a hearing and make a final determination concerning cancellation of Cosan PMA–100. Such a hearing would have involved substantial uncertainties and resource expenditures for both Cosan and EPA. EPA did not want to insist on existing stocks provisions which would provide an incentive to Cosan to request a hearing solely to delay the effective date of cancellation. Ultimately, EPA concluded that it would be consistent with the purposes of FIFRA to permit Cosan to distribute and sell Cosan PMA–100 for a period approximately equivalent to the period which would be required to cancel Cosan PMA–100 in a contested proceeding.

In the event that Cosan PMA–100, EPA Reg. No. 8489–5, is cancelled pursuant to this notice, EPA will permit stocks of Cosan PMA–100 packaged and labeled by Cosan on or before the effective date of cancellation to be distributed and sold until September 30, 1991. After Cosan PMA–100 is cancelled, EPA will not permit Cosan to distribute or sell any stocks of Cosan PMA–100 packaged or labeled by Cosan after the date of cancellation, and EPA will not permit any person to distribute or sell Cosan PMA–100 after September 30, 1991.

EPA believes that users may have purchased stocks of Cosan PMA–100 in the expectation that this product would remain registered during the pendency of data development. Moreover, users of PMA–100 will likely require some time to complete the unexpected transition to alternative biocides. Finally, EPA believes that disposal of excess PMA stocks could itself present serious environmental problems. For these reasons, EPA has decided to permit manufacturers of exterior paints and coatings to use all stocks of Cosan PMA–100 which were packaged and labeled by Cosan on or before the effective date of cancellation and purchased by the manufacturer on or before September 30, 1991.

As noted above, Troy's registered PMA product, Troysan PMA–100, EPA Reg. No. 5383–4, is the subject of an additional voluntary cancellation notice published elsewhere in this issue of the **Federal Register**. Separate provisions governing sale, distribution, and use of Troysan PMA–100 are set forth in that notice.

V. Cancellation Pursuant to Cosan's Request

EPA will grant Cosan's request for voluntary cancellation and issue a final order cancelling Cosan PMA–100 on July 1, 1991, unless Cosan withdraws its request before that time. [Even if Cosan were to withdraw its request for voluntary cancellation, EPA would then immediately issue a notice of intent to cancel the conditional registration for Cosan PMA–100 pursuant to FIFRA section 6(e).] Because issuance of a final order granting Cosan's request and cancelling Cosan PMA–100 will affect the legality of activities by persons other than Cosan and it is not feasible for EPA to notify each such person, EPA has decided in this instance that it will publish the final cancellation order in the **Federal Register**.

Dated: May 20, 1991.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 91–12764 Filed 5–30–91; 8:45 am]

BILLING CODE 6560–50–F

[OPP–66148; FRL–3887–6]

Phenylmercuric Acetate; Notice of Receipt of Request For Voluntary Cancellation From Troy Chemical Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Voluntary cancellation notice.

SUMMARY: Troy Chemical Corporation has requested voluntary cancellation of its conditional registration for the pesticide product Troysan PMA–100, EPA Registration No. 5383–4. In response to concerns expressed by EPA regarding the risks to human health associated with use of mercury compounds in paints and coatings, Troy previously amended the registration for this product to eliminate use in interior paints and coatings and to add new conditions to the product registration. Among other things, the conditional registration for Troysan PMA–100 required Troy to develop and submit specific additional data for use by EPA in evaluating the risks and benefits associated with continued use of phenylmercuric acetate in exterior paints and coatings. Troy has decided to request voluntary cancellation of the registration for this product rather than developing and submitting the required data. After Troysan PMA–100 is cancelled pursuant to Troy's request, EPA has decided to permit sale and distribution of certain stocks of Troysan PMA–100 until June 27, 1991, and to permit use of stocks of Troysan PMA–100 purchased on or before June 27, 1991, in manufacture of exterior paints and coatings.

DATES: Any comments by the public on this request for voluntary cancellation of Troysan PMA–100 should be received by EPA at the address noted below on or before July 1, 1991. EPA will grant Troy's request for voluntary cancellation and issue a final order cancelling Troysan PMA–100 on July 1, 1991, unless Troy withdraws its request before that time. After EPA cancels Troysan PMA–100 pursuant to this request, EPA will permit stocks of Troysan PMA–100 packaged and labeled by Troy on or before February 28, 1991, to be distributed and sold until June 27, 1991, and EPA will permit manufacturers of exterior paints and coatings to use all stocks of Troysan PMA–100 which were packaged and labeled by Troy on or before February 28, 1991, and purchased by the manufacturer on or before June 27, 1991.

ADDRESSES: Any comments on this request for voluntary cancellation may be submitted to: Beth Edwards, Special Review and Reregistration Division (H7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Beth Edwards, Special Review and Reregistration Division (H7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW.,Washington, DC 20460. Office location and telephone number: 3rd Floor, 2800 Jefferson Davis Highway, Arlington, VA (703) 308–8010.

SUPPLEMENTARY INFORMATION:

I. Background

Following receipt of reports concerning a 4–year old child who developed acrodynia (a rare form of mercury poisoning) after his home was painted with paint containing mercury and a followup investigation by the Centers for Disease Control and the State of Michigan of mercury levels in other homes painted with similar paint, EPA initiated a comprehensive review of the risks and benefits associated with the use of mercurial compounds in paints and coatings. After evaluating the available evidence concerning exposure to mercury resulting from use in paints and coatings, toxicity of mercury and mercury compounds, and availability of alternative biocides, EPA concluded that the continued use of mercurial compounds in the manufacture of interior paints and coatings would present an unreasonable risk of adverse health effects. EPA also concluded that the available data were insufficient to enable full evaluation of the risks and benefits associated with use of mercurial compounds in exterior paints and coatings, and that the registrants should be required to develop and submit additional data concerning this use.

After completing its review, EPA initiated discussions with the registrants of mercury products labeled for use in paints and coatings to determine whether the necessary changes in the legal status of such products could be achieved by voluntary action. Troy Chemical Corporation ("Troy") and Cosan Chemical Corporation ("Cosan") agreed to submit applications to conditionally amend pursuant to FIFRA section 3(c)(7)(a) the registrations for

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two pesticide products containing phenylmercuric acetate (PMA), Troysan PMA–100, EPA Registration No. 5383–4 and Cosan PMA–100, EPA Registration No. 8489–5. Troy, Cosan, and the remaining registrants requested voluntary cancellation of all other registered pesticide products containing mercurial pesticides which had been previously labeled for use in manufacture of paints and coatings. (See 55 FR 26754, June 29, 1990.)

The conditional amendments submitted by Troy and Cosan included revised labeling: (1) Prohibiting use of these products in manufacture or formulation of any paint or coating intended or labeled for interior use, (2) limiting use of these products to only those exterior paints and coatings labeled with a specific warning against interior use, and (3) specifying maximum application rates for use of these products in exterior paints and coatings.

The new conditional registrations required each registrant to develop and submit additional data pertaining to the risks and benefits associated with continued use of PMA products in exterior paints and coatings. Each registration incorporated specific conditions requiring submission of protocols, descriptions of analytical methods, draft reports, and final reports by specific dates. Although Cosan and Troy each individually committed to develop and submit the data, EPA agreed that the registrants could elect to cooperate in fulfilling data requirements.

II. Request for Voluntary Cancellation

In a letter dated November 26, 1990, Troy submitted a request for voluntary cancellation of Troysan PMA–100, EPA Registration No. 5383–4. In its initial request, Troy advised EPA that it was immediately ceasing all production of Troysan PMA–100 and requested that EPA permit sale, distribution, and use of existing stocks of Troysan PMA–100 until November 26, 1991. In subsequent discussions, EPA indicated to Troy that it would not be willing to permit sale and distribution of Troysan PMA–100 after June 27, 1991, or use of any stocks of Troysan PMA–100 purchased by the user after June 27, 1991. On February 28, 1991, Troy wrote an additional letter to EPA confirming its prior request for voluntary cancellation and accepting the existing stocks provisions specified by EPA. Troy's November 26, 1990, request for voluntary cancellation, as confirmed and modified on February 28, 1991, is the basis for this notice.

After Troy decided to cease production of Troysan PMA–100 and to request voluntary cancellation, Cosan fell considerably behind the established schedule for development and submission of the required data concerning use of PMA in exterior paints and coatings. EPA concluded that the explanations for these delays offered by Cosan did not warrant an extension of the mandatory due dates. EPA then advised Cosan that it would be issuing a notice of intent to cancel under FIFRA section 6(e) for Cosan PMA–100, EPA Registration No. 8489–5. In subsequent discussions, Cosan agreed to submit a request for voluntary cancellation of this product, which is the subject of another voluntary cancellation notice published elsewhere in this issue of the **Federal Register**.

Since Troy also failed to satisfy the conditions regarding data generation included in its conditional registration for Troysan PMA–100, if Troy had not requested voluntary cancellation the registration for Troysan PMA–100 would be subject to cancellation pursuant to FIFRA section 6(e).

III. Legal Authority

Section 6(f)(1) of FIFRA, as amended, provides that, "A registrant may, at any time, request that a pesticide registration of the registrant be canceled or amended to terminate one or more pesticide uses." EPA must publish a notice of the receipt of the request in the **Federal Register** and provide 30 days for public comment. After 30 days, EPA may grant the request and enter an order cancelling the product.

IV. Existing Stocks

FIFRA section 6(a)(1), 7 U.S.C. section 136d(a)(1), provides that EPA may permit continued sale and use of existing stocks of cancelled products for specific uses and subject to specific conditions, if EPA determines "that such sale or use is not inconsistent with the purposes of this Act and will not have unreasonable adverse effects on the environment." In the event that Troysan PMA–100 is cancelled pursuant to Troy's request, EPA has determined for the reasons given below that distribution, sale, and use of Troysan PMA–100 subject to the limitations described below would not be inconsistent with the purposes of FIFRA and would not have unreasonable adverse effects on the environment.

At the time that the Agency granted applications for conditional amendment of the registrations for two PMA products made by Troy and Cosan, the available data were insufficient to permit the Agency to fully evaluate the risks and benefits associated with use of PMA in exterior paints and coatings. EPA therefore decided to permit continued registration of these products during the pendency of the data development process.

At the same time that EPA granted conditional amendments to Troy and Cosan, the remaining registrants of pesticide products containing mercury and labeled for use in paints and coatings requested voluntary cancellation of their registrations. Since it appeared that PMA products labeled for use in exterior paints and coatings would remain registered during data development by Troy and Cosan, EPA concluded that limited distribution, sale, and use of existing stocks of cancelled mercurial pesticides pursuant to the same substantive terms and conditions as the registered PMA products would be consistent with the purposes of FIFRA and would not have unreasonable adverse effects on the environment. Therefore, EPA decided to allow continued distribution, sale, and use of the previously cancelled mercurial pesticides solely for manufacture of exterior paints and coatings until June 27, 1991.

EPA has now concluded that it would not be inconsistent with the purposes of FIFRA and would not have unreasonable adverse effects on the environment to permit Troy to sell and distribute Troysan PMA–100 until June 27, 1991, the same deadline for distribution and sale established as part of the earlier voluntary cancellations. In the event that Troysan PMA–100, EPA Registration No. 5383–4, is cancelled pursuant to Troy's request, EPA will permit stocks of Troysan PMA–100 packaged and labeled by Troy on or before February 28, 1991, to be distributed and sold until June 27, 1991. After Troysan PMA–100 is cancelled, EPA will not permit Troy to distribute or sell any stocks of Troysan PMA–100 packaged or labeled by Troy after February 28, 1991, and EPA will not permit any person to distribute or sell Troysan PMA–100 after June 27, 1991.

EPA believes that users may have purchased stocks of Troysan PMA–100 in the expectation that this product would remain registered during the pendency of data development. Moreover, users of PMA–100 will likely require some time to complete the unexpected transition to alternative biocides. Finally, EPA believes that disposal of excess PMA stocks could itself present serious environmental problems. For these reasons, after Troysan PMA–100 is cancelled, EPA has decided to permit manufacturers of exterior paints and coatings to use all stocks of Troysan PMA–100 which were packaged and labeled by Troy on or before February 28, 1991, and purchased by the manufacturer on or before June 27, 1991.

As noted above, Cosan's conditional registration for Cosan PMA–100, EPA Registration No. 8489–5, is the subject of an additional voluntary cancellation notice published elsewhere in this issue of the **Federal Register**. Separate provisions governing sale, distribution, and use of Cosan PMA–100 are set forth in that notice.

V. Cancellation Pursuant to Troy's Request

EPA will grant Troy's request for voluntary cancellation and issue a final order cancelling Troysan PMA–100 on July 1, 1991, unless Troy withdraws its request before that time. [Even if Troy were to withdraw its request for voluntary cancellation, EPA would then immediately issue a notice of intent to cancel the conditional registration for Troysan PMA–100 pursuant to FIFRA section 6(e).] Because issuance of a final order granting Troy's request and cancelling Troysan PMA–100 will affect the legality of activities by persons other than Troy and it is not feasible for EPA to notify each such person, EPA has decided in this instance that it will publish the final cancellation order in the **Federal Register**.

Dated: May 20, 1991.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 91–12763 Filed 5–30–91; 8:45 am]

BILLING CODE 6560–50–F

[OPTS–62045A; FRL–3843–4]

Informational Notice on the Interagency Chlorinated Solvents Project

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice is provided to update the activities of the Chlorinated Solvents Project. The Chlorinated Solvents Project was initiated in 1985 by EPA in response to concerns with the use of methylene chloride (DCM, CAS No. 75–09–2), and expanded to include four Federal agencies investigating six major chlorinated solvents in four high-use categories. The integrated regulatory investigation led to significant exposure reductions in the major chlorinated solvent use applications, and established a precedent for future cooperative regulatory endeavors.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0557. For further information on the 33/50 Project, contact Susan B. Hazen, at (202) 382–3671.

SUPPLEMENTARY INFORMATION:

I. Background

In March 1985, the National Toxicology Program (NTP) reported positive results for a cancer bioassay on methylene chloride (DCM). Subsequently, the EPA made a preliminary determination to list DCM as a "Hazardous Air Pollutant" under section 112 of the Clean Air Act (CAA), and made a finding under section 4(f) of the Toxic Substances Control Act (TSCA) that occupational and ambient air exposures to DCM may present a significant risk of serious and widespread harm to humans (50 FR 20126, May 14, 1985).

On October 17, 1985 (50 FR 42037), EPA issued an Advance Notice of Proposed Rulemaking (ANPR) on DCM. At the same time, EPA initiated an integrated Federal regulatory investigation of DCM in cooperation with the Consumer Product Safety Commission (CPSC), the Occupational Safety and Health Administration (OSHA), and the Food and Drug Administration (FDA). The agencies formed an Interagency Work Group, chaired by EPA's Office of Pesticides and Toxic Substances (OPTS), to determine whether DCM presents a significant risk to human health or the environment, and to determine if regulatory actions are needed to limit exposures to DCM.

Following approval by all agencies involved with the integrated regulatory investigation, the Assistant Administrator for OPTS organized an interagency Committee of Office Directors, chaired by the Director of the Office of Toxic Substances (OTS), to oversee the Chlorinated Solvents Project, review the regulatory options developed, and recommend specific courses of action to senior management of participating agencies.

Although the Work Group was initially formed to investigate DCM, its focus expanded to include the following solvent chemicals deemed possible substitutes for DCM: trichloroethylene (TCE, CAS No. 79–01–6); perchloroethylene (tetrachloroethylene, PCE, CAS No. 127–18–4); 1,1,1-trichloroethane (methyl chloroform, TCA, CAS No. 71–55–6); carbon tetrachloride (CAS No. 56–23–5); and 1,1,2-trichloro-1,2,2-trifluoroethane (CFC–113, CAS No. 7613–1). The Work Group directed their analyses to the use categories identified as presenting the greatest risk potential for these solvents: dry cleaning, solvent cleaning (electronics and metal cleaning), aerosols, and paint stripping.

One of the primary purposes of integrating the chlorinated solvents investigation with other Federal agencies was to identify the most appropriate statutory authority for controlling the risks associated with different solvent uses. Risk control strategies were based on appropriate statutory authorities administered by all four participating agencies. These authorities included the Federal Hazardous Substances Act (FHSA), administered by CPSC; the Occupational Safety and Health Act (OSHAct), administered by OSHA; the Federal Food, Drug, and Cosmetic Act (FFDCA), administered by the FDA; and the Clean Air Act (CAA), Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and Toxic Substances Control Act (TSCA), all administered by the EPA.

Regulatory alternatives considered under the FHSA and FFDCA included labeling provisions and product bans. The primary option considered under the OSHAct was lowering of permissible exposure limits (PELs). The other regulatory options considered were National Emission Standards for Hazardous Air Pollutants (NESHAP) under the CAA, pesticide registration controls under the FIFRA, and commercial use bans under the TSCA.

When the Work Group began its analysis, there were several existing regulations affecting the use of the chlorinated solvents under investigation. OSHA had existing PEL's for DCM, PCE, and TCE. The existing limits were: 500 ppm for an 8–hour time weighted average (TWA) for DCM: 100 ppm TWA for TCE; and 100 ppm TWA for PCE.

Two of the six solvents originally under review by the Work Group were subsequently withdrawn from the analysis. Carbon tetrachloride was no longer being used in the major applications under investigation, and CFC–113 was subject to regulation by EPA's Office of Air and Radiation (OAR), as an ozone depletor (53 FR 30566, August 12, 1988). TCA remained a part of the Work Group analysis, but is now regulated by OAR as an ozone depletor. Under both the terms of the Montreal Protocol on Substances that Deplete the Ozone Layer and Title VI of the new Clean Air Act Amendments, CFC–113 and carbon tetrachloride will be completely phased out by the year

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2000, and TCA will be phased out by the year 2002.

II. Work Group Activities

The Work Group completed hazard assessments for the four solvents remaining under investigation, risk assessments for the four high risk use categories, and economic analyses and risk management options papers for each use category. These references are available as described in Unit IV.

A. Summary of Risk Management Actions

The Work Group was responsible for conducting risk assessments, and developing risk management strategies for each category. The project did not generally require the Work Group to reconcile conflicting statutory directions, so much as to choose, from among the many authorities, those that would best reduce the risks.

Below is a description of risk management actions completed by each agency for the chemicals and uses under review, as well as a discussion of ongoing risk control activities.

1. *OSHA.* In 1989, OSHA promulgated their generic PEL project, which addressed PEL's of 400 air contaminants. Two of the chlorinated solvents under investigation by the Work Group, PCE and TCE, were included in OSHA's PEL project.

The PCE PEL was lowered from 100 ppm to 25 ppm for an 8-hour TWA (January 19, 1989, 54 FR 2686). The standard was revised primarily in response to occupational cancer risks attributable to PCE dry cleaning workplace exposure, although the reduced PCE standard effected reduction in the total occupational cancer risks resulting from PCE solvent cleaning and at aerosol packing plants.

For TCE, OSHA lowered the PEL from 100 ppm to 50 ppm for an 8-hour TWA (January 19, 1989, 54 FR 2432). This standard was revised based on occupational cancer risks from TCE solvent cleaning.

OSHA is also currently proceeding on a section 6(b) rulemaking for DCM, and is expected to propose a significant reduction of the DCM PEL, presently at 500 ppm, in late 1991. While the PEL would be lowered across the board for all uses of DCM, the reduction would be driven primarily by concern for the risks of solvent cleaning.

2. *FDA.* On June 29, 1989 (54 FR 27328), FDA promulgated a regulation under the FFDCA prohibiting the use of DCM as an ingredient of cosmetic products. The regulation was primarily targeted at the use of DCM in aerosol hair sprays, which FDA estimated resulted in high cancer risks for hair care specialists and users of hair spray (see 50 FR 51553, December 18, 1985).

3. *CPSC.* On August 20, 1986 (51 FR 29778), CPSC proposed a rule declaring household products containing DCM to be hazardous substances. CPSC suspended the rulemaking and issued a statement of interpretation and enforcement policy (52 FR 34698, September 14, 1987) declaring several DCM consumer products to be hazardous substances requiring labeling under the FHSA. Required labeling of the DCM products was implemented by CPSC in 1987. CPSC is in the process of assessing the effectiveness of their DCM labeling program. Once the assessment of DCM product labeling effectiveness is completed, CPSC staff will make a recommendation to the Commission on the appropriateness of a ban on certain DCM-containing products. The Commission is scheduled to make a decision on further regulation of DCM in household products in early 1992.

4. *EPA.* In October 1988, EPA's Office of Pesticide Programs (OPP) conducted a data call-in under section 3(c)(2)(B) of FIFRA. This action required registrants using DCM as an inert ingredient in their pesticide products to either develop toxicity and exposure data on DCM to support continued product registrations, cancel, reformulate their products, or have their registrations suspended. All registrants using DCM as an inert ingredient responded to the data call-in by canceling or reformulating their products, with the exception of one registrant who requested a waiver from data requirements based upon low volume/minor use considerations.

On July 25, 1990 (55 FR 30370), the Office of Drinking Water proposed a Maximum Contaminant Level Goal (MCLG) of 0.00 and a Maximum Contaminant Level (MCL) of 5 parts per billion (ppb) for DCM in drinking water. Promulgation of the final drinking water standards for DCM is expected in Spring of 1992.

The Office of Air and Radiation began development of a NESHAP for the PCE dry cleaning source category in 1986. On May 19, 1988, a meeting of the National Air Pollution Control Techniques Advisory Committee (NAPCTAC) was held to discuss results of EPA's analysis of control options, and associated environmental, cost, and economic impacts. Shortly thereafter, further work on the PCE dry cleaning NESHAP was delayed to determine the effect of the vinyl chloride NESHAP remand, and possible amendments to the Clean Air Act on subsequent NESHAP development.

Currently, OAR plans to propose the PCE dry cleaning NESHAP under section 112 of the new CAA. Under these provisions, EPA will promulgate the PCE dry cleaning NESHAP based on maximum achievable control technology (MACT), which considers technological feasibility and cost. Based on the current schedule, it is anticipated that a NESHAP will be proposed in November of 1991 with promulgation in November of 1992. NESHAP's for DCM, PCE, and TCE solvent cleaning emissions are scheduled to be proposed by 1993.

EPA's OTS is examining risk reduction possibilities for dry cleaning consumers. The dry cleaning and PCE manufacturing industries agreed to conduct a study intended to determine ways of minimizing the potential in-house exposures of consumers to PCE that may off-gas from dry-cleaned fabrics. The industry's study commenced in September 1990. The results of the industry's investigation could be used to issue guidance to dry cleaners on opportunities for minimizing any potential PCE contribution from dry cleaning to residential indoor air pollution.

B. Other Activities

As an adjunct to CPSC's continuing efforts concerning the use of DCM in paint strippers, EPA, in coordination with CPSC, NIOSH, and OSHA, sponsored an International Conference on Reducing Risk in Paint Stripping. The conference was held February 12-13, 1991, in Washington, DC. It was intended as a mechanism for obtaining information on feasible substitutes for DCM paint strippers. The conference brought together several interested Federal regulatory agencies, and both suppliers and users for each sector of the industry: original equipment manufacture (OEM), maintenance, and commercial/consumer refinishing. The discussions at the conference focused on the cost and effectiveness of alternative stripping technologies and information needs, including consideration of waste generation and exposure.

III. New Initiatives

Although there has been significant risk reduction effected by the agencies participating on the Chlorinated Solvents Project, and many of the most significant risks have been addressed, EPA strongly believes that the use of toxic chemicals, such as chlorinated solvents, should continue to be reduced or controlled wherever possible.

While the regulatory actions detailed above yielded significant reductions in the risks associated with these solvents, there remain uses and emissions which result in unnecessary exposures to these chemicals. In a number of cases, the Agency has seen voluntary reductions in the use of these solvents, voluntary substitution of safer alternatives, and the institution of process controls which reduce exposures. In many instances these changes have proven to be both environmentally and economically beneficial.

Building on the experience these voluntary actions have provided, the Agency is initiating a project to work closely with facilities in the industrial sector to voluntarily reduce or control unnecessary exposures associated with certain high production/high emission chemicals. These chemicals, which are a subset of the Toxic Release Inventory (TRI) list, have been targeted by the Agency for reductions of 50 percent by 1995, with an interim goal of 33 percent reduction by 1992.

Carbon tetrachloride, DCM, PCE, TCA, and TCE are among the 17 chemicals selected for this effort. This project, known as the 33/50 Project, will work with the industrial sector to achieve exposure reductions in all environmental media, as well as transfers of chemical wastes to off-site management facilities. EPA anticipates that most of these reductions can be accomplished through pollution prevention practices which eliminate the wastes at the source, rather than relying on destructive treatment after wastes have been generated.

The successes achieved in the integrated solvents regulatory investigation not only addressed risks posed by chlorinated solvents, but also raised the importance of integrated risk management decision making, while laying the foundation for future regulatory integration. With new emphases on pollution prevention and cross-media approaches to environmental risk reduction, such coordinative capabilities are essential. EPA's 33/50 Project is a good example of the type of project that will require such an integrated, cooperative effort for success.

IV. Official Record

EPA has established an official administrative record in support of this notice [docket number OPTS-62045A]. This record contains basic information developed and utilized by the Interagency Work Group and Committee of Office Directors over the course of the Chlorinated Solvents Project. The record is available in the TSCA Public Docket Office from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located at EPA Headquarters, rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Dated: May 24, 1991.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 91-12892 Filed 5-30-91; 8:45 am]

BILLING CODE 6560-50-F

[OPTS-59298; FRL 3926-6]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of applications for test marketing exemptions (TMEs) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated these applications as TME-91-16, TME-91-17, and TME-91-18. The test marketing conditions are described below.

EFFECTIVE DATE: May 28, 1991. Written comments will be received until June 17, 1991.

ADDRESS: Written comments, identified by the document control number "[OPTS-59298]" and the specific TME numbers "[TME-91-16, TME-91-17, and TME-91-18]" should be sent to: Document Control Officer (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M St., SW., Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Karen K. Pollard, New Chemicals Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St. SW., Washington, DC 20460, (202) 475-8993.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME-91-16, TME-91-17, and TME-91-18. EPA has determined that test marketing of these new chemical substances described below, under the conditions set out in the TME applications, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to health or the environment. Production volumes, uses, and number of customers must not exceed that specified in the application. All other conditions and restrictions described in the applications and in this notice must be met.

Inadvertently, notice of receipt of the application was not published. Therefore, an opportunity to submit comments is being offered at this time. The complete nonconfidential document is available in the Public Reading Room NE G004 at the above address between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. EPA may modify or revoke the test marketing exemption if comments are received which cast significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury.

The following additional restrictions apply to TME-91-16, TME-91-17, and TME-91-18. A bill of lading accompanying each shipment must state that the use of these substances is restricted to that approved in the specific TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of each TME substance imported and the date of import.

2. Records of dates of the shipments to each customer and

3. Copies of the bill of lading that accompanies eachshipment of each TME substance.

Close of Review Period: May 29, 1991. The extended comment period will close (insert date 15 days after date of publication in the **Federal Register**).

TME-91-16

Date of Receipt: April 16, 1991.

Applicant: Mastsui International Co. Inc.

Chemical: (G) Spiro [2H-Indole-2,3'-[3H]Naphth[2,1-b][1,4] Oxazine], 1,3-Dihydrydro-1,3,3-Trimethyl-6'-(1-Piperdinyl)-.

Use: (G) A photochromic textile dye which changes color on exposure to sunlight.

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Import Volume: 40 kg/yr.
Number of Customers: 2.
Test Marketing Period: 30 days, commencing on first day of commercial import.

TME-91-17

Date of Receipt: April 16, 1991.
Applicant: Mastsui International Co. Inc.
Chemical: (G) Spiro [2H-Indole-2,3'-[3H]Naphth[2,1- b][1,4]Oxazine],6'-(2,3-Dihydro-1H-Indole-1-UL)-1,3-Dihydro-1,3-Dihydro-1,3,3-Trimethyl.
Use: (G) A photochromic textile dye which changes color on exposure to sunlight.
Import Volume: 29 kg/yr.
Number of Customers: 2.
Test Marketing Period: 30 days, commencing on first day of commercial import.

TME-91-18

Date of Receipt: April 16, 1991.
Applicant: Mastsui International Co. Inc.
Chemical: (G) 3H-Naphtho[2,1-b]Pyran, 3,3-Diphenyl.
Use: (G) A photochromic textile dye which changes color on exposure to sunlight.
Import Volume: 45 kg/yr.
Number of Customers: 2.
Test Marketing Period: 30 days, commencing on first day of commercial import.

Risk Assessment: EPA has identified potential environmental concerns for test market substances TME-91-16, TME-91-17, and TME-91-18. Based on Quantitative Structural Activity Relationships (QSAR) derived from test data on structurally similar compounds, EPA expects chronic aquatic toxicity at surface water concentrations as low as 1 part-per-billion (ppb); however, due to the low production volumes of these TME substances, the Agency does not expect water releases of the substances to result in surface water concentrations exceeding this level. Regarding the human health concerns, EPA identified apotential for carcinogenicity for the TME substance TME-91-18, based on data on structurally analogous substances. EPA's exposure analysis indicated, however, that there would be no inhalation exposure to the TME substances, that any dermal exposure to the substance would not result in absorption, and that exposures to the substance via drinking water would not be significant.

Based on the above information, EPA determined that TME-91-16, TME-91-17, and TME-91-18, will not present an unreasonable risk of injury to human health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: May 28, 1991.

John W. Melone,
Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 91-13016 Filed 5-30-91; 8:45 am]
BILLING CODE 6560-50-F

[FRL 3960-5]

Guidelines Establishing Test Procedures for the Analysis of Pollutants

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: This notice announces the intentions of the EPA to conduct an interlaboratory study of a "Test Method for Purgeable Organic Compounds in Water by Capillary Column Gas Chromatography/Mass Spectrometry". This study will be a part of the selection and evaluation process prior to proposal of the method under section 304(h) of the Clean Water Act. The method, based on EPA Method 524.2, has been proposed as a consensus standard by the American Society for Testing and Materials (ASTM)—Philadelphia Subcommittee D19.06 Organics in Water pending completion of their interlaboratory study.

EPA through the Environmental Monitoring Systems Laboratory—Cincinnati in cooperation with ASTM Committee D19 will conduct the interlaboratory study. By this notice EPA is soliciting participants for this study. A preliminary announcement of this study was made at the "12th Annual EPA Conference on Analysis of Pollutants in the Environment", May 9-11, 1991 in Norfolk, VA.

In keeping with the EPA Environmental Monitoring Management Committee's charge to combine/reduce the number of analytical methods required to implement environmental regulation, the study is intended to cover a cross-section of water matrices including: Drinking water, ground water, wastewater, ambient/raw source water, and leachate from the toxicity characteristic leaching procedure (TCLP). As many as possible of the regulated volatile organic chemicals (VOCs) will be included.

Summary of Method: Volatile organic compounds are purged by bubbling inert gas thorugh an aqueous sample. Purged sample components are trapped in a sorbent tube which is thermally desorbed onto a capillary gas chromatography column. Compounds are eluted from the column by temperature programming then identified and quantified using a mass spectrometer.

Study Design:

- Approximately seventy regulated analytes will be included using the matrices listed above.
- There will be 10 concentration levels (5 Youden pairs) per water matrix (0.2 to 100 mg/L).
- The study period is planned for October-November 1991 (60 days).
- Sample spiking solutions, reference standards, and quality control samples will be provided.
- A Youden pair will be provided for optional MDL determination in the analysts wastewater of choice (30-40 labelled compounds included).

DATES: Those wishing to participate in this interlaboratory study must respond by July 1, 1991.

ADDRESSES: Those wishing to participate in this study should write to James J. Lichtenberg, Environmental Monitoring Systems Laboratory, Office of Research and Development, U.S. Environmental Protection Agency, Cincinnati, OH 45268.

FOR FURTHER INFORMATION CONTACT: James J. Lichtenberg, (513-569-7306).

SUPPLEMENTARY INFORMATION: Copies of the proposed analytical method are available to prospective participants from Environmental Monitoring Systems Laboratory—Cincinnati. Telephone: 513-569-7306.

Dated: May 20, 1991.

Thomas A. Clark,
Director, Environmental Monitoring Systems Laboratory, Cincinnati, OH 45268.

[FR Doc. 91-12889 Filed 5-30-91; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review.

May 22, 1991.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452-1422. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0110.
Title: Application for Renewal of License of Commercial and Noncommercial AM, FM or TV Broadcast Station.
Form Number: FCC Form 303-S.
Action: Revision.
Respondents: Businesses or other for-profit (including small businesses).
Frequency of Response: Other: once every 5 years for TV; once every 7 years for radio.
Estimated Annual Burden: 3,237 responses; 0.8 hours average burden per response; 2,590 hours total annual burden.
Needs and Uses: FCC Form 303-S is required to be filed by licensees of AM, FM and TV broadcast stations for renewal of the station license. This form is basically a checklist which assures the Commission that all necessary reports and contracts have been filed and that the licensee is in full compliance with FCC Rules. On 4/9/91, the FCC adopted a Report and Order, MM Docket No. 90-570, which implements the Children's Televison Act of 1990. This action will revise the FCC Form 303-S by requiring licensees of commercial broadcast stations to submit a summary of the licensee's programming response and other efforts directed to the educational and informational needs of children and to certify compliance with the commercial limits established in the R&O. This requirement will become effective with renewal applications filed as of February 1, 1992, and corresponding with licenses expiring as of June 1, 1992. This revised information collection also includes modified policies concerning adjudicated or pending adjudications of relevant misconduct by broadcast applicants and fee collection data. The data is used by FCC staf to assure that the necessary forms connected with the renewal application have been filed and that the licensee continues to meet basic statutory requirements to remain a licensee of a broadcast station.
OMB Number: 3060-0214.
Title: Section 73.3526, Local public inspection file of commercial stations.
Action: Revision.
Respondents: Businesses or other for-profit (including small businesses).
Frequency of Response: Recordkeeping requirement.
Estimated Annual Burden: 10,530 recordkeepers; 106.83 hours average burden per recordkeeper; 1,124,920 hours total annual burden.
Needs and Uses: Section 73.3526 requires that each licensee/permittee of a commercial broadcast station maintain a file for public inspection. The contents of the file vary according to type of service and status. The contents include, but are not limited to, copies of certain applications tendered for filing, a statement concerning petitions to deny filed against such applications, copies of ownership reports and annual employment reports, statements certifying compliance with filing announcements in connection with renewal applications, etc. In addition, §§ 73.3526(a) (6) and (9) requires that each broadcast licensee of a commercial station place in a public inspection file a list of community issues addressed by the station's programming. This list is kept on a quarterly basis and contains a brief description of how each issue was treated. This information collection is also affected by the Report and Order, MM Docket No. 90-570, Children's Television Programming. This action will revise § 73.3526 by requiring commercial television broadcast licensees to maintain records sufficient to verify compliance with commercial limits and to maintain records of educational and informations programming desinged to serve children's needs. The data is used by FCC staff and the public to evaluate information about the licensee's performance and to ensure that the station is addressing issues concerning the community to which it is licensed to serve.
OMB Number: None.
Title: Survey to verify the accuracy of existing FM Translator stations technical operation.
Action: New collection.
Respondents: Businesses or other for-profit (including small businesses).
Frequency of Response: Other: one time requirement.
Estimated Annual Burden: 1,869 responses; 3 hours average burden per response; 5,607 hours total annual burden.
Needs and Uses: On 11/8/90, the Commission adopted a Report and Order, MM Docket No. 88-140, Amendment of part 74 of the Commission's Rules Concerning FM Translator Stations. This proceeding established contour overlap protection standards for FM translators. In order for existing FM Translator licensees to be afforded this protection, a survey requesting this information must be made. The survey requires licensees of FM Translator stations to submit data regarding their station's technical operation. The data elements needed to calculate service and interference contours are: The effective radiated power (ERP), antenna height above average terrain (HAAT), the antenna pattern relative field values and radiation center above mean sea level (RCAMSL) values. This survey is necessary to ensure that the licensees meet basic statutory requirements and will not cause interference to other licensed broadcast services. The data will be used by FCC staff to create a technical data base which would facilitate the implementation of the technical protections permitted by MM Docket No. 88-140 for FM Translator stations operating with directional facilities.
OMB Number: 3060-0316.
Title: Section 76.305, Records to be maintained locally by cable system operators for public inspection.
Action: Revision.
Respondents: Businesses or other for-profit (including small businesses).
Frequency of Response: Recordkeeping requirement.
Estimated Annual Burden: 10,188 recordkeepers; 13.86 hours average burden per recordkeeper; 141,206 hours total annual burden.
Needs and Uses: Section 76.305 requires cable television systems having 1000 or more subscribers to maintain a public inspection file containing certain records. On 4/9/91, the FCC adopted a Report and Order, MM Docket No. 90-570, Policies and Rules Concerning Children's Televison Programming, which will revise this rule section by requiring cable operators to maintain records in accordance with § 76.225(c). (Commercial limits in children's programs). Section 76.225(c) requires cable operators to maintain records sufficient to verify compliance with commercial limits. This section would require all cable systems (which would include systems with less than 1000 subscribers) to maintain records. The data is used by FCC staff in field inspections/investigations and the public to assess a cable television system's performance and to ensure that the system is in compliance with all applicable Rules and Regulations of the Commission.

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Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 91-12792 Filed 5-30-91; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for two new FM stations:

Applicant, city/state	File No.	MM docket No.
I.		
A. Madalina Broadcasting, Inc., Haltom City, TX.	BPH-890921MB	91-100
B. Bonnie P. Fox, Haltom City, TX.	BPH-890921MC	
C. Scottlite, Inc., Haltom City, TX.	BPH-890921ME	
D. Q Prime Inc., Haltom City, TX.	BPH-890921MF	
E. Lin-Mar Broadcasting, Inc., Haltom City, TX.	BPH-890921MG	
F. Mary Gaines, Haltom City, TX.	BPH-890921MH	
G. Cynthia Devaney, Haltom City, TX.	BPH-890921MI	
H. Fort Worth Radio, Incorporated, Haltom City, TX.	BPH-890921MJ	
I. Texas Communications, Inc., Haltom City, TX.	BPH-890921MK	
J. Poder Broadcasting, Inc., Haltom City, TX.	BPH-890921ML	
K. Prairie Broadcasting, Inc., Haltom City, TX.	BPH-890921MN	
L. Haltom City Radio Partners, Haltom City, TX.	BPH-890921MO	
M. The Radio Voice of Haltom City, Inc., Haltom City, TX.	BPH-890921MQ	
N. Jonathan and Mary Lyn Wolfert, a general partnership, Haltom City, TX.	BPH-890921MR	
O. Hispanic Coalition, Inc., Haltom City, TX.	BPH-890921MS	
P. Michael C. Nelms, Haltom City, TX.	BPH-890921MT	
Q. The Anchor Network Limited Partnership, Haltom City, TX.	BPH-890921MX	
R. Lenox Broadcasting Corporation, Haltom City, TX.	BPH-890921MY	
S. O'Day Broadcasting, Ltd., Haltom City, TX.	BPH-890921MZ	
T. R.W. Andrews, Urban J. Endres, Billy Wayne Hooten, Charles R. Bowers d/b/a Haltom Media Services, Haltom City, TX.	BPH-890921NB	
U. John W. Barger, Haltom City, TX.	BPH-890921NC	
V. Melanie Bruton, Haltom City, TX.	BPH-890921NG	
W. Charles B. Johnson, Haltom City, TX.	BPH-890921NH	
X. Metroplex Spanish Broadcasters, Inc., Haltom City, TX.	BPH-890921NT	
Y. Tarrant County Educational Foundation, Haltom City, TX.	BPH-890921MA (Dismissed Herein)	
Z. American Indian Broadcast Group, Inc., Haltom City, TX.	BPH-890921NA (Dismissed Herein)	

Issue Heading and Applicant(s)

1. Air Hazard, B, G, I, K, Q, T, U, V, W
2. Ultimate, A-X
3. Comparative, A-X

II.		
A. Mary Anne Embrey d/b/a Clarksville Radio, Clarksville, IN.	BPH-890630MF	91-98
B. Lisa M. Jenkins, Clarksville, IN.	BPH-890905MA	
C. Irvin Davis, Clarksville, IN.	BPH-890905MB	
D. Valerie Hale, Clarksville, IN.	BPH-890905MC	
E. KRB Broadcasting, Inc., Clarksville, IN.	BPH-890905MD	
F. Q Prime, Inc., Clarksville, IN.	BPH-890905ME	
G. Michael R. Leep, Clarksville, IN.	BPH-890905MF	
H. Nellie Gaines, Clarksville, IN.	BPH-890905MN	
I. Kentuckiana Radio Partners, Clarksville, IN.	BPH-890905MO	
J. Anthony D. Fields & David B. Smith d/b/a Minority Venture Broadcasting, Clarksville, IN.	BPH-890905MR	
K. Sandra Metts-Snowden, Clarksville, IN.	BPH-890905MS	
L. Clarksville Broadcasting Ltd. Partnership, Clarksville, IN.	BPH-890905MU	

Issue Heading and Applicant(s)

1. Comparative, A-L
2. Ultimate, A-L

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth above. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used above to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036. (Telephone (202) 452-1422).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 91-12793 Filed 5-30-91; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for renewal of license of Station WSVE(AM), Jacksonville, Florida, and for a New AM station at Jacksonville Florida:

Applicant	City/state	File No.	MM Docket No.
A. Darrell Spann	Jacksonville, Florida	BR-881003YH	91-126.
B. Spicecom Broadcasting, Inc	Jacksonville, Florida	BP-890103AC	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each issue has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name above is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicant
1. Site Availability	B.
2. Financial Qualifications	B.
3. Comparative	A, B.
4. Ultimate	A, B.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an appendix to this Notice. A copy of the complete Hearing Designation Order in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC 20554. The complete text may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036 (Telephone [202] 452-1422)B.

Stuart B. Bedell,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 91-12794 Filed 5-30-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Port of Tacoma International Transportation Service, Inc.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the Date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200522.

Title: Port of Tacoma/International Transportation Service, Inc. Terminal Agreement.

Parties:

Port of Tacoma,
International Transportation Service, Inc. (ITSI).

Synopsis: The Agreement, filed May 22, 1991, provides for ITSI's 25-year lease and operation of certain marine terminal facilities as well as preferential use of the Port's Berth D Pier 7, together with three installed container cranes.

Dated: May 24, 1991.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-12638 Filed 5-30-91; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-011334.

Title: Columbus/Alianca Agreement.

Parties:

Hamburg-Sudamerikanische,
Dampfschifffahrts-Gesellschaft,
Eggert & Amsinck,
Empresa de Navegacao Alianca S/A.

Synopsis: The proposed Agreement would authorize the parties to charter space to each other on the vessels they operate and to agree as to the number, size and type of vessels they will operate in the trade between Altantic and Gulf Coast ports of the United States, and inland points in the United States and Canada, via such ports and ports and points in Brazil, Uruguay and Argentina, and inland points in Paraguay and Bolivia. The parties will share revenue in proportion to the number of slots allocated to each other and cooperate in the use of shoreside facilities. Further, the parties would also discuss and agree on rates and charges. Adherence to any agreement reached by the parties is strictly voluntary.

Dated: May 28, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-12877 Filed 5-30-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

May 24, 1991.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATES: Comments must be submitted on or before July 1, 1991.

ADDRESSES: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.8(a) of the Board's Rules Regarding Availability of Information, 12 CFR § 261.8(a).

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A copy of the comments may also be submitted to the OMB desk officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Divison of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

Proposal To Approve Under OMB Delegated Authority the Extension, With Revisions, of the Following Report

1. *Report title:* Report of Transaction Accounts, Other Deposits and Vault Cash; Reports of Certain Eurocurrency Transactions; and Advance Reports of Deposits.
Agency form number: FR 2900; FR 2950/51; and FR 2000/2001.
OMB Docket number: 7100–0087.
Frequency: Weekly, Quarterly, Daily—dependent upon report.
Reporters: Depository institutions.
Annual reporting hours: 1,863,459.

Report	Estimated Number of Respondents	Estimated Hours Per Response
FR 2900	9,198 (weekly).	1 to 12 (3.50 avg.)
	5,746 (quarterly).	1 to 12 (3.50 avg.)
FR 2950/2951	796 (weekly)	.2 to 5 (1.000 avg.)
	2 (quarterly)	.2 to 5 (1.00 avg.)
FR 2000	186	.3 to 2.4 (.84 avg.)
FR 2001	540	.3 to 3 (.96 avg.)

Small businesses are affected.

General Description of Reports

This information collection is mandatory (12 U.S.C. 248(a), 461, 603, 615, and 1305(b)(2) and is given confidential treatment (5 U.S.C. 552b(4)).

This package of reports collects information on: deposits and related items from depository institutions that have transaction accounts or nonpersonal time deposits and that are not fully exempt from reserve requirements (FR 2900); Eurocurrency transactions from depository institutions that obtain funds from foreign (non–U.S.) sources or that maintain foreign branches (FR 2950, FR 2951); and selected items on the FR 2900 in advance from samples of commerical banks on a daily basis (FR 2000) and on a weekly basis (FR 2001). The Federal Reserve System proposes to consolidate several items now reported on the FR 2000 as separate items, largerly in response to the reduction to zero of the reserve requirement on nonpersonal time deposits that became effective in December 1990, but also because of developments in deposit markets that have reduced the value of certain items. The proposed revisions would reduce the number of data items collected on the FR 2900 from 21 to 14. Information provided by these reports is used for administering Regulation D—Reserve Requirements of Depository Institutions; or for constructing, analyzing, and controlling the monetary and reserves aggregates or both.

Proposal To Approve Under OMB Delegated Authority the Extension, Without Revision, of the Following Reports:

1. *Report title:* Quarterly Report of Selected Deposits, Vault Cash and Reservable Liabilities; and Annual Report of Total Deposits and Reservable Liabilities
Agency form number: FR 2910q; FR 2910a
OMB Docket number: 7100–0175
Frequency: Quarterly; Annually
Reporters: Depository institutions
Annual reporting hours: 6,139

Report	Estimated Number of Respondents	Estimated Average Hours Per Response
FR 2910q	612	2.00
FR 2910a	6,213	.20

Small businesses are affected.

General Description of Reports

This information collection is mandatory [12 U.S.C. §§ 248(a) and 461] and is given confidential treatment [5 U.S.C. § 552b(4)]

These reports collect information from depository institutions (other than U.S. branches and agencies of foreign banks and Edge and Agreement corporations) that are fully exempt from reserve requirements under the Garn-St Germain Depository Institutions Act of 1982. Information provided by these reports is used to construct and analyze the monetary aggregates and to ensure compliance with Regulation D—Reserve Requirement of Depository Institutions. No changes are proposed for these reports.

2. *Report title:* Allocation of Low Reserve Tranche and Reservable Liabilities Exemption
Agency form number: FR 2930; FR 2930a
OMB Docket number: 7100–0088
Frequency: Annually, and on occasion
Reporters: Depository institutions
Annual reporting hours: 53
Estimated average hours per response: .25
Estimated number of respondents: 210
Small businesses are affected

General Description of Reports

This information collection is mandatory (12 U.S.C. 248(a) and 461) and is given confidential treatment (5 U.S.C. 552b(4)).

This report provides information on the allocation of the low reserve tranche and reservable liabilities exemption for depository institutions having offices (or groups of offices) that submit separate FR 2900 deposits reports. The data collected by these reports are needed for the calculation of required reserves. No changes are proposed for these reports.

Board of Governors of the Federal Reserve System, May 24, 1991.

William W. Wiles,
Secretary of the Board.
[FR Doc. 91–12871 Filed 5–30–91; 8:45 am]
BILLING CODE 6210–01–M

Banca Commerciale Italiana S.P.A., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 19, 1991.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Banca Commerciale Italiana S.P.A., Milan, Italy; to engage *de novo* through its subsidiary, BCI Capital Corporation, New York, New York, in dealing in ineligible securities pursuant to § 225.25(b)(16) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Turtle Lake Bancshares, Inc., Turtle Lake, Wisconsin; to engage *de novo* in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in Turtle Lake, Wisconsin.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Southeast Bancorp of Texas, Inc., Winnie, Texas; to engage *de novo* through its subsidiary, Southwest Financial Services, Winnie, Texas, in providing management consulting services to depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y. These activities will be conducted in the State of Texas and southwest Louisiana.

Board of Governors of the Federal Reserve System, May 23, 1991.

Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 91-12867 Filed 5-30-91; 8:45 am]
BILLING CODE 6210-01-F

Central Illinois Financial Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than June 19, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Central Illinois Financial Corporation, Champaign, Illinois; to acquire Heartland Federal Savings and Loan Association, Mattoon, Illinois, and thereby engage in operating a savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

2. Indiana United Bancorp, Greensburg, Indiana; to acquire Regional Federal Bancorp, Inc., New Albany, Indiana, and thereby indirectly acquire Regional Federal Savings Bank, New Albany, Indiana, and thereby engage in operating a savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 24, 1991.

Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 91-12867 Filed 5-30-91; 8:45 am]
BILLING CODE 6210-01-F

David T. Kearns, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 19, 1991.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. David T. Kearns, Alexandria, Virginia; to acquire 25.54 percent of the voting shares of S.B.T. Financial, Inc., Townsend, Montana, and thereby indirectly acquire The State Bank of Townsend, Townsend, Montana.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. H. Leon Brooks, Beverly Hills, California; to retain 14.95 percent of the voting shares of Professional Bancorp, Inc., Santa Monica, California, and thereby indirectly acquire First Professional Bank, National Association, Santa Monica, California.

Board of Governors of the Federal Reserve System, May 24, 1991.

Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 91-12869 Filed 5-30-91; 8:45 am]
BILLING CODE 6210-01-F

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Siouxland Bank Holding Company; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 19, 1991.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Siouxland Bank Holding Company, Sioux Falls, South Dakota; to become a bank holding company by acquiring 96 percent of the voting shares of Dakota Bankshares, Inc., Fargo, North Dakota, and thereby indirectly acquire Dakota Bank and Trust Co. of Fargo, Fargo, North Dakota, and Hettinger Holding Company, Inc., Hettinger, North Dakota, and thereby indirectly acquire First National Bank of Hettinger, Hettinger, North Dakota.

In connection with this application, Applicant also proposes to acquire Dakota Data Processing, Inc., Fargo, North Dakota, and thereby engage in providing data processing and data transmission services, data bases and facilities for affiliated and nonaffiliated organizations pursuant to § 225.25(b)(7); and Dakota First Trust Company, Fargo, North Dakota, and thereby engage in trust company activities pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 24, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-12870 Filed 5-30-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N-0130]

Research Procurement Co.; Opportunity for Hearing on Proposal To Revoke U.S. License No. 692

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for a hearing on a proposal to revoke the establishment (U.S. License No. 692) and product licenses issued to Research Procurement Co. (RPC) for the manufacture of Source Plasma. The proposed revocations are based on RPC's willful disregard for, and continued noncompliance with, the biologics regulations, which subsume and include the establishment license standards.

DATES: RPC must submit a written request for a hearing by July 1, 1991 and any data justifying a hearing by July 30, 1991. Other interested persons may submit written comments on the proposed revocations by July 1, 1991.

ADDRESSES: Submit a written request for a hearing, any data justifying a hearing, and any written comments on the proposed revocations to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Ann Reed Gaines, Center for Biologics Evaluation and Research (HFB-132), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-295-8188.

SUPPLEMENTARY INFORMATION: FDA is initiating proceedings to revoke the establishment (U.S. License No. 692) and product licenses issued to RPC for the manufacture of Source Plasma. RPC's business office is located at 9916A Holmes Rd., Kansas City, MO 64131, while RPC's physical facilities are located at 6040 Troost Ave., Kansas City, MO 64106.

FDA has determined that RPC has repeatedly failed to conform to the biologics regulations applicable to the manufacture of Source Plasma. Such failures: (1) Have compromised the continued safety, purity, and potency of the Source Plasma; (2) have compromised the assurance of a continuous and healthy donor population; and (3) constitute grounds for license revocations, as provided in 21 CFR 601.5(b). By publishing this notice of opportunity for a hearing in the **Federal Register**, FDA is initiating proceedings on a proposal to revoke the above licenses, as provided in 21 CFR 12.21(b).

FDA conducted an inspection of RPC on January 24 through 31, 1985. That inspection documented deviations from the regulations that included failure to follow procedures for preventing infusion of red blood cells into the wrong donor, repeated acceptance of a permanently deferred donor, and inaccurate recordkeeping. FDA concluded that these deviations constituted a danger to public health and suspended RPC's licenses pursuant to 21 CFR 601.6(a), by letter dated February 13, 1985. RPC took corrective action, and FDA reinstated the licenses on April 19, 1985.

The FDA inspection of RPC conducted on April 22 through 26, 28, 30, and May 1, 1986, documented continuing deviations from the regulations that included incomplete donor screening and acceptance of unsuitable donors. FDA again concluded that these deviations constituted a danger to public health and again suspended RPC's licenses pursuant to 21 CFR 601.6(a), by letter dated May 22, 1986. RPC took corrective action, and FDA reinstated the licenses on August 22, 1986.

Subsequent FDA inspections of the establishment in January 1987, January 1988, and February 1989 documented continuing deviations, including improper disposal of bags and tubing that were contaminated with blood, acceptance of repeat donors more often than allowable within a 7-day period of time, acceptance of a donor without the required physical examination, and inadequate performance of donor screening procedures. FDA requested that RPC take voluntary corrective action following each of these inspections.

The most recent FDA inspection of RPC was conducted on September 5 through 18, 1990. That inspection documented continuing deviations that included inadequate explanation of the acquired immunodeficiency syndrome (AIDS) education information to prospective donors, inadequate explanation of the hazards of the plasmapheresis procedure, inadequate space for the private and accurate screening of donors, inadequate and unclean handwashing facilities, inadequate and uncontrolled disposal of biohazardous waste, and inadequate training and supervision of personnel. FDA again suspended RPC's licenses, pursuant to 21 CFR 601.6(a), by letter dated September 27, 1990, because FDA concluded that these deviations constituted a danger to public health.

Based on RPC's inspectional history and the results of an FDA investigation of RPC conducted concurrently with the September 5 through 18, 1990 inspection, FDA determined that grounds for license revocations existed. In the letter dated September 27, 1990, RPC was advised of FDA's intention to initiate proceedings for license revocations, pursuant to 21 CFR 601.6(b)(1), unless RPC: (1) Requested, subject to evaluation and approval by FDA, that the revocations be held in abeyance pending resolution of the license suspensions, as provided in 21 CFR 601.6(b)(2); and (2) detailed the corrective actions that had been undertaken to remedy all deviations noted in the September 1990 inspection report and in the September 27, 1990, letter.

In a letter dated September 25, 1990, written following the September 1990 inspection, and in a letter dated October 3, 1990, written following receipt of the September 27, 1990, letter, RPC detailed the corrective actions that had been taken to remedy the deviations. In the letter dated October 3, 1990, RPC requested that the license revocations be held in abeyance.

By letter dated November 16, 1990, FDA denied RPC's request that the license revocations be held in abeyance. FDA determined that RPC's inspectional history demonstrated a distinct pattern of noncompliance with and careless disregard for the regulations. FDA concluded that RPC's assurances that corrective actions had been taken, would be adhered to, and would be sustained were not credible and that willfulness existed. In accordance with 21 CFR 601.5(b), RPC was advised that no additional time would be provided in which to demonstrate compliance with the regulations before proceedings would be initiated to revoke RPC's licenses. RPC was offered the option of voluntarily requesting that the licenses be revoked and was advised that, should that option not be elected, FDA would initiate proceedings to revoke the licenses by publishing in the **Federal Register** a notice of opportunity for a hearing on a proposal to revoke the licenses, pursuant to 21 CFR 12.21(b), as provided in 21 CFR 601.5(b).

In a telephone call to FDA on December 11, 1990, RPC declined to voluntarily request license revocations. Thus, under 21 CFR 12.21(b), with this notice, FDA is offering an opportunity for a hearing on a proposal to revoke RPC's licenses.

FDA procedures and requirements governing a notice of opportunity for a hearing, notice of appearance and request for a hearing, grant or denial of a hearing, and submission of data and information to justify a hearing on proposed revocation of licenses are contained in 21 CFR parts 12 and 601. A request for a hearing may not rest upon mere allegations or denials but must set forth a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses submitted in support of the request for a hearing that there is no genuine and substantial issue of fact for resolution at a hearing, the Commissioner of Food and Drugs will deny the hearing request, making findings and conclusions that justify the denial.

FDA has placed copies of letters supporting the proposed license revocations on file under the docket number found in brackets in the heading of this notice in the Dockets Management Branch. Included are the following letters from FDA to RPC: The license suspensions letter, dated February 13, 1985; the license suspensions letter, dated May 22, 1986; the license suspensions letter, dated September 27, 1990; and the letter initiating proceedings for license revocations, dated November 16, 1990. These documents are available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any request for a hearing, any data justifying a hearing, or any comments on the proposed revocations must be submitted in writing to the Dockets Management Branch by the dates specified. Two copies of any submissions should be provided, except that individuals may submit one copy. Submissions should be identified with the docket number found in brackets in the heading of this document. Submissions, except for data and information identified pursuant to 21 CFR 10.20(j)(2)(i) or 18 U.S.C. 1905, are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act (sec. 351 (42 U.S.C. 262)) and the Federal Food, Drug, and Cosmetic Act (secs. 201, 501, 502, 505, 701 (21 U.S.C. 321, 351, 352, 355, 371)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and as redelegated (21 CFR 5.67).

Dated: May 22, 1991.

Gerald V. Quinnan, Jr.,

Acting Director, Center for Biologics, Evaluation and Research.

[FR Doc. 91-12881 Filed 5-30-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91F-0160]

Colorcon; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Colorcon has filed a petition proposing that the food additive regulations be amended to provide for the safe use of polydextrose as a formulation aid in film coatings applied to vitamin and mineral supplement tablets.

FOR FURTHER INFORMATION CONTACT: Rosalie M. Angeles, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that Colorcon, 415 Moyer Blvd., West Point, PA 19486, has filed a petition (FAP 1A4258) proposing to amend the food additive regulations in § 172.841 *Polydextrose* (21 CFR 172.841) to provide for the safe use of polydextrose as a formulation aid (film

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former/adhesion promoter) in film coatings applied to vitamin and mineral supplement tablets.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 23, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-12879 Filed 5-30-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91F-0168]

Parexel International Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Parexel International Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of diethylene glycol monoethyl ether as an excipient in vitamin and mineral dietary supplements.

FOR FURTHER INFORMATION CONTACT: Emily Florio, Center for Food Safety and Applied Nutrition (HFF-334, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-9463.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that Parexel International Corp., One Alewife Place, Cambridge, MA 02140, has filed a petition (FAP 0A4230), on behalf of Gattefosse s.a., Saint-Priest, France, proposing that the food additive regulations be amended to provide for the safe use of diethylene glycol monoethyl ether as an excipient in vitamin and mineral dietary supplements.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not requried and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 22, 1991.

L. Robert Lake,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-12880 Filed 5-30-91; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Hearing: Reconsideration of Disapproval of Georgia State Plan Amendment (SPA)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on June 25, 1991, in room 512, 101 Marietta Street, Atlanta, Georgia to reconsider our decision to disapprove Georgia State Plan Amendment 89-37.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by June 17, 1991.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, Suite 110, Security Office Park, 7000 Security Blvd., Baltimore, Maryland 21207, telephone (301) 597-3013.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Georgia State Plan amendment (SPA) number 89-37.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Georgia SPA 89-37 seeks protection under section 1902(r)(2) of the Act for a policy which the State believes is more liberal than that which is used by the Supplemental Security Income (SSI) program. This policy involves disregarding income from title II benefits that are being withheld to recover a prior overpayment. This policy would apply to various optional categorically needy and poverty level-related Medicaid eligibility groups.

The first issue in this matter is whether the application of the policy in question to some of the groups the State proposes to cover could result in individuals receiving Medicaid with incomes which exceed the Federal Financial Participation (FFP) limits at section 1903(f) of the Act. If the FFP limits could be exceeded would this violate sections 1902(a)(4) and (19) of the Act, which requires States' plans to provide such methods of administration as are found necessary by the Secretary for the proper and efficient operation of the plans? These sections also require States to provide for such safeguards as may be necessary to ensure that eligibility for care and services under the plans will be determined, and such care and services will be provided, in a manner consistent with simplicity of administration and the best interests of recipients. The second issue in this matter is whether the State's policy is eligible for protection under section 1902(r)(2) of the Act.

In general, the Medicaid statute requires States to use the eligibility criteria of the SSI program in determining eligibility criteria of the SSI program in determining eligibility for aged, blind, and disabled individuals. (See section 1902(a)(10)(A) of the Act.) Under section 1902(r)(2) of the Act, States may use more liberal methodologies than are used by the cash assistance programs in determining Medicaid eligibility for certain groups of individuals. However, HCFA believes the States may not use more liberal methodologies in determining income eligibility if those methodologies could result in the FFP limits provided for at section 1903(f) of the Act being exceeded.

In SPA 89-37, the State proposes to disregard income from title II benefits that are being withheld to recover prior overpayments. The State would count as income only the amount of the benefit actually received by the individual, rather than the total amount of the title II benefit. The State proposes to apply this policy to the following eligibility groups:

- Individuals eligible for a home and community-based waiver under section 1902(a)(10)(A)(ii)(VI);

- Individuals eligible under a special income level under section 1902(a)(10)(A)(ii)(VII);
- Individuals eligible under the hospice provision under section 1902(a)(10(A)(ii)(VII); and
- Individuals eligible as Qualified Medicare Beneficiaries and individuals eligible as Qualified Disabled and Working Individuals under section 1902(a)(10)(E).

HCFA believes the policy in question is, in fact, more liberal than SSI. However, it also has the potential for exceeding the FFP limits at section 1903(f). For this reason, HCFA disapproved SPA 89-37 as it applies to the groups consisting of individuals eligible under a home and community-based waiver, a special income level, and under the hospice group. Because the FFP limits do not apply to the poverty-level related groups, HCFA approved SPA 89-37 as it applies to the Qualified Medicare Beneficiaries group. The Qualified Disabled and Working Individuals group is not eligible for protection under section 1902(r)(2) at all. HCFA disapproved SPA 89-37 as it applies to this group.

The notice to Georgia announcing an administrative hearing to reconsider the disapproval of its State plan amendment reads as follows:

Mr. Russ Toal
Commissioner
Georgia Department of Medical Assistance
2 Martin Luther King, Jr. Drive, SE.
1220-C West Tower
Atlanta, Georgia 30334

Dear Mr. Toal:

I am responding to your request for reconsideration of the decision to partially disapprove Georgia State Plan Amendment (SPA) 89-37.

Georgia SPA 89-37 seeks protection under section 1902(r)(2) of the Social Security Act (the Act) for a policy which you believe is more liberal than that which is used by the Supplemental Security Income (SSI) program. This policy involves disregarding income from title II benefits that is being withheld to recover a prior overpayment. This policy would apply to various optional categorically needy and poverty level-related Medicaid eligibility groups.

The first issue in this matter is whether the application of the policy in question to some of the groups the State proposes to cover could result in individuals receiving Medicaid with incomes which exceed the Federal Financial Participation (FFP) limits at section 1903(f) of the Act. If the FFP limits could be exceeded would this violate sections 1902(a)(4) and (19) of the Act, which require States' plans to provide such methods of administration as are found necessary by the Secretary for the proper and efficient operation of the plans? These sections also require States to provide for such safeguards as may be necessary to ensure that eligibility for care and services under the plans will be determined, and such care and services will be provided, in a manner consistent with simplicity of administration and the best interests of recipients. The second issue in this matter is whether the State's policy is eligible for protection under section 1902(r)(2) of the Act.

I am scheduling a hearing on your request for reconsideration to be held on June 25, 1991, at 10 a.m. in room 512, 101 Mariette Street, Atlanta, Georgia. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR part 430.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk at (301) 597-3013.

Sincerely,

Gail R. Wilensky,

Administrator.

Authority: Section 1116 of the Social Security Act (42 U.S.C. section 1316); 42 CFR section 430.18.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: May 23, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 91-12831 Filed 5-30-91; 8:45 am]

BILLING CODE 4120-03-M

[BPD-651-PN]

RIN 0938-AE77

Medicare Program; Geographic Designation for Home Health Agency Branch Offices

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: This proposed notice would clarify the way that cost limits are applied to home health agencies. It proposes that a branch office of a home health agency that is situated in a geographic location that is different from the geographic location of the main office of the home health agency would be subject to the limits on allowable costs in effect for the geographic location in which the branch office is located.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on July 30, 1991.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, attention: BPD-651-PN, P.O. Box 26676, Baltimore, MD 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

If comments concern information collection or recordkeeping requirements, please address a copy of comments to: Office of Management and Budget, Office of Information and Regulatory Affairs, Room 3206, New Executive Office Building, Washington, DC 20503, attention: Allison Herron.

In commenting please refer to file code BPD-651-PN. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Tzvi Hefter (301) 966-4595.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1861(v)(1)(A) of the Social Security Act (the Act) authorizes the Secretary to establish limits on allowable costs for services that may be paid under the Medicare program. These limits are based on estimates of the costs necessary for the efficient delivery of needed health services. The limits may be applied to direct or indirect overall costs or to the costs incurred for specific items or services furnished by a provider. This provision of the Act is implemented under regulations at 42 CFR 413.30. Additional statutory provisions specifically governing the limits applicable to home health agencies (HHAs) are contained in section 1861(v)(1)(L) of the Act.

Under sections 1861(v)(1) (A) and (L) of the Act, we have maintained limits on HHA per visit costs since 1979. The current schedule of limits for HHA cost reporting periods beginning on or after July 1, 1988, was published in the **Federal Register** on October 18, 1988 (53 FR 40771).

These limits are determined in part based on the HHA's urban or rural location and are adjusted to reflect area

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wage differences. As of July 1, 1979, the criterion generally used to classify HHAs' location for purposes of applying cost limits is whether their main offices are located in an urban or nonurban area. We consider urban areas to be those areas located with Metropolitan Statistical Areas (MSAs) or New England County Metropolitan Areas (NECMAs) as identified in the U.S. Department of Commerce publication: Federal Information Processing Standards Publication—Metropolitan Statistical Areas. Thus, a main office of an HHA, which is located in an MSA or a NECMA, is considered urban. Subunits of HHAs can be classified differently from their parent agencies. In 42 CFR 484.2, we define a subunit as a semi-autonomous organization that serves patients in a geographic area different from that of the parent agency. A subunit must independently meet the conditions of participation for HHAs because it is too far from the parent agency to share administration, supervision, and services on a daily basis.

Subunits of private agencies (that is, agencies not operated by a State or local government) are classified according to the location of each subunit. Subunits of public agencies are classified according to the location of the main office of the parent agency.

Branch offices of HHAs are classified according to the location of the main office of the parent agency. Section 484.2 states that a branch office is a location or site from which an HHA provides services within a portion of the total geographic area served by the parent agency. The branch office is part of the HHA and is located sufficiently close to share administration, supervision, and services.

The purpose of the urban and rural designation and the corresponding area wage adjustment is to create a limit that reflects the economic conditions experienced by HHAs. In the past, branch offices were presumed to be located sufficiently close to the parent office to share the same economic environment. However, we have found that changing technology, such as direct computer links, facsimile machines, and electronic mail have resulted in branches being much farther from the parent offices. In many cases, the distance between the parent and branch offices is so great that they no longer share the same economic environment. Because allowable cost limits are intended both to reflect local conditions and apply equally to all providers in the geographical area, in order to ensure that all agenices (parent, branch and subunit) in an area have comparable limits, applying the same limit to the parent and branch offices in all situations may defeat the intent of the cost limits.

II. Provisions of this Notice

This notice proposes to change the method of determining the allowable cost limits for branch offices. We are proposing that in establishing cost limits for HHAs with branch offices, the geographic location of both the parent and branch offices must be considered.

If both the parent office and its branch officies are in the same urban or rural area, the cost limits would be determined by that location. If the parent office and one or more branch offices are in different urban or rural areas, the cost limits, for other than State health department agencies, would be determined separately for the parent office and each branch office. Therefore, the provider would be required to maintain sufficient data to determine the number of visits made by each office. While a single cost report would be filed for all services provided by both the parent and all branches, the cost limits would be computed and applied separately using the applicable wage index for the parent office and each branch office, based on the specific office's location

Because public agencies are required to pay employees under uniform wage scales, public agencies with branches or subunits would continue to be permitted to file a single combined cost report. The wage index would be determined by the location of the parent office without regard to the locaton of the branch offices.

III. Information Collection Requirement

Section II contains information collection requirements which are subject to the Paperwork Reduction Act. Providers would be required to report on separate cost report worksheets the number of visits made by each office so that cost limits would be computed and applied separately for each branch office based on the specific office's location. The burden associated with this collection of information is estimated to be two hours per respondent. A notice will be published in the **Federal Register** when approval is obtained.

Organizations and individuals desiring to submit comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing this burden, should direct them to the OMB official whose name appears in the **"ADDRESSES"** section of this preamble.

IV. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed notice that meets one of the E.O. 12291 criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 milion or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secertary certifies that a proposed notice would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all home health agencies are considered small entities.

This proposed notice would clarify the way that cost limits are applied to HHAs. It proposes that a branch office of a HHA that is situated in a geographic location that is different from the geographic location of the main office of the HHA would be subject to the limits on allowable costs in effect for the geographic location in which the branch office is located.

We believe that this proposed notice may result in lower cost limits for the branch offices of HHAs located in rural areas that have parent offices in urban areas. These lower cost limits would be the result of being paid at the rural cost limit of the branch office rather than the urban cost limit of the parent office. We estimate that there exist 600 HHAs with branch offices and that, on average, each of these HHAs has two branch offices thus totalling 1200 branch offices. We are unable to estimate the effect of this proposed notice on these 1200 HHAs either individually or collectively.

Although we are unable to estimate the costs to these approximately 1200 HHAs, we believe that they are not significant enough to meet any of the threshold criteria of E.O. 12291 or of the RFA. Therefore, we have determined, and the Secretary certifies, that a regulatory impact analysis under E.O. 12291 and regulatory flexibility analysis under the RFA are not required.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed notice would have a significant impact on the operations of a substantial number of small rural hospitals. We have determined, and the Secretary certifies, that this proposed notice would not have a significant economic impact on the operations of a substantial number of small rural hospitals since HHAs are the only affected entities.

Authority: Sec. 1861(v)(1) (A) and (L) of the Social Security Act (42 U.S.C. 1395x(v)(1) (A) and (L).

(Catalog of Federal Domestic Assistence Program No. 13.773 Medicare-Hospital Insurance)

Dated: January 20, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 91-12821 Filed 5-30-91; 8:45 am]

BILLING CODE 4120-01-M

Health Resources and Services Administration

Special Projects of National Significance; Ryan White Comprehensive AIDS Resources Emergency (C.A.R.E.) Act of 1990

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Office of the Administrator, Associate Administrator for AIDS, Health Resources and Services Administration (HRSA), announces that Fiscal Year (FY) 1991 funds are available for grants for Special Projects of National Significance (SPNS). These funds, appropriated under Section 2618(a), of the Public Health Services Act, as amended by title II, Public Law 101-381 (The Ryan White Comprehensive AIDS Resources Emergency Act of 1990), will be awarded to support innovative programs that advance the development of knowledge and skills in the delivery of health and support services for persons with HIV disease.

Applications are invited for projects which address one of the following four Special Project Categories: (1) Projects designed to improve access to health and support services through the reduction of sociocultural, financial and/or logistical barriers for one of the following population groups—(a) rural residents, (b) women, children, and adolescents, (c) incarcerated persons, and/or recently released inmates, or (d) American Indian/Alaska Natives; (2) Projects designed to ensure adequate, appropriate and timely receipt of care to which persons with HIV disease are eligible through the provision of advocacy services; (3) Projects designed to improve the quality of life for persons with HIV disease through the amelioration of social isolation precipitated by learning of their HIV seropositivity or diagnosis of AIDS; and (4) Projects designed to develop a more comprehensive treatment regimen for persons with HIV disease through the integration of mental health scrvices into primary care settings.

Since the program is designed to demonstrate potentially replicable models, an internal evaluation of the project's effectiveness and the means of disseminating the project's findings will be critical components of each project.

HEALTHY PEOPLE 2000 OBJECTIVES: The Public Health Service (PHS) urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (telephone 202-783-3238).

DATES: To receive consideration for competition, grant applications must be received by the Grants Management Officer by July 12, 1991. Applications shall be considered as meeting the deadline if they are either (1) received on or before the deadline date or (2) postmarked on or before the deadline date, and received in time for orderly processing. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be accepted as proof of timely mailing. Applications which do not meet the deadline will be considered late applications and will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: Requests for technical or programmatic information should be directed to the SPNS Coordinator, Mr. George Sonsel, in the Office of the Associate Administrator for AIDS, Health Resources and Services Administration, 5600 Fishers Lane, room 14A-21, Rockville, MD 20857, (301) 443-9976; Fax (301) 443-1550. Grant applications (Form PHS 5161-1, with revised face sheet HHS Form 424 and Program Narrative approved under OMB No. 09370-0189), accompanying guidance materials, and additional information regarding business management or fiscal issues related to the awarding of grants under this notice may be requested from the Grants Management Officer, Ms. Glenna Wilcom; Bureau of Health Resources Development Health Resources and Services Administration, 5600 Fishers Lane, room 13A-38, Rockville, MD 20857 (301) 443-2280; or, Fax (301) 227-6096.

SUPPLEMENTARY INFORMATION:

Program Purpose

The primary purpose of the SPNS program is to contribute to the advancement of knowledge and skills in the delivery of health and support services to persons with HIV disease. This will be accomplished under this program by providing financial and technical support for HIV service related projects which meet the criteria for funding and target one of the specified Special Project categories.

Background

The Ryan White C.A.R.E. Act of 1990, contains a provision under title II, section 2618, subsection (a) entitled "Special Projects of National Significance". This provision states that the Secretary shall use not to exceed ten percent of the funds appropriated under title II to award direct grants to public and non-profit private entities, including community based organizations and tribal health programs, to fund special programs for the care and treatment of persons with HIV disease. It further states that grants awarded under this subsection must be based on the need to assess the effectiveness of a particular model of care, the innovative nature of the project and the project's potential for replicability nationally, in other parts of the country, or within similar population groups.

In establishing the Special Project Categories, consideration was given to the funding areas suggested in the statute; the recommendations of the National HRSA AIDS Advisory Committee, the National Commission on AIDS and the National Workshop on HIV Issues in Rural Areas (July, 1990, Washington, DC); evaluations which have been conducted on the AIDS Service Demonstration Programs; and, other studies which have examined AIDS service delivery issues.

Description of Special Project Categories

The following categories have been selected for support under the SPNS Program.

1. Projects designed to improve access to health and support services through the reduction of sociocultural, financial and/or logistical barriers for one of the

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following populations of persons with HIV disease:

(a) Rural residents (Approximately $.75 million will be awarded for the support of up to three grants, with an average grant of $250,000, under this sub-category.);

(b) Women, children and adolescents (Approximately $1.0 million will be awarded for the support of up to four grants, with an average grant of $250,000, under this sub-category.);

(c) Incarcerated persons, or recently released inmates (Approximately $.3 million will be awarded for the support of up to two grants, with an average grant of $150,000, under this sub-category.); or

(d) American Indians/Alaska Natives (Approximately $.3 million will be awarded for the support of up to two grants, with an average grant of $150,000, under this sub-category.)

Although several points will be funded under this Catagory, applicants should focus on only one of these special populations. In this Special Project Category, consideration is being given to specific access barriers such as inadequate financial resources, variances in language and culture, undeveloped or inadequate service networks in rural areas, etc., that present impediments to receiving adequate care. Where appropriate, the applications should address the unique access barriers experienced by racial and ethnic populations.

2. Projects designed to ensure adequate, appropriate, and timely receipt of health and support services for which persons with HIV disease are eligible through the provision of advocacy services. (Approximately $.45 million will be awarded for the support of up to three grants, with an average grant of $150,000, under Special Project Category 2.)

Barriers to eligibility for receipt of services created as a result of discriminatory behavior and practices may require the use of various types of advocacy services. Projects targeting this category should aim to demonstrate innovative approaches to the design and implementation of such advocacy services.

3. Projects designed to improve the quality of life for persons with HIV disease through the amelioration of social isolation precipitated by learning of their HIV seropositivity or a diagnosis of AIDS. (Approximately $.45 million will be awarded for the support of up to three grants, with an average grant of $150,000, under Special Project Category 3.)

People with HIV infection and AIDS have been known to isolate themselves from family, peers, friends, and colleagues for fear of being rejected. This may be a particular problem for individuals residing in rural areas, individuals of certain racial or ethnic minority groups, or women, although it is a phenomenon that may occur for any person with HIV infection or AIDS. One of the important consequences of this can be a failure of the individual to seek early and appropriate care for their HIV disease. Projects selecting this priority can demonstrate methods of reducing social isolation through various social rehabilitation and/or mental health models.

4. Projects designed to develop a more comprehensive treatment regimen for persons with HIV disease through the integration of mental health services into primary care. (Approximately $.75 million will be awarded for the support of up to three grants, with an average grant of $250,000, under Special Project Category 4.)

There are myriad mental health related complications of HIV disease, including, suicidal risk, anxiety reaction, dementia, antisocial behavior, addictive behavior, and others. Left unrecognized and untreated, these conditions may complicate the overall care and treatment process for the HIV infected. This priority will seek to demonstrate innovative approaches to incorporating mental health activities within the scope of primary care services to prevent and/or treat these conditions early in their development.

Availability of Funds

Approximately $4.0 million is available in FY 1991 for new competitive projects. The budget periods for approved and funded projects will begin on or about October 1, 1991. Project periods may be requested for up to 3 years. Grants to support projects beyond the first budget year will be contingent upon the availability of funds and satisfactory progress in meeting the project's objectives. Applicants are required to submit budgets for each proposed project year.

Eligible Applicants

The statute, in section 2618 (a)(1), provides that grants may be awarded to public and non-profit private entities, including community based organizations, to fund special programs for the care and treatment of individuals with HIV disease. Eligible entities may include, but are not limited to, State or local health departments, public or private hospitals, community based service organizations, tribal health programs, institutions of higher education, and national organzations of service providers.

Review Criteria

Applications for the SPNS program grant will be reviewed and rated by an objective review committee. Criteria for the technical review of applications will include the following:

1. Adequacy of the justification of the need for the proposed program within the target population to be served by the project.

2. A comprehensive understanding of HIV service delivery issues as they related to the project's goals.

3. A clearly defined and realistic management plan which includes attainable, time framed, and measureable project goals and objectives that specifically relate to the selected Special Project Category, the program methodology and the population to be served by the proposed project.

4. The demonstrated capability of the applicant organization to provide competent fiscal and program management, as demonstrated in the consistency of the budget justification with the level of effort proposed; the level of expertise required in the personnel specifications; a feasible management plan; and, a plan for continuation of the program, if indicated, beyond the project period.

5. The strength of the internal evaluation plan for the project which includes dissemination of the project findings.

6. The applicant's conformance of the SPNS program guidelines, i.e., the need to study a particular model of care and treatment, the innovativeness of the proposed project, and its potential for replicability.

7. Evidence of coordination of the proposed project with other HIV related activities within the proposed project area, including knowledge about HIV service activities within their States and localities.

Other Grant Information

Allowable Costs

The basis for determining the allowability and allocability of costs charged to PHS grants is set forth in 45 CFR part 74, subpart Q and 45 CFR part 92 for State and local governments. These regulations implement the five separate sets of cost principles prescribed for grant recipients, which are: OMB circular A–87 for State and local governments; OMB circular A–21 for institutions of higher education; 45 CFR part 74, appendix E for hospitals; OMB circular A–122 for nonprofit organizations.

Reporting and Other Requirements

A successful applicant under this notice will submit reports in accordance with provisions of the general regulations which apply under 45 CFR part 74, subpart J. Monitoring and Reporting of Program Performance, with the exception of State and local governments to which 45 CFR part 92, subpart C reporting requirements will apply. Additionally, all applicants will be expected to develop a management plan that includes the program methodology and evaluation techniques. This will be stated in the form of goals and objectives and be the basis for progress reporting to HRSA. Grantees will also be expected to cooperate with HRSA, or its contractors, in conducting an overall evaluation of the SPNS Program.

Executive Order 12372

The Special Projects of National Significance Grant Program has been determined to be a program subject to the provisions of Executive Order 12372, concerning intergovernmental review of Federal Programs, as implemented by 45 CFR part 100. Executive Order 12372 allows states the option of setting up a system for reviewing applications from within their states for assistance under certain Federal programs. The application package under this notice will contain a listing of States which have chosen to set up such a review and will provide a point of contact in the States for the review. Applicants should promptly contact their State single point of contact (SPOC) and follow their instructions prior to the submission of an application. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for a State to process recommendations is 60 days after the application deadline for new and competing awards. The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date. (See part 148 Intergovernmental Review of PHS Programs under Executive Order 12372 and 45 CFR part 100 for a description of the review process and requirements.)

The OMB Catalog of Federal Domestic Assistance number for the Special Projects of National Significance is 93.928.

Dated: April 8, 1991.

John H. Kelso,

Acting Administrator.

[FR Doc. 91–12878 Filed 5–30–91; 8:45 am]

BILLING CODE 4160–15–M

Office of Human Development Services

Federal Council on the Aging; Meeting

AGENCY HOLDING THE MEETING: Federal Council on the Aging.

TIME AND DATE: Meeting begins at 9 a.m. ends at 4:30 p.m. on Tuesday, June 11, 1991, begins at 9 a.m. and ends at 4:30 p.m. on Wednesday, June 12, 1991.

PLACE: On Tuesday, June 11, from 9 a.m. to 4:30 p.m., in room 632 of the Dirksen Senate Office Building, and Wednesday, June 12, from 9 a.m. to 4:30 p.m., in the Snow Room, Fifth Floor of the Wilbur J. Cohen Federal Office Building, 330 Independence Avenue, SW., Washington, DC 20201.

STATUS: Meeting is open to the public.

CONTACT PERSON: Kevin W. Parks, room 4280, Wilbur Cohen Federal Building, 330 Independence Avenue, SW., Washington, DC 20201 (202) 619–2451.

The Federal Council on the Aging was established by the 1973 Amendments to the Older Americans Act of 1965 (Pub. L. 93–29, 42 U.S.C. 3015) for the purpose of advising the President, the Secretary of Health and Human Services, the Commissioner on Aging and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to the Federal Advisory Committee Act (Pub. L. 92–453, 5 U.S.C. App. 1, Sec. 10, 1976) that the Council will hold its final meeting for FY 91 on June 11 and 12, 1991, from 9 a.m. to 4:30 p.m., respectively.

The agenda will include: The Council's regular business meeting during the morning session on Tuesday, June 11 from 9 a.m. to 12 noon. The afternoon session will begin at 1:30 p.m. and end at 4:30 p.m. and will be devoted to work sessions of the Council's Committee on Mental Health and the Elderly, Task Force on the National Eldercare Campaign, Planning and Budget Committee, and Membership Committee.

On Wednesday, June 12, 9 a.m. to 12 noon, the morning session will be devoted to reports of the four committees and discussion of future activities. The afternoon session will begin at 1:30 p.m. and end at 4:30 p.m. and will focus on the development of meeting topics and agenda for the remainder of calendar year 1991.

Dated: May 24, 1991.

Ingrid C. Azvedo,

Chairperson, Federal Council on the Aging.

[FR Doc. 91–12822 Filed 5–30–91; 8:45 am]

BILLING CODE 4130–01–M

National Institute of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting, National Digestive Diseases Advisory Board

Pursuant to Public Land 92–463, notice is hereby given of the meeting of the National Digestive Disease Advisory Board on July 22, 1991. The meeting will begin at 8 a.m. and adjourn at 5 p.m. The meeting, which will be open to the public, will be held at the Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, Virginia 22032. The meeting will include a conference on liver transplantation as well as discussion regarding the Board's activities and continued evaluation of the implementation of the longrange digestive diseases plan. The conference portion of the meeting will enable the Board to develop a position statement on selected issues regarding liver transplantation that will aid the Board in its subsequent recommendations. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Digestive Diseases Advisory Board, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496–6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contracting his office.

Dated: May 22, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–12832 Filed 5–30–91; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Commercial Use Fees on National Wildlife Refuges in Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that special use permit fees for commercial uses on National Wildlife Refuges (Refuges) in Alaska are bring revised. The revised fee schedule is proposed to

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become effective on January 1, 1992. Fees equal to 50% of the proposed fee schedule will be charged during 1992. Full fees will be charged starting in 1993.

The proposed fee schedule is intended for publication in the Fish and Wildlife Service's (Service) Region 7 (Alaska) Policy Manual. The fee revision is needed in order for the Service to meet Federal mandates. These mandates require fee determinations to be based on fair market values, and that the Service attempts to recover costs of administering revenue producing commercial activities on Refuge lands. The Service is publishing this notice for the purpose of seeking comments and recommendations in written form from agencies of State, local, and Federal government; groups and organizations; and individuals with an interest in this matter.

DATES: Comments on this revision of fees must be received by July 30, 1991.

ADDRESSES: Comments should be sent to Daryle R. Lons at the following address.

FOR FURTHER INFORMATION CONTACT: Daryle R. Lons, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3354.

SUPPLEMENTARY INFORMATION: The following fee schedule is proposed for guides, outfitters, and transporters that are issued special use permits to conduct commercial operations on National Wildlife Refuges in Alaska. Fees for other non-recreational types of commercial activities that involve removing marketable resources or utilizing reserved sites will not be based on the following proposed fee schedule. Fees for these types of commercial activities will be determined by the Service's Division of Realty and will be based on fair market value analysis surveys. These surveys will be conducted periodically to assure that fees reflect current market values.

The Service considered a number of methods for meeting the required mandates. Four alternatives were given serious consideration. These alternatives were: (1) A single fixed fee of $350 for all commercial permittees, (2) a fee schedule based on type of commercial use activity and actual client numbers, (3) a fee schedule based on permittee calculations, made after the permit use period, of 3% of adjusted gross income derived from commercial activities that are authorized by special use permit on Refuge lands, and (4) a fee schedule based on permittee estimates, made prior to the permit use period, of 3% of anticipated adjusted gross income derived from commercial activities that are authorized by special use permit on Refuge lands.

The Service proposes to adopt alternative 4 because it appears that it will be: (1) Equitable to all commercial use permittees, regardless of whether they operate on a small or large scale, (2) charging a fair market value, (3) reasonably consistent with the fee schedule of other Federal agencies in Alaska, and (4) cost effective for the government to administer.

The proposed fee system is similar to what the Bureau of Land Management, Department of the Interior; and the Forest Service, Department of Agriculture; currently use for similar commercial use activities on public lands. Under these agencies' systems, permittees estimate their level of commercial use and pay fees prior to the use period. After the use period, permittees calculate the actual fees owned and the difference is paid to the government by the permittee, applied to the permittee's estimated fees for the next year, or refunded.

The Service's proposed fee schedule system requires permittees to estimate adjusted gross incomes prior to each year's use period and then pay the fixed fee of the category that the estimate is in (see proposed fee schedule chart). This estimate is used exclusively to determine the annual fee due the government. Final fee calculations after the use period are not required under this proposal. All special use permits will have a clause that states all of the permittee's financial records, including Internal Revenue Service income reporting forms, will be subject to review by the refuge manager. Providing significantly inaccurate income estimates will, with due process, be considered grounds for revocation of the permit and could result in legal action, financial penalties and denial of future permit requests for lands administered by the Service.

Special circumstances may justify fee reductions/fee waivers on a case by case basis.

Permit fees shall generally be non-refundable. Refuge Managers may authorize the refund of a partial fee payment, under unusual circumstances, where the permittee can sufficiently demonstrate that the level of actual commercial use was significantly less than the estimated level because of reasons beyond the permittee's control. In these cases, fees will only be refunded above the amount that is needed to fully recover the government's expenses in administering the permit.

Estimates for fees due the government will be made by the permittee using the following guidelines:

A. General Procedure

1. Estimating the total of all customer payments to be received by the permittee, their employees, or agents for goods or services provided in connection with commercial activities authorized by the special use permit; whether provided on refuge lands or related waters, or not;

2. Adjusting the estimated total customer payments by:

a. Subtracting allowable deductions (see B.1).

b. Applying applicable discounts for off-refuge land use (see B.2.).

3. The resulting figure, after the applicable adjustments are made in step 2, will determine which category of adjusted gross earnings is to be used (see following proposed fee schedule). The fixed fee for this category is the amount due the Service.

B. Deductions and Discounts

1. *Deductions for Transportation and Lodging*—Deductions shall be allowed for certain client transportation and lodging costs before arrival at the beginning of a trip, and after departure at the end of a trip from a permittee's headquarters or local community. These deductions may not include costs incurred between the permittee's headquarters or local community and the refuge lands, or for costs incurred during the permitted activity or trip regardless of public or private land status.

a. *Transportation Deductions*—For applicable transportation described above, the estimated costs to be incurred may be deducted, provided they are reasonable and consistent with local area charges.

b. *Lodging Deductions*—Estimated lodging costs to be paid or borne by the permittee which will be incurred on non-refuge lands, before or after the permitted activity, may be deducted up to the estimated amount to be paid, to the extent they are consistent with local community rates. Costs incurred for lodging on non-refuge lands during the trip shall not be deducted; however, the time spent on non-refuge land may be applied to the discount for non-refuge land use.

2. *Discount for Non-Refuge Land Use.*—A discount shall be allowed for time spent off refuge land or related waters (see Table 1.) which occurs between the time when a customer leaves a permittee's headquarters or local community at the beginning of the trip, and when they return at the end of a trip. Permittees must make sure there is no overlap or double deduction with transportation costs in section B.1. above.

TABLE 1

Percent of total time on refuge land or related waters	Fee reduction (percent)	Multiplication factor
1–5	80	20
6–60	40	.60
61–100	None	None

Additonal fees will be charged all commercial users for reserved site authorizations. These fees will be based on fair market value of sites and will be different for various geographic areas. Periodic surveys will be conducted to determine fees which reflect current fair market values. Commercial transporters who don't actually physically transport clients from one place to another on refuge lands, but who just "drop off or pick up" clients from refuge lands, will only be required to pay the minimum annual permit fee of $100.

The proposed fee schedule follows:

Permit fee (3% of adjusted gross)	Adjusted gross earnings from activities authorized on refuge lands
$100	$0–3,500
200	3,5001–10,000
300	10,001–20,000
600	20,001–30,000
900	30,001–40,000
1,200	40,001–50,000
1,500	50,001–60,000
1,800	60,001–70,000
2,100	70,001–80,000
2,400	80,001–90,000
2,700	90,001–100,000
3,000	101,00–110,000
3,300	110,001–120,000
3,600	120,001–130,000
3,900	130,001–140,000
4,200	140,001–150,000
4,500	150,001–160,000
4,800	160,001–170,000
5,100	170,001–180,000
5,400	180,001–190,000
5,700	190,001–200,000
3%	Over 200,000

Dated: May 21, 1991.

Walter O. Stieglitz,

Regional Director, Region 7, U.S. Fish and Wildlife Service.

[FR Doc. 91–12927 Filed 5–30–91; 8:45 am]

BILLING CODE 4310–55–M

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–754748

Applicant: San Diego Zoo, San Diego, CA.

The applicant requests a permit to import two pairs of captive hatched blyth's tragopan (*Tragopan blythii*) and one male captive hatched cabot's tragopan (*T. caboti*) from Glen Howe, Canada for the purpose of captive propagation.

PRT–756164

Applicant: Larry Johnson, Orange, CA.

The applicant requests a permit to purchase in interstate commerce from Wildlife Safari, Winston, Oregon and export one captive born female white-handed gibbon (*Hylobates lar*) to the Guadalajara Zoo, Mexico for the purpose of captive propagation and education.

PRT–757837

Applicant: U.S. Fish and Wildlife Service, Patuxent Wildlife Research Center, Laurel, MD.

The applicant requests a permit to import up to 12 eggs and 20 blood samples collected in the wild from Eurasian peregrine falcons (*Falco peregrinus peregrinus*) for the purpose of evaluating the contaminant burdens in the eggs and genetic indicators in blood of U.S.S.R. populations of this species.

PRT–758093

Applicant: Florida Marine Research Institute, Dept. of Natural Resources, St. Petersburg, FL.

The applicant requests a permit to import (blood and tissue samples from live animals and organs, gut contents, and bones salvaged from animals taken and butchered by indigenous people for substistence use) green sea turtle (*Chelonia mydas*), loggerhead turtle (*Caretta caretta*), and hawksbill turtle (*Eretmochelys imbricata*) from Panama and Bermuda for the purpose of scientific research.

PRT–702631

Applicant: U.S. Fish and Wildlife Service, Regional Director Region 1, Portland, OR.

The applicant requests an amendment of their current permit to authorize additional take activities (remove nestlings from the wild to establish a captive breeding population and release to the wild birds produced from the captive population) with the San Clemente Island loggerhead shrike (*Lanius ludovicianus mearnsi*) for scientific purposes and the enhancement of propagation or survivial in accordance with the California Channel Island Species document.

PRT–758470

Applicant: San Diego Wild Animal Park, San Diego, CA.

The applicant requests a permit to import one captive-born male Przewalski's horse (*Equus przewalskii*) from Munchner Tierpark Hellabrunn, Germany, for the purpose of education and display.

PRT–758779

Applicant: Frederick J. Schlack, McHenry, IL.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. D. Parker, Elandsberg Farms, Constantina, South Africa for the purpose of enhancement of survivial of the species.

PRT–755877

Applicant: San Diego Wild Animal Park, San Diego, CA.

The applicant requests a permit to reexport one male and one female Manchurian crane (*Grus japonensis*), captive hatched at the Osaka Zoo, Japan and the Guangzhou Zoo, China, to the Hong Kong Zoological and Botanical Gardens, Hong Kong, for breeding purposes.

Written data or comments should be submitted to the director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45–4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: May 24, 1991.

Maggie Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 91–12880 Filed 5–30–91; 8:45 a.m.]

BILLING CODE 4310–55–M

Fish and Wildlife Service; Receipt of Application for Permit

The public is invited to comment on the following application for a permit to conduct certain activities with marine

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mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Applicant: Homer Society of Natural History, Inc.; File No. PRT 756274.

Address: Homer, AK.

Type of Permit: Public display.

Name and Number of Animals: Alaskan sea otter (*Enhydra lutris lutris*); 3.

Summary of Activity To Be Authorized: The applicant proposes to Import one mount and two pelts of one adult female and two pups to transport throughout the U.S. in a traveling exhibit to various museums for public display.

Source of Marine Mammals for Research Public Display: Anchorage, Alaska; Homer Alaska; and Seldovia, Alaska.

Period of Activity: Spring 1991 until tour of display is completed.

Concurrent with the publication of this notice, the Office of Management Authority is forwarding copies of the applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments and/or requests for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45–4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: May 28, 1991.

Maggie Tieger,

Acting Chief, Branch of Permits Office of Management Authority.

[FR Doc. 91–12876 Filed 5–30–91; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[AZ–040–01–4320–02]

Meeting for the Safford District Advisory Council and Grazing Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bureau of Land Management (BLM), Safford District announces a forthcoming joint meeting of the Safford District Advisory Council and Grazing Advisory Board.

DATES: Wednesday, June 19, 1991, 8:30 a.m..

ADDRESSES: BLM Office, 425 E. 4th St., Safford, Arizona 85546.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Public Law 92–463 and 94–579. The agenda for the meeting will include:

1. Heritage Program (Arizona Game and Fish Department).
2. San Carlos Apache Reservation boundary fence.
3. North Santa Teresa Wilderness and Black Rock Road (BLM/BIA).
4. Gila Box Riparian National Conservation Area Advisory Committee.
5. Management Updates.
6. Grazing Advisory Board Business Meeting.

Council and Board members will meet at the BLM Office, 425 E. 4th Street, Safford, Arizona at 8:30 a.m. From there they will depart via BLM-provided vehicles for the meeting location at the Black Rock Allotment headquarters located approximately 15 miles southwest of Ft. Thomas, Arizona. Members of the public may attend the meeting, but must provide their own transportation. It is expected the Council and Board members will return to Safford by 5 p.m.

Interested persons may make oral statements to the Council or Board, or may file written statements for consideration by the Council or Board. Anyone wishing to make an oral statement must notify the District Manager by Tuesday, June 18, 1991. Depending on the number of people wishing to make oral statements, a per person time limit may be considered.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within thirty (30) days following the meeting.

Dated: May 21, 1991.

Jerome H. Satterlee,

Acting District Manager.

[FR Doc. 91–12928 Filed 5–30–91; 8:45 am]

BILLING CODE 4310–32–M

[WY–920–41–5700; WYW97705]

Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of Public Law 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW97705 for lands in Sweetwater County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW97705 effective February 1, 1991, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Beverly J. Poteet,

Supervisory Land Law Examiner.

[FR Doc. 91–12806 Filed 5–30–91; 8:45 am]

BILLING CODE 4310–22–M

[AZ–930–01–4214–11; A–9706]

Expiration of Withdrawal and Opening of Land; Arizona

May 23, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: United States Forest Service withdrawal under Public Land Order No. 5763, expired on September 25, 1990. The order withdrew 320 acres of U.S. Forest Service administered land in the Coconino National Forest in Coconino County. The withdrawal, effective for a 10-year period, withdrew the land from operation of the mining laws only in support of U.S. Forest Service vegetative research and resource management programs. This action will open the land

to location and entry under the United States mining laws.

EFFECTIVE DATE: Expiration of Public Land Order No. 5763 was effective on September 25, 1990. The land will be opened to mining at 10 a.m. MST on July 1, 1991.

FOR FURTHER INFORMATION CONTACT: John Mezes, Bureau of Land Management, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, 602–640–5509.

SUPPLEMENTARY INFORMATION: Pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, the following described land is hereby relieved of the segregative effect of Public Land Order No. 5763, and opened to location and entry under the United States mining laws.

Gila and Salt River Meridian

T. 19 N., R. 5 E.,
Sec. 15, SW¼SW¼NE¼, S½SE¼NW¼, NE¼SW¼, N½SE¼SW¼, W½NW¼SE¼, and NW¼SW¼SE¼;
Sec. 22, S½NW¼SW¼, SW¼SW¼, and W½SE¼SE¼;
Sec. 27, SW¼NW¼NE¼, W½, SW¼NE¼, NE¼NW¼, NE¼NW¼NW¼, and SE¼NW¼.

The area described contains 320 acres in Coconino County, Arizona.

Beaumont C. McClure,

Deputy State Director, Lands and Renewable Resources.

[FR Doc. 91–12929 Filed 5–30–91; 8:45 am]

BILLING CODE 4310–32–M

[AK–040–01–4230–21; AA–58203]

Realty Action: FLPMA Lease Proposal Near Farewell Landing Strip, Alaska

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of realty action.

SUMMARY: This notice of realty action involves converting a permit to a lease on public lands administered by the Bureau of Land Management. The lease is intended to authorize continued use of approximately one (1) acre of land for a trapping cabin west of the Farewell Landing Strip and approximately 55 miles southeast of McGrath, Alaska. This land has been examined and found suitable for leasing under the provisions of section 302 of the Federal Land Policy and Management Act of 1976, and is located within the following described area:

Seward Meridian, Alaska

T. 28 N., R. 27 W.,
Secs. 24 and 25 those portions within a one acre parcel around the existing trapping cabin.

The area described contains 1.00 acre.

The above land would be offered noncompetitively to the current permittee and owner of the improvements, Mr. Dewayne G. Covey of Farewell, Alaska, under a renewable ten (10) year lease at no less than fair market rental. In addition, the lessee shall reimburse the United States for reasonable administrative and other costs incurred by the United States in processing and monitoring the lease. (The general terms and conditions for leases are found in 43 CFR 2920.7.)

DATES: Interested parties may submit comments on or before July 1, 1991.

ADDRESSES: Comments must be submitted to the Anchorage District Manager, 6881 Abbott Loop Road, Anchorage, Alaska 99507–2599.

FOR FURTHER INFORMATION CONTACT: Sandra Dunn (907) 267–1214.

Richard J. Vernimen,

Anchorage District Manager.

[FR Doc. 91–12931 Filed 5–30–91; 8:45 am]

BILLING CODE 4310–JA–M

[AZ–020–01–4212–11; AZA–24614]

Realty Action: Recreation and Public Purposes (R&PP) Act Lease/Conveyance

The following described lands, located near the city of Florence, Pinal County, Arizona, have been found suitable for lease/conveyance to the Arizona National Guard (to be used in conjunction with lands that have been withdrawn for the Guard, EO 1633), and are so classified under the Recreation and Public Purpose Act of June 14, 1926, as amended (44 Stat. 471: 43 U.S.C. 869 et seq.).

Gila and Salt River Meridian, Arizona

T. 4 S., R. 10 E.,
Sec. 8, SE¼;
Sec. 9, All;
Sec. 17, NE¼NE¼.
Containing 840 acres.

These lands are not needed for federal purposes. Through the environmental assessment process, it has been determined that the lease/conveyance of these lands would not affect any BLM programs and would be in the public interest.

The lease/conveyance would be subject to the following conditions:

1. Provisions of the Recreation and Public Purpose Act and all regulations of the Secretary of the Interior.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

3. A right-of-way for ditches and canals constructed by the authority of the United States.

4. All rights reserved for the Central Arizona Project by A–977 and AR–031307.

Upon publication of this Notice in the Federal Register, these lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purpose Act.

For a period of (45) days from the date of publication of this Notice, interested parties may submit comments regarding this proposed lease/conveyance or classification of these lands to the District Manager, Phoenix District Office, 2015 W. Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be evaluated by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this Notice. Further information concerning this realty action may be obtained from the Phoenix Resource Area, Phoenix District at (602) 863–4464.

Dated: May 15, 1991.

Kirby Boldan,

Acting District Manager.

[FR Doc. 91–12932 Filed 5–30–91; 8:45 am]

BILLING CODE 4310–31–M

[CO–050–4212–11]

Realty Action: Park County, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action COC–52691, Recreation and Public Purpose Classification and Application for Lease and Patent, for a Gliderport and Campground, Park County, Colorado.

SUMMARY: The following public lands are being examined for classification under the Recreation and Public Purposes Act (R&PP) of July 14, 1926, as amended, 43 U.S.C. 869 et. seq., and the regulations thereunder 43 CFR 2740. The public lands involved are segregated from the public land laws including the general mining laws, except for applications for R&PP lease and patent.

Sixth Principal Meridian, Colorado

T. 8 S., R. 76 W., sec. 27, SW¼SE¼, SE¼SW¼ (east of U.S. Highway 285);
Sec. 34, W½NE¼, SE¼NE¼, NW¼ (east of U.S. Highway 285, and north of Park

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County Road No. 15, Elkhorn Road), NE¼SW¼ (north of Park County Road No. 15, Elkhorn Road), SE¼ (north of Park County Road No. 15, Elkhorn Road); containing approximately 425 acres of public land.

DATES: Interested parties may submit comments on this action for a period on or before July 15, 1991. Comments should be directed to the District Manager, BLM, P.O. Box 2200, Canon City, CO 81215–2200. Objections will be reviewed and this realty action may be sustained, vacated, or modified. Unless vacated or modified, this realty action will become the final.

ADDRESSES: Bureau of Land Management, Royal Gorge Resource Area, P.O. Box 2200, Canon City, CO 81215–2200.

FOR FURTHER INFORMATION CONTACT: Mark Pyle, Realty Specialist, Bureau of Land Management, Royal Gorge Resource Area, P.O. Box 2200, Canon City, Colorado 81215–2200; Phone: (719) 275–0631.

SUPPLEMENTARY INFORMATION: The purpose of the classification and application for an R&PP lease and/or patent is to allow recreational development investment on public land by the Park County Board of County Commissioners for use as a gliderport and campground. The proposed classification would be consistent with BLM land use plans for the area. Since an application has been filed, segregation will continue until cancelled.

A grazing lease will have to be cancelled in part if the application is approved. If issued, the lease will be subject to any valid existing rights. A perpetual reverter clause will be in any patent; title will revert to the U.S. if the property is put to another use or transfer of the property is attempted.

Donnie R. Sparks,
District Manager.
[FR Doc. 91–12933 Filed 5–30–91; 8:45 am]
BILLING CODE 4310–JB–M

[G–010–5101–09–G002/G1–0114; NMNM 83311]

Right-of-Way Application; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: An application, serialized as NMNM 83311, was received for a 5.42 mile right-of-way for a 42 inch diameter pipeline.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973, (37 Stat. 576), El Paso Natural Gas Company has applied for a right-of-way serialized as NMNM 83311 to construct 5.42 miles of 42 inch diameter natural gas pipeline across public land in San Juan County, New Mexico. This is part of a project that will transport natural gas to California markets. The proposed line crosses the following public lands in San Juan County.

New Mexico Principal Meridian

T. 29 N., R. 11 W.,
Sec. 26, NW¼NW¼;
Sec. 27, S½SE¼;
Sec. 33, E½SE¼;
Sec. 34, NW¼NE¼, NE¼NW¼, SW¼NW¼, NW¼SW¼.
T. 28 N., R.11 W.,
Sec. 9, SE¼NE¼;
Sec. 10, NW¼NW¼;
Sec. 16, N½NE¼, SW¼NE¼, E½SW¼, NW¼SE¼;
Sec. 20, SE¼NE¼, N½SE¼, SW¼SE¼, SE¼SW¼;
Sec. 29, N½NW¼, SW¼NW¼.

The purpose of this notice is to inform the public that the Bureau will be deciding whether the right-of-way should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, 435 Montano Road NE., Albuquerque, New Mexico 87107.

Dated: May 16, 1991.

Steve Henke,
Acting Associate District Manager.
[FR Doc. 91–12930 Filed 5–30–91; 8:45 am]
BILLING CODE 4310–FB–M

[CA–068–00–7123–52–D094]

Implementation of the Dumont Dune OHV Area Management Plan: Barstow Resource Area, Desert District, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of implementation of the Dumont Dunes Off-Highway Vehicle (OHV) Area Management Plan, and Establishment of Supplementary Rules for the Dumont Dunes OHV Area, San Bernardino County, CA.

SUMMARY: The Interim Critical Management Program designated Dumont Dunes as an OHV area in 1973. Seven years later the California Desert Conservation Area (CDCA) Plan reassessed this decision and continued the OHV area designation. This designation provides the opportunity for "Intensive" multiple-use and "Open" vehicle-use. The planning area surrounds the OHV area and includes public land within T. 17N., R. 6E.–7E.–8E.; T. 18N., R. 6E.–7E.–8E.; T. 19N., R. 6E.–7E–8E, SBBM. Actions in the management plan identify methods to enhance OHV recreation opportunities, visitor safety and primary vehicle access, delineate the boundary and expand the OHV area. Area expansion has already been accomplished through a CDCA Plan amendment.

Authorities for the management plan are 43 CFR 8340, 8341, 8342 and 8360; Federal Land Policy and Management Act of 1976 section 202(e)); National Environmental Policy Act of 1969; and the CDCA Plan of 1980, as amended. Six public meetings were held to acquire written and oral comments throughout the planning process. the draft plan was revised to reflect public input and the final was approved on June 4, 1990. The decision to implement the management plan was made on the basis of the environmental assessment (EA) which considered the environmental effect of the proposed action. No significant adverse effects were found and a Finding of No Significant Impact (FONSI) was made. The management plan, EA and FONSI are available for the public at the Barstow BLM office.

Implementation of the management plan will prevent environmental degradation in adjacent sensitive areas and encourage safe recreational use within the OHV area. The plan prescribes these major actions: Amend the CDCA Plan to expand the Dumont Dunes OHV Area from 2,718 acres to 8,327 acres; Acquire non-Federal land through purchase or exchange; Cancel right-of-way grants #R–4265 and R4267; Construct two information kiosks; Publish an OHV area brochure; Establish and equip a volunteer organization; Identify hazards on the Tonopah & Tidewater Railroad grade; Establish a designated route from the Amargosa River crossing to the parking area; Whip antenna with flag required in OHV area; No glass beverage containers in OHV area; Sign the boundary and routes crossing the boundary; Post designated routes and route closure information; No parking, staging or camping along portions of Dumont Road and the Amargosa River; Rehabilitate closed routes; Conduct a Class III cultural inventory of previously unsurveyed areas; Upgrade the intersections of access roads and Highway 127; Improve Dumont Road from the Amargosa River crossing to top

of mesa; Develop an improved access road to the Little Dunes; Maintain the access roads; Monitor effectiveness of plan implementation.

In order to fully implement selected recommendations in the final management plan, the following supplementary rules are promulgated to provide for the protection of persons, property and public land resources:

(1) All off-highway vehicles registered under California Vehicle Code Section 38010 or other off-road vehicles as defined in 43 CFR 8340.0-5(a) operating within the Dumont Dunes OHV Area shall be equipped with a whip, which is any pole, rod, mast or antenna, that is securely mounted on the vehicle and which extends at least eight (8) feet from the surface of the ground when the vehicle is stopped. When the vehicle is stopped, the whip shall be capable of standing upright when supporting the weight of any attached flags. At least one whip attached to each vehicle shall have a solid red or orange colored safety flag with a minimum size of six (6) inches by twelve (12) inches and be attached within ten (10) inches of the top of the whip. Flags may be of pennant, triangle, square or rectangular shape. Club or other flags may be mounted below the safety flag or on a second whip.

(2) Unless otherwise authorized by the Area Manager, Barstow Resource Area, no person within the Dumont Dunes OHV Area shall have, possess, or use any cup, tumbler, bottle, jar or container of whatever nature, empty or not, which is made of glass and used for carrying or containing any liquid for drinking purposes, except that persons may pick up glass containers discarded by others and remove or deposit same in approved trash receptables.

(3) Parking, staging and camping is prohibited within 500 feet of either side of Dumont Road from the intersection of Dumont Road and Highway 127, to where the Amargosa River crosses Dumont Road; and within 500 feet of either side of the Amargosa River from where the river crosses Dumont Road to T.19N., R.7E., SEC. 3, SBBM, approximately five miles up river.

EFFECTIVE DATE: July 1, 1991.

ADDRESSES: The management plan including maps and environmental assessment are available by either writing, calling or visiting the Bureau of Land Management, Barstow Resource Area Office, 150 Coolwater Lane, Barstow, California 92311 from 7:45 a.m. until 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Tim Read, Wilderness/Recreation Branch Chief, or Jeff Wilbanks, Outdoor Recreation Planner at the above address or telephone (619) 256–3591.

SUPPLEMENTARY INFORMATION: The authority for establishing supplemental rules is contained in 43 CFR 8365.1–6. These rules have been recommended and adopted through the development of the Dumont Dunes OHV Area Management Plan. Copies of these will be available in the Barstow Resource Area Office. These rules will also be posted near and/or within the lands, sites or facilities affected in the Dumont Dunes OHV Area. Violations of supplementary rules established under authority of 43 CFR 8365.1-6 are punishable by a fine not to exceed $1000 and/or imprisonment not to exceed 12 months.

APPEALS: If a party is adversely affected by this action, there is a right of appeal to the Board of Land Appeals, Office of Secretary, in accordance with the regulations in 43 CFR part 4, subpart E. If an appeal is taken, the notice of appeal must be filed in this office (not with the Board) so that the case file can be sent to the Board. A copy of the notice of appeal and of any statement of reasons, written arguments or briefs must be served upon any adverse parties, and in addition, to the Regional Solicitor, Pacific Southwest Region, U.S. Department of the Interior, 2800 Cottage Way, room E–2753, Sacramento, California 95825, within 30 days of the publication of this notice. If the procedures set forth in the regulations are not followed, an appeal is subject to dismissal.

Dated: May 21, 1991.

Ed Hastey,
State Director.
[FR Doc. 91–12953 Filed 5–30–91; 8:45 am]
BILLING CODE 4310–40–M

[CO–942–91–4730–12]

Colorado: Filing of Plats of Survey

May 20, 1991.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., May 20, 1991.

The plat representing the dependent resurvey of a portion of the south boundary, T. 9 S., R. 86 W., a portion of Tracts 51 and 52, a metes-and-bounds survey of a portion of Pitkin County Road No. 11, and the survey of the location of the Bullion King No. 10 lode in section 3, T. 10 S., R. 86 W., Sixth Principal Meridian, Colorado, Group No. 949, was accepted April 18, 1991.

The plat representing the dependent resurvey of certain mineral claims in section 36, T. 3 S., R. 73 W., Sixth Principal Meridian, Colorado, Group No. 964, was accepted April 29, 1991.

The plat representing the dependent resurvey of a portion of the boundary between the states of Colorado and Kansas (from mile corner No. 200 to the Oklahoma boundary) and a portion of the boundary between the states of Colorado and Oklahoma, Group No. 944, Colorado, was accepted April 11, 1991.

These surveys were executed to meet certain administrative needs of this Bureau.

The supplemental plat showing new lots 5 and 6 from previously designated lot 3 in section 24, and new lots 9 and 10 from previously designated lot 4 in section 25 is based upon the plat accepted August 11, 1983, T. 39 N., R. 9 W., New Mexico Principal Meridian, Colorado, was accepted May 2, 1991.

This supplemental plat was prepared to support a land exchange under General Exchange Act of March 20, 1922 (42 stat. 465) of this Bureau.

The protraction diagrams of the following described townships will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., July 8, 1991.

Protraction Diagram No. 50, prepared to delineate the remaining unsurveyed public lands in T. 43 N., R. 10 W., New Mexico Principal Meridian, Colorado was approved October 26, 1990.

Protraction Diagram No. 49, prepared to delineate the remaining unsurveyed public lands in T. 39 N., R. 10 W., New Mexico Principal Meridian, Colorado was approved June 20, 1990.

Protraction Diagram No. 3A, prepared to delineate the remaining unsurveyed public lands in T. 5 S., R. 88 W., Sixth Principal Meridian, Colorado was approved May 17, 1991.

These protraction diagrams were prepared to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Jack A. Eaves,
Chief, Cadastral Surveyor for Colorado.
[FR Doc. 91–12934 Filed 5–30–91; 8:45 am]
BILLING CODE 4310–JB–M

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[ID-943-4214-11; IDI-017112]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service, Department of Agriculture, proposes that the withdrawal of 24.54 acres of National Forest System land for three recreation sites within the Challis National Forest be continued for an additional 30 years. The lands are now being used for recreation site purposes. The lands would remain closed to surface entry and mining, but have been and would remain open to mineral leasing under the proposal.

EFFECTIVE DATE: August 29, 1991.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208–384–3162.

The Forest Service proposes that the existing land withdrawal made by Public Land Order No. 4214 be partially continued for a period of 30 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The lands are described as follows:

Boise Meridian

Challis National Forest

(Pole Flat Campground)

T. 11 N., R. 15 E., sec. 8, a metes and bounds description within the NE¼.

(Custer No. 1 Campground)

T. 12 N., R. 15 E., sec. 2, a metes and bounds description within the NE¼.

(Jerrys Creek Campground)

T. 12 N., R. 15 E., sec. 32, a metes and bounds description within the NE¼.

The areas described aggregate 24.54 acres in Custer County.

The withdrawal is essential for protection of substantial capital improvements on the sites. The withdrawal closed the lands to surface entry and mining, but not to mineral leasing. No changes in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued; and if so, for how long. The final determination of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: May 24, 1991.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 91–12935 Filed 5–30–91; 8:45 am]

BILLING CODE 4310–96–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 731–TA–470 (Final)]

Revised Schedule Silicon Metal From Argentina

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: Date of Commission action.

FOR FURTHER INFORMATION CONTACT: Fred Fisher (202–252–1179), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–100.

SUPPLEMENTRY INFORMATION: Effective March 27, 1991, the Commission instituted the subject investigation and established a schedule for its conduct (56 FR 15632, April 17, 1991). Subsequently, the Department of Commerce extended the date for its final determination in the investigation from June 5, 1991, to August 12, 1991 (56 FR 19835, April 30, 1991). The Commission, therefore, is revising its schedule in the investigation to conform with Commerce's new schedule.

The Commission's new schedule for the investigation requires that posthearing briefs be filed not later than seven days after Commerce announces its final determination.

For further information concerning this investigation see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201, as amended by 56 FR 11918, Mar. 21, 1991), and part 207, subparts A and C (19 CFR part 207, as amended by 56 FR 11918, Mar. 21, 1991).

Authority

This investigation is being conducted under authority of the Tariff act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: May 21, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–12828 Filed 5–30–91; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Lodging of Joint Stipulation for Entry of Judgment

In accordance with Department policy notice is hereby given that on May 15, 1991, a proposed Joint Stipulation for Entry of Judgment Against Defendant Auto Specialties Manufacturing Company in *United States* v. *Burrows, et al.*, Civil Action No. K88–128–CA8, was lodged with the United States District Court for the Western District of Michigan. The proposed Joint Stipulation For Entry of Judgment Against Defendant Auto Specialties Manufacturing Company resolves the judicial enforcement action brought by the United States against Auto Specialties Manufacturing Company pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA").

The proposed Joint Stipulation for Entry of Judgment provides for the entry of judgment against Auto Specialties Manufacturing Company in the amount of $250,000. The proposed Joint Stipulation also provides that Auto Specialties Manufacturing Company and the bankruptcy trustee have stipulated that the judgment of $250,000 entered against Auto Specialties Manufacturing Company shall be an allowed claim in bankruptcy pursuant to section 502 of the Bankruptcy Code (*i.e.*, as a general unsecured claim).

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Joint Stipulation for Entry of Judgment. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Burrows, et al.*, D. J. Ref. 90–11–2–223.

The proposed Joint Stipulation for Entry of Judgment may be examined at the office of the United States Attorney, 399 Federal Building, Grand Rapids, Michigan 49503 and at the Office of Regional Counsel, United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois.

Copies of the proposed Joint Stipulation for Entry of Judgment may be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202–347–2072). A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $1.25 (25 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91–12808 Filed 5–30–91; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Settlement Agreement

In accordance with the policy of the Department of Justice, 28 CFR 50.7, and pursuant to section 122(d)(2) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(d)(2), notice is hereby given that a proposed Consent Decree in *In re Hollingsworth Solderless Terminal Corporation*, was lodged with the United States Bankruptcy Court for the Eastern District of Pennsylvania on May 8, 1991. This action was brought pursuant to section 107 of CERCLA, 42 U.S.C. 96078.

Under the proposed Settlement Agreement, Hollingsworth Solderless Terminal Corporation (HSTC) agrees to pay $130,000 to the Hazardous Substance Superfund. In addition, HSTC agrees to sell one of its manufacturing plants as part of the company's plan of reorganization and pay 55% of the net sales proceeds to the Superfund. These funds are being paid to reimburse the United States for environmental response actions taken and to be undertaken at the HSTC facility in Fort Lauderdale, Florida. The United States will complete the remedial action contemplated by the United States Environmental Protection Agency's Record of Decision relative to the site.

The Department of Justice will receive comments relating to the proposed Settlement Agreement for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, 10th and Pennsylvania Ave., NW., Washington, DC 20530. All comments should refer to *In re Hollingsworth Solderless Terminal Company*, D.J. Ref. 90–11–3–162.

The proposed Settlement Agreement may be examined at the office of the United States Attorney, 3310 U.S. Courthouse, 601 Market Street, Independence Mall West, Philadelphia, PA 19106. A copy of the proposed Settlement Agreement may also be examined at the Environmental Enforcement Section, Document Center, 601 Pennsylvania Avenue Building, NW, Washington, DC 20004 (202–347–2072). A copy of the proposed Settlement Agreement may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. Any request for a copy of the proposed Settlement Agreement should be accompanied by a check in the amount of $7.25 for copying costs ($0.25 per page) payable to "Aspen Systems Corporation."

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91–12809 Filed 5–30–91; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Proposed Consent Decree Under the Clean Air Act

Notice is hereby given, in accordance with Departmental policy, 28 CFR 50.7, that on April 25, 1991, a proposed consent decree was lodged with the United States District Court for the Northern District of Illinois in *United States* v. *CED's Inc. d/b/a/ Products for Power*, Civil Action No. 89 C 2461 (N.D. Ill.), between the United States—on behalf of the Environmental Proctection Agency ("EPA")—and CED's Inc.

The claims that would be resolved under the proposed decree arise from alleged violations relating to the Clean Air Act ("Act"), 42 U.S.C. 7401 *et seq.*, including defendant's alleged breach of a prior administrative settlement concluded under the Act. The alleged violations involve section 203 of the Act, 42 U.S.C. 7522, and defendant's production and sale of devices known as replacement pipes or test tubes, which were used in motor vehicles in lieu of catalytic converters. The proposed consent decree will permanently enjoin defendant from the manufacture, marketing, advertisement, distribution, and sale of replacement pipes or test tubes. Also under the proposed decree, the defendant will pay the United States a civil penalty of $292,700.

The Department of Justice will receive comments relating to the proposed decree for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *CED's Inc. d/b/a Products for Power*, D.J. Ref. No. 90–5–2–1–1290. The proposed consent decree may be examined at the Office of the United States Attorney for the Northern District of Illinois, 219 South Dearborn Street, room 1500, Chicago, Illinois 60604, or at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004 (202–347–2072). A copy of the proposed decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $5.00 (25 cents per page reproduction costs) payable to Aspen Systems Corporation.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91–12810 Fied 5–30–91; 8:45am]

BILLING CODE 4410–01–M

Lodging a Final Judgment by Consent Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on May 13, 1991, a proposed Consent Decree in *United States of America* v. *Temrac, Inc., et al.* Civil Action No. 91–3042, was lodged with the United States District Court for the Eastern District of Pennsylvania.

The proposed Consent Decree resolves the liability of Defendants Temrac, Inc. and Sunbeam Oster Corporation (collectively "Defendants") under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") for the groundwater contamination at the Bally Engineered Structures Superfund Site ("the Site"), Berks County, Pennsylvania. The Consent Decree requires Defendants to implement the June 30, 1989, Record of Decision, as modified by an Explanation of Significant Differences, dated January 18, 1990. The Record of Decision, as modified, calls for remediation of groundwater contamination at the Site by pumping the groundwater and

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treating it by means of air stripping. The remedial objectives set forth in the June 30, 1989, Record of Decision are to pevent current and future ingestion of groundwater containing unacceptable levels of volatile organic compounds ("VOC") and to restore the aquifer within a reasonable time frame to a condition such that levels of the VOC contaminants of concern are below specified remediation levels. Under the Decree, Defendants agree to pay the United States $95,000.00 in settlement of the federal government's claim for reimbursement of past response costs incurred by EPA at the Site. Defendants also agree to pay all future oversight costs to be incurred by the United States at the Site overseeing the implementation of work under the Decree.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Temrac, et al.* (DOJ No. 90-11-3-302).

The proposed Consent Decree may be examined at the office of the United States Attorney for the Eastern District of Pennsylvania, 615 Chestnut Street, suite 1300, Philadelphia, Pennsylvania 19106 and the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. The Decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, 202-347-2072. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy of the proposed Consent Decree, please enclose a check in the amount of $37.75 (25 cents per page reproduction cost) payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-12811 Filed 5-30-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree

In accordance with Department of Justice regulations, 28 CFR 50.7, notice is hereby given that on May 15, 1991, a proposed Consent Decree ("Decree") in *United States* v. *Wheeling-Pittsburgh Steel Corporation*, No. C2 88-598, was lodged with the United States District Court for the Southern District of Ohio.

The United States filed this action pursuant to section 309 of the Clean Water Act, 33 U.S.C. 1319, at the request of the United States Environmental Protection Agency ("U.S. EPA"). The complaint seeks injunctive relief and civil penalties as a result of Wheeling-Pittsburgh's violations of sections 301 and 311 of the Act, 33 U.S.C. 1311, 1321, and its National Pollutant Discharge Elimination System ("NPDES") permits, at three of Wheeling-Pittsburgh's facilities located in Steubenville, Mingo Junction, and Yorkville, Ohio.

Under the proposed Decree, Wheeling-Pittsburgh has agreed to implement a number of injunctive programs. The principal injunctive measures include, among others: (1) A Facilities Evaluation and Action Program to identify and then implement, as necessary, measures to upgrade further its treatment and sewer systems at each facility; (2) rerouting of wastewaters at the Mingo Junction facility and construction of an upgraded treatment of effluent; (3) an Oil Control Program at the Yorkville facility; (4) a Toxicity Reduction Program at each process water outfall at each facility; and (5) a series of environmental audits to assess compliance with the Act at each facility and at Wheeling-Pittsburgh's Martin's Ferry, Ohio facility.

In addition, under the proposed Decree, Wheeling-Pittsburgh has agreed to pay a civil penalty of $6,000,000, plus interest which has accrued thereon since February 8, 1991.

The Department of Justice will receive comments relating to the proposed Decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044. All comments should refer to *United States* v. *Wheeling-Pittsburgh Steel Corporation*, DJ Ref. No. 90-5-1-3035.

The proposed Decree may be examined at the following offices: (1) The United States Attorney, 85 Marconi Blvd., Columbus, Ohio, 43215; (2) the United States Environmental Protection Agency, 111 West Jackson Street, Chicago, Illinois 60604; (3) the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202-347-2072). A copy of the proposed Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004.

Any request for a copy of the Decree, not including Exhibits, should be accompanied by a check in the amount of $18.25 ($.25 per page) for copying costs. The check should be made payable to the "Consent Decree Library."

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-12812 Filed 5-30-91; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

[Civil No. 90-00904 DAE]

United States v. First Hawaiian, Inc. and First Interstate of Hawaii, Inc., Comments and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (a) and (b), the United States publishes below the comments it received on the proposed Final Judgment in *United States* v. *First Hawaiian, Inc. and First Interstate of Hawaii, Inc.*, Civil Action No. 90-00904 DAE, United States District Court for the District of Hawaii, together with the response of the United States to those comments.

Copies of the response and the public comments are available on request for inspection and copying in Room 3233 of the Antitrust Division, U.S. Department of Justice, Tenth Street and Pennsylvania Avenue, NW., Washington, DC 20530 and for inspection at the Office of the Clerk of the United States District Court for the District of Hawaii, 300 Ala Moana Boulevard, Honolulu, Hawaii 96850

Joseph H. Widmar,

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In the United States District Court for the District of Hawaii

RESPONSE OF THE UNITED STATES TO PUBLIC COMMENTS AND MOTION OF THE UNITED STATES FOR ENTRY OF FINAL JUDGMENT

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)-(g)) ("APPA"), the United States of America hereby files its Response to Public Comments and moves for entry of the proposed Final Judgment in this civil antitrust proceeding.

I. Introduction

After carefully reviewing the comments submitted on the proposed Final Judgment, the United States remains convinced that entry of the proposed Final Judgment is in the public interest.

II. Background

This action began on December 28, 1990 when the United States filed a complaint alleging that the proposed acquisition of First Interstate of Hawaii, Inc. ("FIH") by First Hawaiian, Inc. ("FH") violated section 7 of the Clayton Act, 15 U.S.C. 18. The complaint alleged that the effect of the proposed acquisition may be substantially to lessen competition in the provision of business banks services in the Honolulu, East Hawaii, West Hawaii, Maui, and Kauai geographic markets.

On March 7, 1991, the United States filed a Stipulation between the United States and defendants FH and FIH for entry of the proposed Final Judgment and a Competitive Impact Statement explaining the basis for the complaint and for the United States' conclusion that entry of the proposed Final Judgment would be in the public interest. The proposed Final Judgment provides structural relief in each of the relevant geographic markets through divestiture of branches, and also provides additional relief by requiring the defendants to relinquish use of the First Interstate System franchise.

The Stipulation provides that the proposed Final Judgment may be entered by the Court after completion of the procedures required by APPA.

III. Compliance With APPA

Upon publication of this Response in the **Federal Register**,[1] the procedures required by APPA will be completed, and the Court may enter the proposed Final Judgment. The United States hereby certifies that it has complied with all the other provisions of the APPA, 15 U.S.C. 16(b)-(d) and states:

A. Stipulation, Proposed Final Judgment and Competitive Impact Statement

The United States has caused the Stipulation between the parties for entry of the proposed Final Judgment, the proposed Final Judgment and Competitive Impact Statement, in the form prescribed by 15 U.S.C. 16(b), to be filed with the Court on March 7, 1991, and to be published in the **Federal Register** (56 FR 109106, March 14, 1991).[2] It has also furnished copies of these documents to all persons who have requested them.

B. Newspaper Notices

The United States has caused newspaper notices of the proposed Final Judgment and its Competitive Impact Statement to be published in the Washington Post and the Sunday Star-Bulletin & Advertiser and the Honolulu Advertiser in accordance with the procedures set forth in 15 U.S.C. 16(c).[3]

C. Statements Regarding Communications

As required by 15 U.S.C. 16(g), defendant FH on March 18 and May 2, and defendant FIH on March 15 and May 9, filed with the Court a description of communications, by or on behalf of the defendants with officers and employees of the United States concerning the proposed Final Judgment.

D. Waiting Period, Comments and Publication of Comments and Response

The 60-day comment period prescribed in 15 U.S.C. 16(d) expired on May 16, 1991. The United States received three comments between May 12 and 13, 1991. In accordance with the APPA, the United States has evaluated the three comments and responds to them below.[4]

E. Response to Comments

The United States has received three comments which express generalized concerns regarding possible anticompetitive effects as a result of the proposed acquisition of FIH by FH. None of the comments express concerns regarding the relief required by the proposed Final Judgment, nor do any of them contain factual or policy arguments that would justify a judicial refusal to enter the proposed Final Judgment.

In the Competitive Impact Statement the United States explained the contentions it would have made if it proceeded to trial rather than settling the case. The comments raise no new contentions related to competition that have not already been considered by the United States before agreeing to the proposed Final Judgment.

The issue in an APPA proceeding is "[w] hether the relief provided * * * was adequate to remedy the antitrust violations alleged in the complaint." [5] None of the comments dispute the United States' conclusion that the relief provided by the proposed Final Judgment effectively will remedy the antitrust violations alleged in the Complaint. The proposed Final Judgment will guard against possible anticompetitive effects which might have otherwise occurred as a result of the proposed acquisition. The proposed branch divestitures and termination of the First Interstate System franchise will maintain competition in the local banking markets in the state of Hawaii.

Each of the three comments also express concerns unrelated to the proposed Final Judgment. In general, they express complaints about the business activities of First Hawaiian. For example, they generally allege that First Hawaiian unlawfully foreclosed on certain property in which at least one of the commentors has an interest. These allegations are unrelated to the proposed acquisition's effects on competition, and even if true do not support a finding that the proposed Final Judgment is not in the public interest.

F. Public Interest Determination

Pursuant to the Stipulation filed on March 7, 1992, and 15 U.S.C. 16(e), the Court may enter the proposed Final

[1] Upon filing of this Response today with the Court, the United States began procedures for publication of this Response in the **Federal Register**. Publication in the **Federal Register** generally takes five to seven days. The United States will advise the Court of the **Federal Register** publication date. The United States is required to publish its Response one time in the **Federal Register**.

[2] A copy of the **Federal Register** notice is attached to this Response as Exhibit A.

[3] A copy of the Certificates of Publication are attached to this Response as Exhibit B.

[4] The three comments are attached to the Response as Exhibit C. An appendix of documents to the Lighter comment may be requested for inspection and copying at room 3233, Antitrust Division, Department of Justice, Washington, DC 20530 and at the Office of the Clerk of the United States District for the District of Hawaii.

[5] *United States* v. *Bechtel Corp.*, 1979-1 Trade Cas. (CCH) ¶ 62,429 (N.D. Cal. 1979), *aff'd*, 648 F. 2d 660, 665 (9th Cir. 1981), *cert. denied*, 454 U.S. 1083 (1982). *See also United States* v. *National Broadcasting Companies*, 449 F. Supp. 1127, 1144 (C.D. Cal. 1978), *citing United States* v. *Automobile Manufacturers Ass'n.*, 307 F. Supp. 617, 621 (C.D. Cal. 1969), *aff'd per curiam sub nom. City of New York* v. *United States*, 397 U.S. 248 (1970) ("[I]n evaluating a proposed consent decree, one highly significant factor is the degree to which the proposed decree advances and is consistent with the government's original prayer for relief. [citations omitted]").

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Judgment after it determines that the proposed Final Judgment serves the public interest. The United States' Competitive Impact Statement demonstrates that the proposed Final Judgment satisfies the public interest standard of 15 U.S.C. 16(e). Accordingly, the United States requests that this Court enter the proposed Final Judgment without further hearings. Counsel for Defendants have authorized the United States to state that Defendants join in this request.

IV. Conclusion

For the reasons set forth in the Competitive Impact Statement and this Response, the Court should find that the proposed Final Judgment is in the public interest and should enter the proposed Final Judgment after publication of this Response in the **Federal Register**.

Dated: May 20, 1991.

Respectfully submitted,

Patricia A. Shapiro

Laury E. Bobbish

Jennifer L. Otto

Attorneys, U.S. Department of Justice, Antitrust Division, room 8104, 555 Fourth Street, NW., Washington, DC 20001. Telephone: (202) 514-5768.

Daniel Bent,

United States Attorney, District of Hawaii.

Marshall Silverberg,

Assistant U.S. Attorney, Room 6100, PJKK Federal Building, P.O. Box 50183, 300 Ala Moana Blvd., Honolulu, Hawaii 96850.

Exhibit A. previously was published in the **Federal Register** (56 FR 10016, March 14, 1991) and is not republished herein. Exhibit B, copies of affidavits of publication of newspaper notices of the proposed Final Judgment and Competitive Impact Statement, is also omitted from publications herein; these may be requested for inspection and copying at room 3233, Antitrust Division, Department of Justice, Washington, DC 20530 and at the Office of the Clerk of the United States District Court for the District of Hawaii.

Exhibit C

John Salter & Company, 734 Holmes Street, P.O. Box 7192, Missoula, Montana 59813 (406) 533-7750

May 10, 1991

Certified Mail, P 314 766 118.

Constance K. Robinson, Chief,
Communications and Finance Section, AntiTrust Division, U.S. Department of Justice, 555 Fourth Street NW, Washington, D.C. 20001.

Re: USA v. First Hawaiian, Inc., et al, CV 90-0000904.

Re: Competitive Impact Statement March 7, 1991, Federal Register publication date: April 14, 1991.

Re: 15 USC 16.

Dear Ms. Robinson: 1. The proposed merger of First Hawaiian Bank ("FHB") and First Interstate Bank ("FIB") is incredibly anti-competitive and should not be approved.

2. Hawaii has NO "outside" banks. State law prohibits it. First Hawaiian, Inc. ("FHI") is the leader of a small, closed-shop "cartel" of "Hawaii-only" banks gouging consumers in Hawaii. Hawaiian banks are among the most profitable in the Nation, not necessarily due to "exceptionally brilliant management".

3. FHI has been instrumental in preventing competition from "outside banks" via the immense political influence of FHI in Hawaiian State politics, including massive opposition to any change in this state legislation:

(a) CEO Walter Dods was the governor's campaign chairman while serving as a senior executive of FHI just prior to his elevation to the CEO position.

(b) Former Governor George Ariyoshi held a large block of FHI stock while governor, and at all times since.

(c) Former Governor Ariyoshi became a Director of FHI immediately upon his retirement from the governorship.

(d) Former Governor Ariyoshi's (former?) law firm (Kobayashi, Watanabe, Sugita and Goda) is the primary firm relied upon by FHI to handle real estate matters, which are at the core of FHI banking activities.

4. FHI has acted overtly and covertly to prevent US banks from participating in the lucrative Hawaiian economy, thus preserving a small, closed "cartel" of "Hawaii-only" banks which continue to generate extraordinarily large profits at the expense of local Hawaiian citizens who are denied the obvious benefits of true competition in the availability and price of money and credit.

5. While thus preventing US banks from any inroads upon the FHI-led cartel of "Hawaii-only" banks, FHI has secretly stage-managed massive flows of banking funds from "Japan, Inc." banks intent upon buying/controlling Hawaiian properties, businesses, and politicians:

(a) George Ariyoshi, Former Governor of Hawaii, Director of FHI, and major stockholder of FHI, acting through his law firm affiliations and in other capacities, has been very instrumental in funnelling massive Japanese banking funds through FHI for the purpose of facilitating abusive Japanese takeover "investments" in Hawaiian businesses and real estate purchases.

(b) Massive Japanese funding for such purposes has been secretly funnelled through FHI via huge "credit facilities" subscribed by banking consortia led by the Industrial Bank of Japan ("IBJ") and its affiliated Japanese financial partners, including but not limited to Mitsui, Mitsubishi, Dai Ichi, Sanwa, and others.

(c) These "credit facilities", often exceeding $300,000,000.00 per event, continue to exert great and obscene distortion in the ownership of Hawaiian commercial real estate, and in the visitation of economic distress upon locally-owned businesses suddenly confronted with competition from "competitor" firms secretly and massively funded in "trickle-down" loans passed out by FHI pursuant to instructions masterminded by the IBJ consortia.

(d) These abuses of economic power and public trust have caused predictable results, reducing Hawaii to the stature of a "banana republic" in which those who are favored by FHI prosper while those who are not become targeted victims of economic and political terror.

6. Among the predatory banking practices brandished by FHI is the chilling tale of the Hawaiian Colony Hotel Corporation ("HCHC"), a company targeted for obliteration by the IBJ consortia. HCHC owned a key real estate property in Waikiki which was coveted by the IBJ consortia in order to efficiently link the then-secretly-planned Mass Transit Rail system with the Hawaii Convention Center. The Center was intended to be built on forty acres of Fort DeRussy land in the heart of Waikiki and worth perhaps $1,000 per square foot. Fort DeRussy is owned by the US Department of Defense.

Senator Dan Inouye and Governor George Ariyoshi openly championed a plan to have DOD "dispose" of the land, as "excess US property", in a sale (at a favorable price) to the State of Hawaii. They did not disclose their knowledge of, and participation in, the mega-buck IBJ role lurking in the wings:

(a) The IBJ consortia funded a new $2 billion real estate/hotel development 20 miles West of Waikiki now known as West Beach.

(b) To assure the success of this outlying venture, a $1 billion light-rail mass transit system was desired, hopefully to be paid for with citizen dollars, and linking Waikiki to West Beach.

(c) To help "sell" the Mass Transit plan to the voters, it was designed to serve the proposed $0.5 billion Convention Center, which in turn needed to be anchored in Waikiki.

(d) Key properties alone the proposed route were targeted by the IBJ consortia for "acquisition", and funds were made available through FHI to special Japanese-led "investment groups" formed for the specific purpose of acquiring these key parcels.

(e) The HCHC parcel became a primary target because it sat atstride the Mass Transit entryway to the planned Convention Center Fort DeRussy. Without control of this site, a $200 million detour would be required in order to properly serve the Center.

(f) Documentary evidence in a certain Hawaii state court case revealed that FHI had engineered a plot to gain control of the HCHC site. FHI was represented at a secret meeting in the office of attorney (now Federal Judge) David Ezra wherein an illegal and conspiratorially-rigged insolvency of the condominium owner's association of the Hawaiian Colony Apartment/Hotel Fueled the intended foreclosure/takeover of the property by FHI.

(g) HCHC waged a brilliant but unsuccessful defense of its property rights. Eventually the battle came down to a question of control of the Air Rights, which FHI wrested in a state court decision. Even FHI's own internal appraisal clarified that the Air Rights were not subject to the foreclosure. However, determined to gain control, FHI successfully but wrongly (and wrongfully) argued via Ariyoshi's law firm that HCHC had "lost" its separately-owned Air Rights on the theory that such rights could not "float", i.e., that HCHC had failed to preserve any "real property" rights in the Hawaiian Colony property, which was itself untrue. FHI/IBJ clout in Hawaiian state courts (described elsewhere as "judgeships populated by real estate developers, disguised in black robes") assured the intended "legal" judgment, even though the legal theory advanced is founded in deed theory inapplicable to condominium ownership.

(h) FHI also concealed the fact that FHI was simultaneously involved in "floating air rights" matters involving three other high-rise properties in Honolulu built with IBJ consortia funds funnelled through FHI. Speaking out of both sides of their mouth in court, FHI/IBJ funded those developments on a basis exactly opposite to the "legal theory" espoused in court by Ariyoshi's law firm, representing FHI. HCHC has appealed, alleging a predatory banking act by FHI to illegally confiscate private property.

(i) FHI wrongfully concealed these matters from the Federal Reserve, Federal Deposit Insurance Commission ("FDIC"), Department of Justice ("DOJ"), and the Securities and Exchange Commission ("SEC") in this application to gain control of First Interstate Bank, which is the subject of the instant Anti-Trust inquiry, and of this letter.

7. An further instance of predatory banking practices by FHI is found in the matter of In Re Royal Hawaiian Heritage Company of Hawaii, Inc. ("Royal"), USBC 87-00386, 9th Circuit, Hawaii:

(a) Royal possessed legal interests in (two) Key properties along the route of the planned Mass Transit System.

(b) Royal had the misfortune of falling victim to an uninsured $300,000 burglary by parties unknown who spent five hours torching into the safe whilst a central alarm company supervisor "ignored" a valid burglar alarm.

(c) Royal, cash short and struggling to recover from the burglary, temporarily sought legal refuge from creditors in a bankruptcy court petition. However, a trustee was appointed.

(d) Japanese investor groups, formed and managed by Ariyoshi's law firm and financed by IBJ-consortia funds dispensed via FHI, obtained the trustee's signature in an under-the-table deal, releasing Royal's interests. These releases were necessary in order to acquire the two key parcels. Royal's trustee obligingly "abandoned" one property int: :at as "worthless", and signed off Royal's control of the other parcel, obtaining nothing of value for the estate for its forebearance.

(e) IRS/Hawaii and DOJ/Hawaii officers knew this, did nothing, and continue doing nothing in order to help coverup the blatant wrongdoing by the FHI/IBJ consortia.

8. Certain other matters re the "acquisition of Royal's property by IBJ/FHI affiliates" (otherwise referred to as "the taking") which are of concern to anyone pondering the wisdom of approving a banking merger in ANY state to empower only one single bank to control 40%

(a) Royal came "voluntarily" to the bankruptcy court, in order to legitimately "buy a little time to get its finances, and its healthy cash flow, back on track". Shortly thereafter, a trustee was appointed, who evicted Royal's owners from their own offices, and ISOLATED them from the financial "books".

Note: For any business owner, this is a real scary event. I am asking Congress to correct this defect in our law by empowering any owner to have reasonable and timely (48 hours written notice?) access to the company's books of account, to prevent trustee's from stealing them blind, which they can do and they do do, often. Two dozen felonious trustees are currently in Federal prisons for precisely such acts, and probably another two hundred belong there.

(b) Royal's court-appointed trustees concealed a secret conflict of interest about which he "forgot" to tell the court and Royal . . . that he secretly owned one of the businesses competing directly with Royal, and through which he then began receiving kickbacks from Royal's major creditor, a twice-convicted felon who had gotten him to be appointed in the first place. Both the creditor and the Trustee intended to benefit handsomely as decently soon as they could indecently dismantle Royal. They almost made it . . .

(c) Royal's trustee embezzled $300,000 from Royal's estate. To conceal the embezzlement, he filed a prima facie fraudulent tax return for Royal.

(d) When Royal discovered and filed evidence (UCC-1) of the conflict with the court, a successor trustee was appointed. The US Internal Revenue Service ("IRS") and the Department of Justice ("DOJ") were charged with the duty to investigate, but no meaningful action ever resulted.

(e) Again, even after Royal (not IRS) obtained and filed further evidence (i.e., an official copy of the prima facie fraudulent tax return), no action by the court or by DOJ or by IRS resulted.

(f) The successor-trustee then embezzled an additional $900,000 from Royal's estate.

(g) Royal obtained conclusive evidence of two sets of books in use by the successor-trustee. The actual inventory, as evidenced by the internal computer runs used by the Trustee, is several hundred thousand dollars less that the fictitious amount reported by the trustee to the Court.

(h) When Royal filed said evidence of embezzlement with the Court and with IRS, no action resulted by either the Court or IRS.

(i) Royal filed numerous reports with IRS and DOJ, seeking a formal determination that the prima facie fraudulent tax return filed by the first trustee was, in fact, illegal. However, an IRS/Hawaii attorney, William Sims, stated in a letter to Royal (since filed in court by Royal) that he saw "nothing improper" in the tax return. DOJ relied upon this "determination" and opposed Royal, joining with IRS in seeking (unsuccessfully) to strike Royal's evidence from the court record on "procedural" grounds.

(j) The court continues to rely upon this "determination", and has taken no action to unseat the successor trustee or to appoint an independent Master, as Royal has requested.

(k) Royal besieged both IRS and DOJ supervisory executives, via some 200 documented telephone calls and certified letters. Every senior executive in the chain of command has "downstreamed", stonewalled, or just flat ignored Royal's every demand for an official written determination whether Royal's tax return, as filed by the trustee, is—or is not—an illegal evasion of taxes rightly due to the government.

(l) Royal caused a Federal Court Order to be issued clarifying that the "Official Position of the United States" regarding the contested tax return is "as stated by attorney Sims", i.e., that there is "no wrongdoing" and the tax return is fine.

(m) Royal steadfastly maintains that the tax return is fraudulent, prima facie, and that taxes are due on unreported income which the Trustee stole. ROYAL SEEKS TO RECOVER THE INCOME AND PAY ITS TAXES. Royal demands an audit which IRS refuses to conduct.

(n) A critical problem with the tax return is that the two sets of books used by the trustee clearly revealed that he "wrotedown" gold jewelry in Royal's inventory to values far below the meltdown value of the gold content. The power to arbitrarily "writedown" inventory values is synonymous with the power to unilaterally reduce one's tax bill. It achieves "unreported income", and it evades taxes due.

(o) Royal argues that IRS/Hawaii approved of this procedure, fully ratified by senior IRS and DOJ officials, constitutes an unlawful unpublished "private ruling" directly contrary to federal statutory law, 26 USC 471, which prohibits such fancy.

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(p) Royal argues that this untidy bit of lawlessness by IRS and DOJ, in permitting such "writedown", constitutes a new ruling equally available to all citizens even though it potentially reduces the nation's tax revenue to zero.

(q) Royal has begun to provide detailed specifics to taxpayers and tax advisors nationwide who may wish to avail themselves of this unprecedented opportunity to legaly avoid ever paying any taxes again. One of many vehicles available to taxpayers to achieve this wonderful result is to join in a class action lawsuit against IRS, thus to legally avoid or at least defer indefinitely ANY tax payments until and unless the government renounces its ridiculous position endorsing the trustee's writedown . . . and thereafter to remain completely immune from any retribution or even any penalty and maybe not even any interest on taxes which might at some indefinite future date be found to have been payable afterall if only the taxpayer hadn't made the silly mistake of honestly believing that she could trust a Federal Court Order which clarifies that "THE Official Position of the United States of American authorizes taxpayers to lower their tax bill by lowering the value of their inventory" (hereinafter referred to as "the position", synonymous with the procedure which Royal has dubbed the "PBS Ruling" in honor of its primary progenitors, Mssrs. Polivka, Bent, and Sims). If any uncertainty remained, one need only contemplate that this same "position" is fully ratified by all executives in the direct chains of command within both the Department of Treasury and the Department of Justice, in their entireties.

(r) Royal filed a lawsuit against the trustee to recover the embezzled funds and/or to collect on the fidelity bond which both trustees were obliged to post with the court. IRS and DOJ opposed Royal's action, and the court granted the DOJ motion dismissing Royal's suit. Royal's subsequent Motion to Reconsider was likewise denied. An appeal lies.

(s) IRS and DOJ have now been ingeniously maneuvered by Royal into the bizarre position of opposing restitution of embezzeled funds, opposing collection of tax moneys due and payable, opposing Statutory law, championing a clandestine "ruling" favoring one taxpayer, defending a prima facie fraudulent tax return filed in collusion with a felon twice convicted of dealing in (fencing) stolen property, and conducting a massive coverup of the many illegal acts by IRS and DOJ officers which perpetrate this scandal and which help coverup wrongdoing by the IBJ/FHI consortia.

9. I am formally testing my way of contradiction that curious hypothesis that the government is right. I am using the "PBS Ruling" in my personal income tax return for 1990. Although it certainly seems odd to me that I apparently didn't owe any taxes on my income (because I can just willy-nilly "writedown" anything in my own business inventory), I know that I could never be wrongfully avoiding (evading?) taxes otherwise due UNLESS Mr. Sims has lied in speaking for the entire United States government from his eminent position as district counsel for the Hawaii branch of the IRS, and/or if Mr. Dan Bent, U.S Attorney for Hawaii has lied with him.

Mr. Sims and Mr. Bent share a mutual desire to coverup the misbehavior of their mutual subordinate, Carol Muranaka, Assistant US Attorney for Hawaii (DOJ) representing the Department of the Treasury ("Treasury"), IRS, and the USA. Carol works for DOJ (Bent) but she represents Treasury (Sims).

A few years ago, some brave Americans in Selma tested an illegal law by daring to sit in a restaurant "off-limits" to black Americans. One may well test a law by being arrested for breaking it.

I conclude that the only way to challenge this law (PBS Ruling) is to obey it. Please arrest me; I'm sitting in the front of the bus, apparently knowingly committing an act of tax evasion pursuant to Federal Statute (26 USC 471). However, I'm reasonably claiming that I'm exempt from the Statute by electing the "PBS Ruling" authorized by IRS/Hawaii, clarified by Federal Court Order, and Ratified by Treasury and by DOJ.

10. In view of the events chronicled herein, it appears that your approval of the allegedly anti-competitive FHI/FIB merger plan would be most unwise. Further, said approval, if forthcoming by DOJ, is but further ratification by the US government (DOJ) of the lawlessness rampant in the Royal "fraudulent tax return" affair.

11. All statements made herein are true and accurate to the best of my ability and knowledge and intellect, and said statements are based upon my personal observation and/or investigation, and that I believe that I have evidence sufficient to defend them in a court of law, if required and/or arrested for daring to speak out against the continuation of such lawlessness as I believe these facts bespeak.

12. Please reject the FHI/FIB merger, because it is conceived by greedy criminal minds intent upon further subjugation and plunder of the Hawaiian citizenry, and because it is destructive of the principles of justice and fairplay which underly the Anti-Trust Acts in America. Finally, please reject it because it further empowers the crude lawlessness of Japanese and American financial consortia which seem to distain such principles and which seem rather blatantly to exploit America's trust.

Sincerely,

John Salter,

Financial Consultant.

cc: R. Measel, President, Cache, Inc.
E. Lighter, President, Royal.

Attachment: Statement/Letter of Record.

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Robert Measel, Jr., Republican Candidate for Governor, State of Hawaii, P.O. Box #3088, Princeville, Hi 96722.

May 13, 1991.

Constance K. Robinson, Chief,
Communications and Finance Section, Antitrust Division, U.S. Department of Justice, 555 Fourth Street, N.W., Washington, D.C. 20001.

RE: *United States of America* vs *First Hawaiian Inc., et al CV 90-0000904.*

Dear Ms. Robinson: I write to you with regards to the above mentioned matter, which case was filed in the United States District Court for the District of Hawaii.

I was a Republican Candidate in the 1990 elections and remain a Republican Candidate for 1994 elections for the office of Governor for the State of Hawaii and for the same reasons that are part of my platform for that office, I oppose the *proposed merger of First Hawaiian Bank with First Interstate Bank.* These reasons although not specifically naming First Hawaiian Bank, clearly outlined in my *Press Release* during my 1990 campaign which is a part of my filing as president of Cache, Inc., being *Document #90-133571 filed on August 29th, 1990 in the Bureau of Conveyance, State of Hawaii;* whereby First Hawaiian Bank has been and is a major player of massive corruption and coverup of said corruptions.

(1) The approval of said merger shall further ratify the *PBS Ruling* as very well documented in the case of *John S. Salter* vs *United States of America-Brady* which case, is intimately related to the merger.

(2) Important related information included in these documents, upon review, would show serious conflicts of interest for Judge David Ezra in the case and other serious problems for U.S. Attorney Daniel Bent.

(3) First Hawaiian Bank has been and is attempting to embezzle my property right and I have complained about this and other corruption and wrong doings to Federal Agencies to no avail and now this merger could only make First Hawaiian Bank bigger in their abilities to coverup massive corruption for the local political machine in power for the past two or three decades. This power is probably part of what caused the major medias to do a blackout of my 1990 campaign for the office of Governor in Hawaii. I have spent untold hours filing complaints to the Federal Authorities and now it looks like you want to do a further coverup of all this wrongdoing and corruption with an approval of this bank merger between First Hawaiian Bank and First Interstate Bank.

So in the event that you and your department don't take the right and just action in this matter, I am prepared to take these issues together with the PBS Ruling Tax Course to all the voters and tax payers of America, because it is my duty as an American citizen and part of the oath I took when I became a candidate for public office.

Respectfully Yours,

Robert Measel, Jr.,
Governor Candidate, State of Hawaii.

Eric Aaron Lighter, President,
Royal Hawaiian Heritage Company of Hawaii, Inc., "Royal", Tokyo Rail and Development, Ltd., "Tokyo", P.O. Box 2556, Honolulu, Hawaii 96804 (no certified mail accepted)

May 9, 1991

Constance K. Robinson, Chief,
Communications and Finance Section Antitrust Division, U.S. Department of Justice 555 Fourth Street, NW., Washington, DC 20001

Re: (a) Royal, Fed. I.D. No. 99-0213120, (b) Tokyo, Fed. I.D. No. 99-0283570, (c) B&P Realty, Ltd., Fed. I.D. No. 99-0257080

Dear Ms. Robinson: This written response is made regarding that certain case filed in the United States District Court for the District of Hawaii, *USA* v. *First Hawaiian Inc., et al.*, CV 90-0000904. Further, this written response is pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), and in response to the Competitive Impact Statement ("CIS") filed March 7, 1991 in the United States District Court for the District of Hawaii, and pursuant to pages 15 and 16 of the CIS in the section entitled, "Procedures Available For Modification of the Proposed Final Judgment"; and mailed by Express Mail, numbered FB65699984. The proposed merger should be halted due to First Hawaiian's *predatory banking practices* and its refusal to disclose same, so that First Hawaiian isn't rewarded for what would be Justice Department ratified wrongdoing.

In its latest, February 11, 1991, letter to me, the Federal Reserve Board, via William W. Wiles, Secretary of the Board, correctly elucidated an important part of my allegations, "First Hawaiian is involved in a conspiracy with the Internal Revenue Service, the Office of U.S. Trustee, and unnamed Japanese financial institutions to gain control unlawfully of real property in Honolulu," and that "First Hawaiian's bank subsidiary had foreclosed unlawfully on certain real property in which you have claimed an interest."

These allegations are true. However, originally the only Federal agency involved was the Hawaii Internal Revenue Service, which plays the chief role.

I recently filed a tax return composed of about 250,000 pages which shows the *prima facie* wrongdoing in detail by a plethora of quality supporting evidence. In the event my allegations are incorrect I urge any federal officer in the United States to initiate and/or complete my indictment and/or arrest for filing what would then be a fraudulent tax return. Please refer to Document No. 91-046610, filed April 12, 1991 in the Hawaii Bureau of Convenyances and entitled Affidavit of Eric Aaron Lighter, in order to see a powerful part of the index of these related documents. One of the things you will see there are thousands of pages of correspondence with IRS, US Trustees Office and other parties in the US Justice Department (including incompetent and/or corrupt agents) all published in public record. Said Document No. 91-046610 is attached to with my April 22, 1991 hand delivered letter to Kenneth Binning, Assistant Vice President, Federal Reserve Board of San Francisco (name provided to me by the Federal Reserve Board), and my May 3, 1991 certified letter to Sandra Wittman, Acting U.S. Trustee, San Diego, California. Said Document No. 91-046610 and said two attached letters are attached hereto and made a part hereof by reference as Exhibit "A".

First Hawaiian's attorneys filed two (2) affidavits per *lix pendens* in the Hawaii Land Court title system (guaranteed by the State of Hawaii) that certify that First Hawaiian never had an interest in the property it has tried to embezzle (see Land Court Document Nos. 1660975, 1661335, 1668282). First Hawaiian's Federal Court filed affidavits confirm this (see Land Court Document No. 1693015). These facts alone prevent any intelligent observer from attempting to say my allegations are "tangential". First Hawaiian is attempting to covertly obtain the Justice Department's ratification of predatory banking practices, which are only part of the wrongdoing committed by First Hawaiian in its thirst for power and expansion that this case is all about (the merger would increase market share from 32.3% to 37.9%). As stated, numerous other incriminating documents exist and filed in public record, and are utilzed as support for my demand to also be protected under the Whistleblowers Act.

Another important and quite revealing document was filed on August 29, 1990 by a separate entity, CACHE, Inc.'s Robert Measel, Jr., a past and current Republican Hawaii Governor candidate, entitled Confirmation of Delivery of Certain Development Related Documents, filed in the Hawaii Bureau of Conveyances as Document No. 90-133571, attached hereto and made a part hereof by reference as Exhibit "B".

After some five years of intense research, I note with important authority that I find nothing significantly wrong in the allegations in that document (Exhibit "B"). Again, since I say so in my tax return, please arrest me in the event I am lying.

You will note in that document (Exhibit "B") my Federal Court filed declaration regarding my key role in the Iran Contra case, and especially in my well documented contribution to the conviction of John Poindexter. At this time, I possess a recently acquired impressive smoking gun in the Iran Contra case that would affect the next Presidential election. I am now in prayful deliberation as to how to handle this matter. I have asked the Christic Institute for input, and they have presented me a response that is respectful of my position.

Please note that my Federal Court filed testimony requires a slight expansion. The statement, "It is true that I did give the Republican National Committee the "dirt" on Inouye that apparently was used to make the "deal" to keep Reagan and Bush directly out of the Iran-Contragate hearings, and also to move the serious hearings until after the Congressional elections" should read "Presidential/Congressional elections".

For clarity, I also testified, "It is true that Paul Laxault did assist in communications with President Reagan regarding the matter, and regarding the appointment of Hawaii District Judge David Ezra (judge in this case). It is true that the Hawaii Regulated Industries Complaints Office complaint against David Ezra was stolen from Senator Bidden's Senate Judiciary Committee vault just prior to scheduled review by Senator Bidden's committee. *The New York Magazine* April 29, 1990 article, beginning on page 48, further describes the consequences of said "deal" . . . "It is true that the British Broadcasting Corporation did televise an investigative report on Ronald Rewald that evidenced that Rewald apparently stole the mass transit train plans from Japan, and that local powers tumbled the Rewald, CIA backed empire obviously to gain control of the then fast rising flood of Japanese funds and other economic power. For her own physical safety and for the sake of her high integrity, a copy of this tape (was) sent to Judge Greene (*USA* v. *Poindexter*) by attorney Mary Rudolph (together with much more on CIA related activities elucidated by Rudolph, myself and others)" . . . "Two presidential Prosecution groups, Lawrence Walsh and Leon Jaworski's law firm (defense attorney Richard W. Beckler's employing law firm), were caught red-handed supressing significant evidence."

Beckler attempted to discredit me as a key witness by sending my evidence to the Chief of the Justice Department Security, saying my package was a bomb, when in actuality it was just figuratively explosive. "The supression of evidence and probable backroom dealing was presented to (Judge Greene) just before closing arguments, and with the significant consequences to the ongoing Poindexter trial. Both sides changed their arguments, and when that didn't work the noticed (by me, which was reported to Judge Greene) Washington Post then, in a seemingly deliberate act, almost caused a mistrial that required the jury to be sequestered; apparently in a desperate move to help save President Bush."

Among numerous other vitelly related documents, including some given to the Antitrust Division of the Department of Justice, I have available a six hundred and sixteen (616) page Affidavit (by another party) with mostly certified evidence regarding the powerful Japanese interests in the First Hawaiian case. Most importantly, there are national tax courses about to begin that this First Hawaiian case has generated. That no officer or agent or agency in the United States sees any wrongdoing regarding any of my allegations indeed ratifies the following national tax ruling, the key part of the strikingly noteworthy Federal Court filed tax return (amended December 26, 1990, see Exhibit "A" for location in public record) I appropriately signed (particularly note the very related last three paragraphs, which most press against the wrongdoing in this case), approved by federal order as being the Official Position of the United States (see Exhibit [00975 of Exhibit "A" hereto); and ratified by the IRS at least as early as December 14, 1989:

The (Formerly) Corrupt, Redundantly Ratified PBS Ruling

1. Without the express written permission of the IRS, the arbitrary, unilateral writedown and/or writeup of inventory by taxpayer is acceptable, even when:

a. said inventory is gold arbitrarily, unilaterally written down to forty per cent (40%) of meltdown value;

b. any such writedown would conceal the impact of the true significance of any such writedown; and where such writeup may now be made on finished goods purchased even when same is a significant amount of gold chains;

c. any such writedown would ensure a contrived loss in the same taxable year as such writedown;

d. any such writedown would allow a United States Trustee to sell of such written

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down inventory (to a friend?) and obtain a twenty per cent (20%) commission for same:

e. any such writeup would ensure a contrived loss for the next one or more taxable year(s).

2. Unexplained "missing" inventory may arbitrarily and unilaterally be stated by the taxpayer to be "consumed" and increase the cost of goods sold by the amount "missing", rather than same being detailed in a casualty and loss schedule. The IRS will avoid diligent investigation into such matters despite any Court Order, even when IRS has two or more sets of books of the taxpayer for the same period. The ratio of costs of goods sold to sales shall no longer be considered in determining "missing" inventory, despite inventory standards, company history, legitimate current operating practices, and other formerly well accepted standards, including Section 427.14 of the *Handbook for Special Agents, Criminal Investigation Intelligence Division, Internal Revenue Service.*

3. Retained earnings shall be reduced by the amount of contrived consumption; and work in progress no longer needs to be included in listed assets.

4. Cost may now be called retail, even when using the percentage of retail method of cost valuation.

5. Inventory may be "added" without an audit trail, in order to:

a. "cover" for formerly "missing" inventory by slipping similar inventory in later; and/or

b. finally report inventory "missing" from a prior period; and/or

c. allow a United States Trustee to attempt to trick the innocent shareholders into purchasing such slipped in and/or "found" inventory so to ratify such writeup and writedown of inventory, because such slipped in and/or "found" inventory is listed at such contrived written up and written down figures.

6. No evidence is required in "payroll" audit assessments, and Bankruptcy Proofs of Claim will be amended to include such assessments regardless of merit or proof; and at the risk of voiding any meritorious assessment sums being included with such unsubstantiated assessments. Required, signed Form 23c and thirty (30) day assessment notice letters shall be ignored when conducting coverups described in paragraph 11 below.

7. The IRS and United States Attorney representing the IRS will perform acts that would have previously been deemed to be corrupt, in order to have valid claims and assets be dismissed for, especially when rich special interest Japanese power groups are involved; including demand that legitimate bankruptcy payments be considered fraudulent and/or preferential even though they obviously are not.

8. Tax disclosure will be refused no matter how many written Court Orders, and no matter how much comprehensive, cooperative and substantiating documentation is provided; tax disclosure requests should be treated as though never having been submitted; and no valid reasons will be given for refusal for such tax disclosure.

9. United States Trustees do not have to file tax returns on time as required by prior written statute. Court filed income statements may now be significantly incongruent with court filed balance sheets.

10. Corporations with (a) fifty per cent (50%) or more of its stock owned by a stock trust composed partially by C corporations, and (b) with sole ownership of all the stock of one or more C corporations, may now file as S corporations despite clear statutory language to the contrary; and no return is required for first tax period of such "S" corporation.

11. The IRS will now diligently act to cover up any acts deemed corrupt by statute prior to the PBS Ruling. The IRS will now assist taxpayers to utilize tax fraud to defeat corporate statutory and contractual obligations and duties, plus assist taxpayers in assisting one or more FDIC-insured lending institutions in predatory banking practices and collusive property embezzlement schemes.

12. The IRS will defend altered and/or falsified tax related documents filed in Federal Court, and/or false statements in Federal Court and/or to and with either or both the U.S. Treasury Department and U.S. Justice Department, and/or any or all of the above positions of the IRS, as long as any challenge to the above is not a formal Complaint filed in any Federal Court; and despite any duty of any Federal Officer and/or agent to comply with all Federal Statutes and regulations now amended by the PBS Ruling. Officers and Agents of the IRS will now defend the PBS Ruling with their careers, regardless of Court Orders and prior written statutes and regulations.

Please be advised that the PBS Ruling obtained its name as follows: (1) "P" is for Theron Polivka, Service Center Director of the IRS Service Center at Fresno, California, who conducted an on-off-on-off-who knows response to a legitimate request for refund for disclosing significant tax wrongdoings in this case, (2) "B" is for Dan Bent, Hawaii U.S. Attorney, who is a fine gentleman, but no one as yet (to my knowlege) has stopped him from being deceived by Assistant U.S. Attorney Carol Muranaka from corruption and/or coverup of corruption in representing the IRS in this case, including opposing in open Federal Court (per transcript) the truth of the conclusions of the quite truthful Federal Court filed comprehensive fraud audit on the basis of "falsity", and (3) "S" is for William Sims, District Counsel for IRS, whose Declaration is now the Official Position of the United States, and which position is that there is "no wrongdoing" in this case, even after the Federal Court filing of said comprehensive fraud audit (other fraud audits exist) and PBS Ruling (such position allows millions of Americans to obtain three years of refunds).

The recently served suit, *John Salter* v. *USA and Nicholas F. Brady*, CV 90-152-M-CCL, which is a complaint for declaratory judgement in order to force the Treasury and Justice Departments to stop playing games and decide to continue or try to overrule the Federal Order directly or in effect approving the PBS Ruling. For example, there are two tax returns in a related case which are about $1.5 million different in unreported income. Right now, both IRS and the US Trustees Office say they are both right, even though they are for the same business operation! That is, they again say there is "no wrongdoing." A good question this suit causes to be raised is, "Who actually owns and/or controls First Hawaiian?" Because of the volume of money that has flowed or is flowing from Japan, it may actually be the Japanese interests. Because First Hawaiian has Japanese branches that the Justice Department has actually or in effect "overlooked", the proposed merger may also be requested for purposes of further ratification of "no wrongdoing" with Japanese interests, when that may indeed seems to be one of the important points of this case. In *Antitrust & Trade Regulation Report*, Vol. 59, December 6, 1990, page 850, Assistant Attorney General James F. Rill, Chief of the Antitrust Divison, has otherwise been very unsuccessful in dealing with some of the powerful Japanese interests directly involved in this case (per certified letters and other evidence). The proposed merger will further ratify already clearly unjust joint American and Japanese operations here and in Japan.

Lastly, please be advised that there is a directly related Complaint against the presiding and/or order-signing Judge in the case, Judge David Ezra, filed in the Hawaii Regulated Industries Complaint Office on November 19, 1987 by Sherri Lindahl, whose contents I have testified to be correct. See the related Document filed November 14, 1989 in the Bureau of Conveyances at Liber 23875 beginning at page 98, and Land Court Document No. 1659537, among others. I am sorry Judge Ezra got caught in the web of/with such corrupt parties. Unfortunately, this matter causes Judge Ezra to have or appear to have a definite conflict of interest in this case, which is hardly "tangential".

Again and in conclusion, there is a massive coverup occurring, and if I am lying about the abovenamed corruption and coverup of corruption, I will assist the United States to indict and/or arrest me for filing a fraudulant tax return, wherein these statements are contained. In the event that this letter is ignored and/or there is directly or in effect one more ruling of "no wrongdoing", then millions of taxpayers in this country will be correct in arranging for three years of refunds pursuant to the Federal Order approved PBS Ruling, once again ratified by the highest authorities in the United States.

In such case, I will probably be hunted by corrupt agents from Treasury and Justice Departments, whereupon my answer will be to go to Tax Court, and bring this case with me. "No wrongdoing" does indeed mean that millions of American should obtain three years of refunds. "No wrongdoing" does indeed mean that predatory banking practices (by First Hawaiian, et al) have been ratified to COVER UP larger crimes. "No wrongdoing" except by me means that I have become a political prisoner for whistleblowing on the role First Hawaiian and others play in property embezzlement attempts and other wrongdoing for the sake of supporting larger crimes; and I call on Amnesty International regarding same. I incorporate herein the entire Christic Institute La Penca bombing lawsuit (see Exhibit "B") by reference, which suit clearly demonstrates the scope of the larger crimes this merger proposal is intended to help ratify. Perhaps First Hawaiian would prefer to stop its property embezzlement attempts instead; as that would be a good faith start in the right direction.

The abovedescribed millions of Americans will, of course, thus have the ethical right of notifying the key parties involved (especially the U.S. Justice Department) and being given continued confirmation and reassurance that there is "no wrongdoing", especially for utilizing the PBS Ruling. My prayer is that the justice of Amighty God be done.

Yours Truly,

Eric Aaron Lighter,

President.

[FR Doc. 91-12813 Filed 5-30-91; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—Center for Emissions Control, Inc.

Notice is hereby given that, on May 13, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the participants in the Center for Emissions Control, Inc. ("CEC") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the program and (2) the nature and objectives of the research to be performed in accordance with said program. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties participating in the CEC, together with the nature and objectives of the research program, are given below.

The current parties to the CEC identified by this notice are: ICI Americas, Inc., LCP Chemicals and Plastics, Inc., Occidental Chemical Corporation, PPG Industries, Inc., The Dow Chemical Company, and Vulcan materials Company.

The nature and planned activities of the CEC are: (1) To provide and act as a clearinghouse for information about and to encourage the development and use of safe and effective work practices, process modifications, control technologies, and other methods to reduce emissions of chlorinated compounds; and (2) to undertake and support research and development projects intended to result in the creation or application of new technologies or products that will reduce emissions of chlorinated compounds.

Membership in the CEC remains open and the parties intend to file additional written notifications disclosing any changes in membership. Information regarding participation may be obtained from Mr. Stephen P. Risotto, Executive Director, Center for Emissions Control, Inc., 1225 19th St., NW., suite 300, Washington, DC 20036.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-12814 Filed 5-30-91; 8:45 am]

BILLING CODE 4410-01-M

National Institute of Corrections

Advisory Board Meeting

Time and Date: 8:30 p.m., Tuesday, July 2, 1990.

Place: Dallas/Fort Worth Airport Marriott Hotel, 8440 Freeport Parkway, Irving, Texas.

Status: Open.

Matters to be Considered: A report on the Corrections Satellite Television Network, an update on the relocation of the National Academy of Corrections, the Jail Center, and the Information Center, a review of FY 1992 budget strategies and recommendations, and reports from the federal agencies.

Contact Person for more Information: Larry Solomon, Deputy Director, (202) 307-3106.

M. Wayne Huggins,

Director.

[FR Doc. 91-12865 Filed 5-30-91; 8:45 am]

BILLING CODE 4410-36-M

DEAPRTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Traning Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 10, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 10, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Traning Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 20th day of May 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
ADT Security Systems (IBEW)	Jonesboro, AR	05/20/91	05/06/91	25,828	Fire and burglar alarms.
Ali—Court (ILGWU)	Alburtis, PA	05/20/91	05/13/91	25,829	Sportswear.
American Sign & Indicator Corp. (IBEW)	Spokane, WA	05/20/91	05/02/91	25,830	Visual electronic displays.
ASKO, Inc., American Shear Knife (Wkrs)	Homestead, PA	05/20/91	05/04/91	25,831	Cutting tools and parts.
B&W Shake Co. (Wkrs)	Forks, WA	05/20/91	05/06/91	25,832	Cedar shakes & shingles.
C&R Cedar (Wkrs)	Forks, WA	05/20/91	05/08/91	25,833	Shakes & shingles.
Cherry Elec.—Printed Circuit Div. (CO)	Waukegan, IL	05/20/91	05/13/91	25,834	Circuit boards.
Corporate Knitting Mill (Wkrs)	Passaic, NJ	05/20/91	05/03/91	25,835	Knitwear.
Dana Corp., Spicer Axle Div. (UAW)	Syracuse, IN	05/20/91	05/09/91	25,836	Axles.

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APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Endicott Johnson Corp (Riverside) (Wkrs)	Johnson City, NY	05/20/91	05/06/91	25,837	Footwear warehouse.
Endicott Johnson Corp (Lester) (Wkrs)	Johnson City, NY	05/20/91	05/06/91	25,838	Footwear warehouse.
Endicott Johnson Corp (Wkrs)	Endicott, NY	05/20/91	05/06/91	25,839	Footwear warehouse.
Fitzsimons Mfg. Co. (UAW)	Big Rapids, MI	05/20/91	05/08/91	25,840	Gas neck filler tubes.
Gitano Menswear Div. Knits (Wkrs)	New York, NY	05/20/91	05/07/91	25,841	Men's jeans.
Haskell of Pittsburgh Mfg. Co. (IUE)	Verona, PA	05/20/91	05/08/91	25,842	Chairs.
Houston Ceramics (Wkrs)	Houston, MS	05/20/91	05/13/91	25,843	Floor & wall tile.
Johnson Controls Inc., Hoover Auto. (Wkrs)	Adrian, MI	05/20/91	05/01/91	25,844	Prototype auto seatings.
Kentucky Agricultural Energy Corp. (Wkrs)	Franklin, KY	05/20/91	05/02/91	25,845	Ethanol fuel.
LaRose RF Systems, Inc. (USWA)	Cohoes, NY	05/20/91	05/08/91	25,846	Mold heaters.
Northern Contracting Co. (Wkrs)	Philadelphia, PA	05/20/91	05/10/91	25,847	Coal.
Nustyle Knitting Mills (ILGWU)	Bronx, NY	05/20/91	05/06/91	25,848	Sweaters.
Olympic Luggage Corp. (Company)	Kane, PA	05/20/91	05/01/91	25,849	Olympic luggage.
Sol Duc Shakes & Shingles (Wkrs)	Forks, WA	05/20/91	05/08/91	25,850	Shakes & shingles.
Sunshine Mining Co. (USWA)	Kellogg, ID	05/20/91	05/09/91	25,851	Silver.
Tara Knitting Mills (ILGWU)	Brooklyn, NY	05/20/91	05/06/91	25,852	Knitted garments.
W.A. Schaerr, Inc. (Wkrs)	Delhi, NY	05/20/91	04/29/91	25,853	Thermometer protectors.
William Carter Co. (Wkrs)	Vicksburg, MS	05/20/91	05/02/91	25,854	Infants jumpers & sleepers.
Witco Corp. Richardson Battery (URW)	Indpls, IN	05/20/91	05/11/91	25,855	Battery containers and covers.

[FR Doc. 91-12944 Filed 5-30-91; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-25,829]

Mitel, Inc. Ogdensburg, NY, Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 1, 1991 in response to a worker petition which was filed on April 1, 1991 on behalf of workers at Mitel, Incorporated, Ogdensburg, New York.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 22nd day of May, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-12945 Filed 5-30-91; 8:45 am]
BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

Florida:
FL91-45(Feb. 22, 1991) ..... p. 211, pp. 212-213..

New Jersey:
NJ91-2(Feb. 22, 1991) ..... p. 701, pp. 702-708.
NJ91-3(Feb. 22, 1991) ..... p. 721, pp. 721-728.
NJ91-7(Feb. 22, 1991) ..... p. 767, p. 768.

Pennsylvania:
PA91-5(Feb. 22, 1991) ..... p. 995, p. 996.
PA91-6(Feb. 22, 1991) ..... p.. 1007, p. 1008.

Volume II:

Indiana:
IN91-5(Feb. 22, 1991) ..... p. 305, pp. 306-308.

Kansas:
KS91-1(Feb. 22, 1991) ..... p. 353, p. 354.

Michigan:
MI91-1(Feb. 22, 1991) ..... p. 441, pp. 442-443, pp. 446-447.
MI91-2(Feb. 22, 1991) ..... p. 461, pp. 462, 464.
MI91-5(Feb. 22, 1991) ..... p. 499, pp. 500-501.
MI91-7(Feb. 22, 1991) ..... p. 515, p. 516.
MI91-17(Feb. 22, 1991) ..... p. 559, p. 560.

New Mexico:
NM91-1(Feb. 22, 1991) ..... p. 779, p. 781.

Ohio:
OH91-1(Feb. 22, 1991) ..... p. 809, p. 812.
OH91-2(Feb. 22, 1991) ..... p. 821, p. 822.
OH91-29(Feb. 22, 1991) ..... p. 903, pp. 910-911.

Texas:
TX91-10(Feb. 22, 1991) ..... p. 1045, p. 1046.

Volume III:

California:
CA91-1(Feb. 22, 1991) ..... p. 31, pp. 32-34, 36-38.
CA91-2(Feb. 22, 1991) ..... p. 45, pp. 46-47, 49-51, pp. 53-54, 57-59.

Colorado:
CO91-1(Feb. 22, 1991) ..... p. 151, pp. 152-153.
CO91-5(Feb. 22, 1991) ..... p. 175, p. 176.

Hawaii:
HI91-1(Feb. 22, 1991) ..... p. 197, p. 198.

North Dakota:
ND91-2(Feb. 22, 1991) ..... p. 285, p. 286.

Utah:
UT91-5(Feb. 22, 1991) ..... p. 421, p. 422.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscription may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 24th day of May 1991.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 91-12795 Filed 5-30-91; 8:45 am]
BILLING CODE 4510-27-M

Occupational Safety and Health Administration

[Docket No. NRTL-1-88]

MET Electrical Testing Co. Inc.

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of Expansion of Current Recognition as a Nationally Recognized Testing Laboratory.

SUMMARY: This notice announces the Agency's final decision on the MET Electrical Testing Company, Inc. application for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: James J. Concannon, Director, Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., room N3653, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

Final Decision

The MET Electrical Testing Company, Inc. (MET), previously made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970, (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 1-90 (55 FR 9033), and 29 CFR 1910.7, for recognition as a Nationally Recognized Testing Laboratory (see 53 FR 49258, 12/6/88), and was so recognized (see 54 FR 21136, 5/16/89).

MET initially applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory for two test standards pursuant to 29 CFR 1910.7 which was granted as published in the **Federal Register** on June 7, 1990 (55 FR 23311-12) (See exhibit 9).

Subsequent to that, MET again applied for an expansion of its recognition for twelve standards. (See **Federal Register** notice dated April 12, 1991 (56 FR 14956-57, Exhibit 10.)).

Notice is hereby given that MET's recognition as a Nationally Recognized Testing Laboratory has been expanded to included the twelve test standards (product categories) listed below.

Copies of all pertinent documents (Docket No. NRTL-1-88), are available for inspection and duplication at the Docket Office, Room N-2634, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Washington, DC 20210. The address of the concerned laboratory is: MET Electrical Testing Company, Inc., Laboratory Division, 916 West Patapsco Avenue, Baltimore, Maryland 21230.

Final Decision and Order

Based upon the facts found as part of the MET Electrical Testing Company, Inc. original recognition, including details of necessary test equipment, procedures, and special apparatus or facilities needed, adequacy of the staff, the application(s) and documentation submitted by the applicant (see exhibit 11. A.), the OSHA staff finding including the original On-Site Review Report, as well as the evaluation of the current request (see exhibit 11.B.), OSHA finds that the MET Electrical Testing Company, Inc. has met the requirements of 29 CFR 1910.7 for expansion of its present recognition to test and certify certain equipment or materials.

Pursuant to the authority in 29 CFR 1910.7, the MET Electrical Testing Company, Inc. recognition is hereby expanded to include the twelve additional test standards (product categories) cited below, subject to the

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conditions listed below. This recognition is limited to equipment or materials which, under 29 CFR part 1910, require testing, listing, labeling, approval, acceptance, or certification by a Nationally Recognized Testing Laboratory. This recognition is limited to the use of the following two additional test standards for the testing and certification of equipment or materials included within the scope of these standards.

MET has stated that these standards are used to test equipment or materials which can be used in environments under OSHA's jurisdiction, and OSHA has determined that they are appropriate within the meaning of 29 CFR 1910.7(c).

ANSI/UL 22—Electric Amusement Machines
ANSI/UL 122—Electric Photographic Equipment
ANSI/UL 130—Electric Heating Pads
ANSI/UL 231—Electrical Power Outlets
ANSI/UL 813—Commerical Audio Equipment
ANSI/UL 869—Electrical Service Equipment
ANSI/UL 1012—Power Supplies
UL 1244—Electrical and Electronic Measuring and Testing Equipment
ANSI/UL 1411—Transformers and Motor Transformers for Use in Audio-, Radio-, and Television-Type Appliances
UL 1449—Transient Voltage Surge Suppressors
ANSI/UL 1647—Motor-Operated Massage and Exercise Machines
UL 1778—Uninterruptible Power Supply Equipment

The MET Electical Testing Company, Inc., must also abide by the following conditions of this expansion of its recognition, in addition to those already required by 29 CFR 1910.7:

This recognition does not apply to any aspect of any program which is available only to qualified manufacturers and is based upon the NRTL's evaluation and accreditation of the manufacturer's quality assurance program;

The Occupational Safety and Health Administration shall be allowed access to MET's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If MET has reason to doubt the efficacy of any test standard it is using under this program, it shall promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

MET shall not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, MET agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, of that its recognition is limited to certain products;

MET shall inform OSHA as soon as possible, in writing, of any change of ownership or key personnel, including details;

MET will continue to meet the requirements for recognition in all areas where it has been recognized; and

MET will always cooperate with OSHA to assure compliance with the letter as well as the spirit of its recognition and 29 CFR 1910.7.

EFFECTIVE DATE: This recognition will become effective on May 31, 1991, and will be valid until May 16, 1994, (a period of five years from the date of the original recognition, May 16, 1989), unless terminated prior to that date, in accordance with 29 CFR 1910.7.

Signed at Washington, DC this 28th day of May, 1991.

Gerard F. Scannell,

Assistant Secretary.

[FR Doc. 91-12948 Filed 5-30-91; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting; Music Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Overview/Special Projects Section) to the National Council on the Arts will be held on June 18-19, 1991 from 9 a.m.-5 p.m. and June 20 from 9 a.m.-4 p.m. in room M-14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on June 18 from 9 a.m.-5 p.m., June 19 from 9 a.m.-1 p.m. and June 20 from 3 p.m.-4 p.m. The topics will be introductory remarks, panel orientation, Endowment-wide issues, Music Program issues and updates, panelists' issues, and special projects guidelines review.

The remaining portions of this meeting on June 19 from 1 p.m.-5 p.m. and June 20 from 9 a.m.-3 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, as amended, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: May 24, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-12883 Filed 5-30-91; 8:45 am]

BILLING CODE 7537-01-M

Meeting; Theater Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (National Resources Section) to the National Council on the Arts will be held on June 18-19, 1991 from 9:30 a.m.-5:30 p.m. in room M-07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the Public on June 18 from 9:30 a.m.-10 a.m. and June 19 from 3 p.m.-5:30 p.m. The topics will be opening remarks, policy and FY 92 guidelines discussion.

The remaining portions of this meeting on June 18 from 10 a.m.-5:30 p.m. and June 19 from 9:30 a.m.-3 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, as amended, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: May 24, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-12884 Filed 5-30-91; 8:45 am]

BILLING CODE 7537-01-M

Meeting; Visual Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Visual Artists Fellowships/Works on Paper Section) to the National Council on the Arts will be held on June 17-20, 1991 from 9 a.m.-6 p.m. and June 21 from 10 a.m.-3:30 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on June 21 from 2:30 p.m.-3:30 p.m. The topics will be policy and guidelines recommendations.

The remaining portions of this meeting on June 17-20 from 9 a.m.-6 p.m. and June 21 from 10 a.m.-2:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, as amended, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: May 24, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-12885 Filed 5-30-91; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting two notices of information collections that will affect the public. Interested persons are invited to submit comments by June 21, 1990. Comments may be submitted to:

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or by telephone (202) 357-7335, and to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, room 3208, NEOB, Washington, DC 20503.

(1) **Title:** Survey of Undergraduate Instruction in Engineering.

Affected Public: Non-profit institutions.

Responses/Burden Hours: 300 respondents; 1.5 hours each response.

(2) *Title:* Survey of Science and Technology Education in Two-year schools.

Affected Public: Non-profit institutions.

Responses/Burden Hours: 1,140 respondents; 1 hour each response.

Abstract: Panel survey are responsive to a variety of policy issues. Topics are not predetermined and survey instruments are designed specifically for each survey. This and other surveys information for program management, serve research objectives and satisfy general information needs not met through existing information sources.

Dated: May 28, 1991.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 91-12900 Filed 5-30-91; 8:45 am]

BILLING CODE 7555-01-M

Antarctic Tour Operators Meeting

The National Science Foundation announces the following meeting:

Name: Antarctic Tour Operators Meeting.

Date & Time: July 10, 1991, 9 a.m.-5 p.m.

Place: National Science Foundation, room 540, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Nadene G. Kennedy, Polar Activities Coordinator, Division of Polar Programs, National Science Foundation Washington, DC 20550, Telephone: (202) 357-7817.

Purpose of Meeting: Pursuant to the National Science Foundation's responsibilities under the Antarctic Conservation Act (Public Law 95-541) and the Antarctic Treaty, the U.S. Antarctic Program Managers plan to meet with Antarctic Tour Operators to exchange information concerning dates and procedures for visiting U.S. antarctic stations, review the latest Antarctic Treaty Recommendations concerning the environment and protected

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sites, and other items designed to protect the Antarctic environment.

Agenda:

- Introduction and Overview.
- Review of 1990–91 Visits to Palmer Station.
- Review of 1990–91 Visits to McMurdo Station.
- USAP Observers Report.
- 1991–92 Visits to Palmer Station.
- Update on Palmer Management Plan.
- 1990 & 1991 Analysis of Visited Sites.
- Scientific Study on Tourism and the Environment.
- Status of 15th Antarctic Treaty Recommendations Concerning Specially Protected Sites.
- Review Draft NSF Pollution Regulations.
- Environmental Protocol.
- 16th Antarctic Treaty Consultative Meeting Agenda Item on Antarctic Tourism.
- Pending Legislation Concerning Antarctic Tourism.
- Other Items.

John B. Talmadge,

Head, Polar Coordination and Information Section, Division of Polar Programs.

[FR Doc. 91–12815 Filed 5–30–91; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Polar Programs; Notice of Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Polar Programs.

Dates/Times: June 10–11, 1991—8:30 a.m. to 5 p.m. each day.

Place: Room 1242, National Science Foundation, 1800 G St., NW., Washington, DC.

Type of Meeting: Closed.

Agenda: Review and evaluate cross directorate proposals on arctic research.

Contact: Dr. Ted E. DeLaca, Director, Arctic System Science Program, room 620, National Science Foundation, Washington, DC 20550 (202–357–7766).

Reason for Late Notice: Difficulty in obtaining acceptable meeting date.

Dated: May 28, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–12901 Filed 5–30–91; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste Joint Working Group on Expert Judgment and Human Intrusion in the Performance Assessment for Nuclear Waste Disposal; Meeting

The Joint Working Group on Expert Judgment and Human Intrusion will hold a meeting on June 18–19, 1991, in room P–110, 7920 Norfolk Avenue, Bethesda, Maryland, 8:30 a.m. until 5:30 p.m. each day. The entire meeting will be open to the public.

The Working Group will focus on the mechanics of the expert elicitation process and the utilization of the results of that process. Participants will address the appropriate procedures for selection of experts and issues. Past experience in the Nuclear Regulatory Commission staff's Severe Accident Risk Study (NUREG–1150) will be discussed in light of their applicability to the specific problem of assessing the potential for human intrusion into a geologic waste repository, for both the proposed Yucca Mountain and the Waste Isolation Pilot Plant sites. In addition to decision analysts from the United States, an international perspective from Canada will be presented. This is the second meeting addressing the role and the extent of expert judgment in the site characterization and licensing process with respect to the disposal of nuclear waste.

Oral statements may be presented by members of the public with the concurrence of the Working Group Chairman; written statements will be accepted and made available to the Group. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Working Group, its consultants, and staff. Persons desiring to make oral statements should notify the ACNW staff members named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Working Group, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Working Group will then hear presentations by and hold discussions with the invited speakers from DOE, the Atomic Energy Control Board of Canada, the National Laboratories, as well as normative experts and other persons interested in this subject.

Further information regarding the agenda for this meeting, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACNW staff member, Mr. Giorgio Gnugnoli (telephone 301/492–9851 between 8:15 a.m. and 6 p.m.). Persons planning to attend this meeting are urged to contact the above named individuals one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: May 24, 1991.

R. K. Major,

Chief, Nuclear Waste Branch.

[FR Doc. 91–12909 Filed 5–30–91; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittees on Regional Programs; Meeting

The ACRS Subcommittee on Regional Programs will hold a meeting on June 18 and 19, 1991, NRC region III Office, 799 Roosevelt Road, Glen Ellyn, IL.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, June 18, 1991—8:30 a.m. until the conclusion of business.

Wednesday, June 19, 1991–8:30 a.m. until the conclusion of business.

The Subcommittee will discuss the activities of the NRC region III Office.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, their consultants, and other interested person regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Paul Boehnert (telephone 301/492–8558) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: May 23, 1991.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 91–12910 Filed 5–30–91; 8:45 am]

BILLING CODE 7590–01–M

Correction to Biweekly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

In the biweekly notice beginning on page 20045 in the issue of Wednesday, May 1, 1991, make the following correction:

On page 20045, "Date of amendment request: April 8, 1990" should read "Date of amendment requests: April 8, 1991."

For the Nuclear Regulatory Commission.

Lawrence E. Kokajko,

Project Manager, Project Directorate V, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91–12907 Filed 5–30–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–445 and 50–446]

Texas Utilities Electric Co., Commanche Peak Steam Electric Station; Receipt of Petition for Director's Decision

Notice is hereby given that by petition dated April 5, 1991, Citizens for Fair Utility Regulation (CFUR) requested that the Nuclear Regulatory Commission take action with regard to the Texas Utilities Electric Company's (TU Electric or licensee) Comanche Peak Steam Electric Station, Units 1 and 2. CFUR requests that a supplemental environmental impact statement be prepared in accordance with 10 CFR 51.20(a), and that the Commission take action against the licensee for violation of 10 CFR 50.9.

CFUR asserts as bases for its request the following: Since 1974, Brown & Root, Inc., the principal contractor for the Commanche Peak Steam Electric Station, and several subcontractors, maintained at least 15 and possibly 20 unlicensed waste dumps containing at least 157 types of toxic chemicals and construction waste, some of which are classified as Class I hazardous waste; fires or explosions could occur with the current mixture of wastes and methane gas in the waste dumps; the waste sites are unlined and three of them are at the edge of or in Squaw Creek Reservior, which supplies cooling water to the licensee's nuclear plant and which mixes with surface water used by the public; the licensee has reported to the Texas Water Commission (TWC) that groundwater samples recently taken from a monitoring well near the Squaw Creek Reservoir were found to contain carcinogens and other contaminants above reportable drinking water levels; toxic or hazardous materials could enter the plant's safety systems or could corrode vital components of the plant's cooling system; the NRC decision to rely on the TWC to monitor the waste dumps was based on incomplete and inaccurate information supplied by the licensee to the NRC concerning the number and location of dumps and the types and amounts of hazardous material, and, moreover, the TWC is not qualified to determine the safety significance of hazardous waste to a nuclear plant; the closure plan submitted by the licensee to TWC violates 40 CFR 265.111 because no removal or decontamination has been proposed; the licensee violated the national pollutant discharge emission system (NPDES) permit issued by the U.S. Environmental Protection Agency (EPA) for the cooling water intake structure because the licensee located unauthorized and unreported hazardous waste dumps near the cooling water intake system; the licensee violated the Resource Conservation and Recovery Act (RCRA) land ban disposal restrictions; the licensee violated the Texas Administrative Code, section 335.43, by failing to provide proper information regarding the waste dumps; in accordance with 10 CFR 51.53(a), the presence of the waste dumps reflects new information which the licensee was required to reveal to the NRC before the February 1990 grant of an operating license for Comanche Peak Unit No. 1, and; the licensee did not reveal environmental and safety-related information that was material to the licensing of the Comanche Peak plant regarding the presence of unauthorized hazardous waste dumps, which violated 10 CFR 50.9.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. As provided by 10 CFR 2.206, appropriate action will be taken on this request within a reasonable time.

A copy of the petition is available for inspection at the U.S. Nuclear Regulatory Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019.

Dated at Rockville, Maryland, this 23rd day of May 1991.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Deputy Director, Office of Nuclear Reactor Regulation.

[FR Doc. 91–12906 Filed 5–30–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–461]

Illinois Power Co., et al.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–62, issued to Illinois Power Company and Soyland Power Cooperative, Inc. (the licensee), for operation of the Clinton Power Station, Unit No. 1, located in DeWitt County, Illinois.

The amendment would change section 3.3.4.1 of the Technical Specifications to more closely reflect the capabilities of the Clinton Power Station Anticipated Transient Without Scram Recirculation Pump Trip (ATWS–RPT) instrumentation design, and to allow use of the ATWS–RPT system test switches during Operational Condition 1 (at power).

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By July 1, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the

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proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions that are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, 20555 by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John N. Hannon: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated December 17, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois.

Dated at Rockville, Maryland, this 24th day of May 1991.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate III–3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91–12905 Filed 5–30–91; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Privacy Act of 1974; Proposed Changes to Systems of Records

AGENCY: Railroad Retirement Board.

ACTION: Notice of proposed change to systems of records.

SUMMARY: The purpose of this document is to give notice of two proposed routine uses in three systems of records.

DATES: The systems of records for which a new routine use is proposed shall be amended as proposed without further notice 30 calendar days from the date of this publication June 30, 1991), unless comments are received before this date which would result in a contrary determination.

ADDRESSES: Send comments to Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: LeRoy Blommaert, Privacy Act/FOIA Officer, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4548 (FTS 386–4548).

SUPPLEMENTARY INFORMATION: The proposed routine use for inclusion in one system of records (RRB–4, "h") would permit the RRB to disclose estimates of annuity rates to any court, state agency, or interested party, or the representative of such court, state agency, or interested party, in connection with contemplated or actual legal or administrative proceedings concerning domestic relations and support matters. The RRB presently is permitted under routine use "kk" in system of records RRB–22, Railroad Retirement, Survivor, and Pensioner Benefit System, to disclose entitlement data and actual benefit rates to such parties under the above described circumstances. The RRB has determined that this proposed routine use meets the compatibility requirement because it is a necessary and proper use.

The proposed routine use for inclusion in two systems of records (RRB–25, "e"; and RRB–26, "f") would permit the RRB to disclose to state agencies benefit information for the purpose of determining entitlement of continued entitlement to state income-dependent benefits and, if entitled, for the prupose of adjusting such benefits to the amount to which the individual is entitled under state law. The Railroad Retirement Board has determined that this proposed routine use meets the compatibility requirement because it is a necessary and proper use.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

RRB–4

SYSTEM NAME:

Microfiche of Estimated Annuity, Total Compensation and Residual Amount File—RRB.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

New paragraph "h" is added to read as follows:

* * * * *

h. Annuity estimates may be released to any court, state agency, or interested party, or the representative of such court, state agency, or interested party, in connection with contemplated or actual legal or administrative proceedings concerning domestic relations and support matters.

RRB–25

SYSTEM NAME:

Research Master Record for Survivor Beneficiaries Under the Railroad Retirement Act—RRB.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

New paragraph "e" is added to read as follows:

e. Benefit information may be furnished to state agencies for the purposes of determining entitlement or continued entitlement to state income-dependent benefits and, if entitled, to adjusting such benefits to the amount to which the individual is entitled under state law, provided the state agency furnishes identifying information for the individuals for whom it wants RRB benefit information.

* * * * *

RRB–26

SYSTEM NAME:

Research Master Record for Retirement Railroad Employees and their Dependents—RRB.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

New paragraph "f" is added to read as follows:

f. Benefit information may be furnished to state agencies for the purposes of determining entitlement or continued entitlement to state income-dependent benefits and, if entitled, to adjusting such benefits to the amount to which the individual is entitled under state law, provided the state agency furnishes identifying information for the individuals for whom it wants the RRB benefit information.

[FR Doc. 91–12936 Filed 5–30–91; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272–2700.

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, 450 5th St. NW., Washington, DC 20549.

New Corporate Account ID Form, 270–352

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for clearance the Corporate Account ID Form. The form will be used to assign a unique account number for each filing entity with the Commission for the purpose of managing the collection of filing fees. The estimated average burden hours for each filer is .17 hours.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimaed average burden hours for compliance with Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

May 21, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–12949 Filed 5–30–91; 8:45 am]

BILLING CODE 8010–01–M

Requests Under Review by Office of Management and Budget Agency Clearance Officer—Kenneth A. Fogash (202) 272–2142

Upon written request copies available from: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549–1002.

Extension, Rule 15Ba2–1 and Form MSD, File No. 270–88

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted extension of OMB approval rule 15Ba2–1 and form MSD under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*), which provide the form for application for registration with the Commission by bank municipal securities dealers. Approximately forty respondents incur as estimated average of one and one-half burden hours to comply with this rule. The requested extension would last until January 31, 1994, in order to provide that the expiration date for the rule and form will parallel the expiration dates applicable to other Commission rules

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pertaining to municipal securities dealers.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

May 22, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-12950 Filed 5-30-91; 8:45 am]

BILLING CODE 8010-01-M

[Securities Exchange Act of 1934 Release No. 29236/May 24, 1991]

Order Granting Temporary Approval of Registration Until May 31, 1993

In the Matter of: The Registration as a Clearing Agency of the Government Securities Clearing Corp.

(File No. 600-23)

On March 15, 1991, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") pursuant to section 19(a) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(a), an amended form CA-1.[1] GSCC requested that the Commission grant GSCC full registration as a clearing agency, or, in the alternative, extend GSCC's temporary registration as a clearing agency until such time as the Commission is able to grant GSCC permanent registration. Notice of GSCC's request for extension of temporary registration appeared in the **Federal Register** on April 17, 1991.[2] No comments were received. This order approves GSCC's request by extending GSCC's registration as a clearing agency until May 31, 1993. The Commission has determined that it is appropriate under the Act to continue GSCC's exemption from the participation standards in sections 17A(b)(3)(B) and 17A(b)(4)(B) and the fair representation standards in sections 17A(b)(3)(C) of the Act. This order extending GSCC's temporary registration continues those exemptions.

On May 24, 1988, the Commission granted GSCC's application for registration as a clearing agency, pursuant to sections 17A and 19(a) of the Act, and rule 17Ab2-1 thereunder, for a period of 36 months.[3] One of the primary reasons for GSCC's registration was to provide comparison services for transactions in securities issued or guaranteed by the United States, U.S. government agencies and instrumentalities, and U.S. government-sponsored corporations ("Government Securities").[4]

At the time temporary registration was granted, the Commission noted that GSCC would need to address certain issues relating to GSCC's operations and procedures during the temporary registration period. In addition, GSCC has undertaken to satisfy other requirements in connection with GSCC's clearing fund formula.[5]

In this connection, over the last three years GSCC has, among other things, established admission criteria for its three categories of membership.[6] GSCC is taking affirmative steps to encourage nonprimary Government Securities dealers who are comparison-only members to become full netting members of GSCC. GSCC expects that certain of these comparison-only members will become full netting members in the near future.

GSCC's services include clearance and settlement services for members in processing transactions in Government Securities. Initially GSCC offered a trade comparison service. GSCC has expanded its services and GSCC now offers its members netting and comparison services for trades in Government Securities including forward-settling trades[7] and zero-coupon Government Securities.[8] In connection with GSCC's clearance and settlement services GSCC provides a centralized loss allocation procedure and GSCC maintains margin to offset netting and settlement risks.

The Commission believes that GSCC continues to meet the determinations enumerated in section 17A(b) of the Act. Because GSCC continues to refine its operations and work toward meeting certain undertakings in GSCC's initial temporary registration order and subsequent orders relating to GSCC's netting system, the Commission believes GSCC's temporary registration should be extended for a period of 24 months to allow GSCC time to complete these undertakings.[9]

It is therefore ordered, That GSCC's temporary registration as a clearing agency be, and hereby is, extended until May 31, 1993, subject to the terms, undertakings, and conditions as set forth above.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-12951 Filed 5-30-91; 8:45 am]

BILLING CODE 8010-01-M

[1] Letter from Charles A. Moran, President, GSCC, to Brandon Becker, Associate Director, Division of Market Regulation, Commission, dated March 15, 1991.

[2] Securities Exchange Act Release No. 29087 (April 11, 1991), 56 FR 15062.

[3] Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19839.

[4] *Id.*

[5] Those undertakings include: (1) The development of an automated system for the assessment, based on maturity ranges, of price volatility; (2) monitoring the adequacy of its margin levels and increasing its confidence level to 99% for all maturity ranges, and evaluating the cost of such a change to GSCC and to its membership; (3) the development of participation standards listing in its rules all the statutory enumerated entities and the provision of standards to accommodate such entities when those entities seek membership with GSCC; (4) re-examining GSCC's Board selection criteria to ensure fair representation among GSCC's membership; and (5) conferring with the Commission regarding GSCC's standard of care in performing non-custodial clearing agency services.

[6] GSCC rules enumerate three categories of membership: government securities brokers, dealers and clearing agent banks. GSCC Rules and Procedures, rule 2.

[7] Securities Exchange Act Release No. 27902 (April 12, 1990), 55 FR 15096.

[8] Securities Exchange Act Release No. 28942 (January 31, 1991), 56 FR 5032.

[9] See Securities Exchange Act Release Nos. 25740 (May 24, 1988), 53 FR 19839 ("Temporary Registration Order"); 27096 (July 7, 1989), 54 FR 29798 and 29701 (April 12, 1990), 55 FR 13955 ("Netting Orders"); and 28842 (January 31, 1991), 56 FR 5032 (Netting of zero-coupon securities).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[Release No. 34-29229; File No. SR-NYSE-91-05]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating To Listing Criteria for Securities Other Than Common Stocks and Bonds

On January 24, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities and Exchange Act of 1934 ("Act")[1] and rule 19b-4 thereunder,[2] a proposed rule change to standardize certain listing requirements for securities other than common stocks and bonds.

The proposed rule change was published in Securities Exchange Act Release No. 28944 (March 5, 1991), 56 FR 10935. No comments were received on the proposed rule change.

Specifically, the Exchange proposes to amend §§ 703.12 Warrant Listing Process, 703.15 Foreign Currency Warrants, 703.17 Index Warrants Listing Standards, 703.18 Contingent Value Rights, and 703.19 Other Securities of the Exchange's Listed Company Manual to standardize certain hybrid product listing requirements.[3] The minimum proposed standardized requirements for these financial products referenced above are: (1) 1 million securities outstanding; (2) 400 holders; (3) a one year life; and (4) $4 million in market value.

Over the years, the NYSE has developed separate listing standards for a variety of innovative securities which are not traditional common stocks or bonds that are traded on the Exchange. These securities include: common stock warrants, foreign currency warrants, index warrants, and special purpose securities not readily categorized as equity or debt.

The Exchange originally developed these security-related listing standards separately in anticipation of the unique characteristics of each of these different securities. However, experience gained in bringing these issues to market has shown that varying listing requirements among these products is unnecessary. In particular, issuers and underwriters are confused by different requirements for seemingly similar instruments. Accordingly, the Exchange proposes to consolidate the listing standards for certain hybrid products traded on the NYSE.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[4] Specifically, the Commission believes that it will be less confusing for issuers and investors alike and beneficial to the mechanism of a free and open market, if the listing standards for certain hybrid products traded on the NYSE are standardized. Moreover, the listing standards chosen by the Exchange are designed to ensure that there is a sufficient float and shareholder base for a hybrid security so that a fair and orderly market can be maintained. The standards basically are culled from the standards that currently apply to various hybrid products listed on the Exchange.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change (SR-NYSE-91-05) to standardize listing requirements for certain securities other than common stock and bonds, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

Dated: May 23, 1991.

[FR Doc. 91-12841 Filed 5-30-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29237; International Series Release No. 275; Files No. SR-NYSE-90-52 and SR-NYSE-90-53]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Temporary Approval to Proposed Rule Changes Relating to the New York Stock Exchange's Off-Hours Trading Facility

I. Introduction

On November 1, 1990, the New York Stock Exchange ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b-4 thereunder,[2] two proposed rule changes that would extend the Exchange's trading hours beyond the close of the 9:30 a.m. to 4 p.m. trading session and would establish an "Off-Hours Trading" ("OHT") facility. The OHT facility would consist of two trading sessions: "Crossing Session I," which would permit the execution of single-stock, single-sided closing-price orders and crosses of single-stock, closing-price buy and sell orders;[3] and "Crossing Session II," which would allow the execution of crosses of multiple-stock aggregate-price buy and sell orders.[4] The proposed rule changes consist of changes to existing NYSE rules and the adoption of a new "900 series" of rules that would apply solely to the OHT facility ("Rules for Off-Hours Trading Facility")

Files No. SR-NYSE-90-52 and SR-NYSE-90-53 were published for comment in Securities Exchange Act Release No. 28639 (November 21, 1990), 55 FR 49736 (November 30, 1990), and Securities Exchange Act Release No. 28640 (November 21, 1990), 55 FR 49739 (November 30, 1990), respectively. The Commission received seven comment letters, all of which opposed the proposed rule changes.[5]

II. Description of the Proposal

The NYSE's proposed OHT facility, consisting of Crossing Sessions I and II, represents the second phase of the Exchange's four-part plan to respond to the evolving demand among NYSE members and member organizations ("members") and customers for trading opportunities beyond those offered by the Exchange's 9:30 a.m. to 4 p.m. trading session.[6] The plan also responds, in part, to a continuing concern that the Exchange consider developing an after-hours trading session as a means to attract back to the United States the order flow currently being executed overseas. The final parts of the NYSE plan likely would consist of a third phase taking the form of discontinuous auction pricing sessions between the close of the OHT sessions and the 9:30 a.m. opening of the regular trading session, and a final phase consisting of off-hours continuous trading.[7]

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1989).

[3] In its filing, the Exchange proposed to modify Section 703.20 governing the listing standards applicable to Units, Component Securities and Similar Securities which is contained in pending filing SR-NYSE-90-32. In order to consolidate all proposed rule changes dealing with proposed § 703.20, the Exchange considered the proposed changes to § 703.20 contained in file SR-NYSE-91-05 as an amendment to file SR-NYSE-90-32. See letter from Linda Simplicio, Vice-President, Division Counsel, Listed Company Compliance, NYSE, to Thomas Gira, Branch Chief, Options Regulation, Division of Market Regulation, SEC, dated February 4, 1991.

[4] 15 U.S.C. 78f(b)(5) (1982).

[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30-3(a)(12) (1989).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1990).

[3] See File No. SR-NYSE-90-52.

[4] See File No. SR-NYSE-90-53.

[5] The Commission received comment letters from the Boston, Pacific, Philadelphia, and Midwest Stock Exchanges and the National Association of Securities Dealers, Inc. regarding the proposed rule changes. Some commenters raised concerns with respect to both Crossing Sessions I and II, while other commenters limited their comments specifically to Crossing Session I. See infra notes 30-40 and accompanying text for a discussion of the comments received.

[6] Phase one consists of the NYSE's revisions to its market-on-close ("MOC") execution process to ensure that MOC orders receive the closing price in a stock, and to enable members to enter matched MOC buy and sell orders prior to 4 p.m. to achieve guaranteed executions as part of the closing trade. See Securities Exchange Act Release No. 28167 (June 29, 1990), 55 FR 28117 (Approving File No. SR-NYSE-89-10).

[7] See letter from Catherine R. Kinney, Senior Vice President, NYSE, to Brandon Becker, Associate Director, Division of Market Regulation, SEC, dated September 18, 1990. See also U.S. Congress, Office of Technology Assessment, Trading Around the Clock: Global Securities Markets and Information Technology—Background Paper, OTA-BP-CIT-86 (Update) (July 1990); Power, New York Stock Exchange Sets Its First Limited Off-Hours Trades, Wall St. J., Sept. 12, 1990, at C1, col. 3; Eichenwald, Big Board Approves Late Trades, N.Y. Times, Sept. 12, 1990, at D1, col. 1.

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A. Description of Crossing Session I

Crossing Session I would accept orders in a particular stock for execution at the last price at which the stock traded on the NYSE during the 9:30 to 4 session. Two different types of closing-price orders could be entered into, and executed in, Crossing Session I: (1) Single-stock, single-sided orders ("closing-price single-sided orders") in round lots of up to 99,900 shares only, including certain limit orders from the regular 9:30 a.m. to 4 p.m. trading session; and (2) coupled single-stock orders (odd lots and partial round lots permitted), so long as both sides of such an order are not proprietary to members ("closing-price coupled orders").

Crossing Session I, which would operate on each day that the Exchange is open, would commence following the close of the 9:30 a.m. to 4 p.m. session and would end at 5 p.m. Closing-price single-sided and coupled orders can be entered into the OHT facility only through the NYSE's Designated Order Turnaround System ("SuperDOT"), the Exchange's network of electronic order processing and post-trade systems.[9] In addition, only NYSE-listed equity securities that have been designated by the Exchange and are not subject to a trading halt as of the close of the regular trading session may be entered into Crossing Session I.[10]

In addition to closing-price single-sided and coupled orders that are entered into the OHT facility after 4 p.m., certain limit orders that have migrated from the 9:30 a.m. to 4 p.m. session would be able to participate in Crossing Session I. Members may designate unconditioned round-lot and partial round-lot limit orders entered during the 9:30 a.m. to 4 p.m. session as "GTX" ("good 'til cancelled,[10] executable through crossing session") to enable the orders to be executed against closing-price single-sided orders during Crossing Session I.[11] When the NYSE closing price of a security is known, SuperDOT would "sweep" the specialists' limit order books for GTX orders that are at or better than the closing price and would enter those orders into the OHT facility.[12]

"Migrated" GTX orders would retain the same priority among themselves as existed on the specialist's book, and would have priority over all closing-price single-sided orders. Closing-price single-sided orders would have priority based on the time of entry into the OHT facility. Traditional rules of priority or precedence based on price or size would not apply to transactions effected in Session I.[13] Closing-price coupled orders would be executed without regard to the priority of other orders entered into the OHT facility and would not interact with the single-sided orders.

Trading halts occurring during the 9:30 a.m. to 4 p.m. session would affect trading in Crossing Session I. For instance, if a particular security is the subject of a trading halt at the end of the 9:30 a.m. to 4 p.m. session, then Crossing Session I would not be available for that security that day. In addition, during the operation of Crossing Session I, the Exchange may announce that, as the result of news of a corporate development with respect to a particular security, it has determined to: (i) Return unexecuted GTX orders to the specialist's book, maintaining their priority; (ii) cancel all unexecuted single-sided or coupled orders in that stock; and (iii) preclude the entry of new closing-price orders into the OHT facility. Similarly, trading in Crossing Session I would not commence if market activity during the 9:30 a.m. to 4 p.m. trading session were to trigger a market wide trading halt pursuant to NYSE rule 80B, the "circuit breaker" rule,[14] and the trading halt was in effect at the close of the 9:30 a.m. to 4 p.m. session.[15]

At 5 p.m., both closing-price single-sided orders (including GTX orders) and closing-price coupled orders would be executed. Members may enter and cancel closing-price orders and GTX orders up until this time. Any closing-price single-sided orders not executed during Crossing Session I would expire; they would have to be re-entered to participate in the next day's opening. Unexecuted GTX orders would be returned to the book, maintaining their priority; therefore, they would participate in the next day's opening, unless cancelled prior to the opening by the entering broker. Closing-price coupled orders, which would be entered without the possibility of break-up, would be executed in full.

The NYSE proposes to implement trade reporting for Crossing Session I by reporting executions of closing-price single-sided orders and closing-price coupled orders at 5 p.m. over the high speed facility of the Consolidated Tape Association ("CTA") Plan [16] and the low speed line as two transactions per stock—one for closing-price single-sided orders (and GTX orders) and one for closing-price coupled orders. Each print would include the closing price and aggregate volume for each stock. Closing-price coupled orders would be printed as "sold" sales.[17]

B. Description of Crossing Session II

Crossing Session II, which would occur from 4 p.m. to 5:15 p.m., differs substantially from Crossing Session I.

[9] The NYSE states that the Exchange will use its existing systems to operate the OHT sessions. The NYSE represents that system capacity and operation with respect to the 9:30 a.m. to 4 p.m. trading session will not be affected adversely by implementation of the OHT sessions. Similarly, the NYSE represents that OHT system capacity is sufficient to meet expected demand. The NYSE further represents that security and contingency plans for existing trading systems would be unaffected by the new sessions. Finally, the NYSE represents that it has tested the system changes necessary to support the new sessions.

[10] The Exchange has stated that any SuperDOT-eligible issue, including rights, warrants, and American Depository Receipts, may be entered into the OHT facility.

[10] NYSE rule 13 states that a good 'til cancelled (or "GTC") order to buy or sell remains in effect until it is either executed or cancelled.

[11] Orders for an account in which the specialist, the specialist's member organization, or any associated party has an interest may not migrate to the OHT facility. If GTX is appended to (i) any market, stop, or stop limit order; (ii) any odd-lot order; or (iii) any order entered during the Off-Hours Trading session, the system would reject it. Under the proposal, NYSE members would not have access to the closing-price order file nor would NYSE systems indicate to specialists whether limit orders would be eligible for Crossing Session I.

[12] Although the system would begin as soon as possible after the NYSE close by sweeping the limit order book for eligible GTX orders, as a practical matter, closing-price single-sided and coupled orders cannot be entered into the OHT facility until 4:15 p.m. in order to allow Exchange computer systems sufficient time to perform the mechanics necessary for commencement of the OHT facility.

[13] See NYSE rule 72.

[14] NYSE rule 80B, the Exchange's "circuit breaker" rule, provides procedures for a one-hour trading halt in the trading of all securities after a 250-point decline in the Dow Jones Industrial Average ("DJIA") and a two-hour trading halt after a 400-point decline. See Securities Exchange Act Release No. 25198 (October 19, 1988), 53 FR 41637 (order approving NYSE, American Stock Exchange, Chicago Board Options Exchange, and National Association of Securities Dealers, Inc. circuit breaker proposals). See also Securities Exchange Act Release No. 28380 (October 25, 1990), 55 FR 45898 (latest revisions to NYSE circuit breaker rules).

[15] NYSE rule 80B would operate the same way with respect to Crossing Session II.

[16] The Consolidated Tape, operated by the CTA, compiles current last sale reports in certain listed securities from all exchanges and market makers trading such securities and disseminates these reports to vendors on a consolidated basis.

[17] *See* letter from Catherine R. Kinney, Senior Vice President, NYSE, to Mary Revell, Branch Chief, Division of Market Regulation, SEC, dated February 25, 1991. The NYSE states that, because some closing-price coupled orders will seek the 4 closing price at 5 p.m. with little regard for whether it remains the equilibrium price, a 5 p.m. execution involving solely two-sided closing-price coupled orders might not represent a price-validating trade. Therefore, the NYSE proposes to print closing-price coupled orders as "said" sales, thereby eliminating those prints from selection as the day's consolidated closing price and from use as the basis for the next morning's Intermarket Trading System pre-opening application.

Crossing Session II is an aggregate-price session that would enable members to enter crosses of buy and sell program orders that includes at least 15 NYSE-listed stocks having a total market value of $1,000,000 or more ("aggregate-price coupled orders"), and to effect their execution at an aggregate price.

Like closing-price single-sided orders and closing-price coupled orders, aggregate-price coupled orders could not be entered until after the close of the 9:30 a.m. to 4 p.m. trading session. To participate in Crossing Session II, members would transmit data regarding aggregate-price coupled orders to the Exchange via facsimile. Each side of the aggregate-price order entered on a coupled basis would be executed against the other side without regard to the priority of other orders entered into the OHT facility. The facsimiles would be time-stamped immediately and confirmed back to the entering brokers, thereby effecting continuous executions of aggregate-price coupled orders upon entry into the OHT facility.[18]

The NYSE propose to implement trade reporting for the aggregate-price session by reporting the total number of shares and the total market value of the aggregate-price trades. After 5:15 p.m., the NYSE would transmit the report over the high speed line as an administrative message.

A trading halt occurring during the regular 9:30 a.m. to 4 p.m. trading session in one or more individual stocks would not affect the execution of aggregate-price coupled orders. Moreover, the unavailability of the OHT facility to one or more individual stocks due to post-4 p.m. corporate news would not affect the execution of aggregate-price coupled orders. NYSE rule 80B, however, would have the same effect on Crossing Session II as it would have on Crossing Session I: A market-wide halt pursuant to rule 80B that is still in effect at 4 p.m. would halt aggregate-price crossing.

C. Exemptive and Interpretive Relief

In connection with transactions in Crossing Session I, the NYSE seeks exemptive or interpretive relief from section 31 [19] of the Act and from rules 10a–1, [20] 10b–18, [21] and 11Aa3–1 [22] thereunder. For Crossing Session II, the NYSE seeks exemptive or other relief from section 31 of the Act and from rules 10a–1, 10b–6, [23] 10b–7, [24] 10b–8, [25] 10b–18, 11Aa3–1, 15c1–5, [26] and 15c1–6 [27] thereunder.[28]

Rule 10a–1 provides that short sales [29] of exchange-listed securities may not be effected at a price less than the price at which the immediately preceding sale was effected ("minus tick") or at a price equal to the last sale if the last preceding transaction at a different price was at a higher price ("zero minus tick"). The Exchange has requested an exemption from rule 10a–1 as it would apply to transactions in Crossing Sessions I and II.

Rule 10b–6 limits the ability of underwriters, issuers, or certain other persons to bid for or purchase a security being distributed, or a related security, during the distribution of that security. Rule 10b–7 regulates stabilizing transactions in connection with an offering of securities. Rule 10b–8 restricts bids and purchases of rights, and offers and sales of the underlying stock, by persons participating in a rights offering. Rule 15c1–5 requires a broker-dealer to disclose that it has a control relationship with an issuer before executing a transaction in that issuer's securities. Rule 15c1–6 requires a broker-dealer to disclose any participation or financial interest in the distribution of a security, at or before the completion of a transaction in such security for the account of a customer. The NYSE has requested that the Commission grant relief from these rules for transactions in Crossing Session II.

Rule 10b–18 generally provides that an issuer (and its affiliated purchasers) will not incur liability under the antimanipulation provisions of sections 9(a)(2) or 10(b) of the Act and rule 10b–5 thereunder if purchases of the issuer's common stock are effected in compliance with the conditions contained in that rule. The NYSE has requested interpretive advice concerning the applicability of rule 10b–18's timing conditions in OHT, including the timing of purchases. Generally, under rule 10b–18, an issuer may not purchase its common stock during the one-half hour before the scheduled close of trading in the security.

Rule 11Aa3–1 generally requires that an exchange collect and disseminate last sale information with respect to transactions through its facilities in certain listed and unlisted securities pursuant to a transaction reporting plan approved by the Commission. Members must execute transactions in any such security in compliance with an effective transaction reporting plan that is in effect with respect to the security. The NYSE has requested that the Commission provide exemptive relief from the requirements of rule 11Aa3–1 to the extent, if any, that the Commission views the NYSE's proposed reporting procedures for Crossing Sessions I and II as inconsistent with the requirements of this rule.

Section 31 of the Act imposes a fee on each national securities exchange based on a percentage of the dollar amount of the sales of securities (other than bonds and other debt) transacted on that exchange. The fee applies to all NYSE equity securities transactions, including those that would be effected through the OHT facility. The NYSE has requested the Commission to adopt a rule that would exempt transactions effected in Crossing Sessions I and II from section 31 fees.

III. Comments Received

A. Comments

The Boston, ("BSE"), Pacific ("PSE"), Philadelphia ("Phlx"), and Midwest ("MSE") Stock Exchanges submitted comment letters in opposition to various aspects of the NYSE's OHT facility.[30]

[18] By contrast, the order executions in Crossing Session I take place only at 5 p.m.

[19] 15 U.S.C. 78ee (1988).

[20] 17 CFR 240.10a–1 (1988).

[21] 17 CFR 240.10b–18 (1988).

[22] 17 CFR 240.11Aa3–1 (1990).

[23] 17 CFR 240.10b–6 (1990).

[24] 17 CFR 240.10b–7 (1990).

[25] 17 CFR 240.10b–8 (1990).

[26] 17 CFR 240.15c1–5 (1990).

[27] 17 CFR 240.15c1–6 (1990).

[28] See letters from Catherine R. Kinney, Senior Vice President NYSE, to Brandon Becker, Associate Director, Division of Market Regulation, SEC, dated September 18, 1990 (request for exemptive relief regarding Crossing Session I and II); from Catherine R. Kinney, Senior Vice President, NYSE, to Brandon Becker and Larry Bergmann, Associate Directors, Division of Market Regulation, SEC, dated January 9, 1991 (request for exemptive relief regarding Crossing Session I); from Catherine R. Kinney, Senior Vice President, NYSE, to Brandon Becker and Larry Bergmann, Associate Directors, Division of Market Regulation, SEC, dated January 9, 1991 (request for exemptive relief regarding Crossing Session II); from Catherine R. Kinney, Senior Vice President, NYSE, to Larry Bergmann, Associate Director, Division of Market Regulation, SEC, dated January 10, 1991 (request for interpretive advice under rule 10b–18); from Catherine R. Kinney, Senior Vice President, NYSE, to Howard Kramer, Assistant Director, Division of Market Regulation, SEC, dated April 18, 1991.

[29] A short sale is defined in rule 3b–3 under the Act, 17 CFR 240.3b–3, as any sale of a security that the seller does not own or any sale that is consummated by delivery of a security borrowed by, or for the account of, the seller. Rule 3b–3 provides further that a person shall be deemed to own a security only to the extent that the person has a net long position in that security.

[30] See letters from Brian L. Riddell, Executive Vice President, Trading Services, BSE, to Jonathan G. Katz, Secretary, SEC, dated January 27, 1991 and to Richard G. Ketchum, Director, Division of Market Regulation, dated October 18, 1990 (commenting on File No. SR–NYSE–90–42, which was withdrawn and replaced with Files No. SR–NYSE–90–52 and NYSE–90–53), and supplemental letter from Brian Riddell to Jonathan G. Katz, Secretary, SEC, dated April 5, 1991 (rebutting several points in the NYSE

Continued

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The issues raised by the exchanges focused primarily on Crossing Session I and concerns that the session: (1) May be inconsistent with the principles underlying the national market system; (2) does not involve an open auction market for securities trading; (3) prevents regional specialists from participating in the OHT facility; (4) will result in the potential loss of business and exposure of regional specialists to increased risks and costs; (5) could result in price manipulation by professionals; and (6) uses the NYSE closing price, rather than the consolidated closing price. The National Association of Securities Dealers, Inc. ("NASD") also submitted a comment letter which raised a concern regarding the extension of the NYSE's off-board trading restrictions to the OHT facility.[31] A discussion of the concerns raised by the commenters is presented below.[32]

1. Effect on National Market System

The BSE, PSE, Phlx, and MSE all state that the OHT proposal is inconsistent with the goals and objectives of a national market system ("NMS").[33] The objectives of the NMS, as set forth in Section 11A(a)(1) of the Act, include assuring fair competition among exchange markets, the economically efficient execution of securities transactions, and the practicability of brokers executing investors' orders in the best market. Section 11A(a)(1) also states that competition and the best execution of investors' orders would be enhanced by the linking of all securities markets through communication and data processing facilities.[34]

a. Fair Competition. The BSE, PSE, Phlx, and MSE state that the NYSE proposal contravenes one of the stated objectives of the NMS, which is to assure fair competition among exchange markets. For example, these commenters assert that, because only NYSE members and their public customers can participate in the OHT facility by entering orders into Session I through SuperDOT, this Session impedes fair competition among exchange markets by making it virtually impossible for members of the regional stock exchanges who are not NYSE members to compete with the NYSE in trading NYSE-listed securities.[35]

In addition, several commenters believe that the OHT proposal is anti-competitive because the availability of OHT will result in the movement of GTC orders from the regional exchanges to the NYSE.[36] According to the commenters, this will occur because broker-dealers will want to ensure that customer orders receive an opportunity to participate in Session I and to provide customer orders with primary market price protection. The commenters believe that, once limit orders are diverted from the regional exchanges to the NYSE, market orders will follow because the cost benefits associated with sending market orders to the regional exchanges for execution will then be lost. The commenters believe that, as a result, the NYSE will have an unfair competitive advantage.

b. Best Execution of Transactions. The BSE states that the implementation of Session I would reduce the BSE's ability to compete with other exchange markets because it will result in increased costs and risks to regional specialists. The BSE explains that, because regional specialists are obligated to obtain the best execution for their customers' orders, they would likely have to place duplicate orders with the NYSE through SuperDOT immediately upon receipt of GTC orders throughout the day, or at least before 4 p.m., or alternatively, they would have to execute all eligible GTC orders for their own accounts and carry the long or short positions overnight, thereby exposing themselves to market risk. The BSE states that this practice would become necessary in order to protect the time and price position of GTC orders in the marketplace and to instill confidence in the member firms that their customers' orders were being properly represented in the NMS. The BSE emphasizes that either of these scenarios would increase costs to regional specialists and subject them to substantial market risk.

In addition, the BSE and MSE assert that, because many GTC limit orders now are placed on regional exchanges because of lower transaction costs and improved executions, the movement of GTC limit orders away from regional exchanges will result in more expensive transaction costs for NYSE member firms, which costs will eventually be passed on to the public customer. In addition, the PSE states that single-sided and GTX orders effected in Crossing Session I may be disadvantaged because a superior price may be reached on the PSE during its additional one-half hour of trading (4 p.m. to 4:30 p.m. e.s.t.), but orders in Crossing Session I would not be exposed to that superior price. Finally, the Phlx suggests that, in order to allow the OHT facility to interact with trading interest on competing marketplaces, a central order repository where all GTX orders, regardless of origin, can be assigned priority based on time of entry, should be developed.

c. Linking of Markets. The commenters also state that, by excluding non-NYSE members and thereby eliminating competition among the exchange markets, the OHT facility, particularly Crossing Session I, is inconsistent with another objective of the NMS, the linking of all markets. The commenters conclude that, by not providing a mechanism for orders from all markets to participate, the OHT sessions decrease inter-market participation and diminish competition among orders. In addition, the PSE argues that the NYSE's OHT proposal should not be implemented until the other exchanges are prepared to participate.

response letter and reiterating various concerns raised in its prior comment letters); letters from David P. Semak, Vice President, Regulation, PSE, to Jonathan G. Katz, Secretary, SEC, dated December 21, 1990 and January 21, 1991; letter from Nicholas A. Giordano, President and Chief Executive Officer, Phlx, to Jonathan G. Katz, Secretary, SEC, dated January 23, 1991; and letter from J. Craig Long, Vice President and General Counsel, MSE, to Jonathan G. Katz, Secretary, SEC, dated February 7, 1991 and supplemental letter from Daniel J. Liberti, Associate Counsel, MSE, to Mary Revell, Branch Chief, Division of Market Regulation, dated April 23, 1991 (rebutting various points in the NYSE response letter and reiterating concerns raised in its prior comment letter). Although the issues raised by the various stock exchanges referred generally to both Crossing Session I and Crossing Session II of the OHT facility, the majority of the concerns raised were applicable specifically to the operation of Crossing Session I, the closing-price session.

[31] See letter from Joseph R. Hardiman, President, NASD, to Jonathan G. Katz, Secretary, SEC, dated January 16, 1991.

[32] The Commission also received letters from the BSE, MSE, and NASD seeking an extension of the comment period. See letters from George W. Mann, Jr., Senior Vice President and General Counsel, BSE, to Richard G. Ketchum, Director, Division of Market Regulation, dated December 19, 1990; J. Craig Long, Vice President and General Counsel, MSE, to Howard Kramer, Assistant Director, Division of Market Regulation, SEC, dated December 20, 1990; Robert E. Aber, Vice President and Deputy General Counsel, NASD, to Mary Revell, Branch Chief, Division of Market Regulation, SEC, dated December 21, 1990.

[33] Although the letters submitted by the exchanges state generally that the OHT proposal is inconsistent with the objectives underlying a national market system, most of the concerns raised are applicable specifically to Crossing Session I.

[34] 15 U.S.C. 78k–1(a)(1) (1988).

[35] The BSE, PSE, Phlx, and MSE all cite to the Securities Acts Amendments of 1975 ("1975 Amendments") (Pub. L. No. 94–29 (June 4, 1975)), which mandated the development of a national market system for securities, and state that proposed Session I contravenes Congress' intent in calling for a national market system by excluding the participation of other marketplaces.

[36] NYSE rule 13 states that a GTC order to buy or sell remains in effect until it is either executed or cancelled. See supra note 10.

The PSE is particularly concerned about trading on the PSE during its additional half hour of trading—4 p.m. to 4:30 p.m. The PSE states that, because the NYSE is extending its trading hours beyond 4 p.m., the Intermarket Trading System ("ITS") Plan may require that the PSE and NYSE OHT session be linked.[37]

2. Auction Market

The BSE, Phlx, and MSE also state that the OHT facility, particularly Crossing Session I, is contrary to the goals and objectives of a NMS because it would deprive investors of the protections and benefits of an open auction market for securities, including continuous price discovery and competition among all available bids and offers. In particular, the MSE states that the execution of GTX and single-sided orders in Crossing Session I would decrease the number of available orders which otherwise would have participated in the auction market environment operating during the 9:30 a.m. to 4 p.m. trading session, and which would have contributed to the depth and liquidity of the market. In addition, several commenters state that, because all orders executed in Session I would be executed at the closing price for that security and without the price discovery inherent in the auction process, there is no possibility for price betterment.

3. Use of NYSE Closing Price

The PSE and Phlx raise concerns that, in Crossing Session I, orders of public customers may be disadvantaged because orders in that Session would be executed based upon the NYSE closing price, rather than on the consolidated closing price, which may reflect a superior price to a customer. The commenters also state that use of a Crossing Session I price as the consolidated closing price would have a negative effect on the next morning's ITS pre-opening application.

4. Short Sale Rule

The BSE, Phlx, PSE, and MSE objected to the NYSE's request that the Commission provide exemptive relief from, or take a no-action position with respect to, the application of rule 10a–1, the short sale rule. The commenters state that waiver of the short sale rule during the OHT sessions would magnify the potential for manipulation because a professional would be able to effect a transaction in the OHT session that he or she was prohibited from effecting during regular trading hours by the restrictions of the short sale rule. This could result in the movement of order flow away from the auction pricing session held during the day and impact the following day's opening (e.g., causing the stock to open lower), resulting in possible manipulative abuse by the professional trader and reduced opportunities for other orders market-wide, particularly those of retail investors. The commenters further state that the NYSE has not provided sufficient justification for waiver of the short sale rule during the OHT sessions.

5. Recapturing Order Flow

The BSE, Phlx, and MSE challenge one of the NYSE's stated purposes in proposing the OHT sessions, which is to recapture order flow from overseas. These commenters state that the NYSE has demonstrated no nexus between Crossing Session I and attracting overseas orders back to the United States. In fact, the MSE asserts that implementation of Session I would induce trading away from the NYSE.

6. NYSE Rule 390

In its comment letter, the NASD asserts that application of NYSE rule 390[38] to the OHT sessions would constitute a burden on competition that is neither necessary nor appropriate under the Act. The NASD believes that the anti-competitive effects of extending off-board trading restrictions beyond normal operating hours would be antithetical to the development of new trading systems within the rubric of a NMS. The Phlx also states that the application of NYSE rule 390 to the OHT sessions directly contradicts the NYSE's traditional arguments against the abolition of off-board trading restrictions.

7. Miscellaneous Issues

a. Market Manipulation. The BSE, PSE, Phlx, and MSE suggest that several forms of market manipulation may arise if the OHT sessions, particularly Session I, are established. The commenters conclude that these potential types of manipulation would give professionals a significant advantage over retail orders, thereby undermining public confidence in fair and orderly markets.

The BSE believes that single-sided orders would be initiated primarily by professionals anxious to take advantage of market opportunities to the detriment of retail customers. The BSE also states that specialists, because they are privy to market information that is unavailable to others, would have a special advantage in knowing when it would be in their interests to enter single-sided orders to trade with limit orders from their own books. The BSE concludes that it would be a conflict of the specialist's fiduciary responsibilities to trade against orders on their book during Crossing Session I.

The BSE also is concerned with possible market manipulation arising from the fact that the futures markets remain open for trading for 15 minutes beyond the close of the NYSE 9:30 a.m. to 4 p.m. trading session. The BSE suggets that a professional could watch the futures market until its 4:15 p.m. close and, based on this information, participate as a seller (buyer) in the OHT sessions and then profit as a buyer (seller) in the next day's stock market.

b. Trade Reporting. The MSE states that proposed Crossing Session II should have the same disclosure requirements as those that were required for the MSE's Portfolio Crossing Session.[39] The MSE states that the NYSE should require disclosure of individual stocks comprising a portfolio and the number of shares of each stock traded. Further, the MSE states that more complete disclosure of after-hours portfolio trading enhances the quality of the U.S. markets from a regulatory perspective and promotes economically efficient executions of trades in the underlying stocks because investors are made aware of after-hours trading in individual stocks comprising a portfolio.

c. Section 31 Fees. The MSE and PSE objected to the NYSE's request that the Commission adopt a rule, pursuant to section 31 of the Act, exempting transactions in Crossing Session I from section 31 transaction fees,[40] stating

[37] Section 10, subparagraph (c) of the Plan For the Purpose of Creating and Operating an Intermarket Communications Linkage Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934 ("ITS Plan") states that any period outside of the normal 9 a.m. to 4 p.m. operating hours of the ITS System constitutes an "additional period" for the purposes of the ITS Plan. This subparagraph further states that the System shall be operable during any "additional period" requested in writing by any two or more participants.

[38] In general, NYSE rule 390 prohibits a member from effecting a transaction otherwise than on an exchange as principal or as an in-house agency cross in a security listed on the exchange before April 26, 1979. The rule does not apply to transactions on a foreign stock exchange, or after regular NYSE trading hours in a foreign over-the-counter market.

[39] See Securities Exchange Act Release No. 27384 (October 26, 1989), 54 FR 24779, which approved a proposed rule change by the MSE to establish a Secondary Trading Session for the execution of transactions in portfolios of securities through the MSE's automated Portfolio Trading System ("PTS"). As discussed supra, for portfolio transactions effected in Crossing Session II, the NYSE proposes to transmit a report at 5:15 p.m. over the high speed line containing the total number of shares and the total market value of the aggregate-price trades.

[40] See supra for a discussion of section 34 under the Act.

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that the NYSE is attempting to provide incentives to trade away from the auction pricing session held during the day.

B. NYSE Response

The NYSE responded to the specific issues raised by the commenters in a letter dated February 25, 1991 ("NYSE response letter").[41] The NYSE's responses are discussed below.

1. Effect on NMS

a. Fair Competition. In response to concerns by commenters that the OHT facility is inconsistent with the goals and objectives of a NMS as set forth in section 11A of the Act, the NYSE responds that its proposal is a competitive initiative designed to improve its marketplace for the benefit of the investing public. In addition, the NYSE states that neither the Act nor its legislative history contains a directive to redistribute order flow from the NYSE to the regional exchanges or to prevent the NYSE from recapturing lost order flow through innovation.

b. Best Execution of Transactions. In response to concerns that introduction of the OHT facility in general, and the GTX order in particular, would reduce competition between exchange markets, the NYSE emphasizes that its OHT facility is a competitive initiative and a means of competing with the regional exchanges. In addition, the NYSE notes that the regional exchanges are free to introduce competitive after-hours trading markets, including a closing price session comparable to Crossing Session I. The NYSE further states that any shift or order flow from one competing market to another always enhances the liquidity of the successful market at the expense of the unsuccessful one. The NYSE notes that this outcome is inherent in the structure of competing markets that Congress fostered. In addition, the NYSE states that it disagrees with concerns by commenters that the introudction of GTX orders will result in the demise of trading in NYSE-listed securities on regional exchanges.

Only NYSE members and member organizations may use, and have access to, NYSE facilities and systems. The NYSE states that the regional exchanges similarly restrict the use of, and access to, their facilitis and systems. In addressing concerns that only NYSE members would be permitted to enter orders into the OHT facility, the NYSE responds that this is true of all NYSE orders, even during its regular 9:30 a.m. to 4 p.m. trading session.

In response to specific comments that Session I would result in increased costs and risks to regional specialists, thereby reducing their ability to compete, the NYSE suggests that the regional exchanges are free, as they do now, to use proprietary executions to protect orders brought to their markets. For example, the NYSE states that, with respect to GTX orders, the regional exchanges could presumably retain their usual order flow by guaranteeing the NYSE closing price for limit orders whose price has been reached at the NYSE close.

c. Linking of Markets. The NYSE responds to the PSE's concern that Crossing Session I does not provide for price protection of single-sided orders that are entered after 4 p.m., particularly during PSE's additional one-half hour of trading (4 p.m. to 4:30 p.m.), by stating that the ITS Plan permits, but does not require, two or more markets that are open after 4 p.m. to extend the operating hours of ITS.[42] The NYSE also states that it is prepared to discuss the issue of a linkage, through ITS or otherwise, when another exchange introduces an after-hours session comparable to its own.

2. Auction Market

The NYSE also responds to concerns that the OHT facility, particularly Crossing Session I, deprives investors of the protections and benefits of an open auction market for securities. The NYSE does not dispute the merits and validity of an open auction market for trading securities and the benefits of price discovery inherent in an auction market. Instead, the NYSE states that the commenters fail to recognize that Crossing Session I is a modified auction, which, while using the closing prices for executions, confirms closing prices as valid at 5 p.m., retains the rules regarding the strict priority of orders, and functions as a centralized location at which the forces of supply and demand can interact.

The NYSE responds specifically to concerns that constraining the price during Crossing Session I would have the effect of precluding price improvement. The NYSE states that no price improvement opportunity will be available elsewhere in the NMS at 5 p.m. and unlike trading during the 9:30 a.m. to 4 p.m. session (where holding an order for exposure and price improvement carries an acceptable risk of missing the market), holding an order overnight for next-day execution in order to give it an opportunity for price improvement carries a much greater risk of no execution because of an adverse change in market direction over 17½ hours. In addition, the NYSE notes that the decision of whether to enter any particualr order into Crossing Session I or to hold it overnight is a matter of judgment to be left to the entering broker and his or her customer.

The NYSE response letter further states that the Exchange agrees with the commenters that the auction market is harmed whenever the securities industry fragments that market by taking orders away from the auction market to internalize them or to send them to another market, either domestic or overseas. The NYSE argues that its OHT proposal was designed to avoid diversion of orders from the 9:30 a.m. to 4 p.m. trading session by establishing a trading session that would attract orders that are currently being executed overseas. The NYSE also emphasizes that the OHT facility was designed to provide customers with an additional forum for executing certain orders, e.g., orders that may not have been executed during the 9:30 a.m. to 4 p.m. trading session or certain aggregate-price portfolio orders, rather than to take order flow away from the 9:30 a.m. to 4 p.m. trading session.

3. Use of NYSE Closing Price

The NYSE response letter also addresses commenters' concerns that Crossing Session I disadvantages public customers because it uses the NYSE's closing price, rather than the consolidated closing price. The NYSE states that it has decided to use the NYSE closing price because it reflects industry references and because it is known earlier. The NYSE also states that it is unlikely that members representing Crossing Session I orders would ignore post-4 p.m. prices on other markets. If the NYSE closing price does not remain a valid equilibrium price at 5, the Exchange states that it would expect to find a dearth of single-sided orders on the one side of the market, in which case no executions would occur. The NYSE further emphasizes that a party may cancel a Crossing Session I order at any time prior to 5, including after evaluating the 4:30 p.m. PSE closing price.

4. Short Sale Rule

The NYSE responds to concerns that waiver of the short sale rule in the OHT sessions would promote price manipulation and harm liquidity at the opening of the next regular trading session. The NYSE states that it would be extremely difficult for a market participant to depress stock prices by engaging in short selling during Crossing Session I because those short sales do not generate the price effects necessary for the type of manipulation that the short sale rule seeks to address. Because the trade price is constrained, Crossing Session I allows only for the verification of the continued legitimacy of the 4 p.m. closing price at 5 p.m. and does not allow manipulation of the price. Closing-price single-sided orders would not create an imbalance that would exacerbate or create downward pressure because constraining these orders' execution to the closing price prevents the normal price response. Furthermore, any unexecuted closing-price orders that are re-entered the next morning which may contribute to a sell imbalance at the opening or later in the day will be subject to the short sale rule.

In addition, the NYSE states that manipulation stemming from waiver of the short sale rule would be unlikely in Crossing Session II becuase it would be expensive and inefficient for a market participant to use aggregate-price coupled orders to attempt to manipulate the price of a component stock.

5. Recapturing Order Flow

The NYSE also responds to comments that the OHT sessions, particularly Crossing Session I, would not recapture U.S. trading activity that has gone overseas, but rather would usurp orders that would otherwise participate in the traditional U.S. auction market. The NYSE states that the OHT sessions must be viewed in the context of the Exchange's multi-phase plan to eventually begin 24-hour continuous trading. The NYSE, while conceding that implementation of the GTX order in Crossing Session I is not the key to recapturing overseas trading activity, states that the closing-price session, in general, and the GTX order in particular, represents the first initiative by any market—on or off exchanges—to bring the retail investor into off-hours trading.

6. NYSE Rule 390

The NYSE does not respond specifically to the NASD's concerns that application of NYSE rule 390 to the OHT sessions would constitute a burden on competition. Instead, the NYSE states that application of rule 390 to the OHT sessions would not extend the rule domestically (it already applies 24 hours a day domestically), but would extend rule 390's application overseas. The NYSE states that, pursuant to rule 390.10, overseas over-the-counter ("OTC") trading would be reduced by 75 minutes because of the extension of the NYSE's trading hours by 75 minutes. In addition, the NYSE states that, when the Exchange moved its opening up from 10 a.m. to 9:30 a.m. several years ago, rule 390 was not viewed as a burden on competition. Similarly, the NYSE states that application of rule 390 to the OHT sessions would impose no unnecessary or inappropriate regulatory burden.

7. Miscellaneous Issues

a. Market Manipulation. In response to concerns that Crossing Session I may provide professionals with opportunities to take advantage of retail customers, the NYSE states that members representing retail orders would have discretion in determining whether an order should be represented in Crossing Session I. The NYSE emphasizes, however, that its members representing customer orders in the 9:30 a.m. to 4 p.m. trading session similarly have to exercise judgment and diligence on behalf of their customer's orders. The NYSE also states that it plans to monitor closely trading during Crossing Session I in order to detect any such trading abuses.

The NYSE further states that, under the OHT proposal, NYSE specialists would have not more access to information than they currently have. Under the OHT proposal, NYSE members would not have access to the closing-price order file and the systems would not disclose to specialists whether limit orders are eligible for the closing-price session.

In addition, with regard to concern over possible manipulation based upon prices in the futures markets, the NYSE notes that a professional's ability to use the OHT sessions to take advantage of retail customers based upon information gained from the 4:15 p.m. close of the futures markets would apply to any after-hours session, including 4:15 p.m. to 4:30 p.m. trading on the PSE.

b. Trade Reporting. In response to comments that Crossing Session II should have the same disclosure requirements as those that were required for the MSE's Portfolio Crossing Session,[43] the NYSE states that, in designing its proposed reporting procedures, it was cognizant of the fact that investors may take orders overseas for execution to avoid U.S. trade reporting requirements. The NYSE states that its proposed trade reporting requirements for Crossing Session II have struck an appropriate balance between the disclosure necessary to meet market regulatory needs and the anti-disclosure pressures attendant to the recapture of overseas order flow and the competition presented by domestic off-exchange markets.

IV. Discussion

A. Introduction

After careful consideration of the comments received and applicable statutory provisions, the Commission believes that the NYSE's proposed OHT facility, comprised of Crossing Sessions I and II, is reasonably designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and remove impediments to and perfect the mechanism of a free and open market and a national market system. For these reasons and for the additional reasons set forth below, the Commission finds that approval, for a two year period, of the Exchange's proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6(b)(5) and 11A.[44]

B. Benefits of Off-Hours Trading

In recent years, both the Commission and other Federal agencies, along with private sector committees, have observed the trend toward the internationalization of the securities markets and toward the development of 24-hour markets in which world-class securities would be traded around the clock and around the globe. The Division of Market Regulation's ("Division") Report on the October 1987 Market Break ("Staff Report") and the Report of the Presidential Task Force on Market Mechansims ("Brady Report") highlight the interdependency of the

[41] See letter from Catherine R. Kinney, Executive Vice President, Equities/Audit, NYSE, to Mary Revell, Branch Chief, Branch of Exchange Regulation, Division of Market Regulation, SEC, dated February 25, 1991. This letter responds to issues raised by commenters with respect to both Files No. SR–NYSE–90–52 (Crossing Session I) and SR–NYSE–90–53 (Crossing Session II). See also supplemental letters from Brian L. Riddell, Executive Vice President, Trading Services, BSE, to Jonathan G. Katz, Secretary, SEC, dated April 5, 1991 and from Daniel J. Liberti, Associate Counsel, MSE, to Mary Revell, Branch Chief, Division of Market Regulation, dated April 23, 1991, which rebut several points in the NYSE response letter and reiterate the concerns raised by the exchanges in their prior comment letters.

[42] See supra note 37.

[43] The MSE agreed to make available to vendors, on a real time basis, the aggregate price of the portfolio and the symbol and quantity for each security comprising the portfolio. At the end of each Secondary Trading Session a report would be provided containing the aggregate number of shares of each of the securities purchased and sold, as well as aggregate system volume. See Securities Exchange Act Release No. 27384 (October 26, 1989), 54 FR 24779.

[44] 15 U.S.C. 78f(b)(5) and 78k–1 (1988).

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world's markets and note that these markets have become increasingly linked, both psychologically and through improved communications technology that has made possible both trading and information sharing arrangements.[45] This has been accompanied by an increased desire among institutional investors to be able to trade U.S. stocks outside of regular trading hours. The Commission believes that the OHT sessions proposed by NYSE are intended to attract the order flow currently being executed overseas back to the United States, with the attendant benefits of Commission and Exchange oversight pursuant to the Act, trade reporting, and consolidated surveillance, and are reasonably designed to provide a limited mechanism for after-hours trading.

In approving the NYSE's OHT sessions, the Commission notes that the proposal should be considered as one part of a multi-step plan to respond to the evolving demand among NYSE member organizations and customers for trading opportunities beyond those offered by the Exchange's 9:30 a.m. to 4 p.m. trading session. At the same time, the proposal is the only part of that plan currently before the Commission, and thus must be reviewed as a separate and distinct proposal to extend the E> ange's trading hours beyond the 9:30 ..m. to 4 p.m. trading session. The Commission believes that, in both respects, the NYSE OHT proposal is consistent with the requirements of the Act and will offer significant benefits to investors.

Crossing Session I would provide investors whose orders were not executed during the 9:30 a.m. to 4 p.m. session with another opportunity to have their orders executed at the NYSE closing price. Crossing Session I also would provide investors the flexibility to decide whether they want a particular order to participate in this Session. With respect to GTC orders entered for execution during the 9:30 a.m. to 4 p.m. trading session, a customer would have the option of deciding whether to designate that order as a GTX order, thus allowing the order to migrate to Crossing Session I for possible execution. In addition, a customer would have the option of cancelling any order entered into Crossing Session I at any time prior to its execution at 5 p.m.[46] These benenfits would accrue to both individual and institutional investors. In addition, the Commission agrees with the NYSE's conclusions that Crossing Session I may help recapture overseas order flow by enabling firms to facilitate a number of portfolio trading strategies involving small programs of stocks to achieve executions at the NYSE closing price.

Similarly, the Commission believes that Crossing Session II will benefit the investing public by offering members the opportunity to enter crossing portfolio orders with their customers after-hours to be executed against each other. The Commission agrees with the NYSE that the establishment of Crossing Session II could help to recapture overseas trades of U.S. stocks by providing a mechanism by which portfolio trades arranged off the floor can be effected in an exchange trading system. While the Commission recognizes that Crossing Session II does not provide an auction market for portfolio trades, the reality of the marketplace, however, is that these portfolio trades currently are being effected off-exchange and, frequently, overseas. Bringing institutional trades that currently are being exported overseas for execution within the purview of U.S. regulatory bodies and subject to transaction reporting will benefit the marketplace overall, as well as help to protect the investing public.

Accordingly, for these reasons and the reasons discussed below, the Commission believes that the OHT facility is consistent with the requirements of section 6(b)(5) of the Act in that it is reasonably designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and remove impediments to and perfect the mechanism of a free and open market and a national market system.

C. Effect on NMS

After careful consideration of the applicable statutory provisions and the comments received, the Commission believes that the OHT proposal is consistent with section 11A of the Act and the principles underlying the NMS.

1. Fair Competition and Best Execution of Transactions

After the careful review of the comments by several exchanges that the OHT proposal is anti-competitive to the regional exchanges because it will result in increased costs and loss of order flow, as well as a review of the Exchange's response to the comments, the Commission does not believe that the OHT facility as proposed imposes an unnecessary or inappropriate burden on competition or provides the NYSE with an unfair competitive advantage. In fact, the Commission believes that the OHT sessions should enhance competition by providing a service to customers that other exchanges currently are not providing.[47] Mere innovation that provides marketplace benefits to attract order flow to the Exchange does not result in unfair competition if the other markets are free to compete in the same manner. In this regard, the Commission believes that, if the regional exchanges or the NASD desire to compete with the OHT facility, they could provide a similar service.

The Commission understands the concern of the regional exchanges regarding loss of business and increased risks and costs that could result from implementation of the NYSE's OHT facility, and acknowledges that, as a practical matter, it may not be economically realistic for the regional exchanges to use proprietary executions to protect orders brought to their markets. The Commission believes, however, that any reduction of regional exchange market share resulting from the NYSE's OHT system would be due to the enhanced competition such a system provides, and not a result of any anti-competitive aspects of the OHT facility. To determine otherwise would be to thwart the spirit of competition and innovation and deny investors the benefits resulting from marketplace initiatives. In this regard, the Commission notes that service competition among the various exchanges has benefited the entire marketplace. For instance, the regional exchanges were pioneers in the development of small order routing and execution systems. Such systems were approved by the Commission because of the benefits they provide to investors and the marketplace as a whole, even though loss of order flow to the primary marketplace may have been a side effect. In response, the primary markets substantially automated their order routing capabilities. The Commission sees no reason why this process can not originate with a primary exchange.

2. Linking of Markets

In response to the concern raised by the commenters that the OHT sessions are inconsistent with another objective of the NMS, the linking of all securities markets through communication and data processing facilities, the Exchange noted that there currently is no other after-hours session comparable to the NYSE's proposed OHT facility, but that if one were implemented the question of linkage through an ITS application or otherwise would arise. While it is true that section 11A of the Act contemplates an integrated system for trading securities, this section also envisions competition between markets, and we do not believe it requires that a new trading system developed by one market immediately must caontain provisions to facilitate trading by its competitors. In connection with the OHT proposal, no other U.S. securities exchange or the NASD's Automated Quotation ("NASDAQ") system currenty offers a system that is the same as, or substantially similar to, the NYSE OHT facility. The Commission only recently received proposals from three regional stock exchanges responding to the NYSE's OHT facility. On May 16, 1991, the Phlx submitted a proposed rule change that virtually copied the NYSE proposal and proposed to establish an after-hours session to compete with the NYSE OHT facility.[48] In addition, the MSE and BSE have submitted much narrower proposals that do not propose separate after-hours trading sessions, but instead seek to protect limit orders on the regional specialists' books.[49] The Commission staff is currently reviewing these proposals.[50]

In addition, the Commission notes that, although the PSE currently is open for one half hour beyond the traditional 9:30 a.m. to 4 p.m. trading session on the NYSE (from p.m. to 4:30 p.m.), the PSE's "after-hours" session differs from the NYSE's OHT facility in that it would not operate contemporaneously with the OHT system and is designed for different types of transactions.[51] Furthermore, the Commission notes that, at the present time, the PSE is open from 4 p.m. to 4:30 p.m. and that no other marketplace is linked to the PSE. Accordingly, the Commission does not believe that the lack of a linkage of the OHT facility is inconsistent with section 11A, at the present time. Of course, depending upon how trading develops, the Commission may wish to revisit this issue.

In addition to these market structure issues, the commenters on the NYSE's proposed rule raised a number of other concerns which may be termed as "intermarket" issues. The questions raised include: (i) Whether ITS should be operational during any time period when both the NYSE Crossing Sessions and another ITS market are accepting orders; (ii) whether the NYSE should be required to permit orders entered "GTX" on the books of regional specialists to "migrate" automatically at the close(s) of such regional exchanges to the NYSE Crossing Session I order book; (iii) if so, with what priority, if any; and (iv) who should bear the cost of developing a working mechanism for such transmittal.

In considering these intermarket, or NMS, issues, the Commission believes that the NYSE's OHT facility is not inconsistent with the Act. The effect of the OHT system on similar systems that the regional exchanges or the NASD may propose, as well as its effect on orders on the limit order books of both NYSE and regional specialists, is unclear and speculative at this time. The Commission believes that the two year approval period will provide the Commission and the NYSE, as well as competing markets, the opportunity to observe and evaluate the workings of the OHT facility. In its order today approving the NYSE OHT facility, the Commission wishes to emphasize that the NMS issues remain open. The Commission intends to consider them actively during the operation of the OHT facility and to impose such requirements, if any, as it determines are appropriate to provide intermarket protections and to further the goal of a NMS. The Commission will, in this regard, monitor, and be influenced by, the actual operation of the Crossing Sessions.

In addition, the Commission realizes that, because at least one other exchange has proposed a trading session similar or identical to the NYSE's OHT facility, significant NMS issues may need to be resolved by the NYSE and the competing market, in conjunction with the SEC. Accordingly, for all these reasons, the Commission believes that the NYSE's OHT sessions should be approved for a two year temporary period. This two year period will provide an opportunity for the Commission and market participants to observe the actual operation of the OHT facility. Based on these observations the Commission, NYSE, and other market participants will be in a better position to evaluate whether further steps to link the OHT facility with other markets are necessary or appropriate to protect investors or promote fair competition. In this regard, 18 months from the date of approval of the instant proposal, the NYSE should submit a new filing pursuant to rule 19b–4 under the Act requesting permanent approval of the OHT facility, as well as a report describing the NYSE's experience with the OHT facility during that 18-month period, including information regarding the ability of customers to cancel orders entered into the OHT facility (see note 46, supra). The report also should include, but not be limited to, the following information (broken down by month) for the 18-month period:

- Trading volume (trade, share and dollar value) in both Crossing Session I and Crossing Section II.
- The number, if any, of: (1) Single-stock single-sided orders; (2) single-

[45] See SEC, Division of Market Regulation, The October 1987 Market Break, at 11–1 to 11–2 (February 1988); Report of the Presidential Task Force on Market Mechanisms, at I–1 (January 1988). See also U.S. Congress, Office of Technology Assessment ("OTA"), Trading Around the Clock: Global Securities Markets and Information Technology—Background Paper, OTA–BP–CIT–66 (July 1990); and U.S. Congress, OTA, Electronic Bulls and Bears: U.S. Securities Markets and Information Technology, OTA–CIT–469 (September 1990).

[46] In this regard, the Commission emphasizes the importance of having brokers available to effect cancellations of customer orders between 4 p.m. and 5 p.m. The Commission realizes the while some firms may be fully staffed during this time period, other firms may not. The Exchange should monitor the ability of customers to cancel orders entered into the OHT facility and should provide this information to the Commission as part of its report on the operation of the OHT facility. The Commission believes that if the system becomes a success, customer demand should make it cost-effective for firms to be adequately staffed during the operational hours of the OHT facility and should ensure, as a result, that customers would be able to cancel any orders entered with their brokers prior to the 5 p.m. execution.

[47] The Commission notes that, although the PSE is open for one half hour beyond the traditional 9:30 a.m. to 4 p.m. trading session on the NYSE (from 4 p.m. to 4:30 p.m.), this "after-hours" session differs substantially from the NYSE's OHT facility. While the OHT facility is a limited system designed solely for the purpose of executing orders based on the NYSE closing price and certain portfolio orders based on an aggregate price, the PSE post-4 p.m. session is an auction market with continuous price discovery. These two markets are designed for different types of order execution. More importantly, these two systems would not be operating contemporaneously. Although both markets would accept orders between 4 p.m. and 4:30 p.m., the PSE market would not be open at 5 p.m., which is the time that all closing-price orders would be executed in Crossing Session I. Moreover, although the Commission approved an after-hours Secondary Trading Session for the execution of transactions in portfolios of securities on the MSE, we understand that, to date, this system has never been operational.

[48] See File No. SR–Phlx–91–25. For the session that is equivalent to the NYSE's Crossing Session I, the Phlx proposes to report the closing price and aggregate volume for each security in the same manner as the NYSE. In addition, for the session that is comparable to the NYSE's Crossing Session II, the Phlx proposes to disseminate only one report that will provide the total volume for all the aggregate-price orders executed during the crossing session. Like the NYSE, the Phlx does not propose to report prices for the individual stocks that comprise the aggregate-price orders.

[49] See Files No. SR–MSE–91–11 (filed May 7, 1991) and SR–BSE–91–4 (filed May 13, 1991).

[50] The MSE proposal has been reviewed by Commission staff and has been sent to the Federal Register to be published for public comment.

[51] See supra note 47. Similarly, the Commission recognizes that an after-hours Secondary Trading Session for the execution of transactions in portfolios of securities was approved for the MSE. We understand, however, that, to date, this system has never been operational. Moreover, both the MSE system and Crossing Session II are systems for crossing customized portfolios of stocks, and may not raise the same type of NMS issues as Crossing Session I.

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stock, paired buy and sell orders; and (3) GTX orders executed in Crossing Session I.

• The number, if any, of: (1) Single-sided orders; and (2) single-sided GTX orders that remained unexecuted at the end of Crossing Session I.

• The number and percentage of GTC orders on the book that were designated "GTX"; and thus migrated to Crossing Session I.

• The number of member firms participating in Crossing Session I and those participating in Crossing Session II.

• Whether the NYSE marketplace has experienced any increased volatility during the last hour of the 9:30 a.m. to 4 p.m. trading session after the initiation of the OHT facility.

• Whether there were greater (wider) quote spreads during the last hour of the 9:30 a.m. to 4 p.m. trading session after the initiation of the OHT facility.

• Whether there was a diminution in the number of block transactions during the last hour after the initiation of the OHT facility.

• The degree to which transactions were entered in Crossing Session II to avoid the restrictions of the short sale rule in the 9:30 a.m. to 4 p.m. trading session.

The Commission notes that, because at least one other marketplace has proposed a system comparable to the NYSE's OHT facility, the NYSE's report should also indicate: (1) How its OHT facility could link with any other systems approved during the 18-month period; (2) how orders entered on other marketplaces could interact with orders in the OHT; and (3) how the intermarket issues discussed in this order would be addressed. In this connection, however, the Commission would underscore its strong belief that resolution of intermarket issues would not be solely a responsibility of the NYSE, and would fall equally upon the regional exchanges (or the NASD) proposing an after-hours system and the NYSE.

In addition to the above information, the Commission further expects the NYSE to monitor carefully the composition of aggregate-price orders in Crossing Session II to ensure that firms do not enter aggregate-price orders where one stock dominates the basket. In addition, the Commission expects that the NYSE, through use of its surveillance procedures, will monitor for, and report to the Commission, any patterns of manipulation on trading abuses or unusual trading activity in the two crossing sessions. Finally, the Commission expects the NYSE to keep the Commission apprised of any technical problems which may arise regarding the operation of the OHT, such as difficulties in order execution or order cancellation.

D. Auction Market

In response to concerns that the OHT facility, particularly Crossing Session I, is contrary to the goals underlying the NMS because it would deprive investors of the protections and benefits of an open auction market for securities, including continuous price discovery and competition among all available bids and offers, the Exchange responded that Crossing Session I is a modified auction. While the Commission believes that the OHT facility is not a full auction market, the Commission also believes that the OHT proposal is consistent with the maintenance of fair and orderly markets because it is a limited purpose facility that is designed to bring buyers and sellers together with the benefits associated with exchange trading.

Crossing Session I is a limited trading system that was designed as an alternative forum for order execution after the close of the Exchange based on NYSE closing prices. While it is not an auction market in terms of price discovery, the Commission notes that the NYSE closing price would not represent an artificial price, but rather a price that has been determined by auction market trading during the 9:30 a.m. to 4 p.m. trading session. Investors participating in Crossing Section I would be indicating their desire to have the potential for an execution at that price after regular trading hours. Crossing Session I also retains other characteristics of auction market trading in that it functions as a centralized location where buyers and sellers can interact under auction priority rules.

Crossing Session II is a facility of the exchange that will allow members to effect crosses of portfolios of securities at an aggregate price. While the "auction" under Crossing Session II occurs "upstairs," Crossing Session II transactions will enable these transactions to take place domestically, rather than overseas, with the benefits of Commission oversight, Exchange surveillance, and trade reporting.

E. Use of NYSE Closing Price

In response to concerns that orders of public customers in Crossing Session I may be disadvantaged because they would be executed based upon the NYSE closing price, rather than the consolidated closing price,[53] which may reflect a superior price to a customer, the Exchange stated that the NYSE closing price reflects industry preferences. In addition, in response to concerns that use of a Crossing Session I price as the consolidated closing price would have a negative effect on the next morning's ITS pre-opening application,[54] the Exchange notes that if participants are willing to submit single-sided orders to be executed at 5 p.m. at the NYSE closing price, then those executions, in essence, are an accurate reflection of the market price for the security. The Exchange notes that if participants believe that some other price is more reflective of the current market for a security, for example, where the closing price is different from the price at which transactions have been effected elsewhere after the NYSE close, then they will not participate in Crossing Session I, and no trades will be effected at the "invalid" price.

In addition, because the NYSE believes that participants who submit two-sided closing price orders will do so with little regard to whether the NYSE closing price has remained the currrent market price, those transactions will be reported as "sold sales." [55] The term "sold sale" generally is used to report transactions that are out of sequence and thus may not be reflective of the current market for a security. Sold sales have no effect on the determination of the consolidated closing price for purposes of the pre-opening procedures in ITS. Thus, only those trades that market participants are willing to execute at 5 p.m. because they believe the NYSE closing price accurately reflects the current market price for the security will affect the pre-opening application.

The Commission believes that the use of the NYSE closing price in Crossing Session I is consistent with the Act. The NYSE's closing prices would be known in advance to any investor that may choose to participate in Crossing Session I. Because the closing price on the NYSE would be know, investors have the option of not participating in Crossing Session I if they did not want the primary market closing price or if, after evaluating the 4:30 p.m. PSE closing price, they decided to cancel their OHT orders. In addition, the Commission does not believe it is required that the NYSE use the PSE 4:30 p.m. closing price. Both the PSE 4:30 p.m. closing price and the NYSE closing price occur well before the Crossing Session I execution. The NYSE price, however, represents the liquid trading environment on the primary market, while the PSE closing price represents trading when the primary market is closed. Consequently, it is reasonable for the NYSE price to be used in Crossing Session I. In addition, the Commission agrees with the NYSE that if its closing price does not remain a valid price at 5 p.m., then the Exchange would find a dearth of one-sided orders on one side of the market, in which case no executions would occur. The Commission also agrees that a Crossing Session I price, if "validated" by a 5 p.m. trade resulting from separate buy and sell orders (and not from "clean" crosses), should constitute the consolidated closing price and be utilized in the next day's ITS pre-opening application.

F. Recapturing Order Flow

The Commission does not agree with the commenters that the OHT sessions are not reasonably designed to result in the purposes described by the NYSE, namely to recapture order flow that currently is being exported for execution overseas. The Commission agrees with the NYSE that Crossing Session II should serve as a means of execution for institutional investor orders that currently are being sent overseas. The Commission believes that bringing order flow being executed overseas back to the NYSE, with the attendant benefits of Commission and Exchange oversight pursuant to the Act, consolidated surveillance, and trade reporting, will serve to protect the marketplace and the investing public.

The Commission further recognizes that Crossing Session I was not designated specifically to recapture overseas order flow. As stated above, however, the Commission believes that Crossing Session I offers investors other benefits, such as having their orders executed after the close of the 9:30 a.m. to 4 p.m. trading session at the NYSE closing price and the flexibility of determining whether they wish to participate in this Session. Moreover, the Commission believes that both Crossing Sessions I and II must be viewed as parts of NYSE's multi-phase plan for after-hours trading that is designed to respond to an increasingly global marketplace.

G. NYSE Rule 390

The NASD, in its comment letter, stated that it believed that the application of NYSE rule 390 [56] to the OHT sessions would constitute a burden on competition and would have a chilling effect on the development of new trading systems. In response, the Exchange stated that the domestic application of rule 390 would not be extended by the OHT proposal because the rule currently applies 24 hours each day.

The application of rule 390 in a domestic, after hours context, is an open question that the Commission does not need to address in this order because the NASD has not proposed to operate a similar after-hours facility in the domestic OTC market. The Commission would revisit this issue, however, if such a system were proposed, and would require the NYSE to respond to serious competitive questions regarding the effect of the application of rule 390 on the NASD's ability to operate such a system.[57]

H. Market Manipulation

The Commission does not believe that Crossing Section I would provide professionals with enhanced opportunities to take advantage of retail customers who have entered closing-price single-sided orders and GTX orders into Crossing Session I. The Commission agrees with the NYSE that retail orders that would be entered into Crossing Session I, or GTX orders that migrate to this Session, would have the same "professional" representation in the OHT facility as they have in today's markets, e.g. members represent retail orders and, acting as brokers, must exercise judgment in determining whether orders should be represented in Crossing Session I. In addition, the Commission notes that there are certain safeguards built into the OHT facility that should decrease the opportunities for manipulation. For instance, NYSE members would not have access to the closing-price order file and NYSE systems would not disclose to specialists whether limit orders are eligible for the closing-price session.

In addition, the ability to see how the stock index futures market closes after 4 p.m. does not provide professionals with any non-public information. The closing futures price is public and is known well in advance of 5 p.m. Moreover, the PSE's current post-4 p.m. session runs past the stock index futures close, and the Commission has not received complaints about customers in the PSE being "picked off" by professionals reacting to the futures close. The Commission sees no reason why the OHT facility should be treated differently.

Finally, the NYSE has submitted to the Commission surveillance procedures for the OHT sessions. The Commission believes that these surveillance procedures, combined with the NYSE's existing surveillance program, should further provide the safeguards necessary to prevent trading abuses or market manipulation.

I. Priority Rules

During Crossing Session I, orders would be executed accoridng to a strict time priority system. Closing-price single-sided orders would have priority based on the time of entry into the OHT facility. Any GTX orders that migrate to Crossing Session I would retain their priority as among themselves, and would have priority over all closing-price single-sided orders. Under this strict time priority rule, there is no requirement that firm proprietary orders yield to customer orders. In addition, traditional rules of priority or precedence based on price or size would not apply to transactions effected in Crossing Session I. In the public notice and request for comments on Crossing Session I that was published in the **Federal Register**,[57] the Commission requested specifically public comment on whether the lack of customer preference was necessary or appropriate for the closing-price session. None of the commenters addressed this issue.

The Commission believes that the NYSE's proposed time priority system is appropriate for trading in the closing-price session and would facilitate a fair

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[53] The consolidated closing price is the last price at which a transaction in a security was reported by the consolidated last sale reporting system on the last previous day on which transactions in the security were reported by the system, and includes prices for transactions occurring on the PSE or in the OTC market in the time period beginning after the NYSE close and ending at 4:30 p.m.

[54] In ITS, special procedures, called the pre-opening application, apply at the opening. A pre-opening application must be sent through ITS whenever a market maker anticipates that the opening transaction will be at a price that represents a change of more than the "applicable price change" from the stock's "previous day's consolidated closing price," which is the last price at which a transaction in the stock was reported through CTA on the previous trading day. Applicable price changes vary between an ⅛ and ¼ point depending on the price of the stock. For example, if a stock's consolidated closing price was 34 and the market maker anticipates the opening price to be 34⅜, that market maker will have to send a pre-opening notification because the price change of ⅜ is more than the applicable price change of ¼ for a stock of such value, as provided in the ITS Plan.

[55] See supra note 17.

[56] As stated above, NYSE rule 390 prohibits a member from effecting a transaction otherwise than on an exchange as principal or as an in-house agency cross in a security listed on the exchange before April 26, 1979. The rule does not apply to transactions on a foreign stock exchange, or after regular NYSE trading hours in a foreign OTC market.

[57] The Commission is approving the NYSE's proposed OHT facility even though it is not a true auction market. In addition, the Commission previously approved the MSE's Secondary Trading Session which has some, but not all, attributes of an auction market. See note 30, supra. The Commission sees no reason why the NASD should not be able to offer a system similar to the NYSE proposed OHT facility.

[57] See Securities Exchange Act Release No. 28639 (November 21, 1990), 55 FR 49736.

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market for trading in this Session. In reaching this conclusion, the Commission emphasizes the unique nature and trading environment of Crossing Session I; it is a limited trading system and is not intended to be a price discovery system. All trades in Crossing Session I would be based on the NYSE closing price, which price is disseminated shortly after 4 p.m. Because (1) the trading price of any security would be known and no price discovery would exist in this system, (2) the existence of GTX orders is not disclosed to members, and (3) proprietary orders for members only can be entered from off the floor after the close of trading, there are no time and place advantages to NYSE members entering proprietary orders.[58]

J. Trading Halts

In addition, the Commission notes that NYSE rule 80B, the circuit breaker rule, may affect trading in the OHT sessions. As discussed above, if market activity during the 9:30 a.m. to 4 p.m. trading session were to trigger a market-wide trading halt pursuant to rule 80B, and the trading halt was in effect at the close of the 9:30 a.m. to 4 p.m. trading session, no trading would occur in either Crossing Sessions I or II. In effect, the sessions would not operate that day.[59]

The Commission believes that NYSE rule 80B plays an important role in dealing with potential strains on securities prices during periods of extreme downward volatility; it acts as a coordinated means to address potentially destabilizing market volatility and help promote stability and the equity and equity-related markets by providing for increased information flows and enhanced opportunity to assess information during times of extreme market movements. For these reasons, the Commission believes that the applicability of rule 80B to the OHT sessions should help provide participants in both Crossing Sessions I and II with the opportunity to re-establish an equilibrium between buying and selling interest in periods of extreme market volatility. In addition, the applicability of these rules to the OHT sessions should help ensure that market participants have a reasonable opportunity to become aware of, and respond to, significant price movements.

K. NYSE Rule 92

NYSE rule 92 protects against conflicts of interest when a member holds a customer order and trades for a proprietary account by imposing specific requirements on how the member must price and handle customer orders in these circumstances. Under proposed rule 900(d)(ii), however, a member who holds or has knowledge of a customer's unexecuted order in a stock still may initiate a proprietary order in that stock as part of an aggregate-price portfolio order in Crossing Session II, despite the otherwise contrary application of rule 92.

The Commission believes that the limitations to rule 92 proposed for the trading of aggregate-price portfolio orders in Crossing Session II are appropriate given the special attributes of this Session. To be eligible for entry onto the OHT facility for Crossing Session II, an aggregate-price order must include at least 15 NYSE-listed securities having a total market value of at least $1,000,000. It is very unlikely that members would use portfolio trades in Crossing Session II to disadvantage or "frontrun" customer single stock orders. Indeed, firms currently are executing these portfolio trades today overseas free from the constraints of NYSE rule 92. All Crossing Session II is doing is capturing these trades in the OHT system. It does not seem necessary at this time to subject these trades to rule 92, especially as they do not present the potential for abuse that the rule was designed to address.[60]

L. Exemptive and Other Relief

As discussed above, for Crossing Session I, the NYSE requests exemptive relief from, and interpretive advice under, section 31 of the Act and rules 10a–1, 10b–18, and 11Aa3–1 thereunder. In connection with Crossing Session II, the NYSE requests exemptive and other relief from section 31 of the Act and from rules 10a–1, 10b–18, and 11Aa3–1.[61]

1. Rules 10a–1 and 10b–18

The Commission believes that certain transactions in the OHT facility do not raise all of the same regulatory concerns that are raised by similar transactions during the 9:30 a.m. to 4 p.m. trading session and that exemptive relief from rule 10a–1 and interpretive advice under rule 10b–18 are appropriate.

Accordingly, the Commission's staff will issue a letter that grants exemptions and provides interpretive advice with respect to the treatment of transactions in the OHT facility under rules 10a–1 and 10b–18, respectively.

2. Rule 11Aa3–1

The NYSE has requested exemptive relief from the requirements of rule 11Aa3–1 [62] to the extent the Commission views the NYSE's proposed transaction reporting procedures for Crossing Sessions I and II as inconsistent with the requirements of the rule. Specifically, the NYSE will not disseminate last sale reports in the individual stocks that comprise the aggregate-price executions in Crossing Session II and the NYSE will not consolidate the volume attributable to Crossing Session II with the volume in those securities from the 9:30 to 4 session. Accordingly, the Commission grants the NYSE appropriate exemptions from the requirements in rule 11Aa3–1(b)(2)(iv) in light of these practices and the Commission's staff will issue a letter granting these exemptions.

In its comment letter, the MSE expressed concern that the NYSE should be required to disclose individual stocks comprising a portfolio and the number of shares of each stock traded in Crossing Session II. The MSE stated that it believes that more complete disclosure of after-hours portfolio trading enhances the quality of the U.S. markets from a regulatory perspective and promotes economically efficient executions of trades in the underlying stocks when investors are made aware of the extent of trading after hours in individual stocks comprising a portfolio. The Commission agrees that consolidation of volume in individual securities with volume in those individual securities from the 9:30 a.m. to 4 p.m. trading session and dissemination of that volume is important. The Commission does not believe that the NYSE has yet presented convincing evidence that the Commission and the industry should retreat from the long-standing policy encouraging the dissemination of consolidated market data. The Commission has consistently stated that it believes that real-time reporting of program trading data is important.[63] The Commission also believes, however, that there may be significant timing and implementation difficulties involved in establishing the systems necessary to accomplish this goal. Thus, the Commission has determined to grant the NYSE a temporary exemption from the requirement in rule 11Aa3–1(b)(2)(iv) that volume from the Crossing Sessions be consolidated with volume from the 9:30 a.m. to 4 p.m. session for one year, commencing on [the first day of the month following the date of this order] and the Commission's staff will issue a letter granting this exemption.

Because the Commission continues to believe in the importance of having this data reported, however, the Commission requests that the NYSE consider how to disseminate data on the volume of the individual stocks in the aggregate-price orders executed in Crossing Session II at least before the next trading session begins. The Commission believes that, at a minimum, a facility must be developed to disseminate this data before the next day's opening and requests that the NYSE report to the Commission within four months on how it will accomplish these objectives.

3. Section 31 Fees

The Exchange has requested the Commission to adopt a rule that would exempt transactions effected in Crossing Sessions I and II from section 31 fees. The Commission preliminarily believes that granting this relief for transactions in Session II is consistent with the Act and not anti-competitive. Accordingly, the Commission will issue a release soliciting comment on a proposal to exempt transactions which are executed otherwise than during regular trading hours in a system that provides execution for orders of 15 securities or more at one aggregate price. In addition, while the Commission at this time, does not believe that it is appropriate to solicit comment on a proposal to grant such relief for transactions in Crossing Session I for the reasons stated in the proposing release, the Commission's release also solicits comment on whether to extend the exemption to individual stock transactions executed in Crossing Session I.

V. Conclusion

Based on the foregoing factors, the Commission finds that the NYSE's proposed rule change establishing an OHT facility is consistent with the requirements of sections 6(b)(5) and 11A of the Act and the rules and regulations thereunder. Accordingly, the proposed rule changes are approved for a two year temporary period.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[64] that the proposed rule changes are approved for a two year period ending on May 24, 1993.

Dated: May 24, 1991.
By the Commission.
Jonathan G. Katz,
Secretary.

Dissenting Statement of Commissioner Fleischman

I dissent from the foregoing Order, although I do not disagree with the objectives of the NYSE's proposals, because I cannot conclude that "Crossing Session II" satisfies the requirements of section 6(b)(5) of the Securities Exchange Act.[65]

Crossing Session I

For the second time within a year,[66] the NYSE—the historic champion of the auction market—is forsaking its normal auction market procedures to provide for execution of matched single-stock orders without any opportunity for order exposure or interaction and thus without any opportunity for price discovery or price improvement. The NYSE's stated purpose for Crossing Session I is to respond to the significant increase in overseas trading of listed stocks while minimizing the effect on its auction pricing mechanism.[67] The NYSE's application to the Commission for approval of Crossing Session I does not, however, otherwise justify permitting crossed orders (as was the case last year, for example, when the NYSE explained the need to meet the requirements of the Commodity Exchange Act and the regulations thereunder for "Exchange for Physical" (EFP) transactions).[68] Nor does the application make any reference to the Commission's expressed belief that the development of an after-hours trading system permitting order exposure and order interaction (for purposes of price discovery and of order book and trading crowd protection, respectively), or an amendment to NYSE rule 390 for after-hours trading, could better achieve the NYSE's stated purpose.[69]

In these circumstances, just as with the NYSE's MOC proposal last year, I do not believe that the purpose enunciated by the NYSE justifies the extensive departure from its normal market procedures. I note, particularly, that Crossing Session I relinquishes auction price discovery, permits single-stock matched orders to trade free from interaction with unmatched customer orders regardless of time of order entry,[70] and compromises customary transparency requirements. Nevertheless, because I believe innovations originated by the "primary" market need not be viewed automatically as anti-competitive but may in fact reflect the healthy competition of the marketplace (whether such competition is occurring on an international or domestic basis), because I believe that any potential for abuse in this situation is appropriately addressed by other NYSE rules [71] and by other applicable law [72] and market forces, because I believe that the officials and governors of the securities exchanges and the NASD understand their markets more thoroughly than any government regulatory agency (not to speak of any single individual acting in a regulatory role) and will be quick to respond to market reaction labelling their prior initiatives "wrong," and because I believe that, so long as they

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[58] In light of factors that ensure that a NYSE member effecting a transaction for its own account, the account of an associated person, or an account managed by either the member or an associated person of the member has no time and place advantages, i.e., lack of price discovery; nondisclosure of the existence of GTX orders to members; the fact that proprietary orders for members only can be entered from off the floor after the close of trading; and the fact that orders entered into the OHT facility must be entered through and executed by SuperDOT, the Commission believes that executions obtained through the OHT facility should be regarded as satisfying paragraphs (a)(2)(i), (a)(2)(ii), and (a)(2)(iii) of rule 11a2–2(T) under the Act ("effect versus execute rule").

[59] The Commission further notes that a Commission-ordered suspension of trading in an individual security pursuant to section 12(k) of the Act, 15 U.S.C. 781(k), would prohibit transactions in such security in either Crossing Session I or Crossing Session II until the suspension of trading was lifted.

[60] The Commission allowed a similar limitation of rule 92 in its order approving basket trading. See Securities Exchange Act Release No. 27382 (October 26, 1989), 54 FR 45834 (Approving File No. SR–NYSE–89–5).

[61] The Exchange also has requested exemptions from rules 10b–6, 10b–7, and 10b–8, and no-action positions under rules 15c1–5 and 15c1–6, for aggregate-price coupled orders entered during Crossing Session II. The Division of Market Regulation has under review a comprehensive approach to the application of the anti-manipulation rules to index-related transactions, which will accommodate in part the Exchange's request. Relief from these rules was requested on behalf of participants in the OHT facility, and is not necessary to implementation of the facility itself.

[62] 17 CFR 240.11Aa3–1 (1990).

[63] See, e.g., October 1987 Market Break Report, Division of Market Regulation, at 3–27 to 3–28 (February 1988). See also letters from Richard G. Ketchum, Director, Division of Market Regulation, SEC, to Thomas E. Haley, Chairman, CTA, dated May 10 and June 10, 1988.

[64] 15 U.S.C. 78s(b)(2) (1988).

[65] 15 U.S.C. 78f(b)(5) (1991).

[66] *See* Exchange Act Rel. No. 28167, 46 SEC Docket (CCH) 832 (June 29, 1990) (approving one year pilot rule changes to permit matched and unmatched market-on-close (MOC) orders).

[67] File No. SR–NYSE–90–52, form 19b–4 at 3.

[68] Exchange Act Rel. No. 28167, 46 SEC Docket (CCH) 832, text at n.9.

[69] Exchange Act Rel. No. 28167, 46 SEC Docket (CCH) 832, 833–4, text at n. 16–17.

[70] See File No. SR–NYSE–90–52, Letter from Boston Stock Exchange to Jonathan G. Katz, Secretary, SEC (January 27, 1991) (commenting that the investor benefit arising from the sequencing requirement of the auction market will not be present in the NYSE's Crossing Session I).

[71] E.g., NYSE rule 92.

[72] E.g., In the Matter of E.F. Hutton & Co., Inc., n/k/a Shearson Lehman Hutton Inc., 41 SEC Docket (CCH) 413 (1988).

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meet the statutory requirements, those officials and governors are properly entrusted under the Exchange Act to take market initiatives even though I and other regulators would act otherwise,[73] I would have concurred in the Commission's Order approving the NYSE's rules governing Crossing Session I [74] had the Order not also encompassed Crossing Session II.

Crossing Session II

The NYSE's stated purpose for Crossing Session II is again to respond to the significant increase in overseas trading of listed stocks.[75] Crossing Session II will permit nonstandardized baskets of listed securities to be crossed under the auspices of the NYSE, free from what its application to the Commission describes as "structural and regulatory factors" [76] that have tended to drive such trades to overseas markets. To translate, Crossing Session II transactions will occur without exposure to the auction market or to any open orders for the securities that comprise the basket, without the safeguard of certain normal NYSE and Commission trading rules, and, most important, without any meaningful disclosure of the trades to the market. In short, the trades will have the seal of approval of a primary American equities market although a central element of what in my view earns that seal—transparency—is lacking.

To me the primary reason to promote the return to domestic markets of trades in domestic stocks currently being executed overseas is to reveal them to the marketplace so that their significance may be known and assessed by other market participants pursuing trading strategies that presume awareness of all transactions in the public markets. To report Crossing Session II transactions, for each day's session, solely as a total amount of dollars and as an aggregate number of undifferentiated shares, without disclosure of the identities of the stocks included in the baskets traded or of price or volume of individual stocks or of separate baskets, may present the facile advantage of shielding those directly involved on the long side of the traded baskets from the normal market risk that accompanies market awareness, but the parallel and obverse effect is clear: undifferentiated reporting, solely in gross, deprives all market participants, other than those directly involved, of crucial market information and mocks what has become one of the fundamental tenets of American market regulation. More detailed information regarding Crossing Session II trades will be supplied to the NYSE, and thereby will be available to the Commission, for regulatory monitoring purposes, but the quality of that information will not be significantly different from what has been supplied to the NYSE and the Commission with respect to recent overseas basket trading by NYSE member firms—and in any event supplying information for surveillance, as important as it may be, is a distant second in importance to disclosing information to the marketplace.

I cannot agree that the NYSE's Crossing Session II should receive the Commission's approval, even on a pilot basis, when every trade will be non-transparent behind an NYSE curtain. Just last month the Commission stated, in testimony before a Subcommittee of the House of Representatives, that the issue of market transparency directly affects American investors and American markets, and that this Commission has been working to promote the availability of data concerning trading volume and prices so that American investors, analysts and all other participants in the American securities markets can have a full picture of total trading activity. Chairman Breeden phrased the issue quite succinctly at the public Commission meeting at which the Commission's Order was approved: The rules governing Crossing Session II permit what he called the "virus of opacity" to enter the American primary equity markets. To whatever extent one accepts the theories of capital market efficiency and the regulatory policy consequences flowing from those theories, there can be no doubt that efficiency is adversely impacted by the deliberate withholding of market information.

The American securities markets, in my view, do and will compete with foreign markets for trades on the basis of the unrivalled fundamental strengths of the American markets: Liquidity, transparency, ease of entry, and breadth of participation. To sacrifice one of those strengths—transparency—and thereby to diminish the others is for me too high a price to pay to accomplish the laudable purpose of furthering the domestic markets' role in international market competition. That sacrifice prevents me from concluding, as section 6(b)(5) of the Exchange Act mandates that I must, that these new Exchange rules, taken all together as a package governing both Crossing Sessions I and II, would "remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, (would) protect investors and the public interest".

[FR Doc. 91-12952 Filed 5-30-91; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-29225; File No. SR-PHLX-91-23]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Cross-Rate Currency Options Margin

Pursuant to section 19(b)(1) of the Securities Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 6, 1991, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX, pursuant to rule 19b-4, proposes to amend PHLX Rule 722 regarding Margins with respect to Cross-Rate Currency Options. Specifically, the PHLX proposes to amend Exchange Rule 722(c)(2)(J) to provide that any of the forms of margin deposit specified in the Regulations of the Board of Governors of the Federal Reserve System will suffice as an appropriate margin deposit for cross-rate currency options.

The text of the proposed rule change is available at the Office of the Secretary, PHLX, and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend PHLX rule 722(c)(2)(J) to extend the applicability of this provision governing appropriate margin deposits for short customer currency option positions to PHLX cross-rate currency options.

On November 20, 1990, the PHLX filed SR-PHLX-90-12 respecting the listing and trading of three cross-rate currency options contracts which was subsequently amended. Thereafter, on March 11, 1991, the PHLX field SR-PHLX-91-03 to amend generally rule 722 to provide for a comprehensive methodology to calculate margin requirements for cross-rate currency options.

The proposed rule change herein is a corollary filing designed to extend the provision of rule 722 regarding the appropriate margin deposits for short customer currency options positions to PHLX cross-rate currency options. Specifically, the amendment will clarify that any of the forms specified in the Regulations of the Board of Governors of the Federal Reserve System will suffice as an appropriate margin deposit for cross-rate currency options. Additionally, identical to currency options denominated in U.S. dollars, customers for cross-rate currency options can utilize letters of credit that comply with the standards established in rule 722(c)(2)(J). To be useful and consistent with the business application of the new cross-rate currency option product, however, such letter of credit for margin purposes will have to be denominated in the base currency of the cross-rate currency option contract.

The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act which provides, in part, that the rules of the Exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 24, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 23, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-12840 Filed 5-30-91; 8:45 am]
BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 03/03-0187]

BDP Capital, Ltd.; Surrender of License

Notice is hereby given that BDP Capital, Ltd. (BDP), 100 Matson Ford Road, 5 Radnor Corporate Center, suite 454, Radnor, PA 19807 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). BDP was licensed by the Small Business Administration on August 26, 1989.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the License was accepted on April 25, 1991, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 24, 1991.

Bernard Kulik,

Associate Administrator for Investment.

[FR Doc. 91-12882 Filed 5-30-91; 8:45 am]
BILLING CODE 8025-01-M

Region V Executive Committee Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region V Executive Committee Advisory Council, located in the geographical area of Chicago, will hold a public meeting from 9:30 a.m. to 4 p.m. on Friday, June 7, 1991, at the O'Hare Plaza Hotel, Chicago, Illinois, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Roy A. Olson, Assistant Regional Administrator, for Public Affairs, U.S. Small Business Administration, 230 South Dearborn Street, room 510, Chicago, Illinois 60604, telephone (312) 353-0359.

Dated: May 22, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91-12799 Filed 5-30-91; 8:45 am]
BILLING CODE 8025-01-M

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[73] See Fleischman, The "Unique Partnership" Between the SEC and the Self-Regulatory Organizations, Address to the Legal Advisory Committee to the New York Stock Exchange Board of Directors (July 29, 1988).

[74] I am pleased that, even in circumstances where the Commission is uncertain of the appropriate evaluative criteria, the Commission has detailed for the NYSE the categories of minimum data (including data as to the changes, if any, in spreads, volatility, and number of block transactions, during the last hour of the regular trading session) for evaluation of the after-hours sessions.

[75] File No. SR-NYSE-90-53, form 19b-4 at 3.

[76] *Id.*

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DEPARTMENT OF STATE

[Public Notice 1402]

Shipping Coordinating Committee, Subcommittee for the Prevention of Marine Pollution; Meeting

The Subcommittee for the Prevention of Marine Pollution (SPMP), a subcommittee of the Shipping Coordinating Committee, will conduct an open meeting on June 26, 1991, at 9 a.m. in room 2415 of U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of this meeting will be to review the agenda items to be considered at the thirty-first session of the Marine Environment Protection Committee of the International Maritime Organization to be held July 1–5, 1991. Proposed U.S. positions on the agenda items for this meeting will be discussed.

The major items for discussion will be the following:

1. Adoption of special area status under Annex V of the International Convention for the Prevention by Ships, 1973, as modified by the Protocol of 1978, relating thereto (MARPOL 73/78) for the Wider Caribbean. This would extend special area status under Annex V to the Gulf of Mexico.
2. Measures for the prevention of pollution including a U.S. proposal at IMO for requirements for double hulls on tank vessels.
3. Requirements for oil spill response plans for commercial vessels under proposed Regulation 26 of Annex I of MARPOL 73/78. The proposed content of such plans will be discussed.
4. Election of the Chairman and Vice-Chairman of the Marine Environment Protection Committee.
5. Control of discharge of ballast water containing harmful marine organisms.
6. Amendments to MARPOL 73/78 regulations 15(3)(a), 17(3), 26, forms of the International Oil Pollution Prevention Certificate Supplements and appendix III of Annex I and regulation 5 of Annex V.
7. Follow-up to the International Conference on Oil Pollution Preparedness and Response of November, 1990, which adopted the International Convention on Oil Pollution Preparedness, Response and Co-Operation, 1990 (OPRC 90).
8. Reports of the enforcement of International Maritime Organization Conventions by the various signatory member states.

Members of the public may attend these meetings up to the seating capacity of the room.

For further information or documentation pertaining to the NCPMP meeting, contact either Commander W. St. J. Chubb or Lieutenant M. L. McEwen, U.S. Coast Guard Headquarters (G–MEP–3), 2100 Second Street, SW., Washington, DC 20593–0001, Telephone: (202) 267–0419.

Dated: May 15, 1991.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 91–12937 Filed 5–30–91; 8:45 am]

BILLING CODE 4710-7-M

Bureau of African Affairs

[Public Notice 1403]

South African Parastatal Organizations

AGENCY: Bureau of African Affairs, Department of State.

ACTION: Notice.

SUMMARY: A Notice is given that USKO Limited (formerly the Union Steel Company) is no longer deemed to be a "parastatal organization" for purposes of the Comprehensive Anti-Apartheid Act of October 2, 1986 (Pub. L. 99–440).

EFFECTIVE DATE: May 31, 1991.

FOR FURTHER INFORMATION CONTACT: Jim Bond, Office of Southern African Affairs, (202) 647–6433; or Tony Perez, Office of the Legal Adviser, (202) 647–4110, Department of State.

SUPPLEMENTARY INFORMATION: Section 303(a) of the Comprehensive Anti-Apartheid Act of 1986 (Pub. L. 99–440), as amended, provides that no article which is grown, produced, manufactured by, marketed, or otherwise exported by a parastatal organization of South Africa may be imported into the United States, with certain limitations and exceptions. Section 314 of the Act prohibits U.S. Government procurement of goods or services from parastatal organizations, except for items necessary for diplomatic or consular purposes.

Section 303(b) of the Act states that the term "parastatal organization" means a corporation, partnership, or entity owned, controlled, or subsidized by the Government of South Africa, but does not mean a corporation, partnership, or entity which previously received start-up assistance from the South African Industrial Development Corporation but which is now privately owned.

Executive Order No. 12571 of October 27, 1986 provides that the Secretary of State is responsible for determining which corporations, partnerships, or entities are parastatal organizations within the meaning of the Act. Pursuant to section 2 of the Executive Order, the Department of State published on November 19, 1986 a public notice identifying the firms it deemed "parastatal organizations" within the meaning of the Act (Public Notice 983, 51 FR 41912). The Department published two public notices on December 23, 1986 (51 FR 45981) and February 5, 1987 (52 FR 3731) inviting interested persons to submit any written comments relevant to the Department's review of the status of certain firms that requested reconsideration of the Department's initial determination. On March 27, 1987, the Department published Public Notice 1007 (52 FR 9982), containing a revised list of parastatal organizations.

A request, dated November 29, 1990, was submitted to the Department by USKO Limited to review its status as a parastatal organization. On January 7, 1991, the Department published a public notice inviting interested persons to submit any written comments relevant to the Department's review of the status of USKO Limited (Public Notice 1316, 56 FR 554). No comments were received. The Department has determined that the submission made on behalf of ISKOR Limited establishes that it is no longer "owned, controlled or subsidized by the Government of South Africa" within the meaning of section 303(b) of the Act and that is should no longer be deemed a parastatal organization.

This notice involves a foreign affairs function of the United States. It is excluded from the procedures of 5 U.S.C. 553 and 554 and Executive Order 12291. It implements a statutory requirement that entered into force on October 2, 1986, and section 2 of Executive Order 12571.

Dated: May 20, 1991.

Herman J. Cohen,

Assistant Secretary of State for African Affairs.

[FR Doc. 91–12938 Filed 5–30–91; 8:45 am]

BILLING CODE 4710-26-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Adirondack Airlines, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 91–5–32, Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find that Adirondack Airlines, Inc., is fit, willing, and able to provide commuter air service under section 419(e) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P–56, room 6401, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than June 10, 1991.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2337.

Dated: May 24, 1991.

Patrick V. Murphy,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 91–12828 Filed 5–30–91; 8:45 am]

BILLING CODE 4910-62-M

Show Cause Order Regarding Foreign Air Carrier Permit of Iberia, Lineas Aereas de Espana, S.A.

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Order to Show Cause (Order 91–5–29) Docket 47553.

SUMMARY: The Department has tentatively decided to amend the foreign air carrier permit authority of Iberia, Lineas Aereas de Espana, S.A. (Order 90–3–9) by suspending, until further order of the Department, its authority to engage in foreign air transportation between Spain and Miami, Florida, and between Spain and New York, New York.

DATES: Objections to the issuance of an order making final our tentative findings and conclusions shall be filed with the Department no later than May 28, 1991. Answers to objections are due no later than May 30, 1991.

ADDRESSES: Answers should be filed in Docket 47553, and addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., room 4107, Washington, DC 20590, and should be served on all parties in Docket 47553.

Dated: May 15, 1991.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 91–12827 Filed 5–30–91; 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

Environmental Impact Statement: Carbondale, Jackson County, IL.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for construction of Illinois Route 13 as a four lane highway around the north side of Carbondale, Illinois. The proposed project corridor extends from Illinois Route 13 near the Airport Road west of Carbondale to Illinois Route 13 near the Reeds Station Road east of Carbondale. The proposed project would be designated Federal Air Primary Route 331 (formerly FAP 107).

FOR FURTHER INFORMATION CONTACT:

Mr. James C. Partlow, Project Development and Implementation Engineer, Federal Highway Administration, 3250 Executive Park Drive, Springfield, Illinois 62703. Phone (217) 492–4622.

Mr. T.L. Jennings, District Engineer, Illinois Department of Transportation, District 9, Old Route 13 West, Carbondale, Illinois 62903–0100. Phone (618) 549–2171.

SUPPLEMENTARY INFORMATION: The proposed action is to construct Illinois Route 13 as a four lane highway facility around the north side of Carbondale in Jackson County, Illinois. The project corridor begins at existing Illinois Route 13 near the Airport Road west of Carbondale and extends approximately 7.5 miles around the north side of Carbondale terminating at Illinois Route 13 near the Reeds Station road east of Carbondale.

The need for the Illinois Route 13 project is to improve traffic circulation within Carbondale, enhance access to established and planned economic development zones north of Carbondale, provide a grade separation structure across the Illinois Central Gulf Railroad on the north side of town and improve traffic circulation to and from Interstate 57 and other communities in southern Illinois.

It is anticipated that the project will be constructed as a limited access expressway. Interchanges or intersections will be provided at Illinois Route 13, U.S. Route 51 and other major roadways or city streets. Alternate alignments and the no-action alternative will be evaluated.

The scoping process undertaken as part of this project will include distribution of scoping information, informal coordination and review sessions as appropriate. A formal scoping meeting will not be held. Further details and a scoping information packet may be obtained from one of the contact persons listed above.

To ensure that the full range of issues to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA or IDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

James C. Partlow,

Project Development and Implementation Engineer, Federal Highway Administration, Springfield, Illinois 62703.

[FR Doc. 91–12817 Filed 5–30–91; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Applicable Rate of Interest on Nonqualified Withdrawals From a Capital Construction Fund

Under the authority in section 607(h)(4)(B) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1177(h)(4)(B)), we hereby determine and announce that the applicable rate of interest on the amount of additional tax attributable to any nonqualified withdrawals from a Capital Construction Fund established under section 607 of the Act shall be 9.10 percent, with respect to nonqualified withdrawals made in the taxable year beginning in 1991.

The determination of the applicable rate of interest with respect to nonqualified withdrawals was computed, according to the joint regulations issued under the Act (46 CFR 391.7(e)(2)(ii)), by multiplying eight percent by the ratio which (a) the average yield on 5-year Treasury securities for the calendar year immediately preceding the beginning of such taxable year bears to (b) the average yield on 5-year Treasury

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securities for the calendar year 1970. The applicable rate so determined was computed to the nearest one-hundredth of one percent.

Dated: May 22, 1991.

So Ordered By:
Maritime Administrator
Maritime Administration
Administrator, National Oceanic and Atmospheric Administration
Assistant Secretary for Tax Policy, Department of the Treasury

Robert E. Martinez,
Deputy Administrator.
John A. Knauss,
Administrator, National Oceanic and Atmospheric Administration.
Kenneth W. Gideon,
Assistant Secretary for Tax Policy.

[FR Doc. 91-12723 Filed 5-30-91; 8:45 am]
BILLING CODE 4910-81-M

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

Demonstration Grants to Provide Outreach to Homeless People in Transit Facilities

Subject to the availability of funds, the Urban Mass Transportation Administration of the Department of Transportation will accept applications in response to this announcement under the single receipt date of July 19, 1991.

I. Purpose

For a variety of reasons, (e.g., fear of large shelters, restrictive shelter eligibility and code of conduct rules, and perceived threats to safety and security) a significant segment of America's homeless population moves in and out of street locations. Because public transit facilities such as mass transit and bus terminals (and facilities such as airports and railroad and ferry terminals that are linked to mass transit) offer some protection from the elements, bathroom facilities, and police protection, these transit facilities have become living sites for homeless people, both individuals and families with children.

The special needs of these homeless people are highlighted by studies documenting that one-third of adults living on the street have severe mental illnesses, 40–50 percent have alcohol use disorders, and 10–20 percent have other drug disorders. The co-occurrence of a mental illness with an alcohol or other drug abuse disorder is estimated to be 15–20 percent in this population. Dietary inadequacy is also prevalent among homeless people; a study in 1987 reported that 36 percent go one or more days each week without eating anything at all.

The presence of homeless people in transit facilities is often perceived as a threat by other users of public transit. Homeless people have increased maintenance and security costs and may have contributed to declines in ridership on transit systems. In addition, transit facilities have often proved hazardous to homeless people.

It is in the public interest for UMTA and the service providing community to demonstrate how transit systems can help provide the homeless people congregating in transit facilities with appropriate services and alternative shelter and housing. Such assistance could involve actions taken directly by a transit system, coordination with other organizations seeking to serve the homeless, or a combination of both.

While both transit providers and the public generally wish to assist homeless people, they lack the resources and expertise to provide them with available service and housing programs. Ready access to transit facilities, and the collaboration of owners and operators of transit facilities, are crucial to successful efforts to serve this population.

The purpose of this Federal initiative is to encourage that collaboration, and to assist homeless people in better meeting both their immediate and their long-term needs. An expected outcome of the collaboration will be a substantial reduction or elimination of the homeless population's long-term dependence on transit facilities for shelter, and an eventual reduction in the number of homeless people living on the streets of our cities.

A Federal interagency effort, led by the Department of Transportation (DOT), will make new demonstration grant awards specifically focused on the homeless population residing in or around public transit facilities. These grants will support the provision of outreach services, coordinated with required health, mental health, and substance abuse treatment, employment/training, housing, education, transportation, and nutrition services, and other necessary community support resources.

The Federal Interagency Council on the Homeless, the Department of Health and Human Services (HHS), the Department of Housing and Urban Development (HUD), the Department of Labor (DOL), and the Department of Agriculture (USDA), are participating with the Department of Transportation (DOT) in the review and approval, funding, monitoring, and evaluation of the projects. The Urban Mass Transportation Administration (UMTA) within DOT will administer the program.

II. Availability of Funds and Period of Support

It is anticipated that at least $1.750 million will be available in FY 1991 to support the three-year costs of three to five new demonstration grants. Final grant amounts, however, will be determined by the number of demonstration sites selected and are subject to appropriations and funding availability. Although there are no mandated match requirements, the magnitude of the matching resources proffered by applicants will be favorably considered in making the grant awards.

III. Eligibility

Applications may only be submitted by a public entity such as a transit agency or a unit of State or local government, representing a project team consisting of: entities currently providing services to the homeless, at least one transit facility provider, and perhaps other public agencies or private nonprofit organizations. Eligibility is restricted to applicants proposing to provide services in areas substantially impacted by a street homeless population. It is expected that all grants will be awarded in United States cities that had populations over 250,000 in 1988 according to the Bureau of the Census (see Attachment 1). Airport sponsors impacted by an otherwise eligible project may seek Airport Improvement Program (AIP) planning funds from the Federal Aviation Administration as set forth in section VI.

Applicants must put together a project team that includes a transit facility provider and a service providing coalition with all of the following:

- Experience and expertise in providing outreach, assessment, case management, health, mental health, and substance abuse treatment to homeless people;
- Experience and expertise in providing transportation, housing, nutrition, protection and advocacy, and other support services to homeless people;
- Experience and expertise in HUD's Community Development Block Grant (CDBG) program and its use to provide assistance to the homeless;
- Experience and expertise in the provision of training and job placement services under the Job Training Partnership Act (JTPA) or the Stewart B. McKinney Homeless Assistance Act;
- The capability and appropriate resources to coordinate and integrate the requisite services between and among all relevant parties including State, city, and nonprofit nongovernmental homeless service providers; transit facility owners, operators, and users; civic groups; private sector entities; and relevant Federal agencies and programs;
- The capability and resources to develop, implement, and evaluate the effects of the specified intervention(s);
- The capability and resources to monitor and to insure consumer rights.

IV. Program Goals

This Request For Applications solicits proposals demonstrating effective strategies for all of the following: assessing the needs of "street-dwelling" homeless people currently residing in transit facilities; engaging these individuals through outreach facilities; and linking these individuals with suitable shelter or housing, while providing a broad range of necessary supportive services.

The goals of the demonstration program are:

- Service delivery to a homeless clientele concentrated in transit facilities;
- Improved physical and mental health, functional status, and quality of life, and reduced alcohol/drug abuse or dependence in the target population;
- Increased access to a range of appropriate housing alternatives and employment opportunities, leading to improved residential stability of the target population;
- Reductions in the number of homeless people residing in targeted transit settings and inappropriate surrounding street locations;
- Improved coordination of health, housing, transportation, public assistance and/or entitlements, dietary, education and job training, and other support services for homeless individuals.

V. Target Population

The target population includes the street population of homeless adults, homeless adolescents, and homeless families (one or more adults with minor children) who are inappropriately using or residing in transit facilities.

VI. Activities for Which Grant Support is Available

Two types of grant support are available:

1. General Grants

(A) Grant support is available for comprehensive projects that build upon existing services to the homeless and other community resources. Federal funds may not replace or supplant existing resources but may be used to fill gaps, improve coordination, and evaluate interventions.

(B) Grant support is available only to communities that have committed or plan to commit HUD CDBG monies to this project. HUD Technical Assistance funds are also being made available for the purpose of providing assistance to facilities skills and knowledge in planning, developing, and administering the homeless activities being funded by local CDBG entitlement funds. These funds will be made available directly through this grant.

(C) Section 8(d) of the Urban Mass Transportation Act provides funds that may be used for: planning, design and evaluation of public transportation projects and for other technical studies. Specific activities may include: studies related to management, operation, and economic feasibility; preparation of engineering and architectural surveys, plans, and other specifications; and other similar or related activities preliminary to and in preparation for the construction, acquisition, or improved operation of mass transportation systems, facilities, and equipment. For further information about the use of section 8(d) funds, call Mr. Eric Bers at (202) 366–4060, FAX (202) 366–7116.

2. Department and Agency-specific Grants.

A. United States Department of Agriculture. Grant support is available to grantees proposing diverse, innovative projects that are designed: to develop effective methods of reaching and helping homeless people obtain food-assistance-program benefits; to facilitate homeless service providers' and commercial restaurant operators' participation in the prepared meals provision of the Food Stamp Program; and to devise and demonstrate other innovative ways of reaching and providing food assistance to homeless people. This grant support will parallel the separate USDA program of Small Grants for Homeless Outreach and Assistance Programs.

Potential applicants may also wish to apply separately to this program, and if so, should request an Application Package—in writing, with two self-addressed mailing labels included—from: Crystal Brooks, Contract Specialist, USDA, Food & Nutrition Service, 3101 Park Center Drive, room 914, Alexandria, VA 22302.

B. Department of Transportation (Federal Aviation Administration). Grant support is available under the Airport Improvement Program (AIP) to units of state or local government that own or operate airports (airport sponsors) for planning the facilities in an airport terminal building necessary to deal with homeless people.

VII. Project Requirements

1. At minimum the demonstrations must provide or arrange for the following community services:

- Outreach and engagement.
- Case management.
- Coordination with the existing shelter and social service system.
- Primary health, including basic dietary needs, mental health, and substance abuse assessment and treatment through linkage or referral to secondary care sites.
- Housing needs assessment and development or linkage to appropriate housing alternatives with potential placement.
- Employability assessment and the provision of appropriate job training, placement, and followup services.
- Benefit determination and assistance in accessing public assistance and/or entitlement programs.
- Consideration of the basic dietary needs of the homeless people contacted.
- Training for program staff, transit personnel, and public and private law enforcement personnel.
- Administrative and systems coordination activities.

2. Grant support is available only to those communities that have committed or plan to commit HUD CDBG entitlement funds to homeless assistance services or shelter activities focused on homeless populations. Technical Assistance activities may be funded in support of CDBG-funded activities in the demonstration projects, and may include the following:

- Design alternative outreach and engagement activities to be funded with CDBG entitlement funds; training of staff in the implementation of these activities; and assessment of the activities;
- Assessment of housing needs and design of development and placement systems;
- Assessment of services provided by existing shelter and social service systems as they relate to CDBG-funded activities and development of systems and coordination/linkage with these systems;
- Design and training in implementation of administrative systems to coordinate all activities related to the CDBG-funded activities;
- Design and conduct of training programs for program staff, transit personnel, and public and private law enforcement personnel in the

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implementation of CDBG-funded activities.

Each application must submit the following:

• A letter signed by the government official responsible for administering the CDBG program in the community in which the technical assistance activities will occur, identifying the amount of CDBG entitlement funds committed or planned to be committed, the dates of commitment or planned commitment, the specific activities undertaken or planned to be undertaken, and the relationship between the CDBG entitlement activities and the proposed technical assistance activities.

• Where the applicant is a public body other than the CDBG entitlement community itself, the application must include a letter signed by the Chief Executive Officer of the CDBG community in which the technical assistance will occur, designating the applicant as a technical assistance provider to its CDBG entitlement program.

3. Applications will not be accepted without a Street Homeless Outreach Plan that: discusses in detail the outreach problems presented by the street homeless, and presents a coherent, specific, well considered plan that shows how the outreach workers would make contact with, and motivate the street homeless to seek services and shelter outside the transit facilities. The Plan must be grounded in past experience in, or based upon research concerning, the difficulties in outreach to the street homeless. This Street Homeless Outreach Plan, submitted with the application, may not exceed ten (10) single-spaced pages in length.

4. Applications will not be accepted without a Transit Outreach Facility Agreement, signed by the owner(s) or operator(s) of one or more transit facilities, consisting of a commitment letter that specifies the resources to be provided by the transit facility (cash and/or in-kind, eg, office space within the facility), access agreements between the transit facility and the service providers, and coordination mechanisms among the project team members including the transit facility provider. This Transit Outreach Facility Agreement, submitted with the application, may not exceed ten (10) single-spaced pages in length. If a project is to include an airport, the airport sponsor must also submit a TOFA.

5. Applications will not be accepted without a Local Agency Plan that lists the local agencies and entities to be involved in the demonstration project and discusses the history of their involvement and interaction, with particular focus on their previous activities regarding the homeless. The Local Agency Plan and the Evaluation Plan (explained below), submitted with the application, may not together exceed ten (10) single-spaced pages in length.

Letters of commitment from each listed agency identifying the resources to be made available to the project should be submitted in an Appendix to the Local Agency Plan. This appendix should also include the commitment letter(s) from the Service Delivery Area/Private Industry Council (see #6 below). The contributions, both in cash and in kind, that the local agencies and other sponsors plan to provide to the project should be listed in an Appendix to the Local Agency Plan. Although there are no mandated project match requirements, the magnitude of the matching resources proffered will be favorably considered in making the grant awards.

6. Applications will not be accepted without commitment letters from the local SDA/PIC that describe cooperative arrangements/agreements with the project for the provision of comprehensive employment and training services designed to lead to gainful employment of the homeless participants.

7. Applications will not be accepted without an Evaluation Plan that describes in detail how the sponsor proposes to evaluate the demonstration project. If an airport is a proposed FAA AIP supplemental grantee, airport-related evaluation efforts should be included in the Evaluation Plan. Grantees are expected to budget no less than 15 percent of project funding for monitoring and evaluation. As noted above this Evaluation Plan and the Local Agency Plan, submitted with the application, may not together exceed ten (10) single-spaced pages in length.

Each project will collect its own client-level quantitative data. The data should include, at a minimum, demographic characteristics, assessments of health, mental health, dietary, and substance abuse status, referrals for and use of services, and follow-up assessments of health, mental health, dietary, substance abuse, and housing status (at appropriate intervals following receipt of services).

Since a transit facility will become the focus of a major thrust to improve overall usage and appearance, DOT/UMTA is interested in obtaining specific information regarding ridership, customer satisfaction, operating expenses and other financial consequences before, during, and after the demonstration. The information to be collected should include impact on personnel levels (staff hours), worker morale, type of maintenance actions and maintenance levels, amount of debris (removal), reported crimes (type and severity), passenger reaction, patronage changes, and economic effects on businesses in the facility.

8. Applicants not meeting the above criteria will not be eligible for funding from each of the Departments; except in unusual circumstances they cannot be considered for any funding.

9. The demonstrations may request funding to provide or to arrange for the following optional activities and/or services:

A. United States Department of Agriculture.

(1) Activities and/or Service

Homeless Outreach Project applicants may propose activities designed to encourage and actively assist homeless people to become certified to receive food-assistance benefits under Federally supported food programs (e.g., Food Stamps, WIC, School Lunch and Breakfast, Commodity Supplemental Food Program). Applicants may also propose activities designed to increase the participation of either or both nonprofit homeless-meal providers and commercial restaurant operators (as authorized by the Mickey Leland Domestic Hunger Relief Act of 1990) in the prepared-meals provision of the Food Stamp Program. Finally, applicants may propose activities to develop new, innovative means of making essential food assistance available and accessible to homeless individuals and families. A description of these activities, the Nutrition Action Plan, submitted with the application, may not exceed five (5) single-spaced pages in length.

(2) Additional Requirements

An application that proposes to include a homeless food-assistance component in the demonstration project must submit a letter signed by the government official responsible for administering the Food Stamp Program, and/or other appropriate food-assistance program(s) in the demonstration area, indicating awareness of and a commitment to cooperate with the homeless food-assistance initiative(s) planned for the demonstration project.

VIII. Evaluation

Monitoring and evaluation will be a critical element in this demonstration program. DOT and the other participating Federal Departments and agencies are interested in the systematic monitoring and evaluation of how the proposed service interventions are being implemented, what types of services are being delivered, the volume of services provided, and the characteristics and needs of the primary recipients of those services. In addition, DOT and the other participating Federal Departments and agencies are interested in assessing changes in the individual participants, the transit setting, and the existing network of care for homeless people over the period of the demonstration. Evaluation expenses must be clearly itemized in the proposed grant budget. Grantees are expected to budget no less than 15 percent of project funding for monitoring and evaluation.

Each grantee will be required to collect data for the local project evaluation. DOT/UMTA will conduct a program evaluation using its own contractors and the data collected locally. A detailed plan for the DOT/UMTA evaluation will be provided to grantees once they are selected. Airport sponsors will work separately with FAA headquarters and regional staff.

IX. Reporting Requirements

Each year grantees must provide reports describing their progress, problems encountered in implementing their projects, proposed strategies for resolving their problems, and preliminary findings. In addition, copies of all data collection instruments, outcome measures, and reports that are generated must be submitted to DOT for distribution to the Federal Departments and agencies providing funding.

At the end of the period of support, six copies of a final report must be submitted to DOT within ninety (90) days. The final report must include a complete description and history of the demonstration project, the characteristics of the individuals served, an interpretation and discussion of the findings, and any materials (e.g., training materials) that were developed during the course of the project.

X. Participation in National Meetings

The project director and at least one other person from each demonstration project will be invited to participate in two meetings per year to exchange project information and facilitate evaluation. Such meetings may include, but will not be limited to, the Washington, DC area. Money for this purpose should be identified in the project budget.

XI. Review Procedures

Applications will be reviewed by a Federal team with expertise in the different facets of the demonstration program any may include ad hoc outside experts.

XII. Review Criteria

1. All applications will be ranked on the following criteria:

(A) Soundness of approach based on the extent to which the application identifies techniques or systems that can significantly impact on the key problem(s) identified (maximum of 25 points):

• Adequacy of the theoretical and conceptual framework of the proposed demonstration;

• Evidence of cooperation, commitment, and expertise from people and organizations whose support is essential for the conduct of the demostration; appropriateness of the collaborative arrangements that assure access to participants within transit facilities;

• Clear, operational definitions of the variables, such as transit facilities, georgraphic boundaries of the site to be served, homeleasness, and service components;

• Relevance of the proposed demonstration for subpopulations and racial/ethnic minority groups among the homeless;

• Adequacy of the plan to protect study participants; and

• Appropriate inclusion of women and minorities as research participants.

(B) Probable effectiveness of the proposal in meeting needs of localities and accomplishing overall project objectives (maximum of 25 points):

• The appropriateness and probable contribution of the project to improving services to homeless people in transit facilities;

• Capacity to coordinate and integrate between all parties the requisite facilities at the point of service delivery; and

• Evidence of familiarity with and understanding of outreach, communication, health, dietary, and other issues as they pertain to homeless people, both through experience and the relevent literature.

(C) Methodology for transfer of successful technical assistance techniques to other potential assistance providers (maximum of 10 points):

• Adequacy of the proposed Evaluation Plan to provide for the systematic evaluation of how the proposed service interventions are being implemented, types and volume of service being delivered, and the characteristics and needs of service recipients;

• Adequacy of the Evaluation Plan to assess changes in individual participants, the transit setting, and the existing network of care for homeless people over the period of the demonstration;

• Extent to which the stated goals of the project are achievable, realistic, and generalizable to other populations, environments, and service conditions; and

• Adequacy of the Evaluation Plan (transit and, as appropriate, aviation-related) to provide information on the success or failure of technical assistance techniques, client outcomes, and project implementation.

(D) Organizational and management plan reflecting a rational project management system (maximum of 15 points):

• Evidence of sustained history of project team members successfully providing coordinated services to the street homeless or the homeless in the community;

• Appropriateness of the budget requests; and

• Adequacy of the Evaluation Plan in building evaluative data collection and review into the operations of the project.

(E) Application qualifications based on present and past relevant experience and the comptence of key personnal assigned to the project (maximum of 15 points):

• Demonstrated administrative and technical capability, experience, and level of commitment of the proposed demonstration staff; and

• Adequacy of facilities, general environment, and core resources for the development and implementation of the proposed demonstration.

(F) Potential for assistance activities being sustained beyond the period of the grant (maximum of 10 points):

• Potential contribution of the project to provide alternative short term and long term housing and other services to homeless people in transit facilities; and

• Community support, as evidenced by proposed project matching contributions.

2. Applications will be selected for funding according to the rank order of their scores in these criteria, provided that no application scoring below 50 will be funded. Although there are no mandated project match requirements, the magnitude of the matching resources proffered will be considered in making the grant awards.

XIII. Contact for Additional Information

Ms. Jocelyn Stevenson, Special Assistant to the Assistant Secretary for Budget and Programs at DOT, has been named contact point during the application process. Please call Ms. Stevension for additional information

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concerning this Request For Applications, especially the Department- and agency-specific programmatic requirements detailed in sections VI Activities For Which Grant Support Is Available; VII Project Requirements; and XII Review Criteria. This central contact point will facilitate and ensure the inter-Departmental nature of the Homeless Outreach Demonstration Program.

Ms. Stevenson will refer questions as needed to staff in the other Departments involved in this demonstration project. She can be reached on (202) 366–9193. Her local FAX numbers are (202 366–6031 and (202) 366–7952. Inquiries may also be made at the regional offices of the Regional Coordinators of the Interagency Council for the Homeless (Attachment 2).

If you plan to apply for a grant for this demonstration program, please send a FAX message to that effect to Ms. Stevenson as soon as possible, including your own FAX number. Additional information concerning the application process and questions arising from it will be sent by FAX to all applicants on a regular basis.

XIV. Inclusion of Minorities and Women Study Populations

DOT urges applicants to give attention (where feasible and appropriate) to the inclusion of minorities and women in study populations of homeless people. If minorities and women are to be excluded from a proposed project or activity, a clear and convincing rationale for their exclusion must be provided.

Without approval of an exclusion, the project team will be obligated to deal with all homeless users and residents of transit facilities in a non-discriminatory manner, and failure to do so may be cause for immediate termination of funding.

XV. Submission of Applications

Non-binding letters of intent to apply should be sent immediately by facsimile transmission to (202) 366–6031, (202) 366–7952, or (202) 708–3617. Include a point of contact, a mailing address, and if possible a FAX number.

All applications should be submitted, in six complete copies, to Ms. Jocelyn Stevenson, U.S. Department of Transportation, Office of the Assistant Secretary for Budget and Programs, 400 Seventh Street SW., Washington, DC 20590.

Each application should contain an executive summary, not longer than two pages, that highlights information about the homeless in that city, the applicant agency and the coalition applying for the grant, and the activities proposed.

The budget for the demonstration project should be submitted as a stand-alone document, bound separately from the rest of the application.

Application format:

- Face Sheet (one page).
- Executive Summary (NTE 2 pages).
- Street Homeless Outreach Plan (NTE 10 pages).
- Transit Outreach Facility Agreement (NTE 10 pages).
- Local Agency Plan (with Evaluation Plan, NTE 10 pages).

Appendix: Agency commitment letters (must include CDBG and SDA/PIC commitment letters).

- Nutrition Action Plan (if appropriate; NTE 5 pages).

Appendix: Letter(s) from local food-assistance program, administrators (Food Stamps, WIC, Child Nutrition, and/or Commodity Supplemental Food Program), as appropriate.

- Evaluation Plan (with Local Agency Plan, NTE 10 pages).
- Budget (under separate cover).

Appendices other than to the Local Agency Plan and the Nutrition Action Plan are discouraged, given the generous page allotments listed above.

Robert A. Knisely,

Special Assistant to the Secretary.

XVI. Attachments

(1) List of cities of over 250,000 population.

(2) List of regional contacts for additional information.

HUD CDBG 90 ENTITLED CITIES.

[1988 estimated population]—Attachment 1

Albuquerque	NM
Arlington	TX
Atlanta	GA
Austin	TX
Baltimore	MD
Baton Rouge	LA
Birmingham	AL
Boston	MA
Buffalo	NY
Charlotte	NC
Chicago	IL
Cincinnati	OH
Cleveland	OH
Colorado Springs	CO
Columbus	OH
Corpus Christi	TX
Dallas	TX
Denver	CO
Detroit	MI
El Paso	TX
Fort Worth	TX
Fresno	CA
Honolulu	HI
Houston	TX
Indianapolis	IN
Islip Town	NY
Jacksonville	FL
Kansas City	MO
Long Beach	CA
Los Angeles	CA
Louisville	KY
Memphis	TN
Mesa	AZ
Miami	FL
Milwaukee	MI
Minneapolis	MN
Nashville-Davidson	TN
New Orleans	LA
New York	NY
Newark	NJ
Norfolk	VA
Oakland	CA
Oklahoma City	OK
Omaha	NB
Philadelphia	PA
Phoenix	AZ
Pittsburgh	PA
Portland	OR
Sacramento	CA
San Antonio	TX
San Diego	CA
San Francisco	CA
San Jose	CA
San Juan Municipio	PR
Seattle	WA
St. Louis	MO
St. Paul	MN
Tampa	FL
Toledo	OH
Tucson	AZ
Tulsa	OK
Virginia Beach	VA
Washington	DC
Wichita	KS

INTERAGENCY COUNCIL ON THE HOMELESS FIELD STAFF

Region	Regional Coordinators Address	Telephone/ Fax
I	Robert B. Yablonskie, c/o HUD Boston Regional Office, Thomas P. O'Neill Federal Building, room 375, Boston, MA 02222, CC Mail: BOST-POST YABLONSKIE, BOB..	COM (617) 565–5238, FTS (8) 835–5238, FAX (617) 565–6558.
II	Jack Johnson, c/o HUD New York Regional Office, 26 Federal Plaza, room 3541, New York, NY 10278, CC MAIL: NYNPOST.	COM (212) 264–1738, FTS (8) 264–1738, FAX (212) 264–0246.
III	Patrick J. Mulligan, c/o HUD Philadelphia Regional Office, 105 S. Seventh Street, Liberty Square Building, Philadelphia, PA 19106, CC MAIL: PHILPOST MULLIGAN, Patrick J.	COM (215) 597–0519, FTS (8) 597–0519 FAX (215) 597–1393.
IV	Augustus Lee Clay, Jr. (Gus), c/o HUD Atlanta Regional Office, Richard B. Russell Federal Bldg., 75 Spring Street, SW.—room 600, Atlanta, GA 30303, CC MAIL: ALTPOST CLAY, AUGUSTUS L.	COM (404) 331–4113, FTS (8) 841–4113, FAX (404) 730–2365.

INTERAGENCY COUNCIL ON THE HOMELESS FIELD STAFF—Continued

Region	Regional Coordinators Address	Telephone/ Fax
	Alternate Region IV contact: Walter Scott, same address.	COM (404) 730–2391, FTS (8) 880–2391, FAX (404) 730–2365.
V	Ray E. Willis, c/o HUD Chicago Regional Office, Illinois Operations Office, 547 West Jackson Boulevard, room 1013, Chicago, IL 60606, CC MAIL: CHI-POST WILLIS, RAY.	COM (312) 353–5980, FTS (8) 353–6980, FAX (312) 353–0121.
VI	Nancy Mattox Ulmer, c/o HUD Fort Worth Regional Office, (1600 Throckmorton, room 403), P.O. Box 2905, Fort Worth, TX 76113, CC MAIL: FTWPOST ULMER, NANCY MATTOX.	COM (817) 885–5483, FTS (8) 728–5483, FAX (817) 885–5629.
VII	Marcia L. Presley, c/o HUD Kansas City Regional Office, 400 State Avenue, Gateway Tower II, Kansas City, Kansas 66101–2406, CC MAIL: KANPOST PRESLEY, MARCIA L.	COM (913) 236–2195, FTS (8) 757–2195, FAX (913) 236–2116.
VIII	Donna Jacobsen, c/o HUD Denver Regional Office, Executive Tower, 1405 Curtis Street, 27th Floor, Denver, CO 80202, CC MAIL: DEN-POST JACOBSEN, DONNA K.	COM (303) 844–6359, FTS (8) 564–6359, FAX (303) 844–2475.
IX	Linda E. White, c/o HUD San Francisco Regional Office, (450 Golden Gate Avenue), P.O. Box 36003, San Francisco, CA 94102, CC MAIL: SFCPOST WHITE, LINDA E.	COM (415) 556–4752, FTS (8) 556–4752, FAX (415) 556–1319.
X	Lee Desta, c/o HUD Seattle Regional Office, Arcade Plaza Building, 1321 Second Avenue, Seattle, WA 98101–2058, CC MAIL: SEA-POST DESTA, LEE.	COM (206) 553–4610, FTS (8) 399–4610, FAX (206) 553–5379.

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BILLING CODE 4910–62–M

UNITED STATES INFORMATION AGENCY

Public and Private Non-Profit Organizations in Support of International Educational and Cultural Activities; Request for Proposals

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: The Office of Citizen Exchanges (E/P) announces a request for proposals from public and private nonprofit organizations in support of six projects that have been initiated by E/P. Interested applicants are urged to read the complete **Federal Register** announcement before addressing inquiries to the Office or submitting their proposals.

DATES: This action is effective from the publication date of this notice through 5 p.m. EDT, July 12, 1991.

APPLICATION DEADLINE: Proposals must be received at the U.S. Information Agency by 5 p.m. EDT on July 12, 1991. Proposals received by the Agency after this deadline will not be eligible for consideration. Faxed documents will not be accepted, nor will documents postmarked July 12, 1991 but received at a later date.

ADDRESSES: Institutions must submit 16 copies of the final proposal and attachments. Proposals must fully accord with the terms of this Request for Proposals (RFP), as well as with Project Proposal Information Requirements (OMB #3116–0175—provided in application packet). (See "Technical Requirements.") Proposals should be mailed to: U.S. Information Agency, Office of the Executive Director (E/X), ATTN: Citizen Exchanges—Initiatives, room 336, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: The Office of Citizen Exchanges, Bureau of Educational and Cultural Affairs, United States Information Agency, 301 4th Street, SW., Washington, DC 20547. To facilitate the processing of your request, please include the name of the appropriate USIA Program Officer, as identified on each announcement, on all inquiries and correspondence.

SUPPLEMENTARY INFORMATION: The Office of Citizen Exchanges of the United States Information Agency (USIA) announces a program to encourage, through limited awards to nonprofit institutions, increased private sector commitment to and involvement in international exchanges. (All international participants will be nominated by USIS personnel overseas and selected by USIA.) Awarding of any and all grants is contingent upon the availability funds.

Summary of Initiative Award Program Ideas

NEA Regional Project on Drug Education and Public Awareness

Summary:

The Office of Citizen Exchanges (E/P) of the United States Information Agency is interested in supporting the development of a three-week study project that will bring up to 12 senior level drug abuse prevention specialists from the Near East and South Asia (NEA) to the U.S. for an intensive exchange with U.S. counterparts. Participating countries might include Pakistan, Nepal, Bangladesh, Morocco, Egypt and Saudi Arabia.

The program should explore and compare techniques used to design, develop and implement effective drug abuse education and public awareness programs. The project should also illustrate the formal and informal role that public and private organizations play in addressing this issue.

Participants will be selected by USIS representatives in participating countries. The program design will be conceived and executed by a U.S. not-for-profit institution which has experience in developing, implementing and monitoring drug abuse education, prevention and awareness programs. The program should include travel to several locations in the U.S. and should include a stay in Washington, DC where the topic of national and international coordination of drug abuse prevention efforts is addressed. The project will be scheduled for summer or fall 1991.

The E/P Program Officer for this project is Michael Weider.

Exchange Designed to Expose Kuwaiti Parliamentarians to the Role of the U.S. Congress in American Political Life and to the Federal System of Government

Summary:

The Office of Citizen Exchanges of the United States Information Agency (E/P) proposes the development of a series of seminars/study tours designed to introduce groups of Kuwaiti Parliamentarians to the concept of representational government and its application to the Federal system of government in the U.S. The initial project will have three phases and upon its completion will undergo intensive review and evaluation by the Agency. Successful implementation of the program, as determined by USIA, could lead to funding for follow-on projects or repetition of phases two and three in succeeding years.

Phase I:

Two to three Americans with practical experience in legislative affairs would travel to Kuwait to conduct a series of introductory seminars addressing the topic of representational government. They would simultaneously coordinate a needs assessment that

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would lead to a final plan for the ensuing phases of the exchange.

Phase II:

Shortly after this visit, and following the post-war election, a group of up to ten Kuwaiti members of the newly elected National Assembly would participate in a three-week U.S. program of seminars, site visits and meetings with various groups concerned with the workings of Congress. This portion of the project would include an analysis of at least one state legislator which resembles the Kuwait Parliament in size and function. If required, the U.S. portion of the program would be conducted in Arabic.

Phase III:

Two to three months later a delegation of up to six American experts would travel to Kuwait to conduct workshops and seminars designed to provide constructive insight into systems and processes that might be applied to the Kuwaiti Parliamentary system.

This project will be executed by a U.S. not-for-profit institution which, through its proposal, illustrates extensive experience and success in coordinating international exchange programs for senior-level foreign visitors. Institutions which have substantive working relationships with potential cosponsoring Kuwaiti institutions are strongly encouraged to apply.

The E/P Program Officer for this project is Michael Weider.

Cooperative Efforts Between Civilian and Military Institutions in a Representative System of Government (Haiti)

Summary:

The Office of Citizen Exchanges (E/P) proposes the development of a study/observation tour for up to 12 military and civilian leaders from Haiti to observe the cooperative working relationship between civilian and military institutions in a democratic system of government. The two-week program will examine the separation of powers as mandated by the U.S. Constitution; examine civilian administration of the U.S. armed forces; explore the interaction between the military and various levels of government; and compare approaches to developing constructive communication among the armed forces, local communities, and public and private sector institutions.

A U.S. not-for-profit institution will design and execute the program. The recipient institution is responsible for selecting the American speakers. The participants will be nominated by overseas personnel of the United States Information Service (USIS) and selected by the United States Information Agency (USIA).

The E/P Program Officer for this project is Stephen Taylor.

Nicaraguan Television Media Internship Program

Summary:

The Office of Citizen Exchanges (E/P) of the United States Information Agency proposes a two-way exchange program for newscasting and production personnel of Nicaragua's national television system, Sistema Nacional de Television (SNTV) and two American specialists. The first phase of the program would include up to eight newswriters and broadcasters and up to eight television producers from SNTV. These participants would attend seminars and workshops at SNTV in Managua led by two American specialists. Subsequently, six of these Nicaraguan participants would take part in internships in the U.S. which would focus on improving newscasting and studio production of news and current affairs programming of SNTV.

A U.S. nonprofit institution would design and execute the program and select the American specialists. The institution should demonstrate extensive experience and success in coordinating international exchange programs for Latin American visitors. The participants would be nominated by United States Information Service personnel in Managua and selected by the United States Information Agency.

The E/P Program Officer for this project is Sandra Wyatt.

Nordic Regional Project for Journalism Education in the U.S.

SUMMARY:

The Office of Citizen Exchanges (E/P) of the United States Information Agency proposes the development of a three-week program for nine faculty members and administrators from Swedish, Danish and Norwegian schools of journalism. This exchange program will explore the diversity of American journalism and education as well as the constitutional, political, ethical and social principles under which U.S. journalism professionals operate.

The program, tentatively scheduled for the late Fall of 1991, will include visits to several major journalism schools; major and small town newspapers; television and radio stations; specialized newsletters; and media research institutes. Part of the program will take place in Washington, DC.

A U.S. not-for-profit institution will design the program and select the American speakers. The foreign participants will be selected by the United States Information Agency (USIA) with the cooperation of its posts in the countries involved.

The E/P Program Officer for this project is Katharine Guroff.

Labor Dispute Resolution in Argentina

SUMMARY:

The Office of Citizen Exchanges (E/P) of the United States Information Agency proposes the development of a two-week program in the U.S. for ten Argentine labor and management professionals designed to compare bargaining and negotiation techniques, improve communication skills, and explore a range of actions available for dispute resolution.

A U.S. nonprofit institution would design and execute the program and select the American speakers. The institution should demonstrate extensive experience and success in coordinating international exchange programs. The participants would be nominated by United States Information Service personnel in Argentina and selected by the United States Information Agency.

The E/P Program Officer for this project is Sandra Wyatt.

Funding and Budget Requirements for all Submissions

Since USIA assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of support. Applications should demonstrate substantial financial and in-kind support using a three-column format that clearly displays cost-sharing support of proposed projects. Those budgets including funds from other sources should provide firm evidence of the funds. The required format follows:

Line Item	USIA Support	Cost Sharing	Total
Travel, per diem, etc.	$	$	$
Total			

Funding assistance is limited to project costs as defined in the Project Proposal Information Requirements (OMB #3116–0175, provided in application packet) with modest contributions to defray total administrative costs (salaries, benefits, other direct and indirect costs). USIA-funded administrative costs are limited to 20 (twenty) per cent of the total funds requested. The recipient institution may wish to cost-share any of these expenses.

Organizations with less than four years experience in conducting international exchange programs are limited to $60,000 of USIA support, and their budget submissions should not exceed this amount. (Awarding of any and all grants is contingent upon the availability of funds.)

Application Requirements

Detailed concept papers and application materials may be obtained by writing to: The Office of Citizen Exchanges (E/P), USIA, 301 4th Street, SW., Washington, DC 20547.

Attention: (Name of the appropriate E/P Program Officer).

Inquiries concerning technical requirements are welcome.

Proposals must contain a narrative which includes a complete and detailed description of the proposed program activity as follows:

1. A brief statement of what the project is designed to accomplish, how it is consistent with the purposes of the USIA award program, and how it relates to USIA's mission.
2. A concise description of the project, spelling out complete program schedules and proposed itineraries.
3. A statement of what follow-up activities are proposed, how the project will be evaluated, what groups, beyond the direct participants, will benefit from the project and how they will benefit.
4. A detailed budget.
5. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion, Primary Covered and Lower Tier Covered Transactions, Forms IA–1279 and IA–1280.
6. Compliance with Office of Citizen Exchanges Additional Guidelines for Conferences (if applicable).
7. Compliance with Travel Guidelines for Organizations Inside and Outside Washington, DC (if and as applicable).
8. For proposals requesting $100,000 or more, Certification for Contracts, Grants and Cooperative Agreements, Form M/KG–13.
9. For proposals requesting $100,000 or more, Disclosure of Lobbying Activities (OMB #0348–0046).

Note: All required forms will be provided with the application packet.

Review Criteria

USIA will consider proposals based on the following criteria:

1. Quality of Program Idea: Proposals should exhibit originality, substance, rigor, and relevance to Agency mission.

2. Institution Reputation/Ability/Evaluations: Institutional recipients should demonstrate potential for program excellence and/or track record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts (M/KG). Relevant evaluation results of previous projects are part of this assessment.

3. Project Personnel: Personnel's thematic and logistical expertise should be relevant to the proposed program.

4. Program Planning: Detailed agenda and relevant work plan should demonstrate substantive rigor and logistical capacity.

5. Thematic Expertise: Proposal should demonstrate expertise in the subject area which guarantees an effective sharing of information.

6. Cross-Cultural Sensitivity/Area Expertise: Evidence of sensitivity to historical, linguistic, and other cross-cultural factors; relevant knowledge of geographic area.

7. Ability to Achieve Program Objectives: Objectives should be reasonable, feasible, and flexible. Proposal should clearly demonstrate how the institution will meet the program's objectives.

8. Multiplier Effect: Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional and individual ties.

9. Cost-Effectiveness: The overhead and administrative components should be kept as low as possible. All other items should be necessary and appropriate to achieve the program's objectives.

10. Cost-Sharing: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Dated: May 1, 1991.

Warren Obluck,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 91–12861 Filed 5–30–91; 8:45 am]

BILLING CODE 8230–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–85]

Initiation of Section 302 Investigation and Request for Public Comment: Intellectual Property and Market Access Acts, Policies and Practices of the Government of India

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of investigation under section 302(b)(2)(A) of the Trade Act of 1974, as amended; request for written comments.

SUMMARY: The United States Trade Representative (USTR) has initiated an investigation under section 302(b)(2)(A) of the Trade Act of 1974, as amended (the Trade Act) with respect to certain acts, policies and practices of the Government of India that deny adequate and effective protection of intellectual property rights and fair and equitable market access to United States persons that rely upon intellectual property protection. USTR invites written comments from the public on the matters being investigated.

DATES: This investigation was initiated on May 26, 1991. Written comments from the public are due on or before 12 noon, Monday, July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Carmen Suro-Bredie, Deputy Assistant USTR (202) 395–7320, Peter Collins, Director, Southeast Asian and Indian Affairs (202) 395–6813, Emery Simon, Director, Intellectual Property (202) 395–6864, or Catherine Field, Associate General Counsel (202) 395–3432, Office of the United States Trade Representative.

SUPPLEMENTARY INFORMATION: Section 182(a) of the Trade Act (19 U.S.C. 2242) requires the USTR to identify countries that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to U.S. persons that rely on intellectual property protection. Accordingly, on April 26, 1991, the USTR identified India as a priority foreign country under that provision. In identifying India as a priority foreign country, the USTR noted deficiencies in that country's intellectual property acts, policies and practices including: (1) Numerous deficiencies in its patent law, in particular the failure to provide product patent protection for a wide range of products including pharmaceuticals and products resulting from chemical processes, an inadequate term of protection, and overly broad involuntary licensing provisions; (2) lack

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of protection for service marks and restrictions on use of foreign trademarks and (3) copyright compulsory licensing provisions that are overly broad. Further, the USTR noted the absence of effective enforcement of intellectual property rights in India including copyrights which has led to a high level of piracy in that country.

With respect to market access for persons that rely on intellectual property protection, USTR noted that access is severely restrained through quotas, fees and other barriers.

Investigation and Consultations

Section 302(b)(2)(A) of the Trade Act requires the USTR to initiate an investigation of any act, policy, or practice that was the basis of the identification of a country as a priority foreign country under the provisions of section 182(a)(2) of the Trade Act to determine whether such act, policy, or practice is actionable under section 301 of the Trade Act.

Pursuant to section 303(a) of the Trade Act, the USTR has requested consultations with the Indian Government concerning the issues under investigation. USTR will seek information and advice from the appropriate representatives provided for under section 135 of the Trade Act in preparing the U.S. presentations for such consultations.

Within 6 months after the date on which this investigation was initiated (i.e., on or before November 26, 1991), pursuant to section 304 of the Trade Act the USTR must determine, on the basis of the investigation and the consultations, whether any act, policy, or practice described in section 301 of the Trade Act exists and, if that determination is affirmative, determine what action, if any, to take under section 301 of the Trade Act. The deadline for making these determinations may, however, be extended to 9 months after the date of initiation of this investigation if USTR determines that complex or complicated issues are involved in the investigation that require additional time. India is making substantial progress in drafting or implementing legislative or administrative measures that will provide adequate and effective protection of intellectual property rights, or India is undertaking enforcement measures to provide adequate and effective protection of intellectual property rights.

Requirements for Submissions

Interested persons are invited to submit written comments on the acts, policies and practices of the Government of India that are the subject of this investigation, the amount of burden or restriction on U.S. commerce caused by these acts, policies and practices, and the determinations required under section 304 of the Trade Act.

Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) (55 FR 20593) and are due no later than 12 noon, Monday, July 1, 1991. Comments must be in English and provided in twenty copies to: Chairman, Section 301 Committee, room 223, USTR, 600 17th Street, NW., Washington, DC 20506.

Comments will be placed in a file (Docket 301–85) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. (Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the Docket which is open to public inspection.)

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 91–13002 Filed 5–30–91; 8:45 am]

BILLING CODE 3190–01–M

FOR FURTHER INFORMATION CONTACT: Carmen Suro-Bredie, Deputy Assistant USTR (202) 395–7320, Howard Krawitz, Director, China and Mongolian Affairs (202) 395–5050, Emery Simon, Director, Intellectual Property (202) 395–6864, or Catherine Field, Associate General Counsel (202) 395–3432, Office of the United States Trade Representative.

SUPPLEMENTARY INFORMATION: Section 182(a) of the Trade Act (19 U.S.C. 2242) requires the USTR to identify countries that deny adequate and effective protection of intellectual property rights or which deny fair and equitable market access to U.S. persons that rely on intellectual property protection. Accordingly, on April 26, 1991, the USTR identified the People's Republic of China as a priority foreign country under that provision. In identifying China as a priority foreign country, the USTR noted deficiencies in that country's intellectual property acts, policies and practices including: (1) Deficiencies in its patent law, in particular, the failure to provide product patent protection for chemicals, including pharmaceuticals and agrichemicals, (2) lack of copyright protection for U.S. works not first published in China, (3) deficient levels or protection under the copyright law and regulations that will come into effect on June 1, 1991, and (4) inadequate protection of trade secrets. Further, USTR noted the absence of effective enforcement of intellectual property rights in China, including rights in trademarks.

Investigation and Consultations

Section 302(b)(2)(A) of the Trade Act requires the USTR to initiate an investigation of any act, policy, or practice that was the basis of the identification of a country as a priority foreign country under the provisions of section 182(a)(2) of the Trade Act to determine whether such act, policy, or practice is actionable under section 301 of the Trade Act.

Pursuant to section 303(a) of the Trade Act, the USTR has requested consultations with the Chinese Government concerning the issues under investigation. USTR will seek information and advice from the appropriate representatives provided for under section 135 of the Trade Act in preparing the U.S. presentations for such consultations.

Within 6 months afer the date on which this investigation was initiated (i.e., on or before November 26, 1991), pursuant to section 304 of the Trade Act the USTR must determine, on the basis of the investigation and the consultations, whether any act, policy, or practice described in section 301 of the Trade Act exists and, if that determination is affirmative, determine what action, if any, to take under section 301 of the Trade Act. The deadline for making these determinations may, however, be extended to 9 months after the date of initiation of this investigation if USTR determines that complex or complicated issues are involved in the investigation that require additional time. China is making substantial progress in drafting or implementing legislative or administrative measures that will provide adequate and effective protection of intellectual property rights, or China is undertaking enforcement measures to provide adequate and effective protection of intellectual property rights.

Requirements for Submissions

Interested persons are invited to submit written comments on the acts, policies and practices of the Government of People's Republic of China that are the subject of this investigation, the amount of burden or restriction on U.S. commerce caused by these acts, policies and practices, and the determinations required under section 304 of the Trade Act.

Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) (55 FR 20593) and are due no later than 12 noon, Monday, July 1, 1991. Comments must be in English and provided in twenty copies to: Chairman, Section 301 Committee, room 223, USTR, 600 17th Street, NW., Washington, DC 20506.

Comments will be placed in a file (Docket 301–86) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. (Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the Docket which is open to public inspection.)

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 91–13003 Filed 5–30–91; 8:45 am]

BILLING CODE 3190–01–M

[Docket No. 301–86]

Initiation of Section 302 Investigation and Request for Public Comment: Intellectual Property Laws and Practices of the People's Republic of China

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of investigation under section 302(b)(2)(A) of the Trade Act of 1974, as amended; request for written comments.

SUMMARY: The United States Trade Representative (USTR) has initiated an investigation under section 302(b)(2)(A) of the Trade Act of 1974, as amended (the Trade Act) with respect to certain acts, policies and practices of the People's Republic of China that deny adequate and effective protection of intellectual property rights. USTR invites written comments from the public on the matters being investigated.

DATES: This investigation was initiated on May 26, 1991. Written comments from the public are due on or before 12 noon, Monday, July 1, 1991.

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by July 1, 1991.

Dated: May 22, 1991.

By direction of the Secretary:

Charles A. Fountaine, III,

Chief, Directives Management.

Extension

1. Status of Dependents Questionnaire, VA Form 21–0538.

2. The form is used to request certification of the status of dependents of veterans for whom additional compensation is being paid. The information is used to determine continued entitlement to the benefits for dependents.

3. Individuals or households.

4. 14,083 hours.

5. 10 minutes.

6. Once every eight years.

7. 84,500 respondents.

[FR Doc. 91–12820 Filed 5–30–91; 8:45 am]

BILLING CODE 8320–01–M

Veterans Health Services and Research Administration, Scientific Review and Evaluation Board for Health Services Research and Development; Meetings

The Department of Veterans Affairs, Veterans Health Services and Research Administration, gives notice under Public Law 92–463 that an advisory committee meeting of the Scientific Review and Evaluation Board for Health Services Research and Development will be held at the Royal Sonesta Hotel, 5 Cambridge Parkway, Cambridge, Massachusetts, on June 25–26, 1991. The meetings will convene at 8 a.m. on June 25 and 26 and adjourn at 4:30 p.m. The purpose of the meetings will be to review research and development applications concerned with the measurement and evaluation of health care systems and with testing new methods of health care delivery and management. Applications are reviewed for scientific and technical merit and recommendations regarding their funding are prepared for the (Acting) Assistant Chief Medical Director for Research and Development.

The meeting will be open to the public (to the seating capacity of the room) at the start of the June 25th session for approximately one hour to cover administrative matters and to discuss the general status of the program. The closed portion of the meetings involves: Discussion, examination, reference to, and oral review of staff and consultant critiques of research protocols, and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing portions of these meetings is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

Due to the limited seating capacity of the room, those who plan to attend the open session should contact Mrs. Carolyn Smith, Program Analyst, Health Services Research and Development Service, 810 Vermont Avenue, NW., Washington, DC. 20420, (phone: 202/535–7158) at least 5 days before the meetings.

Dated: May 17, 1991.

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By direction of the Secretary:

Laurence M. Christman,

Executive Assistant, Office of Program Coordination & Evaluation.

[FR Doc. 91-12818 Filed 5-30-91; 8:45 am]

BILLING CODE 8320-01-M

Availability of Report of 38 U.S.C. 219 Program Evaluation

Notice is hereby given that the evaluation of the Department of Veterans Affairs Veterans Housing Loan Program has been completed.

Single copies of the Veterans Housing Loan Program Evaluation report are available.

Reproduction of multiple copies can be arranged at the user's expense.

Direct inquiries to William H. Barbee, Jr. (076A), Director, Program Evaluation Service, Office of Program Coordination and Evaluation, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: May 14, 1991.

By direction of the Secretary:

Sylvia Chavez Long,

Deputy Assistant Secretary for Program Coordination and Evaluation.

[FR Doc. 91-12819 Filed 5-30-91; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 56, No. 105

Friday, May 31, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., June 5, 1991.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, DC 20573-0001.

STATUS: Closed.

MATTER(S) TO BE CONSIDERED:

1. Fact Finding Investigation No. 16—Possible Malpractices in the Transatlantic Trades.
2. Petition No. P1-90—*In the Matter of Maritime Administration—Department of Transportation Rules Affecting Foreign Commerce of the United States*—Consideration of the Record.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking,

Secretary.

[FR Doc. 91-13049 Filed 5-29-91; 2:26 pm]

BILLING CODE 6730-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Board of Directors of the Resolution Trust Corporation will meet in open session beginning at 2:00 p.m. on Tuesday, June 4, 1991, to consider the following matter:

SUMMARY AGENDA: None.

DISCUSSION AGENDA:

A. *Memorandum re:*
Proposed policy regarding the payment of real estate taxes on RTC properties.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. John M. Buckley, Jr., Executive Secretary of the Resolution Trust Corporation, at (202) 416-7282.

Dated: May 28, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91-13020 Filed 5-29-91; 12:36 pm]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following open meetings during the week of June 3, 1991.

Open meetings will be held on Tuesday, June 4, 1991, at 10:00 a.m., and Thursday, June 6, 1991, at 10:00 a.m., in Room 1C30.

The subject matter of the open meeting scheduled for Tuesday, June 4, 1991, at 10:00 a.m., will be:

1. Consideration of whether to release for public comment proposed rules, that would facilitate multinational tender and exchange offers, including (1) a small issue exemptive rules for exchange offers for foreign equity securities, pursuant to Section 3(b) of the Securities Act; (2) a Securities Act registration statement that would permit the registration of exchange offers and business combinations by foreign private issuers in the United States on the basis of home country disclosure documents prepared in accordance with the requirements of a foreign regulatory authority; and (3) amendments to the Exchange Act that would exempt issuer and third-party tender and exchange offers for the securities of a foreign private issuer from the requirements of the Commission's tender offer rules. For further information, please contact John C. Maguire at (202) 272-3097.
2. Consideration of whether to issue a release proposing for public comment a new small issue exemptive rule and Securities Act registration form to facilitate the extension of cross-border rights offerings of foreign equity securities to U.S. investors; and amendments to Form F-3 to extend the availability of that Form to certain registrants for registration of rights offerings. For further information, please contact Victoria Choy or David Messman at (202) 272-3246.
3. Consideration of proposed amendments to Rule 3-19 of Regulation S-X, Rule 15d-2 under the Securities Exchange Act and Forms F-2 and F-3 under the Securities Act relating to age of financial statements, updating requirements and the requirement to provide reconciliation of certain interim financial information prepared using foreign accounting principles. These amendments are intended to expedite foreign issuers' securities offerings in the United States by conforming financial statement updating requirements to the annual and interim updating requirements of a substantial majority of foreign countries. For further information, please contact Teresa Iannaconi at (202) 272-2553.

The subject matter of the open meeting scheduled for Thursday, June 6, 1991, at 10:00 a.m., will be:

1. Consideration of whether to issue three orders approving the proposed rule changes by the Municipal Securities Rulemaking Board ("MSRB") that: (1) permit the Board to establish and operate a central electronic facility, the Municipal Securities Information Library, through which information regarding municipal securities and their issuers would be made available to market participants and information vendors; (2) amend Rule G-36 to require underwriters to deliver advance refunding documents to the MSRB; and (3) permit the MSRB to accept voluntary submissions of continuing disclosure information electronically. For further information, please contact Elizabeth H. MacGregor at (202) 272-7380.
2. Consideration of whether to issue a release soliciting public comment in connection with a petition for rulemaking which requests that the Commission adopt a rule that would require public reporting of material short security positions in publicly traded companies in a manner analogous to the current reporting requirement for material long security positions. For further information, contact George E. Scargle at (202) 272-2848.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain, what, if any, matters have been added, deleted or postponed, please contact: Laura Josephs at (202) 272-2300.

Dated: May 28, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-13013 Filed 5-29-91; 12:36 pm]

BILLING CODE 8010-01-M

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Corrections

Federal Register
Vol. 56, No. 105
Friday, May 31, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 71, 170 and 171

RIN 3150-AD87

Revison of Fee Schedules; 100% Fee Recovery

Correction

In proposed rule document 91-8161 beginning on page 14870 in the issue of Friday, April 12, 1991, make the following corrections:

1. On page 14870:

a. In the heading, the agency name should have appeared as set forth above.

b. In the third column, under **II. Analysis of Legislation**, in the eighth line, insert quotation marks before "Subsection (a)(1) ***"; and in the fourth line from the bottom of the page, "32" should read "31".

2. On page 14871, in the second column, in the second line, "its" should read "is".

3. On page 14873, in the third column, in the first full paragraph, in the fourth line from the bottom, "May 31" should read "May 21"

4. On the same page, in the same column, in the second paragraph, in the seventh line from the bottom, "permanently" should read "prematurely".

5. On page 14874, in the second column, in the fifth line, insert "fuel" after "these".

6. On page 14875, in the third column, in the second full paragraph, in the tenth line, "licensees" should read "licenses".

7. On page 14877:

a. In the second column, under *Section 170.3 Definitions*, in the second line from the bottom, "bill" should read "will".

b. In the same column, under *Section 170.11 Exemptions*, in the seventh line, "agreement" should read "government".

8. On page 14879, in the second column, under *Section 171.5 Definitions*, in the seventh line, "Materia," should read "Material,".

9. On page 14880:

a. In the heading for the table, "Table" was misspelled.

b. At the end of Table IV, in the three lines just before Footnotes 1 and 2, the figures were not aligned and should have appeared as follows:

"Base amount ***	$362,800,000
Less part 170 ***	−71,900,000
Part 171 ***	290,900,000"

10. On page 14881, in Table V, in entry 36, Trojan, the annual fee should read "2,612,000"

11. On page 14882, in Table V:

a. Entry 17, LaSalle 1, the annual fee should read "2,614,000".

b. Entry 21, Millstone 1, the annual fee should read "2,600,000".

c. Entries 26 and 27, Peach Bottom 2 and 3, the annual fee should read "2,600,000" respectively.

d. Entry 29, "Pilgram" should read "Pilgrim".

e. Under Other Reactors, entry 1, Three Mile Island, insert "2" after "Island".

12. On page 14883, in Table VI:

a. In the first column, in the fourth line, "NSA" should read "NSR".

b. At the end of Table VI, in the three lines just before Footnotes 1 and 2, the figures were not aligned and should have appeared as follows:

"Base amount ***	$13,300,000
Less part 170 ***	−2,700,000
Part 171 ***	10,600,000"

13. On page 14884, at the end of Table VII, in the three lines just before Footnotes 1 and 2, the figures were not aligned and should have appeared as follows:

"Base amount ***	$30,200,000
Less part 170 ***	−3,000,000
Part 171 ***	27,200,000"

14. On the same page, in the first column, in the second line from the bottom, "licensees" should read "licenses".

15. On page 14885, in the first column, in the table, in the fifth entry, "Radioactive" was misspelled.

16. On page 14886, in the third column, under **Regulatory Flexibility Analysis**, in the first paragraph, in the second line, "Budget" was misspelled.

§ 170.21 [Corrected]

17. On page 14888, in the second column, in § 170.21, in the table, under K. Import and export licenses, in the fourth line, "for" should read "of".

§ 170.31 [Corrected]

18. On page 14889, in the first column, in § 170.31, in the table, in the fourth line, "E. Source material:" should read "2. Source material:".

19. On the same page, in the second column, in § 170.31, in the table, under G., the fee for Nonroutine (Inspections) should read "$1,400."

20. On page 14890, in the first column, in § 170.31, in the table, under 4.A., in the seventh line, "licenses" should read "licensee'" and "license" should read "licenses".

21. On page 14891, in the 2d column, in § 170.31, in the table, in the 4th line, "Application" should read "Approval"; and in the 3rd column, in footnote 3, in the 12th line, "application" should read "applicable".

§ 171.16 [Corrected]

22. On page 14894:

a. In the first column, in amendatory instruction 21, "reach" should read "read".

b. In § 171.16, in the table, in 1.A.(1), in the third line, "Nuclear Fuell Services" should read "Nuclear Fuel Services".

c. In § 171.16, in the table, in 1.A.(1), in the sixth line, the Docket No. for General Electric Company should read "70-1113".

d. In § 171.16, in the table, in 1.A.(2), in the first line, "1.A.(a)" should read "1.A.(1)".

e. In § 171.16, in the table, in 2.C., "licenses1" should read "licenses".

22. On page 14895, in § 171.16, in the table, in 3.I., in the second line, the first "of" should read "to".

§ 171.19 [Corrected]

23. On page 14896, in the second column, in the third line, "

§ 17.19 Payment." should read "

§ 171.19 Payment.".

BILLING CODE 1505-01-D

federal register

Friday
May 31, 1991

Part II

Environmental Protection Agency

Asbestos-Containing Materials in Schools; EPA-Approved Courses Under the Asbestos Hazard Emergency Response Act (AHERA); Notice

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ENVIRONMENTAL PROTECTION AGENCY

[OPTS-62106; FRL-3891-9]

Asbestos-Containing Materials in Schools; EPA-Approved Courses Under the Asbestos Hazard Emergency Response Act (AHERA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 206(c)(3) of the Toxic Substances Control Act (TSCA) directs the EPA Administrator to publish (and revise as necessary) a list of EPA-approved asbestos courses and tests which are consistent with the Agency's Model Accreditation Plan required under section 206(b) of TSCA. Also required is a list of those courses and tests which had qualified for equivalency treatment for interim accreditation during the time period established by Congress in AHERA. Effective July 1990, that time period has expired in all States. All courses approved for interim accreditation have therefore been included in this list for information purposes only.

Section 206(f) of TSCA Title II requires the Administrator to publish quarterly in the **Federal Register**, beginning August 31, 1988, and ending August 31, 1991, a list of EPA-approved asbestos training courses. Accordingly, this **Federal Register** notice presents the fifteenth cumulative listing of EPA-approved courses and also includes a list of State accreditation programs that EPA has approved as meeting the requirements of the Model Plan.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, Telephone: (202) 382-3949, TDD: (204) 554-0551.

SUPPLEMENTARY INFORMATION: Section 206 of Title II of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2646, required EPA to develop a Model Accreditation Plan by April 20, 1987. The Plan was issued on April 20, 1987, and was published in the **Federal Register** of April 30, 1987 (52 FR 15875), as Appendix C to subpart E, 40 CFR part 763. Persons must receive accreditation in order to inspect school buildings for asbestos, develop school asbestos management plans, and design or conduct school asbestos response actions. Such persons can be accredited by States, which are required under Title II to adopt contractor accreditation plans at least as stringent as the EPA Model Plan, or by completing an EPA-approved training course and passing an examination for such course. The EPA Model Accreditation Plan establishes those areas of knowledge of asbestos inspection, management plan development, and response action technology that persons seeking accreditation must demonstrate and States must include in their accreditation programs.

In the **Federal Register** of October 30, 1987 (52 FR 41826), EPA promulgated a final "Asbestos-Containing Materials In Schools" rule (40 CFR part 763, subpart E) which required all local education agencies (LEAs) to identify asbestos-containing materials (ACM) in their school buildings and take appropriate actions to control the release of asbestos fibers. The LEAs are also required to describe their activities in management plans, which must be made available to the public and submitted to State governors. Under Title II, LEAs are required to use specially trained persons to conduct inspections for asbestos, develop the management plans, and design or conduct major actions to control asbestos. The rule took effect on December 14, 1987.

The length of initial training courses for accreditation under the Model Plan varies by discipline. Briefly, inspectors must take a 3-day training course; management planners must take the inspection course plus an additional 2 days devoted to management planning; and abatement project designers are required to have at least 3 days of training. In addition, asbestos abatement contractors and supervisors must take a 4-day training course and asbestos abatement workers are required to take a 3-day training course. For all disciplines, persons seeking accreditation must also pass an examination and participate in annual re-training courses. A complete description of accreditation requirements can be found in the Model Accreditation Plan at 40 CFR part 763, subpart E, appendix C.I.1.A through E.

In Section 206(c)(3) of Title II, and as amended by section 206(f), the Administrator, in consultation with affected organizations, is directed to publish quarterly a list of asbestos courses and tests in effect before the date of enactment of this title which qualified for equivalency treatment for interim accreditation purposes, and a list of EPA-approved asbestos courses and tests which the Administrator has determined are consistent with the Model Plan and which qualify a contractor for accreditation.

This quarterly notice formerly included a list of laboratories accredited by the National Institute of Standards and Technology (NIST) for the polarized light microscopy (PLM) analysis of bulk materials for asbestos. The EPA is no longer publishing this laboratory list because it is now available from the NIST National Voluntary Laboratory Accreditation Program (NVLAP). Persons wishing to obtain current information on the accreditation of asbestos laboratories in general or the accreditation status of any particular laboratory should contact NIST directly for this information by: (1) Writing to: Chief, Laboratory Accreditation Program, National Institute of Standards and Technology, Bldg. 411, Room A124, Gaithersburg, MD 20899 (please include a self-addressed mailing label); (2) computer-to-computer communication with the NVLAP electronic bulletin board on 301-948-2058; (3) Fax on 301-975-3839; or (4) calling NVLAP on 301-975-4016. EPA interim approval for laboratories ended October 30, 1989, and since that date laboratory asbestos accreditation has been administered by NIST through the NVLAP.

The **Federal Register** notice of October 30, 1987, included EPA's initial list of course approvals. In addition, the initial list also included those State accreditation programs that EPA had approved as meeting the requirements of the Model Plan. The second **Federal Register** notice of February 10, 1988 (53 FR 3982), the third **Federal Register** notice of June 1, 1988 (53 FR 20066), the fourth **Federal Register** notice of August 31, 1988 (53 FR 33574), the fifth **Federal Register** notice of November 30, 1988 (53 FR 48424), the sixth **Federal Register** notice of February 28, 1989 (54 FR 8438), the seventh **Federal Register** notice of May 31, 1989 (54 FR 23392), the eighth **Federal Register** notice of August 31, 1989 (54 FR 36166), the ninth **Federal Register** notice of November 29, 1989 (54 FR 49190), the tenth **Federal Register** notice of February 28, 1990 (55 FR 7202), the eleventh **Federal Register** notice of May 31, 1990 (55 FR 22176), the twelfth **Federal Register** notice of August 31, 1990 (55 FR 35760), the thirteenth **Federal Register** notice of November 30, 1990 (55 FR 49756), and the fourteenth **Federal Register** notice of February 28, 1991 (56 FR 8396), were subsequent listings of cumulative EPA course approvals and EPA-approved State accreditation programs.

This **Federal Register** notice is divided into four units. Unit I discusses EPA approval of State accreditation programs. Unit II covers EPA approval of training courses. Unit III discusses the AHERA-imposed deadline for persons with interim accreditation. Unit IV provides the list of State accreditation programs and training courses approved by EPA as of April 7, 1991. Subsequent lists will add other State programs as they are approved.

As announced in the **Federal Register** of September 20, 1989, EPA is no longer accepting for review and contingent approval training courses for AHERA accreditation after October 15, 1989. However, a course's status may change after that cut- off date. For example, a contingently approved course may become fully approved and a course with full approval may become disapproved. As mentioned in the September 1989 **Federal Register** notice, EPA has said it would continue to conduct full approval audits of courses that already have received contingent approval and review for contingent approval and subsequent full approval, courses received by EPA which had been postmarked on or before October 15, 1989. EPA may reach agreements with States that do not currently have an accreditation program, to turn over responsibility for auditing courses with contingent and full approval, as these States develop accreditation programs.

I. EPA Approval of State Accreditation Programs

As discussed in the Model Plan, EPA may approve State accreditation programs that the Agency determines are at least as stringent as the Model Plan. In addition, the Agency is able to approve individual disciplines within a State's accreditation program. For example, a State that currently only has an accreditation requirement for inspectors can receive EPA approval for that discipline immediately, rather than waiting to develop accreditation requirements for all disciplines in the Model Plan before seeking EPA approval.

As listed in Unit IV, Alabama, Alaska, Arkansas, Colorado, Delaware, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Jersey, New York, North Dakota, Oregon, Rhode Island, South Dakota, Utah, Virginia, Washington, West Virginia, and Wisconsin have received EPA full approval for two accreditation disciplines, abatement workers as well as contractors and supervisors, that are at least as stringent as the Model Plan. In addition, the States of Alabama, Colorado, Idaho, Illinois, Indiana, Iowa, Maine, Massachusetts, Michigan, Montana, Nebraska, New York, North Dakota, Rhode Island, South Dakota, Utah, Virginia, West Virginia, and Wisconsin have received full approval for their inspector/management planner and project designer disciplines. Any training courses in those disciplines approved by the aforementioned States are EPA-approved courses for purposes of accreditation. These training courses are EPA- approved courses for purposes of TSCA Title II in these States and in all States without an EPA-approved accreditation program for the discipline. Current lists of training courses approved by Alabama, Alaska, Arkansas, Colorado, Delaware, Idaho, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Jersey, New York, North Dakota, Oregon, Rhode Island, South Dakota, Utah, Virginia, Washington, West Virginia, and Wisconsin are listed under Unit IV. Indiana does not have separate provider listings since it has not independently approved any additional courses.

Each State accreditation program may have different requirements. For example, New Jersey requires participants of its courses to take the State exam. Therefore, those New Jersey- approved course sponsors who want to provide training in another State must develop their own examination. They must also submit for EPA approval to the Regional Asbestos Coordinator in their Region, a detailed statement about the development of the course examination as required by the Model Plan.

II. EPA Approval of Training Courses

A cumulative list of training courses approved by EPA is included under Unit IV. The examinations for these approved courses under Unit IV have also been approved by EPA. EPA has three categories of course approval: full, contingent, and approved for interim accreditation. As noted in Unit III, interim accreditation is no longer in effect as of July 1990. Each course that had been approved for interim accreditation will show inclusive dates of this approval. EPA's deadlines for interim accreditation are discussed further in Unit III.

Full approval means EPA has reviewed and found acceptable the course's written submission seeking EPA approval and has conducted an on-site audit and determined that the training course meets or exceeds the Model Plan's training requirements for the relevant discipline.

Contingent approval means the Agency has reviewed the course's written submission seeking EPA approval and found the material to be acceptable (i.e., the written course materials meet or exceed the Model Plan's training course requirements). However, EPA has not yet conducted an on-site audit.

Successful completion of either a fully approved course or a contingently approved course provides full accreditation for course attendees. If EPA subsequently audits a contingently approved course and withdraws approval due to deficiencies discovered during the audit, future course offerings would no longer have EPA approval. However, withdrawal of EPA approval would not affect the accreditation of persons who took previously offered training courses, including the course audited by EPA.

Thus far, EPA has taken formal action to revoke or suspend course approvals in two instances. EPA revoked approval from Living Word College's inspector and management planner training courses offered after May 6, 1988. Living Word College is located in EPA Region VII. In addition, EPA has suspended approval from the Safety Management Institute's training courses and refresher courses for workers, inspectors/management planners, and contractors/supervisors. The effective date for the course suspensions is the first week of October 1989. Safety Management Institute is located in EPA Region III. Certain EPA- approved State programs have also taken actions to suspend or revoke courses within their jurisdictions.

EPA-approved training courses listed under Unit IV are approved on a national basis. EPA has organized Unit IV by EPA Region to assist the public in locating those training courses that are offered nearby. Training courses are listed in the Region where the training course is headquartered. Although several sponsors offer their courses in various locations throughout the United States, a large number of course sponsors provide most of their training within their own Region.

State accreditation programs may have more stringent requirements than does the Model Plan. As a result, some EPA- approved training courses listed under Unit IV may not meet the requirements of a particular State's accreditation program. Sponsors of training courses and persons who have received accreditation should contact individual States to check on accreditation requirements.

A number of training courses offered before EPA issued the Model Plan equaled or exceeded the subsequently issued Model Plan's training course requirements. These courses are listed under Unit IV as being approved. It should be noted that the persons who have successfully completed these

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courses are fully accredited; they are not only accredited on an interim basis.

III. Phase out of Interim Accreditation.

TSCA Title II allowed EPA to accredit persons on an interim basis if they had attended EPA-approved asbestos training before the effective date of the AHERA regulation and passed an asbestos exam. As a result, the Agency approved, on an interim basis, a number of training courses which had been offered prior to the effective date of the AHERA regulation. Only those persons who had taken training courses equivalent to the Model Plan's requirements between January 1, 1985, and December 14, 1987, were considered accredited under these interim provisions. Equivalent means that the courses had to be essentially similar in length and content to the curriculum found in the Model Plan. In addition, an examination had to be essentially equivalent to the examination requirements found in the Model Plan. If no examination was offered at the time, course providers seeking interim approval needed to provide an examination.

Persons who took one of the EPA-approved courses for interim accreditation, and could produce evidence that they had successfully completed the course by passing an examination, were accredited on an interim basis. This accreditation was interim since the person was considered accredited for only 1 year after the date on which the State where the person was employed was required to have established an accreditation program at least as stringent as the EPA Model Plan. TSCA Title II requires States to adopt a contractor accreditation program at least as stringent as the Model Plan within 180 days after the first regular session of the State's legislature convened following the date EPA issued the Model Plan.

The deadline for all States to establish a complete accreditation program was July 1989. In fact, most States were required to have developed a program by July 1988. As a result, after July 1989, the period of interim accreditation expired for persons in all States but Arkansas, Montana, Nevada, North Carolina, Oregon, Pennsylvania, and Texas. In these seven States, the legislatures meet on a bi-annual basis and last met in January 1989; therefore, persons in these States with interim accreditation lost their interim status in these States after July 1990. Because interim accreditation has now expired in all States, anyone who had previously received interim accreditation is no longer eligible to perform AHERA work unless he or she has subsequently acquired AHERA accreditation by completing an approved course. To receive accreditation, such persons, if they have not already done so, must complete an EPA-approved course or a State course under a State plan at least as stringent as the EPA Model Plan. For example, a person who had interim accreditation as a supervisor would have to take a 4-day supervisor course approved by EPA or an EPA-approved State program to become fully accredited.

IV. List of EPA-Approved State Accreditation Programs and Training Courses

The fifteenth cumulative listing of EPA-approved State accreditation programs and training courses follows. As discussed above, notifications of EPA approval of State accreditation programs and EPA approval of training courses will be published in subsequent lists. The closing date for the acceptance of submissions to EPA for inclusion in this fifteenth notice was April 7, 1991. Omission from this list does not imply disapproval by EPA, nor does the order of the courses reflect priority or quality. The format of the notification lists first the State accreditation programs approved by EPA, followed by EPA-approved training courses grouped by Region. The name, address, phone number, and contact person is provided for each training provider followed by the courses and type of course approval (i.e., full, contingent, or for interim purposes).

As of April 7, 1991, a total of 598 training providers are offering 1,177 EPA-approved training courses for accreditation under TSCA Title II. There are 507 asbestos abatement worker courses, 398 contractor/supervisor courses, 208 inspector/management planner courses, 18 inspector-only courses, and 46 project designer courses. In addition, EPA has approved 775 refresher courses.

Twenty-seven States currently have EPA-approved State accreditation programs in one or more disciplines. These State programs have approved a total of 913 courses, including 471 worker courses, 310 contractor/supervisor courses, 29 inspector- only courses, 77 inspector/management planner courses and 26 project designer courses. In addition, these State programs have approved 609 refresher courses. It should be noted that certain training course providers may have course approval in more than one State; therefore, there may be some double-counting of these courses reflected in the above numbers.

An EPA-funded model course for inspectors and management planners is available for use by training providers. In addition, an earlier EPA-developed course for asbestos abatement contractors and supervisors has now been revised and is also available. A recently developed model worker course is now available as well. A fee for each course will be charged to cover the reproduction and shipping costs for the written and visual aid materials. Interested parties should contact the following firm to receive copies of the training courses: ATLIS Federal Services, Inc., EPA AHERA Program, 6011 Executive Blvd., Rockville, MD 20852, Phone number: (301) 468-1916.

The following is the cumulative list of EPA-approved State accreditation programs and training courses:

Approved State Accreditation Programs

Alabama.

(1)(a) *State Agency:* Alabama Safe State Program, Address: Box 870388, Tuscaloosa, AL 35487-0388, Contact: George Wade, Phone: (205) 348-7130.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 11/13/90).
Contractor/Supervisor (full from 11/13/90).
Inspector (full from 11/13/90).
Inspector/Management Planner (full from 11/13/90).
Project Designer (full from 11/13/90).

(i)(a) *Training Provider:* American Environmental Protection, Inc.
Address: 606 Wade Circle, Goodlettsville, TN 37072, Contact: Terry C. Reaves, Phone: (615) 851-9824.

(b) *Approved Course:*

Abatement Worker (Certified 3/24/91).

(ii)(a) *Training Provider:* Law Companies Environmental Group.
Address: 114 Townpark Dr., Suite 300, Kennesaw, GA 30144-5508, Contact: David W. Mayer, Phone: (404) 499-6700.

(b) *Approved Courses:*

Contractor/Supervisor Annual Review (Certified 3/15/91).
Inspector/Management Planner Annual Review (Certified 3/14/91).

Alaska.

(2)(a) *State Agency:* Department of Labor, Address: P.O. Box 1149, Juneau, AK 99802, Contact: Richard Arab, Phone: (907) 465-4856.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (interim from 10/1/85).
Abatement Worker (full from 1/29/90).
Contractor/Supervisor (interim from 10/1/85).
Contractor/Supervisor (full from 1/29/90).

(i)(a) *Training Provider:* Alaska Laborers Training School.
Address: 13500 Old Seward Highway, Anchorage, AK 99515, Contact: Leslie Lauinger, Phone: (907) 345-3853.

(b) *Approved Courses:*

Abatement Worker (Certified 11/1/89).
Contractor/Supervisor (Certified 11/1/89).

(ii)(a) *Training Provider:* Alaska Quality Control & Technical Service, Ltd.
Address: 907 E. Dowling Rd., Suite 18, Anchorage, AK 99518, Contact: Gracita O. Torrijos, Phone: (907) 561-2400.

(b) *Approved Courses:*

Abatement Worker (Certified 5/1/90).
Contractor/Supervisor (Certified 5/1/90).

(iii)(a) *Training Provider:* Arctic Slope Consulting Group, Inc.
Address: 6700 Arctic Spur Rd., Anchorage, AK 99518-1550, Contact: Tom Tessier, Phone: (907) 349-5148.

(b) *Approved Courses:*

Abatement Worker (Certified 12/1/89).
Contractor/Supervisor (Certified 12/1/89).

(iv)(a) *Training Provider:* Asbestos Removal Specialists of Alaska.
Address: 1888 Marika Rd., Unit No. 3, Fairbanks, AK 99709, Contact: J. J. Middleton, Phone: (907) 451-8555.

(b) *Approved Courses:*

Abatement Worker (Certified 5/1/89).
Contractor/Supervisor (Certified 5/1/89).

(v)(a) *Training Provider:* Central & Southeastern Alaska District Council of Carpenters.
Address: 100 W. International Airport Rd., No. 102, Anchorage, AK 99518, Contact: William Matthews, Phone: (907) 561-4568.

(b) *Approved Courses:*

Abatement Worker (Certified 2/1/89).
Contractor/Supervisor (Certified 2/1/89).

(vi)(a) *Training Provider:* Environmental Management, Inc.
Address: P.O. Box 91477, Anchorage, AK 99509, Contact: Kenneth D. Johnson, Phone: (907) 272-8056.

(b) *Approved Courses:*

Abatement Worker (Certified 6/1/89).
Contractor/Supervisor (Certified 6/1/89).

(vii)(a) *Training Provider:* Environmental Science & Engineer, Inc.
Address: 1205 E. International Airport Rd., Suite 100, Anchorage, AK 99518-1498, Contact: Robert Morgan, Phone: (907) 561-3055.

(b) *Approved Courses:*

Abatement Worker (Certified 6/1/90).
Contractor/Supervisor (Certified 6/1/90).

(viii)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers.
Address: 407 Denali St., Suite 303, Anchorage, AK 99501, Contact: Dan Middaugh, Phone: (907) 272-8224.

(b) *Approved Courses:*

Abatement Worker (Certified 8/1/89).
Contractor/Supervisor (Certified 8/1/89).

(ix)(a) *Training Provider:* Martech Construction Co.
Address: 300 E. 54th Ave., Anchorage, AK 99518, Contact: Gary Lawley, Phone: (907) 561-1970.

(b) *Approved Courses:*

Abatement Worker (Certified 9/1/89).
Contractor/Supervisor (Certified 9/1/89).

(x)(a) *Training Provider:* Sheet Metal Worker Int'l. Association Local 23.
Address: 1818 W. Northern Lights Blvd. No. 100, Anchorage, AK 99517, Contact: Randall E. Pysher, Phone: (907) 277-5313.

(b) *Approved Courses:*

Abatement Worker (Certified 1/1/90).
Contractor/Supervisor (Certified 1/1/90).

(xi)(a) *Training Provider:* University of Alaska Mining & Petroleum Training Services.
Address: 155 Smith Way, Suite 104, Soldotna, AK 99669, Contact: Dennis Steffy, Phone: (907) 262-2788.

(b) *Approved Courses:*

Abatement Worker (Certified 4/1/89).
Contractor/Supervisor (Certified 4/1/89).

Arkansas.

(3)(a) *State Agency:* Arkansas Dept. of Pollution Control and Ecology, Address: 8001 National Dr., P.O. Box 9583, Little Rock, AR 72209, Contact: Wilson Tolefree, Phone: (501) 562-7444.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (interim from 11/22/85).
Abatement Worker (full from 1/22/88).
Contractor/Supervisor (interim from 11/22/85).
Contractor/Supervisor (full from 1/22/88).

(i)(a) *Training Provider:* American Specialty Contractors.
Address: P.O. Box 66375, Baton Rouge, LA 70896, Contact: Daniel L. Anderson, Phone: (504) 926-9624.

(b) *Approved Courses:*

Abatement Worker (Certified 2/13/90).
Contractor/Supervisor (Certified 2/13/90).

(ii)(a) *Training Provider:* Arkansas Laborers Training Fund.
Address: 4501 West 61st St., Little Rock, AR 72209, Contact: W. Rudy Osborne, Phone: (501) 562-5502.

(b) *Approved Course:*

Abatement Worker (Certified 5/2/88).

(iii)(a) *Training Provider:* Asbestos Training & Employment, Inc.
Address: 809 East 11th St., Michigan City, IN 46360, Contact: Bruce H. Connell, Phone: (219) 874-7348.

(b) *Approved Courses:*

Abatement Worker (Certified 5/18/88).
Contractor/Supervisor (Certified 5/18/88).

(iv)(a) *Training Provider:* Critical Environmental Training, Inc.
Address: 5815 Gulf Freeway, Houston, TX 77023, Contact: Charles M. Flanders, Phone: (713) 921-8921.

(b) *Approved Courses:*

Abatement Worker (Certified 9/12/88 to 12/20/90 only).
Contractor/Supervisor (Certified 9/12/88 to 12/20/90 only).

(v)(a) *Training Provider:* Enviro Sciences, Inc.
Address: 3810 F Merton Dr., Raleigh, NC 27609, Contact: Chester Hudlow, Phone: (919) 782-1487.

(b) *Approved Courses:*

Abatement Worker (Certified 6/6/90).
Abatement Worker Annual Review (Certified 6/21/90).
Contractor/Supervisor (Certified 7/31/90).
Contractor/Supervisor Annual Review (Certified 6/21/90).

(vi)(a) *Training Provider:* Environmental Institute.
Address: 350 Franklin Rd., Suite 300, Marietta, GA 30067, Contact: Eva Clay, Phone: (404) 425-2000.

(b) *Approved Course:*

Contractor/Supervisor (Certified 10/7/88).

(vii)(a) *Training Provider:* Environmental Technologies.
Address: P.O. Box 21243, Little Rock, AR 72221, Contact: Phyllis Moore, Phone: (501) 580-3518.

(b) *Approved Courses:*

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Abatement Worker (Certified 3/16/88).
Abatement Worker Annual Review (Certified 3/30/89).
Contractor/Supervisor (Certified 3/16/88).
Contractor/Supervisor Annual Review (Certified 3/30/89).
(viii)(a) *Training Provider:* Hall-Kimbrell Environmental Services.
Address: P.O. Box 307, Lawrence, KS 66044, Contact: Patrick Shrepf, Phone: (913) 749-2381.
(b) *Approved Courses:*
Abatement Worker (Certified 6/8/88).
Contractor/Supervisor (Certified 6/8/88).
(ix)(a) *Training Provider:* ICU, Inc.
Address: P.O. Box 2896, Farmington, NM 87499, Contact: Sharon Adams, Phone: (505) 328-0472.
(b) *Approved Courses:*
Abatement Worker (Certified 10/8/90).
Contractor/Supervisor (Certified 10/8/90).
(x)(a) *Training Provider:* Labor Education Program, University of Arkansas.
Address: 2801 S. University Ave., Little Rock, AR 72204, Contact: Bernica Tackett, Phone: (501) 562-7444.
(b) *Approved Course:*
Abatement Worker (Certified 12/12/89).
(xi)(a) *Training Provider:* Meta Inc.
Address: P.O. Box 786, Lawrence, KS 66044, Contact: Karen P. Wilson, Phone: (913) 491-0181.
(b) *Approved Courses:*
Abatement Worker (Certified 3/27/90).
Abatement Worker Annual Review (Certified 3/27/90).
Contractor/Supervisor (Certified 3/27/90).
Contractor/Supervisor Annual Review (Certified 3/27/90).
(xii)(a) *Training Provider:* National Asbestos Training Center, University of Kansas.
Address: 6600 College Blvd., Suite 315, Overland Park, KS 66211, Contact: Lani Himegarner, Phone: (913) 491-0221.
(b) *Approved Courses:*
Contractor/Supervisor (Certified 3/30/90).
Contractor/Supervisor Annual Review (Certified 3/30/90).
(xiii)(a) *Training Provider:* Professional Asbestos Training Service.
Address: P.O. Box 19092, Little Rock, AR 72219, Contact: Harold Lewis, Phone: (501) 562-1519.
(b) *Approved Courses:*
Abatement Worker (Certified 4/18/88).
Abatement Worker Annual Review (Certified 1/4/90).
Contractor/Supervisor (Certified 4/18/88).
Contractor/Supervisor Annual Review (Certified 1/4/90).
(xiv)(a) *Training Provider:* University of Arkansas.
Address: 521 South Razorback Rd., Fayettville, AR 72701, Contact: Greg Weeks, Phone: (501) 575-6175.
(b) *Approved Course:*
Abatement Worker (Certified 10/7/88).
(xv)(a) *Training Provider:* Wellington House.
Address: 120 West State St., High Point, NC 27262, Contact: R. Donald Phillips, Phone: (919) 889-3722.
(b) *Approved Courses:*
Abatement Worker (Certified 6/6/90).
Contractor/Supervisor (Certified 6/6/90).

Colorado.

(4)(a) *State Agency:* Colorado Dept. of Health, Address: 4210 East 11th Ave., Denver, CO 80220, Contact: David R. Ouimette, Phone: (303) 331-8500.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 7/8/89).
Contractor/Supervisor (full from 7/8/89).
Inspector/Management Planner (full from 7/8/89).
Project Designer (full from 7/8/89).
(i)(a) *Training Provider:* Air Technology & Associates.
Address: 724 Oil Hill Rd., P.O. Box 23, El Dorado, KS 67042, Contact: Richard Green, Phone: (913) 841-1193.
(b) *Approved Courses:*
Abatement Worker (Certified 3/7/90).
Abatement Worker Annual Review (Certified 3/7/90).
Contractor/Supervisor (Certified 3/7/90).
Contractor/Supervisor Annual Review (Certified 3/7/90).
(ii)(a) *Training Provider:* Asbestos Consultants/Asbestos Certified Training (ACTT).
Address: 5953 Telegraph Rd., Los Angeles, CA 90040, Contact: Robert Griese, Phone: (213) 720-1805.
(b) *Approved Courses:*
Abatement Worker (Certified 3/19/91).
Abatement Worker Annual Review (Certified 3/19/91).
Contractor/Supervisor Annual Review (Certified 3/19/91).
Inspector/Management Planner Annual Review (Certified 3/19/91).
(iii)(a) *Training Provider:* Environmental Training Center.
Address: 2781 West Oxford Ave., Unit No.7, Englewood, CO 80110, Contact: Harvey Lindenberg, Phone: (303) 761-0422.
(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 11/14/89).
Contractor/Supervisor Annual Review (Certified 11/14/89).
Inspector/Management Planner (Certified 11/14/89).
Inspector/Management Planner Annual Review (Certified 11/14/89).
(iv)(a) *Training Provider:* Haz - Cure International.
Address: 1555 Simms St., Lakewood, CO 80215, Contact: Edmund C. Garthe, Phone: (303) 232-3174.
(b) *Approved Courses:*
Abatement Worker (Certified 1/30/90).
Abatement Worker Annual Review (Certified 4/9/90).
Contractor/Supervisor (Certified 1/30/90).
Contractor/Supervisor Annual Review (Certified 4/9/90).
(v)(a) *Training Provider:* Precision Safety and Services Inc.
Address: 1245 Windemaker Lane, Colorado Springs, CO 80907, Contact: James R. Mapes, Jr., Phone: (719) 593-8596.
(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 11/6/89).
Contractor/Supervisor (Certified 11/6/89).
Contractor/Supervisor Annual Review (Certified 11/6/89).
Inspector/Management Planner (Certified 10/2/90).
Inspector/Management Planner Annual Review (Certified 10/2/90).
(vi)(a) *Training Provider:* Public Service Company of Colorado.
Address: 1500 West Hampden Avenue, Building 5k, Englewood, CO 80110, Contact: Norman E. Peters, Phone: (303) 797-4109.
(b) *Approved Courses:*
Abatement Worker (Certified 7/24/90).
Abatement Worker Annual Review (Certified 3/15/91).
Contractor/Supervisor (Certified 7/24/90).
Contractor/Supervisor Annual Review (Certified 3/15/91).
(vii)(a) *Training Provider:* QA Training & Inspection Services.
Address: 1405 Krameria St., Suite 4-D, Denver, CO 80220, Contact: Garrett Fleming, Phone: (303) 388-7388.
(b) *Approved Courses:*
Abatement Worker (Certified 3/7/90).
Abatement Worker Annual Review (Certified 3/7/90).

Contractor/Supervisor (Certified 3/7/90).
Contractor/Supervisor Annual Review (Certified 3/7/90).
(viii)(a) *Training Provider:* Summit Environmental.
Address: P.O. Box 7557, Boulder, CO 80306-7557, Contact: Philip Karl, Phone: (303) 447-2835.
(b) *Approved Courses:*
Abatement Worker (Certified 10/2/90).
Abatement Worker Annual Review (Certified 10/2/90).
Contractor/Supervisor (Certified 10/2/90).
Contractor/Supervisor Annual Review (Certified 10/2/90).
Inspector/Management Planner (Certified 10/2/90).
Inspector/Management Planner Annual Review (Certified 10/2/90).
(ix)(a) *Training Provider:* U.S. Army Environmental Hygiene Activity - West.
Address: Fitzsimons Army Medical Center, Aurora, CO 80045-5001, Contact: Wendell C. King, Phone: (303) 361-8881.
(b) *Approved Courses:*
Abatement Worker (Certified 12/20/89).
Contractor/Supervisor (Certified 12/20/89).
(x)(a) *Training Provider:* Univ. of Calif.-Berkeley, Extension Program in Environmental Hazard Management (PHEM).
Address: 2223 Fulton St., Berkeley, CA 94720, Contact: Deborah Dobin, Phone: (415) 643-7143.
(b) *Approved Course:*
Project Designer Annual Review (Certified 2/26/91).

Delaware.

(5)(a) *State Agency:* Delaware Dept. of Administrative Services, Address: Short Building, 21 The Green, P.O. Box 1401, Dover, DE 19903, Contact: Robert Foster, Phone: (302) 739-3930.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 8/14/89).
Contractor/Supervisor (full from 8/14/89).
(i)(a) *Training Provider:* Delaware Technical & Community College, Stanton Campus.
Address: Churchman Center, Churchman's Rd., New Castle, DE 19804, Contact: F. Tucker Mulrooney, Phone: (302) 323-9662.
(b) *Approved Courses:*
Abatement Worker (Certified 4/1/88).
Abatement Worker Annual Review (Certified 5/5/89).
Contractor/Supervisor (Certified 4/1/88)
Contractor/Supervisor Annual Review (Certified 5/5/89).
(ii)(a) *Training Provider:* Delaware Technical & Community College, Terry Campus.
Address: 1832 North Dupont Pkwy., Dover, DE 19901, Contact: David T. Stanley, Phone: (302) 736-5428.
(b) *Approved Courses:*
Abatement Worker (Certified 4/1/88).
Abatement Worker Annual Review (Certified 5/5/89).
Contractor/Supervisor (Certified 4/1/88).
Contractor/Supervisor Annual Review (Certified 5/5/89).
(iii)(a) *Training Provider:* Local Union No. 42 Heat - Pipe & Frost Union.
Address: 1188 River Rd., New Castle, DE 19720, Contact: Joe Noble, Phone: (302) 328-4203.
(b) *Approved Courses:*
Abatement Worker (Certified 3/5/87).
Abatement Worker Annual Review (Certified 3/5/87).
Contractor/Supervisor (Certified 3/5/87).
Contractor/Supervisor Annual Review (Certified 3/5/87).
(iv)(a) *Training Provider:* Local Union No. 626 United Brotherhood of Carpenters and Joiners of America.
Address: 626 Wilmington Road, New Castle, DE 19720, Contact: Robert A. McCullough, Phone: (302) 328-9430 Ext. 9439.
(b) *Approved Courses:*
Abatement Worker (Certified 8/8/90).
Abatement Worker Annual Review (Certified 8/8/90).
Contractor/Supervisor (Certified 8/8/90).
Contractor/Supervisor Annual Review (Certified 8/8/90).

Idaho.

(6)(a) *State Agency:* Idaho Department of Labor & Industrial Services, Building Division, Address: 277 North 6th St., Statehouse Mail, Boise, ID 83720-6000, Contact: Thomas E. Rodgers, Phone: (208) 334-3896.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 3/26/91).
Contractor/Supervisor (full from 3/26/91).
Inspector (full from 3/26/91).
Inspector/Management Planner (full from 3/26/91).
Project Designer (full from 3/26/91).
(i)(a) *Training Provider:* Asbestos Technology, Incorporated.
Address: 140 Ivan St., Cheyenne, WY 82001, Contact: Leo Quinlivan, Phone: (307) 632-5571.
(b) *Approved Courses:*
Abatement Worker (Certified 7/9/90).
Abatement Worker Annual Review (Certified 7/17/90).
Contractor/Supervisor (Certified 8/8/90).
Contractor/Supervisor Annual Review (Certified 8/8/90).
Inspector/Management Planner (Certified 9/24/90).
Inspector/Management Planner Annual Review (Certified 9/24/90).
Project Designer Annual Review (Certified 8/13/90).
(ii)(a) *Training Provider:* Industrial Hygiene Resources, Ltd.
Address: 7337 Northview, Boise, ID 83704, Contact: Harry J. Beaulieu, Phone: (208) 323-8187.
(b) *Approved Courses:*
Abatement Worker (Certified 8/13/90).
Contractor/Supervisor (Certified 8/13/90).
(iii)(a) *Training Provider:* Valley Research Corporation.
Address: 111 South State St., P.O. Box 637, Hagerman, ID 83332, Contact: Leonn Urie, Phone: (208) 837-6653.
(b) *Approved Courses:*
Abatement Worker (Certified 7/9/90).
Contractor/Supervisor (Certified 6/8/90).
Inspector/Management Planner (Certified 8/13/90).

Illinois.

(7)(a) *State Agency:* Illinois Department of Public Health Division of Environmental Health, Address: 525 West Jefferson St, Springfield, IL 62761, Contact: R. Kent Cook, Phone: (217) 782-3517.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 3/13/90).
Contractor/Supervisor (full from 3/13/90).
Inspector (full from 3/13/90).
Inspector/Management Planner (full from 3/13/90).
Project Designer (full from 3/13/90).
(i)(a) *Training Provider:* Abatement Project Training.
Address: P.O. Box 4372, Kansas City, KS 66112, Contact: Virginia Ireton, Phone: (913) 788-3440.
(b) *Approved Courses:*
Abatement Worker (Certified 12/21/90).
Abatement Worker Annual Review (Certified 12/21/90).
(ii)(a) *Training Provider:* Aerostat Environmental Engineering Corp.

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Address: 2817 Atchison Avenue, Lawrence, KS 66047, Contact: Joe Stimac, Phone: (800) 828-6269.

(b) *Approved Courses:*

Contractor/Supervisor (Certified 9/17/90).
Contractor/Supervisor Annual Review (Certified 9/17/90).
Inspector/Management Planner (Certified 9/17/90).
Inspector/Management Planner Annual Review (Certified 9/17/90).

(iii)(a) *Training Provider:* American Asbestos Institute Inc.

Address: P.O. Box 7477, Springfield, IL 62791, Contact: Donald Handy, Phone: (217) 523-8747.

(b) *Approved Courses:*

Abatement Worker (Certified 8/15/90).
Abatement Worker Annual Review (Certified 8/15/90).
Contractor/Supervisor (Certified 8/15/90).
Contractor/Supervisor Annual Review (Certified 8/15/90).
Inspector/Management Planner (Certified 9/20/90).
Inspector/Management Planner Annual Review (Certified 9/20/90).

(iv)(a) *Training Provider:* Asbestos Abatement Training Center Inc.

Address: Route 1 Box 209, Lacon, IL 61540, Contact: Brian Kline, Phone: (309) 246-3183.

(b) *Approved Courses:*

Abatement Worker (Certified 8/22/90).
Abatement Worker Annual Review (Certified 8/22/90).
Contractor/Supervisor (Certified 8/22/90).
Contractor/Supervisor Annual Review (Certified 8/22/90).

(v)(a) *Training Provider:* Asbestos Professional Services, Inc.

Address: 501 North Second St., P.O. Box 364, Breese, IL 62230, Contact: Donald T. Anderson, Jr., Phone: (618) 526-2742.

(b) *Approved Courses:*

Abatement Worker (Certified 10/22/90).
Abatement Worker Annual Review (Certified 10/22/90).

(vi)(a) *Training Provider:* Asbestos Workers Local No. 1.

Address: 3325 Hollenberg Drive, St. Louis, MO 63044, Contact: James Hagen, Phone: (314) 291-7399.

(b) *Approved Courses:*

Abatement Worker (Certified 11/1/90).
Abatement Worker Annual Review (Certified 11/1/90).
Contractor/Supervisor (Certified 11/1/90).
Contractor/Supervisor Annual Review (Certified 11/1/90).

(vii)(a) *Training Provider:* Auburn Environmental Services.

Address: 410 East Jefferson, Auburn, IL 62615, Contact: Linda Funk, Phone: (217) 438-6694.

(b) *Approved Course:*

Abatement Worker (Certified 10/18/90).

(viii)(a) *Training Provider:* Boelter Environmental Consultants.

Address: 1300 Higgins No. 301, Park Ridge, IL 60068, Contact: Linda Beechler, Phone: (708) 692-4700.

(b) *Approved Courses:*

Contractor/Supervisor (Certified 3/25/91).
Inspector/Management Planner (Certified 3/25/91).

(ix)(a) *Training Provider:* Construction/General Labor of Chicago.

Address: 4 N 250 Old Gary Avenue, Cloverdale, IL 60103, Contact: Anthony Solano, Phone: (708) 323-8999.

(b) *Approved Courses:*

Abatement Worker (Certified 8/10/90).
Abatement Worker Annual Review (Certified 8/10/90).
Contractor/Supervisor (Certified 8/10/90).
Contractor/Supervisor Annual Review (Certified 9/18/90).

(x)(a) *Training Provider:* ESCOR, Inc.

Address: 629 Greenbay Road, Wilmette, IL 60091, Contact: R. Eric Zimmerman, Phone: (708) 256-6970.

(b) *Approved Courses:*

Abatement Worker (Certified 11/2/90).
Abatement Worker Annual Review (Certified 11/2/90).
Contractor/Supervisor (Certified 11/19/90).
Contractor/Supervisor Annual Review (Certified 11/19/90).
Inspector Annual Review (Certified 11/2/90).
Inspector/Management Planner (Certified 11/2/90).

(xi)(a) *Training Provider:* Emergency Medical Service Consults of America Emsc.

Address: 12125 S. 90th Avenue, Palos Park, IL 60464, Contact: Fred Debow, Phone: (707) 448-7500.

(b) *Approved Courses:*

Abatement Worker (Certified 9/6/90).
Abatement Worker Annual Review (Certified 9/6/90).

(xii)(a) *Training Provider:* Environment Technology of Fort Wayne.

Address: 9208 Hessen Cassel Rd., Fort Wayne, IN 46816, Contact: Randy Aumsbaugh, Phone: (219) 447-3141.

(b) *Approved Courses:*

Abatement Worker (Certified 12/27/90).
Abatement Worker Annual Review (Certified 12/27/90).

(xiii)(a) *Training Provider:* Environmental Group Service LTD (EGSL).

Address: 215 West Huron, Chicago, IL 60610, Contact: Vahooman Mirkaef, Phone: (312) 642-8434.

(b) *Approved Courses:*

Abatement Worker (Certified 5/14/90).
Abatement Worker Annual Review (Certified 5/14/90).
Contractor/Supervisor (Certified 5/14/90).
Contractor/Supervisor Annual Review (Certified 5/14/90).

(xiv)(a) *Training Provider:* Environmental Safety Training Services.

Address: 11802 Hanson Rd., Algonquin, IL 60102, Contact: Robert Sayre, Phone: (708) 658-5950.

(b) *Approved Courses:*

Abatement Worker (Certified 10/1/90).
Abatement Worker Annual Review (Certified 12/6/90).

(xv)(a) *Training Provider:* Environmental Science & Engineering, Inc.

Address: 8900 N. Industrial Rd., Peoria, IL 61615, Contact: Kirk Sweetland, Phone: (309) 692-4422.

(b) *Approved Courses:*

Abatement Worker (Certified 10/25/90).
Abatement Worker Annual Review (Certified 10/25/90).
Contractor/Supervisor (Certified 8/10/90).
Contractor/Supervisor Annual Review (Certified 8/10/90).

(xvi)(a) *Training Provider:* Environmental Training Center.

Address: 1988 Innerbelt Business Center Dr., St. Louis, MO 63114, Contact: Ronald Neislar, Phone: (314) 428-7020.

(b) *Approved Courses:*

Abatement Worker (Certified 9/26/90).
Abatement Worker Annual Review (Certified 9/26/90).
Contractor/Supervisor (Certified 9/26/90).
Contractor/Supervisor Annual Review (Certified 9/26/90).
Inspector (Certified 2/28/91).
Inspector Annual Review (Certified 2/28/91).

(xvii)(a) *Training Provider:* Georgia Tech Research Institute.

Address: GTRI/ESTL/ESB-29 O'Keef Building, Atlanta, GA 30332, Contact: Margaret Ojala, Phone: (404) 894-8078.

(b) *Approved Courses:*

Contractor/Supervisor (Certified 11/8/90).
Contractor/Supervisor Annual Review (Certified 11/8/90).

(xviii)(a) *Training Provider:* Hazardous Material Training & Research.

Address: 306 West River Dr., Davenport, IA 52801, Contact: David Canine, Phone: (319) 322-5015.

(b) *Approved Courses:*

Abatement Worker (Certified 11/7/90).
Contractor/Supervisor (Certified 2/26/91).

(xix)(a) *Training Provider:* Heat and Frost Insulators Local No. 17.

Address: 3850 Racine Avenue, Chicago, IL 60609, Contact: John P. Shine, Phone: (312) 247-1007.

(b) *Approved Courses:*

Abatement Worker (Certified 8/29/90).
Abatement Worker Annual Review (Certified 8/29/90).
Contractor/Supervisor (Certified 8/29/90).
Contractor/Supervisor Annual Review (Certified 8/29/90).

(xx)(a) *Training Provider:* Hinds Asbestos Consultant & Technical Services.

Address: 1037 South Fourth Street, Springfield, IL 62703, Contact: Patricia Elmore, Phone: (217) 789-7823.

(b) *Approved Courses:*

Contractor/Supervisor (Certified 12/5/90).
Contractor/Supervisor Annual Review (Certified 12/5/90).

(xxi)(a) *Training Provider:* Hygienetics, Inc.

Address: 2200 Powell Street, Suite 800, Emeryville, CA 94608, Contact: Allison Roberts, Phone: (415) 547-3886.

(b) *Approved Courses:*

Contractor/Supervisor (Certified 3/5/91).
Inspector/Management Planner (Certified 11/1/90).

(xxii)(a) *Training Provider:* I.P.C., Chicago, Inc.

Address: 4309 West Henderson, Chicago, IL 60641, Contact: Robert Cooley, Phone: (312) 718-7395.

(b) *Approved Courses:*

Abatement Worker (Certified 8/7/90).
Abatement Worker Annual Review (Certified 8/7/90).
Contractor/Supervisor (Certified 8/7/90).
Contractor/Supervisor Annual Review (Certified 8/7/90).

(xxiii)(a) *Training Provider:* IL Laborers & Contractors Training Program.

Address: R.R. 3, Mt Sterling, IL 62353, Contact: Anthony Romolo, Phone: (217) 773-2741.

(b) *Approved Courses:*

Abatement Worker (Certified 8/9/90).
Abatement Worker Annual Review (Certified 8/9/90).
Contractor/Supervisor (Certified 9/24/90).
Contractor/Supervisor Annual Review (Certified 10/31/90).

(xxiv)(a) *Training Provider:* Ideal & Associate Environmental Engineer Services, Inc.

Address: 1102 South Main St., Bloomington, IL 61702, Contact: James S. Langan, Phone: (309) 828-4259.

(b) *Approved Courses:*

Abatement Worker (Certified 6/15/90).
Abatement Worker Annual Review (Certified 6/15/90).
Contractor/Supervisor (Certified 6/15/90).
Contractor/Supervisor Annual Review (Certified 6/15/90).

(xxv)(a) *Training Provider:* Jenkens Professionals, Inc.

Address: 5042 Campbell Blvd., Suite D, Baltimore, MD 21236, Contact: Jeff McKnight, Phone: (301) 931-7588.

(b) *Approved Courses:*

Abatement Worker (Certified 1/28/91).
Abatement Worker Annual Review (Certified 1/28/91).
Contractor/Supervisor (Certified 1/28/91).

(xxvi)(a) *Training Provider:* Keter Environmental, Ltd.

Address: 699 Edgewood Avenue, Elmhurst, IL 60126, Contact: Phil Pekron, Phone: (708) 941-0201.

(b) *Approved Courses:*

Abatement Worker (Certified 9/28/90).
Abatement Worker Annual Review (Certified 9/28/90).
Contractor/Supervisor (Certified 9/28/90).
Contractor/Supervisor Annual Review (Certified 9/28/90).

(xxvii)(a) *Training Provider:* Local 101 Technical Training Center.

Address: 728 Broadway, Gary, IN 46402, Contact: Thomas Moore, Phone: (219) 885-0005.

(b) *Approved Courses:*

Abatement Worker (Certified 9/17/90).
Abatement Worker Annual Review (Certified 12/28/90).

(xxviii)(a) *Training Provider:* Mayhew Environmental Training Assoc.

Address: 901 Kentucky, Lawrence, KS 66044, Contact: Thomas Mayhew, Phone: (913) 842-6382.

(b) *Approved Courses:*

Abatement Worker (Certified 9/20/90).
Abatement Worker Annual Review (Certified 9/20/90).
Contractor/Supervisor (Certified 9/20/90).
Contractor/Supervisor Annual Review (Certified 9/20/90).
Inspector/Management Planner (Certified 1/29/91).
Inspector/Management Planner Annual Review (Certified 1/29/91).

(xxix)(a) *Training Provider:* McDowell Business Training Center.

Address: 1313 S. Michigan, 3rd Floor, Chicago, IL 60605, Contact: Edward McDowell, Phone: (312) 427-2598.

(b) *Approved Course:*

Abatement Worker (Certified 9/12/90).

(xxx)(a) *Training Provider:* Midwest Environmental & Industrial Health.

Address: 1440 W. Washington, Chicago, IL 60607, Contact: Steve Margevich, Phone: (312) 829-1277.

(b) *Approved Courses:*

Abatement Worker (Certified 7/30/90).
Abatement Worker Annual Review (Certified 7/30/90).
Contractor/Supervisor (Certified 7/30/90).
Contractor/Supervisor Annual Review (Certified 7/30/90).
Inspector/Management Planner (Certified 7/30/90).
Inspector/Management Planner Annual Review (Certified 7/30/90).
Project Designer (Certified 8/2/90).

(xxxi)(a) *Training Provider:* Midwest Institute of Asbestos.

Address: 4747 W. Peterson, Suite 101, Chicago, IL 60646, Contact: Bogdan Mucha, Phone: (312) 545-3222.

(b) *Approved Courses:*

Abatement Worker (Certified 10/17/90).
Abatement Worker Annual Review (Certified 10/17/90).

(xxxii)(a) *Training Provider:* Milwaukee Asbestos Information Center.

Address: 2224 S. Kinnickinnic, Milwaukee, WI 53207, Contact: Tom Ortell, Phone: (800) 848-3298.

(b) *Approved Courses:*

Abatement Worker (Certified 12/6/90).
Abatement Worker Annual Review (Certified 12/6/90).
Contractor/Supervisor (Certified 12/6/90).
Contractor/Supervisor Annual Review (Certified 12/6/90).
Project Designer (Certified 12/6/90).
Project Designer Annual Review (Certified 12/6/90).

(xxxiii)(a) *Training Provider:* Moraine Valley Community College.

Address: 10900 South 88th Ave., Palos Hills, IL 60465, Contact: Dale Luecht, Phone: (708) 974-5735.

(b) *Approved Courses:*

Abatement Worker (Certified 7/27/90).

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Abatement Worker Annual Review (Certified 7/27/90).
Contractor/Supervisor (Certified 7/27/90).
Contractor/Supervisor Annual Review (Certified 8/8/90).
Inspector/Management Planner (Certified 8/8/90).
Inspector/Management Planner Annual Review (Certified 8/22/90).

(xxxiv)(a) *Training Provider:* National Asbestos Council.
Address: 1777 Northeast Expressway, Suite 150, Atlanta, GA 30329, Contact: Tina Smith, Phone: (404) 633-2622.
(b) *Approved Courses:*
Abatement Worker (Certified 1/2/91).
Abatement Worker Annual Review (Certified 1/2/91).

(xxxv)(a) *Training Provider:* National Asbestos Training Center.
Address: 6330 College Boulevard, Overland Park, KS 66211, Contact: Karen Wilson, Phone: (913) 491-0181.
(b) *Approved Courses:*
Abatement Worker (Certified 1/29/91).
Contractor/Supervisor (Certified 1/29/91).
Contractor/Supervisor Annual Review (Certified 1/29/91).

(xxxvi)(a) *Training Provider:* Olive-Harvey College Skill Center.
Address: 10001 South Woodlawn Avenue, Chicago, IL 60628, Contact: Verondo Tucker, Phone: (312) 660-4841.
(b) *Approved Course:*
Abatement Worker (Certified 10/5/90).

(xxxvii)(a) *Training Provider:* Pat Services.
Address: 133 Hollywood Circle, Creve Coeur, IL 61611, Contact: Cheryl McGinnis, Phone: (309) 698-0708.
(b) *Approved Courses:*
Abatement Worker (Certified 11/21/90).
Abatement Worker Annual Review (Certified 11/21/90).
Contractor/Supervisor (Certified 11/21/90).
Contractor/Supervisor Annual Review (Certified 11/21/90).

(xxxviii)(a) *Training Provider:* Performance Systems, Inc.
Address: 4804 Oakwood Avenue, Downers Grove, IL 60515, Contact: John T. Cammuto, Phone: (708) 968-5959.
(b) *Approved Courses:*
Abatement Worker (Certified 11/21/90).
Abatement Worker Annual Review (Certified 3/11/91).

(xxxix)(a) *Training Provider:* Professional Service Industries Hall-Kimbrell.
Address: 75 Executive Drive, Suite 434, Aurora, IL 60504, Contact: Greg Corder, Phone: (708) 896-9414.
(b) *Approved Courses:*
Abatement Worker (Certified 8/3/90).
Abatement Worker Annual Review (Certified 8/9/90).
Contractor/Supervisor (Certified 8/3/90).
Contractor/Supervisor Annual Review (Certified 8/9/90).
Inspector/Management Planner (Certified 8/3/90).
Inspector/Management Planner Annual Review (Certified 8/16/90).

(xl)(a) *Training Provider:* Safer Foundation.
Address: 571 W. Jackson, Chicago, IL 60606, Contact: Eli Caliph, Phone: (312) 922-2200.
(b) *Approved Courses:*
Abatement Worker (Certified 8/17/90).
Abatement Worker Annual Review (Certified 8/17/90).

(xli)(a) *Training Provider:* Safety Training of Illinois.
Address: P.O. Box 11093, Springfield, IL 62791, Contact: Dave Farris, Phone: (217) 787-9091.
(b) *Approved Courses:*
Abatement Worker (Certified 7/31/90).
Abatement Worker Annual Review (Certified 7/31/90).

(xlii)(a) *Training Provider:* Schemel Asbestos Abatement Co.
Address: 104B North Jackson, Perryville, MO 63775, Contact: Claire E. Schemel, Phone: (314) 547-2558.
(b) *Approved Courses:*
Contractor/Supervisor (Certified 12/4/90).
Contractor/Supervisor Annual Review (Certified 2/11/91).

(xliii)(a) *Training Provider:* Seagull Environmental Management.
Address: 903 NW 6th Avenue, Ft. Lauderdale, FL 33311, Contact: Mark Knick, Phone: (305) 524-7208.
(b) *Approved Course:*
Abatement Worker (Certified 3/6/91).

(xliv)(a) *Training Provider:* Summit Abatement Contracting, Inc.
Address: 7255 Tower Road, Battle Creek, MI 49017, Contact: Treina Norris, Phone: (616) 968-4242.
(b) *Approved Courses:*
Abatement Worker (Certified 10/19/90).
Abatement Worker Annual Review (Certified 10/19/90).
Contractor/Supervisor (Certified 10/19/90).
Contractor/Supervisor Annual Review (Certified 10/19/90).

(xlv)(a) *Training Provider:* The American Center for Educational Developement.
Address: 318 South Wabash Ave., Chicago, IL 60604, Contact: Francine F. Rossi, Phone: (312) 322-2233.
(b) *Approved Courses:*
Abatement Worker (Certified 7/27/90).
Abatement Worker Annual Review (Certified 7/27/90).
Contractor/Supervisor (Certified 7/27/90).
Contractor/Supervisor Annual Review (Certified 7/27/90).

(xlvi)(a) *Training Provider:* The Brand Companies.
Address: 1420 Renaissance Dr., Park Ridge, IL 60068, Contact: Frank Barta, Phone: (708) 298-1200.
(b) *Approved Courses:*
Abatement Worker (Certified 7/2/90).
Abatement Worker Annual Review (Certified 7/2/90).
Contractor/Supervisor (Certified 7/2/90).
Contractor/Supervisor Annual Review (Certified 7/2/90).

(xlvii)(a) *Training Provider:* The Environmental Institute.
Address: 350 Franklin Road, Suite 300, Marietta, GA 30067, Contact: Rachel McCain, Phone: (404) 425-2000.
(b) *Approved Courses:*
Abatement Worker (Certified 11/1/90).
Abatement Worker Annual Review (Certified 11/1/90).
Contractor/Supervisor (Certified 11/1/90).
Contractor/Supervisor Annual Review (Certified 11/1/90).

(xlviii)(a) *Training Provider:* The National Training Fund.
Address: 601 N. Fairfax Street, Suite 240, Alexandria, VA 22314, Contact: Gerald Olejniczak, Phone: (703) 793-7200.
(b) *Approved Courses:*
Abatement Worker (Certified 10/25/90).
Abatement Worker Annual Review (Certified 10/25/90).
Contractor/Supervisor (Certified 10/25/90).
Contractor/Supervisor Annual Review (Certified 10/25/90).

(xlix)(a) *Training Provider:* Total Environmental Air Management.
Address: 8016 A. Kolmar, Chicago, IL 60652, Contact: Louis Racila, Phone: (312) 582-9374.
(b) *Approved Courses:*
Abatement Worker (Certified 3/13/91).
Abatement Worker Annual Review (Certified 3/13/91).

(l)(a) *Training Provider:* United Brotherhood of Carpenters & Joiners UBC.
Address: 1[illegible] Constitution Avenue NW., Washington, DC 20001, Contact: Joseph Durst, Jr., Phone: (202) 546-6706.
(b) *Approved Courses:*
Abatement Worker (Certified 8/27/90).
Abatement Worker Annual Review (Certified 8/27/90).
Contractor/Supervisor (Certified 1/25/91).
Contractor/Supervisor Annual Review (Certified 1/25/91).

(li)(a) *Training Provider:* United Environmental System, Inc.
Address: 202 South State Street, Chicago, IL 60604, Contact: David Mizrahi, Phone: (312) 663-5693.
(b) *Approved Courses:*
Abatement Worker (Certified 8/23/90).
Abatement Worker Annual Review (Certified 8/23/90).
Contractor/Supervisor (Certified 8/23/90).
Contractor/Supervisor Annual Review (Certified 3/8/91).

(lii)(a) *Training Provider:* United Science Industries, Inc.
Address: 621 Ninth Street, Carlyle, IL 62231, Contact: Jay Koch, Phone: (618) 594-4023.
(b) *Approved Courses:*
Abatement Worker (Certified 9/19/90).
Abatement Worker Annual Review (Certified 9/19/90).
Contractor/Supervisor (Certified 9/19/90).
Contractor/Supervisor Annual Review (Certified 9/19/90).

(liii)(a) *Training Provider:* University of Cincinnatti, Department of Environmental Health.
Address: 3223 Eden Avenue ML-056, Cincinnatti, OH 45267, Contact: Judy Jarrell, Phone: (513) 558-1730.
(b) *Approved Courses:*
Abatement Worker (Certified 10/15/90).
Abatement Worker Annual Review (Certified 10/15/90).
Contractor/Supervisor (Certified 10/15/90).
Contractor/Supervisor Annual Review (Certified 10/15/90).
Inspector/Management Planner (Certified 10/15/90).
Inspector/Management Planner Annual Review (Certified 10/15/90).

Indiana.

(8)(a) *State Agency:* Indiana Department of Environmental Management, Office of Air Management, Address: 105 South Meridian St., P.O. Box 6015, Indianapolis, IN 46206-6015, Contact: Debra Dubenetzky, Phone: (317) 232-8373.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 11/10/89).
Contractor/Supervisor (full from 11/10/89).
Inspector (full from 11/10/89).
Inspector/Management Planner (full from 11/10/89).
Project Designer (full from 11/10/89).

(i)(a) *Training Provider:* ATI Environmental Services.
Address: P.O. Box 3044, Louisville, KY 40201, Contact: Steve Chappars, Phone: (502) 589-5308.
(b) *Approved Courses:*
Abatement Worker (Certified 2/6/91).
Abatement Worker Annual Review (Certified 2/6/91).
Contractor/Supervisor (Certified 2/6/91).
Contractor/Supervisor Annual Review (Certified 2/18/91).

(ii)(a) *Training Provider:* Academy for Environmental Training Inc.
Address: 316 South State Avenue, Indianapolis, IN 46201, Contact: Anne Gress, Phone: (317) 269-3620.
(b) *Approved Courses:*
Abatement Worker (Certified 12/3/90).
Abatement Worker Annual Review (Certified 12/3/90).
Contractor/Supervisor (Certified 12/3/90).
Contractor/Supervisor Annual Review (Certified 12/12/90).

(iii)(a) *Training Provider:* American Electric Power Company.
Address: One Summit Square, P.O. Box 60, Fort Wayne, IN 43215, Contact: Barry A. Smith, Phone: (219) 425-2392.
(b) *Approved Courses:*
Abatement Worker (Certified 2/25/91).
Contractor/Supervisor (Certified 2/25/91).

(iv)(a) *Training Provider:* Asbestos Workers Council.
Address: 1216 East McMillan St., Cincinnati, OH 45206, Contact: Larry Briley, Phone: (513) 461-1512.
(b) *Approved Courses:*
Abatement Worker (Certified 3/5/91).
Abatement Worker Annual Review (Certified 3/5/91).

(v)(a) *Training Provider:* CRU Incorporated.
Address: 13029 Middletown Industrial Boulevard, Louusville, KY 40223, Contact: William Ringo, Phone: (502) 244-8844.
(b) *Approved Courses:*
Contractor/Supervisor (Certified 2/26/91).
Contractor/Supervisor Annual Review (Certified 2/26/91).
Inspector/Management Planner Annual Review (Certified 2/26/91).

(vi)(a) *Training Provider:* Environment Technology of Fort Wayne.
Address: P.O. Box 6153, Fort Wayne, IN 46896, Contact: Randy Aumsbaugh, Phone: (219) 749-5150.
(b) *Approved Courses:*
Abatement Worker (Certified 11/6/90).
Abatement Worker Annual Review (Certified 11/6/90).

(vii)(a) *Training Provider:* Environmental Management Consultants, Inc.
Address: 427 Main St., Evansville, IN 47708, Contact: Barbara Kramer, Phone: (812) 424-7768.
(b) *Approved Courses:*
Abatement Worker (Certified 3/8/91).
Abatement Worker Annual Review (Certified 3/8/91).
Contractor/Supervisor (Certified 3/27/91).
Contractor/Supervisor Annual Review (Certified 3/27/91).

(viii)(a) *Training Provider:* Environmental Management Institute, Inc.
Address: 5610 Crawfordsville Rd., Suite 15, Indianapolis, IN 46224, Contact: Jack Leonard, Phone: (317) 248-4848.
(b) *Approved Courses:*
Abatement Worker (Certified 1/23/91).
Abatement Worker Annual Review (Certified 10/19/90).
Contractor/Supervisor (Certified 1/23/91).
Contractor/Supervisor Annual Review (Certified 10/19/90).
Inspector/Management Planner (Certified 10/26/90).
Inspector/Management Planner Annual Review (Certified 1/23/91).
Project Designer Annual Review (Certified 2/26/91).

(ix)(a) *Training Provider:* Environmental Safety Training Services Inc.
Address: 11802 Hanson Road, Algonquin, IL 60102, Contact: Robert Sayre, Phone: (708) 658-5950.
(b) *Approved Course:*
Abatement Worker (Certified 10/23/90).

(x)(a) *Training Provider:* Environmental Training Institute.
Address: 4708 Angold Rd., Toledo, OH 43615, Contact: Jay Burzynski, Phone: (419) 382-9200.
(b) *Approved Courses:*
Abatement Worker (Certified 2/6/91).
Abatement Worker Annual Review (Certified 2/6/91).

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(xi)(a) *Training Provider:* Heat & Frost Insulators & Asbestos Workers Local Union No. 17 Apprentice Training Center.
Address: 3850 South Racine Ave., Chicago, IL 60608, Contact: John P. Shine, Phone: (312) 847-1007.
(b) *Approved Courses:*
Abatement Worker (Certified 2/6/91).
Abatement Worker Annual Review (Certified 2/6/91).
Contractor/Supervisor (Certified 2/6/91).
Contractor/Supervisor Annual Review (Certified 2/6/91).
(xii)(a) *Training Provider:* Indiana Laborers' Training Trust Fund.
Address: P.O. Box 758, Bedford, IN 47421, Contact: Richard Fassino, Phone: (812) 279-8751.
(b) *Approved Courses:*
Abatement Worker (Certified 10/1/90).
Abatement Worker Annual Review (Certified 10/1/90).
Contractor/Supervisor (Certified 10/1/90).
Contractor/Supervisor Annual Review (Certified 10/1/90).
(xiii)(a) *Training Provider:* Industrial Environmental Consultants.
Address: 2875 Northwind, Suite 113, East Lansing, MI 48823, Contact: Michael R. Tillotson, Phone: (517) 332-7026.
(b) *Approved Courses:*
Abatement Worker (Certified 2/6/91).
Contractor/Supervisor (Certified 2/6/91).
(xiv)(a) *Training Provider:* Keter Environmental, Inc.
Address: 18028 Dixie Highway, Homewood, IL 60429, Contact: Phil Pekron, Phone: (708) 206-1122.
(b) *Approved Courses:*
Abatement Worker (Certified 1/28/91).
Abatement Worker Annual Review (Certified 1/28/91).
Contractor/Supervisor (Certified 1/28/91).
Contractor/Supervisor Annual Review (Certified 1/28/91).
Inspector (Certified 1/28/91).
(xv)(a) *Training Provider:* Moraine Valley Community College.
Address: 10900 South 88th Ave., Palos Hills, IL 60465, Contact: Dale Luecht, Phone: (708) 974-5415.
(b) *Approved Courses:*
Abatement Worker (Certified 3/4/91).
Inspector (Certified 3/4/91).
(xvi)(a) *Training Provider:* PSI/Hall Kimbrell.
Address: 75 Executive Drive., Suite 434, Aurora, IL 60504, Contact: Greg Corder, Phone: (708) 898-9414.
(b) *Approved Courses:*
Abatement Worker (Certified 2/28/91).
Abatement Worker Annual Review (Certified 2/28/91).
Contractor/Supervisor (Certified 2/28/91).
Contractor/Supervisor Annual Review (Certified 2/28/91).
(xvii)(a) *Training Provider:* The Environmental Institute.
Address: 350 Franklin Road, Marietta, GA 30067, Contact: Rachel McCain, Phone: (404) 425-2000.
(b) *Approved Courses:*
Contractor/Supervisor Annual Review (Certified 2/26/91).
Inspector/Management Planner Annual Review (Certified 3/28/91).
(xviii)(a) *Training Provider:* The Environmental Training Center.
Address: 607 Shepherd Drive, Unit 7, Cincinnati, OH 45215, Contact: Robert E. Robb Jr., Phone: (513) 563-2828.
(b) *Approved Course:*
Project Designer (Certified 3/5/91).
(xix)(a) *Training Provider:* The National Training Fund for the Sheet Metal & Air Conditioning Industry.
Address: 601 North Fairfax St., Suite 240, Alexandria, VA 22314, Contact: Gerald Olejniczak, Phone: (703) 739-7200.
(b) *Approved Courses:*
Abatement Worker (Certified 3/5/91).
Abatement Worker Annual Review (Certified 3/5/91).
Contractor/Supervisor (Certified 3/5/91).
Contractor/Supervisor Annual Review (Certified 3/5/91).
(xx)(a) *Training Provider:* University of Cincinnati Medical Center Department of Environmental Health.
Address: 3223 Eden Ave. ML056, Cincinnati, OH 45267, Contact: Judy L. Jarrell, Phone: (513) 558-1738.
(b) *Approved Courses:*
Contractor/Supervisor (Certified 2/18/91).
Contractor/Supervisor Annual Review (Certified 2/18/91).
Inspector/Management Planner (Certified 2/18/91).
Inspector/Management Planner Annual Review (Certified 2/18/91).
Project Designer (Certified 2/18/91).
Project Designer Annual Review (Certified 2/18/91).
(xxi)(a) *Training Provider:* Walker & Ward, Inc.
Address: 2803-B North St., Joseph Ave., Evansville, IN 47720, Contact: Roger Ward, Phone: (812) 421-1900.
(b) *Approved Courses:*
Abatement Worker (Certified 2/1/91).
Contractor/Supervisor (Certified 2/1/91).

Iowa.

(9)(a) *State Agency:* Iowa Dept. of Education School Facilities Administration & Accreditation, Address: Grimes State Office Bldg., Des Moines, IA 50319-0146, Contact: C. Milton Wilson, Phone: (515) 281-4743.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 11/30/87).
Contractor/Supervisor (full from 11/30/87).
Inspector (full from 11/30/87).
Inspector/Management Planner (full from 11/30/87).
Project Designer (full from 11/30/87).
(i)(a) *Training Provider:* Advanced Technologies Corp.
Address: P.O. Box 902, Cedar Falls, IA 50613, Contact: Michael L. Llewellyn, Phone: (319) 266-7524.
(b) *Approved Course:*
Contractor/Supervisor (Certified 7/15/90).
(ii)(a) *Training Provider:* Ames Environmental, Inc.
Address: 3910 Lincoln Way, Ames, IA 50010, Contact: Ann Fairchild, Phone: (515) 292-3400.
(b) *Approved Courses:*
Abatement Worker (Certified 1/18/90).
Abatement Worker Annual Review (Certified 1/18/90).
Inspector Annual Review (Certified 12/8/89).
(iii)(a) *Training Provider:* Iowa Electric Light & Power.
Address: Duane Arnold Nuclear Energy Center, 3363 DEAC Rd., Palo, IA 52324, Contact: Robert Tucker, Phone: (319) 851-7574.
(b) *Approved Course:*
Contractor/Supervisor (Certified 10/1/89).
(iv)(a) *Training Provider:* Iowa Environmental Services, Inc.
Address: 820 First St., Suite 200, West Des Moines, IA 50265, Contact: Glenn Soyer, Phone: (515) 279-8042.
(b) *Approved Courses:*
Abatement Worker (Certified 3/27/89).
Contractor/Supervisor (Certified 10/1/89).
(v)(a) *Training Provider:* Iowa Illinois Thermal Insulation Inc.
Address: P.O. Box 931, Davenport, IA 52805-0931, Contact: Richard H. Knauss, Phone: (319) 324-0685.
(b) *Approved Courses:*
Abatement Worker (Certified 12/1/89).

Contractor/Supervisor Annual Review (Certified 1/27/90).
(vi)(a) *Training Provider:* M & W Environmental Consultants, Inc.
Address: RR No. 1 Wells Dr., Canton, IA 61520, Contact: Vahooman Mirkhoef, Phone: (800) 445-8745.
(b) *Approved Course:*
Inspector/Management Planner (Certified 10/1/89).
(vii)(a) *Training Provider:* Wisconsin Asbestos Advisory Team, Inc.
Address: 9402 N. Lakeshore Drive, Van Dyne, WI 54979, Contact: Robert P. LaPoint, Phone: (414) 922-8110.
(b) *Approved Courses:*
Contractor/Supervisor (Certified 7/15/90).
Contractor/Supervisor Annual Review (Certified 7/15/90).

Kansas.

(10)(a) *State Agency:* Kansas Dept. of Health and Environment Asbestos Control Section, Address: Forbes Field Building 740, Topeka, KS 66620-7430, Contact: Gary Miller, Phone: (913) 296-1547.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (interim from 11/6/86).*
Abatement Worker (full from 12/16/87).*
Contractor/Supervisor (interim from 11/6/86).
Contractor/Supervisor (full from 12/16/87).

Maine.

(11)(a) *State Agency:* State of Maine Department of Environmental Protection, Address: State House Station No. 17, Augusta, ME 04333, Contact: Ed Antz, Phone: (207) 582-8740.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 11/5/90).
Contractor/Supervisor (full from 11/5/90).
Inspector (full from 11/5/90).
Inspector/Management Planner (full from 11/5/90).
Project Designer (full from 11/5/90).
(i)(a) *Training Provider:* Balsam Environmental Consultants.
Address: 5 Industrial Way, Salem, NH 03079, Contact: Douglas Lawson, Phone: (603) 893-0616.
(b) *Approved Courses:*
Inspector/Management Planner (Certified 12/3/90).
Project Designer (Certified 12/3/90).
(ii)(a) *Training Provider:* Maine Labor Group on Health.
Address: P.O. Box V, Augusta, ME 04330, Contact: Diana White, Phone: (207) 622-7823.
(b) *Approved Courses:*
Abatement Worker (Certified 12/2/90).
Abatement Worker Annual Review (Certified 12/3/90).
Contractor/Supervisor (Certified 12/3/90).
Contractor/Supervisor Annual Review (Certified 12/3/90).
(iii)(a) *Training Provider:* National Asbestos Council.
Address: c/o MACC, P.O. Box 1566, 416 Lewiston Jct. Road, Auburn, ME 04210, Contact: Ron Tillson, Phone: (207) 783-4260.
(b) *Approved Courses:*
Abatement Worker (Certified 12/3/90).
Abatement Worker Annual Review (Certified 12/3/90).
(iv)(a) *Training Provider:* Northeast Test Consultants.
Address: 587 Spring Street, Westbrook, ME 04092, Contact: Tom Sukeforth, Phone: (207) 854-3939.
(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 12/3/90).
Contractor/Supervisor Annual Review (Certified 12/3/90).

Massachusetts.

(12)(a) *State Agency:* Massachusetts Dept. of Labor & Industries: Division of Occupational Hygiene, Address: 1001 Watertown St., West Newton, MA 02165, Contact: Patricia Circone, Phone: (617) 727-3983.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 10/30/87).
Contractor/Supervisor (full from 10/30/87).
Inspector (full from 10/30/87).
Inspector/Management Planner (full from 10/30/87).
Project Designer (full from 10/30/87).
(i)(a) *Training Provider:* A & S Training School, Inc.
Address: 99 South Cameron St., Harrisburg, PA 17101, Contact: William I. Roberts, Phone: (717) 257-1360.
(b) *Approved Courses:*
Abatement Worker (Certified 7/31/90).
Abatement Worker Annual Review (Certified 7/31/90).
Contractor/Supervisor (Certified 5/4/88).
Contractor/Supervisor Annual Review (Certified 5/4/89).
(ii)(a) *Training Provider:* Abatement Technical Corporation c/o Ecosystems, Inc.
Address: 5 North Meadow Rd., Medfield, MA 02052, Contact: Joseph C. Moben, Phone: (508) 692-0883.
(b) *Approved Courses:*
Abatement Worker (Certified 4/28/88 to 4/28/89 only).
Contractor/Supervisor (Certified 4/28/88 to 4/28/89 only).
Inspector/Management Planner (Certified 4/28/88 to 4/28/89 only).
(iii)(a) *Training Provider:* Asbestos Workers Union Local 43.
Address: 1053 Burts Pit Rd., Northampton, MA 01060, Contact: John Charest, Jr., Phone: (413) 584-0028.
(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 4/27/90).
Contractor/Supervisor Annual Review (Certified 4/27/90).
(iv)(a) *Training Provider:* Asbestos Workers Union Local No.06.
Address: 56 Rolland St., Boston, MA 02129, Contact: James P. McCourt, Phone: (617) 387-2679.
(b) *Approved Courses:*
Abatement Worker (Certified 4/25/88).
Abatement Worker Annual Review (Certified 4/25/89).
Contractor/Supervisor (Certified 4/25/88).
Contractor/Supervisor Annual Review (Certified 4/25/89).
(v)(a) *Training Provider:* Astoria Industries, Inc.
Address: 536 Stewart Ave., Brooklyn, NY 11222, Contact: Gary Dipaolo, Phone: (718) 387-0011.
(b) *Approved Course:*
Abatement Worker (Certified 4/6/88 to 4/8/89 only).
(vi)(a) *Training Provider:* Astral Environmental Assoc.
Address: 3 Adams Lane, Westford, MA 01886, Contact: Dorothy Young, Phone: (508) 692-2070.
(b) *Approved Courses:*
Abatement Worker (Certified 6/5/89).
Abatement Worker Annual Review (Certified 7/13/89).
Contractor/Supervisor (Certified 7/13/89).
Contractor/Supervisor Annual Review (Certified 7/13/89).
(vii)(a) *Training Provider:* BCM Engineering.
Address: 12 Alfred St., Suite 300, Woburn, MA 01801, Contact: Pam Evans, Phone: (617) 935-7080.

* Applies only to workers who have taken the Kansas Contractor/Supervisor course and passed the State's worker exam.

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(b) *Approved Courses:*
Abatement Worker (Certified 4/28/88).
Inspector/Management Planner (Certified 4/28/88).
Project Designer (Certified 4/28/88).

(viii)(a) *Training Provider:* BFI/Stevens.
Address: 777 N Eldridge, Suite 650, Houston, TX 77079, Contact: James G. Cole, Phone: (713) 870-9666.
(b) *Approved Courses:*
Abatement Worker (Certified 9/6/90).
Abatement Worker Annual Review (Certified 9/6/90).

(ix)(a) *Training Provider:* Balsm Environmental Consultants.
Address: 59 Stiles Rd., Salem, NH 03079, Contact: Dougles Lawson, Phone: (603) 893-0616.
(b) *Approved Courses:*
Inspector/Management Planner (Certified 3/1/90).
Inspector/Management Planner Annual Review (Certified 3/1/90).
Project Designer (Certified 3/1/90).
Project Designer Annual Review (Certified 3/1/90).

(x)(a) *Training Provider:* Certified Engineering & Testing Co., Inc.
Address: 100 Grossman Dr., Braintree, MA 02184, Contact: Robert Thornburgh, Phone: (617) 849-0111.
(b) *Approved Courses:*
Abatement Worker (Certified 9/26/88).
Abatement Worker Annual Review (Certified 9/26/88).
Contractor/Supervisor (Certified 9/26/88).
Contractor/Supervisor Annual Review (Certified 9/26/88).
Inspector/Management Planner (Certified 9/26/88).
Inspector/Management Planner Annual Review (Certified 9/26/88).
Project Designer (Certified 9/26/88).

(xi)(a) *Training Provider:* Community College of Rhode Island.
Address: 1762 Louisquisset Pike, Lincoln, RI 02865, Contact: Richard Tessier, Phone: (401) 333-7060.
(b) *Approved Courses:*
Contractor/Supervisor (Certified 7/30/90).
Contractor/Supervisor Annual Review (Certified 2/5/90).
Inspector/Management Planner (Certified 7/30/90).
Inspector/Management Planner Annual Review (Certified 8/3/89).

(xii)(a) *Training Provider:* Con-Test, Inc.
Address: P.O. Box 591, East Longmeadow, MA 01028, Contact: Brenda Boldue, Phone: (413) 525-1198.
(b) *Approved Courses:*
Abatement Worker (Certified 2/25/88).
Abatement Worker Annual Review (Certified 2/25/89).
Contractor/Supervisor (Certified 2/25/88).
Contractor/Supervisor Annual Review (Certified 2/25/89).
Inspector/Management Planner (Certified 2/25/88).
Inspector/Management Planner Annual Review (Certified 2/25/89).
Project Designer (Certified 2/25/88).
Project Designer Annual Review (Certified 2/25/88).

(xiii)(a) *Training Provider:* Dennison Environmental, Inc.
Address: 35 Industrial Hwy., Woburn, MA 01880, Contact: Joan Ryan, Phone: (617) 932-9400.
(b) *Approved Courses:*
Abatement Worker (Certified 4/8/88).
Abatement Worker Annual Review (Certified 4/8/89).
Contractor/Supervisor (Certified 4/8/88).
Contractor/Supervisor Annual Review (Certified 4/8/89).
Inspector (Certified 4/8/88).
Inspector/Management Planner Annual Review (Certified 4/8/89).

(xiv)(a) *Training Provider:* ESTRI.
Address: 55 Ferncraft Rd., Suite 201, Danvers, MA 01923, Contact: Martin Leavitt, Phone: (508) 777-8789.
(b) *Approved Courses:*
Abatement Worker (Certified 7/17/89).
Abatement Worker Annual Review (Certified 7/17/89).
Contractor/Supervisor (Certified 7/17/89).
Contractor/Supervisor Annual Review (Certified 7/17/89).
Inspector/Management Planner (Certified 9/12/89).
Inspector/Management Planner Annual Review (Certified 9/12/89).

(xv)(a) *Training Provider:* EcoSystems, Inc.
Address: 2 Deerwood Rd., Westport, CT 06880, Contact: Richard Doyle, Phone: (203) 226-4421.
(b) *Approved Courses:*
Abatement Worker (Certified 6/13/89).
Contractor/Supervisor (Certified 6/13/89).

(xvi)(a) *Training Provider:* Enviromed Services.
Address: 25 Science Park, New Haven, CT 06511, Contact: Lawrence J. Cannon, Phone: (203) 786-5580.
(b) *Approved Courses:*
Abatement Worker (Certified 10/16/89).
Contractor/Supervisor (Certified 10/16/89).
Contractor/Supervisor Annual Review (Certified 10/16/89).

(xvii)(a) *Training Provider:* Environmental Training Corp.
Address: 100 Moody St., Suite 200, Ludlow, MA 01056, Contact: Ann Folta, Phone: (413) 589-1882.
(b) *Approved Courses:*
Abatement Worker (Certified 8/5/88).
Abatement Worker Annual Review (Certified 8/5/89).
Contractor/Supervisor (Certified 8/5/88).
Contractor/Supervisor Annual Review (Certified 8/5/89).

(xviii)(a) *Training Provider:* Environmental Training Services.
Address: 62 - H Montvale Pl., Stoneham, MA 02180, Contact: Maryann Martin, Phone: (617) 279-0855.
(b) *Approved Courses:*
Abatement Worker (Certified 4/8/88).
Abatement Worker Annual Review (Certified 4/8/89).
Contractor/Supervisor (Certified 4/8/88).
Contractor/Supervisor Annual Review (Certified 4/8/89).

(xix)(a) *Training Provider:* GSX Northeast Solvents Inc.
Address: 221 Sutton St., N. Audover, MA 01845, Contact: Cynthia Whaler, Phone: (508) 683-1002.
(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 4/17/90).
Contractor/Supervisor Annual Review (Certified 4/17/90).

(xx)(a) *Training Provider:* General Physics Corp.
Address: 6700 Alexander Bell Dr., Columbia, MD 21046, Contact: Andy Marsh, Phone: (301) 290-2300.
(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 9/6/88).
Contractor/Supervisor (Certified 9/6/88).
Contractor/Supervisor Annual Review (Certified 9/6/88).

(xxi)(a) *Training Provider:* Hall-Kimbrell Environmental Services.
Address: P.O. Box 307, Lawrence, KS 66046, Contact: Alice Hart, Phone: (800) 346-2860.
(b) *Approved Courses:*
Abatement Worker (Certified 4/25/88).
Abatement Worker Annual Review (Certified 4/25/88).
Contractor/Supervisor (Certified 4/25/88).
Contractor/Supervisor Annual Review (Certified 4/25/88).
Inspector/Management Planner (Certified 4/25/88).

Inspector/Management Planner Annual Review (Certified 4/25/88).
Project Designer (Certified 4/25/88).
Project Designer Annual Review (Certified 4/25/88).

(xxii)(a) *Training Provider:* Harvard School of Public Health.
Address: 677 Huntington Ave., Boston, MA 02115, Contact: William A. Burgess, Phone: (617) 732-1171.
(b) *Approved Courses:*
Contractor/Supervisor (Certified 2/25/88).
Inspector/Management Planner (Certified 2/25/88).
Inspector/Management Planner Annual Review (Certified 5/25/89).
Project Designer (Certified 2/25/88).
Project Designer Annual Review (Certified 5/25/89).

(xxiii)(a) *Training Provider:* Hygeia, Inc.
Address: 303 Bear Hill Rd., Waltham, MA 02154, Contact: David Kaplan, Phone: (617) 890-4999.
(b) *Approved Courses:*
Abatement Worker (Certified 6/5/88).
Abatement Worker Annual Review (Certified 10/31/89).
Contractor/Supervisor (Certified 8/5/88).
Contractor/Supervisor Annual Review (Certified 10/31/89).
Inspector/Management Planner (Certified 3/23/90).
Inspector/Management Planner Annual Review (Certified 3/23/90).

(xxiv)(a) *Training Provider:* Hygienetics, Inc.
Address: 150 Causeway St., Boston, MA 02114, Contact: Marybeth Carver, Phone: (617) 723-4864.
(b) *Approved Courses:*
Abatement Worker (Certified 2/25/89).
Abatement Worker Annual Review (Certified 2/25/89).
Contractor/Supervisor (Certified 2/25/89).
Contractor/Supervisor Annual Review (Certified 2/25/89).
Inspector/Management Planner (Certified 2/25/89).
Inspector/Management Planner Annual Review (Certified 2/25/89).
Project Designer Annual Review (Certified 3/14/91).

(xxv)(a) *Training Provider:* Institute for Environmental Education.
Address: 500 West Cummings Pk., Suite 3650, Woburn, MA 01801, Contact: Starla L. Engelhardt, Phone: (617) 935-7370.
(b) *Approved Courses:*
Abatement Worker (Certified 4/28/88).
Abatement Worker Annual Review (Certified 5/28/89).
Contractor/Supervisor (Certified 4/28/88).
Contractor/Supervisor Annual Review (Certified 5/28/89).
Inspector/Management Planner (Certified 4/28/88).
Inspector/Management Planner Annual Review (Certified 5/28/89).
Project Designer (Certified 4/28/88).
Project Designer Annual Review (Certified 4/28/88).

(xxvi)(a) *Training Provider:* JF Walton & Co.
Address: 201 Marginal St., P.O. Box 8120, Chelsea, MA 02150, Contact: James O'Connor, Phone: (617) 884-0350.
(b) *Approved Courses:*
Abatement Worker (Certified 3/28/88).
Abatement Worker Annual Review (Certified 3/28/89).

(xxvii)(a) *Training Provider:* Kaselaan & D'Angelo Associates.
Address: 500 Victory Rd., Suite 270, North Quincy, MA 02171, Contact: Paul Heffernan, Phone: (617) 472-1330.
(b) *Approved Courses:*
Abatement Worker (Certified 2/25/88).
Abatement Worker Annual Review (Certified 2/25/89).
Contractor/Supervisor (Certified 2/25/88).
Contractor/Supervisor Annual Review (Certified 2/25/89).
Inspector/Management Planner (Certified 2/25/88).
Inspector/Management Planner Annual Review (Certified 2/25/89).

(xxviii)(a) *Training Provider:* Metcalf and Eddy Services Inc.
Address: 30 Harvard Mill Square, Wakefield, MA 01880, Contact: Gary Rodriques, Phone: (508) 777-8789.
(b) *Approved Courses:*
Abatement Worker (Certified 10/23/90).
Abatement Worker Annual Review (Certified 10/23/90).
Contractor/Supervisor (Certified 10/23/90).
Contractor/Supervisor Annual Review (Certified 10/23/90).
Inspector/Management Planner (Certified 10/23/90).
Inspector/Management Planner Annual Review (Certified 10/23/90).

(xxix)(a) *Training Provider:* Mystic Air Quality Consultants.
Address: 1085 Buddington Rd., Groton, CT 06340, Contact: Christopher Eident, Phone: (203) 449-8883.
(b) *Approved Courses:*
Abatement Worker (Certified 1/11/89).
Abatement Worker Annual Review (Certified 2/2/90).
Contractor/Supervisor (Certified 1/11/89).
Contractor/Supervisor Annual Review (Certified 1/11/89).
Inspector/Management Planner (Certified 2/2/90).
Inspector/Management Planner Annual Review (Certified 2/2/90).

(xxx)(a) *Training Provider:* National Asbestos Training Center of Kansas.
Address: 6600 College Blvd., Overland Park, KS 66211, Contact: Lani Himegarner, Phone: (913) 491-0181.
(b) *Approved Courses:*
Abatement Worker (Certified 5/20/88).
Abatement Worker Annual Review (Certified 5/20/89).
Contractor/Supervisor (Certified 5/20/88).
Contractor/Supervisor Annual Review (Certified 5/20/89).

(xxxi)(a) *Training Provider:* National Training Fund/Workers Institute for Safety & Health (WISH).
Address: 1126 16th St., NW., Washington, DC 20036, Contact: Scott Schneider, Phone: (202) 887-1980.
(b) *Approved Courses:*
Abatement Worker (Certified 5/10/88).
Contractor/Supervisor (Certified 5/10/88).
Contractor/Supervisor Annual Review (Certified 5/10/89).

(xxxii)(a) *Training Provider:* New England Laborers Training Trust Fund.
Address: 37 East St., Hopkinton, MA 01748-2699, Contact: James Merloni, Jr., Phone: (617) 435-6316.
(b) *Approved Courses:*
Abatement Worker (Certified 2/25/88).
Abatement Worker Annual Review (Certified 2/25/89).
Contractor/Supervisor (Certified 2/25/89).
Contractor/Supervisor Annual Review (Certified 8/8/88).

(xxxiii)(a) *Training Provider:* Northern Asbestos Abatement Co.
Address: 757 A Turnpike St., North Andover, MA 01845, Contact: J. William Vitta, Phone: (508) 681-8711.
(b) *Approved Courses:*
Abatement Worker (Certified 3/16/89 to 4/15/89 only).
Abatement Worker Annual Review (Certified 3/16/89 to 4/15/89 only).
Contractor/Supervisor (Certified 3/16/89 to 4/15/89 only).
Contractor/Supervisor Annual Review (Certified 3/16/89 to 4/15/89 only).

(xxxiv)(a) *Training Provider:* O'Brien & Gere Engineers, Inc.
Address: 1304 Buckley Rd., Syracuse, NY 13221, Contact: Edwin Tifft, Phone: (315) 451-4700.
(b) *Approved Courses:*

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Inspector/Management Planner (Certified 11/7/88).
Project Designer (Certified 11/7/88).

(xxxv)(a) *Training Provider:* Quality Control Services, Inc.
Address: 10 Lowell Junction Rd., Andover, MA 01810, Contact: Ajay Pathak, Phone: (508) 475-0623.
(b) *Approved Courses:*
Abatement Worker (Certified 5/6/88).
Abatement Worker Annual Review (Certified 5/16/89).
Contractor/Supervisor (Certified 5/6/88).
Contractor/Supervisor Annual Review (Certified 5/16/89).

(xxxvi)(a) *Training Provider:* Safety Council of Western Massachusetts.
Address: 90 Berkshire Ave., Springfield, MA 01109, Contact: Tate Berkan, Phone: (413) 737-7908.
(b) *Approved Courses:*
Abatement Worker (Certified 6/21/88).
Abatement Worker Annual Review (Certified 6/21/89).

(xxxvii)(a) *Training Provider:* Seagull/Acts.
Address: 903 NW 6th Ave., Ft Lauderdale, FL 33311, Contact: James Stump, Phone: (305) 524-7208.
(b) *Approved Courses:*
Abatement Worker (Certified 12/10/90).
Abatement Worker Annual Review (Certified 12/10/90).
Contractor/Supervisor (Certified 12/10/90).
Contractor/Supervisor Annual Review (Certified 12/10/90).

(xxxviii)(a) *Training Provider:* The Environmental Institute.
Address: 350 Franklin Rd., Suite 300, Marietta, GA 30067, Contact: Bill Ewing, Phone: (404) 425-2000.
(b) *Approved Courses:*
Contractor/Supervisor (Certified 10/28/88).
Contractor/Supervisor Annual Review (Certified 10/28/88).
Inspector/Management Planner (Certified 10/28/88).
Project Designer (Certified 10/28/88).

(xxxix)(a) *Training Provider:* Tufts University Asbestos Information Center.
Address: 474 Boston Ave., Medford, MA 02155, Contact: Anne Chabot, Phone: (617) 381-3531.
(b) *Approved Courses:*
Abatement Worker (Certified 3/16/88).
Abatement Worker Annual Review (Certified 3/16/89).
Contractor/Supervisor (Certified 3/16/88).
Contractor/Supervisor Annual Review (Certified 3/16/89).
Inspector/Management Planner (Certified 3/16/88).
Inspector/Management Planner Annual Review (Certified 3/16/89).
Project Designer (Certified 3/16/88).
Project Designer Annual Review (Certified 3/16/89).

(xl)(a) *Training Provider:* United Environmental Systems.
Address: 35 W 35th St., 3rd Floor, New York, NY 10001, Contact: Holly Tate, Phone: (215) 923-5441.
(b) *Approved Courses:*
Abatement Worker (Certified 10/12/90).
Abatement Worker Annual Review (Certified 10/12/90).
Contractor/Supervisor (Certified 10/12/90).

(xli)(a) *Training Provider:* University of Massachusetts Environmental Health & Safety.
Address: N. 414 Morrill Science Center, Amherst, MA 01003, Contact: Al Soreuseu, Phone: (413) 545-2682.
(b) *Approved Course:*
Abatement Worker Annual Review (Certified 10/3/89).

(xlii)(a) *Training Provider:* Weston-Atc, Inc.
Address: 1635 Pumphrey Ave., Auburn, AL 36830, Contact: Ron Thompson, Phone: (205) 826-6100.
(b) *Approved Courses:*
Contractor/Supervisor (Certified 5/25/89).
Contractor/Supervisor Annual Review (Certified 5/25/89).
Inspector/Management Planner (Certified 5/25/89).
Inspector/Management Planner Annual Review (Certified 5/25/89).
Project Designer (Certified 5/25/89).
Project Designer Annual Review (Certified 5/25/89).

(xliii)(a) *Training Provider:* Young Sales Corp.
Address: 1054 Central Industrial Drive, St. Louis, MO 63110, Contact: W. Todd McCane, Phone: (314) 771-3080.
(b) *Approved Course:*
Abatement Worker (Certified 6/13/89).

Michigan.

(13)(a) *State Agency:* State of Michigan Dept. of Public Health.
Address: 3500 North Logan, P.O. Box 30035, Lansing, MI 48909, Contact: Bill DeLiefde, Phone: (517) 335-8186.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 4/13/89).
Contractor/Supervisor (full from 4/13/89).
Inspector (full from 4/13/89).
Inspector/Management Planner (full from 4/13/89).
Project Designer (full from 4/13/89).

(i)(a) *Training Provider:* Aerospace America, Inc.
Address: P.O. Box 146, Bay City, MI 48707, Contact: Joseph P. Goldring, Phone: (517) 684-2121.
(b) *Approved Courses:*
Abatement Worker (Certified 1/31/90).
Abatement Worker Annual Review (Certified 4/26/90).
Contractor/Supervisor (Certified 1/31/91).
Contractor/Supervisor Annual Review (Certified 4/26/90).

(ii)(a) *Training Provider:* Alderink & Associates, Inc.
Address: 3221 3 Miles Rd., NW., Grand Rapids, MI 49504, Contact: David Lutheuhoff, Phone: (616) 791-0730.
(b) *Approved Courses:*
Abatement Worker (Certified 11/28/89).
Abatement Worker Annual Review (Certified 11/28/89).
Contractor/Supervisor (Certified 11/28/89).
Contractor/Supervisor Annual Review (Certified 11/28/89).

(iii)(a) *Training Provider:* Asbestos Management, Inc.
Address: 36700 S. Huron Rd., New Boston, MI 48164, Contact: LaDonna Slifco, Phone: (313) 961-6135.
(b) *Approved Courses:*
Abatement Worker (Certified 12/20/89).
Abatement Worker Annual Review (Certified 12/20/89).
Contractor/Supervisor (Certified 12/20/89).
Contractor/Supervisor Annual Review (Certified 12/20/89).
Inspector/Management Planner (Certified 12/20/89).
Inspector/Management Planner Annual Review (Certified 12/20/89).

(iv)(a) *Training Provider:* Asbestos Services Inc.
Address: 9028 Hills Rd., Baroda, MI 49101, Contact: Dennis W Calkins, Phone: (616) 422-2174.
(b) *Approved Courses:*
Abatement Worker (Certified 1/11/90).
Abatement Worker Annual Review (Certified 1/11/90).
Contractor/Supervisor (Certified 1/11/90).
Contractor/Supervisor Annual Review (Certified 1/11/90).

(v)(a) *Training Provider:* Asbestos Workers Local 25.
Address: 29200 Vasser, Livonia, MI 48152, Contact: Dan A. Somenauer, Phone: (313) 471-1007.
(b) *Approved Courses:*
Abatement Worker (Certified 4/25/90).

Abatement Worker Annual Review (Certified 4/25/90).
Contractor/Supervisor (Certified 7/12/90).
Contractor/Supervisor Annual Review (Certified 7/12/90).

(vi)(a) *Training Provider:* Asbestos Workers Local 47.
Address: 8735 O' Hern, Saginaw, MI 48603, Contact: Greg Revard, Phone: (517) 781-1627.
(b) *Approved Courses:*
Abatement Worker (Certified 3/20/90).
Abatement Worker Annual Review (Certified 3/20/90).

(vii)(a) *Training Provider:* BDN Industrial Hygiene Consultants.
Address: 8105 Valleywood Ln., Portage, MI 49002, Contact: Brent Bassett, Phone: (616) 329-1237.
(b) *Approved Courses:*
Abatement Worker (Certified 11/13/89).
Abatement Worker Annual Review (Certified 11/13/89).
Contractor/Supervisor (Certified 11/13/89).
Contractor/Supervisor Annual Review (Certified 11/13/89).
Inspector/Management Planner (Certified 12/14/89).
Inspector/Management Planner Annual Review (Certified 4/24/90).
Project Designer Annual Review (Certified 11/21/90).

(viii)(a) *Training Provider:* Barton Associates.
Address: 1265 Westport Rd., Ann Arbor, MI 48103, Contact: Sara Bassett, Phone: (313) 665-3681.
(b) *Approved Courses:*
Abatement Worker (Certified 1/19/90).
Abatement Worker Annual Review (Certified 4/5/90).
Contractor/Supervisor (Certified 9/18/89).
Contractor/Supervisor Annual Review (Certified 4/5/90).

(ix)(a) *Training Provider:* Bierlein Demolition.
Address: 2903 S. Graham Rd., Saginaw, MI 48603, Contact: Ramond E. Passeno, Phone: (517) 781-1810.
(b) *Approved Courses:*
Contractor/Supervisor (Certified 11/20/89).
Contractor/Supervisor Annual Review (Certified 11/20/89).

(x)(a) *Training Provider:* Burdco Environmental, Inc.
Address: P.O. Box 52638, Livonia, MI 48150, Contact: Van S. Mauzy, Phone: (313) 462-9490.
(b) *Approved Courses:*
Abatement Worker (Certified 2/5/91).
Abatement Worker Annual Review (Certified 2/5/91).
Contractor/Supervisor Annual Review (Certified 2/5/91).

(xi)(a) *Training Provider:* Clayton Environmental Consit.
Address: 22345 Roethel Dr., Novi, MI 48050, Contact: Charlotte Heideman, Phone: (313) 344-1770.
(b) *Approved Courses:*
Inspector/Management Planner (Certified 2/9/90).
Inspector/Management Planner Annual Review (Certified 1/9/90).

(xii)(a) *Training Provider:* Clean Air Management, Inc.
Address: 39319 Plymouth Rd., Livonia, MI 48150, Contact: James Kukalis, Phone: (313) 462-0800.
(b) *Approved Courses:*
Abatement Worker (Certified 5/29/90).
Contractor/Supervisor (Certified 5/29/90).

(xiii)(a) *Training Provider:* DeLisle Associates, LTD.
Address: 8225 Moorsbridge Rd., Portage, MI 49002, Contact: Mark DeLisle, Phone: (616) 327-8225.
(b) *Approved Courses:*
Abatement Worker (Certified 12/12/89).
Abatement Worker Annual Review (Certified 12/12/89).
Contractor/Supervisor (Certified 12/12/89).
Contractor/Supervisor Annual Review (Certified 12/12/89).
Inspector/Management Planner (Certified 12/12/89).
Inspector/Management Planner Annual Review (Certified 12/12/89).

(xiv)(a) *Training Provider:* EMU Corporate Services.
Address: 3075 Washtenaw Ave., Ypsilanti, MI 48197, Contact: Bertrand Ramsay, Phone: (313) 487-2259.
(b) *Approved Courses:*
Abatement Worker (Certified 1/5/90).
Abatement Worker Annual Review (Certified 11/1/89).
Contractor/Supervisor (Certified 1/5/90).
Contractor/Supervisor Annual Review (Certified 1/5/90).
Inspector/Management Planner (Certified 1/5/90).
Inspector/Management Planner Annual Review (Certified 1/5/90).

(xv)(a) *Training Provider:* ENTELA Engineering Service.
Address: 4020 W. River Dr., Comstock Park, MI 49321, Contact: Bruce H. Connell, Phone: (616) 784-7774.
(b) *Approved Courses:*
Abatement Worker (Certified 9/26/89).
Abatement Worker Annual Review (Certified 12/14/89).
Contractor/Supervisor (Certified 9/26/89).
Contractor/Supervisor Annual Review (Certified 12/14/89).

(xvi)(a) *Training Provider:* Environmental & Occupational, Consulting & Training.
Address: 3410 East Cork St., Kalamazoo, MI 49001, Contact: A. Clark Kahn, Phone: (616) 388-6085.
(b) *Approved Courses:*
Abatement Worker (Certified 11/14/89).
Abatement Worker Annual Review (Certified 11/14/89).
Contractor/Supervisor (Certified 11/14/89).
Contractor/Supervisor Annual Review (Certified 11/14/89).

(xvii)(a) *Training Provider:* Environmental Abatement System.
Address: 2727 Second Ave, Suite G-13, Detroit, MI 48201, Contact: Farrell Davis, Phone: (313) 961-6910.
(b) *Approved Courses:*
Abatement Worker (Certified 4/25/90).
Abatement Worker Annual Review (Certified 4/25/90).
Contractor/Supervisor (Certified 4/25/90).
Contractor/Supervisor Annual Review (Certified 4/25/90).

(xviii)(a) *Training Provider:* Environmental Diversified Service.
Address: 24356 Sherwood, Centerline, MI 48015, Contact: Michael D. Berg, Phone: (313) 757-4800.
(b) *Approved Course:*
Abatement Worker (Certified 6/13/90).

(xix)(a) *Training Provider:* Fibertec Inc.
Address: 700 Abbott Rd., East Lansing, MI 48823, Contact: Matthew H. Frisch, Phone: (517) 351-0345.
(b) *Approved Course:*
Contractor/Supervisor (Certified 10/4/89).

(xx)(a) *Training Provider:* G & H Contracting Assoc.
Address: 300 Acron St., Plainwell, MI 49080, Contact: Gregory G. Moe, Phone: (616) 685-1606.
(b) *Approved Courses:*
Abatement Worker (Certified 12/20/89).
Contractor/Supervisor (Certified 12/20/89).

(xxi)(a) *Training Provider:* Hall-Kimbrell Environ Services.
Address: 4840 W. 15th St., Lawrence, KS 66044, Contact: Alice Hart, Phone: (800) 346-2860.
(b) *Approved Courses:*
Abatement Worker (Certified 4/2/90).
Abatement Worker Annual Review (Certified 4/2/90).

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Contractor/Supervisor (Certified 4/2/90).
Contractor/Supervisor Annual Review (Certified 4/2/90).

(xxii)(a) *Training Provider:* Howard Abatement Inc.
Address: 25415 Glendale Ave., Redford, MI 48239, Contact: William R. Wyler, Phone: (313) 537-4974.
(b) *Approved Courses:*
Abatement Worker (Certified 5/29/90).
Contractor/Supervisor (Certified 5/29/90).

(xxiii)(a) *Training Provider:* Industrial Environmental Consulting.
Address: 2875 Northwind, E. Lansing, MI 48823, Contact: Michael Tillotson, Phone: (517) 332-7026.
(b) *Approved Courses:*
Abatement Worker (Certified 1/2/90).
Abatement Worker Annual Review (Certified 1/2/90).
Contractor/Supervisor (Certified 1/2/90).
Contractor/Supervisor Annual Review (Certified 1/2/90).
Inspector/Management Planner (Certified 1/2/90).
Inspector/Management Planner Annual Review (Certified 1/2/90).

(xxiv)(a) *Training Provider:* Jensen Environmental & Training.
Address: 651 Fisher Rd., Grosse Pointe, Mi 48230, Contact: Leonard L. Jensen, Phone: (313) 882-2021.
(b) *Approved Courses:*
Abatement Worker (Certified 5/7/90).
Abatement Worker Annual Review (Certified 8/25/89).
Contractor/Supervisor (Certified 5/7/90).
Contractor/Supervisor Annual Review (Certified 8/25/89).
Inspector/Management Planner (Certified 2/12/91).
Inspector/Management Planner Annual Review (Certified 8/25/90).
Project Designer (Certified 2/12/91).
Project Designer Annual Review (Certified 12/21/90).

(xxv)(a) *Training Provider:* Kemron Environmental Services.
Address: 39830 Grand River, B-2, Novi, MI 48375, Contact: Henry D. Baier, Phone: (313) 474-4200.
(b) *Approved Courses:*
Abatement Worker (Certified 1/22/90).
Abatement Worker Annual Review (Certified 1/22/90).
Contractor/Supervisor (Certified 1/22/90).
Contractor/Supervisor Annual Review (Certified 1/22/90).
Inspector (Certified 3/15/90).
Inspector Annual Review (Certified 3/15/90).

(xxvi)(a) *Training Provider:* Manage Right Asbestos.
Address: 314 W. Genesee Ave., Saginaw, MI 48602, Contact: Mary Margaret Brown, Phone: (517) 753-9290.
(b) *Approved Courses:*
Abatement Worker (Certified 1/2/90).
Contractor/Supervisor (Certified 1/2/90).

(xxvii)(a) *Training Provider:* Michigan Laborers' Training.
Address: 11155 S. Beardslee Rd., Perry, MI 48872, Contact: Edwin H. McDonald, Phone: (517) 625-4919.
(b) *Approved Courses:*
Abatement Worker (Certified 9/21/89).
Abatement Worker Annual Review (Certified 9/12/89).
Contractor/Supervisor (Certified 9/12/89).
Contractor/Supervisor Annual Review (Certified 9/12/89).

(xxviii)(a) *Training Provider:* NTH Consultants, Ltd.
Address: 38955 Hills Tech Drive, Farmington Hills, MI 48331, Contact: Vickie Jo Armstrong, Phone: (313) 553-6300.
(b) *Approved Courses:*
Abatement Worker (Certified 9/14/90).
Abatement Worker Annual Review (Certified 8/6/90).
Contractor/Supervisor (Certified 12/7/90).
Contractor/Supervisor Annual Review (Certified 12/7/90).
Project Designer Annual Review (Certified 1/30/91).

(xxix)(a) *Training Provider:* National Asbestos Abatement.
Address: 3080 N. Center Rd., Flint, MI 48506, Contact: James Sheaffer, Phone: (313) 736-7911.
(b) *Approved Courses:*
Abatement Worker (Certified 3/20/90).
Abatement Worker Annual Review (Certified 3/20/90).
Contractor/Supervisor (Certified 3/20/90).
Contractor/Supervisor Annual Review (Certified 3/20/90).

(xxx)(a) *Training Provider:* National Training Fund/Workers Institute.
Address: 1126 Sixteenth St., NW., Washington, DC 20036, Contact: Scott Schneider, Phone: (202) 887-1000.
(b) *Approved Courses:*
Abatement Worker (Certified 6/21/90).
Abatement Worker Annual Review (Certified 6/21/90).
Contractor/Supervisor (Certified 6/21/90).
Contractor/Supervisor Annual Review (Certified 6/21/90).

(xxxi)(a) *Training Provider:* Northern Safety Consultants.
Address: 1406 Lincoln Ave., Marquette, MI 49855, Contact: Christopher Baker, Phone: (906) 228-5161.
(b) *Approved Courses:*
Abatement Worker (Certified 3/14/90).
Abatement Worker Annual Review (Certified 3/14/90).
Contractor/Supervisor (Certified 3/14/90).
Contractor/Supervisor Annual Review (Certified 3/14/90).
Project Designer (Certified 3/14/90).
Project Designer Annual Review (Certified 3/14/90).

(xxxii)(a) *Training Provider:* Nova Environmental, Inc.
Address: 5340 Plymouth Rd., Suite 210, Ann Arbor, MI 48105, Contact: Kary S. Amin, Phone: (313) 930-0995.
(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 4/13/90).
Contractor/Supervisor (Certified 9/26/90).
Contractor/Supervisor Annual Review (Certified 1/2/90).
Inspector/Management Planner (Certified 9/14/90).
Inspector/Management Planner Annual Review (Certified 12/14/89).

(xxxiii)(a) *Training Provider:* Onikepo Inc.
Address: 3643 W. Outer Dr., Detroit, MI 48221, Contact: Constance S. Molette, Phone: (313) 862-9321.
(b) *Approved Courses:*
Abatement Worker (Certified 5/7/90).
Abatement Worker Annual Review (Certified 5/7/90).
Contractor/Supervisor (Certified 5/7/90).

(xxxiv)(a) *Training Provider:* SE MI Coalition on Occ Safety.
Address: 2727 Second Ave., Detroit, MI 48201, Contact: Donele Wilkins, Phone: (313) 961-3345.
(b) *Approved Courses:*
Abatement Worker (Certified 11/28/89).
Abatement Worker Annual Review (Certified 11/28/89).

(xxxv)(a) *Training Provider:* Sierra Analytical & Consulting.
Address: 237 Dino Dr., Ann Arbor, MI 48103, Contact: David Nelson, Phone: (313) 662-1155.
(b) *Approved Courses:*
Abatement Worker (Certified 3/27/90).
Abatement Worker Annual Review (Certified 3/14/90).
Contractor/Supervisor (Certified 12/18/89).

Contractor/Supervisor Annual Review (Certified 3/14/90).
Inspector (Certified 6/25/90).

(xxxvi)(a) *Training Provider:* Summit Abatement Contracting.
Address: 7255 Tower Rd., Battle Creek, MI 49017, Contact: William Morris, Phone: (616) 968-4242.
(b) *Approved Courses:*
Abatement Worker (Certified 11/22/89).
Abatement Worker Annual Review (Certified 11/22/89).
Contractor/Supervisor (Certified 11/22/89).
Contractor/Supervisor Annual Review (Certified 11/22/89).

(xxxvii)(a) *Training Provider:* Testing Engineers & Consultants.
Address: 1333 Rochester Rd., Troy, MI 48099, Contact: Karen Brunch, Phone: (313) 588-6200.
(b) *Approved Courses:*
Abatement Worker (Certified 7/13/90).
Contractor/Supervisor (Certified 12/1/89).
Contractor/Supervisor Annual Review (Certified 6/28/90).
Inspector/Management Planner (Certified 11/13/89).
Inspector/Management Planner Annual Review (Certified 11/13/89).

(xxxviii)(a) *Training Provider:* The Brand Companies, Inc.
Address: 1420 Renaissance Dr., Park Ridge, IL 60068, Contact: Dolores A. Lott, Phone: (708) 298-1200.
(b) *Approved Courses:*
Contractor/Supervisor (Certified 6/27/90).
Contractor/Supervisor Annual Review (Certified 6/27/90).

(xxxix)(a) *Training Provider:* The Environmental Management.
Address: 314 S. State Ave., Indianapolis, IN 46201, Contact: Joseph Parker, Phone: (317) 269-3618.
(b) *Approved Courses:*
Abatement Worker (Certified 5/16/90 to 12/28/90 only).
Abatement Worker Annual Review (Certified 5/16/90 to 12/28/90 only).

(xl)(a) *Training Provider:* Thermico Inc.
Address: 3405 Centennial Dr., Midland, MI 48640, Contact: Kevin Otis, Phone: (517) 496-2927.
(b) *Approved Courses:*
Abatement Worker (Certified 4/2/90).
Abatement Worker Annual Review (Certified 4/24/90).
Contractor/Supervisor (Certified 4/25/90).
Contractor/Supervisor Annual Review (Certified 4/25/90).

(xli)(a) *Training Provider:* Trust Thermal Systems.
Address: 13109 Schavey Rd., Suite 2 Dewitt, Dewitt, MI 48820, Contact: Thomas J. Lowe, Phone: (517) 669-8834.
(b) *Approved Courses:*
Abatement Worker (Certified 1/8/90).
Abatement Worker Annual Review (Certified 1/8/90).
Contractor/Supervisor (Certified 1/8/90).
Contractor/Supervisor Annual Review (Certified 1/8/90).

(xlii)(a) *Training Provider:* Wonder Makers, Inc.
Address: 3101 Darmo, Kalamaoo, MI 49008, Contact: Michael Pinto, Phone: (616) 382-4154.
(b) *Approved Courses:*
Abatement Worker (Certified 11/20/89).
Abatement Worker Annual Review (Certified 11/20/89).
Contractor/Supervisor (Certified 11/20/89).
Contractor/Supervisor Annual Review (Certified 11/20/89).
Inspector/Management Planner (Certified 11/20/89).
Inspector/Management Planner Annual Review (Certified 11/20/89).

Minnesota.

(14)(a) *State Agency:* Minnesota Dept. of Health, Division of Environmental Health, Section of Occupational Health, Address: 925 Southeast Delaware St., P.O. Box 59040, Minneapolis, MN 55459-0040, Contact: William A. Fetzner, Phone: (612) 627-5097.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 10/3/88).
Contractor/Supervisor (full from 10/3/88).

(i)(a) *Training Provider:* Aerostat Environmental Engineering.
Address: Box 3096, Lawrence, KS 66046, Contact: Damir Joseph Stimac, Phone: (913) 749-4747.
(b) *Approved Course:*
Contractor/Supervisor Annual Review (Certified 12/4/90).

(ii)(a) *Training Provider:* Applied Environmental Sciences, Inc. (AES).
Address: Minneapolis Business & Tec. Center, Box 220, 511 11th Ave. South, Minneapolis, MN 55415, Contact: Franklin H. Dickson, Phone: (612) 339-5559.
(b) *Approved Courses:*
Abatement Worker (Certified 1/16/90).
Abatement Worker Annual Review (Certified 12/11/89).
Contractor/Supervisor (Certified 1/16/90).
Contractor/Supervisor Annual Review (Certified 12/11/89).

(iii)(a) *Training Provider:* Asbestos Technology & Training, Inc.
Address: 840 Hampden Ave., Suite 110, St. Paul, MN 55114, Contact: James Risimini, Phone: (612) 649-0043.
(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 12/29/89 to 4/1/91 only).
Contractor/Supervisor Annual Review (Certified 12/29/89 to 4/1/91 only).

(iv)(a) *Training Provider:* Hall-Kimbrell Environmental Services.
Address: 4840 West 15th St., Lawrence, KS 66049, Contact: Alice M. Hartz, Phone: (800) 346-2860.
(b) *Approved Courses:*
Abatement Worker (Certified 1/12/90).
Abatement Worker Annual Review (Certified 1/12/90).
Contractor/Supervisor (Certified 1/12/90).
Contractor/Supervisor Annual Review (Certified 1/12/90).

(v)(a) *Training Provider:* Ilse Engineering Inc.
Address: 205 Board of Trade Building, Duluth, MN 55802, Contact: John F. Ilse, Phone: (218) 720-3526.
(b) *Approved Courses:*
Contractor/Supervisor (Certified 1/23/90).
Contractor/Supervisor Annual Review (Certified 1/23/90).

(vi)(a) *Training Provider:* Institute for Environmental Assessment, Inc.
Address: 433 Jackson St., Anoka, MN 55303, Contact: Jesse Lee, Phone: (612) 323-9770.
(b) *Approved Courses:*
Abatement Worker (Certified 11/12/89).
Abatement Worker Annual Review (Certified 11/12/89).
Contractor/Supervisor (Certified 11/12/89).
Contractor/Supervisor Annual Review (Certified 11/12/89).

(vii)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local No. 34.
Address: 708 South 10th St., Minneapolis, MN 55404, Contact: Lee Houske, Phone: (612) 332-3216.
(b) *Approved Courses:*
Abatement Worker (Certified 11/2/89).
Abatement Worker Annual Review (Certified 6/27/89).
Contractor/Supervisor (Certified 11/2/89).
Contractor/Supervisor Annual Review (Certified 6/27/89).

(viii)(a) *Training Provider:* Laborers District Council of Minnesota and North Dakota.

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Address: 1388 Carroll Ave., St. Paul, MN 55104, Contact: Kenneth J. Lynch, Phone: (612) 645-7981.

(b) *Approved Courses:*

Abatement Worker (Certified 12/17/90).
Abatement Worker Annual Review (Certified 2/17/90).
Contractor/Supervisor (Certified 1/7/91).
Contractor/Supervisor Annual Review (Certified 6/17/90).

(ix)(a) *Training Provider:* Mayhew Environmental Training Associates, Inc. (META).

Address: P.O. Box 1991, Lawrence, KS 66044, Contact: Brad Mayhew or Betty Fenstemaker, Phone: (800) 444-6382.

(b) *Approved Courses:*

Abatement Worker (Certified 3/5/90).
Abatement Worker Annual Review (Certified 3/5/90).
Contractor/Supervisor (Certified 3/5/90).
Contractor/Supervisor Annual Review (Certified 3/9/90).

(x)(a) *Training Provider:* McNeil Environmental, Inc.

Address: 755 East Cliff Rd., Burnsville, MN 55337, Contact: Philip Allmon, Phone: (612) 890-9452.

(b) *Approved Courses:*

Abatement Worker Annual Review (Certified 10/22/89).
Contractor/Supervisor Annual Review (Certified 10/22/89).

(xi)(a) *Training Provider:* Midwest Asbestos Consultants, Inc.

Address: 219 23rd St. North, Box 1706, Fargo, ND 58107, Contact: Jerry Day, Phone: (701) 280-1286.

(b) *Approved Courses:*

Abatement Worker (Certified 4/25/90).
Abatement Worker Annual Review (Certified 4/25/90).

(xii)(a) *Training Provider:* Midwest Center for Occupational Health & Safety.

Address: 640 Jackson St., St. Paul, MN 55101, Contact: Jim Viskocil, Phone: (612) 221-3982.

(b) *Approved Courses:*

Abatement Worker (Certified 1/22/90).
Abatement Worker Annual Review (Certified 1/22/90).
Contractor/Supervisor (Certified 1/22/90).
Contractor/Supervisor Annual Review (Certified 11/14/89).

(xiii)(a) *Training Provider:* Nova Environmental Services, Inc.

Address: Suite 400, Hazeltine Gates, 1107 Hazeltine Blvd., Chaska, MN 55318, Contact: Karon L. Ballor, Phone: (612) 448-9393.

(b) *Approved Courses:*

Abatement Worker (Certified 11/30/89).
Abatement Worker Annual Review (Certified 11/29/89).
Contractor/Supervisor (Certified 11/30/89).
Contractor/Supervisor Annual Review (Certified 11/29/89).

(xiv)(a) *Training Provider:* Southwest Technical College.

Address: Continuing Education, SW State University, FT 103, Marshall, MN 53103, Contact: Carole Treadway, Phone: (507) 537-7386.

(b) *Approved Courses:*

Abatement Worker (Certified 4/27/89).
Abatement Worker Annual Review (Certified 7/24/89).
Contractor/Supervisor (Certified 4/27/89).
Contractor/Supervisor Annual Review (Certified 7/24/89).

(xv)(a) *Training Provider:* The Brand Companies, Inc.

Address: 1420 Renaissance Dr., Park Ridge, IL 60068, Contact: Dolores A. Lott, Phone: (708) 298-1200.

(b) *Approved Courses:*

Contractor/Supervisor (Certified 5/30/90).
Contractor/Supervisor Annual Review (Certified 5/30/90).

(xvi)(a) *Training Provider:* Twin City Area Carpenter's Joint Apprenticeship Committee/United Brotherhood of Carpenters & Joiners.

Address: 2208 County Rd. C2, Roseville, MN 55113, Contact: Gerald W. Setterholm, Phone: (612) 636-6096.

(b) *Approved Courses:*

Abatement Worker (Certified 6/14/89).
Abatement Worker Annual Review (Certified 3/19/90).
Contractor/Supervisor (Certified 6/14/89).
Contractor/Supervisor Annual Review (Certified 2/19/90).

(xvii)(a) *Training Provider:* University of North Dakota, Occupational Safety and Environmental Health Office.

Address: University Station, Box 8275, Grand Forks, ND 58202, Contact: Dale P. Patrick, Phone: (701) 777-3341.

(b) *Approved Courses:*

Abatement Worker (Certified 7/5/91).
Abatement Worker Annual Review (Certified 7/5/91).
Contractor/Supervisor (Certified 7/5/91).
Contractor/Supervisor Annual Review (Certified 7/5/91).

Montana.

(15)(a) *State Agency:* Department of Health & Environmental Sciences, Address: Cogswell Building, Helena, MT 59620, Contact: Adrian C. Howe, Phone: (406) 444-3671.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 5/16/90).
Contractor/Supervisor (full from 5/16/90).
Inspector/Management Planner (full from 5/16/90).
Project Designer (full from 5/16/90).

(i)(a) *Training Provider:* Bison Engineering.

Address: 30 South Ewing, Helena, MT 59601, Contact: Ralph Deleng, Phone: (406) 442-5768.

(b) *Approved Courses:*

Abatement Worker (Certified 4/24/90).
Abatement Worker Annual Review (Certified 4/24/90).
Contractor/Supervisor (Certified 4/24/90).
Contractor/Supervisor Annual Review (Certified 4/24/90).

(ii)(a) *Training Provider:* Black Hills Special Services Cooperative.

Address: P.O. Box 218, Sturgis, SD 57785, Contact: Randy Morris, Phone: (605) 347-4467.

(b) *Approved Courses:*

Abatement Worker (Certified 8/8/90).
Contractor/Supervisor (Certified 10/5/90).

(iii)(a) *Training Provider:* Brand Companies, Inc.

Address: 1420 Renaissance Dr., Park Ridge, IL 60068, Contact: Frank Barta, Phone: (708) 298-1200.

(b) *Approved Course:*

Abatement Worker (Certified 1/19/90).

(iv)(a) *Training Provider:* Chen-Northern, Inc.

Address: 600 South 25th St., Billings, MT 59601, Contact: Kathy Smit, Phone: (406) 248-9161.

(b) *Approved Courses:*

Abatement Worker (Certified 4/24/90).
Abatement Worker Annual Review (Certified 2/5/90).
Contractor/Supervisor (Certified 1/24/90).
Contractor/Supervisor Annual Review (Certified 2/5/90).

(v)(a) *Training Provider:* Georgia Tech Research Institute.

Address: Georgia Institute of Technology, Atlanta, GA 30332, Contact: Margaret Ojala, Phone: (404) 894-3078.

(b) *Approved Courses:*

Contractor/Supervisor (Certified 10/5/90).
Contractor/Supervisor Annual Review (Certified 10/5/90).

(vi)(a) *Training Provider:* Hall-Kimbrell.

Address: 3333 Quebec St., Suite 4000, Denver, CO 80207, Contact: Perry Ford, Phone: (800) 348-2500.

(b) *Approved Courses:*

Abatement Worker (Certified 4/24/90).
Abatement Worker Annual Review (Certified 4/24/90).
Contractor/Supervisor (Certified 4/24/90).
Contractor/Supervisor Annual Review (Certified 4/24/90).
Inspector/Management Planner (Certified 10/1/90).
Inspector/Management Planner Annual Review (Certified 2/21/90).
Project Designer (Certified 4/26/90).
Project Designer Annual Review (Certified 2/21/90).

(vii)(a) *Training Provider:* Laborer's AGC, Training Program of Montana.

Address: 3100 Horseshoe Bend Rd., Helena, MT 59601, Contact: Dan Holland, Phone: (406) 442-9994.

(b) *Approved Courses:*

Abatement Worker (Certified 1/17/90).
Abatement Worker Annual Review (Certified 1/17/90).

(viii)(a) *Training Provider:* Montana State Council of Carpenters.

Address: P.O. Box 621, Helena, MT 59624, Contact: Bruce Morris, Phone: (406) 442-5296.

(b) *Approved Courses:*

Abatement Worker (Certified 3/1/90).
Abatement Worker Annual Review (Certified 3/1/90).

(ix)(a) *Training Provider:* Rocky Mountain Center.

Address: University of Utah, Bldg. 512, Salt Lake City, UT 84112, Contact: David Wallace, Phone: (801) 581-5710.

(b) *Approved Courses:*

Contractor/Supervisor (Certified 6/19/90).
Contractor/Supervisor Annual Review (Certified 6/27/90).
Inspector/Management Planner (Certified 7/27/90).
Inspector/Management Planner Annual Review (Certified 7/27/90).

Nebraska.

(16)(a) *State Agency:* Department of Health Division of Asbestos Control, Address: 301 Centennial Mall South, P.O. Box 95007, Lincoln, NE 68509-5007, Contact: Jacqueline M. Fiedler, Phone: (402) 471-2541.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 5/9/89).
Contractor/Supervisor (full from 5/9/89).
Inspector (full from 5/9/89).
Inspector/Management Planner (full from 5/9/89).
Project Designer (full from 5/9/89).

(i)(a) *Training Provider:* Environmental Salvage, Ltd.

Address: 4930 South 23rd St., Omaha, NE 68107, Contact: Lynn Knudson, Phone: (402) 733-2985.

(b) *Approved Courses:*

Abatement Worker (Certified 3/14/89).
Abatement Worker Annual Review (Certified 8/3/89).
Contractor/Supervisor (Certified 3/14/89).
Contractor/Supervisor Annual Review (Certified 8/3/89).

(ii)(a) *Training Provider:* Institute for Environmental Assessment.

Address: 433 Jackson St., Anoka, MN 55303, Contact: Jesse Lee, Phone: (800) 233-9513.

(b) *Approved Course:*

Contractor/Supervisor Annual Review (Certified 12/19/89).

(iii)(a) *Training Provider:* Insulators & Asbestos Workers Midwest States Health & Training Council.

Address: Route 2, Wahoo, NE 68066, Contact: Ray Richmond, Phone: (402) 443-4810.

(b) *Approved Courses:*

Abatement Worker (Certified 5/22/89).
Abatement Worker Annual Review (Certified 4/12/90).
Contractor/Supervisor (Certified 5/22/89).
Contractor/Supervisor Annual Review (Certified 11/27/89).

(iv)(a) *Training Provider:* National Asbestos Council.

Address: 1777 Northeast Expressway, Suite 150, Atlanta, GA 30329, Contact: Tina Smith, Phone: (404) 633-2622.

(b) *Approved Courses:*

Abatement Worker (Certified 1/31/90).
Abatement Worker Annual Review (Certified 12/15/89).

(v)(a) *Training Provider:* Safety and Health Council of Greater Omaha.

Address: 2513 St. Mary's Avenue, Omaha, NE 68105, Contact: Kay Farrell, Phone: (402) 345-1067.

(b) *Approved Courses:*

Abatement Worker Annual Review (Certified 10/12/90).
Contractor/Supervisor Annual Review (Certified 10/16/90).

New Jersey.

(17)(a) *State Agency:* State of New Jersey Dept. of Health, Address: CN 360, Trenton, NJ 08625-0360, Contact: James A. Brownlee, Phone: (609) 984-2193.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 6/16/85).
Contractor/Supervisor (full from 6/16/85).

(i)(a) *Training Provider:* A & S Training School, Inc.

Address: 99 South Cameron St., Harrisburg, PA 17101, Contact: Robert Bradshaw or Robyn Brunson, Phone: (717) 257-1300.

(b) *Approved Courses:*

Abatement Worker (Certified 5/20/85).
Abatement Worker Annual Review (Certified 2/6/91).
Contractor/Supervisor (Certified 5/20/85).
Contractor/Supervisor Annual Review (Certified 2/6/91).

(ii)(a) *Training Provider:* Alternative Ways, Inc.

Address: 100 Essex Ave., Bellmawr, NJ 08031, Contact: Peggy Wolf or John Luxford, Phone: (609) 933-3900.

(b) *Approved Courses:*

Abatement Worker (Certified 4/25/85).
Abatement Worker Annual Review (Certified 3/15/90).
Contractor/Supervisor (Certified 4/25/85).
Contractor/Supervisor Annual Review (Certified 3/15/90).

(iii)(a) *Training Provider:* Asbestos Abatement Council, AWCI.

Address: 1600 Cameron St., Alexandria, VA 22314-2785, Contact: Carol Pacquin, Phone: (703) 684-2924.

(b) *Approved Courses:*

Abatement Worker (Certified 6/17/87 to 9/28/89 only).
Contractor/Supervisor (Certified 6/17/87 to 9/28/89 only).

(iv)(a) *Training Provider:* Asbestos Training Academy, Inc. - NJ.

Address: 218 Cooper Center, Pennsauken, NJ 08109, Contact: Joseph Bower, Phone: (609) 488-9200.

(b) *Approved Courses:*

Abatement Worker (Certified 5/1/85).
Abatement Worker Annual Review (Certified 6/6/90).
Contractor/Supervisor (Certified 5/1/85).
Contractor/Supervisor Annual Review (Certified 6/6/90).

(v)(a) *Training Provider:* Asbestos Training Academy, Inc. - NY.

Address: 315 West 36th St., 9th Fl., New York, NY 10018, Contact: Richard Green or Charlotte Hicks, Phone: (212) 971-0370.

(b) *Approved Courses:*

Abatement Worker (Certified 9/20/88 to 9/19/90 only).

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Contractor/Supervisor (Certified 9/20/88 to 9/19/90 only).

(vi)(a) *Training Provider:* Asbestos Training Institute, Inc.

Address: 47 West 13th St., 2nd Floor, New York, NY 10011, Contact: Jean Bodman or Ron Rominski, Phone: (212) 206-7019.

(b) *Approved Courses:*

Abatement Worker (Certified 3/4/87).
Abatement Worker Annual Review (Certified 5/30/90).
Contractor/Supervisor (Certified 3/4/87).
Contractor/Supervisor Annual Review (Certified 5/30/90).

(vii)(a) *Training Provider:* BCM Eastern, Inc.

Address: One Plymouth Meeting Mall, Plymouth Meeting, PA 19462, Contact: R. Ferguson or C. Sterchak, Phone: (215) 825-3800.

(b) *Approved Courses:*

Abatement Worker (Certified 6/7/87 to 12/13/89 only).
Contractor/Supervisor (Certified 6/7/87 to 12/13/89 only).

(viii)(a) *Training Provider:* Building Laborers of N.J. - Training Center.

Address: P.O. Box 163, Jamesburg, NJ 08831, Contact: Emmanuel Riggi or Pat Collura, Phone: (908) 521-0200.

(b) *Approved Courses:*

Abatement Worker (Certified 7/19/85).
Abatement Worker Annual Review (Certified 12/5/89).
Contractor/Supervisor (Certified 7/19/85).
Contractor/Supervisor Annual Review (Certified 12/5/89).

(ix)(a) *Training Provider:* Drexel University, Office of Continuing Education.

Address: 32nd & Chestnut Sts., Philadelphia, PA 19104, Contact: Robert T. Ross or Rita Karmiol, Phone: (215) 895-2156.

(b) *Approved Courses:*

Abatement Worker (Certified 4/13/88).
Abatement Worker Annual Review (Certified 7/13/90).
Contractor/Supervisor (Certified 4/13/88).
Contractor/Supervisor Annual Review (Certified 7/13/90).

(x)(a) *Training Provider:* E.I. DuPont DeNemours & Co.

Address: Chamber Works, Deepwater, NJ 08023, Contact: Jeffery Thomason or Jayne Lane, Phone: (609) 540-2918.

(b) *Approved Courses:*

Abatement Worker (Certified 5/1/86).
Abatement Worker Annual Review (Certified 6/12/89).
Contractor/Supervisor (Certified 5/1/86).
Contractor/Supervisor Annual Review (Certified 6/12/89).

(xi)(a) *Training Provider:* Hazard Management Division of Curtin Management Consultants, Inc.

Address: 200 Smith St., Keasbey, NJ 08832, Contact: Daniel Curtin or Lori Abrams, Phone: (908) 738-9700.

(b) *Approved Courses:*

Abatement Worker (Certified 6/3/87).
Contractor/Supervisor (Certified 6/3/87).

(xii)(a) *Training Provider:* Hunter College Asbestos Training Center.

Address: c/o Carpenters Union-No. 455, 1931 Route 22 West, Bound Brook, NJ 08805-1519, Contact: Jack Caravanos or Joseph Marino, Phone: (908) 526-1116.

(b) *Approved Courses:*

Abatement Worker (Certified 5/23/85).
Contractor/Supervisor (Certified 5/23/85).

(xiii)(a) *Training Provider:* IT Corporation.

Address: 17461 Derian Ave., Suite 190, Irvine, CA 92714, Contact: Keith Soesbe, Phone: (714) 261-6441.

(b) *Approved Courses:*

Abatement Worker (Certified 8/29/85 to 9/13/90 only).
Contractor/Supervisor (Certified 8/29/85 to 9/13/90 only).

(xiv)(a) *Training Provider:* Kaselaan & D'Angelo Associates - NJ.

Address: 515 Grove St., Haddon Heights, NJ 08035, Contact: Jim Capritti or Patricia Cancglin, Phone: (609) 547-6500.

(b) *Approved Courses:*

Abatement Worker (Certified 5/8/85).
Abatement Worker Annual Review (Certified 12/5/89).
Contractor/Supervisor (Certified 5/8/85).
Contractor/Supervisor Annual Review (Certified 12/5/89).

(xv)(a) *Training Provider:* Kaselaan & D'Angelo Associates - NY.

Address: 220 5th Ave., 17th Floor, New York, NY 10001, Contact: L. Fredericks, Phone: (212) 216-6340.

(b) *Approved Courses:*

Abatement Worker (Certified 8/28/89).
Contractor/Supervisor (Certified 8/28/89).

(xvi)(a) *Training Provider:* Local Union No. 14.

Address: 6513 Bustleton Ave., Philadelphia, PA 19149, Contact: James Aikens or Lewis Fitzgerald, Phone: (215) 533-0395.

(b) *Approved Courses:*

Abatement Worker (Certified 8/9/85).
Abatement Worker Annual Review (Certified 11/1/89).
Contractor/Supervisor (Certified 8/9/85).
Contractor/Supervisor Annual Review (Certified 11/1/89).

(xvii)(a) *Training Provider:* Local Union No. 32.

Address: 870 Broadway, Newark, NJ 07104, Contact: Paul Ielmini or John Dwyer, Phone: (201) 485-3626.

(b) *Approved Courses:*

Abatement Worker (Certified 5/8/87).
Abatement Worker Annual Review (Certified 8/14/89).
Contractor/Supervisor (Certified 5/8/87).
Contractor/Supervisor Annual Review (Certified 8/14/89).

(xviii)(a) *Training Provider:* Local Union No. 42.

Address: 1188 River Rd., New Castle, DE 19720, Contact: Joseph Noble, Phone: (302) 328-4203.

(b) *Approved Courses:*

Abatement Worker (Certified 10/30/85).
Abatement Worker Annual Review (Certified 8/23/90).
Contractor/Supervisor (Certified 10/30/85).
Contractor/Supervisor Annual Review (Certified 8/23/90).

(xix)(a) *Training Provider:* Local Union No. 89.

Address: 2733 Nottingham Way, Trenton, NJ 08619, Contact: Charles DaBronzo/John DaBronzo, Phone: (609) 587-0092.

(b) *Approved Courses:*

Abatement Worker (Certified 5/13/86)
Abatement Worker Annual Review (Certified 11/27/89).
Contractor/Supervisor (Certified 5/13/86).
Contractor/Supervisor Annual Review (Certified 11/27/89).

(xx)(a) *Training Provider:* Mid-Atlantic Asbestos Training Center UMDNJ.

Address: 45 Knightsbridge Rd., Piscataway, NJ 08854, Contact: Lee Laustsen/Doris Daneluk, Phone: (908) 463-5062.

(b) *Approved Courses:*

Abatement Worker (Certified 7/1/86).
Abatement Worker Annual Review (Certified 1/17/90).
Contractor/Supervisor (Certified 7/1/86).
Contractor/Supervisor Annual Review (Certified 1/17/90).

(xxi)(a) *Training Provider:* NDI Training Institute.

Address: 7050 Kaighn Ave., Pennsauken, NJ 08109, Contact: J. Rodney Walton or John O'Brien, Phone: (609) 863-5042.

(b) *Approved Courses:*

Abatement Worker (Certified 9/13/88).
Contractor/Supervisor (Certified 9/13/86).

(xxii)(a) *Training Provider:* National Asbestos & Environmental Training Institute.

Address: 1776 Bloomsbury Ave., Ocean, NJ 07712, Contact: Doris Adler or Lisa Criscuolo, Phone: (908) 918-0610.

(b) *Approved Courses:*

Abatement Worker (Certified 5/3/85).
Abatement Worker Annual Review (Certified 8/14/89).
Contractor/Supervisor (Certified 5/3/85).
Contractor/Supervisor Annual Review (Certified 8/14/89).

(xxiii)(a) *Training Provider:* National Asbestos Council Training Dept.

Address: 1777 Northeast Expressway, Suite 150, Atlanta, GA 30329, Contact: Raymond McQueen, Phone: (404) 633-2622.

(b) *Approved Courses:*

Abatement Worker (Certified 1/13/87 to 10/3/90 only).
Contractor/Supervisor (Certified 1/13/87 to 10/3/90 only).

(xxiv)(a) *Training Provider:* National Institute on Abatement Sciences and Technology.

Address: 114 West State St., P.O. Box 1780, Trenton, NJ 08607, Contact: Glenn Phillips, Phone: (800) 422-2836.

(b) *Approved Courses:*

Abatement Worker (Certified 1/16/88 to 10/24/89 only).
Contractor/Supervisor (Certified 1/16/88 to 10/24/89 only).

(xxv)(a) *Training Provider:* National Training Fund/Workers Institute for Safety & Health (WISH).

Address: 1128 16th St., NW., Washington, DC 20036, Contact: Scott Schneider or Matthew Gillen, Phone: (202) 887-1980.

(b) *Approved Courses:*

Abatement Worker (Certified 3/31/89).
Contractor/Supervisor (Certified 3/31/89).

(xxvi)(a) *Training Provider:* Northeastern Analytical Corporation.

Address: 4 Stow Rd., Marlton, NJ 08053, Contact: R. Holwitt or M. Dutkiewicz, Phone: (609) 985-6000.

(b) *Approved Courses:*

Abatement Worker (Certified 5/20/85).
Abatement Worker Annual Review (Certified 6/30/89).
Contractor/Supervisor (Certified 5/20/85).
Contractor/Supervisor Annual Review (Certified 6/30/89).

(xxvii)(a) *Training Provider:* Princeton Testing Laboratory.

Address: 3490 U.S. Rte. 1, Princeton, NJ 08540-3108, Contact: Charles Schneekloth, Phone: (609) 452-9050.

(b) *Approved Courses:*

Abatement Worker (Certified 5/8/85).
Abatement Worker Annual Review (Certified 6/14/89).
Contractor/Supervisor (Certified 5/8/85).
Contractor/Supervisor Annual Review (Certified 6/14/89).

(xxviii)(a) *Training Provider:* Temple University Asbestos Center.

Address: CECSA, 12th & Norris St., Philadelphia, PA 19122, Contact: Melvin Benarde or Diane Dymski, Phone: (215) 787-8546.

(b) *Approved Courses:*

Abatement Worker (Certified 11/24/87).
Abatement Worker Annual Review (Certified 10/25/90).
Contractor/Supervisor (Certified 11/24/87).
Contractor/Supervisor Annual Review (Certified 10/25/90).

(xxix)(a) *Training Provider:* White Lung Association - NY.

Address: 12 Warren St., 4th Floor, New York, NY 10007, Contact: Nelson Helu or Barbara Zeluck, Phone: (212) 619-2270.

(b) *Approved Courses:*

Abatement Worker (Certified 9/21/88 to 12/21/89 only).
Contractor/Supervisor (Certified 9/26/88 to 12/21/89 only).

(xxx)(a) *Training Provider:* White Lung Association of NJ.

Address: 901 Broad St., 2nd Floor, Newark, NJ 07102, Contact: Myles O'Malley or Gregory Camacho, Phone: (201) 824-2623.

(b) *Approved Courses:*

Abatement Worker (Certified 5/21/85).
Abatement Worker Annual Review (Certified 10/25/90).
Contractor/Supervisor (Certified 5/21/85).
Contractor/Supervisor Annual Review (Certified 10/25/90).

New York.

(18)(a) *State Agency:* Department of Health, Address: Asbestos Safety Training Program, Bureau of Occupational Health, II University Place, Room 312, Albany, NY 12203-3313, Contact: George R. Estel, Phone: (518) 458-6483.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 12/19/90).
Contractor/Supervisor (full from 12/19/90).
Inspector (full from 12/19/90).
Inspector/Management Planner (full from 12/19/90).
Project Designer (full from 12/19/90).

(i)(a) *Training Provider:* AAC Contracting, Inc.

Address: 1225 Ridgeway Ave., Rochester, NY 14615, Contact: Mario DiNottia, Phone: (716) 458-8700.

(b) *Approved Courses:*

Abatement Worker (Certified 11/8/90).
Abatement Worker Annual Review (Certified 2/13/91).
Contractor/Supervisor (Certified 3/5/91).
Contractor/Supervisor Annual Review (Certified 3/5/91).

(ii)(a) *Training Provider:* ATC Environmental, Inc.

Address: 104 East 25th Street, New York, NY 10010, Contact: David Chambers, Phone: (212) 353-8280.

(b) *Approved Courses:*

Abatement Worker (Certified 3/15/89).
Inspector (Certified 2/20/90).

(iii)(a) *Training Provider:* Abatement Safety Training Institute.

Address: 323 West 39th Street, New York, NY 10018, Contact: Preeti Belur, Phone: (212) 629-8400.

(b) *Approved Courses:*

Abatement Worker (Certified 7/12/88).
Inspector (Certified 1/12/90).

(iv)(a) *Training Provider:* Adelaide Environmental Health Associates.

Address: 61 Front Street, Binghamton, NY 13905-4705, Contact: William Carter, Phone: (607) 722-6839.

(b) *Approved Course:*

Abatement Worker (Certified 6/20/88).

(v)(a) *Training Provider:* Advanced Analytical Laboratories, Inc.

Address: 30th and North Church Streets, Hazelton, PA 18201, Contact: Steve Hahn, Phone: (717) 455-5115.

(b) *Approved Course:*

Abatement Worker (Certified 3/16/88).

(vi)(a) *Training Provider:* Aerosol Monitoring and Analysis.

Address: 1341 Ashton Rd., Suite A, Hanover, MD 21076, Contact: Steven Blizzard, Phone: (301) 684-3327.

(b) *Approved Course:*

Abatement Worker (Certified 12/6/88).

(vii)(a) *Training Provider:* Alice Hamilton Occupational Health Center.

Address: 410 Seventh Street SE., Washington, DC 20003-2750, Contact: Brian Christopher, Phone: (202) 543-0005.

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(b) *Approved Course:*
Abatement Worker (Certified 5/3/89).
(viii)(a) *Training Provider:* Alleghany Council for Occupational Health.
Address: 100 East Second St., Suite 3, Jamestown, NY 14701, Contact: Linda Berlin, Phone: (716) 488-0720.
(b) *Approved Course:*
Abatement Worker (Certified 7/17/89).
(ix)(a) *Training Provider:* Allwash of Syracuse, Inc.
Address: P.O. Box 605, Syracuse, NY 13201, Contact: Paul Watson, Phone: (315) 454-4476.
(b) *Approved Courses:*
Abatement Worker (Certified 9/1/87).
Abatement Worker Annual Review (Certified 1/14/91).
Contractor/Supervisor (Certified 1/23/91).
Contractor/Supervisor Annual Review (Certified 2/14/91).
(x)(a) *Training Provider:* Alternative Ways, Inc.
Address: 100 Essex Avenue, Bellmawr, NJ 08031, Contact: Donna Weiss, Phone: (609) 933-3300.
(b) *Approved Course:*
Abatement Worker (Certified 2/25/88).
(xi)(a) *Training Provider:* American Environmental Institute.
Address: 20220 Center Ridge Road, Cleveland, OH 44116, Contact: Gary Block, Phone: (216) 333-6225.
(b) *Approved Course:*
Abatement Worker (Certified 8/25/88).
(xii)(a) *Training Provider:* Analytical Laboratories of Albany, Inc.
Address: 4-A Vatrano Rd., Albany, NY 12205, Contact: Timothy Carroll, Phone: (518) 459-0885.
(b) *Approved Courses:*
Abatement Worker (Certified 3/5/91).
Abatement Worker Annual Review (Certified 3/6/91).
Contractor/Supervisor (Certified 3/5/91).
Contractor/Supervisor Annual Review (Certified 3/6/91).
(xiii)(a) *Training Provider:* Anderson International.
Address: Rd No.2 North Main Street Extension, Jamestown, NY 14701, Contact: Sally Gould, Phone: (716) 664-4026.
(b) *Approved Courses:*
Abatement Worker (Certified 4/5/89).
Inspector (Certified 5/24/90).
(xiv)(a) *Training Provider:* Applied Respiratory Technology.
Address: P.O. Box 399, Hughsonville, NY 12537-0399, Contact: Charles Mayo, Phone: (914) 265-4330.
(b) *Approved Courses:*
Abatement Worker (Certified 2/9/89).
Abatement Worker Annual Review (Certified 3/7/91).
Contractor/Supervisor (Certified 2/1/91).
Contractor/Supervisor Annual Review (Certified 3/7/91).
(xv)(a) *Training Provider:* Asbestos Control Management, Inc.
Address: 126 South Third Street, Olean, NY 14760, Contact: Clar D. Anderson, Phone: (716) 372-6393.
(b) *Approved Courses:*
Abatement Worker (Certified 6/16/89).
Abatement Worker Annual Review (Certified 3/4/91).
(xvi)(a) *Training Provider:* Asbestos Technical Services.
Address: Dogwood Road, Peekskill, NY 10566, Contact: Kenneth Strusz, Phone: (914) 739-7146.
(b) *Approved Course:*
Abatement Worker (Certified 6/30/88).
(xvii)(a) *Training Provider:* Asbestos Training Institute.
Address: 47 West 13th Street, 2nd Floor, New York, NY 10011, Contact: Jean Bodman, Phone: (212) 206-7019.
(b) *Approved Courses:*
Abatement Worker (Certified 2/1/87).
Abatement Worker Annual Review (Certified 3/26/91).
Inspector (Certified 9/19/90).
(xviii)(a) *Training Provider:* Asteco, Inc.
Address: 4287 Witmer Road, Niagara Falls, NY 14105, Contact: David Root, Phone: (716) 297-5981.
(b) *Approved Course:*
Abatement Worker (Certified 2/25/88).
(xix)(a) *Training Provider:* Astoria Industries.
Address: 538 Stewart Avenue, Brooklyn, NY 11222, Contact: J. Gajeski, Phone: (718) 387-0011.
(b) *Approved Courses:*
Abatement Worker (Certified 5/1/87).
Abatement Worker Annual Review (Certified 3/28/91).
(xx)(a) *Training Provider:* BOCES 2 - Suffolk County.
Address: 375 Locust Ave., Oakdale, NY 11789, Contact: Louise Baxter, Phone: (516) 563-2954.
(b) *Approved Course:*
Abatement Worker (Certified 3/29/89).
(xxi)(a) *Training Provider:* BOCES III - Suffolk County.
Address: 17 Westminster Ave, Dix Hills, NY 11746, Contact: George Flemming, Phone: (516) 667-6000.
(b) *Approved Course:*
Abatement Worker (Certified 1/4/88).
(xxii)(a) *Training Provider:* Biospherics, Inc.
Address: 12051 Indian Creek Court, Beltsville, MD 20705, Contact: Joyce Eger, Phone: (301) 369-3900.
(b) *Approved Course:*
Abatement Worker (Certified 9/1/87).
(xxiii)(a) *Training Provider:* Buffalo Laborers Training Fund No. 210.
Address: 1370 Seneca St., Buffalo, NY 14210, Contact: Victor Sansanese, Phone: (716) 825-0883.
(b) *Approved Courses:*
Abatement Worker (Certified 3/7/88).
Abatement Worker Annual Review (Certified 3/4/91).
(xxiv)(a) *Training Provider:* Building Laborers of NJ - Training and Education Trust Fund.
Address: 31 Mott Ave., P.O. Box 553, Jamesburg, NJ 08831, Contact: Emanuel Riggi, Phone: (201) 521-0200.
(b) *Approved Course:*
Abatement Worker (Certified 1/1/88).
(xxv)(a) *Training Provider:* CA Rich Consultants, Inc.
Address: 404 Glen Cove Ave., Sea Cliff, NY 15799, Contact: Bruce Beck, Phone: (516) 674-3889.
(b) *Approved Course:*
Abatement Worker (Certified 6/5/90).
(xxvi)(a) *Training Provider:* Calibrations, Inc.
Address: 802 Watervliet-Shaker Rd., Latham, NY 12110, Contact: James Percent, Phone: (518) 786-1865.
(b) *Approved Courses:*
Abatement Worker (Certified 3/7/88).
Inspector (Certified 8/13/90).
(xxvii)(a) *Training Provider:* Camtech, Inc.
Address: 4550 McKnight Rd., Suite 202, Pittsburgh, PA 15237, Contact: Leslie Connors, Phone: (412) 931-1210.
(b) *Approved Course:*
Abatement Worker (Certified 5/18/90).
(xxviii)(a) *Training Provider:* Cayuga - Onondaga BOCES.
Address: 234 South Street Rd., Auburn, NY 13021, Contact: Peter Pirnie, Phone: (315) 253-0361.
(b) *Approved Course:*
Abatement Worker (Certified 3/21/88).
(xxix)(a) *Training Provider:* Center for Environmental & Occupational Training, Inc.
Address: 814 East Pittsburgh Plaza, East Pittsburgh, PA 15112, Contact: Joseph Hughes, Phone: (412) 823-1002.
(b) *Approved Course:*

Abatement Worker (Certified 1/11/90).
(xxx)(a) *Training Provider:* Certified Engineering & Testing Co., Inc.
Address: 25 Mathewson Dr., Weymouth, MA 02189, Contact: Robert Thornburgh, Phone: (617) 337-7887.
(b) *Approved Course:*
Abatement Worker (Certified 6/28/88).
(xxxi)(a) *Training Provider:* Comprehensive Analytical Group, Inc.
Address: 147 Midler Park Dr., Syracuse, NY 13206, Contact: David Serino, Phone: (315) 432-0855.
(b) *Approved Courses:*
Abatement Worker (Certified 10/28/88).
Contractor/Supervisor (Certified 2/1/91).
(xxxii)(a) *Training Provider:* Con-Test.
Address: 39 Spruce St., P.O. Box 591, East Longmeadow, MA 01028, Contact: Brenda Bolduc, Phone: (413) 525-1198.
(b) *Approved Course:*
Abatement Worker (Certified 9/1/86).
(xxxiii)(a) *Training Provider:* Corning, Inc.
Address: Corporate Safety & Health, HP C-2-10, Corning, NY 14831, Contact: Ron Kitson, Phone: (607) 974-8638.
(b) *Approved Course:*
Abatement Worker (Certified 1/19/88).
(xxxiv)(a) *Training Provider:* D/E3, Inc.
Address: 19701 South Miles Parkway, N-12, Warrensville, OH 44128, Contact: Harold Danto, Phone: (216) 663-1200.
(b) *Approved Course:*
Abatement Worker (Certified 7/6/89).
(xxxv)(a) *Training Provider:* Dennison Environmental, Inc.
Address: 74 Commerce Way, Woburn, MA 01801, Contact: Joan Ryan, Phone: (617) 932-9400.
(b) *Approved Course:*
Abatement Worker (Certified 3/28/88).
(xxxvi)(a) *Training Provider:* Dore & Associates Contracting, Inc.
Address: 900 Harry S. Truman Pkwy., Bay City, MI 48707, Contact: Joseph Goldsing, Phone: (517) 684-8358.
(b) *Approved Course:*
Abatement Worker (Certified 6/28/88).
(xxxvii)(a) *Training Provider:* E.I. DuPont DeNemours & Co., Inc.
Address: Chambers Workers, Petroleum Labs, Deepwater, NJ 08023, Contact: Jeff Thomason, Phone: (609) 540-2918.
(b) *Approved Course:*
Abatement Worker (Certified 6/1/86).
(xxxviii)(a) *Training Provider:* Edward O. Watts & Associates.
Address: 1331 N. Forrest Rd., Suite 340, Buffalo, NY 14221, Contact: Edward Watts, Phone: (716) 688-4827.
(b) *Approved Courses:*
Abatement Worker (Certified 12/1/88).
Abatement Worker Annual Review (Certified 1/10/91).
Contractor/Supervisor (Certified 2/4/91).
Contractor/Supervisor Annual Review (Certified 1/10/91).
Inspector (Certified 9/24/90).
(xxxix)(a) *Training Provider:* Enclosure Technology, Inc.
Address: 861 Manhattan Ave., Suite 14, Brooklyn, NY 11222, Contact: Roland Baronowski, Phone: (718) 349-3235.
(b) *Approved Course:*
Abatement Worker (Certified 9/5/90).
(xl)(a) *Training Provider:* Enviro Med Services, Inc.
Address: 25 Science Park, New Haven, CT 06511, Contact: George Giacco, Phone: (203) 786-5580.
(b) *Approved Course:*
Abatement Worker (Certified 10/12/89).
(xli)(a) *Training Provider:* Environmental Safety Institute.
Address: 4225 Millersport Highway, Amherst, NY 14228, Contact: Betty Glovins, Phone: (716) 689-4806.
(b) *Approved Course:*
Abatement Worker (Certified 3/1/88).
(xlii)(a) *Training Provider:* Environmental Training Corporation.
Address: 100 Moody St., Ludlow, MA 01056, Contact: Anne Folta, Phone: (413) 589-1882.
(b) *Approved Course:*
Abatement Worker (Certified 6/20/89).
(xliii)(a) *Training Provider:* Environmental Training Inc.
Address: 65 Barclay Center Rte. 70, Suite 305, Cherryhill, NJ 08034, Contact: Gary Hyrne, Phone: (215) 521-5469.
(b) *Approved Course:*
Abatement Worker (Certified 12/8/89).
(xliv)(a) *Training Provider:* Environmental Training Services.
Address: 62 H Montvale Ave., Stoneham, MA 02180, Contact: Kenneth Martin, Phone: (617) 279-0855.
(b) *Approved Course:*
Abatement Worker (Certified 1/1/87).
(xlv)(a) *Training Provider:* Failsafe Risk Management Alternatives, Inc.
Address: 1670 Western Ave., Albany, NY 12203, Contact: James Thomson, Phone: (518) 452-4360.
(b) *Approved Courses:*
Abatement Worker (Certified 4/25/90).
Inspector (Certified 10/3/90).
(xlvi)(a) *Training Provider:* Fostock Corporation.
Address: 392 Fifth Ave., Paterson, NJ 07514, Contact: Anna Ghassibi, Phone: (201) 345-0040.
(b) *Approved Course:*
Abatement Worker (Certified 6/19/90).
(xlvii)(a) *Training Provider:* Future Environmental Designs, Inc.
Address: 114 Old Country Rd., Suite 620, Mineola, NY 11501, Contact: Michael Marcik, Phone: (516) 742-2557.
(b) *Approved Courses:*
Abatement Worker (Certified 8/21/90).
Abatement Worker Annual Review (Certified 3/4/91).
Contractor/Supervisor (Certified 2/20/91).
Contractor/Supervisor Annual Review (Certified 3/4/91).
Inspector/Management Planner (Certified 2/20/91).
Inspector/Management Planner Annual Review (Certified 2/20/91).
(xlviii)(a) *Training Provider:* G.S.T. Company.
Address: 50 Progress Ave., Zelienople, PA 16063, Contact: Norma Stanford, Phone: (412) 772-7488.
(b) *Approved Course:*
Abatement Worker (Certified 10/4/88).
(xlix)(a) *Training Provider:* General Building Laborers Local No. 66.
Address: 286 Middle Island Rd., Medford, NY 11763, Contact: Peter Purazzella, Phone: (516) 696-2280.
(b) *Approved Courses:*
Abatement Worker (Certified 10/4/88).
Abatement Worker Annual Review (Certified 3/7/91).
(l)(a) *Training Provider:* General Physics Corporation.
Address: 6700 Alexander Bell Dr., Columbia, MD 21046-2100, Contact: Andrew Marsh, Phone: (301) 290-2300.
(b) *Approved Course:*
Abatement Worker (Certified 6/15/88).
(li)(a) *Training Provider:* Geo-Environmental Company, Inc.
Address: P.O. Box 274, Yonkers, NY 10710, Contact: Carol Califano, Phone: (914) 375-1554.
(b) *Approved Courses:*
Abatement Worker (Certified 4/12/90).
Abatement Worker Annual Review (Certified 3/22/91).
(lii)(a) *Training Provider:* Georgia Institute of Technology.
Address: O'Keefe Bldg., ESTD Room 027, Atlanta, GA 30332, Contact: Margaret Ojala, Phone: (404) 894-3806.
(b) *Approved Course:*
Abatement Worker (Certified 5/11/87).

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(liii)(a) *Training Provider:* Health/Safety/Risk Management - Albany Schoharie Schenectady BOCES.
Address: 47 Cornell Rd., Latham, NY 12110, Contact: Charlene Vespi, Phone: (518) 786-3211.
(b) *Approved Courses:*
Abatement Worker (Certified 8/30/89).
Inspector (Certified 1/31/90).
(liv)(a) *Training Provider:* Hillman Technical Services.
Address: 1089 Cedar Ave., Suite 2, Union, NJ 07083, Contact: Steven Gladstone, Phone: (201) 688-3461.
(b) *Approved Course:*
Abatement Worker (Certified 3/3/90).
(lv)(a) *Training Provider:* Hudson Asbestos Training Institute.
Address: 804 Manhattan Ave., Brooklyn, NY 11222, Contact: Ann Sumiec, Phone: (718) 383-2656.
(b) *Approved Course:*
Abatement Worker (Certified 4/30/90 to 3/20/91 only).
(lvi)(a) *Training Provider:* Hunter College Asbestos Training Center.
Address: 425 East 25th St., New York, NY 10010, Contact: Jacquenette Locker, Phone: (212) 481-7569.
(b) *Approved Course:*
Abatement Worker (Certified 1/1/87).
(lvii)(a) *Training Provider:* Hygeia Research & Training.
Address: P.O. Box 4506, Utica, NY 13501, Contact: Richard Gighotti, Phone: (315) 732-8567.
(b) *Approved Courses:*
Abatement Worker (Certified 3/7/88).
Contractor/Supervisor (Certified 1/29/91).
(lviii)(a) *Training Provider:* Hygeia, Inc.
Address: 308 Bear Hill Rd., Waltham, MA 02154, Contact: David Kaplan, Phone: (617) 890-4999.
(b) *Approved Course:*
Inspector (Certified 5/18/90).
(lix)(a) *Training Provider:* Hygienetics, Inc.
Address: 150 Causeway St., Boston, MA 02114, Contact: MaryBeth Carver, Phone: (617) 723-4664.
(b) *Approved Courses:*
Abatement Worker (Certified 6/6/88).
Inspector (Certified 9/27/90).
(lx)(a) *Training Provider:* Institute for Environmental Education.
Address: 500 West Cummings Park, Suite 3650, Woburn, MA 01801, Contact: Starla Engelhardt, Phone: (617) 935-7370.
(b) *Approved Courses:*
Abatement Worker (Certified 8/1/88).
Inspector (Certified 8/21/90).
(lxi)(a) *Training Provider:* Institute of Asbestos Technology.
Address: 5900 Butternut Dr., East Syracuse, NY 13057, Contact: Charles Kirch, Phone: (315) 437-1307.
(b) *Approved Courses:*
Abatement Worker (Certified 10/24/87).
Abatement Worker Annual Review (Certified 3/27/91).
(lxii)(a) *Training Provider:* International Technology Corporation.
Address: 17605 Fabrica Way, Cerritos, CA 90701, Contact: Sean Smith, Phone: (213) 921-9831.
(b) *Approved Course:*
Abatement Worker (Certified 12/30/87).
(lxiii)(a) *Training Provider:* Jenkins Professional Inc.
Address: 5024 Campbell Blvd, Suite D, Baltimore, MD 21236, Contact: Larry Jenkins, Phone: (301) 931-7588.
(b) *Approved Course:*
Abatement Worker (Certified 6/1/88).
(lxiv)(a) *Training Provider:* Joint Apprenticeship & Training Committee.
Address: 425 Broad Hollow Rd., Suite 405, Melville, NY 11747, Contact: R. Erickson, Phone: (516) 694-2022.
(b) *Approved Course:*
Abatement Worker (Certified 11/30/87).
(lxv)(a) *Training Provider:* Kaselaan and D'Angelo Associates, Inc.
Address: 220 Fifth Ave., 17th Floor, New York, NY 10001, Contact: Lance Fredricks, Phone: (212) 216-6340.
(b) *Approved Course:*
Abatement Worker (Certified 4/1/88).
(lxvi)(a) *Training Provider:* Kemron Environmental Services, Inc.
Address: 755 New York Ave., Huntington, NY 11743, Contact: John Peters, Phone: (516) 427-0950.
(b) *Approved Course:*
Abatement Worker (Certified 10/4/88).
(lxvii)(a) *Training Provider:* Korean Asbestos Training Center.
Address: 136-15 Roosevelt Ave., 3rd Floor, Flushing, NY 11354, Contact: Tchang Bahrk, Phone: (718) 321-2700.
(b) *Approved Course:*
Abatement Worker (Certified 1/3/90).
(lxviii)(a) *Training Provider:* Laborer's Local No. 214 Training & Education Fund.
Address: 23 Mitchell St., Oswego, NY 13126, Contact: John Shannon, Phone: (315) 343-8553.
(b) *Approved Course:*
Abatement Worker (Certified 8/17/87).
(lxix)(a) *Training Provider:* Laborer's Local No.17 Education & Training Fund.
Address: 305 C Little Britain Rd., Newburgh, NY 12550, Contact: Victor Mandia, Phone: (914) 562-1121.
(b) *Approved Course:*
Abatement Worker (Certified 1/1/87).
(lxx)(a) *Training Provider:* Laborer's Local No.91 Training & Education Fund.
Address: 2558 Seneca Ave., Niagara Falls, NY 10010, Contact: Joel Cicero, Phone: (716) 297-6001.
(b) *Approved Courses:*
Abatement Worker (Certified 7/27/90).
Abatement Worker Annual Review (Certified 12/19/90).
(lxxi)(a) *Training Provider:* Long Island Lighting Company.
Address: 131 Hoffman Lane, Central Islip, NY 11722, Contact: Ernest Papadoulias, Phone: (516) 436-4076.
(b) *Approved Course:*
Abatement Worker (Certified 2/20/89).
(lxxii)(a) *Training Provider:* Lozier Architects & Engineers.
Address: 1050 Pittsford-Victor Rd., Pittsford, NY 14534, Contact: Dyke Coyne, Phone: (716) 381-2210.
(b) *Approved Course:*
Abatement Worker (Certified 1/12/88).
(lxxiii)(a) *Training Provider:* META.
Address: P.O. Box 786, Lawrence, KS 66044, Contact: Katy Nitcher, Phone: (913) 842-6382.
(b) *Approved Course:*
Abatement Worker (Certified 4/3/90).
(lxxiv)(a) *Training Provider:* Mid-Atlantic Asbestos Training Center.
Address: Brookwood II, 45 Knightsbridge Rd., Piscataway, NY 08854, Contact: Lee Lausten, Phone: (201) 463-5062.
(b) *Approved Courses:*
Abatement Worker (Certified 7/1/88).
Inspector (Certified 3/30/90).
(lxxv)(a) *Training Provider:* Monroe Community College.
Address: 1000 East Henrietta Rd., Bailey Center, Rochester, NY 14623-5780, Contact: David Duford, Phone: (716) 292-2000.
(b) *Approved Course:*
Abatement Worker (Certified 8/1/88).
(lxxvi)(a) *Training Provider:* Mystic Air Quality Consultants, Inc.
Address: 1204 North Rd., Groton, CT 06340, Contact: Christopher Eldent, Phone: (203) 449-6803.
(b) *Approved Course:*
Abatement Worker (Certified 5/2/88).
(lxxvii)(a) *Training Provider:* NET Atlantic-Syracuse Division.

Address: 5854 Butternut Dr., East Syracuse, NY 13057, Contact: Brian King, Phone: (315) 446-8795.
(b) *Approved Course:*
Abatement Worker (Certified 2/20/91).
(lxxviii)(a) *Training Provider:* National Asbestos Training Institute.
Address: 1766 Bloomsbury Ave., Ocean, NJ 07712, Contact: Doris Adler, Phone: (201) 918-0610.
(b) *Approved Courses:*
Abatement Worker (Certified 5/27/85).
Inspector (Certified 8/6/90).
(lxxix)(a) *Training Provider:* National Training Fund for Sheet Metal & Air Conditioning Industry.
Address: 1126 16th Street NW., Washington, DC 20036, Contact: Matthew Gillen, Phone: (202) 887-1980.
(b) *Approved Course:*
Abatement Worker (Certified 11/1/86).
(lxxx)(a) *Training Provider:* New England Laborer's Training Fund.
Address: 37 East St., Hopkinton, MA 01748-2699, Contact: James Merloni, Phone: (508) 435-6316.
(b) *Approved Course:*
Abatement Worker (Certified 4/7/86).
(lxxxi)(a) *Training Provider:* New York Committee for Occupational Safety and Health.
Address: 275 Seventh Ave., 25th Floor, New York, NY 10001, Contact: Joel Shufro, Phone: (212) 627-3900.
(b) *Approved Course:*
Abatement Worker (Certified 1/27/88).
(lxxxii)(a) *Training Provider:* New York District Council of Carpenters Labor Technical College.
Address: 395 Hudson St., Clarkson St. Entrance, New York, NY 10014, Contact: Charles Fanning, Phone: (212) 727-2224.
(b) *Approved Course:*
Abatement Worker (Certified 5/19/89).
(lxxxiii)(a) *Training Provider:* New York State Carpenters Labor Management Committee.
Address: P.O. Box 286, Milford, NY 13807, Contact: Maurice Torruella, Phone: (607) 286-7755.
(b) *Approved Course:*
Abatement Worker (Certified 3/23/89).
(lxxxiv)(a) *Training Provider:* New York University School of Continuing Education.
Address: 10 East 38th St., New York, NY 10016, Contact: Charles Schwartz, Phone: (212) 545-0077.
(b) *Approved Courses:*
Abatement Worker (Certified 8/7/89).
Inspector (Certified 10/16/90).
(lxxxv)(a) *Training Provider:* Niagara County Community College.
Address: 160 Washburn St., P.O. Box 70, Lockport, NY 14095, Contact: Mary Baldi-Fron, Phone: (716) 433-1856.
(b) *Approved Courses:*
Abatement Worker (Certified 1/4/87).
Inspector (Certified 8/22/90).
(lxxxvi)(a) *Training Provider:* Niagara Mohawk Power Corporation.
Address: Training Dept., 300 Erie Blvd., West Syracuse, NY 13202, Contact: Eileen Reynolds, Phone: (315) 428-5534.
(b) *Approved Courses:*
Abatement Worker (Certified 4/10/90).
Abatement Worker Annual Review (Certified 2/13/91).
Contractor/Supervisor (Certified 2/13/91).
(lxxxvii)(a) *Training Provider:* O'Brien & Gere Engineers, Inc.
Address: 5000 Brittonfield Parkway, P.O. Box 4873, Syracuse, NY 13221, Contact: Michael Quirk, Phone: (315) 437-6100.
(b) *Approved Courses:*
Abatement Worker (Certified 2/23/89).
Inspector (Certified 7/23/90).
(lxxxviii)(a) *Training Provider:* Operating Engineers Local 17.
Address: 2342 Pleasant Ave., Lake View, NY 14085, Contact: Frederick Eye, Phone: (716) 627-2311.
(b) *Approved Course:*
Abatement Worker (Certified 12/10/90).
(lxxxix)(a) *Training Provider:* Orange-Rockland Utilities.
Address: Bowline Pt. Training Center, Samsondale Ave., West Harestraw, NY 10993, Contact: Daniel Farguson, Phone: (914) 577-2038.
(b) *Approved Course:*
Abatement Worker (Certified 11/14/90).
(xc)(a) *Training Provider:* Orange-Ulster BOCES.
Address: Gibson Rd., Rd. No. 2, Goshen, NY 10924, Contact: Arthur Lange, Phone: (914) 294-5431.
(b) *Approved Course:*
Abatement Worker (Certified 2/3/89).
(xci)(a) *Training Provider:* PSI Hall-Kimbrell Environmental Services, Inc.-Flushing.
Address: 129-02 26 St., Flushing, NY 11354, Contact: Josephine Marchelletta, Phone: (718) 445-9090.
(b) *Approved Courses:*
Abatement Worker (Certified 8/1/87 to 3/15/91 only).
Inspector (Certified 12/4/90 to 3/15/91 only).
(xcii)(a) *Training Provider:* PSI Hall-Kimbrell Environmental Services, Inc.-Kansas.
Address: 4840 West 15th St., Lawrence, KS 66044, Contact: Margaret Maniger, Phone: (315) 463-5542.
(b) *Approved Course:*
Abatement Worker (Certified 8/1/87).
(xciii)(a) *Training Provider:* PSI-Hall Kimbrell Environmental Services, Inc.-Syracuse.
Address: 6103 East Molloy Rd., East Syracuse, NY 13057, Contact: Julie Williams, Phone: (315) 463-5542.
(b) *Approved Courses:*
Abatement Worker (Certified 8/1/87).
Inspector (Certified 12/4/90).
(xciv)(a) *Training Provider:* Paradigm Environmental Services, Inc.
Address: 961 Lyell Ave., Building 2, Suite 8, Rochester, NY 14606, Contact: Dmitry Tsimberrov, Phone: (716) 647-2530.
(b) *Approved Courses:*
Abatement Worker (Certified 8/29/89).
Abatement Worker Annual Review (Certified 1/31/91).
Contractor/Supervisor (Certified 1/4/91).
Contractor/Supervisor Annual Review (Certified 1/31/91).
Inspector (Certified 1/14/91).
Inspector Annual Review (Certified 2/20/91).
(xcv)(a) *Training Provider:* Professional Testing Laboratories, Inc.
Address: 18 Seaview Blvd., Port Washington, NY 11050, Contact: Yelena Goodman, Phone: (516) 484-7878.
(b) *Approved Course:*
Abatement Worker (Certified 5/10/90).
(xcvi)(a) *Training Provider:* Quality Control Services.
Address: 10 Lowell Rd., Andover, MA 01810, Contact: Ajay Pathak, Phone: (518) 475-0623.
(b) *Approved Course:*
Abatement Worker (Certified 6/1/88).
(xcvii)(a) *Training Provider:* Rennselaer, Columbia, Green BOCES.
Address: Brookview Rd., P.O. Box 26, Brookview, NY 12026, Contact: Shirley Readdean, Phone: (518) 732-4474.
(b) *Approved Course:*
Abatement Worker (Certified 4/10/89).
(xcviii)(a) *Training Provider:* Retra Services, Inc.
Address: 211 Oxford Blvd., Allison Park, PA 15101, Contact: Phillip Parroff, Phone: (412) 487-1711.
(b) *Approved Courses:*
Abatement Worker (Certified 5/10/90).
Abatement Worker Annual Review (Certified 2/22/91).

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(xxix)(a) *Training Provider:* Rochester Gas and Electric.
Address: 89 East Ave., Rochester, NY 14649-0001, Contact: Jeffrey Williams, Phone: (716) 724-8129.
(b) *Approved Course:*
Abatement Worker (Certified 4/4/89).
(c)(a) *Training Provider:* Safety Training, Inc.
Address: 114 Durst Pl., Yonkers, NY 10704, Contact: Nelson Helu, Phone: (914) 963-6831.
(b) *Approved Course:*
Abatement Worker (Certified 1/31/90).
(ci)(a) *Training Provider:* Seagull/Asbestos Consulting & Training Systems.
Address: 903 Northwest 6th Ave., Fort Lauderdale, FL 33311, Contact: James Stump, Phone: (305) 524-7209.
(b) *Approved Course:*
Abatement Worker (Certified 2/29/88).
(cii)(a) *Training Provider:* Senagraph Training Facilities.
Address: 37-42 72nd Street, Jackson Heights, NY 11372, Contact: Juan Herrera, Phone: (718) 429-0647.
(b) *Approved Courses:*
Abatement Worker (Certified 9/25/90).
Abatement Worker Annual Review (Certified 2/20/91).
(ciii)(a) *Training Provider:* Sevenson Environmental Services.
Address: 2749 Lockport Rd., Niagara Falls, NY 14302, Contact: Paul Hitcho, Phone: (716) 284-0431.
(b) *Approved Course:*
Abatement Worker (Certified 2/1/88).
(civ)(a) *Training Provider:* State University of New York at Buffalo.
Address: 111 Faber Hall, Buffalo, NY 14214, Contact: Joseph Syracuse, Phone: (716) 831-2125.
(b) *Approved Courses:*
Abatement Worker (Certified 2/2/90).
Inspector (Certified 7/9/90).
(cv)(a) *Training Provider:* Suffolk County Carpenters Apprenticeship and Journeymans Retraining Fund.
Address: 3380 Route No. 112, Medford, NY 11763, Contact: Carl Berglin, Phone: (516) 732-2501.
(b) *Approved Course:*
Abatement Worker (Certified 2/14/89).
(cvi)(a) *Training Provider:* Syracuse Asbestos Workers Apprentice Fund.
Address: 3950 Griffin Rd., Syracuse, NY 13215, Contact: John Whyland, Phone: (315) 469-6001.
(b) *Approved Course:*
Abatement Worker (Certified 6/1/87).
(cvii)(a) *Training Provider:* Temple University College of Engineering.
Address: 12th and Norris St., Philadelphia, PA 19122, Contact: M. A. Bernarde, Phone: (212) 787-8479.
(b) *Approved Course:*
Abatement Worker (Certified 6/1/87).
(cviii)(a) *Training Provider:* Testwell Craig Laboratories - Albany.
Address: 518 Clinton Ave., Albany, NY 12206, Contact: George Stowell, Phone: (518) 436-4114.
(b) *Approved Courses:*
Abatement Worker (Certified 3/6/88).
Inspector (Certified 4/11/90).
(cix)(a) *Training Provider:* Testwell Craig Laboratories - Ossining.
Address: 47 Hudson St., Ossining, NY 12206, Contact: Charles Schwartz, Phone: (914) 762-9000.
(b) *Approved Course:*
Abatement Worker (Certified 9/7/90).
(cx)(a) *Training Provider:* The Environmental Institute.
Address: 350 Franklin Rd., Suite 300, Marietta, GA 30067, Contact: Rachel McCain, Phone: (404) 425-2800.
(b) *Approved Courses:*
Abatement Worker (Certified 2/1/88).
Inspector (Certified 3/28/90).
(cxi)(a) *Training Provider:* Tri-Cities Laborers.
Address: 666 Wemple Rd., Box 100, Glenmont, NY 12077, Contact: Joseph Zappone, Phone: (518) 426-0290.
(b) *Approved Courses:*
Abatement Worker (Certified 12/1/87).
Abatement Worker Annual Review (Certified 1/25/91).
(cxii)(a) *Training Provider:* Tufts University Division of Education.
Address: 177 College Ave., Medford, NY 02155, Contact: Anne Chabot, Phone: (617) 381-3531.
(b) *Approved Course:*
Abatement Worker (Certified 1/1/86).
(cxiii)(a) *Training Provider:* Union Occupational Health Center.
Address: 450 Grider St., Buffalo, NY 14215, Contact: Jeanne Reilly, Phone: (716) 894-9366.
(b) *Approved Course:*
Abatement Worker (Certified 10/28/88).
(cxiv)(a) *Training Provider:* United Environmental Systems.
Address: 35 W. 35th St., New York, NY 10001, Contact: Eyal Bakshi, Phone: (212) 643-9633.
(b) *Approved Course:*
Abatement Worker (Certified 5/16/88).
(cxv)(a) *Training Provider:* University of Cincinnati Medical Center, Institute of Environmental Health.
Address: 3223 Eden Ave., ML56, Cincinnati, OH 45267-0056, Contact: Judy Jarrell, Phone: (513) 558-1729.
(b) *Approved Course:*
Abatement Worker (Certified 11/15/88).
(cxvi)(a) *Training Provider:* University of Illinois - Chicago.
Address: 1440 W. Washington Blvd., Chicago, IL 60607, Contact: Richard Lyons, Phone: (312) 829-1277.
(b) *Approved Course:*
Abatement Worker (Certified 6/1/86).
(cxvii)(a) *Training Provider:* University of Kansas/National.
Address: 6600 College Blvd., Suite 315, Overland, KS 66211, Contact: Lani Himegarner, Phone: (913) 491-0161.
(b) *Approved Course:*
Abatement Worker (Certified 9/1/87).
(cxviii)(a) *Training Provider:* Utilicon, Inc.
Address: 7 Tobey Village Office Park, Pittsford, NY 14534, Contact: Dennis Money, Phone: (716) 381-8710.
(b) *Approved Course:*
Abatement Worker (Certified 7/25/89).
(cxix)(a) *Training Provider:* Warren Mae Associates.
Address: 1480 Park St., White Bear Lake, MN 55110, Contact: Janine Rogelstad, Phone: (807) 754-6366.
(b) *Approved Course:*
Abatement Worker (Certified 7/19/88).
(cxx)(a) *Training Provider:* White Lung Association.
Address: 901 Broad St., 2nd Floor, Newark, NJ 07102, Contact: Myles O'Malley, Phone: (201) 824-2623.
(b) *Approved Courses:*
Abatement Worker (Certified 12/1/86).
Abatement Worker Annual Review (Certified 3/7/91).
Contractor/Supervisor (Certified 3/7/91).
Contractor/Supervisor Annual Review (Certified 3/7/91).
Inspector/Management Planner (Certified 3/7/91).
Inspector/Management Planner Annual Review (Certified 3/7/91).
(cxxi)(a) *Training Provider:* Wild Apple Enterprises Ltd.
Address: North Hollow Rd., Granville, VT 05747, Contact: John Furman, Phone: (812) 767-4415.
(b) *Approved Courses:*
Abatement Worker (Certified 4/24/90).
Abatement Worker Annual Review (Certified 3/26/91).
Contractor/Supervisor (Certified 3/26/91).
Contractor/Supervisor Annual Review (Certified 3/26/91).

North Dakota.

(19)(a) *State Agency:* State Dept. of Health & Consolidated Laboratories, Address: 1200 Missouri Ave., Box 5520, Bismark, ND 58505, Contact: Ken Wangler, Phone: (701) 221-5188.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 4/21/89).
Contractor/Supervisor (full from 4/21/89).
Inspector (full from 4/21/89).
Inspector/Management Planner (full from 4/21/89).
Project Designer (full from 4/21/89).
(i)(a) *Training Provider:* Midwest Asbestos Consultants, Inc.
Address: Box 1706, Fargo, ND 58107, Contact: Jerry Day, Phone: (701) 280-2286.
(b) *Approved Courses:*
Abatement Worker (Certified 6/30/89).
Abatement Worker Annual Review (Certified 7/31/89).
(ii)(a) *Training Provider:* Survey Management and Design.
Address: 2905 35th Ave. SW., Fargo, ND 58104, Contact: Peter L. Mehl, Phone: (701) 234-9556.
(b) *Approved Courses:*
Abatement Worker (Certified 6/13/89).
Abatement Worker Annual Review (Certified 1/5/90).
Contractor/Supervisor (Certified 6/13/89).
Contractor/Supervisor Annual Review (Certified 6/10/89).
Inspector/Management Planner (Certified 6/24/89).
Inspector/Management Planner Annual Review (Certified 3/28/90).
(iii)(a) *Training Provider:* University of North Dakota.
Address: Box 8275 University Station, Grand Forks, ND 58201, Contact: Dale Patrick, Phone: (701) 777-3341.
(b) *Approved Courses:*
Abatement Worker (Certified 6/13/89).
Abatement Worker Annual Review (Certified 3/28/90).
Contractor/Supervisor (Certified 6/13/89).
Contractor/Supervisor Annual Review (Certified 3/28/90).
Inspector/Management Planner (Certified 3/28/91).
Project Designer Annual Review (Certified 3/14/91).

Oregon.

(20)(a) *State Agency:* State of Oregon Dept. of Environmental Quality, Address: 811 Southwest Sixth Ave., Portland, OR 97204-1390, Contact: Bruce E. Arnold, Phone: (503) 229-5506.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (Certified 9/23/88).
Contractor/Supervisor (full from 9/23/88).
(i)(a) *Training Provider:* Alice Hamilton Occupational Health Center.
Address: 410 7th Street, SE., Washington, DC 20003, Contact: Brian Christopher, Phone: (202) 543-0005.
(b) *Approved Course:*
Abatement Worker (Certified 12/6/90).
(ii)(a) *Training Provider:* Asbestos Training Project Workplace Resources.
Address: 1908 Southeast Pershing St., Portland, OR 97202, Contact: Wendy Wiles, Phone: (503) 233-7707.
(b) *Approved Courses:*
Abatement Worker (Certified 9/23/88).
Contractor/Supervisor (Certified 9/23/88).
(iii)(a) *Training Provider:* Hazcon, Inc.
Address: 9500 Southwest Barbur Blvd., Portland, OR 97219, Contact: Randi Olson, Phone: (503) 244-6045.
(b) *Approved Courses:*
Abatement Worker (Certified 9/23/88).
Contractor/Supervisor (Certified 9/23/88).
(iv)(a) *Training Provider:* Laborers/AGC Apprenticeship & Training Program.
Address: Route 5, Box 325A, Corvallis, OR 97330, Contact: Bill Duke, Phone: (503) 745-5513.
(b) *Approved Courses:*
Abatement Worker (Certified 9/23/88).
Contractor/Supervisor (Certified 9/23/88).
(v)(a) *Training Provider:* Marine & Environmental Testing, Inc.
Address: P.O. Box 1142, Beaverton, OR 97075, Contact: Martin Finkel, Phone: (503) 288-2950.
(b) *Approved Course:*
Abatement Worker (Certified 12/3/88 to 9/18/89 only).
(vi)(a) *Training Provider:* NAC Corporation.
Address: 1005 Northwest Galveston, Suite E, Bend, OR 97701, Contact: Dale Schmidt, Phone: (503) 389-9727.
(b) *Approved Courses:*
Abatement Worker (Certified 3/23/89).
Contractor/Supervisor (Certified 4/1/90).
(vii)(a) *Training Provider:* Northwest Envirocon, Inc.
Address: P.O. Box 4638, Vancouver, WA 98662, Contact: Debbie Dunn, Phone: (206) 699-4015.
(b) *Approved Courses:*
Abatement Worker (Certified 12/14/88).
Contractor/Supervisor (Certified 12/14/88).
(viii)(a) *Training Provider:* PSI/Hall-Kimbrell Environmental Division.
Address: 4621 SW Kelly Avenue, Portland, OR 97201, Contact: Kelly Champion, Phone: (503) 223-1440.
(b) *Approved Courses:*
Abatement Worker (Certified 12/28/86 to 1/1/91 only).
Contractor/Supervisor (Certified 9/7/89 to 10/1/90 only).

Rhode Island.

(21)(a) *State Agency:* State of Rhode Island & Providence Plantations, Department of Health, Address: 206 Cannon Bldg., Three Capitol Hill, Providence, RI 02908, Contact: William Dundulis, Jr., Phone: (401) 277-3601.
(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 2/4/86).
Contractor/Supervisor (full from 2/4/86).
Inspector/Management Planner (full from 8/3/89).
Project Designer (full from 8/3/89).
(i)(a) *Training Provider:* A & S Training School, Inc.
Address: 99 South Cameron St., Harrisburg, PA 17101, Contact: William L Roberts, Phone: (717) 257-1360.
(b) *Approved Course:*
Contractor/Supervisor (Certified 3/31/89 to 3/29/91 only).
(ii)(a) *Training Provider:* Analytical Testing Services, Inc.
Address: 27 Thurber Blvd., Smithfield, RI 02917, Contact: Robert Weisberg, Phone: (401) 232-1420.
(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 12/10/86).
Contractor/Supervisor Annual Review (Certified 12/10/86).
Inspector/Management Planner (Certified 1/10/91).
Inspector/Management Planner Annual Review (Certified 1/10/91).
(iii)(a) *Training Provider:* Applied Occupational Health Systems.
Address: 29 River Rd., Suite 16, Concord, NH 03301, Contact: H. Charles Claridge, II, Phone: (603) 228-3610.
(b) *Approved Courses:*
Abatement Worker (Certified 6/11/90).
Contractor/Supervisor (Certified 6/11/90).
(iv)(a) *Training Provider:* Asbestos Consulting & Training Systems.

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Address: 903 Northwest Sixth Ave., Fort Lauderdale, FL 33311, Contact: James F. Stump, Phone: (305) 524-7208.

(b) *Approved Course:*

Abatement Worker (Certified 11/21/89).

(v)(a) *Training Provider:* Center for Environmental Management-Tufts University.

Address: 474 Boston Ave., Medford, MA 02155, Contact: Brenda Cole, Phone: (617) 381-3531.

(b) *Approved Courses:*

Abatement Worker (Certified 7/1/86).
Abatement Worker Annual Review (Certified 3/31/89).
Contractor/Supervisor (Certified 7/1/86).
Contractor/Supervisor Annual Review (Certified 3/31/89).

(vi)(a) *Training Provider:* Certified Engineering & Testing Co., Inc.

Address: 100 Grossman Dr., Braintree, MA 02184, Contact: Robert Thornburgh, Phone: (617) 849-0111.

(b) *Approved Courses:*

Abatement Worker (Certified 8/22/89).
Abatement Worker Annual Review (Certified 8/22/89).
Contractor/Supervisor (Certified 8/22/89).
Contractor/Supervisor Annual Review (Certified 8/22/89).

(vii)(a) *Training Provider:* Chemscope, Inc.

Address: P.O. Box 389, Newhaven, CT 06513, Contact: Ronald D. Arena, Phone: (203) 865-5605.

(b) *Approved Courses:*

Abatement Worker Annual Review (Certified 11/27/90).
Contractor/Supervisor Annual Review (Certified 11/27/90).

(viii)(a) *Training Provider:* Community College of Rhode Island.

Address: 1762 Louisquisset Pk., Lincoln, RI 02865, Contact: Richard Tessier, Phone: (401) 333-7166.

(b) *Approved Courses:*

Abatement Worker (Certified 11/13/87).
Abatement Worker Annual Review (Certified 3/31/89).
Contractor/Supervisor (Certified 3/31/89).
Contractor/Supervisor Annual Review (Certified 3/31/89).
Inspector/Management Planner Annual Review (Certified 12/14/90).

(ix)(a) *Training Provider:* Con-Test Educational Center.

Address: 39 Spruce St., East Longmeadow, MA 01028, Contact: Brenda Bolduc, Phone: (413) 525-1198.

(b) *Approved Courses:*

Abatement Worker (Certified 3/1/86).
Abatement Worker Annual Review (Certified 2/8/89).
Contractor/Supervisor (Certified 3/1/86).
Contractor/Supervisor Annual Review (Certified 2/8/89).

(x)(a) *Training Provider:* Dennison Environmental, Inc.

Address: 74 Commerce Way, Woburn, MA 01801, Contact: Kathleen Estridge, Phone: (617) 932-9400.

(b) *Approved Courses:*

Abatement Worker (Certified 4/30/89).
Abatement Worker Annual Review (Certified 4/30/89).
Contractor/Supervisor (Certified 4/30/89).
Contractor/Supervisor Annual Review (Certified 4/30/89).

(xi)(a) *Training Provider:* Environmed Services, Inc.

Address: 25 Science Park, New Haven, CT 06511, Contact: George Giacco, Jr., Phone: (203) 786-5580.

(b) *Approved Courses:*

Abatement Worker (Certified 9/28/89).
Abatement Worker Annual Review (Certified 12/6/90).
Contractor/Supervisor (Certified 9/28/89).
Contractor/Supervisor Annual Review (Certified 12/6/90).

(xii)(a) *Training Provider:* Environmental Training Services.

Address: 62 - H Montvale Pl., Stoneham, MA 02180, Contact: Maryann Martin, Phone: (617) 279-0855.

(b) *Approved Courses:*

Abatement Worker (Certified 1/23/90).
Abatement Worker Annual Review (Certified 1/23/90).
Contractor/Supervisor (Certified 1/23/90).
Contractor/Supervisor Annual Review (Certified 1/23/90).

(xiii)(a) *Training Provider:* Georgia Institute of Technology/GTRI.

Address: 151 6th St., Atlanta, GA 30332, Contact: Mark Demyanek, Phone: (404) 894-3806.

(b) *Approved Courses:*

Abatement Worker (Certified 7/22/88).
Abatement Worker Annual Review (Certified 2/14/89).
Contractor/Supervisor (Certified 7/22/88).
Contractor/Supervisor Annual Review (Certified 2/14/89).

(xiv)(a) *Training Provider:* Harvard School of Public Health.

Address: 677 Huntington Ave., Boston, MA 02115, Contact: Louis DiBerardinis, Phone: (617) 732-1171.

(b) *Approved Courses:*

Abatement Worker (Certification Pending).
Contractor/Supervisor (Certification Pending).

(xv)(a) *Training Provider:* Heat & Frost Insulation Union Local No. 6.

Address: 56 Roland St., Boston, MA 02129, Contact: Anthony Pistorino, Phone: (617) 625-6666.

(b) *Approved Courses:*

Abatement Worker (Certified 3/2/89).
Contractor/Supervisor (Certified 3/2/89).

(xvi)(a) *Training Provider:* Hygeia, Inc.

Address: 303 Bear Hill Rd., Waltham, MA 02154, Contact: Cynthia Whalen, Phone: (617) 890-4999.

(b) *Approved Courses:*

Abatement Worker (Certified 1/31/89).
Abatement Worker Annual Review (Certified 3/6/90).
Contractor/Supervisor (Certified 12/7/89).
Contractor/Supervisor Annual Review (Certified 3/6/90).

(xvii)(a) *Training Provider:* Hygienetics, Inc.

Address: 150 Causeway St., Boston, MA 02114, Contact: Russell Matthews, Phone: (617) 723-4664.

(b) *Approved Courses:*

Abatement Worker (Certified 5/10/89).
Abatement Worker Annual Review (Certified 5/10/89).
Contractor/Supervisor (Certified 5/10/89).
Contractor/Supervisor Annual Review (Certified 5/10/89).

(xviii)(a) *Training Provider:* Institute for Environmental Education.

Address: 500 West Cummings Pk., Suite 3650, Woburn, MA 01801, Contact: Starla L. Engelhardt, Phone: (617) 935-7370.

(b) *Approved Courses:*

Abatement Worker (Certified 9/9/87).
Abatement Worker Annual Review (Certified 5/8/89).
Contractor/Supervisor (Certified 9/9/87).
Contractor/Supervisor Annual Review (Certified 5/8/89).

(xix)(a) *Training Provider:* Mystic Air Quality Consultants.

Address: 1085 Buddington Rd., Groton, CT 06340, Contact: Christopher Eident, Phone: (203) 449-8903.

(b) *Approved Courses:*

Abatement Worker Annual Review (Certified 1/29/90).
Contractor/Supervisor (Certified 1/31/89).
Contractor/Supervisor Annual Review (Certified 1/29/90).

(xx)(a) *Training Provider:* NAACO.

Address: 790 Turnpike St., North Andover, MA 01845, Contact: Martin Levitt, Phone: (508) 681-8711.

(b) *Approved Courses:*

Abatement Worker (Certified 4/28/88).
Abatement Worker Annual Review (Certified 4/3/89).
Contractor/Supervisor Annual Review (Certified 4/3/89).

(xxi)(a) *Training Provider:* National Asbestos Council (NAC), Training Dept.

Address: 1777 Northeast Expressway, Suite 150, Atlanta, GA 30329, Contact: Tom Laubenthal, Phone: (404) 633-2622.

(b) *Approved Courses:*

Abatement Worker (Certified 9/5/86).
Abatement Worker Annual Review (Certified 1/16/91).
Contractor/Supervisor Annual Review (Certified 1/16/91).

(xxii)(a) *Training Provider:* National Training Fund/Workers Institute for Safety & Health (WISH).

Address: 1126 16th St., NW., Washington, DC 20036, Contact: Mathew Gillen, Phone: (202) 887-1980.

(b) *Approved Courses:*

Abatement Worker (Certified 1/31/89).
Abatement Worker Annual Review (Certified 1/31/89).
Contractor/Supervisor (Certified 1/31/89).
Contractor/Supervisor Annual Review (Certified 1/31/89).

(xxiii)(a) *Training Provider:* New England Laborers Training Trust Fund.

Address: 37 East St., Hopkinton, MA 01748, Contact: James Merloni, Phone: (508) 435-6316.

(b) *Approved Courses:*

Abatement Worker (Certified 7/1/86).
Abatement Worker Annual Review (Certified 2/15/89).
Contractor/Supervisor (Certified 2/4/91).
Contractor/Supervisor Annual Review (Certified 2/15/89).

(xxiv)(a) *Training Provider:* Quality Control Services, Inc.

Address: 10 Lowell Junction Rd., Andover, MA 01810, Contact: Ajay Pathak, Phone: (508) 475-0623.

(b) *Approved Courses:*

Abatement Worker (Certified 4/27/88).
Abatement Worker Annual Review (Certified 3/10/89).
Contractor/Supervisor (Certified 4/27/88).
Contractor/Supervisor Annual Review (Certified 3/10/89).

(xxv)(a) *Training Provider:* Safe Environment of America, Inc.

Address: 100 Moody St., Suite 200, Ludlow, MA 01056, Contact: Anne Folta, Phone: (413) 289-1409.

(b) *Approved Courses:*

Abatement Worker (Certified 1/31/89).
Abatement Worker Annual Review (Certification Pending).
Contractor/Supervisor (Certified 1/31/89).
Contractor/Supervisor Annual Review (Certification Pending).

South Dakota.

(22)(a) *State Agency:* Dept. of Water & Natural Resources Division of Air Quality & Solid Waste, Address: Joe Foss Building, 523 East Capitol St., Pierre, SD 57501, Contact: Bob McDonald, Phone: (605) 773-3153.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 9/15/88).
Contractor/Supervisor (full from 9/15/88).
Inspector/Management Planner (full from 9/15/88).
Project Designer (full from 9/15/88).

(i)(a) *Training Provider:* ATC Environmental.

Address: 1515 East 10th St., Sioux Falls, SD 57701, Contact: Jim Stout, Phone: (605) 338-0555.

(b) *Approved Courses:*

Abatement Worker (Certified 2/6/90).
Contractor/Supervisor (Certified 2/6/90).
Inspector/Management Planner (Certified 2/6/90).

(ii)(a) *Training Provider:* Asbestec.

Address: P.O. Box 5064, Cheyenne, WY 82003-5064, Contact: Leo Quinlivan, Phone: (307) 638-3100.

(b) *Approved Courses:*

Abatement Worker (Certified 2/14/91).
Abatement Worker Annual Review (Certified 2/14/91).
Contractor/Supervisor (Certified 2/14/91).
Contractor/Supervisor Annual Review (Certified 2/14/91).
Inspector/Management Planner (Certified 2/14/91).
Inspector/Management Planner Annual Review (Certified 2/14/91).
Project Designer (Certified 2/14/91).
Project Designer Annual Review (Certified 2/14/91).

(iii)(a) *Training Provider:* Asbestos Consulting & Training Systems.

Address: 903 NW. 6th Ave., Fort Lauderdale, FL 33311, Contact: Marl Knick, Phone: (305) 524-7208.

(b) *Approved Courses:*

Abatement Worker (Certified 6/20/90).
Abatement Worker Annual Review (Certified 6/20/90).
Contractor/Supervisor (Certified 6/20/90).
Contractor/Supervisor Annual Review (Certified 6/20/90).

(iv)(a) *Training Provider:* Asbestos Training & Supply.

Address: 504 Saddle Dr., Cheyenne, WY 82009, Contact: F. Gerald Blackwell, Phone: (307) 634-6858.

(b) *Approved Courses:*

Abatement Worker (Certified 2/14/91).
Abatement Worker Annual Review (Certified 2/14/91).
Contractor/Supervisor (Certified 2/14/91).
Contractor/Supervisor Annual Review (Certified 2/14/91).

(v)(a) *Training Provider:* Black Hills Special Services Cooperative.

Address: Box 218, Sturgis, SD 57784, Contact: Steve Miller, Phone: (605) 347-4467.

(b) *Approved Courses:*

Abatement Worker (Certified 3/22/89).
Abatement Worker Annual Review (Certified 8/9/88).
Contractor/Supervisor (Certified 3/22/89).
Contractor/Supervisor Annual Review (Certified 8/9/88).
Inspector/Management Planner (Certified 3/22/89).
Inspector/Management Planner Annual Review (Certified 2/26/90).
Project Designer Annual Review (Certified 12/7/90).

(vi)(a) *Training Provider:* Cleveland Environmental Services, Inc.

Address: 1400 Harrison Avenue, P.O. Box 14643, Cleveland, OH 45214, Contact: Eugene B. Rose, Phone: (513) 921-1160.

(b) *Approved Courses:*

Abatement Worker (Certified 9/10/90).
Abatement Worker Annual Review (Certified 9/10/90).

(vii)(a) *Training Provider:* Enviro-safe Inc.

Address: P.O. Box 328, Wakonda, SD 57073, Contact: John Mathrol, Phone: (605) 267-2539.

(b) *Approved Courses:*

Abatement Worker (Certified 2/28/89 to 1/1/90 only).
Contractor/Supervisor (Certified 2/28/89 to 1/1/90 only).
Inspector/Management Planner (Certified 2/26/89 to 1/1/90 only).

(viii)(a) *Training Provider:* Fargo - Moorhead Carpenters Joint Apprenticeship & Training Committee.

Address: 3002 1st Ave., N., Fargo, ND 58102, Contact: Raymond Such, Phone: (701) 235-4981.

(b) *Approved Courses:*

Abatement Worker (Certified 4/20/89).

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Abatement Worker Annual Review (Certified 4/25/90).
Contractor/Supervisor (Certified 4/20/89).
Contractor/Supervisor Annual Review (Certified 4/25/90).

(ix)(a) *Training Provider:* Fox & Fox, Inc.
Address: 1904 Willow Creek Rd., Casper, WY 82604, Contact: David Fox, Phone: (307) 234-0084.

(b) *Approved Courses:*
Abatement Worker (Certified 1/29/90).
Abatement Worker Annual Review (Certified 1/29/90).
Contractor/Supervisor (Certified 1/29/90).
Contractor/Supervisor Annual Review (Certified 1/29/90).

(x)(a) *Training Provider:* Iowa Laborers Training Fund.
Address: 5806 Meredith Ave., Suite C, Des Moines, IA 50322, Contact: Jack Jones, Phone: (515) 270-6965.

(b) *Approved Course:*
Abatement Worker (Certified 3/22/88).

(xi)(a) *Training Provider:* L & L Insulation, Inc.
Address: P.O. Box 1258, Rapid City, SD 57709, Contact: Perry Huber, Phone: (605) 348-4012.

(b) *Approved Courses:*
Abatement Worker (Certified 3/4/91).
Contractor/Supervisor (Certified 3/4/91).
Contractor/Supervisor Annual Review (Certified 3/19/91).

(xii)(a) *Training Provider:* National Asbestos Training Center, University of Kansas.
Address: 6600 College Blvd., Suite 315, Overland Park, KS 66211, Contact: Karen Wilson, Phone: (913) 491-0181.

(b) *Approved Courses:*
Abatement Worker (Certified 4/3/90).
Abatement Worker Annual Review (Certified 4/3/90).
Contractor/Supervisor (Certified 4/3/90).
Contractor/Supervisor Annual Review (Certified 4/3/90).
Inspector/Management Planner Annual Review (Certified 4/3/90).

(xiii)(a) *Training Provider:* Pickering Environmental.
Address: 1750 Madison Ave., Memphis, TN 38104, Contact: David Wright, Phone: (901) 726-0810.

(b) *Approved Course:*
Inspector/Management Planner (Certified 2/8/89).

(xiv)(a) *Training Provider:* South Dakota State University, College of Engineering.
Address: P.O. Box 2218, Brookings, SD 57007-0597, Contact: James Ceglian, Phone: (605) 688-4107.

(b) *Approved Courses:*
Abatement Worker (Certified 5/18/88).
Abatement Worker Annual Review (Certified 9/8/88).
Contractor/Supervisor (Certified 5/18/88).
Contractor/Supervisor Annual Review (Certified 9/8/88).
Inspector/Management Planner (Certified 5/18/88).
Inspector/Management Planner Annual Review (Certified 9/8/88).

Utah.

(23)(a) *State Agency:* Utah Dept. of Health Bureau of Air Quality, Address: 1950 West North Temple, P.O. Box 16690, Salt Lake City, UT 84116-0690, Contact: F. Burnell Cordner, Phone: (801) 536-4000.

(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 7/8/89).
Contractor/Supervisor (full from 7/8/89).
Inspector/Management Planner (full from 7/8/89).
Project Designer (full from 7/8/89).

(i)(a) *Training Provider:* Asbestos Training Associates (ATA).
Address: 10256 S. Flanders Road, Sandy, UT 84092, Contact: Joseph B. Liqori, Phone: (801) 571-4116.

(b) *Approved Course:*
Contractor/Supervisor (Certified 4/5/90).

(ii)(a) *Training Provider:* Industrial Health Incorporated.
Address: 640 E. Wilmington Ave., Salt Lake City, UT 84106, Contact: Merlynn Densley, Phone: (801) 466-2223.

(b) *Approved Courses:*
Abatement Worker (Certified 1/10/89).
Contractor/Supervisor (Certified 4/24/89).
Inspector/Management Planner (Certified 3/23/89).

(iii)(a) *Training Provider:* JKL Asbestos, Inc.
Address: P.O. Box 406, Lehi, UT 84043, Contact: James K. Libberton, Phone: (801) 768-4231.

(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 7/2/90).
Contractor/Supervisor Annual Review (Certified 7/2/90).

(iv)(a) *Training Provider:* National Education Program for Asbestos (NEPA).
Address: 2863 West 8750 South, West Jordan, UT 84088, Contact: Mark A. Kirk, Phone: (801) 565-1400.

(b) *Approved Courses:*
Contractor/Supervisor (Certified 4/12/89).
Contractor/Supervisor Annual Review (Certified 5/22/89).

(v)(a) *Training Provider:* Power Master Incorporated.
Address: 13205 South State St., Draper, UT 84020, Contact: Brian Welty, Phone: (801) 571-9321.

(b) *Approved Course:*
Abatement Worker (Certified 7/29/88 to 4/4/91 only).

(vi)(a) *Training Provider:* Rocky Mountain Center for Occupational and Environmental Health.
Address: University of Utah, Building 512, Salt Lake City, UT 84112, Contact: Jeffery S. Lee, Phone: (801) 581-5710.

(b) *Approved Courses:*
Abatement Worker (Certified 2/8/89).
Abatement Worker Annual Review (Certified 2/13/89).
Contractor/Supervisor (Certified 10/7/88).
Contractor/Supervisor Annual Review (Certified 6/7/88).
Inspector/Management Planner Annual Review (Certified 12/15/88).
Project Designer (Certified 10/7/88).

(vii)(a) *Training Provider:* S & H Asbestos Consultants, Inc.
Address: 4980 Holladay Blvd., Salt Lake City, UT 84117, Contact: Stanley Christiansen, Phone: (801) 277-2323.

(b) *Approved Courses:*
Abatement Worker (Certified 8/12/88).
Abatement Worker Annual Review (Certified 7/28/89).

(viii)(a) *Training Provider:* Utah Carpenters Joint Apprenticeship & Training Committee.
Address: 2261 S. Redwood Rd., Suite J, Salt Lake City, UT 84119, Contact: Ken Mayne, Phone: (801) 972-5147.

(b) *Approved Courses:*
Abatement Worker (Certified 10/16/89).
Contractor/Supervisor (Certified 10/16/89).

(ix)(a) *Training Provider:* Utah Correctional Industries.
Address: P.O. Box 850, Draper, UT 84020-850, Contact: Vic Middleton, Phone: (801) 571-9264.

(b) *Approved Courses:*
Contractor/Supervisor (Certified 9/25/89).
Contractor/Supervisor Annual Review (Certified 4/5/90).

Virginia.

(24)(a) *State Agency:* Commonwealth of Virginia Dept. of Commerce. Address: 3600 West Broad St., Richmond, VA 23230-4917, Contact: Nelle P. Hotchkiss, Phone: (804) 367-8595.

(b) *Approved Accreditation Program Disciplines:*
Abatement Worker (full from 7/1/88).
Contractor/Supervisor (full from 7/1/88).
Inspector/Management Planner (full from 7/1/88).
Project Designer (full from 7/1/88).

(i)(a) *Training Provider:* Aerosol Monitoring & Analysis.
Address: The Commons Corporate Center, 1341 Ashton Rd., Suite A, Hanover, MD 21076, Contact: Steve Blizzard, Phone: (800) 221-1745.

(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 10/18/89).
Contractor/Supervisor (Certified 10/31/89).
Contractor/Supervisor Annual Review (Certified 10/18/89).
Inspector/Management Planner (Certified 10/18/89).
Inspector/Management Planner Annual Review (Certified 10/18/89).

(ii)(a) *Training Provider:* Alice Hamilton Occupational Health Center.
Address: 410 7th St., SE., 2nd Floor, Washington, DC 20003, Contact: Brian Christopher, Phone: (202) 543-0005.

(b) *Approved Courses:*
Abatement Worker (Certified 3/2/88).
Abatement Worker Annual Review (Certified 1/1/89).
Contractor/Supervisor (Certified 3/2/88).
Contractor/Supervisor Annual Review (Certified 1/1/89).
Inspector/Management Planner (Certified 3/2/88).
Inspector/Management Planner Annual Review (Certified 3/1/89).

(iii)(a) *Training Provider:* Asbestos Analytical Association.
Address: 3208-B George Washington Hwy., Portsmouth, VA 23704, Contact: Carol Holden, Phone: (804) 397-0695.

(b) *Approved Courses:*
Abatement Worker (Certified 7/27/88).
Abatement Worker Annual Review (Certified 2/1/89).
Contractor/Supervisor (Certified 7/27/88).
Contractor/Supervisor Annual Review (Certified 2/1/89).
Inspector/Management Planner (Certified 7/27/88).
Inspector/Management Planner Annual Review (Certified 6/1/89).
Project Designer Annual Review (Certified 5/13/89).

(iv)(a) *Training Provider:* Asbestos Consulting & Training Systems.
Address: 903 Northwest Sixth Ave., Ft. Lauderdale, FL 33311, Contact: Mark Knick, Phone: (305) 524-7208.

(b) *Approved Courses:*
Abatement Worker (Certified 10/6/89).
Abatement Worker Annual Review (Certified 2/1/90).
Contractor/Supervisor (Certified 10/6/89).
Contractor/Supervisor Annual Review (Certified 2/1/90).

(v)(a) *Training Provider:* Asbestos Removal Corp. of Maryland.
Address: 521-D Pulaski Highway, Joppa, MD 21085, Contact: John Therappas, Phone: (301) 679-6062.

(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 7/19/90).
Contractor/Supervisor Annual Review (Certified 7/19/90).

(vi)(a) *Training Provider:* Atlantic Environmental Resources.
Address: 10111-B Bacon Dr., Beltsville, MD 20705, Contact: John Profitt, Phone: (301) 595-1737.

(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 7/19/90).
Contractor/Supervisor Annual Review (Certified 7/19/90).

(vii)(a) *Training Provider:* BCM Engineers, Inc.
Address: 108 St. Anthony St., Mobile, AL 36602, Contact: H. Conrad Freeman, Phone: (205) 433-3981.

(b) *Approved Courses:*
Inspector/Management Planner Annual Review (Certified 9/1/89).
Project Designer Annual Review (Certified 9/1/89).

(viii)(a) *Training Provider:* Barco, Inc.
Address: 2439 N. Charles St., Baltimore, MD 21218, Contact: Bart Harrison, Phone: (301) 889-7770.

(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 11/19/90).
Contractor/Supervisor Annual Review (Certified 11/19/90).

(ix)(a) *Training Provider:* Biospherics, Inc.
Address: 12051 Indian Creek Ct., Beltsville, MD 20705, Contact: Jean Fisher, Phone: (301) 369-3900.

(b) *Approved Courses:*
Abatement Worker (Certified 9/13/88).
Abatement Worker Annual Review (Certified 4/1/89).
Contractor/Supervisor (Certified 9/13/88).
Contractor/Supervisor Annual Review (Certified 3/1/89).
Inspector/Management Planner (Certified 9/13/88).
Inspector/Management Planner Annual Review (Certified 3/1/89).

(x)(a) *Training Provider:* Briggs Assoc. Inc.
Address: 8325 Guilford Rd., Suite E, Columbia, MD 21046, Contact: J. Roos Voorhees, Phone: (301) 381-4434.

(b) *Approved Course:*
Abatement Worker (Certification Pending).

(xi)(a) *Training Provider:* Critical Environmental.
Address: 5815 Gulf Freeway, Houston, TX 77023, Contact: Ronald F. Dodson, Phone: (713) 921-8921.

(b) *Approved Courses:*
Abatement Worker (Certification Pending).
Contractor/Supervisor (Certification Pending).
Inspector/Management Planner (Certification Pending).

(xii)(a) *Training Provider:* Delaware Tech.
Address: 1832 North Dupont Parkway, Dover, DE 19001, Contact: David T. Stanley, Phone: (302) 736-5321.

(b) *Approved Courses:*
Abatement Worker Annual Review (Certified 1/16/91).
Contractor/Supervisor Annual Review (Certified 1/16/91).

(xiii)(a) *Training Provider:* E.I. DuPont DeNemours & Co., Inc.
Address: Spruance Plant, P.O. Box 27001, Richmond, VA 23261, Contact: Clarence Mihal, Phone: (804) 743-2948.

(b) *Approved Courses:*
Abatement Worker (Certified 5/11/88).
Abatement Worker Annual Review (Certified 2/1/89).
Contractor/Supervisor (Certified 5/11/88).
Contractor/Supervisor Annual Review (Certified 6/1/89).

(xiv)(a) *Training Provider:* EME, Inc.
Address: P.O. Box 8843, Greensboro, NC 27409, Contact: Russ Luther, Phone: (919) 855-5752.

(b) *Approved Course:*
Abatement Worker (Certified 4/1/90).

(xv)(a) *Training Provider:* Environmental Specialties, Inc.
Address: P.O. Box 130, Hopewell, VA 23860, Contact: Lewis Stevenson, Phone: (804) 452-1212.

(b) *Approved Courses:*
Abatement Worker (Certified 5/1/89).
Abatement Worker Annual Review (Certified 6/1/89).
Contractor/Supervisor (Certified 5/1/89).

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Contractor/Supervisor Annual Review (Certified 6/1/89).

(xvi)(a) *Training Provider:* Fluor Daniel.

Address: The Daniel Bldg., 301 North Main St., Greenville, SC 29601, Contact: Rick Florence, Phone: (803) 298-2168.

(b) *Approved Courses:*

Abatement Worker (Certified 6/24/88).
Contractor/Supervisor (Certified 6/24/88).

(xvii)(a) *Training Provider:* GST Company.

Address: 50 Progress Ave., Zelienople, PA 16063, Contact: Norma Stanford, Phone: (412) 772-7466.

(b) *Approved Courses:*

Abatement Worker (Certified 6/1/89).
Abatement Worker Annual Review (Certified 7/1/89).
Contractor/Supervisor (Certified 6/1/89).
Contractor/Supervisor Annual Review (Certified 7/1/89).

(xviii)(a) *Training Provider:* Georgia Tech Research Group.

Address: Georgia Tech Institute of Technology, Atlanta, GA 30332, Contact: Vicki H. Ainslie, Phone: (404) 895-3806.

(b) *Approved Courses:*

Contractor/Supervisor (Certified 5/1/89).
Contractor/Supervisor Annual Review (Certified 4/1/89).

(xix)(a) *Training Provider:* Global Waste System Inc.

Address: Smith Reynolds Airport Hangar 14, Winston Salem, NC 27105, Contact: Carl Reid, Phone: (919) 744-9382.

(b) *Approved Courses:*

Abatement Worker (Certified 3/2/90).
Abatement Worker Annual Review (Certified 3/1/90).
Contractor/Supervisor (Certified 3/2/90).
Contractor/Supervisor Annual Review (Certified 3/1/90).

(xx)(a) *Training Provider:* Great Barrier Insulation Co.

Address: P.O. Box 70247, Mobile, AL 36607-8247, Contact: Thomas W Knotts, Phone: (205) 476-0350.

(b) *Approved Course:*

Abatement Worker (Certified 12/6/89).

(xxi)(a) *Training Provider:* Hall-Kimbrell Environmental Services.

Address: 4840 West 15th St., P.O. Box 307, Lawrence, KS 66046, Contact: Steve Davis, Phone: (804) 270-7235.

(b) *Approved Courses:*

Abatement Worker (Certified 5/23/88).
Abatement Worker Annual Review (Certified 6/1/89).
Contractor/Supervisor (Certified 5/23/88).
Contractor/Supervisor Annual Review (Certified 6/1/89).
Inspector/Management Planner Annual Review (Certified 2/1/90).

(xxii)(a) *Training Provider:* Harman Engineering Associates, Inc.

Address: 1550 Pumphrey Ave., Auburn, AL 36830, Contact: Dave Schrimsher, Phone: (205) 821-9250.

(b) *Approved Course:*

Abatement Worker (Certified 9/21/89).

(xxiii)(a) *Training Provider:* Hazard Abatement Consultants.

Address: 5 Breechwood Rd., Hampton, VA 23666, Contact: Thomas Priesman, Phone: (804) 825-0302.

(b) *Approved Course:*

Abatement Worker (Certified 6/1/89).

(xxiv)(a) *Training Provider:* Hercules Aerospace Co.

Address: Radford Army Ammunition Plant, Caller Service 1, Radford, VA 24141-0299, Contact: Lance Hudnall, Phone: (703) 639-7730.

(b) *Approved Courses:*

Abatement Worker Annual Review (Certified 12/19/90).
Contractor/Supervisor Annual Review (Certified 12/19/90).
Inspector Annual Review (Certified 10/30/90).

(xxv)(a) *Training Provider:* Ind-Tra-Co., Ltd.

Address: 511 W. Grace St., Richmond, VA 23220, Contact: Ernest Drew, Phone: (804) 648-7836.

(b) *Approved Courses:*

Abatement Worker (Certified 3/7/88).
Abatement Worker Annual Review (Certified 3/1/89).
Contractor/Supervisor (Certified 3/7/88).
Contractor/Supervisor Annual Review (Certified 3/1/89).
Inspector/Management Planner (Certified 3/7/88).
Inspector/Management Planner Annual Review (Certified 3/1/89).

(xxvi)(a) *Training Provider:* Industrial Training & Support Services.

Address: P.O. Box 495, Lightfoot, VA 23090, Contact: Virginia Graham, Phone: (804) 565-3308.

(b) *Approved Courses:*

Abatement Worker (Certified 10/22/88).
Abatement Worker Annual Review (Certified 6/1/89).
Contractor/Supervisor (Certified 11/19/90).
Contractor/Supervisor Annual Review (Certified 6/1/89).

(xxvii)(a) *Training Provider:* Institute for Environmental Education.

Address: 500 West Cummings Pk., Suite 3650, Woburn, MA 01801, Contact: Starla L. Engelhardt, Phone: (617) 935-7370.

(b) *Approved Courses:*

Abatement Worker (Certification Pending).
Abatement Worker Annual Review (Certified 2/1/90).
Contractor/Supervisor (Certification Pending).
Contractor/Supervisor Annual Review (Certified 12/1/89).
Inspector (Certification Pending).
Inspector/Management Planner Annual Review (Certified 12/27/89).

(xxviii)(a) *Training Provider:* Jenkins Professionals Inc.

Address: 5502 Campbell Blvd., Suite F, Baltimore, MD 21236, Contact: Larry Jenkins, Phone: (301) 529-3553.

(b) *Approved Courses:*

Abatement Worker (Certified 12/27/89).
Contractor/Supervisor (Certified 12/27/89).

(xxix)(a) *Training Provider:* Laborers District Council of Virginia Training Trust Fund.

Address: 4191 Rochambeau Dr., Williamsburg, VA 23185, Contact: Roy Brightwell, Phone: (804) 564-8148.

(b) *Approved Courses:*

Abatement Worker (Certified 8/6/88).
Abatement Worker Annual Review (Certified 6/1/89).

(xxx)(a) *Training Provider:* META.

Address: P.O. Box 1961, Lawrence, KS 66044, Contact: Katy Nitcher, Phone: (913) 842-6382.

(b) *Approved Courses:*

Abatement Worker Annual Review (Certified 3/1/90).
Contractor/Supervisor Annual Review (Certified 3/1/90).

(xxxi)(a) *Training Provider:* Marcus Environmental.

Address: 6345 Courthouse Rd., P.O. Box 227, Prince George, VA 23875, Contact: Marshall Marcus, Phone: (804) 733-1855.

(b) *Approved Courses:*

Abatement Worker (Certified 2/13/89).
Contractor/Supervisor (Certified 2/13/89).

(xxxii)(a) *Training Provider:* Maryland Center for Environmental Training-Charles County Community College.

Address: Mitchell Rd., P.O. Box 910, LaPlata, MD 20646-0910, Contact: Jake Bair, Phone: (301) 934-2251.

(b) *Approved Courses:*

Abatement Worker (Certified 5/19/89).
Abatement Worker Annual Review (Certified 6/1/89).
Contractor/Supervisor (Certified 5/19/89).
Contractor/Supervisor Annual Review (Certified 6/1/89).

(xxxiii)(a) *Training Provider:* Medical College of Virginia, Dept. of Preventive Medicine.

Address: P.O. Box 212, Richmond, VA 23298, Contact: Leonard Vance, Phone: (804) 786-9785.

(b) *Approved Courses:*

Abatement Worker (Certified 12/8/87).
Abatement Worker Annual Review (Certified 4/1/89).
Contractor/Supervisor (Certified 3/8/87).
Contractor/Supervisor Annual Review (Certified 11/1/88).
Inspector/Management Planner (Certified 12/8/87).
Inspector/Management Planner Annual Review (Certified 1/1/89).
Project Designer (Certified 6/25/89).

(xxxiv)(a) *Training Provider:* Metropolitan Laboratories.

Address: P.O. Box 8921, Norfolk, VA 23503, Contact: Ethel Holmes, Phone: (804) 583-9444.

(b) *Approved Courses:*

Abatement Worker (Certified 8/4/88).
Contractor/Supervisor (Certified 8/4/88).

(xxxv)(a) *Training Provider:* National Asbestos Council, Inc.

Address: 1777 Northeast Expressway, Route 150, Atlanta, GA 30329, Contact: Cynthia Clavon, Phone: (404) 633-2622.

(b) *Approved Courses:*

Abatement Worker (Certified 3/1/88).
Abatement Worker Annual Review (Certified 10/1/89).

(xxxvi)(a) *Training Provider:* Norfolk Shipbuilding & Dry Dock Co.

Address: P.O. Box 2100, Norfolk, VA 23501, Contact: Thomas Beacham, Phone: (804) 494-2940.

(b) *Approved Courses:*

Abatement Worker (Certified 6/15/88).
Abatement Worker Annual Review (Certified 7/1/89).

(xxxvii)(a) *Training Provider:* OMC.

Address: 4451 Parliament Place, Lanham, MD 20706, Contact: Ellen J. Kite, Phone: (301) 306-0632.

(b) *Approved Courses:*

Abatement Worker Annual Review (Certified 8/17/90).
Contractor/Supervisor (Certified 8/25/89).
Contractor/Supervisor Annual Review (Certified 8/17/90).

(xxxviii)(a) *Training Provider:* Old Dominion University.

Address: Office of Health Sciences, Norfolk, VA 23529, Contact: Shirley Glover, Phone: (804) 683-4256.

(b) *Approved Courses:*

Abatement Worker (Certified 6/8/88).
Abatement Worker Annual Review (Certified 5/1/89).
Contractor/Supervisor (Certified 6/8/88).
Contractor/Supervisor Annual Review (Certified 5/1/89).
Inspector/Management Planner (Certified 6/8/88).
Inspector/Management Planner Annual Review (Certified 4/1/89).

(xxxix)(a) *Training Provider:* Quality Specialties, Inc.

Address: One Westover Park, 501 Westover Ave., Hopewell, VA 23860, Contact: Bowen Hyatt, Phone: (804) 748-9637.

(b) *Approved Courses:*

Abatement Worker (Certified 5/17/88).
Abatement Worker Annual Review (Certified 7/20/90).

(xl)(a) *Training Provider:* Retra Services.

Address: 200 Oxford Blvd., Allison Park, PA 15101, Contact: David Sarvadi, Phone: (800) 229-8724.

(b) *Approved Courses:*

Abatement Worker (Certified 6/18/89).
Abatement Worker Annual Review (Certified 2/1/90).
Contractor/Supervisor (Certified 10/22/90).
Contractor/Supervisor Annual Review (Certified 2/1/90).

(xli)(a) *Training Provider:* Roy F. Weston, Inc.

Address: 1635 Pumphrey Ave., Auburn, AL 36830, Contact: Michael Skotnick, Phone: (205) 826-6100.

(b) *Approved Course:*

Inspector/Management Planner (Certified 12/27/89).

(xlii)(a) *Training Provider:* S.G. Brown, Inc.

Address: 2701 Sonic Dr., Virginia Beach, VA 23334, Contact: George Torrence, Phone: (804) 468-0027.

(b) *Approved Courses:*

Abatement Worker (Certified 6/10/88).
Abatement Worker Annual Review (Certified 7/1/89).
Contractor/Supervisor Annual Review (Certified 7/1/89).

(xliii)(a) *Training Provider:* State Council of Carpenters of Virginia.

Address: 3801 Jefferson Davis Hwy., Richmond, VA 23234, Contact: Frank Hollis, Phone: (804) 275-0701.

(b) *Approved Courses:*

Abatement Worker (Certified 8/31/89).
Abatement Worker Annual Review (Certified 10/9/90).
Contractor/Supervisor (Certified 8/31/89).
Contractor/Supervisor Annual Review (Certified 10/9/90).

(xliv)(a) *Training Provider:* T R C Environmental Consultants, Inc.

Address: 1725 K Street, NW., Washington, DC 20006, Contact: Marian Meiselman, Phone: (202) 337-0307.

(b) *Approved Courses:*

Abatement Worker (Certified 12/4/90).
Abatement Worker Annual Review (Certified 1/31/91).
Contractor/Supervisor (Certified 12/4/90).
Contractor/Supervisor Annual Review (Certified 1/31/91).

(xlv)(a) *Training Provider:* The Environmental Institute.

Address: Cobb Corporate Center/300, 350 Franklin Rd., Marietta, GA 30067, Contact: Rachel McCain, Phone: (404) 425-2000.

(b) *Approved Course:*

Contractor/Supervisor Annual Review (Certified 12/1/89).

(xlvi)(a) *Training Provider:* The Francis L. Greenfield Institute.

Address: Route 6344, P.O. Box 217, Sterling, VA 22170, Contact: Bengamin Bostic, Phone: (703) 450-5950.

(b) *Approved Courses:*

Abatement Worker (Certified 10/10/88).
Abatement Worker Annual Review (Certified 10/1/89).

(xlvii)(a) *Training Provider:* The Glaser Company.

Address: 200 Kanawha Terrace, St. Albans, WV 25177, Contact: Gina Silbaugh, Phone: (304) 722-2832.

(b) *Approved Courses:*

Abatement Worker Annual Review (Certified 6/1/90).
Contractor/Supervisor Annual Review (Certified 6/1/90).

(xlviii)(a) *Training Provider:* Tidewater Community College.

Address: VA Beach Campus, 1700 College Cresent, Virginia Beach, VA 23456, Contact: Sam Lamb, Phone: (804) 427-7198.

(b) *Approved Course:*

Abatement Worker (Certified 3/21/89).

(xlix)(a) *Training Provider:* University of Virginia National Asbestos Council Division of Continuing Education.

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Address: 106 Midmont Lane, Charlottesville, VA 22903, Contact: Gregory Fels, Phone: (804) 924-7114.

(b) *Approved Course:*

Abatement Worker (Certified 3/7/89).

(l)(a) *Training Provider:* Waco, Inc.

Address: 4407 Theodore Green Blvd., White Plains, MD 20695-0740, Contact: Wayne Cooper, Phone: (301) 870-3323.

(b) *Approved Courses:*

Abatement Worker (Certified 10/31/88).
Abatement Worker Annual Review (Certified 2/1/89).
Contractor/Supervisor (Certified 10/31/88).
Contractor/Supervisor Annual Review (Certified 2/1/89).

(li)(a) *Training Provider:* White Lung Association.

Address: 1601 St. Paul St., Baltimore, MD 21202, Contact: James Fite, Phone: (301) 727-6029.

(b) *Approved Courses:*

Inspector/Management Planner (Certified 7/11/88).
Inspector/Management Planner Annual Review (Certified 2/1/90).

Washington.

(25)(a) *State Agency:* Washington Department of Labor and Industries, Division of Industrial Safety and Health, Address: 300 West Harrison St., Seattle, WA 98119, Contact: James Catalano, Phone: (206) 281-5325.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (Interim from 12/28/87).
Abatement Worker (full from 11/10/89).
Contractor/Supervisor (interim from 12/28/87).
Contractor/Supervisor (full from 11/10/89).

(i)(a) *Training Provider:* Asbestos Training Project/Workplace Resources.

Address: 1908 Southeast Pershing St., Portland, OR 97202, Contact: Wendy Wiles, Phone: (503) 233-7707.

(b) *Approved Courses:*

Abatement Worker (Certified 3/1/88).
Abatement Worker Annual Review (Certified 3/1/88).

(ii)(a) *Training Provider:* Bison Engineering/Research.

Address: 1020 S. 344th No. 204, Federal Way, WA 98003, Contact: Don Hurst, Phone: (206) 838-7261.

(b) *Approved Course:*

Abatement Worker (Certified 5/12/87 to 5/12/89 only).

(iii)(a) *Training Provider:* Carpenters-Employers Apprenticeship & Training Trust Fund of Western Washington.

Address: 1700 Hickox Rd., Mt. Vernon, WA 98273, Contact: Emil Lippert, Phone: (206) 428-2983.

(b) *Approved Courses:*

Abatement Worker (Certified 4/23/90).
Abatement Worker Annual Review (Certified 4/23/90).

(iv)(a) *Training Provider:* Chen-Northern, Inc.

Address: 600 South 25th St., P.O. Box 30815, Billings, MT 59107, Contact: Kathleen Smit, Phone: (406) 248-9282.

(b) *Approved Course:*

Abatement Worker (Certified 12/22/88 to 12/22/89 only).

(v)(a) *Training Provider:* Enviro-tec, Inc.

Address: 2825 - 152nd Ave. NE., Redmond, WA 98052, Contact: Lawrence Short, Phone: (206) 867-5111.

(b) *Approved Course:*

Abatement Worker (Certified 6/22/88 to 6/22/89 only).

(vi)(a) *Training Provider:* Environmental Health Sciences, Inc.

Address: 9 Lake Bellevue Bldg., Suite 104, Bellevue, WA 98005, Contact: Robert Gilmore, Phone: (206) 455-2959.

(b) *Approved Courses:*

Abatement Worker (Certified 3/1/88).
Abatement Worker Annual Review (Certified 3/1/88).
Contractor/Supervisor (Certified 3/1/88).

(vii)(a) *Training Provider:* Environmental Management, Inc.

Address: P.O. Box 91477, Anchorage, AK 99509, Contact: Kenneth Johnson, Phone: (907) 272-8050.

(b) *Approved Course:*

Abatement Worker (Certified 1/1/89 to 1/10/90 only).

(viii)(a) *Training Provider:* Environmental Management, Inc.

Address: P.O. Box 383, Wauna, WA 98395, Contact: Ray Donahue, Phone: (206) 857-3222.

(b) *Approved Course:*

Abatement Worker (Certified 1/10/89 to 1/10/90 only).

(ix)(a) *Training Provider:* Hall-Kimbrell Environmental Services, Inc.

Address: 5319 SW. Westgate, No. 239, Portland, OR 97221, Contact: Peter Clark, Phone: (503) 292-9406.

(b) *Approved Courses:*

Abatement Worker (Certified 6/1/88).
Abatement Worker Annual Review (Certified 6/1/88).

(x)(a) *Training Provider:* Hazcon, Inc.

Address: 9500 SW. Barbur Blvd., Suite 100, Portland, OR 97219, Contact: Harvey McGill, Phone: (503) 244-8045.

(b) *Approved Courses:*

Abatement Worker (Certified 3/1/88).
Abatement Worker Annual Review (Certified 3/1/88).
Contractor/Supervisor (Certified 11/1/89).

(xi)(a) *Training Provider:* Hasson, Inc.

Address: 5950 Sixth Ave. S., No. 200, Seattle, WA 98108, Contact: Mike Krause, Phone: (206) 763-7364.

(b) *Approved Courses:*

Abatement Worker (Certified 3/1/88).
Abatement Worker Annual Review (Certified 3/1/88).
Contractor/Supervisor (Certified 11/1/89).

(xii)(a) *Training Provider:* Heavey Engineers, Inc.

Address: P.O. Box 832, Stevenson, WA 98648, Contact: Bernard Heavey, Phone: (509) 427-8936.

(b) *Approved Courses:*

Abatement Worker (Certified 11/7/87 to 8/1/89 only).
Abatement Worker Annual Review (Certified 7/1/88 to 8/1/89 only).

(xiii)(a) *Training Provider:* Long Services.

Address: 8025 10th Ave. S., P.O. Box C 81435, Seattle, WA 98018-4498, Contact: Michael Cole, Phone: (206) 763-8422.

(b) *Approved Course:*

Abatement Worker (Certified 8/5/85).

(xiv)(a) *Training Provider:* M & M Environmental, Inc.

Address: 3902 N. 34th St., Tacoma, WA 98407, Contact: Mike Reid, Phone: (206) 759-3443.

(b) *Approved Courses:*

Abatement Worker (Certified 9/1/86 to 2/4/90 only).
Abatement Worker Annual Review (Certified 1/1/89 to 2/4/90 only).

(xv)(a) *Training Provider:* NW Envirocon, Inc.

Address: 285 SW. 41 St., Renton, WA 98055, Contact: Matt Johnson, Phone: (206) 251-6033.

(b) *Approved Courses:*

Abatement Worker (Certified 1/1/88).
Abatement Worker Annual Review (Certified 1/1/88).

(xvi)(a) *Training Provider:* NW Envirocon, Inc.

Address: P.O. Box 169, Washoughal, WA 98671, Contact: Ed Hemsley, Phone: (206) 835-8876.

(b) *Approved Courses:*

Abatement Worker (Certified 1/1/88).
Abatement Worker Annual Review (Certified 1/1/88).

(xvii)(a) *Training Provider:* NW Laborers - Employers Training Trust Fund.

Address: 27055 Ohio Ave., Kingston, WA 98346, Contact: Harold Avery, Phone: (206) 297-3035.

(b) *Approved Courses:*

Abatement Worker (Certified 8/1/85).
Abatement Worker Annual Review (Certified 8/1/85).

(xviii)(a) *Training Provider:* NW Washington Painting, Drywall Joint Apprenticeship Committee.

Address: 6770 E. Marginal Way S., Seattle, WA 98108, Contact: Paul Norling, Phone: (206) 762-8332.

(b) *Approved Courses:*

Abatement Worker (Certified 5/25/88 to 6/30/89 only).
Abatement Worker Annual Review (Certified 5/25/88 to 6/30/89 only).

(xix)(a) *Training Provider:* Oregon, Southern Idaho, Wyoming, SW Washington Apprenticeship.

Address: Route 5, Box 325A, Corvallis, OR 97330, Contact: Larry Porter, Phone: (503) 745-5513.

(b) *Approved Courses:*

Abatement Worker (Certified 9/1/85).
Abatement Worker Annual Review (Certified 9/1/85).

(xx)(a) *Training Provider:* Prezant Associates, Inc.

Address: 711 6th Ave. N., Suite 200, Seattle, WA 98109, Contact: Sue Nelson, Phone: (206) 281-5858.

(b) *Approved Courses:*

Abatement Worker (Certified 6/1/88).
Abatement Worker Annual Review (Certified 6/1/88).
Contractor/Supervisor (Certified 9/1/89).

(xxi)(a) *Training Provider:* Seattle Area Roofers Joint Apprenticeship Committee.

Address: 2800 1st Ave., Rm. 318, Seattle, WA 98121, Contact: Pat Gilliland, Phone: (206) 728-2777.

(b) *Approved Course:*

Abatement Worker (Certified 1/28/90).

West Virginia.

(26)(a) *State Agency:* West Virginia Dept. of Health and Human Resources, Bureau of Pub. Health Office of Environmental Services, Address: Asbestos Control Program Asbestos, Training Accreditation Program, 151 11th Ave., South Charleston, WV 25303, Contact: Richard L. Peggs, Phone: (304) 348-0606.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 2/28/91).
Contractor/Supervisor (full from 2/28/91).
Inspector (full from 2/28/91).
Inspector/Management Planner (full from 2/28/91).
Project Designer (full from 2/28/91).

Wisconsin.

(27)(a) *State Agency:* Department of Health & Social Services Division of Health, Address: 1414 East Washington Ave., Rm. 117, Madison, WI 53703, Contact: Regina Cowell, Phone: (608) 267-2289.

(b) *Approved Accreditation Program Disciplines:*

Abatement Worker (full from 11/10/89).
Contractor/Supervisor (full from 11/10/89).
Inspector (full from 11/10/89).
Inspector/Management Planner (full from 11/10/89).
Project Designer (full from 11/10/89).

(i)(a) *Training Provider:* Aerostat Environmental Engineering.

Address: P.O. Box 3096, 2817 Atchison Ave., Lawrence, KS 66046, Contact: Joseph Stimac, Phone: (913) 749-4747.

(b) *Approved Course:*

Project Designer (Certified 4/9/90).

(ii)(a) *Training Provider:* Biological & Environmental Control Laboratories Inc.

Address: 615 Front St., Toledo, OH 43605, Contact: James Burk, Phone: (419) 693-5307.

(b) *Approved Courses:*

Contractor/Supervisor (Certified 4/11/90).
Inspector/Management Planner (Certified 3/28/90).

(iii)(a) *Training Provider:* Brand Companies.

Address: 1420 Renaissance Dr., Park Ridge, IL 60068, Contact: Frank Barta, Phone: (708) 298-1200.

(b) *Approved Course:*

Abatement Worker (Certified 5/8/90).

(iv)(a) *Training Provider:* Daniel J. Hartwig & Associates.

Address: P.O. Box 80, Oregon, WI 53575, Contact: Naomi Gray, Phone: (608) 835-5781.

(b) *Approved Courses:*

Abatement Worker (Certified 6/14/90).
Abatement Worker Annual Review (Certified 3/22/91).
Contractor/Supervisor (Certified 6/14/90).
Contractor/Supervisor Annual Review (Certified 3/22/91).
Inspector/Management Planner (Certified 1/8/90).
Inspector/Management Planner Annual Review (Certified 2/28/90).

(v)(a) *Training Provider:* Environmental Rehab. Inc.

Address: 1030 Parkview Rd., Greenbay, WI 54304, Contact: Randy LaCrosse, Phone: (414) 337-0650.

(b) *Approved Courses:*

Abatement Worker (Certified 1/16/91).
Abatement Worker Annual Review (Certified 5/8/90).

(vi)(a) *Training Provider:* Good Armstrong and Associates.

Address: 7709 West Beloit Rd., Milwaukee, WI 53219, Contact: Bonnie Good, Phone: (414) 541-9740.

(b) *Approved Courses:*

Abatement Worker (Certified 9/1/90).
Abatement Worker Annual Review (Certified 9/1/90).
Contractor/Supervisor (Certified 9/1/90).
Contractor/Supervisor Annual Review (Certified 9/1/90).
Inspector/Management Planner (Certified 9/14/90).
Inspector/Management Planner Annual Review (Certified 9/14/90).

(vii)(a) *Training Provider:* Institute for Environmental Assessment.

Address: 433 Jackson St., Anoka, MN 55303, Contact: Bill Sloan, Phone: (612) 323-9770.

(b) *Approved Courses:*

Project Designer (Certified 2/7/91).
Project Designer Annual Review (Certified 2/7/91).

(viii)(a) *Training Provider:* International Assoc. of Heat & Frost, Local 19.

Address: 9401 W. Beloit Ave., Milwaukee, WI 53227, Contact: Joel Eckmann, Phone: (414) 321-9656.

(b) *Approved Courses:*

Abatement Worker (Certified 1/17/91).
Contractor/Supervisor (Certified 3/27/91).

(ix)(a) *Training Provider:* Mayhew Environmental Training Associates, Inc. (META).

Address: 901 Kentucky, Suite 305, P.O. Box 786, Lawrence, KS 66044, Contact: Thomas Mayhew, Phone: (800) 444-6381.

(b) *Approved Courses:*

Abatement Worker (Certified 12/19/90).
Abatement Worker Annual Review (Certified 5/17/90).
Contractor/Supervisor (Certified 12/19/90).
Contractor/Supervisor Annual Review (Certified 8/17/90).

(x)(a) *Training Provider:* Milwaukee Asbestos Information Center MAIC.

Address: 2224 S. Kinnickinnic Dr., Milwaukee, WI 53207, Contact: Tom Ortell, Phone: (414) 747-0700.

(b) *Approved Courses:*

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Abatement Worker (Certified 7/30/90).
Abatement Worker Annual Review (Certified 10/17/90).
Contractor/Supervisor (Certified 7/30/90).
Contractor/Supervisor Annual Review (Certified 10/17/90).
Inspector/Management Planner (Certified 12/6/90).
Inspector/Management Planner Annual Review (Certified 12/6/90).
Project Designer (Certified 8/27/90).
Project Designer Annual Review (Certified 8/27/90).

(xi)(a) *Training Provider:* National Asbestos Council (NAC).
Address: 1777 Northeast Expressway, Suite 150, Atlanta, GA 30329, Contact: Raymond McQueen, Phone: (404) 633-2622.

(b) *Approved Courses:*
Abatement Worker (Certified 5/9/90).
Abatement Worker Annual Review (Certified 5/9/90).

(xii)(a) *Training Provider:* Northland Environmental Services Inc.
Address: 15 Park Ridge Dr., Stevens Point, WI 54481, Contact: Robert Voborsky, Phone: (715) 341-9699.

(b) *Approved Courses:*
Abatement Worker (Certified 7/11/90).
Abatement Worker Annual Review (Certified 7/11/90).
Contractor/Supervisor (Certified 7/11/90).
Contractor/Supervisor Annual Review (Certified 7/11/90).
Inspector/Management Planner (Certified 10/22/90).
Inspector/Management Planner Annual Review (Certified 2/6/91).

(xiii)(a) *Training Provider:* PSI-Hall-Kimbrell.
Address: 72 Executive Dr., Suite 434, Aurora, IL 60504-8137, Contact: Greg Corder, Phone: (708) 898-9414.

(b) *Approved Courses:*
Abatement Worker (Certified 6/27/90).
Abatement Worker Annual Review (Certified 6/27/90).
Contractor/Supervisor (Certified 6/27/90).
Contractor/Supervisor Annual Review (Certified 6/27/90).

(xiv)(a) *Training Provider:* University of Wisconsin College of Engineering.
Address: 432 N. Lake Dr., Madison, WI 53706, Contact: Michael Waxman, Phone: (608) 262-2101.

(b) *Approved Courses:*
Project Designer (Certified 11/5/90).
Project Designer Annual Review (Certified 11/5/90).

(xv)(a) *Training Provider:* Wisconsin Asbestos Advisory Team, Inc. (WAAT).
Address: North 9420 Lakeshore Dr., Van Dyne, WI 54979, Contact: Jerry Martin, Phone: (800) 236-8123.

(b) *Approved Courses:*
Abatement Worker (Certified 4/23/90).
Abatement Worker Annual Review (Certified 3/5/91).
Contractor/Supervisor (Certified 4/6/90).
Contractor/Supervisor Annual Review (Certified 3/5/91).

(xvi)(a) *Training Provider:* Wisconsin Laborers Training Center.
Address: P.O. Box 150, Route 1, Almond, WI 54909, Contact: Dean Jensen, Phone: (715) 366-8221.

(b) *Approved Courses:*
Abatement Worker (Certified 4/2/90).
Abatement Worker Annual Review (Certified 4/2/90).
Contractor/Supervisor (Certified 10/16/90).
Contractor/Supervisor Annual Review (Certified 4/2/90).

EPA-Approved Training Courses

REGION I -- Boston, MA

Regional Asbestos Coordinator: James Bryson, EPA, Region I, Air and Management Division (APT-2311), JFK Federal Building, Boston, MA 02203. (617) 565-3835, (FTS) 835-3836.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region I training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* Applied Occupational Health Systems.
Address: P.O. Box 894, Concord, NH 03301, Contact: Gegorey B. Stevenson, Phone: (603) 228-3610.

(b) *Approved Courses:*
Abatement Worker (contingent from 3/13/90).
Abatement Worker Refresher Course (contingent from 7/20/90).
Contractor/Supervisor (contingent from 3/13/90).
Contractor/Supervisor Refresher Course (contingent from 7/20/90).
Inspector/Management Planner (contingent from 1/29/90).
Inspector/Management Planner Refresher Course (contingent from 7/19/90).

(2)(a) *Training Provider:* Brooks Safe & Sound, Inc.
Address: 44 Codfish Ln., Weston, CT 06883, Contact: Keith Brooks, Phone: (203) 226-6970.

(b) *Approved Courses:*
Abatement Worker (contingent from 11/27/89).
Abatement Worker Refresher Course (contingent from 11/27/89).
Abatement Worker Refresher Course (full from 2/7/91).
Contractor/Supervisor (contingent from 11/27/89).
Contractor/Supervisor Refresher Course (contingent from 11/27/89).
Inspector/Management Planner (contingent from 11/1/89).
Inspector/Management Planner Refresher Course (contingent from 11/1/89).

(3)(a) *Training Provider:* Con-Test, Inc.
Address: P.O. Box 591, East Longmeadow, MA 01028, Contact: Brenda Bolduc, Phone: (413) 525-1196.

(b) *Approved Courses:*
Abatement Worker (contingent from 10/2/87).
Abatement Worker Refresher Course (full from 11/22/88).
Contractor/Supervisor (contingent from 10/2/87).
Contractor/Supervisor Refresher Course (contingent from 10/2/87).
Contractor/Supervisor Refresher Course (full from 12/21/88).
Inspector/Management Planner (contingent from 10/2/87).
Inspector/Management Planner Refresher Course (contingent from 10/2/87).
Inspector/Management Planner Refresher Course (full from 2/1/89).

(4)(a) *Training Provider:* Ecosystems, Inc.
Address: 2 Deerwood Rd., Westport, CT 06880, Contact: Richard Doyle, Phone: (203) 226-4421.

(b) *Approved Course:*
Contractor/Supervisor (contingent from 10/5/87).

(5)(a) *Training Provider:* Enviromed Services, Inc.
Address: 25 Science Park, New Haven, CT 06511, Contact: Lawrence J. Cannon, Phone: (203) 786-5580.

(b) *Approved Courses:*
Abatement Worker (contingent from 7/8/88).
Abatement Worker (full from 1/12/90).
Abatement Worker Refresher Course (contingent from 6/19/89).
Contractor/Supervisor (contingent from 2/23/89).
Contractor/Supervisor (full from 1/12/90).
Contractor/Supervisor Refresher Course (contingent from 6/19/89).

Inspector/Management Planner (contingent from 1/30/89).

(6)(a) *Training Provider:* Environmental Training Services Inc.
Address: 62-H Montvale Pl., Stoneham, MA 02180, Contact: Maryann Martin, Phone: (617) 279-0855.

(b) *Approved Course:*
Abatement Worker (contingent from 4/22/88).

(7)(a) *Training Provider:* Hygienetics, Inc.
Address: 150 Causeway St., Boston, MA 02114, Contact: Mary Beth Carver, Phone: (617) 723-4664.

(b) *Approved Course:*
Inspector (contingent from 10/2/87).

(8)(a) *Training Provider:* Industrial Health & Safety Consultants, Inc.
Address: 915 Bridgeport Ave., Shelton, CT 06484, Contact: Angela D. Rath, Phone: (203) 929-1131.

(b) *Approved Courses:*
Abatement Worker (contingent from 5/15/89).
Abatement Worker Refresher Course (contingent from 6/19/89).
Contractor/Supervisor (contingent from 5/12/89).
Contractor/Supervisor Refresher Course (contingent from 6/19/89).
Inspector/Management Planner (contingent from 11/1/89).
Inspector/Management Planner Refresher Course (contingent from 11/1/89).

(9)(a) *Training Provider:* Institute for Environmental Education.
Address: 500 West Cummings Pk, Suite 3650, Woburn, MA 01801, Contact: Starla L. Engelhardt, Phone: (617) 935-7370.

(b) *Approved Courses:*
Abatement Worker (contingent from 4/28/88).
Abatement Worker Refresher Course (full from 11/3/88).
Contractor/Supervisor (full from 9/18/87).
Contractor/Supervisor Refresher Course (full from 11/3/88).
Inspector/Management Planner (contingent from 10/2/87).
Inspector/Management Planner Refresher Course (contingent from 10/31/88).
Project Designer (contingent from 2/26/89).
Project Designer (full from 6/7/90).
Project Designer Refresher Course (contingent from 8/8/89).
Project Designer Refresher Course (full from 4/5/90).

(10)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 33.
Address: 15 South Elm St., Wallingford, CT 06492, Contact: Joseph V. Soli, Phone: (203) 265-3547.

(b) *Approved Course:*
Contractor/Supervisor (contingent from 7/27/88).

(11)(a) *Training Provider:* Maine Labor Group on Health, Inc.
Address: P.O. Box V, Augusta, ME 04332-1042, Contact: Diana White, Phone: (207) 622-7823.

(b) *Approved Courses:*
Abatement Worker (contingent from 8/11/87).
Abatement Worker (full from 3/22/90).
Abatement Worker Refresher Course (contingent from 10/17/88).
Abatement Worker Refresher Course (full from 5/25/90).
Contractor/Supervisor (contingent from 5/18/87).
Contractor/Supervisor (full from 3/2/90).
Contractor/Supervisor Refresher Course (full from 3/26/88).

(12)(a) *Training Provider:* New England Laborers Training Trust Fund.
Address: Route 97 & Murdock Rd., P.O. Box 77, Pomfret Center, CT 06259, Contact: Gennaro Lepore, Phone: (203) 974-1455.

(b) *Approved Course:*
Abatement Worker (contingent from 5/25/89).

(13)(a) *Training Provider:* New England Laborers Training Trust Fund.
Address: 37 East St., Hopkinton, MA 01748-2899, Contact: Jim Merloni, Jr., Phone: (617) 435-6316.

(b) *Approved Courses:*
Abatement Worker (contingent from 10/5/87).
Abatement Worker Refresher Course (contingent from 5/20/88).

(14)(a) *Training Provider:* Radiation Safety Associates, Inc.
Address: P.O. Box 107, 10 Pendleton Dr., Hebron, CT 06248, Contact: K. Paul Steinmeyer, Phone: (203) 228-0487.

(b) *Approved Courses:*
Contractor/Supervisor (contingent from 5/16/89).
Inspector/Management Planner (contingent from 5/16/89).

(15)(a) *Training Provider:* Tufts University Asbestos Information Center.
Address: 474 Boston Ave., Medford, MA 02155, Contact: Anne Chabot, Phone: (617) 381-3531.

(b) *Approved Courses:*
Contractor/Supervisor (interim from 9/1/85 to 5/31/87).
Contractor/Supervisor (full from 6/1/87).
Inspector/Management Planner (full from 11/16/87).

REGION II -- Edison, NJ

Acting Regional Asbestos Coordinator: Albert Kramer, EPA, Region II, 2890 Woodbridge Ave., Raritan Depot, Bldg. 5, (MS-500), Edison, NJ 08837. (201) 321-6793, (FTS) 340-6793.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region II training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* ATC Environmental, Inc.
Address: 104 East 25th St., New York, NY 10010, Contact: David V. Chambers, Phone: (212) 353-8260.

(b) *Approved Courses:*
Abatement Worker (full from 11/7/88).
Contractor/Supervisor (full from 11/7/88).
Inspector/Management Planner (contingent from 6/5/88).
Inspector/Management Planner (full from 3/6/89).

(2)(a) *Training Provider:* Abatement Safety Training Institute.
Address: 323 West 39th St., New York, NY 10018, Contact: Rosemarie Bascianilli, Phone: (212) 629-6400.

(b) *Approved Courses:*
Abatement Worker (contingent from 10/25/88).
Abatement Worker (full from 12/11/89).
Contractor/Supervisor (contingent from 10/25/88).
Contractor/Supervisor (full from 2/9/90).
Inspector/Management Planner (contingent from 3/9/88).
Inspector/Management Planner (full from 3/21/88).
Inspector/Management Planner Refresher Course (contingent from 1/11/89).
Inspector/Management Planner Refresher Course (full from 1/30/89).

(3)(a) *Training Provider:* Adelaide Environmental Health Associates.
Address: 61 Front St., Binghamton, NY 13905-4705, Contact: William S. Carter, Phone: (607) 722-6839.

(b) *Approved Course:*
Abatement Worker (contingent from 11/14/88).

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(4)(a) *Training Provider:* Albany Environmental Technologies (A.E. Technologies).
Address: P.O. Box 1346, Schenectady, NY 12301, Contact: Kevin Pilgrim, Phone: (518) 374-4801.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/8/89).
Contractor/Supervisor (contingent from 6/8/89).
(5)(a) *Training Provider:* Allegheny Council on Occupational Health.
Address: 100 East Second St., Suite 3, Jamestown, NY 14701, Contact: Linda Berlin, Phone: (716) 488-0720.
(b) *Approved Course:*
Abatement Worker (contingent from 7/26/89 to 4/9/91 **only**).
(6)(a) *Training Provider:* Allwash of Syracuse, Inc.
Address: P.O. Box 605, Syracuse, NY 13201, Contact: Paul D. Watson, Phone: (315) 454-4476.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/16/87).
Abatement Worker (full from 12/7/88).
Abatement Worker Refresher Course (contingent from 12/15/88).
Contractor/Supervisor (contingent from 1/30/89).
Contractor/Supervisor Refresher Course (contingent from 10/17/89).
(7)(a) *Training Provider:* Alternative Ways, Inc. Educational Services.
Address: 100 Essex Ave., Bellmawr, NJ 08031, Contact: James Mitchell, Phone: (609) 933-3300.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/11/88).
Abatement Worker (full from 12/1/89).
Contractor/Supervisor (contingent from 4/11/88).
Contractor/Supervisor (full from 12/1/89).
Inspector/Management Planner (contingent from 4/22/88).
Inspector/Management Planner (full from 5/26/88).
Inspector/Management Planner Refresher Course (contingent from 1/18/89).
Inspector/Management Planner Refresher Course (full from 2/14/90).
(8)(a) *Training Provider:* Anderson International.
Address: RD 2, North Main Street Extension, Jamestown, NY 14701, Contact: Sally L. Gould, Phone: (716) 664-4028.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/29/88).
Abatement Worker (full from 9/23/90).
Contractor/Supervisor (contingent from 12/29/88).
Contractor/Supervisor (full from 9/24/90).
(9)(a) *Training Provider:* Applied Respiratory Technology.
Address: Pemm - Corp Building, Rd 1, Box 310 C, Route 9, Cold Spring, NY 10516, Contact: Susan M. Schlager, Phone: (914) 431-6421.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/11/88).
Abatement Worker (full from 11/28/88).
Abatement Worker Refresher Course (contingent from 10/19/88).
Abatement Worker Refresher Course (full from 11/21/90).
Contractor/Supervisor (contingent from 8/11/88).
Contractor/Supervisor (full from 11/28/88).
Contractor/Supervisor Refresher Course (contingent from 10/31/88).
(10)(a) *Training Provider:* Asbestos Control Management, Inc.
Address: 126 South Third St., Olean, NY 14760, Contact: Clar D. Anderson, Phone: (716) 372-6393.
(b) *Approved Course:*
Abatement Worker (contingent from 5/5/89).
(11)(a) *Training Provider:* Asbestos Training Academy, Inc.
Address: 218 Cooper Center, Pennsauken, NJ 08109, Contact: S. J. Sieracki, Phone: (609) 488-9200.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/15/88 to 12/28/90 **only**).
Abatement Worker (full from 11/7/88 to 12/28/90 **only**).
Contractor/Supervisor (contingent from 9/15/88 to 12/28/90 **only**).
Contractor/Supervisor (full from 11/7/88 to 12/28/90 **only**).
Inspector (contingent from 4/27/89 to 12/28/90 **only**).
Inspector (full from 1/24/90 to 12/28/90 **only**).
(12)(a) *Training Provider:* Asteco, Inc.
Address: 140 Telegraph Rd., P.O. Box 179, Middleport, NY 14105, Contact: Claudine R. Larocque, Phone: (716) 735-3894.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/1/88 to 4/9/91 **only**).
Abatement Worker (full from 4/13/88 to 4/9/91 **only**).
Abatement Worker Refresher Course (contingent from 12/20/88 to 4/9/91 **only**).
(13)(a) *Training Provider:* Astoria Industries, Inc.
Address: 538 Stewart Ave., Brooklyn, NY 11222, Contact: Gary DiPaolo, Jr., Phone: (718) 387-0011.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/8/88).
Abatement Worker (full from 4/18/88).
Contractor/Supervisor (contingent from 9/20/89).
Contractor/Supervisor (full from 1/4/90).
Inspector (contingent from 1/18/89).
(14)(a) *Training Provider:* BOCES-Albany-Schoharie-Schenectady Counties.
Address: 47 Cornell Rd., Latham, NY 12110, Contact: Charlene Vespi, Phone: (518) 786-3211.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/20/89).
Abatement Worker (full from 3/7/90).
Abatement Worker Refresher Course (contingent from 7/31/89).
Contractor/Supervisor (contingent from 7/20/89).
Inspector/Management Planner (full from 1/26/90).
Inspector/Management Planner Refresher Course (contingent from 10/6/89).
(15)(a) *Training Provider:* BOCES-Cayuga-Onondaga Counties.
Address: 234 South St. Rd., Auburn, NY 13021, Contact: Peter Pirnie, Phone: (315) 253-0361.
(b) *Approved Course:*
Abatement Worker (contingent from 6/17/88).
(16)(a) *Training Provider:* BOCES-Schuyler, Chemung, Tioga Counties.
Address: 431 Philo Road, Elmira, NY 14903, Contact: L. Eugene Ferro, Phone: (607) 739-3581.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/1/89).
Abatement Worker Refresher Course (contingent from 6/1/89).
Abatement Worker Refresher Course (full from 7/31/90).
Contractor/Supervisor (contingent from 6/1/89).
Contractor/Supervisor Refresher Course (contingent from 6/1/89).
Contractor/Supervisor Refresher Course (full from 7/31/90).
Inspector/Management Planner Refresher Course (contingent from 6/1/89).
Inspector/Management Planner Refresher Course (full from 4/18/90).
(17)(a) *Training Provider:* Board of Cooperative Educational Services (BOCES) No. 3.
Address: 507 Deer Park Rd., Dix Hills, NY 11746, Contact: Ciro Aiello, Phone: (516) 667-6000 Ext. 300.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/6/89).
Abatement Worker (full from 11/27/89).
Contractor/Supervisor (contingent from 2/6/89).
(18)(a) *Training Provider:* Board of Cooperative Educational Services of Rensselaer, Columbia & Green Counties of New York.
Address: Brookview Rd., P.O. Box 26, Brookview, NY 12026, Contact: Paul D. Bowler, Phone: (518) 732-7266.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/10/89).
Abatement Worker (full from 3/22/90).
Inspector/Management Planner (contingent from 4/10/89).
(19)(a) *Training Provider:* Board of Cooperative Educational Services-Suffolk County Boces 2, Adult Occup. & Continuing Ed.
Address: 375 Locust Ave., Oakdale, NY 11769, Contact: Edward J. Milliken, Phone: (516) 563-6159.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/27/89).
Abatement Worker (full from 10/11/90).
Abatement Worker Refresher Course (contingent from 6/16/89).
Abatement Worker Refresher Course (full from 5/17/90).
Contractor/Supervisor (contingent from 3/27/89).
Contractor/Supervisor (full from 5/9/90).
Contractor/Supervisor Refresher Course (contingent from 6/16/89).
(20)(a) *Training Provider:* Branch Services, Inc.
Address: 1255 Lakeland Ave., Bohemia, NY 11716, Contact: Luis Sanders, Phone: (516) 563-7300.
(b) *Approved Course:*
Abatement Worker (contingent from 6/1/89).
(21)(a) *Training Provider:* Buffalo Laborers Training Fund.
Address: 1370 Seneca St., Buffalo, NY 14210-1647, Contact: Victor J. Sansanese, Phone: (716) 825-0883.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/30/88).
Abatement Worker (full from 3/9/90).
Abatement Worker Refresher Course (contingent from 8/8/89).
(22)(a) *Training Provider:* Building Laborers Local Union No. 17.
Address: P.O. Box 252, Vails Gate, NY 12584, Contact: Victor P. Mandia, Phone: (914) 562-1121.
(b) *Approved Course:*
Abatement Worker (contingent from 10/31/88).
(23)(a) *Training Provider:* Calibrations, Inc.
Address: 802 Watervliet - Shaker Rd., Latham, NY 12110, Contact: James Percent, Phone: (518) 786-1865.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/28/88).
Abatement Worker (full from 12/5/88).
Abatement Worker Refresher Course (contingent from 3/6/89).
Abatement Worker Refresher Course (full from 9/6/90).
Contractor/Supervisor (contingent from 9/28/88).
Contractor/Supervisor (full from 12/5/88).
Contractor/Supervisor Refresher Course (contingent from 3/6/89).
Inspector/Management Planner (contingent from 9/28/88).
Inspector/Management Planner (full from 1/26/90).
Inspector/Management Planner Refresher Course (contingent from 3/6/89).
Inspector/Management Planner Refresher Course (full from 5/2/90).
Project Designer (full from 5/23/88).
Project Designer Refresher Course (contingent from 3/6/89).
(24)(a) *Training Provider:* Comprehensive Analytical Group.
Address: 147 Midler Park Dr., Syracuse, NY 13206, Contact: Susan Richardson, Phone: (315) 432-1332.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/9/89).
Abatement Worker (full from 2/16/90).
Abatement Worker Refresher Course (contingent from 4/25/89).
Abatement Worker Refresher Course (full from 3/27/90).
Contractor/Supervisor (contingent from 3/29/89).
Contractor/Supervisor (full from 2/16/90).
Contractor/Supervisor Refresher Course (contingent from 5/18/89).
Contractor/Supervisor Refresher Course (full from 3/27/90).
Inspector (contingent from 10/27/89).
(25)(a) *Training Provider:* Ecology & Environment, Inc.
Address: Buffalo Corporate Center, 368 Pleasantview Dr., Lancaster, NY 14086, Contact: Thomas G. Siener, Phone: (716) 684-8060.
(b) *Approved Course:*
Inspector/Management Planner Refresher Course (contingent from 4/7/89).
(26)(a) *Training Provider:* Education & Training Fund Laborers' Local No. 91.
Address: 2556 Seneca Ave., Niagra Falls, NY 14305, Contact: Joel Cicero, Phone: (716) 297-6001.
(b) *Approved Courses:*
Abatement Worker (full from 7/27/87).
Abatement Worker Refresher Course (contingent from 10/20/88).
Abatement Worker Refresher Course (full from 10/22/88).
(27)(a) *Training Provider:* Edward O. Watts & Associates.
Address: 1331 North Forest Rd., Suite 340, Buffalo, NY 14221, Contact: Edward O. Watts, Phone: (716) 688-4627.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/4/89).
Abatement Worker (full from 1/20/90).
Abatement Worker Refresher Course (contingent from 3/3/89).
Contractor/Supervisor (contingent from 7/12/89).
Contractor/Supervisor (full from 1/20/90).
Contractor/Supervisor Refresher Course (contingent from 3/3/89).
(28)(a) *Training Provider:* Environmental Training, Inc.
Address: 65 Barclay Center, Rte 70, Suite 305, Cherry Hill, NJ 08034, Contact: Gary D. Hyrne, Phone: (609) 665-7470.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/1/89).
Abatement Worker Refresher Course (contingent from 6/29/89).
Contractor/Supervisor (contingent from 3/1/89).
Contractor/Supervisor Refresher Course (contingent from 6/29/89).
(29)(a) *Training Provider:* Envotech Center for Environmental Vocational Training.
Address: 1225 Ridgeway Ave., Rochester, NY 14615, Contact: Mario DiNottia, Phone: (716) 458-8700.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/8/89).
Abatement Worker (full from 1/25/90).
(30)(a) *Training Provider:* General Bldg. Laborer's Local Union No. 66.
Address: 288 Middle Island Rd., Medford, NY 11763, Contact: Peter Purrazzella, Phone: (516) 696-2280.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/10/89).

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Abatement Worker (full from 12/1/89).
(31)(a) *Training Provider:* Hazardous Waste Management Corp. Training Center of Buffalo, New York.
Address: 3816 Union Rd., Buffalo, NY 14225-5301, Contact: Donald Larder, Phone: (716) 634-3000.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/31/88 to 4/9/91 only).
Contractor/Supervisor (contingent from 10/31/88 to 4/9/91 only).
(32)(a) *Training Provider:* Hudson Asbestos Training Institute.
Address: 604 Manhattan Ave., Brooklyn, NY 11222, Contact: Henry Kawiorski, Phone: (718) 383-2656.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/30/89).
Abatement Worker (full from 3/13/89).
Contractor/Supervisor (contingent from 1/30/89).
(33)(a) *Training Provider:* Hunter College Asbestos Training Center.
Address: 425 East 25th St., New York, NY 10010, Contact: Jack Caravanos, Phone: (212) 481-7569.
(b) *Approved Courses:*
Abatement Worker (full from 7/1/88).
Abatement Worker Refresher Course (contingent from 6/20/89).
Contractor/Supervisor (full from 7/1/88).
Contractor/Supervisor Refresher Course (contingent from 6/20/89).
Inspector/Management Planner (contingent from 12/21/89).
(34)(a) *Training Provider:* Hygeia Research & Training.
Address: P.O. Box 4506, Utica, NY 13501, Contact: Richard A. Gigliotti, Phone: (315) 732-8567.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/9/88).
Abatement Worker (full from 5/6/88).
Abatement Worker Refresher Course (contingent from 12/12/88).
Abatement Worker Refresher Course (full from 1/17/90).
Contractor/Supervisor (contingent from 1/26/89).
Contractor/Supervisor (full from 3/8/90).
Contractor/Supervisor Refresher Course (contingent from 12/20/88).
Contractor/Supervisor Refresher Course (full from 1/17/90).
(35)(a) *Training Provider:* Institute of Asbestos Awareness.
Address: 2 Heitz Pl., Suite 1000, Hicksville, NY 11801, Contact: Henry R. Clegg, Phone: (516) 937-1600.
(b) *Approved Courses:*
Abatement Worker (full from 10/24/88 to 10/12/90 only).
Abatement Worker Refresher Course (contingent from 3/8/89 to 10/12/90 only).
Contractor/Supervisor (full from 10/24/88 to 10/12/90 only).
Contractor/Supervisor Refresher Course (contingent from 3/8/89 to 10/12/90 only).
Inspector/Management Planner (contingent from 9/28/88 to 10/12/90 only).
Inspector/Management Planner (full from 3/2/89 to 10/12/90 only).
Inspector/Management Planner Refresher Course (contingent from 3/8/89 to 10/12/90 only).
Project Designer (contingent from 9/26/89 to 10/12/90 only).
(36)(a) *Training Provider:* Institute of Asbestos Technology Corp.
Address: 5900 Butternut Dr., East Syracuse, NY 13057, Contact: Charles Kirch, Phone: (315) 437-1307.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/18/88).
Abatement Worker (full from 6/27/88).
Abatement Worker Refresher Course (contingent from 12/20/88).
Abatement Worker Refresher Course (full from 6/15/90).
Contractor/Supervisor (contingent from 4/7/89).
Contractor/Supervisor Refresher Course (contingent from 6/6/89).
Inspector/Management Planner (contingent from 10/19/89).
Inspector/Management Planner Refresher Course (contingent from 10/27/89).
(37)(a) *Training Provider:* Kaselaan & D'Angelo Associates, Inc.
Address: 220 Fifth Ave., New York, NY 10001, Contact: Lance Fredericks, Phone: (212) 216-6340.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/15/89).
Abatement Worker (full from 3/16/90).
Contractor/Supervisor (contingent from 3/27/89).
Inspector/Management Planner (contingent from 2/12/88).
Inspector/Management Planner (full from 3/7/88).
Inspector/Management Planner Refresher Course (full from 4/27/89).
(38)(a) *Training Provider:* Korean Asbestos Training Center.
Address: 136 -15 Roosevelt Ave., 3rd Floor, Flushing, NY 11354, Contact: Tchang S. Bahrk, Phone: (718) 321-2700.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/11/89).
Abatement Worker (full from 4/25/90).
Abatement Worker Refresher Course (contingent from 5/22/89).
Abatement Worker Refresher Course (full from 4/19/90).
Contractor/Supervisor (contingent from 5/11/89).
Contractor/Supervisor (full from 5/19/90).
Contractor/Supervisor Refresher Course (contingent from 5/22/89).
(39)(a) *Training Provider:* Laborers Local Union No. 214 of Oswego New York & Vicinity Training & Education Fund.
Address: 23 Mitchell St., Oswego, NY 13126, Contact: John T. Shannon, Phone: (315) 343-8553.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/1/88).
Abatement Worker (full from 1/23/89).
Abatement Worker Refresher Course (contingent from 2/15/89).
Contractor/Supervisor (contingent from 10/7/89).
(40)(a) *Training Provider:* Lozier Architects/Engineers.
Address: 600 Perinton Hills, Fairport, NY 14450, Contact: Dyke Coyne, Phone: (716) 223-7610.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/12/89).
Abatement Worker Refresher Course (contingent from 7/12/89).
(41)(a) *Training Provider:* McDonnell-Gamble Environmental Services, Inc.
Address: 444 Park Ave. South, 5th Fl., Suite 503, New York, NY 10016, Contact: Yelena Goodman, Phone: (212) 545-1122.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/15/88).
Abatement Worker (full from 12/5/88).
Abatement Worker Refresher Course (contingent from 8/25/89).
Abatement Worker Refresher Course (full from 3/7/90).
Contractor/Supervisor (contingent from 10/18/88).
Contractor/Supervisor (full from 12/5/88).
(42)(a) *Training Provider:* Monroe Community College of Rochester, New York.
Address: P.O. Box 9720, Rochester, NY 14623-0720, Contact: Dusty Swanger, Phone: (716) 424-5200.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/7/88).

Abatement Worker (full from 4/26/89).
(43)(a) *Training Provider:* National Asbestos and Environmental Training Institute.
Address: 1776 Bloomsbury Ave., Ocean, NJ 07712, Contact: Doris L. Adler, Phone: (201) 918-0610.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/3/89).
Abatement Worker (full from 12/1/89).
Abatement Worker Refresher Course (contingent from 10/20/89).
Abatement Worker Refresher Course (full from 1/31/90).
Contractor/Supervisor (contingent from 11/3/89).
Contractor/Supervisor (full from 12/1/89).
Contractor/Supervisor Refresher Course (contingent from 10/20/89).
Contractor/Supervisor Refresher Course (full from 1/31/90).
Inspector/Management Planner (contingent from 6/13/88).
Inspector/Management Planner (full from 4/17/89).
Inspector/Management Planner Refresher Course (contingent from 5/25/89).
Inspector/Management Planner Refresher Course (full from 1/31/90).
Project Designer (contingent from 11/3/89).
Project Designer (full from 2/7/90).
Project Designer Refresher Course (contingent from 10/20/89).
Project Designer Refresher Course (full from 7/13/90).
(44)(a) *Training Provider:* National Institute on Abatement Science & Technology (NIAST).
Address: 114 West State St., P.O. Box 1780, Trenton, NJ 08607-1780, Contact: Glenn W. Phillips, Phone: (800) 422-2836.
(b) *Approved Courses:*
Inspector (contingent from 3/8/88 to 4/9/91 only).
Inspector (full from 4/11/88 to 4/9/91 only).
(45)(a) *Training Provider:* New York University School of Continuing Education.
Address: 11 West 42nd St., New York, NY 10036, Contact: William Loch, Phone: (212) 545-0077.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/18/89).
Abatement Worker (full from 11/17/89).
Abatement Worker Refresher Course (contingent from 6/8/89).
Contractor/Supervisor (contingent from 5/18/89).
Contractor/Supervisor (full from 11/17/89).
Contractor/Supervisor Refresher Course (contingent from 6/8/89).
Inspector/Management Planner (contingent from 5/18/89).
Inspector/Management Planner (full from 12/8/89).
Inspector/Management Planner Refresher Course (contingent from 6/8/89).
Inspector/Management Planner Refresher Course (full from 3/27/90).
Project Designer (contingent from 5/18/89).
Project Designer (full from 1/10/90).
Project Designer Refresher Course (contingent from 6/8/89).
(46)(a) *Training Provider:* Niagara County Community College.
Address: Corporate Training Center, P.O. Box 70, Lockport, NY 14095, Contact: Eugene Zinni, Phone: (716) 433-1856.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/5/88).
Abatement Worker (full from 1/25/88).
Abatement Worker Refresher Course (contingent from 1/23/89).
Abatement Worker Refresher Course (full from 9/14/90).
Contractor/Supervisor (contingent from 1/5/88).
Contractor/Supervisor (full from 2/19/88).
Contractor/Supervisor Refresher Course (contingent from 2/8/89).
Inspector/Management Planner (contingent from 5/18/88).
Inspector/Management Planner (full from 12/5/88).
Inspector/Management Planner Refresher Course (contingent from 3/6/89).
(47)(a) *Training Provider:* Northeastern Analytical Corporation.
Address: 4 Stow Rd., Marlton, NJ 08053, Contact: Robert Howlitt, Phone: (609) 985-8000.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/17/89).
Abatement Worker Refresher Course (contingent from 8/17/89).
Contractor/Supervisor (contingent from 8/17/89).
Contractor/Supervisor Refresher Course (contingent from 8/17/89).
(48)(a) *Training Provider:* O'Brien & Gere Engineers, Inc.
Address: 5000 Brittonfield Pkwy., P.O. Box 4873, Syracuse, NY 13221, Contact: Michael P. Quirk, Phone: (315) 437-6100.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/19/89).
Abatement Worker (full from 4/10/89)
Abatement Worker Refresher Course (contingent from 9/21/89).
Contractor/Supervisor (contingent from 1/19/89).
Contractor/Supervisor (full from 4/10/89).
Contractor/Supervisor Refresher Course (contingent from 9/21/89).
Inspector/Management Planner (full from 10/27/88).
Inspector/Management Planner Refresher Course (contingent from 2/24/89).
Inspector/Management Planner Refresher Course (full from 1/17/90)
(49)(a) *Training Provider:* Orange/Ulster BOCES Risk Management Dept.
Address: RD 2 Gibson Rd., Goshen, NY 10924, Contact: Arthur J. Lange, Phone: (914) 294-5431.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/18/90).
Contractor/Supervisor (contingent from 3/2/89).
Contractor/Supervisor (full from 5/18/90).
(50)(a) *Training Provider:* P.A. Environmental Corp.
Address: 4240-24F Hutchinson River Pkwy. E., Bronx, NY 10475, Contact: Pichai Arjarasumpun, Phone: (212) 379-6716.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/31/89).
Abatement Worker Refresher Course (contingent from 5/31/89).
Contractor/Supervisor (contingent from 5/31/89).
Contractor/Supervisor Refresher Course (contingent from 5/31/89).
(51)(a) *Training Provider:* Paradigm Environmental Services, Inc.
Address: 961 Lyell Ave., Building 2, Suite 8, Rochester, NY 14606, Contact: Dmitry Tsimberov, Phone: (716) 647-2530.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/19/89).
Abatement Worker Refresher Course (contingent from 10/3/89).
Contractor/Supervisor (contingent from 12/28/89).
Contractor/Supervisor Refresher Course (contingent from 10/6/89).
(52)(a) *Training Provider:* Princeton Testing Laboratory, Inc.
Address: 3490 US Route 1, Princeton Service Center, Princeton, NJ 08543, Contact: Charles Schneekloth, Phone: (609) 452-9050.

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(b) *Approved Course:*
Inspector/Management Planner (contingent from 3/21/88).

(53)(a) *Training Provider:* Puerto Rico Environmental Consultants and Training Center, Inc.
Address: Cond. Banco Cooperativo Plaza Office, 302-B, Hato Rey, PR 00917, Contact: Kermit Morales/Gail Leblanc, Phone: (809) 250-6052.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/1/89).
Abatement Worker Refresher Course (contingent from 11/20/89).
Contractor/Supervisor (contingent from 11/1/89).
Contractor/Supervisor Refresher Course (contingent from 11/20/89).
Inspector/Management Planner (contingent from 11/1/89).
Inspector/Management Planner Refresher Course (contingent from 11/20/89).

(54)(a) *Training Provider:* R. J. Fletcher, Inc.
Address: P.O. Box 5021, Utica, NY 13505, Contact: Robert J. Fletcher, Phone: (315) 724-0141.
(b) *Approved Courses:*
Abatement Worker Refresher Course (contingent from 2/24/89 to 4/9/91 only).
Inspector/Management Planner Refresher Course (contingent from 2/24/89 to 4/9/91 only).

(55)(a) *Training Provider:* SUNY College of Technology at Farmingdale.
Address: Biology Department, Nathan Hale Hall, Farmingdale, NY 11735, Contact: George W. Fleming, Phone: (516) 667-6000 Ext. 310
(b) *Approved Courses:*
Inspector/Management Planner (contingent from 4/24/89).
Inspector/Management Planner (full from 4/27/90).
Inspector/Management Planner Refresher Course (contingent from 4/24/89).

(56)(a) *Training Provider:* Safe Air Environmental Group, Inc.
Address: P.O. Box 1767, Williamsville, NY 14231, Contact: L. J. Beenau or Cronan Long, Phone: (716) 632-0707.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/8/88 to 4/9/91 only).
Abatement Worker (full from 4/4/88 to 4/9/91 only).
Abatement Worker Refresher Course (contingent from 3/2/89 to 4/9/91 only).
Contractor/Supervisor (contingent from 3/8/88 to 4/9/91 only).
Contractor/Supervisor (full from 4/4/88 to 4/9/91 only).
Contractor/Supervisor Refresher Course (contingent from 3/2/89 to 4/9/91 only).

(57)(a) *Training Provider:* Safety Training, Inc.
Address: 459 Main St., Room 202, New Rochelle, NY 10801, Contact: Nelson Helu, Phone: (914) 632-1032.
(b) *Approved Course:*
Abatement Worker (contingent from 4/25/88).

(58)(a) *Training Provider:* State University of New York at Buffalo Toxicology Research Center.
Address: 111 Farber Hall, Buffalo, NY 14214, Contact: Paul J. Kostyniak or J. Syracuse, Phone: (716) 831-2125.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/19/89).
Abatement Worker (full from 6/8/90).
Abatement Worker Refresher Course (contingent from 2/2/89).
Contractor/Supervisor (contingent from 10/19/89).
Contractor/Supervisor (full from 6/8/90).
Contractor/Supervisor Refresher Course (contingent from 2/2/89).
Inspector/Management Planner (contingent from 1/25/89).
Inspector/Management Planner Refresher Course (contingent from 2/2/89).

(59)(a) *Training Provider:* State of New Jersey Dept. of Health.
Address: CN 360, Trenton, NJ 08625-0360, Contact: James A. Brownlee, Phone: (609) 984-2193.
(b) *Approved Course:*
Inspector/Management Planner Refresher Course (contingent from 3/28/89).

(60)(a) *Training Provider:* Testwell Craig Laboratories of Albany, Inc.
Address: 47 Hudson St., Building B, Ossining, NY 10562, Contact: Charles Schwartz, Phone: (914) 762-9000.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/15/88).
Abatement Worker (full from 1/24/89).
Abatement Worker Refresher Course (contingent from 10/17/89).
Contractor/Supervisor (contingent from 6/20/89).
Contractor/Supervisor Refresher Course (contingent from 10/15/90).

(61)(a) *Training Provider:* Tri-Cities Laborers Training Program.
Address: 666 Wemple Road, Box 100, Glenmont, NY 12077, Contact: Joseph A. Zappone, Phone: (518) 426-0290.
(b) *Approved Courses:*
Abatement Worker (full from 3/21/88).
Abatement Worker Refresher Course (contingent from 10/26/88).
Abatement Worker Refresher Course (full from 2/2/89).
Contractor/Supervisor (contingent from 10/15/90).

(62)(a) *Training Provider:* Union Occupational Health Center.
Address: 450 Grider St., Buffalo, NY 14215, Contact: Garath L. Tubbs, Phone: (716) 894-9366.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/31/88).
Contractor/Supervisor (contingent from 10/17/89).

(63)(a) *Training Provider:* Univ. Med. & Dentistry of N.J. Robert Wood Med. School, Mid-Atlantic Asbestos Training Center.
Address: Brookwood II, 45 Knightsbridge Rd., Piscataway, NJ 08854, Contact: Lee Laustsen, Phone: (201) 463-5062.
(b) *Approved Courses:*
Abatement Worker (interim from 7/28/88 to 10/17/89).
Abatement Worker (full from 10/17/89).
Abatement Worker Refresher Course (contingent from 10/17/89).
Contractor/Supervisor (interim from 7/28/88 to 10/17/89).
Contractor/Supervisor (full from 10/17/89).
Contractor/Supervisor Refresher Course (contingent from 10/17/89).
Inspector/Management Planner (full from 11/18/87).
Inspector/Management Planner Refresher Course (full from 11/18/88).
Project Designer (contingent from 11/20/89).
Project Designer Refresher Course (contingent from 10/17/89).

(64)(a) *Training Provider:* Utilicom Corp.
Address: 7 Tobey Village Office Park, Pittsford, NY 14534, Contact: Jackie Aab, Phone: (716) 381-8710.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/20/88 to 4/9/91 only).
Abatement Worker (full from 10/31/88 to 4/9/91 only).
Abatement Worker Refresher Course (contingent from 4/21/89 to 4/9/91 only).

(65)(a) *Training Provider:* Warren Mae Associates.
Address: RD 3, Box 300, Endicott, NY 13760, Contact: Janine C. Rogelstad, Phone: (607) 754-6366.
(b) *Approved Courses:*

Abatement Worker (contingent from 8/11/88).
Abatement Worker (full from 1/4/89).
Abatement Worker Refresher Course (contingent from 3/2/89).
Abatement Worker Refresher Course (full from 3/20/90).

(66)(a) *Training Provider:* Western New York Council on Occupational Safety & Health (WNYCOSH).
Address: 450 Grider St., Buffalo, NY 14215, Contact: Jeanne Reilly, Phone: (716) 897-2110.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/28/87 to 4/9/91 only).
Abatement Worker (full from 1/24/88 to 4/9/91 only).

(67)(a) *Training Provider:* Wetlands & Environmental Technologies, Inc.
Address: 68 Willow Ave., Hackensack, NJ 07601, Contact: John J. Borris, Phone: (201) 361-4799.
(b) *Approved Courses:*
Inspector/Management Planner (contingent from 11/8/89).
Project Designer (contingent from 11/8/89).

(68)(a) *Training Provider:* White Lung Association - NY.
Address: 12 Warren St., 4th Fl., New York, NY 10007, Contact: Daniel Manasia, Phone: (212) 619-2270.
(b) *Approved Course:*
Inspector (contingent from 2/23/89 to 4/9/91 only).

(69)(a) *Training Provider:* White Lung Association of New Jersey.
Address: 901 Broad St., Newark, NJ 07102, Contact: Myles O'Malley or Gregory Camacho, Phone: (201) 624-2623.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/19/89).
Contractor/Supervisor (contingent from 6/19/89).
Inspector/Management Planner (contingent from 9/19/89).
Inspector/Management Planner (full from 5/18/90).

(70)(a) *Training Provider:* Zola Sookias Associates Environmental Consultants.
Address: 545 Eighth Ave., Suite 401, New York, NY 10018, Contact: Zola Sookias, Phone: (212) 330-0914.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/6/89).
Contractor/Supervisor (contingent from 10/6/89).

REGION III -- Philadelphia, PA

Regional Asbestos Coordinator: Carole Dougherty, EPA, Region III (3AM-32), 841 Chestnut Bldg., Philadelphia, PA 19107, (215)597-3160, (FTS) 597-3160.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region III training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* A & S Training School, Inc.
Address: 99 South Cameron St., Harrisburg, PA 17101, Contact: Anna Marie Sossong, Phone: (717) 257-1360.
(b) *Approved Courses:*
Abatement Worker (full from 5/20/85).
Contractor/Supervisor (full from 5/20/85).

(2)(a) *Training Provider:* Advance Analytical Laboratories Inc.
Address: 30th & North Church Sts., Hazleton, PA 18201, Contact: Steven L. Hahn, Phone: (717) 788-4155.
(b) *Approved Courses:*
Abatement Worker (full from 9/8/88).
Abatement Worker Refresher Course (contingent from 12/29/88).
Contractor/Supervisor (contingent from 8/11/88).
Contractor/Supervisor Refresher Course (contingent from 12/29/88).

(3)(a) *Training Provider:* Aerosol Monitoring & Analysis, Inc.
Address: 1341 Ashton Rd., Suite A, Hanover, MD 21076, Contact: Steve Blizzard, Phone: (301) 684-3327.
(b) *Approved Courses:*
Abatement Worker (full from 11/27/87).
Abatement Worker Refresher Course (contingent from 4/20/89).
Abatement Worker Refresher Course (full from 9/1/89).
Contractor/Supervisor (full from 11/27/87).
Contractor/Supervisor Refresher Course (contingent from 4/20/89).
Contractor/Supervisor Refresher Course (full from 9/1/89).
Inspector/Management Planner (contingent from 3/1/88).
Inspector/Management Planner (full from 3/31/88).

(4)(a) *Training Provider:* Alcam, Inc.
Address: 113 Poplar St., Box 213, Ambler, PA 19002, Contact: Albert Camburn, Phone: (215) 367-2791.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/26/89).
Contractor/Supervisor (contingent from 1/26/89).

(5)(a) *Training Provider:* Alice Hamilton Center for Occupational Health Center.
Address: 410 7th St., SE., 2nd Fl., Washington, DC 20003, Contact: Brian Christopher, Phone: (202) 543-0005.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/12/87).
Abatement Worker (full from 1/16/88).
Abatement Worker Refresher Course (contingent from 12/29/88).
Abatement Worker Refresher Course (full from 2/22/90).
Contractor/Supervisor (full from 1/16/88).
Contractor/Supervisor Refresher Course (contingent from 12/29/88).
Contractor/Supervisor Refresher Course (full from 2/22/90).
Inspector/Management Planner (contingent from 3/9/88).
Inspector/Management Planner (full from 6/20/88).
Inspector/Management Planner Refresher Course (contingent from 3/2/89).

(6)(a) *Training Provider:* American Asbestos Training Institute, Inc.
Address: 2133 Arch St., Philadelphia, PA 19103, Contact: Linda McNeil, Phone: (215) 988-9710.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/16/89).
Contractor/Supervisor (contingent from 5/16/89).

(7)(a) *Training Provider:* American Monitoring & Engineering Services, Inc.
Address: 200 High Tower Boulevard, Suite 205, Pittsburgh, PA 15205, Contact: David J. Drummond, Phone: (412) 788-8300.
(b) *Approved Course:*
Inspector/Management Planner (contingent from 7/21/89).

(8)(a) *Training Provider:* Apex Environmental, Inc.
Address: 7652 Standish Pl., Rockville, MD 20855, Contact: Dorothy Washlick, Phone: (301) 217-0200.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/27/89).
Contractor/Supervisor (contingent from 7/27/89).

(9)(a) *Training Provider:* Asbestos Abatement Council, AWCI.
Address: 1600 Cameron St., Alexandria, VA 22314-2705, Contact: Gene Fisher, Phone: (703) 684-2924.
(b) *Approved Courses:*
Abatement Worker (full from 6/17/87).

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Contractor/Supervisor (full from 6/17/87).

(10)(a) *Training Provider:* Asbestos Analytical Association, Inc.

Address: 3208-B George Washington Hwy., Portsmouth, VA 23704, Contact: Carol A. Holden, Phone: (804) 397-0895.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/7/88).

Contractor/Supervisor (contingent from 10/7/88).

(11)(a) *Training Provider:* Asbestos Environmental Services of Maryland, Inc.

Address: P.O. Box 26, Timonium, MD 21093, Contact: David George, Phone: (301) 584-1490.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/6/89).

Contractor/Supervisor (contingent from 4/6/89).

(12)(a) *Training Provider:* Asbestos Removal Co.

Address: 521 D Pulaski Hwy., Joppa, MD 21085, Contact: Nick Thrappas, Phone: (301) 679-6062.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/11/89).

Contractor/Supervisor (contingent from 12/11/89).

(13)(a) *Training Provider:* Asbestos Training Center.

Address: 628 Spring St., Fairmont, WV 26554, Contact: Theodore Jackson, Phone: (304) 363-3803.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/11/89).

Abatement Worker Refresher Course (contingent from 6/20/90).

Contractor/Supervisor (contingent from 2/18/91).

Contractor/Supervisor Refresher Course (contingent from 6/20/90).

Inspector Refresher Course (contingent from 6/20/90).

(14)(a) *Training Provider:* Asbestos Workers Local Union No. 24.

Address: 6713 Ammendale Rd., Beltsville, MD 20705, Contact: Thomas Haun, Phone: (301) 937-7630.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/15/88).

Abatement Worker Refresher Course (contingent from 12/1/88).

Contractor/Supervisor (contingent from 12/1/88).

Contractor/Supervisor Refresher Course (contingent from 12/1/88).

(15)(a) *Training Provider:* Associated Thermal Services.

Address: 121 Edgewood Ave., Pittsburgh, PA 15218, Contact: Renee Yuhasz, Phone: (412) 247-4003.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/11/89).

Abatement Worker Refresher Course (contingent from 4/20/90).

Contractor/Supervisor (contingent from 12/11/89).

Contractor/Supervisor Refresher Course (contingent from 4/20/90).

Inspector/Management Planner (contingent from 12/11/89).

Inspector/Management Planner Refresher Course (contingent from 4/20/90).

Project Designer (contingent from 12/11/89).

Project Designer Refresher Course (contingent from 4/20/90).

(16)(a) *Training Provider:* Atlantic Environmental Resources Inc.

Address: 10111-B-Bacon Dr., Beltsville, MD 20705, Contact: John E Kee, Phone: (301) 595-1014.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/11/89).

Contractor/Supervisor (contingent from 12/11/89).

(17)(a) *Training Provider:* BARCO Enterprises, Inc.

Address: 2439 North Charles St., Baltimore, MD 21218, Contact: Bart Harrison, Phone: (301) 889-7770.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/11/89).

Contractor/Supervisor (contingent from 12/11/89).

(18)(a) *Training Provider:* Bardon Institute for Environmental Sciences, Inc.

Address: 3225 S. Delaware Ave., Philadelphia, PA 19148, Contact: Michael Grant, Phone: (215) 271-9808.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/5/91).

Abatement Worker Refresher Course (contingent from 3/14/91).

Contractor/Supervisor (contingent from 2/5/91).

Contractor/Supervisor Refresher Course (contingent from 3/14/91).

Inspector/Management Planner (contingent from 2/5/91).

Inspector/Management Planner Refresher Course (contingent from 3/14/91).

(19)(a) *Training Provider:* Biospherics, Inc.

Address: 12051 Indian Creek Ct., Beltsville, MD 20705, Contact: Marian Meiselman, Phone: (301) 369-3900.

(b) *Approved Courses:*

Abatement Worker (full from 10/1/87).

Abatement Worker Refresher Course (contingent from 8/12/88).

Abatement Worker Refresher Course (full from 10/31/88).

Contractor/Supervisor (full from 10/1/87).

Contractor/Supervisor Refresher Course (contingent from 8/12/88).

Contractor/Supervisor Refresher Course (full from 10/31/88).

Inspector/Management Planner (contingent from 5/20/88).

Inspector/Management Planner (full from 8/15/88).

Inspector/Management Planner Refresher Course (contingent from 2/23/89).

Inspector/Management Planner Refresher Course (full from 3/20/89).

(20)(a) *Training Provider:* Briggs Associates, Inc.

Address: 8300 Guilford Rd., Suite E, Columbia, MD 21046, Contact: J. Ross Voorhees, Phone: (301) 381-4434.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/30/89).

Abatement Worker (full from 1/11/90).

Abatement Worker Refresher Course (contingent from 1/26/90).

Contractor/Supervisor (full from 1/12/90).

(21)(a) *Training Provider:* Brujos Scientific, Inc.

Address: 505 Drury Ln., Baltimore, MD 21229, Contact: Robert Olcerst, Phone: (301) 566-0859.

(b) *Approved Courses:*

Abatement Worker (full from 11/21/88).

Contractor/Supervisor (contingent from 9/29/88).

(22)(a) *Training Provider:* Business Industrial Safety Supplies.

Address: 118 East Patapsco Ave., Baltimore, MD 21225, Contact: Ronald Mace, Phone: (301) 354-2477.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/20/89).

Contractor/Supervisor (contingent from 11/20/89).

(23)(a) *Training Provider:* Calvert Asbestos Training Services Inc.

Address: P.O. Box 799, Huntingtown, MD 20639, Contact: Carol F. Newhouse, Phone: (301) 535-0960.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/1/90).

Contractor/Supervisor (contingent from 8/1/90).

Inspector/Management Planner (contingent from 8/1/90).

Project Designer (contingent from 8/1/90).

(24)(a) *Training Provider:* Camtech, Inc.

Address: 4550 McKnight Rd., Suite 202, Pittsburgh, PA 15237, Contact: Leslie Connors, Phone: (412) 931-1210.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 10/13/89).

(25)(a) *Training Provider:* Carpenters Joint Apprenticeship Committee of Western Pennsylvania.

Address: 495 Mansfield Ave., Pittsburgh, PA 15205, Contact: William Shehab, Phone: (412) 922-6200.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/1/88).

Abatement Worker (full from 10/6/89).

Abatement Worker Refresher Course (contingent from 10/20/89).

Contractor/Supervisor (contingent from 11/27/89).

Contractor/Supervisor (full from 11/27/89).

Contractor/Supervisor Refresher Course (full from 11/27/89).

(26)(a) *Training Provider:* Center for Environmental & Occupational Training, Inc.

Address: 814 East Pittsburgh Plaza, Pittsburgh, PA 15112, Contact: David Ginsburg, Phone: (412) 823-1002.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/15/88).

Abatement Worker (full from 12/6/88).

Abatement Worker Refresher Course (full from 1/19/89).

Contractor/Supervisor (contingent from 9/15/88).

Contractor/Supervisor (full from 12/6/88).

Contractor/Supervisor Refresher Course (full from 1/19/89).

Inspector/Management Planner (contingent from 3/1/89).

Inspector/Management Planner Refresher Course (contingent from 3/1/89).

Project Designer (contingent from 6/29/89).

Project Designer (full from 12/21/89).

Project Designer Refresher Course (contingent from 12/13/89).

(27)(a) *Training Provider:* Center for Hazardous Materials Research.

Address: University of Pittsburgh Applied, Research Center, 320 William Pitt Way, Pittsburgh, PA 15238, Contact: Steven T. Ostheim, Phone: (412) 826-5320.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/28/88).

Contractor/Supervisor (contingent from 11/28/88).

(28)(a) *Training Provider:* Charles County Community College.

Address: Mitchell Rd., Box 910, LaPlata, MD 20646-0910, Contact: Jake Bair, Phone: (301) 934-2251.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/26/89).

Abatement Worker Refresher Course (contingent from 4/20/89).

Contractor/Supervisor (contingent from 1/26/89).

Contractor/Supervisor Refresher Course (contingent from 4/20/89).

(29)(a) *Training Provider:* Criteron Laboratories.

Address: 5301 Tacony St., Box 105, Bldg 8, Philadelphia, PA 19137, Contact: James A Weltz, Phone: (215) 288-1088.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/24/91).

Abatement Worker Refresher Course (contingent from 3/14/91).

Contractor/Supervisor (contingent from 1/24/91).

Contractor/Supervisor Refresher Course (contingent from 3/14/91).

Inspector/Management Planner (contingent from 1/24/91).

Inspector/Management Planner Refresher Course (contingent from 3/14/91).

(30)(a) *Training Provider:* Delaware Technical & Community College, Terry Campus/Stanton Campus.

Address: 1798 North DuPont Pkwy., P.O. Box 897, Dover, DE 19903, Contact: David Stanley, Phone: (302) 454-3900.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/20/88).

Abatement Worker Refresher Course (contingent from 3/1/88).

Contractor/Supervisor (contingent from 4/20/88).

Contractor/Supervisor Refresher Course (contingent from 3/1/88).

(31)(a) *Training Provider:* Drexel University, Office of Continuing Professional Education.

Address: 32nd & Chestnut Sts., Philadelphia, PA 19104, Contact: Robert Ross, Phone: (215) 895-2150.

(b) *Approved Courses:*

Abatement Worker (interim from 9/1/86 to 11/11/87).

Abatement Worker (full from 11/12/87).

Abatement Worker Refresher Course (contingent from 12/29/88).

Contractor/Supervisor (interim from 9/1/86 to 11/11/87).

Contractor/Supervisor (full from 11/12/87).

Contractor/Supervisor Refresher Course (contingent from 12/29/88).

Inspector/Management Planner (contingent from 3/8/88).

Inspector/Management Planner (full from 3/14/88).

Inspector/Management Planner Refresher Course (contingent from 12/29/88).

Inspector/Management Planner Refresher Course (full from 1/19/90).

Project Designer (contingent from 11/27/89).

(32)(a) *Training Provider:* Dynamac Corp.

Address: 11140 Rockville Pike, Rockville, MD 20852, Contact: Richard A. De Blasio, Phone: (301) 468-2500.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/6/89).

Contractor/Supervisor (contingent from 3/2/89).

Inspector/Management Planner (contingent from 9/1/88).

Inspector/Management Planner Refresher Course (contingent from 6/26/89).

(33)(a) *Training Provider:* E.I. DuPont De Nemours & Co. Spruance Plant.

Address: P.O. Box 27001, Richmond, VA 23261, Contact: Clarence P. Mihal, Jr., Phone: (804) 743-2948.

(b) *Approved Course:*

Abatement Worker (contingent from 11/14/88).

(34)(a) *Training Provider:* Eagle Industrial Hygiene Association Inc.

Address: 350 Dresher Rd., Horsham, PA 19044, Contact: Stephen R. Bell, Phone: (215) 657-2361.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/6/89).

Abatement Worker (full from 7/14/89).

Abatement Worker Refresher Course (contingent from 10/30/89).

Contractor/Supervisor (contingent from 4/6/89).

Contractor/Supervisor (full from 7/14/89).

Contractor/Supervisor Refresher Course (contingent from 10/30/89).

Inspector/Management Planner (contingent from 5/16/89).

Inspector/Management Planner Refresher Course (contingent from 7/20/89).

Project Designer (contingent from 12/11/89).

(35)(a) *Training Provider:* Environmental Education Associates.

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Address: 28 West Main St., Plymouth, PA 18651, Contact: Harry H. West, Phone: (717) 779-4242.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/17/89).
Contractor/Supervisor (contingent from 5/17/89).
Inspector (contingent from 5/17/89).

(36)(a) *Training Provider:* Environmental Training & Consultants, Inc.

Address: 2 Bala Plaza, Suite 300, Bala Cynwyd, PA 19004, Contact: Linda L. Kershaw, Phone: (215) 667-4685.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/6/89).
Abatement Worker Refresher Course (contingent from 1/13/90).
Contractor/Supervisor (contingent from 4/6/89).
Contractor/Supervisor Refresher Course (contingent from 1/13/90).
Inspector/Management Planner (contingent from 4/6/89).
Inspector/Management Planner Refresher Course (contingent from 1/13/90).

(37)(a) *Training Provider:* Facilities Management Consultants, Inc.

Address: P.O. Box 309, Cecil, PA 15321, Contact: Edward Monaco, Phone: (412) 745-1770.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/30/88).
Abatement Worker (full from 10/18/88).
Abatement Worker Refresher Course (contingent from 7/21/89).
Abatement Worker Refresher Course (full from 10/5/89).
Contractor/Supervisor (full from 10/18/88).
Contractor/Supervisor Refresher Course (contingent from 7/21/89).
Contractor/Supervisor Refresher Course (full from 10/5/89).

(38)(a) *Training Provider:* GA Environmental Services, Inc.

Address: Pier 5 Penn's Landing, Philadelphia, PA 19106, Contact: Frank E. Cona, Phone: (215) 351-4045.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/17/89).
Abatement Worker Refresher Course (contingent from 12/13/89).
Contractor/Supervisor (contingent from 8/17/89).
Contractor/Supervisor Refresher Course (contingent from 12/13/89).
Inspector/Management Planner (contingent from 11/7/89).
Inspector/Management Planner Refresher Course (contingent from 11/7/89).
Project Designer (contingent from 8/17/89).
Project Designer Refresher Course (contingent from 12/13/89).

(39)(a) *Training Provider:* GST Co.

Address: 50 Progress Ave., Zelienople, PA 16063, Contact: Norma Stanford, Phone: (412) 772-7488.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/14/88).
Abatement Worker (full from 12/5/88).
Abatement Worker Refresher Course (contingent from 1/30/89).
Contractor/Supervisor (contingent from 11/14/88).
Contractor/Supervisor (full from 12/5/88).
Contractor/Supervisor Refresher Course (contingent from 1/30/89).
Inspector/Management Planner (contingent from 12/29/88).
Inspector/Management Planner Refresher Course (contingent from 12/12/89).

(40)(a) *Training Provider:* Galson Technical Services, Inc.

Address: 5170 Campus Dr., Suite 200, Plymouth Meeting, PA 19462, Contact: Ernest L. Sweet, Phone: (215) 432-0506.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 6/17/88).

(41)(a) *Training Provider:* General Physics Corp.

Address: 6700 Alexander Bell Dr., Columbia, MD 21046, Contact: Andrew K. Marsh, Phone: (301) 290-2300.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/6/89).
Contractor/Supervisor (contingent from 4/6/89).

(42)(a) *Training Provider:* Genty Associates.

Address: 6080 Woodland Ave., Philadelphia, PA 19143, Contact: Frank Genty, Phone: (215) 727-4420.

(b) *Approved Course:*

Abatement Worker (contingent from 9/14/89).

(43)(a) *Training Provider:* Gerald T. Fenton, Inc.

Address: 3152 Bladensburg Rd., Washington, DC 20018, Contact: James R. Foster, Phone: (202) 269-2112.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/15/88).
Contractor/Supervisor (contingent from 12/15/88).

(44)(a) *Training Provider:* Hazard Abatement Training Center.

Address: 101 East Lancaster Ave., Wayne, PA 19087, Contact: Robert Mautner, Phone: (215) 971-0830.

(b) *Approved Course:*

Inspector/Management Planner (contingent from 4/12/88).

(45)(a) *Training Provider:* Hazardous Materials Management.

Address: 932 West Patipso Ave., Baltimore, MD 21230, Contact: Anthony Bizzari, Phone: (301) 355-6586.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/11/89).
Contractor/Supervisor (contingent from 12/11/89).

(46)(a) *Training Provider:* Heat & Frost Insulators & Asbestos Workers Local Union No. 2.

Address: P.O. Box 595, Moon-Clinton Rd., Clinton, PA 15026, Contact: Terry Larkin, Phone: (412) 695-2883.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/28/88).
Abatement Worker (full from 10/27/88).
Abatement Worker Refresher Course (contingent from 9/28/88).
Abatement Worker Refresher Course (full from 12/8/88).
Contractor/Supervisor (contingent from 9/28/88).
Contractor/Supervisor (full from 8/28/89).
Contractor/Supervisor Refresher Course (contingent from 9/28/88).
Contractor/Supervisor Refresher Course (full from 8/3/89).

(47)(a) *Training Provider:* Heat & Frost Insulators & Asbestos Workers Local Union No. 23.

Address: 42 Lynwood Dr., Rd. 4, Allentown, PA 18103, Contact: Jos Klocek, Phone: (717) 564-7563.

(b) *Approved Course:*

Abatement Worker (contingent from 10/20/88).

(48)(a) *Training Provider:* Ind. Tra. Co. Ltd.

Address: 18 South 22nd St., Richmond, VA 23223-7024, Contact: Vera Barley, Phone: (804) 648-7836.

(b) *Approved Courses:*

Abatement Worker (full from 9/15/87).
Abatement Worker Refresher Course (contingent from 8/12/88).
Contractor/Supervisor (full from 9/15/87).
Inspector/Management Planner (full from 9/16/88).
Inspector/Management Planner Refresher Course (full from 3/1/89).

(49)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 38.

Address: 315 - 317 North Washington St., Wilkes-Barre, PA 18703, Contact: Robert Hughes, Phone: (717) 829-0634.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 3/20/90).
Abatement Worker Refresher Course (contingent from 6/6/90).

(50)(a) *Training Provider:* International Union of Operating Engineers.

Address: 1125 Seventeen St. NW., Washington, DC 20036, Contact: David Treanor, Phone: (202) 429-9100.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/25/91).
Abatement Worker Refresher Course (contingent from 3/22/91).
Contractor/Supervisor (contingent from 2/25/91).
Contractor/Supervisor Refresher Course (contingent from 3/22/91).

(51)(a) *Training Provider:* JMR Associates.

Address: P.O. Box 9895, Philadelphia, PA 19140, Contact: Joseph Faulk, III, Phone: (215) 227-3035.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/24/89).
Abatement Worker (full from 9/15/89).
Contractor/Supervisor (contingent from 8/24/89).
Contractor/Supervisor (full from 9/15/89).

(52)(a) *Training Provider:* Jenkins Professionals, Inc.

Address: 5022 Campbell Blvd., Suite F, Baltimore, MD 21236, Contact: Larry Jenkins, Phone: (301) 529-3553.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/10/88).
Abatement Worker Refresher Course (contingent from 3/2/89).
Contractor/Supervisor (contingent from 2/10/88).
Contractor/Supervisor Refresher Course (contingent from 3/2/89).
Inspector/Management Planner (contingent from 11/1/89).

(53)(a) *Training Provider:* John H. Lange Associates.

Address: 4623 Northridge Dr., Pittsburgh, PA 15235-3510, Contact: John H. Lange, Phone: (412) 733-1448.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/9/90).
Abatement Worker Refresher Course (contingent from 10/15/89).
Contractor/Supervisor (contingent from 7/9/90).
Contractor/Supervisor Refresher Course (contingent from 10/15/89).
Inspector/Management Planner (contingent from 7/9/90).
Inspector/Management Planner Refresher Course (contingent from 10/15/89).
Project Designer (contingent from 7/9/90).
Project Designer Refresher Course (contingent from 10/15/89).

(54)(a) *Training Provider:* Laborers District Council Training Fund of Baltimore & Vicinity.

Address: 7400 Buttercup Rd., Sykesville, MD 21784, Contact: Robert Williams, Phone: (301) 549-1800.

(b) *Approved Course:*

Abatement Worker (contingent from 4/10/89).

(55)(a) *Training Provider:* Laborers District Council of Eastern Pennsylvania.

Address: 2163 Berryhill St., Harrisburg, PA 17104, Contact: Gerald D. Temarantz, Phone: (717) 564-2707.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/17/88).
Abatement Worker (full from 1/30/89).
Abatement Worker Refresher Course (contingent from 6/17/89).
Abatement Worker Refresher Course (full from 3/20/90).

(56)(a) *Training Provider:* Laborers District Council of Western Pennsylvania.

Address: 1101 Fifth Ave., Pittsburgh, PA 15219, Contact: Robert F. Ferrari, Phone: (412) 391-8533.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/17/88).
Abatement Worker (full from 10/31/88).
Abatement Worker Refresher Course (contingent from 3/2/89).
Contractor/Supervisor (contingent from 6/17/88).
Contractor/Supervisor (full from 10/31/88).
Contractor/Supervisor Refresher Course (contingent from 6/17/89).

(57)(a) *Training Provider:* Laborers District Council, Education Training Fund of Philadelphia & Vicinity.

Address: 500 Lancaster Ave., Exton, PA 19341, Contact: Jerry Roseman, Phone: (215) 836-1175.

(b) *Approved Courses:*

Abatement Worker (interim from 11/1/87 to 12/14/87).
Abatement Worker (contingent from 2/16/88).
Contractor/Supervisor (contingent from 4/30/89).
Contractor/Supervisor Refresher Course (contingent from 4/20/89).

(58)(a) *Training Provider:* Marcus Environmental.

Address: 6345 Courthouse Rd., P.O. Box 227, Prince George, VA 23875, Contact: Susan M. Wilcox, Phone: (804) 733-1855.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/26/89).
Contractor/Supervisor (contingent from 1/26/89).

(59)(a) *Training Provider:* Maryland Department of the Environment.

Address: 2500 Broening Hwy., Baltimore, MD 21224, Contact: Barbara Conrad, Phone: (301) 631-3847.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/16/89).
Contractor/Supervisor (contingent from 11/16/89).
Inspector/Management Planner (contingent from 4/14/89).

(60)(a) *Training Provider:* Maryland Industrial Safety Training Services.

Address: 668 Shore Dr., Joppa, MD 21085, Contact: Brain Stewart, Phone: (301) 679-9362.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/11/89).
Contractor/Supervisor (contingent from 12/11/89).

(61)(a) *Training Provider:* Medical College of Virginia, Virginia Commonwealth University Dept. of Preventive Medicine.

Address: P.O. Box 212, Richmond, VA 23298, Contact: Leonard Vance, Phone: (804) 786-9785.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 10/2/87).
Contractor/Supervisor (full from 11/2/87).
Contractor/Supervisor Refresher Course (contingent from 8/12/88).
Inspector/Management Planner (full from 2/29/88).
Inspector/Management Planner Refresher Course (contingent from 12/29/88).

(62)(a) *Training Provider:* National Association of Minority Contractors.

Address: 806 15th St., NW., Washington, DC 20012, Contact: Ralph C. Thomas, III, Phone: (202) 347-8259.

(b) *Approved Courses:*

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Abatement Worker (contingent from 4/19/89).
Contractor/Supervisor (contingent from 4/19/89).
(63)(a) *Training Provider:* National Training Fund for the Sheet Metal and Air Conditioning Industry.
Address: 601 North Fairfax St., Suite 240, Alexandria, VA 22314, Contact: Gerald Olejniczak, Phone: (703) 739-7200.
(b) *Approved Courses:*
Abatement Worker (interim from 11/1/86 to 8/1/87).
Abatement Worker (contingent from 9/18/87).
Abatement Worker (full from 9/18/87).
Abatement Worker Refresher Course (contingent from 12/29/88).
Contractor/Supervisor (interim from 11/1/86 to 8/1/87).
Contractor/Supervisor (contingent from 9/18/87).
Contractor/Supervisor (full from 9/18/87).
Contractor/Supervisor Refresher Course (contingent from 5/18/89).
Inspector (contingent from 5/26/88).
(64)(a) *Training Provider:* Occupational Medical Center.
Address: 4451 Parliament Pl., Lanham, MD 20706, Contact: Ellen Kite, Phone: (301) 306-0632.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/28/88).
Abatement Worker Refresher Course (contingent from 12/13/89).
Contractor/Supervisor (contingent from 9/25/89).
Contractor/Supervisor Refresher Course (contingent from 12/13/89).
(65)(a) *Training Provider:* Old Dominion University, Office of Continuing Education, College of Health Services.
Address: 204 Old Science Building, Norfolk, VA 23529-0290, Contact: Shirley Glover, Phone: (804) 440-4256.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/30/88).
Abatement Worker (full from 7/27/88).
(66)(a) *Training Provider:* Oneil M. Banks, Inc.
Address: 336 South Main St., Bel Air, MD 21014, Contact: Oneil M. Banks, Phone: (301) 879-4676.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/5/88).
Abatement Worker (full from 2/20/88).
Abatement Worker Refresher Course (contingent from 10/12/89).
Contractor/Supervisor (contingent from 1/5/88).
Contractor/Supervisor Refresher Course (contingent from 10/12/89).
Inspector (contingent from 3/14/88).
(67)(a) *Training Provider:* Paskal Environmental Services.
Address: 6010 Sonoma Rd., Bethesda, MD 20817, Contact: Steve Paskal, Phone: (301) 571-1507.
(b) *Approved Course:*
Abatement Worker (contingent from 4/28/88).
(68)(a) *Training Provider:* Pennsylvania Dept. of Welfare.
Address: Capitol Associates Bldg., Room 103, P.O. Box 2675, Harrisburg, PA 17105, Contact: Gerald A. Donatucci, Phone: (717) 783-9543.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/3/88).
Abatement Worker (full from 11/15/88).
Abatement Worker Refresher Course (contingent from 8/17/89).
Abatement Worker Refresher Course (full from 12/14/89).
(69)(a) *Training Provider:* Philadelphia Electric Co.
Address: Barbados Training Center, Norristown, PA 19401, Contact: John J. Stankiewicz, Phone: (215) 270-9600.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/19/88).
Abatement Worker (full from 7/28/89).
Abatement Worker Refresher Course (contingent from 2/24/89).
Abatement Worker Refresher Course (full from 11/15/89).
(70)(a) *Training Provider:* Phoenix Safety Associates, Ltd.
Address: P.O. Box 545, Phoenixville, PA 19460, Contact: Janice Sharkey, Phone: (215) 935-1770.
(b) *Approved Course:*
Inspector/Management Planner (contingent from 9/1/88).
(71)(a) *Training Provider:* Quality Specialities, Inc.
Address: P.O. Box 40, 109 South 15th Ave., Hopewell, VA 23860, Contact: Lewis Stevenson, Phone: (804) 458-5855.
(b) *Approved Course:*
Abatement Worker (contingent from 8/8/88).
(72)(a) *Training Provider:* RCW Environmental Consulting & Training.
Address: 711 Shetland St., Rockville, MD 20851, Contact: Robert C. Wyatt, Phone: (301) 251-0291.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/1/89).
Contractor/Supervisor (contingent from 8/1/89).
Inspector/Management Planner (contingent from 11/1/89).
(73)(a) *Training Provider:* Roofer Local No. 30/Roofing & Sheet Metal Contractors of Philadelphia & Vicinity Joint Apprentice Program.
Address: 433 Kelly Dr., Philadelphia, PA 19129, Contact: Richard Harvey, Phone: (215) 849-4800.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/21/89).
Contractor/Supervisor (contingent from 7/21/89).
(74)(a) *Training Provider:* S.G. Brown, Inc.
Address: 2701 Sonic Dr., Virginia Beach, VA 23456, Contact: Sandra A. Akers, Phone: (804) 468-0027.
(b) *Approved Course:*
Abatement Worker (contingent from 7/12/88).
(75)(a) *Training Provider:* SE Technologies., Inc. (SET).
Address: 98 Vanadium Rd., Bridgeville, PA 15017, Contact: Amy Couch Shultz, Phone: (412) 221-1100.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/22/89).
Abatement Worker Refresher Course (contingent from 4/20/89).
Contractor/Supervisor (contingent from 2/22/89).
Contractor/Supervisor Refresher Course (contingent from 4/20/89).
Inspector/Management Planner (contingent from 2/22/89).
Inspector/Management Planner Refresher Course (contingent from 4/20/89).
(76)(a) *Training Provider:* STI, Inc.
Address: P.O. Box 1029, Aberdeen, MD 21001, Contact: Terry F. Carraway, Jr., Phone: (301) 575-7844.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/19/88).
Abatement Worker Refresher Course (contingent from 12/29/88).
Contractor/Supervisor (contingent from 7/19/88).
Contractor/Supervisor Refresher Course (contingent from 12/29/88).
Inspector/Management Planner (contingent from 12/15/88).
Inspector/Management Planner Refresher Course (contingent from 10/30/89).
(77)(a) *Training Provider:* STIC Corporation.
Address: Box 347, Wilkes-Barre, PA 18703, Contact: Ed Barrett, Phone: (717) 829-3614.

(b) *Approved Course:*
Contractor/Supervisor (contingent from 4/7/89).
(78)(a) *Training Provider:* Safety Management Institute.
Address: P.O. Box 1844, Altoona, PA 16603, Contact: Christopher Tate, Phone: (814) 946-1221.
(b) *Approved Courses:*
Abatement Worker (Approval Suspended 10/2/89).
Abatement Worker Refresher Course (Approval Suspended 10/2/89).
Contractor/Supervisor (Approval Suspended 10/2/89).
Contractor/Supervisor Refresher Course (Approval Suspended 10/2/89).
Inspector/Management Planner (Approval Suspended 10/2/89).
Inspector/Management Planner Refresher Course (Approval Suspended 10/2/89).
(79)(a) *Training Provider:* Temple University College of Engineering Asbestos Abatement Center.
Address: 12th & Norris Sts., Philadelphia, PA 19122, Contact: Lester Levin, Phone: (215) 787-6479.
(b) *Approved Courses:*
Abatement Worker (full from 10/21/87).
Contractor/Supervisor (contingent from 9/28/87).
Contractor/Supervisor (full from 10/1/87).
Inspector/Management Planner (full from 10/13/87).
Inspector/Management Planner Refresher Course (full from 12/19/88).
Project Designer (contingent from 3/20/89).
(80)(a) *Training Provider:* Tetra Services, Inc.
Address: Pleasant Valley Rd., P.O. Box 295A, Trafford, PA 15085, Contact: Dominic R. Medure, Phone: (412) 744-3377.
(b) *Approved Course:*
Abatement Worker (contingent from 4/20/89).
(81)(a) *Training Provider:* The Glaser Co.
Address: 200 Kanawha Ter., St. Albans, WV 25177, Contact: Stephen P. Glaser, Phone: (304) 722-2832.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/6/89).
Contractor/Supervisor (contingent from 4/6/89).
(82)(a) *Training Provider:* The J.O.B.S. Company.
Address: P.O. Box 3763, Charleston, WV 25337, Contact: Ann Hyre, Phone: (304) 344-0048.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/28/89).
Abatement Worker (full from 2/14/90).
Contractor/Supervisor (contingent from 5/25/89).
(83)(a) *Training Provider:* Tracor Jitco, Inc.
Address: 1601 Research Blvd., Rockville, MD 20850, Contact: Daniel O. Chute, Phone: (301) 984-2718.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/4/89).
Contractor/Supervisor (contingent from 1/4/89).
Inspector/Management Planner (contingent from 1/4/89).
(84)(a) *Training Provider:* United Brotherhood of Carpenters & Joiners of America.
Address: 101 Constitution Ave., NW., Washington, DC 20001, Contact: Joseph L. Durst Jr., Phone: (202) 546-6206.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/11/89).
Abatement Worker Refresher Course (contingent from 3/21/90).
Contractor/Supervisor (contingent from 12/11/89).
Contractor/Supervisor Refresher Course (contingent from 3/21/90).
(85)(a) *Training Provider:* United Environmental Systems, Inc.
Address: 104-106 Arch St., Philadelphia, PA 19106, Contact: Holly Tate, Phone: (215) 829-9454.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/3/88).
Abatement Worker (full from 9/25/89).
Abatement Worker Refresher Course (contingent from 1/30/90).
Contractor/Supervisor (contingent from 6/30/88).
Inspector/Management Planner (contingent from 7/8/88).
(86)(a) *Training Provider:* University of Pittsburgh, Graduate School of Public Health.
Address: Dept. of Industrial Environmental, Health Sciences, Pittsburgh, PA 15261, Contact: Dietrich A. Weyel, Phone: (412) 624-3042.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/6/88).
Abatement Worker (full from 6/6/88).
Abatement Worker Refresher Course (contingent from 4/20/89).
Contractor/Supervisor (contingent from 3/6/88).
Contractor/Supervisor (full from 6/6/88).
Contractor/Supervisor Refresher Course (contingent from 4/20/89).
(87)(a) *Training Provider:* University of Scranton Technology Center.
Address: Scranton, PA 18510-2192, Contact: Jerome P. De Santo, Phone: (717) 961-4050.
(b) *Approved Course:*
Inspector/Management Planner (contingent from 6/26/89).
(88)(a) *Training Provider:* Volz Environmental Services, Inc.
Address: 3010 William Pitt Way, Pittsburgh, PA 15238, Contact: Greg Ashman, Phone: (412) 826-3150.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/3/88).
Abatement Worker (full from 1/23/89).
Abatement Worker Refresher Course (contingent from 4/20/89).
Abatement Worker Refresher Course (full from 11/21/89).
Contractor/Supervisor (contingent from 10/3/88).
Contractor/Supervisor (full from 1/23/89).
Contractor/Supervisor Refresher Course (contingent from 4/20/89).
Contractor/Supervisor Refresher Course (full from 11/21/89).
Inspector/Management Planner (contingent from 10/3/88).
Inspector/Management Planner (full from 1/29/90).
Inspector/Management Planner Refresher Course (contingent from 4/20/89).
Inspector/Management Planner Refresher Course (full from 12/18/89).
Project Designer (contingent from 9/1/89).
Project Designer (full from 12/6/89).
Project Designer Refresher Course (contingent from 12/13/89).
(89)(a) *Training Provider:* W.S. Keyes Associates.
Address: 55 Frazer Rd., Bech 232, Malvern, PA 19355, Contact: W. Scot Keyes, Phone: (215) 647-2878.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/25/90).
Contractor/Supervisor (contingent from 1/25/90).
Inspector/Management Planner (contingent from 1/25/90).
(90)(a) *Training Provider:* Waco, Inc.
Address: Highway 925, N., P.O. Box 740, White Plains, MD 20695, Contact: Wayne Cooper, Phone: (301) 843-2488.
(b) *Approved Courses:*
Abatement Worker (full from 9/15/87).
Abatement Worker Refresher Course (contingent from 8/12/88).

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Contractor/Supervisor (full from 9/15/87).
Contractor/Supervisor Refresher Course (contingent from 3/1/88).
Inspector/Management Planner Refresher Course (contingent from 3/11/88).
(91)(a) *Training Provider:* West Virginia Laborers Training Trust Fund.
Address: One Monogalia St., Charleston, WV 25302, Contact: Wetzel Harvey, Phone: (304) 346-0581.
(b) *Approved Course:*
Abatement Worker (contingent from 8/29/88).
(92)(a) *Training Provider:* West Virginia University Extension Service.
Address: 704 Knapp Hall, P.O. Box 6031, Morgantown, WV 26506-6031, Contact: Robert L. Moore, Phone: (304) 293-4013.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/20/88).
Abatement Worker Refresher Course (contingent from 11/2/89).
Contractor/Supervisor (contingent from 10/20/88).
Contractor/Supervisor Refresher Course (contingent from 11/2/89).
Inspector/Management Planner (contingent from 5/9/88).
Inspector/Management Planner Refresher Course (contingent from 4/20/89).
Inspector/Management Planner Refresher Course (full from 4/26/89).
(93)(a) *Training Provider:* White Lung Association.
Address: 1601 St. Paul St., Baltimore, MD 21201, Contact: James Fite, Phone: (301) 727-6029.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/18/88).
Abatement Worker (full from 6/6/88).
Abatement Worker Refresher Course (contingent from 2/23/89).
Contractor/Supervisor (contingent from 2/18/88).
Contractor/Supervisor (full from 6/6/88).
Contractor/Supervisor Refresher Course (contingent from 2/23/89).
Inspector/Management Planner (contingent from 1/4/88).
Inspector/Management Planner (full from 2/15/88).
Inspector/Management Planner Refresher Course (contingent from 12/29/88).
(94)(a) *Training Provider:* William L. James Enterprises, Inc.
Address: P.O. Box 1478, Scranton, PA 18501-1478, Contact: William L. James, Phone: (717) 344-5630.
(b) *Approved Courses:*
Abatement Worker Refresher Course (contingent from 11/7/89).
Contractor/Supervisor (contingent from 4/20/88).
Contractor/Supervisor Refresher Course (contingent from 11/7/87).

REGION IV – Atlanta, GA

Acting Regional Asbestos Coordinator: Sally Shaver, EPA, Region IV, 345 Courtland St., NE., Atlanta, GA 30365. (404) 347-5014, (FTS) 257-5014.
List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certificatin indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region IV training courses and contact points for each, are as follows:
(1)(a) *Training Provider:* A.S.C. Consultants, Inc.
Address: P.O. Box 31, Waynesville, NC 28786, Contact: Terry LaDuke, Phone: (704) 452-3449.
(b) *Approved Course:*
Abatement Worker (contingent from 6/22/89).
(2)(a) *Training Provider:* AHP Research, Inc.
Address: 1505 Johnson's Ferry Rd., Marietta, GA 30062, Contact: Dwight Brown, Phone: (404) 565-0061.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/3/89).
Contractor/Supervisor (contingent from 11/13/89).
Contractor/Supervisor Refresher Course (contingent from 1/6/89).
Inspector/Management Planner (interim from 5/28/86 to 12/13/87).
Inspector/Management Planner (full from 12/14/87).
(3)(a) *Training Provider:* ARI Institute.
Address: P.O. Box 60599, Nashville, TN 37206, Contact: Theresa Cook, Phone: (615) 228-3820.
(b) *Approved Course:*
Abatement Worker (contingent from 12/6/89).
(4)(a) *Training Provider:* ASC Asbestos Training Center.
Address: P.O. Box 291569, Nashville, TN 37229-1569, Contact: Don Hoffman, Phone: (615) 399-2221.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/4/90).
Abatement Worker Refresher Course (contingent from 2/4/90).
Contractor/Supervisor (contingent from 2/4/90).
Inspector/Management Planner (contingent from 2/5/90).
Inspector/Management Planner Refresher Course (contingent from 2/5/90).
Project Designer (contingent from 2/5/90).
(5)(a) *Training Provider:* ATEC Associates, Inc.
Address: 129 West Valley Ave., Birmingham, AL 35209-3691, Contact: W. David Yates, Phone: (205) 945-9224.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/14/89).
Contractor/Supervisor (contingent from 4/14/89).
Inspector/Management Planner (contingent from 4/14/89).
(6)(a) *Training Provider:* ATI Environmental Services.
Address: P.O. Box 3044, Louisville, KY 40201, Contact: Tim Ellis, Phone: (502) 589-5308.
(b) *Approved Courses:*
Abatement Worker (full from 1/12/88).
Abatement Worker Refresher Course (contingent from 2/21/89).
Contractor/Supervisor (full from 1/12/88).
Contractor/Supervisor Refresher Course (contingent from 2/21/89).
(7)(a) *Training Provider:* American Environmental Safety Institute.
Address: P.O. Box 212116, Columbia, SC 29221-2116, Contact: Kim Cleveland, Phone: (803) 771-7483.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/29/89).
Abatement Worker (full from 6/1/90).
Abatement Worker Refresher Course (contingent from 12/16/88).
Abatement Worker Refresher Course (full from 6/12/90).
Contractor/Supervisor (full from 10/17/88).
Contractor/Supervisor Refresher Course (contingent from 12/16/88).
Contractor/Supervisor Refresher Course (full from 6/13/90).
Inspector/Management Planner (full from 2/8/89).
(8)(a) *Training Provider:* Asbesco, Inc.
Address: P.O. Box 9874, Mobile, AL 36609, Contact: Robert Pettie, Phone: (205) 666-5199.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/22/89).
Abatement Worker (full from 3/7/91).
(9)(a) *Training Provider:* Asbestos Abatement Associates, Inc.

Address: P.O. Box 8178, Spartanburg, SC 29305, Contact: John McNamara, Phone: (803) 582-1222.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/17/89).
Abatement Worker (full from 6/26/89).
Abatement Worker Refresher Course (contingent from 5/1/89).
Abatement Worker Refresher Course (full from 7/19/89).
Contractor/Supervisor (contingent from 3/7/89).
Contractor/Supervisor (full from 7/19/89).
Contractor/Supervisor Refresher Course (contingent from 5/1/89).
Contractor/Supervisor Refresher Course (full from 7/19/89).
Inspector/Management Planner Refresher Course (contingent from 5/1/89).
Inspector/Management Planner Refresher Course (full from 7/31/89).
Project Designer (contingent from 11/14/89).
Project Designer (full from 1/12/90).
Project Designer Refresher Course (contingent from 10/18/89).
Project Designer Refresher Course (full from 11/21/89).
(10)(a) *Training Provider:* Asbestos Consultants, Inc.
Address: P.O. Box 9054, Greensboro, NC 27408, Contact: Thomas Petty, Phone: (919) 275-3907.
(b) *Approved Course:*
Inspector/Management Planner (contingent from 3/9/88).
(11)(a) *Training Provider:* Asbestos Disease Association.
Address: 800 West Platt St., Tampa, FL 33706, Contact: John D. Householter, Phone: (813) 254-0003.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 12/11/89).
Inspector/Management Planner (contingent from 12/11/89).
(12)(a) *Training Provider:* Asbestos Technical Resource Center, Inc.
Address: P.O. Box 2755, Covington, GA 30209-2755, Contact: Timothy E. Fuller, Phone: (404) 361-9182.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/2/89).
Abatement Worker Refresher Course (full from 6/7/89).
Contractor/Supervisor (contingent from 6/2/89).
Contractor/Supervisor (full from 8/10/89).
Contractor/Supervisor Refresher Course (full from 6/7/89).
(13)(a) *Training Provider:* Atlantic Environmental Consulting, Inc.
Address: 12200 Southwest 132 Ct., Miami, FL 33186, Contact: Stephan R. Schanamann, Phone: (305) 232-6364.
(b) *Approved Course:*
Abatement Worker (contingent from 8/11/88).
(14)(a) *Training Provider:* BCM Engineers, Inc.
Address: 104 St. Anthony St., P.O. Box 1784, Mobile, AL 36633, Contact: Conrad Freeman, Phone: (205) 433-3981.
(b) *Approved Courses:*
Inspector/Management Planner (full from 11/11/87).
Inspector/Management Planner Refresher Course (contingent from 11/10/88).
Inspector/Management Planner Refresher Course (full from 10/16/90).
Project Designer (full from 12/8/87).
Project Designer Refresher Course (contingent from 5/4/89).
Project Designer Refresher Course (full from 10/17/90).
(15)(a) *Training Provider:* Betchel Construction, Inc.
Address: P.O. Box 3218, Florida City, FL 33034, Contact: R.C. Slover, Phone: (305) 248-8585.
(b) *Approved Course:*
Abatement Worker (contingent from 3/13/89).
(16)(a) *Training Provider:* Big Bend Abatement, Inc.
Address: 3542 West Orange Ave., Tallahassee, FL 32310, Contact: Robert Law, Phone: (904) 576-0130.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/28/89).
Abatement Worker (full from 9/26/90).
(17)(a) *Training Provider:* Briggs Associates Int'l. Inc.
Address: 4209 Vineland Rd., Suites J-9/10, Orlando, FL 32811, Contact: Jim McCulloch, Phone: (407) 422-3522.
(b) *Approved Course:*
Abatement Worker (contingent from 5/4/89).
(18)(a) *Training Provider:* CRU Incorporated.
Address: 13029 Middletown Industrial Blvd., Louisville, KY 40223, Contact: Donna Ringo, Phone: (502) 244-8644.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/1/89).
Contractor/Supervisor (contingent from 5/1/89).
Contractor/Supervisor Refresher Course (contingent from 9/1/89).
Inspector/Management Planner (contingent from 5/26/89).
(19)(a) *Training Provider:* Chemalytica.
Address: 33 East 7th St., Covington, KY 41011, Contact: Kenneth Reed, Phone: (606) 431-6224.
(b) *Approved Course:*
Abatement Worker (contingent from 1/17/90).
(20)(a) *Training Provider:* DPC General Contractors, Inc.
Address: 250 Arizona Ave., NE., Bldg. A, Atlanta, GA 30307, Contact: Glen Kahler, Phone: (404) 373-0561.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/5/88).
Abatement Worker (full from 5/9/88).
(21)(a) *Training Provider:* Diversified Industries, Inc.
Address: P.O. Box 10452, 7316 Market St., Wilmington, NC 28405, Contact: Greg Hale, Phone: (919) 686-1736.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/23/90).
Abatement Worker Refresher Course (contingent from 12/13/89).
Contractor/Supervisor (contingent from 1/23/90).
Contractor/Supervisor Refresher Course (contingent from 12/13/89).
(22)(a) *Training Provider:* EBC, Inc.
Address: 2245 North Hills Dr., Suite J, Raleigh, NC 27612, Contact: Mike Shrimanker, Phone: (919) 872-8910.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/7/89).
Abatement Worker (full from 11/16/89).
Abatement Worker Refresher Course (contingent from 5/3/89).
Abatement Worker Refresher Course (full from 5/1/90).
Contractor/Supervisor (contingent from 7/14/89).
Contractor/Supervisor (full from 5/3/90).
Contractor/Supervisor Refresher Course (contingent from 9/26/89).
Contractor/Supervisor Refresher Course (full from 5/2/90).
(23)(a) *Training Provider:* ELB & Associates, Inc.
Address: 605 Eastowne Dr., Chapel Hill, NC 27514, Contact: Michael L. Cannon, Phone: (919) 493-4471.
(b) *Approved Course:*
Abatement Worker (contingent from 6/30/88).
(24)(a) *Training Provider:* Eagle Environmental Laboratory.
Address: 1129 Ellard Rd., Fultondale, AL 35068, Contact: Mark Cambron, Phone: (205) 841-7693.

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(b) *Approved Course:*
Abatement Worker (contingent from 11/14/89).
(25)(a) *Training Provider:* Energy Support Services, Inc.
Address: P.O. Box 6096, Ashville, NC 28816, Contact: Edward T. Rochelle, Phone: (704) 258-8888.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/7/89).
Abatement Worker Refresher Course (contingent from 11/8/89).
Contractor/Supervisor (contingent from 11/7/89).
Contractor/Supervisor Refresher Course (contingent from 11/8/89).
Inspector/Management Planner (contingent from 3/5/89).
Inspector/Management Planner Refresher Course (contingent from 11/8/89).
(26)(a) *Training Provider:* Enpuricon Asbestos Management.
Address: 3200 Glen Royal Rd., No. 110, Raleigh, NC 27612-7404, Contact: Terry E. Slate, Phone: (919) 781-0686.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/11/89).
Contractor/Supervisor (contingent from 2/6/89).
(27)(a) *Training Provider:* Enviro Science, Inc.
Address: P.O. Box 5804, Spartanburg, SC 29304, Contact: Andrew Schauder, Phone: (803) 585-4900.
(b) *Approved Course:*
Inspector/Management Planner (contingent from 9/15/89).
(28)(a) *Training Provider:* Enviro-Tech.
Address: 550 Comet St., No. 16, P.O. Box 6752, Jacksonville, FL 32236, Contact: Rafael Abrev, Phone: (904) 384-0732.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/28/89 to 7/6/90 only).
Contractor/Supervisor (contingent from 7/11/89 to 7/6/90 only).
(29)(a) *Training Provider:* Environmental Control Systems Training Institute.
Address: 377 Harrods Woods Rd., Frankfurt, KY 40601, Contact: William A. Sadler, Phone: (502) 896-1245.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 8/10/89).
Inspector/Management Planner (contingent from 11/6/89).
(30)(a) *Training Provider:* Environmental Engineering Co., Inc.
Address: 500 Rivermont Rd., Columbia, SC 29210, Contact: Russell Richard, Phone: (803) 256-7646.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/17/89).
Abatement Worker (full from 9/22/89).
Abatement Worker Refresher Course (contingent from 9/28/89).
Abatement Worker Refresher Course (full from 1/31/90).
Contractor/Supervisor (contingent from 2/17/89).
Contractor/Supervisor (full from 9/22/89).
Contractor/Supervisor Refresher Course (contingent from 9/28/89).
Contractor/Supervisor Refresher Course (full from 2/1/90).
(31)(a) *Training Provider:* Environmental Resources Group.
Address: P.O. Box 18283, Memphis, TN 38181-0283, Contact: Lee C. Thompson, Phone: (901) 366-9160.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/14/88).
Abatement Worker (full from 1/10/91).
(32)(a) *Training Provider:* Environmental Training Corporation.
Address: 2252 Rocky Ridge Rd., Suite 105, Birmingham, AL 35216, Contact: William E. Hicks, Phone: (800) 677-8761.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/31/89).
Abatement Worker (full from 11/28/90).
Contractor/Supervisor (contingent from 11/1/89).
Contractor/Supervisor (full from 11/29/90).
Contractor/Supervisor Refresher Course (contingent from 11/1/89).
Contractor/Supervisor Refresher Course (full from 11/28/90).
Project Designer (contingent from 10/31/89).
Project Designer (full from 8/1/90).
(33)(a) *Training Provider:* Evans Environmental & Geological Science & Management, Inc.
Address: 2831 Southwest 27 St., Miami, FL 33133, Contact: Charles Evans, Phone: (305) 856-7458.
(b) *Approved Course:*
Abatement Worker (contingent from 1/31/89).
(34)(a) *Training Provider:* Fayetteville Technical Community College.
Address: P.O. Box 35236, Fayetteville, NC 28303, Contact: John McNeill, Phone: (919) 323-1961.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/1/89).
Contractor/Supervisor (contingent from 5/1/89).
(35)(a) *Training Provider:* Georgia Tech. Institute.
Address: O'Keefe Building, Room 029, Atlanta, GA 30332, Contact: Robert D. Schmitter, Phone: (404) 894-3806.
(b) *Approved Courses:*
Contractor/Supervisor (interim from 6/1/85 to 5/10/87).
Contractor/Supervisor (full from 5/11/87).
Contractor/Supervisor Refresher Course (contingent from 9/23/87).
Contractor/Supervisor Refresher Course (full from 7/7/88).
Inspector/Management Planner (contingent from 9/29/87).
Inspector/Management Planner (full from 10/19/87).
Inspector/Management Planner Refresher Course (contingent from 10/24/88).
Inspector/Management Planner Refresher Course (full from 11/29/88).
Project Designer (contingent from 6/1/88).
Project Designer (full from 6/7/88).
Project Designer Refresher Course (contingent from 1/31/89).
Project Designer Refresher Course (full from 3/22/89).
(36)(a) *Training Provider:* Great Barrier Insulation Co.
Address: Meador Warehouse, Western Dr., Mobile, AL 36607, Contact: Thomas Knotts, Phone: (205) 476-0350.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/13/88).
Abatement Worker (full from 4/4/89).
Abatement Worker Refresher Course (contingent from 3/30/89).
(37)(a) *Training Provider:* Harrison Contracting, Inc.
Address: 3845 Viscount St., Suite 12, Memphis, TN 38118, Contact: Lee C. Thompson, Phone: (901) 795-0432.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/11/88).
Abatement Worker (full from 10/12/88).
(38)(a) *Training Provider:* Howard L. Henson Training Institute.
Address: 3592 Flat Shoals Rd., Decatur, GA 30034, Contact: Stephen Henson, Phone: (404) 243-5107.
(b) *Approved Course:*
Abatement Worker (full from 2/16/88).
(39)(a) *Training Provider:* International Association of Heat & Frost Insulation & Asbestos Workers Local Union No. 13.

Address: 145 East First St., Jacksonville, FL 32206, Contact: Tom Mallard, Phone: (904) 388-1601.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/23/89).
Abatement Worker (full from 7/27/90).
Abatement Worker Refresher Course (contingent from 1/23/89).
Abatement Worker Refresher Course (full from 6/14/90).
Contractor/Supervisor (contingent from 1/23/89).
Contractor/Supervisor (full from 4/24/89).
Contractor/Supervisor Refresher Course (contingent from 1/23/89).
Contractor/Supervisor Refresher Course (full from 6/15/90).
(40)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 46.
Address: 7111 Wright Rd., Knoxville, TN 37931, Contact: John Wade, Phone: (615) 938-1274.
(b) *Approved Courses:*
Abatement Worker (full from 10/11/88).
Abatement Worker Refresher Course (contingent from 6/16/89).
Abatement Worker Refresher Course (full from 11/8/89).
Contractor/Supervisor (full from 1/9/89).
Contractor/Supervisor Refresher Course (contingent from 10/11/88).
Contractor/Supervisor Refresher Course (full from 11/9/89).
(41)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 48.
Address: 7815 Old Morrow Rd., Atlanta, GA 30316, Contact: Timothy Fuller, Phone: (404) 478-1393.
(b) *Approved Courses:*
Abatement Worker (full from 5/4/88).
Contractor/Supervisor (full from 6/27/88).
Contractor/Supervisor Refresher Course (full from 11/2/88).
Inspector (contingent from 9/26/88).
Inspector (full from 9/28/88).
(42)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 60.
Address: 13000 Northwest 47th Ave., Miami, FL 33054, Contact: David Cleveland, Phone: (305) 681-0679.
(b) *Approved Courses:*
Abatement Worker (full from 11/15/88).
Contractor/Supervisor (full from 12/12/88).
(43)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 67.
Address: 7930 U.S. Hwy. 301 N., Tampa, FL 33637, Contact: Don Tucker, Phone: (813) 985-3067.
(b) *Approved Courses:*
Abatement Worker (full from 6/23/89).
Abatement Worker Refresher Course (contingent from 11/15/89).
Abatement Worker Refresher Course (full from 11/29/89).
Contractor/Supervisor (full from 11/29/88).
Contractor/Supervisor Refresher Course (contingent from 11/15/89).
Contractor/Supervisor Refresher Course (full from 11/28/89).
(44)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 72.
Address: 2513 Adams St., Wilmington, NC 28401, Contact: Mike Harrell, Phone: (919) 343-1730.
(b) *Approved Course:*
Abatement Worker (full from 8/10/88).
(45)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 78.
Address: 600 Main St., Gardendale, AL 35071, Contact: Bill Boothe, Phone: (205) 631-5230.
(b) *Approved Courses:*
Abatement Worker (full from 10/25/88).
Abatement Worker Refresher Course (full from 2/21/91).
Contractor/Supervisor (contingent from 12/6/89).
Contractor/Supervisor (full from 3/29/91).
Contractor/Supervisor Refresher Course (full from 5/17/89).
(46)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 86.
Address: 4822 Charlotte Ave., Nashville, TN 37209, Contact: Don Cundiff, Phone: (615) 297-7127.
(b) *Approved Courses:*
Abatement Worker (full from 7/10/89).
Contractor/Supervisor (full from 7/10/89).
(47)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 96.
Address: P.O. Box 623, Pooler, GA 31322-0623, Contact: Kem Dugger, Phone: (912) 748-6282.
(b) *Approved Courses:*
Abatement Worker (full from 7/26/88).
Abatement Worker Refresher Course (full from 8/17/89).
Contractor/Supervisor (full from 9/13/88).
Contractor/Supervisor Refresher Course (full from 8/17/89).
(48)(a) *Training Provider:* Kentucky Laborers Training Trust Fund.
Address: US 127 Bypass South, P.O. Box 208, Lawrenceburg, KY 40342, Contact: David Vinson, Phone: (502) 839-3155.
(b) *Approved Course:*
Abatement Worker (contingent from 1/10/89).
(49)(a) *Training Provider:* LCI Training Institute.
Address: 1432 Jocasta Dr., Lexington, KY 40502-5320, Contact: John F. Summersett, Phone: (606) 273-8881.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/9/88).
Contractor/Supervisor (contingent from 6/9/88).
(50)(a) *Training Provider:* Laborers District Council of Southeast Florida.
Address: 799 Northwest 62nd St., Miami, FL 33510, Contact: Albert Houston, Phone: (305) 754-2650.
(b) *Approved Course:*
Abatement Worker (full from 3/15/88).
(51)(a) *Training Provider:* Laborers Local Union No. 517 North & Central Florida Education & Training Fund.
Address: 4625 Old Wintergarden Rd., Bldg. A-6, Orlando, FL 32811, Contact: Patrick O' Donnell, Phone: (407) 298-3446.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/6/88).
Abatement Worker Refresher Course (contingent from 9/22/89).
(52)(a) *Training Provider:* Lang Engineering of Florida, Inc.
Address: 5432 Commerce Park Blvd., Tampa, FL 33610, Contact: Robert Lang, Phone: (813) 622-6311.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/17/89).
Abatement Worker (full from 4/2/90).
Abatement Worker Refresher Course (contingent from 8/9/89).
(53)(a) *Training Provider:* Laseter & Associates, Inc.
Address: P.O. Box 176, Collierville, TN 38017, Contact: Kenneth M. Laseter, Phone: (800) 456-8617.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/7/89).
Contractor/Supervisor (contingent from 11/7/89).

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Inspector/Management Planner (contingent from 11/7/89).
Inspector/Management Planner Refresher Course (contingent from 11/8/89).
(54)(a) *Training Provider:* Law Engineering, Inc.
Address: 7616 Southland Blvd., Suite 110, Orlando, FL 32809, Contact: Diana Rigdon, Phone: (407) 855-6740.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/1/89).
Contractor/Supervisor (contingent from 9/1/89).
(55)(a) *Training Provider:* Mississippi State University, Dept. of Continuing Education.
Address: Memorial Hall-Bar Ave., P.O. Drawer 5247, Mississippi State, MS 39762-5247, Contact: Billy G. Smith, Phone: (601) 325-3473.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/15/88).
Abatement Worker (full from 3/22/90).
Contractor/Supervisor (contingent from 7/19/88).
Contractor/Supervisor (full from 6/29/89).
Contractor/Supervisor Refresher Course (contingent from 5/26/89).
Contractor/Supervisor Refresher Course (full from 3/19/90).
Inspector/Management Planner (full from 6/20/88).
Inspector/Management Planner Refresher Course (contingent from 5/26/89).
Project Designer (contingent from 12/15/88).
Project Designer Refresher Course (contingent from 5/26/89).
(56)(a) *Training Provider:* Mobile Asbestos Resource Services, Inc.
Address: 10 Airport Lane, Archer, FL 32618, Contact: Walter Heope, Phone: (904) 495-9214.
(b) *Approved Course:*
Abatement Worker (contingent from 12/6/89).
(57)(a) *Training Provider:* Mur-Shel, Inc. Asbestos Abatement.
Address: 518 South Mulberry, Panama City, FL 32401, Contact: Lois Shelton, Phone: (904) 763-2010.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 9/1/89).
Contractor/Supervisor (full from 2/22/91).
(58)(a) *Training Provider:* Napri/Cisco.
Address: 4545 St. Augustine Rd., Jacksonville, FL 32207, Contact: Otey C. Reynolds, Phone: (904) 730-2222.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/13/89).
Abatement Worker Refresher Course (contingent from 10/16/89).
Contractor/Supervisor (contingent from 10/13/89).
Contractor/Supervisor Refresher Course (contingent from 10/16/89).
Inspector/Management Planner (contingent from 10/13/89).
Inspector/Management Planner Refresher Course (contingent from 10/16/89).
Project Designer (contingent from 10/13/89).
Project Designer Refresher Course (contingent from 10/16/89).
(59)(a) *Training Provider:* National Asbestos Council (NAC) Training Dept.
Address: 1777 Northeast Expressway, Suite 150, Atlanta, GA 30329, Contact: Zachary S. Cowan, III, Phone: (404) 633-2622.
(b) *Approved Courses:*
Abatement Worker (interim from 7/1/86 to 6/1/87).
Abatement Worker (full from 7/1/87).
Abatement Worker Refresher Course (contingent from 2/8/89).
Abatement Worker Refresher Course (full from 9/17/90).
(60)(a) *Training Provider:* National Monitoring Labs, Inc.
Address: 1400 North 46th St., Suite V-28, Tampa, FL 33613, Contact: Gil Bakshi, Phone: (800) 347-3414.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 4/14/89).
Contractor/Supervisor (full from 3/22/90).
Contractor/Supervisor Refresher Course (contingent from 5/23/89).
Inspector/Management Planner (contingent from 4/14/89).
Inspector/Management Planner (full from 1/19/90).
Inspector/Management Planner Refresher Course (contingent from 5/23/89).
(61)(a) *Training Provider:* Occupational Training Academy, Inc.
Address: 8409 Laurel Fair Circle, Suite 102, Tampa, FL 33610, Contact: John Burke, Phone: (813) 621-5586.
(b) *Approved Course:*
Abatement Worker (contingent from 1/17/90).
(62)(a) *Training Provider:* PDR Engineers, Inc.
Address: 2000 Lindell Ave., Nashville, TN 37203, Contact: Ayaja K. Upaphyaya, Phone: (615) 298-2065.
(b) *Approved Course:*
Inspector (contingent from 9/15/88).
(63)(a) *Training Provider:* Practical Environmental Training Institute.
Address: 230 S. Tryon St., Suite 910, Charlotte, NC 28221-6306, Contact: Dianne Christenbery, Phone: (704) 375-9382.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/20/88).
Abatement Worker (full from 10/24/88).
Abatement Worker Refresher Course (contingent from 6/18/89).
Contractor/Supervisor (contingent from 1/17/89).
Contractor/Supervisor (full from 3/20/89).
Contractor/Supervisor Refresher Course (contingent from 6/18/89).
Contractor/Supervisor Refresher Course (full from 2/6/90).
(64)(a) *Training Provider:* Republic Industries, Inc.
Address: P.O. Box 5565, Station 1, Wilmington, NC 28403, Contact: Gerry Phelps, Phone: (919) 799-2864.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/23/89).
Abatement Worker (full from 1/24/90).
Abatement Worker Refresher Course (contingent from 5/5/89).
Abatement Worker Refresher Course (full from 1/25/90).
Contractor/Supervisor (contingent from 9/22/89).
Contractor/Supervisor (full from 4/20/90).
Contractor/Supervisor Refresher Course (contingent from 6/5/89).
Contractor/Supervisor Refresher Course (full from 12/11/90).
(65)(a) *Training Provider:* Retra Services, Inc.
Address: 1730 U.S. Alt. 19 South, Suite H, Tarpon Springs, FL 34689, Contact: Phillip Paroff, Phone: (800) 548-5848.
(b) *Approved Courses:*
Abatement Worker (full from 1/24/89).
Abatement Worker Refresher Course (contingent from 12/29/88).
Abatement Worker Refresher Course (full from 1/24/89).
(66)(a) *Training Provider:* SASSI.
Address: 1550 Pumphrey Ave., Auburn, AL 36830, Contact: William Shell, Phone: (800) 633-5471.
(b) *Approved Course:*
Abatement Worker (contingent from 1/4/89).
(67)(a) *Training Provider:* Seagull Environmental Management Asbestos Consulting & Training Systems.

Address: 903 Northwest 6th Ave., Ft. Lauderdale, FL 33311, Contact: James F. Stump, Phone: (305) 524-7208.
(b) *Approved Courses:*
Abatement Worker (full from 5/8/88).
Abatement Worker Refresher Course (contingent from 9/22/89).
Contractor/Supervisor (contingent from 2/22/89).
Contractor/Supervisor Refresher Course (contingent from 9/22/89).
Inspector/Management Planner (contingent from 10/30/89).
Inspector/Management Planner Refresher Course (contingent from 11/1/89).
(68)(a) *Training Provider:* Southeast Asbestos Free Environments, Inc.
Address: 350 South Second Ave., P.O. Box 51267, Jacksonville Beach, FL 32250, Contact: Jim Ilardi, Phone: (904) 246-8000.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/15/88).
Contractor/Supervisor (contingent from 1/18/89).
(69)(a) *Training Provider:* Technical Abatement Service, Inc.
Address: 897 East Lemon St., Bartow, FL 33830, Contact: John W. Pevy, Phone: (813) 533-0885.
(b) *Approved Course:*
Abatement Worker (contingent from 6/21/89).
(70)(a) *Training Provider:* Technical Education Resources, Inc.
Address: 2212 Swann Ave., Suite D, Tampa, FL 33606, Contact: Robert Greene, Phone: (813) 251-1095.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/16/89).
Abatement Worker Refresher Course (contingent from 11/14/89).
Contractor/Supervisor (contingent from 11/16/89).
Contractor/Supervisor Refresher Course (contingent from 11/14/89).
Inspector/Management Planner (contingent from 11/16/89).
Inspector/Management Planner Refresher Course (contingent from 11/14/89).
(71)(a) *Training Provider:* Technical Environmental Service Training Institute (T.E.S.T).
Address: Box 28210, Raleigh, NC 27611-8210, Contact: Dennis Mast, Phone: (800) 868-7246.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/22/89).
Abatement Worker (full from 7/7/89).
Abatement Worker Refresher Course (contingent from 7/18/89).
Abatement Worker Refresher Course (full from 3/29/90).
Contractor/Supervisor (contingent from 4/14/89).
Contractor/Supervisor Refresher Course (contingent from 10/20/89).
Inspector/Management Planner (contingent from 7/7/89).
Inspector/Management Planner Refresher Course (contingent from 10/20/89).
(72)(a) *Training Provider:* Technical Training Institute.
Address: 4124 Clemson Blvd., Anderson, SC 29621, Contact: Bill Martin, Phone: (803) 226-3622.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/13/89).
Abatement Worker Refresher Course (contingent from 10/17/89).
Contractor/Supervisor (contingent from 11/13/89).
Contractor/Supervisor (full from 9/7/90).
Contractor/Supervisor Refresher Course (contingent from 10/17/89).
Inspector/Management Planner (contingent from 11/13/89).
Inspector/Management Planner Refresher Course (contingent from 10/17/89).
Project Designer (contingent from 11/13/89).
Project Designer Refresher Course (contingent from 10/17/89).
(73)(a) *Training Provider:* Tennessee Environmental Services.
Address: 1804 Williamson Ct., Brentwood, TN 37027, Contact: Gary J. Lang, Phone: (615) 373-8792.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/26/89).
Abatement Worker (full from 8/15/90).
Abatement Worker Refresher Course (contingent from 11/1/89).
Abatement Worker Refresher Course (full from 8/17/90).
Contractor/Supervisor (contingent from 5/26/89).
Contractor/Supervisor Refresher Course (contingent from 11/1/89).
Contractor/Supervisor Refresher Course (full from 8/16/90).
(74)(a) *Training Provider:* Testwell Craig Labs of Florida, Inc.
Address: 7104 North 51st St., Miami, FL 33166, Contact: George W. Stowell, Phone: (305) 593-0561.
(b) *Approved Course:*
Abatement Worker (contingent from 9/8/89).
(75)(a) *Training Provider:* The Environmental Institute.
Address: COBB Corporate Center/300, 350 Franklin Rd., Marietta, GA 30067, Contact: Eva Clay, Phone: (404) 425-2000.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/10/87).
Abatement Worker (full from 5/2/88).
Contractor/Supervisor (contingent from 12/10/87).
Contractor/Supervisor (full from 2/1/88).
Contractor/Supervisor Refresher Course (full from 5/19/88).
Inspector/Management Planner (contingent from 12/10/87).
Inspector/Management Planner (full from 1/25/88).
Inspector/Management Planner Refresher Course (full from 11/8/88).
Project Designer (contingent from 2/5/88).
Project Designer (full from 2/9/88).
Project Designer Refresher Course (contingent from 4/17/89).
Project Designer Refresher Course (full from 4/19/89).
(76)(a) *Training Provider:* University of Alabama, Tuscaloosa College of Continuing Studies.
Address: P.O. Box 870388, Tuscaloosa, AL 35486-0388, Contact: Dennis Daniels, Phone: (800) 452-5923.
(b) *Approved Courses:*
Abatement Worker (full from 4/5/88).
Abatement Worker Refresher Course (contingent from 11/13/89).
Abatement Worker Refresher Course (full from 3/4/91).
Contractor/Supervisor Refresher Course (contingent from 11/13/89).
Contractor/Supervisor Refresher Course (full from 3/4/91).
Inspector/Management Planner (full from 5/16/88).
Inspector/Management Planner Refresher Course (contingent from 11/13/89).
Inspector/Management Planner Refresher Course (full from 5/8/90).
(77)(a) *Training Provider:* University of Alabama-Birmingham Deep South Center.
Address: Birmingham, AL 35294, Contact: Elizabeth Lynch, Phone: (205) 934-7032.
(b) *Approved Courses:*
Inspector/Management Planner (contingent from 3/21/88).
Inspector/Management Planner (full from 3/21/88).
Inspector/Management Planner Refresher Course (contingent from 3/3/89).
Inspector/Management Planner Refresher Course (full from 7/30/90).
(76)(a) *Training Provider:* University of Florida TREEO Center.

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Address: 3900 Southwest 63rd Blvd., Gainesville, FL 32608, Contact: Sara Washburn, Phone: (904) 392-9570.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/12/88).
Abatement Worker Refresher Course (contingent from 1/24/89).
Contractor/Supervisor (interim from 2/9/87 to 4/30/87).
Contractor/Supervisor (full from 5/1/87).
Contractor/Supervisor Refresher Course (contingent from 1/17/89).
Inspector/Management Planner (interim from 1/27/87 to 12/14/87).
Inspector/Management Planner (contingent from 2/5/88).
Inspector/Management Planner (full from 2/15/88).
Inspector/Management Planner Refresher Course (contingent from 10/18/89).

(79)(a) *Training Provider:* University of Kentucky, College of Engineering Continuing Education.

Address: CRMS Building, Room 320, Lexington, KY 40506-0108, Contact: Liz Haden, Phone: (606) 257-3972.

(b) *Approved Courses:*

Abatement Worker Refresher Course (contingent from 3/30/89).
Inspector/Management Planner (full from 2/15/88).
Inspector/Management Planner Refresher Course (contingent from 3/3/89).

(80)(a) *Training Provider:* University of North Carolina, Occupational Safety & Health Educational Resource Center.

Address: 109 Conner Dr., Suite 1101, Chapel Hill, NC 27514, Contact: Larry Hyde, Phone: (919) 962-2101.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/11/89).
Contractor/Supervisor (contingent from 6/1/88).
Contractor/Supervisor (full from 6/6/88).
Contractor/Supervisor Refresher Course (contingent from 6/7/89).
Contractor/Supervisor Refresher Course (full from 2/5/91).
Inspector/Management Planner (contingent from 11/9/87).
Inspector/Management Planner (full from 11/9/87).
Inspector/Management Planner Refresher Course (contingent from 12/15/88).
Inspector/Management Planner Refresher Course (full from 2/4/91).
Project Designer (contingent from 5/2/88).
Project Designer Refresher Course (contingent from 6/22/89).
Project Designer Refresher Course (full from 2/6/91).

(81)(a) *Training Provider:* University of North Florida, Division of Continuing Education & Extension Environmental Ed. & Safety Institute.

Address: 4567 St. Johns Bluff Rd., South Jacksonville, FL 32216, Contact: Elaine Puri, Phone: (904) 646-2690.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/1/89).
Abatement Worker (full from 5/16/90).
Abatement Worker Refresher Course (contingent from 8/25/89).
Abatement Worker Refresher Course (full from 5/16/90).
Contractor/Supervisor (contingent from 9/1/89).
Contractor/Supervisor (full from 5/17/91).
Contractor/Supervisor Refresher Course (contingent from 8/25/89).
Contractor/Supervisor Refresher Course (full from 5/17/90).
Inspector/Management Planner (contingent from 9/1/89).
Inspector/Management Planner (full from 7/27/90).

(82)(a) *Training Provider:* University of South Carolina Medical (MUSC) Dept. of Environmental Health.

Address: 171 Ashley Ave., Charleston, SC 29425, Contact: Jan Temple, Phone: (803) 792-5315.

(b) *Approved Courses:*

Abatement Worker (full from 12/19/88).
Abatement Worker Refresher Course (contingent from 2/2/89).
Contractor/Supervisor (full from 3/8/88).
Contractor/Supervisor Refresher Course (contingent from 2/2/89).
Contractor/Supervisor Refresher Course (full from 5/3/89).
Inspector/Management Planner (full from 3/1/88).
Inspector/Management Planner Refresher Course (contingent from 2/2/89).
Inspector/Management Planner Refresher Course (full from 5/2/89).

(83)(a) *Training Provider:* University of South Carolina, School of Public Health, c/o Azimuth Inc.

Address: 386 St. Andrews Rd., Columbia, SC 29210, Contact: Donald Cobb, Phone: (803) 798-2343.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/9/89).
Abatement Worker (full from 12/7/89).
Contractor/Supervisor (contingent from 5/5/89).
Contractor/Supervisor (full from 8/21/89).
Contractor/Supervisor Refresher Course (contingent from 5/24/89).
Contractor/Supervisor Refresher Course (full from 9/20/89).

(84)(a) *Training Provider:* Westinghouse Environmental & Geotechnical Services, Inc.

Address: 3980 Dekalb Technology Parkway, Suite 700, Atlanta, GA 30340, Contact: Russell Dukes, Phone: (404) 452-1911.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/8/89).
Contractor/Supervisor (contingent from 7/18/89).
Inspector/Management Planner (contingent from 1/3/90).

(85)(a) *Training Provider:* Weston, Inc.

Address: 1635 Pumphrey Ave., Auburn, AL 36830-4303, Contact: David Whittington, Phone: (205) 826-6100.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/13/88).
Abatement Worker (full from 11/1/90).
Contractor/Supervisor (contingent from 10/13/88).
Contractor/Supervisor (full from 5/15/89).
Contractor/Supervisor Refresher Course (contingent from 1/31/89).
Contractor/Supervisor Refresher Course (full from 9/25/89).
Inspector/Management Planner (contingent from 3/25/88).
Inspector/Management Planner (full from 9/27/89).
Inspector/Management Planner Refresher Course (contingent from 12/15/88).
Inspector/Management Planner Refresher Course (full from 3/17/89).
Project Designer (contingent from 8/23/88).
Project Designer (full from 3/8/90).
Project Designer Refresher Course (contingent from 1/31/89).
Project Designer Refresher Course (full from 9/26/89).

(86)(a) *Training Provider:* Williams & Associates, Inc., Environmental Training Center.

Address: 400 Tennessee St., Memphis, TN 38103, Contact: Ruth Williams, Phone: (901) 521-0030.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/18/88).
Abatement Worker (full from 4/18/88).
Abatement Worker Refresher Course (contingent from 5/1/89).
Contractor/Supervisor (contingent from 2/18/88).

Contractor/Supervisor (full from 4/18/88).
Contractor/Supervisor Refresher Course (contingent from 5/1/89).

REGION V -- Chicago, IL

Regional Asbestos Coordinator: Anthony Restaino, EPA, Region V, 230 S. Dearborn St., (5SPP-TUB11), Chicago, IL 60604. (312) 886-6003, (FTS) 886-6003.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region V training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* Abatement Training Institute, Inc.

Address: P.O. Box 26835, Columbus, OH 43226-0835, Contact: Steven Ritchie, Phone: (614) 267-0908.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/1/88).
Abatement Worker Refresher Course (contingent from 4/25/89).

(2)(a) *Training Provider:* Advanced Mechanical Insulation, Inc.

Address: 205 West Randolph St., Suite 1050, Chicago, IL 60606, Contact: Jeffery M. Bertrand, Phone: (312) 704-9494.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/2/89).
Contractor/Supervisor (contingent from 3/2/89).

(3)(a) *Training Provider:* Affiliated Environmental Services, Inc.

Address: 3606 Venice Rd., Sandusky, OH 44870, Contact: Jack Dauch, Phone: (419) 627-1976.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/14/88).
Abatement Worker (full from 10/24/88).
Abatement Worker Refresher Course (contingent from 2/2/89).
Contractor/Supervisor (contingent from 12/29/88).
Contractor/Supervisor (full from 2/27/89).
Contractor/Supervisor Refresher Course (contingent from 2/2/89).
Inspector/Management Planner (contingent from 5/30/89).

(4)(a) *Training Provider:* Alderink & Associates, Inc.

Address: 3221 Three Mile Rd., NW., Grand Rapids, MI 49504, Contact: Deborah C. Alderink, Phone: (616) 791-0730.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/15/88).
Abatement Worker (full from 9/6/88).
Abatement Worker Refresher Course (contingent from 9/1/88).
Abatement Worker Refresher Course (full from 9/6/88).
Contractor/Supervisor (contingent from 7/15/88).
Contractor/Supervisor (full from 9/19/88).
Contractor/Supervisor Refresher Course (contingent from 12/1/88).

(5)(a) *Training Provider:* American Asbestos Institute, Inc. (Formerly Illinois Asbestos Council).

Address: Box 7477, Springfield, IL 62791, Contact: Donald G. Handy, Phone: (217) 523-8747.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/29/89).
Abatement Worker (full from 8/14/89).
Abatement Worker Refresher Course (contingent from 8/31/89).
Contractor/Supervisor (contingent from 3/29/89).
Contractor/Supervisor (full from 8/14/89).
Contractor/Supervisor Refresher Course (contingent from 9/11/89).
Inspector/Management Planner (contingent from 3/29/89).
Inspector/Management Planner Refresher Course (contingent from 9/11/89).
Project Designer Refresher Course (contingent from 9/19/89).

(6)(a) *Training Provider:* American Environmental Institute.

Address: Main Campus, Plaza West, Cleveland, OH 44116, Contact: Gary P. Block, Phone: (216) 333-6225.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/15/88).
Abatement Worker Refresher Course (contingent from 12/8/88).
Contractor/Supervisor (contingent from 9/1/88).
Contractor/Supervisor Refresher Course (contingent from 12/6/88).
Inspector/Management Planner (contingent from 11/14/88).

(7)(a) *Training Provider:* American Industrial Hygiene Association.

Address: 475 Wolf Ledges Pkwy., Akron, OH 44311-1087, Contact: Mary Christ, Phone: (216) 762-7294.

(b) *Approved Course:*

Contractor/Supervisor (contingent from 2/23/89).

(8)(a) *Training Provider:* Applied Environmental Sciences, Inc.

Address: Minneapolis Business & Technology, Center, 511 11th Ave. S., Minneapolis, MN 55415, Contact: Franklin H. Dickson, Phone: (612) 339-5559.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/30/88).
Abatement Worker Refresher Course (contingent from 3/16/89).
Contractor/Supervisor (contingent from 2/7/89).
Contractor/Supervisor Refresher Course (contingent from 3/16/89).
Inspector/Management Planner (contingent from 10/17/89).
Inspector/Management Planner Refresher Course (contingent from 10/16/89).

(9)(a) *Training Provider:* Aries Environmental Services, Ltd.

Address: 1550 Hubbard, Batavia, IL 60510, Contact: Dennis Cesarotti, Phone: (312) 879-3006.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/13/88).
Abatement Worker Refresher Course (contingent from 1/16/89).

(10)(a) *Training Provider:* Asbestech, Inc.

Address: 326 Front St., Marietta, OH 45750, Contact: Phillip Lee, Phone: (614) 373-0714.

(b) *Approved Course:*

Abatement Worker (contingent from 11/9/89).

(11)(a) *Training Provider:* Asbestos Abatement, Inc.

Address: 2420 N. Grand River, Lansing, MI 48906, Contact: Shawn O'Callaghan, Phone: (517) 323-0053.

(b) *Approved Course:*

Abatement Worker (contingent from 7/6/88).

(12)(a) *Training Provider:* Asbestos Consulting Group, Inc.

Address: P.O. Box 3157, La Crosse, WI 54602-3157, Contact: Larry Lienau, Phone: (608) 782-1670.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 7/12/88).
Inspector/Management Planner (contingent from 10/14/88).

(13)(a) *Training Provider:* Asbestos Management, Inc.

Address: 36700 South Huron, Suite 104, New Boston, MI 48164, Contact: LaDonna Slifco, Phone: (313) 961-6135.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/12/88).
Abatement Worker Refresher Course (contingent from 1/4/89).

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Contractor/Supervisor (contingent from 8/18/87).
Inspector/Management Planner (contingent from 1/26/88).
Inspector/Management Planner (full from 2/1/88).
Inspector/Management Planner Refresher Course (contingent from 11/14/88).

(14)(a) *Training Provider:* Asbestos Professional Services, Inc.
Address: 501 North Second St., Breese, IL 62230, Contact: Donald T. Anderson, Phone: (618) 526-2742.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/13/89).
Abatement Worker Refresher Course (contingent from 10/9/89).
Contractor/Supervisor (contingent from 10/13/89).
Contractor/Supervisor Refresher Course (contingent from 10/9/89).

(15)(a) *Training Provider:* Asbestos Removal Inc.
Address: Waterworks Rd., P.O. Box 522, Wabash, IN 46992, Contact: Karen S. Eckman, Phone: (219) 563-2407.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/18/89).
Abatement Worker Refresher Course (contingent from 12/20/89).

(16)(a) *Training Provider:* Asbestos Roofing Technology, Inc.
Address: P.O. Box 211, Lyons, IL 60534, Contact: Jay E. Refieuna, Phone: (312) 352-0400.
(b) *Approved Course:*
Abatement Worker (contingent from 4/13/89).

(17)(a) *Training Provider:* Asbestos Services, Inc.
Address: P.O. Box 141, Baroda, MI 49101, Contact: Dennis W. Calkins, Phone: (616) 422-2174.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/12/88).
Abatement Worker Refresher Course (contingent from 3/17/89).
Contractor/Supervisor (contingent from 8/12/88).
Contractor/Supervisor Refresher Course (contingent from 3/17/89).

(18)(a) *Training Provider:* Asbestos Technology & Training, Inc.
Address: 1186 Summit Ave., St. Paul, MN 55105, Contact: James D. Risimini, Phone: (612) 290-0342.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/27/88).
Abatement Worker Refresher Course (contingent from 2/7/89).
Contractor/Supervisor (contingent from 7/27/88).
Contractor/Supervisor Refresher Course (contingent from 2/7/89).
Inspector/Management Planner (contingent from 7/27/88).
Inspector/Management Planner Refresher Course (contingent from 2/7/89).

(19)(a) *Training Provider:* Asbestos Training & Employment, Inc. (ATEI).
Address: 809 East 11th St., Michigan City, IN 46360, Contact: Tom Dwyer, Phone: (219) 874-7348.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/15/88).
Abatement Worker (full from 5/18/88).
Abatement Worker Refresher Course (contingent from 12/11/88).
Contractor/Supervisor (contingent from 1/19/88).
Contractor/Supervisor (full from 6/20/88).
Contractor/Supervisor Refresher Course (contingent from 12/11/88).
Inspector/Management Planner (contingent from 5/13/88).
Inspector/Management Planner Refresher Course (contingent from 12/11/88).

(20)(a) *Training Provider:* Asbestos Workers Council.
Address: 1216 East McMillan St., Room 107, Cincinnati, OH 45206, Contact: Richard Black, Phone: (513) 221-5900.
(b) *Approved Course:*
Abatement Worker (contingent from 10/31/88).

(21)(a) *Training Provider:* Astesco Laboratory, Inc.
Address: P.O. Box 517, Cloverdale, IN 46120, Contact: Donald R. Allen, Phone: (317) 795-4724.
(b) *Approved Courses:*
Abatement Worker (full from 10/31/88).
Abatement Worker Refresher Course (contingent from 2/7/89).
Contractor/Supervisor (contingent from 2/23/89).
Contractor/Supervisor Refresher Course (contingent from 2/23/89).

(22)(a) *Training Provider:* BDN Industrial Hygiene Consultants.
Address: 8105 Valleywood Lane, Portage, MI 49002, Contact: Keith Nichols, Phone: (616) 329-1237.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/1/88).
Contractor/Supervisor (contingent from 10/1/87).
Contractor/Supervisor Refresher Course (contingent from 9/15/88).
Inspector/Management Planner (contingent from 1/15/88).
Inspector/Management Planner (full from 2/15/88).

(23)(a) *Training Provider:* Baker Midwest, Maple Grove, Minnesota.
Address: 10650 State Highway 152, Suite 112, Maple Grove, MN 55369, Contact: Joseph Reeves, Phone: (612) 493-2595.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/15/89).
Contractor/Supervisor (contingent from 6/15/89).

(24)(a) *Training Provider:* Ball State University.
Address: College of Sciences & Humanities, Department of Natural Resources, Muncie, IN 47306, Contact: Thad Godish, Phone: (317) 285-5760.
(b) *Approved Course:*
Inspector/Management Planner (contingent from 3/30/89).

(25)(a) *Training Provider:* Bems Engineering, Inc.
Address: 18600 Northville Rd., Suite 200, Northville, MI 48167, Contact: Eugene L. Kunz, Phone: (313) 348-9167.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 12/29/88).
Contractor/Supervisor Refresher Course (contingent from 12/29/88).
Inspector (contingent from 1/16/89).
Inspector/Management Planner Refresher Course (contingent from 1/4/89).
Project Designer (contingent from 3/2/89).

(26)(a) *Training Provider:* Bierlein Demolition Contractors, Inc.
Address: 2903 South Graham Rd., Saginaw, MI 48608-8078, Contact: Harry T. Dryer, Jr., Phone: (517) 781-1810.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/7/89).
Contractor/Supervisor (contingent from 2/7/89).

(27)(a) *Training Provider:* Boelter Associates, Inc.
Address: 8700 West Bryn Mawr Ave., South Tower, Suite 401, Chicago, IL 60631, Contact: Philip Ramos, Phone: (312) 380-1070.
(b) *Approved Course:*
Contractor/Supervisor Refresher Course (contingent from 5/22/89).

(28)(a) *Training Provider:* Bonne Terre Training Services.
Address: P.O. Box 673, Tiffin, OH 44883, Contact: Timothy E. Blott, Phone: (419) 447-5091.
(b) *Approved Courses:*

Abatement Worker (contingent from 10/13/89).
Abatement Worker Refresher Course (contingent from 10/12/89).

(29)(a) *Training Provider:* Bowling Green State University Environmental Health Program.
Address: 102 Health Center, Bowling Green, OH 43403-0280, Contact: Gary S. Silverman, Phone: (419) 372-7774.
(b) *Approved Course:*
Abatement Worker (contingent from 4/21/89).

(30)(a) *Training Provider:* Carnow, Conibear & Associates, Ltd.
Address: 333 West Wacker Dr., Suite 1400, Chicago, IL 60606, Contact: Victoria Musselman, Phone: (312) 782-4486.
(b) *Approved Course:*
Abatement Worker (full from 2/29/88).

(31)(a) *Training Provider:* Centin Corp.
Address: 6801 North Interchange Rd., Evansville, IN 47715, Contact: Dan Sanders, Phone: (812) 474-6220.
(b) *Approved Course:*
Abatement Worker (contingent from 3/30/89).

(32)(a) *Training Provider:* Charles J. Ogg and Associates.
Address: P.O. Box 615, Newburgh, IN 47629-0815, Contact: Charles J. Ogg, Phone: (812) 853-7607.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/29/88).
Contractor/Supervisor (contingent from 5/1/89).

(33)(a) *Training Provider:* Clayton Environmental Consultants, Inc.
Address: 22345 Roethel Dr., Novi, MI 48050, Contact: Michael Coffman, Phone: (313) 344-1770.
(b) *Approved Courses:*
Inspector/Management Planner (contingent from 1/26/88).
Inspector/Management Planner (full from 2/16/88).
Inspector/Management Planner Refresher Course (contingent from 1/26/89).

(34)(a) *Training Provider:* Cleveland Environmental Services, Inc.
Address: P.O. Box 14643, Cincinnati, OH 45214, Contact: Eugene B. Rose, Phone: (513) 921-4143.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/18/89).
Contractor/Supervisor (contingent from 4/21/89).

(35)(a) *Training Provider:* Cleveland Wrecking Co.
Address: 1400 Harrison Ave., P.O. Box 145530, Cincinnati, OH 45214, Contact: Eugene B. Rose, Phone: (513) 921-1160.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/3/89).
Abatement Worker Refresher Course (contingent from 6/3/89).
Contractor/Supervisor (contingent from 6/3/89).
Contractor/Supervisor Refresher Course (contingent from 6/3/89).

(36)(a) *Training Provider:* Columbus Paraprofessional Institute Battelle Columbus Division.
Address: 505 King Ave., Columbus, OH 43201-2693, Contact: John Simpkins, Phone: (614) 424-6424.
(b) *Approved Courses:*
Inspector/Management Planner (contingent from 4/4/88).
Inspector/Management Planner (full from 4/11/88).
Inspector/Management Planner Refresher Course (contingent from 11/30/88).

(37)(a) *Training Provider:* Construction & General Laborers Training Trust Fund.
Address: 4N250 Old Gary Ave., Cloverdale, IL 60103, Contact: Anthony Solano, Phone: (708) 653-0006.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/16/88).
Abatement Worker (full from 1/23/89).
Abatement Worker Refresher Course (contingent from 12/1/88).
Abatement Worker Refresher Course (full from 12/12/89).
Contractor/Supervisor (contingent from 9/22/89).
Contractor/Supervisor (full from 3/23/90).

(38)(a) *Training Provider:* Construction Laborer Local Union No. 496.
Address: 5945 North Ridge Rd., P.O. Box 190, Madison, OH 44057, Contact: Floyd Conrad, Phone: (216) 428-7177.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/25/89).
Abatement Worker Refresher Course (contingent from 12/1/89).
Contractor/Supervisor (contingent from 10/25/89).
Contractor/Supervisor Refresher Course (contingent from 12/1/89).
Inspector (contingent from 10/25/89).
Inspector Refresher Course (contingent from 12/1/89).

(39)(a) *Training Provider:* D/E 3.
Address: 19701 South Miles Pkwy., N-12, Warrensville, OH 44128, Contact: Harold Danto, Phone: (216) 663-1500.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/7/88).
Abatement Worker Refresher Course (contingent from 1/4/89).
Contractor/Supervisor (contingent from 9/1/89).
Contractor/Supervisor Refresher Course (contingent from 10/10/89).

(40)(a) *Training Provider:* Daniel J. Hartwig Associates, Inc.
Address: P.O. Box 31, Oregon, WI 53575-0031, Contact: Alice J. Seeliger, Phone: (608) 835-5781.
(b) *Approved Courses:*
Abatement Worker (full from 10/16/88).
Abatement Worker Refresher Course (contingent from 4/25/89).
Contractor/Supervisor (contingent from 4/11/89).
Contractor/Supervisor Refresher Course (contingent from 4/25/89).
Inspector/Management Planner (contingent from 2/9/88).
Inspector/Management Planner (full from 4/18/88).
Inspector/Management Planner Refresher Course (contingent from 2/23/89).

(41)(a) *Training Provider:* Daria Environmental, Inc.
Address: 1220 Richards St., Suite H, Joliet, IL 60433-2758, Contact: Salvador Garcia, Phone: (815) 722-5561.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/7/88).
Contractor/Supervisor (contingent from 10/7/88).

(42)(a) *Training Provider:* DeLisle Associates, Ltd.
Address: 6946 East North Ave., Kalamazoo, MI 49001, Contact: Mark A. DeLisle, Phone: (616) 385-1018.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/1/88).
Abatement Worker (full from 1/23/89).
Contractor/Supervisor (contingent from 10/5/87).
Contractor/Supervisor (full from 10/20/87).
Contractor/Supervisor Refresher Course (contingent from 9/1/88).
Inspector/Management Planner (contingent from 12/22/87).
Inspector/Management Planner (full from 1/27/88).
Inspector/Management Planner Refresher Course (contingent from 2/23/89).

(43)(a) *Training Provider:* Dore & Associates Contracting, Inc.
Address: 900 Harry S. Truman Pkwy., P.O. Box 146, Bay City, MI 48707.

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Contact: Joseph Goldring, Phone: (517) 684-8358.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/6/88).
Abatement Worker (full from 7/25/88).
Abatement Worker Refresher Course (contingent from 10/31/88).
Contractor/Supervisor (contingent from 10/31/88).
Contractor/Supervisor Refresher Course (contingent from 3/29/89).

(44)(a) *Training Provider:* Ecological Services, Inc.

Address: 107 Clay St., Tiffin, OH 44880-0715, Contact: Harish N. Pandhi, Phone: (419) 447-2514.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/1/88 to 11/30/90 only).
Abatement Worker Refresher Course (contingent from 3/7/89 to 11/30/90 only).

(45)(a) *Training Provider:* Emscoa-Emergency Medical Service Consultants of America.

Address: 12125 South 90th Ave., Palos Park, IL 60464, Contact: Fred Debow, Phone: (708) 448-7500.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/3/89).
Abatement Worker Refresher Course (contingent from 12/20/89).
Contractor/Supervisor (contingent from 11/3/89).
Contractor/Supervisor Refresher Course (contingent from 12/20/89).

(46)(a) *Training Provider:* Environment Technology of Fort Wayne, Inc.

Address: 9208 Hessen Cassel Rd., Fort Wayne, IN 46816, Contact: Randy C. Aumsbaugh, Phone: (219) 447-3141.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/5/89).
Abatement Worker (full from 3/21/90).
Abatement Worker Refresher Course (contingent from 4/7/89).

(47)(a) *Training Provider:* Environmental & Occupational Consulting & Training, Inc.

Address: 3410 East Cork St., Kalamazoo, MI 49001, Contact: A. Clark Kahn, Phone: (616) 388-8099.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/1/89).
Abatement Worker Refresher Course (contingent from 3/7/89).
Contractor/Supervisor (contingent from 3/1/89).
Contractor/Supervisor Refresher Course (contingent from 3/7/89).

(48)(a) *Training Provider:* Environmental Abatement Systems, Inc.

Address: 6416 Ellsworth, Detroit, MI 48238, Contact: Farrell Davis, Phone: (313) 345-3154.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/12/88).
Contractor/Supervisor (contingent from 8/12/88).

(49)(a) *Training Provider:* Environmental Diversified Services, Inc.

Address: 24356 Sherwood, Center Line, MI 48015-1061, Contact: Michael D. Berg, Phone: (313) 757-4800.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/30/89).
Abatement Worker Refresher Course (contingent from 4/14/89).
Contractor/Supervisor (contingent from 3/30/89).
Contractor/Supervisor Refresher Course (contingent from 4/11/89).

(50)(a) *Training Provider:* Environmental Management Consultants, Inc.

Address: 5201 Middle Mt. Vernon Rd., Evansville, IN 47712, Contact: Barbara S. Kramer, Phone: (812) 424-7768.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/13/89).
Abatement Worker (full from 12/13/89).
Contractor/Supervisor (contingent from 3/9/89).
Contractor/Supervisor (full from 12/13/89).

(51)(a) *Training Provider:* Environmental Management Institute.

Address: 5610 Crawfordsville Rd. 15, Indianapolis, IN 46224, Contact: Jack Leonard, Phone: (800) 488-8842.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/13/88).
Abatement Worker (full from 1/10/89).
Abatement Worker Refresher Course (contingent from 12/27/88).
Contractor/Supervisor (contingent from 9/15/88).
Contractor/Supervisor (full from 1/10/89).
Contractor/Supervisor Refresher Course (contingent from 12/27/88).
Inspector/Management Planner (contingent from 5/9/88).
Inspector/Management Planner (full from 6/6/88).
Inspector/Management Planner Refresher Course (contingent from 12/6/88).

(52)(a) *Training Provider:* Environmental Professionals, Inc.

Address: 1405 Newton St., Tallmadge, OH 44278, Contact: Edward C. Bruner, Phone: (216) 633-4435.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 2/2/88).
Contractor/Supervisor Refresher Course (contingent from 1/26/89).

(53)(a) *Training Provider:* Environmental Rehab, Inc.

Address: 700 Coronis Cir., Green Bay, WI 54304, Contact: Randy LaCrosse, Phone: (414) 337-0650.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/4/89).
Abatement Worker (full from 3/29/89).
Abatement Worker Refresher Course (contingent from 10/13/89).

(54)(a) *Training Provider:* Environmental Response Systems, Inc.

Address: 5319 Broadway Ave., Cleveland, OH 44127, Contact: Paul J. Stroud, Jr., Phone: (216) 883-1152.

(b) *Approved Course:*

Contractor/Supervisor (contingent from 12/29/88).

(55)(a) *Training Provider:* Environmental Safety Training Services, Inc.

Address: 11802 Hanson Rd., Algonquin, IL 60102, Contact: Robert Sayre, Phone: (217) 525-6161.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/1/88).
Abatement Worker Refresher Course (contingent from 1/17/89).

(56)(a) *Training Provider:* Environmental Science & Engineering, Inc.

Address: 8901 North Industrial Rd., Peoria, IL 61615, Contact: Phillip G. Zerwer, Phone: (309) 692-4422.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 5/30/89).
Contractor/Supervisor Refresher Course (contingent from 6/9/89).

(57)(a) *Training Provider:* Environmental Technologies Co. (Formerly Lee Environmental Services, Inc.).

Address: 2727 Second Ave., Detroit, MI 48201, Contact: David W. McDowell, Phone: (313) 961-4230.

(b) *Approved Course:*

Abatement Worker (contingent from 3/17/89).

(58)(a) *Training Provider:* Environmental Training Institute.

Address: 4706 Angold Rd., Toledo, OH 43615, Contact: Dale Bruhl, Jr., Phone: (419) 382-9200.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/10/89).
Abatement Worker Refresher Course (contingent from 10/5/89).

(59)(a) *Training Provider:* Envirplus, Inc.

Address: 600 Hartrey Ave., Suite 203 A, Evanston, IL 60202, Contact: Salvador Garcia, Phone: (312) 475-0022.

(b) *Approved Course:*

Contractor/Supervisor (contingent from 8/31/89).

(60)(a) *Training Provider:* Escor, Inc.

Address: 540 Frontage Rd., Suite 211, Northfield, IL 60093, Contact: R. Eric Zimmerman, Phone: (312) 501-2190.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/12/88).
Abatement Worker Refresher Course (contingent from 9/15/88).
Contractor/Supervisor (contingent from 8/12/88).
Contractor/Supervisor Refresher Course (contingent from 9/15/88).
Inspector/Management Planner (contingent from 8/12/88).
Inspector/Management Planner Refresher Course (contingent from 9/1/88).

(61)(a) *Training Provider:* Foley Occupational Health Consulting.

Address: 2400 North Reynolds Rd., Toledo, OH 43615, Contact: E.D. Foley, Jr., Phone: (419) 531-7191.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 2/4/88).
Contractor/Supervisor Refresher Course (contingent from 1/4/89).

(62)(a) *Training Provider:* G & H Contracting Associates, Ltd.

Address: 300 Acorn St., P.O. Box 49080, Plainwell, MI 49080, Contact: Jeffrey C. Gren, Phone: (616) 685-1606.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/7/88).
Abatement Worker (full from 11/7/88).
Contractor/Supervisor (contingent from 4/21/89).

(63)(a) *Training Provider:* Gandee & Associates, Inc.

Address: 4488 Mobile Dr., Columbus, OH 43220, Contact: Kurt Varga, Phone: (614) 459-8338.

(b) *Approved Courses:*

Abatement Worker (full from 1/17/89).
Abatement Worker Refresher Course (contingent from 8/17/89).
Contractor/Supervisor (contingent from 8/1/88).
Contractor/Supervisor (full from 8/29/88).
Contractor/Supervisor Refresher Course (contingent from 7/26/89).
Inspector/Management Planner (contingent from 3/3/89).
Inspector/Management Planner Refresher Course (contingent from 8/2/89).

(64)(a) *Training Provider:* Hazard Management Group, Inc.

Address: P.O. Box 627, Ashtabula, OH 44004, Contact: Gabriel Demshar, Jr., Phone: (216) 992-1122.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/4/89).
Contractor/Supervisor (contingent from 1/4/89).

(65)(a) *Training Provider:* Hazardous Materials Institute, Inc.

Address: 1550 Old Henderson Rd., Suite N-232, Columbus, OH 43222, Contact: Al Wilson, Phone: (614) 459-1105.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/12/88).
Abatement Worker Refresher Course (contingent from 9/15/88).
Contractor/Supervisor (contingent from 8/12/88).
Contractor/Supervisor Refresher Course (contingent from 9/15/88).
Inspector/Management Planner (contingent from 8/3/88).
Inspector/Management Planner Refresher Course (contingent from 9/15/88).
Project Designer (contingent from 10/14/88).

(66)(a) *Training Provider:* Heat & Frost Insulators & Asbestos Workers Local Union No. 17 Apprentice Training Center.

Address: 3850 South Racine Ave., Chicago, IL 60609, Contact: John P. Shine, Phone: (312) 247-1007.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/2/87).
Abatement Worker (full from 11/8/87).
Abatement Worker Refresher Course (contingent from 10/14/88).
Abatement Worker Refresher Course (full from 1/9/90).
Contractor/Supervisor (contingent from 3/21/88).
Contractor/Supervisor (full from 3/22/88).
Contractor/Supervisor Refresher Course (contingent from 12/1/88).

(67)(a) *Training Provider:* Heat & Frost Insulators & Asbestos Workers Local Union No. 34.

Address: 708 South 10th St., Minneapolis, MN 55404, Contact: Lee Houske, Phone: (612) 332-3216.

(b) *Approved Courses:*

Abatement Worker (full from 11/8/88).
Contractor/Supervisor (full from 11/8/88).

(68)(a) *Training Provider:* Helix Environmental, Inc.

Address: 416 Triangle, Dayton, OH 45419, Contact: Ralph Froehlich, Phone: (513) 298-2990.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/1/89).
Contractor/Supervisor (contingent from 11/1/89).
Contractor/Supervisor Refresher Course (contingent from 12/19/89).
Inspector/Management Planner (contingent from 11/1/89).
Inspector/Management Planner Refresher Course (contingent from 12/20/89).

(69)(a) *Training Provider:* I.P.C. of Chicago.

Address: 4309 West Henderson, Chicago, IL 60641, Contact: Robert G. Cooley, Phone: (312) 718-7395.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/5/87).
Abatement Worker (full from 8/8/88).
Contractor/Supervisor (contingent from 2/7/89).
Contractor/Supervisor Refresher Course (contingent from 2/7/89).
Inspector/Management Planner Refresher Course (contingent from 2/7/89).

(70)(a) *Training Provider:* Illinois Environmental Institute.

Address: 8425 West 95th St., Hickory Hills, IL 60457, Contact: William T. Giova, Phone: (312) 839-9000.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/3/89).
Abatement Worker (full from 2/9/90).

(71)(a) *Training Provider:* Illinois Laborers' & Contractors Training Program.

Address: R.R. 3, Mount Sterling, IL 62353, Contact: Tony Romolo, Phone: (217) 773-2741.

(b) *Approved Courses:*

Abatement Worker (full from 12/15/85).
Abatement Worker Refresher Course (contingent from 9/1/88).
Abatement Worker Refresher Course (full from 12/13/89).
Contractor/Supervisor (contingent from 2/9/88).
Contractor/Supervisor (full from 3/14/88).
Contractor/Supervisor Refresher Course (contingent from 2/27/89).

(72)(a) *Training Provider:* Ilse Engineering, Inc.

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Address: 7177 Arrowhead Rd., Duluth, MN 55811, Contact: John F. Ilse, Phone: (218) 729-6658.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/15/88).
Contractor/Supervisor Refresher Course (contingent from 4/11/89).

(73)(a) *Training Provider:* Indiana Laborers Training Trust Fund.

Address: P.O. Box 758, Bedford, IN 47421, Contact: Richard Fassino, Phone: (812) 279-9751.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/11/87).
Abatement Worker (full from 2/22/88).
Abatement Worker Refresher Course (contingent from 10/7/88).
Abatement Worker Refresher Course (full from 1/17/90).
Contractor/Supervisor (contingent from 6/2/88).
Contractor/Supervisor (full from 6/15/88).
Contractor/Supervisor Refresher Course (contingent from 6/14/89).

(74)(a) *Training Provider:* Industrial Environmental Consultants.

Address: 2875 Northwind, Suite 113, East Lansing, MI 48823, Contact: James C. Fox, Phone: (517) 332-7026.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/9/88).
Abatement Worker (full from 1/23/89).
Abatement Worker Refresher Course (contingent from 1/18/89).
Contractor/Supervisor (contingent from 8/3/88).
Contractor/Supervisor (full from 1/23/89).
Contractor/Supervisor Refresher Course (contingent from 12/5/88).
Inspector/Management Planner (contingent from 3/1/88).

(75)(a) *Training Provider:* Institute for Environmental Assessment.

Address: 2829 Verndale Ave., Anoka, MN 55303, Contact: Bill Sloan, Phone: (612) 427-5310.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/12/88).
Contractor/Supervisor (contingent from 8/12/88).
Inspector/Management Planner Refresher Course (contingent from 2/21/89).

(76)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 19.

Address: 9401 West Beloit Rd., No. 209, Milwaukee, WI 53227, Contact: Randall Gottsacker, Phone: (414) 321-2828.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/29/88).
Abatement Worker (full from 5/15/89).
Abatement Worker Refresher Course (contingent from 1/26/89).
Contractor/Supervisor (contingent from 12/29/88).
Contractor/Supervisor Refresher Course (contingent from 1/26/89).

(77)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 34.

Address: 708 South 10th St., Minneapolis, MN 55404, Contact: Lee A. Houske, Phone: (612) 332-3216.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/8/88).
Contractor/Supervisor (contingent from 9/1/88).

(78)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers, Local Union No. 127.

Address: 2787 Pamela Dr., Green Bay, WI 54302, Contact: Michael A. Simons, Phone: (414) 468-5973.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/18/89).
Abatement Worker Refresher Course (contingent from 1/18/89).
Contractor/Supervisor (contingent from 1/18/89).

(79)(a) *Training Provider:* JWP Enterprises, Ltd.

Address: 122 Water St., Baraboo, WI 53913, Contact: Stephen P. Jandrowski, Phone: (608) 356-2101.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/6/89).
Abatement Worker Refresher Course (contingent from 6/8/89).
Contractor/Supervisor (contingent from 6/6/89).
Contractor/Supervisor (full from 12/7/89).
Contractor/Supervisor Refresher Course (contingent from 6/8/89).

(80)(a) *Training Provider:* Kemron Environmental Services, Inc.

Address: 32740 Northwestern Hwy., Farmington Hills, MI 48018, Contact: Sara A. Bassett, Phone: (313) 626-2426.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/2/89).
Contractor/Supervisor (contingent from 5/13/88).
Contractor/Supervisor (full from 2/27/89).
Contractor/Supervisor Refresher Course (contingent from 2/7/89).
Inspector/Management Planner (contingent from 3/25/88).
Inspector/Management Planner Refresher Course (contingent from 1/4/89).

(81)(a) *Training Provider:* Keter Environmental Ltd.

Address: 699 Edgewood Ave., Elmhurst, IL 60126, Contact: Philip Pekron, Phone: (312) 941-0201.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/27/89).
Abatement Worker Refresher Course (contingent from 11/28/89).
Contractor/Supervisor Refresher Course (contingent from 12/20/89).

(82)(a) *Training Provider:* Lakeland Contractors, Inc.

Address: 7615-B St. Clair St., Mentor, OH 44060, Contact: Rex Harris, Phone: (216) 942-0006.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/4/89).
Abatement Worker Refresher Course (contingent from 4/11/89).

(83)(a) *Training Provider:* Lepi Enterprises, Inc.

Address: 917 Main St., Dresden, OH 43821, Contact: James R. Lepi, Phone: (614) 754-1162.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/6/88).
Abatement Worker (full from 6/8/90).
Abatement Worker Refresher Course (contingent from 4/25/89).

(84)(a) *Training Provider:* Lyle Training Institute.

Address: 41 South Grant, Columbus, OH 43215, Contact: Andrea D. Hamblin, Phone: (614) 224-8822.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/21/88).
Contractor/Supervisor (contingent from 3/7/89).
Inspector/Management Planner (contingent from 6/30/88).
Inspector/Management Planner Refresher Course (contingent from 3/16/89).

(85)(a) *Training Provider:* M.K. Moore & Sons, Inc.

Address: 5150 Wagoner-Ford Rd., Dayton, OH 45414, Contact: Catherine C. Buchanan, Phone: (513) 236-1812.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/31/89).
Abatement Worker (full from 5/3/90).

Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/31/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(86)(a) *Training Provider:* MacNeil Environmental, Inc.

Address: 755 East Cliff Rd., Burnsville, IL 55332, Contact: Phil Allmon, Phone: (612) 890-3452.

(b) *Approved Courses:*

Contractor/Supervisor Refresher Course (contingent from 7/6/89).
Inspector/Management Planner Refresher Course (contingent from 7/6/89).

(87)(a) *Training Provider:* Manage Right Asbestos Consultants.

Address: 314 West Genesee Ave., Saginaw, MI 48602, Contact: Mary Margaret Brown, Phone: (517) 753-9290.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/24/89).
Abatement Worker Refresher Course (contingent from 4/27/89).
Contractor/Supervisor (contingent from 4/7/89).

(88)(a) *Training Provider:* Mark A. Kriesemint, Ltd.

Address: P.O. Box 06198, Chicago, IL 60606-0198, Contact: Mark Kriesemint, Phone: (312) 463-0206.

(b) *Approved Course:*

Abatement Worker (contingent from 10/31/88).

(89)(a) *Training Provider:* McDowell Business Training Center.

Address: 1313 S. Michigan Ave., 3rd Floor, Chicago, IL 60605, Contact: Edward McDowell, Phone: (312) 427-2598.

(b) *Approved Course:*

Abatement Worker (contingent from 10/6/89).

(90)(a) *Training Provider:* Metropolitan Detroit AFL-CIO Training Center.

Address: 14333 Prairie, Detroit, MI 48238, Contact: Richard M. King, Phone: (313) 863-1000.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/12/88).
Contractor/Supervisor (contingent from 8/12/88).

(91)(a) *Training Provider:* Michigan Laborers Training Institute.

Address: 11155 South Beardslee Rd., Perry, MI 48872, Contact: Edwin H. McDonald, Phone: (517) 625-4919.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/9/88).
Abatement Worker (full from 5/2/88).
Abatement Worker Refresher Course (contingent from 11/14/88).
Contractor/Supervisor (contingent from 4/6/88).
Contractor/Supervisor (full from 5/6/88).
Contractor/Supervisor Refresher Course (contingent from 11/14/88).

(92)(a) *Training Provider:* Mid-Central Illinois District Council of Carpenters.

Address: 910 Brenkman Dr., Pekin, IL 61554, Contact: Jeff Burnett, Phone: (309) 353-4232.

(b) *Approved Courses:*

Abatement Worker Refresher Course (contingent from 9/1/89).
Contractor/Supervisor Refresher Course (contingent from 9/1/89).

(93)(a) *Training Provider:* Midwest Center for Occupational Health & Safety.

Address: 640 Jackson St., St. Paul, MN 55101, Contact: Ruth K. McIntyre, Phone: (612) 221-3992.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/16/88).
Contractor/Supervisor (full from 11/28/88).
Contractor/Supervisor Refresher Course (contingent from 12/1/88).
Inspector/Management Planner (contingent from 5/9/88).
Inspector/Management Planner (full from 5/23/88).
Inspector/Management Planner Refresher Course (contingent from 12/1/88).

(94)(a) *Training Provider:* Midwest Environmental & Industrial Health Center.

Address: 1440 West Washington, Chicago, IL 60607, Contact: Dick Lyons, Phone: (312) 829-1277.

(b) *Approved Courses:*

Abatement Worker (interim from 10/1/87 to 12/14/87).
Abatement Worker (contingent from 10/2/87).
Abatement Worker (full from 4/5/88).
Abatement Worker Refresher Course (contingent from 11/14/88).
Contractor/Supervisor (full from 6/1/86).
Contractor/Supervisor Refresher Course (contingent from 1/18/89).
Inspector/Management Planner (contingent from 10/2/87).
Inspector/Management Planner (full from 10/21/87).
Inspector/Management Planner Refresher Course (full from 2/17/89).
Project Designer (contingent from 7/7/89).

(95)(a) *Training Provider:* Midwest Health Training.

Address: 3920 Central, Western Springs, IL 60558, Contact: H.C. Brown, Phone: (312) 246-9527.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/25/88).
Abatement Worker (full from 4/25/88).
Abatement Worker Refresher Course (contingent from 9/15/88).
Contractor/Supervisor (contingent from 2/23/89).

(96)(a) *Training Provider:* Milwaukee Asbestos Information Center.

Address: 2224 South Kinnickinnic Ave., Milwaukee, WI 53207, Contact: Thomas R. Ortell, Phone: (414) 744-8100.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/1/88).
Abatement Worker Refresher Course (contingent from 2/23/89).
Contractor/Supervisor (contingent from 12/1/88).
Contractor/Supervisor Refresher Course (contingent from 2/23/89).
Inspector/Management Planner (contingent from 3/2/89).
Inspector/Management Planner Refresher Course (contingent from 2/23/89).
Project Designer (contingent from 9/22/89).
Project Designer Refresher Course (contingent from 10/16/89).

(97)(a) *Training Provider:* Moraine Valley Community College.

Address: 10900 South 88th Ave., Palos Hills, IL 60465, Contact: Dale Luecht, Phone: (708) 974-5735.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/7/89).
Abatement Worker (full from 1/11/90).
Abatement Worker Refresher Course (contingent from 3/16/89).
Abatement Worker Refresher Course (full from 1/25/90).
Contractor/Supervisor (contingent from 8/12/88).
Contractor/Supervisor (full from 5/7/90).
Contractor/Supervisor Refresher Course (contingent from 12/6/88).
Contractor/Supervisor Refresher Course (full from 5/1/90).
Inspector/Management Planner (full from 2/9/88).
Inspector/Management Planner Refresher Course (contingent from 12/6/88).
Inspector/Management Planner Refresher Course (full from 4/30/90).

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(98)(a) *Training Provider:* National Asbestos Abatement Corp.
Address: 1199 Robert T. Longwey Blvd., Flint, MI 49503, Contact: James S. Sheaffer, Phone: (313) 232-7100.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/7/89).
Abatement Worker (full from 4/18/89).

(99)(a) *Training Provider:* National Institute for Abatement Education.
Address: 5501 Williamsburg Way No. 305, Madison, WI 53719, Contact: Dean Leischow, Phone: (608) 271-7281.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/15/88 to 11/30/90 only).
Contractor/Supervisor (contingent from 7/15/88 to 11/30/90 only).

(100)(a) *Training Provider:* Northern Safety Consultants, Inc.
Address: 1406 Lincoln Ave., Marquette, MI 49855, Contact: Christopher M. Baker, Phone: (906) 228-5161.
(b) *Approved Courses:*
Abatement Worker (full from 5/31/88).
Contractor/Supervisor (full from 5/31/88).
Contractor/Supervisor Refresher Course (contingent from 10/7/88).

(101)(a) *Training Provider:* Northland Environmental Services, Inc.
Address: P.O. Box 909, Stevens Point, WI 54481, Contact: Bob Voborsky, Phone: (715) 341-9699.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/18/89).
Abatement Worker Refresher Course (contingent from 1/18/89).
Contractor/Supervisor (contingent from 1/18/89).
Contractor/Supervisor Refresher Course (contingent from 1/18/89).

(102)(a) *Training Provider:* Nova Environmental Services.
Address: Suite 420 Hazeltine Gates, 1107 Hazeltine Blvd., Chaska, MN 55318, Contact: Deborah S. Green, Phone: (612) 448-9393.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/24/87).
Abatement Worker Refresher Course (contingent from 4/13/89).
Contractor/Supervisor (contingent from 9/1/88).
Contractor/Supervisor Refresher Course (contingent from 4/13/89).

(103)(a) *Training Provider:* Nova Environmental, Inc.
Address: 5340 Plymouth Rd., Suite 210, Ann Arbor, MI 48105, Contact: Kary S. Amin, Phone: (313) 930-0995.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/13/88).
Abatement Worker (full from 3/27/89).
Contractor/Supervisor (contingent from 10/7/88).
Contractor/Supervisor (full from 3/27/89).
Contractor/Supervisor Refresher Course (contingent from 10/7/88).
Inspector/Management Planner (contingent from 10/7/88).
Inspector/Management Planner Refresher Course (contingent from 11/14/88).

(104)(a) *Training Provider:* Occupational Safety Training, Inc.
Address: 237 Dino Dr., Suite A, Ann Arbor, MI 48103, Contact: Randy Gamble, Phone: (313) 426-3300.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/17/89).
Abatement Worker Refresher Course (contingent from 3/17/89).
Contractor/Supervisor (contingent from 1/26/89).
Contractor/Supervisor (full from 3/13/89).
Contractor/Supervisor Refresher Course (contingent from 1/17/89).

(105)(a) *Training Provider:* Ohio Asbestos Workers Council.
Address: 1216 East McMillan St., Room 107, Cincinnati, OH 45206, Contact: Larry Briley, Phone: (513) 221-5968.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 2/17/88).
Contractor/Supervisor (full from 5/12/88).

(106)(a) *Training Provider:* Ohio Laborers' Training & Upgrading Trust Fund.
Address: 25721 Coshocton Rd., P.O. Box 218, Howard, OH 43028, Contact: John L. Railing, Phone: (614) 599-7915.
(b) *Approved Courses:*
Abatement Worker (full from 4/11/88).
Abatement Worker Refresher Course (contingent from 9/1/88).
Abatement Worker Refresher Course (full from 2/8/90).
Contractor/Supervisor (contingent from 7/27/88).
Contractor/Supervisor (full from 2/8/90).
Contractor/Supervisor Refresher Course (contingent from 6/6/89).
Contractor/Supervisor Refresher Course (full from 2/9/90).

(107)(a) *Training Provider:* Olive - Harvey College Skill Center.
Address: 10001 South Woodlawn Ave., Chicago, IL 60628, Contact: Verondo Tucker, Phone: (312) 660-4841.
(b) *Approved Course:*
Abatement Worker (contingent from 3/6/89).

(108)(a) *Training Provider:* Peoria Public Schools.
Address: 3202 North Wisconsin Ave., Peoria, IL 61603, Contact: Emil S. Steinseifer, Phone: (309) 672-6512.
(b) *Approved Course:*
Abatement Worker Refresher Course (contingent from 11/14/88).

(109)(a) *Training Provider:* Professional Asbestos Control Company Inc.
Address: 5739 West Howard St., Niles, IL 60648, Contact: William Foss, Phone: (312) 647-0077.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/2/89).
Contractor/Supervisor (contingent from 11/2/89).

(110)(a) *Training Provider:* Professional Asbestos Labor Services, Inc.
Address: 2955 W 5th Ave., Gary, IN 46404-1201, Contact: George Bradley, Phone: (219) 883-6541.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/18/88).
Abatement Worker Refresher Course (contingent from 12/5/88).

(111)(a) *Training Provider:* Professional Service Industries, Inc.
Address: 510 East 22nd St., Lombard, IL 60148, Contact: W. K. Swartzendruber, Phone: (312) 691-1490.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 11/13/89).
Contractor/Supervisor Refresher Course (contingent from 10/11/89).
Inspector/Management Planner (contingent from 12/15/88).
Inspector/Management Planner (full from 4/27/89).
Inspector/Management Planner Refresher Course (contingent from 10/11/89).

(112)(a) *Training Provider:* Rend Lake College.
Address: Department AAA, Ina, IL 62846, Contact: Fred Bruno, Phone: (618) 437-5321.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/29/89).
Abatement Worker (full from 10/16/88).

(113)(a) *Training Provider:* Risk Services, Inc.
Address: 26384 Ford Rd., Suite 200, Dearborn Heights, MI 48127, Contact: Michael J. Borsuck, Phone: (313) 565-5225.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/11/89).
Abatement Worker Refresher Course (contingent from 4/11/89).
Contractor/Supervisor (contingent from 4/11/89).
Contractor/Supervisor Refresher Course (contingent from 4/11/89).

(114)(a) *Training Provider:* S.Z. Mansdorf & Associates, Inc.
Address: 2000 Chestnut Blvd., Cuyahoga Falls, OH 44223-1323, Contact: S. Z. Mansdorf, Phone: (216) 928-5434.
(b) *Approved Courses:*
Contractor/Supervisor (contingent from 1/15/88).
Contractor/Supervisor (full from 2/12/88).
Contractor/Supervisor Refresher Course (contingent from 1/19/89).
Inspector/Management Planner (contingent from 6/24/88).
Inspector/Management Planner (full from 3/23/90).
Inspector/Management Planner Refresher Course (contingent from 1/26/89).

(115)(a) *Training Provider:* SEMCOSH.
Address: 2727 2nd Ave., Detroit, MI 48201-2654, Contact: Barbara Boylan, Phone: (313) 961-3345.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/13/87).
Abatement Worker (full from 4/25/88).
Abatement Worker Refresher Course (contingent from 4/25/89).

(116)(a) *Training Provider:* Safer Foundation.
Address: 571 West Jackson Blvd., Chicago, IL 60606, Contact: C. Bentley or P. Bergmann, Phone: (312) 922-2200.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/15/88).
Abatement Worker (full from 7/7/89).
Abatement Worker Refresher Course (contingent from 11/3/89).

(117)(a) *Training Provider:* Safety Dynamics.
Address: 124 Massachussetts Ave., Poland, OH 44514, Contact: Ronald G. Zikmund, Phone: (216) 757-3899.
(b) *Approved Course:*
Abatement Worker (contingent from 8/18/89).

(118)(a) *Training Provider:* Safety Training of Illinois.
Address: 1515 South Park, Springfield, IL 62704, Contact: S. David Farris, Phone: (217) 787-9091.
(b) *Approved Courses:*
Abatement Worker (full from 12/18/87).
Abatement Worker Refresher Course (contingent from 11/14/88).

(119)(a) *Training Provider:* Sear Corp.
Address: 8802 Bash St., Suite F, Indianapolis, IN 46256, Contact: Todd M. Strader, Phone: (317) 576-5845.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/3/89).
Abatement Worker (full from 7/7/89).

(120)(a) *Training Provider:* Seneca Asbestos Removal & Control, Inc.
Address: 76 Ashwood Rd., Tiffin, OH 44883, Contact: Roger Bakies, Phone: (419) 447-0202.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/21/89).
Abatement Worker (full from 11/15/89).

(121)(a) *Training Provider:* Testing Engineers & Consultants, Inc.
Address: 1333 Rochester Rd., P.O. Box 249, Troy, MI 48099, Contact: Karl D. Agee, Phone: (313) 588-6200.
(b) *Approved Courses:*
Inspector/Management Planner (contingent from 5/9/88).
Inspector/Management Planner (full from 8/22/88).
Inspector/Management Planner Refresher Course (contingent from 3/30/89).

(122)(a) *Training Provider:* The American Center for Educational Development, Inc.
Address: 316 S. Wabash, 2nd Floor, Chicago, IL 60604, Contact: Ron Broom, Phone: (312) 322-2233.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/3/89).
Abatement Worker (full from 12/13/89).
Abatement Worker Refresher Course (contingent from 12/1/89).
Contractor/Supervisor (contingent from 11/3/89).
Contractor/Supervisor (full from 1/19/90).
Contractor/Supervisor Refresher Course (contingent from 12/1/89).

(123)(a) *Training Provider:* The Brand Companies.
Address: 1420 Renaissance Dr., Park Ridge, IL 60068, Contact: Frank J. Barta, Phone: (312) 298-1200.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/4/89).
Abatement Worker (full from 5/1/89).
Abatement Worker Refresher Course (contingent from 6/8/89).
Contractor/Supervisor (contingent from 7/7/89).
Contractor/Supervisor Refresher Course (contingent from 8/16/89).

(124)(a) *Training Provider:* The Clea- Consortium.
Address: 127 North Dearborn St., Chicago, IL 60602, Contact: Lorenzo Higgins, Phone: (312) 368-0211.
(b) *Approved Course:*
Abatement Worker (contingent from 7/18/89 to 11/30/90 only).

(125)(a) *Training Provider:* The Environmental Institute.
Address: 314 South State Ave., Indianapolis, IN 46201, Contact: Cindy Witte, Phone: (317) 269-3618.
(b) *Approved Course:*
Abatement Worker Refresher Course (contingent from 12/22/88).

(126)(a) *Training Provider:* Thermico, Inc.
Address: 3405 Centennial Dr., P.O. Box 2151, Midland, MI 48641-2151, Contact: Kevin Otis, Phone: (517) 496-2927.
(b) *Approved Course:*
Abatement Worker (contingent from 4/7/89).

(127)(a) *Training Provider:* Tillotson Consulting & Training, Inc.
Address: 9332 Oakview, Portage, MI 49002, Contact: Michael R. Tillotson, Phone: (616) 323-2124.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/29/88).
Abatement Worker Refresher Course (contingent from 12/11/88).
Contractor/Supervisor (contingent from 12/29/88).
Contractor/Supervisor Refresher Course (contingent from 12/11/88).
Inspector/Management Planner (contingent from 12/29/88).
Inspector/Management Planner Refresher Course (contingent from 12/11/88).

(128)(a) *Training Provider:* Trust Thermal Systems.
Address: 10445 Wright Rd., Eagle, MI 48822, Contact: Thomas Lowe, Phone: (517) 626-6791.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/1/88).
Abatement Worker Refresher Course (contingent from 4/7/89).
Contractor/Supervisor (contingent from 3/30/89).
Contractor/Supervisor Refresher Course (contingent from 4/7/89).

(129)(a) *Training Provider:* United Science Industries, Inc.

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Address: 921 Ninth St., P.O. Box 21, Carlyle, IL 62231, Contact: Mr. Koch, Phone: (618) 594-8670.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/4/89).
Abatement Worker (full from 5/17/90).
Abatement Worker Refresher Course (contingent from 12/20/88).
Contractor/Supervisor (contingent from 12/4/89).
Contractor/Supervisor (full from 5/17/90).
Contractor/Supervisor Refresher Course (contingent from 12/20/88).

(130)(a) *Training Provider:* University of Cincinnati, Medical Center Department of Environmental Health Kettering Laboratory.

Address: 3223 Eden Ave., ML 056, Cincinnati, OH 45267-0056, Contact: Judy L. Jarrell, Phone: (513) 558-1730.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/14/88).
Abatement Worker (full from 11/15/88).
Abatement Worker Refresher Course (contingent from 7/11/88).
Contractor/Supervisor (full from 10/20/87).
Contractor/Supervisor Refresher Course (contingent from 10/4/89).
Inspector/Management Planner (full from 11/16/87).
Inspector/Management Planner Refresher Course (contingent from 12/1/88).
Project Designer (contingent from 10/20/89).

(131)(a) *Training Provider:* University of Wisconsin.

Address: 422 Lowell Hall, 610 Langdon St., Madison, WI 53703, Contact: Neil DeClercq, Phone: (608) 262-2111.

(b) *Approved Courses:*

Abatement Worker (full from 12/7/87).
Abatement Worker Refresher Course (contingent from 12/15/88).
Contractor/Supervisor (contingent from 2/2/88).
Contractor/Supervisor (full from 9/1/88).
Contractor/Supervisor Refresher Course (contingent from 12/15/88).
Inspector/Management Planner (contingent from 2/2/88).
Inspector/Management Planner (full from 2/22/88).
Inspector/Management Planner Refresher Course (contingent from 12/15/88).
Project Designer (contingent from 9/15/88).
Project Designer Refresher Course (contingent from 3/3/89).

(132)(a) *Training Provider:* William E. Fink & Associates.

Address: 25 South State St., Girard, OH 44420, Contact: William Fink, Phone: (216) 545-1222.

(b) *Approved Course:*

Contractor/Supervisor (contingent from 8/18/89).

(133)(a) *Training Provider:* William E. Fink & Associates, Inc.

Address: 3695 Indian Run, Suite 5, Canfield, OH 44406, Contact: William E. Fink, Phone: (216) 533-6299.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/11/88).
Abatement Worker (full from 2/13/89).
Abatement Worker Refresher Course (contingent from 8/11/88).
Contractor/Supervisor (contingent from 8/18/89).
Contractor/Supervisor Refresher Course (contingent from 10/13/89).

(134)(a) *Training Provider:* Wisconsin Laborers Training Center.

Address: P.O. Box 150, Almond, WI 54909, Contact: Dean Jensen, Phone: (715) 366-8221.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/8/87).
Abatement Worker (full from 11/29/88).
Abatement Worker Refresher Course (contingent from 11/14/88).
Contractor/Supervisor (contingent from 11/21/88).
Contractor/Supervisor (full from 11/29/88).

(135)(a) *Training Provider:* Wonder Makers, Inc.

Address: 3101 Darmo St., Kalamazoo, MI 49008, Contact: Michael A. Pinto, Phone: (616) 382-4154.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/16/89).
Abatement Worker Refresher Course (contingent from 3/9/89).
Contractor/Supervisor (contingent from 3/16/89).
Contractor/Supervisor Refresher Course (contingent from 3/16/89).
Inspector/Management Planner (contingent from 4/21/89).
Inspector/Management Planner Refresher Course (contingent from 4/21/89).

REGION VI – Dallas, TX

Acting Regional Asbestos Coordinator: Carol D. Peters, 6T-PT, EPA, Region VI, 1445 Ross Avenue, Dallas, TX 75202-2733, (214) 655-7244, (FTS) 255-7244.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region VI training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* AC & C Systems Corp.

Address: 5909 Northwest Expressway, Suite 310, Oklahoma City, OK 73132, Contact: Turner Stallings, Phone: (405) 728-0444.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/20/88).
Contractor/Supervisor (contingent from 10/26/88).

(2)(a) *Training Provider:* AEGIS Associates, Inc.

Address: 4868 Research Dr., San Antonio, TX 78240, Contact: John J. Gokelman, Phone: (512) 641-8320.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/14/89 to 4/16/90 only).
Contractor/Supervisor (contingent from 5/25/89 to 4/16/90 only).
Inspector Refresher Course (contingent from 4/4/89 to 4/16/90 only).

(3)(a) *Training Provider:* ASCTC Asbestos Training Center.

Address: P.O. Box 1419, Albany, LA 70711, Contact: Alphia Rose, Phone: (504) 567-3876.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/4/90).
Abatement Worker Refresher Course (contingent from 2/4/90).
Contractor/Supervisor (contingent from 2/4/90).
Contractor/Supervisor Refresher Course (contingent from 2/5/90).
Inspector/Management Planner (contingent from 2/5/90).
Inspector/Management Planner Refresher Course (contingent from 2/5/90).
Project Designer (contingent from 2/5/90).
Project Designer Refresher Course (contingent from 2/5/90).

(4)(a) *Training Provider:* Abateco, Inc.

Address: 10696 Haddington, Suite 100, Houston, TX 77043, Contact: E. H. Zansler, Phone: (713) 461-0692.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/14/89).
Abatement Worker (full from 3/7/90).
Abatement Worker Refresher Course (contingent from 3/17/88).
Abatement Worker Refresher Course (full from 8/21/90).

Contractor/Supervisor (contingent from 8/14/89).
Contractor/Supervisor (full from 3/9/90).
Contractor/Supervisor Refresher Course (full from 8/22/90).

(5)(a) *Training Provider:* Ahera Training Institute.

Address: 12116A Jekel Circle, Austin, TX 78727, Contact: Rick Orr, Phone: (512) 837-8851.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/10/89).
Abatement Worker (full from 5/9/90).
Abatement Worker Refresher Course (contingent from 12/15/89).
Abatement Worker Refresher Course (full from 1/30/90).
Contractor/Supervisor (contingent from 1/11/88).
Contractor/Supervisor (full from 3/1/88).
Contractor/Supervisor Refresher Course (contingent from 12/15/89).
Contractor/Supervisor Refresher Course (full from 1/31/90).
Inspector/Management Planner (full from 1/25/88).
Inspector/Management Planner Refresher Course (contingent from 10/2/89).
Inspector/Management Planner Refresher Course (full from 2/1/90).

(6)(a) *Training Provider:* Allied Training Systems.

Address: 1808 D Brothers Blvd., College Station, TX 77840, Contact: Dan Sheppard, Phone: (409) 693-8300.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/30/89).
Abatement Worker Refresher Course (contingent from 10/28/89).
Contractor/Supervisor (contingent from 8/25/89).
Contractor/Supervisor Refresher Course (contingent from 10/31/89).

(7)(a) *Training Provider:* Allison Sheridan Environmental Training Services.

Address: P.O. Box 6101, Katy, TX 77492, Contact: Don Rawlings, Phone: (713) 492-2309.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/8/90).
Contractor/Supervisor (contingent from 1/8/90).

(8)(a) *Training Provider:* American Specialty Contractors, Inc.

Address: 8181 West Darryl Pkwy., Baton Rouge, LA 70896, Contact: Kurt Jones, Phone: (504) 926-9624.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/18/88).
Abatement Worker (full from 5/3/89).
Contractor/Supervisor (contingent from 11/18/88).
Contractor/Supervisor (full from 5/4/89).

(9)(a) *Training Provider:* Analytical Labs Training Center.

Address: 218 Market St., Baird, TX 79504, Contact: Bob Dye, Phone: (915) 854-1264.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/21/89).
Abatement Worker (full from 2/7/90).
Contractor/Supervisor (contingent from 4/21/89).
Contractor/Supervisor (full from 2/9/90).

(10)(a) *Training Provider:* Asbestos Consulting Services, Inc. (A.C.S.I.).

Address: 13523 Ridgeview Dr., Baton Rouge, LA 70817, Contact: Ken Talbot, Phone: (504) 291-9941.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/2/89).
Abatement Worker (full from 5/10/90).
Abatement Worker Refresher Course (contingent from 3/16/89).
Contractor/Supervisor (contingent from 3/2/89).
Contractor/Supervisor (full from 5/11/90).
Contractor/Supervisor Refresher Course (contingent from 3/16/89).
Inspector/Management Planner (contingent from 3/2/89).
Inspector/Management Planner Refresher Course (contingent from 3/16/89).

(11)(a) *Training Provider:* Asbestos Education Services.

Address: 11608 Barchetta Dr., Austin, TX 78758, Contact: Rick Orr, Phone: (512) 832-5298.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/5/89).
Abatement Worker Refresher Course (contingent from 11/28/88).
Contractor/Supervisor (contingent from 10/25/89).
Contractor/Supervisor Refresher Course (contingent from 10/5/89).
Project Designer Refresher Course (contingent from 11/28/89).

(12)(a) *Training Provider:* Asbestos Surveys & Training, Inc.

Address: 5959 Central Crest, Houston, TX 77092, Contact: J. T. Stoneburger, Phone: (713) 681-2639.

(b) *Approved Course:*

Abatement Worker (full from 10/22/87 to 5/1/89 only).

(13)(a) *Training Provider:* Ashley Environmental Services.

Address: 5959 Central Crest, Houston, TX 77092, Contact: Jesse Ashley, Phone: (713) 683-5311.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/27/89).
Abatement Worker (full from 9/13/90).
Contractor/Supervisor (contingent from 9/29/89).
Contractor/Supervisor (full from 12/21/90).

(14)(a) *Training Provider:* Beaumont Business Incubator.

Address: P.O. Box 1364, Beaumont, TX 77704, Contact: Jerry Plaia, Phone: (409) 832-1934.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/29/90).
Abatement Worker Refresher Course (contingent from 1/29/90).
Contractor/Supervisor (contingent from 1/29/90).
Contractor/Supervisor Refresher Course (contingent from 1/29/90).

(15)(a) *Training Provider:* Carpenters Apprenticeship Training School.

Address: 8505 Glen Vista, Houston, TX 77061, Contact: S. C. Strank, Jr., Phone: (713) 641-1011.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/8/88).
Abatement Worker Refresher Course (contingent from 7/8/88).

(16)(a) *Training Provider:* Certified Asbestos Training Institute, Inc.

Address: 4202 Argentina Cir., Pasadena, TX 77504, Contact: Clyde O. Waters, Phone: (713) 487-3155.

(b) *Approved Course:*

Abatement Worker (contingent from 4/20/88).

(17)(a) *Training Provider:* El Paso Community College, Transmountain Campus.

Address: P.O. Box 20500, El Paso, TX 79998, Contact: Jim Rath, Phone: (915) 757-5053.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/28/89).
Abatement Worker Refresher Course (contingent from 11/28/89).
Contractor/Supervisor (contingent from 11/28/89).
Contractor/Supervisor Refresher Course (contingent from 11/28/89).

(18)(a) *Training Provider:* Enviro-Con Services, Inc.

Address: 4916 Highway 6 North, Houston, TX 77084, Contact: Douglas S. Shotwell, Phone: (713) 855-9877.

(b) *Approved Courses:*

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Abatement Worker (contingent from 9/22/89).
Abatement Worker (full from 3/28/90).
Abatement Worker Refresher Course (contingent from 10/2/89).
Abatement Worker Refresher Course (full from 5/2/90).
Contractor/Supervisor (contingent from 9/21/89).
Contractor/Supervisor (full from 3/29/90).
Contractor/Supervisor Refresher Course (contingent from 10/2/89).
Contractor/Supervisor Refresher Course (full from 5/3/90).

(19)(a) *Training Provider:*
Environmental Consultant Service.
Address: 401 N. Fannin, Rockwall, TX 75087, Contact: Thomas Armstrong, Phone: (214) 771-1160.

(b) *Approved Courses:*
Abatement Worker (contingent from 4/20/89).
Contractor/Supervisor (contingent from 4/20/89).
Contractor/Supervisor Refresher Course (contingent from 9/1/89).
Inspector/Management Planner (contingent from 4/20/89).

(20)(a) *Training Provider:*
Environmental Monitoring Service, Inc. (EMS).
Address: 12731 Research Blvd., Building A, Austin, TX 78759, Contact: Rick Pruett, Phone: (512) 335-9116.

(b) *Approved Courses:*
Abatement Worker (contingent from 3/1/88).
Abatement Worker Refresher Course (contingent from 1/15/90).
Contractor/Supervisor (contingent from 2/5/90).
Contractor/Supervisor Refresher Course (contingent from 2/5/90).
Inspector/Management Planner (contingent from 4/19/89).

(21)(a) *Training Provider:*
Environmental Specialists, Inc.
Address: 320 Broadway SE., Albuquerque, NM 87102, Contact: Fernando E.C. Debaca, Phone: (505) 243-2499.

(b) *Approved Courses:*
Abatement Worker (contingent from 6/25/90).
Abatement Worker (full from 2/6/91).
Contractor/Supervisor (contingent from 6/28/90).
Contractor/Supervisor (full from 2/6/91).
Inspector/Management Planner (contingent from 7/27/90).

(22)(a) *Training Provider:* Field Sciences Institute.
Address: 2309 Renard Pl. SE., Suite 104, Albuquerque, NM 87106, Contact: Robert L. Edgar, Phone: (505) 764-9251.

(b) *Approved Courses:*
Abatement Worker (contingent from 10/13/89).
Abatement Worker Refresher Course (full from 8/1/89).
Contractor/Supervisor (contingent from 4/22/88).
Contractor/Supervisor Refresher Course (full from 8/1/89).
Inspector Refresher Course (full from 8/1/89).
Inspector/Management Planner (contingent from 4/22/88).

(23)(a) *Training Provider:* Fort Worth Independent School District.
Address: 3210 West Lancaster, Fort Worth, TX 76107, Contact: H. D. Duncan, Phone: (817) 336-8311.

(b) *Approved Courses:*
Abatement Worker (contingent from 7/27/88).
Abatement Worker Refresher Course (contingent from 7/27/88).

(24)(a) *Training Provider:* GEBCO Associates, Inc.
Address: 669 Airport Freeway, Suite 210, Hurst, TX 76053-3962, Contact: Ed Kirch, Phone: (817) 268-4006.

(b) *Approved Courses:*
Abatement Worker (interim from 4/15/87 to 8/19/87).
Abatement Worker (full from 8/20/87).
Abatement Worker Refresher Course (contingent from 5/16/88).
Abatement Worker Refresher Course (full from 7/5/89).
Contractor/Supervisor (contingent from 3/15/88).
Contractor/Supervisor (full from 7/24/89).
Contractor/Supervisor Refresher Course (contingent from 7/27/88).
Contractor/Supervisor Refresher Course (full from 7/28/89).
Inspector/Management Planner (full from 3/7/88).
Inspector/Management Planner Refresher Course (contingent from 7/27/88).
Inspector/Management Planner Refresher Course (full from 8/16/89).

(25)(a) *Training Provider:* Gary LaFrance Abatement Workers Training Program.
Address: 4802 Prestwick, Tyler, TX 75703, Contact: Gary G. LaFrance, Phone: (214) 581-8852.

(b) *Approved Courses:*
Abatement Worker (contingent from 12/14/88).
Abatement Worker (full from 4/12/89).

(26)(a) *Training Provider:* Houston Independent School District.
Address: 228 McCarty Dr., Houston, TX 77029, Contact: Bennie Jenkins, Phone: (713) 676-2222 Ext. 396.

(b) *Approved Courses:*
Abatement Worker (contingent from 10/10/89).
Abatement Worker Refresher Course (contingent from 10/12/89).

(27)(a) *Training Provider:* IMPACT Inc.
Address: 5330 Griggs Rd., Houston, TX 77021, Contact: Edgar Harvey, Phone: (713) 845-2416.

(b) *Approved Course:*
Abatement Worker (contingent from 8/17/89 to 3/28/91 only).

(28)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 22.
Address: 3219 Pasadena Blvd., Pasadena, TX 77503, Contact: Robert M. Chadwick, Phone: (713) 473-0888.

(b) *Approved Courses:*
Abatement Worker (interim from 10/1/87 to 10/4/87).
Abatement Worker (contingent from 10/5/87).
Abatement Worker (full from 3/22/88).
Abatement Worker Refresher Course (contingent from 10/5/87).
Contractor/Supervisor (full from 6/27/88).

(29)(a) *Training Provider:* K & T Safety Service, Inc.
Address: 9888 Bissonnett, Houston, TX 77036, Contact: Henry Kana, Phone: (713) 988-9021.

(b) *Approved Course:*
Abatement Worker (contingent from 3/28/89).

(30)(a) *Training Provider:* Keers Environmental, Inc.
Address: P.O. Box 6848, Albuquerque, NM 89197, Contact: Robert W. Keers, Phone: (505) 888-9525.

(b) *Approved Courses:*
Contractor/Supervisor (contingent from 3/28/89).
Contractor/Supervisor Refresher Course (contingent from 10/6/89).

(31)(a) *Training Provider:* Kiser Engineering, Inc.
Address: 211 North River St., Seguin, TX 78155, Contact: Nathan Kiser, Phone: (512) 372-2570.

(b) *Approved Courses:*
Abatement Worker (contingent from 3/27/89).
Abatement Worker Refresher Course (contingent from 8/24/89).
Contractor/Supervisor (contingent from 3/29/89).
Contractor/Supervisor Refresher Course (contingent from 8/24/89).

(32)(a) *Training Provider:* Lafayette Parish School Board Asbestos Training Program.
Address: P.O. Drawer 2158, Lafayette, LA 70502, Contact: Salvador E. Longo, Phone: (504) 887-3740.

(b) *Approved Courses:*
Abatement Worker (contingent from 7/21/88).
Contractor/Supervisor (contingent from 7/21/88).

(33)(a) *Training Provider:* Lamar University, Hazardous Materials Program.
Address: P.O. Box 10008, Beaumont, TX 77710, Contact: Marion Foster, Phone: (409) 880-2369.

(b) *Approved Courses:*
Abatement Worker (contingent from 7/19/88).
Abatement Worker (full from 4/28/89).
Contractor/Supervisor (contingent from 5/20/88).
Contractor/Supervisor Refresher Course (contingent from 10/24/88).
Inspector/Management Planner (contingent from 1/15/90).

(34)(a) *Training Provider:* Law Engineering.
Address: 5500 Guhn Rd., Houston, TX 77040, Contact: Richard MacIntyre, Phone: (713) 939-7161.

(b) *Approved Courses:*
Abatement Worker (contingent from 9/14/89).
Contractor/Supervisor (contingent from 2/28/90).

(35)(a) *Training Provider:* Little-Tex Insulation Co., Inc.
Address: 911 North Frio St., San Antonio, TX 78207, Contact: Dan Juepe, Phone: (512) 222-8084.

(b) *Approved Courses:*
Abatement Worker (contingent from 8/1/88).
Contractor/Supervisor (contingent from 8/1/88).

(36)(a) *Training Provider:* Louisiana Laborers Union-AGC Training Fund.
Address: P.O. Box 376, Livonia, LA 70755-0376, Contact: Jamie Peers, Phone: (504) 637-2311.

(b) *Approved Courses:*
Abatement Worker (contingent from 7/15/88).
Abatement Worker Refresher Course (contingent from 4/4/89).

(37)(a) *Training Provider:* Louisiana State University Agricultural & Mechanical College.
Address: 181 Pleasant Hall, Baton Rouge, LA 70803-1529, Contact: Marcia L. Gilman, Phone: (504) 388-6591.

(b) *Approved Courses:*
Abatement Worker (full from 1/1/88).
Abatement Worker Refresher Course (contingent from 11/16/88).
Abatement Worker Refresher Course (full from 3/8/89).
Contractor/Supervisor (contingent from 10/6/87).
Contractor/Supervisor (full from 4/7/88).
Contractor/Supervisor Refresher Course (contingent from 11/16/88).
Contractor/Supervisor Refresher Course (full from 3/6/89).
Inspector/Management Planner (full from 1/18/88).
Inspector/Management Planner Refresher Course (contingent from 12/5/88).
Inspector/Management Planner Refresher Course (full from 3/7/89).
Project Designer (contingent from 10/13/89).
Project Designer Refresher Course (contingent from 10/13/89).

(38)(a) *Training Provider:* MARTECH International, Inc.
Address: P.O. Box 460, Broussard, LA 70518-0460, Contact: Gary Lawley, Phone: (318) 364-3800.

(b) *Approved Courses:*
Abatement Worker (contingent from 1/17/89).
Contractor/Supervisor (contingent from 1/17/89).

(39)(a) *Training Provider:* Maxim Engineers Inc.
Address: 2342 Fabens, Dallas, TX 75229, Contact: Tommy Osborne, Phone: (214) 247-7575.

(b) *Approved Courses:*
Abatement Worker (contingent from 1/6/89).
Abatement Worker (full from 6/9/89).
Abatement Worker Refresher Course (contingent from 10/10/89).
Inspector (contingent from 12/11/89).
Inspector (full from 6/9/90).

(40)(a) *Training Provider:* McClelland Management Services.
Address: 6100 Hillcroft, Suite 220, Houston, TX 77081, Contact: David Winburne, Phone: (713) 995-9000.

(b) *Approved Courses:*
Abatement Worker (contingent from 1/5/90).
Abatement Worker Refresher Course (contingent from 1/5/90).
Contractor/Supervisor (contingent from 1/5/90).
Contractor/Supervisor (full from 9/21/90).
Contractor/Supervisor Refresher Course (contingent from 1/5/90).
Inspector/Management Planner (contingent from 1/5/90).
Inspector/Management Planner Refresher Course (contingent from 1/5/90).
Project Designer (contingent from 1/5/90).
Project Designer Refresher Course (contingent from 1/5/90).

(41)(a) *Training Provider:* Meador-Wright & Associates, Inc.
Address: 6211 W. Northwest Hwy., Suite C260, Dallas, TX 75225, Contact: Carl Teel, Phone: (214) 691-3485.

(b) *Approved Course:*
Inspector/Management Planner (full from 10/12/89).

(42)(a) *Training Provider:* Micro Analysis Laboratory, Inc.
Address: 5220 McKinney, No. 209, Dallas, TX 75205, Contact: Carolyn Jones, Phone: (214) 528-4800.

(b) *Approved Course:*
Abatement Worker (contingent from 9/6/89).

(43)(a) *Training Provider:* Moore-Norman Area Vocational Training School.
Address: 4701 12th Ave. NW., Norman, OK 73069, Contact: Mike Armstrong, Phone: (405) 364-7032.

(b) *Approved Courses:*
Abatement Worker (full from 3/3/86).
Abatement Worker Refresher Course (contingent from 5/19/89).
Abatement Worker Refresher Course (full from 12/14/88).
Contractor/Supervisor (full from 12/14/89).
Contractor/Supervisor Refresher Course (contingent from 12/14/89).
Contractor/Supervisor Refresher Course (full from 12/14/89).
Inspector/Management Planner (contingent from 1/25/88).
Inspector/Management Planner (full from 4/4/88).
Inspector/Management Planner Refresher Course (contingent from 5/19/89).
Inspector/Management Planner Refresher Course (full from 12/15/89).

(44)(a) *Training Provider:* NATEC of Texas, Inc.
Address: 5555 West Loop South, Suite 636, Bellaire, TX 77041, Contact: Paul Speck, Phone: (713) 524-9444.

(b) *Approved Courses:*
Abatement Worker (contingent from 11/22/89).
Abatement Worker (full from 2/28/91).

(45)(a) *Training Provider:* Nelson/Imel, Inc.
Address: 3900 Morrison Cir., Norman, OK 73072, Contact: Deborah Nelson, Phone: (405) 364-3278.

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(b) *Approved Courses:*
Abatement Worker (contingent from 7/27/88 to 1/31/91 **only**).
Abatement Worker Refresher Course (contingent from 11/16/88 to 1/31/91 **only**).
Contractor/Supervisor Refresher Course (contingent from 4/7/89 to 1/31/91 **only**).

(46)(a) *Training Provider:* O'Connor McMahon, Inc.
Address: 1505 Luna Rd., Suite 114, Carrollton, TX 75006, Contact: Bob Walley, Phone: (214) 245-3300.
(b) *Approved Course:*
Abatement Worker (contingent from 7/27/88).

(47)(a) *Training Provider:* Occupational Safety Health Consultants of Louisiana.
Address: 1034 Willow Brook Ave., Denham Springs, LA 70726, Contact: Clayton Joe Mitchell, Phone: (504) 664-0288.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/22/89).
Abatement Worker Refresher Course (contingent from 8/22/89).
Contractor/Supervisor (contingent from 8/22/89).
Contractor/Supervisor Refresher Course (contingent from 8/22/89).

(48)(a) *Training Provider:* Occupational Safety Training Institute.
Address: 9000 West Bellfort, Suite 450, Houston, TX 77031, Contact: Eva Bonilla, Phone: (713) 270-6882.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/27/88).
Abatement Worker Refresher Course (contingent from 12/8/88).
Contractor/Supervisor (contingent from 7/27/88).
Contractor/Supervisor (full from 7/27/88).
Contractor/Supervisor Refresher Course (contingent from 12/8/88).
Inspector/Management Planner (contingent from 9/15/88).

(49)(a) *Training Provider:* PAN AM World Services Inc.
Address: P. O. Box 58938, Houston, TX 77258, Contact: Audrey Hall, Phone: (713) 483-7951.
(b) *Approved Course:*
Abatement Worker (contingent from 8/23/89).

(50)(a) *Training Provider:* Phoenix Services.
Address: 3131 Stemmons, Suite 117, Dallas, TX 75247, Contact: Alcee Chriss, Phone: (214) 437-0150.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/18/89).
Abatement Worker Refresher Course (contingent from 11/29/89).
Contractor/Supervisor (contingent from 11/29/89).
Contractor/Supervisor Refresher Course (contingent from 11/29/89).

(51)(a) *Training Provider:* Pollution Control Management Corp.
Address: P.O. Box 24248, Houston, TX 77229-4248, Contact: David S. Barnett, Phone: (713) 452-6406.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/26/89).
Abatement Worker (full from 11/1/90).

(52)(a) *Training Provider:* Protechnics Environmental Services.
Address: 14760 Memorial Dr., Suite 105, Houston, TX 77079, Contact: Fabian Limon, Phone: (713) 496-9874.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/5/89 to 2/11/91 **only**).
Abatement Worker (full from 6/30/89 to 2/11/91 **only**).
Contractor/Supervisor (contingent from 6/22/89 to 2/11/91 **only**).
Contractor/Supervisor Refresher Course (contingent from 11/28/89 to 2/11/91 **only**).

(53)(a) *Training Provider:* R & H Associates, Inc.
Address: P.O. Box 8948, Albuquerque, NM 87198, Contact: Floyd Rubi, Phone: (505) 275-1045.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/12/89).
Abatement Worker Refresher Course (contingent from 4/20/89).
Contractor/Supervisor (contingent from 1/12/89).
Contractor/Supervisor Refresher Course (contingent from 4/20/89).
Inspector/Management Planner (contingent from 1/12/89).
Inspector/Management Planner Refresher Course (contingent from 4/20/89).

(54)(a) *Training Provider:* Raba-Kistner Training Institute.
Address: 12821 West Golden Ln., San Antonio, TX 78249, Contact: Donald Fetzer, Phone: (512) 699-9090.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/23/89).
Contractor/Supervisor Refresher Course (contingent from 12/13/89).
Inspector/Management Planner (contingent from 12/13/89).
Inspector/Management Planner Refresher Course (contingent from 12/13/89).

(55)(a) *Training Provider:* Region 6 Environmental Training.
Address: P.O. Box 180435, Austin, TX 78718-0435, Contact: Carter Ramzel, Phone: (512) 837-9296.
(b) *Approved Courses:*
Abatement Worker (conti gent from 7/27/88).
Abatement Worker (full from 3/7/91).
Abatement Worker Refresher Course (contingent from 3/2/89).
Contractor/Supervisor (contingent from 7/27/88).
Contractor/Supervisor (full from 3/8/91).
Contractor/Supervisor Refresher Course (contingent from 3/2/89).
Inspector/Management Planner (contingent from 10/10/89).
Inspector/Management Planner Refresher Course (contingent from 10/10/89).

(56)(a) *Training Provider:* Regional Environmental Training Center.
Address: 9024 Garland Rd., Dallas, TX 75218, Contact: Lisa Adams, Phone: (214) 328-2928.
(b) *Approved Courses:*
Abatement Worker (contingent from 8/30/89).
Contractor/Supervisor (contingent from 9/1/89).
Inspector/Management Planner (contingent from 9/1/89).

(57)(a) *Training Provider:* Safety & Health Research Institute.
Address: 500 One Gallery Tower, 13355 Noel Rd., P.O. Box 612245, Dallas, TX 75261, Contact: Ted Davis, Phone: (214) 851-3536.
(b) *Approved Courses:*
Abatement Worker (contingent from 9/12/88 to 1/1/89 **only**).
Contractor/Supervisor (contingent from 9/12/88 to 1/1/89 **only**).
Inspector/Management Planner (contingent from 9/12/88).

(58)(a) *Training Provider:* Southeast Arkansas Education Services Cooperative.
Address: U.A.M. - Willard Hall, P.O. Box 3507, Monticello, AR 71655, Contact: Lloyd Crossley, Phone: (501) 367-6848.
(b) *Approved Course:*
Inspector/Management Planner Refresher Course (contingent from 4/11/89).

(59)(a) *Training Provider:* Specialized Environmental Services Inc.
Address: 6614 John Ralston Rd., Houston, TX 77049, Contact: James Homminga, Phone: (713) 458-7274.
(b) *Approved Courses:*

Abatement Worker (contingent from 11/29/89).
Abatement Worker (full from 4/19/90).
Abatement Worker Refresher Course (contingent from 11/29/89).

(60)(a) *Training Provider:* Specialized Environmental Training.
Address: P.O. Box 7001, Pasadena, TX 77508-7001, Contact: Sue Ann Williams, Phone: (713) 487-4415.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/12/90).
Contractor/Supervisor (contingent from 1/12/90).

(61)(a) *Training Provider:* Texas Engineering Extension Service Building Codes Inspection Training Division.
Address: Texas A & M University System, College Station, TX 77843-8000, Contact: Tom Garney, Phone: (409) 845-6682.
(b) *Approved Courses:*
Abatement Worker (full from 9/28/87).
Contractor/Supervisor (interim from 5/26/86 to 9/13/87).
Contractor/Supervisor (full from 9/14/87).
Contractor/Supervisor Refresher Course (full from 3/2/89).
Inspector/Management Planner (full from 10/19/87).
Inspector/Management Planner Refresher Course (full from 3/1/89).

(62)(a) *Training Provider:* Texas State Conference of Painters & Allied Trades.
Address: P.O. Box 130441, Houston, TX 77223-0441, Contact: John S. Dolney, Phone: (713) 527-0152.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/7/89).
Abatement Worker Refresher Course (contingent from 11/7/89).

(63)(a) *Training Provider:* Texas Tech University.
Address: P.O. Box 4369, Lubbock, TX 79409, Contact: Paul Cotter, Phone: (806) 742-3876.
(b) *Approved Courses:*
Abatement Worker (full from 6/1/90).
Abatement Worker Refresher Course (contingent from 11/7/89).
Abatement Worker Refresher Course (full from 11/14/90).
Contractor/Supervisor (contingent from 10/31/89).
Contractor/Supervisor (full from 6/8/90).
Contractor/Supervisor Refresher Course (contingent from 11/7/89).
Contractor/Supervisor Refresher Course (full from 11/15/90).

(64)(a) *Training Provider:* The Institute of Environmental Training.
Address: P.O. Box 171161, San Antonio, TX 78217, Contact: Gene Walker, Phone: (512) 622-8438.
(b) *Approved Courses:*
Abatement Worker (contingent from 7/27/88).
Abatement Worker (full from 9/17/90).
Abatement Worker Refresher Course (contingent from 8/17/89).
Contractor/Supervisor (contingent from 10/20/88).
Contractor/Supervisor (full from 9/19/90).
Contractor/Supervisor Refresher Course (contingent from 8/8/89).
Inspector/Management Planner (contingent from 8/24/89).

(65)(a) *Training Provider:* Tulane University, School of Public Health & Tropical Medicine, Dept. of Environmental Health Sciences.
Address: 1430 Tulane Ave., New Orleans, LA 70112, Contact: Shau-Wong-Chang, Phone: (504) 588-5374.
(b) *Approved Courses:*
Contractor/Supervisor (interim from 3/17/87 to 9/14/87).
Contractor/Supervisor (full from 9/15/87).
Contractor/Supervisor Refresher Course (contingent from 8/1/89).
Inspector/Management Planner (contingent from 5/20/88).
Inspector/Management Planner Refresher Course (contingent from 8/1/89).

(66)(a) *Training Provider:* U.S. Analytical, Inc.
Address: P.O. Box 801, Abilene, TX 79604, Contact: Keith Davis, Phone: (915) 698-3293.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/13/89).
Abatement Worker Refresher Course (contingent from 1/5/89).
Contractor/Supervisor (contingent from 2/13/89).

(67)(a) *Training Provider:* U.S. Environmental Services.
Address: 2621 Cullen St., Ft. Worth, TX 76107, Contact: Sandra Liebenberg, Phone: (817) 429-9400.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/8/90).
Abatement Worker Refresher Course (contingent from 1/8/90).

(68)(a) *Training Provider:* University of Arkansas at Little Rock Biology Dept.
Address: 33rd & University, Little Rock, AR 72204, Contact: Phyllis Moore, Phone: (501) 569-3270.
(b) *Approved Courses:*
Inspector/Management Planner (contingent from 8/18/89).
Inspector/Management Planner (full from 6/15/90).
Inspector/Management Planner Refresher Course (contingent from 6/20/89).

(69)(a) *Training Provider:* University of Arkansas at Little Rock, Labor Education Program.
Address: 2801 South University, Little Rock, AR 72204, Contact: James E. Nickles, Phone: (501) 569-8483.
(b) *Approved Courses:*
Inspector/Management Planner (contingent from 9/14/88).
Inspector/Management Planner Refresher Course (contingent from 9/12/88).

(70)(a) *Training Provider:* University of New Mexico, The Environmental Training Center Division of Continuing Education.
Address: 1634 University Blvd. NE., Albuquerque, NM 87131, Contact: Correz Williams, Phone: (505) 277-9060.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/4/89).
Abatement Worker Refresher Course (contingent from 10/5/89).
Contractor/Supervisor (contingent from 6/16/85).
Contractor/Supervisor Refresher Course (contingent from 10/5/89).
Inspector/Management Planner (contingent from 9/19/89).
Inspector/Management Planner Refresher Course (contingent from 10/6/89).

(71)(a) *Training Provider:* University of Texas Health Center at TYLER.
Address: P.O. Box 2003, Tyler, TX 75710, Contact: Ronald F. Dodson, Phone: (214) 877-7877.
(b) *Approved Courses:*
Abatement Worker (full from 4/14/88).
Abatement Worker Refresher Course (full from 10/27/88).
Contractor/Supervisor (full from 3/7/88).
Contractor/Supervisor Refresher Course (full from 10/27/88).
Inspector/Management Planner (contingent from 3/21/88).
Inspector/Management Planner (full from 4/15/88).
Inspector/Management Planner Refresher Course (full from 10/27/88).

(72)(a) *Training Provider:* University of Texas at Arlington Civil Engineering Dept.
Address: Box 19308, Arlington, TX 76019, Contact: Vic Argento, Phone: (817) 273-3694.
(b) *Approved Courses:*

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Contractor/Supervisor (full from 7/14/86).
Contractor/Supervisor Refresher Course (full from 9/26/88).
Inspector/Management Planner (full from 10/19/87).
Inspector/Management Planner Refresher Course (full from 9/26/88).

(73)(a) *Training Provider:* Veltmann Engineering.

Address: Midland Air Park, P.O. Box 50741, Midland, TX 79710, Contact: Clyde Veltmann, Phone: (915) 683-1874.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/27/88).
Contractor/Supervisor (contingent from 7/27/88).
Contractor/Supervisor Refresher Course (contingent from 8/8/88).

(74)(a) *Training Provider:* Young Insulation Group of Amarillo, Inc.

Address: P.O. Box 5088, Amarillo, TX 79117, Contact: Beaune E. Pare, Phone: (806) 857-3586.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/27/88).
Abatement Worker Refresher Course (contingent from 7/27/88).

REGION VII – Kansas City, KS

Regional Asbestos Coordinator: Wolfgang Brandner, EPA, Region VII, (ARTX), 726 Minnesota Ave., Kansas City, KS 66101. (913) 551-7381, (FTS) 551-7381.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region VII training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* AEROSTAT Environmental Engineering Corporation.

Address: Box 3096, Lawrence, KS 66046, Contact: Joseph Stimac, Phone: (913) 749-4747.

(b) *Approved Courses:*

Abatement Worker (full from 5/9/88).
Abatement Worker Refresher Course (contingent from 5/5/89).
Abatement Worker Refresher Course (full from 8/16/89).
Contractor/Supervisor (full from 5/9/88).
Inspector/Management Planner (contingent from 3/14/88).
Inspector/Management Planner (full from 1/23/89).
Inspector/Management Planner Refresher Course (contingent from 1/13/89).
Inspector/Management Planner Refresher Course (full from 2/14/89).

(2)(a) *Training Provider:* Abatement Project Training.

Address: P.O. Box 4372, Kansas City, KS 66104, Contact: Virginia Ireton, Phone: (913) 788-3040.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/15/88).
Abatement Worker (full from 4/27/89).
Abatement Worker Refresher Course (contingent from 3/27/89).
Abatement Worker Refresher Course (full from 4/29/89).
Contractor/Supervisor (contingent from 3/23/89).
Contractor/Supervisor (full from 4/28/89).
Contractor/Supervisor Refresher Course (contingent from 6/21/89).
Contractor/Supervisor Refresher Course (full from 1/8/90).

(3)(a) *Training Provider:* Accredited Project Design Environmental Management.

Address: 9636 S.W. Wanamaker Rd., Wakarusa, KS 66549-9609, Contact: Richard H. Pointer, Phone: (913) 256-2003.

(b) *Approved Courses:*

Abatement Worker (contingent from 11/13/89).
Abatement Worker (full from 2/8/90).
Abatement Worker Refresher Course (contingent from 2/21/90).
Contractor/Supervisor (contingent from 11/16/89).
Contractor/Supervisor (full from 2/8/90).
Contractor/Supervisor Refresher Course (contingent from 2/15/90).
Inspector/Management Planner (contingent from 11/16/89).
Inspector/Management Planner (full from 1/22/90).
Inspector/Management Planner Refresher Course (contingent from 2/16/90).

(4)(a) *Training Provider:* American Asbestos Training Center, Ltd.

Address: 121 East Grand, Monticello, IA 52310, Contact: Steve Intlekofer, Phone: (319) 465-5786.

(b) *Approved Courses:*

Abatement Worker (full from 6/27/88).
Abatement Worker Refresher Course (contingent from 6/23/89).
Abatement Worker Refresher Course (full from 8/28/89).
Contractor/Supervisor (full from 6/27/88).
Contractor/Supervisor Refresher Course (contingent from 6/23/89).
Contractor/Supervisor Refresher Course (full from 6/28/89).
Inspector/Management Planner (contingent from 10/26/88).
Inspector/Management Planner (full from 11/18/88).
Inspector/Management Planner Refresher Course (contingent from 11/10/89).
Inspector/Management Planner Refresher Course (full from 11/16/89).

(5)(a) *Training Provider:* Asbestos Consulting Testing (ACT).

Address: 14953 West 101st Ter., Lenexa, KS 66215, Contact: Jim Pickel, Phone: (913) 492-1337.

(b) *Approved Courses:*

Abatement Worker (full from 1/25/89).
Abatement Worker Refresher Course (full from 1/6/89).
Contractor/Supervisor (full from 1/25/88).
Contractor/Supervisor Refresher Course (full from 1/6/89).

(6)(a) *Training Provider:* Baird Scientific, Inc.

Address: 221 West Fourth St., P.O. Box 842, Carthage, MO 64836, Contact: Timmothy Redfern, Phone: (417) 358-5567.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/26/89).
Abatement Worker (full from 10/19/89).
Abatement Worker Refresher Course (contingent from 7/3/90).
Contractor/Supervisor (contingent from 9/26/89).
Contractor/Supervisor (full from 10/19/89).
Contractor/Supervisor Refresher Course (contingent from 7/31/90).

(7)(a) *Training Provider:* CHART Services, Ltd.

Address: 4725 Merle Hay Rd., Suite 214, Des Moines, IA 50322, Contact: Mary A. Finn, Phone: (515) 276-3642.

(b) *Approved Courses:*

Abatement Worker (full from 11/17/87).
Abatement Worker Refresher Course (full from 10/17/88).
Contractor/Supervisor (full from 11/17/87).
Contractor/Supervisor Refresher Course (full from 10/17/88).
Inspector/Management Planner (full from 2/22/88).
Inspector/Management Planner Refresher Course (full from 11/28/88).

(8)(a) *Training Provider:* Construction Industry Laborers' Training Institute for Eastern Missouri.

Address: Route 1, Box 70 H, High Hill, MO 63350, Contact: Jerald A. Pelker, Phone: (314) 585-2391.

(b) *Approved Courses:*

Abatement Worker (full from 1/19/88).

Abatement Worker Refresher Course (contingent from 5/16/89).
Abatement Worker Refresher Course (full from 5/31/89).

(9)(a) *Training Provider:* Construction Laborers Building Corp.

Address: 11000 North 72nd St., Omaha, NE 68122, Contact: Leonard Schaffer, Sr., Phone: (402) 572-1470.

(b) *Approved Course:*

Abatement Worker (full from 11/2/87).

(10)(a) *Training Provider:* Educational Innovations.

Address: 23 West 3rd St., Lee's Summit, MO 64063, Contact: JoAnn Onwiler, Phone: (816) 525-6911.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/11/89).
Abatement Worker (full from 5/2/89).
Abatement Worker Refresher Course (contingent from 3/29/89).
Abatement Worker Refresher Course (full from 8/2/89).
Contractor/Supervisor (contingent from 4/11/89).
Contractor/Supervisor (full from 5/2/89).
Contractor/Supervisor Refresher Course (contingent from 3/29/89).
Contractor/Supervisor Refresher Course (full from 8/2/89).
Inspector/Management Planner Refresher Course (contingent from 2/4/91).
Project Designer Refresher Course (contingent from 6/21/89).
Project Designer Refresher Course (full from 7/31/89).

(11)(a) *Training Provider:* Enviro-Impact Inspections, Inc.

Address: 1515 North Warson, Suite 213, St. Louis, MO 63132, Contact: Denis Boles, Phone: not available.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/8/88 to 11/9/90 only).
Contractor/Supervisor (contingent from 3/8/88 to 11/9/90 only).

(12)(a) *Training Provider:* Environmental Salvage, Ltd.

Address: 4930 South 23rd St., Omaha, NE 68107, Contact: John Deseck, Phone: (402) 733-2595.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/12/89).
Abatement Worker (full from 2/16/89).
Abatement Worker Refresher Course (contingent from 6/22/89).
Abatement Worker Refresher Course (full from 8/1/89).
Contractor/Supervisor (contingent from 1/12/89).
Contractor/Supervisor (full from 2/16/89).
Contractor/Supervisor Refresher Course (contingent from 6/22/89).
Contractor/Supervisor Refresher Course (full from 8/1/89).

(13)(a) *Training Provider:* Environmental Technology, Inc. (ETI).

Address: 4315 Merriam Dr., Overland Park, KS 66203, Contact: Gene Dettmar, Phone: (913) 236-5040.

(b) *Approved Courses:*

Abatement Worker (full from 2/29/88).
Abatement Worker Refresher Course (contingent from 4/26/89).
Abatement Worker Refresher Course (full from 7/18/89).

(14)(a) *Training Provider:* Flint Hills Area Vocational-Technical School.

Address: 3301 West 18th Ave., Emporia, KS 66801, Contact: Jim Krueger, Phone: (316) 342-6404.

(b) *Approved Course:*

Abatement Worker (full from 3/7/88).

(15)(a) *Training Provider:* General Services Administration (GSA)- Region 6 Safety & Environmental Management Div.

Address: 1500 East Bannister Rd., Kansas City, MO 64131-3088, Contact: Sharon Kersey, Phone: (816) 926-5318.

(b) *Approved Courses:*

Inspector/Management Planner (full from 5/16/88).
Inspector/Management Planner Refresher Course (contingent from 7/18/89).
Inspector/Management Planner Refresher Course (full from 8/29/89).

(16)(a) *Training Provider:* Greater Kansas City Laborers Training Fund.

Address: 8944 Kaw Dr., Kansas City, KS 66111, Contact: James D. Barnett, Phone: (913) 441-6100.

(b) *Approved Courses:*

Abatement Worker (full from 2/1/88).
Abatement Worker Refresher Course (contingent from 6/19/89).
Abatement Worker Refresher Course (full from 7/19/89).
Contractor/Supervisor (full from 5/2/88).
Contractor/Supervisor Refresher Course (contingent from 6/19/89).
Contractor/Supervisor Refresher Course (full from 7/20/89).

(17)(a) *Training Provider:* Hazard Control Training Enterprises, Inc.

Address: P.O. Box 20594, Wichita, KS 67208, Contact: Karen Alexander, Phone: not available.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/19/88 to 12/7/88 only).
Contractor/Supervisor (contingent from 10/19/88 to 12/7/88 only).

(18)(a) *Training Provider:* Hazardous Materials Training & Research Institute.

Address: 306 West River Dr., Davenport, IA 52801-1221, Contact: Kirk Barkdoll, Phone: (319) 322-5015.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/6/89).
Abatement Worker (full from 4/13/89).
Contractor/Supervisor (contingent from 6/6/89).
Contractor/Supervisor (full from 7/21/89).

(19)(a) *Training Provider:* Insulators & Asbestos Workers Midwest States Health & Training Council.

Address: Rural Route 2, Wahoo, NE 68066, Contact: Ray Richmond, Phone: (402) 443-4810.

(b) *Approved Courses:*

Abatement Worker (full from 6/28/88).
Abatement Worker Refresher Course (contingent from 4/4/89).
Abatement Worker Refresher Course (full from 4/24/89).
Contractor/Supervisor (full from 6/28/88).
Contractor/Supervisor Refresher Course (contingent from 4/4/89).
Contractor/Supervisor Refresher Course (full from 4/24/89).

(20)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local No.1.

Address: 3325 Hallenberg Dr., St. Louis, MO 63044, Contact: James M. Hagen, Phone: (314) 291-7399.

(b) *Approved Courses:*

Abatement Worker (full from 6/6/88).
Abatement Worker Refresher Course (contingent from 6/28/89).
Abatement Worker Refresher Course (full from 6/30/89).
Contractor/Supervisor (full from 9/16/88).
Contractor/Supervisor Refresher Course (contingent from 8/14/89).
Contractor/Supervisor Refresher Course (full from 8/18/89).

(21)(a) *Training Provider:* Iowa Dept. of Education.

Address: Grimes State Office Bldg., Des Moines, IA 50319, Contact: C. Milt Wilson, Phone: (515) 281-4743.

(b) *Approved Course:*

Inspector/Management Planner (full from 4/4/88).

(22)(a) *Training Provider:* Iowa Laborers District Council Training Fund.

Address: 5806 Meredith Dr., Suite B, Des Moines, IA 50322, Contact: Jack G. Jones, Phone: (515) 270-6965.

(b) *Approved Courses:*

Abatement Worker (full from 2/22/88).

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Abatement Worker Refresher Course (contingent from 11/30/88).
Abatement Worker Refresher Course (full from 11/14/89).
Contractor/Supervisor (contingent from 10/14/88).
Contractor/Supervisor (full from 12/6/89).

(23)(a) *Training Provider:* Kansas Construction Laborers' Training Trust Fund.

Address: 2430 Marlatt Ave., Manhattan, KS 66502, Contact: Fred Tipton, Phone: (913) 267-0140.

(b) *Approved Courses:*

Abatement Worker (full from 1/5/88).
Abatement Worker Refresher Course (contingent from 6/19/89).
Abatement Worker Refresher Course (full from 7/19/89).
Contractor/Supervisor (full from 5/2/88).
Contractor/Supervisor Refresher Course (contingent from 6/19/89).
Contractor/Supervisor Refresher Course (full from 7/20/89).

(24)(a) *Training Provider:* Kansas State University.

Address: Division of Facilities Management, Dykstra Hall, Manhattan, KS 66506, Contact: Robert D. Williams, Phone: (913) 532-6566.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/7/89).
Abatement Worker (full from 2/8/90).
Abatement Worker Refresher Course (contingent from 1/3/90).
Abatement Worker Refresher Course (full from 2/8/90).

(25)(a) *Training Provider:* Living Word College.

Address: 2750 McKelvey Rd., St. Louis, MO 63043, Contact: Donald C. Femmer, Phone: (314) 291-2749.

(b) *Approved Course:*

Inspector/Management Planner (Approval Revoked 5/6/88).

(26)(a) *Training Provider:* MI-TON, Inc.

Address: 205 W. Walnut, Springfield, MO 65806, Contact: Barry Mills, Phone: (417) 831-4647.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/14/88).
Abatement Worker (full from 5/15/89).
Abatement Worker Refresher Course (contingent from 4/16/90).
Abatement Worker Refresher Course (full from 5/18/90).
Contractor/Supervisor (contingent from 4/14/89).
Contractor/Supervisor (full from 5/15/89).
Contractor/Supervisor Refresher Course (contingent from 4/17/90).
Contractor/Supervisor Refresher Course (full from 5/11/90).
Inspector/Management Planner (full from 3/14/90).
Inspector/Management Planner Refresher Course (contingent from 3/30/89).
Inspector/Management Planner Refresher Course (full from 4/3/89).

(27)(a) *Training Provider:* Maple Woods Community College.

Address: 10771 Ambassador Dr., Kansas City, MO 64153, Contact: James C. Lauer, Phone: (816) 891-6500.

(b) *Approved Courses:*

Abatement Worker (full from 2/1/88).
Abatement Worker Refresher Course (full from 1/13/89).
Contractor/Supervisor (full from 3/28/88).
Contractor/Supervisor Refresher Course (full from 1/13/89).
Inspector/Management Planner (contingent from 4/20/88).
Inspector/Management Planner (full from 5/2/88).
Inspector/Management Planner Refresher Course (contingent from 7/27/89).
Inspector/Management Planner Refresher Course (full from 7/28/89).

(28)(a) *Training Provider:* Mayhew Environmental Training Associates, Inc., (META).

Address: P.O. Box 1961, Lawrence, KS 66044, Contact: Brad Mayhew or Robyn Harris, Phone: (800) 444-6382.

(b) *Approved Courses:*

Abatement Worker (full from 10/20/87).
Abatement Worker Refresher Course (full from 11/14/88).
Contractor/Supervisor (full from 10/20/87).
Contractor/Supervisor Refresher Course (full from 11/14/88).
Inspector/Management Planner (full from 6/8/88).
Inspector/Management Planner Refresher Course (full from 1/30/89).
Project Designer Refresher Course (contingent from 2/6/91).
Project Designer Refresher Course (full from 2/4/91).

(29)(a) *Training Provider:* Midwest Environmental Testing & Training, Inc.

Address: 1566 N.W. 18th St., Blue Springs, MO 64105, Contact: Steve Minshall, Phone: (816) 229-3853.

(b) *Approved Courses:*

Abatement Worker (full from 5/9/88 to 6/5/89 only).
Abatement Worker Refresher Course (contingent from 4/26/89 to 6/5/89 only).
Contractor/Supervisor (full from 5/9/88 to 6/5/89 only).
Contractor/Supervisor Refresher Course (contingent from 4/85/89 to 6/5/89 only).

(30)(a) *Training Provider:* National Asbestos Training Center, University of Kansas.

Address: 6330 College Blvd., Suite 315, Overland Park, KS 66211-1506, Contact: Karen Wilson, Phone: (913) 491-6181.

(b) *Approved Courses:*

Abatement Worker (full from 7/27/87).
Abatement Worker Refresher Course (contingent from 10/5/88).
Abatement Worker Refresher Course (full from 9/26/89).
Contractor/Supervisor (interim from 6/1/85 to 7/26/87).
Contractor/Supervisor (full from 7/27/87).
Contractor/Supervisor Refresher Course (contingent from 10/5/88).
Contractor/Supervisor Refresher Course (full from 1/25/89).
Inspector/Management Planner (full from 10/26/87).
Inspector/Management Planner Refresher Course (contingent from 10/5/88).
Inspector/Management Planner Refresher Course (full from 1/25/89).

(31)(a) *Training Provider:* Occu-Tec, Inc.

Address: 6501 East Commerce Ave., Suite 208, Kansas City, MO 64120, Contact: Duncan Heydon, Phone: (816) 231-5500.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/29/90).
Abatement Worker (full from 7/26/90).
Abatement Worker Refresher Course (contingent from 1/29/90).
Abatement Worker Refresher Course (full from 4/2/90).
Contractor/Supervisor (contingent from 1/29/90).
Contractor/Supervisor (full from 7/26/90).
Contractor/Supervisor Refresher Course (contingent from 1/28/90).
Contractor/Supervisor Refresher Course (full from 4/2/90).
Inspector/Management Planner (contingent from 1/29/90).
Inspector/Management Planner (full from 12/12/90).
Inspector/Management Planner Refresher Course (contingent from 1/29/90).
Inspector/Management Planner Refresher Course (full from 4/2/90).

(32)(a) *Training Provider:* PS&H Inc.

Address: 1610 Craig Rd., Suite 114, St. Louis, MO 63146, Contact: Carol E. Hoag, Phone: (314) 275-7733.

(b) *Approved Courses:*

Abatement Worker (full from 11/28/88).
Abatement Worker Refresher Course (contingent from 9/14/89).
Abatement Worker Refresher Course (full from 11/2/89).
Contractor/Supervisor (full from 11/28/88).
Contractor/Supervisor Refresher Course (contingent from 9/14/89).
Contractor/Supervisor Refresher Course (full from 11/2/89).
Inspector/Management Planner (full from 6/23/88).
Inspector/Management Planner Refresher Course (contingent from 1/19/89).
Inspector/Management Planner Refresher Course (full from 3/2/89).

(33)(a) *Training Provider:* Performance Abatement Services, Inc.

Address: 14601 West 99th St., P.O. Box 19328, Lenexa, KS 66215, Contact: Tony Chiaverini, Phone: (913) 888-2423.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 7/6/89).
Contractor/Supervisor (full from 7/27/89).

(34)(a) *Training Provider:* Professional Service Industries, Inc.

Address: 4840 West 15th St., Lawrence, KS 66049, Contact: Margaret Maninger, Phone: (800) 346-2860.

(b) *Approved Courses:*

Abatement Worker (full from 8/17/87).
Abatement Worker Refresher Course (contingent from 9/19/88).
Abatement Worker Refresher Course (full from 10/19/88).
Contractor/Supervisor (full from 8/17/87).
Contractor/Supervisor Refresher Course (contingent from 9/19/88).
Contractor/Supervisor Refresher Course (full from 10/20/88).
Inspector/Management Planner (full from 8/17/87).
Inspector/Management Planner Refresher Course (full from 9/19/88).
Project Designer (full from 8/17/87).
Project Designer Refresher Course (contingent from 9/19/88).
Project Designer Refresher Course (full from 12/20/88).

(35)(a) *Training Provider:* Ramsey - Schilling Consulting Group, Inc.

Address: 503 Main, Belton, MO 64012, Contact: George McDowell, Phone: (816) 331-0002.

(b) *Approved Course:*

Inspector (contingent from 1/30/90).

(36)(a) *Training Provider:* Roth Asbestos Consultants, Inc.

Address: 1900 West 47th Pl., Westwood, KS 66205, Contact: Donald J. Welsh, Phone: (913) 831-4795.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/9/89).
Abatement Worker (full from 3/13/89).
Abatement Worker Refresher Course (contingent from 6/15/89).
Abatement Worker Refresher Course (full from 7/24/89).
Contractor/Supervisor (contingent from 5/16/89).
Contractor/Supervisor (full from 7/20/89).
Contractor/Supervisor Refresher Course (contingent from 5/16/89).
Contractor/Supervisor Refresher Course (full from 7/24/89).
Inspector/Management Planner Refresher Course (contingent from 1/19/89).
Inspector/Management Planner Refresher Course (full from 1/23/89).

(37)(a) *Training Provider:* Ryckman's Emergency Action & Consulting Team (REACT).

Address: 2208 Welsch Industrial Ct., St. Louis, MO 63146, Contact: Nicolaus P. Neuman, Phone: (800) 325-1398.

(b) *Approved Courses:*

Abatement Worker (full from 7/26/88).
Abatement Worker Refresher Course (contingent from 4/26/89).
Abatement Worker Refresher Course (full from 8/3/89).
Contractor/Supervisor (full from 7/26/88).
Contractor/Supervisor Refresher Course (contingent from 4/26/89).
Contractor/Supervisor Refresher Course (full from 8/4/89).

(38)(a) *Training Provider:* University of Missouri-Columbia Environmental Health and Safety.

Address: Research Park Development Bldg., Columbia, MO 65211, Contact: Brent S. Mattox, Phone: (314) 882-7018.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 8/8/90).
Contractor/Supervisor (full from 8/23/90).

REGION VIII – Denver, CO

Regional Asbestos Coordinator: David Combs, (8AT-TS), EPA, Region VIII, 1 Denver Place, 999-18th St., Suite 500, Denver, CO 80202-2413. (303) 293-1442, (FTS) 330-1442.

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region VIII training courses and contact points for each, are as follows.

(1)(a) *Training Provider:* Acme Asbestos Removal.

Address: 9101 Pearl St., Suite 307, Thornton, CO 80229, Contact: Eugene Aragon, Phone: (303) 450-5026.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/26/89).
Abatement Worker (full from 11/22/89).
Abatement Worker Refresher Course (contingent from 5/31/89).
Contractor/Supervisor (contingent from 7/26/89).
Contractor/Supervisor (full from 11/22/89).

(2)(a) *Training Provider:* Asbestos Training & Supply.

Address: 504 Saddle Dr., Cheyenne, WY 82009, Contact: F. Gerald Blackwell, Phone: (307) 634-6858.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/2/89).
Abatement Worker (full from 5/4/90).

(3)(a) *Training Provider:* Chen-Northern, Inc.

Address: P.O. Box 30615, Billings, MT 59107, Contact: Kathleen A. Smit, Phone: (406) 248-9161.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/1/87).
Abatement Worker (full from 1/11/90).
Abatement Worker Refresher Course (contingent from 2/16/89).
Abatement Worker Refresher Course (full from 11/8/90).
Contractor/Supervisor (contingent from 10/31/88).
Contractor/Supervisor (full from 1/11/90).
Contractor/Supervisor Refresher Course (contingent from 5/31/89).
Contractor/Supervisor Refresher Course (full from 11/9/90).

(4)(a) *Training Provider:* Colorado Carpenters Statewide Joint Apprenticeship Educational & Training Committee.

Address: 4290 Holly St., Denver, CO 80216, Contact: Manuel Rodriquez, Jr., Phone: (303) 393-6060.

(b) *Approved Courses:*

Abatement Worker (contingent from 12/1/88).
Abatement Worker (full from 12/19/88).

(5)(a) *Training Provider:* Colorado Laborers' & Contractors' Education & Training Fund.

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Address: 10505 Havana, Brighton, CO 80601, Contact: James Zancanaro, Phone: (303) 287-3116.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/ 3/89).

Abatement Worker (full from 2/16/89).

(6)(a) *Training Provider:* Colorado State University Dept. of Industrial Sciences.

Address: Fort Collins, CO 80523, Contact: Birgit Wolff, Phone: (303) 491-7240.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/ 23/88).

Abatement Worker (full from 9/22/90).

Abatement Worker Refresher Course (contingent from 12/9/88).

Abatement Worker Refresher Course (full from 4/6/90).

Contractor/Supervisor (contingent from 12/29/88).

Contractor/Supervisor (full from 9/22/ 90).

Contractor/Supervisor Refresher Course (contingent from 12/9/88).

Contractor/Supervisor Refresher Course (full from 4/6/90).

Inspector/Management Planner (contingent from 3/14/88).

Inspector/Management Planner (full from 5/23/88).

Inspector/Management Planner Refresher Course (contingent from 12/ 9/88).

Inspector/Management Planner Refresher Course (full from 1/17/89).

(7)(a) *Training Provider:* Colorado Training Institute.

Address: 10255 E. 25th Ave., Suite 13, Aurora, CO 80010, Contact: Carlos M. Guerra, Phone: (303) 367-8986.

(b) *Approved Courses:*

Abatement Worker (contingent from 10/ 31/88).

Abatement Worker (full from 9/19/90).

Abatement Worker Refresher Course (contingent from 12/29/88).

Contractor/Supervisor (contingent from 10/31/88).

Contractor/Supervisor (full from 9/20/ 90).

Contractor/Supervisor Refresher Course (contingent from 12/29/88).

(8)(a) *Training Provider:* Energy Insulation, Inc. (EII).

Address: P.O. Box 1996, Casper, WY 82602, Contact: David K. Fox, Phone: (307) 473-1247.

(b) *Approved Courses:*

Abatement Worker (contingent from 5/ 18/88 to 8/1/90 only).

Abatement Worker (full from 8/22/88 to 8/1/90 only).

(9)(a) *Training Provider:* Engineering Extension College of Engineering South Dakota State University.

Address: Box 2218, Brookings, SD 57007-0597, Contact: James Ceglian, Phone: (605) 688-4101.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 5/18/88).

Inspector/Management Planner (contingent from 5/18/88).

(10)(a) *Training Provider:* Envir-o-Tech.

Address: 300 Moore Ln., Billings, MT 59102, Contact: Leonard Cranford, Phone: (406) 252-7538.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/ 13/88).

Abatement Worker (full from 7/6/88).

(11)(a) *Training Provider:* Front Range Community College.

Address: 3645 West 112 Ave., Westminster, CO 80030, Contact: Gwen Burton, Phone: (303) 466-8811.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/ 13/88).

Abatement Worker (full from 4/7/89).

Abatement Worker Refresher Course (contingent from 2/28/89).

Contractor/Supervisor (contingent from 2/28/89).

Contractor/Supervisor (full from 4/7/ 89).

Contractor/Supervisor Refresher Course (contingent from 2/28/89).

Contractor/Supervisor Refresher Course (full from 7/27/90).

Inspector/Management Planner (contingent from 2/28/89).

Inspector/Management Planner (full from 1/26/90).

Inspector/Management Planner Refresher Course (contingent from 2/ 28/89).

(12)(a) *Training Provider:* HWS Technologies, Inc.

Address: 9101 East Kenyon Ave., Suite 1600, Denver, CO 80237, Contact: William C. Oleskevich, Phone: (303) 771-6868.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/ 28/89).

Abatement Worker (full from 4/7/89).

Abatement Worker Refresher Course (contingent from 2/28/89).

Abatement Worker Refresher Course (full from 6/29/89).

Contractor/Supervisor (contingent from 2/28/89).

Contractor/Supervisor (full from 4/7/ 89).

Contractor/Supervisor Refresher Course (contingent from 2/28/89).

Contractor/Supervisor Refresher Course (full from 6/29/89).

Inspector/Management Planner (contingent from 2/28/89).

Inspector/Management Planner Refresher Course (contingent from 2/ 28/89).

Inspector/Management Planner Refresher Course (full from 6/29/89).

(13)(a) *Training Provider:* Hager Laboratories, Inc.

Address: 5930 McIntire St., P.O. Box 4012, Golden, CO 80403, Contact: Charles Metzger & D. Robinson, Phone: (303) 278-3400.

(b) *Approved Courses:*

Abatement Worker (full from 3/28/88).

Abatement Worker Refresher Course (contingent from 10/7/88).

Abatement Worker Refresher Course (full from 4/26/89).

Contractor/Supervisor (full from 3/28/ 88).

Contractor/Supervisor Refresher Course (contingent from 10/7/88).

Contractor/Supervisor Refresher Course (full from 1/25/89).

Inspector/Management Planner (contingent from 4/20/88).

Inspector/Management Planner (full from 5/2/88).

Inspector/Management Planner Refresher Course (contingent from 10/ 7/88).

Inspector/Management Planner Refresher Course (full from 12/6/89).

(14)(a) *Training Provider:* Industrial Health, Inc. (IHI).

Address: 640 East Wilmington Ave., Salt Lake City, UT 84106, Contact: Donald E. Marano, Phone: (801) 466-2223.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/ 4/89).

Abatement Worker (full from 11/13/89).

Abatement Worker Refresher Course (contingent from 6/15/89).

Contractor/Supervisor (contingent from 4/22/88).

Contractor/Supervisor (full from 11/18/ 89).

Contractor/Supervisor Refresher Course (contingent from 4/24/89).

Contractor/Supervisor Refresher Course (full from 11/2/90).

Inspector/Management Planner (contingent from 2/28/89).

Inspector/Management Planner (full from 4/17/89).

Inspector/Management Planner Refresher Course (contingent from 12/ 29/88).

Inspector/Management Planner Refresher Course (full from 1/6/89).

Project Designer (contingent from 5/23/ 88).

Project Designer (full from 1/11/91).

Project Designer Refresher Course (contingent from 4/24/89).

(15)(a) *Training Provider:* International Association of Heat & Frost Insulators & Asbestos Workers Local Union No. 28.

Address: 360 Acoma St., Suite 216, Denver, CO 80223, Contact: Chet Graham or Pat Pfeifer, Phone: (303) 778-8602.

(b) *Approved Courses:*

Abatement Worker (contingent from 2/ 28/89).

Abatement Worker (full from 4/28/89).

Abatement Worker Refresher Course (full from 7/21/89).

(16)(a) *Training Provider:* Laborers AGC Training Program for Montana.

Address: 3100 Horseshoe Bend Rd., Helena, MT 59601, Contact: Daniel F. Holland, Phone: (406) 442-0964.

(b) *Approved Course:*

Abatement Worker (contingent from 9/ 19/88).

(17)(a) *Training Provider:* Major Safety Instructional Services.

Address: 12729 West Belmont Ave., Littleton, CO 80127, Contact: Carrie Sare, Phone: (303) 978-0325.

(b) *Approved Courses:*

Abatement Worker (contingent from 1/ 28/88).

Abatement Worker (full from 9/15/88).

Abatement Worker Refresher Course (contingent from 1/16/89).

Contractor/Supervisor (contingent from 4/14/88).

Contractor/Supervisor (full from 9/5/ 88).

Contractor/Supervisor Refresher Course (contingent from 1/16/89).

Inspector/Management Planner (contingent from 1/2/88).

Inspector/Management Planner (full from 3/27/89).

Inspector/Management Planner Refresher Course (contingent from 1/ 18/89).

Inspector/Management Planner Refresher Course (full from 1/12/90).

Project Designer (contingent from 1/26/ 88).

Project Designer Refresher Course (contingent from 1/16/89).

(18)(a) *Training Provider:* Midwest Asbestos Consultants, Inc. (MAC).

Address: 219 23rd St. North, Box 1708, Fargo, ND 58107, Contact: Jerry Day, Phone: (701) 280-2286.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/ 11/88).

Abatement Worker (full from 8/23/89).

Abatement Worker Refresher Course (contingent from 7/31/89).

Abatement Worker Refresher Course (full from 8/24/89).

(19)(a) *Training Provider:* Misers Inspection & Training, Inc.

Address: 1600 South Cherokee St., Denver, CO 80223, Contact: Michael E. DiRito, Phone: (303) 761-0367.

(b) *Approved Courses:*

Abatement Worker (contingent from 6/ 17/88).

Abatement Worker (full from 7/5/88).

Abatement Worker Refresher Course (contingent from 11/14/88).

Abatement Worker Refresher Course (full from 1/27/89).

Contractor/Supervisor (contingent from 6/17/88).

Contractor/Supervisor (full from 7/5/ 88).

Contractor/Supervisor Refresher Course (contingent from 11/14/88).

Contractor/Supervisor Refresher Course (full from 1/27/89).

(20)(a) *Training Provider:* NATEC International, Inc.

Address: 2761 West Oxford Ave., No. 7, Englewood, CO 80110, Contact: Lester Ablin, Phone: (303) 781-0422.

(b) *Approved Courses:*

Abatement Worker (contingent from 4/ 15/88 to 6/1/90 only).

Inspector/Management Planner (contingent from 6/2/89 to 6/1/90 only).

(21)(a) *Training Provider:* National Education Program for Asbestos (NEPA).

Address: 2863 West 8750 S., West Jordan, UT 84088, Contact: Mark A. Kirk, Phone: (801) 565-1400.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/ 6/89).

Abatement Worker (full from 6/22/89).

Abatement Worker Refresher Course (contingent from 5/22/89).

Contractor/Supervisor (contingent from 5/22/89).

Contractor/Supervisor (full from 6/22/ 89).

Contractor/Supervisor Refresher Course (full from 7/3/90).

(22)(a) *Training Provider:* Power Master, Inc.

Address: 13205 Minuteman Drive, Draper, UT 84020, Contact: Brian Welty, Phone: (801) 571-9321.

(b) *Approved Course:*

Abatement Worker (contingent from 6/ 13/88 to 6/22/90 only).

(23)(a) *Training Provider:* Precision Safety & Services, Inc.

Address: 1045 W. Garden of Gods Rd., Unit T, Colorado Springs, CO 80907, Contact: James R. Mapes, Jr., Phone: (719) 593-8596.

(b) *Approved Courses:*

Abatement Worker (contingent from 8/ 11/88).

Abatement Worker (full from 11/2/88).

(24)(a) *Training Provider:* R.S. Christiansen Asbestos Consultant.

Address: 4980 Holladay Blvd., Salt Lake City, UT 84117, Contact: R. S. Christiansen, Phone: (801) 277-2323.

(b) *Approved Courses:*

Abatement Worker (contingent from 7/ 29/88).

Abatement Worker (full from 12/7/88).

(25)(a) *Training Provider:* Survey Management & Design (SMD).

Address: RR 2, Box 85-B, Fargo, ND 58102, Contact: Peter Mehl, Phone: (701) 234-9556.

(b) *Approved Courses:*

Abatement Worker (contingent from 3/ 2/89).

Contractor/Supervisor (contingent from 3/2/89).

Contractor/Supervisor (full from 5/2/ 89).

Inspector/Management Planner (contingent from 9/14/89).

Inspector/Management Planner (full from 10/15/89).

(26)(a) *Training Provider:* The Environmental Training Center.

Address: 2761 W. Oxford Ave., No. 7, Englewood, CO 80110, Contact: Les Ablin, Phone: (303) 781-0422.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/ 21/89).

Abatement Worker (full from 4/27/90).

Contractor/Supervisor (contingent from 9/21/89).

Contractor/Supervisor (full from 4/27/ 90).

(27)(a) *Training Provider:* University of Utah, Rocky Mountain Center for Occupational & Environmental Health.

Address: Dept. of Family & Preventive Medicine, Building 512, Salt Lake City, UT 84112, Contact: Jeffery S. Lee, Phone: (801) 581-5710.

(b) *Approved Courses:*

Abatement Worker (contingent from 9/ 27/88).

Abatement Worker (full from 9/27/88).

Contractor/Supervisor (contingent from 6/1/87).

Contractor/Supervisor (full from 6/1/ 87).

Contractor/Supervisor Refresher Course (contingent from 6/7/88).

Contractor/Supervisor Refresher Course (full from 11/13/88).

Inspector/Management Planner (contingent from 12/23/87).

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Inspector/Management Planner (full from 2/8/88).
Inspector/Management Planner Refresher Course (contingent from 12/9/88).
Inspector/Management Planner Refresher Course (full from 12/14/88).

REGION IX – San Francisco, CA

Regional Asbestos Coordinator: Jo Ann Semones, (A-4-4), EPA, Region IX, 75 Hawthorne St., San Francisco, CA 94105. (415) 744-1112, (FTS) 484-1128.

List of Asbestos Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region IX training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* Ahearn & Associates, Inc.
Address: 4015 N. 44th St., Phoenix, AZ 85018, Contact: Colleen McCarthy, Phone: (602) 840-9446.
(b) *Approved Courses:*
Abatement Worker Refresher Course (contingent from 10/18/89).
Contractor/Supervisor (contingent from 10/18/89).
Contractor/Supervisor Refresher Course (contingent from 10/18/89).
Inspector/Management Planner (contingent from 10/18/89).
Inspector/Management Planner Refresher Course (contingent from 10/18/89).

(2)(a) *Training Provider:* Arizona Carpenters Joint Apprenticeship & Training Committee.
Address: 2625 W. Holly, Phoenix, AZ 85009, Contact: Thomas E. Quine, Phone: (602) 272-6547.
(b) *Approved Course:*
Contractor/Supervisor (contingent from 10/18/89).

(3)(a) *Training Provider:* Arizona Laborers' Joint Training Center.
Address: P.O. Box 565, Chino Valley, AZ 86323, Contact: Bill Hadley, Phone: (602) 636-2532.
(b) *Approved Course:*
Abatement Worker (contingent from 10/18/89).

(4)(a) *Training Provider:* Asbestos C.T.I.
Address: 3619 Duck Creek Dr., Stockton, CA 95215, Contact: Lee Hess, Phone: (209) 942-1818.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/31/89).
Abatement Worker Refresher Course (contingent from 10/31/89).
Contractor/Supervisor (contingent from 10/31/88).
Contractor/Supervisor Refresher Course (contingent from 10/31/89).
Inspector (contingent from 3/21/89).
Inspector Refresher Course (contingent from 10/31/89).

(5)(a) *Training Provider:* Asbestos Training Institute.
Address: 210 S. La Fayette Park Pl., Suite 205, Los Angeles, CA 90057, Contact: Kayode Akinrele, Phone: (213) 252-0166.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/18/89).
Contractor/Supervisor (contingent from 10/18/89).

(6)(a) *Training Provider:* California State University - Sacramento.
Address: 650 University Ave., Suite 101A, Sacramento, CA 95825, Contact: Jackie Branch, Phone: (916) 923-0282.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/18/89).
Abatement Worker Refresher Course (contingent from 12/7/89).
Contractor/Supervisor (contingent from 10/18/89).
Contractor/Supervisor Refresher Course (contingent from 12/7/89).

(7)(a) *Training Provider:* Carpenters 46 Northern California Counties J.A.T.C.
Address: 2350 Santa Rita Rd., Pleasanton, CA 94566-4190, Contact: Hugh Johnson, Phone: (415) 462-9640.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/31/89).
Abatement Worker Refresher Course (contingent from 12/7/89).
Contractor/Supervisor (contingent from 12/1/88).
Contractor/Supervisor Refresher Course (contingent from 12/7/89).

(8)(a) *Training Provider:* Center for Accelerated Learning (CAL Inc.).
Address: P.O. Box 6327, Vacaville, CA 95696-6327, Contact: David Esparza, Phone: (707) 446-7996.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/1/88).
Abatement Worker Refresher Course (contingent from 12/15/88).
Contractor/Supervisor (contingent from 6/1/88).
Contractor/Supervisor Refresher Course (contingent from 12/15/88).
Inspector/Management Planner (contingent from 6/30/88).
Inspector/Management Planner Refresher Course (contingent from 12/7/89).

Project Designer (contingent from 10/18/89).
Project Designer Refresher Course (contingent from 10/18/89).

(9)(a) *Training Provider:* DWC Consulting Co., Inc.
Address: 1250 Pine St., Suite 307, Walnut Creek, CA 94596, Contact: Dan Weathers, Phone: (415) 933-9066.
(b) *Approved Courses:*
Abatement Worker (contingent from 4/3/89).
Abatement Worker Refresher Course (contingent from 10/18/89).
Contractor/Supervisor (contingent from 4/3/89).
Contractor/Supervisor Refresher Course (contingent from 10/18/89).
Inspector/Management Planner (contingent from 4/3/89).
Inspector/Management Planner Refresher Course (contingent from 10/18/89).

(10)(a) *Training Provider:* Dan Napier & Associates.
Address: 15342 Hawthorne Blvd., Suite 207, P.O. Box 1540, Lawndale, CA 90260-6440, Contact: Dan Napier, Phone: (213) 644-1924.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/18/88).
Abatement Worker Refresher Course (contingent from 1/18/89).
Contractor/Supervisor (contingent from 3/27/89).
Contractor/Supervisor Refresher Course (contingent from 1/18/89).
Inspector/Management Planner (contingent from 4/3/89).
Inspector/Management Planner Refresher Course (contingent from 3/30/89).
Project Designer Refresher Course (contingent from 3/30/89).

(11)(a) *Training Provider:* Design for Health.
Address: 1516 W. Redwood St., Suite 104, San Diego, CA 92101, Contact: Virginia Shefa, Phone: (619) 291-1777.
(b) *Approved Courses:*
Abatement Worker (contingent from 11/30/89).
Abatement Worker (full from 1/10/91).
Abatement Worker Refresher Course (contingent from 12/6/89).
Contractor/Supervisor (contingent from 10/18/89).
Contractor/Supervisor (full from 1/11/91).
Contractor/Supervisor Refresher Course (contingent from 12/6/89).
Inspector/Management Planner (contingent from 11/30/89).

(12)(a) *Training Provider:* Education Enviornmental Services (Formerly Eagle Environmental).
Address: 8817 Elk Grove Blvd., Elk Grove, CA 95624, Contact: George Ayule, Phone: (916) 686-3655.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/18/89).
Abatement Worker Refresher Course (contingent from 10/18/89).
Contractor/Supervisor (contingent from 10/18/89).
Contractor/Supervisor Refresher Course (contingent from 10/18/89).
Inspector/Management Planner (contingent from 10/18/89).
Inspector/Management Planner Refresher Course (contingent from 10/18/89).
Project Designer (contingent from 10/18/89).
Project Designer Refresher Course (contingent from 10/18/89).

(13)(a) *Training Provider:* EnviroMD, Inc.
Address: 3443 East Fort Lowell Rd., Tucson, AZ 85716, Contact: Lee Allen, Phone: (800) 822-5800.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/15/89).
Abatement Worker (full from 2/27/91).
Abatement Worker Refresher Course (contingent from 4/12/91).
Contractor/Supervisor (contingent from 1/17/89).
Contractor/Supervisor (full from 2/28/91).
Contractor/Supervisor Refresher Course (contingent from 10/18/89).
Inspector/Management Planner (contingent from 11/14/88).
Inspector/Management Planner Refresher Course (contingent from 10/18/89).

(14)(a) *Training Provider:* Environmental Control Industries.
Address: 2700 Teagarden St., San Leandro, CA 94577, Contact: Robert Seese, Phone: (415) 614-0180.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/1/88).
Abatement Worker Refresher Course (contingent from 10/18/89).
Contractor/Supervisor (contingent from 10/31/89).
Contractor/Supervisor Refresher Course (contingent from 10/18/89).

(15)(a) *Training Provider:* Environmental Sciences, Inc.
Address: 105 E. Speedway, Tucson, AZ 85705, Contact: Paula Keyes, Phone: (602) 792-0097.
(b) *Approved Courses:*
Inspector/Management Planner (contingent from 9/29/87).
Inspector/Management Planner (full from 10/5/87).
Inspector/Management Planner Refresher Course (contingent from 11/14/88).

(16)(a) *Training Provider:* Environmental Service & Technology, Inc.
Address: 3445 32nd St., San Diego, CA 92104, Contact: Mary Lacey, Phone: (800) 633-0373.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/18/89).
Abatement Worker Refresher Course (contingent from 12/6/89).
Contractor/Supervisor (contingent from 10/18/89).
Contractor/Supervisor Refresher Course (contingent from 12/6/89).
Inspector/Management Planner (contingent from 10/18/89).
Inspector/Management Planner Refresher Course (contingent from 10/18/89).

(17)(a) *Training Provider:* Excel Environmental, Inc.
Address: 739 Allston Way, Berkeley, CA 94710, Contact: Robert Bottome, Phone: (415) 548-4300.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/28/87).
Abatement Worker Refresher Course (contingent from 12/1/88).
Contractor/Supervisor (contingent from 6/1/88).
Contractor/Supervisor Refresher Course (contingent from 12/1/88).

(18)(a) *Training Provider:* Hawaii Laborers Training School.
Address: P.O. Box 457, Aiea, HI 96701, Contact: Norman Jimeno, Phone: (808) 488-6161.
(b) *Approved Courses:*
Abatement Worker (contingent from 5/27/88).
Abatement Worker Refresher Course (contingent from 10/18/89).

(19)(a) *Training Provider:* Herring & Herring Enterprises.
Address: No. 9 Grits Court, Sacramento, CA 95823, Contact: Leslie Herring, Phone: (916) 421-6260.
(b) *Approved Courses:*
Abatement Worker (contingent from 1/2/90).
Abatement Worker Refresher Course (contingent from 10/18/89).
Contractor/Supervisor (contingent from 1/2/90).
Contractor/Supervisor Refresher Course (contingent from 10/18/89).

(20)(a) *Training Provider:* INFOTOX.
Address: 8531 Mission Blvd, Suite 24, Riverside, CA 92509, Contact: Jim Maclam, Phone: (714) 685-5053.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/18/89).
Abatement Worker Refresher Course (contingent from 10/18/89).
Contractor/Supervisor (contingent from 10/18/89).
Contractor/Supervisor Refresher Course (contingent from 10/18/89).

(21)(a) *Training Provider:* IT Corporation.
Address: 17605 Fabrica Way, Cerritos, CA 90701, Contact: Tom McKinney, Phone: (213) 921-9831.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/24/87).
Abatement Worker Refresher Course (contingent from 3/29/89).
Contractor/Supervisor (contingent from 4/15/88).
Contractor/Supervisor Refresher Course (contingent from 3/29/89).

(22)(a) *Training Provider:* Insulators & Asbestos Industry of Northern California & Local Union No. 16 Apprentice Training Fund.
Address: 2033 Clement Ave., Building 31, Room 112, Alameda, CA 94501, Contact: Hans D. Siebert, Phone: (415) 865-2292.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/1/88).
Contractor/Supervisor (contingent from 6/1/88).
Contractor/Supervisor (contingent from 10/31/89).

(23)(a) *Training Provider:* Joint Apprenticeship Trust Asbestos Workers Local 5.
Address: 520 So. La Fayette Park Pl., Suite 300, Los Angeles, CA 90057, Contact: Tom L. Gutierrez, Phone: (213) 383-8010.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/1/88).
Abatement Worker Refresher Course (contingent from 10/18/89).
Contractor/Supervisor (contingent from 1/26/89).
Contractor/Supervisor Refresher Course (contingent from 10/18/89).

(24)(a) *Training Provider:* KELLCO Training Institute.
Address: 44802 Osgood Rd., Fremont, CA 94539, Contact: Charles W. Kellogg, Phone: (415) 651-7401.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/1/88).

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Abatement Worker (full from 2/14/91).
Contractor/Supervisor (contingent from 7/20/88).
Contractor/Supervisor (full from 2/15/91).
Contractor/Supervisor Refresher Course (contingent from 10/31/88).
Contractor/Supervisor Refresher Course (full from 3/19/91).
Inspector/Management Planner (contingent from 3/21/89).
Inspector/Management Planner Refresher Course (contingent from 3/16/89).

(25)(a) *Training Provider:* Laborers Training & Retraining Trust Fund for Northern California.
Address: 21321 San Ramon Valley Blvd., San Ramon, CA 94583, Contact: Monte R. Strother, Phone: (415) 828-2513.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/13/88).
Abatement Worker Refresher Course (contingent from 12/15/88).

(26)(a) *Training Provider:* Laborers Training & Retraining Trust Fund for Southern California.
Address: P.O. Box 76, Anza, CA 92306-0076, Contact: Don Sanders, Phone: (714) 763-4341.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/30/88).
Abatement Worker Refresher Course (contingent from 12/6/89).

(27)(a) *Training Provider:* Lehr Training Institute, Inc.
Address: 4125 East La Palma Ave., Suite 300, Anaheim, CA 92807, Contact: Patricia Norris, Phone: (714) 572-0110.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/16/88).
Abatement Worker Refresher Course (contingent from 2/21/89).
Contractor/Supervisor (contingent from 2/16/88).
Contractor/Supervisor Refresher Course (contingent from 2/21/89).
Inspector/Management Planner (contingent from 10/31/88).
Inspector/Management Planner Refresher Course (contingent from 2/21/89).

(28)(a) *Training Provider:* Los Angeles District Council of Carpenters and Vicinity.
Address: 4665 Mercury St., San Diego, CA 92111, Contact: Otis Kunz, Phone: (619) 495-1650.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/30/89).
Contractor/Supervisor (contingent from 10/31/88).

(29)(a) *Training Provider:* National Asbestos Technology Education Center (NATEC).
Address: 11552 Knott St., Suite 8, Garden Grove, CA 92641, Contact: Rodger D. Sandlin, Phone: (714) 894-7577.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/30/87).
Abatement Worker Refresher Course (contingent from 11/8/88).
Contractor/Supervisor (contingent from 12/30/87).
Contractor/Supervisor Refresher Course (contingent from 11/8/88).

(30)(a) *Training Provider:* National Institute for Asbestos & Hazardous Waste Training.
Address: 1019 West Manchester Blvd., Suite 102, Inglewood, CA 90301, Contact: Jim McFarland, Phone: (213) 645-4516.
(b) *Approved Courses:*
Abatement Worker (full from 12/24/87).
Abatement Worker Refresher Course (contingent from 10/19/88).
Contractor/Supervisor (full from 12/24/87).
Contractor/Supervisor Refresher Course (contingent from 10/19/88).
Inspector/Management Planner (contingent from 6/30/88).
Inspector/Management Planner Refresher Course (contingent from 11/4/88).

(31)(a) *Training Provider:* Naval Civil Engineering Laboratory.
Address: Code LO-15, Port Hueneme, CA 93043-5003, Contact: Susan C. Tianen, Phone: (805) 982-1136.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/31/89).
Abatement Worker Refresher Course (contingent from 10/18/89).
Contractor/Supervisor (contingent from 10/31/89).
Contractor/Supervisor Refresher Course (contingent from 10/18/89).
Inspector (contingent from 4/6/89).

(32)(a) *Training Provider:* Occupational Training Institute, Inc.
Address: 5 Civic Plaza, Suite 225, Newport Beach, CA 92660, Contact: Charles Godshall, Phone: (714) 721-9578.
(b) *Approved Courses:*
Abatement Worker (contingent from 2/21/89).
Abatement Worker Refresher Course (contingent from 2/21/89).
Contractor/Supervisor (contingent from 2/21/89).
Contractor/Supervisor Refresher Course (contingent from 2/21/89).
Inspector/Management Planner (contingent from 3/16/89).
Inspector/Management Planner Refresher Course (contingent from 2/21/89).

(33)(a) *Training Provider:* Painters District Council No. 36.
Address: 3601 W. Alameda Ave., Suite 200, Burbank, CA 91505, Contact: William Sauerwald, Phone: (818) 841-1366.
(b) *Approved Course:*
Abatement Worker (contingent from 10/15/89).

(34)(a) *Training Provider:* Robert Harvey Griese.
Address: 5933 Telegraph Rd., City of Commerce, CA 90040, Contact: Robert H. Griese, Phone: (213) 720-1805.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/6/89).
Contractor/Supervisor (contingent from 12/6/89).
Inspector/Management Planner (contingent from 12/6/89).

(35)(a) *Training Provider:* Salem Kroeger, Inc.
Address: 1325 Schwab St., Red Bluff, CA 96080, Contact: Brian Frink, Phone: (916) 527-7312.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/30/89).
Abatement Worker Refresher Course (contingent from 4/3/89).
Contractor/Supervisor (contingent from 3/30/89).
Contractor/Supervisor Refresher Course (contingent from 4/3/89).
Inspector Refresher Course (contingent from 4/3/89).

(36)(a) *Training Provider:* San Diego County Construction Laborers Training & Retraining Trust.
Address: 4161 Home Ave., Second Fl., San Diego, CA 92105, Contact: Bob White, Phone: (619) 263-6941.
(b) *Approved Courses:*
Abatement Worker (contingent from 3/21/89).
Abatement Worker Refresher Course (contingent from 10/16/89).

(37)(a) *Training Provider:* Spectrum Environmental Training.
Address: 6245 Bristol Pkwy., Suite 305, Culver City, CA 90230, Contact: James H. Mondy, Phone: (213) 322-2332.
(b) *Approved Courses:*
Abatement Worker (contingent from 12/6/89).
Contractor/Supervisor (contingent from 12/6/89).

(38)(a) *Training Provider:* The Asbestos Institute.
Address: 2621 East Camelback, Suite 175, Phoenix, AZ 85016, Contact: William T. Cavness, Phone: (602) 224-5404.
(b) *Approved Courses:*
Abatement Worker (contingent from 6/30/88).
Abatement Worker Refresher Course (contingent from 10/31/88).
Contractor/Supervisor (contingent from 6/13/88).
Contractor/Supervisor Refresher Course (contingent from 3/9/89).
Inspector/Management Planner (contingent from 6/17/88).
Inspector/Management Planner Refresher Course (contingent from 6/16/88).

(39)(a) *Training Provider:* The Environmental Institute.
Address: 41 East Foothill Blvd., Suite 104, Arcadia, CA 91006, Contact: Bruce Tingley, Phone: (818) 447-5216.
(b) *Approved Courses:*
Abatement Worker (contingent from 10/27/88).
Contractor/Supervisor (contingent from 6/27/88).
Inspector/Management Planner (contingent from 6/27/88).
Inspector/Management Planner Refresher Course (contingent from 4/18/89).
Project Designer (contingent from 12/1/88).
Project Designer Refresher Course (contingent from 10/18/89).

(40)(a) *Training Provider:* Univ. of Calif. Extension Programs in Environmental Hazard Management (PEHM) (Formerly Pacific Asbestos Info. Ctr.).
Address: 2223 Fulton St., Berkeley, CA 94720, Contact: Deborah Dobin, Phone: (415) 643-7143.
(b) *Approved Courses:*
Contractor/Supervisor (full from 10/1/87).
Contractor/Supervisor Refresher Course (contingent from 10/19/88).
Inspector/Management Planner (full from 11/16/87).
Inspector/Management Planner Refresher Course (contingent from 10/19/88).
Project Designer (contingent from 10/31/89).

(41)(a) *Training Provider:* University Associates.
Address: 3791 N. Camino de Oeste, Tucson, AZ 85745, Contact: John D. Repko, Phone: (602) 624-9366.
(b) *Approved Course:*
Inspector/Management Planner (contingent from 12/1/88).

(42)(a) *Training Provider:* University of Southern California Institute of Safety & Systems Management.
Address: 927 W. 35th Pl., Room 102, Los Angeles, CA 90089-0021, Contact: James O. Pierce, Phone: (213) 740-3998.
(b) *Approved Courses:*
Inspector/Management Planner (contingent from 7/27/88).
Inspector/Management Planner (full from 2/2/89).
Inspector/Management Planner Refresher Course (contingent from 2/23/89).

REGION X – Seattle, WA

Regional Asbestos Coordinator: Matt Wilkening, EPA, Region X, 1200 Sixth Ave. (6T-083), Seattle, WA 98101. (206) 442-8282 (FTS) 399-8282

List of Approved Courses: The following training courses have been approved by EPA. The courses are listed under (b). This approval is subject to the level of certification indicated after the course name. Training Providers are listed in alphabetical order and do not reflect a prioritization. Approvals for Region X training courses and contact points for each, are as follows:

(1)(a) *Training Provider:* Arctic Slope Consulting Group.
Address: 3801 South Cushman, Fairbanks, AK 99701-7529, Contact: Robert A. Perkins or Clark Milne, Phone: (907) 451-6009.
(b) *Approved Courses:*
Inspector/Management Planner (contingent from 10/18/89).
Inspector/Management Planner (full from 10/5/90).
Inspector/Management Planner Refresher Course (contingent from 10/25/89).

(2)(a) *Training Provider:* Asbestos Removal Technologies.
Address: P.O. Box 4762, Vancouver, WA 98662, Contact: Skip Gaultier, Phone: (800) 321-4121.
(b) *Approved Courses:*
Inspector/Management Planner Refresher Course (contingent from 10/25/89).
Inspector/Management Planner Refresher Course (full from 12/26/89).
Project Designer Refresher Course (contingent from 10/25/89).
Project Designer Refresher Course (full from 12/26/89).

(3)(a) *Training Provider:* Asbestos Services International, Inc.
Address: 12360 Southwest Butner Rd., Portland, OR 97225-5818, Contact: Jim Jones, Phone: (503) 644-0246.
(b) *Approved Courses:*
Inspector/Management Planner (contingent from 8/23/88).
Inspector/Management Planner (full from 7/17/89).
Inspector/Management Planner Refresher Course (contingent from 10/31/88).
Inspector/Management Planner Refresher Course (full from 1/20/89).
Project Designer (contingent from 10/31/88).
Project Designer (full from 1/17/89).

(4)(a) *Training Provider:* Certified Industrial Hygiene Services, Inc.
Address: 911 Western Ave., Suite 206, Seattle, WA 98104, Contact: Dorothy Stansel, Phone: (206) 622-1096.
(b) *Approved Course:*
Inspector (contingent from 3/25/88).

(5)(a) *Training Provider:* Engineering Continuing Education University of Washington.
Address: GG-13, Seattle, WA 98195, Contact: Susan G. Stone, Phone: (206) 543-5539.
(b) *Approved Courses:*
Inspector/Management Planner (contingent from 1/26/88 to 6/1/90 only).
Inspector/Management Planner (full from 2/8/88 to 6/1/90 only).

(6)(a) *Training Provider:* Environmental Health Sciences Lake Washington Vo-Tech.
Address: 11605 132nd Ave., NE., Kirkland, WA 98034, Contact: Dave Rodewald, Phone: (206) 828-5643.
(b) *Approved Courses:*
Inspector/Management Planner (full from 4/11/88).
Inspector/Management Planner Refresher Course (contingent from 1/14/89).
Inspector/Management Planner Refresher Course (full from 1/27/89).
Project Designer (contingent from 12/11/89).

(7)(a) *Training Provider:* Environmental Management, Inc.
Address: P.O. Box 91477, Anchorage, AK 99509, Contact: Debra Chrisman or Gordon Randall, Phone: (907) 272-8056.
(b) *Approved Course:*
Inspector/Management Planner (full from 4/18/88).

(8)(a) *Training Provider:* Hazcon, Inc.
Address: 4636 Marqiael Way S., Suite 215, Seattle, WA 98134, Contact: Mike Krause, Phone: (206) 763-7364.
(b) *Approved Courses:*
Inspector/Management Planner (contingent from 3/1/88).
Inspector/Management Planner (full from 4/4/88).

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Inspector/Management Planner Refresher Course (contingent from 1/18/89).
Inspector/Management Planner Refresher Course (full from 1/30/89).

(9)(a) *Training Provider:* Heavey Engineers, Inc.

Address: 113 Russell St., P.O. Box 832, Stevenson, WA 98648-0832, Contact: Bernard Heavey, Phone: (509) 427-8930.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 4/13/88).
Inspector/Management Planner (full from 5/2/88).
Inspector/Management Planner Refresher Course (contingent from 1/18/89).
Inspector/Management Planner Refresher Course (full from 3/10/89).

(10)(a) *Training Provider:* NAC Corporation/Northwest Asbestos Consultants.

Address: 1005 Northwest Galveston, Suite E, Bend, OR 97701, Contact: Dale Schmidt, Phone: (503) 389-9727.

(b) *Approved Courses:*

Inspector/Management Planner Refresher Course (contingent from 4/25/89).
Inspector/Management Planner Refresher Course (full from 7/24/89).

(11)(a) *Training Provider:* Northwest Envirocon, Inc.

Address: P.O. Box 160, Washougal, WA 98671, Contact: Debbie Stevinon, Phone: (503) 659-8899.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 4/13/88).
Inspector/Management Planner (full from 5/2/88).

(12)(a) *Training Provider:* PBS Environmental Building Consultants, Inc.

Address: 1220 SouthWest Morrison, Portland, OR 97205, Contact: Kelly Strother, Phone: (503) 248-1939.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 2/4/88).
Inspector/Management Planner (full from 3/14/88).
Inspector/Management Planner Refresher Course (contingent from 3/14/89).
Inspector/Management Planner Refresher Course (full from 6/30/89).
Project Designer (contingent from 8/9/89).
Project Designer (full from 6/19/89).
Project Designer Refresher Course (contingent from 10/25/89).
Project Designer Refresher Course (full from 9/18/90).

(13)(a) *Training Provider:* South East Regional Resource Center, Inc.

Address: 210 Ferry Way, Suite 200, Juneau, AK 99801, Contact: William Suss, Phone: (907) 586-6806.

(b) *Approved Courses:*

Inspector/Management Planner Refresher Course (contingent from 4/18/89).
Inspector/Management Planner Refresher Course (full from 6/1/90).

(14)(a) *Training Provider:* Specialized Environmental Consulting, Inc.

Address: P.O. Box 363, Wauna, WA 98395, Contact: Raymond Donahue, Phone: (206) 857-3222.

(b) *Approved Courses:*

Inspector/Management Planner Refresher Course (contingent from 3/7/89).
Inspector/Management Planner Refresher Course (full from 3/20/89).

(15)(a) *Training Provider:* University of Alaska, Mining & Petroleum Training Services.

Address: 155 Smith Way, Suite 104, Soldotna, AK 99669, Contact: Dennis D. Steffy, Phone: (907) 262-2788.

(b) *Approved Courses:*

Inspector/Management Planner (contingent from 2/16/88).
Inspector/Management Planner (full from 4/11/88).
Inspector/Management Planner Refresher Course (contingent from 1/14/89).
Inspector/Management Planner Refresher Course (full from 4/2/91).

(16)(a) *Training Provider:* Valley Research Corporation.

Address: 1299 E. 2400 St., Hagerman, ID 83332, Contact: Leon Urie, Phone: (208) 837-6437.

(b) *Approved Courses:*

Contractor/Supervisor (contingent from 10/20/89).
Contractor/Supervisor (full from 6/8/90).

(17)(a) *Training Provider:* Washington Association of Maintenance & Operations Administrators, WAMOA.

Address: 12037 Northeast Fifth, Bellevue, WA 98005, Contact: Colin MacRae, Phone: (206) 455-6054.

(b) *Approved Courses:*

Inspector/Management Planner Refresher Course (contingent from 4/25/89).
Inspector/Management Planner Refresher Course (full from 7/24/89).

Dated: May 8, 1991.

Mark Greenwood,

Director, Office of Toxic Substances.

[FR Doc. 91-11757 Filed 5-30-91; 8:45 am]

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Friday
May 31, 1991

Part III

Federal Trade Commission

16 CFR Chapter I

Petitions for Environmental Marketing and Advertising Guides; Public Hearings; Proposed Rule

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FEDERAL TRADE COMMISSION

16 CFR Ch. I

Petitions for Environmental Marketing and Advertising Guides; Public Hearings

AGENCY: Federal Trade Commission.

ACTION: Request for public comment on issues concerning environmental marketing and advertising claims and pending petitions; notice of public hearings.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") seeks written comment on issues relating to whether additional guidance to the public is needed on the applicability of section 5 of the FTC Act, 15 U.S.C. 45 ("section 5") to environmental advertising and labeling claims and, more specifically, what form such guidance should take and what it should cover. In order to develop a factual basis for whatever action the Commission decides is needed in this area, if any, the Commission will also hold a public hearing on these and related issues and invites applications to participate.

Assuming that specific guidance is needed in this area beyond that currently provided by the Commission's general advertising policy (as articulated in the Commission's Policy Statements on Deception, Unfairness, and Advertising Substantiation), such guidance may be provided in several ways: (1) Increased enforcement of section 5 on a case-by-case basis and enhanced dissemination of the decisions in such cases; (2) issuance of a trade regulation rule, a binding regulation; and/or (3) issuance of interpretive guides, or guidelines as they sometimes are called.

The Commission has received petitions to issue guides concerning the proper advertising and labeling of the environmental benefits of products. Two of the petitions received were accompanied by proposed guides. In addition, a task force of eleven State attorneys general has proposed guidelines. The Commission is publishing in this issue of the **Federal Register** these three proposed guides and also seeks written comment on them.

DATES: Comments must be received on or before July 17, 1991. Public hearings will be held on July 17–18, 1991, 9:30 a.m. to 4:30 p.m. Requests to present oral testimony must be received on or before June 20, 1991. The Commission requests that ten copies of the proposal oral comments be submitted on or before July 12, 1991.

ADDRESSES: Comments and requests to testify may be mailed to the Office of the Secretary, room 159, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580. The hearings will be held in room 432 of the Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Devenette Sneed, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, suite 4002, 6th & Pennsylvania Avenue NW., Washington, DC 20580, (202) 326–3360.

SUPPLEMENTARY INFORMATION: .

1. *The Nature of the FTC's Interest*

Claims concerning the environmental benefits and risks of particular products are not new in advertising and labeling.[1] However, recent surveys have shown increasing consumer interest in the environmental effects of products purchased and a corresponding increase in the number of products making environmental advertising and labeling claims.[2] Concerns have been expressed that some claims are deceptive, misleading, or unsubstantiated.

The FTC has authority under section 5 of the FTC Act, 15 U.S.C. 45 ("section 5"), to ensure that environmental performance claims in advertising and labeling are not deceptive or unfair and are adequately substantiated. It may exercise this authority in various ways, including: (1) The pursuit of enforcement cases; (2) the promulgation of trade regulation rules; and (3) the issuance of interpretive guides. The Commission does not have a statutory mandate to set environmental policy. It is not the Commission's goal, for example, to require that product be "recyclable." Rather, any Commission cases, rules, or guides would be designed to address how such terms may be used in a non-deceptive fashion in light of consumer understanding of the terms.

The FTC currently is conducting over two dozen investigations into the use of certain environmental claims. In addition, the FTC has formed a joint task force along with the Environmental Protection Agency ("EPA") and the U.S. Office of Consumer Affairs to provide Federal agency leadership and cooperation to reduce marketplace confusion that may result from environmental advertising claims.

2. **Currently Available FTC Guidance Applicable to Environmental Claim**

Some general guidance regarding how section 5 applies to advertising claims is provided by the FTC's Deception, Ad Substantiation, and Unfairness Policy Statements, which state the FTC's policy regarding its interpretation of claims and the level of substantiation evidence necessary to support the claims. Copies of the Commission's Policy Statements are available on request from the Commission's Public Reference Room, at (202) 326–2222.

The FTC's Policy Statement on Deception (Deception Statement) states that the Commission will find deception if there is a representation, omission, or practice that is likely to mislead in a material way the consumer acting reasonably in the circumstances.[3] If the act or practice is likely to affect the consumer's conduct or decision with regard to a product or service, the practice is material, and consumer injury is likely because consumers are likely to have chosen differently but for the deception.[4]

The FTC's Policy Statement on Advertising Substantiation (Ad Substantiation Statement) states that, before disseminating ads, advertisers must have a reasonable basis for express and implied claims, however conveyed, that make objective assertions about the product or service advertised.[5] Claims must be supported by the level of substantiation they communicate, either expressly or impliedly, to the reader or listener, whether the level of substantiation they communicate, either expressly or impliedly, to the reader or listener, whether the level of substantiation is a specific study or set of studies or a consensus of opinion. If no level of substantiation is expressly or impliedly

[1] *E.g., Ex-Cell-O Corp.*, 82 F.T.C. 36 (1973) (consent agreement with milk carton manufacturer concerning biodegradable and environmental safety claims for plastic-coated paperboard milk cartons); *Standard Oil of California*, 85 F.T.C. 1401 (1974), *aff'd as modified sub nom. Standard Oil Co.* v. *FTC*, 577 F.2d 653 (9th Cir. 1979) (order against a gasoline manufacturer concerning misleading fuel emission reduction claims); and FTC voluntary industry uniform labeling guideline agreement as to phosphorus content and biodegradability of detergents (Aug. 6, 1973).

[2] *E.g.*, JWT Greenwatch, Vol. 1, no. 2, J. Walter Thompson, USA (Autumn 1990); The Enviromental Report, vol. 1, Environmental Research Associates, Inc. (Fall 1990); *1990 Green Product Introductions Soar*, Green MarketAlert, Report of Marketing Intelligence Service, Ltd., at 8–9 (October 1990).

[3] Federal Trade Commission Policy Statement on Deception, *appended to Cliffdale Assocs., Inc.*, 103 F.T.C. 110 (1984).

[4] *Id.*

[5] FTC Policy Statement Regarding Advertising Substantiation, *appended to Thompson Medical Co.*, 104 F.T.C. 648 (1984).

stated, then the Commission looks at six factors: The type of claim, the type of product, the consequences of a false claim, the benefits of a truthful claim, the cost of developing substantiation for the claim, and the amount of substantiation experts in the field believe is reasonable.

The FTC's Policy Statement on Unfairness (Unfairness Statement) makes clear that advertising need not be deceptive or unsubstantiated to violate the Federal Trade Commission Act. It may also violate the FTC Act if it is "unfair." The primary criterion for determining whether an advertisement is unfair is consumer injury. To justify a finding of unfairness, the injury must satisfy three tests: It must be substantial; it must not be outweighed by countervailing benefits to consumers or competition; and it must be an injury that consumers themselves could not reasonably have avoided.[6]

The Commission has traditionally taken action against deceptive, unsubstantiated, or unfair advertising or labeling claims on a case-by-case basis. The Commission has begun to provide guidance in the environmental area through such case-by-case enforcement. For example, the Commission recently released for public comment a proposed consent order in its first case involving ozone-safety claims for aerosol products.[7] Advertisements and/or labels for the product in question contained the following statements: "Ecologically-Safe Propellant" and "Zipatone's time saving spray products use only ecologically safe propellants. You get the job done quickly without damaging the environment." The draft complaint accompanying the proposed consent agreement alleged that, through the use of the preceding statements, Zipatone represented either directly or by implication that: (1) Zipatone spray cement contains no ingredients damaging to the environment; and (2) use of Zipatone Spray Cement will not have a detrimental effect on the earth's ecology. Although the propellant in Zipatone's product is not ozone-depleting, the primary ingredient in the product is, 1,1,1-trichloroethane, a Class I ozone-depleting substance.[8] The draft complaint therefore alleges that the representations noted above are false, misleading, and unsubstantiated. The proposed consent order prohibits the company from making a representation that any product containing a Class I ozone-depleting chemical is ecologically safe, ozone safe, ozone friendly, or, through the use of substantially similar terms or expressions, that any such product will not deplete, destroy, or otherwise adversely affect ozone in the upper atmosphere. The proposed consent order also prohibits Zipatone from representing that any product containing any ozone-depleting substance offers any environmental benefits concerning the ecology, atmosphere, or ozone layer, unless it has competent and reliable scientific evidence that substantiates the claim.[9]

3. **Efforts by Others to Provide Environmental Marketing Guidance**

Aside from FTC action, numerous other parties either have provided, or are attempting to provide, guidance on the use of environmental advertising claims.

A number of private groups have initiated measures to create voluntary standards in environmental marketing. These include certification programs being developed by private groups such as Green Cross Certification and Green Seal, and a number of other efforts, such as the ongoing work of the American Society for Testing and Materials (ASTM) to develop standards and testing methods on paper recycling and the degradability of plastic products.

In addition to private efforts, a number of Federal and State government agencies have taken initiatives in the area of environmental marketing. Legislative proposals have been introduced in Congress. Some of these legislative proposals involve other Federal agencies, such as EPA.[10] EPA participates in the Recycling Advisory Council, which was established in 1990 to build consensus and provide national leadership on issues affecting recycling and resource management, including national consistency on definitions, standards, and labeling issues. In addition, EPA has announced that it is developing voluntary guidelines for definitions of the terms "recycled" and "recyclable."

On the State level, both the Coalition of Northeastern Governors and the Council of State Governments have set up special councils to develop guidelines for environmentally preferable packaging, with specific emphasis on recycling and source reduction. In addition, a number of States have passed laws or enacted regulations concerning the use of environmental terms. For example, California regulates the use of the terms "biogradable," "photodegradable," "recyclable," "recycled," and "ozone friendly." New York regulates the use of the terms "recyclable," "recycled," and "reusable." Twenty-two States define or regulate the use of the terms "degradable," "biodegradable," or "photodegradable."

4. **Pending Petitions**

The FTC seeks public comment on certain pending petitions seeking issuance of FTC guides on the use of environmental claims in product advertising, promotion, and labeling to prevent consumer deception. The Commission has now received four petitions and numerous less formal requests that the FTC issue guides on the advertising and labeling of environmental risks and benefits.

By resolution adopted March 20, 1990 by the National Association of Attorneys General, the State Attorneys General requested that the FTC, in cooperation with the States and EPA, develop uniform national guidelines. A similar resolution was adopted by the National Association of Consumer Agency Administrators. In addition, environmental groups have called for guidance on environmental marketing claims.[11]

In September 1990, the Mobil Chemical Co. submitted a petition for FTC guides on environmental claims. The petition recommends that the Commission develop industrywide guides on a variety of environmental claims, such as "degradable,"

[6] See Companion Statement to Letter from Commission to Honorable Wendell H. Ford and John C. Danforth (December 17, 1980) (Unfairness Policy Statement), *appended to International Harvester Co.*, 104 F.T.C. 949, 1072 (1984), *appeal dismissed*, No. 85–1111 (D.C. Cir. 1985). See *Orkin Exterminating Co.*, 108 F.T.C. 263 (1986), *aff'd*, 849 F.2d 1354 (11th Cir. 1988), *cert. denied*, 488 U.S. 1041 (1989); *International Harvester Co.*, 104 F.T.C. 949, 1060–62; see also *FTC versus Sperry & Hutchinson Co.*, 405 U.S. 233, 244–45 n.5 (1972).

[7] *Zipatone, Inc., et al.*, FTC File No. 902 3366 (April 22, 1991).

[8] The Clean Air Act Amendments of 1990 specify two classes of ozone-depleting substances. Class I ozone-depleting substances are more harmful to the ozone layer than Class II substances.

[9] In entering into this consent agreement, the respondents did not concede liability but simply agreed to be bound by the terms of the order. The public comment period on this proposed consent order ends on July 1, 1991.

[10] *See e.g.*, S. 615, "Environmental Marketing Claims Act of 1991," introduced by Senator Frank Lautenberg on March 12, 1991, and its companion bill, H.R. 1408, introduced in the House of Representatives by Congressman Gerry Sikorski on March 12, 1991; see also earlier bills introduced by Senator Albert Gore: S. 1884, "National Recyclable Commodities Act of 1989," and Congressman Sikorski: H.R. 4042, "National Recyclable Commodities Act of 1990."

[11] *E.g.*, Environmental Action Foundation Press Release, "Solid Waste Expert Urges State Action Against Bogus 'Green Market' Products" (March 14, 1990).

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"photodegradable," "biodegradable," "safe for the environment," "recyclable," "recycled," "ozone friendly," "landfill safe," and "environmentally friendly."

On February 5, 1991, First Brands Corp. submitted a petition to the FTC to establish guides governing the use of environmental claims in the marketing of all types of consumer and industrial products, including bags and packaging, and the ingredients for such products. The petition urges that the Commission develop industry-wide guides that address the industries and trade practices covered, the content of both general and specific claims, disclosures and qualifications required, and the nature of the substantiation that must support the claims.

On February 14, 1991, the Commission received a petition for industry guides for environmental claims from the National Food Processors Association ("NFPA") and ten other trade associations. The petition included proposed guides that reflected the consensus of a coalition of trade associations and industry members. The proposed guides include general statements on the use of six claims (recyclable, recycled, compostable, source reduction, refillable/reusable, and general claims). Each general statement is followed by a series of examples of claims that would or would not be deceptive, followed by brief explanations. The guides also state several general principles on the scope of their application.

On April 12, 1991, the Commission received a petition from the Cosmetic, Toiletry, and Fragrance Association ("CTFA") and the Nonprescription Drug Manufacturers Association ("NDMA") which supported and supplemented the NFPA petition. It addressed claims relating to the ozone layer and included supplementary proposed guides for claims regarding recyclability and recycled content.

In addition, in November 1990 a task force of ten State attorneys general published "The Green Report: Findings and Preliminary Recommendations for Responsible Environmental Advertising," which recommended that the Federal Government adopt a national regulatory scheme establishing definitions to be used in the labeling, packaging, and promotion of products on the basis of environmental attributes. As interim guidance to industry, the task force published proposed guidelines for environmental marketing claims, including "environmentally friendly," "environmentally safe," "degradable," "compostable," "recyclable," "recycled," "ozone friendly," and "safe for incineration." In May 1991, the task force, now representing eleven State attorneys general, published revised recommendations in "The Green Report II."

The NFPA, CTFA/NDMA, and revised state guides are published in this issue of the **Federal Register** for public comment. The Commission seeks comment on the advantages and disadvantages of these proposed guides. The petitions filed by Mobil Chemical Co. and First Brands Corp. have not been published here because they do not include proposed guides. These petitions, however, are available to the public and may be obtained on request from the Commission's Public Reference Room, at (202) 326–2222

The petitions received by the FTC identify a number of specific environmental claims currently being used to advertise and promote various products. The FTC seeks comment on how environmental claims, including those identified below, are interpreted by consumers. The FTC is particularly interested in receiving any consumer survey or consumer perception data concerning consumer understanding or interpretations of these claims. The FTC also seeks to identify other terms that may require additional guidance.

a. Degradable/Biodegradable/Photodegradable
b. Compostable
c. Recyclable
d. Recycled/Recycled Content/Contains Recycled Material
e. Source Reduction
f. Ozone Safe/Ozone Friendly
g. Refillable/Reusable
h. Landfill Safe/Safe for Incineration
i. Environmentally Safe/Environmentally Friendly

5. Alternative Means of Providing Additional FTC Guidance

Although the pending petitions request that the FTC provide additional guidance through issuance of guides, alternative means of providing guidance are available. The other two primary means of providing guidance are: (1) Increased case-by-case law enforcement and dissemination of Commission decisions in individual cases; and (2) rulemaking proceedings aimed at the promulgation of substantive rules.[12]

The Commission traditionally has taken action against deceptive, unsubstantiated, or unfair advertising and labeling claims through administrative adjudication on a case-by-case basis. The case-by-case approach allows the Commission to examine in a detailed way the claims, the context in which they appear, and their substantiation. Decisions resulting from adjudications and consent agreements are published in the **Federal Register**, along with an analysis to aid public comment. The public, through the news media, is also alerted to the Commission's decisions through FTC news releases.

Additional efforts could be undertaken to enhance the effectiveness of cases in providing guidance. For example, the decisions could be disseminated more widely by sending packages of case materials to interested persons or industry members. In addition, a determination made by the Commission in an adjudicative proceeding under section 5(b) of the FTC Act that an act or practice is unfair or deceptive also may be synopsized and served on other members of the affected industry so that they will have actual notice of the Commission's determination.[13] The determination then may form the basis for civil penalty actions against those other companies if they are found to be engaging in the same conduct with actual knowledge that the practice is unfair or deceptive.[14]

A second avenue by which the Commission could address issues relating to environmental marketing claims is the promulgation of a trade regulation rule under section 18 of the Federal Trade Commission Act.[15] Under that section, the Commission is authorized to conduct rulemaking proceedings to determine if particular claims are deceptive.[16] If the Commission makes these determinations, it may issue a trade regulation rule declaring the claims deceptive, and it may enforce the rule against those who continue to make such claims through judicial actions seeking civil penalties and injunctive relief. Trade regulation rules are binding on the public and the Commission and may be amended only after full rulemaking proceedings. Additionally, trade regulations rules may preempt state and local requirements.[17]

Guidance can also be provided through interpretive guides, or guidelines. Under section 6(f) of the FTC Act, the Commission has general authority to provide interpretations of its substantive laws by means of guidelines, advisory opinions, and policy statements. According to the Commission's Rules:

> Industry guides are promulgated by the Commission on its own initiative or pursuant to petition filed * * * when it appears to the Commission that guidance as to the legal requirements applicable to particular practices would be beneficial in the public interest and would serve to bring about more widespread and equitable observance of laws administered by the Commission. In connection with the promulgation of industry guides, the Commission at any time may conduct such investigations, make such studies, and hold any conferences or hearings as it may deem appropriate.[18]

Commission guides issued in the past have often followed decisions in individual cases in which the agency has addressed questions of deception, unfairness, or substantiation based on records in administrative enforcement proceedings. Principles developed in those cases are then summarized to provide guidance to the industry in general concerning the likely enforcement position of the Commission with respect to practices used in the industry.[19] Other guides have resulted from numerous requests for advice over an extended period of time.[20]

One advantage of guides is that they would provide prospective industry-wide guidance on a number of issues. To the extent that some companies may refrain from making environmental claims because of concerns about the lack of specific guidance in the area, guidelines can encourage claims. In addition, if the guidance from guides is clearer or more extensive than that derived from cases, and if guides can be developed more quickly than illustrative cases are decided, more widespread compliance may result, and fewer enforcement actions may be necessary. Thus, guides may perform a useful function by stimulating voluntary abandonment of practices that the Commission considers unlawful and thereby may result in greater compliance with the law in a relatively short period of time.

On the other and, guides have the disadvantage of requiring the Commission to pass judgment on a wide range of potential claims in a pre-specified manner without having the benefit of analysis of the facts specific to each case and the context in which each particular claim was made. Therefore, to the extent that such guides are adhered to, the use of guides could increase the likelihood that the Commission might inadvertently either discourage beneficial claims or encourage deceptive claims. Guides also set a standard that may become obsolete as science, technology, and consumer knowledge of environmental issues evolve.

Whatever their effect, it should be recognized that guides are not binding either on the public or on the Commission. The Commission may change the policies reflected in such guides with minimal procedure and notice. In addition, guides may not be relied on as an independent basis for Commission enforcement action. If the use of a particular environmental claim appears to be inconsistent with a guide, any cease and desist order could issue only after a determination that the claim was unlawful under section 5. Guides, therefore, do not present a short-cut to reaching binding Commission decisions. Finally, guides have no formal, preemptive effect on State or local laws or regulations. Although they can set precedents to which the States may look, guides will not necessarily impose uniformity on a system of diverse regulations.[21]

In evaluating the desirability of issuing guides as a supplement to continuing its current case-by-case enforcement efforts, the Commission will assess both the advantages and disadvantages described above. Drafting workable guidelines for environmental labeling and advertising claims for a broad range of products will depend on the extent to which: (1) The context of a claim is important in determining an advertisement's meaning; (2) the state of scientific knowledge is changing concerning the impact of products on the environment; (3) consumers' knowledge and perceptions regarding environmental issues are changing; and (4) the technology of providing environmentally sound products is evolving.

The Commission seeks comment on how these and other factors affect the feasibility of developing workable guides, and, if guides are issued, how they should be structured so as to provide maximum guidance while minimizing the likelihood of inadvertently encouraging misleading claims or chilling truthful, non-misleading claims. The FTC also seeks comment on the comparative advantages and disadvantages of the various approaches to providing guidance for environmental claims including, but not necessarily limited to, the three methods discussed above.

6. Public Hearings

The Commission will hold public hearings on July 17–18, 1991, to receive comments on issues relating to whether additional guidance to the public is needed on the applicability of section 5 to environmental advertising and labeling claims and, more specifically, what form such guidance should take and what it should cover. Comments also will be received on the three proposed guidelines published with this notice. The hearings will consist of two days of testimony. Because of the limited amount of time available and the desire to hear a range of views, presenters will be grouped in appropriate panels and will be allotted a specified time for statements, which may be followed by questions from the Commission. Groups with common perspectives on the questions raised by this petition are urged to select a single representative.

Written requests to appear at the hearings should be submitted no later than June 20, 1991, to: Office of the

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[12] Other means of providing guidance are also available. For example, staff members and individual Commissioners can offer informal guidance, or the staff or the Commission could issue advisory opinions under 16 CFR § 1.1 (1991).

[13] Ordinarily consent orders do not contain such a determination.

[14] 15 U.S.C. 45(m)(1)(B).

[15] 15 U.S.C. 57a. Although the Commission has issued rules in the past, the procedures contained in this provision are detailed and extensive, making a rulemaking proceeding a relatively time-consuming and resource-intensive process. Nonetheless, the Commission has used the process effectively. See, *e.g.*, 16 CFR part 444 (Credit Practices).

[16] The Commission lacks authority to initiate rulemaking under section 18 of the FTC Act that is intended to, or may, result in promulgation of a rule that prohibits or otherwise regulates commercial advertising on the basis of a determination that the advertising constitutes an unfair act or practice. See Public Law No. 101–615, 101st Cong., 2d Sess. (Nov. 5, 1990). Congress curtailed the Commission's authority to initiate rulemaking proceedings based upon a legal theory of unfairness in the FTC Improvements Act of 1980, Public Law No. 96–252, section 11(b), 94 Stat. 374, 379. Congress has extended this proscription by annual increments to September 30, 1991, by provisions in the Commission's appropriation legislation.

[17] See, *e.g.*, *City of New York* v *FCC*, 486 U.S. 57, 63–64 (1988); *Fidelity Federal Savings & Loan* v *De La Cuesta*, 458 U.S. 141, 153–54 (1982).

[18] 16 CFR 1.6 (1991).

[19] Existing guides range in subject and relevance to issues of current public interest from Guides for Advertising Fallout Shelters, 16 CFR part 229, to Guides for the Jewelry Industry, 16 CFR part 23.

[20] See, *e.g.*, Commentary on the Fair Credit Reporting Act, 16 CFR 600.1 (a compilation, adopted by the Commission, of responses to requests for advice under the FCRA).

[21] Although the Commission does not contend that its interpretive guides are binding, Commission interpretations may be accorded deference under state "little FTC Acts." Some states require that Commission interpretations be given great weight. See, *e.g.*, Ala. Code § 8–9–16 (1975 & Supp. 1990); Alaska Stat. § 45.50.545 (1982 & Supp. 1990); Ariz. Rev. Stat. Ann. § 44–1522(B) (1986 & Supp. 1990). Some states also prohibit their state officials from adopting rules inconsistent with Commission interpretations. See, *e.g.*, Conn. Gen. Stat. Ann. § 42–110b(c) (1958 & Supp.1990); Fla. Stat. Ann. 501.205 (West 1991).

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Secretary, room 159, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580. The notice of participation should contain the name, affiliation (if applicable), address, and telephone number of the participant and the individual presenter, a brief statement of the participant's interest in the matter, and the topic of presentation. Participants should put the words "Requests to Participate in Environmental Hearings" on the outside of the envelope.

If the Commission determines that there is not adequate time to hear from all those wishing to present comments, the Commission will select among those wishing to testify, in order to ensure that a range of viewpoints and interests is represented.

7. Questions for Comment

In considering the issues described in this notice, the Commission seeks information concerning the nature of the environmental advertising and labeling claims being made and the nature and extent of the deception or consumer injury being sustained, or likely to be sustained, from those claims. It also seeks comment on the extent of consumers' knowledge, or the nature of their perceptions, concerning environmental advertising claims, and evolving nature of their perceptions, and the evolving nature of science and technology relating to environmental claims. In addition, the Commission seeks comment on the costs, benefits, and feasibility of the available means of providing guidance: rules, guidelines, or enforcement actions with enhanced dissemination of the results of such actions. Finally, the Commission seeks comment on the pending petitions for guidelines and particularly the attached proposals.

In an effort to facilitate comment, the Commission poses the questions below. The Commission requests that the written comments (and oral presentations at the upcoming hearing) address any or all of these questions, focusing on the areas in which the commenter has particular interest or expertise. Please include a brief statement of your own or your organization's interest and expertise in the general area of environmental claims. In addition, please respond with as much specificity as possible, with references to empirical data wherever available and appropriate.

(1) What is the extent of consumers' knowledge or the nature of their perceptions concerning such claims? (Empirical data are essential.) How important is the context of the claims? Please identify, if possible, those environmental claims that may be most likely to inflict consumer harm and that may be most likely to benefit consumers. How widespread are these claims?

(a) Does the analysis of consumer deception depend on any of the following factors: (i) The availability of specific environmental services (*e.g.*, recycling, lawn and leaf composting, municipal solid waste composting) in a given area, (ii) the state of technology, and (iii) consumers' beliefs and misperceptions regarding environmental issues?

(b) What additional information do consumers need to know in order to avoid being deceived or unfairly misled by environmental claims?

(c) Are consumers' beliefs and knowledge regarding environmental issues changing over time and, if so, what effect would or should this have on governmental action?

(2) Is there a need for Commission action, and, if so, what form should that action take—increased case-by-case law enforcement, rulemaking, guides, or other?

(a) What are the relative advantages and limitations of relying on the traditional case-by-case application of section 5 and the FTC's Policy Statements as the vehicle for clarifying which environmental claims are deceptive, unsubstantiated, or unfair?

(b) Would the adoption and issuance by the Commission of either of the proposed guidelines published in this notice provide appropriate guidance on environmental advertising claims and, if not, what else would be needed?

(3) If consumer deception depends, at least in part, on factors that are likely to change over time, how should guides or rules be drafted to ensure, on the one hand, sufficient flexibility to adapt to change, and on the other, sufficient stability to provide reliable guidance beyond that already provided in the Commission's Policy Statements?

(a) What types of environmental claims are likely to increase or decrease in prevalence in the future, and why is their prevalence likely to change?

(b) What are the latest scientific developments and product innovations in the areas in which environmental claims currently are being made, or are likely to be made, and what future developments are likely?

(c) How often are guides or rules likely to need updating?

(4) What are the costs and benefits of each of the Commission approaches to providing further guidance? This discussion should include but not be limited to the benefits of each type of action to prevent deceptive claims and the possible costs of stifling truthful claims.

(5) How, if at all, are guides or rules aimed at preventing deception likely to encourage or discourage environmentally beneficial innovations in technology and products?

(6) What types and levels of costs are likely to result from adoption by the FTC and other government agencies, both Federal and State or local, of competing or conflicting regulations on the use of environmental claims, and is Federal preemptive action a useful solution?

(7) If guides are considered appropriate, on what empirical basis should they be developed, and how should such a basis be created?

(8) What are the legal and scientific bases for determining that the practices to be addressed by Commission action are unfair or deceptive practices in violation of section 5 of the Federal Trade Commission Act?

(9) What are the advantages and disadvantages of the various initiatives and proposals regulating environmental marketing claims described in this notice? What effect would the governmental and private initiatives have on the need for Commission guidance?

(10) What additional factors should the Commission consider in evaluating alternative methods of providing guidance on how to avoid deceptive, unfair, or unsubstantiated environmental marketing claims?

8. Proposed Guidelines

(a) Guidelines For Environmental Claims [22]

Section 1. Preamble

The purpose of these Guides is to provide assistance to businesses seeking to make claims about the environmental attributes of consumer products or packaging in compliance with section 5 of the Federal Trade Commission Act (the "Act"). The Guides focus on consumer perceptions that are likely to arise from various environmental claims, and seek to identify the types of claims that raise concerns about consumer deception. Under section 5 of the Act, a representation or omission is

[22] These guides were proposed by the National Food Processors Association, and American Association of Advertising Agencies, American Frozen Food Institute, Association of National Advertisers, Can Manufacturers Institute, Chemical Specialties Manufacturers Association, Food Marketing Institute, Grocery Industry Committee on Solid Waste, Grocery Manufacturers of America, International Dairy Foods Association, and Steel Can Recycling Institute.

deceptive if it is likely to mislead consumers, acting reasonably under the circumstances, to their detriment.

The Guides reflect the Commission's longstanding commitment to the principle that, when provided with accurate information, consumers themselves are the best instigators of improvements in the market. Thus, ensuring that claims about environmental attributes are truthful does more than protect consumers from deception. When firms are free to make truthful claims, competition over environmental attributes should lead to more product and packaging innovation by industry. Such competition also should stimulate the development of related markets, such as the market for recycled goods. In short, truthful advertising of environmental features ultimately will benefit both consumers and the environment generally.

The Guides are contextually based. The Commission's particular expertise lies in its ability to evaluate the impressions that advertisements or labels are likely to leave with consumers. Long experience with the evaluation of claims has taught the Commission that the meaning of a communication cannot be separated from its context. Thus, the Guides do not attempt to establish inflexible definitions of environmental terms and apply them rigidly in all contexts. Rather, through a series of examples, the Guides reveal the different meanings that a marketer might convey based on the use of particular language—or the omission of important qualifying language—about environmental features.

The Guides also do not attempt to provide definitive answers to scientific questions. Particularly in a field in which science and technology are rapidly changing, such conclusive answers may not be possible and are, in any event, beyond the Commission's expertise. Rather, the Guides rely on the well-established rule that advertisers must have a reasonable basis for claims before making them. As in any area of scientific uncertainty, the reasonable basis requirement does not demand scientific consensus. Instead, section 5 requires that an advertiser possess reliable evidence indicating the likely truth of its claim at the time the claim is made.

Section 2. General Provisions

(a) Scope. These Guides apply to environmental claims included in labeling, advertising, or other marketing materials (*e.g.*, in-store displays). Such claims may be made directly or by implication. They may also arise as a result of consumer interpretations of a product's brand name or trade name. The Guides apply to any person who makes an environmental claim in connection with the sale, offering for sale, or marketing of any product for personal, family or household use, or for commercial, institutional or industrial use.

(b) Reasonable Basis. As is true for all claims made to consumers, claims subject to the Guides must be supported by a reasonable basis. In this context, a reasonable basis will most often consist of scientific or professional tests, analyses, research, studies, or any other evidence based upon expertise of professionals in the relevant area, conducted and evaluated in an objective manner by persons qualified to do so, using procedures accepted in the profession or science to yield accurate and reliable results. For further guidance on the reasonable basis requirement, advertisers should consult the Commission's 1983 Policy Statement on the Advertising Substantiation Doctrine.

(c) Structure of the Guides. Each section of the Guides addresses claims in a particular area. Of necessity, the Guides are general in nature. However, each statement of general principles is followed by examples that suggest "safe harbors" for those seeking to ensure their compliance with the law. A given claim may, of course, raise issues that are addressed under more than one section of the Guides. Advertisers are cautioned to assure that their claims comply with all of the provisions of the Guides, not simply the provision that seems most directly applicable.

(d) Enforcement of the Guides. The Guides are what their name implies—guidelines for compliance with the law. As in all areas, the Commission will follow its normal practice of weighing the likely harm to consumers and the probable benefit to the public before determining whether or not to initiate a law enforcement proceeding to address conduct that may be inconsistent with the Guides.

Section 3. Claims of Recycled Content

(a) Scope of Claims. It is deceptive to misrepresent, directly or by implication, that a product or package, or a portion thereof, is made of recycled materials.

Example 1. A packaged product bears the word "recycled," without elaboration, on its label. Unless the type of product, surrounding language, or other elements of the context indicate otherwise, the term is likely to convey to consumers that substantially all components of the product and its packaging are made from recycled materials. Unless each such message is substantiated, the claim should be qualified.

Example 2. A soft drink bottle is labeled "recycled." The claim is deceptive unless the bottle is made from recycled materials. The bottle cap is an incidental component not addressed by the claim. Similarly, it would not be deceptive to label a shopping bag "recycled" where the bag is made of recycled material but the handle, an incidental component, is not.

Example 3. A product in a multi-component package, such as a paperboard sleeve in a shrink-wrapped plastic box, indicates that it has recycled packaging. The paperboard sleeve is made of recycled material, but the plastic box and shrink-wrapped plastic are not. The claim is deceptive. A claim limited to the paperboard sleeve would not be deceptive.

Example 4. A package is made from layers of foil, plastic, and paper laminated together, although the layers are indistinguishable to consumers. The label claims that the package contains "a layer of recycled paper." The claim is not deceptive, as long as the paper layer is more than an incidental component of the package.

(b) Quantity of Recycled Content. It is deceptive to misrepresent, directly or by implication, the amount of recycled material contained in a product or package.

Example 1. A company's soda bottles bear the word "recycled," without elaboration, on its label. The claim is deceptive unless, on average, substantially all of the material from which the bottles are made is recycled material.

Example 2. A product is labeled as containing "20% recycled material." The claim is deceptive unless the advertiser has a reasonable basis for concluding that at least 20%, by weight or volume, of the material in the product is recycled material.

Example 3. A package comprised of a cardboard sleeve over a plastic box bears the legend "package is 30% recycled material." Each packaging component amounts to one-half the weight of the total package. The sleeve is 20% recycled, while the plastic is 40% recycled. The claim is not deceptive, since the average amount of recycled material is 30%.

Example 4. An advertiser claims that "no other diaper contains more recycled content." The advertised diaper does have more recycled content than any other on the market, but the recycled content is well under 100%. The claim is not deceptive, because there is no representation of the amount of recycled

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material in the product, and the specific comparison is substantiated.

Example 5. A package label bears the claim that the packaging material contains "50% recycled material." The seller purchases packaging material from several sources, and the amount of recycled material provided by each source varies. The 50% figure is based on the weighted average of recycled material purchased from the sources. The claim is not deceptive.

(c) Source of Recycled Material. It is deceptive to represent, directly or by implication, that a product or package contains recycled material unless there is a reasonable basis to believe that all material being claimed as part of the "recycled" content otherwise would have entered the solid waste stream.

Example 1. A manufacturer routinely collects spilled material and scraps from cutting finished products.

The material is combined with virgin raw material for use in further production of the same product. A claim that the additional products contain "recycled" material would be deceptive, because the material would not normally have entered the solid waste stream.

Example 2. A manufacturer purchases material from a firm that collects wastes of various sorts from manufacturers and resells them. The manufacturer includes the weight of this material in its calculations of the recycled content of its products. A claim of recycled content based on this calculation is not deceptive because, absent the purchase and reuse of this material by others, it would have entered the solid waste stream.

Example 3. A package is labeled as containing "20% recycled paper." Some of the recycled content was composed of material collected from consumers after use of the original product; the rest was composed of industrial scrap that otherwise would have entered the solid waste stream. The claim is not deceptive.

Example 4. A manufacturer produces a product made of flexible plastic. Scraps from the production line are diverted to a separate line in the plant, where they are incorporated into the production of a rigid plastic container with equal amounts of virgin material. A claim that the rigid plastic container contains "at least 50% recycled plastic" is not deceptive if, without the diversion, the waste material from the first process would have entered the solid waste stream.

Section 4. Claims of Recyclability

(a) Scope of Claims. It is deceptive to misrepresent, directly or by implication, that any product or packaging material can be recycled.

Example 1. A packaged product is labeled with a claim of recyclability. Unless the type of product, surrounding language, or other elements of the context indicate otherwise, the label is likely to convey to consumers that substantially all portions of the product and its packaging that remain after normal use of the product can be recycled. Unless each such message is substantiated, the claim should be qualified.

Example 2. A soft drink bottle with a metal cap is labeled as recyclable. As long as the bottle is recyclable, the claim is not deceptive. The cap is an incidental portion of the product.

Example 3. A product is packaged in a plastic tray in a paperboard sleeve, and wrapped in plastic. The label states "plastic tray recyclable where facilities exist." The claim is not deceptive as long as the plastic tray can be recycled. No claim is made for the recyclability of other components of the package.

Example 4. A plastic package is labeled with the Society of the Plastics Industry (SPI) code, consisting of a design of arrows in a triangular shape containing a number and abbreviation identifying the component plastic resin. Without more, the mere use of the SPI symbol (or the similar European code) does not constitute a claim of recyclability.

(b) Feasibility of Recycling. It is deceptive to misrepresent, directly or by implication, the feasibility of recycling a product or packaging material.

Example 1. A bottle bears the unqualified statement that it is "recyclable." The material in question is recycled in some parts of the country. The claim might nevertheless be deceptive if consumers understand the reference to mean that recycling facilities for the material are more widely available than is actually the case. Marketers should exercise caution before using such unqualified claims for a material.

Example 2. A soda bottle made of plastic is labeled with the claim "Recyclable where facilities exist." Recycling facilities for this material are available in some parts of the country, but not universally. The claim is not deceptive, because only a limited claim of recycling availability is being made.

Example 3. A package made of a certain plastic is labeled with the claim "Recyclable where facilities exist." This particular type of plastic is being recycled in only two facilities in the country, both of which are demonstration projects whose economic viability has not yet been demonstrated. Although the claim of recyclability is a limited one, facilities are virtually nonexistent and, given their status as demonstration projects, the continued viability is uncertain. As a result, the claim is deceptive. However, if the likely long-term viability of the demonstration projects could be demonstrated, the claim may be substantiated.

Example 4. A product is packaged in a plastic bottle that is labeled "recyclable through Company X facilities." The bottle's manufacturer has developed a technology to recycle the material, and has established numerous collection points around the country for transfer of used bottles back to the manufacturer's recycling facility. The claim is not deceptive because a reasonable amount of recycling is occurring consistent with the limited claim made.

Example 5. A label claims that the package "includes recyclable plastic." The package is composed of four layers of different materials, bonded together. One of the layers is a recyclable plastic, but the others are not. Even if it is technologically possible to separate the layers, the claim is deceptive unless the manufacturer has a reasonable basis for concluding that a reasonable amount of the material will actually be separated and recycled at some facilities around the country.

Section 5. Claims of Compostability.

(a) Scope of Claims. It is deceptive to misrepresent, directly or by implication, that any product or packaging material can be composted.

Example 1. A manufacturer indicates that its package or product is made of compostable materials. The claim is deceptive unless the manufacturer has reliable evidence that, through a process of physical, chemical, thermal and/or biological degradation in a solid waste composting facility, the product or package will be converted to soil-like material.

Example 2. A package is labeled with the phrase "can be composed," without elaboration. Unless the type of product, surrounding language, or other elements of the context indicate otherwise, the claim is deceptive unless both the product and the packaging can be processed in solid waste composting facilities.

Example 3. A manufacturer sells a disposable diaper that bears the legend "this diaper can be composted where municipal solid waste composting facilities exist." The claim is deceptive unless the manufacturer has reliable evidence that the diaper can be processed in municipal solid waste facilities and that all materials in the product either are compatible with

compost intended for soil application or can be screened from the final compost.

Example 4. A manufacturer sells paper yard waste bags with metal closure ties. The package indicates that the bags can be composted. If the bags can be composted, the claim is not deceptive. The closure ties are incidental components of the product.

(b) Feasibility of Composting. It is deceptive to misrepresent, directly or by implication, the feasibility of composting a product or packaging material.

Example 1. A manufacturer indicates that its package "can be composted where facilities exist." The package or its materials are being composted at facilities in some parts of the country. The claim is not deceptive because only a limited claim of composting facility availability is being made.

Example 2. A paper bag for yard waste is labeled "compostable." The bags are in fact composted at many locations around the country, at solid waste composting facilities accepting yard waste. Nevertheless, the unqualified claim may be deceptive if consumers understand it to mean that composting facilities for the material are more widely available than is actually the case. Marketers should exercise caution before making such unqualified claims.

Example 3. A manufacturer indicates that its package "can be composted where facilities exist." There is general agreement among experts on a technology for composting the material in question, but no facilities are yet in operation which accept the material. The claim is deceptive because it implies that at least some composting facilities are actually processing the material.

Section 6. Claims of Source Reductions

(a) Scope of Claims. It is deceptive to misrepresent, directly or by implication, that the manufacture of a product or package represents a source reduction as compared with another product or package.

Example 1. An ad claims that solid waste created by the advertiser's packaging is "now 10% less." The claim is deceptive unless the advertiser has substantiation that shows that the current package contributes, by weight or volume, 10% less waste to the solid waste stream as compared with the immediately preceding version of the package.

Example 2. A packaged product bears the claim "source reduced 20% to help the environment." Unless the type of product, surrounding language, or other elements of the context indicate otherwise, the claim is likely to convey to consumers that both the product and the packaging produce 20% less solid waste as compared with their immediately preceding counterparts. Each such claim must be substantiated.

Example 3. An advertiser notes that disposal of its product generates "10% less waste." The claim is ambiguous. Depending on contextual factors, it could be a comparison either to the immediately preceding product or to competitive products. The seller should clarify the claim, or be prepared for the possibility that both claims will need to be substantiated.

Example 4. A product's label states that it has "nontoxic packaging." The claim is deceptive unless the manufacturer has reliable evidence which shows that, under any reasonably foreseeable means of use or disposal, no part of the package will produce or leave behind toxic residues that pose more than a de minimis risk to human health or the environment.

Example 5. A product is labeled "source reduced." Consumers would expect that waste from the product has been reduced by a reasonable amount, and advertisers must have substantiation consistent with these expectations. Advertisers can minimize the risk of consumer misimpressions by providing additional information concerning the source reduction in connection with such claims.

Example 6. A package indicates that toxic byproducts have been source reduced. The manufacturer has reliable evidence that the package will produce significantly fewer toxic byproducts than the package it used in test marketing for the preceding three months. Although the claim is substantiated, it is deceptive because the comparison is not to a product that was regularly offered to the public at large for a reasonably substantial period of time.

(b) Timeliness of Claims. It is deceptive to misrepresent, directly or by implication, when a source reduction was implemented.

Example 1. An ad claims that solid waste created by the advertiser's packaging is "now 10% less." The claim is deceptive unless the source reduction was implemented recently—at least within the past 12 months. If the comparison is to a much earlier package, then the advertiser should indicate the time frame covered by the comparison, such as "the package we used 5 years ago."

Example 2. An ad claims that the advertiser's packaging creates "less waste than the leading national brand." The advertiser's source reduction was implemented four years ago, and is supported by a detailed mass balance calculation comparing the relative solid waste contributions of the two packages. The claim is not deceptive, because it does not misrepresent when the source reduction was implemented and the comparison appears still to be true. If the advertiser had reason to believe that either it or its competitor had changed its packaging in the interim in a manner that rendered the claim unsubstantiated, the claim would be deceptive.

Example 3. An ad for a cleaning fluid in a plastic container states that it creates "20% less waste than our comparable glass bottle." The product is still available in a glass bottle. The plastic container was introduced to the market three years ago, and there is a reasonable basis for the comparison. The claim is not deceptive. However, if the ad stated or implied that the source reduction was a recent one, the claim would be deceptive

Example 7. Claims of Refillability/ Reusability

(a) Scope of Claims. It is deceptive to represent, directly or by implication, that a package is refillable or reusable unless there is in existence a program for: (1) The collection and return of such packages to the manufacturer for reuse in a manufacturing process or for reuse and refill without remanufacture; or (2) the later use of the package by consumers to mix, cook, use, or store product subsequently sold in another package.

Example 1. A package is labeled "refillable 5 times." The manufacturer has the capability to reuse returned packages, and can show that the package will withstand at least 5 manufacturing cycles. The claim is nevertheless deceptive unless there is a program for the collection and return of the packages to the manufacturer.

Example 2. A bottle of fabric softener states that it is in a "handy refillable container." The manufacturer also sells a large-sized container which indicates that the consumer is expected to use it to refill the smaller container. The claim is not deceptive because there is a program for the subsequent use of the container by consumers to store the same product sold in a different container.

Example 3. A small food jar bears the legend "reusable." The manufacturer has evidence that a significant number of consumers use the jars to store screws and nails. The claim is nevertheless deceptive because storing such articles is not a "reuse" of the food

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jar, and there is no program for such reuse.

(b) Quantification of Claims. It is deceptive to misrepresent, directly or by implication, the number of times a package may be refilled or reused without a material adverse impact.

Example 1. A cleaning solution bottle bears the word "refillable," without elaboration. The manufacturer has a collection and reuse program, under which the bottle can be refilled no more than four times without material adverse impact. Consumers are likely to believe that the bottle can be refilled a reasonable number of times without material adverse impact. What constitutes a reasonable number of times will depend on circumstances, such as the nature of the product and consumer awareness of refilling practices. Advertisers can minimize the potential for deception by specifying the number of times a product may reasonably be refilled or reused.

Example 2. A cake manufacturer sells a product kit containing cake mix and a baking tray. It also sells a product containing only the cake mix. The tray is sized specifically for the mixing instructions on the cake mix package and can be reused to make more cakes. After 5 baking and washing cycles, the tray loses its material functionality. A claim of "reusable 5 times" for the tray is not deceptive.

Section 8. General Claims

It is deceptive to make generalized statements of environmental benefit unless there is a reasonable basis for each claim consumers will take from such statements.

Note: Generalized claims of environmental benefit, such as "environmentally friendly," "green," "earth friendly," "environmentally safe," and the like, are very difficult to interpret. In some contexts, such statements may be regarded by consumers as mere puffery, thus requiring no substantiation. In many cases, however, these statements may imply environmental benefits that are both specific and far-reaching. Thus, advertisers should exercise great caution before deciding to use terms of this type. The examples below suggest the types of interpretations which could arise from such generalized statements.

Example 1. A manufacturer states that its packaging is "now environmentally friendlier." The packaging is, in fact, source reduced 15% compared to previous packaging, but it is not recyclable. The claim is deceptive if consumers interpret "environmentally friendlier" in this context to mean that all significant environmental aspects of the packaging are improved over previous packaging. A source reduction claim that focuses on solid waste and is substantiated would not be deceptive.

Example 2. The seller of an aerosol product claims that the product is "ozone friendly." In fact, chlorofluorocarbons ("CFCs") have been removed from the product. The claim is deceptive unless the manufacturer can establish that none of the product's emissions will have adverse effects on the upper atmosphere. A specific claim regarding the absence of CFCs would not be deceptive.

Example 3. A brand name like "Eco-Safe" would be deceptive if, in the context of the product in question, it leads consumers to believe that the product has environmental benefits that cannot be substantiated by the manufacturer. The claim would not be deceptive if "Eco-Safe" were followed by qualifing language limiting the safety representation to a particular product attribute for which it could be substantiated.

(b) Guidelines for Recycling Claims [23]

Section X. Claims of Recyclability

Example. Two products are packaged in plastic bottles, both made from the same type of plastic and both labeled "recyclable where facilities exist." One bottle is large and the other is small. The large bottle is being recycled throughout the country, but currently there are few recycling facilities equipped to recycle the small plastic bottle. The recyclability claims are not deceptive, because both bottles are made of a plastic that is currently being recycled throughout the country.

Example. A product is packaged in a plastic bottle that is labeled "recyclable where facilities exist." The plastic bottle is made of a material that is being recycled throughout the country. Affixed to the bottle is a label made from a material that is not recyclable. Even if it is technologically feasible for a recycling facility to separate the label from the bottle, the claim is deceptive unless the manufacturer has a reasonable basis for concluding that it is economically feasible for a processing or recycling facility to separate the label from the bottle.

Example. A product is packaged in a plastic bottle that is made of a material that is being recycled throughout the country. Affixed to the bottle is a label made from a material that is not recyclable. The product is labeled "recyclable if consumer removes label." The claim is not deceptive.

[23] These guides were proposed by the Cosmetic, Toiletry, and Fragrance Association and the National Nonprescription Drug Manufacturers Association.

Section Y. Claims of Quantity of Recycled Content

Example. A product is packaged in a "blister pack" consisting of recycled cardboard and non-recycled plastic. A statement on the cardboard portion of the blister pack claims "recycled," without elaboration, or "made from recycled material." Such claims are deceptive because they are likely to convey to consumers that the entire blister pack is recycled. If the statement read, "made from recycled cardboard," the claim would not be deceptive.

Example. A product is packaged in a bottle made from three types of plastic, laminated together. The two thin outer layers are made from plastic that is not recycled, and the middle layer is made from recycled plastic. The bottle contains the statement, "bottle contains at least X% recycled plastic." The claim is not deceptive.

(c) The Green Report II: Recommendations for Responsible Environmental Advertising [24]

1. Claims Should Be Specific

Environmental claims should be as specific as possible, and not general, overly broad.

Commentary: Not only are terms such as "environmentally friendly" or "safe for the environment" too vague to be meaningful but, because of the inherent complexity of environmental issues, simplified statements have a tendency to be inaccurate. Moreover, vague and incomplete claims do not permit consumers to make meaningful comparisons between products. Providing more specific information allows consumers to evaluate environmental attributes for themselves and makes an important contribution to consumer education. Specific claims also prevent the misunderstanding that is probable when a more generalized term or phrase is used because such term or phrase may be subject to more than one reasonable interpretation. Finally, specific information minimizes the risk that consumers will attach a broader significance to the product's actual environmental attributes than is warranted.

[24] The recommendations in "The Green Report II: Recommendations for Responsible Environmental Advertising" were proposed by a task force of the attorneys general of eleven states: California, Florida, Massachusetts, Minnesota, Missouri, New York, Tennessee, Texas, Utah, Washington, and Wisconsin.

1.1 Use of Terms "Environmentally Friendly" and "Safe for the Environment"

Generalized environmental claims which imply that a product has no negative or adverse impact on the environment should be avoided. Instead, claims should be specific and state the precise environmental benefit that the product provides.

Commentary: In the absence of standards for comparing the environmental impacts of products throughout a product's lifecycle, it is very difficult, if not impossible, to substantiate claims of generalized environmental benefit. Moreover, generalized environmental benefit claims may create an unwarranted impression that a product is good for the environment in all respects. As stated in our preliminary report, the production and use of products necessarily have adverse environmental consequences. For these reasons, such claims should be avoided altogether. Instead, companies should make truthful, narrowly-drawn claims that specify the precise environmental attribute of a product. Such claims are much more useful to consumers and avoid the potential for deception.

1.2 Pre-existing Environmental Attributes

The promotion of a previously-existing but previously-unadvertised positive environmental attribute should not create, either explicitly or implicitly, the perception that the product has been recently modified or improved.

Commentary: There was objection to the preliminary recommendation of the Task Force that when promoting a previously-existing but previously-unadvertised positive environmental attribute an advertiser make clear that the product had not been modified or improved. Companies commented that an affirmative disclosure that the product had not been modified would place a company that had long made a product with a positive environmental attribute at a competitive disadvantage to a company that only now reformulates its product to achieve the same attribute.

This was not the intended result of the Task Force. Therefore, the Task Force has modified the recommendation to make our intention clear. The final recommendation is that promotion of a previously-existing but previously unadvertised positive environmental attribute of a product should not create, either explicitly or implicitly, the impression that the product has been recently modified or improved. Companies should not misinterpret this modification as encouragement to promote previously unadvertised attributes in an irresponsible or deceptive manner. Companies must insure that such claims do not mislead, even implicitly; of course, claims must also be literally true.

For example, some companies have used recycled paper in their packaging materials for years. Consumers are now sensitive to the environmental benefits of recycling and base their purchasing decisions, in part, on whether product packaging is made from recycled materials. The company that has been doing the responsible thing for years may promote that fact, provided that such promotion does not mislead. Clearly, it would be deceptive to promote a product that had been packaged in recycled paper for ten years by saying "Now! Recycled package!" It would not be deceptive, on the other hand, to say "We have used 100% recycled paper for years," as long as that claim is true and does not otherwise deceive.

1.3 Removal of Harmful Ingredient

In promoting the removal of a single harmful ingredient or a few harmful ingredients from a product or package, care should be taken to avoid the impression that the product is good for the environment in all respects.

Commentary: This a problem that came to light when the Task Force began examining claims being made for aerosol spray products. Some aerosol spray products made without CFCs are advertised as "safe for the environment" or "ozone friendly," but they may contain other ingredients that contribute to destruction of the stratospheric ozone layer, such as 1,1,1,-trichloroethane. Certain of these products identify the chemical additives on the label; others do not. Promoting a product which contains ozone depleting ingredients as "ozone friendly" is clearly misleading. The Task Force is also concerned that stating that such a product "contains no CFCs" may also mislead because the phrase "no CFCs" may mean "safe for the ozone" to many consumers.

Labeling an aerosol spray product that does not contain any ozone depleting chemicals as "safe for the environment" may also be misleading because many of these products contain volatile organic compounds that are linked to the creation of ground level ozone, a component of smog. A more appropriate, less confusing claim for such a product would be one which states "contains no ozone depleting ingredients" or "does not contribute to ozone depletion." In addition, since concerned consumers are becoming more sophisticated in their knowledge about chemicals and their impact on the environment, companies should list the ingredients used in their products so that consumers can avoid other potentially harmful propellants or ingredients if they choose.

1.4 Benefits of Products versus Packaging

A clear distinction should be made between the environmental attributes of a product and the environmental attributes of its packaging.

Commentary: The testimony of a county recycling official at the Public Forum in Minnesota illustrates the problems that can arise when such distinction is not clearly made. A manufacturer of disposable diapers placed a sticker on the plastic wrapper containing its diapers which states "recyclable" in large capital letters. Below the word "recyclable," in smaller print, were the words "This softpac is recyclable where plastic bag recycling facilities exist." The county recycling official reported that shortly after the sticker appeared on the wrapper, a consumer dropped off a pile of the plastic wrappers and a garbage bag full of dirty diapers. Evidently, the consumer thought that the diapers, as well as the plastic wrapper, were recyclable. In fact, the recycling facility accepts only milk and soft drink bottles—not plastic bags and certainly not used disposable diapers.

1.5 Use of Term "Recycled"

Recycled content claims should be specific and separate percentages should be disclosed for post-consumer and pre-consumer materials. To avoid the potential for deception, the Task Force recommends that only post-consumer materials be referred to as "recycled" material. Recaptured factory material should be referred to by some other term, such as "reprocessed (or recovered) industrial material."

Commentary: There is clearly a need to set national standards and definitions for the term "recycled" because the term is being used to refer to several different types of material. Consumers and solid waste managers should be able to discern, from a label, the sources for the recycled content of a product. Until national definitions are in place, the Task Force believes that full disclosure of both the source and the percentage of recovered materials is critical to avoid misleading consumers.

Realistically, when consumers think about recycling, they are thinking only about post-consumer waste—the trash they leave at the curb. The Task Force is

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of the opinion that consumers commonly believe that products labeled "recycled" contain material that consumers have recycled, *i.e.*, household waste, that has been separated out by the consumer for separate collection by a recycler and reused in creating new products. Because solid waste managers are often unable to locate markets for materials that consumers discard, state policymakers have sought to stimulate these markets by requiring that specific amounts of post-consumer material be incorporated into products before they can be labeled as "recycled." [25] Consumers can only support markets for such recyclable post-consumer material, thus improving the chances that more of their waste will actually be incorporated into new products, if they can determine which products are made from post-consumer materials.

This is not to say that other forms of internal industrial recycling of industry-generated waste are unimportant for the environment. They are important. National figures indicate that the amount of industrial waste far surpasses the amount of waste generated by households. However, industry does not need to rely on advertising to stimulate the routine recycling of factory scraps back into the manufacturing process. Industry already has a strong financial incentive to recycle this type of material. When industry recycles its own by-products, it makes more internally-efficient use of raw materials and, presumably, becomes more cost efficient because it has conserved both natural materials and reduced its own internal disposal costs. Industry may, however, need an incentive to recycle factory wastes that are generally landfilled or incinerated. The Task Force believes that a distinction must be made between factory waste that is routinely fed back into the industrial process and factory waste that is routinely discarded. Only those industrial by-products that are actually diverted from the waste stream should be promoted as "recovered content" when used to make new products or packaging.

Because both consumers and policymakers have an interest in differentiating between the source of materials that can be included in recycled content, a distinction should be made between pre- and post-consumer materials in advertising, and a separate percentage should be listed for each.

[25] California, New York, and New Hampshire all require that a product include some percentage of post-consumer waste before it can be labeled "recycled." Rhode Island requires separate disclosure of pre-consumer and post-consumer waste content for materials labeled "recycled."

Further, because consumers generally understand "recycled content" to mean only post-consumer materials, to avoid deception a different word or phrase, such as "reprocessed (or recovered) industrial material," is recommended to describe factory waste that has been diverted from the waste stream. For example, if a company elects to advertise only the post-consumer material content of a product it could advertise "made from 50% recycled fibers." If a company wants to advertise both pre- and post-consumer content it might say "Our package is made from 50% recycled paper and 50% recovered industrial material."

The Task Force recognizes that a number of companies are seeking to have new technologies or technological modifications, such as the use of sawdust in making paper, designated as "recycling" technologies because of their desire to advertise their product as made from recycled materials. While innovative and environmentally-sound technologies such as these should be acknowledged, the use of the term "recycled" to describe the resulting products would only add confusion where confusion already abounds. Advertising such a product as "made from sawdust" or "made from reprocessed industrial material" more accurately describes the technological process involved.

1.6 Comparative Claims

Only complete and full comparisons should be made; the basis for the comparison should be stated.

Commentary: Any specific claim that includes a comparative statement such as "better for the environment" should only be used if a complete and full comparison is made and the basis for the comparison is stated. Such a comparison might be: "This product is better than (our former product) (our competitor's product) because * * *."

1.7 Product Life Assessments

The results of product life assessments should not be used to advertise or promote specific products until uniform methods for conducting such assessments are developed and a general consensus is reached among government, business, environmental and consumer groups on how this type of environmental comparison can be advertised non-deceptively.

Commentary: Although product life assessments or cradle-to-grave product analyses are expected to be extremely useful for evaluating the overall environmental effects of various manufacturing processes and products, the methodology for this type of assessment has not yet been fully developed. Experts in many fields are now working together to develop a consensus on how to conduct these complex and costly comparisons.[26]

Promotional materials that refer to product life assessments demonstrate the problems with using information from such assessments at this time. Problems include comparisons of information that technically cannot be compared; references to only the positive environmental aspects of one product and only the negative aspects of the competing product; and misuse of such assessments by third parties who do not know how to interpret the results. Moreover, the few product life assessments that have been conducted by the business community have come out in favor of the manufacturer who paid for the assessment and against that manufacturer's "target" competitor. For these reasons, the Task Force believes that, at the current time, it is misleading to use the results of product life assessments in advertisements.

However, nothing in this section should be read to discourage industry from using product life assessments to determine what products to manufacture or how to modify already existing products so as to lessen their adverse impact on the environment. In light of our growing environmental crisis, every possible tool should be employed by industry to protect our natural environment.

1.8 Third-Party Certifications and Seals of Approval

Environmental certifications and seals of approval must be designed and promoted with great care, to avoid misleading the public.

Commentary: The use of certifications, seals of approval and other third-party evaluations has become a more pressing issue than it was when the Task Force began its inquiry. The last year has seen the emergence of a variety of programs in which products are evaluated by an independent third party, and the evaluation is then used in advertising and labeling.

Most conspicuous among these arrangements are several private seal programs that will, for a fee, certify one or more environmental attributes of qualifying products, and then allow the manufacturer to display the program's seal on certified products.[27] Other third-party certification programs are also proliferating. These include the governmentally sponsored environmental seals already in place in Canada, Germany, Japan, and the Scandinavian countries; a new seal being developed by the European Economic Community; and governmental seals for recycled products and "organic" foods being developed in several states. In addition, several major retailers have developed in-house programs to highlight ostensibly "environmentally superior" products—whether by a seal, shelf-labeling, in-store displays, or distinctive private label packaging.[28] In theory, there is no reason that third-party assessments cannot play an important role in the environmental advertising area. Consumers would undoubtedly benefit from detailed environmental product comparisons if those comparisons were based on testing conducted with the appropriate safeguards. However, the use of these comparisons, when communicated through advertising and on product packaging, can present significant problems.

[26] Experts in many fields have been working cooperatively with the support of the EPA to reach a consensus on the methods to be used to conduct the most accurate and useful product life assessments. Most parties agree that using such assessments now to make comparisons between products is inappropriate because a great deal of technical work remains to be done before agreements on methods for conducting such assessments can be reached.

For example, the Task Force is concerned about the criteria grantors of "seals" will use to select product categories and to determine whether a product qualifies for a "seal of approval." The criteria used are critical to determining whether the "seal" is meaningful or, on the other hand, potentially confusing and deceptive.

Another concern is the danger that financial consideration may lead programs to choose product categories and evaluation criteria that are actually at odds with environmental goals because those manufacturers most willing to pay for a "seal" may have products that are environmentally suspect or environmentally inferior to alternatives not included in the seal program. For example, the on-going public debate about the relative merits of paper and plastic bags might tempt a program to award seals in a "grocery bag" category. However, experts agree that, whenever possible, shoppers should avoid disposable bags and carry their own reusable bags. This option would be difficult to include in establishing the product category criteria because it is unlikely to generate certification fees for the seal program.

The Task Force is equally concerned that certification programs may award seals on the basis of a single criterion that may be arbitrary, trivial or even intrinsically deceptive. For example, a program might award a seal to an environmentally harmful product simply on the basis of the recycled content of the outer package. Or a seal could be awarded to single-use paper towels, made of virgin wood products by a process using chlorine bleach, wrapped in non-recycled and non-recyclable plastic, solely on the basis of the partial recycled content in the towel's inner cardboard core. As these examples demonstrate, when a product is awarded a certificate or seal on the basis of a single criterion or a few criteria, it is critical that those criteria be carefully chosen to reflect the product's dominant environmental impact.

In some cases—for example, where there are no clearly dominant environmental benefits—meaningful product evaluation may require an in-depth lifecycle assessment, and for this reason, such a product should not at this time receive any seal of approval or certification that is used for advertising purposes. As discussed in section 1.7 above, there simply is not enough information available today to draw reliable conclusions about the cradle-to-grave environmental impact of most products.

Even if a program uses appropriate criteria in granting its certification, problems may still arise when the certification logo is used as a sales tool. No matter how laudable a seal program's purposes may be, if the manufacturers who pay for the use of the seal advertise it in a confusing and deceptive manner, its implementation may persent more problems for consumers than solutions.

The use of seals on packages and in advertising must therefore be done with the utmost of care. In particular, advertisers must not overstate the meaning or importance of the logo to their product, either explicitly or by the configuration of their labels and advertisements. For example, seals based on only one attritbute of a product must be very clear about that fact. Seals based on a constellation of "key" factors should be clearly explained, to void the easily-fostered misperception that a prominent seal constitutes an absolute, cradle-to-grave endorsement of the product. Nor shouted any environmnental claim be made in proximity to a seal on a package, unless the claim is in fact certified as true by the seal grantor.

There is also a danger that a manufacturer will use a seal to imply that its product is superior to products that lack the seal, when in fact the other products may have no seal simply because their manufacturers chose not to pay to participate in the certification program, or could not afford to do so. This may be so even though their products may be superior for the environment. One safeguard for this problem would be disclosure, on products and elsewhere, that fees are paid to use the seal.

The Task Force believes that the seal grantors have an independent duty to effectively monitor the use of their seals in order to prevent deception, and may themselves be subject to legal action if they permit their seals to be used deceptively. This duty extends not only to the manner in which logos are displayed on packages, but to all advertising by licensees. It also includes an affirmative duty to communicate to the public the true significance of each seal, whether through in-store information, separate advertising by the grantor, or information on the logo.

For all of these reasons, the Task Force sees a serious potential for deception unless certification programs are designed, promoted, and monitored very carefully. If properly implemented, certifications may offer real benefits, but opportunities for missteps abound. Manufacturers and seal grantors alike should therefore proceed with great caution.

1.9 Souce Reduction Claims

Source reduction claims should be specific, and where possible include percentages. Comparisons should be clear and complete.

Commentary: The Task Force recognizes that source reduction can provide a significant environmental benefit. Some companies took the Task Force's silence on source reduction

[27] One member of this Task Force, Attorney General Hubert H. Humphrey III of Minnesota, serves as an uncompensated member of the Board of Directors of one such organization, the nonprofit corporation, Green Seal.

[28] Many companies are also pursuing less direct methods of legitimizing their products by associating them with respected third-party environmental organizations—for example, by establishing tie-in arrangements in which the company makes a financial contribution to an environmental organization for each product sold. While not certification programs in the strict sense, these arrangements are similar, in that their purpose is to establish the environmental credentials of a product by associating it with a respected third-party—often by featuring the third party's name or logo in the product's packaging or advertising. These tie-in arrangements raise many of the same problems discussed in this section with regard to certification programs. Thus, those using such tie-in arrangements should take into account the discussion regarding certification programs when developing or participating in these promotions.

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claims to mean that such claims are unacceptable. That is not correct.

Companies that have made strides towards reducing packaging (for example, by using fewer layers of packaging or smaller containers/boxes), companies that have designed products that encourage consumers to reuse their original containers (for example, by selling concentrated refills in small paper containers that consumers can reconstitute in their original plastic container), and companies that have significantly reduced the actual size of their products certainly can advertise their efforts at source reduction so long as the claims made are truthful and accurate.

However, to avoid the possibility of deception, such claims should be specific and, where possible, include exact percentages for the reduction in weight or volume (e.g., "Now 10% less packaging than before"). Source reduction claims should only be made for a relatively short period of time—six months to one year—immediately following the implementation of the change in size. Comparisons should always be complete (e.g., "10% less volume than our previous package"). Size reduction comparisons should be made only to the previous version of the manufacturer's product on the market unless there is a clear disclosure that a comparison is being made to a different product(s) (e.g., "10% less packaging than the leading brand").

2. Claims Should Reflect Current Solid Waste Management Options

Environmental claims relating to the disposability or potential for recovery of a particular product (e.g., "compostable" or "recyclable") should be made in a manner that clearly discloses the general availability of the advertised option where the product is sold.

Commentary: In the preliminary report, the Task Force recommended that all solid waste management claims be location specific. While environmental and consumer groups heartily endorsed this approach, the opposition from industry was nearly unanimous. Representatives from the business and advertising communities argued that it is impossible to make location specific disposability or recovery claims for products sold nationally. Moreover, they argued, if industry stops making such claims, consumers and the environment will suffer because: (1) Consumers will not be informed as to which products are potentially recyclable or compostable and therefore will not be motivated to push for recycling or composting facilities that will accommodate these specific types of products in their communities; and (2) where composting or recycling facilities are available, consumers will not dispose of products properly if they are not clearly labeled as compostable or recyclable.

The Task Force is not persuaded by the first argument. It is true that their is a need to promote the creation of recycling and composting facilities, but there are many ways to achieve this goal without misleading consumers. For example, straighforward, informational advertisements that tell the full story are likely to accomplish more than ambiguous labeling buzzwords. Even on labels, companies can easily give a clear, non-deceptive message. For example, one company currently puts the following message on its plastic laundry product containers: "We are now using technology that can include recycled plastics in our bottles at levels of 25–35%. But to do so consistently, we need more recycled plastic. So please encourage recycling in your community." Such a statement, by indicating that plastic can be recycled and used by this manufacture, encourages consumers to recycle, or to advocate for recycling facilities where none exist, without being misleading.

The controversy arises not because industry cannot write non-misleading labels, but rather because non-misleading labels are often less effective sales tools. The Task Force believes, that if a disposability or recovery claim cannot be made without misleading consumers in a number of communities, then it should not be made at all. Such claims must be clarified to ensure that the public is well-informed rather than deceived. As discussed in the sections that follow, the Task Force believes there is a middle ground that will achieve that goal and foster the emergence of alternative solid waste management facilities. The worst possible solution, the Task Force is convinced, would be to continue the use of the unqualified terms "recyclable" and "compostable" on products that are not widely recyclable or compostable until consumers become so disillusioned, annoyed and frustrated that they lose interest in recycling and composting generally.

The Task Force still firmly believes that degradability claims should not be made for products that are likely to be disposed of in landfills or incinerators. During the December, 1990, hearings in San Diego, representatives from the plastic and paper industries generally conceded that degradable products provide virtually no environmental benefit when disposed of in landfills. During the past year, the Task Force has witnessed substantial movement on the part of manufacturers toward removing degradability claims from products destined for landfills or incinerators because of the confusion such claims created for consumers. Because of industry's willingness to discontinue such claims it appears that, for the most part, this particular controversy regarding the use of the word "degradable" has been resolved.

However, both plastic and paper manufacturers indicated that they were interested in promoting degradable products as "compostable" or "degradable if deposited in a composting facility." This also presents potential deception problems. Although several communities now compost yard trimmings, few compost other types of municipal solid waste. Several questions are now being raised about the environmental soundness of composting inorganic and organic materials together because of the danger of contaminating the resulting compost. These problems may stall efforts to develop general municipal solid waste composting facilities.

At the current time, composting is not an available option for the vast majority of consumers in the United States. The advertising today of an environmental attribute that cannot be realized until some uncertain time in the future is confusing and misleads the consumer. Consumers are purchasing products and packaging that must be disposed of in short order. To avoid potential deception, companies that elect to make claims such as "compostable" or "degradable if deposited in a composting facility" must also clearly disclose the current limited availability of this disposal option and the fact that the product is not designed to degrade in a landfill. (See section 2.2 for examples.)

Recyclability claims present similar problems. Only those nationally sold products that are generally recyclable everywhere should carry an unqualified "recyclable" claim. Other products that are recyclable in some communities, but not in others, should only make qualified recyclability claims that inform the public that the product is potentially recyclable without misleading consumers to believe that the product is recyclable everywhere it is sold. (See Section 2.3 for examples.)

2.1 Use of terms "Degradable," "Biodegradable," and "Photodegradable"

Products that are currently disposed of primarily in landfills or through incineration—whether paper or plastic—should not be promoted as "degradable," "biodegradable," or "photodegradable."

Commentary: While there was some debate over the environmental benefits of disposing of degradable products in landfills at the Public Forum in March, 1990, by December, 1990, at the hearings in San Diego, virtually all the companies that testified conceded (or had accepted) that degradability claims should not be made for products likely to be disposed of in landfills.[29]

The Task Force notes, however, that it may be appropriate to make claims about the "biodegradability" of a product when that product is disposed of in a waste management facility that is designed to take advantage of biodegradability (such as a municipal solid waste composting facility) and the product at issue will safely break down at a sufficiently rapid rate and with enough completeness when disposed of in that system to meet the standards set by any existent state or federal regulations. (See section 2.2.)

2.2. Use of Term "Compostable"

Unqualified compostability claims should not be made for products sold nationally unless a significant amount of the product is currently being composted everywhere the product is sold. In all other cases, compostability claims should be accompanied by a clear disclosure about the limited availability of this disposal option. If a claim of degradability is made in the context of a product's compostability a disclosure should be made that the product is not designed to degrade in a landfill.

Commentary: A product sold nationally should not be promoted as "compostable" or "compostable where composting facilities exist" until a significant amount of the product is composted nationally. There are currently very few locations in the United States where anything other than yard trimmings is composted. Thus, at the present time, promoting most nationally sold products as "compostable" is meaningless at best and potentially deceptive. Because of the extremely limited availability of municipal solid waste composting facilities, the Task Force believes that compostability claims for most products sold nationally are premature. In sum, companies should proceed with extreme caution in promoting this product attribute.

To minimize the risk of deception, a compostability claim should be both qualified and as specific as possible. For example, "This product is potentially compostable; however, less than 1% of the U.S. population has access to composting facilities. To find out if there is a composting facility near you, call (800) xxx-xxxx" would be an informative, non-deceptive claim. In addition, if only a portion of the product is compostable that fact and the percentage that is compostable should be clearly disclosed. Other material facts regarding the dangers of composting certain products should also be made explicit. One such fact, for example, is that disposable diapers should not be composted in backyard compost bins designed for food scraps and/or yard trimmings or in municipal lawn and leaf composting operations because of health and sanitation problems. Another is that many solid waste managers do not recommend that paper or plastic packaging materials be composted at home or in municipal yard trimming composting facilities.

Finally, because of the widespread misunderstanding among consumers about the benefits of "degradability" for products disposed of in landfills, the label of any product promoted as "degradable if disposed of in a composting facility" should clearly and prominently disclose that the product is not designed to degrade quickly in landfills.

2.3 Use of Term "Recyclable"

Unqualified recyclability claims should not be made for products sold nationally unless a significant amount of the product is being recycled everywhere the product is sold. Where a product is being recycled in many areas of the country, a qualified recyclability claim can be made. If consumers have little or no opportunity to recycle a product, recyclability claims should not be made.

Commentary: Products sold nationally should not be promoted with the unqualified claim "recyclable" unless the product is currently being recycled in a significant amount everywhere the product is sold. Thus, for example, aluminum cans, which are recyclable virtually everywhere in this country, could carry the unqualified claim "Recyclable," or the phrase "Please recycle."[30]

Where a nationally sold product can be recycled in many communities, but not everywhere it is sold, recyclability claims should be qualified to avoid the potential for deception. The Task Force strongly recommends that companies desiring to promote their products' recyclability set up 800 numbers so that consumers can find out if recycling facilities exist near them. Such a company could advertise saying, "Recyclable in many communities. Call us at (800) xxx-xxxx to find out if there is a recycling facility that accepts this product near you. Support recycling." Such a claim informs consumers that the product can be recycled in some communities and tells them how to find out if they can recycle it in their community, but avoids giving the impression that the product is being recycled everywhere.[31] In addition, if only a portion of the product (for example, the paper wrapper) is recyclable, that fact should be clearly disclosed.

However, if a product is only technically capable of being recycled and is, in fact, only being recycled at a few test sites, then no recyclability claim should be made because there is no real opportunity to recycle. If a company marketing such a product wants to promote the fact that the product has the potential to be recycled, or that it is technologically possible to recycle it, then that company should clearly disclose all of the material facts,

[29] As detailed in the Preliminary Report, there is good reason why such claims should not be made. Even products specifically modified to degrade more rapidly than conventional products do not degrade at any appreciable rate in landfills. Clearly they are not breaking down fast enough to extend the useful life of our landfills. Moreover, in a report submitted to Congress in February 1990 entitled "Methods to Manage and Control Plastic Wastes," the EPA stated that degradable plastics will not help solve the landfill capacity problems facing many communities in the United States. Indeed, to the extent degradable plastics do break down over some extended period of time, their degradability may actually be harmful, because breakdown can create toxic leachates and dangerous methane gas—precisely the result that modern landfills are designed to inhibit. Further, degradability claims on plastic products may send the message that it is all right to litter such products. The Task Force believes that consumers are confused about the environmental effects of degradability for products disposed of in landfills or incinerators, and that the widespread use of deceptive degradability claims in advertising and packaging have both taken advantage of and exacerbated consumer confusion about the environmental benefits of degradability.

[30] Both New York and California, by statute, restrict the use of the terms "recycled" and "recyclable" based on how widespread the recycling opportunities are in each state, and companies wishing to use these terms in those states must, of course, comply with the requirements of those states' laws.

[31] The availability of recycling depends on a combination of technical and economic feasibility, market demand and the existence of collection and separation facilities. If the manufacturer is not recycling the packaging it sells itself, the economics of recycling tend to vary by geographic location and the physical composition of materials. For example, the economics of aluminum recycling are settled and can be quantified by the value assigned to scrap aluminum. The economics of polystyrene recycling, on the other hand, are not yet known. While demonstration and pilot projects exist, it is by no means clear that recycling polystyrene is economically feasible.

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including at least: (1) The fact that the technology is in the early stages, or that there are only "pilot" recycling programs, if that is the case; (2) the number of locations where the product is being recycled; (3) the types of collection sites if there is no curbside pick-up available (e.g., "at school cafeterias"); and (4) the number of states in which the collection and recycling facilities are located. Finally, a product should not be promoted as "recyclable" if it contains additives or other materials that make the product problematic or unsuitable for recycling.[**]

2.4 Safe for Disposal

Vague safety claims concerning disposability should be avoided. Instead, products should specifically disclose those environmentally dangerous materials or additives that have been eliminated.

Commentary: Federal and state solid waste managers need to control the components of the waste stream which enter their incinerators and landfills in order to reduce specific adverse environmental impacts associated with their waste disposal method. Thus, some waste districts may prohibit the incineration of a specific product, packaging material or the like, even though, in the manufacturer's opinion, it can be "safely" incinerated. Simply because a product meets a federal safety standard does not mean that its disposal in a landfill or incinerator is risk free or has no adverse impact on the environment. To prevent confusion, manufacturers should not promote products as "safe for incineration" or "landfill safe." If a product does not contain materials or additives that are known to be problematic for environmentally benign disposal, the manufacturer should simply state that the product does not contain them (e.g., "Our packaging material contains no cadmium").

3. Claims Should be Substantive

Environmental claims should be substantive.

Commentary: Nonsubstantive claims are widespread in "green marketing" today. These trivial and irrelevant environmental claims create a false impression of a product's overall environmental soundness. They also contribute to consumer confusion. Although this may, in the short run, aid the sale of a given product, it reflects an irresponsible attitude toward the environment and may be misleading.

3.1 Trivial and Irrelevant Claims

Trivial and irrelevant claims should be avoided.

Commentary: The broad variety of trivial and irrelevant environmental claims being made today almost defies description. Examples include products promoted as "degradable" that will be disposed of in landfills or incinerators, and trash bags, which are highly unlikely to be used again for any purpose, advertised as "recyclable." An example of a technically accurate but irrelevant claim is a polystyrene foam cup that claims to "preserve our trees and forest." It is simply irrelevant, and perhaps deceptive, to suggest that a product made of petroleum products, a scarce nonrenewable natural resource, provides an environmental benefit because it does not use trees, the natural renewable resource that would have been used if the cup had been made of paper instead of polystyrene.

3.2 Single Use Products

Single use disposable products promoted on the basis of environmental attributes should be promoted carefully to avoid the implication that they do not impose a burden on the environment.

Commentary: Many products that are designed to be thrown away after a single use, such as disposable diapers, paper plates or shopping bags, sport claims that imply environmental soundness. Such claims convey an implicit message that disposal of a single use item—perhaps the most environmentally distressing aspect of the product—does not contribute to the overall solid waste disposal problem. These claims therefore run the risk of leading consumers to ignore or reject more durable alternatives to single use products, such as cloth diapers, reusable plates or reusable shopping bags. Advertisements for single use products should not convey the message that they impose no burden on the environment.

4. Claims Should Be Supported.

Environmental claims should be supported by competent and reliable scientific evidence.

Commentary: Of course, this recommendation does not set forth a new legal concept. Instead it restates what has always been required under state and federal law—that advertising claims must be supported by tests, analysis, research or studies conducted or evaluated in an objective manner by persons qualified to do so using procedures generally accepted by others in the profession to yield accurate and reliable results.

The Task Force notes that in the course of its investigation of environmental claims, some companies have attempted to minimize their responsibility for claims that appear on their products by pointing to information provided by suppliers of the constituent materials. Companies that fail to independently confirm substantiation provided to them by suppliers do so at their peril when they incorporate such claims into their advertising and packaging labels. Aside from potential legal liability, a company that does not independently confirm the accuracy completeness of claims made by suppliers abdicates its duties to its consumers and the environment.

In addition to ensuring that environmental claims are adequately supported, business can make a significant contribution toward the public debate about environmental problems by making the substantiation for environmental claims available to the public, regulators and experts. Although the Task Force recognizes that companies will often feel it necessary to keep certain information confidential, the Task Force urges companies to make information about the composition and the environmental effects of their products, and the substantiation for their environmental claims, available to the public to the greatest extent possible.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 91-12803 Filed 5-30-91; 8:45 am]

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[**] Nothing in this section should be read to apply to the Society of Plastic Industry (SPI) code, which consists of a design of arrows in a triangular shape with a number or letter code that identifies its component plastic resin. This symbol alone, usually placed inconspicuously on the bottom of the container, is not promotional and appears for the sole purpose of permitting plastic recyclers to easily sort plastics for recycling.

federal register

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May 31, 1991

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Supplemental Proposals for Migratory Game Bird Hunting Regulations; Notice of Meetings; Proposed Rule; Supplemental

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA24

Migratory Bird Hunting; Supplemental Proposals for Migratory Game Bird Hunting Regulations; Notice of Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter the Service) proposed in an earlier document to establish annual hunting regulations for certain migratory game birds. This supplementary document describes proposed changes and provides additional information that will facilitate establishment of the 1991–92 hunting regulations. This document also announces the meetings of the Service Migratory Bird Regulations Committee.

DATES: The Service Migratory Bird Regulations Committee will meet to consider and develop proposed regulations for early seasons on June 18, 19, and 20, and for late seasons on July 31 and August 1 and 2. Public hearings on proposed early- and late-season frameworks will be held at 9 a.m. on June 20 and August 2, 1991, respectively. The comment period for proposed migratory bird hunting-season frameworks for Alaska, Hawaii, Puerto Rico, the Virgin Islands, and other early seasons will end on July 22, 1991; and for late-season proposals will end on August 26, 1991.

ADDRESSES: Meetings of the Service Migratory Bird Regulations Committee will be held in the Board Room of the American Institute of Architects Building, 1735 New York Avenue (at the corner of 18th and E Streets, NW.), Washington, DC. Both public hearings will be held in the Auditorium of the Department of the Interior Building, 1849 C Street, NW., Washington, DC. Written comments on the proposals and notice of intention to participate in either hearing should be sent to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, room 634–Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Thomas J. Dwyer, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634–Arlington Square, Washington, DC 20240 (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1991

On March 6, 1991, the Service published in the **Federal Register** (56 FR 9462) a proposal to amend 50 CFR part 20. The proposal dealt with establishment of seasons, limits, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. This document is the second in a series of proposed, supplemental, and final rules for migratory game bird hunting regulations. Comment periods on this second document are specified above under **DATES.** Early-season frameworks will be proposed in late June and late-season frameworks in early August. Final regulatory frameworks for early seasons are targeted for publication on or about August 16, 1991, and those for late seasons on or about September 20, 1991.

On June 20, 1991, a public hearing will be held in Washington, DC, to review the status of migratory shore and upland game birds. Recommended hunting regulations for these species and other early seasons will be discussed at that time.

On August 2, 1991, a public hearing will be held in Washington, DC, to review the status of waterfowl and recommended hunting regulations for regular waterfowl seasons, and other species and seasons not previously discussed at the June 20 public hearing.

Announcement of Service Regulations Committee Meetings for Early-Season Regulations

The meeting on June 18 is to review information on the 1991 status of migratory game birds and to develop 1991–92 migratory game bird regulations recommendations. The June 19 meeting is to assure that the Service's regulation recommendations are developed with the benefit of full consultation on the issues. Immediately after the Service's regulations proposals are presented at the June 20 public hearing, the Service Regulations Committee will meet again to review the public comments presented at the hearing and to determine whether any modifications need to be recommended to the Director.

In accordance with Departmental policy regarding meetings of the Service Regulations Committee that are attended by any person outside the Department, these meetings will be open to public observation. Members of the public may submit to the Director written comments on the matters discussed.

Announcement of Flyway Council Meetings

Service representatives will be present at the following meetings of Flyway Councils:

Atlantic Flyway—July 28–29, Burlington, Vermont (Sheraton Inn).

Mississippi Flyway—July 28–29, Biloxi, Mississippi (Biloxi Beach Resort Hotel).

Central Flyway—July 28–29, Corpus Christi, Texas (Emerald Beach-Holiday Inn).

Pacific Flyway—July 27, Reno, Nevada (Peppermill Inn).

Although agendas are not yet available, these meetings usually commence at 8:30 to 9 a.m. on the days indicated.

Review of Public Comments

This supplemental rulemaking describes changes which have been recommended based on the preliminary proposals published March 6, 1991, in the **Federal Register.** Only those recommendations that would require either new proposals or substantial modification of the preliminary proposals to facilitate effective public participation are included herein. Those that support or oppose but do not recommend alternatives to the preliminary proposals are not included, but will be considered later in the regulations-development process. The Service will publish responses to proposals, written comments, and public-hearing testimony when final frameworks are developed, at which time additional data about the status of affected species will be available.

The Service seeks additional information and comments on the recommendations contained in this supplemental proposed rule. These recommendations and all associated comments will be considered during development of the final frameworks.

New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items in the March 6, 1991, **Federal Register** (56 FR 9462).

1. Ducks

The categories used to discuss issues related to duck harvest management are as follows: (A) General Harvest Strategy, (B) Framework Dates, (C) Season Length, (D) Closed Seasons, (E) Bag Limits, (F) Zones and Split Seasons, and (G) Special/Species Management.

Only those categories containing substantial recommendations have been used below.

B. Framework Dates

During the 1990 regulations-development cycle, the Service was requested to consider setting framework dates on a permanent basis (i.e., no longer using framework dates to regulate duck harvest). The Service agreed to review the role of framework dates in regulating harvest levels. This review will be made available in draft form for comment. The Service will then prepare a final report after reviewing the comments received.

The Upper and Lower Region Regulations Committees of the Mississippi Flyway Council recommended framework dates of October 1 through January 20, and that these dates remain fixed and not be used for management purposes on an annual basis.

F. Zones and Split Seasons

In the March 6, 1991, **Federal Register** (at 56 FR 9465), the Service asked States planning to change their use of zones and split seasons under the new guidelines in 1991 to advise the Service in writing as soon as possible so that proposed changes may be reviewed prior to the July regulations meetings. The Service should also be notified by States wishing to take advantage of the "grandfather clause" to continue a zone/split-season configuration that does not adhere to the new guidelines. The Service continues to request prompt notification of any plans a State may have regarding zones and split seasons. The Service has already received a number of notifications and questions from the States and is currently reviewing these and preparing responses to the various questions. All proposed changes in zone boundaries will be published in future proposed rules.

The Lower Region Regulations Committee of the Mississippi Flyway Council recommended that a separate zone be established for Catahoula Lake in Louisiana to help reduce lead-poisoning losses on the Lake. This zone would have a continuous season while the East and West Zones would be allowed to continue with split seasons. Under the current water management plan for the Lake, water levels are raised immediately following the close of the duck hunting season. The closed periods between split seasons have allowed waterfowl, unmolested by hunting activity, to more actively feed on the lake and increase the potential for lead-poisoning die-offs. The Committee believes that a continuous season for Catahoula Lake would reduce the probability of lead-poisoning mortality and would not significantly increase annual harvest.

G. Special/Species Management

i. *Canvasback harvest management.* In the preliminary proposals published on March 6, 1991, in the **Federal Register** (at 56 FR 9464), the Service gave notice of its intent to review the decision criteria for harvesting canvasbacks stated in the "1983 Environmental Assessment on Canvasback Hunting" as a basis for managing Eastern and Western Populations. The Service requested that Flyway Councils review the bases for these harvest guidelines and to determine whether these criteria are still appropriate. The Service reiterates that the two fundamental questions prompting a review of canvasback harvest guidelines include:

a. Whether existing guidelines based on specific breeding population index levels are the most appropriate harvest strategy for maintaining desired population levels; and, if not, what new approaches should be considered?

b. Whether the delineation of the breeding survey area (strata 1–50) into a Western Population (strata 1–12 and 26–29) and an Eastern Population (strata 13–25 and 30–50) correctly represents two distinct populations; and, if not, should harvest management by population units be continued?

In the March 6 document, the Service stated it would work with the Flyway Councils in accomplishing the review recommended above, and that it is doubtful that this process can be completed for the 1991–92 season.

The Atlantic Flyway Council recommended that canvasbacks be managed as a single continental population with a threshold level for harvest management to be a 3-year average breeding population index of 500,000 birds. The Council stated that the proper management of the canvasback resource requires a continental approach with harvest divided equitably among all flyways, in accordance with approved hunt plans, when the 3-year average breeding population index reaches the 500,000 threshold.

The Upper Region Regulations Committee of the Mississippi Flyway Council recommended that canvasback populations should continue to be separated into a Western and an Eastern Population based on breeding population survey strata as documented in the current canvasback harvest guidelines. Delineation of the boundaries between the populations should be reevaluated as new information becomes available. Canvasback harvest guidelines should be based on specific breeding population index levels as contained in the current canvasback harvest guidelines and current threshold levels as appropriate, pending further review of information.

The Central Flyway Council recommended that States in the Central Flyway be allowed to hunt canvasbacks when the continental 3-year running average breeding population index exceeds 500,000 and the breeding habitat in survey strata 1–50 is capable of production such that an age ratio of at least 1.0 young per adult would be expected in the harvest. The Council remarked that annual recruitment can be estimated based on water levels, that harvest in the Central Flyway averaged only 10,000 per year during the period 1980–85, that research indicates no conclusive evidence that a restricted hunting season would result in significantly lower survival rates beyond those occurring during a closed season, and finally that the focus of harvest regulation should be one of restrictive bag limits rather than area closures.

The Wisconsin Department of Natural Resources supports the current canvasback harvest guidelines but asked the Service to reconsider the current breeding areas assigned to the two population units based on banding information through 1990.

ii. *September Wood Duck Seasons.* The Lower Region Regulations Committee of the Mississippi Flyway Council recommended that the States of Kentucky and Tennessee be allowed to continue the 5-day September seasons to harvest wood ducks.

iii. *September teal seasons.* The Lower Region Regulations Committee of the Mississippi Flyway Council recommended a 3-day September teal season with a bag limit of three birds per day.

The Central Flyway Council recommended reinstatement of the September teal season at some reduced level of harvest pressure, but withheld specific recommendations for bag limit and season length until a later date pending receipt of data about this year's population level. The Council remarked that the September teal season has been suspended since 1988 because of drought conditions on the breeding grounds and declining breeding populations of blue-winged teal. The Council believes that a reversal of this situation would warrant a return to a limited teal season.

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4. Canada Geese

A. Early-September Seasons

The Upper Region Regulations Committee of the Mississippi Flyway Council recommended that the Service grant operational status to the experimental early-September Canada goose seasons in Illinois, Michigan, and Minnesota. Several modifications are being proposed for the Michigan season, including another 3-year experimental season to include the eastern portion of the Upper Peninsula and several areas of the Lower Peninsula.

The Committee also recommended that new experimental early-September Canada goose seasons be allowed in the northeast portions of Indiana and Ohio. Nuisance goose problems continue to grow in these areas, and neck-collar observations and other data indicate that greater than 90 percent of the harvest will be resident Canada geese.

The Lower Region Regulations Committee of the Mississippi Flyway Council recommended that the Service fully analyze data from existing special or experimental seasons before expanding seasons that might cause cumulative harvest on Southern James Bay Population Canada geese. Current special seasons should adhere to present criteria designated by the Service.

The Pacific Flyway Council recommended modification of the early-September Canada goose seasons in Wyoming and Utah. In Wyoming, the modifications included reinstatement of the Eden-Farson Irrigation Project Area in Sweetwater and Sublette Counties and an increase from 115 to 150 permits. In Utah, the Council recommended that the framework dates be September 1 through September 15. The framework closing date previously was September 9. The Council added that early goose seasons have been successful in alleviating depredation problems and providing hunter opportunity.

The Wisconsin Department of Natural Resources commented that the criteria established for special early-September Canada goose seasons needs review based on the experience of the various States that have implemented the early seasons. They question the appropriateness of the season dates and the restrictions and controls required for these seasons.

B. Regular Seasons

The Atlantic Flyway Council recommended that South Carolina be permitted a 3-year experimental resident Canada goose season in the Central Piedmont, Western Piedmont, and Mountain hunt units of the State. The season would be 4 days in length, occurring after the regular waterfowl season. The bag limit would be one goose per season. This proposed season would provide recreational waterfowl hunting opportunity while alleviating nuisance and depredation problems. Historically, migrant goose use of the proposed hunt area has been insignificant.

The Upper Region Regulations Committee of the Mississippi Flyway Council recommended that Minnesota be allowed to expand the Southeast Goose Zone to include two additional counties, Chisago and Isanti, at the north end of the zone. The Committee believes that this expansion will provide additional hunting opportunity in November and December without any significant impact on migrant geese.

8. Tundra Swans

The Central Flyway Council recommended that 1,500 swan permits be redistributed in order to increase the number of permits available in North Dakota by 1,000 permits and South Dakota by 500 permits. The Eastern Population of tundra swans is currently well above the management goal; sportsmen in North and South Dakota continue to request additional hunting opportunity on swans; and the sport hunting plan allows for this redistribution.

The Pacific Flyway Council recommended that the Service grant operational status to the experimental tundra swan season in Alaska's Game Management Unit 22. The harvest during the past 3 years has been well below levels identified in the Western Population hunt plan.

9. Sandhill Cranes

The Central Flyway Council recommended that Oklahoma be allowed to divide that portion of the State currently open to sandhill crane hunting, west of Interstate Highway 35, into separate north and south zones. The current 93-day hunting season cannot encompass the time period when sandhill cranes are present and provide hunting opportunity in both the northwest and southwest portions of the State.

The Central and Pacific Flyway Councils recommended that the framework dates for the Rocky Mountain Population of sandhill cranes be expanded to include September 1 through January 31. Currently, the framework closing date is November 30, except in the Hatch-Deming Area in New Mexico where the closing date is January 31.

10. Coots

The Wisconsin Department of Natural Resources suggested that the Service reexamine the coot breeding-population data as this species probably has also been severely impacted by the prolonged drought in the prairies.

11. Woodcock

In the August 14, 1990, **Federal Register** (at 55 FR 33266), the Service stated its intent to work with the Flyway Councils to develop background materials on hunting of woodcock in February. However, the Service stated that unless sufficient justification was developed to continue February hunting, the Service would propose a change in framework dates. On March 6, 1991, (at 55 FR 9467), the Service proposed a framework closing date of January 31 pending any new proposals or information that may be provided.

The Upper Region Regulations Committee of the Mississippi Flyway Council recommended that the framework dates be modified to September 1 through February 9.

The Lower Region Regulations Committee of the Mississippi Flyway Council recommended framework dates of September 1 through February 14 and stated that elimination of February woodcock hunting falls far short of achieving a significant and equitable harvest reduction. They recommended that a February 14 closing date would be sufficient to significantly reduce the chances of breeding or nesting hens being harvested.

The Central Flyway Council expressed support for the preliminary proposal of a January 31 closing date and recommended that February hunting of woodcock be eliminated.

The Wisconsin Department of Natural Resources indicated that they do not oppose the proposed January 31 framework closing date but suggested that the Service consider the recommendation of the Upper Region Regulations Committee of the Mississippi Flyway Council for a February 9 framework closing date for woodcock.

16. Mourning Doves

The Central Flyway Council recommended that the number of mourning doves permitted in the aggregate daily bag during the Texas special white-winged dove season be increased from five to ten birds. Texas notes that, in 1984, concern about late-nesting mourning doves in South Texas led to restrictions in the daily bag limit. These restrictions were relaxed somewhat during 1989 and 1990 under the provision that Texas would monitor the effects of this change. The recommendation to increase the number of mourning doves allowed in the aggregate bag limit during the special white-winged dove season is based upon the results of those studies. (See Item 17. *White-winged and White-tipped Doves.*)

The Texas Parks and Wildlife Department is requesting that the Service permit Texas to split the mourning dove season into not more than three segments under the three-zone option. Texas remarked that the purpose of this proposal would be to permit greater flexibility in establishing hunting seasons consistent with anticipated migration patterns and population levels. This proposed change would also allow Texas to establish additional "opening days" and thereby create additional interest in dove hunting among Texas sportsmen.

17. White-winged and White-tipped Doves

The Central Flyway Council recommended that the number of white-winged doves permitted in the aggregate daily bag limit during the Texas mourning dove season be increased from two to six birds. In recent years, whitewings have expanded their range into other areas of the State. Texas believes that the two-whitewing limit is overly restrictive, particularly in those local areas where whitewings now outnumber mourning doves. (See Item 16. *Mourning Doves.*)

Public Comment Invited

The Service intends that adopted final rules be as responsive as possible to all concerned interests, and therefore desires to obtain for consideration the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time that the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) The need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms; and (2) the unavailability before mid-June of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, the Service believes that to allow comment periods past the dates specified is contrary to the public interest.

Comment Procedure

It is the policy of the Department of the Interior, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, room 634–Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours at the Service's office in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. All relevant comments received during the comment period will be considered. The Service will attempt to acknowledge received comments, but substantive response to individual comments may not be provided.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with EPA on June 9, 1988. Notice of Availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988, (53 FR 31341). Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES.**

Endangered Species Act Consideration

As in the past, hunting regulations this year will be designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species. Consultations are presently under way to ensure that actions resulting from these regulatory proposals will not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. It is possible that the findings from the consultations, which will be included in a biological opinion, may cause modification of some regulatory measures proposed in this document. Any modifications will be reflected in the final frameworks. The Service's biological opinions resulting from its consultation under section 7 are considered public documents and are available for public inspection in the Division of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

Regulatory Flexibility Act, Executive Order 12291, and Paperwork Reduction Act

In the **Federal Register** dated March 6, 1991, (56 FR 9462), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. This information is included in the present document by reference. As noted in the above **Federal Register** reference, the Service plans to issue its Memorandum of Law for the migratory bird hunting regulations at the same time the first of the annual hunting rules is finalized. This rule does not contain any information collection requiring approval by the Office of Management and Budget under 44 U.S.C. 3504.

Authorship

The primary author of this supplemental proposed rulemaking is Robert J. Blohm, Office of Migratory Bird Management, working under the direction of Thomas J. Dwyer, Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1991–92 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918, as amended, (40 Stat. 755; 16 U.S.C. 701–711) and the Fish and Wildlife Improvement Act of 1978, as amended, (92 Stat. 3112; 16 U.S.C. 712).

Date: May 22, 1991.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

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Part V

Department of Labor

Employment Standards Administration, Wage and Hour Division

29 CFR Parts 579 and 580

Civil Money Penalties—Procedures for Assessing and Contesting Penalties; Final Rule

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DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Parts 579, 580

Civil Money Penalties—Procedures for Assessing and Contesting Penalties

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This document amends the procedural regulations for issuance of assessments of civil money penalties for violations of the child labor provisions of the Fair Labor Standards Act, and for employers to contest such assessments. These provisions will also be applicable to assessment of penalties for violations of the minimum wage and overtime provisions of the Act, as permitted by the 1989 Amendments. An appeal is provided to the Secretary of decisions of administrative law judges.

DATES: These rules are effective July 1, 1991.

FOR FURTHER INFORMATION CONTACT: John R. Fraser, Acting Administrator, Wage and Hour Division, U.S. Department of Labor, room S–3502, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523–8305. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background

Section 16(e) of the Fair Labor Standards Act (FLSA) as amended in 1974 provided for the assessment of civil money penalties of up to $1000 per violation for violations of the child labor provisions of the Act. Section 9 of the Fair Labor Standards Amendments of 1989 amended section 16(e) to further provide for the assessment of civil money penalties against any person who repeatedly or willfully violates section 6 (minimum wage) or section 7 (overtime) of the Act. Section 3103 of the Omnibus Budget Reconciliation Act of 1990 further amended section 16(e) of the FLSA to raise to $10,000 the maximum civil money penalty to be assessed for each employee who is the subject of a child labor violation. The maximum civil money penalty for repeated or willful violations of the minimum wage or overtime provisions of the FLSA was kept at $1,000 per violation.

Substantive regulations for the assessment of civil money penalties for violation of the child labor provisions are set forth at 29 CFR part 579. Proposed substantive regulations implementing the penalty provisions for minimum wage and overtime violations are being published separately this date in the Federal Register, to be codified at 29 CFR part 578.

II. Paperwork Reduction Act

There are no reporting or recordkeeping requirements contained in these regulations.

III. Summary of Rule

These regulations contain the procedures for the assessment and collection of civil money penalties for repeated or willful violations of section 6 (minimum wage) or section 7 (overtime) of the FLSA, and also for violations of section 12 (child labor). These regulations also set forth procedures for the employer to take exception to the assessment of penalties and obtain a hearing before an administrative law judge, and for any party to the proceeding to appeal the decision of the administrative law judge to the Secretary of Labor. Heretofore no party to a child labor proceeding had the right to appeal an adverse decision of an administrative law judge to the Secretary. Subsequent proceedings were in United States District Court pursuant to the Administrative Procedure Act.

29 CFR part 579 is also amended to delete those portions of the regulations which are procedural in nature. Procedural provisions for all civil money penalty assessments under the FLSA are now fully incorporated in this rule, 29 CFR part 580.

The rule also provides an exception from the evidence rules contained in the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges (29 CFR part 18, subpart B) to admit testimony of Department of Labor officials and documents from investigation files other than the investigation at issue in the proceeding. This exception is provided to facilitate establishing that an employer has violated the Act in the past, or has had advice from Wage-Hour concerning a matter in the past, and therefore that the violation to which the penalty relates is repeated or willful. The provision is not intended to imply that such evidence would otherwise be inadmissible under the rules, or to limit the admissibility of any other evidence.

The procedural regulations set forth herein will be used for all civil money penalties under the Act. The provisions will be applicable on their effective date to all future and pending child labor penalty cases in which a decision of an administrative law judge has not yet been issued. The provisions will be applicable to minimum wage and overtime penalty cases when the substantive provisions (29 CFR part 578) become effective as a final rule.

Executive Order 12291

This proposed rule is not considered to be a major rule within the meaning of Executive Order 12291, in that it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore no regulatory impact analysis is required.

Regulatory Flexibility Act

Because no notice proposed rulemaking is required for this rule under 5 U.S.C. 553(b), the requirement to prepare a regulatory flexibility analysis does not apply.

Administrative Procedure Act

This regulation is procedural in nature. Therefore no notice of proposed rulemaking is required under 5 U.S.C. 553(b).

This document was prepared under the direction and control of John R. Fraser, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 579, 580

Administrative practice and procedure, Child Labor, Employment, Labor, Law enforcement, Penalties.

For the reasons set forth above, title 29, chapter V, subchapter A of the Code of Federal Regulations is amended as set forth below.

Signed at Washington, DC on this 23d day of May 1991.

Lynn Martin,
Secretary of Labor.

Samuel B. Walker,
Acting Assistant Secretary for Employment Standards.

John R. Fraser,
Acting Administrator, Wage and Hour Division.

PART 579—CHILD LABOR VIOLATIONS—CIVIL MONEY PENALTIES

1. The authority citation for part 579 continues to read as follows:

Authority: 29 U.S.C. 203, 211, 212, 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App.; secs. 25, 29, 88 Stat. 72, 76; Secretary of Labor's Order No. 1371, 36 FR 8755; Sec. 3103, Pub. L. 101–508.

§§ 579.4, 579.5, 579.7 and 579.9 [Reserved]

2. Sections 579.4, 579.5, 579.7, and 579.9 are removed and reserved.

3. Part 580 is revised to read as follows:

PART 580—CIVIL MONEY PENALTIES—PROCEDURES FOR ASSESSING AND CONTESTING PENALTIES

Sec.
580.1 Definitions.
580.2 Applicability of procedures and rules.
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580.10 Referral to Administrative Law Judge.
580.11 Appointment of Administrative Law Judge and notification of prehearing conference and hearing date.
580.12 Decision and Order of Administrative Law Judge.
580.13 Procedures for appeals to the Secretary.
580.14 Filing and Service.
580.15 Responsibility of the Office of Administrative Law Judges for the Administrative Record.
580.16 Final Decision of the Secretary.
580.17 Retention of official record.
580.18 Collection and recovery of penalty.

Authority: 29 U.S.C. 9a, 203, 211, 212, 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App.; secs. 25, 29, 88 Stat. 72, 76; Secretary of Labor's Order No. 13–71, 36 FR 8755; 5 U.S.C. 500, 556, 557; Sec. 9, Pub. L. 101–157, 103 Stat. 938; Sec. 3103, Pub. L. 101–508.

§ 580.1 Definitions.

As used in this part:

"Act" means the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060 as amended; 29 U.S.C. 201 et seq.).

"Administrative law judge" means a person appointed as provided in 5 U.S.C. 3105 and subpart B of part 930 of title 5 of the CFR, e[illegible] qualified to preside at hearings und[illegible] U.S.C. 554–557.

"Administrator" means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, and includes any official of the Wage and Hour Division authorized by the Administrator to perform any of the functions of the Administrator under this part and parts 578 and 579 of this chapter.

"Chief Administrative Law Judge" means the Chief Administrative Law Judge, Office of the Administrative Law Judges, U.S. Department of Labor, Washington, DC 20210.

"Department" means the U.S. Department of Labor.

"Person" includes any individual, partnership, corporation, association, business trust, legal representative, or organized group of persons.

"Secretary" means the Secretary of Labor, U.S. Department of Labor, or a designated representative of the Secretary.

"Solicitor of Labor" means the Solicitor, U.S. Department of Labor, and includes attorneys of the Office of the Solicitor authorized by the Solicitor to perform functions of the Solicitor under this part.

§ 580.2 Applicability of procedures and rules.

The procedures and rules contained in this part prescribe the administrative process for assessment of civil money penalties for any violation of the child labor provisions at section 12 of the Act and any regulation thereunder as set forth in part 579, and for assessment of civil money penalties for any repeated or willful violation of the minimum wage provisions of section 6 or the overtime provisions of section 7 of the Act or the regulations thereunder set forth in 29 CFR subtitle B, chapter V. The substantive requirements for assessment of civil money penalties are set forth at 29 CFR part 578 (child labor) and part 578 (minimum wage and overtime).

§ 580.3 Written notice of determination required.

Whenever the Administrator determines that there has been a violation by any person of section 12 of the Act relating to child labor or any regulation issued under that section, or determines that there has been a repeated or willful violation by any person of section 6 or section 7 of the Act, and determines that imposition of a civil money penalty for such violation is appropriate, the Administrator shall issue and serve a notice of such penalty on such person in person or by certified mail. Where service by certified mail is not accepted by the party, notice shall be deemed received on the date of attempted delivery. Where service is not accepted, the Administrator may exercise discretion to serve the notice by regular mail.

§ 580.4 Contents of Notice.

The notice required by § 580.3 of this part shall:

(a) Set forth the determination of the Administrator as to the amount of the penalty and the reason or reasons therefor;

(b) Set forth the right to take exception to the assessment of penalties and set forth the right to request a hearing on such determination;

(c) Inform any affected person or persons that in the absence of a timely exception to a determination of penalty and a request for a hearing received within 15 days of the date of receipt of the notice, the determination of the Administrator shall become final and unappealable; and

(d) Set forth the time and method for taking exception to the determination and requesting a hearing, and the procedures relating thereto, as set forth in § 580.6 of this part.

§ 580.5 Finality of notice.

If the person charged with violation does not, within 15 days after receipt of the notice, take exception to the determination that the violation or violations for which the penalty is imposed occurred, the administrative determination by the Administrator of the amount of such penalty shall be deemed final, and collection and recovery of the penalty shall be instituted pursuant to § 580.19 of this part.

§ 580.6 Exception to determination of penalty and request for hearing.

(a) Any person desiring to take exception to the determination of penalty shall request an administrative hearing pursuant to this part. The exception shall be in writing to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, and must be received no later than 15 days after the date of receipt of the notice referred to in § 580.3 of this part. No additional time shall be added where service of the determination of penalties or of the exception thereto is made by mail.

(b) No particular form is prescribed for any exception to determination of penalty and request for hearing permitted by this part. However, any such request shall:

(1) Be dated;

(2) Be typewritten or legibly written;

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(3) Specify the issue(s) stated in the notice of determination giving rise to such request;

(4) State the specific reason(s) why the person requesting the hearing believes such determination is in error;

(5) Be signed by the person making the request or by an authorized representative of such person; and

(6) Include the address at which such person or authorized representative desires to receive further communications relating thereto.

RULES OF PRACTICE

§ 580.7 General.

(a) Except as specifically provided in this subpart, and to the extent they do not conflict with the provisions of this subpart, the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges established by the Secretary at 29 CFR part 18 shall apply to administrative proceedings under this subpart.

(b) Subpart B of the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges (29 CFR part 18, subpart B) shall apply except as follows: Notwithstanding the provisions of subpart B, including the hearsay rule (§ 18.802), testimony of current or former Department of Labor employees concerning information obtained in the course of investigations and conclusions thereon, as well as any documents contained in Department of Labor files (other than the investigation file concerning the violation(s) as to which the penalty in litigation has been assessed), shall be admissible in proceedings under this subpart. Nothing in this paragraph is intended to limit the admissibility of any evidence which is otherwise admissible under 29 CFR part 18, subpart B.

§ 580.8 Service and computation of time.

(a) Service of documents under this subpart shall be made by delivery to the individual, an officer of a corporation, or attorney of record or by mailing the determination to the last known address of the individual, officer, or attorney. If done by mail, service is complete upon mailing. If done in person, service is complete upon handing it to the attorney, officer or party; by leaving it at the office with a clerk or person in charge, or leaving it at a conspicuous place in the office if no one is in charge; or by leaving it at the attorney's or party's residence.

(b) Two (2) copies of all pleadings and other documents required for any administrative proceeding provided by this subpart shall be served on the attorneys for the Department of Labor. One copy shall be served on the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, and one copy on the attorney representing the Department in the proceeding.

(c) Time will be computed beginning with the day following the action and includes the last day of the period unless it is a Saturday, Sunday, or federally-observed holiday, in which case the time period includes the next business day.

§ 580.9 Commencement of proceeding.

Each administrative proceeding permitted under the Act and these regulations shall be commenced upon receipt of a timely request for hearing filed in accordance with § 580.6 of this subpart.

REFERRAL FOR HEARING

§ 580.10 Referral to Administrative Law Judge.

(a) Upon receipt of a timely exception to a determination of penalties and request for a hearing filed pursuant to and in accordance with § 580.6 of this subpart, the Administrator, by the Associate Solicitor for the Division of Fair Labor Standards or by the Regional Solicitor for the Region in which the action arose, shall, by Order of Reference, refer the matter to the Chief Administrative Law Judge, for a determination in an administrative proceeding as provided herein. A copy of the notice of administrative determination and of the request for hearing shall be attached to the Order of Reference and shall, respectively, be given the effect of a complaint and answer thereto for purposes of the administrative proceeding, subject to any amendment that may be permitted under this subpart and 29 CFR part 18.

(b) A copy of the Order of Reference and attachments thereto, together with a copy of this part, shall be served by counsel for the Administrator upon the person requesting the hearing, in the manner provided in § 580.8 of this subpart.

§ 580.11 Appointment of Administrative Law Judge and notification of prehearing conference and hearing date.

Upon receipt from the Administrator of an Order of Reference, the Chief Administrative Law Judge shall appoint an Administrative Law Judge to hear the case. The Administrative Law Judge shall notify all interested parties of the time and place of a prehearing conference and of the hearing.

§ 580.12 Decision and Order of Administrative Law Judge.

(a) The Administrative Law Judge shall render a decision on the issues referred by the Administrator.

(b) The decision of the Administrative Law Judge shall be limited to a determination of whether the respondent has committed a violation of section 12, or a repeated or willful violation of section 6 or section 7 of the Act, and the appropriateness of the penalty assessed by the Administrator. The Administrative Law Judge shall not render determinations on the legality of a regulatory provision or the constitutionality of a statutory provision.

(c) The decision of the Administrative Law Judge shall include a statement of findings and conclusions, with reasons and basis therefor, upon each material issue presented on the record. The decision shall also include an appropriate order which may affirm, deny, reverse, or modify, in whole or in part, the determination of the Administrator.

(d) The Administrative Law Judge shall serve copies of the decision on each of the parties.

(e) The decision of the Administrative Law Judge shall constitute the final order of the Secretary unless, pursuant to § 580.13 of this part, there is an appeal to the Secretary.

§ 580.13 Procedures for appeals to the Secretary.

Any party desiring review of a decision of the Administrative Law Judge shall file an appeal with the Secretary. To be effective, such appeal must be received by the Secretary within 30 days of the date of the decision of the Administrative Law Judge. Copies of the appeal shall be served on all parties and on the Chief Administrative Law Judge. If no timely appeal has been filed, the decision of the Administrative Law Judge shall be deemed the final agency action.

§ 580.14 Filing and Service.

(a) Filing. All documents submitted to the Secretary shall be filed with the Secretary of Labor, U.S. Department of Labor, Washington, DC 20210.

(b) Number of copies. An original and two copies of all documents shall be filed.

(c) Computation of time for delivery by mail. Documents are not deemed filed with the Secretary until actually received by the Secretary either on or before the due date. No additional time shall be added where service of a document requiring action within a prescribed time was made by mail.

(d) Manner and proof of service. A copy of each document filed with the Secretary shall be served upon all other parties involved in the proceeding. Service under this section shall be by personal delivery or by mail. Service by mail is deemed effected at the time of mailing to the last known address.

§ 580.15 Responsibility of the Office of Administrative Law Judges for the administrative record.

Upon receipt of a petition seeking review of the Decision and Order of an Administrative Law Judge, the Chief Administrative Law Judge shall promptly forward a copy of the complete hearing record to the Secretary.

§ 580.16 Final decision of the Secretary.

The Secretary's final decision shall be served upon all parties and the Chief Administrative Law Judge, in person or by mail to the last known address.

§ 580.17 Retention of official record.

The official record of every completed administrative hearing provided by this part shall be maintained and filed under the custody and control of the Chief Administrative Law Judge.

§ 580.18 Collection and recovery of penalty.

(a) When the determination of the amount of any civil money penalty provided for in this part becomes final under § 580.5 in accordance with the administrative assessment thereof, or pursuant to the decision and order of an Administrative Law Judge in an administrative proceeding as provided in § 580.12, or the decision of the Secretary pursuant to § 580.16, the amount of the penalty as thus determined is immediately due and payable to the U.S. Department of Labor. The person against whom such penalty has been assessed or imposed shall promptly remit the amount thereof, as finally determined, to the Secretary by certified check or by money order, made payable to the order of Wage and Hour Division. Such remittance shall be delivered or mailed to the Regional Office, Wage and Hour Division, for the area in which the violations for which the penalty was assessed occurred.

(b) Pursuant to section 16(e) of the Act, the amount of the penalty, finally determined as provided in § 580.5, § 580.12 or § 580.16, may be:

(1) Deducted from any sums owing by the United States to the person charged. To effect this, any agency having sums owing from the United States to such person shall, on the request of the Secretary, withhold the specific amount of the penalty from the sums owed to the person so charged and remit the amount to the Secretary to satisfy the amount of the penalty assessed;

(2) Recovered in a civil action brought by the Secretary in any court of competent jurisdiction, in which litigation the Secretary shall be represented by the Solicitor of Labor. When the person against whom a final determination assessing a civil money penalty has been made does not voluntarily remit the amount of such penalty to the Secretary within a reasonable time after notification to do so, the Solicitor of Labor may institute such an action to recover the amount of the penalty; or

(3) Ordered by the court, in an action brought for a violation of section 15(a)(4) or a repeated or willful violation of section 15(a)(2), to be paid to the Secretary. Any such unlawful act or practice may be enjoined by the United States district courts under section 17 upon court action, filed by the Secretary; and failure of the person so enjoined to comply with the court order may subject such person to contempt proceedings. A willful violation of section 6, 7, or 12 of the Act may subject the offender to the penalties provided in section 16(a) of the Act, enforced by the Department of Justice in criminal proceedings in the United States courts. In any of the foregoing civil or criminal proceedings, the court may order the payment to the Secretary of the civil penalty finally assessed by the Secretary.

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Part VI

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Final Mashantucket Pequot Gaming Procedures.

SUMMARY: Pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. 2710(d)(7)(B)(vii), the Secretary of the Interior shall prescribe procedures for Class III gaming to be conducted by the Mashantucket Pequot Tribe of Connecticut. The Assistant Secretary-Indian Affairs, Department of the Interior, through his delegated authority, proposed Mashantucket Pequot Tribe gaming procedures by his notice of opportunity to comment on Mashantucket Pequot Gaming Procedures as published in the **Federal Register** on April 17, 1991. Interested parties were afforded an opportunity to comment.

All comments received by close of business May 17, 1991, were reviewed and considered. The Assistant Secretary-Indian Affairs, Department of the Interior, through his delegated authority, now approves the Mashantucket Pequot Tribe gaming procedures, modified as described below.

SUPPLEMENTARY INFORMATION: A total of 17 comments were received by close of business May 17, 1991. Nine commentors expressed support of the proposed procedures for the Mashantucket Pequot gaming rules stating the proposed casino will have extremely positive effects on local business and economy.

One commentor expressed support for the right of the Mashantucket Pequot Tribe to conduct Class III gaming activities under the proposed gaming procedures and added that to do otherwise would completely undermine the provisions of the Indian Gaming Regulatory Act.

One commentor expressed general opposition to the Mashantucket Pequot's proposed casino because of the impact it would have on the area's pastoral setting.

One commentor enclosed a list of 90 signatures identified as people in the general area who opposed the Pequot gambling casino because of their concern for the character of Ledyard, Connecticut.

Several commentors objected to the Secretary's decision to permit casino gambling on the Mashantucket Pequot Reservation. The Secretary is required by the Indian Gaming Regulatory Act to prescribe procedures consistent with the compact chosen by a court appointed mediator. The compact chosen by the mediator was proposed by the State of Connecticut and included casino gaming. Therefore, the Secretary's role in determining whether casino gambling would be conducted was ministerial.

With respect to horse race wager "take out," a commentor stated the off-site operation on Indian land should be treated no differently than the existing off-site operations in Connecticut. This concern was also raised by the State although the State believed that State percentages for take out did apply. The State asked for additional language to make more explicit the applicability of the State take out. We agree that it is intended that the procedures apply State take out percentages, but the procedures are not ambiguous as to the applicability of the State take out percentages and, therefore, need not be changed.

The only other substantive comments received were provided by the State of Connecticut. They include assertions that the authority of the Secretary to impose the procedures is limited, recommendations to amend the procedures to effectuate the intent of the parties, the addition of more extensive regulations to protect the environment and public health and safety, application of state tax and assessment provisions, and a state legislation provision.

We conclude that the preferred method for dealing with the State recommendations is through negotiations between the Mashantucket Pequot Tribe and the State and amendment of the procedures as provided for in section 17 of the procedures. We believe that section 17 of the procedures is intended to cover negotiations on such issues, and this approval assumes good faith negotiations between the parties on these issues will occur. The procedures were written and proffered by the State as its last, best offer for the implementation of tribal gaming. The State's offer resulted from intensive negotiations with the Tribe. Furthermore, we have made some modifications in the procedures, as described below, based on the State's views as to what is necessary to provide sound gaming procedures. The State should present its additional recommendations to the Tribe for renegotiation of the procedures as provided for under section 17 of the procedures.

Two areas of the procedures were modified. First, the State asserts its power to properly investigate and license all gaming employees and that a New Jersey license should not automatically qualify an applicant for a temporary Connecticut license. The State recommends, at a minimum, a criminal check and a permanent New Jersey license should be required for a temporary Connecticut license. We agree with the State's concern that a minimum criminal check must be conducted for temporary licensing of gaming employees. Although the State of New Jersey does, as a practical matter, conduct criminal checks before issuing temporary licenses, it is not legally required to do so. Therefore, we modified section 5(d) of the procedures to remove reliance on New Jersey licenses, but also included a provision to assure that the State of Connecticut will issue temporary licenses on a timely basis.

Secondly, the State desires an explicit statement that tort procedures must be developed before the Tribe may engage in gaming. Rather than relying on the implicit requirement in the procedures, we concur that the requirement should be explicit and have changed section 2(g) accordingly.

The State, and one other commentor, assert that the Secretary does not have the authority to permit commercial casino gaming on the Tribe's reservation. This is essentially the same argument presented previously by the State. No new arguments or evidence are offered to cause the Office of the Solicitor to change its previous legal conclusions on the subject, as referenced in the April 17, 1991, publication of the proposed procedures.

The State asserts that it retains its right to amend its laws. This issue is not before the Department in the context of the proposed procedures. It is therefore inappropriate to comment on the State's discussion, other than to say that it is the intent of these procedures that the issue will be considered should the State enact relevant amendments to its laws.

The State also opines that a tribal ordinance is necessary before the casino gaming can be authorized under the procedures. The Tribe must pass a gaming ordinance before conducting gaming, and the Tribe informs us that it has passed a tribal gaming ordinance. We are unaware of any requirement that an ordinance must be passed prior to development of the gaming procedures. Irrespective of what the Tribe has already done, we feel it is illogical for the Tribes to take further steps in enacting gaming ordinances until final procedures are in place so that tribal ordinances can be made consistent with approved procedures.

The State asserts its right to investigate entities providing financial services to the gaming operations as well as any enterprise providing goods or services to the gaming establishment. The State argues the proposed procedures must be amended to insert clarifying language. We conclude the provisions in section 6(j) of the proposed procedures adequately cover financial as well as other sorts of services. Any further clarification felt needed by the State or the Tribe can be negotiated under section 17.

The State further recommends the deletion of the $50,000 investigatory threshold commenting that its inclusion in the procedures was a typographical error. Upon review we believe that the inclusion of the numerical figure may indeed have been a typographical error. The State asserts that the dollar threshold significantly thwarts the intent of the parties that all aspects of the tribal gaming activities be as free of criminal element as is possible. The Tribe's concern is that investigation of all vendors with no dollar threshold may make it prohibitively expensive to do business with minor suppliers, if the background investigation agreed upon by the parties is too wide ranging and too costly. Any further clarifications concerning the scope of the authorized investigations can be negotiated under section 17 by the State and the Tribe and should not be, in our view, the basis for rejecting this provision. Thus, we decline to accept this recommendation.

Further, the State recommends the types of gaming activities allowed must be clarified so as not to limit "services" as defined in the procedures and to reiterate that the procedures contained a prohibition of video slot machines. We do not feel such clarification is necessary as the language in section 15(a) of the procedures is adequate.

The State alleges that exempting gaming service enterprises with a current New Jersey registration from Connecticut registration is inconsistent with previous sections. We do not interpret the language in the proposed procedure as providing permanent waivers but rather as an interim process which remains effective for the first twelve months following the effective date of the procedures. The temporary registration does not preclude the applicant from satisfying the State's requirements for permanent registration. Thus, we decline to accept the State's recommendation to delete the reciprocity provision.

The State proposes to license officers of the Tribal Gaming Commission who are not tribal members. At this time, such decisions should be left to the Tribe.

The State further recommends that the State law enforcement agency be allowed to investigate all employees associated with gaming activities and that a list of persons "barred from gaming facilities" be compiled prior to the opening of the facilities. The State desires to investigate all employees regardless of whether they are gaming or non-gaming employees, or their employment location. The State contends that all necessary steps must be taken to prevent infiltration of unsuitable people in any part of the gaming operations. As presently provided in the proposed procedures in section 5(j), the State contends the existing provision is too restrictive and allows for a distinction between employees that rests merely on location. The State recommends that the "barred" list include those exclusions made by Connecticut, New Jersey and Nevada. Expansion of the State's authority over non-gaming employees and exclusion of patrons does not appear warranted at this time. Therefore, we decline to accept this recommendation.

Additionally, the State recommends that a detention area be established to hold offenders prior to transfer to state facilities. However, the Tribe may wish to pursue other alternatives such as renting space in a local detention facility or cross-deputizing local and state law enforcement officials. These alternatives could prove less costly and more efficient and can be the subject of negotiations under section 17.

The State recommends that it be allowed to develop its own ability to regulate video facsimile devices and retain its individual licensing authority even where management contracts are approved by the National Indian Gaming Commission. Pending issuance of guidance by the National Indian Gaming Commission, the provisions covering these issues in the procedures are acceptable as they are now articulated. Further revisions should be made through tribal-state negotiations.

The State asserts that the Tribe and State did not intend to permit the extension of credit for gambling. However, the explicit provisions in appendix A covering the extension of credit indicate the State and Tribe's understanding that credit would be extended.

The State also commented on the annual audits of the gaming activities. Appendix B at page B-4 adequately addresses the system of accounting and internal controls.

The State recommends amending the default authority as presently provided for in the proposed procedures. The State proposes to establish timeframes for notifications and remedy before the Tribe gaming agency could exercise its authority under the default provision. The proposed timeframes, however, could result in a lapse of service. Especially in the area of law enforcement and licensing, such a lapse would not be conducive to sound administration and control of gaming. Therefore, we decline to accept this recommendation.

The State recommends an expansion of the procedures on the environment and public health and safety. Although the broadening of these requirements may enhance the quality of life on the reservation, such requirements are usually left to tribal and federal law. We therefore decline to expand unilaterally those procedures.

The State also seeks to broaden its control over liquor on the rest of the reservation. This suggestion is beyond the scope of gaming procedures covered in this document. This document does not change the extent to which State laws may apply to liquor on the reservation.

Expansion of state tax provisions and assessments are also sought by the State. Since these provisions were bargained for between the State and Tribe, we do not believe it appropriate to modify these provisions.

Finally, the State requests language acknowledging the need for State legislation in order for the State to assume the responsibilities assigned to it under the procedures. We assume that the State, of course, recognizes its responsibility to seek State legislation if it is required. We cannot anticipate the legislation which the State may conclude will be needed as gaming proceeds. Therefore, we decline to issue a federal list of required State legislation. In the event that any particular legislation proves to be needed and is not passed, the default provision will permit the Tribe to enact ordinances as needed and assume the responsibilities involved.

Final Procedures: The gaming procedures of the Mashantucket Pequot Tribe hereby consist of the gaming compact, as amended, which was proffered by the State of Connecticut, chosen by the mediator and proposed as procedures in an April 17, 1991, **Federal Register** notice. The amendments consist of the following:

Section 3(g): Tort remedies for patrons. The Tribe shall establish, prior to the commencement of class III

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gaming, reasonable procedures for the disposition of tort claims arising from alleged injuries to patrons of its gaming facilities. The Tribe shall not be deemed to have waived its sovereign immunity from suit with respect to such claims by virtue of any provision of this Compact, but may adopt a remedial system analogous to that available for similar claims arising against the State or such other remedial system as may be appropriate following consultation with the State gaming agency.

Section 5(d): Temporary Licensing. Unless the State criminal record check undertaken by the State gaming agency within ten days of the receipt of a completed application discloses that the applicant has a criminal history, or unless other grounds sufficient to disqualify the applicant pursuant to subsection (e) are apparent on the face of the application, the State gaming agency shall upon request of the Tribal Operation issue a temporary gaming employee license to the applicant, within ten days of the receipt of a completed application, which shall expire and become void and of no effect upon the determination by the State gaming agency of the applicant's suitability for a gaming employee license.

EFFECTIVE DATE: May 31, 1991.

ADDRESSES: Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, MS 4603, 1849 "C" Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Joyce Grisham, Bureau of Indian Affairs, Washington DC (202) 208-7445.

Dated: May 24, 1991.

Eddie F. Brown

Assistant Secretary—Indian Affairs.

[FR Doc. 91-12887 Filed 5-30-91; 8:45 am]

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Friday
May 31, 1991

Part VII

Department of Health and Human Services

Public Health Service

42 CFR Part 34

Medical Examination of Aliens; Interim Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 34

Medical Examination of Aliens

AGENCY: Centers for Disease Control, Public Health Service, HHS.

ACTION: Interim rule.

SUMMARY: This interim rule establishes regulations for the medical examination of aliens to determine their admissibility into the United States under the Immigration and Nationality Act. It establishes standards for exclusion of aliens from admission because of (1) a communicable disease of public health significance, (2) a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others; (3) a history of a physical or mental disorder and behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or lead to other harmful behavior; or (4) drug abuse or addiction. It implements new provisions of the Immigration and Nationality Act added by the Immigration Act of 1990, Pub. L. 101–649.

DATES: Effective date: June 1, 1991.

Comment date: Comments must be received on or before August 2, 1991.

ADDRESSES: Comments should be addressed in writing to the Director, Division of Quarantine, Center for Prevention Services, Centers for Disease Control, Mail Stop E04, Atlanta, GA 30333. Comments received will be available for public inspection between 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), in Room 1327E, 1644 Tullie Circle, Atlanta, Georgia. All comments received during the comment period will be considered in developing the final rule.

FOR FURTHER INFORMATION CONTACT: Mr. Charles R. McCance, Director, Division of Quarantine, Center for Prevention Services, Centers for Disease Control, Mail Stop E04, Atlanta, GA 30333; telephone (404) 639–1455 or FTS 236–1455. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Prior to amendment by the Immigration Act of 1990, section 212(a) of the Immigration and Nationality Act (8. U.S.C. 1182(a)) set our health-related grounds for excluding aliens from the United States. Among these were the presence of a dangerous contagious disease, mental retardation, insanity (past or present), psychopathic personality, sexual deviation, mental defects, narcotic drug addiction, chronic alcoholism, and conditions that may affect an alien's ability to earn a living.

Revision

The Immigration Act of 1990 revised section 212(a) (1)–(6) to exclude any alien with: (a) a communicable disease of public health significance; (b) a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others; (c) a history of a physical or mental disorder and behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or lead to other harmful behavior; or (d) drug abuse or addiction.

The Immigration Act of 1990 also subsumed previous section 212(a)(7), dealing with aliens unable to earn a living, into section 212(a)(15), which covers aliens likely to become public charges. Section 212(a)(15) is now renumbered as section 212(a)(4).

Medical Examination

Immigrants and refugees coming to the United States are given physical and mental examinations overseas to identify the presence or absence of certain conditions which could result in exclusion from the United States under the provisions of the Immigration and Nationality Act described above. The examinations are normally performed abroad by physicians designated by consular officers of the Department of State. These physicians enter into written agreements with the consular posts to perform the examination in accordance with these regulations and technical instructions issued by the Director, Centers for Disease Control, U.S. Public Health Service. The physicians must follow specific identification procedures to ensure that the person appearing for the medical examination is the person who is actually applying for the visa. Applicants for a visa pay for the examination; however, the U.S. Government pays for refugees' examinations. The physicians are responsible for the entire examination and are accountable to the consular post.

There are similar arrangements for the medical examination of aliens in the United States who are applying for adjustment of status to that of permanent resident. In the United States, the examining physicians are appointed by the Department of Justice; the procedure is essentially the same.

The medical examination consists of a brief history of present and previous illnesses; a visual inspection of the body's skin surface; and an observation for excludable medical conditions. Any excludable or nonexcludable medical condition, which is suspected or detected as a result of the screening examination, may require a more comprehensive medical evaluation and may necessitate hospitalization or treatment, or both, before a visa is issued.

This medical examination will continue to be required for all aliens applying for permanent residence in the United States. Tourists and other nonimmigrants are not routinely examined, although an examination may be required for such persons on a case-by-case basis. This regulation sets out standards for these examinations, as well as medical appeal procedures. The examination and appeal procedures are essentially the same as those that have been in effect for many years.

Exclusion Standards

The regulation reflects new standards for determining which aliens, in light of their health status, are to be excluded from the United States. These standards implement the new exclusion provisions in the Immigration and Nationality Act, described above. From time to time, the Director, Centers for Disease Control, U.S. Public Health Service, will issue technical instructions to examining physicians conducting the medical examinations to assist them in diagnosing disorders in aliens who may be excluded from admission into the United States on medical grounds.

Communicable Disease Exclusion

On January 23, 1991, a Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** (56 FR 2486), proposing that infectious tuberculosis be the only communicable disease of public health significance for exclusion purposes. The NPRM provided a 30-day comment period, during which approximately 40,000 written comments were received. In view of the extent of the public comment and the concerns expressed by the commenters, the Department has decided that more time is needed to review the issue. Consequently, in order for the Department to implement the health exclusion provisions of the Immigration Act of 1990 in a timely fashion, the diseases currently listed at 42 CFR 34.2(b) will constitute "communicable diseases of public health significance", solely for the purposes of this interim rule. The waiver provisions promulgated on May 25, 1990, and modified on May 9, 1990, remain in effect.

In addition, we solicit comment as to whether and, if so, to what extent section 212(a)(1)(A)(ii)(I) provides a legal and policy basis for excluding classes of aliens not excluded by this interim final regulation.

Health Conditions and Harmful Behavior Exclusion

The Immigration and Nationality Act, as recently amended, no longer lists specific mental health conditions for which aliens are automatically excludable. The presence of physical or mental illness alone does not determine whether an alien poses a significant risk to the general population of the United States. Under the new provisions and these implementing regulations, aliens will be excluded if they have physical or mental disorders with a history of harmful behavior associated with the disorder.

Drug Abuse or Addiction Exclusion

The recent amendments also replaced the previous law's exclusion of narcotic drug addicts with a broader category, "drug abuser or addict." The regulation defines such persons as those who engage in the non-medical use of a substance listed in section 202 of the Controlled Substances Act, as amended (21 U.S.C. 13).

Public Charge Exclusion on Health Grounds

In addition to the examination for specific excludable medical conditions, aliens will also be examined for other physical and mental abnormalities which bear on the likelihood of an alien becoming a public charge. This aspect of the examination is similar to existing procedures. Examining physicians are required to identify, in addition to any specifically excludable conditions they find in an alien, any physical or mental abnormality, disease, or disability serious in degree or permanent in nature amounting to a departure from normal well-being. Their reports must describe the nature and extent of the abnormality, the degree to which the alien is incapable of normal physical activity, and the extent to which the condition is remediable. They must also indicate the likelihood, that because of the condition, the applicant will require extensive medical care or institutionalization and state total projected costs of medical care or institutionalization.

Other Provisions

The regulation maintains in effect, with no substantive change, existing administrative provisions for management of medical facilities in the United States in which aliens are examined or treated by the United States Public Health Service.

Interim Rule

This rule is being published as an interim rule, in order to implement the new provisions of the Immigration and Nationality Act by the statutory deadline of June 1. Comments on this interim rule are invited (to be submitted as specified above in "ADDRESSES") and will be carefully considered in preparation of a final rule.

Economic Analysis

The Secretary has determined that this interim rule will not have a significant impact on a substantial number of small entities and therefore does not require a regulatory flexibility analysis under the Regulatory Flexibility Act, Public Law 96–354. The Secretary has also determined that this interim rule would not be a "major rule" under Executive Order 12291. Thus, a regulatory impact analysis is not required because this rule will not:

1. Have an annual effect of $100 million or more on the economy;
2. Impose a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions; or
3. Result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 42 CFR Part 34

Aliens, Health care, Passports and visas, Public health.

Therefore, part 34 of title 42 of the Code of Federal Regulations is amended, effective June 1, 1991, as set forth below.

Dated: May 29, 1991.

James O. Mason,
Assistant Secretary for Health.

Approved: May 29, 1991.

Louis W. Sullivan,
Secretary.

PART 34—MEDICAL EXAMINATION OF ALIENS

1. The authority citation for part 34 is revised to read as follows:

Authority: 42 U.S.C. 216, 249, 252; 8 U.S.C. 1182, 1224, 1228; sec. 601 of Pub. L. 101–649.

2. Section 34.1 is revised to read as follows:

§ 34.1 Applicability.

The provisions of this part shall apply to the medical examination of:

(a) Aliens applying for a visa at an embassy or consulate of the United States;

(b) Aliens arriving in the United States;

(c) Aliens required by the INS to have a medical examination in connection with determination of their admissibility into the United States; and

(d) Aliens applying for adjustment status.

3. Section 34.2 is amended by revising the introductary text, paragraph (a), the heading of paragraph (b), paragraphs (c) through (f) and by adding paragraphs (g) through (p) to read as follows:

§ 34.2 Definitions.

As used in this part, terms shall have the following meanings:

(a) *CDC.* Centers for Disease Control, Public Health Service, U.S. Department of Health and Human Services.

(b) *Communicable Disease of Public Health Significance.* * * *

(c) *Civil surgeon.* A physician, with not less than 4 years' professional experience, selected by the District Director of INS to conduct medical examinations of aliens in the United States who are applying for adjustment of status to permanent residence or who are required by the INS to have a medical examination.

(d) *Class A medical notification.* Medical notification of:

(1) a communicable disease of public health significance;

(2)(i) A physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others;

(ii) A history of a physical or mental disorder and behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or lead to other harmful behavior; or

(3) Drug abuse or addiction.

(e) *Class B medical notification.* Medical notification of a physical or mental abnormality, disease, or disability serious in degree or permanent in nature amounting to a substantial departure from normal well-being.

(f) *Director.* The Director of the Centers for Disease Control.

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(g) *Drug abuse.* The non-medical use of a substance listed in section 202 of the Controlled Substances Act, as amended (21 U.S.C. 802) which has not necessarily resulted in physical or psychological dependence.

(h) *Drug addiction.* The non-medical use of a substance listed in section 202 of the Controlled Substances Act, as amended (21 U.S.C. 802) which has resulted in physical or psychological dependence.

(i) *INS.* Immigration and Naturalization Service, U.S. Department of Justice.

(j) *Medical examiner.* A panel physician, civil surgeon, or other physician designated by the Director to perform medical examinations of aliens.

(k) *Medical hold document.* A document issued to the INS by a quarantine inspector of the Public Health Service at a port of entry which defers the inspection for admission until the cause of the medical hold is resolved.

(l) *Medical notification.* A document issued to a consular authority or the INS by a medical examiner, certifying the presence or absence of:

(1) A communicable disease of public health significance;

(2)(i) A physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others;

(ii) A history of a physical or mental disorder and behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or lead to other harmful behavior;

(3) Drug abuse or addiction; or

(4) Any other physical abnormality, disease, or disability serious in degree or permanent in nature amounting to a substantial departure from normal well-being.

(m) *Medical officer.* A physician of the Public Health Service Commissioned Corps assigned by the Director to conduct physical and mental examinations of aliens.

(n) *Mental disorder.* A currently accepted psychiatric diagnosis, as defined by the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association, or by other authoritative sources.

(o) *Panel physician.* A physician selected by a United States embassy or consulate to conduct medical examinations of aliens applying for visas.

(p) *Physical disorder.* A currently accepted medical diagnosis, as defined by the Manual of the International Classification of Diseases, Injuries, and Causes of Death published by the World Health Organization, or by other authoritative sources.

4. Sections 34.3 through 34.8 are revised to read as follows:

§ 34.3 Scope of examinations.

(a) *General.* In performing examinations, medical examiners shall consider those matters that relate to:

(1) A communicable disease of public health significance;

(2)(i) A physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others;

(ii) A history of a physical or mental disorder and behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or lead to other harmful behavior;

(3) Drug abuse or addiction; and

(4) Any other physical abnormality, disease, or disability serious in degree or permanent in nature amounting to a substantial departure from normal well-being.

The scope of the examination shall include any laboratory or additional studies that are deemed necessary, either as a result of the physical examination or pertinent information elicited from the alien's medical history, for the examining physician to reach a conclusion about the presence or absence of a physical or mental abnormality, disease, or disability.

(b) *Persons subject to requirement for chest X-ray examination and serologic testing.* (1) Except as provided in paragraph (b)(1)(v) of this section, a chest X-ray examination, serologic testing for syphilis and serologic testing for HIV of persons 15 years of age and older shall be required as part of the examination of:

(i) Applicants for immigrant visas;

(ii) Students, exchange visitors, and other applicants for a nonimmigrant visa who are required by a consular authority to have a medical examination;

(iii) Aliens outside the United States who apply for refugee status;

(iv) Applicants in the United States who apply for adjustment of status under the immigration statute and regulations;

(v) *Exceptions.* Neither a chest X-ray examination nor serologic testing for syphilis and HIV shall be required if the alien is under the age of 15. Provided, a tuberculin skin test shall be required if there is evidence of contact with a person known to have tuberculosis or other reason to suspect tuberculosis, and a chest X-ray examination shall be required in the event of a positive tuberculin reaction, and serologic testing where there is reason to suspect infection with syphilis or HIV. Additional exceptions to the requirement for a chest X-ray examination may be authorized for good cause upon application approved by the Director.

(2) *Tuberculin skin test examination.* (i) All aliens 2 years of age or older in the United States who apply for adjustment of status to permanent residents, under the immigration laws and regulations, or other aliens in the United States who are required by the INS to have a medical examination in connection with a determination of their admissibility, shall be required to have a tuberculin skin test. Exceptions to this requirement may be authorized for good cause upon application approved by the Director. In the event of a positive tuberculin reaction, a chest X-ray examination shall be required. If the chest radiograph is consistent with tuberculosis, the alien shall be referred to the local health authority for evaluation. Evidence of this evaluation shall be provided to the civil surgeon before a medical notification may be issued.

(ii) Aliens less than 2 years old shall be required to have a tuberculin skin test if there is evidence of contact with a person known to have tuberculosis or other reason to suspect tuberculosis. In the event of a positive tuberculin reaction, a chest X-ray examination shall be required. If the chest radiograph is consistent with tuberculosis, the alien shall be referred to the local health authority for evaluation. Evidence of this evaluation shall be provided to the civil surgeon before a medical notification may be issued.

(3) *Sputum smear examination.* All aliens subject to the chest X-ray examination requirement and for whom the radiograph shows an abnormality consistent with pulmonary tuberculosis shall be required to have a sputum smear examination for acid-fast bacilli.

(4) *How and where performed.* All chest X-ray films used in medical examinations performed under the regulations in this part shall be large enough to encompass the entire chest (approximately 14 by 17 inches; 35.6×43.2 cm.). Serologic testing for HIV shall be a sensitive and specific test, confirmed when positive by a test such as the Western blot test or an equally reliable test. For aliens examined abroad, the serologic testing for HIV must be completed abroad, except that the Attorney General after consultation with the Secretary of State and the Secretary of Health and Human Services may in emergency circumstances permit serologic testing of refugees for HIV to be completed in the United States.

(5) *Chest X-ray, laboratory, and treatment reports.* The chest X-ray reading and serologic test results for syphilis and HIV shall be included in the medical notification. When the medical examiner's conclusions are based on a study of more than one chest X-ray film, the medical notification shall include at least a summary statement of findings of the earlier films, followed by a complete reading of the last film, and dates and details of any laboratory tests and treatment for tuberculosis.

(c) *Procedure for transmitting records.* For aliens issued immigrant visas, the medical notification and chest X-ray film, if any, shall be placed in a separate envelope which shall be sealed and attached to the alien's visa in such a manner as to be readily detached at the U.S. port of entry. When more than one chest X-ray film is used as a basis for the examiner's conclusions, all films shall be included.

(d) *Failure to present records.* When a determination of admissibility is to be made at the U.S. port of entry, a medical hold document shall be issued pending completion of any necessary examination procedures. A medical hold document may be issued for aliens who:

(1) Are not in possession of a valid medical notification, if required;

(2) Have a medical notification which is incomplete;

(3) Have a medical notification which is not written in English;

(4) Are suspected to have an excludable medical condition.

(e) The Attorney General, after consultation with the Secretary of State and the Secretary of Health and Human Services, may in emergency circumstances permit the medical examination of refugees to be completed in the United States.

(f) All medical examinations shall be carried out in accordance with such technical instructions for physicians conducting the medical examination of aliens as may be issued by the Director. Copies of such technical instructions are available upon request to the Director, Division of Quarantine, Mailstop E03, CDC, Atlanta GA 30333.

§ 34.4 Medical notifications.

(a) Medical examiners shall issue medical notifications of their findings of the presence or absence of Class A or Class B medical conditions. The presence of such condition must have been clearly established.

(b) *Class A medical notifications.* (1) The medical examiner shall report his/her findings to the consular officer or the INS by Class A medical notification which lists the specific condition for which the alien may be excluded, if an alien is found to have:

(i) A communicable disease of public health significance;

(ii)(A) A physical or mental disorder, and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others; or

(B) A history of a physical or mental disorder and behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or lead to other harmful behavior;

(iii) Drug abuse or addition.

Provided, however, That a Class A medical notification of a physical or mental disorder, and behavior associated with that disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others, shall in no case be issued with respect to an alien having only mental shortcomings due to ignorance, or suffering only from a condition attributable to remediable physical causes or of a temporary nature, caused by a toxin, medically prescribed drug, or disease.

(2) The medical notification shall state the nature and extent of the abnormality; the degree to which the alien is incapable of normal physical activity; and the extent to which the condition is remediable. The medical examiner shall indicate the likelihood, that because of the condition, the applicant will require extensive medical care or institutionalization.

(c) *Class B medical notifications.* (1) If an alien is found to have a physical or mental abnormality, disease, or disability serious in degree or permanent in nature amounting to a substantial departure from normal well-being, the medical examiner shall report his/her findings to the consular or INS officer by Class B medical notification which lists the specific conditions found by the medical examiner. Provided, however, that a Class B medical notification shall in no case be issued with respect to an alien having only mental shortcomings due to ignorance, or suffering only from a condition attributable to remediable physical causes or of a temporary nature, caused by a toxin, medically prescribed drug, or disease.

(2) The medical notification shall state the nature and extent of the abnormality, the degree to which the alien is incapable of normal physical activity, and the extent to which the condition is remediable. The medical examiner shall indicate the likelihood, that because of the condition, the applicant will require extensive medical care or institutionalization.

(d) *Other medical notifications.* If as a result of the medical examination, the medical examiner does not find a Class A or Class B condition in an alien, the medical examiner shall so indicate on the medical notification form and shall report his findings to the consular or INS officer.

§ 34.5 Postponement of medical examination.

Whenever, upon an examination, the medical examiner is unable to determine the physical or mental condition of an alien, completion of the medical examination shall be postponed for such observation and further examination of the alien as may be reasonably necessary to determine his/her physical or mental condition. The examination shall be postponed for aliens who have an acute infectious disease until the condition is resolved. The alien shall be referred for medical care as necessary.

§ 34.6 Applicability of Foreign Quarantine Regulations.

Aliens arriving at a port of the United States shall be subject to the applicable provisions of 42 CFR part 71, Foreign Quarantine, with respect to examination and quarantine measures.

§ 34.7 Medical and other care; death.

(a) An alien detained by or in the custody of the INS may be provided medical, surgical, psychiatric, or dental care by the Public Health Service through interagency agreements under which the INS shall reimburse the Public Health Service. Aliens found to be in need of emergency care in the course of medical examination shall be treated to the extent deemed practical by the attending physician and if considered to be in need of further care, may be referred to the INS along with the physician's recommendations concerning such further care.

(b) In case of the death of an alien, the body shall be delivered to the consular or immigration authority concerned. If such death occurs in the United States, or in a territory or possession thereof, public burial shall be provided upon request of the INS and subject to its agreement to pay the burial expenses. Autopsies shall not be performed unless approved by the INS.

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§ 34.8 Reexamination; convening of review boards; expert witnesses; reports.

(a) The Director shall convene a board of medical officers to reexamine an alien:

(1) Upon the request of the INS for a reexamination by such a board; or

(2) Upon an appeal to the INS by an alien who, having received a medical examination in connection with the determination of admissibility to the United States (including examination on arrival and adjustment of status as provided in the immigration laws and regulations) has been certified for a Class A condition.

(b) For boards convened to reexamine aliens certified as:

(1) Having a communicable disease of public health significance, the board shall consist of three medical officers, at least one of whom is experienced in the diagnosis and treatment of the communicable disease for which medical notification has been made, and the decision of the majority of the board shall prevail;

(2)(i) Having a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others; or

(ii) Having a history of a physical or mental disorder and behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or lead to other harmful behavior; or

(iii) Being a drug abuser or addict;

(3) In circumstances covered by paragraph (b)(2) of this section, the board shall consist of three medical officers, at least one of whom shall be a board certified psychiatrist, and the decision of the majority of the board shall prevail.

(c) Reexamination shall include:

(1) review of all records submitted by the alien, other witnesses, or the board;

(2) use of any laboratory or additional studies which are deemed clinically necessary as a result of the physical examination or pertinent information elicited from the alien's medical history;

(3) consideration of statements regarding the alien's physical or mental condition made by a physician after his/her examination of the alien; and

(4) an independent physical or psychiatric examination of the alien performed by the board, at the board's option.

(d) An alien who is to be reexamined shall be notified of the time and place of his/her reexamination not less than 5 days prior thereto.

(e) The alien, at his/her own cost and expense, may introduce as witnesses before the board such physicians or medical experts as the board may in its discretion permit; provided that the alien shall be permitted to introduce at least one expert medical witness. If any witnesses offered are not permitted by the board to testify, the record of the proceedings shall show the reason for the denial of permission.

(f) Witnesses before the board shall be given a reasonable opportunity to examine the medical notification and other records involved in the reexamination and to present all relevant and material evidence orally or in writing until such time as the proceedings are declared by the board to be closed. During the course of the hearing the alien's attorney or representative shall be permitted to examine the alien and he/she, or the alien, shall be permitted to examine any witnesses offered in the alien's behalf and to cross-examine any witnesses called by the board. If the alien does not have an attorney or representative, the board shall assist the alien in the presentation of his/her case to the end that all of the material and relevant facts may be considered.

(g) The findings and conclusions of the board shall be based on its medical examination of the alien, if any, and on the evidence presented and made a part of the record of its proceedings.

(h) The board shall report its findings and conclusions to the INS, and shall also give prompt notice thereof to the alien if his/her reexamination has been based on his/her appeal. The board's report to the INS shall specifically affirm, modify, or reject the findings and conclusions of prior examining medical officers.

(i) The board shall issue its medical notification in accordance with the applicable provisions of this part if it finds that an alien it has reexamined has a Class A or Class B condition.

(j) If the board finds that an alien it has reexamined does not have a Class A or Class B condition, it shall issue its medical notification in accordance with the applicable provisions of this part.

(k) After submission of its report, the board shall not be reconvened, nor shall a new board be convened, in connection with the same application for admission or for adjustment of status, except upon the express authorization of the Director.

§§ 34.9–34.14 [Removed]

5. Sections 34.9 through 34.14 are removed.

[FR Doc. 91–13058 Filed 5–30–91; 8:45 am]
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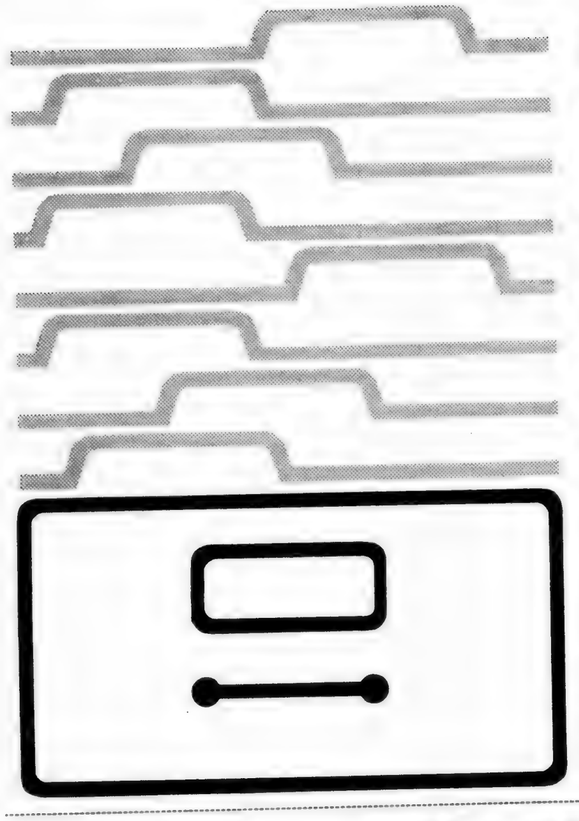

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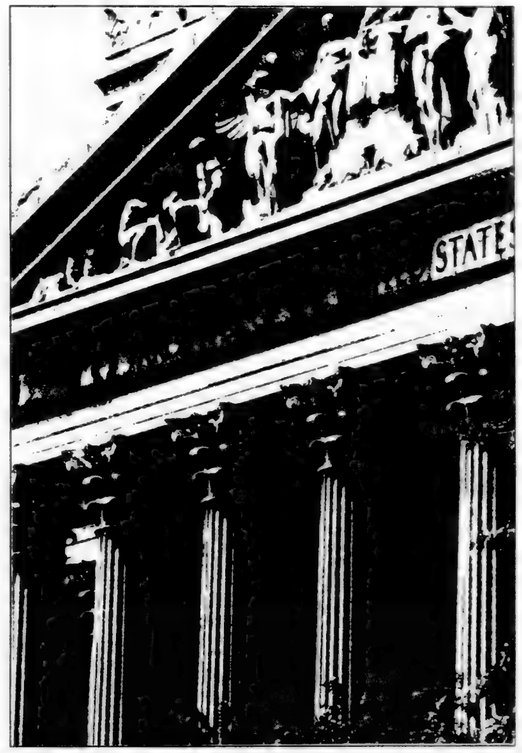

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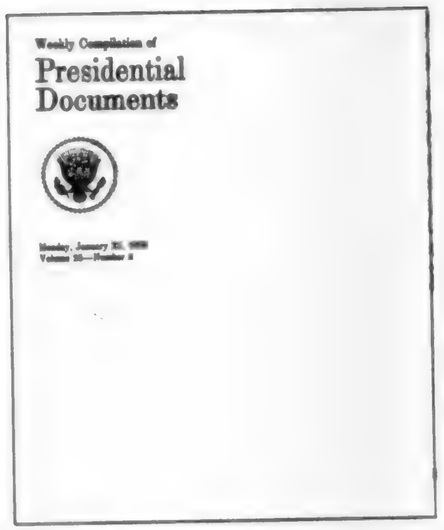

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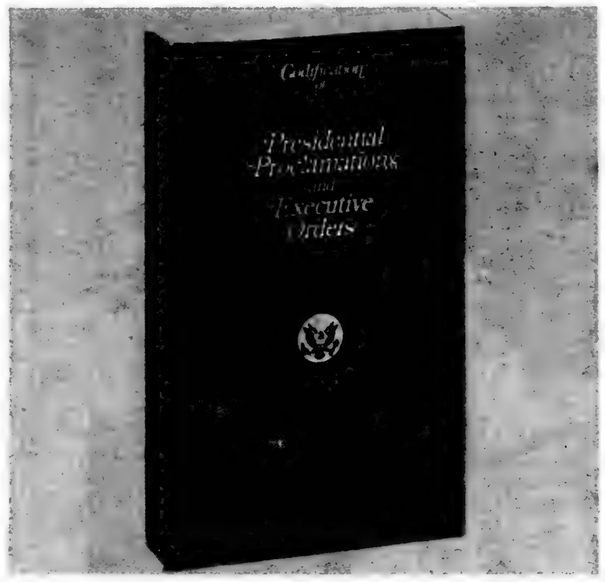

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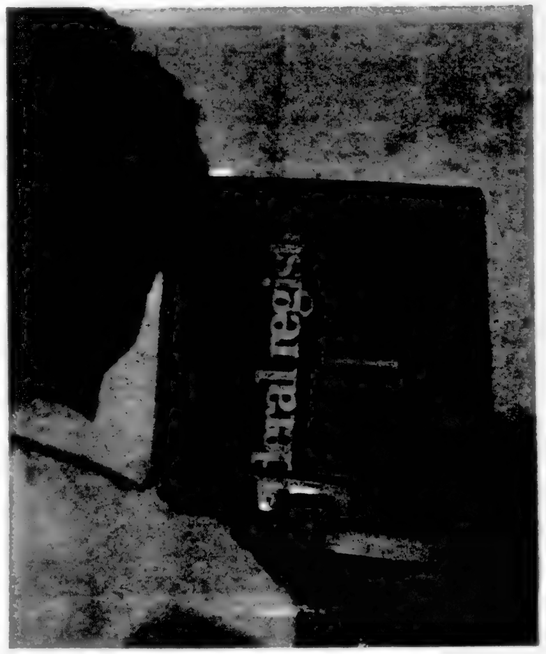

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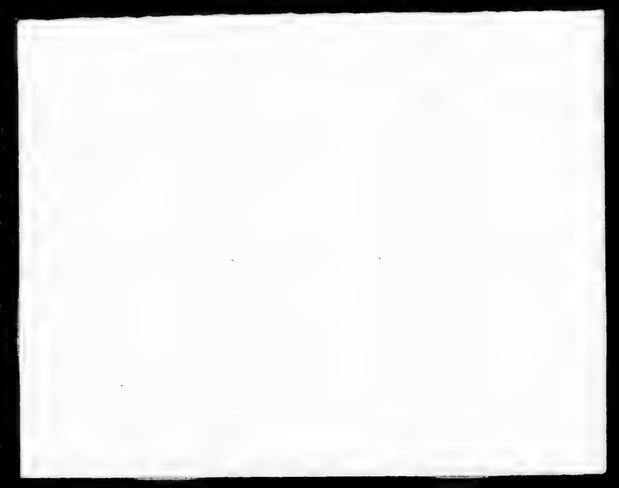

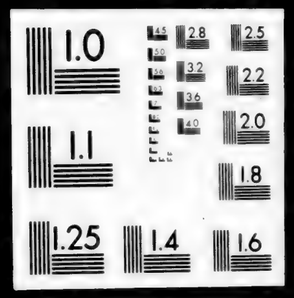

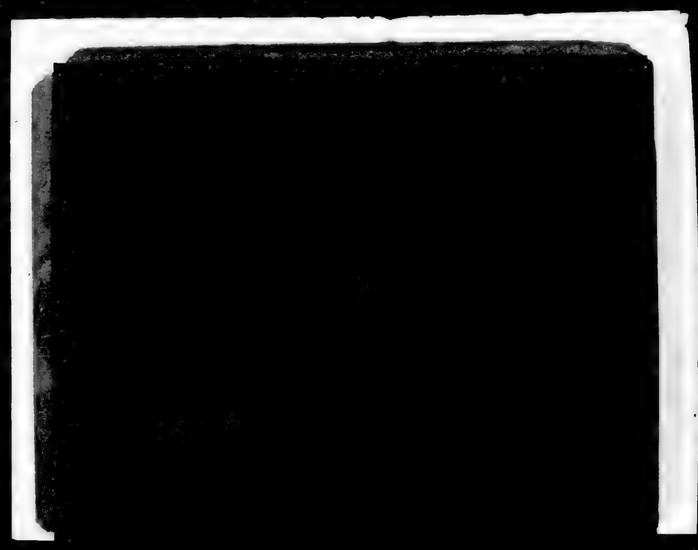

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Briefing on How To Use the Federal Register
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Rules and Regulations

Federal Register
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Monday, June 3, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1494

Export Bonus Programs

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Commodity Credit Corporation (CCC) is issuing this final rule which establishes regulations governing the payment of bonuses in connection with the export of agricultural commodities under the Export Enhancement Program (EEP). The EEP has previously been administered by the Foreign Agricultural Service (FAS), on behalf of CCC, through the issuance of "EEP Commodity Announcements" (Announcements) and "Invitations for Offers" (Invitations). These regulations are intended to simplify the administration of the EEP by consolidating the general information about the program contained in the various EEP Announcements, while maintaining the system of issuing Invitations for specific EEP initiatives for targeted countries. This final rule also incorporates material required by provisions of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624) (hereinafter referred to as the 1990 Act), enacted on November 28, 1990, which are specifically applicable to the EEP. The EEP will continue to be administered by FAS on behalf of CCC.

EFFECTIVE DATE: July 3, 1991.

FOR FURTHER INFORMATION CONTACT: L.T. McElvain, Director, CCC Operations Division, USDA, FAS, room 4503–S, 1400 Independence Avenue, SW., Washington, DC, 20250–1000, telephone (202) 447–6211.

SUPPLEMENTARY INFORMATION:

Regulatory Requirements

This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "major." It has been determined that these program provisions will result in an annual effect on the economy of $100 million or more.

As required by Executive Order 12291, section 4, it has been determined that the factual conclusions upon which this final rule is based have substantial support in the agency record, viewed as a whole, with full attention to public comments in general and the comments of persons directly affected by the rule in particular.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

The paperwork requirements which would be imposed by this final rule were contained in the proposed rule and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. The Office of Management and Budget assigned number for those requirements is OMB No. 0551–0028. Public reporting burden for these collections is estimated to average 23 minutes per response, including time for reviewing instructions, searching existing sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0551–0028), Washington, DC 20503.

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

This final rule includes a Final Regulatory Impact Analysis, as required for a major rule under Executive Order No. 12291. The Department has prepared a more detailed analysis in connection with the final rule, in accordance with Executive Order No. 12291, and has issued a public press release on May 23, 1991 notifying interested parties that it is available for review. Copies of the Final Regulatory Impact Analysis Statement are available upon request to the Planning and Evaluation Staff, Foreign Agricultural Service, USDA, Room 5550–S, 1400 Independence Avenue, SW., Washington, DC 20250–1000, telephone (202) 245–5198.

Background

In the **Federal Register** of April 25, 1990 (55 FR 17443), CCC proposed the issuance of regulations to replace its previous administrative procedure of issuing Invitations pursuant to the EEP commodity Announcements with a procedure in which Invitations would be issued pursuant to such regulations. The proposed regulations contained provisions which were the same as, or similar to, the provisions previously contained in the various commodity Announcements issued under the EEP. The proposed regulations consolidated the terms and conditions previously contained in the commodity Announcements as well as additional information concerning the operation of the EEP. In the course of this consolidation, some of the information contained in the Announcements was re-stated in a manner which was intended to simplify the material, enhance clarity, eliminate duplication, and facilitate the use of the regulations. CCC also proposed to continue to issue Invitations for specific initiatives under the EEP which will contain additional information concerning the eligible commodity, the targeted (eligible) country or group of countries, the unit of measure, the countries' buying preferences, performance security requirements, allowances for transshipments, and other specific limitations to be imposed on offers submitted to CCC by participating exporters.

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Comments on the proposed regulations were to be submitted by June 25, 1990. Eighteen parties submitted comments on the proposal. Comments were received from eight producer associations, four U.S. exporters, two U.S. export trade associations, and one U.S. Government agency, and three separate responses were received from entities associated with a foreign government which is considered a non-subsidizing supplier. These eighteen parties made approximately 86 separate and significant comments regarding either the proposed regulations or the policy issues and the impact of policies involved in administering the EEP. Other comments were made specifically on the content of the Preliminary Regulatory Impact Analysis Statement.

General Comments

Five commenters expressed general support for the EEP but did not comment specifically on the proposed rule. One commenter opposed continuation of the EEP and questioned the issuance of the proposed EEP regulations. Another commenter appreciated the effort made by the proposed rule to increase program accountability. Two commenters were wary of institutionalizing the EEP. One commenter expressed the opinion that the rulemaking process is the proper vehicle for change in the program. Another commenter stated that the proposed rules appeared fair and firm and they should be adopted as they appear. Twelve commenters, in some context, addressed the regulatory provisions of the proposed rule. The majority of the commenters which discussed the regulatory provisions of the proposed rule were in favor of the regulations with suggested changes. Ten commenters made specific suggestions for changes or additions to the rules.

Eight of the commenters addressed, in whole or in part, the Preliminary Regulatory Impact Analysis Statement. The comments made regarding this anlaysis are addressed in the Final Regulatory Impact Analysis Statement, which is being made publicly available.

Fifteen of the respondents addressed issues involving policy considerations related to the EEP. The objectives of the program are to discourage unfair trade practices by other countries, to increase U.S. agricultural commodity exports, and to encourage other countries exporting agricultural commodities to undertake serious negotiations on agricultural trade problems. Fourteen respondents indicated that the EEP is succeeding in sending a strong message to unfairly subsidizing exporting countries about the seriousness of the United States in trying to bring about trade policy reform. One commenter expressed that the EEP has had little, or no, effect as a measure to promote trade policy reform. Five respondents encouraged the more aggressive use of the EEP. Five commenters questioned whether the EEP had been an effective tool for achieving its goals. Four commenters indicated that the EEP should focus more on value-added commodities. Three commenters expressed their opinion that additional measures are needed to protect non-subsidizing suppliers from the impact of the EEP.

The comments regarding the policy administration of the EEP were taken into consideration. However, CCC has been given a mandate by Congress to carry out an EEP and many of the important policy decisions concerning implementation of the program have already been made by officials in the executive and legislative branches of government. Furthermore, these general comments regarding EEP policy are not pertinent to a review of the proposed EEP regulations. The objective of the regulations for the operation of the EEP, now found in subpart B of part 1494, is to establish the terms and conditions that will govern the Agreement between an exporter and CCC (Agreement) to provide a CCC bonus in return for the export of an eligible commodity and for the arrival of that eligible commodity in an eligible country.

Specific comments were submitted by a foreign government (a non-subsidizing supplier of agricultural commodities) suggesting that the revised criteria for the EEP, which were published in the **Federal Register** on November 27, 1989, should be made a part of these regulations. An additional commenter recommended that the "EEP guidelines" be republished for comment, perhaps annually. Section 403(a)(1) of the Agricultural Trade Act of 1978, as amended by section 1531 of the 1990 Act, requires the Secretary of Agriculture to "specify by regulation the criteria used to evaluate and approve proposals for (the EEP)." As a result of this mandate, CCC will publish guidelines for the review of EEP proposals through a separate rulemaking procedure, during which public comments on this subject will be addressed. These guidelines are not applicable to the establishment and operation of an EEP Agreement and, therefore, they will be codified in a separate subpart (subpart A) of part 1494. A subpart A has been reserved in this final rule for that purpose.

One commenter also suggested that new criteria be established to determine if the EEP was achieving its objectives. A determination as to whether the EEP is achieving its objectives will depend upon policy considerations and changing economic conditions and, therefore, it would be inappropriate to specify strict criteria in these regulations for making such a determination.

This commenter, a non-subsidizing supplier, also suggested that measures be included in the regulations to restrict EEP sales in markets where non-subsidizing suppliers have a market share or to more clearly define that market share. The commenter further suggested that CCC should consider a breach of an Agreement to occur when sales by an exporter of U.S. commodities encroach on the "fair market" presence or have more than a minimal impact on sales of a non-subsidizing supplier. The impact on non-subsidizing suppliers is taken into consideration in the review and approval of EEP initiatives, the guidelines for which will be codified in subpart A of part 1494. It would be inappropriate to consider an Agreement to be breached or canceled due to unforeseen impacts on the sales of a non-subsidizing supplier.

Nine of the commenters expressed the opinion that the EEP regulations should be flexible to meet market challenges. These comments regarding flexibility of the EEP are valid, and CCC will maintain this flexibility by continuing to issue Invitations for Offers in connection with initiatives for specific eligible countries, as indicated in § 1494.101. The Invitations contain specific information about buyer's purchasing requirements, such as the quality of the commodity, and can also be structured to fit particular situations in a targeted country or countries. Several control mechanisms in the EEP are left to be spelled out in the Invitation, and the regulations are written in such a manner that they often state "or as contained in the applicable Invitation" to allow CCC the flexibility to adapt to a particular set of circumstances.

Two commenters suggested that an "EEP marketing plan" be announced on an annual basis. The plan would include eligible countries and available quantities targeted for each country. The suggested marketing plan would replace the public press release announcements of initiatives or increased allocations under existing initiatives currently issued by the U.S. Department of Agriculture (USDA). It is acknowledged that an EEP marketing plan of this nature may make the EEP more transparent; however, such a plan may or may not limit the market reaction to announcements of EEP initiatives or allocations. USDA followed a similar approach in the operation of the Dairy Export Incentive Program (DEIP) and, although the impact on the U.S. dairy market was limited, the reaction of the international market to the marketing plan announcement was far greater than should have been warranted in light of the relatively small volume of DEIP export sales which ultimately resulted. CCC will continue to consider the use of this type of approach on a commodity by commodity basis. However, it has been determined that a general marketing plan approach for the EEP would not be in the best interests of the program at this time. Given the difficulty of predicting import requirements and capabilities for many eligible countries over a year time-frame, it would be necessary to update such a marketing plan on a frequent basis, which would be as disruptive as, or more disruptive than, the procedure of announcing targeted countries and allocations on a case by case basis. The primary consideration in determining whether to use a marketing plan approach should be the effect it would have on the ability of subsidizing foreign competitors to predict and react to the targets established for the EEP. If these competitors are able to take action to prevent U.S. commodities from being competitive as a result of information which they obtain from a marketing plan, then the release of an EEP marketing plan would not further the objectives of the program.

Section-by-Section Analysis of Subpart B

The numbering system of the final rule varies somewhat from that of the proposed rule. Some sections were added, some were deleted and others were reordered. For the purposes of this discussion, the numbering of the final rule will be used, except where otherwise indicated. In addition to changes resulting from comments from interested parties, additional changes have been incorporated into the final rule for the purpose of further clarification. These changes are not of such a substantive nature that they require additional comment from interested parties. Finally, certain provisions required by the 1990 Act have also been included.

Section 1494.101 General Statement

No public comment was received on this section. However, portions of the general statement relating to the program objectives have been deleted and will be included in subpart A when it is published through a separate rulemaking procedure.

Section 1494.201 Definitions of Terms

Although no public comment was received specifically suggesting such a change, for the purpose of clarity a definition of the Date of Entry has been added to this final rule at § 1494.201(j).

A comment was received regarding the definition of the Date of Export in § 1494.201(k)(4). The commenter questioned CCC's use of the date of entry shown on an authenticated landing certificate or similar document issued by an official of the government of an eligible country to determine the date of export when the eligible commodity is shipped by rail or truck from the U.S. The commenter felt that, in commercial practice, the date of export is established by the date of the on-board bill of lading rather than the date of entry and suggested that the same approach be adopted in § 1494.201(k)(4). It is correct that, in cases of ocean shipments, whether by lash-barge, container or vessel, the on-board date of the bill of lading does establish the date of export. However, in the case of rail or truck shipments, the bill of lading stating that the truck or rail car was loaded at an interior U.S. point on a particular date cannot establish a date of export. The provision in § 1494.201(k)(4) was included in the regulations particularly for overland shipments to Mexico and is consistent with the date of export established for such shipments in other CCC programs, such as the Export Credit Guarantee Program (GSM–102). Therefore, it has been determined not to incorporate the suggested change.

A commenter suggested that the provisions regarding "Interim Bid Agreements" be clarified. Upon further review, a determination has been made to delete the provision for an Interim Bid Agreement, which was defined in § 1494.201(v) of the proposed rule and also addressed in other sections of the proposed rule. The Interim Bid Agreement was employed in the EEP to accommodate the purchasing practices of a particular targeted country. Those practices have not changed and, therefore, the mechanism for an Interim Bid Agreement in the EEP can now be deleted.

Although no public comment was received specifically suggesting such a change, for the purpose of clarity a definition of Transshipment has been added to this final rule at § 1494.201(cc).

In accordance with section 102(7) of the Agricultural Trade Act of 1978 (7 U.S.C. 5602(7)), as amended by section 1531 of the 1990 Act, a definition of U.S. agricultural commodity has been added to this final rule at § 1494.201(gg).

Section 1494.301 Qualification Requirements for Program Participation

No public comment was received on this section. The final rule has been revised to change the type of evidence that an interested person is required to submit to demonstrate the necessary experience for program participation. In the proposed rule, an interested person was required to submit evidence to show experience in buying and selling for export the particular eligible commodity for which such person wished to qualify for program participation. In the final rule, § 1494.301(a)(1) has been revised to permit interested persons to submit evidence to show experience, within the preceding three calendar years, in selling for export such particular eligible commodity or a similar agricultural commodity, as determined by CCC. This change will permit CCC to qualify persons who have exported commodities which are of similar complexity in quality specifications, which have similar end-uses, and which are handled and shipped in a manner similar to that of the commodity for which they wish to qualify as an eligible exporter under the EEP.

The final rule has been revised to restructure the certification statement regarding suspension or debarment, which persons seeking to qualify as an eligible exporter were required to submit pursuant to § 1494.301(a)(7) in the proposed rule, into the provision entitled "Ineligibility for Program Participation" now contained in § 1494.301(f).

Section 1494.401 Performance Security

Various commenters addressed the requirements for the establishment and the release of the performance security for an EEP Agreement, as prescribed in § 1494.401. One respondent felt that CCC should exempt companies from the performance security requirement after they have demonstrated a record of acceptable performance in the EEP. It has been determined that such a measure would expose CCC to undue financial risk in the event that it should become necessary to assess liquidated damages or secure the return of a bonus. If performance security were not established for each Agreement, CCC would have to pursue claims and off-set actions in order to recover its losses. The procedures for processing claims and off-set actions are more complex and burdensome than simply claiming

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against performance security. In addition, such a measure would unfairly benefit some exporters that have records of past participation in the EEP in comparison to other exporters that do not have such records and, therefore, would be unable to have the performance security requirements waived. However, an attempt has been made to build some flexibility into the performance security requirements. The regulations state in § 1494.401(c) that the exact amount of the performance security will be specified in the applicable Invitation. This will give CCC the flexibility to review the performance security requirements and set them at levels based upon the estimated liquidated damages that CCC would incur, in the event of a breach of the Agreement, in light of circumstances unique to the Invitation. In addition, a new provision has been added to § 1494.401(c) which will allow exporters to switch from performance security "Option A" to "Option B" after obtaining CCC's approval and increasing the amount of the performance security.

One respondent addressed § 1494.401(e)(2), suggesting that CCC's right to funds under the performance security should be limited to rights arising under the specific EEP Agreement for which the performance security was established. This comment has been accepted and a phrase has been added to § 1494.401(e)(2) limiting CCC's right to draw against the performance security established in connection with a specific Agreement to situations where funds are owed to CCC by the exporter in connection with such Agreement.

Although no public comment was received specifically suggesting such a change, § 1494.401(e)(3) was added to provide that CCC may draw against the performance security in the event that it is about to expire before the exporter has fulfilled its obligations under an Agreement.

Two commenters suggested that a clause be added to § 1494.401(e) providing that, upon CCC's determination to hold the exporter harmless for liquidated damages, or the payment of damages by the exporter, CCC will agree to the cancellation of the performance security. An exporter that chooses "Option A" for the bonus payment opens performance security in an amount sufficient to cover both potential liquidated damages and the repayment of the bonus. In some cases, CCC may determine to hold the exporter harmless for the payment of liquidated damages without having resolved the issue of whether to require the exporter to return the amount of the bonus payment. Therefore, the suggestion will be adopted to the extent that, if a determination is made to hold an exporter harmless for liquidated damages under a specific EEP Agreement, CCC will agree to the cancellation or reassignment of that portion of the performance security which would pertain to liquidated damages. A new § 1494.401(f)(4) has been added to the final regulations to address this matter.

Although no public comment was received specifically suggesting such a change, in order to provide CCC with the necessary flexibility in the administration of the EEP, provisions to allow CCC to determine that it is no longer in the best interest of the EEP to require an exporter to maintain the performance security have also been included in § 1494.401(f)(1).

Comments were received suggesting that the provisions regarding the entry document required for proof of arrival in the eligible country be revised. One respondent suggested that a certificate showing the quantity of the eligible commodity unloaded may be difficult to obtain quickly in some circumstances and asked that CCC accept an entry certificate as long as the loading weight is shown. It is acknowledged that it is sometimes difficult to obtain entry documents from some eligible countries. Therefore, in order to facilitate the presentation of entry documentation by the exporter to CCC, the forms of allowable entry documentation referenced in § 1494.401(f)(2) have been expanded to include a certification issued by an independent surveyor in the eligible country or a statement from the vessel or shipline. However, it has been determined that the quantity of the eligible commodity discharged in the eligible country is specific information needed in order to determine that all of the commodity for which a bonus was paid or will be paid arrived in the eligible country, taking into account reasonable handling losses and differences in weighing equipment and methods.

Although no public comment was received specifically suggesting such a change, in order to facilitate the timely processing of entry certificates, an additional requirement has been added to § 1494.401(f)(2) of this final rule to provide that entry certificates must either be in English or accompanied by an acceptable translation.

Section 1494.501 Submission of Offers to CCC

One commenter questioned whether the expiration date included in the Invitations, which is referenced in § 1494.501(a), applied to all Invitations or whether expiration dates would be consistent as applied to all commodities and countries. The expiration date for each Invitation is individually set at a date not more than one year from the date of issuance of that Invitation. Invitations are issued as export opportunities develop and, therefore, there is no consistency between the expiration dates of Invitations for different commodities and countries. Furthermore, no consistency is intended or needed.

Although no public comment was received specifically suggesting such a change, in order to facilitate the offer review process, an additional requirement has been added to § 1494.501(c) of this final rule to provide that offers must be submitted in the format prescribed in this subsection.

Although no public comment was received specifically suggesting such a change, in order to clarify that the quantity of the eligible commodity which is eligible for the payment of a bonus is the net weight (less any dockage, if applicable), § 1494.501(c)(7) of this final rule has been reworded to require the eligible exporter to express on a net weight basis the quantity for which it wishes to receive a bonus.

Two respondents suggested that the regulations allow exporters the flexibility to change classes of wheat (except for Durum Wheat) and coastal range for shipments and to make allowance for shifts in delivery period without approval by CCC. This type of flexibility could be reflected by changing the requirements relating to the content of the offers to CCC in § 1494.501(c) to allow for multiple coasts of export, optional classes of wheat, and a stated tolerance for shifts in the delivery period. In considering these comments, a review was performed of the current procedures applied in the price and bonus review of exporters' offers in response to Invitations for wheat and the application and approval process for amendments to existing EEP Agreements to change the class, coastal range and/or delivery period. In order to accommodate a flexible system where the exporter could change the class, coast, and/or delivery period, CCC would have to base its bonus calculations upon the class of wheat, coastal range and delivery period which would result in the lowest cost bonus to

CCC. CCC has allowed some flexibility for multiple classes of wheat, multiple coastal ranges and extended delivery periods in certain EEP Invitations. The language of the final EEP regulations will continue to allow for this limited flexibility in Invitations. However, to subject all bids to this type of least cost bonus restriction may unfairly limit the export of some higher cost classes of wheat such as Hard Red Spring or White Wheat and shipment from some coastal ranges such as the Great Lakes/St. Lawrence River or Pacific Northwest. Such a restriction may be detrimental to the purchasing desires of an eligible buyer and to regional interests supporting the export of certain classes of wheat from specific U.S. ports. Therefore, it has been determined that, due to the impact of lowest cost bonus calculations on the purchasing preferences of eligible buyers, it would not be in the best interest of the EEP to try to accommodate the flexibility suggested for class, coast and delivery period in all EEP Invitations.

Although no public comment was received specifically suggesting such a change, in order to facilitate the price and bonus review process, an additional requirement has been added to § 1494.501(c)(15) of this final rule to provide that an eligible exporter must include in its offer information on applicable credit payment terms and, if permitted in the applicable Invitation, the discharge port for transshipments.

In addition, a new provision has been added at § 1494.501(c)(20)(v) to comply with the requirement in section 401(a) of the Agricultural Trade Act of 1978 (7 U.S.C. 5661(a)), as amended by section 1531 of the 1990 Act, that CCC obtain certifications from eligible exporters that there were no corrupt payments or extra sales services, or other items extraneous to the export sale, provided in connection with the export sale.

A new provision is also added at § 1494.501(c)(20)(xi) to comply with the requirement of section 401(a) of the Agricultural Trade Act of 1978 (7 U.S.C. 5622) as amended by Section 1531 of the 1990 Act. Section 1494.501(c)(20)(xi) provides that exporters certify that the agricultural commodity or product to be exported under an EEP Agreement will be a United States agricultural commodity or product thereof, as defined by § 1493.201(gg).

Although no public comment was received specifically suggesting such a change, in order to ensure that CCC only considers offers from eligible exporters which qualify for program participation at the time that such offers are submitted, a new provision has been added at § 1494.501(c)(20)(xii) to require the eligible exporter to certify that it still meets all of the qualification requirements for program participation and will notify CCC if there is a change of circumstances which should cause it to fail to meet such requirements.

Some respondents suggested that CCC announce daily, after the close of the futures market, or on a weekly basis, a set bonus or subsidy level which would be applicable for a given eligible commodity to all eligible countries. Although this type of subsidy mechanism would be very simple and quite transparent, it would also be self-defeating in that other subsidizing suppliers would be able to readily adjust their subsidies in reaction to the bonus announced by CCC. Therefore, such simplification of the EEP operating procedures would not be in the best interest of the program. Past experience in operation of the EEP shows that exports made in connection with Announced CCC Bonuses have been only marginally successful in remaining competitive with exports of unfairly subsidizing suppliers and gaining U.S. market share in the targeted country. The final rule allows CCC to continue to employ Announced CCC Bonuses where conditions for purchase by a buyer in a specific targeted country necessitate such a system under the EEP. However, adopting a general announced bonus for a particular commodity would deprive CCC of the flexibility to adjust the bonus level to take into account particular country purchasing preferences or differences in transportation off-sets needed to keep U.S. commodities competitive on a landed cost basis with those of unfairly subsidizing suppliers.

A commenter suggested that an exporter not be required to declare the eligible country to which an eligible commodity will be exported until after a certain quantity of such eligible commodity has been awarded to the exporter. However, in order to accomplish the program objective of helping U.S. agricultural commodities remain competitive in targeted markets, the eligible country must be known at the time the offer is considered by CCC.

Section 1494.601 Acceptance of Offers by CCC

One commenter suggested that § 1494.601, Acceptance of Offers by CCC, be used to provide more equity among the classes of wheat exported with the assistance of the EEP. CCC does not control the classes of wheat exported in connection with the EEP. The specifications for the eligible commodity exported are mutually determined between buyer and seller. Although a buyer may have a traditional preference for a certain class of wheat, other considerations such as price may override these preferences. In the past, when a specific allocation was announced for Durum Wheat to Algeria, this allocation was underutilized due to price considerations and remained largely inactive until the remaining balance was made available to wheat of any class, including Durum Wheat. Therefore, it has been determined that earmarking of allocations for various classes of wheat under an EEP initiative is counterproductive.

One commenter questioned whether the provision for the acceptance of offers for an Announced CCC Bonus contained in § 1494.601(c) provides an exporter with an opportunity to submit exclusive or early bids. This provision states the CCC will accept such offers on a first-come, first-served basis. The Announced CCC Bonus mechanism allows the EEP to facilitate export sales in situations in which the eligible buyer will not permit a bid by an exporter to be contingent upon CCC approval of an EEP bonus. CCC recognizes that the acceptance of offers for an Announced CCC Bonus on a first-come, first-served basis could allow the exporter to sell to the buyer an amount of the eligible commodity which is equal to the buyer's entire tender amount. Under circumstances where CCC may question if sufficient competition existed for a sale, CCC reserves the right under § 1494.601(h) to reject any offers received. Therefore, these provisions have not been changed in the final rule in response to the comment.

Section 1494.701 Payment of Bonus

A commenter requested that a change be made in the description of the form of bonus payment in § 1494.701(a). CCC had proposed that "the bonus may be paid in the form of CCC certificates or in any other form which CCC determines appropriate." The respondent suggested that this paragraph be revised to read as follows: "The bonus may be paid in the form of CCC certificates or in any other form specified in the Invitation which CCC determines to be appropriate." The final rule reflects this change.

Two respondents asked that, in determining whether a sufficient quantity of the eligible commodity has been entered into the eligible country to satisfy the quantity condition of the EEP Agreement, CCC make such determination on the basis of gross weight (including dockage), in order to better follow commercial practice, rather than net weight (excluding dockage), as specified in § 1494.701(b). It

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is correct that normal U.S. commercial practice is to satisfy sales contracts on the basis of gross weight exported. However, for the reasons set forth below, this suggested change will not be adopted.

Dockage is a controllable factor in grain export shipments, and grain export elevator operators often routinely adjust the amount of dockage in a shiplot to a tenth of a percent. In export shipments of grain (wheat, barley, sorghum), dockage normally is less than one percent of weight. The dockage amount is certified by the Federal Grains Inspection Service. Other than in circumstances where there is a set allowable dockage level set by contract, dockage is normally weight deductible to the buyer. This means that the buyer only pays for the net weight, plus the set allowable dockage, if any, rather than for the gross weight. To determine net weight for the purposes of the EEP, the reported dockage is deducted from the total weight of the shipment, so that a subsidy is paid only on the net weight exported, with no allowable dockage level.

To fulfill its obligations to CCC, an exporter must export and enter into the eligible country a quantity of the eligible commodity that is within plus or minus five percent, on a net weight basis, of the quantity specified in the Agreement. Some exporters have previously expressed their concerns about CCC's use of net weight in determining whether an exporter has fulfilled its obligations to CCC under an Agreement when the exporter may have otherwise met its obligations to the buyer on the basis of gross weight. Other exporters have agreed with CCC's determination that it should pay bonuses on the basis of the net weight exported, after the removal of dockage, because the bonus should not be paid on dockage which has no intrinsic value.

Because the upward shipping tolerance of five percent is also applied on a net weight basis, this means that the exporter can ship up to 105 percent of the quantity specified in the Agreement (on a net weight basis) and still receive a bonus under the EEP for the entire net amount. Applying the upward tolerance to the new weight benefits the exporter. If CCC were to change the lower tolerance limit under EEP to apply to gross weight rather than net weight, then the upward tolerance limit should also be changed to apply to gross weight. Exporters have also previously disagreed with this approach.

To comply with the requirement to fulfill the EEP Agreement on the basis of net weight, the exporter has the ability to: Bid a lower quantity in the EEP offer to adjust for anticipated dockage; determine the vessel size so that, even with the inclusion of dockage, a sufficient quantity can be shipped to fulfill the Agreement on a net weight basis; control the dockage during loading; or place the outstanding balance to be shipped on another vessel.

An additional comment was made by one of the respondents relating to this discussion of gross versus net weight. The commenter suggested that some buyers prefer a 10 percent shipping tolerance and have no difficulty in securing the same from the European Economic Community. The respondent asked why the EEP should permit only a five percent shipping tolerance. This approach has been adopted in administering the EEP because it is necessary to place fairly stringent restraints upon the levels of program awards. Additionally, the five percent shipping tolerance takes into account normal commercial practice for the non-bulk commodities, such as wheat flour, rice, table eggs and frozen poultry. For commercial transactions dealing with these and similar commodities, a plus or minus 10 percent shipping tolerance is less common. The adoption of various shipping tolerances for different commodities was considered, but, for the sake of simplicity in administering the EEP, it has been deemed desirable to maintain the same shipping tolerance for all eligible commodities.

A commenter questioned the lack of consistency between § 1494.701(b) and § 1494.401(f)(2) with regard to the certifications of quantity of the eligible commodity at export and the entry documentation relating to the quantity discharged in the eligible country. It has been recognized that there may be discrepancies between the quantities stated in the export and entry documentation. In particular, the quantity reported in entry documentation for bulk handled commodities may be affected by handling losses and weighing errors in many eligible countries due to less sophisticated discharge equipment and weigh scales. Therefore, § 1494.701(b) has been revised to state that the quantity of the eligible commodity established by the export documentation will be used in determining the quantity on which the bonus will be paid, unless, in the determination of CCC, there is evidence to suggest that there was loss, destruction or diversion of the eligible commodity prior to its entry into the eligible country.

Finally in recognition of the delays which exporters may experience in obtaining entry documentation, the length of time permitted to submit entry documentation to CCC without penalty has been extended from 30 days to 60 days, as referenced in §§ 1494.701 (d) and (g).

Section 1494.801 Enforcement and Termination of Agreements With CCC

Four commenters suggested that the provisions of § 1494.801, dealing with the enforcement and termination of EEP Agreements, be revised to allow the exporter to receive or retain the bonus in situations where it was unable to fulfill the EEP Agreement due to force majeure. Generally, if a force majeure provision is included in a contract, then neither party to the contract will be held liable for a failure or delay in complying with its responsibilities under the contract which resulted from a condition that is beyond the control or without the fault or negligence of the party to the contract seeking excuse from liability. A force majeure provision contained in a contract may be triggered by such conditions as acts of God, strikes, embargoes, fires, floods, epidemics, quarantines, severe weather, or war. The respondents commented that, when the exporter has had no control over the disposition of the eligible commodity as a result of a situation resulting from force majeure, CCC should allow the exporter to receive or retain a bonus under the EEP. To adopt the commenters' suggestion would place CCC in the position of an insurer for the value of the bonus. Private insurance for the bonus value may be available to the exporter for force majeure contingencies. Furthermore, it would be inappropriate for CCC to pay a bonus if the eligible commodity failed to reach the eligible country, for whatever reason, because the program objective of countering unfair foreign competition in the eligible country would not have been furthered. It has, therefore, been determined that the exporter will not have the right to receive or retain a bonus even if its failure to fulfill the Agreement was due to conditions of force majeure.

Section 1494.801(d) has been revised to replace the provisions for relief from liability for liquidated damages with a hold harmless provision. Under this provision CCC will hold an exporter harmless for liquidated damages: (1) If the exporter's failure to perform was due to causes solely without the exporter's fault or negligence and the exporter had taken the necessary action to enable it to export the required quantity of the eligible commodity and enter it into the eligible country; or (2) if the eligible commodity was lost or destroyed after it had been placed on board the export carrier.

A new provision entitled "Fraud, Scheme or Device" has been added at § 1494.801(e) in accordance with section 402(b) of the Agricultural Trade Act of 1978 (7 U.S.C. 5662(b)), as amended by section 1531 of the 1990 Act.

One commenter recommended that the exporter and the eligible buyer be given the flexibility to negotiate directly any amendment to the contract terms, without approval by CCC and with the exporter required only to notify CCC of such amendments for record keeping purposes. Except for the case of an Announced CCC Bonus, the bonus for each Agreement is awarded competitively and is dependent upon the specifications of quality (i.e., class), export coastal range, and delivery period stated in that particular Agreement. If these conditions change, CCC should have the right to determine if a bonus reduction is warranted in light of the new conditions. Therefore, this recommendation has not been adopted. However, in the final rule, § 1494.801(i) has been expanded to provide further detail concerning the procedure for the amendment of Agreements.

Section 1494.901 Dispute Resolution and Appeals

No public comment was received on this section. However, in the final rule, § 1494.901(b)(3) was revised to allow the General Sales Manager sixty days to schedule an administrative hearing of an appeal and sixty days to make a final decision on the appeal. The proposed rule had allowed thirty days for these two time periods; upon further review, it has been determined that thirty days was an insufficient amount of time.

Section 1494.1001 Miscellaneous Provisions

No public comment was received on this section. Section 1494.1001(b) was revised in the final rule to comply with the provisions of section 402(a) of the Agricultural Trade Act of 1978 (7 U.S.C. 5662(a)), as amended by section 1531 of the 1990 Act. Section 1494.1001(c) was added to comply with section 401(b) of the Agricultural Trade Act of 1978 (7 U.S.C. 5661(b)), as amended by section 1531 of the 1990 Act.

List of Subjects in 7 CFR Part 1494

Administrative practice and procedure, Agricultural commodities, Exports, Reporting and recordkeeping requirements, Governments contracts.

Accordingly, 7 CFR chapter XIV is amended by adding a new part 1494 to read as follows:

PART 1494—EXPORT BONUS PROGRAMS

Subpart A—[Reserved]

Subpart B—Export Enhancement Program Operations

Sec.

1494.101 General statement.
1494.201 Definitions of terms.
1494.301 Qualification requirements for program participation.
1494.401 Performance security.
1494.501 Submission of offers to CCC.
1494.601 Acceptance of offers by CCC.
1494.701 Payment of bonus.
1494.801 Enforcement and termination of agreements with CCC.
1494.901 Dispute resolution and appeals.
1494.1001 Miscellaneous provisions.

Authority: 15 U.S.C. 714c; 7 U.S.C. 5602, 5651, 5661, 5662, 5676.

Subpart A—[Reserved]

Subpart B—Export Enhancement Program Operations

§ 1494.101 General statement.

This subpart contains the regulations governing the operation of the Export Enhancement Program (EEP) of the Commodity Credit Corporation (CCC). CCC will, from time to time, announce, through public press release, initiatives to facilitate the export of U.S. agricultural commodities to targeted markets. The public press release, which will contain the name of a person for interested parties to contact, will be followed by the issuance of an Invitation for Offers (Invitation). Invitations will be issued pursuant to this subpart by the General Sales Manager (GSM) and will specify the eligible country(ies) (the targeted market), the unit of measure, the eligible commodity, the maximum quantity of the eligible commodity eligible for a CCC bonus, the quality specifications of the eligible commodity (including possible restrictions on type, kind, grade and/or class or other quality specifications), the eligible buyer(s), the method and rate for determining liquidated damages and performance security requirements, and any other terms and conditions peculiar to that Invitation. Invitations may be one of the following two types: Those inviting exporters which have a sales contract with an eligible buyer to submit a competitive offer for a CCC Bonus; and those inviting exporters which have a sales contract with an eligible buyer to apply for an Announced CCC Bonus. After an interested person has qualified to submit an offer for an eligible commodity, the eligible exporter may submit an offer to CCC in response to an Invitation. Such offer must contain the information required by this subpart and any additional information required by the applicable Invitation. The exporter's offer will include either the Announced CCC Bonus, if applicable, or an amount in dollars and cents for a bonus deemed necessary by the exporter to make a commercial sale of the eligible commodity for export to the eligible country competitive with export sales of the commodity by other exporting countries to buyers in the eligible country. If the exporter has furnished the required performance security and the offer is acceptable to CCC, then CCC will notify the exporter that its offer has been accepted. CCC and the exporter will enter into an Agreement in which CCC will agree to pay the bonus to the exporter in return for the exporter's submission of proof that the eligible commodity has been exported from the United States and entered into the eligible country, in accordance with the terms and conditions of the Agreement.

§ 1494.201 Definitions of terms.

Terms used in this subpart, Invitations issued pursuant to this subpart, and any documents pertaining to the EEP shall have the following meaning, unless otherwise specified in such Invitations or documents:

(a) *Agreement or EEP Agreement*—The Agreement entered into between CCC and the exporter consisting of:

(1) The terms and conditions of this subpart;

(2) The terms and conditions of the applicable Invitation;

(3) The exporter's offer;

(4) CCC's acceptance of the exporter's offer; and

(5) The public press release for the Announced CCC Bonus in effect at the time of the offer, if applicable.

(b) *Announced CCC bonus*—A CCC bonus announced by CCC by public press release in connection with an Invitation which specifies that the CCC bonus amount will be pre-determined and announced by CCC.

(c) *ASCS*—The Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

(d) *Bonus value*—The CCC bonus multiplied by the quantity of the eligible commodity exported pursuant to an Agreement, provided that the eligible commodity enters into the eligible country. (The bonus value is paid to the exporter in CCC certificates or other form of payment.)

(e) *Business day*—Days during which employees of the U.S. Department of Agriculture in Washington, DC or in Kansas City, Missouri, as applicable depending upon the office to which a

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submission is to be made, are on official duty during normal business hours.

(f) *CCC*—The Commodity Credit Corporation, U.S. Department of Agriculture.

(g) *CCC bonus*—A dollar and cents amount, established through CCC's acceptance of the exporter's offer for such bonus amount, to be paid to the exporter for each unit of the eligible commodity exported pursuant to an Agreement, provided that the eligible commodity enters into the eligible country.

(h) *CCC Certificate*—The CCC Commodity Certificate or Certificates issued by CCC that may be transferred or exchanged for a CCC-owned commodity pursuant to CCC's regulations on Commodity Certificates, In Kind Payments, and Other Forms of Payment, currently codified at 7 CFR part 1470.

(i) *CCC Operations Division (CCCOD)*—The CCC Operations Division, FAS, U.S. Department of Agriculture.

(j) *Date of entry*—Either the date on the certificate of entry specified in § 1494.401(f)(2) indicating that the eligible commodity entered the eligible country on that date or the date that an entry document was issued by a customs port authority or other government official, whichever is later.

(k) *Date of export*—One of the following dates, depending upon the method of shipment:

(1) The on-board date shown on the export carrier's bill of lading, when the eligible commodity is shipped from the U.S. without being transshipped through a Canadian port;

(2) The on-board date at the Canadian port shown on the export carrier's bill of lading, when the eligible commodity is shipped from a Canadian transshipment port on the St. Lawrence River, provided its identity had been preserved until shipped from Canada;

(3) The on-board date shown on the export carrier's through bill of lading, when the eligible commodity is loaded to a lash barge for shipment from the U.S.; or

(4) The date of entry shown on an authenticated landing certificate or similar document issued by an official of the government of the eligible country, when the eligible commodity is shipped by rail or truck from the U.S.

(l) *Date of sale*—The earliest date the exporter has knowledge that a sales contract, as defined in paragraph (bb) of this section, exists with an eligible buyer.

(m) *Director*—The Director, Kansas City Commodity Office, ASCS, U.S. Department of Agriculture, or the Director's designee.

(n) *Eligible Buyer*—Unless otherwise specified in the Invitation, a buyer, located in the eligible country, that has entered, or will enter, into a sales contract with an exporter. (The applicable Invitation may limit the eligible buyer to one or more particular buyers in an eligible country.)

(o) *Eligible country*—The country or countries, as specified in an Invitation, which will be the only country or countries into which an exported eligible commodity must ultimately be entered in order for the exporter to earn a bonus from CCC under that Invitation.

(p) *Eligible commodity*—The U.S. agricultural commodity specified as eligible for export under the applicable Invitation, which is of the kind, type, grade and/or class of commodity specified in the applicable Invitation. (If the eligible commodity is grain, it must meet the definition applicable for that grain under the U.S. Grain Standards Act and the regulations issued thereunder.)

(q) *Eligible exporter*—A person that has been notified by CCC that such person has been determined to be qualified to submit offers for consideration by CCC in response to Invitations for a particular eligible commodity.

(r) *Export or exported*—The shipment of the eligible commodity from the United States or from the Canadian transshipment port, as permitted by this subpart, destined for the eligible country.

(s) *Exporter*—An eligible exporter that enters into an Agreement with CCC under this subpart.

(t) *Export carrier*—The carrier on which the eligible commodity is shipped under the Agreement to the eligible country or to a port in a nearby country, if transshipments other than through Canada are allowed by the applicable Invitation. ("Export carrier" may mean an ocean vessel and, on Canadian transshipments, will mean the ocean vessel loaded at the Canadian transshipment port; or, on overland shipments, a railcar or truck; or a container or lash barge loaded with the eligible commodity for which a through on-board bill of lading is issued for shipment to the eligible country, provided that the loaded container or lash barge is subsequently lifted aboard an ocean vessel.)

(u) *FAS*—The Foreign Agricultural Service, U.S. Department of Agriculture.

(v) *GSM*—The General Sales Manager, FAS, U.S. Department of Agriculture, acting in the capacity of Vice President, CCC, or the GSM's designee.

(w) *Invitation*—The Invitation for Offers issued by CCC pursuant to this subpart, generally specifying the eligible country, the eligible commodity, the maximum quantity of the eligible commodity eligible for a CCC bonus, the quality specifications of the eligible commodity, the eligible buyer(s), the method and rate for determining liquidated damages and performance security requirements, allowances for transshipments, and any other terms and conditions particular to that Invitation. (If the Invitation contains terms or conditions that are inconsistent with this subpart, the terms and conditions of the Invitation will prevail for the purposes of Agreements entered into pursuant to such Invitation.)

(x) *Notice to exporters—EEP Contacts*—A notice issued by FAS by public press release which contains specific addresses; telephone, facsimile and telex numbers; and contacts within FAS and ASCS to obtain further information concerning qualification as an eligible exporter, the submission of offers in response to Invitations, amendments to Agreements, requests for bonus payments, the submission of export and entry documentation, and other matters related to the EEP.

(y) *Official Inspection Certificate*—A valid official export inspection or other quality analysis certificate, as specified in the applicable Invitation.

(z) *Official weight certificate*—A valid official export weight or other quantity certificate, as specified in the applicable Invitation.

(aa) *Person*—An individual, partnership, corporation, association or other legal entity.

(bb) *Sales contract*—The sales contract entered into between an eligible exporter and an eligible buyer which sets forth the terms and conditions of a sale of the eligible commodity from the eligible exporter to the buyer. (Written evidence of sale may be in the form of a signed sales contract, an offer and acceptance between parties, or other documentary evidence of sale. The written evidence of sale for the purposes of the EEP must, at a minimum, document the following information: the eligible commodity, quantity, quality specifications, delivery terms (FOB, C&F, etc.) to the eligible country, delivery period, unit price, payment terms, date of sale, and evidence of agreement between buyer and seller. A sales contract with an intervening purchaser or an affiliate or subsidiary of the eligible exporter is not an eligible sales contract for the purpose of this subpart.)

(cc) *Transshipment*—The entry of the eligible commodity into a country other than the eligible country which occurs prior to the subsequent entry of the eligible commodity into the eligible country.

(dd) *Time*—All references to time shall refer to local time in Washington, DC.

(ee) *Unit of measure*—The unit of measure for the eligible commodity, as specified in the applicable Invitation.

(ff) *United States or U.S.*—All of the 50 States, the District of Columbia, and the territories and possessions of the United States.

(gg) *U.S. Agricultural Commodity*—(1) With respect to any agricultural commodity other than a product of an agricultural commodity, an agricultural commodity entirely produced in the United States; and (2) with respect to a product of an agricultural commodity:

(i) A product all of the agricultural components of which are entirely produced in the United States; or

(ii) Any other product the Secretary may designate that contains any agricultural component that is not entirely produced in the United States if:

(A) Such component is an added, de minimus component,

(B) Such component is not commercially produced in the United States, and

(C) There is no acceptable substitute for such component that is commercially produced in the United States.

(For purposes of this paragraph, fish entirely produced in the United States include fish harvested by a documented fishing vessel as defined in title 46, United States Code, in waters that are not waters [including the territorial sea] of a foreign country.)

§ 1494.301 Qualification requirements for program participation.

Before CCC will consider an offer from an interested person in response to an Invitation under the EEP, such person must qualify as an eligible exporter specifically for the eligible commodity for which the interested person wishes to submit an offer. The interested person must qualify as an eligible exporter for an eligible commodity in accordance with the procedures set forth below.

(a) *Submission of documentation.* An interested person that wishes to qualify as an eligible exporter to submit offers with respect to a particular eligible commodity must furnish the following information or documentation to CCC at the address referenced in the Notice to Exporters—EEP Contacts:

(1) Evidence to show that the interested person has had experience, within the preceding three calendar years, in selling for export such particular eligible commodity or an agricultural commodity which CCC has determined jto be similar to the eligible commodity;

(2) The address of the interested person's office and the name and address of an agent in the U.S. for the service of process;

(3) The legal form of doing business of the interested person, e.g., sole proprietorship, partnership, corporation, etc.;

(4) The place of incorporation of the interested person, if the interested person is a corporation;

(5) The name and address of an office(s) of the interested person within the U.S., if the interested person is a foreign corporation or other foreign entity; and

(6) A certified statement describing the interested person's participation, if any, during the past three years in U.S. Government programs, contracts or agreements.

(b) *Previous qualification.* If an interested person has already qualified as an eligible exporter to submit offers for a specific eligible commodity and wishes to qualify as an eligible exporter for other eligible commodities, the interested person need only provide the following to CCC at the address referenced in the Notice to Exporters—EEP Contacts:

(1) The information or documentation required in subparagraphs (a)(1)and (a)(6) of this section; and

(2) A certification that the information previously provided pursuant to paragraph (a) of this section has not changed. If the interested person is unable to provide such certification, such person must comply with the procedure in paragraph (a) of this section.

(c) *Necessity to qualify.* An interested person may not submit an offer in response to an Invitation for a particular eligible commodity, and CCC will not consider any such offer from an interested person, until CCC has notified the interested person that such person has qualified as an eligible exporter for that particular eligible commodity.

(d) *Additional submissions.* CCC will promptly notify interested persons that have submitted information required by this section whether they have qualified to have their offers considered. Any person failing to qualify will be notified of the basis of CCC's decision and will be given an opportunity to provide additional information for consideration by CCC.

(e) *Previous performance.* CCC may request additional information with respect to the person's previous performance under any U.S. Government programs or contracts or agreements with the U.S. Government during the past three years. Persons with a history of unsatisfactory participation in such programs or performance of such contracts or agreements will be ineligible to participate in the EEP, unless CCC determines that permitting the interested person to participate would be in the best interests of the program.

(f) *Ineligibility for program participation.* A person will be ineligible to qualify for participation in the EEP if such person:

(1) has been debarred or suspended from contacting with or participating in any program administered by a U.S. Government agency;

(2) is controlled or can be controlled in whole or in part, by any individuals or entities debarred or suspended from contracting with or participating in programs administered by any U.S. Government agency; or

(3) employs any individuals debarred or suspended from contracting with or participating in programs administered by any agency of the U.S. Government.

(g) *Removal from qualified status.* An eligible exporter's qualification to submit offers for a particular eligible commodity will depend upon the continued accuracy of the information provided by the eligible exporter pursuant to this section. If this information changes or if CCC learns of other information indicating that an eligible person's continued qualification would no longer be in the best interests of the EEP, CCC may notify the eligible exporter that it is no longer qualified to submit offers for any or all eligible commodities.

§ 1494.401 Performance security.

(a) *Requirement to establish performance security.* Prior to the submission of an offer to CCC in response to an Invitation, an eligible exporter must establish performance security, in a form which is acceptable to CCC, in order to guarantee the eligible exporter's faithful performance of the Agreement. If CCC enters into an Agreement with the eligible exporter, this performance security must remain in effect until its cancellation or reduction is authorized by CCC pursuant to paragraph (f) of this section. An offer made by an eligible exporter will not be considered if proof of the establishment of the performance security is not made available to CCC by 3 p.m. on the date

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for which the offer is submitted for consideration.

(b) *Form of performance security.* The performance security must be acceptable to CCC and may be an irrevocable standby letter of credit, a bond, or a certified or cashier's check. If a standby letter of credit is furnished as performance security, the opening bank may be a U.S. bank or a foreign bank. If the standby letter of credit is opened by a foreign bank, it must be 100 percent confirmed by a U.S. bank. If a bond is furnished as performance security, the surety(ies) must be among those appearing on the list of approved sureties maintained by the U.S. Department of the Treasury. If a cashier's or certified check is furnished as performance security, the bank issuing the cashier's or certified check must be a U.S. bank.

(c) *Amount of performance security.* The amount of the performance security to be furnished to CCC in response to a particular Invitation will depend upon whether the eligible exporter intends to select "Option A" or "Option B" for the timing of the bonus payment. If the eligible exporter furnishes performance security under "Option A" of the applicable Invitation, the eligible exporter may request payment of the bonus after export of the eligible commodity but before entry of the commodity into the eligible country. If the eligible exporter furnishes performance security under "Option B" of the applicable Invitation, the eligible exporter may request payment of the bonus only after the exported eligible commodity has entered into the eligible country. The applicable Invitation will specify the exact amount of performance security for the eligible commodity required under either "Option A" or "Option B" and the method and rate for determining liquidated damages. After the exporter and CCC enter into an Agreement, the exporter may request CCC to change the performance security option for an entire Agreement from "Option B" to "Option A" and, if CCC agrees to this change, the exporter will increase the performance security amount to the level required by the applicable Invitation for "Option A".

(d) *Additional security.* The exporter shall promptly furnish such additional security as CCC may determine is necessary to protect CCC under an Agreement if the surety(ies) or obligating bank:

(1) Becomes unacceptable to the U.S. Government or CCC; and/or

(2) Fails to furnish reports on its financial condition as required by the U.S. Government or CCC.

(e) *Right to funds under the performance security.* If CCC enters into an Agreement with an exporter under the EEP, CCC will have the right to funds from the performance security established by the exporter for such Agreement to recover:

(1) The amount of any bonus paid to the exporter under the Agreement if the exporter fails to perform in accordance with such Agreement;

(2) Any funds owed by the exporter to CCC related to the specific EEP Agreement for which the performance security was established, including those for liquidated damages, discounts for late performance, overpayments made by CCC, storage charges, or other damages or charges as determined by CCC; and/or

(3) Any amounts or funds that could be owed by the exporter to CCC in accordance with subparagraphs (e) (1) and (2) of this section for unfulfilled obligations under the Agreement if the performance security should expire prior to the exporter's fulfillment of these obligations. Should the exporter fulfill these obligations, in accordance with the Agreement, after CCC has drawn upon the performance security, CCC will return the funds drawn to the exporter or other appropriate party, as determined by CCC. CCC may return the performance security if it determines that the exporter is not liable for any damages incurred by CCC as a result of the exporter's failure to fulfill its obligations under the Agreement and that the exporter will not retain any bonus payment which was not earned.

(f) *Cancellation or reduction of performance security.* (1) CCC will agree, upon request by the exporter, to a cancellation of the performance security established for an Agreement when CCC determines, on the basis of evidence provided by the exporter or other evidence available to CCC, that:

(i) The exporter has fully performed under the Agreement;

(ii) The exporter has fully compensated CCC for all costs incurred or damages suffered by CCC, unless CCC has determined to hold the exporter harmless for such damages pursuant to § 1494.801(d) as a result of the exporter's nonperformance of the Agreement; or

(iii) It is no longer in the best interest of the EEP to require the exporter to maintain the performance security, and the exporter submits to CCC a written statement agreeing that all other terms and conditions of the Agreement will remain unchanged pending final resolution of the exporter's liabilities to CCC.

(2) To support a request for the cancellation of performance security furnished in connection with an Agreement, the exporter must provide to CCC evidence of the export of the eligible commodity as provided by § 1494.701(c), and the entry of the eligible commodity into the eligible country or countries. The entry certification must be in English or accompanied by a certified or other translation acceptable to CCC. To show entry of the eligible commodity into the eligible country, the exporter must furnish to CCC an original certification signed by a duly authorized customs or port official of the eligible country, by the eligible buyer, by an agent or representative of the vessel or shipline which delivered the eligible commodity to the eligible country, or by a private surveyor in the target country or other documentation deemed acceptable by the GSM showing:

(i) That the eligible commodity entered the eligible country;

(ii) The identification of the export carrier;

(iii) The quantity of the eligible commodity unloaded;

(iv) The kind, type, grade and/or class of the eligible commodity; and

(v) The date(s) and place(s) of unloading of the eligible commodity in the eligible country.

(3) If the exporter makes multiple shipments against a sales contract with an eligible buyer, CCC may agree to a proportional reduction in the amount of the required performance security when the exporter has furnished evidence that the exporter has performed under the Agreement with respect to a particular shipment.

(4) Upon the payment of liquidated damages by an exporter to CCC under a specific Agreement or the determination by CCC, pursuant to § 1494.801(d), to hold the exporter harmless for the payment of liquidated damages owed to CCC under a specific Agreement, CCC will allow the exporter to cancel or reassign that portion of the performance security opened for such specific Agreement that would relate to the value of the liquidated damages.

§ 1494.501 Submission of offers to CCC.

(a) *Consideration of offers.* Unless otherwise specified in the Invitation, CCC will consider offers on a daily basis from the date of issuance of the Invitation until such time that CCC announces that offers will no longer be accepted under the Invitation, the total quantity of the eligible commodity announced in the Invitation has been awarded, or the Invitation has expired

as indicated by the expiration date shown in the Invitation.

(1) Prior to the submission of an offer to CCC, the eligible exporter must have entered into a sales contract, as defined in § 1494.201(bb), with an eligible buyer for the export sale and the delivery of the eligible commodity to the eligible country.

(2) The date of sale of the eligible exporter's sales contract with an eligible buyer must be after the issuance date of the applicable Invitation.

(3) The sales contract between the eligible exporter and an eligible buyer may be conditioned upon the eligible exporter's entering into an Agreement with CCC under the EEP for the payment of a bonus.

(4) CCC will not be responsible to any person for any loss caused by the failure of the eligible exporter to obtain a CCC bonus.

(5) The eligible exporter must promptly notify CCC in writing of any amendment to the sales contract with an eligible buyer.

(b) *Submission of offers.* Eligible exporters must submit offers, or modifications or withdrawals thereof, to the address, telephone, telex or facsimile numbers specified in the Notice to Exporters—Contacts for EEP. Telephonic offers must be confirmed in writing immediately thereafter by telex or facsimile. If a telephonic offer is not confirmed in writing by 9 a.m. on the next business day, the offer will not be considered. The date and time affixed to submissions will be as determined by CCC.

(c) *Content of offers.* Offers to CCC for a CCC bonus under the EEP must contain the information shown below in the same numerical order as shown below. CCC reserves the right to reject any offer that so materially departs from this prescribed format that its consideration would hinder the offer review process. The applicable Invitation may require the submission of further information necessary for the consideration of an offer.

(1) The use of the numerical designation assigned to the applicable Invitation, which shall signify that the offer is submitted subject to all the terms and conditions of this subpart and the Invitation in response to which the offer is being submitted for consideration by CCC.

(2) The date and time for which the offer is submitted for consideration. The time shall be stated as "after 3 p.m." For example, the information required by paragraphs (c)(1) and (c)(2) of this section could be stated as follows: "Invitation No. GSM–500–1, Revision No. X, For Consideration After 3 p.m. on August 1, 1991."

(3) The full business name and address of the eligible exporter making the offer.

(4) The name and title of the individual signing the offer.

(5) The telephone number and telex or facsimile number of the eligible exporter submitting the offer.

(6) The CCC bonus in dollar and cents requested by the eligible exporter for each unit of measure of the eligible commodity to be exported to the eligible country. The offer shall contain only one CCC bonus. In offers submitted in response to an Invitation in which CCC has announced the bonus amount, the eligible exporter shall state the dollar and cents amount of the Announced CCC Bonus.

(7) The quantity, on a net weight basis, (less any dockage, if applicable) of the eligible commodity for which the eligible exporter wishes to receive a CCC bonus pursuant to an EEP Agreement. This quantity shall be exclusive of tolerances and expressed in the unit of measure specified in the applicable Invitation. This quantity may be less than the sales contract quantity.

(8) The U.S. coast of export. The Invitation may require the eligible exporter to indicate: The coasts of export if more than one coast of export is allowed for an offer; the Canadian port if the eligible commodity is to be transshipped through a Canadian port on the St. Lawrence River; or the U.S. city and state from which the shipments will cross the border into the eligible country if the eligible commodity is to be shipped by rail or truck.

(9) The quality of the eligible commodity to be exported to the eligible buyer, if required by the applicable Invitation, including any additional quality specifications not found in the Invitation but included in the tender specifications by the eligible buyer or the sales contract with the eligible buyer. The Invitation may limit an offer to one or more quality designations for the eligible commodity.

(10) The names of the eligible buyer and the eligible country. Unless otherwise provided for in the applicable Invitation, an offer shall contain only one eligible buyer and one eligible country. The Invitation may also provide that the eligible buyer need not necessarily be located in the eligible country.

(11) The date of sale of the sales contract with the eligible buyer.

(12) The number assigned by the eligible exporter to the sales contract.

(13) The quantity of the eligible commodity specified in the sales contract, expressed in the unit of measure specified in the applicable Invitation.

(14) The sales contract loading tolerance, if any, expressed in a percentage.

(15) The sales contract unit price, delivery terms (e.g., FOB, C&F, etc.); the nature of any arrangements or understandings of the eligible exporter and any other person that would affect the sales contract, including but not limited to arrangements or understandings concerning commissions, rebates, and other payments if applicable; credit payment terms (e.g., GSM–102, GSM–103, or other credit arrangements); and, if required by the applicable Invitation, the discharge port. The possible credit payment terms referenced in an offer are for CCC's information only and are not to be construed as a contingency for consideration or acceptance. The eligible exporter is fully responsible for the arrangement of such payment terms independently from the EEP offer and CCC bears no responsibility if such credit payment terms cannot be secured.

(16) The delivery period specified in the sales contract expressed on the basis of either shipment from the United States or the Canadian transshipment port or arrival in the eligible country. If an arrival period is shown, the offer must also indicate an anticipated shipment period. If a multiple month delivery schedule is agreed upon in the sales contract the offer must specify the quantity of the eligible commodity to be delivered each month or at other specified intervals.

(17) Any options which may be exercised by the eligible buyer under the sales contract. If the offer is accepted by CCC, the exporter must immediately inform CCC if any such options are exercised by the buyer.

(18) The name and address of the sales agent, if any, for the sales contract.

(19) The designation of bonus payment under "Option A" or "Option B," as described in § 1494.401(c).

(20) The words "ALL ITEM 20 CERTIFICATIONS ARE BEING MADE IN THIS OFFER" which, when included in the offer by the eligible exporter, will indicate that the eligible exporter is certifying that:

(i) The information furnished to CCC with respect to the sales contract is correct;

(ii) The date of sale with an eligible buyer was after the issuance date of the applicable Invitation;

(iii) The sale does not replace any sale made to the eligible buyer by the eligible exporter, or any affiliate or subsidiary of

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the eligible exporter, prior to the issuance date of the applicable Invitation;

(iv) There are no other arrangements or understandings between the eligible exporter and any other person that would alter the information provided under paragraph (c) of this section;

(v) There were and will be no corrupt payments or extra sales services, or other items extraneous to the export sale provided in connection with the export sale, and the transaction complied with applicable U.S. law;

(vi) The CCC bonus requested in the offer has been arrived at independently, without any consultation, communication, or agreement with any other eligible exporter or competitor relating to:

(A) The amount of the CCC bonus;

(B) The intention to submit an offer; or

(C) The methods or factors used to calculate the CCC bonus requested;

(vii) The CCC bonus requested in the offer has not been and will not knowingly be disclosed by the eligible exporter, directly or indirectly, to any other eligible exporter or competitor before the time the offer is to be considered by CCC, unless otherwise required by law;

(viii) No attempt has been made, or will be made, by the eligible exporter to induce any other concern to submit, or not to submit, an offer for the purpose of restricting competition;

(ix) The signatory of the offer:

(A) Is the person in the eligible exporter's organization responsible for determining the CCC bonus being requested and has not participated and will not participate in any action contrary to subparagraphs (c)(20) (vi), (vii), and (viii) of this section; or

(B) Has been authorized in writing to act as agent for the eligible exporter for the purposes of paragraphs (b) and (c) of this section and certifies that the eligible exporter named in the offer and the signatory have not participated and will not participate in any action contrary to subparagraphs (c)(20) (vi), (vii), and (viii) of this section;

(x) If the eligible commodity is vegetable oil or a vegetable oil product, that none of the eligible commodity has been or will be used as the basis of a claim of a refund, as drawback, pursuant to Section 313 of the Tariff Act of 1930 (19 U.S.C. 1313) of any duty, tax or fee imposed under Federal law on an imported commodity or product;

(xi) The agricultural commodity or product to be exported under an EEP Agreement will be an United States agricultural commodity or product thereof as defined by § 1493.201(gg);

(xii) The eligible exporter is providing the assurances required by §§ 15.4 and 15b.5 of this title (7 CFR part 15 relates to various non-discrimination provisions);

(xiii) The eligible exporter still meets all of the qualification and program eligibility requirements of § 1494.301 and will immediately notify CCC if there is a change of circumstances which should cause it to fail to meet such requirements; and

(xiv) The eligible exporter is providing any other certification required by the applicable Invitation.

Any eligible exporter which is unable to make the certifications specified in this subparagraph (c)(20) must provide a written statement to that effect to CCC and may include any explanation or any additional information for the consideration of CCC. CCC will reject an offer if the eligible exporter states that it is unable to provide the required certifications, unless CCC determines that acceptance of the offer would be in the best interests of the EEP.

(d) *Conditional offers.* Any qualification or condition in, or added to, the offer and not expressly authorized by this subpart or the applicable Invitation may make such offer ineligible for consideration by CCC.

(e) *CCC's right to additional information.* CCC may require the individual who signed the offer to provide documentary evidence of such individual's authority to execute an Agreement with CCC on behalf of the eligible exporter making the offer. CCC may require the eligible exporter to submit any other information which CCC deems necessary for consideration of the eligible exporter's offer. The exporter must furnish a copy of the sales contract to CCC upon request.

(f) *Considerations in making an offer.* In making an offer, the eligible exporter should take into consideration that the exchange of CCC Certificates which may be issued as a bonus will be governed by the terms and conditions stated on the certificates and by any applicable regulations or procedures issued by or on behalf of CCC.

§ 1494.601 Acceptance of offers by CCC.

(a) *Establishment of acceptable sales prices and CCC bonuses.* For each Invitation, CCC will establish sales prices for the eligible commodity and CCC bonus amounts which would be acceptable to CCC in terms of furthering the objectives of the EEP.

(1) In establishing acceptable sales prices for the eligible commodity, CCC will consider available relevant market data.

(2) In determining acceptable CCC bonus amounts, CCC may take into consideration factors such as, but not limited to, the following: The prevailing domestic market price of the eligible commodity; the price of the same agricultural commodity exported by other exporting countries to the eligible country; ocean freight rates for the export of the eligible commodity from the U.S. and other exporting countries to the eligible country; the particular preferences or purchasing practices of buyers in the eligible country which would customarily affect the acceptability of the eligible commodity relative to that of competing exports of the same agricultural commodity to the eligible country from other exporting countries; and the cost effectiveness of the payment of a CCC bonus amount in view of CCC's obligation to maximize the use of resources available for the operation of the EEP.

(3) The acceptable sales prices and bonus amounts will be modified by CCC as necessary to take advantage of updated information that becomes available to CCC.

(b) *Acceptance of offers for a CCC bonus on a competitive basis.* An offer from an eligible exporter for a CCC bonus on a competitive bonus that meets all of the requirements of this subpart will first be reviewed to determine if the offer contains an acceptable sales price. If the sales price contained in the offer is found to be acceptable, then the CCC bonus contained in the offer will be reviewed to determine if the CCC bonus requested is found to be acceptable. Offers with acceptable sales prices and acceptable CCC bonuses will be accepted under each Invitation beginning with the offer having the lowest CCC bonus amount, subject to the limitations in paragraphs (f) and (h) of this section.

(c) *Acceptance of offers for an announced CCC bonus.* Offers from eligible exporters for an Announced CCC Bonus that meet all of the requirements of this subpart and which contain an acceptable sales price will be accepted under each Invitation on a first-come, first-served basis according to the time of receipt of the offer, as determined by CCC, subject to the limitations in paragraphs (f) and (h) of this section.

(d) *Notification of acceptance of offers.* CCC will notify an eligible exporter by telephone of the acceptance or rejection of its offer as soon as possible after review of the exporter's offer by CCC but not later than 10 a.m. of the next business day after the date the offer was submitted for consideration. If an offer is rejected, CCC will notify the eligible exporter of the basis for the rejection. Acceptance of offers will be confirmed in writing. The date of the telephonic notification of acceptance by CCC of the eligible exporter's offer will be the effective date of the exporter's Agreement with CCC.

(e) *Announcement of acceptance of offers.* CCC will generally announce the acceptance of offers by public press release as soon as possible after the notification to the exporter. The announcement will generally include the eligible commodity, the eligible country, the exporter, the delivery period, the CCC bonus, and, if applicable, the class of the eligible commodity.

(f) *Limitation on acceptance of offers.* The total quantity of the eligible commodity, exclusive of tolerances, to be exported under all offers that are accepted by CCC pursuant to a particular Invitation will not be greater than the total quantity of the eligible commodity stated in such Invitation. CCC may refuse to accept further offers under an applicable Invitation if the quantity of the eligible commodity, exclusive of tolerances, already accepted totals the quantity, exclusive of tolerances, that is being tendered for by the eligible buyer, even though such quantity may be less than the total quantity available under that Invitation.

(g) *Rejection of offers.* Any offer or part of an offer submitted for consideration that is not accepted by CCC by 10 a.m. of the next business day after the date for which the offer was submitted for consideration will be deemed to have been rejected.

(h) *CCC's right of rejection.* Notwithstanding any other provisions of this subpart, CCC reserves the right to reject any or all offers submitted for consideration on a particular day, including those offers that have acceptable sales prices and CCC bonus amounts.

§ 1494.701 Payment of bonus.

(a) *Forms of bonus.* The bonus may be paid to the exporter in CCC Certificates or in any other form specified in the applicable Invitation which CCC determines to be appropriate.

(b) *Quantity on which bonus is paid.* The quantity of the eligible commodity exported from the U.S. which is eligible for the payment of a CCC bonus is the net weight (less any dockage, if applicable) or count which is established by the Official Inspection Certificate, the Official Weight Certificate or the export bill of lading, whichever is less. If the exporter has furnished performance security under "Option A" of the applicable Invitation and wishes the bonus to be paid prior to the entry of the eligible commodity into the eligible country, this quantity will be used in calculating the bonus value for the purposes of making payment to the exporter. If the exporter is not paid the bonus until the commodity enters into the eligible country, then this quantity will also be used in calculating the bonus value for the purposes of making payment to the exporter, unless in the determination of CCC, there is evidence to suggest that there was destruction, diversion or loss of the eligible commodity prior to entry into the eligible country. The payment of a bonus value to an exporter does not indicate that the bonus has been earned by the exporter under the Agreement; pursuant to § 1494.801(a)(3), the bonus is not earned by the exporter until the eligible commodity enters into the eligible country in accordance with the Agreement and the exporter submits proof of such entry to CCC.

(c) *Request for bonus payment under "Option A."* If the exporter has furnished performance security under "Option A" of the applicable Invitation and wishes the bonus to be paid after export of the eligible commodity, the exporter must, within 30 calendar days after the date of export of the eligible commodity, furnish to the Director, at the address referenced in the Notice to Exporters—Contacts for EEP, a written request for payment of the bonus. All documents submitted to support such a request must be acceptable to the Director.

(1) To support each bonus payment request, the exporter must furnish to the Director the following:

(i) The original or an original copy of the on-board bill of lading issued for the export carrier and signed by an agent of the export carrier. The bill of lading must show:

(A) The identification of the export carrier;

(B) The date and place of issuance;

(C) The quantity of the eligible commodity;

(D) An on-board date; and

(E) That the eligible commodity is destined for the eligible country.

(ii) The original or an original copy of the Official Weight Certificate, as required in the applicable Invitation. The certificate must show:

(A) The identification of the export carrier, if known at the time of issuance;

(B) The date and place of issuance;

(C) The weight or count of the eligible commodity.

(iii) The original or an original copy of the Official Inspection Certificate, as required in the applicable Invitation. The certificate must show:

(A) The identification of the export carrier, if known at the time of issuance;

(B) The date and place of issuance;

(C) The quantity of the eligible commodity to which the certificate relates; and

(D) The quality description of the eligible commodity.

(iv) If the documents submitted under paragraphs (c)(1)(ii) and (iii) of this section do not specify the export carrier, the exporter must also submit a signed certification that the commodity represented by the Official Inspection and/or the Official Weight certificates is the identical eligible commodity represented on the export bill of lading.

(2) If the export of the eligible commodity was by lash barge, the exporter must furnish, in addition to the documents required by paragraph (c)(1) of this section, a statement from the vessel's agent showing that the lash barge was loaded to the lash vessel named in the on-board lash bill of lading and that the eligible commodity is destined for the eligible country.

(3) If the export of the eligible commodity was from a Canadian transshipment port on the St. Lawrence River, the exporter must furnish to the Director the following, in addition to the documents required by paragraph (c)(1) of this section:

(i) Documentary evidence covering the movement of the eligible commodity from the United States to the export carrier described in the on-board bill of lading issued at the Canadian transshipment port and showing the information provided in paragraphs (c)(1) and, if applicable, (c)(2) of this section; and

(ii) A certification that the eligible commodity exported is the identical eligible commodity that was shipped from the United States.

(4) If the export of the eligible commodity was by railcar or truck, the exporter must furnish to the Director the following, in addition to the documents required by paragraphs (c)(1)(ii) and (iii) of this section:

(i) The authenticated landing certificate or similar document issued by the government of the eligible country; and

(ii) The original or an original copy of the bill of lading issued at the point of loading the railcar or truck. The bill of lading must show:

(A) The identification of the export carrier;

(B) The date and place of issuance;

(C) The quantity of the eligible commodity;

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(D) The date that the railcar or truck was loaded; and

(E) That the eligible commodity is destined for the eligible country.

(d) *Request for bonus payment under "Option B."* If the exporter has furnished performance security under "Option B" of the applicable Invitation and wishes the bonus to be paid after the entry of the exported eligible commodity into the eligible country, the exporter must, within 60 calendar days after the date of entry of the eligible commodity into the eligible country, furnish to the Director at the address referenced in the Notice to Exporters—Contracts for EEP, a written request for payment of the bonus. To support each request, the exporter must furnish to the Director, in a form acceptable to the Director, the documents specified in paragraph (c) of this section, as applicable, along with the certification of entry specified in § 1494.401(f)(2).

(e) *Time frame for payment of a bonus.* CCC will endeavor to pay the bonus to the exporter within 10 business days after CCC determines that the documents supporting the bonus request are acceptable.

(f) *Certificate amount.* If CCC decides to pay the bonus in the form of a CCC Certificate(s), the dollar value of the certificate(s) issued to the exporter will be determined by multiplying the CCC bonus specified in the Agreement by the net quantity of the eligible commodity on which the bonus is to be paid, as specified in paragraph (b) of this section, less any dockage if applicable.

(g) *Late requests for bonus payment.* If CCC decides to pay the bonus in the form of a CCC Certificate(s) and the exporter fails to request issuance of the certificate(s) within 30 calendar days after the date of export of the eligible commodity, if the exporter has chosen performance security "Option A," or within 60 days after the entry of the eligible commodity into the eligible country, if the exporter has chosen performance security "Option B", CCC may, upon issuing the certificate(s), discount the certificate(s) in an amount determined appropriate by CCC to compensate it for costs which may be incurred by CCC as a result of the exporter's delay.

§ 1494.501 Enforcement and termination of Agreements with CCC.

(a) *Performance in accordance with an Agreement with CCC.* (1) An exporter which enters into an Agreement with CCC must ensure that the eligible commodity is exported from the U.S. and enters the eligible country in accordance with the terms and conditions of the Agreement.

(2) The diversion of the eligible commodity to a country other than the eligible country is prohibited. Transshipments of the eligible commodity are permitted only if specifically allowed in the applicable Invitation or for shipment through a Canadian transshipment port on the St. Lawrence River if the eligible commodity had been shipped from the United States via the Great Lakes coastal range and its identity had been preserved until shipped from Canada.

(3) Regardless of whether or not a bonus has been paid by CCC to the exporter pursuant to § 1494.701, the bonus is not earned by the exporter until the eligible commodity enters into the eligible country in accordance with the Agreement. In order to retain a bonus or request payment of a bonus, depending upon the option chosen for furnishing performance security, and to request cancellation of the performance security, the exporter must provide evidence to CCC, as specified in § 1494.401(f)(2), that the eligible commodity entered into the eligible country. If, on the basis of evidence available to it, CCC determines that there was destruction, diversion or loss of the eligible commodity prior to entry into the eligible country, CCC will not release the amount of performance security corresponding to the amount of eligible commodity for which insufficient evidence of entry into the eligible country was presented to CCC until:

(i) CCC recovers from the exporter the amount of the bonus corresponding to such amount of the eligible commodity, if the exporter has already been paid the bonus under performance security "Option A"; and

(ii) The requirements of either § 1494.401(f)(1)(ii) or § 1494.401(f)(1)(iii) have been met.

(4) The failure of an exporter to perform in full and to fulfill all of its obligations under the Agreement will constitute a breach of the Agreement. An exporter which breaches the Agreement may be required to forfeit its right to receive or retain part or all of the bonus authorized or paid under the Agreement and may also be liable to CCC for damages. Examples of an exporter's failure to perform under the Agreement include, but are not limited to, the following:

(i) The exporter does not ship all of the required amount of the eligible commodity in accordance with the delivery period stated in the Agreement;

(ii) The exporter exports an amount of the eligible commodity that is inconsistent with the quality specifications in the Agreement;

(iii) The exporter is unable to provide a certification that all of the eligible commodity exported pursuant to the Agreement was entered into the eligible country;

(iv) The eligible commodity is transshipped through any country, other than Canada, unless specifically allowed in the applicable Invitation; or

(v) The eligible commodity is transshipped through Canada without having its identity preserved.

(5) If the eligible commodity is to be delivered to the eligible buyer in multiple shipments, CCC may decide to consider the shipments separately in determining whether the exporter has failed to perform under the Agreement.

(b) *Return of bonus.* An exporter that fails to fulfill all of its obligations under the Agreement shall be in default. If an exporter that has already been paid the bonus value defaults, CCC shall have the right to recover the bonus value paid for the quantity of the eligible commodity with respect to which the exporter failed to perform under the Agreement.

(1) If CCC has paid this bonus value in the form of a CCC Certificate(s), the exporter shall pay to CCC the higher of:

(i) The dollar value of the CCC Certificate(s);

(ii) The dollar amount received for the CCC Certificate(s) if the CCC Certificate(s) was transferred to another party; or

(iii) The dollar amount of the proceeds from the sale of the CCC-owned commodities exchanged for the CCC Certificate(s) if the commodities were sold to another party.

(2) If CCC has paid this bonus value in some other form, as specified in the applicable Invitation, the exporter shall pay to CCC the dollar and cents amount or equivalent of the bonus value paid to the exporter.

(c) *Liability for liquidated damages.* The exporter's failure to perform under the Agreement will cause serious and substantial losses to CCC, such as damages to the EEP and CCC's domestic price support program, storage charges, and administrative and other costs incurred. If the exporter breaches the Agreement, the exporter will be liable to pay to CCC as liquidated damages an amount obtained by applying the method or rate for determining damages specified in the applicable Invitation to the quantity of the eligible commodity with respect to which the exporter failed to perform under such Agreement. In submitting an offer in response to an Invitation issued under this subpart, the exporter agrees that such liquidated damages are reasonable estimates of the probable actual damages which may be incurred by CCC.

(d) *Decision to hold the exporter harmless for liquidated damages.* CCC will hold an exporter harmless for the payment of liquidated damages if:

(1) The exporter's failure to perform under the Agreement was due to causes solely without the exporter's fault or negligence and the exporter had taken the necessary action to enable it to export the required quantity of the eligible commodity and enter it into the eligible country; or

(2) The eligible commodity was lost or destroyed after it had been placed aboard the export carrier.

In making the decision whether to hold an exporter harmless pursuant to this paragraph, CCC may consider any information available to CCC, including any information provided to it by the exporter.

(e) *Fraud, scheme or device.* Notwithstanding any other provision of law, CCC may take action to recover any bonus paid or to hold the exporter liable for the payment of damages caused to CCC if the exporter engages in fraud with respect to the EEP, or adopts or participates in adopting a scheme or device which is designed to evade this subpart or which has the effect of evading this subpart. Such acts shall include, but are not limited to:

(1) Concealing information which is required by this subpart; or

(2) Submitting information which is known by the exporter to be false or erroneous.

(f) *CCC's right to recover amounts due CCC by exporters.* If the exporter breaches its obligations under the Agreement and becomes liable to CCC for repayment of the bonus value or for liquidated or other damages, CCC reserves the right to recover such amounts due CCC by making a claim against the performance security furnished to CCC, as described under § 1494.401, or by taking any other measures available to CCC as a result of this subpart or any laws or regulations, including debt settlement regulations, applicable to CCC.

(g) *Shipping tolerances.* If the exporter exports and enters into the eligible country, in accordance with the requirements of the Agreement, a quantity of the eligible commodity which is less than the quantity specified in § 1494.501(c)(7) but not less than such quantity minus 5 percent, the exporter shall not be required to pay liquidated damages for failure to perform under the Agreement for the quantity which failed to be exported and entered into the eligible country. If an exporter exports and enters into the eligible country, in accordance with the requirements of the Agreement, a quantity of the eligible commodity which is greater than the quantity specified in § 1494.501(c)(7), the exporter may request payment of the bonus value based upon the actual quantity, on a net weight basis, exported and entered into the eligible country, but not greater than the quantity specified in § 1494.501(c)(7), plus 5 percent.

(h) *Termination of agreements.* (1) CCC may, by written notice to the exporter, terminate an Agreement, in whole or in part, as a result of:

(i) the failure of the exporter to carry out any provisions of the Agreement;

(ii) the failure of the exporter to maintain a business office in the U.S.;

(iii) the failure of the exporter to maintain an agent in the U.S. for service of process; or

(iv) the suspension or debarment of the exporter from participation in CCC or other U.S. Government programs.

If an Agreement is terminated by CCC pursuant to this subparagraph, CCC will not compensate the exporter for any costs incurred by the exporter. The exporter will be liable to CCC for any funds owed to CCC for the repayment of any bonus already paid and may be liable to CCC for liquidated or other damages suffered by CCC. If CCC intends to hold the exporter liable for liquidated damages, and it has not already so notified the exporter prior to the termination of the Agreement, CCC will generally do so at the time that it notifies the exporter of the termination of the Agreement.

(2) CCC may, by written notice to the exporter, terminate an Agreement, in whole or in part, if CCC determines it to be in the best interest of CCC. If an agreement is so terminated, the exporter will be compensated for reasonable losses, as determined by CCC, resulting from such termination. These losses will not include lost profits and will not exceed the bonus value under the Agreement.

(i) *Amendment of agreements.* (1) CCC will have the authority to amend an Agreement, either before or after such Agreement has been breached by the exporter, if the exporter requests that the Agreement be amended and CCC determines that such amendment would serve the best interests of the EEP. The exporter may be required to submit documentary evidence to CCC to demonstrate that it is making progress toward fulfilling the Agreement before CCC will consider amending the Agreement. All requests for amendments submitted by exporters, and all amendments made by CCC to an Agreement, under this subpart shall be in writing.

(2) Prior to amending an Agreement with the exporter, CCC will consider whether the amendment to the Agreement should include a reduction in the CCC bonus or a modification of the sales price. If CCC determines that the CCC bonus and the sales price are still acceptable, it may amend the Agreement to incorporate the exporter's requested change, while maintaining the current CCC bonus and sales price, provided that the amendment would otherwise serve the best interests of the EEP. If CCC determines that the CCC bonus and/or the sales price are no longer acceptable, due to changes in market or other conditions, it will so inform the exporter. If the exporter still requests that the Agreement be amended, CCC and the exporter will enter into discussions in an attempt to arrive at a new CCC bonus and/or sales price which would be acceptable to CCC. If these discussions are successful, then CCC may amend the Agreement to incorporate the exporter's requested change as well as the new CCC bonus and/or sales price, provided that the amendment would otherwise serve the best interests of the EEP. If these discussions are unsuccessful, then the Agreement will not be amended and the exporter will be considered to be in breach of the Agreement if it fails to perform under the terms of the Agreement.

(j) *Amendments to sales contracts.* In the event of an amendment to the sales contract between the exporter and the eligible buyer or a change in the delivery schedule, CCC will determine whether the amendment or change would constitute a breach of the Agreement. If CCC determines that the amendment or change would constitute a breach of the Agreement, CCC may terminate the Agreement. In the alternative, if CCC determines that a continuation of the Agreement would serve the best interests of the EEP, and if the exporter requests an amendment, CCC may amend the Agreement to take into account the amendment to the sales contract or change in delivery schedule. An amendment to an Agreement will be in accordance with paragraph (i)(1) of this section. CCC will promptly advise the exporter of its determination in writing by letter, facsimile, or telex.

§ 1494.601 Dispute resolution and appeals.

(a) *Dispute resolution.* (1) The Director of the CCC Operations Division (Director, CCCOD) and the exporter will attempt to resolve any disputes.

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including any adverse determinations made by CCC, arising under the EEP, this subpart, the applicable invitation, or the Agreement.

(2) The exporter may seek reconsideration of a determination by the Director, CCCOD relating to the Agreement by submitting a letter requesting reconsideration to the Director, CCCOD, within 30 days of the date of the determination. For the purposes of this section, the date of a determination will be the date of the letter or other means of notification to the exporter of the determination. The exporter may include with the letter requesting reconsideration any additional information which it wishes the Director, CCCOD, to consider in reviewing its request. The Director, CCCOD, will respond to the request for reconsideration within 30 days of the date on which the request or the final documentary evidence submitted by the exporter is received by him, whichever is later, unless the GSM extends the time permitted for response. If the exporter fails to request reconsideration of a determination by the Director, CCCOD, that the exporter owes any funds to CCC under the Agreement, then such funds will become a debt of the exporter to CCC at the expiration of the 30-day period for submitting such a request.

(3) If the exporter requested a reconsideration of a determination by the Director, CCCOD, pursuant to subparagraph (a)(2) of this section, and the Director, CCCOD, upheld the original determination, then the exporter may appeal the determination to the GSM in accordance with the procedures set forth in paragraph (b) of this section. If the exporter fails to appeal the determination to the GSM, then any funds owed to CCC will become a debt of the exporter to CCC at the expiration of the 30-day period for submitting an appeal to the GSM.

(b) *Appeal procedures.* (1) An exporter which has exhausted the procedures set forth in paragraph (a) of this section may appeal to the GSM a determination of the Director, CCCOD, relating to the Agreement between the exporter and CCC. An appeal to the GSM must be in writing and filed with the office of the GSM no later than 30 days following the date of the final determination by the Director, CCCOD. In this appeal to the GSM, the exporter shall be entitled to an administrative hearing before the GSM, if the exporter indicates in its appeal letter that it desires such a hearing.

(2) If the exporter does not desire an administrative hearing, the exporter may submit any additional written information or documentation which it desires the GSM to consider in acting upon its appeal. This information or documentation may be submitted to the GSM up until the time that a decision is made by the GSM. The GSM will base the determination upon information contained in the administrative record. The GSM will endeavor to make a decision on an appeal not involving a hearing within 60 days of the date on which the GSM receives the appeal or the date that final documentary evidence is submitted by the exporter to the GSM, whichever is later.

(3) If the exporter has indicated that it desires an administrative hearing, the GSM will set a date and time for the hearing which is mutually convenient for the GSM and the exporter. This date will ordinarily be within 60 days of the date on which the GSM receives the request for hearing. The hearing will be an informal procedure. The exporter and/or its counsel may present any administrative or documentary evidence to the GSM which it desires to have the GSM consider in making a determination. A transcript of the hearing will not ordinarily be prepared unless the exporter bears the costs involved in preparing the transcript, although the GSM may arrange to have a transcript prepared at the expense of the Government if it is determined to be appropriate. The exporter may provide additional written information to the GSM up until the time that the GSM makes a determination. The GSM will base the determination upon the information contained in the administrative record and will endeavor to make a decision within 60 days of the date of the hearing or the date of receipt of the transcript, if one is to be prepared, whichever is later.

(4) The decision of the GSM will be the final determination of CCC and the exporter will be entitled to no further administrative appellate rights.

(5) If the GSM upholds a determination of the Director, CCCOD, that the exporter owes any funds to CCC under the Agreement, then such funds will become a debt of the exporter to CCC.

(c) *Failure to comply with determination.* If, for any reason, the exporter has failed to pay funds to CCC which have been determined to be owed to CCC under the Agreement and the exporter has exhausted its rights under this section or has failed to exercise such rights, then CCC will have the right to withdraw funds from the performance security established by the exporter or to take any other measures available to CCC as result of this subpart or any laws or regulations, including debt settlement regulations, applicable to CCC.

(d) *Exporter's obligation to perform.* The exporter will continue to have an obligation to perform under the Agreement pending the conclusion of all procedures under this section.

§ 1494.1001 Miscellaneous provisions.

(a) *Assignments.* The exporter may not assign the Agreement or any rights thereunder, including the right to receive a bonus under the Agreement.

(b) *Maintenance of records and access to premises.* (1) For a period of five years after CCC agrees to the cancellation of an exporter's performance security for an Agreement, the exporter must maintain accurate records showing sales and deliveries of the eligible commodity exported in connection with the Agreement. The Secretary of Agriculture and the Comptroller General of the United States, through their authorized representatives, will have full and complete access to the premises of the exporter during regular business hours from the effective date of the Agreement until the expiration of such five-year period to inspect, examine, audit and make copies of the exporter's books, records and accounts concerning transactions relating to the Agreement, including, but not limited to, financial records and accounts pertaining to sales, inventory, processing, and administrative and incidental costs, both normal and unforeseen. From the effective date of the Agreement and until the expiration of such five-year period, the exporter may be required to make available to the Secretary of Agriculture and the Comptroller General of the United States, through their authorized representatives, records that pertain to transactions conducted outside the program, if, in the opinion of the GSM, such records would pertain directly to the review of transactions undertaken by the exporter in connection with the performance of an EEP Agreement.

(2) The exporter must maintain the certification of entry specified in § 1494.401(f)(2), and must provide access to such document if requested by the Secretary of Agriculture or an authorized representative, for the five-year period specified in subparagraph (b)(1) of this section.

(c) *Arrival verification reviews.* CCC will review, on an annual basis, a sufficient number of exports made in connection with EEP Agreements to ensure that the eligible commodity which was exported pursuant to each such Agreement arrived in the eligible country specified in the Agreement.

(d) *Signatory on certifications.* Any certification required from a person pursuant to this subpart or an Invitation must be signed by the person, if an individual, or by a partner or officer of the person, if the person is a partnership or a corporation, respectively.

(e) *Officials not to benefit.* No member of or Delegate to Congress, or Resident Commissioner, will participate or share in any of the benefits of any Agreement entered into pursuant to the EEP, but this provision may not be construed to extend to an Agreement made by CCC with a corporation for its general benefit.

(f) *Paperwork Reduction Act.* The information collection requirements contained in this subpart have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0551-0028.

(g) *Waiver of irregularities.* CCC reserves the right to waive any informality or minor irregularity with respect to any aspect of the operation of the EEP or any Agreement executed thereunder in order to best accomplish the purposes of the program.

Signed this 28th day of May, 1991 at Washington, DC.

F. Paul Dickerson,

General Sales Manager and Vice President, Commodity Credit Corporation.

[FR Doc. 91-12939 Filed 5-31-91; 8:45am]

BILLING CODE 3410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-107-AD; Amendment 39-7005]

Airworthiness Directives; Boeing Model 767-200 and 767-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767-200 and 767-300 series airplanes, which requires inspection of the center wing fuel tank override boost pumps for discrepant inlet diffuser assembly brazed joints and replacement of unacceptable assemblies or deactivation of the center wing fuel tank system. This amendment is prompted by reports of center wing fuel tank override fuel boost pumps whose brazed joints may be inadequate, which could allow separation of the diffuser ring, cause damage to the impeller and pumping unit housing, and possibly stop the rotation of the pump shaft. This condition, if not corrected, could, during dry pump operation, result in the generation of sparks, thereby creating a potential ignition source.

DATES: Effective June 3, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 3, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Lanny Pinkstaff, Seattle Aircraft Certification Office, Propulsion Branch, ANM-140S; telephone (206) 227-2684. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: The FAA has received reports of failures of the fuel boost pumps on Boeing Model 767-200 and 767-300 series airplanes. Subsequent investigation of the center wing fuel tank override boost pump assemblies has revealed that, on certain pumping units, the brazed joints that attach the diffuser ring to the diffuser may not contain enough filler (braze) material. Inadequate filler material at these joints may allow the diffuser ring to break from the diffuser sleeve support struts; this could cause damage to the impeller and pumping unit housing, and possibly stop the rotation of the pump shaft. During dry pump operation, a detached diffuser ring may generate sparks if the unit continues to operate, and thereby create a potential ignition source inside the tank.

The airplane manufacturer has identified unacceptable brazed joints on one pump assembly returned by an operator and on two pumps removed from production airplanes prior to their delivery to customers. The override fuel boost pump manufacturer has identified similar conditions on 6 out of 52 pumps inspected to date.

The FAA has reviewed and approved Boeing Alert Service Bulletin 767-28A0036, dated May 3, 1991, which describes inspection procedures to determine if certain affected pumping unit diffuser assemblies have properly brazed joints, and rework procedures to remove discrepant diffuser assemblies and replace them with acceptable units. The proper deactivation procedures are also described in the service bulletin for operators who elect to deactivate the center wing fuel tank rather than perform the inspection, repair, and/or replacement.

Since this condition is likely to exist on other airplanes of the same type design, this AD requires inspection of diffuser assemblies for those suspected of having inadequately brazed joints and replacement of discrepant assemblies; if necessary; or, as an alternative, deactivation of the center wing fuel tank; in accordance with the service bulletin previously described.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

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Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-11-08. Boeing: Amendment 39-7005. Docket 91-NM-107-AD.

Applicability: Model 767-200 and 767-300 series airplanes, listed in Boeing Alert Service Bulletin 767-28A0036, dated May 3, 1991, certificated in any category.

Compliance: Required within 30 days after the effective date of this AD, unless previously accomplished.

To prevent, during dry pump operation, a potential ignition source in the center wing tanks due to a broken pumping unit diffuser ring, accomplish the following:

(a) Inspect the center wing tank pumping units, part number 5006286, in accordance with the procedures of Boeing Alert Service Bulletin 767-28A0036, dated May 3, 1991.

(1) If diffuser assembly brazed joints are found to be acceptable, reidentify and reinstall the pumping unit in accordance with the service bulletin. No further action is required.

(2) If the brazed joints are determined to be discrepant, as indicated by the inspection procedure, repair or replace the diffuser assembly in accordance with the service bulletin prior to reinstallation of the pumping unit.

(b) In lieu of performing the inspection, repair, and/or replacement described in paragraph (a) of this AD, deactivate the center wing fuel tank in accordance with Boeing Service Bulletin 767-28A0036, dated May 3, 1991. The tank may be reactivated only following completion of the inspections, repairs, and/or replacement required by paragraph (a) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

The inspections, repairs, and replacement shall be done in accordance with Boeing Alert Service Bulletin 767-28A0036, dated May 3, 1991.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39-7005, AD 91-11-08) becomes effective June 3, 1991.

Issued in Renton, Washington, on May 13, 1991.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-12986 Filed 5-31-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 775, 776, 779, 785, and 799

[Docket No. 910503-1103]

Editorial Revisions to the Export Administration Regulations: Deletion of References to East and West Berlin

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Export Administration Regulations are being amended to delete references to East and West Berlin. The unification of Germany has made these references unnecessary.

EFFECTIVE DATE: This rule is effective June 3, 1991.

FOR FURTHER INFORMATION CONTACT: Sharon Congwer, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: 202-377-2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule does not involve a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in the effective date, are inapplicable because the regulation involves a foreign and military affairs function of the United States. This rule does not impose a new control. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Accordingly, this rule is being issued in final form. However, comments from the public are always welcome. Comments should be submitted to Sharon Gongwer, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Parts 775, 776, and 799

Exports, Reporting and recordkeeping requirements.

15 CFR Part 779

Computer technology, Exports, Reporting and recordkeeping requirements, Science and technology.

15 CFR Part 785

Communist countries, Exports.

Accordingly, parts 775, 776, 779, 785, and 799 of the Export Administration Regulations (15 CFR parts 730-799) are amended as follows:

1. The authority citations for 15 CFR parts 775, 776, 779, 785, and 799 continue to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 et seq.), as amended; Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

PART 775—[AMENDED]

§ 775.3 [Amended]

2. In § 775.3(b), the list of country destinations subject to the International Import Certificate/Delivery Verification Certificate System requirements is amended by removing the parenthetical phrase "(including West Berlin)" in the entry for Germany, Federal Republic of.

Supplement 1 to Part 775 [Amended]

3. In Supplement 1 to part 775, the entries under the "Country", "IC/DV Authorities," and "System Administered" columns for "West Berlin" are removed.

PART 776—[AMENDED]

§ 776.14 [Amended]

4. In § 776.14, the phrase "the Federal Republic of Germany (including West Berlin)" in the first sentence of paragraph (a) is revised to read "the Federal Republic of Germany".

§ 776.16 [Amended]

5. In § 776.16, the phrase "the Federal Republic of Germany (including West Berlin)" in the first sentence of paragraph (a) is revised to read "the Federal Republic of Germany".

PART 779—[AMENDED]

§ 779.4 [Amended]

6. In § 779.4 the phrase "the Federal Republic of Germany (including West Berlin)" in the first sentence of paragraph (h) is revised to read "the Federal Republic of Germany".

PART 785—[AMENDED]

§ 785.4 [Amended]

7. In § 785.4, the phrase "the Federal Republic of Germany (including West Berlin)" in paragraphs (g)(2) and (g)(3) is revised to read "the Federal Republic of Germany".

PART 799—[AMENDED]

§ 799.1 [Amended]

8. In § 799.1, the phrase "the Federal Republic of Germany (including West Berlin)" in the second sentence of paragraph (m) is revised to read "the Federal Republic of Germany".

Dated: May 24, 1991.

Michael P. Galvin,

Assistant Secretary for Export Administration.

[FR Doc. 91-12773 Filed 5-31-91; 8:45 am]

BILLING CODE 3510-DT-M

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15 CFR Part 799

[Docket No. 910509-1109]

Removal of National Security Controls for Exports of Certain Prepreg Production Equipment

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule.

SUMMARY: This interim rule removes national security controls for exports of certain prepreg production equipment controlled under Export Control Commodity Number (ECCN) 1357A in the Commodity Control List (CCL), Supplement No. 1 to § 799.1 of the Export Administration Regulations (EAR). This action follows a positive determination of foreign availability under section 5(f) of the Export Administration Act of 1979, as amended (EAA), and section 791 of the EAR. However, the removal of national security controls does not eliminate the need to obtain validated licenses for this prepreg production equipment. This equipment continues to require a validated license for export to all destinations except Canada because it is subject to foreign policy controls designed to limit the proliferation of nuclear-capable missiles. All other foreign policy controls also remain in effect.

DATES: *Effective date:* This rule is effective June 3, 1991. *Comment date:* Comments must be received by July 2, 1991.

ADDRESSES: Written comments (6 copies) should be sent to Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Surendra Dhir, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-5695.

SUPPLEMENTARY INFORMATION:

Background

Although the Export Administration Act (EAA) expired on September 30, 1990, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the Export Administration Regulations (EAR) in Executive Order 12730 of September 30, 1990.

The Bureau of Export Administration (BXA) maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls. With limited exceptions, BXA may not maintain national security export controls on items for which a positive determination has been made under section 5(f) of the Export Administration Act of 1979, as amended (EAA), and section 791 of the Export Administration Regulations (EAR).

On September 25, 1989, the Commerce Department published a **Federal Register** notice (54 FR 39218) stating that on August 18, 1989, the Deputy Assistant Secretary for Export Administration had made a positive determination of foreign availability under section 5(f) of the EAA for certain prepreg production equipment controlled under paragraph (e) of ECCN 1357A in the CCL. The notice also indicated that on September 15, 1989, the President had determined that export controls must be maintained on this prepreg production equipment, notwithstanding foreign availability, because the removal of these controls would prove detrimental to the national security of the United States (see Presidential Determination No. 89-27 of September 25, 1989 (54 FR 39159)). The President directed the Secretary of State (in consultation with the Secretaries of Commerce and Defense) to initiate negotiations with source countries, as required by section 5(f) of the EAA, for the purpose of eliminating foreign availability for this equipment. The Secretary of Commerce certified to Congress that progress was demonstrated during the first six months of the negotiations and on March 15, 1990, extended the negotiations for an additional twelve months, to March 15, 1991.

The negotiations to eliminate foreign availability for prepreg production equipment have concluded. The negotiations resulted in the elimination of foreign availability for hot melt prepreg production equipment, but they did not eliminate foreign availability for prepreg production equipment designed to use a solvent coating method. Hot melt prepreg production equipment remains controlled both for national security reasons and for foreign policy reasons.

This interim rule implements the August 18, 1989, positive determination of foreign availability only as it applies to prepreg production equipment designed to use a solvent coating method. Specifically, this rule revises the *Reason for Control* paragraph for ECCN 1357A by removing national security controls for exports to all destinations of prepreg production equipment, described in paragraph (e) of ECCN 1357A, that is designed to use a solvent coating method. While this change effectively removes national security based validated licensing requirements for this equipment, it does not affect the destinations for which a validated license is required.

This prepreg production equipment continues to require a validated license to all destinations except Canada because it remains subject to foreign policy controls designed to limit the proliferation of nuclear-capable missiles (see § 776.18 of the EAR for a description of the Missile Technology

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Control Regime). In addition, all other foreign policy controls remain in effect.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0005.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function. This rule does not impose a new control. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close July 3, 1991. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377–2593.

List of Subjects in 15 CFR Part 799

Exports, Reporting and recordkeeping requirements.

Accordingly, part 799 of the Export Administration Regulations (15 CFR parts 730–799) is amended as follows:

1. The authority citation for 15 CFR part 799 is revised to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended; Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986); Pub. L. 85–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990).

PART 799—[AMENDED]

2. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1357A is amended under the Controls for ECCN heading by revising the *Reason for Control* and *Technical Data* paragraphs, as follows:

1357A Equipment for the production of fibers controlled for export by ECCN 1763A or their composites, and specially designed components and accessories and "specially designed software" therefor

* * * * *

Controls for ECCN 1357A

* * * * *

Reason for control: National security; foreign policy. National security controls apply to all items described in this entry, except prepreg production equipment controlled under paragraph (e) in the List of this ECCN that is designed to use a solvent coating method only. Foreign policy controls to limit the proliferation of nuclear-capable missiles apply to all items described in this entry.

Special licenses available: * * *

Technical data: Exports of certain related technical data require a validated license to all destinations except Canada (see § 779.4(d)(18) of this subchapter).

* * * * *

Dated: May 24, 1991.

Michael P. Galvin,

Assistant Secretary for Export Administration.

[FR Doc. 91–12874 Filed 5–31–91; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Center for Biologics Evaluation and Research

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority relating to issuing notices of revocation of product or establishment licenses. The amendment provides for the Center for Biologics Evaluation and Research (CBER) to issue notices of revocation when a manufacturer has waived the opportunity for a hearing. This action will make CBER's authority concerning revocation of licenses similar to the Center for Veterinary Medicine's authority regarding withdrawing approval of new animal drug applications and the Center for Drug Evaluation and Research's authority regarding withdrawing approval of new drug applications when a manufacturer has waived its opportunity for a hearing.

EFFECTIVE DATE: June 3, 1991.

FOR FURTHER INFORMATION CONTACT: Ellen Rawlings, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: Currently, the Director and Deputy Director, CBER, are authorized to issue a notice of license revocation when requested by the manufacturer (21 CFR 5.67(c)). This new delegation of authority will also authorize them to issue a notice of license revocation when a manufacturer has waived the opportunity for a hearing under § 601.7(a) (21 CFR 601.7(a)) by failing to respond to a notice of opportunity for a hearing (see 21 CFR 314.200(a)(2), referenced in § 601.7(a)). Currently, this authority is held by the Commissioner or his designee.

Therefore, the agency is adding new paragraph (d) to § 5.67 *Issuance of notices of opportunity for a hearing on proposals for denial of approval of applications for licenses or revocation of licenses and certain notices of revocation of licenses.*

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such a position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–393); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 354–360F, 361, 362, 1701–1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591.

2. Section 5.67 is amended by adding new paragraph (d) to read as follows:

§ 5.67 Issuance of notices of opportunity for a hearing on proposals for denial of approval of applications for licenses or revocation of licenses and certain notices of revocation of licenses.

* * * * *

(d) Notices of revocation when the manufacturer has waived the opportunity for hearing under § 601.7(a) of this chapter.

Dated: May 29, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91–12980 Filed 5–31–91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1306

Prescriptions; Requirements Clarification

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: This final rule amends 21 CFR 1306.05 and 1306.13 to clarify the requirements of prescriptions for controlled substances, and to extend the partial filling of Schedule II prescriptions to patients in hospice or home-care that have a medical diagnosis documenting a terminal illness. The proposal regarding the use of medication order sheets for filling prescriptions for patients in Long Term Care Facilities under the provisions of 21 CFR 1306.11 is not adopted at this time and will be the subject of a separate proposed **Federal Register** announcement which will allow a period for additional comments.

EFFECTIVE DATE: July 3, 1991.

FOR FURTHER INFORMATION CONTACT: Chief, State and Industry Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537 (202) 307–7297.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published in the **Federal Register** on March 16, 1989 (54 FR 11008) to amend 21 CFR 1306.02, 1306.05, 1306.11, and 1306.13 to clarify the issuance of controlled substance prescriptions and to facilitate the requirements for Schedule II prescriptions for patients in a Long Term Care Facility (LTCF) and the terminally ill. The proposed rulemaking provided an opportunity for interested parties to submit comments in writing on or before April 17, 1989. The comment period was extended until May 25, 1989 by a notice published in the **Federal Register** on April 25, 1989 (54 FR 17769).

Section 1306.02 Definitions

Several comments were received concerning the definition of the term "terminally ill" as used by the Health Care Financing Administration (HCFA) in title 42 CFR 418.3, as an individual who has a medical prognosis that the life expectancy is six months or less. Nine of the comments objected to the six-month limitation as being too restrictive since predicting an individual's life expectancy is difficult and often uncertain. Upon consideration of the comments, DEA has eliminated this definition and has, instead, incorporated into the final regulations the phrase "a patient with a medical diagnosis documenting a terminal illness".

Section 1306.05 Manner of Issuance of Prescriptions

Two comments expressed concern over allowing a secretary or agent of the physician to prepare the prescriptions for the signature of the physician. This provision has always been permitted and is not affected by the proposed changes to § 1306.05. It has been DEA's position that a secretary or agent of the physician may prepare the prescription. However, it is the physician's responsibility before signing the prescription to ensure that the prescription is properly prepared.

Two comments objected to the requirement to specify the quantity prescribed on prescriptions for LTCF patients, especially in those states which do not require a quantity of prescribed drugs for LTCF residents or for hospice or home-care patients. DEA has considered these comments and finds that the quantity prescribed has always been a requirement of the regulations. For example, 21 CFR 1304.24 requires dispensers of controlled substances to maintain records including the number of units dispensed. And, 21 CFR 1306.22(b)(1) requires computerized prescription records to provide on-line retrieval of original prescription order information including the drug name, strength, dosage form and quantity prescribed. The purpose of this change is to make "quantity prescribed" a part of 21 CFR 1306.05, "Manner of issuance of prescriptions."

One comment questioned the requirement for "directions for use" on the prescription and inquired whether the phrase "take as directed" would

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satisfy the requirement. DEA considers the "directions for use" to be essential to drug therapy and on a prescription it serves as a means of communicating to the patient and pharmacist the recommended dosage. The use of the phrase "take as directed," while not desirable complies with the regulatory requirement. The most communicative form of directions include the number of dosage units to be taken in a specified time period.

Section 1306.11 Requirement for Prescription (Schedule II)

Seven comments were received addressing the proposed use of the physician's medication order sheet for LTCF patients in lieu of a signed written prescription from the physician. While some supportive comments were received, most of the comments indicated that the proposed changes did not adequately address the realities of LTCF operations, especially the difficulty in obtaining a written prescription from the prescribing physician prior to the need to administer a schedule II controlled substance. DEA has considered these comments and has concluded a second proposal will be published in the **Federal Register**. This announcement will propose to amend the use of emergency provisions under 21 CFR 1306.11, taking into consideration the unique situation between pharmacies and LTCF patients.

Section 1306.13 Partial Filling of Prescriptions (Schedule II)

A large majority of comments supported the proposed allowance of partial filling of Schedule II controlled substances for hospice and home care patients that have a terminally ill medical diagnosis. However, they objected to the 15-day limitation on partial dispensing under those circumstances and for LTCF patients and would prefer to have the amount to be partially dispensed left to the discretion of the pharmacist and the patient. Some also commented that the 15-day limitation would add unnecessary visits to the pharmacy and would actually increase patient cost. The intent of this proposal was not to place any restriction on partial filling of Schedule II prescriptions for LTCF patients, but to reduce the quantity of controlled substances which may be in the home or in the hospice of terminally ill patients. In considering the comments, DEA finds that by encouraging the use of partial filling, the objective of reducing large quantities of drugs from being stored where the patient resides stands to be achieved. Therefore, the 15-day limitation has been deleted from the final rule.

Four comments were received which sought to broaden partial filling to include not only LTCF and terminally ill patients, but also patients with severe intractable pain regardless of diagnosis. DEA finds no merit in broadening the partial filling of Schedule II controlled substances beyond LTCFs and terminally ill patients and considers the issue of intractable pain to be separate and apart from prescribing to the terminally ill. A partial filling to other than an LTCF or terminally ill patient constitutes a violation of the Controlled Substances Act. DEA has further amended the regulation by requiring the pharmacist to record on the prescription whether the patient is terminally ill or is an LTCF patient. This will differentiate those prescriptions which are authorized for partial filling from the pharmacy's regular prescriptions.

One comment addressed partial filling and whether a new prescription is required when the physician changes only the initial directions for use, e.g., a prescription is authorized for 200 Percodan to be taken four times a day, and a week later the physician changes the directions for use to six tablets a day. This would not require a new prescription. The pharmacist merely is required to amend the directions for use on the original prescription and continue dispensing under that prescription until the 200 tablet quantity is reached. The pharmacist may not dispense beyond the original quantity prescribed without a new prescription.

Several comments were received objecting to the language of 21 CFR 1306.13(c) as being vague, confusing, unnecessary, and causing an additional recordkeeping burden on the pharmacist. Two comments suggested that this section be deleted since there is an initial procedure of review to assure that the schedule of use of the controlled substance is consistent with the prescribing practioner's directions. The purpose of this section was to cause the pharmacist to check with the patient or with the LTCF prior to automatically dispensing another partial refill to ensure that the quantities previously dispensed have been administered and that there is justification for the continued use of the controlled substance. DEA has considered the comments and has rephrased the regulation to clarify its intent by deleting the proposed § 1306.13(c) and incorporating into § 1306.13(b) a requirement for the pharmacist to confirm that additional partial fillings are necessary prior to dispensing to a LTCF patient or to a terminally ill hospice or home-care patient.

General Comments

The amendments will not require any additional paperwork or recordkeeping burden beyond normal business practices and are intended to clarify the present requirements and to extend partial filling of Schedule II controlled substances to hospice and homecare for the terminally ill.

The Deputy Assistant Administrator, Office of Diversion control, hereby certifies that this final rule will not have significant impact upon entities whose interest must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The changes will not impose any additional regulatory requirements. They will revise the method by which certain Schedule II controlled substance prescriptions are handled and will allow a smaller quantity of controlled substances to be dispensed to authorized patients. The final rule is not a major rule for the purposes of Executive Order (E.O.) 12291 of February 17, 1981. Pursuant to section 3(c)(3) and 3(e)(2)(C) of E.O. 12291, this final rule has been submitted for review to the Office of Management and Budget.

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of Federalism Assessment.

List of Subject in 21 CFR Part 1306

Drug Enforcement Administration, Drug traffic control, Prescription drugs.

For reasons set out above, 21 CFR part 1306 is amended as follows:

PART 1306—[AMENDED]

1. The authority citation for part 1306 continues to read as follows:

Authority: 21 U.S.C. 821, 829, 871(b) unless otherwise noted.

2. Section 1306.05 is amended by revising paragraph (a) to read as follows:

§ 1306.05 Manner of issuance of prescriptions.

(a) All prescriptions for controlled substances shall be dated as of, and signed on, the day when issued and shall bear the full name and address of the patient, the drug name, strength, dosage form, quantity prescribed, directions for use and the name, address and registration number of the practitioner. A practitioner may sign a prescription in the same manner as he would sign a check or legal document (e.g., J.H. Smith or John H. Smith). Where an oral order is not permitted, prescriptions shall be written with ink or indelible pencil or typewriter and shall be manually signed by the practitioner. The prescriptions may be prepared by the secretary or agent for the signature of a practitioner, but the prescribing practitioner is responsible in case the prescription does not conform in all essential respects to the law and regulations. A corresponding liability rests upon the pharmacist who fills a prescription not prepared in the form prescribed by these regulations.

* * * * *

3. Section 1306.13 is amended by revising paragraph (b) and the introductory text of paragraph (c) and paragraph (c)(1) to read as follows:

§ 1306.13 Partial filling of prescriptions.

* * * * *

(b) A prescription for a Schedule II controlled substance written for a patient in a Long Term Care Facility (LTCF) or for a patient with a medical diagnosis documenting a terminal illness may be filled in partial quantities to include individual dosage units. If there is any question whether a patient may be classified as having a terminal illness, the pharmacist must contract the practitioner prior to partially filling the prescription. Both the pharmacist and the prescribing practitioner have a corresponding responsibility to assure that the controlled substance is for a terminally ill patient. The pharmacist must record on the prescription whether the patient is "terminally ill" or an "LTCF patient." A prescription that is partially filled and does not contain the notation "terminally ill" or "LTCF patient" shall be deemed to have been filled in violation of the Act. For each partial filling, the dispensing pharmacist shall record on the back of the prescription (or on another appropriate record, uniformly maintained, and readily retrievable) the date of the partial filling, quantity dispensed, remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist. Prior to any subsequent partial filling the pharmacist is to determine that the additional partial filling is necessary. The total quantity of Schedule II controlled substances dispensed in all partial fillings must not exceed the total quantity prescribed. Schedule II prescriptions for patients in a LTCF or patients with a medical diagnosis documenting a terminal illness shall be valid for a period not to exceed 60 days from the issue date unless sooner terminated by the discontinuance of medication.

(c) Information pertaining to current Schedule II prescriptions for patients in a LTCF or for patients with a medical diagnosis documenting a terminal illness may be maintained in a computerized system if this system has the capability to permit:

Output (display or printout) of the original prescription number, date of issue, identification of prescribing individual practitioner, identification of patient, address of the LTCF or address of the hospital or residence of the patient, identification of medication authorized (to include dosage, form, strength and quantity), listing of the partial fillings that have been dispensed under each prescription and the information required in § 1306.13(b).

* * * * *

Dated: March 11, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Drug Enforcement Administration.

[FR Doc. 91-12730 Filed 5-31-91; 8:45 am]

BILLING CODE 4410-09-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 521

Implementation of the Program Fraud Civil Remedies Act

AGENCY: United States Information Agency.

ACTION: Final regulations.

SUMMARY: The U.S. Information Agency is promulgating as a final rule regulations to implement the Program Fraud Civil Remedies Act of 1986. These final regulations establish administrative procedures for imposing the statutorily authorized civil penalties and assessments against any person who makes, submits, or presents or causes to be made, submitted or presented a false, fictitious or fraudulent claim or written statement to the U.S. Information Agency.

EFFECTIVE DATE: May 16, 1991.

FOR FURTHER INFORMATION CONTACT: Richard S. Werksman, Assistant General Counsel, Office of the General Counsel, room 700, United States Information Agency, 301 4th Street, SW., Washington, DC 20547, (202) 619-6975.

SUPPLEMENTARY INFORMATION: The Program Fraud Civil Remedies Act established a new administrative remedy for imposing civil penalties and assessments against any person who makes a false claim or false written statement to the Federal Government in an amount less than $150,000. This remedy applies to any person who knowingly submits or causes to be submitted a false claim or statement to the Federal Government. The statute requires Federal agencies to follow certain procedures to recover penalties and assessments against persons who file false claims or statements. It provides for designated investigative and reviewing officials, an administrative hearing process, and an agency appeal procedure with limited judicial review. The President's Council on Integrity and Efficiency developed draft model regulations in order to promote uniformity in implementing the new procedure. These regulations are based on the Council's draft.

The U.S. Information Agency published a notice of proposed rulemaking on this subject in the **Federal Register** on February 6, 1991 [56 FR 4761]. No comments were received, and the final rule contains no changes from the proposed rule.

Consistent with the statute's requirements, the U.S. Information Agency's final regulations provide that the Office of Inspector General will act as the Investigating Official; the Office of General Counsel will act as the Reviewing Official; an administrative law judge will be the Presiding Official; and the Director of the U.S. Information Agency will act as the Authority Head on appeals.

The new administrative process should serve to deter the submission of false claims and statements and provide USIA with an effective remedy against persons submitting such false claims to the Agency.

The final rule will have no direct effect on the economy, or on Federal or State expenditures, and thus does not constitute a "major rule" within the meaning of section 1(b) of Executive Order 12291. As a result, we have concluded that an initial regulatory impact analysis is not required. Nor do the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b) apply. The final rules contain no information collection or recordkeeping requirements as defined by the Paperwork Reduction Act of 1976, and fall within the exceptions to coverage.

Lists of Subjects in 22 CFR Part 521

Administrative practice and procedure, Claims, Fraud, Penalties.

Accordingly, Title 22 CFR Chapter V, is amended to add Part 521 to read as follows:

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PART 521—IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL REMEDIES ACT

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Authority: 22 U.S.C. 2658; 31 U.S.C. 3801–3812.

§ 521.1 Basis and purpose.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Public Law 99–509, sections 6101–6104, 100 Stat. 1874 (October 21, 1986), codified at 31 U.S.C. 3801–3812. The Act requires each authority head to promulgate regulations necessary to implement the provisions of the statute (31 U.S.C. 3809).

(b) *Purpose.*

(1) This part establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to the United States Information Agency or to its agents, and

(2) Specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

(c) *Special considerations abroad.* Where a party, witness or material evidence in a proceeding under these regulations is located abroad, the investigating official, reviewing official or ALJ, as the case may be, may adjust the provisions below for service, filing of documents, time limitations, and related matters to meet special problems arising out of that location.

§ 521.2 Definitions.

ALJ means an Administrative Law Judge in USIA appointed pursuant to 5 U.S.C. 3105 or detailed to USIA pursuant to 5 U.S.C. 3344.

Benefit means, in the context of "statement," anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

Claim means any request, demand, or submission—

(1) Made to USIA for property, services or money (including money representing grants, loans, insurance or benefits);

(2) Made to a recipient of property, services or money from USIA, or to a party to a contract with USIA—

(i) For property or services if the United States—

(A) Provided such property or services;

(B) Provided any portion of the funds for the purchase of such property or services; or

(C) Will reimburse such recipient or party for the purchase of such property or services; or

(ii) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

(A) Provided any portion of the money requested or demanded; or

(B) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(3) Made to USIA which has the effect of decreasing an obligation to pay or account for property, services, or money.

Complaint means the administrative complaint served by the reviewing official on the defendant under § 521.7.

Defendant means any person alleged in a complaint under § 521.7 to be liable for a civil penalty or assessment under § 521.3.

Director means Director of the United States Information Agency.

Government means the United States Government.

Individual means a natural person.

Initial decision means the written decision of the ALJ required by § 521.10 or § 521.37, and includes a revised initial decision issued following a remand or a motion for reconsideration.

Investigating Official means the Inspector General for USIA or an officer or employee of the Office of Inspector General designated by the Inspector General and serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

Knows or has reason to know means that a person, with respect to a claim or statement—

(1) Has the actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(2) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(3) Acts in reckless disregard of the truth or falsity of the claim or statement.

Makes, wherever it appears, shall include the terms *presents, submits and causes to be made, presented, or submitted.* As the context requires, *making* or *made* shall likewise include the corresponding forms of such terms.

Person means any individual, partnership, corporation, association, or private organization and includes the plural of that term.

Representative means an attorney who is a member in good standing of the bar of any State, Territory, or possession of the United States or the District of Columbia or the Commonwealth of Puerto Rico.

Reviewing official means the General Counsel of USIA or his designee who is:

USIA means the United States Information Agency.

(1) Not subject to supervision by, or required to report to, the investigating official;

(2) Not employed in the organizational unit of USIA in which the investigating official is employed; and

(3) Is serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

Statement means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(1) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(2) With respect to (including relating to eligibility for)—

(i) A contract with, or a bid or proposal for a contract with; or

(ii) A grant, loan, or benefit from, USIA, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit.

USIA means the United States Information Agency.

§ 521.3 Basis for civil penalties and assessments.

(a) *Claims.*

(1) Any person who makes claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed; shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made to USIA, a recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of USIA or such recipient or party.

(4) Each claim for property, services, or money is subject to a civil penalty regardless of whether such property, services, or money is actually delivered or paid.

(5) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(b) *Statement.*

(1) Any person who makes, a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement; and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made to USIA when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of USIA.

(c) No proof of specific intent to defraud is required to establish liability under this section.

(d) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each such person may be held liable for a civil penalty under this section.

(e) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

§ 521.4 Investigation.

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted—

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued, and shall identify the records or documents sought;

(2) The investigating official may designate a person to act on his or her behalf to receive the documents sought; and

(3) The person receiving such subpoena shall be required to tender to the investigating official or the person designated to receive the documents a certification that the documents sought have been produced, or that such documents are not available and the reasons therefore, or that such documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of such investigation to the reviewing official.

(c) Nothing in this section shall preclude or limit an investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or other civil relief, or to defer or postpone a report or referral to the reviewing official to avoid interference with a criminal investigation or prosecution.

(d) Nothing in this section modifies any responsibility of an investigating official to report violations of criminal law to the Attorney General.

§ 521.5 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 521.4(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 521.3 of this part, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 521.7.

(b) Such notice shall include—

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 521.3 of this part;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.

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§ 521.6 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 521.7 only if:

(1) The Department of Justice approves the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1); and

(2) In the case of allegations of liability under § 521.3(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money or the value of property or services demanded or requested in violation of §521.3(a) does not exceed $150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (e.g., grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person's claims that are unrelated or were not submitted simultaneously, regardless of the amount of money, or the value of property or services, demanded or requested.

§ 521.7 Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 521.8.

(b) The complaint shall state:

(1) Allegations of liability against the defendant including the statutory basis for liability, an identificaiton of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer to request a hearing, including a specific statement of the defendant's right to request a hearing by filing an answer and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessment without right to appeal, as provided in § 521.10.

(c) At the same time the reviewing official serves the complaint, he or she shall serve the defendant with a copy of these regulations.

§ 521.8 Service of complaint.

(a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by rule 4(d) of the Federal Rules of Civil Procedure. Service is complete upon receipt.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by:

(1) Affidavit of the individual serving the complaint by delivery;

(2) A United States Postal Service return receipt card acknowledging receipt; or

(3) Written acknowledgment of receipt by the defendant or the defendant's representative.

(4) In case of service abroad authenticated in accordance with the Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters.

§ 521.9 Answer.

(a) The defendant may request a hearing by filing an answer with the reviewing official within 30 days of service of the complaint. An answer shall be deemed to be a request for a hearing.

(b) In the answer, the defendant:

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

(c) If the defendant is unable to file an answer meeting the requirements of paragraph (b) of this section within the time provided, the defendant may, before the expiration of 30 days from service of the complaint, file with the reviewing official a general answer denying liability and requesting a hearing, and a request for an extension of time within which to file an answer meeting the requirements of paragraph (b) of this section. The reviewing official shall file promptly with the ALJ the complaint, the general answer denying liability, and the request for an extension of time as provided in § 521.11. For good cause shown, the ALJ may grant the defendant up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section.

§ 521.10 Default upon failure to file an answer.

(a) If the defendant does not file an answer within the time prescribed in § 521.9(a), the reviewing official may refer the complaint to the ALJ.

(b) Upon the referral of the complaint, the ALJ shall promptly serve on defendant in the manner prescribed in § 521.8, a notice that an initial decision will be issued under this section.

(c) If the defendant fails to answer, the ALJ shall assume the facts alleged in the complaint to be true, and, if such facts establish liability under § 521.3, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the defendant files a motion with the ALJ seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial decision shall be stayed pending the ALJ's decision on the motion.

(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the ALJ shall withdraw the initial decision in paragraph (c) of this section, if such a decision has been issued, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 521.38.

(h) The defendant may appeal to the Director the decision denying a motion to reopen by filing a notice of appeal with the Director within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the Director decides the issue.

(i) If the defendant files a timely notice of appeal with the Director, the ALJ shall forward the record of the proceeding to the Director.

(j) The Director shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the ALJ.

(k) If the Director decides that extraordinary circumstances excused the defendant's failure to file a timely answer, the Director shall remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(l) If the Director decides that the defendant's failure to file a timely answer is not excused, the Director shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the Director issues such decision.

§ 521.11 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ.

§ 521.12 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 521.8. At the same time, the ALJ shall send a copy of such notice to the representative for the Government.

(b) Such notice shall include:

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the Government and of the defendant, if any; and

(6) Such other matters as the ALJ deems appropriate.

§ 521.13 Parties to the hearing.

(a) The parties to the hearing shall be the defendant and USIA.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

§ 521.14 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or agent of USIA who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case:

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision by the Director, except as a witness or representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ shall not be responsible to, or subject to, the supervision or direction of the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section, the representative for the Government may be employed anywhere in USIA, including in the offices of either the investigating official or the reviewing official.

§ 521.15 Ex Parte contacts.

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 521.16 Disqualification of reviewing official or ALJ.

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or ALJ. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of such a motion and affidavit, the ALJ shall proceed no further in the case until he or she resolves the matter of disqualification in accordance with paragraph (f) of this section.

(f)(1) If the ALJ determines that the reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case shall be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the Director may determine the matter only as part of his or her review of the initial decision upon appeal, if any.

§ 521.17 Rights of parties.

Except as otherwise limited by this part, all parties may:

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law, which shall be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

§ 521.18 Authority of the ALJ.

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ may:

(1) Set and change the date, time and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas to be served within the United States requiring the attendance of witnesses and the production of documents at depositions or at hearings. Subpoenas to be served outside the jurisdiction of the United States shall state on their face the authority therefore;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and time of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(c) The ALJ does not have the authority to find treaties and other

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international agreements or Federal Statutes or regulations invalid.

§ 521.19 Prehearing conferences.

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations and admissions of fact or as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ shall issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 521.20 Disclosure of documents.

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 521.4(b) are based, unless such documents are subject to a privilege under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 521.5 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the doucment subject to the provisions of this section. Such a motion may only be filed with the ALJ following the filing of an answer pursuant to § 521.9.

§ 521.21 Discovery.

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admissions of the authenticity of any relevant document or the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and § 521.22 and § 521.23, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) *Motions for Discovery.*

(1) A party seeking discovery may file a motion with the ALJ. Such a motion shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within ten days of service a party may file an opposition to the motion and/or a motion for protective order as provided § 521.24.

(3) The ALJ may grant a motion for discovery only if the ALJ finds that the discovery sought:

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The ALJ may grant discovery subject to a protective order under § 521.24.

(e) *Deposition.*

(1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 521.8.

(3) The deponent may file with the ALJ a motion to quash the subpoena or a motion for a protective order within ten days of service.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition which it shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

§ 521.22 Exchange of witness lists, statements and exhibits.

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 521.33(b). At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ shall not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided above, unless the ALJ finds good cause for the failure or that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragraph (a) of this section shall be deemed to be authentic for the purpose of admissibility at the hearing.

§ 521.23 Subpoenas for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefor not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown. Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 521.8. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within ten days after service or on or before the time specified in the subpoena for compliance if it is less than ten days after service.

§ 521.24 Protective order.

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or, with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed;

(7) That a deposition after being sealed be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

§ 521.25 Fees.

The party requesting a subpoena shall pay the cost of the fee and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in the United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of USIA, a check for witness fees and mileage need not accompany the subpoena.

§ 521.26 Form, filing and service of papers.

(a) *Form.*

(1) Documents filed with the ALJ shall include an original and two copies.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the ALJ, and a designation of the paper (e.g., motion to quash subpoena), and shall be in English or accompanied by an English translation.

(3) Every pleading and paper shall be signed by, and shall contain the address and telephone number of, the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(b) *Service.*

A party filing a document with the ALJ shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than those required to be served as prescribed in § 521.8, shall be made by delivering a copy or by placing a copy of the document in the United States mail, postage prepaid, and addressed to the party's last known address. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party.

(c) *Proof of Service.*

A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

§ 521.27 Computation of time.

(a) In computing any period of time under this part or in an order issued hereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal Government, in which event it includes the next business day.

(b) When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal Government shall be excluded from the computation.

(c) Where a document has been served or issued by placing it in the mail, an additional five days will be added to the time permitted for any response.

§ 521.28 Motions.

(a) Any application to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

§ 521.29 Sanctions.

(a) The ALJ may sanction a person, including any party or representative for:

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

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(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

§ 521.30 The hearing and burden of proof.

(a) The ALJ shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 521.3, and if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

(b) USIA shall prove defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise ordered by the ALJ for good cause shown.

§ 521.31 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the Director, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, ordinarily double damages and a significant civil penalty should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the ALJ and the Director in determining the amount of penalties and assessments to impose with respect to the misconduct (i.e., the false, fictitious, or fraudulent claims or statements) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant attempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees of agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of defendant's prior participation in the program or in similar transactions;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding, to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly; and

(16) The need to deter the defendant and others from engaging in the same or similar misconduct.

(c) Nothing in this section shall be construed to limit the ALJ or the Director from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

§ 521.32 Location of hearing.

(a) The hearing may be held:

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement in issue was made; or

(3) In such other place as may be agreed upon by the defendant and the ALJ.

(b) Each party shall have the opportunity to present arguments with respect to the location of the hearing.

(c) The hearing shall be held at the place and at the time ordered by the ALJ.

§ 521.33 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 521.22(a)

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to

(1) Make the interrogation and presentation effective for the ascertainment of the truth,

(2) Avoid needless consumption of time, and

(3) Protect witnesses from harassment or undue embarrassment.

(d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of his or her direct examination. To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of:

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party appearing for the entity pro se or designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

§ 521.34 Evidence.

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided in this part, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence, where appropriate (e.g., to exclude unreliable evidence).

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by consideration of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 521.24.

§ 521.35 The record.

(a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the Director.

(c) The record of the hearing may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 521.24.

§ 521.36 Post-hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for filing briefs, at a time not exceeding 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

§ 521.37 Initial decision.

(a) The ALJ shall issue an initial decision based only on the record, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portion thereof, violate § 521.3;

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments, considering any mitigating or aggravating factors that he or she finds in the case, such as those described in § 521.31.

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all parties with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the Director. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the Director, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the Director and shall be final and binding on the parties 30 days after it is issued by the ALJ.

§ 521.38 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be five days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon request of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decision of the Director and shall be final and binding on the parties 30 days after the ALJ denies the motion, unless the initial decision is timely appealed to the Director in accordance with § 521.39.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the Director and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the Director in accordance with § 521.39.

§ 521.39 Appeal to the USIA Director.

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the USIA Director by filing a notice of appeal with the USIA Director in accordance with this section.

(b)(1) No notice of appeal may be filed until the time period for filing a motion for reconsideration under § 521.38 has expired.

(2) If a motion for reconsideration is timely filed, a notice of appeal may be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) If no motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ issues the initial decision.

(4) The Director may extend the initial 30-day period for an additional 30 days if the defendant files with the Director a request for an extension within the initial 30-day period and shows good cause.

(c) If the defendant files a timely notice of appeal with the Director, and the time for filing motions for reconsideration under § 521.38 has expired, the ALJ shall forward the record of the proceeding to the Director.

(d) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decisions and reasons supporting the exceptions.

(e) The representative for the Government may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the Director.

(g) There is no right to appeal any interlocutory ruling by the ALJ.

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(h) In reviewing the initial decision, the Director shall not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the Director that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the Director shall remand the matter to the ALJ for consideration of such additional evidence.

(j) The Director may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment determined by the ALJ in an initial decision.

(k) The Director shall promptly serve each party to the appeal with a copy of her/his decision and a statement describing the right of any person determined to be liable for a penalty or assessment to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the Director serves the defendant with a copy of her/his decision, a determination that a defendant is liable under § 521.3 is final and is not subject to judicial review.

§ 521.40 Stays ordered by the Department of Justice.

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the Director a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the Director shall stay the process immediately. The Director may order the process resumed only upon receipt of the written authorization of the Attorney General.

§ 521.41 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the Director.

(b) No administrative stay is available following a final decision of the Director.

§ 521.42 Judicial review.

Section 3805 of title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the Director imposing penalties or assessments under this part and specifies the procedures for such.

§ 521.43 Collection of civil penalties and assessments.

Sections 3806 and 3808(b) of title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

§ 521.44 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 521.42 or § 521.43, or any amount agreed upon in a compromise or settlement under § 521.46, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under the subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

§ 521.45 Deposit in Treasury of United States.

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3808(g).

§ 521.46 Compromise or settlement.

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The Director has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during pendency of any review under § 521.42 or during the pendency of any action to collect penalties and assessments under § 521.43.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 521.42 or of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the Director, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the Director, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

§ 521.47 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 521.8 within 6 years after the date on which such claim or statement is made.

(b) If the defendant fails to file a timely answer, service of a notice under § 521.10(b) shall be deemed notice of hearing for purposes of this section.

(c) The statute of limitations may be extended by agreement of the parties.

Dated: May 21, 1991.

Henry E. Catto,

Director, U.S. Information Agency.

[FR Doc. 91-12948 Filed 5-31-91; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 700, 840, and 842

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Compliance With Court Order

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of suspension.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the United States Department of the Interior (DOI) is suspending certain portions of its permanent program regulations which: (1) Provide that a regulatory authority may terminate regulatory jurisdiction under the Surface Mining Control and Reclamation Act of 1977 (the Act) for reclaimed sites of completed surface coal mining and reclamation operations and coal exploration operations; and (2) allow for a reduced inspection frequency for "abandoned sites." OSM is taking these actions as a result of a recent District Court decision which remands these rules to the Secretary of the DOI because the court has found these rules contrary to the language and intent of the Act.

EFFECTIVE DATE: July 3, 1991.

FOR FURTHER INFORMATION CONTACT: George M. Stone, Jr., Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; telephone (202) 208-2550 (Commercial) or 268-2550 (FTS).

SUPPLEMENTARY INFORMATION:

I. Background.
II. Discussion of Rules Suspended.
III. Procedural Matters.

I. Background

The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (the Act), sets forth general regulatory requirements governing surface coal mining and reclamation operations. OSM has, by regulation, implemented or clarified many of the general requirements of the Act by setting forth specific requirements to be implemented by regulatory authorities in their regulation of surface coal mining operations. See 30 CFR chapter VII.

On November 2, 1988, OSM promulgated the termination of jurisdiction rule at 30 CFR 700.11(d) (53 FR 44356) to set forth the circumstances under which regulatory jurisdiction could be terminated over the sites of reclaimed surface coal mining and reclamation operations. The general procedure among State regulatory authorities has been to terminate regulatory jurisdiction upon the final release of a performance bond for a completed surface coal mining and reclamation operation or, where no bond was required, upon a finding that all reclamation had been successfully completed. OSM had decided to codify this long standing practice, and thereby establish a uniform standard, to clarify for regulatory authorities, the coal industry, and the public, the point in time at which regulatory jurisdiction could be terminated and the circumstances and methods under which a regulatory authority must reassert jurisdiction, and the standard OSM would use to review such terminations.

Also, on June 30, 1988, OSM promulgated rules at 30 CFR 840.11 (g) and (h) 842.11 (e) and (f) concerning inspection frequency requirements for abandoned sites of surface coal mining operations. OSM had concluded that repeated inspections at abandoned sites were an ineffective expenditure of resources, and that a reduced inspection frequency would not result in increased harm to the environment or reduce the likelihood of compliance.

Both of these rules were challenged in Federal District Court. On August 30, 1990, Judge Thomas A. Flannery of the United States District Court for the District of Columbia issued an order in the case of *National Wildlife Federation, et al.*, v. *Manuel Lujuan, Jr., et al.*, No. 88-3345, D.D.C. August 30, 1990, (*NWF, et al.* v. *Lujan, et al.*). The court rules on seven consolidated cases in which environmental and industry plaintiffs separately asked the court to strike down certain regulations promulgated under the Act by OSM. Among other matters, the court ruled in favor of the environmental plantiffs' challenge the rules on termination of jurisdiction and inspection of abandoned sites.

This suspension notice is being published in accordance with the court's order. It is not intended to affect any appeal of the court's decision concerning the affected regulations. The purpose of this notice is to implement the Federal court's order and is not intended to be an endorsement of the district court's decision which may be challenged in an appeal.

Although it affects the Code of Federal Regulations, this suspension notice is an interpretive statement which describes how the Secretary is already implementing the court's decision. Even in the absence of this notice, the Secretary's actions must be consistent with the Act as interpreted by the court. The Secretary may not implement regulations that are inconsistent with the Act. In order to update the Code of Federal Regulations to reflect the District Court's interpretation, OSM intends to propose revisions to the remanded rules consistent with the court's opinions.

II. Discussion of Rules Suspended

Termination of Jurisdiction

Section 700.11(d) Applicability.

On November 2, 1988, OSM promulgated the termination of jurisdiction rule to explain under what circumstances a regulatory authority may terminate jurisdiction over a surface coal mining and reclamation operation, the circumstances and methods under which a regulatory authority must reassert jurisdiction, and the standard OSM would use to review such terminations. The final rule specified that a reclaimed site of a surface coal mining and reclamation operation, or increment thereof, or of a coal exploration operation may no longer be subject to regulatory jurisdiction under either a Federal or State regulatory program when all reclamation requirements of the regulatory program had been successfully completed, the period of extended liability for revegetation had expired, and final release of the performance bond, if any, had occurred.

Section 700.11(d)(1)(i) provided that if the regulatory authority determined in writing that all requirements imposed under the initial program regulations at 30 CFR chapter VII, subchapter B had been successfully completed, the regulatory authority may terminate its jurisdiction under the regulatory program over reclaimed sites at initial program surface coal mining and reclamation operations.

Section 700.11(d)(1)(ii) provided that a regulatory authority may terminate its jurisdiction under the regulatory program over the reclaimed site of a permanent program surface coal mining and reclamation operation, or increment thereof, or of a coal exploration site, if the regulatory authority determined in writing that all requirements imposed under the applicable regulatory program had been successfully completed, or where a performance bond was required, final release of the bond had occurred.

Paragraph 700.11(d)(2) defined t' circumstances that would require a State regulatory authority to reassert jurisdiction over a site of a surface coal mining and reclamation operation because a prior termination of jurisdiction was found to be the result of fraud, collusion, or a misrepresentation of a material fact.

In the case of *NWF, et al.* v. *Lujan, et al.*, the District Court determined that the language of sections 521 (a)(1) and (a)(2) of the Act imposes "an ongoing duty upon the Secretary to correct violations of the Act. This appears to be without limitation." The court ruled that this enforcement authority and obligation never ends at a site where a surface coal mining and reclamation operation has occurred. The court, therefore, struck down the rule at 30 CFR 700.11(d).

In compliance with the court order, the regulatory provision for termination of jurisdiction at 30 CFR 700.11(d) is suspended.

Abandoned Sites

The second rule challenged by the environmental plaintiffs in the case of *NWF, et al.* v. *Lujan, et al.*, was the abandoned sites rule (53 FR 24872, dated June 30, 1988), specifically those sections of the rule that allow regulatory authorities to establish alternative inspection frequencies for abandoned sites at 840.11(h) and 842.11(f). Although the definition of abandoned sites was not subject to the court challenge, the court has ordered that inspection frequencies at abandoned sites and the definition of abandoned sites at 30 CFR 840.11(g) and 842.11(e) (as it relates to inspection frequencies) be remanded to the Secretary. Discussed below are those sections of the rule which are being suspended in whole or in part.

Section 840.11/842.11 Inspections by State regulatory authority/Federal inspections and monitoring.

On June 30, 1988, OSM amended its rules concerning inspections by State regulatory authorities at 30 CFR 840.11

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by adding new paragraphs (g) and (h). The rules governing Federal inspections and monitoring at 30 CFR 842.11 were amended by adding new paragraphs (e) and (f) (53 FR 24872). This rulemaking added to the inspection requirements a definition of "abandoned sites" and allowed for inspection of these sites "as necessary to monitor environmental conditions or changes of status." For a site to have qualified as abandoned under the definition of an abandoned site, the regulatory authority must have made a written finding that surface mining and reclamation activities had ceased, and that specified enforcement measures had been taken. For an abandoned site to have qualified for a reduced inspection frequency the regulatory authority must have also evaluated the site and documented in writing both the inspection frequency necessary to comply with the rule and the reasons for selecting that frequency. The regulatory authority would then be required to inspect the site at the new frequency level selected.

In its August 30, 1990, decision, the court remanded the rule to the Secretary, with respect to the statutory inspection frequency requirement for abandoned sites at 30 CFR 840.11 (g) and (h) and 842.11 (e) and (f). The court recognized that while reducing the inspection frequency on abandoned mine sites makes sense, it conflicts with the plain language of section 517(c) of the Act which provides for inspections by the regulatory authority on an irregular basis averaging not less than one partial inspection per month and one complete inspection per calendar quarter for the surface coal mining and reclamation operation covered by each permit. Accordingly, to comply with the court order, OSM is suspending the regulatory provisions for inspections of abandoned sites at 30 CFR 840.11(h) and 842.11(f), and the definition of abandoned sites at 30 CFR 840.11(g) and 842.11(e) insofar as the definition relates to inspection frequencies at abandoned sites.

OSM has decided not to suspend the definition of abandoned sites beyond the scope of the court remand for two reasons. First, the definition of abandoned sites at 30 CFR 840.11(g) and 842.11(e) is an integral part of a State regulatory authority's good cause showing for not taking action in response to a ten-day notice (53 FR 26740, dated July 14, 1988). Under section 521(a)(1), if an authorized representative of the Secretary of the Interior has reason to believe that a person is in violation of the Act he must notify the State regulatory authority (SRA) in the primacy state. The SRA is given ten days after notification to take appropriate action to cause the said violation to be corrected, or show good cause for failing to take appropriate action. The authorized representative shall then determine in writing whether the standards for appropriate action or good cause for such failure have been met. Under 30 CFR 842.11(b)(1)(ii)(B)(*2*) an action or response by an SRA that is not arbitrary, capricious, or an abuse of discretion under the State program shall be considered appropriate action to cause a violation to be corrected or good cause for failure to do so. When reviewing the SRA response to a ten-day notice, the authorized representative (and Deputy Director of OSM when the SRA requests an informal review) shall consider good cause for failure to take action, as enumerated in 30 CFR 842.11(b)(1)(ii)(B)(*4*)(*v*), "with regard to abandoned sites as defined in section 840.11(g) of this chapter, the State regulatory authority is diligently pursuing or has exhausted all appropriate enforcement provisions of the State program."

The second reason why OSM has decided not to suspend the definition is its function in 30 CFR 843.22 which delineates authority for enforcement actions under Federal programs. 30 CFR section 843.22 authorizes OSM to "refrain from issuing a notice of violation or cessation order for a violation at an abandoned site, as defined in section 842.11(e) of this chapter, if abatement of the violation is required under any previously issued notice or order." (emphasis added). The purpose of this section is to save the regulatory authority the time and expense involved in issuing redundant enforcement actions, and assessing uncollectible civil penalties for violations which are already covered by existing citations.

Therefore, since OSM has determined that these sections defining abandoned sites have a bearing on the enforcement mechanism of Federal and State regulatory programs other than inspection frequencies at abandoned sites, sections 30 CFR 840.11(g) and 842.11(e) are not being suspended in their entirety.

III. Procedural Matters

Administrative Procedure Act

This document is an interpretive statement not subject to 5 U.S.C. 553(b) of the Administrative Procedure Act. Also, good cause exists under 5 U.S.C. 553(b) to issue this document without advance notice and comment. Publication of this notice will avoid further delay in informing the public concerning OSM's implementation of the court's direction to implement the statutory frequency of inspections and not to allow termination of jurisdiction under section 521.

Effect in Federal Program States and on Indian Lands

The final suspension notice applies through cross-referencing in those States with Federal programs and on Indian lands. The States with Federal programs are California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. The Indian lands program appears at 30 CFR parts 750.

Effect on State Programs

OSM will evaluate permanent State regulatory programs approved under section 503 of the Act to determine whether any changes in these programs will be necessary. If the Director determines that certain State provisions should be amended in order to be made no less effective than the Federal rules, the individual States will be notified in accordance with the provisions of 30 CFR 732.17.

Executive Order 12291

The DOI has examined this suspension notice according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis. The promulgation in 1988 of the rules being suspended was not a major action and for the same reasons, neither is this suspension.

Regulatory Flexibility Act

The DOI also has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the suspension will not have significant economic impact for the same reasons that promulgation of the rules in 1988 did not have such an impact.

Federal Paperwork Reduction Act

This suspension notice does not contain collections of information which require approval by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* The information collection requirement contained in 30 CFR 700.11(d), which was previously approved by OMB, is being suspended.

National Environmental Policy Act

The effect of the regulations being suspended by this notice is covered in two Environmental Assessments (EAs) prepared by the DOI. These are the EAs prepared prior to promulgation of the November 2, 1988, final rule at 30 CFR 700.11(d) (referenced at 53 FR 44356) and promulgation of the June 30, 1988, final rule at 30 CFR 840.11 (g) and (h), 30 CFR 842.11 (e) and (f), and 30 CFR 843.11 (referenced at 53 FR 24872).These documents are on file at the OSM Administrative Record, room 5131, 1100 L Street NW., Washington, DC 20240.

Authors

The authors of this suspension notice are Kathleen M. Parry and John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; telephone (202) 208–2550 (Commercial) or 268–2550 (FTS).

List of Subjects

30 CFR Part 700

Administrative practice and procedure, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 840

Intergovernmetnal relations, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 842

Law Enforcement, Surface Mining, Underground mining.

Accordingly, 30 CFR parts 700, 840, and 842 are amended as set forth below:

Dated: May 28, 1991.

David O'Neal,

Assistant Secretary, Land and Minerals Management.

SUBCHAPTER A—GENERAL

PART 700—GENERAL

1. The authority citation for part 700 continues to read as follows:

Authority: Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*), and Pub. L. 100–34.

§ 700.11 Applicability.

2. Paragraph (d) of § 700.11 is suspended.

SUBCHAPTER L—PERMANENT PROGRAM INSPECTION AND ENFORCEMENT PROCEDURES

PART 840—STATE REGULATORY AUTHORITY: INSPECTION AND ENFORCEMENT

3. The authority citation for part 840 continues to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, and Pub. L. 100–34, unless otherwise noted.

§ 840.11 Inspections by State regulatory authority.

4. Paragraph (g) of § 840.11 is suspended insofar as it authorizes reduced inspection frequencies at abandoned sites, and paragraph (h) of § 840.11 is suspended.

PART 842—FEDERAL INSPECTIONS AND MONITORING

5. The authority citation for part 842 continues to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, and Pub. L. 100–34, unless otherwise noted.

§ 842.11 Federal inspections and monitoring.

6. Paragraph (e) of § 842.11 is suspended insofar as it authorizes reduced inspection frequencies at abandoned sites, and paragraph (f) of § 842.11 is suspended.

[FR Doc. 91–12978 Filed 5–31–91; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010–R]

Payment Method for Health Care Services Under the Supplemental Health Care Program for Active Duty Members of the Uniformed Services; Adoption of CHAMPUS Procedures

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule amendment.

SUMMARY: On May 24, 1991 (56 FR 23800), the Department of Defense published a final rule on "Payment Method for Health Care Services Under the Supplemental Health Care Program for Active Duty Members of the Uniformed Services" concerning discharges occurring on or after June 24, 1991. Through an administrative error the effective date for the regulation should have been June 24, 1991, instead of May 24, 1991. This document is published to suspend the regulation.

EFFECTIVE DATE: The suspension is effective June 3, 1991, until June 24, 1991.

ADDRESSES: Office of the Assistant Secretary of Defense (Health Affairs), Health Services Financing, room 1B657, Pentagon, Washington, DC 20301–1200.

FOR FURTHER INFORMATION CONTACT: Lt Col Ray Kincy, USAF, telephone (703) 697–8975.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 199

Claims, Health insurance, Military personnel.

For reasons set forth in the preamble, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086; 5 U.S.C. 301.

§ 199.6 [Amended]

2. Section 199.6 is amended by suspending paragraph (a)(9) until June 24, 1991.

§ 199.16 [Amended]

3. Section 199.16 is suspended until June 24, 1991.

Dated: May 28, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–13034 Filed 5–31–91; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

32 CFR Part 552

Physical Security of Arms, Ammunition, and Explosives—Fort Lewis, WA

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: This part establishes the criteria for possessing, carrying, concealing, and transporting, firearms and/or other deadly or dangerous weapons and instruments on Fort Lewis. This regulation is applicable to all persons, both military and civilian, who are residents, on, work on, or who otherwise enter Fort Lewis Military Reservation for any reason.

EFFECTIVE DATE: June 3, 1991.

FOR FURTHER INFORMATION CONTACT: 2LT Jeffrey C. Torres, Headquarters I Corps, Fort Lewis, ATTN: AFZH–JA.

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Fort Lewis, WA 98433–5000, (202) 967–4601 or 5069.

SUPPLEMENTARY INFORMATION: This regulation is punitive in nature. Violations of the provisions of this regulation are subject to disciplinary actions under the Uniform Code of Military Justice or administrative judicial actions authorized by pertinent state and/or Federal law. Regulations referenced or cited in this part may be reviewed at the Office of the Judge Advocate General or the Office of the Provost Marshall, Fort Lewis, Washington.

Executive Order

This final rule has been reviewed under Executive Order 12291 and the Secretary of the Army has classified this action as nonmajor. The effect of the final rule on the economy will be less than $100 million.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 and the Secretary of the Army has certified that this action does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

List of Subjects in 32 CFR Part 552—Subpart I

Ammunition, firearms, guns, weapons, munitions.

1. The authority citation for 32 CFR part 552 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 3012, 15 U.S.C. 1601; 18 U.S.C. 1382; 31 U.S.C. 71; 40 U.S.C. 258a; 41 U.S.C. 14; 50 U.S.C. 797.

2. 32 CFR part 552, Subpart I is added to read:

PART 552—REGULATIONS AFFECTING MILITARY RESERVATIONS

Subpart I—Physical Security of Arms, Ammunition, and Explosives—Fort Lewis

Sec.
552.112 Purpose.
552.113 References.
552.114 Violations.
552.115 Applicability.
552.116 Privately owned weapons—security.
552.117 Disposition of Commander's Letter of Authorization.
552.118 Issuance from unit arms rooms.
552.119 Registration and storage.
552.120 Possession and control.
552.121 Possession or retention of prohibited weapons.
552.122 Personnel not authorized to possess or retain personal weapons.
552.123 Storage of personal weapons other than firearms or handguns.
552.124 Transportation of privately owned weapons and ammunition.
552.125 Disposition of confiscated weapons.

Subpart I—Physical Security of Arms, Ammunition, and Explosives—Fort Lewis, Washington

§ 552.112 Purpose.

To provide enhanced security for the protection of arms, ammunition, explosives (AA&E) and sensitive items at Fort Lewis.

§ 552.113 References.

This regulation is to be used in conjunction with the following:

(a) AR–190–11 with Forces Command and Training Command Supplement 1 (Physical Security of Arms, Ammunition and Explosives).

(b) AR 190–13 with Forces Command and Training Command Supplement 1 (The Army Physical Security Program).

(c) Fort Lewis Regulation 210–1 (Installation Fort Lewis Post Regulations).

(d) Headquarters Fort Lewis Form 816 (Registration of Personal Firearms).

§ 552.114 Violations.

Violations of the provisions of this regulation are subject to disciplinary actions under the Uniform Code of Military Justice, judicial action as authorized by state or federal law, or administrative action as provided by controlling regulation.

§ 552.115 Applicability.

This regulation is applicable to all Active Army, Reserve Officer Training Corps (ROTC), U.S. Army Reserve (USAR), and Army National Guard (ARNG) units training and/or assigned/attached to Fort Lewis and its sub-installations. This regulation also applies to tenant units/activities stationed on Fort Lewis. It is also applicable to all persons, both military and civilian, who reside on or who otherwise enter Fort Lewis Military Reservation for whatever reason.

§ 552.116 Privately owned weapons—security.

Privately owned arms and ammunition will be secured in the manner required for military weapons and ammunition but separate from military arms, ammunition, and explosives (AA&E) items.

§ 552.117 Disposition of Commander's Letter of Authorization.

The unit commander's written approval to withdraw privately owned weapons from the unit arms room will be attached to the record of the next weekly arms, ammunition, and explosive (AA&E) inventory. Following is a Sample Request for Authorization to Withdraw Weapon from Arms Room:

Office Symbol _____
Date _____
Memorandum for Commander of unit concerned, Fort Lewis, WA 98433
Subject: Request Authorization to Remove Privately Owned Firearm/Weapon from the Unit Arms Room

1. Request authorization to remove the following firearm/weapon registered in my name from the arms room. The firearm/weapon is a _____ (type) and serial number is _____.

2. The firearm/weapon will be removed on _____ (date) and returned on _____ (date).

3. The reason for removal is _____.

(Name/rank/unit/signature of individual making request)
Office Symbol 1st End SFC Jones/mmm/telephone CDR, Unit concerned, Fort Lewis, WA 98433
FOR (individual making request plus complete address) Approval is granted.
(Signature block of authorizing official)

§ 552.118 Issuance from unit arms room.

When privately owned weapons are withdrawn from the arms room, DA Form 3749 (Equipment Receipt), will be turned in and the weapon will be signed out on Headquarters Fort Lewis Form 938 (Weapons/Ammunition and Sensitive Item Issue and Turn-In Register). The armorer will provide the owner with a copy of Headquarters Fort Lewis Form 816 (Registration of Personal Firearms), which will remain with the weapon at all times. When the weapon is turned back in to the arms room, the HFL Form 816 will be turned in also.

§ 552.119 Registration and storage.

(a) All types of personal weapons to include rifles, shotguns, handguns and antique firearms owned by personnel residing on Fort Lewis Military Reservation will be registered at the Weapons Registration Office, Law Enforcement Command, within 72 hours (three working days) after signing in to his/her permanent unit of assignment. HFL Form 816, Registration of Personal Firearms, will be completed in triplicate. The unit commander is responsible for verifying proof of legal ownership paperwork on all data entered on HFL 816. The Military Police Weapons Registration Section will retain two copies of the completed registration form and issue one copy to the individual to be retained with the weapon at all times. The Weapons Registration Section will forward one copy of the form to the individual's unit commander. The commander's copy of the registration will be maintained in the unit arms room for personnel storing personal weapons in the unit arms room. When an individual possessing a personal weapon transfers (intra-installation), the losing commander will ensure that HFL Form 816 is forwarded to the gaining commander. The gaining commander will ensure that the individual re-registers the personal weapon within 72 hours (three working days). The commander of 525th Replacement Detachment is responsible for the storage of personal weapons of newly arriving personnel, temporarily assigned to the unit. Personnel residing off post who wish to bring personal weapons on post are also required to register those weapons. Weapons registration forms (HFL 816) will be turned in at the Weapons Registration Section when clearing post. Upon any sale or transfer of a registered weapon, the transaction will be immediately reported within 72 hours (three working days) to the Registration Office. For additional guidance on weapon registration, refer to Fort Lewis Regulation 210–1.

(b) All soldiers are required to inform the unit commander if they are storing privately owned weapons within a 100 mile radius of Fort Lewis. Soldiers residing off-post must inform the unit of the location of the weapon(s). Those weapons must be registered if they are to be brought onto the installation for any type of authorized use.

(c) Privately owned weapons of soldiers residing in the unit billets, Bachelor Enlisted Quarters (BEQ), or Bachelor Officer Quarters (BOQ), will be stored in the assigned unit arms room under the following provisions:

(1) Commanders may authorize their personnel who reside in billets, BEQ or BOQ to store privately owned weapons in the off post quarters of another member of his/her unit or in the quarters of immediate family members residing in the area.

Family members will be considered sponsors for paragraph (b) (2) thru (5) of this section.

(2) A unit member who resides off post may sponsor a maximum of one unit member who resides in billets, BEQ or BOQ for storage of privately owned weapons.

(3) Request to store weapons off post must be submitted in writing to the unit commander, indicating the name, exact address and phone number of the proposed unit sponsor. Request must be accompanied by a written authorization from the sponsor to store the weapons, and a copy of HFL 816. Request must be kept on file in the unit arms room until legal disposition of the weapon is presented to the unit commander.

(4) Civilians (except for immediate family residing in the area) and military dependents will not be considered as sponsors to store privately owned weapons for military members.

(5) Unit commanders have the responsibility to verify the off post location for off post storage requests and ensure that military members comply with both local and state laws governing possession and use of privately owned weapons.

(d) Weapons stored in unit arms rooms may be issued to registered owners only for authorized hunting or participation in authorized target practices or matches. Request for issue of a privately owned weapon from the arms room must be in writing indicating the inclusive dates and times, reasons and serial number of weapon for issue. Weapons stored in the unit arms rooms may not be issued to anyone other than the registered owner.

(e) Properly registered privately owned weapons may be kept at the owners assigned government family quarters if approved in writing by the unit commander. One copy of the completed HFL Form 816 will be maintained on file in the unit arms room. Intra-post transfer rules as stated in paragraph (a) of this section apply.

(f) Privately owned weapons with a maximum of 100 rounds of ammunition (per weapon) may be stored in the unit arms room. Weapons and ammunition will be stored separately. The owner of a privately owned weapon will be issued a hand receipt when the weapon and/or ammunition is turned in to the arms room. The owner will return the hand receipt when the weapon and/or ammunition is removed from the arms room for any reason.

(g) Weapons cancellation and installation clearance will be as follows:

(1) Commander will ensure that privately owned weapons registered with Weapons Registration Section are de-registered during the outprocessing or when legally disposed of.

(2) Individuals who register a privately owned weapon and legally dispose of the weapon while it is still registered will surrender the registration certificate to the Weapons Registration Section at the time of disposal along with appropriate disposition documents.

§ 552.120 Possession and control.

(a) Possession of weapons on the post by civilians is prohibited with the following exceptions:

(1) Engaged in authorized hunting.

(2) Engaged in authorized target practice.

(3) Engaged in authorized and organized shooting matches.

(b) Request for authorization for these exceptions will be submitted in writing to the Commanding General, I Corps and Fort Lewis. Prior coordination for the use of ranges will be made through the Range Control Officer or Range Scheduling. Civilians who fail to comply with this regulation are subject to charges of Trespassing, Unlawful Discharge of a Firearm, and other criminal offenses as applicable.

(c) Military or civilian personnel are not authorized to bring personal weapons into field training sites.

(d) Carrying of concealed privately owned weapons by either military or civilian personnel is prohibited while on the Fort Lewis Military Reservation regardless of whether a state or county permit has been obtained. For the purpose of this regulation, a concealed weapon is any instrument used or designed to be used in an offensive or defensive manner which is carried in such a way as to be hidden from ordinary view. Folding knives with a blade of three inches or less are specifically excluded from this definition. Request to carry concealed weapons will be submitted in writing, with full what and why justification, to the Commanding General, I Corps and Fort Lewis, through appropriate channels.

§ 552.121 Possession or retention of prohibited weapons.

Prohibited weapons are defined as:

(a) Any instrument or weapon of the kind usually known as a sling shot, sand club, metal knuckles, spring blade knife, or any knife from which the blade is automatically released by a spring mechanism or other mechanism or other mechanical device, or any knife having a blade which opens, falls, or is effected into position by force of gravity or an outward thrust or centrifugal movement, or any knife with a blade with a length in excess of three inches. This does not include knives designed for and used during hunting and fishing activities. However, such knives may only be

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carried while participating in those activities. The possession of knives kept in quarters and designed for the use in the preparation of food is authorized.

(b) Any incendiary devices, military ammunition and/or explosives.

(c) Any weapons not legally obtained.

(d) Any instrument commonly used in the practice of martial arts, for example, a nunchaku, except during the legitimate martial arts training. If martial arts use is authorized, storage of these instruments during nontraining periods will be in a location other than the arms room, as designed by the unit commander for soldiers residing in troop billets, BEQ or BOQ. Martial arts instruments may be stored in assigned government family quarters during nontraining periods.

(e) Any weapons on which the name of the manufacturer, serial number of identification have been changed, altered, removed or obliterated unless done for legitimate repair or part replacement.

§ 552.122 Personnel not authorized to possess or retain personal weapons.

(a) Possession, retention or storage of personal weapons or ammunition by person(s) described below is prohibited:

(1) Any person who has been convicted in any court of a crime of violence. For the purpose of this regulation, a crime of violence is one in which the use of force or threat of force is an element.

(2) Any person who is a fugitive from justice.

(3) Any person who has been convicted in any court of the possession, use, or sale of marijuana, dangerous or narcotic drugs.

(4) Any person who is presently declared as mentally incompetent or who is presently committed to any mental institution.

(5) Any civilian, or other than a military family member or a law enforcement officer authorized to carry the weapon under state or federal law, while on Fort Lewis or a sub-installation, except while hunting or engaged in authorized target practice or an organized match, unless specifically authorized in writing by the Commanding General, I Corps and Fort Lewis.

(b) Any person under the age of eighteen is prohibited from the use of firearms unless accompanied and supervised by a parent or legal guardian.

(c) Delivery of a personal handgun to persons known to be under the age of twenty-one, persons known to have been convicted of a crime or violence, persons known to be a drug abuser or under the influence of drugs, persons known to be an alcoholic or currently under the influence of alcohol or a person known to be of unsound mind, is prohibited.

§ 552.123 Storage of personal weapons other than firearms or handguns.

Privately owned weapons, such as knives, swords, air guns, BB guns, cross bows, pellet guns, bow and arrows, of personnel residing the unit billets will be stored in a separate locked container, within a secured storage area designated for this purpose by the unit commander, in a location other than the unit arms room.

§ 552.124 Transportation of privately owned weapons and ammunition.

(a) Privately owned firearms and ammunition will be transported in the following manner:

(1) Weapons, other than weapons being transported into Fort Lewis for the first time, may be carried in vehicles only when traveling to and from an authorized hunting area during hunting seasons or enroute to or from authorized target practice and matches.

(2) The carrying of loaded privately owned weapons in a vehicle is prohibited.

(3) Privately owned weapons carried in a vehicle will be secured in the trunk or encased and carried in such a manner that they will not be readily available to the driver or passenger.

(b) Personnel who remove privately owned weapons from Fort Lewis or sub-installations will comply with applicable Federal, state, and local laws pertaining to the ownership, possession and/or registration of weapons.

§ 552.125 Disposition of confiscated weapons.

Commanders will maintain confiscated weapons in the unit arms room pending final disposition. They will provide written notification of the circumstances or loss or recovery of such weapons and a complete and accurate description of the weapon to Commander, I Corps and Fort Lewis, ATTN: AFZH-PMS-P, Fort Lewis, WA 98433-5000. A copy of this notification will be maintained with the weapon pending final disposition.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91-12924 Filed 5-31-91; 8:45 am]

BILLING CODE 3710-08

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD8-91-10]

Special Local Regulations; 1991 LakeFest, Lake Pontchartrain, LA

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special local regulations are being adopted for the 1991 LakeFest. This event will be held on June 9, 1991 from 12 p.m. until 3 p.m. on Lake Pontchartrain, La. In case of postponement this event will be held on June 10, 1991 from 12 p.m. until 3 p.m. These regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on June 9, 1991 at 11 a.m. and terminate on June 9, 1991 at 4 p.m. In case of postponement this regulation will take effect on June 10, 1991 at 11 a.m. and terminate on June 10, 1991 at 4 p.m.

FOR FURTHER INFORMATION CONTACT: LT E.N. Eng, Operations Officer, U.S. Coast Guard Group New Orleans, LA (504) 942-3002.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The details of the event were not finalized until May 21, 1991 and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Nevertheless, interested persons wishing to comment may do so by submitting written views, data or arguments. Commentators should include their name and address, identify this notice (CGD8-91-10) and the specific section of the proposal to which the comments apply, and give reasons for comment. Receipt of comments will be acknowledged if a stamped self-addressed envelope is enclosed. The regulations may change in light of comments received.

Drafting Information

The drafter of this regulation is LT Edward N. Eng, Project Officer, Coast Guard Group New Orleans, La. and LT J.A. Wilson, Project Attorney, Eighth Coast Guard District Legal Office.

Discussion of Regulation

The marine event requiring this regulation is called "The 1991 LakeFest." This event is sponsored by the Southern Offshore Racing Association. It will consist of approximately 50-70 race boats traveling in excess of 91 m.p.h. The course followed by the race will be marked by buoys positioned at various points along its several straightaways and turns. The regulated area will encompass the entire race area. Approximately 1,000 spectator boats are expected for the event. While viewing the event at any point outside the regulated area is not prohibited, spectators will be encouraged to congregate within designated spectator areas. These areas will be defined by buoys and are located as follows:

West Spectator Area:

Along the west side of the regulated area between 17th Street Canal and the Causeway.

South Spectator Areas:

(1) Along the south side of the regulated area between Pontchartrain Beach and New Orleans Lakefront Airport.

(2) The entire entrance area of Bayou St. John.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the forgoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35 T9110 is added to read as follows:

§ 100.35-T9110 Lake Pontchartrain, Louisiana

(a) *Regulated Area:* The following area will be closed to all vessel traffic: A triangle starting at a point 1.7 statute miles east of the Causeway on the South shore of Lake Pontchartrain near the West End Boat Launch (latitude 30-01.8N, longitude 091-07.0W) along the south shore to a point 2.0 statute miles east of the Lakefront Airport (latitude 30-03.4N, longitude 089.59.3W) then northwesterly 7.5 statute miles to a point near the Bascule Bridge on the Causeway (latitude 30-06.5N, longitude 090-07.0W).

(b) *Special Local Regulation:* All persons and/or vessels not registered with the sponsors as participants or official patrol vessels are considered spectators. The "official patrol" consists of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessels assigned to patrol the event.

(1) No spectators shall anchor, block, loiter in or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for such entry by or through an official patrol vessel.

(2) When hailed and/or signaled, by an official patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions given; failure to do so may result in a citation.

(3) The Patrol Commander is empowered to forbid and control the movement of all vessels in the regulated area. He may terminate the event at any time it is deemed necessary for the protection of life and/or property. He may be reached on VHF-FM Channel 16, when required, by the call sign "PATCOM".

(c) *Effective Dates:* These regulations will be effective from 11 a.m. to 4 p.m. June 9, 1991. In case of postponement due to inclement weather this regulation will take effect on June 10, 1991 at 11 a.m. and terminate at 4 p.m.

Dated: May 23, 1991.

T.D. Fisher,

Captain, U.S. Coast Guard, Commander, Eighth Coast Guard District, Acting.

[FR Doc. 91-13038 Filed 5-31-91; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 1 and 3

RIN 2900-AF09

Omnibus Budget Reconciliation Act of 1990: To Implement Provisions of Public Law 101-508

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its general and adjudication regulations concerning the mandatory disclosure of social security numbers, the presumption of total disability at age 65 for pension purposes, the eligibility of remarried surviving spouses or married children for the reinstatement of benefits, pension for veterans receiving Medicaid-covered nursing home care, plot allowance eligibility, and the headstone or marker allowance. These changes are needed t implement recently enacted legislation. The intended effect of these changes is to bring the regulations into conformance with the new statutory requirements.

EFFECTIVE DATE: These amendments are effective November 1, 1990, except the provisions concerning Medicaid payments (§§ 3.501(i)(3) and 3.551(h)) which are effective November 5, 1990, the date that Public Law 101-508 was signed into law.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: Section 8053 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, amended 38 U.S.C. 3001 to authorize the Secretary to require the disclosure of the social security number of any individual, as well as those of his or her dependents, who applies for or is in receipt of compensation or pension benefits. The Secretary has decided to exercise this authority. An individual is not required to furnish VA with a social security number for any person to whom a social security number has not been assigned. VA is amending 38 CFR 1.575(b) to conform with this new statutory requirement.

Section 8002 of Public Law 101-508 amended 28 U.S.C 502(a) to eliminate the presumption of total disability at age 65 for pension purposes. VA is amending 38 CFR 3.3(a)(3)(v), 3.342(a), and 3.400(d) to conform with this new statutory provision. We are also removing the reference to "vicious habits" in § 3.3(a)(3)(v), as that term no longer appears in the statutory language (38 U.S.C. 521) as amended by Public Law 95-588.

Section 8004 of Public Law 101-508 amended 38 U.S.C. 103 to eliminate the eligibility of remarried surviving spouses and married children for reinstatement of benefits when that marital relationship terminates unless the disqualifying marital relationship was void or was annulled. Similarly, the fact that a surviving spouse of a veteran has terminated a relationship with another person, in which the surviving spouse has held himself or herself out openly to the public as the spouse of that person, has also been eliminated as a basis for the reinstatement of benefits. VA is

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amending 38 CFR 3.55, 3.215, 3.400(u), 3.400(v), and 3.400(w) to conform with this new statutory provision.

Section 8003 of Public Law 101–508 amended 38 U.S.C. 3203 to require the reduction of pension benefits to $90 per month when a veteran, who has neither spouse nor child, is receiving Medicaid-covered nursing home care. This reduction will occur after the month of admission to the nursing home. A veteran is not liable to the United States for any payment of pension in excess of the permitted amount that is paid to or for the veteran by reason of the inability or failure of VA to reduce the pension unless such inability or failure is the result of a willful concealment by the veteran of information necessary to make the reduction. The provisions of this statutory amendment expire on September 30, 1992. VA is amending 38 CFR 3.501 and 3.551 to conform with this new statutory requirement. Inclusion in § 3.501 of a reference to a reduction effective the last day of the month following 60 days after issuance of a prereduction notice required under § 3.103(b) reflects the fact that, under section 8003 of Public Law 101–508, a pensioner may not generally be held liable for any overpayment created by operation of that statute. This action is not intended to imply that provision of a 60-day prereduction notice period creates an entitlement to benefits for that period.

Section 8042 of Public Law 101–508 amended 38 U.S.C. 903(b)(2) to eliminate eligibility for the $150 plot allowance based solely on wartime service. This change applies to deaths occurring on or after November 1, 1990. VA is amending 38 CFR 3.1600(f)(2) to conform with this new statutory provision.

Section 8041 of Public Law 101–508 amended 38 U.S.C. 906(d) to eliminate the payment of the monetary allowance in lieu of VA-provided headstone or marker for deaths occurring on or after November 1, 1990. VA is amending 38 CFR 3.1612 to conform with this new statutory provision.

VA is issuing a final rule to make the above described amendments. These amendments are necessary to conform regulatory provisions with Public Law 101–508. Because these amendments implement statutory changes, publication as a proposal for public notice and comment is unnecessary.

Since a notice of proposed rulemaking is unnecessary and will not be published, these amendments are not a "rule" as defined in and made subject to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601(2). In any case, these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the RFA, 5 U.S.C. 601–612. These amendments will not directly affect any small entity.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that these regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with Foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.101, 64.104, 64.105, 64.109 and 64.110.

List of Subjects

38 CFR Part 1

Administrative practice and procedure, Claims, Privacy, Security measures.

38 CFR Part 3

Administrative practices and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: April 10, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

PART 1—[AMENDED]

38 CFR part 1, General Provisions, is amended as follows:

1. In § 1.575, paragraph (b) is revised and an authority citation is added at the end of the section to read as follows:

§ 1.575 Social security numbers in veterans' benefits matters.

* * * * *

(b) VA shall require mandatory disclosure of a claimant's or beneficiary's social security number (including the social security number of a dependent of a claimant or beneficiary) on necessary forms as prescribed by the Secretary as a condition precedent to receipt or continuation of receipt of compensation or pension payable under the provisions of chapters 11, 13 and 15 of title 38, United States Code, provided, however, that a claimant shall not be required to furnish VA with a social security number for any person to whom a social security number has not been assigned. VA may also require mandatory disclosure of an applicant's social security number as a condition for receiving loan guaranty benefits and a social security number or other taxpayer identification number from existing direct and vendee loan borrowers and as a condition precedent to receipt of a VA-guaranteed loan, direct loan or vendee loan, under chapter 37 of title 38, United States Code. (Pub. L. 97–365, sec. 4)

* * * * *

(Authority: 38 U.S.C. 3001)

PART 3—[AMENDED]

38 CFR part 3, Adjudication, is amended as follows:

1. In § 3.3, paragraph (a)(3)(v) is revised to read as follows:

§ 3.3 Pension.

(a) * * *

(3) * * *

(v) Is permanently and totally disabled from nonservice-connected disability not due to the veteran's own willfull misconduct; and

(Authority: 38 U.S.C. 502(a))

* * * * *

2. In § 3.55, paragraph (b) introductory text, paragraphs (c) and (d), and paragraph (e) introductory text are amended by removing the words "On and after" where they appear, and adding, in their place, the words "With respect to claims filed prior to November 1, 1990, on and after".

3. In § 3.55, the authority citation appearing at the end of the section is revised to read as follows:

§ 3.55 Terminated marital relationships.

* * * * *

(Authority: 38 U.S.C. 103)

4. Section 3.215 is amended by removing the words "On or after" where they appear, and adding, in their place, the words "With respect to claims filed prior to November 1, 1990, on or after".

5. In § 3.215, the authority citation is revised to read as follows:

§ 3.215 Termination of marital relationship or conduct.

* * * * *

(Authority: 38 U.S.C. 103)

§ 3.342 [Amended]

6. In § 3.342(a), the second and third sentences are removed.

7. In § 3.400, paragraphs (d), (u)(3) and (u)(4), (v)(3) and (v)(4), and (w) are revised to read as follows:

§ 3.400 General.

* * * * *

(d) *Age; surviving spouse 70 (§ 3.208).* In other than original claims date of receipt or 70th birthday, whichever is later, if evidence filed within 1 year after date of request.

(Authority: 38 U.S.C. 502(a))

* * * * *

(u) * * *

(3) *Death.* Date of death if claim is filed within 1 year after that date; otherwise date of receipt of claim. Benefits are not payable for claims filed after October 31, 1990.

(Authority: 38 U.S.C. 103)

(4) *Divorce.* Date the decree became final if claim is filed within 1 year after that date; otherwise date of receipt of claim. Benefits are not payable for claims filed after October 31, 1990.

(Authority: 38 U.S.C. 103)

(v) * * *

(3) *Death.* Date of death if claim is filed within 1 year after that date; otherwise date of receipt of claim. Benefits are not payable for claims filed after October 31, 1990.

(Authority: 38 U.S.C. 103)

(4) *Divorce.* Date the decree became final if claim is filed within 1 year after that date; otherwise date of receipt of claim. Benefits are not payable for claims filed after October 31, 1990.

(Authority: 38 U.S.C. 103)

(w) *Termination of relationship or conduct resulting in restriction on payment of benefits (38 U.S.C. 103(d)(3), 3010(m), effective January 1, 1971; §§ 3.50(b)(2) and 3.55).* Date of receipt of application filed after termination of relationship and after December 31, 1970. Benefits are not payable for claims filed after October 31, 1990.

(Authority: 38 U.S.C. 103)

* * * * *

8. In § 3.501, paragraph (i)(3) is redesignated as paragraph (i)(4), and a new paragraph (i)(3) is added to read as follows:

§ 3.501 Veterans.

* * * * *

(i) * * *

(3) *§ 3.551(h).* (i) Last day of the calendar month in which Medicaid payments begin, last day of the month following 60 days after issuance of a prereduction notice required under § 3.103(b)(2), or the earliest date on which payment may be reduced without creating an overpayment, whichever date is later; or

(ii) If the veteran willfully conceals information necessary to make the reduction, the last day of the month in which that willful concealment occurred.

(Authority: 38 U.S.C. 3203)

* * * * *

9. In § 3.551, paragraph (h) is added to read as follows:

§ 3.551 Reduction because of hospitalization.

* * * * *

(h) *Certain veterans receiving Medicaid-covered nursing home care.* Effective November 5, 1990, and terminating on September 30, 1992, if a veteran having neither spouse nor child is receiving Medicaid-covered nursing home care, no pension in excess of $90 per month shall be paid to or for the veteran for any period after the month in which the Medicaid payments begin. A veteran is not liable for any pension paid in excess of the $90 per month by reason of the Secretary's inability or failure to reduce payments, unless that inability or failure is the result of willful concealment by the veteran of information necessary to make that reduction.

(Authority: 38 U.S.C. 3203)

10. In § 3.1600, redesignate paragraphs (f)(2), (f)(3), and (f)(4) as paragraphs (f)(3), (f)(4), and (f)(5), respectively. In the newly redesignated paragraph (f)(3), remove the words "either served during a period of war or". Add a new paragraph (f)(2) to read as follows:

§ 3.1600 Payment of burial expenses of deceased veterans.

* * * * *

(f) * * *

(2) The veteran served during a period of war and the conditions set forth in § 3.1604(d)(1)(ii)–(v) (relating to burial in a state veterans' cemetery) are met; or

(Authority: 38 U.S.C. 903(b)(2))

* * * * *

11. In § 3.1612, add paragraph (h) to read as follows:

§ 3.1612 Monetary allowance in lieu of a Government-furnished headstone or marker.

* * * * *

(h) The monetary allowance in lieu of a Government-furnished headstone or marker is not payable if death occurred on or after November 1, 1990.

(Authority: Pub. L. 101–508)

[FR Doc. 91–12992 Filed 5–31–91; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF DEFENSE

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AE51

Veterans Education; Procedural Due Process and the Educational Assistance Test Program

AGENCY: Department of Veterans Affairs and Department of Defense.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) has been reviewing regulations for the purpose of improving due process procedures. This final regulation provides that in certain instances if claimants or beneficiaries under the Educational Assistance Test Program can show good cause why they did not comply with the time limits within which they are required to act, those time limits do not apply. These final regulations will provide increased due process to veterans affected by these time limits.

EFFECTIVE DATE: July 3, 1991.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2092.

SUPPLEMENTARY INFORMATION: On pages 31193 and 31194 of the **Federal Register** dated August 1, 1990, there was published a notice of intent to amend a regulation in order to provide veterans claiming benefits under the Educational Assistance Test Program with increased due process. Interested people were given 30 days to submit comments, suggestions or objections. VA received no comments, suggestions or objections. Nevertheless, VA is making some changes in the final regulations.

VA proposed a companion rulemaking on pages 37787 through 37801 of the **Federal Register** dated September 28, 1988. This proposal concerned due process for claimants for disability compensation and pension. Like the proposal of August 1, 1990, the September 28, 1988, publication proposed not holding claimants responsible for time limits for perfecting claims if VA did not notify the claimants of those time limits.

VA received several comments on that proposal. As a result of those

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comments. VA decided to amend the September 28, 1966, proposal. The amended regulation (38 CFR 3.109) ensures, to the maximum extent practicable, that notice of any time limit within which a claimant or beneficiary must act, to perfect a claim or challenge an adverse VA decision, is effectively communicated to the claimant or beneficiary. Consequently, § 3.109 now permits an extension of time limits when a claimant or beneficiary can show good cause exists for failure to meet the limits.

After further consideration, VA has determined that the reasons for amending § 3.109 also apply to amending the regulations providing due process for our education programs. Consequently, VA has amended § 21.5732 so that it parallels § 3.109. VA is making the amended regulation final.

The Department of Veterans Affairs and the Department of Defense have determined that this final regulatory amendment does not meet the criteria for a major rule as that term is defined by Executive Order 12291, Federal Regulation. The regulatory amendment will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy.

The Secretary of Veterans Affairs and the Secretary of Defense have certified that this amended regulation will not have a significant economic impact on the substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulation affects only individuals. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

There is no Catalog of Federal Domestic Assistance number for the program affected by this regulation.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: February 12, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Approved: April 18, 1991.

Donald W. Jones,

Deputy Assistant Secretary of Defense (Military Manpower & Personnel Policy).

PART 21—[AMENDED]

38 CFR part 21, Vocational Rehabilitation and Education, is amended as follows:

In § 21.5732, paragraph (c) is revised to read as follows:

§ 21.5732 Time limits.

* * * * *

(c) *Failure to furnish form or notice of time limit.* (1) VA's failure to furnish any form of information concerning the right to file a claim or to furnish notice of the time limit for the filing of a claim will not extend the periods allowed for these actions.

(2) Time limits within which claimants or beneficiaries are required to act to perfect a claim or challenge an adverse VA decision may be extended for good cause shown. When an extension is requested after expiration of a time limit, the action required of the claimant or beneficiary must be taken concurrently with or prior to the filing of a request for extension of the time limit, and good cause must be shown as to why the required action could not have been taken during the original time period and could not have been taken sooner that it was. Denials of time limit extensions are separately appealable issues.

(Authority: 38 U.S.C. 3001, 3013)

[FR Doc. 91-12995 Filed 5-31-91; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 142

[WH-FRL 3924-6]

National Primary Drinking Water Regulations Implementation Primary Enforcement Responsibility

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: EPA is today promulgating final language for 40 CFR 142.17(a)(2), which concerns EPA's initiation of proceedings that could lead to the withdrawal of State primary enforcement responsibility ("primacy") for the Public Water System Supervision ("PWSS") program under the Safe Drinking Water Act ("SDWA"), 42 U.S.C. 300f et. seq. This final regulation retains the language that was originally adopted in the December 1989 rulemaking.

EFFECTIVE DATE: This final rule will take effect on July 3, 1991. (EPA notes, however, that the language of this final rule is the same as the regulatory language that is currently in effect.) In accordance with 40 CFR 23.7, this regulation shall be considered final Agency action for purposes of judicial review at 1 p.m. eastern time on June 17, 1991.

ADDRESSES: Supporting documents for this rulemaking are available for review during normal business hours at EPA, room 1005 East Tower, 401 M St. SW., Washington, DC 20460; telephone (202) 382–5522.

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Act Hotline, toll free (800) 426–4791, or Carl Reeverts, Deputy Director, Enforcement and Program Implementation Division, Office of Ground Water and Drinking Water, EPA (WH–550E), 401 M St. SW., Washington, DC 20460; telephone (202) 382–5522.

SUPPLEMENTARY INFORMATION:

A. Background

40 CFR part 142, subpart B sets out requirements for States to obtain primacy for the Public Water System Supervision program, as authorized by section 1413 of the SDWA. EPA first promulgated these regulations on January 20, 1976. On December 20, 1989, EPA published amendments to these regulations (54 FR 52126).

The December, 1989 final rule amending the part 142 regulations was prompted by a recognition that the operation and scope of the PWSS program have changed considerably since the regulations were first promulgated. In addition, the SDWA Amendments of 1986 made significant changes to the scope and content of the drinking water program (see 54 FR 52127). The final rule established for the first time explicit procedures that States will need to follow to revise their approved primacy programs to adopt the requirements of new or revised EPA drinking water regulations. There are a large number of such new or revised regulations that EPA has promulgated or will be promulgating pursuant to the 1986 SDWA Amendments.

In addition, among other things, the rule modified the language of the provision in part 142 that concerns EPA's initiation of procedures that could

lead to withdrawal of primacy status for States that EPA determines are not continuing to meet the requirements for primacy [see § 142.17(a)(2)]. The language of this provision as promulgated in December, 1989 reads as follows:

> When, on the basis of the Administrator's review or other available information, the Administrator determines that a State no longer meets the requirements set forth in § 142.10, and the State has failed to request or has been denied an extension under § 142.12(b)(2) of the deadlines for meeting those requirements, or has failed to take corrective actions required by the Administrator, the Administrator *may* initiate proceedings to withdraw program approval. The Administrator shall notify the State in writing of EPA's intention to initiate withdrawal proceedings and shall summarize in the notice the information available that indicates that the State no longer meets such requirements.

(emphasis added).

Portions of the final rule have been the subject of a petition for review filed by the National Wildlife Federation in the DC Circuit Court of Appeals (*National Wildlife Federation* v. *Reilly*, No. 90–1072). In addition to challenging EPA's regulation on extensions (see below), NWF challenged on both procedural and substantive grounds the revision to the language on program withdrawals in § 142.17(a)(2). On procedural grounds, NWF alleges that the Agency provided insufficient opportunity for the public to comment on the revision to § 142.17(a)(2), in violation of requirements of the Administrative Procedure Act ("APA"). As to substance, NWF contends that EPA was without statutory authority to promulgate a revision making explicit that it is within EPA's discretion whether to initiate proceedings to withdraw a State's PWSS primacy program.

Although EPA disagreed with NWF's contentions, to ensure the fullest possible public input on the issue involved, the Agency decided to allow additional opportunity to comment in this case. Therefore, EPA published a Notice of Proposed Rulemaking to allow reconsideration of the language of § 142.17(a)(2) (55 FR 49398, November 28, 1990). That notice stated that EPA proposed to retain the language for the withdrawals provision adopted in the December, 1989 rulemaking but solicited public comments on whether this language should be revised.

As discussed below, in today's final rulemaking, EPA is retaining in § 142.17(a)(2) the language that was originally adopted in the December, 1989 rulemaking.

B. Partial Decision in National Wildlife Federation Lawsuit

On February 15, 1991, the U.S. Court of Appeals for the DC Circuit issued a partial decision in the National Wildlife Federation lawsuit. The decision upholds the "extensions" regulation in EPA's revised primacy rules. While this decision does not directly address the validity of the primacy withdrawals regulation, parts of the Court's discussion of the extensions regulation and its more general discussion of primacy are relevant to this issue.

The extensions provision allows primacy States up to two years after the effective date of new EPA drinking water regulations to adopt the regulations as State law. NWF had claimed that the effect of the extensions regulation—the creation of time periods in which primacy responsibility is split between the federal and State governments—is prohibited by the SDWA. NWF argued that under the Act, a State's primacy for the entire drinking water program necessarily ceases whenever a State fails to adopt a new EPA regulation by its effective date. The Court, however, found this reading to be unsupported by the Act. As discussed below, EPA believes similarly that initiation of primacy withdrawal is not necessary under the Act in every case where there are other types of program deficiencies.

In addition, the Court found the extensions regulation to be a "quite rational response to the practical realities of safe drinking water enforcement" (slip op. at 9). The Court also recognized a clearly expressed Congressional purpose that the Act is to be primarily a State and locally run program and determined that EPA's approach of allowing extensions is consistent with this purpose. EPA believes that these findings as well are applicable to and support today's decision to retain a withdrawals regulation that is discretionary.

C. Summary of Comments

Five groups submitted comments on the proposal to retain the existing regulation on withdrawals. Four of these commenters (consisting of two State agencies and two associations of water suppliers) supported the proposed rule. They cite a number of reasons for their support. For example, they note that the discretion this provision allows EPA in considering whether to initiate withdrawal is consistent with the cooperative State-federal spirit that Congress intended. In addition, they support EPA's exercise of discretion as a necessary approach in light of the number and complexity of new EPA regulations. The commenters note that this discretion allows the Agency to consider the significance of State program deficiencies and the time required for corrections. They also believe that EPA's thoughtful application of this discretionary withdrawal authority will result in more efficient and effective oversight of State programs.

The final commenter was the National Wildlife Federation, which submitted detailed comments in opposition to the proposed regulation. NWF's comments echo the position it voiced during the earlier rulemaking and in its Court challenge to that rulemaking. NWF believes that the use of "may" in the withdrawals regulation (where the previous regulation used the term "shall") provides EPA with unlawful discretion over the initiation of withdrawal proceedings and unacceptably weakens EPA's oversight role in the primacy process.

NWF gives a number of reasons for its position. First, it contends that the discretion afforded to EPA under this regulation not to initiate withdrawal when the Agency determines that deficiencies exist in a State program cannot be reconciled with the SDWA. NWF points to SDWA section 1413(a), which provides that a State has primacy "during any period for which the Administrator determines" pursuant to Agency rules that the State meets the requirements for primacy. NWF believes that § 142.17(a)(2) contradicts the law by allowing a State to retain primacy even when the Administrator determines that a State no longer meets the requirements for primacy, no matter how serious the violation.

NWF also argues that the legislative history of the SDWA reinforces the conclusion that EPA is not "free to ignore" its own determination that a State program is deficient. It points to what it describes as a loose provision on EPA oversight in an earlier bill adopted by the Senate, which was rejected in the final legislation "in favor of the House bill's stringent State primacy oversight provision * * *." NWF also believes that the discretion contained in the withdrawals provision reverses a longstanding and contemporeneous interpretation of the Act by EPA. Further, NWF contends that the withdrawals provision encourages private consultations between the State and EPA concerning State program deficiencies, whereas SDWA section 1413(b)(1) specifically enables the public to have a voice in the process.

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In addition, NWF believes that the withdrawals regulation represents poor public policy. The purpose of the 1986 SDWA amendments, it points out, was to ensure improved implementation and enforcement of the Act. NWF finds that the "relaxed" withdrawals regulation sends a message that compliance with the Act and regulations is not required. The regulation represents a relief valve, in NWF's view, which will encourage States to cut short their efforts to improve drinking water programs. Further, it finds, the process is driven "underground" by the lack of public participation; this will engender public mistrust and cynicism. According to NWF, the signal that EPA is "likely to look the other way" when there are program deficiencies will exacerbate problems with EPA oversight and with large numbers of documented illnesses from polluted drinking water.

D. Discussion of Withdrawals Provision

After carefully considering all of the public comments, EPA is retaining the language in § 142.17(a)(2) that was proposed in November, 1990 (and which had been originally promulgated in the December, 1989 rulemaking). This provision clearly states that it is within EPA's discretion whether to initiate procedures that could lead to withdrawal of a State's primacy program when the Administrator determines that the State program fails to continue to meet federal requirements for primacy.

1. Legal Basis. The language of § 142.17(a)(2) is authorized by SDWA section 1413, which affords discretion to the Administrator in matters concerning program withdrawals (*see* section 1413(b)). Although § 142.17(a)(2) constitutes a revision to the language of the previous withdrawals regulation (§ 142.12(b)(2)), EPA does not view the effect of the revised regulation to be different from that of the prior one, which EPA always interpreted and applied as providing this discretion to the Administrator. The Agency's purpose in revising this language was to clarify the discretionary nature of EPA's program withdrawal authority.

NWF's legal argument incorrectly focuses on SDWA section 1413(a). Section 1413(a) relates only to EPA decisions to grant primacy, not to withdraw it. SDWA section 1413(b) is the only statutory provision addressing EPA's manner for determining that primacy requirements are no longer met, and it gives EPA broad discretion in such matters. The DC Circuit Court's recent decision in the NWF lawsuit explicitly recognizes the Act's "broad grant of discretion to EPA to establish a system for * * * withdrawal of primacy" (slip op. at 7).

That the SDWA affords this discretion to the Administrator is supported by its legislative history. The legislative history emphasizes Congress's intent to encourage States to assume primacy for public water systems and to foster a close working partnership between EPA and each State in operating the public drinking water program (see, *e.g.*, H.R. Rep. No. 1185, 93d Cong., 2d Sess. 21 (1974), noting importance of Federal-State cooperation). As the State and utility commenters noted, EPA's discretion on the initiation of withdrawals is consistent with this scheme in that it allows the Agency to take into account the significance of particular violations of primacy requirements and the amount of time needed for the State to resolve any such violations.

NWF points to parts of the legislative history for the proposition that Congress intended section 1413 to be a "stringent" primacy oversight provision and that EPA therefore may not "ignore" its own determinations that State programs are deficient. As discussed below, EPA does not ignore program deficiencies. The Agency has worked and will continue to work with the States to ensure they are taking good faith actions to resolve any program deficiencies expeditiously. [States that simply ignore program deficiencies in the face of EPA efforts to ensure they are resolved should be on notice that the Agency does intend to initiate withdrawal of the State's primacy program in such cases.]

In any event, EPA does not believe that the legislative history cited by NWF casts any doubt on the legal validity of § 142.17(a)(2). The passages cited by NWF relate to the substantive standards against which EPA is to judge State programs, not to the procedures EPA is to follow in determining whether to withdraw primacy. It is consistent with SDWA section 1413, considered in light of this legislative history, for EPA to set stringent standards for primacy but to retain the discretion to decline or postpone initiation of withdrawal proceedings when there are primacy program deficiencies, where appropriate.

NWF also implies that the withdrawals regulation is inconsistent with SDWA section 1413(b)(1), which NWF notes gives the public "a voice in the process." Section 1413(b)(1), however, provides that "before a determination of the Administrator that [the requirements for primacy] * * * are no longer met with respect to a State may become effective," there shall be an opportunity for a public hearing (emphasis added). The withdrawals regulation has always provided, and continues to provide, the opportunity for a public hearing before withdrawal of a program becomes effective. (The subject of public input is discussed further below.)

2. Policy Considerations. The discretionary nature of the withdraw ls regulation allows EPA to work with a State that is acting in good faith to rectify the deficiencies in its program without having the Agency spend needless time and resources on withdrawal proceedings. As commenters recognized, initiating withdrawal would be unnecessary and inefficient if it appears that a State will soon resolve the problems with its program or that the State program deficiencies are of a minor or technical nature. Further, EPA has always interpreted the withdrawals regulation as discretionary. Despite NWF's claim, there is no longstanding Agency interpretation to the contrary (see the Court's discussion of this issue, slip op. at 8–9). Because EPA has not changed the effect of the withdrawals regulation, the Agency does not agree with NWF's claim that the new withdrawals regulation weakens EPA's primacy oversight procedures.

NWF believes that through the 1986 SDWA amendments, Congress sought to fortify EPA oversight of States and to improve enforcement and that the discretion retained by EPA in the withdrawals regulation is contrary to these directives. EPA notes that Congress's focus in the legislative excerpts cited by NWF was not on EPA oversight of State program requirements. Regardless, for the reasons stated in this notice, EPA believes that the discretion retained in the withdrawals regulation is in fact consistent with a strong and effective role for EPA in overseeing State primacy requirements.

The withdrawals regulation does not, of course, give discretion to the States as to what requirements they must meet and what EPA regulations they must adopt to retain primacy. It gives discretion only to EPA, to allow the Agency the flexibility to resolve State program deficiencies in the most effective way.

The discretion retained in the withdrawals regulation is fully consistent with the extensions provision added in December, 1989. Under the extensions regulation, where a State has not adopted the requirements of new Federal regulations, EPA in its discretion may extend the time for adoption (and under § 142.17(a)(2), EPA will refrain during the extension period from initiating program withdrawal). The withdrawals regulation similarly allows EPA to exercise judgment in determining when it is appropriate to initiate withdrawal in the case of other types of program deficiencies.

In upholding the extensions regulation, the DC Circuit Court noted that "[i]f a state is the better enforcer of its local drinking water quality, but is temporarily unable to conform to a particular national standard for reasons beyond its control, what sense does it make for EPA to take over enforcement of the entire program?" (slip op. at 9). In line with this view, EPA needs a flexible regulation allowing it to exercise its reasoned discretion on when to initiate withdrawals in general. The alternative advocated by NWF—requiring EPA to initiate withdrawal and take over primacy for an entire State program in every case where there are program deficiencies, however readily those deficiencies may be resolved—makes little sense.

Notwithstanding EPA's discretion on withdrawal decisions, it is important for States and others to recognize that the Agency will vigorously pursue the need for corrections to State programs. This is discussed further in section E below.

In its comments, NWF also objected to the lack of public involvement in the consultations between EPA and the States concerning State program deficiencies. As noted above, under the regulations, there is always an opportunity for a public hearing before EPA makes effective a determination that a State is no longer meeting the requirements for primacy. While NWF would prefer to be involved earlier in the process, public involvement at that point would be premature and overly cumbersome. EPA's discussions with the States on the adequacy of their primacy programs are part of a continual dialogue and process stemming from EPA's oversight and enforcement responsibilities in primacy States. It would be inappropriate to provide for specific public involvement as to every determination by EPA that a State is continuing to meet primacy requirements or that a State program has deficiencies but they appear readily resolvable or otherwise minor.

At the same time, the decision not to involve the public in these findings is not meant to conceal them. The public is free to request information and documents concerning these determinations as it is with respect to any EPA actions.

NWF also refers to a June, 1990 General Accounting Office (GAO) report on the PWSS program, which found that State programs are experiencing difficulties implementing SDWA regulations. The fundamental problem faced by the States is inadequate resources to operate the programs. The GAO report cited a resource needs survey conducted by EPA and the Association of State Drinking Water Administrators (ASDWA) which documents significant funding shortfalls in the State programs.

In response to these major resource constraints, EPA has developed a special initiative to help States increase their program resource capabilities. This State capacity initiative is targeted at helping States maintain primacy for drinking water programs, as Congress intended. Drinking water programs across the country received an increase of $14 million from State sources in FY 1990 in addition to the federal increase of $8.1 million. These increases have helped and the quality of State programs has improved such that EPA has not yet found deficiencies serious enough to warrant initiating withdrawal of primacy. GAO, it should be noted, did not recommend initiating withdrawals.

The Agency disagrees with NWF's contention that States already are taking a casual attitude toward complying with the law, as evidenced by the failure of the majority of States to adopt the recent filtration and total coliforms rules by December 31, 1990, the effective date for both rules. EPA has in fact entered into formal extension agreements with all States that have not yet adopted and been approved for these new rules. To be granted extensions, the States needed to show that they were working in good faith toward adopting the rules and that, as agreed to with EPA, they are taking certain actions within their current capabilities to implement the rules during the interim.

3. Further Changes. The revised language of § 142.17(a)(2) also contains two further changes to the previous regulation. First, the term "determines" has been substituted for "indicates." Specifically, the previous regulation stated that the Administrator shall notify the State when information "indicates" that the State no longer meets primacy requirements. Under the new regulation, the Administrator may initiate program withdrawal proceedings when the Administrator "determines" that the State no longer meets primacy requirements. EPA substituted this term to clarify and emphasize that a finding that a State no longer meets the requirements for primacy is a decision that rests within the discretion of the Administrator.

A second change to § 142.17(a)(2) made in December, 1989 was the addition of language providing that the Administrator may initiate program withdrawal proceedings when he determines that a State no longer meets primacy requirements, "and the State has failed to request or has been denied an extension under § 142.12(b)(2) of the deadlines for meeting those requirements, or has failed to take other corrective actions required by the Administrator * * *." As to the latter clause concerning corrective actions, the Agency does not intend this language to mean that the Administrator would initiate withdrawal proceedings only where he has first ordered corrective actions and the State has failed to comply. Rather, the Administrator may initiate withdrawal proceedings if the Administrator has ordered corrective actions and the State has failed to comply.

The Agency's reasons for adopting the changes to § 142.17(a)(2) made in December, 1989, which today's action retains, are further explained in its brief in the *NWF* v. *Reilly* litigation, which is included in the public record for today's rulemaking. Also included in the record are the briefs filed by NWF.

E. EPA Policy on Withdrawals of Primacy

Although EPA has retained discretion under the regulations as to when to initiate primacy withdrawal, the Agency wishes to make it clear that it will vigorously pursue the need for corrections to State programs. It should be understood that EPA does intend to initiate program withdrawals in States that do not adopt all EPA regulations or otherwise are not acting in good faith to maintain the requirements for primacy. This includes situations where a State is not meeting a basic standard of sufficiency in testing, monitoring, or reporting. EPA's purpose in retaining discretion in the withdrawals regulation is to provide that the Agency need not initiate withdrawal in every single instance where there is a program deficiency. It does not follow that States may take a casual attitude toward complying with primacy requirements or that EPA will "look the other way," in NWF's words, when a State is failing to meet all primacy requirements. No one should construe the withdrawals regulation to send such messages.

List of Subjects in 40 CFR Part 142

Administrative practices and procedures, Intergovernmental relations,

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Reporting and recordkeeping requirements, Water supply, Indians

Dated: May 28, 1991.

William K. Reilly,

Administrator.

For the above reasons, the effect of today's rulemaking is that the language of § 142.17(a)(2) of title 40, chapter I of the Code of Federal Regulations shall remain unchanged. The existing language, which shall continue, is republished (to read) as follows:

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

§ 142.17 Review of State programs and procedures for withdrawal of approved primacy programs.

(a) * * *

(2) When, on the basis of the Administrator's review or other available information, the Administrator determines that a State no longer meets the requirements set forth in § 142.10, and the State has failed to request or has been denied an extension under § 142.12(b)(2) of the deadlines for meeting those requirements, or has failed to take corrective actions required by the Administrator, the Administrator may initiate proceedings to withdraw program approval. The Administrator shall notify the State in writing of EPA's intention to initiate withdrawal proceedings and shall summarize in the notice the information available that indicates that the State no longer meets such requirements.

* * * * *

[FR Doc. 91-12971 Filed 5-31-61; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1-244]

Organization and Delegation of Powers and Duties

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Final rule.

SUMMARY: This document delegates authority to the Federal Railroad Administrator to implement section 1704 of the Crime Control Act of 1990, which permits a railroad police officer who is employed by a rail carrier to enforce the laws of any jurisdiction in which the rail carrier owns property.

EFFECTIVE DATE: June 3, 1991.

FOR FURTHER INFORMATION CONTACT: Cynthia Mabry, Trial Attorney, Office of Chief Counsel, Federal Railroad Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366-0635; or Steven B. Farbman, Office of the Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366-9307.

SUPPLEMENTARY INFORMATION: Section 1704 of the Crime Control Act of 1990 (Pub. L. 101-647, November 29, 1990) authorizes the Secretary of Transportation to promulgate regulations which would allow a railroad police officer who is employed by a rail carrier to enforce the laws of any jurisdiction where the rail carrier owns property. This amendment delegates the Secretary of Transportation's authority to the Federal Railroad Administrator to issue those regulations.

Since this amendment relates to departmental management, notice and public comment are unnecessary. For the same reason, good cause exists for not publishing this rule at least thirty days before its effective date, as is ordinarily required by 5 U.S.C. 553(d). Therefore, the delegation of authority to the Federal Railroad Administrator to carry out the provision of the Crime Control Act of 1990 is effective as of the date of publication of this final rule.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, part 1 of title 49, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 322.

2. Section 1.49 is amended by adding a new paragraph (ff) to read as follows:

§ 1.49 Delegations to Federal Railroad Administrator.

* * * * *

(ff) Exercise the authority vested in the Secretary by the Crime Control Act of 1990 (Pub. L. 101-647) as it relates to a railroad police officer's authority to enforce the laws of any jurisdiction in which the police officer's rail carrier employer owns property.

Issued on: May 20, 1991.

Samuel K. Skinner,

Secretary of Transportation.

[FR Doc. 91-12979 Filed 5-31-61; 8:45 am]

BILLING CODE 4910-62-M

Proposed Rules

Federal Register
Vol. 56, No. 106
Monday, June 3, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-15-AD]

Airworthiness Directives; Fokker Model F-27 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Fokker Model F-27 series airplanes, which would require reptitive visual inspections to detect worn, loose, cracked or broken parts in the elevator trim system, and repair; and eventual modification of the elevator trim system. This proposal is prompted by several reports of elevator and trim tab flutter during flight and subsequent damage to both the elevator and tab. This condition, if not corrected, could result in reduced controllability of the airplane.

DATES: Comments must be received no later than July 22, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-15-AD, 1601 Lind Avenue SW, Renton, Washington 98055-4056. The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 227-2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-15-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority of the Netherlands, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Fokker Model F-27 series airplanes. There have been several reports of elevator and trim tab flutter during flight and subsequent damage to both the elevator and tab. Further investigation of the elevator and tab flutter incidents revealed that there are three primary failure modes causing the flutter: (1) Play or disconnect at the tab drive system; (2) play or disconnect at the inboard hinge; and (3) loss of torsional stiffness of the tab structure. This condition, if not corrected, could result in reduced controllability of the airplane.

As an interim action, Fokker issued F27 Maintenance Circular 55-3, dated September 10, 1985. This maintenance circular recommended inspecting the elevator trim system to detect worn, loose, cracked, or broker parts, and repair, if necessary, in accordance with the appropriate maintenance instructions referred in that document.

Subsequent to issuing Maintenance Circular 55-3, Fokker issued Service Bulletin F27/27-130, dated September 11, 1990, which describes procedures to modify the elevator trim system, which include the installation of an improved push-pull rod and an integral drive bracket; the installation of regreasable bearings at all tab hinges, and the installation of an improved elevator trim tab. The RLD has classified this service bulletin as mandatory, and has issued Airworthiness Directive BLA 90-106 addressing this subject.

The airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive visual inspections to detect worn, loose, cracked, or broken parts, and repair; and eventual modification of the elevator trim system in accordance with the maintenance circular and service bulletin previously described.

It is estimated that 44 airplanes of U.S. registry would be affected by this AD, that it would take approximately 46 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. The estimated cost for the modification kit is $18,000. Based on these figures, the toal cost impact of the AD on U.S. operators is estimated to be $903,320.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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For the reasons discussed above, I certify that this proposed regulation (1) Is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 139 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as folows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket No. 91-NM-15-AD.

Applicability: Model F-27 series airplanes; Serial Numbers 10102 through 10684, 10686, 10687, and 10689 through 10692; certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent elevator and trim tab flutter during flight and reduced controllability of the airplane, accomplish the following:

(a) Within 100 hours time-in-service, unless accomplished within the previous 400 hours time-in-service, and thereafter at intervals not to exceed 500 hours time-in-service, perform a visual inspection to detect worn, loose, cracked, or broken parts in the elevator trim system, in accordance with the appropriate maintenance instructions referenced in the Fokker F27 Maintenance Circular 55-3, dated September 10, 1985. Repair any discrepant part(s) prior to further flight.

(b) Within 18 months after the effective date of this AD, modify the elevator trim system in accordance with the Accomplishment Instructions of Fokker Service Bulletin F27/27-130, dated September 11, 1990. Accomplishment of this modification constitutes terminating action for the repetitive visual inspections required by paragraph (a) of this AD.

Note: This terminating action does not preclude the visual inspections of the elevator and trim tab that should be considered at the Check 4 or the 2C-check interval, which are recommended in Fokker Service Bulletin F27/27-130, dated September 11, 1990.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may conoccur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on May 20, 1991.

Darell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-12987 Filed 5-31-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-104-AD]

Airworthiness Directives; McDonnell Douglas DC-9 and DC-9-80 Series Airplanes, Model MD-88 Airplanes, and C-9 (Military) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede two existing airworthiness directives (AD), applicable to McDonnell Douglas DC-9 and DC-9-80 series airplanes, Model MD-88 airplanes, and C-9 (Military) airplanes, which currently require inspection of specific primary longitudinal trim relays for discrepancies, and replacement, if necessary. This action would require replacement of the primary longitudinal trim relay with new parts at various intervals. This proposal is prompted by reports of shorting and burning of certain trim relays. This condition, if not corrected, could result in uncontrolled fire in the forward cargo compartment of the airplane.

DATES: Comments must be received no later than July 22, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-104-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

FOR FURTHER INFORMATION CONTACT: Mr. J. Kirk Baker, Aerospace Engineer, ANM-133L, FAA Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5345.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-104-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On February 1, 1991, the FAA issued AD 90-26-53, Amendment 39-6894 (56 FR 5342, February 11, 1991), and AD 91-01-51, Amendment 39-6893 (56 FR 5341, February 11, 1991). Both AD's require inspection for discrepancies of specific primary longitudinal trim relays installed on McDonnell Douglas Model DC-9 and DC-9-80 series airplanes,

Model DM-88 airplanes, and C-9 (Military) airplanes; and replacement, if necessary. Those actions were prompted by reports of shorting and burning of certain trim relays. This condition, if not corrected, could result in uncontrolled fire in the forward cargo compartment of the airplane.

The inspections required by those AD's were considered to be interim action until final action could be identified. It was anticipated that, subsequent to issuance of those ADs, a design change to the trim system would be developed that would preclude the need for repetitive inspections, as well as preclude the need for continual replacement of the primary trim relays at various intervals. As of this date, however, the FAA has received no proposed design changes to the system. Since continued inspections may not provide the level of safety assurance necessary, the FAA has determined that a requirement for regular replacement of the trim relays is warranted until an appropriate design change can be developed and implemented.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD's 90-26-53 and 91-01-51 with a new airworthiness directive that would require regular replacement of the primary longitudinal trim relay with new parts. For Model DC-9 and C-9 series airplanes, replacement of the relay would be required at intervals of 8,000 flight hours; for Model DC-9-80 series airplanes and MD-88 airplanes, replacement would be required at intervals of 16,000 flight hours. These intervals are based on the airplane manufacturer's reliability and probability studies of the subject relays. Replacement procedures would be required to be accomplished in accordance with the applicable airplane maintenance manual. This replacement would constitute terminating action for the inspections previously required by the existing AD's.

There are approximately 1,500 Model McDonnell Douglas Model DC-9 and DC-9-80 series airplanes, MD-88 airplanes, and C-9 (Military) series airplanes of the affected design in the worldwide fleet. It is estimated that 795 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1.5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Cost of required parts is estimated to be $1,000 per relay. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $860,588.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient frederalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 90-26-53, Amendment 39-6894 (56 FR 5342, February 11, 1991), and AD 91-01-51, Amendment 39-6893 (56 FR 5341, February 11, 1991), and adding the following new airworthiness directive:

McDonnell Douglas: Docket No. 91-NM-104-AD. Supersedes AD 90-26-53 and AD 91-01-51.

Applicability: Model DC-9 and DC-9-80 series airplanes, Model MD-88 airplanes, and C-9 (Military) airplanes; equipped with Primary Longitudinal Trim Relays (up and down), Leech (P/N) 9207-8333, -8333-1, -8968, -10101, -10296, and -10166; certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To eliminate overheating of primary longitudinal trim relays and the possibility of fire in the forward cargo compartment, accomplish the following:

(a) For Model DC-9 series airplanes (other than Model DC-9-80 series airplanes), and C-9 (military) airplanes: Within 17 days after February 27, 1991 (the effective date of Amendment 39-6894, AD 90-26-53; and Amendment 39-6893, AD 91-01-51), or prior to the accumulation of 8,000 flight hours on the subject relays, whichever occurs later, remove the relay cover and inspect the primary longitudinal trim relays for evidence of contact degradation, arcing, carbon build-up, or other evidence of abnormal wear on the contacts; and perform a functional check of the system in accordance with McDonnell Douglas Alert Service Bulletin A27-316, dated December 22, 1990.

(b) For Model DC-9-80 series airplanes and Model MD-88 airplanes: Within 30 days after February 27, 1991, or prior to the accumulation of 16,000 flight hours on the subject relays, whichever occurs later, remove the relay cover and inspect the primary longitudinal trim relays for evidence of contact degradation, arcing, carbon build-up, or other evidence of abnormal wear on the contacts; and perform a functional check of the system in accordance with McDonnell Douglas Alert Service Bulletin A27-316, dated December 22, 1990.

(c) If damage is found during the inspections or functional tests required by paragraphs (a) and (b) of this AD, prior to further flight, remove and replace the relays in accordance with McDonnell Douglas Alert Service Bulletin A27-316, dated December 22, 1990.

(d) For Model DC-9 series airplanes (other than Model DC-9-80 series airplanes) and C-9 (Military) airplanes: Within 90 days after the effective date of this AD or prior to the accumulation of 8,000 flight hours on the subject relays, whichever occurs later; and thereafter at intervals not to exceed 8,000 flight hours; remove and replace the primary longitudinal trim relays in accordance with McDonnell Douglas DC-9 Maintenance Manual, Chapter 27-40-4. This replacement constitues terminating action for the inspection and functional test required by paragraph (a) of this AD.

(e) For Model DC-9-80 series airplanes and Model MD-88 airplanes: Within 90 days after the effective date of this AD, or prior to the accumulation of 16,000 flight hours on the subject relays, whichever occurs later, and thereafte at intervals not to exceed 16,000 flight hours, remove and replace the primary longitudinal trim relays in accordance with McDonnell Douglas MD-80 Maintenance Manual, Chapter 27-40-4. This replacement constitutes terminating action for the inspection and functional test required by paragraph (b) of this AD.

(f) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance

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Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California, 90846. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Renton, Washington, on May 20, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-12988 Filed 5-31-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 771 and 777

[Docket No. 910480-1080]

Western Red Cedar

AGENCY: Bureau of Export Administration Commerce.

ACTION: Proposed rule with requests for comments.

SUMMARY: The Bureau of Export Administration is proposing to amend the Export Administration Regulations (EAR) (15 CFR 730-799) to clarify the definition of processed western red cedar lumber by establishing a standard based on product size (maximum cross section of 2,000 square centimeters (310 square inches)) that can be exported. This rule also proposes to revise the licensing procedures for exporting unprocessed western red cedar timber. In addition, this rule proposes to establish a new general license GLOG for exports of unprocessed western red cedar timber harvested from private lands. Unprocessed western red cedar timber harvested from public lands would continue to require a validated license. Applications to export unprocessed western red cedar timber harvested from public lands would be reviewed with the presumption of denial. The Bureau of Export Administration expects this action to remove IVL requirements on approximately $78 million dollars of annual exports.

DATES: Comments should be received by July 3, 1991.

ADDRESSES: Written comments (six copies) should be sent to: Sharon Gongwer, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Bernard Kritzer, Office of Industrial Resource Administration (OIRA), Telephone: (202) 377-4060.

SUPPLEMENTARY INFORMATION:

Background Information

The Department of Commerce administers controls under section 7(i) of the Export Administration Act, as amended, for western red cedar harvested from Federal and other public lands. The Export Administration Regulations (§ 777.7) currently require a validated license to export unprocessed western red cedar (WRC) timber harvested from private lands while maintaining a presumption of denial for WRC timber harvested from public lands. This export restriction does not apply to WRC that has been processed into lumber of American Lumber Standards, Grades of Number 3 or better, or Pacific Lumber Inspection Bureau Export R-List Grades of Number 3 dimension common or better.

This proposed rule would amend certain licensing procedures for exports of unprocessed western red cedar timber and would establish a new General License GLOG authorizing exports of unprocessed western red cedar harvested from private lands. Exports of unprocessed western red cedar harvested from public lands would continue to require a validated license. The Bureau of Export Administration expects this action to remove IVL requirements on approximately 78 million dollars of annual exports.

Rulemaking Requirements.

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694-0005. This rule also contains a collection of information already approved by OMB under control number 0694-0025 and new recordkeeping requirements for exporters using the general license GLOG. These recordkeeping requirements have been submitted to the Office of Management and Budget for review. Public burden hours for these information collection and recordkeeping requirements is estimated to average 30 minutes for the collection of information under 0694-0025 and 1 hour for the new recordkeeping requirement 0694-XXXX. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing these burdens, to the Office of Security and Management Support, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: Paperwork Reduction Project—0694-0025 and/or 0694-XXXX.)

3. The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities because it reduces the burden on exporters. The GLOG regulation would result in the export licensing decontrol of approximately $79 million (1989 data) of WRC harvested from public lands. This amount represents approximately one to one and one-half percent of the $6 billion dollar value of United States exports of forest products during 1990. The firms which would be affected by this rule are small-to-medium size log exporters and traders. To the best of our knowledge, few, if any, large firms are involved in exporting unprocessed WRC timber. Removal of the IVL requirements would reduce the burden on each firm by approximately four hours per export license. As a result, an initial Regulatory Flexibility Analysis was not prepared.

4. This rule is being issued in proposed form because the Department wishes to encourage comments from all interested parties.

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Invitation To Comment

This rule is issued in proposed form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close July 3, 1991. In developing final regulations, the Department will consider all comments received before the close of the comment period. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377-5653.

List of Subjects

15 CFR Part 771

Exports, Reporting and recordkeeping requirements.

15 CFR Part 777

Administrative practice and procedure, Exports, Forest and forest products, Petroleum, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR parts 768-799) are amended as follows:

PART 771—[AMENDED]

1. The authority citation for 15 CFR part 771 is revised to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986); Pub. L. 95-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990); E.O. 12214 of May 2, 1980 (3 CFR 256 (1981)), and E.O. 12002 of July 7, 1977 (3 CFR 133 (1978)).

2. The authority citation for 15 CFR part 777 is revised to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended; sec. 103, Pub. L. 94-163 of December 22, 1975 (42 U.S.C. 6212), as amended; sec. 101, Pub. L. 93-153 of November 16, 1973 (30 U.S.C. 185); sec. 28, Pub. L. 95-372 of September 18, 1978 (43 U.S.C. 1354); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976), as amended; sec. 201 and 201(11)(e), Pub. L. 94-258 of April 5, 1976 (10 U.S.C. 7420 and 7430(e)); sec. 125, Pub. L. 99-64 of July 12, 1985 (46 U.S.C. 466(c)); Pub. L. 95-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990); E.O. 12214 of May 2, 1980 (3 CFR 256 (1981)), and E.O. 12002 of July 7, 1977 (3 CFR 133 (1978)).

3. 15 CFR part 771 is amended by adding § 771.7 to read as follows:

§ 771.7 General License GLOG; unprocessed western red cedar timber harvested from private lands.

(a) *Scope.* A General License GLOG is established subject to the provisions of this section, authorizing the export of unprocessed western red cedar timber harvested from all private lands; all Indian lands; and Federal, State and other public lands in Alaska, subject to the recordkeeping requirements in paragraph (b) of this section.

(b) *Recordkeeping requirements.* Exporters who use General License GLOG must obtain and retain on file the documents described in paragraphs (b)(1) and (b)(2) of this section. These documents must be maintained in accordance with the recordkeeping requirements of § 787.13 of this subchapter.

(1) A statement by the exporter (or other appropriate documentation) indicating that the unprocessed timber exported under GLOG was not harvested from State or Federal lands outside the State of Alaska, and did not become available for export through substitution of commodities so harvested or produced. If the exporter did not harvest or produce the timber, the records or statement must identify the harvester or producer and must be accompanied by an identical statement from the harvester or producer. Appropriate statements or documentation from each intermediate party or parties who held title to the timber between harvesting and purchase by the exporter must also be obtained by the exporter and retained on file. The exporter shall retain this documentation in the files for the period prescribed in § 787.13(e) of this subchapter.

(2) A certificate of inspection issued by a log scaling and grading bureau, recognized by both the United States Forest Service and the State within which the timber was harvested, that:

(i) Specifies the quantity in cubic meters or board feet, scribner rule, of unprocessed western red cedar timber to be exported; and

(ii) Lists each type of brand, tag, and/or paint marking that appears on any log or unprocessed lumber in the export shipment or, alternatively, on the logs from which the unprocessed timber was produced.

Note: See § 777.7 of this subchapter for definitions of unprocessed red cedar.

4. Section 777.7 is revised to read as follows:

§ 777.7 Unprocessed western red cedar.

(a) *General.* The export of unprocessed western red cedar timber (defined in paragraph (b) of this section) from the United States, to any destination, including Canada, is prohibited, except pursuant to a validated license issued by the Office of Export Licensing, unless the timber has been harvested from private lands, Indian lands, or public lands in the State of Alaska, and is thereby eligible for export under General License GLOG (See § 771.7 of this subchapter). This section controls only exports of unprocessed western red cedar timber harvested from State, Federal, or other public lands. The Forest Resources Conservation and Shortage Relief Act of 1990 (See 15 CFR part 709) controls exports of unprocessed timber (except western red cedar) that is harvested from Federal, State or other public lands in the contiguous United States west of the 100th meridian.

(b) *Licensing policy.* (1) A validated license will not be issued for unprocessed western red cedar harvested from State or Federal lands under harvest contracts entered into after September 30, 1979.

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(2) A validated license may be issued for unprocessed western red cedar harvested from State or Federal lands under contracts entered into prior to October 1, 1979.

(c) *Definitions*—(1) *Unprocessed western red cedar* means western cedar (thujaplicata) timber, logs, cants, flitches, and processed lumber containing wane on one or more sides, as defined in ECCN 4998B, which has not been processed into:

(i) Lumber of American Lumber Standards Grades of Number 3 dimension or better, or Pacific Lumber Inspection Bureau Export R-List Grades of Number 3 common or better. The size of any individual piece of processed WRC being exported is limited to a maximum cross section of 2,000 square centimeters (310 square inches);

(ii) Chips, pulp, and pulp products;

(iii) Veneer and plywood;

(iv) Poles, posts, or pilings cut or treated with preservative for use as such and not intended to be further processed; and

(v) Shakes and shingles.

(2) *Federal and State lands* means Federal and State lands excluding lands in the State of Alaska and lands held in trust by any Federal or State official or agency for a recognized Indian tribe or for any member of such tribe.

(3) *Contract harvester* means any person who, on October 1, 1978, had an outstanding contractual commitment to harvest western red cedar timber from State and Federal lands and who can show by his previous business practice or other means that he intended to export or to sell into or for export in unprocessed form all or part of the commodities to be harvested.

(4) *Producer* means any person engaged in a process that transforms an unprocessed western red cedar commodity (e.g. western red cedar timber) into another unprocessed western red cedar commodity (e.g. cants) primarily through a saw mill.

(d) *Application for export license.* (1) Applicants to export unprocessed western red cedar must submit a properly completed Form BXA 622P, Application for Export License, other documents as may be required by the Office of Export Licensing, and a signed statement from an authorized representative of the exporter, reading as follows:

I, _____
(Name)

_____
(Title)

of _____
(Company)

HEREBY CERTIFY that to the best of my knowledge and belief the

_____
(Quantity)

(cubic feet or mbf scribner) of unprocessed western red cedar that

_____
(Company)

proposes to export was not harvested from state or federal lands under contracts entered into after October 1, 1979.

_____
(Date)

_____
(Signature)

(2) For Items 6 and 7 on Form BXA–622P, "Various" may be entered when there is more than one purchaser or ultimate consignee.

(e) *Supporting documentation.* For each Form BXA–622P submitted, or each export shipment made under the authority of a validated export license, the exporter must assemble and retain for the period prescribed in § 787.13(e) of this subchapter, and produce or make available for inspection as provided in § 787.13(f) of this subchapter:

(1) A signed statement(s), by the harvester or producer, and each subsequent party having held title to the commodities, that the commodities in question were harvested under a contract to harvest unprocessed western red cedar from State or Federal lands, entered into before October 1, 1979; and

(2) A copy of the Shipper's Export Declaration.

(f) *Shipping tolerance.* A shipping tolerance of 5 percent in cubic feet or board feet scribner is allowed on the unshipped balance of a commodity listed on a validated export license. This tolerance applies only to the final quantity remaining unshipped on a license against which more than one shipment is made and not to the original quantity authorized by such license. (See § 786.7 of this subchapter.)

(g) *Communications.* Questions concerning applications to export unprocessed western red cedar under this section and the specific documentation requirements should be directed to the Bureau of Export Administration at the address provided in § 772.1(e) of this subchapter.

Dated: May 24, 1991.

Michael P. Galvin,

Assistant Secretary for Export Administration.

[FR Doc. 91–12774 Filed 5–31–91; 8:45 am]

BILLING CODE 3510–DT–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–29230; File No. S7–15–91]

Securities Transactions Exempt From Transaction Fees

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is publishing for comment amendments to rule 31–1 under the Securities Exchange Act of 1934, which governs exemptions from section 31 transaction fees. The Commission is soliciting comment on a proposal to exempt certain transactions effected after regular trading hours from the imposition of section 31 transaction fees. Under the proposal, transactions effected after regular trading hours in a system that provides execution for orders of 15 securities or more at one aggregate price would be exempt from transaction fees imposed pursuant to section 31 of the Securities Exchange Act of 1934. The Commission is also soliciting comment on, but not proposing at this time, extending the exemption to individual stock transactions that are executed after regular trading hours where execution occurs at the last price established during regular trading hours.

DATES: Comments are requested by July 3, 1991.

ADDRESSES: Interested persons should submit three copies of their written data, views, and arguments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and should refer to File No. S7–15–91. All submissions will be made available for public inspection and copying at the Commission's Public Reference Section, room 1024, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Sharon Lawson, Special Counsel, 202/272–2406, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., (Mail Stop 5–1), Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

Section 31 of the Securities Exchange Act of 1934 ("Act") [1] requires every national securities exchange to pay an annual fee to the Commission based on the aggregate dollar amount of the sale of securities (other than bonds, debentures, and other evidences of indebtedness) transacted on that exchange. [2] In addition, section 31 requires payment of similar fees from broker-dealers for over-the-counter ("OTC") transactions in exchange-listed stocks. [3] The purpose behind Section 31 fees is to require the markets to pay for the cost of regulation and oversight. [4]

Section 31 also provides the Commission with authority to exempt any sale of securities or any class of sales of securities from imposition of the transaction fee if the Commission finds that such exemption is consistent with the public interest, the equal regulation of markets, and the development of a national market system.

Pursuant to its exemptive authority, the Commission promulgated rule 31–1 under the Act which provides a number of exemptions from section 31. In particular, rule 31–1(e) exempts from section 31 fees transactions which are executed outside the United States and are not reported or required to be reported to a transaction reporting association and any approved plan filed thereunder. [5]

The New York Stock Exchange, Inc. ("NYSE") has received approval to establish two distinct off-hours trading sessions ("Off-Hours Trading Sessions") called Crossing Session I and Crossing Session II. [6] Transactions occurring through the Off-Hours Trading Sessions would be subject to Section 31 fees under the current requirements of the Act. Crossing Session I permits the execution, at the NYSE closing price, of single stock, single sided orders against one another and coupled single-stock buy and sell orders. These executions would take place in a single crossing trade at 5 p.m. (e.s.t.). Crossing Session I also permits certain limit orders to participate in the crossing session. Crossing Session II permits executions, at a single aggregate price, after the NYSE's 4 p.m. (e.s.t.) close, of coupled buy and sell orders involving portfolios of at least 15 stocks valued at $1 million or more. Under Crossing Session II, members will be able to transmit summary data regarding aggregate price coupled orders to the NYSE via facsimile. The NYSE will aggregate the total number of shares and the total market value of the aggregate-price trades into one report. After 5:15 p.m. the report will be transmitted over the high speed line as an administrative message.

In its filings, the NYSE indicated that it was proposing the Off-Hours Trading Sessions to recapture some of the orderflow that it had lost due to overseas trading in listed stocks. In pursuing this goal, the NYSE requested that the Commission exempt transactions in its Off-Hours Trading Sessions from Section 31 fees. [7] The NYSE argues that without such an exemption, Section 31 fees would adversely impact competition by making NYSE transactions more expensive than foreign transactions and that this would impede the NYSE's ability to recapture cost-sensitive order flow from overseas.

In response to this request, the Commission has decided to propose for comment subsection (g) to rule 31–1. As discussed below, the proposed amendment would exempt from Section 31 fees only transactions involving portfolios of 15 or more securities executed at a single price during off-hours trading sessions.

II. Discussion

The Commission has reviewed carefully the NYSE request to grant an exemption from Section 31 fees to both of its proposed Crossing Session I and Crossing Session II Off-Hours Trading Sessions. The Commission is cognizant of the competitive concerns that prompted the NYSE to propose its Off-Hours Trading Sessions. The Commission also recognizes the view that overseas orders in U.S. stocks, which the NYSE's proposed Off-Hours Trading Sessions are attempting to recapture, supposedly are not currently subject, pursuant to rule 31–1(e), to Section 31 fees. [8] Accordingly, if the NYSE's Off-Hours Trading Sessions accomplish their intended purpose of attracting after hours overseas order flow, the impact on Section 31 fees received by the Commission would be minimal.

Section 31 specifically states that, in granting an exemption to Section 31 transaction fees, the Commission must find that the exemption is consistent with the public interest, the equal regulation of markets and brokers and dealers, and the development of a national market system. The Commission preliminarily believes that, in applying these standards, an exemption that would apply to off-hour executions at a single price involving a portfolio of 15 or more securities would be appropriate. The Commission, however, is declining at this time to propose a broader exemption from Section 31 fees that would encompass the entry of single sided orders to be crossed in an off-hours trading session such as in the NYSE's proposed Crossing Session I.

The proposed amendment to rule 31–1, if adopted by the Commission, would provide a limited exemption from the payment of Section 31 fees for sales involving 15 securities or more at one aggregate price occurring on or off an exchange in listed securities after regular trading hours. Under the proposal, regular trading hours. Under the proposal, regular trading hours are defined as the hours between 9:30 a.m. and 4 p.m. (e.s.t.), or the hours otherwise established by the Commission or by the

[1] 15 U.S.C. 78a (1988).

[2] The fee is equal to .00003% of the aggregate dollar value of securities sold.

[3] For transactions otherwise than on a national securities exchange, the fee is to be paid by the broker-dealer on the sale side of the transaction. If, however, there is no broker-dealer on the sale side of the transaction, then the broker-dealer on the buy side is required to pay the fee. Where no broker-dealer is involved in the transaction, no fee is required. *See* Rule 31–1.

[4] As adopted by Congress in 1934, and originally entitled "Registration fees," section 31 of the Act required each exchange to pay to the Commission "a registration fee for the privilege of doing business as a national securities exchange." See Securities Exchange Act of 1934, 31, 48 Stat. 881, 904 (1934). The Securities Acts Amendments of 1975 amended Section 31, changing the caption to "Transaction Fees," to require broker-dealers also to pay fees for OTC transactions in exchange-listed securities. See 15 U.S.C. 78ee (1975). In adopting these amendments, the legislative history indicates the purpose behind Section 31 remained the same stating that "even-handed treatment of transactions in [exchange] registered securities is necessary in view of the fact that the over-the-counter market involves Commission regulation and oversight as well as that of the exchange market. The cost of such regulation and oversight should be borne in comparable fashion." See S. Rep. No. 5, 94th Cong., 1st Sess., reprinted in 1975 U.S. Code Cong. & Ad. News 179, 310.

[5] In evaluating if a particular transaction is not subject to Section 31 fees because it is "executed outside the United States" commentators should be aware of the Commission's recent order concerning Wunsch Auction Systems, Inc. ("WASI"). In that order, the Commission stated its belief that "trades negotiated in the U.S. on a U.S. exchange are domestic, not foreign trades. The fact that the trade may be time-stamped in London * * * does not in our view affect the obligation * * * to maintain a complete record of such trades and report them as U.S. trades to U.S. regulatory and self-regulatory authorities and, where applicable, to U.S. reporting systems." See Securities Exchange Act Release No. 28899 (February 20, 1991).

[6] See Securities Exchange Act Release No. 29237 (May 24, 1991) approving NYSE File Nos. 90–52 (Crossing Session I) and 90–53 (Crossing Session II).

[7] See letter from Catherine R. Kinney, Senior Vice President, NYSE, to Brandon Becker, Associate Director, Division of Market Regulation, SEC, dated September 18, 1990 ("Kinney Letter"). The Kinney Letter also requested other exemptive and interpretive relief unrelated to the Section 31 fee issue being discussed in this release.

[8] In this connection, however, the Commission does not necessarily believe that all such transactions are exempt from Section 31 fees. As noted *supra* note 5, depending on whether the transaction is first negotiated in the U.S., it may or may not be so exempt.

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rules of a national securities exchange or national securities association. The proposed amendment, if adopted, would apply to NYSE's Crossing Session II and to any transactions on the Midwest's Stock Exchange's ("MSE") Portfolio Trading System ("PTS") during its Secondary Trading Session.[9] Aside from the NYSE, the MSE is the only other national securities exchange that currently has approval to execute single priced, portfolio trades after regular trading hours that would be exemtped from fees under the proposed terms of the amendment.[10]

The Commission preliminarily believes that the proposed exemption for off-hours portfolio trades is appropriate for several reasons. First, as stated in the NYSE's portfolio execution proposal, the NYSE is trying to respond to the increased development of trading strategies incolving the contemporaneous execution of multiple stocks at a single, aggregate price, often in conjunction with index options and futures.[11] Many of the transactions occurring after regular trading hours overseas involve portfolio trades. These transactions, when executed overseas, currently may be exempt from section 31 fees.[12] By aligning the fee exemption for after hours portfolio trading to match the treatment for overseas trading, the proposal will promote the public interest and the equal regulation of markets and broker-dealers, as required by section 31 of the Act, because it will remove an incentive for executing these trades overseas. This furthers the public interest because the executive of portfolios in the U.S. would subject these trades to the full panoply of the federal securities laws. Finally, the Commission preliminarily believes that the proposal is consistent with the development of a national market system and equal regulation of markets because it is a discrete exemption to facilitate the execution of portfolio trades that otherwise occur overseas after regular trading hours and should not have any significant effect on the markets during regular trading hours. In this context, the exemption has been drafted to be available to any U.S. market premitting off-hours portfolio trading that meets the requirements described above. For all of these reasons, we preliminarily believe that the statutory standards for exempting off-hours portfolio transactions from section 31 fees have been met.

For several reasons, however, we are unable to make the same conclusions, at this time, about off-hours trading involving executions of single stock orders similar to those envisioned in the NYSE's Crossing Session I. First, it is unclear whether the extension of an exemption to single stock orders would result in a significant loss of funds collected by the Commission. As noted above, the purpose behind section 31 fees is that the market pay for their regulation and oversight. NYSE's Crossing Session I would allow certain unexecuted limit orders from the specialists book to be executed during the off-hours trading session. These orders might otherwise be executed during regular trading hours and thus would currently, when executed, be subject to section 31 fees. Second, an exemption for single-stock orders executed at closing prices would apply to other off-hour trading sessions that currently exist, in addition to the NYSE's Crossing Session I. Currently, both Instinet and POSIT have an off-hours trading session involving single stock executions at closing prices on the primary market.[13] Equal regulations would require that any exemption would have to encompass trading over such systems, thereby resulting in a further loss of section 31 fees collected by the Commission, a fee that is directly related to the oversight of the U.S. markets. Third, another market currently operates a continuous auction market in listed securities past the 4 p.m. close. This market currently pays section 31 fees for all transactions executed until its close. A fee exemption for crossing sessions that permit the entry of single-sided orders to be executed at the closing price of the primary market after the regular NYSE 4 p.m. close could therefore create the perception of unequal treatment vis-a-vis a market that maintains a continuous action market past the NYSE's 4 p.m. close and that continues to pay section 31 fees after 4 p.m.[14]

For these reasons, the Commission is declining, at this time, to propose a section 31 fee exemption for the NYSE's Crossing Session I Off-Hours Trading Session. The Commission, however, is still consideraing whether to propose such an exemption and to aid in this consideration is soliciting comment on granting a section 31 fee exemption for off-hours, single-stock executions that occur at the closing price established during regular trading hours.

The Commissin also solicits general comments on the proposed amendment discussed herein and whether the conditions for granting off-hour portfolio transactions an exemption from section 31 fees are appropriate.

III. Regulatory Flexibility Act Status

Pursuant to section 605(b) of the Regulatory Flexibility Act,[15] the Chairman of the Commission has certified that the proposed amendment to the Rule herein will not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons, therefor, is attached to this release.

IV. Effects on Competition

Section 23(a) of the Exchange Act [16] requires the Commission, in adopting rules under the Exchange Act, to consider the anti-competitive effects of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission has considered the proposed amendments to rule 31–1 in light of the standards cited in section 23(a)(2) and preliminarily believes for the reasons stated in this release that adoption would not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act. The Commission, however, solicits commentators' views on whether the proposed amendments to the Rule would result in any anti-competitive impact.

V. Statutory Basis and Text of Proposed Amendments

The rule amendments are being proposed pursuant to 15 U.S.C. 78a *et seq.*, particularly sections 23(a) and 31 of the Act.

[9] Although the MSE has Commission approval to operate its PTS, currently the MSE is not operating the system. See Securities Exchange Act Release No. 27384 (October 28, 1989), 54 FR 45852 approving MSE's PTS.

[10] Of course, the proposed amendment potentially could apply to other trading systems approved in the future that meet the exemption's requirements.

[11] See NYSE rule filing, SR–NYSE–90–53, on Crossing Session II, note 6, *Supra*.

[12] See notes 5 and 6, *supra*.

[13] Instinet has an after-hours crossing network that permits participants, through the system, to electronically enter stock orders. The system pairs off buy and sell orders against each other, and then sends any unmatched orders to an exchange for execution or executes the residue against Instinet as principal. POSIT permits the trading of exchange-listed and OTC securities by institutional customers with substantial securities portfolios. The system permits its subscribers to post an indication of interest to be matched on a confidential basis against other orders in the system.

[14] This same concern would arise with respect to executions by BT Brokerage for WASI, an after-hours single priced auction exchange, which are currently subject to section 31 fees.

[15] 5 U.S.C. 605(b).

[16] 15 U.S.C. 78w(a)(2).

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

On the basis of the above discussion, the Commission is proposing to amend part 240 of chapter II, title 17 of the Code of Federal Regulation as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read as follows:

Authority: 15, U.S.C. 77c, 77d, 77s, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 79q, 79t, 80a–29, 80a–37, unless otherwise noted.

2. Section 240.31–1 would be amended by adding paragraph (g) to read as follows:

§ 240.31–1 Securities transactions exempt from transaction fees.

* * * * *

(g) Transactions which are executed otherwise than during regular trading hours in a system that provides execution for orders of 15 securities or more at one aggregate price. "Regular trading hours" is defined as the hours between 9:30 a.m. and 4 p.m. (e.s.t.), or the hours otherwise established by the Commission by rule or order or by the rules of a national securities exchange or national securities association.

Dated: May 28, 1991.

By the Commission.

Jonathan G. Katz,

Secretary.

Regulatory Flexibility Act Certification

I, Richard C. Breeden, Chairman of the Securities Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendment to rule 31–1 set forth in Securities Exchange Act Release No. 34–29238, if adopted, will not have a significant economic impact on a substantial number of small entities. The reasons for this certification are that (1) the proposed amendment imposes no regulatory burden in itself but rather exempts certain transactions from payment of Section 31 fees and (2) the amendment merely identifies a type of transaction proposed to be exempt from Section 31 fees and applies to any national securities exchange or broker-dealer executing single priced, portfolio trades, involving 15 or more securities, after regular trading hours as defined under the terms of the proposed amendment.

Dated: May 28, 1991.

Richard C. Breeden,

Chairman.

[FR Doc. 91–12969 Filed 5–31–91; 8:45 am]

BILLING CODE 8010–01–M

POSTAL SERVICE

39 CFR Part 111

Curbside Mailboxes; Manufacturing Standard USPS-STD-7

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposal will revise the Domestic Mail Manual and USPS–STD–7, dated October 1985, to include all mailboxes which are designed for installation at the curb or edge of a roadway on city, rural, and highway contract delivery routes. The proposed new title of USPS–STD–7 is "U.S. Postal Service Standard, Mailboxes, City and Rural Curbside." The proposed rules would also permit the use of plastics in the construction of mailboxes. The proposed revision of USPS–STD–7 will include minimum requirements and test critieria for all boxes.

DATES: Comments must be received on or before July 3, 1991.

ADDRESSES: Written comments should be addressed to: Director, Office of Retail and Delivery Management, U.S. Postal Service, 475 L'Enfant Plaza SW., rm. 7142, Washington, DC 20260–7151.

Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Roy Preston (202) 268–3949.

SUPPLEMENTARY INFORMATION: Current postal regulations require rural delivery customers who receive curbside service to install and maintain approved mail receptacles. Construction standards and specifications for these receptacles are set forth in USPS–STD–7 (U.S. Postal Service Standard Boxes, Rural Mail). The use of approved receptacles promotes Postal Service efficiency, safety, and mail security.

Regulations do not currently require customers who receive city delivery or highway contract delivery service to use approved boxes for curbside delivery although customers generally purchase these receptacles voluntarily. The same reasons which justify the use of approved receptacles in rural delivery areas apply equally to city delivery and highway contract delivery. Accordingly, the Postal Service proposes revisions to sections 151, 155, 156, and 157 of the Domestic Mail Manual to require customers in all delivery areas to utilize approve boxes for curbside service, to set forth specifications and application procedures consistent with the proposed USPS-STD-7, and to set forth the rules concerning the specifications for the receptacles in section 151, rather than in the section concerning rural delivery service. The proposed rules also require customers on all routes to comply with current rural delivery rules regarding painting and identification of boxes, posts and supports, location, and locks.

The Postal Service also proposes to reissue USPS–STD–7 and to revise certain of its provisions. The proposal would permit the use of plastics in the manufacture of receptacles, in view of the recent advances in the durability of these materials. The proposal would also revise certain specifications and testing standards for all curbside receptacles in order to ensure efficient and safe delivery, and the security of mail. The proposed changes in USPS-STD-7 include the following:

1. Section 1.1—The new standard covers all curbside mailboxes in city, rural, and highway contract delivery service areas; this change is reflected beginning in 1.1 and is continued throughout the text.

2. Section 1.2—Box size designations for both standard and contemporary mailboxes are changed from 1, 1A, 2, C1, C1A, and C2 to 1, 2, 3, C1, C2, and C3 respectively.

3. Section 1.3—Added to specify that approved manufacturers will be listed in the Domestic Mail Manual, and to provide a source for information within the Postal Service.

4. Section 2.1—Specifications MIL–W–8604 and MIL–W–8611 and standards FTMS 141 (Method 6191) and FTMS 151 (Method 811.1) are deleted. The address to obtain copies of federal specifications is added, and the address to obtain copies of military specifications and standards is changed.

5. Section 2.2—A new section lists non-government documents. It adds American Standards for Testing Materials (ASTM) specifications as follows: ASTM B–117, ASTM D–968, ASTM E–308, ASTM E–313, ASTM G–26; and an address to obtain copies of these standards. American Welding Society (AWS) standard C2.0 is deleted from the new specifications. The following standards are added to the new specifications: AWS C2.4, AWS D9.1, & AWS WHB–4 Ch 8; and the address to obtain copies of American Welding Society standards is changed. National Motor Freight Classification Rules are

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added to the specifications and an address to obtain copies of the rules is provided.

6. Section 2.3—Added to make clear that the specifications generally apply to both Type I and Type II boxes.

7. Section 3.1—"General Design" provisions are added to specify load tests which must be passed by all boxes, that boxes must be self-extinguishing, and that boxes cannot contain any transparent material. The latter, which is a change form existing policy, is for mail security.

8. Section 3.1.2—Changed to require a design such that the delivery and retrieval of mail must be in a horizontal position only (no vertical). Additional language is added allowing both front and rear doors to enable a customer to remove mail without standing in the street. These changes facilitate efficient and safe delivery of mail, and customer safety in retrieving mail.

9. Section 3.3—Provides that the carrier service door may not be spring loaded, and eliminates the option of providing a ring rather than handle or knob for opening the door. These changes are for safety reasons.

10. Section 3.5—Provides that a locking mechanism is optional. It also adds language requiring that any box equipped with a lock must have a slot large enough to accommodate the customer's noral daily mail volume.

11. Section 3.6.1—Specifies the location of the flag in relation to the top and front of the box, the minimum number of test cycles required, and that the flag cannot be free to rotate more than one hundred (100) degrees.

12. Section 3.6.2—Adds language allowing a self-lowering device when the door is opened, and specifying the location of the flag in relation to the top and front of the box, the minimum number of test cycles required, and that the flag cannot be free to rotate more than one hundred (100) degrees.

13. Section 3.7—Specifies that boxes, submitted to the Postal Service for approval, must include the inscriptions "U.S. MAIL" an "Approved By The Postmaster General".

14. Section 3.8—Adds provisions concerning testing procedures and standards for approval.

15. Section 3.9—Adds provisions specifying maximum tolerance changes (plus or minus) allowed in color intensity and yellowness indexes, that boxes may be any color, and that carrier signal flags may be any color which contrasts with the box with the exception of any shade of green, brown, or white.

16. Section 3.10—Adds provisions prohibiting any part of the box mounting apparatus to project beyond the front or the rear of the box, or to interfere with the doors.

17. Section 3.11—Adds a specific message in bold print which must be included in the instructions.

18. Section 3.12—Adds provisions expanding and clarifying the requirements concerning workmanship and new provisions concerning plastics.

19. Section 3.13—Renumbered from former section 3.17.1 with minor changes in language and requirements.

20. Section 3.14—Renumbered from former section 3.13. It includes new language concerning submission of boxes for testing and approval.

21. Section 3.14.1—Continues former section 3.13.1 with the addition of the termperature at which the test is conducted.

22. Section 3.14.2—Continues former section 3.13.2 with the addition of further test requirements.

23. Section 3.14.3—Provides a new impact test.

24. Section 3.14.4—Continues former section 3.14.1 with revisions in the standards and testing of the abrasion resistance of the coating.

25. Section 3.14.5—Continues former section 3.15.1 with revisions in the standards and testing of salt spray resistance.

26. Section 3.14.6—Continues former section 3.16.1 with revisions in the standards and testing of flammability.

27. Section 3.14.7—"Watertightness" is a new provision which specifies the method of testing, and the minimum acceptable requirements.

28. Section 3.14.8—"Solar Exposure/Weathering" is a new provision which specifies the method of testing, and the minimum acceptable requirements.

29. Section 3.14.9—A new provision continues and adds a means for testing the requirements which were contained in former section 1.2.

30. Section 3.14.10—A new provision specifies the method of testing and the maximum change tolerances (plus or minus) in yellowness indexes when the box is subjected to the environmental conditions specified in section 3.14.8.

31. Section 4—Expands former section 3.19.1 to clarify the complete process for submission of products for testing and approval by the Postal Service.

32. Section 5—Expands former section 3.18.1 to clarify the requirements concerning the packaging of boxes.

Other minor changes in the language and organization of the Domestic Mail Manual and USPS–STD–7 are also proposed. It is the intention of the Postal Service that all mailboxes currently approved to bear the inscription "Approved by the Postmaster General" will be required to be recertified under the proposed standard, USPS–STD–7, not later than six (6) months after its effective date.

Although exempt from the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(b), (c), regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the following proposed amendments of parts 151, 155, 156, and 157 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations, see 39 CFR Part 111.1, and USPS–STD–7 (U.S. Postal Service Standard Boxes, Rural Mail), the complete text of which is set forth in an Exhibit following this notice.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation in 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552 (a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

CHAPTER 1—DOMESTIC MAIL SERVICES

Part 150—Collection and Delivery

151—MAIL RECEPTACLES

* * * * *

2. Revise the first sentence of 151.2 to read as follows:

Except as provided in 151.58, the receptacles described in 151.1 shall be used exclusively for matter which bears postage. Therefore, other than as permitted in 151.58, no part of a mail receptacle may be used to deliver any matter not bearing postage.

In 151 add 151.5 through 151.59 as follows:

151.5 Curbside Mailboxes, City, Rural, and Highway Contract Routes

Manufacturers of all mailboxes designed and manufactured to be erected at the edge of a roadway or curbside of a street to be served by motorized carrier from the vehicle on city, rural, and highway contract routes must obtain approval of their products in accordance with USPS–STD–7 (*U.S. Postal Service Standard, Mailboxes, City and Rural Curbside*).

151.511 Dimensions and Styles

(a) Three approved standard sizes and two styles of boxes are approved for use on city, rural, and highway contract routes:

TRADITIONAL AND CONTEMPORARY BOX STYLES

Size	Length*	Width*	Height*
1 and C1	19"	6¼"	8¼"
2 and C2	21"	8"	10½"
3 and C3	23¼"	11¼"	13½"

* Dimensions given in approximate inches.

(b) In General, boxes may be constructed in any size between the maximum and minimum outside dimensions specified on approved drawings, provided the height, width, and length proportions and the general shape are maintained.

151.512 Drawings

Construction standards and drawings (USPS–STD–7) for guidance in the manufacture of curbside mailboxes may be obtained by writing to the Delivery Management Division, Delivery, Distribution and Transportation Department, U.S. Postal Service, 475 L'Enfant Plaza, SW., room 7142, Washington, DC 20260–7151.

151.513 Application for Approval

To secure approval of a curbside mailbox, the following must be submitted to the Engineering and Development Center, Delivery Equipment Division, U.S. Postal Service, 8403 Lee Highway, Merrifield, VA 22082–8101. Manufacturers also must notify the Delivery Management Division by letter that mailboxes are being submitted for approval. See 151.512 for address.

(a) Not less than two complete boxes, including markings required in Paragraph 3.7 of USPS–STD–7) (Standard 7), of each style made of exact materials, construction, coatings, paint, etc., including the panels required by Paragraph 3.14.8 of the Standard 7, and otherwise identical in every way with the boxes intended to be marketed.

(b) A copy of the instructions required by Paragraph 3.11 of the Standard 7.

(c) Color samples showing all color schemes to be used (d) Boxes or packaging of the type proposed for shipping production units.

(e) Documentation—The units submitted for approval must be accompanied by two complete sets of manufacturing drawings and installation instructions, showing that the units supplied meet the requirements of Standard 7. The drawings must be dated, signed, and certified to represent the production units exactly as submitted. The drawings must include sufficient details to allow the Postal Service to document and inspect all materials, construction methods, processes, coatings, treatments, finishes, control specifications, parts, and assemblies used in the construction of the units. The Postal Service may request individual piece parts to verify drawings. No changes may be made by the manufacturer to its products or drawings without written notification of an approval from the Postal Service. Any changes must be submitted with an explanation of the reasons in writing and also documented in the revision block of the affected drawing(s). Two units of each type with the changes incorporated must be submitted for testing and approval. All changes are subject to written approval by the Postal Service.

(f) Boxes that are approved will be retained after testing by the Postal Service. Boxes disapproved may be disposed of or returned to the manufacturer, if requested, provided the manufacturer pays the shipping costs.

(g) Approval or Disapproval—One set of manufacturing drawings, together with written notification of approval or disapproval, including reasons for disapproval, will be returned to the manufacturer. The drawings will be stamped and identified as representing the production unit type if the box is approved. The decision to approve or disapprove boxes is issued by the Office of Delivery and Retail Management. All correspondence and inquiries must be directed to this office at the address listed in 151.512 above and in paragraph 1.3.2 of the standards.

(h) Production Units—Manufacturers' production units must be constructed in accordance with the identified (stamped) drawings and provisions of USPS–STD–7, and be of the exact materials, construction, coating, workmanship, finish, etc., as the approved units. Manufacturers must receive written approval from the Postal Service before making any change to the unit or the identified design drawings. Approval for changes requires resubmission of units for testing and updated drawings for review. The Postal Service reserves the right at any time to examine and retest production units either obtained in the general marketplace or from the manufacturer, and may require the manufacturer to provide units for examination and testing. Failure of these production units to be manufactured in strict accordance with the approved units, the identified drawings, and the provisions of USPS–STD–7 may result in the rejection of units and the suspension or revocation of the manufacturer's authorization as an approved manufacturer through a decision issued by the Office of Delivery and Retail Management.

(i) Packaging—The box and accessories must be packaged in a manner which will ensure arrival at destination in satisfactory condition. The box must be shipped fully assembled except that the following parts may be removed if necessary to protect them from damage: protruding portions, such as door latching hardware, mounting adapters, and mounting posts or stands. Containers and packing must comply with the National Motor Freight Classification Rule 222, section 2 and 3. The boxes must be suitably wrapped or protected and packaged in separate containers so as to prevent damage to painted surfaces by rubbing against the internal surfaces of the container, or by rubbing against other parts.

Part 151.514 Marking

All boxes must have the following legible inscriptions on the carrier service door: "U.S. MAIL and "APPROVED BY THE POSTMASTER GENERAL". The markings shall be accomplished by embossing on sheet metal, raised lettering on plastic, or engraving on wood or other materials not suitable for embossing. The name and address of the manufacturer and the month and year of manufacture shall also be noted on the box on the rear or on an inside wall of the box. This marking shall be accomplished by embossing on the rear wall or a permanent decal on the inside of the box near the front opening.

Part 151.515 List of Approved Manufacturers. Following is a list of manufacturers of standard and contemporary curbside receptacles whose boxes have been approved by the Postal Service:

Approved manufacturers	Type of Mailbox
Add On's by Fischer P.O. Box 746 Huntley IL 60142–0746	C1
Armor Plate Mailbox Inc. P.O. Box 1060 Sterling Heights MI 48311–1060	C1
Bacova Guild Ltd. Bacova VA 24122–9999	C1
Mr Jerry Ballinger 5119 West U Avenue Schoolcraft MI 49087–9769	C1
Beacon Products Inc. 6065A 17th Street East Bradenton FL 34203–5002	C, 2
Carmel Wood Products 24723 Upper Trail Carmel CA 93923–8343	C1
Chicago Heights Furnace Supply Co. Inc. 94 104 East 22nd Street Chicago Heights IL 60411–4263	1, 2, 3
Decor House P.O. Box 1108 Temple TX 76503–1108	C1

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Approved manufacturers	Type of Mailbox
EZ Mail Corporation 82 Carroll Avenue P.O. Box 4038 Bridgeport CT 06607-4038	1, C1
Innovative Plastics Corporation 400 Route 303 Orangeburg NY 10962-1395	2
The Jenzer Corporation 5896 Tibby Road Bensalem PA 19020-1122	C1
Leigh A Harrow Company 411 64th Avenue Cooperaville MI 49404-1234	C1
Macklanburg Duncan P.O. Box 25188 Oklahoma City OK 73125-0188	1, C1
Northwest Metal Products Division of Noll Manufacturing Company P.O. Box 10 Kent WA 98035-0010	1
Norwell Manufacturing Company Inc. 82 Stevens Street East Taunton MA 02718-1398	C1
Parker Mailboxes Company 9571 Hotle Brady Road Richmond VA 23231-9744	C1
Pony Express Manufacturing P.O. Box 7916 Nashua NH 03060-7916	C
Safe T Box Corporation Route 1 Box 404 Washington WV 26181-9743	C1
Shaller Inc. P.O. Box 30011 Indianapolis IN 46230-0011	1
Steel City Corporation P.O. Box 1227 Youngstown OH 44501-1227	1, 2, 3, C
The Country Corner P.O. Box 18 Orchard Park NY 14127-0018	C1
The Solar Group Southern Gemini P.O. Box 525 Taylorsville MS 39168-0525	1, 2, 3, C2
Timely Industries Inc. 701 Montrose Avenue South Plainfield NJ 07080-1887	1, 2, C2
Trailside Mailbox Inc. 1993 Stonehenge Drive Lafayette CO 80026-9115	C1
Tuckey Metal Fabricators P.O. Box 720 Carlisle PA 17013-0720	C1
Veeders Mailbox Inc. P.O. Box 42048 Cincinnati OH 45242-0048	1, 2
Wood Quarters Inc. 7914 Ridgewood Drive Jenison MI 49428-7923	C1

T 1—Traditional Curbside Box Size No. 1,

T 2—Traditional Curbside Box Size No. 2,

T 3—Traditional Curbside Box Size No. 3,

C—Contemporary Curbside Boxes.

Part 151.516 Custom-Built Curbside Mailboxes. Postmasters are authorized to approve curbside mailboxes constructed by individuals who, for aesthetic or other reasons, do not wish to use an approved manufactured box. The custom-built box must conform generally to the same requirements as approved manufactured boxes relative to the flag, size, strength, and quality of construction.

Part 151.52 Painting and Identification. The Postal Service prefers that curbside boxes and posts or supports be painted white, but other colors may be used if desired. Where box numbers are used, the box number must be inscribed in contrasting color in neat letters and numerals not less than 1-inch high on the side of the box, visible to the carrier's regular approach, or on the door if boxes are grouped. Where street names and house numbers have been assigned by local authorities, and the postmaster has authorized use of a street name and house numbers as a postal address, the house number must be shown on the box. If the box is located on a different street from the customer's residence, the street name and house number must be inscribed on the box. The placing of the owner's name on the box is optional. Advertising on boxes or supports is prohibited.

Part 151.531 Construction. Posts or other supports for curbside boxes must be neat and of adequate strength and size. They may not be designed to represent effigies or caricatures which would tend to disparage or ridicule any person. The box may be attached to a fixed or movable arm.

Part 151.532 Newspaper Receptacles. A receptacle for the delivery of newspapers may be attached to the post of a letterbox which is used by the Postal Service, provided: no part of the receptacle touches or is attached to or is supported by any part of the mailbox, interferes with the delivery of mail, obstructs the view of the flag, or presents a hazard to the carrier or his vehicle. The receptacle must not extend beyond the front of the box when the box door is closed. No advertising shall be displayed on the outside of the receptacle, except that the name of the publication may be shown.

Part 151.54 Location. Curbside boxes must be placed so that they may be safely and conveniently served by carriers without leaving their conveyances, and must be located on the right-hand side of the road in the direction of travel of the carriers in all cases where traffic conditions are such that it would be dangerous for the carriers to drive to the left in order to reach the boxes, or where their doing so would constitute a violation of traffic laws and regulations. (Exception: See 156.312.) On new rural routes or highway contract routes, all boxes must be located on the right side of the road in the direction of travel by the carrier. Boxes must be placed to conform with state laws and highway regulations. Carriers are subject to the same traffic laws and regulations as are other motorists. Customers must remove obstructions, including vehicles, trashcans, and snow, which make delivery difficult. Generally, customers should install boxes with the bottom of the box at a vertical height of between 3½ and 4 feet from the road surface. However, because of varying road and curb conditions and other factors, the Postal Service recommends that customers contact the postmaster or carrier before erecting or replacing their mailboxes or supports.

Part 151.55 Grouping. Boxes on rural routes and highway contract routes should be grouped wherever possible, especially at or near crossroads, at service turnouts, or at other places where a considerable number of boxes are presently located.

Part 151.56 More Than One Family. More than one family, but not more than five families, on rural routes and highway contract routes, may use the same box, provided a written notice of agreement, signed by the heads of the families, or by the individuals who desire to join in the use of such box, is filed with the postmaster at the distributing office.

Part 151.57 Locks. The use of locks on boxes on rural routes and highway contract routes is not required. If however, a box is equipped with a lock, the box must have a slot large enough to accommodate the customer's normal daily mail volume. The Postal Service will not open boxes which are locked and will not accept keys for this purpose.

Part 151.58 Unstamped Newspapers. Mail receptacles are to be used for mail only, except that publishers of newspapers regularly mailed as second-class mail may, on Sundays and national holidays only, place copies of the Sunday or holiday issues in the rural and highway contract route boxes of subscribers, with the understanding that copies will be removed from the boxes before the next day on which deliveries are scheduled.

Part 151.59 Nonconforming Boxes. Carriers will report to the postmaster any boxes which do not conform to the regulations. The postmaster will send to the owner of these boxes Form 4056, *Your Mailbox Needs Attention,* requesting that the irregularities or defects be remedied.

* * * * *

PART 155—CITY DELIVERY

4. In 155 revise the first sentence of 155.41a to read as follows:

155.41 Obligation of Customer

a. Customers of the carrier delivery service must provide authorized receptacles (see section 151.5) or door slots, except for mail receptacles specifically authorized by the Postal Service to be owned and maintained by the Postal Service.

* * * * *

PART 156—RURAL SERVICE

5. In 156 revise 156.26 and replace 156.5 as follows:

156.26 Highway Contract Delivery. Persons residing on roads traveled by both rural and highway contract carriers may qualify as customers of either or both routes. If one box is used for both routes, it must be an approved receptacle (see 151.5).

* * * * *

156.5 Rural Boxes. Rules setting specifications for rural boxes, and other provisions concerning the installation, location, and use of boxes are set forth in 151.5.

PART 157—HIGHWAY CONTRACT SERVICE

6. In 157 revise 157.32c and 157.4 to read as follows:

Part 157.32 Availability.

* * * * *

(c) either erect a curbside mailbox approved under the procedures in 151.5 on the highway contract route carrier's existing line of travel or are authorized to receive delivery through neighborhood delivery and collection boxes and parcel lockers owned and maintained by the Postal Service.

* * * * *

157.4 Location of Receptacles. Approved curbside mailboxes (151.5) or approved sacks or satchels must be placed where they protect mail and may be conveniently served by carriers without leaving their vehicle. They must be located on the right side of the road in the direction of travel, when required by traffic conditions, or when driving to the left to reach the boxes would constitute a violation of traffic laws by the carrier. In such cases, customers desiring service on both outward and return trips of the carrier must furnish a box, sack, or satchel on each side of the road.

An appropriate notice and amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted. The proposed revision of USPS-STD-7 is set forth in the following exhibit.

Stanley F. Mires,

Assistant General Counsel Legislative Division.

Exhibit—U.S. Postal Service Standard Mailboxes, City and Rural Curbside, USPS-STD-7

1. *Scope and Classification*

1.1 *Scope*—This standard covers all city and rural curbside mailboxes.

1.2 *Classification*—Curbside mailboxes must be of the following types and sizes:

Type I—Box, Traditional, Curbside Mail
Size T1—See Drawing 3730-0310, RD-4
Size T2—See Drawing 3730-0310, RD-5
Size T3—See Drawing 3730-0310, RD-6
Type II—Box, Contemporary, Curbside Mail
Size C1—18⅛" × 5" × 6"
Size C2—19⅛" × 6" × 7"
Size C3—22⅛" × 8" × 11⅛"

Minimum Parcel Size Acceptable (Applicable to both Types I and II)

ASTM D968—Standard Test Methods for Abrasion Resistance of Organic Coatings by Falling Abrasive
ASTM E308—Method for Computing the Colors of Objects by Using the CIE System.
ASTM E313—Standard Test Method for Indexes of Whiteness and Yellowness of Near-White, Opaque Materials
ASTM G26—Standard Practice for Operating Light-Exposure Apparatus (Xenon-Arc Type) with and without Water for Exposure of Nonmetallic Materials

Copies of the preceding documents may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103-1106.

Other Documents

AWS C1.1—Recommended Practices for Resistance Welding
ANSI/AWS A2.4—Standard Symbols for Welding, Brazing and Nondestructive Examination
ANSI/AWS D9.1 Specification for Welding of Sheet Metal
AWS WHB-4 Ch 8—Aluminum Alloys-Welding Handbook

Copies of the preceding documents may be obtained from the American Welding Society, 2501 NW. 7th St., Miami, FL 33125-3136.

National Motor Freight Classification Rules

1.3 *Approved Manufacturers*

1.3.1 *Approved Manufacturers*—Manufacturers whose boxes have been approved by the United States Postal Service (USPS) will be listed in the Domestic Mail Manual (DMM).

1.3.2 *Interested Manufacturers*—Manufacturing standards and drawings concerning the manufacture of curbside mailboxes may be obtained by writing to: DELIVERY MANAGEMENT DIVISION, US POSTAL SERVICE, 475 L'ENFANT PLAZA, SW., ROOM 7142, WASHINGTON, DC 20260-7151, Telephone: (202) 268-3608

2. *Applicable Documents*

2.1 *Government Documents*—The following documents of the latest issue are incorporated by reference as part of this standard.

Specifications

MIL-T-704—Treatment and Painting of Materiel
MIL-A-8625—Anodic Coatings, for Aluminum and Aluminum Alloys
MIL-W-6858—Welding, Resistance: Spot and Seam

Standards

Military

MIL-STD-171—Finishing of Metal and Wood Surfaces

Federal

FED-STD-406—Flammability of Plastic over 0.050 Inch in Thickness
FED-STD-595—Colors Used in Government Procurement

Copies of federal specifications and standards may be obtained from the General Services Administration, Specification Section, Room 6654, 7th and D Streets, SW., Washington, DC 20407-8999.

Copies of military specifications and standards may be obtained from the Standardization Documents Order Desk, 700 Robbins Ave., Building 4, Section D, Philadelphia, PA 19111-5094.

2.2 *Non-Government Documents*—The following documents of the latest issue are incorporated by reference as part of this standard.

American Standards for Testing Materials (ASTM)

ASTM B117—Standard Test Methods of Salt Spray (Fog) Testing

Copies of the preceding document may be obtained from the National Motor Freight Traffic Association, 2200 Mill Rd., Alexandria, VA 22314-4687.

2.3 Except where specifically noted, the specifications set forth herein shall apply to both Type I and Type II boxes.

3. *Requirements*

3.1 *General Design*—All mailboxes must be capable of passing the load tests specified in table 1 and Figure 1. All plastic mailboxes must withstand an impact of a 10-pound weight being dropped 3 feet. Mailboxes made of plastic, wood, or other material that normally sustains a flame must be self-extinguishing. The mailbox must not contain any transparent material. No attachments are permitted on any mailbox. No shapes or protrusions are permitted on the mailbox except as approved and do not interfere with mail delivery nor present a safety hazard. The box must be free from harmful projections, burrs, sharp edges, or other features that may be hazardous to carriers or customers or interfere with delivery, and must positively protect mail from all types of weather. All seams and joints must be tight to prevent loss of or damage to any mail placed in the box.

3.1.1 *Type I, Traditional Design*—The general configuration of the box must conform to USPS Drawings RD-4, RD-5, and RD-6. Minor design and construction changes may be considered for approval, provided

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they are equal to or better than the features they replace, and provided the operation of the box is unchanged.

3.1.2 *Type II, Contemporary Design*—The general configuration of the box must conform to USPS collection and delivery operations and requirements. Designs of the contemporary rural mailboxes are not restricted to shape, material, finish, or style; however, boxes must be designed and constructed so that they may be serviced in the same manner as the traditional curbside mailbox. The mailbox must be designed to allow for all mail (outgoing and incoming) to be inserted and retrieved in a horizontal manner. The bottom of the mailbox must contain no lip or protrusion that could restrict the mail from being pulled straight out of the box. The mailbox may contain only a front door or it may contain front and rear doors to enable the customer to remove mail without standing in the street.

The bottom of the box must be corrugated, ribbed, or otherwise formed similar to the bottom of the Type I boxes (with ribs .08 ± .015 inch wide and .10 ± .015 inch high on 1 ± .015 inch centers) to prevent mail from adhering to it as a result of moisture, rain or snow entering through an open door. Provisions must be incorporated to prevent damage or destruction of finishes by moving parts of the box.

3.2 *Materials*—Ferrous or nonferrous metals, wood, plastics, or other materials may be used, as long as their thickness, form, mechanical properties, and chemical properties adequately meet the operational, structural, and performance requirements set forth in this standard. Materials used must be compatible with each other and must be nontoxic and nonirritating to humans.

3.3 *Carrier Service Door*—The carrier service door must operate freely by pulling outward and downward with a convenient handle or knob at the top of the door. The handle or knob must have adequate clearance to permit grabbing and pulling it with one hand (with or without gloves) to open the door. No protrusions other than the handle, knob, door catch and marking are permitted on the carrier service door. The design of the door hinges, handles, etc. must provide the maximum protection against wind, rain, sleet, or snow. Door latches must hold the door closed but allow easy opening and closing. The door must be capable of operating 7,500 normal operating cycles without breakage or failure to operate correctly. Action of the latch must be a positive mechanical one not relying solely on friction of the parts. The door must not be spring loaded. Magnetic latches are acceptable provided adequate closure power is obtained and maintained. The door, once opened, must remain in the open position until the carrier pushes it closed. Doors or door attachments that reduce the usable volume within the box or protrude into the opening of the box are not acceptable.

3.4 *Auxiliary Doors*—Doors other than the carrier service door must not interfere with the normal servicing of the box by the carrier or require the carrier to perform any unusual operations. The auxiliary door must not open as a result of newspapers, parcels, or other mail items being inserted through the carrier door.

3.5 *Locks*—The box may be provided with an effective means of locking, but the use of locks is not required. If the box is equipped with a lock, the box must have a slot large enough to accommodate the customer's normal daily mail volume. The Postal Service will not open boxes that are locked, accept keys for this purpose, or lock boxes after delivery of the mail.

3.6 *Carrier Signal Flag*

3.6.1 *Type I. Traditional Design*—The carrier signal flag must be as shown on the drawings. The flag must be on the right side when facing the box from the front. The flag centerline must be no farther back from the foremost projection of the box (excluding protruding catch hardware) than 2 inches. When the flag is in the raised position, not less than 6 square inches of the signal portion must be visible above the top of the box and the flag may project not less than 2 inches above the top of the box. The signal portion of the flag must be in a plane perpendicular to the road or street on which the box is located. No portion of the flag must extend beyond the top outline of the box when the flag is in the lowered position. The flag operating mechanism must operate properly and positively, without binding or excessive free play, must not require lubrication, and must be resistant to freeze-up at temperatures specified under ambient conditions (3.13). The flag must be capable of operating 7,500 normal operating cycles without breakage or failure to operate correctly. The flag must not be free to rotate more than 100 degrees and must remain in a locked point in either the vertical or horizontal position until repositioned by the customer or carrier.

3.6.2 *Type II Contemporary Design*—The carrier signal flag must be of a contemporary design or similar to that used on the Type I box and must operate freely. The flag may incoporate a self-lowering feature that automatically drops to the lowered position when the carrier door is opened. The flag must be located on the right side when facing the box from the front. The flag staff centerline must be no farther back from the foremost projection of the box (excluding protruding catch hardware) than 2 inches. When the flag is in the raised position, not less than 6 square inches of the signal portion must be visible above the top of the box and the flag must project not less than 2 inches above the top of the box. The signal portion of the flag may be in a plane perpendicular to the road or street on which the box is located. No portion of the flag must extend beyond the top outline of the box when the flag is in the lowered position. The flag operating mechanism must operate properly and positively, without binding or excessive free play. The operating mechanism must not require lubrication, and must be resistant to freeze-up temperatures specified under ambient conditions (3.13). The flag must be capable of operating 7,500 normal operating cycles without breakage or failure to operate correctly. The flag must not be free to rotate more than 100 degrees and must remain in a locked point in either the vertical or horizontal position until repositioned by the customer or carrier.

3.7 *Marking*—The box must bear two inscriptions on the carrier service door: "U.S. MAIL" in 1.0 ± .2 inch high letters and "Approved By The Postmaster General" in .25 ± .06 inch high letters. The markings must be accomplished by embossing on sheet metal, raised lettering on plastic or engraving on wood or other materials not suitable for embossing. All markings must be raised or incised enough to be easily read. The name and address of the manufacturer and the month and year of manufacture must also be noted on the box on the rear or on an inside wall of the box. This marking must be accomplished by embossing on the rear wall or placing a permanent decal on the inside of the box near the front opening.

3.8 *Coatings and Finishes*—Choice of materials for coatings and finishes is optional, provided all requirements of this standard are met. All finish coatings must be free from flaking, peeling, cracking, crazing, blushing, as well as orange peel and powdery surfaces. Finishes must be compatible with the box materials, and must be prepared by primers or other protective procedures. All painted mailboxes must be coated with a minimum of 3 mils of paint. Mirror-like finishes and coatings on large flat areas, which might cause reflected glare in motorists' eyes from the sun or vehicle lights will not be approved. No part of the coating or finish may show corrosion, blistering, peeling or other destructive reaction after 200 hours of the salt fog environment. The coating or finish is considered to fail the sand abrasion test if less than 15 liters of sand is required to penetrate a coating or if less than 75 liters of sand is required to penetrate any plating.

3.9 *Color*—Color intensity and yellowness indexes must not lose or gain more than 10 percent of their original values.

3.9.2 *Boxes*—The box may be any color. Colors and color schemes may be of a hue, saturation, and brilliance that provide sufficient contrast with normal surroundings to ensure visibility to carrier and persons using the road or street.

3.9.2 *Carrier Signal Flags*—The carrier signal flag must be any contrasting color with the exception of any shade of green, brown, or white and must be painted with high gloss paint. The flag color must not be used on any other portion of the box.

3.10 *Mounting*—The box must be provided with means for convenient and secure mounting. Types of mounting such as a metal post or stand may be offered by the manufacturer as an accessory. No part of the box mounting apparatus must project beyond the front or rear of the mounted box or interfere with the door(s). Mounting mut not require the use of tools other than a hammer, screwdriver or common wrench unless such special tools are furnished with the box or accessory.

3.11 *Instructions*—A complete set of instructions for assembling and mounting the box must be furnished with each box. The instructions must include the following message in bold print:

CUSTOMERS ARE REQUESTED TO CONTACT THE LOCAL POST OFFICE BEFORE ERECTING THE BOX TO ENSURE ITS CORRECT PLACEMENT AND HEIGHT AT THE STREET.

3.12 *Workmanship*—Workmanship must be of the highest quality throughout. Highest quality is defined as the following: All parts and assemblies must be clean, straight, accurately formed and assembled, properly fitted, and uniform in size and shape. Parts must be free from delaminations, cracks, warpage, bulges, kinks, dents, porosity, voids, peelings, lumps, foreign matter, or other defects. All pastic parts must be free from flashing, injection header or mold marks, undercuts, voids, surface defects, or visual stresses. Plastic units must be free from releasing agents and any outgassing condition. Finished or coated surfaces must be smooth and uniform, and free from soft areas, stains, chips, color variations, runs, sags, peeling, bubbling, crazing and cracks. Seams and connections must be tight. Rivets must be installed in the rivet manufacturer's recommended hole diameter, be tight, have uniformly formed heads, and must not contain sharp burrs. Welding must be uniform, clean, and positioned properly, must use the correct amperage, and must be inspected as specified by AWS D9.1. The units must be free from sharp edges or corners, burrs, protruding rivets or screws, and design features or details including outside edging, doors, and underside that might injure or hamper carriers or customers using the box.

3.13 *Ambient Conditions*—The box must protect mail placed inside and must operate properly when subjected to the following ambient conditions: temperatures of −65 degrees Fahrenheit to +140 degrees Fahrenheit; relative humidities of 0 to 100 percent (limited by 35 degrees Fahrenheit dewpoint temperature); full solar radiation; snow and freezing rain; heavy rainstorms during which the rain strikes the box at any angle from 0 degrees (vertically downward) to 90 degrees (horizontal); wind velocities up to 100 miles per hour; water and slush thrown upwards by vehicles.

3.14 *Testing Requirements*—Two mailboxes/units of each type must be submitted for testing as specified herein. Test mailboxes must be submitted in packaging identical to that of the production units. Units which fail to pass any test will be rejected and failure of one type of unit can be cause for rejection of all of the units submitted by the manufacturer.

3.14.1 *Operational Requirements*—Carrier service doors, auxiliary doors, door catches and mechanisms, carrier signal flags, and accessory devices must be capable of operating 7,500 normal operating cycles at room temperature without breakage of parts while continuing to operate correctly and positively.

3.14.2 *Structural and Performance Requirements*—Refer to Figure 1 for an explanation of load positions, method of application and bolster plates to be used. At positions 1 through 4 and at position 7, the box must be supported on a horizontal board in a normal fashion. At positions 5 and 6, the load must be applied with the unmounted (without board or adapters) box lying on its opposite side (flag side up). The door(s) is in a closed position for loads in positions 1 through 6. For position 7, the door must be placed in its maximum open position and a load applied normal to the door surface. If the door is free to rotate greater than 120 degrees from the closed position, this part of the structural test is not required. Immediately after release of the slowly applied load in each position, permanent deformation of the box in the load direction must not exceed the permanent deformation indicated from the loads shown on Table I. Cracks in the material must not develop as a result of the load or cause the door to become inoperable. At position 6, the flag must be capable of withstanding an 8-pound load applied at the top of the flag without exceeding permanent deformation specified in Table I.

TABLE I.—PERMANENT DEFORMATION LIMITS

Position	Deformation (inches)	Load (pounds)
1	½	200
2	½	200
3	½	50
4	½	50
5	½	100
6	½	8
7	½	8

3.14.3 *Impact Test*—Refer to the Figure 1 for load position. Precondition the box for 4 hours at −20 degrees Fahrenheit. At position 3, with the unmounted box (without board or adaptors) lying on its side (flag side up), apply an impact load equivalent to a 10-pound weight dropped from a distance of 3-feet above the box surface onto a bolster plate having a surface not larger than 2 inches by 2 inches. the door(s) is in a closed position for this test. Repeat the impact load at position 4. No perforation, occurrence of sharp edges, or cracking of the material, either inside or outside the box, may develop as a result of the impact, nor may the door become inoperable or fail to close normally.

3.14.4 *Coating and Abrasion resistance*—The coating of all painted units must meet the abrasive test specified herein. The test must be conducted in accordance with ASTM D-968, Method A for Abrasion resistance of Coatings of Paint, Lacquer, and Related Products by the Falling Sand Method, rate of flow of 2 liters of sand in 22±3 seconds. The box is considered to fail this test if less than 15 liters of sand is required to penetrate painted coatings, or if less than 75 liters of sand is required to penetrate plating or protective coatings.

3.14.5 *Salt Spray Resistance*—A salt spray test must be conducted in accordance with ASTM B-117, Standard Method of Salt Spray (Fog) Testing. A 5 percent salt solution at 95 degrees Fahrenheit will be used. The salt test must be operated for 200 continuous hours. Units must be tested in a finished condition, including all protective coating, paint, and mounting hardware but must be thoroughly washed when submitted to remove all oil, grease, and other nonpermanent coatings. No part of the units may show finish corrosion, blistering or peeling, or other destructive reaction after 200 hours of continuous exposure. Corrosion is defined as any form of property change such as rust, oxidation, color changes, perforation, accelerated erosion, or disintegration. The build-up of salt deposits upon the surface will not be cause for rejection. However, any corrosion, paint blistering, or paint peeling is cause for rejection. The plastic units must be similarly exposed to test any metal hardware used in the construction or mounting of the units.

3.14.6 *Flammability*—Testing is performed in accordance with FED-STD-406, Method 2021. Cut a specimen 5 inches long by 1/2 inch wide. Scribe the specimen 1/2 inch from the end and three more times at 1-inch intervals. The specimen support fixture should hold the flammability sample with its longitudinal axis horizontal and its transverse axis inclined at 45 degrees to the horizontal. Apply a flame at the end of the sample for 30 seconds or until the flame reaches the first scribe mark. When the flame reaches this point, start a stopwatch and stop the stopwatch when the flame reaches the final scribe mark. If the flame goes out prior to this point, the sample is considered "self-extinguishing." If the burning rate exceeds 3 inches in 3 minutes, the unit is rejected.

3.14.7 *Watertightness*—Each mailbox is subjected to a heavy spray of water, equivalent to 3 to 5 inches per hour, for a period of 15 minutes for each side. The spray is directed downward at an angle of 0 to 90 degrees from the vertical. At the conclusion of the test, the outside of the unit is wiped dry and doors are opened. The inside of the compartment must contain no water other than that produced by high moisture condensation.

3.14.8 *Solar Exposure/Weathering*—Twelve 3-inch by 6-inch panels of the material(s) used in the boxes must be submitted with the mailboxes for solar exposure/weathering testing. Panel thickness must be the same thickness as that of the submitted mailbox walls and door. All metal panels must be finished in the same manner as the mailbox. Plastic panels must be submitted in a natural state (without paint). The test is conducted in accordance with ASTM G-26 using a spectral irradiance level of 0.35 watts per meter squared per nanometer band at 340 nanometers, a black panel temperature of 145±5 degrees Fahrenheit and a relative humidity of 50±5 percent. Both Method 1 for weathering painted panels and Method 3 for UV degradation testing of painted panels and plastic panels must be conducted. The test is conducted for 336 hours. Any blistering, peeling or cracking of the paints is cause for rejection. Any blistering, cracking, disintegration or embrittlement of the plastic is cause for rejection. The test required by 3.14.10 will be performed before and after this test. The color intensity must not lose more than 10 percent of its original value when measured in 3.14.10.

3.14.9 *Capacity*—Conformance to 1.2 of this standard must be tested by insertion and removal of a test gauge for each size mailbox as follows:

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Size	Test gauge (inches)
T1 and C1	18⅛×5×6
T2 and C2	19⅛×6×7
T3 and C3	22⅛×8×11⅛

The test gauge for each size mailbox must be easily inserted and removed from each size mailbox and allow for the door(s) to be completely closed without interference.

3.14.10 Color Intensity—Color intensity must be measured in accordance with ASTM E-308 using the CIE method. A yellowness index must be measured using ASTM E-313. Color intensity and yellowness indexes must not lose or gain more than 10 percent of their original values when subjected to environmental conditions in 3.14.8.

4. Approval.

4.1 *Application Requirements*—All correspondence and inquiries must be directed through the Delivery Management Division, U.S. Postal Service, 475 L'Enfant Plaza S.W., Washington, DC 20260-7151. The manufacturer must notify the Delivery Management Division that mailboxes are being submitted for approval. To secure approval of a box, manufacturers must submit the following to the Engineering & Development Center, Delivery Equipment Division, U.S. Postal Service, 8403 Lee Highway, Merrifield, VA 22082-8101:

4.1.1 Not less than two complete boxes, including markings required in 3.7, of each style made of the exact materials, construction, coatings, paint, etc., including the panels required by 3.14.8 and otherwise identical in every way with the boxes intended to be marketed.

4.1.2 A copy of the instructions required by 3.11.

4.1.3 Color samples showing all color schemes expected to be used.

4.1.4 The boxes in the packaging proposed for shipping production units.

4.1.5 Documentation—The units submitted for approval must be accompanied by two complete sets of manufacturing drawings and installation instructions consisting of black on white prints (blueprints or sepia are unacceptable) showing that the units supplied meet the requirements of this standard. The drawings must be dated, signed, and certified to represent the production units exactly as submitted. The drawings must include sufficient details to allow the USPS to document and inspect all materials, construction methods, processes, coatings, treatments, finishes, control specifications, parts and assemblies used in the construction of the units. THe USPS may request individual piece parts to verify drawings. No changes may be made by the manufacturer to its products or drawings without written notification of and approval from the USPS. Any changes must be submitted with an explanation of the reasons written in a letter and also documented in the revision block of the affected drawing(s). Two units of each type with the changes incorporated must be submitted for testing and approval. All changes are subject to USPS written approval.

4.1.6 Boxes that are approved will be retained after testing by the USPS. Boxes disapproved may be disposed of or returned to the manufacturer, if requested, provided the manufacturer pays shipping costs.

4.2 Approval or disapproval—One set of manufacturing drawings, together with written notification of approval or disapproval, including reasons for disapproval, will be returned to the manufacturer. The drawings will be stamped and identified as representing the production unit type if approval notification is used. The USPS Office of Delivery and Retail Management will issue the written notification of approval or disapproval of the mailboxes. All correspondence and inquires must be directed through that office at the address listed in 1.3.2.

4.3 Production Units—Manufacturer's production units must be constructed in accordance with the identified (stamped) drawings and provisions of this specification, and be of the exact materials, construction, coatings, workmanship, finish, etc. as the approved units. Manufacturers must receive written approval from the USPS before making any change to the unit or the identified design drawings. Approval for changes requires resubmission of units for testing and updated drawings for review. The USPS reserves the right at any time to examine and retest production units either obtained in the general marketplace or from the manufacturer and may require the manufacturer to provide units for examination and testing. Failure of these production units to be manufactured in strict accordance with the approved units, the identified drawings, and the provisions of this specification may result in the rejection of units and the suspension or revocation of the manufacturer's authorization as an approved manufacturer. Suspension or revocation of the manufacturer's authorization as an approved manufacturer will be issued by the USPS Office of Delivery and Retail Management.

5. *Preparation for Delivery.*

5.1 *Packaging*—The packaged mailbox and accessories must be packaged in a manner that will ensure arrival at destination in satisfactory condition. The box must be shipped fully assembled except that the following parts may be removed if necessary to protect them from damage: protruding portions, such as door latching hardware, mounting adapters, and mounting posts or stands. Containers and packing must comply with the National Motor Freight Classification Rule 222, Sections 2 and 3. The boxes must be suitably wrapped or protected and packaged in separate containers to prevent damage to painted surfaces by rubbing against the internal surfaces of the container or against other parts.

[FR Doc. 91-12961 Filed 5-30191; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 215

[Docket No. 910510-1110]

RIN No. 0648-AE16

Marine Mammals; Fur Seal Act Regulations

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of proposed rulemaking, request for comments and notice of public meeting.

SUMMARY: NMFS issues this notice of proposed rulemaking to solicit public comments on the amendment to that portion of the Fur Seal Act regulations which authorizes the Assistant Administrator for Fisheries (Assistant Administrator), NOAA, to extend the subsistence harvest of fur seals in the Pribilof Islands beyond August 8. This action is being considered to ensure that no harvesting of seals will occur during times when female seals are on the rookeries and other harvest areas. The proposed action is being considered because the northern fur seal *Callorhinus ursinus)*, the object of the harvest, is designated a depleted species pursuant to the Marine Mammal Protection Act (MMPA) and the taking of female seals would further decrease the chances of the species returning to optimum sustainable population (OSP) level. The Pribilovians have requested that the removal of the harvest extension option be offset by amending the regulations to allow the harvest to begin one week earlier (on June 23 instead of June 30).

DATES: Comments on this proposed rule must be postmarked on or before July 18, 1991.

ADDRESSES: Send written comments to Nancy Foster, Ph.D., Director, Office of Protected Resources (F/PR), NOAA, 1335 East-West Highway, room 7324, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Aleta Hohn, Ph.D., or Lynne Harris, Permit Division, Office of Protected Resources, 301-427-2289; Steve Zimmerman, Ph.D., Alaska Region, 907-586-7235.

SUPPLEMENTARY INFORMATION: On July 9, 1966, NMFS published an emergency final rule establishing regulations for the subsistence taking of northern fur seals on the Pribilof Islands, Alaska. Among the regulations that were established, 50 CFR paragraph 215.32(f) provides

criteria for terminating the harvest, or for extending the harvest if the subsistence needs of the Pribilovians have not been met.

The Assistant Administrator is required to terminate the harvest when he determines that the subsistence needs of the Pribilovians have been met, or on August 8 of each year, whichever comes first. The August 8 date was chosen to avoid an unacceptable taking of female fur seals. After the first week of August, immature fur seals of both sexes begin to arrive on St. Paul Island in significant numbers. The harem structure in rookery areas breaks down in early August and many females begin using the haul-out areas from which animals are taken for harvesting. Extending the harvest could result in a marked and biologically unacceptable increase in the accidental take of female seals. Two standards of unacceptable levels of female take trigger termination of any harvest extension: (1) When the total number of female seals taken during the harvest exceeds one half of one percent of the total number of seals taken; and (2) when, during the extension period, five female seals are taken within 7 consecutive days.

Six seasons of subsistence harvesting of northern fur seals have been conducted on the Pribilof Islands since 1985. Extensions to the harvest season were requested and granted in 1986 and 1987. Only St. Paul Island exercised the extension option. During the extension period in 1986, at least 359 seals were expected to be harvested, but only 71 were taken on the single day of harvesting (September 27). Of that total, immediate analysis revealed that six of the seals were females and the harvest was suspended. Later analysis of the teeth and reproductive tracts of the seals taken on the single day of harvesting during the extension period revealed that 12 of them were female (17 percent of the day's total). For the 1987 extension period, a total harvest of 211 seals was requested. On the single day of harvesting (September 2), 110 seals were taken. Of that total, it was discovered that five of the seals taken were female, and the harvest was again suspended. Because of this demonstrated risk of taking females after August 8, and the apparent inability of harvesters to distinguish young males from females, NMFS announced its intent to amend 50 CFR 215.32(f) to eliminate the extension option for 1989 and subsequent years (53 FR 28887, August 1, 1988); however, no action was taken. Harvest extensions were not requested in 1988, 1989, or 1990.

In June 1989, in response to the August 1, 1988, announcement, the Aleut Community of St. Paul Island requested a change in the Fur Seal Act regulations to allow the subsistence harvest to begin June 23, 1 week earlier than the June 30 start date dictated by 50 CFR 215.32(c)(1). They cited a desire for seal meat by community members before June 30, a lack of meat remaining from the previous year's take, and an inability to harvest their quota of seals in the absence of the harvest extension option. The Pribilovians have also indicated that the number of sub-adult males present in haul-out areas in late June is substantially the same as the number present in early July. It therefore appears that sufficient numbers of seals would be available to allow for an earlier start date. Preliminarily, no adverse impact on the seal population is anticipated because only sub-adult males are present in the harvest areas at that time, and all other mandatory controls upon the harvest would apply.

Classification

For reasons discussed in previous environmental impact statements (EIS's), it is hereby determined that the approval and implementation of this proposed rule will not significantly affect the human environment, and that preparation of an EIS on this action is not required by section 102(2) of the National Environmental Policy act or its implementing regulations.

The Under Secretary of NOAA has determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The present action will not have a cumulative effect on the economy of $100 million or more, nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse effects on competition, employment, investments, productivity, innovation, or competitiveness of U.S.-based enterprises are anticipated.

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The only impact will be on individual native Alaskan residents of the Pribilof Islands in the form of a revised calendar for the annual fur seal harvest. Therefore a regulatory flexibility analysis was not prepared.

This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 215

Administrative practice and procedure, Marine mammals, Penalties, Pribilof Islands, Reporting and recordkeeping requirements.

Dated: May 24, 1991.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service.

For the reasons set forth in the preamble, NOAA proposes to amend 50 CFR part 215 as follows:

PART 215—[AMENDED]

1. The authority citation for 50 CFR part 215 continues to read as follows:

Authority: 16 U.S.C. 1151-1175, 16 U.S.C. 1361-1384.

2. Section 215.32 is amended by removing paragraphs (f)(2) and (f)(2)(i-iii), by redesignating paragraph (f)(1) as (f), and by revising paragraph (c)(1) to read as follows:

§ 215.32 Restrictions on taking.

* * * * *

(c)(1) No fur seal may be taken on the Pribilof Islands before June 23 of each year.

* * * * *

[FR Doc. 91-12943 Filed 5-31-91; 8:45 am]

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Notices

Federal Register
Vol. 56, No. 106
Monday, June 3, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation will meet on Monday, June 10, 1991, and Tuesday, June 11, 1991. The meeting will be held in the Lecture Hall, rooms 121 and 122, at the National Building Museum (Pension Building), 401 F Street, NW. (Judiciary Square), Washington, DC, beginning at 2 p.m. on June 10, and at 8:30 a.m. on June 11.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Housing and Urban Development, Treasury, and Transportation; the Director, Office of Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Welcome/Opening.
II. Council Business.
III. Section 106 Cases.
IV. New Business.
V. Adjourn.

Note: The meetings of the Council are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., room 809, Washington, DC, 202-786-0503, at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., #809, Washington, DC 20004.

Dated: May 29, 1991.

Robert D. Bush,
Executive Director.

[FR Doc. 91-13006 Filed 5-31-91; 8:45 am]
BILLING CODE 4310-10-M

Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with the regulations of the Advisory Council on Historic Preservation, "Protection of Historic Properties" (36 CFR part 800), that a panel of three members of the Council will meet on Wednesday, June 12, 1991, to consider the proposed interpretation and preservation of the remains of the Wesleyan Chapel, Women's Rights National Historical Park in Seneca Falls, New York. The proposal as currently planned would preserve remaining historic fabric within a modern structure and develop commemorative landscape features on the site. This undertaking will affect the Seneca Falls Historic District, which is listed in the National Register of Historic Places.

The panel will meet in Seneca Falls, New York, at the Gould Hotel, 108 Fall Street, at 9:30 a.m. The evening before the meeting, June 11, the panel will hear public testimony. This public hearing will take place at the Gould Hotel, 108 Fall Street, at 7:30 p.m.

The panel welcomes written and oral statements from concerned parties. Written statements should be submitted to the Executive Director of the Council by June 4. Persons wishing to make oral statements at the public hearing should contact the Executive Director by June 7, Attention: Druscilla Null (202-786-0505). Priority will be given to those persons who have indicated prior to the meeting their desire to speak.

The Council was established by the National Historic Preservation Act to advise the President and Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties that are listed in or eligible for listing in the National Register of Historic Places.

Note: The meetings of the Council are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Places, 1100 Pennsylvania Avenue NW., Suite 809, Washington, DC 20004 (202-786-0505).

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting schedule and location or the submission of statements is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue NW., suite 809, Washington, DC 20004, Attention: Druscilla Null (202-786-0505).

Dated: May 28, 1991.

Robert D. Bush,
Executive Director.

[FR Doc. 91-13007 Filed 5-31-91; 8:45 am]
BILLING CODE 4310-10-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.
Title: Monthly Retail Trade Survey.
Form Number(s): B-101(87), 102, 103, 111, 112, 113.
Agency Approval Number: 0607-0187.
Type of Request: Extension of a currently approved collection.
Burden: 30,187 hours.
Number of Respondents: 27,675.
Avg Hours Per Response: 14 minutes.
Needs and Uses: The Bureau of the Census uses the Monthly Retail Trade Survey to collect sales data from a sample of retail establishments in the United States. Estimates derived from this survey provide a current statistical picture of the retail portion of consumer activity. The Bureau of Economic Analysis uses the estimates in their preparation of the National Income and Product Accounts, and their benchmark and annual input-output tables. The Bureau of Labor Statistics uses the estimates as input to its Producer Price Indices and in developing productivity measurements. Other government agencies use the data for planning and development and to gauge the current trends of the economy.

Affected Public: Businesses or other for-profit organizations, Small businesses or organizations.
Frequency: Monthly.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 28, 1991.

Edward Michals,
Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-12977 Filed 5-31-91; 8:45 am]
BILLING CODE 3510-07-F

International Trade Administration

Short-Supply Review and Request for Comments

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice of short-supply review and request for comments; certain rail.

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 10,000 metric tons of certain rail for the balance of 1991 under paragraph 8 of the Arrangement Between the Government of Japan and the Government of the United States of America Concerning Trade in Certain Steel Products ("the U.S.-Japan Arrangement").

SHORT-SUPPLY REVIEW NUMBER: 51

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and section 357.104(b) of the Department of Commerce's Short-Supply Procedures, (19 CFR 357.104(b) ("Commerce's Short-Supply Procedures"), the Secretary hereby announces that a short-supply request is under review with respect to 10,000 metric tons of certain "damage-resistant" steel rail. On May 20, 1991, the Secretary received an adequate petition from Burlington Northern Railroad ("BN") requesting a short-supply allowance for 10,000 metric tons of this product for the balance of 1991 under Paragraph 8 of the U.S.-Japan Arrangement. BN is requesting short supply for this material because the potential foreign supplier has no regular export licenses available to ship this product, and potential domestic producers are unable to meet the required specifications.

The requested rail meets the following specifications:

Section of rail: AREA136BN
Type of rail: High Strength Damage Resistant Rail
Standard length: 80 feet and 39 feet
Manufacturing: The steel shall be cast by a continuous casting process and, the bloom shall be free from injurious segregation and pipe
Chemical composition:
Cargon: 0.72-0.82 Percent;
Manganese: 0.80-1.05 Percent;
Phosphorus: 0.030 Percent;
Sulphur: 0.020 Percent;
Silicon: 0.10-0.35 Percent;
Mechanical properties:
0.2 Percent Proof Stress: Min 80 KGF/MM2
Tensile Strength: Min 120 KGF/MM2
Elongation: Min 10 Percent
Surface hardness:
(Brinell hardness) 350-388 at rail head corner/shoulder and head side portions
(Brinell hardness) 300-340 at rail head center portion
Workmanship: Rails shall be straightened cold in a press or roller machine to remove twist, waves and kinks until they meet the surface and line requirements specified below. Cold straightening shall be effected by means of gradual pressure without impact. Rail straightened by roller machine shall be straightened only once in each straightening plane.
Surface upsweep: Maximum 0.10 inch per foot with maximum of 0.08 inch or rail in excess of 80 feet. Maximum 0.10 inch in 5 feet from the rail ends provided it shall not occur at a point closer than 30 inches from the rail ends.
Surface downsweep: Rail with surface downsweep and droop shall be accepted.
Uniform sidesweep: Maximum 0.10 inch per foot with a maximum of 0.80 inch for rail in excess of 80 feet. Maximum 0.25 inch in 5 feet at the rail ends provided it shall not occur at a point closer than 30 inches from the rail ends.
Vertical deviation: Sharp deviations from uniform vertical line of the rail in either direction will not be aceptable deviations in the vertical line of the rail and shall not exceed:
—Maximum ordinate of 0.020 inch as measured with a 3 foot straight edge.
—Maximum vertical peak measurement 0.040 inch as measured with a 3 foot straight edge.
Horizontal deviation: Sharp deviations from uniform horizontal line of the rail in either direction will not be acceptable. Deviations of the horizontal line in either direction of the rail shall not exceed an ordinate of 0.020 inch in the horizontal plane as measured with a 3 foot straight edge.
Periodic waviness: The entire shall not present a periodic waviness with an amplitude in the vertical greater than 0.020 inch and not greater than 0.020 inch in the horizontal plane as measure with a 3 foot straight edge.
Twist: Rail that exhibits twist that exceeds 0.001 inch in one foot will be rejected (i.e. 0.039 inch over 39 feet, 0.080 inch over 80 feet).

Section 4(b)(4)(B) of the Act and § 357.106(b)(2) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply petition not later than the 30th day after the petition is filed, unless the Secretary finds that one of the following conditions exist: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) The requested steel product is not produced in the United States. The Secretary finds that none of these conditions exist with respect to the requested product; therefore, the Secretary will determine whether this product is in short supply not later than June 19, 1991.

Comments

Interested parties wishing to comment upon this review must send written comments not later than June 10, 1991, to the Secretary of Commerce, Attention: Import Administration, Room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. Interested parties may file replies to any comments submitted. All replies must be filed not later than 5 days after June 10, 1991. All

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documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above noted short-supply review number.

FOR FURTHER INFORMATION CONTACT: Derek S. Lewis or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230, (202) 377-3208 or 377-0159.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-12999 Filed 5-31-91; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review: Certain Stainless Steel Wire Rod

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of short-supply review and request for comments on certain Type 409 CB welding quality stainless steel wire rod.

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 250 metric tons of certain Type 409 CB stainless steel wire rod for June-December 1991 under the U.S.-EC and U.S.-Japan steel arrangements.

SHORT-SUPPLY REVIEW NUMBER: 52.

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and § 357.104(b) of the Department of Commerce's Short-Supply Procedures, 19 CFR 357.104(b) ("Commerce's Short-Supply Procedures"), the Secretary hereby announces that a short-supply request is under review with respect to certain Type 409 CB welding quality stainless steel wire rod. On May 22, 1991, the Secretary received an adequate petition from ECD, Inc. ("ECD"), for 250 metric tons of this product for June-December 1991, under article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community and the Government of the United States of America Concerning Trade in Certain Steel Products and paragraph 8 of the Arrangement Between the Government of Japan and the Government of the United States of America Concerning Trade in Certain Steel Products. ECD is requesting short supply because it alleges that the only potential domestic producer has been unwilling to supply this product to ECD and because its potential foreign suppliers have insufficent quota available.

The requested stainless wire rod meets the following specifications:

1. Scope

This specification covers general requirements for AISI 409 CB stainless steel wire rod to be drawn to wire suitable for cold heading.

2. Diameters and Quantity Sought per Size

0.7870 inch—125 metric tons
0.8125 inch—125 metric tons

3. Method of Manufacture

The stainless steel shall be made by electric furnace, or equivalent steel making process.

4. Chemical Composition

a. Heat cast of ladle:	
Carbon	0.05 max.
Manganese	1.00 max.
Silicon	1.00 max.
Phosphorous	0.04 max.
Sulphur	0.025 max.
Chromium	10.50-11.75 max.
Nickel	0.50 max.
Molybdenum	0.50 max.
Nitrogen	0.03 max.
Copper	0.50 max.
Columbium	0.50 min.-0.80 max.
b. Permissible Variation in Product Analysis:	
Carbon	0.01 percent.
Manganese	0.03 percent.
Silicon	0.05 percent.
Phosphorous	0.01 percent.
Sulphur	0.01 percent.
Chromium	0.10 percent.
Nickel	0.05 percent.
Molybdenum	0.01 percent.
Copper	0.01 percent.

5. Physical Properties

a. Tensile of any coil in the shipment not to exceed 75,000 PSI max. (aim 70,000 PSI max.).

b. Minimum reduction of area measured during tensile test 60 percent, and elongation minimum 20 percent on 10 foot gauge length.

c. The steel be fine grained from 5-8, according to ASTM classification.

d. Wire rods having defects like pipes, slivers, bursts, surface pits, nicks, tangles and sharp kinks and excessive porosity will be rejected.

e. No cracks will be tolerated. Maximum seam depth allowed 0.003 inch.

6. Tolerances

The dimension and out of roundness of the stainless steel wire rods shall not vary from that specified below:

Permissible variation in diameter = +/- .008 inch

Permissible out of round = +/- .010 inch

7. Packing

Coils should be bundled weighing 4,000-5,000 pounds. Minimum weight of coil = 500 pounds. Maximum weight of coil = 4,000 pounds. Each coil and bundle shall be strapped, banded or wired in four (4) places approximately 90 degrees apart.

8. Microstructure.

1. Micro structure should reveal fine equaxed ferrite grains. No presence of continuous grain boundry or carbide precipitation will be accepted. Carbides should be uniformly dispersed in ferrite matrix.

2. The material should be fully annealed. No presence of Martensite is acceptable.

Section 4(b)(4)B)(ii) of the Act and § 357.106(b)(2) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply petition not later than the 30th day after the petition is filed, unless the Secretary finds that one of the following conditions exist: (1) the raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds that none of these conditions exist with respect to the requested product, and therefore, the Secretary will determine whether this product is in short supply not later than June 21, 1991.

COMMENTS: Interested parties wishing to comment upon this review must send written comments not later than June 10, 1991, to the Secretary of Commerce, Attention: Import Administration, Room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above-noted short-supply review number.

FOR FURTHER INFORMATION CONTACT: Marissa Rauch or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230, (202) 377-1382 or (202) 377-0159.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-12998 Filed 5-31-91; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Determination; Excess Defense Articles (Individual Equipment Items, First Aid Kits and Vehicles)

Pursuant to the reporting requirements of section 517 of the Foreign Assistance Act of 1961 (FAA) this document provides notification that during Fiscal Year 1991 the United States Government will transfer to the Government of Paraguay a variety of individual equipment items, first aid kits and vehicles.

These items are required to enable the military forces in Paraguay to participate in a comprehensive national anti-narcotics enforcement program, by conducting activities within Paraguay to prevent the production, processing, trafficking, transportation, and consumption of illicit drugs or other controlled substances. They will be provided at no cost with the exception of transportation charges.

In accordance with section 527(c) FAA the recipient country will agree in the associated Letter of Offer and Acceptance that it will ensure that these items will be used primarily in support of anti-narcotics activities.

The Director, Defense Security Assistance Agency, Lt Gen Teddy G. Allen, certifies that the items are needed by Paraguay and will determine that there will be no adverse impact on U.S. military readiness as a result of these transfers.

Dated: May 28, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-13011 Dated 5-31-91; 8:45 am]

BILLING CODE 3810-01-M

Defense Environmental Response Task Force; Meeting

AGENCY: Office of the Assistant Secretary of Defense (Production and Logistics).

ACTION: Notice of business meeting and hearing.

SUMMARY: Pursuant to Public Law 92-463, notice is hereby given of a business meeting and hearing of the Defense Environmental Response Task Force. The purpose of the meeting is to consider issues related to the improvement of interagency coordination of environmental response actions at military installations scheduled for closure pursuant to Public Law 100-526. The Task Force will also consider consolidation and streamlining of current practices with respect to such actions and consider recommendations regarding changes to existing laws, regulations, and administration policies. Testimony will be taken from invited witnesses. The business meeting and hearing will be open to the public.

DATES: June 19, 1991.

ADDRESSES: 1616 P Street, NW., Washington, DC, 20036, Thomas B. Kimball Conference Center.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Doxey, Task Force Executive Director, Office of the Deputy Assistant Secretary of Defense (Environment), the Pentagon, Washington, DC 20301-8000; telephone (703) 695-8361.

Dated: May 28, 1991.

L.M. Bynum,

Alternate OSD Federal Register Officer, Department of Defense.

[FR Doc. 91-13012 Filed 5-31-91; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary of Defense

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, June 4, 1991; Tuesday, June 11, 1991; Tuesday, June 18, 1991; and Tuesday, June 25, 1991 at 10 a.m. in room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered from officials of private establishments with a

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guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, room 3D264, The Pentagon, Washington, DC 20301.

Dated: May 20, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-13010 Filed 5-31-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 3, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collecitons, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: May 28, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Elementary and Secondary Education

Type of Review: Revision.
Title: Application for Assistance—School Assistance in Federally Affected Areas.
Frequency: Annually.
Affected Public: Individuals or households; State or local governments.
Reporting Burden: Responses: 2,033,350. *Burden Hours:* 1,054,359.
Recordkeeping Burden:
Recordkeepers: 0. *Burden Hours:* 0.
Abstract: This form will be used by State Educational agencies to apply for funding under the Impact Aid Program. The Deparatment uses the information to make grant awards.

[FR Doc. 91-12962 Filed 5-31-91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meeting

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notice is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on Tuesday, June 11, 1991, at the offices of the Organization for Economic Cooperation and Development (OECD), 2, rue Andre Pascal, Paris, France, beginning at 9:30 a.m. The purpose of this meeting is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ), which is scheduled to be held at the aforesaid location on that date.

The agenda for the meeting is under the control of the SEQ. It is expected that the following draft agenda will be followed:

1. Adoption of the Agenda.
2. Summary Record of 71st SEQ Meeting.
3. Conclusions of the Ministerial Meeting of the IEA Governing Board of June 3, 1991.
4. The Gulf Crisis of 1990/91, the IEA Response and Lessons for IEA Emergency Preparedness.
5. IAB Activities.
6. Future Work of the SEQ.
7. Emergency Response Reviews of IEA Countries.
—Emergency Response Reviews of Canada, Italy and Japan
—Review of Spain
—Schedule for the Review of Member Countries' Emergency Response Programs
8. Emergency Reserve and Net Import Situation of IEA Countries on 1st January 1991.
9. Emergency Data System and Related Questions.
—Quarterly Oil Forecast 2Q91/1Q92
—Monthly Oil Statistics (MOS) to February 1991
—MOS to March 1991
—Base Period Final Consumption 1Q90/4Q90
—Questionnaire A/Questionnaire B Data Quality
—Proposals for the Simplification and Improvement of Questionnaire C
10. Any Other Business.
—Standing Group on the Oil Market Meeting of 17th May; Current Oil Market Situation
—Change of Central Computer System

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, the meeting is open only to representatives of the Departments of Energy, Justice, State, the Federal Trade Commission, and the General Accounting Office, representatives of Committees of the Congress, representatives of the IEA, representatives of members of the SEQ, representatives of the Commission of the European Communities, and invitees of the IAB, or the IEA.

Issued in Washington, DC, May 29, 1991.

Stephen A. Wakefield,

General Counsel.

[FR Doc. 91-13035 Filed 5-31-91; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of request submitted for expedited review by the Office of Management and Budget of Proposed Forms EIA-822A-D.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96-511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Under the provisions of 5 CFR 1320.15(b)(1), the Agency has requested that the Office of Management and Budget take action by June 28, 1991.

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION: Jay Casselberry, Office of Statistical Standards, (EI-73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586-2171.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Energy Information Administration.
2. EIA-822A-D.
3. N.A.
4. Oxygenate Operations Identification Surveys.
5. New—The Energy Information Administration requests expedited OMB processing by June 28, 1991 to conduct a one-time survey to collect data on oxygenates which can be used to produce certified motor gasoline that meets the requirements of the Clean Air Act of 1990. As a result of the Clean Air Act of 1990, substantial amounts of oxygenated motor gasoline will be produced that will not be measured by EIA's current data collection program. The failure to include these volumes in the EIA published statistics will render difficult any substantive analyses or conclusions on the state of the domestic energy situation. These proposed collections are designed to determine the universe of oxygenate producers, refinery and terminal oxygenate blending and storage operators, and oxygenate importers so that EIA can incorporate these companies into the existing data program and capture the missing motor gasoline.
6. One-Time.
7. Mandatory.
8. Businesses or other for-profit.
9. 1,500 respondents.
10. 1 response.
11. 1.50 hours per response.
12. 2,250 hours.
13. EIA-822A-D will be used to determine the universe of oxygenate producers, blenders, storers, and importers and to collect data on oxygenates which can be used to produce finished motor gasoline that meets the Clean Air Act of 1990 requirements.

Also, in accordance with the provisions of 5 CFR 1320.15(b), a copy of the proposed forms follows in its entirety.

Authority: Sec. 5(a), 5(b), 13(b), and 52, Public Law 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, May 28, 1991.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

BILLING CODE 6450-01-M

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ONE -TIME FRAME IDENTIFIER SURVEY

EIA-822A
(6/91)

Energy Information Administration
U.S. DEPARTMENT OF ENERGY
Petroleum Supply Reporting System

Form Approved
OMB No.
Expiration Date:

OXYGENATE PRODUCERS SURVEY
FORM EIA-822A

This report is mandatory under Public Law 93-275. Failure to comply may result in criminal fines, civil penalties and other sanctions as provided by law. For the provisions concerning the confidentiality of information submitted on this form, see Section VI of the instructions. Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time of reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Energy Information Administration, Office of Statistical Standards EI-73, Mail Station: 2F-081 Forrestal, 1000 Independence Ave. SW, Washington, DC 20585; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Survey forms can be submitted by either mail or facsimile following the steps in Section IV of the survey instructions.

RESPONDENT IDENTIFICATION

[ ]

[LABEL]

[ ]

Please make any necessary name and address corrections in the space provided.

1. Does this facility produce oxygenates ? Yes ___ No ___

Product	Code	Production Capacity as of January 1 (Thousand Gallons)				Thousand Gallons		
		1991 Calendar Day		1991 Stream Day	1992 Projected Calendar Day	1990 Actual Production	Working Storage Capacity*	Stocks*
		Operating	Idle					
Ethanol (Dehydrated)	141							
Ethyl tertiary butyl ether (ETBE)	142							
Methanol	143							
Methyl tertiary butyl ether (MTBE)	144							
Tertiary amyl methyl ether (TAME)	145							
Tertiary butyl alcohol (TBA)	146							
Other Products	444							
TOTAL	999							

* Report all storage capacity and stocks as of December 31, 1990. Include in your figures the storage capacity and stocks at petroleum refineries operated by your company that are either adjacent to or part of the oxygenate producing facility.

(CONTINUED)

2. If 1991 production capacity is idle, please explain (e.g., scheduled maintenance).

3. Was your 1990 production of oxygenates constrained to less than full utilization? Yes ___ No ___ If yes, please list type of constraint (e.g., feedstock availability, maintenance, etc.).

4. What was the end use of the oxygenates produced at this facility during 1990? (The figures in the Total Column should match total 1990 production for each product.)

Product	Code	Thousand Gallons				
		Gasoline Blending	Shipped to Ether Plants	Non-Fuel Uses	Other Uses*	Total
Ethanol (Dehydrated)	141					
Ethyl tertiary butyl ether (ETBE)	142					
Methanol	143					
Methyl tertiary butyl ether (MTBE)	144					
Tertiary amyl methyl ether (TAME)	145					
Tertiary butyl alcohol (TBA)	146					
Other Products	444					

* Direct consumption (e.g., methanol, M85, etc.)

(CONTINUED)

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5. Provide the name, address and phone number of facilities including facilities owned or operated by your company (i.e., refineries and motor gasoline blending plants) that received **one thousand gallons or more** of oxygenates from your facility during 1990. This information will be used for frame identification purposes only.

Receiving Facility Name	Facility Address	Telephone No.
(1)		( )
(2)		( )
(3)		( )
(4)		( )
(5)		( )
(6)		( )
(7)		( )
(8)		( )
(9)		( )
(10)		( )
(11)		( )

Name of person to contact regarding this report (please print)

Telephone Number (AC) ( ) Ext.

CERTIFICATION: I certify that the information provided herein and appended hereto is true and accurate to the best of my knowledge.

Name (please print) _____ Title _____

Signature _____ Date _____

Title 18, U.S.C. 1001 makes it a crime for any person knowingly and willingly to make to any Agency or Department of the United States any false, fictitious or fraudulent statements as to any matter within its jurisdiction.

ONE -TIME FRAME IDENTIFIER SURVEY

EIA-822B
(6/91)

Energy Information Administration
U.S. DEPARTMENT OF ENERGY
Petroleum Supply Reporting System

Form Approved
OMB No.
Expiration Date:

REFINERY OXYGENATE BLENDING AND STORAGE SURVEY FORM EIA-822B

This report is mandatory under Public Law 93-275. Failure to comply may result in criminal fines, civil penalties and other sanctions as provided by law. For the provisions concerning the confidentiality of information submitted on this form, see Section VI of the instructions. Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time of reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Energy Information Administration, Office of Statistical Standards EI-73, Mail Station: 2F-081 Forrestal, 1000 Independence Ave. SW, Washington, DC 20585; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Survey forms can be submitted by either mail or facsimile following the steps in Section IV of the survey instructions.

RESPONDENT IDENTIFICATION

[ ]

[LABEL]

[ ]

Please make any necessary name and address corrections in the space provided.

1. Does this facility produce finished motor gasoline that contains either alcohol or ethers? Yes ___ No ___

2. What volume of oxygenates was blended with motor gasoline (gasoline blending) at this facility or delivered for direct consumption (other uses) as a motor fuel (e.g., methanol) in 1990?

Product	Code	Thousand Gallons	
		Gasoline Blending	Other Uses*
Ethanol (Dehydrated)	141		
Ethyl tertiary butyl ether (ETBE)	142		
Methanol	143		
Methyl tertiary butyl ether (MTBE)	144		
Tertiary amyl methyl ether (TAME)	145		
Tertiary butyl alcohol (TBA)	146		
Other Products	444		

* Direct consumption (e.g., methanol, M85, etc.)

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3. Report the stocks and storage capacity of oxygenates located at this facility as of December 31, 1990. (Do not complete this section if this refinery produces oxygenates or is located adjacent to a facility operated by this company that produces oxygenates. This data should be reported on Form EIA-822A.)

Product	Code	Thousand Gallons	
		Stocks	Working Storage Capacity
Ethanol (Dehydrated)	141		
Ethyl tertiary butyl ether (ETBE)	142		
Methanol	143		
Methyl tertiary butyl ether (MTBE)	144		
Tertiary amyl methyl ether (TAME)	145		
Tertiary butyl alcohol (TBA)	146		
Other Products	444		
TOTAL	999		

Name of person to contact regarding this report (please print)

Telephone Number (AC) ( ) Ext.

CERTIFICATION: I certify that the information provided herein and appended hereto is true and accurate to the best of my knowledge.

Name (please print) _____ Title _____

Signature _____ Date _____

Title 18, U.S.C. 1001 makes it a crime for any person knowingly and willingly to make to any Agency or Department of the United States any false, fictitious or fraudulent statements as to any matter within its jurisdiction.

ONE -TIME FRAME IDENTIFIER SURVEY

EIA-822C
(6/91)

Energy Information Administration
U.S. DEPARTMENT OF ENERGY
Petroleum Supply Reporting System

Form Approved
OMB No.
Expiration Date:

TERMINAL OXYGENATE BLENDING AND STORAGE SURVEY
FORM EIA-822C

This report is mandatory under Public Law 93-275. Failure to comply may result in criminal fines, civil penalties and other sanctions as provided by law. For the provisions concerning the confidentiality of information submitted on this form, see Section VI of the instructions. Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time of reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Energy Information Administration, Office of Statistical Standards EI-73, Mail Station: 2F-081 Forrestal, 1000 Independence Ave. SW, Washington, DC 20585; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Survey forms can be submitted by other mail or facsimile following the steps in Section IV of the survey instructions.

RESPONDENT IDENTIFICATION

[ ] _____

_____

_____

[LABEL] _____

[ ] Please make any necessary name and address corrections in the space provided.

1. Excluding refineries operated by your company, does your company or corporation blend oxygenates into motor gasoline or operate a storage facility that stores oxygenates? Yes ___ No ___

2. Excluding refineries operated by your company, does your company or corporation blend motor gasoline blending components and oxygenates into motor gasoline? Yes ___ No ___

3. Excluding refineries operated by your company, report the volume of oxygenates blended into motor gasoline during 1990.

Volume of Oxygenates Blended into Motor Gasoline (Thousand Gallons)

State	Ethanol 141	ETBE 142	Methanol 143	MTBE 144	TAME 145	TBA 146	Other Products 444
TOTAL							

(CONTINUED)

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4. Excluding refineries operated by your company, report the volume of oxygenates delivered for direct use as motor fuel.

Volume Delivered for Direct Use (Thousand Gallons)

State	Ethanol 141	Methanol 143	TBA 146	Other Products 444
TOTAL				

5. Excluding refineries, MTBE and petrochemical plants operated by your company, report stocks of oxygenates as of December 31, 1990.

Stock Level as of December 31, 1990 (Thousand Gallons)

State	Ethanol 141	ETBE 142	Methanol 143	MTBE 144	TAME 145	TBA 146	Other Products 444
TOTAL							

(CONTINUED)

6. Excluding refineries, MTBE and petrochemical plants operated by your company, report the working storage capacity by state as of December 31, 1990.

Working Storage Capacity as of December 31, 1990 (Thousand Gallons)

State	Ethanol 141	ETBE 142	Methanol 143	MTBE 144	TAME 145	TBA 146	Other Products 444
TOTAL							

Name of person to contact regarding this report (please print)

Telephone Number (AC) ( ) Ext.

CERTIFICATION: I certify that the information provided herein and appended hereto is true and accurate to the best of my knowledge.

Name (please print) _____ Title _____

Signature _____ Date _____

Title 18, U.S.C. 1001 makes it a crime for any person knowingly and willingly to make to any Agency or Department of the United States any false, fictitious or fraudulent statements as to any matter within its jurisdiction.

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ONE -TIME FRAME IDENTIFIER SURVEY

EIA-822D
(6/91)

Energy Information Administration
U.S. DEPARTMENT OF ENERGY
Petroleum Supply Reporting System

Form Approved
OMB No.
Expiration Date:

OXYGENATE IMPORTERS SURVEY
FORM EIA-822D

This report is mandatory under Public Law 93-275. Failure to comply may result in criminal fines, civil penalties and other sanctions as provided by law. For the provisions concerning the confidentiality of information submitted on this form, see Section VI of the instructions. Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time of reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Energy Information Administration, Office of Statistical Standards EI-73, Mail Station: 2F-081 Forrestal, 1000 Independence Ave. SW, Washington, DC 20585; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Survey forms can be submitted by either mail or facsimile following the steps in Section IV of the survey instructions.

RESPONDENT IDENTIFICATION

[ ]

[LABEL]

[ ]

Please make any necessary name and address corrections in the space provided.

1. Did you import oxygenates in 1990? Yes ___ No ___ If yes, enter the volume of imports below.

Type of Commodity	Port of Entry	Country of Origin	1990 Imports (Thousand Gallons)

2. What was the end use of the oxygenates imported during 1990? (The figures in the Total Column should match 1990 imports.)

Product	Code	Thousand Gallons: Gasoline Blending	Shipped to Ether Plants	Non-Fuel Uses	Other Uses*	Total
Ethanol (Dehydrated)	141					
Ethyl tertiary butyl ether (ETBE)	142					
Methanol	143					
Methyl tertiary butyl ether (MTBE)	144					
Tertiary amyl methyl ether (TAME)	145					
Tertiary butyl alcohol (TBA)	146					
Other Products	444					

* Direct consumption (e.g., methanol, M85, etc.)

(CONTINUED)

3. Report projected imports for 1991.

Product	Code	1991 Projected Imports (Thousand Gallons)
Ethanol (Dehydrated)	141	
Ethyl tertiary butyl ether (ETBE)	142	
Methanol	143	
Methyl tertiary butyl ether (MTBE)	144	
Tertiary amyl methyl ether (TAME)	145	
Tertiary butyl alcohol (TBA)	146	
Other	444	

4. Provide the name, address and phone number of facilities including facilities owned or operated by your company (i.e., refineries and motor gasoline blending plants) that received one thousand gallons or more of oxygenates from your company during 1990. This information will be used for frame identification purposes only.

Receiving Company Name	Company Address	Telephone No.
(1)		( )
(2)		( )
(3)		( )
(4)		( )
(5)		( )
(6)		( )
(7)		( )
(8)		( )
(9)		( )

Name of person to contact regarding this report (please print)

Telephone Number (AC) ( ) Ext.

CERTIFICATION: I certify that the information provided herein and appended hereto is true and accurate to the best of my knowledge.

Name (please print) _____ Title _____

Signature _____ Date _____

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EIA-822A-D
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ONE -TIME FRAME IDENTIFIER SURVEY

Form Approved
O.M.B. No.
Expiration Date:

Energy Information Administration
U.S. DEPARTMENT OF ENERGY
Petroleum Supply Reporting System

OXYGENATE OPERATIONS IDENTIFICATION SURVEY
FORMS EIA-822A-D
INSTRUCTIONS

For help in completing this form, please contact the Project Manager at 1-800-255-3159.

I. PURPOSE

The Energy Information Administration (EIA) Forms EIA-822A-D, "Oxygenate Operations Identification Survey" is designed to obtain information on oxygenate producers, blenders, storers, and importers. The information will aid in determining whether such operators are eligible respondents to EIA monthly data surveys.

II. WHO MUST SUBMIT

Every firm that receives Forms EIA-822A-D must fill out the pertinent forms and submit them to the Department of Energy (DOE).

- Form EIA-822A, "Oxygenate Producers Survey," should be completed by the operator for each facility that manufactures or distills oxygenates (including refineries that produce oxygenates as part of their operations) located in the 50 States, District of Columbia, Puerto Rico, the Virgin Islands, Guam and other U.S. possessions.
- Form EIA-822B, "Refinery Oxygenate Blending and Storage Survey," should be completed by the operators of all refineries located in the 50 States, District of Columbia, Puerto Rico, the Virgin Islands, Guam and other U.S. possessions.
- Form EIA-822C, "Terminal Oxygenate Blending and Storage Survey," should be completed by operators of bulk terminals, bulk stations, and blending plants that store, blend and/or market petroleum products or oxygenates located in the 50 States, District of Columbia, Puerto Rico, the Virgin Islands, Guam and other U.S. possessions.
- Form EIA-822D, "Oxygenate Importers Survey," should be completed by each importer of record who imports oxygenates (1) into the 50 States and the District of Columbia, (2) into Puerto Rico, the Virgin Islands, Guam and other U.S. possessions, and (3) from Puerto Rico, the Virgin Islands, Guam and other U.S. possessions into the 50 States and the District of Columbia. Imports into Foreign Trade Zones located in the 50 States and the District of Columbia are considered imports into the 50 States and the District of Columbia.

III. WHEN TO SUBMIT

Forms should be submitted no later than _____.

IV. WHERE TO SUBMIT

Survey forms can be submitted by either mail or facsimile.

Mail:

Energy Information Administration
Mail Station BG-094 Forrestal
U.S. Department of Energy
Washington, DC 20585

Facsimile:

Equipment:	**Murata**
Compatibility:	**1, 2, and 3**
Receiving Speed(s):	**30 secs. to 6 mins.**
Telephone Nos:	**(202) 586-6323**
	(202) 586-6410
Verification Nos:	**(202) 586-6214**
	(202) 586-3219

To ensure receipt of complete legible data, companies should call the verification numbers upon completion of transmission and obtain the name of the person who verified receipt of their data.

V. FORM COMPLETION PROCEDURES

Definitions of petroleum products and other terms are provided for your use in Section VIII. Please refer to these definitions before completing the survey form.

Report all quantities to the nearest whole number in thousand gallons, except where noted. Quantities ending in 499 or less are rounded down, and quantities ending in 500 or more are rounded up (e.g., 106,499 gallons are reported as 106 and 106,500 gallons are reported as 107).

Report data only for those lines which are applicable to your operation. If there are no data for a specific line, leave the entire line blank. If more space is required for your answer to a specific item, continue on an attached sheet.

For purposes of this survey, MTBE plants and petrochemical plants are considered to be separate from the refinery and should file Form EIA-822A, "Oxygenate Producers Survey" only.

For purposes of this survey, reported quantities (stocks, production, imports, quantities blended, and production capacities) of oxygenates should include only oxygenates. Do not include non-oxygenate components that may be mixed with the oxygenates. For example, if material other than methyl tertiary butyl ether (MTBE) is generated or produced from your MTBE production unit, report only the MTBE portion of the mixture.

Stocks

Report all stocks in the custody of the facility regardless of ownership. Reported stock quantities should represent actual measured inventories where an actual physical measurement is possible.

Refineries that produce oxygenates should report their stocks and storage capacity on Form EIA-822A, "Oxygenate Producers Survey" only and not complete Question 3 of Form EIA-822B, "Refinery Oxygenate Blending and Storage Survey."

Include stocks in underground storage associated with the facility.

Exclude leased tankage at other facilities.

Report all domestic and foreign stocks held at the facility and in transit thereto. Include foreign stocks only after entry through Customs. Exclude stocks of foreign origin held in bond.

For purposes of this report, "after entry through Customs" is said to occur on:

the "entry date" specified on the U.S. Customs Form CF 7501, "Entry Summary;" or

the "import date" specified on the U.S. Customs Form 214, "Application for Foreign Trade Zone Admission and/or Status Designation;" or

the "date of withdrawal" specified on the U.S. Customs Form CF 7505, "Warehouse Withdrawal for Consumption;" or

the "date of withdrawal" specified on the U.S. Customs Form CF 7506, "Warehouse Withdrawal Conditionally Free of Duty, and Permit;" or

the "date of exportation" specified on the U.S. Department of Commerce Form 7525-V, "Shipper's Export Declaration," for shipments from Puerto Rico to the 50 States and the District of Columbia.

Imports

For purposes of this report, an "import" is said to occur on:

the "entry date" specified on the U.S. Customs Form CF 7501, "Entry Summary;" or

the "import date" specified on the U.S. Customs Form 214, "Application for Foreign Trade Zone Admission and/or Status Designation;" or

the "date of withdrawal" specified on the U.S. Customs Form CF 7505, "Warehouse Withdrawal for Consumption;" or

the "date of withdrawal" specified on the U.S. Customs Form CF 7506, "Warehouse Withdrawal Conditionally Free of Duty, and Permit;" or

the "date of exportation" specified on the U.S. Department of Commerce Form 7525-V, "Shipper's Export Declaration," for shipments from Puerto Rico to the 50 States and the District of Columbia.

Include imports into the 50 States, District of Columbia, and imports from Puerto Rico, the Virgin Islands and other U.S. possessions. In addition, imports into Puerto Rico, the Virgin Islands and other U.S. possessions should be reported. For example, imports into Puerto Rico and the Virgin Islands should be reported using the producing country as the "Country of Origin" and a port in Puerto Rico or the Virgin Islands as the "Port of Entry." Products shipped from Puerto Rico or the Virgin Islands to the 50 States or the District of Columbia should also be reported, with Puerto Rico or the Virgin Islands as the "Country of Origin" and a port in the 50 States or the District of Columbia as the "Port of Entry."

For Each Import Line complete the following columns:

Type of Commodity: Enter the appropriate commodity as listed below for each import.

Ethanol
Ethyl tertiary butyl ether (ETBE)
Methanol
Methyl tertiary butyl ether (MTBE)
Tertiary amyl methyl ether (TAME)
Tertiary butyl alcohol (TBA)
Other Products

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Port of Entry: Enter the port at which the commodity was unloaded.

Country of Origin: Enter the country from which the commodity was produced or originated.

Quantity: Enter the quantity of the commodity imported in thousand gallons. Quantities are to be corrected to 60°F less basic sediment & water.

Contact Information and Certification Blocks

Enter the name and telephone number of the person to be contacted if clarification of reported data is necessary.

Enter the name and title of the individual your company has designated to certify the accuracy of the data.

Sign the "certification" block and enter the current date.

VI. PROVISIONS REGARDING CONFIDENTIALITY OF INFORMATION

The information contained in this form will be kept confidential and not disclosed to the public to the extent that it satisfies the criteria for exemption under the Freedom of Information Act (FOIA), 5 U.S.C. §552, the DOE regulations, 10 C.F.R. §1004. 11, implementing the FOIA, and the Trade Secrets Act, 18 U.S.C. §1905.

Upon receipt of a request for this information under the FOIA, the DOE shall make a final determination whether the information is exempt from disclosure in accordance with the procedures and criteria provided in the regulations. To assist us in this determination, respondents should demonstrate to the DOE that, for example, their information contains trade secrets or commercial or financial information whose release would be likely to cause substantial harm to their company's competitive position. A letter accompanying the submission that explains (on an element-by-element basis) the reasons why the information would be likely to cause the respondent substantial competitive harm if released to the public would aid in this determination.

Except as otherwise provided by law, the information may be made available in response to an order of a Court of competent jurisdiction, or, upon request, to other components of DOE, to any Committee of Congress, the General Accounting Office, or other Congressional agencies authorized by law to receive such information.

Detailed provisions of the restrictions on the disclosure of this information can be found in the Policy on the Disclosure of Individually Identifiable Energy Information in the Possession of the EIA (45 Federal Register 59812 (1980)).

VII. SANCTIONS

The timely submission of Forms EIA-822A-D by a firm required to report is mandatory under Section 13(b) of the Federal Energy Administration (FEA) Act of 1974, Public Law 93-275. Failure to respond may result in criminal fines, civil penalties, and other sanctions as provided by law.

VIII. DEFINITIONS OF PETROLEUM PRODUCTS AND OTHER TERMS

Alcohol. The family name of a group of organic chemical compounds composed of carbon, hydrogen, and oxygen. The series of molecules vary in chain length and are composed of a hydrocarbon plus a hydroxyl group; CH-(CH)n-OH (e.g., methanol, ethanol, and tertiary-butyl alcohol (TBA)).

Blending Plant. A facility which has no refining capability but is capable of producing finished motor gasoline through mechanical blending.

Bulk Station. A facility used primarily for the storage and/or marketing of petroleum products which has a total bulk storage capacity of less than 50,000 barrels and receives its petroleum products by tank car or truck.

Bulk Terminal. A facility used primarily for the storage and/or marketing of petroleum products which has a total bulk storage capacity of 50,000 barrels or more and/or receives petroleum products by tanker, barge, or pipeline.

Ending Stocks. Stocks of oxygenates held in storage as of 12 midnight on December 31, 1990.

ETBE (Ethyl tertiary butyl ether) $(CH_3)_3COCH_3$. An oxygenate blend stock with a high-octane number 110 (R+M)/2 formed by the catalytic etherification of isobutylene with ethanol.

Ethanol (C_2H_5OH). A colorless, volatile, flammable liquid.

Ether. A generic term applied to a group of organic chemical compounds composed of carbon, hydrogen, and oxygen, characterized by an oxygen atom attached to two carbon atoms (e.g., methyl tertiary butyl ether).

Idle Capacity. Capacity that is not in operation and not under active repair, but capable of being placed in operation within 30 days; and capacity not in operation but under active repair that can be completed within 90 days.

Methanol (CH_3OH). A light, volatile, flammable, poisonous, liquid alcohol.

Motor Gasoline (Finished). A complex mixture of relatively volatile hydrocarbons, with or without small quantities of additives, that has been blended to form a fuel suitable for use in spark-ignition engines. Motor gasoline, as given in ASTM Specification D439 or Federal Specification VV-G-1690B, includes a range in distillation temperatures from 122 to 158° F at the 10-percent recovery point and from 365 to 374° F at the 90-percent recovery point. Motor gasoline includes finished leaded gasoline, finished unleaded gasoline, and gasohol. Blendstock is excluded until blending has been completed. Alcohol that is to be used in the blending of gasohol is also excluded.

Finished Leaded Gasoline. Contains more than 0.05 gram of lead per gallon or more than 0.005 gram of phosphorus per gallon. Premium and regular grades are included, depending on the octane rating. Includes leaded gasohol. Blendstock is excluded until blending has been completed. Alcohol that is to be used in the blending of gasohol is also excluded.

Finished Unleaded Gasoline. Contains not more than 0.05 gram of lead per gallon and not more than 0.005 gram of phosphorus per gallon. Premium and regular grades are included, depending on the octane rating. Includes unleaded gasohol. Blendstock is excluded until blending has been completed. Alcohol that is to be used in the blending of gasohol is also excluded.

Gasohol. A blend of finished motor gasoline (leaded or unleaded) and alcohol (generally ethanol but sometimes methanol), limited to 10 percent by volume of alcohol.

Motor Gasoline Blending Components. Naphthas which will be used for blending or compounding into finished motor gasoline (e.g. straight-run gasoline, alkylate, reformate, benzene, toluene, and xylene). Excludes oxygenates (alcohols, ethers), butane, and pentanes plus.

MTBE (Methyl tertiary butyl ether) $(CH_3)_3COCH_3$. An oxygenate blend stock with a high-octane number 110 (R+M)/2 formed by the catalytic etherification of isobutylene with methanol.

Other Products. Other alcohols and ethers not listed on the survey forms (e.g., isopropyl ether (IPE)).

Operating Capacity. Capacity that is in operation as of January 1.

Oxygenates. Alcohols and ethers (e.g., ethanol, ethyl tertiary butyl ether, methanol, methyl tertiary butyl ether, tertiary amyl methyl ether, and tertiary butyl alcohol).

Production Capacity. The amount of product that produced from processing facilities. Production capac., measured in calendar day and stream day.

Calendar Day. The maximum amount of product that can be produced during a 24-hour period after making allowances for the following limitations:

- the capability of downstream facilities to absorb the output of the processing facilities. No reduction is made when a planned distribution of intermediate streams through other than downstream facilities is part of a company's normal operation;
- the types and grades of inputs to be processed;
- the types and grades of products expected to be manufactured;
- the environmental constraints associated with operations;
- the reduction of capacity for scheduled downtime such as routine inspection, mechanical problems, maintenance, repairs, and turnaround; and
- the reduction of capacity for unscheduled downtime such as mechanical problems, repairs, and slowdowns.

Stream Day. The amount a unit can process running at full capacity under optimal feedstock and product slate conditions.

Refinery. An installation that manufactures finished petroleum products from crude oil, unfinished oils, natural gas liquids, other hydrocarbons, and alcohol.

TAME (Tertiary amyl methyl ether) $(CH_3)(C_2H_5)COCH_3$. An oxygenate blend stock with a high-octane number 104.5 (R+M)/2 formed by the catalytic etherification of isoamylene with methanol.

TBA (Tertiary butyl alcohol) $(CH_3)_3COH$. An alcohol primarily used as a chemical feedstock, a solvent or feedstock for isobutylene production for MTBE; produced as a co-product of propylene oxide production or by direct hydration of isobutylene.

Working Storage Capacity. The difference in volume between the maximum safe fill capacity and the quantity below which pump suction is ineffective (tank bottoms).

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Federal Energy Regulatory Commission

[Docket Nos. ER91-446-000, et al.]

LTV Steel Mining Co., et al.; A Limited Partnership, Electric Rate, Small Power Production, and Interlocking Directorate Filings

May 23, 1991.

Take notice that the following filings have been made with the Commission:

1. LTV Steel Mining Co. A Limited Partnership

[Docket No. ER91-446-000]

Take notice that on May 20, 1991, LTV Steel Mining Company, a limited filing pursuant to 18 CFR 35.12(b) initial rates for the sale of excess energy and power to Minnesota Power & Light Company.

Comment date: June 7, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Baltimore Gas and Electric Co.

[Docket No. ER91-216-000]

Take notice that on May 15, 1991, Baltimore Gas and Electric Company (BG&E) tendered for filing, a supplemental letter agreement to a letter agreement between BG&E and Public Service Electric Gas Company (PS) reflecting BG&E's sale to PS of one hundred percent of BG&E'S entitlement for the use of the Pennsylvania-New Jersey-Maryland Interconnection's (PJM) transmission system which is used to import energy from systems to the west of PJM. The supplemental letter agreement revises the letter agreement providing that PS will receive a refund of any charges made pursuant to the letter agreement in excess of 5.5 miles per kwh, if over the term of the letter agreement, purchases by PS are below a forty percent load factor. PS has concurred in this rate schedule by its execution of the letter agreement. BG&E requests that the Commission waive its customary notice period and allow the rate schedule to become effective December 31, 1990.

Comment date: June 7, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Co. of New Mexico

[Docket No. ER91-446-000]

Take notice that on May 20, 1991, Public Service Company of New Mexico (PNM) submitted for filing an Economy Energy Agreement between PNM and the City of Banning, California. Under the Agreement PNM and Banning will make economy energy available to one another at rates reflecting current market conditions.

Copies of the filing have been served upon Banning and the New Mexico Public Service Commission.

Comment date: June 7, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Arkansas Power & Light Co.

[Docket No. ER91-331-000]

Take notice that on May 20, 1991, Arkansas Power & Light Company tendered for filing its response to staff's request for additional information in the above-referenced docket.

Comment date: June 7, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Central Vermont Public Service Corp.

[Docket No. ER91-450-000]

Take notice that Central Vermont Public Service Corporation ("CVPS") on May 20, 1991, tendered for filing as an initial rate schedule a contract under which CVPS has agreed to sell a portion of Central Vermont's entitlement in the capacity and net electrical output of the Millstone 3 Unit to Hydro-Electric Company.

CVPS requests the Commission to waive its notice of filing requirements to permit the rate schedule to become effective as of May 1, 1991.

Comment date: June 7, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. Canal Electric Co.

[Docket No. ER91-343-000]

Take notice that on May 20, 1991, Canal Electric Company ("Canal") filed additional information in support of its March 28, 1991 filing of a Power Sale Agreement between itself and Central Vermont Public Service Corporation ("CVPS") with respect to the sale of an entitlement in Canal Unit No. 2 to CVPS over the period March 1, 1991 through October 31, 1995. The additional information consists of an existing contract for the sale of power from Canal Unit No. 2 to other purchasers (Canal's Rate Schedule FERC No. 17), which is referenced in the Power Sale Agreement.

Comment date: June 7, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Co. of New Mexico

[Docket No. ER91-445-000]

Take notice that on May 20, 1991, Public Service Company of New Mexico (PNM) submitted for filing an Economy Energy Agreement between PNM and the City of Colton, California (Colton). Under the Agreement PNM and Colton will make economy energy available to one another at rates reflecting current market conditions.

Copies of the filing have been served upon Colton and the New Mexico Public Service Commission.

Comment date: June 7, 1991, in accordance with Standard Paragraph E at the end of this notice.

8. Public Service Co. of New Mexico

[Docket No. ER91-447-000]

Take notice that on May 20, 1991, Public Service Company of New Mexico (PNM) submitted for filing an Economy Energy Agreement between PNM and Azusa will make economy energy available to one another at rates reflecting current market conditions.

Copies of the filing have been served upon Azusa and the New Mexico Public Service Commission.

Comment date: June 7, 1991, in accordance with Standard Paragraph E at the end of this notice.

9. Idaho Power Co.

[Docket No. ER91-449-000]

Take notice that on May 20, 1991, Idaho Power Company (IPC) tendered for filing the Power Sales Agreement between Idaho Power and the Cities of Azusa, Banning and Colton, California. The Agreement was executed December 28, 1990 and expires September 30, 2009. The Agreement provides for the sale of 7 MW of power with associated energy to be divided among the three Cities.

IPC has requested waiver of the notice provisions of § 35.3 of the Commission's regulations in order to permit the Agreement to become effective on July 1, 1991. Copies of this filing were served upon the IPUC, the California PUC and the purchasers under the Agreement.

Comment date: June 7, 1991, in accordance with Standard Paragraph E at the end of this notice.

10-11. Wheelabrator North Broward Inc.

[Docket No. ER91-442-000]

Take notice that on May 17, 1991, Wheelabrator North Broward Inc. submitted for filing, pursuant to rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, initial rate schedules for sales to Florida Power & Light Company.

Comment date: June 7, 1991, in accordance with Standard Paragraph end of this notice.

12. Gulf States Utilities Co.

[Docket No. ER91-441-000]

Take notice that Gulf States Utilities Company ("Gulf States") on May 17, 1991, tendered for filing: (1) Amendment No. 4 to Power Supply Agreement ("PSA") between Gulf States and Sam Rayburn Dam Electric Cooperative, Inc. ("SRDE"), Sam Rayburn G&T, Inc. ("SRG&T") and Sam Rayburn Municipal Power Agency ("SRMA"), Rate Schedule FERC No. 130; (2) Amendment No. 5 to PSA; (3) Amendment No. 6 to PSA; (4) Rate Schedule WPS applicable to SRDE and SMRA; (5) Amendment No. 7 to PSA; (6) Amendment No. 4 to Power Interconnection Agreement ("PIA") between Gulf States and SRDE, SRG&T, and SRMA, Rate Schedule FERC No. 131; (7) Amendment No. 5 to PIA, including Riders A to Service Schedules ES and RE applicable to SRDE and SRMA; (8) Rate of Supplemental Service under Service Schedule ES (Sam Rayburn Municipal Power Agency); (9) Rate for Supplemental Service under Service under Service Schedule RE (Sam Rayburn Municipal Power Agency); (10) Rate for Supplemental Service under Service Schedule SRGES (Sam Rayburn G&T Electric Cooperative, Inc.); (11) Rate for Supplemental Service under Service Schedule SRGRE (Sam Rayburn G&T Electric Cooperative, Inc.); (12) Billing Agreement between Gulf States and SRDE, SRMA, and SRG&T; (13) Standstill Agreement between Gulf States and SRMA and SRDE; and (14) Mutual Release and Covenant Not to Sue between Gulf States and SRMA.

Gulf States that, as a result of SRG&T's termination of its participation in the PIA and PSA and other changes in the parties' relationships, Gulf States, SRMA, and SRDE have agreed to several modifications of the PIA and PSA and service and rate schedules. In addition, Gulf States, SRMA, SRG&T, and SRDE have entered a Billing Agreement concerning SRDE's acting as SRMA and SRG&T's agent for purposes of receiving billings from Gulf States. These and other related arrangements among the parties are the subject of the filing.

Gulf States requests an effective date of August 1, 1991, for Amendment No. 6 to the PSA, Rate Schedule WPS, Amendment No. 4 to the PIA, the Billing Agreement, and the Mutual Release and Covenant Not to Sue.

Gulf States requests an effective date of June 1, 1990, for Amendment No. 7 to the PSA, Amendment No. 5 to the PIA including Riders A to Service Schedules ES and RE, the "Rate for Supplemental Service Under Service Schedule ES (Sam Rayburn Municipal Power Agency)," and the "Rate for Supplement Service Under Service Schedule RE (Sam Rayburn Municipal Power Agency)." Gulf States request an effective date of December 1, 1989, for Amendments Nos. 4 and 5 to the PSA.

Pursuant to 18 CFR 35.11, Gulf States requests a waiver of the notice provisions of the Federal Power Act and the Commission's regulations to allow these effective dates.

Gulf States states that the effective date of the "Rate for Supplemental Service Under Service Schedule SRGES (Sam Rayburn G&T Electric Cooperative, Inc.)" and the "Rate for Supplemental Service Under Service Schedule SRGRE (Sam Rayburn G&T Electric Cooperative, Inc.)" is August 19, 1989, in accordance with the Commission's Letter Order in Docket No. ER89-551-000, and that, by its terms, the effective date of the Standstill Agreement is August 19, 1989.

Copies of the filing were served on Sam Rayburn G&T Electric Cooperative, Inc., Sam Rayburn Municipal Power Agency, and the Public Utility Commission of Texas.

Comment date: June 7, 1991, in accordance with Standard Paragraph E at the end of this notice.

13. Southern California Edison Co.

[Docket No. ER91-444-000]

Take notice that on May 20, 1991, Southern California Edison Company (Edison) tendered for filing, as an initial rate schedule, the following agreement, executed on May 14, 1991 by the respective parties: Edison-IID 1991 Summer Power Sale Agreement between Southern California Edison Company (Edison) and Imperial Irrigation District (IID).

The Agreement establishes the terms and conditions whereby Edison shall provide 50 megawatts of capacity and associated energy to IID from June 1, 1991 through September 30, 1991.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: June 7, 1991, in accordance with Standard Paragraph E at the end of this notice.

14. Boston Edison Co.

[Docket No. ER91-452-000]

Take notice that on May 20, 1991, Boston Edison Company (Boston Edison) tendered for filing a Notice of Cancellation of the Service Agreement No. 1 to FERC Electric Tariff Original Volume No. V and Service Agreement No. 7 to FERC Electric Tariff No. III.

Boston Edison requests an effective date of May 1, 1991 and requests waiver of the sixty notice period.

Comment date: June 7, 1991, in accordance with Standard Paragraph E at the end of this notice.

15. Southern California Edison Co.

[Docket No. ER91-443-000]

Take notice that on May 20, 1991, Southern California Edison Company (Edison) tendered for filing, as an initial rate schedule, the following agreement, executed on May 14, 1991, by the respective parties: Edison-SMUD 1991 Summer Power Sale Agreement between Southern California Edison Company (Edison) and Sacramento Municipal Utility District (SMUD).

The Agreement establishes the terms and conditions whereby Edison shall provide 60 megawatts of capacity and associated energy to SMUD from June 1, 1991 through September 30, 1991.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: June 7, 1991, in accordance with Standard Paragraph E at the end of this notice.

16. Cogeneration Partners of America

[Docket No. QF90-176-001]

On May 16, 1991, Cogeneration Partners of America, Agent for Vineland Cogeneration Limited Partnership of 3 Executive Campus, P.O. Box 2910, Cherry Hill, New Jersey 08034-0258 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Vineland, New Jersey. The facility will consist of a combustion turbine generator and a heat recovery boiler. Thermal energy recovered from the facility will be used for cooking and cleaning operation of various food products. The primary energy source will be natural gas with distillate fuel oil used as a secondary fuel when natural gas supply is interrupted. The net electric power production capacity will be 46.6 megawatts. Atlantic Generation, Inc., an electric utility holding company has 50% ownership interest in the facility. Installation of the facility will begin in fall 1992.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825

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North Capitol Street, NE., Washington, DC 20426 in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12986 Filed 5-31-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-460-001; CP90-1375-000]

Pacific Gas Transmission Co.; Altamont Gas Transmission Co.; Availability of the Final Environmental Impact Statement for the PGT/PG&E Expansion—Altamont Natural Gas Pipeline Projects

May 24, 1991.

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC) has made available a final environmental impact statement (FEIS) on the natural gas pipeline facilities proposed in the above-referenced dockets, and related nonjurisdictional facilities.

The FEIS was prepared to satisfy the requirements of the National Environmental Policy Act. Construction of either of the proposed projects would be a "major Federal action significantly affecting the quality of the human environment." However, the staff concludes that approval of one or both of the proposed projects, with appropriate mitigating measures, including receipt of necessary permits and approvals, would have limited adverse environmental impact. The FEIS evaluates alternatives to each proposal, including the No Action alternative.

Pacific Gas Transmission Company (PGT) proposes, in Docket No. CP89-460-001, to expand the capacity of its existing natural gas pipeline transmission system which extends from the United States/Canadian border at Kingsgate, British Columbia to the Oregon/California border at Malin, Oregon. In order to transport up to an additional 903 million cubic feet per day (MMcf/d) of natural gas, PGT would construct 430 miles of 42-inch-diameter pipeline loop in 7 segments through the states of Idaho, Washington, and Oregon, and replace/install additional compression at 3 existing compressor stations. Minor modifications would also be required at nine additional stations. The new gas would be received at Kingsgate from Alberta Natural Gas Company, Ltd. and transported for delivery at existing interconnections with Northwest Pipeline Corporation (Northwest) at Stanfield, Oregon and with Pacific Gas and Electric Company (PG&E) at Malin, Oregon. Northwest would deliver 148 MMcf/d of the gas to customers in the Pacific Northwest and intermountain region, while PG&E would deliver 755 MMcf/d of the gas to customers within the state of California.

In order to accommodate the additional gas deliveries from PGT, PG&E proposes to construct 415 miles of 42- and 36-inch-diameter pipeline loop in 5 segments between the Oregon-California border and a point near Panoche Station, California. Additionally, PG&E proposes to make minor modifications at three existing compressor stations, install additional compression at its Delevan Compressor Station, and either expand its Brentwood Compressor Station or construct an additional station at a new location. PG&E is not regulated by the FERC. However, because their facilities would not be constructed without FERC approval of the PGT expansion, the FEIS discusses the potential impact of the nonjurisdictional PG&E facilities on federally listed threatened and endangered species, cultural resources, and federally administered lands within California. The FEIS also incorporates by reference relevant portions of the Final Environmental Impact Report (FEIR) prepared by the California Public Utilities Commission (CPUC) for the facilities proposed by PG&E. The FEIR was issued by the CPUC on November 19, 1990, and the CPUC authorized the construction of PG&E's facilities on December 27, 1990. Incorporation of the FEIR will eliminate duplication of this information in the FEIS. With the exception of the three limited issues concerning the non-jurisdictional facilities in California, all other issues/comments concerning the California facilities should be directed to the CPUC.

Altamont Gas Transmission Company (Altamont) proposes, in Docket No. CP90-1375-000, to construct a new natural gas transmission system from the United States/Canadian border near Wild Horse, Montana to a point in southwest Wyoming near Opal. Altamont's system would consist of 620 miles of 30-inch-diameter pipeline, 6 compressor stations, 1 meter station, and related appurtenant facilities. Gas would be received at Wild Horse from NOVA Corporation of Alberta and transported for delivery to Kern River Gas Transmission Company (Kern River) at its certificated interconnection with Northwest near Opal. Kern River would then transport up to 700 MMcf/d of natural gas for Altamont to customers in southern California. Incremental facilities required on the certificated Kern River system in order to accommodate gas received from Altamont at the proposed Opal interconnection would consist of installing additional compression at two compressor stations and construction of five new compressor stations.

Detailed listings of the facilities associated with each project, land requirements, and counties affected by the proposed construction were published in the **Federal Register** on August 14, 1989 (54 FR 33272). Issuance of the FERC's Draft EIS was noticed by the FERC on January 16, 1991 (56 FR 1623), and by the U.S. Environmental Protection Agency on January 18, 1991 (56 FR 2017).

The FEIS will be used in the regulatory decision-making process at the FERC. While the period for filing motions to intervene in these cases has expired, motions to intervene out-of-time can be filed with the FERC in accordance with the requirements of rule 214 of the Commission's Rules of Practice and Procedure [18 CFR 385.214(d)].

The FEIS is available for public inspection in the FERC's Division of Public Information, room 3104, 941 North Capitol Street NE., Washington, DC 20426. Copies have been mailed to Federal, state and local agencies, public interest groups, libraries, parties in the FERC proceedings interested in environmental issues, and other interested individuals. The FEIS is also available for public inspection at the CPUC in San Francisco, CA.

A limited number of copies of the FEIS are also available from Mr. Mark C. Kalpin, PGT/PG&E Expansion Project Manager, or Mr. Laurence J. Sauter, Jr., Altamont Project Manager. Messrs. Kalpin and Sauter can be reached either at (202) 208-0918 or (202) 208-0205, respectively, or by writing to them at the following address: Federal Energy Regulatory Commission, Office of Pipeline and Producer Regulation, Environmental Compliance and Project Analysis Branch, Room 7312—PR21.4, 825 North Capitol Street NE., Washington, DC 20426.

An Executive Summary of the FEIS was also prepared and sent to approximately 1400 property owners directly affected by the projects, as well as 600 other environmental groups and organizations and the remaining parties in the FERC proceedings. Those individuals receiving the Executive Summary who wish to receive the entire FEIS may request copies from Messrs. Kalpin or Sauter while supplies last.

Lois D. Cashell,

Secretary.

[FR Doc. 91-12966 Filed 5-31-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-433-003]

El Paso Natural Gas Co.; Compliance Filing

May 24, 1991.

Take notice that on April 19, 1991, Pacific Gas and Electric Company (PG&E), in response to the Commission's Order Amending Certificate in Docket No. CP88-433-001, issued March 20, 1991, submitted for filing an Information Submittal in which PG&E states that the only procedures that it is currently proposing for implementing the open access, nondiscriminatory transportation assignment program on the El Paso Natural Gas Company (El Paso) system are those contained in a settlement it has filed with the Public Utilities Commission of the State of California. PG&E's filing includes a copy of the settlement.

The March 20, 1991 Order directed PG&E to file written procedures stating how it plans to implement the open access, nondiscriminatory requirements of the El Paso transportation assignment program. PG&E states that its submittal is made without conceding or admitting the Commission's jurisdiction over PG&E's actions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.211. All protests should be filed on or before ten days from issuance of this notice. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-12967 Filed 5-31-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 91-27-NG]

Venro Petroleum Corp.; Application To Export Natural Gas To Mexico

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to export natural gas to Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on April 8, 1991, of an application filed by Venro Petroleum Corporation (Venro) requesting blanket authorization to export from the United States to Mexico up 146 Bcf of natural gas on a short-term or spot market basis over a two-year period beginning with the date of first delivery. Venro states that it will advise the DOE of the date of first delivery and submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time July 3, 1991.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Larine A. Moore, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586-9478

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586-6667.

SUPPLEMENTARY INFORMATION: Venro is a Delaware corporation with its principal place of business in Houston, Texas. According to Venro, the gas to be exported would be purchased from U.S. producers in the States of Texas, Louisiana, and New Mexico, primarily for sales to Petroleos Mexicanos (Pemex), Mexico's natural oil company. All sales would result from arms-length negotiations and prices will be determined by market conditions. Venro intends to use existing pipeline facilities to export this gas.

This export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204-111 and 0204-127. In deciding whether the proposed export of natural gas is in the public interest, domestic need for the gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic gas that would be exported under the proposed arrangements. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notices of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

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It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and response filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Venro's application is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on May 28, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-13036 Filed 5-31-91; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-903-DR]

Kansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas (FEMA-903-DR), dated April 29, 1991, and related determinations.

DATES: May 20, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Kansas, dated April 29, 1991, is hereby amended to include Public Assistance in the following areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 29, 1991:

The counties of Butler, Cowley, and Sedgwick for Public Assistance. (Already designed for Individual Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dennis H. Kwiatkowski,

Acting Associate Director, State and Local Programs and Support Federal Emergency Management Agency.

[FR Doc. 91-13021 Filed 5-31-91; 8:45 am]

BILLING CODE 6718-02-M

Kansas; Amendment to Notice of a Major Disaster Declaration

[FEMA-903-DR]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas (FEMA-903-DR), dated April 29, 1991, and related determinations.

DATES: May 20, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that the incident period for this disaster is amended to be April 26, 1991, through and including May 19, 1991.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Acting Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-13022 Filed 5-31-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-904-DR]

Louisiana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA-904-DR), dated May 3, 1991, and related determinations.

DATES: May 22, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Louisiana dated May 3, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 3, 1991:

The parishes of Avoyelles, Concordia, Iberville, La Salle, Lincoln, and St. John the Baptist for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Acting Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-13023 Filed 5-31-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-906-DR]

Mississippi; Notice of Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Mississippi (FEMA-906-DR), dated May 17, 1991, and related determinations.

DATES: May 17, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that, in a letter dated May 17, 1991, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288, as amended by Public Law 100-707), as follows:

I have determined that the damage in certain areas of the State of Mississippi, ... resulting from severe storms, tornadoes, and flooding beginning on April 28, 1991, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Mississippi.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Public Assistance may be provided at a later date, if damage assessments warrant. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Michael J. Polny of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Mississippi to have been affected adversely by this declared major disaster:

The counties of Carroll, Coahoma, Grenada, Holmes, Humphreys, Leflore, Panola, Quitman, Sharkey, Sunflower, Tallahatchie, Tate, Warren, Washington, and Yalobusha for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

[Dated: May 21, 1991].

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 91-3024 Filed 5-31-91; 8:45 am]

BILLING CODE 6718-02-M

NOTICE: The notice of a major disaster for the State of Mississippi, dated May 17, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 17, 1991:

The counties of Bolivar, George, Harrison, Issaquena, and Pearl River for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Acting Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-13025 Filed 5-31-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-905-DR]

Oklahoma; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oklahoma (FEMA-905-DR), dated May 8, 1991, and related determinations.

DATES: May 22, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Oklahoma, dated May 8, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 8, 1991:

Osage County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Acting Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-13026 Filed 5-31-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-906-DR]

Mississippi; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Mississippi (FEMA-906-DR), dated May 17, 1991, and related determinations.

DATE: May 23, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

FEDERAL MARITIME COMMISSION

ACL/Wallenius Space Charter; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-011261-001

Title: ACL/Wallenius Space Charter and Cooperative Working Agreement.

Parties:

Walleniusrederierna AB ("Wallenius"),

Atlantic Container Line AB ("ACL"),

Rederiaktiebolaget Transatlantic

Incotrans BV.

Synopsis: The proposed amendment would add a new provision to the Agreement Authority permitting ACL and Wallenius to discuss and voluntarily agree, in a non-binding manner, on rates and conditions for the carriage of non-containerizable cargo and certain specified types of wheeled vehicles in the trade. It would also make other non-substantive changes.

Dated: May 29, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-13045 Filed 5-31-91; 8:45 am]

BILLING CODE 6730-01-M

City of Los Angeles Evergreen Marine Corporation, et al. Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the

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Commission regarding a pending agreement.

Agreement No.: 224-010825-006.

Title: City of Los Angeles/Evergreen Marine Corporation (Taiwan), Ltd. Marine Terminal Agreement.

Parties:

City of Los Angeles,
Evergreen Marine Corporation; (Taiwan), Ltd. (Evergreen).

Synopsis: The Agreement extends the date for renegotiating compensation under the Agreement and extends the date on which Evergreen could exercise an option to terminate this Agreement.

Agreement No.: 224-200523.

Title: Port Authority of New York and New Jersey/Atlantic Container Line AB Terminal Agreement.

Parties:

Port Authority of New York and New Jersey (Port);
Atlantic Container Line AB (ACL).

Synopsis: The Agreement, filed May 24, 1991, provides for: The Port to pay ACL $25 per import and $50 per export container with cargo loaded/unloaded from a vessel at the Port and shipped by rail to or from points more than 260 miles from the Port, subject to rail freight bills or waybills issued on or after January 1, 1991. The term of the Agreement will expire December 31, 1991.

Agreement No.: 224-200524.

Title: Port Authority of New York and New Jersey/Sea-Land Service, Inc. Terminal Agreement.

Parties:

Port Authority of New York and New Jersey (Port),
Sea-Land Service, Inc. (Sea-Land).

Synopsis: The Agreement, filed May 24, 1991, provides for: The Port to pay Sea-Land $25 per import and $50 per export container with cargo loaded/unloaded from a vessel at the Port and shipped by rail to or from points more than 260 miles from the Port, subject to rail freight bills or waybills issued on or after January 1, 1991. The term of the Agreement will expire December 31, 1991.

Agreement No.: 224-200525.

Title: Port Authority of New York and New Jersey/Maersk, Inc. Terminal Agreement.

Parties:

Port Authority of New York and New Jersey (Port),
Maersk Inc. (Maersk).

Synopsis: The Agreement, filed May 24, 1991, provides for: The Port to pay Maersk $25 per import and $50 per export container with cargo loaded/unloaded from a vessel at the Port and shipped by rail to or from points more than 260 miles from the Port, subject to rail freight bills or waybills issued on or after January 1, 1991. The term of the Agreement will expire December 31, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-13044 Filed 5-31-91; 8:45 am]

BILLING CODE 6730-01-M

Jackson County Port Authority/Ryan-Walsh Marine Terminal; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10220. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in §§ 560.602 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-200180-001.

Title: Jackson County Port Authority/Ryan-Walsh Marine Terminal Agreement.

Parties:

Jackson County Port Authority and Board of Supervisors of Jackson County, Mississippi (Port),
Ryan-Walsh, Inc.

Filing Party: Mr. Fred S. Sherman, Executive Director, Jackson County Port Authority, 3033 Pascagoula Street, P.O. Box 70, Pascagoula, MS 39568-0070.

Synopsis: The Agreement, filed May 28, 1991, amends the basic agreement to: (1) Extend its term to December 31, 1995; (2) provide the rental terms for the extended term; and (3) provide that the Port's tariff charges not specifically addressed in the basic agreement are for the account of the Port.

Dated: May 29, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-13046 Filed 5-31-91; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC); Meeting

Name: Control Technology Guidelines for Health Care Facilities.

Time and Date: 9 a.m.-12 noon, June 28, 1991.

Place: Alice Hamilton Laboratory, Conference Room B, NIOSH, CDC, 5555 Ridge Avenue, Cincinnati, Ohio 45213.

Status: Open to the public, limited only by the space available.

Purpose: To conduct an open meeting for the review of a project titled "Control Technology Guidelines for Health Care Facilities." This project will evaluate current recommendations and, if necessary, develop new guidelines for controlling the spread of airborne infectious diseases in health-case facilities.

Contact Person for Additional Information: Vincent D. Mortimer, P.E., NIOSH, CDC, 4676 Columbia Parkway, Mailstop R-5, Cincinnati, Ohio 45226, telephone 513/841-4307 or FTS 684-4307.

Dated: May 28, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control.

[FR Doc. 91-13001 Filed 5-31-91; 8:45 am]

BILLING CODE 4160-18-M

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96-511).

1. Type of Request: Reinstatement; *Title of Information Collection:* HCFA Forms and Manual Order; *Form Number:* HCFA-1961; *Use:* This form is used by Medicare intermediaries, carriers, State Agencies, Social Security Administration and End-Stage Renal Disease networks to order Medicare/Medicaid forms and program manuals from HCFA; *Frequency:* Annually; *Respondents:* State/local governments, businesses/other for profit, and Federal agencies/employees; *Estimated Number of Responses:* 589; *Average Hours per Response:* 3.942; *Total Estimated Burden Hours:* 2,322.

2. Type of Request: Reinstatement; *Title of Information Collection:* Hospital Survey Report Form; *Form Number:* HCFA-1537; *Use:* The Social Security Act provides that hospitals participating in Medicare must meet specific requirements which are presented as conditions of participation. State Agencies must determine compliance with these conditions through the use of this report form; *Frequency:* On occasion; *Respondents:* State/local governments; *Estimated Number of Responses:* 1,539; *Average Hours per Response:* 3.25; *Total Estimated Burden Hours:* 5,001.

3. Type of Request: Revision; *Title of Information Collection:* Medicaid Integrated Quality Control Review Worksheet; *Form Number:* HCFA-316; *Use:* State Agencies are required to perform quality control (QC) review for the Aid to Families with Dependent Children, Food Stamps, and Medicare programs. The integrated review worksheet is designed to collect both case characteristiccs and QC data for all QC reviews in the three Federal assistance programs listed above; *Frequency:* Monthly; *Respondents:* State/local governments; *Estimated Number of Responses:* 612; *Average Hours per Response:* 440.2 (reporting) and 377.8 (recordkeeping); *Total Estimated Burden Hours:* 289,419 (reporting) and 19,269 (recordkeeping) for a total of 288,688 hours.

4. Type of Request: Reinstatement; *Title of Information Collection:* End-Stage Renal Disease (ESRD) Beneficiary Selection; *Form Number:* HCFA-382; *Use:* ESRD facilities have each new *home* dialysis patient select one of two methods to handle Medicare reimbursement. The intermediaries pay for the beneficiaries selecting reimbursement under method I and carriers pay for the beneficiaries selecting reimbursement under method II. This system was developed to avoid duplicate billing by both intermediary and carrier; *Frequency:* One-time; *Respondents:* Individuals/households, businesses/other for profit, and small businesses/organizations; *Estimated Number of Responses:* 4,000; *Average Time per Response:* 5 minutes; *Total Estimated Burden Hours:* 333.

5. Type of Request: Revision; *Title of Information Collection:* Current Beneficiary Survey (CBS), Round 1; *Form Number:* HCFA-P-15; *Use:* Round 1 of the Medicare CBS will assess access to health care and baseline information to aid in evaluating the impact of physician payment reform. Both the household and the nursing home component will be fielded. These will collect basic demographic and utilization information and provide boundaries (timeframes) for the collection of cost, charge, and payment information; *Frequency:* One-time for households and twice for nursing homes; *Respondents:* Individuals/households, businesses/other for profit, non-profit institutions, and small businesses/organizations; *Estimated Number of Responses:* 14,000; *Average Hours per Reponse:* 1; *Total Estimated Burden Hours:* 14,000.

6. Type of Request: New; *Title of Information Collection:* Task 4, Home Care Worker Supply, Home Care Quality Studies; *Form Number:* HCFA-R-3; *Use:* The collection is proposed to provide data about the characteristics of home care workers and those who do not provide home care services in order to understand the factors affecting the supply of the home care labor market by Medicare and/or Medicaid providers both and in the future; *Frequency:* One-time; *Respondents:* Individuals/households, businesses/other for profit, and small businesses/organizations; *Estimated Number of Responses:* 1,066; *Average Time per Response:* 37 minutes; *Total Estimated Burden Hours:* 658.

7. Type of Request: Reinstatement; *Title of Information Collection:* Information Collection Requirements in 42 CFR 416.43 and 416.47 (Ambulatory Surgical Centers); *Form Number:* HCFA-R-54; *Use:* The regulations standards are designed to ensure that each ambulatory surgical center facility has a properly trained staff and adequate physical environment to provide the appropriate type and level of care for that type of facility; *Frequency:* Not applicable; *Respondents:* State/local governments and small businesses/organizations; *Estimated Number of Responses:* Not applicable; *Average Time per Response:* Not applicable; *Total Estimated Burden Hours:* 12,760 (recordkeeping).

8. Type of Request: New; *Title of Information Collection:* Survey Team Composition and Workload Report; *Form Number:* HCFA-670; *Use:* The Omnibus Budget Reconciliation Act of 1987 required revision of the survey process and the Clinical Laboratory Improvement Act of 1988 required laboratories to be surveyed and certified. This form is used to determine reimbursement to State survey agencies for the amount of time spent surveying; *Frequency:* On occasion; *Respondents:* State/local governments and Federal agencies/ employees; *Estimated Number of Responses:* 700,000; *Average Time per Response:* 10 minutes; *Total Estimated Burden Hours:* 116,667.

9. Type of Request: Reinstatement; *Title of Information Collection:* Pacemaker Related Data; *Form Number:* HCFA-497; *Use:* This information, gathered from providers and manufacturers, is needed to assist in the development of the Food and Drug Administration's registry file as well as to determine when manufacturer warranty supersedes Medicare reinbursement; *Frequency:* On occasion; *Respondents:* Businesses/other for profit; *Estimated Number of Responses:* 165,000; *Average Time per Response:* 8 minutes; *Total Estimated Burden Hours:* 22,000.

10. Type of Request: Extension; *Title of Information Collection:* Hospital and Hospital Health Care Complex Report; *Form Number:* HCFA-2552-DEMO; *Use:* This form is used by hospitals and hospital health care complexes to report their health care costs and by their servicing intermediaries to determine amounts payable for the services furnished Medicare beneficiaries; *Frequency:* Annually; *Respondents:* Businesses/other for profit, non-profit institutions, and small businesses/organizations; *Estimated Number of Responses:* 700; *Average Hours per Response:* 1; *Total Estimated Burden Hours:* 5,600 (reporting) and 99,400 (recordkeeping) for a total of 105,000 hours.

11. Type of Request: Revision; *Title of Information Collection:* State Drug Rebate (Medicaid); *Form Numbers:* HCFA-368 and HCFA-R-144; *Use:* These requirements implement provisions of the Omnibus Budget Reconciliation Act of 1990 in that State Medicaid agencies report to drug manufactures and HCFA on the drug utilization for their States and the amount of rebate to be paid by the manufacturers; *Frequency:* Quarterly; *Respondents:* State/local governments; *Estimated Number of Responses:* 208; *Average Hours per Response:* 29.31; *Total Estimated Burden Hours:* 6,125. HCFA requested and received emergency clearance by OMB for these

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forms. OMB granted approval through July 31, 1991, under OMB No. 0938-0582.

Additional Information or Comments: Call the Reports Clearance Officer on 301-966-2088 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Herron, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: May 24, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 91-13019 Filed 5-31-91; 8:45 am]

BILLING CODE 4120-03-M

National Institutes of Health

Room Change for Meeting

The **Federal Register** notice of March 22, 1991 (56 FR 12207) regarding the meeting of the Task Force on Opportunities for Research on Women's Health is corrected as follows:

On *June 12* the Task Force will meet in Conference Room 10, Building 31 (C Wing), National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

On *June 13* the Task Force will meet in Conference Room 4, Building 31 (A Wing), National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

Dated: May 28, 1991.

William F. Raub,

Deputy Director, NIH.

[FR Doc. 91-12978 Filed 5-31-91; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meeting of the President's Cancer Panel

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the President's Cancer Panel, National Cancer Institute on July 9, 1991. The meeting will be held at Wilson Hall, James A. Shannon Building, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on July 9, from 8:30 a.m. until Noon. Attendance will be limited to space available. Agenda items will include reports by the Secretary; DHHS; the Chairman, President's Cancer Panel; the Director, NCI; and other invited participants. The major topic for this meeting will be "Cancer and Poverty."

The Committee Management Office, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Elliott Stonehill, Executive Secretary, President's Cancer Panel, National Cancer Institute, Building 31, room 4A32, National Institutes of Health, Bethesda, Maryland 20892 (301/496-1148) will provide a roster of the Panel members and substantive program information upon request.

Dated: May 22, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-12973 Filed 5-31-91; 8:45 am]

BILLING CODE 4140-01-M

Division of Research Grants; Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the following study sections for June through July 1991, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to study section business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301-496-7534 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each study section. Since it is necessary to schedule study section meetings months in advance, it is suggested that anyone planning to attend a meeting contact the executive secretary to confirm the exact date, time and location. All times are A.M. unless otherwise specified.

Study section	June-July 1991 meeting	Time	Location
AIDS & Related Research 1, Dr. Sami Mayyasi, Rm. A13, Tel. 301-496-0012.	July 17-18	8:30	Holiday Inn, Chevy Chase, MD.
AIDS & Related Research 2, Dr. Gilbert Meier, Rm. A10, Tel. 301-496-5191	July 1	8:30	Holiday Inn, Chevy Chase, MD.
AIDS & Related Research 3, Dr. Marcel Pons, Rm. A13, Tel. 301-496-7286	June 26-28	8:30	Holiday Inn, Chevy Chase, MD.
AIDS & Related Research 4, Dr. Mohindar Poonian, Rm. A10, Tel. 301-496-4666.	July 15-16	8:90	Holiday Inn Crowne Plaza, Rockville, MD.
AIDS & Related Research 5, Dr. Mohindar Poonian, Rm. A10, Tel. 301-496-4666.	July 12	8:30	Holiday Inn Crowne Plaza, Rockville, MD.
AIDS & Related Research 6, Dr. Gilbert Meier, Rm. A10, Tel. 301-496-5191	July 12	8:30	Holiday Inn, Chevy Chase, MD.
AIDS & Related Research 7, Dr. Gilbert Meier, Rm. A10, Tel. 301-496-5191	July 26	8:30	Holiday Inn, Chevy Chase, MD.
Behavioral and Neurosciences—1, Dr. Luigi Giacometti, Rm. 303, Tel. 301-496-5352.	July 8-10	8:30	St. James Hotel, Washington, DC.
Behavioral and Neurosciences—2, Dr. Luigi Giacometti, Rm. 303, Tel. 301-496-5352.	July 11	8:30	St. James Hotel, Washington, DC.
Biological Sciences—1, Dr. James R. King, Rm. A22, Tel. 301-496-1067	July 17-19	8:30	St. James Hotel, Washington, DC.
Biological Sciences—2, Dr. Syed Amir, Rm. 326, Tel. 301-496-3117	July 15-17	8:30	Holiday Inn, Georgetown, DC.
Biological Sciences—3, Mr. Gene Headley, Rm. A27, Tel. 301-496-6724	July 15-16	8:30	St. James Hotel, Washington, DC.
Biomedical Sciences, Dr. Charles Baker, Rm. 219, Tel. 301-496-7150	July 29-31	8:30	Holiday Inn, Georgetown, DC.
Clinical Sciences—1, Ms. Jo Pelham, Rm. 353, Tel. 301-496-7477	July 18-19	8:30	Holiday Inn, Chevy Chase, MD.
Clinical Sciences—2, Ms. Jo Pelham, Rm. 353, Tel. 301-496-7477	July 25-26	8:00	Holiday Inn, Chevy Chase, MD.
Immunology, Virology & Pathology, Dr. Lynwood Jones, Rm. A20, Tel. 301-496-7510.	July 17-19	8:30	Holiday Inn, Chevy Chase, MD.

Study section	June-July 1991 meeting	Time	Location
International & Cooperative Projects, Dr. Sandy Warren, Rm. 222, Tel. 301-496-7600.	July 30-31	8:00	Hyatt Regency Hotel, Bethesda, MD.
Physiological Sciences, Dr. Nicholas Mazarella, Rm. 222, Tel. 301-496-1069.	July 18-19	8:30	Holiday Inn Crowne Plaza, Rockville, MD.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, 13.333, 13.337, 13.393-13.396, 13.837-13.844, 13.846-13.878, 13.892, 13.893, National Institutes of Health, HHS)

Dated: May 21, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-12972 Filed 5-31-91; 8:45 am]

BILLING CODE 4140-01-M

National Library of Medicine; Meetings of the Board of Regents and Subcommittees

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Regents of the National Library of Medicine on June 20-21, 1991, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland. The Subcommittees will meet on June 19 as follows:

The Extramural Programs Subcommittee, 5th-floor Conference Room, Building 38A, 2 to approximately 3:30 p.m., and the Planning Subcommittee, Conference Room B, Building 38, 4 to approximately 5 p.m. The Extramural Programs Subcommittee will be closed to the public.

The meeting of the Board will be open to the public from 9 to approximately 3:30 p.m. on June 20 and from 9 a.m. to adjournment on June 21 for administrative reports and program discussions. Attendance will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4), 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the entire meeting of the Extramural Programs Subcommittee on June 19 will be closed to the public, and the regular Board meeting on June 20 will be closed from approximately 3:30 p.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Robert B. Mehnert, Chief, Office of Inquiries and Publications Management, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, Telephone Number: 301-496-6308, will furnish a summary of the meeting, rosters of Board members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—Medical Library Assistance, National Institutes of Health.)

Dated: May 20, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-12975 Filed 5-31-91; 8:45 am]

BILLING CODE 4140-01-M

National Library of Medicine; Meeting of the Biomedical Library Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Biomedical Library Review Committee on June 26-27, 1991, convening at 8:30 a.m. in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on June 26 will be open to the public from 8:30 to approximately 11 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C., and section 10(d) of Public Law 92-463, the meeting on June 26 will be closed to the public for the review, discussion, and evaluation of individual grant applications from 11 a.m. to approximately 5 p.m., and on June 27, from 8:30 a.m. to adjournment. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Roger W. Dahlen, Scientific Review Administrator, and Chief, Biomedical Information Support Branch, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301-496-4221, will provide summaries of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—Medical Library Assistance, National Institutes of Health.)

Dated: May 20, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-12974 Filed 5-31-91; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-1917; FR-2934-N-28]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATES: June 3, 1991.

ADDRESSES: For further information, contact James Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the tool-free title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and rea:

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property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a Notice in the **Federal Register** identifying the properties determined as suitable.

The properties identified as suitable in this Notice have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Homeless assistance providers interested in any property identified as suitable and available in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 60 days from the date of this Notice. For complete details concerning the processing of applications, the reader is encouraged to refer to HUD's **Federal Register** Notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

This Notice also contains a list of properties determined by HUD to be unsuitable for use as facilities to assist the homeless. These properties will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, existing street address), providers should contact the appropriate landholding agencies at the following addresses: *U.S. Army:* Robert Conte, Dept. of Army, Military Facilities, DAEN–ZCI–P; rm. IE671, Pentagon, Washington, DC 20310–2600; (202) 693–4583; *GSA:* Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501–0067; *U.S. Navy:* John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (202) 325–0474; *Dept. of Commerce:* Jim McCombs, Office of Federal Property Programs, room 1037, 14th St. and Constitution Ave. NW., Washington, DC 20230; (202) 377–3580; (202) 366–5601; (These are not toll-free numbers.)

Dated: May 24, 1991.

Russell K. Paul,

Deputy Assistant Secretary for Grant Programs.

SUITABLE/AVAILABLE PROPERTIES

Alaska

Suitable/Available Land (by Agency)

Army

Eklutna Dispersal Site
Fort Richardson
Anchorage, AK, Co: Anchorage 99505
Federal Register Notice Date: 05/31/91
Property Number: 219014006
Status: Underutilized
Base Closure: No
Comment: 500 acres; parkland; environmentally protected.

Commerce

Gibson Cove
1211 Gibson Cove Road
Kodiak, AK, Co: Kodiak Island 99615
Federal Register Notice Date: 05/31/91
Property Number: 279010002
Status: Excess
Base Closure: No
Comment:
7.44 acres; small rock peninsula, most recent use-windbreak for cove.

Army

Nome Army Site
Nome, AK, Co: Nome
Location: Located on shoreline of Norton Sound on Bering Sea
Federal Register Notice Date: 05/31/91
Property Number: 219013779
Status: Underutilized
Base Closure: No
Comment: 2.2 acres; limited utilities.

Alabama

Suitable/Available Buildings (by Agency)

Army

Bldg. T00220
Fort McClellan
Fort McClellan, AL, Co: Calhoun 36205–5000
Location: Take left turn off Baltzell Gate Road
Federal Register Notice Date: 05/31/91
Property Number: 219110041
Status: Underutilized
Base Closure: No
Comment: 1040 sq. ft.; 1 story wood frame; needs major rehab; termite infested; off-site use only.

Bldg. T00221
Fort McClellan
Fort McClellan, AL, Co: Calhoun 36205–5000
Location: Take left turn off Baltzell Gate Road
Federal Register Notice Date: 05/31/91
Property Number: 219110042
Status: Underutilized
Base Closure: No
Comment: 4125 sq. ft.; one story wood frame; needs major rehab; termite infested; presence of asbestos; off-site use only.

Bldg. T00796
Fort McClellan
Fort McClellan, AL, Co: Calhoun 36205–5000
Location: Intersection of 19th and 20th Streets
Federal Register Notice Date: 05/31/91
Property Number: 219110043
Status: Unutilized
Base Closure: No
Comment: 1340 sq. ft.; one story wood frame; needs major rehab; presence of asbestos; off-site use only.

Bldg. T00883
Fort McClellan
3rd Avenue
Ft. McClellan, AL, Co: Calhoun 36205–5000
Federal Register Notice Date: 05/31/91
Property Number: 219110044
Status: Unutilized
Base Closure: No

Comment: 760 sq. ft.; one story wood frame; needs major rehab; presence of asbestos; off-site use only.

Bldg. T00890
Fort McClellan
2nd Avenue
Fort McClellan, AL, Co: Calhoun 36205–5000
Federal Register Notice Date: 05/31/91
Property Number: 219110045
Status: Underutilized
Base Closure: No
Comment: 1713 sq. ft.; one story wood frame; needs major rehab; presence of asbestos; off-site use only.

Bldg. T00895
Fort McClellan
3rd Avenue in Area 8 Motor Pool Compound
Fort McClellan, AL, Co: Calhoun 36205–5000
Federal Register Notice Date: 05/31/91
Property Number: 219110047
Status: Unutilized
Base Closure: No
Comment: 108 sq. ft.; one story wood floor with metal walls; off-site use only.

Bldgs. T01121, T01123, T01124
Fort McClellan
MacArthur Avenue
Fort McClellan, AL, Co: Calhoun 36205–5000
Federal Register Notice Date: 05/31/91
Property Numbers: 219110048–219110050
Status: Unutilized
Base Closure: No
Comment: 2400 sq. ft. each; two story wood frame; need rehab; presence of asbestos; off-site use only.

Bldg. T01125
Fort McClellan
21st Street and MacArthur Avenue
Fort McClellan, AL, Co: Calhoun 36205–5000
Federal Register Notice Date: 05/31/91
Property Number: 219110051
Status: Unutilized
Base Closure: No
Comment: 2556 sq. ft.; one story wood frame; needs rehab; presence of asbestos; off-site use only.

Bldg. T01301
Fort McClellan
4th Avenue in Area 13 of Post
Fort McClellan, AL, Co: Calhoun 36205–5000
Federal Register Notice Date: 05/31/91
Property Number: 219110052
Status: Unutilized
Base Closure: No
Comment: 191 sq. ft.; one story tin and lumber building; needs major rehab; off-site use only.

Bldg. T01602 :
Fort McClellan
25th Street
Fort McClellan, AL, Co: Calhoun 36205–5000
Federal Register Notice Date: 05/31/91
Property Number: 219110053
Status: Unutilized
Base Closure: No
Comment: 4404 sq. ft.; one story wood frame; needs rehab; presence of asbestos; off-site use only.

Bldgs. T02264, T02266–T02268
Fort McClellan
WAC Circle
Fort McClellan, AL, Co: Calhoun 36205–5000
Federal Register Notice Date: 05/31/91
Property Numbers: 219110054–219110057
Status: Unutilized
Base Closure: No
Comment: 664 sq. ft. each; one story wood frame; needs major rehab; electrical hazard; presence of asbestos; off-site use only.

Bldg. T00123
Post Chapel – Fort Rucker
5th Avenue
Fort Rucker, AL, Co: Dale 36362–
Federal Register Notice Date: 05/31/91
Property Number: 219110145
Status: Unutilized
Base Closure: No
Comment: 4798 sq. ft.; 1 story wood structure; minor repairs; scheduled to be vacated September 1991.

Bldg. T09307
Post Chapel – Fort Rucker
3rd Avenue
Fort Rucker, AL, Co: Dale 36362–
Federal Register Notice Date: 05/31/91
Property Number: 219110146
Status: Unutilized
Base Closure: No
Comment: 3739 sq. ft.; 1 story wood structure; minor repairs; scheduled to be vacated September 1991.

Bldg. T09309
Fort Rucker – Education Facility
3rd Avenue
Fort Rucker, AL, Co: Dale 36362–
Federal Register Notice Date: 05/31/91
Property Number: 219110147
Status: Unutilized
Base Closure: No
Comment: 1500 sq. ft.; 1 story wood structure; minor repairs; scheduled to be vacated September 1991.

Arkansas

Suitable/Available Land (by Agency)

Army

Pine Bluff Arsenal
Pine Bluff, AR, Co: Jefferson 71602–9500
Location: 8 miles north of Pine Bluff on Highway 365
Federal Register Notice Date: 05/31/91
Property Number: 219013841
Status: Unutilized
Base Closure: No
Comment: 1 acre and 3 acres; potential utilities; brush terrain; used as safety buffer; subject to easements.

Suitable/Available Buildings (by Agency)

Fort Chaffee
U.S. Army Garrison
1095 4th Avenue
Barling, AR, Co: Sebastian 72905–5000
Federal Register Notice Date: 05/31/91
Property Number: 219012811
Status: Underutilized
Base Closure: No
Comment: 3634 sq. ft.; 1 story wood frame; possible asbestos; selected periods used for military/training exercises.

Fort Chaffee
U.S. Army Garrison
1094 4th Avenue
Barling, AR, Co: Sebastian 72905–5000
Federal Register Notice Date: 05/31/91
Property Number: 219012812
Status: Underutilized
Base Closure: No
Comment: 2181 sq. ft.; 1 story wood frame; possible asbestos; selected periods used for military/training exercises.

Fort Chaffee
U.S. Army Garrison
1092 4th Avenue
Barling, AR, Co: Sebastian 72905–5000
Federal Register Notice Date: 05/31/91
Property Number: 219012813
Status: Underutilized
Base Closure: No
Comment: 3321 sq. ft.; 1 story wood frame; possible asbestos; selected periods used for military/training exercises.

U.S. Army Garrison
Fort Chaffee
1070 2nd Avenue
Barling, AR, Co: Sebastian 72905–5000
Federal Register Notice Date: 05/31/91
Property Number: 219013267
Status: Underutilized
Base Closure: No
Comment: 3191 sq. ft.; 2 story wood frame; possible asbestos; selected periods used for military training; most recent use—barracks.

U.S. Army Garrison
Fort Chaffee
260 Taylor Avenue
Fort Chaffee, AR, Co: Sebastian 72905–5000
Federal Register Notice Date: 05/31/91
Property Number: 219110112
Status: Underutilized
Base Closure: No
Comment: 173 sq. ft.; one story; no water or heat in bldg.; most recent use—administration.

U.S. Army Garrison
Fort Chaffee
263 Taylor Avenue
Fort Chaffee, AR, Co: Sebastian 72905–5000
Federal Register Notice Date: 05/31/91
Property Number: 219110113
Status: Underutilized
Base Closure: No
Comment: 707 sq. ft.; one story; no water or heat in bldg.; needs rehab; most recent use—storage.

Arizona

Suitable/Available Buildings (by Agency)

Army

Bldg. S–306
Yuma Proving Ground
Main Admin. Area-near inter. 1st & D sts
Yuma, AZ, Co: Yuma/La Paz 85365–9102
Federal Register Notice Date: 05/31/91
Property Number: 219011725
Status: Underutilized
Base Closure: No
Comment: 2 story wood and stucco frame; needs structural upgrading; portion of 2nd floor vacant.

Bldg. S–1003
Yuma Proving Ground
Main Admin Area-5th & Barranca Road
Yuma, AZ, Co: Yuma/La Paz 85365–9102
Federal Register Notice Date: 05/31/91
Property Number: 219011727
Status: Underutilized
Base Closure: No
Comment: 2227 sq. ft.; two-story wood and stucco frame; 2 floor wood and frame;

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possible asbestos; bldg. committed to Congress for disposal.
Bldg. S–503
Yuma Proving Ground
Main Admin. Area—2nd St. bet. D & F Sts.
Yuma, AZ. Co: Yuma/La Paz 85365–0102
Federal Register Notice Date: 05/31/91
Property Number: 219011746
Status: Underutilized
Base Closure: No
Comment: 2123 sq. ft.; possible asbestos; 2nd floor vacant; structural upgrading needed; bldg. scheduled for renovation and used as community center.
Bldg. S–501
Yuma Proving Ground
Main Admin Area—D & 2nd Sts.
Yuma, AZ. Co: Yuma/La Paz 85365–0102
Federal Register Notice Date: 05/31/91
Property Number: 219011747
Status: Unutilized
Base Closure: No
Comment: 4000 sq. ft.; possible asbestos; scheduled for renovation; to be used as "Army Continuing Education Facility"; 2 floors.
Bldg. S–309
Yuma Proving Ground
Main Admin. Area—D & 2nd Sts.
Yuma, AZ. Co: Yuma/La Paz 85365–0102
Federal Register Notice Date: 05/31/91
Property Number: 219011748
Status: Underutilized
Base Closure: No
Comment: 4500 sq. ft.; 2 floors; possible asbestos; scheduled for renovation; Convert from Barracks to Administration Bldg.
Bldg. S–306
Yuma Proving Ground
Main Admin. Area—near 1st & D sts.
Yuma, AZ. Co: Yuma/La Paz 85365–0102
Federal Register Notice Date: 05/31/91
Property Number: 219011749
Status: Underutilized
Base Closure: No
Comment: 3822 sq. ft. on second floor; structural upgrading needed; possible asbestos; scheduled for use by administrative personnel currently housed in trailers.
Bldg. S–611
Yuma Proving Ground
Yuma, AZ. Co: Yuma/La Paz 85365–0102
Location: Main Administrative Area—Near intersection of 5th and D streets.
Federal Register Notice Date: 05/31/91
Property Number: 219013928
Status: Unutilized
Base Closure: No
Comment: 1840 sq. ft.; 1 story wood and stucco frame; most recent use—child care center.
Bldg. S–1005
Yuma Proving Ground
Yuma, AZ. Co: Yuma/La Paz 85365–0102
Location: Main Administrative Area—Near intersection of 7th and F streets.
Federal Register Notice Date: 05/31/91
Property Number: 219013930
Status: Unutilized
Base Closure: No
Comment: 176 sq. ft.; 1 story wood and stucco frame; most recent use—cold storage and refrigeration facility.

California

Suitable/Available Buildings (by Agency)

Army
Bldgs. 608–610, 612–619, 621–629
Parks Reserve Forces Training Area
Dublin, CA. Co: Alameda 94129–
Federal Register Notice Date: 05/31/91
Property Numbers: 219012855–219012874
Status: Unutilized
Base Closure: No
Comment: 49500 sq. ft. each; 2 story temporary wood; extensive asbestos present; most recent use—barracks.
Bldgs. 858–869, 875, 881–887, 889–890
Parks Reserve Forces Training Area
Dublin, CA. Co: Alameda 94129–
Federal Register Notice Date: 05/31/91
Property Numbers: 219012884–219012897, 219012902–219012911
Status: Unutilized
Base Closure: No
Comment: 63290 sq. ft. each; 2 story temporary wood; extensive asbestos present; most recent use— barracks.
Bldgs. 988, 906–909, 912–919, 924–938, 942–959, 966–969, 971–972, 976–979, 987
Parks Reserve Forces Training Area
Dublin, CA. Co: Alameda 94129–
Federal Register Notice Date: 05/31/91
Property Numbers: 219012918, 219012923–219012926, 219012929–219012936 219012938–219012970, 219012975–219012978, 219012980 219012981, 219012984–219012995
Status: Unutilized
Base Closure: No
Comment: 11300 sq. ft. each; 1 story temporary wood; extensive asbestos present; most recent use— barracks.
Bldgs. 218, 219, 227–229, 237–249, 252–269, 279, 282, 283, 286–289
Parks Reserve Forces Training Area
Dublin, CA. Co:Alameda 94129–
Federal Register Notice Date: 05/31/91
Property Numbers: 219013002–219013003, 219013011–219013013, 219013021 219013033, 219013036–219013053, 219013062, 219013065 219013066, 219013068–219013071
Status: Unutilized
Base Closure: No
Comment: 11500 sq. ft. each; 3 story temporary wood; extensive asbestos present; most recent use—barracks.
Bldgs. 920–922, 940, 941
Parks Reserve Forces
Training Area
Dublin, CA. Co: Alameda 94129–
Federal Register. Notice Date: 05/31/91
Property Numbers: 219030289–219030294
Status: Unutilized
Base Closure: No
Comment: 11300 sq. ft. each; 1 story wood frame; needs major rehab; extensive asbestos present.
EM Barracks, T–1201—T–1204, T–1208, T–1214
Sierra Army Depot
DS Hall Avenue
Herlong, CA. Co: Lassen 96113–
Federal Register Notice Date: 05/31/91
Property Number: 219110117–219110122
Status: Underutilized
Base Closure: No
Comment: 5310 sq. ft. each; two story wood frame; security restrictions.
Open Mess & NCO Club, T–1218
Sierra Army Depot
DS Hall Avenue
Herlong, CA. Co: Lassen 96113–
Federal Register Notice Date: 05/31/91
Property Number: 219110123
Status: Underutilized
Base Closure: No
Comment: 8694 sq. ft.; one story wood frame; needs rehab; presence of asbestos; security restrictions.

GSA
Ukiah Latitude Observatory
432 Observatory Avenue
Ukiah, CA, Co: Mendocino 95482–
Federal Register Notice Date: 05/31/91
Property Number: 549120003
Status: Excess
Base Closure: No
Comment: 1517 Sq. Ft., One story brick/wood frame, easement restrictions, bldg. on 2.0 acres, possible asbestos on pipe insulation
GSA NO. 9–C–CA–1277.

ARMY
T–1771—T–1775, Fort Ord
4th St. and 2nd Ave.
Fort Ord, CA. Co: Monterey 93940–
Federal Register Notice Date: 05/31/91
Property Numbers: 219010738, 219010740, 219010742, 219010743, 219010745
Status:. Unutilized
Base Closure: No
Comment: 5 bldgs.; 2 story; possible asbestos, needs extensive repairs.

Colorado

Suitable Land (by Agency)

GSA
Railroad Spur and Right-of-Way
Denver Federal Center
Lakewood, CO. Co: Jefferson 80215–
Federal Register Notice Date: 05/31/91
Property Number: 549120007
Status: Excess
Base Closure: No
Comment: 1.5 miles long (width varies 35 to 200 ft.), limited access, right-of-way restrictions.
GSA No. 7–C–CO–441–Q.
Paonia Govt. Housing Camp
Southside of 2nd Street
at Clark Avenue
Paonia, CO, Co: Delta 81428–
Federal Register Notice Date: 05/31/91
Property Number: 549120004
Status:. Excess
Comment: 1.4 acres with paved parking and basketball court, potential utilities
GSA No. 7–GR–CO–413–C.

Georgia

Suitable/Available Buildings (by Agency)

Army
Bldg. 4866
Fort Benning
Fort Benning, GA. Co: Fort Benning 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011485

Status: Unutilized
Base Closure: No
Comment: 794 sq. ft.; 1 floor; most recent use—arms bldg.; major rehab./construction required to be made habitable.
Bldgs. 4920, 4921, 4910, 4911, 4928
Fort Benning, GA. Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Numbers: 219010002–219010003, 219010105–219010106, 219010108
Status: Unutilized
Base Closure: No
Comment: 1868 sq. ft. each; most recent use—barracks; needs rehab.
Bldg. 4915
Fort Benning
Fort Benning, GA. Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91.
Property Number: 219010004
Status: Unutilized
Base Closure: No
Comment: 1297 sq. ft.; most recent use—headquarters building; needs rehab.
Bldg. 4914
Fort Benning
Fort Benning, GA. Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property number: 219010005
Status: Unutilized
Base Closure: No
Comment: 810 sq. ft.; most recent use—arms building; needs rehab.
Bldg. 4927
Fort Benning, GA. Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219010107
Status: Unutilized
Base Closure: No
Comment: 1868 sq. ft.; most recent use—classrooms; 2-stories; needs rehab.
Bldgs. 5286, 5290
Fort Benning, GA. Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Numbers: 219010109, 219010111
Status: Unutilized
Base Closure: No
Comment: 1216 sq. ft. each; most recent use—arms building; needs rehab.
Bldg. 5289
Fort Benning, GA. Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219010110
Status: Unutilized
Base Closure: No
Comment: 1216 sq. ft.; most recent use—store house; needs rehab.
Bldgs. 5291, 5293–5295
Fort Benning, GA. Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Numbers: 219010112, 219010114–219010116
Status: Unutilized
Base Closure: No
Comment: 2529 sq. ft. each; most recent use—dining room; needs rehab.
Bldg. 5292
Fort Benning, GA. Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219010113
Status: Unutilized
Base Closure: No
Comment: 2525 sq. ft.; most recent use—snack bar; needs rehab.
Bldg. 5297
Fort Benning, GA., Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219010117
Status: Unutilized
Base Closure: No
Comment: 1060 sq. ft.; most recent use—storehouse; needs rehab.
Bldgs. 5298–5299
Fort Benning, GA. Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Numbers: 219010118–219010119
Status: Unutilized
Base Closure: No
Comment: 3759 sq. ft. each; most recent use—general; needs rehab.
Bldgs. 5300, 5302
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Numbers: 219010120, 219010122
Status: Unutilized
Base Closure: No
Comment: 1400 sq. ft. each; most recent use—day room; needs rehab.
Bldgs. 5301, 5303–5305
Fort Benning, GA., Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Numbers: 219010121, 219010123–219010125
Status: Unutilized
Base Closure: No
Comment: 2124 sq. ft. each; most recent use—barracks; needs rehab.
Bldg. 5306
Fort Benning, GA. Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219010126
Status: Unutilized
Base Closure: No
Comment: 2406 sq. ft.; most recent use—dining room; needs rehab.
Bldg. 5307
Fort Benning, GA., Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219010127
Status: Unutilized
Base Closure: No
Comment: 1216 sq. ft.; most recent use—arms building; needs rehab.
Bldg. 5308
Fort Benning, GA. Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219010128
Status: Unutilized
Base Closure: No
Comment: 1680 sq. ft.; most recent use—storehouse; needs rehab.
Bldg. 5309
Fort Benning, GA. Co: Muscogee. 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219010129
Status: Unutilized
Base Closure: No
Comment: 1629 sq. ft.; most recent use—clinic; needs rehab.
Bldg. 5310
Fort Benning, GA. Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219010130
Status: Unutilized
Base Closure: No
Comment: 3484 sq. ft.; most recent use—diagnostic center; needs rehab.
Bldg. 5311
Fort Benning, GA., Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219010131
Status: Unutilized
Base Closure: No
Comment: 5767 sq. ft.; most recent use—post exchange (store); needs rehab.
Bldg. 5315
Fort Benning, GA. Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219010132
Status: Unutilized
Base Closure: No
Comment: 2930 sq. ft.; most recent use—hdqts. bldg.; needs rehab.
Bldg. 5316
Fort Benning, GA. Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219010133
Status: Unutilized
Base Closure: No
Comment: 1400 sq. ft.; most recent use—day room; needs rehab.
Bldg. 5320
Fort Benning, GA. Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219010134
Status: Unutilized
Base Closure: No
Comment: 2124 sq. ft.; most recent use—barracks; needs rehab.
Bldgs. 5366–5367
Fort Benning, GA. Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Numbers: 219010135–219010136
Status: Unutilized
Base Closure: No
Comment: 3759 sq. ft. each; most recent use—recreation bldg.; needs rehab.
Bldg. 5390
Fort Benning, GA. Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219010137
Status: Unutilized
Base Closure: No
Comment: 2432 sq. ft.; most recent use—dining room; needs rehab.
Bldg. 5404
Fort Benning, GA. Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219010138
Status: Unutilized
Base Closure: No
Comment: 2792 sq. ft.; most recent use—recreation bldg; needs rehab.
Bldg. 5328
Fort Benning, GA. Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219010139
Status: Unutilized
Base Closure: No
Comment: 2486 sq. ft.; most recent use—arms bldg.; needs rehab.
Bldg. 5324
Fort Benning, GA. Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219010141
Status: Unutilized
Base Closure: No
Comment: 2124 sq. ft.; most recent use—barracks; needs rehab.
Bldg. 5323
Fort Benning, GA. Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91

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Property Number: 219010142
Status: Unutilized
Base Closure: No
Comment: 2525 sq. ft.; most recent use—dining room; needs rehab.

Bldgs. 5322, 5321
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Numbers: 219010143–219010144
Status: Unutilized
Base Closure: No
Comment: 2124 sq. ft. each; most recent use—barracks; needs rehab.

Bldgs. 5360, 5361, 5363
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Numbers: 219010145–219010146, 219010148
Status: Unutilized
Base Closure: No
Comment: 3750 sq. ft. each; most recent use—recreation bldg.; needs rehab.

Bldg. 5362
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219010147
Status: Unutilized
Base Closure: No
Comment: 5550 sq. ft.; most recent use—service club; needs rehab.

Bldg. 5404
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219010149
Status: Unutilized
Base Closure: No
Comment: 2792 sq. ft.; most recent use—recreation bldg.; needs rehab.

Bldg. 5365
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219010150
Status: Unutilized
Base Closure: No
Comment: 3759 sq. ft.; most recent use—recreation bldg.; needs rehab.

Bldg. 5392
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219010151
Status: Unutilized
Base Closure: No
Comment: 2432 sq. ft.; most recent use—dining room; needs rehab.

Bldg. 5391
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219010152
Status: Unutilized
Base Closure: No
Comment: 2432 sq. ft.; most recent use—dining room; needs rehab.

Bldg. 4865
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011447
Status: Unutilized
Base Closure: No
Comment: 1098 sq ft., 1 floor, most recent use—storehouse; needs rehab.

Bldgs. 4867–4870
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Numbers: 219011448, 219011450–219011452
Status: Unutilized
Base Closure: No
Comment: 1888 sq. ft. each, 2 floors; most recent use—trainee barracks; needs rehab/major construction to be habitable.

Bldg. 4871
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011453
Status: Unutilized
Base Closure: No
Comment: 1507 sq. ft.; 1 floor; most recent use—day room; needs major rehab/construction to be made habitable.

Bldg. 4875
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011455
Status: Unutilized
Base Closure: No
Comment: 1888 sq. ft.; 2 floors; most recent use—BN classrooms; major rehab/construction required to be habitable.

Bldg. 4872
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011456
Status: Unutilized
Base Closure: No
Comment: 2183 sq. ft.; 1 floor; most recent use—dining room; major construction required to be made habitable.

Bldg. 4873
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011465
Status: Unutilized
Base Closure: No
Comment: 2183 sq. ft.; 1 floor; most recent use—dining room; major construction required to be made habitable.

Bldg. 4546
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011466
Status: Unutilized
Base Closure: No
Comment: 2818 sq. ft.; bldgs in poor condition; major construction needed to be made habitable.

Bldg. 4874
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011467
Status: Unutilized
Base Closure: No
Comment: 1507 sq. ft.; 1 floor; most recent use—day room; major construction required to be made habitable.

Bldgs. 4877, 4878, 4879, 4880, 4902–4905
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Numbers: 219011468, 219011470, 219011472, 219011474, 219011476–219011479
Status: Unutilized
Base Closure: No
Comment: 1888 sq. ft. each; 2 floors; most recent use—trainee barracks; major rehab/construction required to be habitable.

Bldg. 4545
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011473
Status: Unutilized
Base Closure: No
Comment: 2818 sq. ft.; bldgs in poor condition; major construction needed to be made habitable.

Bldg. 4906
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011480
Status: Unutilized
Base Closure: No
Comment: 1507 sq. ft.; 1 floor; most recent use—day room; major construction required to be made habitable.

Bldgs. 4907, 4908
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011481–219011482
Status: Unutilized
Base Closure: No
Comment: 2183 sq. ft. each; 1 floor; most recent use—dining room facility; major construction required to be made habitable.

Bldg. 4909
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011483
Status: Unutilized
Base Closure: No
Comment: 1507 sq. ft.; 1 floor; most recent use—day room; major construction required to be made habitable.

Bldg. 4901
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011484
Status: Unutilized
Base Closure: No
Comment: 810 sq. ft.; 1 floor; most recent use—other inst st.; major rehab/construction to be made habitable is required.

Bldg. 4879
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011486
Status: Unutilized
Base Closure: No
Comment: 794 sq. ft.; 1 floor; most recent use—arms building; major rehab/construction required to be habitable.

Bldg. 4549
Fort Benning
Fort Benning, GA, Co: Muscogee. 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011487
Status: Unutilized
Base Closure: No

Comment: 794 sq ft., buildings in poor condition, major construction needed to be made habitable.

Bldg. 4550
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011488
Status: Unutilized
Base Closure: No
Comment: 269 sq ft., buildings in poor condition, major construction needed to be made habitable.

Bldg. 4551
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011489
Status: Unutilized
Base Closure: No
Comment: 4,416 sq ft., buildings in poor condition, major construction needed to be made habitable.

Bldg. 4552
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011490
Status: Unutilized
Base Closure: No
Comment: 6,624 sq ft., buildings in poor condition, major construction needed to be made habitable.

Bldg. 4553
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011491
Status: Unutilized
Base Closure: No
Comment: 1,440 sq ft., buildings in poor condition, major construction needed to be made habitable.

Bldg. 4564
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011492
Status: Unutilized
Base Closure: No
Comment: 3,149 sq ft., buildings in poor condition, major construction needed to be made habitable.

Bldgs. 4605, 4615
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Numbers: 219011493–219011494
Status: Unutilized
Base Closure: No
Comment: 915 sq ft. each, buildings in poor condition, major construction needed to be made habitable.

Bldgs. 4642, 4643
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Numbers: 219011495–219011496
Status: Unutilized
Base Closure: No
Comment: 3,068 sq ft. each, buildings in poor condition, major construction needed to be made habitable.

Bldgs. 4747, 4634
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Numbers: 219011497–219011498
Status: Unutilized
Base Closure: No
Comment: 794 sq ft. each, buildings in poor condition, major construction needed to be made habitable.

Bldg. 4835
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011499
Status: Unutilized
Base Closure: No
Comment: 1,501 sq ft., building in poor condition, major construction needed to be made habitable.

Bldgs. 4840, 4841
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Numbers: 219011500–219011501
Status: Unutilized
Base Closure: No
Comment: 2,930 sq ft. each, buildings in poor condition, major construction needed to be made habitable.

Bldg. 4843
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011502
Status: Unutilized
Base Closure: No
Comment: 1,776 sq ft., buildings in poor condition, major construction needed to be made habitable.

Bldg. 4844
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011503
Status: Unutilized
Base Closure: No
Comment: 3,776 sq ft., buildings in poor condition, major construction needed to be made habitable.

Bldg. 4846
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011504
Status: Unutilized
Base Closure: No
Comment: 1,455 sq. ft., building in poor condition, major construction needed to be made habitable.

Bldg. 4847
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011505
Status: Unutilized
Base Closure: No
Comment: 900 sq. ft., building in poor condition, major construction needed to be made habitable.

Bldg. 4848
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011506
Status: Unutilized
Base Closure: No
Comment: 804 sq. ft., buildings in poor condition, major construction needed to be made habitable.

Bldgs. 4851–4854, 4859–4862
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Numbers: 219011507–219011510, 219011515–219011518
Status: Unutilized
Base Closure: No
Comment: 1,888 sq. ft. each, buildings in poor condition, major construction needed to be made habitable.

Bldg. 4855
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011511
Status: Unutilized
Base Closure: No
Comment: 1,507 sq. ft., buildings in poor condition, major construction needed to be made habitable.

Bldg. 4856
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011512
Status: Unutilized
Base Closure: No
Comment: 2,183 sq. ft., buildings in poor condition, major construction needed to be made habitable.

Bldg. 4857
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011513
Status: Unutilized
Base Closure: No
Comment: 2,160 sq. ft., building in poor condition, major construction needed to be made habitable.

Bldg. 4858
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011514
Status: Unutilized
Base Closure: No
Comment: 1,507 sq. ft., building in poor condition, major construction needed to be made habitable.

Bldg. 4863
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011519
Status: Unutilized
Base Closure: No
Comment: 794 sq. ft., building in poor condition, major construction needed to be made habitable.

Bldg. 4864
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011520
Status: Unutilized
Base Closure: No

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Comment: 1,292 sq. ft., building in poor condition, major construction needed to be made habitable.

Bldg. 4507
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011673
Status: Unutilized
Base Closure: No
Comment: 1888 sq. ft.; most recent use—barracks, needs substantial rehabilitation, 2 floors.

Bldgs. 4506, 4505
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Numbers: 219011675–219011676
Status: Unutilized
Base Closure: No
Comment: 2145 sq. ft. each; most recent use—dining facilities, needs substantial rehabilitation, 1 floor.

Bldg. 4487
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011681
Status: Unutilized
Base Closure: No
Comment: 1868 sq. ft.; most recent use—telephone exchange bldg.; needs substantial rehabilitation; 1 floor.

Bldg. 4484
Fort Benning
Fort Benning, GA., Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011682
Status: Unutilized
Base Closure: No
Comment: 1098 sq. ft.; most recent use—storehouse; needs substantial rehabilitation; 1 floor.

Bldg. 4319
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011683
Status: Unutilized
Base Closure: No
Comment: 2584 sq. ft.; most recent use—vehicle maintenance shop; needs substantial rehabilitation; 1 floor.

Bldgs. 4481, 4479
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Numbers: 219011685–219011686
Status: Unutilized
Base Closure: No
Comment: 1507 sq. ft. each; most recent use—administrative (day room); needs substantial rehabilitation; 1 floor.

Bldg. 4045
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011688
Status: Unutilized
Base Closure: No
Comment: 2135 sq. ft.; most recent use—administration; needs substantial rehabilitation; 2 floors.

Bldg. 2414
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011692
Status: Unutilized
Base Closure: No
Comment: 1472 sq. ft.; most recent use—administrative; needs substantial rehabilitation; 1 floor.

Bldg. 3400
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011694
Status: Unutilized
Base Closure: No
Comment: 2570 sq. ft.; most recent use—fire station; needs substantial rehabilitation; 1 floor.

Bldg. 4042
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011696
Status: Unutilized
Base Closure: No
Comment: 2891 sq. ft.; most recent use—administrative; needs substantial rehabilitation; 1 floor.

Bldg. 2285
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011704
Status: Unutilized
Base Closure: No
Comment: 4574 sq. ft.; most recent use—clinic; needs substantial rehabilitation; 1 floor.

Bldg. 4092
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011709
Status: Unutilized
Base Closure: No
Comment: 336 sq. ft.; most recent use—inflammable materials storage; needs substantial rehabilitation; 1 floor.

Bldg. 4089
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011710
Status: Unutilized
Base Closure: No
Comment: 176 sq. ft.; most recent use—gas station; needs substantial rehabilitation; 1 floor.

Bldg. 4043
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011711
Status: Unutilized
Base Closure: No
Comment: 2135 sq. ft.; most recent use—administrative; needs substantial rehabilitation; 2 floors.

Bldg. 4044
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219011712
Status: Unutilized
Base Closure: No
Comment: 4044 sq. ft.; most recent use—administrative; needs substantial rehabilitation; 2 floors.

Bldg. 5268
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219012364
Status: Unutilized
Base Closure: No
Comment: 1400 sq. ft.; one story; most recent use—day room; in poor condition; needs major rehab.

Bldgs. 5267–5275, 5277–5283
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Numbers: 219012365, 219012367–219012370, 219012372–219012375, 219012378–219012379, 219012381–219012383, 219012385–219012386
Status: Unutilized
Base Closure: No
Comment: 2124 sq. ft.; 2 story; most recent use—barracks; poor condition; needs major repair.

Bldg. 4936
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219012388
Status: Unutilized
Base Closure: No
Comment: 1888 sq. ft.; 2 story; most recent use—barracks; poor condition; needs major rehab.

Bldg. 4937
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219012389
Status: Unutilized
Base Closure: No
Comment: 2183 sq. ft.; 1 story; most recent use—dining room; poor condition; needs major rehab.

Bldg. 4938
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219012391
Status: Unutilized
Base Closure: No
Comment: 1320 sq. ft.; one story; most recent use—administrative; poor condition; needs major rehab.

Bldg. 4939
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219012392
Status: Unutilized
Base Closure: No
Comment: 1800 sq. ft.; one story; most recent use—classrooms; poor condition; needs major rehab.

Bldg. 4951
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219012394
Status: Unutilized
Base Closure: No

Comment: 2192 sq. ft.; one story; most recent use—storehouse; poor condition; needs major rehab.

Bldg. 4953
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219012395
Status: Unutilized
Base Closure: No
Comment: 794 sq. ft.; 1 story; most recent use—storehouse; poor condition; needs major rehab.

Bldg. 4954
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219012397
Status: Unutilized
Base Closure: No
Comment: 1888 sq. ft.; 2 story; most recent use—custody fac.; poor condition; needs major rehab.

Bldg. 4926
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219012398
Status: Unutilized
Base Closure: No
Comment: 1888 sq. ft.; 2 story; most recent use—classrooms; poor condition; needs major rehab.

Bldg. 4925
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219012400
Status: Unutilized
Base Closure: No
Comment: 1507 sq. ft.; one story; most recent use—classroom; poor condition; needs major rehab.

Bldg. 4924
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219012401
Status: Unutilized
Base Closure: No
Comment: 2183 sq. ft.; one story; most recent use—dining room; poor condition; needs major rehab.

Bldgs. 4919, 4918, 4929, 4931, 4912, 4933, 4935
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Numbers: 219012403–219012404, 219012409, 219012410, 219012417–219012418, 219012422
Status: Unutilized
Base Closure: No
Comment: 1888 sq. ft. each; 2 story; most recent use—barracks; poor condition; needs major rehab.

Bldgs. 4917, 4930
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Numbers: 219012405, 219012406
Status: Unutilized
Base Closure: No
Comment: 810 sq. ft. each; 1 story; most recent use—arms building; poor condition; need major rehab.

Bldg. 5287
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219012411
Status: Unutilized
Base Closure: No
Comment: 1216 sq. ft.; 1 story; most recent use—arms building; poor condition; needs major rehab.

Bldg. 4934
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219012419
Status: Unutilized
Base Closure: No
Comment: 1507 sq. ft.; one story; most recent use—dayroom; needs major rehab.

Bldg. 4932
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219012421
Status: Unutilized
Base Closure: No
Comment: 794 sq. ft.; 1 story; most recent use—storehouse; needs rehab.

Bldgs. 1235, 1236
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Numbers: 219014887–219014888
Status: Unutilized
Base Closure: No
Comment: 9367 sq. ft. each; 1 story buildings; needs rehab; most recent use—General Storehouse.

Bldg. 1251
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219014889
Status: Unutilized
Base Closure: No
Comment: 18385 sq. ft.; 1 story building; needs rehab; most recent use—Arms Repair Shop.

Bldg. 2393
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219014902
Status: Unutilized
Base Closure: No
Comment: 820 sq. ft.; 1 story building; needs rehab; most recent use—Vehicle Maintenance; potential use—storage.

Bldg. 2397
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219014903
Status: Unutilized
Base Closure: No
Comment: 420 sq. ft.; 1 story building; needs rehab; most recent use—Dispatch Building; potential use—storage.

Bldg. 2416
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219014904
Status: Unutilized
Base Closure: No
Comment: 1840 sq. ft.; 1 story building; needs rehab; most recent use—administrative.

Bldg. 2591
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219014906
Status: Unutilized
Base Closure: No
Comment: 1663 sq. ft.; 1 story building; needs rehab; most recent use—General storehouse.

Bldgs. 3005–3010
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Numbers: 219014907–219014912
Status: Unutilized
Base Closure: No
Comment: 7688 sq. ft. each; 2 story buildings; need rehab; most recent use—Barracks.

Bldg. 3080
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219014913
Status: Unutilized
Base Closure: No
Comment: 1372 sq. ft.; 1 story building; needs rehab; most recent use—General Storehouse.

Bldg. 3081
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219014914
Status: Unutilized
Base Closure: No
Comment: 2284 sq. ft.; 1 story building; needs rehab; most recent use—Clinic.

Bldg. 4022
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219014915
Status: Unutilized
Base Closure: No
Comment: 1712 sq. ft.; 1 story building; needs rehab; most recent use—Clinic.

Bldg. 4491
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219014916
Status: Unutilized
Base Closure: No
Comment: 18240 sq. ft.; 1 story building; needs rehab; most recent use—Vehicle maintenance shop.

Bldg. 4500
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219014917
Status: Unutilized
Base Closure: No
Comment: 1372 sq. ft.; 1 story building; needs rehab; most recent use—Arms Building.

Bldg. 4511
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219014918
Status: Unutilized
Base Closure: No
Comment: 4720 sq. ft.; 2 story building; needs rehab; most recent use—Barracks.

Bldg. 4633
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219014919
Status: Unutilized
Base Closure: No
Comment: 5069 sq. ft.; 1 story building; needs rehab; most recent use—Training Building.

Bldg. 4634
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219014920
Status: Unutilized
Base Closure: No
Comment: 5069 sq. ft.; 1 story building; needs rehab; most recent use—Training Building.

Bldgs. 4646, 4690
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Numbers: 219014921, 219014923
Status: Unutilized
Base Closure: No
Comment: 1372 sq. ft. each; 1 story buildings; needs rehab; most recent use—General Storehouse.

Bldg. 4649
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219014922
Status: Unutilized
Base Closure: No
Comment: 2250 sq. ft.; 1 story building; needs rehab; most recent use—Headquarters Building.

Bldg. 4751
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219014924
Status: Unutilized
Base Closure: No
Comment: 3060 sq. ft.; 1 story building; needs rehab; most recent use—Recreation building.

Bldg. 4752
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219014925
Status: Unutilized
Base Closure: No
Comment: 2284 sq. ft.; 1 story building; needs rehab; most recent use—Headquarters Building.

Bldg. 5400
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219014926
Status: Unutilized
Base Closure: No
Comment: 2750 sq. ft.; 1 story building; needs rehab; most recent use—General Storehouse.

Bldg. 5401
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219014927
Status: Unutilized
Base Closure: No
Comment: 2956 sq. ft.; 1 story building; needs rehab; most recent use—Dental Clinic.

Bldg. 5403
Fort Benning
Fort Benning, GA, Co: Muscogee 31905–
Federal Register Notice Date: 05/31/91
Property Number: 219030286
Status: Unutilized
Base Closure: No
Comment: 7850 sq. ft.; 1 story; needs major rehab; most recent use—exchange branch.

Bldg. 39722
Fort Gordon
Off 8th street
Fort Gordon, GA Co: Richmond 30905–
Federal Register Notice Date: 05/31/91
Property Number: 219012353
Status: Underutilized
Base Closure: No
Comment: 1197 sq. ft.; 1 story wood; possible asbestos; extensive rot and termite damage; Building for off-site use only.

Bldgs. 20701, 20703, 20709, 34402, 34404, 35401
Fort Gordon
Augusta, GA, Co: Richmond 30905–
Location: Located on Barnes Avenue and 20th street.
Federal Register Notice Date: 05/31/91
Property Numbers: 219014281–219014282, 219014284–219014287
Status: Unutilized
Base Closure: No
Comment: 4524 sq. ft.; 2 story wood structure; needs major rehab; off-site use only.

Bldg. 20705
Fort Gordon
Augusta, GA, Co: Richmond 30905–
Location: Located on 20th street
Federal Register Notice Date: 05/31/91
Property Number: 219014283
Status: Unutilized
Base Closure: No
Comment: 2352 sq. ft.; 1 story wood structure; needs major rehab; off-site use only.

Bldg. 36701
Fort Gordon
Augusta, GA, Co: Richmond 30905–
Location: Located on Chamberlain Avenue at Center Golf Course.
Federal Register Notice Date: 05/31/91
Property Number: 219014286
Status: Underutilized
Base Closure: No
Comment: 196 sq. ft.; 1 story brick structure; off-site use only.

Illinois

Suitable/Available Land (by Agency)

Army

Arlington USAR Center
1515 W. Central Road
Arlington Height, IL, Co: Cook 60005–
Federal Register Notice Date: 05/31/91
Property Number: 219013921
Status: Underutilized
Base Closure: No
Comment: 6 acres; access subject to negotiation.

Indiana

Suitable/Available Buildings (by Agency)

Army

Bldg. 719–1
Indiana Army Ammunition Plant
Charlestown, IN, Co: Clark
Federal Register Notice Date: 05/31/91
Property Number: 219013578
Status: Underutilized
Base Closure: No
Comment: 5000 sq. ft.; 1 story brick frame; secured area with alternate access; most recent use—administration.

Bldg. 703–IC
Indiana Army Ammunition Plant
Charlestown, IN, Co: Clark
Location: Gate 22 off Highway 22
Federal Register Notice Date: 05/31/91
Property Number: 219013761
Status: Underutilized
Base Closure: No
Comment: 4000 sq. ft.; 2 story brick frame; possible asbestos; most recent use—exercise area.

Bldg. 1011 (Portion of)
Indiana Army Ammunition Plant
End of 3rd Street
Charlestown, IN, Co: Clark
Location: East of State Highway 62 at Gate 3
Federal Register Notice Date: 05/31/91
Property Number: 219013762
Status: Underutilized
Base Closure: No
Comment: 4040 sq. ft.; 1 story concrete block frame; possible asbestos; secured area with alternate access; most recent use—office.

Bldg. 1001 (Portion of)
Indiana Army Ammunition Plant
Charlestown, IN, Co: Clark
Location: South end of 3rd Street, East of Highway 62 at entrance gate
Federal Register Notice Date: 05/31/91
Property Number: 219013763
Status: Underutilized
Base Closure: No
Comment: 55630 sq. ft.; 1 story concrete block; possible asbestos; secured area with alternate access; most recent use—cloth bag manufacturing.

Bldg. 720
Indiana Army Ammunition Plant
Charlestown, IN, Co: Clark
Federal Register Notice Date: 05/31/91
Property Number: 219013765
Status: Underutilized
Base Closure: No
Comment: 5000 sq. ft.; 2 story brick frame; possible asbestos; secured area with alternate access; most recent use—administrative.

Kansas

Suitable/Available Buildings (by Agency)

Army

Bldgs. T–1383, T–2060, T–2324
Fort Riley
Fort Riley, KS, Co: Geary 66442–
Federal Register Notice Date: 05/31/91
Property Numbers: 219013774–219013775, 219013777
Status: Unutilized
Base Closure: No
Comment: 3422 sq. ft. to 3864 sq. ft.; 2 story wood frame; possible asbestos; most recent use—open-bay trainee barracks with gang latrine.

Suitable Land (by Agency)

Parcel 1
Fort Leavenworth
Combined Arms Center
Fort Leavenworth, KS, Co: Leavenworth 66027–5020
Federal Register Notice Date: 05/31/91
Property Number: 219012333
Status: Underutilized
Base Closure: No
Comment: 14.4+ acres.

Parcel 3
Fort Leavenworth
Combined Arms Center
Fort Leavenworth, KS, Co: Leavenworth 66027–5020
Federal Register Notice Date: 05/31/91

Property Number: 219012336
Status: Underutilized
Base Closure: No
Comment: 281+ acres; heavily forrested; no access to a public right-of-way; selected periods are reserved for military/training exercises.

Parcel 4
Fort Leavenworth
Combined Arms Center
Fort Leavenworth, KS, Co: Leavenworth 66027–5020
Federal Register Notice Date: 05/31/91
Property Number: 219012339
Status: Underutilized
Base Closure: No
Comment: 24.1+ acres; selected periods are reserved for military/ training exercises; steep/wooded area.

Parcel 6
Fort Leavenworth
Combined Arms Center
Fort Leavenworth, KS, Co: Leavenworth 66027–5020
Location:
Extreme north east corner of installation in Flood Plain of
the Missouri River.
Federal Register Notice Date: 05/31/91
Property Number: 219012340
Status: Underutilized
Base Closure: No
Comment: 1280 acres; selected periods are reserved for military/ training exercises.

Parcel F
Fort Leavenworth
Combined Arms Center
Fort Leavenworth, KS, Co: Leavenworth 66027–5020
Federal Register Notice Date: 05/31/91
Property Number: 219012552
Status: Unutilized
Base Closure: No
Comment: 33.4 acres; area is land locked; heavily wooded; periodic flooding.

Suitable Buildings (by Agency)

Bldg. T–629
Fort Leavenworth—NCO Club Building
Combined Arms Command
Leavenworth, KS, Co: Leavenworth 66027–
Federal Register Notice Date: 05/31/91
Property Number: 219110148
Status: Unutilized
Base Closure: No
Comment: 17540 gross sq. ft.; 2 story wood frame; needs rehab; termite infested; possible asbestos; scheduled to be vacated Summer 1991; off-site use only.

Kentucky

Suitable/Available Buildings (by Agency)

Army

Bldg. 5956
Fort Campbell
Fort Campbell, KY, Co: Christian 42223–
Federal Register Notice Date: 05/31/91
Property Number: 219010956
Status: Unutilized
Base Closure: No
Comment: 2179 sq. ft.; one story; possible asbestos; most recent use-Military Vehicle Maintenance Shop; Organizational.

Bldg. 104
Fort Campbell
Fort Campbell, KY, Co: Christian 42223–
Federal Register Notice Date: 05/31/91
Property Number: 219010937
Status: Underutilized
Base Closure: No
Comment: 15066 sq. ft.; two story; possible asbestos; most recent use-barracks.

Bldgs. 126, 141, 147, 149, 161, 165, 167, 169, 143
Fort Campbell
Fort Campbell, KY, Co: Christian 42223–
Federal Register Notice Date: 05/31/91
Property Numbers: 219010938, 219010940–219010946, 219013139
Status: Underutilized
Base Closure: No
Comment: 12576 sq. ft. each; two story; possible asbestos; most recent use—storage.

Bldg. 122
Fort Campbell
Fort Campbell, KY, Co: Christian 42223–
Federal Register Notice Date: 05/31/91
Property Number: 219010939
Status: Underutilized
Base Closure: No
Comment: 1468 sq. ft.; two story; possible asbestos; most recent use—storage and administration.

Bldg. 2244
Fort Campbell
Fort Campbell, KY, Co: Christian 42223–
Federal Register Notice Date: 05/31/91
Property Number: 219010948
Status: Underutilized
Base Closure: No
Comment: 4248 sq. ft.; possible asbestos; two story; most recent use—storage.

Bldg. 3110
Fort Campbell
Fort Campbell, KY, Co: Christian 42223–
Federal Register Notice Date: 05/31/91
Property Number: 219010950
Status: Unutilized
Base Closure: No
Comment: 1000 sq. ft.; one story; possible asbestos; most recent use—administration.

Bldgs. 5954, 5958, 5960
Fort Campbell
Fort Campbell, KY, Co: Christian 42223–
Federal Register Notice Date: 05/31/91
Property Numbers: 219010953, 219010958, 219010961
Status: Unutilized
Base Closure: No
Comment: 2179 sq. ft. each; one story; possible asbestos; most recent use—Military Vehicle Maintenance Shop, Organizational.

Bldg. 6605
Fort Campbell
Fort Campbell, KY, Co: Christian 42223–
Federal Register Notice Date: 05/31/91
Property Number: 219010968
Status: Underutilized
Base Closure: No
Comment: 1968 sq. ft.; one story; most recent use—storage.

Bldg. 3148
Ft. Campbell
Ft. Campbell, KY, Co: Christian 42223–
Federal Register Notice Date: 05/31/91
Property Number: 219013223
Status: Underutilized
Base Closure: No
Comment: 2200 sq. ft.; 1 story; possible asbestos; selected periods used for military/training exercises.

Louisiana

Suitable/Available Buildings (by Agency)

Army

Bldg. 417
6th Street
Fort Polk, LA, Co: Vernon 71459–5000
Federal Register Notice Date: 05/31/91
Property Number: 219012682
Status: Unutilized
Base Closure: No
Comment: 7670 sq. ft.; 2 story temporary wood frame; possible asbestos; most recent use—BOQ.

Bldg. 7124
Reserve Road
Fort Polk, LA, Co: Vernon 71459–5000
Federal Register Notice Date: 05/31/91
Property Number: 219012688
Status: Unutilized
Base Closure: No
Comment: 2500 sq. ft.; 1 story temporary wood frame; most recent use—recreation room.

Bldgs. 7129–7132, 7134, 7135
Reserve Road
Fort Polk, LA, Co: Vernon 71459–5000
Federal Register Notice Date: 05/31/91
Property Numbers: 219012689–219012692, 219012694–219012695
Status: Unutilized
Base Closure: No
Comment: 4957 sq. ft. each; 2 story temporary wood frame; possible asbestos; most recent use—barracks.

Bldg. 7143
"D" Avenue
Fort Polk, LA, Co: Vernon 71459–5000
Federal Register Notice Date: 05/31/91
Property Number: 219012696
Status: Unutilized
Base Closure: No
Comment: 2250 sq. ft.; 1 story temporary wood frame; possible asbestos; most recent use—dining facility.

Bldg. T–7157
Guard Road
Fort Polk, LA, Co: Vernon 71459–5000
Federal Register Notice Date: 05/31/91
Property Number: 219012698
Status: Unutilized
Base Closure: No
Comment: 4357 sq. ft.; 2 story; possible asbestos; most recent use—barracks.

Bldgs. 7161–7163, 7166–7168
"D" Avenue
Fort Polk, LA, Co: Vernon 71459–5000
Federal Register Notice Date: 05/31/91
Property Numbers: 219012699–219012704
Status: Unutilized
Base Closure: No
Comment: 4957 sq. ft. each; 2 story temporary wood frame; possible asbestos; most recent use—barracks.

Bldgs. 7183, 7184, 7187
"D" Avenue
Fort Polk, LA, Co: Vernon 71459–5000
Federal Register Notice Date: 05/31/91
Property Numbers: 219012705–219012707
Status: Unutilized

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Base Closure: No
Comment: 2250 sq. ft. to 2830 sq. ft. each; 1 story temporary wood frame; possible asbestos; most recent use—dining facility.
Bldg. 7304
Armored Road
Fort Polk, LA, Co: Vernon 71459–5000
Federal Register Notice Date: 05/31/91
Property Number: 219012712
Status: Unutilized
Base Closure: No
Comment: 6103 sq. ft.; 2 story temporary wood frame; most recent use—storage.
Bldg. 7430
1st Street
Fort Polk, LA, Co: Vernon 71459–5000
Federal Register Notice Date: 05/31/91
Property Number: 219012715
Status: Unutilized
Base Closure: No
Comment: 4987 sq. ft.; 2 story temporary frame; most recent use— storage.
Bldg. 8026
10th Street
Fort Polk, LA, Co: Vernon 71459–5000
Federal Register Notice Date: 05/31/91
Property Number: 219012724
Status: Underutilized
Base Closure: No
Comment: 2580 sq. ft.; 1 story temporary wood frame; most recent use—storage.
Bldg. 8226
12th Street
Fort Polk, LA, Co: Vernon 71459–5000
Federal Register Notice Date: 05/31/91
Property Number: 219012729
Status: Unutilized
Base Closure: No
Comment: 2050 sq. ft.; 1 story temporary wood frame; possible asbestos; most recent use—dining facility.
Bldg. 7175
Fort Polk
3rd Street
Fort Polk, LA, Co: Vernon 71459–
Federal Register Notice Date: 05/31/91
Property Number: 219013770
Status: Excess
Base Closure: No
Comment: 7527 sq. ft.; temporary wood structure; scheduled for demolition; seriously deteriorated.

Massachusetts

Suitable/Available Buildings (by Agency)

Army
Bldg. T–2732
Fort Devens
Fort Devens, MA, Co: Middlesex/Worcester 01433–
Federal Register Notice Date: 05/31/91
Property Number: 219012343
Status: Unutilized
Base Closure: No
Comment: 6351 sq ft., wood, two stories, most recent use-housing.
Bldg. T–2281
Fort Devens
Fort Devens, MA, Co: Middlesex/Worcester 01433–
Federal Register Notice Date: 05/31/91
Property Number: 219012344
Status: Unutilized
Base Closure: No
Comment: 6351 sq ft., wood structure, 2 floors, most recent use-housing.
Bldg. T–201
Fort Devens
Fort Devens, MA, Co: Middlesex/Worcester 01433–
Federal Register Notice Date: 05/31/91
Property Number: 219012383
Status: Unutilized
Base Closure: No
Comment: 1000 sq ft., wood structure-needs rehab, no sanitary facilities, most recent use-company admin/supply.

Maryland

Suitable/Available Buildings (by Agency)

Army
Bldg. 533
Fort George Meade
Fort Meade, MD, Co: Ann Arundel 20755–5115
Federal Register Notice Date: 05/31/91
Property Number: 219040001
Status: Unutilized
Base Closure: No
Comment: 6525 sq. ft.; one story; wood frame; possible asbestos; needs major rehab; secured area w/alternate access.
Bldg. 523
Fort George Meade
Fort Meade, MD, Co: Ann Arundel 20755–5115
Federal Register Notice Date: 05/31/91
Property Number: 219040002
Status: Unutilized
Base Closure: No
Comment: 4307 sq. ft.; one story; wood frame; possible asbestos; needs major rehab; secured area w/alternate access.
Bldg. 6926
Taylor Avenue
Fort Meade, MD, Co: Anne Arundel 21061–
Federal Register Notice Date: 05/31/91
Property Number: 219013605
Status: Unutilized
Base Closure: No
Comment: 1275 sq. ft.; 1 story frame with basement (216 sq. ft.); possible asbestos; termite damage.
Bldg. 157
Fort Meade
Chisholm Street
Fort Meade, MD, Co: Anne Arundel 20755–5115
Federal Register Notice Date: 05/31/91
Property Number: 219013606
Status: Unutilized
Base Closure: No
Comment: 4720 sq. ft.; 2 story frame bks.; possible asbestos; needs major rehab.
Bldg. 2296
Fort Meade
4th Street
Fort Meade, MD, Co: Anne Arundel 20755–5115
Federal Register Notice Date: 05/31/91
Property Number: 219013607
Status: Unutilized
Base Closure: No
Comment: 2740 sq. ft.; 1 story frame warehouse; possible asbestos; potential use—storage.
Bldg. 632
Fort Meade
15th Street
Fort Meade, MD, Co: Anne Arundel 21061–
Federal Register Notice Date: 05/31/91
Property Number: 219013608
Status: Unutilized
Base Closure: No
Comment: 2208 sq. ft.; 1 story wood frame; possible asbestos; needs major rehab.
Bldg. 641
Fort Meade
15th Street
Fort Meade, MD, Co: Anne Arundel 21061–
Federal Register Notice Date: 05/31/91
Property Number: 219013610
Status: Unutilized
Base Closure: No
Comment: 3537 sq. ft.; 1 story with balcony; possible asbestos; no furnace; needs major rehab.
Bldg. 143
Fort Meade
1st and Saxton Streets
Fort Meade, MD, Co: Anne Arundel 21061–
Federal Register Notice Date: 05/31/91
Property Number: 219013611
Status: Unutilized
Base Closure: No
Comment: 7670 sq. ft.; 2 story wood frame; possible asbestos; needs rehab; no furnace.
Bldg. 2250A
Fort Meade
Fort Meade, MD, Co: Anne Arundel 20755–5115
Federal Register Notice Date: 05/31/91
Property Number: 219013612
Status: Unutilized
Base Closure: No
Comment: 240 sq. ft.; 1 story metal/wood shed; structurally unsound; potential use—storage.
Bldg. 197
Fort George G. Meade
1st and Chisholm Streets
Fort Meade, MD, Co: Anne Arundel 20755–
Federal Register Notice Date: 05/31/91
Property Number: 219014848
Status: Unutilized
Base Closure: No
Comment: 7670 sq. ft.; 2 story wood frame; needs rehab; secured area with alternate access; possible asbestos.
Bldg. 508
Fort George G. Meade
Llewelyn Street
Fort Meade, MD, Co: Anne Arundel 20755–
Federal Register Notice Date: 05/31/91
Property Number: 219014849
Status: Unutilized
Base Closure: No
Comment: 4720 sq. ft.; 2 story wood frame; needs rehab; most recent use—storage; secured area with alternate access; possible asbestos.
Bldg. 4461
Fort George G. Meade
Lewilyn Avenue
Fort Meade, MD, Co: Anne Arundel 20755–
Federal Register Notice Date: 05/31/91
Property Number: 219014850
Status: Unutilized
Base Closure: No
Comment: 18594 sq. ft.; 3 story concrete block; needs rehab; secured area with

alternate access; possible asbestos; most recent use—branch exchange.
Bldg. 3187
Fort George G. Meade
Mac Arthur Road
Fort Meade, MD, Co: Anne Arundel 20755–
Federal Register Notice Date: 05/31/91
Property Number: 219014851
Status: Unutilized
Base Closure: No
Comment: 1914 sq. ft.; 1 story wood frame; needs rehab; secured area with alternate access; possible asbestos.
Bldg. 6599
Fort George G. Meade
Zimboraki Road
Fort Meade, MD, Co: Anne Arundel 20755–
Federal Register Notice Date: 05/31/91
Property Number: 219014852
Status: Unutilized
Base Closure: No
Comment: 4173 sq. ft.; 1 story wood frame; needs rehab; secured area with alternate access.
Bldg. 378
Fort George G. Meade
Behind Bldg. 368 on 5½ Street
Fort Meade, MD, Co: Anne Arundel 20755–
Federal Register Notice Date: 05/31/91
Property Number: 219014853
Status: Underutilized
Base Closure: No
Comment: 1144 sq. ft.; 1 story wood frame; secured area with alternate access; possible asbestos; most recent use—storage.
Bldg. 373
Fort George G. Meade
Behind Bldg. 372 on Chamberlain Street
Fort Meade, MD, Co: Anne Arundel 20755–
Federal Register Notice Date: 05/31/91
Property Number: 219014854
Status: Underutilized
Base Closure: No
Comment: 1144 sq. ft.; 1 story wood frame; secured area with alternate access; possible asbestos; most recent use—storage.
Bldg. 2815
Fort Goerge G. Meade
Chisholm Street
Fort Meade, MD, Co: Anne Arundel 20755–
Federal Register Notice Date: 05/31/91
Property Number: 219014855
Status: Unutilized
Base Closure: No
Comment: 2208 sq. ft.; 1 story wood frame; needs rehab; secured area with alternate access; possible asbestos.
Bldg. 287
Fort George G. Meade
3rd Street
Fort Meade, MD, Co: Anne Arundel 20755–
Federal Register Notice Date: 05/31/91
Property Number: 219014856
Status: Unutilized
Base Closure: No
Comment: 2208 sq. ft.; 1 story wood frame; needs rehab; secured area with alternate access; possible asbestos.
Bldg. T–6357
Fort George G. Meade
Hodges Street
Fort Meade, MD, Co: Anne Arundel 20755–
Federal Register Notice Date: 05/31/91
Property Number: 219014857
Status: Unutilized
Base Closure: No
Comment: 2360 sq. ft.; 1 story wood frame; needs rehab; secured area with alternate access; possible asbestos.
Bldg. 6205
Fort George G. Meade
Rock Avenue
Fort Meade, MD, Co: Anne Arundel 20755–
Federal Register Notice Date: 05/31/91
Property Number: 219014858
Status: Unutilized
Base Closure: No
Comment: 2441 sq. ft.; 1 story wood frame; secured area with alternate access; possible asbestos; most recent use—storage.
Bldg. 6212
Fort George G. Meade
Rock Avenue
Fort Meade, MD, Co: Anne Arundel 20755–
Federal Register Notice Date: 05/31/91
Property Number: 219014859
Status: Unutilized
Base Closure: No
Comment: 2220 sq. ft.; 1 story wood frame; needs rehab; secured area with alternate access; most recent use—storage.
Bldg. 2816
Fort George G. Meade
Chisholm Street
Fort Meade, MD, Co: Anne Arundel 20755–
Federal Register Notice Date: 05/31/91
Property Number: 219014860
Status: Unutilized
Base Closure: No
Comment: 1676 sq. ft.; 1 story wood frame; secured area with alternate access; possible asbestos; most recent use—storage.
Bldg. 2817
Fort George G. Meade
Chisholm Street
Fort Meade, MD, Co: Anne Arundel 20755–
Federal Register Notice Date: 05/31/91
Property Number: 219014861
Status: Underutilized
Base Closure: No
Comment: 3663 sq. ft.; 1 story wood frame; possible asbestos; secured area with alternate access; most recent use—storage.
Bldg. T–356
Fort George G. Meade
5½ Street
Fort Meade, MD, Co: Anne Arundel 20755–
Federal Register Notice Date: 05/31/91
Property Number: 219014862
Status: Unutilized
Base Closure: No
Comment: 4720 sq. ft.; 2 story wood frame; needs rehab; secured area with alternate access; possible asbestos; most recent use—storage.
Bldg. 2229
Fort George G. Meade
Chisholm Street
Fort Meade, MD, Co: Anne Arundel 20755–
Federal Register Notice Date: 05/31/91
Property Number: 219014863
Status: Unutilized
Base Closure: No
Comment: 4720 sq. ft.; 2 story wood frame; needs rehab; secured area with alternate access; possible abestos.
Bldg. 649
Fort George G. Meade
Chamberlain Avenue
Fort Meade, MD, Co: Anne Arundel 20755–
Federal Register Notice Date: 05/31/91
Property Number: 219014864
Status: Underutilized
Base Closure: No
Comment: 2594 sq. ft.; 1 story wood frame; possible asbestos; secured area with alternate access; needs rehab; most recent use—storage.
Bldg. 583
Fort George G. Meade
Chamberlain Avenue
Fort Meade, MD, Co: Anne Arundel 20755–
Federal Register Notice Date: 05/31/91
Property Number: 219014865
Status: Unutilized
Base Closure: No
Comment: 3245 sq. ft.; 1 story wood frame; needs rehab; possible asbestos; secured area with alternate access.
Bldg. 543
Fort George G. Meade
Chamberlain Avenue
Fort Meade, MD, Co: Anne Arundel 20755–
Federal Register Notice Date: 05/31/91
Property Number: 219014866
Status: Unutilized
Base Closure: No
Comment: 4720 sq. ft.; 2 story wood frame; possible asbestos; needs rehab; secured area with alternate access.
Bldg. 509
Fort George G. Meade
Llewellyn Street
Fort Meade, MD, Co: Anne Arundel 20755–5115
Federal Register Notice Date: 05/31/91
Property Number: 219014867
Status: Unutilized
Base Closure: No
Comment: 4720 sq. ft.; 2 story wood frame; needs rehab; secured area with alternate access; most recent use—storage.
Bldg. 369
Fort George G. Meade
Chisholm Street
Fort Meade, MD, Co: Anne Arundel 20755–5115
Federal Register Notice Date: 05/31/91
Property Number: 219014868
Status: Unutilized
Base Closure: No
Comment: 2208 sq. ft.; 1 story wood frame; needs rehab; secured area with alternate access; possible asbestos.
Bldgs. 364, 357, 353
Fort George G. Meade
5½ Street
Fort Meade, MD, Co: Anne Arundel 20755–5115
Federal Register Notice Date: 05/31/91
Property Numbers: 219014869, 219014871, 219014872
Status: Unutilized
Base Closure: No
Comment: 4720 sq. ft. each; 2 story wood frame; needs rehab; secured area with alternate access; possible asbestos; most recent use—storage.
Bldg. T–359

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Fort George G. Meade
5½ and Chisholm Street
Fort Meade, MD, Co: Anne Arundel 20755–5115
Federal Register Notice Date: 05/31/91
Property Number: 219014870
Status: Unutilized
Base Closure: No
Comment: 2208 sq. ft.; 1 story wood frame; needs rehab; secured area with alternate access; possible asbestos.

Bldg. 269
Fort George G. Meade
Chisholm Street
Fort Meade, MD, Co: Anne Arundel 20755–5115
Federal Register Notice Date: 05/31/91
Property Number: 219014873
Status: Underutilized
Base Closure: No
Comment: 3537 sq. ft.; 1 story wood frame; possible asbestos; needs rehab; secured area with alternate access; most recent use—storage.

Bldgs. 2408, 2413, 2417, 2418
Fort George G. Meade
Ernie Pyle Street
Fort Meade, MD, Co: Anne Arundel 20755–5115
Federal Register Notice Date: 05/31/91
Property Numbers: 219014874–219014877
Status: Unutilized
Base Closure: No
Comment: 4720 sq. ft.; 2 story wood frame; needs rehab; secured area with alternate access; possible asbestos.

Bldg. 2419
Fort George G. Meade
Behind Bldg 2427—Ernie Pyle Street
Fort Meade, MD, Co: Anne Arundel 20755–5115
Federal Register Notice Date: 05/31/91
Property Number: 219014878
Status: Underutilized
Base Closure: No
Comment: 2441 sq. ft.; 1 story wood frame; needs rehab; possible asbestos; secured area with alternate access; most recent use—arms room.

Bldg. 2425
Fort George G. Meade
Ernie Pyle Street
Fort Meade, MD, Co: Anne Arundel 20755–5115
Federal Register Notice Date: 05/31/91
Property Number: 219014879
Status: Unutilized
Base Closure: No
Comment: 1843 sq. ft.; 1 story wood frame; needs rehab; secured area with alternate access; possible asbestos.

Bldg. 2426
Fort George G. Meade
Ernie Pyle Street
Fort Meade, MD, Co: Anne Arundel 20755–5115
Federal Register Notice Date: 05/31/91
Property Number: 219014880
Status: Unutilized
Base Closure: No
Comment: 7670 sq. ft.; 1 story wood frame; needs rehab; secured area with alternate access; possible asbestos.

Bldg. 2427
Fort George G. Meade
Ernie Pyle Street
Fort Meade, MD, Co: Anne Arundel 20755–5115
Federal Register Notice Date: 05/31/91
Property Number: 219014881
Status: Unutilized
Base Closure: No
Comment: 8150 sq. ft.; 2 story wood frame; needs rehab; secured area with alternate access; possible asbestos.

Bldg. 2840
Fort George G. Meade
Ernie Pyle Street
Fort Meade, MD, Co: Anne Arundel 20755–5115
Federal Register Notice Date: 05/31/91
Property Number: 219014882
Status: Unutilized
Base Closure: No
Comment: 2250 sq. ft.; 1 story wood frame; needs rehab; possible asbestos; secured area with alternate access.

Bldg. 2847
Fort George G. Meade
Ernie Pyle Street
Fort Meade, MD, Co: Anne Arundel 20755–5115
Federal Register Notice Date: 05/31/91
Property Number: 219014883
Status: Unutilized
Base Closure: No
Comment: 3663 sq. ft.; 1 story wood frame; possible asbestos; secured area with alternate access; most recent use—gym.

Bldg. 6599
Ft. George G. Meade
6599 Zimborski Road
Ft. Meade, MD, Co: Anne Arundel 20755–5115
Federal Register Notice Date: 05/31/91
Property Number: 219030002
Status: Unutilized
Base Closure: No
Comment: 4173 sq. ft.; 1 story wood frame; possible asbestos; needs major rehab; most recent use—PX exchange facility.

Bldg. 3187
Ft. George G. Meade
3187 MacArthur Road
Ft. Meade, MD, Co: Anne Arundel 20755–5115
Federal Register Notice Date: 05/31/91
Property Number: 219030003
Status: Unutilized
Base Closure: No
Comment: 1914 sq. ft.; 1 story wood frame; possible asbestos; needs major rehab; most recent use—storage.

Bldg. 2815
Ft. George G. Meade
2815 Chish Street
Ft. Meade, MD, Co: Anne Arundel 20755–5115
Federal Register Notice Date: 05/31/91
Property Number: 219030004
Status: Unutilized
Base Closure: No
Comment: 2208 sq. ft.; 1 story wood frame; needs rehab; possible asbestos; secured area with alternate access; most recent use—storage.

Bldg. 2426
Ft. George G. Meade
2426 Ernie Pyle Street
Ft. Meade, MD, Co: Anne Arundel 20755–5115
Federal Register Notice Date: 05/31/91
Property Number: 219030005
Status: Unutilized
Base Closure: No
Comment: 1 story wood frame; needs major rehab; possible asbestos; secured area with alternate access; potential utili[illegible]; most recent use—storage.

Bldg. 2030
Aberdeen Proving Ground
Aberdeen City, MD, Co: Harford 21005–5001
Federal Register Notice Date: 05/31/91
Property Number: 219011418
Status: Unutilized
Base Closure: No
Comment: 3302 sq ft., one story, possible asbestos.

Bldg. 2174
Aberdeen Proving Ground
Aberdeen City, MD, Co: Harford 21005–5001
Federal Register Notice Date: 05/31/91
Property Number: 219011[illegible]
Status: Unutilized
Base Closure: No
Comment: 3540 sq ft.; poor condition; utilities disconnected; one story; possible asbestos

Bldg. 3243
Aberdeen Proving Ground
Aberdeen City, MD, Co: Harford 21005–5001
Federal Register Notice Date: 05/31/91
Property Number: 219011420
Status: Unutilized
Base Closure: No
Comment: 11800 sq ft., possible asbestos, two story, potential utilities.

Bldg. 3244
Aberdeen Proving Ground
Aberdeen City, MD, Co: Harford 21005–5001
Federal Register Notice Date: 05/31/91
Property Number: 219011421
Status: Unutilized
Base Closure: No
Comment: 3302 sq ft., one story, possible asbestos, potential utilities.

Bldgs. 3621–3624, 3626–3629, 3634–3635, 3637, 3639–3642
Aberdeen Proving Ground
Aberdeen City, MD, Co: Harford 21005–5001
Federal Register Notice Date: 05/31/91
Property Numbers: 219011422–219011425, 219011427–219011430, 219011435–219011437, 219011439–219011442
Status: Unutilized
Base Closure: No
Comment: 4720 sq ft. each, two story, possible asbestos, poor condition, utilities disconnected.

Bldg. 3625
Aberdeen Proving Ground
Aberdeen City, MD, Co: Harford 21005–5001
Federal Register Notice Date: 05/31/91
Property Number: 219011426
Status: Unutilized
Base Closure: No
Comment: 2031 sq ft., one story, utilities disconnected, poor condition, possible asbestos.

Bldg. 3630
Aberdeen Proving Ground
Aberdeen City, MD, Co: Harford 21005–5001
Federal Register Notice Date: 05/31/91
Property Number: 219011431
Status: Unutilized
Base Closure: No
Comment: 1750 sq ft., one story, possible asbestos, poor condition, utilities disconnected.

Bldgs. 3631, 3632
Aberdeen Proving Ground
Aberdeen City, MD, Co: Harford 21005–5001
Federal Register Notice Date: 05/31/91
Property Numbers: 219011432–219011433
Status: Unutilized
Base Closure: No
Comment: 1513 sq ft. each, one story, possible asbestos, poor condition, utilities disconnected.

Bldg. 3633
Aberdeen Proving Ground
Aberdeen City, MD, Co: Harford 21005–5001
Federal Register Notice Date: 05/31/91
Property Number: 219011434
Status: Unutilized
Base Closure: No
Comment: 1754 sq ft., one story, utilities disconnected, possible asbestos, poor condition.

Bldg. 3638
Aberdeen Proving Ground
Aberdeen City, MD, Co: Harford 21005–5001
Federal Register Notice Date: 05/31/91
Property Number: 219011438
Status: Unutilized
Base Closure: No
Comment: 18880 sq ft., one story, utilities disconnected, possible asbestos, poor condition.

Bldg. 3643
Aberdeen Proving Ground
Aberdeen City, MD, Co: Harford 21005–5001
Federal Register Notice Date: 05/31/91
Property Number: 21901 443
Status: Unutilized
Base Closure: No
Comment: 1750 sq ft., one story, utilities disconnected, possible asbestos, poor condition.

Bldgs. 3644, 3645
Aberdeen Proving Ground
Aberdeen City, MD, Co: Harford 21005–5001
Federal Register Notice Date: 05/31/91
Property Numbers: 219011444–219011445
Status: Unutilized
Base Closure: No
Comment: 1541 sq ft. each, one story, utilities disconnected, possible asbestos, poor condition.

Bldg. 3646
Aberdeen Proving Ground
Aberdeen City, MD, Co: Harford 21005–5001
Federal Register Notice Date: 05/31/91
Property Number: 219011446
Status: Unutilized
Base Closure: No
Comment: 1750 sq ft., one story, utilities disconnected, possible asbestos, poor condition.

Bldg. E4736
Aberdeen Proving Ground
Edgewood Area
Aberdeen City, MD, Co: Harford 21010–5425
Federal Register Notice Date: 05/31/91
Property Number: 219012821
Status: Unutilized
Base Closure: No
Comment: Possible contamination—under study; potential utilities.

Bldg. 4723
Aberdeen Proving Ground
Edgewood Area
Aberdeen City, MD, Co: Harford 21010–5425
Federal Register Notice Date: 05/31/91
Property Number: 219012843
Status: Unutilized
Base Closure: No
Comment: 3250 sq. ft.; potential utilities; poor condition; possible asbestos.

Bldg. 5104
Aberdeen Proving Ground
Edgewood Area
Aberdeen City, MD, Co: Harford 21010–5425
Federal Register Notice Date: 05/31/91
Property Number: 219012844
Status: Unutilized
Base Closure: No
Comment: 624 sq. ft.; trailer; potential utilities; poor condition.

Bldg. E5878
Aberdeen Proving Ground
Edgewood Area
Aberdeen City, MD, Co: Harford 21010–5425
Federal Register Notice Date: 05/31/91
Property Numbers: 219012852
Status: Unutilized
Base Closure: No
Comment: 213 sq. ft.; structural deficiencies; possible abestos; and contamination.

Bldg. E5879
Aberdeen Proving Ground
Edgewood Area
Aberdeen City, MD, Co: Harford 21010–5425
Federal Register Notice Date: 05/31/91
Property Numbers: 219012853
Status: Unutilized
Base Closure: No
Comment: 213 sq. ft.; possible asbestos and contamination; no utilities; most recent use—igloo storage.

Bldg. E5974
Aberdeen Proving Ground
Edgewood Area
Aberdeen City, MD, Co: Harford 21010–5425
Federal Register Notice Date: 05/31/91
Property Number: 219012854
Status: Unutilized
Base Closure: No
Comment: 272 sq. ft.; possible asbestos and contamination; most recent use—headquarters building.

Bldg. 10302
Aberdeen Proving Ground
Edgewood Area
Aberdeen City, MD, Co: Harford 21010–5425
Federal Register Notice Date: 05/31/91
Property Number: 219012866
Status: Unutilized
Base Closure: No
Comment: 42 sq. ft.; possible asbestos; most recent use—pumping station.

Bldg. E5978
Aberdeen Proving Ground
Edgewood Area
Aberdeen City, MD, Co: Harford 21010–5425
Federal Register Notice Date: 05/31/91
Property Number: 219012867
Status: Unutilized
Base Closure: No
Comment: 256 sq. ft.; 1 story; structural deficiencies; possible asbestos and contamination; most recent use—general storehouse.

Bldg. E5975
Aberdeen Proving Ground
Edgewood Area.
Aberdeen City, MD, Co: Harford 21010–5425
Federal Register Notice Date: 05/31/91
Property Number: 219012877
Status: Unutilized
Base Closure: No
Comment: 650 sq. ft.; possible contamination; structural deficiencies most recent use—training exercises/chemicals and explosives; potential use—storage.

Bldg. 2173
Aberdeen Proving Ground
Aberdeen City, MD, Co: Harford 21005–5001
Federal Register Notice Date: 05/31/91
Property Number: 219013772
Status: Unutilized
Base Closure: No
Comment: 3540 sq. ft.; 1 story temporary frame; possible asbestos; most recent use—barracks.

Bldg. 101
Walter Reed Army Medical Center
Forest Glen Section
Silver Spring, MD, Co: Montgomery 20910
Federal Register Notice Date: 05/31/91
Property Number: 219012678
Status: Underutilized
Base Closure: No
Comment: 18438 sq. ft.; needs rehab; possible asbestos; building listed on National Historic Register.

Bldg. 104.
Walter Reed Army Medical Center
Forest Glen Section
Silver Spring, MD, Co: Montgomery 20910
Federal Register Notice Date: 05/31/91
Property Number: 219012679
Status: Underutilized
Base Closure: No
Comment: 12495 sq. ft.; needs rehab; possible asbestos; building listed on National Historic Register.

Bldg. 107
Walter Reed Army Medical Center
Forest Glen Section
Silver Spring, MD, Co: Montgomery 20910
Federal Register Notice Date: 05/31/91
Property Number: 219012680
Status: Unutilized
Base Closure: No
Comment: 4107 sq. ft.; possible structural deficiencies; possible asbestos; historic property.

Bldg. 120
Walter Reed Army Medical Center
Forest Glen Section
Silver Spring, MD, Co: Montgomery 20910
Federal Register Notice Date: 05/31/91
Property Number: 219012681
Status: Underutilized
Base Closure: No
Comment: 2442 sq. ft.; possible structural deficiencies; possible asbestos; historic property.

Maine

Suitable/Available Buildings (by Agency)

Navy

Parcel No. 3
Naval Air Station Topsham Annex
Topsham, ME, Co: Sagadahoc 04066
Federal Register Notice Date: 05/31/91
Property Number: 779120001
Status: Excess
Base Closure: No
Comment: 1900 sq. ft. abandoned storage facility, poor condition on 4.31 acres.

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Minnesota

Suitable/Available Buildings (by Agency)

Army

Le Sueur USAR Center
620 Turill Street
Le Sueur, MN, Co: Le Sueur 56058
Federal Register Notice Date: 05/31/91
Property Number: 219013558
Status: Underutilized
Base Closure: No
Comment: 4316/1325 sq. ft.; 1 story; most recent use—storage.

Nevada

Suitable/Available Land (by Agency)

Army

Parcel A
Hawthorne Army Ammunition Plant
Hawthorne, NV, Co: Mineral 89415–
Location:
At Foot of Eastern slope of Mount Grant in Wassuk Range & S.W. edge of Walker Lane
Federal Register Notice Date: 05/31/91
Property Number: 219012049
Status: Unutilized
Base Closure: No
Comment: 160 acres, road and utility easements, no utility hookup, possible flooding problem.

Parcel B
Hawthorne Army Ammunition Plant
Hawthorne, NV, Co: Mineral 89415–
Location:
At foot of Eastern slope of Mount Grant in Wassuk Range & S.W. edge of Walker Lane
Federal Register Notice Date: 05/31/91
Property Number: 219012050
Status: Unutilized
Base Closure: No
Comment: 1920 acres; road and utility easements; no utility hookup; possible flooding problem.

Parcel C
Hawthorne Army Ammunition Plant
Hawthorne, NV, Co: Mineral 89415–
Location:
South-southwest of Hawthorne along HWAAP's South Magazine Area at Western edge of State Route 359
Federal Register Notice Date: 05/31/91
Property Number: 219012057
Status: Unutilized
Base Closure: No
Comment: 85 acres; road & utility easements; no utility hookup.

Parcel D
Hawthorne Army Ammunition Plant
Hawthorne, NV, Co: Mineral 89415–Location:
South-southwest of Hawthorne along HWAAP'S South Magazine Area at western edge of State Route 359
Federal Register Notice Date: 05/31/91
Property Number: 219012058
Status: Unutilized
Base Closure: No
Comment: 955 acres; road & utility easements; no utility hookup.

Suitable/Available Buildings (by Agency)

Bldgs. 00425–00440
Hawthorne Army Ammunition Plant
Schweer Drive Housing Area
Hawthorne, NV, Co: Mineral 89415–
Location: Schweer Drive
Federal Register Notice Date: 05/31/91
Property Numbers: 219011946–219011952, 219011954, 219011956, 219011959, 219011961, 219011964, 219011968, 219011970, 219011974, 219011976–219011978, 219011980, 219011982, 219011984, 219011987, 219011990, 219011994, 219011996
Status: Unutilized
Base Closure: No
Comment: 1310–1640 sq. ft. each, one floor residential, semi/wood construction, good condition.

New York

Suitable/Available Buildings (by Agency)

Army

Bldg. 627
U.S. Military Academy—West Point
Pitcher Road, North Dock
Highland, NY, Co: Orange 10996–1592
Federal Register Notice Date: 05/31/91
Property Number: 219030185
Status: Unutilized
Base Closure: No
Comment: 23185 sq. ft.; 1 story wood frame; needs rehab; presence of asbestos; most recent use—storage warehouse; scheduled to be vacant 9/1/90.

Bldg. 503
Fort Totten
Ordnance Road
Bayside, NY, Co: Queens 11357
Federal Register Notice Date: 05/31/91
Property Number: 219012564
Status: Unutilized
Base Closure: No
Comment: 510 sq ft., 1 floor, most recent use—storage, needs major rehab/no utilities.

Bldg. 323
Fort Totten
Story Avenue
Bayside, NY, Co: Queens 11359
Federal Register Notice Date: 05/31/91
Property Number: 219012567
Status: Unutilized
Base Closure: No
Comment: 30000 sq ft., 3 floors, most recent use—barracks & mess facility, needs major rehab.

Bldg. 304
Fort Totten
Shore Road
Bayside, NY, Co: Queens 11359
Federal Register Notice Date: 05/31/91
Property Number: 219012570
Status: Unutilized
Base Closure: No
Comment: 9610 sq ft., 3 floors, most recent use—hospital, needs major rehab/utilities disconnected.

Bldg. 211
Fort Totten
211 Totten Avenue
Bayside, NY, Co: Queens 11359
Federal Register Notice Date: 05/31/91
Property Number: 219012573
Status: Unutilized
Base Closure: No
Comment: 6329 sq ft., 3 floors, most recent use—family housing, needs major rehab, utilities disconnected.

Bldg. 332
Fort Totten
Thester Road
Bayside, NY, Co: Queens 11359
Federal Register Notice Date: 05/31/91
Property Number: 219012578
Status: Unutilized
Base Closure: No
Comment: 6286 sq ft., 1 floor, most recent use—theater w/stage, needs major rehab, utilities disconnected.

Bldg. 504
Fort Totten
Ordnance Road
Bayside, NY, Co: Queens 11359
Federal Register Notice Date: 05/31/91
Property Number: 219012580
Status: Unutilized
Base Closure: No
Comment: 490 sq ft., 1 floor, most recent use—storage, no utilities, needs major rehab.

Bldg. 322
Fort Totten
322 Story Avenue
Bayside, NY, Co: Queens 11359
Federal Register Notice Date: 05/31/91
Property Number: 219012583
Status: Unutilized
Base Closure: No
Comment: 30000 sq ft., 3 floors, most recent use-barracks, mess & administration, utilities disconnected, needs rehab.

Bldg. 326
Fort Totten
326 Pratt Avenue
Bayside, NY, Co: Queens 11359
Federal Register Notice Date: 05/31/91
Property Number: 219012586
Status: Unutilized
Base Closure: No
Comment: 6000 sq ft., 2 floors, most recent use—storage, offices & residential, utilities disconnected/needs rehab.

Oklahoma

Suitable/Available Land (by Agency)

Army

Parcel No. 8
Fort Gibson Lake
Section 22
(See County), OK, Co: Cherokee
Federal Register Notice Date: 05/31/91
Property Number: 219013801
Status: Underutilized
Base Closure: No
Comment: 5 acres; bushy and timbered; subject to grazing lease.

Parcel No. 9
Fort Gibson Lake
Section 16
(See County), OK, Co: Cherokee
Federal Register Notice Date: 05/31/91
Property Number: 219013802
Status: Underutilized
Base Closure: No
Comment: 7.5 acres; rolling; relatively open; subject to grazing lease; most recent use—recreation.

Parcel No. 10
Fort Gibson Lake
Section 16
(See County), OK, Co: Cherokee
Federal Register Notice Date: 05/31/91

Property Number: 219013803
Status: Underutilized
Base Closure: No
Comment: 36 acres; rolling; relatively open; subject to grazing lease; most recent use—recreation.

Parcel No. 11
Fort Gibson Lake
Section 16
(See County), OK, Co: Cherokee
Federal Register Notice Date: 05/31/91
Property Number: 219013804
Status: Underutilized
Base Closure: No
Comment: 60.34 acres; semi open with trees; most recent use—recreation.

Parcel No. 12
Fort Gibson Lake
Section 16
(See County), OK, Co: Cherokee
Federal Register Notice Date: 05/31/91
Property Number: 219013805
Status: Underutilized
Base Closure: No
Comment: 6 acres; flat and open; subject to grazing lease; most recent use—recreation.

Parcel No. 13
Fort Gibson Lake
Section 21
(See County), OK, Co: Cherokee
Federal Register Notice Date: 05/31/91
Property Number: 219013806
Status: Underutilized
Base Closure: No
Comment: 7 acres; flat and open; subject to grazing lease; most recent use—recreation.

Suitable Buildings (by Agency)

Bldg. T–931
Fort Sill
931 Fort Sill Blvd.
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011239
Status: Unutilized
Base Closure: No
Comment: 5174 sq. ft.; structurally unsound; wood frame; 1 floor; asbestos; WWII Bldg.

Bldg. T–1471
Fort Sill
1471 Bateman Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011241
Status: Unutilized
Base Closure: No
Comment: 468 sq. ft.; structually unsound; wood frame; 1 floor; WWII Bldg.

Bldg. T–2530
Fort Sill
2530 Sheridan Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011246
Status: Unutilized
Base Closure: No
Comment: 3988 sq. ft.; structually unsound; asbestos; wood frame; 2 floors, WWII Bldg.

Bldgs. T–2531, T–2532
Fort Sill
2531–2532 Sheridan Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Numbers: 219011248, 219011250
Status: Unutilized
Base Closure: No
Comment: 1990 sq. ft. each; structurally unsound; asbestos; wood frame, 2 floors, WWII Bldg.

Bldg. T–2533
Fort Sill
2533 Sheridan Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011252
Status: Unutilized
Base Closure: No
Comment: 1976 sq. ft.; structurally unsound; asbestos; wood frame; 2 floors, WWII Bldg.

Bldgs. T–2544–T–2548
Fort Sill
2544–2548 Sheridan Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Numbers: 219011253, 219011255, 219011257, 129011258, 219011260
Status: Unutilized
Base Closure: No
Comment: 1994 sq. ft. each; asbestos; wood frame; 2 floors, No operating sanitary facilities; most recent use—barracks.

Bldgs. T–2564–T–2566
Fort Sill
2564–2566 Currie Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Numbers: 219011264, 219011266, 219011267
Status: Unutilized
Base Closure: No
Comment: 1165–1196 sq. ft. each; asbestos; wood frame; 1 floor; most recent use—administrative/supply.

Bldg. T–2601
Fort Sill
2601 Ringold Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011272
Status: Unutilized
Base Closure: No
Comment: 1600 sq. ft.; 2 story wood frame; possible asbestos; possible structure deficiencies.

Bldg. T–2606
Fort Sill
2606 Currie Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011273
Status: Unutilized
Base Closure: No
Comment: 2722 sq. ft.; possible asbestos, one floor wood frame; most recent use—Headquarters Bldg.

Bldg. T–2613
Fort Sill
2613 Ringold Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011276
Status: Unutilized
Base Closure: No
Comment: 4800 sq. ft.; possible asbestos, wood frame, 2 floors; most recent use—barracks.

Bldgs. T–2614–T–2615
Fort Sill
2614–2615 Ringold Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Numbers: 219011278–219011279
Status: Unutilized
Base Closure: No
Comment: 3778 sq. ft. each; possible asbestos; wood frame; two floors; most recent use—barracks.

Bldgs. T–2620–T–2622, T–2626, T–2627, T–3529
Fort Sill
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Numbers: 219011281, 219011283, 2129011285, 219011291, 219011292 219011330
Status: Unutilized
Base Closure: No
Comment: 2370 sq. ft. each; 2 story wood frame; possible asbestos; possible structure deficiencies.

Bldg. T–2623
Fort Sill
2623 Ringold Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011287
Status: Unutilized
Base Closure: No
Comment: 2400 sq. ft.; 2 story wood frame; asbestos; possible structure deficiencies.

Bldg. T–2624
Fort Sill
2624 Miner Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011288
Status: Unutilized
Base Closure: No
Comment: 3738 sq. ft.; possible asbestos, wood frame; 2 floors; most recent use—day room .

Bldgs. T–2625, T–2628–T–2631
Fort Sill
Ringold Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Numbers: 219011289, 219011294, 219011296, 219011298, 219011299
Status: Unutilized
Base Closure: No
Comment: 3664 sq. ft. each; wood frame; 2 floors; possible asbestos; most recent use—barracks.

Bldg. T–2650
Fort Sill
250 Ringold Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011301
Status: Unutilized
Base Closure: No
Comment: 4021 sq. ft.; 2 story; possible asbestos; possible structure deficiencies.

Bldg. T–2781
Fort Sill
2781 Ringold Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011312
Status: Unutilized
Base Closure: No
Comment: 2229 sq. ft.; structurally unsound; wood frame, 2 floors; asbestos.

Bldg. T–2931
Fort Sill

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2931 Currie Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011313
Status: Unutilized
Base Closure: No
Comment: 435 sq. ft.; structurally unsound; asbestos; wood frame; 1 floor.

Bldg. T–3507
Fort Sill
3507 Sheridan Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011315
Status: Unutilized
Base Closure: No
Comment: 2904 sq. ft.; possible asbestos; potential heavy metal contamination; wood frame; most recent use—chapel.

Bldg. T–3508
Fort Sill
3508 Sheridan Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011316
Status: Unutilized
Base Closure: No
Comment: 1964 sq. ft.; structurally unsound; asbestos; wood frame; 1 floor, WWII Bldg.

Bldg. T–3514
Fort Sill
3514 Sheridan Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011322
Status: Unutilized
Base Closure: No
Comment: 1917 sq. ft.; possible asbestos; wood frame; most recent use—administrative.

Bldg. T–3516
Fort Sill
3516 Packard Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011324
Status: Unutilized
Base Closure: No
Comment: 1495 sq. ft.; possible asbestos; wood frame; most recent use—administrative.

Bldg. T–3518
Fort Sill
3518 Sheridan Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011325
Status: Unutilized
Base Closure: No
Comment: 2345 sq. ft.; possible asbestos; wood frame; most recent use—Headquarters Bldg.

Bldg. T–3519
Fort Sill
3519 Sheridan Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011326
Status: Unutilized
Base Closure: No
Comment: 1711 sq. ft.; one floor; wood frame; most recent use administrative.

Bldg. T–3524
Fort Sill
3524 Walker St.
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011327
Status: Unutilized
Base Closure: No
Comment: 1603 sq. ft.; structurally unsound; asbestos; wood frame 1 floor; WWII Bldg.

Bldg. T–3529
Fort Sill
3529 Sheridan Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011330
Status: Unutilized
Base Closure: No
Comment: 2370 sq. ft.; structurally unsound; asbestos; wood frame; 2 floors.

Bldg. T–3534
Fort Sill
3534 Tacy Street
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011331
Status: Unutilized
Base Closure: No
Comment: 2467 sq. ft.; structurally unsound; asbestos; wood frame; 1 floor; WWII Bldg.

Bldg. T–3562
Fort Sill
3562 Packard Street
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011334
Status: Unutilized
Base Closure: No
Comment: 1027 sq. ft.; possible asbestos; wood frame; most recent use—storage.

Bldg. T–3638
Fort Sill.
3638 Scott Street
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011336
Status: Unutilized
Base Closure: No
Comment: 1616 sq. ft.; 2 story wood frame; possible asbestos; possible structured deficiencies.

Bldg. T–3760
Fort Sill
3760 Tacy Street
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011337
Status: Unutilized
Base Closure: No
Comment: 2767 sq. ft.; structurally unsound; possible asbestos; one story wood frame.

Bldg. T–3767
Fort Sill.
3767 Hartell Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011339
Status: Unutilized
Base Closure: No
Comment: 2469 sq. ft.; structurally unsound; possible asbestos; one story wood frame.

Bldgs. T–3779, T–3780
Fort Sill
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Numbers: 219011343–219011344
Status: Unutilized
Base Closure: No
Comment: 4720 sq ft each; possible asbestos, wood frame, 2 floors, most recent use-barracks.

Bldg. T–3781
Fort Sill
3781 Hartell Blvd.
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011345
Status: Unutilized
Base Closure: No
Comment: 2781 sq. ft.; structurally unsound, possible asbestos; one story wood frame.

Bldg. 3788
Fort Sill
3788 Tacy Street
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011346
Status: Unutilized
Base Closure: No
Comment: 2758 sq. ft.; structurally unsound, possible asbestos, one story wood frame.

Bldg. T–4520
Fort Sill
4520 Bragg Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011347
Status: Unutilized
Base Closure: No
Comment: 1249 sq. ft., 1 story wood frame, possible asbestos, possible structural deficiencies.

Bldgs. T–4363 – T–4365, T–4383 – T–4385
Fort Sill.
4363 McKee Street
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011348–219011350, 219011361–219011362, 219011364
Status: Unutilized
Base Closure: No
Comment: 1947 sq. ft. each; some utilities; possible structural deficiencies; possible asbestos.

Bldg. T–4366
Fort Sill
4366 McKee Street
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011351
Status: Unutilized
Base Closure: No
Comment: 1951 sq. ft.; some utilities, possible structural deficiencies; possible asbestos; two story wood frame.

Bldg. T–4521
Fort Sill
4521 Wilson Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011352
Status: Unutilized
Base Closure: No
Comment: 3833 sq. ft., 1 floor, wood frame, asbestos, most recent use—classroom.

Bldg. T–4374
Fort Sill
4374 McKee Street
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011355

Status: Unutilized
Base Closure: No
Comment: 1296 sq. ft.; possible structural deficiencies; possible asbestos; one story wood frame.

Bldg. T–4375
Fort Sill
4375 Bragg Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011356
Status: Unutilized
Base Closure: No
Comment: 1102 sq. ft.; structurally unsound; possible asbestos.

Bldg. T–4522
Fort Sill
4522 Wilson Street
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011357
Status: Unutilized
Base Closure: No
Comment: 4307 sq. ft., possible asbestos, wood frame, two floors, most recent use—barracks.

Bldg. 4524
Fort Sill
4524 Wilson Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011360
Status: Unutilized
Base Closure: No
Comment: 2947 sq. ft., possible asbestos, possible structural deficiencies, one story wood frame.

Bldg. T–4525
Fort Sill
4524 Wilson Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011363
Status: Unutilized
Base Closure: No
Comment: 1636 sq. ft., 1 floor, asbestos, wood frame, most recent use—Exchange Service Outlet.

Bldg. T–4386
Fort Sill
4386 Bragg Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011365
Status: Unutilized
Base Closure: No
Comment: 1447 sq. ft.; no sanitary facilities; structurally unsound; possible asbestos.

Bldg. T–4526
Fort Sill
4526 Wilson Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011366
Status: Unutilized
Base Closure: No
Comment: 3833 sq. ft., 1 floor, asbestos, wood frame, most recent use—recreation building.

Bldg. T–4387
Fort Sill
4387 Bragg Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011367

Status: Unutilized
Base Closure: No
Comment: 1988 sq. ft.; no sanitary facilities; structurally unsound; possible asbestos; two story wood frame.

Bldg. T–4388
Fort Sill
4388 Wilson Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011368
Status: Unutilized
Base Closure: No
Comment: 2845 sq. ft.; structurally unsound; possible asbestos; one story wood frame.

Bldg. P–4489
Fort Sill
4489 Walker Street
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011370
Status: Unutilized
Base Closure: No
Comment: 1045 sq. ft.; 1 story; concrete block structure, structurally unsound; possible asbestos.

Bldg. T–4498
Fort Sill
4498 Walker Street
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011371
Status: Unutilized
Base Closure: No
Comment: 1000 sq. ft.; wood frame; one floor; possible asbestos; most recent use—storage.

Bldg. 4528
Fort Sill
4528 Wilson Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011372
Status: Unutilized
Base Closure: No
Comment: 2741 sq. ft., possible asbestos, possible structural deficiencies, one story wood frame.

Bldg. T–4530
Fort Sill
4530 Wilson Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011374
Status: Unutilized
Base Closure: No
Comment: 3833 sq. ft., possible asbestos; possible structural deficiencies, one story wood frame.

Bldg. T–4501
Fort Sill
4501 Wilson Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011375
Status: Unutilized
Base Closure: No
Comment: 2797 sq. ft.; structurally unsound; possible asbestos; one story wood frame.

Bldg. T–4502
Fort Sill
4502 Wilson Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011376

Status: Unutilized
Base Closure: No
Comment: 2812 sq. ft.; structurally unsound; possible asbestos; one story wood frame.

Bldg. T–4503
Fort Sill
4503 Wilson Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011378
Status: Unutilized
Base Closure: No
Comment: 2812 sq. ft.; asbestos, wood frame; 1 floor; most recent use—administrative.

Bldg. T–4504
Fort Sill
4504 Wilson Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011379
Status: Unutilized
Base Closure: No
Comment: 2833 sq. ft.; asbestos; wood frame; 1 floor; most recent use—administrative.

Bldg. T–4506
Fort Sill
4506 Wilson Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011380
Status: Unutilized
Base Closure: No
Comment: 2286 sq. ft.; asbestos; wood frame; 1 floor; most recent use—administrative/supply.

Bldg. T–4507
Fort Sill
4507 Wilson Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011382
Status: Unutilized
Base Closure: No
Comment: 2772 sq. ft.; asbestos; wood frame; 1 floor; most recent use—administrative.

Bldg. T–4508
Fort Sill.
4508 Wilson Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011383
Status: Unutilized
Base Closure: No
Comment: 3833 sq. ft.; asbestos; wood frame; 1 floor; most recent use—classroom.

Bldg. T–4535
Fort Sill
4535 Hartell Blvd.
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011384
Status: Unutilized
Base Closure: No
Comment: 2816 sq. ft.; 1 story wood frame; possible asbestos; possible structural deficiencies.

Bldg. T–4509
Fort Sill
4509 Wilson Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011385
Status: Unutilized
Base Closure: No

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Comment: 4153 sq. ft.; asbestos; wood frame; 1 floor; most recent use—exchange branch.

Bldg. T–4510
Fort Sill
4510 Wilson Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011386
Status: Unutilized
Base Closure: No
Comment: 3006 sq. ft.; asbestos; wood frame; 1 floor; most recent use—medical storage.

Bldg. T–4511
Fort Sill
4511 Wilson Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011388
Status: Unutilized
Base Closure: No
Comment: 2760 sq. ft.; asbestos; wood frame; 2 floors; most recent use—classroom.

Bldg. T–4513
Fort Sill
4513 Wilson Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011389
Status: Unutilized
Base Closure: No
Comment: 3842 sq. ft.; asbestos; wood frame; 1 floor; most recent use—classroom.

Bldg. T–4542
Fort Sill
4542 Hartell Blvd.
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011390
Status: Unutilized
Base Closure: No
Comment: 3803 sq. ft.; possible asbestos; possible structural deficiencies; two story wood frame.

Bldg. T–4514
Fort Sill
4514 Wilson Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011391
Status: Unutilized
Base Closure: No
Comment: 1639 sq. ft.; asbestos; wood frame; 1 floor; most recent use—medical supply.

Bldg. T–4516
Fort Sill
4516 Lewis Street
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011392
Status: Unutilized
Base Closure: No
Comment: 2282 sq. ft.; 2 story wood frame; possible asbestos; possible structural deficiencies.

Bldg. T–4518
Fort Sill
4518 Wilson Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011393
Status: Unutilized
Base Closure: No
Comment: 1311 sq. ft.; 1 story wood frame; possible asbestos; possible structural deficiencies.

Bldg. 4543
Fort Sill
4543 Hartell Blvd.
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011394
Status: Unutilized
Base Closure: No
Comment: 2238 sq. ft.; possible asbestos; possible structural deficiencies; one story wood frame.

Bldg. T–4519
Fort Sill
4519 Bragg Street
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011395
Status: Unutilized
Base Closure: No
Comment: 2262 sq. ft.; 2 story wood frame; possible asbestos; possible structural deficiencies.

Bldg. T–4546
Fort Sill
4546 Bragg Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011397
Status: Unutilized
Base Closure: No
Comment: 2833 sq. ft.; possible asbestos; possible structural deficiencies; one story wood frame.

Bldg. T–4548
Fort Sill
4548 Lewis Street
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011398
Status: Unutilized
Base Closure: No
Comment: 1976 sq. ft.; 1 story wood frame; possible asbestos; structurally unsound.

Bldg. T–4553
Fort Sill
4553 Hartell Blvd.
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011400
Status: Unutilized
Base Closure: No
Comment: 1905 sq. ft.; some utilities; possible asbestos; possible structural deficiencies; one story wood frame.

Bldg. T–4556
Fort Sill
4556 Hartell Blvd.
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011401
Status: Unutilized
Base Closure: No
Comment: 2308 sq. ft.; possible asbestos; possible structural deficiencies; one story wood frame.

Bldg. T–4557
Fort Sill.
3447 Hartell Blvd.
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011402
Status: Unutilized
Base Closure: No
Comment: 456 sq. ft.; possible asbestos; some utilities; possible structural deficiencies; one story wood frame.

Bldg. T–4558
Fort Sill
4558 Hartell Blvd.
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011403
Status: Unutilized
Base Closure: No
Comment: 4021 sq. ft.; 2 story wood frame; possible asbestos; possible structural deficiencies

Bldg. T–4720
Fort Sill
4720 Hartell Blvd.
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011405
Status: Unutilized
Base Closure: No
Comment: 13225 sq. ft.; visual asbestos; wood frame; 2 floors; most recent use—recreation bldg.

Bldg. T–4550
Fort Sill
4550 Hartell Blvd.
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219013795
Status: Unutilized
Base Closure: No
Comment: 2750 sq. ft.; 1 story wood frame; possible asbestos; most recent use—headquarters bldg.

Bldg. T–4378
Fort Sill
4378 Walker Street
Lawton, OK, Co: Comanche 73503–
Federal Register Notice Date: 05/31/91
Property Number: 219014323
Status: Unutilized.
Base Closure: No
Comment: 1296 sq. ft.; 1 story wood frame; possible asbestos; most recent use—administrative support.

Bldg. T–4381
Fort Sill
4381 Bragg Road
Lawton, OK, Co: Comanche 73503–
Federal Register Notice Date: 05/31/91
Property Number: 219014324
Status: Unutilized
Base Closure: No
Comment: 3036 sq. ft.; 1 story wood frame building; most recent use storage; possible asbestos.

Bldg. T–836
Fort Sill
Corner of Macomb Road and Burrell Road
Lawton, OK, Co: Comanche 73503–
Federal Register Notice Date: 05/31/91
Property Number: 219014326
Status: Unutilized
Base Closure: No
Comment: 1341 sq. ft.; 1 story wood frame; most recent use—storage; possible asbestos.

Bldg. T–4367
Fort Sill
4367 McKee Street
Lawton, OK, Co: Comanche 73503–
Federal Register Notice Date: 05/31/91
Property Number: 219014329
Status: Unutilized
Base Closure: No

Comment: 3036 sq. ft.; 1 story wood frame; possible asbestos; most recent use—dining facility.

Bldg. T–4370
Fort Sill
4370 Walker Street
Lawton, OK, Co: Comanche 73503–
Federal Register Notice Date: 05/31/91
Property Number: 219014330
Status: Unutilized
Base Closure: No
Comment: 1296 sq. ft.; 1 story wood frame; possible asbestos; most recent use—administrative support.

Bldg. T–4379
Fort Sill
4379 Bragg Road
Lawton, OK, Co: Comanche 73503–
Federal Register Notice Date: 05/31/91
Property Number: 219014331
Status: Unutilized
Base Closure: No
Comment: 4425 sq. ft.; 2 story wood frame; most recent use barracks; possible asbestos.

Bldg. T–4368
Fort Sill
4368 McKee Street
Lawton, OK, Co: Comanche 73503–
Federal Register Notice Date: 05/31/91
Property Number: 219014333
Status: Unutilized
Base Closure: No
Comment: 4525 sq. ft.; 2 story wood frame building; possible asbestos; most recent use—barracks.

Bldg. T–4380
Fort Sill
4380 Bragg Road
Lawton, OK, Co: Comanche 73503–
Federal Register Notice Date: 05/31/91
Property Number: 219014334
Status: Unutilized
Base Closure: No
Comment: 4425 sq. ft.; 2 story wood frame; most recent use—barracks.

Bldg. T–4369
Fort Sill
4369 McKee Street
Lawton, OK, Co: Comanche 73503–
Federal Register Notice Date: 05/31/91
Property Number: 219014335
Status: Unutilized
Base Closure: No
Comment: 4425 sq. ft.; 2 story wood frame building; possible asbestos; most recent use—barracks.

Bldg. T–4919
Fort Sill
4919 Post Road
Lawton, OK, Co: Comanche 73503–
Federal Register Notice Date: 05/31/91
Property Number: 219014842
Status: Unutilized
Base Closure: No
Comment: 603 sq. ft.; 1 story mobile home trailer; possible asbestos; needs rehab.

Bldg. T–4914
Fort Sill
4914 Post Road
Lawton, OK, Co: Comanche 73503–
Federal Register Notice Date: 05/31/91
Property Number: 219014843
Status: Unutilized
Base Closure: No
Comment: 719 sq. ft.; 1 story mobile home trailer; needs rehab; possible asbestos.

Bldg. T–4555
Fort Sill
4555 Hartell Blvd.
Lawton, OK, Co: Comanche 73503–
Federal Register Notice Date: 05/31/91
Property Number: 219014930
Status: Unutilized
Base Closure: No
Comment: 3893 sq. ft.; 2 story wood frame; needs rehab; possible asbestos; most recent use—barracks.

Bldg. T–4362
Fort Sill
4362 McKee Street
Lawton, OK, Co: Comanche 73503–
Federal Register Notice Date: 05/31/91
Property Number: 219014931
Status: Unutilized
Base Closure: No
Comment: 1947 sq. ft.; 2 story wood frame; needs rehab; possible asbestos; limited utilities; most recent use—barracks.

Bldg. T–4361
Fort Sill
4361 McKee Street
Lawton, OK, Co: Comanche 73503–
Federal Register Notice Date: 05/31/91
Property Number: 219014932
Status: Unutilized
Base Closure: No
Comment: 1513 sq. ft.; 2 story wood frame; needs rehab; limited utilities; possible asbestos; most recent use—barracks.

Bldg. T–4523
Fort Sill
4523 Wilson Road
Lawton, OK, Co: Comanche 73503–
Federal Register Notice Date: 05/31/91
Property Number: 219014933
Status: Unutilized
Base Closure: No
Comment: 1639 sq. ft.; 1 story wood frame; needs rehab; possible asbestos; most recent use—storage.

Bldg. 4547
Fort Sill
4547 Hartell Blvd.
Lawton, OK, Co: Comanche 73503–
Federal Register Notice Date: 05/31/91
Property Number: 219014934
Status: Unutilized
Base Closure: No
Comment: 1062 sq. ft.; 1 story wood frame; needs rehab; possible asbestos; most recent use—administration.

Bldg. T–4541
Fort Sill
4541 Hartell Blvd.
Lawton, OK, Co: Comanche 73503–
Federal Register Notice Date: 05/31/91
Property Number: 219014935
Status: Unutilized
Base Closure: No
Comment: 2340 sq. ft.; 1 story wood frame; needs rehab; possible asbestos; most recent use—administration.

B1dg. T 4552
Fort Sill
4552 Hartell Blvd.
Lawton, OK, Co: Comanche 73503–
Federal Register Notice Date: 05/31/91
Property Number: 219014936
Status: Unutilized
Base Closure: No
Comment: 4071 sq. ft.; 2 story wood frame; needs rehab; possible asbestos; most recent use—barracks.

Bldg. T–4360
Fort Sill
4360 Wilson Blvd.
Lawton, OK, Co: Comanche 73503–
Federal Register Notice Date: 05/31/91
Property Number: 219014937
Status: Unutilized
Base Closure: No
Comment: 2841 sq. ft.; 1 story wood frame; needs rehab; limited utilities; possible asbestos; most recent use—mess hall.

Bldg. S–701
Fort Sill
701 Randolph Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219030163
Status: Unutilized
Base Closure: No
Comment: 19903 sq. ft.; steel/wood frame; 1 story; needs rehab; possible asbestos; most recent use—general instruction building.

Bldg. T–3527
Fort Sill
3527 Sheridan Road
Lawton, OK, Co: Comanche 73503–5100
Federal Register Notice Date: 05/31/91
Property Number: 219011328
Status: Unutilized
Base Closure: No
Comment: 2370 sq. ft.; structurally unsound; asbestos; wood frame; 2 floors; WWII Bldg.

Suitable/Available Land (by Agency)

Parcel No. 32
Fort Gibson Lake
Section 2
(See County), OK, Co: Mayes
Federal Register Notice Date: 05/31/91
Property Number: 219013810
Status: Underutilized
Base Closure: No
Comment: 22 acres; rolling and open; subject to grazing lease; most recent use—recreation.

Parcel No. 33
Fort Gibson Lake
Section 4
(See County), OK, Co: Mayes
Federal Register Notice Date: 05/31/91
Property Number: 219013811
Status: Underutilized
Base Closure: No
Comment: 18 acres; flat and open; subject to grazing lease; most recent use—recreation.

Parcel No. 34
Fort Gibson Lake
Section 34
(See County), OK, Co: Mayes
Federal Register Notice Date: 05/31/91
Property Number: 219013812
Status: Underutilized
Base Closure: No
Comment: 18 acres; hilly-timbered; subject to grazing lease; most recent use—recreation.

Parcel No. 36
Fort Gibson Lake
Section 12
(See County), OK, Co: Mayes

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Federal Register Notice Date: 05/31/91
Property Number: 219013813
Status: Underutilized
Base Closure: No
Comment: 19 acres; subject to grazing lease; most recent use—recreation.
Parcel No. 38
Fort Gibson Lake
Section 7 and 8
(See County), OK, Co: Mayes
Federal Register Notice Date: 05/31/91
Property Number: 219013814
Status: Underutilized
Base Closure: No
Comment: 07.59 acres; rolling, partially open with trees; subject to grazing lease; most recent use—recreation.
Parcel No. 40
Fort Gibson Lake
Section 5
(See County), OK, Co: Mayes
Federal Register Notice Date: 05/31/91.
Property Number: 219013815
Status: Underutilized
Base Closure: No
Comment: 42 acres; timber; subject to grazing lease; most recent use recreation.
Parcel No. 41
Fort Gibson Lake
Section 5
(See County), OK, Co: Mayes
Federal register Notice Date: 05/31/91
Property Number: 219013816
Status: Underutilized
Base Closure: No
Comment: 10 acres; some trees; subject to grazing lease; most recent use—recreation.
Parcel No. 17
Fort Gibson Lake
Section 12
Wagoner Co., OK, Co: Wagoner
Federal Register Notice Date: 05/31/91
Property Number: 219013807
Status: Underutilized
Base Closure: No
Comment: 25.09 acres; flat with trees; subject to grazing lease; most recent use—recreation.
Parcel No. 18.
Fort Gibson Lake
Section 12
Wagoner Co., OK, Co: Wagoner
Federal Register Notice Date: 05/31/91
Property Number: 219013808
Status: Underutilized
Base Closure: No
Comment: 8.77 acres; subject to grazing lease; most recent use recreation.
Parcel No. 22
Fort Gibson Lake.
Section 10 and 21
Wagoner Co., OK, Co: Wagoner
Federal Register Notice Date: 05/31/91
Property Number: 219013809.
Status: Underutilized
Base Closure: No
Comment: 177.84 acres; rolling with timbered and open areas; subject to grazing lease; most recent use—recreation.

Oregon

Suitable/Available Land (by Agency)

GSA

Land

Portland, OR, Co: Multnomah 97217
Location: Near SE corner of North Union Ave. and North Marine Dr.
Federal Register Notice Date: 05/31/91
Property Number: 549120008
Status: Excess
Comment: 63,000 sq. ft. (140x450) land, most recent use—part of highway right-of-way, access is restricted.

South Carolina

Suitable/Available Buildings (by Agency)

Army

Bldg. 5436
Fort Jackson
Hill Street
Fort Jackson, SC, Co: Richland 29207–
Federal Register Notice Date: 05/31/91
Property Number: 219012559
Status: Unutilized
Base Closure: No
Comment: 946 sq. ft.; wood frame; 1 floor; needs rehab; most recent use—storage.
Bldg. 5438
Fort Jackson
Hill Street
Fort Jackson, SC, Co: Richland 29207–
Federal Register Notice Date: 05/31/91
Property lumber: 219012561
Status: Unutilized
Base Closure: No
Comment: 5,079 sq. ft.; wood frame; 1 floor; needs rehab; to be vacated mid 1990.
Bldg. 5405
Fort Jackson
Jackson Blvd.
Fort Jackson, SC, Co: Richland 29207–
Federal Register Notice Date: 05/31/91
Property Number: 219012563
Status: Unutilized
Base Closure: No
Comment: 4,764 sq. ft.; 1 floor; wood frame; needs rehab; to be vacated mid 1990.
Bldg. 1554
Fort Jackson
Ewell Road
Fort Jackson, SC, Co: Richland 29207–
Federal Register Notice Date: 05/31/91
Property Number: 219012565
Status: Unutilized
Base Closure: No
Comment: 53,519 sq. ft.; 1 floor; wood frame; open bay; needs rehab; formerly used as post laundry; most recent use—storage.
Bldgs. 5429, 5428
Fort Jackson
Hill Street
Fort Jackson, SC, Co: Richland 29207–
Federal Register Notice Date: 05/31/91
Property Numbers: 219012566, 219012572
Status: Unutilized
Base Closure: No
Comment: 71 sq. ft.; concrete; most recent use—storage; no utilities.
Bldg. 5430
Fort Jackson
Hill Street
Fort Jackson, SC, Co: Richland 29207–
Federal Register Notice Date: 05/31/91
Property Number: 219012568
Status: Unutilized
Base Closure: No
Comment: 8,000 sq. ft.; wood frame; 1 floor; needs rehab; most recent use—storage.
Bldg. 5409
Fort Jackson
Jackson Blvd.
Fort Jackson, SC, Co: Richland 29207–
Federal Register Notice Date: 05/31/91
Property Number: 219012571
Status: Unutilized
Base Closure: No
Comment: 3,900 sq. ft.; wood frame; 1 floor; needs rehab; most recent use—storage.
Bldg. 5401
Fort Jackson
Jackson & Hill Streets
Fort Jackson, SC, Co: Richland 29207–
Federal Register Notice Date: 05/31/91
Property Number: 219012574
Status: Unutilized
Base Closure: No
Comment: 8,641 sq. ft.; wood frame; 1 floor; needs major rehab; to be vacated mid 1990.
Bldg. 5403
Fort Jackson
Hill Street & Jackson Blvd.
Fort Jackson, SC, Co: Richland 29207–
Federal Register Notice Date: 05/31/91
Property Number: 219012575
Status: Unutilized
Base Closure: No
Comment: 6,621 sq. ft.; wood frame; 1 floor; needs rehab; to be vacated mid 1990.
Bldg. 5405
Fort Jackson
Jackson Blvd.
Fort Jackson, SC, Co: Richland 29207–
Federal Register Notice Date: 05/31/91
Property Number: 219012577
Status: Unutilized
Base Closure: No
Comment: 4,764 sq. ft.; wood frame; 1 floor; needs rehab; to be vacated mid 1990.
Bldgs. 5448, 5446
Fort Jackson
Hill Street
Fort Jackson, SC, Co: Richland 29207–
Federal Register Notice Date: 05/31/91
Property Numbers: 219012584, 219012587
Status: Unutilized
Base Closure: No
Comment: 8,020 sq. ft. each; wood frame; 1 floor; needs rehab; to be vacated mid 1990.
Bldg. 5444
Fort Jackson
Hill Street
Fort Jackson, SC, Co: Richland 29207–
Federal Register Notice Date: 05/31/91
Property Number: 219012585
Status: Unutilized
Base Closure: No
Comment: 4,970 sq. ft.; wood frame; 1 floor; needs rehab; to be vacated mid 1990.
Bldg. 9705
Fort Jackson
Hampton Parkway
Fort Jackson, SC, Co: Richland 29207–
Federal Register Notice Date: 05/31/91
Property Number: 219012590
Status: Unutilized
Base Closure: No
Comment: Wood frame; 1 floor; needs rehab.
Bldg. 9615
Fort Jackson
Off Hampton Parkway
Fort Jackson, SC, Co: Richland 29207–
Federal Register Notice Date: 05/31/91

Property Number: 219012593
Status: Unutilized
Base Closure: No
Comment: 2,208 sq. ft.; wood frame; 1 floor; needs rehab; most recent use—storage.
Bldg. 9536
Fort Jackson
Vicinity Hampton Parkway
Fort Jackson, SC, Co: Richland 29207–
Federal Register Notice Date: 05/31/91
Property Number: 219012597
Status: Unutilized
Base Closure: No
Comment: 2,250 sq. ft.; wood frame; 1 floor; needs rehab; most recent use—storage.
Bldg. 5442
Fort Jackson
Hill Street
Fort Jackson, SC, Co: Richland 29207–
Federal Register Notice Date: 05/31/91
Property Number: 219012599
Status: Unutilized
Base Closure: No
Comment: 4368 sq. ft.; wood frame; 1 floor; needs rehab; to be vacated mid 1990.
Bldg. 1565
Anderson Street
Fort Jackson, SC, Co: Richland 29207–
Federal Register Notice Date: 05/31/91
Property Number: 219012868
Status: Unutilized
Base Closure: No
Comment: 1565 sq. ft.; corregated metal building; most recent use—fueling point; potential use—storage.
Bldg. 5407
Jackson Blvd.
Fort Jackson, SC, Co: Richland 29207–
Federal Register Notice Date: 05/31/91
Property Number: 219013768
Status: Unutilized
Base Closure: No
Comment: 5063 sq. ft.; 1 story wood frame; needs rehab; most recent use—storage.
Bldg. 5434
Fort Jackson
Hill Street
Fort Jackson, SC, Co: Richland 29207–
Federal Register Notice Date: 05/31/91
Property Number: 219012569
Status: Unutilized
Base Closure: No
Comment: 3600 sq. ft.; wood frame; 1 floor; needs rehab; will be vacated mid 1990.

Tennessee

Suitable/Available Land (by Agency)

Army

Milan Army Ammunition Plant
Milan, TN, Co: Carroll 38358–
Location: Plant boundary in the northeast corner of the plant & housing area
Federal Register Notice Date: 05/31/91
Property Number: 219010547
Status: Excess
Base Closure: No
Comment: 17.2 acres; right of entry legal constraint.

Suitable/Available Buildings (by Agency)

Milan Army Ammunition Plant
Area Q—Housing Area Q–27, Q–7, Q–12
Milan, TN, Co: Carroll 38358–
Federal Register Notice Date: 05/31/91
Property Number: 219010559, 219010605, 219010606
Status: Underutilized
Base Closure: No
Comment: 3 bldgs.; two story; wood frame; temporarily empty due to personnel rotation.
Area Q—Housing Area—Q–20, Q–21, Q–26, Q–22
Milan Army Ammunition Plant
Milan, TN, Co: Carroll 38358–
Federal Register Notice Date: 05/31/91
Property Numbers: 219014790, 219110032–219110033, 219110103
Status: Underutilized
Base Closure: No
Comment: 4 bldgs.; 2506 sq. ft. each; 2 story wood frame residence.
Area Q—Housing Area—Q–28, Q–9
Milan Army Ammunition Plant
Milan, TN, Co: Carroll 38358–
Federal Register Notice Date: 05/31/91
Property Numbers: 219110034, 219110102
Status: Underutilized
Base Closure: No
Comment: 2 bldgs.; 2024 sq. ft. each; 2 story wood frame residence.
Robert Joel Ridings
US Army Reserve Center
920 Cherokee Avenue
Nashville, TN, Co: Davidson 37207–
Federal Register Notice Date: 05/31/91
Property Number: 219011687
Status: Excess
Base Closure: No
Comment: 40,000 sq. ft.; 3.67 acres; concrete block; utilities disconnected; site vandalized.

Suitable/Available Land (by Agency)

Holston Army Ammunition Plant
Kingsport, TN, Co: Hawkins 61299–6000
Federal Register Notice Date: 05/31/91
Property Number: 219012338
Status: Unutilized
Base Closure: No
Comment: 8 acres; unimproved; could provide access; 2 acres unusable; near explosives.

Texas

Suitable/Available Buildings (by Agency)

Army

Bldg. T–227
Fort Sam Houston
San Antonio, TX, Co: Bexar 78234–
Federal Register Notice Date: 05/31/91
Property Number: 219014275
Status: Excess
Base Closure: No
Comment: 2987 sq. ft.; 1 story wood structure; major rehab needed.
Bldgs. 1189, 1192, 1193
Fort Sam Houston
San Antonio, TX, Co: Bexar 78234–
Federal Register Notice Date: 05/31/91
Property Numbers: 219014276–219014277, 219014280
Status: Excess
Base Closure: No
Comment: 9190 sq. ft. each; 1 story wood structure; needs major rehabilitation.
Bldgs. T4001, T4004
Fort Sam Houston
San Antonio, TX, Co: Bexar 78234–
Federal Register Notice Date: 05/31/91
Property Numbers: 219014278–219014279
Status: Underutilized
Base Closure: No
Comment: 48000 sq. ft. each; 2 story wood frame building with metal siding; needs rehab; possible asbestos.
T–4013
Fort Sam Houston
San Antonio, TX, Co: Bexar 78234–
Federal Register Notice Date: 05/31/91
Property Number: 219030001
Status: Underutilized
Base Closure: No
Comment: 64067 sq. ft.; 1 story wood frame; needs rehab; limited utilities.
Bldg. 2302
Fort Hood
Headquarters Avenue
Fort Hood, TX, Co: Coryell 76544–
Federal Register Notice Date: 05/31/91
Property Number: 219030169
Status: Unutilized
Base Closure: No
Comment: 7239 sq. ft.; 2 story; needs rehab; potential utilities; presence of asbestos; most recent use—administrative/storage.
Bldg. 2234
Fort Hood
Battalion Avenue
Fort Hood, TX, Co: Coryell 76544–
Federal Register Notice Date: 05/31/91
Property Number: 219030170
Status: Unutilized
Base Closure: No
Comment: 1523 sq. ft.; 1 story; needs rehab; potential utilities; presence of asbestos; most recent use—battalion storage building.
Bldg. 2230
Fort Hood
Battalion Avenue
Fort Hood, TX, Co: Coryell 76544–
Federal Register Notice Date: 05/31/91
Property Number: 219030171
Status: Unutilized
Base Closure: No
Comment: 2025 sq. ft.; 1 story; needs rehab; potential utilities; presence of asbestos; most recent use—office/administrative.
Bldg. 35
Fort Hood
Battalion Avenue
Fort Hood, TX, Co: Coryell 76544–
Federal Register Notice Date: 05/31/91
Property Number: 219030177
Status: Unutilized
Base Closure: No
Comment: 5346 sq. ft.; 1 story; needs rehab; potential utilities; presence of asbestos; most recent use—administrative office.
Bldg. 34
Fort Hood
Battalion Avenue
Fort Hood, TX, Co: Coryell 76544–
Federal Register Notice Date: 05/31/91
Property Number: 219030179
Status: Unutilized
Base Closure: No
Comment: 3996 sq. ft.; 1 story; needs rehab; potential utilities; presence of asbestos; most recent use—administrative office.
17 Bldgs.
Fort Bliss

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El Paso, TX, Co: El Paso 79916–
Federal Register Notice Date: 05/31/91
Property Numbers: 219014694, 219014943, 219030186, 219030188–219030193, 219110935–219110940
Status: Unutilized
Base Closure: No
Comment: 642 sq. ft.—14390 sq. ft.; 1 and 2 story frame; off-site use only; need rehab.
Bldgs. 640, 757–759, 5440
Fort Bliss
El Paso, TX, Co: El Paso 79916–
Federal Register Notice Date: 05/31/91
Property Numbers: 219110058–2190110061, 219110065
Status: Unutilized
Base Closure: No
Comment: 150–495 sq. ft. each; one story metal frame; off-site use only; mos recent use—general storehouse.
Bldg. 7034
7034 Sutherland Street, Lower Beaumont Area
Fort Bliss
El Paso, TX, Co: El Paso 79916–
Federal Register Notice Date: 05/31/91
Property Number: 219110066
Status: Unutilized
Base Closure: No
Comment: 430 sq. ft.; one story brick/stucco frame; off-site use only most recent use—storage shed.

Suitable Available Land (by Agency)

Land Saginaw Army Aircraft Plt
Saginaw, TX, Co: Tarrant 76070–
Federal Register Notice Date: 05/31/91
Property Number: 219014614
Status: Unutilized
Base Closure: No
Comment: 154.3 acres; includes buildings/structures/parking and air strip.

Suitable Buildings (by Agency)

Bldg. 2
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant 76070–
Federal Register Notice Date: 05/31/91
Property Number: 219014615
Status: Unutilized
Base Closure: No
Comment: 94606 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
Bldg. 4
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant 76070–
Federal Register Notice Date: 05/31/91
Property Number: 219014616
Status: Unutilized
Base Closure: No
Comment: 1350 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
Bldg. 17
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant 76070–
Federal Register Notice Date: 05/31/91
Property Number: 219014617
Status: Unutilized
Base Closure: No
Comment: 66 sq. ft.; wood and metal frame; subject to sewer pipeline easement; needs rehab; most recent use—guard house.
Bldg. 29
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant 76070–
Federal Register Notice Date: 05/31/91
Property Number: 219014618
Status: Unutilized
Base Closure: No
Comment: 5028 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
Bldg. 30
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant 76070–
Federal Register Notice Date: 05/31/91
Property Number: 219014619
Status: Unutilized
Base Closure: No
Comment: 5323 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
Bldg. 18
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant 76070–
Federal Register Notice Date: 05/31/91
Property Number: 219014620
Status: Unutilized
Base Closure: No
Comment: 9560 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
Bldg. 6
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant 76070–
Federal Register Notice Date: 05/31/91
Property Number: 219014621
Status: Unutilized
Base Closure: No
Comment: 1258 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
Bldg. 7
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant 76070–
Federal Register Notice Date: 05/31/91
Property Number: 219014622
Status: Unutilized
Base Closure: No
Comment: 508 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
Bldg. 8
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant 76070–
Federal Register Notice Date: 05/31/91
Property Number: 219014624
Status: Unutilized
Base Closure: No
Comment: 171 sq. ft.; 2 story wood and metal frame; subject to sewer pipeline easement; needs rehab; most recent use—watch tower.
Bldg. 16
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant 76070–
Federal Register Notice Date: 05/31/91
Property Number: 219014625
Status: Unutilized
Base Closure: No
Comment: 17263 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
Bldg. 19
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant 76070–
Federal Register Notice Date: 05/31/91
Property Number: 219014626
Status: Unutilized
Base Closure: No
Comment: 25399 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
Bldg. 31
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant 76070–
Federal Register Notice Date: 05/31/91
Property Number: 219014627
Status: Unutilized
Base Closure: No
Comment: 1392 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
Bldg. 9
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant 76070–
Federal Register Notice Date: 05/31/91
Property Number: 219014628
Status: Unutilized
Base Closure: No
Comment: 244 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
Bldg. 25
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant 76070–
Federal Register Notice Date: 05/31/91
Property Number: 219014629
Status: Unutilized
Base Closure: No
Comment: 1320 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab; most recent use—fire house.
Bldg. 10
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant 76070–
Federal Register Notice Date: 05/31/91
Property Number: 219014630
Status: Unutilized
Base Closure: No
Comment: 354 sq. ft.; 2 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
Bldg. 26
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant 76070–
Federal Register Notice Date: 05/31/91
Property Number: 219014631
Status: Unutilized
Base Closure: No
Comment: 3518 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
Bldg. 21
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant 76070–
Federal Register Notice Date: 05/31/91
Property Number: 219014632
Status: Unutilized
Base Closure: No
Comment: 65 sq. ft.; wood and metal frame; subject to sewer pipeline easement; needs rehab; most recent use—guard house.
Bldg. 22
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant 76070–
Federal Register Notice Date: 05/31/91
Property Number: 219014633
Status: Unutilized
Base Closure: No

Comment: 50561 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.
Bldg. 27
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant 76070–
Federal Register Notice Date: 05/31/91
Property Number: 219014634
Status: Unutilized
Base Closure: No
Comment: 228 sq. ft.; 2 story wood and metal frame; subject to sewer pipeline easement; needs rehab; most recent use—control tower.
Bldg. 32
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant 76070–
Federal Register Notice Date: 05/31/91
Property Number: 219014635
Status: Unutilized
Base Closure: No
Comment: 19548 sq. ft.; 1 story wood and metal frame; subject to sewer pipeline easement; needs rehab.

Virginia

Suitable/Available Buildings (by Agency)
Army
Bldg. 1932
Fort Belvoir
Goethals Road
Fort Belvoir, VA, Co: Fairfax 22060–
Federal Register Notice Date: 05/31/91
Property Number: 219012310
Status: Unutilized
Base Closure: No
Comment: 13780 sq. ft.; 2 floors; most recent use—storage; All utilities have been removed; needs rehab.
Bldg. 227
Fort Belvoir
OPS General Purpose Building
Fort Belvoir, VA, Co: Fairfax 22401–
Location: Off of Middleton Road
Federal Register Notice Date: 05/31/91
Property Number: 219012313
Status: Unutilized
Base Closure: No
Comment: 900 sq. ft.; one floor; concrete foundation with wood walls; utilities disconnected.
Bldg. 2222
Fort Belvoir
Fort Belvoir, VA, Co: Fairfax 22060–
Location: West of Foster Road
Federal Register Notice Date: 05/31/91
Property Number: 219012315
Status: Unutilized
Base Closure: No
Comment: 3800 sq. ft. per floor; 2 floors; concrete foundation/frame building; no utilities.
Bldg. 1932
Fort Belvoir
Goethals Road
Fort Belvoir, VA, Co: Fairfax 22060–
Federal Register Notice Date: 05/31/91
Property Number: 219012318
Status: Unutilized
Base Closure: No
Comment: 6880 sq. ft. per floor; two floors; frame on concrete foundation; possible asbestos; utilities disconnected; quarters;
Bldg. T–11130,
Combined Arms Support Command and Fort Lee,
39th Street
Fort Lee, VA, Co: Fort Lee 23801–
Federal Register Notice Date: 05/31/91
Property Number: 219110141
Status: Excess
Base Closure: No
Comment: 2488 sq. ft.; one story; structurally deteriorated; off-site use only
103 Bldgs.
Fort Pickett
Blackstone, VA, Co: Nottoway 23824
Federal Register Notice Date: 05/31/91
Property Numbers: 219010006–219010079, 219010972, 219010978, 219010979, 219010982, 219010984, 219010987, 219010990, 219010993, 219010995, 219010998, 219011000, 219011003, 219011010, 219011012, 219011014, 219011017, 219011020, 219011023, 219011027, 219011032–219011036, 219011038, 219011040, 219011043, 219011046, 219011047
Status: Unutilized
Base Closure: No
Comment: 4292 sq. ft. each; Selected periods are reserved for military/ training exercises.
87 Bldgs.
Fort Pickett
Blackstone, VA, Co: Nottoway 23824
Federal Register Notice Date: 05/31/91
Property Numbers: 219010080–219010104, 219011002, 219011004–219011009, 219011011, 219011013, 219011015–219011016, 219011018, 219011019, 219011021–219011022, 219011024–219011026, 219011028–219011031, 219011060, 219011064–219011065, 219011067–219011068, 219011070–219011071, 219011073, 219011074, 219011076–219011077, 219011079–219011081, 219011083, 219011065–219011086, 219011088–219011089, 2191011091, 219011093, 219011096–219011103, 219011105, 219011107, 219011114, 219011116, 219011121,219011140, 219011143, 219011145–219011147, 219012797
Status: Unutilized
Base Closure: No
Comment: 2900 sq. ft. each; selected periods are reserved for military/ training exercises.
Bldgs. 1676, 1677
Fort Pickett
Blackstone, VA, Co: Nottoway 23930
Federal Register Notice Date: 05/31/91
Property Numbers: 219010971, 219010973
Status: Underutilized
Base Closure: No
Comment: 3300 sq. ft. each; Selected periods reserved for military/ training exercises; most recent use—Hdqts. Bldg.
Bldgs. 1666, 1687, 1696
Fort Pickett
Blackstone, VA, Co: Nottoway 23824
Federal Register Notice Date: 05/31/91
Property Numbers: 219010974–219010975, 219010977
Status: Underutilized
Base Closure: No
Comment: 1300 sq. ft. each; selected periods are reserved for military/ training exercises; most recent use—Hdqts. Bldg.
Bldgs. 1667, 1686
Fort Pickett
Blackstone, VA, Co: Nottoway 23930
Federal Register Notice Date: 05/31/91
Property Numbers: 219010978, 219010980
Status: Underutilized
Base Closure: No
Comment: 11000 sq. ft. each; most recent use—mess hall; selected periods are reserved for military/training exercises.
Bldg. 1690
Fort Pickett
Blackstone, VA, Co: Nottoway 23824
Federal Register Notice Date: 05/31/91
Property Number: 219010981
Status: Underutilized
Base Closure: No
Comment: 2300 sq. ft.; selected periods are reserved for military/training exercises; most recent use—storage.
Bldg. 2810
Fort Pickett
Blackstone, VA, Co: Nottoway 23824
Federal Register Notice Date: 05/31/91
Property Number: 219010983
Status: Underutilized
Base Closure: No
Comment: 3500 sq. ft.; most recent use—recreation; selected periods are reserved for military/training exercises.
Bldgs. 2800, 2801
Fort Pickett
Blackstone, VA, Co: Nottoway 23824
Federal Register Notice Date: 05/31/91
Property Numbers: 219010985–219010986
Status: Underutilized
Base Closure: No
Comment: 1200 sq. ft. each; most recent use—recreation; selected periods are reserved for military/training exercises.
Bldgs. 2802, 2806
Fort Pickett
Blackstone, VA, Co: Nottoway 23824
Federal Register Notice Date: 05/31/91
Property Numbers: 219010985–219010989
Status: Underutilized
Base Closure: No
Comment: 2200 sq. ft. each; most recent use—Recreation Bldg; selected periods are reserved for military/training exercises.
Bldgs. 1315, 1316
Fort Pickett
Blackstone, VA, Co: Nottoway 23930
Federal Register Notice Date: 05/31/91
Property Numbers: 219010991–219010992
Status: Underutilized
Base Closure: No
Comment: 4038 sq. ft. each; most recent use—housing; selected periods are reserved for military/training exercises.
4 Bldgs.
Fort Pickett
Blackstone, VA, Co: Nottoway 23824
Federal Register Notice Date: 05/31/91
Property Numbers: 219010994, 219010996–219010997, 219010999
Status: Underutilized
Base Closure: No
Comment: 2256 sq. ft. each; most recent use—housing; selected periods are reserved for military/training exercises.
Bldg. T3055
Fort Pickett
Blackstone, VA, Co: Nottoway 23824
Federal Register Notice Date: 05/31/91
Property Number: 219011001
Status: Underutilized
Base Closure: No

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Comment: 2307 sq. ft.; most recent use—recreation facility; selected periods are reserved for military/training exercises.

5 Bldgs.
Fort Pickett
Blackstone, VA, Co: Nottoway 23824
Federal Register Notice Date: 05/31/91
Property Numbers: 219011037, 219011039, 219011041–219011042, 21901104
Status: Underutilized
Base Closure: No
Comment: 2500 sq. ft. each; selected periods reserved for military/training exercises; most recent use—Hdqts. Bldg.

5 Bldgs.
Fort Pickett
Blackstone, VA, Co: Nottoway 23930
Federal Register Notice Date: 05/31/91
Property Numbers: 219011045, 219011048–219011049, 219011051–21901105
Status: Underutilized
Base Closure: No
Comment: 1176 sq. ft. each; selected periods of time reserved for military training exercises; most recent use—Hdqts. Bldg.

15 Bldgs.
Fort Pickett
Blackstone, VA, Co: Nottoway 23824
Federal Register Notice Date: 05/31/91
Property Numbers: 219011050, 219011053–219011059, 219011061–219011063, 219011066, 219011069, 219011072, 219011075
Status: Underutilized
Base Closure: No
Comment: 2761 sq ft; most recent use—veh. maint. shop; selected periods are reserved for military/training exercises.

5 Bldgs.
Fort Pickett
Blackstone, VA, Co: Nottoway 23824
Federal Register Notice Date: 05/31/91
Property Numbers: 219011078, 219011082, 219011084, 219011087, 21901109
Status: Underutilized
Base Closure: No
Comment: 2300 sq ft each; most recent use—dining fac; selected periods are reserved for military/training exercises.

Bldgs. 1352, 3026
Fort Pickett
Blackstone, VA, Co: Nottoway 23824
Federal Register Notice Date: 05/31/91
Property Numbers: 219011092, 219011095
Status: Underutilized
Base Closure: No
Comment: 3500 sq ft each; most recent—dining fac; selected periods are reserved for military/training exercises.

Bldg. T–6015
U.S. Army Logistics Center & Fort Lee
Shop Road
Fort Lee, VA, Co: Prince George 23801
Federal Register Notice Date: 05/31/91
Property Number: 219012376
Status: Unutilized
Base Closure: No
Comment: 2124 sq. ft.; 2 story; most recent use—barracks; poor condition; needs major rehab.

Bldg. T–6016
U.S. Army Logistics Center and Fort Lee
Shop Road
Fort Lee, VA, Co: Prince George 23801
Federal Register Notice Date: 05/31/91
Property Number: 219012396
Status: Unutilized
Base Closure: No
Comment: 1575 sq ft., 1 floor, no utilities, possible asbestos, needs rehab, off site use only.

Bldg. T–12054
U.S. Army Logistics Center and Fort Lee
Logistics Circle
Fort Lee, VA, Co: Prince George 23801
Federal Register Notice Date: 05/31/91
Property Number: 219030328
Status: Unutilized
Base Closure: No
Comment: 4095 sq. ft.; 1 story sheet metal; needs rehab; presence of asbestos; off-site use only.

Washington

Suitable/Available Buildings (by Agency)

Army

Bldg. 875
East 10th Street & Cabell Road
Vancouver Barracks
Vancouver, WA, Co: Clark 98661–3896
Federal Register Notice Date: 05/31/91
Property Number: 219011618
Status: Excess
Base Closure: No
Comment: 13,695 sq ft., 2 story wood frame, extensive fire damage, Historic property.

Bldg. 701
SE Corner, McClelland & McLoughlin Road
Vancouver Barracks
Vancouver, WA, Co: Clark 98661-3896
Federal Register Notice Date: 05/31/91
Property Number: 219011628
Status: Unutilized
Base Closure: No
Comment: 1 story wood frame, needs extensive repairs, Historic property.

Wisconsin

Suitable/Available Buildings (by Agency)

Army

Bldg. T–1058
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe 54656–5000
Federal Register Notice Date: 05/31/91
Property Number: 219013435
Status: Unutilized
Base Closure: No
Comment: 4829 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10122
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe 54656–5000
Federal Register Notice Date: 05/31/91
Property Number: 219013436
Status: Unutilized
Base Closure: No
Comment: 1900 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10123
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe 54656–5000
Federal Register Notice Date: 05/31/91
Property Number: 219013437
Status: Unutilized
Base Closure: No
Comment: 2405 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldgs. T–10135, T–10136, T–10137
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe 54656–5000
Federal Register Notice Date: 05/31/91
Property Numbers: 219013438–219013439, 219013442
Status: Unutilized
Base Closure: No
Comment: 96–192 sq. ft. each ; 1 story wood frame; possible asbestos; hospital patient ward buildings; most recent use—power plant.

Bldg. T–10127
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe 54656–5000
Federal Register Notice Date: 05/31/91
Property Number: 219013440
Status: Unutilized
Base Closure: No
Comment: 1148 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. P–10119
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe 54656–5000
Federal Register Notice Date: 05/31/91
Property Number: 219013441
Status: Unutilized
Base Closure: No
Comment: 215 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldgs. T–01088—T–01093, T–01094—T–01097, T–01014
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe 54656–5000
Federal Register Notice Date: 05/31/91
Property Numbers: 219013444–219013449, 219013452–219013455, 219013457
Status: Unutilized
Base Closure: No
Comment: 5295 sq. ft. each; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldgs. T–10118, T–10120
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe 54656–5000
Federal Register Notice Date: 05/31/91
Property Numbers: 219013450–219013451
Status: Unutilized
Base Closure: No
Comment: 1250 sq. ft. each; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10113
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe 54656–5000
Federal Register Notice Date: 05/31/91
Property Number: 219013456
Status: Unutilized
Base Closure: No
Comment: 2393 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10121
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe 54656–5000
Federal Register Notice Date: 05/31/91
Property Number: 219013458
Status: Unutilized
Base Closure: No
Comment: 2405 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldgs. T–10100—T–10103, T–10105, T–10107, T–10106
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe 54656–5000
Federal Register Notice Date: 05/31/91
Property Numbers: 219013459–219013463, 219013465–219013466
Status: Unutilized
Base Closure: No
Comment: 3944 sq. ft. each; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10106
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe 54656–5000
Federal Register Notice Date: 05/31/91
Property Number: 219013464
Status: Unutilized
Base Closure: No
Comment: 4105 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10124
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe 54656–5000
Federal Register Notice Date: 05/31/91
Property Number: 219013467
Status: Unutilized
Base Closure: No
Comment: 3115 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldgs. T–10125, T–10126
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe 54656–5000
Federal Register Notice Date: 05/31/91
Property Numbers: 219013468–219013469
Status: Unutilized
Base Closure: No
Comment: 3590 sq. ft. each; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10110
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe 54656–5000
Federal Register Notice Date: 05/31/91
Property Number: 219013470
Status: Unutilized
Base Closure: No
Comment: 2548 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings; most recent use—vehicle storage.

55 Bldgs.
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe 54656–5000
Federal Register Notice Date: 05/31/91
Property Numbers: 219013471–219013502, 219013504–219013505, 219013515–219013535
Status: Unutilized
Base Closure: No
Comment: 4686–4829 sq. ft. each; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01032
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe 54656–5000
Federal Register Notice Date: 05/31/91
Property Number: 219013503
Status: Unutilized
Base Closure: No
Comment: 5588 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01054
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe 54656–5000
Federal Register Notice Date: 05/31/91
Property Number: 219013506
Status: Unutilized
Base Closure: No
Comment: 4184 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01033
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe 54656–5000
Federal Register Notice Date: 05/31/91
Property Number: 219013507
Status: Unutilized
Base Closure: No
Comment: 5241 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10112
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe 54656–5000
Federal Register Notice Date: 05/31/91
Property Number: 219013508
Status: Unutilized
Base Closure: No
Comment: 1273 sq. ft., 1 story wood frame; possible asbestos; hospital/patient ward buildings; most recent use—morgue.

Bldg. T–01031
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe 54656–5000
Federal Register Notice Date: 05/31/91
Property Number: 219013509
Status: Unutilized
Base Closure: No
Comment: 4813 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01002
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe 54656–5000
Federal Register Notice Date: 05/31/91
Property Number: 219013510
Status: Unutilized
Base Closure: No
Comment: 2573 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01010
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe 54656–5000
Federal Register Notice Date: 05/31/91
Property Number: 219013511
Status: Unutilized
Base Closure: No
Comment: 8799 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–10109
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe 54656–5000
Federal Register Notice Date: 05/31/91
Property Number: 219013512
Status: Unutilized
Base Closure: No
Comment: 2000 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01098
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe 54656–5000
Federal Register Notice Date: 05/31/91
Property Number: 219013513
Status: Unutilized
Base Closure: No
Comment: 7133 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01099
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe 54656–5000
Federal Register Notice Date: 05/31/91
Property Number: 219013514
Status: Unutilized
Base Closure: No
Comment: 3294 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01003
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe 54656–5000
Federal Register Notice Date: 05/31/91
Property Number: 219013536
Status: Unutilized
Base Closure: No
Comment: 3366 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01001
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe 54656–5000
Federal Register Notice Date: 05/31/91
Property Number: 219013537
Status: Unutilized
Base Closure: No
Comment: 3350 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01005
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe 54656–5000
Federal Register Notice Date: 05/31/91
Property Number: 219013538
Status: Unutilized
Base Closure: No
Comment: 3253 sq. ft., 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T–01020

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Army Hospital Complex
Sparta, WI, Co: Monroe 54656-5000
Federal Register Notice Date: 05/31/91
Property Number: 219013539
Status: Unutilized
Base Closure: No
Comment: 4150 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldgs. T-01070, T-01081
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe 54656-5000
Federal Register Notice Date: 05/31/91
Property Numbers: 219013540-219013541
Status: Unutilized
Base Closure: No
Comment: 7133 sq. ft. each; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

9 Bldgs.
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe 54656-5000
Federal Register Notice Date: 05/31/91
Property Numbers: 219013542-219013544, 219013546-219013551
Status: Unutilized
Base Closure: No
Comment: 5295 sq. ft. each; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldgs. T-01011, T-01021
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe 54656-5000
Federal Register Notice Date: 05/31/91
Property Numbers: 219013545, 219013552
Status: Unutilized
Base Closure: No
Comment: 4236 sq. ft. each; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldgs. T-01004, T-01019
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe 54656-5000
Federal Register Notice Date: 05/31/91
Property Numbers: 219013553-219013554
Status: Unutilized
Base Closure: No
Comment: 2815 sq. ft. each; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T-01056
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe 54656-5000
Federal Register Notice Date: 05/31/91
Property Number: 219013555
Status: Unutilized
Base Closure: No
Comment: 15657 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T-01000
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe 54656-5000
Federal Register Notice Date: 05/31/91
Property Number: 219013556
Status: Unutilized
Base Closure: No
Comment: 3378 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings; most recent use—fire station.

Bldg. T-01055
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe 54646-5000
Federal Register Notice Date: 05/31/91
Property Number: 219013557
Status: Unutilized
Base Closure: No
Comment: 5471 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Suitable/Unavailable Properities

Arkansas

Suitable/Unavailable Buildings (by Agency)

Army
S.W. Terry USAR Center
3600 South Pierce Street
Little Rock, AR, Co: Pulaski 72204
Federal Register Notice Date: 05/31/91
Property Number: 219014785
Status: Unutilized
Base Closure: No
Comment: 22350 sq. ft.; 1 story plus mezzadine; masonry frame; possible asbestos in boiler room.

U.S. Army Garrison
Fort Chaffee
4093 11th Avenue
Ft. Chaffee, AR, Co: Sebastian 72905
Federal Register Notice Date: 05/31/91
Property Number: 219014607
Status: Unutilized
Base Closure: No
Comment: 3045 sq. ft.; 1 story wood frame; possible asbestos; needs major rehab; potential utilities.

Arizona

Suitable/Unavailable Buildings (by Agency)

Army
Bldg. S-105
Yuma Proving Ground
Yuma, AZ, Co: Yuma/La Paz 85365-9102
Location: Main Administrative Area—Between A and C streets, north of 2nd street
Federal Register Notice Date: 05/31/91
Property Number: 219013959
Status: Underutilized
Base Closure: No
Comment: 8910 sq. ft.; 1 story metal frame; possible asbestos; most recent use—storage.

California

Suitable/Unavailable Buildings (by Agency)

Army
Bldg. 226
Parks Reserve Forces Training Area
Dublin, CA, Co: Alameda 94129
Federal Register Notice Date: 05/31/91
Property Number: 219013010
Status: Unutilized
Base Closure: No
Comment: 11500 sq. ft.; 3 story temporary wood; extensive asbestos present; most recent use—barracks.

Bldg. 939
Parks Reserve Forces
Training Area
Dublin, CA, Co: Alameda 94129
Federal Register Notice Date: 05/31/91
Property Number: 219030292
Status: Unutilized
Base Closure: No
Comment: 11300 sq. ft.; 1 story wood frame; needs major rehab; extensive asbestos present.

P-33 Fort Ord
East Garrison
Fort Ord, CA, Co: Monterey 93940-
Federal Register Notice Date: 05/31/91
Property Number: 219010723
Status: Unutilized
Base Closure: No
Comment: 4132 sq. ft.; 1 floor; most recent use—storage.

T-88 Fort Ord
East Garrison
Fort Ord, CA, Co: Monterey 93940
Federal Register Notice Date: 05/31/91
Property Number: 219010768
Status: Unutilized
Base Closure: Yes
Comment: 1049 sq. ft.; 1 story; possible asbestos.

Bldg. T-220
Artillery Street
Presidio of Monterey, CA, Co: Monterey 93940-
Federal Register Notice Date: 05/31/91
Property Number: 219014784
Status: Unutilized
Base Closure: No
Comment: 3343 sq. ft.; 2 story wood frame; most recent use—bowling center.

Georgia

Suitable/Unavailable Buildings (by Agency)

Army
Bldg. 5325
Fort Benning, GA, Co: Muscogee 31905
Federal Register Notice Date: 05/31/91
Property Number: 219010140
Status: Unutilized
Base Closure: No
Comment: 2124 sq. ft.; most recent use—barracks; needs rehab.

Kentucky

Suitable/Unavailable Buildings (by Agency)

Army
Bldgs. 2945, 3165
Fort Campbell
Fort Campbell, KY, Co: Christian 42223
Federal Register Notice Date: 05/31/91
Property Numbers: 219012543, 219013221
Status: Underutilized
Base Closure: No
Comment: 4248 sq. ft. each; 2 story; selected periods are reserved for military/training exercises; possible asbestos.

Bldgs. 144, 145
Ft. Campbell
Ft. Campbell, KY, Co: Christian 42223
Federal Register Notice Date: 05/31/91
Property Numbers: 219013140, 219013141
Status: Underutilized
Base Closure: No.
Comment: 12576 sq. ft. each; 2 story; possible asbestos.

Bldgs. 3140, 3143, 3142, 3141
Ft. Campbell
Ft. Campbell, KY, Co: Christian 42223
Federal Register Notice Date: 05/31/91
Property Numbers: 219013222, 219013224-219013228
Status: Underutilized
Base Closure: No
Comment: 2200 sq. ft. each; 1 story; possible asbestos; selected periods used for military/training exercises.

Bldgs. 3135, 2733, 3132, 3133
Ft. Campbell
Ft. Campbell, KY, Co: Christian 42223
Federal Register Notice Date: 05/31/91
Property Numbers: 219013227, 219013229, 219013233, 219013234
Status: Underutilized
Base Closure: No
Comment: 1760 sq. ft. each; 1 story; possible asbestos; selected periods used for military/training exercises.

Bldg. 3134
Ft. Campbell
Ft. Campbell, KY, Co: Christian 42223
Federal Register Notice Date: 05/31/91
Property Number: 219013228
Status: Underutilized
Base Closure: No
Comment: 1880 sq. ft.; 1 story; possible asbestos; selected periods used for military/training.

Bldg. 3111
Ft. Campbell
Ft. Campbell, KY, Co: Christian 42223
Federal Register Notice Date: 05/31/91
Property Number: 219013230
Status: Underutilized
Base Closure: No
Comment: 4248 sq. ft.; 2 story; possible asbestos; selected periods used for military/training exercises.

Bldg. 3113
Ft. Campbell
Ft. Campbell, KY, Co: Christian 42223
Federal Register Notice Date: 05/31/91
Property Number: 219013231
Status: Underutilized
Base Closure: No
Comment: 2124 sq. ft.; 2 story; possible asbestos; selected periods used for military/training exercises.

Louisiana

Suitable/Unavailable Buildings (by Agency)

Army
Bldg. 8323
12th Street
Fort Polk, LA, Co: Vernon 71459-5000
Federal Register Notice Date: 05/31/91
Property Number: 219012730
Status: Underutilized
Base Closure: No
Comment: 4015 sq. ft.; temporary wood frame; most recent use—motor pool maintenance shop.

Massachusetts

Suitable/Unavailable Buildings (by Agency)

Army
Bldg. T-209
Fort Devens
Fort Devens, MA 01433
Federal Register Notice Date: 05/31/91
Property Number: 219030265
Status: Underutilized
Base Closure: No
Comment: 4070 sq. ft.; 2 story wood frame; needs rehab; most recent use—barracks.

Bldg. T-206
Fort Devens
Fort Devens, MA, Co: Middlesex/Worcester. 01433-
Federal Register Notice Date: 05/31/91
Property Number: 219012345
Status: Underutilized
Base Closure: No
Comment: 1000 sq ft., 1 story, wood, most recent use-day room.

New Jersey

Suitable/Unavailable Buildings (by Agency)

Army
Bldgs. 3315-B, 3316-C, 3329-C, 3329-E, 3346-C, 3349-B 3349-C, 3350-B, 3350-E, 3350-G, 3356-A, 3356-B, 3356-C, 3356-D
Nelson Family Housing
Fort Dix, NJ, Co: Burlington 08640-
Federal Register Notice Date: 05/31/91
Property Numbers: 219030194, 219030196, 219030206, 219030207, 219030223, 219030227, 219030228, 219030230-219030232, 219030235-219030238
Status: Unutilized
Base Closure: No
Comment: 879 sq. ft. each; 2 story residences; structurally deteriorated; possible asbestos.

Bldgs. 3315-C, 3349-E, 3351-C, 3351-D, 3356-E
Nelson Family Housing
Fort Dix, NJ, Co: Burlington 08640
Federal Register Notice Date: 05/31/91
Property Numbers: 219030195, 219030229, 219030233, 219030234, 219030239
Status: Unutilized
Base Closure: No
Comment: 595 sq. ft.; 1 story residence; structurally deteriorated; possible asbestos.

Bldgs. 3357-C, 3357-D, 3357-E
Nelson Family Housing
Lexington Avenue
Fort Dix, NJ, Co: Burlington 08640-
Federal Register Notice Date: 05/31/91
Property Numbers: 219030240-219030242
Status: Unutilized
Base Closure: No
Comment: 875 sq. ft. each; 2 story residence; structurally deteriorated; possible asbestos.

Bldgs. 3316-A, 3316-B, 3317-A, 3322-C, 3319-C, 3323-A, 3323-B, 3332-A, 3332-B, 3333-E, 3336-F, 3336-E, 3338-B, 3339-A, 3340-A, 3342-A 3342-B, 3342-C, 3342-D, 3342-E, 3345-A, 3348-A, 3348-C, 3348-B
Nelson Family Housing
Fort Dix, NJ, Co: Burlington 08640
Federal Register Notice Date: 05/31/91
Property Numbers: 219030196, 219030197, 219030199, 219030201, 219030202, 219030203-219030204, 219030208-219030220, 219030222, 219030224, 219030226, 219030225
Status: Unutilized
Base Closure: No
Comment: 975 sq. ft. each; 2 story residences; structurally deteriorated; possible asbestos.

Bldgs. 3318-A, 3325-A, 3344-B
Nelson Family Housing
Fort Dix, NJ, Co: Burlington 08640
Federal Register Notice Date: 05/31/91
Property Numbers: 219030200, 219030205, 219030221
Status: Unutilized
Base Closure: No
Comment: 1267 sq. ft. each; 2 story residences; structurally deteriorated; possible asbestos.

Pennsylvania

Suitable/Unavailable Land (by Agency)

COMMERCE
Weather Service Forecast
192 Shafer Road
Corapolis, PA, Co: Allegheny 15106-
Federal Register Notice Date: 05/31/91
Property Number: 279010006
Status: Unutilized
Base Closure: No
Comment: 5 acres, limitation—future weather radar system site, potential utilities

South Carolina

Suitable/Unavailable Buildings (by Agency)

Army
Bldg 5485
Marion Avenue
Fort Jackson, SC, Co: Richland
Federal Register Notice Date: 05/31/91
Property Number: 219013897
Status: Unutilized
Base Closure: No
Comment: 6303 sq. ft.; 1 story permanent structure; former heating plant; deteriorated condition.

Texas

Suitable/Unavailable Buildings (by Agency)

Army
Bldg. 2211
Fort Hood
Headquarters Avenue
Fort Hood, TX, Co: Coryell 76544
Federal Register Notice Date: 05/31/91
Property Number: 219013693
Status: Unutilized
Base Closure: No
Comment: 7239 sq. ft.; 2 story; potential utilities; needs major rehab; most recent use—guest house/storage.

Bldg. 2231
Fort Hood
Battalion Avenue
Fort Hood, TX, Co: Coryell 76544
Federal Register Notice Date: 05/31/91
Property Number: 219013699
Status: Unutilized
Base Closure: No
Comment: 1998 sq. ft.; 1 story temporary frame; needs rehab.

Virginia

Suitable/Unavailable Land (by Agency)

GSA
St. Helena Annex (former portion)
Treadwell and South Main Streets
Norfolk, VA, Co: Norfolk 23523
Federal Register Notice Date: 05/31/91
Property Number: 549120005

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Status: Excess
Base Closure: No
Comment: 4.36 acres, most recent use—paved parking lot GSA No. 4–GR(2)–VA525AA.

Suitable/Unavailable Buildings (by Agency)

Army

Bldg. 2809
Fort Pickett
Blackstone, VA, Co: Nottoway 23824
Federal Register Notice Date: 05/31/91
Property Number: 219030271
Status: Underutilized
Base Closure: No
Comment: 3500 sq. ft.; selected periods are reserved for military/training exercises; most recent use—recreation building.

Bldg. 2649
Fort Pickett
Blackstone, VA, Co: Nottoway 23824
Federal Register Notice Date: 05/31/91
Property Number: 219030272
Status: Underutilized
Base Closure: No
Comment: 2900 sq. ft.; selected periods are reserved for military/training exercises; most recent use—dining facility.

Bldg. 2212
Fort Pickett
Blackstone, VA, Co: Nottoway 23824
Federal Register Notice Date: 05/31/91
Property Number: 219030279
Status: Underutilized
Base Closure: No
Comment: 2256 sq. ft.; selected periods are reserved for military/training exercises; most recent use—headquarters building.

Bldg. 2417
Fort Pickett
Blackstone, VA, Co: Nottoway 23824
Federal Register Notice Date: 05/31/91
Property Number: 219030280
Status: Underutilized
Base Closure: No
Comment: 2256 sq. ft.; selected periods are reserved for military/training exercises; most recent use—headquarters building.

Bldgs. 1693, 1694, 1695
Fort Pickett
Blackstone, VA, Co: Nottoway 23824
Federal Register Notice Date: 05/31/91
Property Numbers: 219030281–129030283
Status: Underutilized
Base Closure: No
Comment: 6912 sq. ft. each; selected periods are reserved for military/training exercises; most recent use—barracks.

Bldgs. T–3029, T–3030, T–3037, T–3038, T 3039
Fort Pickett
Blackstone, VA, Co: Nottoway 23824–
Federal Register Notice Date: 05/31/91
Property Numbers: 219030284–219030288
Status: Underutilized
Base Closure: No
Comment: 4292 sq. ft. each; selected periods are reserved for military/training exercises; most recent use—barracks.

Bldgs. 1358, 1360–1362, 1668–1675, 1678–1685,
Fort Pickett
Blackstone, VA, Co: Nottoway 23824–
Federal Register Notice Date: 05/31/91
Property Numbers: 219030295–219030314
Status: Underutilized
Base Closure: No
Comment: 11000 sq. ft. each; selected periods are reserved for military/training exercises; most recent use—mess hall.

Washington

Suitable Available Land (by Agency)

Commerce
NOAA Western Regional Center
7600 Sand Point Way, NE
Seattle, WA, Co: King 98115–0070
Federal Register Notice Date: 05/31/91
Property Number: 279040001
Status: Unutilized
Base Closure: No
Comment: 35 acres with 6000 sq. ft., two story wood frame Bldg. #7, presence of asbestos, structurally deteriorated.

Alaska

Unsuitable Buildings (by Agency)

Navy
Baler Bldg., Map Grid 55N14
Naval Air Station
Adak, AK, Co: Adak 98791–
Federal Register Notice Date: 05/31/91
Property Number: 779120003
Status: Unutilized
Base Closure: No
Reason: Secured Area

Sand Shed, Map Grid 45024
Naval Air Station
Adak, AK, Co: Adak 98791–
Federal Register Notice Date: 05/31/91
Property Number: 779120004
Status: Unutilized
Base Closure: No
Reason: Secured Area

Pier #9, Map Grid 55Y1,
Naval Air Station
Adak, AK, Co: Adak 98791–
Federal Register Notice Date: 05/31/91
Property Number: 779120005
Status: Unutilized
Base Closure: No
Reason: Secured Area

Unsuitable Land (by Agency)

Eklutna Mountain & Glacier
Training Site
Fort Richardson, AK, Co: Anchorage 99505–
Location: 18 miles from Fort Richardson
Federal Register Notice Date: 05/31/91
Property Number: 219014788
Status: Unutilized
Base Closure: No
Reason: Other
Comment: Unexploded ordanance

Davis Range
Fort Richardson
Fort Richardson, AK, Co: Anchorage 99505–
Location: SW Portion of Installation
Federal Register Notice Date: 05/31/91
Property Number: 219030267
Status: Underutilized
Base Closure: No
Reason: Secured Area

Unsuitable Buildings (by Agency)

Bldg. 603
Fort Richardson
Fort Richardson, AK, Co: Anchorage 99505–
Federal Register Notice Date: 06/31/91
Property Number: 219014280
Status: Excess
Base Closure: No
Reason: Secured Area

Unsuitable Land (by Agency)

Dike Range
Fort Wainwright
Fort Wainwright, AK, Co: Fairbanks 99703–
Location: 14 miles south of Fairbanks
Federal Register Notice Date: 05/31/91
Property Number: 219014684
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Floodway.

Unsuitable Buildings (by Agency)

B1dg. 4006, 3705
Fort Wainwright
6th Infantry Division
Fort Wainwright, AK, Co: Fairbanks
Federal Register Notice Date: 05/31/91
Property Number: 219013776, 219013780
Status: Excess
Base Closure: No
Reason: Secured Area
Bldg. P01024
MARS Station
Fort Wainwright, AK, Co: Fairbanks 99703–
Location: Located on North Post; West of 102nd street and North of Apple Street.
Federal Register Notice Date: 05/31/91
Property Number: 219014685
Status: Unutilized
Base Closure: No
Reason: Floodway.

Bldg. 1188
Sentry Station
Fort Wainwright, AK, Co: Fairbanks 99703–
Location: Located at Trainor Gate Entrance
Federal Register Notice Date: 05/31/91
Property Number: 219014686
Status: Unutilized
Base Closure: No
Reason: Floodway.

Bldg. 1514, 1546, 1566.
Fort Wainwright, AK, Co: Fairbanks 99703–
Federal Register Notice Date: 05/31/91
Property Number: 219014687–219014689
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 2050
Sentry Station
Fort Wainwright, AK, Co: Fairbanks 99703–
Federal Register Notice Date: 05/31/91
Property Number: 219014690
Status: Unutilized
Base Closure: No
Reason: Floodway.

Bldg. 1066, 1062
Officer's Military Housing
Fort Wainwright, AK, Co: Fairbanks 99703–
Location: North of Apple street and West of 100th street.
Federal Register Notice Date: 05/31/91
Property Number: 219014691–219014692
Status: Underutilized
Base Closure: No
Reason: Floodway.

Alabama

Unsuitable Buildings (by Agency)

Army
Bldg. P00894
Fort McClellan
3rd Avenue in Area 8 Motor Pool
Fort McClellan, AL, Co: Calhoun 36205–5000
Federal Register Notice Date: 05/31/91
Property Number: 219110046
Status: Unutilized
Base Closure: No
Reason: Other
Comment: Gas station.

72 Bldgs.
Redstone Arsenal
Redstone Arsenal, AL, Co: Madison 35898–
Federal Register Notice Date: 05/31/91
Property Numbers: 219014000, 219014003–219014005, 219014009 219014012, 219014015–219014053, 219014055–219014061, 219014064, 219014066, 219014068–219014080, 219014291–219014292, 219110109–219110111
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Arkansas

Unsuitable Buildings (by Agency)

Army
Fort Smith USAR Center
Fort Smith
1218 South A Street
Fort Smith, AR, Co: Sebastian 72901–
Federal Register Notice Date: 05/31/91
Property Number: 219014928
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material.

U.S. Army Garrison
Fort Chaffee
428 Ellis Avenue
Fort Chaffee, AR, Co: Sebastian 72905–5000
Federal Register Notice Date: 05/31/91
Property Number: 219110114
Status: Underutilized
Base Closure: No
Reason: Other
Comment: Fuel pumphouse.

U.S. Army Garrison
Fort Chaffee
1916 1st Avenue
Fort Chaffee, AR, Co: Sebastian 72905–5000
Federal Register Notice Date: 05/31/91
Property Number: 219110115
Status: Unutilized
Base Closure: No
Reason: Other
Comment: Fuel pumphouse.

U.S. Army Garrison
Fort Chaffee
2520 1st Avenue
Fort Chaffee, AR, Co: Sebastian 72905–5000
Federal Register Notice Date: 05/31/91
Property Number: 219110116
Status: Unutilized
Base Closure: No
Reason: Other
Comment: Fuel pumphouse.

Arizona

Unsuitable Buildings (by Agency)

Army
34 Bldgs.
Navajo Depot Activity
Bellemont, AZ, Co:, Coconino 86015
Location: 12 miles west of Flagstaff, Arizona on I–40
Federal Register Notice Date: 05/31/91
Property Number: 219014560–219014591, 219030273, 219030274
Status: Underutilized
Base Closure: No
Reason: Secured Area.

10 properties: 753 earth covered igloos; above ground standard magazine.
Navajo Depot Activity
Bellemont, AZ, Co: Coconino 86015
Location: 12 miles west of Flagstaff, Arizona on I–40.
Federal Register Notice Date: 05/31/91
Property Number: 219014592–219014601
Status: Underutilized
Base Closure: No
Reason: Secured Area.

53 Bldgs.
Yuma Proving Ground
Yuma, AZ, Co: Yuma/La Paz 85365–9102
Federal Register Notice Date: 05/31/91
Property Number: 219013966, 219011729, 219011738, 219011741–219011745, 219013931–219013958, 219013962–219013964, 219013966–219013967, 219013969–219013980
Status: Unutilized
Base Closure: No
Reason: Secured Area.

California

Unsuitable Buildings (by Agency)

Army
8 Bldgs.
Oakland Army Base
Oakland, CA, Co: Alameda 94626–5000
Federal Register Notice Date: 05/31/91
Property Number: 219013903–219013906, 219120048–219120051
Status: Unutilized
Base Closure: No
Reason: Secured Area.

17 Bldgs.
Sierra Army Depot
Herlong, CA, Co: Lassen 96113–
Federal Register Notice Date: 05/31/91
Property Number: 219014695–219014700, 219014703–219014705, 219014713–219014717, 219014719–219014721
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Bldg. S–369
Sierra Army Depot
Herlong, CA, Co: Lassen 96113
Federal Register Notice Date: 05/31/91
Property Number: 219014706
Status: Unutilized
Base Closure: No
Reason: Other, Secured Area
Comment: Detached Latrine.

Bldg. P–88
Sierra Army Depot
Road Oil Storage
Herlong, CA, Co: Lassen 96113
Federal Register Notice Date: 05/31/91
Property Number: 219014707
Status: Unutilized
Base Closure: No
Reason: Other
Comment: Oil Storage Tank.

P–C0707, P–C0708, P–C0808—igloo
Sierra Army Depot
Magazine Area
Herlong, CA, Co: Lassen 96113
Federal Register Notice Date: 05/31/91
Property Number: 219014708–219014710
Status: Unutilized
Base Closure: No
Reason: Secured Area.

39 Bldgs., Nos. 3001–3040,
Wherry Housing, title VIII
Sierra Army Depot
Herlong, CA, Co: Lassen 96113
Location: Intersection of Susanville Road and Flagler Blvd.
Federal Register Notice Date: 05/31/91
Property Number: 219030128–219030167
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Bldg. S–321, T–136–Sierra Army Depot
Herlong, CA, Co: Lassen 96113–
Federal Register Notice Date: 05/31/91
Property Number: 219120046–219120047
Status: Unutilized
Base Closure: No
Reason: Secured Area.

P–12 Fort Ord
East Garrison
Fort Ord, CA, Co: Monterey 93940
Federal Register Notice Date: 05/31/91
Property Number: 219010722
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material.

16 Bldgs.
Fort Ord, CA., Co: Monterey 93940–
Federal Register Notice Date: 05/31/91
Property Number: 219010724–219010727, 219010729–219010737, 5219010739, 219010741, 219010744
Status: Underutilized
Base Closure: No
Reason: Secured Area (some are also within 2000 ft. of flammable or explosive material).

T–1781 Fort Ord
4th St. and 1st Ave.
Fort Ord, CA, Co: Monterey 93940
Federal Register Notice Date: 05/31/91
Property Number: 219010746
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Other environmental, Secured Area.
Comment: Friable asbestos.

T–8, T–9, T–10, T–23, T–26, T–27, T–135 Fort Ord
East Garrison
Fort Ord, CA, Co: Monterey 93940
Federal Register Notice Date: 05/31/91
Property Number: 219010747, 219010749, 219010754, 219010756, 219010761, 219010765, 219010774
Status: Unutilized
Base Closure: No

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Reason: Within 2000 ft. of flammable or explosive material.

T-1782 Fort Ord
4th St. and 1st Ave
Fort Ord, CA, Co: Monterey 93940
Federal Register Notice Date: 05/31/91
Property Number: 219010748
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material. Other environmental.
Comment: Friable asbestos.

T-1783, T-1784, T-1785, T-1786, T-22 Fort Ord
Fort Ord, CA, Co: Monterey 93940
Federal Register Notice Date: 05/31/91
Property Numbers: 219010750, 219010752-219010753, 219010755-219010756
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material. Other environmental.
Comment: Friable asbestos.

T-1801 Fort Ord
4th St. and 1st Ave.
Fort Ord, CA, Co: Monterey 93940
Federal Register Notice Date: 05/31/91
Property Number: 219010757
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material. Secured Area.

T-1806, T-1807 Fort Ord
4th St. 2nd Ave.
Fort Ord, CA, Co: Monterey 93940
Federal Register Notice Date: 05/31/91
Property Numbers: 219010759-219010760
Status: Unutilized
Base Closure: No
Reason: Other environmental. Secured Area
Comment: Contains friable asbestos.

T-1983, T-2050, T-2108 Fort Ord
Fort Ord, CA, Co: Monterey 93940
Federal Register Notice Date: 05/31/91
Property Numbers: 219010762-219010764
Status: Unutilized
Base Closure: No
Reason: Secured Area.

T-2107-2109 Fort Ord
7th St. between 1st and 2nd Ave.
Fort Ord, CA, Co: Monterey 93940
Federal Register Notice Date: 05/31/91
Property Numbers: 219010766-219010767 219010769
Status: Underutilized
Base Closure: No
Reason: Secured Area.

T-2112-T-2115 Fort Ord
2nd Ave., 7th St.
Fort Ord, CA, Co: Monterey 93940
Federal Register Notice Date: 05/31/91
Property Numbers: 219010770-219010773
Status: Unutilized
Base Closure: No
Reason: Secured Area.

48 Bldgs.
Fort Ord, CA, Co: Monterey 93940
Federal Register Notice Date: 05/31/91
Property Numbers: 219010775-219010790, 219010792-219010808, 219010808-219010816, 219010818-219010819, 219010821, 219010823-219010824, 219010826, 219010828-219010829
Status: Underutilized
Base Closure: No
Reason: Secured Area.

3 Bldgs.
Fort Ord, CA, Co: Monterey 93940
Federal Register Notice Date: 05/31/91
Property Numbers: 219010791, 219010827, 219010831
Status: Unutilized
Base Closure: No
Reason: Secured Area.

5 Bldgs.
Fort Ord, CA, Co: Monterey 93940
Federal Register Notice Date: 05/31/91
Property Numbers: 219010807, 219010817, 219010820, 219010822 219010825
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material.

T-1787
Fort Ord, CA, Co: Monterey 97411
Federal Register Notice Date: 05/31/91
Property Number: 219010821
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material. Secured Area.

Bldg. P-99, T-324
Fort Hunter Liggett
Jolon, CA, Co: Monterey 93944
Federal Register Notice Date: 05/31/91
Property Numbers: 219012413, 219012420
Status: Unutilized
Base Closure: No
Reason: Other
Comment: Latrine, detached structure.

Bldg. P-177, P-178, 325
Fort Hunter Liggett,
Infantry Road
Jolon, CA, Co: Monterey 93928
Federal Register Notice Date: 05/31/91
Property Numbers: 219012414-219012415, 219012600
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. T-323, T-322
Fort Hunter Liggett
Mission Road
Jolon, CA, Co: Monterey 93928
Location: East of Airfield
Federal Register Notice Date: 05/31/91
Property Numbers: 219012601-219012602
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material.
Comment: Within 2,000 ft of sewage facility.

7 Bldgs.
Fort Ord
Fort Ord, CA, Co: Monterey
Federal Register Notice Date: 05/31/91
Property Numbers: 219013574-219013577, 219013579-219013581
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Bldg. T-2880
Fort Ord
13th Street and Corps Pl.
Fort Ord, CA, Co: Monterey
Federal Register Notice Date: 05/31/91
Property Number: 219013817
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. T-2438, T-2106, T-2524
Fort Ord
Fort Ord, CA, Co: Monterey
Federal Register Notice Date: 05/31/91
Property Numbers: 219013818-219013819, 219013821
Status: Underutilized
Base Closure: No
Reason: Secured Area.

Bldg. T-2404
Fort Ord
Tenth Street and First Avenue
Fort Ord, CA, Co: Monterey
Federal Register Notice Date: 05/31/91
Property Number: 219013820
Status: Underutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material. Secured Area.

Bldg. T-1952, T-2004
Fort Ord
Fort Ord, CA, Co: Monterey
Federal Register Notice Date: 05/31/91
Property Number: 219013822-219013823
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Bldg. T-1705
Fort Ord
Third Street and First Avenue
Fort Ord, CA, Co: Monterey
Federal Register Notice Date: 05/31/91
Property Number: 219013824
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. T-2409
Fort Ord
Tenth Street and Second Avenue
Fort Ord, CA, Co: Monterey
Federal Register Notice Date: 05/31/91
Property Number: 219013825
Status: Underutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. T-2550, T-2527
Fort Ord
Ninth Street and Third Avenue
Fort Ord, CA, Co: Monterey
Federal Register Notice Date: 05/31/91
Property Number: 219013826-219013827
Status: Underutilized
Base Closure: No
Reason: Secured Area.

10 Bldgs.
Fort Ord
Fort Ord, CA, Co: Monterey
Federal Register Notice Date: 05/31/91
Property Number: 219013828-219013837
Status: Unutilized
Base Closure: No
Reason: Secured Area.

8 Bldgs.
Fort Ord
Fort Ord, CA, Co: Monterey
Federal Register Notice Date: 05/31/91
Property Number: 219013838-219013839, 219014294-219014299
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

4 Bldgs.
Fort Ord
Fort Ord, CA, Co: Monterey 93941
Federal Register Notice Date: 05/31/91
Property Number: 219014300-219014303
Status: Underutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. S-184
Fort Hunter
POL Road
Fort Hunter Liggett, CA, Co: Monterey 93928
Federal Register Notice Date: 05/31/91
Property Number: 219014946
Status: Underutilized
Base Closure: No
Reason: Secured Area.

27 Bldgs.
Fort Ord
Fort Ord, CA, Co: Monterey 93941-5777
Federal Register Notice Date: 05/31/91
Property Number: 219030180-219030182, 219030346-219030360, 219040379-219040381, 219110067-219110072
Status: Unutilized
Base Closure: No
Reason: Secured Area.

7 Bldgs.—Fort Ord
Fort Ord, CA, Co: Monterey 93941-5777
Federal Register Notice Date: 05/31/91
Property Number: 219120052-219120057, 219120099
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Bldg. S-108
Sharpe Army Depot
Lathrop, CA, Co: San Joaquin 95331
Location: Roth Road
Federal Register Notice Date: 05/31/91
Property Number: 219014290
Status: Underutilized
Base Closure: No
Reason: Secured Area.

Bldg. 173, 177, 197
Roth Road—Sharpe Army Depot
Lathrop, CA, Co: San Joaquin
Federal Register Notice Date: 05/31/91
Property Number: 219014940-219014942
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Bldg. 18
Riverbank Army Ammunition Plant
5300 Claus Road
Riverbank, CA, Co: Stanislaus 95367
Federal Register Notice Date: 05/31/91
Property Number: 219012554
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

9 Bldgs., Nos. 2-8, 18, 156
Riverbank Army Ammunition Plant
5300 Claus Road
Riverbank, CA, Co: Stanislaus 95367
Federal Register Notice Date: 05/31/91
Property Number: 219013582-219013590
Status: Underutilized
Base Closure: No
Reason: Secured Area.

Colorado

Unsuitable Buildings (by Agency)

Army

Bldg. T-9643, T9644
Fort Carson
Butts Airfield
Colorado Springs, CO, Co: El Paso 80913-5023
Federal Register Notice Date: 05/31/91
Property Number: 219013603-219013604
Status: Unutilized.
Base Closure: No.
Reason: Secured Area.

87 Bldgs.
Pueblo Army Depot
Pueblo, CO, Co: Pueblo 81001-
Location: 14 miles East of Pueblo City on Highway 50
Federal Register Notice Date: 05/31/91
Property Number: 219012209, 219012211, 219012214, 219012216, 219012221, 219012223-219012224, 219012226-219012228, 219012230-219012237, 219012239-219012257, 219012260-219012278, 219012280-219012286, 219012290-219012298, 219012300, 219012303, 219012743, 219012745, 219012747-219012748, 219014845, 219120058-219120063
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Georgia

Unsuitable Buildings (by Agency)

Army

Railway Spur and Bridge
Fort Gillem
Forest Park, GA, Co: Clayton 30050-
Location: Located on Highway 42, Southeast
Federal Register Notice Date: 05/31/91
Property Number: 219014293
Status: Unutilized
Base Closure: No
Reason: Within airport runway clear zone.

Fort Stewart
Sewage Treatment Plant
Ft. Stewart, GA, Co: Hinesville 31314-
Federal Register Notice Date: 05/31/91
Property Number: 219013922
Status: Unutilized
Base Closure: No
Reason: Other
Comment: Sewage treatment.

Unsuitable Land (by Agency)

Facility EH001
Fort Gordon
Augusta, GA, Co: Richmond 30905-
Location: Located at the Eisenhower Army Medical Center
Federal Register Notice Date: 05/31/91
Property Number: 219014786
Status: Unutilized
Base Closure: No
Reason: Other
Comment: Heliport—concrete pad.

Unsuitable Buildings (by Agency)

Facility 12304
Fort Gordon
Augusta, GA, Co: Richmond 30905-
Location: Located off Lane Avenue
Federal Register Notice Date: 05/31/91
Property Number: 219014787
Status: Unutilized
Base Closure: No
Reason: Other
Comment: Wheeled vehicle grease/inspection rack.

Hawaii

Unsuitable Buildings (by Agency)

Army

P-001, PN-05
Kahuku Training Area
Kahuku Training Area Access Road
Kahuku, HI 96731-
Federal Register Notice Date: 05/31/91
Property Number: 219030322-219030323
Status: Underutilized
Base Closure: No
Reason: Secured Area.

P-88
Aliamanu Military Reservation
Honolulu, HI, Co: Honolulu 96818-
Location: Approximately 600 feet from Main Gate on Aliamanu Drive
Federal Register Notice Date: 05/31/91
Property Number: 219030324
Status: Unutilized
Base Closure: No
Reason: Other environmental
Comment: Friable Asbestos.

PU-01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11
Schofield Barracks
Kolekole Pass Road
Wahiawa, HI, Co: Wahiawa 96786-
Federal Register Notice Date: 05/31/91
Property Number: 219014836-219014837
Status: Unutilized
Base Closure: No
Reason: Secured Area.

TMK 1-6-8-8-11
Dillingham Military Reservation
Waialua, HI, Co: Wahiawa 96791-
Location: Property adjacent to 68-999 Farrington Highway
Federal Register Notice Date: 05/31/91
Property Number: 219014838
Status: Unutilized
Base Closure: No
Reason: Other environmental
Comment: Civil Defense—Tsunami Inundated area.

TMK 1-6-9-1-29
Dillingham Military Reservation
Waialua, HI, Co: Wahiawa 96791-
Location: In Quarry site
Federal Register Notice Date: 05/31/91
Property Number: 219014839
Status: Unutilized
Base Closure: No
Reason: Secured Area.

P-3384 East Range
Schofield Barracks
East Range Road
Wahiawa, HI, Co: Wahiawa 96786-
Federal Register Notice Date: 05/31/91
Property Number: 219030361
Status: Unutilized
Base Closure: No
Reason: Secured Area.

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Iowa

Unsuitable Buildings (by Agency)

Army

12 Bldgs.
Iowa Army Ammunition Plant
Middletown, IA, Co: Des Moines 52638–
Federal Register Notice Date: 05/31/91
Property Number: 219012603, 219012605–219012607, 219012609, 219012611, 219012613, 219012615, 219012618, 219012620, 219012622, 219012624
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

33 Bldgs.
Iowa Army Ammunition Plant
Middletown, IA, Co: Des Moines
Federal Register Notice Date: 05/31/91
Property Number: 219013706–219013736
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Illinois

Unsuitable Land (by Agency)

Army

Homewood USAR Center
18760 S. Halsted Street
Homewood, IL, Co: Cook 60430
Federal Register Notice Date: 05/31/91
Property Number: 219014087
Status: Underutilized
Base Closure: No
Reason: Secured Area.

Unsuitable Buildings (by Agency)

Bldg. 725
Fort Sheridan
Highwood, IL, Co: Lake 60037–5000
Federal Register Notice Date: 05/31/91
Property Number: 219013789
Status: Underutilized
Base Closure: No
Reason: Secured Area.

Bldg. 251
Rock Island Arsenal
Rock Island, IL, Co: Rock Island 61299–5000
Federal Register Notice Date: 05/31/91
Property Number: 219012357
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldgs. 58, 59 and 72, 60, 64, 105
Rock Island Arsenal
Rock Island, IL, Co: Rock Island 61299–5000
Federal Register Notice Date: 05/31/91
Property Numbers: 219110104–219110108
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Bldg. 64–32
Joliet Army Ammunition Plant
Joliet, IL, Co: Will 60436
Federal Register Notice Date: 05/31/91
Property Number: 219011774
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Unsuitable Land (by Agency)

Group 66A
Joliet Army Ammunition Plant
Joliet, IL, Co: Will 60436
Federal Register Notice Date: 05/31/91
Property Number: 219010414
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Parcels 1–6
Joliet Army Ammunition Plant
Joliet, IL, Co: Will 60436
Federal Register Notice Date: 05/31/91
Property Numbers: 219012810, 219013796–219013800
Status: Excess
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material Floodway.

Unsuitable Buildings (by Agency)

589 Bldgs.
Joliet Army Ammunition Plant
Joliet, IL, Co: Will 60436
Federal Register Notice Date: 05/31/91
Property Numbers: 219010153–219010317, 219010319–219010413, 219010415–219010439, 219011750–219011773, 219011775–219011879, 219011881–219011906, 219012331, 219013076–219013136, 219014722–219014781, 219030277–219030278, 219040354
Status: Unutilized
Base Closure: No
Reason: Secured Area; many within 2000 ft. of flammable or explosive materials; some within floodway.

Indiana

Unsuitable Buildings (by Agency)

Army

117 Bldgs.
Indiana Army Ammunition Plant (INAAP)
Charlestown, IN, Co: Clark 47111
Federal Register Notice Date: 05/31/91
Property Numbers: 219010913–219010919, 219010925–219010928, 219010929–219010936, 219010952, 219010954–219010955, 219010957, 219010959–219010960, 219010962–219010964, 219010966–219010967, 219010969–219010970, 219011449, 219011454, 219011456–219011457, 219011459–219011464, 219013764, 219013845, 219014608–219014620, 219014622–219014651 219014653–219014683, 219030315.
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

6 Bldgs.
Indiana Army Ammunition Plant
Charlestown, IN, Co: Clark 47111
Federal Register Notice Date: 05/31/91
Property Numbers: 219010820, 219010924, 219010927–219010928, 219014621, 219014652
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg T–109
Fort Benjamin Harrison,
Beaumont Road
Ft. Benjamin Harrison, IN, Co: Marion 47216–5450
Federal Register Notice Date: 05/31/91
Property Number: 219011848
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material.

Unsuitable Land (by Agency)

Newport Army Ammunition Plant
East of 14th St. & North of S. Blvd.
Newport, IN, Co: Vermillion 47966
Federal Register Notice Date: 05/31/91
Property Number: 219012300
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material. Secured Area.

Unsuitable Buildings (by Agency)

52 Bldgs.
Newport Army Ammunition Plant
Newport, IN, Co: Vermillion 47966
Federal Register Notice Date: 05/31/91
Property Numbers: 219011584, 219011586–219011587, 219011589–219011590, 219011592–219011615, 219011617–219011627, 219011629–219011636, 219011638–219011641
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Kansas

Unsuitable Buildings (by Agency)

Army

324 Bldgs.
Sunflower Army Ammunition Plant
35425 W. 103rd Street
DeSoto, KS, Co: Johnson 66018
Federal Register Notice Date: 05/31/91
Property Number: 219040005–219040006, 219040032–219040353
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Floodway, Secured Area.

25 Bldgs.
Sunflower Army Ammunition Plant
35425 W. 103rd Street
DeSoto, KS, Co: Johnson 66018
Federal Register Notice Date: 05/31/91
Property Number: 219040007–219040031
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Floodway.

Bldg. 9002
Sunflower Army Ammunition Plant
35525 W. 103rd Street
DeSoto, KS, Co: Johnson 66018
Federal Register Notice Date: 05/31/91
Property Number: 219110073
Status: Excess
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

37 Bldgs.
Kansas Army Ammunition Plant
Production Area
Parsons, KS, Co: Labette 67357
Federal Register Notice Date: 05/31/91
Property Number: 219011909–219011945
Status: Unutilized
Base Closure: No
Reason: Secured Area (most are within 2000 ft. of flammable or explosive material).

Kentucky

Unsuitable Buildings (by Agency)

Army

Spring House
Kentucky River Lock and Dam No. 1
Highway 320
Carrollton, KY, Co: Carroll 41006
Federal Register Notice Date: 05/31/91
Property Number: 219040416
Status: Unutilized
Base Closure: No
Reason: Other
Comment: Spring House.

Bldg. 126
Lexington—Blue Grass Army Depot
Lexington, KY, Co: Fayette 40511
Location: 12 miles northeast of Lexington, Kentucky
Federal Register Notice Date: 05/31/91
Property Number: 219011661
Status: Unutilized
Base Closure: No
Reason: Other, Secured Area
Comment: Sewage treatment facility.

Bldg. 12
Lexington—Blue Grass Army Depot
Lexington, KY, Co: Fayette 40511
Location: 12 miles Northeast of Lexington, Kentucky
Federal Register Notice Date: 05/31/91
Property Number: 219011663
Status: Unutilized
Base Closure: No
Reason: Other
Comment: Industrial waste treatment plant.

Building
Kentucky River Lock and Dam No. 4
1021 Kentucky Avenue
Frankfort, KY, Co: Franklin 40601–9999
Federal Register Notice Date: 05/31/91
Property Number: 219040417
Status: Unutilized
Base Closure: No
Reason: Other
Comment: Coal Storage.

Unsuitable Land (by Agency)

GSA

Tract 701
Upper Cumberland River Basin
U.S. 421
Harlan, KY, Co: Harlan 40831
Federal Register Notice Date: 05/31/91
Property Number: 549120063
Status: Excess
Base Closure: No
Reason: Other
Comment: Inaccessible
GSA No. 4–D–KY–600.

Unsuitable Buildings (by Agency)

Army

Barn
Kentucky River Lock and Dam No. 3
Highway 561
Pleasureville, KY, Co: Henry 40057
Federal Register Notice Date: 05/31/91
Property Number: 219040419
Status: Underutilized
Base Closure: No
Reason: Other
Comment: 110 year old barn with crumbled foundation.

Louisiana

Unsuitable Land (by Agency)

Army

Land
Louisiana Army Ammunition Plant
Doyline, LA, Co: Webster
Federal Register Notice Date: 05/31/91
Property Number: 219013923
Status: Unutilized
Base Closure: No
Reason: Other
Comment: Barrow pit, predominately under water.

Unsuitable Buildings (by Agency)

48 Bldgs.
Louisiana Army Ammunition Plant
Doylin, LA, Co: Webster 71023
Federal Register Notice Date: 05/31/91
Property Numbers: 219011668–219011670, 219011691, 219011700, 219011714–219011716, 219011718–219011724, 219011726, 219011728, 219011731, 219011733–219011737, 219012112, 219013571–219013572, 219013862–219013869, 219110124–219110137
Status: Unutilized
Base Closure: No
Reason: Secured Area (most are within 2000 ft. of flammable or explosive material).

Maryland

Unsuitable Buildings (by Agency)

Army

Bldg. 312
SFC Adams Brandt & Reserve Center
700 Ordance Road B
Baltimore, MD, Co: Anne Arundel 21226–1790
Federal Register Notice Date: 05/31/91
Property Number: 219013881
Status: Unutilized
Base Closure: No
Reason: Other
Comment: Collapsed roof/supporting beams cracked.

9 Bldgs.
Fort George G. Meade
Fort Meade, MD, Co: Anne Arundel 20755
Federal Register Notice Date: 05/31/91
Property Number: 219014789, 219014847, 219040365–219040366, 219040368–219040372
Status: Unutilized
Base Closure: No
Reason: Secured Area.

P501
Installation #24235
Ballast House
La Plata, MD, Co: Charles 20646
Location: At the end of the access road
Federal Register Notice Date: 05/31/91
Property Number: 219011643
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. E3484
Aberdeen Proving Ground
Edgewood Area
Aberdeen City, MD, Co: Harford 21010–5425
Federal Register Notice Date: 05/31/91
Property Number: 219012617
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Unsuitable Land (by Agency)

Carroll Island, Graces Quarters
Aberdeen Proving Ground
Edgewood Area
Aberdeen City, MD, Co: Harford 21010–5425
Federal Register Notice Date: 05/31/91
Property Number: 219012630, 219012632
Status: Underutilized
Base Closure: No
Reason: Floodway, Secured Area.

Unsuitable Buildings (by Agency)

55 Bldgs.
Aberdeen Proving Ground
Aberdeen City, MD, Co: Harford 21005–5001
Federal Register Notice Date: 05/31/91
Property Number: 219011406–219011417, 219012608, 219012610, 219012612, 219012614, 219012616, 219012619, 219012623, 219012625–219012629, 219012631, 219012633–219012635, 219012637–219012642, 219012645–219012651, 219012655–219012664, 219014711–219014712, 219030316, 219013773, 219110140
Status: Unutilized
Base Closure: No
Reason: Most are in a secured area. (Some are within 2000 ft. of flammable or explosive material) (Some are in a floodway).

Bldg. 10401, 10402
Aberdeen Proving Ground
Aberdeen Area
Harford, MD, Co: Harford 21005–5001
Federal Register Notice Date: 05/31/91
Property Number: 219110138–219110139
Status: Unutilized
Base Closure: No
Reason: Other
Comment: Sewage treatment plant.

Bldg. 142–146 USARC Gaithersburg
8510 Snouffers School Road
Gaithersburg, MD, Co: Montgomery 20879–1624
Federal Register Notice Date: 05/31/91
Property Number: 219120009–219120013
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Michigan

Unsuitable Buildings (by Agency)

Army

25 Bldgs.
Fort Custer Training Center
2501 26th Street
Augusta, MI, Co: Kalamazoo 49102–9205
Federal Register Notice Date: 05/31/91
Property Number: 219014947–219014963, 219120001–219120008
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Bldg. 602, 604
US Army Garrison Selfridge
Mt. Clemens, MI, Co: Macomb 48043
Federal Register Notice Date: 05/31/91
Property Number: 219012355–219012356
Status: Unutilized
Base Closure: No
Reason: Within airport runway clear zone, Floodway, Secured Area.

Detroit Arsenal Tank Plant

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28251 Van Dyke Avenue
Warren, MI, Co: Macomb 48090
Federal Register Notice Date: 05/31/91
Property Number: 219014805
Status: Underutilized
Base Closure: No
Reason: Secured Area.

Missouri

Unsuitable Buildings (by Agency)

Army

Building-Stockton Lake Project
Old Mill Area
(See County), MO, Co: Cedar 65785
Federal Register Notice Date: 05/31/91
Property Number: 219040414
Status: Unutilized
Base Closure: No
Reason: Floodway.

Lake City Army Ammo. Plant
59, 59A, 59C, 59B
Independence, MO, Co: Jackson 64050
Federal Register Notice Date: 05/31/91
Property Number: 219013666–219013699
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Bldg #1, 2, 3
St. Louis Army Ammunition Plant
4800 Goodfellow Blvd
St. Louis, MO, Co: St. Louis 63120–1798
Federal Register Notice Date: 05/31/91
Property Number: 219120067–219120069
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Mississippi

Unsuitable Buildings (by Agency)

Army

Bldg. 8301, 8303–8305, 9158
Mississippi Army Ammunition Plant
Stennis Space Center, MS, Co: Hancock 39529–7000
Federal Register Notice Date: 05/31/91
Property Number: 219040438–219040442
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material Secured Area.

Nebraska

Unsuitable Land (by Agency)

Army

Land
Cornhusker Army Ammunition Plant
Potash Road
Grand Island, NE, Co: Hall 68802
Location: 4 miles west of Grand Island
Federal Register Notice Date: 05/31/91
Property Number: 219013785
Status: Underutilized
Base Closure: No
Reason: Floodway.

Unsuitable Buildings (by Agency)

13 Bldgs
Cornhusker Army Ammunition Plant
Grand Island, NE, Co: Hall 68802
Location: 4 miles west (Potash Road)
Federal Register Notice Date: 05/31/91
Property Number: 219013649–219013661
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material.

New Jersey

Unsuitable Buildings (by Agency)

Army

Bldg. 13–14, 15A, 41, 100, 110–111
Military Ocean Terminal
Bayonne, NJ, Co: Hudson 07002
Location: Foot of 32nd Street and Route 169
Federal Register Notice Date: 05/31/91
Property Number: 219013690–219013696
Status: Unutilized
Base Closure: No
Reason: Floodway, Secured Area.

Bldg. 2337
Fort Monmouth
Charles Wood Area
Wall, NJ, Co: Monmouth 07719
Federal Register Notice Date: 05/31/91
Property Number: 219012828
Status: Unutilized
Base Closure: No
Reason: Secured Area.

17 Bldgs. (Evans Area)
Fort Monmouth
Wall, NJ, Co: Monmouth 07719
Federal Register Notice Date: 05/31/91
Property Number: 219012829–219012844, 219013786
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Unsuitable Land (by Agency)

Land
Armament Research Development & Eng. Center
Route 15 North
Picatinny Arsenal, NJ, Co: Morris 07806
Federal Register Notice Date: 05/31/91
Property Number: 219013788
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Unsuitable Buildings (by Agency)

192 Bldgs.
Armament Res. Dev. & Eng. Ctr.
Picatinny Arsenal, NJ, Co: Morris 07806–5000
Location:
Route 15 north
Federal Register Notice Date: 05/31/91
Property Number: 219010440–219010474, 219010476, 219010478,
219010639–219010721, 219012423–219012475, 219013787,
219014306–219014321, 219030269–219030270
Status: Excess
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

12 Bldgs.
Armament Reserve Dev. and Engineering Center
Route 15 North
Picatinny Arsenal, NJ, Co: Morris 07806
Federal Register Notice Date: 05/31/91
Property Number: 219012756–219012767
Status: Excess
Base Closure: No
Reason: Secured Area.

Nevada

Unsuitable Buildings (by Agency)

Army

124 Bldgs.
Hawthorne Army Ammunition Plant
Hawthorne, NV, Co: Mineral 89415–
Federal Register Notice Date: 05/31/91
Property Number: 219011953, 219011955, 219011957–219011958, 219011980, 219011982–219011983, 219011985–219011987, 219011989, 219011971–219011973, 219011975, 219011979, 219011981, 219011983, 219011985–219011986, 219011988–219011989, 219011991–219011993, 219011995, 219011998–219012001, 219012003–219012004, 219012006– 219012008, 219012010–219012012, 219012014–219012015, 219012017– 219012020, 219012022–219012024, 219012026, 219012027, 219012029– 219012030, 219012032–219012033, 219012035–219012036, 219012038– 219012040, 219012042–219012043, 219012045–219012048, 219012050– 219012055, 219012059–219012107, 219013613–219013614
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Bldg. 396
Hawthorne Army Ammunition Plant
Bachelor Enlisted Qtrs W/Dining Facilities
Hawthorne, NV, Co: Mineral 89415–
Location: East side of Decatur Street-North of Maine Avenue
Federal Register Notice Date: 05/31/91
Property Number: 219011997
Status: Unutilized
Base Closure: No
Reason: Within airport runway clear zone, Secured Area.

64 Bldgs.
Hawthorne Army Ammunition Plant
Hawthorne, NV, Co: Mineral 89415–
Federal Register Notice Date: 05/31/91
Property Number: 219012002, 219012005, 219012009, 219012013,
219012016, 219012021, 219012025, 219012028, 219012031,
219012034, 219012037, 219012041, 219012044, 219013615–219013665
Status: Underutilized
Base Closure: No
Reason: Secured Area (some within airport runway clear zone; many within 2000 ft. of flammable or explosive material).

New York

Unsuitable Land (by Agency)

Army

Watervliet Arsenal
Watervliet, NY, Co: Albany 12189–4050
Location: East of Main Arsenal Reservation
Federal Register Notice Date: 05/31/91
Property Number: 219012508
Status: Excess
Base Closure: No
Reason: Other
Comment: Easement to N.Y. State, 6-lane highway construction.

Unsuitable Buildings (by Agency)

Bldg. 10, 20, 40
Watervliet Arsenal

Watervliet, NY, Co: Albany 12189–4050
Federal Register Notice Date: 05/31/91
Property Number: 219012514, 219012516, 219012519
Status: Underutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 25
Watervliet Arsenal
Watervliet, NY, Co: Albany 12189–4050
Federal Register Notice Date: 05/31/91
Property Number: 219012521
Status: Underutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Secured Area
Comment: Contamination.

Bldg. 110
Fort Totten
110 Duane Road
Bayside, NY, Co: Queens 11359–
Federal Register Notice Date: 05/31/91
Property Number: 219012589
Status: Unutilized
Base Closure: No
Reason: Other
Comment: Contamination.

Ohio

Unsuitable Buildings (by Agency)

Army

62 Buildings
Ravenna Army Ammunition Plant
Ravenna, OH, Co: Portage 44266–9297
Federal Register Notice Date: 05/31/91
Property Number: 219012476–219012507, 219012509– 219012513, 219012515, 219012517–219012518, 219012520, 219012522–219012523, 219012525–, 219012528, 219012530–219012532, 219012534–219012535, 219012537, 219013670–219013677, 219013781
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Oklahoma

Unsuitable Buildings (by Agency)

Army

6 Bldgs.
Fort Sill
Lawton, OK, Co: Comanche 73503–51000
Federal Register Notice Date: 05/31/91
Property Numbers: 219011243, 219011353–219011354, 219011358–219011359, 219014322
Status: Unutilized
Base Closure: No
Reason: Other
Comment: Latrines, detached structures.

549 Buildings
McAlester Army Ammunition Plant
McAlester, OK, Co: Pittsburg 74501
Federal Register Notice Date: 05/31/91
Property Numbers: 219014154, 219011674, 219011684, 219011687 219012113, 219013792–219013793, 219014081–219014102, 219014104, 219014107–219014137, 219014139, 219014141–219014153, 219014155–219014159, 219014161–219014162, 219014165–219014216, 219014218–219014274, 219014336–219014506, 219014508–219014559, 219030007–219030091, 219030093–219030127, 219040004, 219013981– 219013995, 219011680
Status: Underutilized
Base Closure: No
Reason: Secured Area, Some are within 2000 ft. of flammable or explosive material.

Bldg. 173
McAlester Army Ammunition Plant
Bomb High Explosive Plant
McAlester, OK, Co: Pittsburg 74501–5000
Location: 10 miles south of McAlester OK
Federal Register Notice Date: 05/31/91
Property Number: 219011684
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

209 Ammo. Renovation
McAlester Army Ammunition Plant
McAlester, OK, Co: Pittsburg 74501–5000
Location: 10 miles south of McAlester
Federal Register Notice Date: 05/31/91
Property Number: 219030092
Status: Underutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material.

Unsuitable Land

McAlester Army Ammo. Plant
McAlester, OK, Co: Pittsburg 74501–5000
Location: 10 miles south of McAlester OK
Federal Register Notice Date: 05/31/91
Property Number: 219011671
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material.

McAlester Army Ammunition Plant
McAlester, OK, Co: Pittsburg 74501
Federal Register Notice Date: 05/31/91
Property Number: 219014603
Status: Underutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material.

Oregon

Unsuitable Buildings (by Agency)

Army

24 Buildings
Tooele Army Depot
Umatilla Depot Activity
Hermiston, OR, Co: Morrow 97838
Federal Register Notice Date: 05/31/91
Property Numbers: 219012196, 219012199, 219012207 219012208, 219012225, 219012279, 219014782, 219030362–219030363, 219120032, 219012177, 219012185–219012186, 219012189, 219012195, 219012200–219012205, 219014304–219014305, 219014844
Status: Unutilized
Base Closure: No
Reason: Secured Area

11 Buildings
Tooele Army Depot
Umatilla Depot Activity
Hermiston, OR, Co: Morrow 97838
Federal Register Notice Date: 05/31/91
Property Numbers: 219012197–219012198, 219012217, 219012229, 219012174–219012176, 219012178, 219012179, 219012190, 219012191
Status: Underutilized
Base Closure: No
Reason: Secured Area

Pennsylvania

Unsuitable Buildings (by Agency)

Army

Hays Army Ammunition Plant
300 Miffin Road
Pittsburgh, PA, Co: Allegheny 15207
Federal Register Notice Date: 05/31/91
Property Number: 219011666
Status: Excess
Base Closure: No
Reason: Secured Area

Defense Personnel Support Ctr.
2800 South 20th Street
Philadelphia, PA, Co: Philadelphia 19101–6419
Federal Register Notice Date: 05/31/91
Property Number: 219011664
Status: Underutilized
Base Closure: No
Reason: Other environmental, Secured Area
Comment: Friable asbestos.

Unsuitable Land (by Agency)

Army

Land
Raystown Lake
Huntingdon, PA, Co: Huntingdon
Location: Downstream of Raystown Lake
Federal Register Notice Date: 05/31/91
Property Number: 219040420
Status: Excess
Base Closure: No
Reason: Other
Comment: Property Landlocked.

Lickdale Railhead
Fort Indiantown Gap
Lickdale, PA, Co: Lebanon 17038
Federal Register Notice Date: 05/31/91
Property Number: 219012359
Status: Excess
Base Closure: No
Reason: Floodway.

Lickdale Railhead
Fort Indiantown Gap
Lickdale, PA, Co: Lebanon 17038
Location: Adjacent to State Route 72 and 343
Federal Register Notice Date: 05/31/91
Property Number: 219012551
Status: Excess
Base Closure: No
Reason: Floodway.

Commerce

Weather Service Forecast Of.
192 Shafer Road
Corapolis, PA, Co: Moon Township 15108
Federal Register Notice Date: 05/31/91
Property Number: 279010004
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material.

Tennessee

Unsuitable Buildings (by Agency)

Army

47 Buildings
Milan Army Ammunition Plant
Milan, TN, Co: Carroll 38358
Federal Register Notice Date: 05/31/91
Property Numbers: 219010634, 219010501, 219010503, 219010505, 219010604, 219010610–219010611, 219010613–219010614,

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219010618, 219010620, 219010622, 219010625, 219010628, 219010631, 219010922, 219030317–219030319, 219010545, 219010551, 219010554, 219010557, 219010567, 219010569, 219010573, 219010576, 219010596, 219010600–219010602, 219010606–219010607, 219010615–219010617, 219010619, 219010621, 219010624, 219010626–219010627, 219010629–219010630, 219010632–219010633
Status: Unutilized
Base Closure: No
Reason: Secured Area, some are within 2000 ft. of flammable or explosive material.

132 Buildings
Milan Army Ammunition Plant
MOD—Igloo Area
Milan, TN, Co: Carroll 38358
Federal Register Notice Date: 05/31/91
Property Numbers: 219010504, 219010506–219010508, 219010510, 219010515, 219010521, 219010523, 219010525–219010526, 219010531, 219014797, 219014801–219014802, 219014804–219014811, 219030321, 219110012–219110019, 219110030–219110031, 219110078–219110082, 219110095–219110101, 219010635–219010638, 219014792–219014795, 219110001–219110011, 219110020–219110029, 219110074–219110077, 219110083–219110094, 219010538–219010539, 219010544, 219010546, 219010548–219010550, 219010553, 219010556–219010558, 219010558, 219010561–219010566, 219010568, 219010570–219010572, 219010574–219010575, 219010577–219010582, 219010584–219010586, 219010588–219010595, 219010597, 219010599, 219010923
Status: Underutilized
Base Closure: No
Reason: Secured Area, some are within 2000 ft. of flammable or explosive material.

Unsuitable Land

Cheatham Lock and Dam
Highway 12
Ashland City, TN, Co: Cheatham 37015
Location: Tracts E–513, E–512–1 and E–512–2
Federal Register Notice Date: 05/31/91
Property Number: 219040415
Status: Underutilized
Base Closure: No
Reason: Floodway.

Land
Volunteer Army Ammunition Plant
Chattanooga, TN, Co: Hamilton
Federal Register Notice Date: 05/31/91
Property Number: 219013791
Status: Underutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Volunteer Army Ammo. Plant
Chattanooga, TN, Co: Hamilton
Location: Area around VAAP—outside fence in buffer zone
Federal Register Notice Date: 05/31/91
Property Number: 219013880
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Unsuitable Buildings

Bldg. 707–15
Indiana Army Ammunition Plant (INAAP)
Charlestown, TN, Co: Clark 47111
Federal Register Notice Date: 05/31/91
Property Number: 219010947
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 707–16
Indiana Army Ammunition Plant (INAAP)
Charlestown, TN, Co: Clark 47111
Federal Register Notice Date: 05/31/91
Property Number: 219010949
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 707–17
Indiana Army Ammunition Plant (INAAP)
Charlestown, TN, Co: Clark 47111
Federal Register Notice Date: 05/31/91
Property Number: 219010951
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 100
Volunteer Army Ammo. Plant
Chattanooga, TN, Co: Hamilton 37422
Federal Register Notice Date: 05/31/91
Property Number: 219010475
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

22 Buildings
Volunteer Army Ammo. Plant
Chattanooga, TN, Co: Hamilton 37422
Federal Register Notice Date: 05/31/91
Property Numbers: 219010477, 219010479–219010500
Status: Underutilized
Base Closure: No
Reason: Secured Area, some are within 2000 ft. of flammable or explosive material.

20 Buildings
Holston Army Ammunition Plant
Kingsport, TN, Co: Hawkins 61299–6000
Federal Register Notice Date: 05/31/91
Property Numbers: 219012304–219012309, 219012311–219012312, 219012314, 219012316–219012317, 219012319, 219012325, 219012328, 219012330, 219012332, 219012334, 219012337, 219013790, 219030286
Status: Unutilized
Base Closure: No
Reason: Secured Area, some are within 2000 ft. of flammable or explosive material.

Bldg. 1
Holston Army Ammunition Plant
Kingsport, TN, Co: Hawkins 61299–6000
Federal Register Notice Date: 05/31/91
Property Number: 219012335
Status: Underutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. No. 1, Area B
Holston Army Ammunition Plant
Kingsport, TN, Co: Kingsport
Federal Register Notice Date: 05/31/91
Property Number: 219013789
Status: Underutilized
Base Closure: No
Reason: Secured Area.

Unsuitable Land

Brooks Bend
Cordell Hull Dam and Reservoir
Highway 85 to Brooks Bend Road
Gainesboro, TN, Co: Jackson 38562
Location: Tracts 800, 802–806, 835–837, 900–902, 1000–1003, 1025
Federal Register Notice Date: 05/31/91
Property Number: 219040413
Status: Underutilized
Base Closure: No
Reason: Floodway.

McClure Bend
Cordell Hull Dam and Reservoir
Carthage, TN, Co: Smith 37030
Location: Highway 85 to McClure Bend Road
Federal Register Notice Date: 05/31/91
Property Number: 219040412
Status: Underutilized
Base Closure: No
Reason: Floodway.

Texas

Unsuitable Buildings (by Agency)

Army

Bldg. T–1191 Fort Sam Houston
San Antonio, TX, Co: Bexar 78234–5000
Federal Register Notice Date: 05/31/91
Property Number: 219120065
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. T–1198 Fort Sam Houston
San Antonio, TX, Co: Bexar 78234–5000
Federal Register Notice Date: 05/31/91
Property Number: 219120066
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material.

18 Buildings
Lone Star Army Ammunition Plant
Highway 82 West
Texarkana, TX, Co: Bowie 75505–9100
Federal Register Notice Date: 05/31/91
Property Numbers: 219012524, 219012529, 219012533, 219012536, 219012539, 219012540, 219012542, 219012544–219012545, 219030337–219030345
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 40A Red River Army Depot
Texarkana, TX, Co: Bowie 75505
Federal Register Notice Date: 05/31/91
Property Number: 219120064
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Bldgs. 4701, 4705, 4801
Fort Bliss
El Paso, TX, Co: El Paso 79916
Federal Register Notice Date: 05/31/91
Property Numbers: 219110062–219110064
Status: Unutilized
Base Closure: No
Reason: Other
Comment: Gas stations.

27 Ammunition Magazines
Fort Bliss Ammunition Supply Point
El Paso, TX, Co: El Paso 79916

Federal Register Notice Date: 05/31/91
Property Numbers: 219120072–219120095
Status: Unutilized
Base Closure: No
Reason: Other
Comment: Extensive deterioration.

Bldg. 0021A
Longhorn Army Ammunition Plant
Karnack, TX, Co: Harrison 75661–
Location: State highway 43 north
Federal Register Notice Date: 05/31/91
Property Number: 219012546
Status: Underutilized
Base Closure: No
Reason: Secured Area.

Bldg. 0027A
Longhorn Army Ammunition Plant
Karnack, TX, Co: Harrison 75661
Federal Register Notice Date: 05/31/91
Property Number: 219012548
Status: Underutilized
Base Closure: No
Reason: Secured Area.

Bldg. 9042
Possum Kingdom Rec Area
Star Route, Box 200
Grayford, TX, Co: Palo Pinto 76045
Federal Register Notice Date: 05/31/91
Property Number: 219040397
Status: Unutilized
Base Closure: No
Reason: Other
Comment: Detached latrine.

Bldg. 9046
Possum Kingdom Rec Area
Star Route, Box 200
Grayford, TX, Co: Palo Pinto 76045
Federal Register Notice Date: 05/31/91
Property Number: 219040399
Status: Unutilized
Base Closure: No
Reason: Other
Comment: Sewage treatment plant.

Bldg. 9047
Possum Kingdom Rec Area
Star Route, Box 200
Grayford, TX, Co: Palo Pinto 76045
Federal Register Notice Date: 05/31/91
Property Number: 219040400
Status: Unutilized
Base Closure: No
Reason: Other
Comment: Chlorine Building.

Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant 76079
Federal Register Notice Date: 05/31/91
Property Number: 219011665
Status: Unutilized
Base Closure: No
Reason: Other
Comment: Easement to city of Saginaw for sewer pipeline ending 5/15/2023.

Bldg. 14
Saginaw Army Aircraft Plant
Saginaw, TX, Co: Tarrant 76070
Federal Register Notice Date: 05/31/91
Property Number: 219014823
Status: Unutilized
Base Closure: No
Reason: Other
Comment: Pump house

Utah

Unsuitable Buildings (by Agency)

Army

42 Buildings
Tooele Army Depot
Tooele, UT, Co: Tooele 84074–5008
Federal Register Notice Date: 05/31/91
Property Numbers: 219012110–219012111, 219012114–219012122, 219012126, 219012128, 219012131, 219012133, 219012136, 219012138, 219012140, 219012146, 219012150–219012151, 219012153, 219012158, 219012162, 219012164–219012167, 219012169–219012170, 219012172, 219012749, 219012752–219012755, 219014929, 219030360, 219120028–219120031
Status: Unutilized
Base Closure: No
Reason: Secured Area.

16 Buildings
Tooele Army Depot
Tooele, UT, Co: Tooele 84074–5008
Federal Register Notice Date: 05/31/91
Property Numbers: 219012142–219012144, 219012146–219012149, 5219012152, 219012155, 219012156, 219012158, 219012163, 219012171, 219012742, 219012750–219012751, 219014938, 219040003
Status: Underutilized
Base Closure: No
Reason: Secured Area.

Bldg. 104
Tooele Army Depot, North Area
Tooele, UT, Co: Tooele 84074–5008
Federal Register Notice Date: 05/31/91
Property Number: 219120014
Status: Underutilized
Base Closure: No
Reason: Other
Comment: Extensive Deterioration.

13 Buildings
Tooele Army Depot, South Area
Tooele, UT, Co: Tooele 84074–5008
Location: 19 miles south of Tooele City on State Hwy. 36 and 73
Federal Register Notice Date: 05/31/91
Property Numbers: 219120015, 219120018–219120027
Status: Unutilized
Base Closure: No
Reason: Other
Comment: Extensive deterioration.

Bldg. 8643
Dugway Proving Ground
Dugway, UT, Co: Tooele 84022
Location: ¼ mile north of Rising Sun Grid on Access Road
Federal Register Notice Date: 05/31/91
Property Number: 219013998
Status: Underutilized
Base Closure: No
Reason: Secured Area.

Bldg. 4141
Dugway Proving Ground
Dugway, UT, Co: Tooele 84022
Location: Ditto area at corner of C Street and 3rd Street
Federal Register Notice Date: 05/31/91
Property Number: 219013996
Status: Underutilized
Base Closure: No
Reason: Secured Area.

Bldg. 8373
Dugway Proving Ground
Dugway, UT, Co: Tooele 84022
Location: 1 ½ miles south of Stark Road near November Road
Federal Register Notice Date: 05/31/91
Property Number: 219013999
Status: Underutilized
Base Closure: No
Reason: Secured Area.

Bldg. 9307
Dugway Proving Ground
Dugway, UT, Co: Tooele 84022
Location: North of Stark Road on V Grid Access Road
Federal Register Notice Date: 05/31/91
Property Number: 219013997
Status: Underutilized
Base Closure: No
Reason: Secured Area.

Bldg. 7156
Dugway Proving Ground
Dugway, UT, Co: Tooele 84022
Federal Register Notice Date: 05/31/91
Property Number: 219014003
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Virginia

Unsuitable Land (by Agency)

Army

Fort Belvoir Military Reservation—5.6 Acres
South Post located West of Pohick Road
Fort Belvoir, VA, Co: Fairfax 22060
Location: Rightside of King Road
Federal Register Notice Date: 05/31/91
Property Number: 219012550
Status: Unutilized
Base Closure: No
Reason: Within airport runway clear zone, Secured Area
Comment: 5.6 acres.

Unsuitable Buildings

Bldg. 611
Fixed Laundry Building—Fort Belvoir
Spengler Road
Fort Belvoir, VA, Co: Fairfax 22060
Federal Register Notice Date: 05/31/91
Property Number: 219012547
Status: Unutilized
Base Closure: No
Reason: Within 2,000 ft. of flammable or explosive material.

6 Buildings
Fort Belvoir, VA, Co: Fairfax 22060
Federal Register Notice Date: 05/31/91
Property Numbers: 219012553, 219012556–219012558, 219012560, 219012562
Status: Unutilized
Base Closure: No
Reason: Within 2,000 ft. of flammable or explosive material.

150 Buildings
Radford Army Ammunition Plant
Radford, VA, Co: Montgomery 24141
Federal Register Notice Date: 05/31/91
Property Numbers: 219010833, 219010836, 219010839, 219010842, 219010844, 219010847–219010890, 219010892–219010912, 219011521–219011523, 219011525–219011535, 219011537–219011538, 219011540–219011577, 219011581–219011583, 219011585, 219011588, 219011591, 219013558–219013570, 219110142,

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219110143, 219011524, 219011536, 219011539, 219120070, 219120071
Status: Unutilized
Base Closure: No
Reason: Within 2,000 ft. of flammable or explosive material Secured Area.

13 Buildings
Radford Army Ammunition Plant
Radford, VA, Co: Montgomery 24141
Federal Register Notice Date: 05/31/91
Property Numbers: 219010834, 219010835, 219010837, 219010838, 219010840–219010841, 219010843, 219010845, 219010848, 219010891, 219011578–219011580
Status: Unutilized
Base Closure: No
Reason: Within 2,000 ft. of flammable or explosive material, Secured Area Latrines, detached structures.

13 Buildings
U.S. Army Combined Arms Support Command
Fort Lee, VA, Co: Prince George 23801
Federal Register Notice Date: 05/31/91
Property Numbers: 219120033–219120045
Status: Unutilized
Base Closure: No
Reason: Other
Comment: Extensive deterioration.

Unsuitable Land (by Agency)

Commerce

Parcel #3
Atlantic Marine Center
439 West York Street
Norfolk, VA, Co: Norfolk 23510–
Federal Register Notice Date: 05/31/91
Property Number: 279010001
Status: Underutilized
Base Closure: No
Reason: Floodway.

Washington

Unsuitable Buildings (by Agency)

Army

34 Buildings
Fort Lewis
Fort Lewis, WA, Co: Pierce 98433–5000
Federal Register Notice Date: 05/31/91
Property Numbers: 219011651–219011652, 219011854–219011860,
219011662, 219013782, 219013882–219013888, 219013907–219013920, 219010144, 219013900
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Bldgs. 310, 321–324, 330
130–228th Street, S.W.
Federal Regional Center (FEMA)
Bothell, WA, Co: Snohomish 98021–**Federal Register** Notice Date: 05/31/91
Property Numbers: 219011637, 219011642, 219011644, 219011646–
219011647, 219011649
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Bldg. 209
Yakima Firing Center
Yakima, WA, Co: Yakima 98901–5000
Location: Exit 28 off I–82 on Yakima Firing Center Road
Federal Register Notice Date: 05/31/91
Property Number: 219040363
Status: Excess
Base Closure: No
Reason: Within 2,000 ft. of flammable or explosive material. Secured Area.

Wisconsin

Unsuitable Land (By Agency)

Army

Land
Badger Army Ammunition Plant
Baraboo, WI, Co: Sauk 53913–Location: Vacant land within plant boundaries.
Federal Register Notice Date: 05/31/91
Property Number: 219013783
Status: Unutilized
Base Closure: No
Reason: Secured Area.

Unsuitable Buildings (by Agency)

Army

Bldg. P–10111
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe 54656–5000
Federal Register Notice Date: 05/31/91
Property Number: 219013443
Status: Unutilized
Base Closure: No
Reason: Other Comment: Structure is boiler plant for hospital.

6 Buildings
Badger Army Ammunition Plant
Baraboo, WI, Co: Sauk 53913
Federal Register Notice Date: 05/31/91
Property Numbers: 219011094, 219011209–219011212, 219011217
Status: Underutilized
Base Closure: No
Reason: Within 2,000 ft. of flammable or explosive material Other environmental Secured Area
Comment: friable asbestos.

154 Buildings
Badger Army Ammunition Plant
Baraboo, WI, Co: Sauk 53913
Federal Register Notice Date: 05/31/91
Property Numbers: 219011104, 219011106, 219011108–219011113,
219011115–219011117, 219011119–219011120, 219011122–219011139,
219011141–219011142, 219011148–219011208, 219011213–219011216,
219011218–219011234, 219011230, 219011238, 219011240, 219011242,
219011244, 219011247, 219011249, 219011251, 219011254, 219011256,
219011259, 219011263, 219011265, 219011268, 219011270, 219011275,
219011277, 219011280, 219011282, 219011284, 219011286, 219011290,
219011293, 219011295, 219011297, 219011300, 219011302, 219011304–
219011311, 219011317, 219011319–219011321, 219011323
Status: Unutilized
Base Closure: No
Reason: Within 2,000 ft. of flammable or explosive material Other environmental Secured Area
Comment: friable asbestos.

Bldg. 264
Badger Army Ammunition Plant
Bus Station
Baraboo, WI, Co: Sauk 53913
Federal Register Notice Date: 05/31/91
Property Number: 219013784
Status: Unutilized
Base Closure: No
Reason: Within 2,000 ft. of flammable or explosive material.

6 Buildings
Badger Army Ammunition Plant
Baraboo, WI, Co: Sauk
Federal Register Notice Date: 05/31/91
Property Numbers: 219013870–219013875
Status: Underutilized
Base Closure: No
Reason: Secured Area

5 Buildings
Badger Army Ammunition Plant
Baraboo, WI, Co: Sauk
Federal Register Notice Date: 05/31/91
Property Numbers: 219013876–219013878, 219030275, 219030276
Status: Unutilized
Base Closure: No
Reason: Secured Area.

[FR Doc. 91–12911 Filed 5–31–91; 8:45 am]
BILLING CODE 4310–35–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–943–4212–13; IDI–25446, IDI–26673]

Exchange and Order Providing for Opening of Public Lands; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange and opening order.

SUMMARY: The United States has issued two exchange conveyance documents as shown below under section 206 of the Federal Land Policy and Management Act. In addition to providing official public notice of the exchanges, this document contains an order which opens lands received by the United States to the public land, mining, and mineral leasing laws.

EFFECTIVE DATE: July 5, 1991.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho, (208) 384–3163.

1. In two exchanges made under the provisions of section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, the following described lands have been conveyed from the United States:

Boise Meridian

IDI–25446 (Conveyed to Steven L. and Dan E. Murdock, of Hamer, Idaho)
T. 8 N., R. 36 E.,
Sec. 21, W½SW¼.
IDI–26673 (Conveyed to Thomas L. and Theresa E. Eden, of Burbank, California)
T. 10 N., R. 34 E.,
Sec. 29, SE¼SW¼ and SW¼SE¼;

Sec. 32, NE¼, NE¼NW¼, S½NW¼, NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 33, W½SW¼.
Comprising 680.00 acres of public land.

2. In exchange for these lands, the United States acquired the following described lands:

Boise Meridian

IDI–25488 (Acquired from Dan Murdock)
T. 5 N., R. 37 E.,
Sec. 12, that portion of lot 5 lying north of the Butte Market Lake Canal.
T. 5 N., R. 38 E.,
Sec. 7, that portion of lots 7 and 8 and SW¼NE¼ lying north of the Butte Market Lake Canal.
IDI–26673 (Acquired from Thomas L. and Theresa E. Eden)
T. 10 N., R. 34 E.,
Sec. 1, lot 4;
Sec. 2, lots 1 to 4, inclusive, and SW¼NE¼;
Sec. 3, lot 1;
Sec. 9, SE¼SE¼;
Sec. 10, SW¼SW¼;
Sec. 15, W½W½;
Sec. 22, N½NW¼.
Comprising 680.79 acres of private land.

The purpose of the exchange was to acquire non-Federal lands which have a water right for a spring and high public value for grazing and wildlife habitat. The public interest was well served through completion of both exchanges. The values of both the Federal and non-Federal lands in the Murdock exchange were appraised at $6,600 each. The value of the Federal land in the Eden exchange was appraised at $45,000 while the value of the non-Federal land was appraised at $45,500.

3. At 9 a.m. on July 5, 1991, the reconveyed private lands described in paragraph 2 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on July 5, 1991, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 9 a.m. on July 5, 1991, the reconveyed private lands described in paragraph 2, will be opened to location and entry under the United States mining laws and to applications and offers under the mineral leasing laws. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Duane Olsen,

Acting Deputy State Director for Operations.

[FR Doc. 91–12964 Filed 5–31–91; 8:45 am]
BILLING CODE 4310–GG–M

[UT–020–01–4212–14; U–65884]

Salt Lake District; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; exchange of public lands in Utah County, Utah.

SUMMARY: The BLM proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership.

The following public land is being considered for exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

	Acres
T. 6S., R. 3E., SLM, UT Section 5, E½SE¼ Section 8, Lots 1 through 12	549.620

Final determination on exchange will await completion of an environmental analysis. In accordance with the regulations of 43 CFR 2201.1(b), publication of this notice will segregate the public lands, as described in this notice, from appropriation under the public land laws, including the mineral laws, but not the mineral leasing laws.

The segregation of the above described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

This notice will cancel and replace the segregative effects of all previously published notices on the public lands described herein.

Deane H. Zeller,

Salt Lake District Manager.

[FR Doc. 91–13000 Filed 5–31–91; 8:45 am]
BILLING CODE 4310–DQ–M

National Park Service

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 18, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by June 18, 1991.

Carol D. Schull,

Chief of Registration, National Register.

ILLINOIS

Lake County

Jensen, Jens, Summer House and Studio [Highland Park MRA], 930 Dean Ave., Highland Park, 88004572

OREGON

Benton County

Gayloyd, Charles, House, 600 NW. Seventh St., Corvallis, 91000805
Lewisburg Hall and Warehouse Company Building, 6000 NE. Elliott Cir., Corvallis, 91000804
Soap Creek School, 37405 Soap Creek Rd., Corvallis vicinity, 91000803

Crook County

Crook County Bank Building, 246 N. Main St., Prineville, 91000802

Hood River County

Smith, E. L., Building, 213–215 Oak St., Hood River, 91000801

Jackson County

Schuler Apartment Building, 38 N. Oakdale Ave., Medford, 91000800

Josephine County

Speed's Place on the Rogue, 11407 Merlin—Galice Road., Galice vicinity, 91000808

Linn County

First Baptist Church of Brownsville, 515 N. Main St., Brownsville, 91000807

Marion County

Lamport, Frederick S., House, 590 Lower Ben Lomond Dr. SE., Salem, 91000800

Multnomah County

Chamberlain, George Earle, House, 1927 NE. Tillomook St., Portland, 91000815
Greenwood, Frederick and Grace, House, 248 SW. Kingston Ave., Portland, 91000814
Hall, Hazel, House, 104–108 NW. 22nd Pl., Portland, 91000813
Hendershott, Dr. Harry M., House [Architecture of Ellis F. Lawrence MPS], 824 NW. Albemarle Terr., Portland, 91000797

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Jantzen Knitting Mills Company Building, 1935 NE. Glisan St., Portland, 91000612
Smith, Blaine, House [Architecture of Ellis F. Lawrence MPS], 5219 SE. Belmont St., Portland, 91000798
Smith, Stanley C. E., House [Architecture of Ellis F. Lawrence MPS], 01905 SW. Greenwood Rd., Portland vicinity, 91000796
Zimmerman—Rudeen House, 3425 NE. Beakey St., Portland, 91000811

Wallowa County

Barnard, Dr. J. W., Building and First National Bank of Joseph, 012–014 Main St., Joseph, 91000810

Wasco County

Humason, Orlando, House, 906 Court St., The Dalles, 91000809

Yamhill County

Yamhill River Lock and Dam, Across the Yamhill R. at S terminus of Locks Rd., Dayton vicinity, 91000799

[FR Doc. 91–13033 Filed 5–31–91; 8:45 am]
BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Intent To Engage In Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent corporation and address of principal office: Hendrix Batting Company, 2310 Surrett Drive, P.O. Box 7105, High Point, North Carolina 27264.

2. Wholly owned subsidiaries which will participate in the operations, and State of incorporation: Hendrix Transport, Inc., a North Carolina corporation.

B. 1. Parent Corporation: Supradur Companies, Inc., 411 Theodore Fremd Avenue, P.O. Box 908, Rye, New York 10580.

2. Wholly-owned Subsidiaries:

(i) Supradur Manufacturing Corporation—A Pennsylvania Corporation.

(ii) Appaloosa Express, Inc.—A Pennsylvania Corporation.

(iii) Supradur Canada, Inc.—A Province of Quebec Corporation.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–13031 Filed 5–31–91; 8:45 am]
BILLING CODE 7035–01–M

[Finance Docket No. 31679]

Lewisburg & Buffalo Creek Railroad Corp.—Acquisition, Exemption—Milton Industrial Track; Exemption

Lewisburg & Buffalo Creek Railroad Corp. (L&BC), a noncarrier controlled by Richard C. Sanders (Sanders), filed a notice of exemption for acquisition and future operation [1] of 8.965 miles of rail line between West Milton and Winfield, in Union County, PA, owned by Sanders.[2] West Shore Railway Services, Inc. (WSRS), will operate the lines under an agreement with Sanders assigned to L&BC.[3]

The transaction was expected to be consummated after the May 16, 1991, effective date of the exemption. The transaction also involved the issuance of securities by L&BC, an exempt transaction under 49 CFR 1175.1.[4]

[1] An exemption to acquire a line of railroad embraces the exemption to operate that line, regardless of whether the acquiring entity will immediately operate the line in its own right or lease the line to another entity with the possibility that the acquiring entity/lessor may operate the line in the future. Accordingly, any future operation by L&BC need not be exempted separately. See Finance Docket No. 30317, *New York, Susquehanna and Western Railway Corporation, Pocono, Northeast Railway, Inc., and IR, Inc.—Exemption—49 U.S.C. 10901, 11301, and 10746* (not printed), served June 17, 1985.

[2] The lines include: (1) The Milton Industrial Track (MIT), formerly the Milton Secondary Track, an 8.4-mile line extending between approximately milepost 161.4, at Winfield, and approximately milepost 169.8, at West Milton; (2) Limekiln Branch, a 0.19–mile line in Winfield extending between its connection with MIT at approximately milepost 161.75 and the western edge of Dry Creek Run; and (3) Penitentiary Branch, a 0.378–mile line in Lewisburg extending between its connection with MIT at approximately milepost 167.25 and a point approximately 300 feet north of the International Paper Company switch.

[3] WSRS's operation of the lines is the subject of a notice of exemption in Finance Docket No. 31672, *West Shore Railway Services, Inc.—Operation Exemption—Milton Industrial Track.* A related notice of exemption in Finance Docket No. 31672 (Sub-No. 1), Richard D. Robey—Continuance in Control Exemption—*West Shore Railway Services, Inc.*

[4] Mr. Sanders will be in control of L&BC. The notice here discloses that Mr. Sanders also has an interest as a stockowner, director, and officier in West Shore Railroad Corporation (West Shore), said to be a carrier connecting with the "Sanders Lines" (presumably the involved lines). While the parties here do not consider this interest to result in Sanders being in control of West Shore and subject to the requirements of 49 U.S.C. 11343, resolution of this issue is a matter of fact and law beyond the scope of this proceeding. "Control or management" within the meaning of the statute embraces all types of control or management. *See Colletti—Control—Comet Freight Lines,* 38 M.C.C. 95, 97 (1942). Publication of this notice should not be construed as Commission acquiescence in L&BC's representations as to this issue, with respect to which no determination is made.

Any comments must be filed with the Commission and served on: Eric M. Hocky, Rubin Quinn Moss Heaney & Patterson, P.C., 1800 Penn Mutual Tower, 510 Walnut Street, Philadelphia, PA 19106.

L&BC shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 407.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petition to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: May 23, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–13032 Filed 5–31–91; 8:45 am]
BILLING CODE 7035–01–M

[Finance Docket No. 31672 (Sub-No. 1)]

Exemption; Richard D. Robey-Continuance in Control Exemption—West Shore Railway Services, Inc.

Richard D. Robey filed a notice of exemption to continue to control West Shore Railway Services, Inc. (WSRS). WSRS was to become a Class III carrier operating approximately 8.965 miles of rail lines between West Milton and Winfield, Union County, PA, known generally as the Milton Industrial Track. WSRS filed an exemption ntoice to operate the lines in Finance Docket No. 31672, *West Shore Services, Inc.—Operation Exemption—Milton Industrial Track.*

Mr. Robey owns and operates the following Class III rail common carriers: North Shore Railroad Company, Nittany & Bald Eagle Railroad Company, Shamokin Valley Railroad Company, and the Stourbridge Railroad Company. He indicates that: (1) The properties operated by the named railroads will not connect with each other; (2) the continuance in control is not a part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a Class I carrier. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.,* 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Richard R. Wilson, Vuono, Lavelle & Gray, 2310 Grant Building, Pittsburgh, PA 15219.

Decided: May 23, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–13029 Filed 5–31–91; 8:45 am]
BILLING CODE 7035–01–M

[Finance Docket No. 31672]

Exemption; West Shore Railway Services, Inc.—Operation Exemption—Milton Industrial Track

West Shore Railway Services, Inc. (WSRS), a Pennslyvania corporation formed by Richard D. Robey,[1] filed a notice of exemption to operate 8.965 miles of rail line between West Milton and Winfield, in Union County, PA.[2] The transaction was to be consummated May 1, 1991.[3]

[1] Mr. Robey controls several class III rail common carriers. He concurrently filed a notice in Finance Docket No. 31672 (Sub-No. 1), to exempt, under 49 CFR 1180.2(d), his continuance in control of WSRS.

[2] The lines, then owned by Richard C. Sanders, were to be acquired by Lewisburg & Buffalo Creek Railroad Corp. (L&BC) under an exemption notice in Finance Docket No. 31679. The operating agreement between WSRS and Mr. Sanders was to be assigned to L&BC by Sanders as part of the acquisition.

The lines include: (1) the Milton Industrial Track (MIT), formerly the Milton Secondary Track, an 8.4-mile line extending between approximately milepost 161.4, at Winfield, and approximately milepost 169.8, at West Milton; (2) Limekiln Branch, a 0.19–mile line in Winfield extending between its connection with MIT at approximately milepost 161.75 and the western edge of Dry Creek Run; and (3) Penitentiary Branch, a 0.378–mile line in Lewisburg extending between its connection with MIT at approximately milepost 167.25 and a point approximately 300 feet north of the International Paper Company switch.

[3] The parties' intend notwithstanding, consummation could not occur before the May 8, 1991, effectiv· date of the exemption. 49 CFR 1150.32(b).

Any comments must be filed with the Commission and served on: Richard R. Wilson, Vuono, Lavelle, & Gray, 2310 Grant Building, Pittsburgh, PA 15219.

WSRS shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 407.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petititon to revoke will not automatically stay the transaction.

Decided: May 23, 1991.

By the Commission, David M.Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–13030 Filed 5–31–91; 8:45 am]
BILLING CODE 7035–01–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Standing Committee on Rules of Practice and Procedure

AGENCY: Judicial Conference of the United States.

SUBAGENCY: Committee on rules of practice and procedure.

ACTION: Notice of open meeting.

SUMMARY: There will be a three-day meeting of the Judicial Conference Committee on Rules of Practice and Procedure. The meeting will be open to public observation but not participation. The meeting will commence at 8:30 a.m.

DATES: July 18–20, 1991.

ADDRESSES: The Equinox Hotel, Route 7A, Manchester Village, Vermont.

FOR FURTHER INFORMATION CONTACT: Joseph F. Spaniol, Jr., Secretary, Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 633–6021.

Dated: May 20, 1991.

Joseph F. Spaniol, Jr.,

Secretary, Committee on Rules of Practice and Procedure.

[FR Doc. 91–12665 Filed 5–31–91; 8:45 am]
BILLING CODE 2210–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 91–31; Exemption Application No. D–8562, et al.]

Grant of Individual Exemptions; Columbia Artists Management, Inc. Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

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(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Columbia Artists Management Inc. Profit Sharing Plan (the Plan) Located in New York, New York

[Prohibited Transaction Exemption 91–31; Exemption Application No. D–8562]

Exemption

Effective September 22, 1989, the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The sale, on September 22, 1989, by the Plan of a note (the Note) to Columbia Artists Management, Inc. (the Employer), the sponsor of the Plan, and (2) the assignment on the same date by the Plan to the Employer of a mortgage on a parcel of real estate in Quoque, New York, which secures the Note; provided that the terms of the transactions were no less favorable to the Plan than similar transactions negotiated at arm's length with unrelated third parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 26, 1991, at 56 FR 12562.

FOR FURTHER INFORMATION CONTACT: Angelena Le Blanc of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

National Bank of Alaska Common Trust Fund "A" (the Fund) Located in Anchorage, Alaska

[Prohibited Transaction Exemption 91–32; Exemption Application No. D–8498]

Exemption

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale (the Sale) of six secured promissory notes (the Notes) by the Fund to the National Bank of Alaska, a party in interest with respect to the Fund, for the greater of (1) the outstanding principal of the Notes, plus accrued interest owing on the Notes on the date of Sale, or (2) the fair market value of the Notes as determined by a qualified, independent appraiser on the date of the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 26, 1991, at 56 FR 12561.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subjet to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 29th day of May, 1991.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration U.S. Department of Labor.

[FR Doc. 91–1300 Filed 5–31–91; 8:45 am]

BILLING CODE 4510–29–M

[Application Number T–7940]

Proposed Amendment to Prohibited Transaction Exemption (PTE) T88–1 Involving Class Exemptions for the Thrift Savings Fund

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of a proposed amendment to PTE T88–1.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed amendment to PTE T88–1. PTE T88–1 adopted, for purposes of the prohibited transaction provisions of section 8477(c)(2) of the Federal Employees' Retirement System Act of 1986 (FERSA or the Act), certain prohibited transaction class exemptions (the Class Exemptions) which were granted pursuant to section 408(a) of the Employee Retirement Income Security Act of 1974. The proposed amendment, if adopted, would affect participants and beneficiaries of the Thrift Savings Fund (the Fund), a fund established pursuant to provisions of FERSA, and parties in interest with respect to the Fund.

DATES: Written comments or requests for a hearing must be received by the Department on or before August 21, 1991.

EFFECTIVE DATE: If adopted, the proposed amendment of PTE T88–1 would apply to transactions occurring on or after January 1, 1988.

ADDRESSES: Written comments and requests for a hearing (preferably at least three copies) should be submitted to the Office of Exemption Determinations, Pension and Welfare Benefits Administration, room N–5649, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention FERSA Class Exemptions. All submissions will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Lyssa E. Hall, Office of Exemption Determinations, Pension and Welfare Benefits Administration, (202) 523–8971 (this is not a toll free number), or Susan B. Rees, Plan Benefits Security Division, Office of the Solicitor, Washington, DC 20210 (202) 523–9141 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department is considering an amendment to PTE T88–1 (53 FR 52838, December 29, 1988). PTE

T88–1 adopted certain Class Exemptions for purposes of the prohibited transaction provisions of section 8477(c)(2) of FERSA.[1] The Class Exemptions were adopted only to the extent that they provide exemptive relief from the restrictions of section 406(b) of ERISA or subsections thereunder, which are parallel to those of section 8477(c)(2) of FERSA. The Department is proposing this amendment to PTE T88–1 pursuant to the authority of the Secretary of Labor (the Secretary) established in section 8477(c)(3) of FERSA. Subparagraph (E) of section 8477(c)(3) provides that the Secretary may adopt exemptions granted for any class of fiduciaries or transactions under section 408(a) of ERISA for purposes of section 8477(c)(2) of FERSA, upon publication of notice in the **Federal Register.** The Department is proposing this amendment on its own motion in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32826, 32847, August 10, 1990), specifically § 2570.32 of that Procedure.

Occasionally, the Department will propose an amendment to a class exemption either on its own motion or pursuant to a request submitted by members of the public.[2] Such amendments are granted for purposes of ERISA pursuant to the provisions of section 408(a) of ERISA and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[3] Prior to granting an exemption, the Department must make a determination that the amendment is administratively feasible, in the interests of the plan participants and beneficiaries and protective of the rights of plan participants and beneficiaries. Notice of the pendency of each amendment is published in the **Federal Register** and interested persons are afforded the opportunity to present their views and, where appropriate, to request a hearing.

In general, the Department recognizes that it may be in the interests of plan participants and beneficiaries to amend certain class exemptions to reflect the Department's experience with such exemptions and the evolution of the financial marketplace. In this regard, the Department notes that many of the reasons for amending class exemptions under ERISA are equally applicable under FERSA. The Department also notes that not all such amendments are relevant for purposes of FERSA.

Accordingly, based on its belief that the amendments adopted or to be adopted in the future, with respect to the Class Exemptions, pursuant to section 408(a) of ERISA may be relevant and appropriate for purposes of section 8477(c)(2), the Department has decided to propose an amendment to section II of PTE T88–1. The amendment would modify PTE T88–1 to include, for purposes of applying the Class Exemptions to the prohibitions of section 8477(c)(2) of FERSA, any amendments of the Class Exemptions which are granted pursuant to section 408(a) of ERISA unless the Department expressly determines, as part of the proceeding to amend the class exemption under consideration, that the amendments shall not apply for FERSA purposes.[4]

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption from the prohibitions of section 8477(c)(2) of FERSA, pursuant to section 8477(c)(3) of FERSA, does not relieve a fiduciary from any other provisions of FERSA, including but not limited to any prohibited transaction provisions to which the exemption does not apply, and the general fiduciary responsibility provisions of section 8477(b) of FERSA. Among other things, this section requires a fiduciary to discharge his duties respecting the Fund solely in the interest of participants and beneficiaries and in a prudent manner in accordance with section 8477(b)(1)(B) of FERSA.

(2) Before an exemption may be granted under section 8477(c)(3) of FERSA, the Department must find that the exemption is administratively feasible, in the interests of the Fund and its participants and beneficiaries and protective of the rights of the participants and beneficiaries of the Fund.

(3) The proposed amendment, if adopted, will be supplemental to, and not in derogation of, any other provisions of FERSA.

(4) The fact that a transaction is subject to an administrative exemption pursuant to section 8477(c)(3) of FERSA is not dispositive of whether the transaction is in fact a prohibited transaction.

(5) The Class Exemptions are applicable to particular transactions only if the conditions specified in the particular exemption are satisfied.

(6) The Department's record with respect to any amendment to a class exemption, including, but not limited to, applications for such amendment, notices of the proposal of the amendment, public comments received by the Department with respect to such proposals, testimony which was part of any public hearing held with regard to any of the amendments and notices of the granting of the amendments, shall, together with any public comments in response to this Notice and any testimony which may be made part of any public hearing held with regard to this Notice, constitute the record for purposes of this proposed adoption of the amendment.

Written Comments and Hearing Request

All interested persons are invited to submit written comments or requests for a public hearing on the proposed amendment to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed amendment. Comments received will be available for public inspection with the referenced application at the above address.

Proposed Amendment

Under section 8777(c)(3) of FERSA and in accordance with the procedures set forth in 29 CFR part 2570, subpart B, the Department proposes to amend PTE T88–1 as set forth below:

* * * * *

[1] The following class exemptions were adopted in Prohibited Transaction Exemption T88–1: PTE 75–1 (40 FR 50845, October 31, 1975), exempting certain classes of transactions involving employee benefit plans and certain broker-dealers, reporting dealers and banks; PTE 76–19 (43 FR 50915, December 22, 1978), exempting certain transactions involving insurance company pooled separate accounts; PTE 80–26 (45 FR 28545, April 29, 1980, technically corrected at 45 FR 35040, May 23, 1980), exempting certain interest free loans to employee benefit plans; PTE 80–51 (45 FR 46709, July 25, 1980, technically corrected at 45 FR 52949, August 8, 1980), exempting certain transactions involving bank collective investment funds; PTE 82–63 (47 FR 14804, April 6, 1982, technically corrected at 47 FR 16437, April 16, 1982) exempting certain payments of compensation to plan fiduciaries for the provision of securities lending services; and PTE 86–128 (51 FR 41686, November 18, 1986, amended at 52 FR 8670, March 19, 1987), exempting certain securities transactions involving employee benefit plans and broker-dealers.

[2] In this regard, for example, see PTE 90–1 (55 FR 2801 January 29, 1990) which amended PTE 76–19.

[3] For applications filed prior to September 10, 1990, the procedures for exemption applications were set forth in ERISA Procedure 75–1 (40 FR 18471 (April 28, 1975)).

[4] The Department notes that PTE T88–1 adopted the Class Exemptions only to the extent that they provide exemptive relief from the restrictions of section 406(b) of ERISA or subsections thereunder, which are parallel to those of section 8477(c)(2) of FERSA. Therefore, an amendment to a Class Exemption will be applicable with respect to FERSA only to the extent that the amendment relates to the provision of exemptive relief from the restrictions of section 406(b) of ERISA.

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II. Specific Terms

For purposes of applying the Class Exemptions to the prohibitions of section 8477(c)(2) of FERSA, (1) Any amendment to one of the Class Exemptions adopted pursuant to section 408(a) of ERISA and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32736, 32847, August 10, 1990), relating to the relief provided from the prohibitions of section 406(b) of ERISA or subsections thereunder, shall be deemed to apply for purposes of FERSA, unless the Department expressly determines, as part of the proceeding to amend such class exemption, that the amendment is not applicable with respect to the Fund. (2) Any reference in the Class Exemptions to "section 406", "section 406 of the Act", "section 406(b)" or "section 406(b) of the Act" shall be deemed to apply to section 8477(c)(2) of FERSA. Reference to subsections of section 406(b) of ERISA shall be deemed to apply to the corresponding subsection of section 8477(c)(2) of FERSA. Thus, reference to "section 406(b)(1)" shall mean section 8477(c)(2)(A) of FERSA; reference to "section 406(b)(2)" shall mean section 8477(c)(2)(B) of FERSA; and reference to "section 406(b)(3)" shall mean section 8477(c)(2)(C) of FERSA. (3) The term "fiduciary" as used in the Class Exemptions shall be construed to mean "fiduciary" as defined in section 8477(a)(3) of FERSA. (4) The terms "employee benefit plan(s)" and "plan(s)" shall be construed to mean "Thrift Savings Fund" as established under section 8437 of FERSA. (5) The term, "party in interest" shall be construed to mean "party in interest" as defined in section 8477(a)(4) of FERSA. (6) Reference in the Class Exemptions to "section 502(i) of the Act" shall be deemed to apply to section 8477(e)(1)(B) of FERSA. (7) References in the Class Exemptions to "subsections (a)(2) and (b) of section 504 of the Act" shall be deemed to apply to section 8478a of FERSA. (8) References in the Class Exemptions to section 4975 of the Internal Revenue Code (the Code) or subsections thereunder are not applicable with respect to the Fund, pursuant to sections 4975(g) and 414(d) of the Code. (9) For purposes of section I(b)(2) of PTE 80-12S, the term "relative [as defined in section 3(15) of ERISA]" shall mean any spouse, ancestor, lineal descendant, or spouse of a lineal descendant. (10) For purposes of PTE 76-19 and PTE 80-51, the phrase "by reason of a relationship to a service provider described in section 3(14)(F), (G), (H) or (I) of the Act", shall mean "by reason of a relationship to a service provider described in section 8477(a)(4)(F), (G), (H), (I) or (J) of FERSA".

* * * * *

Signed at Washington, DC this 24th day of May, 1991.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 91-13008 Filed 5-31-91; 8:45 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 04008989]

Envirocare of Utah, Inc.; Intent to Prepare a Draft Environmental Impact Statement

1. Description of Proposed Action—Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has received, by letter dated April 26, 1991, a revised application, environmental report and safety analysis report from Envirocare of Utah, Inc., for a license to receive, store, and dispose of uranium and thorium byproduct material (as defined in section 11e.(2) of the Atomic Energy Act, as amended) received from other persons, at a site near Clive, Tooele County, Utah.

The applicant proposes to dispose of high-volume, low-activity section 11e.(2) byproduct material received in bulk by rail and truck. The material will be placed in earthen disposal cells in lifts and covered with earth and rock. The applicant proposes to conduct operations on a site where the applicant currently disposes of Naturally Occurring Radioactive Material (NORM) under license from the Utah Department of Health, Bureau of Radiation Control.

The State of Utah recently was granted an amended agreement, pursuant to section 274b. of the Atomic Energy Act, to expand its regulatory authority to include the disposal of low-level radioactive waste. Under this agreement, the State has licensed Envirocare to dispose of low-level waste at the Clive, Utah site, pending fulfillment of a number of technical requirements stipulated in Ground Water Quality Discharge Permit No. UGW 450005, issued by the Executive Secretary of the Utah Water Pollution Control Committee. The authority does not, however, include authority to regulate the disposal of section 11e.(2) byproduct material. Regulatory authority for the disposal of section 11e.(2) byproduct material in the State of Utah remains with the Nuclear Regulatory Commission (NRC).

2. Alternatives—The principal alternatives currently planned to be considered in the preparation of a draft statement include alternative siting of the facility, alternative design and operation, acceptance of additional radioactive waste, and the alternative of no licensing action.

3. Scoping Process—The scoping process will consist of the solicitation of comments on the scope of the proposed environmental impact statement by interested parties. Comments from the public and all interested government agencies are invited. Copies of this notice will be mailed to all affected Federal, State, and local agencies, and other interested persons. Written comments concerning the scope of the proposed statement will be accepted through July 15, 1991.

4. Document Availability—The applicant's Environmental Report and Application and any subsequent documents will be available for inspection and copying at the Public Document Room, 2120 L Street, NW., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Sandra L. Wastler, Uranium Recovery Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 492-0582.

Dated at Rockville, Maryland, this 28th day of May 1991.

For the Nuclear Regulatory Commission.

John J. Surmeier,

Chief, Uranium Recovery Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards, NRC.

[FR Doc. 91-13028 Filed 5-31-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-155]

Consumers Power Co. (Big Rock Point Plant); Exemption

I

Consumers Power Company (CPCo, the licensee) is the holder of Facility Operating License No. DPR-6 which authorizes the operation of the Big Rock Point Plant (the facility) at steady-state reactor power levels not in excess of 240 megawatts thermal (rated power). The facility consists of one boiling water reactor located at the licensee's site in Charlevoix County, Michigan. The license provides, among other things, that it is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (Commission) now or hereafter in effect.

II

Section 55.45(b)(2)(ii) of 10 CFR part 55 requires that an application for use of a simulation facility be submitted not later than 42 months after the effective date of the part 55 rule; that is, by November 26, 1990. Further requirements of 10 CFR 55.45(b)(2)(ii) state that the application be submitted in accordance with paragraph (b)(4)(i) of the same section which requires the application to include "(C) a description of the performance tests as part of the application, and the results of such tests."

By letter dated May 20, 1991, the licensee requested a schedular exemption to delay submittal of the performance test requirements until September 27, 1991.

Consumers Power Company has submitted a Big Rock Point simulation facility application (excepting the performance tests) in a letter dated June 29, 1990, and revised in a letter dated November 14, 1990. The original application reflected a simulation facility consisting of five parts: (1) A full scale static mock-up; (2) partial task enhancements; (3) use of the actual plant; (4) a plant walk-through; and (5) the continued use of the Dresden full scope simulator. Some of the partial task enhancements were to be accomplished by the installation of a PC-based work station that would model the Big Rock Point reactor core and primary system hydraulics. The Commission previously granted an exemption dated September 10, 1990, from the schedular requirements of 10 CFR 55.45(b)(2)(ii) for Big Rock Point until May 26, 1991.

The application was subsequently revised to reflect a simulation facility consisting of two parts: (1) Plant walk-throughs; and (2) use of an expanded limited scope simulator (LSS). The proposed capabilities of the limited scope simulator have been expanded significantly beyond those proposed in the original submittal. Most significantly, the licensee changed the original specification for the use of two Compaq 80386 computers to require a single Taurus V860 minicomputer. The new computer provides capacity for 2400 input/output (I/O) points, compared to the 72 I/O points specified in the original simulation facility application.

Contractual agreements between the licensee and S-3 (formerly Link-Miles Simulation Corporation) reflected delivery of the RETACT (Real-Time Advanced Core and Thermohydraulic Code) work station during November 1990, with acceptance testing to be completed during January 1991. However, delivery of the RETACT work station was not made until December 1990, with acceptance testing completed on April 12, 1991. Simulation Associates Incorporated (SAI) provided software development to support the expanded simulation capabilities of the LSS. The Big Rock Point Engineering staff has modified the original RETACT computer code to ensure compatibility with the software provided by SAI to permit the RETACT work station to operate the simulator hardware.

A September 27, 1991, freeze date has been selected as an appropriate extension for this exemption. "A description of the performance test as part of the application and the results of such test," as required by 10 CFR 55.45(b)(4)(i)(C), will be submitted by September 27, 1991, and will reflect the stage of LSS development on that date.

A timing exemption until September 27, 1991, is appropriate for the Big Rock Point Simulation Facility because:

(1) Extensive manufacturing and contract delivery delays have occurred. These delays have impacted testing of control logic variables for the Phase I instruments and controls of the LSS, as described in the licensee's June 29, 1990, simulation facility application.

(2) Big Rock Point has demonstrated a good faith effort to meet the previous commitments by:

(a) Expanding the capability of the LSS as soon as appropriate hardware became available.

(b) Attempting to provide, as soon as achievable, a means of conducting an operating test utilizing the same criteria as any certified simulator.

(c) Meeting all applicable dates up to the present in a timely fashion.

(d) Attempting to meet the May 26, 1991, submittal date while continuing to enhance the Big Rock Point Simulation Facility.

(3) An exemption provides adequate time for testing of the enhanced scope of the Big Rock Point Simulation Facility.

(4) It takes into consideration paragraph 55.45(b)(3)(i), which requires that facility licensee applicants allow 180 days before the date for conducting a Big Rock Point operating test. The next operating test at Big Rock Point is scheduled for April 1992.

Based on the above, the staff has determined that the schedule proposed by the licensee for submittal of the performance test requirements of its application is acceptable.

III

The Commission has determined that pursuant to 10 CFR 55.11, an exemption is authorized by law and will not endanger life or property and is otherwise in the public interest. Furthermore, the Commission has determined pursuant to 10 CFR 50.12(a) that special circumstances of 10 CFR 50.12(a)(2)(v) are applicable in that an exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation. This exemption grants a temporary relief period of ten months from the November, 1990 date for submittal of part of the Big Rock Point application for use of the simulation facility. Good faith efforts to comply with the regulation were made as follows:

(1) Immediately following publication of the new part 55 rule, Big Rock Point joined with three other facilities to form the Utility Simulation Facility Group (USFG).

(2) During the development of the plan, the USFG interacted with NRC in meetings on September 15, and 16, 1987 and December 7, 1987, to obtain comments and understandings.

(3) A final USFG document was issued on April 5, 1988, that provided "Guidance for the Development of a Simulation Facility to Meet the Requirements of 10 CFR 55.45."

(4) Consumers Power Company submitted, by letter Dated May 26, 1988, a Big Rock Point Plant specific Simulation Facility Plan that incorporated and reflected the USFG guidance document plans.

(5) NRC letter dated April 10, 1989, provided comments to the licensee's May 26, 1988, Simulation Facility Plan. The NRC comments indicated that the licensee would probably not be successful in justifying continued use of the Dresden simulator, even if they performed "the research and analysis required to support" their position. The letter states, "the major physical fidelity deviations expected to exist between the Big Rock Point control room and the Dresden simulator are not likely to be sustained for use by such an analysis."

(6) Consumers Power Company met with NRC on May 9, 1989, to discuss NRC comments regarding their proposal, and the need to apply for exemption since resolution of NRC comments seemed to require a plant-specific simulator.

(7) NRC letter dated June 12, 1989, documented the May 9, 1989, meeting and summarized the conclusion as

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follows: "It was also emphasized that if a land-specific simulator would not be available, Consumers Power Company was to provide a program with the submittal on how the NRC would evaluate the license students."

(8) On September 7, 1989, Consumers, Power Company met with NRC to present a plan that specified how the NRC would evaluate Big Rock Point operators, using Dresden controls with Big Rock Point specific labels, panel overlays, and other enhancements. Ths approach was to be combined with us of the actual plant and a commitment to develop a full-scale site mock-up of the Big Rock Point control room. The licensee expressed concern that an analysis to identify deviations and justify the differences between the Dresden simulator and Big Rock Point control room could be cost prohibitive.

(9) NRC letter dated October 2, 1989, documented the September 7, 1989, meeting and summarized the NRC staff position as follows: "The staff indicated that the fidelity issue can be addressed by other techniques with an analysis of any exceptions or deviations. These other techniques would model Big Rock Point processes to compensate for the Dresden simulatory difference. The plan should be packaged as close as possible to the rule."

(10) Working meetings and telephone conference calls held with NRC which included a meeting on October 12, 1989; a conference call on October 25, 1989, and a meeting on November 13, 1989, identified alternative courses of action in lieu of spending an estimated additional one million dollars on an analysis that offered little in return except justification for donig what was already proposed in the docketed simulation facility plan.

(11) On December 19, 1989, a letter of intent with a simulator vendor was signed to purchase a work station that provides a real-time thermohydraulic model of the Big Rock Point reactor core and primary system

(12) During December 1989, and January 1990, methodology was developed for a control manipulation analysis that would evaluate operator actions to identify which part task simulation devices and were appropriate to be included in Big Rock Point plant-specific limited scope simulator.

(13) In December 1989, January and February 1990, construction of the Big Rock Point plant-specific mock-up and limited scope simulator began. Software development for the work station was also initiated.

(14) On February 27, 1990, Consumers Power Company met with NRC to present a revised approach for the Big Rock Point Plant Simulation Facility. In the meeting, NRC expressed concern that it was important for Consumers Power Company to submit as exemption request as soon as possible if the licensee indentified that timing requirements specified by 10 CFR 55.44(2)(ii) could not be met.

(15) The licensee submitted a simulation facility application (excepting the performance tests) on June 29, 1990.

(16) In July 1990, the licensee expanded the scope of the simulation facility in incorporating a Taurus V850 computer system.

(17) The licensee met with NRC on August 1, 1990, to identify the scope of the expansion of the LSS and to describe how the simulator would be utilized to conduct simulator examinations.

(18) The licensee met with NRC on November 14, 1990 to explain the expansion of the LSS and the attempted upgrade of Phase I to include 477 active instruments and controls by May 26, 1991. A total of 655 active instruments and controls had been incorporated as of April 25, 1991.

(19) On November 14, 1990, the licensee submitted a revised simulation facility application for the purposes of eliminating further use of the Dresden simulator.

(20) The licensee remained in close contract with NRC concerning the progress of the LSS through April 1991.

The Commission hereby grants as exemption for the schedular requirements of 10 CFR 55.45(b)(2)(ii) for submittal of a description of the performance test and the results of the performance test as part of the submittal of an application for use a simulation facility. The Exemption is effective until September 27, 1991.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the Exemption will have no significant impact on the environment (56 FR 23945).

This Exemption is effective upon issuance.

Dated as Rockville, Maryland this 24th day of May 1991.

For the Nuclear Regulatory Commission.

Bruce Boger, Director,

Division of Reactor Projects III-IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-13027 Filed 5-31-91 :84 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 35—25318]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

May 24, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 18, 1991 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Edgewater Development Company, Inc. (31–847)

Edgewater Development Company, Inc. ("Edgewater"), Nettleton Commons, 323 E. Willow Street, suite 201, Syracuse, New York, 13203–1926, a New York corporation and a holding company exempt from registration under section 3(a)(1) of the Act pursuant to rule 2, has filed an application for an order granting exemption under section 3(a)(1) from all provisions of the Act except section 9(a)(2).

Edgewater is primarily engaged, through subsidiaries and other entities, in developing and investing in small power production facilities. Edgewater states that it is a holding company under section 2(a)(7)(A) of the Act by reason of its control, through a 1% general partnership interest, over Glen Park Associates Limited Partnership ("Glen Park"), a New York limited partnership that is an "electric public-utility company" within the meaning of the Act.[1] Glen Park owns and operates the three unit 32.6 MW Glen Park Hydroelectric Project ("Project") near Watertown, New York. Glen Park owns no transmission facilities, and the entire output of the Project is sold to Niagara Mohawk Corporation.

Edgewater states that it has no affiliate other than Glen Park which is a public utility company within the meaning of the Act. Edgewater futher states that both it and Glen Park are predominantly intrastate in character and carry out their business substantially in New York, their state of organization.

Mercer Companies, Inc. (31–848)

Mercer Companies, Inc. ("Mercer"), 330 Broadway, Albany, New York 12207, a New York corporation and a holding company exempt from registration under section 3(a)(1) of the Act pursuant to rule 2, has filed an application for an order granting exemption under section 3(a)(1) from all provisions of the Act, except section 9(a)(2).

Among other things, Mercer is engaged, through subsidiaries and other entities, in developing and investing in small power production facilities that are qualifying facilities under the Public Utility Regulatory Policies Act of 1978. Mercer states that it is a holding company under section 2(a)(7)(A) of the Act by reason of its control, through a 1% general partnership interest, over Glen Park Associates Limited Partnership ("Glen Park"), a New York limited partnership that is an "electric public-utility company" within the meaning of the Act.[2] Glen Park owns and operates the three unit 32.6 MW Glen Park Hydroelectric Project ("Project") near Watertown, New York. Glen Park owns no transmission facilities, and the entire output of the Project is sold to Niagara Mohawk Corporation.

Mercer states that it has no affiliate other than Glen Park which is a public utility company within the meaning of the Act. Mercer further states that both it and Glen Park are predominantly intrastate in character and carry out their business substantially in New York, their state of organization.

[1] Mercer Companies, Inc., which owns the remaining 1% general partnership interest in Glen Park, has also filed an application in File No. 31–848, *infra*, for an order granting exemption under section 3(a)(1) from all provisions of the Act, except section 9(a)(2).

[2] Edgewater Development Company, which owns the remaining 1% general partnership interest in Glen Park, has also filed an application in File No. 31–847, *supra*, for an order granting exemption under section 3(a)(1) from all provisions of the Act, except section 9(a)(2).

Consolidated Natural Gas Company, et al. (70–7845)

Consolidated Natural Gas Company ("CNG"), a registered holding company, and its wholly-owned subsidiary, CNG Energy Company ("CNG Energy"), both located at CNG Tower, Pittsburgh, Pennsylvania 15222–3199, have filed an application-declaration with this Commission under sections 6(a), 7, 9(a), 10, and 12 of the Act and rules 43 and 45 thereunder.

CNG and CNG Energy request authorization for CNG Energy, through its Natural Gas Vehicle Division ("NGV Division"), to: (1) Buy from suppliers and resell or lease to customers, equipment necessary to transform vehicles from gasoline to natural gas and/or combined natural gas and gasoline operation ("Gas Conversion Equipment"); (2) install and/or maintain Gas Conversion Equipment on customer vehicles and provide training in the use thereof; (3) design, construct, own, lease, sell and/or maintain refueling stations or mobile refueling operations for the refueling of natural gas vehicles and provide training in the use thereof; (4) enter to joint ventures with companies or individuals owning service stations to engage in the activities described in (1) through (3), provided that CNG Energy will not acquire a general voting interest equal to or in excess of 10% of the total general voting interests outstanding without further Commission authorization; and (5) market or distribute, at wholesale and/or retail, certain types of equipment other than on-the-road vehicles that are in the early stages of utilizing natural gas as a fuel. CNG also proposes to provide CNG Energy with up to $5 million in funds, through December 31, 1995, for the above mentioned activities by purchasing additional shares of CNG Energy common stock, $1,000 par value per share ("Common Stock"), and/or by making long-term loans to CNG Energy. CNG Energy currently has 112,500 shares of authorized Common Stock, of which 9,640 shares have been issued and are held by CNG. Long-term loans to CNG Energy would be made pursuant to terms and conditions similar to those authorized by order dated June 29, 1990 (HCAR No. 25110) relating to intrasystem financing for 1990–1991.

Long-term loans to CNG Energy would be evidenced by the issuance of long-term non-negotiable notes ("Notes") by CNG Energy to CNG. The Notes will mature over a period of time, not in excess of 30 years, to be determined by the officers of CNG, and will bear interest predicated on and equal to the effective cost of money to CNG obtained through the most recent of its long-term debt financings. In the event that CNG does not issue long-term debt during the period ending December 31, 1995, the proceeds of which are allocable to loans made hereunder, long-term borrowing rates will be tied to the Salomon Brothers indicative rate for comparable debt issuances published in Salomon Brothers, Inc. Bond Market Roundup on the date nearest to the time of takedown. Such rate will be adjusted to match CNG's cost of borrowing if CNG subsequently issues long-term debt within one year of the date of takedown. Should CNG not issue long-term debt during the subsequent twelve-month period, the proceeds of which are allocable to loans made hereunder, the indicative rate at the time of takedown will be used for the life of the Notes.

CNG will obtain the funds required to provide the necessary funds to CNG Energy through internal cash generation, issuance of long-term debt securities, borrowings under a credit agreement or through such other authorizations approved or to be approved by the Commission.

NGV Division will conduct its business in states having service areas of local distribution companies ("LDCs") of the CNG system and of nonassociate LDCs which receive or purchase gas from the CNG system. NGV Division will initially conduct its activities in Ohio, Pennsylvania, West Virginia and Virginia, states in which CNG's LDCs are located, and in New York, New Jersey, Maryland and the District of Columbia, areas in which nonassociate LDCs acquire gas from the CNG system. NGV Division's primary prospective customers are transit authorities, government agencies, school districts and private companies which operate fleets of automobiles, trucks and/or buses. CNG and CNG Energy estimate that there are approximately 1.1 million fleet vehicles currently located within the CNG system's retail and wholesale distribution areas. They also anticipate that some private individuals in the CNG System's distribution areas may wish to convert their personal vehicles to natural gas.

CNG Energy has no full-time employees and obtains accounting, credit, financial, management, operating, technical and clerical support from Consolidated Natural Gas Service Company, Inc. ("CNG Service"), CNG's service company subsidiary, at cost and under a written service agreement. Certain of these services may also be

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provided by CNG subsidiaries other than CNG Service, at cost, under service agreements similar to the service contracts between CNG Service and other CNG system companies. In addition, NGV Division may hire independent contractors to install and maintain Gas Conversion Equipment and construct refueling stations.

CNG and CNG Energy believe that section 2(b) of the Gas Related Activity Act of 1990, Public Law 101–572 (November 15, 1990) ("GRAA") applies to the proposed activities of NGV Division.

GPU Nuclear Corporation (70–7847)

GPU Nuclear Corporation, 1 Upper Pond Road, Parsippany, New Jersey 07054 ("GPU Nuclear"), a subsidiary of General Public Utility Corporation, 100 Interpact Parkway, Parsippany, New Jersey 07054 ("GPU"), a registered holding company, has filed an application under sections 9(a) and 10 of the Act.

GPU Nuclear owns a centralized computer system known as the Nuclear Employee Data System ("NEDS") that includes a software database containing information on over 23,000 transient nuclear workers' qualifications for access to nuclear sites in accordance with federal regulations and nuclear industry standards. GPU Nuclear intends to use NEDS in establishing the qualifications of transient workers for access to GPU system nuclear sites.

GPU Nuclear now proposes to grant, from time-to-time through December 31, 2001, to nonassociate companies and to contractors and organizations associated with the nuclear industry, non-exclusive, non-transferable licenses to access, receive, update and use NEDS for a monthly licensing fee to be negotiated with the prospective licensees. GPU Nuclear anticipates that its total investment of capital or employees' time expended and the total revenues derived, in connection with the development, marketing and servicing of NEDS licenses through December 31, 1996, will not exceed $3 million and $5 million, respectively.

Consolidated Natural Gas Company, et al. (70–7855)

Consolidated Natural Gas Company ("Consolidated"), a registered holding company, CNG Tower, Pittsburgh, Pennsylvania 15222–3199, and its wholly owned nonutility subsidiary companies, CNG Research Company ("Research") and Consolidated Natural Gas Service Company, Inc. ("Service"), both located at CNG Tower, Pittsburgh, Pennsylvania 15222–3199; CNG Coal Company ("CNG Coal"), CNG Producing Company ("Producing"), and its subsidiary CNG Pipeline Company ("Pipeline"), CNG Tower, 1450 Poydras Street, New Orleans, Louisiana 70112–6000; CNG Transmission Corporation ("Transmission"), 445 West Main Street, Clarksburg, West Virginia 26301; and Consolidated's wholly owned public-utility subsidiary companies, The Peoples Natural Gas Company ("Peoples"), CNG Tower, Pittsburgh, Pennsylvania 15222–3199; The East Ohio Gas Company ("East Ohio"), 1717 East Ninth Street, Cleveland, Ohio 44115; The River Gas Company ("River Gas"), 324 Fourth Street, Marietta, Ohio 45750; Virginia Natural Gas, Inc. ("Virginia Gas"), 5100 East Virginia Beach Boulevard, Norfolk, Virginia 23501–3488; Hope Gas, Inc. ("Hope Gas") P.O. Box 2868 Clarksburg, West Virginia 26302–2868; and West Ohio Gas Company ("West Ohio"), 319 West Market Street, Lima Ohio 45802 ("Subsidiaries"), have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 12(c) of the Act and Rules 42, 43, 45 and 50(a)(5) thereunder.

Consolidated proposes to issue and sell commercial paper in the form of short-term bearer notes, pursuant to an exception from competitive bidding, in an aggregate principal amount not to exceed $600 million outstanding at any one time, from time-to-time through June 30, 1992 ("Commercial Paper"). Such Commercial Paper may be domestic commercial paper ("Domestic Paper") and/or European commercial paper ("Euro Paper"). Domestic Paper will have varying maturities of not more than 270 days and Euro Paper will have maturities from 7 to 183 days.

To the extent that it becomes impractical to sell the Commercial Paper due to market conditions or otherwise, Consolidated proposes to issue and sell up to $450 million unsecured short-term notes to banks through June 30, 1992 ("Notes"). The Notes will mature in not more than one year, will be prepayable in whole or part at any time, and will bear interest at a rate not to exceed the prime commercial rate of interest of the lending bank in effect on the date of each borrowing.

It is also proposed that through June 30, 1992, Consolidated provide financing to the Subsidiaries in an aggregate amount not exceeding $986 million in the form of open account advances, long-term loans and/or capital stock purchases. Individual Subsidiary financing by Consolidated would not exceed the following amounts: (1) Transmission, $485 million; (2) East Ohio $230 million; (3) Virginia Gas, $110 million; (4) Peoples, $60 million; (5) Producing $50 million; (6) Hope Gas, $15 million; (7) West Ohio, $15 million; (8) Service, $10 million; (9) CNG Coal, $5 million; and (11) Research $1 million.

Open account advances ("Advances") may be made, repaid and remade and all such Advances will be repaid within one year from the date of the first Advance to the borrowing Subsidiary with interest at the same effective rate of interest as Consolidated's weighted average effective rate of commercial paper and/or revolving credit borrowings. If no such borrowings are outstanding, the interest rate shall be predicated on the Federal Funds' effective rate of interest as quoted by the Federal Reserve Bank of New York. Advances will be made through the CNG System money pool authorized under a Commission order dated June 12, 1986 (NCAR No. 24128).

Long-term loans will mature over a period of time not in excess of 30 years, with the interest rate predicated on and substantially equal to the effective cost of money to Consolidated obtained through its then most recent long-term debt financing. In the event Consolidated does not issue long-term debt between April 30, 1991 and June 30, 1992, long-term borrowings of Subsidiaries will be tied to the Salomon Brothers Inc. Bond Market Roundup dated nearest to the time of first takedown. Such rate will be adjusted to match Consolidated's cost of borrowing if Consolidated subsequently issues long-term debt within one year of the date of first takedown. Should Consolidated not issue long-term debt during the subsequent year period, the indicative rate at the time of first takedown will be used for the life of the security.

Capital stock will be purchased from the Subsidiaries at its par value (book value in the case of Virginia Gas). Capital stock transactions between Consolidated and its utility Subsidiaries, Hope Gas, Peoples, Virginia Gas, West Ohio Company, East Ohio and River Gas, would occur under an exemption pursuant to rule 52 and are not part of the authorization requested herein.

Producing proposes from time to time through June 30, 1992, to provide to Pipeline up to an aggregate of $1 million of financing through short-term loans in the form of open account advances and/or long-term loans evidenced by non-negotiable notes (documented by book entry only) and/or the purchase of up to 10,000 shares of common stock, $100 par value, of Pipeline. The open account advances and long-term loan will bear interest at rates equal to the cost of money to Producing through its borrowings from Consolidated.

Consolidated also proposes to increase any Subsidiary's authorized common stock as needed to accommodate proposed stock sales and to provide for future issues, any such increase being limited to a number of shares calculated by dividing the aggregate financing proposed for such Subsidiary in the application-declaration by the par value (book value in the case of Virginia Gas) of such Subsidiary's common stock rounded up to the nearest hundred.

It is also proposed that Transmission, Research and CNG Coal effect a one for one hundred reverse stock split, resulting in an increase in the par value of their respective common stocks from $100 to $10,000, in order to reduce state franchise taxes. Further, Producing requests authority to purchase and retire up to 5,000 shares of its common stock, $10,000 par value, from Consolidated so that Producing's debt to equity ratio would resemble more closely that of Consolidated.

The Connecticut Light & Power Company, et al. (70–7875)

The Connecticut Light & Power Company ("CL&P"), Selden Street, Berlin, Connecticut 06037, and Western Massachusetts Electric Company ("WMECO"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089 (collectively, "Applicants"), each an electric public-utility subsidiary of Northeast Utilities, a registered holding company, have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(d) of the Act and rules 44 and 50(a)(5) thereunder.

By orders dated December 30, 1981 and May 19, 1982 (HCAR Nos. 22342 and 22501, respectively), the Commission authorized, in relevant part: (1) The formation of the Niantic Bay Fuel Trust ("Trust") for the purpose of financing the acquisition of nuclear fuel under a Trust Agreement, dated as of January 4, 1982, between the Connecticut Bank and Trust Company, as trustor, Bankers Trust Company as trustee ("Trustee"), and CL&P, WMECO and The Hartford Electric Light Company,[3] as beneficiaries; (2) the assignment of certain nuclear fuel and nuclear fuel contracts; and (3) financing for acquisition of nuclear fuel. The Commission authorized financing of the nuclear fuel through the issuance by the Trust of intermediate term notes ("ITNs") in an aggregate principal amount not to exceed $300 million outstanding at any one time. In addition, the Commission authorized financing through the sale of commercial paper notes ("Commercial Paper"), backed by an irrevocable master letter of credit ("LOC") issued by The First National Bank of Boston ("FNBB"), and borrowings under revolving Credit Agreement, dated as of January 4, 1982, between the Trustee and FNBB, in a combined aggregate principal amount not to exceed $230 million. The Trustee has entered into a $230 million revolving credit facility with FNBB ("FNBB Credit Facility") that includes an LOC issued by FNBB which backs the Trust's Commercial Paper.

The Applicants now propose to replace the FNBB Credit Facility and to have the Trustee enter into a new $230 million revolving credit facility ("Facility") with a syndicate of banks ("Banks"), with The First National Bank of Chicago ("FNB-Chicago") serving as agent. The initial term of the Facility will be three years, which may be extended with the Banks' consent for one-year increments. The Applicants seek authority through December 31, 1996 for borrowings under the Facility.

Under the Facility, each Bank would be severally responsible for making advances ("Ratable Advance") in an amount not to exceed the amount of its commitment, ratably in proportion to the aggregate commitment of all Banks, for an interest period of one, two or three months. The Trustee may also invite selected Banks to make a quote of the rate of interest such Bank would require for a loan ("Competitive Bid Loan") in a stated principal amount and for an identified interest period of 180 days or less.

Each Ratable Advance would bear interest at a rate selected by the Trustee from among the following options: (1) A Eurodollar Rate equal to the sum of the quotient of (a) the rate at which deposits in U.S. dollars are offered by the Agent to first-class banks in the London interbank market two business days prior to the date of the advance, divided by one minus the applicable reserve requirement, if any, plus (b) an increment which shall not exceed 0.50%; (2) a fixed certificate of deposit ("CD") rate equal to the sum of the quotient of (a) the average of the prevailing bid rates quoted to the Agent by three CD dealers for the purchase at face value of CD's of the Agent of like face amount and maturity on the date of the advance, divided by one minus the applicable reserve requirement, plus (b) the applicable assessment rate, plus (c) an increment which shall not exceed 0.875%; or (3) a floating rate ("Floating Rate") equal to the higher of (a) the corporate base rate of the Agent, as announced from time to time by the Agent, as the same may change from time to time, and (b) a fluctuating interest rate equal for each day of any interest period to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers as published for such day, plus 0.50%.

The Applicants seek authority to continue to be able to obtain credit, through December 31, 1996, through the Trust's sale of Commercial Paper, which will no longer be backed by a LOC, and the issuance of ITNs. Commercial Paper will continue to have a stated maturity date no later than 270 days following the date of issuance. The aggregate principal amount of outstanding loans under the Facility and the face value of outstanding Commercial Paper would not at any one time exceed $230 million. The aggregate outstanding principal amount of the ITNs will not at any one time exceed $300 million.

The Applicants request that the Commission exempt the issuance and sale of Commercial Paper from the competitive bidding requirements of rule 50 under subsection (a)(5) thereunder.

The Trustee will also enter into an Amendment to the Nuclear Fuel Lease Agreement with the Applicants and an Amendment to the Security Agreement and Assignment of Contracts, each dated as of January 4, 1982, under which FNB-Chicago will act as successor collateral agent.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–13015 Filed 5–31–91; 8:45 am]

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[3] Hartford was merged with and into CL&P on June 30, 1982.

[Rel. No. IC–18166; 812–7631]

Van Kampen Merritt Trust, et al.; Application

May 24, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Van Kampen Merritt Trust (the "Trust"), Van Kampen Merritt Investment Advisory Corp. (the "Adviser"), and Van Kampen Merritt Inc. (the "Distributor").

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from the provisions of sections 2(a)(32),

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2(a)(35), 18(f), 19(g), 18(i), 22(c), and 22(d) of the 1940 Act and rule 22d–1 thereunder.

SUMMARY OF APPLICATION: Applicants request an exemption from sections 18(f), 19(g), and 18(i) to permit certain open-end management investment companies in the same group of investment companies as the Trust to sell two classes of securities representing interests in the same portfolio of investments. The "Class A Shares" would be subject to a front-end sales load and a rule 12b–1 distribution fee, and the "Class B Shares" would be subject to a contingent deferred sales load ("CDSL") and a higher rule 12b–1 distribution fee. Applicants also request an exemption from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the 1940 Act and rule 22d–1 thereunder to permit such investment companies to impose the CDSL and to waive the CDSL in certain cases.

FILING DATE: The application was filed on November 16, 1990, and amendments were filed on February 27, 1991 and on May 15, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 19, 1991, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 1001 Warrenville Road, Lisle, Illinois 60532.

FOR FURTHER INFORMATION CONTACT: Robert B. Carroll, Special Counsel, at (202) 272–3043, or Jeremy N. Rubenstein, Branch Chief, at (2020 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is an open-end management investment company registered under the 1940 Act, and the Van Kampen Merritt Short-Term global Income Fund (the "Fund") is a non-diversified series of the Trust. The Adviser serves as the Fund's investment adviser and manager. The Distributor acts as the principal underwriter of the Fund's shares. The Fund presently offers a single class of shares at net asset value plus a front-end sales load, and may spend up to .30 percent of the Fund's aggregate daily net assets pursuant to a distribution plan adopted by the Fund under rule 12b-1 under the 1940 Act.

2. Applicants propose to establish a dual distribution system (the "Dual Distribution System") to enable the Fund to offer investors the option of purchasing shares that would either be subject to a conventional front-end sales load and rule 12b-1 plan payments (the "Front-End Option") or subject to a CDSL and higher rule 12b-1 plan payments (the "Deferred Option").

3. If the requested relief is granted, the Fund will create a new class of shares, designated as the Class B Shares. The currently authorized shares will be designated as the Class A Shares and will continue to be offered. The two classes will each represent interests in the same portfolio of securities of the Fund and will have identical voting, dividend, liquidation, and other rights, terms, and conditions, except as described below.

4. Under the Front-End Option, an investor will purchase Class A Shares at net asset value plus a front-end sales load. The sales load will be subject to reductions for larger purchases, under a combined purchase privilege, under a right of accumulation, or under a letter of intent. The sales load also will be subject to other reductions as set forth in the Fund's prospectus. The Fund expects to continue to spend up to 0.30 percent per year of the average daily net asset value of the Class A Shares pursuant to the Fund's rule 12b-1 distribution plan. The Fund, or the Distributor as agent for the Fund, pays certain financial intermediaries up to .25 percent per year of the average daily net asset value of the Class A Shares maintained in the Fund by such person's customers. The Fund will pay to the Distributor the lesser of the balance of the .30 percent not paid to such financial intermediaries or the amount of the Distributor's actual distribution-related expenses during the year with respect to the Class A Shares.

5. The Deferred Option will permit investors to purchase Class B Shares without a front-end sales load and at the same time permit the Distributor to pay to financial intermediaries a commission on the sale of the Class B Shares. The Fund may spend up to 1.0 percent per year of the average daily net asset value of the Class B Shares pursuant to the Fund's rule 12b-1 distribution plan. The Fund, or the Distributor as agent for the Fund, will pay certain financial intermediaries up to .25 percent per year of the average daily net asset value of the Class B Shares maintained in the Fund by such person's customers. The Fund will pay to the Distributor the lesser of the balance of the 1.0 percent not paid to such financial intermediaries or the amount of the Distributor's actual distribution-related expenses during the year with respect to the Class B Shares. In addition, proceeds from a redemption of Class B Shares made within a specified period of years of purchase, which will be at least three years but will not exceed seven years, generally will be subject to a CDSL.

6. All Class B Shares of the Fund, other than those purchased through the reinvestment of dividends and distributions, automatically will convert to Class A Shares a certain number of years after the end of the calendar month in which the shareholder's order to purchase was accepted, in the circumstances and subject to the qualifications described below (the "conversion feature"). Such number of years, which will be the same with respect to all Class B Shares of the Fund, will be at least three years but will not exceed eight years. The conversion feature is intended to relieve the holders of Class B Shares from higher rule 12b-1 distribution plan fees after the shares have been outstanding for sufficient time for the Distributor to have been reimbursed for its distribution expenses. Thus, Class A Shares will consist of shares purchased by investors prior to the implementation of the Dual Distribution System, shares purchased pursuant to the Front-End Option, Class B Shares that have converted to Class A Shares, and shares purchased by holders of Class A Shares through the reinvestment of dividends and distributions paid on Class A Shares.

7. Shares purchased through the reinvestment of dividends and distributions paid on Class B Shares will be treated as Class B Shares for purposes of determining the applicable distribution fee. However, for purposes of conversion to Class A Shares, all shares in a shareholder's account that are purchased through the reinvestment of dividends and distributions paid on Class B Shares (and which have not converted to Class A Shares as provided in the following sentence) will be considered held in a separate sub-account. Each time any Class B Shares in the shareholder's account (other than those in the sub-account) convert to Class A Shares, a proportionate number of Class B Shares in the sub-account also will convert to Class A Shares.

8. The Fund will obtain an opinion of counsel that the assessment of the higher distribution expenses and transfer agency costs and any other special allocations described above with respect to Class B Shares does not result in any dividend or distribution constituting a "preferential dividend" under the Internal Revenue Code of 1986 ("IRC") and that conversion of Class B Shares to Class A Shares does not constitute a taxable event under current federal income tax law. The conversion of Class B Shares to Class A Shares may be suspended if such an opinion is no longer available at the time conversions of Class B Shares would occur. In such an event, shares might continue to be subject to the additional distribution fee for an indefinite period beyond when conversion of the shares would otherwise have occurred.

9. The decision as to whether a particular distribution expenditure or category of distribution expenditures is properly attributable to the sale of a particular class or to the sale of both classes of shares (and thus allocated to each class of shares) will be subject to the review and approval of the Trustees. It is anticipated that all distribution expenditures will be determined to be attributed to the sale of both classes of shares except commission expenses, including interest or carrying charges, related to the sale of the Class B Shares, and trail or maintenance payments, which will be separately calculated with respect to each class.

10. All expenses incurred by the Fund will be borne on a *pro rata* basis by each class based on its percentage of the Fund's net asset value except for the distribution expenses incurred pursuant to the Fund's rule 12b–1 distribution plan and incremental transfer agency costs. Because of the additional expenses that will be borne solely by the Class B Shares, the net income attributable to and the dividends payable on Class B Shares will be lower than the net income attributable to and the dividends payable on Class A Shares. Initially, it is expected that the net asset value of the Class A Shares will be marginally higher than the net asset value of the Class B Shares, and the net asset value per share of the two classes may continue to diverge over time.

11. Class A Shares will be exchangeable for shares of other open-end investment companies sold subject to a front-end sales load, and for shares of money market funds, distributed by the Distributor and that offer an exchange privilege. In addition, a shareholder of any other open-end investment company sponsored by the Distributor that is sold subject to a front-end sales load and an exchange privilege, or of money market fund shares acquired through an exchange of such shares, will be able to exchange his shares for Class A Shares. Class B Shares will be exchangeable only for shares offered pursuant to a Deferred Option by any other open-end investment company in the Adviser's complex that offers an exchange privilege.

12. The CDSL is expected to range from 3% to 7% on Class B Shares redeemed during the first year after purchase and will be reduced each year over the applicable CDSL period. The CDSL will not be imposed on redemptions of Class B Shares which were purchased more than a specified period of up to seven years (the "CDSL Period") prior to their redemption of Class B Shares derived from the reinvestment of distributions. Furthermore, no CDSL will be imposed on an amount which represents an increase in the value of the shareholder's account resulting from capital appreciation above the amount paid for shares purchased during the CDSL period. In determining whether a CDSL is applicable, it will be assumed that a redemption is made first of any Class B Shares derived from reinvestment of dividends and distributions, second of Class B Shares held for a period longer than the CDSL Period, third of Class A Shares in the shareholder's Fund account, and fourth of Class B Shares held for a period not longer than the CDSL Period.

13. The Fund proposes to waive the CDSL on redemptions following the death of an individual Class B Shareholder or an individual who owns Class B Shares with his or her spouse as a joint tenant with right of survivorship if the redemption is made within one year of the death of the shareholder. In addition, the fund may waive the CDSL when a redemption is made in connection with certain distributions from an individual retirement account, a custodial account maintained pursuant to IRC section 403(b)(7), or a qualified pension or profit-sharing plan. Such distributions include a lump-sum or other distribution after the individual attains age 59½ or, in the case of a qualified pension or profit-sharing plan, after termination of employment of the individual after age 55. In addition, the CDSL may be waived on any redemption which results from the tax-free return of an excess contribution pursuant to IRC sections 408(d)(4) or 408(d)(5), the return of excess deferral amounts under IRC sections 401(k)(8) or 402(g)(2), or from the death or disability of the employee. Also, the CDSL may be waived when a plan qualified under IRC section 401(k) or a participant in such plan exchanges Class B Shares of the Fund for Class B Shares of another fund in the Adviser's complex or when an investor exchanges Class B shares of the Fund for Class B Shares of another fund in the Adviser's complex. If the Fund waives or reduces the CDSL, such waiver or reduction will be uniformly applied to all Class B shareholders.

Applicants' Legal Conclusions

1. Applicants seek an exemption from sections 18(g), 18(f), and 18(i) to the extent the Dual Distribution System may result in a senior security, as defined by section 18(g), the issuance and sale of which would be prohibited by section 18(f), and to the extent the allocation of voting rights under the Dual Distribution System may violate the provisions of section 18(i).

2. Applicants believe that the Dual Distribution System will facilitate the distribution of shares by the Fund and provide investors with a broader choice of methods for financing the purchase of shares. An investor will be able to choose the method of purchasing shares that is most beneficial given the amount of his purchase, the length of time that he expects to hold his shares, and other relevant circumstances. Owners of both classes may be relieved of a portion of the fixed costs normally associated with open-end management investment companies since such costs will, applicants believe, be spread over a greater number of shares than would otherwise be the case. In addition, the conversion feature will benefit long-term holders of Class B Shares whose shares have been outstanding for enough time for the Distributor to have been reimbursed for its distribution expenses.

3. The Dual Distribution System will not create the potential for the abuses that section 18 of the 1940 Act was designed to redress. The Dual Distribution System will not increase the speculative character of the shares of the Fund and will not involve borrowings. Both Class A and Class B shares will participate *pro rata* in all of the Fund's income and expenses, except for different rule 12b–1 distribution expenses and transfer agency costs. Both classes of shares will be redeemable at all times, and neither

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class will have any distribution or liquidation preference with respect to particular assets or any right to require that lapsed dividends be paid before dividends are declared on the other class, and neither class will be protected by any reserve or other account. Moreover, the proposed allocation of expenses and voting rights relating to the Fund's rule 12b–1 distribution plan is equitable and will not discriminate against either group of shareholders.

4. Applicants also seek an exemption from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the 1940 Act and rule 22c–1 thereunder to permit the Fund to assess a CDSL on redemptions of Class B Shares and to permit the Fund to waive the CDSL for certain types of redemptions. Applicants believe that the imposition of the CDSL on the Class B Shares of the Fund is fair and in the best interests of the Fund's Shareholders. The proposed Dual Distribution System permits the holders of Class B Shares to have the advantage of greater investment dollars working for them from the time of their purchase than if a sales load were imposed at the time of purchase, as is the case with the Class A Shares.

5. Applicants request that any relief from sections 18(f), 18(g), 18(i), 2(a)(32), 2(a)(35), 22(c), and 22(d) of the 1940 Act and rule 22c-1 apply to any existing or future sub-trust or series of the Trust, or any existing or future registered, open-end investment company, or any existing or future sub-trust or series thereof, that is part of the same group of investment companies, and (i) whose investment adviser is the Adviser or an investment adviser that is a successor to any of the business or operations of the Adviser or is directly or indirectly controlling, controlled by, or under common control with the Adviser (as "control" is defined in section 2(a)(9) of the 1940 Act), (ii) whose principal underwriter is the Distributor, or a principal underwriter that is a successor to any of the business or operations of the Distributor or is directly or indirectly controlling, controlled by, or under common control with the Distributor, (iii) which holds itself out to investors as being related for purposes of investment and investor services, and (iv) whose shares are divided into two classes of securities whose sales load, CDSL, rate of distribution fees, exchange privileges, conversion feature, and differences in voting rights are substantially identical to those applicable to the Fund's Class A Shares and Class B Shares as described in the application. Any such series or investment company will be subject to each of the conditions contained in the application.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

A. Conditions Relating to the Dual Distribution System

1. The Class A Shares and Class B Shares will represent interests in the same portfolio of investments of the Fund, and be identical in all respects, except as set forth below. The only difference between Class A Shares and Class B Shares will relate solely to (a) the impact of the disproportionate rule 12b-1 distribution plan payments allocated to each of the holders of Class A Shares and Class B Shares of the Fund, the incremental transfer agency costs attributable to the Class B Shares of the Fund resulting from the Deferred Option arrangement, and any other incremental expenses subsequently identified that should be properly allocated to one class of shares which shall be approved by the Commission; (b) the Class B Shares will be sold subject to a CDSL whereas the Class A Shares will be sold subject to a front-end sales load; (c) the fact the each class of shares will vote separately as a class with respect to the Fund's rule 12b-1 distribution plan; (d) different exchange privileges of the Class A Shares and Class B Shares; (e) the fact that only Class B Shares will have a Conversion Feature; and (f) the fact that the designation of each class of shares of the Fund will differ.

2. The Trustees, including a majority of the Trustees who are not interested persons of the Trust within the meaning of section 2(a)(19) of the 1940 Act (the "independent Trustees"), will approve the Dual Distribution System. The minutes of the meetings of the Trustees regarding the deliberations of the Trustees with respect to the approvals necessary to implement the Dual Distribution System will reflect in detail the reasons for the Trustees' determination that the proposed Dual Distribution System is in the best interests of both the Fund and its shareholders.

3. On an ongoing basis, the Trustees, pursuant to their fiduciary responsibilities under the 1940 Act and otherwise, will monitor the Fund for the existence of any material conflicts between the interests of the two classes of shares. The Trustees, including a majority of the independent Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Adviser and the Distributor will be responsible for reporting any potential or existing conflicts of which they may be aware to the Trustees. If a conflict arises, the Adviser and the Distributor at their own cost will remedy such conflict up to and including establishing a new registered investment company.

4. Any rule 12b-1 plan adopted or amended to permit the assessment of a rule 12b-1 fee on any class of shares which has not had its rule 12b-1 plan approved by the public shareholders of that class will be submitted to the public shareholders of such class for approval at the next meeting of shareholders after the initial issuance of the class of shares. Such meeting is to be held within 16 months of the date that the registration statement relating to such class first becomes effective or, if applicable, the date that the amendment to the registration statement necessary to offer such class first becomes effective.

5. The Trustees will receive quarterly and annual statements complying with paragraph (b)(3)(ii) of rule 12b-1, as it may be amended from time to time. In the statements, only distribution expenditures properly attributable to the sale of a particular class of shares will be used to justify the distribution fee charged to that class. Expenditures not related to the sale of a particular class of shares will not be presented to the Trustees to justify the distribution fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent Trustees in the exercise of their fiduciary duties.

6. Dividends paid by the Fund with respect to its Class A Shares and Class B Shares, to the extent any dividends are paid, will be calculated in the same manner at the same time on the same day and will be in the same amount, except that distribution fee payments relating to each respective class of shares will be borne exclusively by that class and any incremental transfer agency costs relating to Class B Shares and other expenses determined by the Trustees to be allocated to the Class B Shares will be borne exclusively by that class.

7. The methodology and procedures for calculating the net asset value and dividends and distributions of the two classes and the proper allocation of expenses between the two classes were reviewed by the expert who rendered a report to the applicants, which report was provided to the staff of the Commission prior to the issuance of this notice, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the expert, or an appropriate substitute expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Fund that the calculations and allocations are being made properly. The reports of the expert shall be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the 1940 Act. The work papers of the expert with respect to such reports, following request by the Fund (which the Fund agrees to provide), will be available for inspection by the Commission staff upon the written request to the Fund for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrators or Associate and Assistant Administrators. The initial report of the expert is a "Special Purpose" report on the "Design of a System" and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in SAS No. 44 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the two classes of shares and the proper allocation of expenses between the two classes of shares, and this representation has been concurred with by the expert in the initial report referred to in condition (7) above and will be concurred with by the expert, or an appropriate substitute expert, on an ongoing basis at least annually in the ongoing reports referred to in condition (7) above. Applicants will take immediate corrective measures if this representation is not concurred in by the expert or appropriate substitute expert.

9. The prospectus of the Fund will contain a statement to the effect that a salesperson and any other person entitled to receive any portion of a distribution fee may receive different compensation for selling one particular class of shares over another in the Fund.

10. The Distributor will adopt compliance standards, substantially in the form of Exhibit C to the application, as to when Class A Shares and Class B Shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Fund to agree to conform to such standards.

11. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Trustees with respect to the Dual Distribution System will be set forth in guidelines which will be furnished to the Trustees.

12. The Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. To the extent any advertisement or sales literature describes the expenses or performance data applicable to all classes of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of the Fund's net asset value and public offering price will present each class of shares separately.

13. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply Commission approval, authorization, or acquiescence in any particular level of payments that the Fund may make pursuant to its rule 12b-1 distribution plan in reliance on the exemptive order.

14. In the circumstances and subject to the qualifications described herein, after three but not more than eight years from the date on which a shareholder purchases Class B Shares, such shares will convert into Class A Shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge.

B. Condition Relating to the CDSL

Applicants will comply with the provisions of proposed rule 6c-10 under the 1940 Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), 53 FR 45,275 (1988), as such rule is currently proposed and as it may be reproposed, adopted, or amended by the Commission.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–13014 Filed 5–31–91; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 91–026]

Central Pacific Loran-C Closure

AGENCY: Coast Guard, DOT.

ACTION: Notice; request for comments.

SUMMARY: The Coast Guard proposes early closure of the Central Pacific Loran-C Chain at the end of calendar year 1992 vice operation through 1994 as currently planned. Continued operation of the Central Pacific Chain is not economically justified. Early closure of this Loran-C Chain will save the Coast Guard the cost of operating it for two years which amounts to an estimated 5–6 million dollars.

DATES: Comments must be received on or before August 2, 1991.

ADDRESSES: Comments should be mailed to Commandant (G–LRA–2/3406) (CGD 91–026), U.S. Coast Guard, Washington, DC 20593–0001. Comments will be available for public inspection and copying between 8 a.m. and 3:30 p.m., Monday through Friday, except holidays, at the Marine Safety Council (G–LRA–2), room 3406, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: Commander Richard J. Armstrong, Chief, Radio Aids Management Branch (G–NRN–1), room 1413, U.S. Coast Guard Headquarters, 2100 2nd St., SW., Washington, DC 20593–0001, phone (202) 267–0990.

SUPPLEMENTARY INFORMATION: The Central Pacific Loran-C Chain, in the Hawaiian area, was installed in the mid-60's in response to a Department of Defense requirement. The 1990 edition of the Federal Radionavigation Plan, provides for termination of overseas and Hawaiian Loran-C stations when the Department of Defense requirement for Loran-C ends on December 31, 1994. The new satellite based Global Positioning System may allow the Department of Defense to end its requirement for Loran-C in the Hawaiian area as early as the end of calendar year 1992.

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Because of the poor coverage area and limited number of users, the United States Coast Guard's position is that continued operation of the Central Pacific Loran-C Chain past 1992 is not economically justified. The Loran-C system serving the continental U.S., Alaska, and the coastal areas, with the exception of Hawaii, will remain part of the radionavigation mix and not be terminated at the end of 1994.

Comments are requested concerning possible termination of Loran-C service provided by the Central Pacific Loran-C Chain, Rate 4990, in the Hawaiian area, at the end of calendar year 1992, in lieu of the end of calendar year 1994 as is currently planned.

The Coast Guard encourages interested persons to participate by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this Notice (CGD 91-026) and how each comment relates to the proposed action. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

Dated: May 24, 1991.

J. W. Lockwood,

Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 91-13040 Filed 5-31-91; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

[Summary Notice No. PE-91-19]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Petitions for Exemption received and of dispositions of prior petitions; Correction.

SUMMARY: This action corrects an error with reference to the comment close date to a notice published on Tuesday, May 14, 1991, page 22191 and in the third column. The FAA inadvertantly inserted July 3, 1991. Please change the comment close date to read June 3, 1991.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9683.

Issued in Washington, DC, on May 23, 1991.

Deborah Swank,

Acting Manager, Program Management Staff, Office of the Chief Counsel.

[Summary Notice No. PE-91-21]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 24, 1991.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9683.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Petitions for Exemption

Docket No.: 25030.
Petitioner: Pan Am Express, Inc.
Sections of the FAR Affected: 14 CFR 93.123 and 93.129.
Description of Relief Sought: To extend Exemption No. 4777A, as amended, which allows petitioner to conduct 20 operations during 4 of the 5 high-density hours at John F. Kennedy (JFK) International Airport under Separate Access Landing System with aircraft capable of short takeoff and landing on the stubs of runways, with systems and performance capabilities approved by the Administrator and with operating procedures established by the JFK tower. Exemption No. 4777A, as amended, will expire on October 28, 1991.

Docket No.: 26508.
Petitioner: Era Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 135.207.
Description of Relief Sought: To allow petitioner's pilots to operate helicopters under VFR without the pilot having visual surface reference or, at night, visual surface light reference.

Docket No.: 26515.
Petitioner: Era Helicopters.
Sections of the FAR Affected: 14 CFR 43.3(a) and 135.443(b)(3).
Description of Relief Sought: To allow helicopter flightcrews to perform daily checks, or checks occurring at intervals of 10 hours or less, as called out in manufacturers' Service Bulletins or FAA Airworthiness Directives.

Docket No.: 26517.
Petitioner: Era Aviation, Inc.
Sections of the FAR Affected: 14 CFR 133.51.
Description of Relief Sought: To allow petitioner to lease an AS332L Super Puma Helicopter from a Canadian carrier and use this helicopter to support offshore drilling operations off the North Slope of Alaska.

Docket No.: 26527.
Petitioner: James F. Young.
Sections of the FAR Affected: 14 CFR 47.15(b).
Description of Relief Sought: To allow the use of one or two letters following the "N" on a United States registration number.

Docket No.: 2646.
Petitioner: Precision Valley Aviation, Inc., dba Northwest Airlink.
Sections of the FAR Affected: 14 CFR 135.225(e)(1).

Description of Relief Sought: To allow petitioner's pilots to take off under instrument flight rules at any Canadian civil airport listed in its operations specifications when the visibility at that airport is less than 1 statute mile.

Dispositions of Petitions

Docket No.: 22469.
Petitioner: Parks College of St. Louis University.
Sections of the FAR Affected: 14 CFR part 141, appendixes A, C, D, and F.
Description of Relief Sought/Disposition: To extend Exemption No. 3495, as amended, which allows petitioner to train students to a performance standard rather than to minimum flight time requirements, except for solo cross-country flights.

Grant, May 13, 1991, Exemption No. 3495E

Docket No.: 22706.
Petitioner: Bankair Inc.
Sections of the FAR Affected: 14 CFR 135.335(e)(1).
Description of Relief Sought/Disposition: To extend Exemption No. 5090, which allows petitioner's pilots to operate their aircraft from Myrtle Beach Air Force Base and Beaufort Marine Corps Air Station using takeoff visibility minimums, subject to the approval of the appropriate military authority, that are less than 1 mile and are equal to or greater than the landing visibility minimums established for those airfields.

Grant, May 13, 1991, Exemption No. 5090A

Docket No.: 22872.
Petitioner: Air Transport Association of America.
Sections of the FAR Affected: 14 CFR 61.157; 121.424; part 61, appendix A; and part 121, appendixes E and F.
Description of Relief Sought/Disposition: To extend Exemption No. 4416, which allows continued authorization for operators to conduct the required preflight inspections using approved advanced pictorial means.

Grant, May 15, 1991, Exemption No. 4416D

Docket No.: 23499.
Petitioner: Lifeline, Inc.
Sections of the FAR Affected: 14 CFR 61.118(a).
Description of Relief Sought/Disposition: To extend Exemption No. 5068, which allows petitioner's private pilots who perform flight services to be reimbursed for their fuel expenses.

Grant, May 15, 1991, Exemption No. 5068A

Docket No.: 23713.
Petitioner: SimuFlite Training International.
Sections of the FAR Affected: 14 CFR 61.56(b)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(d)(2) and (d)(3); 61.67(d)(2); 61.157(d)(1), (d)(2), (e)(1), and (e)(2); part 61, appendix A; part 121, appendix H.
Description of Relief Sought/Disposition: To amend Exemption No. 3931, as amended, which allows petitioner and persons who contract for services from petitioner to use FAA-approved simulators to meet certain training and testing requirements.

Grant, February 28, 1990, Exemption No. 3931E

Docket No.: 24541.
Petitioner: Boeing Commercial Airplanes.
Sections of the FAR Affected: 14 CFR 91.611.
Description of Relief Sought/Disposition: To extend Exemption No. 4467, as amended, which allows petitioner to conduct ferry flights with one engine inoperative on its Boeing-manufactured 707, 720, 727, and 747 airplanes without obtaining a special flight permit.

Grant, May 13, 1991, Exemption No. 4467C

Docket No.: 25748.
Petitioner: Popular Rotorcraft Association.
Sections of the FAR Affected: 14 CFR 91.319(a)(1) and (a)(2).
Description of Relief Sought/Disposition: To allow the establishment of guidelines and the training and rating of pilots in experimental gyroplane aircraft.

Grant, May 13, 1991, Exemption No. 5209A

Docket No.: 25798.
Petitioner: Embry-Riddle Aeronautical University.
Sections of the FAR Affected: 14 CFR 61.71.
Description of Relief Sought/Disposition: To allow the petitioner's students who are enrolled in its part 141 approved commercial pilot certification course to apply for an instrument rating prior to receiving their commercial pilot certificate without meeting the flight experience requirements of § 61.65(e)(1).

Denial, May 13, 1991, Exemption No. 5310

Docket No.: 25950.
Petitioner: Mr. Dagfinn Myrvang.
Sections of the FAR Affected: 14 CFR 61.155(b)(2).
Description of Relief Sought/Disposition: To allow petitioner to qualify for an airline pilot license by receiving credit for simulator evaluation test hours.

Denial, May 13, 1991, Exemption No. 5309

Docket No.: 26340.
Petitioner: Delta Air Lines, Inc.
Sections of the FAR Affected: 14 CFR 121.409(b)(3), 121.433(c)(1)(iii), and 121.441(a)(1).
Description of Relief Sought/Disposition: To amend Exemption No. 5271 to allow the petitioner to substitute simulator training received by its first officers in combination with a special line check by these first officers, in place of an approved simulator line-oriented flight training period.

Partial Grant, April 30, 1991, Exemption No. 5271A

Docket No.: 26359
Petitioner: Federal Express Corporation.
Sections of the FAR Affected: 14 CFR 121.623(a) and (d), 121.643, and 121.645(e).
Description of Relief Sought/Disposition: To amend Exemption No. 5264 to remove the requirement to comply with the flight and duty requirements in part 121, subpart Q, to operate under the exemption.

Grant, April 30, 1991, Exemption No. 5264A

Docket No.: 26431 [Reprinted Disposition].
Petitioner: Regional Airline Association.
Sections of the FAR Affected: 14 CFR 121.314 and 135.169(d).
Description of Relief Sought/Disposition: To allow continued operation of certain airplanes beyond the March 20, 1991, deadline for compliance with the flammability requirements for cargo and baggage compartment liners.

Grant, March 18, 1991, Exemption No. 5289

Docket No.: 26499.
Petitioner: Delta Air Lines, Inc.
Sections of the FAR Affected: 14 CFR 108.23(b).
Description of Relief Sought/Disposition: To allow petitioner to accomplish pilot crewmember recurrent security training during one annual session. Since none of the petitioner's pilots have received annual security training since June 1990, compliance

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with § 108.23(b) during 1991 would generate a separate trip to recurrent ground school, in lieu of a single visit, for security training.

Grant, May 10, 1991, Exemption No. 5308

Docket No.: 26516.

Petitioner: Northwest Airlines, Inc.

Sections of the FAR Affected: 14 CFR 121.433a.

Description of Relief Sought/ Disposition: To allow petitioner an additional 180 days to train its European personnel in the proper handling and carriage of dangerous articles and magnetized materials. The regulations require that ground personnel complete such training within the previous 12 calendar months (by April 1991).

Denial, May 15, 1991, Exemption No. 5311

Docket No.: 26524.

Petitioner: Association of Air Medical Services/Helicopter Association International.

Sections of the FAR Affected: 14 CFR 43.3(a) and (g).

Description of Relief Sought/ Disposition: To allow properly trained personnel to exchange medical oxygen cylinders after such cylinders have been depleted.

Petition Withdrawn, May 14, 1991

[FR Doc. 91-12980 Filed 5-31-91; 8:45 am]

BILLING CODE 4910-13-M

Federal Railroad Administration

Petition for Exemption or Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received from the National Railroad Passenger Corporation a request for exemptions from or waivers of compliance with a requirement of Federal rail safety standards. The petition is described below, including the regulatory provisions involved, and the nature of the relief being requested.

National Railroad Passenger Corporation

[Waiver Petition Docket Number H-91-2]

The National Railroad Passenger Corporation (Amtrak) is seeking a 1 year test waiver of compliance from certain sections of the Railroad Power Brakes and Drawbars Regulations, 49 CFR part 232. Amtrak is requesting that it be permitted to extend the clean, oil, test and stencil (COT&S) period from 36 months to 48 months on 50 test cars equipped with 26-C Type Brake Equipment. The test cars are part of the 103 Horizon car fleet built between May 1989 and January 1990. The performance of the test cars will be monitored and each will be given a COT&S at the conclusion of the 48 month period. Amtrak will petition for a permanent extension for all cars equipped with the 26-C Brake Equipment at that time if conditions justify it.

Section 232.17(b)(2) states—"Brake equipment on passenger cars must be clean, repaired, lubricated and tested as often as necessary to maintain it in a safe and suitable condition for service but not less frequently than as required in Standard S-045 in the Manual of Standards and Recommended Practices of the Association of American Railroads (AAR)." Paragraph 2.1.2 of Standard S-045 (AAR Manual section A, part III) currently specifies 36 months for 26-C Type Brake Equipment. The AAR will participate in the test since they control the specification.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number H-91-2) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before July 18, 1991 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) in room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC on May 22, 1991.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 91-13005 Filed 5-31-91; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

May 24, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0710.

Form Number: 5500, 5500-C/R, Schedule B (Form 5500), Schedule E (Form 5500), Schedule P (Form 5500).

Type of Review: Revision.

Title: Annual Return/Report of Employee Benefit Plan, Return/Report of Employee Benefit Plan and Associated Schedules.

Description: Forms Listed in item 4 are annual information returns filed by employee benefit plans. The IRS uses this data to determine if the plan appears to be operating properly as required under the law or whether the plan should be audited.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 901,400.

Estimated Burden Hours Per Response/ Recordkeeping

	Form 5500 (initial filers)	Form 5500 (all other filers)	Sched. A (Form 5500)
Recordkeeping	87 hrs., 3 mins	81 hrs., 19 mins	17 hrs., 28 mins.
Learning about the law or the form	8 hrs., 51 mins	8 hrs., 51 mins	28 mins.
Preparing the form	13 hrs., 7 mins	13 hrs., 2 mins	1 hr., 42 mins.

	Form 5500 (initial filers)	Form 5500 (all other filers)	Sched. A (Form 5500)
Copying, assembling, and sending the form to IRS	48 mins	48 mins	16 mins.

	Sched. B (Form 5500	Sched. C (Form 5500)	Sched. E (Form 5500) (non leveraged ESOP)
Recordkeeping	33 hrs., 56 mins	5 hrs., 16 mins	1 hr., 40 mins.
Learning about the law or the form	2 hrs., 19 mins	18 mins.	12 mins.
Preparing the form	3 hrs., 3 mins	23 mins.	14 mins.
Copying, assembling, and sending the form to IRS			

	Sched. E (Form 5500) (leveraged ESOP)	Sched. P (Form 5500)	Sched. SSA (Form 5500)
Recordkeeping	10 hrs., 2 mins	1 hr., 40 mins	6 hrs., 42 mins.
Learning about the law or the form	1 hr., 41 mins	30 mins.	12 mins.
Preparing the form	1 hr., 6 mins	32 mins.	19 mins.
Copying, assembling, and sending the form to IRS			

Frequency of Response: Annually.

Estimated Total Recordkeeping/ Reporting Burden: 32,508,310 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91-12996 Filed 5-31-91; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

May 24, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0012.

Form Number: CF 3189.

Type of Review: Extension.

Title: Lay Order Application and Approval.

Description: Customs Form 3189 is used to extend the time for merchandise or baggage to remain on a wharf or pier from the allowed five days after a vessel has entered.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 2,400.

Estimated Burden Hours Per Response: 5 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 5,998 hours.

Clearance Officer: Ralph Meyer (202) 566-9182, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91-12997 Filed 5-31-91; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Ann Bickoff, Veterans Health Administration (161B3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 535-7407.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before July 3, 1991.

Dated: May 28, 1991.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy Assistant Secretary for Information Resources Policies and Oversight.

Reinstatement

1. Former POW (Prisoner of War) Medical Study; Former POW Medical History, VA Form 10-0048, Former Prisoner of War Follow-up, VA Forms 10-20844a-d (NR).

2. The information will be gathered from former POWs to assess the medical

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care needs of these veterans. The data will be used to determine the present and future needs of POWs in the areas of disability compensation, health care and rehabilitation.

3. Individuals or households.

4. 9,800 hours.

5. 7 hours: VA Form 10-0048—60 minutes, VA Form 10-20844a(NR)—10 minutes, VA Form 10-20844b(NR)—10 minutes, VA Form 10-20844cU.S.C.—25 minutes, VA Form 10-20844dU.S.C.—15 minutes, Medical Examination—5 hours.

6. Non-recurring.

7. 2,450 respondents.

[FR Doc. 91-12994 Filed 5-31-91; 8:45 am]

BILLING CODE 8320-01-M

Summary of Precedent Opinions of the General Counsel

AGENCY: Department of Veterans Affairs.

ACTION: NOTICE.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of legal interpretations issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. These interpretations are considered precedential by VA and will be followed by VA officials and employees in future claim matters. They are being published to provide the public and, in particular, veterans' benefits claimants and their representatives with notice of VA's interpretation regarding the legal matter at issue.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library; Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 523-3826.

SUPPLEMENTARY INFORMATIOAN: VA regulations at 38 CFR 12.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters contained in such opinions are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefits claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA offical named above.

O.G.C. Precedent 1-91

Questions presented: a. In the consideration of the payment of a loan guaranty claim would a cramdown reducing the principal debt owed by a debtor approved in a chapter 13 bankruptcy petition affect the claim filed by a holder? b. Is it appropriate to approve additional attorneys fees incurred by a holder in objecting to a cramdown and to permit the lender to include such fees in the eligible indebtedness for purposes of accounting with the holder upon the filing of a claim?

Held: a. Claims under the VA loan guaranty may only be filed after liquidation has occurred or after a conveyance in lieu of liquidation has been approved by VA and completed. At that time, based on the remaining outstanding indebtedness, a claim may be paid. If the bankruptcy action has been completed and the outstanding balance has been reduced in such proceeding, the VA liability would be based on the reduced balance. b. Litigation associated with matters where a mortgagor is seeking a reduction in the outstanding mortgage loan balance is not unique to VA guaranteed loans; however, such litigation is required by VA in order to preserve VA's liability under its guaranty. Attorney fees accociated with such litigation thus may be included as part of a veteran's indebtedness in the lender's accounting with VA, provided VA approved such fees in advance.

Effective date: January 8, 1991.

O.G.C. Precedent 2-91

Question presented: Whether VA is required to pay interest on the money that will be paid to lenders due to the technical inaccuracy of the methods used in the past few years to determine "net value" of properties securing VA loans in foreclosure.

Held: No.

Effective date: January 15, 1991.

O.G.C. Precedent 3-91

Questions presented: a. May the Secretary agree to terms imposed by the draft American Housing Trust (AHT) VIII loan sale agreement which will require, as a condition to the sale, that if the master servicer and the trustee fail in their obligations to advance for a shortfall in scheduled monthly interest and principal, VA will make the advance plus reimbursement of all reasonable expenses incurred by certificate holders in connection with delay? b. May the provision described in question 'a' be added to the existing VHT VI and VHT VII by amendment of the documents for those transactions?

Held: a. Yes, the Secretary, under 38 U.S.C. 1833 and 1820, has authority to agree to this provision. b. Yes, the Secretary, under 38 U.S.C. 1833 and 1820, has authority to enter into such amendments to VHT VI and VHT VII.

Effective date: January 25, 1991.

O.G.C. Precedent 4-91

Questions presented: Has a veteran failed to report for a scheduled examination for purposes of 38 CFR 3,655 if he or she appears but refuses to be examined unless accompanied by a private attorney and allowed to record the evaluation?

Held: Neither the Constitution, the Administrative Procedure Act, nor VA statutes and regulations provide a right to counsel at medical examinations scheduled by VA for evaluation of beneficiaries, including psychiatric evaluation. As, under the relevant constitutional, statutory, and regulatory provisions, there is no "right" to be accompanied by an attorney to this type of agency activity, refusal to participate unless accompanied by an attorney may be considered a failure to report for purposes of VA regulations at 38 CFR 3.655 providing for discontinuance of benefits for failure to report for examination. Simiarly, a beneficiary may not insist on using a recording device at a VA medical examination, and refusal to participate due to the absence of such a device may be considered a failure to report for purposes of VA regulations governing termination of benefits.

Effective date: February 13, 1991.

O.G.C. Precedent 5-91

Questions presented: a. Is the amount payable under the provisions of Public Law No. 86-146 to be considered amounts retained by such home from any payments of pension or compensation made to such veteran? b. Are such payments made under Public Law No. 86-146 to be considered collections from any source on behalf of the veteran? c. Can simultaneous payments of the $700 and the amount payable under the provisions of Public Law No. 86-146 be made? (The change to a $2.50 per diem payment from the former $00 per annum effected by Public Law No. 86-625, which was approved July 12, 1960, has no bearing on the discussion herein). d. If the answer to c is in the negative, can the home, by not making application on behalf of the veteran or withdrawing the application which must be made under 38 U.S.C. 643 be entitled to receive the full payments which can be made under Public Law No. 86-146 for the veteran's care and maintenance?

Held: a. Payments of pension or compensation to an incompetent veteran having neither wife nor child and being furnished domiciliary care in a State Home that is discounted because his estate equals or exceeds $1500 are to be considered "amounts retained by such Home from any payments of pension or compensation made to such veteran." b. There is no legal objection to the simultaneous payments to the State Home of the $700 (now $2.50 per diem) payable under 38 U.S.C. 641(a) and the amount payable under the provisions of Public Law No. 86-146, subject to the reduction provided for in 38 U.S.C. 641(b)(1) c. 38 U.S.C. 643 which provides for the making of an application by a State Home for benefits under 38 U.S.C. 641 is permissive and not mandatory. There is nothing in Public Law No. 86-146 which warrants a departure from this discretionary right exercised by State Homes in making or withdrawing applications for benefits provided by 38 U.S.C. 641.

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 23-60, December 8, 1960, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 6-91

Questions presented:

a. Series E savings bonds have been purchased from funds in Personal Funds of Patients (PFOP) Accounts at the request of the patient or his next of kin, or at the discretion of Manager and held for the patient. Upon the death of such a patient, is the disposition of these bonds governed by the provisions of Public Law No. 86-146? b. If the answer to question 'a' is in the affirmative, does the Manager have the authority to redeem such bonds for deposit in PFOP? If not, what disposition should we make of such bonds? c. If bonds are redeemed by the Manager prior to the death of a patient and the proceeds deposited in PFOP to be used for the patient's needs, should the proceeds be considered gratuitous if they can be identified as such or nongratuitous funds? Are the proceeds when so deposited considered to have been deposited by the VA through the Manager in this instance is acting as Trustee for the patient? In your reply to this question, we should be advised as to the proper disposition to be given to the interest in the proceeds from the bonds. d. Upon admission a patient may have several compensation or pension checks which he has not cashed. If after a reasonable length of time, the patient refuses to cooperate and endorse the checks for deposit in PFOP, it is our practice to return such checks to the Disbursing Office and request the Adjudication Division of the regional office concerned to reissue the checks to the Manager. Would such funds be considered gratuitous benefits under Public Law No. 86-146 in view of the fact that they would have been excluded if the patient had endorsed the check for deposit?

Held: Amounts derived from gratuitous benefits which were originally deposited in PFOP by VA do not lose their identity as to source and nature of deposit, for purposes of Public Law No. 86-146, where withdrawn from PFOP and used to purchase bonds if they are returned to PFOP and remain on deposit at the time of the veteran's death. The interest should not be considered to be subject to disposition in accordance with the provisions of section 3202(d) of title 38, U.S.C., as amended.

Funds represented by unendorsed compensation or pension checks, the amount of which is subsequently paid to the Manager by issuance of new checks and deposited by the Manager in the veteran's PFOP account should be considered "gratuitous benefits deposited by the VA * * * into a PFOP * * * account" within the meaning of that language in Instruction I to Public Law No. 86-146 and, therefore, subject to the provisions of section 3202(d) of title 38, U.S.C. Such a transaction is equivalent to an original institutional award and is, accordingly, clearly within the language and intent of Public Law No. 86-146 and the implementing issue.

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 28-60, September 13, 1960, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 7-91

Question presented: Whether a veteran receiving compensation for a service-connected disability and who otherwise would be entitled to pension based upon the need for aid and attendance may be furnished an invalid lift under the provisions of 38 U.S.C. 617.

Held: A veteran who is adjudicated to be presently eligible for a disability pension based upon the need for regular aid and attendance may be furnished an invalid lift under the provisions of 38 U.S.C. 617, notwithstanding the non-receipt of such pension by reason of the receipt of a greater disability compensation benefit.

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 1-61, January 6, 1961, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 8-91

Question Presented: During the period in which a veteran is being or will be furnished medical services in preparation for admission to a hospital, or within which he is receiving post-hospital care, pursuant to Public Law 86-639, as implemented by Circular 10-209, and while he is neither at a VA facility nor traveling to or from such facility under prior authorization and at VA expense: a. If the veteran dies during such period, is VA responsible for the cost of burial, funeral, and transportation expenses as though death occurred while the deceased was properly hospitalized by VA? b.: Is VA responsible for the cost of hospital care furnished to such veteran in a non-VA facility as a result of an emergency developing during such period?

Held: VA is not responsible for the cost of burial, funeral, and transportation expenses for a veteran's death occurring during the period in which the veteran was being or was to be furnished medical services for a non-service-connected disability in preparation for the veteran's admission to a VA hospital. Further, in this case, in an emergency, VA is not responsible for the cost of hospital care furnished to such veteran in a non-VA hospital.

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 2-61, January 12, 1961, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

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O.G.C. Precedent 9–91

Question presented: Whether, once there was an investment in U.S. Savings Bonds by VA Managers from gratuitous benefits deposited by VA in PFOP accounts, such bonds or the money redeposited in PFOP by VA from a redemption of such bonds should not be considered subject to the decedent distribution provisions of Public Law 86–146 on the premise that there was a change in the character of the gratuitous VA benefits by the act of investing the bonds.

Held: U.S. Savings Bonds in existence at the time of death of a veteran could not be said to be on deposit in a PFOP account, as only money (including checks deposited for collection) may be deposited. Also, bonds are registered in the name of the veteran and belong to the owner's estate upon his death and are subject to distribution according to Department of Treasury regulations. Op. G.C. 28–60 (O.G.C. Precedent 6–91) is reaffirmed.

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 10–61, August 4, 1961, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 10–91

Question presented: Whether there is authority for VA to pay PFOP to a veteran's widow recognized under Public Law 85–209, now covered in 38 U.S.C. 103(a).

Held: PFOP deposits may be paid to the spouse qualifying under 38 U.S.C. 103(a).

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 12–61, October 9, 1961, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 11–91

Question presented: Whether volunteers, regular and casual, may be regarded as employees of the government for various purposes.

Held: There is no distinction between regular voluntary employees and casual or occasional voluntary employees for purposes of the application of the Federal Employees Compensation Act. Also, the status of a voluntary employee is not determinative of the application of the Federal Tort Claims Act to tortious acts committed during the performance of their duties.

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 15A–62, December 31, 1962, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 12–91

Question presented: Whether injury sustained by an individual while en route to inactive duty training and adjudicated "service-connected" pursuant to 38 U.S.C. 106(d) may be the basis for reimbursement or payment of such expenses, including those incurred on the day of the accident, where the hospital and medical services were rendered before adjudication of service connection and the award of compensation.

Held: Where an individual has not acquired the necessary duty status but is deemed pursuant to 38 U.S.C. 106(d), as further implemented by 101(24), to have incurred his injury in the active service, payment or reimbursement for unauthorized hospital and medical services furnished for such injury while the individual was not in a duty status may be made, provided other requirements of VA Regulations 6140, *et seq.*, are met, without regard to the fact that adjudication of service connection occurred after the services were rendered. Where the services for such an injury were furnished on or after August 14, 1962—the date or enactment of Public Law 87–583—payment or reimbursement may be made for unauthorized hospital and medical services rendered on the day the injury was sustained, as well as subsequent days, irrespective of the fact that compensation was not payable for the times involved. By a parity or reasoning, these conclusions relate equally to situations where injuries deemed service-connected pursuant to section 106(d) are incurred while returning directly from training duty.

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 1–64, May 15, 1964, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 13–91

Question presented: Whether a veteran who has been adjudicated as eligible for increased pension under 38 U.S.C. 521(d) based on need of regular aid and attendance, but who has elected to receive a greater compensation benefit for his service-connected disabilities, may be considered to be in constructive receipt of such pension and entitled to drugs or medicines for his non-service connected disabilities.

Held: A veteran who is adjudicated as presently eligible for increased pension under 38 U.S.C. 521(d) based on need of regular aid and attendance may be furnished drugs or medicines under 38 U.S.C. 612(h), notwithstanding the non-receipt of such pension by reason of the receipt of a greater compensation benefit. Since the furnishing of drugs or medicines will usually be a continuing benefit, the veteran must meet the eligibility requirements for increased pension under 38 U.S.C. 521(d) at all times when drugs or medicines are being furnished under section 612(h).

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 3–65, June 18, 1965, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 14–91

Question presented: Whether appropriated medical care or General Post funds may be expended to provide necessary local transportation for volunteers in Government vehicles (or in commercial vehicles by contractual agreement if Government vehicles are unavailable), or to provide such volunteers with bus tickets, tokens, cash, or transportation expenses when such is necessary.

Held: Appropriated funds may be used for such purposes. Therefore, the question of whether General Post funds may be expended for the same purposes need not be addressed.

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 4–65, October 13, 1965, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 15–91

Question presented: May a VA hospital enter into a contract with a commercial firm to provide guard services?

Held: The proposal to obtain guard services by contracting with a commercial firm cannot be accomplished under the authority of section 213, title 38, U.S.C., or otherwise.

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 3–66, August 12, 1966, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 16–91

Question presented: The necessity for parental consent for surgery on a minor veteran and the applicability of State laws on this matter.

Held: In summary, there are many actions which could be done by VA personnel in exercising the inherent power of the Federal Government which, as a matter of policy, are not done. The consent for surgery on a minor veteran is one such area. By complying with State law, VA tends to avoid or minimize criticism and law suits.

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 3–70, August 19, 1970, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 17–91

Question presented: a. Whether VA can finance hemodialysis in the home for veterans whose kidney disease is either of service-connected or non-service-connected origin. b. If so, whether VA can authorize Government-owned home dialysis equipment to be installed in a community hospital for the treatment of an eligible veteran and, in exchange for the use of the hospital's facilities and staff in dialyzing the veteran, permit the hospital to dialyze non-veterans when the equipment is not being used for treatment of veterans.

Held: a. Home dialysis may be furnished under the general outpatient care program (section 612(a)) for service-connected conditions; under the post-hospital care provisions of sections 612(f) and 612(g) for non-service-connected conditions; and under the provisions of section 617 for either service-connected or non-service-connected veterans who qualify therefor. b. VA has authority to place Government-owned home dialysis units in a community hospital with the understanding that the unit may be used for treatment on non-veterans when it is not being used for veterans, pursuant to a revocable license agreement properly setting forth the limitations outlined by the Comptroller General.

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 5–70, October 2, 1970, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 18–91

Question presented: Whether the Veterans Administration may require inspection of packages being brought into a Veterans Administration facility.

Held: If the Administrator determines the inspection of packages of those entering a Veterans Administration facility will enable him to carry out his obligations and responsibilities, he has the authority to impose such a condition on those seeking admission to the facility. Such inspection may be to minimize danger to life or property or to prevent contra-indicated materials from reaching patients.

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 3–71, February 16, 1971, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 19–91

Question presented: a. Whether VA has authority to have improperly parked automobiles on hospital reservations removed. b. If so, whether VA has authority to have such vehicles impounded and retained until the towing fee is paid either to VA or to the fee contractor engaged for that purpose, assuming such an agreement is proper.

Held: VA has authority to have improperly parked automobiles removed from the reservation, where the motor vehicle regulations adopted at the station are posted so as to constitute notice to those entering. Such removal and retention may be performed by a commercial concern and may properly entail a fee.

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 6–71, May 13, 1971, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 20–91

Question presented: Whether expiration of the five year statute of limitations for submission of claims against the General Post Fund under 38 U.S.C. 5226 bars the claim of heirs of a veteran who were known to VA at the time of the death of the veteran.

Held: The five year statute of limitations for filing claims under 38 U.S.C. 5226 should not bar a claim where the VA was aware of the existence of heirs at the time of the veteran's death and did not take proper action to transfer funds to the known heirs before making deposit to credit of the General Post Fund.

Effective Date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 9–71, June 14, 1971, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 21–91

Question Presented: The extent to which the Administrator's authority to furnish outpatient dental services and treatment is limited by provisions of subsection (b) of section 612, title 38, U.S.C.

Held: The use of the word "section" in the text of subsection (b) of section 612 limits authorized outpatient dental services and treatment to those dental conditions or disabilities specifically enumerated in that subsection. In view of the long and well documented legislative hisotry of the VA dental program, such use of the word "section" and the construction placed thereon by current regulations were intended by the Congress.

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 11–71, May 3, 1971, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 22–91

Questions presented: a. Whether VA may perform an autopsy on a veteran who dies outside of the VA facility while undergoing post-hospital care under the provisions of 38 U.S.C.

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612(f)(2) when the cause of death is unknown or uncertain and the results of an autopsy may enable VA to complete its hospital records, assuming proper authorization by the next of kin is obtainable.

b. If so, may the same conclusion be applied in the case of a veteran whose post-hospital care outpatient treatment status arises from other statutory authority?

Held: a. there is authority to perform an autopsy on a veteran who dies outside a VA facility while receiving post-hospital treatment under 38 U.S.C. 612(f)(2) when the cause of death is unknown or uncertain if it is concluded that such autopsy is reasonably required for any necessary purpose of VA, including the completion of official records and advancement of medical practice and when proper authorization of the next of kin is obtained. Such authorization encompasses the furnishing of transportation of the body. If a research purpose is to be accomplished, both the transportation of the remains and the costs of autopsy are properly chargeable to the appropriation for research.

b. The conclusion in 'a', supra, is for application under similar post-hospital care outpatient treatment circumstances regardless of the source of the authority for the relationship; e.g., service-connected veterans under section 612(a), Spanish-American War or Indian wars veterans under section 612(e), and those veterans whose eligibility for medical services arises under section 612(g).

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 13–71, May 26, 1971, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 23–91

Question presented: Whether there is any prohibition to the payment of additional amounts by the veteran or his family to obtain benefits from a contract nursing home for creature comforts not considered part of the basic nursing home care provided by VA.

Held: Payment of additional amounts by the veteran or his family is permissible, with prior VA approval, for creature comforts not considered a part of the basic nursing home care provided by VA.

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 9–72, December 11, 1972, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 24–91

Question presented: Is the establishment of therapeutic communities and similar training facilities for the rehabilitation of patients with psychiatric problems or suffering from alcohol or drug abuse or for spinal cord injury patients legally permissible as part of the VA hospital care program?

Held: In view of the broad authority of the Administrator to provide a complete medical and hospital care program for veterans, the establishment of halfway houses, i.e., therapeutic communities, is legally permissible as part of the VA hospital care program.

Effective Date: March 11, 1991.

Note: This opinon was previously issued as General Counsel Opinion 5–73, August 15, 1973, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 25–91

Questions Presented: a. What is the proper and legal manner for obtaining donated cadaver kidneys? b. Has VA published a definition of "death" for this purpose? c. What is the position of VA on the status of the "cerebral or brain death" theory?

Held: The VA policy with respect to the legal and proper manner of obtaining organs for the kidney transplant program must reflect the state or local Anatomical Gift Act provisions and meet the locally accepted criteria for determining the time of the donor's death.

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 9–73, November 9, 1973, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 26–91

Question Presented: Is it mandatory that the report of the Advisory Committee on Cemeteries and Memorials be made directly to the Congress simultaneously with a report to the Administrator, or must the report be submitted to the Administrator who, in turn, will forward it to the Congress with his recommendations?

Held: The language in 38 U.S.C. 1001 requiring the Committee to make periodic reports and recommendations might be literally interpreted as requiring such reports and recommendations to be submitted directly to the Congress. However, various provisions of the Federal Advisory Committee Act clearly show a different intent on the part of the Congress with respect to the functions and authority of Advisory Committees. The Congress has in this legislation said that (a) The function of an advisory committee is advisory only and (b) all matters under consideration should be determined in accordance with the law administered by the appropriate executive official. There is only one way the Administrator, the responsible executive official, can determine all matters under consideration by the Committee in accordance with the law. He must receive, for transmission to the Congress, the recommendations and report of the Committee, and transmit same with his determinations with respect thereto. It is only in this manner that he can assure compliance with the provisions of Pub. L. 92–463 and Executive Order 11686, as implemented by OMB Circular No. A–63 and MP–1, Part 1, Chapter 12.

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 4–74, April 10, 1974, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 27–91

Question Presented: The proper interpretation and application of 38 U.S.C. 210(c)(3)(A) which authorizes the Administrator to provide equitable relief to any person who suffers a loss on account of an erroneous determination by VA that someone was entitled to benefits when, in fact, he was not so entitled.

Held: When a case arises involving section 210(c)(3)(A) the following determinations must be made in order to properly recommend to the Administrator that relief be granted: (a) That an erroneous determination as to eligibility for benefits was made by the VA; (b) that an individual has acted to his deteriment based on the erroneous determination; (c) that the individual who has acted to his detriment was not aware that the determination of eligibility was made in error; and (d) the extent of the loss suffered by the individual and the remedy to be afforded.

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 8–74, May 20, 1974, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 28–91

Question Presented: May an otherwise eligible veteran be furnished drugs and medicines by the VA while he or she is a resident of the State Veterans Home or should he or she look to that institution for the provisions of these needed items?

Held: VA may furnish "very unusual" or "expensive" drugs and medicines to or on behalf of any eligible veteran in a State Home, provided they are not within the scope of medical services normally required to be provided by the Home, and provided further that there is no duplication (i.e., costs incident to the provision of such drugs and medicines are not included in the computation of the per capita costs). The determination of what is "very unusual" or "expensive" is for administrative resolution by the Department of Medicine and Surgery, keeping in mind the dual responsibilities of the States and the Federal Government.

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 14–74, July 16, 1974, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 29–91

Question Presented: Does VA have authority to waive the recapture provisions of 38 U.S.C. 5036, when State Home nursing home care units constructed with grant funds provided by VA pursuant to subchapter III of chapter 81, title 38, U.S.C., are utilized for a different level of care?

Held: The congressional intent to assist States in the construction of nursing home care facilities appears unmistakable. We find nothing in the legislative history of Public Law 88–450, which introduced the subchapter in question, or in the general rules of statutory construction, from which authority to waive the recapture provisions can be deduced. However commendable it might be for the State of Nebraska to make a higher level of care available to the residents of the Home, we are of the opinion that there is no authority for VA to waive the recapture provisions.

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 15–74, July 22, 1974, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 30–91

Question presented: Does the mathematical limitation contained in 38 U.S.C. 601(4)(C)(iii) apply to the Commonwealth of Puerto Rico?.

Held: The mathematical limitation on private hospital care of veterans residing in a State, Territory, Commonwealth or possession of the U.S. as provided under 38 U.S.C. 601(4)(C)(iii) does not apply to Puerto Rico. This subsection applies only to the noncontiguous States, Alaska and Hawaii. The expiration date of clause (iii) applies to all noncontiguous lands (including territories and Puerto Rico) which are a part of, or controlled by, the U.S.

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Council Opinion 4–75, October 30, 1974, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 31–91

Question presented: Is it legally permissible to allow participation of outpatients in the Incentive Therapy program?

Held: The term "patients" may be read generically so that outpatients as well as inpatients may be considered within the scope of the provisions of 38 U.S.C. 618 for participation in the Incentive Therapy program.

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 20–75, July 18, 1975, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 32–91

Question presented: What guidelines should be established for the furnishing of rehabilitative or therapeutic devices which might be construed as temporary home improvements?

Held: The home health services language cannot be construed to authorize something which can be considered a personal comfort item that would make life outside a hospital more acceptable, but which could not be considered necessary for medical treatment. The determination of what is reasonable and necessary for treatment is a question of medical fact.

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 22–75, June 10, 1975, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 33–91

Question presented: Whether VA Hospital Police should refrain from issuing United States Court Violation Notices to juvenile offenders for violations of VA Regulation 218, or, in the alternative, whether juveniles should continue to be cited until the current practices are challenged.

Held: In any State where jurisdiction over VA property is concurrent or proprietorial in nature, the provisions of the Juvenile Justice and Delinquency Prevention Act require that cases involving violation of Federal law by juveniles (including, violations of VA Regulations 218) be presented to the appropriate local prosecutor in order that he may accept or relinquish prosecutorial responsibilities. This will include both arrest and citation cases, and contact should be made with the appropriate United States Attorney to explore the question of whether he or the agency will contact the local prosecutor to discuss the matter.

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 23–75, September 11, 1975, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 34–91

Question presented: Under the current law, it is possible to provide modification of utility systems for home dialysis patients?

Held: The law does allow for modification of utility systems in a veteran's home, when such modifications are deemed essential to, and are an integral part of, the home

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dialysis treatment, and failure to make the necessary treatment available in the home would result in the readmission of the veteran to a VA hospital. The basic criteria which must be considered in determining the extent of these modifications are set forth in 38 U.S.C. 601(6); namely, that it would result in "the effective and economical treatment of a disability of a veteran.".

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 28-75, August 20, 1975, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 35-91

Question presented: Does care at a contract nursing home under VA auspices constitute care by VA within the meaning of 38 U.S.C. 627, so as to allow readmission to a VA hospital from the contract nursing home without regard to current eligibility criteria?

Held: Care at a contract nursing home does constitute care by VA and, therefore, continued treatment in the case of this veteran is authorized both under the current statutory savings provision (38 U.S.C. 627), and under precedents based on the principle of *res judicata*, established prior to the enactment of this provision of law. Under the *res judicata* principle, protected status depends on continuous treatment and would be terminated by a break in treatment.

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 8-76, May 10, 1976, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 36-91

Question presented: Does the present language of 38 U.S.C. 3202 enable VA to accept an application for an automobile authorized to an eligible veteran who is incompetent and where the application is signed by a spouse as payee?

Held: A spouse-payee may file an application for an automobile on behalf of an incompetent veteran and such an application may be properly accepted and processed.

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 9-76, August 25, 1975, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 37-91

Question presented: What is the responsibility and possible liability of a hospital to return a veteran patient who has left the hospital grounds without permission to visit a nearby establishment, and who has become intoxicated and caused such a disturbance that the hospital has been called by the proprietor who requested that VA personnel be sent to return the patient to the hospital?

Held: a. The patient's rights are violated if force is used or the patient is returned to the hospital against his will.

b. Unless the patient is incompetent or under commitment to the hospital there is no duty or responsibility upon the hospital to return the veteran patient.

c. VA is not liable for damages caused by a patient to the property of others.

d. VA has no liability or responsibility to the patient for injuries suffered by the patient as the result of the negligent act of a third party.

e. VA would not be liable for injuries suffered by the patient while off the hospital premises in crossing the street or in any other manner not caused by a VA employee. (However, if any action can be taken to alleviate a dangerous condition, needless to say, such action should be taken.)

f. VA would not be liable for injuries caused to a third party by the negligent act of the veteran.

g. While suit could be brought against the government for acts of assault, battery, false imprisonment, or false arrest by any investigative or law enforcement officer of the United States who is empowered by the law to make arrests, and while personal liability from such a suit would be protected under the provisions of Public Law 93-253, such provisions are not applicable under the circumstances described since a VA Hospital Police Officer is not empowered to make arrests off VA premises. Only where the arrest took place on VA premises would the forgoing come into consideration.

h. Where a VA Hospital Police Officer is acting in a capacity which can be considered to make him a member of the medical care team and is sued by the patient, the personal liability immunity provisions of 38 U.S.C. 4116 would be for consideration.

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 11-76, February 5, 1976, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 38-91

Question presented: May the Veterans Administration extend financial assistance to the Virgin Islands for purposes of construction of a State home facility to furnish nursing home care to eligible veterans?

Held: The Virgin Islands is a U.S. "possession" within the meaning of 38 U.S.C. 5031(b), and, accordingly, there is no authority for VA to extend financial assistance to construct a State home facility to furnish nursing home care.

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 3-77, October 12, 1976, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 39-91

Question presented: a. Is there authority for providing space in an existing or planned VA hospital for the operation of a bank?

b. If so, what procedures should be employed to accomplish the provision of such space?

Held: a. Space may be lawfully provided in an existing or planned VA hospital for the operation of a bank.

b. If such space is to be provided, it must be accomplished by the execution of a formal lease and by formal, competitive advertising in the absence of a legal justification for procurement by negotiation under Part 1-3 of the Federal Procurement Regulations.

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 8-77, April 4, 1977, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 40-91

Question presented: What is VA's authority for application of M-1, Part 1, chapter 16, ¶ 16.20—authority to limit outpatient services afforded discharged members of allied armed forces under 38 U.S.C. 109 so that nonemergent treatment would be rendered to the extent that it did not interfere with the

treatment or service provided VA beneficiaries?

Held: That Administrator's primary responsibility to veterans may not be supplanted by the provision of nonemergent outpatient treatment to allied beneficiaries to the extent that it interferes with services provided VA beneficiaries.

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 5-79, October 29, 1976, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 41-91

Question presented: Is 38 U.S.C. 621(h) the sole legal authority for providing a veteran with drugs and medicines prescribed by the veteran's private physician, when VA has no involvement, fee basis or otherwise, in the treatment of the veteran?

Held: 38 U.S.C. 621(h) is the exclusive authority for providing a veteran with drugs and medicines prescribed by the veteran's private physician, when VA has no involvement, fee basis or otherwise, in the treatment of the veteran.

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 11-83, October 11, 1983, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 42-91

Questions presented: a. Is there legal authority to allow employees to use, for their own health benefit, equipment paid for from the medical care appropriation and intended for patient use? b. What, if any, liability is there for employee use of such equipment during non-duty status times such as before and after work or lunch breaks?

Held: a. There is ample authority for the joint use by VA employees and patients of equipment paid for by medical care appropriations in order to implement a fitness program pursuant to 5 U.S.C. 7901.

b. The liability of individuals is extremely limited and should not act as a deterrent to use of the facilities. Under most foreseeable circumstances, the liability of the government should be limited to that which is permitted under FECA. 5 U.S.C. 8147 provides for Agency contribution to the employees compensation fund based upon actual cost assessed by the fund. Pursuant to section 8147 "each agency * * * shall include in its annual budget estimates for the fiscal year beginning on the next calendar year a request for an appropriation in an amount equal to the costs." The liability costs of the fitness programs can be contained by careful management directed at preventing employee injury.

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 2-85, March 5, 1985, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 43-91

Question presented: When VA-loaned medical or prosthetic equipment is damaged or destroyed, does the Agency have any claim against the veteran, or may VA refuse to furnish replacement equipment?

Held: By using mandatory language "shall provide" rather than the permissive "may furnish" used in sections 612 and 617, Congress did not grant the Administrator the same wide discretion to determine that an authorized benefit will not be provided at all. However, by adding the language, "[I]n accordance with regulations which the Administrator shall prescribe," we believe the Administrator is given wide latitude to place conditions on provision of the benefit. Accordingly, the Administrator may promulgate regulations limiting provision of equipment under section 1902(c) to only those veterans who do not abuse the system by negligently or willfully damaging or destroying equipment loaned to them.

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 6-85, September 5, 1985, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 44-91

Question presented: Whether it is proper for a VA social worker to advise the spouse of an incompetent beneficiary, who is to be placed in a nursing home, to have the spouse appointed guardian of the beneficiary and then obtain a court order to utilize all income, include veterans' benefits, for such spouse's own support so as to shield the income from being counted for Medicaid eligibility purposes.

Held: Even though DM&S is vitally interested in the financial resources available to meet the needs of an incompetent beneficiary upon de-institutionalization from a VA facility, the authority and responsibility for payee selection, as well as the administrative oversight of the management of funds by the fiduciary recognized or appointed, rest primarily with the VSO's and secondarily with the District Counsels. Each case must be evaluated on its own merits and, while VA must make every effort to lawfully maximize all resources available to meet the needs of beneficiaries and their dependents, it must not encourage the undermining of standards set by other agencies. We suggest that social workers and other DM&S employees involved in planning for an incompetent beneficiary's care upon release from a VA institution provide pertinent information and recommendations to the VSO, or designee, regarding payment arrangements needed.

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 1-85, October 24, 1985, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 45-91

Question presented: Under what circumstances, if any, does 38 U.S.C. 1902(a) permit payment of the automobile allowance where an automobile is leased, rather than sold, to a person eligible for the benefit?

Held: The transfer of possession of a vehicle under a contract amounting to a lease does not qualify for the automobile allowance under 38 U.S.C. 1902(a).

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 2-86, November 25, 1985, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 46-91

Question presented: Under what circumstances domiciliary patients may be required to submit to blood, breath or urine testing for the detection of drug or alcohol use? The issue arises as a result of the intention to require domiciliary

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patients participating in drug abuse treatment programs to execute a written contract prior to entering the domiciliary program to permit such testing at the request of a staff member. The intention to require domiciliary patients not in abuse programs to submit to testing, irrespective of any contract, is also at issue.

Held: It is our opinion that testing undertaken as part of the patient's treatment or rehabilitation, to include periodic analyses of blood or urine specimens as part of a required physical examination, does not violate protections afforded by the Fourth Amendment. Medical testing associated with monitoring a patient's medical progress is clearly integral to provision of medical care; thus conducting periodic testing as part of examinations furnished domiciliary members would appear to be perfectly reasonable. Secondly, collection and testing on a case-by-case basis where facts give rise to a reasonable suspicion that an individual is under the influence of, or abusing, alcohol or drugs would not violate Fourth Amendment protections. Presentation of a domiciliary patient demonstrating characteristically erratic behavior may well require that the individual be tested to preserve institutional security by detecting and preventing alcohol and drug abuse as well to determine whether an individual patient requires treatment. Such a response may be necessary to protect the health and safety of all those participating in the program. We recommend the formulation of an administrative plan or guidelines to govern the initiation of case-by-case substance abuse testing and to assure its reasonableness. We also recommend that the domiciliary give appropriate notice to the patient that he may be required to submit to testing and possible sanctions associated with noncompliance or positive test findings. Finally, we do not envision a basis under which random, generalized substance abuse testing of domiciliary patients would be permissible.

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 7–86, March 10, 1986, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 47–91

Questions presented: a. Whether VA facilities in Massachusetts must follow *Rogers* v. *Commissioner of Mental Health Department*, 458 N.E. 2d 308 (S. J. Ct. Mass. 1983) in administering psychotropic drugs to incompetent patients. b. Whether VA should as a matter of comity follow State law in such cases. c. If not, whether current VA procedures are sufficient to meet the constitutional requirements for administering such drugs to patients who are incapable of making decisions regarding use of such drugs. d. If not, what options are available to the Agency to correct those deficiencies, particularly in Massachusetts? e. What are the implications under the Federal Tort Claims Act (FTCA) in determining not to follow State law in Administering such drugs?

Held: VA has no obligation to follow State law regarding obtaining consent to administer psychotropic drugs. Current VA procedures may not, however, be sufficient to meet due process requirements for administering such drugs to involuntarily committed patients. These patients have qualified constitutional right to refuse treatment with such drugs which requires that, except in an emergency, the patient be provided certain procedural protections to determine whether involuntary treatment should proceed. We recommend establishing interim guidelines pending agency-wide action on this issue. These guidelines should minimize or eliminate the risk that the Agency or its employees will be found liable for improperly administering psychotropic drugs. VA's interest in ensuring uniformity in the administration of such drugs through procedures that accommodate those needs do not warrant following State law agency-wide as a matter of comity. However, given the facts here, we have no objection to hospitals in Massachusetts following State procedures pending development of agency-wide procedures.

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 9–86, August 1, 1985, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 48–91

Question presented: To what extent is the Director, VAMC or other VAMC personnel legally liable for statements made responding to reference inquiries about VAMC staff members presented by local community hospitals?

Held: VA must ensure that any information released to the private hospital is accurate, complete, timely, and relevant, and that no identifying data of patients or information from a SERP visit report or investigation is released. Further, the Director of the VAMC Amarillo, Texas would be absolutely immune from a lawsuit alleging libel thereby defeating a lawsuit at the outset. In order to ensure that the director can successfully assess the defense of qualified immunity in the event that a constitutional tort is alleged, we suggest that the physician be notified of the information to be released, and be given a meaningful opportunity to respond to the information orally or in writing before the information is released to a private hospital.

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 3–87, December 2, 1986, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

O.G.C. Precedent 49–91

Questions presented: a. May VA expend funds for a program to allow patients to purchase and prepare food, and then serve each other meals? b. If so, may VA charge the patients for the meals they receive as part of the program? c. May donations be used to help fund the rehabilitation program?

Held: a. A VA medical center may conduct a program to allow veterans to purchase food and prepare and serve each other meals as a form of medical (but not vocational) rehabilitation. b. The center may not, however, charge veterans for the meals consumed. c. Donations may be used to help fund such a program.

Effective date: March 11, 1991.

Note: This opinion was previously issued as General Counsel Opinion 6–86, July 20, 1988, and is being reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text in the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.

Dated: April 9, 1991.

Raoul L. Carroll,

General Counsel.

[FR Doc. 91–12958 Filed 5–31–91; 8:45 am]

BILLING CODE 8320–01–M

Privacy Act of 1974; Computer Matching Program Between the Department of Veterans Affairs and the United States Office of Personnel Management

AGENCY: Department of Veterans Affairs.

ACTION: Notice of computer matching program.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs proposes to conduct a computer matching program with the U.S. Office of Personnel Management. The purpose of the program is to identify and locate U.S. Government active and retired civilian employees who owe delinquent debts to the Federal Government under certain programs administered by the Department of Veterans Affairs. Once identified and located, the debtors may become subject to involuntary offset of their pay under Public Law 97–365.

DATES: Written comments must be received on or before July 3, 1991. Comments will be available for public inspection until July 15, 1991.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding the proposal to conduct the matching program to the Secretary of Veterans Affairs (217A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 at the above address, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except holidays, until July 15, 1991.

FOR FURTHER INFORMATION CONTACT: Daniel Osendorf, Director, Debt Management Staff (20A6), Department of Veterans Affairs, (202) 233–2853.

SUPPLEMENTARY INFORMATION: The Department of Veterans Affairs and the U.S. Office of Personnel Management have concluded an agreement to conduct a computer matching program for the purpose stated below. This notice meets publication requirements under subsection (e)(12) of the Privacy Act of 1974 (5 U.S.C. 552a, as amended by Pub. L. 100–503 and 101–508). Set forth below is a description of the matching program as required by the "Final Guidance Interpreting the Provisions of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988", issued by the Office of Management and Budget and published at 54 FR 25818 (June 19, 1989).

Report of Computer Matching Program Between the Department of Veterans Affairs and the U.S. Office of Personnel Management for Debt Collection

A. Participating Agencies

The Department of Veterans Affairs is the recipient agency and will perform the computer match with records provided by the U.S. Office of Personnel Management, the source agency.

B. Purpose of the Match

This match will permit the Department of Veterans Affairs to identify and locate active and retired civilian employees of the U.S. Government who owe delinquent debts to the Federal Government as the result of their participation in certain programs administered by the Department of Veterans Affairs. Once identified and located, these debtors' pay or retirement benefits may become subject to offset for collection of their debts under the provisions of the Debt Collection Act of 1982 when voluntary payments are not forthcoming.

C. Authority for Conducting the Matching Program

The authority for undertaking this match is found in 5 U.S.C. 5514a (Debt Collection Act of 1982) and 38 U.S.C. 3006 which authorizes the exchange of information between the Department of Veterans Affairs and other Federal agencies.

D. Categories of Individuals Involved and Identification of Records to be Matched

1. *U.S. Office of Personnel Management Systems:* (1) OPM/CENTRAL-1, Civil Service Retirement and Insurance Records, containing records of approximately 1.5 million Federal civilian retirees. This system of records appears at 55 FR 3816 (February 5, 1990). The exchange of data in this matching program is consistent with routine use "ff" for this system of records. (2) OPM/GOVT-1, General Personnel Records, containing records of approximately 2.2 million current Federal civilian employees. This system of records appears at 55 FR 3838 (February 5, 1990). The exchange of data under this matching program is consistent with routine use "hh" for this system.

2. *Department of Veterans Affairs Systems:* (1) Compensation, Pension, Education and Rehabilitation Records-VA, 58VA21/22/28, and (2) Loan Guaranty Home, Condominium, and Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records and Vendee Loan Applicant Records, 55VA26. 58VA21/22/28 appears at page 918 of the document entitled Privacy Act Issuances, 1989 Comp. Volume II, and has been amended at 55 FR 28508 (July 11, 1990), 55 FR 42540 (October 19, 1990) and 56 FR 15668 (April 17, 1991). 55VA26 appears at page 914 of the document entitled Privacy Act Issuances, 1989 Comp., Volume II, and has been amended at 56 FR 2064 (January 18, 1991) and 56 FR 15666 (April 17, 1991). The exchange of data under this matching program is consistent with routine uses 9 and 12 of 58VA21/22/28 and routine use 19 of 55VA26. The Department of Veterans Affairs records used in this match are limited to individuals who owe delinquent debts to the Federal Government as a result of their participation in programs administered by the The Department of Veterans Affairs. Approximately 500,000 persons fall within this category. The records actually used to perform the match are maintained in the Centralized Accounts Receivable System (CARS). CARS records are a subset of those found in the Privacy Act system of records 58VA21/22/28. In some instances, data in an individual's record in the Privacy Act system of records 58VA21/22/28 include certain data extracted from the same individual's record maintained under 55VA26. This would occur, for instance, where an individual has a delinquent debt as the result of his or her participation in the Department of Veterans Affairs loan guaranty program.

E. Inclusive Dates of the Matching Program

The matching program is expected to begin on or about July 1, 1991, and continue in effect for 18 months. Matching activity will begin no sooner than 30 days after the publication of this notice in the **Federal Register**, or 30 days after the transmittal of this notice and a copy of the agreement to Congress and the Office of Management and Budget, whichever is later. The agreement governing the matching program between VA and OPM and, thus, the matching program, may be renewed for an additional 12 months with the mutual approval of the Data Integrity Boards of each agency. Such renewal must occur within three months prior to the expiration of the 18-month period set forth above and under the terms set forth in 5 U.S.C. 552a(o)(2)(D).

Dated: May 23, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 91–12993 Filed 5–31–91; 8:45 am]

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Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

29 CFR Part 578

Minimum Wage and Overtime Violations—Civil Money Penalties; Proposed Rule and Request for Comments

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DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Part 578

Minimum Wage and Overtime Violations—Civil Money Penalties

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: This document provides proposed regulations for the implementation of the civil money penalty provisions of the 1989 Amendments to the Fair Labor Standards Act of 1938 (FLSA), which were signed into law on November 17, 1989. Effective that date any employer employing individuals who are covered by the FLSA is subject to a civil money penalty up to $1,000 for each repeated or willful violation of the minimum wage or overtime provisions of the Act.

DATES: Comments are due on or before August 2, 1991.

ADDRESSES: Submit written comments to John R. Fraser, Acting Administrator, Wage and Hour Division, ESA, U.S. Department of Labor, room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped post card.

FOR FURTHER INFORMATION CONTACT: John R. Fraser, Acting Administrator, Wage and Hour Division, U.S. Department of Labor, room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523–8305. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background

The Fair Labor Standards Amendments of 1989 were enacted into law on November 17, 1989. Among other provisions, the Amendments amend section 16(e) of the Act, which provided for assessment of civil money penalties for violations of the child labor provisions, to make any person who repeatedly or willfully violates section 6 (minimum wage) or section 7 (overtime) of the Act subject to a civil money penalty not to exceed $1,000 for each such violation. These regulations define certain statutory terms and set forth the criteria to be used by the Administrator for assessing the penalties.

Regulations setting forth procedures for assessment of penalties and exceptions thereto are set forth at 29 CFR part 580, published separately in the Federal Register this date.

II. Paperwork Reduction Act

There are no reporting or recordkeeping requirements contained in this regulation.

III. Summary of Rule

In order to apply the civil money penalty provisions of the 1989 Amendments, the rule defines the terms "repeated" and "willful" and sets forth the criteria to be used in the determination of the amount of the penalties.

A "repeated" violation is defined as occurring when there has been a prior finding of a section 6 or section 7 violation, or both, by the Administrator or by a court or other tribunal with authority to make such a finding, that the employer has violated section 6 or section 7, or both. Such a prior violation is deemed to be established where the employer has failed to file an appeal of the finding of the court or other tribunal, or where any appeal filed has been concluded.

In the case of a finding by the Administrator, issuance of a Form WH–56 notice of back wages due or other written finding by a Wage-Hour official authorized by the Administrator to issue such finding conclusively establishes such violation for purposes of these civil money penalty provisions unless the employer notifies the Administrator in writing that the claim is disputed, including the specific grounds for disputing the claim, within 30 days of receipt of the finding. With respect to investigations conducted prior to the effective date of these regulations, the employer must file such a response within 30 days after receipt of any written notification of the violation which occurs after the effective date of these regulations, or in response to the assessment letter issued as a result of a subsequent finding of a violation, whichever occurs first.

At any hearing on the civil money penalty assessment, the finding by the Administrator or authorized Wage-Hour official shall be deemed to constitute a *prima facie* case that the employer previously violated the Act. The employer's defense regarding the prior violation will be limited to those specific defenses raised in the response made after notification of that violation, and it shall be the burden of the employer to establish the validity of the defense.

The definition of a "willful" violation is taken from the case of *McLaughlin* v. *Richard Shoe*, 486 U.S. 128 (1988), in which the Supreme Court defined a "willful" violation of the FLSA for purposes of the 3-year statute of limitations for recovery of back wages contained in section 6 of the Portal-to-Portal Act. A violation is considered "willful" when the employer knew that its conduct was prohibited by the Act or showed reckless disregard or deliberate indifference for the requirements of the Act. A violation shall be deemed to be willful, notwithstanding an employer's belief that the conduct is in compliance with the law, whenever the employer's actions are at variance with previous advice by the Administrator, or a Wage-Hour official duly authorized to perform such function, such as where the employer was advised during the course of an investigation of similar or other conduct that the conduct in question constitutes a violation of the Act, where the conduct is at variance with conduct which the employer was advised was required to comply with the Act, or where the employer relies on a belief that its employees are not covered by the Act, contrary to advice by Wage-Hour. In other circumstances, all of the facts and circumstances regarding the conduct shall be taken into consideration in determining whether the violation was willful.

In determining the amount of the penalties the Administrator will consider the relevant facts and circumstances, including various factors which may serve, where appropriate, to mitigate the severity of the penalties. The statute (section 16(e)) requires that in determining the amount of the penalty the Department consider the size of the employer and the gravity of the violation. In addition, under this rule the Administrator may consider efforts by the employer in good faith to comply with the Act; whether the violations resulted from a bona fide legal dispute; previous history of violations, including whether the employer is subject to an injunction against such violations; the employer's commitment to future compliance; interval between violations; number of employees affected; and any pattern of violations.

Executive Order 12291

This proposed rule is not considered to be a "major rule" within the meaning of Executive Order 12291, in that it is not likely to result in (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, no regulatory impact analysis is required.

During the most recently completed fiscal year (FY 1990), the Wage and Hour Division conducted reinvestigations in which violations were discovered of 1,497 employers. A reinvestigation is reentry into the same establishment that was previously investigated within the past twelve months. The Wage and Hour Division has no experiential data on which to estimate the anticipated level of CMPs, however, preliminary estimates based on other regulations providing CMPs indicate that an annual assessment of approximately $750,000 can be expected.

Regulatory Flexibility Analysis

Only persons who have repeatedly or willfully violated the minimum wage and overtime requirements of the Act will be affected by this rule. Furthermore, penalties will be assessed only in the amount of up to $1000 for each violation, and the assessment will take into consideration the size of the employer's business. Accordingly, the Department has determined that the proposed regulation will not have a significant economic impact on a substantial number of small entities. Therefore no regulatory flexibility analysis is required. The Secretary has certified to this effect to the Chief Counsel for Advocacy of the Small Business Administration.

This document was prepared under the direction and control of John R. Fraser, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 578

Employment, Labor, Law enforcement, Penalties.

Signed at Washington, DC on this 23d day of May, 1991.

Lynn Martin,

Secretary of Labor.

Samuel D. Walker,

Acting Assistant Secretary for Employment Standards.

John R. Fraser,

Acting Administrator, Wage and Hour Division.

Accordingly, title 29, chapter V, subchapter A, of the Code of Federal Regulations is proposed to be amended by adding a new part 578 to read as follows:

PART 578—MINIMUM WAGE AND OVERTIME VIOLATIONS—CIVIL MONEY PENALTIES

Sec.
578.1 Purpose and scope of regulations
578.2 Definitions
578.3 Violations for which penalty may be assessed
578.4 Determination of penalty

Authority: Sec. 9, Public Law 101–157, 103 Stat. 938; sec. 3103, Public Law 101–508; 29 U.S.C. 216(e).

§ 578.1 Purpose and scope of regulations.

Section 9 of the Fair Labor Standards Amendments of 1989 amended section 16(e) of the Act to subject any person who repeatedly or willfully violates section 6 or section 7 of the Act to a civil money penalty not to exceed $1,000 for each such violation. This part defines terms necessary for administration of the civil money penalty provisions, describes the violations for which a penalty may be imposed, and describes criteria for determining the amount of penalty to be assessed.

§ 578.2 Definitions.

(a) *Act* means the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060 as amended; 29 U.S.C. 201, et seq.);

(b) *Administrator* means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, and includes any official of the Wage and Hour Division who is authorozed by the Administrator to perform any of the functions of the Administrator under this part.

(c) *Person* includes any individual, partnership, corporation, association, business trust, legal representative, or organized group of persons.

§ 578.3 Violations for which penalty may be assessed.

(a) A penalty of up to $1,000 per violation may be assessed against any person who repeatedly or willfully violates section 6 (minimum wage) or section 7 (overtime) of the Act. The amount of the penalty shall be determined by application of the criteria in § 578.4.

(b) Repeated violations. (1) An employer's violation of section 6 or section 7 of the Act shall be deemed to be "repeated" for purposes of this section when there has been, with respect to a violation occurring prior to the violation for which the assessment is issued, a decision or a finding by the Administrator or by a court, administrative tribunal, or other tribunal authorized to make such determination, that the employer has violated section 6 or 7 of the Act, except as follows:

(i) Where the Administrator or an official authorized by the Administrator has issued a finding of violations (through issuance of a Form WH–56, "Summary of Unpaid Wages," or otherwise), an employer who may later wish to dispute the violation so found in any proceeding concerning the assessment of civil money penalties for a subsequent violation of section 6 or 7 of the Act, must file a response to the finding, which must be received by the Administrator not later than 30 days from the date of receipt of the finding. The response shall specify in detail the factual and legal matters in dispute, including the specific reasons or bases for the employer's dispute of such finding, and any affirmative defenses. A mere general denial of the violations shall not be sufficient to permit the contest of any of the factual or legal bases of the finding. Where service by certified mail is not accepted by the employer, the finding shall be deemed received on the date of attempted delivery.

(ii) In the case of investigations completed prior to [insert date 30 days after publication of final rule in the **Federal Register**], the response referred to in paragraph (b)(1)(i) must be received within 30 days of receipt of any written notification of the violation served after such date, or within 15 days of receipt of the notice of assessment of civil money penalties for the subsequent violation, whichever occurs first.

(iii) Where a court or other tribunal has made a finding that an employer has violated section 6 or 7 of the Act, the finding will not be deemed established if any appeal therefrom which has been timely filed is pending before a court or other tribunal with jurisdiction to hear the appeal, or if the finding has been set aside or reversed by such appellate tribunal. Notwithstanding the fact that such an appeal concerning alleged violations of the Act is pending, if the Administrator issues a finding that the employer has committed the violations at issue in the court or other proceeding, and the employer wishes to dispute the violation in any civil money penalty proceeding regarding subsequent violations, the employer must follow the procedures set forth in paragraph (b)(1)(i) or (ii) of this section.

(2) Where the employer has filed a timely response to a finding by the Administrator pursuant to paragraph (b)(1)(i), (ii) or (iii) of this section, the finding of the Administrator or authorized Wage-Hour official shall be deemed to constitute a *prima facie* case

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that the previous violation has occurred. The employer's defense regarding the previous violation shall be limited to those specific reasons for disputing the finding and defenses raised in the response to the finding, and it shall be the employer's burden to establish the validity of the employer's assertions and defenses.

(c) Willful violations. (1) An employer's violation of section 6 or section 7 of the Act shall be deemed to be "willful" when the employer knew that its conduct was prohibited by the Act or showed reckless disregard or deliberate indifference for the requirements of the Act. Except as set forth in paragraph (C)(2) of this section, all of the facts and circumstances surrounding the violation shall be taken into account in determining whether a violation was willful.

(2) A violation shall be deemed to be willful if the employer's actions are at variance with previous advice by the Administrator, or where, as a result of previous advice of the Administrator, the employer was on notice that it should have inquired further into whether its conduct was in compliance with the Act.

§ 578.4 Determination of penalty.

(a) In determining the amount of penalty to be assessed for any repeated or willful violation of section 6 or section 7 of the Act, the Administrator shall consider the seriousness of the violations and the size of the employer's business.

(b) Where appropriate, the Administrator may also consider other relevant factors in assessment of the penalty, including but not limited to the following:

(1) Whether the employer has made efforts in good faith to comply with the provisions of the Act and this part;

(2) The employer's explanation for the violations, including whether the violations were the result of a bona fide dispute of doubtful legal certainty;

(3) The previous history of violations, including whether the employer is subject to injunction against violations of the Act;

(4) The employer's commitment to future compliance;

(5) The interval between violations;

(6) The number of employees affected; and

(7) Whether there is any pattern to the violations.

[FR Doc. 91-12797 Filed 5-31-91; 8:45 am]
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federal register

Monday
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Part III

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Missing Children's Assistance Act; Proposed Program Priorities; Notice

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DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Missing Children's Assistance Act; Proposed Program Priorities

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of Proposed FY 1991 Research, Demonstration, and Service Program Priorities and Merit Selection Criteria under the Missing Children's Assistance Act.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing, for public comment, a Notice of FY 1991 proposed program priorities for making grants and contracts under section 405 of Juvenile Justice and Delinquency Prevention Act of 1974, as amended (the Act) (42 U.S.C. 5775).

DATES: Comments are due by 5 p.m. E.D.T. August 2, 1991.

ADDRESSES: Send comments to Administrator, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531 (202) 307-5911.

FOR FURTHER INFORMATION CONTACT: Patrick Meacham, Special Assistant to the Administrator, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531 (202) 307-5911.

SUPPLEMENTARY INFORMATION: Responsibility for establishing annual research, demonstration, and service program priorities and criteria for making grants and contracts pursuant to section 405 of the Juvenile Justice and Delinquency Prevention Act, as amended, rests with the Administrator of the Office of Juvenile Justice and Delinquency Prevention. For FY 1991, nine new programs and four continuation programs will constitute all proposed section 405 priority funding areas. The Administrator hereby announces these proposed priorities, specifying the criteria to be applied in their review, and inviting public comment on them for 60 days.

During FY 1991 additional new programs, or continuations of currently funded programs, may also be funded under sections 404 and 408 of the Act. Solicitations to fund all new Missing Children (title IV) assistance awards in amounts exceeding $50,000 will be announced in the **Federal Register** and competitively awarded. Described below are discretionary programs being proposed for funding under section 405 of the Act followed by a listing of continuation programs currently funded under section 405 proposed as eligible to receive continuation funding during their currently existing project periods. After consideration of public comments received and the publication of final section 405 program priorities, full program announcements further detailing program strategies and application requirements will be published in the **Federal Register** inviting applications for those programs referenced as "new programs."

New Programs

Grants and Cooperative Agreements To Support Public or Private Nonprofit Missing Children's Agencies Service Activities

This program will provide grants for up to 2 years in amounts ranging from $25,000–$50,000 to support implementation of new or enhanced services to be provided by nonprofit agencies, public agencies or combinations thereof in the following areas:

- Educating parents, children, and community agencies and organizations in ways to prevent the abduction and sexual exploitation of children;
- Providing information to assist in the location and return of missing children;
- Aiding communities in the collection of materials that would be useful to parents in assisting others in the identification of missing children;
- Assisting missing children and their families following the recovery of such children;
- Conducting activities to reduce the likelihood that individuals under 18 years of age will be removed from the control of their legal custodians without such custodian's consent; and
- Providing services that minimize the negative impact of judicial and law enforcement procedures on children who are victims of abuse or sexual exploitation.

Up to $600,000 will be available to support up to 24 assistance awards under this program initiative. Applications will be screened by a panel in the order received, and those applications receiving a score of 65 or higher will be eligible for funding consideration, providing that necessary programmatic and budgetary revisions are successfully negotiated.

All applications received will be rated on the extent to which they meet the following criteria:

(1) The problem to be addressed by the project is clearly stated. The applicant must demonstrate an understanding of the extent and nature of the problem of missing and exploited children. (25 points)

(2) The objectives of the proposed project are clearly defined. (20 points)

(3) The project design is sound and contains program elements directly linked to the prevention and recovery of missing children and/or the provision of services to such children and their families. (25 points)

(4) The project management structure is adequate for the successful conduct of the project. (15 points)

(5) Organizational capability is demonstrated at a level sufficient to support the project successfully. The applicant should provide evidence of appropriate linkages with law enforcement and other missing children nonprofit organizations. (10 points)

(6) Budgeted costs are reasonable, allowable and cost-effective for the proposed activities to be undertaken. (5 points).

The applicant must provide evidence that the amount of the Federal grant will not exceed 25% of its current operating budget.

Program to Identify and Understand Risk Factors for Parental Abduction and Demonstrate Promising Prevention and Intervention Models

The goals of this two-phased program are to: (1) Learn more about the circumstances likely to precipitate the abduction of a child by a noncustodial parent and (2) to identify and document effective prevention and intervention strategies.

The objectives of this program are: (1) To investigate and document the circumstances most likely to result in the abduction of a child by a noncustodial parent and (2) to identify, demonstrate, and evaluate currently existing programs, public and private, that appear to be effective interventions to prevent parental abductions.

The program will provide one research grant or cooperative agreement in an amount up to $400,000 for a project period of 36 months. Phase I will be funded in an amount not to exceed $150,000 for 12 months, and Phase II will be funded at a level of approximately $250,000 for 24 months. Phase I funding will support research to conduct an analysis of circumstances that place a child at risk of parental abduction. Phase II funding will provide for research to identify promising public and nonprofit programs currently used to prevent or intervene in parental abductions, determine how effectively they address the factors identified in Phase I as precipitating abductions, and develop written training and technical assistance materials to encourage program replication in jurisdictions lacking such services. The grantee selected for this program will be required to analyze and to build upon information collected during the first national incidence study on missing children entitled: "Missing, Abducted, Runaway, and Thrownaway Children in America" with regard to family abductions, as well as other recent research in the area of family crisis intervention.

Product(s): The grantee will be responsible for preparing publication(s) describing risk factors for parental abductions and promising program interventions. These publications will be prepared in a style and format suitable for wide dissemination to family courts, prosecutors, social service agencies, and others working on the issue of family abductions.

All applications received will be rated on the extent to which they meet the following critiera:

(1) The problem to be addressed by the project is clearly stated. The applicant must demonstrate a clear understanding of the extent of the problem of parental abductions and associated factors such as parental custody laws. (25 points)

(2) The objectives of the proposed project are clearly defined. (20 points)

(3) The project design is sound and contains program elements directly related to the achievement of project objectives. (25 points)

(4) The project management structure is adequate to the successful conduct of the project. (15 points)

(5) Organizational capability is demonstrated at a level sufficient to support the project successfully. (10 points)

(6) Budgeted costs are reasonable, allowable and cost-effective for the proposed activities to be undertaken. (5 points).

Program for Research to Determine the Effectiveness of Mediation to Prevent or Resolve Parental Abductions

The goal of this program is to test mediation as a model in the prevention and resolution of abductions by noncustodial parents. Objectives of the program include measuring the effectiveness of existing mediation programs in reducing parental abductions and defining the aspects or elements of mediation programs that make them effective. Various mediation models will be examined including those operated by family courts, nonprofit organizations and publicly supported family counseling services.

The grantee will identify, study, and describe the effectiveness of currently operating mediation programs. A comprehensive report of findings and recommendations suitable for dissemination to courts and child service agencies will be prepared by the grantee. One research grant or cooperative agreement will be awarded in an amount not to exceed $300,000 for a 24-month project period.

All applications received will be rated on the extent to which they meet the following criteria:

(1) The problem to be addressed by the project is clearly stated. The applicant must demonstrate a clear understanding of the extent of the problem of parental abductions and associated factors such as parental custody laws. (25 points)

(2) The objectives of the proposed project are clearly defined. (20 points)

(3) The project design is sound and contains program elements directly related to the achievement of project objectives. (25 points)

(4) The project management structure is adequate for the successful conduct of the project. (15 points)

(5) Organizational capability is demonstrated at a level sufficient to support the project successfully. (10 points)

(6) Budgeted costs are reasonable, allowable and cost-effective for the proposed activities to be undertaken. (5 points).

Program to Provide Training for Teachers and Other School Officials Concerning Missing and Exploited Children

This program will develop and test a training curriculum to be used to train teachers, school officials, and child service workers to recognize probable indicators and circumstances that suggest that a child may likely be the victim of abduction by a noncustodial parent or other individual. The curriculum will include training regarding a teacher's or other child care worker's legal responsibility for reporting suspected incidents as well as procedures for reporting and requesting assistance for such a child. Information will also be provided to trainees concerning the lawful use of school records and birth certificates to identify and locate missing children.

This program will be conducted in two phases. Phase I will involve the development of the curriculum. Phase II will test the curriculum in test sites. Both phases will be completed within a 24-month project period. One competitive award will be made in an amount not to exceed $175,000.

All applications will be rated on the extent to which they meet the following critieria:

(1) The problem to be addressed by the project is clearly stated. The applicant must demonstrate a clear understanding of the extent and nature of the missing and exploited children problem. The applicant must demonstrate full knowledge of the ethical and legal responsibilities of teachers and other child care workers with regard to reporting suspected incidents of abduction. (25 points)

(2) The objectives of the proposed project are clearly defined. (20 points)

(3) The project design is sound and contains program elements directly related to the achievement of project objectives. The applicant demonstrates prior linkages with school systems and child care agencies that will help to facilitate the provision of training. (25 points)

(4) The project management structure is adequate to the successful conduct of the project. (15 points)

(5) Organizational capability is demonstrated at a level sufficient to support the project successfully. (10 points)

(6) Budgeted costs are reasonable, allowable and cost-effective for the proposed activities to be undertaken. (5 points)

Program to Increase Understanding of Child Exploitation

The First Report from the National Incidence Studies, "Missing, Abducted, Runaway, and Thrownaway Children in America" provided the juvenile justice and missing children's fields with a better understanding of the extent and nature of the missing child problem. This newly acquired information will assist Federal, state, and local planners in their efforts to design intervention for the various types of missing child cases. It is known that many children who are missing become the victims of sexual exploitation, including pornography and prostitution, however little has been documented about the extent of the problem, the precipitating circumstances, or the system's response to the problem.

OJJDP will solicit applications to conduct a survey of current literature on the subject of child sexual exploitation, followed by a national incidence study on the types of child victims, the circumstances involved, and a study of system responses to the problem. This study will provide more detailed information about various issues relating to the missing and exploited children problem.

Up to $300,000 will be available to support this study over a 3-year project period.

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All applications will be rated on the extent to which they meet the following criteria:

(1) The problem to be addressed by the project is clearly stated. (25 points)

(2) The objectives of the proposed project are clearly defined. (20 points)

(3) The project design is sound and contains program elements directly linked to the achievement of project objectives. (25 points)

(4) The project management structure is adequate to the successful conduct of the project. (15 points)

(5) Organizational capability is demonstrated at a level sufficient to support the project successfully. (10 points)

(6) Budgeted costs are reasonable, allowable and cost-effective for the proposed activities to be undertaken. (5 points)

Effective Screening of Child Care and Youth Service Workers

Adults, volunteers and paid personnel, who work in agencies and organizations that provide services to and for children and youth are responsible for the guidance, supervision, and general well being of those under their care. While most such workers are conscientious individuals of high moral values, too often an employee has been known to have victimized a young person through sexual exploitation. This program will develop a screening protocol for use by nonprofit missing children's agencies and other organizations having direct contact with children and youth.

Up to $100,000 is available to support this 12-month project.

All applications will be rated on the extent to which they meet the following criteria:

(1) The problem to be addressed by the project is clearly stated. (25 points)

(2) The objectives of the proposed project are clearly defined. (20 points)

(3) The project design is sound and contains program elements directly linked to the achievement of project objectives. (25 points)

(4) The project management structure is adequate to the successful conduct of the project. (15 points)

(5) Organizational capability is demonstrated at a level sufficient to support the project successfully. (10 points)

(6) Budgeted costs are reasonable, allowable and cost-effective for the proposed activities to be undertaken. (5 points)

Training and Technical Assistance for Non-Profit Missing Children's Programs

This program will provide technical assistance and training to improve the capacity of nonprofit missing children's organizations to engage successfully in activities that will prevent the abduction and sexual exploitation of children, assist in the recovery of such children, and provide services to aid in the reunification of families. Agency personnel will be trained in the most advanced technology available to assist in investigations, make identifications, track sightings, share data, access data, and ultimately locate and secure treatment for missing children.

Applications will be invited from public and private organizations. Up to $250,000 will be available for the program implementation of a 24-month project period.

All applications will be rated on the extent to which they meet the following criteria:

(1) The problem to be addressed by the project is clearly stated. (25 points)

(2) The objectives of the proposed project are clearly defined. (20 points)

(3) The project design is sound and contains program elements directly linked to the achievement of project objectives. (25 points)

(4) The project management structure is adequate to the successful conduct of the project. (15 points)

(5) Organizational capability is demonstrated at a level sufficient to support the project successfully. (10 points)

(6) Budgeted costs are reasonable, allowable and cost-effective for the proposed activities to be undertaken. (5 points)

Field-Initiated Program

Within the Field-Initiated Program, applications are invited which address certain specific priority areas of the Office of Justice Programs for Fiscal Year 1991. These priority areas are discussed below:

Prevention and Education—Keeping children from becoming missing, abducted, runaway, and thrownaway children is closely associated with education and requires innovative and different approaches.

Community Based Programs—Public agencies and nonprofit groups working in the area of missing children must work cooperatively to maximize resources and share information that will prevent children from becoming missing, expedite recoveries, and provide treatment for missing children and their families. The involvement of residents, neighborhood organizations and institutions is an essential element of successful programs.

Victims—Public and private agencies and organizations should implement policies and practices that will improve services for missing children and their families. Children who have been missing have too frequently been victimized by sexual exploitation and must be provided appropriate treatment.

Information Systems, Support and Statistics—Agencies serving missing and exploited children require accurate, accessible, comprehensive and timely information to develop effective policies and allocate resources to enhance missing children programs and reduce the incidence of such events.

Through the Field-Initiated Program, OJJDP encourages eligible agencies and organizations to develop promising and new ideas that are relevant to the mission of OJJDP in carrying out title IV of the Act.

Customarily, the research, development, and training programs which OJJDP has sponsored have addressed specific activities mandated by Congress. The Field-Initiated Program, however, invites imaginative and innovative approaches of researchers and practitioners to the discretionary activities authorized by section 405(a) (1) through (9) of the Act. Those approaches include research, demonstration, or service programs designed:

(1) To educate parents, children, and community agencies and organizations in ways to prevent the abduction and sexual exploitation of children;

(2) To provide information to assist in the location and return of missing children;

(3) To aid communities in the collection of materials which would be useful to parents in assisting others in the identification of missing children;

(4) To increase knowledge of and develop effective treatment pertaining to the psychological consequences, on both parents and children, of:

a. The abduction of a child, both during the period of disappearance and after the child is recovered and

b. The sexual exploitation of a missing child;

(5) To collect detailed data from selected States or localities on the actual investigative practices utilized by law enforcement agencies in missing children's cases;

(6) To address the particular needs of missing children by minimizing the negative impact of judicial and law enforcement procedures on children who are victims of abuse or sexual exploitation and by promoting the active participation of children and their families in cases involving abuse or sexual exploitation of children;

(7) To address the needs of missing children, as defined in section 403(1)(A), and their families following the recovery of such children;

(8) To reduce the likelihood that individuals under 18 years of age will be removed from the control of such individual's legal custodians without such custodians' consent; and

(9) To establish or operate statewide clearinghouses to assist in locating and recovering missing children.

The Field-Initiated Programs will have the following objectives:

(1) To promote and support research, development, demonstration and service programs which address innovative approaches toward improving existing practices and policies related to activities identified in section 405(a) of the Act;

(2) To encourage new methods for addressing the issue of Missing Children; and

(3) To develop knowledge that will lead to new techniques, approaches, and methods addressing the problems of missing and exploited children and the prevention and deterrence of abduction and exploitation;

Through the Field-Initiated Program, OJJDP is actively soliciting innnovative program proposals. Applications should define the needs and/or problems and describe the objectives, strategy, and methodology to be employed. A brief review of the history of the issue and current knowledge and approaches to addressing this issue should be included.

A total of $150,000 is available to support this program for a period of 18 months. Three to five awards are anticipated. Amounts will be based on the needs of each award.

All applications received will be rated on the extent to which they meet the following criteria:

(1) The problem to be addressed by the project is clearly stated. The applicant must demonstrate an understanding of the extent and nature of the problem of missing and exploited children. (25 points)

(2) The objectives of the proposed project are clearly defined. (15 points)

(3) The project design is sound and contains program elements directly linked to the prevention and recovery of missing children and or/the provision of services to such children and their families. The project design demonstrates an innovative approach to addressing the problem. (30 points)

(4) the project management structure is adequate to the successful conduct of the project. (10 points)

(5) Organizational capability is demonstrated at a level sufficient to conduct the project successfully. (10 points)

(6) Budgeted costs are reasonable, allowable and cost-effective for the activities proposed to be undertaken. (10 points)

Continuation Programs

Listed below are programs currently funded under section 405 of the Act that are proposed as continuing program priorities for FY 1991 under their existing project period grants.

The following criteria, based on merit, will be considered in assessing the noncompetitive continuation awards listed below.

(1) The results of title IV funding under the recipient's current award justify further program activity.

(2) The recipient has promptly submitted all required reports.

(3) The recipients has shown satisfactory progress in achieving the objectives of the project and has met all material terms and conditions of the award.

(4) The recipient's management practices have provided adequate stewardship of grantor agency funds.

Continuation Award—Missing and Exploited Children Comprehensive Action Program (MCAP) ($404,448; Project Period 10/1/88–6/30/92)

This award will provide continuation funding for the Missing and Exploited Children Comprehensive Action Program funded in 1988. MCAP is a multi-agency juvenile services coordination program. Primary program activity provides directed and supportive training and technical assistance to encourage, guide, and focus community development and planning on priority missing and exploited children issues. This award will provide for the administration sites of the training and technical assistance program products developed during the initial stages of the program in four sites.

Continuation Award—State Missing Children Clearinghouses Specialized Training ($225,000; 9/30/91–3/31/92)

This award will provide continuation funding for the National Center for Missing and Exploited Children for the purpose of providing stipends for use by State Missing Children Clearing-houses in obtaining specialized training in the recovery and reunification of missing children. Stipends will cover training and transportation expenses for Clearinghouse personnel.

Continuation Award—Federal Law Enforcement Training Center—Interagency Agreement; ($150,000; Project Period 4–15–91/12–31–92)

This transfer of funds to the Department of the Treasury for the Federal Law Enforcement Training Center's law enforcement program will support a 2-day program for local criminal justice agencies on the recognition and investigation of sexual abuse and exploitation of missing children. The program will focus on the state-of-the-art techniques for investigating the missing child and will include issues relative to runaways, abductions, parental kidnapping, and other missing children categories. The 2-day program will be conducted at the local level as a technical assistance request.

Continuation Award—Investigation and Prosecution of Parental Abduction Cases; ($150,000; Project Period 10/1/88–12/31/92)

The American Prosecutors Research Institute (APRI) received an award to implement a training and technical assistance program. The project has focused on the development of a directory of prosecutors who prosecute parental abduction cases, the development of a trial manual, the holding of a conference on investigation and prosecution of parental abduction cases, and the provision of technical assistance. This award will continue the project for an additional twelve months enabling APRI to conduct training conferences and continue its technical assistance efforts. In addition, APRI will serve as a resource center on the issues related to the investigation and prosecution of parental abduction.

For all assistance awards funded under Title IV of the Act (Missing Children), priority will be given, where applicable, to applicants who utilize volunteers in locating, reuniting, and providing other services to missing children and their families. In order to receive assistance for a fiscal year, applicants must give assurance that they will expend, to the greatest extent practicable for such fiscal year, an amount of funds (without regard to any funds received under any Federal law) that is not less than the amount of funds they received in the preceding fiscal year from State, local, and private sources.

In considering grant applications under this title, the Administrator will give priority, where applicable, to

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applicants who have demonstrated or demonstrate ability in successfully:

- Locating missing children or locating and reuniting missing children with their legal custodians;
- Providing other services to missing children or their families; or
- Conducting research relating to missing children.

Applicants will be expected to provide documentation of their success in achieving the above.

Robert W. Sweet, Jr.,
Administrator, Office of Juvenile Justice and Delinquency Prevention.
Walter W. Barbee,
Acting General Council.
[FR. Doc. 91-12960 Filed 5-31-91; 8:45 am]
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federal register

Monday
June 3, 1991

Part IV

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 412 and 413
Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1992 Rates; Proposed Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 412 and 413

[BPD-711-P]
RIN 0938-AE90

Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1992 Rates

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: We are proposing to revise the Medicare inpatient hospital prospective payment system to implement necessary changes arising from legislation and our continuing experience with the system. In addition, in the addendum to this proposed rule, we are proposing changes in the amounts and factors necessary to determine prospective payment rates for Medicare inpatient hospital services. These changes would be applicable to discharges occurring on or after October 1, 1991. We are also setting forth proposed rate-of-increase limits for hospitals and hospital units excluded from the prospective payment system.

DATES: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on August 2, 1991.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-711-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC.

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept audio, visual, or facsimile (FAX) copies of comments.

If comments concern information collection recordkeeping requirements, please address a copy of comments to: Office of Mangement and Budget, Office of Information and Regulatory Affairs, Room 3208, New Excecutive Office Building, Washington, DC 20503, Attention: Allison Herron.

In commenting, please refer to file code BPD-711-P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-245-7890).

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FOR FURTHER INFORMATION, CONTACT: Barbara Wynn, (301) 966-4529.

To obtain data used in deriving the standardized amounts and DRG relative weights, see section VII.B of the preamble, Public Requests for Data.

SUPPLEMENTARY INFORMATION:

I. Background

A. Summary

Under section 1886(d) of the Social Security Act (the Act), a system of payment for acute inpatient hospital stays under Medicare Part A (Hospital Insurance) based on prospectively-set rates was established effective with hospital cost reporting periods beginning on or after October 1, 1983. Under this sytem, Medicare payment is made at a predetermined, specific rate for each hospital discharge. All discharges are classified according to a list of diagnosis-related groups (DRGs). The regulations governing the inpatient hospital prospective payment system are located in 42 CFR part 412.

On September 4, 1990, we published a final rule (55 FR 35990) to implement the prospective payment system for Federal fiscal year (FY) 1991. Since publication of the September 4, 1990 final rule, two pieces of legislation that affect payment for hospitals have been enacted. These are the Continuing Resolution of October 1, 1990 (Pub. L. 101-403) and the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508), enacted October 1, 1990 and November 5, 1990, respectively. In response to these public laws and the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239), enacted on December 19, 1989, we have published several rules that affect payment for hospital operating costs under the inpatient hospital prospective payment system. The discussion below summarizes the relevant changes to the inpatient hospital prospective payment system that have been implement since the September 4, 1990 final rule and includes changes that will be implemented in the final rule with comment period concerning the geographic classification of hospitals. We anticipate that this final rule will be published in the **Federal Register** on June 4, 1991.

1. Summary of September 6, 1990 Interim Final Rule With Comment Period

One factor that is taken into account in the determination of prospective payment rates is the location of each hospital; that is, the geographic area where a hospital is located and whether it is a rural area, a large urban area, or an other urban area. This location affects the determination of the standardization amount and the wage index value used for determining the labor-related portion of a hospital's prospective payment rate.

Section 6003(h) of Public Law 101-239 added section 1886(d)(10) to the Act (later amended by section 4002(h) of Pub. L. 101-508) to provide for the establishment of the Medicare Geographic Classification Review Board (MGCRB) to consider applications by hospitals for geographic reclassification. On September 6, 1990, we published an interim final rule with comment period, Geographical Classification Review Board; Procedures and Criteria (55 FR 36754), to implement section 6003(h)(1) of Public Law 101-239. That interim final rule provided for the establishment of the MGCRB, including procedures and criteria to be used by the MGCRB in making determinations about hospital reclassification. The interim final rule included the following specific provisions that affect payments under the Medicare inpatient hospital prospective payment system:

- The MGCRB may redesignate a hospital to an adjacent rural or urban area with which it has a close proximity for the purposes of using the other area's standardized amount, wage index value, or both. (A rural referral center or a sole community hospital may be redesignated to an area that is not an adjacent county.)

—To be redesignated to an adjacent area for the purpose of using that area's standardized amount, a hospital must demonstrate that its incurred costs are comparable to hospital costs in the adjacent area (that is, a hospital's case-mix adjusted cost per discharge must equal at least 75 percent of the difference between its current payment rate and the rate it would receive if redesignated) and that it has the necessary close proximity with that area (that is, an urban hospital must be no more than 15 miles and a rural hospital no more than 35 miles from the adjacent area; or at least 50 percent of the hospital's employees must reside in the adjacent area).

—To be redesignated to an adjacent area for the purpose of using that area's wage index, a hospital must demonstrate that its incurred wage costs are comparable to hospital wage costs in the adjacent area (that is, the hospital's average hourly wage must be at least 85 percent of that of hospitals in the adjacent area; or that the hospital's average wage weighted for occupational mix must be at least 90 percent of that of hospitals in the adjacent area) and that it has the necessary close proximity with that area.

- Alternative criteria were provided for hospitals located in New England County Metropolitan Areas (NECMAS) that seek to be redesignated to different urban areas.
- A hospital that is reclassified only for wage index purposes is not considered urban for any purpose other than its labor market area (for example, the disproportionate share hospital formula). A hospital that is reclassified only for purposes of the standardized payment amounts is considered urban for all purposes under section 1886(d)(2)(D) of the Act, except for the use of the wage index. We indicated that section 1886(d)(8)(C) of the Act was silent with respect to how reclassifications of individual hospitals are to be treated. Therefore, we stated in the September 6, 1990 interim final rule that in the proposed rule that sets forth the changes to the prospective payment system for FY 1992, we would propose a methodology to address the application of the wage index where not all hospitals in a county or MSA have been redesignated (55 FR 36764).
- The MGCRB may also redesignate all the hospitals in a rural county to an adjacent urban area if all the hospitals in the rural county apply jointly and demonstrate that as a group they meet the applicable proximity, cost, and wage criteria. The effect of the reclassifications on the wage index value of the affected areas is the same as the effect of redesignations of certain rural counties as urban under section 1886(d)(8)(B) of the Act. Both situations are dependent on the hypothetical impact the wage data for the reclassified hospitals would have on the wage index value of the area to which they have been reclassified, as provided in section 1886(d)(8)(C) of the Act.
- As required under section 1886(d)(8)(D) of the Act, the effect of decisions of the MGCRB must be budget neutral. Further, aggregate payments to those rural hospitals not affected by geographic reclassification must remain constant. Therefore, a proportional adjustment to the standardized amount for urban hospitals must be made to ensure that the total aggregate payments made in the prospective payment system are neither greater nor lesser than would otherwise be made.
- The MGCRB is required to issue decisions on hospital applications no later than 180 days after October 1, that is, by the following March 30. This time limit ensures that the effects of geographic reclassification can be included in computing the adjusted prospective payment rates that are required to be published in the **Federal Register** by September 1 of each year.
- A redesignation is effective for 1 year beginning with discharges occurring on the first day of the Federal Fiscal year after the year in which an application is filed. The first hospital reclassifications under this provision will take effect on October 1, 1991.

2. Summary of January 7, 1991 Notice

As noted above, Public Law 101-403 was enacted on October 1, 1990, and Public Law 101-508 was enacted on November 5, 1990. On January 7, 1991, we published a notice, Legislative Changes Concerning Payment to Hospitals for Federal Fiscal Year 1991 (56 FR 562), announcing the provisions of section 115 of Public Law 101-403 and sections 4001 (a) and (c), 4002 (e) and (f), 4007, 4151, and 4158 of Public Law 101-508 that were self-implementing and were effective before Janaury 1, 1991. That notice announced the following changes in payment under the prospective payment system:

- The 15 percent reduction in payments for capital-related costs of inpatient hospital services was extended through portions of cost reporting periods or discharges occurring during the period beginning October 1, 1990 and ending September 30, 1991. Sole community hospitals and rural primary care hospitals are exempt from this provision.
- The regional floor provision was extended through discharges occurring before September 30, 1993. A budget neutrality adjustment factor of .99819 for the regional floor provision was applied to the payment rates that were effective October 1, 1990 through October 20, 1990. Effective October 21, 1990, the regional floor provision was no longer subject to budget neutrality.
- The offset for physician assistant services was eliminated. This provision would have allowed the Secretary to offset DRG payments for services performed by physician assistants in the part of the hospital that is subject to the prospective payment system.
- A freeze was applied in the level of Medicare Part A payments and in the level of payment for graduate medical education per resident for the period October 21, 1990 through December 31, 1990. The market basket percentage increase applicable to prospective payment hospitals was deemed to be 0 percent for discharges occurring on or after October 20, 1990 and before January 1, 1991. The hospital-specific rate applicable to sole community hospitals and Medicare-dependent, small rural hospitals was reduced to remove the market basket percentage increase reflected in the hospital-specific rate applicable to discharges during this period. For hospitals excluded from the prospective payment system, the market basket percentage increase was deemed to be 0 percent for the portion of cost reporting periods occurring during the period October 21, 1990 through December 31, 1990. The percentage change in the Consumer Price Index for All Urban Consumers that is applicable to graduate medical education (GME) per resident amounts was deemed to be 0 percent for the payment of Medicare inpatient GME costs for the portion of cost reporting periods occurring during the period October 21, 1990 through December 31, 1990.
- The use of the area wage index applicable to prospective payment hospitals that was in effect on September 30, 1990 was extended to discharges occurring on or after October 1, 1990, through December 31, 1990.

3. Summary of January 7, 1991 Final Rule With Comment Period

Also on January 7, 1991, we published a final rule with comment period, Mid-Year FY 1991 Changes to the Inpatient Hospital Prospective Payment System (56 FR 568), to implement several provisions of section 4002 of Public Law

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101–508 that affect Medicare payment for inpatient hospital services and that took effect with discharges occurring on or after January 1, 1991. That final rule with comment period implemented the following legislative changes to the inpatient hospital prospective payment system:

- The percentage increase in the standardized amounts applicable to rural hospitals for discharges occurring on or after January 1, 1991 and before October 1, 1991 is the market basket percentage increase minus 0.7 percentage points (that is, 4.5 percent). The percentage increase in the average standardized amounts applicable to large urban hospitals and other urban hospitals for the same period is equal to the market basket percentage increase minus 2.0 percentage points (that is, 3.2 percent).
- For discharges occurring on or after January 1, 1991 and before October 1, 1993, the hospital wage index will be based solely on the 1988 hospital wage survey data with no phase-in period. Therefore, the one-year phase-in of the updated wage index that would have limited the percentage change in a wage index value to 8 percent plus 50 percent of the difference between the 8 percent threshold and the new wage index value was eliminated. In addition, we incorporated all corrections of wage data that had been identified since publication of the September 4, 1990, final rule.
- The methodology under section 1886(d)(8)(C) for determining the wage index applicable to rural counties whose hospitals are treated as urban under section 1886 (d)(8)(B) or (d)(10) of the Act was revised. Effective for discharges occurring on or after January 1, 1991, if including the wage data for the redesignated hospitals reduces the wage index value for an urban area by more than one percentage point, the wage index value for that urban area is to be calculated and applied separately to hospitals located in that urban area (excluding the redesignated hospitals). In lieu of a county-specific wage index value, the hospitals that are redesignated are to use the wage index value of the MSA that results from including the wage data of the redesignated hospitals in the determination. The wage index value for the redesignated hospitals cannot be less than the Statewide rural wage index value. The revised methodology has already been applied to hospital reclassifications under section 1886(d)(8)(B) of the Act and will also be applicable to reclassifications under section 1886(d)(10) of the act that are effective with discharges occurring on or after October 1, 1991.
- The sunset provision that would have ended all adjustments to hospitals that serve a disproportionate share of low income patients effective October 1, 1995, was repealed. In addition, the disproportionate share payments applicable to certain hospitals were increased as follows:
  - —For discharges occurring on or after January 1, 1991 and before October 1, 1993, urban hospitals with 100 or more beds and rural hospitals with 500 or more beds that have a disproportionate patient percentage greater than 20.2 percent will receive 5.62 percent plus 70 percent of the difference between the hospital's disproportionate patient percentage and 20.2 percent. For discharges occurring on or after October 1, 1993 and before October 1, 1994, these hospitals will receive 5.88 percent plus 80 percent of the difference between the hospital's disproportionate share percentage and 20.2 percent. Effective with discharges occurring on or after October 1, 1994, these hospitals will receive 5.88 percent plus 82.5 percent of the difference between the hospital's disproportionate share percentage and 20.2 percent.
  - —For urban hospitals with 100 or more beds or rural hospitals with 500 or more beds and a disproportionate share percentage of 20.2 percent or less, the hospital's disproportionate share adjustment will be increased to 2.5 percent plus 65 percent of its disproportionate share patient percentage and 15 percent effective with discharges occurring on or after October 1, 1993.
  - —The disproportionate share adjustment for urban hospitals with 100 or more beds receiving more than 30 percent of net inpatient revenues from State and local government sources for the care of indigent patients will be increased from 30 to 35 percent for discharges occurring on or after October 1, 1991.

(The standardized amounts were not restandardized to take into account the effect of these additional payments to disproportionate share hospitals.)

4. Summary of Final Rule With Comment Period Concerning Geographic Classification of Hospitals

Section 4002(h) of Pub. L. 101–508 contained several provisions relating to the geographic classification of hospitals. In response to these provisions and to the comments received on the September 6, 1990, interim final rule with comment period, we anticipate publishing a final rule with comment period, Medicare Geographic Review Board—Procedures and Guidelines on June 4, 1991. This final rule will implement the following changes from the September 6, 1990, interim final rule:

- The definition of a sole community hospital (SCH) will be revised to state that a hospital located in either a large urban area or another urban area can qualify for SCH status if it is located more than 35 road miles from the nearest like hospital. However, if a hospital's status as a rural referral center, sole community hospital, or a Medicare-dependent rural hospital is dependent upon its being located in a rural area, it will lose its special status if it qualifies for reclassification to an urban area for its standardized amount.
- Beginning October 1, 1991, for applications for geographic reclassification that would be effective in FY 1993, all hospitals in a county located in an urban area can apply jointly for reclassification to another urbn area.
- Changes will be made in the MGCRB and administrative review procedures, including the addition of the Secretary's review of an MGCRB decision on the motion of the Administrator.
- Because hospitals could not determine at the time they submitted applications for geographic reclassification to the MGCRB how their wage index values would be computed, hospitals will be allowed to withdraw their applications even though an MGCRB decision had been made. A request for withdrawal of an application after issuance of an MGCRB decision will be permitted only for a FY 1992 application, provided that the request for withdrawal is received within 60 days of publication of the final rule with comment period. If that final rule is published on June 4, 1991, as anticipated, the request for withdrawal must be received by August 5, 1991.

B. Major Contents of This Proposed Rule

This proposed rule would be effective for discharges occurring on or after October 1, 1991. Following is a summary of the major changes that we are proposing to make to the prospective payment system:

1. Changes to the DRG Classification and Weighing Factors

As required by section 1886(d)(4)(C) of the Act, we must adjust the DRG classifications and weighing factors at least annually. Our proposed changes for FY 1992 are set forth in section II of this preamble.

2. Changes to the Hospital Wage Index

In section III of this preamble, we discuss revisions to the wage index and, in particular, the revisions necessary because of hospital reclassifications.

3. Other Decisions and Regulations Changes

In section IV of this preamble, we discuss several current provisions of the regulations in 42 CFR parts 412 and 413 and set forth certain proposed changes concerning the following:

- Payment for Hemophilia Blood Clotting Factor.
- Retroactive Adjustments for Provisionally Excluded Rehabilitation Hospitals and Units.
- Outlier Payments.
- Rural Referral Center Criteria.
- Indirect Medical Education Costs.
- Ceiling on Rate of Hospital Cost Increases.
- Direct Graduate Medical Education Payments.
- Funding of Depreciation.

4. Determining Prospective Payment Rates and Rate-of-Increase Limits

In the addendum to this proposed rule, we set forth proposed changes to the amounts and factors for determining the FY 1992 prospective payment rates. We are also proposing new target rate percentages for determining the rate-of-increase limits for cost reporting periods beginning in FY 1992 for hospitals and hospital units excluded from the prospective payment system.

5. Impact Analysis

In appendix A, we set forth an analysis of the impact that the proposed changes described in this rule would have on affected entities.

6. Report to Congress on the Update Factor

Section 1886(e)(3)(B) of the Act requires that the Secretary report to Congress no later than March 1, 1991 on our initial estimate of an update factor for FY 1992 for both prospective payment hospitals and hospitals excluded from the prospective payment system. This report is included as appendix B of this proposed rule.

7. Proposed Recommendation of Update Factor

As required by sections 1886 (e)(4) and (e)(5) of the Act, appendix C provides our recommendation of the appropriate percentage change for FY 1992 for the following:

- Large urban, other urban, and rural average standardized amounts for inpatient hospital services paid for under the prospective payment system.
- Target rate-of-increase limits to the allowable operating costs of inpatient hospital services furnished by hospitals and hospital units excluded from the prospective payment system.

8. Discussion of Prospective Payment Assessment Commission Recommendations

The Prospective Payment Assessment Commission (ProPAC) is directed by the provisions of section 1886(e)(2)(A) of the Act to make recommendations on the appropriate percentage change factor to be used in updating the average standardized amounts beginning with FY 1986 and thereafter. In addition, section 1886(e)(2)(B) of the Act, as added by section 4002(g) of Public Law 101–508, directs ProPAC to make recommendations regarding changes in each of the Medicare payment policies under which payments to an institution are prospectively determined. In particular, the recommendations relating to the inpatient hospital prospective payment system are to include recommendations concerning the number of DRGs used to classify patients, adjustments to the DRGs to reflect severity of illness, and changes in the methods under which hospitals are paid for capital-related costs. As set forth in section 1886(e)(3)(A) of the Act, the recommendations required of ProPAC under sections 1886(e)(2) (A) and (B) of the Act are to be reported to Congress not later than March 1 of each year.

We are printing ProPAC's March 1, 1991 report, which includes its recommendations, as appendix D of this document. The recommendations, and the actions we are proposing to take with regard to them (when an action is recommended), are discussed in detail in the appropriate sections of this preamble or the appendixes of this proposed rule. Those recommendations that are not specifically relevant to matters presented below are discussed in section VI of this preamble. For a brief summary of the ProPAC recommendations, we refer the reader to pages 5 through 7 of the ProPAC report as set forth in appendix D of this proposed rule. ProPAC also produced technical appendixes in its March 1, 1991 report that provide background material and detailed analyses used in preparation of the ProPAC recommendations. For further information relating specifically to the ProPAC report or to obtain a copy of the technical appendixes, contact ProPAC at (202) 453–3986.

II. Proposed Changes to DRG Classifications and Weighting Factors

A. Background

Under the prospective payment system, we pay for inpatient hospital services on the basis of a rate per discharge that varies by the DRG to which a beneficiary's stay is assigned. The formula used to calculate payment for a specific case takes an individual hospital's payment rate per case and multiplies it by the weight of the DRG to which the case is assigned. Each DRG weight represents the average resources required to care for cases in that particular DRG relative to the average resources used to treat cases in other DRGs.

Congress recognized that it would be necessary to recalculate the DRG relative weights periodically to account for changes in resource consumption. Accordingly, section 1886(d)(4)(C) of the Act requires that the Secretary adjust the DRG classifications and weighting factors annually beginning with discharges occurring in FY 1988. These adjustments are made to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources. The proposed changes to the DRG classification system and the proposed recalibration of the DRG weights for discharges occurring on or after October 1, 1991 are discussed below.

B. DRG Reclassification

1. General

Cases are classified into DRGs for payment under the prospective payment system based on the principal diagnosis, up to four additional diagnoses, and up to three procedures performed during the stay, as well as age, sex, and discharge status of the patient. The diagnosis and procedure information is reported by the hospital using codes from the International Classification of Diseases, Ninth Edition, Clinical Modification (ICD–9–CM). The intermediary enters the information into its claims system and subjects it to a series of automated screens called the Medicare Code Editor (MCE). These screens are designed to identify cases that require further review before classification into a DRG can be accomplished.

After screening through the MCE and any further development of the claims, cases are classified by the GROUPER software program into the appropriate DRG. The GROUPER program was

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developed as a means of classifying each case into a DRG on the basis of the diagnosis and procedure codes and demographic information (that is, sex, age, and discharge status). It is used both to classify past cases in order to measure relative hospital resource consumption to establish the DRG weights and to classify current cases for purposes of determining payment.

Currently, there are 467 DRGs in 25 major diagnostic categories (MDCs). Most MDCs are based on a particular organ system of the body (for example, MDC 6, Diseases and Disorders of the Digestive System); however, some MDCs are not constructed on this basis since they involve multiple organ systems (for example, MDC 22, Burns).

Except for a few special cases, principal diagnosis determines MDC assignment. Within most MDCs, cases are then divided into surgical DRGs (based on a surgical hierarchy that orders individual procedures or groups of procedures by resource intensity) and medical DRGs. Medical DRGs generally are differentiated on the basis of diagnosis and age. Some surgical and medical DRGs are further differentiated based on the presence or absence of complications or comorbidities (hereafter CC). Generally, GROUPER does not consider other procedures; that is, nonsurgical procedures or minor surgical procedures generally not done in an operating room are not listed as operating room (OR) procedures in the GROUPER decision tables. However, there are a few non-OR procedures that do affect DRG assignment for certain principal diagnoses, such as extracorporeal shock wave lithotripsy for patients with a principal diagnosis of urinary stones.

In the September 4, 1990 final rule, we made several significant changes to the DRG system (55 FR 36010). We added two new DRGs for tracheostomies and one each for liver and bone marrow transplant cases. Cases are assigned to these new DRGs on the basis of procedure codes rather than first assigning them to an MDC based on the principal diagnosis. We also added two new MDCs: One for multiple significant trauma cases (MDC 24) and one for human immunodeficiency virus (HIV) infection cases (MDC 25). Cases are assigned to these two MDCs before assignment to the other MDCs. These changes were implemented to help improve the amount of resource variation explained by DRGs.

The changes we are proposing to make to the DRG classification system for FY 1992 are set forth below.

2. Reassignment of Acute Myocardial Infarction (AMI)

Effective with discharges on or after October 1, 1988, we required the use of a new fifth digit subclassification within the diagnostic category 410 (Acute myocardial infarction). (See Table 6A—New Diagnosis Codes, in section IV of the addendum to the September 1, 1989 final rule (54 FR 36547).) This subclassification distinguishes an initial episode of care from a subsequent episode of care. A fifth digit of "1" (initial episode of care) is used to designate the acute phase of care regardless of the location of the treatment. It includes cases that are transferred for care and treatment within the acute phase of care. Any subsequent episode of care for another AMI is also assigned a fifth digit of "1." All of these cases are assigned, as they have been in the past, to DRG 121 or 122 (Circulatory Disorders with AMI With and Without Cardiovascular Complications, Discharged Alive) or DRG 123 (Circulatory Disorder With AMI, Expired) or, in the case of a pacemaker implantation, to DRG 115 (Permanent Cardiac Pacemaker Implant with AMI, Heart Failure or Shock).

A fifth digit of "2" is used to designate observation, treatment, or evaluation of AMI within 8 weeks of onset, but following the acute phase, or in the healing state in which the episode of care may be for related or unrelated conditions. All of these cases are currently assigned to DRGs 132 or 133 (Atherosclerosis) [1] if AMI, subsequent episode of care, is identified as the principal diagnosis. We also assign principal diagnosis with a fifth digit of "0" to these DRGs. The fifth digit "0" is used when the episode of care is unspecified. Without the creation of the fifth digit subclassification, we would have continued to be unable to distinguish the resource-intensive, clinically-coherent group of patients admitted to the hospital with an AMI in the acute phase from the less resource-intensive and clinically different groups of patients who are not suffering an acute phase AMI but who are readmitted to the hospital within 8 weeks of an AMI or who are first admitted to the hospital after the acute phase has ended.

Our reasons for assigning the nonacute (that is, subsequent and unspecified episode of care) AMI cases in FY 1990 to the atherosclerosis DRGs rather than the AMI DRGs relate to two of the basic characteristics of the DRG patient classification system. First, each DRG should contain cases with a similar pattern of resource intensity and, second, each DRG should contain cases that are similar from a clinical perspective.

With the availability of the FY 1990 Medicare provider analysis and review file (MEDPAR) data, we are able to assess the appropriateness of assigning the nonacute AMI cases to DRGs 132 and 133. Based on our analysis, we are proposing to reclassifying the nonacute AMI cases effective with discharges occurring on or after October 1, 1991. The average charges for these AMI cases are higher than the average charges for the other cases assigned to DRGs 132 and 133. Because the nonacute AMI cases are not clinically cohesive with any specific set of cases in other MDC 5 medical DRGs, we are proposing to reassign them to DRGs 144 and 145 (Other Circulatory Diagnoses). The average charges of the cases currently assigned to these DRGs are fairly equivalent to the average charges for the nonacute AMIs. Although we are somewhat reluctant to move these cases from a more well-defined DRG to the "other" category, we believe that the action is justified by the fact that these cases would be underpaid if they remained in DRGs 132 and 133.

We considered creating a new DRG category for these cases. However, in reviewing the MEDPAR data, we identified several problems with the nonacute AMI cases that are assigned to DRGs 132 and 133. As we discussed above, both the "2" and "0" fifth digit codes are currently assigned to those DRGs. In most sets of codes where there is a classification for "unspecified," we expect the specified cases to be the vast majority of the codes. In only a small number of cases should the medical record not be specific enough to allow accurate coding. However, in DRGs 132 and 133, the unspecified "0" fifth digit is reported almost five times more often than the subsequent episode of care "2" fifth digit. In addition, based on the FY 1990 MEDPAR data, these unspecified cases had an average charge that was approximately 25 percent higher than the average charge of the subsequent episode cases. This finding, and correspondence we have received over the past 2 years concerning how these fifth digits are to be coded, lead us to believe that coding inaccuracies may be in part responsible for the higher charges for these cases. We suspect that a percentage of cases that are coded with the "0" fifth digit are actually acute

[1] A single title combined with two DRG numbers is used to signify pairs, the first DRG of which is for cases with CC and the second of which is for cases without CC. If a third number is included, it represents cases of patients who are age 0-17.

AMI cases that were not coded correctly.

We have consulted with out medical coding policy staff, and they have agreed to undertake educational action on these codes. We believe that the medical records staff in hospitals may be confused in coding cases that are still in the acute phase but where the patient was not brought to the hospital immediately after incurring the AMI (for example, when the patient has been transferred). We will continue to monitor these cases, and we may propose other classification changes when we are more confident that the cases are correctly coded and, thus, can be accurately evaluated.

3. Major Joint and Limb Reattachment Procedures (DRG 209)

Effective October 1, 1988, we introduced new procedure codes to distinguish initial hip replacement procedures from revision of hip replacement procedures. (See Table 6B—New Procedures Codes, in section IV of the addendum to the September 1, 1989 final rule (54 FR 36549).) In response to comments we received concerning that change, we agreed to review the charges for these procedures as part of our analysis of DRG changes for FY 1992. Our review of the FY 1990 MEDPAR data has revealed that, although the initial hip replacements cases assigned to DRG 209 are less expensive than the revision procedures, the difference is not enough to justify our creating a separate DRG or reassigning the revision cases.

However, during our review, we did note that the cases assigned to DRG 209 fall into two distinct groups based on the procedure performed and the corresponding average charges. The procedures of the lower extremity (that is, hip, thigh, leg, knee, ankle, and foot) have charges that are about 50 percent higher than those of the upper extremity (that is, shoulder, elbow, arm, wrist, and hand). Based on this finding, we are proposing to assign each of these groups of procedures to a separate DRG. We propose to revise DRG 209 by changing the title to "Major Joint and Limb Reattachment Procedures of Lower Extremity" and removing the upper extremity procedures from this DRG assignment. DRG 209 would include only the remaining lower extremity procedures as follows:

81.51 Total hip replacement
81.52 Partial hip replacement
81.53 Revision of hip replacement
81.54 Total knee replacement
81.55 Revision of knee replacement
81.56 Total ankle replacement
84.26 Foot reattachment
84.27 Lower leg or ankle reattachment
84.28 Thigh reattachment

We would create a new DRG, DRG 491 (Major Joint and Limb Reattachment Procedures of Upper Extremity). The upper extremity procedures from DRG 209 would be assigned to DRG 491. These procedures are as follows:

81.73 Total wrist replacement
81.80 Total shoulder replacement
81.81 Partial shoulder replacement
81.84 Total elbow replacement
84.23 Forearm, wrist, or hand reattachment
84.24 Upper arm reattachment

These DRG classification changes would reduce the variation in the charges of the cases within each of these DRGs, as well as improve the clinical coherency of each DRG.

4. Chemotherapy (DRG 410)

Under the DRG classification system, patients admitted for chemotherapy for cancer (principal diagnosis of V581 (Chemotherapy) or V672 (Chemotherapy follow-up)) are assigned to DRG 410 (Chemotherapy) regardless of the type of cancer indicated by the secondary diagnosis. Therefore, DRG 410 represents a significantly heterogenous group of cases that not only vary clinically in terms of diagnosis, prognosis, and severity but also vary widely in resource consumption, as measured by hospital charges.

Evaluation of the types of cancer assigned to DRG 410, as identified by secondary diagnosis codes 140.0 through 208.9, indicated a high degree of variance, with a few cases utilizing a disproportionate share of the financial resources. Further analysis of these cases indicated that the acute leukemia patients incurred significantly higher charges than patients with other types of cancer. Separating the acute leukemia cases greatly reduces the variance within DRG 410, increasing the homogeneity of that DRG.

DRGs are intended to represent groups of hospital patients who are clinically similar to one another and are relatively homogenous with respect to resource use. In order to achieve this goal and to improve payment equity, we are proposing the addition of a DRG for chemotherapy patients with a secondary diagnosis of acute leukemia. This new DRG 492 (Chemotherapy with Acute Leukemia as Secondary Diagnosis) would consist of patients with a principal diagnosis code of V581 or V672 and a secondary diagnosis code of acute leukemia (204.0, 205.0, 206.0, 207.0, or 208.0). Cases with a principal diagnosis of V58.1 or V67.2 and any other secondary diagnosis would continue to be assigned to DRG 410, with the DRG title revised to "Chemotherapy Without Acute Leukemia as Secondary Diagnosis." The addition of the proposed DRG 492 would reduce the variance in charges within these two DRGs and maximize the differences between the groups.

We note that effective October 1, 1991, a fifth digit has been added to the existing diagnosis codes for leukemia, making it possible to distinguish between cases in remission and those not in remission. (See Table 6e—New Diagnosis Codes, in section IV of the addendum to this proposed rule.) We would continue to assign these cases to DRGs based on the current 4-digit code assignments. Thus, all acute leukemia cases admitted for chemotherapy would be classified in DRG 492, whether they are in remission or not. When we have collected data using the new codes and are able to analyze the cases in remission compared to those not in remission, we will evaluate whether it will be necessary or appropriate to consider further distinctions in DRG assignment.

5. Multiple Significant Trauma (MDC 24)

As discussed above, MDC 24 (Multiple Significant Trauma) was added to the DRG system effective October 1, 1990 with four DRGs to classify multiple significant trauma cases. Discharges with a principal diagnosis of trauma (diagnosis codes 800.00 through 904.9, 910.0 through 929.9, and 950.0 through 959.9) group to MDC 24 if at least two significant trauma diagnosis codes from two different body site categories are reported as either principal or secondary diagnoses. We recognize eight different body site categories: head, chest, abdomen, kidney, urinary, pelvis and spine, upper limb, and lower limb. The eight body site categories and the diagnosis codes associated with each category were set forth in Table 6h of section IV of the addendum of the September 4, 1990 final rule (55 FR 36137). The DRGs in MDC 24 are the following:

DRG 484 Craniotomy for Multiple Significant Trauma
DRG 485 Limb Reattachment, Hip and Femur Procedures for Multiple Significant Trauma
DRG 486 Other OR Procedures for Multiple Significant Trauma
DRG 487 Other Multiple Significant Trauma

Since the implementation of this change, we have discovered that there were some omissions in our list of diagnosis codes by body site. Although

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these codes are included as principal diagnosis codes that will allow a case to group to MDC 24, they were not included in any of the body site categories. We are proposing to add these diagnosis codes to the appropriate body site category as follows: Codes 839.00 through 839.18 (Dislocation of cervical vertebrae) would be added to the "Pelvis and Spine" body site; codes 874.10 (Open wound of larynx with trachea, complicated) and 874.11 (Open wound of larynx, complicated) would be added to the "Chest" category; and code 927.9 (Crushing injury of upper limb, unspecified site) to the "Upper Limb" category. We are also proposing to move diagnosis code 874.12 (Open wound of trachea, complicated) from the "Head" to the "Chest" category and diagnosis code 954.9 (Injury to unspecified nerve of trunk) from the "Upper Limb" to the "Pelvis and Spine" category. These latter codes were incorrectly assigned in the September 4, 1990 final rule.

In addition to these changes, we are proposing to move three hip replacement procedures (procedure codes 81.51 (Total hip replacement), 81.52 (Partial hip replacement), and 81.53 (Revision of hip replacement)) from DRG 486 to DRG 485. We have analyzed the charges for these cases and found that they are more similar to those of cases in DRG 485 than those in DRG 486. Since these hip replacement procedures are similar clinically and in terms of resource use to the cases in DRG 485, we are proposing to remove them from DRG 486 and assign them to DRG 485.

6. Addition of HIV-Related Conditions to MDC 25 (HIV Infections)

As noted above, we added a new MDC 25 for Human Immunodeficiency Virus (HIV) Infections as a part of our FY 1991 DRG changes, which became effective October 1, 1990. HIV infections are identified by diagnosis codes 042.0 through 042.9 (HIV infection with specified conditions), 043.0 through 043.9 (HIV infection causing other specified conditions), and 044.0 through 044.9 (Other HIV infection). (See discussion in the September 4, 1990 final rule (55 FR 36019).) Cases are assigned to DRGs for HIV infection when the principal diagnosis is one of the HIV infection diagnosis codes (listed above) or when one of these codes is a secondary diagnosis and the principal diagnosis is a condition related to HIV infection (see below).

The three DRGs for HIV-infected patients are as follows:

DRG 488 HIV with Extensive OR Procedure
DRG 489 HIV with Major Related Condition
DRG 490 HIV with or without Other Related Condition

The OR procedures allowed for DRG 488 are all OR procedures other than nonextensive OR procedures (those procedures that result in assignment to DRG 477 when the procedure is unrelated to the principal diagnosis). If the HIV-related condition involves a disease or disorder of the central nervous system, a malignancy, an infection, or other major related condition, the case is assigned to DRG 489. The remaining cases, with or without an HIV-related condition, group to DRG 490.

The HIV-related conditions qualifying for classification to MDC 25 are limited to those conditions identified by the Centers for Disease Control (CDC) as being HIV-related. These conditions are listed in Volume 1 of ICD–9–CM in the "Includes Only" notes under diagnosis codes 042.0, 042.1, 042.2, 043.1, 043.3, and 044.0. In addition, we listed all the HIV-related conditions in Table 6i in section IV of the addendum to the September 4, 1990 final rule (55 FR 36137). In that document, we stated that as CDC updated and expanded the list of HIV-related conditions, we would add any changes made to our classification system (55 FR 36021). Effective October 1, 1991, CDC will expand the list of diagnoses identified as HIV-related conditions, and they will be added to the ICD–9–CM "Includes Only" notes under the HIV infection diagnosis codes. We are proposing to add these diagnoses to our list of HIV-related conditions. Thus, effective for discharges occurring on or after October 1, 1991, if any of these conditions is listed as principal diagnosis with a secondary diagnosis of HIV infection, it will be assigned to MDC 25 and one of the HIV DRGs. We have listed these additional HIV-related conditions in Table 6i, Additional HIV-Related Conditions Necessary for Assignment to MDC 25, in section IV of the addendum to this proposed rule. In that table, we have indicated which conditions are considered to be major and thus would be assigned to DRG 489 when no extensive OR procedure is performed.

7. Surgical Hierarchies

Some inpatient stays entail multiple surgical procedures, each one of which, occurring by itself, could result in assignment of the case to a different DRG within the MDC to which the principal diagnosis is assigned. It is, therefore, necessary to have a decision rule by which these cases are assigned to a single DRG. The surgical hierarch, an ordering of surgical classes from most to least resource intensive, performs that function. Its application ensures that cases involving multiple surgical procedures are assigned to the DRG associated with the most resource-intensive surgical class.

Because the relative resource intensity of surgical classes can shift as a function of DRG reclassification and recalibration, we reviewed the surgical hierarchy of each MDC, as we have for previous reclassifications, to determine if the ordering of classes coincided with the intensity of resource utilization, as measured by the same billing data used to compute the DRG relative weights.

A surgical class can be composed of one or more DRGs. For example, in MDC 5, the surgical class "heart transplant" consists of a single DRG and the class "coronary bypass" consists of two DRGs. Consequently, in many cases, the surgical hierarchy has an impact on more than one DRG. The methodology for determining the most resource-intensive surgical class, therefore, involves weighting each DRG for frequency to determine the average resources for each surgical class. For example, assume surgical class A includes DRGs 1 and 2 and surgical class B includes DRGs 3, 4, and 5, and that the average charge of DRG 1 is higher than that of DRG 3, but the average charges of DRGs 4 and 5 are higher than the average charge of DRG 2. To determine whether surgical class A should be higher or lower than surgical class B in the surgical hierarchy, we would weight the average charge of each DRG by frequency (that is, by the number of cases in the DRG) to determine average resource consumption for the surgical class. The surgical classes would then be ordered from the class with the highest average resource utilization to that with the lowest, with the exception of "other OR procedures" as discussed below.

This methodology may occasionally result in a case involving multiple procedures being assigned to the lower-weighted DRG (in the highest, most resource-intensive surgical class) of the available alternatives. However, given that the logic underlying the surgical hierarchy provides that the Grouper searches for the more resource-intensive procedure, which may sometimes occur in cases involving multiple procedures, this result is unavoidable.

We would like to point out, notwithstanding the foregoing discussion, that there are a few instances where a surgical class with a smaller average relative weight is

ordered above a surgical class with a higher average relative weight. For example, the "other OR procedures" surgical class is uniformly ordered last in the surgical hierarchy of each MDC in which it occurs regardless of the fact that the weighting factor for the DRG or DRGs in that surgical class may be higher than that for other surgical classes in the MDC. The "other OR procedures" class is a group of procedures that are least likely to be related to the diagnoses in the MDC but are occasionally performed on patients with these diagnoses. Therefore, these procedures should only by considered if no other procedure more closely related to the diagnoses in the MDC has been performed.

A second example occurs when the difference between the average weights for two surgical classes is very small. We have found that small differences generally do not warrant reordering of the hierarchy since, by virtue of the hierarchy change, the weighting factors are likely to shift such that the higher-ordered surgical class has a lower average weight than the class ordered below it.

Based on the preliminary recalibration of the DRGs, we are proposing to modify the surgical hierarchy as set forth below. As we stated in the September 1, 1989 final rule (54 FR 36457), we are unable to test the effects of the proposed revisions to the surgical hierarchy and to reflect these changes in the proposed relative weights due to the unavailability of revised Grouper software at the time this proposed rule is prepared. Rather, we simulate most major classification changes to approximate the placement of cases under the proposed reclassification and then determine the average charge for each DRG. These average charges then serve as our best estimate of relative resource use for each surgical class. We test the proposed surgical hierarchy changes after the revised Grouper is received and reflect the final changes in the DRG relative weights in the final rule. Further, as discussed below in section II.C of this preamble, we anticipate that the final recalibrated weights will be somewhat different from those proposed since they will be based on more complete data. Consequently, further revision of the hierarchy, using the above principles, may be necessary in the final rule.

At this time, we would revise the surgical hierarchy for MDC 8 (Diseases and Disorders of the Musculoskeletal System and Connective Tissue) and the pre-MDC DRGs.

a. In MDC 8, we would reorder Biopsies (DRG 216) above Hip and Femur Procedures Except Major Joint (DRGs 210, 211, and 212) and Amputations (DRG 213). In addition, we would add the new Major Joint and Limb Reattachment Procedures of Upper Extremity (DRG 491) below Amputations. We would also move Knee Procedures (DRGs 221 and 222) above Lower Extremity and Humerus Procedures Except Hip, Foot and Femur (DRGs 218, 219, and 220).

b. In the pre-MDC DRGs, we would reorder Bone Marrow Transplant (DRG 481) above Tracheostomy Without Mouth, Larynx or Pharynx Disorder (DRG 483).

8. Refinement of Complications and Comorbidities List

There is a standard list of diagnoses that are considered complications or comorbidities (CCs). This list was developed by physician panels to include those diagnoses that, when present as a secondary condition, would be considered a substantial complication or comorbidity. In preparing the original CC list, a substantial CC was defined as a condition that, because of its presence with a specific principal diagnosis, would increase the length of stay by at least one day for at least 75 percent of the patients.

Based upon clinical review by our medical consultants and analysis of the charge data in the FY 1990 MEDPAR file, we are proposing to revise the list of diagnoses that are considered to be CCs as follows:

• We would add the following diagnoses to the CC list:

293.81 Organic delusional syndrome
292.82 Organic hallucinosis syndrome
293.83 Organic affective syndrome
453.8 Venous embolism and thrombosis of other specified veins
453.9 Venous embolism and thrombosis of unspecified site
696.0 Psoriatic arthropathy
733.81 Malunion of fracture
733.82 Nonunion of fracture

Each of these diagnosis codes will be considered a CC for any principal diagnosis not shown in Table 6g, Additions to the CC Exclusions List (see discussion of CC Exclusions list, in section IV of the addendum below).

• We would delete the following diagnoses from the CC list:

318.2 Profound mental retardation
429.0 Myocarditis, unspecified
447.0 Arteriovenous fistula, acquired
448.0 Hereditary hemorrhagic telangiectasia
457.2 Lymphangitis
500 Coal worker's pneumoconiosis
501 Asbestosis
502 Pneumoconiosis due to other silica or silicates
503 Pneumoconiosis due to other inorganic dust
504 Pneumonopathy due to inhalatio of other dust
505 Pneumoconiosis, unspecified
571.1 Acute alcoholic hepatitis
607.1 Balanoposthitis
607.2 Other inflammatory disorders of penis
607.3 Priapism
619.0 Urinary-genital tract fistual, female
619.1 Digestive-genital tract fistula, female
619.2 Genital tract-skin fistual, female
619.8 Other specified fistulas involving female genital tract
619.9 Unspecified fistula involving female genital tract
683 Acute lymphadenitis
708.0 Allergic urticaria
788.0 Renal colic
790.8 Viremia, unspecified

Each of these diagnoses would no longer be considered a CC for any principal diagnosis.

In the September 1, 1987 final notice concerning changes to the DRG classification system (52 FR 33143), we modified the Grouper logic so that certain diagnoses included on the standard list of CCs would not be considered a valid CC in combination with a particular principal diagnosis. Thus, we created the CC Exclusions List. We made these changes to preclude coding of closely related conditions, to preclude duplicative coding or inconsistent coding from being treated as CCs, and to ensure that cases are appropriately classified between the complicated and uncomplicated DRGs in a pair.

In the May 19, 1987 proposed notice concerning changes to the DRG classification system (52 FR 18877), we explained that the excluded secondary diagnoses were established using the following five principles:

• Chronic and acute manifestations of the same condition should not be considered CCs for one another (as subsequently corrected in the September 1, 1987 final notice (52 FR 33154)).

• Specific and nonspecific (that is, not otherwise specified (NOS)) diagnosis codes for a condition should not be considered CCs for one another.

• Conditions that may not co-exist, such as partial/total, unilateral/bilateral, obstructed/unobstructed, and benign/malignant, should not be considered CCs for one another.

• The same condition in anatomically proximal sites should not be considered CCs for one another.

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• Closely related conditions should not be considered CCs for one another.

The creation of the CC Exclusions List was a major project involving hundreds of codes. The FY 1988 revisions were intended to be only a first step toward refinement of the CC list in that the criteria used for eliminating certain diagnoses from consideration as CCs were intended to identify only the most obvious diagnoses that should not be considered complications or comorbidities of another diagnosis. For that reason and in light of comments and questions on the CC list, we have continued to review the remaining CCs to identify additional exclusions and to remove diagnoses from the master list that have been shown not to meet the definition of a CC, stated above, as appropriate. (See the September 30, 1988 final rule for the revision made for the discharges occurring in FY 1989 (53 FR 38485), the September 1, 1989 final rule for the revision made for discharges occurring in FY 1990 (54 FR 36552), and the September 4, 1990 final rule for the revision made for discharges occurring in FY 1991 (55 FR 36126).)

We are proposing a limited revision of the CC Exclusions List, which includes corrections of errors in the existing list, addition of a number of excluded CCs, and deletion of a number of excluded CCs. These proposed changes are being made in accordance with the principles established when we created the CC Exclusions List in 1987.

Tables 6g and 6h in section IV of the addendum to this proposed rule contain the proposed revisions to the CC Exclusions List that would be effective for discharges occurring on or after October 1, 1991. Each table shows the principal diagnoses with proposed changes to the excluded CCs. Each of these principal diagnoses is shown with an asterisk and the additions or deletions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

CCs that are added to the list are in Table 6g—Additions to the CC Exclusions List. Currently, the indented diagnoses are recognized by the Grouper as valid CCs for the asterisked principal diagnosis but will be excluded and thus ignored by the Grouper beginning with discharges on or after October 1, 1991.

CCs that are deleted from the list are in Table 6h—Deletions from the CC Exclusions List. Currently, the indented diagnoses are excluded and are not recognized by the Grouper as valid CCs for the asterisked principal diagnosis but, except for those diagnoses that are being removed from the CC list altogether, will be recognized as valid CCs beginning with discharges on or after October 1, 1991.

Copies of the original CC Exclusions List applicable to FY 1988 can be obtained from the National Technical Information Service (NTIS) of the Department of Commerce. It is available in hard copy for $67.00 and on microfiche for $16.50, plus $3.00 for shipping and handling. A request for the FY 1988 CC Exclusions List (which should include the identification accession number, ((PB) 88–133970), should be made to the following address: National Technical Information Service, United States Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161 or by calling (703) 487–4650.

Users should be aware of the fact that all (FYs 1989, 1990, and 1991) revisions to the CC Exclusions List and those in Tables 6g and 6h of this document must be incorporated into the list purchased from NTIS in order to obtain the CC Exclusions List applicable for discharges occurring on or after October 1, 1991.

Alternatively, the complete documentation of the Grouper logic, including the current CC Exclusions List, is available from 3M/HIS, which, under contract with HCFA, is responsible for updating and maintaining the Grouper program. The current DRG Definitions Manual, Seventh Revision is available for $195.00, which includes $15.00 for shipping and handling. The Eighth Revision of this manual, which will include the changes proposed in this document as finalized in response to public comment, will be available in September 1991 for $195.00. These manuals may be obtained by writing 3M/HIS at: 100 Barnes Road, Wallingford, Connecticut 06492 or by calling (203) 949–0303.

Please specify the revisions requested.

9. Review of Procedure Codes in DRGs 468 and 477

Each year, we review cases assigned to DRG 468 (Extensive OR Procedure Unrelated to Principal Diagnosis) in order to determine whether, in conjunction with certain principal diagnoses, there were certain procedures performed that are not currently included in the surgical hierarchy for the MDC in which the diagnosis falls. In FY 1989, this review resulted in the addition of DRG 476 (Prostatic OR Procedure Unrelated to Principal Diagnosis) and DRG 477 (Non-Extensive OR Procedure Unrelated to Principal Diagnosis). For a detailed discussion of these changes, see the September 30, 1988 final rule (53 FR 38487).

Since DRG 468 is reserved for those cases in which none of the OR procedures is related to the principal diagnosis, it is intended to capture atypical cases, that is, those cases not occurring with sufficient frequency to represent a distinct, recognizable clinical group. DRGs 476 and 477 are assigned to specific subsets of these cases. DRG 476 is currently assigned to those discharges in which one of the following prostatic procedures is performed and it is unrelated to the principal diagnosis:

60.0—Incision of prostate
60.12—Open biopsy of prostate
60.15—Biopsy of periprostatic tissue
60.18—Other diagnostic procedures on prostatic and periprostatic tissue
60.2—Transurethral prostatectomy
60.61—Local excision of lesion of prostate
60.69—Prostatectomy NEC
60.93—Repair of prostate
60.94—Control of (postoperative) hemorrhage of prostate
60.99—Other operations on prostate

DRG 477 is assigned to those discharges in which the only procedures performed are nonextensive procedures that are unrelated to the principal diagnosis. The original list of the ICD–9–CM procedure codes for the procedures we consider nonextensive procedures if performed with an unrelated principal diagnosis was published in Table 6c in section IV of the addendum to the September 30, 1988 final rule (53 FR 38591). As a part of the September 4, 1990 final rule, we moved a large number of procedures from DRG 468 to 477. We listed the procedure codes in Table 6g in section IV of the addendum to that final rule (55 FR 36135).

We annually conduct a review of procedures producing DRG 468 or 477 assignments on the basis of volume of cases in these DRGs with each procedure. Our medical consultants then identify those procedures occurring in conjunction with certain principal diagnoses with sufficient frequency to justify adding them to one of the surgical DRGs for the MDC in which the diagnosis falls. This year's review did not identify any changes that are necessary; therefore, we are not proposing to move any procedures from DRGs 468 or 477 to one of the surgical DRGs.

However, because of an ICD–9–CM coding revision, we are proposing to add a procedure to DRG 476. Effective October 1, 1991, procedure code 60.95 (Transurethral ballon dilation of the prostatic urethra) will be added to the ICD–9–CM. Since this is an OR procedure that currently group to DRG 476 when they are performed on patients with an unrelated principal diagnosis, we are proposing to add procedure code 60.95 to the list of DRG 476 prostatic procedures.

We also reviewed the list of OR procedures that produce DRG 468 assignments to ascertain if any of those procedures should be moved to the list of nonextensive procedures that produce DRG 477 assignments. We analyzed the charge and length of stay data for cases assigned to DRG 468 to identify those procedures that are associated with discharges that are more similar to the discharges that currently group to DRG 477 than to the discharges that group to DRG 468. Generally, we consider moving only those procedures for which we have an adequate number of discharges to analyze the data.

Based on our analysis, we are proposing to add the following two procedures to the list of nonextensive procedures that group to DRG 477:

53.41—Repair of umbilical hernia with prosthesis.
53.49—Other umbilical herniorrhaphy.

These cases would group to DRG 477 instead of DRG 468 beginning with discharges on or after October 1, 1991.

10. Changes to the ICD–9–CM Coding System

As discussed above in section II.B.1 of this preamble, the ICD–9–CM is a coding system for the reporting of diagnoses and procedures performed on a patient. In September 1985, the ICD–9–CM Coordination and Maintenance Committee was formed. This is a Federal interdepartmental committee charged with the mission of maintaining and updating the ICD–9–CM. This includes approving new coding changes, developing errata, addenda, and other modifications to the ICD–9–CM to reflect newly developed procedures and technologies and newly identified diseases. The Committee is also responsible for promoting the use of Federal and non-Federal educational programs and other communication techniques with a view toward standardizing coding applications and upgrading the quality of the classification system.

The Committee is co-chaired by the National Center for Health Statistics (NCHS) and HCFA. The NCHS has lead responsibility for the ICD–9–CM diagnosis codes included in Volume 1—Diseases: Tabular List and Volume 2—Diseases: Alphabetic Index, while HCFA has lead responsibility for the ICD–9–CM procedure codes included in Volume 3—Procedures: Tabular List and Alphabetic Index.

The Committee encourages participation in the above process by major health-related organizations. In this regard, the Committee holds public meetings for discussion of educational issues and proposed coding changes. These meetings provide an opportunity for input into coding matters from representatives of recognized organizations in the coding fields, such as the American Medical Record Association (AMRA), the American Hospital Association (AHA), and various physician specialty groups as well as physicians, medical record administrators, and other members of the public. After considering the opinions expressed at the public meetings, the Committee formulates recommendations, which then must be approved by the agencies.

The Committee presented proposals for coding changes at public meetings held on April 23, July 26, and December 7, 1990 and finalized the coding changes after consideration of comments received at the meetings and in writing in the 30 days following the December 7, 1990 meeting. The initial meeting for consideration of coding issues for resolution in FY 1992 was held on May 2, 1991. Copies of the minutes of these meetings may obtained by writing to the co-chairpersons representing NCHS and HCFA. We encourage commenters to address suggestions on coding issues involving diagnosis codes to: Ms. Sue Meads, R.R.A, Co-Chairperson, ICD–9–CM Coordination and Maintenance Committee, NCHS, Rm. 9–58, 6525 Belcrest Road, Hyattsville, Maryland 20782. Questions and comments concerning the procedure codes should be addressed to: Ms. Patricia E. Brooks, Co-Chairperson, ICD–9–CM Coordination and Maintenance Committee, HCFA, Office of Coverage Policy, Rm. 401 East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

The ICD–9–CM code changes that have been approved will become effective October 1, 1991. The new ICD–9–CM codes are listed, along with their proposed DRG classifications, in Tables 6a and 6b (New Diagnosis Codes and New Procedure Codes, respectively) in section IV of the addendum to this proposed rule. As we stated above, the code numbers and their titles were presented for public comment in the ICD–9–CM Coordination and Maintenance Committee meetings. Both oral and written comments were considered before the codes were approved. Therefore, we are soliciting comments only on the proposed DRG classification.

Further, the Committee has approved the expansion of certain ICD–9–CM codes to require an additional digit for valid code assignment. Diagnosis codes that have been replaced by expanded codes or have been deleted are in Table 6c (Invalid Diagnosis Codes). Procedure codes that have been replaced by expanded codes or have been deleted are in Table 6d (Invalid Procedure Codes). These diagnosis and procedure codes will not be recognized by the Grouper beginning with discharges occurring on or after October 1, 1991. The corresponding new expanded codes are included in Tables 6a and 6b. Revisions to diagnosis and procedure code titles are in Tables 6e (Revised Diagnosis Code Titles) and 6f (Revised Procedure Code Titles), which also include the proposed DRG assignments for these revised codes.

11. Expansion of Diagnosis and Procedure Reporting Fields on the UB–82 Form

In the May 9, 1990 proposed rule (55 FR 19459), in respones to a ProPAC recommendation, we announced our intention to expand to 10 the number of fields available for reporting diagnosis and procedure codes on the UB–82 billing form (the billing form used for Medicare discharges). We agreed with ProPAC that this expansion was necessary to ensure complete medical informaton reporting and expressed our intention to implement a revised form that would allow the reporting of 10 codes in each field for discharges occurring on or after October 1, 1990. The current UB–82 form limits these fields to five diagnosis and three procedure codes.

This increase in the number of reporting fields was deemed necessary to provide space to report all relevant medical conditions affecting the patient's hospital stay and, also, to allow more fields for reporting procedures representing services and treatment received. Because principal, diagnosis, secondary diagnosis, and certain procedures performed determine assignment to DRGs and, thus, payment, these critical elements are reported in the limited number of fields available to the exclusion of other procedures and diagnoses that are also of importance. In analyzing MEDPAR data for DRG refinement, we found that information relating to specific diseases or treatments often was not available. Since the codes did not effect DRG assignment and, thus, payment, they were not included in the limited space

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available on the bill. Increasing the number of fields for reporting would enhance our data analysis capabilities in modifying and refining DRGs.

We received several comments concerning our announcement of the expansion of the UB–82 form. Although the majority of the commenters were supportive of the revision, believing that it would improve the overall accuracy of the data reported, they were virtually unanimous in requesting delayed implementation of the expansion. Based on their previous experience with this type of change, the commenters believed that hospitals needed at least 6 months after the details of the bill changes were announced to change their computer systems to collect and process more codes. They stated that the expanded reporting of codes should not be effective until the UB–82 form had been revised to accept the additional data. Also, they expressed the belief that we should analyze the need for the full expansion to 10 diagnoses and procedure codes before implementation.

Based upon these comments and our own analysis of the situation, we stated in the September 4, 1990 final rule (55 FR 36068) that we would delay implementation of an expansion of the UB–82 billing form to accept additional diagnosis and procedure codes until October 1, 1991. We also agreed to do more analysis on the number of codes necessary to optimize DRG refinement. Therefore, since publication of the September 4 final rule, we have conducted further analysis of the number of codes that are necessary to improve our ability to make accurate and valid changes in the DRG classification system. We have evaluated the reporting use of the fields currently in existence as well as reviewing other data systems to identify the optimal number of fields. Analysis of the FY 1990 MEDPAR file, based on 9.2 million Medicare claims submitted by hospitals, indicated that full use of all five fields for reporting diagnoses occurred 54 percent of the time. Procedure codes were reported using all three available fields only 25 percent of the time. However, we note that 38 percent of the records reported no procedure codes.

In addition, we consulted with an analyzed data from California. The California Statewide Discharge Data Set contains 25 diagnosis fields and 25 procedure fields. The California Patient Discharge Data Section recently completed a study of approximately 3.5 million discharge records that aggregated data identifying the number of records reporting codes in each of the available fields. The results of this study confirmed what we had found in our internal analysis: the percentage of records reporting diagnoses and procedures decreases significantly after a certain number of fields. Using the California data, we found that while approximately 50 percent of the records used at least three diagnosis fields, only 9 percent contained at least seven codes. For procedure codes, the pattern was similar. Out of 25 available fields, 40 percent reported no procedures while only 13 percent used at least 4 procedure code fields for reporting.

Based on these results and on our analysis of reporting on MEDPAR records, we will expand the UB–82 billing form to include 9 diagnosis fields and 6 procedure code fields effective for discharges occurring on or after October 1, 1991. We estimate that this will encompass approximately 95 percent of the diagnosis and procedure codes reported. There is no evidence to support the efficacy of expanding beyond this number as the incremental cost of expansion and of reporting each additional code would exceed the benefit to be derived. We believe that this expansion will provide additional data on diagnosis and procedures that will greatly enhance our analytic capabilities. The need to provide, for example, more than three procedure codes to ensure sequencing accuracy and logic will be adequately met by the expanded number of procedure code fields. Given the increasing emphasis on coexisting conditions as a measure for severity of illness, we believe the additional diagnosis fields will improve reporting and analytic accuracy.

We will continue to work with the National Uniform Bill Committee on revising the UB–82 to accommodate these expanded fields. With the expanded fields, we believe that there will be adequate room for hospitals to completely code virtually all inpatient hospital discharges. We expect hospitals to fully code every case using the Uniform Hospital Discharge Data Set (UHDDS) definitions and instructions as well as the coding guidelines set forth in the Coding Clinic for ICD–9–CM (Coding Clinic), published quarterly by the AHA for use by hospitals. Coding Clinic provides specific diagnosis and procedure information and guidelines that are helpful for determining proper coding. As a part of their claims review, the Peer Review Organizations (PROs) will be using these same definitions and coding guidelines to assess hospital coding practice. HCFA will send this coding expansion to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3511). These requirements will not be effective until OMB approval is received.

12. Other Issues: Intractable Epilepsy

Effective October 1, 1988, the diagnosis codes identifying epilepsy were modified by the addition of a fifth digit, which distinguished intractable from nonintractable epilepsy. (See Table 6A—New Diagnosis Codes, in section IV of the addendum to the September 1, 1989 final rule (54 FR 36547)). This modification added a fifth digit of "0" to specify "without mention of intractable epilepsy" and a fifth digit of "1" to identify intractable epilepsy cases to diagnosis codes 345.0 through 345.9. Patients with a principal diagnosis of 345.00 through 345.91 are assigned to MDC 1 (Diseases and Disorders of the Nervous System). These cases group to DRG 1 (Craniotomy Age>17 Except Trauma) or DRG 3 (Craniotomy Age 0–17) when surgery is performed and to DRG 24, 25, or 26 (Seizure and Headache) when there is no operating room procedure performed.

By differentiating between intractable epilepsy and routine epilepsy, the new diagnosis codes recognize the varying severity of epilepsy. Further, we added two new procedure codes effective October 1, 1989 to identify procedures typically performed in the diagnosis and treatment of epilepsy patients. (See Table 6B—New Procedure Codes, in section IV of the addendum to the September 1, 1989 final rule (54 FR 36549)). These new codes, 89.10 (Intracarotid amobarbital test) and 89.19 (Video and radio-telemetered electroencephalographic monitoring) with the modified diagnosis codes provide an opportunity to identify the intractable epilepsy patients, both with and without the specified procedures, and to analyze resource use during hospital stays.

In the September 1, 1989 final rule, at the time the new codes were announced, we stated that these codes would allow us to collect and evaluate data concerning resource requirements for patients with intractable epilepsy compared to patients with routine epilepsy and to determine whether any additional classification changes should be proposed once the FY 1990 data were available (54 FR 36461). Accordingly, we have analyzed the FY 1990 MEDPAR data, comparing cases with intractable and nonintractable epilepsy with and without procedures 89.10 and 89.19. As a result of this analysis, we found that, while cases with intractable epilepsy assigned to DRGs 24, 25, and 26 incurred higher charges than those cases without intractable epilepsy, the differences are not significant enough to warrant any DRG classification changes at this time. The average standardized charge for the FY 1990 nonintractable epilepsy cases was $5,810 while the intractable cases had an average standardized charge of $6,362.

As part of our analysis, we also examined the charge data from those hospitals that specialize in the treatment of epilepsy. Because these hospitals treat many of the most complicated cases, we would expect that the charges at these hospitals would be higher than the average. Although the number of cases treated at each center is small (between 0 and 55 cases in the FY 1990 MEDPAR), there was not consistent pattern concerning charges for either intractable or nonintractable epilepsy cases. Out of 13 specialty hospitals, the average charge for intractable cases was higher than the national average in only 5 hospitals, while for nonintractable cases, the average charge was higher at 8 hospitals. We will continue to monitor the performance of intractable epilepsy compared to nonintractable epilepsy to determine if the differential in charges between these cases increases.

We note that there were too few cases reported using either of the procedure codes to make a definitive statement in regard to the impact of these procedures on resource intensity. As with the specialty centers, the data were inconsistent. Although the cases with the procedures code 89.19 had higher charges for intractable cases, this finding did not hold true for intractable cases with procedure code 89.10, nor was it true for either of the codes for nonintractable cases. We will also follow-up on these cases in ensuing years as more current data become available.

C. Recalibration of DRG Weights

One of the basic issues in recalibration is the choice of a data base that allows us to construct relative DRG weights that most accurately reflect current relative resource use. Since FY 1986, the DRG weights have been based on charge data. The latest recalibration, which was published as a part of the FY 1991 prospective payment final rule, used hospital charge information from the FY 1989 MEDPAR file. For a discussion of the options we considered and the reasons we chose to use charge data beginning in FY 1986, we refer the reader to the rules published on June 10, 1985 (50 FR 24372) and September 3, 1985 (50 FR 35652).

We are proposing to use the same basic methodology for the FY 1992 recalibration as we did for FY 1991. (See the September 4, 1990 final rule (55 FR 36033).) That is, we would recalibrate the weights based on charge data for Medicare discharges. However, we would use the most current charge information available, the FY 1990 MEDPAR file, rather than the FY 1989 MEDPAR file. The MEDPAR file is based on fully-coded diagnostic and surgical procedure data for all Medicare inpatient hospital bills.

The propsed recalibrated DRG relative weights are constructed from FY 1990 MEDPAR data, received by HCFA through December 1990, from all hospitals subject to the prospective payment system and short-term acute care hospitals in waiver States. The FY 1990 MEDPAR file includes data for approximately 9.8 million Medicare discharges.

The methodogoly used to calculate the proposed DRG weights from the FY 1990 MEDPAR file is as follows:

- All the claims were regrouped using the revised DRG classifications discussed above in section II.B of this preamble.
- Charges were standardized to remove the effects of differences in area wage levels, indirect medical education costs, disproportionate share payments, and, for hospitals in Alaska and Hawaii, the applicable cost-of-living adjustment.
- The average standardized charge per DRG was calculated by summing the standardized charges for all cases in the DRG and dividing that amount by the number of cases classified in the DRG.
- We then eliminated statistical outliers using the same criterion as was used in computing the current weights. That is, all cases outside of 3.0 standard deviations from the mean of the log distribution of charges per case for each DRG were eliminated.
- The average charge for each DRG was then recomputed excluding the statistical outliers and divided by the national average standardized charge per case to determine the weighting factor.
- We established the weighting factor for heart transplants (DRG 103) in a manner consistent with the methodology for all other DRGs except that the heart transplant cases that were used to establish the weight were limited to those Medicare-approved heart transplant centers that have cases in the FY 1990 MEDPAR file. Similarly, we limited the liver transplant cases that were used to establish the weight for DRG 480 (Liver Transplant) to those hospitals that are established liver transplant centers.
- Acquisition costs for kidney, heart, and liver transplants continue to be paid on a reasonable cost basis. Unlike other excluded costs, the acquisition costs are concentrated in specific DRGs (DRG 302 (Kidney Transplant); DRG 103 (Heart Transplant); and DRG 480 (Liver Transplant)). Because these costs are paid separately from the prospective payment rate, it is necessary to make an adjustment to prevent the relative weights for these DRGs from including the effect of the acquisition costs. Therefore, we subtracted the acquisition charges from the total charges on each transplant bill that showed acquisition charges prior to computing the average charge for the DRG and prior to eliminating statistical outliers.

When we recalibrated the DRG weights for previous years, we set a threshold of 10 cases as the minimum number of cases required to compute a reasonable weight. In the FY 1989 MEDPAR data used to establish the FY 1991 weights, there were 35 DRGs that contained fewer than 10 cases. We propose to use that same case threshold in recalibrating the DRG weights for FY 1992. In the FY 1991 recalibration, we computed the weight for the 35 low-volume DRGs by adjusting the original weights of these DRGs by the percent change in the weight of the average case in the remaining DRGs. We propose to use this same methodology for the FY 1992 recalibration. Using the FY 1990 MEDPAR data set, there are 37 DRGs that contain fewer than 10 cases.

The weights developed according to the methodology described above, using the proposed DRG classification changes, result in an average case weight that is different from the average case weight before recalibration. Therefore, the new weights are normalized by an adjustment factor, so that the average case weight after recalibration is equal to the average case weight prior to recalibration. This adjustment is intended to ensure that recalibration by itself neither increases nor decreases total payments under the prospective payment system.

In developing the FY 1990 weights, we made an across-the-board 1.22 percent reduction to the weights after normalization to take into account increases in the average case weight attributable to reclassification and recalibration changes between FY 1986 and FY 1988 (54 FR 36466). Section 6003(b) of Public Law 101–239 enacted section 1886(d)(4)(C)(ii) of the Act to ratify the 1.22 percent reduction to the DRG weights but required in section

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1886(d)(4)(C)(iii) of the Act that reclassification and recalibration changes in subsequent years (beginning with FY 1991) be made in a manner that assures that the aggregate payments are not greater or less than the aggregate payments that would have been made without the changes. Section 1886(d)(4)(C)(iv) of the Act requires that the Secretary include recommendations regarding any adjustments to the weights in his annual report to the Congress (required under section 1886(e)(3)(B) of the Act) on his initial estimate of his recommendation for the prospective payment update factor for the coming year.

We also interpret section 1886(d)(4)(C)(iii) of the Act to require that we ensure the FY 1992 reclassification and recalibration changes do not affect aggregate payments. Although normalization is intended to achieve this effect, equating the average case weight after recalibration to the average case weight before recalibration does not necessarily achieve budget neutrality with respect to aggregate payments to hospitals. Therefore, as discussed in section II.A.4.b of the Addendum to this proposed rule, we are proposing to make a budget neutrality adjustment to assure the requirement of section 1886(d)(4)(C)(iii) of the Act is met.

As discussed above in section II.B.2 of this preamble, one of the reclassification changes that we made in FY 1990 involved the implementation of the new 5-digit codes for cases with a diagnosis of acute myocardial infraction (AMI). Consistent with our policy at the time, which predated the enactment of Public Law 101–239, we assigned the revised codes for nonacute AMIs to DRGs 132 and 133, which we believed were the appropriate DRGs for payment purposes. Because we were unable to identify which cases in the FY 1988 MEDPAR file would no longer be assigned to DRGs 121 and 122, we left all the AMI cases in those DRGs in recalibrating their weights. In addition, because we could not identify which cases would no longer be assigned to DRGs 121 and 122, we could not determine an appropriate adjustment to the DRG weights for DRGs 121 and 122 and DRGs 132 and 133 to reflect the new DRG assignment. To continue to assign the nonacute cases to DRGs 121 and 122 for payment purposes until FY 1992 (when we would be able to identify the nonacute cases in our data for recalibration purposes) would have been inappropriate because it would have resulted in excessive payments for the nonacute cases without improving the payment accuracy for the acute cases in DRGs 121 and 122.

ProPAC, as a part of its March 1, 1991 report, has recommended that a one-time adjustment be made during the FY 1992 DRG recalibration process to account for the reassignment of the nonacute AMI cases in FY 1990 (Recommendation 5). ProPAC believes that the reassignment of the cases before the change could be accounted for in the recalibration policy resulted in inappropriately low weights for acute AMIs assigned to DRGs 121 and 122 and nonacute AMIs assigned to DRGs 132 and 133. ProPAC also believes that this adjustment is necessary to prevent the underpayment for these cases from being carried forward into the future.

The type of adjustment ProPAC is recommending is similar to the −1.22 percent adjustment that we made in FY 1990 to account for increases in the case-mix index attributable to DRG reclassification changes. We believe that in amending section 1886(d)(4)(C)(ii) of the Act, Congress intended that no adjustment be made in the DRG weights to make allowances for the impact of previous reclassification changes. As we did for FY 1991, we have taken into account in our update recommendation for FY 1992 any effect previous DRG changes had on aggregate payments (See Appendix C). We note that just as the AMI change may have inadvertently reduced aggregate paymetns, other changes may have increased payments. We believe that any adjustment should be for the net effect of all reclassification changes.

We also note that the proposed FY 1992 relative weights for DRGs 121 and 122, which are based on only acute AMI cases, are only slightly higher than the FY 1991 weights.

Weight	DRG 121	DRG 122
Proposed FY 1992	1.6268	1.1714
FY 1991	1.5772	1.1152

We believe this indicates that, even though the case mix in these DRGS changed because of our coding revisions, treatment patterns or other practices have been lowering the resource consumption of these cases relative to all other cases. Therefore, we do not believe that these cases suffered the dramatic losses that ProPAC projected based on FY 1988 MEDPAR data. Although our analysis does indicate that the nonacute cases assigned to DRGs 132 and 133 may have been underpaid, as discussed above in section II.B.2 of this preamble, we believe this may be largely attributable to acute AMI cases that were not coded correctly.

III. Proposed Changes to the Hospital Wage Index

A. Background

Section 1886(d)(2)(C)(ii) of the Act required, as part of the process of developing separate urban and rural standardized amounts for FY 1984, that we standardize the average cost per case of each hospital for differences in area wage levels. Sections 1886(d)(2)(H) and 1886(d)(3)(E) of the Act have required that the standardized urban and rural amounts be adjusted for area variations in hospital wage levels as part of the methodology for determining prospective payments to hospitals. To fulfill both of these requirements, we constructed an index that reflects average hospital wages in each urban and rural area as a percentage of the national average hospital wage.

In determining prospective payments to hospitals in FY 1990, the wage index was based on wage data from cost reporting periods beginning in FY 1984. Section 6003(h)(6) of Public Law 101–239 amended section 1886(d)(3)(E) of the Act to require that wage indexes that are applied to the labor-related portion of the national average standardized amounts of the prospective payment system be updated not later than October 1, 1990, and updated annually beginning October 1, 1993. The September 4, 1990 final rule (55 FR 35990) set forth a revised hospital wage index that was based on a HCFA survey of hospital wage and salary data for all hospitals subject to the prospective payment system with cost reporting periods ending in calendar year 1988. Home office costs and fringe benefits associated with hospital and home office salaries were included in the updated wage index. Nonhospital costs were excluded from the wage index.

In the September 4, 1990 final rule (55 FR 36041), we implemented a 1-year phase-in of the undated wage index for FY 1991 to lessen the impact of the most significant changes in wage index values. We limited the percentage change in the wage index value to 8 percent plus 50 percent of the difference between the 8 percent threshold and the new wage index value.

Section 115(a) of Public Law 101–403 extended the use of the area wage index applicable to prospective payment system hospitals that was in effect on September 30, 1990 (that is, the wage index in use in FY 1990, which was based on 1984 hospital wage data) to discharges occurring on or after October 1, 1990 and before October 21, 1990. Section 4007(a)(3) of Public Law 101–508 further extended use of the FY 1990 wage index for prospective payment hospitals for discharges occurring on or after October 21, 1990 and before January 1, 1991. These changes were announced in the January 7, 1991 notice, Legislative Changes Concerning Payment to Hospitals for Federal Fiscal Year 1991 (56 FR 562).

Section 4002(d)(1)(A) of Public Law 101–508 specified that a wage index based on 1988 hospital wage data would be effective for discharges occurring on or after January 1, 1991 and before October 1, 1993. Also, section 4002(d)(1)(B) of Public Law 101–508 specified that the Secretary shall apply the wage index without regard to a previous survey of wages and wage-related costs. Therefore, in the January 7, 1991 final rule with comment period, Mid-Year FY 1991 Changes to the Inpatient Hospital Prospective Payment System (56 FR 568), we revised the wage index to eliminate the 1-year transition period set forth in the September 4, 1990 final rule.

B. Updating the Wage Index Data

For discharges occurring in FY 1991, the proposed wage index continues to be based solely on 1988 wage data. In addition, in determining the proposed wage index for discharges occurring on or after October 1, 1991, we incorporated all corrections of errors that have been identified in the survey wage data since the construction of the wage index implemented in the January 7, 1991 final rule.

The wage indexes are shown in tables 4a through 4c in the addendum to this proposed rule.

C. Revisions to the Wage Index Based On Hospital Reclassifications

Under section 1886(d)(8)(B) of the Act, for discharges occurring on or after October 1, 1988, hospitals in certain rural counties adjacent to one or more Metropolitan Statistical Areas (MSAs) are considered to be located in one of the adjacent MSAs if certain standards are met. Under this provision, as a part of the September 30, 1988 prospective payment system final rule, we classified the wage data for those rural areas as if the hospitals in those areas were located in the adjacent MSAs and recomputed the wage index values for the affected MSAs and rural areas.

Because inclusion of the wage data from rural hospitals that are considered to be located in an adjacent MSA under section 1886(d)(8)(B) of the Act resulted in the reduction of the wage index values of several MSAs and rural areas, Congress enacted section 8403(a) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647). Under that provision, which added a new section 1886(d)(8)(C) to the Act, if the inclusion of wage data from rural hospitals now considered to be located in an urban area resulted in a reduction of the wage index value for the affected MSA, or resulted in a reduction of the wage index value for the rural area from which these data were now excluded, then the wage index values for those affected areas were determined as if section 1886(d)(8)(B) of the Act had not been enacted. In addition, the wage index value for hospitals located in rural counties that were deemed urban was determined on a county-specific basis as if the county were a separate urban area. This provision was implemented as part of the September 1, 1989 prospective payment system final rule (54 FR 36476).

For some hospitals in counties redesignated as urban under the provisions of section 1886(d)(8)(B) of the Act, the application of county-specific wage index values for FY 1990 resulted in lower total prospective payments than what those hospitals had received in FY 1989 because those hospitals were now subject to a lower wage index value. For some redesignated hospitals, such as those that had a county-specific wage index value lower than the Statewide rural wage index, the decrease in payment was significant. In fact, some county-specific wage index values were so low that some rural hospitals redesignated as urban hospitals received lower payments than they would have received if they had not been redesignated.

In order to address the adverse impact on certain redesignated hospitals that resulted from implementation of section 8403(a) of Public Law 100–647, Congress revised the methodology for applying the wage index to hospitals affected by section 1886(d)(8)(B) of the Act. This change was effective for discharges occurring on or after April 1, 1990. As amended by section 6003(h)(3) of Public Law 101–239, section 1886(d)(8)(C) of the Act made the application of the wage index to redesignated hospitals dependent on the hypothetical impact that the wage data from these hospitals would have on the wage index value for the MSA to which they have been redesignated. Therefore, the wage index values were determined by considering the following:

- If including the wage data for the redesignated hospitals reduces the MSA wage index value by one percentage point or less, the MSA wage index value applies to the redesignated hospitals deemed to be a part of that MSA. The MSA wage index value is determined exclusive of the wage data for the redesignated hospitals.
- If including the wage data for the redesignated hospitals reduces the MSA wage index value by more than one percentage point, the wage index is applied separately to the MSA and to the hospitals deemed to be part of that MSA. In this case, the redesignated hospitals continue to have their wage index determined on a county-specific basis, as if their county were a separate urban area. However, the wage index for such county will not be less than the Statewide rural wage index.
- Rural areas whose wage index values would be reduced by excluding the data for redesignated hospitals continue to have their wage index calculated as if no redesignation had occurred. Those rural areas whose wage index values increased as a result of excluding the wage data for the excluded hospitals continue to have their wage index calculated exclusive of the redesignated hospitals.

Section 4002(h) of Public Law 101–508 amended section 1886(d)(8)(C) of the Act effective for discharges occurring on or after January 1, 1991 by specifying that if including the wage data for the redesignated hospitals reduces the wage index value for the area to which the hospitals are redesignated by more than one percentage point, the hospitals that are redesignated are subject to the wage index value of the area that results from including the wage data of the redesignated hospitals. However, the wage index value for the redesignated hospitals cannot be less than the wage index value for the rural areas of the State in which the hospitals are located.

As discussed above in section I.A.1. of the preamble, section 6003(h)(1) of Public Law 101–239 added section 1886(d)(10) to the Act (which was later amended by section 4002(h) of Public Law 101–508) to provide for the establishment of the Medicare Geographic Classification Review Board (MGCRB). The MGCRB considers applications by hospitals for geographic reclassification for purposes of payment under the prospective payment system. The first hospital reclassifications based on decisions of the MGCRB will take effect October 1, 1991. Section 1886(d)(10)(C) of the Act requires that the MGCRB issue its decisions by no later than 180 days afer the first day of the Federal fiscal year (that is, March 30) and also provides for an appeals process that can extend an additional 105 days.

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The methodology for determining the wage index values for redesignated hospitals will be applied jointly to the hospitals located in those rural counties that were deemed urban under section 1886(d)(8)(B) of the Act and those hospitals that are redesignated as a result of the MGCRB decisions under section 1886(d)(10) of the Act. We note that, except for those rural areas where reclassifications would reduce the rural wage index value, the wage index value for each area is computed exclusive of the data for hospitals that have been granted reclassification from the area for purposes of their wage index. As a result, there are a few MSAs listed in Table 4a that do not have a wage index value. This is because the hospitals in the original MSA have been reclassified to another area and our records indicate that there are no other hospitals currently classified in those areas.

The proposed revised wage index values effective for discharges occurring on or after October 1, 1991, are shown in tables 4a, 4b, and 4c, of the addendum to this proposed rule. Hospitals that are redesignated should use the wage index values shown in Table 4c. It should be noted that for some areas, more than one wage index value will be shown in table 4c. This occurs when hospitals from more than one state are included in the group of redesignated hospitals, and one state has a higher statewide rural wage index value than the wage index value otherwise applicable to the redesignated hospitals.

Revised Table Names

Table 4a—Wage Index for Urban Areas
Table 4b—Wage Index for Rural Areas
Table 4c—Wage Index for Redesignated Hospitals

The proposed FY 1992 wage index values incorporate all reclassification decisions made by the MGCRB as of March 30, 1991. As of that date, 639 wage index reclassifications were approved by the MGCRB. At the time this proposed wage index was constructed, the MGCRB was continuing to evaluate some additional applications requesting a reclassification. Any additional decisions made by the MGCRB, as well as changes that result from the appeals process will be incorporated into the wage index values to be published in the final rule implementing changes to the prospective payment system for FY 1992. The later decisions may affect not only the wage index value for specific geographic areas but also whether redesignated hospitals receive the wage index of the area to which they are redesignated or a combined wage index that includes the data for both the hospitals already in the area and the redesignated hospitals. Further, the wage index for the area from which the hospitals are redesignated may be affected.

D. Occupational Mix Adjustment

In its March 1, 1991 report, ProPAC recommended that the Secretary collect hospital wage data by occupation and evaluate the effect of adjusting the HCFA wage index for occupational mix (Recommendation 4). The HCFA wage index reflects variations in the cost of labor; that is, it accounts for variations in the mix of occupations as well as the price of labor. ProPAC believes that the wage index should account for only variations in price, which are beyond the hospital's control and are not otherwise accounted for by other adjustments in the prospective payment system.

Last year, ProPAC studied the effect of adjusting the wage index for occupational mix and found that a wage index adjusted for occupational mix would redistribute funds from urban to rural hospitals. Within urban areas, the occupational mix adjustment would redistribute funds from large to small hospitals. Within rural areas, the occupational mix adjustment would increase the wage index values of all bed size groups. Section 4002(d) of Public Law 101-508 required that ProPAC examine available data to analyze the impact of variation in occupational mix on the computation of the wage data and include in its March 1, 1991 report recommendations regarding the desirability and feasibility of modifying the wage index for occupational mix. To fulfill this requirement, ProPAC studied 1988 California wage and hour data and concluded, as in the earlier study, that the occupational mix adjustment would increase the wage index values in rural areas and decrease the values in large urban areas. Although ProPAC did not formally measure the burden of hospital reporting, it concluded that the California experience indicated the cost would not be prohibitive.

We do not plan to collect occupational mix data at this time for several reasons. First, we believe any decision on obtaining wage data by occupational category for use in future wage indexes must be preceded by a formal evaluation of the value, feasibility, and impact of the collection and use of occupation-specific wage data for indexing hospital wage costs. We are reluctant to place on hospitals the additional reporting burden associated with such a data collection effort when it is still not clear that a substantial improvement in the distribution of payments to hospitals would result from an occupational mix adjustment. In this regard, we note that the use of occupation-specific wage data should be evaluated in conjunction with other potential wage index changes, such as revised labor market definitions. For example, the effect of changing the current wage index adjustment to include both more distinctly defined labor market areas and an adjustment for occupational mix would be that these two factors would tend to moderate each other. That is, the gains the central city hospitals might realize under revised labor market areas would be somewhat offset by the effect of an occupational mix adjustment, and the gains rural hospitals in the least densely populated areas might realize under an occupational mix adjustment would be somewhat offset by the effect of revised labor market areas.

In addition, we do not know the optimum occupational mix or standard that is needed to provide quality care in an efficient manner. The ProPAC study indicates that the use of occupational weights would result in significant redistribution across hospitals based on urban and rural status, region, and bed size ("Adjusting Wage Differences for Geographic Differences in Occupational Mix," 1990). It is not clear that this redistribution is desirable, particularly in conjunction with the elimination of separate standardized amounts for rural and other urban hospitals. Moreover, we note that the ProPAC studies have not examined the effect of the payment redistributions on hospital Medicare operating margins.

Second, ProPAC believes that the wage index as currently constructed overcompensates certain large urban hospitals due to the fact that the case-mix index already reflects the higher intensity of labor costs these hospitals incur. ProPAC's point is that the cost of labor essentially is double-counted in paying these hospitals through both a higher case-mix index and wage index value relative to other hospitals. As a result, ProPAC believes the system overcompensates for the more complex and higher-weighted DRGs that require the services of more highly trained professionals and that are more often treated in large urban and teaching hospitals. Conversely, hospitals with a lower occupational mix, which are often located in rural areas, are disadvantaged by the payment system, in ProPAC's view. We believe, however, that ProPAC may be overstating the extent of this problem. The standardization process used to recalibrate the DRG relative weights is intended to remove the effects of area wage differences from the case mix measure, including the effect of variations in occupational mix.

Finally, the more fundamental issue concerns what the wage index is intended to measure: (a) The cost of labor purchased by hospitals, regardless of the mix of employees; or (b) the price paid for labor, holding the mix of employees constant. Currently, the wage index measures the cost of labor. If the wage index were to measure the price of labor, then a set of occupational weights would have to be developed to determine a standard occupational mix. Hospitals would not be compensated for a mix of employees above the standard, while hospitals with a mix of employees below the standard would be overcompensated, relative to their cost of labor.

For all these reasons, we are not proposing at this time to adopt an occupational mix adjustment in the wage index. In this regard, we have an ongoing research project with the Center for Health Economics Research to evaluate several topics related to the wage index, including the change in wages across areas in the 1982, 1984, and 1988 HCFA wage surveys, occupational mix, and alternative labor market areas.

IV. Other Decisions and Proposed Changes to the Regulations

A. Add-On Payment for Blood Clotting Factor (§ 412.2)

Hemophilia, a blood disorder characterized by prolonged coagulation time, is caused by an inherited deficiency of a factor in plasma necessary for blood to clot. Hemophilia encompasses three conditions: Factor VIII deficiency (classical hemophilia); Factor IX deficiency (plasma thromboplastin component or Christmas factor deficiency); and Von Willebrand's disease. The most common factors required by hemophiliacs to increase coagulation are Factor VIII and Factor IX; a small number of hemophiliacs have developed inhibitors to these factors and require special treatment.

Under section 6011 of Public Law 101-239, Congress amended section 1886(a)(4) of the Act to provide that prospective payment hospitals receive an additional payment for the costs of administering blood clotting factor to hemophiliacs who are hospital inpatients. This add-on payment is effective for blood clotting factor furnished on or after June 19, 1990 and before December 19, 1991.

In the April 20, 1990 final rule with comment, we established an add-on price for clotting factor based on the latest (1990) price listing available from the Drug Topics Red Book, the publication of pharmaceutical average wholesale prices (55 FR 15158). Due to high variation in the costs of the different types of blood clotting factor, we determined that it was more equitable to set an add-on payment amount for each type of blood clotting factor. Therefore, we set three separate add-on amounts, one for each of the three basic types of clotting factor. Also, we discounted the average wholesale prices by 15 percent before calculating the median price. This decision was based on the results of a study conducted by the Department's Office of the Inspector General ("Use of Average Wholesale Prices in Reimbursing Pharmacies Participating in Medicaid and Medicare Prescription Drug Program"; Report No. A-06-89-00037, October 3, 1989), which found the average wholesale price of a drug was discounted by an average 15.5 percent.

The prices we established for the three types of blood clotting factors are as follows:

Factor VIII	$.64 per unit.
Factor IX	$.26 per unit.
Other Hemophilia blood clotting factor.	$1.00 per unit.

We stated in the September 4, 1990 final rule that we recognized that the available blood clotting products and their costs were changing rapidly, with new products entering the market and existing products being discontinued (55 FR 36001). At that time, we also stated that we were aware that changes in the clotting factor market might require re-evaluation of the add-on payment amount as part of our FY 1992 changes to the prospective payment system. We have re-evaluated the price per unit for blood clotting factors used by hemophilia inpatients, based on the current (1991) Drug Topics Red Book. Using the same methodology as was used to set the current add-on payment amount, we have calculated updated prices per unit of factor as follows:

Factor VIII	$.72 per unit.
Factor IX	$.26 per unit.
Other Hemophilia blood clotting factor.	$1.11 per unit.

We are proposing that these prices be used to pay for blood clotting factor for discharges occurring on or after October 1, 1991 and before December 19, 1991, at which time the payment authority expires.

Since the implementation of the add-on payment, a new blood clotting factor used in the treatment of hemophilia inpatients has been approved by the Food and Drug Administration. This product, although used in the treatment of factor IX patients, differs from other factor IX products both in cost and efficacy. Because it does not contain the same proportion of thrombogenic agents, the risk of thrombosis to the patient is significantly reduced. Extensive research and resources were invested to produce this safer product. Consequently, the price established in the Drug Topics Red Book more closely resembles that of those products we have classified as "Other." If this new factor were to be included in the factor IX category, the resulting average would inflate the payment to other factor IX products and would so lower the payment for the new product that the incentive to use it would be diminished. We have, therefore, proposed to include the new product in the "Other" category both for purposes of calculating the average payment for that class and for purposes of payment for the product.

B. Retroactive Adjustments for Provisionally Excluded Rehabilitation Hospitals and Units (§§ 412.23, 412.30, and 412.130)

Since October 1, 1983, our regulations have allowed new rehabilitation hospitals and units to be excluded from the prospective payment system, and existing excluded rehabilitation units to be expanded by the addition of new beds, without requiring proof that the new facilities actually treated an inpatient population meeting the requirements of § 412.23(b)(2) (the "75 percent" rule). A new rehabilitation hospital or unit can be excluded, or an existing unit can add new beds, if the new or added facilities are otherwise qualified for exclusion and the hospital submits a written certification that it intends to use the facilities to treat an inpatient population that meets the 75 percent rule. The provisions allowing this are located at § 412.23(b)(8) (for new hospitals) and § 412.30 (for addition of new units and expansion of existing units).

We recognize that there may be cases in which a hospital or unit does not actually perform in accordance with its projections and, therefore, is not able to show actual compliance with the 75 percent rule in the first 12-month cost reporting period for which it is excluded from the prospective payment system.

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Such a facility would not be able to qualify for a prospective payment system exclusion as a rehabilitation hospital or unit in its next cost reporting period. However, our current regulations do not allow us to make any retroactive changes in the status of a hospital or unit. This means the operator of the facility is able to benefit financially from the first year of exclusion even though the hospital or unit failed to meet the 75 percent rule. Although our current policy is consistent with the prospective nature of the hospital payment system, we are concerned that it may have the unintended effect of rewarding poor planning and may, in fact, encourage operators of marginal facilities to request exclusion and attempt to meet the 75 percent rule, since they could be assured of at least 1 year of exclusion.

Because of this concern, we are proposing that hospitals or units that have been excluded based on certifications of compliance with the 75 percent rule would be allowed to retain payments made to them on the basis of the exclusion only if they actually meet the 75 percent rule in the first year for which they are excluded. If a hospital or unit does not actually meet the 75 percent rule in its first year of exclusion, we would determine the amount of actual payment under the exclusion, compute what we would have paid for the facility's services to Medicare patients under the prospective payment system, and recover any difference in accordance with the rules on the recoupment of overpayments. (We would also, of course, make additional payments to the hospital in the event that the payment amount computed under the prospective payment system is greater.) We are proposing to adopt this policy change because we believe it offers new hospitals or units reasonable access to exclusions from the prospective payment system, while holding them responsible for their performance and ensuring that the Medicare program does not provide inappropriate financial rewards.

We would revise both §§ 412.23 and 412.30 and add a new § 412.130 to implement the revisions concerning rehabilitation hospitals and units.

C. Outlier Payments (§ 412.84)

On February 28, 1991, we published a proposed rule to establish a prospective payment system for inpatient hospital-related capital costs (56 FR 8476). In that document, we proposed modifying our outlier policy in order to take into account capital costs for unusually long length of stay or high-cost cases (56 FR 8486). As discussed in that proposed rule, we believe that it is appropriate to establish a unified outlier payment methodology for operating and capital costs. Thus, we would establish a single set of thresholds that would be used to identify outlier cases for both operating and capital payments. In the capital proposed rule, we stated that the percentage reduction for outliers in the capital standard payment rate would be the same as the aggregate percentage reduction in the operating standardized amounts. We would accomplish this by setting a single outlier pool target of 5.1 percent and would reduce the urban standardized amount, the rural standardized amount, and the capital payment rate by a factor that recognizes actual outlier payments to each group. We have proposed only one offset to the capital payment rate, rather than separate urban and rural offsets, because the capital standard payment rate does not vary based on urban or rural location, although hospitals in large urban areas will receive 1.6 percent add-on.

In the February 28, 1991 proposed rule, we proposed that capital-related payment for day outliers be determined based on the same provisions now in effect for operating-related costs. That is, the prospective portion of the capital payment rate for a DRG would be adjusted by the geometric mean length of stay for that DRG in order to determine a per diem capital-related outlier payment. Payment for cost outliers would be determined based on a single threshold that incorporates both capital-related costs and operating-related costs and the same marginal cost factor. We believe that it would be inappropriate to make cost outlier payments for high capital cost cases or high operating cost cases in which total capital-related and operating-related costs are below the cost threshold.

We are setting the outlier thresholds and the standardized amount reduction factors based on the assumption that capital payments are made on 100 percent of the Federal payment rate, instead of payment under the special transition period provisions. However, actual payments would be made only for the portion of capital payments that are based on the Federal rate. Outlier payments would not be made on the hospital-specific portion of the payment to hospitals under the fully prospective methodology. For hospitals paid under the hold-harmless methodology, outlier payments would be made only on the payment for new capital that is based on the Federal rate. This method of estimating outlier payments is similar to the method used when the prospective payment system first was introduced for oprating costs (see the January 4, 1984 final rule (49 FR 261)). Under that method, the outlier pool was set at a certain percentage level of Federal payments, but actual outlier payments were less than that percentage of total operating payments to hospitals because of the transition from hospital-specific to Federal rates. In addition, since it is not possible to determine at this point what proportion of capital payments to hospitals will be paid on the Federal rate (this depends on FY 1992 capital costs, in part), we cannot reliably set the outlier thresholds in any other manner. A detailed example of the combined outlier payment determination methodology was set forth in the February 28, 1991 capital proposed rule (56 FR 8497).

Therefore, for FY 1992, we propose to set the day outlier threshold at the geometric mean length of stay for each DRG plus the lesser of 32 days or 3 standard deviations and the cost outlier threshold at the greater of 2.0 times the prospective payment rate for the DRG or $43,000. The proposed thresholds would essentially maintain the current outlier payment split with 42.8 percent of cases being paid using the cost outlier methodology and 57.3 percent using the day outlier methodology. Cases that meet the day outlier threshold but that would be paid using the cost outlier methodology, because it yields the higher payment, constitute 14 percent of all cases. Our simulation of FY 1992 outlier payments based on FY 1990 MEDPAR data indicates that the percentage of outlier cases that qualify as day outliers is about 71.2 percent. The cases qualifying as day outliers are expected to receive 78.1 percent of outlier payments in FY 1992. An estimated 28.8 percent of outlier cases would be cost only outlier cases, which are expected to receive about 21.9 percent of outlier payments. The following table illustrates this finding in greater detail:

Type of outlier	Percentage of outlier cases	Percentage of operating outlier payments	Percentage of capital outlier payments	Percentage of total outlier payments
Meets day threshold only	47.1	22.2	17.5	21.9
Meets day and cost thresholds, paid using day methodology	10.1	21.0	16.7	20.8
Meets day and cost thresholds, paid using cost methodology	14.0	35.2	38.4	35.4
Subtotal—All cases meeting day threshold	71.2	78.4	72.6	78.1
Meets cost threshold only	28.8	21.6	27.4	21.9
Total	100.0	100.0	100.0	100.0

When we modeled the combined outlier payments, we found that using a common set of thresholds would result in a lower percentage of outlier payments for capital-related costs than for operating costs. We estimate the proposed thresholds would result in outlier payments equal to 5.1 percent of operating DRG payments and 4.5 percent of capital payments based on the Federal rate.

The proposed outlier adjustment factors that would be applied to the standardized amounts and the capital Federal rate for FY 1992 are as follows:

Urban standardized amount	Rural standardized amount	Capital federal rate
0.944309	0.979806	0.954854

To evaluate the effect on operating outlier payments of capital prospective payments, we also calculated the outlier thresholds that would be appropriate in the absence of capital prospective payments. If we were to continue to pay outliers only on operating prospective payments, we would have proposed to set the day outlier threshold at the geometric mean length of stay for each DRG plus the lesser of 32 days or 3.0 standard deviations and the cost outlier threshold at the greater of 2.0 times the prospective payment rate for the DRG or $39,000. The only difference between these thresholds and the thresholds that we are proposing is that the fixed dollar threshold for cost outliers only is $4,000 lower. Because capital costs are approximately 10 percent of operating costs, we would expect the fixed cost threshold including capital to be approximately 10 percent higher than the fixed cost threshold for operating only, or approximately $42,900. The threshold that we are proposing, at $43,000, is very close to this expected level. At these threshold levels for operating outliers only, we would have expected approximately 56.9 percent of cases to be using the day outlier methodology and 43.1 percent of cases to be paid using the cost outlier methodology. However, 14.2 percent of day outlier cases would be paid under the cost methodology because it would yield higher payments. These proportions of cases are very close to those found under our proposed thresholds which include capital outlier payments. We therefore believe that incorporating capital into outlier payments will not have a significant effect on operating outlier payments.

Table 8a in section IV of the addendum to this proposed rule contains the updated Statewide average operating cost-to-charge ratios for urban hospitals and for rural hospitals to be used in calculating cost outlier payments for those hospitals for which the intermediary is unable to compute a reasonable hospital-specific cost-to-charge ratio. Effective October 1, 1991, these Statewide average ratios replace the ratios published in the September 4, 1990 final rule (55 FR 36162). Table 8b contains comparable Statewide average cpaital cost-to-charge ratios. We propose that these average ratios would be used to calculate cost outlier payments for those hospitals for which the intermediary computes operating cost-to-charge ratios lower than 0.335 or greater than 1.252 and capital cost-to-charge ratios lower than 0.017 or greater than 0.255. This range represents 3 standard deviations (plus or minus) from the mean of the log distribution of cost-to-charge ratios for all hospitals. The cost-to-charge ratios in tables 8a and 8b would be applied to all hospital-specific cost-to-charge ratios based on cost report settlements occurring during FY 1992.

D. Rural Referral Centers (§ 412.96)

Under the authority of section 1886(d)(5)(C)(i) of the Act, § 412.96 sets forth the criteria a hospital must meet in order to receive special treatment under the prospective payment system as a rural referral center (that is, payment is based on the other urban payment rate rather than the rural payment rate). One of the criteria under which a rural hospital may qualify as a referral center is to have 275 or more beds available for use. A rural hospital that does not meet the bed size criterion can qualify as a rural referral center if the hospital meets two mandatory criteria (number of discharges and case-mix index) and at least one of three optional criteria (medical staff, source of inpatients, or volume of referrals). With respect to the two mandatory criteria, a hospital is classified as a rural referral center if its—

- Case-mix index is equal to the lower of the median case-mix index for urban hospitals in its census region, excluding hospitals with approved teaching programs, or the median case-mix index for all urban hospitals nationally; and
- Number of discharges is at least 5,000 discharges per year or, if fewer, the median number of discharges for urban hospitals in the census region in which the hospital is located. (We note that the number of discharges criterion for an osteopathic hospital is at least 3,000 discharges per year.)

1. Case-Mix Index

Section 412.96(c)(1) provides that HCFA will establish updated national and regional case-mix index values in each year's annual notice of prospective payment rates for purposes of determining rural referral center status. In determining the proposed national and regional case-mix index values, we would follow the same methodology we used in the November 24, 1986 final rule, as set forth in regulations at § 412.96(c)(1)(ii). Therefore, the proposed national case-mix index value includes all urban hospitals nationwide and the proposed regional values are the median values of urban hospitals within each census region, excluding those with approved teaching programs (that is, those hospitals receiving indirect medical education payments as provided in § 412.118).

These values are based on discharges occurring during FY 1990 (October 1, 1989 through September 30, 1990) and include bills posted to HCFA's records through December 1990. Therefore, in addition to meeting other criteria, we are proposing that to qualify for initial rural referral center status for cost reporting periods beginning on or after October 1, 1991, a hospital's case-mix

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index value for FY 1990 would have to be at least—

- 1.2567; or
- Equal to the median case-mix index value for urban hospitals (excluding hospitals with approved teaching programs as identified in § 412.118) calculated by HCFA for the census region in which the hospital is located.

The median case-mix values by region are set forth in the table below:

Region	Case-mix index value
1. New England (CT, ME, MA, NH, RI, VT)	1.1703
2. Middle Atlantic (PA, NJ, NY)	1.1774
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	1.2610
4. East North Central (IL, IN, MI, OH, WI)	1.1945
5. East South Central (AL, KY, MS, TN)	1.2073
6. West North Central (IA, KS, MN, MO, NB, ND, SD)	1.1823
7. West South Central (AR, LA, OK, TX)	1.2564
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	1.2808
9. Pacific (AK, CA, HI, OR, WA)	1.2795

The above numbers will be revised in the final rule to the extent required if additional bills are received for discharges through September 30, 1990.

For the benefit of hospitals seeking to qualify as referral centers or those wishing to know how their case-mix index value compares to the criteria, we are publishing the FY 1990 case-mix index values in table 3c in section IV of the addendum of this proposed rule. In keeping with our policy or discharges, these case-mix index values are computed based on all Medicare patient discharges subject to DRG-based payment.

2. Discharges

Section 412.96(c)(2)(i) provides that HCFA will set forth the national and regional numbers of discharges in each year's annual notice of prospective payment rates for purposes of determining referral center status. As specified in section 1886(d)(5)(C)(i)(II) of the Act, the national standard is set at 5,000 discharges. However, we are proposing to update the regional standards, which are based on discharges for urban hospitals during FY 1989 (that is, October 1, 1988 through September 30, 1989). That is the latest year for which we have complete discharge data available.

Therefore, in addition to meeting other criteria, we are proposing that to qualify for initial rural referral center status for cost reporting periods beginning on or after October 1, 1991, a hospital's number of discharges for its cost reporting period that began during FY 1990 would have to be at least—

- 5,000; or
- Equal to the median number of discharges for urban hospitals in the census region in which the hospital is located, as indicated in the table below.

Region	No. of discharges
1. New England (CT, ME, MA, NH, RI, VT)	5,991
2. Middle Atlantic (PA, NJ, NY)	8,454
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	6,663
4. East North Central (IL, IN, MI, OH, WI)	8,130
5. East South Central (AL, KY, MS, TN)	6,117
6. West North Central (IA, KS, MN, MO, NB, ND, SD)	5,166
7. West South Central (AR, LA, OK, TX)	4,831
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	7,854
9. Pacific (AK, CA, HI, OR, WA)	5,161

We again note that to qualify for rural referral center status for cost reporting periods beginning on or after October 1, 1991, an osteopathic hospital's number of discharges for its cost reporting period that began during FY 1990 would have to be at least 3,000.

E. Indirect Medical Education Costs (§ 412.118)

Section 1886(d)(5)(B) of the Act provides that prospective payment hospitals that have residents in an approved graduate medical education program receive an additional payment to reflect the higher indirect operating costs associated with graduate medical education. The regulations governing the calculation of this additional payment are set forth at § 412.118. Each hospital's additional indirect medical education (IME) payment is determined by multiplying the hospital's total DRG revenue by the applicable IME adjustment factor.

Section 4002(b)(3)(B) of Public Law 101–508 revised section 1886(d)(5)(B)(ii) of the Act to delete the scheduled increase in the IME adjustment factor from approximately 7.7 percent to 8.1 percent for every 10 percent increase in the hospital's resident-to-bed ratio for discharges occurring on or after October 1, 1995. The IME adjustment factor is an approximation because it is applied on a curvilinear or variable basis. That is, each absolute increment in a hospital's resident-to-bed ratio does not result in an equal proportional increase in costs. The deletion of the scheduled increase in the adjustment factor was made as a conforming amendment to the repeal of the sunset provision for the disproportionate share adjustment. To implement this change, we would delete both § 412.118(c)(2), which specifies a larger IME adjustment factor for discharges occurring on or after October 1, 1995, and § 412.118(d)(2), which sets forth the steps for calculating the IME adjustment factor for discharges occurring on or after October 1, 1995. We are also correcting a typographical error in newly redesignated § 412.118(c). That paragraph currently states that the .405 factor applied to determine the amount of each hospital's adjustment is effective with discharges "on or after May 1, 1988"; however, as set forth in section 1886(d)(5)(B)(ii) of the Act, the correct effective date is "on or after May 1, 1986".

F. Ceiling on Rate of Hospital Cost Increases (§ 413.40)

Section 101 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248) added section 1886 of the Act to establish a ceiling on the allowable rate of increase for hospital inpatient operating costs. This ceiling still applies to hospitals and units excluded from the prospective payment system. Under section 1886(d)(1)(B) of the Act, excluded hospital and hospital units include psychiatric, rehabilitation, cancer, children's and long-term hospitals, and psychiatric and rehabilitation distinct-part units of acute care hospitals. (Prior to FY 1986, alcohol/drug hospitals and distinct-part units were also excluded from the prospective payment system, but are now paid under the prospective payment system.)

These excluded hospitals and units receive payment for the inpatient hospital services they furnish on the basis of reasonable cost up to a ceiling. Under the rate of increase limits, an annual target amount (stated as inpatient operating cost per discharge) is set for each hospital based on the hospital's own cost experience in its base year. This target amount is applied as a ceiling on the allowable costs per discharge for the hospital's next cost reporting period.

A hospital that has inpatient operating costs less than its target amount would be paid its costs plus the lower of—

- 50 percent of the difference between the inpatient operating cost per discharge and the target amount; or
- 5 percent of the target amount.

For cost reporting periods beginning on or after October 1, 1984 and before October 1, 1991, hospitals that have inpatient operating costs per discharge in excess of their target amount are to be paid no more than that amount.

However, section 4005(a) of Public Law 101–508 amended section 1886(b)(1)(B) of the Act to provide that hospitals with cost reporting periods beginning on or after October 1, 1991 are allowed 50 percent of the costs in excess of the target amount, but this additional payment is not to exceed 10 percent of the target amount (after any exceptions or adjustments are made to the target amount for the cost reporting period). We are proposing to revise § 413.40(d)(3) to implement this provision.

Each hospital's target amount is adjusted annually, before the beginning of its cost reporting period, by an applicable target rate percentage for the 12-month period. The limit is based on an assumption that a provider's year-to-year inpatient operating costs should remain comparable to its base year, except for inflation. Section 1886(b)(4)(A) of the Act gives the Secretary the authority to grant an exemption from, or an adjustment or exception to, the target rate-of-increase limit where events beyond the hospital's control or extraordinary circumstances create a distortion in the increase in costs. In addition, section 6015 of Public Law 101–239 amended 1886(b)(4)(A) of the Act to provide that a hospital or excluded unit may be assigned a new base year in lieu of adjustments to the existing target rate.

To implement section 1886(b)(4)(A) of the Act, the regulations provide that HCFA may adjust a hospital's operating costs considered in establishing costs per case for purposes of determining the target amount, including both the periods subject to the limit and the hospital's base period, as follows:

- Section 413.40(g) provides for an exception to the target amount to take into account unusual costs due to extraordinary circumstances beyond the provider's control or distortions in costs caused by a change in case mix as a result of the addition or discontinuation of services.
- Section 413.40(h) provides for an adjustment to take into account factors such as a change in the inpatient services that a hospital provides that could result in a significant distortion in the operating costs of inpatient hospital services.
- Effective with cost reporting periods beginning on or after April 1, 1990, § 413.40(j) provides that a new base period will be assigned to address substantial and permanent changes in patient care services that are so broad in nature that the resulting cost distortion cannot be adequately addressed through the more targeted exceptions and adjustments available under §§ 413.40(g) and (h).

The adjustments may be made only if the hospital exceeds its limit for the cost reporting period and only to the extent the hospital's costs are reasonable, attributable to the circumstances specified as creating the cost distortion, and are verified by the intermediary. (In addition to the provisions outlined above which implement section 1886(b)(4)(A) of the Act, § 413.40(i) provides for an adjustment to the target amount authorized by the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360) as amended by the Family Support Act of 1988 (Pub. L. 100–485) and the Medicare Catastrophic Coverage Repeal Act of 1989 (Pub. L. 101–234) to take into account cost distortions due to the temporary elimination of the day limitation on inpatient hospital services under catastrophic coverage.)

1. The Appeals Process (§ 413.40(e))

The general procedures for applying for an exemption or adjustment to the rate-of-increase limit are described in § 413.40(e). Section 413.40(e) requires that the hospital file its request with its fiscal intermediary no later than 180 days from the date on the notice of program reimbursement issued by the intermediary. The intermediary makes a recommendation on the hospital's request to HCFA, which makes the decision. HCFA responds to the request within 180 days from the date HCFA receives the request from the intermediary. The intermediary notifies the hospital of HCFA's decision.

Section 4005(c)(1)(A) of Public Law 101–508 amended section 1816(f) of the Act to require that the performance standards and criteria for fiscal intermediaries include the ability to process a completed application for an adjustment to the target amount not later than 75 days after the application is filed, and, if the application is incomplete, to return it with proper instructions within 60 days. This provision should decrease substantially the processing time applied by intermediaries before forwarding hospital applications to HCFA.

Section 4005(c)(1)(B) of Public Law 101–508 amended section 1886(b)(4)(A) of the Act by adding a requirement that the Secretary issue a decision on any request for an exemption, exception, or adjustment to the target amount not later than 180 days after receiving a completed application from the intermediary. Further, the provision requires that the Secretary issue a detailed explanation of the grounds on which the request was approved or denied. The statutory provision essentially codifies our current policy for processing rate-of-increase limit appeals. Under our current procedures, until we receive a hospital's completed application and any recommendation from the intermediary, the 180-day period does not begin to run. We do not count within the 180-day limitation the time required to secure the additional information needed to reach a decision on the request. Although there are some instances in which appeals have not been processed within the 180-day period even though all necessary information has been submitted, most decisions that have taken more than 180 calendar days have involved delays because needed documentation was not included in the original request. Further, in issuing a decision, we provide an explanation of the basis for our decision. Nevertheless, to reflect the statutory requirements, we are proposing to revise § 413.40(e) to state explicitly that HCFA's decision will be issued within 180 days of receiving a completed application with the intermediary's recommendation and that the decision will contain a detailed explanation of the grounds for the approval or denial.

An adjustment to the target amount is granted only if the hospital's costs are reasonable, the cost increase is attributable to significant changes in the provision of services or the type of patient served, and the effect of those changes on the hospital's costs is separately identified by the hospital and verified by the intermediary. Some requests for an adjustment to the target amount do not contain sufficient justification and documentation to support a favorable decision. For example, a request for an adjustment may set out the circumstances that caused the cost distortion to occur but fail to quantify the effect of those circumstances on the hospital's costs. In other cases, the increased costs may be appropriately documented but the application does not link the increases to changes in patient care services.

Although we deny the request based on the information in the application, we also indicate a willingness to reconsider our decision if the hospital submits additional information. Since this has been an informal procedure, we have not established a time limit within which the hospital has to submit additional information. In some instances, we have received additional information several years after we issued our initial decision. We do not believe it is appropriate for the appeals process to be prolonged in this manner. Therefore, we are proposing to formalize our reconsideration process by

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providing that HCFA's decision will be considered final unless a hospital submits additional information within 90 days of the date the intermediary notifies the hospital of HCFA's decision. We believe that 90 days is a reasonable amount of time for the hospital to develop whatever additional documentation is needed to support its request.

In processing applications for adjustments, we have identified situations where we do not believe it is necessary for HCFA to review the request. One example is an application for an adjustment to the target amount that is based on circumstances that are similar to those in an earlier cost reporting period for which HCFA has already issued a decision. Another example would involve circumstances for which our adjustment policy is well-established; that is, the type of circumstances that gave rise to the cost increases is generally accepted as a basis for adjustment, the evaluation of whether the circumstances actually occurred is relatively straightforward, and there is an established methodology for determining the amount of the exception. In these situations, we believe that direct review by HCFA of the hospital's request for an adjustment would unnecessarily delay commencement of the appeals process. To streamline the application review process in these situations, we are proposing to provide that HCFA may authorize the intermediary to make the final determination on a request for an adjustment under § 413.40(g). This authorization may be for specific hospitals or for specific circumstances. The authorization for specific hospitals for subsequent cost reporting periods would be issued at the same time as the decision on the initial adjustment request. The authorization for specific circumstances would be issued through manual instructions and would be applicable only if one of those circumstances were the only basis for an adjustment request. If HCFA authorizes the intermediary to make the final determination, the decision would be subject to the same rules as a decision issued by HCFA. The intermediary would be required to issue a decision that included a detailed explanation of the grounds for approval or disapproval within 180 days of receiving a completed application from the hospital. The decision would be subject to review under the administrative and judicial review provisions set forth in subpart R of 42 CFR part 405.

2. Exceptions and Adjustments (§§ 413.40(g) and 413.40(h))

We have found that the separate provisions at §§ 413.40(g) and 413.40(h) for adjustments in the hospital's costs per case have resulted in confusion. One source of confusion has been the use of the term "exceptions" under § 413.40(g) and the term "adjustments" under § 413.40(h). There is no substantive difference between the two terms as they are applied under § 413.40 and the terms may be used interchangeably to describe the general procedure for adjusting a hospital's costs for purposes of determining the target amount.

To eliminate confusion on this point, we are proposing to combine the provisions of § 413.40(g) and § 413.40(h). As a result of this change, there would be a single provision, that is, proposed § 413.40(g), which would be used to describe the basis of adjustments to the target amount authorized under section 1886(b)(4)(A) of the Act that do not involve the assignment of a new base period. The term "exceptions" would no longer be used to describe these adjustments.

A second source of confusion has been the adjustment for change in case mix authorized under § 413.40(g)(3). Originally, § 413.40(g) applied to acute care hospitals that became subject to the prospective payment system effective with cost reporting periods beginning on or after October 1, 1983, as well as hospitals that are currently excluded from the prospective payment system. Since case mix in acute care hospitals could be readily measured by the DRG classification system and relative weights, there was a straightforward method to document case-mix changes to justify an adjustment in the target amount under § 413.40(g)(3). This provision is generally no longer applicable since there is no good measurement of case mix in excluded hospitals. In fact, a major reason these hospitals are excluded from the prospective payment system is that the existing DRGs do not adequately differentiate among the patients served within each type of excluded hospital. As a result, target amount adjustments for the cost distortions resulting from a change in the type of patient treated have been made under § 413.40(h)(1) instead of § 413.40(g)(3). Also, under our current policy, any situation that would qualify for an adjustment under § 413.40(g)(3) would also qualify for an adjustment under § 413.40(h)((1) since it would involve a cost distortion that would make the cost reporting period subject to the ceiling not comparable with the base period. Therefore, we are proposing to eliminate the specific adjustment for case mix described in § 413.40(g)(3). Hospitals would continue to qualify for an adjustment under current § 413.40(h)(1) for cost distortions attributable to a change in the type of patient treated. Since § 413.40(h) does not explicitly identify a change in the type of patient treated as a basis for an exception, we have added this as an example of a situation that would warrant an adjustment.

We would incorporate the remainder of § 413.40(g) with the contents of § 413.40(h) into a newly redesignated § 413.40(g) with editorial changes to eliminate duplication. (As a consequence, paragraphs (i) and (j) of § 413.40 would be redesignated as paragraphs (h) and (i), respectively.)

3. Adjustment for Significant Wage Increases (§ 413.40(g))

Under current policy, significant increases in wages since the base period are not recognized as a basis for an adjustment in the target amount under current § 413.40(h). This is because wage increases are accounted for by the update factor. One of the assumptions behind the rate-of-increase limit has been that if a hospital needed to increase costs in one area beyond the amount provided by the update factor, cost containment measures would be taken in other areas. However, as discussed below in section IV.F.5 of this preamble, Congress has explicitly provided that increase in wages should be taken into consideration in determining whether to assign a new base period. Since wage increases are to be considered in the new base period determination, we believe it is also appropriate to provide a limited adjustment under newly redesignated § 413.40(g) for wage increases significantly in excess of the increase in the national average hourly wage accounted for by the update factor. We are proposing to establish a specific methodology for these exceptions so that we could authorize the intermediary to make the determination on the adjustment request.

To qualify for an adjustment, the excluded hospital or hospital unit would have to be located in a geographic area that is determined to have an average hourly wage that increased significantly more than the national average hourly wage over the period. This criterion is consistent with the statutory basis for considering wage increases in assigning a new base period. We proposed to use the hospital wage index for prospective payment hospitals to determine the rate

of increase in the average hourly wage in the labor market area. To be eligible, a given area must have had at least an 8 percent increase between its wage index value based on 1982 wage data and its wage index value based on 1988 wage data. If the hospital's base period begins in FY 1984 or later, the geographic area must have had at least an 8 percent increase between the wage index value based on 1984 data and the wage index value based on 1988 wage data. Since the wage index measures the relative wage levels in the area, a change in the wage index value for a given area indicates the extent to which the rate of increase in the average hourly wage in the labor market area is above or below the rate of increase in the national average hourly wage. In the September 4, 1990 final rule, we cited 8 percent as the threshold for significant changes in the wage index (see 55 FR 36041). We believe that, in this case, it also appropriately reflects a change that should be accounted for through an adjustment in the target amount. The latest applicable wage data would be used in all cases for this comparison. Further, the comparison would be made without regard to any geographic reclassifications under sections 1886(d)(8) and (10) of the Act. We believe it is appropriate for the measurement of the rate of increase to be based on the rate of increase in average hourly wage for the hospitals that are physically located in the same labor market area. The inclusion of wage data for hospitals that have been reclassified to the geographic area or the exclusion of wage data for hospitals that have been reclassified from the area would distort the comparison since the resulting changes in the average hourly wages would be attributable to changes in the mix of hospitals as well as increases in wages.

The wage index values based on 1982 and 1984 wage data reflect variation in average hourly wages and salaries. The wage index values that are based on 1988 wage data include fringe benefits and home office salaries in addition to salaries and fringe benefits. We do not believe this presents a problem under our proposed methodology. Generally, fringe benefits are highly correlated with wages and salaries, and we would expect the relative rates of increase to be similar.

Example: A rehabilitation hospital located in Boston, Massachusetts has a base period beginning January 1, 1984. The wage index value for Boston, Massachusetts based on 1984 wage data was 1.0813. The wage index value based on 1988 wage data is 1.1828. The rate of increase above the national average rate of increase equals (1.1828–1.0813)/1.0813, or 9.37 percent. Since the additional rate of increase is more than 8 percent, the hospital may qualify for a wage adjustment.

The amount of the adjustment for wage increases would be determined by taking three factors into account between the base period and the period for which an adjustment is requested: the rate of incease in the hospital's average hourly wage; the rate of increase in the average hourly wage in the labor market area; and the rate of increase in the national average hourly wage for hospital workers. The adjustment would be limited to the amount by which the lower of the hospital's or the labor market area's rate of increase in average hourly wages significantly exceeds the national increase (that is, exceeds the national rate of increase by more than 8 percent). For purposes of computing the adjustment, the relative rate of increase in the average hourly wage for the labor market area would be assumed to have been the same over each of the years covered by the wage surveys. In addition, it would also be assumed to be applicable to subsequent years until more recent wage data become available to determine the actual rate of increase relative to the national average in the subsequent years.

Example: The rate of increase in the average hourly wage in Boston, Massachusetts was 9.37 percent higher than the national rate of increase between 1984 and 1988. That is, wages grew 9.37 percent more rapidly in Boston, Massachusetts than nationally. We will assume that this rate of increase is applicable to each of the years between 1984 and 1988 and, until a new wage index is published, to 1989 and later.

To determine the rate of increase in the national hourly wage, we are proposing to use the average hourly earnings (AHE) component of the wages and salaries portion of the market basket for three reasons. First, it is a price proxy that can be measured historically back to 1982. Second, it adjusts for shifts in skill mix. Finally, it measures earnings much like the area wage index, because it is calculated by dividing gross payrolls by total hours. This measure would be derived from the 1982-based market basket since the 1987-based market basket uses the employment cost index (ECI) for hospital workers as the price proxy for this component. Unlike the AHE, the ECI for hospital workers can be measured historically only back to 1986. In addition, the ECI does not adjust for skill-mix shifts and, therefore, measures only the change in wage rates per hour.

The average hourly earnings for hospital workers as measured by the market basket show the following increases:

1983=6.4 percent
1984=5.6 percent
1985=5.4 percent
1986=4.1 percent
1987=4.7 percent
1988=6.5 percent
1989=6.9 percent
1990=5.6 percent

We propose to use the following methodology to determine if an adjustment for significant wage increases is appropriate:

Step 1: Compare the hospital's rate of increase in average hourly wages to the rate of increase in the labor market area. The hospital's rate of increase is calculated by dividing its average hourly wage in the year for which the adjustment is requested by its average hourly wage in the base year. The rate of increase in the labor market area is computed by multiplying the cumulative percentage increase in the AHE for hospital workers by the applicable percentage change in the wage index. The lower of the two rates of increase will be used in Step 3.

Step 2: Determine the threshold for the adjustment. The threshold is equal to the cumulative percentage increase in the AHE for hospital workers over the period in question multiplied by 1.08.

Step 3: Subtract the amount determined in Step 2 from the lower of the two amounts determined in Step 1. This result is the percentage increase that is considered significantly above the increase that is accounted by the update factor.

Step 4: Determine the proportion of the hospital's operating costs that is attributable to wages and fringe benefits. Adjust this proportion of the hospital's target amount to account for the wage increase by multiplying it by the percentage increase determined in Step 3. As is the case with other adjustments under current § 413.40(h), the adjustment will be made only to the extent the hospital's costs are in excess of the target amount.

Example: A hospital located in Boston, Massachusetts has a base year of 1984 and is requesting an adjustment for its 1990 cost reporting period. Over this period, its average hourly wage increased from $8.00 to $12.63. The hospital's salaries and fringe benefits constitute 55 percent of its operating costs. In FY 1990, its operating costs per

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case were $8000 and its target amount prior to adjustment was $7600.

Step 1: a. Determine the hospital's rate of increase in average hour wages:

$12.63 – $8.00/$8.00 = .578, or 57.8 percent

b. Determine the labor market area's rate of increase in average hourly wages by multiplying the national average increase by the rate at which the increase in average hourly wages in the Boston MSA exceeded the national rate of increase (9.37 percent):

1985 5.4×1.0937 = 5.91
1986 4.1×1.0937 = 4.48
1987 4.7×1.0937 = 5.14
1988 6.5×1.0937 = 7.11
1989 6.9×1.0937 = 7.55
1990 5.8×1.0937 = 6.12

(1.0591×1.0448×1.0514 ×1.0711×1.0755×1.0612) = 1.422, or 42.2 percent

Since the rate of increase in the labor market area (42.2 percent) is less than the hospital's rate of increase (57.8 percent), the increase in the labor market area will be used in the rest of the calculations.

Step 2: Determine the adjustment threshold by increasing the rate of increase in the national hourly average wage by 8 percent.

5.4×1.08 = 5.83
4.1×1.08 = 4.43
4.7×1.08 = 5.08
6.5×1.08 = 7.02
6.9×1.08 = 7.45
5.8×1.08 = 6.05

(1.0583×1.0443×1.0508 ×1.0702×1.0745×1.0605) = 1.416, or 41.6 percent

Step 3: Determine the adjustment to the wage-related portion of the target amount by subtracting the amount determined in Step 2 from the amount determined in Step 1:

42.2 percent – 41.6 percent = 0.6 percent

Step 4: Determine the adjusted target amount.

a. Determine the wage-related portion of target amount subject to adjustment = $7600 × .55 = $4180
b. Apply the adjustment determined in Step 3 to the wage-related portion of target amount = $4180 × 1.006 = $4205.80
c. Determine the adjusted target amount by adding the adjusted wage-related portion of the target amount to the nonwage-related portion = $4205.80 + (7600 × .45) = $7625.80

Since $7625.80 is less than the hospital's operating costs per case, the full adjustment will be authorized.

Since we are proposing that a specific methodology be used to make the wage adjustment, we would authorize the intermediary to make the determinations on these requests for an adjustment due to a significant wage increase.

4. Adjustment for Part B Services (Current § 413.40(h))

Current § 413.40(h)(1)(i) states that base period costs are to be adjusted to explicitly include services billed under Part B of Medicare during the base period, but paid under Part A during the subject cost reporting period. The purpose of this provision was to take into account the requirement that the hospital furnish directly or under arrangements all nonphysician services furnished to inpatients effective October 1, 1983. With this requirement, outside suppliers were no longer permitted to bill directly under Part B for services they furnished to hospital inpatients.

Section 4003 of Public Law 101–508 amended section 1886(a)(4) of the Act by expanding the definition of inpatient hospital services to include diagnostic or other services that are related to the admission (as defined by the Secretary) that are provided by the hospital (or by an entity wholly owned or operated by the hospital) during the 3 days immediately preceding the date of the patient's admission. We are implementing this provision through program instructions and a separate Federal Register document.

To the extent a hospital furnishes services prior to admission that were not considered inpatient hospital services in the base period, there will be a cost distortion between the base period and the current cost reporting period. Current § 413.40(h)(1)(i) provides that the cost distortion would be corrected through an adjustment to the base period. We do not believe it is feasible for hospitals to reconstruct from base period billing information the cost of services that would be affected by section 4003 of Public Law 101–508. Therefore, we are proposing to delete the reference to the base period adjustment. As revised, adjustment for Part B services to either the base period or the current period would be authorized.

5. Assignment of a New Base Period (Current § 413.40(j))

Section 1886(b)(4)(A) of the Act, as amended by section 6015(a) of Public Law 101–239, authorizes the Secretary to assign a new base period to a hospital if it is more representative of the reasonable and necessary costs of its inpatient services. Implementing regulations were published in the April 20, 1990 final rule with comment period (55 FR 15157) and the comments received on that rule were discussed in the September 4, 1990 final rule (55 FR 36003). Current § 413.40(j) provides that the Secretary may assign a new base period if the hospital experiences a substantial and permanent change in patient care services that is so broad in nature that the resulting cost distortion cannot be adequately addressed through the more targeted adjustments available under current §§ 413.40 (g) and (h) (to be redesignated as § 413.40(g)). As is the case with adjustments, rebasing is authorized only if the hospital's operating costs per discharge are in excess of its target amount.

Section 4005(c)(2) of Public Law 101–508 amended section 1886(b)(4)(B) of the Act to include factors that the Secretary must take into consideration in determining whether to assign a new base period. These factors are the following:

- Changes in applicable technologies and medical practices.
- Differences in the severity of illness among patients.
- Increases in wages and wage-related costs for hospitals in the area that exceed the national average increases.
- Such other factors as the Secretary considers appropriate in determining increases in the hospital's costs of providing inpatient services.

The Conference Committee report accompanying the legislation noted that the assignment of the new base period falls within the Secretary's discretionary authority to grant adjustments to the target amount. (See H.R. Rep. No. 964, 101st Cong., 2nd Sess. 704 (1990).) The conferees stated that although the Secretary was required to take into consideration certain factors in determining whether to assign a new base period, the Secretary may take into consideration other factors that might lead to a determination that a new base period is not warranted. Further, the conferees noted that they did not expect the increase in wage-related costs in the area to result in automatic assignment of the base period. The amendment is effective for cost reporting periods beginning on or after April 1, 1990.

We are proposing to revise current § 413.40(j)(1) (proposed redesignated § 413.40(i)(1)) to include the factors specified in section 1886(b)(4)(B) of the Act in the determination of whether the hospital's costs are necessary and proper. We intend to take these factors into account in conjunction with the factors that are already identified in § 413.40(j)(1). The current factors identified in § 413.40(j)(1) constitute other factors that we believe are appropriate in determining whether the cost increases warrant rebasing. We do not anticipate that any of the added factors in isolation would result in the assignment of a new base period since these factors in isolation can be accommodated through the adjustment provisions provided in proposed redesignated § 413.40(g). However, we would consider the hospital's documentation of the changes in technology, medical practices, and patient severity and the impact of those changes on the hospital's costs as support that the requirement that there has been a substantial and permanent change in furnishing patient care has been met. We would consider the hospital's demonstration that the wage increases in the area have exceeded the national average increase and have had a substantial impact on the hospital's costs in determining whether increases in the hospital's wage costs are necessary and proper.

The circumstances under which we would authorize the assignment of a new base period would continue to be limited to those involving substantial and permanent changes in patient services that cannot be addressed by the more targeted adjustments provided for by proposed § 413.40(g). To some extent, cost increases for new technologies and changes in medical practice patterns are offset by productivity improvements and are taken into account in the update factor. When the new technology or change in medical practice patterns results in the provision of a new service, it creates a cost distortion that would be a basis for an adjustment to the target amount under § 413.40(g). Similarly, cost increases that are attributable to changes in the patient population that results in increases in service intensity or length of stay are a basis for an adjustment. As explained above in section IV.F, we are proposing to establish an adjustment under § 413.40(g) for significant wage increases.

G. Direct Graduate Medical Education Payments (§ 413.86)

Section 1886(h)(5)(A) of the Act provides that "[t]he term 'approved medical residency training program' means a residency or other postgraduate medical training program participation in which may be counted toward certification in a specialty or subspecialty and includes formal postgraduate training programs in geriatric medicine approved by the Secretary." On September 29, 1989, we published a final rule in the Federal Register (54 FR 40286) that added a new § 413.86, which included a new counting methodology for determining resident full-time equivalents (FTEs) for graduate medical education payment (GME) purposes. In § 413.86(b), we defined Approved medical residency program as a program that meets one of three criteria. Under the second criterion, the program "may count towards certification of the participant in a specialty or subspecialty listed in the Directory of Residency Training Programs published by the American Medical Association. In reviewing the second criterion, we have determined that the definition is not sufficiently broad in accordance with section 1886(h)(5)(A) of the Act. That is, the Directory of Residency Training Programs published by the American Medical Association is not the sole directory of specialties and subspecialties that are counted toward certification by a national organization. In addition, the American Board of Medical Specialties publishes a current directory of approved programs in its Annual Report and Reference Handbook. An approved program is one for which a member specialty board of the American Board of Medical Specialties may confer a general or subspecialty certificate. Therefore, we would amend the third criterion of Approved medical residency program under § 413.86(b) to include programs that may count towards certification of the participant in a specialty or subspecialty listed in the Annual Report and Reference Handbook published by the American Board of Medical Specialties.

H. Funding of Depreciation (§ 413.134)

Under section 1861(v)(1)(A) of the Act, Congress has given the Secretary broad latitude to prescribe regulations concerning Medicare payment to providers on a reasonable cost basis. Under the authority of this and other provisions of the Act, we have adopted the regulation that is now codified at § 413.134(e). Section 413.134(e) provides that, although we do not require the funding of depreciation, we strongly recommend it as a means to conserve funds for the replacement of assets. To encourage the funding of depreciation, we have specified at §§ 413.134(e) and 413.153 that investment income earned on funded depreciation will not be used to reduce allowable interest expense. However, we have also been aware that some providers may be reluctant at times to spend funded depreciation for capital purposes and may prefer to borrow money for capital purposes, and incur interest expense, even when funded depreciation is available. HCFA has long taken the position that such a borrowing would be unnecessary to the extent of available funded depreciation and would be contrary to the requirements of § 413.153.

Historically, in determining whether funded depreciation funds were available, HCFA generally required that funded depreciation funds that were not "expended" would be considered available. However, on occasion, HCFA recognized borrowing for a capital purpose to be necessary despite the presence of unexpended funded depreciation when certain factors were present. In an effort to clarify the policy regarding when funded depreciation funds would be considered available, in January 1983, HCFA published sections 226.C and 226.4.C of the Provider Reimbursement Manual (HCFA Pub. 15–1). These sections provided that funded depreciation funds would be considered available unless the funds had been committed to a capital project by contract. This requirement of "contractual commitment" relaxed the more strict "expended" policy, which HCFA had applied with rare exception.

Recently, the United States District Court for the District of Delaware decided, in *St. Francis Hospital, Inc.* v. *Sullivan*, No. 89–291–JJF (D.Del. March 1, 1991), that we have erred procedurally by not adopting the "contractually committed" standard through notice and comment rulemaking under the Administrative Procedure Act. Although we do not agree with this decision, we want to remove any doubt about the applicability of the "contractually committed" standard. Accordingly, we are proposing to revise § 413.134(e) to codify the "contractually committed" standard.

The Court in St. Francis Hospital also addressed the issue of spenddown to cure an unnecessary borrowing. Spenddown is a process whereby a borrowing that was originally determined to be unnecessary due to the existence of available funded depreciation is subsequently deemed necessary if the funded depreciation that resulted in the unnecessary borrowing determination later is used for an intended purpose of funded depreciation. However, if additional deposits have been made to funded depreciation after the incurrence of unnecessary borrowing, withdrawals from the funded depreciation subsequent to a determination of unnecessary borrowing are made on a last-in, first-out basis (typically, withdrawals for a proper purpose are made on a first-in, first-out basis). That is, spending from the funded depreciation must come from the additional deposits before spending can

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be allotted from the portion of the funded depreciation that resulted in the unnecessary borrowing. Although the spenddown policy is not currently spelled out in either regulations or program manuals, it has been applied consistently in implementing the Medicare program.

We are proposing to revise § 413.134 to set forth in the regulations a statement of HCFA's spenddown principle. By proposing explicit language in the regulations text detailing the proper order for withdrawing funds from funded depreciation subsequent to a determination of unnecessary borrowing, we would clarify for providers how they can properly effect a spenddown of depreciated funds to cure unnecessary borrowing. This provision is also intended to prevent hospitals with available cash from curing unnecessary borrowing through financial manipulation. We do not anticipate that the proposed provisions will have a major effect, because it has been our experience that most providers and fiscal intermediaries already understand and comply with the policy expressed in these provisions.

We are also proposing to clarify our policy that withdrawals from funded depreciation that do not meet the requirements for proper withdrawals are considered improper withdrawals. Improper withdrawals would be deemed to be made on a last-in, first-out basis. Finally, we are cross-referencing our revisions to § 413.134(e) in § 413.153(a)(2)(iii).

V. Other ProPAC Recommendations

We have reviewed the March 1, 1991 report submitted by ProPAC to Congress and have given its recommendations careful consideration in conjunction with the proposals set forth in this document. Recommendations 1 and 6 concerning the update factors are discussed in appendix C of this document. Recommendation 4 concerning incorporating the occupational mix data into the area wage index is discussed in section III of this preamble. Recommendation 5 concerning adjusting payments for acute myocardial infraction (AMI) is discussed in section II.C of this preamble. The remaining recommendations are discussed below.

A. Data for Evaluating Case-Mix Change (Recommendation 2)

Recommendation: The Secretary should collect the data necessary to apportion case-mix index change into its real and upcoding components.

Response: We agree with ProPAC concerning the need for ongoing and systematic analysis of case-mix change. To determine an appropriate allowance for case-mix increases in the annual update factor, it is important that we establish a sound empirical basis for differentiating between real increases and increases that result from changes in coding behavior. During the past two years, studies by Rand Corporation for HCFA and ProPAC have used SuperPRO data to apportion observed case-mix change between real changes and those attributable to coding behavior. More recent SuperPRO data are not sufficiently representative to be used for this purpose. Therefore, HCFA is currently evaluating viable alternatives for evaluating case-mix change and will work with ProPAC to determine how best to continue this important component of analysis.

B. The Indirect Medical Education Adjustment (Recommendation 3)

Recommendation: The indirect medical education (IME) adjustment to PPS should be reduced from its current level of 7.7 percent to 7.0 percent for FY 1992. This reduction should be implemented in a budget-neutral fashion, with the anticipated decrease in IME payments returned to all hospitals through corresponding increases in the standardized payment amounts. Before recommending further reductions, ProPAC intends to examine the financial status of teaching hospitals to determine whether further reductions in the IME adjustment would produce deleterious effects on access to care for Medicare beneficiaries.

Response: ProPAC's recommended reduction of 0.7 percentage points in the IME adjustment represents one-fifth of the difference between the current level of 7.7 percent (set forth at section 1886(d)(5)(B)(ii) of the Act) and 4.2 percent, which is ProPAC's most recent estimate of the effect of teaching activity on inpatient operating costs. That is, ProPAC estimates that for every 10 percent change in the resident-to-bed ratio, there is, on average, a 4.2 percent increase in Medicare inpatient operating costs per case.

The statistical model ProPAC used to generate the estimate of 4.2 percent is different from previous models in that it did not control for the effects on costs of a disproportionate share of low-income patients. When controlling for these effects, ProPAC's estimate was 2.1 percent. The difference in the estimates is due to the overlap of hospitals receiving both the IME and the disproportionate share adjustments.

We agree that the IME adjustment should be reduced from its current level. The President's budget for FY 1992 proposes to reduce the adjustment over 5 years, starting at 4.4 percent during FY 1992, and gradually reducing it to 4.1 percent in FY 1993, 3.8 percent in FY 1994, 3.5 percent in FY 1995, and 3.2 percent in FY 1996. Because we believe payment levels to other hospitals are adequate, the money saved from reducing the adjustment should be retained as budget savings rather than redistributed among all hospitals, as proposed by ProPAC. Our proposal to lower the adjustment to 3.2 percent over a 5-year period is based on the results of the analysis ProPAC included in its March 1, 1990 report, which estimated a 3.2 percent effect of graduate medical education on higher operating costs. This estimate was attained by controlling for all payment variables, including disproportionate share payments. We believe it is appropriate to control for the effects of disproportionate share when estimating the effects of teaching. Not controlling for the effects of all of the payment variables distorts the results by loading the effects of the excluded variables onto the estimates of the other variables.

Continuing to pay IME at the current level, or reducing it to 7.0 percent as proposed by ProPAC, would result in payments exceeding all recent estimates of the indirect costs associated with graduate medical education. We strongly believe that payment for the added costs associated with graduate medical education should be based on the best estimate of the added costs incurred in treating Medicare patients and that payment in excess of this amount is an inappropriate expenditure of Medicare trust funds.

In addition, it must be noted that teaching hospitals continue to have much higher Medicare operating margins than nonteaching hospitals. In FY 1988, the most recent year for which complete data are available, major teaching hospitals (that is, those with resident-to-bed ratios greater than or equal to .25) had an average Medicare operating margin of 12.4 percent, while nonteaching hospitals had a Medicare operating margin of negative 1.7 percent. The national average Medicare operating margin was 2.2 percent, and minor teaching hospitals (that is, those with a resident-to-bed ratio of less than .25) had an average Medicare operating margin of 3.7 percent.

ProPAC's reason for reducing the adjustment only to 7.0 percent in FY 1992 is that major teaching hospitals have had lower total operating margins (which are based on the facility's overall operations, not just Medicare patients) than other types of hospitals. These lower total operating margins are associated with the fact that major teaching hospitals tend to be faced with a broad array of social issues not directly related to Medicare patients, stemming largely from their location in urban areas and their role in providing services to low-income individuals. ProPAC's concern is that a reduction greater than 7.0 percent might impair the continued operation of these hospitals and, thus, the fulfillment of their special role in the health care system.

While we share ProPAC's view that teaching hospitals fulfill a unique health care role, we disagree with the conclusion that the IME adjustment should be decreased only marginally in order to help offset losses in other areas of the operations of teaching hospitals. First, teaching hospitals have successfully responded to the incentives of the prospective payment system in the past, and we believe that they will continue to do so. In addition, social problems that are not directly related to Medicare beneficiaries should be addressed through more targeted policies rather than through indirect subsidies in the form of higher Medicare payments to all teaching hospitals. In this regard, we note that in ProPAC's discussion of uncompensated care at the end of the recommendations section, ProPAC indicated that it found no relationship between the amount of uncompensated care a hospital provides and the IME payments it receives. (Specifically, ProPAC found that although the top 10 percent of prospective payment hospitals in terms of uncompensated care load provide 27 percent of all uncompensated care, these hospitals together receive the same proportion of total IME payments (9 percent) as do the prospective payment hospitals ranking in the bottom 10 percent of uncompensated care load, which provide only 1 percent of all uncompensated care.) The Deputy Secretary's Task Force on the Uninsured is examining more appropriate ways to address some of these larger social issues.

The President's budget for FY 1992 also recommends that the measure of teaching intensity be changed, on a budget neutral basis, from a resident-to-bed ratio to a resident-to-average daily census (or resident-to-day) ratio. This change is based on our belief that the use of beds in the measurement of teaching intensity presents hospitals an opportunity to receive higher Medicare payments per case simply by taking unused beds out of service. It is highly unlikely that the closing of unused beds should increase the impact of teaching activities on operating costs.

D. Outpatient Facility Services Payment Reform Recommendations 7 and 8)

Recommendation: ProPAC believes that a prospective payment system for outpatient services should be developed. Outpatient facility payment reform should ultimately include all providers of outpatient services (such as hospitals, physicians' offices, and free-standing ambulatory surgery centers). However, the Commission recognizes that, as required by Congress, outpatient payment reform will focus initially on the hospital outpatient setting. In addition, outpatient payment reform for facility services should have incentives that are consistent with physician payment reform. Medicare financial incentives should not lead physicians or beneficiaries to inappropriately select one site of care over another.

Response: We agree with ProPAC's recommendations. Although we are working to develop a prospective payment system for hospital outpatient services, it may make sense to extend that system at some point to other settings where the same services are performed. We also agree that outpatient payment reform should contain incentives that are consistent with those of physician payment reform and should not provide incentives that would favor one site of care over another. As we continue our work on developing a prospective payment system for hospital outpatient services, we will take these recommendations into consideration.

E. Data Collection and Coding Requirements (Recommendation 9)

Recommendation: Uniform coding and billing requirements should be implemented for all providers of outpatient care. These requirements should apply to the hospital outpatient setting, physicians' offices, and free-standing ambulatory care providers. In addition, a mechanism for periodic collection of procedure-specific cost data in free-standing settings (including physicians' offices and ambulatory surgery centers) should be implemented.

Response: We agree in principle with ProPAC's recommendation. Both uniform coding and billing requirements and a systematic cost data collection mechanism are prerequisites for a prospective payment system that would be applicable across all outpatient settings. However, in practice, there are several problems involved in the implementation of this recommendation.

First, it should be understood that there are two categories of codes to which the recommendations applies, diagnosis coding and procedure coding. HCFA uses the ICD–9–CM coding system for reporting diagnosis and inpatient hospital procedures and the CPT–4 coding system for reporting ambulatory services. A major problem in implementing ProPAC's recommendation is the lack of standardization between the two coding systems, which are managed by separate entities.

As discussed in section II.B.10 of this preamble, HCFA plays a major role in the development of ICD–9–CM coding guidelines, since the ICD–9–CM system is controlled by two Federal agencies, NCHS and HCFA. We have made significant progress in standardizing the way in which ICD–9–CM codes are used. HCFA and the NCHS work closely with AHA and AMRA in developing the ICD–9–CM coding guidelines.

The CPT–4 coding system is owned and managed by the American Medical Association (AMA). Although HCFA participates as one of 12 voting members of the panel that creates CPT–4 codes, we have no control over either the creation of the codes or the AMA's coding guidelines. We are continuing to encourage the AMA to strive toward a more systematic coding system.

Another problem inherent in the use of the CPT–4 coding system is that it was designed specifically for reporting physician services. Ambulatory services provided by nonphysician practitioners, such as physical and occupational therapists, speech pathologists and audiologists, optometrists, and nurse practitioners are not always included in the CPT–4 system. The lack of a single coding system that is used by all providers of ambulatory services makes comparisons of services across all outpatient settings difficult. We recommend that the procedure coding system that we ultimately adopt be uniform and contain codes for all types of providers and practitioners to make possible standardized procedure coding and billing across all ambulatory settings.

With respect to ProPAC's recommendation regarding cost data collection, we agree that a more systematic and comprehensive method is needed for collecting nonhospital cost data for rate-setting purposes, and we have begun to examine the design of such a method. A data collection system should employ a sample from all outpatient settings and take into account surgical and medical specialty, volume of procedures, and case mix. Critical elements of such a data collection system will be the definition of a unit of

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service that is comparable across all service sites and the universal use by both providers and fiscal intermediaries of a unique provider identification number. Verification of the data by audit is essential, as is the establishment of quality of care measurements to assure that the quality of service is reasonably comparable across care settings. Policies will also need to be developed to determine payment for services and procedures when there are insufficient cost data available to set payment rates.

In conclusion, we support ProPAC's recommendation regarding uniform coding requirements and the need for periodic cost data collection. We will continue to explore possible mechanisms for achieving these ends.

F. Medicare Volume Performance Standards (Recommendation 10)

Recommendation: Services provided in the hospital outpatient setting should be included in the Medicare Physician Volume Performance Standards (MVPS). Certain services (such as laboratory tests and therapy services) are currently included in the MVPS when provided in free-standing settings. Other services (including ambulatory surgery and durable medical equipment) are excluded. The Commission believes that outpatient hospital-provided services should also be incorporated in the MVPS to the extent that these services are included when provided in other settings.

Response: Many diagnostic services, such as diagnostic x-ray and diagnostic laboratory tests, are furnished in outpatient departments of hospitals. Except for medically necessary physician interpretations of the tests, these hospital tests are not paid on a fee schedule basis by carriers, but, rather, are paid by intermediaries. Much of the detailed information needed to set performance standard rates of increase is not available for diagnostic services furnished by a hospital. The data are included in hospital cost reports and are not readily available under current data collection systems. As data systems evolve in response to setting physician performance standard rates of increase, we may consider including diagnostic x-ray, laboratory, and other services furnished in hospital outpatient departments in setting future performance standard rates of increase.

VI. Other Required Information

A. Paperwork Reduction Act

This proposed rule does not impose information collection requirements. However, completion of the UB-82 billing form (the billing form used for Medicare discharges), as discussed in section II.B.11 of this preamble, requires information collection that is subject to review by the Office of Management and Budget (OMB) under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3511). The current information collection requirements associated with the UB-82 billing form have been approved through April 30, 1992 under OMB number 0938-0279.

In this document, we are announcing changes to the UB-82 billing form that result in an increase in the number of fields for diagnosis and procedure codes that may be completed. (In the May 9, 1990 proposed rule (55 FR 19459) we announced our intention to expand the UB-82 billing form to 10 diagnosis fields and 10 procedure code fields. The current UB-82 billing form limits these fields to five diagnosis and three procedure codes. After consideration of public comment and further analysis, we have decided to expand the UB-82 billing form to include nine diagnosis fields and six procedure code fields effective for discharges occurring on or after October 1, 1991.) However, these requirements will not be effective until OMB approval is received.

There are approximately 10 million Medicare inpatient hospital claims filed every year. Of that number, we estimate that approximately 86 percent of the claims are completed with the current five diagnosis codes and approximately 87 percent of the claims are completed with the current three procedure codes. Thus, we estimate that no more than 27 percent of the claims (if there is no overlap between these two sets) and possibly as few as 14 percent of the claims will require additional coding.

Because the prospective payment system requires the coding of the principal diagnosis and because the coding of certain secondary diagnoses results in assignment of the claim to a higher-weighted DRG, medical record technicians and coders should already be reviewing the entire medical record and collecting all diagnosis codes (using the Uniform Hospital Discharge Data Set (UHDDS) definitions and instructions) to result in the correct DRG assignment. Also, because there is a hierarchy that assigns a surgical claim to a DRG based on the most resource-intensive procedure, the technicians and coders must also review the entire record and collect all procedures. Thus, we estimate that these expanded reporting fields should not result in any additional collection activities. However, they will result in a minimal amount of time necessary to record the additional codes; we estimate that this will be less than 1 minute per claim. We believe that this additional time will be more than offset by the time saved due to the fact that, for the vast majority of claims, the coders and technicians will no longer be required to make any decisions concerning which diagnoses and procedures to code to ensure correct DRG assignment because there will be adequate room to include all codes.

The information collection and recordkeeping requirements associated with the expanded reporting fields in the UB-82 billing form will be sent to OMB for review under 44 U.S.C. 3501-3511. Organizations and individuals desiring to submit comments concerning these information collection and recordkeeping requirements should direct them to the OMB official whose name appears in the "**ADDRESSES**" section of this preamble.

B. Requests for Data from the Public

In order to respond promptly to public requests for data related to the prospective payment system, we have set up a process under which commenters can gain access to the raw data on an expedited basis. Generally, the data are available in computer tape format; however, some files are available on diskette. Data sets are listed below with the cost of each. Anyone wishing to purchase data tapes should submit a written request along with a certified check or money order (payable to HCFA) to cover the cost of the tapes or diskettes to the following address: HCFA Office of Statistics and Data Management, Bureau of Data Management and Strategy, Room 3-A-12 Security Office Park Building, 6325 Security Boulevard, Baltimore, MD 21207.

1. Expanded Modified MEDPAR File

The file contains records for 100 percent of Medicare beneficiaries using hospital inpatient services. The file is stripped of most data elements that would identify beneficiaries. The hospitals are identified. The file is available to persons qualifying under the terms of the Notice of Proposed New Routine Use for an Existing System of Records published in the **Federal Register** on December 24, 1984 (49 FR 49941), which was amended by the July 22, 1985 Notice of Proposed New Routine Use for an Existing System of Records (50 FR 27361). Under the requirements of these notices, a data release agreement must be signed by the purchaser before release of these data.

Expanded Modified MEDPAR—Hospital Inpatient
Periods Available: FY 1984 through FY 1989

Price: $2,870.00 per fiscal year

2. HCFA Hospital Wage Index Survey

This tape contains three files. Included are the hospital hours and salaries for 1988 used to create the wage indexes used in the Medicare Hospital Prospective Payment System (PPS) as well as all wage indexes used since October 1, 1983. It also contains a list of State and county codes used by SSA and FIPS (Federal Information Processing Standards), county name, and Metropolitan Statistical Area (MSA), since October 1, 1983.

Periods Available: FY 1992 PPS Update
File Cost: $440.00

3. H180 Extract, Cost Reporting Periods Ending January 1, 1982 Through September 29, 1983

The H180 Extract contains cost, statistical, financial, and other information from the Medicare Hospital Cost Report (HCFA Form 2552-81). The data set includes as submitted, final settled and reopened cost reports as they were received from the Medicare Fiscal Intermediary. There is a single record for each Medicare Cost Report submitted for a Medicare Certified Hospital by the Medicare Fiscal Intermediary. This file is no longer updated.

Price: $630.00

4. TEFRA Minimum Data Set, Cost Reporting Periods Beginning On or After October 1, 1982 and Before October 1, 1983

The TEFRA Minimum Data Set contains cost, statistical, financial, and other information from the Medicare Hospital Cost Report (HCFA Form 2552-83) for the Hospital Fiscal Periods beginning on or after October 1, 1982 and before October 1, 1983. This dataset includes capital-related cost (fixed/moveable) information used in the early analyses of prospective capital payment. The majority of these cost reports have been settled by the Medicare Fiscal Intermediary. This file is no longer updated.

Price: $630.00

5. PPS-I Minimum Data Set, Cost Reporting Periods Beginning On or After October 1, 1983 and Before October 1, 1984

The PPS-I Minimum Data Set contains cost, statistical, financial, and other information from the Medicare hospital cost report (HCFA Form 2552-84). The dataset includes only the most current cost report (as submitted, final settled or reopened) submitted for a Medicare Certified Hospital by the Medicare Fiscal Intermediary to HCFA. The majority of these cost reports have been settled by the Medicare Fiscal Intermediary. This file is no longer updated.

Price: $630.00

6. PPS-II Minimum Data Set, Cost Reporting Periods Beginning On or After October 1, 1984 and Before October 1, 1985

The PPS-II Minimum Data Set contains cost, statistical, financial, and other information from the Medicare hospital cost report (HCFA Form 2552-85). The dataset includes only the most current cost report (as submitted, final settled or reopened) submitted for a Medicare Certified Hospital by the Medicare Fiscal Intermediary to HCFA. This dataset is updated by the 15th day of each calendar quarter and is available on the first day of the following month.

Price: $630.00

7. PPS-III Minimum Data Set, Cost Reporting Periods Beginning On or After October 1, 1985 and Before October 1, 1986

The PPS-III Minimum Data Set contains cost, statistical, financial, and other information from the Medicare hospital cost report (HCFA Form 2552-85). The dataset includes only the most current cost report (as submitted, final settled or reopened) submitted for a Medicare Certified Hospital by the Medicare Fiscal Intermediary to HCFA. This dataset is updated by the 15th day of each calendar quarter and is available on the first day of the following month.

Price: $630.00

8. PPS-IV Minimum Data Set, Cost Reporting Periods Beginning On or After October 1, 1986 and Before October 1, 1987

The PPS-IV Minimum Data Set, contains cost, statistical, financial, and other information from the Medicare hospital cost report (HCFA Form 2552-85). The dataset includes only the most current cost report (as submitted, final settled or reopened submitted for a Medicare Fiscal Intermediary to HCFA. This dataset is updated by the 15th day of each calendar quarter and is available on the first day of the following month.

Price: $630.00

9. PPS-V Minimum Data Set, Cost Reporting Periods Beginning On or After October 1, 1987 and Before October 1, 1988

The PPS-V Minimum Data Set, contains cost, statistical, financial, and other information from the Medicare hospital cost report (HCFA Form 2552-85). The dataset includes only the most current cost report (as submitted, final settled or reopened) submitted for a Medicare Fiscal Intermediary to HCFA. This dataset is updated by the 15th day of each calendar quarter and is available on the first day of the following month.

Price: $630.00

10. PPS-VI Minimum Data Set

The PPS-VI Minimum Data Set contains cost, statistical, financial, and other information from the Medicare Hospital Cost Report (Form HCFA 2552-85 (Hospital Fiscal Periods beginning on or after October 1, 1988 and before January 1, 1989) and Form HCFA 2552-89 (Hospital Fiscal Periods beginning on or after January 1, 1989)). The dataset includes only the most current cost report (as submitted, final settled or reopened) submitted for a Medicare Certified Hospital by the Medicare Fiscal Intermediary to HCFA. This dataset is updated by the 15th day of each calendar quarter and is available on the first day of the following month.

Price: $630.00

11. Capital Regulations File

This file was developed from PPS year V hospital cost report data. The file contains capital-related costs in total and after reclassifications and adjustments under Medicare principles of reimbursement. These costs combine depreciation, rent, interest, real estate taxes, insurance and other similar expenses. The file includes balance sheet data and other pertinent information. This file is updated by the 15th day of each calendar quarter and is available on the first day of the following month.

Price: $630.00

12. Provider-Specific File

This file is a component of the PRICER program used in an intermediary's system to compute individual DRG payments. The file contains records for all prospective payment system eligible hospitals, including hospitals in waiver States, and data elements used in the prospective payment system recalibration process and related activities. Beginning with December 1988, the individual records

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were enlarged to include pass-through per diems and other elements.

Periods Available: December 1987, 1988, 1989, and 1990 updates
Price: $440.00

13. HCFA Medicare Case-Mix Index File (3½" Diskette)

This file contains the hospital provider number and the Medicare case-mix index as published in each year's update of the Medicare Hospital Prospective Payment System. The case-mix index is a measure of the costliness of cases treated by a hospital relative to the cost of the national average of all Medicare hospital cases, using DRG weights as a measure of relative costliness of cases.

Periods Available: FY 1985 through FY 1990
Price: $120.00

14. Table 5 DRG (3½" Diskette)

This file contains a listing of DRGs, DRG narrative description, relative weight, geometric mean, length of stay, and day outlier trim points as published in the Federal Register.

Periods Available: FY 1992
Price: $120.00

15. AOR/BOR File (3½" Diskette)

This diskette contains data used to develop the DRG relative weights. It contains mean, maximum, minimum, standard deviation and coefficient of variation statistics by DRG for length of stay and standardized charges. The BOR tables are "Before Outliers Removed" and the AOR is "After Outliers Removed." (This refers to statistical outliers, not payment outliers.)

Periods Available: FY 1992
Price: $120.00

For further information concerning these data tapes, contact Rose Connerton at (301) 597-5151.

In addition, certain other data, such as area wage data and data used to construct the Puerto Rico standardized amounts, are available in hard copy format. Commenters interested in examining hard copy data should contact Lana Price at (301) 966-4534.

We realize that commenters may be interested in obtaining data other than those we have discussed above. These commenters should direct their requests to Lana Price at the number provided above.

Finally, in lieu of obtaining data through the mail, certain data may also be available for inspection at the central office of the Health Care Financing Administration in Baltimore, Maryland. Commenter interested in obtaining more information about this alternative for reviewing data should also contact Lana Price.

C. Public Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments concerning the provisions of this proposed rule that we receive by the date and time specified in the "Dates" section of this preamble and respond to those comments in the preamble to that rule. We emphasize that, given the statutory requirement under section 1886(e)(5) of the Act that our final rule for FY 1991 be published by September 1, 1990, we will consider only those comments that deal specifically with the matters discussed in this proposed rule.

List of Subjects

42 CFR Part 412

Health Facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION DEPARTMENT OF HEALTH AND HUMAN SERVICES

Subchapter B—Medicare Program

I. Part 412 is amended as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

A. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102, 1815(e), 1871, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395g(e), 1395hh, and 1395ww).

B. Subpart B is amended as follows:

Subpart B—Hospital Services Subject to and Excluded from the Prospective Payment System

1. In § 412.23, the introductory text of paragraph (b) is republished and a new paragraph (b)(9) is added to read as follows:

§ 412.23 Excluded hospitals: Classifications.

* * * * *

(b) *Rehabilitation hospitals.* A rehabilitation hospital must meet the following requirements:

* * * * *

(9) If a hospital is excluded from the prospective payment system for a cost reporting period under paragraph (b)(8) of this section, but the inpatient population it actually treated during that period does not meet the requirements of paragraph (b)(2) of this section, HCFA adjusts payments to the hospital retroactively in accordance with the provisions in § 412.130 of this part.

* * * * *

2. In § 412.30, a new paragraph (c) is added to read as follows:

§ 412.30 Exclusion of new distinct part rehabilitation units and expansion of units already excluded.

* * * * *

(c) *Retroactive adjustments for certain units.* If a hospital has a new rehabilitation unit excluded from the prospective payment system for a cost reporting period under paragraph (a) of this section or expands an existing rehabilitation unit under paragraph (b) of this section, but the inpatient population actually treated in the new unit or the beds added to the existing unit during that cost reporting period does not meet the requirements in § 412.23(b)(2), HCFA adjusts payments to the hospital retroactively in accordance with the provisions in § 412.130 of this part.

C. Subpart H is amended as follows:

Subpart H—Payments to Hospitals Under the Prospective Payment System

1. In § 412.118, paragraph (c) is revised; paragraphs (d)(1) introductory text and (d)(1)(i) through (d)(1)(iii) are redesignated as paragraphs (d) introductory text and (d)(1) through (d)(3), respectively; and paragraph (d)(2) is removed to read as follows:

§ 412.118 Determination of indirect medical education adjustment.

* * * * *

(c) *Measurement for teaching activity.* The factor representing the effect of teaching activity on inpatient operating costs equals .405 for discharges occurring on or after May 1, 1986.

* * * * *

2. A new § 412.130 is added to read as follows:

§ 412.130 Retroactive adjustments for incorrectly excluded hospitals and distinct part units.

(a) *Hospitals for which adjustment is made.* The intermediary makes the payment adjustment described in paragraph (b) of this section for the following hospitals:

(1) A hospital that was excluded from the prospective payment system as a new rehabilitation hospital for a cost reporting period based on a certification under § 412.23(b)(8) regarding the inpatient population the hospital planned to treat during that cost reporting period, if the inpatient population actually treated in the hospital during that cost reporting period did not meet the requirements of § 412.23(b)(2).

(2) A hospital that had a distinct part unit excluded from the prospective payment system as a new rehabilitation unit for a cost reporting period based on a certification under § 412.30(a) regarding the inpatient population the hospital planned to treat in that unit during that period, if the inpatient population actually treated in the unit during that cost reporting period did not meet the requirements of § 412.23(b)(2).

(3) A hospital that added new beds to its existing distinct part rehabilitation unit for a cost reporting period based on a certification under § 412.30(b) regarding the inpatient population the hospital planned to treat in these new beds during that cost reporting period, if the inpatient population actually treated in the new beds during that cost reporting period did not meet the requirements of § 412.30(b)(2).

(b) *Adjustment of payment.* The intermediary adjusts the payment to the hospitals described in paragraph (a) of this section as follows:

(1) The intermediary calculates the difference between the amounts actually paid during the cost reporting period for which the hospital, unit, or beds were first excluded as a new hospital, new unit, or newly added beds, and the amount that would have been paid under the prospective payment system for those services.

(2) The intermediary makes a retroactive adjustment for the difference between the amount paid to the hospital based on the exclusion and the amount that should have been paid under the prospective payment system.

II. Part 413 is amended as follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

A. The authority citation for part 413 continues to read as follows:

Authority: Sec. 1102, 1814(b), 1815, 1833 (a) and (i), 1861(v), 1871, 1881, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395g, 1395l (a) and (i), 1395x(v), 1395hh, 1395rr, and 1395ww) and sec. 104(c) of Public Law 100-360 as amended by sec. 608(d)(3) of Public Law 100-485 (42 U.S.C. 1395ww (note)) and sec. 101(c) of Public Law 101-234 (42 U.S.C. 1395ww (note)).

B. In Subpart C, § 413.40, paragraphs (c)(1)(ii) and (d)(3)(ii) are revised; new paragraph (d)(3)(iii) is added; paragraphs (e) and (g) are revised; paragraph (h) is removed; paragraphs (i) and (j) are redesignated as paragraph (h) and (i), respectively; redesignated paragraph (i)(1)(i) is amended by revising the introductory text of paragraph (i)(1)(i) and paragraphs (i)(1)(i)(B) and (i)(1)(i)(C); and redesignated paragraph (i)(1)(ii) is revised to read as follows:

Subpart C—Limits on Cost Reimbursement

§ 413.40 Ceiling on rate of hospital cost increases.

* * * * *

(c) *Procedure for establishing the ceiling (target amount).*

(1) *Costs subject to the ceiling.* * * *

(ii) For cost reporting periods beginning on or after October 1, 1982 and before October 1, 1983, these operating costs include operating costs of routine services (as described in § 413.53(b)), ancillary service operating costs, and special care unit operating costs. These operating costs exclude the costs of malpractice insurance, certain kidney acquisition costs, capital-related costs, the Medicare inpatient routine nursing salary cost differential, and costs a hospital allocates to approved medical education programs (nursing school or approved intern and resident programs) on its Medicare cost report.

(d) *Application of target amounts in determining reimbursement.* * * *

(3) *Inpatient operating costs are greater than the target amount.*

* * * * *

(ii) For cost reporting periods beginning on or after October 1, 1984 and before October 1, 1991, payment will be based on the hospital's target amount per case.

(iii) For cost reporting periods beginning on or after October 1, 1991, payment will be based on the lower of the hospital's—

(A) Target amount plus 50 percent of the allowable operating costs per case in excess of the target amount; or

(B) 110 percent of the target amount per case.

(e) *Hospital requests regarding applicability of the rate-of-increase ceiling.*

(1) A hospital may request an exemption from, or adjustment to, the rate of cost increase ceiling imposed under this section. The hospital's request must be made to its fiscal intermediary no later than 180 days from the date on the intermediary's notice of program reimbursement.

(2) Unless HCFA has authorized the intermediary to make the decision, the intermediary makes a recommendation on the hospital's request to HCFA, which makes the decision. HCFA issues a decision to the intermediary within 180 days from the date it receives the completed application and the intermediary's recommendation.

(3) If HCFA has authorized the intermediary to make the decision, the intermediary issues a decision within 180 days of receiving the completed application.

(4) The intermediary notifies the hospital of the decision. A decision issued under paragraphs (e)(2) or (e)(3) of this section is considered final unless the hospital submits additional information within 90 days of the date the intermediary notifies the hospital of the decision. The final decision is subject to review under subpart R of part 405 of this chapter.

(5) The time required to review the request is considered good cause for the granting of an extension of the time limit to apply for review of the notice of amount of program reimbursement by the Provider Reimbursement Review Board, as specified in § 405.1841(b) of this chapter.

* * * * *

(g) *Adjustments.* (1) *General rule.* HCFA may adjust the amount of the operating costs considered in establishing cost per case for one or more cost reporting periods, including both periods subject to the ceiling and the hospital's base period, under the circumstances specified below. HCFA makes an adjustment only to the extent that the hospital's operating costs are reasonable, attributable to the circumstances specified, separately identified by the hospital, and verified by the intermediary. HCFA may grant an adjustment only if a hospital's operating costs exceed the rate of increase ceiling imposed under this section.

(2) *Extraordinary circumstances.* HCFA may make an adjustment to take into account unusual costs (in either a cost reporting period subject to the ceiling or the hospital's base period) due to extraordinary circumstances beyond the hospital's control. These circumstances include, but are not limited to, strikes, fire, earthquakes, floods, or similar unusual occurrences with substantial cost effects.

(3) *Comparability of cost reporting periods.* HCFA may make an adjustment to take into account factors that would result in a significant distortion in the operating costs of inpatient hospital services between the base year and the cost reporting period subject to the limits. The adjustments include, but are

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not limited to, adjustments to take into account:

(i) FICA taxes (if the hospital did not incur costs for FICA taxes in its base period).

(ii) Services billed under Part B of Medicare during the base period, but paid under Part A during the subject cost reporting period.

(iii) Malpractice insurance costs (if malpractice costs were not included in the base year operating costs).

(iv) Increases in service intensity or length of stay attributable to changes in the type of patient served.

(v) A change in the inpatient hospital services that a hospital provides, and that are customarily provided directly by similar hospitals, such as an addition or discontinuation of services or treatment programs.

(vi) The manipulation of discharges to increase reimbursement.

(4) *Significant wage increase.* (i) *Criteria.* HCFA may make an adjustment to take into account a significant increase in wages occurring between the base period and the cost reporting period subject to the ceiling if the increase in the average hourly wage for the geographic area in which the hospital is located (determined by reference to the wage index for prospective payment hospitals without regard to geographic reclassifications under sections 1886(d) (8) and (10) of the Act meets one of the following criteria:

(A) The wage index value based on 1988 wage data is at least 8.0 percent higher than the wage index value based on 1982 wage data.

(B) If the hospital's base period begins in FY 1984 or later, the wage index value based on 1988 wage data is at least 8.0 percent higher than the wage index value based on 1984 wage data.

(ii) *Amount of the adjustment.* The adjustment for a significant wage increase equals the amount by which the lesser of the following calculations is 8 percent higher than the rate of increase in the national average hourly earnings for hospital workers:

(A) The rate of increase in the average hourly wage in the geographic area (determined by applying the applicable increase in the area wage index value to the rate of increase in the national average hourly earnings for hospital workers).

(B) The rate of increase in the hospital's average hourly wage.

* * * * *

(i) *Assignment of a new base period.* (1) *General rule.* (i) Effective with cost reporting periods beginning on or after April 1, 1990, HCFA may assign a new base period to establish a revised ceiling if the new base period is more representative of the reasonable and necessary cost of furnishing inpatient services and all the following conditions apply:

* * * * *

(B) The hospital documents that the higher costs are the result of substantial and permanent changes in furnishing patient care services since the base period. In making this determination, HCFA takes into consideration the following factors:

(*1*) Changes in the services provided by the hospital.

(*2*) Changes in applicable technologies and medical practices.

(*3*) Differences in the severity of illness among patients or types of patients served.

(C) The adjustments described in paragraph (g) of this section would not result in recognition of the reasonable and necessary costs of providing inpatient services.

(ii) The revised ceiling is based on the necessary and proper costs incurred during the new base period.

(A) Increases in overhead costs (for example, administrative and general costs and housekeeping costs) are not taken into consideration unless the hospital documents that these increases result from substantial and permanent changes in furnishing patient care services.

(B) In determining whether wage increases are necessary and proper, HCFA takes into consideration whether increases in wages and wage-related costs for hospitals in the labor market area exceed the national average increase.

* * * * *

C. In Supart F, § 413.86, the introductory text of paragraph (b) is republished and the definition "Approved medical residency program" is amended by republishing the introductory text and revising (2) to read as follows:

Subpart F—Specific Categories of Costs

§ 413.86 Direct graduate medical education payments.

* * * * *

(b) *Definitions.* For purposes of this section, the following definitions apply:

* * * * *

"Approved medical residency program" means a program that meets one of the following criteria:

* * * * *

(2) May count towards certification of the participant in a specialty or subspecialty listed in the current edition of either of the following publications:

(i) The *Directory of Graduate Medical Education Programs* published by the American Medical Association, and available from American Medical Association, Department of Directories and Publications, 515 North State Street, Chicago, Illinois 60610; or

(ii) The *Annual Report and Reference Handbook* published by the American Board of Medical Specialties, and available from American Board of Medical Specialties, One Rotary Center—Suite 805, Evanston, Illinois 60201.

* * * * *

C. Subpart G is amended as follows:

Subpart G—Capital-Related Costs

1. In § 413.134, paragraph (e) is revised to read as follows:

§ 413.134 Depreciation: Allowance for depreciation based on asset costs.

* * * * *

(e) *Funding of depreciation.* Although funding of depreciation is not required, it is strongly recommended that providers use this mechanism as a means of conserving funds for replacement of depreciable assets, and that they coordinate their planning of capital expenditures with areawide planning activities of community and State agencies.

(1) *Incentive.* As an incentive for funding, investment income on funded depreciation is not treated as a reduction of allowable interest expense.

(2) *When considered available.* HCFA considers funded depreciation available for use in the acquisition or replacement of depreciable assets relating to patient care unless the funded depreciation funds have been committed by contract for the acquisition of depreciable assets related to the furnishing of patient care or for other capital purposes related to patient care.

(3) *Proper withdrawals of funded depreciation.* (1) *Proper withdrawls.* (A) Withdrawals from funded depreciation are considered proper if made either for investments or for the acquisition of depreciable assets related to the furnishing of patient care or for other capital purposes related to patient care.

(B) Proper withdrawals from funded depreciation are made on a first-in, first-out basis.

(C) *Exception.* If HCFA determines that a borrowing is unnecessary because of the existence of available funded depreciation, any withdrawals made after the date of the borrowing are deemed to be made on a last-in, first-out basis.

(ii) *Improper withdrawals.* (A) Withdrawals from funded depreciation that do not meet the requirements for proper withdrawals under the provisions in paragraph (e)(3)(i)(A) of this section are considered improper withdrawals.

(B) Improper withdrawals from funded depreciation are made on a last-in, first-out basis.

* * * * *

2. In § 413.153, the introductory text in paragraph (a)(2) is republished and paragraph (a)(2)(iii) is revised to read as follows:

§ 413.153 Interest expense

(a)(1) *Principle.* * * *

(2) *Necessary.* Necessary requires that the interest be—

* * * * *

(iii) Reduced by investment income except if such income is from gifts and grants, whether restricted or unrestricted, and that are held separate and not commingled with other funds. Income from funded depreciation that meets the requirements of § 413.134 or a provider's qualified pension fund is not used to reduce interest expense. Interest received as a result of judicial review by a Federal court (as described in § 413.64(j)) is not used to reduce interest expense.

(Catalog of Federal Domestic Assistance Programs No. 93.733, Medicare—Hospital Insurance; No. 93.744, Medicare—Supplementary Medicare Insurance)

Dated: April 24, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: May 13, 1991.

Louis W. Sullivan,

Secretary.

[**Editorial Note:** The following addendum and appendixes will not appear in the Code of Federal Regulations.]

Addendum—Proposed Schedule of Standardized Amounts Effective with Discharges On or After October 1, 1991 and Update Factors and Target Rate Percentages Effective With Cost Reporting Periods Beginning On or After October 1, 1991

I. Summary and Background

In this addendum, we are making changes in the amounts and factors for determining prospective payment rates for Medicare inpatient hospital services. We are also setting forth new target rate percentages for determining the rate-of-increase limits (target amounts) for hospitals and hospital units excluded from the prospective payment system.

For discharges occurring on or after October 1, 1991, except for sole community hospitals, Medicare-dependent small rural hospitals, hospitals located in Puerto Rico, and hospitals subject to the regional floor, each hospital's payment per discharge under the prospective payment system will be comprised of 100 percent of the Federal national rate.

For cost reporting periods beginning on or after April 1, 1990, sole community hospitals and Medicare-dependent small rural hospitals are paid based on whichever of the following rate yields the greatest aggregate payment: the Federal national rate (subject to the regional floor), the updated hospital-specific rate based on FY 1982 cost per discharge, or the updated hospital-specific rate based on FY 1987 cost per discharge. Hospitals in Puerto Rico are paid on the basis of a rate per discharge composed of 75 percent of a Puerto Rico rate and 25 percent of a national rate (section 1886(d)(9)(A) of the Act). Hospitals affected by the regional floor are paid on the basis of 85 percent of the Federal national rate and 15 percent of the Federal regional rate (section 1886(d)(1)(A)(iii) of the Act).

As discussed below in section II, we are making changes in the determination of the prospective payment rates. The changes, to be applied prospectively, will affect the calculation of the Federal rates. Section III sets forth our changes for determining the rate-of-increase limits for hospitals excluded from the prospective payment system. The tables to which we refer in the preamble to the proposed rule are presented at the end of this addendum in section IV.

II. Changes to Prospective Payment Rates For Hospitals for FY 1992

The basic methodology for determining prospective payment rates is set forth at § 412.63 for hospitals located outside of Puerto Rico. The basic methodology for determining the prospective payment rates for hospitals located in Puerto Rico is set forth at §§ 412.210 and 412.212. Below we discuss the manner in which we are changing some of the factors used for determining the prospective payment rates. The Federal and Puerto Rico rate changes, once issued as final, will be effective with discharges occurring on or after October 1, 1991. As required by section 1886(d)(4)(C) of the Act, we must adjust the DRG classifications and weighting factors for discharges in FY 1992.

In summary, the proposed standardized amounts set forth in tables 1a, 1b, and 1c of section IV of this addendum were—

- Updated by 2.2 percent for urban hospitals (that is, the market basket percentage increase of 3.8 percent minus 1.6 percent); and 3.2 percent for rural hospitals (that is, the market basket percentage increase of 3.8 percent minus 0.6 percent);
- Adjusted by the revised urban and rural outlier offsets;
- Adjusted to ensure budget neutrality as provided for in section (d)(8)(D) of the Act; and
- Adjusted to ensure budget neutrality as provided for in sections 1886 (d)(4)(C)(iii) and (d)(3)(E) of the Act.

A. Calculation of Adjusted Standardized Amounts

1. Standardization of Base-Year Costs or Target Amounts

Section 1886(d)(2)(A) of the Act required the establishment of base-year cost data containing allowable operating costs per discharge of inpatient hospital services for each hospital. The preamble to the September 1, 1983 interim final rule (48 FR 39763) contains a detailed explanation of how base-year cost data were established in the initial development of standardized amounts for the prospective payment system and how they are used in computing the Federal rates.

Section 1886(d)(9)(B)(i) of the Act required that Medicare target amounts be determined for each hospital located in Puerto Rico for its cost reporting period beginning in FY 1987. The September 1, 1987 final rule contains a detailed explanation of how the target amounts were determined and how they are used in computing the Puerto Rico rates (52 FR 33043, 33066).

The standardized amounts are based on per discharge averages of adjusted hospital costs from a base period or, for Puerto Rico, adjusted target amounts from a base period, updated and otherwise adjusted in accordance with the provisions of section 1886(d) of the Act. Sections 1886 (d)(2)(C) and (d)(9)(B)(ii) of the Act required that the updated base-year per discharge costs and, for Puerto Rico, the updated target amounts, respectively, be standardized in order to remove from the cost data the effects of certain sources of variation in cost among hospitals. These include case mix, differences in area wage levels, cost of living adjustments for Alaska and Hawaii, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients.

Since the standardized amounts have already been adjusted for differences in

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case mix, wages, cost-of-living, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients, no additional adjustments for these factors for FY 1992 were made. That is, the standardization adjustments reflected in the FY 1992 standardized amounts are the same as those reflected in the FY 1991 standardized amounts.

Sections 1886 (d)(2)(H) and (d)(3)(E) of the Act require that, in making payments under the prospective payment system, the Secretary adjust the proportion of payments that are wage-related (as estimated by the Secretary from time to time). Beginning with October 1, 1990, when the market basket was rebased, we have considered 71.40 percent of costs to be labor-related for purposes of the prospective payment system.

2. Computing Urban and Rural Averages Within Geographic Areas

In determining the prospective payment rates for FY 1984, section 1886(d)(2)(D) of the Act required that the average standardized amounts be determined for hospitals located in urban and rural areas of the nine census divisions and the nation. Under section 1886(d)(9)(B)(iii) of the Act, the average standardized amount per discharge for FY 1988 must be determined for hospitals located in urban and rural areas in Puerto Rico. Hospitals in Puerto Rico are paid a blend of 75 percent of the applicable Puerto Rico standardized amount and 25 percent of a national standardized payment amount.

Section 4002(c)(1) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) amended section 1886(d)(3) of the Act to require the Secretary to compute three average standardized amounts for discharges occurring in a fiscal year beginning on or after October 1, 1987: One for hospitals located in rural areas; one for hospitals located in large urban areas; and one for hospitals located in other urban areas. Section 4002(b) of Public Law 100–203 amended section 1886(d)(2)(D) of the Act to define a "large urban area" as an urban area with a population of more than 1,000,000. In addition, section 4009(i) of Public Law 100–203 provides that a New England County Metropolitan Area (NECMA) with a population of more than 970,000 is classified as a large urban area. As required by section 1886(d)(2)(D) of the Act, population size is determined by the Secretary based on the latest population data published by the Bureau of the Census. Under that section, urban areas that do not meet the definition of a "large urban area" are referred to as "other urban areas."

Based on 1989 census population estimates published by the Bureau of the Census, the current 46 large urban areas continue to meet the criteria to be defined as large urban areas for FY 1992. A list of those areas was set forth in the April 5, 1988 notice (at 53 FR 11138) concerning FY 1988 legislative changes that affect payment to hospitals. In addition, these areas are identified by an asterisk in tables 4a and 4c. No additional areas have been identified. Therefore, we are making no change in these areas for purposes of this proposed rule. If new population estimates are published by the Bureau of Census before we issue the final rule, we would include any resulting changes in the list of large urban areas in that rule.

Table 1a contains the three national standardized amounts that would continue to be applicable to most hospitals. Table 1b sets forth the 27 regional standardized amounts that would continue to be applicable for hospitals located in census areas subject to the regional floor. Under section 1886(d)(9)(A)(ii) of the Act, the national standardized payment amount applicable to hospitals in Puerto Rico consists of the discharge-weighted average of the national rural standardized amount, the national large urban standardized amount, and the national other urban standardized amount (as set forth in table 1a). The national average standardized amount for Puerto Rico is set forth in table 1c. This table also includes the three standardized amounts that would be applicable to most hospitals in Puerto Rico.

The methodology for computing the national average standardized amounts is identical to the methodology for determining the regional amounts.

The Office of Management and Budget (OMB) may announce revised listings of the MSA and NECMA designations that are used in calculating standardized amounts. If OMB makes an announcement before we issue the final rule, we will list the revised MSA/NECMA designations in the addendum to the final rule. Consistent with Medicare policy and our regulations at § 412.63(b)(4), the changes in designation will be effective for discharges occurring on or after October 1, 1991.

3. Updating the Average Standardized Amounts

In accordance with section 1886(d)(3)(A) of the Act, we are proposing to update the large urban, other urban, and rural average standardized amounts using the applicable percentage increases specified in section 1886(b)(3)(B)(i). Section 1886(b)(3)(B)(i)(VII) (as added by sections 4002 (a) and (c) of Public Law 101–508) specifies the following update factors for the standardized amounts for FY 1992:

- The market basket percentage increase minus 1.6 percentage points (that is, 2.2 percent) for hospitals located in urban areas.
- The market basket percentage increase minus 0.6 percentage points (that is, 3.2 percent) for hospitals located in rural areas.

The percentage change in the market basket reflects the average change in the price of goods and services purchased by hospitals to furnish inpatient care. The most recent forecasted hospital market basket increase for FY 1992 is 3.8 percent.

Although the update factor for FY 1992 is set by law, we were required by section 1886(e)(3)(B) of the Act to report to Congress no later than March 1, 1991 on our initial recommendation of update factors for FY 1992 for both prospective payment hospitals and hospitals excluded from the prospective payment system. For general information purposes, we have included the report to Congress as appendix C to this proposed rule. Our proposed recommendation on the update factors (which is required by sections 1886 (e)(4)(A) and (e)(5)(A) of the Act), as well as our responses to ProPAC's recommendation concerning the update factor, is set forth as appendix D to this proposed rule.

4. Other Adjustments to the Average Standardized Amounts

a. Reclassified Hospitals—Budget Neutrality Adjustment. Section 1886(d)(8)(B) of the Act provides that certain rural hospitals are deemed urban effective with discharges occurring on or after October 1, 1988. In addition, section 1886(d)(10) of the Act provides for the reclassification of hospitals beginning in FY 1992 based on determinations by the Medicare Geographic Classification Review Board (MGCRB). Under section 1886(d)(10) of the Act, a hospital may be reclassified for purposes of the standardized amount or the wage index, or both. (See section I.A.1 of the preamble for a further explanation.)

Section 1886(d)(8)(D) of the Act specifies two budget neutrality objectives that must be met. First, the FY 1992 urban standardized amounts are to be adjusted so as to ensure that total aggregate payments under the prospective payment system after implementation of the provisions of

sections 1886(d)(8) (B) and (C) and 1886(d)(10) of the Act are equal to the aggregate prospective payments that would have been made absent these provisions. Second, the rural standardized amounts are to be adjusted to ensure that aggregate payments to rural hospitals not affected by these provisions neither increase nor decrease as a result of implementation of these provisions. The following adjustment factors, necessary to achieve the requisite budget neutrality constraints, were applied to the proposed standardized amounts:

Urban	Rural
.988778	.999766

We note that these adjustments reflect wage index and standardized amount reclassifications approved by the MGCRB as of March 31, 1991. Approximately 500 cases were still pending before the MGCRB as of that date. The effects of any additional reclassifications approved by the MGCRB for FY 1992 will be reflected in the final budget neutrality adjustment required under section 1886(d)(8)(D) of the Act. We expect the additional reclassifications will result in a greater reduction in the urban standardized amounts in the final rule.

b. Recalibration of DRG Weights and Updated Wage Index—Budget Neutrality Adjustment. Section 1886(d)(4)(C)(iii) of the Act, as amended by section 6003(b) of Public Law 101–239, specifies that beginning in fiscal year 1991, the annual DRG reclassifications and recalibration of the relative weights must be made in a manner that ensures that aggregate payments to hospitals are not affected. As discussed in section II.C of the preamble, we normalized the recalibrated DRG weights by an adjustment factor so that the average case weight after recalibration is equal to the average case weight prior to recalibration. While this adjustment is intended to ensure that recalibration does not affect total payments to hospitals, our analysis indicates that the normalization adjustment does not necessarily achieve budget neutrality with respect to aggregate payments to hospitals.

Section 1886(d)(3)(E) of the Act, as amended by section 6003(h)(6) of Public Law 101–239, specifies that the hospital wage index must be updated based on new survey data no later than October 1, 1990 and on an annual basis beginning October 1, 1993. This provision also requires that any updates or adjustments to the wage index must be made in a manner that ensures that aggregate payments to hospitals are not affected by the change in the wage index.

To comply with the requirement of section 1886(d)(4)(C)(iii) of the Act that the DRG reclassification changes and recalibration of the relative weights be budget neutral and the requirement in section 1886(d)(E) of the Act that the updated wage index be implemented in a budget neutral manner, we compared aggregate payments using the FY 1991 relative weights and the wage index effective January 1, 1991 to aggregate payments using the proposed FY 1992 relative weights and wage index. This was the same methodology used for the FY 1991 recalibration. (See discussion in September 4, 1990 final rule (55 FR 36073).) Based on this comparison, we computed a budget neutrality adjustment factor equal to 1.000018. We applied this budget neutrality adjustment factor to the standardized amounts.

In addition, we are proposing to continue to apply the same adjustment factor to the hospital-specific rates that are effective for cost reporting periods beginning on or after October 1, 1991, in order to ensure that we meet the statutory requirement that aggregate payments neither increase nor decrease as a result of the implementation of the DRG weights and updated wage index. (See discussion in September 4, 1990 final rule (55 FR 36073).)

c. Retroactive Budget Neutrality Adjustment to Reflect FY 1991 Midyear Wage Index Corrections. In the September 4, 1990 final rule (55 FR 36042), we set forth under § 412.63(1) our policy for making mid-year corrections in the wage index and applying those corrections on a prospective basis effective with discharges occurring after the date the corrections are made. As described in that rule, when mid-year corrections are made under the provisions of § 416.63(1), the correction in the wage index value for the affected area is effective prospectively from the date the revision is made; however, both the corresponding prospective adjustment to the wage index values for all other wage areas (to reflect the effect of the corrected data on the national average hourly wage), and the budget neutrality adjustment to the standardized amounts required by section 1886(d)(3)(E) (to account for the effect on payments of the mid-year corrections), are not made until the beginning of the next fiscal year.

To account for the effect that mid-year corrections in the wage index for FY 1991 had on program payments for that year, we have computed a retroactive budget neutrality adjustment factor of .999876. This adjustment was computed by comparing FY 1991 aggregate payments before the wage data corrections were made with aggregate payments after the revised wage index values were implemented. This adjustment has been applied to the FY 1992 standardized amounts.

d. Outliers. Section 1886(d)(5)(A) of the Act requires that, in addition to the basic prospective payment rates, payments must be made for discharges involving day outliers and may be made for cost outliers. Section 1886(d)(3)(B) of the Act requires that the urban and rural standardized amounts be separately reduced by the proportion of estimated total DRG payments attributable to estimated outlier payments for hospitals located in urban areas and those located in rural areas. Section 1886(d)(9)(B)(iv) of the Act requires that the urban and rural standardized amounts be reduced by the proportion of estimated total payments made to hospitals in Puerto Rico attributable to estimated outlier payments.

Consequently, instead of a uniform reduction factor applying equally to all the standardized amounts, there are two separate reduction factors, one applicable to the urban national and regional standardized amounts and the other applicable to the rural national and regional standardized amounts. Furthermore, sections 1886(d)(5)(A)(iv) and 1886(d)(9)(D)(i) of the Act direct that outlier payments in any year may not be less than 5 percent nor more than 6 percent of total payments projected to be made based on the prospective payment rates.

In the September 4, 1990 final rule, we set the outlier thresholds so as to result in estimated outlier payments equal to 5.1 percent of total prospective payments. We also set the same outlier thresholds and offsets for the Puerto Rico prospective payment standardized amounts as we had for hospitals located outside Puerto Rico. For FY 1991, the day outlier threshold is the geometric mean length of stay for each DRG plus the lesser of 29 days or 3.0 standard deviations. The cost outlier threshold is the greater of 2.0 times the prospective payment rate for the DRG or $35,000. In implementing the changes required by Pub. L. 101–508 in the January 7, 1991 final rule with comment period, we determined that maintaining the FY 1991 thresholds would result in estimated outlier payments equal to 5.2 percent of total prospective payments. Accordingly, we revised the adjustment factors to reflect the higher outlier

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payments. The outlier adjustments for FY 1991 that were effective for discharges on or after January 1, 1991 were .944078 for the urban rates and .977448 for the rural rates.

As discussed in section IV.C of the preamble, we are proposing to establish outlier thresholds that would be applicable to both operating costs and capital-related costs. The proposed outlier adjustment factors applied to the standardized amounts and the capital Federal rate for FY 1992 are as follows:

Urban standardized amount	Rural standardized amount	Capital federal rate
.944309	.979608	.954854

We are proposing to continue to set the outlier thresholds so as to result in estimated outlier payments equal to 5.1 percent of total prospective payments. The model that we use to determine the outlier thresholds necessary to target our desired outlier pool for FY 1992 uses FY 1990 charges. We are proposing to adjust that model to take into account the effect of expanded Medicare coverage for inpatient hospital services during the first quarter of FY 1990 that resulted from the enactment of the Catastrophic Coverage Act of 1988 (Pub. L. 100–360). These catastrophic coverage provisions were effective with discharges occurring on or after January 1, 1989 (the second quarter of FY 1989) and were repealed by the Medicare Catastrophic Coverage Repeal Act of 1989 (Pub. L. 101–234) effective for discharges occurring on or after January 1, 1990.

We determine the outlier thresholds and establish the outlier pool based on the covered days and charges reflected in the billing data. The FY 1990 billing data that we used to determine the FY 1992 outlier payments contain 3 months of data for discharges occurring while the catastrophic legislation was in effect (data from discharges occurring on or after October 1, 1989 and before December 31, 1989) and 9 months of data for discharges occurring after the catastrophic legislation was repealed (data from discharges occurring on or after January 1, 1990 and before October 1, 1990). For discharges occurring on or after October 1, 1989 through December 31, 1989, we are not able to identify the additional days (and charges) covered under the catastrophic legislation that are no longer covered after its repeal. If we include the additional inpatient days attributable to catastrophic coverage in the model used to estimate outlier payments, we will overestimate the FY 1992 outlier payments. Since we are not able to isolate the catastrophic-covered days and charges from other covered days and charges, we have developed an adjustment to the outlier model to account for the catastrophic-covered days reflected in the billing data. The adjustment is based on a comparative analysis of outlier payments modeled on covered days and charges and on total days and charges using postcatastrophic billing data and billing data for the period the catastrophic legislation was in effect.

We propose to adjust the model used to develop the outlier thresholds by calculating an adjustment to the 5.1 percent outlier pool payment target solely for purposes of estimating the thresholds. By adjusting the payment target, we eliminate the impact that the changes in coverage that occurred in FY 1990 would have had on the computation of the outlier thresholds. To accomplish this, we calculated, for each quarter in FY 1990, the ratio of outlier payments based on covered days and covered charges to payments based on total days and total charges. We arrived at the adjustment by comparing the ratio for the first quarter (in which catastrophic days and charges occurred) to the succeeding quarters (in which postcatastrophic days and charges occurred). The result was an adjustment factor of .9966. Based on this analysis, we estimate that outlier payments will be .9966 percent of the amounts estimated based on FY 1990 covered days and charges. To account for this, we multiplied the outlier payments estimated by the model by .9966 before determining the outlier adjustment factors that are applied to the standardized amounts and the capital Federal rate.

B. Adjustments for Area Wage Levels and Cost-of-Living

This section contains an explanation of the application of two types of adjustments to the adjusted standardized amounts that would be made by the intermediaries in determining the prospective payment rates as described in section II.D of this addendum. For discussion purposes, it is necessary to present the adjusted standardized amounts divided into labor and nonlabor portions. Table 1a, 1b, and 1c, as set forth in this addendum, contain the actual labor-related and nonlabor-related shares that will be used to calculate the prospective payment rates for hospitals located in the 50 States, the District of Columbia, and Puerto Rico.

1. Adjustment for Area Wage Levels

Sections 1886(d)(2)(H) and 1886(d)(9)(C)(iv) of the Act require that an adjustment be made to the labor-related portion of the prospective payment rates to account for area differences in hospital wage levels. This adjustment is made by the intermediaries by multiplying the labor-related portion of the adjusted standardized amounts by the appropriate wage index for the area in which the hospital is located. In section III of the preamble, we discuss certain revisions we are making to the wage index. This index is set forth in Tables 4a through 4c of this addendum.

2. Adjustment for Cost of Living in Alaska and Hawaii

Section 1886(d)(5)(H) of the Act authorizes an adjustment to take into account the unique circumstances of hospitals in Alaska and Hawaii. Higher labor-related costs for these two States are taken into account in the adjustment for area wages above. For FY 1992, the adjustment necessary for nonlabor-related costs for hospitals in Alaska and Hawaii would be made by the intermediaries by multiplying the nonlabor portion of the standardized amounts by the appropriate adjustment factor contained in the table below.

TABLE OF COST-OF-LIVING ADJUSTMENT FACTORS, ALASKA AND HAWAII HOSPITALS

Alaska—All areas	1.25
Hawaii:	
Oahu	1.225
Kauai	1.175
Maui	1.20
Molokai	1.20
Lanai	1.20
Hawaii	1.15

(The above factors are based on data obtained from the U.S. Office of Personnel Management.)

C. DRG Weighting Factors

As discussed in section II of the preamble, we have developed a classification system for all hospital discharges, assigning them into DRGs, and have developed weighting factors for each DRG that are intended to reflect the resource utilization of cases in each DRG relative to Medicare cases or other DRGs.

Table 5 of section IV of this addenum contains the weighting factors that we propose to use for discharges occurring in FY 1992. These factors have been recalibrated as explained in section II.C of the preamble.

D. Calculation of Prospective Payment Rates for FY 1992

GENERAL FORMULA FOR CALCULATION OF PROSPECTIVE PAYMENT RATES FOR FY 1992

Prospective payment rate for all hospitals located outside Puerto Rico except sole community hospitals and Medicare-dependent, small rural hospitals=.	Federal rate
Prospective payment rate for sole community hospitals and Medicare-hospitals and Medicare-dependent, small rural hospitals (for cost reporting periods beginning on or after April 1, 1990)=.	Whichever of the rates yields the greatest aggregate payment: 100 percent of the Federal rate, 100 percent of the FY 1982 hospital-specific rate, or 100 percent of the FY 1987 hospital-specific rate
Prospective payment rate for Puerto Rico=.	75 percent of the Puerto Rico rate+25 percent of a discharge-weighted average of the large urban, other urban, and rural national rates.

1. Federal Rate

For discharges occurring on or after October 1, 1991 and before October 1, 1992, except for sole community hospitals, Medicare-dependent, small rural hospitals, hospitals located in Puerto Rico, and hospitals subject to the regional floor, the hospital's rate is comprised exclusively of the Federal national rate. Section 1886(d)(1)(A)(iii) of the Act provides that the Federal rate is comprised of 100 percent of the Federal national rate except for those hospitals located in census regions that have a regional rate that is higher than the national rate. This provision, which was due to expire effective with discharges occurring on or after October 1, 1990, was extended by section 115(b)(1) of Public Law 101–403 and section 4002(e) of Public Law 101–508 to discharges occurring before October 1, 1993. The Federal rate for hospitals located in census regions that have a regional rate that is higher than the national rate equals 85 percent of the Federal national rate plus 15 percent of the Federal regional rate. For discharges occurring on or after October 1, 1991, rural hospitals in regions I, II, III, and IV and urban and large urban hospitals in I, IV, and VI are affected by the regional floor.

The Federal rates are determined as follows:

Step 1—Select the appropriate regional or national adjusted standardized amount considering the type of hospital and designation of the hospital as large urban, other urban, or rural (see tables 1a and 1b, section IV of this addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the applicable wage index for the geographic area in which the hospital is located (see tables 4a, 4b, and 4c, section IV of this addendum).

Step 3—For hospitals in Alaska and Hawaii, multiply the nonlabor-related portion of the standardized amount by the appropriate cost-of-living adjustment factor.

Step 4—Add the amount from Step 2 and the nonlabor-related portion of the standardized amount (adjusted if appropriate under Step 3).

Step 5—Multiply the final amount from Step 4 by the weighting factor corresponding to the appropriate DRG (see table 5, section IV of this addendum).

2. Hospital-Specific Rate (Applicable Only to Sole Community Hospitals and Medicare-Dependent, Small Rural Hospitals)

Section 1886(d)(5)(D)(i) of the Act provides that for cost reporting periods beginning on or after April 1, 1990, sole community hospitals are paid based on whichever of the following rates yields the greatest aggregate payment: The Federal rate (subject to the regional factor), the updated hospital-specific rate based on FY 1982 cost per discharge, or the updated hospital-specific rate based on FY 1987 cost per discharge. Under section 1886(d)(5)(G) of the Act, Medicare-dependent, small rural hospitals are eligible for special payment under the prospective payment system and, effective for cost reporting periods beginning or after April 1, 1990 and ending before April 1, 1993, are paid based on the same formula applicable to sole community hospitals.

Hospital-specific rates have been determined for each of these hospitals based on both the FY 1982 cost per discharge and the FY 1987 cost per discharge. For a more detailed discussion of the calculation of the FY 1982 hospital-specific rate and the FY 1987 hospital-specific rate, we refer the reader to the September 1, 1983 interim final rule (48 FR 39772); the April 20, 1990 final rule with comment (55 FR 15150); and the September 4, 1990 final rule (55 FR 35994).

a. Updating the FY 1982 and FY 1987 Hospital-Specific Rates for FY 1992 Cost Reporting Periods. For cost reporting periods beginning on or after October 1, 1991, we are proposing to increase the hospital-specific rates by 3.8 percent (the hospital market basket percentage increase) for hospitals located in all areas. Sections 1886(b)(3)(C)(ii) and (b)(3)(D)(ii) of the Act (as amended by section 4002(c)(2)(A)(ii) of Public Law 101–508) provide that the update factor applicable to the hospital-specific rates for sole community and Medicare-dependent, small rural hospitals equals the update factor provided under section 1886(b)(3)(B)(ii) of the Act, which, for cost reporting periods beginning in FY 1992, is the market basket rate of increase.

b. Calculation of Hospital-Specific Rate. For sole community hospital and Medicare-dependent, small rural hospital cost reporting periods beginning on or after October 1, 1991 and before October 1, 1992, the applicable hospital-specific rate would be calculated by multiplying a hospital's hospital-specific rate for the preceding cost reporting period by the applicable update factor (that is, 3.8 percent). In addition, the hospital-specific rate would be adjusted by the budget neutrality adjustment factor (that is, 1.000018) as discussed in section II.A.4.b of this addendum. This resulting rate would be used in determining under which rate a sole community or Medicare-dependent, small rural hospital is paid for its cost reporting period beginning on or after October 1, 1991, based on the formula set forth above.

3. General Formula for Calculation of Prospective Payment Rates for Hospitals Located in Puerto Rico Beginning On or After October 1, 1991 and Before October 1, 1992

a. Puerto Rico. The Puerto Rico prospective payment rate is determined as follows:

Step 1—Select the appropriate adjusted average standardized amount considering the large urban, other urban, or rural designation of the hospital (see table 1c, section IV of the addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the appropriate wage index (see tables 4a and 4b, section IV of the addendum).

Step 3—Add the amount from Step 2 and the nonlabor-related portion of the standardized amount.

Step 4—Multiply the result in Step 3 by 75 percent.

Step 5—Multiply the amount from Step 3 by the weighting factor corresponding to the appropriate DRG

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weight (see table 5, section IV to the addendum).

b. National Rate. The national prospective payment rate is determined as follows:

Step 1—Multiply the labor-related portion of the national average standardized amount (see table 1c, section IV of the addendum) by the appropriate wage index.

Step 2—Add the amount from Step 1 and the nonlabor-related portion of the national average standardized amount.

Step 3—Multiply the result in Step 2 by 25 percent.

Step 4—Multiply the amount from Step 3 by the weighting factor corresponding to the appropriate DRG weight (see table 5, section IV of the addendum).

The sum of the Puerto Rico rate and the national rate computed above equals the prospective payment for a given discharge for a hospital located in Puerto Rico.

III. Proposed Target Rate Percentages for Hospitals and Hospital Units Excluded From the Prospective Payment System

The inpatient operating costs of hospitals and hospital units excluded from the prospective payment system are subject to rate-of-increase limits established under the authority of section 1886(b) of the Act, which is implemented in § 413.40 of the regulations. Under these limits, an annual target amount (expressed in terms of the inpatient operating cost per discharge) is set for each hospital, based on the hospital's own historical cost experience, trended forward by the applicable update factors. This target amount is applied as a ceiling on the allowable costs per discharge for the hospital's next cost reporting period.

As discussed in section IV.F of the preamble, effective with cost reporting periods beginning on or after October 1, 1991, a hospital that has inpatient operating costs per discharge in excess of its target amount would be paid its target amount plus 50 percent of its costs in excess of the target amount. Total payments may not exceed 110 percent of the target amount. Total payments may not exceed 110 percent of the target amount. However, a hospital that has inpatient operating costs less than its target amount would be paid its costs plus the lower of—

(1) 50 percent of the difference between the inpatient operating cost per discharge and the target amount; or

(2) 5 percent of the target amount.

Each hospital's target amount is adjusted annually, before the beginning of its cost reporting period, by an applicable target rate percentage. For cost reporting periods beginning on or after October 1, 1991 and before October 1, 1992, section 1886(b)(3)(B)(ii) of the Act provides that the applicable percentage increase is the market basket percentage increase. In order to determine a hospital's target amount for its cost reporting period beginning in FY 1992, the hospital's target amount for its reporting period that began in FY 1991 is increased by the market basket percentage increase for FY 1992 for hospitals and units excluded from the prospective payment system is 4.0 percent. Therefore, the applicable percentage increase is also 4.0 percent.

IV. Tables

This section contains the tables referred to throughout the preamble to this proposed rule and in this addendum. For purposes of this final rule, and to avoid confusion, we have retained the designations of tables 1a, 1b, 1c, 3c, 4a, 4b, and 5 that were first used in the September 1, 1983 initial prospective payment final rule (48 FR 39844). Tables 1a, 1b, 1c, 3C, 4a, 4b, 4c, 5, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 7A, 7B, 8a, and 8b are presented below. The tables presented below are as follows:

Table 1a—National Adjusted Standardized Amounts, Labor/Nonlabor.
Table 1b—Regional Adjusted Standardized Amounts, Labor/Nonlabor.
Table 1c—Adjusted Standardized Amounts for Puerto Rico, Labor/Nonlabor.
Table 3C—Hospital Case Mix Indexes for Discharges Occurring in Federal Fiscal Year 1990.
Table 4a—Wage Index for Urban Areas.
Table 4b—Wage Index for Rural Areas.
Table 4c—Wage Index for Hospitals That Are Reclassified.
Table 5—List of Diagnosis Related Groups (DRGs), Relative Weighting Factors, Geometric Mean Length of Stay, and Length of Stay Outlier Cutoff Points Used in the Prospective Payment System.
Table 6a—New Diagnosis Codes.
Table 6b—New Procedure Codes.
Table 6c—Invalid Diagnosis Codes.
Table 6d—Invalid Procedure Codes.
Table 6e—Revised Diagnosis Code Titles.
Table 6f—Revised Procedure Code Titles.
Table 6g—Additions to the CC Exclusions List.
Table 6h—Deletions to the CC Exclusions List.
Table 6i—New HIV-Related Conditions Necessary for Assignment to MDC 25.
Table 7A—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 90 MEDPAR Update 12/90 GROUPER V8.0.
Table 7B—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 90 MEDPAR Update 12/90 GROUPER V9.0.
Table 8a—Statewide Average Operating Cost-to-Charge Ratios for Urban and Rural Hospitals (Case Weighted).
Table 8b—Statewide Average Capital Cost-to-Charge Ratios for Urban and Rural Hospitals (Case Weighted).

TABLE 1A.—NATIONAL ADJUSTED STANDARDIZED AMOUNTS, LABOR/NONLABOR

Large urban		Other urban		Rural	
Labor-related	Nonlabor-related	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
2512.73	1005.22	2472.95	1018.84	2522.10	812.58

TABLE 1B.—REGIONAL ADJUSTED STANDARDIZED AMOUNTS, LABOR/NONLABOR

	Large urban		Other urban		Rural	
	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
1. New England (CT, ME, MA, NH, RI, VT)	2638.77	1080.99	2506.99	1063.86	2706.23	964.36
2. Middle Atlantic (PA, NJ, NY)	2270.68	1024.11	2333.17	1007.90	2677.95	911.65
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	2530.63	945.13	2490.57	930.18	2559.99	790.52

TABLE 1B.—REGIONAL ADJUSTED STANDARDIZED AMOUNTS, LABOR/NONLABOR—Continued

	Large urban		Other urban		Rural	
	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
4. East North Central (IL, IN, MI, OH, WI)	2669.20	1118.28	2626.94	1100.55	2592.34	878.60
5. East South Central (AL, KY, MS, TN)	2429.71	865.80	2390.26	842.26	2537.23	737.17
6. West North Central (IA, KS, MN, MO, NB, ND, SD)	2581.36	1018.92	2491.28	1002.79	2465.99	787.57
7. West South Central (AR, LA, OK, TX)	2516.79	938.74	2476.94	923.88	2354.99	724.29
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	2427.81	1005.52	2389.37	989.59	2991.54	833.02
9. Pacific (AK, CA, HI, OR, WA)	2361.59	1148.56	2324.20	1130.40	2328.08	938.44

TABLE 1C.—ADJUSTED STANDARDIZED AMOUNTS FOR PUERTO RICO, LABOR/NONLABOR

	Large urban		Other urban		Rural	
	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
Puerto Rico	2259.94	470.91	2224.16	462.57	1719.13	370.60
National	2500.63	972.93				

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TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1990 PAGE 1 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
010001	01.2939	010062	01.0021	010128	00.8710	030011	01.2971	030084	01.0451
010004	00.9755	010064	01.4971	010129	01.0317	030012	01.1940	030085	01.2996
010005	01.1574	010065	01.2021	010130	01.0286	030013	01.1927	030086	01.2671
010006	01.2862	010066	00.9161	010131	01.2568	030014	01.4247	030087	01.4509
010007	01.1267	010068	01.1770	010134	00.8778	030016	01.1738	030088	01.2788
010008	01.0536	010069	01.1199	010136	00.9732	030017	01.3556	030089	01.2164
010009	01.0554	010072	01.1716	010137	01.3083	030018	01.5556	030091	00.8910
010010	01.0883	010073	00.9591	010138	00.9789	030019	01.2037	030092	01.3689
010011	01.3780	010078	01.1946	010139	01.4307	030022	01.2975	030093	01.2652
010012	01.2696	010079	01.1687	010143	01.1505	030023	01.2024	030094	01.3111
010015	01.1387	010080	00.9822	010144	01.3628	030024	01.5193	030898	01.2260
010016	01.1412	010081	01.7305	010145	01.2403	030025	01.1554	030899	01.2260
010018	00.8923	010083	01.1224	010146	01.1357	030027	01.0529	040001	01.0066
010019	01.1900	010084	01.2881	010148	00.9271	030030	01.6140	040002	01.1683
010020	01.0934	010085	01.3089	010149	01.3583	030033	01.4048	040003	01.0197
010021	01.2969	010086	00.9549	010150	00.9681	030034	01.1360	040004	01.2751
010022	01.0000	010087	01.3356	010152	01.2621	030035	01.1834	040005	01.0332
010023	01.2900	010089	01.0373	010153	01.9047	030036	01.2909	040006	01.7706
010024	01.2369	010090	01.4848	010155	01.0292	030037	01.7223	040007	01.4880
010025	01.2161	010091	01.0039	020001	01.4943	030038	01.4469	040008	01.0759
010027	00.9062	010092	01.3072	020002	01.0650	030040	01.0011	040010	01.1221
010028	01.1262	010094	01.2456	020004	01.1603	030041	00.8996	040011	00.8875
010029	01.4261	010095	01.1096	020005	00.9555	030043	01.1318	040013	00.9986
010031	01.2444	010096	00.9312	020006	01.0239	030044	01.0988	040014	01.1206
010032	00.8628	010097	01.0528	020007	01.2222	030046	01.0056	040015	01.0317
010033	01.8417	010098	01.0472	020008	00.9268	030047	00.9379	040016	01.3695
010034	01.0678	010099	01.0324	020009	00.8187	030049	00.9425	040017	01.2398
010035	01.1584	010100	01.2254	020010	00.9279	030051	01.1121	040018	01.1189
010036	01.1422	010101	01.0175	020011	00.8732	030054	00.8974	040019	01.1858
010038	01.1981	010102	00.9249	020012	01.2801	030055	01.2108	040020	01.4342
010039	01.5512	010103	01.4430	020013	00.8895	030057	01.1831	040021	01.2218
010040	01.2252	010104	01.5221	020014	01.0491	030059	01.3527	040022	01.5985
010043	00.9907	010108	01.1179	020017	01.3687	030060	01.0770	040024	00.9529
010044	01.0119	010109	01.1084	020018	00.9015	030061	01.4047	040025	01.0373
010045	01.0558	010110	00.9048	020019	00.9452	030062	01.2818	040026	01.3489
010046	01.2454	010112	01.1353	020020	00.8887	030064	01.4458	040027	01.2488
010047	00.8841	010113	01.5143	020021	00.8831	030065	01.4348	040028	00.9664
010049	01.1402	010114	01.2020	020024	01.0086	030067	01.0533	040029	01.0989
010050	00.9425	010115	00.9158	020025	00.7764	030068	00.9991	040030	00.9124
010051	00.9762	010117	01.0202	020026	01.4457	030069	01.2289	040031	00.9029
010052	01.0150	010118	01.1897	020027	00.9528	030071	01.0145	040032	00.9852
010053	01.0050	010119	01.3118	030001	01.3490	030072	00.8947	040033	00.9118
010054	01.1400	010120	00.9480	030002	01.6709	030073	01.1357	040035	00.9150
010055	01.3259	010121	01.0789	030003	01.3857	030074	01.2382	040036	01.1875
010056	01.3053	010122	00.9522	030004	00.9528	030075	00.9364	040037	01.0403
010057	01.0588	010123	01.2199	030006	01.4599	030076	01.0052	040039	01.0711
010058	00.9968	010124	01.2475	030007	01.3251	030078	01.1746	040040	00.9993
010059	01.0194	010125	01.0161	030008	01.7522	030079	00.7847	040041	01.1526
010060	00.9684	010126	01.0651	030009	01.2142	030080	01.4708	040042	01.2648
010061	00.9903	010127	01.4990	030010	01.3702	030083	01.3672	040044	00.9342

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1990

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1990 PAGE 2 OF 23

PROVIDER	CASE MIX
040045	00.9620
040047	01.0004
040048	01.1548
040050	01.0275
040051	00.9135
040053	01.0871
040054	00.9593
040055	01.2839
040058	00.9075
040060	00.9847
040062	01.3011
040063	01.3813
040064	00.9059
040066	00.9374
040067	01.0710
040069	01.0121
040070	00.9083
040071	01.3592
040072	01.0683
040074	01.1342
040075	01.1083
040076	00.9858
040077	00.9244
040078	01.2199
040080	01.0805
040081	00.8561
040082	01.1395
040084	01.1324
040085	01.1179
040088	01.1586
040090	00.9719
040091	01.0611
040093	00.9607
040095	00.9221
040100	01.1038
040105	01.0133
040106	01.0663
040107	01.0336
040109	01.1070
040114	01.5619
040115	01.0092
040116	01.2628
040118	01.1215
040119	01.1017
040122	01.0462
040124	01.1115
040126	00.9885
040131	00.8363
050002	01.3057
050006	01.2889
050007	01.4805
050008	01.4550
050009	01.8227
050013	01.9786
050014	01.1165
050015	01.4238
050016	01.1098
050017	01.8639
050018	01.1991
050019	00.8844
050021	01.3128
050022	01.4418
050024	01.4381
050025	01.5251
050026	01.4706
050028	01.2721
050029	01.3383
050030	01.2944
050032	01.1878
050033	01.3873
050034	01.2537
050036	01.8136
050038	01.2683
050039	01.5851
050040	01.1512
050041	01.1886
050042	01.1858
050043	01.4871
050045	01.3758
050046	01.1744
050047	01.5758
050049	01.3028
050051	01.1884
050052	00.8104
050053	01.2789
050054	01.2975
050055	01.2624
050056	01.2997
050057	01.3852
050058	01.3768
050060	01.4091
050061	01.2752
050063	01.3283
050065	01.4802
050066	01.2545
050067	01.2789
050068	00.8734
050069	01.5715
050070	01.1962
050071	01.2573
050072	01.2166
050073	01.1272
050074	01.0021
050075	01.1995
050076	01.4488
050077	01.8028
050078	01.1986
050079	01.4257
050080	01.2140
050081	01.5938
050082	01.4032
050084	01.4546
050086	01.1726
050087	00.8658
050088	01.0487
050089	01.2863
050090	01.2275
050091	01.1881
050092	00.9953
050093	01.5203
050096	01.0666
050097	01.5262
050099	01.5233
050100	01.7262
050101	01.3216
050102	01.2817
050103	01.5006
050104	01.3551
050107	01.3715
050108	01.3871
050109	02.0838
050110	01.1288
050111	01.3027
050112	01.4977
050113	01.1986
050114	01.5040
050115	01.4488
050116	01.3819
050117	01.2986
050118	01.1808
050121	01.2052
050122	01.4121
050124	01.2194
050125	01.3223
050126	01.3327
050127	01.3006
050128	01.4385
050129	01.5119
050131	01.2287
050132	01.3158
050133	01.1404
050135	01.3178
050136	01.3222
050137	01.2187
050138	01.5582
050139	01.1412
050140	01.2181
050143	01.3901
050144	01.4833
050145	01.2479
050146	01.1911
050147	00.8156
050148	01.1189
050149	01.2906
050150	01.2212
050152	01.4712
050153	01.6023
050154	01.2064
050155	01.1874
050158	01.5659
050159	01.3015
050161	01.8671
050164	01.2498
050166	00.9255
050167	01.3507
050168	01.6728
050169	01.4256
050170	01.3901
050172	01.2849
050173	01.2593
050174	01.5668
050175	01.3195
050177	01.3048
050179	01.2444
050180	01.3810
050181	01.3570
050183	01.1645
050186	01.3964
050188	01.3825
050189	01.0212
050190	01.0259
050191	01.3734
050192	01.1939
050193	01.3742
050194	01.2412
050195	01.3891
050196	01.2920
050197	01.8869
050199	01.3371
050201	01.1547
050204	01.3558
050205	01.2131
050207	01.1472
050208	01.1947
050211	01.2567
050212	01.1376
050213	01.3077
050214	01.5635
050215	01.3939
050217	01.1873
050219	01.3123
050220	01.2577
050221	01.4448
050222	01.5193
050224	01.4838
050225	01.2336
050226	01.3718
050228	01.2396
050229	01.0478
050230	01.3804
050231	01.4480
050232	01.8827
050233	01.2453
050234	01.3037
050235	01.3884
050236	01.3380
050238	01.4136
050239	01.3496
050240	01.3747
050241	01.2385
050242	01.4143
050243	01.4196
050245	01.4848
050248	01.1403
050251	01.2172
050254	01.1878
050256	01.5785
050257	01.3638
050258	01.3552
050260	01.0072
050261	01.1945
050262	01.5822
050263	01.3500
050264	01.4542
050267	01.4700
050269	01.1958
050270	01.2838
050272	01.3287
050274	01.0414
050276	01.1088

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1990

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1990 PAGE 3 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
050277	01.3180	050353	01.5784	050436	01.0825	050523	01.2290	050593	01.2856
050278	01.3074	050355	00.9115	050438	01.4297	050526	01.2391	050594	01.9324
050279	01.2687	050357	01.7071	050440	01.2862	050527	01.3323	050597	01.2773
050280	01.3956	050359	01.0785	050441	01.6522	050528	01.2157	050598	01.3205
050281	01.2887	050360	01.3888	050442	01.2104	050530	01.3093	050599	01.5293
050282	01.2914	050363	01.3432	050443	00.9662	050531	01.1104	050601	01.2766
050283	01.2944	050366	01.3556	050444	01.1899	050534	01.3943	050603	01.3919
050286	00.9609	050367	01.2492	050446	00.9476	050535	01.3648	050604	01.2822
050289	01.5700	050369	01.3438	050447	01.1421	050537	01.2424	050607	01.2646
050290	01.4416	050373	01.1640	050448	01.0184	050539	01.3055	050608	01.1885
050291	01.1896	050376	01.2396	050449	01.1838	050541	01.4035	050609	01.3460
050292	01.1590	050377	01.0800	050450	00.9044	050542	01.0992	050613	01.0649
050293	00.9474	050378	01.2029	050451	00.9842	050543	01.1380	050615	01.5389
050295	01.2926	050379	01.2018	050454	01.6044	050544	01.4127	050616	01.2980
050296	01.1808	050380	01.5670	050455	01.7506	050545	00.8718	050618	01.2005
050298	01.2661	050381	01.2506	050456	01.3163	050546	00.8538	050619	01.3654
050299	01.2195	050382	01.2953	050457	01.6635	050547	01.0030	050622	01.2548
050300	01.3313	050385	01.2239	050458	00.9235	050549	01.6525	050623	01.2889
050301	01.2189	050387	01.0291	050459	01.3674	050550	01.2503	050624	01.1889
050302	01.2802	050388	00.8893	050464	01.7959	050551	01.2982	050625	01.4657
050305	01.3799	050390	01.2160	050467	01.2551	050552	01.1380	050630	01.1978
050307	01.4725	050391	01.3562	050468	01.4560	050557	01.4190	050633	01.1964
050308	01.5504	050392	00.8529	050469	01.0534	050559	01.3095	050635	01.2214
050309	01.2544	050393	01.4563	050470	01.1739	050560	01.2848	050636	01.2870
050310	01.1590	050394	01.4650	050471	01.7321	050561	01.0686	050637	01.2742
050312	01.7444	050396	01.4779	050476	01.2846	050564	01.2631	050638	01.0446
050313	01.1868	050397	00.8786	050477	01.3802	050565	01.2628	050641	01.1551
050315	01.2685	050401	01.2509	050478	00.9862	050566	00.9377	050643	00.8446
050317	01.2991	050404	01.0876	050481	01.5422	050567	01.4837	050644	00.9951
050319	01.3291	050406	01.0313	050482	00.9971	050568	01.3193	050649	01.2986
050320	01.1746	050407	01.1531	050483	01.3735	050569	01.1731	050650	01.0897
050324	01.7695	050410	01.1130	050485	01.6054	050570	01.6310	050651	01.2856
050325	01.2333	050411	01.1988	050486	01.4654	050571	01.3128	050655	00.5693
050327	01.5741	050414	01.2774	050488	01.1731	050573	01.5455	050660	01.1281
050328	01.3351	050417	01.1482	050489	01.1654	050575	01.2928	050661	00.8840
050329	01.2771	050418	01.2716	050491	01.4888	050577	01.2922	050662	01.1541
050331	01.2940	050419	01.2017	050492	01.2601	050578	01.3398	050663	01.0525
050333	01.0148	050420	01.3859	050494	01.0773	050579	01.3719	050665	00.5556
050334	01.4305	050421	01.3068	050496	01.6737	050580	01.2536	050666	00.8284
050335	01.2853	050423	01.0539	050497	00.9029	050581	01.3150	050667	01.1423
050336	01.2737	050424	01.7376	050498	01.1344	050583	01.6610	050668	01.1165
050337	01.2664	050425	01.2342	050502	01.6663	050584	01.2700	050669	01.1085
050342	01.4228	050426	01.3937	050503	01.3963	050585	01.3086	050670	01.1774
050343	01.0687	050427	00.9137	050506	01.4481	050586	01.3355	050671	01.1262
050345	01.3181	050430	00.9522	050510	01.2565	050587	01.1861	050672	00.6653
050348	01.5996	050431	01.1894	050512	01.2135	050588	01.2746	050674	01.1362
050349	01.0123	050432	01.5016	050515	01.3375	050589	01.3341	050675	01.5395
050350	01.3787	050433	01.0244	050516	01.3113	050590	01.2658	050676	00.9538
050351	01.4207	050434	01.0710	050517	01.3795	050591	01.1861	050677	01.2606
050352	01.2467	050435	01.1606	050522	01.3388	050592	01.3322	050678	01.1790

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1990

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1990 PAGE 4 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
050679	01.3815	060047	00.8761	070018	01.2824	100018	01.2846	100075	01.6495
050680	01.2051	060049	00.9741	070019	01.1529	100019	01.4724	100076	01.3169
050682	00.7346	060050	01.0795	070020	01.3512	100020	01.3167	100077	01.2707
050684	01.2186	060052	01.0202	070021	01.2104	100021	01.3096	100078	01.1315
050685	01.1222	060053	00.9776	070022	01.5916	100022	01.4419	100079	01.1852
050686	01.1647	060054	01.2038	070023	01.2049	100023	01.2891	100080	01.5185
050687	01.1043	060056	00.9454	070024	01.2020	100024	01.1750	100081	01.1705
050688	01.0696	060057	01.0618	070025	01.5879	100025	01.4832	100082	01.3261
050689	01.4286	060058	00.8472	070026	01.1599	100026	01.3744	100083	01.3329
050690	01.1567	060060	01.0313	070027	01.2143	100027	00.8970	100084	01.3274
050691	00.4553	060062	00.9606	070028	01.4235	100028	01.3134	100085	01.3108
060001	01.4327	060063	01.2082	070029	01.2542	100029	01.3838	100086	01.3182
060003	01.1833	060064	01.3018	070030	01.2531	100030	01.0982	100087	01.6202
060004	01.0048	060065	01.3329	070031	01.3140	100032	01.3622	100088	01.3715
060005	01.6970	060066	00.9511	070033	01.3001	100033	01.3948	100089	01.2319
060006	01.1291	060068	01.1762	070034	01.2529	100034	01.4872	100090	01.2772
060007	01.1881	060070	01.0347	070035	01.3235	100035	01.4184	100092	01.2504
060008	01.0813	060071	01.1239	070036	01.2636	100038	01.4938	100093	01.4349
060009	01.3080	060072	00.9499	080001	01.5275	100039	01.5538	100098	01.0606
060010	01.5011	060073	01.0535	080002	01.1534	100040	01.5616	100099	01.2199
060011	01.1003	060074	00.9071	080003	01.2136	100042	01.1895	100100	01.1655
060012	01.3526	060075	01.2170	080004	01.2539	100043	01.3585	100102	01.1567
060013	01.1905	060076	01.2896	080005	01.2306	100044	01.3385	100103	00.9833
060014	01.4953	060085	01.0253	080006	01.1376	100045	01.3409	100105	01.2716
060015	01.3637	060087	01.4290	080007	01.1750	100046	01.3008	100106	01.0150
060016	01.0922	060088	01.0640	090001	01.4210	100047	01.3318	100107	01.2468
060017	01.2101	060090	00.8500	090002	01.3037	100048	00.9456	100108	01.0039
060018	01.1231	060093	00.8704	090003	01.3809	100049	01.3395	100109	01.1882
060020	01.4690	060096	01.1390	090004	01.5340	100050	01.1339	100110	01.3975
060022	01.4437	060100	01.3413	090005	01.2678	100051	01.1328	100112	00.9916
060023	01.4695	060101	02.0222	090006	01.2714	100052	01.3072	100113	01.7135
060024	01.5196	060102	01.3299	090007	01.1709	100053	01.1303	100114	01.3987
060026	01.3421	060103	01.1879	090008	01.3008	100054	01.3880	100117	01.3068
060027	01.2935	070001	01.7497	090009	01.2495	100055	01.3320	100118	01.2585
060028	01.3476	070002	01.7315	090010	01.0594	100056	01.4852	100121	01.1952
060029	00.9406	070003	01.1584	090011	01.6985	100057	01.3288	100122	01.3432
060030	01.3253	070004	01.1409	100001	01.2952	100059	01.4275	100124	01.2995
060031	01.3897	070005	01.2712	100002	01.3526	100060	01.6548	100125	01.0849
060032	01.3499	070006	01.2431	100004	01.0659	100061	01.4119	100126	01.4395
060033	01.0927	070007	01.3350	100005	00.9523	100062	01.5408	100127	01.4342
060034	01.2729	070008	01.2128	100006	01.5517	100063	01.2104	100128	02.2767
060036	01.2116	070009	01.2458	100007	01.8637	100065	01.2823	100129	01.4463
060037	00.9677	070010	01.4421	100008	01.5957	100067	01.4142	100130	01.1033
060038	01.1295	070011	01.1780	100009	01.4046	100068	01.4295	100131	01.2997
060039	00.9447	070012	01.2397	100010	01.3146	100069	01.3929	100132	01.3321
060041	01.1971	070013	01.3067	100012	01.3938	100070	01.3022	100134	01.0174
060042	00.9849	070014	01.1254	100014	01.2618	100071	01.3489	100135	01.4758
060043	00.9207	070015	01.2432	100015	01.3103	100072	01.1983	100137	01.1634
060044	01.1183	070016	01.2869	100016	01.0483	100073	01.7345	100138	01.0352
060046	01.2474	070017	01.3771	100017	01.6954	100074	01.2863	100139	01.0194

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1990

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1990 PAGE 5 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
100140	01.1304	100209	01.5408	100269	01.2825	110048	01.0763	110111	01.0298
100142	01.0621	100210	01.5896	100270	00.8839	110049	01.0895	110112	00.9510
100143	01.0869	100211	01.2445	100271	01.4612	110050	01.1049	110113	01.0061
100144	01.1381	100212	01.5078	100273	01.1525	110051	00.9471	110114	01.1566
100145	01.2855	100213	01.5365	100275	01.2552	110052	00.8789	110115	01.5301
100146	01.0883	100217	01.1382	100276	01.3046	110054	01.2026	110117	01.0621
100147	01.0883	100218	00.8897	100277	01.0237	110055	00.9132	110118	00.8041
100149	01.2593	100219	01.3940	100278	00.8639	110056	00.9298	110120	01.0225
100150	01.3855	100220	01.6952	110001	01.2142	110059	01.1637	110121	01.0088
100151	01.7231	100221	01.5027	110002	01.1994	110061	00.9361	110122	01.2989
100152	01.2312	100222	01.2884	110003	01.2331	110062	00.9021	110123	01.0124
100154	01.4536	100223	01.3851	110004	01.2101	110063	01.0573	110124	01.0886
100156	01.0812	100224	01.2447	110005	01.2823	110064	01.1940	110125	01.1198
100157	01.4309	100225	01.3883	110006	01.2585	110065	01.0443	110127	00.9337
100159	00.9687	100226	01.3066	110007	01.2514	110066	01.2153	110128	01.0196
100160	01.1538	100227	01.0757	110008	01.1404	110069	01.1596	110129	01.4601
100161	01.4608	100228	01.1889	110009	01.1889	110070	00.9244	110130	01.0070
100162	01.2810	100229	01.5103	110010	01.8427	110071	01.0561	110131	01.1163
100164	00.9682	100230	01.2335	110011	01.1115	110072	00.8928	110132	01.0967
100165	01.0459	100231	01.6107	110013	01.0425	110073	01.3367	110133	00.9122
100166	01.4250	100232	01.2521	110014	01.1368	110074	01.2689	110134	00.8956
100167	01.2846	100234	01.2165	110015	01.1343	110075	01.1923	110135	01.1159
100168	01.2657	100235	01.3985	110016	01.1478	110076	01.2973	110136	01.1537
100169	01.7364	100236	01.3292	110017	00.9488	110077	01.0287	110140	00.8933
100170	01.3193	100237	02.0601	110018	01.1227	110078	01.4698	110141	00.9088
100172	01.3798	100238	01.3597	110020	01.0928	110079	01.1488	110142	01.0882
100173	01.4655	100239	01.3580	110023	01.1701	110080	01.0335	110143	01.2123
100174	01.4987	100240	00.7906	110024	01.3469	110082	01.8625	110144	01.2962
100175	01.0892	100241	01.0250	110025	01.1931	110083	01.4293	110146	00.9463
100176	01.9083	100242	01.2801	110026	01.1373	110085	01.1080	110149	00.9807
100177	01.2961	100243	01.2958	110027	01.0865	110086	01.1081	110150	01.1914
100178	01.8133	100244	01.3630	110028	01.4464	110087	01.2270	110151	01.0101
100180	01.3752	100246	01.3040	110029	01.2955	110088	00.9402	110152	01.0133
100181	01.2785	100248	01.6204	110030	01.1978	110089	01.1014	110153	01.0041
100183	01.3207	100249	01.2892	110031	01.2182	110091	01.2627	110154	00.8770
100185	01.1506	100252	01.2490	110032	01.0949	110092	01.0277	110155	01.0332
100186	01.3815	100253	01.3749	110033	01.3439	110093	00.9687	110156	00.9536
100187	01.2363	100254	01.5141	110034	01.3568	110094	00.9854	110157	01.1708
100189	01.3201	100255	01.3781	110035	01.3135	110095	01.2797	110161	01.1700
100191	01.3120	100256	01.5674	110036	01.5824	110096	01.1245	110162	00.8497
100194	01.2235	100258	01.7042	110037	01.1819	110097	01.1011	110163	01.2754
100195	01.4793	100259	01.4287	110038	01.2558	110098	01.0571	110164	01.3043
100196	01.2254	100260	01.2873	110039	01.2634	110100	01.0999	110165	01.1428
100199	01.2602	100262	01.3139	110040	00.9525	110101	01.0163	110166	01.3891
100200	01.3139	100263	01.3897	110041	01.0913	110103	00.9450	110168	01.4825
100203	01.0995	100264	01.2785	110042	01.0932	110104	01.1277	110169	00.7331
100204	01.5274	100265	01.2120	110043	01.4883	110105	01.1700	110171	01.3191
100206	01.3632	100266	01.2971	110044	01.0887	110107	01.5214	110172	01.1002
100207	01.3449	100267	01.2401	110045	00.9739	110108	00.8223	110174	00.8742
100208	01.4386	100268	01.2960	110046	01.2050	110109	01.0225	110175	00.8824

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1990

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1990 PAGE 6 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
110176	01.1198	130008	00.8439	140016	00.9999	140080	01.6974	140139	01.0749
110177	01.3843	130009	01.0108	140017	01.1409	140081	01.1104	140140	01.0569
110178	01.1665	130010	00.9264	140018	01.3207	140082	01.2278	140141	00.9840
110179	01.1075	130011	01.2421	140019	00.9097	140083	01.2626	140143	01.0398
110181	00.9541	130012	00.9869	140024	00.9876	140084	01.1945	140144	01.0188
110183	01.1907	130013	01.2258	140025	01.0883	140085	01.0295	140145	01.0783
110184	01.1782	130014	01.3112	140026	01.1005	140086	01.0335	140146	00.9276
110185	01.0440	130015	00.9801	140027	01.0842	140087	01.3966	140147	01.1061
110186	01.2271	130016	00.9124	140029	01.3314	140088	01.5006	140148	01.4550
110187	01.0306	130017	00.9445	140030	01.4855	140089	01.2205	140150	01.3402
110188	01.3182	130018	01.4800	140031	01.0256	140090	01.3231	140151	01.0883
110189	01.0424	130019	01.0929	140032	01.2075	140091	01.5105	140152	01.1243
110190	01.1261	130021	00.9477	140033	01.2091	140093	01.2397	140154	01.2563
110191	01.1832	130022	01.2745	140034	01.1142	140094	01.1784	140155	01.1939
110192	01.2816	130024	01.1118	140035	01.0129	140095	01.2832	140158	01.4029
110193	01.1595	130025	00.9974	140036	01.1394	140097	00.9298	140159	01.2113
110194	00.9088	130026	01.0990	140037	00.9442	140098	01.2787	140160	01.1618
110195	01.1785	130027	00.9222	140038	00.9920	140100	01.1943	140161	01.1430
110198	01.2928	130028	01.2296	140039	01.0523	140101	01.0982	140162	01.3568
110200	01.7324	130029	01.0157	140040	01.2563	140102	01.0212	140164	01.2464
110201	01.2815	130030	00.9859	140041	00.9979	140103	01.2088	140165	01.0460
110202	01.1593	130031	01.0321	140042	01.0600	140105	01.2618	140166	01.2350
110203	01.0069	130034	00.8979	140043	01.1467	140107	00.9120	140167	01.0776
110205	00.9084	130035	00.9684	140045	00.9913	140108	01.1658	140168	01.1656
120001	01.5791	130036	01.2253	140046	01.2076	140109	00.9999	140170	00.9428
120002	01.1707	130037	01.1565	140047	01.0821	140110	01.1952	140171	00.8593
120003	01.1057	130039	01.2702	140048	01.2208	140112	01.0835	140172	01.4290
120004	01.2991	130040	00.9313	140049	01.3748	140113	01.3259	140173	01.0227
120005	01.1237	130043	01.0384	140051	01.1708	140114	01.2123	140174	01.2858
120006	01.1924	130044	00.8867	140052	01.1444	140115	01.1579	140176	01.2002
120007	01.5290	130045	01.0032	140053	01.8170	140116	01.2566	140177	01.2214
120009	00.8646	130048	01.0118	140054	01.2740	140117	01.1784	140179	01.2310
120010	01.5509	130049	01.1813	140055	00.9971	140118	01.4685	140180	01.2851
120011	01.3189	130051	01.0271	140058	01.0527	140119	01.4966	140181	01.2806
120012	00.9589	130054	00.9209	140059	01.0391	140120	01.1864	140182	01.2856
120014	01.2274	130056	00.9365	140061	01.1611	140121	00.9786	140184	01.1214
120015	00.8761	130058	00.9229	140062	01.2570	140122	01.3599	140185	01.3432
120016	00.9992	140001	01.2617	140063	01.2465	140123	01.1412	140186	01.1965
120018	00.8382	140002	01.2568	140064	01.1669	140124	01.1177	140187	01.3658
120019	01.1352	140003	00.9637	140065	01.2695	140125	01.1721	140188	00.9637
120021	00.8978	140004	01.0055	140066	01.1653	140126	01.4200	140189	01.1513
120022	01.5230	140005	00.9458	140067	01.8257	140127	01.2778	140190	01.0616
120026	01.3773	140007	01.2814	140068	01.2223	140128	01.0844	140191	01.3071
120027	01.1409	140008	01.3653	140069	01.1036	140129	01.0208	140192	01.0897
130001	00.9635	140010	01.3364	140070	01.2542	140130	01.1399	140193	00.9697
130002	01.3560	140011	01.0895	140072	01.0797	140132	01.4621	140197	01.3084
130003	01.2985	140012	01.2618	140074	01.1278	140133	01.3270	140199	01.0267
130005	01.3497	140013	01.2974	140075	01.3680	140135	01.1796	140200	01.4599
130006	01.5847	140014	01.0760	140077	01.0418	140137	01.0362	140202	01.1866
130007	01.4901	140015	01.1656	140079	01.2260	140138	01.0997	140203	01.1396

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1990

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1990 PAGE 7 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
140204	00.9516	140295	00.8969	150052	01.0314	150111	01.1312	160041	01.1149
140205	00.9802	140297	01.4539	150053	01.0744	150112	01.1434	160043	00.9833
140206	01.1826	140299	00.9979	150054	01.0827	150113	01.1565	160044	01.2645
140207	01.2440	150001	01.1112	150056	01.6182	150114	01.0727	160045	01.5182
140208	01.4240	150002	01.3069	150057	02.2331	150115	01.3180	160046	01.0214
140209	01.4862	150003	01.5162	150058	01.4473	150122	01.1081	160047	01.3384
140210	01.0513	150004	01.2681	150059	01.1500	150123	00.8766	160048	01.0137
140211	01.1414	150005	01.2208	150060	01.1312	150124	01.1432	160049	00.8709
140212	01.2839	150006	01.2402	150061	01.1664	150125	01.3675	160050	01.0855
140213	01.2111	150007	01.1996	150062	01.0282	150126	01.5475	160051	01.1653
140215	01.0813	150008	01.3124	150063	01.1657	150127	01.2099	160052	01.0698
140217	01.2067	150009	01.2867	150064	01.0541	150128	01.1586	160054	00.9672
140218	00.9541	150010	01.2002	150065	01.0988	150129	01.2858	160055	00.9996
140220	01.1176	150011	01.1529	150066	01.1302	150130	01.1333	160056	01.0298
140223	01.4409	150012	01.5255	150067	01.0879	150132	01.3450	160057	01.3452
140224	01.2657	150013	01.0419	150069	01.2343	150133	01.2223	160058	01.5577
140226	00.7709	150014	01.2773	150070	01.0906	150134	01.2107	160059	01.1959
140228	01.5077	150015	01.2111	150071	01.1654	150135	00.7789	160060	01.0462
140229	00.9711	150017	01.5515	150072	01.2394	150136	01.0562	160061	01.0024
140230	00.9508	150018	01.1868	150073	01.0359	160001	01.1725	160062	00.9786
140231	01.2726	150019	01.2396	150074	01.4071	160002	01.1811	160063	01.1482
140232	01.0356	150020	01.0992	150075	01.2548	160003	01.0408	160064	01.4483
140233	01.5572	150021	01.5846	150076	01.0120	160005	01.1217	160065	01.1249
140234	01.1594	150022	01.1315	150077	01.1239	160007	01.0123	160066	01.0470
140236	01.0097	150023	01.3767	150078	01.0612	160008	01.0648	160067	01.2088
140239	01.4882	150024	01.2089	150079	01.1143	160009	01.1008	160068	01.1094
140240	01.2706	150025	01.4684	150082	01.3634	160012	01.1496	160069	01.3472
140242	01.4048	150026	01.1454	150084	01.6148	160013	01.2248	160070	01.0424
140245	01.0351	150027	01.0104	150085	00.9353	160014	01.0146	160071	01.0685
140246	01.0109	150029	01.1938	150086	01.1844	160016	01.2591	160072	01.1043
140250	01.2219	150030	01.1744	150088	01.1636	160018	00.9542	160073	00.9280
140251	01.2787	150031	01.1050	150089	01.2911	160020	01.0711	160074	01.0579
140252	01.2869	150032	01.5404	150090	01.2803	160021	01.1132	160075	01.0480
140253	01.3988	150033	01.5163	150091	01.1981	160023	01.0831	160076	00.9612
140258	01.2948	150034	01.3076	150092	01.1154	160024	01.3070	160077	01.0851
140271	01.0505	150035	01.3311	150094	01.0461	160025	01.7121	160078	01.2976
140273	01.1245	150036	01.0265	150095	01.0485	160026	01.0706	160080	01.1222
140275	01.1907	150037	01.1858	150096	01.0367	160027	01.1027	160081	01.1219
140276	01.9164	150038	01.2883	150097	01.1043	160028	01.2436	160082	01.5091
140280	01.1911	150039	01.0851	150098	00.9849	160029	01.3156	160083	01.4495
140281	01.4450	150042	01.2197	150099	01.3880	160030	01.2356	160085	01.0634
140285	01.2306	150043	01.0877	150100	01.5025	160031	01.0880	160086	00.9511
140286	01.1081	150044	01.2162	150101	01.1010	160032	00.9942	160088	01.0144
140288	01.5345	150045	01.1214	150102	01.0715	160033	01.3178	160089	01.2048
140289	01.2707	150046	01.2964	150103	01.1212	160034	01.0243	160090	01.0648
140290	01.3656	150047	01.5087	150104	01.1129	160035	01.0505	160091	01.1832
140291	01.2543	150048	01.1999	150105	01.1836	160036	01.0938	160092	01.0118
140292	01.2008	150049	01.0887	150106	01.0233	160037	01.0779	160093	00.9520
140293	00.8927	150050	01.1339	150109	01.2777	160039	00.9774	160094	01.1070
140294	01.0650	150051	01.2088	150110	00.9063	160040	01.2216	160095	01.1259

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1990

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1990 PAGE 8 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
160097	01.1772	170009	01.1716	170067	00.9706	170125	00.9109	180023	00.8636
160098	01.0209	170010	01.1474	170068	01.1321	170126	00.9971	180024	01.0379
160099	01.0744	170011	01.3178	170069	00.8930	170128	00.9651	180025	01.0913
160101	01.1778	170012	01.4124	170070	00.9468	170131	01.0840	180026	00.9952
160102	01.2820	170013	01.2645	170072	00.9068	170133	01.2407	180027	01.1348
160103	00.9491	170014	01.0403	170073	01.2139	170134	00.9946	180028	00.9856
160104	01.1015	170015	01.0468	170074	01.1243	170137	01.1592	180029	01.2556
160106	01.0535	170016	01.5469	170075	00.8413	170139	00.9539	180030	01.1198
160107	01.0868	170017	01.1566	170076	01.1557	170140	01.0245	180031	00.9935
160108	01.2148	170018	01.0885	170077	01.0334	170142	01.2089	180032	00.9156
160109	01.0529	170019	01.2597	170078	00.9618	170143	01.1228	180033	01.0038
160110	01.4715	170020	01.2301	170080	00.8772	170144	01.4327	180034	01.0292
160111	01.0525	170021	00.9328	170081	01.0879	170145	01.1781	180035	01.4035
160112	01.2450	170022	01.2237	170082	00.9560	170146	01.2851	180036	01.0728
160113	00.9750	170023	01.9011	170084	01.0284	170147	01.1484	180037	01.3145
160114	01.0051	170024	01.1920	170085	00.8706	170148	01.2926	180038	01.2353
160115	01.0766	170025	01.1727	170086	01.5736	170150	01.1339	180040	01.7963
160116	01.1198	170026	01.0962	170087	01.3906	170151	01.0339	180041	01.0992
160117	01.2867	170027	01.1887	170088	01.0039	170152	01.0167	180042	01.0696
160118	01.0810	170030	01.0127	170089	00.9872	170153	00.9831	180043	01.0087
160119	00.8733	170031	00.9115	170090	00.9865	170160	00.9652	180044	01.1096
160120	00.9870	170032	01.0445	170092	00.8458	170164	01.0782	180045	01.1713
160122	01.1184	170033	01.2222	170093	00.9887	170166	01.0151	180046	01.0080
160123	01.0767	170034	01.0273	170094	01.0202	170168	00.8945	180047	00.8878
160124	01.1651	170035	00.9197	170095	01.1587	170170	01.0026	180048	01.1683
160126	01.0521	170036	00.8447	170097	00.8863	170171	01.2066	180049	01.3434
160129	01.1444	170037	01.1064	170098	00.9994	170172	01.0402	180050	01.2820
160130	01.0848	170038	00.9397	170099	01.2292	170173	01.0885	180051	01.1560
160131	01.1760	170039	01.0829	170100	00.7727	170174	00.8828	180053	01.0095
160132	00.9380	170040	01.3874	170101	01.1068	170175	01.2591	180054	01.0407
160133	01.1434	170041	00.9840	170102	01.0017	170176	01.4518	180055	01.0112
160134	00.8332	170043	01.0018	170103	01.1854	180001	01.1310	180056	01.0465
160135	00.9594	170044	01.2128	170104	01.3934	180002	01.1338	180058	00.9163
160136	00.8724	170045	01.0858	170105	01.0038	180004	01.1434	180059	00.9381
160140	01.0481	170048	01.2647	170106	00.8821	180005	01.0244	180060	00.9244
160141	00.9185	170050	00.9806	170108	00.9874	180006	00.8765	180062	00.9071
160142	01.1080	170051	00.8913	170109	01.0182	180007	01.3743	180063	01.0487
160143	01.1017	170052	01.0686	170110	00.9783	180009	01.1203	180064	01.0783
160145	01.0310	170053	00.9080	170112	01.1035	180010	01.6674	180065	00.9487
160146	01.2821	170054	01.1572	170113	01.1183	180011	01.1568	180066	01.0891
160147	01.2378	170055	01.0439	170114	01.0338	180012	01.2401	180067	01.7046
160151	01.1144	170056	00.9706	170115	01.1184	180013	01.3248	180069	01.1343
160152	01.0733	170057	01.0245	170116	01.1440	180014	01.5031	180070	00.9869
160153	01.5134	170058	01.0474	170117	00.9845	180015	01.1280	180072	01.0284
170001	01.1867	170060	01.0062	170119	01.0052	180016	01.2348	180075	00.9844
170003	01.1829	170061	01.0332	170120	01.1929	180017	01.2845	180076	01.0227
170004	01.1320	170062	00.9538	170121	00.8500	18 - 18	01.2020	180078	00.9959
170006	01.1759	170063	00.8556	170122	01.8139	18 19	01.1857	180080	01.1787
170007	01.2074	170064	01.1227	170123	01.5827	180020	01.0200	180081	01.3478
170008	01.0627	170066	00.9788	170124	01.0149	180021	00.9585	180085	01.2362

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1990

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1990 PAGE 9 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
180087	01.0118	190015	01.2020	190109	01.0557	190182	01.0691	200032	01.2573
180088	01.5512	190017	01.1944	190110	00.9755	190183	01.0105	200033	01.6723
180092	01.1235	190018	01.1971	190111	01.4624	190184	00.9575	200034	01.1916
180093	01.3486	190019	01.4251	190112	01.2895	190185	01.1796	200037	01.1540
180094	00.9651	190020	01.1410	190113	01.2221	190186	00.9333	200038	01.0670
180095	01.0059	190023	00.9288	190114	00.9504	190187	00.6282	200039	01.2637
180099	00.9540	190025	01.1710	190115	01.2751	190188	00.8035	200040	01.0544
180101	01.2321	190026	01.2711	190116	01.1954	190189	01.2223	200041	01.1741
180102	01.3332	190027	01.3774	190118	01.0143	190190	01.0136	200043	00.7778
180103	01.6792	190029	01.2139	190119	00.9076	190191	01.1332	200044	01.1475
180104	01.3957	190033	00.9473	190120	00.8829	190193	01.2136	200050	01.1077
180105	00.9312	190034	01.2140	190122	01.2086	190194	01.1752	200051	00.9512
180106	00.8974	190035	01.3583	190124	01.3230	190196	00.9773	200052	01.0824
180108	00.9521	190036	01.5776	190125	01.2782	190197	01.1503	200055	01.0494
180115	01.0134	190037	01.0125	190127	01.3902	190198	01.1212	200062	00.9800
180116	01.2438	190039	01.3798	190128	00.8758	190199	01.1516	200063	01.2114
180117	01.2472	190040	01.3073	190130	00.9779	190200	01.4961	200066	01.2390
180118	00.9977	190041	01.5025	190131	01.2650	190201	01.2645	210001	01.2829
180120	00.9282	190043	01.0365	190132	01.1456	190202	01.2680	210002	01.6924
180121	01.0728	190044	01.0789	190133	01.0095	190203	01.5904	210003	01.1447
180122	00.9706	190045	01.2530	190134	01.0235	190204	01.3791	210004	01.2588
180123	01.3445	190046	01.3987	190135	01.3148	190205	01.3153	210005	01.2253
180124	01.2029	190047	01.1378	190136	00.9534	190206	01.3958	210006	01.0793
180125	00.9907	190048	01.0618	190138	00.8019	190207	01.2916	210007	01.4008
180126	01.0124	190049	01.0224	190140	00.9766	190208	00.8447	210008	01.2118
180127	01.1325	190050	01.1058	190142	00.9474	190211	00.8690	210009	01.4082
180128	01.0910	190053	01.0073	190144	01.1593	190212	00.8851	210010	01.1844
180129	01.1668	190054	01.3031	190145	00.9391	200001	01.2998	210011	01.2952
180130	01.3535	190059	00.9462	190146	01.4897	200002	01.0413	210012	01.3003
180132	01.2958	190060	01.2514	190147	00.9821	200003	00.9557	210013	01.2811
180133	01.2006	190064	01.3915	190148	00.9098	200006	01.1274	210015	01.2218
180134	01.1120	190065	01.4032	190149	00.9945	200007	00.9926	210016	01.6316
180136	01.2645	190071	00.9722	190151	01.1020	200008	01.1885	210017	01.1284
180137	01.7295	190075	01.3834	190152	01.3725	200009	01.6288	210018	01.2806
180138	01.1983	190077	00.9081	190155	01.0556	200012	01.1273	210019	01.2755
180139	00.9341	190078	01.1493	190156	00.8467	200013	01.1524	210021	01.1980
190001	00.8119	190079	01.2471	190158	01.3046	200015	01.2713	210022	01.2307
190002	01.5028	190081	00.8870	190160	01.1026	200016	01.0233	210023	01.2218
190003	01.3243	190083	00.8760	190161	00.9382	200017	01.2832	210024	01.2513
190004	01.1415	190086	01.2278	190162	01.1355	200018	01.0779	210025	01.2046
190005	01.1728	190088	01.2033	190164	01.0944	200019	01.2215	210026	01.2948
190006	01.1110	190089	01.1071	190165	01.0353	200020	01.0364	210027	01.1961
190007	01.0590	190090	01.2247	190166	01.0622	200021	01.1707	210028	00.9899
190008	01.4123	190092	01.2676	190167	01.3163	200023	00.8718	210029	01.2517
190009	01.1753	190095	01.0545	190170	00.9772	200024	01.1819	210030	01.0155
190010	00.9686	190098	01.2482	190173	01.3755	200025	01.1395	210031	01.6803
190011	01.0595	190099	01.2360	190175	01.1742	200026	01.0233	210032	01.1445
190012	00.9915	190102	01.4217	190176	01.4154	200027	01.0973	210033	01.1394
190013	01.1903	190103	00.9674	190177	01.4365	200028	01.0021	210034	01.1893
190014	00.9455	190106	01.1617	190178	01.0077	200031	01.2054	210035	01.1118

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1990

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1990 PAGE 10 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
210036	01.1618	220046	01.3790	220111	01.1777	230039	01.2847	230108	01.1082
210037	01.1925	220048	01.1703	220114	01.0581	230040	01.2416	230110	01.2538
210038	01.3129	220049	01.1325	220115	01.3489	230041	01.1164	230111	00.9851
210039	01.1529	220050	01.0087	220116	01.7082	230042	01.1028	230112	00.9545
210040	01.2761	220051	01.1750	220117	00.9582	230043	00.8935	230114	00.8012
210043	01.1674	220052	01.2118	220118	01.6320	230046	01.6223	230115	00.9547
210044	01.2029	220053	01.2247	220119	01.2955	230047	01.2069	230116	00.9380
210045	00.8931	220055	01.1872	220120	00.9545	230051	00.9701	230117	01.7527
210046	01.1085	220057	01.2207	220123	00.8116	230053	01.3569	230118	01.2256
210048	01.1103	220058	01.0295	220126	01.2534	230054	01.5658	230119	01.1514
210049	01.1121	220060	01.0795	220128	01.1217	230055	01.0855	230130	01.0185
210051	01.2344	220062	00.5592	220129	01.0714	230056	01.0062	230121	01.1563
210054	01.2275	220063	01.1374	220131	01.1271	230058	01.1094	230122	01.3262
210055	01.1854	220064	01.1956	220133	00.7341	230059	01.4151	230124	01.0811
210056	01.3568	220065	01.1430	220135	01.0855	230060	01.1181	230125	01.4355
210057	01.1812	220066	01.3006	220153	00.9267	230062	01.0854	230126	01.3396
210058	01.7171	220067	01.1913	220154	00.9150	230063	01.2084	230129	01.9092
210059	01.2850	220068	00.6290	220156	01.1884	230065	01.3108	230130	01.5229
220001	01.1583	220070	01.1534	220162	01.2287	230066	01.2411	230132	01.3302
220002	01.3320	220071	01.7568	220163	01.9302	230068	01.2634	230133	01.1092
220003	01.0155	220073	01.2085	220171	01.4252	230069	01.1438	230134	01.1000
220004	01.3566	220074	01.0860	220173	00.5510	230070	01.2903	230135	01.2161
220006	01.2054	220075	00.7498	220175	00.9529	230071	00.8569	230137	01.0880
220008	01.2042	220076	01.1938	230001	01.2540	230072	01.2008	230138	00.8855
220010	01.1809	220077	01.5814	230002	01.2122	230075	01.2758	230140	01.1608
220011	01.2613	220079	01.1176	230003	01.1338	230076	01.1450	230141	01.4882
220012	01.1942	220080	01.1504	230004	01.6069	230077	02.0090	230142	01.2431
220015	01.1999	220081	00.9689	230005	01.1886	230078	01.1963	230143	01.2788
220016	01.1555	220082	01.1903	230006	01.0845	230080	01.2542	230144	01.1889
220017	01.2430	220083	01.1817	230007	01.1007	230081	01.1655	230145	01.1291
220019	01.0826	220084	01.1984	230012	00.8801	230082	01.0770	230146	01.1575
220020	01.1011	220086	01.5454	230013	01.2840	230085	01.1943	230147	01.2758
220021	01.1733	220088	01.5286	230014	00.9820	230086	01.0044	230148	01.1108
220023	01.2141	220089	01.2279	230015	01.2819	230087	01.0705	230150	01.6540
220024	01.1756	220090	01.2282	230017	01.5112	230089	01.3223	230151	01.3787
220025	01.0577	220092	01.2012	230018	01.5227	230090	01.0919	230152	01.0834
220026	01.2231	220094	01.1704	230020	01.4743	230092	01.2122	230154	01.0859
220028	01.3302	220095	01.1796	230021	01.4107	230093	01.1291	230155	01.0082
220029	01.1218	220097	01.0500	230022	01.2401	230095	01.0789	230156	01.5761
220030	01.0405	220098	01.1390	230024	01.4654	230096	01.0748	230157	01.3722
220031	01.6594	220099	01.1148	230027	01.1428	230097	01.3124	230159	01.3250
220032	01.1595	220100	01.2278	230028	01.4383	230098	01.4230	230161	01.9047
220034	01.1939	220101	01.3107	230030	01.1707	230099	01.1475	230162	00.8430
220035	01.1783	220102	00.8345	230031	01.3369	230100	01.1360	230165	01.8425
220036	01.4809	220104	01.1722	230032	01.7230	230101	01.0859	230167	01.1740
220038	01.2056	220105	01.1517	230034	01.1838	230103	01.0155	230169	01.2775
220040	01.2806	220106	01.1149	230035	01.0864	230104	01.4169	230171	01.0286
220041	01.1574	220107	01.1154	230036	01.2572	230105	01.5258	230172	01.1307
220042	01.1398	220108	01.1524	230037	01.0912	230106	01.1055	230173	01.4395
220045	01.2068	220110	01.8909	230038	01.4920	230107	01.0325	230174	01.2878

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1990

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1990 PAGE 11 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
230175	01.0655	230275	00.9286	240063	01.4220	240122	01.0879	240182	00.9313
230176	01.1875	230276	00.8316	240064	01.2032	240123	01.0387	240193	00.9382
230178	01.0538	230277	01.2251	240065	01.0304	240124	01.0870	240196	01.3050
230179	00.7850	240001	01.5358	240066	01.2984	240125	01.0212	240200	00.9743
230180	01.1331	240002	01.6148	240069	01.2441	240127	01.0374	240201	00.9937
230184	01.1334	240003	01.2545	240071	01.1190	240128	01.1610	240205	00.8652
230185	01.0134	240004	01.3934	240072	00.9856	240129	00.9618	240206	00.8636
230188	01.1029	240005	01.0293	240073	01.0516	240130	00.9957	240207	01.2263
230189	00.9462	240006	01.1358	240074	00.8762	240132	01.2260	240210	01.2607
230190	01.0910	240007	01.0656	240075	01.2106	240133	01.1365	240211	00.9945
230191	00.9617	240008	01.1108	240076	01.0487	240134	00.9906	250001	01.3498
230193	01.2381	240009	01.0704	240077	00.9954	240135	00.9018	250002	00.8010
230194	01.1362	240010	01.8241	240078	01.3561	240136	00.9057	250003	00.9118
230195	01.3187	240011	01.0510	240079	01.1479	240137	01.1869	250004	01.3824
230197	01.2000	240013	01.1852	240080	01.3501	240138	00.8660	250005	00.9680
230199	01.1826	240014	01.1240	240082	01.1411	240139	01.0308	250006	01.0560
230201	01.0332	240016	01.3262	240083	01.2065	240140	00.8485	250007	01.1261
230204	01.3687	240017	01.1761	240084	01.2252	240141	01.0499	250008	00.9460
230205	01.0347	240018	01.2466	240085	00.9026	240142	01.1017	250009	01.0994
230207	01.2849	240019	01.3684	240086	01.0688	240143	01.0369	250010	01.0636
230208	01.1100	240020	01.1862	240087	01.0842	240144	00.9542	250012	00.9391
230211	00.9284	240021	00.9952	240088	01.3926	240145	00.9502	250015	01.0634
230212	01.0590	240022	01.0769	240089	01.0652	240146	00.9546	250016	00.8456
230213	01.0112	240023	01.0506	240090	01.0726	240148	00.9919	250017	01.0068
230216	01.2856	240025	01.1907	240091	00.9936	240150	00.9547	250018	01.0314
230217	01.1125	240027	01.0804	240093	01.3394	240152	00.9332	250019	01.2157
230219	00.9015	240028	01.0999	240094	01.0426	240153	01.0420	250020	01.0202
230221	01.2359	240029	01.1806	240096	00.8909	240154	01.0318	250021	00.9731
230222	01.2536	240030	01.3045	240097	01.0979	240155	01.0522	250023	00.8271
230223	01.2616	240031	00.8148	240098	00.9633	240156	01.1172	250024	01.0386
230224	01.2483	240036	01.4178	240099	01.0834	240157	01.0613	250025	01.0224
230227	01.3098	240037	01.0642	240100	01.3078	240158	01.0268	250027	00.9645
230228	01.2618	240038	01.4135	240101	01.2316	240160	00.9674	250029	00.8612
230230	01.2531	240040	01.2214	240102	00.9058	240161	00.9387	250030	00.9200
230232	01.0605	240041	01.1989	240103	01.1306	240162	01.0779	250031	01.1621
230235	00.9912	240043	01.1137	240104	01.2378	240163	00.9887	250032	01.1179
230236	01.2984	240044	01.1586	240105	00.9250	240166	01.1059	250033	00.9931
230237	01.0752	240045	01.0644	240106	01.2866	240167	00.8472	250034	01.4198
230239	01.1596	240047	01.4139	240107	00.9841	240169	00.9658	250035	00.8595
230241	01.1276	240048	01.2909	240108	01.0028	240170	01.1018	250036	00.9725
230244	01.2938	240049	01.5880	240109	01.1226	240171	01.1031	250037	00.8975
230253	01.1057	240050	01.0036	240110	01.0735	240172	01.1674	250038	00.9158
230254	01.2435	240051	00.8173	240111	01.0566	240173	01.0391	250039	01.0009
230257	00.8912	240052	01.1820	240112	01.0525	240175	00.8384	250040	01.1745
230259	01.0752	240053	01.4091	240114	01.0151	240176	01.0236	250042	01.1810
230264	01.1785	240055	01.3328	240115	01.3917	240179	01.0193	250043	00.8691
230268	01.3054	240057	01.7385	240116	00.9776	240180	00.9755	250044	01.0841
230269	01.2454	240058	01.0175	240117	01.1133	240183	01.1308	250045	01.1518
230270	01.2364	240059	01.0964	240119	00.8856	240184	01.0455	250046	01.0246
230273	01.3872	240061	01.5143	240121	00.9493	240187	01.1359	250047	00.9200

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1990

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1990

PROVIDER	CASE MIX
250048	01.3191
250049	00.9499
250050	01.0597
250051	00.9179
250057	01.1241
250058	01.1012
250059	01.0149
250060	00.8047
250061	00.9568
250062	01.0586
250063	00.8504
250065	00.9629
250066	00.8814
250067	01.0044
250068	00.8530
250069	01.1876
250071	00.9310
250072	01.1282
250073	00.9892
250076	00.9605
250077	00.8800
250078	01.3570
250079	00.8161
250081	01.1668
250082	01.2032
250083	00.9325
250084	01.2018
250085	00.9784
250086	00.9561
250088	01.0306
250089	00.9532
250091	00.9574
250093	01.1639
250094	01.1819
250095	01.0970
250096	01.1136
250097	01.1819
250098	00.9065
250099	01.2589
250100	01.1470
250101	00.8846
250102	01.3645
250104	01.2810
250105	00.9270
250107	00.8875
250109	01.0052
250112	00.9485
250113	00.9535
250117	01.0752
250119	00.9620
250120	01.0659
250122	01.1906
250123	01.1293
250124	00.8708
250125	01.1647
250126	01.0196
250127	00.8673
250128	01.0173
250129	01.0962
250131	00.9068
250132	00.8181
250134	00.9806
250136	00.8309
250137	00.9199
250138	01.1488
250139	00.9041
250140	00.8151
250141	01.3157
250142	00.8685
250143	00.9212
260001	01.5131
260002	01.3136
260003	01.0029
260004	01.0473
260005	01.3308
260006	01.2637
260007	01.1881
260008	01.2879
260009	01.2012
260011	01.5022
260012	01.0064
260013	01.0860
260014	01.5598
260015	01.0614
260016	01.0969
260017	01.2532
260018	00.9684
260019	00.9867
260020	01.4781
260021	01.2634
260022	01.3445
260023	01.2109
260024	01.1100
260025	01.2255
260026	01.0136
260027	01.5049
260029	01.0675
260030	01.0857
260031	01.3140
260032	01.5413
260033	01.2630
260034	01.0228
260035	01.0623
260036	01.0850
260037	01.1710
260039	01.3572
260040	01.4362
260041	00.8982
260042	01.2380
260044	01.0785
260047	01.2957
260048	01.3104
260049	00.9643
260050	01.0746
260051	01.2312
260052	01.1451
260053	01.0999
260054	01.3047
260055	01.1318
260057	01.1784
260059	00.8980
260061	01.1292
260062	01.2452
260063	01.0704
260064	01.4906
260065	01.4873
260066	00.9926
260067	00.9631
260068	01.7347
260070	01.0515
260073	00.9571
260074	01.1945
260077	01.3784
260078	01.0956
260079	01.0272
260080	01.0867
260081	01.4050
260082	01.1771
260085	01.4177
260086	00.9968
260089	01.1246
260090	01.3713
260091	01.5092
260092	01.1428
260094	01.0649
260095	01.3296
260096	01.3693
260097	01.1534
260100	01.1829
260102	01.0279
260103	01.3204
260104	01.5700
260105	01.7896
260107	01.2698
260108	01.6365
260109	01.0132
260110	01.4864
260111	01.0399
260112	01.3413
260113	01.1923
260115	01.1324
260116	01.1898
260119	01.2006
260120	01.1897
260122	01.2150
260123	00.9646
260127	00.9901
260128	01.0552
260129	01.0382
260131	01.2400
260134	01.2177
260137	01.2244
260138	01.6603
260141	01.7803
260142	01.2722
260143	01.3142
260146	01.1812
260147	00.9862
260148	00.9472
260158	01.0908
260159	01.1013
260160	01.1605
260162	00.9971
260163	01.2148
260164	01.0979
260165	00.9857
260166	01.2285
260172	01.0243
260173	01.1867
260175	01.1244
260176	01.2905
260177	01.2775
260178	01.4119
260179	01.4481
260180	01.4804
260182	01.0403
260183	01.3288
260186	01.1469
260188	01.1568
260189	01.0289
ROVIDER	CASE MIX
260190	01.1394
260191	01.2515
260193	01.2055
260195	01.0996
260197	01.2101
260198	01.4216
260200	01.1785
260202	01.2817
270002	01.1416
270003	01.2269
270004	01.6709
270006	00.9090
270007	00.9222
270008	00.9152
270009	01.0000
270011	01.1161
270012	01.3515
270013	01.2245
270014	01.5033
270016	00.9556
270017	01.2215
270019	00.9097
270021	01.1158
270023	01.2665
270024	01.0996
270026	00.9610
270027	01.0033
270028	01.0779
270029	01.0787
270030	00.9654
270031	00.8844
270032	01.1377
270033	00.9136
270035	01.0130
270036	00.9257
270039	01.0247
270040	01.0567
270041	00.9670
270043	00.8579
270044	01.1523
270046	00.9270
270047	00.8829
270048	01.1513
270049	01.5041
270050	01.0257
270051	01.2393
270052	00.9714
270053	00.8452
270055	00.6533
270057	01.1349

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1990

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1990 PAGE 13 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
270058	01.0278	280042	01.0615	280107	00.9995	300015	01.0387	310042	01.1233
270059	00.8752	280043	00.9687	280108	01.0054	300016	01.1486	310043	01.2324
270060	00.9334	280045	01.0202	280109	00.9012	300017	01.1982	310044	01.2440
270063	00.8877	280046	01.0929	280110	01.1076	300018	01.2402	310045	01.2300
270067	00.8986	280047	01.2054	280111	01.2338	300019	01.1891	310047	01.2554
270068	00.9025	280048	01.0374	280114	00.9935	300020	01.1870	310048	01.1680
270071	00.9150	280049	01.0196	280115	01.0345	300021	01.1104	310049	01.2539
270072	00.9128	280050	00.9885	280117	01.0454	300022	01.1235	310060	01.2060
270073	01.1078	280051	01.0816	280118	00.9677	300023	01.2179	310061	01.2475
270074	00.9795	280052	01.1203	280119	00.8422	300024	01.2505	310062	01.1557
270075	00.8833	280054	01.1716	280122	01.0289	300025	01.1423	310064	01.2642
270076	00.8125	280055	00.9782	280123	01.1403	300026	01.2784	310066	01.1998
270079	00.9605	280056	01.0063	290001	01.4139	300033	01.0452	310067	01.2203
270080	01.1129	280057	01.0635	290002	01.0421	300034	01.8581	310068	01.1970
270081	00.9830	280058	01.1958	290003	01.6040	310001	01.5128	310080	01.1690
270082	00.9215	280060	01.3781	290005	01.2245	310002	01.8718	310081	01.1477
270083	01.0359	280061	01.2855	290006	01.1483	310003	01.1922	310082	01.1388
270084	00.9517	280062	01.2006	290007	01.5420	310005	01.2455	310083	01.2982
280001	01.1359	280064	01.0638	290008	01.2157	310006	01.1587	310084	01.1844
280002	01.8254	280065	01.2072	290009	01.5473	310009	01.2890	310087	01.1818
280004	00.9444	280066	01.0442	290010	01.1008	310009	01.1515	310088	01.2197
280005	01.3823	280068	00.9192	290011	00.9543	310010	01.2072	310089	01.1019
280009	01.4721	280070	00.9686	290012	01.3671	310011	01.3184	310070	01.2298
280011	01.0342	280073	01.0234	290013	01.0335	310012	01.4317	310071	00.5052
280012	01.1824	280074	01.1506	290014	00.9841	310013	01.2468	310072	01.1893
280013	01.5959	280075	01.3381	290015	00.9882	310014	01.4899	310073	01.2298
280014	01.1421	280076	00.9625	290016	00.9830	310015	01.5033	310074	01.3067
280015	01.0627	280077	01.2757	290018	01.0788	310016	01.2043	310075	01.2482
280017	01.0383	280078	00.8139	290019	01.2452	310017	01.3921	310078	01.2511
280018	00.9478	280079	00.9275	290020	01.0057	310018	01.0833	310077	01.5504
280020	01.4488	280080	00.9849	290021	01.5048	310019	01.5306	310078	01.2351
280021	01.1473	280081	01.3882	290022	01.6224	310020	01.1873	310081	01.1382
280022	01.0480	280082	01.1067	290027	01.0517	310021	01.2208	310082	01.2907
280023	01.3802	280083	00.9772	290028	00.8521	310022	01.1693	310084	01.1838
280024	00.8394	280084	00.9737	290031	01.0681	310024	01.1851	310085	01.2010
280025	00.9492	280085	01.4034	290032	01.4388	310025	01.1485	310086	01.1788
280026	01.0047	280088	01.6386	290033	01.2352	310026	01.2324	310087	01.1877
280028	00.8313	280089	00.9998	300001	01.2781	310027	01.2143	310088	01.2085
280029	00.9761	280090	01.0248	300002	01.1156	310028	01.1852	310090	01.1921
280030	01.8435	280091	01.0832	300003	01.8078	310029	01.7190	310091	01.2226
280031	01.1404	280092	00.9400	300005	01.3848	310031	02.5107	310092	01.2432
280032	01.1731	280093	00.9295	300006	01.1222	310032	01.2196	310093	01.0881
280033	00.9881	280094	01.0511	300007	01.1572	310033	01.1539	310095	01.6821
280034	01.2438	280097	00.9080	300008	01.1874	310034	01.1427	310105	01.0848
280035	00.8106	280098	01.0028	300009	01.1588	310036	01.1918	310106	01.2180
280037	01.0305	280101	01.1061	300010	01.2509	310037	01.2218	310110	01.1783
280038	01.0356	280102	00.9020	300011	01.1986	310038	01.8108	310111	01.2303
280039	01.0857	280104	01.0159	300012	01.2718	310039	01.2397	310112	01.1456
280040	01.4828	280105	01.1637	300013	01.2084	310040	01.1908	310113	01.2440
280041	00.9808	280106	00.9870	300014	01.2800	310041	01.2378	310115	01.1584

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1990

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1990 PAGE 14 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
310116	01.2249	330001	01.1604	330066	01.2180	330148	01.0256	330213	01.1301
310118	01.2024	330002	01.4513	330067	01.2322	330151	01.1189	330214	01.6420
310119	01.2607	330003	01.2705	330072	01.2739	330152	01.3660	330215	01.2017
310120	01.0551	330004	01.2371	330073	01.1854	330153	01.3347	330218	01.2108
310121	01.0326	330005	01.5527	330074	01.2196	330154	01.3600	330219	01.4553
320001	01.3484	330006	01.3542	330075	01.0820	330155	01.1610	330221	01.2764
320002	01.2252	330007	01.2404	330078	01.3584	330157	01.2557	330222	01.2195
320003	01.2386	330008	01.1420	330079	01.1631	330158	01.2750	330223	01.1185
320004	01.1795	330009	01.2257	330080	01.2853	330159	01.3263	330224	01.2776
320005	01.2736	330010	01.2050	330082	01.2161	330160	01.3735	330225	01.2375
320006	01.1685	330011	01.1684	330084	01.0013	330161	01.1204	330226	01.2587
320009	01.2598	330012	01.5799	330085	01.3565	330162	01.2304	330229	01.2375
320010	01.2848	330013	01.8604	330086	01.2050	330163	01.1464	330230	01.4455
320011	01.0229	330014	01.2966	330088	01.2073	330164	01.3619	330231	01.1528
320012	00.9775	330015	01.3679	330090	01.6336	330166	00.9744	330232	01.2323
320013	01.0530	330016	01.0349	330091	01.3181	330167	01.4248	330233	01.4944
320014	00.9311	330019	01.2499	330092	00.9787	330168	01.0485	330234	01.7879
320016	01.1035	330020	01.0454	330094	01.2865	330169	01.3015	330235	01.1896
320017	01.0815	330022	01.0088	330095	01.2347	330171	01.2554	330236	01.3051
320018	01.2066	330023	01.2371	330096	01.1457	330174	00.8043	330238	01.1390
320019	01.3846	330024	01.8134	330097	01.2244	330175	01.0852	330239	01.1371
320021	01.5249	330025	01.1279	330100	00.8814	330176	00.8875	330240	01.1385
320022	01.2058	330027	01.3857	330101	01.8171	330177	01.0883	330241	01.5885
320023	01.0529	330028	01.2879	330102	01.2353	330179	00.9181	330242	01.3402
320030	01.0915	330029	01.1394	330103	01.1612	330180	01.2485	330244	01.0518
320031	00.9350	330030	01.1421	330104	01.3769	330181	01.2469	330245	01.3219
320032	00.9444	330033	01.2769	330106	01.5394	330182	02.1266	330246	01.1449
320033	01.0888	330034	01.2433	330107	01.2740	330183	01.3794	330247	00.5962
320035	01.0566	330036	01.2741	330108	01.2920	330184	01.2839	330249	01.2242
320037	01.2096	330037	01.1024	330110	01.0006	330185	01.1777	330250	01.2481
320038	01.1325	330038	01.0925	330111	01.1140	330186	01.1511	330252	00.9245
320046	00.9854	330039	00.9060	330114	01.0160	330188	01.1454	330254	01.0337
320048	01.3297	330041	01.4389	330115	01.1818	330189	00.7829	330258	01.3374
320053	00.9668	330043	01.2580	330116	01.0056	330191	01.2464	330259	01.2119
320056	00.8670	330044	01.2231	330118	01.5088	330193	01.4347	330261	01.2596
320057	01.0371	330045	01.2353	330119	01.4098	330194	01.6189	330263	01.0700
320058	00.8040	330046	01.4885	330121	01.1307	330195	01.6510	330264	01.1426
320059	00.9993	330047	01.2689	330122	01.2390	330196	01.3717	330265	01.2697
320060	00.9262	330048	01.2362	330125	01.7030	330197	01.0350	330267	01.2241
320061	01.1730	330049	01.2879	330126	01.1987	330198	01.2693	330268	01.1183
320062	00.8388	330053	01.0724	330127	01.2042	330199	01.2228	330270	01.9199
320063	01.2070	330055	01.2523	330128	01.2495	330201	01.4661	330273	01.2008
320065	01.1734	330056	01.2469	330132	01.1192	330202	01.1658	330275	01.1883
320067	00.8968	330057	01.5360	330133	01.3047	330203	01.3878	330276	01.2637
320068	00.9231	330058	01.3360	330135	01.2546	330204	01.1776	330277	01.1035
320069	01.0997	330059	01.4615	330136	01.2451	330205	01.1252	330279	01.2338
320070	00.8969	330061	01.3245	330140	01.5836	330208	01.1605	330281	00.5960
320074	01.0311	330062	01.1406	330141	01.1990	330209	01.1797	330285	01.6743
320076	01.1262	330064	01.3295	330142	01.2543	330211	01.2178	330286	01.2951
320079	01.0518	330065	01.2130	330144	01.0237	330212	01.1780	330288	01.1183

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: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1990

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1990 PAGE 15 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
330290	01.4920	340003	01.1488	340084	01.0804	340132	01.9387	350025	01.0170
330293	01.1398	340004	01.3490	340085	01.1004	340133	01.1889	350027	01.0082
330304	01.2178	340005	01.2079	340087	01.1178	340135	01.1806	350029	00.9285
330306	01.3604	340006	01.1705	340088	01.2728	340136	01.0026	350030	01.0856
330307	01.1550	340007	01.1163	340089	01.7090	340137	01.3068	350031	00.9880
330308	01.3369	340008	01.2481	340070	01.2923	340138	01.2438	350032	01.0338
330309	01.2200	340009	01.1599	340071	01.0744	340141	01.4582	350033	00.9518
330314	01.2060	340010	01.2822	340072	01.0510	340142	01.1584	350034	00.9831
330315	01.1574	340011	01.0051	340073	01.2850	340143	01.9302	350035	00.8956
330318	01.2411	340012	01.0501	340075	01.2038	340144	01.2409	350036	00.9014
330327	00.9372	340013	01.2272	340076	01.0188	340145	01.2257	350038	00.9381
330331	01.2311	340014	01.5391	340080	01.0855	340146	01.0201	350039	00.9201
330332	01.3528	340015	01.2744	340084	01.0188	340147	01.2815	350041	01.0101
330333	01.2821	340016	01.1385	340085	01.2389	340148	01.3249	350042	00.9018
330335	01.0161	340017	01.1992	340087	01.1443	340151	01.1412	350043	01.1933
330336	01.2564	340018	01.1482	340088	01.1433	340153	01.6877	350044	00.8958
330338	01.1727	340019	01.1222	340089	00.9618	340154	00.8768	350047	01.0471
330339	00.9881	340020	01.2013	340090	01.1260	340155	01.4573	350049	01.1179
330340	01.0819	340021	01.2253	340091	01.5983	340156	00.8808	350050	00.9838
330350	01.6712	340022	01.0844	340093	01.0887	340158	01.0905	350051	00.9848
330351	01.1294	340023	01.3128	340094	01.3778	340159	01.2061	350053	01.0001
330353	01.2313	340024	01.2682	340096	01.1350	340160	01.0588	350055	00.8678
330354	01.1516	340025	01.1283	340097	01.0144	340162	01.3110	350056	00.8531
330357	01.2784	340027	01.1215	340098	01.5007	340164	01.2888	350058	00.9941
330359	00.9814	340028	01.3405	340099	01.1284	340165	01.3745	350060	00.9174
330362	00.7303	340030	01.7023	340100	01.2270	340167	00.5830	350061	01.0355
330363	00.7087	340031	01.0532	340101	00.9787	340168	00.5473	350063	00.8745
330366	00.6818	340032	01.3085	340104	00.8755	350001	01.0717	350064	00.8220
330367	00.8319	340034	01.2639	340105	01.3495	350002	01.0581	350065	01.0058
330368	00.8286	340035	01.1033	340106	01.0880	350003	01.0837	350066	00.8432
330369	00.8430	340036	01.0817	340107	01.2535	350004	01.5863	350067	00.9426
330371	00.7278	340037	01.1414	340108	01.3031	350005	01.0912	360001	01.1884
330372	01.1992	340038	01.2116	340111	01.1788	350006	01.3240	360002	01.1342
330373	00.5775	340039	01.2111	340112	00.9545	350007	00.9806	360005	01.4240
330381	01.2106	340040	01.6817	340113	01.9153	350008	00.9487	360006	01.6203
330383	01.3008	340041	01.2319	340114	01.2893	350009	01.1908	360007	01.1178
330385	01.2120	340042	01.2327	340115	01.3170	350010	01.0837	360008	01.1882
330386	01.3194	340044	01.0231	340116	01.6310	350011	01.7038	360009	01.2438
330387	00.8936	340045	00.8328	340119	01.2208	350012	01.0124	360010	01.1878
330389	01.7344	340047	01.7370	340120	01.0785	350013	01.0328	360011	01.2483
330390	01.1281	340049	00.6489	340121	01.0228	350014	01.0567	360012	01.3265
330393	01.5306	340050	01.2019	340122	01.0108	350015	01.6270	360013	01.0701
330394	01.3477	340051	01.2729	340123	01.1974	350016	01.0880	360014	01.1458
330395	01.3514	340052	00.9592	340124	01.1009	350017	01.2492	360015	01.3998
330396	01.1548	340053	01.5728	340125	01.4813	350018	00.9815	360016	01.3719
330397	01.3822	340054	01.1016	340126	01.2620	350019	01.5134	360017	01.6487
330398	01.2769	340055	01.1826	340127	01.2048	350020	01.3043	360018	01.3104
330399	01.3648	340060	01.1915	340129	01.1186	350021	01.0570	360019	01.1787
340001	01.2480	340061	01.5319	340130	01.3042	350023	00.9485	360020	01.2261
340002	01.7414	340063	01.1186	340131	01.9595	350024	00.9591	360021	01.2093

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1990

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1990 PAGE 16 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
360024	01.2082	360078	01.2327	360133	01.3815	360197	01.0851	370039	01.2476
360025	01.1596	360079	01.5544	360134	01.4710	360200	01.2023	370040	01.0748
360026	01.1289	360080	01.1910	360135	01.1249	360203	01.1347	370041	00.9874
360027	01.4601	360081	01.2412	360136	01.0614	360204	01.2140	370042	00.8751
360028	01.2351	360082	01.3203	360137	01.4404	360210	01.1655	370043	00.9969
360029	01.0678	360083	01.2101	360139	01.0356	360211	01.0937	370045	01.0599
360030	01.1541	360084	01.4309	360140	01.0671	360212	01.4241	370046	01.0969
360031	01.1759	360085	01.6056	360141	01.3478	360213	01.0690	370047	01.1839
360032	01.1399	360086	01.2928	360142	01.0494	360215	01.2965	370048	01.1247
360034	01.0980	360087	01.2978	360143	01.1749	360230	01.3015	370049	01.2250
360035	01.4090	360088	01.1621	360144	01.2721	360231	01.0929	370050	00.8754
360036	01.1683	360089	01.0651	360145	01.4890	360232	01.0813	370051	01.1162
360037	01.7251	360090	01.1919	360147	01.2223	360234	01.2288	370054	01.2704
360038	01.4332	360091	01.2599	360148	01.1435	360235	01.1402	370056	01.3552
360039	01.2007	360092	01.1432	360149	01.0855	360238	00.9462	370057	01.0942
360040	01.2104	360093	01.1310	360150	01.2583	360239	01.2023	370059	01.3532
360041	01.2026	360094	01.1907	360151	01.2503	360240	00.7358	370060	00.9600
360042	01.1180	360095	01.2561	360152	01.4382	360241	00.6897	370063	01.0410
360044	01.0702	360096	01.0963	360153	01.1807	370001	01.6745	370064	00.9220
360045	01.3912	360098	01.3035	360154	01.0308	370002	01.1974	370065	01.1227
360046	01.0653	360099	01.0892	360155	01.1732	370004	01.0515	370069	01.0048
360047	01.0653	360100	01.2615	360156	01.1308	370005	00.9616	370071	00.8544
360048	01.6263	360101	01.5037	360159	01.1729	370006	01.2371	370072	00.8500
360049	01.2514	360102	01.2205	360161	01.2518	370007	01.1407	370076	01.1135
360050	01.2433	360103	01.2515	360162	01.1885	370008	01.2106	370077	01.2618
360051	01.4054	360104	00.8080	360163	01.5004	370011	00.9337	370078	01.4199
360052	01.5029	360106	01.2191	360164	01.0862	370012	00.9231	370079	00.8452
360053	01.2554	360107	01.0480	360165	01.0494	370013	01.3284	370080	00.8425
360054	01.2700	360108	01.0670	360166	01.0198	370014	01.1923	370082	00.8895
360055	01.1703	360109	01.0435	360168	00.8086	370015	01.0958	370083	01.0014
360056	01.2588	360112	01.4888	360169	01.0384	370016	01.2882	370084	00.8872
360057	00.8284	360113	01.2398	360170	01.0679	370017	01.0035	370085	00.8995
360058	01.0885	360114	01.1015	360172	01.2880	370018	01.1945	370086	01.0925
360059	01.3644	360115	01.1825	360174	01.1383	370019	01.0511	370089	01.2894
360061	01.2422	360116	01.0635	360175	01.1839	370020	01.2640	370091	01.4857
360062	01.4202	360118	01.2356	360176	01.1752	370021	00.8987	370092	01.0618
360063	01.0759	360119	01.1059	360177	01.1135	370022	01.2423	370093	01.4982
360064	01.4267	360120	00.8058	360178	01.1878	370023	01.1897	370094	01.2221
360065	01.2244	360121	01.1169	360179	01.2982	370025	01.2478	370095	00.9488
360066	01.2203	360122	01.2984	360180	01.8930	370026	01.2803	370097	01.2870
360067	01.2405	360123	01.1591	360184	00.7133	370028	01.5058	370099	01.1407
360068	01.3474	360124	01.1549	360185	01.1962	370029	01.2160	370100	01.0278
360069	01.0333	360125	01.1148	360186	01.0957	370030	01.2728	370103	00.9649
360070	01.2604	360126	01.1661	360187	01.3389	370032	01.3035	370105	01.8571
360071	01.1782	360127	00.8861	360188	01.0160	370033	01.2018	370106	01.2992
360072	01.2454	360128	01.0577	360189	01.1289	370034	01.1385	370107	01.0583
360074	01.2873	360129	01.0448	360192	01.1841	370035	01.3771	370108	00.9497
360075	01.3806	360130	01.1130	360193	01.2171	370036	01.1271	370110	00.9807
360076	01.2263	360131	01.2592	360194	01.1134	370037	01.4744	370112	00.9681
360077	01.3599	360132	01.1938	360195	01.1519	370038	00.9515	370113	01.1052

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1990

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1990 PAGE 17 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
370114	01.5041	380008	01.0495	380078	01.1647	390043	01.1021	390100	01.6409
370117	01.1271	380009	01.5905	380081	01.1258	390044	01.4599	390101	01.1931
370121	01.2884	380010	01.1273	380082	01.2819	390045	01.2513	390102	01.2584
370122	00.9585	380011	01.1280	380083	01.1167	390046	01.3784	390103	01.0540
370123	01.1069	380013	01.1661	380084	01.4205	390047	01.4513	390104	01.1721
370125	00.9662	380014	01.2696	380087	01.0607	390048	01.1399	390106	01.0757
370126	01.1684	380017	01.7235	380088	00.9633	390049	01.4429	390107	01.1579
370131	00.9711	380018	01.8526	380089	01.2957	390050	01.7975	390108	01.2944
370133	01.1045	380019	01.1518	380090	01.3330	390051	01.9897	390109	01.2102
370138	01.1080	380020	01.3601	380091	01.1726	390052	01.1202	390110	01.2187
370139	00.9672	380021	01.3007	380094	01.0419	390054	01.1638	390111	01.6953
370140	00.9886	380022	01.1936	390001	01.2198	390055	01.5579	390112	01.1735
370141	01.4120	380023	01.3260	390002	01.1979	390056	01.1157	390113	01.2200
370144	01.0441	380024	01.2983	390003	01.1528	390057	01.2882	390114	01.0060
370146	00.9298	380025	01.2501	390004	01.2599	390058	01.2813	390115	01.2070
370148	01.3055	380026	01.3439	390005	01.1265	390059	01.3249	390116	01.2037
370149	01.1995	380027	01.2515	390006	01.5980	390060	01.1961	390117	01.0993
370153	01.1008	380029	01.0879	390007	01.1822	390061	01.2738	390118	01.0981
370154	00.9784	380030	00.8106	390008	01.0964	390062	01.1483	390119	01.3149
370156	01.0569	380031	00.9721	390009	01.4012	390063	01.5346	390121	01.2201
370157	00.9735	380033	01.5894	390010	01.1090	390064	01.3446	390122	01.1058
370158	01.0369	380035	01.3002	390011	01.1707	390065	01.2424	390123	01.2306
370159	01.1312	380036	01.0474	390012	01.2272	390066	01.2927	390125	01.2011
370161	01.0526	380037	01.3312	390013	01.2005	390067	01.4844	390126	01.2270
370163	00.8778	380038	01.2370	390014	00.6305	390068	01.2578	390127	01.0960
370165	01.0744	380039	01.3754	390015	01.1261	390069	01.2256	390128	01.1525
370166	01.0859	380040	01.2666	390016	01.1578	390070	01.1943	390130	01.1139
370169	01.0086	380042	01.1456	390017	01.0441	390071	01.0970	390131	01.2188
370170	00.9722	380045	01.1267	390018	01.2198	390072	00.9867	390132	01.0405
370171	00.9792	380047	01.5372	390019	01.0873	390073	01.4169	390133	01.3319
370172	00.8881	380048	00.9964	390021	01.0641	390074	01.1795	390135	01.2378
370173	01.0933	380050	01.3250	390022	01.2435	390075	01.2923	390136	01.1925
370174	00.9339	380051	01.3651	390023	01.1168	390076	01.2005	390137	01.1809
370176	01.2175	380052	01.1922	390024	00.7859	390077	01.2352	390138	01.2757
370177	00.9368	380055	01.1686	390025	00.8059	390078	01.1044	390139	01.4272
370178	00.8991	380056	00.9945	390026	01.3165	390079	01.6359	390142	01.6348
370179	00.9864	380059	00.9095	390027	01.8000	390080	01.1672	390143	00.9056
370180	01.0079	380060	01.3229	390028	01.6817	390081	01.2119	390145	01.1869
370182	01.0107	380061	01.5212	390029	01.5384	390083	01.1668	390146	01.1608
370183	01.1385	380062	00.8888	390030	01.1498	390084	01.1408	390147	01.1850
370184	01.0247	380063	01.2353	390031	01.1274	390086	01.1095	390148	01.1269
370186	00.9664	380064	01.2642	390032	01.2173	390088	01.3501	390149	01.2348
370189	00.9524	380065	01.0621	390034	00.6755	390090	01.6569	390150	01.2004
380001	01.3509	380066	01.0937	390035	01.3212	390091	01.1267	390151	01.2686
380002	01.2020	380068	01.0966	390036	01.2331	390092	01.1121	390152	01.0010
380003	01.1574	380069	01.1209	390037	01.2198	390093	01.0717	390153	01.1608
380004	01.7491	380070	01.0207	390039	01.0781	390095	01.2040	390154	01.1162
380005	01.1443	380071	01.2247	390040	00.9557	390096	01.2011	390155	01.2831
380006	01.2293	380072	00.9293	390041	01.1702	390097	01.3228	390156	01.3479
380007	01.7244	380075	01.3570	390042	01.1817	390098	01.6106	390157	01.1588

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1990

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1990 PAGE 18 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
390158	01.2243	390222	01.2171	400014	01.3505	410010	00.9124	420064	01.1187
390159	01.2140	390223	01.8047	400015	01.1385	410011	01.1801	420065	01.2517
390160	01.1789	390224	00.9811	400016	01.2627	410012	01.5327	420066	01.0213
390161	01.0614	390225	01.2627	400017	01.0822	410013	01.1833	420067	01.1028
390162	01.2382	390226	01.4868	400018	01.2254	410016	00.9134	420068	01.1525
390163	01.1503	390228	01.2181	400019	01.1378	420002	01.3013	420069	01.0138
390164	01.6256	390229	01.3698	400021	01.2733	420003	00.9367	420070	01.2315
390165	01.0831	390231	01.3006	400022	01.2832	420004	01.7448	420071	01.2838
390166	01.1484	390232	01.0977	400024	01.0288	420005	01.0703	420072	01.0011
390167	01.2316	390233	01.2528	400026	00.9517	420006	01.3094	420073	01.3285
390168	01.1194	390234	01.2858	400027	01.0581	420007	01.4283	420074	00.8135
390169	01.2384	390235	01.7857	400028	01.0293	420009	01.2765	420075	01.0730
390170	01.8873	390236	01.1570	400029	01.0299	420010	01.0732	420076	01.0823
390171	01.1148	390237	01.4684	400031	01.0106	420011	01.0754	420078	01.5188
390172	01.1718	390238	00.8873	400032	01.1882	420014	01.1047	420079	01.5106
390173	01.1270	390242	01.2240	400037	00.8707	420015	01.1958	420080	01.1428
390174	01.4640	390244	00.8920	400038	00.9788	420016	01.1198	420081	00.5535
390176	01.1606	390245	01.2522	400044	01.1247	420018	01.5388	420082	01.3067
390178	01.3485	390246	01.2082	400048	01.1512	420019	01.1552	420083	01.1709
390179	01.2446	390247	01.0848	400061	01.8090	420020	01.1553	420084	00.7848
390180	01.2832	390249	01.0845	400079	01.1483	420022	01.0784	420085	01.2174
390181	01.0836	390252	00.7808	400087	01.1954	420023	01.2424	420086	01.2887
390182	01.1032	390256	01.5788	400088	00.7460	420026	01.7727	420087	01.3511
390184	01.2088	390258	01.1885	400089	01.0988	420027	01.2087	420088	01.1448
390185	01.1788	390260	01.1839	400094	00.8478	420028	01.0278	420089	01.2480
390186	01.0831	390261	01.7295	400095	01.2271	420029	01.8137	430004	01.1487
390187	01.1110	390262	01.6657	400102	01.1358	420030	01.1540	430006	01.2831
390188	01.1124	390263	01.5041	400103	01.4115	420031	00.8988	430007	01.1531
390191	01.0880	390265	01.2125	400104	01.1811	420032	00.8951	430008	01.1914
390192	01.1002	390266	01.1275	400105	01.2434	420033	01.1808	430009	01.1582
390193	01.2312	390267	01.2174	400106	01.0498	420035	00.8541	430010	01.1006
390194	01.0548	390268	01.1849	400108	01.3938	420036	01.2574	430011	01.2278
390195	01.4821	390270	01.2705	400110	01.2210	420037	01.2870	430012	01.2434
390196	01.2435	390272	00.8589	400111	01.1900	420038	01.0887	430013	01.1503
390197	01.2899	390275	00.8908	400112	01.2371	420039	01.1085	430014	01.2373
390198	01.2185	390277	01.4352	400113	01.1805	420040	01.2284	430015	01.0421
390199	01.2751	390278	00.7587	400114	01.0288	420042	01.0945	430016	01.8288
390200	01.0185	400001	01.1103	400115	01.0542	420043	01.1321	430017	01.0829
390201	01.2828	400002	01.2858	400116	01.0815	420044	01.2019	430018	00.8350
390203	01.2823	400003	01.1158	400117	01.1484	420045	01.0549	430022	00.8433
390204	01.2360	400004	01.1430	400118	01.1771	420048	01.0866	430023	00.8215
390205	01.2315	400005	01.0444	400120	01.2942	420051	01.4408	430024	01.0441
390208	01.2852	400006	01.1851	410001	01.2674	420053	01.1328	430025	00.8273
390209	00.9662	400007	01.0845	410002	01.1750	420054	01.0854	430026	00.8974
390211	01.1556	400008	01.0879	410004	01.3304	420055	01.0321	430027	01.5158
390213	00.9985	400009	00.9720	410005	01.2838	420056	01.1117	430028	01.0640
390215	01.2023	400010	01.0424	410006	01.2069	420057	01.0790	430029	00.9061
390217	01.1324	400011	01.0828	410007	01.4775	420059	01.0864	430031	00.9825
390218	01.2068	400012	00.9873	410008	01.1489	420061	01.2813	430033	01.0040
390220	01.1821	400013	00.9188	410009	01.2755	420062	01.1858	430034	01.1352

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1990

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1990 PAGE 19 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
430036	01.0682	440020	01.1807	440090	01.0296	440175	01.1080	450043	01.4028
430037	00.9811	440022	01.0862	440091	01.4201	440176	01.1656	450044	01.4321
430038	01.0546	440023	00.9673	440095	01.0187	440177	00.9336	450046	01.4206
430039	00.9980	440024	01.0870	440100	01.0873	440178	01.2260	450047	01.1013
430040	00.9535	440025	01.0850	440102	01.0390	440180	01.0770	450048	01.1534
430041	00.9687	440026	01.1542	440103	01.2799	440181	00.9726	450050	01.1527
430042	00.9918	440029	01.2004	440104	01.4322	440182	00.9893	450051	01.5823
430043	01.2050	440030	01.0240	440105	01.1585	440183	01.3817	450052	01.0488
430044	00.8724	440031	01.0565	440109	01.0408	440184	01.0938	450053	01.1789
430047	01.2015	440032	00.9822	440110	01.1040	440185	01.1166	450054	01.5197
430048	01.1075	440033	01.1351	440111	01.1387	440186	01.0596	450055	01.0968
430049	00.9157	440034	01.3181	440114	01.1070	440187	01.0218	450056	01.4837
430051	01.0041	440035	01.1625	440115	01.0830	440189	01.4184	450057	01.1783
430054	00.9210	440038	00.9237	440120	01.4321	440192	00.9573	450058	01.4499
430056	00.8127	440039	01.5572	440121	01.1357	440193	01.1403	450059	01.2696
430057	00.8982	440040	00.9493	440125	01.3654	440194	01.2120	450060	01.2055
430060	00.8734	440041	00.8924	440128	01.0155	440196	01.0287	450063	00.9286
430062	00.8964	440046	01.0290	440130	01.1332	440197	01.2532	450064	01.4381
430064	01.0285	440047	00.9528	440131	01.1056	440200	01.0817	450065	01.0942
430065	00.9276	440048	01.5332	440132	00.9894	440203	01.0472	450068	01.5242
430066	00.9506	440049	01.5991	440133	01.4869	440205	00.9666	450070	01.1517
430073	01.0611	440050	01.1199	440135	01.2073	450002	01.3407	450072	01.2034
430076	00.9474	440051	00.9071	440136	01.2902	450004	01.0632	450073	01.0585
430077	01.3677	440052	01.0787	440137	01.1029	450005	01.0193	450074	01.1152
430079	00.9827	440053	01.1803	440141	00.9060	450007	01.2816	450076	01.1543
430080	00.9747	440054	00.9627	440142	00.9736	450008	01.2271	450077	00.9385
430081	01.0266	440056	00.9683	440143	00.9853	450010	01.2225	450078	01.0178
430082	00.9342	440057	00.9735	440144	01.1944	450011	01.5539	450079	01.4445
430083	00.7948	440058	01.1850	440145	01.0132	450014	01.0830	450080	01.2358
430084	00.9213	440059	01.0828	440146	01.1807	450015	01.3608	450081	01.1798
430085	01.0225	440060	01.1404	440147	00.8467	450016	01.6619	450082	01.0135
430086	00.8124	440061	01.1055	440148	01.0609	450018	01.5350	450083	01.4601
430087	00.9725	440063	01.2994	440149	01.1427	450020	01.1310	450085	01.0472
430088	00.9801	440064	00.9558	440150	01.2855	450021	01.6124	450087	01.2887
440001	01.0148	440065	01.0723	440151	01.1369	450023	01.4154	450090	01.1809
440002	01.4189	440067	01.1417	440152	01.4588	450024	01.2570	450092	01.2013
440003	01.1512	440068	01.1575	440153	00.9519	450025	01.4142	450094	01.3088
440006	01.3716	440069	01.1503	440154	00.7313	450027	01.1587	450096	01.4178
440007	01.0091	440070	00.9119	440156	01.3741	450028	01.3294	450097	01.3373
440008	01.0289	440071	01.3106	440157	01.0556	450029	01.1882	450098	01.1577
440009	01.0350	440072	01.2801	440159	01.1443	450031	01.1742	450099	01.1375
440010	00.9480	440073	01.2889	440160	01.0376	450032	01.1309	450101	01.3501
440011	01.2270	440074	00.9200	440161	01.5444	450033	01.5849	450102	01.5617
440012	01.2249	440075	00.9811	440162	01.1013	450034	01.5079	450104	01.2719
440014	00.9490	440079	00.8582	440166	01.2075	450035	01.4840	450107	01.4075
440015	01.4757	440081	01.1439	440167	01.1345	450037	01.4551	450108	01.0187
440016	00.9728	440082	01.7663	440168	01.0214	450039	01.0935	450109	00.9681
440017	01.3854	440083	01.2397	440170	01.2764	450040	01.5533	450110	01.2139
440018	01.2563	440084	01.0710	440173	01.3782	450041	00.9918	450111	01.2075
440019	01.5006	440087	00.9734	440174	00.9071	450042	01.5383	450112	01.2135

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1990

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1990 PAGE 20 OF 23

PROVIDER	CASE MIX
450113	01.1825
450115	01.1115
450116	01.4449
450119	01.2277
450121	01.3084
450123	01.0543
450124	01.4512
450126	01.1810
450127	00.9163
450128	01.2320
450130	01.3809
450131	01.1597
450132	01.4893
450133	01.4033
450135	01.5280
450137	01.2390
450140	00.9813
450141	01.0682
450142	01.3465
450143	01.0190
450144	01.1834
450145	01.0404
450146	01.0841
450147	01.2877
450148	01.3421
450149	01.3715
450150	00.9513
450151	01.0760
450152	01.3804
450153	01.4338
450154	01.2035
450155	01.1394
450157	01.0008
450160	00.8656
450162	01.5041
450163	01.1997
450164	00.8028
450165	00.9528
450166	00.9864
450169	00.8716
450170	01.1650
450175	01.2870
450176	01.2552
450177	01.0943
450178	01.0315
450179	00.9994
450181	00.9571
450183	01.1893
450184	01.3878
450185	01.0654
450187	01.2330
450188	00.9598
450190	01.2458
450191	01.0913
450192	01.0675
450193	02.1032
450194	01.1326
450195	01.4021
450196	01.1853
450197	01.2130
450200	01.2327
450201	01.0007
450203	01.2001
450207	01.2221
450208	01.2260
450209	01.2472
450210	01.0263
450211	01.2798
450213	01.3465
450214	01.3248
450217	00.8226
450218	00.9664
450219	01.1500
450221	01.0218
450222	01.5456
450224	01.0823
450228	01.4117
450231	01.5378
450233	01.0847
450234	00.8731
450235	01.0859
450236	01.1628
450237	01.4677
450239	01.1417
450241	00.8969
450243	01.0236
450246	01.0138
450249	00.9286
450250	00.9232
450253	01.1223
450256	01.0214
450258	01.0777
450259	01.2915
450264	00.8619
450268	01.1685
450269	00.9365
450270	01.1054
450271	01.1209
450272	01.1754
450275	01.0067
450276	01.1252
450278	00.8435
450280	01.2842
450283	01.0812
450286	01.0868
450288	01.1737
450289	01.2791
450292	01.2159
450293	00.9838
450296	01.1734
450297	01.0038
450299	01.4190
450303	00.9095
450306	01.0442
450307	01.1384
450309	01.0445
450315	01.2657
450320	01.2991
450321	00.9220
450322	00.8769
450324	01.5407
450325	01.2957
450327	01.0494
450330	01.1319
450331	00.9864
450334	01.0348
450337	01.1378
450340	01.2750
450341	00.9573
450346	01.3127
450347	01.2454
450348	00.9788
450349	01.2091
450351	01.2876
450352	01.2795
450353	01.1572
450355	00.8981
450358	01.8314
450362	00.9923
450365	00.9319
450366	01.6535
450369	01.1754
450370	01.1927
450371	01.1533
450372	01.3189
450373	01.1644
450374	00.8389
450376	01.4631
450378	01.3344
450379	01.5224
450381	00.9060
450388	01.5520
450389	01.2692
450393	01.2579
450394	01.1752
450395	01.0776
450399	01.1255
450400	01.1428
450403	01.2348
450410	01.1001
450411	01.0490
450417	01.0205
450418	01.3841
450419	01.2957
450422	00.7788
450423	01.4055
450424	01.2111
450429	00.9970
450431	01.4383
450438	01.0735
450446	00.8430
450447	01.2985
450450	01.0704
450451	01.1144
450457	01.5168
450460	01.0428
450462	01.3943
450464	00.9192
450465	01.1380
450467	01.0187
450469	01.2376
450472	01.0182
450473	01.1160
450475	01.1211
450478	00.9588
450484	01.4276
450486	01.0006
450488	01.1014
450489	01.0343
450492	00.8598
450497	01.1274
450498	00.9934
450508	01.4748
450514	01.1038
450517	00.9587
450518	01.2561
450523	01.4431
450530	01.3085
450534	01.0273
450535	01.2819
450537	01.3069
450538	01.1782
450539	01.3144
450544	01.2611
450545	01.3141
450546	01.3351
450547	00.9632
450550	01.1339
450551	01.0979
450557	01.0447
450558	01.7981
450559	00.9071
450561	01.4386
450563	01.1978
450565	01.2065
450570	00.9689
450571	01.4354
450573	01.0722
450574	01.1088
450575	00.9254
450578	01.0036
450580	01.1620
450583	00.9937
450584	01.2852
450586	01.1323
450587	01.1575
450590	00.9427
450591	01.1480
450596	01.1934
450597	01.0820
450600	00.9367
450603	00.7851
450604	01.2204
450605	01.2848
450607	00.8793
450609	00.9935
450610	01.3323
450614	01.0073
450615	00.9823
450617	01.2810
450620	01.1186
450623	01.1285
450626	00.9638
450628	00.9842
450630	01.5981
450631	01.6209
450632	00.9587
450633	01.5019
450634	01.2490
450637	01.1767

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1990

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1990 PAGE 21 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
450638	01.4458	450709	01.2011	460007	01.2330	490001	01.1135	490066	01.0742
450639	01.5224	450711	01.5925	460008	01.2583	490002	01.0814	490067	01.2112
450641	00.8960	450712	00.6179	460009	01.7190	490003	00.6207	490069	01.3075
450643	01.1838	450713	01.2316	460010	01.9523	490004	01.1541	490071	01.2567
450644	01.7831	450715	01.3891	460011	01.2512	490005	01.4026	490073	01.1249
450648	01.2485	450716	01.1740	460013	01.3396	490006	01.1855	490074	01.2620
450647	01.9723	450717	01.2684	460014	01.0043	490007	01.7953	490075	01.1973
450648	01.1289	450718	01.1180	460015	01.2411	490008	01.1157	490077	01.1931
450649	01.0041	450719	01.2281	460016	00.9062	490009	01.5749	490079	01.2047
450651	01.5674	450723	01.2760	460017	01.2066	490010	01.2429	490083	00.7832
450652	00.9142	450724	01.2244	460018	00.9287	490011	01.2259	490084	01.1103
450653	01.2288	450725	00.9363	460019	00.9800	490012	01.0478	490085	01.1280
450654	00.9290	450726	00.8527	460020	01.0134	490013	01.1399	490088	01.0863
450656	01.2545	450727	01.0036	460021	01.3738	490014	01.4979	490089	01.0482
450658	01.0353	450728	00.8656	460022	00.9712	490015	01.3828	490090	01.1416
450659	01.3582	450729	00.8710	460023	01.0931	490017	01.2820	490091	01.2245
450660	01.4831	450730	01.3778	460024	00.9899	490018	01.1370	490092	01.1258
450661	01.2440	450732	01.1220	460025	00.8826	490019	01.1175	490093	01.2582
450662	01.2331	450733	01.3539	460026	00.8672	490020	01.0716	490094	01.0980
450665	00.9825	450734	01.1089	460027	00.9252	490021	01.3331	490095	01.2763
450666	01.1955	450735	00.8700	460029	00.9737	490022	01.1787	490097	01.1469
450667	01.0568	450737	00.5897	460030	01.0435	490023	01.2181	490098	01.3134
450668	01.4432	450742	01.2589	460032	00.9582	490024	01.5803	490099	00.9355
450669	01.3449	450743	01.3417	460033	00.8486	490027	01.0743	490100	01.2852
450670	01.1934	450744	00.9526	460035	00.8976	490028	01.2400	490101	01.0842
450672	01.5085	450745	00.7559	460036	00.9342	490029	01.1182	490104	00.8577
450673	00.9167	450746	00.9585	460037	00.9660	490030	01.2796	490105	00.8034
450674	00.8559	450747	01.1706	460039	00.9627	490031	01.0377	490106	00.7849
450676	01.2586	450748	01.0530	460041	01.1992	490032	01.5385	490107	01.1455
450677	01.2529	450750	00.9573	460042	01.3554	490033	01.2231	490108	00.8741
450678	01.4288	450751	01.1623	460043	01.2123	490035	01.1330	490109	00.8212
450681	01.5271	450753	01.1280	460044	01.2027	490037	01.1055	490110	01.1066
450682	01.2718	450754	00.8918	460045	00.9879	490038	01.2707	490111	01.1358
450683	01.2920	450755	00.9681	460047	01.6770	490040	01.3081	490112	01.4434
450684	01.3834	450757	00.9463	470001	01.1340	490041	01.1810	490113	01.1974
450685	01.3259	450758	01.2820	470003	01.8027	490042	01.2323	490114	01.0138
450686	01.3355	450759	00.9929	470004	01.1935	490043	01.1800	490115	01.1650
450688	01.1918	450760	01.2583	470005	01.2113	490044	01.2584	490116	01.1178
450690	01.2874	450761	00.8628	470006	01.1693	490045	01.1178	490117	01.0968
450691	01.4182	450763	01.0988	470008	01.1672	490046	01.3452	490118	01.8488
450694	01.1214	450764	01.7971	470010	01.0026	490047	01.1705	490119	01.3163
450696	01.0772	450765	01.0303	470011	01.1978	490048	01.2539	490120	01.3001
450697	01.4277	450766	01.4706	470012	01.2788	490050	01.2454	490122	01.1776
450698	00.8448	450767	00.9188	470013	01.0921	490052	01.3854	490123	01.0928
450700	00.8969	450768	01.1763	470015	01.2009	490053	01.1972	490124	01.2707
450702	01.2532	460001	01.5494	470016	01.0934	490054	01.0928	490126	01.1818
450703	01.2820	460002	01.4277	470018	01.1241	490057	01.2100	490127	01.0885
450704	01.2326	460004	01.5818	470020	00.9332	490058	01.3798	490129	00.8857
450705	00.8108	460005	01.2808	470023	01.2211	490060	01.0869	490130	01.1878
450706	01.2463	460006	01.3422	470024	01.1227	490063	01.5034	490131	00.8186

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1990

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1990 PAGE 22 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
500001	01.2952	500064	01.5329	510001	01.4832	510072	01.0678	520048	01.2642
500002	01.4083	500065	01.1558	510002	01.2991	510076	00.9799	520049	01.7324
500003	01.3925	500068	01.0428	510004	00.9369	510077	01.1300	520051	01.7915
500005	01.6800	500069	01.0342	510005	00.9859	510080	00.9566	520053	01.0731
500007	01.2553	500071	01.3130	510006	01.2281	510081	01.0600	520054	01.2171
500008	01.9018	500072	01.2118	510007	01.3026	510082	00.9608	520056	01.2813
500009	01.3600	500073	01.0221	510008	01.1675	510084	01.0036	520057	01.1324
500010	00.5654	500074	01.1039	510009	01.1003	510085	01.2476	520058	01.1470
500011	01.2400	500075	01.2349	510012	01.0574	510086	01.0409	520059	01.2511
500012	01.5001	500076	01.2166	510013	01.1575	510087	00.8549	520060	01.2070
500014	01.6201	500077	01.2441	510014	00.7564	520002	01.2881	520062	01.2083
500015	01.3243	500078	01.2879	510015	01.0074	520003	01.1070	520063	01.1950
500016	01.3211	500079	01.2043	510016	01.0067	520004	01.2203	520064	01.4449
500017	01.2529	500080	01.0329	510018	01.1276	520006	01.0350	520066	01.2409
500019	01.1906	500084	00.9810	510020	01.1785	520007	01.1159	520068	01.0267
500021	01.2666	500085	01.0210	510022	01.5819	520008	01.2001	520069	01.2659
500023	01.1083	500086	01.3168	510023	01.0090	520009	01.3431	520070	01.2316
500024	01.3038	500087	01.1146	510024	01.2933	520010	01.0993	520071	01.1333
500025	01.9746	500088	01.3223	510025	01.0331	520011	01.1237	520074	01.1232
500026	01.2864	500089	00.9754	510026	01.0028	520012	00.9384	520075	01.3142
500027	01.5421	500090	00.8224	510027	01.2297	520013	01.2662	520076	01.1944
500028	00.9582	500092	01.1840	510028	01.0700	520014	01.1769	520077	01.0062
500029	00.9266	500093	01.1299	510029	01.2368	520015	01.1943	520078	01.3251
500030	01.2977	500094	00.9329	510030	01.1411	520016	01.0173	520081	01.1911
500031	01.2232	500096	00.9965	510031	01.2325	520017	01.1732	520082	01.2527
500033	01.2734	500097	01.0176	510033	01.2011	520018	01.0090	520083	01.5188
500034	00.9882	500098	00.8922	510035	01.1091	520019	01.2371	520084	01.0589
500035	01.4801	500101	00.9378	510038	01.1587	520020	01.3679	520087	01.4975
500036	01.2371	500102	00.9040	510038	01.0545	520021	01.1697	520088	01.1750
500037	01.2274	500104	01.2310	510039	01.2607	520024	01.0148	520089	01.3392
500039	01.2849	500106	00.9065	510040	01.0505	520025	01.1133	520090	01.1188
500041	01.1951	500107	01.1207	510043	01.0207	520026	01.0089	520091	01.2723
500042	01.2567	500108	01.6179	510046	01.2713	520027	01.1542	520092	01.1257
500043	01.2402	500110	01.2163	510047	01.1236	520028	01.2756	520094	01.1800
500044	01.9055	500114	00.9746	510048	01.1380	520029	00.9058	520095	01.2565
500045	01.2260	500118	01.1347	510050	01.2237	520030	01.4587	520096	01.3071
500048	00.9232	500119	01.2509	510053	01.0085	520031	01.1116	520097	01.2207
500049	01.2408	500122	01.2278	510055	01.1678	520032	01.1261	520098	01.6024
500050	01.3023	500123	01.0304	510058	01.1809	520033	01.1918	520100	01.2230
500051	01.6743	500124	01.2990	510059	01.1927	520034	01.1461	520101	01.1338
500052	01.2296	500125	00.9082	510060	01.1639	520035	01.2387	520102	01.2575
500053	01.2295	500127	00.9825	510061	01.1303	520037	01.5642	520103	01.2858
500054	01.7635	500129	01.6380	510062	01.1696	520038	01.2281	520104	00.9830
500055	00.9846	500132	00.8537	510063	01.0729	520039	01.0216	520105	01.0010
500057	01.2095	500134	00.5609	510065	01.0020	520040	01.3823	520107	01.2745
500058	01.2488	500135	01.1417	510066	01.0954	520041	01.1000	520109	01.0969
500059	01.1123	500137	00.8152	510067	01.2202	520042	01.0288	520110	01.0150
500060	01.1726	500138	02.3026	510068	01.1588	520044	01.3639	520111	01.1077
500061	01 0159	500139	01.3082	510070	01.1453	520045	01.6259	520112	01.0814
500062	01.0344	500141	01.3048	510071	01.3277	520047	00.9828	520113	01.2023

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1990

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1990 PAGE 23 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
520114	01.1263	530008	01.0612						
520115	01.3094	530009	00.9084						
520116	01.1484	530010	01.1537						
520117	01.0443	530011	01.1589						
520118	00.9459	530012	01.8071						
520120	01.0286	530014	01.0934						
520121	01.0149	530015	01.0478						
520122	01.0149	530016	01.0802						
520123	00.9753	530017	01.0214						
520124	01.0825	530018	01.1228						
520130	01.0020	530019	00.9784						
520131	01.1114	530022	01.0822						
520132	01.2163	530023	00.8722						
520134	01.1462	530024	00.9485						
520135	00.9816	530025	01.1972						
520136	01.4237	530026	01.0122						
520138	01.7075	530027	00.9238						
520139	01.2306	530029	00.9014						
520140	01.3368	530031	01.0070						
520141	01.1332								
520142	00.9341								
520144	00.8953								
520145	01.0074								
520146	01.1136								
520148	01.1327								
520149	01.1407								
520151	01.0792								
520152	01.1206								
520153	01.1186								
520154	01..1229								
520156	01.0636								
520157	01.0428								
520159	00.9269								
520160	01.7232								
520161	01.1199								
520170	01.2088								
520171	00.9786								
520173	01.0720								
520174	01.3858								
520176	00.8335								
520177	01.4220								
520178	01.1378								
520180	00.6410								
530001	01.2547								
530002	01.2136								
530003	00.9593								
530004	00.9913								
530005	01.0419								
530006	01.1370								
530007	01.0510								

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH DECEMBER 1990

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TABLE 4A.—WAGE INDEX FOR URBAN AREAS

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Abilene, TX	0.9442
Taylor, TX	
Aguadilla, PR	0.4574
Aguada, PR	
Aguadilla, PR	
Isabella, PR	
Moca, PR	
Akron, OH	0.9386
Portage, OH	
Summit, OH	
Albany, GA	0.8061
Dougherty, GA	
Lee, GA	
Albany-Schenectady-Troy, NY	0.8935
Albany, NY	
Greene, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Albuquerque, NM	1.0138
Bernalillo, NM	
Alexandria, LA	0.8287
Rapides, LA	
Allentown-Bethlehem-Easton, PA-NJ	0.9458
Warren, NJ	
Carbon, PA	
Lehigh, PA	
Northampton, PA	
Altoona, PA	0.9251
Blair, PA	
Amarillo, TX	0.8782
Potter, TX	
Randall, TX	
*Anaheim-Santa Ana, CA	1.1825
Orange, CA	
Anchorage, AK	1.4186
Anchorage, AK	
Anderson, IN	1.0127
Madison, IN	
Anderson, SC	0.7256
Anderson, SC	
Ann Arbor, MI	1.1400
Washtenaw, MI	
Anniston, AL	0.7942
Calhoun, AL	
Appleton-Oshkosh-Neenah, WI	0.9233
Calumet, WI	
Outgamie, WI	
Winnebago, WI	
Arecibo, PR	0.3959
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
Quebradillas, PR	
Asheville, NC	0.8751
Buncombe, NC	
Athens, GA	0.8220
Clarke, GA	
Jackson, GA	
Madison, GA	
Oconee, GA	
*Atlanta, GA	0.9609
Barrow, GA	
Butts, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
Atlantic City, NJ	1.0521
Atlantic, NJ	
Cape May, NJ	
Augusta, GA-SC	0.9414
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Aurora-Elgin, IL	0.9604
Kane, IL	
Kendall, IL	
Austin, TX	0.9612
Hays, TX	
Travis, TX	
Williamson, TX	
Bakersfield, CA	1.0883
Kern, CA	
*Baltimore, MD	1.0176
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
Bangor, ME	0.9078
Penobscot, ME	
Baton Rouge, LA	0.9101
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
Battle Creek, MI	0.9112
Calhoun, MI	
Beaumont-Port Arthur, TX	0.9617
Hardin, TX	
Jefferson, TX	
Orange, TX	
Beaver County, PA	1.0179
Beaver, PA	
Bellingham, WA	1.0511
Whatcom, WA	
Benton Harbor, MI	0.7717
Berrien, MI	
*Bergen-Passaic, NJ	1.0310
Bergen, NJ	
Passaic, NJ	
Billings, MT	0.9338
Yellowstone, MT	
Biloxi-Gulfport, MS	0.8073
Hancock, MS	
Harrison, MS	
Binghamton, NY	0.9273
Broome, NY	
Tioga, NY	
Birmingham, AL	0.8782
Blount, AL	
Jefferson, AL	
Saint Clair, AL	
Shelby, AL	
Walker, AL	
Bismarck, ND	0.6825
Burleigh, ND	
Morton, ND	
Bloomington, IN	0.7815
Monroe, IN	
Bloomington-Normal, IL	0.8671
McLean, IL	
Boise City, ID	1.0125
Ada, ID	
*Boston-Lawrence-Salem-Lowell-Brockton, MA	1.1826
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Boulder-Longmont, CO	1.0163
Boulder, CO	
Bradenton, FL	0.8633
Manatee, FL	
Brazoria, TX	0.9199
Brazoria, TX	
Bremerton, WA	(1)
Kitsap, WA	
Bridgeport-Stamford-Norwalk-Danbury, CT	1.2049
Fairfield, CT	
Brownsville-Harlingen, TX	0.8613
Cameron, TX	
Bryan-College Station, TX	0.9502
Brazos, TX	
Buffalo, NY	0.8921
Erie, NY	
Burlington, NC	(1)
Alamance, NC	
Burlington, VT	0.9371
Chittenden, VT	
Grand Isle, VT	
Caguas, PR	0.4594
Caguas, PR	
Gurabo, PR	
San Lorenz, PR	
Aguas Buenas, PR	
Cayey, PR	
Cidra, PR	
Canton, OH	0.8106
Carroll, OH	
Stark, OH	
Casper, WY	0.8903
Natrona, WY	
Cedar Rapids, IA	(1)
Linn, IA	
Champaign-Urbana-Rantoul, IL	0.8757
Champaign, IL	
Charleston, SC	0.8343
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
Charleston, WV	0.9706
Kanawha, WV	
Putnam, WV	
*Charlotte-Gastonia-Rock Hill, NC-SC	0.9499
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Union, NC	
York, SC	
Charlottesville, VA	0.9628

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TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Albemarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
Chattanooga, TN–GA	0.9211
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
Sequatchie, TN	
Cheyenne, WY	0.7919
Laramie, WY	
*Chicago, IL	1.0532
Cook, IL	
Du Page, IL	
McHenry, IL	
Chico, CA	1.0631
Butte, CA	
*Cincinnati, OH-KY-IN	0.9834
Dearborn, IN	
Boone, KY	
Campbell, KY	
Kenton, KY	
Clermont, OH	
Hamilton, OH	
Warren, OH	
Clarksville-Hopkinsville, TN-KY	0.7330
Christian, KY	
Montgomery, TN	
*Cleveland, OH	1.0754
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Medina, OH	
Colorado Springs, CO	0.9830
El Paso, CO	
Columbia, MO	0.9520
Boone, MO	
Columbia, SC	0.8953
Lexington, SC	
Richland, SC	
Columbia, GA-AL	0.7581
Russell, AL	
Chattahoochee, GA	
Muscogee, GA	
*Columbus, OH	0.9667
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
Union, OH	
Corpus Christi, TX	0.8606
Nueces, TX	
San Patricio, TX	
Cumberland, MD-WV	0.8199
Allegany, MD	
Mineral, WV	
*Dallas, TX	0.9378
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Kaufman, TX	
Rockwall, TX	
Danville, VA	0.7517
Danville City, VA	
Pittsylvania, VA	
Davenport-Rock Island-Moline, IA-IL	0.8482
Scott, IA	
Henry, IL	
Rock Island, IL	
Dayton-Springfield, OH	0.9533
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
Daytona Beach, FL	0.8956
Volusia, FL	
Decatur, AL	0.7497
Lawrence, AL	
Morgan, AL	
Decatur, IL	0.8298
Macon, IL	
*Denver, CO	1.0773
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
Des Moines, IA	0.9184
Dallas, IA	
Polk, IA	
Warren, IA	
*Detroit, MI	1.0643
Lapeer, MI	
Livingston, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
Saint Clair, MI	
Wayne, MI	
Dothan, AL	0.7580
Dale, AL	
Houston, AL	
Dubuque, IA	0.8386
Dubuque, IA	
Duluth, MN-WI	0.9531
St. Louis, MN	
Douglas, WI	
Eau Claire, WI	0.8499
Chippewa, WI	
Eau Claire, WI	
El Paso, TX	0.8726
El Paso, TX	
Elkhart-Goshen, IN	0.6593
Elkhart, IN	
Elmira, NY	0.8823
Chemung, NY	
Enid, OK	0.8925
Garfield, OK	
Erie, PA	0.9166
Erie, PA	
Eugene-Springfield, OR	1.0178
Lane, OR	
Evansville, IN-KY	0.9289
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
Fargo-Moorhead, ND–MN	0.9720
Clay, MN	
Cass, ND	
Fayetteville, NC	0.8307
Cumberland, NC	
Fayetteville-Springdale, AR	0.8001
Washington, AR	
Flint, MI	1.1560
Genesee, MI	
Florence, AL	0.7892
Colbert, AL	
Lauderdale, AL	
Florence, SC	0.8440
Florence, SC	
Fort Collins-Loveland, CO	1.0252
Larimor, CO	
*Fort Lauderdale-Hollywood-Pompano Beach, FL	1.0366
Broward, FL	
Fort Myers-Cape Coral, FL	0.9813
Lee, FL	
Fort Pierce, FL	1.1056
Martin, FL	
St. Lucie, FL	
Fort Smith, AR–OK	0.7943
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
Fort Walton Beach, FL	0.8954
Okaloosa, FL	
Fort Wayne, IN	0.8914
Allen, IN	
De Kalb, IN	
Whitley, IN	
*Fort Worth-Arlington, TX	0.9537
Johnson, TX	
Parker, TX	
Tarrant, TX	
Fresno, CA	1.0752
Fresno, CA	
Gadsden, AL	0.8210
Etowah, AL	
Gainesville, FL	0.8811
Alachua, FL	
Bradford, FL	
Galveston-Texas City, TX	0.9444
Galveston, TX	
Gary-Hammond, IN	0.9853
Lake, IN	
Porter, IN	
Glens Falls, NY	0.9477
Warren, NY	
Washington, NY	
Grand Forks, ND	0.9591
Grand Forks, ND	
Grand Rapids, MI	0.9697
Kent, MI	
Ottawa, MI	
Great Falls, MT	1.0006
Cascade, MT	
Greeley, CO	0.9371
Weld, CO	
Green Bay, WI	0.9599
Brown, WI	
Greensboro-Winston-Salem-High Point, NC	0.8764
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
Greenville-Spartanburg, SC	0.8916
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
Hagerstown, MD	0.9170
Washington, MD	
Hamilton-Middletown, OH	0.9166
Butler, OH	
Harrisburg-Lebanon-Carlisle, PA	0.9932
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
*Hartford-Middletown-New Britain-Bristol, CT	1.1933
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
Hickory, NC	0.9814

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Alexander, NC	
Burke, NC	
Catawba, NC	
Honolulu, HI	1.1597
Honolulu, HI	
Houma-Thibodaux, LA	0.7189
Lafourche, LA	
Terrebonne, LA	
*Houston, TX	0.9793
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
Huntington-Ashland, WV–KY–OH	0.9451
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
Huntsville, A'	0.8847
Madison,	
*Indianapolis	0.9580
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
Iowa City, IA	0.9541
Johnson, IA	
Jackson, MI	0.8836
Jackson, MI	
Jackson, MS	0.7744
Hinds, MS	
Madison, MS	
Rankin, MS	
Jackson, TN	0.7984
Madison, TN	
Jacksonville, FL	0.9063
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
Jacksonville, NC	0.7164
Onslow, NC	
Jamestown-Dunkirk, NY	0.7394
Chatauqua, NY	
Janesville-Beloit, WI	0.8739
Rock, WI	
Jersey City, NJ	1.0541
Hudson, NJ	
Johnson City-Kingsport-Bristol, TN–VA	0.8680
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
Johnstown, PA	0.8866
Cambria, PA	
Somerset, PA	
Joliet, IL	1.0293
Grundy, IL	
Will, IL	
Joplin, MO	0.7892
Jasper, MO	
Newton, MO	
Kalamazoo, MI	1.1726
Kalamazoo, MI	
Kankakee, IL	0.8900
Kankakee, IL	
*Kansas City, KS–MO	0.9802
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
Kenosha, WI	0.8867
Kenosha, WI	
Killeen-Temple, TX	1.1311
Bell, TX	
Coryell, TX	
Knoxville, TN	0.8705
Anderson, TN	
Blount, TN	
Grainger, TN	
Jefferson, TN	
Knox, TN	
Sevier, TN	
Union, TN	
Kokomo, IN	0.9449
Howard, IN	
Tipton, IN	
LaCrosse, WI	0.8968
LaCrosse, WI	
Lafayette, LA	0.8257
Lafayette, LA	
St. Martin, LA	
Lafayette, IN	0.8444
Tippecanoe, IN	
Lake Charles, LA	0.8366
Calcasieu, LA	
Lake County, IL	0.9932
Lake, IL	
Lakeland-Winter Haven, FL	0.8182
Polk, FL	
Lancaster, PA	0.9271
Lancaster, PA	
Lansing-East Lansing, MI	1.0237
Clinton, MI	
Eaton, MI	
Ingham, MI	
Laredo, TX	0.7298
Webb, TX	
Las Cruces, NM	0.7920
Dona Ana, NM	
Las Vegas, NV	1.0646
Clark, NV	
Lawrence, KS	0.8949
Douglas, KS	
Lawton, OK	0.8400
Comanche, OK	
Lewiston-Auburn, ME	0.9070
Androscoggin, ME	
Lexington-Fayette, KY	0.8458
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Scott, KY	
Woodford, KY	
Lima, OH	0.8103
Allen, OH	
Auglaize, OH	
Lincoln, NE	0.9968
Lancaster, NE	
Little Rock-North Little Rock, AR	0.8432
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
Longview-Marshall, TX	0.8703
Gregg, TX	
Harrison, TX	
Lorain-Elyria, OH	0.8952
Lorain, OH	
*Los Angeles-Long Beach, CA	1.2372
Los Angeles, CA	
Louisville, KY-IN	0.9104
Clark, IN	
Floyd, IN	
Harrison, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
Shelby, KY	
Lubbock, TX	0.8802
Lubbock, TX	
Lynchburg, VA	0.8558
Amherst, VA	
Campbell, VA	
Lynchburg City, VA	
Macon-Warner Robins, GA	0.8816
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Madison, WI	1.0325
Dane, WI	
Manchester-Nashua, NH	1.0242
Hillsborough, NH	
Merrimack, NH	
Mansfield, OH	0.8404
Richland, OH	
Mayaguez, PR	0.4776
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
San German, PR	
McAllen-Edinburg-Mission, TX	0.7726
Hidalgo, TX	
Medford, OR	1.0059
Jackson, OR	
Melbourne-Titusville, FL	0.9212
Brevard, FL	
Memphis, TN-AR-MS	0.9072
Crittenden, AR	
De Soto, MS	
Shelby, TN	
Tipton, TN	
Merced, CA	1.0326
Merced, CA	
*Miami-Hialeah, FL	1.0203
Dade, FL	
Middlesex-Somerset-Hunterdon, NJ	1.0415
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
Midland, TX	1.0391
Midland, TX	
*Milwaukee, WI	0.9732
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
*Minneapolis-St. Paul, MN-WI	1.0833

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TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Washington, MN	
Wright, MN	
St. Croix, WI	
Mobile, AL	0.8331
Baldwin, AL	
Mobile, AL	
Modesto, CA	1.1599
Stanislaus, CA	
Monmouth-Ocean, NJ	0.9914
Monmouth, NJ	
Ocean, NJ	
Monroe, LA	0.7875
Ouachita, LA	
Montgomery, AL	0.7749
Autauga, AL	
Elmore, AL	
Montgomery, AL	
Muncie, IN	0.8079
Delaware, IN	
Muskegon, MI	0.9496
Muskegon, MI	
Naples, FL	1.0338
Collier, FL	
Nashville, TN	0.9410
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford, TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
*Nassau-Suffolk, NY	1.2657
Nassau, NY	
Suffolk, NY	
New Bedford-Fall River-Attleboro, MA	1.0016
Bristol, MA	
New Haven-Waterbury-Meriden, CT	1.2112
New Haven, CT	
New London-Norwich, CT	1.1566
New London, CT	
*New Orleans, LA	0.8913
Jefferson, LA	
Orleans, LA	
St. Bernard, LA	
St. Charles, LA	
St. John The Baptist, LA	
St. Tammany, LA	
*New York, NY	1.3491
Bronx, NY	
Kings, NY	
New York City, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
*Newark, NJ	1.1248
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Niagara Falls, NY	0.7571
Niagara, NY	
*Norfolk-Virginia Beach-Newport News, VA	0.8527

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
James City Co., VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
*Oakland, CA	1.4225
Alameda, CA	
Contra Costa, CA	
Ocala, FL	0.8626
Marion, FL	
Odessa, TX	1.0987
Ector, TX	
Oklahoma City, OK	0.9157
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
Olympia, WA	1.1017
Thurston, WA	
Omaha, NE-IA	0.9002
Pottawattamie, IA	
Douglas, NE	
Sarpy, NE	
Washington, NE	
Orange County, NY	0.9703
Orange, NY	
Orlando, FL	0.9634
Orange, FL	
Osceola, FL	
Seminole, FL	
Owensboro, KY	0.8126
Daviess, KY	
Oxnard-Ventura, CA	1.2102
Ventura, CA	
Panama City, FL	0.8645
Bay, FL	
Parkersburg-Marietta, WV-OH	0.8552
Washington, OH	
Wood, WV	
Pascagoula, MS	0.8767
Jackson, MS	
Pensacola, FL	0.8636
Escambia, FL	
Santa Rosa, FL	
Peoria, IL	0.8722
Peoria, IL	
Tazewell, IL	
Woodford, IL	
*Philadelphia, PA-NJ	1.0967
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
*Phoenix, AZ	1.0443
Maricopa, AZ	
Pine Bluff, AR	0.7883
Jefferson, AR	
*Pittsburgh, PA	1.0142

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Allegheny, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
Pittsfield, MA	1.0797
Berkshire, MA	
Ponce, PR	0.4608
Juana Diaz, PR	
Ponce, PR	
Portland, ME	0.9305
Cumberland, ME	
Sagadahoc, ME	
York, ME	
*Portland, OR	1.1589
Clackamas, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Portsmouth-Dover-Rochester, NH	1.0120
Rockingham, NH	
Strafford, NH	
Poughkeepsie, NY	1.0462
Dutchess, NY	
*Providence-Pawtucket-Woonsocket, RI	1.0662
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
Provo-Orem, UT	1.0244
Utah, UT	
Pueblo, CO	0.8734
Pueblo, CO	
Racine, WI	0.8742
Racine, WI	
Raleigh-Durham, NC	0.9478
Durham, NC	
Franklin, NC	
Orange, NC	
Wake, NC	
Rapid City, SD	0.8412
Pennington, SD	
Reading, PA	0.9103
Berks, PA	
Redding, CA	1.0564
Shasta, CA	
Reno, NV	1.1634
Washoe, NV	
Richland-Kennewick, WA	0.9415
Benton, WA	
Franklin, WA	
Richmond-Petersburg, VA	0.9430
Charles City Co., VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
*Riverside-San Bernardino, CA	1.1067
Riverside, CA	
San Bernardino, CA	
Roanoke, VA	0.8296
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
Rochester, MN	1.1045

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Olmsted, MN	
Rochester, NY	0.9724
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
Rockford, IL	0.9296
Boone, IL	
Winnebago, IL	
*Sacramento, CA	1.2249
Eldorado, CA	
Placer, CA	
Sacramento, CA	
Yolo, CA	
Saginaw-Bay City-Midland, MI	1.0466
Bay, MI	
Midland, MI	
Saginaw, MI	
St. Cloud, MN	0.8995
Benton, MN	
Sherburne, MN	
Stearns, MN	
St. Joseph, MO	0.9427
Buchanan, MO	
*St. Louis, MO–IL	0.9401
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Salem, OR	1.0460
Marion, OR	
Polk, OR	
Salinas-Seaside-Monterey, CA	1.3059
Monterey, CA	
*Salt Lake City-Ogden, UT	0.9946
Davis, UT	
Salt Lake, UT	
Weber, UT	
San Angelo, TX	0.8151
Tom Green, TX	
*San Antonio, TX	0.8454
Bexar, TX	
Comal, TX	
Guadalupe, TX	
*San Diego, CA	1.1951
San Diego, CA	
*San Francisco, CA	1.4531
Marin, CA	
San Francisco, CA	
San Mateo, CA	
*San Jose, CA	1.4668
Santa Clara, CA	
*San Juan, PR	0.4094
Barcelona, PR	
Bayoman, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Corozal, PR	

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (constituent counties or county equivalents)	Wage index
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trujillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Santa Barbara-Santa Maria-Lompoc, CA	1.1785
Santa Barbara, CA	
Santa Cruz, CA	1.1835
Santa Cruz, CA	
Santa Fe, NM	0.9175
Los Alamos, NM	
Santa Fe, NM	
Santa Rosa-Petaluma, CA	1.2975
Sonoma, CA	
Sarasota, FL	0.9795
Sarasota, FL	
Savannah, GA	0.8339
Chatham, GA	
Effingham, GA	
Scranton-Wilkes Barre, PA	0.8928
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Monroe, PA	
Wyoming, PA	
*Seattle, WA	1.0606
King, WA	
Snohomish, WA	
Sharon, PA	0.9184
Mercer, PA	
Sheboygan, WI	0.8884
Sheboygan, WI	
Sherman-Denison, TX	0.9101
Grayson, TX	
Shreveport, LA	0.9312
Bossier, LA	
Caddo, LA	
Sioux City, IA–NE	0.8516
Woodbury, IA	
Dakota, NE	
Sioux Falls, SD	0.8845
Minnehaha, SD	
South Bend-Mishawaka, IN	1.0081
St. Joseph, IN	
Spokane, WA	1.0706
Spokane, WA	
Springfield, IL	0.9308
Menard, IL	
Sangamon, IL	
Springfield, MO	0.8093
Christian, MO	
Greene, MO	
Springfield, MA	0.9636
Hampden, MA	
Hampshire, MA	

TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (constituent counties or county equivalents)	Wage index
State College, PA	0.9915
Centre, PA	
Steubenville-Weirton, OH–WV	0.8724
Jefferson, OH	
Brooke, WV	
Hancock, WV	
Stockton, CA	1.1629
San Joaquin, CA	
Syracuse, NY	0.9575
Madison, NY	
Onondaga, NY	
Oswego, NY	
Tacoma, WA	1.0214
Pierce, WA	
Tallahassee, FL	0.9233
Gadsden, FL	
Leon, FL	
*Tampa-St. Petersburg-Clearwater, FL	0.9201
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
Terre Haute, IN	0.8770
Clay, IN	
Vigo, IN	
Texarkana-TX-Texarkana, AR	0.7903
Miller, AR	
Bowie, TX	
Toledo, OH	1.0036
Fulton, OH	
Lucas, OH	
Wood, OH	
Topeka, KS	0.9315
Shawnee, KS	
Trenton, NJ	1.0221
Mercer, NJ	
Tucson, AZ	0.9633
Pima, AZ	
Tulsa, OK	0.8544
Creeks, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
Tuscaloosa, AL	0.8533
Tuscaloosa, AL	
Tyler, TX	0.9644
Smith, TX	
Utica-Rome, NY	0.8335
Herkimer, NY	
Oneida, NY	
Vallejo-Fairfield-Napa, CA	1.2935
Napa, CA	
Solano, CA	
Vancouver, WA	1.0614
Clark, WA	
Victoria, TX	0.9006
Victoria, TX	
Vineland-Millville-Bridgeton, NJ	0.9773
Cumberland, NJ	
Visalia-Tulare-Porterville, CA	1.0407
Tulare, CA	
Waco, TX	0.7825
McLennan, TX	
*Washington, DC-MD-VA	1.0956
District of Columbia, DC	

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TABLE 4A.—WAGE INDEX FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk.]

Urban area (constituent counties or county equivalents)	Wage index
Calvert, MD Charles, MD Frederick, MD Montgomery, MD Prince Georges, MD Alexandria City, VA Arlington, VA Fairfax, VA Fairfax City, VA Falls Church City, VA Loudoun, VA Manassas City, VA Manassas Park City, VA Prince William, VA Stafford, VA	
Waterloo-Cedar Falls, IA	0.9054
Black Hawk, IA Bremer, IA	
Wausau, WI	0.9762
Marathon, WI	
West Palm Beach-Boca Raton-Delray Beach, FL	1.0092
Palm Beach, FL	
Wheeling, WV-OH	0.7741
Belmont, OH Marshall, WV Ohio, WV	
Wichita, KS	0.9629
Butler, KS Harvey, KS Sedgwick, KS	
Wichita Falls, TX	0.8183
Wichita, TX	
Williamsport, PA	0.8808
Lycoming, PA	
Wilmington, DE-NJ-MD	1.0694
New Castle, DE Cecil, MD Salem, NJ	
Wilmington, NC	0.9724
New Hanover, NC	
Worcester-Fitchburg-Leominster, MA	1.0899
Worcester, MA	
Yakima, WA	1.0125
Yakima, WA	
York, PA	0.9174
Adams, PA York, PA	
Youngstown-Warren, OH	0.9060
Mahoning, OH Trumbull, OH	
Yuba City, CA	1.0181
Sutter, CA Yuba, CA	
Yuma, AZ	0.9998
Yuma, AZ	

[1] All hospitals within this urban area have been reclassified to another urban area.

TABLE 4B—WAGE INDEX FOR RURAL AREAS

Nonurban area	Wage index
Alabama	0.7131
Alaska	1.2838
Arizona	0.8808
Arkansas	0.8976
California	1.0134
Colorado	0.8420
Connecticut	1.1922
Delaware	0.9584
Florida	0.8743
Georgia	0.7774
Hawaii	0.9831
Idaho	0.8965
Illinois	0.7710
Indiana	0.7779
Iowa	0.7517
Kansas	0.7457
Kentucky	0.7809
Louisiana	0.7395
Maine	0.8691
Maryland	0.8073
Massachusetts	1.1739
Michigan	0.8826
Minnesota	0.8320
Mississippi	0.8057
Missouri	0.7221
Montana	0.8605
Nebraska	0.7695
Nevada	0.9716
New Hampshire	0.9560
New Jersey [1]	
New Mexico	0.8328
New York	0.8497
North Carolina	0.7863
North Dakota	0.7729
Ohio	0.8442
Oklahoma	0.7411
Oregon	0.9820
Pennsylvania	0.8697
Puerto Rico	0.4339
Rhode Island [1]	
South Carolina	0.7584
South Dakota	0.7178
Tennessee	0.7349
Texas	0.7595
Utah	0.9057
Vermont	0.9242
Virginia	0.7826
Washington	0.9649
West Virginia	0.8505
Wisconsin	0.8480
Wyoming	0.8480

[1] All counties within the State are classified urban.

TABLE 4C—WAGE INDEX FOR HOSPITALS THAT ARE RECLASSIFIED

Area reclassified to	Wage index
Abilene, TX	0.8442
Akron, OH	0.9071
Albany, GA	0.7774
Albany-Schenectady-Troy, NY	0.8665
Albany-Schenectady-Troy, NY (Vermont Hospitals)	0.8842
Albuquerque, NM	0.9098
Alexandria, LA	0.8287
Allentown-Bethlehem-Easton, PA-NJ	0.9468
Altoona, PA	0.9284
Amarillo, TX	0.8782
Anaheim-Santa Ana, CA	1.1826
Anchorage, AK	1.4086
Anderson, IN	0.8740
Ann Arbor, MI	1.1116
Appleton-Oshkosh-Neenah, WI	0.9007
Asheville, NC	0.8548
Atlanta, GA	0.9809
Augusta, GA-SC	0.9414
Aurora-Elgin, IL	0.9604
Baltimore, MD	1.0170
Bangor, ME	0.9078
Baton Rouge, LA	0.9101
Battle Creek, MI	0.9112
Beaver County, PA	0.9586
Benton Harbor, MI	0.8826
Billings, MT	0.8757
Biloxi-Gulfport, MS	0.7971
Binghamton, NY	0.9153
Bismarck, ND	0.8296
Bloomington, IN	0.7975
Boise City, ID	1.0135
Boston-Lawrence-Salem-Lowell-Brockton, MA	1.1838
Buffalo, NY	0.9681
Burlington, VT	0.9057
Burlington, VT (Vermont Hospitals)	0.8842
Caguas, PR	0.4086
Canton, OR	0.9442
Charleston, SC	0.8185
Charleston, WV	0.8796
Charlotte-Gastonia-Rock Hill, NC-SC	0.8489
Charlottesville, VA	0.9287
Chattanooga, TN-GA	0.9088
Cheyenne, WY	0.7728
Chicago, IL	1.0562
Chico, CA	1.0834
Cincinnati, OH-KY-IN	0.9694
Cleveland, OH	1.0552
Columbia, MO	0.9311
Columbus, OH	0.9584
Dallas, TX	0.9378
Davenport-Rock Island-Moline, IA-IL	0.8652
Dayton-Springfield, OH	0.9533
Denver, CO	1.0273
Des Moines, IA	0.9164
Detroit, MI	1.0643
Dothan, AL	0.7599
Dubuque, IA	0.8152
Dubuque, IA (Wisconsin Hospitals)	0.8499
Duluth, MN-WI	0.9531
Eau Claire, WI	0.8499
Elkhart-Goshen, IN	0.8568
Elmira, NY	0.8708
Enid, OK	0.8692
Eugene-Springfield, OR	1.0178
Evansville, IN-KY	0.9398
Fargo-Moorhead, ND-MN	0.9695
Fayetteville, NC	0.7869
Fayetteville-Springdale, AR	0.8091
Flint, MI	1.1352
Florence, AL	0.7892
Florence, SC	0.8449
Fort Lauderdale-Hollywood-Pompano Beach, FL	1.0088
Fort Meyers-Cape Coral, FL	0.9813
Fort Pierce, FL	1.0318
Fort Walton Beach, FL	0.9054
Fort Wayne, IN	0.9270
Fort Worth-Arlington, TX	0.9537
Fresno, CA	1.0752
Galveston-Texas City, TX	0.9444
Glens Falls, NY	0.9477
Grand Forks, ND	0.9226
Grand Rapids, MI	0.9697
Great Falls, MT	0.9935
Greeley, CO	0.9971
Green Bay, WI	0.9443
Greensboro-Winston-Salem-High Point, NC	0.8648
Greenville-Spartanburg, SC	0.8996
Hagerstown, MD	0.8913
Harrisburg-Lebanon-Carlisle, PA	0.9068
Hartford-Middletown-New Britain-Bristol, CT	1.1831
Hickory, NC	0.8598
Honolulu, HI	1.1597
Houston, TX	0.9793
Huntington-Ashland, WV-KY-OH	0.9209
Huntsville, AL	0.8363
Indianapolis, IN	0.9580

TABLE 4C—WAGE INDEX FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area reclassified to	Wage index
Iowa City, IA	0.9340
Jackson, MI	0.8838
Jackson, MS	0.7744
Jackson, TN	0.7984
Jacksonville, FL	0.9083
Johnson City-Kingsport-Bristol, TN-VA	0.8680
Joliet, IL	1.0171
Joplin, MO	0.7892
Kalamazoo, MI	1.1332
Kansas City, KS-MO	0.9602
Knoxville, TN	0.8705
Kokomo, IN	0.9254
LaCrosse, WI	0.8966
Lafayette, LA	0.8257
Lafayette, IN	0.8444
Lake Charles, LA	0.8386
Lancaster, PA	0.9106
Lansing-East Lansing, MI	1.0125
Las Vegas, NV	1.0646
Lawton, OK	0.8231
Lexington-Fayette, KY	0.8335
Lima, OH	0.8442
Lincoln, NE	0.8585
Little Rock-North Little Rock, AR	0.8432
Longview-Marshall, TX	0.8703
Lorain-Elyria, OH	0.8952
Los Angeles-Long Beach, CA	1.2372
Louisville, KY-IN	0.8987
Lubbock, TX	0.8802
Lynchburg, VA	0.8401
Macon-Warner Robins, GA	0.8818
Madison, WI	1.0127
Manchester-Nashua, NH	1.0242
Mansfield, OH	0.8442
Medford, OR	0.9896
Memphis, TN-AR-MS	0.9072
Midland, TX	1.0391
Milwaukee, WI	0.9732
Minneapolis-St. Paul, MN-WI	1.0633
Mobile, AL	0.8331
Modesto, CA	1.1599
Monroe, LA	0.7767
Montgomery, AL	0.7749
Muncie, IN	0.8079
Muskegon, MI	0.9496
Nashville, TN	0.9410
New London-Norwich, CT	1.1279
New Orleans, LA	0.8913
New York, NY	1.3491
Oakland, CA	1.4225
Oklahoma City, OK	0.9157
Olympia, WA	1.1017
Omaha, NE-IA	0.9002
Orange County, NY	0.9703
Orlando, FL	0.9634
Owensboro, KY	0.8126
Oxnard-Ventura, CA	1.2102
Parkersburg-Marietta, WV-OH	0.8552
Peoria, IL	0.8722
Philadelphia, PA-NJ	1.0967
Phoenix, AZ	1.0443
Pine Bluff, AR	0.7768
Pittsburgh, PA	1.0142
Portland, ME	0.9305
Portland, OR	1.1589
Poughkeepsie, NY	1.0462
Provo-Orem, UT	1.0244
Raleigh-Durham, NC	0.9278
Rapid City, SD	0.8412
Reading, PA	0.8736
Redding, CA	1.0564
Reno, NV	1.1454
Roanoke, VA	0.8296
Rochester, NY	0.9599
Rockford, IL	0.9084
Saginaw-Bay City-Midland, MI	1.0159
St. Cloud, MN	0.8995
St. Louis, MO-IL	0.9401
Salem, OR	1.0326
Salinas-Seaside-Monterey, CA	1.2917
San Antonio, TX	0.8454
San Francisco, CA	1.4556
Santa Barbara-Santa Maria-Lompoc, CA	1.1785
Santa Fe, NM	0.9175
Santa Rosa-Petaluma, CA	1.2646
Sarasota, FL	0.9596
Scranton-Wilkes Barre, PA	0.8926
Seattle, WA	1.0886
Sharon, PA	0.8948
Sheboygan, WI	0.8735
Shreveport, LA	0.9312
Sioux City, IA-NE	0.8335
South Bend-Mishawaka, IN	0.9777
Springfield, IL	0.9206
Springfield, MO	0.7970
State College, PA	0.9341
Steubenville-Weirton, OH-WV	0.8476
Steubenville-Weirton, OH-WV (West Virginia Hospitals)	0.8505
Syracuse, NY	0.9410
Tacoma, WA	1.0214
Tallahassee, FL	0.8666
Tampa-St. Petersburg-Clearwater, FL	0.9201
Terre Haute, IN	0.8663
Toledo, OH	1.0038
Topeka, KS	0.9105
Tucson, AZ	0.9633
Tulsa, OK	0.8544
Tyler, TX	0.9297
Vancouver, WA	1.0328
Victoria, TX	0.9006
Waco, TX	0.7825
Waterloo-Cedar Falls, IA	0.8654
Wausau, WI	0.9218
West Palm Beach-Boca Raton-Delray Beach, FL	1.0092
Wichita, KS	0.9636
Wichita Falls, TX	0.8183
Williamsport, PA	0.8713
Yakima, WA	1.0125
Youngstown-Warren, OH	0.9568
Rural Georgia	0.7774
Rural Illinois	0.7710
Rural Indiana	0.7779
Rural Iowa	0.7517
Rural Kansas	0.7457
Rural Kentucky	0.7809
Rural Louisiana	0.7395
Rural Michigan	0.8826
Rural Minnesota	0.8320
Rural Missouri	0.7221
Rural New Hampshire	0.9560
Rural North Carolina	0.7863
Rural Ohio	0.8442
Rural Oklahoma	0.7411
Rural Pennsylvania	0.8697
Rural South Dakota	0.7178
Rural Utah	0.9057
Rural Washington	0.9649
Rural West Virginia	0.8505
Rural Wisconsin	0.8480
Rural Wyoming	0.8314

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TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
1	01	SURG	CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA	3.3418	12.2	41
2	01	SURG	CRANIOTOMY FOR TRAUMA AGE >17	3.3220	11.4	40
3	01	SURG	* CRANIOTOMY AGE 0-17	2.8830	12.7	42
4	01	SURG	SPINAL PROCEDURES	2.4232	8.8	30
5	01	SURG	EXTRACRANIAL VASCULAR PROCEDURES	1.8245	5.8	34
6	01	SURG	CARPAL TUNNEL RELEASE	.4848	1.9	17
7	01	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC WITH CC	2.6581	11.5	40
8	01	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC	.7829	3.0	32
9	01	MED	SPINAL DISORDERS & INJURIES	1.2807	7.2	36
10	01	MED	NERVOUS SYSTEM NEOPLASMS WITH CC	1.2811	7.7	37
11	01	MED	NERVOUS SYSTEM NEOPLASMS W/O CC	.7803	4.5	33
12	01	MED	DEGENERATIVE NERVOUS SYSTEM DISORDERS	.9345	6.9	36
13	01	MED	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	.6572	6.7	36
14	01	MED	SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	1.2196	7.1	36
15	01	MED	TRANSIENT ISCHEMIC ATTACK & PRECEREBRAL OCCLUSIONS	.6541	4.1	33
16	01	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	1.0830	6.6	36
17	01	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC	.6315	4.4	33
18	01	MED	CRANIAL & PERIPHERAL NERVE DISORDERS WITH CC	.8958	5.8	35
19	01	MED	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	.5723	3.6	33
20	01	MED	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	1.9272	8.5	37
21	01	MED	VIRAL MENINGITIS	1.4857	7.5	36
22	01	MED	HYPERTENSIVE ENCEPHALOPATHY	.7192	4.3	33
23	01	MED	NONTRAUMATIC STUPOR & COMA	.6786	4.4	33
24	01	MED	SEIZURE & HEADACHE AGE >17 WITH CC	.8783	5.3	34
25	01	MED	SEIZURE & HEADACHE AGE >17 W/O CC	.5273	3.5	28
26	01	MED	SEIZURE & HEADACHE AGE 0-17	.8411	3.4	31
27	01	MED	TRAUMATIC STUPOR & COMA, COMA >1 HR	1.3490	4.3	33
28	01	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 WITH CC	1.2288	8.9	35
29	01	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W/O CC	.5511	3.2	32
30	01	MED	* TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0-17	.3498	2.0	17
31	01	MED	CONCUSSION AGE >17 WITH CC	.7131	4.3	33
32	01	MED	CONCUSSION AGE >17 W/O CC	.4092	2.8	24
33	01	MED	* CONCUSSION AGE 0-17	.2427	1.6	9
34	01	MED	OTHER DISORDERS OF NERVOUS SYSTEM WITH CC	1.1509	5.9	35
35	01	MED	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	.5849	3.7	33

* MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER AND TRANSFER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
36	02	SURG	RETINAL PROCEDURES	.6402	2.1	12
37	02	SURG	ORBITAL PROCEDURES	.7926	2.9	32
38	02	SURG	PRIMARY IRIS PROCEDURES	.3850	2.1	16
39	02	SURG	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	.4711	1.5	8
40	02	SURG	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	.5110	2.0	23
41	02	SURG *	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0-17	.3613	1.6	7
42	02	SURG	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	.6134	2.1	15
43	02	MED	HYPHEMA	.3540	3.6	24
44	02	MED	ACUTE MAJOR EYE INFECTIONS	.6114	5.5	54
45	02	MED	NEUROLOGICAL EYE DISORDERS	.5955	3.5	30
46	02	MED	OTHER DISORDERS OF THE EYE AGE >17 W CC	.6715	4.2	33
47	02	MED	OTHER DISORDERS OF THE EYE AGE >17 W/O CC	.3851	2.7	31
48	02	MED *	OTHER DISORDERS OF THE EYE AGE 0-17	.3988	2.8	30
49	03	SURG	MAJOR HEAD & NECK PROCEDURES	2.2703	7.0	36
50	03	SURG	SIALOADENECTOMY	.6633	2.2	14
51	03	SURG	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	.5881	2.0	17
52	03	SURG	CLEFT LIP & PALATE REPAIR	.7487	2.4	23
53	03	SURG	SINUS & MASTOID PROCEDURES AGE >17	.6811	1.9	20
54	03	SURG *	SINUS & MASTOID PROCEDURES AGE 0-17	.6806	3.2	22
55	03	SURG	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES	.5096	1.8	14
56	03	SURG	RHINOPLASTY	.5489	1.8	15
57	03	SURG	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	.5489	3.4	32
58	03	SURG *	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	.3060	1.5	4
59	03	SURG	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	.4131	1.5	11
60	03	SURG *	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	.2584	1.5	4
61	03	SURG	MYRINGOTOMY W TUBE INSERTION AGE >17	.5180	2.5	32
62	03	SURG *	MYRINGOTOMY W TUBE INSERTION AGE 0-17	.3092	1.3	5
63	03	SURG	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES	1.0818	3.8	33
64	03	MED	EAR, NOSE, MOUTH & THROAT MALIGNANCY	1.1170	5.2	34
65	03	MED	DYSEQUILIBRIUM	.4748	3.3	23
66	03	MED	EPISTAXIS	.4818	3.3	24
67	03	MED	EPIGLOTTITIS	.8787	4.2	33
68	03	MED	OTITIS MEDIA & URI AGE >17 WITH CC	.7284	5.0	33
69	03	MED	OTITIS MEDIA & URI AGE >17 W/O CC	.5189	3.8	23
70	03	MED	OTITIS MEDIA & URI AGE 0-17	.5368	3.2	32

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** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER AND TRANSFER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
71	03	MED	LARYNGOTRACHEITIS	.8298	4.8	34
72	03	MED	NASAL TRAUMA & DEFORMITY	.5648	3.4	32
73	03	MED	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17	.7533	4.1	33
74	03	MED	* OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0-17	.3388	2.1	20
75	04	SURG	MAJOR CHEST PROCEDURES	3.0000	11.5	41
76	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.3756	10.6	40
77	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	1.0388	4.5	34
78	04	MED	PULMONARY EMBOLISM	1.4339	8.7	38
79	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 WITH CC	1.7847	9.2	38
80	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	1.0097	6.7	36
81	04	MED	* RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0-17	1.0899	6.1	35
82	04	MED	RESPIRATORY NEOPLASMS	1.2461	6.7	36
83	04	MED	MAJOR CHEST TRAUMA WITH CC	.9544	6.2	35
84	04	MED	MAJOR CHEST TRAUMA W/O CC	.4854	3.7	32
85	04	MED	PLEURAL EFFUSION WITH CC	1.1663	6.8	36
86	04	MED	PLEURAL EFFUSION W/O CC	.8839	4.3	33
87	04	MED	PULMONARY EDEMA & RESPIRATORY FAILURE	1.3819	6.0	35
88	04	MED	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	.8982	5.9	35
89	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 WITH CC	1.1719	7.1	36
90	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	.7318	5.4	30
91	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE 0-17	.7903	4.1	33
92	04	MED	INTERSTITIAL LUNG DISEASE WITH CC	1.2034	6.8	36
93	04	MED	INTERSTITIAL LUNG DISEASE W/O CC	.8021	5.2	34
94	04	MED	PNEUMOTHORAX WITH CC	1.2494	7.1	36
95	04	MED	PNEUMOTHORAX W/O CC	.6148	4.4	33
96	04	MED	BRONCHITIS & ASTHMA AGE >17 WITH CC	.9505	5.9	35
97	04	MED	BRONCHITIS & ASTHMA AGE >17 W/O CC	.6468	4.6	28
98	04	MED	BRONCHITIS & ASTHMA AGE 0-17	.7484	5.2	34
99	04	MED	RESPIRATORY SIGNS & SYMPTOMS WITH CC	.7880	4.1	33
100	04	MED	RESPIRATORY SIGNS & SYMPTOMS W/O CC	.4891	2.8	17
101	04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES WITH CC	.8252	5.1	34
102	04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	.5300	3.3	30
103	05	SURG	HEART TRANSPLANT	12.2183	23.8	53
104	05	SURG	CARDIAC VALVE PROCEDURES W CARDIAC CATH	8.2071	18.1	47
105	05	SURG	CARDIAC VALVE PROCEDURES W/O CARDIAC CATH	6.1312	12.7	42

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
106	05	SURG	CORONARY BYPASS W CARDIAC CATH	5.4388	13.6	43
107	05	SURG	CORONARY BYPASS W/O CARDIAC CATH	4.9325	11.3	40
108	05	SURG	OTHER CARDIOTHORACIC PROCEDURES	5.9278	12.7	42
109			NO LONGER VALID	.0000	.0	0
110	05	SURG	MAJOR CARDIOVASCULAR PROCEDURES WITH CC	4.2663	10.3	39
111	05	SURG	MAJOR CARDIOVASCULAR PROCEDURES W/O CC	2.4009	7.5	37
112	05	SURG	PERCUTANEOUS CARDIOVASCULAR PROCEDURES	2.0129	4.8	34
113	05	SURG	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE	2.6816	14.2	43
114	05	SURG	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	1.5571	8.0	38
115	05	SURG	PERM CARDIAC PACEMAKER IMPLANT W AMI, HEART FAILURE OR SHOCK	3.0897	11.9	41
116	05	SURG	PERM CARDIAC PACEMAKER IMPLANT W/O AMI, HEART FAILURE OR SHOCK	2.5029	9.7	35
117	05	SURG	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT	1.2714	3.7	33
118	05	SURG	CARDIAC PACEMAKER DEVICE REPLACEMENT	1.6977	2.8	32
119	05	SURG	VEIN LIGATION & STRIPPING	.9411	3.5	33
120	05	SURG	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	2.0583	7.4	36
121	05	MED	CIRCULATORY DISORDERS W AMI & C.V. COMP DISCH ALIVE	1.6268	8.2	37
122	05	MED	CIRCULATORY DISORDERS W AMI W/O C.V. COMP DISCH ALIVE	1.1714	6.0	35
123	05	MED	CIRCULATORY DISORDERS W AMI, EXPIRED	1.3957	3.0	32
124	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG	1.1979	4.2	33
125	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG	.7388	2.2	22
126	05	MED	ACUTE & SUBACUTE ENDOCARDITIS	2.8808	18.3	46
127	05	MED	HEART FAILURE & SHOCK	1.0086	8.0	35
128	05	MED	DEEP VEIN THROMBOPHLEBITIS	.7841	7.4	33
129	05	MED	CARDIAC ARREST, UNEXPLAINED	1.2600	2.4	31
130	05	MED	PERIPHERAL VASCULAR DISORDERS WITH CC	.9156	6.1	35
131	05	MED	PERIPHERAL VASCULAR DISORDERS W/O CC	.5917	4.6	34
132	05	MED	ATHEROSCLEROSIS WITH CC	.7282	4.0	33
133	05	MED	ATHEROSCLEROSIS W/O CC	.5334	3.0	28
134	05	MED	HYPERTENSION	.5674	3.9	30
135	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE > 17 WITH CC	.8770	4.9	34
136	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE > 17 W/O CC	.5472	3.2	28
137	05	MED	* CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0-17	.8239	3.3	32
138	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS WITH CC	.8232	4.5	33
139	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	.5163	3.1	22
140	05	MED	ANGINA PECTORIS	.5258	3.7	25

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
141	05	MED	SYNCOPE & COLLAPSE WITH CC	.6959	4.3	33
142	05	MED	SYNCOPE & COLLAPSE W/O CC	.5018	3.1	22
143	05	MED	CHEST PAIN	.5138	2.8	18
144	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	1.0897	5.2	34
145	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	.6470	3.4	32
146	06	SURG	RECTAL RESECTION WITH CC	2.5742	12.4	41
147	06	SURG	RECTAL RESECTION W/O CC	1.6354	9.0	35
148	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES WITH CC	3.1749	13.5	42
149	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.5462	8.9	29
150	06	SURG	PERITONEAL ADHESIOLYSIS WITH CC	2.5108	11.4	40
151	06	SURG	PERITONEAL ADHESIOLYSIS W/O CC	1.2024	6.7	36
152	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES WITH CC	1.7292	8.7	38
153	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.0557	6.7	28
154	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE > 17 WITH CC	4.1565	14.3	43
155	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE > 17 W/O CC	1.5488	7.7	37
156	06	SURG *	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0-17	.8281	6.0	35
157	06	SURG	ANAL & STOMAL PROCEDURES WITH CC	.9425	4.6	34
158	06	SURG	ANAL & STOMAL PROCEDURES W/O CC	.4824	2.5	18
159	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 WITH CC	1.0740	4.8	34
160	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC	.5187	2.9	20
161	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 WITH CC	.7382	3.2	32
162	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	.4480	1.8	11
163	06	SURG	HERNIA PROCEDURES AGE 0-17	.6751	4.0	33
164	08	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG WITH CC	2.1733	9.8	39
165	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	1.2595	6.9	25
166	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG WITH CC	1.2980	6.1	35
167	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	.7821	4.0	15
168	03	SURG	MOUTH PROCEDURES WITH CC	1.0804	3.8	33
169	03	SURG	MOUTH PROCEDURES W/O CC	.5439	2.0	17
170	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES WITH CC	2.7466	11.1	40
171	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC	1.1431	5.3	34
172	06	MED	DIGESTIVE MALIGNANCY WITH CC	1.2535	7.0	36
173	06	MED	DIGESTIVE MALIGNANCY W/O CC	.6219	3.6	33
174	06	MED	G.I. HEMORRHAGE WITH CC	.9738	5.4	34
175	06	MED	G.I. HEMORRHAGE W/O CC	.5704	3.8	23

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
176	06	MED	COMPLICATED PEPTIC ULCER	1.0226	5.9	35
177	06	MED	UNCOMPLICATED PEPTIC ULCER WITH CC	.7823	5.1	32
178	06	MED	UNCOMPLICATED PEPTIC ULCER W/O CC	.5655	3.8	22
179	06	MED	INFLAMMATORY BOWEL DISEASE	1.1157	7.1	38
180	06	MED	G.I. OBSTRUCTION WITH CC	.8222	5.8	35
181	06	MED	G.I. OBSTRUCTION W/O CC	.4990	3.8	25
182	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 WITH CC	.7619	4.9	34
183	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC	.5207	3.5	25
184	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0-17	.5128	2.7	16
185	03	MED	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17	.7857	4.4	33
186	03	MED	* DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0-17	.4062	2.9	23
187	03	MED	DENTAL EXTRACTIONS & RESTORATIONS	.5159	2.3	26
188	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 WITH CC	.9840	5.2	34
189	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	.4681	2.8	30
190	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0-17	.7522	4.2	33
191	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES WITH CC	4.3970	15.4	44
192	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	1.7288	8.5	37
193	07	SURG	BILIARY TRACT PROC W CC EXCEPT ONLY CHOLECYST W OR W/O CDE .D.E	3.0112	13.9	43
194	07	SURG	BILIARY TRACT PROC W/O CC EXCEPT ONLY CHOLECYST W OR W/O C.D.E	1.6109	8.7	38
195	07	SURG	CHOLECYSTECTOMY W C.D.E. WITH CC	2.2105	10.6	40
196	07	SURG	CHOLECYSTECTOMY W C.D.E. W/O CC	1.3578	7.6	28
197	07	SURG	CHOLECYSTECTOMY W/O C.D.E. WITH CC	1.6883	7.8	37
198	07	SURG	CHOLECYSTECTOMY W/O C.D.E. W/O CC	.9084	4.5	25
199	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	2.3685	11.8	41
200	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY	2.7731	9.4	38
201	07	SURG	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	2.2911	8.8	28
202	07	MED	CIRRHOSIS & ALCOHOLIC HEPATITIS	1.2263	7.2	36
203	07	MED	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	1.1803	6.8	36
204	07	MED	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	1.0897	6.1	35
205	07	MED	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA WITH CC	1.2355	6.7	36
206	07	MED	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W/O CC	.6003	3.7	33
207	07	MED	DISORDERS OF THE BILIARY TRACT WITH CC	.8754	5.5	34
208	07	MED	DISORDERS OF THE BILIARY TRACT W/O CC	.6526	3.3	26
209	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES - LOWER EXTREMITY	2.3884	10.1	36
210	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 WITH CC	1.9494	11.4	40

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
211	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC	1.3851	9.0	36
212	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17	.8602	4.5	34
213	08	SURG	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS	1.7483	9.4	38
214	08	SURG	BACK & NECK PROCEDURES WITH CC	1.8621	8.9	36
215	08	SURG	BACK & NECK PROCEDURES W/O CC	1.1145	5.8	32
216	08	SURG	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	1.9244	9.3	36
217	08	SURG	WND DEBRID & SKN GRFT EXCEPT HAND,FOR MUSCSKELET & CONN TISS DIS	3.1286	14.0	43
218	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 WITH CC	1.4197	7.2	36
219	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W/O CC	.9054	4.6	28
220	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE 0-17	.9130	5.2	34
221	08	SURG	KNEE PROCEDURES WITH CC	1.8483	7.6	37
222	08	SURG	KNEE PROCEDURES W/O CC	.9698	3.8	33
223	08	SURG	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC	.8084	3.5	25
224	08	SURG	SHOULDER,ELBOW OR FOREARM PROC,EXC MAJOR JOINT PROC, W/O CC	.6322	2.6	16
225	08	SURG	FOOT PROCEDURES	.7682	3.2	32
226	08	SURG	SOFT TISSUE PROCEDURES WITH CC	1.0804	6.0	36
227	08	SURG	SOFT TISSUE PROCEDURES W/O CC	.6807	2.9	25
228	08	SURG	MAJOR THUMB OR JOINT PROC,OR OTH HAND OR WRIST PROC W CC	.8024	2.6	28
229	08	SURG	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	.6402	1.9	16
230	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR	.9348	4.1	33
231	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR	1.0800	4.0	33
232	08	SURG	ARTHROSCOPY	1.2460	4.0	33
233	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC WITH CC	1.9754	9.0	38
234	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC	1.0341	4.8	34
235	08	MED	FRACTURES OF FEMUR	1.0962	7.4	36
236	08	MED	FRACTURES OF HIP & PELVIS	.8420	6.8	36
237	08	MED	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH	.5803	4.4	33
238	08	MED	OSTEOMYELITIS	1.9808	10.6	40
239	08	MED	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY	1.0271	7.5	37
240	08	MED	CONNECTIVE TISSUE DISORDERS WITH CC	1.1489	7.1	36
241	08	MED	CONNECTIVE TISSUE DISORDERS W/O CC	.5698	4.4	33
242	08	MED	SEPTIC ARTHRITIS	1.2943	8.2	37
243	08	MED	MEDICAL BACK PROBLEMS	.6867	5.0	34
244	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES WITH CC	.7675	5.5	34
245	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	.5431	4.0	33

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LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
246	08	MED	NON-SPECIFIC ARTHROPATHIES	.5889	4.4	33
247	08	MED	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE	.5467	3.6	33
248	08	MED	TENDONITIS, MYOSITIS & BURSITIS	.6896	4.6	34
249	08	MED	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	.7178	4.3	33
250	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 WITH CC	.7017	4.5	34
251	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC	.4297	2.5	24
252	08	MED *	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0-17	.3454	1.8	15
253	08	MED	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 WITH CC	.7911	5.8	35
254	08	MED	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W/O CC	.4247	3.5	33
255	08	MED *	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE 0-17	.4582	2.9	32
256	08	MED	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES	.6398	3.8	33
257	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY WITH CC	.9045	4.6	24
258	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	.7076	3.6	15
259	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY WITH CC	.9044	4.0	33
260	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	.5715	2.4	14
261	09	SURG	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION	.6722	2.2	15
262	09	SURG	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	.4911	1.9	18
263	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS WITH CC	2.6650	15.1	44
264	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC	1.2901	8.5	37
265	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC	1.3805	6.1	35
266	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC	.6821	3.0	32
267	09	SURG	PERIANAL & PILONIDAL PROCEDURES	.5953	2.7	32
268	09	SURG	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES	.7138	2.5	31
269	09	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROCEDURE WITH CC	1.6526	8.0	37
270	09	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROCEDURE W/O CC	.8537	2.9	32
271	09	MED	SKIN ULCERS	1.2456	8.8	38
272	09	MED	MAJOR SKIN DISORDERS WITH CC	1.0789	7.3	36
273	09	MED	MAJOR SKIN DISORDERS W/O CC	.6726	5.5	35
274	09	MED	MALIGNANT BREAST DISORDERS WITH CC	1.1340	6.6	36
275	09	MED	MALIGNANT BREAST DISORDERS W/O CC	.5829	3.2	32
276	09	MED	NON-MALIGANT BREAST DISORDERS	.5763	3.8	33
277	09	MED	CELLULITIS AGE >17 WITH CC	.9201	7.0	36
278	09	MED	CELLULITIS AGE >17 W/O CC	.6178	5.3	30
279	09	MED *	CELLULITIS AGE 0-17	.7278	4.2	24
280	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 WITH CC	.6636	4.6	34

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** DRGS 468 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER AND TRANSFER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
481	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC	.4188	3.1	10
282	08	MED	* TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0-17	.3383	2.2	19
283	08	MED	MINOR SKIN DISORDERS WITH CC	.7217	5.2	34
284	08	MED	MINOR SKIN DISORDERS W/O CC	.4401	3.5	33
285	10	SURG	AMPUTAT OF LOWER LIMB FOR ENDOCRINE,NUTRIT,& METABOL DISORDERS	2.6867	15.0	44
286	10	SURG	ADRENAL & PITUITARY PROCEDURES	2.4249	9.5	38
287	10	SURG	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS	2.2498	10.4	42
288	10	SURG	O.R. PROCEDURES FOR OBESITY	2.0003	7.1	26
289	10	SURG	PARATHYROID PROCEDURES	1.0083	4.0	23
290	10	SURG	THYROID PROCEDURES	.7500	2.8	17
291	10	SURG	THYROGLOSSAL PROCEDURES	.4430	1.7	8
292	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC WITH CC	2.8120	12.0	41
293	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC	1.1488	5.5	24
294	10	MED	DIABETES AGE >35	.7631	5.8	35
295	10	MED	DIABETES AGE 0-35	.7488	4.4	33
296	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 WITH CC	.8388	6.0	35
297	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC	.5311	4.0	21
298	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0-17	.5477	2.8	21
299	10	MED	INBORN ERRORS OF METABOLISM	.8574	4.8	24
300	10	MED	ENDOCRINE DISORDERS WITH CC	1.1238	6.9	36
301	10	MED	ENDOCRINE DISORDERS W/O CC	.5899	4.1	33
302	11	SURG	KIDNEY TRANSPLANT	3.8312	12.8	43
303	11	SURG	KIDNEY,URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM	2.6851	11.4	40
304	11	SURG	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL WITH CC	2.3712	10.0	39
305	11	SURG	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC	1.1878	5.3	34
306	11	SURG	PROSTATECTORY WITH CC	1.8958	8.8	38
307	11	SURG	PROSTATECTORY W/O CC	.7128	4.0	23
308	11	SURG	MINOR BLADDER PROCEDURES WITH CC	1.4382	6.4	36
309	11	SURG	MINOR BLADDER PROCEDURES W/O CC	.7280	3.8	31
310	11	SURG	TRANSURETHRAL PROCEDURES WITH CC	.8787	3.9	33
311	11	SURG	TRANSURETHRAL PROCEDURES W/O CC	.5128	2.3	18
312	11	SURG	URETHRAL PROCEDURES, AGE >17 WITH CC	.8190	3.8	33
313	11	SURG	URETHRAL PROCEDURES, AGE >17 W/O CC	.4818	2.1	17
314	11	SURG	* URETHRAL PROCEDURES, AGE 0-17	.4271	2.3	26
315	11	SURG	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	2.0964	7.0	36

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** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
316	11	MED	RENAL FAILURE	1.2808	6.3	35
317	11	MED	ADMIT FOR RENAL DIALYSIS	.4827	2.5	31
318	11	MED	KIDNEY & URINARY TRACT NEOPLASMS WITH CC	1.0977	6.0	35
319	11	MED	KIDNEY & URINARY TRACT NEOPLASMS W/O CC	.5479	2.6	32
320	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 WITH CC	1.0014	6.7	36
321	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	.6371	4.9	28
322	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE 0-17	.8286	4.6	34
323	11	MED	URINARY STONES WITH CC, &/OR ESW LITHOTRIPSY	.7118	2.9	31
324	11	MED	URINARY STONES W/O CC	.3947	2.1	14
325	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 WITH CC	.6679	4.3	33
326	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC	.4216	2.9	25
327	11	MED	* KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0-17	.5444	3.1	32
328	11	MED	URETHRAL STRICTURE AGE >17 WITH CC	.8170	3.6	33
329	11	MED	URETHRAL STRICTURE AGE >17 W/O CC	.3978	2.1	18
330	11	MED	* URETHRAL STRICTURE AGE 0-17	.2754	1.6	9
331	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 WITH CC	.9533	5.3	34
332	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	.5310	3.0	32
333	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0-17	.8726	4.7	34
334	12	SURG	MAJOR MALE PELVIC PROCEDURES W CC	1.7565	8.8	32
335	12	SURG	MAJOR MALE PELVIC PROCEDURES W/O CC	1.3601	7.4	21
336	12	SURG	TRANSURETHRAL PROSTATECTOMY WITH CC	.9029	5.0	26
337	12	SURG	TRANSURETHRAL PROSTATECTOMY W/O CC	.6187	3.7	13
338	12	SURG	TESTES PROCEDURES, FOR MALIGNANCY	.7784	2.8	32
339	12	SURG	TESTES PROCEDURES, NON-MALIGNANCY AGE >17	.8423	2.5	32
340	12	SURG	* TESTES PROCEDURES, NON-MALIGNANCY AGE 0-17	.4283	2.4	13
341	12	SURG	PENIS PROCEDURES	.9659	3.3	25
342	12	SURG	CIRCUMCISION AGE >17	.5842	2.5	31
343	12	SURG	* CIRCUMCISION AGE 0-17	.3742	1.7	6
344	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY	1.0462	4.4	33
345	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY	.7330	3.3	32
346	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, WITH CC	.9815	5.8	35
347	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC	.4998	2.6	32
348	12	MED	BENIGN PROSTATIC HYPERTROPHY WITH CC	.6666	3.9	33
349	12	MED	BENIGN PROSTATIC HYPERTROPHY W/O CC	.4023	2.3	20
350	12	MED	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	.8761	4.9	28

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
351	12	MED	* STERILIZATION, MALE	.3293	1.3	5
352	12	MED	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	.5825	3.3	32
353	13	SURG	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY	2.0837	10.1	38
354	13	SURG	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG WITH CC	1.3884	7.2	33
355	13	SURG	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC	.8801	5.0	13
356	13	SURG	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	.7119	4.1	17
357	13	SURG	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIG	2.2188	10.2	38
358	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY WITH CC	1.1143	6.0	23
359	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	.7859	4.6	12
360	13	SURG	VAGINA, CERVIX & VULVA PROCEDURES	.7788	4.1	30
361	13	SURG	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	.8484	3.3	32
362	13	SURG	* ENDOSCOPIC TUBAL INTERRUPTION	.4921	1.4	5
363	13	SURG	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	.6398	3.1	27
364	13	SURG	D&C, CONIZATION EXCEPT FOR MALIGNANCY	.5298	2.5	28
365	13	SURG	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	1.6777	7.4	36
366	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM WITH CC	1.1030	6.6	36
367	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	.4843	2.8	32
368	13	MED	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	.9284	6.0	35
369	13	MED	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS	.5338	3.3	32
370	14	SURG	CESAREAN SECTION W CC	1.0350	5.8	35
371	14	SURG	CESAREAN SECTION W/O CC	.6826	4.1	11
372	14	MED	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	.5408	3.3	32
373	14	MED	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	.3135	2.1	8
374	14	SURG	VAGINAL DELIVERY W STERILIZATION &/OR D&C	.5167	3.5	9
375	14	SURG	* VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	.8736	4.4	28
376	14	MED	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE	.3751	2.4	22
377	14	SURG	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE	.8639	2.8	32
378	14	MED	ECTOPIC PREGNANCY	.7592	3.8	14
379	14	MED	THREATENED ABORTION	.2818	2.1	15
380	14	MED	ABORTION W/O D&C	.2775	1.4	10
381	14	SURG	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	.3782	1.8	10
382	14	MED	FALSE LABOR	.1304	1.2	5
383	14	MED	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	.3880	3.2	30
384	14	MED	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	.2938	2.2	22
385	15	MED	* NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	1.2084	1.8	31

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
386	15	MED	* EXTREME IMMATURITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE	3.6039	17.9	47
387	15	MED	* PREMATURITY W MAJOR PROBLEMS	1.8046	13.3	42
388	15	MED	* PREMATURITY W/O MAJOR PROBLEMS	1.1431	8.6	38
389	15	MED	FULL TERM NEONATE W MAJOR PROBLEMS	1.4831	8.5	35
390	15	MED	NEONATE W OTHER SIGNIFICANT PROBLEMS	.8997	4.5	34
391	15	MED	* NORMAL NEWBORN	.2191	3.1	11
392	16	SURG	SPLENECTOMY AGE >17	2.2872	11.6	41
393	16	SURG	* SPLENECTOMY AGE 0-17	1.5022	9.1	38
394	16	SURG	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS	1.9566	8.7	25
395	16	MED	RED BLOOD CELL DISORDERS AGE >17	.7891	4.6	34
396	16	MED	RED BLOOD CELL DISORDERS AGE 0-17	.5397	2.4	31
397	16	MED	COAGULATION DISORDERS	1.2106	6.5	34
398	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS WITH CC	1.1082	6.6	28
399	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC	.6882	4.0	33
400	17	SURG	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE	2.8840	9.4	38
401	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC	2.2490	10.3	39
402	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC	.8832	5.6	33
403	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	1.6106	8.1	37
404	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	.7294	3.8	33
405	17	MED	* ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0-17	1.0281	4.8	34
406	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC	2.6481	10.8	40
407	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC	1.1634	5.3	34
408	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC	1.1048	4.2	33
409	17	MED	RADIOTHERAPY	1.0073	6.4	35
410	17	MED	CHEMOTHERAPY WITHOUT ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS	.5661	2.8	19
411	17	MED	HISTORY OF MALIGNANCY W/O ENDOSCOPY	.4548	2.5	31
412	17	MED	HISTORY OF MALIGNANCY W ENDOSCOPY	.4221	2.1	21
413	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG WITH CC	1.3288	7.5	36
414	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC	.7243	4.3	33
415	18	SURG	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	3.5788	14.8	44
416	18	MED	SEPTECEMIA AGE >17	1.8336	7.5	37
417	18	MED	SEPTECEMIA AGE 0-17	1.0063	5.0	34
418	18	MED	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	.9571	6.5	36
419	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 WITH CC	.9560	5.6	35
420	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	.6526	4.5	30

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
421	18	MED	VIRAL ILLNESS AGE >17	.8873	4.4	32
422	18	MED	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0-17	.5828	4.0	33
423	18	MED	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	1.6178	8.1	37
424	19	SURG	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS	2.3480	12.5	42
425	19	MED	ACUTE ADJUST REACT & DISTURBANCES OF PSYCHOSOCIAL DYSFUNCTION	.7118	4.7	34
426	19	MED	DEPRESSIVE NEUROSES	.6222	5.5	34
427	19	MED	NEUROSES EXCEPT DEPRESSIVE	.6068	5.2	34
428	19	MED	DISORDERS OF PERSONALITY & IMPULSE CONTROL	.7901	6.7	36
429	19	MED	ORGANIC DISTURBANCES & MENTAL RETARDATION	.9325	7.6	37
430	19	MED	PSYCHOSES	.6074	6.8	36
431	19	MED	CHILDHOOD MENTAL DISORDERS	.7291	6.1	35
432	19	MED	OTHER MENTAL DISORDER DIAGNOSES	.7015	4.3	32
433	20	MED	ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	.3774	3.1	32
434	20	MED	ALC/DRUG ABUSE OR DEPENDENCE, DETOX OR OTHER SYMPT TRT WITH CC	.7702	5.6	35
435	20	MED	ALC/DRUG ABUSE OR DEPENDENCE, DETOX OR OTHER SYMPT TRT W/O CC	.5154	4.8	34
436	20	MED	ALC/DRUG DEPENDENCE W REHABILITATION THERAPY	1.0903	10.6	48
437	20	MED	ALC/DRUG DEPENDENCE, COMBINED REHAB & DETOX THERAPY	1.1838	15.1	44
438			NO LONGER VALID	.0000	.0	00
439	21	SURG	SKIN GRAFTS FOR INJURIES	1.4834	8.4	35
440	21	SURG	WOUND DEBRIDEMENTS FOR INJURIES	1.8270	8.4	37
441	21	SURG	HAND PROCEDURES FOR INJURIES	.8813	2.4	28
442	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES WITH CC	1.8320	6.2	35
443	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W/O CC	.7578	2.7	32
444	21	MED	TRAUMATIC INJURY AGE > 17 W CC	.7537	5.2	34
445	21	MED	TRAUMATIC INJURY AGE > 17 W/O CC	.4897	3.6	30
446	21	MED	* TRAUMATIC INJURY AGE 0-17	.4738	2.4	22
447	21	MED	ALLERGIC REACTIONS AGE >17	.4802	2.8	24
448	21	MED	* ALLERGIC REACTIONS AGE 0-17	.2428	2.9	17
449	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 WITH CC	.7874	4.2	33
450	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC	.4456	2.5	25
451	21	MED	* POISONING & TOXIC EFFECTS OF DRUGS AGE 0-17	.5126	2.1	17
452	21	MED	COMPLICATIONS OF TREATMENT WITH CC	.8130	4.2	33
453	21	MED	COMPLICATIONS OF TREATMENT W/O CC	.4178	2.8	25
454	21	MED	OTHER INJURY, POISONING & TOXIC EFF DIAG WITH CC	.8118	4.4	33
455	21	MED	OTHER INJURY, POISONING & TOXIC EFF DIAG W/O CC	.4210	2.5	25

* MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER AND TRANSFER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
456	22	MED	BURNS, TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	2.0863	5.7	35
457	22	MED	EXTENSIVE BURNS W/O O.R. PROCEDURE	1.6726	3.0	32
458	22	SURG	NON-EXTENSIVE BURNS W SKIN GRAFT	4.0260	16.3	45
459	22	SURG	NON-EXTENSIVE BURNS W WOUND DEBRIDEMENT OR OTHER O.R. PROC	1.8344	10.4	39
460	22	MED	NON-EXTENSIVE BURNS W/O O.R. PROCEDURE	1.0484	6.4	35
461	23	SURG	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES	.8219	2.5	31
462	23	MED	REHABILITATION	1.8140	14.2	43
463	23	MED	SIGNS & SYMPTOMS W CC	.7319	5.0	34
464	23	MED	SIGNS & SYMPTOMS W/O CC	.4505	3.1	28
465	23	MED	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	.3871	1.8	18
466	23	MED	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	.5784	2.8	32
467	23	MED	OTHER FACTORS INFLUENCING HEALTH STATUS	.4289	2.5	32
468			EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3.4055	13.3	42
469		**	PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS	.0000	.0	0
470		**	UNGROUPABLE	.0000	.0	0
471	08	SURG	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY	3.9537	13.3	42
472	22	SURG	EXTENSIVE BURNS W O.R. PROCEDURE	13.4433	21.8	51
473	17	MED	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	3.3130	9.8	39
474			NO LONGER VALID	.0000	.0	0
475	04	MED	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	3.8144	9.8	39
476			PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2.2235	14.3	43
477			NON-EXTENSIVE O R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	1.4339	8.1	35
478	05	SURG	OTHER VASCULAR PROCEDURES W CC	2.2083	7.2	36
479	05	SURG	OTHER VASCULAR PROCEDURES W/O CC	1.3271	4.4	33
480		SURG	LIVER TRANSPLANT	24.4737	41.1	70
481		SURG	BONE MARROW TRANSPLANT	14.7402	36.9	66
482		SURG	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	3.1671	13.6	42
483		SURG	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	13.9015	38.3	68
484	24	SURG	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	6.1785	13.9	43
485	24	SURG	LIMB REATTACH., HIP AND FEMUR PROCS FOR MULTI SIGN TRAUMA	2.9328	13.5	42
486	24	SURG	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA	5.1850	11.2	40
487	24	MED	OTHER MULTIPLE SIGNIFICANT TRAUMA	1.7883	7.7	37
488	25	SURG	HIV W EXTENSIVE O.R. PROCEDURE	4.3078	17.1	48
489	25	MED	HIV W MAJOR RELATED CONDITION	1.8737	9.5	39
490	25	MED	HIV W OR W/O OTHER RELATED CONDITION	1.1984	5.5	35

* MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
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NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER AND TRANSFER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND ENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
491	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES - UPPER EXTREMITY	1.5888	5.9	34
492	17	MED	CHEMOTHERAPY WITH ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS	2.5533	8.2	37

* MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER AND TRANSFER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

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TABLE 6A.—NEW DIAGNOSIS CODES

Diagnosis code	Description	CC	MDC	DRG
070.20	Viral hepatitis B with hepatic coma, without mention of hepatitis delta	Y	07	205, 206
070.21	Viral hepatitis B with hepatic coma, with hepatitis delta	Y	07	205, 206
070.30	Viral hepatitis B without mention of hepatic coma, without mention of hepatitis delta	Y	07	205, 206
070.31	Viral hepatitis B without mention of hepatic coma, with hepatitis delta	Y	07	205, 206
070.41	Hepatitis C with hepatic coma	Y	07	205, 206
070.42	Hepatitis delta without mention of active hepatitis B disease with hepatic coma	Y	07	205, 206
070.43	Hepatitis E with hepatic coma	Y	07	205, 206
070.49	Other specified viral hepatitis with hepatic coma	Y	07	205, 206
070.51	Hepatitis C without mention of hepatic coma	Y	07	205, 206
070.52	Hepatitis delta without mention of active hepatitis B disease without mention of hepatic coma	Y	07	205, 206
070.53	Hepatitis E without mention of hepatic coma	Y	07	205, 206
070.59	Other specified viral hepatitis without mention of hepatic coma	Y	07	205, 206
176.0	Kaposi's sarcoma, skin	N	09	283, 284
176.1	Kaposi's sarcoma, soft tissue	N	09	283, 284
176.2	Kaposi's sarcoma, palate	N	03	64
176.3	Kaposi's sarcoma, gastrointestinal sites	N	06	172, 173
176.4	Kaposi's sarcoma, lung	Y	04	82
176.5	Kaposi's sarcoma, lymph nodes	Y	17	400, 401, 402, 403, 404
176.8	Kaposi's sarcoma, other specified sites	N	09	283, 284
176.9	Kaposi's sarcoma, unspecified	N	09	283, 284
203.00	Multiple myeloma without mention of remission	Y	17	400, 401, 402, 403, 404
203.01	Multiple myeloma in remission	Y	17	400, 401, 402, 403, 404
203.10	Plasma cell leukemia without mention of remission	Y	17	400, 401, 402, 403, 404
203.11	Plasma cell leukemia in remission	Y	17	400, 401, 402, 403, 404
203.80	Other immunoproliferative neoplasms without mention of remission	Y	17	400, 401, 402, 403, 404
203.81	Other immunoproliferative neoplasms in remission	Y	17	400, 401, 402, 403, 404
204.00	Acute lymphoid leukemia without mention of remission	Y	17	400, 405, 473
204.01	Acute lymphoid leukemia in remission	Y	17	400, 401, 405, 473
204.10	Chronic lymphoid leukemia without mention of remission	Y	17	400, 401, 402, 403, 404
204.11	Chronic lymphoid leukemia in remission	Y	17	400, 401, 402, 403, 404
204.20	Subacute lymphoid leukemia without mention of remission	Y	17	400, 401, 402, 403, 404
204.21	Subacute lymphoid leukemia in remission	Y	17	400, 401, 402, 403, 404
204.80	Other lymphoid leukemia without mention of remission	Y	17	400, 401, 402, 403, 404
204.81	Other lymphoid leukemia in remission	Y	17	400, 401, 402, 403, 404
204.90	Unspecified lymphoid leukemia without mention of remission	Y	17	400, 401, 402, 403, 404
204.91	Unspecified lymphoid leukemia in remission	Y	17	400, 401, 402, 403, 404
205.00	Acute myeloid leukemia without mention of remission	Y	17	400, 405, 473
205.01	Acute myeloid leukemia in remission	Y	17	400, 405, 473
205.10	Chronic myeloid leukemia without mention of remission	Y	17	400, 401, 402, 403, 404
205.11	Chronic myeloid leukemia in remission	Y	17	400, 401, 402, 403, 404
205.20	Subacute myeloid leukemia without mention of remission	Y	17	400, 401, 402, 403, 404
205.21	Subacute myeloid leukemia in remission	Y	17	400, 401, 402, 403, 404
205.30	Myeloid sarcoma without mention of remission	Y	17	400, 401, 402, 403, 404
205.31	Myeloid sarcoma in remission	Y	17	400, 401, 402, 403, 404
205.80	Other myeloid leukemia without mention of remission	Y	17	400, 401, 402, 403, 404
205.81	Other myeloid leukemia in remission	Y	17	400, 401, 402, 403, 404
205.90	Unspecified myeloid leukemia without mention of remission	Y	17	400, 401, 402, 403, 404
205.91	Unspecified myeloid leukemia in remission	Y	17	400, 401, 402, 403, 404
206.00	Acute monocytic leukemia without mention of remission	Y	17	400, 405, 473
206.01	Acute monocytic leukemia in remission	Y	17	400, 405, 473
206.10	Chronic monocytic leukemia without mention of remission	Y	17	400, 401, 402, 403, 404

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TABLE 6A.—NEW DIAGNOSIS CODES—Continued

Diagnosis code	Description	CC	MDC	DRG
206.11	Chronic monocytic leukemia in remission	Y	17	400, 401, 402, 403, 404
206.20	Subacute monocytic leukemia without mention of remission	Y	17	400, 401, 402, 403, 404
206.21	Subacute monocytic leukemia in remission	Y	17	400, 401, 402, 403, 404
206.80	Other monocytic leukemia without mention of remission	Y	17	400, 401, 402, 403, 404
206.81	Other monocytic leukemia in remission	Y	17	400, 401, 402, 403, 404
206.90	Unspecified monocytic leukemia without mention of remission	Y	17	400, 401, 402, 403, 404
206.91	Unspecified monocytic leukemia in remission	Y	17	400, 401, 402, 403, 404
207.00	Acute erythremia and erythroleukemia without mention of remission	Y	17	400, 405, 473
207.01	Acute erythremia and erythroleukemia in remission	Y	17	400, 405, 473
207.10	Chronic erythremia without mention of remission	Y	17	400, 401, 402, 403, 404
207.11	Chronic erythremia in remission	Y	17	400, 401, 402, 403, 404
207.20	Megakaryocytic leukemia without mention of remission	Y	17	400, 401, 402, 403, 404
207.21	Megakaryocytic leukemia in remission	Y	17	400, 401, 402, 403, 404
207.80	Other specified leukemia without mention of remission	Y	17	400, 401, 402, 403, 404
207.81	Other specified leukemia in remission	Y	17	400, 401, 402, 403, 404
208.00	Acute leukemia of unspecified cell type without mention of remission	Y	17	400, 405, 473
208.01	Acute leukemia of unspecified cell type in remission	Y	17	400, 405, 473
208.10	Chronic leukemia of unspecified cell type without mention of remission	Y	17	400, 401, 402, 403, 404
208.11	Chronic leukemia of unspecified cell type in remission	Y	17	400, 401, 402, 403, 404
208.20	Subacute leukemia of unspecified cell type without mention of remission	Y	17	400, 401, 402, 403, 404
208.21	Subacute leukemia of unspecified cell type in remission	Y	17	400, 401, 402, 403, 404
208.80	Other leukemia of unspecified cell type without mention of remission	Y	17	400, 401, 402, 403, 404
208.81	Other leukemia of unspecified cell type in remission	Y	17	400, 401, 402, 403, 404
208.90	Unspecified leukemia without mention of remission	Y	17	400, 401, 402, 403, 404
208.91	Unspecified leukemia in remission	Y	17	400, 401, 402, 403, 404
491.20	Obstructive chronic bronchitis, without mention of acute exacerbation	Y	04	88
491.21	Obstructive chronic bronchitis, with acute exacerbation	Y	04	88
524.60	Temporomandibular joint disorders, unspecified	N	03	165, 166, 167
524.61	Adhesions and ankylosis (bony or fibrous)	N	03	165, 166, 167
524.62	Arthralgia of temporomandibular joint	N	03	165, 166, 167
524.63	Articular disc disorder (reducing or non-reducing)	N	03	165, 166, 167
524.69	Other specified temporomandibular joint disorders	N	03	165, 166, 167
535.00	Acute gastritis, without mention of hemorrhage	N	06	182, 183, 184
535.01	Acute gastritis, with hemorrhage	Y	06	174, 175
535.10	Atrophic gastritis, without mention of hemorrhage	N	06	182, 183, 184
535.11	Atrophic gastritis, with hemorrhage	Y	06	174, 175
535.20	Gastric mucosal hypertrophy, without mention of hemorrhage	N	06	182, 183, 184
535.21	Gastric mucosal hypertrophy, with hemorrhage	Y	06	174, 175
535.30	Alcoholic gastritis, without mention of hemorrhage	N	06	182, 183, 184
535.31	Alcoholic gastritis, with hemorrhage	Y	06	174, 175
535.40	Other specified gastritis, without mention of hemorrhage	N	06	182, 183, 184
535.41	Other specified gastritis, with hemorrhage	Y	06	174, 175
535.50	Unspecified gastritis and gastroduodenitis, without mention of hemorrhage	N	06	182, 183, 184
535.51	Unspecified gastritis and gastroduodenitis, with hemorrhage	Y	06	174, 175
535.60	Duodenitis, without mention of hemorrhage	N	06	182, 183, 184
535.61	Duodenitis, with hemorrhage	Y	06	174, 175
537.83	Angiodysplasia of stomach and duodenum with hemorrhage	Y	06	174, 175
562.02	Diverticulosis of small intestine with hemorrhage	Y	06	174, 175
562.03	Diverticulitis of small intestine with hemorrhage	Y	06	174, 175
562.12	Diverticulosis of colon with hemorrhage	Y	06	174, 175
562.13	Diverticulitis of colon with hemorrhage	Y	06	174, 175
569.85	Angiodysplasia of intestine with hemorrhage	N	14	469
645.00	Prolonged pregnancy, unspecified as to episode of care or not applicable [1]	N	14	370, 371, 372, 373, 374, 375
645.01	Prolonged pregnancy, delivered, with or without mention of antepartum condition [1]	N	14	383, 384
645.03	Prolonged pregnancy, antepartum condition or complication [1]	N	14	469
657.00	Polyhydramnios, unspecified as to episode of care or not applicable [1]	N	14	370, 371, 372, 373, 374, 375

TABLE 6A.—NEW DIAGNOSIS CODES—Continued

Diagnosis code	Description	CC	MDC	DRG
657.01	Polyhydramnios, delivered, with or without mention of antepartum condition [1]	N	14	370, 371, 372, 373, 374, 375
657.03	Polyhydramnios, antepartum condition or complication [1]	N	14	383, 384
670.04	Major puerperal infection, unspecified as to episode of care or not applicable [1]	Y	14	383, 384
670.02	Major puerperal infection, delivered, with mention of postpartum complication [1]	Y	14	370, 371, 372, 373, 374, 375
670.04	Major puerperal infection, postpartum condition or complication [1]	Y	14	376, 377
672.00	Pyrexia of unknown origin during the puerperium, unspecified as to episode of care or not applicable [1]	N	14	469
672.02	Pyrexia of unknown origin during the puerperium, delivered, with mention of postpartum complication [1]	N	14	370, 371, 372, 373, 374, 375
672.04	Pyrexia of unknown origin during the puerperium, postpartum condition or complication [1]	N	14	376, 377
702.0	Actinic keratosis	N	09	283, 284
702.1	Seborrheic keratosis	N	09	283, 284
702.8	Other specified dermatoses	N	09	283, 284
760.75	Cocaine affecting fetus via placenta or breast milk	N	15	389

[1] NOTE: Code categories 645, 657, 670, and 672 will now officially use "0" as the fourth-digit. The GROUPER currently requires that these codes have a fifth-digit for subclassification, however, now ICD-9-CM also requires it.

TABLE 6b—NEW PROCEDURE CODES

Procedure code	Description	OR	MDC	DRG
29.31	Cricopharyngeal myotomy	Y	03	63
			06	154, 155, 156
29.32	Pharyngeal diverticulectomy	Y	03	63
			06	154, 155, 156
29.33	Pharyngectomy (partial)	Y	03	63
			06	154, 155, 156
29.39	Other excision or destruction of lesion or tissue of pharynx	Y	03	63
			06	154, 155, 156
39.28	Extracranial-intracranial (EC-IC) vascular bypass	Y	01	1, 2, 3
			21	442, 443
			24	486
51.23	Laparoscopic cholecystectomy	Y	07	195, 196, 197
			17	198
			21	400, 406, 407
			24	442, 443
				486
60.96	Transurethral balloon dilation of the prostatic urethra	Y	11	310, 311
			12	344, 345
78.24	Limb shortening procedures, carpals and metacarpals	Y	08	226, 229
			21	441
			24	486
78.38	Limb shortening procedures, tarsals and metatarsals	Y	08	225
			21	442, 443
			24	486
89.50	Ambulatory cardiac monitoring	N		
96.70	Continuous mechanical ventilation of unspecified duration	[1]	04	475
96.71	Continuous mechanical ventilation for less than 96 consecutive hours	[1]	04	475
96.72	Continuous mechanical ventilation for 96 consecutive hours or more	[1]	04	475

[1] Non-OR procedure that affects DRG assignment.

TABLE 6C—INVALID DIAGNOSIS CODES [1]

Diagnosis code	Description	CC	MDC	DRG
070.2	Viral hepatitis B with hepatic coma	Y	07	205, 206
070.3	Viral hepatitis B without mention of hepatic coma	Y	07	205, 206
070.4	Other specified viral hepatitis with hepatic coma	Y	07	205, 206
070.5	Other specified viral hepatitis without mention of hepatic coma	Y	07	205, 206
203.0	Multiple myeloma	Y	17	400, 401, 402, 403, 404
203.1	Plasma cell leukemia	Y	17	400, 401, 402, 403, 404
203.8	Other immunoproliferative neoplasms	Y	17	400, 401, 402, 403, 404
204.0	Acute lymphoid leukemia	Y	17	400, 405, 473
204.1	Chronic lymphoid leukemia	Y	17	400, 401, 402, 403, 404
204.2	Subacute lymphoid leukemia	Y	17	400, 401, 402, 403, 404
204.8	Other lymphoid leukemia	Y	17	400, 401, 402, 403, 404

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TABLE 6c—INVALID DIAGNOSIS CODES [1]—Continued

Diagnosis code	Description	CC	MDC	DRG
204.9	Unspecified lymphoid leukemia	Y	17	400, 401, 402, 403, 404
205.0	Acute myeloid leukemia	Y	17	400, 405, 473
205.1	Chronic myeloid leukemia	Y	17	400, 401, 402, 403, 404
205.2	Subacute myeloid leukemia	Y	17	400, 401, 402, 403, 404
205.3	Myeloid sarcoma	Y	17	400, 401, 402, 403, 404
205.8	Other myeloid leukemia	Y	17	400, 401, 402, 403, 404
205.9	Unspecified myeloid leukemia	Y	17	400, 401, 402, 403, 404
206.0	Acute monocytic leukemia	Y	17	400, 405, 473,
206.1	Chronic monocytic leukemia	Y	17	400, 401, 402, 403, 404
206.2	Subacute monocytic leukemia	Y	17	400, 401, 402, 403, 404
206.8	Other monocytic leukemia	Y	17	400, 401, 402, 403, 404
206.9	Unspecified monocytic leukemia	Y	17	400, 401, 402, 403, 404
207.0	Acute erythremia and erythroleukemia	Y	17	400, 405, 473
207.1	Chronic erythremia	Y	17	400, 401, 402, 403, 404
207.2	Megakaryocytic leukemia	Y	17	400, 401, 402, 403, 404
207.8	Other specified leukemia	Y	17	400, 401, 402, 403, 404
208.0	Acute leukemia of unspecified cell type	Y	17	400, 405, 473
208.1	Chronic leukemia of unspecified cell type	Y	17	400, 401, 402, 403, 404
208.2	Subacute leukemia of unspecified cell type	Y	17	400, 401, 402, 403, 404
208.8	Other leukemia of unspecified cell type	Y	17	400, 401, 402, 403, 404
208.9	Unspecified leukemia	Y	17	400, 401, 402, 403, 404
491.2	Obstructive chronic bronchitis	Y	04	88
524.6	Temporomandibular joint disorders	N	03	185, 186, 187
535.0	Acute gastritis	Y	06	182, 183, 184
535.1	Atrophic gastritis	N	06	182, 183, 184
535.2	Gastric mucosal hypertrophy	N	06	182, 183, 184
535.3	Alcoholic gastritis	N	06	182, 183, 184
535.4	Other specified gastritis	N	06	182, 183, 184
535.5	Unspecified gastritis and gastroduodenitis	N	06	182, 183, 184
535.6	Duodenitis	N	06	182, 183, 184
702	Other dermatoses	N	09	283, 284

[1] See Table 6a for new diagnosis codes (4 or 5 digits) that will be considered valid by the FY 1992 GROUPER.

TABLE 6d—INVALID PROCEDURE CODES

Procedure code	Description	OR	MDC	DRG
13.61	Discission of primary membranous cataract	Y	02	39
13.62	Excision of primary membranous cataract	Y	02	39
13.63	Mechanical fragmentation of primary membranous cataract	Y	02	39
29.3	Excision or destruction of lesion or tissue of pharynx [2]	Y	03	63
			06	154, 155, 156
36.00	Removal of coronary artery obstruction, not otherwise specified	Y	05	110, 111
51.21	Partial cholecystectomy	Y	07	193, 194
			21	442, 443
			24	486
78.31	Other change in bone length, scapula, clavicle, and thorax [ribs and sternum]	Y	04	76, 77
			06	233, 234
			21	442, 443
			24	486
93.92	Other mechanical ventilation	(*)	04	475

[1] See Table 6b for new procedure codes (4 digits) that will be considered valid by the FY 1992 GROUPER.
[*] Non-OR procedure code that affects DRG assignment.

TABLE 6e—REVISED DIAGNOSIS CODE TITLES

Diagnosis code	Description	CC	MDC	DRG
411.81	Coronary occlusion without myocardial infarction	Y	05	124, 140
537.82	Angiodysplasia of stomach and duodenum (without mention of hemorrhage)	N	06	182, 183, 184
562.00	Diverticulosis of small intestine (without mention of hemorrhage)	N	06	182, 183, 184
562.01	Diverticulitis of small intestine (without mention of hemorrhage)	N	06	182, 183, 184
562.10	Diverticulosis of colon (without mention of hemorrhage)	N	06	182, 183, 184
562.11	Diverticulitis of colon (without mention of hemorrhage)	N	06	182, 183, 184
569.84	Angiodysplasia of intestine (without mention of hemorrhage)	N	06	188, 189, 190
578.1	Blood in stool	Y	06	174, 175

TABLE 6f—REVISED PROCEDURE CODE TITLES

Procedure code	Description	OR	MDC	DRG
36.06	Other removal of coronary artery obstruction	Y	05	112
46.85	Dilation of intestine	N		
51.22	Cholecystectomy	Y	07	195, 196, 197, 198
			17	400, 406, 407
			21	442, 443
			24	486
60.94	Control of (postoperative) hemorrhage of prostate	Y	12	344, 345
			21	442, 443
			24	486
78.10	Application of external fixation device, unspecified site	Y	06	233, 234
			21	442, 443
			24	486
78.11	Application of external fixation device, scapula, clavicle, and thorax [ribs and sternum]	Y	04	76, 77
			06	233, 234
			21	442, 443
			24	486
78.12	Application of external fixation device, humerus	Y	06	218, 219, 220
			21	442, 443
			24	486
78.13	Application of external fixation device, radius and ulna	Y	06	223, 224
			21	442, 443
			24	486
78.14	Application of external fixation device, carpals and metacarpals	Y	06	226, 229
			21	441
			24	486
78.15	Application of external fixation device, femur	Y	06	210, 211, 212
			21	442, 443
			24	485
78.16	Application of external fixation device, patella	Y	06	221, 222
			21	442, 443
			24	486
78.17	Application of external fixation device, tibia and fibula	Y	06	216, 219, 220
			21	442, 443
			24	486
78.18	Application of external fixation device, tarsals and metatarsals	Y	06	225
			21	442, 443
			24	486
78.19	Application of external fixation device, other	Y	06	233, 234
			21	442, 443
			24	486
78.20	Limb shortening procedures, unspecified site	Y	06	233, 234
			21	442, 443
			24	486
78.22	Limb shortening procedures, humerus	Y	06	218, 219, 220
			21	442, 443
			24	486
78.23	Limb shortening procedures, radius and ulna	Y	06	223, 224
			21	442, 443
			24	486
78.25	Limb shortening procedures, femur	Y	06	210, 211, 212
			21	442, 443
			24	485
78.27	Limb shortening procedures, tibia and fibula	Y	06	216, 219, 220
			21	442, 443
			24	486
78.29	Limb shortening procedures, other	Y	06	233, 234
			21	442, 443
			24	486
78.30	Limb lengthening procedures, unspecified site	Y	06	233, 234
			21	442, 443
			24	486

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TABLE 6f—REVISED PROCEDURE CODE TITLES—Continued

Procedure code	Description	OR	MDC	DRG
78.32	Limb lengthening procedures, humerus	Y	08	218, 219, 220
			21	442, 443
			24	486
78.33	Limb lengthening procedures, radius and ulna	Y	08	223, 224
			21	442, 443
			24	486
78.34	Limb lengthening procedures, carpals and metacarpals	Y	08	228, 229
			21	441
			24	486
78.35	Limb lengthening procedures, femur	Y	08	210, 211, 212
			21	442, 443
			24	485
78.37	Limb lengthening procedures, tibia and fibula	Y	08	218, 219, 220
			21	442, 443
			24	486
78.38	Limb lengthening procedures, tarsals and metatarsals	Y	08	225
			21	442, 443
			24	486
78.39	Limb lengthening procedures, other	Y	08	233, 234
			21	442, 443
			24	486
92.24	Teleradiotherapy using photons	N		

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Table 6g - Additions to the CC Exclusions List

CCs that are added to the list are in Table 6g-Additions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

*01580	07052	07049	*07043	07049	07030	6960	1540
6960	07053	07051	07020	07051	07031	*1398	1541
*01581	07059	07052	07021	07052	07041	07020	1542
6960	*0701	07053	07030	07053	07042	07021	1543
*01582	07020	07059	07031	07059	07043	07030	1548
6960	07021	0706	07041	0706	07049	07031	1550
*01583	07030	0709	07042	0709	07051	07041	1551
6960	07031	7800	07043	7800	07052	07042	1552
*01584	07041	*07031	07049	*07053	07053	07043	1560
6960	07042	07020	07051	07020	07059	07049	1561
*01585	07043	07021	07052	07021	*07889	07051	1562
6960	07049	07030	07053	07030	07020	07052	1568
*01586	07051	07031	07059	07031	07021	07053	1569
6960	07052	07041	0706	07041	07030	07059	1570
*01590	07053	07042	0709	07042	07031	*1628	1571
6960	07059	07043	7800	07043	07041	1764	1572
*01591	*07020	07049	*07049	07049	07042	*1629	1573
6960	07020	07051	07020	07051	07043	1764	1574
*01592	07021	07052	07021	07052	07049	*1658	1578
6960	07030	07053	07030	07053	07051	1764	1579
*01593	07031	07059	07031	07059	07052	*1659	*1764
6960	07041	0706	07041	0706	07053	1764	1622
*01594	07042	0709	07042	0709	07059	*1763	1623
6960	07043	7800	07043	7800	*0798	1500	1624
*01595	07049	*07041	07049	*07059	07020	1501	1625
6960	07051	07020	07051	07020	07021	1502	1628
*01596	07052	07021	07052	07021	07030	1503	1629
6960	07053	07030	07053	07030	07031	1504	1764
*01790	07059	07031	07059	07031	07041	1505	*1765
6960	0706	07041	0706	07041	07042	1508	1765
*01791	0709	07042	0709	07042	07043	1509	1960
6960	7800	07043	7800	07043	07049	1510	1961
*01792	*07021	07049	*07051	07049	07051	1511	1962
6960	07020	07051	07020	07051	07052	1512	1963
*01793	07021	07052	07021	07052	07053	1513	1965
6960	07030	07053	07030	07053	07059	1514	1966
*01794	07031	07059	07031	07059	*0799	1515	1968
6960	07041	0706	07041	0706	07020	1516	1969
*01795	07042	0709	07042	0709	07021	1518	*1958
6960	07043	7800	07043	7800	07030	1519	1764
*01796	07049	*07042	07049	*0706	07031	1520	1765
6960	07051	07020	07051	07020	07041	1521	*1960
*03682	07052	07021	07052	07021	07042	1522	1765
6960	07053	07030	07053	07030	07043	1523	*1961
*05671	07059	07031	07059	07031	07049	1528	1765
6960	0706	07041	0706	07041	07051	1529	*1962
*0700	0709	07042	0709	07042	07052	1530	1765
07020	7800	07043	7800	07043	07053	1531	*1963
07021	*07030	07049	*07052	07049	07059	1532	1765
07030	07020	07051	07020	07051	*09850	1533	*1965
07031	07021	07052	07021	07052	6960	1534	1765
07041	07030	07053	07030	07053	*09851	1535	*1966
07042	07031	07059	07031	07059	6960	1536	1765
07043	07041	0706	07041	*0709	*09859	1537	*1968
07049	07042	0709	07042	07020	6960	1538	1765
07051	07043	7800	07043	07021	*09889	1539	*1969

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1765	20810	20801	20800	20781	20780	20721	20720
*1990	20811	20810	20801	20800	20781	20780	20721
1764	20820	20811	20810	20801	20800	20781	20780
1765	20821	20820	20811	20810	20801	20800	20781
*1991	20880	20821	20820	20811	20810	20801	20800
1764	20881	20880	20821	20820	20811	20810	20801
1765	20890	20881	20880	20821	20820	20811	20810
*20300	20891	20890	20881	20880	20821	20820	20811
20300	*20301	20891	20890	20881	20880	20821	20820
20301	20300	*20310	20891	20890	20881	20880	20821
20310	20301	20300	*20311	20891	20890	20881	20880
20311	20310	20301	20300	*20380	20891	20890	20881
20380	20311	20310	20301	20300	*20381	20891	20890
20381	20380	20311	20310	20301	20300	*20400	20891
20400	20381	20380	20311	20310	20301	20300	*20401
20401	20400	20381	20380	20311	20310	20301	20300
20410	20401	20400	20381	20380	20311	20310	20301
20411	20410	20401	20400	20381	20380	20311	20310
20420	20411	20410	20401	20400	20381	20380	20311
20421	20420	20411	20410	20401	20400	20381	20380
20480	20421	20420	20411	20410	20401	20400	20381
20481	20480	20421	20420	20411	20410	20401	20400
20490	20481	20480	20421	20420	20411	20410	20401
20491	20490	20481	20480	20421	20420	20411	20410
20500	20491	20490	20481	20480	20421	20420	20411
20501	20500	20491	20490	20481	20480	20421	20420
20510	20501	20500	20491	20490	20481	20480	20421
20511	20510	20501	20500	20491	20490	20481	20480
20520	20511	20510	20501	20500	20491	20490	20481
20521	20520	20511	20510	20501	20500	20491	20490
20530	20521	20520	20511	20510	20501	20500	20491
20531	20530	20521	20520	20511	20510	20501	20500
20580	20531	20530	20521	20520	20511	20510	20501
20581	20580	20531	20530	20521	20520	20511	20510
20590	20581	20580	20531	20530	20521	20520	20511
20591	20590	20581	20580	20531	20530	20521	20520
20600	20591	20590	20581	20580	20531	20530	20521
20601	20600	20591	20590	20581	20580	20531	20530
20610	20601	20600	20591	20590	20581	20580	20531
20611	20610	20601	20600	20591	20590	20581	20580
20620	20611	20610	20601	20600	20591	20590	20581
20621	20620	20611	20610	20601	20600	20591	20590
20680	20621	20620	20611	20610	20601	20600	20591
20681	20680	20621	20620	20611	20610	20601	20600
20690	20681	20680	20621	20620	20611	20610	20601
20691	20690	20681	20680	20621	20620	20611	20610
20700	20691	20690	20681	20680	20621	20620	20611
20701	20700	20691	20690	20681	20680	20621	20620
20710	20701	20700	20691	20690	20681	20680	20621
20711	20710	20701	20700	20691	20690	20681	20680
20720	20711	20710	20701	20700	20691	20690	20681
20721	20720	20711	20710	20701	20700	20691	20690
20780	20721	20720	20711	20710	20701	20700	20691
20781	20780	20721	20720	20711	20710	20701	20700
20800	20781	20780	20721	20720	20711	20710	20701
20801	20800	20781	20780	20721	20720	20711	20710

20711	20710	20701	20700	20691	20690	20681	20680
20720	20711	20710	20701	20700	20691	20690	20681
20721	20720	20711	20710	20701	20700	20691	20690
20780	20721	20720	20711	20710	20701	20700	20691
20781	20780	20721	20720	20711	20710	20701	20700
20800	20781	20780	20721	20720	20711	20710	20701
20801	20800	20781	20780	20721	20720	20711	20710
20810	20801	20800	20781	20780	20721	20720	20711
20811	20810	20801	20800	20781	20780	20721	20720
20820	20811	20810	20801	20800	20781	20780	20721
20821	20820	20811	20810	20801	20800	20781	20780
20880	20821	20820	20811	20810	20801	20800	20781
20881	20880	20821	20820	20811	20810	20801	20800
20890	20881	20880	20821	20820	20811	20810	20801
20891	20890	20881	20880	20821	20820	20811	20810
*20410	20891	20890	20881	20880	20821	20820	20811
20300	*20411	20891	20890	20881	20880	20821	20820
20301	20300	*20420	20891	20890	20881	20880	20821
20310	20301	20300	*20421	20891	20890	20881	20880
20311	20310	20301	20300	*20480	20891	20890	20881
20380	20311	20310	20301	20300	*20481	20891	20890
20381	20380	20311	20310	20301	20300	*20490	20891
20400	20381	20380	20311	20310	20301	20300	*20491
20401	20400	20381	20380	20311	20310	20301	20300
20410	20401	20400	20381	20380	20311	20310	20301
20411	20410	20401	20400	20381	20380	20311	20310
20420	20411	20410	20401	20400	20381	20380	20311
20421	20420	20411	20410	20401	20400	20381	20380
20480	20421	20420	20411	20410	20401	20400	20381
20481	20480	20421	20420	20411	20410	20401	20400
20490	20481	20480	20421	20420	20411	20410	20401
20491	20490	20481	20480	20421	20420	20411	20410
20500	20491	20490	20481	20480	20421	20420	20411
20501	20500	20491	20490	20481	20480	20421	20420
20510	20501	20500	20491	20490	20481	20480	20421
20511	20510	20501	20500	20491	20490	20481	20480
20520	20511	20510	20501	20500	20491	20490	20481
20521	20520	20511	20510	20501	20500	20491	20490
20530	20521	20520	20511	20510	20501	20500	20491
20531	20530	20521	20520	20511	20510	20501	20500
20580	20531	20530	20521	20520	20511	20510	20501
20581	20580	20531	20530	20521	20520	20511	20510
20590	20581	20580	20531	20530	20521	20520	20511
20591	20590	20581	20580	20531	20530	20521	20520
20600	20591	20590	20581	20580	20531	20530	20521
20601	20600	20591	20590	20581	20580	20531	20530
20610	20601	20600	20591	20590	20581	20580	20531
20611	20610	20601	20600	20591	20590	20581	20580
20620	20611	20610	20601	20600	20591	20590	20581
20621	20620	20611	20610	20601	20600	20591	20590
20680	20621	20620	20611	20610	20601	20600	20591
20681	20680	20621	20620	20611	20610	20601	20600
20690	20681	20680	20621	20620	20611	20610	20601
20691	20690	20681	20680	20621	20620	20611	20610
20700	20691	20690	20681	20680	20621	20620	20611
20701	20700	20691	20690	20681	20680	20621	20620

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20621	20620	20611	20610	20601	20600	20591	20590
20680	20621	20620	20611	20610	20601	20600	20591
20681	20680	20621	20620	20611	20610	20601	20600
20690	20681	20680	20621	20620	20611	20610	20601
20691	20690	20681	20680	20621	20620	20611	20610
20700	20691	20690	20681	20680	20621	20620	20611
20701	20700	20691	20690	20681	20680	20621	20620
20710	20701	20700	20691	20690	20681	20680	20621
20711	20710	20701	20700	20691	20690	20681	20680
20720	20711	20710	20701	20700	20691	20690	20681
20721	20720	20711	20710	20701	20700	20691	20690
20780	20721	20720	20711	20710	20701	20700	20691
20781	20780	20721	20720	20711	20710	20701	20700
20800	20781	20780	20721	20720	20711	20710	20701
20801	20800	20781	20780	20721	20720	20711	20710
20810	20801	20800	20781	20780	20721	20720	20711
20811	20810	20801	20800	20781	20780	20721	20720
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20821	20820	20811	20810	20801	20800	20781	20780
20880	20821	20820	20811	20810	20801	20800	20781
20881	20880	20821	20820	20811	20810	20801	20800
20890	20881	20880	20821	20820	20811	20810	20801
20891	20890	20881	20880	20821	20820	20811	20810
*20500	20891	20890	20881	20880	20821	20820	20811
20300	*20501	20891	20890	20881	20880	20821	20820
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20310	20301	20300	*20511	20891	20890	20881	20880
20311	20310	20301	20300	*20520	20891	20890	20881
20380	20311	20310	20301	20300	*20521	20891	20890
20381	20380	20311	20310	20301	20300	*20530	20891
20400	20381	20380	20311	20310	20301	20300	*20531
20401	20400	20381	20380	20311	20310	20301	20300
20410	20401	20400	20381	20380	20311	20310	20301
20411	20410	20401	20400	20381	20380	20311	20310
20420	20411	20410	20401	20400	20381	20380	20311
20421	20420	20411	20410	20401	20400	20381	20380
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20481	20480	20421	20420	20411	20410	20401	20400
20490	20481	20480	20421	20420	20411	20410	20401
20491	20490	20481	20480	20421	20420	20411	20410
20500	20491	20490	20481	20480	20421	20420	20411
20501	20500	20491	20490	20481	20480	20421	20420
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20511	20510	20501	20500	20491	20490	20481	20480
20520	20511	20510	20501	20500	20491	20490	20481
20521	20520	20511	20510	20501	20500	20491	20490
20530	20521	20520	20511	20510	20501	20500	20491
20531	20530	20521	20520	20511	20510	20501	20500
20580	20531	20530	20521	20520	20511	20510	20501
20581	20580	20531	20530	20521	20520	20511	20510
20590	20581	20580	20531	20530	20521	20520	20511
20591	20590	20581	20580	20531	20530	20521	20520
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20601	20600	20591	20590	20581	20580	20531	20530
20610	20601	20600	20591	20590	20581	20580	20531
20611	20610	20601	20600	20591	20590	20581	20580

20581	20580	20531	20530	20521	20520	20511	20510
20590	20581	20580	20531	20530	20521	20520	20511
20591	20590	20581	20580	20531	20530	20521	20520
20600	20591	20590	20581	20580	20531	20530	20521
20601	20600	20591	20590	20581	20580	20531	20530
20610	20601	20600	20591	20590	20581	20580	20531
20611	20610	20601	20600	20591	2059	20581	20580
20620	20611	20610	20601	20600	20591	20590	20581
20621	20620	20611	20610	20601	20600	20591	20590
20680	20621	20620	20611	20610	20601	20600	20591
20681	20680	20621	20620	20611	20610	20601	20600
20690	20681	20680	20621	20620	20611	20610	20601
20691	20690	20681	20680	20621	20620	20611	20610
20700	20691	20690	20681	20680	20621	20620	20611
20701	20700	20691	20690	20681	20680	20621	20620
20710	20701	20700	20691	20690	20681	20680	20621
20711	20710	20701	20700	20691	20690	20681	20680
20720	20711	20710	20701	20700	20691	20690	20681
20721	20720	20711	20710	20701	20700	20691	20690
20780	20721	20720	20711	20710	20701	20700	20691
20781	20780	20721	20720	20711	20710	20701	20700
20800	20781	20780	20721	20720	20711	20710	20701
20801	20800	20781	20780	20721	20720	20711	20710
20810	20801	20800	20781	20780	20721	20720	20711
20811	20810	20801	20800	20781	20780	20721	20720
20820	20811	20810	20801	20800	20781	20780	20721
20821	20820	20811	20810	20801	20800	20781	20780
20880	20821	20820	20811	20810	20801	20800	20781
20881	20880	20821	20820	20811	20810	20801	20800
20890	20881	20880	20821	20820	20811	20810	20801
20891	20890	20881	20880	20821	20820	20811	20810
*20580	20891	20890	20881	20880	20821	20820	20811
20300	*20581	20891	20890	20881	20880	20821	20820
20301	20300	*20590	20891	20890	20881	20880	20821
20310	20301	20300	*20591	20891	20890	20881	20880
20311	20310	20301	20300	*20600	20891	20890	20881
20380	20311	20310	20301	20300	*20601	20891	20890
20381	20380	20311	20310	20301	20300	*20610	20891
20400	20381	20380	20311	20310	20301	20300	*20611
20401	20400	20381	20380	20311	20310	20301	20300
20410	20401	20400	20381	20380	20311	20310	20301
20411	20410	20401	20400	20381	20380	20311	20310
20420	20411	20410	20401	20400	20381	20380	20311
20421	20420	20411	20410	20401	20400	20381	20380
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20481	20480	20421	20420	20411	20410	20401	20400
20490	20481	20480	20421	20420	20411	20410	20401
20491	20490	20481	20480	20421	20420	20411	20410
20500	20491	20490	20481	20480	20421	20420	20411
20501	20500	20491	20490	20481	20480	20421	20420
20510	20501	20500	20491	20490	20481	20480	20421
20511	20510	20501	20500	20491	20490	20481	20480
20520	20511	20510	20501	20500	20491	20490	20481
20521	20520	20511	20510	20501	20500	20491	20490
20530	20521	20520	20511	20510	20501	20500	20491
20531	20530	20521	20520	20511	20510	20501	20500

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20501	20500	20491	20490	20481	20480	20421	20420
20510	20501	20500	20491	20490	20481	20480	20421
20511	20510	20501	20500	20491	20490	20481	20480
20520	20511	20510	20501	20500	20491	20490	20481
20521	20520	20511	20510	20501	20500	20491	20490
20530	20521	20520	20511	20510	20501	20500	20491
20531	20530	20521	20520	20511	20510	20501	20500
20580	20531	20530	20521	20520	20511	20510	20501
20581	20580	20531	20530	20521	20520	20511	20510
20590	20581	20580	20531	20530	20521	20520	20511
20591	20590	20581	20580	20531	20530	20521	20520
20600	20591	20590	20581	20580	20531	20530	20521
20601	20600	20591	20590	20581	20580	20531	20530
20610	20601	20600	20591	20590	20581	20580	20531
20611	20610	20601	20600	20591	20590	20581	20580
20620	20611	20610	20601	20600	20591	20590	20581
20621	20620	20611	20610	20601	20600	20591	20590
20680	20621	20620	20611	20610	20601	20600	20591
20681	20680	20621	20620	20611	20610	20601	20600
20690	20681	20680	20621	20620	20611	20610	20601
20691	20690	20681	20680	20621	20620	20611	20610
20700	20691	20690	20681	20680	20621	20620	20611
20701	20700	20691	20690	20681	20680	20621	20620
20710	20701	20700	20691	20690	20681	20680	20621
20711	20710	20701	20700	20691	20690	20681	20680
20720	20711	20710	20701	20700	20691	20690	20681
20721	20720	20711	20710	20701	20700	20691	20690
20780	20721	20720	20711	20710	20701	20700	20691
20781	20780	20721	20720	20711	20710	20701	20700
20800	20781	20780	20721	20720	20711	20710	20701
20801	20800	20781	20780	20721	20720	20711	20710
20810	20801	20800	20781	20780	20721	20720	20711
20811	20810	20801	20800	20781	20780	20721	20720
20820	20811	20810	20801	20800	20781	20780	20721
20821	20820	20811	20810	20801	20800	20781	20780
20880	20821	20820	20811	20810	20801	20800	20781
20881	20880	20821	20820	20811	20810	20801	20800
20890	20881	20880	20821	20820	20811	20810	20801
20891	20890	20881	20880	20821	20820	20811	20810
*20620	20891	20890	20881	20880	20821	20820	20811
20300	*20621	20891	20890	20881	20880	20821	20820
20301	20300	*20680	20891	20890	20881	20880	20821
20310	20301	20300	*20681	20891	20890	20881	20880
20311	20310	20301	20300	*20690	20891	20890	20881
20380	20311	20310	20301	20300	*20691	20891	20890
20381	20380	20311	20310	20301	20300	*20700	20891
20400	20381	20380	20311	20310	20301	20300	*20701
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20491	20490	20481	20480	20421	20420	20411	20410

20411	20410	20401	20400	20381	20380	20311	20310
20420	20411	20410	20401	20400	20381	20380	20311
20421	20420	20411	20410	20401	20400	20381	20380
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20481	20480	20421	20420	20411	20410	20401	20400
20490	20481	20480	20421	20420	20411	20410	20401
20491	20490	20481	20480	20421	20420	20411	20410
20500	20491	20490	20481	20480	20421	20420	20411
20501	20500	20491	20490	20481	20480	20421	20420
20510	20501	20500	20491	20490	20481	20480	20421
20511	20510	20501	20500	20491	20490	20481	20480
20520	20511	20510	20501	20500	20491	20490	20481
20521	20520	20511	20510	20501	20500	20491	20490
20530	20521	20520	20511	20510	20501	20500	20491
20531	20530	20521	20520	20511	20510	20501	20500
20580	20531	20530	20521	20520	20511	20510	20501
20581	20580	20531	20530	20521	20520	20511	20510
20590	20581	20580	20531	20530	20521	20520	20511
20591	20590	20581	20580	20531	20530	20521	20520
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20601	20600	20591	20590	20581	20580	20531	20530
20610	20601	20600	20591	20590	20581	20580	20531
20611	20610	20601	20600	20591	20590	20581	20580
20620	20611	20610	20601	20600	20591	20590	20581
20621	20620	20611	20610	20601	20600	20591	20590
20680	20621	20620	20611	20610	20601	20600	20591
20681	20680	20621	20620	20611	20610	20601	20600
20690	20681	20680	20621	20620	20611	20610	20601
20691	20690	20681	20680	20621	20620	20611	20610
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20701	20700	20691	20690	20681	20680	20621	20620
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20721	20720	20711	20710	20701	20700	20691	20690
20780	20721	20720	20711	20710	20701	20700	20691
20781	20780	20721	20720	20711	20710	20701	20700
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20801	20800	20781	20780	20721	20720	20711	20710
20810	20801	20800	20781	20780	20721	20720	20711
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20820	20811	20810	20801	20800	20781	20780	20721
20821	20820	20811	20810	20801	20800	20781	20780
20880	20821	20820	20811	20810	20801	20800	20781
20881	20880	20821	20820	20811	20810	20801	20800
20890	20881	20880	20821	20820	20811	20810	20801
20891	20890	20881	20880	20821	20820	20811	20810
*20710	20891	20890	20881	20880	20821	20820	20811
20300	*20711	20891	20890	20881	20880	20821	20820
20301	20300	*20720	20891	20890	20881	20880	20821
20310	20301	20300	*20721	20891	20890	20881	20880
20311	20310	20301	20300	*20780	20891	20890	20881
20380	20311	20310	20301	20300	*20781	20891	20890
20381	20380	20311	20310	20301	20300	*20800	20891
20400	20381	20380	20311	20310	20301	20300	*20801
20401	20400	20381	20380	20311	20310	20301	20300

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20301	20300	*20811	20891	20890	20881	20880	20821
20310	20301	20300	*20820	20891	20890	20881	20880
20311	20310	20301	20300	*20821	20891	20890	20881
20380	20311	20310	20301	20300	*20880	20891	20890
20381	20380	20311	20310	20301	20300	*20881	20891
20400	20381	20380	20311	20310	20301	20300	*20890
20401	20400	20381	20380	20311	20310	20301	20300
20410	20401	20400	20381	20380	20311	20310	20301
20411	20410	20401	20400	20381	20380	20311	20310
20420	20411	20410	20401	20400	20381	20380	20311
20421	20420	20411	20410	20401	20400	20381	20380
20480	20421	20420	20411	20410	20401	20400	20381
20481	20480	20421	20420	20411	20410	20401	20400
20490	20481	20480	20421	20420	20411	20410	20401
20491	20490	20481	20480	20421	20420	20411	20410
20500	20491	20490	20481	20480	20421	20420	20411
20501	20500	20491	20490	20481	20480	20421	20420
20510	20501	20500	20491	20490	20481	20480	20421
20511	20510	20501	20500	20491	20490	20481	20480
20520	20511	20510	20501	20500	20491	20490	20481
20521	20520	20511	20510	20501	20500	20491	20490
20530	20521	20520	20511	20510	20501	20500	20491
20531	20530	20521	20520	20511	20510	20501	20500
20580	20531	20530	20521	20520	20511	20510	20501
20581	20580	20531	20530	20521	20520	20511	20510
20590	20581	20580	20531	20530	20521	20520	20511
20591	20590	20581	20580	20531	20530	20521	20520
20600	20591	20590	20581	20580	20531	20530	20521
20601	20600	20591	20590	20581	20580	20531	20530
20610	20601	20600	20591	20590	20581	20580	20531
20611	20610	20601	20600	20591	20590	20581	20580
20620	20611	20610	20601	20600	20591	20590	20581
20621	20620	20611	20610	20601	20600	20591	20590
20680	20621	20620	20611	20610	20601	20600	20591
20681	20680	20621	20620	20611	20610	20601	20600
20690	20681	20680	20621	20620	20611	20610	20601
20691	20690	20681	20680	20621	20620	20611	20610
20700	20691	20690	20681	20680	20621	20620	20611
20701	20700	20691	20690	20681	20680	20621	20620
20710	20701	20700	20691	20690	20681	20680	20621
20711	20710	20701	20700	20691	20690	20681	20680
20720	20711	20710	20701	20700	20691	20690	20681
20721	20720	20711	20710	20701	20700	20691	20690
20780	20721	20720	20711	20710	20701	20700	20691
20781	20780	20721	20720	20711	20710	20701	20700
20800	20781	20780	20721	20720	20711	20710	20701
20801	20800	20781	20780	20721	20720	20711	20710
20810	20801	20800	20781	20780	20721	20720	20711
20811	20810	20801	20800	20781	20780	20721	20720
20820	20811	20810	20801	20800	20781	20780	20721
20821	20820	20811	20810	20801	20800	20781	20780
20880	20821	20820	20811	20810	20801	20800	20781
20881	20880	20821	20820	20811	20810	20801	20800
20890	20881	20880	20821	20820	20811	20810	20801
20891	20890	20881	20880	20821	20820	20811	20810
*20810	20891	20890	20881	20880	20821	20820	20811

20820	20811	20780	20711	29381	29381	29381	29381
20821	20820	20781	20720	29382	29382	29382	29382
20880	20821	20800	20721	29383	29383	29383	29383
20881	20880	20801	20780	*2913	*2929	*30302	*30420
20890	20881	20810	20781	29381	29381	29381	29381
20891	20890	20811	20800	29382	29382	29382	29382
*20891	20891	20820	20801	29383	29383	29383	29383
20300	*2391	20821	20810	*2914	*2930	*30303	*30421
20301	1764	20880	20811	29381	29381	29381	29381
20310	*2398	20881	20820	29382	29382	29382	29382
20311	1764	20890	20821	29383	29383	29383	29383
20380	1765	20891	20880	*2915	*2931	*30390	*30422
20381	20300	*2399	20881	29381	29381	29381	29381
20400	20301	1764	20890	29382	29382	29382	29382
20401	20310	1765	20891	29383	29383	29383	29383
20410	20311	20300	*25070	*2918	*29381	*30391	*30423
20411	20380	20301	4538	29381	29381	29381	29381
20420	20381	20310	4539	29382	29382	29382	29382
20421	20400	20311	*25071	29383	29383	29383	29383
20480	20401	20380	4538	*2919	*29382	*30392	*30430
20481	20410	20381	4539	29381	29381	29381	29381
20490	20411	20400	*25080	29382	29382	29382	29382
20491	20420	20401	4538	29383	29383	29383	29383
20500	20421	20410	4539	*2920	*29383	*30393	*30431
20501	20480	20411	*25081	29381	29381	29381	29381
20510	20481	20420	4538	29382	29382	29382	29382
20511	20490	20421	4539	29383	29383	29383	29383
20520	20491	20480	*25090	*29211	*29389	*30400	*30432
20521	20500	20481	4538	29381	29381	29381	29381
20530	20501	20490	4539	29382	29382	29382	29382
20531	20510	20491	*25091	29383	29383	29383	29383
20580	20511	20500	4538	*29212	*2939	*30401	*30433
20581	20520	20501	4539	29381	29381	29381	29381
20590	20521	20510	*2515	29382	29382	29382	29382
20591	20530	20511	53501	29383	29383	29383	29383
20600	20531	20520	53511	*2922	*2940	*30402	*30440
20601	20580	20521	53521	29381	29381	29381	29381
20610	20581	20530	53531	29382	29382	29382	29382
20611	20590	20531	53541	29383	29383	29383	29383
20620	20591	20580	53551	*29281	*2941	*30403	*30441
20621	20600	20581	53561	29381	29381	29381	29381
20680	20601	20590	53783	29382	29382	29382	29382
20681	20610	20591	56202	29383	29383	29383	29383
20690	20611	20600	56203	*29282	*2948	*30410	*30442
20691	20620	20601	56212	29381	29381	29381	29381
20700	20621	20610	56213	29382	29382	29382	29382
20701	20680	20611	56985	29383	29383	29383	29383
20710	20681	20620	*2910	*29283	*2949	*30411	*30443
20711	20690	20621	29381	29381	29381	29381	29381
20720	20691	20680	29382	29382	29382	29382	29382
20721	20700	20681	29383	29383	29383	29383	29383
20780	20701	20690	*2911	*29284	*30300	*30412	*30450
20781	20710	20691	29381	29381	29381	29381	29381
20800	20711	20700	29382	29382	29382	29382	29382
20801	20720	20701	29383	29383	29383	29383	29383
20810	20721	20710	*2912	*29289	*30301	*30413	*30451

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29381	29381	29381	29381	4539	53531	53531	53531
29382	29382	29382	29382	*4560	53541	53541	53541
29383	29383	29383	29383	53501	53551	53551	53551
*30452	*30490	*30532	*30570	53511	53561	53561	53561
29381	29381	29381	29381	53521	53783	53783	53783
29382	29382	29382	29382	53531	56202	56202	56202
29383	29383	29383	29383	53541	56203	56203	56203
*30453	*30491	*30533	*30571	53551	56212	56212	56212
29381	29381	29381	29381	53561	56213	56213	56213
29382	29382	29382	29382	53783	56985	56985	56985
29383	29383	29383	29383	56202	*5307	*53111	*53131
*30460	*30492	*30540	*30572	56203	53501	53501	53501
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29382	29382	29382	29382	56213	53521	53521	53521
29383	29383	29383	29383	56985	53531	53531	53531
*30461	*30493	*30541	*30573	*45989	53541	53541	53541
29381	29381	29381	29381	4538	53551	53551	53551
29382	29382	29382	29382	4539	53561	53561	53561
29383	29383	29383	29383	*4599	53783	53783	53783
*30462	*30500	*30542	*30580	4538	56202	56202	56202
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29382	29382	29382	29382	*4911	56212	56212	56212
29383	29383	29383	29383	49120	56213	56213	56213
*30463	*30501	*30543	*30581	49121	56985	56985	56985
29381	29381	29381	29381	*49120	*53100	*53120	*53140
29382	29382	29382	29382	4911	53501	53501	53501
29383	29383	29383	29383	49120	53511	53511	53511
*30470	*30502	*30550	*30582	49121	53521	53521	53521
29381	29381	29381	29381	4918	53531	53531	53531
29382	29382	29382	29382	4919	53541	53541	53541
29383	29383	29383	29383	49320	53551	53551	53551
*30471	*30503	*30551	*30583	49321	53561	53561	53561
29381	29381	29381	29381	*49121	53783	53783	53783
29382	29382	29382	29382	4911	56202	56202	56202
29383	29383	29383	29383	49120	56203	56203	56203
*30472	*30520	*30552	*30590	49121	56212	56212	56212
29381	29381	29381	29381	4918	56213	56213	56213
29382	29382	29382	29382	4919	56985	56985	56985
29383	29383	29383	29383	49320	*53101	*53121	*53141
*30473	*30521	*30553	*30591	49321	53501	53501	53501
29381	29381	29381	29381	*4918	53511	53511	53511
29382	29382	29382	29382	49120	53521	53521	53521
29383	29383	29383	29383	49121	53531	53531	53531
*30480	*30522	*30560	*30592	*4919	53541	53541	53541
29381	29381	29381	29381	49120	53551	53551	53551
29382	29382	29382	29382	49121	53561	53561	53561
29383	29383	29383	29383	*49320	53783	53783	53783
*30481	*30523	*30561	*30593	49120	56202	56202	56202
29381	29381	29381	29381	49121	56203	56203	56203
29382	29382	29382	29382	*49321	56212	56212	56212
29383	29383	29383	29383	49120	56213	56213	56213
*30482	*30530	*30562	*4538	49121	56985	56985	56985
29381	29381	29381	4538	*5302	*53110	*53130	*53150
29382	29382	29382	4539	53501	53501	53501	53501
29383	29383	29383	*4539	53511	53511	53511	53511
*30483	*30531	*30563	4538	53521	53521	53521	53521

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53541	53541	53541	53541	53541	53541	53541	53541
53551	53551	53551	53551	53551	53551	53551	53551
53561	53561	53561	53561	53561	53561	53561	53561
53783	53783	53783	53783	53783	53783	53783	53783
56202	56202	56202	56202	56202	56202	56202	56202
56203	56203	56203	56203	56203	56203	56203	56203
56212	56212	56212	56212	56212	56212	56212	56212
56213	56213	56213	56213	56213	56213	56213	56213
56985	56985	56985	56985	56985	56985	56985	56985
*53151	*53171	*53201	*53221	*53241	*53261	*53291	*53311
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53511	53511	53511	53511	53511	53511	53511	53511
53521	53521	53521	53521	53521	53521	53521	53521
53531	53531	53531	53531	53531	53531	53531	53531
53541	53541	53541	53541	53541	53541	53541	53541
53551	53551	53551	53551	53551	53551	53551	53551
53561	53561	53561	53561	53561	53561	53561	53561
53783	53783	53783	53783	53783	53783	53783	53783
56202	56202	56202	56202	56202	56202	56202	56202
56203	56203	56203	56203	56203	56203	56203	56203
56212	56212	56212	56212	56212	56212	56212	56212
56213	56213	56213	56213	56213	56213	56213	56213
56985	56985	56985	56985	56985	56985	56985	56985
*53160	*53190	*53210	*53230	*53250	*53270	*53300	*53320
53501	53501	53501	53501	53501	53501	53501	53501
53511	53511	53511	53511	53511	53511	53511	53511
53521	53521	53521	53521	53521	53521	53521	53521
53531	53531	53531	53531	53531	53531	53531	53531
53541	53541	53541	53541	53541	53541	53541	53541
53551	53551	53551	53551	53551	53551	53551	53551
53561	53561	53561	53561	53561	53561	53561	53561
53783	53783	53783	53783	53783	53783	53783	53783
56202	56202	56202	56202	56202	56202	56202	56202
56203	56203	56203	56203	56203	56203	56203	56203
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56202	56202	56202	56202	56202	56202	56202	56202
56203	56203	56203	56203	56203	56203	56203	56203
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53551	53551	53551	53551	53551	53551	53551	53551
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56203	56203	56203	56203	56203	56203	56203	56203
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53521	53521	53521	53521	53521	53521	53521	53100
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53541	53541	53541	53541	53541	53541	53541	53110
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56203	56203	56203	56203	56203	56203	56203	53140
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56985	56985	56985	56985	56985	56985	56985	53151
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56213	53401	53231	9981	53440	53261	53110	53471
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56985	53411	53241	4560	53450	53291	53120	53501
5780	53420	53250	5307	53451	53300	53121	53511
5781	53421	53251	53100	53460	53301	53131	53521
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5781	53421	53251	53100	53460	53301	53131	53521
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5307	53451	53300	53121	53511	53331	53160	53783
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53101	53461	53310	53140	53531	53341	53171	56203
53110	53471	53311	53141	53541	53350	53191	56212
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53121	53511	53331	53160	53783	53361	53210	56985
53131	53521	53340	53161	56202	53371	53211	5780
53140	53531	53341	53171	56203	53391	53220	5781
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53151	53561	53360	53201	5693	53410	53240	*56213
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53161	56202	53371	53211	5780	53420	53250	5307
53171	56203	53391	53220	5781	53421	53251	53100
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53271	53111	53491	53320	53150	53551	53351	53200
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53351	53200	56213	53401	53231	9981	53440	53261
53360	53201	5693	53410	53240	*56212	53441	53271
53361	53210	56985	53411	53241	4560	53450	53291
53371	53211	5780	53420	53250	5307	53451	53300
53391	53220	5781	53421	53251	53100	53460	53301
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5789	53340	53501	6960	6960	6960	6960	6960
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*71990
6960
*71991
6960
*71992
6960
*71993
6960
*71994
6960
*71995
6960
*71996
6960
*71997
6960
*71998
6960
*71999
6960
*73381
73381
73382
*73382
73381
73382
*7903
29381
29382
29383

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Table 6h - Deletions to the CC Exclusions List

CCs that are deleted from the list are in Table 6h-Deletions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

*01100	*01111	*01122	*01133	*01144	*01155	*01166	*01180
500	500	500	500	500	500	500	500
501	501	501	501	501	501	501	501
502	502	502	502	502	502	502	502
503	503	503	503	503	503	503	503
504	504	504	504	504	504	504	504
505	505	505	505	505	505	505	505
*01101	*01112	*01123	*01134	*01145	*01156	*01170	*01181
500	500	500	500	500	500	500	500
501	501	501	501	501	501	501	501
502	502	502	502	502	502	502	502
503	503	503	503	503	503	503	503
504	504	504	504	504	504	504	504
505	505	505	505	505	505	505	505
*01102	*01113	*01124	*01135	*01146	*01160	*01171	*01182
500	500	500	500	500	500	500	500
501	501	501	501	501	501	501	501
502	502	502	502	502	502	502	502
503	503	503	503	503	503	503	503
504	504	504	504	504	504	504	504
505	505	505	505	505	505	505	505
*01103	*01114	*01125	*01136	*01150	*01161	*01172	*01183
500	500	500	500	500	500	500	500
501	501	501	501	501	501	501	501
502	502	502	502	502	502	502	502
503	503	503	503	503	503	503	503
504	504	504	504	504	504	504	504
505	505	505	505	505	505	505	505
*01104	*01115	*01126	*01140	*01151	*01162	*01173	*01184
500	500	500	500	500	500	500	500
501	501	501	501	501	501	501	501
502	502	502	502	502	502	502	502
503	503	503	503	503	503	503	503
504	504	504	504	504	504	504	504
505	505	505	505	505	505	505	505
*01105	*01116	*01130	*01141	*01152	*01163	*01174	*01185
500	500	500	500	500	500	500	500
501	501	501	501	501	501	501	501
502	502	502	502	502	502	502	502
503	503	503	503	503	503	503	503
504	504	504	504	504	504	504	504
505	505	505	505	505	505	505	505
*01106	*01120	*01131	*01142	*01153	*01164	*01175	*01186
500	500	500	500	500	500	500	500
501	501	501	501	501	501	501	501
502	502	502	502	502	502	502	502
503	503	503	503	503	503	503	503
504	504	504	504	504	504	504	504
505	505	505	505	505	505	505	505
*01110	*01121	*01132	*01143	*01154	*01165	*01176	*01190
500	500	500	500	500	500	500	500
501	501	501	501	501	501	501	501
502	502	502	502	502	502	502	502
503	503	503	503	503	503	503	503
504	504	504	504	504	504	504	504
505	505	505	505	505	505	505	505

*01191	*01202	*01213	*01284	*01795	0704	501	6198
500	500	500	500	500	0705	502	*1363
501	501	501	501	501	0706	503	500
502	502	502	502	502	0709	504	501
503	503	503	503	503	7800	505	502
504	504	504	504	504	*0704	*11515	503
505	505	505	505	505	0702	500	504
*01192	*01203	*01214	*01285	*01796	0703	501	505
500	500	500	500	500	0704	502	*1398
501	501	501	501	501	0705	503	0702
502	502	502	502	502	0706	504	0703
503	503	503	503	503	0709	505	0704
504	504	504	504	504	7800	*11595	0705
505	505	505	505	505	*0705	500	*2030
*01193	*01204	*01215	*01286	*0212	0702	501	2030
500	500	500	500	500	0703	502	2031
501	501	501	501	501	0704	503	2038
502	502	502	502	502	0705	504	2040
503	503	503	503	503	0706	505	2041
504	504	504	504	504	0709	*1221	2042
505	505	505	505	505	7800	500	2048
*01194	*01205	*01216	*01790	*0310	*0706	501	2049
500	500	500	500	500	0702	502	2050
501	501	501	501	501	0703	503	2051
502	502	502	502	502	0704	504	2052
503	503	503	503	503	0705	505	2053
504	504	504	504	504	*0709	*1304	2058
505	505	505	505	505	0702	500	2059
*01195	*01206	*01280	*01791	*0391	0703	501	2060
500	500	500	500	500	0704	502	2061
501	501	501	501	501	0705	503	2062
502	502	502	502	502	*07889	504	2068
503	503	503	503	503	0702	505	2069
504	504	504	504	504	0703	*13100	2070
505	505	505	505	505	0704	6071	2071
*01196	*01210	*01281	*01792	*0700	0705	6072	2072
500	500	500	500	0702	*0798	6073	2078
501	501	501	501	0703	0702	6190	2080
502	502	502	502	0704	0703	6191	2081
503	503	503	503	0705	0704	6192	2082
504	504	504	504	*0701	0705	6198	2088
505	505	505	505	0702	*0799	*1318	2089
*01200	*01211	*01282	*01793	0703	0702	6071	*2031
500	500	500	500	0704	0703	6072	2030
501	501	501	501	0705	0704	6073	2031
502	502	502	502	*0702	0705	6190	2038
503	503	503	503	0702	*1122	6191	2040
504	504	504	504	0703	6071	6192	2041
505	505	505	505	0704	6072	6198	2042
*01201	*01212	*01283	*01794	0705	6073	*1319	2048
500	500	500	500	0706	6190	6071	2049
501	501	501	501	0709	6191	6072	2050
502	502	502	502	7800	6192	6073	2051
503	503	503	503	*0703	6198	6190	2052
504	504	504	504	0702	*11505	6191	2053
505	505	505	505	0703	500	6192	2058

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2059	2053	2051	2049	2042	2040	2031	*2061
2060	2058	2052	2050	2048	2041	2038	2030
2061	2059	2053	2051	2049	2042	2040	2031
2062	2060	2058	2052	2050	2048	2041	2038
2068	2061	2059	2053	2051	2049	2042	2040
2069	2062	2060	2058	2052	2050	2048	2041
2070	2068	2061	2059	2053	2051	2049	2042
2071	2069	2062	2060	2058	2052	2050	2048
2072	2070	2068	2061	2059	2053	2051	2049
2078	2071	2069	2062	2060	2058	2052	2050
2080	2072	2070	2068	2061	2059	2053	2051
2081	2078	2071	2069	2062	2060	2058	2052
2082	2080	2072	2070	2068	2061	2059	2053
2088	2081	2078	2071	2069	2062	2060	2058
2089	2082	2080	2072	2070	2068	2061	2059
*2038	2088	2081	2078	2071	2069	2062	2060
2030	2089	2082	2080	2072	2070	2068	2061
2031	*2041	2088	2081	2078	2071	2069	2062
2038	2030	2089	2082	2080	2072	2070	2068
2040	2031	*2048	2088	2081	2078	2071	2069
2041	2038	2030	2089	2082	2080	2072	2070
2042	2040	2031	*2050	2088	2081	2078	2071
2048	2041	2038	2030	2089	2082	2080	2072
2049	2042	2040	2031	*2052	2088	2081	2078
2050	2048	2041	2038	2030	2089	2082	2080
2051	2049	2042	2040	2031	*2058	2088	2081
2052	2050	2048	2041	2038	2030	2089	2082
2053	2051	2049	2042	2040	2031	*2060	2088
2058	2052	2050	2048	2041	2038	2030	2089
2059	2053	2051	2049	2042	2040	2031	*2062
2060	2058	2052	2050	2048	2041	2038	2030
2061	2059	2053	2051	2049	2042	2040	2031
2062	2060	2058	2052	2050	2048	2041	2038
2068	2061	2059	2053	2051	2049	2042	2040
2069	2062	2060	2058	2052	2050	2048	2041
2070	2068	2061	2059	2053	2051	2049	2042
2071	2069	2062	2060	2058	2052	2050	2048
2072	2070	2068	2061	2059	2053	2051	2049
2078	2071	2069	2062	2060	2058	2052	2050
2080	2072	2070	2068	2061	2059	2053	2051
2081	2078	2071	2069	2062	2060	2058	2052
2082	2080	2072	2070	2068	2061	2059	2053
2088	2081	2078	2071	2069	2062	2060	2058
2089	2082	2080	2072	2070	2068	2061	2059
*2040	2088	2081	2078	2071	2069	2062	2060
2030	2089	2082	2080	2072	2070	2068	2061
2031	*2042	2088	2081	2078	2071	2069	2062
2038	2030	2089	2082	2080	2072	2070	2068
2040	2031	*2049	2088	2081	2078	2071	2069
2041	2038	2030	2089	2082	2080	2072	2070
2042	2040	2031	*2051	2088	2081	2078	2071
2048	2041	2038	2030	2089	2082	2080	2072
2049	2042	2040	2031	*2053	2088	2081	2078
2050	2048	2041	2038	2030	2089	2082	2080
2051	2049	2042	2040	2031	*2059	2088	2081
2052	2050	2048	2041	2038	2030	2089	2082

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2088	2081	2078	2071	2069	2062	2060	4470
2089	2082	2080	2072	2070	2068	2061	4480
*2068	2088	2081	2078	2071	2069	2062	*25091
2030	2089	2082	2080	2072	2070	2068	4470
2031	*2070	2088	2081	2078	2071	2069	4480
2038	2030	2089	2082	2080	2072	2070	*27411
2040	2031	*2072	2088	2081	2078	2071	7880
2041	2038	2030	2089	2082	2080	2072	*317
2042	2040	2031	*2080	2088	2081	2078	3182
2048	2041	2038	2030	2089	2082	2080	*3180
2049	2042	2040	2031	*2082	2088	2081	3182
2050	2048	2041	2038	2030	2089	2082	*3181
2051	2049	2042	2040	2031	*2089	2088	3182
2052	2050	2048	2041	2038	2030	2089	*3182
2053	2051	2049	2042	2040	2031	*2399	3182
2058	2052	2050	2048	2041	2038	2030	*319
2059	2053	2051	2049	2042	2040	2031	3182
2060	2058	2052	2050	2048	2041	2038	*3912
2061	2059	2053	2051	2049	2042	2040	4290
2062	2060	2058	2052	2050	2048	2041	*3989
2068	2061	2059	2053	2051	2049	2042	4290
2069	2062	2060	2058	2052	2050	2048	*4228
2070	2068	2061	2059	2053	2051	2049	4290
2071	2069	2062	2060	2058	2052	2050	*42290
2072	2070	2068	2061	2059	2053	2051	4290
2078	2071	2069	2062	2060	2058	2052	*42291
2080	2072	2070	2068	2061	2059	2053	4290
2081	2078	2071	2069	2062	2060	2058	*42292
2082	2080	2072	2070	2068	2061	2059	4290
2088	2081	2078	2071	2069	2062	2060	*42293
2089	2082	2080	2072	2070	2068	2061	4290
*2069	2088	2081	2078	2071	2069	2062	*42299
2030	2089	2082	2080	2072	2070	2068	4290
2031	*2071	2088	2081	2078	2071	2069	*4290
2038	2030	2089	2082	2080	2072	2078	4290
2040	2031	*2078	2088	2081	2078	2071	*42971
2041	2038	2030	2089	2082	2080	2072	4290
2042	2040	2031	*2081	2088	2081	2078	*42979
2048	2041	2038	2030	2089	2082	2080	4290
2049	2042	2040	2031	*2088	2088	2081	*4470
2050	2048	2041	2038	2030	2089	2082	4470
2051	2049	2042	2040	2031	*2390	2088	*4480
2052	2050	2048	2041	2038	2030	2089	4480
2053	2051	2049	2042	2040	2031	*25070	*4572
2058	2052	2050	2048	2041	2038	4470	4572
2059	2053	2051	2049	2042	2040	4480	*45989
2060	2058	2052	2050	2048	2041	*25071	4290
2061	2059	2053	2051	2049	2042	4470	4470
2062	2060	2058	2052	2050	2048	4480	4480
2068	2061	2059	2053	2051	2049	*25080	4572
2069	2062	2060	2058	2052	2050	4470	*4599
2070	2068	2061	2059	2053	2051	4480	4290
2071	2069	2062	2060	2058	2052	*25081	4470
2072	2070	2068	2061	2059	2053	4470	4480
2078	2071	2069	2062	2060	2058	4480	4572
2080	2072	2070	2068	2061	2059	*25090	*4800

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500	500	500	4912	504	504	504	504
501	501	501	*4912	505	505	505	505
502	502	502	4911	*4955	*502	*5064	*5089
503	503	503	4912	500	500	500	500
504	504	504	4918	501	501	501	501
505	505	505	4919	502	502	502	502
*4801	*4823	*4846	49320	503	503	503	503
500	500	500	49321	504	504	504	504
501	501	501	*4918	505	505	505	505
502	502	502	4912	*4956	*503	*5069	*5171
503	503	503	*4919	500	500	500	500
504	504	504	4912	501	501	501	501
505	505	505	*49320	502	502	502	502
*4802	*4824	*4847	4912	503	503	503	503
500	500	500	*49321	504	504	504	504
501	501	501	4912	505	505	505	505
502	502	502	*494	*4957	*504	*5070	*5178
503	503	503	500	500	500	500	500
504	504	504	501	501	501	501	501
505	505	505	502	502	502	502	502
*4808	*4828	*4848	503	503	503	503	503
500	500	500	504	504	504	504	504
501	501	501	505	505	505	505	505
502	502	502	*4950	*4958	*505	*5071	*51889
503	503	503	500	500	500	500	500
504	504	504	501	501	501	501	501
505	505	505	502	502	502	502	502
*4809	*4829	*485	503	503	503	503	503
500	500	500	504	504	504	504	504
501	501	501	505	505	505	505	505
502	502	502	*4951	*4959	*5060	*5078	*5198
503	503	503	500	500	500	500	500
504	504	504	501	501	501	501	501
505	505	505	502	502	502	502	502
*481	*483	*486	503	503	503	503	503
500	500	500	504	504	504	504	504
501	501	501	505	505	505	505	505
502	502	502	*4952	*496	*5061	*5080	*5199
503	503	503	500	500	500	500	500
504	504	504	501	501	501	501	501
505	505	505	502	502	502	502	502
*4820	*4841	*4870	503	503	503	503	503
500	500	500	504	504	504	504	504
501	501	501	505	505	505	505	505
502	502	502	*4953	*500	*5062	*5081	*5350
503	503	503	500	500	500	500	5350
504	504	504	501	501	501	501	9981
505	505	505	502	502	502	502	*5351
*4821	*4843	*4871	503	503	503	503	5350
500	500	500	504	504	504	504	*5352
501	501	501	505	505	505	505	5350
502	502	502	*4954	*501	*5063	*5088	*5353
503	503	503	500	500	500	500	5350
504	504	504	501	501	501	501	*5354
505	505	505	502	502	502	502	5350
*4822	*4845	*4911	503	503	503	503	*5355

5350	6071	6071	*6259	6071
*5711	6072	6072	6190	6072
5711	6073	6073	6191	6073
*5738	*5993	*6079	6192	*7539
5711	6071	6071	6198	6071
*5739	6072	6072	*6298	6072
5711	6073	6073	6190	6073
*5970	*5994	*6084	6191	6190
6071	6071	6071	6192	6191
6072	6072	6072	6198	6192
6073	6073	6073	*6299	6198
*59780	*5995	*60881	6190	*7809
6071	6071	6071	6191	7880
6072	6072	6072	6192	7908
6073	6073	6073	6198	*7880
*59781	*5996	*60883	*683	7880
6071	6071	6071	683	*7889
6072	6072	6072	*7080	7880
6073	6073	6073	7080	*7907
*59789	*5998	*60885	*7081	7908
6071	6071	6071	7080	*7908
6072	6072	6072	*7098	7908
6073	6073	6073	683	*7909
*59800	*5999	*60886	7080	7908
6071	6071	6071	*74861	*7998
6072	6072	6072	500	7880
6073	6073	6073	501	7908
*59801	*6070	*60889	502	
6071	6071	6071	503	
6072	6072	6072	504	
6073	6073	6073	505	
*5981	*6071	*6089	*7528	
6071	6071	6071	6071	
6072	6072	6072	6072	
6073	6073	6073	6073	
*5982	*6072	*6190	6190	
6071	6071	6190	6191	
6072	6072	*6191	6192	
6073	6073	6191	6198	
*5988	*6073	*6192	*7529	
6071	6071	6192	6071	
6072	6072	*6198	6072	
6073	6073	6190	6073	
*5989	*60781	6191	6190	
6071	6071	6192	6191	
6072	6072	6198	6192	
6073	6073	*6199	6198	
*5990	*60782	6190	*7536	
6071	6071	6191	6071	
6072	6072	6192	6072	
6073	6073	6198	6073	
*5991	*60783	*6258	*7537	
6071	6071	6190	6071	
6072	6072	6191	6072	
6073	6073	6192	6073	
*5992	*60789	6198	*7538	

BILLING CODE 4120-03-C

TABLE 6I.—HIV-RELATED CONDITIONS NECESSARY FOR ASSIGNMENT TO MDC 25

Diagnosis code	Description	Major
136.8	Microsporidiosis	Yes.
176.0–176.9	Kaposi's sarcoma	Yes.
323.8	Other causes of encephalitis.	Yes.
421.0; 421.9	Endocarditis	Yes.
422.90–422.99	Myocarditis	Yes.
425.9	Secondary cardiomyopathy.	No.

TABLE 6I.—HIV-RELATED CONDITIONS NECESSARY FOR ASSIGNMENT TO MDC 25—Continued

Diagnosis code	Description	Major
480.8	Viral pneumonia, NEC.	Yes.
481	Pneumococcal	Yes.
482.0–482.9	Other bacterial pneumonia.	Yes.

TABLE 6I.—HIV-RELATED CONDITIONS NECESSARY FOR ASSIGNMENT TO MDC 25—Continued

Diagnosis code	Description	Major
580.0–583.9	Nephritis and nephropathy.	No.

BILLING CODE 4120-03-M

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TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY90 MEDPAR UPDATE 12/90 GROUPER V8.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
001	27486	17.1497	5	7	12	21	35
002	5622	16.3527	4	7	12	20	33
003	4	16.7500	3	3	6	17	41
004	4907	14.2710	3	6	10	17	29
005	44483	7.0902	3	4	5	8	13
006	1101	2.8828	1	1	2	3	6
007	5637	22.2673	2	6	12	24	50
008	2953	4.8019	1	1	3	6	11
009	1700	10.8359	2	4	7	13	22
010	19302	11.2841	2	4	8	14	24
011	3850	6.5021	1	2	5	8	13
012	21844	10.4811	2	4	7	12	20
013	8268	8.0452	3	4	7	10	15
014	323888	10.2829	2	4	7	12	20
015	131952	5.5095	2	3	4	7	10
016	11097	9.4402	3	4	7	11	18
017	3424	5.8744	2	3	5	7	11
018	13081	8.0548	2	4	8	10	15
019	7248	5.3230	1	2	4	7	10
020	7091	12.4578	2	5	9	16	25
021	879	10.2526	3	5	7	12	19
022	9795	5.8817	2	3	4	7	10
023	3333	6.6244	2	3	5	8	13
024	51667	7.6885	1	2	5	8	15
025	23296	4.5508	1	2	3	5	8
026	48	4.4583	1	1	3	6	8
027	2482	8.2472	1	3	5	10	15
028	7416	8.7044	1	2	6	12	19
029	3591	4.7307	1	2	3	6	8
030	1	2.0000	2	2	2	2	2
031	3789	6.5220	1	2	4	8	13
032	2974	9.6078	1	3	6	10	18
034	12850	8.6969	2	2	4	6	10
035	3851	5.4845	1	2	3	5	8
036	20697	2.5713	1	1	2	3	4
037	2849	4.4486	1	2	3	5	8
038	846	2.7293	1	1	2	3	5
039	12800	1.9066	1	1	1	2	3
040	3824	3.1653	1	1	2	4	6
042	21752	2.7113	1	1	2	3	5
043	213	4.4085	2	2	4	6	8
044	2104	8.9596	3	4	6	8	12
045	2652	4.5147	1	2	4	6	8
046	2903	6.0331	1	2	4	5	8
047	2079	4.4449	1	2	3	5	7
048	2	8.0000	6	6	10	10	10
049	3806	11.1117	2	4	7	14	24
050	5244	2.8398	1	1	2	3	5
051	669	2.8595	1	1	2	3	5
052	87	4.8209	1	2	4	6	8
053	7515	3.1271	1	1	2	3	7

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY90 MEDPAR UPDATE 12/90 GROUPER V8.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
066	4997	2.8536	1	1	1	3	6
064	852	3.0493	1	1	2	3	6
067	714	5.5058	1	2	3	7	13
069	218	2.1820	1	1	1	2	4
081	385	4.6857	1	1	2	6	12
083	4854	6.1502	1	2	4	7	12
084	4787	9.1548	1	2	5	11	21
085	30414	4.1782	1	2	3	5	8
086	8488	4.1807	1	2	3	5	7
087	444	5.4032	2	3	4	7	10
088	17778	5.2091	2	3	5	7	11
089	8301	4.8420	2	3	4	6	8
070	34	4.7059	1	2	3	5	7
071	158	6.2215	2	3	5	8	14
072	671	4.7720	2	3	4	7	10
073	7121	6.1012	1	2	4	6	12
075	29937	14.0844	6	8	11	17	26
076	38943	14.8089	6	7	11	18	28
077	3828	6.8835	1	2	5	9	15
078	25637	10.3078	4	7	9	12	17
079	124318	12.2080	4	6	9	15	23
080	10057	8.3190	3	5	7	10	15
081	6	5.6667	4	6	8	12	20
082	70714	9.6573	2	4	7	10	15
083	7328	8.1799	2	4	6	9	13
084	1962	5.1580	1	2	4	6	9
085	16710	9.0594	2	4	7	11	18
086	2065	5.6470	1	3	4	7	11
087	66635	8.2889	2	4	7	10	16
088	133665	7.4853	3	4	6	9	14
089	382887	6.8507	3	5	7	11	16
090	84264	6.4284	3	4	6	8	11
091	41	5.4878	2	2	4	6	11
092	8501	6.8856	3	4	7	11	17
093	1671	6.7267	2	4	5	8	12
094	8045	9.3250	3	4	7	12	18
095	1302	6.7005	2	3	4	7	10
096	192857	7.2432	3	4	6	9	13
097	38851	6.3955	2	3	5	7	9
098	12	6.3333	2	3	4	8	9
099	32042	5.8069	2	2	4	7	11
100	11601	3.1638	1	2	3	4	6
101	18800	7.1788	2	3	5	9	14
102	4238	4.9035	1	2	3	6	9
103	188	33.4415	13	16	24	38	52
104	14942	22.2889	9	13	18	26	40
105	14137	16.2138	8	9	12	18	29
106	58226	15.8380	8	10	13	18	24
107	56915	13.8186	7	8	10	15	23
108	7728	16.5612	7	9	13	19	29
110	46714	14.5029	8	8	11	17	27

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY90 MEDPAR UPDATE 12/90 GROUPER V8.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
111	7045	8.8605	3	7	8	10	14
112	100174	6.4193	2	3	5	8	13
113	35541	19.2541	8	9	14	23	38
114	8399	12.6348	3	6	10	16	24
115	7155	14.3913	8	8	12	17	25
116	58209	7.5178	2	3	6	9	14
117	3153	5.5490	1	2	4	7	11
118	7593	4.3853	1	1	2	5	9
119	3861	6.2191	1	2	3	7	15
120	32232	12.8703	2	3	8	17	29
121	131401	10.0088	4	6	9	12	17
122	98699	7.2577	2	5	7	9	12
123	55083	5.4952	1	1	3	7	13
124	107783	5.8234	1	2	5	8	12
125	90851	3.1531	1	1	2	4	7
126	3821	21.6502	5	10	18	30	42
127	565431	7.9022	3	4	6	9	15
128	25006	8.5476	4	6	8	10	14
129	6682	4.6764	1	1	1	6	12
130	56116	8.2288	2	4	7	10	15
131	28814	6.0203	1	3	6	8	11
132	18447	6.3039	1	3	5	8	12
133	6904	4.8318	1	2	4	6	9
134	30150	5.1580	2	3	4	6	9
135	6438	7.0393	2	3	5	8	13
136	1485	4.2424	1	2	3	5	8
138	173853	6.0647	2	3	5	7	11
139	71436	3.8770	1	2	3	5	7
140	347524	4.8196	2	2	4	6	8
141	75901	5.7800	2	3	4	7	10
142	38885	3.9786	1	2	3	5	7
143	109168	3.4402	1	2	3	4	6
144	53270	7.3776	2	3	5	9	15
145	7727	4.3367	1	2	3	5	8
146	6878	14.3516	6	9	12	18	24
147	1670	9.7663	6	8	8	11	14
148	133609	16.6627	7	9	13	19	29
149	19680	9.7127	6	7	9	11	14
150	20275	14.0251	6	8	11	17	24
151	5359	8.0537	3	5	7	10	13
152	4445	10.7633	4	6	9	12	19
153	2284	7.4444	4	5	7	9	11
154	38376	18.7974	6	9	14	22	36
155	4609	9.1042	4	6	8	11	15
156	3	14.3333	8	8	12	23	23
157	13693	6.6466	2	3	5	8	13
158	11710	3.1646	1	2	2	4	6
159	15481	6.5490	2	3	5	8	12
160	13493	3.6025	1	2	3	5	7
161	27143	4.6105	1	2	3	5	9
162	29151	2.2723	1	1	2	3	4

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
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DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
163	11	4.9091	1	2	4	7	10
164	4479	11.0073	5	7	10	13	18
165	1931	7.5557	3	5	7	9	11
166	2588	7.8001	3	4	6	8	13
167	2241	4.4052	2	3	4	5	7
168	2004	6.5123	3	4	6	7	10
169	1788	2.7323	1	2	2	3	5
170	12108	16.3918	3	7	12	20	33
171	1631	7.4513	1	3	6	9	15
172	31047	10.4283	2	4	7	13	21
173	3704	5.4498	1	2	4	7	11
174	148751	7.1028	2	4	6	8	13
175	24151	4.5138	2	3	4	6	8
176	12582	7.7967	2	4	6	8	15
177	16134	5.2155	2	3	4	6	11
178	7138	4.5166	2	3	4	5	8
179	7810	5.5836	2	3	5	7	10
180	83702	7.7422	2	4	6	8	15
181	22815	4.6813	2	3	4	5	8
182	250118	5.3840	2	3	4	6	9
183	78323	4.3977	2	3	4	5	8
184	50	3.5600	1	2	3	5	8
185	3918	6.3024	1	3	6	8	12
186	1	6.0000	6	6	6	6	6
187	1174	3.5843	1	2	3	5	8
188	47042	7.4071	2	3	5	8	15
189	9861	3.9100	1	2	3	5	8
190	118	5.4068	2	3	5	7	10
191	10580	20.3824	7	15	25	40	59
192	1202	10.2871	4	6	12	18	28
193	12585	16.8587	7	10	20	30	45
194	1735	10.3793	4	6	10	15	21
195	18854	12.5419	6	8	13	21	31
196	2488	8.3886	4	6	10	17	25
197	52437	8.8874	4	5	8	11	17
198	39052	5.2747	2	3	5	8	13
199	2884	15.2779	5	8	12	18	26
200	1878	14.4094	5	8	12	18	26
201	4883	12.8428	5	7	10	15	20
202	14884	9.9542	3	5	8	13	20
203	29173	9.8980	3	5	8	12	18
204	35983	8.1078	3	4	7	10	15
205	20349	9.3889	3	5	8	12	18
206	2928	5.2585	2	3	4	7	11
207	36206	7.2343	2	4	6	9	14
208	14392	4.1495	1	2	3	5	8
209	241325	11.2659	4	6	10	13	17
210	105588	13.8143	6	8	11	15	23
211	31842	10.1864	5	7	9	12	16
212	15	6.1333	2	3	5	6	12
213	5515	13.2655	3	6	10	16	26

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
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DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
214	35870	11.2898	4	6	9	13	21
215	25488	6.8875	3	4	6	8	12
216	5230	14.5799	2	5	11	19	31
217	14878	21.8885	4	8	15	28	47
218	16439	8.5070	3	5	7	11	17
219	17871	5.6412	2	3	5	7	10
220	7	4.7143	1	2	3	7	7
221	4338	11.2813	2	4	8	14	23
222	5488	5.4651	1	2	4	7	11
223	13068	4.4063	1	2	3	5	8
224	8462	3.0482	1	2	3	4	5
225	11033	5.1850	1	2	3	6	11
226	6863	9.5956	2	3	6	11	21
227	7615	3.9236	1	2	3	5	8
228	4736	3.9068	1	1	2	4	8
229	3072	2.7695	1	1	2	3	5
230	3566	6.9041	1	2	4	8	15
231	8351	6.7875	1	2	4	8	16
232	720	7.6173	1	2	3	9	20
233	5912	12.8540	3	6	8	15	25
234	3984	6.3431	1	3	5	8	12
235	6085	12.3218	2	4	7	14	29
236	37316	9.3925	2	4	7	11	18
237	1667	6.1572	2	3	4	7	12
238	6070	14.3152	4	7	11	17	29
239	59087	10.2814	3	5	8	12	20
240	10501	9.6346	3	4	7	12	19
241	4286	5.7870	2	3	5	7	11
242	2396	11.4332	3	5	8	14	23
243	111614	6.8300	2	3	5	9	13
244	11115	7.6882	2	3	6	9	14
245	8188	5.3891	1	3	4	7	10
246	1822	5.8222	2	3	4	7	11
247	9527	5.0758	1	2	4	6	10
248	6228	6.4042	2	3	5	8	12
249	7738	6.6826	1	2	4	8	14
250	3391	6.6331	1	3	5	8	13
251	3639	3.5072	1	1	2	4	7
253	16372	8.3882	2	3	6	10	16
254	13237	4.8868	1	2	4	6	9
255	1	7.0000	7	7	7	7	7
256	9014	5.5843	1	2	4	6	11
257	27229	5.6021	2	3	5	6	9
258	26662	4.0382	2	3	4	5	6
259	3687	6.3835	1	2	4	7	13
260	4408	2.8396	1	2	2	3	5
261	3190	2.8009	1	1	2	3	5
262	1606	2.9141	1	1	2	3	6
263	25321	21.8860	5	8	15	28	44
264	4583	11.9614	3	5	9	15	25
265	4830	10.1006	2	3	6	12	22

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
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DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
266	4586	4.4119	1	2	3	6	9
267	423	4.5745	1	1	3	5	10
268	1475	4.4902	1	1	2	4	9
269	10250	12.2877	2	4	9	15	25
270	5151	4.4081	1	2	3	5	9
271	19088	12.3322	3	6	9	14	23
272	8857	9.6926	3	5	7	12	19
273	2522	7.2663	2	3	6	9	15
274	3402	10.2831	2	4	7	13	22
275	459	4.8410	1	2	3	6	10
276	872	5.6239	1	2	4	7	10
277	84697	8.7140	3	5	7	10	15
278	25539	6.4068	3	4	5	8	11
279	5	4.0000	2	2	3	4	9
280	13016	6.6362	2	3	5	8	13
281	8001	4.4946	1	2	3	5	8
283	5854	7.3286	2	3	5	8	13
284	2636	4.7870	1	2	4	6	9
285	4206	20.8945	6	9	15	25	41
286	1668	12.6271	5	6	9	14	24
287	5875	20.1083	5	8	13	23	41
288	459	11.3638	3	4	6	10	26
289	3751	5.9312	2	2	4	6	13
290	9171	3.7755	1	2	3	4	6
291	148	2.1419	1	1	2	2	4
292	4524	18.0144	4	7	13	22	36
293	532	8.2293	1	3	6	11	18
294	91024	7.4979	3	4	6	9	13
295	3197	5.8993	2	3	5	7	11
296	200135	8.5034	2	4	6	10	16
297	46464	5.2867	2	3	4	6	10
298	51	3.8519	1	1	3	5	9
299	810	7.2296	3	3	5	9	15
300	11184	9.4880	3	4	7	11	18
301	2107	5.6929	2	2	4	7	10
302	6152	16.5917	5	8	13	19	28
303	16486	13.9724	6	8	11	16	24
304	14096	13.6741	4	6	10	16	26
305	3818	6.8360	2	3	6	9	12
306	11906	9.2912	3	4	7	12	18
307	4578	4.8316	2	3	4	6	9
308	10096	9.5896	2	3	7	12	19
309	4690	4.3086	1	2	3	5	9
310	35059	5.7527	1	2	4	7	11
311	21057	2.8417	1	1	2	4	5
312	3487	5.8311	1	2	4	7	12
313	2221	2.8582	1	1	2	3	6
314	4	6.0000	1	1	3	5	9
315	25969	12.7809	4	6	8	8	28
316	46335	9.3516	2	4	7	12	19
317	1042	4.1862	1	1	2	4	8

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DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
318	6852	8.1018	2	3	6	11	19
31	1078	4.0120	1	1	3	5	8
320	152543	6.6098	3	4	7	10	15
321	30266	5.9105	2	3	5	7	10
322	45	5.5444	2	3	4	7	11
323	23245	4.1049	1	2	3	5	8
324	12140	2.8127	1	1	2	3	5
325	9795	5.9863	2	3	4	7	11
326	4051	3.8331	1	2	3	5	7
327	5	4.8000	1	1	2	6	12
328	1422	5.2180	1	2	4	6	10
329	340	2.7706	1	1	2	3	6
331	27220	7.5850	2	3	6	9	15
332	8331	4.3481	1	2	3	5	8
333	296	6.8176	1	2	5	8	15
334	15823	10.0840	3	5	7	11	18
335	8702	7.5486	3	5	7	10	16
336	101739	6.1534	2	3	5	7	11
337	58836	4.0833	2	3	4	6	9
338	8231	5.3288	1	2	3	5	8
339	3717	4.3990	1	2	3	5	8
340	1	2.0000	2	2	2	2	2
341	14306	4.4078	2	3	4	6	10
342	826	4.1887	1	2	3	5	8
343	1	2.0000	2	2	2	2	2
344	3820	8.0788	2	3	5	8	13
345	2552	5.0184	2	3	4	6	10
346	8370	5.8208	2	3	5	7	11
347	1148	4.0838	2	3	4	6	10
348	4335	5.8889	1	2	4	7	11
349	1985	3.0828	1	2	3	4	6
350	7967	5.9640	2	3	5	7	10
351	4	4.2500	3	3	4	6	8
352	893	4.7021	1	2	4	6	9
353	2223	12.9536	5	7	10	14	23
354	8412	8.7189	4	5	7	10	15
355	6073	8.4006	4	5	8	12	18
356	28989	4.8814	2	3	4	6	8
357	6603	12.8747	5	7	10	15	23
358	19782	8.9920	4	5	8	11	17
359	26206	4.9216	3	4	6	8	11
360	8913	5.4801	2	3	4	6	8
361	318	5.2516	1	2	3	4	6
363	5009	4.7485	1	2	3	4	6
364	2863	3.7132	1	1	2	3	5
365	3874	10.8826	3	4	7	10	15
366	8155	10.1387	2	4	7	13	22
367	849	4.3235	1	2	3	5	8
368	1443	7.8482	3	4	6	8	15
369	2610	4.7693	1	2	3	5	10
370	502	7.8383	3	4	5	7	14

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SELECTED PERCENTILE LENGTHS OF STAY
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DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
371	668	4.4431	3	3	4	5	6
372	317	5.0158	1	2	3	5	12
373	2216	2.5454	1	2	2	3	3
374	70	3.1286	2	2	3	4	5
375	6	3.1667	2	2	2	3	4
376	118	3.4831	1	2	3	3	6
377	25	5.5600	1	1	3	7	13
378	141	4.3475	2	3	4	5	8
379	224	2.9688	1	1	2	3	5
380	83	1.9683	1	1	1	2	3
381	218	2.0734	1	1	1	2	4
382	83	1.4127	1	1	1	1	3
383	803	4.4110	1	2	3	5	8
384	100	3.0400	1	1	2	4	6
385	1	5.0000	5	5	5	8	5
386	23	8.9130	2	4	7	10	16
389	21	6.4286	1	2	5	6	14
390	2	2.0000	2	2	2	2	2
391	2298	15.2815	5	7	11	18	30
392	1	11.0000	11	11	11	11	11
393	2041	10.6502	1	2	6	13	24
394	70931	6.5358	2	3	5	8	13
395	17	4.5294	1	1	2	4	11
396	11448	7.6679	2	3	6	8	15
397	13525	8.6455	3	4	7	10	16
398	1961	5.5207	1	2	4	7	10
399	7762	14.0084	3	6	10	17	30
400	6274	15.1506	3	6	11	19	31
401	2647	5.4088	1	2	4	7	12
402	28634	11.8323	2	5	8	15	25
403	5769	5.7748	1	2	4	8	12
404	3	13.0000	3	3	10	20	20
405	3813	14.8218	4	7	11	19	31
406	1146	6.7277	2	4	6	8	12
407	8562	7.2723	1	2	4	8	16
408	6980	9.7489	2	4	5	13	22
409	133799	3.6052	1	2	3	5	6
410	199	4.2563	1	1	2	4	8
411	248	2.9919	1	1	2	3	7
412	10093	11.0388	2	4	8	14	23
413	2204	6.7713	1	2	4	8	14
414	25875	20.7733	5	9	15	25	41
415	123040	10.6111	2	5	8	13	20
416	29	6.1724	2	3	6	8	10
417	13009	8.4565	3	4	7	10	16
418	16520	7.8306	2	4	8	9	14
419	3892	5.5952	2	3	4	7	10
420	14588	5.8506	2	3	4	7	10
421	102	5.0196	2	2	4	6	10
422	8477	11.7448	3	5	8	14	24
423	2816	22.9343	2	7	15	27	47
424							

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY90 MEDPAR UPDATE 12/90 GROUPER V8.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
425	17180	6.8194	2	3	5	8	14
426	8640	7.7938	2	3	5	9	16
427	1880	7.8814	2	3	5	10	18
428	1133	10.8182	2	4	7	13	24
429	29392	12.1322	3	4	7	13	23
430	55116	12.6953	3	5	9	16	26
431	293	6.2082	2	3	6	11	20
432	516	6.8958	1	2	4	7	16
433	5520	4.7058	1	1	3	6	11
434	18112	8.0417	2	3	5	9	17
435	12611	7.0370	2	3	5	8	15
436	2212	19.3079	6	13	21	28	29
437	8415	17.6408	6	10	17	25	29
438	1013	11.2458	1	3	7	13	27
440	4309	13.6538	2	4	9	17	30
441	842	3.5962	1	1	2	4	7
442	10611	10.3317	1	3	7	13	22
443	6066	3.9965	1	1	3	5	9
444	4079	7.1647	2	3	5	8	13
445	2555	4.7973	1	2	4	6	9
446	2	2.5000	2	2	3	3	3
447	3015	3.5809	1	1	2	4	7
448	1	61.0000	61	61	61	61	61
449	28913	6.0580	1	2	4	7	12
450	8184	3.5408	1	1	2	4	7
451	5	3.0000	1	1	3	4	5
452	15976	6.2755	1	2	4	7	13
453	6000	3.7853	1	2	3	5	7
454	4006	7.3452	1	2	4	8	15
455	1175	3.7021	1	1	2	4	7
456	206	11.6796	1	2	7	13	27
457	157	6.1847	1	1	2	10	16
458	1674	23.4606	5	10	18	30	47
459	545	15.6312	3	6	11	19	31
460	2486	9.2306	2	4	7	11	19
461	6296	5.1062	1	1	2	5	11
462	8175	18.3785	5	8	16	24	35
463	9381	6.8493	2	3	5	8	13
464	3170	4.2478	1	2	3	5	8
465	875	2.8183	1	1	2	3	6
466	3662	5.5347	1	1	2	5	11
467	3652	4.9721	1	1	2	4	9
468	62531	19.3115	4	8	15	24	38
471	5030	15.6750	8	9	13	18	26
472	206	38.4417	3	13	30	52	73
473	8278	17.1972	2	4	10	27	41
475	74205	14.2825	2	6	11	18	28
476	10988	17.7123	7	10	14	21	31
477	35782	10.5926	1	3	7	13	22
478	94058	11.0022	2	4	8	14	22
479	21100	5.9378	1	2	5	8	11

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY90 MEDPAR UPDATE 12/90 GROUPER V8.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
480	24	52.7083	14	22	41	66	124
481	60	40.1600	20	27	35	48	69
482	5739	17.8942	6	9	13	20	32
483	24829	30.7438	15	25	40	63	94
484	277	23.3935	2	7	18	32	48
485	1556	17.6926	7	9	13	20	32
486	2163	18.0787	2	6	13	22	36
487	2420	11.2736	2	5	9	14	22
488	338	22.9645	6	11	19	30	44
489	2519	14.5419	3	6	10	17	29
490	1215	9.4364	2	3	5	11	19

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY90 MEDPAR UPDATE 12/90 GROUPER V9.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
001	27476	17.1526	5	7	12	21	35
002	5622	16.3527	4	7	12	20	33
003	4	16.7500	3	3	6	17	41
004	4917	14.2756	3	6	10	17	29
005	44493	7.0902	3	4	5	8	13
006	1101	2.8928	1	1	2	3	6
007	5662	22.2209	2	6	12	24	50
008	2961	4.7886	1	1	3	6	11
009	1700	10.9359	2	4	7	13	22
010	18302	11.2941	2	4	8	14	24
011	3850	6.5021	1	2	5	8	13
012	21844	10.4811	2	4	7	12	20
013	5268	8.0452	3	4	7	10	15
014	323588	10.2829	2	4	7	12	20
015	131952	5.5096	2	3	4	7	10
016	11098	9.4418	3	4	7	11	18
017	3423	5.8682	2	3	5	7	11
018	13083	8.0558	2	4	6	10	15
019	7243	5.3204	1	2	4	7	10
020	7089	12.4592	2	5	9	16	25
021	878	10.2526	3	5	7	12	19
022	9796	5.8617	2	3	4	7	10
023	3333	6.6244	1	2	5	8	13
024	51672	7.6882	2	3	5	9	15
025	23291	4.5505	1	2	3	5	8
026	48	4.4583	1	2	3	6	8
027	2492	8.2472	1	1	5	10	19
028	7417	9.7035	1	3	6	12	20
029	3590	4.7312	1	2	3	6	10
030	1	2.0000	2	2	2	2	2
031	3789	6.5220	1	2	4	8	13
032	2974	3.6076	1	1	3	4	7
034	12685	8.7013	2	3	6	10	18
035	3877	5.4847	1	2	4	6	10
036	20896	2.5714	1	1	2	3	4
037	2849	4.4486	1	2	3	5	8
038	846	2.7293	1	1	2	3	5
039	12600	1.8096	1	1	1	2	3
040	3821	3.1670	1	1	2	3	5
042	21750	2.7114	1	1	2	3	5
043	213	4.4085	2	2	4	5	7
044	2104	6.9596	3	4	5	8	12
045	2652	4.5147	1	2	4	6	8
046	2903	6.0331	1	2	5	8	12
047	2079	4.4449	1	1	3	5	8
048	2	8.0000	6	6	10	10	10
049	3806	11.1117	2	4	7	14	24
050	5244	2.8398	1	1	2	3	5
051	669	2.8595	1	1	2	3	5
052	180	3.8056	1	1	2	4	7
053	7515	3.1271	1	1	2	3	7

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY90 MEDPAR UPDATE 12/90 GROUPER V8.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
055	4464	2.7328	1	1	1	2	5
056	1385	2.6780	1	1	1	3	6
057	714	5.5658	1	2	3	7	13
059	216	2.1620	1	1	1	2	4
061	385	4.6857	1	1	2	5	12
063	4854	5.1502	1	2	4	7	12
064	4767	5.1548	1	2	5	11	21
065	30414	4.1782	1	2	3	5	8
066	8465	4.1807	1	2	3	5	7
067	444	5.4032	2	3	4	7	10
068	17778	5.2081	2	3	5	7	11
069	6300	4.6418	2	3	4	6	8
070	34	4.7059	1	2	3	4	7
071	155	6.2516	2	3	5	7	14
072	671	4.7720	1	2	3	6	10
073	7121	5.1012	1	2	4	6	12
075	29926	14.0832	6	8	11	17	26
076	36916	14.8048	4	7	11	18	28
077	3827	6.8835	1	2	5	9	15
078	25837	10.3078	4	7	9	12	17
079	124196	12.2058	3	6	9	15	23
080	10055	8.3194	3	5	7	10	15
081	6	6.6667	4	6	6	8	8
082	70714	9.6573	2	4	7	12	20
083	7239	8.1799	2	4	6	10	15
084	1982	5.1660	1	2	4	6	9
085	16711	9.0590	2	4	7	11	18
086	2084	5.6487	1	3	4	7	11
087	66639	5.3888	2	4	7	10	16
088	133866	7.4953	3	5	8	12	18
089	383742	6.9506	3	5	7	9	14
090	54340	6.4263	3	4	6	9	16
091	41	5.4878	2	2	4	8	11
092	8903	8.9871	3	4	7	11	17
093	1565	6.7145	2	4	5	8	12
094	9045	9.3280	3	4	7	12	18
095	1302	5.7005	2	3	4	7	10
096	182868	7.2431	3	4	6	9	13
097	38540	5.3962	2	3	5	7	9
098	12	6.3333	2	2	4	8	9
099	32044	5.6089	2	3	5	7	11
100	11598	3.1936	1	2	3	4	6
101	18802	7.1785	2	3	5	8	14
102	4234	4.5043	1	2	3	6	9
103	188	33.4415	13	18	24	38	62
104	14942	22.2889	9	13	18	26	40
105	14137	16.2138	8	9	12	18	29
106	58228	15.6380	8	10	13	18	24
107	56915	13.8186	7	8	10	15	23
108	7728	16.5612	7	9	13	19	29
110	46714	14.5029	3	6	11	17	27

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY90 MEDPAR UPDATE 12/90 GROUPER V8.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
111	7045	8.8805	3	7	8	10	14
112	100174	6.4183	2	3	5	8	13
113	35541	18.2541	6	8	14	23	38
114	8399	12.6348	3	6	10	16	24
115	7155	14.3813	6	8	12	17	25
116	58208	7.5178	2	3	6	9	14
117	3183	5.5490	1	2	4	7	11
118	7583	4.3853	1	1	2	5	8
119	3661	6.2191	1	2	3	7	15
120	32232	12.8703	2	3	6	17	29
121	131401	10.0088	4	6	9	12	17
122	98899	7.2577	2	5	7	9	12
123	55093	5.4852	1	1	3	7	13
124	107783	5.9234	1	2	5	8	12
125	90651	3.1531	1	1	2	4	7
126	3803	21.8438	5	10	18	30	42
127	585431	7.9022	3	4	6	9	15
128	25006	8.5478	4	6	8	10	14
129	6682	4.6784	1	1	1	6	12
130	66121	8.2287	2	4	7	10	15
131	26806	6.0202	1	3	6	8	11
132	12702	5.5501	1	2	4	7	10
133	4453	4.4108	1	2	3	5	7
134	30150	5.1580	2	3	4	6	9
135	8438	7.0393	2	3	5	8	13
136	1485	4.2424	1	2	3	5	8
138	173858	6.0848	2	3	5	8	11
139	71430	3.8786	1	2	3	5	7
140	347524	4.8196	2	2	4	6	8
141	76906	5.7898	2	3	4	7	10
142	38880	3.8786	1	2	3	5	7
143	108188	3.4402	1	2	3	4	6
144	60017	7.4157	2	3	5	8	13
145	10174	4.8403	1	2	3	6	9
146	6878	14.3516	5	9	12	18	24
147	1870	9.7883	5	8	8	11	14
148	133608	16.8627	7	9	13	19	28
149	19680	9.7127	5	7	9	11	14
150	20276	14.0248	6	8	11	17	24
151	5388	8.0536	3	5	7	10	13
152	4445	10.7833	4	6	9	12	18
153	2284	7.4444	4	5	7	9	11
154	38377	18.7972	6	9	14	22	36
155	4806	8.1042	4	6	8	11	15
156	3	14.3333	8	8	12	23	23
157	13693	6.6466	2	3	5	8	13
158	11710	3.1646	1	2	2	4	6
159	15481	6.5490	2	3	5	8	12
160	13493	3.6025	1	2	3	5	7
161	27145	4.6104	1	2	3	5	9
162	29149	2.2723	1	1	2	3	4

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY90 MEDPAR UPDATE 12/90 GROUPER V8.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
163	11	4.8091	1	2	4	7	10
164	4479	11.6073	5	7	10	13	19
165	1931	7.5857	4	5	7	9	11
166	2589	7.5887	3	4	6	9	13
167	2200	4.4054	2	3	4	5	7
168	1871	6.6494	1	2	4	7	15
169	1678	2.7452	1	1	2	3	6
170	12108	16.3919	3	7	12	20	33
171	1531	7.4513	1	3	6	9	15
172	21047	10.4293	2	4	7	13	21
173	3704	5.4495	1	2	4	7	11
174	149751	7.1028	2	4	5	8	13
175	24151	4.5138	2	3	4	6	8
176	12552	7.7957	2	4	6	9	15
177	16135	6.3182	2	3	5	8	11
178	7137	4.5172	2	3	4	6	8
179	7910	9.5638	3	5	7	11	18
180	63704	7.7421	2	4	6	9	15
181	22813	4.6812	2	3	4	6	8
182	250136	6.3839	2	3	5	8	12
183	78305	4.3375	1	2	4	5	8
184	50	3.5600	1	2	3	4	5
185	3919	6.3024	1	3	4	6	13
186	1	6.0000	6	6	6	6	6
187	1174	3.5843	1	1	2	4	8
188	47043	7.4071	2	3	5	9	15
189	9659	3.9086	1	1	3	5	8
190	118	5.4068	2	3	4	7	10
191	10561	20.3618	7	10	15	25	40
192	1201	10.2540	4	6	9	12	18
193	12585	16.8587	7	10	14	20	30
194	1736	10.3793	4	7	9	13	18
195	18954	12.5419	6	8	10	14	21
196	2488	5.3986	4	6	8	10	13
197	62439	9.5875	4	5	8	11	17
198	39060	5.2745	2	3	5	6	9
199	2854	15.2779	5	7	12	19	30
200	1678	14.4094	2	5	10	18	30
201	4963	12.8428	3	5	9	16	26
202	14864	9.9542	2	4	8	12	20
203	29173	8.8980	2	4	7	13	20
204	35963	8.1078	3	4	6	10	15
205	20349	9.3989	2	4	7	12	19
206	2628	5.2565	1	2	4	7	11
207	36206	7.2343	2	3	6	9	14
208	14352	4.1495	1	2	3	5	8
209	235606	11.3661	6	8	10	13	17
210	105591	13.8142	6	8	11	15	23
211	31840	10.1865	5	7	9	12	16
212	15	6.1333	2	2	5	6	12
213	5517	13.2630	3	6	10	16	26

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY90 MEDPAR UPDATE 12/90 GROUPER V9.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
214	35873	11.2895	4	6	9	13	21
215	35483	6.8873	3	4	6	8	12
216	5231	14.5894	2	5	11	19	31
217	14881	21.8884	4	8	15	28	47
218	16439	9.5070	3	5	7	11	17
219	17871	5.6412	2	3	5	7	10
220	7	4.7143	1	2	3	7	7
221	4338	11.2913	2	4	8	14	23
222	8485	5.4651	1	2	4	7	11
223	13089	4.4053	1	2	3	5	8
224	8451	3.0460	1	2	3	4	5
225	11033	5.1850	1	2	3	6	11
226	5236	9.6203	2	3	6	12	21
227	7008	3.8305	1	2	3	5	8
228	4737	3.8058	1	1	3	4	8
229	3072	2.7591	1	1	2	3	5
230	3483	6.8498	1	2	4	8	14
231	8330	6.7529	1	2	4	8	15
232	729	7.6173	1	2	4	8	20
233	5836	12.8706	3	6	9	15	25
234	3985	6.3438	1	3	5	8	12
235	6085	12.3218	2	4	7	14	25
236	37316	6.3925	2	4	7	11	18
237	1667	6.1572	2	3	4	7	12
238	6070	14.3152	4	7	11	17	25
239	59087	10.2914	3	5	8	12	20
240	10758	9.8751	3	4	7	12	19
241	4287	5.7933	2	3	5	7	11
242	2366	11.4332	3	5	8	14	23
243	111614	6.8300	2	3	5	8	13
244	11116	7.6876	2	3	5	8	14
245	6188	5.3688	1	3	4	7	10
246	1822	5.8222	2	3	4	7	11
247	9527	5.0758	1	2	4	6	10
248	6228	6.4042	2	3	5	8	12
249	7738	6.6826	2	3	5	8	14
250	3381	6.8331	1	3	5	8	13
251	3839	3.5072	1	1	3	4	7
253	18374	8.3976	2	3	6	10	18
254	13235	4.6870	1	2	4	7	9
255	1	7.0000	7	7	7	7	7
256	8014	5.6843	1	2	4	6	11
257	27229	5.6021	2	3	5	8	9
258	26682	4.0382	2	3	4	5	8
259	3687	6.2835	1	2	4	7	13
260	4408	2.8396	1	2	2	3	5
261	3190	2.8009	1	1	2	3	5
262	1606	2.8141	1	1	2	3	6
263	25325	21.8847	5	9	15	26	44
264	4579	11.9598	3	5	9	15	25
265	4830	10.1006	2	3	6	12	22

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY90 MEDPAR UPDATE 12/90 GROUPER V8.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
266	4586	4.4119	1	2	3	6	9
267	423	4.5745	1	1	3	5	10
268	1475	4.4802	1	1	2	4	9
269	10250	12.2877	2	4	6	15	25
270	5151	4.4081	1	2	3	5	9
271	19088	12.3322	3	6	9	14	23
272	6856	9.6919	3	5	7	12	19
273	2521	7.2892	2	3	5	9	15
274	3402	10.2831	2	4	7	13	22
275	459	4.8410	1	2	3	6	10
276	872	5.8239	1	2	4	7	10
277	64703	8.7139	3	5	7	10	15
278	25533	6.4085	3	4	5	8	11
279	5	4.0000	2	2	3	4	9
280	13017	6.6361	2	3	5	8	13
281	8000	4.4945	1	2	3	5	8
283	5655	7.3282	2	3	5	8	13
284	2635	4.7970	1	2	4	6	9
285	4208	20.8945	6	9	15	25	41
286	1668	12.6271	5	6	9	14	24
287	5875	20.1083	5	8	13	23	41
288	459	11.3838	3	4	6	10	26
289	3751	5.9312	2	2	4	6	13
290	9171	3.7755	1	2	3	4	6
291	148	2.1419	1	1	2	2	4
292	4526	18.0135	4	7	13	22	36
293	530	8.2000	1	3	6	11	17
294	91024	7.4878	3	4	6	8	13
295	3197	5.8993	2	3	5	7	11
296	200144	8.5033	2	4	6	10	16
297	46455	5.2868	2	3	4	6	10
298	81	3.8519	1	1	3	5	9
299	810	7.3296	1	3	5	8	15
300	11184	9.4880	3	4	7	11	18
301	2107	5.6828	2	2	4	7	10
302	8205	16.5531	5	8	13	19	28
303	16898	13.9724	6	8	11	16	24
304	14214	13.8678	4	8	10	16	26
305	3843	6.8578	2	3	6	9	12
306	11809	5.2812	3	4	7	12	18
307	4578	4.9316	2	3	4	6	8
308	10087	9.5697	4	7	12	19	29
309	4690	4.3096	2	3	5	7	9
310	35061	5.7527	1	2	4	7	11
311	21087	2.8417	1	1	2	4	5
312	3487	5.8311	1	2	4	7	12
313	2221	2.8582	1	1	2	3	6
314	4	6.0000	1	1	3	5	9
315	26005	12.7772	4	6	8	16	28
316	46335	9.3516	2	4	7	12	19
317	1042	4.1862	1	1	2	4	8

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
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DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
318	6852	9.1016	2	3	6	11	19
319	1076	4.0130	1	1	3	5	8
320	152550	8.6085	3	4	7	10	15
321	30259	5.9105	2	3	5	7	10
322	45	5.8444	2	3	4	7	11
323	23247	4.1049	1	2	3	5	8
324	12138	2.6125	1	1	2	3	5
325	9765	5.9863	2	3	4	7	11
326	4061	3.8331	1	2	3	5	7
327	5	4.6000	1	1	2	6	12
328	1422	5.2180	1	2	4	6	10
329	340	2.7706	1	1	2	3	6
331	27406	7.5763	2	3	6	9	15
332	6392	4.3477	1	2	3	6	9
333	286	6.5176	1	2	5	8	15
334	15523	10.0540	5	7	9	11	16
335	8702	7.5466	3	5	7	9	11
336	101740	6.1534	3	3	5	7	11
337	88835	4.0633	2	3	4	5	8
338	8231	5.3288	1	1	2	5	8
339	3717	4.3980	2	2	3	6	13
340	1	2.0000	1	2	2	5	10
341	14306	4.4078	2	2	3	5	8
342	525	4.1867	1	1	2	5	10
343	1	2.0000	2	2	2	2	2
344	3920	6.0755	2	3	5	8	11
345	2552	5.0184	2	2	3	6	10
346	8370	6.6205	2	3	5	8	13
347	1146	4.0638	1	1	2	5	8
348	4335	5.6589	1	2	3	5	9
349	1985	3.0529	1	1	2	4	6
350	7887	5.9540	2	3	4	6	9
351	4	4.2500	1	1	2	5	11
352	883	4.7021	1	2	3	6	10
353	2223	12.6536	5	7	10	14	23
354	8412	8.7199	4	5	7	10	15
355	6073	5.4005	2	3	4	6	8
356	28989	4.6814	2	3	4	6	7
357	6603	12.6747	5	7	10	15	23
358	19783	6.9919	3	4	6	8	11
359	26208	4.9216	2	3	4	6	7
360	8895	5.4821	2	3	4	6	9
361	337	5.2493	2	3	4	5	7
363	5009	4.7455	2	3	4	6	9
364	2863	3.7132	1	2	3	4	6
365	3574	10.8626	3	4	7	13	23
366	5155	10.1387	3	4	7	13	22
367	949	4.3235	2	2	3	5	9
368	1443	7.8482	3	4	6	9	15
369	2810	4.7693	2	3	4	6	10
370	502	7.9363	3	4	5	7	14

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
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DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
371	668	4.4431	3	3	4	6	8
372	317	5.0158	3	3	4	6	12
373	2215	2.5454	1	2	2	3	5
374	70	3.1286	2	2	2	4	6
375	6	3.1667	2	2	2	4	6
376	118	3.4831	1	2	2	4	13
377	25	5.5600	2	3	4	7	8
378	141	4.3475	2	3	4	5	8
379	224	2.9866	1	1	2	3	5
380	53	1.9623	1	1	1	2	3
381	218	2.0734	1	1	1	2	4
382	83	1.4127	1	1	1	1	2
383	803	4.4110	1	2	3	4	8
384	100	3.0400	1	1	2	4	6
385	1	5.0000	5	5	5	5	5
386	23	5.5130	2	4	5	7	16
387	21	5.4286	1	2	5	8	14
390	2	2.0000	2	2	2	2	2
391	2298	15.2615	8	7	11	18	30
392	1	11.0000	11	11	11	11	11
393	3041	10.6502	1	2	6	13	24
394	70931	6.5356	2	3	5	8	13
395	17	4.5294	2	2	3	6	11
396	11448	7.8678	3	4	7	10	15
397	13826	6.6453	2	3	5	8	16
398	1960	5.5204	1	2	4	7	10
399	7762	14.0084	3	6	10	17	30
400	8274	15.1806	3	6	11	19	31
401	2647	5.4068	1	2	4	7	12
402	29636	11.9318	2	5	8	15	25
403	5787	5.7761	2	3	4	6	12
404	3	13.0000	3	7	15	20	20
405	3813	14.9218	4	7	11	19	31
406	1148	6.7277	2	4	6	8	12
407	6882	7.2723	2	4	6	8	16
408	8980	9.7488	2	5	8	13	22
410	132842	3.5347	1	2	3	4	6
411	199	4.3563	1	2	3	4	8
412	248	2.9919	1	2	2	3	7
413	10083	11.0368	2	5	8	14	23
414	2204	6.7713	1	3	4	6	14
415	25975	20.7733	5	8	15	25	41
416	123040	10.8111	2	5	8	13	20
417	28	6.1724	2	3	6	8	10
418	13008	8.4565	3	4	7	10	18
419	16830	7.8294	2	4	8	9	14
420	3982	5.5952	2	3	4	7	10
421	14588	5.6606	2	3	4	7	10
422	102	5.0196	2	3	4	6	10
423	6477	11.7448	3	5	8	14	24
424	2816	22.9343	2	7	15	27	47

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
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DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
425	17180	6.8194	2	3	5	8	14
426	6640	7.7938	2	3	5	9	16
427	1880	7.8814	2	3	5	10	18
428	1133	10.8182	2	4	7	13	24
429	29392	12.1322	3	4	7	13	23
430	55115	12.8863	3	5	9	16	26
431	283	9.2082	2	3	6	11	20
432	516	6.8958	1	2	4	7	16
433	5520	4.7054	1	1	3	6	11
434	18112	6.0417	2	3	5	9	17
435	12811	7.0370	2	3	5	8	15
436	2212	19.3079	6	13	21	28	29
437	9415	17.6406	6	10	17	25	29
438	1013	11.2458	1	3	7	13	27
440	4306	13.8536	2	4	9	17	30
441	842	3.5962	1	1	2	4	7
442	10811	10.3317	1	3	7	13	22
443	6086	3.8965	1	1	3	5	9
444	4078	7.1847	2	3	5	8	13
445	2555	4.7973	1	2	4	6	9
446	2	2.5000	2	2	3	3	3
447	3015	3.5809	1	1	2	4	7
448	1	61.0000	61	61	61	61	61
449	28915	6.0591	1	2	4	7	12
450	8182	3.5398	1	1	2	4	7
451	5	3.0000	1	1	3	4	5
452	15976	6.2755	1	2	4	7	13
453	6000	3.7853	1	2	3	5	7
454	4008	7.3452	1	2	4	8	15
455	1176	3.7021	1	1	2	4	7
456	306	11.6797	1	2	7	13	27
457	157	8.1847	1	1	2	10	16
458	1874	23.4808	5	10	18	30	47
459	545	15.6312	3	6	11	18	31
460	2486	8.2306	2	4	7	11	19
461	6296	5.1082	1	1	2	5	11
462	6175	18.3785	5	8	16	24	35
463	9381	6.8493	2	3	5	8	13
464	3170	4.2479	1	2	3	5	8
465	675	2.8163	1	1	2	3	6
466	3952	5.5347	1	1	2	5	11
467	3651	4.9726	1	1	2	4	9
468	62561	19.3108	4	8	15	24	38
471	6030	15.6750	4	9	13	18	26
472	206	36.4417	3	13	30	52	73
473	8279	17.1972	2	4	10	27	41
475	74190	14.2823	2	6	11	18	28
476	10987	17.7121	7	10	14	21	31
477	35764	10.5923	1	3	7	13	22
478	94059	11.0005	2	4	8	14	22
479	21098	5.9378	1	2	5	8	11

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
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DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
480	24	52.7083	14	22	41	66	124
481	50	40.1600	20	27	35	48	69
482	5707	17.8207	6	9	13	20	32
483	24665	30.7168	15	25	40	63	84
484	277	23.3935	2	7	16	32	48
485	2188	17.2817	7	8	13	20	31
486	1532	16.8488	1	7	14	24	41
487	2420	11.2736	2	5	9	14	22
488	377	23.0424	6	11	19	29	44
489	3844	14.3119	3	6	10	17	29
490	1222	9.4364	2	3	5	11	19
491	5720	7.1451	3	4	6	8	12
492	957	13.8119	2	4	6	23	35

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TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS

[(Case weighted) 4/91]

State	Urban	Rural
Alabama	0.5023	0.5410
Alaska	0.6489	0.8295
Arizona	0.5911	0.8239
Arkansas	0.6187	0.5777
California	0.5429	0.5728
Colorado	0.6046	0.6604
Connecticut	0.5949	0.7364
Delaware	0.6181	0.6943
District of Columbia	0.5080	
Florida	0.5189	0.5228
Georgia	0.6038	0.5905
Hawaii	0.6053	0.7499
Idaho	0.5990	0.7136
Illinois	0.5817	0.6614
Indiana	0.6788	0.7183
Iowa	0.8415	0.7319
Kansas	0.6630	0.7128
Kentucky	0.5991	0.5857
Louisiana	0.5945	0.5628
Maine	0.7143	0.8621
Maryland	0.7606	0.7925
Massachusetts	0.7472	0.8571
Michigan	0.5749	0.5716
Minnesota	0.6695	0.7185
Mississippi	0.6214	0.5958
Missouri	0.5670	0.5838
Montana	0.6477	0.6914
Nebraska	0.6108	0.7103
Nevada	0.5682	0.7988
New Hampshire	0.6918	0.7095
New Jersey	0.7902	
New Mexico	0.5984	0.5955
New York	0.6695	0.7291
North Carolina	0.6676	0.6021
North Dakota	0.7190	0.6824
Ohio	0.6519	0.6658
Oklahoma	0.5741	0.6236
Oregon	0.6424	0.6849
Pennsylvania	0.5352	0.6092
Puerto Rico	0.5257	0.6661
Rhode Island	0.7650	
South Carolina	0.5696	0.5491
South Dakota	0.6543	0.6839
Tennessee	0.5992	0.5793
Texas	0.5786	0.6669
Utah	0.5534	0.5429
Vermont	0.6577	0.5972
Virginia	0.5950	0.6113
Washington	0.7156	0.7347
West Virginia	0.6145	0.5770
Wisconsin	0.7545	0.7539
Wyoming	0.7221	0.7483

TABLE 8.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS

[(Case Weight) 4/91]

State	Ratio
Alabama	0.0669
Alaska	0.1113
Arizona	0.0789
Arkansas	0.0609
California	0.0557
Colorado	0.0706
Connecticut	0.0475
Delaware	0.0783
District of Columbia	0.0997
Florida	0.0669
Georgia	0.0623
Hawaii	0.0781

TABLE 8.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS—Continued

[(Case Weight) 4/91]

State	Ratio
Idaho	0.0845
Illinois	0.0586
Indiana	0.0772
Iowa	0.0709
Kansas	0.0744
Kentucky	0.0766
Louisiana	0.0810
Maine	0.0537
Maryland	0.0571
Massachusetts	0.0617
Michigan	0.0620
Minnesota	0.0796
Mississippi	0.0597
Missouri	0.0676
Montana	0.0680
Nebraska	0.0730
Nevada	0.0514
New Hampshire	0.0689
New Jersey	0.0786
New Mexico	0.0649
New York	0.0584
North Carolina	0.0682
North Dakota	0.0654
Ohio	0.0689
Oklahoma	0.0682
Oregon	0.0678
Pennsylvania	0.0600
Puerto Rico	0.0644
Rhode Island	0.0438
South Carolina	0.0738
South Dakota	0.0645
Tennessee	0.0704
Texas	0.0748
Utah	0.0757
Vermont	0.0559
Virginia	0.0643
Washington	0.0682
West Virginia	0.0583
Wisconsin	0.0738
Wyoming	0.0789

Appendix A—Regulatory Impact Analysis

I. Introduction

Executive Order (E.O.) 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed rule that meets one of the Executive Order 12291 criteria for a "major rule;" that is, a rule that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- A significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all hospitals to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. With the exception of hospitals located in certain rural counties adjacent to urban areas and hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds located outside of a Metropolitan Statistical Area or New England County Metropolitan Area.

Section 1886(d)(8)(E) of the Act specifies that hospitals located in certain rural counties adjacent to one or more urban areas are deemed to be located in the adjacent urban area. We have identified 52 rural hospitals, some of which may be considered small, that we have reclassified as urban hospitals. Also, section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98-21) designated hospitals in certain New England counties as belonging to the adjacent New England Metropolitan County. Thus, for purposes of the prospective payment system, we classified these hospitals as urban hospitals.

It is clear that the changes being implemented in this document would affect both a substantial number of small rural hospitals as well as other classes of hospitals, and the effects on some may be significant. Therefore, the discussion below, in combination with the rest of this proposed rule, constitutes a combined regulatory impact analysis and regulatory flexibility analysis in accordance with Executive Order 12291 and the RFA.

II. Objectives

We expect these proposed changes to further Congress' original objectives in establishing the prospective payment system. The prospective payment rates create incentives similar to the incentives a hospital faces in pricing and marketing its services in a conventional market. Because similar hospitals are paid the same rate for similar services, hospitals know in advance the amount they will be paid per discharge. Giving hospitals an opportunity to receive this payment,

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regardless of their specific cost experience, creates a strong incentive to operate more efficiently and to minimize unnecessary costs. Unlike a cost limitation approach, which achieves savings largely by disallowing Medicare payment for costs that are not reasonable or that are in excess of a specific limit, the prospective payment system achieves savings by intensifying hospitals' incentives to operate efficiently. Thus, our objectives include the following:

- Restructuring hospitals' economic incentives.
- Basing payment on a system that more accurately identifies the product being purchased than cost reimbursement.
- Reinforcing the role of the Federal government as a prudent buyer of services.
- Restraining the rate of hospital cost increases, thus moderating the outflow of expenditures from the Medicare trust fund while maintaining high quality care.

In addition, we share national goals of deficit reduction and restraints on government spending in general. We believe the proposed changes would further all of the above goals while maintaining the financial viability of the hospitals industry and ensuring access to high quality care for beneficiaries.

We also expect these proposed changes to further these objectives while avoiding or minimizing unintended adverse consequences and ensuring that the outcomes of this payment system are, in general, reasonable and equitable. Thus, our intent is to refine further the prospective payment system without undercutting our objectives.

III. Limitations of Our Analysis

As has been the case in previously published regulatory impact analyses, the following quantitative analysis is limited to presenting the projected effects of the proposed policy and rate changes on current and projected payment rates. In the analysis that follows, we examine the effects of both statutory and proposed policy changes on hospital payments by projecting estimated payments under each set of policy changes onto the current payment amounts. That is, we project the effects of each policy change on payments while holding all other payment variables constant. Thus, we are not attempting to predict behavioral responses to our policy changes, and we are not generally accounting for changes in such exogenous variables as admissions, lengths of stay, or case mix.

In view of the difficulty we have in quantifying impacts and attributing causality, we believe that the approach we are taking in the specific impact discussions below is the most reasonable one. Wherever possible, we have included quantitative representations of the changes being proposed in this document. As with previously published impact analyses, we are soliciting comments and information about the anticipated effects of these changes on the prospective payment system.

IV. Hospitals Included In and Excluded From the Prospective Payment System

In general, hospitals began operating under the prospective payment system with the start of their cost reporting period beginning on or after October 1, 1983. Since September 1985, Massachusetts, New York, and New Jersey have terminated the waivers under which they were excluded from the Medicare prospective payment system, and hospitals in those States have entered the prospective payment system. Also, the demonstration project being conducted in the Rochester region of New York State has ended and the 10 hospitals in that region are now under the prospective payment system.

With the enactment of section 9304 of Public Law 99–509, which added section 1886(d)(9) to the Act, the 58 acute care hospitals located in Puerto Rico began receiving payments under the prospective payment system effective with discharges occurring on or after October 1, 1987. Also, effective with cost reporting periods that began on or after October 1, 1987, alcohol/drug hospitals and units that had been excluded from the prospective payment system under 42 CFR 412.22(c) of the regulations began receiving Medicare prospective payments. Only 59 short-term, acute care hospitals remain excluded from the prospective payment system under section 1814(b)(3) of the Act (in Maryland) or a demonstration project (in the Finger Lakes region of New York State). Thus, as of April 3, 1991, about 5,560 hospitals (84 percent of all Medicare-participating hospitals) were operating under the prospective payment system.

Among the 5,560 prospective payment hospitals, there are over 1,160 hospitals that are paid on various special bases under the prospective payment system, as required by statute. They include sole community hospitals; Medicare-dependent, small rural hospitals; and rural referral centers. In addition, there are some 1,580 hospitals that are receiving additional payments on the basis of being classified as disproportionate share hospitals. About 30 of these hospitals also receive special payments as rural referral centers. About 1,190 hospitals are receiving additional payments for the indirect cost of medical education. There are about 610 hospitals that qualify for additional payments under both the indirect medical education and disproportionate share payment provisions.

As of April 3, 1991, almost 990 Medicare hospitals were excluded from the prospective payment system and continue to be paid on the basis of their reasonable cost, subject to limits on the rate of their cost increases. These hospitals include psychiatric, rehabilitation, long-term care, and children's hospitals. Another 1,820 psychiatric and rehabilitation units in hospitals subject to the prospective payment system are excluded from the prospective payment system as of the same date. These units, too, are paid on the basis of reasonable cost subject to limits on the rate of their cost increases. Although hospitals extensively involved either in the treatment of cancer or cancer research were at one time prospective payment hospitals that were paid on a reasonable cost basis, section 6003(a) of Public Law 101–239 specifically excluded these hospitals from the prospective payment system effective with cost reporting periods beginning on or after October 1, 1989. There are currently nine hospitals that HCFA has designated as cancer research or treatment hospitals.

V. Impact on Excluded Hospitals and Units

As noted in the previous section of this impact analysis, almost 990 Medicare hospitals, and 1,820 units in hospitals included in the prospective payment system, currently are paid on a reasonable cost basis subject to the rate-of-increase ceiling requirement of § 413.40. Section 4005 of Public Law 101–508 amended section 1886(b)(1) of the Act to provide that an excluded hospital or unit with cost reporting periods beginning on or after October 1, 1991 will be paid 50 percent of the costs in excess of the target amount. This additional payment, however, is not to exceed 10 percent of the target amount after any exceptions or adjustments are made to the target amount for the cost reporting period.

The most current data for excluded hospitals is for cost reporting periods beginning in FY 1989. These costs reports contain additional days of care resulting from the enactment of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360) that would no longer be appropriate due to the subsequent repeal of that law. There may be a distortion in the relationship between operating costs per case and a hospital's target amount, which may not be adjusted to reflect the catastrophic coverage provisions. Thus, any attempt to project the impact of the increased payment amount provided for under section 4005 of Public Law 101–508, based on the most current data, could produce erroneous and misleading results.

Section 4085 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) also amended the language in section 1886(b)(4)(A) of the Act permitting assignment of a new base year. Section 1886(b)(4)(A) of the Act permits the Secretary to grant an exemption from, or an adjustment or exception to, the target rate of increase limit in those cases in which events beyond the hospital's control or extraordinary circumstances create a distortion in the increase in costs. In addition, as amended by section 6015 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239), section 1886(b)(4)(A) of the Act provides that a hospital or excluded unit may be assigned a new base year in lieu of adjustments to the existing target rate. Redesignated § 413.40(f) provides that if the hospital experiences a substantial and permanent change in patient care services that is so broad in nature that the resulting cost distortion cannot be adequately addressed through the more targeted adjustments available under redesignated § 413.40(g), we will consider granting the hospital a new base year. Section 4005(c)(2) of Public Law 101–508 further amended section 1886(b)(4) of the Act to include factors that the Secretary must take into consideration in determining whether to assign a new base period. These factors include:

- Changes in applicable technologies and medical practices.
- Differences in the severity of illness among patients.
- Whether increases in wages and wage-related costs for hospitals in the area exceed the national average increases.
- Such other factors as the Secretary considers appropriate in determining increases in the hospital's costs of providing inpatient services.

It is impossible for us to estimate the impact of this change because the circumstances involved in each request for an adjustment or a new base year are unique to the hospital in question and cannot be predicted until the hospital files its request. However, as explained in the April 20, 1990 final rule with comment period (55 FR 15167), which implemented amendments to section 1886(b)(4) of the Act made by section 6015 of Public Law 101–239, we do not believe that many hospitals will qualify for the new base year provision even with the additional factors required by section 4004 of Public Law 101–508. Therefore, the impact of this provision on program payments should be small.

We do expect there to be an increase in program payments as the result of our proposal to adjust the target amount for significant wage increases. However, since the adjustment would be limited to hospitals in geographic areas where the rate of increase in wages is 8.0 percent higher than the national average rate of increase, we believe the impact of our proposal would be minimal because of the small number of hospitals that would qualify.

In general, the proposals in this document liberalize the payment provisions contained in our regulations to reflect both changes in the Act as well as recognition on our part that significant wage increases may warrant an adjustment in the target amount. While most hospitals would not benefit from the proposed changes, those hospitals that experience significant increases in their operating costs as a result of factors beyond their control would be helped through these proposed regulations.

VI. Quantitative Impact Analysis of the Proposed Policy Changes on Prospective Payment Hospitals

A. Basis and Methodology of Estimates

The data used in developing the following quantitative analysis of changes in payments, presented in table I below, are taken from FY 1990 billing data and hospital-specific data for FY 1988 and 1989. As in previous analyses, we compared the estimated effects of changes being proposed in this document to our estimate of the payment amounts under policies in effect for the previous payment period. Normally, we would compare the proposed payments to payments that went into effect at the beginning of the current fiscal year. However section 4007 of Public Law 101–508 froze all Medicare Part A payments from October 21, 1990 through December 1, 1990 and made changes in the payment policies effective January 1, 1991. Thus, for the sake of this analysis, we are comparing the proposed changes in prospective hospital payments to the rates that went into effect on January 1, 1991, and which were announced in a final rule with comment published January 7, 1991 (56 FR 568).

For purposes of simulating the impact of the proposed payments, we have treated all hospitals in our data base as if they have cost reporting periods that begin on October 1, the beginning of the Federal fiscal year. Only by establishing the same cost reporting period for all hospitals can we show the effect of policy changes on payments for comparable 12-month periods.

Our analysis has several limitations. First, it does not take into account behavioral changes that hospitals may adopt in response to the policy changes being implemented in this proposed rule. Second, as a result of gaps in our data, we are unable to quantify some of the effects of the changes contained in this rule. Third, we could not categorize all the hospitals in our data base because in some cases the hospital-specific data necessary for constructing our impact model were missing. For some hospitals, data on hospital bed size and type of ownership were missing. The missing data, however, did not prevent us from using the discharges from these facilities to estimate the actual payments for FY 1991 and the projected payments under the policies proposed for FY 1992 that serve as the bases of our simulation.

The following analysis examines in (column 1 of table I) the effects of the annual reclassification of diagnoses and procedures and the recalibration of the DRG weights required by section 1886(d)(4)(C) of the Act. In column 2 of table I, we show the effects of the changes in reclassifying hospitals in accordance with decisions of the Medicare Geographic Classification Review Board (MGCRB). For both columns 1 and 2, we held constant all the payment variables except those associated with the provision under examination. In the last column (column 3), we present the combined effect of all changes being presented in this proposed rule. That is, column 3 displays the combined effects of the previous two columns as well as changes in the outlier payments and in the update and budget neutrality factors. As such, this last column is the only one that reflects the effects of all the quantifiable proposed policy changes on simulated FY 1991 payments.

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TABLE I.—IMPACT OF THE PROPOSED CHANGES IN THE INPATIENT HOSPITAL PROSPECTIVE PAYMENT SYSTEM FOR FY 1992

	Number of hospitals [1]	Reclassification and recalibration [2] (1)	Geographic reclassification [3] (2)	All changes [4] (3)
All hospitals	5,461	0.0	0.0	2.1
Urban by region:				
New England	176	0.1	−0.3	1.4
Middle Atlantic	477	0.0	−0.3	1.2
South Atlantic	449	0.0	−0.3	1.7
East North Central	522	0.0	−0.5	1.6
East South Central	176	0.0	−0.7	1.6
West North Central	191	0.0	−0.7	1.6
West South Central	383	−0.1	−0.5	1.8
Mountain	118	−0.1	−0.6	1.7
Pacific	511	−0.1	−0.3	1.7
Puerto Rico	49	0.0	−0.2	1.6
Rural by region:				
New England	57	0.0	1.7	4.3
Middle Atlantic	81	0.1	1.8	4.2
South Atlantic	318	0.0	1.8	4.4
East North Central	310	0.1	2.7	5.4
East South Central	294	0.0	2.6	5.3
West North Central	552	0.0	3.1	6.0
West South Central	406	0.0	4.6	7.3
Mountain	244	0.0	2.8	5.8
Pacific	151	0.0	2.3	5.3
Puerto Rico	8	0.2	1.1	4.4
Large urban areas (populations over 1 million)	1,471	0.0	−0.4	1.6
Other urban areas (populations of 1 million or fewer)	1,561	0.0	−0.5	1.5
Geographic reclassification:				
Standardized amount	20	0.1	5.4	7.4
Wage index	517	0.0	6.3	8.2
Standardized amount & wage index	65	0.0	8.7	10.3
No reclassification	4,807	0.0	−0.7	1.4
Urban hospitals	3,032	0.0	−0.4	1.5
0–99 beds	747	0.0	0.0	2.0
100–199 beds	882	0.0	−0.3	1.6
200–299 beds	638	0.0	−0.4	1.6
300–499 beds	550	0.0	−0.5	1.5
Over 500 beds	212	0.0	−0.6	1.5
Rural hospitals	2,429	0.0	2.7	5.4
0–49 beds	1,215	0.1	1.3	4.5
50–99 beds	736	0.1	2.5	5.7
100–149 beds	253	0.0	3.0	5.8
150–200 beds	111	−0.1	3.7	5.9
Over 200 beds	114	0.0	3.0	5.0
Teaching status:				
Non-teaching	4,271	0.0	0.4	2.6
Resident/bed ratio less than 0.25	958	0.0	−0.3	1.6
Resident/bed ratio 0.25 or greater	232	0.0	−0.5	1.4
Disproportionate share hospitals (DSH):				
Non-DSH	4,013	0.0	0.3	2.5
Urban DSH				
Fewer than 100 beds	68	0.0	0.2	2.5
100 beds or more	1,098	0.0	−0.5	1.4
Rural DSH				
Fewer than 100 beds—not rural referral centers or sole community hospitals	141	0.1	1.5	4.7
100 beds or more—not rural referral centers or sole community hospitals	45	−0.1	1.5	4.4
Sole community hospitals	64	0.0	1.8	5.0
Rural referral centers and sole community or rural referral centers	32	0.0	2.5	4.1
Urban teaching and DSH:				
Both teaching and DSH	591	0.0	−0.6	1.3
Teaching and no DSH	517	0.0	−0.3	1.7
No teaching and DSH	575	−0.1	−0.3	1.6
No teaching and no DSH	1,349	0.0	−0.4	1.7
Other special status (rural):				
Non SCH/RRC rural hospital	1,140	0.1	2.3	5.4
Sole community hospital or medicare dependent	1,132	0.0	2.3	5.3
Sole community hospital	509	0.0	2.0	5.3
Rural referral center (RRC)	203	0.0	3.9	5.6
Medicare-dependent	553	0.1	1.7	5.0
Sole community and rural referral center	31	−0.1	3.2	5.4
Medicare utilization as a percent of inpatient days:				
0–25	354	−0.1	−0.7	1.1
25–50	2,666	0.0	−0.1	2.0
50–65	1,855	0.0	0.3	2.4
Over 65	374	0.0	0.1	2.3
Type of ownership:				
Voluntary	2,966	0.0	−0.1	1.9
Proprietary	835	−0.1	0.1	2.3
Government	1,507	0.0	0.3	2.4

TABLE I.—IMPACT OF THE PROPOSED CHANGES IN THE INPATIENT HOSPITAL PROSPECTIVE PAYMENT SYSTEM FOR FY 1992—Continued

[1] Because data necessary to classify some hospitals by category were missing, these hospitals were omitted from the analysis. Therefore, the total number of hospitals in each category may not equal the national total.

[2] Recalibration of the DRG weights and classification changes are based on FY 1990 MEDPAR data and are performed annually in accordance with section 1886(d)(4)(C) of the Act.

[3] Under section 1886(d)(10) of the Act, a hospital may apply to the Medicare Geographic Classification Review Board for the purpose of obtaining a higher wage index, standardized payment amount, or both. Under section 1886(d)(8)(D) of the Act, changes in the geographic designation of hospitals must be budget neutral and payments to rural hospitals after reclassification cannot be lower than they would be absent reclassification.

[4] This column shows the combined effects of all the previous columns as well as the effects of updating the FY 1991 standardized payment amounts by the market basket increase as mandated by section 1886(b)(3)(B)(i)(VII) of the Act as added by sections 4002 (a) and (c) of Pub. L. 101–508. For the comparative effects of updating the FY 1991 standardized amounts by the update factors we are recommending to the Congress as required by section 1886(e)(4) of the Act, see appendix D to this document. Also, FY 1991 baseline payments were adjusted to reflect an estimate of actual outlier payments at 5.3 percent in contrast to the 5.1 percent set for the outlier pool for FY 1991. These estimates of outlier payments also contain an adjustment to remove the effects of the elimination of the day limitation on inpatient hospital services under Pub. L. 101–360. Because our total FY 1992 estimated payments do not perpetuate the 0.2 percentage point increase in outlier payments relative to the outlier pool, this column reflects the 0.2 percent decrease in total prospective payments necessary to ensure equality between projected outlier payments and the outlier offsets. In addition, this column captures interactive effects that we are not able to quantify.

B. The Impact of the Proposed Changes to the DRG Weights (Column 1)

In column 1, we present the combined effects of revising the assignment of diagnosis and procedure codes to different DRGs, the addition or elimination of diagnosis or procedure codes or DRGs, and the subsequent recalibration of the DRG weights incorporating these redefined DRGs. Section 1886(d)(4)(C)(1) of the Act requires us each year to perform these reclassifications and recalibrations of the DRG weights in order to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources.

The redistributional impact of the reclassification and recalibration changes across hospital groupings appears to be negligible. At most the impact is either a reduction or an increase of 0.1 percent for a few hospital groupings while most hospitals appear to experience no effect. The impact of reclassification and recalibration on aggregate payments is required by section 1886(d)(4)(C)(iii) of the Act to be budget neutral.

C. The Impact of Reclassified Hospitals (Column 2)

As discussed in section I.A.1 of the preamble to this proposed rule, section 6003(h)(1) of Public Law 101–239 added section 1886(d)(10) to the Act (which was later amended by section 4002(h) of Public Law 101–508) to provide for the establishment of the Medicare Geographic Classification Review Board (MGCRB). The MGCRB considers applications by hospitals for geographic reclassification for purposes of payment under the prospective payment system. The first hospital reclassifications based on decisions of the MGCRB will take effect October 1, 1991. Under section 1886(d)(10) of the Act, the MGCRB may reclassify a hospital to an adjacent rural or urban area with which it has a close proximity for the purposes of using the other area's standardized amount, wage index value, or both. (A rural referral center or a sole community hospital may be redesignated to an area that is not an adjacent county.)

Both the proposed FY 1992 standardized payment amounts and wage index values incorporate all reclassification decisions made by the MGCRB as of March 30, 1991. As of that date, 639 reclassifications were approved by the MGCRB

In keeping with the authority granted the MGCRB to reclassify hospitals on the basis of either their wage index, their standardized amount, or both, we have identified the three sets of hospitals and have presented the effects of their being reclassified on the other hospitals in the payment system in column 2 of table I. The two ways in which the reclassification of hospitals affects payment to nonreclassified hospitals is through changes in the wage index and through the geographic reclassification budget neutrality adjustment required by section 1886(d)(8)(D) of the Act.

The effects of the MGCRB reclassification decisions are significant. As reflected in table I, the effect on hospitals reclassified only for the purpose of their wage index is to increase their payments by an average of 6.3 percent. Hospitals reclassified for the purpose of both their wage index and standardized amount can expect a gain of an average 8.7 percent in their payments, and hospitals reclassified only for the purpose of their standardized amounts can expect an average increase of 5.4 percent. The counterbalancing reduction to hospitals that are not reclassified is projected to be 0.7 percent of current payments.

As one would expect, rural hospitals, as a group, benefit the most from reclassifications while urban hospitals absorb the reduction. As a group, the average payment to a rural hospital will increase 2.7 percent per case. Among rural hospitals, those in the 150 to 200 bed size range are projected to benefit the most, with an increase of 3.7 percent in the average payment case, indicating that a large proportion of the reclassified hospitals are in this bed size range. Among the types of rural hospitals benefiting from reclassification, rural referral centers are projected to receive an increase of 3.9 percent, also indicating that many of the reclassified hospitals qualify as rural referral centers. The geographical analysis of the effects of reclassified hospitals shows rural West South Central census division receiving the largest increase of 4.6 percent.

Overall, urban hospitals can expect a reduction of 0.4 percent in their payments per case. It should be noted that this value and those that follow in the discussion of specific groupings of urban hospitals are net values. That is, while the effect of reclassifying hospitals will be generally to reduce payments to urban hospitals, some urban hospitals were reclassified either into areas with a higher wage index value or a higher standardized amount or both. A case in point are the urban disproportionate share hospitals with fewer than 100 beds. We are projecting these hospitals to receive an increase in payments of 0.2 percent because some of the reclassified hospitals fall into this group. But as the value for all urban

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hospitals indicates, many more hospitals can expect negative effects from the reclassification than expect gains.

Among the urban hospitals, those that will see the largest reduction in their average payments per case have over 500 beds (−0.6 percent), or have large graduate medical education programs (−0.5 percent), or are urban, disproportionate share hospitals with 100 or more beds (−0.5 percent). In addition, those hospitals that qualify for additional payments for both their teaching activities and for being a disproportionate share hospitals may see a reduction in average payments of a 0.6 percent because of hospital reclassification. The geographic analysis shows that the largest reduction in average payments occurring in the urban areas of the East South Central and West North Central census division. The reduction is projected to be 0.7 percent for each of these areas.

From the foregoing analysis, it is evident that the provisions allowing the geographic reclassification of hospitals is resulting in the redistribution of ←payments from hospitals in higher paying urban areas to hospitals in the generally lower paying rural areas. We note that this analysis is based on only the decisions made by the MGCRB as of March 30, 1991. Additional decisions will be reflected in the final rule, and we expect the distributional impact to increase when the additional decisions are taken into account.

D. Combined Effects of All Changes (Column 3)

In column 3 of Table I, we present the expected effects of all proposed changes for FY 1992 compared to expected payments under policies in effect for FY 1991. In addition to the changes being proposed for DRG weights (presented in column 1) and the effects of reclassified hospitals (presented in column 2), we incorporated the update factors being proposed for large and other urban areas and rural areas, changes in the outlier thresholds, revisions to the wage index, and cost of living adjustments. Although we have not explicitly analyzed these changes in this impact analysis, they are discussed in the addendum to the proposed rule and in the preamble. As explained in our introductory remarks to the quantitative analysis section, some changes cannot be captured because we lack current data and the data we do possess may be incomplete. There may also be interactive effects between the various factors comprising the payment system which we are not able to isolate. For these reasons the values in column 3 may not equal the sum of the previous columns plus the other variables we are able to identify.

In addition to the update factors to the standardized amounts being proposed (that is, 2.2 percent for urban hospitals and 3.2 percent for rural hospitals), we are proposing changes in the outlier thresholds to incorporate the proposed prospective payment system for hospital inpatient capital-related costs. In section IV.C. of the preamble to this proposed rule, we provide a detailed explanation of the effects of incorporating outlier payments for capital with outlier payments for the operating portion of the prospective payment system. That analysis shows that there would be very little change in the proportion of outlier cases meeting the day and cost outlier thresholds given our proposed changes to the outlier thresholds. Under the proposed thresholds that would include outlier payments for capital, 57.2 percent of the cases used to model these thresholds would be paid as day outliers (that is, paid a per diem amount based either on the number of days exceeding the DRG geometric mean length of stay plus the lesser of 22 days or 3.0 standard deviations), and 42.8 of the cases would be paid as high cost outliers (that is, paid once costs exceed the lesser of 2 times the DRG payment rate or $43,000). If capital payments for outliers were not included, 56.9 of the outlier cases would be paid as day outliers (that is, they would exceed the DRG geometric mean length of stay plus lesser of 22 days or 3.0 standard deviations), and 43.1 of the cases would be paid as high cost outliers (that is, they would exceed the lesser of 2 times the DRG payment rate or $39,000).

In addition to adjusting the outlier threshold to account for the inclusion of capital in the prospective payment system, we have made other adjustments to achieve an outlier pool target of 5.1 percent of total prospective payments. Because we estimate outlier payments in FY 1991 will equal 5.3 percent of total prospective payments based on FY 1990 billing data, we have adjusted the amounts in the FY 1991 baseline amounts to account for the underestimation of outlier payments. By making this adjustment to the base year amounts in our model, we would maintain equality between the proposed outlier offsets and the target of a 5.1 percent outlier pool.

In order to recognize the impact of the Medicare Catastrophic Coverage Act of 1988 on outlier payments, we adjusted the outlier model to account for the effects of these provisions. The provisions of that statute were effective for discharges occurring on or after January 1, 1988. They were subsequently repealed by the Medicare Catastrophic Coverage Repeal Act of 1989 for discharges occurring on or after January 1, 1990. As a consequence of these two provisions, Medicare patients discharged from a hospital during the first quarter of FY 1990 were subject to the extended coverage provisions under the 1988 catastrophic coverage act while patients discharged during the remainder of FY 1990 were subject to the more restrictive coverage provisions that were in effect before January 1, 1988. As discussed in section II.A.4.d of the addendum to this proposed rule, we developed an adjustment factor that we believe appropriately accounts for the extended coverage provisions that were in effect during the first 3 months of FY 1990.

At the national level, our simulation of the proposed FY 1992 prospective payment rates shows that the average payment to hospitals will increase 2.1 percent. Geographically, urban hospitals can expect an increase of 1.5 percent with hospitals in the large urban areas receiving an increase of 1.6 percent and hospitals in the other urban areas receiving an increase of 1.3 percent. Hospitals in rural areas can expect an increase in the average payment of 5.4 percent.

The analysis by census division shows that among urban hospitals, those in West South Central census division are projected to receive the largest increase in payments per case of 1.8 percent. However, it should be noted that, with the exceptions of the New England and Middle Atlantic census divisions, there is a difference of only two-tenths of a percentage point. The projected increases for the urban New England and Middle Atlantic census divisions are 2.4 percent and 2.2 percent, respectively.

Among the rural areas, the West South Central census division will receive the largest increase in payments per case of 7.3 percent. The smallest increase is projected for the Middle Atlantic census division. We project this increase to be 4.2 percent.

Consistent with our expectations, reclassified hospitals would gain the most under policies being proposed in this document. Those hospitals that are reclassified for the purpose of obtaining both a higher wage index and a standardized amount are projected to receive an increase of 10.3 percent, while hospitals reclassified only for the wage index will receive an 8.2 percent increase, and hospitals reclassified only for the standardized amount will receive a 7.4 percent increase. Also, rural

hospitals with between 150 and 200 beds are projected to receive a payment increase of 5.9 percent. The smaller rural hospitals, with bed sizes of fewer than 50 beds and between 50 and 100 beds, are projected to receive an increase equal to 4.5 percent and 5.7 percent, respectively. As a group, hospitals that were not reclassified can expect an increase of 1.4 percent.

Among hospitals grouped by type of facility or special payment status, rural sole community hospitals that also receive a disproportionate share adjustment can expect an increase of 5.0 percent while rural referral centers can expect an increase of 5.6 percent. When looked at from the type of ownership, government-controlled facilities can expect to receive an increase of 2.4 percent compared to a 1.9 percent increase for voluntary hospitals.

As a general conclusion, the single factor increase dominates the outcome of our simulation (other than the update factor) is the reclassification of hospitals. Because of the requirements to maintain budget neutrality, our simulation shows a general redistribution of prospective payments from hospitals located in urban area to hospitals located in rural areas. This reflects the reclassification of many rural hospitals to urban areas. But it should be noted that some urban areas hospitals have also been reclassified either from other urban to large urba areas or large urban to other urban.

Table II presents the projected average payments per case under the changes proposed for FY 1992 for urban and rural hospitals and for the different categories of hospitals shown in table I, and it compares them with the average estimated per case payments that were effective January 1, 1991. As such, this table presents, in terms of the average dollar amounts paid per discharge, the combined effects of the changes presented in table I. That is, the percentage change in average payments from January 1, 1991 to October 1, 1991 equals the percentage changes shown in the last column of table I.

TABLE II—COMPARISON OF PAYMENT PER CASE

[FY 1992 Compared to FY 1991]

	Number of hospitals	Average FY 1991 payment per case (1)	Average FY 1992 payment per case (2)	Percentage change [1] (3)
All hospitals	5,461	5,249	5,357	2.1
Urban by region:				
New England	176	6,182	6,271	1.4
Middle Atlantic	477	6,381	6,458	1.2
South Atlantic	449	5,344	5,436	1.7
East North Central	522	5,524	5,611	1.6
East South Central	176	4,933	5,010	1.6
West North Central	191	5,577	5,666	1.6
West South Central	363	5,182	5,275	1.8
Mountain	118	5,596	5,692	1.7
Pacific	511	6,500	6,611	1.7
Puerto Rico	49	2,222	2,257	1.6
Rural by region:				
New England	57	4,251	4,432	4.3
Middle Atlantic	81	3,982	4,148	4.2
South Atlantic	318	3,444	3,594	4.4
East North Central	310	3,456	3,643	5.4
East South Central	294	3,078	3,240	5.3
West North Central	582	3,190	3,381	6.0
West South Central	406	3,055	3,309	7.3
Mountain	244	3,656	3,868	5.8
Pacific	151	4,136	4,358	5.3
Puerto Rico	6	1,479	1,543	4.4
Large urban areas (populations over 1 million)	1,471	5,246	5,343	1.8
Other urban areas (populations of 1 million or fewer)	1,561	5,224	5,304	1.5
Geographic reclassification:				
Standardized amount	20	3,831	4,116	7.4
Wage index	517	4,262	4,614	8.2
Standardized amount & wage index	65	5,009	5,526	10.3
No reclassification	4,807	5,368	5,444	1.4
Urban hospitals	3,032	5,726	5,816	1.5
0–99 beds	747	4,122	4,204	2.0
100–199 beds	882	4,877	4,956	1.6
200–299 beds	638	5,383	5,468	1.6
300–499 beds	550	5,916	6,003	1.5
Over 500 beds	212	7,275	7,383	1.5
Rural hospitals	2,429	3,400	3,583	5.4
0–49 beds	1,215	2,872	3,002	4.5
50–99 beds	736	3,158	3,339	5.7
100–149 beds	253	3,507	3,709	5.8
150–200 beds	111	3,601	3,814	5.9
Over 200 beds	114	4,061	4,263	5.0
Teaching status:				
Non-teaching	4,271	4,326	4,440	2.6
Resident/bed ratio less than 0.25	958	5,743	5,837	1.6
Resident/bed ratio 0.25 or greater	232	9,035	9,163	1.4
Disproportionate share hospitals (DSH):				
Non-DSH	4,013	4,712	4,826	2.5
Urban DSH				
Fewer than 100 beds	68	4,094	4,197	2.5
100 beds or more	1,098	6,470	6,558	1.4

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TABLE II—COMPARISON OF PAYMENT PER CASE—Continued

[FY 1992 Compared to FY 1991]

	Number of hospitals	Average FY 1991 payment per case (1)	Average FY 1992 payment per case (2)	Percentage change [1] (3)
Rural DSH:				
Fewer than 100 beds—not rural referral centers or sole community hospitals	141	2,792	2,899	4.7
100 beds or more—not rural referral centers or sole community hospitals	45	3,137	3,275	4.4
Sole community hospitals	64	3,324	3,549	6.0
Rural referral centers and sole community or rural referral centers	32	4,093	4,261	4.1
Urban teaching and DSH:				
Both teaching and DSH	591	7,298	7,398	1.3
Teaching and no DSH	617	5,839	5,961	1.7
No teaching and DSH	575	5,119	5,202	1.6
No teaching and no DSH	1,348	4,702	4,782	1.7
Other special status (rural):				
Non SCH/RRC rural hospital	1,140	3,039	3,202	5.4
Sole community hospital or Medicare dependent	1,132	3,456	3,640	5.3
Sole community hospital	509	3,443	3,627	5.3
Rural referral center (RRC)	203	3,956	4,179	5.6
Medicare-dependent	553	2,990	3,141	5.0
Sole community and rural referral center	31	4,384	4,620	5.4
Medicare utilization as a percent of inpatient days:				
0–25	354	7,107	7,186	1.1
25–50	2,866	5,494	5,604	2.0
50–65	1,655	4,584	4,693	2.4
Over 65	374	4,412	4,514	2.3
Type of ownership:				
Voluntary	2,966	5,430	5,536	1.9
Proprietary	835	4,727	4,836	2.3
Government	1,597	4,790	4,907	2.4

[1] Percentage changes shown in this column are taken from Table I, column 3. Because the dollar amounts shown in this table are rounded to the nearest dollar, percentage changes computed on the basis of these amounts will differ slightly from those displayed in the last column of Table I.

Appendix B

April 4, 1991.

The Honorable Dan Quayle,
President of the Senate,
Washington, DC 20510

Dear Mr. President: Section 1886(e)(3)(B) of the Social Security Act requires that the Secretary of Health and Human Services, not later than March 1, 1991, report to the Congress his initial estimate of the applicable percentage increase for FY 1992 that he will recommend for hospitals subject to the Medicare prospective payment system (PPS) and for excluded hospitals and units. This submission constitutes the required report.

President Bush's budget incorporates updates consistent with those mandated by current law. The budget recommends an update for hospitals subject to the PPS equal to the rate of increase in the hospital market basket minus 1.6 percentage points for urban hospitals, and the rate of increase in the hospital market basket minus 0.6 percentage points for rural hospitals. For hospitals excluded from PPS, the budget includes an average increase in the Tax Equity and Fiscal Responsibility Act (TEFRA) limit equal to the rate of increase in the TEFRA hospital market basket. In addition, the budget contains a legislative proposal to move the annual update for hospitals from October 1 to January 1 to conform with the update cycle generally used in Medicare.

We have not had the opportunity to evaluate fully the recommendations of the Prospective Payment Assessment Commission (ProPAC). Our recommendation for the updates is contingent on current projections of relevant data. The President's budget assumed the hospital market basket would increase by 5.5 percent. Our most current projection is that the PPS hospital market basket will increase by 3.8 percent, and the TEFRA hospital market basket will increase by 4.0 percent. A final recommendation on the appropriate percentage increases for FY 1992 will be made nearer the beginning of the new Federal fiscal year based on the most current market basket projection available at that time. The final recommendation will incorporate our analysis of the latest estimates of all relevant factors, including ProPAC's recommendations.

Section 1886(d)(4)(C)(iv) of the Social Security Act, as enacted by section 6003(b)(2) of the Omnibus Budget Reconciliation Act of 1989, requires that the Secretary include in his report recommendations with respect to adjustments to the diagnosis-related group (DRG) weighting factors. We do not recommend any adjustment to the DRG weighting factors for FY 1992.

My staff and I look forward to discussing this recommendation with you.

Sincerely,

Louis W. Sullivan.

April 4, 1991.

The Honorable Thomas S. Foley,
Speaker of the House of Representatives,
Washington, DC 20510

Dear Mr. Speaker: Section 1886(e)(3)(B) of the Social Security Act requires that the Secretary of Health and Human Services, not later than March 1, 1991, report to the Congress his initial estimate of the applicable percentage increase for FY 1992 that he will recommend for hospitals subject to the Medicare prospective payment system (PPS) and for excluded hospitals and units. This submission constitutes the required report.

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We have not had the opportunity to evaluate fully the recommendations of the Prospective Payment Assessment Commission (ProPAC). Our recommendation for the updates is contingent on current projections of relevant data. The President's budget assumed the hospital market basket would increase by 5.5 percent. Our most current projection is that the PPS hospital market basket will increase by 3.8 percent, and the TEFRA hospital market basket will increase by 4.0 percent. A final recommendation on the appropriate percentage increases for FY 1992 will be made nearer the beginning of the new Federal fiscal year based on the most current market basket projection available at that time. The final recommendation will incorporate our analysis of the latest estimates of all relevant factors, including ProPAC's recommendations.

Section 1886(d)(4)(C)(iv) of the Social Security Act, as enacted by section 6003(b)(2) of the Omnibus Budget Reconciliation Act of 1989, requires that the Secretary include in his report recommendations with respect to adjustments to the diagnosis-related group (DRG) weighting factors. We do not recommend any adjustment to the DRG weighting factors for FY 1992.

My staff and I look forward to discussing this recommendation with you.

Sincerely,

Louis W. Sullivan.

Appendix C: Recommendation of Update Factors for Rates of Payment for Inpatient Hospital Services

I. Background

Several provisions of the Social Security Act (the Act) apply to setting update factors for services furnished in FY 1992 by hospitals subject to the prospective payment system and those excluded from the prospective payment system. Section 1886(b)(3)(B)(i) of the Act, as modified by sections 4002 (a) and (c) of Public Law 101–508, set the FY 1992 applicable percentage increase for prospective payment hospitals for FY 1991 as the market basket percentage increase minus 1.6 percentage points for hospitals located in urban areas and the market basket percentage increase minus 0.6 percentage points for hospitals located in rural areas. Section 1886(b)(3)(B)(ii) of the Act governs the target rate-of-increase limits for hospitals excluded from the prospective payment system and the hospital-specific rate applicable to sole community and Medicare-dependent small rural hospitals. In accordance with section 1886(d)(3)(A) of the Act, we are proposing to update the average standardized amounts, the hospital-specific rates and the target rate-of-increase limits for hospitals excluded from the prospective payment system as provided for in section 1886(b)(3)(B) of the Act, as set forth above.

Sections 1886(e)(2)(A) and (3)(A) of the Act require that the Prospective Payment Assessment Commission (ProPAC) recommend to the Congress by March 1, 1991 an update factor that takes into account changes in the market basket index, hospital productivity, technological and scientific advances, the quality of health care provided in hospitals, and long-term cost effectiveness in the provision of inpatient hospital services.

In its March 1, 1991 report, ProPAC recommended update factors to the standardized amounts equal to the percentage increase in HCFA's market basket rate of increase minus 1.6 percentage points for urban hospitals and the market basket rate of increase minus 0.6 percentage points for hospitals located in rural areas. Further, ProPAC recommended an update to the standardized amounts equal to 3.2 percent for hospitals located in urban areas and 4.2 percent for hospitals located in rural areas (based on a market basket estimate of 4.8 percent). The components of the update factor recommendations are described in detail in the ProPAC report, which is published as appendix D to this document. ProPAC did not make a recommendation regarding the update for the hospital-specific rates applicable to sole community and Medicare-dependent, small rural hospitals. We discuss ProPAC's recommendations concerning the update factors and our responses to those recommendations below.

Section 1886(e)(4) of the Act, as amended by section 4002(f) of Public Law 100–203, requires that the Secretary, taking into consideration the recommendations of ProPAC, recommend update factors for FY 1992 that take into account the amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. Under section 1886(e)(5) of the Act, we are required to publish the recommended FY 1992 update factors that are provided for under section 1886(e)(4) of the Act. Accordingly, the purpose of this appendix is to provide our recommendations of appropriate update factors, our analysis of the derivation of the amount of the update factors, and our responses to the ProPAC recommendations concerning the update factors.

II. Secretary's Recommendations

Under section 1886(e)(4) of the Act, we are recommending that the standardized amounts be increased by an amount equal to the market basket percentage increase minus 1.6 percentage points for hospitals located in urban areas and the market basket percentage increase minus 0.6 percentage points for hospitals in rural areas. Based on the currently forecasted market basket increase of 3.8 percent, the recommended updates would be 2.2 percent for hospitals in urban areas and 3.2 percent for hospitals in rural areas. We are recommending that the hospital-specific rate applicable to sole community hospitals and Medicare-dependent, small rural hospitals be updated by an amount equal to the market basket percentage increase minus 1.6 percentage points or 2.2 percent. With the exception of the higher update for the rural standardized amount, we believe that the considerations used to develop our update recommendations for the standardized amounts and also applicable to the hospital-specific rates for sole community and Medicare-dependent, small rural hospitals. Our recommendation for a higher update to the rural standardized amount is intended to reduce the differential between the standardized amounts for other urban and rural hospitals, which is not an applicable consideration for hospital-specific rates.

We recommend that hospitals excluded from the prospective payment system receive, on average, and update equal to the percentage increase in the market basket that measures input price increases for services furnished by excluded hospitals. That market basket is currently forecast at 4.0 percent. However, we are also recommending that the amount of the update vary according to the base year used to establish the excluded hospital or unit's rate of increase. Those hospitals and units whose base year for purposes of the rate of increase limit began during the period FY 1983 through FY 1987 would receive a higher update than hospitals whose base year was established in FY 1982 or after FY 1987. The amount of the recommended HCFA update is dependent on the actural base year, as follows:

Base year began in FY	FY 1992 general update	FY 1992 additional update	Recommended FY 1992 update
1982	3.1		3.1
1983	3.1	1.4	4.5
1984	3.1	2.8	5.9
1985	3.1	4.6	7.7
1986	3.1	2.8	5.6
1987	3.1	1.4	4.5
1988 and later	3.1		3.1

In recommending these increases, we have followed section 1886(e)(4) of the Act which indicates we should take into account the amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. In addition, as required by section 1886(e)(4) of the Act, we have taken into consideration the recommendations of ProPAC. Our responses to the ProPAC recommendations concerning the update factor are discussed below.

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III. ProPAC Recommendations for Updating the Prospective Payment System Standardized Amounts and our Response

For FY 1992, ProPAC recommends that the standardized amount be updated by the following factors:

- The projected increase in the hospital market basket (which was estimated to be 4.8 percent in ProPAC's March 1, 1991 report), plus 0.2 percentage points to account for the different wage and salary price proxies used for the ProPAC market basket.
- A correction of—1.0 percent to reflect the forecast error in the FY 1990 market basket rate of increase.
- A discretionary adjustment factor of 0.2 percent composed of an allowance of 0.7 percent for scientific and technological advancement and an allowance of—0.5 percent for productivity improvement.
- An adjustment for case-mix change of—1.0 percent.
- A differential update of 1.0 percent for hospitals located in rural areas, to reflect the phasing out of the differential in the standardized amounts between rural and other urban hospitals.

Overall, the net increase employing the above factors is the percentage increase in the hospital market basket minus 1.6 percentage points for urban hospitals and the market basket minus 0.6 percentage points for rural hospitals. Based on the market basket estimate of 4.8 percent used in its March 1, 1991 report, ProPAC recommends a differential update for urban and rural hospitals, with urban hospitals receiving a 3.2 percent update, and rural hospitals receiving a 4.2 percent update.

Response: We are recommending an update that is consistent with the Administration's budget proposal that all hospitals receive an update in their payments for FY 1992 based on the current market basket forecast with the adjustments set forth in Public Law 101-508. The latest forecast shows that the FY 1992 market basket has declined from 4.8 percent, the figure used by ProPAC in determining its update recommendations, to 3.8 percent between the fourth quarter of 1990 and the first quarter of 1991. The largest decreases occurred in the employment cost index for hospital workers and the producer price index for chemicals. The significant decrease in the forecast stemmed mainly from the Middle East crisis and the predicted recession. Downward pressure on prices is predicted through FY 1992 as demand for products continues to fall and unemployment continues to rise.

Our recommendation is supported by the following analyses which measure changes in hospital productivity, scientific and technological advances, practice pattern changes, and changes in case mix:

- *Productivity:* At the beginning of the prospective payment system update process, HCFA established a conservative normative standard for hospital productivity increases of 1.0 percent per year, which is equal to the average long-run productivity growth in the U.S. economy. In the short run, any increases in productivity in excess of 1.0 percent would be kept by hospitals as increases in operating margins. Productivity increases of more than 1.0 percent would be encouraged by this standard. We believe that substantial gains can be made in hospital productivity and that we should continue to provide an incentive to increase productivity.

ProPAC also believes hospitals should be given an incentive for additional productivity improvement. ProPAC measures productivity as the ratio of hospital admissions (adjusted for case mix and outpatient services) per FTE employee (adjusted for changes in skill mix). ProPAC includes in its productivity measurement the effect of changes in practice patterns. We have traditionally treated historic practice pattern changes as a separate factor because they represent changes that have occurred in the nature of the hospital product. This year, ProPAC assumes a productivity gain of at least 1.0 percent and recommends a —0.5 percentage point adjustment on the basis that any productivity gains should be shared equally by Medicare and hospitals.

- *Quality Enhancing New Science and Technology:* The new science and technology factor is intended to recognize technological changes that increase costs but also enhance health status. We have no empirical evidence that accurately sets the level for this factor. Typically, a specific new technology increases costs in some uses and decreases costs in other uses. Concurrently, in some situations, health status is improved while in other situations it may be unaffected or even worsened using the same technology. It is difficult to separate out the relative significance of each of the cost-increasing effects for individual technologies and new technologies. In the early years of the prospective payment system, ProPAC conducted several studies of new technology costs and concluded that they were fairly low. Those studies focused primarily on the acquisition costs of the new technologies but also looked at diffusion and operating costs. Project Hope, under contract with ProPAC, annually estimates the incremental operating costs of specific cost-increasing technologies. However, we know of no definitive studies that establish an appropriate level or range for this factor. ProPAC's adjustment is for the cost-increasing effect of new technologies only, and this year assumes the range of estimated costs for these technologies at 0.5 to 1.0 percent, with a best estimate of 0.7 percent.

We believe that the ProPAC estimate may be overstated for several reasons. First, the estimate does not account for offsetting changes in revenue due to changes in DRG assignment. More than 25 percent of the adjustment is attributable to implantable defibrillators, which would normally involve reassignment to a higher-weighted DRG and thus higher payment than would have been made if the patient had not received the defibrillator. Second, it is not clear that all of the new technologies listed in ProPAC's study significantly enhance health status. Examples are the adjustments for thrombolytic agents and low osmolar and nonionic contrast agents. Further, Medicare does not cover positron emission tomography on the basis that is investigative and restricts coverage for implantable infusion pumps. To the extent the new technologies are not quality enhancing, and adjustment is inappropriate. Finally, some of the technologies, such as percutaneous transluminal coronary angioplasty (PTCA), have considerable potential for cost savings relative to the technologies they are replacing.

Until a usable measure for the incremental operating costs associated with the implementation of these new sciences and technologies is developed, we believe that this adjustment should be set at a conservative, stable level. We recommend an adjustment of +0.3 to +0.5 percent.

- *Improvements in Practice Patterns:* We measure practice pattern changes based on changes in average length of stay since the beginning of the prospective payment system. Although we have no complete measure of changes in practice patterns, we believe this factor can be modeled appropriately based on this measure. The practice pattern adjustment is based on the belief that the costs on which the initial payment rates were based included a component of unnecessarily high costs reflecting ineffective practice patterns and that it is reasonable for us to share in the savings in the long run.

Average length of stay declined dramatically during the first years of the prospective payment system and gradually increased in subsequent years. However, our latest data indicate that average length of stay declined again and has remained stable over the last few years. Based on updated data on changes in average length of stay and the cumulative practice pattern adjustment implicit in prior update recommendations, we estimate that a residual adjustment of up to —1.85 percent could be supported.

Overall, the combined adjustment for productivity, technology, and practice pattern changes could range from —2.5 to —0.5 percentage points.

- *Change in Case Mix:* Our analysis takes into account changes in case mix, net of changes attributable to improved coding practices and DRG reclassification and recalibration. We found that the observed increase in case mix was 2.0 percent during FY 1990. We estimate real case mix increase at 1.0 percent. We define real case-mix change as actual changes in the mix (and resource requirements) of Medicare patients as opposed to changes in coding behavior that result in assignment of cases to higher-weighted DRGs but do not reflect greater resource requirements. This estimate is supported by past studies of case-mix change by RAND Corporation. In addition, we estimate that DRG reclassification and recalibration in FY 1990 resulted in a 0.8 percent decrease in the case-mix index. The resulting adjustment to account for changes in case mix during FY 1990, the most recent year for which data are available, is —0.2 percent (the sum of —2.0, +1.0 and +0.8). The —2.5 and 1.5 percent figures used in the ProPAC framework represent ProPAC's projection for observed case-mix change and real case-mix change, including within-DRG case complexity change, during FY 1991. ProPAC's observed case-mix change is estimated whereas our observed case-mix change is based on FY 1990 bills received through February 28, 1991.
- *Correction for Market Basket Forecast Error:* The FY 1990 estimated market basket percentage increase used to update the payment rates was 5.5 percent. Our most recent data indicate the actual FY 1990 increase was 4.6 percent, reflecting that the increase in wages and malpractice premiums was lower than projected. The resulting forecast error in the projected FY 1990 market basket rate of increase forecast was —0.9 percentage points. Our policy has been to make a forecast error correction if our estimate is off by 0.25 percentage points or more. Therefore, we are recommending an adjustment of —0.9 percentage points to reflect this overestimation of the FY 1990 market basket. ProPAC's recommended adjustment of —1.0 percentage points was based on an earlier estimate of the FY 1990 forecast error.

The following is a summary of the update ranges supported by our analyses compared to ProPAC's framework.

TABLE 1.—COMPARISON OF FY 1992 UPDATE RECOMMENDATIONS

	HHS	ProPAC
Policy Adjustment Factors:		
Productivity	—1.0	—0.5
Science and Technology	+0.3 to +0.5	+0.7
Practice Patterns	—1.8 to 0.0	
Subtotal	—2.5 to —0.5	+0.2
Observed Case Mix Change	—2.0	—2.5
Real Across DRG Change	+1.0	+1.3
Real Within DRG Change		+0.2
Effect of 1990 Reclassification and Recalibration	+0.8	
Subtotal	—0.2	—1.0
Forecast Error Correction	—0.9	—1.0
Difference Between HCFA & ProPAC Forecasts		+0.2
Total Recommended Update	—3.6 to —1.6	—1.6

We believe the above analysis supports a recommendation that the standardized amounts applicable to urban hospitals and the hospital-specific rates applicable to sole community hospitals and Medicare-dependent small rural hospitals be updated in FY 1992 by an amount equal to the market basket percentage increase minus 1.6 percentage points. However, we believe a differential update for the standardized amount applicable to rural hospitals is appropriate in order to phase out the differential between the rural and other urban standardized amounts. Therefore, we are recommending that the rural standardized amount be updated by an additional 1.0 percentage point, for a total update of 3.2 percent (that is, market basket minus 0.6 percentage points).

We note that we are in the process of refining our analytical framework for the update recommendation. Our intent is to develop an expanded conceptual framework and appropriate measures for each component that would be used to support our update recommendations for FY 1993 and thereafter. We invite public comment on the appropriate factors and measures that should be taken into consideration in determining an appropriate update that would take into account the amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality.

IV. ProPAC's Recommendation for Updating the Rate-of-Increase Limits for Excluded Hospitals

ProPAC recommends an update factor equal to the market basket rate of increase minus 0.7 percentage points for excluded hospitals and units. The 0.7 percentage point reduction represents a reduction of —1.0 percentage points to account for the forecast error in the FY 1990 market basket rate of increase for excluded units, a 0.2 percentage point increase to reflect the different compensation price proxies used by ProPAC, and an allowance for new technology of 0.1 percent. (We note that in FY 1990 the prospective payment system hospital market basket was also used for excluded hospitals.) Further, ProPAC recommends an additional allowance based on the year the hospital or unit was excluded from the prospective payment system. Before FY 1989, excluded hospitals and units received the prospective payment system update, which was reduced to account for rapid growth in payments due to case-mix increases. Since excluded facilities do not benefit from the payment-increasing effect of case-mix index change, ProPAC believes that these hospitals should receive the applicable full market basket increase for years prior to 1989. ProPAC believes this recommendation would result in total payments to excluded hospitals approximating those that would have resulted from updates equal to the rate of increase in the market basket for excluded hospitals.

Response: We recommend an average update for excluded hospitals that would result in total payments comparable to those that would result from an update equal to the market basket rate of increase. The market basket for excluded hospitals is currently estimated at 4.0 percent. However, we recommend that excluded hospitals and units whose base year began during the period FY 1983 through FY 1987 would receive a higher update than hospitals whose base year began in FY 1982 or after FY 1987.

We recommend that excluded hospitals and units with an FY 1982 base

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year or a base year that began after FY 1987 receive an update equal to the market basket percentage increase minus 0.9 percent. The −0.9 percentage point adjustment is to account for the forecast error in the FY 1990 market basket rate of increase. Generally, we believe that increased costs for quality-enhancing new technologies should be offset by productivity gains and that explicit adjustments in the rate-of-increase limit for productivity and new technology are inappropriate.

In addition, we agree with ProPAC that a higher update for hospitals and units that were excluded in the early years of the prospective payment system is appropriate. This is because the updates applied to excluded hospitals in fiscal years 1986, 1987, and 1988 were considerably less than the market basket rate of increase and were based on some considerations appropriate only to hospitals subject to the prospective payment system. However, we disagree with the amount of the higher update recommended by ProPAC for several reasons. First, we disagree with the amount of the shortfall computed by ProPAC in its recommendation, as follows:

Fiscal year	ProPAC market basket change	ProPAC excluded update	ProPAC computed difference	Actual market basket change [1]	Actual excluded update	Actual difference
1983	NA	NA	NA	5.9	[2] 5.58	+2.68
1984	4.9	4.7	−0.2	4.9	[2] 7.08	+2.18
1985	3.9	4.5	+0.6	3.9	[2] 6.78	+2.88
1986	3.1	0.5	−2.6	3.1	0.50	−2.60
1987	3.6	1.2	−2.5	3.5	1.15	−2.35
1988	4.8	2.7	−2.1	4.8	2.70	−2.10

[1] Actual change in the 1982-based market basket.
[2] Average update—actual update was based on cost reporting periods. Budget neutrality adjustment applicable to the prospective payment system hospitals did not affect the update for excluded hospitals.

We note that the first year that hospitals and units were subject to the rate of increase limit was FY 1983. The actual average update to the target rate for cost reporting periods beginning in that fiscal year was 6.58 percent compared to the market basket rate of increase of 5.9 percent for FY 1983.

Second, in recommending a cumulative positive allowance adjustment for excluded hospitals and units, ProPAC presented its recommended adjustments based on the year of exclusion from the prospective payment system. This is somewhat misleading because hospitals and units are not subject to the rate of increase limit during the first year of exclusion from the prospective payment system. Newly certified excluded units are subject to the rate of increase limit beginning with the first cost reporting period following the year of exclusion (its base period). Newly certified excluded hospitals are not subject to the rate of increase limit until the beginning of the third cost reporting period after the first patient is admitted. For these hospitals, the base period would be the preceding cost reporting period. In addition, the cumulative adjustment for hospitals with an FY 1982 base year is negative if the adjustment is developed from the cumulative difference between the market basket increase and the actual updates to the target amounts. Relating the actual difference between the market basket percentage and the updates to the hospital or unit's base period, the cumulative differences are as follows:

Base year began in FY	FYs subject to ceiling	Compounded adjustment	[1] ProPac recommendation
1982	1983–1988	−0.5	6.6
1983	1984–1988	2.1	6.8
1984	1985–1988	4.2	6.4
1985	1986–1988	6.9	7.0
1986	1987–1988	4.4	4.5
1987	1988	2.1	2.1

[1] Based on year of exclusion.

Finally, the ProPAC recommendation would result in a substantial increase in program payments. It is not clear that such an expenditure is warranted or that any increase in payments is more appropriately distributed to excluded hospitals through a differential update factor rather than through a more targeted approach. While some hospitals have been adversely affected by the rate-of-increase limits, others have managed to receive substantial incentive payments. Further analysis is needed to understand why some hospitals have fared well and others have not before determining whether an across-the-board increase is more appropriate than one targeted toward groups of hospitals whose costs are systematically above the rate-of-increase limit. Additionally, the lower updates are only one dimension of why hospitals with early base years are more financially vulnerable than hospitals that more recently became subject to the rate-of-increase limits. Another consideration is that these hospitals have been subject to the limits for a longer period of time and, in the case of those hospitals with an FY 1982 or FY 1983 base year, have a target amount that was established before the prospective payment system was implemented. It is for this reason that we are recommending a 3.1 percent update for hospitals with an FY 1982 base year even though a lower update would appear warranted based on the cumulative difference between the market basket increase and the update factors.

We believe any increase in aggregate payments to excluded hospitals and units is premature until these issues are more fully evaluated. In this regard, we note that the Secretary is required by section 4005(b) of Public Law 101–508 to report to the Congress on recommendations for potential modifications to the rate-of-increase limits system as well as the possible replacement of that system with a prospective payment system. At the same time, we believe the analysis of the cumulative difference between the market basket rate-of-increases and the update factors supports a recommendation for differential updates. We have used the results of the analysis to determine differential update factors that will result in program outlays that would approximate the outlays that would result from a 4.0 percent update. Our recommended update factor is 3.1 percent for all excluded hospitals and units plus an additional update for hospitals and units that became subject to the ceiling during the period FY 1984 through FY 1988. The recommended updates are as follows:

Base year began in FY	General update	HCFA recommended additional adjustment	HCFA recommended FY 1992 update
1982	3.1		3.1
1983	3.1	1.4	4.5
1984	3.1	2.8	5.9
1985	3.1	4.6	7.7
1986	3.1	2.9	6.0
1987	3.1	1.4	4.5
1988 and later	3.1		3.1

Appendix D—Prospective Payment Assessment Commission

Report and Recommendations to the Congress

March 1, 1991

Prospective Payment Assessment Commission

Stuart H. Altman, Ph.D., *Chairman*
Richard A. Berman
James D. Bernstein
Curtis C. Erickson
William D. Fullerton
William S. Hoffman, Ph.D.
Larry L. Mathis
Barbara J. McNeil, M.D.
Kathryn M. Mershon
Donald R. Oder
Elliott C. Roberts, Sr.
J. Michael Sadaj, M.D.
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Molly Ryan
Karen K. Shore
Deborah K. Williams
Jeannette A. Younes

Prospective Payment Assessment Commission

March 1, 1991.

The Honorable Dan Quayle,
President of the Senate, United States Senate, Washington, D.C. 20510.

Dear Mr. President: I am hereby transmitting to the Congress the annual report of the Prospective Payment Assessment Commission as required by section 1886(e)(3) of the Social Security Act as amended by Public Law 101–508. This report presents the Prospective Payment Assessment Commission's framework for assessing potential refinements of Medicare payment policies. The report also contains 10 recommendations and addresses several additional concerns that reflect the Commission's collective judgment about issues of substantial importance to beneficiaries, hospitals, other providers, and the Medicare program.

Sincerely,

Stuart H. Altman,
Chairman.

Enclosure

Prospective Payment Assessment Commission

March 1, 1991.

The Honorable Thomas Foley,
Speaker, United States House of Representatives, Washington, DC 20515.

Dear Mr. Speaker: I am hereby transmitting to the Congress the annual report of the Prospective Payment Assessment Commission as required by section 1886(e)(3) of the Social Security Act as amended by Public Law 101–508. This report presents the Prospective Payment Assessment Commission's framework for assessing potential refinements of Medicare payment policies. The report also contains 10 recommendations and addresses several additional concerns that reflect the Commission's collective judgment about issues of substantial importance to beneficiaries, hospitals, other providers, and the Medicare program.

Sincerely,

Stuart H. Altman,
Chairman

Enclosure

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Executive Summary

In this report for fiscal year 1992, the Prospective Payment Assessment Commission (ProPAC) presents its framework for assessing potential refinements to Medicare payment policies. The Commission also presents 10 recommendations and addressed several additional concerns. This report reflects the analysis and collective judgment of ProPAC's Commissioners about issues of substantial importance to beneficiaries, hospitals, other providers, and the Medicare program. The report and recommendations are made directly to Congress, although the Secretary of the Department of Health and Human Services is required to respond to them.

ProPAC's responsibilities have expanded over time to include analyzing and developing prospective payment policies for all facility services furnished to Medicare beneficiaries. The Congress has also asked ProPAC to examine and report on broader issues regarding the effectiveness and quality of health care delivery in the United States. However the Commission will continue to devote substantial effort to updating and improving policies for paying hospitals under the prospective payment system (PPS) and policies for paying hospitals from PPS.

MEDICARE PROSPECTIVE PAYMENT: ASSESSING POTENTIAL REFINEMENTS

The first seven years of PPS have seen dramatic changes in the rate of increase in Medicare payments and in hospital performance. PPS uses prospectively determined rates based on average costs per case to create incentives for hospitals to control costs. An annual update is used to increase the rates and to provide some control over the level of Medicare payments.

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The components of PPS are intended to distribute these payment equitably. Over time, refinements to the structure of PPS have substantially affected the level and distribution of payments. However, some of these refinements and their interactions may also have altered the incentives of PPS.

ProPAC has been evaluating the factors that determine Medicare payments and their effects on hospitals' financial condition since the beginning of PPS. Both Medicare inpatient hospital payments and total Medicare payments have grown at a slower rate under PPS than before. At the same time, growth in hospital costs has moderated, but not as much as expected.

Hospital costs continue to grow faster than Medicare payments. By fiscal year 1988, both PPS margins and total margins had declined to their lowest levels since PPS began. However, total margins remain comparable to what they were before PPS. Differences among hospitals in both PPS and total margins have widened, and many hospitals face greater financial risk than before PPS. If these trends continue, access to care and quality of that care could be adversely affected for some Medicare beneficiaries. In addition, attempts to generate revenue from other sources may increase costs to private third-party payers, employers, and patients.

In a sense, the effects of PPS's incentives are now becoming evident. As more hospitals' PPS margins fall below zero, they will feel more pressure to change their behavior than they did when PPS payments exceeded costs. Conclusions about the effects of PPS on hospitals' financial behavior may be made more confidently when this information is available.

Changes have been made or are being considered in almost all of the major components of PPS. Some of these improvements have been attempts to fine-tune components of PPS that were part of the system from the beginning. Others have been intended to mitigate perceived inequities. Taken together, they have had a significant effect on the level and distribution of payments across hospitals.

PPS is a per-case payment system. It consists primarily of a base payment rate (the standardized payment amount) and several adjustments. An area wage index is used to reflect geographic differences in the cost of labor. Diagnosis-related groups (DRGs) are used to classify patients by diagnosis and procedure. Variations in the cost of care are measured by the DRG relative weights. Certain hospital characteristics are also reflected in the payment system. The indirect medical education (IME) adjustment is intended to recognize additional costs faced by teaching hospitals in treating Medicare patients. The disproportionate share (DSH) adjustment is used to pay certain hospitals for the higher costs they face in treating a large proportion of poor patients and the indirect costs of operating in areas accessible to the poor. Finally, extra payments are made for outlier cases—patients with unusually long stays or high costs.

There are three standardized payment amounts: one each for hospitals in large urban areas (metropolitan areas with more than one million people), other urban areas, and rural areas. Congress has set updates so that the differential between the standardized amounts for hospitals in other urban areas and rural areas will be eliminated over time. This change will reduce the differential in payments to urban and rural hospitals. Urban hospitals, however, will continue to receive higher payments because of higher labor costs, the treatment of a more complex mix of cases, and other factors.

The area wage index—one of the most important determinants of the distribution of PPS payments—reflects geographic differences in labor costs. However, because the wage index includes differences in occupational mix, hospitals in high wage index areas may be overcompensated. ProPAC is thus recommending that the area wage index be modified to remove the effects of differences in the mix of occupations that hospitals employ. An occupational mix adjustment would likely redistribute payments from urban areas to rural areas. In addition, occupational mix is related to other components of the payment system, such as the IME adjustment. As a result, changes to the IME adjustment may be desirable if changes to the area wage index are made.

The patients treated by a hospital are classified into DRGs. The distribution of payments can be significantly affected by changes to the structure and definitions of the DRGs. Minor refinements to the DRGs have been made regularly, and major refinements have been made periodically. Additional refinements are being considered that may affect other PPS adjustments.

The case-mix index (CMI) measures the relative costliness of the mix of patients across DRGs. Increases in the CMI have a major effect on the level and distribution of PPS payments. The CMI may change over time because patients are more severely ill, medical practices change, or hospitals refine their medical documentation and coding practices. The first two reasons require more hospital resources for patient care; the third, called upcoding, does not. Although hospitals are paid for the full increase in the CMI regardless of the reason, some of this increase has been a result of upcoding that is not associated with higher costs. ProPAC has taken this into account in its update recommendation.

The IME and DSH adjustments have a major impact on the level and distribution of payments. Both of these adjustments are currently set at levels higher than differences in Medicare costs alone would support. The payments made for both adjustments are concentrated among relatively few hospitals. Further, there is considerable overlap between the hospitals that receive these adjustments. Although this raises concerns about PPS payment equity, these concerns are tempered by awareness of the important contributions these hospitals make and evidence about their financial condition. On the one hand, the hospitals that receive these payment adjustments tend to have higher PPS margins than hospitals that do not receive them. On the other hand, they also tend to have the lowest total margins. Maintaining payments from these adjustments at levels above Medicare costs alone reflects a judgment about the appropriate balance between two objectives: compensating only for Medicare-allowed costs and ensuring the financial stability of important groups of hospitals.

Outlier policy also affects the distribution of payments. Like the IME and DSH adjustments, outlier payments are concentrated among certain types of hospitals, including teaching hospitals. Because outliers are defined based on the DRGs, any major changes in the DRGs would have major effects on outlier payment policy.

The interaction and interdependence of the components of PPS directly affect the level and distribution of payments. This review of the structure of PPS highlights how each of the components of the payment system affects the others. These interactions require that incremental changes in payment policy not be evaluated in isolation. The Commission believes that efforts to improve the system and address perceived inequities should be evaluated in the context of the system as a whole. The recommendations in this report should also be viewed in this broader context.

Summary of the Recommendations

In Chapter 2, ProPAC presents 10 recommendations for updating and improving Medicare payment policies. The Commission also comments on other issues of importance to the Medicare program that may require action in the near future. ProPAC believes that its proposed changes are necessary for maintaining access to high-quality health care, encouraging hospital productivity and cost-effectiveness, and permitting the adoption of innovative and appropriate technological advances. The Commission developed its recommendations by setting priorities, analyzing information, and deliberating. ProPAC also responds to the concerns of the Congress, the Administration, health care providers, third-party payers, beneficiaries, and the public. The recommendations are offered to comply with the Commission's statutory mandate and to contribute to an informed and open debate about hospital payment policy and the Medicare program. For fiscal year 1992, the Commission focuses on eight broad areas:

- Updating PPS payments,
- Rural hospital payment,
- Teaching and disproportionate share hospital payment,
- Other adjustments to PPS,
- Capital payment,
- Updating and adjusting payments to PPS-excluded hospitals and distinct-part units,
- Hospital outpatient payment, and
- Uncompensated care.

Updating PPS Payments.—The Commission recommends fiscal year 1992 updates of market basket minus 1.0 percentage points for hospitals in urban areas and market basket minus 0.6 percentage points for hospitals in rural areas. Based on current Health Care Financing Administration (HCFA) projections, the updates are 3.2 percent and 4.2 percent, respectively. The average update is market basket minus 1.4 percentage points, or 3.4 percent.

The update factor recommendation combines five components. First, the fiscal year 1992 HCFA market basket is forecasted to increase 4.8 percent. Second, 0.2 percentage points are added to better reflect the increases in hospital labor costs that are not adequately measured in HCFA's market basket. Third, an adjustment of −1.0 percentage points for errors in the fiscal year 1990 market basket forecast is made. Fourth, a 0.2 percentage point discretionary adjustment reflects the Commission's judgment that the costs of scientific and technological advancement can be partially funded by hospital productivity improvements. Fifth, a −1.0 percentage point adjustment for case-mix change offsets the estimated extra revenues hospitals received in fiscal year 1991 from case-mix index increases that were not due to treating sicker patients.

The Commission supports the phased elimination of the differential in the standardized amounts of hospitals in rural areas and other urban areas. Therefore, an additional 1.0 percentage point should be added to the update for rural hospitals.

The update is only one source of the increase in total PPS payments to hospitals. Change in the case-mix index, which is estimated to rise 2.3 percent during fiscal year 1992, will also increase payments. As a result, the average increase in per-case PPS payments, including CMI change and all of ProPAC's recommendations, is expected to be 5.7 percent in fiscal year 1992.

Finally, the Commission recommends that the Secretary collect medical records data so that case-mix index change can continue to be apportioned into its real and upcoding components.

Rural Hospital Payment—Since the implementation of PPS, many changes have been made in Medicare policies to reflect the changing patterns of rural health care delivery. The Commission believes that although rural and urban hospitals have similar overall financial performance, some, but not all, rural hospitals continue to fare poorly under PPS. The performance of many rural hospitals will continue to improve as a result of recent payment policy changes directed at rural hospitals. However, increased payments have not often been targeted at specific problems or hospitals that need help. The Commission is especially concerned about the impact of declines in volume on small or isolated rural hospitals.

Ongoing analyses and congressionally requested studies will be the foundation for a report on payments to rural hospitals that the Commission will issue in mid-1991. Recommendations made in this report will suggest policy reforms tailored to specific problems faced by groups of rural hospitals.

Teaching and Disproportionate Share Hospital Payment—The Commission believes that the level of the indirect medical education adjustment should be reduced from 7.7 percent to 7.0 percent for every 10 percent increase in teaching intensity. The Commission further recommends that the savings from this reduction be returned to the standardized amounts for urban and rural hospitals.

Two factors were balanced when this recommendation was made: a recognition that Medicare is more than adequately compensating teaching hospitals for differences in Medicare costs, and a serious concern for the continued financial stability of major teaching hospitals. Future recommendations on the IME adjustment will also consider these factors.

ProPAC also believes that it is important to examine the IME and disproportionate share adjustments to find better ways to target these payments to achieve their objectives. ProPAC will continue to address the interaction between the DSH and IME adjustments.

Other Adjustments to PPS—The Commission continues to be concerned that the area wage index overcompensates some hospitals and undercompensates others. The area wage index should be adjusted to remove the effects of differences in the mix of occupations hospitals employ. This adjustment should be based on data to be collected by the Secretary.

In addition, a one-time adjustment to the DRG recalibration process is necessary to prevent continued underpayments caused by coding and assignment changes for patients with acute myocardial infarction.

Capital Payment—Current law requires the Secretary to implement a prospective payment system for capital beginning in fiscal year 1992. ProPAC has been considering many aspects of this complex issue and has put aside its previous recommendations. The Commission has not made a recommendation in this report. Instead, ProPAC will evaluate and comment on the Secretary's proposal when it is available, and will then recommend changes or an alternative approach, if warranted.

Updating and Adjusting Payments to PPS-Excluded Hospitals and District-Part Units—The Commission recommends an average update of market basket minus 0.7 percentage points. Based on current HCFA projections, the recommended update is 4.2 percent. This update is determined by the 4.9 percent projected point increase in the HCFA market basket, a 0.2 percentage point increase to better reflect increases in hospital labor costs, a −1.0 percent point forcast error correction factor for fiscal year 1990, and a 0.1 percentage point scientific and technological advancement allowance. No specific adjustment is made for savings from productivity improvements because the Medicare program already shares in these savings under the TEFRA payment system used for these providers.

ProPAC also recommends that higher updates be given to PPS-excluded providers that entered the program before fiscal year 1989. The updates should depend on the base year used to calculate each provider's target rate. The amount of the updates should reflect differences between the actual updates these providers received in each year and the actual market basket for those years.

Hospital Outpatient Payment—As required by Congress, the Commission issued a report on outpatient payment reform in July 1990. That report provided background on hospital outpatient services and discussed the factors the Commission will consider in evaluating future payment reforms. Another report, due in March 1992, will present specific recommendations.

Four recommendations are being made in this report as a result of the Commission's ongoing activities. First, the Commission believes that prospective payment for outpatient facility services should be implemented. Initially, these reforms will focus on hospitals, but ultimately they should address both hospital and non-hospital providers. Second, payment reforms should be consistent with physician payment reform and should not inappropriately favor one site of care over another. The same payment method should be used for all providers, although payment rates should be adjusted to reflect justifiable cost differences. Third, a method for periodically collecting cost data from non-hospital providers is recommended. This method should not, and need not be unnecessarily burdensome. Further, uniform coding and billing requirements should be required of all providers of outpatient care. Fourth, outpatient services furnished by hospitals should be incorporated in the Medicare physician Volume Performance Standards (VPSs) if they are included in the VPSs when furnished by non-hospital providers.

Uncompensated Care—The Commission believes that Congress should develop solutions to the problem of the uninsured. The Commission also recognizes that hospitals face a growing financial burden because many Americans lack adequate health insurance.

Recent work on uncompensated care by ProPAC indicates that during the 1980s, uncompensated care costs rose faster than inflation, while increases in government subsidies for these costs have not kept pace. In addition, the burden of these costs is becoming less concentrated in the types of hospitals that historically have provided a large share of uncompensated care. Uncompensated care costs as a proportion of total costs are as high for rural hospitals as for urban hospitals, after accounting for state and local government subsidies. Finally, it appears there is a poor relationship between uncompensated care costs and the distribution of IME and DSH payments. ProPAC intends to continue its analysis of the impact of payments from Medicare, Medicaid, and other payers and of uncompensated care cost on hospitals' financial condition.

Four appendixes provide additional information. Appendix A includes background material and analysis. Appendix B lists ProPAC's technical reports, which include more detailed descriptions of intramural and extramural analyses that support the Commission's recommendations. Appendix C highlights the background of each Commissioner and describes ProPAC's operations. Appendix D reports changes in DRG relative weights from fiscal year 1990 to fiscal year 1991.

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RECOMMENDATIONS FOR FISCAL YEAR 1992

Updating PPS Payments

Recommendation 1: Amount of the Update Factor for PPS Hospitals

For fiscal year 1992, the PPS standardized payment amounts should be updated to account for the following factors:

- The projected increase in the HCFA PPS market basket, currently estimated at 4.8 percent;
- An adjustment of 0.2 percentage points, to reflect the difference between the ProPAC and HCFA market baskets;
- A correction for substantial error in the fiscal year 1990 market basket forecast, currently estimated at −1.0 percentage points;
- A discretionary adjustment factor of 0.2 percentage points; and
- A net −1.0 percentage point adjustment for case-mix change.

Further, an additional positive adjustment of 1.0 percentage points for rural hospitals should be made to reflect the second year of phasing out the differential in the standardized amounts between rural and other urban hospitals. Through differential updates, the rural standardized amount should be increased until it equals the other urban standardized amount in fiscal year 1995.

Recommendation 2: Data for Evaluating Case-Mix Index Change

The Secretary should collect the data necessary to apportion case-mix index change into its real and upcoding components.

Rural Hospital Payment

Since the implementation of PPS, numerous changes have been made in Medicare policies to reflect the changing pattern of rural health care delivery. While rural and urban hospitals currently exhibit similar overall financial performance, some rural hospitals continue to fare poorly under PPS. Several improvements in PPS policies have been enacted recently, and it is too soon to evaluate their effects. Other changes, such as eliminating the differential in the standardized amounts, are being phased in. Current PPS policies may not be appropriate for some rural hospitals, and the Commission is continuing its analyses of specific problems these hospitals face. A congressionally requested report, to be issued in mid-1991, will contain additional findings and recommendations. These recommendations will suggest policy reforms more tailored to the specific problems faced by some rural hospitals.

Teaching and Disproportionate Share Hospital Payment

Recommendation 3: The Indirect Medical Education Adjustment

The Commission recommends that the indirect medical education adjustment to PPS payments be reduced from its current level of 7.7 percent to 7.0 percent for fiscal year 1992. This reduction should be implemented in a budget-neutral fashion, with the anticipated decrease in indirect medical education payments returned to all hospitals through corresponding increases in the standardized payment amounts.

The Disproportionate Share Adjustment

The Commission believes it is important to examine the structure of the disproportionate share adjustment and the interaction between this adjustment and other elements of the health care financing system, both within and beyond the Medicare program. This examination will focus on developing changes that will better target the payments made under the disproportionate share adjustment to achieve its policy objectives.

Other Adjustments to PPS

Recommendation 4: Improving the Area Wage Index

The Secretary should collect data on employee compensation and paid hours of employment for hospital workers by occupational category. Once these data become available, the Secretary should implement an adjustment in the area wage index. This adjustment would correct for the inappropriate inclusion in the wage index of geographic differences in the mix of occupations employed.

Recommendation 5: Adjusting Payments for Acute Myocardial Infarction Cases

A one-time adjustment should be made in the DRG recalibration process used in calculating revised DRG weights for fiscal year 1992. The adjustment would be designed to prevent continuation of errors in payment caused by changes in coding and DRG assignments for patients with a diagnosis of myocardial infarction.

Capital Payment

The Commission believes that Medicare capital payment policy should recognize hospitals' prior capital expenditures and related financing costs, while encouraging appropriate and efficient investments. Further, the policy should be designed to limit increases in aggregate program expenditures for inpatient hospital care. ProPAC will evaluate and comment on the forthcoming capital payment proposal from the Secretary of Health and Human Services. It will recommend modifications to the proposal, as appropriate, or an alternative payment approach, if warranted.

Updating and Adjusting Payments to PPS—Excluded Hospitals and Distinct-Part Units

Recommendation 6: Amount of the Update Factor for PPS-Excluded Hospitals and Distinct-Part Units

For fiscal year 1992, the target rate of increase for PPS-excluded hospitals and distinct-part units should be updated to account for the following factors:

- The projected increase in the HCFA PPS-excluded market basket, currently estimated at 4.9 percent;
- An adjustment to the market basket of 0.2 percentage points, to reflect the difference between the ProPAC and HCFA market baskets;
- A correction for substantial error in the fiscal year 1990 market basket forecast, currently estimated at −1.0 percentage points; and
- An allowance for scientific and technological advancement of 0.1 percentage points.

In addition, a positive allowance should be given to TEFRA providers that entered the program before fiscal year 1990, depending on the base year used to calculate their target rates. This allowance reflects the difference between the actual updates given in earlier years and the market basket for that year.

Hospital Outpatient Payment

Recommendation 7: Outpatient Payment Reform

The Commission believes that a prospective payment system for outpatient services should be developed. Outpatient facility payment reform should ultimately include all providers of outpatient services (such as hospitals, physicians' offices, and free-standing ambulatory surgery centers). As required by Congress, however, the Commission recognizes that outpatient payment reform will focus initially on the hospital outpatient setting.

Recommendation 8: Outpatient Facility and Physician Payment Reform

Outpatient payment reform for facility services should have incentives that are consistent with physician payment reform. Medicare financial incentives should not lead physicians or beneficiaries to inappropriately select one site of care over another.

Recommendation 9: Data Collection and Coding Requirements

Uniform coding and billing requirements should be implemented for all providers of outpatient care. These requirements should apply to the hospital outpatient setting, physicians' offices, and free-standing ambulatory care providers. In addition, a mechanism for periodic collection of procedure-specific cost data in free-standing settings (including physicians' offices and ambulatory surgery centers) should be implemented.

Recommendation 10: Medicare Volume Performance Standards

Services provided in the hospital outpatient setting should be included in the Medicare physician Volume Performance Standards (VPSs). Certain services (such as laboratory tests and therapy services) are currently included in the VPSs when provided in free-standing settings. Other services (including ambulatory surgery and durable medical equipment) are excluded. The Commission believes that hospital-provided services should also be incorporated in the VPSs to the extent that these services are included when provided in other settings.

Uncompensated Care

Many Americans lack health insurance or other means to cover the cost of medical care furnished by hospitals, physicians and other providers. ProPAC is concerned about the effects of this problem, including the increasing financial burden faced by hospitals that treat the uninsured. The amount of uncompensated care hospitals provide has increased during the 1980s, and the number and variety fo hospitals affected

significantly by the cost of unpaid care have grown. The Commission believes that Congress should continue to consider methods to reduce the size of the uninsured population. Congress should also consider methods to assist hospitals directly with the uncompensated care problem.

Chapter 1—Medicare Prospective Payment: Assessing Potential Refinements

Medicare's prospective payment system (PPS) is in its eighth year. When it was implemented in 1983, PPS represented a dramatic change in the way that hospitals were paid under Medicare. Rather than reimbursing each hospital for actual costs incurred, as was the case during Medicare's first 16 years, a prospectively set payment is now made for a specified product—the hospital discharge. This change was intended to provide incentives for hospitals to operate more efficiently, thereby controlling the cost of treating their patients and reducing the growth rate of Medicare expenditures.

PPS has had a major effect on hospital payments in two ways. First, because the level of per-case payments is set through the annual process of updating the payment rates, Medicare has a degree of control over total Medicare inpatient hospital spending. Second, the payment to each hospital for each case is based on the average cost of treating that type of case at that type of hospital, rather than each hospital's actual costs. This significantly affects the distribution of Medicare payments across hospitals and geographic areas.

Since the beginning of PPS, the Prospective Payment Assessment Commission (ProPAC) has examined and evaluated factors that determine Medicare payment. Each year, the Commission recommends updates to the PPS rates, as well as changes in policies that affect the distribution of payments. The annual update recommendation is intended to recognize the impact on hospitals' costs of factors that are beyond their control, while maintaining financial incentives for productivity growth in the industry. Other policy recommendations are designed to improve payment equity by adjusting for external factors that contribute to variations in costs among hospitals.

In its March 1990 report, the Commission described the overall design of PPS, its goals, and the incentives that it provides. In this year's report, evidence is presented of the changes in Medicare spending and hospital costs that coincided with the implementation of PPS. The impact of recent PPS policy changes on the distribution of hospital payments and financial status is also examined. These effects are then related to the structure of the payment system, highlighting some recent refinements and others that are under consideration. The focus is on the effects of potential changes in PPS payment policy and how they may interact.

The discussion in this chapter provides a context for consideration of the Commission's recommendations on changes to PPS for fiscal year 1992. It is important to recognize the interactions between the various components of the payment system, both in assessing the impact of PPS and in evaluating changes that may be proposed in the near future. This approach also applies to the evaluation of options for prospective payment in other institutional settings, as the Commission proceeds to address a broader mandate.

IMPACT ON MEDICARE SPENDING AND HOSPITAL COSTS

The growth of aggregate Medicare inpatient hospital payments slowed dramatically with the implementation of PPS. When PPS began, the rate of increase in Medicare inpatient payments had been in double-digits for 10 consecutive years. During the six years before prospective payment, these payments grew at an annual rate of 17 percent (see Table 1-1). Over the first six years of PPS, the annual growth rate fell to 6.1 percent.

Total Medicare payments also increased more slowly than before, despite the continued rapid growth of other Medicare Part A payments and Medicare Part B payments. In the six years prior to PPS implementation, total Medicare payments increased at an annual rate of 17.8 percent. For the first six years after PPS took effect, this rate dropped to 9.2 percent.

TABLE 1-1.—ESTIMATED BENEFIT PAYMENTS, BY TYPE OF SERVICE

Fiscal year	Part A				Part B total[b]		Total medicare	
	Inpatient hospital		Other services[a]					
	Payments (in billions)	Percent change	Payments (in billions)	Percent change	Payments (in billions)	Percent change	Payments (in billions)	Percent change
1977	$14,429	—	$746	—	$6,133	—	$21,308	—
1978	16,719	15.9	830	11.3	7,254	18.3	24,803	16.4
1979	19,176	14.7	956	15.2	8,613	18.7	28,745	15.9
1980	23,129	20.6	1,139	19.1	10,467	21.5	34,735	20.8
1981	27,706	19.8	1,434	25.9	12,555	19.9	41,695	20.0
1982	32,554	17.5	1,970	37.4	14,809	18.0	49,333	18.3
1983	36,950	13.5	2,422	22.9	17,670	19.3	57,042	15.6
1984	40,385	9.3	2,788	15.1	19,882	12.5	63,055	10.5
1985	43,618	8.0	3,027	8.6	21,985	10.6	68,630	8.8
1986	45,280	3.8	3,156	4.6	25,499	16.0	73,945	7.7
1987	46,579	2.9	3,300	4.2	29,693	16.4	79,572	7.6
1988	49,570	6.4	3,789	14.8	33,725	13.6	87,064	9.4
1989	52,642	6.2	[c]6,217	[c]64.1	37,745	11.9	96,604	10.9
Annual rate of change:								
1977–1983		17.0		21.7		19.3		17.8
1983–1989		6.1		17.0		13.5		9.2

Note: Payments reported in this table are incurred expenditures, rather than outlays.
[a] Includes skilled nursing, home health, end-stage renal disease, and hospice benefits.
[b] Includes outpatient hospital, physician, independent lab, and other benefits.
[c] Part A other services payments for fiscal year 1989 include payments for services added by the Medicare Catastrophic Coverage Act of 1988.
SOURCE: Health Care Financing Administration, Office of the Actuary.

The rate of increase in overall hospital costs per case also slowed temporarily with the implementation of PPS. In 1983, total expense per adjusted admission at community hospitals rose by 10.2 pecent.[5] For the tenth consecutive year, hospital costs had grown at double-digit rates. In 1984, the increase in expenses per adjusted admission fell to 7.5 percent. This rate has subsequently stayed at around 10 percent. The general rate of inflation, however, is lower than it was immediately prior to PPS. As a result, hospital costs have continued to increase faster than the prices of the resources hospitals use in providing inpatient care.

Health policy makers continue to be concerned about the rate of increase in hospital costs. With costs rising faster than Medicare payments, deterioration in hospital financial status may threaten Medicare enrollees' access to inpatient care and the quality of that care. In addition, the resulting pressure on hospitals to produce more revenue from other sources may have adverse consequences for other third-party payers and their enrollees.

CHANGES IN PPS

The structure of PPS was intended to incorporate incentives for hospitals to

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increase efficiency while maintaining access and quality of care. Although much of the basic structure of PPS has been retained, a number of changes have been made since the system was implemented. These changes have substantially affected the level and distribution of payments. While they generally have been intended to mitigate perceived inequities in the existing structure of PPS, some of these changes have also altered the incentives that were provided by the system as it originally was designed.

PPS Payment Policy Changes

In its June 1990 report, *Medicare Prospective Payment and the American Health Care System*, ProPAC examined the cumulative effects of the payment policy changes adopted from the inception of PPS through fiscal year 1990.[5] These changes include reductions in the indirect medical education (IME) adjustment for teaching hospitals. In fiscal year 1986, an adjustment was added for hospitals that treat a disproportionate share of indigent patients, and the size of this disproportionate share (DSH) adjustment has since been increased considerably.

TABLE 1-2—EFFECTS OF PPS PAYMENT POLICY CHANGES ON PER-CASE PPS PAYMENT RATES, 1984–1990

Hospital group	Effect of payment policy changes (percent)	Effect of case-mix index increases * (percent)	Total effect (percent)
All hospitals	18.3	19.7	41.6
Urban	16.5	20.3	40.1
Rural	29.2	15.1	48.8
Major teaching	17.1	20.4	41.0
Other teaching	14.4	20.2	37.5
Non-teaching	21.6	18.2	43.8
Disproportionate share:			
Large urban	15.8	19.2	38.0
Other urban	23.9	21.1	50.0
Rural	36.1	15.5	57.2
Non-disproportionate share	16.8	19.2	39.2

Note: Figures are not actual changes in PPS payments. They are meant to isolate the effects of changes in PPS payment policy on PPS payment rates, holding all other factors constant. Hospitals in Maryland and New Jersey are excluded; hospitals in New York and Massachusetts are included beginning in fiscal year 1988.

* The effect of case mix change in 1990 for each hospital group is based on the overall estimated change for that year.

SOURCE: ProPAC estimates based on ProPAC PPS payment model and annual MedPAR data from the Health Care Financing Administration.

Beginning in fiscal year 1986, payment amounts for hospitals in large urban areas, other urban areas, and rural areas have been updated at different rates.[6] Changes have also been made in the PPS wage index; the patient categories (diagnosis-related groups, or DRGs) used to group cases for payment purposes; and the method of calculating the DRG relative weights. The rules for paying hospitals for cases with exceptionally long stays or high costs (outlier cases) have also been changed, as has the method of financing outlier payments.[5]

The PPS update factor and other payment policy changes made between fiscal years 1984 and 1990 increased per-case PPS payment rates by a cumulative 18.3 percent (see Table 1–2). This number reflects only the effects of payment policy changes. It does not reflect other changes that may affect the level of payments, including changes in the mix of patients across DRGs (see the discussion of this issue below).

Policy changes have had a considerable effect on the distribution of PPS payment rates. Rural hospitals have benefited from these changes, with a cumulative increase in their payment rates of 29.2 percent-almost twice that for urban hospitals. Because of a substantial decrease in the IME adjustment, policy changes have not increased payment rates for teaching hospitals as much as for non-teaching hospitals. Disproportionate share hospitals in other urban and rural areas have experienced large increase in their payment rates, primarily due to changes in the DSH adjustment enacted in the Omnibus Budget Reconciliation Act (OBRA) of 1989.

The Commission has also noted that, despite the intensity of the debate over the PPS update factor and other payment policy changes, the most important influence on the overall level of PPS payments has been the increase in the Medicare case-mix index (CMI). The CMI measures the mix of cases across DRGs. Any increase in the CMI results in an equal percentage increase in PPS payments.

ProPAC's estimate of the cumulative change in the CMI between fiscal years 1984 and 1990 is 19.7 percent.[6] This indicates that CMI changes have increased PPS payments by more than the PPS rate updates and other PPS policy changes combined. However, because payment increases due to CMI change have been considered in determining the annual PPS update factors, there is some relationship between the two effects.

Changes in the CMI have also affected the distribution of PPS payments, in some instances offsetting the intended effects of policy decisions. For example, CMI change has mitigated the effectiveness of payment rule changes aimed at narrowing the gap between payments to urban and rural hospitals.

Hospital Financial Status

The PPS margin compares the PPS payments (exclusive of passthroughs) that hospitals receive with their Medicare operating costs. The aggregate PPS margin for all hospitals exceeded 14 percent in each of the first two years of PPS (see Figure 1–1). This reflects the large increases in PPS payments per discharge in those years while, at least in the first year, hospitals were generally successful in holding down the increase in operating costs. Since the first two years, however, the continued growth in costs, combined with much smaller increases in payments, has resulted in a sharp decline in PPS margins. By the fifth year, the aggregate PPS margin was 2.6 percent. For the seventh year, ProPAC has estimated an aggregate PPS margin of −2.5 percent.

As the overall level of PPS margins falls, the distribution of these margins becomes increasingly important. In the first year, for instance, when PPS margins were generally high, there was less concern about hospitals with relatively low PPS margins. There were few hospitals for which PPS payments did not cover operating costs. By the fifth year, however, a majority of hospitals had negative PPS margins. By the seventh year, a PPS margin only slightly below average may have meant serious financial difficulty for the hospital.

Figure 1-1. PPS and Total Margins in the First Five Years of PPS

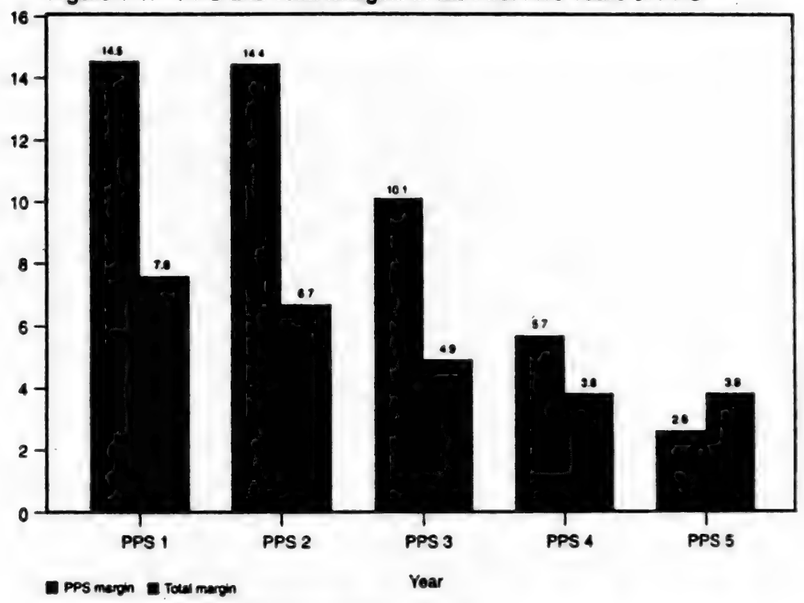

SOURCE: Medicare Cost Report data from the Health Care Financing Administration

The total margin is a primary indicator of the hospital's overall financial status. It compares hospital revenues and expenses for all inpatient and outpatient care and for non-patient care activities. Patient care includes not only the treatment of Medicare and Medicaid patients, but also the treatment of patients covered by private insurance and those who are uninsured. Non-patient care includes all other hospital activities, such as gift shops and parking lots.

As was the case for the PPS margin, the aggregate total margin for all hospitals declined over the first five years of PPS. This decrease, however, was not nearly as steep as that in the PPS margin. The total margin, which was 7.6 percent in the first PPS year, had fallen to 3.8 percent by the fifth year—a decrease of 50 percent. However, the decline in the PPS margin over the same period was 82 percent. In the fifth year, the total margin exceeded the PPS margin for the first time since PPS began.

More recent data from the American Hospital Association (AHA) indicate that the decline in total margins has leveled off. Total margins remain comparable to what they were immediately before PPS. According to the AHA's National Hospital Panel Survey, the average total margin for 1989 was 5.0 percent. This compares with 4.8 percent in 1988, 5.1 percent in 1983, and 4.6 percent in 1980.[7]

In fact, the total margin is currently considerably higher than it was at any time during the 1970s. However, as with PPS margins, the dispersion between the highest and lowest total margins has become wider over time, indicating that hospitals may face greater financial risk now than they did before PPS.

The much steeper decline in PPS margins than in total margins over the first five years of PPS indicates that other sources of revenue have been more stable than Medicare over this period. However, the relatively low recent annual updates in the PPS payment rates have reflected, in part, the response of policy makers to the initially very high PPS margins.

In a sense, the effects of PPS payment policy are just now becoming evident. Several studies have found that hospitals that face more financial pressure under PPS have experienced slower growth in operating costs.[8] If these findings can be applied to the current situation, there may be increasing evidence of hospitals' responses to PPS incentives as more PPS margins fall below zero. On the other hand, hospitals with high total margins may be able to avoid the pressure to constrain costs. In any event, conclusions about the effectiveness of PPS incentives may be premature until more data on hospitals' current behavior become available.

COMPONENTS OF PPS PAYMENT

The structure of PPS determines the distribution of payments. It thus is key to analyzing the incentives that the system provides and the behavioral effects produced by these incentives. Therefore, the components of PPS should be reviewed regularly to identify any changes that may be necessary to meet the system's objectives.

PPS consists primarily of a base payment rate (the standardized payment amount) and a number of adjustments. These adjustments are generally intended to account for factors that affect the cost of treating Medicare patients but are regarded as being beyond the control of the individual hospital.

As discussed above, a number of changes have been made in the way that payments are made under PPS. These changes involve modifications or additions to one or more of the components of the payment system. A number of additional changes have been or are being considered that would further modify the structure of PPS. The following discussion reviews the current structure of PPS and describes some potential changes to the system. This discussion is intended to

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highlight the interdependence of the system's components and demonstrate the need to take a broad view in evaluating potential changes.

Standardized Payment Amounts

The standardized payment amounts are the base payment rates for hospitals under PPS. Initially, they were based on the historical average costs of treating Medicare patients at hospitals located in urban and rural areas, respectively. There currently are three separate standardized payment amounts.

Payments for each hospital are adjusted for relative hourly labor costs in the hospital's area, the hospital's case mix, and its teaching and disproportionate share status. Hospital-specific average costs in the base year are, therefore, standardized for these factors. The standardization process thus indicates the average urban or rural cost of treating an average Medicare patient at a non-teaching, non-disproportionate share hospital in an area with average wages and cost of living. The resulting standardized payment amounts are then reduced to reflect anticipated outlier payments for urban or rural hospitals.

Each year, the standardized payment amounts are updated to reflect increases in the cost of providing inpatient care to Medicare patients, as well as other considerations. From fiscal years 1988 through 1990, hospitals in large urban, other urban, and rural areas received different updates. This has resulted in three separate standardized payment amounts, as mentioned above.

In OBRA 1989, Congress required the Secretary of Health and Human Services (HHS) to develop a legislative proposal for the implementation of a single base payment rate under PPS. The Commission, in its March 1990 report, recommended that the differential between the standardized payment amounts for rural hospitals and hospitals in other urban areas be eliminated over time. In OBRA 1990, Congress set the PPS updates so that the differential between the rural and other urban standardized payment amounts would be eliminated by fiscal year 1995.

This change will significantly affect the distribution of PPS payments. In fiscal year 1990, the standardized payment amounts for rural hospitals was 7 percent lower than for other urban hospitals. The difference in average PPS payments for discharge, however, was much greater than that, due to the effect of other PPS payment factors. Among these factors are the CMI, the wage index, and the IME and DSH adjustments, which are all greater for urban than for rural hospitals.

The elimination of the differential in the standardized payment amounts raises the issue of whether the PPS adjustments should also be modified. Additional adjustment may be required to adequately reflect differences in Medicare costs that are currently captured by the differentials between the standardized payment amounts for large urban, other urban, and rural hospitals.

Input Prices

Hospitals in different geographic areas may face different prices for labor, other services, and supplies that they use in providing inpatient care. PPS thus includes some adjustments for differences in input prices. Each hospital's base payment rate is adjusted for the relative hourly cost of labor in its market area. In addition, an adjustment is made for hospitals in Alaska and Hawaii to reflect the high cost of living in those areas.

Wage Index—The wage index has a considerable effect on the distribution of PPS payments. Every 10 percent difference in the wage index in a given area results in a payment difference of 7.14 percent for hospitals in that area. The fiscal year 1991 wage index ranges from 0.3961 for Arecibo, Puerto Rico, to 1.4677 for San Jose, California—a difference of almost 300 percent.

The large effect of the wage index on the distribution of PPS payments makes it extremely important that the index accurately reflect current labor market conditions faced by hospitals. As of January 1, 1991, the PPS wage index is based on data collected by the Health Care Financing Administration (HCFA) on hospital hourly labor compensation for 1988. Previously, the wage index was based on 1984 data collected by HCFA.[9] The change from 1984 to 1988 data resulted in major differences in the wage index for some areas. In OBRA 1987, Congress required HCFA to update the wage index for 1991 and at least every three years thereafter. In its March 1989 report, the Commission recommended that the wage index be updated at least every other year.

In its March 1990 report, the Commission recommended that HCFA begin to collect data that would allow analysis of the adjustment of the area wage index for differences in occupational mix. This type of adjustment would reduce payments to hospitals in areas where apparently high labor costs are actually due to the use of more expensive types of labor.

The use of more expensive types of labor does not reflect higher input prices, but rather the staffing decisions made by hospitals in each area. Consequently, hospitals in some areas are paid for decisions that are primarily affected by local practice patterns which PPS payment is not intended to reflect.

Due to a lack of nationwide data on occupational mix differences across areas, definitive findings on the effects of an occupational mix adjustment are not available. However, ProPAC has conducted analyses of this issue, using both a national sample of hospital wage data, and hospital-specific data from California to estimate the effects on hospitals in that state. This provided the basis for the Commission's recommendation on this issue in Chapter 2, and will be described in more detail in a technical report to be released this spring.

The correlation of occupational mix with other payment factors (such as case mix and teaching status) means that implementation of an occupational mix adjustment could affect the appropriate levels of these other factors. Teaching hospitals, for example, tend to employ a more skilled mix of labor. An occupational mix adjustment would presumably reduce payments to all hospitals in areas with high concentrations of teaching hospitals. The IME adjustment could then be used to account for the higher labor costs of teaching hospitals, which is now reflected in the wage index. The advantage of this approach is that payments could then be targeted to the teaching hospitals that require a more expensive mix of labor, rather than to all hospitals in the area.

Non-Labor Index—Currently, the only adjustment for hospital input prices other than wages is a cost-of-living adjustment for hospitals in Alaska and Hawaii. The adjustment applies only to a few hospitals and is not designed to reflect any variation in non-labor input prices across the country.

ProPAC examined the issue of adjusting PPS payments for differences in the prices of non-labor inputs in a study conducted in 1989. That study found that the information available at the time was inadequate to determine whether such an adjustment was needed, although there were no indications of substantial variation. In its report to Congress on this issue, the Commission concluded that, given the lack of appropriate data, the development of such an index was infeasible for the time being.[10]

Case Mix

The cost of inpatient care varies due to differences in the patient's diagnois, the type of treatment provided, and the complexity and severity of the patient's illness. One of the key considerations in developing PPS was the ability to adjust payment for differences in the mix of cases treated by the hospital. The base payment rate, adjusted by the wage index and the cost-of-living adjustment, is multiplied by the DRG relative weight for each Medicare case. The relative weight reflects the expected costliness of treating cases in the DRG to which each patient is assigned.

As described above, the increase in the CMI—which is the average relative weight for all PPS discharges—has been the largest single factor in determining the rate of increase in PPS payments over time. The CMI also accounts for much of the difference in payments between hospital groups. For instance, the aggregate CMI for urban hospitals in fiscal year 1988 was 1.329, compared with 1.140 for rural hospitals. The difference in the CMI thus accounted for a 14.2 percent difference in payments—more than the difference between the urban and rural standardized payment amounts in that year.

The effect of case mix on PPS payments is determined by three factors: the definitions of the DRGs, coding practices and their influence on the assignments of cases among DRGs, and the calculation of the DRG weights.

DRG Definitions—In its March 1990 report, the Commission urged HCFA to continue its work on the development and assessment of improvements in the measurement of hospital case mix and resource use. Both HCFA and ProPAC have been analyzing potential refinements to the current DRGs. These efforts have resulted in the addition of several new DRGs in fiscal year 1991. Further refinements to the DRGs, such as the incorporation of more of the revisions developed by Yale University in a HCFA-funded project, are being evaluated.

As improvements are made in the grouping of patients for payment, the appropriate levels of many of the adjustments now applied under PPS are likely to change. The IME adjustment, for instance, is partially based on the assumption that teaching hospitals treat more severely ill patients within any DRG than do other hospitals. Improvements in the ability to measure severity may reduce the extent to which such differences require separate compensation.

The definition, incidence, and the appropriate method of payment for outlier cases are also likely to be affected by DRG refinement. If cases are grouped more appropriately according to illness and resource intensity, fewer cases may be exceptional relative to the group to which they are assigned. In any event, a major refinement of the DRGs is likely to require a reexamination of the outlier payment policy.

Coding Practices—The CMI may change over time for several reasons. Patients admitted for inpatient care may be more severely ill, on average, as less severely ill patients are more commonly treated in other settings. Inpatient treatment protocols may become more complex, as physicians and hospitals respond to technological change and improvements in clinical knowledge. In addition, hospitals may refine their medical record documentation and coding practices. The first two of these reasons are related to patient resources requirements; their combined effect is commonly referred to as real CMI change. The third, however, is not related to the costlines of treatment; it is commonly referred to as upcoding.

The Commission believes that the level of PPS payments should reflect changes in patient care resource requirements, but not upcoding. In its annual recommendation on the update to the PPS rates, ProPAC includes an estimate of real CMI change during the previous year. The PPS update recommendation also accounts for increases in patient complexity within DRGs, which are not reflected in CMI changes. The resulting update removes the net effect of upcoding from PPS payments. The Commission's case-mix adjustment to the recommended PPS update for fiscal year 1992 is described in Chapter 2.

Changes in the CMI—including those due to upcoding—also may affect the distribution of PPS payments. At this time, however, it is not possible to measure the effect of upcoding on the CMI for different hospitals or hospital groups.

Calculation of the DRG Weights—The DRG weights are intended to reflect the relative costliness of treating each type of patient. These weights are based on the average total charge for patients in each DRG, standardized for the PPS payment adjustments.

In its March 1988 report, the Commission recommended that the DRG weights be based on the estimated average costs of patients in each DRG, rather than on charges. Charge-based weights reflect the pricing behavior of hospitals as well as the resources required by the patients they treat, and thus may bias the distribution of PPS payments. ProPAC's analysis of the difference between cost-based and charge-based weights indicated that, although the two sets of weights are highly correlated, they result in systematic differences in payments. Large, urban, and major teaching hospitals are paid more—and small, rural, and non-teaching hospitals less—under charge-based weights than they would be under cost-based weights.

Adjustments for Hospital Characteristics

Under PPS, certain hospital characteristics are recognized as being associated with higher inpatient operating costs that are beyond the hospital's control. PPS payments to teaching hospitals and hospitals that treat a disproportionate share of poor patients are thus adjusted by formulas that depend on measures of their teaching intensity and share of low-income patients, respectively.

Indirect Medical Education Adjustment—The IME adjustment is intended to recognize the higher costs faced by teaching hospitals in the treatment of Medicare patients. These costs have been attributed to greater severity of illness among patients in teaching hospitals, even within each DRG; greater intensity of services provided to patients in teaching hosptials; and higher staffing concentrations and richer staff mixes. In addition, the poor overall financial performance of major teaching hospitals as a group indicates that their continued operation might be endangered without continued Federal support.

The IME adjustment accounts for an estimated 5.4 percent of all PPS payments under fiscal year 1991 payment rules. However, because these payments are concentrated among relatively few hospitals—59 percent of IME payments are received by only 4 percent of all PPS hospitals—they substantially influence the overall distribution of PPS payments. For instance, while urban hospitals account for 78 percent of all PPS discharges, they receive 98 percent of all IME payments. IME payments have a strong effect on the financial status of teaching hospitals. In the fifth year of PPS, major teaching hospitals had an aggregate PPS margin of 15.1 percent, compared with −1.7 percent for non-teaching hospitals. Despite this differential in PPS margins, the aggregate total margin for non-teaching hospitals (3.9 percent) was much higher than for major teaching hospitals (2.0 percent).

For the past several years, ProPAC has analyzed the relationship between teaching intensity and Medicare operating costs per discharge. On the basis of these analyses and other considerations, the Commission annually has made a recommendation on the IME adjustment. These recommendations generally have taken into account the estimated relationship between teaching intensity and Medicare operating costs. However, the Commission has also expressed concern about the poor overall financial status of major teaching hospitals and the potential effect on Medicare enrollees' access to high-quality health care. The Commission's recommendation on the IME adjustment for fiscal year 1992 is in Chapter 2, and the most recent ProPAC analysis of this issue is described in Appendix A.

Disproportionate Share Adjustment—The DSH adjustment recognizes the higher costs faced by hospitals that treat a disproportionate share of poor patients. These costs apply to the treatment of all their patients, including Medicare patients. They are attributed to greater severity of illness among poor patients in any DRG and greater difficulty in arranging for appropriate post-discharge care for these patients. There also are indirect costs—such as those associated with the need for bilingual staff and additional security—associated with operating in areas accessible to the poor. Moreover, because of the broader social purpose served by this group of hospitals, their weak overall financial performance is of particular concern.

With the changes in OBRA 1990, the DSH adjustment accounts for 4.1 percent of all PPS payments. However, as with the IME adjustment, these payments are concentrated among relatively few hospitals. As such, they also strongly influence the overall distribution of PPS payments and the financial status of disproportionate share hospitals. In the fifth year of PPS, disproportionate share hospitals had an aggregate PPS margin of 6.4 percent, compared with −0.2 percent for non-disproportionate share hospitals. However, the aggregate total margin was higher for non-disproportionate share hospitals (4.4 percent) than for disproportionate share hospitals (3.1 percent). The impact of DSH payments is likely to continue to grow over time because OBRA 1990 contains a provision that will increase the DSH adjustment in fiscal years 1994 and 1995.

In the past year, ProPAC and others have been reexamining the relationship between disproportionate share status and Medicare operating costs. In addition, other indicators of hospitals' care for the poor—such as the distribution of uncompensated care costs—are being examined. Moreover, there is considerable overlap between the hospitals that receive the IME and DSH adjustments. Disproportionate share hospitals receive almost two-thirds of all IME payments, while teaching hospitals receive more than two-thirds of all DSH payments.

These activities may lead to the development of potential modifications to the current adjustments under PPS. The Commission believes that these changes must be evaluated in relation to both their direct effects on the distribution of PPS payments and their interaction with the older factors that determine PPS payment and hospital financial condition.

Outlier Payment

The designers of PPS recognized that, regardless of the method used to categorize patients for payment, there would be some patients whose costs could not adequately be predicted by the payment system. Therefore, for exceptionally long or costly cases in each DRG, hospitals receive an additional outlier payment based on the length of stay or cost in excess of a preset threshold. These payments, however, are not designed to compensate hospitals for the full costs of treating these patients.

Outlier payments account for about 5 percent of all PPS payments. They are

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financed by separate offsets to the urban and rural standardized payment amounts, so they probably do not affect the distribution of PPS payments as much as the IME and DSH adjustments do. However, they are concentrated among certain types of hospitals. For instance, teaching hospitals receive 86 percent of all outlier payments, compared with 53 percent of all PPS payments.

Any other refinement of the DRGs would be expected to have major effects on the definition, incidence, and method of payment for outliers. Further, any change in the distribution of outlier payments would, in turn, result in a change in the standardized amounts, since these amounts are adjusted for anticipated outlier payments for urban and rural hospitals. Moreover, since outlier payments are correlated with certain hospital characteristics (such as teaching status), changes in outlier payment may affect the corresponding payment adjustments.

IMPLICATIONS

In this chapter, the Commission has reviewed the structure of PPS and its effect on both aggregate PPS payments and the distribution of PPS payments across hospitals. The system's structure, and the interaction of its various components, raise several issues with important implications for the evalution of PPS payment policy and potential changes to that policy.

Level of Payments

Both aggregate Medicare inpatient hospital payments and total Medicare payments have grown at much slower rates since the implementation of PPS. After a sharp decline in the rate of growth in the first year of PPS, total hospital costs have continued to grow faster than input prices—indicating that hospitals have not been as successful in holding down their costs as policy makers had anticipated. With costs also rising faster than Medicare payment rates, there is continued concern about the potential deterioration of hospital financial status.

From the beginning of PPS, it was recognized that the resulting financial pressure would require greater hospital efficiency to maintain access and quality. In the first few years, PPS payments were substantially higher than costs, diminishing the incentive for hospitals to reduce costs. Available evidence indicated no decline in either patient access or quality of care.

ProPAC estimates, however, that Medicare operating costs exceeded PPS payments by fiscal year 1989. Moreover, Congress has legislated PPS rate increases that are below the increase in input prices through fiscal year 1993. This indicates that hospitals may just be starting to feel substantial financial pressure from PPS—and that the lack of major access and quality problems in the early years may not be taken for granted in the future.

Despite the sharp decrease in PPS margins, there is evidence that overall hospital financial condition is stabilizing. Total margins, while lower than in the first few years of PPS, are as high now as at any time in the decade before PPS. This indicates that the threat of increasing numbers of hospital closures and major service cutbacks may not be as great as might appear from looking only at Medicare payments.

However, the difference between PPS and total margins indicates that hospitals have relied on sources of revenue other than Medicare to cover their costs. This shift in revenue sources has put more pressure on other payers for hospital services. The consequence could be higher costs of insurance coverage for people under 65 years of age and greater difficulty for those without insurance coverage or with inadequate coverage to obtain the care they need.

Distribution of Payments

By severing the connection between Medicare hospital payments and the operating costs of the individual hospital, PPS has substantially changed the distribution of payments. PPS payments are considerably greater than Medicare operating costs for some hospitals and much less for others. Moreover, the variation in PPS margins is systematically related to certain hospital characteristics. To the extent that this observation indicates inequities in the payment system or the unequal abilities of different hospitals to respond to the system's incentives, it is the cause of some concern to the Commission.

There have been a number of changes in the payment rules since PPS began. Some of these changes have been attempts to fine-tune adjustments that were part of PPS from the beginning. Others have been intended to mitigate perceived inequities in the original design of the system. Together, they have had a significant effect on the distribution of payments across hospitals.

In addition, changes in the CMI have had a large effect on both the level and the distribution of PPS payments. The CMI for each hospital is determined by the hospital's mix of cases across DRGs, rather than by explicit policy decisions made by HCFA or Congress. As a result, the influence of CMI change is frequently overlooked or misinterpreted. In many instances, the effect of CMI change has negated or at least diminished the intended effects of PPS payment policy decisions.

The patterns of PPS and total margins are different across groups of hospitals, raising the issue of how to balance Medicare's potentially conflicting responsibilities. One responsibility is to compensate hospitals appropriately for the efficient provision of inpatient care to Medicare patients. The other is to maintain access to necessary services and the quality of those services. The maintenance of the IME and DSH adjustments above the levels indicated by analysis of Medicare costs alone reflects the recognition that both of these responsibilities are important.

Another increasingly evident fact is that, although some components of the payment system apply to groups of hospitals that share certain characteristics (like location or teaching status), financial performance within these groups varies considerably. The distribution of both PPS and total margins has become increasingly wider under PPS, which means there are greater differences between hospitals that do well and those that do poorly.

This trend is consistent with the desire to have the hospital bear more of the risk associated with treating Medicare patients. However, it also means that analyses based on average performance must be interpreted with caution. Both the average outcome and the distribution of outcomes must be considered in evaluating the impact of PPS.

Interdependence of PPS Components

The structure of the payment system is such that changes in one component tend to have effects on other components. Because of this interdependence, the evaluation of incremental changes must be considered in the context of their effects on the system as a whole.

The elimination of the differential between the standardized payment amounts for hospitals in rural and other urban areas illustrates this complex interaction. Rural hospitals have had lower PPS margins than urban hospitals in every year since PPS began. Despite several policy changes aimed at eliminating this disadvantage, the difference has persisted, at least through the fifth year of PPS.

One source of the gap between urban and rural hospitals' payments under PPS is the differential in their standardized payment amounts. This differential was incorporated into the system to recognize the historically higher costs incurred by urban hospitals. However, the system has apparently overcompensated for this difference. In the fifth year of PPS, rural hospitals were paid about 45 percent less per discharge than urban hospitals, yet there costs were only about 40 percent lower. In response to this situation, Congress included in OBRA 1990 a provision that, by fiscal year 1995, the standardized payment amount for rural hospitals would be increased to match that for other urban hospitals.

This action will certainly increase payments to rural hospitals compared with what they would have been. However, it will not make them equal to payments for urban hospitals. The wage index, the CMI, and the IME and DSH adjustments all have had the effect of increasing the share of payments to urban hospitals. Moreover, this effect has grown over the years.

This example shows that, while changes in one component of PPS may be intended to accomplish a given policy objective, other components may mitigate the intended effect. This illustration demonstrates the importance of assessing the interactive effects of the various components of the payment system so that policy objective are met.

CONCLUSIONS

This chapter has reviewed the structure of PPS and the interrelationships among its components. These interactions require that incremental changes in PPS payment policy not be evaluated in isolation from the rest of the system. Each of the components of PPS affects other components and is, in turn, affected by the others. Therefore, efforts to diagnose and correct perceived flaws in the system must be attempted with an eye toward their influence on the system as a whole. The Commission has taken this approach in developing the recommendations in chapter 2. Any policy changes considered in the future should also be evaluated in this broader context.

Notes to Chapter 1

1. Other Medicare Part A payments include payments for skilled nursing, home health, endstage renal disease, and hospice services. Medicare Part B payments primarily include payments for physician services, hospital outpatient services, and independent laboratory services.

2. Adjusted admissions is an indicator of the overall patient load of the hospital. It is a weighted sum of inpatient admissions and outpatient visits.

3. A similar analysis including fiscal year 1991 payment rules will be provided in the Commission's June 1991 report.

4. For payment purposes, large urban areas are metropolitan statistical areas with populations of one million or more, or New England Consolidated Metropolitan Areas with populations of 970,000 or more. Other urban areas are those not designated as large urban.

5. For the first four years, PPS payment rates were a blend of hospital-specific rates-based on each hospital's costs in a base year-end Federal rates-based on average standardized costs for urban and rural hospitals in each region and nationwide. Although the ProPAC analysis compares only the national rates, the establishment of a transition period could also be considered a policy decision with a distinct effect on the distribution of PPS payments.

6. This figure is based on MedPAR data for fiscal years 1984 and 1989, and ProPAC's estimate of a 2.5 percent increase in the CMI for fiscal year 1990.

7. The National Hospital Panel Survey is a monthly survey of hospitals conducted by the AHA. The data from this survey are not directly comparable to the Medicare Cost Report data cited above the because the time periods covered do not match and because the figure reported by the AHA is the mean, rather than the aggregate, total margin.

8. See, for example, Judith Feder, Jack Hadley, and Stephen Zuckerman, "How Did Medicare's Prospective Payment System Affect Hospitals?" *New England Journal of Medicine* 317(14): 867–73, October 1, 1987; and Steven H. Sheingold, "The First Three Years of PPS: Impact on Medicare Costs," *Health Affairs* 8(3):191–204, Fall 1989.

9. In addition to updating the wage index, the 1988 HCFA data included benefits per paid hour of employment, while the 1984 data did not.

10. See *Adjustment to the Nonlabor-Related Portion of the Standardized amounts*, ProPAC Technical Report C–89–03, August 1989.

Chapter 2—Recommendations

When the Prospective Payment Assessment Commission was created by Congress in 1983, its primary responsibility was to analyze issues and make recommendations for updating and improving the Medicare prospective payment system. Over time, Congress has expanded ProPAC's responsibilities to include analyzing current policies and developing future ones for prospective payment for all facility services furnished to Medicare beneficiaries.

The Commission's expanded responsibilities include payment policy for hospital outpatient services; services furnished in free-standing surgery, end-stage renal disease, and other facilities; and services provided by skilled nursing facilities and home health agencies. ProPAC, however, continues to devote substantial effort to updating and improving policies for PPS hospitals and excluded hospitals and distinct-part units. The Congress has also requested ProPAC to examine and report on broader issues regarding the effectiveness and quality of health care delivery in the United States.

From 1985 through 1990, ProPAC's recommendations were delivered to the Secretary of the Department of Health and Human Services. Following the enactment of the Omnibus Budget Reconciliation Act of 1990, the Commission's report and recommendations are now made directly to Congress. The Secretary, however, is still required to consider ProPAC's recommendations and respond to them in the annual notice of rulemaking published in the **Federal Register.**

ProPAC's analyses and decision making are guided by a set of principles that were initially developed on the basis of PPS goals, but that are applicable to other facility services. They include:

- Ensuring beneficiary access to high-quality health care;
- Encouraging hospital productivity and long-term cost-effectivenss;
- Facilitating innovation and appropriate technological change;
- Promoting equity in the distribution of payments to hospitals;
- Maintaining stability for providers, consumers, and third-party payers; and
- Making decisions based on reliable, timely data for information.

Along with these principles, the Commission is mindful of the current fiscal environment. Attaining a balance Federal budget and controlling rising health care costs are concerns the Commisson takes into account with each recommendation. Moreover, budgetary pressures intensify the need to address distributional and technical payment issues that may affect access and quality of care furnished to Medicare beneficiaries.

ProPAC's recommendations reflect the collective judgment of the 17 Commissioners. Some of the recommendations address annually recurring topics, such as the annual update factors. Others are either medifications of previous recommendations or cover new issues and incorporate recent research findings. This year, in addition to making recommendations, the Commission has highlighted serveral areas of concern. Work on these and other issues continues.

The Commission addresses eight areas:

- Updating PPS payments,
- Rural hospital payment,
- Teaching and disproportionate share hospital payment,
- Other adjustments to PPS,
- Capital payment,
- Updating and adjusting payments to PPS-excluded hospitals and distinct-part units,
- Hospital outpatient payment, and
- Uncompensated care.

The next section discusses these recommendations and concerns. The final section describes other issues considered by the Commission.

RECOMMENDATIONS FOR FISCAL YEAR 1992

Updating PPS Payments

The Commission is required by law to report to the Congress each year on the appropriate change factor for updating inpatient hospital payment rates under PPS. In developing its annual recommendation for updating the standardized payment amounts under PPS, ProPAC must consider changes in the hospital market basket and hospital productivity, technological and scientific advances, and the quality and long-term cost-effectiveness of health care. The Commission formerly made its update recommendation to the Secretary of Health and Human Services. Although this was changed under OBRA 1990, the Secretary must still consider the Commission's recommendation in developing his update recommendation.

In OBRA 1990, Congress legislated the PPS update for fiscal year 1992 at the increase in the market basket minus 1.6 percentage points for urban hospitals and minus 0.6 percentage points for rural hospitals. Although the fiscal year 1992 update has been set by law, the Commission has followed the approach it used in the past: examining individual factors that determine the update. ProPAC believes these update amounts, together with increased per-case payments due to case-mix index change, are sufficient to maintain access to quality care, by Medicare beneficiaries while encouraging the efficient provision of hospital care.

Recommendation 1: Amount of the Update Factor for PPS Hospitals

For fiscal year 1992, the PPS sandardized payment amounts should be updated to account for the following factors:

- The projected increase in the HCFA PPS market basket, currently estimated at 4.8 percent;
- An adjustment of 0.2 percentage points, to reflect the difference between the ProPAC and HCFA market baskets;
- A correction for substantial error in the fiscal year 1990 market basket forecast, currently estimated at −1.0 percentage points;
- A discretionary adjustment factor of 0.2 percentage points; and
- A net −1.0 percentage point adjustment for case-mix change.

Further, an additional positive adjustment of 1.0 percentage points for rural hospitals should be made to reflect the second year of phasing out the differential in the standardized amounts between rural and other urban hospitals. Through differential updates, the rural standardized amount should be increased until it equals the other urban standardized amount in fiscal year 1995.

The Commission's recommendation would result in an increase of 4.2 percent for rural hospitals and 3.2 percent for urban hospitals.

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This reflects the Commission's judgment about the appropriate increase in the level of PPS prices for fiscal year 1992. Although this recommendation is likely to be modified as more current market basket forecasts become available, the amount recommended for rural and urban hospitals is the same as that specified in current law. The components of the Commission's update factor recommendation are summarized in Table 2-1; a discussion of each follows.

TABLE 2-1. RECOMMENDED PPS UPDATE FACTORS FOR FISCAL YEAR 1992

Components of the Update Factor	Percent	Percent
Components applied to all hospitals:		
Fiscal year 1992 PPS market basket forecast*		4.8
Adjustment to reflect ProPAC version of PPS market basket*		0.2
Correction for fiscal year 1990 forecast error		−1.0
Components of discretionary adjustment factor:		
Scientific and technological advancement	0.7	
Productivity	−0.5	
Total discretionary adjustment factor		0.2
Adjustments for case-mix change (fiscal year 1991):		
Total DRG case-mix index change	−2.5	
Real DRG case-mix index change	1.3	
Within-DRG case complexity change	0.2	
Net adjustment for case-mix change		−1.0
Additional adjustments to the standardized amounts:		
Adjustment for large urban areas	0.0	
Adjustment for other urban areas	0.0	
Adjustment for rural areas	1.0	
Total Update Factor:		
Large urban	3.2	
Other urban	3.2	
Rural	4.2	
Average update factor		3.4

*Market basket forecast provided by the Health Care Financing Administration, Office of the Actuary, December 1990. The market basket forecast is subject to change as more current forecasts become available.

The increase in average per-case payments will be greater than the PPS update. This is because hospital payments automatically rise with increases in the case-mix index. Future changes in the case-mix index are difficult to project, however. Based on currently available data, the Commission estimates that the 1992 case-mix index change will be 2.3 percent. As a result, the average increase in per-case payments under the Commission's recommendation would be about 5.7 percent, as shown in Table 2-2. ProPAC expects that a portion of the revenue increase associated with case-mix change will be offset by the added costs of treating sicker patients.

PPS Market Basket—The update recommendation is determined primarily by projected increases in the PPS market basket. HCFA and ProPAC, however, have different versions of the PPS market basket. HCFA's version is currently projected to increase by 4.8 percent in fiscal year 1992, while ProPAC's market basket is projected to increase by 5.0 percent. Since the update is legislated relative to a market basket that HCFA would implement, HCFA's market basket construction would likely be used to update fiscal year 1992 payments.

TABLE 2-2. ESTIMATED FISCAL YEAR 1992 AVERAGE INCREASE IN PER-CASE PPS PAYMENTS

PPS update factor	3.4%
Estimated case-mix index change (fiscal year 1992)	2.3
Total increase in average PPS payments*	5.7

* Most of the increase in payments resulting from case-mix index change will be offset by the increased costs of treating sicker patients.

The Commission believes, however, that its version of the market basket best reflects changes in hospital input prices (prices hospitals pay for goods and services) and therefore should be used to update PPS payment rates. While HCFA adopted most of the Commission's 1990 recommendation on the market basket, it failed to adopt the key provision that increased the weight of internal hospital wages used in the wage component of the market basket. The Commission believes that HCFA's market basket, as currently constructed, does not adequately recognize the unique characteristics of the hospital labor market. Therefore, ProPAC's update recommendation includes a 0.2 percentage point adjustment, to reflect the difference between the two market basket forecasts. See Appendix A for more information.

Forecast Error Correction—ProPAC's update recommendation also includes a −1.0 percentage point adjustment for fiscal year 1990 market basket forecast error. A market basket forecast of 5.5 percent was used to set payments in fiscal year 1990. The actual market basket increase, however, was only 4.5 percent, creating a forecast error of −1.0 percentage points. ProPAC continues to believe the correction should be part of its update framework. The correction factor protects both hospitals and the Federal government by adjusting the base payment rates so that the effects of forecast errors are not perpetuated. See Appendix A for more information on the market basket forecast error correction factor.

Discretionary Adjustment Factor—The discretionary adjustment factor incorporates considerations related to scientific and technological advancement and hospital productivity improvement, as provided in the statute establishing PPS. Analysis of the available data has led the Commission to conclude that reasonable ranges of the positive scientific and technological advancement allowance and the negative productivity improvement adjustment net to 0.2 percentage points. This is based on a 0.7 percent scientific and technological advancement allowance and a −0.5 percent productivity adjustment. The Commission believes the DAF should continue to give hospitals an incentive to strive for productivity improvement as they adopt quality-enhancing technologies.

The scientific and technological advancement allowance is a future-oriented policy target. It provides additional funds for hospitals to adopt quality-enhancing but cost-increasing health care advances. To develop an informed judgment on the allowance, the Commission examines a set of the most important new technologies and scientific developments each year, including the effects of those that either complement or substitute for existing technologies. The range of the estimated costs was 0.5 percent to 1.0 percent, but these estimates do not include the effect of "small-ticket" technologies or changes in practice patterns. Given the wide range of the possible cost impact, ProPAC believes that 0.7 percent is an appropriate level for the scientific and technological advancement allowance.

The productivity adjustment in the DAF is also a future-oriented target. Based partly on its analysis of the trend in productivity over the last 10 years, ProPAC thinks it is reasonable to expect hospitals to improve productivity during fiscal year 1992. The Commission also believes that it is appropriate for the costs of scientific and technological advancement to be financed partially by productivity gains. The −0.5 percent recommended adjustment assumes productivity gains of at least 1.0 percent, reflecting the Commission's policy that the savings from productivity improvement should be shared equally by the Medicare program and the hospital industry. See Appendix A for more information on the DAF.

Adjustments for Case-Mix Change—For fiscal year 1992, the PPS standardized amounts should be reduced by 1.0 percentage points to account for increased payments from case-mix index change. This adjustment reflects:

- A 2.5 percentage point reduction for the estimated case-mix index change during fiscal year 1991,
- A positive allowance of 1.3 percentage points for real across-DRG case-mix index change during fiscal year 1991, and
- A positive allowance of 0.2 percentage points for within-DRG case-complexity change during fiscal year 1991.

To allow payments to increase for real case-mix change, while removing the effect of upcoding (changes in medical record documentation or coding practices that affect DRG assignment), the Commission's recommended adjustment for case-mix change has three parts. The first component is a negative adjustment for the CMI increase from the previous year. This is removed from the payment base because it includes the effects of upcoding. Two positive allowances are then made for real case-mix change: one for real, across-DRG CMI change and another for within-DRG case-complexity change. This methodology allows hospitals to keep increased payments for real changes in the resources used to treat patients, but not for changes in medical record documentation and coding practices.

Annual CMI change has generally declined over time. However, this downward trend has been interrupted when DRG changes created new opportunities for upcoding. ProPAC estimates that the CMI increased by 2.5 percent in 1990. Patient classification changes implemented in 1991 are expected to create additional potential for upcoding. Because of expected upcoding, the Commission projects that, rather than declining, CMI change will again be 2.5 percent in 1991 and 2.3 percent in 1992.

The Commission's estimate of real CMI change is based on previous studies that apportioned CMI change into real and upcoding components, and judgments about the future. ProPAC estimated that slightly more than half of the CMI change in 1990 was real. The Commission believes that about half, or 1.3 percent, of the CMI change in 1991 will be real.

The estimate of within-DRG case-complexity change was based on a study conducted under contract for ProPAC. The contractor estimated the amount of within-DRG case-complexity change from 1988 to 1989 by applying two patient classification systems to Medicare discharge data, while holding the DRG constant. The contractor estimated that case complexity increased by 0.3 percent over this period. The Commission estimates that case-complexity change in 1991 will be 0.2 percent. This estimate is based on the application of the study findings to more recent data.

During the first seven years of PPS, CMI change generated higher payment increases than those resulting from the annual updates and all other payment policy changes combined. Given the importance of case-mix change and the failure of CMI change to diminish as much as expected over time, the Commission will continue to study this topic. See Appendix A for more information on case-mix change.

Differential Updates—ProPAC supports OBRA's provisions to eliminate the difference between the standardized amounts for hospitals in other urban areas (metropolitan areas with fewer than one million people) and rural areas. The difference should be eliminated by fiscal year 1995 by providing higher updates to rural hospitals. ProPAC recommended in 1990 eliminating the differential and is pleased this policy has been adopted. Therefore, an additional adjustment of 1.0 percentage points should be added to the update for rural hospitals.

Since the beginning of PPS, the differences between urban and rural hospitals' costs and payments have changed. This is primarily the result of two trends. Increases in payments due to case-mix index change have been higher in urban hospitals than in rural hospitals. In addition, rural hospitals have had larger declines in inpatient volume, raising fixed costs per case.

The Commission continues to believe that payments under PPS should take into account those factors that are beyond the control of hospitals and are known to increase hospital costs. Until these factors are better understood and measured, the elimination of the differential will help to ensure access to care for rural beneficiaries. As specific reasons for these cost differences are better explained, other, more targeted changes to rural hospital payments will be recommended.

Recommendation 2: Data for Evaluating Case-Mix Index Change

The Secretary should collect the data necessary to apportion case-mix change into its real and upcoding components.

Case-mix index change is the largest single source of payment increases under PPS, yet it is difficult to determine how much of these increases are due to real changes in patient resource requirements. The most accurate way to analyze CMI change is by examining medical records. For the past two years, HCFA, with support from ProPAC, has sponsored a study of CMI change that used the medical record reabstraction approach. This study produced estimates of real CMI change and upcoding. However, it cannot be replicated. The data source on which it was based, medical records collected by the SuperPRO for use in evaluating PRO performance, no longer provides a representative sample of PPS cases.

A representative sample of medical records that can be updated annually is needed if analysis of CMI change is to continue. Although there may be other potential sources, the SuperPRO sample could again be used for this type of study if the sampling scheme were appropriately modified.

The Commission believes that CMI change continues to warrant serious examination. If major improvements to the case-classification system are adopted, as have been proposed, the potential for upcoding—and therefore the need to separate CMI change into its real and upcoding components—will increase. ProPAC will continue to support HCFA in its efforts to analyze the components of CMI change.

Rural Hospital Payment

Since the implementation of PPS, numerous changes have been made in Medicare policies to reflect the changing pattern of rural health care delivery. While rural and urban hospitals currently exhibit similar overall financial performance, some rural hospitals continue to fare poorly under PPS. Several improvements in PPS policies have been enacted recently, and it is too soon to evaluate their effects. Other changes, such as eliminating the differential in the standardized amounts, are being phased in. Current PPS policies may not be appropriate for some rural hospitals, and the Commission is continuing its analyses of specific problems these hospitals face. A congressionally requested report, to be issued in mid-1991, will contain additional findings and recommendations. These recommendations will suggest policy reforms more tailored to the specific problems faced by some rural hospitals.

Many factors have affected the use and financial condition of hospitals in rural areas. These include changes in patient demographics, rural economies, the use of hospitals by rural beneficiaries, physician availability, and third-party payment policies. While many of these factors are not directly related to the Medicare program, under PPS rural hospitals have generally not fared as well financially as urban hospitals.

The poorer performance of some rural hospitals is related to two separate trends. First, rural hospitals have experienced large declines in the demand for inpatient care. Because fixed costs are spread over fewer cases, costs per discharge have increased faster than Medicare payment rates. Second, the Medicare case-mix index, which in part determines PPS payments, has increased less rapidly and led to smaller increases in payments for rural hospitals compared with urban hospitals. In the fifth year of PPS, rural hospital PPS margins averaged −2.3 percent, while urban hospital PPS margins averaged 3.6 percent.

However, not all rural hospitals are doing poorly: during the same year, a quarter of all rural hospitals had PPS margins of at least 8.5 percent. Furthermore, rural hospitals' total hospital margins are significantly higher than their PPS margins and are similar to the total margins of urban hospitals. Thus, some rural hospitals are in little or no financial distress.

These mixed results may reflect the broad nature of many of the policy reforms adopted to date. Higher annual rural updates, improvements in the wage index, the shift from hospital to discharge weighting, and the creation of separate outlier financing pools for rural hospitals have increased payments to all rural hospitals. However, they have not targeted these increases to hospitals with specific problems. Most importantly, the Commission is concerned that a per-case payment system like PPS puts small hospitals and hospitals experiencing large volume declines at substantial risk.

To better understand the nature of the problems facing rural hospitals in distress, the Commission is conducting several analyses. Its findings and recommendations will be included in a report requested by the Senate Appropriations Committee. To be completed in mid-1991, this report will help identify potential policy solutions for the particular problems of subsets of rural hospitals for which current PPS policies may be inappropriate.

The Commission has organized its analyses of rural hospitals around the potential problems these institutions face. In one study, ProPAC is estimating the impact of changes in rural hospital payment policy under PPS. This analysis will assess the contributions of changes in Medicare policy, case mix, and volume to the financial condition of these institutions. In another study, the Commission is examining the role of declines and volatility in volume in shaping hospital performance. This study will assess the impact of a possible systematic volume adjustment for hospitals experiencing large declines in volume. In addition, the Commission will examine the effect of large volume declines on fixed and average costs and the implications for payments.

Low volume and differences in resource use may also affect the adequacy of the current DRG weights, and thus payments, for rural hospitals. Given their size and occupancy, some rural hospitals may not have the volume necessary to produce sufficiently low average costs per case so that their payments cover their actual costs. Low-volume hospitals also may be adversely

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affected by the high variability in the costs of their cases. Since PPS payments are based on national average amounts, low-volume hospitals may experience greater year-to-year variation in their PPS performance. In addition, it is possible that national weights may be unfair because weights based on rural hospitals' costs may be quite different from those based on urban hospital costs.

Finally, ProPAC is concerned that the current definition of sole community hospitals is ineffective in identifying hospitals requiring special protection to ensure rural beneficiaries' access to care. Both access to care and hospital performance will be considered in evaluating whether a subset of hospitals requires special protection and, if so, how best to accomplish this.

These analyses will provide important information on the nature and extent of the problems experienced by rural hospitals. They will suggest more tailored policy reforms directed at the specific problems that some rural hospitals are experiencing. Implicitly, the studies also investigate the appropriateness of PPS for small, low-volume hospitals. The Commission is aware, however, that many factors shape rural hospital financial status. Only some of these are related to the adequacy and distribution of PPS payments. While the Medicare program cannot be expected to reverse the effects of broader shifts in the economy or demographics, it should help ensure access to care for all its beneficiaries.

Teaching and Disproportionate Share Hospital Payment

PPS payments are adjusted to recognize the indirect costs of graduate medical education programs and the additional costs faced by hospitals that provide care to a disproportionate share of low-income patients. The adjustment for indirect medical education costs is based on a measure of the hospital's teaching intensity, determined by the ratio of interns and residents per bed. The adjustment for disproportionate share hospitals is based on the hospital's low-income share, which is defined as the sum of two proportions: the proportion of patient days accounted for by Medicaid patients and the proportion of Medicare patient days accounted for by patients who also receive Supplemental Security Income (SSI) payments.

Recently, these adjustments have been the subject of increasing attention. The Administration has proposed sharp reductions in the IME adjustment in each of the past several years. The Commission has proposed comparatively slight reductions, but the IME adjustment remains approximately 7.7 percent for every 10 percent increment in teaching intensity. ProPAC estimates that the IME adjustment accounts for 5.4 percent of total PPS payments under fiscal year 1991 payment rules.

The DSH adjustment was added to PPS in fiscal year 1986, and its importance has grown since then. In OBRA 1989, Congress increased the size of the adjustment for many disproportionate share hospitals as well as the number of hospitals in rural areas that qualify for an adjustment. In OBRA 1990, the Congress again substantially increased the size of the adjustment, primarily for hospitals in urban areas. Under fiscal year 1991 payment rules, the DSH adjustment accounts for an estimated 4.1 percent of total PPS payments.

ProPAC has analyzed the IME and DSH adjustments, their interaction, and their effects on hospital payments and financial status. Based on this analysis, the Commission is recommending a reduction in the level of the IME adjustment together with increased efforts to better target both adjustments to achieve their policy objectives.

Recommendation 3: The Indirect Medical Education Adjustment

The Commission recommends that the indirect medical education adjustment to PPS payments be reduced from its current level of 7.7 percent to 7.0 percent for fiscal year 1992. This reduction should be implemented in a budget-neutral fashion, with the anticipated decrease in indirect medical education payments returned to all hospitals through corresponding increases in the standardized payment amounts.

The IME adjustment is intended to recognize the higher costs incurred by teaching hospitals in the treatment of Medicare patients. These costs have been attributed to the treatment of patients with more severe or complex illnesses, the provision of a broader scope and greater intensity of services, the use of a more costly mix of staff, and greater facility expenses.

ProPAC annually estimates the relationship between teaching intensity and Medicare operating costs per discharge, adjusted for differences in other PPS payment factors. These factors include geographic differences in the PPS base payment amounts, the local area wage index, the hospital's Medicare case-mix index, the DSH adjustment, and outlier payments. The most recent analysis was based on cost data from the fifth year of PPS and payment rules for fiscal year 1991. The results indicate that, on average, a 10 percent difference in teaching intensity is associated with a 2.1 percent difference in Medicare operating costs per discharge.

This year, however, the Commission also estimated the same relationship without adjusting for DSH payments. This approach was designed to determine the effect of teaching intensity on costs, separate from the influence of DSH payments. This reflects the Commission's determination that the IME and DSH adjustments have essentially different policy objectives, although there is substantial overlap between them. The objectives of the IME and DSH adjustments are discussed further below.

Omitting the DSH adjustment from the analysis increased the estimated teaching intensity effect to 4.2 percent. This indicates that DSH payments account for about half of the difference in costs that would otherwise be attributed to teaching intensity.

The Commission recognizes that, since PPS began, the Medicare program has more than adequately compensated teaching hospitals for the costs of treating Medicare patients. The current 7.7 percent IME adjustment is substantially higher than the empirical estimate of 4.2 percent indicated the by teh most recent analysis. Moreover, PPS operating margins consistently have been higher for teaching hospitals than for non-teaching hospitals. PPS margins for major teaching hospitals—a small group of hospitals that receive a majority of IME payments—have been especially high.

However, the overall financial performance of major teaching hospitals has been poor relative to other hospitals. Major teaching hospitals have had lower total margins than other hospital groups. The pattern of IME payments across hospitals indicates that these payments are concentrated among hospitals with low total margins. The Commission is concerned that the continued operation of these hospitals and the fulfillment of their unique role in the provision of health care might be impaired without continued Federal support.

The Commission believes that the Medicare program's responsibility to its enrollees is broader than merely the payment of Medicare operating costs. This responsibility includes maintenance of access to high-quality health care, which might be affected adversely if the poor financial status of major teaching hospitals were to worsen. A sharp reduction of the IME adjustment might have that undesirable effect.

Given these considerations, the Commission believes that a gradual reduction of the IME adjustment is a prudent course of action. This reduction should be implemented in conjunction with better targeting of payments to the teaching and other hospitals in most need. The ProPAC recommendation would reduce the adjustment by one-fifth of the difference between its current level and the Commission's empirical estimate of 4.2 percent. Before recommending further reductions, the Commission will examine the financial status of teaching hospitals to avoid any deleterious affects on access to high-quality care for Medicare beneficiaries.

This approach recognizes as an ultimate objective the use of the IME adjustment to appropriately compensate for differences in Medicare costs that are attributable to differences in teaching intensity. At the same time, the DSH adjustment or a future refinement of that adjustment should be used to fulfill the broader social responsibilities of the Medicare program as efficiently as possible. No preferable alternative to the DSH adjustment is available at this time, but the amount of information on this issue has grown rapidly in the past year. The Commission's agenda for refining the DSH adjustment is discussed further in the next section.

The Commission therefore recommends a reduction in the IME adjustment from its current level of 7.7 percent to 7.0 percent for fiscal year 1992. The anticipated decrease in IME payments that would result from this reduction should be exactly offset by corresponding increases in the standardized payment amounts for urban and rural hospitals.

As stated above, reductions in the IME adjustment should be considered in the context of their interaction with the other components of the payment system and their effect on PPS payments, as well as hospitals' overall financial status. The impact on the

quality of care and access to that care should also be considered. In general, any change in Medicare payment policy must be considered in terms of its effect on the health care system as a whole.

Toward this end, the Commission has intensified its attempts to understand the effects of factors external to the Medicare program and their interactions with Medicare payment. Several of these factors—such as the burden of uncompensated care, which is discussed later in this chapter—may affect the environment in which teaching hospitals operate, and thus be important in determining the appropriate way to pay them.

In the coming year, ProPAC will continue to examine the level and structure of the IME adjustment, as well as other factors that influence payments and costs for teaching hospitals and their financial condition. The distribution of PPS and total margins and the other effects of potential changes in the IME adjustment will also be studied. A description of ProPAC's most recent analysis is in appendix A.

The Disproportionate Share Adjustment

The Commission believes it is important to examine the structure of the disproportionate share adjustment and the interaction between this adjustment and other elements of the health care financing system, both within and beyond the Medicare program. This examination will focus on developing changes that will better target the payments made under the disproportionate share adjustment to achieve its policy objectives.

One purpose of the DSH adjustment is to recognize the additional costs faced by hospitals that treat a disproportionate share of indigent patients in treating all patients, including those covered by Medicare. These costs are attributable to greater severity of illness among poor patients in any diagnosis-related group, and greater difficulty in arranging for post-acute care for these patients. In addition, there are indirect costs—such as bilingual staff and additional security requirements—associated with operating in areas accessible to the poor.

There is substantial overlap between the hospitals that receive the IME and DSH adjustments. Under fiscal year 1991 payment rules, disproportionate share hospitals receive more than two-thirds of all IME payments, and teaching hospitals receive about two-thirds of all DSH payments.

However, ProPAC's analysis indicates that, unlike teaching hospitals, disproportionate share hospitals generally do not have significantly higher Medicare costs than other hospitals. Urban hospitals with large shares of low-income patients are the only exception to this finding.

Like teaching hospitals, disproportionate share hospitals have been more than compensated for their Medicare costs. PPS margins for disproportionate share hospitals are substantially higher than for other hospitals. However, disproportionate share hospitals have low total margins.

There also is overlap in financial status by teaching and disproportionate share status. Hospitals that receive both IME and DSH adjustments to their PPS payments have the highest PPS margin as a group, while hospitals that receive neither adjustment have the lowest PPS margin. However, the total margin for the teaching and disproportionate share group is lower than for the other groups.

Of particular note is the poor overall financial condition of disproportionate share hospitals in the cores of large urban areas. These hospitals provide the main link to the health care system for many people who are too poor to pay for medical care. Without appropriate Federal support, many of these hospitals might lack the resources to provide the care required by the population they serve.

The Commission believes that, although the relationship between disproportionate share status and Medicare costs is not strong, this may be due to the revenue constraints historically faced by hospitals that provide the bulk of care to the poor. Moreover, it is appropriate for the Federal government to subsidize continued access to care for this population, which includes many Medicare beneficiaries. Although it could be argued that more direct policy initiatives would be more effective in accomplishing this goal, the Medicare and Medicaid programs are currently the primary vehicles for such financial support.

In this context, the Commission believes it is important to improve the allocation of IME and DSH payments to fulfill two objectives. One is the program-specific objective of appropriately compensating hospitals for their Medicare costs. The other is the broader objective of maintaining access to care for the Medicare population and others.

ProPAC has undertaken several analyses of the structure of the IME and DSH adjustments and their effects, and also of factors that might indicate better ways to target IME and DSH payments. These analyses indicate that, although both IME and DSH payments appear to be concentrated among hospitals with low total margins, such payments also are received by hospitals that were not in poor financial condition in the fifth year of PPS. Moreover, the patterns of IME and DSH payments across hospitals do not seem to correspond well to the pattern of uncompensated care burden (see the discussion of uncompensated care later in this chapter).

Neither total margin not uncompensated care burden is necessarily a good indicator of the appropriateness of the distribution of IME or DSH payments. However, these analyses show that, regardless of the measure, the current targeting of IME and DSH payments, while in the right direction, leaves room for improvement.

In its recommendation on the IME adjustment, the Commission states that the DSH adjustment or a future refinement of that adjustment should be used to fulfill the broader social responsibilities of the Medicare program as efficiently as possible. The Commission will focus in the coming year on developing information on the effects of the current DSH adjustment and the feasibility of alternatives to that adjustment. ProPAC also urges the Secretary of Health and Human Services to pursue this line of analysis—including the analysis and development of more direct methods beyond Medicare for fulfilling the Federal government's broader responsibilities to maintain access to high-quality health care for the entire population.

Other Adjustments to PPS

Recommendation 4: Improving the Area Wage Index

The Secretary should collect data on employee compensation and paid hours of employment for hospital workers by occupational category. Once these data become available, the Secretary should implement an adjustment in the area wage index. This adjustment would correct for the inappropriate inclusion in the wage index of geographic differences in the mix of occupations employed.

Hospital expenditures for labor vary across geographic areas because of differences in the price of labor and the occupational mix employed by hospitals. The price of labor varies across areas because of differences in the cost of living and other local market conditions. The occupational mix varies across areas due to differences in the complexity of services produced in an area, the supply of certain occupations, and staffing practices. Currently, the HCFA wage index reflects variations in the mix of occupations as well as the price of labor.

The Commission believes that compensating hospitals through the area wage index for differences in occupational mix across area is inconsistent with the design of PPS. Differences in expenditures caused by variation in the price per unit of labor are beyond the hospital's control. Differences in expenditures due to variations in the mix of occupations employed, however are either within the hospital's control or are already accounted for by other adjustments in PPS.

ProPAC's study of 1988 California hospital wage and hour data suggests that an adjustment for occupational mix would increase the wage index values in rural areas and decrease the values in large urban areas. In this study, the wage index value for rural California would have risen by about 3.0 percent. The change in the wage index ranged from a 2.4 percent decrease for Oakland (population 1.8 million) to a 7 percent increase for Yuba City (population 101,000). Further, the adjustment appeared to decrease the variation in wage index values across areas. This means that the current wage index tends to overcompensate areas with high wage index values and under compensate areas with low wage index values.

Last year, the Commission examined the effect of adjusting the wage index using Bureau of the Census wage data on occupations typically employed in hospitals and American Hospital Association full-time equivalent (FTE) employment data. ProPAC found that holding differences in occupational mix constant across areas would increase the wage index values in more than 75 percent of rural areas. The median wage index in urban areas, however, would decline slightly. The urban and rural findings varied by region. The wage index values in both urban and rural areas would

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increase in the South but decline in the Northeast. The regional effect likely reflects the location of hospitals with a more expensive occupational mix, teaching hospitals, relatively large institution, and hospitals in large metropolitan statistical areas (MSAs). Finally, wage index values in some areas were affected more than in others. In Montana and in some small southern MSAs, the increase in these values was three to six times higher than the average 1.8 percent increase in rural areas.

The impact on the distribution of payments among hospitals would depend on how the new adjusted wage index is implemented. Under the current system, the 3 percent increase in the wage index for rural California indicated by the recent study would result in a payment increase of about 2 percent.

The Commission has considered the feasibility and burden of collection the data on wages and paid hours of employment necessary to adjust for occupational mix. The California experience indicates that hospital reporting of these data is clearly feasible. In addition, several other states have reporting systems similar to the system in California.

Although ProPAC did not formally measure the burden of hospital reporting, the example of hospitals in California and elsewhere indicates that the cost would not be prohibitive. Once such a system is implemented, the ongoing cost of reporting wage and hour data by occupational category is likely to be quite small. The Commission recommends prospective implementation of occupational definitions and data collection methods to minimize administrative burden and improve the accuracy of the data. In addition, the data should be collected, as in California, by cost centers. This would allow the development of separate wage indexes for inpatient and ambulatory services. Finally, the Commission believes that data on hours worked and expenditures for contract labor should be collected by occupation and cost center. This would permit an evaluation of the impact of including contract labor in the wage index.

ProPAC also considered the potential impact of state codes and staffing requirements on variations in hospital occupational mix. Some have argued that local staffing practices are not fully within the hospital's control because of state minimum staffing requirements. If this were true, hospitals in states that have strict requirements, such as New York, would be expected to have relatively high levels of occupational mix. However, based on ProPAC analysis of American Hospital Association data, the typical hospital in New York State appears to have an occupational mix index value that is only slightly higher than the national median.

Recommendation 5: Adjusting Payments for Acute Myocardial Infarction Cases

A one-time adjustment should be made in the DRG recalibration process used in calculating revised DRG weights for fiscal year 1992. The adjustment would be designed to prevent continuation of errors in payment caused by changes in coding and DRG assignments for patients with a diagnosis of myocardial infarction.

In fiscal year 1990, HCFA implemented new, five-digit codes for cases with a diagnosis of myocardial infarction (MI). These codes distinguish patients who had an acute MI just before or during their hospital stay from those who were no longer in the acute phase of this illness at the time of admission. HCFA also reassigned the nonacute cases from the acute MI DRGs to other DRGs that are more appropriate in terms of both clinical characteristics and resource use. However, historical data reflecting these coding and assignment changes were not available. Therefore, HCFA decided not to change the DRG relative weights for either the acute MI DRGs or the other DRGs to which the nonacute MI cases were reassigned.

At the time, the Commission was concerned about the short- and long-term payment inequities resulting from these decisions. Weights for the acute MI DRGs for fiscal years 1990 and 1991 are based on all MI cases, both acute and nonacute, treated during fiscal years 1988 and 1989, respectively. Consequently, these weights are inappropriately low for the relative by high-cost acute MI cases assigned to these DRGs in fiscal year 1990 and later years. Similarly, the weights for other DRGs do not account for the nonacute MI cases that are now reassigned to them for payment. Preliminary evidence suggests that, on average, these weights are also too low. Therefore, hospitals treating patients in the acute MI DRGs and the other DRGs affected by the coding and assignment changes were underpaid during fiscal year 1990. This has continued during fiscal year 1991.

The problem of incorrect weights will be resolved when the weights are recalculated for fiscal year 1992. The new weights will be based on fiscal year 1990 data, which reflect the coding changes adopted in that year. Therefore, it will be possible to calculate correct relative weights for both the acute MI DRGs and the other DRGs affected by the reassignment of nonacute MI cases.

However, the Commission continues to be concerned that the recalibration process, which is used to revise the weights each year, ensures that the underpayments in fiscal years 1990 and 1991 will be carried forward into the future. In recalibration, the fiscal year 1992 weights will be adjusted proportionately so that the average weight for all 1990 cases is the same, whether fiscal year 1991 or 1992 weights are used. In addition, current law requires the Secretary to make further adjustments, as necessary, to ensure that the 1992 DRG classification system and the final 1992 weights neither increase nor decrease aggregate PPS payments to hospitals.

In both parts of this process, the standard of comparison is based on the DRG classification system and weights for fiscal year 1991. The fiscal year 1991 weights, however, reflect the underpayment for cases included in the acute MI DRGs and the other DRGs affected by reassigning the nonacute MI cases. Therefore, the overall average weight based on the fiscal year 1991 weights will be too low. Without an offsetting adjustment, the underpayments that occurred in fiscal year 1991 will continue to affect the level of the weights for all DRGs in fiscal year 1992 and later years.

To avoid perpetuating these unintended errors in payments, the Commission recommends that HCFA make a compensating adjustment when the new weights are recalibrated for fiscal year 1992. ProPAC will be pleased to work with HCFA to devise an appropriate adjustment.

Capital Payment

The Commission believes that Medicare capital payment policy should recognize hospitals' prior capital expenditures and related financing costs, while encouraging appropriate and efficient investments. Further, the policy should be designed to limit increases in aggregate program expenditures for inpatient hospital care. ProPAC will evaluate and comment on the forthcoming capital payment proposal from the Secretary of Health and Human Services. It will recommend modifications to the proposal, as appropriate, or an alternative payment approach, if warranted.

The Secretary is required to develop a prospective payment system for capital to be implemented beginning October 1, 1991. Because of this legislative requirement, the Commission has again turned its attention to Medicare capital payment policy. In 1986 and 1987, ProPAC recommended that capital be incorporated in an all-inclusive prospective payment rate. Given changes in the hospital environment, however, the Commission has chosen to lay aside its previous recommendations and reconsider capital payment policy.

Since the beginning of PPS, it has been intended that hospital capital costs would be incorporated under the DRG payment rate. The timing of this incorporation has been repeatedly delayed through legislation, for technical and political reasons. Policy makers and the hospital industry have had difficulty developing a plan for prospective payment for capital because capital costs, more than operating costs, vary significantly across similar institutions. This variation is due to many factors, including differences in the timing of major capital investments and various financing methods and rates. Capital costs associated with major projects generally extend over a significant period. Therefore, hospital managers have limited ability to adjust existing costs to adapt to changing financial incentives or patient demand.

The Commission appreciates that a change in Medicare capital payment may be disruptive to some hospitals. On the other hand, there are important arguments for applying the incentives of PPS to capital costs as well as to operating costs. Currently, hospitals may have incentives to choose capital investments over operating investments. This is because Medicare pays for operating costs on a fixed, prospective, per-case basis, while capital costs are paid on a hospital-specific, cost basis with a discount. The Commission will balance these concerns, and consider information about the growth in capital costs, in assessing appropriate capital payment policy.

Updating and Adjusting Payments to PPS-Excluded Hospitals and Distinct-Part Units

Since the implementation of Medicare's prospective payment system in 1983, psychiatric, rehabilitation, long-term, and children's hospitals and psychiatric, as well as rehabilitation distinct-part units, have been exempt. Cancer hospitals were exempted from PPS as a result of OBRA 1989. The primary reason for their exemption is that DRGs do not accurately predict resource costs for these providers.

PPS-excluded hospitals and distinct-part units are subject to the payment limitations and incentives established in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). They are paid on the basis of each facility's historical costs trended forward, with a limit placed on the rate of increase in per-case reimbursable costs. These TEFRA target rate-of-increase limits are updated annually. The target rate per discharge is based on hospital-specific Medicare costs in a base year. The base year varies depending on when the facility was constructed or converted to a PPS-excluded category.

Facilities with costs less than the target rate per discharge receive their costs plus an additional payment that is the lesser of 50 percent of the difference between its costs and the TEFRA target rate, or 5 percent of the TEFRA target rate. Beginning in fiscal year 1992, providers with costs exceeding their target rates will receive 50 percent of this difference subject to a payment ceiling of 110 percent of the target amount.

The Secretary is required to provide for an exemption from, or an exception and adjustment to, the amount of payment for a hospital when events beyond the hospital's control result in the increase in costs for a reporting period. The Administrator of HCFA is required to provide written guidance to the intermediaries and hospitals to assist them in filing complete applications.

The TEFRA target rate-of-increase limits are updated annually. PPS-excluded hospitals and distinct-part units received the same update provided to PPS hospitals until fiscal year 1989. The PPS update, however, was constrained due to rapid growth in PPS payments resulting from casemix index increases. Over the first seven years, payments to PPS providers increased nearly 70 percent, reflecting the update factor and reported changes in case mix. The market basket increase during this period was about 35 percent. However, PPS updates, and thus the TEFRA target rates, increased only 27 percent. PPS-excluded providers did not benefit from the increaed payments PPS hospitals received due to changes in the CMI.

Since fiscal year 1989, Congress has set the TEFRA target rate update equal to the projected increase in the market basket, as recommended by ProPAC. Beginning in fiscal year 1991, the Secretary implemented a separate market basket for PPS-excluded providers. While the update has been legislated, Congress requires the Commisison and the Secretary of HHS to make their own recommendation for an annual update factor to the TEFRA target rates.

Recommendation 6: Amount of the Update Factor for PPS-Excluded Hospitals and Distinct-Part Units

For fiscal year 1992, the target rate of increase for PPS-excluded hospitals and distinct-part units should be updated to account for the following factors:

- The projected increase in the HCFA PPS-excluded market basket, currently estimated at 4.9 percent;
- An adjustment to the market basket of 0.2 percentage points, to reflect the difference between the ProPAC and HCFA market baskets;
- A correction for substained error in the fiscal year 1990 market basket forecast, currently estimated at −1.0 percentage points; and
- An allowance for scientific and technological advancement of 0.1 percentage points.

In addition, a positive allowance should be given to TEFRA providers that entered the program before fiscal year 1989, depending on the base year used to calculate their target rates. This allowance reflects the difference between the actual updates given in earlier years and the market basket for that year.

The legislated update to the TEFRA target rate is the projected increase in the market basket. The Commission recommendation results in an average update to the target rate equal to the market basket minus 0.7 percent (see Table 2-3). ProPAC believes the savings achieved from this reduction should be used to help offset the increased costs resulting from the positive allowance adjustment based on the hospital's base year.

TABLE 2-3.—RECOMMENDED PPS-EXCLUDED UPDATE FACTOR FOR FISCAL YEAR 1992

Components of the Update Factor	
Components applied to all hospitals and distinct-part units:	
Fiscal year 1992 PPS-excluded market basket forecast*	4.9%
Adjustment to reflect ProPAC version of PPS-excluded market basket*	0.2
Correction for fiscal year 1990 forecast error	−1.0
Allowance for scientific and technological advancement	0.1
Average update before positive allowance adjustment	4.2
Cumulative positive allowance adjustment by year of exclusion	
1984–1988	6.6
1985–1988	6.4
1986–1988	7.0
1987–1988	4.5
1988	2.1

Note: For more information on the computation of the cumulative positive allowance adjustment, see Appendix A.

* Market basket forecast provided by the Health Care Financing Administration, Office of the Actuary, December 1990. The market basket forecast is subject to change as more current forecasts become available.

PPS-Excluded Market Basket—The update recommendation is determined primarily by projected increases in the PPS-excluded market basket. HCFA and ProPAC, however, have different versions of the market basket. HCFA's version is currently projected to increase by 4.9 percent in fiscal year 1992, while ProPAC's market basket is projected to increase by 5.1 percent. Since the update is legislated relative to a market basket that HCFA would implement, HCFA's market basket construction would likely be used to update fiscal year 1992 payments.

The Commission believes, however, that its version of the market basket best reflects changes in hospital input prices (prices hospitals pay for goods and services) and therefore should be used to update PPS-excluded payment rates. While HCFA adopted most of the Commission's 1990 recommendation on the market basket, it failed to adopt the key provision that increased the weight of internal hospital wages used in the wage component of the market basket. The Commission believes that HCFA's market basket, as currently constructed, does not adequately recognize the unique characteristics of the hospital labor market. Therefore, ProPAC's update recommendation includes a 0.2 percentage point adjustment to reflect the difference between the two market basket forecasts. See Appendix A for more information.

Forecast Error Correction—ProPAC's update recommendation also includes a −1.0 percentage point adjustment for fiscal year 1990 market basket forecast error. A market basket forecast of 5.5 percent was used to set payments in fiscal year 1990. The actual market basket increase, however, was only 4.5 percent, creating a forecast error of −1.0

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percentage points. ProPAC continues to believe the correction should be part of its update framework. The correction factor protects both hospitals and the Federal government by adjusting the base payment rates so the effects of forecast errors are not perpetuated. See Appendix A for more information on the market basket forecast error correction factor.

Scientific and Technological Advancement—The scientific and technological advancement allowance for PPS-excluded facilities reflects ProPAC's judgment about the appropriate increase in payments to implement quality-enhancing but cost-increasing technology. In order to develop an informed judgment on the allowance, the Commission examines a set of the most important new technologies and scientific developments each year. Based on this examination, an increase of 0.1 percentage points to the target rates is needed to offset the cost of new technologies.

Unlike the PPS update, a productivity adjustment is, in the Commission's view, not appropriate for PPS-excluded facilities. The productivity adjustment for PPS hospitals is based on the belief that Medicare should share in a portion of the savings generated by productivity improvements. However, Medicare automatically shares in these savings under TEFRA. Facilities with costs less than the target amount receive their costs, plus the lesser of 5 percent of the target amount or 50 percent of the difference between their target amount and costs. Therefore, part of any productivity increase is factored into reduced Medicare payments. The Commission believes that further reductions in payments for productivity improvement are not appropriate for PPS-excluded providers.

Positive Adjustment Allowances—Based on the Commission's initial analysis of PPS-excluded facilities, it appears that the earlier a provider was excluded from PPS the more financially vulnerable it has become. This is, in part, because hospitals and distinct-part units excluded before fiscal year 1989 received the same update provided to PPS hospitals. The PPS update was reduced to account for rapid growth in payments resulting from CMI increases. PPS-excluded providers, however, did not benefit from increased payments due to CMI changes.

In the Commission's view, these providers should have received the full increase in the market basket. Therefore, PPS-excluded providers that were subject to the TEFRA limits during this period should be given an additional update that equals the difference between the market basket increase and the actual update received. Further, the Secretary is required to provide for an exemption from, or an exception and adjustment to, a hospital's payments when events beyond the hospital's control affect the increase in costs during a reporting period. In general, a request for an adjustment must be made by the provider for each year in which costs exceed payments. In these cases, the Secretary is permitted to provide the most appropriate method for adjustment, including the assignment of a new base year.

The Commission believes that providing a positive allowance adjustment to providers that were excluded in the early years will reduce the amount of future adjustments. However, providers that had new target rates computed to reflect more recent cost data should not receive the positive allowance.

The Commission's update recommendation for PPS-excluded hospitals and distinct-part units would result in an estimated 4.2 percent average update factor for fiscal year 1992. The positive allowances are estimated by comparing the actual update with the market basket.

Additional Concerns—The Commission is hopeful that the adoption of a positive allowance adjustment will reduce the need for a cumbersome exceptions process. Nevertheless, the Commission remains concerned about the lack of guidance providers have on the type of data needed to document justifiable changes in costs. In addition, the criteria used to determine whether an exception was merited have been ambiguous and inconsistent. These problems often have resulted in lengthy reviews.

Concerned over the lack of clear guidance in this area, Congress in OBRA 1990 specified the procedure and criteria for an exception or adjustment to the target rates. In addition, the grounds on which the Secretary may grant an appeal for an exception or adjustment were clarified. Further, the Administrator of HCFA was required to provide guidance to the intermediaries and hospitals to help them file complete applications.

The Commission supports this congressional mandate. ProPAC believes that clear guidance to both hospitals and fiscal intermediaries could reduce the time and resources required in the review process. It would allow providers to collect data needed for the exception process during the course of the reporting period. Further, it would eliminate inconsistency in application of the process, thereby ensuring that it is fair and equitable.

The Commission believes that data on successful applications should be systematically collected. The Medicare Cost Report data are a valuable source for assessing the financial effects of TEFRA. However, cost reports are not amended to reflect adjustments resulting from the review process. Therefore, cost report data may overstate any negative financial impact of TEFRA payments on providers.

In addition, anecdotal evidence suggests that over time, PPS-excluded providers are treating patients with more complex conditions. PPS provided hospitals with an incentive to discharge patients sooner. In the early years of PPS, average length of stay in PPS hospitals declined. To the extent these patients were admitted to excluded facilities, they may be sicker and require more intensive care than before. Additional evidence suggests that PPS-excluded providers are hiring a more highly skilled mix of employees, which is consistent with treating more complex cases. These changes in resource use and skill mix may not be reflected in payments to excluded facilities to the extent that they were not included in base year costs. However, there are no data to measure these factors.

The Commission will continue to evaluate the appropriateness of the TEFRA system. As required by Congress, ProPAC will analyze and comment on any proposals developed by the Secretary. In addition, the Commission looks forward to working with the Secretary on developing refinements to the TEFRA system. See Appendix A for more information.

Hospital Outpatient Payment

During the 1980s, there was unprecedented growth in the delivery of care in the outpatient setting. Outpatient revenue is becoming a larger share of total hospital revenue. These revenues are an even larger proportion of total revenues for smaller hospitals and those located in rural areas. Moreover, Medicare benefit payments for outpatient hospital services increased two to three times faster than those for inpatient services. For example, between fiscal years 1983 and 1989, the average annual rate of growth in Medicare outpatient benefit payments was 15.6 percent compared with 6.1 percent for hospital inpatient benefit payments. Expenditures also increased for outpatient services provided in free-standing settings such as physicians' offices and ambulatory surgery centers. (For additional information on the growth in outpatient services refer to ProPAC's *Hospital Outpatient Services: Background Report*, C-90-02, July 1990.)

Congress has instructed both ProPAC and the Secretary of HHS to develop alternative outpatient payment systems. The Omnibus Budget Reconciliation Act of 1990 requires the Secretary to develop a proposal to replace Medicare's current payment system for hospital outpatient services with a prospective payment system. The Secretary must submit his report by September 1, 1991. ProPAC is required to analyze and comment on this report by March 1, 1992.

To respond adequately to the congressional mandate, the Commission has begun examining available data on outpatient services. In addition, ProPAC is looking at various payment policy options and is monitoring the Secretary's research. The Commission will analyze and comment on the Secretary's report in its March 1992 report. See Appendix A for more information.

Recommendation 7: Outpatient Payment Reform

The Commission believes that a prospective payment system for outpatient services should be developed. Outpatient facility payment reform should ultimately include all providers of outpatient services (such as hospitals, physicians' offices, and free-standing ambulatory surgery centers). As required by Congress, however, the Commission recognizes that outpatient payment reform will focus initially on the hospital outpatient setting.

Medicare Part B covers an array of outpatient services furnished by many facilities, practitioners, and suppliers. Among the various payment methods used are fee schedules, prospective amounts, blended rates, reasonable costs, and reasonable charges. For most services, the physician furnishes the service directly or requests (orders) the service from a provider, supplier, or independent practitioner.

Payment to facilities generally covers only the facility or technical component of the service—supplies, materials, and nursing costs, for instance. Physicians or other practitioners usually bill for their professional service separately. Alternatively physicians, practitioners, or suppliers may bill for both the technical and professional component of the service.

The Commission believes that one major goal of outpatient payment reform is to create incentives for controlling total expenditures. Because most ambulatory care is provided outside of the hospital setting, ProPAC recommends that outpatient payment reform should eventually include all providers of ambulatory care, including physicians' offices and independent laboratories.

Although the reforms should be applied to all providers of outpatient services, the payment rate may vary among different providers. Costs may differ among similar providers (such as teaching versus non-teaching hospitals) and between different providers (such as hospitals and physicians' offices) for many reasons. These factors include differences in patient severity, teaching activities, and geographic location. The Commission believes it is desirable to adjust for some of these factors in the payment system, particularly those that represent a benefit to society and are beyond the provider's control. However, lack of available cost data for free-standing settings may complicate the determination of appropriate differences in payment rates. (See Recommendation 9.)

The payment system should also constrain costs in an appropriate manner. It should reward providers for delivering cost-effective quality care in the appropriate setting. A prospective payment method promotes incentives to deliver cost-effective care by allowing an opportunity for a profit as well as the risk of financial loss. However, the Commission relizes that various payment methods may be used during the transition to a fully prospective system.

Recommendation 8: Outpatient Facility and Physician Payment Reform

Outpatient payment reform for facility services should have incentives that are consistent with physician payment reform. Medicare financial incentives should not lead physicians or beneficiaries to inappropriately select one site of care over another.

The Commission believes that outpatient facility payment reform should contain incentives consistent with those of physician payment reform. Beginning in 1992, physicians will be paid using a resource-based fee schedule. This reform is designed to increase payment equity among physicians, constrain Medicare expenditures, protect beneficiaries' access to services, and promote predictability and administrative simplicity.

The three components of the fee schedule are physician work, practice expense, and malpractice expense. The Commission is interested primarily in the practice expense component, which includes costs like rent, salaries, equipment, and supplies. This component of the fee schedule covers services similar to those in the facility payment received by other providers of ambulatory services. The Commission plans to evaluate the findings from the study of practice expense being conducted by the Physician Payment Review Commission (PPRC). These data will be useful in ProPAC's analysis of comparability of costs across different providers.

The Commission believes physicians and beneficiaries should not have financial incentives to favor one site of care over another, but should choose the most medically appropriate site—whether care is provided in hospitals, free-standing ambulatory care settings, or physicians' offices. Applying the same prospective payment method to all outpatient services, regardless of setting, will achieve this goal.

Recommendation 9: Data Collection and Coding Requirements

Uniform coding and billing requirements should be implemented for all providers of outpatient care. These requirements should apply to the hospital outpatient setting, physicians' offices, and free-standing ambulatory care providers. In addition, a mechanism for periodic collection of precedure-apecific cost data in free-standing settings (including physicians' offices and ambulatory surgery centers) should be implemented.

To implement and maintain a prospective payment system across outpatient providers, comparable patient and financial data are needed. Under a prospective payment rate, three different comparisons must be made to determine the appropriate level of payment. These are comparisons among: (1) hospitals and other providers of ambulatory care (such as physicians' offices and free-standing ambulatory surgical centers); (2) geographic areas; and (3) hospital groups (including urban, rural, disproportionate share, and teaching.)

Currently, hospitals and free-standing providers are not required to follow the same coding and billing requirements. Physicians, suppliers, and other Part B providers, for example, were not required to report diagnoses until 1991. Further, hospitals are instructed not to use certain procedure modifiers. Finally, there are differences in how terms like principal diagnosis are defined across settings. Patients may have more complicating conditions in one setting compared with another. However, the lack of consistent coding makes it difficult to compare patient complexity across settings.

The Commission supports HCFA's efforts to establish a common working file. Coding and billing requirements should be standardized in this process. ProPAC believes that appropriate attention should be given to this issue and that the requirements should be uniform across all ambulatory care providers.

Further, cost data in free-standing settings are necessary to ensure that comparable financial incentives exist among providers. Data are not now available to compare the costs of ambulatory care across providers. Because most outpatient services are available in a variety of settings, the Commission believes that collection of non-hospital cost data is necessary to develop oupatient payment policy.

The Commission supports the research being conducted by PPRC. It is designed to collect direct cost data for certain services provided in physicians' offices. These data will allow a limited comparison of service-specific costs of care between physicians' offices and hospital outpatient settings. A more systematic and comprehensive method for collecting additional non-hospital cost data should also be developed, however. The Secretary's survey of ambulatory surgery centers could serve as a model. The data collected should provide cost information by specific services or procedures. These data should be verified using a limited audit review. In the Commission's view, an annual cost report for all providers is neither necessary nor desirable. Further, given the large number of free-standing providers, a limited but representative sample would be adequate. ProPAC is willing to work with the Secretary on developing a method for collecting these data.

Recommendation 10: Medicare Volume Performance Standards

Services provided in the hospital outpatient setting should be included in the Medicare physician Volume Performance Standards (VPSs). Certain services (such as laboratory tests and therapy services) are currently included in the VPSs when provided in free-standing settings. Other services (including ambulatory surgery and durable medical equipment) are excluded. The Commission believes that hospital-provided services should also be incorporated in the VPSs to the extent that these services are included when provided in other settings.

Several of Medicare's current outpatient payment methods (such as blended rates and fee schedules) control the price of individual services. However, these payment methods fail to control the volume of services provided. The Commission believes that a policy to control inappropriate volume is warranted.

The Volume Performance Standards, enacted in OBRA 1989, provide an approach for controlling some Medicare Part B expenditures. The primary purpose of the VPSs is to provide a collective incentive for physicians to control the rate of increase in the volume and intensity of services provided to beneficiaries. The VPSs are designed to give physicians incentives to order fewer tests and other procedures of limited value to the patient. Physicians are expected to limit the amount and types of services to those that are effective and appropriate.

Services that are commonly furnished by physicians or in physicians' offices and billed through the Part B carriers are included in the VPSs. Services provided in the hospital outpatient setting that are billed through the Part A intermediary are excluded because the intermediary does not collect service-specific data. To the extent that these services are included when provided in free-standing settings, they should also be included when provided by hospitals.

The Commission realizes that reductions in volume and intensity growth will be achieved gradually. To provide the appropriate incentives, the Secretary should collect service-specific data so that outpatient

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services provided in the hospital setting can be included in the VPSs. This change would prevent physicians from attempting to circumvent the objectives of the current VPSs. For example, hospital-provided outpatient laboratory services are not included in the VPSs. Therefore, physicians have an incentive to shift these services to the hospital setting. If these services were included in the VPSs, physicians would have the same incentive to control their use as they would to control the use of laboratory tests performed in their office or an independent laboratory.

Uncompensated Care

Many Americans lack health insurance or other means to cover the cost of medical care furnished by hospitals, physicians, and other providers. ProPAC is concerned about the effects of this problem, including the increasing financial burden faced by hospitals that treat the uninsured. The amount of uncompensated care hospitals provide has increased during the 1980s, and the number and variety of hospitals affected significantly by the cost of unpaid care have grown. The Commission believes that Congress should continue to consider methods to reduce the size of the uninsured population. Congress should also consider methods to assist hospitals directly with the uncompensated care problem.

Uncompensated care, which includes both charity care and bad debt, has long been an important health issue. Many financial management experts consider uncompensated care to be an expense that should be recognized in relating payments to costs. However, the Medicare and Medicaid programs have never paid for uncompensated care directly (other than to cover losses related to Medicare cost sharing requirements), and the courts have held that the Social Security Act forbids such direct payment. Nevertheless, the cost of furnishing services without payment can have a strong adverse impact on a hospital's financial condition, ultimately affecting its continued viability. The Federal government has a direct interest in the financial viability of hospitals, for it must protect access to care for Medicare beneficiaries and those eligible for Medicaid. The burden of uncompensated care has been considered, at least indirectly, in justifying the levels of the PPS indirect medical education adjustment and the disproportionate share adjustment for both Medicare and Medicaid.

Because non-Medicare uncompensated care costs have never played a formal role in Medicare payment, the Commission previously has not devoted a significant level of resources to addressing this issue. However, the OBRA 1990 conference report pinpointed uncompensated care as one of several areas for expanded ProPAC analysis. Specifically, the conferees stated that they "intend that ProPAC would include in its analysis and recommendations, proposals for changes in policies regarding: (1) payment of inner-city hospitals, including appropriate recognition of bad debt and charity care costs. . . ."

Uncompensated care costs have risen faster than overall hospital costs, while payments from state and local governments to offset these costs have failed to keep pace with hospital cost inflation. These two factors together have intensified the uncompensated care problem for the hospital industry. From 1980 through 1989, uncompensated care costs in PPS hospitals increased an average of 12.0 percent per year, nearly two full percentage points more than the rate at which total hospital costs have risen. Further, the portion of uncompensated care costs that is not offset by government subsidies increased even faster during this period—by 13.5 percent per year. In 1980, state and local governments covered 29 percent of all uncompensated care costs, but this proportion had dropped to 20 percent by 1989.

Uncompensated care has traditionally been associated with large, inner-city teaching hospitals and with publicly owned institutions. But over the course of the last decade, the problem has increasingly affected the entire industry. Most importantly, uncompensated care is not only an urban problem. After offsetting government operating subsidies, uncompensated care commands the same proportion of hospital resources in rural areas as in urban areas. Public hospitals continue to provide the most uncompensated care, but the proportion of all unpaid care costs net of subsidy borne by these hospitals has declined from 27 percent in 1980 to 16 percent in 1989. Similarly, the proportion provided by major teaching hospitals has decreased from 23 percent to 18 percent, and the proportion for hospitals located in the central city portion of large metropolitan areas has fallen from 71 percent to 67 percent.

While charity care and bad debt have become a significant financial burden for a greater number and variety of hospitals, the amount of uncompensated care provided by individual hospitals varies within all of the standard hospital groups. There is substantial variation in the proportion of hospital resources devoted to uncompensated care in both urban and rural areas, among regions of the country, and among specific large cities and metropolitan areas. The distribution is equally widespread among both teaching and non-teaching hospitals, and even among government hospitals. This tremendous diversity complicates the task of addressing uncompensated care in payment policy.

When patients receive hospital services for which they cannot pay, the hospital must obtain funds to cover the cost of this care from other sources. Some of the possible sources—such as direct operating subsidies from state and local governments, philanthropy, and retained earnings from non-patient services—are appropriately applied to offsetting the cost of uncompensated care. But operating subsidies are not available to most hospitals, and as noted earlier, the amount of these subsidies has been declining in inflation-adjusted terms. Non-patient care income, while increasing in recent years, has also been insufficient to cover burgeoning uncompensated care costs. Moreover, some of the hospitals providing the most uncompensated care have the least opportunity to supplement their revenue in this way.

Increasingly through the 1980s, hospitals have had to obtain funds to cover the cost of uncompensated care by raising their charges to privately insured patients. However, the hospitals with the highest uncompensated care loads, and thus the greatest need for supplementary revenue, often have few charge paying patients. Placing a heavy financial burden on these patients and their insurers is inequitable, fails to provide a reliable payment source, and risks further harming access to care for the nation's low-income population.

While the Medicare payment system was never intended to pay for charity care or bad debt, the indirect medical education and disproportionate share adjustments are commonly thought to be related to uncompensated care. The IME adjustment was designed to recognize the additional costs faced by teaching hospitals in treating Medicare patients, and the amount of payment received is determined by the hospital's ratio of interns and residents to beds. The DSH adjustment was intended to cover the effect that treating low-income patients has on average Medicare costs. Payment is based on two proxies for the hospital's total low-income patient load: the proportion of Medicaid patients and the proportion of Medicare patients receiving welfare payments under the SSI program. Over the last several years, however, these adjustments have increasingly been seen as serving broader social goals. The Commission believes that PPS payment rates do not need to be based strictly on Medicare costs. Nevertheless, the degree to which Medicare funds, which come primarily from a payroll tax, should be used for broader social purposes is limited.

ProPAC analyzed the relationship between the amount of uncompensated care hospitals provide and the payments they receive from the IME and DSH adjustments. The study found no relationship between uncompensated care costs and IME payments. The top 10 percent of PPS hospitals in terms of uncompensated care load together provide 27 percent of all unpaid care net of government subsidies, but receive only 9 percent of total IME payments. The bottom 10 percent provide less than 1 percent of all uncompensated care, and yet receive the same 9 percent share of total IME payments.

The hospitals with the highest uncompensated care rates do receive relatively high DSH payments. Those in the top 10 percent get about 20 percent of all DSH payments, compared with their 27 percent of the total uncompensated care cost load. Below the 90th percentile, however, there is only a limited relationship. The bottom 10 percent receive nearly 8 percent of all DSH payments, relative to their less than 1 percent of the uncompensated care burden. One implication of this finding is that a hospital's combined Medicaid and SSI patient load is generally a poor indicator of the amount of care it provides to non-paying patients.

While a hospital's uncompensated care burden is an important determinant of its overall financial position, the Commission believes it is not the only important factor. ProPAC plans to analyze the impact of Medicaid payment levels in the coming year, and is conducting a major study to identify the factors associated with financial performance under PPS. The Commission intends to continue its analysis of the relative effects of Medicare, Medicaid, and other payer payments, together with uncompensated care costs, on hospital financial condition.

OTHER ISSUES CONSIDERED BY THE COMMISSION

The Commission addressed two additional issues that may be the subject of future recommendations.

Medicare Transfer Payment Policy

The Commission is concerned that current Medicare payment policy may discourage appropriate hospital transfers. Over the past year, ProPAC examined several aspects of Medicare's transfer payment policy. The analyses raised a number of concerns about the financial risk a hospital assumes when it admits a transferred patient. In particular, transfer cases were twice as likely as other patients to become outlier cases. Nevertheless, total Medicare PPS payments to hospitals that received a high proportion of transfers appear to be sufficient. The Commission is concerned, however, that the financial risk posed by transfer cases may discourage hospitals from accepting transfers. ProPAC plans to continue to examine this issue and its relationship to outlier cases over the coming year.

The Commission is also concerned about the adequacy of the current per diem payment for the transferring hospital. Recent analysis shows that payments are significantly lower than costs for these cases. The Commission plans to examine this issue in more detail over the coming year.

In addition, ProPAC is concerned that current payment policy discourages transferring patients to their local communities for recovery. Under current transfer payment policy, hospitals that transfer patients receive a per diem payment up to the full DRG amount. The final discharging hospitals are the only hospitals that automatically receive a full DRG payment. Further, transfer cases are subject to review by Peer Review Organizations. Hospitals that treat transfer cases or other complex cases have little incentive to transfer patients to local hospitals. As a result, few Medicare patients are transferred to their local community for convalescence when this may be appropriate. This issue will also be investigated in the coming year.

Payments for Intractable Epilepsy

In 1987, the Commission addressed the adequacy of PPS payment for intractable epilepsy patients treated with intensive neurodiagnostic monitoring. ProPAC also addressed the adequacy of payments based on one surgical procedure when multiple procedures were performed during an admission. This analysis examined two medical and one surgical DRGs.

At the time of the Commission's analysis, only three centers were found to provide specialized care for the treatment of intractable epilepsy. Operating costs exceeded payments in each of the three DRGs at these centers more than they exceeded payments at other PPS hospitals. Within these DRGs, losses were larger for patients with epilepsy than for other patients in all hospitals. A more complete analysis of this topic was not possible because of the lack of specific codes to identify patients with intractable epilepsy. These codes were implemented in fiscal year 1990.

The National Association of Epilepsy Centers' recent study of several of its members found that costs exceeded payments for patients with epilepsy in two medical DRGs. Intractable epilepsy cases that required monitoring had greater cost to payment differences and longer than average lengths of stay.

ProPAC will reexamine this issue when fiscal year 1990 data become available. The Commission believes the Secretary should also evaluate the appropriateness of PPS payment for Medicare beneficiaries with intractable epilepsy.

[FR Doc. 91-13059 Filed 5-30-91; 8:45 am]
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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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[6] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[7] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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Rules and Regulations

Federal Register
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Tuesday, June 4, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service (ASCS)

7 CFR Part 777

Disaster Payment Program for 1990 Crops

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Final rule.

SUMMARY: Public Law 101–302, the Dire Emergency Supplemental Appropriations Act for Fiscal Year 1990 (the 1990 Act), provides appropriations for assistance to be made available under section 201(k) of the Agricultural Act of 1949 (the 1949 Act) with respect to eligible producers for losses of 1990 crop production of peanuts, soybeans, sugar beets, and sugarcane damaged by a natural disaster in 1989. Generally, to be eligible to receive a payment, a producer must have suffered a loss of production of at least 40 percent for such crop. A proposed rule was published on February 21, 1991, at 56 FR 6994 with respect to these provisions. This final rule sets forth at 7 CFR part 777 the regulations which are necessary to establish the criteria to be used in making assistance available to eligible producers.

EFFECTIVE DATE: This final rule shall become effective on June 4, 1991.

FOR FURTHER INFORMATION CONTACT: Charles M. Cox, Jr., Program Specialist, Cotton, Grain, and Rice Price Support Division (CGRD), Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA) PO Box 2415, Washington, DC Telephone: (202) 382–8757.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in accordance with provisions of Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified as "non major" since the program will not result in: (1) An annual effect on the economy of $100 million, or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or local geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of the law to publish a notice of proposed rulemaking with respect to the subject matter of this final rule.

An Environmental Evaluation with respect to the Disaster Payment Program has been completed. It has been determined that this action is not expected to have a significance impact on the quality of the human environment. In addition, it has been determined that this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, and land use and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The title and number of the Federal assistance program to which this notice applies are: Title—commodity Loans and Purchases; Number 10.051, as found in the Catalogue of Federal Domestic Assistance.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983). Public reporting burden for these collections is estimated to require 30 minutes per response, including time for reviewing instructions, searching existing sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project, (0560–0050) Washington, DC 20503. OMB approval for the information collections contained in this rule expires June 30, 1991. ASCS is in the process of requesting an extension of this date.

Background

The 1990 Act provides $11,000,000 for the making of disaster payments, as provided in section 201(k) of the 1949 Act for production losses to producers of 1990 crops of peanuts, soybeans, sugar beets, and sugarcane which were affected by a natural disaster in 1989. To receive such a payment, the loss of production of a crop must be greater that 40 percent of the farm's expected production. With respect to sugarcane, such losses are made on a recoverable sugar basis.

The 1949 Act establishes the basic payment rate which is to be used in making disaster payments as 50 percent of the support level for the crop. Since the appropriation provided for in the 1990 Act was $11,000,000 the total payments for all producers are limited to $11,000,000. Generally, the proposed rule provided that the farm yield would be determined by using a 3 year average of sugar actually produced on the farm per acre for the years 1987, 1988, and 1989 or using the National Agricultural Statistical Service (NASS) data for the years 1985 through 1990 dropping the highest and the lowest. Also, the proposed rule provided that producers who obtained crop insurance for the 1990 crop of a commodity under the Federal Crop Insurance Act, as amended, would have their disaster payment reduced by the amount by which the sum of the net crop insurance benefits (gross indemnity less premium paid) and the computed disaster payment exceeds the disaster payment acreage times the disaster yield times the basic payment rate for the commodity. In addition, in the event the total claims submitted exceed $11,000,000, all claims would be reduced proportionately. Due to the limited amount of funds provided, and due to the restriction that such funds be used only with respect to 1989 disasters

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which affected 1990 crop production. ASCS proposed that assistance be limited to 1990 crops damaged by frost or freeze in 1989. This proposal was based upon the determination by ASCS that no other disaster occurred in 1989 which damaged 1990 crops of soybeans, sugar beets, sugarcane and peanuts. Further, based upon this review, ASCS is not aware of any 1990 crop of these commodities other than sugarcane which was adversely affected by such 1989 natural disaster. In addition, with the limited amount of funds made available, ASCS has sufficient reason to believe that claims for assistance will exceed $11 million and will, therefore, result in the reduction of payments made to eligible producers. Accordingly, the proposed rule provides for the reduction of payments in the event the total amount of eligible claims exceed $11,000,000.

In response to the proposed rule issued on February 21, 1991, (56 FR 6994) 18 timely filed letters containing 22 comments were received. Respondents included the following: 11 individuals, 2 corporations, 4 farm organizations, 1 cooperative. Fifteen of the letters were received from residents of Louisiana and 3 letters from residents of Texas. One comment was not responsive to the proposed rule and therefore, is not addressed below.

Section 777.3 Definition (Disaster Payment Yield)

Comments were received from 2 respondents on this section of the proposed rule. One respondent commented that, as set forth in the proposed rule, using the 5 year NASS average of actual sugar production, dropping the highest and lowest yield, would be more equitable. This same respondent suggested that the NASS data used should be based on all acreage including the acreage used for seed cane. The other respondent wanted to use only 3 years of actual sugar production for determining the disaster payment yield. This suggestion is not adopted since ASCS and the Commodity Credit Corporation have historically used this 5 year method which provides producers with a more representative yield on the farm since large variances may occur in one year due to abnormal weather conditions; however, this provision has been rewritten for clarity.

Section 773.3 Definitions (Eligible Crop)

One respondent requested that soybeans be included in the list of eligible crops and one respondent wanted all crops included or, in the event all crops were not included, this respondent wanted coverage denied with respect to all crops. Section 201(k) of the 1949 Act specifically includes only sugar beets, sugarcane, soybeans, and peanuts as eligible crops. Accordingly, the final rule includes only these crops. Further, since Congress has appropriated funds for the assistance provided by this section of the 1949 Act, ASCS must make payments to producers of only these crops. Accordingly, this provision of the proposed rule is adopted without change.

Section 777.3 Definitions (Eligible Producer)

Comments were received from 13 respondents (8 individuals, 1 cooperative, and 4 commodity groups) on this section of the proposed rule. The proposed rule restricted eligibility of disaster benefits to only those producers who were producers on the farm at the time of the 1989 freeze and shared in the 1990 harvested crop which suffered a production loss. The commenters suggested that the Department's definition of an eligible producer "who is on the farm at the time of the 1989 freeze and who also harvested the 1990 crop" is too restrictive. Many of the commenters suggested that the producer on the farm on the date of the freeze should be eligible for the payments regardless of whether they were on the farm in 1990. It was also pointed out that the farm owner who received a share of the crop should be entitled to a disaster payment. One respondent suggested that if the producer on the farm at the time of the disaster was different than the producer who harvested sugarcane and that the producer who harvested the sugarcane and the producers cannot agree as to whom the payments should be made then the payments shall be made "jointly to such producers". In response to these comments the final rule provides that producers who shared in the crop for either or both 1989 and 1990 are eligible. In cases where the producers do not agree on the share of payment the producer who suffered the loss will be paid as determined by the County Agricultural Stabilization and Conservation Committee.

Section 777.6 Filing application for payment

The proposed rule provided that all applications for assistance must be filed by May 1, 1991. Since this date has passed, the final rule provides that all such applications must be filed by June 28, 1991.

Section 777.7 Report of acreage, production disposition, and indemnity payments

Section 777.7(b) of the proposed rule provides that the producer must furnish acceptable evidence of the disposition of crop production or authorize CCC to obtain such information. Comments were received from American Sugar Cane League requesting that the following changes be made in this section. "If there has been a disposition of crop production through commercial production channels, the eligible producer must furnish, or authorize CCC to obtain documentary evidence of such disposition in the form of records of sugar production from the applicable processor or processors." This section has been rewritten for clarity; however, ASCS has determined that the suggested changes would be too restrictive and would not allow ASCS to adequately determine the actual production of eligible producers. Accordingly, the suggested changes are not adopted.

Section 777.8 Availability of funds

Comments were received from 2 respondents. One respondent requested in the event all claims submitted are less than $11,000,000, that each payment be increased by a uniform percentage. The other respondent suggested that we should spend the entire amount appropriated. ASCS does not have statutory authority to make payments at a rate which is in excess of the statutory formula. Accordingly, these comments are not adopted.

List of Subjects in 7 CFR Part 777

Disaster payment 1990 crops.

Final rule

Accordingly, 7 CFR part 777 is added to read as follows:

PART 777—DISASTER PAYMENT PROGRAM FOR 1990 CROP OF SUGARCANE, SUGAR BEETS, SOYBEANS AND PEANUTS

Sec.

777.1 General statement.
777.2 Administration.
777.3 Definitions.
777.4 Availability of disaster payments.
777.5 Disaster benefits.
777.6 Filing application for payment.
777.7 Report of acreage, production disposition, and indemnity payments.
777.8 Availability of funds.
777.9 Misrepresentation, scheme and device, and fraud.
777.10 Refunds to CCC.
777.11 Cumulative liability.
777.12 Appeals.
777.13 Liens.
777.14 Other regulations.
777.15 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

Authority: 7 U.S.C. 1446.

§ 777.1 General statement.

This part implements a Disaster Payment Program for the 1990 crop year as provided by section 201(k) of the Agricultural Act of 1949, as amended, and Dire Emergency Supplemental Appropriations Act for Fiscal year 1990. The purpose of the program is to make disaster payments to eligible producers of sugarcane, sugar beets, peanuts and soybeans who have suffered a loss of production of their 1990 crop as the result of a natural disaster in 1989.

§ 777.2 Administration.

(a) The program will be administered under the general supervision of the Administrator, Agricultural Stabilization and Conservation Service (ASCS), and shall be carried out in the field by State and county Agricultural Stabilization and Conservation (ASC) committees.

(b) State and county ASC committees and representatives and employees thereof do not have the authority to modify or waive any of the provisions of this part as amended or supplemented.

(c) The State ASC committee shall take any action required by this part which has not been taken by a county ASC committee. The State ASC committee shall also:

(1) Correct or require a county ASC committee to correct, any action taken by such county ASC committee which is not in accordance with this part, or

(2) Require a county ASC committee to withhold taking any action which is not in accordance with this part.

(d) ASCS shall determine all yields and prices under this part and may utilize any agency of the Department of Agriculture in making such determinations. To the extent practicable, ASCS will use data provided by the National Agricultural Statistical Service (NASS). Any reference in this part to NASS shall not restrict ASCS from using data from other sources.

(e) No delegation herein to a State or county ASC committee shall preclude the Administrator, ASCS, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county ASC committee.

§ 777.3 Definitions.

In determining the meanings of the provisions of this part, unless the context indicates otherwise, words imparting the singular include and apply to several persons or things, words imparting the plural include the singular, words imparting the masculine gender include the feminine as well, and words used in the present tense include the past and future as well as the present. The following terms shall have the following meanings and all other words and phrases shall have the meanings assigned to them in the regulations governing the reconstitution of farms in part 719 of this chapter.

Actual production means the quantity of soybeans and peanuts actually harvested and in the case of sugar beets and sugarcane the quantity of sugar produced from such crop, or which could have been harvested or produced as determined by the county ASC committee in accordance with instructions issued by the Deputy Administrator, State and County Operations (Deputy Administrator), (ASCS). Such quantity includes all harvest acreages including sugarcane harvested for seed.

Disaster payment yield means as applicable, the average of actual yields for the years 1987 through 1989 in accordance with instructions issued by the Deputy Administrator or the county average yield for the crop, established by ASCS. Such county average yield shall be the average of the county average yields, including seed cane production, for the years 1985 through 1989 as determined by NASS, excluding the year in which the yield was the highest and the year in which the yield was the lowest.

Eligible crop means the 1990 crop of sugarcane, sugar beets, soybeans and peanuts.

Eligible disaster means a December 1989 frost or freeze.

Eligible producer means, with respect to an eligible crop for which an application for disaster payment has been made under this part, a person who as owner, landlord, tenant, or sharecropper is entitled to share in such crops, or the proceeds therefrom, available for marketing from the farm or would have been if such crop had been produced. Such person includes the producer who was on the farm at the time of the 1989 freeze and who may or may not have been the producer who harvested the 1990 crop.

Expected production means the disaster yield times the sum of the 1990 planted acreage of the crop and the 1990 prevented planted acreage of the crop.

§ 777.4 Availability of disaster payments.

Disaster payments will be made available to eligible producers of 1990 crop of an eligible crop who suffered losses because of the occurrence of an eligible disaster in 1989.

§ 777.5 Disaster benefits.

(a) Disaster payments for low yield losses on 1990 crop of sugarcane are authorized to be made to producers who file a CCC–441SU, Application for 1990 Disaster Benefits, if:

(1) The farm operator submits an Application for Disaster Credit (Form ASCS–574), in accordance with instructions issued by the Deputy Administrator;

(2) The farm operator submits a record of Production and Yield (Form ASCS–658) in accordance with §1477.7; and

(3) The county ASC committee determines that because of an eligible disaster condition, producers on a farm were able to harvest less than 60 percent of the expected production of an eligible crop in 1990.

(b) Each eligible producer's share of a disaster payment shall be based on the eligible producer's share of the crop or the proceeds therefrom or, if no crop was produced, the share which the eligible producer would have otherwise received if the crop had been produced.

§ 777.6 Filing application for payment.

(a) Applications for payment shall be filed by the applicant with the county ASCS office serving the county where the producer's farm is located for administrative purposes.

(b) An application for payment shall be filed as soon as practicable after the producer's eligibility has been established in accordance with § 777.5(a). Applications for payment must be filed no later than June 28, 1991.

§ 777.7 Report of acreage, production disposition and indemnity payments.

(a) Eligible producers shall report, in accordance with instructions issued by the Deputy Administrator, the acreage, production, and disposition of all eligible crops produced in 1990 on an acreage for which an application for a disaster payment is filed. Such production reports must be filed no later than the date established by the Deputy Administrator.

(b) If there has been a disposition of crop production through commercial channels, the eligible producer must furnish documentary evidence of such disposition or provide ASCS the authority necessary in order to verify the information provided on the report. Such authority includes access to producers' disposition documents of warehousemen and processors. Acceptable evidence shall include, but not limited to, such items as the original or a copy of commercial receipts, CCC

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loan documents, settlement sheets, or records of sugar production.

(c) If there has been a disposition of crop production other than through commercial channels, such as seed cane, the eligible producer must furnish such documentary evidence as the county ASC committee determines to be necessary in order to verify the information provided by the producer.

§ 777.8 Availability of funds.

In the event the total amount of all claims submitted exceeds $11 million, each payment shall be reduced by a uniform percentage.

§ 777.9 Misrepresentation, scheme and device, and fraud.

(a) If ASCS determines that any producer has erroneously represented any fact or has adopted, participated in, or benefited from, any scheme or device which has the effect of defeating, or is designed to defeat the purpose of this part, such producer shall not be eligible for disaster payments under this part and all payments previously made to any such producer shall be refunded to ASCS. The amount paid to ASCS shall include any interest and other amounts as determined in accordance with this part.

(b) If any misrepresentation, scheme or device, or practice has been employed for the purpose of causing ASCS to make a payment which ASCS under this part otherwise would not make, all amounts paid by ASCS to any such producer shall be refunded to ASCS together with interest and other amounts as determined in accordance with this part, and no further disaster payments shall be made to such producer by ASCS.

(c) If the county ASC committee determines that any producer has adopted or participated in any practice which tends to defeat the purpose of the program established in accordance with this part, the county committee shall withhold or require to be refunded all or part of the payments which otherwise would be due the producer under this part.

§ 777.10 Refunds to CCC.

(a) In the event that there is a failure to comply with any term, requirement, or condition for payment made in accordance with this part, all such payments made to the producer shall be refunded to ASCS, together with interest.

(b) Producers must refund to ASCS any excess payments made by ASCS.

(c) In the event that the loss of production was established as a result of erroneous information provided by any person to the county ASCS office or was erroneously computed by such office, the loss of production shall be re-computed and the payment due shall be corrected as necessary. Any refund of payments which are determined to be required as a result of such re-computation shall be remitted to ASCS.

§ 777.11 Cumulative liability.

The liability of any producer for any payment or refund which is determined in accordance with this part to be due to ASCS shall be in addition to any other liability of such producer under any civil or criminal fraud statute or any other statute or provision of law including, but not limited to, 18 U.S.C. 286, 287, 371, 641, 1001; and 31 U.S.C. 3729.

§ 777.12 Appeals.

Reconsideration and review of all determinations made in accordance with this part with respect to a farm or an individual producer shall be made in accordance with part 780 of this chapter.

§ 777.13 Liens.

Any payment which is due any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, and the proceeds thereof, which may be asserted by any creditor, except agencies of the United States Government.

§ 777.14 Other regulations.

The following regulations and amendments thereto shall also be applicable to this part:

(a) 7 CFR Part 3, Debt Management.

(b) 7 CFR Part 12, Highly Erodible Land and Wetland Conservation.

(c) 7 CFR Part 707, Payments Due Persons Who Have Died, Disappeared or Have Been Declared Incompetent.

(d) 7 CFR Part 719, Reconstitution of Farms, Allotments, Normal Crop Acreage and Preceding Year Planted Acreage.

(e) 7 CFR Part 780, Appeal Regulations.

(f) 7 CFR Part 790, Incomplete Performance Based Upon Action or Advice of an Authorized Representative of the Secretary.

(g) 7 CFR Part 796, Denial of Program Eligibility for Controlled Substance Violation.

§ 777.15 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements of this part shall be submitted to the Office of Management and Budget (OMB) for purposes of the Paperwork Reduction Act and it is anticipated that an OMB Number will be assigned.

Signed at Washington, DC, on May 29, 1991.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 91-13120 Filed 6-3-91; 8:45 am]

BILLING CODE 3410-05-M

Rural Electrification Administration

7 CFR Part 1700

Public Information and Collection of Public Comments to Proposed Rules

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby amends 7 CFR part 1700 to revise policies on public information and collection of public comments to proposed rules. This final rule will (1) assist the Agency to modernize and streamline policies and procedures that will provide an efficient information system that directly affects REA borrowers and others, and (2) assist the Agency to respond to comments from the public on proposed rules published in the **Federal Register**. This final rule will benefit both the public and the Agency. Pursuant to 7 CFR part 1610, the provisions of this final rule also apply to the Rural Telephone Bank (RTB).

EFFECTIVE DATE: July 5, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Bryant, Director, Administrative Services Division, Rural Electrification Administration, room 0165, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 382-8940.

SUPPLEMENTARY INFORMATION: This final rule is issued in conformance with Executive Order 12291. It will not (1) have an annual effect on the economy of $100 million or more; or (2) result in a major increase in costs or prices for consumers, individuals, industries, Federal, state, or local government agencies or geographic regions; or (3) result in significant adverse effects on competition, employment, or productivity. Therefore, this rule has been determined to be non-major.

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this final rule will not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.* (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment. This program is listed in the Catalog of Federal Domestic Assistance under No. 10.850, Rural Electrification Loans and Loan Guarantees; 10.851, Rural Telephone Loans and Loan Guarantees; 10.852, Rural Telephone Bank Loans; and 10.853, Rural Economic Development Loans and Grants.

For reasons set forth in 7 CFR part 3015, subpart V (50 FR 47034), this program is excluded from the scope of Executive Order 12373 regarding intergovernmental consultation with State and local officials.

According to the regulations of the Office of Management and Budget (OMB), 5 CFR 1320.7(j)(4), "Facts or opinions submitted in response to general solicitations of comments from the public, published in the **Federal Register** * * *" are not generally considered information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Therefore, this rule contains no reporting or recordkeeping provisions that require OMB approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Background

Pursuant to the Rural Electrification Act of 1936 (49 Stat. 1363; 7 U.S.C. 901 *et seq.*) (the RE Act), as amended, the Rural Electrification Administration (REA) issues notices and regulations in the **Federal Register**, as well as bulletins, informational publications, and instructions to staff in order to (1) implement the provisions of the RE Act and the loan and security instruments; (2) establish Agency procedures; and (3) assist electric and telephone borrowers in the operation, design, and maintenance of their systems. Historically, many Agency policies and procedures have been contained in bulletins and manuals.

Several years ago, REA began to codify material that was found in REA Bulletins in the Code of Federal Regulations (CFR). Issuance of new policies and procedures, and revisions of existing regulations will be published in the daily **Federal Register**. Because the CFR is becoming the primary document on which the public and borrowers will rely, the original concept of Bulletins and other Agency publications is changing. Bulletins directed to borrowers in the future will not contain policy issues they had previously contained. Additionally, codification of material now found in Bulletins will allow the Agency to rescind many Bulletins which are obsolete or duplicative. This will eventually mean fewer Bulletins directed to borrowers.

The Agency now distributes Bulletins to borrowers and others interested in the program. Over the years, it has become difficult to maintain mailing lists of, or to identify, non REA borrowers who may have continuing interest in REA programs. With the changing nature of Bulletins and the choice of the CFR as the vehicle to communicate REA policy to the public, it is no longer necessary to maintain mailing lists of, and to distribute information to non REA borrowers. The **Federal Register** provides better public access to Agency information in a more timely manner because of its wider availability.

REA will continue to provide indexes of Agency publications in reply to Freedom of Information Act requests (5 U.S.C. 552(a)(2)). The Agency will provide single copies of individual bulletins and informational publications to borrowers and other members of the public either directly or from another source to be established by REA. Every effort will be made to keep costs to the government and the public as low as possible. The Agency does not plan to charge REA borrowers for initial copies of bulletins directed to them. Information about availability and cost of any REA publication may be obtained from the Publications and Directives Management Branch, Administrative Services Division, Rural Electrification Administration, room 0180, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 382-9551. REA publications are not copyright protected and may be reproduced.

REA requires a signed original and three copies of all comments in order to respond to information requests submitted to proposed rules, and to provide copies of these comments to the public in a cost effective, convenient, and timely fashion. Persons requesting copies of comments to proposed rules will be charged in conformance with 7 CFR part 1, appendix A.

REA published a proposed rule on this subject on January 2, 1991 (56 FR 32). One comment was received during the 60 day comment period. It supports the proposed revision to section 1700.30.

List of Subjects in 7 CFR Part 1700

Electric power, Freedom of information, Loan programs—communications, Loan programs—energy, organization and functions (Government agencies), Rural areas, Telephone.

For the reasons stated above, REA hereby amends 7 CFR part 1700 as follows:

1. The authority citation for part 1700 continues to read as follows:

Authority: 7 U.S.C. 901–950(b); Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72; 7 U.S.C. 1921 et seq., and 44 FR 30313, May 25, 1979; 5 U.S.C. 301, 552; 7 CFR 1.1–1.16.

2. REA amends part 1700 by revising § 1700.30 to read as follows:

§ 1700.30 Availability of Agency publications and other information, and collection of public comments to proposed rules.

(a) 5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying.

(b) The Rural Electrification Administration (REA) issues from time to time notices and regulations in the **Federal Register** as well as bulletins, informational publications, and staff instructions in order to:

(1) Implement the provisions of the RE Act and the loan and security instruments;

(2) Establish Agency procedures; and

(3) Assist electric and telephone borrowers in the design, operation, and maintenance of their systems.

(c) Information about availability and costs of Agency publications and other Agency materials is available from Publications and Directives Management Branch, Administrative Services Division, Rural Electrification Administration, Room 0180, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500.

(d) REA will provide for the distribution of indexes of publications in conformance with the Freedom of Information Act, 5 U.S.C. 552(a)(2). Single copies of individual bulletins, informational publications, staff instructions, and forms, including forms of basic loan and security instruments, are available to borrowers and other members of the public either directly from REA, from the Superintendent of Documents, U.S. Government Printing Office, Washington DC 20402, or from another source to be established by REA. Costs for these publications are established in conformance with 7 CFR part 1. Initial copies of Bulletins directed to REA borrowers are provided at no cost to those borrowers.

(e) REA requires that all persons submitting comments to a proposed rule published by the Agency submit a signed original and three copies of their

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comments to the address shown in the preamble to the proposed rule. Copies of comments submitted are available to the public in conformance with 7 CFR part 1.

Dated: May 9, 1991.

Gary C. Byrne,

Administrator.

[FR Doc. 91-13017 Filed 6-3-91; 8:45 am]

BILLING CODE 3410-15-M

Farmers Home Administration

7 CFR Parts 1951 and 1965

Security Servicing for Multiple Family Housing Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its multiple family housing security servicing regulations. This action is being taken to clarify the consolidation section, to change the effective interest rate to be used for new term transfers and reamortizations, and to revise the reamortizations section to include reamortizations with cost items. This action is necessary to clarify current instructions.

EFFECTIVE DATE: July 5, 1991.

FOR FURTHER INFORMATION CONTACT: Wanda L. Triplett, Senior Loan Specialist, Multiple Family Housing Servicing and Property Management Division, Farmers Home Administration (FmHA), USDA, room 5333, South Agriculture Building, 14th and Independence SW., DC 20250, telephone (202) 382-1612.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be non-major because there will not be an annual effect on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

FmHA published proposed regulations governing consolidation and transfer of Multiple Family Housing loans in the **Federal Register** on December 28, 1989, (54 FR 53328), providing that interested persons could file comments through February 26, 1990.

We received comments on § 1965.68, "Consolidation," from three FmHA employees, one of which was not received prior to the deadline for receiving comments and which the commenter later requested be withdrawn.

One commenter suggested that loan consolidation include consolidating an initial and subsequent loan(s) in a project where the loans were closed on the same day at the same rates and terms. Paragraphs (a)(1) through (a)(4) of the proposed regulation have been restructured to include this provision.

The commenter also requested an item be added to read "If consolidation of loans is not possible on the Amortization Effective Date (AED) for the loans, consolidation should occur as soon as possible after the AED is established." We agree and have added paragraph (a)(6) as recommended.

The commenter requested paragraph (b)(1) include the statement, "or as soon as possible thereafter" on original notes or assumption agreements not in the District Office. This was due to the time involved in obtaining an affidavit of replacement for lost notes (sometimes up to 1 year). We believe this is justifiable and delay of the consolidation would not be beneficial to the parties involved.

The commenter recommended that paragraph (b)(2) include clarification of the Interest Credit Plan and to delete submitting this form to the Finance Office since this information is now entered through field office terminals. We agree and this paragraph has been changed accordingly.

The commenter noted that paragraph (b)(3) refers to Form FmHA 1965-17A and this should be Form FmHA 1965-17, which deals with loan consolidation and not project consolidation. We agree and have included this modification. In addition, Form FmHA 1965-17 is being revised to include consolidation of initial and subsequent loan(s) where the loans were closed on the same date at the same rates and terms.

The commenter noted that original notes are never filed in the casefiles and paragraph (b)(4) should be revised to reflect this change. This paragraph is being changed accordingly.

The commenter believes paragraph (c)(3) should be revised to include "mixed" projects as eligible for project consolidation. Since the original intent of the units is not changed, we agree to this change and the subject paragraph is revised accordingly.

The final commenter did not believe that the proposed regulations covered "project consolidation" whereby the borrower could combine the payments and use the rental assistance (RA) for either project without combining the loan agreement/resolution. The commenter believed this was a Finance Office transaction and would not require OGC concurrence. The main reason for this transaction would be to use rental assistance in a project that did not contain this subsidy. We believe this would be in violation of the intent of the regulations covering loan agreement/resolution consolidation, which is the same as "project consolidation." If RA is not needed in one project, the State Director may transfer the RA to another project in accordance with exhibit E of subpart C of part 1930 of this chapter.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action, consisting only of accounting changes, does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Public Law 91-120, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program.

Intergovernmental Consultation

For the reasons set forth in the Final Rule related Notice(s) to 7 CFR part 2015, subpart V, programs 10.415, Rural Rental Housing Loans and 10.427, Rural Rental Assistance Payments, are subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance: 10.405 Farm Labor Housing Loans and Grants 10.415 Rural Rental Housing Loans.

List of Subjects in 7 CFR Parts 1951 and 1965

Accounting servicing, administrative practice and procedure, Grant program—housing and community development, low- and moderate-income housing—Rental, Mortgages, Reporting and recordkeeping requirements, and Rural areas.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 16 U.S.C. 1005; CFR 2.33; 7 CFR 2.70.

Subpart E—Servicing of Community and Insured Business Programs Loans and Grants

§ 1951.223 [Amended]

2. Section 1951.223(b)(4) and the second sentence of (c)(3), are amended by changing the reference "Form FmHA 451-33" to "Form FmHA 1951-33."

PART 1965—REAL PROPERTY

3. The authority citation for part 1965 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; CFR 2.33; 7 CFR 2.70.

Subpart B—Security Servicing for Multiple Housing Loans

4. Section 1965.65 is amended by revising the last sentence of paragraph (f)(2) and the first sentence of paragraph (f)(6)(i) to read as follows:

§ 1965.65 Transfer of real estate security and assumption of loans.

* * * * *

(f) * * *

(2) * * * If the loan account or the reserve account cannot be brought current, or less than the total debt is assumed, the transfer will be closed on new terms and the interest rate charged by FmHA will be the current rate being charged for those loans at the time of loan closing, or the interest rate at the time of approval (the date Form FmHA 1944-51 is approved), whichever is less.

* * * * *

(6) * * *

(i) The interest rate charged for all loans, except LH loans, will be the current rate being charged for those loans at the time of loan closing, or the interest rate at the time of approval (the date Form FmHA 1944-51 is approved), whichever is less. * * *

* * * * *

5. Section 1965.68 is revised to read as follows:

§ 1965.68 Consolidation.

General. Loans and/or loan agreements/resolutions may be consolidated to reduce the administrative burden (recordkeeping, budgeting, etc.), to improve the cost effectiveness and efficiencies of project operations, and/or to effectively utilize the physical facilities common to projects. State Directors may approve the consolidations with the advice of OGC and when the following conditions are met:

(a) *Consolidation of loans.*

(1) The loans are being transferred under § 1965.65(f)(6) of this subpart on new terms to the transferee, OR.

(2) An initial and subsequent loan(s) under one project number were closed on the same date at the same rates and terms, i.e., same interest rate and final due date.

(3) The promissory notes and the loan agreements/resolutions will be consolidated.

(4) The conditions for consolidation of loan agreements/resolutions must be met.

(5) The total indebtedness (principal plus accrued interest, overage and late fees) of all loans being consolidated does not exceed the State Director's approval authority.

(6) If consolidation of loans is not possible on the Amortization Effective Date (AED) for the loans, consolidation should occur as soon as possible after the AED is established.

(b) *Processing consolidation of loans.*

(1) Form FmHA 1944-52, "Multiple Family Housing Promissory Note," will be prepared for the notes or assumption agreements being consolidated according to the FMI. If the District Office does not have possession of the original note or assumption agreement, the District Director will call the Finance Office to request the return of the original form so it is in the District Office before a new Form FmHA 1944-52 is processed, or as soon as possible thereafter. Promissory notes should be prepared on a monthly payment basis, as appropriate.

(2) A new Form FmHA 1944-7, "Interest Credit and Rental Assistance Agreement," will be prepared and signed by the borrower for the new consolidated promissory note and distributed according to the FMI. The Interest Credit Plan originally established for the project will apply to the consolidated note. If the Interest Credit Plan is changed with the new Form FmHA 1944-7, the District Office will enter the new plan for the project through their field office terminal.

(3) Form FmHA 1965-17, "Multiple Family Housing Note Consolidation," will be completed to show all of the notes which have been consolidated in the new Form FmHA 1944-52. A copy of the completed Form FmHA 1965-17 will be sent to the Finance Office for processing. The AMAS M5A screen for the project should be reviewed by the District Office and updated, as appropriate, when submitting Form FmHA 1965-17 for processing.

(4) The original and District Office copies of all notes or assumption agreements that are consolidated will be stamped "consolidated," by the District Office. The original instruments being consolidated will be stapled to the "consolidated" note and filed in the safe in the District Office. When the consolidated note has been paid in full or otherwise satisfied, it and all other instruments will be handled according to the provisions of § 1951.15 of subpart A of part 1951.

(5) A consolidated loan agreement or resolution using Forms FmHA 1944-33A, "Consolidated Loan Agreement RRH Insured Loan to an Individual Operating on a Profit Basis or RRH Loan to an Individual Operating on a Limited Profit Basis," FmHA 1944-34A, "Consolidated RRH Loan Agreement To a Partnership Operating on a Profit Basis, To a Limited Partnership Operating on a Profit Basis, To a Partnership Operating on a Limited Profit Basis, To a Limited Partnership Operating on a Limited Profit Basis," or FmHA 1944-35A, "Consolidated Loan Resolution RRH Loan to a Broadly Based Nonprofit Corporation, RRH Loan to a Profit Type Corporation, RRH Loan to Profit Type Corporation Operating on a Limited Profit Basis," as appropriate, will be prepared for RRH loans to reflect current reporting requirements and the authorized initial investment attributable to the owner after the consolidation has occurred. A revised consolidated loan agreement or resolution will be prepared for LH loans containing the requirements of exhibit C, D, or E of subpart D of part 1944 of this chapter, as appropriate.

(6) Consolidation of notes will only be accomplished with the guidance and assistance of OGC. Under no circumstances will promissory notes be consolidated if the security position of FmHA will be adversely affected.

(7) New security instruments which describe the consolidated note will be filed to perfect the FmHA lien position. If the new lien position taken is junior

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only to the previous lien position securing the loans being consolidated, the previous security instruments may be released with the guidance and assistance of OGC.

(c) *Consolidation of loan agreements/resolutions (project consolidation).*

(1) The security for the loans must be on the total project, "project" being defined per Subpart C of Part 1930 of this chapter.

(2) The State Director may approve the consolidation of loan agreements/resolutions irrespective of the total indebtedness represented by all loan agreements/resolutions being consolidated.

(3) The loan agreements being consolidated are for loans made for the same purpose (for example, loans specifically made for senior citizen projects cannot be consolidated with loans for family projects, unless the consolidated project is redesignated "mixed" and the units previously designated "senior citizen" are restricted to tenants meeting the requirements for "senior citizen" as specified in Subpart C of Part 1930 of this chapter), to the same borrower entity and have the same plan of operation (nonprofit, limited profit or full profit), and are operating under the same type of Interest Credit, if applicable.

(4) The requirements of subpart C of part 1930 of this chapter concerning reporting, accounting and project management will be fulfilled as a single project.

(5) All project accounts being consolidated must be current after the consolidation processes, unless authorized by the National Office.

(6) RA agreements will not be consolidated; each RA agreement will be tracked under a separate RA number through AMAS. The RA can be assigned to eligible tenants in the new "project" per assignment priorities. The waiting list(s) for the projects being consolidated will be combined.

(7) The appropriate restrictive-use language set forth in § 1965.90(b)(2)(i) of this subpart for RRH, RCH or LH loans will be added to those loans not previously subject to restrictive use, with the advice of OGC, to the loan agreement/resolution as a condition of FmHA approval of the project consolidation. The restrictive-use period will begin on the date the consolidation is effective for loans not previously subject to restrictive-use provisions.

(d) *Processing loan agreement/resolution consolidations.*

(1) Form FmHA 1965–17A will be completed to show all of the notes for the projects being consolidated. The AMAS M5A screen for all projects should be reviewed and updated before submitting Form FmHA 1965–17A.

(2) A consolidated loan agreement or resolution using Form FmHA 1944–33A, 1944–34A, or 1944–35A, as appropriate, will be prepared for RRH loans to reflect current reporting requirements and the authorized initial investment attributable to the owner after the consolidation has occurred. A revised consolidated loan agreement or resolution will be prepared for LH loans containing the requirements of exhibit C, D, or E of subpart D of part 1944 of this chapter, as appropriate.

(3) Consolidation of projects will only be accomplished with the guidance and assistance of OGC. Under no circumstances will projects be consolidated if the security position of FmHA will be adversely affected.

(4) All of the general requirements of paragraph (c) of this section must be met.

(5) Neither the terms nor the due date of the loan(s) involved are altered, and other security instruments remain unchanged, and are not released.

(6) All of the loan agreements or loan resolutions being consolidated may be secured by one deed of trust or mortgage describing all of the loans for the projects if required by OGC.

6. Section 1965.70 is amended by revising paragraph (d)(5) and by adding paragraphs (b)(3) (ix), (x), (xi) and (d)(9) to read as follows:

§ 1965.70 Reamortization.

* * * * *

(b) * * *

(3) * * *

(ix) All MFH loans being reamortized must be closed on PASS, except LH loans specified in § 1951.501(a)(2)(i) of Subpart K of Part 1951 of this chapter. All initial and subsequent loans must convert to PASS in connection with the reamortization.

(x) When recoverable cost items are involved, they are first capitalized by adding them to the principal loan balance outstanding on the oldest loan and then the entire indebtedness (principal plus outstanding interest, overage and late fees) is reamortized.

(xi) Audit receivables may not be reamortized.

* * * * *

(d) * * *

(5) The interest rate for the account will be unchanged except when the final due date has been extended. The interest rate charged will be the rate at the time the Reamortization Request (Form FmHA 1951–33) is approved, or the current interest rate at closing, whichever is less.

* * * * *

(9) Reamortizations will always be closed the first day of the month. Unpaid interest to the date of closing may be capitalized.

7. Section 1965.70(b)(3) introductory text is amended by changing the reference "Form FmHA 451–33" to "Form FmHA 1951–33."

Dated: March 22, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91–13080 Filed 6–3–91; 8:45 am]

BILLING CODE 3410–07–M

RESOLUTION TRUST CORPORATION

12 CFR Part 1609

RIN 3205–AA03

Affordable Housing Disposition Program

AGENCY: Resolution Trust Corporation.

ACTION: Temporary regulation.

SUMMARY: The Resolution Trust Corporation (RTC) is adopting temporary amendments to the final rule (12 CFR part 1609) for the Affordable Housing Disposition Program in order to implement the provisions of the Resolution Trust Corporation Funding Act (the "Funding Act") of 1991 (Pub. L. 101–73) which amends in part section 21A(c) of the Federal Home Loan Bank Act. Among other things, the Funding Act (i) expands the RTC affordable housing program to include, as eligible residential properties, single family properties held in conservatorship and (ii) allows the RTC to sell eligible single family properties to qualifying families, nonprofit organizations and public agencies without regard to minimum sales price.

EFFECTIVE DATE: Sections 1609.2(h)(1) and 1609.7(a)(3), as published August 31, 1990 (55 FR 35568), are hereby suspended effective March 23, 1991 through September 30, 1991. Temporary §§ 1609.2(h)(1) and 1609.7(a)(3) are effective from March 23, 1991 through September 30, 1991.

ADDRESSES: Resolution Trust Corporation, 801 17th Street, NW., Washington, DC 20434.

FOR FURTHER INFORMATION CONTACT: Stephen S. Allen, Director, Affordable Housing Disposition Program, (202) 416–7346, or Muriel Watkins, Program Coordinator, Affordable Housing Disposition Program, (202) 416–7137. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Administrative Procedure Act

The RTC is adopting this temporary change to its regulation effective March 23, 1991 without the delayed effective date as provided for in the Administrative Procedure Act 5 U.S.C. 553. These requirements may be waived for "good cause." The RTC believes that "good cause" exists to waive the requirements of the Administrative Procedures Act because the amendments to 21A(c) of the Federal Home Loan Bank Act took effect immediately upon the enactment of the Funding Act and are only in effect until September 30, 1991. By implementing these changes immediately the Resolution Trust Corporation is complying with Congressional authority which provides an opportunity to dispose of a substantial volume of single family properties to the benefit of low and moderate income households. To accomplish this goal, the RTC will be marketing properties through a series of sealed bid and auction events, as well as marketing property individually. This process will allow the RTC to help satisfy the demand for affordable housing in regional markets where the RTC has a large inventory of single family homes. By making houses immediately available through marketing events, and selling absolute, with no established reserve price, the RTC will avoid further deterioration of the existing inventory of eligible properties while expanding the range of households who can become homeowners through the disposition of assets of failed savings and loans.

Important also is the fact that by expediting the sale of single family property, federal taxpayers benefit from the reduced holding cost associated with these properties. Additionally, there is the benefit to a local economy associated with turning vacant properties to owner occupied housing which contributes to the local tax base.

List of Subjects in 12 CFR Part 1609

Housing, Real estate, Reporting and recordkeeping requirements, Savings associations.

Accordingly chapter XVI of title 12 of the Code of Federal Regulations is amended as set forth below.

PART 1609—AFFORDABLE HOUSING DISPOSITION PROGRAM

1. The authority citation for part 1609 continues to read as follows:

Authority: Pub. L. No. 101–73, sec. 501, 103 Stat. 183 (12 U.S.C. 1441a).

2. Section 1609.2(h)(1) and 1609.7(a)(3), which were published August 31, 1990 (55 FR 35568), are suspended effective March 23, 1991, through September 30, 1991.

3. Temporary regulation § 1609.2(h)(1) is added effective March 23, 1991, through September 30, 1991, to read as follows:

§ 1609.2 Definitions.

* * * * *

(h) * * *

(1) To which the RTC acquires title acting in any capacity.

* * * * *

4. Temporary regulation § 1609.7(a)(3) is added effective March 23, 1991, through September 30, 1991, to read as follows:

§ 1609.7 Marketing period.

(a) * * *

(3) *Offer and sale.* (i) The RTC shall establish a market value for each eligible single family property.

(ii) The RTC may consider offers during the Marketing Period from qualifying single family purchasers and may accept the best price offer received resulting from a sealed bid, auction, or other multi-property marketing event. The RTC may also consider offers during the Marketing Period from qualifying single family purchasers for properties marketed on an individual basis and, at its discretion, may accept the best offer received.

* * * * *

By order of the Board of Directors.

Dated at Washington, DC, this 21st day of May, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91–13093 Filed 6–3–91; 8:45 am]

BILLING CODE 6714–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–NM–100–AD; Amdt. 39–7014; AD 91–12–03]

Airworthiness Directives; Boeing Model 747–400, 757, and 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–400, 757, and 767 series airplanes, which requires a one-time inspection to locate certain cargo fire extinguishing agent containers which may be contaminated with water. This amendment is prompted by a report from one operator identifying two occurrences of false indication of low pressure in the cargo compartment fire extinguishing containers. This condition, if not corrected, could reduce or stop the discharge of fire extinguishing agent due to water freezing in the metered distribution lines, and could cause false low pressure indications in the initial discharge indicating system.

DATES: Effective June 19, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 19, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124; or Pacific Scientific, HTL/Kin-Tech Division, 1800 Highland Avenue, Duarte, California 91010–2906, telephone (818) 359–9317. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. G.M. Dail, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM–130S; telephone (206) 227–2874. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: The FAA has received a report from the manufacturer indicating that one operator of Boeing Model 767 series airplanes has experienced two incidents of false indications of low pressure in cargo compartment fire extinguishing agent containers. Further investigation of the two incidents revealed that the fire extinguishing agent containers contained excessive amounts of water which could reduce or stop the discharge of fire extinguishing agent from the metered discharge system due to freezing of water at the nozzle. Testing has shown that the initial discharge system would not be affected by freezing of water. However, excessive quantities of water in both the

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initial discharge and metered systems could cause corrosion of the pressure indicating components, which could result in false indications of low pressure.

These conditions, if not corrected, could result in inadequate fire protection of the cargo compartment.

Boeing Model 747-400 and Model 757 series airplanes are equipped with similar cargo compartment fire extinguishing agent containers and systems as are installed on the Model 767. These models, therefore, would be subject to the same unsafe condition indentified on the Model 767.

The FAA has reviewed and approved Boeing Service Bulletins 757-26A0026, 747-26A2180, 767-26A0075, and 767-26-0076, all dated March 28, 1991; and 757-26-0027, Revision 1, dated April 11, 1991. These service bulletins identify the affected airplanes; describe procedures for a one-time inspection of the fire extinguishing agent containers; and describe procedures for removal and replacement, if necessary, of the fire extinguishing agent containers.

The FAA has also reviewed and approved Pacific Scientific HTL/Kin-Tech Division Alert Service Bulletin 26A1100, Revision 1, dated April 3, 1991, which identifies the cargo fire extinguishing containers that may be contaminated.

Since this condition is likely to exist on other airplanes of the same type designs, this AD requires a one-time inspection to locate, remove, and replace, if necessary, certain cargo fire extinguishing agent containers, in accordance with the service bulletins previously described.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-12-03. **Boeing:** Amendment 39-7014. Docket 91-NM-100-AD.

Applicability: Model 757, 747-400, and 767 series airplanes; as listed in Boeing Service Bulletins 757-26A0026, 747-26A2180, 767-26A0075, and 767-26-0076, each dated March 28, 1991, and 757-26-0027, Revision 1, dated April 11, 1991; certificated in any category.

Compliance: Required within 30 calendar days after the effective date of this AD, unless previously accomplished.

To prevent reduced or blocked discharge of fire extinguishing agent from the cargo compartment metered system, and to prevent false indications of low pressure in the initial discharge system, accomplish the following:

(a) Determine the part number and serial number of each cargo compartment fire extinguishing agent container by inspection of aircraft records or visual inspection of the containers. If the part number and serial number are listed in appendix 1 of Pacific Scientific HTL/Kin-Tech Division Alert Service Bulletin 26A1100, Revision 1, dated April 3, 1991, prior to further flight, replace the container with one having a part number and serial number not listed in that Pacific Scientific HTL service bulletin. If the part number and serial number are not listed in that Pacific Scientific HTL service bulletin, no further action is required.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

The required inspections shall be conducted on those airplanes listed in the "Effectivity" sections of Boeing Service Bulletins 757-26A0026, 747-26A2180, 767-26A0075, and 767-26-0076, each dated March 28, 1991; and Boeing Service Bulletin 757-26-0027, Revision 1, dated April 11, 1991. Part numbers and serial numbers of the cargo compartment fire extinguishing agent containers installed on the airplane shall be compared against the listing of part numbers and serial numbers of potentially contaminated containers contained in Appendix 1, pages 1 through 16, of Pacific Scientific, HTL/Kin-Tech Division, Alert Service Bulletin 26A1100, Revision 1, dated April 3, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39-7014, AD 91-12-03) becomes effective June 19, 1991.

Issued in Renton, Washington, on May 20, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-13057 Filed 6-3-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-84-AD; Amdt. 39-7004]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting Airworthiness Directive (AD) T91-07-51, which was previously made effective as to all known U.S. owners and operators of Boeing Model 757 series airplanes by individual telegrams. This AD requires a one-time inspection for improperly installed nuts in the upper and lower attachments of the rudder yaw damper pogo assembly; replacement, if necessary; and reporting of improper installation to the FAA. This action is prompted by a recent report of improper installation of the rudder yaw damper pogo assembly during production. The loss of this attachment could result in the rudder becoming unrestrained such that rudder oscillation is probable.

DATES: Effective July 1, 1991, as to all persons except those persons to whom it was made immediately effective by telegraphic AD T91-07-51, issued March 27, 1991, which contained this amendment. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 1, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2772. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: On March 27, 1991, the FAA issued telegraphic AD T91-07-51, applicable to Boeing Model 757 series airplanes, which requires a one-time inspection for improperly installed nuts in the upper and lower attachments of the rudder yaw damper pogo assembly, replacement of improperly installed nuts and bolts, and reporting of improper installation to the FAA.

That action was prompted by a recent report of improper installation of the rudder yaw damper pogo assembly during production. A nut on the lower attachment bolt was found to be cross threaded. The loss of this attachment, which would be undetected by the flight crew, in combination with a failure of the rudder yaw damper shear pin (a component with a known failure history, and which is currently under review by the FAA) would result in the rudder becoming unrestrained such that rudder oscillation is probable.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on March 27, 1991 to all known U.S. owners and operators of Boeing Model 757 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective as to all persons.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13—[Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-07-51. **Boeing:** Amendment 39-7004. Docket No. 91-NM-84-AD.

Applicability: Model 757 series airplanes, line number 154 through 350, except line numbers 332 and 340, certificated in any category.

Compliance: Required as indicated, unless previously accomplished. To detect improperly installed nuts in the upper and lower attachment of the rudder yaw damper pogo assembly, accomplish the following:

A. Within the next 60 flight cycles or 20 days after the effective date of this AD, whichever occurs sooner, inspect the upper and lower attachment of the rudder yaw damper pogo assembly for improper installation of the nuts in accordance with Boeing Telegram M-7272-91-1886, dated March 22, 1991. If less than one thread from the bolt protrudes through the nut, or if the nut is or appears to be cross threaded, replace both the nut and bolt prior to further flight.

B. Within 10 days after completion of the inspection required by paragraph A. of this AD, submit a report of findings of discrepancies to the Manager, Seattle Manufacturing Inspection District Office, ANM-108S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; fax: (206) 227-1181.

C. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

The inspection shall be done in accordance with Boeing Telegram M-7272-91-1886, dated March 22, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment becomes effective July 1, 1991, as to all persons, except those persons to whom it was made immediately effective by telegraphic AD T91-07-51, issued March 27, 1991, which contained this amendment.

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Issued in Renton, Washington, on May 9, 1991.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-12985 Filed 6-3-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-85-AD; Amendment 39-7002]

Airworthiness Directives; Boeing Model 707/720 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 707/720 series airplanes, which requires inspection and repair, if necessary, of cracks in the wing rear spar upper chord. This amendment is prompted by a recent report of a 59-inch crack inboard of wing station (WS) 360. This condition, if not corrected, could result in crack propagation to the point where fail-safe loads can no longer be supported. This could lead to failure of the rear spar, and subsequent failure of the wing.

DATES: Effective June 19, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of June 19, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Della Henriksen Swartz, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2776. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Recently, one operator of a Boeing Model 707/720 series airplane reported a 59-inch crack in the wing rear spar upper chord which was located between wing station (WS) 234 and WS 293, inboard of the inboard engine nacelle. Fuel leakage resulted, which led to discovery of the crack. There was also a previous report of a 12-inch crack in the wing rear spar upper chord inboard of WS 360 on another Model 707/720. Cracks in the rear spar upper chord are attributed to a combination of corrosion and fatigue resulting from loads induced in the spar chord at rib attachments and stiffener locations. Cracks of such length may lower the fail-safe load capability below required minimums, and, if left undetected and unrepaired, could result in buckling of the upper rear spar and failure of the wing.

The FAA has reviewed and approved Boeing Service Bulletin 3240, Revision 3, dated October 18, 1965, which describes the procedures for periodic visual inspections of the wing rear spar upper chord for cracks and corrosion, and procedures for repairs if cracks or corrosion areas are found.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires repetitive visual inspections of the wing rear spar upper chord inboard of WS 360 at rib and stiffener locations, and repair, if necessary, in accordance with the service bulletin previously described.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA intends to initiate further rulemaking action to require a finite time limit on stop-drill repairs to the wing rear spar in accordance with Boeing Service Bulletin 3240, Revision 3, dated October 18, 1965, or previous revisions, on all affected Model 707/720 series airplanes. The stop-drill repair is considered interim action at this time. However, the proposed compliance time for final repair after stop drilling is sufficiently long so that notice and public comment will not be impracticable.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13—[AMENDED]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-11-06. Boeing: Amendment 39-7002. Docket No. 91-NM-85-AD.

Applicability: Model 707/720 series airplanes, listed in Boeing Service Bulletin 3240, Revision 3, dated October 18, 1965, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To ensure continued structural integrity of the wing rear spar upper chord, accomplish the following:

(a) Perform a close visual inspection for cracks and corrosion of the wing rear spar upper chord from wing station (WS) 360 to WS 109.45 at rib and stiffener locations, in accordance with Boeing Service Bulletin 3240, Revision 3, dated October 18, 1965, prior to the later of the times specified in subparagraphs (a)(1) and (a)(2) of this AD, unless previously accomplished within the last 900 flight cycles or 335 days. Repeat the inspection at intervals not to exceed 1,000 flight cycles or one year, whichever occurs first.

(1) Within the next 30 days or 100 flight cycles after the effective date of this AD, whichever occurs first; or

(2) Prior to the accumulation of 10,000 flight cycles.

(b) If cracks or corrosion areas are found, prior to further flight, repair in accordance with Boeing Service Bulletin 3240, Revision 3, dated October 18, 1965. If the stop drill procedure is used (refer to the Boeing Model 707 Structural Repair Manual, Subject 51-2-10, section C, for the recommended stop drill procedure), perform an eddy current inspection of the stop drill hole in accordance with Subject 5-5-1 of Boeing Document D6-7170, Non-Destructive Test Document, to ensure that the crack does not extend beyond the stop drill.

(c) After accomplishing each of the inspections required by paragraphs (a) and (b) of this AD, and after performing repairs, apply BMS 3-23 corrosion inhibitor, or equivalent, to the affected areas.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector who may concur or comment and then send it to the Manager, Seattle ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

The inspections and repairs shall be done in accordance with Boeing Service Bulletin 3240, Revision 3, dated October 18, 1965. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

This amendment (39-7002, AD 91-11-06) becomes effective June 19, 1991.

Issued in Renton, Washington, on May 8, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-12984 Filed 6-3-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-CE-05-AD; Amendment 39-7017; AD 91-12-06]

Airworthiness Directives; GROB Luft und Raumfahrt Model G 109B Motor Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to GROB Luft und Raumfahrt Model G 109B motor gliders. This action requires a one-time inspection of the security of the stud bolts in the root rib stud plate. Studs have separated from the root rib stud plate on several of the affected motor gliders and caused interference between the aileron and airbrake control systems. The actions specified by this AD are intended to prevent the loss of these critical systems and the possible loss of control of the airplane.

EFFECTIVE DATE: July 5, 1991.

ADDRESSES: GROB Service Bulletin (SB) No. TM 817-29, dated August 6, 1990, that is discussed in this AD may be obtained from GROB Luft und Raumfahrt, D-8939 Mattsies, Federal Republic of Germany. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. R. Stoer, Program Manager, Brussels Aircraft Certification Staff, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone 322.513.38.30 extension 2710; or Mr. Herman Belderok, Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932; Facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain GROB Luft und Raumfahrt Model G 109B motor gliders was published in the **Federal Register** on February 25, 1991 (56 FR 7621). The action proposed a one-time inspection of the security of the stud bolts in the root rib stud plate in accordance with the instructions in GROB Service Bulletin No. TM-817-29, dated August 6, 1990.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The economic analysis paragraph that is discussed below, has been revised to increase the specified hourly labor rate from $40 an hour (as was cited in the preamble of the notice of proposed rulemaking (NPRM)) to $55 an hour. The FAA determined that it is necessary to increase this rate used in calculating the cost impact associated with AD action to account for various inflationary costs in the aviation industry.

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the change in the economic analysis and minor editorial corrections. These minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The compliance time has been mandated in calendar months instead of hours time-in-service. The FAA determined that this is the most desirable method of compliance for this AD because yearly operational times vary greatly throughout the fleet. For example, one motor glider operator might utilize the glider 10 hours in one month, while another may not utilize the glider 10 hours in one year. Therefore, to maintain continuity and avoid inadvertent grounding of the affected motor gliders, compliance based upon calendar time is mandated.

It is estimated that 32 motor gliders in the U.S. registry will be affected by this AD, that it will take approximately 1.5 hours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,640.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

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PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13—[AMENDED]

2. Section 39.13 is amended by adding the following new AD:

AD 91-13-08 GROB Luft und Raumfahrt: Amendment 39-7017; Docket No. 91-CE-05-AD.

Applicability: Model G 109B motor gliders (serial numbers 6200 through 6362), certificated in any category.

Compliance: Required within the next 3 calendar months after the effective date of this AD, unless already accomplished.

To prevent separation of the studs in the root rib stud plate that could result in loss of the aileron and airbrake control systems, accomplish the following:

(a) Inspect the security of the studs in the root rib stud plate (part number 109B-4108) in accordance with the instructions in GROB Service Bulletin No. TM-817-29, dated August 6, 1990. If any loose studs are found, prior to further flight, repair the stud plate in accordance with the instructions in the referenced SB.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the motor glider to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium; Telephone (322) 513.38.30. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the document discussed in this AD upon request to GROB Luft und Raumfahrt, D-8939 Mattsies, Federal Republic of Germany; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on July 5, 1991.

Issued in Kansas City, Missouri, on May 20, 1991.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-12981 Filed 6-3-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-ANE-36; Amendment 39-7001]

Airworthiness Directives; General Electric Company (GE) CF6-80A and CF6-80C2 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to GE CF6-80A and CF6-80C2 series turbofan engines, which requires ultrasonic inspection of the high pressure compressor rotor (HPCR) stages 11-14 spool-shaft inertia weld for cracks or voids. This amendment is prompted by two HPCR stages 11-14 spool-shaft failures at the inertia weld. This condition, if not corrected, could result in aborted takeoff and uncontained engine failure.

DATES: Effective July 5, 1991.

The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of July 5, 1991.

ADDRESSES: The applicable service information may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, room 132, 111 Merchant Street, Cincinnati, Ohio 45246, or may be examined in the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Karen Grant, Engine Certification Office, ANE-140, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803-5299; telephone (617) 273-7096.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include a new airworthiness directive, applicable to GE CF6-80A and CF6-80C2 series turbofan engines, which requires ultrasonic inspection of the HPCR stages 11-14 spool-shaft inertia weld, was published in the **Federal Register** on December 20, 1990 (55 FR 52180).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

One commenter requested that the uppermost inspection threshold be increased from 5,000 cycles to 6,000 cycles. The commenter further stated that the increase will allow one operator the option of accomplishing the inspections during routine shop visits.

The FAA does not concur with the commenter. An increase to the uppermost inspection threshold does not provide an acceptable level of safety. Therefore, the uppermost inspection threshold will not be increased.

After review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 850 GE CF6-80A and CF6-80C2 series turbofan engines of the affected design in the worldwide fleet. It is estimated that 244 engines installed on aircraft of U.S. registry would be affected by this AD, that it would take approximately 37 manhours per engine to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $496,540.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, and Safety.

The Adopted Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13—[AMENDED]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

91-11-05 General Electric Company: Amendment 39-7001, Docket No. 90-ANE-35.

Applicability: General Electric Company (GE) CF6-80A and CF6-80C2 series engines installed on, but not limited to, Airbus A300 and A310; and Boeing 747 and 767 aircraft.

Compliance: Required as indicated, unless already accomplished.

To prevent aborted takeoff and uncontained engine failure, accomplish the following:

(a) Ultrasonic inspect the inertia weld of affected high pressure compressor rotor (HPCR) stages 11-14 spool-shafts at the next engine shop visit after the effective date of this AD but no later than 5,000 cycles in service (CIS) after the effective date of this AD, according to the following:

(1) Inspect CF6-80A HPCR stages 11-14 spool-shafts, Part Numbers (P/N) 9225M37G11, 9225M37G14, 9225M37G16, 9225M37G18, 9225M37G19, 9225M37G20, 9225M37G21, and 1508M71G01, in accordance with the Accomplishment Instructions in GE CF6-80A Service Bulletin (SB) 72-531, Revision 2, dated May 18, 1990.

(2) Inspect CF6-80C2 HPCR stages 11-14 spool-shafts, P/N 9380M30G07, 9380M30G08, 9380M30G09, 9380M30G10, 1531M21G01, 1509M71G02, 1509M71G03, 1509M71G04, 1509M71G05, and 1509M71G06, in accordance with the Accomplishment Instructions in GE CF6-80C2, SB 72-314, Revision 2, dated June 20, 1990.

(3) Remove from service prior to further flight and replace with serviceable parts, HPCR stages 11-14 spool-shafts with ultrasonic indications greater than or equal to 50 percent full-screen height.

(4) For the purpose of this AD, an engine shop visit is defined as the induction of the engine into a shop where the subsequent maintenance entails removal of the high pressure turbine module.

(5) For the purpose of this AD, definition of ultrasonic indication is provided in GE CF6-80A SB 72-531, Revision 2, dated May 18, 1990, and GE CF6-80C2 SB 72-314, Revision 2, dated June 20, 1990, for the CF6-80A and CF6-80C2 engine models, respectively.

(b) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(c) Upon submission of substantiating data by an owner or operator through an FAA Inspector (maintenance, avionics, or operations, as appropriate) an alternate method of compliance with the requirements of this AD or adjustments to the compliance times specified in this AD may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803-5299.

The ultrasonic inspections shall be done in accordance with following the following GE documents:

Document	Page No.	Issue/ Revision	Date
GE CF6-80A.	2-12, 15, 17-27, 30, 31.	Rev. 1	4/3/89
SB 72-531.	1, 13, 14, 16, 28, 29.	Rev. 2	5/18/90
GE CF6-80C2.	2-12, 15, 17-27, 30, 31.	Rev. 1	4/19/89
SB 72-314.	1, 13, 14, 16, 28, 29.	Rev. 2	5/20/90

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, room 132, 111 Merchant Street, Cincinnati, Ohio 45246. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

This amendment (39-7001, AD 91-11-05) becomes effective July 5, 1991.

Issued in Burlington, Massachusetts, on May 6, 1991.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 91-12983 Filed 6-3-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-CE-07-AD; Amendment 39-7018; AD 91-12-07]

Airworthiness Directives; Wytwornia Sprzetu Komunekacyjnego PZL-Mielec Model M18 (Dromader) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Wytwornia Sprzetu Komunekacyjnego PZL-Mielec Model M18 (Dromader) airplanes. This action requires the modification of the electro-hydraulic control system and the replacement of the associated hydraulic hoses. Several of these hydraulic hoses on the affected airplanes have developed cracks. The actions specified by this AD are intended to prevent failure of the electro-hydraulic control system that results in loss of flap and brake control.

DATES: Effective July 5, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 5, 1991.

ADDRESSES: PZL-Mielec Mandatory Engineering Bulletin No. K/02.141/90, dated April 1990, that is discussed in this AD may be obtained from PZL-Mielec, Ludowego Wojska Polkiego 3, 39-300 Mielec, Poland. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Carl Mittag, Flight Test Pilot, Brussels Aircraft Certification Staff, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000, Brussels, Belgium; Telephone 322 513-3830, Ext 2716; or Mr. Richard Yotter, Supervising Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, FAA, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Wytwornia Sprzetu Komunekacyjnego PZL-Mielec Model M18 (Dromader) airplanes was published in the **Federal Register** on March 8, 1991 (56 FR 9913). The action proposed the modification of the electro-hydraulic control system and the replacement of the associated hydraulic hoses in accordance with the instructions in PZL-Mielec Mandatory Engineering Bulletin No. K/02.141/90, dated April 1990.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The economic analysis paragraph that is discussed below, has been revised to increase the specified hourly labor rate from $40 an hour (as was cited in the preamble of the notice of proposed rulemaking (NPRM)) to $55 an hour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD action to account for various inflationary costs in the aviation industry.

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the change in the economic analysis and minor editorial corrections. These minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

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It is estimated that 62 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 8 hours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $750 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $73,780.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13—[Amended]

2. Section 39.13 is amended by adding the following new AD:

AD 91-12-07 Wytwornia Sprzetu Komunikacyjnego PZL-Mielec:

Amendment No. 39-7018; Docket No. 91-CE-07-AD.

Applicability: Model M18 airplanes (serial numbers (S/N) 1Z013-21 through 1Z023-30), equipped with an agriculture equipment electro-hydraulic control system (Modification D73.701.00.1), certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent failure of the electro-hydraulic control system that results in loss of flap and brake control, accomplish the following:

(a) For S/N 1Z013-21 through 1Z023-30 airplanes, upon the accumulation of 200 hours time-in-service (TIS) or within the next 25 hours TIS after the effective date of this AD, whichever occurs later, replace each flexible hose having part number (P/N) D73.7/21.00.0 or D73.7/24.00.0, with a new hose in accordance with the instructions in PZL-Mielec Mandatory Engineering Bulletin (MEB) No. K/02.141/90, dated April 1990.

(1) If hoses are replaced with either P/N D73.7/21.00.0 or D73.7/24.00.0, replace these hoses at intervals not to exceed 200 hours TIS.

(2) If hoses are replaced with P/N D73.7/26.00.0 or D73.7/25.00.0 hose, no further action is required.

(b) For S/N 1Z013-21 through 1Z022-05 airplanes, upon the accumulation of 500 hours TIS or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, modify the electro-hydraulic control system in accordance with the instructions in Paragraph III, 2. of PZL-Mielec MEB No. K/02.141/90, dated April 1990.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equipment level of safety may be approved by the Manager, Brussels Aircraft Certification Staff, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000, Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Staff.

(e) The modifications and replacements required by this AD shall be done in accordance with PZL-Mielec Mandatory Engineering Bulletin No. K/02.141/90, dated April 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from PZL-Mielec, Ludowego Wojska Polkiego 3, 39-300 Mielec, Poland. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

This amendment becomes effective on July 5, 1991.

Issued in Kansas City, Missouri, on May 20, 1991.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-12982 Filed 6-3-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-CE-44-AD; Amendment 39-7022; AD 91-12-11]

Airworthiness Directives; Beech F90, 200, B200, and 300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Beech F90, 200, B200, and 300 series airplanes. This action requires the inspection and eventual replacement of each cast acrylic cockpit "D" side window with a stretched acrylic window. Crazing, cracking, and delamination have been reported on numerous of the affected cockpit "D" side windows, and four failures (blowouts) of these windows have occurred in the flight compartment (cockpit) of these airplanes. The actions specified by this AD are intended to reduce the possibility of these blowouts and the possible decompression injuries that could result.

EFFECTIVE DATE: July 15, 1991.

ADDRESSES: Beech Service Bulletin No. 2206, Revision 1, dated July 1990, and Beech Service Bulletin No. 2273, Revision 1, dated April 1990, that are discussed in this AD may be obtained from the Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085; Telephone (316) 681-7111. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Don Campbell, Aerospace Engineer, Airframe Branch, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Beech F90, 200, B200, and 300 series airplanes was published in the Federal Register on February 13, 1991 (56 FR 5781). The action proposed the inspection and eventual replacement of each cast acrylic cockpit "D" side window with one made of stretched acrylic in accordance with Beech Service Bulletin No. 2273, Revision 1, dated April 1990.

Beech Service Bulletin No. 2273, Revision 1, dated April 1990, specifies installation procedures for stretched acrylic windows on the Beech Model 300 airplanes. If the affected Model 300 airplanes have stretched acrylic "D" side windows installed in accordance with Beech SB No. 2273 or received stretched acrylic "D" side windows at manufacture, no further action would be required by this AD. No nondestructive testing method exists for determining whether the windows are cast acrylic. If the stretched acrylic "D" side windows were installed at manufacture or by replacement, they will be identified by a placard on the window indicating the applicable part number. If the window is missing such a placard, it must be replaced.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

One commenter supports the AD action. The other commenter expressed concern that all the cabin windows were not addressed by the AD. Since the original issue of Beech Service Bulletin 2206 in October 1987, the FAA has received reports of incidents involving only the cockpit "D" side windows. The problems associated with the cabin and baggage compartment windows are being addressed voluntarily by the airplane owners and operators. The FAA is only addressing the "D" side cockpit windows in this AD action. If reports of incidents involving cabin and baggage cast acrylic windows are received, the FAA may take further rulemaking action in the future.

The compliance times have been established in both hours time-in-service and calendar months. The initial inspection must be performed within the next 150 hours time-in-service, and all cast acrylic "D" side windows must be replaced with stretched acrylic windows within the next 12 months. This 12-calendar month compliance requirement has been established because the durability of these cast acrylic "D" windows is affected by general maintenance chemicals regardless of whether the airplane is in operation. This calendar time requirement also sets forth the same compliance criteria as Beech SB No. 2206, Revision 1, dated July 1990. In addition, yearly operational times of these airplanes vary greatly throughout the fleet. To avoid inadvertent grounding of and to assure the airworthiness of the affected airplanes, hours TIS is required for the initial inspections of paragraph (a) of this AD, and calendar months is required for the replacements required by paragraph (a)(3)(ii) of this AD.

The economic analysis paragraph that is discussed below, has been revised to increase the specific hourly labor rate from $40 an hour (as was cited in the preamble of the notice of proposed rulemaking (NPRM)) to $55 an hour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD action to account for various inflationary costs in the aviation industry.

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the change in the economic analysis labor rate and minor editorial corrections. These minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

It is estimated that 1,808 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 10.5 hours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $1,366 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,125,148.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the prepartion of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

AD 91-12-11 Beech: Amendment 39-7022. Docket No. 90-CE-44-AD. Applicability: Model F90 airplanes (serial number (S/N) LA-2 through LA-236); Models 200 and B200 airplanes (S/N BB-2 through BB-1212); Models 200C and B200C airplanes (S/N BL-1 through BL-72); Models 200 CT and B200CT airplanes (S/N BN-1 through BN-4); Models 200T and B200T airplanes (S/N BT-1 through BT-30); and Model 300 airplanes (S/N FA-* through FA-56), certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent cracking and possible blowout of cast acrylic cockpit "D" said windows that could result in decompression injuries, accomplish the following:

(a) Within the next 150 hours time-in-service after the effective date of this AD, accomplish the following:

(1) Determine if the airplane "D" side window contains a placard bearing one of the part numbers presented below. If it does, then the window is made of stretched acrylic and no further action per this AD is required.

Model	Part No.
F90, 200, 200C, 200CT, 200T, B200, B200C, B200CT, and B200T.	101-420081-5 through 101-420081-10; 50-420066-419, 50-420066-420, 50-420066-437, or 50-420066-438.
300	101-420081-9 through 101-420081-12.

(2) If a Model 300 airplane has a "D" side window installed in accordance with Beech Service Bulletin (SB) 2273, Revision 1, dated April 1990, then the window is stretched acrylic and no further action per this AD is required.

(3) If a cast acrylic "D" side window is installed or if the window material cannot be determined, prior to further flight, inspect the window for cracks, chips, stress crazes, fissure scratches, or other damage in accordance with part I of Beech SB No. 2206, Revision 1, dated July 1990.

(i) If cracks, chips, stress crazes, fissure scratches, or other damage that exceeds the limits specified in Beech SB No. 2206, Revision 1, dated July 1990, is found, prior to further flight, except as noted in paragraph (b) of this AD, replace the window with the applicable streched acrylic window listed in paragraph (a)(1) of this AD.

(ii) If no cracks, chips, stress crazes, fissure scratches, or other damage that exceeds the

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limits specified in Beech SB No. 2206, Revision 1, dated July 1990, is found, within the next 12 calendar months, except as noted in Paragraph (b) of this AD, replace each cast acrylic "D" side window in the crew compartment with the applicable stretched acrylic window listed in paragraph (a)(1) of this AD.

(b) If stretched acrylic windows are not available, but have been ordered, the airplane may be operated unpressurized until the stretched acrylic windows are installed provided that the placards specified on page 10 of Beech SB No. 2206, Revision 1, dated July 1990, are installed in clear view of the pilot's position.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, room 100, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita Aircraft Certification Office.

(e) All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Beech Aircraft Corporation, Commercial Service, Department 52, Wichita, Kansas 67201-0085 or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on July 15, 1991.

Issued in Kansas City, Missouri, on May 21, 1991.

Herman C. Belderok,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-13099 Filed 6-3-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-102-AD; Amendment 39-7019; AD 91-12-08]

Airworthiness Directives; Boeing Model 747-400 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 747-400 series airplanes, which requires an inspection to determine if a certain Collins distance measuring equipment (DME) part number is installed. If that DME is installed, then a limitation must be placed in the FAA-approved airplane flight manual (AFM) to prohibit terminal area and en route navigation (RNAV) operations under certain conditions. This amendment is prompted by reports that a certain DME can cause erroneous distance information to be displayed to the flight crew and sent to the flight management computer (FMC). This condition, if not corrected, could result in decreased en route RNAV accuracy, decreased terminal area navigation capabilities, or missed approaches, and may necessitate the use of an alternative means of navigation for approach or necessitate diverting to an alternative airport.

EFFECTIVE DATE: June 17, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen M. Slotte, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2797. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: An anomaly has been reported in the distance measuring equipment (DME) that may be installed on Boeing Model 747-400 series airplanes. This anomaly causes erroneous DME information to be displayed to the flight crew and sent to the flight management computer (FMC). When this anomaly occurs, the left or right DME interrogator may output either "No Data" or erroneous distance data without a flight deck warning. The DME display will either be blank or provide erroneous distance information. On a 30-second cycle, the erroneously displayed distance will change at a rate equal to the rate of change of distance to the ground station at the time the anomaly occurred, then jump back to the original distance. If the affected channel is retuned either manually or by the FMC, the DME display will go blank. DME-supplied data to the FMC is immediately detected and the erroneous DME information and radio updating of the FMC position on the affected side is locked out. Also, the navigational display on the affected side will not display "DD" (DME-DME) or "VD" (VOR-DME) as the FMC position updating mode.

If this anomaly occurs to the DME on the side of the master FMC, the ability of the slave FMC to radio update may also be affected. If radio updating is unavailable for a specified period, the flight management system-control display unit (FMS-CDU) message "IRS NAV ONLY" will be displayed. The FMC will then navigate without continuous radio updating.

This conditon, if not corrected, could result in decreased en route RNAV accuracy, decreased terminal area navigation capabilities, or missed approaches, and may necessitate the use of an alternative means of navigation for approach or necessitate diverting to an alternative airport.

Since this condition is likely to exist on other airplanes of the same type design, this AD requires the inspection of all Boeing Model 747-400 series airplanes to determine if Collins DME part number 622-4540-120 is installed. If that DME is installed on the airplane, a limitation must be placed in the FAA-approved airplane flight manual (AFM) to prohibit terminal area and en route area navigation (RNAV) operations under certain conditions.

The FAA considers this to be an interim action and will consider further rulemaking when a corrective modification is developed and approved.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-12-08. Boeing: Amendment 39-7019. Docket 91-NM-102-AD.

Applicability: All Model 747-400 series airplanes, certificated in any category.

Compliance: Required as indicated within 10 days after the effective date of this AD, unless previously accomplished.

To prevent the use of erroneous DME information, decreased enroute RNAV accuracy, decreased terminal area navigation capabilities, and an increase in missed approaches, accomplish the following:

(a) Inspect the airplane or airplane records to determine if Collins distance measuring equipment (DME) part number 622-4540-120 is installed.

(1) If that Collins DME part number is not installed on the airplane, no further action is required.

(2) If that Collins DME part number is installed, prior to further flight, add the following statements to the Limitations Section of the FAA-approved airplane flight manual (AFM). This may be accomplished by placing a copy of this AD in the AFM.

Electronic Systems

Flight Management Computer System

If the FMS-CDU message "IRS NAV ONLY" is displayed in an area where radio updating is expected, terminal area and enroute RNAV operations using the affected FMC are prohibited and the associated DME must be considered inoperative. RNAV operations may be resumed if radio updating is reestablished by the affected FMC.

Distance Measuring Equipment

During approaches requiring DME, left and right DMEs must be tuned to the same station and monitored. If a difference is noted, only that DME which results in a display of "DD" or "VD" on the navigational display may be used for approach.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Operations Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

This amendment (39-7019, AD 91-12-08) becomes effective June 17, 1991.

Issued in Renton, Washington, on May 21, 1991.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-13100 Filed 6-3-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Technology Administration

15 CFR Part 295

[Docket No. 900130-0152]

Advanced Technology Program

AGENCY: Technology Administration, Commerce.

ACTION: Final rule; nomenclature change.

SUMMARY: On July 24, 1990, the Under Secretary of Commerce for Technology issued a final rule adding 15 CFR part 295 (55 FR 30140) to implement the Advanced Technology Program (hereinafter "ATP"). The ATP was authorized by section 5131 of the Omnibus Trade and Competitiveness Act of 1988, codified at 15 U.S.C. 278n. Section 295.4, entitled Notice of Availability of Funds, contains paragraph (b), which requires that proposals filed under the ATP must be submitted with a Standard Form 424. Since the time of the issuance of the final rule, the Standard Form 424 has been replaced with the NIST 1262 or NIST 1263 forms. Therefore, § 295.4(b) of 15 CFR part 295 must be amended to reflect this change.

EFFECTIVE DATE: June 4, 1991.

FOR FURTHER INFORMATION CONTACT: Philip J. Greene (202) 377-5394.

SUPPLEMENTARY INFORMATION: Because this rulemaking document concerns agency organization and management, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and is not subject to the requirements of that order.

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedures Act (5 U.S.C. 553), or by any other law, no regulatory flexibility analysis has to be or will be prepared for purposes of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)).

This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612. This information collection has been approved by the Office of Management and Budget under Control No. 0693-0009.

List of Subjects in 15 CFR Part 295

Science and technology, Inventions and patents, Laboratories, Research, Scientists.

PART 15—[AMENDED]

For the reasons set forth in the Preamble, 15 CFR part 295 is amended as follows:

§ 295.4 [Amended]

1. The authority citation for 15 CFR part 295 continues to read as follows:

Authority: 15 U.S.C. 271 et seq., and sec. 5131 of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100-418, 102 Stat. 1439, 15 U.S.C. 278n.

2. In 15 CFR 295.4(b) remove the words "Standard Form 424" and add, in their place, the words "NIST 1262 or NIST 1263."

3. The following OMB Control Number is added at the end of § 295.4:

(Approved by the Office of Management and Budget under Control Number 0693-0009)

Dated: May 28, 1991.

Robert M. White,

Under Secretary of Commerce for Technology.

[FR Doc. 91-13096 Filed 6-3-91; 8:45 am]

BILLING CODE 3510-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 162

[T.D. 91-52]

Administrative Forfeiture of Seized Property

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to conform to the provisions of the Customs and Trade Act of 1990 which increased the dollar amount of property which can be administratively forfeited from $100,000 to $500,000 and to include monetary instruments as property which may be administratively forfeited. Additionally, the Customs Regulations are amended to raise the ceiling for the amount of the

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bond filed by a claimant to administratively forfeited property from $2,500 to $5,000. These changes will increase the efficiency of Customs seized property program.

DATES: June 4, 1991.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Penalties Branch (202-566-8317).

SUPPLEMENTARY INFORMATION:

Background

The Customs and Trade Act of 1990 in section 612 (Pub. L. 101-382) amended section 607 of the Tariff Act of 1930, as amended (19 U.S.C. 1607), to provide for the administrative forfeiture of seized property where the value of the seized vessel, vehicle, aircraft, merchandise, or baggage does not exceed $500,000. Prior to this amendment, administrative forfeiture could not be used if the property exceeded $100,000 in value. The Customs Regulations are being amended to reflect this higher limit.

The Customs and Trade Act of 1990 also amended section 607 of the Tariff Act of 1930 by providing for the administrative forfeiture of seized merchandise where "such seized merchandise is any monetary instrument within the meaning of section 5312(a)(3) of title 31 of the United States Code." Pursuant to this amendment, Customs may commence administrative forfeiture proceedings against all monetary instruments seized for violation of monetary instrument reporting requirements, money laundering or other violations for which Customs has authority to seize and forfeit. This additional area for exercise of administrative forfeiture authority is being added to the Customs Regulations.

The Customs Regulations currently provide in § 162.45(a)(3) and 162.47(b) (19 CFR 162.45(a)(3), 162.47(b)) for a ceiling amount of $2,500 for the bond filed by a claimant to administratively forfeited property. The Customs Regulations are being amended to provide, as now required by section 608, Tariff Act of 1930, as amended (19 U.S.C. 1608) that a claimant to administratively forfeited property is required to file a bond in the penal sum of $5,000 or 10 percent of the value of the claimed property, whichever is lower, but not less than $250.

Inapplicability of Notice and Delayed Effective Date Provisions

Inasmuch as this amendment implements statutory requirements, pursuant to 5 U.S.C. 552(b)(B), notice and public procedure thereon are unnecessary. Similarly, pursuant to 5 U.S.C. 553(d)(1), (3), a delayed effective date is not provided.

Executive Order 12291 and Regulatory Flexibility Act

In that this amendment does not meet the criteria for a "major rule" within the meaning of Executive Order 12291, Customs has not prepared a regulatory impact analysis. Inasmuch as a notice of proposed rulemaking is not required for this final regulation, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

Drafting Information

The principal author of this document was Michael Smith, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 162

Administrative practice and procedure, Law enforcement, Penalties, Seizures and forfeitures, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, part 162, Customs Regulations (19 CFR part 162), is amended as set forth below:

PART 162—RECORDKEEPING, INSPECTION, SEARCH, AND SEIZURE

1. The general authority for part 162 and the authority for § 162.47 continue to read as follows and an authority for § 162.45 is added:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624.

* * * * *

§ 162.45 also issued under 19 U.S.C. 1607, 1608;

* * * * *

§ 162.47 also issued under 19 U.S.C. 1608.

§ 162.45 [Amended]

2. Section 162.45(a) is amended by removing the amount "$100,000" and adding in its place "$500,000"; and by adding after the words "controlled substance," the phrase "or such seized merchandise is any monetary instrument within the meaning of 31 U.S.C. 5312(a)(3),".

3. In section 162.45(a)(3) remove the amount "$2,500" and add in its place "$5,000".

§ 162.47 [Amended]

4. Section 162.47(a) is amended by adding after the words "Tariff Act of 1930" the phrase", as amended"; and by removing the amount of "$100,000" and adding in its place "$500,000"; and by adding after the words "controlled substance," the phrase "or in the amount of any monetary instruments within the meaning of 31 U.S.C. 5312(a)(3),".

5. Section 162.47(b) is amended by removing the amount "$2,500" and adding in its place "$5,000"; and by adding after the words "Tariff Act of 1930" the phrase ", as amended"

Carol Hallett,

Commissioner of Customs.

Approved: May 8, 1991.

John P. Simpson,

Acting Assistant Secretary of Treasury.

[FR Doc. 91-13127 Filed 6-3-91; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

26 CFR Parts 42 and 602

[T.D. 8351]

RIN 1545-AP22

Fuel Floor Stocks Tax of 1990

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the floor stocks taxes on gasoline, diesel fuel, and aviation fuel held on December 1, 1990. These rules reflect changes to the law made by the Revenue Reconciliation Act of 1990. The final regulations provide guidance relating to the person liable for the tax, exemptions from the tax, and reporting and recordkeeping responsibilities for the tax.

EFFECTIVE DATE: These regulations are effective December 1, 1990.

FOR FURTHER INFORMATION CONTACT: Frank Boland, (202) 566-4475 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1545-1206. The estimated average burden per recordkeeper is 0.5 hour.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual recordkeepers may require greater or less time depending on their particular circumstances.

Comments regarding the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Office, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On December 3, 1990, the **Federal Register** (55 FR 49908) published proposed amendments to the regulations (26 CFR part 42) under sections 11211 and 11213 of the Revenue Reconciliation Act of 1990, Public Law 101-508 (the "1990 Act"). A public hearing was not requested and none was held. However, several comments were received. After consideration of all comments regarding the proposed regulations, the proposed regulations are adopted as final regulations as revised by this Treasury decision.

Explanation of Provisions

The preamble to the December 3, 1990, notice of proposed rulemaking contains an explanation of the proposed regulations, that except as discussed below, is applicable to the final regulations.

Public Comments

Method of payment. The proposed regulations required that payment of the floor stocks tax be made by deposit, using Form 8109, Federal Tax Deposit Coupon. This form may be used only by persons that have been assigned an employer identification number ("EIN"). Several commentators stated that some small businesses that are liable for the tax do not have an EIN, but would be required to obtain one for the sole purpose of paying this tax. To relieve this burden on small business, § 42.5(c) has been revised to allow all taxpayers to pay the tax either (1) with the return (Form 720, *Quarterly Federal Excise Tax Return* (Revised January 1991)), or (2) by deposit. Any taxpayer without an EIN may use his or her social security number on Form 720. The instructions for Form 720 contain complete information on paying the tax and filing the return.

State-owned trains. One commentator suggested that diesel fuel held for use in state-owned, public passenger trains should not be subject to the floor stocks tax. This suggestion was not adopted in the final regulations because section 11211(j)(1) of the 1990 Act imposes the floor stocks tax on diesel fuel held for use in any train. Section 11211(j)(5) of the 1990 Act allows an exemption from the floor stocks tax for fuel held for a use that is exempt from the diesel fuel tax, but the Code does not provide an excise tax exemption for state-owned trains. See sections 4093(c)(2)(B) and 6427(1)(4) of the Code. If enacted, section 102(b)(3)(B) of the Technical Corrections Act of 1991, as introduced in the House of Representatives, retroactively would exempt diesel fuel used in a train by a state or any political subdivision thereof from both the diesel fuel excise tax and the floor stocks tax.

Fuel held for own use. Several commentators suggested that fuel held in storage tanks by businesses for use in their own highway vehicles should not be subject to the floor stocks tax, even though the amount of fuel held in their storage tanks exceeded the thresholds described in section 11211(j)(7) of the 1990 Act. This suggestion was not adopted in the final regulations because section 11211(j)(1) of the 1990 Act taxes fuel held on December 1, 1990, whether for sale or for use by the holder. Exemptions are provided only for persons that do not hold fuel in excess of the thresholds and for fuel held in fuel supply tanks or used in an exempt use.

Dead storage. One commentator suggested that the regulations provided an exemption for fuel held in "dead storage" (*i.e.*, the amount of fuel held below the mouth of the draw pipe of a storage tank). This commentator noted that section VI(D) of Notice 88-30, 1988-1 C.B. 497, 509, exempted diesel fuel held in dead storage from the 1988 floor stocks tax imposed by section 10502(f) of the Revenue Act of 1987, Public Law 100-203 (the "1987 Act"). Similarly, § 48.4081-1(g)(3)(ii) of proposed regulations (52 FR 44141, 44145) exempted gasoline held in dead storage from the 1988 floor stocks tax imposed by section 1703(f) of the Tax Reform Act of 1986, Public Law 99-514 (the "1986 Act").

The final regulations do not adopt this suggestion. The floor stocks provisions under the 1986 Act and the 1987 Act taxed only fuel that, at the first moment of the relevant date, was held by a dealer for sale. Thus, it was reasonable to exempt from tax fuel held in dead storage because, at the first moment of the relevant date, such fuel was held to facilitate the extraction of other fuel held in the storage tank. The floor stocks tax imposed by the 1990 Act, however, is not limited to fuel held by a dealer for sale. Instead, an exemption is provided for fuel held exclusively for an exempt use. Fuel held in dead storage at the first moment of December 1, 1990, does not qualify for this exemption unless it will be used for an exempt use when it is removed from dead storage.

Another commentator noted that the floor stocks tax on gasoline applies only to previously-taxed fuel and thus gasoline that qualified for the dead-storage exemption from the floor stocks tax imposed by the 1986 Act should be exempt from the floor stocks tax imposed by the 1990 Act. Except in rare and unusual cases, however, fuel held on December 1, 1990, does not qualify for such an exemption. Even if fuel was held in dead storage when the 1986 Act or 1987 Act floor stocks tax was imposed, it is ordinarily impossible to establish that the same fuel has remained in dead storage during the intervening period.

Special Analyses

It has been determined that these regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Frank Boland, Office of Assistant Chief Counsel (Passthroughs & Special Industries), Internal Revenue Service. However, other persons from the Service and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 42

Excise taxes, Revenue Reconciliation Act of 1990.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR, ch. I, is amended as follows:

Paragraph 1. A new part 42 of the Code of Federal Regulations is added as follows:

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PART 42—FUEL FLOOR STOCKS TAX FOR 1990

Sec.
42.1 Scope of part.
42.2 Definitions relating to the floor stocks tax.
42.3 Imposition of floor stocks tax.
42.4 Exemptions from floor stocks tax.
42.5 Requirements with respect to inventory, payment and return.
42.6 Applicability of other laws.

Authority: 26 U.S.C. 7805 and sections 11211(j) and 11213(b)(5) of the Revenue Reconciliation Act of 1990 (Pub. L. 101–508).

§ 42.1 Scope of part.

The regulations in this part 42 relate to the fuel floor stocks taxes imposed by sections 11211(j) and 11213(b)(5) of the Revenue Reconciliation Act of 1990, Public Law 101–508. The taxes are imposed on previously-taxed gasoline, diesel fuel, and aviation fuel held at the first moment of December 1, 1990, and on diesel fuel held for use in trains on that date. These regulations describe the specific articles subject to tax, the rates of tax, and the persons liable for tax. These regulations also describe exemptions from the tax and requirements for inventory of fuel, payment of tax, and filing a return reporting the tax. These regulations are effective on December 1, 1990.

§ 42.2 Definitions relating to the floor stocks tax.

(a) *Overview.* This section provides definitions for purposes of the regulations in this part.

(b) *Act.* The term *Act* means the Revenue Reconciliation Act of 1990, Public Law 101–508.

(c) *Aviation fuel.* The term *aviation fuel* means any liquid (other than gasoline) that is commonly or commercially known or sold as a fuel that is suitable for use in an aircraft.

(d) *Controlled group*—(1) *In general.* The term *controlled group* means—

(i) Any controlled group of corporations (within the meaning of paragraph (d)(2) of this section); and

(ii) Any other group of organizations under common control (within the meaning of paragraph (d)(3) of this section).

(2) *Controlled group of corporations*—(i) *In general.* The term *controlled group of corporations* has the meaning given that term by section 1563(a), except that the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears therein.

(ii) *Excluded members.* For purposes of this part, a controlled group of corporations includes members that are described in section 1563(b) (relating to excluded members).

(iii) *Examples of controlled groups.* Under section 1563(a), controlled groups of corporations include, but are not limited to—

(A) Parent-subsidiary controlled groups as defined in § 1.1563–1(a)(2);

(B) Brother-sister controlled groups as defined in § 1.1563–1(a)(3); and

(C) Combined groups as defined in § 1.1563–1(a)(4).

(3) *Group of organizations under common control.* The term "group of organizations under common control" means any group of organizations (as defined in § 1.52–1(b)) that would be treated as a group of trades or businesses under common control for purposes of § 1.52–1 if—

(i) The rules of § 1.52–1 were applied without regard to whether an organization conducts a trade or business; and

(ii) The phrase "more than 50 percent" were substituted for "at least 80 percent" each place it appears in § 1.52–1(d)(2).

(e) *Diesel fuel.* The term *diesel fuel* means any liquid (including a diesel fuel/alcohol mixture but not including gasoline) that is commonly or commercially known or sold as a fuel that is suitable for use in a diesel-powered highway vehicle or diesel-powered train.

(f) *Diesel fuel/alcohol mixture.* The term *diesel fuel/alcohol mixture* means any mixture described in section 4091(c)(1)(A).

(g) *Floor stocks tax.* The term *floor stocks tax* means the tax imposed by sections 11211(j) and 11213(b)(5) of the Act on fuel held at the first moment of December 1, 1990.

(h) *Fuel.* The term *fuel* means gasoline, diesel fuel, and aviation fuel.

(i) *Gasohol.* The term *gasohol* means any mixture treated as gasohol for purposes of section 4081(c).

(j) *Gasoline.* The term *gasoline* means—

(1) All products (including gasohol) that are commonly or commercially known or sold as gasoline and are suitable for use as a motor fuel (other than products that are not sold as gasoline and have an American Society for Testing Materials octane number of less than 75 as determined by the "motor method"); and

(2) All products that are listed in Revenue Ruling 88–70, 1988–2 Cumulative Bulletin 338, as "gasoline blend stocks" or "products commonly used as additives in gasoline."

(k) *Train.* The term *train* means any equipment or machinery that rides on rails regardless of whether the equipment or machinery transports passengers, freight, or a combination of both passengers and freight. Thus, the term includes a locomotive, work train, switching engine, or track maintenance machine. The term "train" does not include any equipment or machinery that does not ride on rails.

§ 42.3 Imposition of floor stocks tax.

(a) *Overview.* This section identifies the fuels subject to the floor stocks tax, the applicable rates of tax, and the persons liable for the tax.

(b) *Fuels subject to tax and rates of tax*—(1) *Gasoline*—(i) *Imposition of tax.* Section 11211(j)(1)(A) of the Act imposes a floor stocks tax on gasoline (including gasohol)—

(A) On which tax was imposed under section 4081 before December 1, 1990; and

(B) Which is held at the first moment of December 1, 1990, by any person.

(ii) *Generally applicable rate of tax.* Except as otherwise provided in paragraph (b)(1)(iii) of this section, the rate of floor stocks tax on gasoline is 5 cents per gallon.

(iii) *Rates relating to gasohol.* The rate of floor stocks tax under this paragraph (b)(1) is—

(A) 5 cents per gallon in the case of gasohol;

(B) 6.22 cents per gallon in the case of gasoline that was taxed at a reduced rate under section 4081(c) and is used in producing gasohol that contains ethanol;

(C) 5.56 cents per gallon in the case of gasoline that was taxed at a reduced rate under section 4081(c) and is used in producing gasohol that does not contain ethanol;

(D) .55 cent per gallon in the case of gasoline that was not taxed at a reduced rate under section 4081(c) and is used in producing gasohol that contains ethanol (and no amount is recoverable pursuant to section 6427(f) with respect to such gasoline); and

(E) Zero in the case of gasoline that was not taxed at a reduced rate under section 4081(c) and is used in producing gasohol that does not contain ethanol (and .11 cent per gallon is recoverable pursuant to section 6427(f) with respect to such gasoline).

(2) *Diesel fuel*—(i) *Imposition of tax.* Section 11211(j)(1)(A) of the Act imposes a floor stocks tax on diesel fuel (including diesel fuel/alcohol mixtures)—

(A) On which tax was imposed at a Highway Trust Fund financing rate under section 4091 before December 1, 1990; and

(B) Which is held at the first moment of December 1, 1990, by any person.

(ii) *Generally applicable rate of tax.* Except as otherwise provided in paragraph (b)(2)(iii) of this section, the rate of floor stocks tax on diesel fuel described in paragraph (b)(2)(i) of this section is 5 cents per gallon.

(iii) *Rates relating to diesel fuel/alcohol mixtures.* The rate of floor stocks tax under this paragraph (b)(2) is—

(A) 5 cents per gallon in the case of a diesel fuel/alcohol mixture;

(B) 6.22 cents per gallon in the case of diesel fuel that was taxed at a reduced rate under section 4091(c)(1)(B) and is used in producing a diesel fuel/alcohol mixture that contains ethanol;

(C) 5.56 cents per gallon in the case of diesel fuel that was taxed at a reduced rate under section 4091(c)(1)(B) and is used in producing a diesel fuel/alcohol mixture that does not contain ethanol;

(D) 1.22 cents per gallon in the case of diesel fuel that was not taxed at a reduced rate under section 4091(c)(1)(B) and is used in producing a diesel fuel/alcohol mixture that contains ethanol (and no amount is recoverable pursuant to section 6427(f) with respect to such diesel fuel); and

(E) .56 cent per gallon in the case of diesel fuel that was not taxed at a reduced rate under section 4091(c)(1)(B) and is used in producing a diesel fuel/alcohol mixture that does not contain ethanol (and no amount is recoverable pursuant to section 6427(f) with respect to such diesel fuel).

(3) *Diesel fuel held for use in trains*—(i) *Imposition of tax.* Section 11211(j)(1)(B) of the Act imposes a floor stocks tax on diesel fuel—

(A) On which no tax was imposed at a Highway Trust Fund financing rate under section 4091 before December 1, 1990; and

(B) Which is held at the first moment of December 1, 1990, by any person and is used by that person to propel a train on rails.

(ii) *Rate of tax.* The rate of floor stocks tax under this paragraph (b)(3) is 2.5 cents per gallon.

(4) *Aviation fuel*—(i) *Imposition of tax.* Section 11213(b)(5) of the Act imposes a floor stocks tax on aviation fuel—

(A) On which tax was imposed under section 4041(c)(1) or 4091 before December 1, 1990; and

(B) Which is held at the first moment of December 1, 1990, by any person.

(ii) *Rate of tax.* The rate of floor stocks tax under this paragraph (b)(4) is 3.5 cents per gallon.

(c) *Person liable for tax*—(1) *In general.* The person liable for the floor stocks tax on any fuel subject to tax is the person that holds the fuel at the first moment of December 1, 1990. For purposes of the floor stocks tax, fuel is held at the first moment of December 1, 1990, by the person that has title to the fuel (whether or not delivery to that person has been made) at such time, as determined under applicable local law.

(2) *Special rule.* Each business unit that has, or is required to have, its own employer identification number is treated as a separate person for purposes of the floor stocks tax. For example, a chain of retail service stations that has one employer identification number is one person for purposes of the floor stocks tax and a parent corporation and a subsidiary that each have a different employer identification number are two persons for purposes of the floor stocks tax.

(d) *Treatment of fuel in foreign trade zones.* Notwithstanding the Act of June 18, 1934 (48 Stat. 998, 19 U.S.C. 81a) or any other provision of law, any fuel that is located in a foreign trade zone at the first moment of December 1, 1990, shall be subject to floor stocks tax if—

(1) Internal revenue taxes have been determined, or customs duties liquidated, with respect to such fuel before December 1, 1990, pursuant to a request made under the first proviso of section 3(a) of the Act of June 18, 1934; or

(2) Such fuel is held at the first moment of December 1, 1990, under the supervision of a customs officer pursuant to the second proviso of such section 3(a).

§ 42.4 Exemptions from floor stocks tax.

(a) *Overview.* This section provides rules for determining exemptions from the floor stocks tax. Generally, tax is not imposed on—

(1) Fuel held exclusively for an exempt use;

(2) Gasoline or diesel fuel held in the tank of a motor vehicle or motorboat; or

(3) Gasoline or diesel fuel held by a person if the person does not hold more than a specified amount of that fuel.

(b) *Fuel held for exempt uses*—(1) *Gasoline.* The floor stocks tax does not apply to gasoline held exclusively for an exempt use. In determining whether gasoline is held exclusively for an exempt use, the following rules apply:

(i) Except as otherwise provided in paragraph (b)(1)(ii) of this section, the term "exempt use" means, with respect to gasoline, any use that is described in section 6420, 6421 or 6427 and that entitles the user to a credit or refund of the tax imposed by section 4081. These uses include use on a farm for farming purposes; use in an off-highway business use; use in certain intercity, local and school buses; exclusive use by a state or local government or nonprofit educational organization; and use in commercial aircraft.

(ii) Use of gasoline in producing gasohol is not an exempt use under this paragraph (b)(1).

(iii) Gasoline is held exclusively for an exempt use only if—

(A) The person that holds the gasoline at the first moment of December 1, 1990, actually uses the gasoline in an exempt use; or

(B) A gasoline wholesale distributor described in section 6416(a)(4) holds the gasoline at the first moment of December 1, 1990, and sells the gasoline at a tax-excluded price for a use described in section 6416(b)(2).

(iv) Except as provided in paragraph (b)(1)(iii) of this section, gasoline is not held exclusively for an exempt use if, at the first moment of December 1, 1990, the gasoline is held for resale (including resale to a person that will use the gasoline in an exempt use). Thus, for example, gasoline held by a gasoline service station is not exempt from the floor stocks tax under this paragraph (b)(1) if it will be sold to a farmer for use on a farm for farming purposes. However, the farmer would be eligible to claim an income tax credit for the tax under sections 34 and 6420.

(2) *Diesel fuel.* The floor stocks tax does not apply to diesel fuel held exclusively for an exempt use. In determining whether diesel fuel is held exclusively for an exempt use, the following rules apply:

(i) Except as otherwise provided in paragraph (b)(2)(ii) or (iii) of this section, the term "exempt use" means, with respect to diesel fuel, any use that is described in section 6427 and that entitles the user to a credit or refund of the tax imposed by section 4091. These uses include use other than as a fuel in a diesel-powered highway vehicle (as defined in § 48.4041–8(b)(4)), use on a farm for farming purposes, exclusive use by a state or local government or nonprofit educational organization, and use in an off-highway business use.

(ii) Diesel fuel held for use in a diesel-powered train is not exempt from the floor stocks tax under this paragraph (b)(2) even if the fuel is held by a state or local government. Similarly, the exemptions for use other than as fuel in a diesel-powered highway vehicle and off-highway business use do not apply to fuel used in a diesel-powered train. See section 6427(l)(4), as added by the Act.

(iii) Use of diesel fuel in producing a diesel fuel/alcohol mixture is not an exempt use under this paragraph (b)(2).

(iv) The floor stocks tax does not apply to diesel fuel held for use in a bus

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if a credit for, or a refund of, the tax, in whole or in part, is allowable for diesel fuel used in the bus under section 6427(b). Thus, for example, the floor stocks tax does not apply to diesel fuel held for use in an intercity bus if the diesel fuel was previously subject to tax at a reduced rate of 3 cents per gallon or 3.1 cents per gallon.

(v) Diesel fuel is held exclusively for an exempt use only if the person that holds the fuel at the first moment of December 1, 1990, actually uses the diesel fuel in an exempt use.

(vi) Diesel fuel is not held exclusively for an exempt use if, at the first moment of December 1, 1990, the diesel fuel is held for resale (including resale to a person that will use the diesel fuel in an exempt use). Thus, for example, diesel fuel held by a retailer is not exempt from the floor stocks tax under this paragraph (b)(2) if it will be sold to a construction company for use in the construction company's off-road machinery. However, the construction company would be eligible to claim a credit or refund of the tax under sections 34 and 6427.

(3) *Aviation fuel.* The floor stocks tax does not apply to aviation fuel held exclusively for an exempt use. If determining whether aviation fuel is held exclusively for an exempt use, the following rules apply:

(i) The term *exempt use* means, with respect to aviation fuel, any use that is described in section 6427 and that entitles the user to a credit or refund of the tax imposed by section 4091. These uses include use other than as a fuel in an aircraft in noncommercial aviation (as defined in section 4041(c)), use on a farm for farming purposes, and exclusive use by a state or local government or nonprofit educational organization.

(ii) Aviation fuel is held exclusively for an exempt use only if the person that holds the aviation fuel at the first moment of December 1, 1990, actually uses the aviation fuel in an exempt use.

(iii) Aviation fuel is not held exclusively for an exempt use if, at the first moment of December 1, 1990, the aviation fuel is held for resale (including resale to a person that will use the aviation fuel in an exempt use). Thus, for example, aviation fuel held by a fixed base operator is not exempt from the floor stocks tax under this paragraph (b)(3) if it will be sold to an airline for use in commercial aviation. However, the airline would be eligible to claim a credit or refund of the tax under sections 34 and 6427.

(c) *Exemption for gasoline or diesel fuel held in vehicle tank.* The floor stocks tax does not apply to gasoline or diesel fuel held, at the first moment of December 1, 1990, in the fuel supply tank of a motor vehicle (as defined in § 48.4041-8(c)) or motorboat. Fuel held in the fuel supply tank of a train or an aircraft is not exempt from the floor stocks tax under this paragraph (c).

(d) *Exemption for certain amounts of fuel*—(1) *In general.* The floor stocks tax does not apply to—

(i) Gasoline that a person holds at the first moment of December 1, 1990, if the aggregate amount of gasoline held by that person at that time does not exceed 4,000 gallons; and

(ii) Diesel fuel that a person holds at the first moment of December 1, 1990, if the aggregate amount of diesel fuel held by that person at that time does not exceed 2,000 gallons.

(2) *Additional rules.* The following additional rules apply for purposes of this paragraph (d):

(i) *Aviation fuel.* Aviation fuel is not exempt from the floor stocks tax merely because it is held in *de minimis* amounts at the first moment of December 1, 1990.

(ii) *Coordination with other exemptions.* In determining the aggregate amount of gasoline or diesel fuel held by a person at the first moment of December 1, 1990, there shall be excluded the amount of gasoline or diesel fuel exempt from the floor stocks tax by reason of paragraph (b) of this section (relating to fuel held for exempt uses), or paragraph (c) of this section (relating to gasoline and diesel fuel held in the tank of a vehicle).

(iii) *All amounts held subject to tax if threshold exceeded.* The floor stocks tax applies to all amounts of gasoline (or diesel fuel, as the case may be) held by a person at the first moment of December 1, 1990 (and not exempt from tax under paragraph (b) or (c) of this section) if the aggregate amount of such fuel exceeds 4,000 gallons (2,000 gallons in the case of diesel fuel).

(iv) *Controlled groups.* Gasoline (or diesel fuel) held by a member of a controlled group (as defined in § 42.2(d)) is not exempt from the floor stocks tax under this paragraph (d) if the aggregate amount of all gasoline (or diesel fuel, as the case may be) held by all members of the controlled group exceeds 4,000 gallons (2,000 gallons in the case of diesel fuel).

(3) *Examples.* The following examples illustrate the rules of this paragraph (d):

Example 1. *A* holds 10,000 gallons of gasoline on December 1, 1990, 6,000 of which are held exclusively for use on a farm for farming purposes. The remaining 4,000 gallons are held for use in *A*'s highway vehicles. *A* is not a member of a controlled group. *A* is not subject to the floor stocks tax on any of the 10,000 gallons because the aggregate amount of fuel held by *A* for uses other than exempt uses does not exceed 4,000 gallons.

Example 2. On December 1, 1990, *B* holds 1,900 gallons of diesel fuel and 3,900 gallons of gasoline. *B* is not a member of a controlled group. *B* is not liable for the floor stocks tax on diesel fuel because *B*'s holdings of diesel fuel do not exceed 2,000 gallons. *B* is not liable for the floor stocks tax on gasoline because *B*'s holdings of gasoline do not exceed 4,000 gallons.

Example 3. On December 1, 1990, *C* holds 4,100 gallons of gasoline for resale at a service station. *C* is liable for a floor stocks tax of $205 (4,100×$.05) on that gasoline.

Example 4. D, E, and *F* are members of the same controlled group. On December 1, 1990, *D* holds 2,000 gallons of gasoline, *E* holds 2,500 gallons of gasoline, and *F* holds 500 gallons of gasoline. None of the gasoline is held for an exempt use or in the fuel supply tank of a motor vehicle. Because the aggregate amount held by all members of the group exceeds 4,000 gallons, all gasoline held by each member is subject to the floor stocks tax. Thus, *D* is liable for tax of $100 (2,000×$.05), *E* is liable for tax of $125 (2,500×$.05) and *F* is liable for tax of $25 (500×$.05).

§ 42.5 Requirements with respect to inventory, payment and return.

(a) *Overview.* This section sets forth requirements for inventory of fuel, payment of tax and filing a return reporting the tax.

(b) *Inventory.* Every person liable for the floor stocks tax, every person holding gasoline or diesel fuel for resale, and every person holding gasoline or diesel fuel for use as a fuel in a trade or business of providing transportation services by motor vehicle (other than a bus to which section 6421(b) or 6427(b) applies) shall prepare an inventory of all gasoline, diesel fuel and aviation fuel held by that person at the first moment of December 1, 1990 (other than fuel on which no tax under section 4061 or 4091 was imposed before December 1, 1990, and gasoline or diesel fuel held in the fuel supply tank of a motor vehicle or motorboat). In addition, every person who, at the first moment of December 1, 1990, holds diesel fuel for use in a train shall prepare an inventory of all such fuel. The inventory shall be determined as of the first moment of December 1, 1990, but work-back and work-forward inventories will be acceptable if supported by adequate commercial records of receipt, use and disposition of the fuel. Persons subject to the inventory requirement of this paragraph (b) must maintain records of the inventory and make the records available for inspection and copying by internal revenue agents and officers. Records of the inventory are not to be filed with the Internal Revenue Service.

(c) *Payment of tax.* The floor stocks tax shall be paid without assessment or notice by May 31, 1991. The payment may be made either—

(1) With the return referred to in paragraph (d) of this section, or

(2) By deposit using Form 8109, *Federal Tax Deposit Coupon,* in accordance with the instructions applicable to that form.

If Form 8109 is used, the boxes on Form 8109 for "720" and "1st Quarter" shall be marked.

(d) *Filing of returns*—(1) *Form 720.* Every person liable for the floor stocks tax shall make a return of the tax on Form 720, *Quarterly Federal Excise Tax Return* (Revised January 1991). The return shall be prepared and filed in accordance with the instructions relating to the return. The applicable Form 720 and its separate instructions may be obtained at many local Internal Revenue Service offices or by calling the following toll-free number: 1-800-829-3676.

(2) *Time for filing Form 720.* The Form 720 reporting liability for the floor stocks tax shall be filed by May 31, 1991. This Form 720 is for the first calendar quarter of 1991. In the case of a person not otherwise required to file Form 720 for that calendar quarter, the return shall be marked "FINAL-FLOOR STOCKS" at the top. Only one Form 720 shall be filed for any calendar quarter. If a person is also required to report liability for other excise taxes for the first calendar quarter of 1991 on Form 720 and that Form 720 would otherwise be due earlier than May 31, 1991, that person shall report the floor stocks tax and the other taxes on one Form 720 filed by May 31, 1991. This rule does not extend the time for making deposits or paying any excise tax.

§ 42.6 Applicability of other laws.

(a) *In general.* All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 in the case of gasoline and section 4091 in the case of diesel fuel or aviation fuel shall, insofar as applicable and not inconsistent with the provisions of this part, apply with respect to floor stocks tax to the same extent as if that tax was imposed by section 4081 or section 4091, as the case may be.

(b) *Credits and refunds.* For rules relating to credits and refunds with respect to floor stocks tax paid on gasoline, diesel fuel, or aviation fuel used in an exempt use, see sections 34, 6416, 6420, 6421 and 6427.

(c) *Penalties and interest.* For the application of provisions relating to interest and penalties, see chapters 67 and 68 of subtitle F of the Internal Revenue Code.

PART 602—[AMENDED]

Par. 2. The authority for part 602 continues to read as follows:

Authority: 26 CFR Part 7805.

§ 602.101 [Amended]

Par. 3. Section 602.101(c) is amended by adding in the appropriate place in the table "§ 42.5(b) * * * 1545-1206".

Fred T. Goldberg,

Commissioner of Internal Revenue.

Approved: May 24, 1991.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91-13067 Filed 5-30-91; 10:09 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5-91-25]

Drawbridge Operation Regulations; Potomac River, District of Columbia

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule with request for comments.

SUMMARY: The Coast Guard has been petitioned by the Federal Highway Administration, the Maryland and Virginia Departments of Transportation, and the District of Columbia Department of Public Works to permanently amend the regulations governing operation of the Woodrow Wilson Memorial Bridge across the Potomac River, mile 103.8, at Alexandria, Virginia. As part of the rulemaking process, the Coast Guard is considering several alternative opening schedules as well as the schedule proposed by the petitioners. This temporary rule is being issued to evaluate the impacts of one of the alternatives under consideration on both marine and highway traffic during the period.

DATES: This temporary rule is effective from June 1, 1991, through July 30, 1991, unless sooner terminated. Comments must be received on or before July 15, 1991.

ADDRESSES: Comments should be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. The comments received will be available for inspection and copying at room 507 at the above address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at 804-398-6222.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are Ann B. Deaton, Project Officer, and CAPT M. K. Cain, Project Attorney.

Discussion of Temporary Rule

This temporary rule is being issued to evaluate one of the alternative opening schedules being considered by the Coast Guard in response to a request from the Federal Highway Administration, the Virginia and Maryland Departments of Transportation, and the District of Columbia Department of Public Works to permanently change the regulations for the Woodrow Wilson Memorial Bridge by further restricting the hours during which the bridge may open for vessel traffic. This alternative has been selected for evaluation because it is one of several considered to strike a reasonable balance between the needs of both marine and vehicular traffic using this bridge.

This temporary rule is for evaluation purposes only. The impact of this proposal on highway and marine traffic during this period will be evaluated to determine if it will result in substantial improvements in vehicular traffic flow without unreasonably restricting marine traffic. Data will be collected during the period to document the time and duration of draw openings and length of any resulting vehicle backups. If this rule results in an unforeseen disruption of traffic it may be withdrawn sooner than 60 days.

The Woodrow Wilson Bridge has been operating under temporary rules since 2 August 1990 to facilitate repairs to the bridge. The last of these temporary rules expires on 31 May and the Coast Guard has been advised by FHWA that repairs have been completed. Normally, operation of the bridge would revert to the permanent rule in 33 CFR 117.255. However, it is apparent that these will not provide a satisfactory balance between the needs of today's vehicular traffic and the needs of vessels. Therefore the Coast Guard is imposing this temporary deviation from the permanent rules under the provisions of 33 CFR 117.43.

Before any permanent changes are made in the operating rule for the Woodrow Wilson Bridge, a notice of proposed rulemaking will be published and comments on all alternatives under consideration will be solicited.

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Comments are also invited concerning any particular problems experienced with this temporary schedule. These comments will be evaluated and modifications may be made or an alternate temporary schedule of openings may be established for the purpose of further evalution. All comments received will also be considered along with those received in connection with the permanent operating schedule rule change being considered. Persons submitting comments should include their name and address, identify the bridge, and give reasons for any recommended changes to the temporary rules. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

Since this temporary rule serves the immediate interests of highway traffic with no expected significant adverse impacts on marine traffic, I find that good cause exists for publishing this temporary rule without publication of a notice of proposed rulemaking and for making it effective in less than 30 days.

Regulatory Evaluation

This temporary rule is considered to be non-major under Executive Order 12291 and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on fact that these regulations are temporary and may be withdrawn earlier than scheduled. They are not expected to have any substantial affect on commercial navigation or on any businesses that depend on waterborne transportation for successful operations.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the U.S. Coast Guard must consider whether proposed rules will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). The Coast Guard will accept comments on the economic impact on small entities, in connection with the proposal for permanent regulations, and consider them at that time.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the temporary rule does not raise sufficient federalism implications to warrant preparation of a Federalism Assessment.

Environment

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g. of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is temporarily amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); 33 CFR 117.43.

2. Section 117.255 is temporarily amended by revising paragraph (a)(2) to read as follows. This is a temporary rule and will not appear in the Code of Federal Regulations.

§ 117.255 Potomac River.

(a) * * *

(2) Need not open—

(i) Except as provided in paragraph (a)(1) of this section, for the passage of any vessel unless at least two hours advance notice is given to the bridgetender at (202) 727–5522.

(ii) For the passage of any vessel from 4 a.m. to 9 a.m. and from 2 p.m. to 7 p.m., on Mondays through Fridays other than Federal holidays.

(iii) For the passage of any vessel from 6 a.m. to 9 a.m. and from 2 p.m. to 7 p.m. on Saturdays, Sundays, and Federal holidays.

(iv) For the passage of recreational vessels from 4 a.m. to 12 midnight with the exception of one opening at 12 noon, if requested, and one opening at 9 p.m., if requested, on Mondays through Fridays other than Federal holidays.

(v) For the passage of recreational vessels from 6 a.m. to 12 midnight with the exception of one opening at 10 a.m., if requested, and one opening at 1 p.m., if requested, and one opening at 9 p.m., if requested, on Saturdays, Sundays, and Federal holidays.

(vi) For the passage of recreational vessels from midnight to 4 a.m. on Mondays through Fridays other than Federal holidays and from midnight to 6 a.m. on Saturdays, Sundays, and Federal holidays except on the hour and half-hour, and only if requested.

(vii) This temporary rule is effective from June 1, 1991 through July 30, 1991.

* * * * *

Dated: May 21, 1991.

H. B. Gehring,

Acting Commander, Fifth Coast Guard District.

[FR Doc. 91–13110 Filed 5–30–91; 12:17 pm]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 43 and 64

[CC Docket No. 90–337; FCC 91–157]

Common Carrier Services; In the Matter of Regulation of International Accounting Rates

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On May 9, 1991, the Commission adopted a Report and Order consisting of a three-part reform of the Commission's International Settlements Policy (ISP). This document will amend the rules applicable to U.S. carriers when they file their operating agreements to provide international telecommunications services. The effect of this rule will be to remove any U.S. regulatory impediments to lower, more economically efficient, cost-based international accounting rates and calling prices.

EFFECTIVE DATE: July 15, 1991.

FOR FURTHER INFORMATION CONTACT: William J. Kirsch, Deputy Assistant Bureau Chief—International, Common Carrier Bureau, (202) 632–3214, or Michael A. Mandigo, Attorney/Advisor, International Policy Division, Common Carrier Bureau, (202) 632–3214.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order adopted May 9, 1991, and released May 23, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M St. NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1114 21st St. NW., Washington, DC 20036.

Public reporting burden for collections of information contained is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of Managing Director, Paperwork Reduction Project (3060–0454), Washington, DC 20554 and to the Office of Management and Budget, Paperwork Reduction Project (3060–0454), Washington, DC 20503.

OMB Number: (3060–0454).
Title: Regulation of International Accounting Rates (CC Docket No. 90–337–Phase I).
Action: New Collection.
Respondents: Business or other for profit.
Frequency of Response: On occasion.
Estimated Annual Burden: 100 responses; 200 hours total; 2 hours average burden per response.
Needs and Uses: The Report and Order reforms existing regulation of International Settlement arrangements to make it easier for U.S. carriers engaged in international telecommunications to negotiate lower accounting rates. The information will be used for monitoring and enforcement purposes.

Summary of Report and Order

In the Report and Order, the Commission adopted a three-part reform of its International Settlements Policy (ISP) to provide for lower international accounting rates and calling prices. In the Report and Order the Commission: (1) Adopted a notification approach to expedite the implementation of simple accounting rate reductions agreed to by U.S. carriers and their foreign correspondents; (2) streamlined waiver procedures to expedite review of other changes in accounting and settlement arrangements between U.S. carriers and their foreign correspondents; and (3) recommended that U.S. delegations seek revision of language in existing and proposed recommendations of the CCITT, a consultative committee of the International Telecommunication Union (ITU). The Commission stated that these revisions should clarify that international accounting rates should be cost-based, and that administrations should seek to eliminate any non-cost-based discriminatory difference between accounting rates applied by an administration within its region and those applied outside its region. Finally, the Commission directed U.S. carriers to negotiate with their foreign correspondents accounting rates that are consistent with relevant cost trends.

Ordering Clauses

Accordingly, *it is ordered*, That pursuant to authority contained in sections 1, 4, 201–205, 211, 215, 218–220, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201–205, 211, 215, 218–220, and 303, parts 43 and 64 of the Commission's rules, 47 CFR parts 43 and 64 are amended as set forth below.

It is further ordered, That the policies, rules and requirements set forth herein are adopted.

It is further ordered, That the Chief, Common Carrier Bureau is delegated authority to act upon matters pertaining to the policies, rules and requirements set forth herein.

It is further ordered, That NTIA's request that the Commission accept its October 15, 1990 comments under this dockets is granted.

It is further ordered, That NARUC's request that the Commission accept its January 8, 1991 comments under this docket is granted.

It is further ordered, That this *Report and Order* will be effective July 15, 1991.

For further information on this item contact Michael Mandigo Attorney/Advisor, International Policy Division, Common Carrier Bureau, (202) 632–3214.

List of Subjects

47 CFR Part 43

Reports of communication common carriers and certain affiliates, Reporting and recordkeeping requirements, Telegraph, Telephone.

47 CFR Part 64

Miscellaneous rules relating to common carriers, Reporting and recordkeeping requirements, Telegraph, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

A. Title 47 of the Code of Federal Regulations, parts 43 and 64, are amended as follows:

PART 43—[AMENDED]

1. The authority Citation for part 43 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 211, 219, 48 Stat. 1073, 1077, as amended; 47 U.S.C. 211, 219, 220.

2. Section 43.51 is amended by revising paragraph (a) and adding paragraph (d) to read as follows:

§ 43.51 Contracts and concessions.

(a) Any communications common carrier engaged in domestic or foreign communications, or both, which has not been classified as non-dominant pursuant to § 61.3 of the Commission's rules, 47 CFR 61.3, is not treated under the regulatory forbearance policies established by the Commission, and which enters into a contract with another carrier, including an operating agreement with a communications entity in a foreign point for the provision of a common carrier service between the United States and that point, must file with the Commission, within thirty (30) days of execution, a copy of each contract, agreement, concession, license, authorization, operating agreement or other arrangement to which it is a party and amendments thereto with respect to the following:

(1) The exchange of services;

(2) Except as provided in paragraph (c) of this section, the interchange or routing of traffic and matters concerning rates, accounting rates, division of tolls, or the basis of settlement of traffic balances; and

(3) The rights granted to the carrier by any foreign government for the landing, connection, installation, or operation of cables, land lines, radio stations, offices, or for otherwise engaging in communication operation.

* * * * *

(d) *International Settlements Policy.* (1) If a carrier files an operating agreement (whether in the form of a contract, concession, license, etc.) referred to in § 43.51(a) to begin providing switched voice, telex, telegraph, or packet-switched service between the United States and a foreign point and the terms and conditions of such agreement relating to the exchange of services, interchange or routing of traffic and matters concerning rates, accounting rates, division of tolls, or the basis of settlement of traffic balances, are not identical to the equivalent terms and conditions in the operating agreement of another carrier providing the same or similar service between the United States and the same foreign point, the carrier must also file with the Common Carrier Bureau a notification letter or waiver request, as appropriate, under § 64.1001 of this chapter.

(2) If a carrier files an amendment to the operating agreement referred to in

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§ 43.51(a) under which it already provides switched voice, telex, telegraph, or packet-switched service between the United States and a foreign point, and other carriers provide the same or similar service to the same foreign point, and the amendment relates to the exchange of services, interchange or routing of traffic and matters concerning rates, accounting rates, division of tolls, or the basis of settlement of traffic balances, the carrier must also file with the Common Carrier Bureau a notification letter or waiver request, as appropriate, under § 64.1001 of this chapter.

1. The authority citation for part 64 is revised to read as follows:

Authority: Secs. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201–205, 211, 218–220, 303, 48 Stat. 1070, 1072–73, 1077–78, as amended; 47 U.S.C. 201–205, 211, 218–220, 303, unless otherwise noted.

2. Subpart J, consisting of § 64.1001, of part 64 is added to read as follows:

Subpart J—International Settlements Policy and Waivers

§ 64.1001 International settlements policy and waivers.

(a) The procedures set forth in this rule are subject to Commission policies on international operating agreements in CC Dkt. No. 90–337.

(b) If the accounting rate referred to in § 43.51(d)(1) of this chapter is lower than the accounting rate in effect in the operating agreement of another carrier providing service to or from the same foreign point, and there is no modification in the other terms and conditions referred to in § 43.51(d)(1) of this chapter, the carrier must file a notification letter under paragraph (e) of this section.

(c) If the amendment referred to in § 43.51(d)(2) of this chapter is a simple reduction in the accounting rate, and there is no modification in the other terms and conditions referred to in § 43.51(d)(2) of this chapter, the carrier must file a notification letter under paragraph (e) of this section.

(d) If the operating agreement or amendment referred to in §§ 43.51 (d)(1) and (d)(2) of this chapter is not subject to notification under paragraphs (b) and (c) of this section, the carrier must file a waiver request under paragraph (f) of this section.

(e) A notification letter must contain the following information:

(1) The applicable international service;

(2) The name of the foreign telecommunications administration;

(3) The present accounting rate (including any surcharges);

(4) The new accounting rate (including any surcharges);

(5) The effective date (see paragraph (h) of this section);

(6) A statement that the accounting rate will be divided 50–50; and

(7) A statement that there has been no other modification in the operating agreement with the foreign correspondent regarding the exchange of services, interchange or routing of traffic and matters concerning rates, accounting rates, division of tolls, or the basis of settlement of traffic balances.

(f) A waiver request must contain the following information:

(1) The applicable international service;

(2) The name of the foreign telecommunications administration;

(3) The present accounting rate (including any surcharges);

(4) The new accounting rate (including any surcharges);

(5) The effective date;

(6) The division of the accounting rate;

(7) An explanation of the proposed modification(s) in the operating agreement with the foreign correspondent.

(g) Notification letters and waiver requests must contain notarized statements that the filing carrier:

(1) Has not bargained for, nor has knowledge of, exclusive availability of the new accounting rate; and

(2) Has not bargained for, nor has any indication that it will receive, more than its proportionate share of return traffic.

(h) The operating agreement or amendment subject to a notification letter is effective on the date the carrier files the notification letter; *provided that* the notification letter specifies an effective date for the modification that is later than the filing date; *provided further that*, if the purpose of the amendment is to match an accounting rate reduction specified in a notification letter previously filed by another carrier for the same point, the filing carrier may specify in the amendment and notification letter a retroactive effective date identical to that on which the previously-filed reduction became effective.

(i) If a carrier files a notification letter for an operating agreement or amendment that should have been filed as a waiver request, the Bureau will return the notification letter to the filing carrier and the Bureau will notify the carrier that, before it can implement the proposed modification, it must file a waiver request under paragraph (f) of this section.

(j) An operating agreement or amendment filed under a waiver request cannot become effective until the waiver has been granted under paragraph (l) of this section.

(k) On the same day the notification letter or waiver request is filed, carriers must serve a copy of the notification letter or waiver request on all carriers providing the same or similar service to the foreign administration identified in the filing.

(l) All waiver requests will be subject to a twenty-one (21) day pleading period for objections or comments, commencing the date after the request is filed. If the waiver request is not complete when filed, the carrier will be notified that additional information is to be submitted, and a new 21 day pleading period will begin when the additional information is filed. The waiver will be deemed granted as of the twenty-second (22nd) day without any formal staff action being taken; *provided*

(1) No objections have been filed, and

(2) The Common Carrier Bureau has not notified the carrier that grant of the waiver may not serve the public interest and that implementation of the proposed modification must await formal staff action on the waiver request. If objections or comments are filed, the carrier requesting the waiver may file a response pursuant to § 1.45 of the Commission's rules, 47 CFR 1.45. Waiver requests that are formally opposed must await formal action by the Common Carrier Bureau before the proposed modification can be implemented.

[FR Doc. 91–13050 Filed 6–3–91; 8:45 am]
BILLING CODE 6712–01–M

[PR Docket No. 88–139; DA 91–620]

47 CFR Part 97

Editorial Amendment of Part 97 of the Commission's Rules Governing the Amateur Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action makes non-substantive, editorial changes to the amateur service rule that concerns mailing address and station location. It is necessary so that the amateur service rules will reflect current United States Postal Service terminology and regulations. The effect of the rule change is to apprise amateur service licensees that certain postal facilities are unsuitable for designation as an amateur station location.

EFFECTIVE DATE: July 22, 1991.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Private Radio Bureau, Federal Communications Commission, Washington, DC 20554 (202) 632–4964.

SUPPLEMENTARY INFORMATION:

Adopted: May 17, 1991.
Released: May 29, 1991.

In the Matter of Reorganization and Deregulation of part 97 of the Rules Governing the Amateur Radio Service; Memorandum Opinion and Order.

By the Chief, Private Radio Bureau.

I. Introduction

1. On May 31, 1989, the Commission adopted a Report and Order in this proceeding [1] that, *inter alia*, reorganized the amateur service rules and codified existing policies. The purpose of the reorganization was to create a regulatory environment that would encourage modern techniques, technology, and uses of amateur radio. Three petitions for reconsideration were filed. On July 9, 1990, the Commission adopted a Memorandum Opinion and Order disposing of those petitions. [2] On August 8, 1990, one of the original petitioners, David B. Popkin, filed a second petition for reconsideration. This Memorandum Opinion and Order disposes of his second petition for reconsideration by making non-substantive, editorial changes to the mailing address and station location rule. His requests concerning a 9-digit zip code and self-assigned indicators that are included with the call sign during station identification procedures are repetitious and are, therefore, denied.

II. Background

2. The petitioner states that he is filing this second petition for reconsideration because he feels consideration was not given to all the points made in his original petition for reconsideration as required by § 1.425 of the Commission's Rules, 47 CFR 1.425. Specifically, he argues that certain preferences of, and terms used by, the United States Postal Service were not adopted in accordance with his request. Additionally, he requests that § 97.119(c) of the Commission's Rules, 47 CFR 97.119(c), be amended to state that a self-assigned indicator may be used after the station call sign, if there is no intention to conflict with any other indicator specified by the Commission's Rules or with any prefix assigned to another country.

[1] 4 FCC Rcd 4719 (1989).
[2] 5 FCC Rcd 4614 (1990).

III. Discussion

3. Section 1.425 of the Commission's Rules, 47 CFR 1.425, which the petitioner relies on, is not applicable here. That section requires consideration of all relevant comments and the record before final action is taken in a rule making proceeding. After such consideration, the final decision must incorporate the Commission's findings and the reasons for the action taken. It is well settled that the courts do not expect an administrative agency to respond to every comment or to discuss every fact or opinion in the comments submitted in informal rule making proceedings. See *Thompson* v. *Clark*, 741 F.2d 401, 408 (1984). See also *Automotive Parts & Accessories Association* v. *Boyd*, 407 F.2d 330, 338 (1968).

4. Section 1.429 of the Commission's Rules, 47 CFR 1.429, governs the filing of petitions for reconsideration in rule making proceedings. That section requires that petitions for reconsideration must show changed facts or circumstances, or facts that were unknown to the petitioner until after the last opportunity to present them to us. Absent those criteria, a determination must be made that the public interest will be served by considering the facts relied on in the petition for reconsideration.

5. The public interest will be served by making non-substantive, editorial revisions to § 97.21 of the Commission's Rules, 47 CFR 97.21. That rule concerns an amateur service licensee's mailing address and the location of the amateur station. That rule will be amended to specify that a post office box is not suitable as an amateur station location whether the box is provided by the United States Postal Service or by any other party. In addition, instead of stating that a rural delivery service number is not suitable as a station location, the rule will be amended to reflect current postal terminology.

6. The petitioner again requests amendment of the rules to show a 9-digit zip code number in those sections of the amateur service rules that refer to the procedures for filing license applications. There is no United States Postal Service requirement that mandates the use of a 9-digit zip code. The rules, therefore, will continue to show a 5-digit zip code in addresses to which applicants send their license applications.

7. The petitioner's request to include a provision in § 97.119(c) that self-assigned indicators may be used after the station call sign, if there is no intent on the part of the user to conflict with any other indicator specified by the rules or with any prefix assigned to another country, will be denied. The rule, as written, requires that a licensee must take affirmative action to assure that no conflict will result from the use of the self-assigned indicator. To word the rule to state that the user must not intend to cause a conflict with any other Commission-assigned indicator or prefix of a foreign country would weaken the rule and make it meaningless.

IV. Procedural Matter

8. Because the amendment ordered herein is non-substantive and editorial in nature, and, therefore, not controversial, it constitutes a minor amendment to the amateur service rules in which the public is not likely to be interested. For good cause shown, it is unnecessary to comply with the notice and comment procedure of the Administrative Procedure Act. See 5 U.S.C. 553(b)(B).

V. Conclusion

9. In view of the foregoing, and pursuant to the authority contained in 47 U.S.C. 154(i), and §§ 0.331(a)(1) and 1.429(i) of the Commission's Rules, 47 CFR 0.331(a)(1) and 1.429(i), *it is ordered that* the petition for reconsideration filed by David B. Popkin *is granted* as indicated herein, and *is Denied* in all other respects.

10. *It is further ordered that*, pursuant to the authority contained in 47 U.S.C. 303(r), part 97 is amended, effective July 22, 1991, as set forth in the appendix.

11. *It is further ordered that* this proceeding is terminated.

12. For further information concerning this Memorandum Opinion and Order contact Maurice J. DePont, Private Radio Bureau (202) 632–4964.

List of Subjects in 47 CFR Part 97

Mailing address, Radio.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

Title 47 of the Code of Federal Regulations, part 97, is amended as follows:

PART 97—[AMENDED]

1. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. The last sentence of § 97.21 is revised to read as follows:

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§ 97.21 Mailing address and station location.

* * * (A post office box whether provided by the United States Postal Service or by any other party, a rural or highway contract route designation and box number, and general delivery are unsuitable as a station location.)

[FR Doc. 91-13052 Filed 6-3-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

[Docket No. 910506-1106]

RIN 0648-AD24

Shrimp Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; correction.

SUMMARY: This corrects a date in 50 CFR 658.25(a) of the final rule to implement Amendment 5 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico.

EFFECTIVE DATE: May 17, 1991.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813-893-3161.

In FR Doc. 91-11774, (56 FR 22827, May 17, 1991) make the following correction:

§ 658.25 [Corrected]

On page 22829, in the second column, under § 658.25 Texas closure, paragraph (a) Area and season restrictions, on line three, the date "July 6" should read "July 15."

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 29, 1991.

David S. Crestmin,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 91-13077 Filed 6-3-91; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 107
Tuesday, June 4, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1005

[Docket Nos. AO-388-A4, DA-91-005]

Milk in the Carolina Marketing Area; Decision on Proposed Amendments to Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision would change the Carolina order by allowing a handler that operates more than one distributing plant to combine the receipts and dispositions of such plants for the purpose of qualifying them as pool plants. The proposed amendment was submitted by a cooperative association and a dairy processor and supported by another cooperative association that also supplies the dairy processor. The change is based on the record of a public hearing held in Charlotte, North Carolina, on November 8, 1990. The change is necessary to provide efficient procedures for handling milk, to reflect current marketing conditions and to maintain orderly marketing in the Carolina marketing area.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-6274.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amended order will promote more orderly marketing of milk by producers and regulated handlers.

Prior documents in this proceeding:

Notice of Hearing: Issued October 24, 1990; published October 30, 1990 (55 FR 45612).

Recommended Decision: Issued March 1, 1991; published March 6, 1991 (56 FR 9306).

Preliminary Statement

A public hearing was held upon a proposed amendment to the marketing agreement and the order regulating the handling of milk in the Carolina marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice (7 CFR part 900), at Charlotte, North Carolina, on November 8, 1990. Notice of such hearing was issued on October 24, 1990, and published October 30, 1990 (55 FR 45612).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, on March 1, 1991, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto. No exceptions were filed.

The material issue, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein.

The material issue on the record of the hearing relates to pool plant qualification standards for distributing plants.

Findings and Conclusions

The following findings and conclusions on the material issue are based on evidence presented at the hearing and the record thereof:

The provisions affecting the pool qualification of distributing plants under the Carolina Federal milk order should be amended to allow a handler who operates two or more distributing plants to consider them as a unit for the purpose of meeting the order's total Class I disposition requirement. Each plant should continue to be required to distribute at least 15 percent of the total amount of milk received at or diverted from the plant as route disposition in the marketing area.

Currently, 60 percent of the amount of milk received at or diverted from each distributing plant during the months of August through November, January and February must be disposed of as Class I milk in order for the plant to be qualified as a pool plant. The applicable percentage requirement for the months of March throughout July and December is 40 percent.

Southern Milk Sales, Inc. (SMS), a cooperative association, and Hunter Jersey Farms, Inc. (Hunter), a proprietary handler, proposed that the order provide for unit pooling of distributing plants. Under their proposal, the receipts and disposition of the distributing plants requested by a multi-plant handler to be considered as a unit would be combined, and the plants would be treated as a single plant for the purpose of determining whether the unit meets the total route disposition requirement for a pool distributing plant.

Several witnesses for the proponents testified in support of the proposal and a witness for Piedmont Milk Sales (Piedmont) supported the proposal. There was no testimony at the hearing or statements in briefs in opposition to the proposal.

The first witness for SMS said that SMS and Hunter, prior to September 1, 1990 (effective date for the Carolina order), estimated the Hunter plant's Class I utilization at High Point, North Carolina, for the months of September through November 1990 to be about 50 percent. The witness said that the failure to meet the 60 percent requirement would result in the plant at High Point not being a pool plant. Nonpool status, she said, would cost the SMS producers about 90 cents per hundredweight. She said that the estimated 90 cents was based on a comparison of the Class I utilization at the High Point plant of 50 percent and the marketwide Class I utilization of 82 to 85 percent. SMS, she said, with a 90-cent reduction in pay prices would not be competitive with other producers in the market.

The spokeswoman for SMS said that Hunter was able to meet the 60 percent standard for September 1990 by shifting operations between the Hunter plant at High Point and the Hunter plant at Charlotte. SMS, she said, delivered less milk to the High Point plant and more

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milk to the Charlotte plant and at the same time more fluid milk was processed and packaged at the High Point plant and less was processed and packaged at the Charlotte plant. The witness said that SMS incurred an additional cost of about 15 cents per hundredweight on about 500,000 pounds of milk that was delivered to the Charlotte plant rather than the High Point plant.

A witness for Hunter testified that Hunter had to incur additional transportation costs in moving some packaged fluid milk sales accounts normally associated with the Charlotte plant to the selling points associated with the High Point plant. On a combined accounting basis, he said, the Class I utilization of the two plants would be between 65 and 70 percent. He said that Hunter, because of the location of its customers, could not concentrate all of its fluid milk processing at the Charlotte plant and all of its manufacturing at the High Point plant.

The Hunter witness said that Hunter acquired the High Point plant from Borden in April 1990 and that Borden had decreased its fluid milk processing at the High Point plant because of its decision to transfer some of that volume to one of its other plants. He said that in order to keep the High Point plant operating, Hunter decreased its processing of fluid milk products (about 75,000 gallons of milk per week) at its Charlotte plant and increased its fluid milk processing at the High Point plant. He said that even with these uneconomic changes in their operations, he did not think that the High Point plant could achieve a 60 percent or better Class I utilization in the future.

The third witness testifying on behalf of SMS and Hunter said that the "unit pooling" proposal would not change any of the other pooling requirements such as the "in area" route disposition requirement. He said that the record shows that in recent months the Class I utilization at the High Point plant has dropped considerably. At the time the hearing was held to consider promulgation of the Carolina order (April 1989) these developments were not foreseen; otherwise, "unit pooling" would have been proposed.

The spokesman for the proponents stated that at the proponents' request, the Department issued a temporary revision that reduced the 60 percent distribution requirement to 50 percent for the months of October and November 1990 and January and February 1991. He said that the 60 percent requirement would again be effective for the month of August 1991.

The witness for SMS and Hunter said that the steps taken by Hunter to pool the two plants lessen the ability of Hunter to achieve operational efficiencies by specializing in the processing of fluid milk products in one plant and by-products in another plant. He said that the steps taken by Hunter can also result in the disruption of the normal farm-to-market movement of milk by requiring a portion of the supply to be delivered to an alternative plant at a greater distance.

The spokesman for SMS and Hunter said that regulatory provisions should encourage orderly and efficient handling, processing and distribution of milk and milk products and that "unit pooling" is contained in other Federal orders such as the Tennessee Valley order. He said that the proposal will not adversely affect any other proprietary handler or cooperative association associated with the Carolina marketing area.

The proposed "unit pooling" proposal should be adopted. The record evidence demonstrate that inefficient steps were taken by the proponents to pool the High Point plant. The temporary revision issued by the Department for the months of October and November 1990 and January and February 1991 (60 percent to 50 percent) should enable the High Point plant to be pooled without the proponents having to resort to the inefficient steps that were taken in September. The High Point plant would only have to meet a 40 percent fluid milk disposition requirement for the month of December and the months of March 1991 through July 1991. However, the record indicates that the problem encountered by the High Point plant is not temporary and that amendatory action is needed.

The "unit pooling" proposal will remove the need for SMS and Hunter to incur additional transportation costs with respect to the shifting of bulk milk between the two plants and also the additional transportation in moving packaged milk from the High Point plant greater distances to the sales outlets associated with the Charlotte plant.

Order provisions should not impede the ability of a multi-plant handler to achieve operational efficiencies by specializing in the processing of some fluid milk products in one plant and other products in another plant. With unit pooling, as herein adopted, it will be possible for a multi-plant handler to confine certain specialized operations to one plant in order to achieve an economy of scale comparable to that which would be realized by maintaining its total operation in one plant.

Adoption of the proposed amendment will not allow the pooling of any plant that does not distribute a significant amount of fluid milk, or any distributing plant that is not primarily associated with the Carolina marketing area. To qualify for pooling as a unit, each distributing plant in the unit would still have to dispose of at least 15 percent of its receipts as route distribution in the marketing area. This requirement will ensure that each plant pooled in the unit has a significant commitment to supplying fluid milk products to the marketing area.

The witnesses' concern about the reduction in pay prices of about 90 cents to SMS producers delivering milk to the High Point plant should the plant fail to qualify for pooling is valid. A reduction to pay prices of this amount at this location could result in disruptive marketing conditions.

In order to qualify for unit pooling, a handler would be required to notify the market administrator in writing prior to the first month in which plants are to be considered as a unit for pooling purposes. Unit pooling would be continued in each following month without further notification. However, if other plants of the handler are added to or dropped from the unit, the handler would need to notify the market administrator prior to the month in which such change is to be effective.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Carolina order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk in the Carolina marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the **Federal Register**.

Determination of Producer Approval and Representative Period

January 1991 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Carolina marketing area is approved or favored by producers, as defined under the terms of the order as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1005

Milk marketing orders.

Signed at Washington, DC, on: May 22, 1991.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

Order Amending the Order Regulating the Handling of Milk in the Carolina Marketing Area

(This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings. A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Carolina marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the Carolina marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Administrator, on March 1, 1991, and published in the **Federal Register** on March 6, 1991 (54 FR 9306), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

PART 1005—MILK IN THE CAROLINA MARKETING AREA

1. The authority citation for 7 CFR part 1005 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. In § 1005.7, paragraph (a)(2) is revised to read as follows:

§ 1005.7 Pool plant.

* * * * *

(a) * * *

(2) The total quantity of fluid milk products, except filled milk, disposed of in Class I is not less than 60 percent in each of the months of August through November and January and February, and 40 percent in each of the other months, of the total quantity of fluid milk products, except filled milk, physically received at such plant or diverted therefrom pursuant to § 1005.13, subject to the following conditions:

(i) Two or more plants operated by the same handler may be considered as a unit for the purpose of meeting the total Class I requirement percentages specified in paragraph (a)(2) of this section if each plant in the unit meets the in-area route disposition requirement specified in paragraph (a)(1) of this section, and if such handler requests that the plants be so considered as a unit. If such a handler wishes to add or remove plants from consideration as a unit, such a request must be made before the first day of the month for which it is to be effective.

(ii) The applicable percentages in paragraph (a)(2) of this section may be increased or decreased up to 10 percent points by the Director of the Dairy Division if the Director finds such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the Director shall investigate the need for revision either at the Director's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall

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issue a notice stating that the revision is being considered and invite data, views, and arguments.

* * * * *

Marketing Agreement Regulating the Handling of Milk in the Carolina Marketing Area

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1005.1 to 1005.94, all inclusive, of the order regulating the handling of milk in the Carolina marketing area (7 CFR part 1005) which is annexed hereto; and

II. The following provisions:

§ 1005.95 Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he handled during the month of January 1991, ——— hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ 1005.96 Effective date.

This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with § 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

(Seal)
Attest ———
Date ———
(Signature) ———
BY ———
(Name) (Title)
(Address) ———

[FR Doc. 91-13086 Filed 6-3-91; 8:45 am]
BILLING CODE 3410-02-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 122

Business Loans, Rural Loan Program

AGENCY: Small Business Administration (SBA).

ACTION: Proposed rule.

SUMMARY: Section 307 of Public Law 101-574, the Small Business Administration and Amendments Act of 1990, enacted on November 15, 1990 (104 Stat. 2814) (1990 legislation), amended the Small Business Act by adding a new section 7(a)(19)(C) which authorizes a lender to retain one half of the guaranty fee when it makes a guaranteed loan of less than $75,000 to a small business located in a rural area. If the guaranteed loan to a business in a rural area is $75,000 or more, the participating lender would be allowed to keep one half of the quaranty fee attributable to $75,000 on a pro rata basis. The proposed regulation would implement these provisions.

DATES: Comments must be submitted on or before August 5, 1991.

ADDRESSES: Comments may be mailed to Charles R. Hertzberg, Assistant Administrator for Financial Assistance, Small Business Administration, 409 3d Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzberg, 202/205-6490.

SUPPLEMENTARY INFORMATION: Pursuant to section 7(a)(19)(C) of the Small Business Act (15 U.S.C. 636(a)(19)(C)) (Act), if a guaranteed loan of under $75,000 is made to a small business in a rural area under section 7(a) of the Act, the lender is allowed to keep one half of the guaranty fee. Also, if a lender makes a guaranteed loan of $75,000 or more to a business in a rural area, such lender is authorized to retain one half of the guaranty fee attributable to $75,000. At the present time, the quaranty fee (payable to SBA) is two percent of the guaranteed portion of a loan made pursuant to section 7(a) of the Act, except for loans with a maturity of one year or less or for loans made by development companies under section 7(a)(13) of the Act. Accordingly, a lender would be permitted to retain up to $750 of the guaranty fee (one-half of the two percent attributable to $75,000). Under the provisions of the 1990 legislation this so-called rural loan program terminates with respect to guaranteed loans approved by SBA after September 30, 1995.

The rural loan program is separate and distinct from SBA's small loan program (*i.e.*, loans of $50,000 or less) authorized by section 7(a)(19)(B) of the Act which contains its own provisions with respect to the lender retaining one-half of the guaranty fee. Consequently, a lender which makes a rural loan of $50,000 or less would retain only one-half of the guaranty fee under section 7(a)(19)(C); the retention provisions of section 7(a)(19)(B) would not apply.

The proposed regulation would set forth the general rule regarding retention of guaranty fees for the rural loan program. Since the 1990 legislation does not define "rural area", SBA proposes that the term be defined in a manner similar to that used by SBA in another of its programs relating to development companies (see § 108.2 of this title). Under the definition as proposed herein, a "rural area" would mean: (1) Any political subdivision or unincorporated area in a nonmetropolitan county (as defined by the Economic Development Division, Economic Research Service, U.S. Department of Agriculture) or the equivalent thereof, or (2) any political subdivision or unincorporated area in a metropolitan county or the equivalent thereof, with a resident population of less than 20,000 if SBA has determined such political subdivision or area to be rural. The SBA would supply its field offices with the necessary information from the U.S. Department of Agriculture.

The proposed regulation would provide that the proceeds of a guaranteed loan made under this rural loan program could be used for any of the purposes set forth in section 7(a) of the Act.

Compliance With Executive Orders 12291 and 12612, the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., and the Paperwork Reduction Act, 44 U.S.C. ch. 35

For purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, SBA certifies that this proposed rule, if promulgated in final form, will not have a significant impact on a substantial number of small entities.

SBA certifies that this proposed rule, if promulgated in final form, will not constitute a major rule for the purposes of Executive Order 12291, since the proposed change is not likely to result in an annual effect on the economy of $100 million or more.

The proposed rule, if promulgated in final form, would not impose additional reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

This proposed rule would not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

List of Subjects in 13 CFR Part 122

Loan programs/business, Small businesses.

Pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA proposes to amend part 122, chapter I, title 13, Code of Federal Regulations, as follows:

PART 122—BUSINESS LOANS

1. The authority citation for part 122 would continue to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636(a).

2. Subpart B of part 122 would be amended by adding a new § 122.60 to read as follows:

§ 122.60 Rural Loan Program.

§ 122.60-1 General rule.

The Act authorizes a lender to retain one-half of the guaranty fee with respect to a guaranteed loan of less than $75,000 to a small business concern in a rural area. With respect to a guaranteed loan of $75,000 or more to a small business concern in a rural area, a Lender may retain one-half of the guaranty fee attributable to $75,000. The proceeds of a guaranteed loan made pursuant to this section of the regulations may be used for any of the purposes prescribed under section 7(a) of the Act. This rule terminates for guaranteed loans approved by SBA after September 30, 1995.

§ 122.60-2 Rural area.

For the purposes of this section, *rural area* means:

(1) Any political subdivision or unincorporated area in a nonmetropolitan county (as defined by the Economic Development Division, Economic Research Service, U.S. Department of Agriculture) or the equivalent thereof, or

(2) Any political subdivision or unincorporated area in a metropolitan county or the equivalent thereof, with a resident population of less than 20,000 if SBA has determined such political subdivision or area to be rural.

§ 122.60-3 Calculation of guaranty fee.

The guaranty fee (as described in § 120.104-1(a) of this chapter) is calculable with respect to the guaranteed portion of any loan made under section 7(a) of the Act other than a loan repayable in one year or less or a loan under section 7(a)(13).

(Catalogue of Federal Domestic Assistance Programs, No. 59.012, Small Business Loans)

Dated: April 26, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91-13094 Filed 6-3-91; 8:45 am]
BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-CE-38-AD]

Airworthiness Directives; Beech 33 and 36 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would be applicable to Beech 33 and 36 series airplanes. The proposed action would supersede AD 90-11-04, which currently requires initial and repetitive inspections of the rudder forward spar for cracks and replacement if found cracked. This proposal allows for compliance adjustment of the repetitive inspections if a certain Spacecraft Machine Products reinforcement bracket is installed. The actions specified in this AD are intended to prevent separation of the rudder from the airplane.

DATES: Comments must be received on or before August 1, 1991.

ADDRESSES: Beech Service Bulletin No. 2333, dated October 1989, this is discussed in this AD may be obtained from the Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-38-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-38-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Airworthiness Directive (AD) 90-11-04, Amendment 39-6594 (55 FR 19721, May 11, 1990) requires an initial and 500 hour time-in-service (TIS) interval repetitive inspections of the rudder forward spar for cracks and replacement if found cracked on Beech 33 and 36 series airplanes. This AD does not take into account that the affected airplanes might have a Spacecraft Machine Products (SMP) reinforcement bracket installed in accordance with Supplemental Type Certificate (STC) SA 4899NM. This reinforcement bracket reduces the stress in the spar at that location. The FAA has determined that the compliance time for the repetitive inspections should be extended if this SMP reinforcement bracket is installed in accordance with STC SA 4899NM.

Since the condition described above is likely to exist or develop in other Beech 33 and 36 series airplanes of the same type design, the FAA is proposing an AD that would supersede AD 90-11-04 and would help prevent separation of the rudder from the airplane. It would still require initial and repetitive inspections of the rudder spar and replacement if found cracked, but would extend the compliance time for the repetitive inspections to 1,000 hours TIS

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if an SMP reinforcement bracket is installed. The proposed inspections and possible replacement would be accomplished in accordance with the structions in Beech Service Bulletin No. 2333, dated October 1989.

It is estimated that 5,900 airplanes in the U.S. registry would be affected by the proposed AD, that it will take approximately 2 hours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $649,000.

The regulations proposed herein would have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 90-11-04, Amendment 39-6504 (55 FR 19721, May 11, 1990) and adding the following new AD:

Beech: Docket No. 91-CE-38-AD.

Applicability: The following Model airplanes and serial numbers, certificated in any category.

Models	Serial numbers
35-33, 35-A33, 35-833, 35-C33, E33, F33, G33.	CD-1 through CE-1304.
35-C33A, E33A, F33A	CE-1 through CE-1425.
E33C, F33C	CJ-1 through CJ-179.
36, A36	E-1 through E-2518.
A36TC, B36TC	EA-1 through EA-500.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent separation of the rudder on the affected airplanes, accomplish the following:

(a) Upon the accumulation of 1,000 hours time-in-service (TIS) or within the next 100 hours TIS, whichever occurs later, inspect the rudder forward spar for cracks in accordance with the instructions in Beech Service Bulletin No. 2333, dated October 1989.

(1) If no cracking is detected, return the airplane to service and continue the inspections at intervals not to exceed 500 hours TIS.

(2) If cracking is detected, prior to further flight, replace the rudder forward spar (part number 33-630000-115, -09, -113, or -17, whichever is applicable) in accordance with the instructions in Beech Service Bulletin No. 2333, dated October 1989. Reinspect within the next 1,000 hours TIS after installation and reinspect thereafter at intervals not to exceed 500 hours TIS.

(b) If the airplane has a Spacecraft Machine Products (SMP) reinforcement bracket installed in accordance with Supplemental Type Certificate (STC) SA 4899NM, the repetitive inspections required in paragraphs (a)(1) or (a)(2) may be extended to 1,000 hours TIS.

(c) If rudder assembly, part number 33-630000-137, -139, -141, or -167, whichever is applicable, is installed then the inspections required by this AD may be terminated.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

(f) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Beach Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on May 22, 1991.

Herman C. Belderok,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-13101 Filed 6-3-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-86-AD]

Airworthiness Directives; Boeing Model 737, 757, and 747-400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 737, 757, and 747-400 series airplanes, which would require replacement of the radio control panels (RCP) in the flight deck. This amendment is prompted by reports of uncommanded frequency changes of the Very High Frequency (VHF) and High Frequency (HF) radios. This condition, if not corrected, could result in temporary loss of communications with Air Traffic Control (ATC) and result in a hazardous situation during a critical flight phase.

DATES: Comments must be received no later than July 22, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-86-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth J. Schroer, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2795. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-86-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The manufacturer of Boeing Model 737, 757, and 747-400 series airplanes has reported the occurrence of uncommanded High Frequency (HF) radio frequency changes occurring in certain existing radio control panels currently installed in these airplane models. In addition, one foreign operator has reported four occurrences of uncommanded Very High Frequency (VHF) radio frequency changes during revenue service. Investigation has revealed that the unintended frequency changes are caused by the software attempting to read input information while the information was still being received ("BYTE slicing"). If these frequency changes occur during a critical flight phase, communication with ATC may be temporarily lost and result in a hazardous situation which may not be readily identified by the flight crew.

Boeing has issued Operations Manual Bulletin Number 90-4, dated May 21, 1990, to all operators, alerting flight crews to the possibility that this problem may occur.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require replacement of the currently installed radio control panels in the flight desk, with modified panels that are approved by the FAA.

There are approximately 173 Model 737, 757, and 747-400 series airplanes of the affected design in the worldwide fleet. It is estimated that 20 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. The airplane manufacturer has indicted that replacement panels will be provided at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,200.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reason discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rule Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulation as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket No. 91-NM-86-AD.

Applicability: Model 737, 757, and 747-400 series airplanes, equipped with Boeing part number (P/N) 285U0037 series radio control panels, certificated in any category.

Compliance: Required within 9 months after the effective date of this AD, unless previously accomplished.

To prevent uncommanded frequency changes of the HF and VHF radios, accomplish the following:

(a) Remove the P/N 285U0037 series radio control panels and replace them with panels approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certificate Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on May 22, 1991.

Jim Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-13102 Filed 6-3-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 90-AWA-13]

Airport Radar Service Area, Long Beach, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: This notice announces an extension of comment period on an NPRM which proposed to establish an Airport Radar Service Area (ARSA) at Long Beach (Daugherty Field), CA, and adjust the southwest confines of the John Wayne Airport/Orange County ARSA to accommodate the adjoining Long Beach ARSA.

DATES: Comments must be received on or before August 16, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket

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[AGC-10], Airspace Docket No. 90-AWA-13, 800 Independence Avenue, SW., Washington, DC. 20591.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Alton D. Scott, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on the Correction to NPRM must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-AWA-13." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of the document. Persons interested in being placed on a mailing list for future NRPM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Background

Airspace Docket No. 90-AWA-13, published on April 26, 1991, (56 FR 19486) proposed to establish an ARSA at Long Beach (Daugherty Field), CA, and adjust the southwest confines of the John Wayne Airport/Orange County ARSA to accommodate the adjoining Long Beach ARSA. On August 6, 1991, an additional informal airspace meeting will be conducted in the Long Beach area. This action will accommodate this proceeding and allow an opportunity for public comment following the informal airspace meeting. This action will extend the comment period closing date to allow additional time to comment on Airspace Docket No. 90-AWA-13.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

Extension of Comment Period

The comment period for Airspace Docket No. 90-AWA-13 is extended to close on August 16, 1991.

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.)

Issued in Washington, DC on May 23, 1991.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 91-13103 Filed 6-3-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 75

[Airspace Docket No. 91-AWP-3]

Proposed Alteration of VOR Federal Airways and Jet Routes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of the Federal airways and jet routes extending from the Salt River (SRP) VORTAC located in Phoenix, AZ. The Salt River VORTAC is being relocated four miles west of its present position. This notice proposes to alter the en route airway structure to coincide with this relocation. Additionally, the Salt River VORTAC will be renamed the Phoenix (PXR) VORTAC.

DATES: Comments must be received on or before July 24, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AWP-500, Docket No. 91-AWP-3, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Alton D. Scott, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, aeronautical, economic environmental, and energy aspects of the proposals. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91-AWP-3." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal

contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposals

The FAA is considering amendments to parts 71 and 75 of the Federal Aviation Regulations (14 CFR parts 71 and 75) to alter the descriptions of the VOR Federal airways and jet routes located in Phoenix, AZ. On December 11, 1989, the FAA published in the **Federal Register** (54 FR 50982) the final rule on the Phoenix Terminal Control Area (TCA) with an effective date of January 11, 1990. During the rulemaking process many commenters suggested that the FAA establish a very high frequency omnidirectional radio range (VOR) on the airport at Phoenix. The FAA agreed and during June 1989, the FAA identified an acceptable site 1.6 nautical miles (NM) east of Phoenix Sky Harbor Airport. This location has now become available; the Salt River VORTAC will be relocated to this site. Congruent with this move the Salt River VORTAC will be renamed the Phoenix VORTAC (PXR). This notice proposes to alter the en route airway structure to coincide with this relocation. Sections 71.123 and 75.100 of parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 75

Aviation Safety, VOR Federal airways and jet routes.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend parts 71 and 75 of the Federal Aviation Regulations (14 CFR parts 71 and 75) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V-16 [Amended]

By removing the words "Salt River, AZ; INT Salt River 161° and Stanfield, AZ, 105° radials;" and substituting the words "Phoenix, AZ; INT Phoenix 155°T(141°M) and Stanfield, AZ, 105°T(091°M) radials;"

V-95 [Amended]

By removing the words "From Gila Bend, AZ, via INT Gila Bend 096° and Salt River, AZ, 204° radials; Salt River;" and substituting the words "From Gila Bend, AZ, via INT Gila Bend 096°T(082°M) and Phoenix, AZ, 197°T(183°M) radials, Phoenix;"

V-105, V-190 and V-257 [Amended]

By removing the words "Salt River, AZ" and substituting the words "Phoenix, AZ"

V-327 [Revised]

From Phoenix, AZ, INT Phoenix 011°T(357°M) and Flagstaff, AZ, 186°T(172°M) radials; Flagstaff.

V-528 [Revised]

From Phoenix, AZ; INT Phoenix 046°T(032°M) and St. Johns, AZ, 288°T(254°M) radials; St. Johns."

V-562 [Amended]

By removing the words "From Salt River, AZ; via INT Salt River 006° and Drake, AZ, 131° radials;" and substituting the words "From Phoenix, AZ; via INT Phoenix 011°T(357°M) and Drake, AZ, 131°T(117°M) radials;"

V-887 [Revised]

From Phoenix, AZ; via INT Phoenix 011°T(357°M) and Winslow, AZ, 224°T(210°M) radials; 52 miles, 95 MSL; to Winslow.

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

3. The authority citation for part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

4. § 75.100 is amended as follows:

J-11 [Revised]

From Tucson, AZ, via INT Tucson 320°T(306°M) and Phoenix, AZ, 155°T(141°M) radials; Phoenix; Drake, AZ; Bryce Canyon, UT; Fairfield, UT; to Salt Lake City, UT.

J-18, J-44 and J-62 [Amended]

By removing the words "Salt River, AZ" and substituting the words "Phoenix, AZ"

J-19 [Amended]

By removing the words "From Salt River, AZ, via INT Salt River 051° and Zuni, AZ, 242° radials;" and substituting the words "From Phoenix, AZ, via INT Phoenix 052°T(038°M) and Zuni, AZ, 242°T(228°M) radials;"

J-65 [Amended]

By removing the words "Salt River, AZ; INT Salt River 272° and Blythe, CA, 096° radials;" and substituting the words "Phoenix, AZ; INT Phoenix 272° T (258°M) and Blythe, CA, 096° T (082°M) radials;"

J-162 [Amended]

By removing the words "From Salt River, AZ; INT Salt River 066° and Zuni, NM, 226° radials; and substituting the words "From Phoenix, AZ; INT Phoenix 066°T(052°M) and Zuni, NM, 226°T(212°M) radials;"

Issued in Washington, DC, on May 23, 1991.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 91-13104 Filed 6-3-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 162

Proposed Customs Regulation Amendment Regarding the Disposition of Low-Value Seized Property

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

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SUMMARY: Customs is proposing to amend the Customs Regulations pertaining to the destruction or other appropriate disposition of seized property valued at less than $1,000 where the expense of storing such property is disproportionate to the value of the property and to define disproportionate insofar as it relates to the amount of the seizure costs as compared to the value of the seized property. Additionally, Customs is proposing to amend the Customs Regulations to include the statutory administrative petitioning and judicial hearing rights of a claimant to destroyed or otherwise disposed of property. The Customs Regulations are also proposed to be amended to provide that a claimant receiving full or partial relief from the forfeiture will be reimbursed the difference between the value of the merchandise at the time of seizure and any remitted forfeiture amount that the claimant is required to pay. The proposed amendment will increase the efficiency of Customs seized property program without unduly affecting the rights of claimants to seized property.

DATES: Comments must be received on or before August 5, 1991.

ADDRESSES: Written comments may be submitted to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, 1301 Constitution Avenue NW., room 2119, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Penalties Branch (202) 566–8317.

SUPPLEMENTARY INFORMATION:

Background

The Tariff and Trade Act of 1984 amended § 612 of the Tariff Act of 1930, as amended, to provide that if the expense of keeping any vessel, vehicle, aircraft, merchandise or baggage is disproportionate to the value thereof, and such value is less than $1,000, destruction or other appropriate disposition of such property may proceed forthwith (19 U.S.C. 1612(b)). This provision permits the appropriate Customs officer to order the immediate destruction or other appropriate disposition of low-value seized property that is too costly to store without requiring the completion of forfeiture proceedings prior to destruction or disposition of the seized property.

The Customs Regulations currently provide for the disposition of low-valued seized property in § 162.46(d)(2) (19 CFR 162.46(d)(2)). Customs is proposing to amend the Customs Regulations to clarify the meaning of disproportionate as it relates to the amount of seizure costs as compared to the value of the seized property. As proposed, the Customs Regulations would provide that the expense of keeping and maintaining the property will be presumed to be disproportionate to its value where the expense has reached or is anticipated to reach 50 percent of the value of the property.

The Customs Regulations are proposed to be amended to include the statutory requirement that the right of a claimant relating to seized property which has been destroyed or otherwise disposed of will not be extinguished without the completion of forfeiture proceedings. (19 U.S.C. 1607.) Customs is also proposing to amend the Customs Regulations to provide that the administrative petitioning rights of a claimant, as provided for by § 618 of the Tariff Act of 1930, as amended, (19 U.S.C. 1618) and part 171 of the Customs Regulations (19 CFR part 171), will be preserved. Additionally, the Customs Regulations are proposed to be amended to provide that a claimant receiving full or partial relief from the forfeiture will be reimbursed the difference between the value of the merchandise at the time of seizure pursuant to 19 U.S.C. 1606 and § 162.43 of the Regulations (19 CFR 162.43) and any remitted forfeiture amount that the claimant is required to pay.

It is proposed that the Customs Regulations be amended to state that a claimant may file a claim and cost bond seeking judicial condemnation of the property pursuant to 19 U.S.C. 1608. Additionally, the Customs Regulations are proposed to be amended to include that, pursuant to 19 U.S.C. 1613b, a successful claimant to the destroyed or otherwise disposed of property will be compensated from the Customs Forfeiture Fund.

Comments

Prior to final determination, consideration will be given to any written comments timely submitted to Customs. Submitted comments will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, Room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC.

Executive Order 12291 and Regulatory Flexibility Act

In that this amendment does not meet the criteria for a "major rule" within the meaning of Executive Order 12291, Customs has not prepared a regulatory impact analysis. This proposed amendment is certified under the provisions of § 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) not to have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document was Michael Smith, Regulations and Disclosure Law Branch, Office of Regulations and Rulings. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 162

Administrative practice and procedure, Law enforcements, Penalties, Search warrants, Seizures and forfeitures, Reporting and recordkeeping requirements.

Proposed Amendment to Regulations

It is is proposed to amend part 162, Customs Regulations (19 CFR part 162), as set forth below:

PART 162—RECORDKEEPING, INSPECTION, SEARCH, AND SEIZURE

1. The general authority for Part 162 and the authority for § 162.46 continue to read as follows and the authority for § 162.48 is revised:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624.

* * * * *

Section 162.46 also issued under 19 U.S.C. 1609, 1611;

* * * * *

Section 162.48 also issued under 19 U.S.C. 1606, 1607, 1608, 1612, 1613b, 1618;

* * * * *

§ 162.46 [Amended]

2. It is proposed to amend § 162.46 by redesignating paragraph (d)(1) as paragraph (d) and by removing paragraph (d)(2).

3. It is proposed to amend § 162.48 by revising the section heading, designating the text as paragraph (a) and adding a new paragraph heading, and adding a new paragraph (b), to read as follows:

§ 162.48 Disposition of perishable and low-value property.

(a) *Disposition of perishable property.*

* * * * *

(b) *Disposition of low-value property.* (1) If the expense of keeping any vessel, vehicle, aircraft, merchandise or baggage is disproportionate to the value thereof, and such value is less than $1,000, destruction or other appropriate disposition of such property may be ordered by the appropriate Customs officer. Storage expenses are presumed to be disproportionate to the value of the property where the expense has reached or is anticipated to reach 50 percent of the value of the property. The right of a claimant to seized property which has been destroyed or otherwise disposed of shall not be extinguished.

(2) Publication of a notice of the seizure, regardless of the disposition of the property, will be required pursuant to 19 U.S.C. 1607. Claimants to seized property will be permitted to file a petition for remission of the forfeiture pursuant to 19 U.S.C. 1618, and Part 171 of this Chapter. A claimant receiving full or partial relief from the forfeiture shall be reimbursed the difference between the value of the merchandise at the time of seizure, pursuant to 19 U.S.C. 1606 and § 162.43 of this part, and any remitted forfeiture amount that the claimant is required to pay.

(3) A claimant to destroyed or otherwise disposed of seized property requesting relief in the form of payment may file a claim and cost bond and seek judicial hearing on the forfeiture pursuant to 19 U.S.C. 1608.

(4) Successful claimants shall be compensated from the Customs Forfeiture Fund pursuant to 19 U.S.C. 1613b.

Approved: May 7, 1991.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

Carol Hallett,

Commissioner of Customs.

[FR Doc. 91–13126 Filed 6–3–91; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 155

[Docket No. 88P–0373]

Canned Green Beans and Canned Wax Beans; Amendment of the Standard of Identity

AGENCY: Food and Drug Administration, HHS.

ACTION: Reproposed rule.

SUMMARY: The Food and Drug Administration (FDA) is reproposing to amend the standard of identify for canned green beans and canned wax beans to permit the optional use of glucono delta-lactone. Glucono delta-lactone will serve to lower the pH, to reduced processing time and temperature, and thereby to enhance the color, flavor, and texture of the product. This action will, to the extent practicable, provide greater flexibility in the processing of these products and will promote honesty and fair dealing in the interst of consumers. FDA is reproposing this amendment to reflect the recent changes in statutory authority for food standards resulting from the November 8, 1990, passage of the Nutrition Labeling and Education Act of 1990 (the 1990 amendments).

DATES: Comments by July 5, 1991. The Agency proposes that any final rule that may be issued based upon this reproposal shall become effective on the date of publication of the final rule in the **Federal Register**.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nannie H. Rainey, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, (202) 485–0107.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 11, 1990 (55 FR 41346), FDA published a proposed rule to amend the standard of identity for canned green beans and canned wax beans in § 155.120 (21 CFR 155.120). The proposal responded to a citizen petition submitted jointly by the Seymour Canning Co., Seymour, WI 54165; the American National Can Co., Chicago, IL 60631; and Finnsugar Biochemicals Inc., Schaumburg, IL 60173. The petition requested that FDA amend the standard of identity for canned green beans and canned wax beans (§ 155.120) to permit the optional use of added glucono delta-lactone, either alone, or in combination with other acidulants permitted by the standard. According to the petition, glucono delta/lactone acts as a pH control agent and serves to lower the equilibrium pH to below 4.6, to reduce the time and temperature parameters for thermal processing, and thereby to enhance the color, texture, and flavor of the canned beans and canned wax beans.

On its own initiative, FDA proposed to update the method of analysis in § 155.120(b)(2)(i) to refer to the latest edition of the "Official Methods of Analysis of the Association of Official Analytical Chemists" (AOAC), 15th Ed. (1990), as well as reference the new address of the AOAC office. Since development of the proposal, the address has been corrected in the existing regulation. Interested persons were given until December 10, 1990, to submit comments. No comments were received in response to the proposal.

The petition submitted by Seymour Canning Co., American National Can Co., and Finnsugar Biochemicals, Inc. was filed under section 701(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21, U.S.C. 371(e)) which requires formal rulemaking in any action for the amendment of a food standard. However, on November 8, 1990, the 1990 amendment were signed into law. The 1990 amendments removed food standards, except for the amendment or repeal of food standards for dairy products (21 CFR parts 131, 133, and 135) and maple syrup (21 CFR 168.140), from the formal rulemaking procedures of section 701(e) of the act (21 U.S.C. 371(e)). Consequently, action on the petition submitted by Seymour Canning Co., American National Can Co., and Finnsugar Biochemicals, Inc., is now subject to the informal rulemaking procedures (notice and comment rulemaking) of section 701(a) of the act (21 U.S.C. 371(a)). To reflect this change in statutory authority and to ensure that no one is prejudiced by this change in procedure, FDA is issuing this reproposal. Interested persons will have an additional 30 days in which to comment.

The agency believes that it is reasonable to provide for the use of glucono delta-lactone as a pH control agent in canned green beans and canned wax beans and that such use will promote honesty and fair dealing in the interest of consumers and is therefore amending § 155.120 (a)(3) and (b)(2) as set forth below.

Accordingly, the agency is issuing a reproposed rule that sets forth an amendment to the standard of identify for canned green beans and canned wax beans in § 155.120 to permit the optional use of glucono delta-lactone. In addition, the reproposed rule will update the method of analysis in § 155.120(b)(2)(i) to refer to the latest edition of the "Official Methods of Analysis of the Association of Official Analytical Chemists" (AOAC), 15th Ed. (1990).

Economic Impact

In accordance with the Regulatory Flexibility Act (Pub. L. 96–354) (5 U.S.C. 601), FDA reviewed the reproposed rule to amend the standard of identity for canned green beans and canned wax beans to permit the optional use of glucono delta-lactone to determine its impact on small entities, including small businesses. FDA tentatively determined

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that because the effect of the amendment is to permit increased flexibility in the processing of these foods to both large and small entities, the proposed action will not result in a significant impact on a substantial number of small entities. FDA has not received any new information or comments that would alter this tentative determination. Therefore, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act, that no significant economic impact on a substantial number of small entities will derive from this action.

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this reproposal, and the agency has determined that the reproposed rule, if promulgated, will not be a major rule as defined by that order.

List of Subjects in 21 CFR Part 155

Food grades and standards, Incorporation by reference, Vegetables.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR Part 155 is amended as follows:

PART 155—CANNED VEGETABLES

1. The authority citation for 21 CFR part 155 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

2. Section 155.120 is amended by redesignating existing paragraphs (a)(3)(xiii) and (a)(3)(xiv) as paragraphs (a)(3)(xiv) and (a)(3)(xv), respectively; by adding a new paragraph (a)(3)(xiii); and by revising paragraph (b)(2)(i) to read as follows:

§ 155.120 Canned green beans and canned wax beans.

(a) * * *

(3) * * *

(xiii) Glucono delta-lactone.

* * * * *

(b) * * *

(2) * * *

(i) Determine the gross weight of the container. Open and distribute the contents of the container over the meshes of a U.S. No. 8 circular sieve with openings of 2.36 mm (0.0937 in), which has been previously weighed. The diameter of the sieve is 20.3 cm (8 in) if the quantity of contents of the container is less than 1.36 kg (3 lb) and 30.5 cm (12 in) if such quantity is 1.36 kg (3 lb) or more. The bottom of the sieve is woven-wire cloth that complies with the specifications of such cloth set forth in "Official Methods of Analysis of the Association of Official Analytical Chemists," 15th Ed. (1990), Table 1, "Nominal Dimensions of Standard Test Sieves (USA Standard Series)," page xvi, under the heading "Definitions of Terms and Explanatory Notes," which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Association of Official Analytical Chemists, Suite 400, 2200 Wilson Blvd., Arlington, VA 22201-3301, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC. Without shifting the material on the sieve, incline the sieve 17 to 20° to facilitate drainage. Two minutes after drainage begins, weigh the sieve and the drained material. Record in grams (ounces) the weight so found, less the weight of the sieve, as the drained weight. Dry and weigh the empty container and subtract this weight from the gross weight to obtain the net weight. Calculate the percent of drained liquid in the net weight.

* * * * *

Dated: May 24, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-13098 Filed 6-3-91; 8:45 am]

BILLING CODE 4160-01

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 43

[Public Notice 1405]

Visas: Documentation of Immigrants

AGENCY: Bureau of Consular Affairs, State.

ACTION: Notice of proposed rule.

SUMMARY: This proposed rule would implement section 132 of Public Law 101-649 which establishes a three-fiscal-year (fiscal years 1992, 1993, and 1994) program for the issuance of 40,000 visas per year to aliens who are natives of foreign states (other than Canada) designated as "adversely affected" within the meaning of section 314 of Public Law 99-603, as amended. The program would operate in a manner similar to that established to implement section 314 (the NP-5 Program). Because of the many similarities between §§ 132 and 314, the Department proposes to designate current §§ 43.1 through 43.8 as subpart A of part 43 and to designate the regulations implementing section 132 as subpart B of part 43 of 22 CFR.

DATES: Written comments must be received on or before July 5, 1991.

ADDRESSES: Interested persons are invited to submit comments in duplicate to: Director, Office of Legislation, Regulations, and Advisory Assistance, Visa Office, Department of State, Washington, DC 20522-0113.

FOR FURTHER INFORMATION CONTACT: Cornelius D. Scully, III, Director, Office of Legislation, Regulations, and Advisory Assistance, (202) 663-1184.

SUPPLEMENTARY INFORMATION:

General

Section 132 of Public Law 101-649 establishes a three-fiscal-year program for the issuance of 40,000 immigrant visas per year to applicants who meet certain requirements and who make application under a procedure set forth in the section itself. In broad terms, section 132 derives from section 314 of Public Law 99-603, as amended, and, in many ways, closely resembles it.

The Department established part 43 of title 22, Code of Federal Regulations, to set forth the regulations implementing section 314. A very detailed discussion of section 314, the Department's interpretation of it, the procedures for its implementation and the Department's rationale for those procedures is set forth in the Supplementary Information to the regulatory publications, which can be found at 52 FR 1447 (January 14, 1987), 52 FR 17944 (May 13, 1987), and 53 FR 49979 (December 13, 1988). The Department does not consider it necessary repeat extensively the information contained in those earlier publications, but will refer to it as appropriate.

Applicants Entitled To Compete

Section 132(b) defines a qualified alien as a "native of a foreign state that is not contiguous to the United States" which was identifeid as an adversely affected foreign state for the purposes of section 314 of the Immigration Reform and Control Act of 1986" (Pub. L. 99-603). This definition, while derivative from section 314, is somewhat different in that it incorporates by reference the regulatory definition set forth in § 43.2 of this Part. It is also different in that it uses the term "foreign state" while section 314 used the word "country." It is clear, however, from the legislative history that the Congress did not envision a substantive change when it substituted "foreign state" for "country." Accordingly, the Department proposes to define "adversely affected foreign state" for the purpose as having the meaning ascribed to the term "adversely affected country" by § 43.2 of this Part.

The country which was identified as adversely affected for purposes of section 314 and which is contiguous to the United States and Canada. Accordingly, natives of Canada will not be entitled to compete for visas under section 132. The Department proposes to implement this prohibition by prohibiting natives of Canada from registering for this program.

Because of questions which arose during the implementation of section 314 the Department proposes to include a definition of the word "native." One of the questions related to the issue of "alternate foreign state chargeability." Under the Immigration and Nationality Act, as amended, the administration of the numerical limitations on immigration is based upon place of birth. In determining to which foreign state or dependent area is numerically-limited immigrant shall be charged, the primary rule is that the immigrant is charged to the foreign state or dependent area in which he or she was born. Section 202(b) establishes certain circumstances in which an immigrant may be charged to a foreign State or dependent area other than the one of birth. These are referred to informally as the "rules of alternate foreign state chargeability." The Department does not intend to include here a detailed explanation of those "rules" but wishes to make it clear in the proposed regulations that those "rules" do apply in determining whether or not an individual alien is entitled to compete for visas under section 132.

The Department wishes to make clear that the alien's entitlement to alternate foreign state chargeability to a qualifying foreign state must exist at the time of the application period during which the alien applies. An alien will not be permitted to claim the benefit of this program on the basis that, even though not entitled to compete as of the application period, he or she has subsequently become so entitled.

The second question related to the boundaries of foreign states or dependent areas for this purpose. The Department wishes to emphasize that the boundaries for this purpose are those recognized by the United States as of the time of the application period. Cases arose during the implementation of section 314 in which an alien's place of birth had been a part of one country at the time of birth, but had become part of another country by the time the alien applied. Where such a change has occurred and has been recognized by the United States, section 202 of the Immigration and Nationality Act, as amended, requires that the alien be treated as chargeable to the country having recognized jurisdiction over the place of birth as of the time of the application. This interpretation will be applied in the administration of section 132.

Application Forms

Under the original NP-5 Program, the Department did not find it necessry to establish a pre-printed application form. The information required to be submitted was very limited—name, date and place of birth, address of record, visa-issuing office at which the application would be processed, if selected, and the name(s), date(s) and place(s) of birth of spouse and child(ren), if any. The Department believed that the applicants could just as easily provide this information on a sheet of paper. The system worked satisfactorily. Applicants understood what they were expected to do and did it and as well as they would have done had there been a pre-printed form.

Under the proposed program, applicants are required to submit the same information. They must, however, also present a "firm offer of employment for at least one year." The offer of employment to be presented by the applicant must be prepared by the prospective employer. The applicant cannot prepare it. Accordingly, the Department proposes that the application be in the same form as was required for the NP-5 program and that it be accompanied by a separate writing from the prospective employer setting forth the offer of employment.

Firm Offer of Employment For One Year

The Department has considered how to treat the requirement that an applicant present a firm offer of employment for at least one year beginning on the date of admission for permanent residence. It does not appear to be realistic to require that the employer commit himself formally to retain the applicant for a minimum of one year in the offered position. Such a commitment would be inconsistent with normal employment practices. It is the Department's view that the purpose of the one-year requirement in section 132 is to make certain that the employment offered not be of an inherently time-limited character. Accordingly, the Department proposes to define "firm offer of employment for at least one year" to mean that the terms of the offer of employment do not, but its terms, limit the duration of the employment to less than one year.

Special Making of Envelopes

Because of the provisions described below requiring that 40 percent of the visa numbers available during each fiscal year be made available to natives of Ireland, the Department proposes to require that each applicant type or print legibly the name of the adversley affected country of which he or she is a native in the upper left-hand corner of the front of the envelope in which the application is mailed.

This new requirement is added in order to facilitate the registration process. The Department foresees the possibility that, depending upon the order in which applications are received, it might be ncessary to continue to register natives of Ireland after a sufficient number of natives of other adversely affected countries have already been regisered. If each envelope bears on its face the name of the adversely affected country of which the applicant is a native, the process of registering additional natives of Ireland will be facilitated by allowing quick identification of their applications.

Application Procedure and Timing

Proposed §§ 43.13(a) and (b) do not specify the precise dates of the application periods. Rather, it is proposed to announce both the dates of application and the address to which the application is to be mailed in a Public Notice in the **Federal Register**, with appropriate publicity given to both, in the United States and abroad. The Department envisions that the mechanism employed for this purpose will be the same as that employed for the NP-5 program, as discussed and described in detail in the regulatory publications dealing with the original NP-5 program—52 FR 1447 and 52 FR 17944.

The Department will likely be able to specify both the dates and the address by the time of publication of the Final Rule, but believes that it is preferable to announce each of these details separately. Section 132 requires a separate mail-in period for each of the applicable fiscal years. The Department cannot now specify when or to what address applications for fiscal year 1993 or 1994 should be sent and does not believe that it will be able to do so at the time of promulgation of the Final Rule. Logic would indicate that a Public Notice each year, with appropriate attendant publicity, is the preferable way to announce this information to the interested public.

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Registration and Notification Procedures

There will be significant differences in the registration and notification procedures under this program from those used under the original NP–5 program. The differences are dictated by differences in the statutory scheme. Under the original NP–5 program, there was established a single mail-in period because the statute did not provide for more than one and the volume of applications received during the initial mail-in period was more than sufficient to produce applicants for all of the available visas. In addition, the program lasted for two years. This meant that a successful applicant could be processed for visa issuance either in the first or the second year of the program. The registration and notification process for that program took these facts into account.

In the NP–5 program the first 10,000 registrants constituted a primary list. Each was immediately notified that he or she should prepare for visa issuance (the Packet 3 letter). The next 15,000 registrants were sent a Packet 3A letter, informing them that they were registered but that further processing would be possible only if registrants on the primary list failed to pursue their applications. As the implementation of the program proceeded and it was possible to observe the rate at which registrants pursued their applications, the Department was able to send Packet 3 notifications to registrants on the secondary list, in the knowledge that there would be time for those registrants to complete the necessary processing before the program ended.

Section 132 contains provisions which will require a different mechanism. First, a separate mail-in period is required for each fiscal year. Second, applications registered in each mail-in period are valid only for the fiscal year in question. For the registrant who does not receive an immigrant visa during that year, the registration becomes invalid.

These requirements are born of the Department experience with the NP–5 program. A significant problem under the NP–5 program was the "stale address" problem—frequently, by the time it became possible for the Department to notify a registrant that he or she should complete processing, the registrant had moved and never received the notification. The requirement for an annual mail-in and the limitation on the validity of applications are designed to reduce or eliminate the "stale address" problem.

On the other hand, a new potential problem is created by those requirements. The Department does not believe that it will be possible to create separate primary and secondary lists of registrants. The time limitation will make it necessary to create a single list of registrants, all of whom will receive the Packet 3 notification immediately. Time will not permit subsequent adjustments to take into account drop-outs among the primary registrants. Thus, the initial notifications will have to be sent to a number of applicants in excess of the total of available visa numbers, in order to make certain that visas do not go unissued for lack of applicants ready for visa issuance.

The Department is well aware of the fact that a number of applicants who were sent the Packet 3 notification letter under the NP–5 program and who completed the necessary processing before the end of the program could not be issued visas for lack of visa numbers under the program's numerical limitations. As a result certain individuals appear to believe that the Department erred in raising unfulfilled hopes and expectations among those applicants.

The Department cannot emphasize too strongly a point it made in its discussion of the NP–5 regulations—no visa applicant can, as a matter of law, expect to receive a visa until the visa has been issued and delivered to him or her. At every stage of the process statutory requirements can intervene to prevent the issuance of a visa to an applicant who might, at first glance, appear certain to receive one. Those statutory requirements include the numerical limitations, the requirement for processing in chronological order of registration, and the possible applicability of a ground of exclusion which cannot be waived.

The Department anticipates that it will register applicants in chronological order of the receipt of their mail, as was done in the NP–5 program, until a list of approximately 50,000 applicants has been established. There will be no further registrations from among that group of applicants. Packet 3 notifications will be sent to all registered applicants. The administrative processing of those applicants will then proceed as rapidly as possible. Each month, visas will be issued, again in chronological order of registration, to those applicants ready for visa issuance during that month, up to the limit established for that month. Once the total of 40,000 visas has been issued, the program for that year will end.

Numerical Limitations

The numerical limitations established in section 132, in addition to being larger than those established under the original NP–5 program, contain an element requiring a different implementation than that provided for the NP–5 program. Section 314 did not contain any limitation on the number of visas which could be issued to natives of any single adversely affected country. The Department imposed such a limitation administratively, on the theory that it was appropriate to distribute the available visas among natives of the various qualifying countries on a basis which approximated the extent to which each had been adversely affected.

Section 132, on the other hand, expressly requires that at least 40 percent of each year's total of 40,000 be made available to natives of the country which received the largest percentage of the NP–5 visas. That country was Ireland. Thus, the Congress has mandated that at least 40 percent of the visas available under this program be made available to natives of Ireland. Proposed § 43.15 would establish a numerical control system to accomplish this statutory mandate. The Department interprets this express requirement as a deliberate rejection of the per country limitation included in the original NP–5 program. Accordingly, the Department does not propose to include a per country limitation in these implementing regulations.

It is important to note that natives of Ireland will not be limited to 40 percent of the total visas available. The language of section 132 guarantees them a minimum of 40 percent, but does not limit them to that amount. Should they qualify on a chronological basis, for more than 40 percent, they will be entitled, as a matter of law, to whatever higher number chronological processing might produce. The numerical control system proposed in § 43.15 would establish a system which could produce that result.

Fees

Section 132(f) requires the Secretary of State to establish a processing fee to be paid for filing an application and to set the fee at an amount sufficient to "cover the cost of processing applicants under this section." Since those registered for immigrant visa processing under this section will have to pay the normal immigrant visa processing and issuance fees, the Department interprets this requirement to apply to the separate costs of holding the mail-in and the registering of applicants. The estimated cost of that process is $650,000.

The Department has considered how and at what point to collect the required fee. In considering these issues, the Department has taken into account the fact that it received approximately 1.3 million pieces of mail during the original NP–5 mail-in period. Since there is no way to predict whether the volume of applications under this program will be greater or lesser than under the N–5 program, the Department contemplates that the same volume of mail would be received. On that basis, the per applicant fee would be $0.50 (fifty cents). Thus, a separate mechanism would have to be created to account for 1.3 million remittances of fifty cents each, including preparing and returning to the applicant a receipt for the fifty cent remittance. Under such a scheme, every piece of mail would have to be opened for the sole purpose of processing the fifty cent remittance, even for those applicants whose chronological order clearly would never under any circumstance allow them to be considered for visa issuance.

Considering all these factors, the Department has concluded that imposing the fee at the time of the mail-in would be counter-productive and unnecessarily complicate the orderly processing of the registrations. The Department has chosen instead to impose the fee on those applicants whose applications are actually registered. The proposal is that applicants to whom Packet 3 is sent notifying them of their registration and instructing them to take the steps necessary to prepare for final action on their applications will be required to remit to the visa issuing office the sum of $20.00 for each case registered when they return to that office the Form OF–179, Biographic Information for Visa Purposes. The Department estimates that this fee would produce roughly $700,000 to $750,000 which would cover the costs of the mail-in and the registration, even if the actual cost should be somewhat larger than estimated.

Imposing the fee in the manner described above appears appropriate to the Department because (1) It imposes the fee upon those who receive the benefit of the program; and (2) it establishes the fee at a level which is reasonable in terms of the individuals paying it but large enough to justify its collection.

In connection with the establishment of this fee, the Department believes it possible that a number of those registered for futher processing under this program will be in the United States and will not be prohibited by section 245(c) of the Act from applying for adjustment of status. This occurred under the original NP–5 program and there is no reason to believe that it will not occur under this program. This proposed rule includes a requirement that the alien in question remit the established fee to the designated visa-issuing office even if he or she intends to apply for adjustment of status, at the same time informing that office of his or her intent to apply for adjustment.

This requirement will ensure that aliens who apply for adjustment do not thereby avoid payment of this fee. It will also allow the visa-issuing office to avoid unnecessary administrative processing of such cases. While the proposed rule does not, for obvious reasons, include provisions affecting the operations of the Immigration and Naturalization Service, the Department will communicate with the Service concerning this requirement and to request that applicants for adjustment of status under this program be required to present a receipt for this processing fee in connection with their application.

Applicability of Grounds of Exclusion

Section 132(e) provides for waivers of certain grounds of exclusion. The language of that section is confusing. One portion of the section provides that the Attorney General shall waive section 212(a)(6)(C) in behalf of an applicant under section 132 unless he finds it not in the national interest to do so. The Department assumes that the Immigration and Naturalization Service will make provision for implementing this portion of section 132(e).

Another portion of section 132(e) specifies that sections 212(a)(5)(B) and (7)(A) shall not apply to aliens applying under section 132. It is not necessary to specify that section 212(a)(5)(B) shall not apply to such aliens as section 212(a)(5)(B) applies, by its own terms, only to certain classes of employment-based immigrants. While it is certainly not improper to restate in section 132 itself what is already clear as a matter of law from language elsewhere in the statute, the Department finds it entirely unnecessary to do so, since it finds no legally supportable argument to suggest that section 212(a)(5)(B) would apply to applicants under section 132, even without this language.

In this connection, the Department has received inquiries about the possible applicability of section 212(a)(5)(A)—the labor certification requirement—to applicants under section 132. The inquirers explained that it had been intended, they understood, to specify that section 212(a)(5)(A) was not applicable to these aliens. They expressed concern that the inadvertent use of 212(a)(5)(B) instead of section 212(a)(5)(A) might result in the application of the labor certification requirement to these aliens. The Department takes the same position about section 212(a)(5)(A) as about section 212(a)(5)(B). By its express terms, it applies only to certain classes of employment-based immigrants. It is the Department's opinion that it cannot, as a matter of law, be construed to apply to any classes of immigrants other than those expressly listed in the section itself.

The provision that section 212(a)(7)(A) shall not apply to these aliens clearly appears to be a technical error. Section 212(a)(7)(A)(I) requires an immigrant alien to be in possession of a valid unexpired immigrant visa and such travel documentation as might be required by regulations, when applying for admission at a port of entry. Section 212(a)(7)(A)(II) denies admission to an alien whose immigrant visa was issued without compliance with section 203 of the Act.

The Department does not believe that the Congress intended to exempt immigrants under section 132 from the requirement to present an immigrant visa when applying for admission at a port of entry. The provision of section 132(a) itself provides for making 40,000 immigrant visas available. Exempting the aliens from the requirement of obtaining an immigrant visa renders this provision irrelevant. It is possible that the Congress only intended to relieve aliens applying under section 132 from the travel document requirement, but not the visa requirement. The Department notes that there is no evidence that applicants under the original NP–5 program did not have, or experienced any difficulty in obtaining, appropriate travel documents. Accordingly, the Department concludes that section 203 is not applicable, or relevant, to the processing of applicants under section 132.

The Department, therefore, will treat the references to sections 212(a) (5)(B) and (7)(A) in section 132(e) as drafting errors not requiring implementation.

Miscellaneous

The Department wishes to take this occasion to point out several related items which will be of public interest. First, it will be noted that the Department does not propose to establish a limit of one application per alien. Those who are familiar with the original NP–5 program will recall that no such limit was imposed in that program either. The language of section 132 closely resembles that of section 314 of Public Law 99–603. Moreover, section 133 of Public Law 101–649, which

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establishes a diverse immigration program to begin in the year following the last year of this program, explicitly limits applications to one per alien. For these reasons, the Department does not find a basis for imposing such a limit in this program.

Next, the Department wishes to explain how it envisions that incoming mail will be processed. The Department contemplates that it will rent a post office box, as was done for the NP–5 program. The Department believes that the United States Postal Service still has procedures for handling high volumes of mail, identical with those which existed in 1987, or closely similar to them. Under those procedures, incoming mail for the postal address was sorted into boxes containing about 500 pieces of mail each. The boxes, in turn, were loaded onto metal racks and delivered to representatives of the contractor who handled the registration process. Each rack was labelled sequentially to indicate its order of delivery and transported to the office space used by the contractor for the purpose.

Once the racks had reached the contractor's work space, employees of the contractor opened the mail in chronological order of receipt from USPS and entered into a computer programmed for the purpose the identifying information from the applications. Included in the computer program was a feature under which a twelve digit number was created for each entry. This number represented the year, month, day, hour, minute, and second at which the entry was created in the computer data base and became the alien's chronological priority date for further consideration under the program.

Once that process was completed, information concerning the registrants was sent to the visa-issuing office indicated by the applicant. Upon receipt of that information, the visa-issuing office created a record of the alien as an immigrant visa applicant and sent to the alien the appropriate letter of instructions. From that point on, the processing of the registrants followed the standard procedures for immigrant visa applicants generally.

In spite of certain logistical difficulties occasioned by the fact that the original mail-in period was in January and two major snowstorms struck the Washington area during that period, that system worked effectively and the Department believes that in general the same procedure will serve the purpose in this case as well.

There will, however, be one significant difference in the procedure. The Department has concluded that the Packet 3 letter notifying each applicant of registration for further consideration should be sent by the Department itself rather than by the visa-issuing office at which the application will ultimately be processed. The Packet 3 letter will direct the applicant to communicate thereafter with that office and, from that point on, the processing of the applications will be exactly as was the case under the original NP–5 program.

Also, the Department wishes to remind the public that it will not be possible to respond to individual inquiries concerning possible registration. Registrants will be notified by the designated visa-issuing office through the mailing of the appropriate letter of instructions. It will not be administratively feasible to respond to inquiries directed to the Visa Office or elsewhere in the Department of State.

In addition, the Department will not be able to return applications to the sender. Those applications which are chronologically early enough to justify registration will be sent to the visa-issuing office to form part of the documentation on file there in connection with immigrant visa processing. Those pieces of mail which are never opened because their chronological order will not justify doing so will be disposed of by the Department after an appropriate period of time.

Finally, it is the Department's understanding that a successful registrant physically present in the United States will, as was the case under the NP–5 program, be able to apply for adjustment of status under section 245 of the Immigration and Nationality Act, provided he or she is in all respects eligible for adjustment of status under the generally applicable requirements under the INA.

This rule is not considered to be a major rule for purposes of E.O. 12291 nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The collection of information requirements in this rule will be submitted to OMB in accordance with the provisions of the Paperwork Reduction Act of 1980. Form OF–230, Application for Immigrant Visa and Alien Registration, which will be eventually used by the applicants benefiting by this rule, is pending review by OMB. (See FR 56, 22190.)

List of Subject in 22 CFR Part 43

Aliens, Adversely affected country, Immigrants, Numerical limitations.

Proposed Regulations

In view of the foregoing, title 22 of the Code of Federal Regulations, subchapter E–VISAS, part 43 would be amended to read as follows:

PART 43—[AMENDED]

1. The authority citation for part 43 would be revised to read as follows:

Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; Sec. 109(b)(1), 91 Stat. 847; Sec. 132, 104 Stat. 5000, 8 U.S.C. 1153 note.

2. The Title to part 43 would be revised and new Subpart A heading would be added above § 43.1 to read as follows:

PART 43—VISAS: DOCUMENTATION OF IMMIGRANTS

Subpart A—Documentation of Immigrants Under Section 314 of (Pub. L. 99–603)

* * * * *

3. New subpart B would be added to read as follows:

Subpart B—Documentation of Immigrants Under Section 132 of (Pub. L. 101–649)

Sec.
43.11 General.
43.12 Definitions.
43.13 Registration.
43.14 Order of consideration.
43.15 Control of numerical limitation
43.16 Fees

Subpart B—Documentation of Immigrants Under Section 132 of Public Law 101–649

§ 43.11 General.

Except as specifically provided in this subpart, the provisions of the Immigration and Nationality Act, as amended, and of parts 40 and 42 of this chapter shall apply to application for, consideration of, and issuance of refusal of, immigrant visas under section 132 of Public Law 101–649.

§ 40.12 Definitions.

The following definitions shall be applicable to this Part:

(a) *Adversely affected foreign state* shall have the meaning ascribed to the term "adversely affected country" in § 43.2 of Subpart A of this Part;

(b) A *firm commitment for employment in the United States for a period of at least one year* shall mean an offer of employment from an employer in the United States which specifies that the place of employment is within the United States and which does not, by its terms, limit the duration of the offered employment to a period of less than one year;

(c) *Native* shall mean born within the territory of a foreign state, or entitled to be charged for immigration purposes to that foreign state pursuant to section

202(b) of the Immigration and Nationality Act, as amended.

§ 43.13 Registration.

(a) *Limitations on registration.* An alien shall not be eligible to register under this section unless he or she is a native of an adversely affected foreign state (as defined in § 43.12 of this subpart) other than Canada. Applications for registration shall be made separately for each of the Fiscal Years 1992, 1993, and 1994, during application periods established by the Department for such purpose. An application for registration submitted during the application period for a fiscal year shall not be retained for consideration with respect to any fiscal year other than the one for which it was submitted. The dates of each application period held pursuant to this section shall be announced by the Department of State by publishing a Public Notice in the **Federal Register** and through such other means as will ensure wide dissemination of the information, both within the United States and elsewhere. Applications for registration will be accepted only between 12:01 a.m. on the first day of the application period and Midnight of the last day of the application period. Applications received at any other time will not be considered.

(b) *Place of registration.* An alien eligible to register pursuant to paragraph (a) of this section who desires to register as an application for a visa under section 132 of Pub. L. 101–649 shall apply for registration by mail. The address to which such applications shall be submitted shall be included in the announcement of the application period provided for in paragraph (a) of this section. Hand-delivered applications, telegrams, or envelopes sent by any means requiring any form of acknowledgement of receipt by the recipient will not be accepted. Only one application may be submitted in each envelope and, if an envelope contains two or more applications, only the first application removed from the envelope will be accepted and processed.

(c) *Application.*—(1) *Form of application.* An application for registration under this section shall consist of—

(i) A sheet of paper on which shall be typed or legibly printed in the Roman alphabet the applicant's name, place of birth (including city and county, province or other political subdivision, and country), name(s), date(s) and place(s) of birth of spouse and child(ren), if any, a current mailing address, and location of consular office nearest to current residence or, if in the United States, nearest to last foreign residence prior to entry into the U.S.; and

(ii) A firm commitment for employment in the United States for at least one year (beginning on the date of admission for permanent resident).

(2) *Marking of mailing envelope.* An alien who submits an application as provided in this Subpart shall type or print legibly in the Roman alphabet the name of the adversely affected country of which he or she is a native on the upper lefthand corner of the front of the envelope in which the application is mailed.

(d) *Derivative registration.* An application for registration submitted in accordance with paragraphs (a) and (b) of this section shall be considered to include automatically the spouse or child of the applicant, whether or not such spouse or child is named in the application if, in the case of a spouse, the marriage to the applicant took place prior to the applicant's admission for permanent residence or, in the case of a child, the child is the issue of a marriage which took place prior to the applicant's admission to the United States for permanent residence.

(e) *Priority date.* An alien's priority date for consideration of his or her application under this subpart shall be the date, hour, minute, and second (within the application periods provided for in paragraph (a) of this section) of the receipt and processing of the application by the Visa Office of the Department of State.

(f) *Waiting lists.* The Department shall establish two waiting lists of applicants whose applications have been received and processed for consideration under this subpart. Both lists shall be maintained in the chronological order of priority dates established as provided in paragraph (e) of this section. One list shall consist of applicants who are natives of Ireland. The other list shall consist of all applicants who are natives of adversely affected foreign states.

§ 43.14 Order of consideration.

(a) *Registration.* Applicants shall be registered for further consideration under this Subpart in the chronological order in which their applications are received from the United States Postal Service mail-handling facility. Applicants shall be registered only in a number sufficient to ensure usage of all immigrant visa numbers available during the fiscal year for which the application period is held and to ensure that not fewer than 40 percent of such visa numbers are made available to natives of Ireland.

(b) *Further processing.* The Department shall inform applicants registered pursuant to paragraph (a) of this section of the steps necessary to meet the requirements of INA 222(b) in order to apply formally for an immigrant visa.

§ 43.15 Control of numerical limitation.

(a) *Centralized control.* Centralized control of the numerical limitation specified in section 132(a) of Public Law 101–649 is established in the Department. In order to effect this control, the Department shall limit the number of immigrant visas and the number of adjustments of status that may be granted to aliens applying under section 132 of Pub. L. 101–649 to a number

(1) Not to exceed 40,000 each in fiscal year 1992, 1993, or 1994 and

(2) Not to exceed, in any month of any such fiscal year, 4,000 plus any balance remaining from authorizations for preceding months in the same fiscal year.

(b) *Allocation of immigrant visa numbers.* Within the limitations specified in paragraph (a) of this section, the Department shall allocate immigrant visa numbers for use in connection with the issuance of immigrant visas and the granting of adjustment of status. Such allocation shall be based upon the chronological order of priority dates of applicants as established pursuant to § 43.13(e) of this subpart, except that allocations shall be made in such a manner as to ensure that, to the extent natives of Ireland have become documentarily qualified, not less than 40 percent of the visa numbers allocated during any fiscal year are allocated to natives of Ireland. To the extent that allocations of visa numbers to natives of Ireland must be made separately to ensure compliance with the requirement that at least 40 percent of the total be allocated to such aliens, such allocations shall also be made to such aliens in the chronological order of their priority dates.

§ 43.16 Fees.

(a) *Applicant for immigrant visa.* An applicant who is registered for immigrant visa processing pursuant to § 43.23 of this subpart, who receives from the Department notification of the steps necessary to apply formally for an immigrant visa, and who will apply for an immigrant visa shall remit a fee of $20 (or its equivalent in the currency of the country in which such consular office is located) to the consular office at which the formal immigrant visa application will be made. The fee shall

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be $20 regardless of whether or not the applicant has a spouse and/or child(ren) who intend to accompany or follow to join the applicant. The remittance shall be negotiable in such form as the Department shall specify and shall be remitted to the consular office with the completed Form OF-179, Biographic Data for Visa Purposes. Consular officers shall give no further consideration to an application under this Subpart until the fee specified herein has been received.

(b) *Applicant for adjustment of status.* An applicant who is registered for immigrant visa processing pursuant to § 43.23 of this subpart and who receives notification of the steps necessary to apply formally for an immigrant visa, but intends to apply to the Immigration and Naturalization Service for adjustment of status under section 245 of the Immigration and Nationality Act, shall nonetheless complete and return Form OF-179, together with the required fee of $20, as provided in paragraph (a) of this section. The applicant shall also inform the consular officer that he or she intends to apply for adjustment of status rather than for an immigrant visa.

Dated: April 29, 1991.

James Ward,

Acting, Assistant Secretary for Consular Affairs.

[FR Doc. 91-12820 Filed 6-3-91; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 650

[FHWA Docket No. 91-13]

RIN 2125-AC

Highway Bridge Replacement and Rehabilitation Program

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA is requesting comments on proposed revisions to its procedures for evaluating existing highway bridges for eligibility under the Highway Bridge Replacement and Rehabilitation Program (HBRRP). The proposed procedures would replace the evaluation method described in 23 CFR 650.409 which is based on a Sufficiency Rating formula. The FHWA proposes to discontinue using the Sufficiency Rating to evaluate the need to replace or rehabilitate bridges and to implement level-of-service criteria for this purpose. The primary reason for the change is to lessen the changes for inequities in the apportionment of HBRRP funds by improving the objectivity of the evaluation process. The proposed level-of-service criteria evaluates the need to replace or rehabilitate a bridge based on its load capacity, clear deck width, vertical overclearance and vertical underclearance. The criteria varies with traffic volume and functional classification of the highway. The criteria differ from the Sufficiency Rating in that less emphasis is placed on subjective condition and appraisal ratings. The basis of the level-of-service evaluation will be structural, geometric and inventory information contained in the National Bridge Inventory (NBI). Bridges that do not provide the specified level-of-service will be included in calculations for apportioning HBRRP funds under 23 U.S.C. 144.

DATES: Comments must be submitted on or before August 5, 1991.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 91-13, Federal Highway Administration, Office of the Chief Counsel, room 4232, HCC-10, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel S. O'Connor, Bridge Management Branch, Bridge Division, Office of Engineering, (202) 366-1567; or Ms. Vivian Philbin, Office of Chief Counsel, (202) 366-0780, Federal Highway Administration, 400 7th Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: In 1978, Congress established the HBRRP under section 144 of title 23, U.S.C. This program provides funds for the replacement and rehabilitation of bridges on all public roads. Funding for the HBRRP has been authorized in several successive highway acts. The most recent authorization was $8.15 billion for fiscal years 1987 through 1991. About 3,000 bridges are replaced or rehabilitated each year under the HBRRP program.

Section 144 of title 23, U.S.C., directs the Secretary, in consultation with the States, to (1) inventory all highway bridges on public roads, (2) classify them according to serviceability, safety and essentiality for public use, (3) based on the classification, assign each a priority for replacement or rehabilitation and (4) determine the cost of replacing each such bridge with a comparable facility or of rehabilitating such bridge. Section 144 further directs the Secretary to determine the eligibility of highway bridges for replacement or rehabilitation based upon the unsafe highway bridges in each State, and to give consideration to those projects which will remove from service those bridges most in danger of failure.

Since the early 1970's, the FHWA has employed a needs index known as the Sufficiency Rating to classify bridges according to their safety, serviceability and essentiality for public use. This Sufficiency Rating together with a "deficient bridge definition" are currently used to establish funding eligibility under the HBRRP.

The deficient bridge definition uses NBI condition and appraisal ratings to determine whether a bridge is deficient. Bridges classified as deficient are further subdivided as either "structurally deficient" or "functionally obsolete". Bridges classified as structurally deficient are excluded from the functionally obsolete category to avoid duplicate counting. Only the bridges classified as deficient are considered for HBRRP funding.

The Sufficiency Rating rates a bridge on a scale of 0 to 100 using a relatively complicated empirical formula which assigns points on the basis of 17 separate NBI items. The most heavily weighted items are superstructure or substructure condition and inventory rating (combined total of 55 points is possible), lane width (15 points possible), and average daily traffic times detour distance (15 points possible). Being a sufficiency rating, deficiency points are subtracted from 100 to give sufficiency. Thus, a rating of 100 represents an entirely sufficient bridge. The current eligibility criteria specifies that deficient bridges having Sufficiency Ratings of less than or equal to 80 are eligible for rehabilitation, and those bridges with Sufficiency Ratings of less than 50 are eligible for replacement (or rehabilitation). Bridges with Sufficiency Ratings above 80 are not eligible.

The proposed modification of 23 CFR 650.409 retains the Sufficiency Rating as an index for classifying bridges in accordance with 23 U.S.C. 144. However, the Sufficiency Rating will no longer determine HBRRP eligibility. Instead, a level-of-service approach is proposed which evaluates the need to replace or rehabilitate a bridge based on four main bridge characteristics: Load capacity, clear deck width, vertical

overclearance, and vertical underclearance.

The proposal to discontinue the use of the Sufficiency Rating and adopt a level-of-service approach for apportioning HBRRP funds stems from a recognition of several shortcomings in the current procedures. These are:

1. Current procedures establish eligibility primarily on the basis of bridge condition and appraisal ratings, which are not necessarily uniform from State-to-State. The NBI Coding Guide [1] provides general guidance for appraising and rating bridge conditions, however, this guidance must be interpreted when rating specific bridge components or conditions. Consequently, the ratings can be affected by State practices as well as the judgments of individual bridge inspectors. Revisions to the NBI Coding Guide in 1988 removed the subjectivity from appraisal ratings for NBI Items 67 (Structural Evaluation), 68 (Deck Geometry), and 69 (Vertical and Horizontal Underclearances), by basing their values on other NBI items. However, condition ratings remain highly subjective. The level-of-service approach should lessen the chances for inequities in the apportionment of HBRRP funds by basing evaluations on bridge characteristics that can be determined directly through measurement or analysis, thereby reducing the subjectivity of the evaluation process. The level-of-service approach should also simplify and streamline the apportionment process by reducing or eliminating fluctuations in apportionment factors.

2. Current eligibility rules are insensitive to the traffic needs of the various highway systems. Because of this, there is concern that current eligibility rules are inadequate to screen bridges that do not need improvement. The concern is mainly with bridges that show up on the deficiency list because they have narrow width or low load capacity. The current rules do not consider that some of these bridges may be located on low volume local roads where service criteria can be lower.

The Sufficiency Rating formula is not sensitive to traffic volume or detour distance, nor does it consider the highway system on which the bridge is located. Thus, the identical bridge could have nearly the same Sufficiency Rating, whether located on a heavily travelled main highway or a lightly travelled local road.

In its report of May 1988, the General Accounting Office (GAO) [2] questioned the adequacy of the current apportionment formula to equitably distribute funds among the States to meet current bridge needs. The GAO maintains the FHWA's criteria of what constitutes a deficient bridge are too broad to assure that bridges that do not require rehabilitation or replacement are excluded from the apportionment base.

3. Current procedures use terminology such as "Structurally Deficient" for reporting bridge needs under the HBRRP. The public and the media in particular have tended to equate the FHWA term "deficient" with unsafe, which is not the case. The proposed revisions eliminate this and similar terminology from the evaluation criteria.

The level-of-service concept is based on the fact that the Nation's highway system serves a variety of traffic. Interstate highways, for example, usually carry the most cars and the heaviest trucks, and are, therefore, expected to have the strongest pavements and bridges, the widest lanes, and the highest clearances for large vehicles to pass under. By contrast, local roads carry fewer vehicles and typically smaller and lighter trucks. Because of lighter and smaller loads, the pavements and bridges on these roads usually do not need the same strength, lane width, and clearance as those on the Interstate highways.

To apply level-of-service criteria, it is first necessary to logically group bridges in terms of their function within the highway network. Proposed criteria will adopt a hierarchical classification system which has been established by the American Association of State Highway and Transportation Officials (AASHTO).[3] Under this system, highways are grouped into functional classes, where each class is distinguished by the type of service it provides. The hierarchy of the functional systems consists of principal arterials (for main movement), minor arterials (distributors), collectors, and local roads and streets. The characteristics of these systems differ for urban and rural areas. Functional class designations have been used by many highway agencies in constructing their administrators and design policies.

The FHWA is proposing to establish level-of-service criteria for load capacity, deck width, vertical overclearance and vertical underclearance which vary with highway functional class and traffic volume. Bridge condition ratings are purposefully omitted from the criteria because of their subjective nature. These ratings frequently merely reflect the bridge's state of maintenance, not its present structural adequacy and safety. Poor condition affecting structural adequacy and safety should be reflected in the bridge's load rating. Other factors affecting bridge improvement decisions, such as approach roadway alignment and waterway adequacy, normally occur in combination with other characteristics and will rarely be a sole determining factor in rehabilitative or replacement decisions.

It is emphasized that the proposed level-of-service criteria are not in any sense design standards. Nor are they necessarily acceptable criteria for basing replacement or rehabilitation decisions for a particular bridge or group of bridges. Rather, these criteria are intended to determine relative bridge needs throughout the States through an objective screening process which determines those bridges that are the most restrictive in terms of their capacity and the least capable of providing for safe and efficient highway transportation.

Adoption of a level-of-service approach will mean that FHWA will no longer specify the type of improvement for which a bridge is eligible. Rather, the determination to replace or rehabilitate will be made by the State either through its bridge management system or by other means that consider the relevant engineering and economic factors. For purposes of apportioning funds, however, an improvement type will be assigned based on the bridge's design load, current load rating, structure type, and condition.

Load Capacity

Each bridge in the NBI is rated at two load levels, which are defined by AASHTO.[4] The first or upper load level

[1] *Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges*, U.S. Department of Transportation, Federal Highway Administration, Office of Engineering, Bridge Division. Report No. FHWA-ED-89-044, December 1988. Available for inspection and copying as prescribed in 49 CFR part 7 appendix D; a copy is in the FHWA public docket files.

[2] Bridge Condition Assessment, Inaccurate Data May Cause Inequities in the Apportionment of Federal-aid Funds, U.S. General Accounting Office. Report No. GAO/RCED-88-73, May 1988 (U.S. Government Printing Office: Washington, DC, 1988). Available for inspection and copying as prescribed in 49 CFR part 7 appendix D; a copy is in the FHWA public docket files.

[3] A Policy on Geometric Design of Highways and Streets, American Association of State Highway and Transportation Officials. (Washington, DC, 1984). Available for inspection and copying as prescribed in 49 CFR part 7 appendix D; a copy is in the FHWA public docket files.

[4] Manual for Maintenance Inspection of Bridges, American Association of State Highway Officials, (Washington, DC, 1983). Available for inspection and copying as prescribed in 49 CFR part 7 appendix D; a copy is in the FHWA docket files.

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is referred to as the operating rating. The operating rating will result in the absolute maximum permissible load level to which the structure may be subjected. Special permits for heavier than normal vehicles may be issued only if such loads are distributed so as not to exceed the structural capacity determined by the operating rating. At the second or lower load level, the capacity rating is referred to as the inventory rating. The inventory rating will result in a road level that can safely use an existing structure for an indefinite period of time.

Proposed level-of-service criteria for load capacity are given in terms of an HS operating rating for all highway functional classifications. An HS operating rating is the weight in tons of an HS truck that produces operating load levels. The operating rating was selected in lieu of the inventory rating in an attempt to minimize the affects of different load rating practices among the States. Most States are using both load factor and working stress methods to rate bridges but there is no uniformity among States as to when and where a particular rating method is used. Since load factor rating methods generally result in higher ratings, a State that uses predominantly load factor methods may be at a slight disadvantage. However, the difference between a rating obtained by load factor methods and one obtained by working stress methods is much less pronounced at the operating stress level than at the inventory stress level.

Proposed level-of-service criteria for load capacity are given in table 1. At the highest level, interstate highways, a 45 ton (HS–25) operating rating is selected. Bridges meeting this level-of-service will accommodate legal loads at a stress level well below the operating rating. The high frequency of loads at or near the legal maximum requires this lower allowable stress as compared to highways carrying fewer trucks. The 45 ton operating rating will make most bridges on the Interstate that were designed for H–15 eligible for replacement.

At the lowest service level which is for local roads, the intent is to provide sufficient capacity to accommodate legal loads at the operating rating. A capacity of 30 tons was chosen since this is approximately the HS equivalent of the AASHTO vehicles (type 3, 3–S2 and 3–3). Bridges meeting this minimum level-of-service should in general not require posting.

TABLE 1.—LEVEL-OF-SERVICE LOAD CAPACITY

Functional class	Operating rating
Interstate Highways	45 tons (HS–25).
Rural and Urban Principal Arterials.	40 tons (HS–22).
Rural and Urban Minor Arterials.	40 tons (HS–22).
Rural Major Collectors	36 tons (HS–20).
Urban Collectors	36 tons (HS–20
Rural Minor Collectors	33 tons (HS–18).
Rural and Urban Local	30 tons (HS–17).

If the operating rating of a bridge is less than the level-of-service, the bridge is eligible for HBRRP funding. The type of improvement assumed for apportionment—replacement or rehabilitation—is determined by its design capacity and current condition. If the design capacity is capable of providing the specified level-of-service and the bridge is in at least satisfactory condition (condition rating of 6 or better for both superstructure and substructure), the bridge is considered to need rehabilitation only. However, if the design capacity does not provide the specified level-of-service or the superstructure or substructure is in less than satisfactory condition (rated 5 or less), the bridge is considered to require replacement.

The rationale for the above criteria is that insufficient design capacity will usually justify a bridge replacement. Bridge strengthening beyond the original design capacity is seldom done except in special circumstances where maintenance of traffic is a major concern. On the other hand, if the original design load is adequate, restoration of the load capacity should be possible in most cases if the basic structure is in sound condition.

A drawback of the operating rating for purposes of comparing States' needs is that the ratings reported have not always been reliable. Examination of NBI data shows a substantial percentage of the records have inconsistencies between operating and inventory ratings which make the ratings suspect. In some cases, the operating rating and the inventory rating are the same. In other cases, the ratio of operating rating to inventory rating appears to be a constant such as (75/55). These operating ratings would not be appropriate to use in a nationwide criteria unless they are screened, since using them would place some States at a disadvantage. The options are to either not use the records or to retain them and provide a surrogate for the operating rating. The latter option is proposed due to the large number of bridges that would be eliminated from consideration if inaccurate records are not used.

A procedure has been developed to screen reported inventory and operating ratings for "reasonableness" and to compute surrogate ratings, if necessary, for purposes of apportioning funds. However, the FHWA will continue its policy of not altering the actual data reported to the NBI by the States.

Inventory ratings are screened through a comparison with the design load, considering the condition of the bridge. The objective is to eliminate bridges that have adequate design capacity and are structurally sound but fail to meet the level-of-service for capacity because of a localized structural problem. The test is: If the inventory rating is less than the design load, a condition rating of 5 or less for either superstructure or substructure should be expected. Otherwise, the design load is substituted for the inventory rating.

The procedure for screening operating ratings and computing surrogate ratings is based on ratio of operating rating to the inventory rating. This ratio, termed OR/IR, is compared with a threshold value to determine whether the ratio is reasonable. As a first step, reported operating ratings and inventory ratings are converted to their HS equivalents. The HS equivalent of the rating vehicle is assumed as the weight of an HS truck that produces the same moment as the rating vehicle. Next, an initial screen checks if OR/IR is approximately 5/3, the expected value if the bridge has been rated by load factor methods. If this test passes, the bridge is assumed to be rated by load factor methods, and the operating rating is used without adjustment. If this test does not pass, working stress methods are assumed and further checking is made as follows:

Steel and Reinforced Concrete

If OR/IR is less than the value computed by the following formula, a surrogate rating is computed.

(a) $OR/IR = k\,(R_m)\,(R_s - 1) + R_s$

where:

$k = 0.75$

R_m = Ratio of dead load moment to live load moment plus impact for a simple span. R_m is estimated for NBI bridge types 101, 102, 104, 204, 105, 205, 302, 402. For all other types, $R_m = 0$.

R_s = Ratio of allowable stress at operating to the allowable stress at inventory. R_s is assumed to be 1.36 for steel and 1.4 for reinforced concrete.

For continuous spans, R_m is taken as 0.52 times the estimated value for a simple span. If it is necessary to calculate a surrogate rating, the above formula (a) is used with $k = 1$.

Prestressed Concrete

If OR/IR is less than 1.5, a surrogate operating rating is calculated based on a ratio of 5/3.

Timber

If OR/IR is less than 1.25, a surrogate operating rating is calculated based on a ratio of 1.33.

Other Material

If OR/IR is less than 1.25, a surrogate operating rating is calculated based on a ratio of 1.25.

Clear Deck Width

Proposed level-of-service criteria for bridges greater than 200 feet in overall length are given in table 2. The minimums are derived from guidance given in the AASHTO's A Policy on Geometric Design of Highways and Streets. For bridges 200 feet or less in overall length (Table 3) the proposed level-of-service is nine-tenths of the approach roadway width an upper limit of (11 × number of lanes) + 8 for Interstate and Principal Arterial highways, and (11 × number of lanes) + 6 for other highways that have a current average daily traffic above 750. The nine-tenths factor is intended to exclude bridges that are not significantly narrower than the approach roadway. Further, a birdge of any length is not eligible based on width if the approach roadway is less than the applicable table 2 value. This exclusion is intended to screen projects where bridge widening is unlikely or impractical due to the narrowness of the approach roadway.

TABLE 2.—LEVEL-OF-SERVICE, CLEAR DECK WIDTH

[Bridges longer than 200 feet in overall length]

Functional class	Average daily traffic	Lane width (feet)	Shoulder width (feet)
Two or More Lanes:			
Interstate and other freeways and expressways	All	11	3
Arterials	Less than 401	10	2
	401 to 1,000	11	2
	more than 1,000	11	3
Collectors	less than 2,001	10	1
	2,001 to 4,000	11	1
	more than 4,000	11	3
Local roads and streets	less than 251	10	0
	251 to 2,000	10	1
	2,001 to 4,000	11	1
	more than 4,000	11	3

TABLE 3.—LEVEL-OF-SERVICE, CLEAR DECK WIDTH

[Bridges 200 feet or less in overall length]

Functional class	Average daily traffic	Width curb-to-curb (feet)
Two or more lanes:		
Interstate and rural and urban principal arterials	All	Approach Roadway Width × 0.9 Max: (11 × Number of Lanes) + 8 Min: Use criteria for bridges longer than 200 feet.
All other classes	750 or less	Use criteria for bridges longer than 200 feet.
	more than 750	Approach Roadway Width × 0.9 Max: (11 × Number of Lanes) + 6 Min: Use criteria for bridges longer than 200 feet.

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TABLE 4.—LEVEL-OF-SERVICE, CLEAR DECK WIDTH

[One Lane Bridges]

Functional class	Average daily traffic	Width curb-to-curb (feet)
One way traffic.	All	16
Two way traffic.	100 or less	16
	more than 100	Use criteria for two lanes

Once eligibility is established, the type of improvement assumed for apportionment—rehabilitation or replacement—is determined by bridge type and condition. If the bridge is a type that is amenable to widening (last two digits of NBI item 43 are in range of 1 through 8), and is in at least satisfactory condition (a rating 6 or better for both superstructure and substructure), the bridge is considered to need rehabilitation only. If the bridge type is not amenable to widening (last two digits of NBI item 43 are in the range of 9 through 19), or the superstructure or substructure is in less than satisfactory condition (rating of 5 or less), the bridge is considered to require replacement.

Vertical Overclearance and Underclearance

The level-of-service for both vertical overclearance and vertical underclearance (table 5) is set at 14 feet 3 inches for all functional classes with one exception. No minimum vertical clearances are specified for highways functionally classified as local if the average daily traffic is less than 50 and the detour distance is less than 5 miles. The 14 feet 3 inches value is based on the clearance necessary to accommodate legal height vehicles (assumed not to exceed 14.0 feet) plus 3 inches tolerance. Clearance requirements greater than 14 feet 3 inches—such as on the defense network—may need to be accommodated if a bridge is improved for other reasons. However, providing clearances in excess of 14 feet 3 inches should not be an HBRRP cost, unless the bridge is eligible for HBRRP funds for other reasons.

Level-of-Service Vertical Overclearance and Underclearance

TABLE 5

Functional class	Average daily traffic	Detour distance	Vertical overclearances and underclearance
All except Local. Local	All	All	14 feet 3 inches.
	less than 50.	less than 5	no set minimum.
	50 or more	5 or more	14 feet 3 inches.

Since the measures that might be required to correct inadequate vertical clearance cannot usually be determined from the NBI, no attempt is made to distinguish between rehabilitation and replacement eligibility for vertical clearance. Replacement is assumed in all cases. Thus, replacement square foot costs are used for apportioning funds.

Rulemaking Analyses and Notices Executive Order 12291 (Federal Regulation) and Dot Regulatory Policies and Procedures

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under regulatory policies and procedures of the Department of Transportation. It is anticipated that the economic impact of this rulemaking will be minimal. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), the agency has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA certifies that this rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal and Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this section for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment. In consideration of the foregoing, the FHWA proposes to amend 23 CFR 650 by revising 650.403, 650.405 and 650.409 as set forth below.

Regulation Identification Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Services Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 650

Bridges, Highways and roads, Grant programs—transportation, reporting and recordkeeping requirements.

Issued on: May 24, 1991.

T. D. Larson,

FHWA Administrator.

In consideration of the foregoing, the FHWA proposes to amend 23 CFR part 650 by amending 650.403, 650.405, and 650.409 as set forth below.

PART 650—BRIDGES, STRUCTURES, AND HYDRAULICS

Subpart C—Highway Bridge Replacement and Rehabilitation Program [Amended]

1. The authority citation for 23 CFR part 650 continues to read as follows:

Authority: 23 U.S.C. 109 (a) and ((h), 144, 151, 315, and 319; 23 CFR 1.32; 49 CFR 1.48(b); E.O. 11988, Floodplain Management, May 24, 1977 (42 FR 26951); Department of Transportation Order 5650.2 dated April 23, 1979 (44 FR 24678); Sec. 161 of Pub. L. 97–424, 96 Stat. 2097, 3135; Pub. L. 97–134, 95 Stat. 1699; and 33 U.S.C. 401–491 *et seq.*, 511 *et seq.*

2. Section 650.403 is amended by adding paragraph (d) to read as follows:

§ 650.403 Definition of terms.

* * * * *

(d) *Level-of-service.* A criterion for assessing the adequacy of a bridge to serve traffic based on the highway system, expected traffic loads, and other site specific factors.

3. Section 650.405 is amended by revising paragraph (a) to read as follows:

§ 650.405 Eligible projects.

(a) *General.* Highway bridges on all public roads that do not meet the minimum level-of-service may be eligible for replacement or rehabilitation.

* * * * *

4. Section 650.409 is revised to read as follows:

§ 650.409 Evaluation of bridges for inclusion in State programs.

(a) Upon receipt of the bridge inventory, each bridge will be evaluated in accordance with level-of-service criteria and a Sufficiency Rating will be assigned to each bridge in accordance with the approved AASHTO [8] Sufficiency Rating formula. The level-of-service criteria will be used as a basis for establishing eligibility. The Sufficiency Rating will be used to establish priority for replacement or rehabilitation of bridges; in general the lower the rating, the higher the priority.

(b) After evaluation of the inventory in accordance with paragraph (a) of this section, the Secretary will provide the State with a list of bridges within the State that are eligible for the bridge program. The State may select projects from that list or from any previous lists that were furnished since the date of enactment of this rule. The State may select projects from lists furnished prior to enactment of this rule if Federal-aid funds for preliminary engineering for that project have been authorized.

[FR Doc. 91–13116 Filed 6–3–91; 8:45 am]

BILLING CODE 4910-22-M

Coast Guard

33 CFR Part 117

[CGD1 91–029]

Drawbridge Operation Regulations; Hackensack River, New Jersey, et al.

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of New Jersey Transit Rail Operation (NJTRO) and Bergen County Department of Public Works, the Coast Guard is considering a change to the regulations governing the Lower Hackensack drawbridge, mile 3.4 at Jersey City, NJ, the Upper Hack drawbridge, mile 6.9 at Secaucus, NJ, the HX (Jacknife) drawbridge, mile 7.7 at Secaucus, NJ, and the Harold J. Dillard Memorial (Court Street) drawbridge, mile 16.2 at Hackensack, NJ all across the Hackensack River and the Newark-Harrison (Morristown Line) drawbridge across the Passaic River, mile 5.8 at Harrison, New Jersey to permit the drawbridges to be operated on an advance notice basis. NJTRO would man their bridges with a two person roving crew normally based at the Upper Hack Bridge. The NJTRO changes are being made because of the close proximity and limited openings of these bridges, as well as a desire by NJTRO to achieve more efficient utilization of manpower and provide timely openings. The Bergen County Bridge change would permit a one hour change in the manning time of the bridge and would require at least eight (8) hours advance notice at night and at all times on weekends and federal holidays. This action should relieve the bridge owners of the burden of having a person constantly available to open the draw of each bridge and should still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before July 19, 1991.

ADDRESSES: Comments should be mailed to Commander (obr), First Coast Guard District, Bldg. 135A, Governors Island, NY 10004–5073. The comments and other materials referenced in this notice will be available for inspection and copying at this address. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, at (212) 668–7170.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge(s), and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, First Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Sylvia L. Bowens, project officer, and Lieutenant John B. Gately, project attorney.

Discussion of Proposed Regulation

NJTRO's Lower Hack drawbridge mile 3.4, the Upper Hack drawbridge mile 6.9, and the HX drawbridge mile 7.7, all across the Hackensack River, provide a vertical clearance of 40, 8, and 4 feet respectively at mean high water (MHW) and 45, 13, and 9 feet at mean low water (MLW). The Newark-Harrison (Morristown Line) drawbridge mile 5.8 over the Passaic River has a vertical clearance of 15 feet at MHW and 20 feet at MLW. Presently, all the above NJTRO bridges have personnel available 24 hours per day throughout the entire year and open on signal except Newark-Harrison which need not open during rush hours.

There has been a steady decrease in requests for openings at these bridges. The Lower Hack had 156 openings in 1987, 146 in 1988 and 130 in 1989. The Upper Hack had 1643 openings during 1987, 1507 during 1988 and 1174 during 1989. The HX bridge had 1561 openings during 1987, 1337 during 1988 and 955 during 1989. The Newark/Harrison bridge had 406 openings for 1987, 247 for 1988 and 265 for 1989. NJTRO has assured the Coast Guard that by the use of two person roving crews, they can continue to respond to the mariner's needs with minimal or no delays, providing they receive advance notice of the desired time of transit. The Upper Hack bridge will be used as the normal base of operations because this bridge has the greatest number and frequency of openings. The marine transit time will vary based on wind, current and vessel characteristics, a 5 to 6 knot speed of advance was considered appropriate. Using the above speed, the marine transit time between the Upper Hack and HX or Lower Hack would be approximately 9 and 33 minutes, respectively. Whereas, transit time by land for bridge operators from Upper Hack to HX or Lower Hack is 5 and 15 minutes, respectively. The driving time from any of the Hack bridges to the Morristown Line bridge on the Passaic is approximately 24 minutes. The use of a two person crew would permit bridge operators to be at two different bridges when necessary to expedite transits. Federal, state and local public safety vessels will be passed as soon as

[8] American Association of State Highway and Transportation Officials, suite 225, 444 North Capitol Street, NW., Washington, DC 20001.

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possible. Security measures will be enhanced at all of the bridges and the roving crews will have two specially equipped vans/trucks with marine and railroad radios, cellular telephones and repair equipment.

The Harold J. Dillard Memorial (Court Street) Bridge, mile 18.2 across the Hackensack River provides a vertical clearance of 7 feet at MHW and 12 feet at MLW. Current regulations provide that the drawbridge shall open on signal from 8 a.m. to 12 midnight. From 12 midnight to 8 a.m., the draw opens on signal if at least eight (8) hours notice is given. The proposed regulation would advance the time period when the bridge is manned one hour and would place the bridge on eight hour advance notice at night and eight hour advance notice all day on weekends and federal holidays. The County intends to maintain an on-call rotating work shift that will cover emergency and eight hour advance notice openings.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This opinion is based on the fact that the regulations will not prevent or substantially delay marine traffic, but just require advance notice to the bridge operators. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism Implication Assessment

This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that this proposed regulation does not have sufficient federalism implications to warrant preparation of a federal assessment.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations as follows:

PART 117—[AMENDED]

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.723 is revised; section 117.739 is amended to add paragraph (a)(5) and to revise paragraphs (a)(4) and (e) and appendix A to part 117 is amended to revise the Hackensack River and the Passaic River entries under the State of New Jersey to read as follows:

§ 117.723 Hackensack River.

(a) The following requirements apply to all bridges across the Hackensack River as follows:

(1) Public vessels of the United States, state or local vessels used for public safety, and vessels in distress shall be passed through the draws of each bridge as soon as possible without delay. The opening signal for these vessels is four or more short blasts of a whistle or horn or a radio request.

(2) The owners of each bridge shall provide and keep in good legible condition, clearance gauges for each draw with figures not less than 18 inches high for bridges below the turning basin at mile 4.0 and 12 inches high for bridges above mile 4.0. The gauges shall be designed, installed and maintained according to the provisions of section 118.160 of this chapter.

(3) Trains and locomotives shall be controlled so that any delay in opening the draws shall not exceed 10 minutes except as provided in paragraph (a)(1) of this section. However, if a train moving toward the bridge has crossed the home signal for the bridge before the signal requesting the opening of the bridge is given, the train may continue across the bridge and must clear the bridge interlocks before stopping or reversing.

(4) NJTRO's roving crews shall consist of two qualified operators each having a van/truck which is equipped with marine and railroad radios, cellular telephones, and emergency bridge repair and maintenance tools.

(5) Except as provided in paragraphs (b) through (h) of this section the draws shall open on signal.

(b) Except as provided in paragraph (a)(1) of this section, the draw of the NJTRO's Lower Hack Bridge, mile 3.4 at Jersey City shall open on signal if at least one hour advance notice is given to the drawtender(s) at the Upper Hack bridge, mile 6.9 at Secaucus, New Jersey. In the event the drawtender is at the HX bridge, mile 7.7 on the Hackensack River or the Newark-Harrison (Morristown Line) Bridge, mile 5.8 on the Passaic River up to an additional half hour delay may be expected.

(c) Except as provided in paragraph (a)(1) of this section, the draw of AMTRAK's Portal bridge, mile 5.0 at Little Snake Hill, need not be opened Monday through Friday except federal holidays from 7:20 a.m. to 9:20 a.m. and from 4:20 p.m. to 9:20 p.m. At all other times, an opening may not be delayed for more than 10 minutes, unless the drawtender and the vessel operator communicating by radiotelephone, agree to a longer delay.

(d) Except as provided in paragraph (a)(1) of this section, the draw of NJTRO's Upper Hack Bridge, mile 6.9 at Secaucus, NJ shall open on signal unless the drawtender is at the Lower Hack, mile 3.4 at Jersey City, the HX bridge, mile 7.7 at Secaucus, NJ both over the Hackensack River or the Newark-Harrison (Morristown Line) Bridge, mile 5.8 on the Passaic River, then up to one hour delay may be expected.

(e) Except as provided in paragraph (a)(1) of this section, the draw of NJTRO's HX (Jacknife) Bridge, mile 7.7 at Secaucus shall open on signal if at least one hour advance notice is given to the drawtender at the Upper Hack Bridge, mile 6.9 at Secaucus. In the event the drawtender is at the Lower Hack bridge, mile 3.4 on the Hackensack River or the Newark-Harrison (Morristown Line) Bridge, mile 5.8 on the Passaic River up to an additional half hour delay may be expected.

(f) Except as provided by paragraph (a)(1) of this section, the draw of the S46 bridge mile 16.0 at Little Ferry, shall open on signal if at least six hours notice is given.

(g) The draw of the Harold J. Dillard Memorial (Court Street) bridge, mile 16.2 at Hackensack, NJ shall open on signal from 7 a.m. to 11 p.m. From 11 p.m. to 7 a.m. and at all times on weekends and federal holidays, the draw shall open on signal if at least eight hours notice is given to the drawtender or the Bergen County Police Communication Center in Hackensack, New Jersey, except as provided by paragraph (a)(1) of this section.

(h) The draw of the New York Susquehanna and Western Railroad bridge, mile 16.3 and the Midtown bridge, mile 16.5, both at Hackensack need not be opened for the passage of vessels. However, the draws shall be restored to operable condition within 12 months after notification by the District Commander.

§ 117.739 Passaic River

(a) * * *

(4) New Jersey Transit Rail Operations' (NJTRO) roving crews shall consist of two qualified operators each having a van/truck which is equipped with marine and railroad radios, cellular telephones, and emergency bridge repair and maintenance tools.

(5) Except as provided in paragraph (b) through (m) of this section the draws shall open on signal.

(b) * * *

(c) * * *

(d) * * *

(e) The draw of the Newark-Harrison (Morristown Line) bridge, mile 5.8 at Harrison, New Jersey shall operate as follows:

(1) Open on signal if at least one hour advance notice is given to the drawtender(s) at the Upper Hack bridge, mile 6.9 at Secaucus, NJ. In the event the drawtender is at the Lower Hack, mile 3.4 at Jersey City or the HX (Jacknife) bridge, mile 7.7 at Secaucus, NJ all over the Hackensack River, up to an additional half hour may be expected.

(2) Need not open from 7:15 a.m. to 9 a.m. and from 4:30 p.m. to 6:50 p.m. Monday through Friday except federal holidays.

* * * * *

APPENDIX A TO PART 117—DRAWBRIDGES EQUIPPED WITH RADIOTELEPHONES

Waterway	Mile	Location	Bridge name and owner	Call sign	Calling channel	Working channel
NEW JERSEY						
Hackensack River	3.0	Jersey City	PATH, PATH	KQ 7196	13	13
	3.1	Jersey City	Hack Freight, Conrail	KQ 7196	13	13
	3.1	Jersey City	Witt-Penn, NJDOT	Pending	13	13
	3.4	Jersey City	Laurel Hill NJTRO (lower hack)	KX 7465	13	13
	5.0	Snake Hill	Portal, Amtrak	KMC 297	13	13
	5.4	Snake Hill	DB (Erie Swing), NJTRO	KR 6962	13	13
	6.9	Secaucus	Erie Lift, NJTRO (upper hack)	KR 7035	13	13
	7.7	Secaucus	Jacknife (HX), NJTRO	KR 7034	13	13
Passaic River	2.6	Newark	Point-No-Point, Conrail	KR 6938	13	13
	5.0	Newark	Dock, Amtrak	WRY 593	13	13
	5.8	Newark	Morristown Line, NJTRO	Pending	13	13
	8.0	West Arlington	West Arlington, JNTRO	Pending	13	13
	11.7	Lyndhurst	Lyndhurst, NJTRO	KR 7041	13	13

Dated: May 23, 1991.

R.I. Rybacki,

Commander, First Coast Guard District.

[FR Doc. 91–13039 Filed 6–3–91; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3 and 13

RIN 2900–AF07

Limitation on Compensation Benefits for Certain Incompetent Veterans; Computation of Estate

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication and fiduciary activities regulations concerning the payment of compensation benefits to or for certain incompetent veterans, and the computation of those veterans' estates. This proposed change is necessary to implement recently enacted legislation. The intended effect of this change is to prohibit the payment of compensation to incompetent veterans without dependents whose estates exceed $25,000, and clarify the computation of the value of the estates of these incompetent veterans.

DATES: Comments must be received on or before July 5, 1991. This proposed change is to be effective November 1, 1990, the date specified in the enacting legislation. Comments will be available for public inspection until July 15, 1991.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this change to Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until July 15, 1991.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, (202) 233–3005.

SUPPLEMENTARY INFORMATION: Section 8001 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508, added section 3205 to title 38, United States Code to prohibit the payment of compensation benefits to or for an incompetent veterans, having neither spouse, child, nor dependent parent, whose estate, excluding the value of the veteran's home, exceeds $25,000 until the estate has been reduced to $10,000. If the veteran is subsequently rated competent for more than 90 days, the withheld compensation will be paid in a lump-sum payment; however, a lump-sum payment may not be made to or for a veteran who, within that 90 day period, dies or is again rated incompetent. These provisions expire on September 30, 1992.

Compensation payments would be terminated on the last day of the first month in which the veteran's estate exceeds $25,000. Where compensation payments are resumed and subsequently become subject to termination again, they would be terminated on the last day of the first month in which they again became subject to termination. This is consistent with the date that payments are terminated for incompetent veterans who are hospitalized, institutionalized or domiciled by the United States under the provisions of § 3.557. VA proposes to add a new paragraph to § 3.501, and a new section, 38 CFR § 3.853, to implement this new statutory requirement.

Currently, § 13.109(d)(5) allows the value of the veteran's home to be considered as part of his or her estate when medical prognosis indicates that there is no reasonable likelihood that the veteran will again reside in the home. Consistent with the intention of the House/Senate Conference Committee (See 126 Cong. Rec. H12698

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(daily ed. October 26, 1990)), VA proposes to amend § 13.109(d)(5) to exclude the value of the veteran's home from the computation of a veteran's estate for the purposes of applying 38 U.S.C. 3205.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program number is 64.109.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

38 CFR Part 13

Surety bonds, Trusts and trustees, Veterans.

Approved: April 10, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

PART 3—[AMENDED]

38 CFR part 3, adjudication, is proposed to be amended as follows:

1. In § 3.501, new paragraph (n) is added to read as follows:

§ 3.501 Veterans.

* * * * *

(n) *§ 3.853. Incompetents; estate over $25,000.* Incompetent veteran receiving compensation, without spouse, child, or dependent parent, whose estate exceeds $25,000: Last day of the first month in which the veteran's estate exceeds $25,000, but not earlier than November 1, 1990.

(Authority: 38 U.S.C. 3205)

2. The underdesignated center heading preceding § 3.850 is revised to read as follows:

Incompetents, Guardianship and Institutional Awards

3. After § 3.852 add a new section to read as follows:

§ 3.853 Incompetents; estate over $25,000.

(a) Effective November 1, 1990, through September 30, 1992, where a veteran:

(1) Is rated incompetent by VA, and

(2) Has neither spouse, child, nor dependent parent, and

(3) Has an estate, excluding the value of the veteran's home, which exceeds $25,000, further payments of compensation shall not be made until the estate is reduced to $10,000. The value of the veteran's estate shall be computed under the provisions of § 13.109 of this chapter. Payment of compensation shall be discontinued the last day of the first month in which the veteran's estate exceeds $25,000.

(b) Where payment of compensation has been discontinued by reason of paragraph (a) of this section, it shall not be resumed for any period prior to October 1, 1992, until VA has received evidence showing the estate has been reduced to $10,000 or less, or any criterion of paragraphs (a) (1) or (2) of this section is no longer met. Payments shall not be made for any period prior to the date on which the estate was reduced to $10,000 or less, or a criterion of paragraphs (a) (1) or (2) of this section was no longer met.

(c) If a veteran denied payment of compensation under paragraph (a) of this section is subsequently rated competent for more than 90 days, the withheld compensation shall be paid to the veteran in a lump-sum. However, a lump-sum payment shall not be made to or on behalf of a veteran who, within such 90-day period, dies or is again rated incompetent.

(d) The compensation payments to an incompetent veteran who is hospitalized, institutionalized, or domiciled by the United States, or any political subdivision thereof, are subject to the provisions of § 3.557 of this part.

(Authority: 38 U.S.C. 3205)

PART 13—[AMENDED]

38 CFR part 13, Fiduciary Activities, is proposed to be amended as follows:

1. Section 13.109 is amended by revising the section heading, paragraph (d)(5), and the authority citation appearing at the end of the section to read as follows:

§ 13.109 Determination of value of estate; 38 U.S.C. 3203(b)(1)(A) and 38 U.S.C. 3205.

* * * * *

(d) * * *

(5)(i) *For purposes of determinations under 38 U.S.C. § 3203(b)(1)(A).* The value of the veteran's home unless medical prognosis indicates that there is no reasonable likelihood that the veteran will again reside in the home. It may be presumed that there is no likelihood for return when the veteran is absent from the home for a continuous period of 12 months because of the need for care, and the prognosis is void of any expectation for a return to the home.

(ii) *For purposes of determinations under 38 U.S.C. § 3205.* The value of the veteran's home.

* * * * *

(Authority: 38 U.S.C. 3205)

[FR Doc. 91–13095 Filed 6–3–91; 8:45 am]

BILLING CODE 8320–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. 1

[CC Docket No. 90–337; FCC 91–158]

Common Carrier Services; In the Matter of Regulation of International Accounting Rates

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: On May 9, 1991, the Commission adopted a Further Notice of Proposed Rulemaking seeking comment on three additional regulation proposals focusing on: (1) International calling prices; (2) international accounting rates; and (3) international resale of U.S. provided telecommunications services. The intended effect of the proceeding is to promote lower, more economically efficient, cost-based international accounting and collection rates.

DATES: Comments must be submitted on or before August 16, 1991. Reply comments are due on or before September 27, 1991.

ADDRESSES: Federal Communications Commission, 1991 M St., NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: William J. Kirsch, D. Deputy Assistant Bureau Chief—International, Common Carrier Bureau, (202) 632–3214, or Michael A. Mandigo, Attorney/Advisor, International Policy Division, Common Carrier Bureau, (202) 632–3241.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking adopted May 9, 1991, and released may 23, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M St., NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1114 21st St., NW., Washington, DC 20036.

The following collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review under Section 3504(h) of the paperwork Reduction Act (44 U.S.C. 3504(h)). Copies of the submission may be purchased from the Commission's current copy contractor, Downtown Copy Center, (202) 452–1422, 1114 21st Street NW., Washington, DC 20036. Persons wishing to comment on this information collection should direct their comments to Jonas Neihardt, (202) 395–4814, Office of Management and Budget, room 3235 NEOB. Washington, DC 20503. A copy of any comments should also be sent to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554. For further information contact Judy Boley, Federal Communications Commission (202) 632–7513.

OMB Number: 3060–0454.

Title: Regulation of International Accounting Rates (CC Docket No. 90–337—Phase(II).

Action: Proposed Revision and New Collection.

Respondents: Businesses or other for profit.

Frequency of Response: On occasion and one time requirement.

Estimated Annual Burden: 10 responses; 10 hours total; 1 hour average burden per response.

NEEDS AND USES: The FNPRM proposes additional regulatory actions to reform international settlement arrangements. The FNPRM solicits public comment on, among other things, whether the Commission should continue to require only the filing of carrier operating agreements or whether to extend the filing requirement to all international private line interconnection arrangements. The FNPRM also proposes to require U.S. carriers to submit progress reports of their accounting rate negotiations with countries in Asia and Europe by January 1, 1993. The information will be used for monitoring and enforcement purposes.

Summary of Further Notice of Proposed Rulemaking

In the Further Notice the Commission concludes that it must continue its regulatory oversight of settlement arrangements for the provision of international telecommunications services and take additional steps in order to move toward lower, more economically efficient, cost-based international accounting and collection rates.

Should U.S. carriers be successful in their efforts to negotiate lower accounting rates, the Commission believes that it must be prepared to take further regulatory action. The Commission states that it does not believe that the U.S. public interest is served when the lack of progress on reducing international accounting rates prevents U.S. carriers from lowering international calling prices and results in U.S. consumers making an estimated $1 billion overpayment for international telephone calls. Furthermore, the above-cost charges that U.S. carriers must pay to other countries to terminate U.S.-originated calls represent a substantial hindrance to achieving needed reductions.

A. International Calling Prices

The Commission observes that calling prices from the United States to a foreign country are often significantly lower than foreign calling prices to the United States. In 1988, for example, the average price for a foreign-originated telephone call to the United States, based on a limited survey, was approximately $1.70, while the average U.S. calling price was $1.20. The Commission also observes that U.S. international calling prices are substantially higher than U.S. domestic calling prices. In this regard, the Commission believes that it must assess whether there is a systemic problem with international calling prices, and if so, determine whether any further regulatory proposals might be necessary. In particular, the Commission is concerned that, absent international reform regarding international calling prices, U.S. consumers may not be afforded lower international calling rates for the foreseeable future. Finally, the Commission notes that the International Telecommunication Regulations impose a responsibility to try to avoid "too great a dissymetry" between the charges applicable in each direction of the same relation.

The Commission recognizes that to make an informed assessment, the Commission needs to obtain more comprehensive and up-to-date information. As a result, the Commission directs the Common Carrier Bureau to study international calling prices and provide a report to the Commission. The Commission believes that this information will be an important part of its regulatory analysis and asks that parties assist this effort by submitting information on foreign calling prices. The could include information on either domestic calling prices or international calling prices. The Commission states that it would welcome information from individual or corporate users, even where it relates to prices in only one foreign country. The Commission also would welcome the assistance of the Executive Branch agencies that have representatives in other countries that could assist the Bureau in developing this international calling price data base. The Commission invites parties to comment on this approach and to provide any information that would assist its efforts. The Commission also invites parties to comment on what, if any, further regulatory actions the Commission should propose to reduce international calling prices, including seeking action at the international level either within the International Telegraph and Telephone Consultative Committee (CCITT) or the Organization for Economic Co-operation and Development (OECD).

B. Accounting Rates

In the Notice of Proposed Rulemaking (Notice) in this proceeding, the Commission tentatively concluded that U.S. carriers are paying charges well above cost to a large number of foreign telecommunications administrations to terminate U.S.-originated telephone calls. The Commission affirms this conclusion in the Further Notice for several reasons. First, there is little, if any, serious disagreement in the record with the Commission's assessment that U.S. IMTS accounting rates are above-cost. Second, U.S. IMTS accounting rates with Canada suggest that other developed countries may profitably terminate U.S.-originated telephone calls at rates far lower than the existing charges that U.S. carriers generally must pay to terminate U.S.-originated telephone calls elsewhere. Finally, the average U.S. IMTS accounting rate with the fifty top recipients of U.S. net settlements payments is substantially above the average weighted U.S. IMTS accounting rate.

In the Notice, the Commission also tentatively concluded that it has the

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authority to establish accounting rates used by U.S. carriers. The Commission affirms this conclusion in the Further Notice based on clear support in the record that it has the authority under sections 201(a), 201(b), and 205, of the Communications Act, and relevant case law, to establish maximum rates for an entire service.

Should further regulatory action be necessary, however, the Commission believes that it will be particularly important to balance providing for "Nation-wide, and world-wide wire and radio communication service with adequate facilities" and doing so "at reasonable charges." A number of parties in this proceeding emphasize, for example, the importance of U.S. settlement payments for telecommunications infrastructure development. On the other hand, others have a concern that the U.S. ratepayer not be responsible for foreign aid simply by making an international telephone call. As a result, the Commission states that there are a "host of complex factors" involved and that there is a pressing need for better information, particularly with regard to certain regions of the world.

In an accompanying Report and Order in this docket, the Commission directed U.S. carriers to negotiate lower more cost-based accounting rates with their foreign correspondents, particularly focusing on Asia and Europe. Specifically, based on available information, the Commission stated that it believes that U.S. carriers should be paying approximately half current rates, or at most between 0.275 Special Drawing Rights (SDRs) to 0.42 SDRs (0.39–$0.60) to terminate U.S. telephone calls in Asia and between 0.165 SDRs to 0.275 SDRs ($0.23–$0.39) per minute to terminate U.S. telephone calls in Europe. The Commission recognized that reliable cost information is difficult to obtain and it therefore cannot state, with certainty, that these benchmark estimates provide a definitive basis on which to make its policy judgments. Nevertheless, the Commission believes that these estimates are both reasonable and conservative.

In the Futher Notice, the Commission recognizes that not all countries in Asia and Europe have the same cost characteristics and that the Commission simply does not have reliable cost information or cost surrogates for Latin America and Africa. In particular, the question of providing cost estimates for developing countries raises broader international infrastructure issues, including the need to extend service to new areas and to provide for higher call completion. In this context, the Commission invites parties to comment on its proposed estimates for Asia and Europe, including the need to differentiate among differing countries within each region. The Commission also invites parties to comment on an analytical framework for establishing reasonable accounting rate estimates for Latin America and Africa. The Commission adds that it is prepared to consider new proposals to depart from traditional settlement principles, should parties be able to demonstrate that such proposals would better serve the public interest.

Therefore, while the Commission believes that it would be premature to propose additional regulatory actions in this Further Notice to establish the maximum rate that U.S. carriers may pay to terminate U.S.-originated telephone calls, the Commission believes that it is particularly important that parties comment on the development of an analytical framework for assessing the instances in which there has been insufficient progress with particular countries. The Commission proposes to require that U.S. carriers report their progress in negotiating accounting rate reductions with countries in Asia and Europe by January 1, 1993. The Commission invites parties to comment on this proposed report, including the information that should be included in these reports to enable the Commission to determine whether sufficient progress has been made. Moreover, the Commission invites parties to comment on the possibility of preparing a list of the most egregious cases where significant problems continue. In this context, the Commission invites parties to comment whether the Commission has sufficient information in the record with regard to the maximum rates U.S. carriers should pay to terminate U.S. telephone calls in Asia and Europe for the Commission to consider additional regulatory action at a later date, and what additional proceedings would help the Commission conclude whether U.S. carrier payments above these estimated rates could be considered unjust and unreasonable.

The Commission also invites parties to comment on alternative regulatory actions it should consider proposing should U.S. carriers be unsuccessful in their efforts to negotiate lower more cost-based accounting rates with their foreign correspondents. The Commission invites parties to comment on proposals, such as conditioning section 214 authorization to U.S. international common carriers to ensure nondiscriminatory treatment of U.S. carriers serving a given country. Specifically, the Commission seeks comment on the desireability of conditioning section 214 authorizations where a U.S. carriers seeks to serve a foreign country in which that carrier has an ownership interest or sufficiently close corporate relation with a carrier that either holds some form of privileged access to that country or otherwise has market power. In this context, the Commission states that U.S. international common carriers would include all carriers, domestic or foreign-owned, that seek or hold section 214 authorizations from this Commission.

C. International Resale

In the Notice, the Commission made clear its concern that the continuation of existing resale restrictions for international private line and international telephone services permit telecommunications administrations to ignore cost trends that would otherwise result in lower, more economically efficient, cost-based, international accounting rates and calling prices. Moreover, the Commission noted that while it permits, but has not prescribed, international resale, the Commission has not taken action on an earlier proposal to prescribe such resale. In the Further Notice, the Commission proposes considering anew the elimination of any remaining U.S. carrier restrictions for the international resale of telecommunications facilities and services in this proceeding.

The Commission notes that while many other countries have preferred to continue restrictions on international resale, it is encouraged by movement by some countries towards permitting international resale and by the unanimous decision of CCITT Study Group III to apply the accelerated approval procedure of CCITT Resolution No. 2 to a revised CCITT Recommendation D.1. The Commission also continues to be concerned, however, that some countries might seek to unilaterally evade the provisions of the ISP, which are designed to ensure nondiscriminatory treatment of all U.S. carriers. As a result, the Commission invites parties to comment how full advantage of the CCITT's efforts to provide a revised, more liberal, Recommendation D.1 may be realized, while limiting the opportunity for exclusive arrangements that would discriminate against competing U.S. carriers. Specifically, the Commission invites comment whether it should now require, as a matter of U.S. law, unlimited resale and shared use for all U.S. carrier-provided international telecommunications services, including international private line service, for all countries. In this context, the Commission clarifies that it will not permit U.S. carrier operating agreements to apply foreign resale prohibitions in the United States. Specifically, the Commission proposes to direct the Common Carrier Bureau to monitor U.S. carrier operating agreements with their foreign correspondents and to use appropriate procedural opportunities to declare null and void any language in operating agreements with U.S. carriers relating to such a requirement.

The Commission also invites parties to comment on an alternative approach that would require that U.S. carriers permit unlimited resale only to those countries, such as Canada, the United Kingdom, Sweden, and Australia, that are in the process of implementing cost-based international accounting rates and more liberal telecommunications regimes, including permitting or requiring resale of international private line and international telephone services. Finally, the Commission invites parties to comment whether the Commission should continue to require only the filing of carrier operating agreements, or whether the Commission should extend the filing requirement to all international private line interconnection agreements.

Ordering Clauses

Accordingly, *It is Ordered* That Notice is Hereby Given of the proposed regulatory action described above, and that Comment is Sought on these proposals.

It is Further Ordered That the Common Carrier Bureau is hereby delegated authority to terminate CC Docket 80–176.

For further information on this item contact Michael Mandigo Attorney/Advisor, International Policy Division, Common Carrier Bureau, (202) 632–3214.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 91–13051 Filed 6–30–91; 8:45 am]

BILLING CODE 6712–01–M

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Notices

Federal Register
Vol. 56, No. 107
Tuesday, June 4, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Timberline Lodge Winter Sports Resort; Mt. Hood National Forest, Clackamas County, OR

AGENCY: Forest Service, USDA.

ACTION: Cancellation of an environmental impact statement.

SUMMARY: The Forest Service has expanded the scope and planning area, resulting in additional field work and analysis. The Forest Service has made the decision that an intermediate level of analysis is needed for activities that will be considered, before a Forest Service proposal can be defined. Therefore, the notice of intent to prepare an environmental impact statement for Timberline Lodge Winter Sports Resort, published in the October 1, 1990, **Federal Register** (55 FR 40000), is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this cancellation to Michael Heilman, Mt. Hood National Forest, 2955 NW. Division Street, Gresham, Oregon 97030, phone (503) 666-0725.

Dated: May 24, 1991.

Michael S. Edrington,

Forest Supervisor.

[FR Doc. 91-13122 Filed 6-3-91; 8:45 am]

BILLING CODE 3410-11-M

ARMS CONTROL AND DISARMAMENT AGENCY

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: United States Arms Control and Disarmament Agency (ACDA).

ACTION: ACDA has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511.

SUMMARY: The information collected under this survey is to provide a list of the facilities which would be subject to routine on-site inspection under the provisions of the proposed Chemical Weapons Convention being negotiated by the United States to ban chemical warfare. The data will enable the government: (1) To estimate the size of the national authority required to support the convention; (2) to educate the companies involved about international inspection requirements; and (3) to provide feedback and input to the U.S. negotiators.

Type of request—Original.

Originating Office—

Title of information collection—U.S. Producers and Consumers of CW Precursors.

Frequency—One-time survey.

Form No.—Not applicable.

Respondents—U.S. chemical companies producing or consuming chemcial weapons precursors.

Estimated number of respondents—900.

Average hours per response—2 hours.

Total estimated burden hours—1800 hours.

Section 3504(h) of Public Law 96-511 does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed survey guidelines and supporting documents may be obtained from Sig Eckhaus, (202) 647-8777. Comments and questions should be directed to (OMB) Marshall Mills (202) 395-7340. Comments must be recevied within fifteen (15) days of filing.

Dated: May 29, 1991.

William J. Montgomery,

Director, Office of Administration.

[FR Doc. 91-13111 Filed 6-3-91; 8:45 am]

BILLING CODE 6820-32-M

COMMISSION ON CIVIL RIGHTS

Connecticut Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Connecticut Advisory Committee to the Commission will be convened at 1:30 p.m. on Monday, June 24, 1991, in the Conference Room of the Connecticut Historical Society, 1 Elizabeth Street, Hartford, and adjourned about 4 p.m. The purpose of the meeting is to review the status of the Committee, decide on which colleges and other institutions and individuals to involve in the Committee's campus tensions project, and discuss current civil rights issues in the State.

Persons desiring additional information or wishing to address the Committee during the meeting should contact Committee Chairperson Ivor J. Echols (203/232-7274) or John I. Binkley, Director of the Eastern Regional Division (202/523-5264; TDD 202/376-8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the Rules and Regulations of the Commission.

Dated at Washington, DC., May 28, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91-13062 Filed 5-29-91; 4:08 pm]

BILLING CODE 6335-01-M

New York State Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New York State Advisory Committee to the Commission will be convened at 1:15 p.m on Tuesday, June 25, in Conference Room 305-B of the Jacob K. Javits Federal Building, 26 Federal Plaza, Manhattan, and adjourn at 4 p.m. The purpose of the meeting is to discuss the status of the agency, orient recently appointed Committee members, review old business, and discuss topics for a 1992 project.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Setsuko M. Nishi (718/780-5314, 914/359-0813) or John I. Binkley, Director of the Eastern Regional Division, at (202/523-5264; TDD 202/376-8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the Rules and Regulations of the Commission.

Dated at Washington, DC., May 28, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91-13063 Filed 5-29-91; 4:09 pm]

BILLING CODE 6335-01-M

North Dakota Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the North Dakota Advisory Committee to the Commission will be held from 10 a.m. until 1 p.m. on Thursday, June 27, 1991, at the Sheraton Sun, 6th and Broadway, Bismarck, North Dakota. The purpose of this meeting is to discuss current issues, orient new members, and plan future activities.

Persons desiring additional information should contact Committee Chairperson Bryce Streibel, or William F. Muldrow, Director of the Rocky Mountain Regional Division (303) 844-6716 (TDD 303-844-6720). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 28, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91-13064 Filed 5-29-91; 4:09 pm]

BILLING CODE 6335-01-M

South Dakota Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the South Dakota Advisory Committee to the Commission will be held from 1 p.m. until 3:30 p.m. on Wednesday, June 26, 1991, at the Best Western Town House, 400 S. Main Ave., Sioux Falls, South Dakota 57102. The purpose of this meeting is to discuss current issues and plan future activities.

Persons desiring additional information should contact Committee Chairperson Marcella Pure or William F. Muldrow, Director of the Rocky Mountain Regional Division (303) 844-6716 (TDD 303-844-6720). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 28, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91-13065 Filed 5-29-91; 4:09 pm]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Competitiveness Policy Council; Meeting

AGENCY: Economics and Statistics Administration; Department of Commerce.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the Department of Commerce announces a forthcoming meeting of the Competitiveness Policy Council.

DATES: June 21, 1991, 10 a.m. to noon.

ADDRESSES: U.S. Department of Commerce, Herbert C. Hoover Building, room 5859, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Mayer, Director, Office of Economic Policy, room 4858, U.S. Department of Commerce, Washington, DC 20230; (202) 377-1727.

SUPPLEMENTARY INFORMATION: The Competitiveness Policy Council (CPC) was established by the Competitiveness Policy Council Act, as contained in the Trade and Competitiveness Act of 1988, Public Law 100-418, sections 5201-5210, as amended by the Customs and Trade Act of 1990, Public Law 101-382, section 133. The CPC is composed of 12 members and is to advise the President and Congress on competitiveness matters. This meeting is the first meeting of the CPC and is organizational in nature. The main purpose of the meeting will be the selection of a chairperson.

The meeting will be open to the public up to the seating capacity of the room. Visitors will be requested to sign a visitor's register.

TYPE OF MEETING: Open.

AGENDA: The agenda will consist of opening remarks, a review of CPC's background and charter, an ethics briefing, election of a chairperson, and discussion of organization, staffing and other procedural issues.

Dated: May 23, 1991.

Mark W. Plant,

Deputy Under Secretary for Economic Affairs.

[FR Doc. 91-13129 Filed 6-3-91; 8:45 am]

BILLING CODE 3510-EA-M

Bureau of the Census

[Docket Number 910521-1121]

Company Affiliation, Geographic Location and Kind of Business for Establishments with Employees in Areas of Communications, Public Utilities and Transportation; Finance, Insurance and Real Estate; and Industry 8999—Services, Not Elsewhere Classified

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of consideration.

SUMMARY: The Bureau of the Census is proposing to conduct this survey prior to the 1992 Economic Censuses under the provisions of title 13, United States Code, sections 9, 131, 182, 224, and 225. The Census Bureau will collect information on the company affiliation, geographic location and kind of business for establishments with employees in areas of communications, public utilities and transportation; finance, insurance and real estate; and Industry 8999—services, not elsewhere classified. The information obtained will be used to maintain the Census Bureau file of company and establishment records and to update the Standard Statistical Establishment List.

DATES: Comments must be submitted on or before July 5, 1991.

ADDRESSES: Director, Bureau of the Census, Washington, DC 20233.

FOR FURTHER INFORMATION CONTACT: C. Harvey Monk on (301) 763-2536.

SUPPLEMENTARY INFORMATION: The data will have significant application to the needs of the public and to governmental agencies and are not publicly available from nongovernmental or governmental sources. The survey, if conducted, shall begin no earlier than December 1, 1991.

Copies of the proposed form are available on request to the Director, Bureau of the Census, Washington, DC 20233.

Dated: May 23, 1991.

Barbara Everitt Bryant,

Director, Bureau of the Census.

[FR Doc. 91-13125 Filed 6-3-91; 8:45 am]

BILLING CODE 3510-07-M

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Foreign-Trade Zones Board

[Order No. 525]

Madawaska Foreign-Trade Zone Corp.; Application

In the matter of resolution and order approving the application of the Madawaska Foreign-Trade Zone Corporation for a foreign-trade zone in Madawaska, Maine within the Madawaska customs port of entry and a subzone at the Northern Trading Company Plant in Madawaska.

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Madawaska Foreign-Trade Zone Corporation, a Maine non-profit corporation, filed with the Foreign-Trade Zones Board (the Board) on February 15, 1991, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in the Town of Madawaska (Aroostook County), Maine, within the Madawaska Customs port of entry, and for special-purpose subzone status at the toiletries and cosmetics packaging and manufacturing plant of Northern Trading Company, Inc., the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the FTZ Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority

To Establish, Operate, and Maintain a Foreign-Trade Zone and a Foreign-Trade Subzone Within the Madawaska Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Madawaska Foreign-Trade Zone Corporation, Madawaska, Maine, has made application (filed February 15, 1991, FTZ Docket 9–91, 56 FR 8749, 3/1/91) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone at a site in Madawaska, Maine, within the Madawaska Customs port of entry; and for subzone status at the Northern Trading Company plant in Madawaska;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied with respect to the proposed sites;

Now, therefore, The Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, and establishing a subzone at the Northern Trading Company plant, designated on the records of the Board as Foreign-Trade Zone No. 179, and Foreign-Trade Subzone 179A, at the locations mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also the following express conditions and limitations.

Operation of the foreign-trade zone and subzone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from federal, state, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone and subzone sites in the performance of their official duties.

The grant does not include authority for manufacturing operations within the general-purpose zone, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the general-purpose zone, and any new manufacturing within the subzone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 24th day of May, 1991, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Wendell L. Willkie II,

General Counsel, Department of Commerce.

[FR Doc. 91-13134 Filed 6-3-91; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 20-91]

Foreign-Trade Zone 141—Monroe County, NY; Request for Export Manufacturing Authority Sayett Technology, Inc., Plant

The comment period for the above case, involving a request for export manufacturing authority at the computer projector display plant of Sayett Technology, Inc. (56 FR 16066, 4/19/91), is extended to July 26, 1991, to allow interested parties additional time in which to comment on the proposal.

Comments in writing are invited during this period. Submissions shall include 5 copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: May 29, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91-13135 Filed 6-3-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[C-549-501]

Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On January 11, 1991, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on certain circular welded carbon steel pipes and tubes from Thailand for the period January 1, 1987 through December 31, 1987. We have now completed that review and determine the total bounty or grant to be 1.64 percent ad valorem.

EFFECTIVE DATE: June 4, 1991.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On January 11, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 1173) the preliminary results of its administrative review of the countervailing duty order on certain circular welded carbon steel pipes and tubes from Thailand (50 FR 32751; August 14, 1985). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of circular welded carbon steel pipes and tubes ("pipes and tubes") with an outside diameter of 0.375 inch or more but not over 16 inches, of any wall thickness. These products, commonly referred to in the industry as standard pipe or structural tubing, are produced to various ASTM specifications, most notably A–120, A–53 and A–135. During the review period, such merchandise was classifiable under item numbers 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258 and 610.4925 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under item numbers 73.04.1010, 73.04.2050, 73.04.2070, 73.04.3100, 73.04.3900, 73.04.9050, 73.05.1010, 73.05.1110, 73.05.1210, 73.05.1910, 73.05.3140, 73.05.3910, 73.05.9010, 73.05.2060, 73.06.3010, 73.06.3050, 73.06.6050 and 73.06.9010 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1987 through December 31, 1987 and the following programs: (1) Tax certificates for exports; (2) export packing credits; (3) electricity discounts for exporters; (4) tax and duty exemptions under section 28 of the Investment Promotion Act (IPA); (5) repurchase of industrial bills; (6) export processing zones; (7) International Trade Promotion Fund; (8) reduced business taxes for producers; and (9) additional incentives under the IPA.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received written comments from the petitioners, the Standard Pipe Subcommittee of the Committee on Pipe and Tube Imports and its individual producer members, and the respondents.

Comment 1: The petitioners argue that the Department should not use a sectoral input/output I/O) study, which covers the entire secondary steel sector, in determining the amount of import duties and indirect taxes on inputs used in the production of pipes and tubes. According to the petitioners, the Department's use of the I/O study to establish the amount of indirect taxes and import duties imposed on inputs is incorrect as a matter of law. Both the GATT and U.S. law require the Department to determine any subsidy regarding tax rebates by comparing the taxes rebated on the "like product" to the actual indirect taxes on inputs physically-incorporated into that product. By following in the preliminary results of this review the reasoning adopted in Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Carbon Steel Butt-Weld Pipe Fittings from Thailand (55 FR 1695; January 18, 1990) (Butt-Weld Pipe Fittings), the petitioners argue that the Department deviated from the requirements of the law; the Department incorrectly examined the indirect tax incidence for the entire secondary steel sector I/O 106, rather than for the pipes and tubes that were actually subject to the review.

The respondents reply that neither section 771(5) of the Tariff Act nor item (h) of the Illustrative List of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (the Subsidies Code), prohibits the Department from calculating the amount of the allowable rebate on a sectoral basis where the amount of the nominal rebate for the product under review is calculated by the foreign government on this basis. The methodology used in completing the I/O table has repeatedly been evaluated and approved by the Department in numerous countervailing duty determinations involving products from Thailand.

Department's Position: We disagree with the petitioners. The Government of Thailand relies upon the I/O study in calculating the rebate rates for agricultural and manufactured goods. The study is updated periodically to reasonably reflect the amount of import duties and indirect taxes actually paid on the merchandise. The I/O study is structured on a sectoral basis, and the same rebate rates apply to all products within each sector. Pipes and tubes are included in section I/O 106, which consists of secondary steel products; there is no more detailed disaggregation of the indirect tax incidence attributable to pipes and tubes. Therefore, we used the indirect tax incidence on all items physically incorporated into secondary steel products in sector I/O 106 to calculate the amount of the allowable rebate of indirect taxes. We have reviewed and verified the validity of the I/O study in several cases. See Butt Weld Pipe Fittings (55 FR 1695; January 18, 1990); Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Malleable Cast Iron Pipe Fittings from Thailand (54 FR 6439; February 10, 1989) (Malleable Cast Iron Pipe Fittings) and the preliminary results of this administrative review.

Comment 2: The petitioners argue that the Department has based its subsidy calculation entirely on a study that includes no data for producers of the subject merchandise. In *Maverick Tube*

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Corp. v. United States, 687 F. Supp. 1509 (1988), the Court of International Trade (CIT) ruled that specific data relating to one industry did not constitute substantial evidence to apply to another industry because there was no evidence indicating why the data was relevant.

The respondents reply that *Maverick Tube* is distinguishable from the facts in this review in two respects. First, the anlaysis at issue in *Maverick Tube* was based on underlying data compiled decades earlier, which the CIT considered to be dated and therefore unreliable. For pipes and tubes, however, the I/O study has been updated twice, in 1980 and 1985, since it first appeared in 1975. These updates ensure that the rebate amount reasonably reflects the amount of import duties and indirect taxes actually paid on the merchandise. Second, the analysis rejected in *Maverick Tube* had used data and estimates from a study that, according to the study itself, could not be extended to the industry to which it had been applied. Conversely, data on pipes and tubes are specifically included in the sector I/O 106 study, and the rebate rates were calculated using this data.

Department's Position: We disagree with the petitioners. We verified that data on pipes and tubes are included in the sector I/O 106 study on secondary steel products. The I/O study is conducted by surveys of companies in specific sectors and subsequent calculation of input coefficients based on the surveys. There are many subsectors in the secondary steel sector. To obtain input coefficients for subsectors not surveyed, data was taken from various companies' profit and loss accounts and from case studies. The I/O study is updated periodically to ensure that the rebate amount reasonably reflects the amount of import duties and indirect taxes paid.

Comment 3: The petitioners argue that the Department has erred in calculating the amount of excessive indirect tax rebate by including tax incidence on inputs from sector I/O 105, iron and steel products. The petitioners contend that because no sector I/O 105 products were physically incorporated into the subject merchandise, the Department should exclude from the tax incidence calculation any business and municipal taxes imposed on sector 105 products.

The respondents reply that the petitioners' position is inconsistent with *Industrial Fasteners Group v. United States*, 710 F.2d 1576 (Fed. Cir. 1983), which clearly directs the Department to examine the original basis of the rebate calculations by the foreign government for a determination of the indirect taxes incidence carried by the exported articles. The respondents further reply that there is no way to segregate the value of indirect taxes exclusively incurred by any subset of products included in sector I/O 106. The I/O study calculated a weighted-average indirect tax incidence on items physically incorporated into all finished products in sector I/O 106.

Department's Position: We disagree with the petitioners. As noted in the Department's Position at Comment 1, we have determined that it is appropriate to base the calculation of allowable tax incidence on all inputs physically incorporated into sector I/O 106 products, as the tax incidence for all products within that sector, including the subject merchandise, is determined on a sector-wide basis. Because certain sector I/O 105 products are physically incorporated into certain sector I/O 106 products, the tax incidence calculation properly included taxes on those I/O 105 products.

Comment 4: The petitioners argue that basic industrial chemicals are not physically incorporated into pipes and tubes, and the taxes imposed on the chemicals should not be included in the calculation of the indirect tax incidence on pipes and tubes.

The respondents reply that the Department's methodology and finding in Malleable Cast Iron Pipe Fittings from Thailand (54 FR 6439; February 10, 1989), that basic industrial chemicals are physically incorporated into inputs in the I/O 106 sector, should be followed in this proceeding as well.

Department's Position: We disagree with the petitioners. We previously determined and verified in Malleable Cast Iron Pipe Fittings from Thailand (54 FR 6439; February 10, 1989), that aluminum chloride and zinc chloride are physically incorporated into malleable cast iron pipe fittings during the galvanizing process.

Because pipes and tubes, like malleable cast iron pipe fittings, are classified in sector I/O 106 as secondary steel products, we determine that the tax incidence on basic industrial chemicals should be included in the allowable rebate because these chemical inputs are physically incorporated into products in the secondary steel sector.

Comment 5: The petitioners argue that, because respondents withdrew previously submitted verification exhibits, the Department should determine that respondents failed verification and resort to the use of best information available. According to the petitioners, the withdrawal of these exhibits is a flagrant attempt to circumvent the recent amendment to section 777 of the Tariff Act; the purpose of the amendment was to encourage and facilitate the properly protected disclosure of proprietary information in order to improve the investigative process and the ability of interested parties to participate fully in the review.

The petitioners further argue that the Department's choice of those documents as verification exhibits indicated that they were crucial to reaching a determination as to the correctness and reliability of the information submitted by the Thai government. Notwithstanding this withdrawal, the Department has relied on information contained in these documents in making its determination. Given their importance, the withdrawal of these documents leaves a gaping hole in the evidentiary record and leaves the Department's final results open to attack as unsupported by substantial evidence on the record or otherwise not in accordance with law.

The respondents reply that the Thai government submitted the verification exhibits based on the Department's long-standing policy of not releasing exhibits under administrative protective order (APO). In *Allied Tube & Conduit Corporation v. United States*, 13 CIT ___, Slip Op. 89-124 (1989), the CIT, following a decision in *Bethlehem Steel Corporation v. United States*, 13 CIT ___, Slip Op. 89-105 (July 25, 1989), held for the first time that provisions of the Omnibus Trade and Competitiveness Act of 1988, which amended section 777(c) of the Tariff Act, required the disclosure of proprietary foreign government verification exhibits under APO. The CIT, however, noted that the Thai government would not be compelled to consent to the release of business proprietary information contained within the verification documents. The statute allows for the party submitting the documents to withdraw them should the administering agency determine that they are subject to disclosure.

The respondents further state that there is no requirement in the law that copies of verification documents be submitted or that individual statements in the verification report be supported by copies of verification documents annexed to the report. The verification report is independent of the documents reviewed for purposes of verification. Given the unusual circumstances of this case, no action should be taken against the Thai government's interests other than to exclude the withdrawn documents from the administrative record.

Department's Position: We disagree with the petitioners. Verification is a process in which the Department examines invoices, accounting records, programs and eligibility requirements, and other documents, in order to determine the accuracy of the questionnaire responses. We do not request verification exhibits on every item or program that is verified. Exhibits are collected as samples, and as such, are not crucial for a successful verification. Our preliminary results, as well as these final results, are based on substantial evidence contained in the record. Furthermore, all company exhibits remained in the record, and the only exhibits withdrawn were those from the Thai government. The calculation of benefits bestowed from the various programs was based on information contained in the record and does not rely on information contained in the withdrawn exhibits.

Comment 6: The petitioners argue that the Department has failed to investigate the Thai government's subsidization of pipes and tubes producers' legal expenses. A press report was provided to the Department which, according to the petitioners, indicated that the Thai government had reimbursed part or all of the legal expenses incurred by the respondents.

Department's Position: The Thai press report that was provided by the petitioners merely states that "six major exporters of pipes and tubes and the Government have hired an American attorney and filed a lawsuit in the U.S. to fight against the antidumping duty margins." This information provides no indication of how any legal expenses incurred might be paid and in no way forms the basis for an allegation that the Department should pursue.

Comment 7: The respondents argue that the Department improperly included export packing credit (EPC) loans due or repaid after the end of the review period in the calculation of benefits received by Thai Union. In the case of EPCs, the interest is paid either on the date of repayment of the principal or the due date, whichever occurs first, and the Department considers the subsidy event on preferential loans to occur when the interest is paid.

The petitioners agree with the respondents and state that the Department's consistent practice has been to include in its EPC calculation only the interest or penalties on loans whose due date or repayment date falls within the review period.

Department's Positions: We agree. We inadvertently include in the calculation of Thai Union's benefits from EPCs a few loans that were taken out during 1987 with repayment dates in 1988. We have adjusted our calculations to eliminate any benefits from those loans.

Comment 8: The respondents argue that the Department overstated the EPC benefits received by Thai Union by incorrectly assuming that all EPC loans for which export destinations were not identified involved exports of the subject merchandise to the United States. The questionnaire response indicates that Thai Union received loans in connection with sales to the United States from only two banks, and the Department did not request that the company supply the destination of all EPC loans. The Department verified the total value of EPC loans repaid during 1987 in connection with exports of the subject merchandise to the United States at the Bank of Thailand (BOT). By comparing information verified at the BOT to the information on Thai Union's loans, it can be demonstrated that the sum of the loans indicating U.S. destinations received from the two banks is comparable to the figure reported by the BOT. Thus, in calculating the benefit from Thai Union's loans, the Department should include only those loans specifically identified as tied to exports having U.S. destinations.

The petitioners reply that Thai Union bore the burden of proving that the loans were not tied to U.S. exports. Thai Union provided information to show the destination of some exports. There is nothing in the record to indicate that it could not have provided the same information on all EPC loans. In light of that failure, there is reason to suppose that the information withheld was detrimental to the interests of Thai Union.

Department's Position: An EPC loan is obtained by an exporter in the following manner: (1) The exporter issues a promissory note for the amount of the export shipment to a commercial bank; (2) the commercial bank, in turn, applies to the Bank of Thailand (BOT) for the repurchase arrangement; and (3) the BOT repurchases promissory notes, the whole or part, from commercial banks. When the BOT repurchases the promissory note, it records the entire amount of the promissory note and the amount repurchased. We consider only the amount repurchased by the BOT to be countervailable. See Butt-Weld Pipe Fittings (55 FR 1695; January 18, 1990). Based on our analysis of the loans repurchased by the BOT and the loans issued by the two banks which noted U.S. destinations, we agree with the respondents that the value of the EPC loans based on exports to the United States from two banks is comparable to the BOT figure for repurchased EPC loans for Thai Union's exports to the United States. Therefore, we have adjusted our calculation of Thai Union's benefit from EPC loans to include only those loans listed for exports to the United States from these two banks.

Comment 9: The respondents argue that the Department's application to Siam Steel and Thai Hong of the highest company EPA rate calculated unjustly overstate the benefit received by both of these companies. Instead, the respondents argue that the maximum EPC benefit possible for each company would result from the Department assuming, as "best information available," that each loan had a duration of 180 days, the maximum allowable, and applying this and the interest differential to the EPCs repurchased by the BOT.

The petitioners reply that the Department was justified in using the highest calculated rate for any respondent within that country that supplied an adequate and verified response.

Department's Position: After making the adjustments discussed in Comments 7 and 8, the benefit calculated for Thai Union's EPC loans declined. Consequently, the Department has determined to use, as "best information available," the rate calculated for Siam Steel and Thai Hong when we assume that all BOT repurchased loans had a duration of 180 days. This results in a higher rate than applying the highest rate from a company with an adequate and verified response. As a result of the previously noted adjustments, the benefit from the EPC loan program has changed from 1.29 percent *ad valorem* in our preliminary results to 0.88 per cent *ad valorem* in these final results.

Final Results of Review

As a result of our review, we determine the total bounty or grant to be 1.64 percent *ad valorem* during the period January 1, 1987 through December 31, 1987.

The Department will instruct the Customs Service to assess countervailing duties of 1.64 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after January 1, 1987, and on or before December 31, 1987.

The Department will also instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 1.64 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or

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after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: May 28, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-13136 Filed 6-3-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration [C-201-001]

Leather Wearing Apparel From Mexico: Final Results of Countervailing Duty Administrative Reviews and Revocation in Part

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Reviews and Revocation in Part.

SUMMARY: On March 22, 1991, the Department of Commerce published the preliminary results of its administrative reviews and intent to revoke in part the countervailing duty order on leather wearing apparel from Mexico. We have now completed those reviews and determine the total bounty or grant to be 0.08 percent *ad valorem* during the period January 1, 1988 through December 31, 1988, and 0.07 percent *ad valorem* during the period January 1, 1989 through December 31, 1989. In accordance with 19 CFR 255.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

As of result of these reviews, and in accordance with 19 CFR 355.25(a)(3), we are revoking the order with regard to one producer/exporter, Manufacturas Industriales de Nogales (MINSA).

EFFECTIVE DATE: June 4, 1991.

FOR FURTHER INFORMATION CONTACT: Britt Doughtie, Allan Christian or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 22, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 12173) the preliminary results of its administrative reviews and intent to revoke in part the countervailing duty order on leather wearing apparel from Mexico (46 FR 21357; April 10, 1981). The Department has now completed these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of Mexican leather wearing apparel. These products include leather coats and jackets for men, boys, women, girls and infants, and other leather apparel products including leather vests, pants and shorts. Also included are outer leather shells and parts and pieces of leather wearing apparel. During the 1988 review period, such merchandise was classifiable under item numbers 791.7620, 791.7640 and 791.7660 of the Tariff Schedules of the United States Annotated (TSUSA). During the 1989 review period, this merchandise was classifiable under item numbers 4203.10.4030, 4203.10.4060 and 4203.10.4090 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers as provided for convenience and Customs purposes. The written description remains dispositive.

These reviews cover the period January 1, 1988 through December 31, 1988, and January 1, 1989 through December 31, 1989, and nine programs: (1) FOMEX; (2) FOGAIN; (3) PITEX; (4) FONEI; (5) CEPROFI; (6) Article 15 loans; (7) State tax incentives; (8) BANCOMEXT loans; and (9) Import duty reductions and exemptions.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

Final Results of Review

As a result of our reviews, we determine the total bounty or grant to be 0.08 percent *ad valorem* during the period January 1, 1988 through December 31, 1988, and 0.07 percent *ad valorem* during the period January 1, 1989 through December 31, 1989. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

Because MINSA has not applied for or received any bounty or grant on the subject merchandise for five consecutive years, and has provided, together with the Government of Mexico, certification that it will not apply for or receive any bounty or grant in the future, we are revoking the countervailing duty order with regard to MINSA, in accordance with 19 CFR 355.25 (a)(3), effective January 1, 1990.

Therefore, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise exported on or after January 1, 1988 and on or before December 31, 1989, and to terminate the suspension of liquidation requirement with regard to MINSA. The Department will also instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. The deposit waiver shall remain in effect until publication of the final results of the next administrative review.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22 and 355.25.

Dated: May 28, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-13137 Filed 6-3-91; 8:45 am]

BILLING CODE 3510-DS-M

Short Supply Determination: Certain Aluminum-Killed Cold-Rolled Steel Sheet

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of short-supply determination on certain aluminum-killed cold-rolled steel sheet.

SHORT-SUPPLY REVIEW NUMBER: 50.

SUMMARY: The Secretary of Commerce ("Secretary") hereby grants a short-supply request for 1,100 metric tons of certain aluminum-killed ("AK") cold-rolled steel sheet for the remainder of 1991 under the U.S.-EC steel arrangement.

EFFECTIVE DATE: May 29, 1991.

FOR FURTHER INFORMATION CONTACT: Mark B. Brechtl or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230, (202) 377-1386 or (202) 377-0159.

SUPPLEMENTARY INFORMATION: On May 14, 1991, the Secretary received an adequate petition from Buckbee Mears Cortland, Inc. ("BMC") requesting short supply of 1,100 metric tons of certain AK cold-rolled steel sheet for the remainder of 1991 under Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community and the Government of the United States of America Concerning Trade in Certain Steel Products. BMC claimed that the requested product, used to manufacture aperture masks for color television picture and data display tubes, is not produced domestically and that its potential European supplier does not have sufficient regular export licenses available during this time period. The Secretary conducted this short-supply review pursuant to Section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1888 (1989) ("the Act"), and § 357.102 of the Department of Commerce's Short-Supply Procedures. (19 CFR 357.102) ("Commerce's Short-Supply Procedures").

The requested product meets the following specifications:

Chemistry (in maximum values): Carbon (0.004 percent, aim 0.002 percent); Silicon (0.040 percent); Sulphur (0.030 percent); Aluminum (0.070 percent); Nitrogen (0.008 percent); Manganese (0.450 percent); Copper (0.080 percent); and Phosphorus (0.035 percent);

Width range (and tolerance): 15 in. to 30 in. (+/− 0.04 in.);

Thickness range (and tolerance): 0.001 in. to 0.0102 in. (+0.00028 in., −0.00020 in.);

Coil weight: 1.5 to 3.0 metric tons, with up to 20 percent in 0.5 to 1.5 metric ton weight.

On May 14, 1991, the Secretary established an official records of this short-supply request (Case Number 50) in the Central Records Unit, room B-099, Import Administration, U.S. Department of Commerce at the above address. Section 4(b)(4)(B)(i) of the Act and § 357.106(b)(1) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply petition not later than the 15th day after the petition is filed if the Secretary finds that one of the following conditions exist: (1) The raw steelmaking capacity in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds, on the basis of available information, that this product is not produced in the United States at this time. Therefore, in accordance with section 4(b)(4)(B)(i)(III) of the Act and § 357.106(b)(1)(iii) of Commerce's Short-Supply Procedures, the Secretary applied a rebuttable presumption that this product is presently in short supply. Unless domestic steel producers provided proof that they could and would produce the requested quantity of this product within the desired period of time, provided it represents a normal order-to-delivery period, the Secretary would issue a short-supply allowance not later than May 29, 1991.

ACTION: On May 21, 1991, the Secretary published a notice in the **Federal Register** (56 FR 23286) announcing its review of this request and providing domestic steel producers an opportunity to rebut the presumption of short supply. All comments were to be submitted no later than May 28, 1991. No comments were received.

CONCLUSION: Since the Secretary received no comments to the **Federal Register** notice from potential domestic suppliers to rebut the Secretary's presumption of short supply for the requested product, the Secretary hereby grants, pursuant to section 4(b)(4)(A) of the Act and § 357.102 of Commerce's Short-Supply Procedures, a short-supply allowance for 1,100 metric tons of the requested steel sheet for the remainder of 1991 under Article 8 of the U.S.-EC steel arrangement.

Dated: May 29, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-13138 Filed 6-3-91; 8:45 am]

BILLING CODE 3510-DS-M

University of California at Berkeley, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, was being manufactured in the United States.

Docket Number: 90-211.

Applicant: University of California at Berkeley, CA 94720.

Instrument: Imaging Plate X-ray Data Collector.

Manufacturer: MAR Research, West Germany.

Intended Use: See notice at 55 FR 51752, December 17, 1990.

Reasons: The foreign instrument provides X-ray diffraction patterns with a scan and erase cycle time of 90 seconds.

Advice Submitted by: National Institutes of Health, March 27, 1991.

Docket Number: 90-220.

Applicant: University of California, Santa Cruz, CA 95064.

Instrument: Infrared Monocular Oculometer.

Manufacturer: Dr. Bouis, West Germany.

Intended Use: See notice at 56 FR 4046, February 1, 1991.

Reasons: The foreign instrument provides recording of horizontal and vertical eye movements, without eye contact, and with a sampling rate of 4 kHz and resolution better than 5 minutes of arc.

Advice Submitted by: National Institutes of Health, March 27, 1991.

Docket Number: 90-200.

Applicant: University of California, Santa Barbara, CA 93106.

Instrument: Metal-organic Chemical Vapor Deposition System.

Manufacturer: Thomas Swan & Co., Ltd., United Kingdom.

Intended Use: See notice at 55 FR 50857, December 11, 1990.

Reasons: The foreign instrument provides: (1) In situ monitoring of crystal growth, (2) a horizontal reactor cell with stationary susceptor for uniform growth, (3) double dilution on all dopant lines and (4) epison composition monitoring capability.

Advice Submitted by: National Institute of Standards and Technology, April 15, 1991.

The National Institute of Health and National Institutes of Standards and Technology advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91-13139 Filed 6-3-91; 8:45 am]

BILLING CODE 3510-DS-M

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University of Massachusetts Medical Center; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 90-210.

Applicant: University of Massachusetts Medical Center, Worcester, MA 01655.

Instrument: Microvolume Rapid Kinetics Accessory, Model SFA-12M with Pneumatic Drive Attachment and Trigger Unit.

Manufacturer: Hi-Tech Scientific, United Kingdom.

Intended Use: See notice at 55 FR 51752, December 17, 1990.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, was being manufactured in the United States at the time the foreign instrument was ordered, October 22, 1990.

Reasons: The foreign article rapidly mixes and delivers fluid reactants directly to the observation cell of an existing spectrometer or spectrophotometer. The National Institutes of Health advises in its memorandum dated March 27, 1991, that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use which was being manufactured in the United States at the time the foreign instrument was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which was being manufactured in the United States at the time the foreign instrument was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91-13140 Filed 6-3-91; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 91-070.

Applicant: Washington University School of Medicine, 660 South Euclid Avenue, Box 8228, St. Louis, MO 63110.

Instrument: Electron Microscope, Model EM902/PC.

Manufacturer: Carl Zeiss, West Germany.

Intended Use: The instrument will be used for the following purposes:

(1) To image the atomic elements that compose a biological sample.

(2) To increase the clarity of images of thick sections or whole-mounted cells,

(3) To increase the contrast of images of extremely thin and/or unstained biological samples, and

(4) To improve the images of carbon/platinum replicas of freeze-etched samples.

Application Received by Commissioner of Customs: May 9, 1991.

Docket Number: 91-071.

Applicant: Wayne State University, 5950 Cass Avenue, Detroit, MI 48202.

Instrument: Mass Spectrometer, Series II.

Manufacturer: VG Isogas, United Kingdom.

Intended Use: The instrument will be used to determine enrichment in oxygen 18, nitrogen 15, carbon 13 and deuterium in biological fluids and tissue samples. Experiments will involve metabolic studies in humans and animals, including metabolic balances, estimations of body composition, studies of metabolic pathways, determinations of energy expenditures.

Application Received by Commissioner of Customs: May 9, 1991.

Docket Number: 91-072.

Applicant: The University of Michigan, Department of Engineering, 1301 Beal Avenue, Ann Arbor, MI 48109-2122.

Instrument: Fourier Transform Interferometer.

Manufacturer: Bomem, Canada.

Intended Use: The instrument will be used in research for characterization of far infrared dielectric properties of planetary ices and for measurement of minor gases in the Earth's atmosphere. In addition, the instrument will be used to train graduate students in the methods of FTIR measurements.

Application Received by Commissioner of Customs: May 9, 1991.

Docket Number: 91-073.

Applicant: Brookhaven National Laboratory, Upton, NY 11973.

Instrument: Photoelectron Spectrometer.

Manufacturer: VSW, United Kingdom.

Intended Use: The instrument will be used to investigate complex surface intermediates that are important in catalysis and adhesion. The materials to be investigated are molecules of organic compounds (hydrocarbons, sulfur and nitrogen derivatives, oxygenates) absorbed on single crystals, such as silver, platinum, molybdenum, ruthenium and metal oxides.

Application Received by Commissioner of Customs: May 9, 1991.

Docket Number: 91-074.

Applicant: University of Maine, Department of Geological Sciences, Sawyer Environmental Research Center, Orono, ME 04469.

Instrument: Isoprep 18 Equilibrium System, Model PS/003.

Manufacturer: VG Isotech Ltd., United Kingdom.

Intended Use: The instrument will be used for studies of organic and inorganic carbonates, natural surface and ground waters, terrestrial and marine organic matter, igneous rocks and metamorphic rocks. Gases such as H_2, N_2, CO_2, O_2, Ar, SO_2, and SF_6, will be extracted from these materials for analysis. In addition the instrument will be used for educational purposes in the courses: Isotope Geology, Physical Mechanisms of Climate Change and Stable Isotope Geology to train students in state-of-the-art techniques and theory in light stable-isotope mass spectrometry.

Application Received by Commissioner of Customs: May 13, 1991.

Docket Number: 91-075.

Applicant: Washington State University, Department of Chemistry, Pullman, WA 99164-4630.

Instrument: Low Temperature Rapid Mixing Accessory.

Manufacturer: Hi-Tech Scientific Ltd., United Kingdom.

Intended Use: The instrument will be used to study reactions of inorganic and organometallic molecules in solution at low and varied temperature. Typically, the reactions involve colored compounds containing ions of elements such as cobalt, iron, chromium, manganese, nickel and copper. The experiments to be conducted involve rapid mixing of two solutions, each containing one of the reactants. The progress of the reaction is then followed as a function of time by monitoring the accompanying color change. Such experiments will be repeated at different temperatures in order to investigate the effect of temperature variation on the reaction rates.

Application Received by Commissioner of Customs: May 13, 1991.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91-13141 Filed 6-3-91; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

South Atlantic Fishery Management Council; Wreckfish Limited Entry Public Hearings; Correction

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments; correction.

SUMMARY: This notice is being issued to correct information in the "**DATES**" heading of the notice of public hearings for proposed Amendment 5 to the Snapper-Grouper Fishery Management Plan (wreckfish limited entry), which was published May 22, 1991 (56 FR 23551). All other information, as published, remains the same.

FOR FURTHER INFORMATION CONTACT: Carrie R.F. Knight, Public Information Officer, South Atlantic Fishery Management Council, 803-571-3266.

In FR Doc. 91-12066, beginning on page 23551, in the issue of May 22, 1991, make the following correction:

On page 23551, in the third column under the "**DATES**" heading, entry 1, the city and state should read Wrightsville, North Carolina.

Dated: May 29, 1991.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-13142 Filed 6-3-91; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in Hungary

May 29, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 5, 1991.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, carryover and recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 42623, published on October 22, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 29, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 16, 1990, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Hungary and exported during the twelve-month period which began on January 1, 1991 and extends through December 31, 1991.

Effective on June 5, 1991, you are directed to amend the directive dated October 16, 1990 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Republic of Hungary:

Category	Adjusted twelve-month limit [1]
300/301	1,499,154 kilograms.
313	13,083,633 square meters.
410	956,224 square meters.
433	9,590 dozen.
434	8,962 dozen.
435	15,861 dozen.
442	21,512 dozen.
443	101,096 numbers.
444	27,770 numbers.
448	23,826 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1990.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-13133 Filed 6-3-91; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Payment of Funeral and/or Interment Expenses, DD Form 1375 and DD Form 2065, OMB Control Number 0704-0030.

Type of Request: Reinstatement.

Average Burden Hours/Minutes per Response: 1813 hours.

Responses per Respondent: 1.

Number of Respondents: 2,200.

Annual Burden Hours: 399.

Annual Responses: 2,200.

Needs and Uses: DD Form 1375 is an application to the government for reimbursement of funeral/interment

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expenses. DD Form 2065 is the instrument that notifies the government of disposition instruction and acknowledges costs for services and supplies for the remains.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer. Written Comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Officer of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202-4302.

Dated: May 29, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-13076 Filed 6-3-91; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Record of Preparation and Disposition of Remains (within CONUS), DD Form 2063, OMB Control Number 0702-0014.

Type of Request: Reinstatement.

Average Burden Hours/Minutes per Response: 15 minutes.

Responses per Respondent: 1.

Number of Respondents: 3,125.

Annual Burden Hours: 781.

Annual Responses: 3,125.

Needs and Uses: DD Form 2063 provides a record of technical information regarding condition of remains before and after preparation, techniques used in embalming, and essential fiscal data. DD Form 2063 is only used for those cases where mortuary supplies and services are obtained on a contractual basis.

Affected Public: Businesses or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202-4302.

Dated: May 29, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-13075 Filed 6-3-91; 8:45 am]

BILLING CODE 3810-10-M

Office of the Secretary

Availability of Change 1 to DoD 5025.1-I, "DoD Directives System Annual Index"

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of availability.

SUMMARY: This document is to inform the pulic and Government Agencies of the availability of Change 1 to DoD 5025.1-I, "DoD Directives System Annual Index". This Change 1 document replaces the basic Index dated January 1991. Interested persons may obtain copies, at cost, from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, telephone 703-487-4650. The NTIS accession number is PB 91 958517.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Toppings, telephone 703-697-4111.

Dated: May 29, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-13081 Filed 6-3-91; 8:45 am]

BILLING CODE 3810-01-M

Special Operations Policy Advisory Group; Meeting

The Special Operations Policy Advisory Group (SOPAG) will meet on 13 June 1991 in the Pentagon, Arlington, Virginia to discuss sensitive, classified topics.

The mission of the SOPAG is to advise the Office of the Secretary of Defense on key policy issues related to the development and maintenance of effective Special Operations Forces.

In accordance with section 10(d) of Public Law 92-463, the "Federal Advisory Committee Act," and section 552b(c)(1) of title 5, United States Code, this meeting will be closed to the public.

Dated: May 29, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-13079 Filed 6-3-91; 8:45 am]

BILLING CODE 3810-01-M

Strategic Defense Initiative Advisory Committee (SDIAC)

ACTION: Notice of advisory committee meeting.

SUMMARY: The SDIAC will meet in closed session in Washington, DC, on June 13-14, 1991.

The mission of the SDIAC is to advise the Secretary of Defense, Strategic Defense Initiative Organization on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meetings on June 13-14, 1991, the committee will discuss the status of the Architecture Integration Study.

In accordance with section 10(d) the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C., app II, (1982)), it has been determined that this SDIAC meeting concerns matters listed in 5 U.S.C. 552(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: May 29, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-3080 Filed 6-3-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 10-11 July 1991.

Time: 0800-1600 hours each day.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board (ASB) 1991 Summer Study on Army Simulation Strategy will meet for discussions focused on technical and programmatic subjects as regards simulation and modeling. The meeting will be open to the public. Any

interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91-13071 Filed 6-3-91; 8:45 am]

BILLING CODE 3710-8-M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 24 June 1991.

Time: 0800-1600 hours.

Place: General Dynamics Land Systems, Warren, MI, Tank Automotive Command, Warren, MI.

Agenda: The Army Science Board (ASB) 1991 Summer Study on Army Simulation Strategy will hold a one-day meeting. The meeting will include technical programmatic briefing and site visits of PM Abrams Simulations/Simulators in the area of modeling and simulation. The meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91-13070 Filed 6-3-91; 8:45 am]

BILLING CODE 3710-8-M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 24 June 1991.

Time: 0900-1600 hours.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board (ASB) Ad Hoc Subgroup on Improving the Quality of Science and Engineering in the Army will meet with various DOD and DA Staff members involved in the establishment of the Acquisition Corps. The meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91-13069 Filed 6-3-91; 8:45 am]

BILLING CODE 3710-8-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by June 21, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett, (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violates State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: May 29, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: Expedited.

Title: Application for Grants under the Bilingual Education Program: Evaluation Assistance Centers.

Abstracts: This form will be used by institutions of higher education to apply funding under the Bilingual Education Program. The Department will use the information to make grant awards.

Additional Information: An expedited review is requested in order to award grants under the Bilingual Education Program in FY 1991. Failure to collect this information would jeopardize the FY 1991 funds allocated for Evaluation Assistance Centers. This application contains the Intergovernmental Review of Federal Programs and State Single Points of Contact, Standard Form 424 (Application for Federal Assistance), Standard Form 424A Budget Information Sheet, Standard Form 424B (Assurances), Lobbying Certifications, Debarment Certifications, Drug-Free Certifications, and Lobbying Activities Disclosures.

Frequency: Annually.

Affected Public: Non-profit institutions.

Reporting Burden: Responses: 10.

Burden Hours: 81.7.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

BILLING CODE 4000-1-M

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UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE DIRECTOR FOR BILINGUAL EDUCATION AND MINORITY LANGUAGES AFFAIRS

Dear Colleague:

The materials in this package are for your use in preparing a grant application for assistance under the Evaluation Assistance Centers program as authorized under the Bilingual Education Act (20 U.S.C. 3304).

The Department plans to award grants for two Evaluation Assistance Centers for a three-year period beginning October 1, 1991. The primary purpose of these support centers is to provide technical assistance to local and State educational agencies regarding methods and techniques for identifying the educational needs and competencies of limited English proficient persons and for assessing the educational progress achieved through programs assisted under the Bilingual Education Act.

Specific information about the grant competition is provided in the application notice published in the Federal Register and included in this package. Please note the sections pertaining to applicant eligibility, service areas, selection criteria, and deadline for transmittal of applications.

Please note also the instructions for transmittal of applications. One original and two copies of the application must be submitted to the Department's Application Control Center. Applications are not to be mailed to the Office of Bilingual Education and Minority Languages Affairs (OBEMLA).

If you have any questions about application requirements, you should contact the OBEMLA program officer specified in the application notice.

Sincerely,

Rita Esquivel
Director

400 MARYLAND AVE. S.W. WASHINGTON, D.C. 20202

APPLICATION FORMS AND INSTRUCTIONS

Public reporting burden for this collection of information is estimated to average 81.7 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1885-0003, Washington, D.C. 20503.

Application for Federal Assistance (SF-424)

This form is the standard facesheet that must be completed by all applicants in accordance with the accompanying instructions.

Certification Signatures for Bilingual Education Joint Application

This form must be completed by each applicant in a joint application.

Budget Information--Non-Construction Programs

The instruction sheet for this form is attached to the form.

Assurances--Non-Construction Programs

This form must be signed by the authorized certifying official.

Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements

This form must be signed by the authorized certifying official.

Disclosure of Lobbying Activities

This form must be completed if applicable.

Proposal Narrative for New Applications

1. Your proposal narrative should appear in your application immediately after the application forms.

2. Include at the beginning of your narrative an abstract of your proposal.

3. Address the selection criteria in exactly the same order in which they appear in section 75.210(b) of the Education Department General Administrative Regulations (EDGAR). The selection criteria should be used as an outline for your narrative. This format is important for a fair evaluation and rating of your proposal by the review panel.

4. Section 75.210(c) specifies that 15

additional points are distributed among the selection criteria. Refer to the application notice for the distribution of the 15 additional points for this competition.

5. Do not include extensive vitae in addressing the selection criterion on quality of personnel. To reduce unnecessary paperwork and expedite the application review process, you should use the format of the Position Description Form contained in this application package for describing the responsibilities and qualifications for proposed staff positions and, if known, of proposed staff members.

6. Do not include appendices or letters of support.

7 Number the pages of your narrative and include a table of contents.

8. The Secretary of Education strongly requests the applicant to limit the application narrative to no more than 45 double-spaced, typed pages (on one side only), although the Secretary will consider applications of greater length. The Department anticipates that successful applications under this program generally will meet this page limit.

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CERTIFICATION SIGNATURES FOR BILINGUAL EDUCATION JOINT APPLICATION

EACH OF THE FOLLOWING APPLICANTS CERTIFIES THAT TO THE BEST OF HIS KNOWLEDGE AND BELIEF DATA IN THIS APPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANTS AND THE APPLICANTS WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS APPROVED.

AUTHORIZED REPRESENTATIVE			TELEPHONE			NAME OF LEA, IHE, SEA OR PRIVATE NONPROFIT ORGANIZATION
TYPED OR PRINTED NAME	TITLE	SIGNATURE	AREA CODE	NUMBER	EXT.	
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POSITION DESCRIPTION

(This form is to be used in accordance with Item 5 of the instructions under Proposal Narrative for New Applications.)

(1) Position: (2) Name (if known):

R

(3) Description of duties and responsibilities of the position:

(4) Qualifications required for the position:

A

(5) Qualifications of person named above:

F

T

[FR Doc. 91-13068 Filed 6-3-91; 8:45 am]
BILLING CODE 4000-1-C

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 5, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett, (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: May 29, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: New.
Title: Application for the National Assessment of Educational Progress Data Reporting Program.
Frequency: Annually.
Affected Public: Business or other for-profit; Non-profit institutions.
Reporting Burden: Responses: 15.
Burden Hours: 360.
Recordkeeping Burden: Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by State educational agencies to apply for funding under the National Assessment of Educational Progress Data Reporting Program. The Department uses the information to make grant awards.

Office of Planning, Budget and Evaluation

Type of Review: New.
Title: Evaluation of Student Support Services Program.
Frequency: One-time.
Affected Public: Individuals or households; Non-profit institutions.
Reporting Burden: Responses: 508.
Burden Hours: 5358.
Recordkeeping Burden: Recordkeepers: 0.
Burden Hours: 0.
Abstract: The purpose of this study is to examine the effectiveness of the Student Support Services Program. The Department uses the information to report to Congress.

[FR Doc. 91-13067 Filed 6-3-91; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 199-058, et al.]

Hydroelectric Applications (South Carolina Public Service Authority, et al.); Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* Proposed Change of Land Use Classification.
b. Project No.: 199-058.
c. Date Filed: April 22, 1991.
d. Applicant: South Carolina Public Service Authority.
e. Name of Project: Santee-Cooper Project.
f. Location: Clarendon County, South Carolina.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).
h. Applicant Contact: Mr. Robert F. Petracca, Vice President, Property and Transportation, South Carolina Public Service Authority, One Riverwood Drive, Moncks Corner, SC 29148, (803) 761-4014.
i. FERC Contact: Mr. Dan Hayes, (202) 219-2660.
j. Comment Date: July 10, 1991.
k. Description of Project: South Carolina Public Service Authority (licensee) proposes to change land use classifications at Potato Creek on the Lake Marion development to allow construction of a residential resort (Summertown Plantation). The proposal would include relocating and exchanging current land use designations, including relocation of lands designated as public recreation and natural areas.
l. This notice also consists of the following standard paragraphs: B, C, and D2.

2 a. *Type of Application:* Amendment of License.
b. Project No.: 1904-008.
c. Date Filed: February 22, 1991.
d. Applicant: New England Power Company.
e. Name of Project: Vernon Project.
f. Location: The project is located on the Connecticut River in Windham County, Vermont and Cheshire County, New Hampshire.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).
h. Applicant Contact: Mr. George P. Sasdi, New England Power Company, 25 Research Drive, Westborough, MA 01582, (508) 366-9011.
i. FERC Contact: Kenneth Fearon, (202) 219-2657.
j. Comment Date: June 27, 1991.
k. Description of Amendment: The amendment proposes to replace 4 existing 2,000-kW turbine/generator units (Units No. 5 through 8) with 2 new 14 MW turbine/generators. The proposed change would increase the project's total installed capacity from the authorized 24.4 MW to 44.4 MW and increase the plant's maximum hydraulic capacity from 15,530 cfs to 17,860 cfs. All interior electrical equipment connecting the remaining generating units (Units 1 through 4, 9 and 10) will be replaced with new modern control systems and a new control room. The amendment also proposes to install two new outdoor 13.8 to 69-kV step up transformers located at the south end of the 69-kV switchyard.

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replace the existing interior 69-kV bare conductor overhead buses with an underground 13.8-kV interconnection to the new step up transformers, and install two new draft tube extensions, for the two new 14 MW units, projecting downstream of the fish ladder's collection channel.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

3. a. Type of Application: Amendment of License.

b. Project No.: 2100–044.

c. Date Filed: April 11, 1991.

d. Applicant: California Department of Water Resources.

e. Name of Project: Feather River Project.

f. Location: Feather River in Butte County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Mike Ford, California Department of Water Resources, 1416 9th Street, Sacramento, CA 95802, (916) 324–6164.

i. FERC Contact: Jon Cofrancesco, (202) 219–2850.

j. Comment Date: July 1, 1991.

k. Description of Amendment: The California Department of Water Resources, licensee for the Feather River Project, proposes to temporarily close the facilities of the project's Loafer Creek recreation area. The Loafer Creek recreation area contains several group and family campsites, a day-use and swim beach area, boat launching ramps, and parking facilities. The licensee states that current low lake levels at the Oroville reservoir will severely impact camping and day-use activities of Loafer Creek and that past experience has shown that Loafer Creek receives very limited use during periods of low water. Further, the licensee states that the camping facilities of the project's Bidwell Canyon recreation area will remain open. Finally, the licensee states that given this information, it expects camping attendance at the project to be 25 percent of normal and the closure of Loafer Creek to be a minimal inconvenience for the camping public (a copy of the application may be obtained by interested parties directly from the licensee).

l. This notice also consists of the following standard paragraphs: B, C, and D2.

3. Type of Application: Amendment to License.

b. Project No.: 2408–035.

c. Date Filed: April 22, 1991.

d. Applicant: Calaveras County Water District.

e. Name of Project: North Fork Stanislaus River Project.

f. Location: The Project is located on the North Fork Stanislaus River, Stanislaus River, Highland Creek, Beaver Creek, Silver Creek, and Duck Creek in the Counties of Calaveras, Alpine, and Tuolumne, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Steve Felte, General Manager, Calaveras County Water District, P.O. Box 846, San Andreas, CA 95249, (209) 754–3543.

i. FERC Contact: Kenneth Fearon (202) 219–2657.

j. Comment Date: July 1, 1991.

k. Description of Amendment: The The licensee proposes to install a 300-kW microturbine on the low level outlet structure located at McKays Point Dam. The microturbine would use the required by-pass flows, which range from 16.5 cfs to 25 cfs, to generate an estimated 2,630,000 kWh of electricity annually.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

5 a. Type of Application: Amendment of Recreation Plan and Revision of Project Boundary.

b. Project No.: 2535–001.

c. Date Filed: September 17, 1990.

d. Applicant: South Carolina Electric and Gas Company.

e. Name of Project: Stevens Creek Project.

f. Location: Columbia County, Georgia and Edgefield and McCormick Counties, South Carolina.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Randolph R. Mahan, Assistant General Counsel, South Carolina Electric and Gas Company, P.O. Box 760, Columbia, SC 29218, (803) 748–3538.

i. FERC Contact: Mr. Dan Hayes, (202) 219–2860.

j. Comment Date: July 10, 1991.

k. Description of Project: South Carolina Electric and Gas Company (licensee) proposes to exchange approximately 91.86 acres of project property, including approximately 11 acres approved for recreation development, for an area of approximately 10 acres owned by Canal Industries. The licensee states that the 10-acre parcel is better suited for recreational development than the 91.86-acre parcel, which the licensee states is low lying and prone to flooding.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

6 a. Type of Application: License Subsequent.

b. Project No.: 2711–001.

c. Date Filed: March 27, 1991.

d. Applicant: Northern States Power Company.

e. Name of Project: Trego Hydro Project.

f. Location: On the Namekagan River, Washington County, Wisconsin.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Anthony G. Schuster, Northern States Power Company, 100 North Barstow Street, P.O. Box 8, Eau Claire, WI 54702, (715) 839–2401.

i. FERC Contact: Mary C. Golato (202) 219–2804.

j. Comment Date: July 24, 1991.

k. Description of Project: The license project consists of the following facilities: (1) A northeastern earth embankment section 380 feet long and about 30 feet in maximum height; (2) a southwestern earth embankment section 110 feet long and about 25 feet in maximum height; (3) a reinforced concrete hollow gravity spillway structure of the Ambursen type, 92 feet long, 53 feet wide at the base, and 28 feet high, surmounted with 3 tainter gates, each 25.5 feet long and 10 feet high, and a 6-foot-wide trashgate and sluiceway; (4) a reservoir about 6 miles long, with a surface area of 470 acres and a storage capacity of 4,700 acre-feet; (5) a reinforced concrete, steel and brick powerhouse 59.5 feet long, 58 feet wide, and 74 feet high above the foundation, located adjacent to the southwest end of the spillway structure; (6) generating equipment consisting of two open flume, vertical-axis Francis turbine-generator units, No. 1 rated 700 kilowatts (kW), and No. 2 rated 500 kW, for a total capacity of 1,200 kW; (7) a concrete stilling basin apron about 53 feet long and 150 feet wide; (8) transmission facilities; and (9) appurtenant facilities. The applicant proposes no new construction. The dam is owned by the Northern States Power Company. The average annual generation is 7,575,898 kilowatthours.

l. This notice also consists of the following standard paragraphs: B, C, and D1.

7 a. Type of Application: Major License.

b. Project No.: 10416–003.

c. Date filed: September 28, 1990.

d. Applicant: Washington Hydro Development Company.

e. Name of Project: Anderson Creek Hydroelectric.

f. Location: On Anderson and 4 Mile Creeks, within Mt. Baker-Snoqualmie National Forest in Whatcom County, Washington, Sections 21, 29, and 33, Township 37 North, Range 9 East, Willamette Meridian.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Michael S. Wright, Permit/Engineering Inc., 1300–114th Ave. SE. #220, Bellevue, WA 98004, (206) 451–7371.

i. FERC Contact: Mr. James Hunter, (202) 219–2839.

j. Comment Date: July 17, 1991.

k. Description of Project: The proposed project would consist of: (1) A 10-foot-high, 25-foot-long reinforced concrete diversion weir impounding water at elevation 2,716 feet and a 17-foot-wide, 28-foot-long intake structure on the left bank of Anderson Creek with trash racks, fish screens, a fish return pipe, and a gated penstock inlet; (2) a 28-inch-diameter, 8,150-foot-long steel penstock connecting to a junction box; (3) a 12-foot-high, 25-foot-long reinforced concrete diversion weir impounding water at elevation 2,600 feet and a 17-foot-wide, 20-foot-long intake structure with trash racks, fish screens, a fish return pipe, and a gated penstock inlet on the right bank of 4 Mile Creek; (4) a 18-inch-diameter, 1,300-foot-long steel penstock connecting to the junction box; (5) a 34-inch-diameter, 4,850-foot-long steel penstock from the junction box to; (6) a 34-foot-wide, 40-foot-long reinforced concrete powerhouse containing a 6.25-MW generating unit; (7) a 5-foot-wide tailrace discharging flows over a weir at elevation 838 feet into Anderson Creek; (8) a 3.2-mile-long, 35-kV transmission line connecting to the existing Shannon substation; and (9) approximately 3,900 feet of access roads connecting the powerhouse and the two diversions to an existing road. The project would have an estimated annual output of 23.4 GWh and would cost $10,311,800 in 1990 dollars.

l. Purpose of Project: Power generated would be sold to a local utility.

m. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

8 a. Type of Application: Minor License.

b. Project No.: 11090–000.

c. Date filed: February 15, 1991.

d. Applicant: Tunbridge Mill Corporation.

e. Name of Project: Tunbridge Mill Project.

f. Location: On the First Branch of the White River, Orange County, Vermont.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Jay Boeri, RR #1, Box 798, Woodstock, VT 05091, (802) 436–2521.

i. FERC Contact: Michael Dees (202) 219–2807.

j. Comment Date: July 5, 1991.

k. Description of Project: The proposed project would consist of: (1) An existing concrete dam 102 feet long and 8.5 feet high and equipped with flashboards two feet high; (2) an existing reservoir with a surface area of 2.5 acres; (3) a proposed penstock 4.5 feet in diameter and 187 feet long; (4) an existing brick and timber powerhouse containing a 100-kW hydropower unit; (5) an existing tailrace 20 feet long; (6) a proposed 7.2-kV buried transmission line 60 feet long; and (7) appurtenant facilities. The estimated annual energy production is 370 MWh. Project energy would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

9 a. Type of Application: Preliminary Permit.

b. Project No.: 11091–000.

c. Date filed: February 20, 1991

d. Applicant: Bridgeport Hydraulic Company.

e. Name of Project: Aspetuck Tunnel Project.

f. Location: On the Saugatuck and Aspetuck Rivers, in Fairfeld County, Connecticut.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Glenn Thornhill, Bridgeport Hydraulic Company, 600 Lindley Street, P.O. Box 5243, Bridgeport, CT 06610–5243, (203) 367–6621.

i. FERC Contact: Robert Bell (202) 219–2806.

j. Comment Date: July 15, 1991.

k. Description of Project: The proposed project would consist of: (1) The existing 990-foot-long, 110-foot-high linear concrete gravity Samuel P. Senior Dam; (2) an existing reservoir having a surface area of 868 acres with a storage capacity 42,000 acre-feet, and a normal water surface elevation of 280 feet m.s.l.; (3) an intake structure; (4) an existing 200-foot-long, 4-foot-diameter east iron penstock; (5) a proposed powerhouse containing 1 generating unit with an installed capacity of 200 kW; (6) an existing tailrace; (7) a 1,000-foot-long, 13.8-kV transmission line; and (8) appurtenant facilities. The existing project facilities are owned by the applicant. The applicant estimates the average annual generation would be 1,000,000 kWh. The project energy generated would be sold to a local utility. The estimated cost of studies to be done under the permit would be $10,000.

l. This notice also consists of the following standard paragraphs: A3, A7, A9, A10, B, C, and D2.

10 a. Type of Application: Preliminary Permit.

b. Project No.: 11095–000.

c. Date filed: February 25, 1991.

d. Applicant: Greenwood Pumped Storage Corporation.

e. Name of Project: Red Rock.

f. Location: On the Lake Rad Rock in Marion County, Iowa.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Douglas A. Spaulding, 6465 Wayzata Blvd., #860, Minneapolis, MN 55426, (612) 593–5650.

i. FERC Contact: Charles T. Raabe (202) 219–2811.

j. Comment Date: July 5, 1991.

k. Description of Project: The proposed pumped storage project would consist of: (1) An uper reservoir created by a 55-foot-high, 9,500-foot-long earthfill dam having crest elevation 905 feet MSL; (2) a 30-foot-diameter, 50-foot-high intake structure; (3) a 40-foot-diameter, 200-foot-deep vertical shaft; (4) a 40-foot-diameter, 2,000-foot-long limed tunnel; (5) a 350-foot by 400-foot reinforced-concrete powerhouse containing two pump-turbine units rated at 100-MW each operated at a 114 to 150-foot head; (6) a lower reservoir (Lake Red Rock) created by the Corps of Engineers' Red Rock Dam; (7) a 6-mile-long, 161-kV transmission line to Iowa Power's Knoxville Substation; and (8) appurtenant facilities. Lake Rad Rock, an existing reservoir formed by the Corps of Engineers' Red Rock Dam, would be utilized as a lower reservoir.

Applicant estimates that the cost of the studies under the terms of the permit would be $850,000. Project energy would be purchased from and sold to local utilities.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

11 a. Type of Application: Preliminary Permit.

b. Project No.: 11112–000.

c. Date Filed: March 26, 1991.

d. Applicant: The Dayville Corporation.

e. Name of Project: Dayville North Five Mile River.

f. Location: On the Five Mile River near Killingly in Windham County, Connecticut.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Mark C. Yellin, 628 Farmington Ave., Farmington, CT 06032, (203) 677–9207.

i. FERC Contact: Ms. Julie Bernt, (202) 219–2814.

j. Comment Date: July 24, 1991.

k. Description of Project: The proposed project would consist of: (1)

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An exciting 4-foot-high concrete dam owned by The William Prym Company and an existing diversion gate owned by Morgan Whitney, Inc.; (2) a 5-foot-long, 4-foot-diameter penstock; (3) a powerhouse containing one generating unit with a rated capacity of 100 kW; and (4) a 6-mile-long transmission line. The applicant estimates the average annual energy production to be 375,000 kWh and the cost of the work to be performed under the preliminary permit to be $65,000.

l. Purpose of Project: The power produced would be sold to a local power company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

12 a. Type of Application: Preliminary Permit.

b. Project No.: 11126-000.

c. Date Filed: April 9, 1991.

d. Applicant: Edward Navickis.

e. Name of Project: Bear River Canal.

f. Location: On Pacific Gas & Electric Company's Bear River Canal, in Placer County, California.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. Edward Navickis, P.O. Box 910, Penn Valley, CA 95946, (916) 432-9228.

i. FERC Contact: Michael Spencer at (202) 219-2846.

j. Comment Date: July 5, 1991.

k. Description of Project: The proposed project would utilize the existing Pacific Gas and Electric Company's Drum Spaulding Project on Bear River Canal and would consist of: (1) an intake structure at elevation 1,760 Feet; (2) a 200-foot-long, 72-inch-diameter penstock; (3) a powerhouse containing a generating unit with a capacity of 235 kW with an estimated average annual generation of 2.0 GWh; (4) a 200-foot-long transmission line.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $15,000.

l. Purpose of Project: Project power would be sold.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

13 a. Type of Application: Preliminary Permit.

b. Project No.: 11131-000.

c. Date Filed: April 23, 1991.

d. Applicant: S & F Power Company.

e. Name of Project: Palisades Hydroelectric Capacity Addition.

f. Location: At the Bureau of Reclamation's Palisades dam on the South Fork of the Snake River in Bonneville County, Idaho. T1S, R45E in section 17.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. Ted S. Sorenson, P.E., S & F Power Company, 550 Linden Drive, Idaho Falls, Idaho 83401, (208) 522-8069.

i. FERC Contact: Mr. Michael Strzelecki, (202) 219-2827.

j. Comment Date: July 19, 1991.

k. Description of Project: The proposed project would utilize the existing Bureau of Reclamation's Palisades dam and would consist of: (1) A 20-foot diameter, 250-foot long penstock extension; (2) a powerhouse containing two 45-megawatt generators located adjacent to existing generating units of the Bureau of Reclamation; (3) a tailrace returning the discharge into the South Fork of the Snake River; (4) a ½-mile-long transmission line; and (5) appurtenant facilities.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $85,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

14 a. Type of Application: Preliminary Permit.

b. Project No.: 11140.

c. Date Filed: May 3, 1991.

d. Applicant: Greenwood Pumped Storage Corporation.

e. Name of Project: Red Rock.

f. Location: On the Des Moines River in Marion County, Iowa.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. Douglas A. Spaulding, 6465 Wayzata Blvd., #660, Minneapolis, MN 55426, (612) 593-5650.

i. FERC Contact: Charles T. Raabe (202) 219-2811.

j. Comment Date: August 5, 1991.

k. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Red Rock Dam and Would consist of: (1) A new intake structure; (2) two 21-foot-diameter, 280-foot-long penstocks; (3) a powerhouse containing two generating units having a total installed capacity of 30-MW; (4) a 6-mile-long, 69-kV transmission line to Iowa Power's existing Knoxville substation; and (5) appurtenant facilities.

Applicant estimates that the average annual energy production would be 120,000 MWh and that the cost of the studies to be performed under the terms of the permit would be $500,000. Project energy would be sold.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, room 1027 (810 1st), at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the State in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Public Law No. 88-29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313 (b) of the Federal Power Act, 16 U.S.C. 8251 (b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: May 24, 1991, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13085 Filed 6-3-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 90-83-NG]

Poco Petroleum Inc., Authortzation to Import Natural Gas from Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of issuance of order granding long term authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order authorizing Poco Petroleum, Inc. (Poco), to import up to 7.3 million MMBtu (approximately 7,300,000 Mcf) of natural gas from Canada annually commencing on the effective date of the import authorization through October 31, 1999, via existing pipeline facilities. The gas would be imported by Poco, a natural gas marketer, as agent of its parent company, Poco Petroleums Ltd., for sale to IGI Resources, Inc. (IGI), also a natural gas marketer. IGI will resell the gas to industrial customers on a direct sales basis and to local distribution companies for resale to residential, commercial, and industrial customers in the States of Idaho, Washington, Oregon, Utah, Nevada, California, and Colorado.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 29, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary For Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-13144 Filed 6-3-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 3960-9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before July 5, 1991.

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FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Administration

Title: Invitation for Bids (IFBs) and Requests for Proposals (RFPs) (EPA No. 1038.06; OMB No. 2030–0006). This ICR requests approval to add information collection requirements to an existing information collection.

Abstract: This ICR, if approved, will establish cost proposal instructions requiring offerors under RFPs to submit more detailed cost and pricing information with their proposals. Offerors will also have the option of submitting this information on computer disks. Under 48 CFR parts 15 and 31, EPA contract officers must receive sufficiently detailed information from offerors to evaluate the reasonableness of individual cost elements in a proposal, and to ensure that the offerors will not bill the Government for costs that would not be allowable under contract. In the past, offerors responding to RFPs have sometimes submitted pricing and cost data that were insufficiently detailed, restricting the ability of EPA contracting officers to properly analyze and evaluate the proposals.

Burden Statement: Public reporting burden for this collection of information is estimated to average 2 hours per response, including reviewing instructions, searching existing information sources, and completing and reviewing the collection of information.

Respondents: Businesses or other for-profit organizations, non-profit institutions, small businesses or organizations.

Estimated Number of Respondents: 1275.

Frequency of Collection: One time.

Estimated Number of Responses per Respondent: 1.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20530.

OMB Responses to Agency PRA Clearance Requests

EPA ICR #1060.06; NSPS for Steel Plants: Electric ARC Furnaces and Argon-Oxygen Decarburization Vessels—Subpart AA and AAA Information Requirements; was approved 04/24/91; OMB #2060–0038; expires 04/30/94.

EPA ICR #0138.03; Modification of Secondary Treatment Requirements for Discharges into Marine Waters; was approved 03/17/91; OMB #2040–0088; expires 05/31/92.

EPA ICR #0783.10; Gaseous and Particulate Emission Regulations for 1994 and Later Model Year Light-Duty Vehicles and Light-Duty Trucks; was approved 04/24/91; OMB #2060–0104; expires 05/31/92.

EPA ICR #1000.04; Polychlorinated Biphenyls (PCB's): Use in Electrical Equipment and Transformers; was approved 05/15/91; OMB #2070–0003; expires 05/31/94.

Extensions of Expiration Dates

EPA ICR #1012; PCB Disposal Permitting Regulation; OMB #2070–0011; expiration date extended from 06/30/91 to 09/30/91.

EPA ICR #0575; Health and Safety Data Reporting, Submissions of Lists and Copies of Health and Safety Studies; OMB #2070–0004; expiration date extended from 05/31/91 to 08/31/91.

Dated: May 24, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91–13124 Filed 6–3–91; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3961–1]

Public Water System Supervision Program Revision for the State of Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Public notice is hereby given in accordance with the provisions of section 1413 of the Safe Drinking Water Act as amended, 42 U.S.C. 300f et seq., and 40 CFR 142.10, the National Primary Drinking Water Regulations, that the State of Montana has revised its approved Public Water System Supervision (PWSS) Primacy Program. Montana has developed: (1) Drinking water regulations for eight volatile organic chemicals that correspond to the National Primary Drinking Water Regulations for eight volatile organic chemicals promulgated by EPA on July 8, 1987 (52 FR 25690); and (2) public notice regulations that correspond to the revised EPA public notice requirements promulgated on October 28, 1987 (52 FR 41534). EPA has determined that these State program revisions are no less stringent than the corresponding federal regulations and has approved these State program revisions. This determination shall become effective July 5, 1991, and was based upon a thorough evaluation of Montana's PWSS program which has met the requirements stated in 40 CFR 142.10.

Montana's PWSS program, as presented and evaluated, has indicated that it is fully capable of carrying out all of the areas required to achieve primary enforcement capability.

Any interested parties are invited to submit written comments on this determination, and may request a public hearing on or before July 5, 1991. If a public hearing is requested and granted, this determination shall not become effective until such time following the hearing that the Regional Administrator issues an order affirming or rescinding this action.

Requests for a public hearing should be addressed to: James J. Scherer, Regional Administrator, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, CO 80202–2405.

Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Any request for a public hearing shall include the following: (1) the name, address, and telephone number of the individual organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the requests, or, if the request is made on behalf of an organization or other entity, and signature of the responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the **Federal Register** and in newspapers of general circulation in the State of Montana. A notice will also be sent to the person(s) requesting the hearing as well as to the State of Montana. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

Should no timely and appropriate request for a hearing be received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective on July 5, 1991.

Please bring this notice to the attention of any persons known by you to have an interest in this determination.

All documents relating to this determination are available for inspection at the following locations: U.S. EPA Region VIII Regional Library, 999 18th Street, Denver, Colorado 80202–2405, between the hours of 10 a.m. and 4 p.m. (MDT), Mon.-Fri. and the MT Department of Health and Environmental Sciences, Drinking Water/Subdivision Section, Cogswell Building, Helena, Montana 59620 between the hours of 8 a.m. and 5 p.m. (MDT), Mon.-Fri.

FOR FURTHER INFORMATION CONTACT: Robert Clement, EPA Region VIII, Public Water Supply Program Section (8WM–DW) at the Denver address given above, telephone (303) 293–1417, (FTS) 330–1417.

Dated: May 22, 1991.

Jack McGraw,

Deputy Regional Administrator, EPA, Region VIII.

[FR Doc. 91–13123 Filed 6–3–91; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

May 28, 1991.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452–1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB number: None

Title: Informational Tariffs

Action: New collection

Respondents: Businesses or other for-profit (including small businesses)

Frequency of response: On occasion

Estimated annual burden: 330 responses; 50 hours average burden per response; 16,500 hours total annual burden

Needs and uses: Providers of interstate operator services are directed by section 226(h)(1)(A) of the Communications Act, 47 U.S.C. 226(h)(1)(A), to file informational tariffs with the Commission and to update these tariffs regularly. The tariffs will be reviewed by Commission staff to determine whether they are unjust or unreasonable. The informational tariffs will be maintained for public inspection. The Common Carrier Bureau, at the direction of Congress, will also use the informational tariffs in assessing the compliance of the rates charged by operator service providers (OSPs) with the requirements of the Communications Act.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 91–13053 Filed 6–3–91; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirements Submitted To Office of Management and Budget for Review

May 24, 1991.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452–1422. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0340

Title: Section 73.51, Determining operating power

Action: Extension

Respondents: Businesses or other for-profit (including small businesses)

Frequency of response: Recordkeeping requirements

Estimated annual burden: 5,030 recordkeepers; .25 hours average burden per recordkeeper; 1,258 hours total annual burden

Needs and uses: Section 73.51 requires AM stations to make notation in station log when using indirect measurement of power determination and that a record of value F (efficiency factor) be kept. When it is not possible to use the direct method of power determination due to technical reasons, the indirect method of determining antenna input power may be used on a temporary basis. The recordkeeping requirement is used by FCC staff in field investigations to monitor licensee's compliance with the FCC's technical rules and to ensure that licensee is operating in accordance with its station authorization. The value F (efficiency factor) is used by station personnel in the event that measurement by the indirect method of power is necessary.

OMB Number: 3060–0341

Title: Section 73.1680, Emergency antennas

Action: Extension

Respondents: Non-profit institutions and businesses or other for-profit (including small businesses)

Frequency of response: On occasion reporting

Estimated annual burden: 104 responses; 1 hour average burden per response; 104 hours total annual burden

Needs and uses: Section 73.1680 requires that licensees of AM, FM or TV stations submit an informal request to the FCC (without 24 hours of commencement of use) to continue operation with an emergency antenna. An emergency antenna is one that is erected for temporary use after the authorized main and auxiliary antennas are damaged and cannot be used. The data is used by FCC staff to ensure that interference is not caused to other existing stations.

OMB Number: 3060–0254

Title: Section 74.433, Temporary authorizations

Action: Extension

Respondents: State or local governments, non-profit institutions, and businesses or other for-profit (including small businesses)

Frequency of response: On occasion reporting

Estimated annual burden: 20 responses; 2 hours average burden per response; 40 hours total annual burden

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Needs and uses: Section 74.433 requires that a licensee of a remote pickup station make an informal written request to the FCC when requesting temporary authorization for operations of a temporary nature that cannot be conducted in accordance with § 74.24. The data is used by FCC staff to insure that the temporary operation of a remote pickup station will not cause interference to existing stations.

OMB Number: 3060-0246
Title: Section 74.452, Equipment changes
Action: Extension
Respondents: State or local governments, non-profit institutions, and businesses or other for-profit (including small businesses)
Frequency of response: On occasion reporting
Estimated annual burden: 50 responses; .50 hours average burden per response; 25 hours total annual burden
Needs and uses: Section 74.452 requires that licensees of remote pickup stations notify the Commission of any equipment changes that are deemed desirable or necessary (without departing from its station authorization) upon completion of such changes. The data is used by FCC staff to assure that the changes made comply with the Rules and Regulations.

OMB Number: 3060-0342
Title: Section 74.1284, Rebroadcasts
Action: Extension
Respondents: Businesses or other for-profit (including small businesses)
Frequency of response: On occasion reporting
Estimated annual burden: 25 responses; 1 hour average burden per response; 25 hours total annual burden
Needs and uses: Section 74.1284 requires that the licensee of an FM Translator station obtain prior consent from the primary FM broadcast station or other FM translators before rebroadcasting their programs. In addition, the licensee must notify the Commission of the call letters of each station rebroadcast and must certify that written consent has been received from the licensee of that station. The data is used by FCC staff to update records and to assure compliance with FCC rules and regulations.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 91-13054 Filed 6-3-91; 8:45 am]
BILLING CODE 6712-01-M

[Report No. 1846]

Petitions for Reconsideration of Actions in Rule Making Proceedings

Petitions for reconsideration have been filed in the Commission rule making proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor Downtown Copy Center (202) 452-1422. Oppositions to these petitions must be filed on or before June 20, 1991. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Ankeny and West Des Moines, Iowa). Number of Petitions Received: 1

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Prescott Valley, Arizona) (MM 88-473; RM-6388). Number of Petitions Received: 2

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Rocky Mount, North Carolina) (MM 90-316, RM-7059). Number of Petitions Received: 1

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 91-13055 Filed 6-3-91; 8:45 am]
BILLING CODE 6712-01-M

Travel Reimbursement Program January 1, 1991-March 31, 1991; Summary Report (corrected)

The following corrections are hereby made to the Summary Report which first appeared in the **Federal Register**/Vol. 56, No. 91/Friday, May 10, 1991:

Total Number of Sponsored Events: 8
Total Number of Sponsoring Organizations: 8
Total Number of Commissioners/Employees Attending: 22
Total Amount of Reimbursement Expected:

Transportation	$11,438.00
Subsistence	8,848.26
Other Expenses	2,012.90
Total	$22,299.16

Travel Reimbursement Program
Individual Event Report Errata:
(1) Replace the prior Event Reprot with the following:

Sponsoring Organization
National Cable Televisin Association, 1724 Massachusetts Avenue, NW., Washington, DC. 20036.
Date of the Event
March 24-27, 1991
Description of the Event
NCTA's 40th Annual Convention and Exposition
Commissioners Attending
Chairman Alfred C. Sikes
Commissioner James H. Quello
Commissioner Sherrie P. Marshall
Commissioner Ervin C. Duggan
Other Employees Attending
Lauren J. Belvin, Legal Advisor to the Chairman
Linda Townsend Solheim, Director, Office of Legislative Affairs
Thomas P. Stanley, Chief Engineer, Office of Engineering and Technology
Richard M. Firestone, Chief, Common Carrier Bureau
Roy Stewart, Chief, Mass Media Bureau
William H. Johnson, Deputy Chief, Mass Media Bureau
Ronald Parver, Chief, Cable Television Branch, Mass Media Bureau
Michele Farquhar, Legal Advisor to Commissioner Duggan
Amount of Reimbursement:

Transportation	$4,173.00
Subsistence	3,291.58
Other Expenses	769.96
Total	$8,234.54

(2) Replace the prior event with the following:

Sponsoring Organization
INTV Association of Independent Television Stations, Inc.,
1200 Eighteenth Street, NW., suite 502,
Washington, DC 20036
Date of the Event
January 3-5, 1991
Description of the Event
INTV's 1991 Annual Convention
Commissioners Attending
Commissioner James H. Quello
Commissioner Sherrie P. Marshall
Commissioner Ervin S. Duggan
Other Employees Attending
Lauren J. Belvin, Legal Advisor to the Chairman
Byron F. Marchant, Legal Advisor to Commissioner Barrett
Peter D. Ross, Legal Advisor to Commissioner Marshall
Linda Townsend Solheim, Director, Office of Legislative Affairs
Robert M. Pepper, Chief, Office of Plans and Policy
Douglas Webbink, Chief, Policy and

Rules Division, Mass Media Bureau
Amount of Reimbursement

Transportation	$3,894.00
Subsistence	3,674.00
Other Expenses	579.33
Total	$8,147.33

(3) Add the following Event Report:
Sponsoring Organization
Texas Cable Television Association, 506 West 16th Street,
Austin, TX 78701.
Date of the Event
February 27-March 1, 1991
Description of the Event
Annual Texas Show '91
Commissioners Attending
None
Other Employees Attending
John P. Wong, Supervisory Electronics Engineer, Mass Media Bureau
Amount of Reimbursement

Transportation	$262.00
Subsistence	247.50
Other Expenses	65.90
Total	$575.40

(4) Add the following Event Report:
Sponsoring Organization
California Broadcasters Association, 1127 11th Street, suite 730,
Sacramento, CA 95814.
Date of the Event
January 25-26, 1991
Description of the Event
Winter Conference
Commissioners Attending
None
Other Employees Attending
Milton O. Gross, Supervisory Attorney Advisor, Mass Media Bureau
Amount of Reimbursement

Transportation	$492.00
Subsistence	442.50
Other Expenses	68.00
Total	$1,002.50

(5) Add the following Event Report:
Sponsoring Organization
Cardiff Publishing Company, Inc., 6300 S. Syracuse Way, suite 650,
Englewood, CA 80111.
Date of the Event
March 25-28, 1991
Description of the Event
International Mobile Communications Exposition
Commissioners Attending
None
Other Employees Attending
Ralph A. Haller, Chief, Private Radio Bureau
Kent Y. Nakamura, Attorney Advisor,
Private Radio Bureau
Terry L. Fishel, Supervisory Electronics Engineer, Private Radio Bureau
Amount of Reimbursement

Transportation	$1,249.00
Subsistence	307.50
Other Expenses	209.65
Total	$1,766.15

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 91-13056 Filed 6-3-91; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Compagnie Generale Maritime, et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 232-011307-001.
Title: Space Charter Agreement Between Compagnie Generale Maritime and Sea-Land Service, Inc., P&O Containers Ltd. and Nedlloyd Lijnen, B.V.
Parties: P&O Containers Limited, Nedlloyd Lijnen, B.V., Sea-Land Service, Inc., Compagnie Generale Maritime (CGM)
Synopsis: The proposed amendment would advance the effective date in the scope of the Agreement to include United States South Atlantic and Gulf ports, from April 1, 1992 to June 30, 1991. The parties have requested a shortened review period.

Dated: May 30, 1991.
By Order of the Federal Maritime Commission.
Joseph C. Polking,
Secretary.
[FR Doc. 91-13107 Filed 6-3-91; 8:45 am]
BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

Ambassadors International, 19401 S. Main Street, Gardena, CA 90248. Takashi Izumikawa, Sole Proprietor.
All Ports International, Inc., 1415 Atlantic Blvd., suite D, Neptune Beach, FL 32266. Officers: James J. Smith, Jr., President, Linda M. Angleton, Secretary/Treasurer.
F.R.T. International Inc. dba Frontier Freightliner, 2311 E. Pacifica Pl., Rancho Dominguez, CA 90220. Officers: Brian B. Chung, President, Joyce D. Chung, Secretary.
Lancer International Corp., 1465 N.W. 97th Ave., Miami, FL 33172. Officers: Miguel A. Delgado, President/Director/Stockholder, Illiana Delgado, Director/Stockholder.
Mountain Air Delivery, 702 Spice Island Drive, Sparks, Nevada 89431. Officers: Gerald W. Griffin, Jr., President/Director/Stockholder, Marna W. Griffin, Secretary/Director/Treasurer.
Dynasty International, Inc., 365 Chelsea Street, East Boston, MA 02128. Officer: John D. Fitzpatrick, President, Richard Chu, Treasurer/Stockholder.
H & K International, 52-25 73 Street, Maspeth, New York 11378. Officers: Henry K. Rozek, President, Krystyna Rozek, Vice President.
World Port Shipping Inc., 2182 W. 190th Street, Torrance, CA 90504. Officers: Chris D. Lee, President, Oh Hyun, Kim Stockholder, Hyo Won, Shim, Stockholder.
Hollywood Export Forwarding Company, 1943 N. Wilton Place, Los Angeles, CA 90068. Rosamaria M. Alkire, Sole Proprietor.
New York Forwarding Inc., 660 Kings Highway North, suite 200, Cherry Hill, NJ 08034. Officers: Nicholas A. Ciaccio, President/Director/Stockholder, Geraldine M. Ciaccio, V.President/Treas./Stockh.
Vintage Shipping Inc., 1624 E. Sunrise Blvd., Ft. Lauderdale, FL 33304. Officers: Roberta C. L. Robbert, President/Director, Morris Shirazi, Stockholder.

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Stewart Alexander & Company, Inc., 254 W. 35th St., 16th floor, New York, NY 10001. Officers: William D. Stewart, Jr., President/Director, Evangelos Alexander, Vice President/Director, Richard C. Sembler, Secretary/Treasurer/Director.

Mercury Express International, 325 So. Maple Ave., Unite 46, So. San Francisco, CA 94080. Leonardo L. Enriquez, President/General Manager.

S.H.R. Enterprises, Inc., 4500 East 11th Ave., Hialeah, FL 33013. Officers: Stephen H. Rose, President.

CXports, 111 S.W. 313th Street, Federal Way, WA 98023, David L. Ireland, Sole Proprietor.

M.A.M. Intercontinental and Overseas Services, Inc., dba Red Sea Shipping Company, 5405 Garden Grove Blvd., suite 111, Westminster, CA 92683. Officers: Mohamed N. Anwar, President/Director, Mamdouh E. Abousbousha, Secretary/Director.

DJS International Services, Inc., 8411 Sterling St., suite 101, Irving, TX 75063. Officers: Darrell J. Sekin, Jr., President/Stockholder/Director, Martha Gail Sekin, Secretary/Treasurer/Director, Darrell J. Sekin, Sr., Director.

La Favorita Moving & Shipping, 161 W. Cecil B Moore Ave., Philadelphia, PA 19122, Eliezer Garcia, Sole Proprietor.

Total Air & Ocean Services, Inc., 5088 N.W. 74th Ave., Miami, FL 33166. Officers: Lillian Hayden, President, Henry K. Verges, Vice President, Lisa Russo, Secretary/Treasury.

Dated: May 30, 1991.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-13108 Filed 6-3-91; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Development of Guidelines On Quality Determinants of Mammography

The Agency for Health Care Policy and Research announces that it is establishing a panel of experts and health care consumers to develop clinical practice guidelines for the quality determinants of mammography and invites nominations of qualified individuals to serve as the chairperson(s) and as panel members.

Background

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239) enacted on December 19, 1989, added a new title IX to the Public Health Service Act (the Act), which established the Agency for Health Care Policy and Research (AHCPR) to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services. The AHCPR is to achieve its goals through the establishment of a broad base of scientific research and through the promotion of improvements in clinical practice and in the organization, financing and delivery of health care services.

Section 911 of the Act (42 U.S.C. 299b) established within the AHCPR the Office of the Forum for Quality and Effectiveness in Health Care (the Forum). Through this office, AHCPR is arranging for the development and periodic review and updating of clinically relevant guidelines that may be used by physicians, educators, and health care practitioners to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and managed clinically.

Section 912 of the Act (42 U.S.C. 299b-1) requires that the guidelines be:

1. Based on the best available research and professional judgment;

2. Presented in formats appropriate for use by physicians, other health care practitioners, medical educators, medical review organizations, and consumers of health care; and

3. In forms appropriate for use in clinical practice, educational programs, and reviewing quality and appropriateness of medical care.

Section 913 of the Act (42 U.S.C. 299b-2) describes two mechanisms through which the Forum and the Agency can arrange for the development of guidelines: 1. Panels of qualified experts and health care consumers can be convened, and 2. Contracts can be awarded to public and private nonprofit organizations. AHCPR has elected to use the panel process for the development of clinical practice guidelines for the quality determinants of mammography.

Panel Nominations

The panel, consisting of a chairperson(s) and ten to fifteen qualified experts and health care consumers, will develop guidelines regarding attributes of clinical practice, equipment, and personnel to ensure the highest quality of mammography.

To assist in identifying members for the panel, AHCPR is requesting recommendations from a broad range of interested individuals and organizations, including physicians representing specialty and primary practices, nurses, and allied health and other health care practitioners, as well as consumers with pertinent experience or information. AHCPR is especially interested in receiving nominations of: (1) Persons with experience in developing guidelines for early detection of breast cancer; (2) persons with relevant experience in basic and clinical research in early detection of breast cancer; (3) persons with relevant experience in the variety of clinical and technical skills needed in detecting breast cancer; (4) persons with expertise in the design and use of diagnostic equipment for mammograms; (5) persons skilled in the training and certification of technologists and physicians involved in mammography; and, (6) health care consumers who have or have had breast cancer.

To provide a full perspective on current efforts of the Public Health Service, including the Centers for Disease Control, the Food and Drug Administration, and the National Cancer Institute, representatives from these and other relevant Federal agencies will provide information to the panel from their respective institutions.

This Notice requests nominations of qualified individuals to serve on the panel as members and as panel chairperson(s). The functions of the panel chairperson(s) are critical to the guideline development process and the final product. The chairperson(s) will provide leadership to the panel regarding methodology, literature review, panel deliberations, and formation of the final product. Nominations for the chairperson(s) should take into consideration the criteria specified below, which the AHCPR will use in making its selection.

AHCPR will appoint the panel chairperson(s) from among the nominations received using criteria that include the following:

- Relevant training and clinical experience,
- Demonstrated interest in quality assurance and research on the clinical condition(s) under consideration and the related treatment of the condition(s), including publication of relevant peer reviewed articles,
- Commitment to the need to produce clinical guidelines,
- Recognition in the field with a record of leadership in relevant activities,
- Broad public health view of the utility of particular procedure(s) or clinical service(s),

- Demonstrated capacity to lead a health care team in a group decisionmaking process,
- Demonstrated capacity to respond to consumer concerns, and
- Prior experience in developing guidelines for the clinical condition in question.

Once the panel chairperson(s) has been appointed, the nominations for members of the panel will be submitted for further review and consideration to the selected chairperson(s), who will in turn recommend proposed panel members to AHCPR. Appointments of the panel members will be made by the AHCPR, after review of proposed members' qualifications and the overall composition of the panel to ensure representation of a range of experience and expertise.

Nominations should indicate whether the individual is being recommended to serve as the panel chairperson(s) or to serve as a member of the panel. Each nomination must include a copy of the individual's curriculum vitae or resume, plus a statement of the rationale for the specific nomination. To be considered, nominations must be received by June 28, 1991 at the following address:

Office of the Forum on Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, 5600 Fishers Lane, Parklawn Building, room 18A46, Rockville, MD 10857.

For Additional Information

Additional information on the guideline development process is contained in the AHCPR Program Note, Clinical Guideline Development dated August 1990. This Program Note, describing the activities underway by AHCPR for developing clinical practice guidelines, includes the process and criteria for selecting the panels. Copies may be obtained by calling the Center for Research Dissemination and Liaison, Agency for Health Care Policy and Research, at (301) 443-2904.

For further information on the process for developing guidelines for quality determinants of mammography, contact Lawrence E. Williams, Acting Director, Office of the Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, at the above address.

Dated May 28, 1991.

Willard B. Evans, Jr.,

Acting Administrator.

[FR Doc. 91-13048 Filed 6-3-91; 8:45 am]

BILLING CODE 4160-17-M

Alcohol, Drug Abuse, And Mental Health Administration

Current List of Laboratories Which Meet Minimum Standards To Engage In Urine Drug Testing for Federal Agencies

AGENCY: National Institute on Drug Abuse, ADAMHA, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979, 11986). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

FOR FURTHER INFORMATION CONTACT: Denise L. Goss, Program Assistant, Drug Testing section, Division of Applied Research, National Institute on Drug Abuse, room 9-A-53, 5600 Fishers Lane, Rockville, Maryland 20857; tel.: (301)443-6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100-71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of NIDA certification are not to be considered as meeting the minimum requirements expressed in the NIDA Guidelines. A laboratory must have its letter of certification from HHS/NIDA which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Alpha Medical Laboratory, Inc., 405 Alderson Street, Schofield, WI 54476, 800-627-8200.

American BioTest Laboratories, Inc., Building 15, 3350 Scott Boulevard, Santa Clara, CA 95054, 408-727-5525.

American Medical Laboratories, Inc., 11091 Main Street, P.O. Box 188, Fairfax, VA 22030, 703-691-8100.

Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, suite 250, Las Vegas, NV 89119-5412, 702-733-7866.

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801-583-2787.

Bayshore Clinical Laboratory, 4555 W. Schroeder Drive, Brown Deer, WI 53223, 414-355-4444/800-877-7016.

Bellin Hospital-Toxicology Laboratory, 2789 Allied Street, Green Bay, WI 54304, 414-496-2487.

Bio-Analytical Technologies, 2356 North Lincoln Avenue, Chicago, IL 60614, 312-880-6900.

The certification of this laboratory (Bio-Analytical Technologies, Chicago, IL) is suspended from conducting confirmatory testing of amphetamines. The laboratory continues to meet all requirements for HHS/NIDA certification for testing urine specimens for marijuana, cocaine, opiates and phencyclidine. For more information, see 55 FR 2163 (Jan. 22, 1991).

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305-325-5810.

Center for Human Toxicology, 417 Wakara Way-room 290, University Research Park, Salt Lake City, UT 84108, 801-581-5117.

Columbia Biomedical Laboratory, Inc., 4700 Forest Drive, suite 200, Columbia, SC 29206, 800-648-4245/803-782-2700.

Clinical Pathology Facility, Inc., 711 Bingham Street, Pittsburgh, PA 15203, 412-488-7500.

Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800-445-6917.

CompuChem Laboratories, Inc., 3308 Chapel Hill/Nelson Hwy., P.O. Box 12652, Research Triangle Park, NC 27709, 919-549-8263.

Damon Clinical Laboratories, 140 East Ryan Road, Oak Creek, WI 53154, 800-365-3840, (name changed: formerly Chem-Bio Corporation; CBC Clinilab).

Damon Clinical Laboratories, 6300 Esters Blvd., suite 900, Irving, TX 75063, 214-929-0535.

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Doctors & Physicians Laboratory, 801 East Dixie Avenue, Leesburg, FL 32748, 904–787–9006.
Drug Labs of Texas, 15201 I 10 East, suite 125, Channelview, TX 77530, 713–457–3784.
DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310.
Eastern Laboratories, Ltd., 95 Seaview Boulevard, Port Washington, NY 11050, 516–625–9800.
ElSohly Laboratories, Inc., 1215½ Jackson Ave., Oxford, MS 38655, 601–236–2609.
Environmental Health Research & Testing, Inc., 1075 South 13th St., Birmingham, AL 35205–9998, 205–934–0985.
General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608–267–6267.
Harris Medical Laboratory, P.O. Box 2981, 1401 Pennsylvania Avenue, Fort Worth, TX 76104, 817–870–3600.
HealthCare/Preferred Laboratories, 24451 Telegraph Road, Southfield, MI 48034, 800–225–9414 (outside MI)/800–328–4142 (MI only).
Laboratory of Pathology of Seattle, Inc., 1229 Madison St., suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672.
Laboratory Specialists, Inc., P.O. Box 4350, Woodland Hills, CA 91365, 818–716–0115/800–331–6570 (outside CA)/800–464–7081 (CA only), (name changed: formerly Abused Drug Laboratories).
Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504–392–7961.
Massey Analytical Laboratories, Inc., 2214 Main Street, Bridgeport, CT 06606, 203–334–6187.
Mayo Medical Laboratories, 200 SW. First Street, Rochester, MN 55905, 800–533–1710/507–284–3631.
Med Arts Lab, 5419 South Western, Oklahoma City, OK 73109, 800–251–0009.
Med-Chek Laboratories, Inc., 4900 Perry Highway, Pittsburgh, PA 15229, 412–931–7200.
MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901–795–1515.
MedTox Laboratories, Inc., 402 W. County Road D, St Paul, MN 55112, 612–636–7466.
Mental Health Complex Laboratories, 9455 Watertown Plank Road, Milwaukee, WI 53226, 414–257–7439.
Methodist Medical Center, 221 NE. Glen Oak Avenue, Peoria, IL 61636, 309–672–4928.
MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 708–595–3888.
MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201–393–5000.
MetWest-BPL Toxicology Laboratory, 18700 Oxnard Street, Tarzana, CA 91356, 800–492–0800/818–343–8191.
National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore, MD 21227, 301–247–9100 (name changed: formerly Maryland Medical Laboratory, Inc.).
National Health Laboratories Incorporated, 13900 Park Center Road, Herndon, VA 22071, 703–742–3100/800–572–3734 (inside VA)/800–336–0391(outside VA).
National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, suite A–15, Nashville, TN 37217, 615–360–3992/800–800–4522.
National Health Laboratories Incorporated, 2540 Empire Drive, Winston-Salem, NC 27103–6710, 919–760–4620/800–334–8627 (outside NC)/800–642–0894 (NC only).
National Psychopharmacology Laboratory, Inc., 9320 Park W. Boulevard, Knoxville, TN 37923, 800–251–9492.
National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805–322–4250.
Nichols Institute Substance Abuse Testing (NISAT), 6985 Balboa Avenue, San Diego, CA 92123, 800–446–4728/619–694–5050 (name changed: formerly Nichols Institute).
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361.
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Avenue, Eugene, OR 97440–0972, 503–687–2134.
Parke DeWatt Laboratories, Division of Comprehensive Medical Systems, Inc., 1810 Frontage Rd., Northbrook, IL 60062, 708–480–9660.
Pathlab, Inc., 16 Concord, El Paso, TX 79906, 800–999–7284.
Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400.
PDLA, Inc., 100 Corporate Court, So. Plainfield, NJ 07080, 201–769–8500.
PharmChem Laboratories, Inc., 1505–A O'Brien Drive, Menlo Park, CA 94025, 415–328–6200/800–446–5177.
Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619–279–2600.
Precision Analytical Laboratories, Inc., 13300 Blanco Road, suite #150, San Antonio, TX 78216, 512–493–3211.
Regional Toxicology Services, 15305 NE. 40th Street, Redmond, WA 98052, 206–882–3400.
Roche Biomedical Laboratories, 1801 First Avenue South, Birmingham, AL 35233, 205–581–3537.
Roche Biomedical Laboratories, 6370 Wilcox Road, Dublin, OH 43017, 614–889–1061.

The certification of this laboratory (Roche Biomedical Laboratories, Dublin, OH) is suspended from conducting confirmatory testing of amphetamines. The laboratory continues to meet all requirements for HHS/NIDA certification for testing urine specimens for marijuana, cocaine, opiates and phencyclidine. For more information, see 55 FR 50589 (Dec. 7, 1990).

Roche Biomedical Laboratories, Inc., 1912 Alexander Drive, P.O. Box 13973, Research Triangle Park, NC 27709, 919–361–7770.
Roche Biomedical Laboratories, Inc., 101 Inverness Drive East, Englewood, CO 80112, 303–792–2822.
Roche Biomedical Laboratories, Inc., 69 First Avenue, Raritan, NJ 08869, 800–437–4986.
Roche Biomedical Laboratories, Inc., 1120 Stateline Road, Southaven, MS 38671, 601–342–4286.
S.E.D. Medical Laboratories, 500 Walter NE suite 500, Albuquerque, NM 87102, 505–848–8800.
Sierra Nevada Laboratories, Inc., 888 Willow Street, Reno, NV 89502, 800–648–5472.
SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708–885–2010 (name changed: formerly International Toxicology Laboratories).
SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800–523–5447 (name changed: formerly SmithKline Bio-Science Laboratories).
SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404–934–9205 (name changed: formerly SmithKline Bio-Science Laboratories).
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (name changed: formerly SmithKline Bio-Science Laboratories).
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91045, 818–376–2520.
South Bend Medical Foundation, Inc., 530 North Lafayette Boulevard, South Bend, IN 46601, 219–234–4176.
Southgate Medical Laboratory, Inc., 21100 Southgate Park Boulevard, Cleveland, OH 44137, 800–338–0166.
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1600 North Lee Street, Oklahoma City, OK 73102, 405–272–7052.
St. Louis University Forensic Toxicology Laboratory, 3610 Rutgers Avenue, St. Louis, MO 63104, 314–577–8628.
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314–882–1273.
Toxicology Testing Service, Inc., 5426 NW. 79th Avenue, Miami, FL 33166, 305–593–2260.

Charles R. Schuster,
Director, National Institute on Drug Abuse.
[FR Doc. 91–13114 Filed 6–3–91; 8:45 am]
BILLING CODE 4160–20–M

Food and Drug Administration

[Docket No. 88N–0401]

Emerging Issues in Food Safety and Quality for the Next Decade; Report; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a report entitled "Emerging Issues in Food Safety and Quality for the Next Decade." The report was prepared by the Life Sciences Research Office (LSRO) of the Federation of American Societies for Experimental Biology (FASEB).

DATES: The Report became available on April 25, 1991.

ADDRESSES: Submit written requests for single copies of the report to FASEB's Special Publication Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814, along with $12 to cover the cost. In the near future, the report will be available from the National Technical Information Service, 5275 Port Royal Rd., Springfield, VA 22161. Requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist these offices in processing your request. The report is available for public examination at the LSRO, FASEB office (address above) and at the Dockets Management Branch (HFA–305), Food and Drug Administration 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Charles W. Cooper, Center for Food Safety and Applied Nutrition (HFF–3), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, (202) 485–0265.

SUPPLEMENTARY INFORMATION: FDA has a contract (223–88–2124) with FASEB concerning the analysis of scientific issues in food and cosmetic safety. The objective of this contract is to provide information to FDA on general and specific issues of scientific fact associated with food and cosmetic safety.

In the **Federal Register** of December 19, 1988 (53 FR 51008), FDA announced that it has asked LSRO of FASEB, as a task under the contract, to review and evaluate topics and issues in food safety and food quality that FDA should consider as important scientific concerns emerging in the next decade.

FDA is now announcing that the report entitled "Emerging Issues in Food Safety and Quality for the Next Decade" became available to the public on April 25, 1991.

Dated: May 29, 1991

Gary Dykstra,
Acting Associate Commissioner for Regulatory Affairs.
[FR Doc. 91–13097 Filed 6–3–91; 8:45 am]
BILLING CODE 4160–01–M

Health Resources and Services Administration

National Organ Transplant Act; Grants to Increase Organ Donation

AGENCY: Health Resources and Services Administration; HHS.

ACTION: Notice of availability of grant funds.

SUMMARY: The Health Resources and Services Administration (HRSA), announces that fiscal year (FY) 1991 funds are available for grants for assistance to Organ Procurement Organizations (OPOs) and other nonprofit private entities to increase organ donation. The grants are authorized by sections 371 and 374 of the Public Health Service (PHS) Act, as amended by Public Law 101–616. Funds are appropriated under Public Law 101–517.

DATES: To receive consideration, grant applications must be received by the close of business August 5, 1991. Applications will meet the deadline if they are either: (1) Received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be acceptable as proof of timely mailing. Hand delivered applications must be received by 5 p.m. August 5, 1991. Applications received after the deadline will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: Additional information relating to technical or program issues may be obtained from Mr. Remy Aronoff, Chief, Operations and Analysis Branch, Division of Organ Transplantation, Parklawn Building, room 11A–22, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–7577. Grant applications and additional information regarding business, administrative or fiscal issues related to the awarding of grants under this Notice may be requested from the Grants Management Officer (GMO), Ms. Glenna B. Wilcom, Parklawn Building, room 13A–38, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–2280. Applicants for grants will use Form PHS 5161–1, approved under OMB Control Number 0937–0189. Completed applications should be sent to the GMO.

SUPPLEMENTARY INFORMATION:

Background and Objective

Section 371 of the Public Health Service (PHS) Act authorizes a program of grants and special projects for the purpose of increasing the number of organ donors.

Previously, grant awards could only be made to OPOs. Consistent with section 201 of the Transplant Amendments of 1990 other nonprofit entities are now eligible to receive grant awards to increase organ donation.

The Public Health Service urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

Types of Grants and Program Priorities

The principal purpose of this grant program is to increase the availability of organ donors in this country by improving the overall organ procurement system. To accomplish the objective of increasing organ donors, grants will be awarded to OPOs and other nonprofit entities consistent with the statute as specified in this Notice.

Five of the 11 suggested activities are for projects designed to increase minority organ donation. This focus on minority donation results both from a relatively low donation rate among minorities and recent studies which

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show that Blacks spend markedly longer times on the kidney transplantation waiting list. Other differences that have been found between Blacks and whites that relate to the success of transplantation and donation are: (1) 95 percent of the white population is knowledgeable about organ transplantation, whereas only 84 percent of Blacks are; (2) 27 percent of whites are willing to donate their organs after death, but only 10 percent of Blacks are willing to do so; (3) 10 percent of clinically eligible Blacks opt for transplantation, compared to 20 percent of clinically eligible whites; (4) transplants are 10 to 20 percent less successful in Blacks than in whites because of matching variables; (5) transplantation histocompatibility antigens have not been as well defined in Blacks as in whites; (6) Blacks in the United States with hypertension suffer from end-stage renal disease four times as frequently as do whites. Some specific examples of activities that are suggested for this project year are the following:

1. Consolidation of organ and tissue recovery programs in order to increase efficiency in procurement efforts and services to donor hospitals. In some areas there is dysfunctional competition among recovery organizations. Applicants should specify how consolidation will lead to more efficient organ and tissue recovery.

2. Demonstration programs designed to test new approaches to the organ donation process. Such programs might include the applications of more effective managerial techniques for the administration of organ procurement organizations.

3. Demonstration programs to increase minority donation. Minority donation rates are lower than the minority representation in the total population.

4. Development, implementation and evaluation of a campus-wide campaign to increase awareness and information about organ donation and transplantation among students and alumni of Historically Black Colleges and Universities. The contact points in such a project could include classrooms, fraternities and sororities, clubs, and correspondence with students and alumni.

5. Development and testing of a curriculum to increase awareness in young children of the potential of transplantation and of the need for organ and tissue donation. Projects in this category should include methods for effective dissemination of the resulting curriculum.

6. Development and field testing of materials and methods to train primary care physicians and other health care professionals to encourage their patients to consider organ donation if the occasion arises. The primary care physician is, for most people, the most frequent contact with the medical profession.

7. Education programs to recruit and/or train minority nurses, social workers, physicians assistants, and persons from other professional groups from which transplant and procurement coordinators and educators are recruited. The objective is to enlarge the number of minorities who know about the organ procurement coordinator profession and who can be qualified candidates for procurement and community education positions. Activities that should be considered for such projects are development of training programs in conjunction with professional associations' annual conferences and internships for trainees with organ procurement organizations.

8. Examination of methods and a pilot study to increase the usefulness of donor cards. Even though donor cards do not serve as a mechanism for presumed consent, they are one of the primary means by which the public is made aware of organ donation. For example, it would be useful to know the demographic profile of the persons signing organ donor cards at the motor vehicle administration and approaches for increasing that number.

9. Development and operation of a local, regional or national minority speakers' bureau available to provide expert speakers to minority audiences.

10. Survey of attitudes and conduct of focus groups to determine how negative attitudes toward organ donation and transplantation can be changed.

11. Survey of white and Black donor and non-donor families to identify reasons for consenting to or declining the donation request.

Other activities which would increase the number of organ donors and which are not reimbursable under Medicare may be considered.

Availability of Funds

Up to $400,000 is available in FY 1991 for grants to OPOs and other nonprofit private entities. Each grant will be for a period of one year and generally will not exceed $75,000. The Bureau of Health Resources Development expects to issue six awards with an average award of approximately $70,000.

Eligible Applicants

Prior to this year only nonprofit OPOs designated by the Health Care Financing Administration under section 1138(b) of the Social Security Act could apply for these grants.

This year any nonprofit private entity whose application has increasing organ donation as its primary objective may apply. Joint applications of two or more eligible entities may be submitted. In such instances, one eligible institution must be designated as the grantee institution on the Application for Federal Assistance.

Application Evaluation Criteria

Grant applications will be evaluated by an objective review committee according to the following criteria:

- The consistency with the program objective;
- The adequacy of the method(s) proposed to carry out the project;
- The appropriateness of the work plan and schedule for organizing and completing the project;
- The capability of the organization to complete the project as proposed;
- The adequacy of supporting documentation justifying the proposal;
- The reasonableness of the budget;
- The qualifications of the project director and staff.

Allowable Costs

As a policy, HRSA will not award grants to organ procurement organizations for costs that are routinely reimbursable under the Medicare program for activities such as public or professional education, hospital costs, overhead costs and tissue typing costs. Costs that are not reimbursable under the Medicare program and therefore eligible for grant award, are research or other activities related to increasing the availability of solid extrarenal organs.

The basis for determining the allowability and allocability of costs charged to PHS grants is set forth in 45 CFR part 74, subpart Q. The three separate sets of cost principles prescribed for recipients of grants for OPOs and other nonprofit entities are: OMB Circular A–21 for institutions of higher education; 45 CFR part 74, appendix E for hospitals; and OMB Circular A–122 for nonprofit organizations.

Reporting Requirements

A successful applicant under this Notice will submit reports in accordance with the provisions of the general regulations which apply under 45 CFR part 74, subpart J, Monitoring and Reporting Program Performance.

A semi-annual and final progress report will be required of grantees.

Executive Order 12372

Grants awarded under this Notice are subject to the provisions of Executive Order 12372, as implemented by 45 CFR part 100, which allows States the option of setting up a system for reviewing applications within their State for assistance under certain Federal programs. The application packages made available by HRSA will contain a listing of States which have chosen to set up such a review system and will provide a point of contact in the State for the review. Applicants (other than federally recognized Indian tribes) should promptly contact their State Single Point of Contact (SPOC) and follow the SPOC's instructions prior to the submission of an application. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The SPOC has 60 days after the application deadline date to submit its review comments. The granting agency does not guarantee to "accommodate or explain" for State process recommendations applications it receives after that date.

The OMB Catalog of Federal Domestic Assistance Number for this program is 93.134.

Grantee Financial Participation Requirements

There is no cost sharing or matching funds requirement for this program.

Dated: April 25, 1991.

Robert Harmon,

Administrator.

[FR Doc. 91–13145 Filed 6–3–91; 8:45 am]

BILLING CODE 4160–15–M

Availability of Funds for New Community Health Centers and Expanded Community Health Center Activities

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of Availability of Funds.

SUMMARY: The Health Resources and Services Administration announces the availability of discretionary grant funds of approximately $4.5 million under section 330 of the Public Health Service (PHS) Act to establish new community health centers (CHCs) and expand the capacity of existing community health centers. Within the context of a comprehensive system to deliver primary care to medically underserved populations, emphasis will be placed on innovative and creative approaches to bringing women at high risk for poor birth outcomes into the health services delivery system. Approximately 6 to 12 awards will be made, ranging from $400,000 to $800,000. Approximately half of these awards will be for new CHCs and half will be for the expansion of existing CHCs. All awards are for one year, with project periods of up to two years. The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The community health center program directly addresses the Healthy People 2000 objectives by improving access to preventive and primary care services for underserved populations, especially minority and other disadvantaged populations. Potential applicants may obtain a copy of *Healthy People 2000* (Full Report; Stock No. 017–001–00474–0) or *Healthy People 2000* (Summary Report; Stock No. 017–001–00473–01) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

ADDRESSES: The PHS Regional Grants Management Officers (RGMOs) whose names and addresses are provided in the appendix to this document are responsible for distributing application kits and guidance (Form PHS 5161–1 with revised face sheets DHHS Form 424, as approved by the OMB under control numbers 0348–0043 and 0937–0189), and completed applications must be submitted to them. Application kits contain guidance information which incorporates new and updated program requirements arising from changes in the program's authorizing legislation. Potential applicants, either existing grantees or new organizations, should contact the appropriate RGMO. The RGMO can also provide assistance on business management issues.

DATES: Applications are due July 5, 1991. Applications shall be considered to have met the deadline if they are: (1) Received on or before the deadline date; or (2) postmarked before the deadline date and received in time for orderly processing. Untimely applications will be returned to the applicant. Applicants should obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service or request a legibly dated U.S. Postal Service postmark. Private metered postmarks shall not be accepted as proof of timely mailing.

FOR FURTHER INFORMATION CONTACT: For general program information and technical assistance, contact Richard C. Bohrer, Director, Division of Primary Care Services, 5600 Fishers Lane, room 7A–55, Rockville, MD 20857 (301) 443–2260.

ELIGIBLE APPLICANTS: Eligible applicants are existing federally-funded CHCs or public or private nonprofit organizations. Applicants must provide services to areas and/or populations that include Medically Underserved Areas (MUAs) or Medically Underserved Populations (MUPs) officially designated by the Public Health Service. Applicants through their staffs and supporting resources must be able to provide to residents of their service areas services required under section 330(a) of the Public Health Service Act, including primary health and ancillary services, as defined in section 330(b)(1) of the Public Health Service Act, and supplemental services necessary to ensure the effectiveness of the required primary health services, as described in section 330(b)(2) of the Act. Applicants must have established governing boards composed of individuals, the majority of whom are or will be served by the center and who, as a group, represent the individuals being served or will be served by the center. The applicant's catchment area must be exclusive of the area served by another federally funded community or migrant health center.

SUPPLEMENTARY INFORMATION

Program Requirements

Applicants are required to submit as part of their applications a project description and a project plan as well as a reasonable budget to deliver the proposed services based on the health needs it intends to address, sound estimates of revenue and expenses, and realistic projections of service utilization.

Use of Funds

Funds may not be used to supplant existing resources. Funds may not be used to support major capital improvement projects, i.e., projects the costs of which will exceed $100,000. They may be used to establish and operate a new service delivery site through an existing federally-funded CHC or new applicant for CHC funding, or to significantly expand the capacity to provide primary care services at existing sites of current grantees, including the addition of providers and support costs.

Criteria for Evaluation

When determining whether Federal support will be made available, the Department will first review applications for compliance with standard criteria stipulated in the program regulations (42 CFR 51c.305). These are:

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(1) The relative need of the population to be served for the services to be provided; specifically, demonstration of community need based on such factors as high infant mortality rates and the number of infant deaths (total, black or other relevant minority populations), high poverty rates (25% or more), concentrations of minority populations (25% or more), shortages of necessary health professionals to meet the needs of the populations, and lack of availability of health care services due to barriers such as limited access and the inability to pay for services;

(2) The extent to which the applicant's project plan meets the program requirements stipulated in statute (42 CFR 51c.305) and explained in the program guidance;

(3) The soundness of the fiscal plan for assuring effective utilization of grant funds and maximizing non-grant revenue;

(4) The administrative and management capability of the applicant, particularly the extent to which center operations will emphasize efficiency of operations and sound financial management;

(5) The degree to which the applicant intends to integrate services supported by a grant with other health services provided under other Federally assisted health services or reimbursement programs or projects as well as the degree of collaboration with State and local health departments and other health and social services providers;

(6) The extent to which community resources will be utilized by the project;

(7) The extent to which the center will provide preventive health services so as to maintain and improve the health status of the population served; and

(8) The potential of the center for the development of new and effective methods for health services delivery and management.

In evaluating applications, preference will be given to applicants which propose to:

(1) Provide a comprehensive package of outreach and case-managed prenatal, delivery, post-partum and infant care services;

(2) Serve populations which experience high rates of infant mortality and a significant number of infant deaths;

(3) Use outstationed Medicaid eligibility worker(s) on-site; and

(4) Provide WIC services at the center.

Final grant awards will be made in such a manner as to provide for an appropriate distribution of resources throughout the country in both urban and rural areas.

Other Award Information: All grants to be awarded under this notice are subject to the provisions of Executive Order 12372, as implemented by 45 CFR part 100, which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit will contain a listing of States which have chosen to set up a review system and will identify a State Single Point of Contact (SPOC) in each State for the review. Applicants (other than federally-recognized Indian tribal governments) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. State process recommendations should be submitted to the appropriate Regional Office (see Appendix). The due date for State process recommendations is 60 days afer the appropriate application deadline date. The Bureau of Health Care Delivery and Assistance does not guarantee that it will accommodate or explain its response to State process recommendations received after this date.

In the OMB Catalog of Federal Domestic Assistance, the Community Health Center program is listed as Number 93.224.

Dated: April 24, 1991.

Robert G. Harmon,

Administrator.

Appendix—Regional Grants Management Officers

Region I

Mary O'Brien, Grants Management Officer, PHS Regional Office I, John F. Kennedy Federal Building, Boston, MA 02203 (617) 565-1482

Region II

Steven Wong, Grants Management Officer, PHS Regional Office II, Room 3300, 26 Federal Plaza, New York, NY 10278 (212) 264-4496

Region III

Finbarr O'Connell, Acting Grants Management Officer, PHS Regional Office III, P.O. Box 13716, Philadelphia, PA-19101 (215) 596-6653

Region IV

Wayne Cutchens, Grants Management Officer, PHS Regional Office IV, Room 1100, 101, Marietta Tower, Atlanta, GA 30323 (404) 331-2507

Region V

Lawrence Poole, Grants Management Officer, PHS Regional Office V, 105 West Adams Street, 17th Floor, Chicago, IL 60603 (312) 353-8700

Region VI

Frank Cantu, Grants Management Officer, PHS Regional Office VI, 1200 Main Tower, Dallas, TX 75202 (214) 767-3885

Region VII

Hollis Hensley, Grants Management Officer, PHS Regional Office VII, Room 501, 601 East 12th Street, Kansas City, MO 64016 (816) 426-5841

Region VIII

Jerry F. Wheeler, Grants Management Officer, PHS Regional Office VIII, 1961 Stout Street, Denver, CO 80294 (303) 844-4461

Region IX

Linda Gash, Grants Management Officer, PHS Regional Office IX, 50 United Nations Plaza, San Francisco, CA 94102 (415) 556-2595

Region X

James Tipton, Grants Management Officer, PHS Regional Office X, Mail Stop RX 20, 2201 Sixth Avenue, Seattle, WA 98121 (206) 553-7997

[FR Doc. 91-13146 Filed 6-3-91; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Center for Research Resources General Clinical Research Centers Committee; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the General Clinical Research Centers (GCRC) Committee, National Center for Research Resources (NCRR), June 18-19, 1991, Holiday Inn, Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

The meeting will be open to the public on June 18, 1991, from 8 a.m. to 9:15 a.m. during which time there will be comments by the Director, NCRR; and an update on the General Clinical Research Centers Program by Dr. Judith L. Vaitukaitis, Director, GCRC, NCRR. Attendance by the public will be limited to space availabile.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S. Code and sec. 10(d) of Public Law 92-463, the meeting will be closed to the public on June 18, from 9:15 a.m. until recess, and on June 19, from 8 a.m. until adjournment, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James J. Doherty, Information Officer, NCRR, Westwood Building, room 10A15, National Institutes of Health, Bethesda, Maryland 20892 (301) 496-5545, will provide a summary of the meeting, and a roster of the committee members upon request. Dr. Bela J. Gulyas, Scientific Review Administrator, General Clinical Research Centers Committee, NCRR (301) 402-0627, will furnish information on the agenda upon request.

(Catalog of Federal Domestic Assistance Program No. 93.333, Clinical Research, National Institutes of Health)

Dated: May 15, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-13090 Filed 6-3-91; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Aging Meetings

Pursuant to Public Law 92-463, notice is hereby given of meetings of the Neurological, Behavior and Sociology of Aging Review Subcommittee A and the Biological and Clinical Aging Review Subcommittee B.

These meetings will be open to the public as indicated below to discuss administrative details and other issues relating to committee activities as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, for the review, discussion, and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, National Institute on Aging, Building 31, room 5C02, National Institutes of Health, Bethesda, Maryland 20892 (301/496-9322), will provide summaries of the meetings and rosters of the committee members upon request.

Other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Subcommittee: Neurological, Behavior and Sociology of Aging Review Subcommittee A.

Executive Secretary: Dr. Maria Mannarino, Dr. Louise Hsu, Building 31, room 5C12, National Institutes of health, Bethesda, Maryland 20892, phone: 301/496-9666.

Dates of Meeting: June 16-21, 1991.

Place of Meeting: Bethesda Ramada Inn, 8300 Wisconsin Avenue, Bethesda, Maryland 20814.

Open: June 18, 7:30 p.m. to recess.

Closed: June 19-21, 8:30 a.m. to adjournment.

Name of Committee: Biological and Clinical Aging, Review Subcommittee B.

Executive Secretaries: Dr. James Harwood, Building 31, room 5C12, National Institutes of Health, Bethesda, Maryland 20892, phone: 301/496-9666.

Dates of Meeting: June 3-5, 1991.

Place of Meeting: Building 31, Conference Room 8.

Open: June 3—8 p.m. to recess.

Closed: June 4-5—8:30 a.m. to adjournment.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: May 15, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-13091 Filed 6-3-91; 8:45 am]

BILLING CODE 4140-01-M

National Center for Research Resources; Meeting of the Animal Resources Review Committee

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the Animal Resources Review Committee, National Center for Research Resources, National Institutes of Health.

The meeting will be held on June 10, 1991, at the National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, Conference Room 9, Bethesda, Maryland 20892. The meeting will be open to the public from 10 a.m. to 10:30 a.m. on June 10, 1991 for a brief staff presentation on the current status of the Comparative Medicine Program (The Animal Resources Program has been retitled to Comparative Medicine Program) and the selection of future meeting dates. Attendance by the public will be limited space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on June 10 from 8 a.m. until 10 a.m. and from 10:30 a.m. until adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James J. Doherty, Information Officer, National Center for Research Resources, 5333 Westbard Avenue, room 10A15, Bethesda, Maryland 20892, (301) 496-5545, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Arthur D. Schaerdel, Scientific Review Administrator of the Animal Resources Review Committee, Office of Review, National Center for Research Resources, National Institutes of Health, 5333 Westbard Avenue, Room 10A16, Bethesda, Maryland 20892, (301) 496-4390, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Programs No. 93.306, Laboratory Animal Sciences, National Institutes of Health)

Dated: May 16, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-13089 Filed 5-30-91; 9:09 am]

BILLING CODE 4140-01-M

Public Health Service

Agency for Health Care Policy and Research; Title XXVI of the Public Health Service Act, HIV Health Care Services Program; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority to the Assistant Secretary for Health on February 21, 1991, (56 FR 9226) by the Secretary of Health and Human Services, the Assistant Secretary for Health has delegated to the Administrator, Agency for Health Care Policy and Research (AHCPR), the following authorities under title XXVI of the Public Health Service Act, as amended, pertaining to the HIV Health Care Services Program: All of the authorities under section 2673, pertaining to the establishment of a Research, Evaluation, and Assessment Program.

The delegation excluded the authorities to promulgate regulations, submit reports to Congress or a congressional committee, establish advisory committees and coucils, and select members of advisory councils.

Redelegation

This authority may be redelegated.

Prior Delegations

None.

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Effective Date

This delegation became effective on May 24, 1991.

Dated: May 24, 1991.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 91-13147 Filed 6-3-91; 8:45 am]

BILLING CODE 4160-16-M

Centers for Disease Control; Ryan White Comprehensive AIDS Resources Emergency Act of 1990, Public Law 101-381; Delegation of Authority

Notice is hereby given that in furtherance of the February 21, 1991, delegation of authorities under the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (Pub. L. 101-381), as amended hereafter, from the Secretary of Health and Human Services to the Assistant Secretary for Health (43 FR 9226), I have delegated, with authority to redelegate, these authorities to the Director, Centers for Disease Control, insofar as the authorities pertain to the functions assigned to the Centers for Disease Control.

1. Under title XXVI of the Public Health Service Act, as amended, the following authorities:

- Sections 2641-2650—Formula Grants for States.
- Sections 2661-2667—General Provisions.
- Section 2675—Coordination.
- Section 2680—Grants to States and political subdivisions of States to implement guidelines and model curriculum for health workers and public safety workers, including emergency response employees.
- Section 2681—Infectious Diseases and Circumstances Relevant to Notification Requirements.

2. Under the Ryan White Comprehensive AIDS Resources Emergency Act of 1990, as amended hereafter, the following authorities:

- Section 402—Study Regarding Partner Notification.
- Section 403—Study Regarding HIV Disease in Rural Areas.

The delegation excluded the authorities to promulgate regulations and to submit reports to the Congress.

This delegation became effective on May 24, 1991. In addition, I have affirmed and ratified any actions taken by the Director, Centers for Disease Control, or his subordinates which, in effect, involved the exercise of the authorities delegated herein prior to the effective date of the delegation.

Dated: May 24, 1991.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 91-13148 Filed 6-3-91; 8:45 am]

BILLING CODE 4160-16-M

Food and Drug Administration; Ryan White Comprehensive AIDS Resources Emergency Act of 1990, Public Law 101-381; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority to the Assistant Secretary for Health on February 21, 1991, by the Secretary of Health and Human Services, the Assistant Secretary for Health has delegated to the Commissioner of Food and Drugs authority under title XXVI of the Public Health Service Act, section 2872, Provisions Relating to Blood Banks, as amended, insofar as this authority pertains to the functions of the Food and Drug Administration.

This delegation excludes the authority to promulgate regulations, submit reports to the Congress, establish advisory committees or national commissions, and appoint members to such committees or commissions.

In addition the Assistant Secretary for Health affirms and ratifies any actions taken by FDA involving the exercise of the authorities delegated herein prior to the effective date of the delegation.

Effective Date

This delegation became effective on May 24, 1991.

Dated: May 24, 1991.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 91-13149 Filed 6-3-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT080-01-4830-02]

AGENCY: Bureau of Land Management.

ACTION: Notice of advisory council tour and business meeting.

SUMMARY: As authorized by the Federal Land Policy and Management Act, section 309. (a) and (b), the Vernal District will conduct an Advisory Council tour and business meeting on July 19, 1991. The tour will commence at 8 a.m. from the Vernal District Office located at 170 South 500 East. The tour will include a visist to some of the areas proposed for acquisition as a part of the Book Cliffs Conservation Initiative. It will also provide a view of the proposed Ouray-Cisco Highway route and alternatives being considered. The tour will arrive back in Vernal at approximately 5:30 p.m.

The business meeting will be held in the new Western Park Conference Room located at 350 East 200 South, commencing at 7 p.m.

The business meeting agenda is as follows:

1. Follow-up discussion of the Book Cliffs Conservation Initiative and the proposed Ouray-to-Cisco Highway.
2. Update on the Diamond Mountain Resource Area Management Plan and a discussion of the management alternatives being considered.
3. Discussion of the BLM's road maintenance program.
4. Land exchanges.
5. Oil and gas activities and current issues.
6. Concern about wild horses in Agency Draw.
7. Additional items identified by council members or the public.

The public is welcome to tour with the group and to attend the business meeting; however, they would need to supply their own transportation and food. Persons desiring to make a statement at the business meeting must contact the Vernal District Manager no later than close-of-business on Wednesday, July 17, 1991.

FOR FURTHER INFORMATION CONTACT: R. Ray Tate, Public Affairs Specialist, telephone (801) 789-1362.

Dated: May 23, 1991.

Gary Hunter,

Chief, Operations.

[FR Doc. 91-13072 Filed 6-3-91; 8:45 am]

BILLING CODE 4310-DQ-M

[UT-020-00-4212-13; U-66674]

Salt Lake District; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action. Exchange of lands in Wasatch County, Utah.

SUMMARY: The following described public land is being considered for exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976, (43 U.S.C. 1716):

Description	Acres
T. 2S., R. 4E. SLM Sec. 24, Lots 2,9,10,11,12,13,14, Total acres	57.64

Final determination on the exchange will await completion of an environmental analysis. In accordance with the regulations in 43 CFR 2201.1(b), the publication of this notice will segregate the public lands as described above, from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws.

Information on the exchange is available from the District Manager, Bureau of Land Management, Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119.

Deane H. Zeller,

Salt Lake District Manager.

[FR Doc. 91-13121 Filed 6-3-91; 8:45 am]

BILLING CODE 4310-DQ-M

[NV-930-01-4212-14; N-52358]

Elko County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—Direct Sale of Public Lands in Elko County, Nevada.

SUMMARY: The following land has been examined and identified as suitable for disposal by direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713) at no less than fair market value:

Mount Diablo Meridian, Nevada

T. 42 N., R. 60 E.
Sec. 19, NW¼NW¼NE¼.

The above-described land comprising 10 acres is being offered as a direct sale to Hawks and Sons Ranches, adjoining land owners. A direct sale is being conducted to resolve an unauthorized use and occupancy of the public lands. The sale would assure land use compatibility with adjoining lands and protect investments in improvements made to the lands by the Hawks.

The sale is consistent with the Bureau's planning system. The land is not needed for any resource program and is not suitable for management by the Bureau or any other Federal department or agency.

The locatable and salable mineral estates have been determined to have no known value. The land is prospectively valuable for oil and gas. Therefore, the mineral interest, excluding oil and gas, would be conveyed simultaneously with the sale of the parcel. Acceptance of the direct sale offer will constitute an application to purchase the mineral estate having no known value. A nonrefundable fee of $50.00 will be required with the purchase money. Failure to submit the purchase money and the nonrefundable filing fee for the mineral estate within the timeframe specified by the authorized officer will result in cancellation of the sale.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. Oil and gas.

Upon publication of this Notice of Realty Action in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the mining laws but not the mineral leasing laws. The segregation shall terminate upon issuance of patent or other document of conveyance, upon publication in the **Federal Register** of a termination of segregation or 270 days from publication, whichever occurs first.

The land will not be offered for sale any sooner than 60 days after the publication of this Notice in the **Federal Register**. For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Elko District Office, Bureau of Land Management, P.O. Box 831, Elko, Nevada 89801. Any adverse comments will be evaluated by the Nevada State Director, who may sustain, vacate or modify this realty action. In the absence of timely filed objections, this realty action will become the final determination of the Department of the Interior.

Dated: May 21, 1991.

Rodney Harris,

District Manager.

[FR Doc. 91-13108 Filed 6-3-91; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-00-4214-10; N-52757]

Proposed Withdrawal and Opportunity for Public Meeting; Nevada

May 24, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 11.6 acres of public land to protect Blue Link Spring and its associated reservoir located near Mina, Nevada. This notice closes the land for up to 2 years from settlement, sale, location and entry under the general land laws, including the United States mining laws. The land will remain open to leasing under the mineral leasing laws.

DATES: Comments and requests for a public meeting should be received on or before September 3, 1991.

ADDRESSES: Comments and meeting requests should be sent to the Nevada State Director, BLM, P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM Nevada State Office, 702-785-6526.

SUPPLEMENTARY INFORMATION: On May 16, 1991, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location and entry under the public land laws, including the mining laws, subject to valid existing rights:

Mount Diablo Meridian

T. 5 N., R. 37 E.,
sec. 5 (Unsurveyed)

An area 400 feet in radius around Blue Link Spring and the adjoining reservoir. The center of the withdrawal is located at the midpoint between the spring and reservoir, approximately 86.5 feet from either. The area contains 11.6 acres in Mineral County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal, must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period

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by the BLM authorized officer are any temporary uses which will not interfere with the purpose of the withdrawal.

The temporary segregation of the lands in connection with this withdrawal application shall not affect the administrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of the lands.

Robert G. Steele,

Deputy State Director, Operations.

[FR Doc. 91-13109 Filed 6-3-91; 8:45 am]

BILLING CODE 4310-HC-M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in room 3001, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW. in Washington, DC on June 24 and 25, 1991, from 8:30 a.m. to 5 p.m. each day.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in title 5 U.S. Code, section 1242(a)(1)(B) and to review the May 1991 Joint Board examination in order to make recommendations relative thereto, including the minimum acceptable pass score. Topics for inclusion on the syllabus for the Joint Board's examination program for the November 1991 pension actuarial examination and the May 1992 basic actuarial examinations will be discussed.

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) that the portions of the meeting dealing with the discussion of questions which may appear on the Joint Board's examinations and review of the May 1991 Joint Board examination fall within the exceptions to the open meeting requirement set forth in Title 5 U.S. Code, section 552(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the Joint Board examination syllabus will commence at 1:30 p.m. on June 24 and will continue for as long as necessary to complete the discussion, but not beyond 3 p.m. this portion of the meeting will be open to the pubic as space is available. Time permitting after discussion of the program by Committee members, interested persons may make statements germane to this subject. Persons wishing to make oral statements are requested to notify the Committee Management officer in writing prior to the meeting in order to aid in scheduling the time available, and should submit the written text, or, at a minimum, an outline of comments they propose to make orally. Such comments will be limited to ten minutes in length. Any interested person also may file a written statement for consideration by the Joint Board and Committee by sending it to the Committee Management Officer. Notifications and statements should be mailed no later than June 10, 1991 to Mr. Leslie S. Shapiro, Joint Board for the Enrollment of Actuaries, c/o U.S. Department of the Treasury, Washington, DC 20220.

Dated: May 28, 1991.

Leslie S. Shapiro,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 91-13112 Filed 6-3-91; 8:45 am]

BILLING CODE 4510-25-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 91-49]

NASA Advisory Council, Space Science and Applications Advisory Committee, Exploration Science Working Group; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting cancellation

Federal Register Citation of Previous Announcement: 56 FR 23600, Notice Number 91-43, May 22, 1991.

Previously Announced Times and Dates of Meeting: June 4, 1991, 8:30 a.m. to 5 p.m. Meeting has been cancelled.

Contact Person for More Information: Dr. Carl Pilcher, Code S, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1422).

Dated: May 29, 1991.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91-13092 Filed 6-3-91; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreement To Help Administer Applicant Evaluations

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement with a qualified individual or organization to assist the Endowment's Opera-Musical Theater Program in the administration of on-site artistic and/or administrative evaluations of grant applications or grantees. The task includes coordinating travel arrangements for designated evaluators, reviewing travel expenditure reports, disbursing funds to evaluators, maintaining records, and furnishing reports. Those interested in receiving the Solicitation package should reference Program Solicitation PS 91-09 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 91-09 is scheduled for release approximately June 10, 1991 with proposals due July 10, 1991.

ADDRESSES: Requests for the Solicitation should be addressed to the National Endowment for the Arts, Contracts Division, room 217, 1100 Pennsylvania Ave. NW., Washington, DC 20056.

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 91-13073 Filed 6-3-91; 8:45 am]

BILLING CODE 7537-01-M

Meeting; Literature Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Translators Fellowships Section) to the National Council on the Arts will be held on June 20, 1991 from 9 a.m.-6 p.m. and June 21 from 9 a.m.-3 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on June 21 from 1 p.m.-3 p.m. The topic will be policy discussion.

The remaining portions of this meeting on June 20 from 9 a.m.-6 p.m. and June 21 from 9 a.m.-1 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in

confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, as amended, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: May 28, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-13115 Filed 6-3-91; 8:45 am]

BILLING CODE 7537-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: John Daley, (202) 606-0950.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on May 3, 1991 (55 FR 12973). Individual authorities established or revoked under Schedules A and B and established under Schedule C between April 1 and April 30, 1991, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30, 1991.

Schedule A

No Schedule A authorities were established or revoked during April.

Schedule B

No Schedule B authorities were established or revoked during April.

Schedule C

Department of Agriculture

One Staff Assistant to the Manager, Federal Crop Insurance Corporation. Effective April 19, 1991.

Department of Commerce

One Congressional Liaison Specialist to the Director of Congressional Affairs, International Trade Administration. Effective April 4, 1991.

One Special Assistant to the Director, Office of Public Affairs. Effective April 17, 1991.

One Confidential Assistant to the Deputy Under Secretary, International Trade Administration. Effective April 19, 1991.

One Confidential Assistant to the Deputy Assistant Secretary for Domestic Operations, International Trade Administration. Effective April 19, 1991.

One Confidential Assistant to the Director of Scheduling, Office of the Chief of Staff. Effective April 24, 1991.

One Confidential Assistant to the Director, Office of White House Liaison. Effective April 25, 1991.

Department of Defense

One Special Assistant to the Assistant Secretary (Legislative Affairs). Effective April 15, 1991.

Department of Education

One Confidential Assistant to the Chief of Staff/Counselor to the Secretary. Effective April 24, 1991.

Department of Energy

One Special Project Assistant to the Director, Executive Secretariat. Effective April 23, 1991.

One Staff Assistant to the Special Assistant to the Secretary. Effective April 26, 1991.

One Staff Assistant to the Special Assistant, Director, Office of Community Services. Effective April 26, 1991.

Environmental Protection Agency

One Special Assistant to the Assistant Administrator, Office of Air and Radiation. Effective April 19, 1991.

One Staff Assistant to the Special Assistant to the Administrator. Effective April 25, 1991.

Equal Employment Opportunity Commission

One Media Contact Specialist to the Director, Office of Communications and Legislative Affairs. Effective April 29, 1991.

Export-Import Bank of the United States

One Administrative Assistant to the Director Effective April 15, 1991.

Farm Credit Administration

One Congressional Affairs Specialist to the Director, Office of Congressional and Public Affairs. Effective April 15, 1991.

One Director, Congressional and Public Affairs to the Chairman. Effective April 19, 1991.

Federal Maritime Commission

One Counsel to a Commissioner. Effective April 22, 1991.

Federal Trade Commission

One Director of Public Affairs to the Chairman. Effective April 26, 1991.

Government Printing Office

One Congressional and Public Affairs Officer to the Public Printer. Effective April 4, 1991.

Department of Health and Human Services

One Executive Assistant to the Commissioner, Social Security Administration. Effective April 10, 1991.

One Special Assistant to the Deputy Commissioner, Programs, Social Security Administration. Effective April 15, 1991.

One Confidential Assistant to the Staff Director, Advisory Council on Social Security. Effective April 15, 1991.

One Staff Assistant (Scheduling) to the Director, Office of Scheduling. Effective April 19, 1991.

Department of Housing and Urban Development

One Special Assistant to the Deputy Assistant Secretary for Resident Initiatives. Effective April 7, 1991.

One Spcial Assistant to the Deputy Assistant Secretary for Operations.

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Office of Housing. Effective April 15, 1991.

One Special Assistant to the Assistant Secretary for Housing-Federal Housing Commissioner. Effective April 24, 1991.

Interstate Commerce Commission

One Confidential Assistant to the Vice Chairman, Commissioner. Effective April 8, 1991.

Department of Justice

One Public Affairs Specialist to the Chief Spokesman, Office of Public Affairs. Effective April 5, 1991.

One Special Assistant/Special Affairs Officer to the Director, United States Marshals Service. Effective April 17, 1991.

One Confidential Assistant to the Director, Office of Policy Development. Effective April 22, 1991.

Department of Labor

One Special Assistant to the Deputy Assistant Secretary, Mine Safety and Health Administration. Effective April 19, 1991.

Office of Management and Budget

One Legislative Assistant to the Associate Director for Legislative Affairs. Effective April 17, 1991.

One Special Assistant to the Associate Director for Legislative Affairs. Effective April 17, 1991.

Pension Benefit Guaranty Corporation

One Congressional Liaison Specialist to the Special Assistant to the Executive Director. Effective April 19, 1991.

Department of State

One Foreign Affairs Officer, (Ceremonials), to the Chief of Protocol. Effective April 7, 1991.

One Staff Assistant to the Special Assistant, Office of White House Liaison, Bureau of Public Affairs. Effective April 15, 1991.

One Director, Office of Public Liaison to the Senior Deputy Assistant Secretary, Bureau of Public Affairs. Effective April 15, 1991.

One Secretary (Typing) to the Deputy Assistant Secretary, Office of Legislative Affairs. Effective April 17, 1991.

One Program Specialist to the Director, Office of Public Liaison, Bureau of Public Affairs. Effective April 19, 1991.

United States Information Agency

One Special Assistant to the Associate Director for Programs. Effective April 1, 1991.

Authority: 5 U.S.C. 3301; E.O. 10555, 3 CFR 1954–1958 Comp, P.218.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91–13061 Filed 6–3–91; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF THE UNITED TRADE STATES REPRESENTATIVE

Determination of International Trade Agreements; Colombia

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of determination regarding the application of certain international agreements.

SUMMARY: This notice modifies the determination published in the **Federal Register** on January 4, 1980 (45 FR 1181), as amended by determinations published at 45 FR 18547, 45 FR 36569, 45 FR 63402, 45 FR 85239, 46 FR 24059, 46 FR 40624, 46 FR 46263, 46 FR 48391, 46 FR 48807, 47 FR 16697, 49 FR 47467, 50 FR 8428, 50 FR 9342, 50 FR 11471, 50 FR 13111, 50 FR 18335, 50 FR 38731 and 55 FR 40964.

EFFECTIVE DATE: May 30, 1991.

FOR FURTHER INFORMATION CONTACT: Timothy M. Reif, (202) 395–6800, Office of the United States Trade Representative, 600 17th Street, NW., Washington DC 20506.

SUPPLEMENTARY INFORMATION: Under section 1–103(b) of Executive Order 12188 of January 2, 1980, the functions of the President under section 2(b) of the Trade Agreements Act of 1979 (the Act) and section 701(b) of the Tariff Act of 1930, as amended, are delegated to the United States Trade Representative (the Trade Representative), who shall exercise such authority with the advice of the Trade Policy Committee.

Now, therefore, Carla A. Hills, United States Trade Representative, in conformance with the provisions of Section 2(b) of the Act, section 701(b) of the Tariff Act of 1930, as amended, and section 1–103(b) of Executive Order 12188, does hereby determine, effective on the date of signature of this Notice that:

With respect to the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (the Subsidies Code), Colombia has accepted the obligations of the Agreement and should not otherwise be denied the benefits of the Agreement.

In accordance with section 702(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1671(b)), as of May 30, 1991, Colombia is a "country under the Agreement."

Carla A. Hills,

United States Trade Representative.

[FR Doc. 91–13109 Filed 6–3–91; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration; Radio Technical Commission for Aeronautics (RTCA) Special Committee 166

User Requirements for Future Airport and Terminal Area Communication, Navigation and Surveillance Systems; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix I), notice is hereby given for the eleventh meeting of Special Committee 166 to be held June 20–21, 1991, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC, 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Approval of minutes of the tenth meeting held on March 20–21, 1991, RTCA Paper No. 220–91/SC166–65; (3) Report by chairman of Transition/Economics Working Group activity. Reports on action items assigned at last meeting—Dr. Reed, Jim Klein and Vince Bencivenga; (4) Presentation by Mr. Robert Smith, FAA ARD–30, on cost/benefit studies related to helicopter/FR operations; (5) Continue review of Chapter 6, Third Partial Draft, RTCA Paper No. 120–90/SC166–64, dated March 20, 1991 (members please bring working copies); (6) Review draft Chapter 7 (will be mailed prior to meeting); (7) Other business; (8) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 23, 1991.

Steven Zaidman,

Designated Officer.

[FR Doc. 91–13105 Filed 6–3–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

Changes Will Be Made To The Textile Category Guidelines

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General Notice.

SUMMARY: This notice is announcing that effective June 1, 1991, changes will be made to the Textile Category Guidelines for men's and boys' shirts, not knit, found in categories, 340, 440, 640 and 840.

EFFECTIVE DATE: June 1, 1991.

FOR FURTHER INFORMATION CONTACT: Cynthia [illegible]ese, Office of Regulations and Rul[illegible], Textiles Classification Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229; (202)/566–8181. Dick Crichton, Office of Trade Operations, Textiles and Metal Products Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229; (202) 535–4135.

SUPPLEMENTARY INFORMATION: In an attempt to conform to the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) requirements regarding shirts, the language of the Textile Category Guidelines (CIE 13/88 dated November 23, 1988), was inadvertently changed so sleeveless shirts which were previously classified in tariff provisions correlated with category numbers 340, 440, 640 and 840, can no longer be similarly classified. This was not an intentional change in the coverage of categories 340, 440, 640.

Customs will amend the Textile Category Guidelines to allow for men's and boys' sleeveless shirts within categories 340, 440, 640 and 840. The last sentence will be changed to read, "shirts may have sleeves or be sleeveless." This will restore the scope of the guidelines to its previous coverage and is not in conflict with the HTSUSA at the international level.

Michael H. Laca,

Acting Commissioner of Customs.

[FR Doc. 91–13128 Filed 6–3–91; 8:45 am]

BILLING CODE 4820–02–M

UNITED STATES INFORMATION AGENCY

Book and Library Advisory Committee Meeting

AGENCY: United States Information Agency.

ACTION: Notice of meeting.

SUMMARY: The United States Information Agency announces an open meeting of the Book & Library Advisory Committee on Tuesday, June 18, 1991, 1 p.m.–4:30 p.m. in room 800, USIA Headquarters, 301 Fourth Street SW., Washington, DC. The Agenda will include reports from Book and Library Subcommittee Chairmen: Louise Wheeler, USIA's Director of Private Sector Committees; and USIA's Office of Eastern European Initiatives. The meeting will feature Hans N. (Tom) Tuch speaking on "The Role of USIS Libraries in Public Diplomacy and Their Future." Subcommittees will meet individually from 10:30 a.m. to 12 noon.

DATES: June 18 1991.

ADDRESSES: 301 4th St. SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Louise G. Wheeler or Patricia Gribben at 619–6089.

SUPPLEMENTARY INFORMATION: Copies of minutes can be obtained by calling 619–6089.

Dated: May 28, 1991.

Douglas Wertman,

Committee Management Officer.

[FR Doc. 91–13074 Filed 6–3–91; 8:45 am]

BILLING CODE 8230–01–M

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Sunshine Act Meetings

Federal Register
Vol. 56, No. 107
Tuesday, June 4, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMISSION ON CIVIL RIGHTS

ıy 31, 1991.

DATE AND TIME: Monday, June 10, 1991, 9:30 a.m.

PLACE: Telephonic meeting of participants in different locales. Some participants will be present at the Commission's Offices at 1121 Vermont Avenue, N.W., Room 512, Washington, D.C. 20425.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Agenda

I. Indian Civil Rights Act Report

CONTACT PERSON FOR MORE INFORMATION: Barbara Brooks, Press and Communications Division (202) 376-8312.

Carole McCabe Booker,
General Counsel.
[FR Doc. 91-13291 Filed 5-31-91; 4:02 pm]
BILLING CODE 6335-01-M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD:

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given of the following meeting of the Board

TIME AND DATE: 5:30 p.m. June 24, 1991.

PLACE: Ramada Hotel (Denver/Boulder), 8773 Yates Drive, Westminster, CO.

STATUS: Open. While the Government in the Sunshine Act does not require that the scheduled briefing be conducted in a meeting, the Board has determined that an open meeting in this specific case furthers the public interests underlying both the Sunshine Act and the Board's enabling legislation.

MATTERS TO BE CONSIDERED: Briefing will be given by the Department of Energy and its contractors and outside experts on the status of certain health and safety issues at the Rocky Flats Plant, including, but not limited to, removal of plutonium in the ducts, training programs, and safety standards.

FOR MORE INFORMATION CONTACT: Kenneth M. Pusateri or Carole J. Council, (202) 208-6400.

Dated: May 31, 1991.
Kenneth M. Pusateri,
General Manager.
[FR Doc. 91-13161 Filed 5-31-91; 11:34 am]
BILLING CODE 6835-KD-M

FEDERAL COMMUNICATIONS COMMISSION

May 30, 1991.

FCC To Hold a Closed Commission Meeting

The Federal Communications Commission will hold a Closed Meeting in Room 814 on the subjects listed below on Friday, May 31, 1991, which is scheduled to commence at 9:00 a.m., at 1919 M Street, N.W., Washington, D.C.

Item No., Bureau, and Subject

1—General Counsel—Consideration of Possible Commission Participation In *Zell Miller for Governor* v. *Pacific and Southern Co.*, Civil Action No. 1: 91-CV-267-RLV (D. GA. 1991) and *Dickinson* v. *Cosmos Broadcasting Co.*, Docket No. CV-91-67- R (Mont. Cty. AL 1991).

These items are closed to the public because they concern the agency's participation in civil actions. (See 47 C.F.R. 0.603(j)).

The following persons are expected to attend:

Commissioners and their Assistants
Managing Director and members of his staff
The Secretary
General Counsel and members of his staff
Director, Office of Public Affairs and members of her staff
Chief, Mass Media Bureau, and members of his staff

Action by the Commission May 30, 1991, Chairman Sikes; Commissioners Quello, Barrett, and Duggan voting to consider these matters in closed session; and to hold a meeting on less than seven days' notice because, in light of the status of the above-referenced civil actions, the prompt and orderly conduct of agency business so requires. Commissioner Marshall not participating.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632-5050.

Federal Communications Commission.

Issued: May 30, 1991.
William F. Caton,
Acting Secretary.
[FR Doc. 91-13253 Filed 5-31-91; 2:06 pm]
BILLING CODE 6712-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

May 30, 1991.

TIME AND DATE: 2:00 p.m., Thursday, June 6, 1991.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Wyoming Fuel Company*, Docket No. WEST 90-238-R. (Issues include whether the Secretary of Labor was authorized to issue Wyoming Fuel an imminent danger order, pursuant to 30 U.S.C. § 817(a), for conditions that required a withdrawal of miners under 30 U.S.C. § 863(i)(2)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653-5629/(202) 708-9300 for TDD Relay, 1-800-877-8339 for Toll Free.

Jean H. Ellen,
Agenda Clerk.
[FR Doc. 91-13279 Filed 5-31-91; 3:57 pm]
BILLING CODE 6735-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, June 10, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 31, 1991.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 91-13288 Filed 5-31-91; 3:58 pm]
BILLING CODE 6210-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, June 11, 1991.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

5319A—Pipeline Accident Report: Propane Pipeline Rupture and Fire, Texas Eastern Products Pipeline Company, North Blenheim, New York, March 13, 1990.

NEWS MEDIA CONTACT: Brent Bahler Telephone (202) 382-6600.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Dated: May 31, 1991.
Bea Hardesty,
Federal Register Liaison Officer.
[FR Doc. 91-13227 Filed 5-31-91; 3:38 pm]
BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

DATES: Weeks of June 3, 10, 17, and 24, 1991.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of June 3

Friday, June 7

1:30 p.m.
Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
3:00 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Rulemaking, "Procedures for Direct Commission Review of Decisions of Presiding Officers," and Establishment of Office of Opinion Writing

Week of June 10—Tentative

Monday, June 10

2:00 p.m.
Briefing on Proposed Rule on Training and Qualification of Nuclear Power Plant Personnel (Public Meeting)

Tuesday, June 11

10:00 a.m.
Briefing by Agreement States on Compatibility Issues (Public Meeting)

Wednesday, June 12

10:00 a.m.
Briefing on Progress of Design Certification Review and Implementation (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of June 17—Tentative

Wednesday, June 19

1:30 p.m.
Briefing on Shutdown Risk Status (Public Meeting)

Thursday, June 20

9:30 a.m.
Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of June 24—Tentative

Friday, June 28

8:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

Dated: May 30, 1991.
William M. Hill, Jr.,
Office of the Secretary.
[FR Doc. 91-13263 Filed 5-31-91; 2:59 p.m.]
BILLING CODE 7590-01-M

POSTAL SERVICE BOARD OF GOVERNORS

Amendment to Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 56 FR 24117, May 28, 1991.

PREVIOUSLY ANNOUNCED DATE OF MEETING: June 4, 1991.

CHANGE: Delete the following item from the open meeting agenda:

4. Report on the Mailgram Program.

Change the following item on the closed meeting agenda to read:

1. Consideration of a Filing with the Postal Rate Commission for Barcode Discounts on Flats.

CONTACT PERSON FOR MORE INFORMATION: David F. Harris, (202) 268-4800.

David F. Harris,
Secretary.
Neva R. Watson,
Alternate Certifying Officer.
[FR Doc. 91-13268 Filed 5-31-91; 3:00 pm]
BILLING CODE 7710-12-M

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Corrections

Federal Register
Vol. 56, No. 107
Tuesday, June 4, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 90-4]

RIN 9000-AC43, 9000-AE12, 9000-AD85, 9000-AE00, 9000-AD32, 9000-AE01, 9000-AD86, 9000-AD21, 9000-AD57, 9000-AD08, 9000-AE05, 9000-AD73, 9000-AD02, 9000-AD78, 9000-AD81, 9000-AD77, and 9000-AD33

Federal Acquisition Regulation (FAR); Miscellaneous Amendments

Correction

In rule document 91-8647 beginning on page 15142, in the issue of Monday, April 15, 1991, make the following corrections:

1. On page 15142, in the first column, under **DATES:**, in the third line, "and 25-225-11 (a)" should read "and 52.225-11 (a)".

2. On page 15156, in the third column, the heading that reads "52.224-1 [Amended]" should read "52.244-1 [Amended]".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

48 CFR Parts 232 and 252

Department of Defense Federal Acquisition Regulation Supplement; Contract Financing

Correction

In proposed rule document 91-9618 beginning on page 18800 in the issue of Wednesday, April 24, 1991, make the following correction:

On page 18801, in the third column, Section 252.232-7009 was omitted and should read as follows:

252.232-7009 DoD Progress Payment Rates for Small Businesses.

As prescribed in 232.502-4 (S-73) and (S-74) insert the following clause:

DOD PROGRESS PAYMENT RATES FOR SMALL BUSINESSES (XXX 1991)

The progress payment rate and liquidation rate specified in Federal Acquisition Regulation clause 52.232-16, Progress Payments, shall be 90 percent for this contract, excepting paragraph (k), *Limitations on Undefinitized Contract Actions*. (End of Clause)

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

21 CFR Part 177

[Docket No. 90F-0204]

Indirect Food Additives: Polymers

Correction

In rule document 91-11047 beginning on page 21446 in the issue of Thursday, May 9, 1991, make the following correction:

1. On page 21447, in the first column, under **SUPPLEMENTARY INFORMATION**, in the tenth line, "poly(vinyulidene fluoride)" should read "poly(vinylidene fluoride)".

2. On page 21448, in the first column, in the fourth line, "100-1" should read "100^{-1}".

3. On the same page, in the same paragraph, in the second line from the bottom, "S St." should read "L St.".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

45 CFR Part 57

RIN 0905-AD07

Health Professions Student Loan Program

Correction

In rule document 91-9751 beginning on page 19290 in the issue of Friday, April 26, 1991, make the following correction:

§ 57.202 [Corrected]

On page 19293, in the first column, amendatory instruction 2 should read as follows:

"2. In 57.202, the definition of "grace period" is amended by removing the term "podiatry" and adding the term "podiatric medicine", and the definitions of "health professions school", "National of the United States", and "State" are revised to read as follows:"

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulation No. 16]

RIN 0960-AC51

Supplemental Security Income for the Aged, Blind, and Disabled; Interim Assistance Provisions

Correction

In rule document 91-9951 beginning on page 19280 in the issue of Friday, April 26, 1991, make the following corrections:

§ 416.1902 [Corrected]

1. On page 19282, in the first column, in § 416.1902, in the first paragraph, in the fourth line "use" should read "us".

2. On the same page, in the same column, in the second paragraph, in the fourth line, after "meet" insert "your".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-942-01-4730-12]

Idaho; Filing of Plats of Survey

Correction

In notice document 91-7271 appearing on page 12950 in the issue of Thursday, March 28, 1991, in the first column, in the second paragraph, in the third line, "substantial" should read "subdivisional".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

RIN 1018-AB30

Export of American Ginseng Harvested in 1991-93 Seasons

Correction

In proposed rule document 91-8922 beginning on page 15318 in the issue of Tuesday, April 16, 1991, make the following correction:

On page 15321, in the third column, in the first paragraph, beginning in the seventh line, remove the sentence, "Once the convention export documentation and contents of the shipment".

BILLING CODE 1505-01-D

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Government-wide Small Business and Small Disadvantaged Business Goals for Procurement Contracts; Policy Letter

Correction

In notice document 91-6564 beginning on page 11796 in the issue of Wednesday, March 20, 1991, make the following corrections:

1. On page 11796, in the second column, under paragraph 5(d), in the second line, "nd" should read "and".

2. On the same page, in the same column, under paragragh 6, in the ninth line, "and" should read "an".

BILLING CODE 1505-01-D

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Tuesday,
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Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121, 125, 127, 129, and 135
Special Federal Aviation Regulation No. 38; Certification and Operating Requirements; Final Rule; Request for Comments

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125, 127, 129, and 135

[Docket No. 18510; SFAR No. 38-7]

Special Federal Aviation Regulation No. 38; Certification and Operating Requirements

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final Rule; request for comments.

SUMMARY: This amendment establishes a new termination date for Special Federal Aviation Regulation [SFAR] No. 38-2 (50 FR 23941; June 7, 1985), which contains the certification and operating requirements for persons conducting commercial passenger or cargo operations. The FAA stated in previous extensions of SFAR 38-2 that it was necessary to establish a new termination date for SFAR 38-2 to allow time for the FAA to complete the rulemaking process that will consolidate the rules regarding certification and operating requirements and incorporate SFAR 38-2 into the Federal Aviation Regulations (FAR). The current termination date for SFAR 38-2 is June 1, 1991. Because the FAA has not completed that rulemaking process, a 1-year extension of the termination date is necessary. SFAR 38-2 is extended to ensure that the FAA has adequate time to complete the consolidation of the rules regarding certification and operating requirements. However, if a final rule, which consolidates those rules, is issued before the new termination date, the FAA intends to publish a notice rescinding SFAR 38-2 concurrently with the publication of the final rule in the **Federal Register.**

DATES: Effective date May 28, 1991. Comments must be received on or before August 5, 1991.

ADDRESSES: Send comments on the rule in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (ACC-10), Docket No. 18518, 800 Independence Avenue, SW., Washington, DC 10591, or deliver comments in triplicate to: Federal Aviation Administration, Rules Docket, room 916, 800 Independence Avenue, SW., Washington, DC. Comments may be examined in the Rules Dockets weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Donell Pollard, Project Development Branch, AFS-240, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 267-3750.

SUPPLEMENTAL INFORMATION:

Background

On December 12, 1978, the FAA issued SFAR 38 (43 FR 58366; December 14, 1978) as a consequence of the Airline Deregulation Act of 1978 (ADA or Act) (Pub. L. 95-504, 92 Stat. 1705). That Act expresses the Congressional intent that the Federal Government diminish its involvement in regulating the economic aspects of the airline industry. To accomplish this, Congress directed that the CAB be abolished on December 31, 1984, and that certain of its functions cease before that date. Anticipating its sunset, the CAB itself curtailed or suspended much of its regulatory activity during the period 1979-1984. On October 4, 1984, additional legislation was enacted further defining the process of CAB sunset. On January 1, 1985, the remaining CAB functions were transferred to the Department of Transportation (DOT).

Because some aspects of FAA safety regulations relied upon CAB definitions and authority, the FAA found it necessary in 1978 to adopt an interim measure to provide for an orderly transition to the change in economic regulatory activities. This action was consistent with the Congressional directive contained in section 107(a) of the Act that the deregulation of airline economics result in no diminution of the high standard of safety in air transportation that existed when the ADA was enacted. SFAR 38 set forth FAA certification and operating requirements applicable to all "air commerce" and "air transportation" operations for "compensation or hire." (SFAR 38 did not address part 133 External Load Operations, part 137 Agriculture Aircraft Operations, or part 91 training and other special purpose operations.)

On December 27, 1984, the FAA issued SFAR 38-1 (50 FR 450; January 4, 1985), which merely extended the termination date of the regulation and allowed the FAA time to propose and receive comments on revising SFAR 38.

On May 28, 1985, the FAA issued SFAR 38-2 (50 FR 23941; June 7, 1985), which updated SFAR 38 in light of changes since 1978 and clarified provisions stating which FAA regulations apply to each air carrier and each type of operation. This action was necessary because of the changes in the air transportation industry brought about by economic deregulation. Before deregulation, economic certificates were rigidly compartmentalized, and each air carrier typically was authorized to conduct only one type of operation (domestic, flag, or charter (i.e., supplemental)). The safety certificate issued to the air carrier by the FAA paralleled the authorization granted in the air carrier's economic certificate. Economic deregulation broke down the barriers between the various types of operations. The economic authority granted an air carrier by the DOT is no longer indicative of the safety regulations applicable to the type of operation authorized by the FAA. Thus, it was necessary for the FAA to establish guidelines to determine what safety standards were applicable to an air carrier's particular operation.

On April 30, 1986, the FAA issued SFAR 38-3, which extended the termination date of SFAR 38-2 to allow the FAA time to incorporate its contents into Notice No. 88-16. That notice proposes to consolidate the certification and operating requirements rules in parts 121 and 135, and to incorporate various provisions of SFAR 38-2 into new part 119 of the FAR.

On July 15, 1987, the FAA issued SFAR 38-4, which reinstated SFAR 38-2, because it was inadvertently allowed to expire, and extended its termination date to June 1, 1989. That extension allowed the FAA time to incorporate the contents of SFAR 38-2 into Notice No. 88-16.

On May 26, 1989, the FAA issued SFAR 38-5, which extended the expiration date of SFAR 38-2 to June 1, 1990, in order for the FAA to consider comments on Notice No. 88-16 and to issue a final rule which would consolidate the certification and operating requirements rules of SFAR 38-2, Part 121, and Part 135.

On April 11, 1990, the FAA reopened the comment period for Notice No. 88-16 (55 FR 14404; April 17, 1990) for comments on the definition of "scheduled operation" and the notification requirement for changes to operations specifications for a period of 30 days. The reopened comment period closed May 17, 1990.

To allow for additional time to consider comments received during the reopened comment period, the FAA extended the expiration date for SFAR 38-2 until June 1, 1991 (55 FR 23043).

Currently, the FAA is completing work on the final rule that would make SFAR 38-2 a permanent Federal Aviation Regulation; therefore it is necessary to extend the expiration date for SFAR 38-2 until June 1, 1992.

Good Cause Justification for Immediate Adoption

The reasons which justify the adoption, and the subsequent revision, of SFAR 38 still exist. Therefore, it is in the public interest to establish a new termination date for SFAR 38-2 of June 1, 1992. If the FAA publishes a final rule incorporating SFAR 38-2 into the FAR before the termination date, a notice rescinding SFAR 38-2 will be published concurrently. This action is necessary to permit continued operations under SFAR 38, as amended, and to avoid confusion in the administration of FAA regulations regarding operating certificates and operating requirements.

For this reason, and because this amendment continues in effect the provisions of a currently effective SFAR and imposes no additional burden on any person, I find that notice and public procedures are unnecessary, impracticable, and contrary to the public interest, and that the amendment should be made effective in less than 30 days after publication. However, interested persons are invited to submit such comments as they desire regarding this amendment. Communications should identify the docket number and be submitted in duplicate to the address above. All communications received on or before the close of the comment period will be considered by the Administrator, and this amendment may be changed in light of the comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

This rule will not impose any additional incremental costs over those that would have been incurred when SFAR 38-2 was first issued. Therefore, the FAA has determined that this rule will not have a significant cost impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

International Trade Impact Analysis

The FAA finds this amendment will have no impact on international trade.

Federalism Implications

The amendment herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this amendment would not have sufficient federalism applications to warrant the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this document involves an amendment that imposes no additional burden on any person. Accordingly, it has been determined that: The action does not involve a major rule under Executive Order 12291; it is not signficant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and its anticipated impact is so minimal that a full regulatory evaluation is not required.

List of Subjects

14 CFR Part 121

Air carrier, Aircraft, Airmen, Air transportation, Aviation safety.

14 CFR Part 125

Aircraft, Airmen, Airports, Airspace, Air traffic control, Air transportation, Chemicals, Children, Drugs, Flammable materials, Handicapped, Hazardous materials, Infants, Smoking.

14 CFR Part 127

Air carriers, Aircraft, Airmen, Airworthiness.

14 CFR Part 129

Air carriers, Aircraft, Airmen, Air transportation, Aviation safety, Safety.

14 CFR Part 135

Air carriers, Aircraft, Airmen, Air taxis, Air transportation, Airworthiness, Aviation safety, Safety.

Adoption of the Amendment

In consideration of the foregoing SFAR 38-2 (14 CFR parts 121, 125, 127, 129, and 135) of the Federal Aviation Regulations is amended as follows:

PART 121—[AMENDED]

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, 1423, 1424, and 1502; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983).

PART 125—[AMENDED]

2. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, though 1430, and 1502; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983).

PART 127—[AMENDED]

3. The authority citation for part 127 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, 1422, 1423, 1424, 1425, 1430; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983).

PART 129—[AMENDED]

4. The authority citation for part 129 is revised to read as follows:

Authority: 49 U.S.C. 1346, 1354(a) 1356, 1357, 1421, 1502, 1511, and 1522; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983).

PART 135—[AMENDED]

5. The authority citation for part 135 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983).

Special Federal Aviation Regulation No. 38-2 is amended by removing the words "June 1, 1991" in the last paragraph, and by adding in their place the words "June 1, 1992."

Issued in Washington, DC, on May 28, 1991.

James B. Busey,

Administrator.

[FR Doc. 91-13068 Filed 5-30-91; 8:45 am]

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Part III

Department of Education

Office of Special Education and Rehabilitative Services

Discretionary Programs for Minority Entities, Underrepresented Populations, etc.; Notice

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DEPARTMENT OF EDUCATION

Discretionary Programs for Minority Entities, Underrepresented Populations, etc.

Office of Special Education and Rehabilitative Services

AGENCY: Department of Education.

ACTION: Notice of proposed priority for fiscal year 1991.

SUMMARY: The Secretary proposes a priority for fiscal year (FY) 1991 under the Individuals with Disabilities Education Act (IDEA). The Secretary takes this action to implement the Department plan for providing outreach services to minority entities and underrepresented populations to assist them in participating more fully in discretionary programs funded under the Act.

DATES: Comments must be received on or before July 5, 1991.

ADDRESSES: All comments concerning this priority should be addressed to Max Mueller, Department of Education, 400 Maryland Avenue SW. (Switzer Building, room 3512–M/S 2651), Washington, DC 20202–2651.

FOR FURTHER INFORMATION CONTACT: Max Mueller. Telephone: (202) 732–1554; (TDD (202) 732–1999).

SUPPLEMENTARY INFORMATION: The legislation authorizing special education programs has recently been revised (The Education of the Handicapped Act Amendments of 1990, Public Law 101–476). This priority is being proposed as a principal component to carry out the Department's outreach services plan that has been developed pursuant to a recommendation made by Congress in section 610(j)(2) of the IDEA. Outreach activities are to be designed to increase the participation of minority entities and underrepresented populations in discretionary programs (parts C through G) of the IDEA.

The Secretary will announce the final priority in a notice in the Federal Register. The final priority will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priority, and the quality of applications received. The publication of this proposed priority does not preclude the Secretary from publishing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priority does *not* solicit applications. A notice inviting applications under this competition will be published in the Federal Register concurrent with or following publication of the notice of final priority.

Priority

Under 34 CFR 75.105(c)(3) and section 610(j) of the IDEA the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet the absolute priority in this notice.

The Secretary proposes to make one or more 48-month awards for outreach centers to provide technical assistance to the agencies, institutions, organizations, and populations identified by Congress in the minority outreach program under section 610(j) in order to increase the participation of those entities in competitions for grants, cooperative agreements, and contracts under any of parts C through G of the IDEA.

The IDEA urges the Department to mobilize the Nation's resources to prepare minorities for careers in special education and related services. The legislation emphasizes the recruitment of minorities into teaching and related service disciplines, and financial assistance to minority institutions. The specific focus of this proposed priority is on providing outreach services to minority entities to increase their participation in competitions for awards under OSEP discretionary programs.

The immediate goal of this program is to increase access to and participation by minority institutions in discretionary programs authorized under parts C through G of the IDEA. A secondary goal is to strengthen special education and related programs of minority entities. The desired ultimate outcomes of the priority are improved programs for minority children with disabilities and increased numbers of minority personnel in the workforce serving children with disabilities.

Under the statute, the entities targeted for outreach services are:

- Historically Black Colleges and Universities,
- Other institutions of higher education whose minority student enrollment is at least 25 percent,
- Eligible institutions as defined under section 312 of the Higher Education Act of 1965,
- Nonprofit and for-profit agencies at least 51 per cent controlled by one or more minority individuals (however, it should be noted that for-profit agencies are not eligible for most IDEA programs), and
- Underrepresented populations. Underrepresented populations are further defined as—
- Populations such as minorities, the poor, the limited English proficient, and individuals with disabilities.

Background

The Congress has provided in the legislation a substantial rationale that should guide the efforts of the Center. As a part of the IDEA (section 610(j)), the Congress has provided extensive "findings" regarding minority issues relating to the education of people with disabilities. Concerns noted relate to minority students with disabilities, minority personnel to serve such children, and minority institutions. Though the findings concentrate largely on Historically Black Colleges and Universities, the law provides for equal attention to other institutions and agencies defined as minority entities.

With respect to the discretionary programs authorized by parts C through G, the Congress found, in summary:

The Federal Government must be responsive to the growing needs of an increasingly more diverse society. A more equitable allocation of resources is essential for the Federal Government to meet its responsibility to provide an equal educational opportunity for all individuals.

America's racial profile is rapidly changing. The minority population is increasing in society generally and in the schools in particular. In addition, more minority children continue to be served in special education than would be expected from the percentage of minority students in the general population. Greater efforts are needed to prevent the problems associated with mislabeling and higher dropout rates among minority children with disabilities. This combination of factors means that meeting the special needs of minority children with disabilities is a major issue to be addressed in delivery of special education and related services.

At the same time, minorities are seriously underrepresented in the teaching force. As the number of African-Americans and Hispanic students in special education increases, the number of minority teachers and related service personnel produced in our colleges and universities continues to decrease. Recruitment efforts within special education at the level of preservice training, continuing education, and teacher recruitment in the school must focus on bringing larger

numbers of minorities into the profession in order to provide appropriate practitioner knowledge, role models, and sufficient manpower to address the clearly changing demography of special education.

The Congress concluded that the opportunity for full participation in awards for grants, cooperative agreements, and contracts by minority entities is essential if we are to obtain greater success in the recruitment and training of minority personnel and in the education of minority children with disabilities.

Eligible Applicants: The following are eligible for assistance under this priority:

(1) Public agencies; and

(2) Private nonprofit agencies, organizations, and institutions.

Priority: Under this priority, the Secretary will fund one or more centers that provide effective and cost-efficient technical assistance to the agencies, institutions, organizations, and populations listed in section 610(j)(2) to promote their participation in programs authorized under parts C through G of the IDEA.

Each center must establish an advisory group of at least 10 persons to provide advice and recommendations to the Center on all aspects of this project. The advisory group must represent relevant professional organizations, parents of minority children with disabilities, and different disciplinary areas (e.g., special education, health, social work). The center shall select each member of the advisory group on the basis of experience and ability to provide sound recommendations and advice to the Center relative to both minority and disability issues.

Each center shall establish and maintain a clearinghouse of critically important information and materials that can be used effectively to assess and meet the technical assistance needs of minority entities and underrepresented groups. As a part of this task, the Center shall, at least annually, conduct literature searches, identify and visit programs demonstrating exemplary practices, and conduct other activities to secure the most current and effective information available. The center shall also develop materials and other information packages that may be necessary for conducting needs assessments, for delivering technical assistance, for evaluating technical assistance, and for providing training to the center's core staff and national experts.

Each center annually shall conduct technical assistance needs assessments and negotiate technical assistance agreements with target agencies, institutions, organizations, programs, and projects.

In establishing final plans, the Center may propose cross-institutional activities if similar objectives are established in several agencies, and if combining activities could create cost savings. In developing these plans, the Center shall analyze the needs of each entity and determine the most effective and cost efficient means of addressing them. As a final step, the Center shall develop a specific technical assistance agreement, with each entity identified, that—

(a) Reconciles technical assistance needs with the Center's designated fiscal and human resources for that entity;

(b) Describes the technical assistance objectives and mechanisms and strategies that will be used;

(c) Identifies the persons involved in the technical assistance activity;

(d) Specifies the beginning and end dates of the activity;

(e) Describes how the technical assistance activity will contribute to promoting the immediate and long-term goals of the project; and

(f) Describes a plan for coordinating with other technical assistance providers (e.g., the Regional Resource Centers) that may be involved in related activities:

For each competition which the Secretary runs under parts C through G, the Center shall—

- Prepare special materials explaining the competition to the entities (that are the focus of this program);
- Disseminate these materials to these entities on a timely basis;
- Where appropriate, conduct one or more special "potential bidders" conferences for these entities, at which representatives of the Secretary may appear, to explain in more detail how the entities might apply;
- Analyze the results of each competition in terms of the degree to which these entities applied and the degree to which they were successful, and make this analysis available to the Secretary and the entities; and
- Provide advice to the Secretary at least annually on ways in which competitions under parts C through G might be modified to further advance the purposes of this program.

For the purpose of carrying out this function, the Secretary intends to make available to the center(s) the maximum information on the selection process for each competition which the Secretary is permitted to make public under applicable law.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Invitation to Comment: Interested persons are invited to submit comments and recommendations regarding this proposed priority.

The Secretary is especially interested in comments on the relative advantages of implementing the mandate for outreach to minority entities through a single award or a small number of related projects. The issues involve whether the differences among various OSEP programs, the needs of various types of minority entities, or the needs of various minority populations are sufficient to require separate attention through separate awards.

All comments submitted in response to this proposed priority will be available for public inspection during and after the comment period, in room 3072, Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Program Authority: 20 U.S.C. 1410.

(Catalog of Federal Domestic Assistance Number 84.029: Training Personnel for the Education of Individuals with Disabilities)

Dated: April 26, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 91–13088 Filed 6–3–91; 8:45 am]

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Part IV

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 412

Medicare Program; Medicare Geographic Classification Review Board—Procedures and Criteria; Final Rule with Comment Period

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 412

[BPD-684-FC]

RIN 0938-AF19

Medicare Program; Medicare Geographic Classification Review Board—Procedures and Criteria

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule with comment period responds to public comments on the September 6, 1990 interim final rule with comment period that established the Medicare Geographic Classification Review Board (MGCRB) and sets forth the criteria for the MGCRB to use in issuing its decisions concerning the geographic reclassification of hospitals for purposes of payment under the prospective payment system. In addition, this final rule with comment period implements provisions of the Omnibus Budget Reconciliation Act of 1990 concerning the MGCRB.

DATES:

Effective date: This final rule with comment period is effective on June 4, 1991. We refer the reader to section VII.A. of this preamble for a discussion of the effective dates of specific provisions.

Comment date: Comments on changes to the September 6, 1990 interim final rule resulting from provisions of the Omnibus Budget Reconciliation Act of 1990 will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on August 5, 1991. These changes concern discretionary review by the Administrator of MGCRB decisions, calculation of the wage index, and urban to urban group reclassifications. We will not consider comments concerning provisions that remain unchanged from the September 6, 1990 interim final rule with comment period or on provisions that were changed based on public comments.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-684-FC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert Humphrey Building, 200 Independence Ave., SW., Washington, DC.

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

In commenting, please refer to file code BPD-684-FC. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-245-7890).

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FOR FURTHER INFORMATION CONTACT:
Paul Olenick—MGCRB and Administrative Review Procedures (301) 966-4472.
Barbara Wynn—Reclassification Guidelines (301) 966-4529.

SUPPLEMENTARY INFORMATION:

I. Background

Section 6003(h)(1) of the Omnibus Budget Reconciliation Act of 1989, enacted on December 19, 1989, added section 1886(d)(10) to the Social Security Act (the Act) to provide for creation of the Medicare Geographic Classification Review Board (MGCRB). On September 6, 1990, we published an interim final rule with comment period (55 FR 36754) that provided for the establishment of the MGCRB and set forth the criteria for the MGCRB to use in considering applications by hospitals for geographic reclassification for purposes of payment under the prospective payment system. As enacted, section 1886(d)(10) of the Act provided that reclassifications resulting from applications filed by October 1, 1990 would take effect October 1, 1991.

As required by section 1886(d)(10)(A) of the Act, the interim final rule provided for the establishment of the MGCRB and set forth criteria to be used by the MGCRB in making decisions on hospital requests for reclassification. The interim final rule also set forth requirements regarding the MGCRB's composition and operational procedures.

Subsequently, the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) was enacted on November 5, 1990. Section 4002(h) of Public Law 101-508 contained several provisions relating to the geographic classification of hospitals. This final rule with comment period makes changes in the September 6, 1990 interim final rule with comment period based on both the provisions of Public Law 101-508 and the public comments received on the interim final rule.

II. Geographic Classification of Hospitals

Under the prospective payment system, a hospital's payment rate is dependent, to some degree, on whether the county in which a hospital is located is classified as a large urban area, an urban area, or a rural area. These terms are defined in section 1886(d)(2)(D) of the Act. The term "urban area" means an area within a Metropolitan Statistical Area (MSA). An urban area in New England is defined as a New England County Metropolitan Area (NECMA). The term "large urban area" means an urban area with a population of more than one million (or more than 970,000 in New England) as determined by the Secretary using the most recent available population data published by the Bureau of the Census. We use the term "other urban area" for an urban area that is not a large urban area. The term "rural area" means any area outside an urban area. Section 1886(d)(2)(D) of the Act requires that average standardized amounts per discharge be determined for hospitals located in large urban areas, other urban areas, and rural areas. The MSA and NECMA classification are also used to define labor market areas for purposes of establishing a hospital's wage index value under section 1886(d) of the Act.

Effective with discharges on or after October 1, 1988, section 4005(a) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203), as amended by section 411(b)(4) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360), revised 1886(d)(8)(B) of the Act to provide that, if certain conditions are met, the Secretary treats a hospital located in a rural county adjacent to one or more urban areas as being located in the urban area to which the greatest number of workers in the county commute, if the rural county would otherwise be considered part of an urban area, under the standards for designating MSAs (and NECMAs), published in the **Federal Register** on January 3, 1980 (45 FR 956). (We use the terms "classified" and "designated" interchangeably in referring to the area in which a hospital is considered to be located.) The commuting rates used in determining outlying counties are based on the aggregate number of resident workers who commute to (and, if applicable under the standards, from) the central county or counties of all contiguous MSAs (or NECMAs). Thus, hospitals in rural counties adjacent to one or more MSAs or NECMAs are deemed to be urban if the counties meet the following criteria:

- The rural county would otherwise be considered a part of an MSA (as an outlying county) but for the fact that the rural county does not meet the OMB standard relating to the commuting rate of workers between the rural county and the central county or counties of any single adjacent MSA or NECMA.
- The aggregate commuting rate to the central county or counties of all adjacent MSAs or NECMAs is at least 15 percent of the number of residents of the rural county who are employed, or the total commuting rate to and from the central county or counties of all adjacent MSAs is at least 20 percent of the number of residents of the rural county who commute for employment and the county meets the applicable population criteria.

For purposes of payment under the prospective payment system, a hospital located in a rural county that qualifies under this provision is deemed to be located in the MSA to which the greatest number of workers in the rural county commute.

Congress intended that section 1886(d)(8)(B) of the Act apply to a limited number of hospitals that it believed merited payment as urban hospitals because of their location in counties adjacent to at least one MSA and their commuting patterns. However, many hospitals have sought urban classification under this provision, but their requests have been denied because the hospitals do not meet the specific criteria necessary for redesignation.

Congress addressed the many requests by hospitals for geographic reclassification with the enactment of Section 6003(h)(1) of Public Law 101-239, which added new paragraph (10) to section 1886(d) of the Act. Section 1886(d)(10) of the Act provides for the establishment of the MGCRB, which has the authority to issue decisions on hospital requests for geographic reclassification. In addition, section 1886(d)(10)(D)(i) of the Act requires that the Secretary publish guidelines to be used by the MGCRB in making decisions on reclassification requests.

III. The MGCRB Provisions of the Omnibus Budget Reconciliation Act of 1989

On December 19, 1989, Public Law 101-239 was enacted. Section 6003(h)(1) of Public Law 101-239 added section 1886(d)(10) to the Act, which includes the following provisions that affect the geographic classification of hospitals for purposes of payment under the Medicare prospective payment system:

- Section 1886(d)(10)(A) of the Act establishes the MGCRB, which has the authority to issue decisions on hospital requests for geographic reclassification. Under section 1886(d)(10)(C)(i) of the Act, a geographic classification change is effective for the purposes of the hospital's average standardized amount, wage index value, or both, for a Federal fiscal year.
- Under section 1886(d)(10)(B)(i) of the Act, the MGCRB is to consist of five members appointed by the Secretary. Section 1886(d)(10)(B)(ii) of the Act required the Secretary to appoint the MGCRB members by 180 days after enactment of Public Law 101-239; that is, the appointments were to have been made by May 18, 1990.
- Section 1886(d)(10)(C)(ii) of the Act provides that a prospective payment system hospital may obtain a change in geographic classification on a prospective basis only. That is, if a hospital requests reclassification by the first day of a Federal fiscal year (October 1) and meets the specified criteria, the MGCRB reclassifies the hospital or hospitals effective the first day of the following Federal fiscal year.
- Under section 1886(d)(10)(C)(iii)(I) of the Act, the MGCRB is required to issue decisions on hospital applications for geographic reclassification filed within the above time frame no later than 180 days after the first day of the Federal fiscal year.
- Section 1886(d)(10)(C)(iii)(II) of the Act provides for appeals to the Secretary of an MGCRB decision and specifies that the Secretary's decision is to be issued not later than 90 days after the appeal is filed. The Secretary's decision is final, and is not subject to judicial review.
- Under section 1886(d)(10)(D)(i) of the Act, the Secretary is to publish guidelines by July 1, 1990 for use by the MGCRB in issuing reclassification decisions. These guidelines are to address the following issues:
  - —The comparison of wages, taking into account occupational mix, in the area in which the hospital is classified and the area in which the hospital is applying to be reclassified.
  - —The determination of whether the county in which the hospital is located should be treated as being a part of a particular MSA.
  - —The consideration of information provided by a hospital concerning the effects of the hospital's geographic reclassification on access to inpatient hospital services of Medicare beneficiaries.
  - —The appropriateness of criteria used to define NECMAs.
- Section 1886(d)(10)(E)(i) of the Act authorizes the MGCRB to make rules and establish procedures that are not inconsistent with the provisions of title XVIII of the Act or regulations of the Secretary.
- Section 1886(d)(10)(E)(i) of the Act also provides that the MGCRB may administer oaths and affirmations in the course of any oral hearing. In addition, the provisions of section 205 (d) and (e) of the Act with respect to subpoenas apply to the MGCRB to the same extent as these provisions apply to the Secretary under title II of the Act.
- The other provisions in section 1886 (d)(10)(E) and (d)(10)(F) of the Act provide for financial compensation for MGCRB members.

In addition, section 6003(h)(1) of Public Law 101-239 included the following provisions, which were later amended in part by the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508), as described in section IV below:

- Under section 1886(d)(10)(B)(i) of the Act, the MGCRB was to include: Two members who are representatives of prospective payment system hospitals located in rural areas; at least one member of the Prospective Payment Assessment Commission (ProPAC); and at least one MGCRB member knowledgeable in analyzing inpatient hospital service costs.
- Section 1886(d)(10)(C)(iii)(II) of the Act specified that a decision of the MGCRB was final unless an unsuccessful hospital or group of hospitals appealed the decision to the Secretary no later than 15 days after the date of the MGCRB decision. It also provided that the Secretary might not receive any new evidence on appeal, and must issue a decision based only

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upon the record as it appeared before the MGCRB.

IV. The Omnibus Budget Reconciliation Act of 1990

On November 5, 1990, Public Law 101–508 was enacted. Section 4002(h) of Public Law 101–508 contained several provisions relating to the geographic classification of hospitals.

Section 4002(h)(1)(A)(ii) of Public Law 101–508 amended section 1886(d)(8)(C)(i)(II) of the Act effective for discharges occurring on or after January 1, 1991 by specifying that if including the wage data for the hospitals redesignated under section 1886 (d)(8) and (d)(10) reduces the wage index value for an urban area by more than one percentage point, the wage index value for that urban area is to be calculated and applied separately to hospitals already located in that urban area (excluding the redesignated hospitals). The hospitals that are redesignated are to use the wage index value of the MSA that results from including the wage data of all the hospitals that are redesignated to the MSA in the determination. However, the wage index value for the redesignated hospitals cannot be less than the Statewide rural wage index value. This change was implemented in our January 7, 1991 final rule with comment period (56 FR 568), Mid-Year FY 1991 Changes to the Inpatient Hospital Prospective Payment System, and is also explained in section V of this preamble.

Next, section 4002(h)(2)(A) of Public Law 101–508 extended the deadline for hospitals to submit applications for geographic reclassification for Federal fiscal year 1992 from October 1, 1990 until November 6, 1990 (that is, 60 days after publication of the interim final rule with comment period). The interim final rule also had set November 6, 1990 as the deadline for complete applications, but it had required that hospitals submit initial applications by October 1, 1990.

Public Law 101–508 also contained several technical corrections to section 1886(d)(10) of the Act. First, section 4002(h)(2)(B)(i) of Public Law 101–508 changed the title of the Medicare Geographical Classification Review Board to Medicare Geographic Classification Review Board. In addition, section 4002(h)(2)(B)(ii)(I) of Public Law 101–508 amended section 1886(d)(10)(B)(i) of the Act to specify that two members of the MGCRB will be "representative of" but not be "representatives of" rural hospitals. Because we had concluded in developing the September 6, 1990 interim final rule that Congress meant that two members of the MGCRB were to be representative of and familiar with rural hospitals, our implementation of the provision in that document (55 FR 36756) is consistent with section 4002(h)(2)(B)(ii)(I) of Public Law 101–58. Section 4002(h)(2)(B)(ii)(II) of Public Law 101–508 also amended section 1886(d)(10)(B) of the Act to delete the requirement that one member of the MGCRB be a member of the Prospective Payment Assessment Commission (ProPAC).

Finally, section 4002(h)(2)(B)(iv)(I) of Public Law 101–508 amended section 1886(d)(10)(C)(iii)(II) of the Act to require that the appeal of MGCRB decisions be subject to the provisions in section 557(b) of the Administrative Procedure Act (5 USC 557(b)), which specifies that:

"* * * When the * * * [MGCRB] makes an initial decision, that decision then becomes the decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within time provided by rule. On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule * * *"

Previously, section 1886(d)(10)(C)(iii)(II) of the Act had only addressed the right of an unsuccessful hospital to appeal an MGCRB decision, while it remained silent with respect to review at the discretion of the Secretary.

As directed by revised section 1886(d)(10)(C)(iii)(II) of the Act, this final rule with comment period provides an explicit mechanism for the review of an MGCRB decision on the motion of the Secretary. The Secretary has delegated the authority to conduct this "own motion review" to the Administrator of HCFA who has redelegated it to the Deputy Administrator. The procedures that we are implementing for conducting own motion review, that is, discretionary review by the Administrator, are consistent with the provisions of section 5 U.S.C. 557(b). The new discretionary review procedure is set forth in section V.B.17 of this preamble and § 412.278 of the regulations.

In addition to the statutory changes, the Conference Committee Report accompanying Public Law 101–508 noted that, although section 4002(h)(2)(B)(iv)(I) of Public Law 101–508 struck the provision of section 1886(d)(10)(C)(iii)(II) of the Act that an MGCRB decision was final unless a hospital appealed the decision to the Secretary within 15 days after the decision, the Secretary shall retain the 15-day limit on hospital appeals. The Conference Committee report also directed the Secretary to provide that urban hospitals could be reclassified jointly to another urban area. (H.R. Rep. No. 964, 101st Cong. 2nd Sess. 715 (1990).) Consequently, as explained in section V.C.7 below, we have added criteria (at § 412.234) concerning reclassification of all hospitals in a county located in an urban area to another urban area.

V. Discussion of Public Comments Concerning the September 6, 1990 Interim Final Rule

We received 48 timely comments from or on behalf of hospitals in response to the September 6, 1990 interim final rule. The main areas of concern addressed by the commenters were the following:

- Timeliness of publication of the interim final rule
- MGCRB composition and operating procedures
- Criteria and conditions for hospital reclassification

In the discussion below we have set forth the provisions of the September 6, 1990 interim final rule with comment, the relevant provisions of section 4002(h) that amended sections 1886 (d)(8) and (d)(10) of the Act, the public comments that we have received concerning the September 6, 1990 interim final rule, our responses to those comments, and appropriate changes in response to public comments or to the provisions of revised sections 1886(d)(8) and 1886(d)(10) of the Act. In addition, we have made several technical changes to the provisions of the September 6, 1990 interim final rule.

A. Timeliness of Publication of the Interim Final Rule

Section 6003(h) of Public Law 101–239 provided that by July 1, 1990, the Secretary should publish guidelines to be used by the MGCRB in making decisions on applications for reclassification. The statute further provides that the MGCRB must issue its decisions on hospital requests for reclassification by March 30, 1991. This schedule allows hospitals to be paid during Federal fiscal year 1992 based on the new standardized amounts and wage index values that reflect the effects of the geographic reclassifications that take effect on October 1, 1991.

Comment: The regulations set forth in the interim final rule should not be implemented because they are procedurally flawed. That is, the rule was not published in a timely manner, and the use of an interim final rule with comment period forced hospitals to comply with regulations without having had a prior opportunity to comment.

Response: The use of an interim final rule with comment period to implement these regulations was essential to ensure that hospitals could apply timely for reclassification for FY 1992 and that the MGCRB can issue decisions on the applications by March 30, 1991, as required by section 1886(d)(10)(C)(iii)(I) of the Act. The delay that would have been necessitated by a prior notice and comment period would have been contrary to the public interest because it would have diminished opportunities for hospitals to file timely applications for reclassification for FY 1992 and to receive the potential benefits of reclassification. Although we were unable to provide a public comment period before the effective date of the interim final rule, we did provide for a 60-day public comment period in that rule. We are responding to the 48 public comments that we received in this final rule with comment period.

Comment: Publication of the interim final rule on September 6, 1990 did not allow enough time for hospitals to file applications with the MGCRB by the November 6, 1990 deadline. The MGCRB should have provided hospitals an additional 30 days to complete their applications.

Response: Because the interim final rule was published on September 6, we recognized the difficulty that hospitals would encounter in attempting to file complete applications by the then statutorily-mandated deadline of October 1 (see section 1886(d)(10)(C)(ii) of the Act). For this reason, we provided in the interim final rule for an extended deadline of November 6, 1990 (60 days after the publication of the interim final rule) for completing an initial application that had been filed with the MGCRB by October 1. In order to qualify for this one-time only extension, we required hospitals to comply with the requirement in section 1886(d)(10)(C)(ii) of the Act by filing initial applications with the MGCRB by October 1, 1990 and then to complete them by November 6, 1990. Congress also recognized the possible burden for hospitals in meeting the October 1, 1990 due date, and so included the provision in section 4002(h)(2)(A) of Public Law 101–508 to extend the application deadline for Federal fiscal year 1992 only until November 6, 1990.

In response to the interim final rule, the MGCRB received over 1,000 complete applications for geographic reclassification before the November 6, 1990 deadline. We believe that the large volume of timely and complete applications clearly demonstrated that Medicare hospitals were afforded sufficient time for filing applications with the MGCRB.

In addition, under section 1886(d)(10)(C)(iii)(I) of the Act, the MGCRB is required to issue decisions on hospital applications no later than 180 days after October 1, that is, by the following March 30. Congress established this time limit so that the effects of reclassification could be reflected in the new standardized amounts and wage index values that take effect on October 1 of each year for prospective payment hospitals. If the MGCRB generally permitted hospitals to extend the filing deadline beyond November 6, it would be unable to satisfy the 180-day requirement for issuing decisions. However, in compelling circumstances, the MGCRB has granted short extensions beyond November 6, 1990 for completing an application to a hospital that met the November 6, 1990 filing deadline, but whose application failed to contain all the necessary elements of a complete application. Also, as discussed in section V.B.6 of this preamble, we have revised § 412.256(c) to specify that the MGCRB may for good cause grant a hospital an extension beyond the deadline of October 1 (for applications for reclassification for FY 1993 and thereafter) to complete its application.

B. MGCRB Composition and Procedures

1. Composition of the MGCRB

Section 1886(d)(10)(B)(i) of the Act provides that the MGCRB shall be composed of five members appointed by the Secretary. Prior to the enactment of section 4002(h)(2)(B)(ii) of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) on November 5, 1990, it further provided that two of the members shall be "representatives of" prospective payment system hospitals located in rural areas. We interpreted this provision to mean that the two members should be representative of and, therefore, familiar with, the concerns of rural hospitals, rather than serve as members who are representatives of or are selected by rural hospitals. Prior to the enactment of Public Law 101–508, the Secretary was also to appoint one member of ProPAC and at least one member who is knowledgeable in analyzing inpatient hospital service costs. (Section 4002(h)(2)(B)(ii) of Pub. L. 101–508 later eliminated the requirement that one member be a member of ProPAC.) The provisions concerning the composition of the MGCRB are set forth in 42 CFR § 412.246(a).

Under § 412.246(b), the term of office for MGCRB members is 3 years, except that the Secretary may designate initial appointments for shorter terms to permit staggered terms of office. The Secretary will not appoint a member for more than two consecutive 3-year terms of office. The Secretary has the authority to terminate a member's tenure prior to its full term.

The Secretary designated one member of the MGCRB as the chairman. The chairman coordinates and directs the administrative activities of the MGCRB.

Comment: HCFA has misinterpreted the law in providing that two MGCRB members be "representative" of, and therefore, familiar with, the concerns of rural hospitals rather than serve as members who are "representatives" of or are selected by rural hospitals. HCFA's interpretation runs counter to the interests of rural hospitals and counter to the intent of the law. MGCRB members who are representatives of hospitals located in rural areas should be selected by rural hospitals with the assistance of the American Hospital Association, instead of HCFA, to ensure that rural hospitals are truly represented.

Response: Section 4002(h)(2)(B)(ii) of Public Law 101–508 substituted the word "representative" for the word "representatives" in section 1886(d)(10)(B)(i) of the Act to affirm, as the Secretary stated in the September 6, 1990 interim final rule, that rural hospital members of the MGCRB would represent rural hospital interests but would not be actual representatives of rural hospitals. A requirement that appointees be "representatives" of special interests would not only constitute an inappropriate constraint on the appointive power of the Secretary but would also be inconsistent with the undivided loyalty that an appointee owes to the public at large.

HCFA shares the concern about the safeguarding of rural hospital interests and believes such interests are being protected. Pursuant to section 1886(d)(10)(B)(i) of the Act the Secretary has appointed two members who are representative of rural hospital interests. While we do not agree that rural hospitals or the American Hospital Association should have the authority to appoint members of the MGCRB, we will consider their recommendations for future MGCRB membership.

Comment: In contrast with members of the Provider Reimbursement Review Board (PRRB), MGCRB members may be terminated before their three-year term has expired, potentially compromising their effectiveness.

Response: There is precedent in the PRRB regulations for termination of a

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MGCRB member's 3-year term. Section 405.1845(b) of the regulations governing PRRB procedures states that "The Secretary shall have the authority to terminate a Board member's term of office for good cause." The Secretary has not invoked this authority to date. The Secretary needs to have similar termination authority over the MGCRB in case a member of the MGCRB fails to carry out his or her duties under the Act and regulations.

2. A Quorum

Under § 412.248, a quorum is required for making MGCRB decisions. A majority of all MGCRB members currently seated, at least one of whom, if possible, represents the interests of rural hospitals, constitutes a quorum.

Under § 412.448(b), in the event that four members are deciding a case, three votes are needed to change the hospital's classification. If less than a quorum is present for an oral hearing, the chairman, with the consent of the hospital, may designate less than a quorum to conduct the hearing. The member(s) in such cases submits a recommended decision for approval by a majority of the MGCRB members, including, if possible, a member who represents rural hospital interests.

3. Sources of MGCRB's Authority

Under § 412.250(a), the MGCRB, in exercising the authority to consider applications under section 1886(d)(10)(C) of the Act, complies with all the provisions of title XVIII of the Act and regulations issued under that title (which include guidelines published in the **Federal Register** under section 1886(d)(10)(D) of the Act) and HCFA Rulings issued under the authority of the Administrator. In addition, under § 412.250(b), the MGCRB affords great weight to other interpretive rules, general statements of policy and rules of agency organization, procedure, or practice established by HCFA.

4. Right To Submit Application to MGCRB

Under § 412.252(a), an individual hospital under the Medicare prospective payment system has the right to submit an application to the MGCRB concerning its request for a change in geographic classification based on hospital-specific criteria.

Under § 412.252(b), all prospective payment hospitals within a county, but only as a group, have the right to submit a joint application to the MGCRB concerning their request for the redesignation of all hospitals in the county into a different geographic area based on county-specific criteria.

5. Proceedings Before the MGCRB

Under § 412.254(a), the MGCRB is to issue an on-the-record decision (that is, a decision based on a review of submitted written material without any oral presentations) in each case, unless under § 412.254(b) the MGCRB schedules an oral hearing on its own motion or if a hospital can show to the MGCRB's satisfaction that a hearing is necessary.

Comment: We received specific recommendations regarding the operating procedures of the MGCRB as follows:

The MGCRB should lay out the basic application process, complete with format and instructions.

HCFA's final rule should provide the names and phone numbers of all MGCRB staff contacts as well as instructions on how to obtain information on individual applications.

The MGCRB should revise its form letter to eliminate the arbitrary and incorrect statement that the application will be dismissed if all applicable information is not submitted with the application.

The MGCRB's requirement that a hospital sign an affidavit to accompany its application is unnecessary and offensive.

Response: These comments concern internal MGCRB operating procedures and, as such, are governed by section 1886(d)(10)(E)(i) of the Act, which states that "the Board shall have full power and authority to make rules and establish procedures, not inconsistent with the provisions of this title or regulations of the Secretary, which are necessary and appropriate. * * *" Therefore, these comments should be submitted directly to the MGCRB. Correspondence to the MGCRB should be addressed to the following individual: Mr. Steven R. Kirsh, Staff Director, MGCRB, Professional Building, suite 13, 6660 Security Boulevard, Baltimore, MD 21207. Phone: (301) 966-2038.

Comment: Each hospital should be provided with at least a 15-day notice as to the date and time its application is scheduled for review and consideration by the MGCRB. In addition, the regulations should be changed to grant hospitals the absolute right to an oral hearing.

Response: Since on-the-record review consists of examination of all written material and data submitted, no administrative purpose would be served by notifying a hospital of the date and time the review will take place. Also, such notification would prove to be a cumbersome task for the MGCRB, for example, in cases in which applications receive review by individual MGCRB members at different times.

The Act does not require the MGCRB to conduct oral hearings on hospital applications. If the MGCRB were compelled by regulation to hold oral hearings on all, or even a portion, of the applications it received from hospitals, it would be unable to issue decisions by the deadline of March 30. In addition, due process of law under the Fifth Amendment to the United States Constitution does not require oral hearings under these circumstances. As stated in the interim final rule, on-the-record decisions are entirely appropriate given the tight statutory timeframes for issuing decisions and the types of issues to be decided by the MGCRB. However, § 412.254 provides that the MGCRB may hold an oral hearing on its own motion or if a hospital demonstrates to the MGCRB's satisfaction that an oral hearing is necessary. Thus, a hospital may request an oral hearing and articulate in the request why an oral hearing may be necessary in a particular case.

6. Timing and Content of Application

A prospective payment system hospital may obtain a change in geographic classification on a prospective basis only. Under § 412.274(b)(1), a hospital may request the MGCRB to change its classification effective with the beginning of the second Federal fiscal year following the year in which the request is filed. (However, under § 412.274(b)(2), if a complete application is filed on October 1, the reclassification is effective the following October 1.) For example, a hospital desiring a reclassification for Federal fiscal year 1993 (October 1, 1992 through September 30, 1993) must file its written application no later than October 1, 1991. The MGCRB will dismiss a hospital's request for reclassification for Federal fiscal year 1993 that is filed after October 1, 1991.

Although applications may be submitted to the MGCRB as late as October 1, there is no guarantee that the MGCRB will find that an initial application contains the necessary elements of a complete application. Therefore, it is incumbent upon hospitals to submit their applications as early as possible so that the MGCRB may identify incomplete applications and allow hospitals to complete them prior to the October 1 deadline.

Under § 412.256(c)(1), the MGCRB has 15 days from the receipt of a hospital's application to review it and decide whether it is complete. The MGCRB notifies the hospital within that timeframe if the application is incomplete and advises the hospital that

it has until October 1 to complete the application. If a hospital submits its application by September 1, this should give the hospital 15 days or more to complete the application in accordance with the necessary criteria. A hospital submitting an incomplete application between September 2 and October 1 runs the risk of filing an incomplete application and not having enough time to complete the application by the filing deadline of October 1.

Under § 412.256(c)(2) in the interim final rule, the MGCRB dismisses an application that is not complete by the filing deadline. Dismissals are based on a hospital's failure to submit timely an application that contains all the necessary elements of a complete application, as explained below in this section. The MGCRB will not dismiss an application when the hospital has timely submitted all necessary elements of an application, but the data submitted do not support the hospital's request for reclassification. (As discussed below in a response to a comment, this final rule with comment period revises § 412.256(c) to specify that the MGCRB may for good cause grant a hospital an extension beyond the filing deadline to complete its application.)

A decision by the MGCRB dismissing a hospital's application as being incomplete or filed untimely will be mailed to the hospital and to HCFA. The dismissal order will contain the reasons for the action taken by the MGCRB. Under § 412.256(d)(1), the hospital may request that the Administrator review the dismissal within 15 days of the date of the notice of dismissal. Under § 412.256(d)(2), within 20 days of receipt of the hospital's appeal request, the Administrator may affirm the dismissal or reverse the dismissal and remand the case to the MGCRB to determine whether reclassification would be appropriate.

Under § 412.256(b)(2), the hospital, or all the hospitals in a county, must identify the guidelines under which reclassification is requested. As required by § 412.256(b)(3), the application must also contain sufficient documentation for the MGCRB to evaluate whether the criteria for reclassification are met. Under § 412.256(b)(3), the filing date of the application is the date the application is received by the MGCRB. Under § 412.256(a)(2), complete applications must be received by October 1 preceding the Federal fiscal year for which reclassification is requested. Applications must be mailed to the following address: Medicare Geographic Classification Review Board, Professional Bldg., suite 13, 6660 Security Blvd., Baltimore, MD 21207.

Because the interim final rule with comment period was published so close to October 1, 1990, we recognized that many hospitals seeking reclassification for Federal fiscal year 1992 would be unable to submit complete applications to the MGCRB by October 1, 1990. Therefore, for the first application period only, we extended the deadline for completing applications to the MGCRB. We required that hospitals submit as complete an application as possible by October 1, 1990. However, if a hospital filed an application by that date, the MGCRB would consider additional information necessary to complete the application if the information was received by the MGCRB no later than 5:00 p.m. on November 6, 1990. (Section 4002(h)(2)(A) of Public Law 101-508 subsequently ratified this later deadline.) All other procedures connected with the applications process remain applicable.

Under § 412.256(a)(1), the MGCRB does not accept a facsimile (FAX) copy of an application or any additional material from the hospital or group of hospitals or from HCFA for any purpose related to filing or completing an application.

In the preamble of the interim final rule with comment period, we specified at 55 FR 36757 the elements that are necessary for a complete application:

a. Information required of individual hospitals

- Name of hospital.
- Address of hospital.
- Name and signature of responsible hospital official.
- County in which hospital is located.
- Demonstration of status as a rural referral center or sole community hospital status, if applying on the basis of access.
- Fiscal year for which the hospital is applying for redesignation.
- Names of all adjacent MSAs or NECMAs (or nearest MSA or NECMA if the applicant is a rural referral center or sole community hospital applying on the basis of access).
- Medicare provider numbers.
- Narrative explaining reason for requesting reclassification that must include:

—Which criteria in the guidelines constitute the basis of the hospital's application, that is, under which provisions in the regulations the hospital is applying; and

—An explanation of how the hospital meets the relevant criteria.

- Data from approved sources (as also described in the criteria contained in § 412.230) to support the hospital's application.

b. Information Required for Joint Application From All Hospitals in a County Seeking Redesignation

- Names, addresses, county, and provider numbers of all hospitals.
- Names and signatures of responsible officials of all hospitals.
- Federal fiscal year for which hospitals are applying
- Narrative explaining reason for requesting reclassification must include:

—Which criteria in the guidelines constitute the basis for the hospitals' application, that is, under which provisions in the regulations the hospitals are applying; and

—An explanation of how the hospitals meet the relevant criteria.

- Data (from approved sources as also described in § 412.232(d)) to support the hospitals' application.

Comment: The definition of a complete application needs clarification.

Response: The interim final rule describes in great detail the elements necessary for a hospital to submit a complete application with the MGCRB. (See the September 6, 1990 interim file rule at 55 FR 36757, section III.A.6., and §§ 412.230 through 412.234.) Since the MGCRB received over 1,000 complete applications, and we received only one written comment questioning the definition, we believe that the criteria for a complete application included in the interim final rule provide hospitals with sufficient information to prepare their applications for geographic reclassification.

Comment: With regard to future applications submitted to the MGCRB, there may be a timing problem in that the interim final rule requires applications to be submitted by September 1, so that they may be perfected by October 1. Since final wage data are not available prior to September 1, it would be impossible for applications to be submitted by that date.

Response: The interim final rule does not require that applications be submitted by September 1. We have merely recommended that applications be submitted as early as possible, so that an incomplete application submitted prior to October 1 may be completed before the deadline prescribed in § 412.256(a)(2). Section § 412.256(c)(2) of the September 6, 1990 interim final rule also specified that the MGCRB would dismiss an application that was not complete by the statutory deadline of October 1. However, in this final rule with comment period, we are revising § 412.256 (c)(1) and (c)(2) to

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specify that the MGCRB may dismiss an application which is not complete by October 1 and that, at the request of the hospital, the MGCRB may for good cause extend the deadline of October 1 for filing a complete application if an application has been submitted to the MGCRB by October 1.

We note that the appropriate wage data used for reclassification requests are available before September 1. Although the final wage index values are not published each year until September 1 as part of the final prospective payment rule, the wage survey data necessary to apply for reclassification for wage index purposes (see the wage comparison example at section V.B.5 of this preamble) is available from HCFA before that time. The survey data, rather than the wage index values, are used in determining whether a hospital qualifies for a wage index reclassification. Thus, there is nothing to preclude the hospital from filing an application prior to the September 1 final rule based on the latest hospital wage data available from HCFA. Except in those areas which require wage data corrections, the same wage data would be used to construct both the proposed wage index published in May and the final wage index published in September. (Regardless of when the application is filed, we anticipate that the MGCRB will base its decision on the best wage survey data available from HCFA as of the date the MGCRB makes its decision. We plan to furnish the MGCRB with information regarding wage data corrections on a routine basis so that these corrections can be taken into account.)

Comment: The official filing date for an application submitted with the MGCRB should be the postmark date rather than the date the application is received by the MGCRB, as required by § 412.256(a)(3) of the interim final rule.

Response: We believe that adopting the date of receipt of an application rather than the postmark date on the application as the applicable filing date is a reasonable, acceptable legal practice. This position is consistent with the regulations concerning the filing requirements for PRRB hearings. Additionally, courts require documents to be "in hand" to be considered filed. We suggest that applications be submitted by certified mail, return receipt requested, so that there will be no question of when an application is received by the MGCRB.

Comment: Section 412.256(d) of the interim final rule addresses the Administrator's authority to review the MGCRB's dismissal of an application. When the Administrator reverses the dismissal and remands the case to the MGCRB, what is the timeframe for the MGCRB's decision?

Response: The MGCRB is still obligated to issue a decision on remand by March 30 in accordance with the deadline contained in section 1886(d)(10)(C)(iii)(I) of the Act. Section 412.256(c)(1) requires that the MGCRB notify a hospital that its application has been dismissed within 15 days of the filing date, and the hospital then has 15 days to appeal the dismissal to the Administrator (§ 412.256(d)(1)). If the Administrator reverses the dismissal, the case is remanded to the MGCRB within 20 days to determine whether reclassification is appropriate (§ 412.256(d)(2)). Therefore, the MGCRB should have sufficient time to issue a decision by March 30.

7. Party or Parties to MGCRB Proceeding

Under § 412.256(a), the party or parties to the MGCRB proceeding are the hospital requesting a change in geographic classification or group of hospitals requesting reclassification to an urban or rural area. Although not a party under § 412.256(b), HCFA reviews all applications and may offer comments and recommendations on selected applications, if appropriate, within 30 days of receipt of notification from the MGCRB that a complete application has been received. Under § 412.256(c), a hospital has 15 days from the date of receipt of HCFA's comments to submit written comments to the MGCRB, with a copy to HCFA, for the purpose of responding to HCFA's comments.

Therefore, when a hospital submits its application to the MGCRB for consideration, the hospital also sends an informational copy of the application and any accompanying evidence to HCFA in care of the Office of Payment Policy at the following address: Office of Payment Policy, Division of Hospital Payment Policy, Room 1–H–1, East Low Rise Building, 6325 Security Blvd., Baltimore, MD 21207. Re: MGCRB Applications.

Comment: There is no statutory basis for HCFA to participate in the MGCRB process.

Response: As stated in the interim final rule, HCFA is not a party before the MGCRB. However, HCFA is the Federal agency responsible for administration of the prospective payment system, including the establishment of geographic criteria for hospital classification and reclassification and the standardized amounts and wage index values. As such, it is important that HCFA be given an opportunity to provide the MGCRB with technical information regarding geographical classification, and to comment on individual applications when HCFA deems it necessary. HCFA does not have an adversarial role in the MGCRB proceedings. Instead, its interests are in seeing that the MGCRB issues correct and fully informed decisions on applications for geographic reclassification. The MGCRB is not bound to adopt HCFA's case-by-case comments or recommendations in its decisions. Moreover, a hospital has the opportunity to review and address HCFA's comments on its application prior to the issuance of the MGCRB's decision.

8. Establishment of Time and Place of an Oral Hearing by the MGCRB

Under § 412.260, if the MGCRB decides that an oral hearing is necessary, it sets the time and place for the hearing and notifies the hospital or group of hospitals in writing, with a copy to HCFA, not less than 10 days before the scheduled time. Either on its own motion or for good cause shown by the hospital or group of hospitals, the MGCRB may, as appropriate, reschedule, adjourn, postpone, or reconvene the hearing, provided that reasonable written notice is given to the hospital (or group of hospitals), with a copy to HCFA.

9. Disqualification of MGCRB Members

Section 412.262 concerns the disqualification of MGCRB members. A MGCRB member may not participate in a decision in a case in which he or she is prejudiced or partial with respect to a requesting hospital or has any interest in the matter pending before the MGCRB. If the hospital believes that an MGCRB member is prejudiced or partial and, therefore, should not participate in the decision, the hospital states its objection in writing to the MGCRB. HCFA may also submit such a suggestion to the MGCRB.

The MGCRB member considers the objection and, at his or her discretion, either proceeds in the conduct of the case or withdraws. If the MGCRB member does not withdraw, the hospital may petition the MGCRB for withdrawal of the member. At the earliest opportunity and before the reclassification decision is made, the MGCRB rules on this issue.

10. Evidence

Under § 412.264 (a) and (b), the parties may submit evidence during the course of an MGCRB proceeding, including evidence that is generally inadmissible under the rules of evidence applicable to court procedures. Under § 412.264(d), the MGCRB rules upon the admissibility of evidence and comments and excludes irrelevant, immaterial, or unduly repetitious evidence and comments.

11. Ex Parte Communications

Under § 412.264(c)(1), the members of the MGCRB and its staff may not consult or be consulted by an individual representing the interests of an applicant hospital or by any other individual on any matter at issue before the MGCRB without notice to the hospital or HCFA. If such communication occurs, the MGCRB discloses it to the hospital or HCFA, as appropriate, and makes it part of the record after the hospital or HCFA has had an opportunity to comment. MGCRB members and staff may not consider any information outside the record about matters concerning a hospital's application for reclassification.

Under § 412.264(c)(2), the prohibition of ex parte communications does not apply to the following: communications among MGCRB members and staff; communications concerning the MGCRB's administrative functions or procedures; requests from the MGCRB to a party or HCFA for a document; and material that the MGCRB includes in the record after notice and an opportunity to comment.

Comment: In view of HCFA's role as technical advisor to the MGCRB, HCFA should be prohibited from engaging in ex parte communications. The same prohibition should apply to HCFA engaging in ex parte communications with the Administrator with regard to appeals.

Response: We believe that the existing regulations concerning MGCRB procedures provide adequate safeguards against ex parte communications. Under § 412.258(b), HCFA may provide written comments and recommendations to the MGCRB on a case-by-case basis, and it must provide simultaneously copies of any such communications to the hospital. Moreover, under § 412.264(c), if an ex parte communication occurs between MGCRB staff and HCFA, the MGCRB will disclose the communication to the hospital and make it part of the record after the hospital has had an opportunity to comment.

We agree that the restrictions on ex parte communications similar to those provided in § 412.264(c) should also apply to communications between HCFA policymaking components and the Administrator, when a case is reviewed by the Administrator. Accordingly, we have added new §§ 412.278 (c)(3) and (e) to address this issue. (Similar to the provisions in § 412.264(c)(2)(i), these restrictions do not apply to communications between the Administrator and staff of the Office of the Attorney Advisor, which assists the Administrator in the review of PRRB and MGCRB decisions (55 FR 32149).)

When a hospital appeals a decision of the MGCRB, § 412.278(b) requires that the hospital and HCFA submit all comments and recommendations to the Administrator in writing and that the hospital or HCFA be given an opportunity to respond in writing to any comments or recommendations. When the Administrator undertakes discretionary review of a MGCRB decision, new § 412.278(c)(2) requires that the Administrator promptly notify the hospital that he or she has decided to review the MGCRB decision. The notice of review to the hospital indicates the particular issues to be considered, and includes copies of any comments submitted to the Administrator by HCFA staff concerning the MGCRB decision. New § 412.278(c)(3) specifies that the hospital has 15 days to submit to the Administrator a written response to the notice of review. New § 412.278(e) provides additional communication safeguards by specifying that all communications between HCFA staff and the Administrator concerning the Administrator's review of an MGCRB decision must be in writing, with copies furnished to the hospital. The communication procedures set forth in § 412.278(e) apply both to the Administrator's discretionary review of an MGCRB decision and to the Administrator's review at a hospital's request. The above provisions have been included to reduce hospital concerns about ex parte communications in the MGCRB and Administrator review processes.

12. Requests for Information or Data

Section 412.266 concerns requests for information and data. A hospital may request from HCFA wage data information necessary for a complete application. If the information is requested by September 1 (or by October 1, 1990 for applications for reclassification to be effective for Federal fiscal year 1992), HCFA provides the information to the hospital within 15 days in order for the hospital to complete its application by October 1. The request for this information from HCFA should be made to the following address: Office of Payment Policy, Division of Hospital Payment Policy, Room 1–H–1, East Low Rise Building, 6325 Security Blvd., Baltimore, MD 21207. Re: Request for HCFA Wage Data.

If HCFA does not respond timely to the request for wage data necessary for the hospital to file a complete application timely, the hospital should file its application; provide a copy of the prior request to HCFA for data; and request the necessary information through the MGCRB. That request must accompany the application to the MGCRB. If the MGCRB grants the request, HCFA must respond within 15 days of the MGCRB's ruling.

13. Subpoenas

Section 412.268 sets forth rules concerning use of subpoenas by the MGCRB. When reasonably necessary for the full presentation of a case, and only after a predecision request for information or data has failed to produce the necessary evidence, the MGCRB may, either upon its own motion or upon the request of the hospital, issue subpoenas for the attendance and testimony of witnesses (for an oral hearing) or for the production of books, records, correspondence, papers, or other documents that are relevant and material to any matter in issue. A party that desires the issuance of a subpoena files with the MGCRB a written request prior to the decision. The request must designate which witnesses or documents are to be produced, and describe the addresses or locations with sufficient particularity to permit these witnesses or documents to be found. The request for a subpoena must state the pertinent facts that the party expects to establish by the requested witnesses or documetns and whether these facts could be established by other evidence without the use of a subpoena. Subpoenas are issued as provided in section 205(d) of the Act.

14. Witnesses

Under § 412.270, witnesses at an oral hearing testify under oath or affirmation, unless excused by the MGCRB for cause. The MGCRB may examine the witnesses and also allow the hospital or its representative to examine any witnesses called. In addition, the hospital may cross-examine any witnesses who are called to testify.

15. Record of Proceedings Before the MGCRB

Under § 412.272, a complete record of the proceedings before the MGCRB is made in all cases. The record is not closed until a decision has been issued by the MGCRB. A transcription of an oral hearing is made at a party's request, at the expense of that party.

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16. MGCRB Decision and Notice

Under § 412.276, the MGCRB issues a written decision within 180 days after the first day of the Federal fiscal year preceding the Federal fiscal year for which a hospital has filed a complete application for reclassification. The decision is based on the evidence of record, including the hospital's application and other evidence obtained or received by the MGCRB. A MGCRB decision changing a hospital's classification is effective for one year, effective for discharges occurring on or after the first day of the Federal fiscal year following the MGCRB decision, and expiring with discharges occurring on the last day of that same Federal fiscal year.

A copy of the decision is mailed to the hospital and to HCFA. The MGCRB notifies the hospital or group of hospitals that it has 15 days from the date of the decision to request the Administrator to review the decision. The decision of the MGCRB is final and binding on the hospital and HCFA, unless it is reviewed by the Administrator in accordance with § 412.278.

Comment: Hospital redesignations should be granted for more than one year because of the difficulty of engaging in long-term financial planning.

Response: Section 1886(d)(10)(C)(i) of the Act specifies that the MGCRB's determination regarding a hospital's application for geographic reclassification be for a period of a fiscal year. Accordingly, the prescribed term of an MGCRB decision is one year. As provided under § 412.274(c), however, the MGCRB may determine that the facts supporting the decision will remain essentially unchanged through the end of the fiscal year following that for which application is made. In this case, the MGCRB may provide for either a one-year automatic renewal of its decision or an abbreviated application and decision process for renewal under § 412.274(c).

If the Board decides that it is possible the supporting data will vary to the point that a hospital would not qualify for reclassification in subsequent years, it would be inappropriate for the Board's decision to be for a longer term than one year. In this regard, we note that the results of the comparison between the hospital's cost per case and the standardized amount will change annually based on the more recent cost report data and updated standardized amounts. Beginning in FY 1994, the wage comparison results will also change annually since the wage data will be updated annually.

Comment: Although the fiscal intermediary is not involved in the MGCRB proceedings, HCFA should establish a procedure for notifying the intermediary of a hospital's successful application for reclassification.

Response: We agree that fiscal intermediaries must be informed regarding hospital reclassifications and are now developing procedures to do so on a routine basis. We will notify intermediaries of all hospital reclassifications before the beginning of the Federal fiscal year in which the redesignations take effect, and provide the necessary instructions for updating the provider-specific files to reflect the redesignations. In addition, the new wage index value applicable to a reclassified hospital will be incorporated into the PRICER program used to determine the amount of a hospital's prospective payment.

Comment: If the MGCRB fails to issue a decision by the required deadline of March 30, a hospital's request for redesignation should be automatically approved.

Response: Under section 1886(d)(10)(C)(iii)(I) of the Act, the MGCRB must issue all decisions on hospital requests for reclassification by March 30. The Board fully understands its statutory duty and will endeavor to issue decisions by this deadline for all timely and complete applications filed by hospitals. The statute does not provide any basis for the automatic approval of a hospital's request for redesignation.

At the same time, we recognize that in its first year of operation, the MGCRB has been inundated with applications for reclassification and, as a result, it is possible that the MGCRB may not be able to issue decisions on every application by March 30. If this occurs, we will base the FY 1992 proposed wage index and budget neutrality adjustment on the cases that have been decided by March 30. However, we anticipate that all decisions will be made and the administrative review process completed in time for all decisions to be reflected in the final rule setting forth the FY 1992 prospective payment rates for Medicare inpatient hospital services.

Comment: Several of the timeframes set forth in the interim final rule are not fair to hospitals. In particular, the requirement under § 412.276(a) that a hospital must request Administrator review of a Board decision within 15 days after the MGCRB issues its decision is unduly burdensome and should be changed to "within 15 days of receipt of the MGCRB's decision."

Response: Time is of the essence throughout the MGCRB decision-making and appeals process. Under section 1886(d)(10)(C)(iii)(I) of the Act, the MGCRB must issue its decisions no later than 180 days after October 1, and the Administrator must issue a decision within 90 days of the date of an appeal. Congress specified these very tight timeframes in order to ensure that the effects of reclassifications could be reflected in the new standardized amounts and wage index values for prospective payment hospitals that go into effect on October 1 of each year. We urge hospitals to both familiarize themselves with, and adhere to, the necessarily tight timeframes for application and appeal. Relaxation of these requirements would jeopardize the ability of the MGCRB and the Administrator to meet their statutory decision-making deadlines.

17. Administrator's review

Under section 1886(d)(10)(C)(iii)(II) of the Act, the Secretary has the authority to review decisions by the MGCRB regarding geographic reclassification or redesignation. The Secretary has delegated this authority to the HCFA Administrator who has redelegated it to the Deputy Administrator. Thus, the Deputy Administrator's review is the final Department review of MGCRB decisions. (For the sake of simplicity, the final Department review of MGCRB decisions which is conducted by the Deputy Administrator is referred to hereafter in this preamble and in § 412.278 as "Administrator's review".)

Prior to the enactment of Public Law 101–508, section 1886(d)(10) of the Act did not specifically address HCFA's authority to review and MGCRB decision at the discretion of the Administrator or the Secretary. Accordingly, in the interim final rule, the Secretary delegated to the MGCRB the authority to issue final decisions on applications for geographic reclassification, unless the MGCRB's decision is appealed to the Administrator by a hospital. However, we asserted that nothing in this delegation to the MGCRB prejudiced the Secretary's authority to amend the delegation at some future date and to delegate the authority to review all MGCRB decisions to the Administrator of HCFA or elsewhere.

Subsequently, as noted in section IV of this preamble, section 4002(h)(2)(B)(iv) of Public Law 101–508 amended section 1886(d)(10)(C)(iii)(II) of the Act by deleting the first two sentences, which read:

A decision of the Board [MGCRB] shall be final unless the unsuccessful applicant appeals such decision to the Secretary by not later than 15 days after the Board renders its decision. The Secretary in considering the appeal of an applicant shall receive no new evidence but shall consider the record as a whole as such record appeared before the Board.

Section 4002(h)(2)(B)(iv) of Public Law 101–508 further amended section 1886(d)(10)(C)(iii)(II) of the Act to require that the appeal of MGCRB decisions be subject to section 557(b) of the Administrative Procedure Act. Section 557(b) of the Administrative Procedure Act specifies that:

" * * * When the * * * [MGCRB] makes an initial decision, that decision then becomes the decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within time provided by rule. On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule * * *"

In response to the provisions of Public Law 101–508, we have revised § 412.278 to incorporate procedures for discretionary review by the Administrator. For those instances in which the Administrator decides to review MGCRB decisions, the process is as follows:

- Under § 412.278(c)(1), the Administrator has the discretion to review any final decision of the MGCRB.
- Section 412.278(c)(2) specifies that if the Administrator decides to review the decision, the Office of the Attorney Adviser (OAA) will promptly send a notice of review to the hospital and to HCFA and will indicate the particular issues to be considered. The notice will include copies of any comments submitted to the Administrator by HCFA staff concerning the MGCRB's decision.
- Under § 412.278(c)(3), the hospital has 15 days from receipt of this notice to submit its comments to the Administrator, with a copy to HCFA.
- Section 412.278(d) sets forth the criteria for discretionary review by the Administrator. In deciding whether to review an MGCRB decision, the Administrator will normally consider whether it appears that:

—The MGCRB made an erroneous interpretation of law, regulation or HCFA Ruling;
—The MGCRB's decision is not supported by substantial evidence;
—The case presents a significant policy issue based in law or regulation, and review may be needed to clarify a provision in law or regulation;
—The MGCRB's decision requires clarification, amplification or an alternative legal basis; or
—The MGCRB has incorrectly extended its authority beyond that provided by law, regulation or HCFA Ruling.

- For cases reviewed at his or her discretion, the Administrator must issue a decision in writing within 105 days of the MGCRB decision. The statute does not prescribe a period for the Administrator to issue decisions on cases reviewed at his or her discretion. However, we are requiring that the Administrator's decision be issued within 105 days of the MGCRB decision to ensure that these cases are decided within a time period consistent with those decided on appeal, that is, the 15 days in which the hospital may appeal the MGCRB's decision to the Administrator plus the 90-day review period.

Public Law 101–508 did not necessitate changes in the procedures set forth in the interim final rule (under § 412.278) for appeals at the request of hospitals. As noted in section IV of this preamble, the Conference Committee Report accompanying Public Law 101–508 directed that the Secretary retain the requirement that a hospital must appeal an MGCRB decision to the Secretary within 15 days of the decision. (H.R. Rep. No. 964, 101st Cong. 2nd Sess. 715 (1990).) In addition, we have retained in this rule the provision in § 412.278(c) prohibiting the consideration of new evidence by the Administrator in reviewing an MGCRB decision. The prohibition on new evidence (which is redesignated in this final rule with comment period to § 412.278(f)(1)) is necessary because the Administrator must issue a decision within 90 days from the date of the hospital's appeal request or, in cases decided pursuant to discretionary review authority, within 105 days from the date of the MGCRB decision. If the Administrator were permitted to consider new evidence on appeal, it is unlikely that he or she would be able to satisfy these requirements. As stated above in a response to comment, these tight timeframes are needed in order to permit the effects of reclassifications to be reflected in the new standardized amounts and wage index values for prospective payment hospitals that go into effect on October 1. In addition, the regulations already specify in great detail what documentation is necessary to support a request for reclassification. That documentation should all be included with the original application.

However, as detailed below, we have redesignated portions of § 412.278 to accommodate the addition of the new provisions regarding discretionary review by the Administrator. We have also revised former § 412.278(c)(3) to provide at § 412.278(f)(2)(i) that the Administrator must "issue" a decision within 90 days of a hospital's request for review, rather than "furnish" the decision to the hospital within 90 days.

Under § 412.278(a), if a hospital is dissatisfied with the MGCRB's decision regarding its geographic classification, the hospital may request the Administrator to review the decision. In addition, a hospital may request that the Administrator review the dismissal of its application by the MGCRB. In conjunction with considering the request for review, the Administrator may also review rulings made by the MGCRB regarding admissibility of evidence, and if the Administrator decides that an MGCRB evidentiary ruling is erroneous, the Administrator has the authority to consider the previously excluded evidence or exclude (or assign a different probative value to) previously considered evidence.

Under § 412.278(b)(1), "the hospital's request for review must be in writing and sent to the Administrator, in care of the Office of the Attorney Advisor, as follows: Office of the Attorney Advisor, Room 660, East High Rise Building, 6325 Security Blvd., Baltimore, MD 21207. Re: Appeal of MGCRB Decision.

The request must be received by the Administrator within 15 days after the date of the MGCRB's decision. A request for Administrator review filed by facsimile or other electronic means will not be accepted. The hospital must also mail a copy of the request for Administrator review to HCFA's Office of Payment Policy at the following address: Office of Payment Policy, Division of Hospital Payment Policy, Room 1–H–1, East Low Rise Building, 6325 Security Blvd., Baltimore, MD 21207. Re: Appeal of MGCRB Decision.

Under § 412.278(b)(2), the request for review may contain proposed findings of fact and conclusions of law, disagreements with the MGCRB's decision, and supporting reasons therefore.

Under § 412.278(b)(3), within 15 days of receipt of the hospital's request for review, HCFA may submit to the Administrator, with a copy to the hospital, written comments concerning the hospital's request. Section 412.278(b)(4) allows the hospital 10 days from receipt of HCFA's comments to submit a response to the Administrator. As noted above in a response to comment, new § 412.278(e) provides for additional communication safeguards applicable to the Administrator's review of an MGCRB decision both at a hospital's request or at his or her discretion.

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Under 412.278(f), the Administrator may not consider any new evidence and is to issue a decision based only upon the record as it appeared before the MGCRB. The Administrator's decision is issued in writing to the party with a copy to HCFA not later than 90 days following receipt of the hospital's request for review or not later than 105 days following the MGCRB's decision for cases reviewed at the discretion of the Administrator. The Administrator's decision is final and is not subject to judicial review.

Comment: According to § 412.278(c) of the interim final rule, the Administrator's review of an MGCRB decision is to be based only upon the record as it appeared before the MGCRB. This requirement precludes a hospital from giving reasons why it believes the MGCRB decision is incorrect.

Response: Although the Administrator is constrained from considering any new evidence in reviewing the MGCRB decision, a hospital's request for review may contain proposed findings of fact and conclusions of law, as well as other supporting reasons for disagreement with the MGCRB decision. Both the preamble to the interim final rule (55 FR 36759) and § 412.278(b)(2) of the regulations discuss the permitted contents of a hospital's review request.

18. Representation

The rules concerning representation are set forth in § 412.280. A hospital may be represented by legal counsel or any other person appointed to act as its representative with regard to any application filed by a hospital, which is under consideration by the MGCRB or the Administrator.

A representative appointed by the hospital may accept or give on behalf of its client any request or notice relative to any application before the MGCRB or the Administrator. A representative is entitled to present evidence and allegations as to facts and law regarding a hospital application to the same extent as the party he or she represents. Notice of any action or decision sent to the representative of a party has the same effect as if it had been sent to the party itself.

B. Criteria and Conditions for Geographic Reclassification

As required by section 1886(d)(10)(D) of the Act, the September 6, 1990 interim final rule with comment period set forth guidelines to be used by the MGCRB in making its decisions on requests for geographic reclassification. Guidelines concerning the criteria and conditions for hospital redesignation are located in §§ 412.230 through 412.236. The purpose of these criteria is to provide direction, to both the MGCRB and those hospitals seeking geographic reclassification, with respect to the situations that merit an exception to the rules governing the geographic classification of hospitals for purposes of payment under the Medicare prospective payment system.

Section 1886(d)(10)(D) of the Act specifies that the criteria address the following:

- The comparison of wages, taking into account occupational mix, in the area in which the hospital is classified and the area in which the hospital is applying to be classified.
- The determination of whether the county in which the hospital is located should be treated as being a part of a particular MSA.
- The consideration of information provided by an applicant with respect to the effects of the hospital's geographic classification on access to inpatient hospital services of Medicare beneficiaries.
- The consideration of the appropriateness of criteria used to define NECMAS.

1. General Principles

The following general principles apply to the criteria:

- The MGCRB has the authority to make decisions with respect to reclassification from a rural area to an urban area or another rural area and reclassification from an urban area to another urban area.
- In order to be reclassified, a hospital, or group of hospitals, must be located in a county or MSA that is adjacent to the MSA or rural area to which that hospital or group of hospitals seeks reclassification. That is, the border must be contiguous. However, this requirement does not apply with respect to rural referral centers and sole community hospitals that apply for urban redesignation, as explained below.
- Decisions of the MGCRB may be applicable either to a single hospital based on hospital-specific criteria, or to all hospitals in a county based on county-specific criteria. In the latter case, an application must be signed by all hospitals in the county that are subject to the prospective payment system.
- Although all hospitals located in a qualifying rural county could be deemed a part of an adjacent MSA or NECMA for payment purposes under the prospective payment system, the population of that county would not be included in the MSA or NECMA for purposes of determining whether the MSA or NECMA is a large urban area (that is, an MSA with a population of at least 1,000,000 or an NECMA with a population of at least 970,000). The MGCRB does not have the authority to designate areas as large urban areas by including the population of additional counties.
- It is the responsibility of the hospital to acquire and furnish data to support its application. In general, only substantiated data from an official source are acceptable for use by the MGCRB in issuing its decisions. Moreover, where data are available on a national basis, the national data must be used since all hospitals have equal access to these data sources. For example, with respect to population and commuting data, the Bureau of Census is the only national data source available to all hospitals. Therefore, local population and commuting studies would not be acceptable since these studies may not be consistent with Census Bureau data and are not available to all hospitals on a national basis.

With respect to hospital-specific data, for the most part only data used in preparing a hospital's Medicare cost report or HCFA wage survey form would be acceptable, since these data were used in official documents submitted by hospitals and have generally been substantiated by the fiscal intermediaries. In the September 6, 1990 interim final rule with comment, we provided the following list of acceptable data sources (55 FR 36760):

—Financial Data

Hospital-specific data—Most recently settled and most recently filed cost report data.

Data for other hospitals—Appropriate published **Federal Register** final rule revisions to the prospective payment system rates for Medicare inpatient hospital services; and data from the most recent HCFA wage survey.

HCFA wage data can be obtained by contacting Lana Price at the following address: Office of Payment Policy, Division of Hospital Payment Policy, Room 1–H–1, East High Rise Building, 6325 Security Blvd., Baltimore, MD 21207, (301) 966–4534.

—Occupational Data

Bureau of Labor Statistics, Industry Wage Survey: Hospitals.

Occupational mix data from the American Hospital Association annual survey data "Hospital Personnel by Occupational Category, Annual Survey of Hospitals."

AHA wage data can be obtained by contacting Ollie Williams of the AHA at (312) 280–5991.

—Access, Appropriateness and Population

Residence of employees—verified by hospital payroll records.

Population, population density, and commuting data—Bureau of the Census, specifically, population surveys and estimates made periodically by the Bureau of the Census.

The MGCRB may not consider commuting data that are more recent than the most recent decennial census because the Bureau of Census does not update commuting data more often than once every ten years. However, the MGCRB will consider requests based on more recent Bureau of Census data regarding population density, population growth, and changes in designation of urbanized areas.

Comment: HCFA's reliance in the reclassification guidelines on a historical cost-based methodology is biased since it perpetuates payment inequities and rewards inefficiency. Hospitals should be able to qualify for reclassification based on various demonstrations of comparability, such as range of services, occupations, case-mix index, or, for a rural referral center, service certifications.

Response: Under the prospective payment system, the geographic classification system is intended to group hospitals which face similar market conditions. Urban hospitals tend to have higher costs even after accounting for wage differences, case mix, teaching intensity and services to low income patients. The higher costs are largely attributable to differences in the mix and volume of services provided that reflect a wider range of available services and differences in practice patterns. Thus, hospitals in urban areas tend to treat relatively more complex cases, employ more technologically-intensive treatment practices, and offer a broader range of services. Rural hospitals tend to treat less complex cases and use fewer and less costly resources. Within each labor market area, hospitals are assumed to compete for employees.

We believe that the geographic reclassifications should be limited to those hospitals which are disadvantaged by their current geographic classification because they compete with the hospitals that are located in the geographic area to which they seek to be reclassified. We believe it is appropriate for the reclassification guidelines pertaining to the standardized amount to have a direct relationship to the hospital's costs per case since it is a measurement of whether the hospital is providing services that are more comparable to those provided by an urban hospital or a rural hospital. We do not have standard measurements that would allow us to compare directly and readily differences in service intensity that are not accounted for by the DRG case mix measurement. The use of cost per case as the measure rests on an underlying assumption that the hospital is operating efficiently and that costs are comparable because it is treating a similar mix of patients with comparable resources.

Regarding reclassification for purposes of the wage index, we believe that the comparison of the hospital's average hourly wage with the average hourly wage of the area to which it seeks reclassification is the appropriate measure of whether it competes with hospitals in the adjacent area for employees.

With respect to the concern that the guidelines for reclassification perpetuate historical payment inequities, we do not believe that the geographic reclassifications under section 1886(d)(10) are intended to address the broader issue of payment equity and the urban/rural differential in the standardized amounts under the prospective payment system. We believe that section 1886(d)(10) addresses those situations where a hospital competes in the same market with hospitals in an adjacent area; that is, the hospital is more like the hospitals in the adjacent area than the hospitals in its geographic area. We recognize that in relying on cost comparisons in making that determination, hospitals with lower costs per case or wage costs will not be able to qualify for reclassification. However, we do not believe it would be appropriate to reclassify these hospitals since their current cost level does not indicate that they are comparable to hospitals in the adjacent area. The broader issue of urban/rural differentials was addressed by section 4002(c) of Public Law 101–508, which phases out the differential between the rural and other urban standardized amounts by FY 1995.

Comment: The regulations set forth in the September 6, 1990 interim final rule do not allow the Board enough latitude to make decisions concerning the reclassification applications. Specifically, the Secretary was directed to issue "guidelines", rather than the more strict "criteria" contained in the interim final rule. One commenter suggested that HCFA establish an administrative resolution process to expedite decisions on cases that clearly met the guidelines for reclassification.

Response: The legislative history of section 1886(d)(10) of the Act does not provide guidance as to Congressional intent concerning the type of circumstances that would merit reclassification and, therefore, the exact nature and extent of guidelines that the Secretary should establish. We note that Public Law 101–508 included a number of revisions to section 1886(d)(10) of the Act; however, none of the provisions in Public Law 101–508 dealt with the specific criteria included in the interim final rule. While the language in the Conference committee report accompanying Public Law 101–508 (H.R. Rep. No. 964, 101st Cong., 2nd Sess. 715 (1990)), did suggest an alternative threshold with respect to the wage criteria and clarified Congressional intent concerning joint applications for urban to urban reclassifications, there was no indication that the establishment of specific guidelines and numeric thresholds were contrary to Congressional intent. Moreover, the fact that the Conference committee language did suggest an alternative threshold would imply that the Congress generally endorsed the approach set forth in the interim final rule.

We believe the specific criteria with respect to data requirements and qualifying thresholds are necessary to ensure that all hospitals are treated fairly and consistently. In addition, our goal in establishing the guidelines was to develop a simplified process, whereby hospitals could readily complete their own applications. The numeric thresholds help to facilitate this application process as well as to expedite the determination process. Given the volume of applications, a determination process with less specific criteria would likely be a more time-consuming process and, therefore, would make it less feasible for the MGCRB to meet the March 30 deadline for issuing its decisions. We note that although commenters suggested that the MGCRB be provided with more discretion, these commenters did not suggest alternative guidelines that could be readily applied in a consistent and equitable manner.

Moreover, we believe that the regulations do provide the MGCRB with a substantial amount of latitude both to evaluate applications and render decisions with respect to the acceptability of the documentation submitted to support the reclassification requests. Following are examples from each stage of the process that illustrate

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the areas of discretion afforded the MGCRB in the interim final rule:

• *Application process.* The MGCRB has the responsibility to determine if a complete application was filed timely and whether circumstances warrant additional time to submit supplemental information in the case of an incomplete application.

• *Methodology.* Although we have described a methodology that should be followed by hospitals in determining if the various criteria are met, the MGCRB has the discretion to accept an alternative methodology that establishes that the specified criteria are met if the MGCRB determines it is also appropriate. For example, we have established a methodology to determine if the hospital meets the cost criterion for reclassification for purposes of the standardized amount. If a hospital uses a different methodology to make the cost comparison based on acceptable data, the MGCRB may nevertheless determine that the hospital has demonstrated that it qualifies for reclassification.

• *Standardized cost comparison.* The MGCRB has the responsibility to determine if the hospital's costs reported on the hospital's most recently filed cost report appear reasonable and should be used in making the cost comparison.

• *Wage data comparison.* The MGCRB is responsible for determining if the occupational mix categories used by the hospital are reasonable.

• *Special access rule.* The MGCRB has discretion in defining the closest MSA for purposes of SCH and RRC reclassifications.

• *Renewals.* Depending on its assessment of the individual hospital or group of hospitals seeking reclassification, the MGCRB has the discretion to grant a reclassification for one year only, to provide for an automatic one-year renewal, or to provide for an abbreviated application process in the second year.

We note that if we were to expand the variables which the MGCRB may consider in determining if reclassification is appropriate, we would provide the MGCRB with authority both to deny certain reclassifications even though the specified criteria are met, as well as to permit certain reclassifications even though the specified criteria are not met. The guidelines that we have established are quite liberal, as evidenced by the volume of applications from hospitals contending that they meet the current criteria. Therefore, we believe that there is a greater likelihood that the MGCRB would determine, if given the discretion, that in particular cases the specified criteria are too lenient rather than too restrictive. For example, the cost comparison for purposes of the standardized amount is based on an assumption that the hospital is operating efficiently. There may be cases where a hospital's higher costs per case result from low occupancy rather than the volume and mix of services it provides. Another example is a situation where there is no evidence that access to care is threatened by a hospital's current labor market classification because Medicare payments more than adequately compensate the hospital for the services it provides to Medicare patients. Since aggregate payment levels are unaffected by geographic reclassifications, we believe that our responsibility to other hospitals to protect against inappropriate reclassifications is equal to our responsibility to assure that hospitals meriting reclassification are afforded proper consideration.

Accordingly, we plan to evaluate the extent and appropriateness of reclassifications under the current criteria. If our analysis indicates that specific criteria do not result in appropriate reclassifications because they are either too liberal or too stringent, or do not allow the MGCRB adequate discretion, we will propose revisions to the guidelines for future application cycles.

In establishing the MGCRB, Congress expressed its clear intent that the MGCRB make the initial decision on hospital requests for reclassification. Given the MGCRB's clear responsibility to make decisions concerning reclassification applications and the degree of judgment required of the MGCRB in doing so, we do not believe that HCFA should have any initial decision-making authority in a hospital's request for reclassification. Thus, an administrative review process to expedite decisions on cases that appear on the surface to meet the guidelines would not be appropriate. However, we note that the MGCRB has the authority to establish necessary and appropriate procedures that are consistent with the statute and regulations. Thus, the Board would not be precluded from establishing internal procedures to expedite decisions on certain cases.

Comment: The MGCRB interim final rule was flawed in that it failed to address the disparate wage levels paid by inner-city hospitals and suburban hospitals within an existing urban area. Specifically, the guidelines do not authorize the MGCRB to recognize the substantially higher wages paid by hospitals in "core" urban areas compared to hospitals in the suburban "ring" areas within the existing MSAs and NECMAS. When Congress established the MGCRB under section 1886(d)(10) of the Act, it intended to create a mechanism under which any prospective payment hospital could request a change in geographic reclassification, without restricting such reclassifications to the existing MSAs or NECMAs. By not expressly granting the MGCRB the authority to recognize and approve reclassification requests by city hospitals, HCFA has unreasonably restricted the MGCRB's authority.

Response: When Congress added section 1886(d)(10) to the Act its intent was to allow hospital reclassification from one established geographic area to another. Congress made no provision for the establishment of new labor market areas by the MGCRB. In directing the Secretary to establish guidelines to be utilized by the MGCRB in furnishing its decisions, Congress specified in section 1886(d)(10)(D) of the Act that the guidelines address reclassifications from one labor market area to another; reclassifications from one area to a particular MSA; the effects of geographic classification on access to care; and the appropriateness of the criteria used to define NECMAs. Had Congress intended that the MGCRB be given authority to redefine labor market areas, the Secretary would have been directed to establish such guidelines under section 1886(d)(10)(D) of the Act.

Section 1886(d)(3)(E) of the Act provides that the Secretary shall adjust the proportion of hospitals' costs which are attributable to wages and wage-related costs for area differences in hospital wage levels by a factor established by the Secretary. Under this authority, the Secretary establishes labor market areas in order to adjust for different area wage levels. In contrast, the MGCRB's function is to consider whether hospitals are appropriately classified into the labor market areas established by the Secretary. Absent specific Congressional direction, we believe that it would be inappropriate for the Secretary to delegate to the MGCRB the authority to establish guidelines that would give the MGCRB jurisdiction to consider requests to establish new labor market areas.

Comment: The interim final rule did not provide sufficient flexibility in terms of the data sources permissible for use with hospital reclassification requests. Hospitals should be able to use the Medicare cost report, as well as other alternative data sources such as local survey data, market research and hospital payroll records. One commenter asserted that in view of perceived inaccuracies in the American Hospital Association (AHA) Annual Survey data, other data sources should be used.

Another commenter suggested that a hospital should be able to submit any evidence it chooses to the MGCRB, and the MGCRB should then decide whether such evidence is relevant. Further, a hospital should be allowed to submit relevant evidence that becomes available after the deadline for filing an application.

Response: While it is true that no data source is perfect, consistency must be a requirement for the data used for reclassification purposes. In order to ensure that no individual hospital or groups of hospitals can obtain an unfair advantage in the reclassification process, it is necessary to require that hospitals rely on data that are uniformly available throughout the nation. While the local data in one area may be valid, the inability of another area to access the same data introduces a bias to the process. Also, the data must be verifiable by the MGCRB. Therefore, local commuting surveys, market research, or individual hospital payroll records other than those specified in § 412.230 are not acceptable.

With respect to the wage data, it is essential to use standard data for the same time period so that the wage comparisons can appropriately reflect labor costs for the same point in time. The Medicare cost report cannot be used because it does not show paid hours. Hospital payroll data for other than the cost reporting period ending in 1988 would not be audited or otherwise verified and therefore cannot be used. Other than the Bureau of Labor Statistics' data, there are no alternative occupational mix data sources to the AHA Annual Survey that are comparable across areas and can be consistently applied.

Section 412.230(e) provides that only hospital-specific wage data from the most recent HCFA hospital wage survey may be used, so that the data can be verified. An individual hospital's wage survey data are for its cost reporting period ending in calendar year 1988. The individual hospital wage data are adjusted to a common point in time, in calendar year 1988, in constructing the wage index. Thus, the average hourly wage for the individual hospital is for its cost reporting period ending in calendar year 1988 (for example, July 1, 1987 through June 30, 1988), whereas the average hourly wage for the geographic area to which the hospital seeks reclassification is for calendar year 1988. The interim final rule was silent with regard to how the hospital-specific wage survey data should be adjusted to be comparable to the calendar year 1988 hourly wage amount when the hospital's cost reporting period is on other than a calendar year basis. We understand that some hospitals chose to submit calendar year 1988 payroll data in lieu of adjusting their hospital-specific wage survey data to its calendar equivalent in making the occupational mix comparison.

Since the interim final rule did not address this issue, we do not believe it would be appropriate to require on an across-the-board basis that these hospitals reconstruct their hospital-specific wage survey data by occupational category. Therefore, we are providing a limited exception that would allow the MGCRB to consider hospital payroll data based on calendar year 1988 if, in the MGCRB's judgment, the hospital has submitted sufficient documentation to substantiate that it is providing accurate and complete wage data. This exception applies only with respect to reclassification applications based on the occupational mix wage comparison that would be effective for FY 1992. For subsequent reclassification determinations and for wage index comparisons that do not involve occupational mix, only hospital-specific wage survey data may be utilized. Given the limited and temporary nature of this exception, we are not revising the regulation to incorporate the exception.

Under § 412.264(d), the MGCRB has the authority to rule upon the admissibility of evidence, and § 412.264(b) provides that the MGCRB is not limited by the rules of evidence applicable to court procedures. In general, however, we expect that the Board will only consider substantiated data from an official source in making its decisions. Also, in view of the tight timeframes the MGCRB must meet in its decision-making process, it is generally constrained from considering evidence submitted after the filing deadline. However, as explained in section V.B.6 above, we have revised § 412.256(c)(2) to provide that the MGCRB may, for good cause, grant a hospital an extension beyond the filing deadline to complete its application.

Comment: The interim final rule does not address whether a reclassification based on the commuting data would be retroactive to the first Federal fiscal year after the date of the 1990 census, that is, FY 1991.

Response: As specified in section 1886(d)(10)(C)(ii) of the Act, hospitals must submit requests for reclassification not later than the first day of the Federal fiscal year preceding the Federal fiscal year for which the decision will be effective. (However, as stated above, for reclassifications effective for Federal fiscal year 1992, the filing deadline was extended to November 6, 1990.) Accordingly, all reclassifications granted by the MGCRB become effective on a prospective basis only. Therefore, all reclassifications granted by the MGCRB during a fiscal year will be effective prospectively for discharges occurring on or after October 1 of the following fiscal year even if data from earlier years are used to support the reclassification request.

2. General Reclassification Guidelines

An individual hospital may seek reclassification for purposes of its wage index, standardized amount, or both. The September 6, 1990 interim rule set forth separate guidelines for each situation. A hospital that is reclassified from one area to another area only for purposes of the wage index is not considered urban for any other purpose than its labor market area designation. A hospital seeking reclassification for purposes of its wage index must demonstrate that its wages are comparable to the wages paid in the geographic area to which it requests reclassification.

A hospital that is reclassified only for purposes of its standardized amount is considered urban for all purposes except use of the wage index under 1886(d)(2)(D) of the Act. With respect to a reclassification request for purposes of a hospital's standardized amount, the hospital must demonstrate that its costs per case are more comparable to the amount the hospital would be paid if it were reclassified than the amount it is currently paid.

Except for rural referral centers and sole community hospitals, a hospital must be located in a county that is adjacent to the rural area or urban area to which it seeks redesignation. In addition, any individual hospital seeking reclassification from one area to another must meet one of the following proximity guidelines.

• *Distance:* A rural hospital requesting redesignation to an urban area or a rural area in another State must be located no more than 35 road miles from the border of the area to which it is requesting redesignation. An urban hospital requesting redesignation to another urban area must be located no more than 15 road miles from the border of the urban area to which it is requesting to be redesignated. For this purpose, as defined in § 412.92(c)(1), the term road miles means "the shortest distance in miles measured over improved roads. An improved road for

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this purpose is any road that is maintained by local, State, or Federal government entity and which is available for use by the general public."

• *Residence of employees:* A hospital requesting redesignation from one geographic area to another area must demonstrate that 50 percent or more of its employees reside in zip code areas located within the area to which it is requesting to be redesignated.

Comment: The requirement that a hospital must meet both adjacency and mileage criteria is too restrictive. If a hospital meets the mileage criteria, the requirement that the hospital be located in an adjacent area should be waived. In addition, hospitals should be able to qualify for redesignation based on characteristics such as driving time and various demonstrations of comparability to the MSA, such as range of services. The MGCRB should also consider requests that demonstrate that a hospital is not similar to the hospitals located in its immediate area. Finally, what are acceptable means for the verification of road miles for purposes of meeting the mileage criteria? Response: There is ample precedent for requiring that hospitals seeking reclassification to a different geographic area be located in a county that is adjacent (that is, contiguous) to that area. This is consistent with the way urban geographic areas are defined by OMB, which considers only adjacent areas in determining which counties are grouped into a given MSA. The adjacency requirement is also consistent with the special provision in section 1886(d)(8)(B) of the Act that allows hospitals located in certain rural counties that are adjacent to more than one MSA to be deemed urban for purposes of the wage index and standardized amounts. Since urban labor market areas are defined in terms of contiguous counties it is appropriate to require that a hospital be located in an area that adjoins the geographic area to which it is requesting reclassification.

The mileage criteria included in the proximity guidelines at § 412.230(b) were established to ensure that a hospital located in an adjacent county is also within a reasonable distance from the area to which it seeks redesignation and, thus, could be expected to compete in the same market area for both its employees and hospital inpatients. In some cases, a county may cover an unusually large area. The mileage criteria prevent these hospitals from reclassifying to areas that are not within their competitive marketplace.

Alternatively, hospitals that do not meet the mileage criteria can demonstrate economic ties to the area in which they are seeking redesignation under the proximity guideline at § 412.230(b)(2), which requires that at least 50 percent of the hospital's employees reside in the adjacent area. The use of numeric guidelines lends objectivity to the reclassification decision-making process and ensures that hospitals are treated uniformly. The guidelines set forth in the interim final rule were intended to assist hospitals in demonstrating that they do in fact compete with hospitals in another geographic area.

Finally, in order to demonstrate that it meets the guidelines set forth in the regulations, a hospital seeking reclassification must provide enough information to enable the MGCRB to make a reliable determination on the case. An official road map should be sufficient if it clearly shows that the hospital is located within the mileage limit. If the hospital is close to the mileage limit, and a map does not clearly show its location, the hospital may choose to verify the distance through the use of a road test. However, it is up to the MGCRB to determine if the hospital has adequately demonstrated that it meets the requirements for reclassification.

Comment: In the interim final rule, the references for "the necessary geographic relationship" are different in paragraphs (d) and (e) of § 412.230. Section 412.230(d) references § 412.230(b) while § 412.230(e) references § 412.230(a).

Response: We are correcting this omission in this final rule with comment period. Since both the adjacency and proximity guidelines must be met in order to qualify for redesignation (unless the facility is a rural referral center or a sole community hospital), we have revised paragraphs (d) and (e) of § 412.230 to specify that both paragraphs (a) and (b) of § 412.230 must be met to establish the necessary geographic relationship.

Comment: The qualification guideline at § 412.230(b) regarding the residence of employees criteria is too strict. This guideline states that a hospital that does not meet the proximity criteria for mileage may qualify if 50 percent or more of the hospital's employees reside in the area to which the hospital is seeking redesignation.

Response: A significant level of economic integration is necessary for reclassification. In cases where the mileage proximity criteria are met, the limited distance between the provider and the area to which reclassification is requested is sufficient evidence of economic integration. To demonstrate a significant level of economic interaction in cases where the mileage criteria are not met, there must be convincing evidence of interaction between the hospital and the area to which it is applying. We determined, and continue to believe, that a commuting level of 50 percent or more indicates this significant level of economic interaction with the area to which the hospital is seeking redesignation.

3. Special Access Rule for Rural Referral Centers and Sole Community Hospitals Seeking Reclassification

Section 1886(d)(10)(D)(i)(III) of the Act requires that the guidelines include criteria for considering information provided by a hospital with respect to the effects the hospital's geographic classification has on access to inpatient hospital services for Medicare beneficiaries. Generally, access to care is not an issue except for those areas serviced by rural referral centers (RRCs) and sole community hospitals (SCHs). Accordingly, we provide special access guidelines applicable to RRCs and SCHs at § 412.230(a)(4).

We do not require RRCs or SCHs to be located in counties adjacent to an urban area in order to be reclassified urban since their continued financial viability is necessary in order to preserve access to needed services for Medicare beneficiaries residing in these providers' service areas. Similarly, the proximity requirement does not apply for RRCs and SCHs because of the need to maintain access to tertiary care for Medicare beneficiaries in relatively isolated rural areas. RRCs and SCHs that compete with urban areas for labor, or which experience costs per case comparable to urban hospitals, have the opportunity to qualify for the urban wage index, and, where applicable, the large urban or other urban payment rate

If an RRC or an SCH can qualify for reclassification on the basis of its wages or costs, then it can apply for reclassification based on the need of the institution to provide access to care for Medicare beenficiaries. The requirement that the hospital be located in a county that is adjacent to an MSA or NECMA does not apply. However, if the MGCRB finds that the hospital qualifies for urban redesignation, then it must be redesignated as part of the MSA closest to the hospital.

Comment: Are SCHs and RRCs precluded from applying under the general adjacency and proximity criteria for reclassification in § 412.230(a) (2) and (3)?

Response: The special access provisions in § 412.230(a)(4) are intended to provide a means of reclassification for SCHs and RRCs that are unable to meet the general adjacency and proximity criteria. SCHs and RRCs may also apply for reclassification under the general adjacency and proximity criteria in § 412.230(a) (2) and (3), in which case they would not be limited to reclassification to the closest urban area, as required under the special access provisions in § 412.230(a)(4).

Comment: Section 412.230(a)(4)(iii) provides for the redesignation of an SCH or an RRC to the closest urban area. However, the definition being used for determining the closest area needs to be changed. Instead of measuring the distance to the closest MSA based on the MSA border, HCFA should measure the distance to the border of the core urbanized area of the MSA as defined by the Bureau of the Census. Section 1886(d)(2)(D) of the Act defines urban areas for the purposes of the prospective payment system as areas "within a Metropolitan Statistical Area * * *." The MSA that is closest by this alternative measurement is the MSA with which the RRC or SCH most closely competes for labor. Further, accurate measures of the closest MSA are difficult to determine, and it is possible that an MSA may be closer in mileage but farther away by travel time, due to the quality of the roads.

Response: MSA borders are defined on county lines, and these are the borders that are recognized in all cases for prospective payment system purposes. To recognize a different set of borders for MGCRB purposes would be inappropriate. We note that areas "within an MSA" constitute all areas within the MSA, and not just the core urbanized area. For applications based on the special access provisions, the MGCRB has the discretion to identify cases where travel time is a more appropriate measure of distance than is mileage, and we foresee circumstances where time would be the appropriate measure. For example, if an RRC is 55 miles from one MSA using a four-lane highway, and 45 miles from a second MSA using a two-lane road, it may well be the case that the more distant MSA is the MSA more appropriate for the facility's reclassification.

4. Cost Guidelines for a Hospital Seeking Reclassification for Purposes of its Standardized Payment Amount.

With respect to costs per case, a hospital qualifies for reclassification for purposes of its standardized amount if it can demonstrate that its costs per case are more comparable to the amount the hospital would be paid if it were reclassified than to the amount it is paid under its current classification.

Accordingly, in order to qualify for reclassification for purposes of its standardized payment amount, § 412.230(d)(2) requires that a hospital demonstrate that its case-mix adjusted cost per discharge is at least equal to its current rate plus 75 percent of the difference between that rate and what it would receive as a redesignated hospital.

In the September 6, 1990 interim final rule, we provided a wage comparison example (55 FR 36761) and a cost comparison example (55 FR 36762). In response to comments received on the interim final rule, we provide a revised cost comparison example below and a revised wage comparison example in section V(B)(5) below regarding wage guidelines.

Comment: The example published at 55 FR 36762 for calculating the standardized amounts for cost comparisons should be clarified. In particular, clarification is needed in the following areas: how to determine cost per discharge, which case-mix index should be used, how to pro-rate the standardized amount to match up with different cost reporting periods, and which wage index value should be used in these calculations.

Response: For the convenience of the reader, we have provided below a revised cost comparison example for determining whether a hospital qualifies for redesignation for purposes of its standardized amount.

The purpose of the cost comparison is to determine the relationship between the hospital's costs per case with the per case payment the hospital would receive with and without redesignation. A difficulty in making the comparison is that the current standardized amounts and payment adjustment factors do not match the period covered by the hospital's most recently filed cost reporting period. To avoid distorting the relationship between the hospital's costs per case and the standardized amount, the hospital-specific adjustment factors (that is, the case-mix index and the disproportionate share patient percentage) and the standardized amount should match the applicable cost reporting period. In addition, the hospital's costs must be reduced to reflect its outlier payments, because the standardized amounts used in the cost comparison do not include outlier payments.

Other payment adjustment factors should be used that will result in the best estimates of comparative payments per case with and without redesignation. The disproportionate share adjustment should be based on the formula that will be effective during the fiscal year for which redesignation is requested. The wage index value to be used depends on whether the hospital is seeking reclassification based solely on the standardized amount or is also seeking reclassification for purposes of the wage index. If the hospital is seeking reclassification for the wage index as well as the standardized amount, the wage index value applicable to the area to which the hospital is seeking redesignation is applied to the standardized amount calculation both before and after reclassification. Otherwise, the hospital's current wage index value is used.

We believe that requests for reclassification for purposes of the wage index and the standardized amount should be considered together, and that the determination of payments per case with and without redesignation for purposes of the standardized amount should reflect the best estimate of the wage index adjustment factor that will be applicable during the fiscal year. To the extent the wage index value after redesignation already accounts for the hospital's higher costs, those costs should not impact on the determination that reclassification for purposes of the standardized amount is appropriate.

Cost Comparison Example

Hospital A is a 170 bed rural hospital located in De Kalb County, Illinois that is applying to be part of the Chicago, Illinois MSA for purposes of both its wage index value and standardized amount. Hospital A's fiscal year ends 06/30/90.

Medicare costs net of passthroughs (Form 2552, Worksheet D–1, Part II, line 54)	$1,753,960
Total Medicare discharges (Form 2552, Worksheet S–3, Column 13, line 6)	400
Disproportionate share patient percentage	.25
Indirect Medical Education (IME) Adjustment Factor	.0610
Case Mix Index (CMI) (from applicable Federal Register document)	1.1000
DRG amount other than Outlier Payments (Form 2552, Schedule E, part A, line 1A)	$1,356,879
Outlier Payments (Form 2552, Schedule E, part A, line 1B)	$41,807

Step 1—Determine Hospital A's cost per discharge reduced for outliers:

A. Medicare costs net of passthroughs divided by total Medicare discharges = Hospital A's cost per case ($1,753,960 ÷ 400 = $4,384.90)

B. Outlier adjustment factor = 1 – (outlier payments divided by DRG amount other than outlier payments) = 0.9692

C. Hospital A's cost per discharge reduced for outliers = Hospital A's cost per case (from

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step 1A)×outlier adjustment factor (from step 1B)=$4,384.90×0.9662=$4,249.85

Step 2—Determine Hospital A's case-mix adjusted cost per discharge:

Hospital A's cost per discharge reduced for outliers divided by its case-mix index for the applicable cost reporting period ($4,249.85÷1.1000=$3,863.50)

Since the case-mix index can change from year to year depending upon the service furnished, it is important that the case-mix value correspond to the applicable cost reporting period. To be verifiable, the hospital should use the case-mix index values that are published annually as part of the prospective payment final rule. Hospitals with cost reporting periods other than the Federal fiscal year should prorate the case-mix value to the applicable cost reporting period. Alternatively, a case-mix index value developed by the intermediary may be used, as it is based on data accumulated from Medicare bills for the cost reporting period. A case-mix index value developed by the provider is not acceptable since it cannot be readily verified.

Step 3—Determine the payment Hospital A would receive as a large urban hospital in the Chicago, Illinois MSA:

Hospital A is a rural hospital whose: Disproportionate share adjustment factor=0.0; Indirect medical education adjustment factor=.0616

As an urban hospital, Hospital A's disproportionate share adjustment factor=(0.25−0.202)×0.70+0.0562=0.898

Since four difference standardized amounts from four **Federal Register** documents apply during the period from July 1, 1989 through June 30, 1990, the standardized amount is prorated.

For purposes of this illustration, we have prorated the standardized amount based on the number of months in the cost reporting period in which the applicable standardized amount was in effect. A provider may wish to submit, or the MGCRB may wish to require, a more accurate proration based on the number of calendar days or Medicare discharges that occurred during the period the applicable standardized amount was in effect.

FEDERAL REGISTER DOCUMENT

Date of FR doc.	Effective date	Period covered	Months in effect
09/30/88	10/01/88	07/01/89–09/30/89	3
09/01/89	10/01/89	10/01/89–12/31/89	3
12/29/89	01/01/90	01/01/90–03/31/90	3
04/20/90	04/01/90	04/01/90–06/30/90	3

Date of FR doc.	Chicago, IL		Rural, IL	
	Labor portion	Non-labor portion	Labor portion	Non-labor portion
09/30/88	2520.39	907.78	2281.73	664.15
09/01/89	2660.91	958.11	2403.67	700.19
12/29/89	2664.24	959.31	2500.49	728.39
04/20/90	2663.61	959.08	2500.26	728.33

Hospital A requested and qualifies for reclassification for purposes of the wage index. Therefore, the Chicago, Illinois wage index value (1.0538) should be used to determine the amount that would be payable.

Per discharge payment rate after reclassification equals the sum of the following:

[(Labor portion of standardized amount)×(Wage index value)+(Nonlabor portion of standardized amount)]×(1+DSH+IME)×(Months in effect/12)

For 07/01/89–09/30/89:
($2,520.39×1.0538+$907.78) × (1+0.0898+0.0616)×(3/12) ..... =$1,025.83

For 10/01/89–12/31/89:
($2,660.91×1.0538+$958.11) × (1+0.0898+0.0616)×(3/12) ..... =$1,082.94

For 01/01/90–03/31/90:
($2,664.24×1.0538+$959.31) × (1+0.0898+0.0616)×(3/12) ..... =$1,084.30

For 04/01/90–06/30/90:
($2,663.61×1.0538+$959.08) × (1+0.0898+0.0616)×(3/12) ..... =$1,084.04

Payment Hospital A would receive as part of the Chicago, Illinois MSA ..... =$4,277.11

Step 4—Determine the payment Hospital A would receive as a rural hospital (after redesignation for purposes of the wage index).

Per discharge payment rate without reclassification for standardized amount equals the sum of the following:

(Labor portion of standardized amount)×(Wage Index Value+(Nonlabor portion of standardized amount)×(1+DSH+IME)×(Months in effect/12)

For 07/01/89–09/30/89:
($2,281.73×1.0538+$664.15) × (1+0.0616)×(3/12) ..... =$814.42

For 10/01/89–12/31/89:
($2,403.67×1.0538+$700.19) × (1+0.0616)×(3/12) ..... =$858.09

For 01/01/90–03/31/90:
($2,500.49×1.0538+$728.39) × (1+0.0616)×(3/12) ..... =$892.65

For 04/01/90–06/30/90:
($2,500.26×1.0538+$728.33) × (1+0.0616)×(3/12) ..... =$892.57

Payment Hospital A would receive as an Illinois rural hospital ..... =$3,457.73

Step 5—Determine whether Hospital A qualifies for redesignation as part of the Chicago, IL MSA on the basis of its costs.

To qualify, Hospital A's case-mix adjusted cost per discharge (Step 2) must be equal to its payment rate without reclassification (Step 4) plus 75 percent of the difference between that rate and what it would receive as an urban hospital (Step 3).

Rural rate+[75%×(Urban rate−Rural rate)]
$3,457.73+[75%×($4,277.11−$3,457.73)]=$4,072.27

Hospital A's case mix adjusted cost per discharge (Step 2) ..... =$3,863.50
Hospital A's rural rate plus 75 percent of the difference between that rate and what it would receive as an urban hospital (Step 5) ..... =$4,072.27

Since the result in Step 2 is less than the result in Step 5, Hospital A does not meet the cost guidelines for purposes of the standardized amount for reclassification as part of the Chicago, Illinois MSA.

Comment: The calculation for the disproportionate share adjustment should be eliminated from the payment computations for urban and rural hospitals because the disproportionate share percentage is an add-on to the prospective payment system rate.

Response: The calculation of the disproportionate share adjustment is needed for an accurate comparison between the hospital's costs per discharge and the per discharge payments it would receive with and without reclassification. The hospital's cost per discharge reflects any impact the hospital's disproportionate share percentage may have on its costs. Since the amount of the disproportionate share adjustment is dependent on the hospital's status as being located in an urban or rural area, it is appropriate to include the disproprotionate share adjustment in the comparisons. Otherwise, the impact that reclassification would have on the hospital's payments per discharge would be distorted.

Comment: When a hospital requests a reclassification based solely on the standardized amount, the hospital should use the wage index value for the geographic area in which it is located.

Response: We agree with the commenter. If a hospital is seeking reclassification only for purposes of the standardized amount, the wage index value for the area to which it wants to be reclassified should not be used in the cost comparison because the hospital's payments will not be determined using this wage index value. Only when a hospital is applying for redesignation based on both the standardized amount and the wage index, should the wage index value for the area to which it is requesting reclassification be used in the cost comparison.

Comment: In calculating the standardized amount, should hospitals use total discharges or Medicare discharges?

Response: Since the standardized amounts are based on Medicare discharges, hospitals should use Medicare discharges and costs in these calculations. Thus, hospitals must use the amount from the Medicare Cost Report Worksheet, Schedule S–3, Column 13, line 8, which represents total Medicare discharges. (See Step 1 of the cost comparison example above.)

Comment: The cost of transfer cases to other prospective payment hospitals should be removed from the calculation for the case-mix adjusted cost per discharge.

Response: As noted above, the number of discharges used in calculating the cost per case calculation comes from the Medicare Cost Report Worksheet, Schedule D–1, Part II, line 55. For cost reporting purposes, a discharge is a formal release of a patient, including transfers. Thus, all transfers count as discharges in calculating the hospital's allowable Medicare cost per discharge. Since a hospital's Medicare cost per discharge represents an average cost, we believe it is appropriate to include all costs and discharges in the computation. This is consistent with the way we compute hospital-specific rates under the prospective payment system. Moreover, any computations adjusting costs and discharges reported on the cost report would not be readily verifiable by the MGCRB.

Comment: A hospital's cost per case should be inflated to match the standardized amounts published for a later period.

Response: When a hospital uses its adjusted cost per discharge to compare the standardized amount under its current classification with that under its requested reclassification, it should use the appropriate standardized rate for the cost reporting period. Thus, there is no need to inflate the cost per case. This methodology allows the decision to be based on actual cost data and avoids the subjectivity and uncertainty inherent in the selection of an appropriate inflation factor.

5. Wage Guidelines for a Hospital Requesting Reclassification for Wage Index Purposes

Under § 412.230(e), a hospital requesting reclassification to an adjacent labor market area for purposes of determining its wage index must demonstrate that its average hourly wage is equal to at least 85 percent of the average hourly wage of hospitals in the labor market area to which it is applying for reclassification. If the hospital's average hourly wage is less than 85 percent of the average hourly wage for the labor market area to which it is requesting reclassification because of a lower occupational mix, the hospital must demonstrate that its average hourly wage weighted for occupational categories is equal to at least 90 percent of the average hourly wage in the MSA, NECMA or State rural area to which the hospital is requesting to be reclassified. Weighting for occupational categories is accomplished by using data that demonstrates the average occupational mix for the labor market area to which the hospital is requesting redesignation and weighting the hospital's average hourly wage by occupational category based on that information. If the hospital's weighted average hourly wage is equal to or greater than 90 percent of that in the labor market area to which it is requesting reclassification, then the hospital may be reclassified for purposes of its wage index.

Comment: Further clarification is needed on the wage comparison example and occupational mix analysis provided in the September 6, 1990 interim final rule at 55 FR 36761.

Response: The wage comparison example used in the interim final rule was unclear because we used a national average hourly wage that applied to an earlier year and wage survey data base. For clarity, we have revised the labor cost comparison and occupational mix analysis as follows:

Wage Comparison Example

Hospital Y is a rural hospital located in Gratiot County, Michigan that requests reclassification as part of the Lansing, Michigan MSA.

A. Labor Cost Computation

Hospital Y's 1988 adjusted average hourly wage=$12.05. (from the computer listing supplied upon request from HCFA)

This figure is found in the column entitled "Inflated AVW" and represents the sum of the following:

Total salaries minus excluded salaries plus home office salaries plus fringe benefits times an inflation factor (to bring all cost reporting periods to a common point) divided by the equivalent hours. The inflation factors are shown in step 4 below.

Average hourly wage for Lansing, Michigan=$14.31 85 percent of $14.31=$12.16 an hour.

Hospital Y cannot demonstrate that its labor costs are 85 percent of the labor costs for Lansing, Michigan. Since Hospital Y cannot meet the labor cost comparison, it submits data to establish that it meets the occupational mix requirement.

B. Occupational Mix Analysis

Step 1—Determine Hourly Wage by Occupational Category

The hospital must determine the categories it will use for the occupational mix calculation. Hospital Y

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chooses five occupational category groupings: administrative, registered nurses, other nursing (including licensed practical nurses), therapists and other professionals, and all other personnel. Hospital Y then determines the average hourly wage for each category in its fiscal year for which the wage survey was completed, which for Hospital Y is its cost reporting period ending June 30, 1988.

Category	Salaries	Hours	Average hourly wage
Administrative	$1,860,016	116,251	$16.00
Registered Nurses	1,257,113	100,569	12.50
Other Nursing	6,549,906	595,446	11.00
Therapists and Other Profs.	1,084,951	84,227	13.00
All Other Personnel	4,548,234	758,039	6.00
Totals	15,310,220	1,654,532	

The total salaries and hours match the total salaries and hours reported on Hospital Y's wage survey and reflected in the wage index.

The wage survey data include fringe benefits. If Hospital Y is able to determine fringe benefits by occupational category, the fringe benefit data can be considered with the salary data to determine an hourly amount for wages and fringe benefits combined. Otherwise, an adjustment for fringe benefits is made in Step 3.

Step 2—Determine Occupational Mix-Adjusted Average Hourly Wage

Hospital Y now calculates its occupational mix-adjusted average wage:

Employment category	Hospital wage	MSA occupational mix
Administrative	$16.00 ×	20% = $3.20
Register Nurses	12.50 ×	10% = 1.25
LPN & other Nurses	11.00 ×	30% = 3.30
Therapist and other professionals	13.00 ×	25% = 3.25
All other personnel	6.00 ×	15% = 0.90
Total		11.90

To calculate the MSA occupational mix percentages, the number of hospital employees in the MSA should be determined for each of the occupational categories used in the wage comparison. For this purpose, each part-time employee (PTE) counts as 0.5 full time employee (FTE). Thus, the occupational mix percentage for a given category equals the sum of the number of MSA FTEs in the occupational category plus one-half of the MSA PTEs in the category divided by the total number of FTEs plus one-half of the PTEs, totalled across all allowable categories.

Step 3—Fringe Benefit Adjustment

Hospital Y cannot determine fringe benefits for each employment category, so it calculates a fringe benefit factor to apply to the occupational mix-adjusted average wage as follows:

Fringe benefit factor equals fringe benefits reported on wage survey divided by salaries reported on wage survey.

$1,828,959 / $15,310,220 = 0.11946

The average hourly wage, including fringe benefits, adjusted for occupational mix, will then be (1 + fringe benefit factor) × average hourly wage, adjusted for occupational mix.

Occupational Mix Adjusted Average Hourly Wage, Including Fringe Benefits = $13.32

$11.90 × 1.11946 = $13.32

Step 4—Inflation Factor Adjustment

Hospital A must determine its inflation factor adjustment by determining the inflation factor applicable to the midpoint of the cost reporting period from the table below. Hospital A then multiplies the applicable inflation factor by the Occupational Mix Adjusted Average Hourly Wage Adjustment Amount (including fringe benefits) derived in Step 3.

Cost reporting period is 7/1/87 through 6/30/88

Midpoint of cost reporting period is 12/31/87

Applicable inflation factor (from table below) = 1.033150521

Occupational Mix Adjusted Average Hourly Wage Adjustment Amount (from Step 3) = $13.32

Inflated Occupational Mix Adjusted Average Hourly Wage = $13.76

$13.32 × 1.033150521 = $13.76

Inflation Factors for the 1988 Area Wage Index

If the Midpoint of the Cost Reporting Period is:

After	Before	Adjustment factor
02/14/87	03/15/87	1.090861457
03/14/87	04/15/87	1.084948184
04/14/87	05/15/87	1.079066966
05/14/87	06/15/87	1.073217629
06/14/87	07/15/87	1.067400000
07/14/87	08/15/87	1.061613906
08/14/87	09/15/87	1.055859175
09/14/87	10/15/87	1.050135641
10/14/87	11/15/87	1.044443132
11/14/87	12/15/87	1.038781481
12/14/87	01/15/88	1.033150521
01/14/88	02/15/88	1.027550084
02/14/88	03/15/88	1.021980006
03/14/88	04/15/88	1.016440122
04/14/88	05/15/88	1.010930268
05/14/88	06/15/88	1.005450281
06/14/88	07/15/88	1.000000000
07/14/88	08/15/88	0.994549719
08/14/88	09/15/88	0.989069732
09/14/88	10/15/88	0.983559878
10/14/88	11/15/88	0.978019994
11/14/88	12/15/88	0.972449918
12/14/88	01/15/88	0.966849479

Step 5—Wage Comparison

If Hospital Y's occupational mix-adjusted average hourly wage is at least 90 percent of the MSA's average hourly wage, the hospital meets the wage guideline for reclassification.

Hospital Y's average hourly wage adjusted for occupational mix = $13.76.

Hospital Y's average hourly rate adjusted for occupational mix is at least 90 percent of the average hourly wage for Lansing, Michigan. (90% of $14.31 = $12.88)

Because $13.76 is greater than $12.88, Hospital Y meets the required wage guideline.

Comment: In performing the occupational mix calculation, further clarification is needed on the following issues:

- Which categories on the AHA survey should be used.
- Which providers covered by the AHA survey data should be used.
- Which hospital-specific data should be used.
- How to calculate the average wage for each category.
- How to deal with fringe benefits if the hospital could not break out fringe benefits separately by job classification.

Response: The AHA survey data cover 35 occupational categories, 32 of which must be used. The categories not to be used are the following: physicians, dentists, and psychologists. This is because the salary costs for these categories are generally not payable under Medicare part A.

The remaining categories must be used even if the applicant hospital does not have any employees in those categories. (The categories should, of course, be grouped with occupations in which the hospital does have employees). For example, the MSA may have categories for three types of therapists, such as speech, physical, and occupational, whereas the hospital only has physical and speech therapists. In this situation all therapists could be grouped as one occupational category.

Although one commenter recommended that HCFA set required groupings of occupational categories, we believe that no single grouping is clearly

preferable, and the MGCRB has the discretion to determine whether the groupings of occupational categories by the hospital are appropriate. The groupings in the example above are for illustrative purposes and are not intended as recommended groupings. Groupings can be either more general (as in the wage comparison example in the September 6, 1990 interim final rule at 55 FR 36761) or more specific (up to the 32 allowable categories in the AHA data base), subject to the MGCRB's approval. Part-time employees in the MSA should be counted as half-time employees in determining the proportions of each occupational group among MSA employees. Only acute care hospitals should be included in the MSA occupational mix. These are identified by a "0" in the third digit of their Medicare provider number.

The hospital data should match the data used to fill out the HCFA wage survey for the hospitals fiscal year that ended in 1988, and not calendar year 1988, so that the MGCRB can compare the data used to those appearing in the hospital's wage survey. However, as indicated in response to an earlier comment on data requirements, the use of calendar year 1988 payroll data is acceptable for reclassification determinations that would be effective for FY 1992 if the MGCRB concludes that the hospital has submitted sufficient documentation to substantiate that it is providing accurate and complete wage data.

The total employee wages, fringe benefits, and hours for all occupational groupings for the hospital must equal the amounts found on the 1988 survey. In other words, each employee who was counted in the 1988 survey, and only those employees, should appear in one of the occupational groupings. This is necessary in order to maintain comparability to the average hourly wage of the MSA, which is computed using the wage surveys of the prospective payment hospitals in the MSA.

If the hospital cannot determine fringe benefits by class of employees, the hospital may use a fringe benefit factor, determined by dividing fringe benefits as reported on the survey into total salaries as reported on the survey (excluding contract labor and excluded salaries, but including home office salaries if appropriate). When the provider has a fiscal year other than calendar year 1988, it should apply an inflation factor (as provided above) to the average wage, adjusted for occupational mix, in order to ensure comparability with the MSA average wage.

Comment: Clarification is needed regarding how wage data corrections should be taken into account.

Response: We anticipate that the MGCRB will use the latest updated survey data, including midyear corrections, to determine reclassification outcomes. As midyear corrections are made to the survey data, the corrected data will be forwarded to the MGCRB for its consideration. We believe it is appropriate that the MGCRB use the latest corrected data in making its determinations, since these data are currently used for payment purposes. Moreover, we note that a number of wage index applications submitted by hospitals are based on corrected data. If the MGCRB relied on the wage data in effect at the time the reclassification request was filed, rather than using the latest available data in making its determinations, these hospitals would not be able to benefit from the use of the corrected hospital specific data.

We also want to note that, in applying for reclassification for wage index purposes for FY 1993 and thereafter, it is essential that hospitals contact HCFA to request the average hourly wage data that are appropriate for use in reclassification requests. Using the latest available average hourly wage data is necessary for hospitals to determine whether they qualify for reclassification for purposes of the wage index. In addition, unlike for FY 1992 applications, hospitals should not rely on the published wage index values to compute the average hourly wage for the area to which they are seeking reclassification. This is because the published wage index values will reflect geographic reclassifications approved under section 1886(d)(10) of the Act for each fiscal year and thus may not reflect the actual labor market for a given area for the upcoming fiscal year.

Unlike the geographic reclassifications granted under section 1886(d)(8) of the Act that are permanent, the geographic reclassifications granted by the MGCRB are temporary and are generally limited to a 1-year period. Considering such reclassifications in determining whether a hospital qualifies for a wage index reclassification in subsequent periods would not be appropriate because it would invalidate the process of comparing the wages of a hospital applying for reclassification with the wages of the hospitals in the area to which the hospital is requesting to be reclassified. For example, consider the case of a hospital that was reclassified to a given area for FY 1992 that wishes to reapply for reclassification to that same area for FY 1993. A comparison of the hospital's wage data with the wage data of all hospitals (including reclassified hospitals) in the area in FY 1992 would result in the hospital's wage data being compared in part with its own wage data, rather than strictly with the wage data of hospitals that originally made up the area. The anomalous effects of basing reclassification determinations on such comparisons would be particularly evident in smaller MSAs that include only one or two hospitals or in MSAs in which most hospitals were reclassified to another area for FY 1992.

Another possibility is that all the hospitals originally in an MSA would be granted reclassification to other areas for FY 1992. Thus, the area would contain either no hospitals in FY 1992 or only hospitals that were reclassified to the area. If there were no hospitals reclassified to the area, using reclassified hospitals in making wage comparisons would be impossible because there would be neither a published wage index value for FY 1992 nor any comparative wage data that could be used for making a reclassification determination if in the subsequent year other hospitals would seek reclassification to that MSA. If the area contained only reclassified hospitals, hospitals reapplying for reclassification in the subsequent year would conceivably be compared solely to themselves.

Therefore, in making wage comparisons for purposes of meeting the guidelines for reclassification for wage index purposes, hospitals must use the wage survey data for a labor market area absent any reclassifications granted by the MGCRB. As noted in a response to comment in section V.A.6 of this preamble, these data are available from HCFA upon request.

Comment: HCFA should lower the criterion requiring that the hospital's average hourly wage be equal to 85 percent of the average hourly wage in the adjacent area to 80 percent in order to permit a group of hospitals to qualify for reclassification for purposes of their wage index. In addition, language in the Conference committee report accompanying Public Law 101-508 suggested that the Secretary consider lowering the 85 percent wage threshold to 70 percent. (H.R. Rep. No. 964, 101st Cong., 2nd Sess. 715 (1990).) Another option would be to replace the 85 percent threshold with a statistical measure such as two standard deviations or a specified coefficient of variation.

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Response: We continue to believe that a minimum 85 percent threshold for determining comparability among adjacent areas is appropriate. We note that a significant proportion of the over 1,000 complete applications submitted to the MGCRB requested reclassified based on this guideline, which indicates that the threshold is sufficiently low. While reducing the qualifying criteria would permit more hospitals to qualify for a higher wage index value, it would also result in diminishing the degree of wage comparability among hospitals in a given labor market area. That is, we believe that a hospital whose average hourly wage is more than 15 percent below the adjacent labor market area does not incur wage costs comparable to that area and, therefore, does not warrant reclassification.

In any system using a numeric threshold, there will be some hospitals who fall just short of meeting the threshold. An arbitrary reduction in the wage criterion simply to accommodate a specific group of hospitals is not appropriate. Moreover, given the requirement that the geographic redesignations granted by the MGCRB be budget neutral with respect to aggregate payments to hospitals, it would be inequitable to lower the 85 percent criterion to reclassify, at the expense of urban hospitals, additional hospitals that do not have comparable wages.

Finally, the use of two standard deviations or a specified coefficient of variation would not produce a consistent guideline that can be applied to all hospitals seeking to reclassify to alternative labor market areas. The 85 percent threshold provides a constant measure against which all hospitals can compare themselves. In addition, we structured the guidelines so that hospitals can apply for redesignation without necessarily relying on consultants. Using a complicated statistical procedure to achieve reclassification defeats this purpose.

Comment: The criteria for use of another area's wage index value at § 412.230(e) should be revised to take into consideration a hospital's contract labor costs. One hospital noted that, due to the scarcity of specialized labor in the area, its contract labor costs constitute more than 15 percent of its total labor costs. Exclusion of these costs results in a distorted view of the actual labor costs of rural hospitals. Further, the historical wage survey data may not reflect current market conditions.

Response: Including contract labor costs in a hospital's average hourly wage is inappropriate because it would provide a distorted comparison with the wages for the MSA, which do not reflect these costs. HCFA did not include contract labor salaries and hours in the final 1988 wage survey data because these data were not uniformly available. We previously addressed this issue in the September 4, 1990 prospective payment system FY 1991 final rule (55 FR 36038). At that time, we had received a number of comments both supporting and opposing the inclusion of contract labor data. We decided to exclude contract labor data based on our analysis that showed that only 50 percent of hospitals reported contract services and at least 11 percent of those not reporting these services indicated that it was because they could not accurately determine contract hours. In some cases, hospitals included services with a high average hourly wage, such as CRNAs and physicians, which are billed under Part B. Therefore, because of the inconsistency noted in the reporting of contract services on the 1988 HCFA wage survey, we did not include those data in the average hourly wage used to construct the wage index. With respect to the use of historical wage data, it is essential to use standard data for the same time period so that the wage comparisons can appropriately reflect labor costs for the same point in time. In addition, any data for a year other than 1988 would not be edited or otherwise verified.

Moreover, the 1988 wage data represent the latest available data at the time the survey was conducted. As such, there is no way to avoid a time lag in the data used to construct the wage index. However, once the wage index updates are done on an annual basis, beginning in FY 1994, changes in wage levels across areas will be reflected in the wage index more timely.

We are in the process of developing more detailed instructions on the reporting of contract labor costs as part of the Medicare cost report, which may allow the inclusion of contract labor data in future wage index updates. Until contract labor costs are incorporated into the hospital wage index, we believe that these costs cannot be reflected in the average hourly wages of individual hospitals for purposes of their reclassification requests.

6. Guidelines for a Joint Application for All Hospitals in a Rural County Seeking Urban Reclassification

In order for all the Medicare prospective payment system hospitals located in a rural county to be reclassified as part of an adjacent MSA or NECMA, all of the Medicare prospective payment system hospitals in the county must apply jointly to the MGCRB. If all hospitals in a county do not wish to be part of a group application for redesignation, then each of these hospitals seeking redesignation must do so using the individual hospital guidelines in § 412.230.

The county in which the hospitals are located must first meet one of the census guidelines that follow:

a. *Bureau of the Census Data*—1980: If the county failed to qualify for urban classification because it did not meet the OMB standards that were published in the **Federal Register** on January 3, 1980 (45 FR 956) or because it did not meet the standards under section 1886(d)(8)(B) of the Act, with respect to hospitals in certain rural counties adjacent to urban areas, it must be able to demonstrate that based on updated Bureau of the Census data, estimates, or projections, it now meets the standards.

b. *Bureau of the Census Data*—1990: If the county would qualify for reclassification as part of a MSA or NECMA based on the revised standards issued by OMB for the 1990 Census (55 FR 12154, March 31, 1990), those standards may be used to qualify for redesignation. The Appendix to the interim final rule (55 FR 36770) included the part of those standards that is relevant to this issue.

Finally, all the hospitals in the county must meet the wage guidelines set forth in § 412.232(c). That is, the aggregate average hourly wage of all the hospitals in the county must be at least 85 percent of the average hospital hourly wage, or 90 percent of the occupationally adjusted hourly wage, in the MSA or NECMA to which the hospitals in the county seek reclassification. The wage comparison must be based on HCFA wage survey data.

Comment: In cases where not all the hospitals in a county wish to seek reclassification, hospitals that do wish to request reclassification should be permitted to do so as a group. Alternatively, all hospitals in a county that meet the proximity guidelines should be allowed to file for redesignation as a group.

Response: Given the potential impact a county-wide reclassification could have on certain hospitals (such as Medicare-dependent small, rural hospitals that would lose their rural status), we believe it is appropriate to require that all hospitals in the county apply as a group. For those situations where a group application based on county-specific criteria may not be viable, we have provided an alternative process by which individual hospitals may seek reclassification based on hospital-specific criteria. This process

adequately recognizes those situations where individual hospitals that demonstrate close economic ties to adjacent areas may be reclassified even though the county in which they are located may not meet the criteria that would permit a group reclassification.

With respect to group applications for those hospitals in a county that meet the proximity guidelines, we believe that each hospital should demonstrate that it also meets the other criteria for redesignation. Otherwise, reclassification requests by select groups of hospitals could allow hospitals that do not qualify for redesignation to "piggyback" on qualified hospitals.

Comment: The effect the MGCRB provisions have on the criteria for a county to be designated as urban under section 1886(d)(8)(B) of the Act should be clarified. These counties are designated as urban if they are adjacent to one or more urban areas and would otherwise be considered part of an urban area, under the standards for designating MSAs and NECMAS, but for the fact that the county does not meet the OMB standard relating to the commuting rate of workers between the rural county and the central county or counties of any single adjacent MSA or NECMA. Will these counties have to apply for urban designation once 1990 Census data become available, or will HCFA designate them?

Response: At HCFA's request, OMB will identify all qualifying counties as soon as it receives final commuting data for the 1990 census from the Bureau of the Census. Urban designations under section 1886(d)(8)(B) of the Act will automatically take effect on October 1 following the date of the revised MSA designations, which are expected to be announced by OMB in June 1992. Therefore, it is not necessary for hospitals to apply for urban designation under this provision.

7. Guidelines for a Joint Application for All Hospitals in an Urban County Seeking Reclassification to Another Urban Area

As discussed in the following comment and response, this final rule with comment period sets forth at § 412.234 criteria for all hospitals in an urban county applying for redesignation to another urban area. These guidelines will be effective for applications filed October 1, 1991 with respect to reclassifications that would be effective in FY 1993.

Comment: The interim final rule specified criteria for group redesignations of all hospitals in a rural county to an adjacent urban area. However, it did not provide for all hospitals in an urban county to be reclassified as a group to another urban area. Since hospitals in urban counties are essentially in the same situation as hospitals in rural counties, they should be allowed to apply as a group for redesignation to another urban area. Also, the Conference Committee report accompanying Public Law 101-508 demonstrates Congressional intent that the Secretary establish guidelines for joint applications by urban hospitals classified as other urban to seek reclassification to a large urban area. (H.R. Rep. No. 964, 101st Cong., 2nd Sess. 715 (1990).)

Response: In developing the guidelines to be used by the MGCRB in making its determinations, we specifically limited group applications to cases where county-specific population data related to the OMB standards for designating MSAs could be considered. However, given the explicit language included in the Conference Committee report clarifying Congressional intent in this regard, we are adding a new § 412.234 to provide the following guidelines under which all hospitals in an urban county may seek reclassification to another urban area.

Guidelines for a Joint Application for All Hospitals in an Urban County Seeking Reclassification to Another Urban Area.

1. All hospitals in the urban county must apply for redesignation as a group.

2. The urban county in which the hospitals are located must be part of the Consolidated Metropolitan Statistical Area (CMSA) that includes the urban area to which the hospitals are seeking redesignation. In the case of NECMAs, the urban county would be considered part of a consolidated urban area under section 5 of the OMB standards for designating CMSAs published in the January 3, 1980 **Federal Register** (45 FR 956).

We believe that hospitals seeking classification to another area must demonstrate an economic connection to the area to which reclassification is requested. The CMSA requirement is an objective standard that can be used to measure the economic relationship between an urban county seeking redesignation and the other urban area. The CMSA definition (at 45 FR 960) involves various characteristics of the MSAs that are part of a CMSA, including commuting data, urbanization, and total population. The CMSA designation differentiates between adjacent MSAs that are not closely tied economically and adjacent MSAs that have a close economic relationship with each other.

3. *Wage guideline:* The aggregate average hourly wage of all hospitals in the county must be at least 85 percent of the average hospital hourly wage, or 90 percent of the occupationally adjusted hourly wage, in the MSA or NECMA to which the hospitals in the county seek reclassification. The wage comparison must be based on HCFA wage survey data.

4. *Cost guideline:* On average, the case-mix adjusted cost per case reduced for outliers for all hospitals seeking reclassification must at least equal the payment each hospital currently receives plus 75 percent of the difference between that amount and the amount it would receive if reclassified.

To determine if the cost guideline is met, an individual cost threshold is calculated for each hospital requesting reclassification. The threshold equals the amount the hospital would receive under its current classification plus 75 percent of the difference between that amount and the amount it would receive if reclassified. The ratio of each hospital's cost threshold to its case-mix adjusted cost per case, reduced for outliers (from the most recently filed cost report), is then calculated. These ratios are then weighted by the hospital's share of the group's Medicare discharges. These weighted ratios are added together, and the total must be at least one.

Discharge weighting ensures that the cost of each Medicare case in the hospitals requesting redesignation is counted equally. Simple averaging by the number of hospitals would result in cases in hospitals with more than the average number of Medicare discharges being under-counted and cases in hospitals with fewer than average Medicare discharges being over-counted.

The ratios of payments to costs are used because the hospitals requesting reclassification have different relationships between their costs per case and payments per case. The appropriate test is whether or not, on average, the hospitals meet the cost guidelines rather than whether aggregate payments equal an aggregate cost threshold. When determining the current payment and the payment if reclassified, the standardized amounts may have to be prorated as in the cost comparison example for an individual hospital. The disproportionate share patient percentage from the most recently filed cost report is used, but the disproportionate share payment is calculated using the formula applicable to the Federal fiscal year for which redesignation is requested. The indirect

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medical education adjustment is calculated in similar fashion.

Urban to Urban Group Reclassification Example

There are only two prospective payment hospitals (Hospital A and Hospital B) in County Z, an other urban county. Both hospitals apply for reclassification to MSA Q, which is a large urban area.

Step 1—Each hospital calculates its case-mix adjusted cost per case, reduced for outliers (see Step 1 and 2 of Cost comparison example above), and its share of the total discharges of the two hospitals.

Case-mix adjusted cost per case, reduced for outliers	Percentage of total cases in both hospitals
Hospital A: $3,886.54	40 percent
Hospital B: $3,540.36	60 percent

Step 2—Determine the ratio of cost to payment threshold for each hospital.

In order to determine the ratio, the following must be determined: the payment hospitals A and B currently receive and the payments they would receive if they are reclassified, using each hospital's most recently filed cost report and the disproportionate share formula and the indirect medical education formula appropriate for FY 1992, the year for which reclassification is requested. (See Step 3 of Cost comparison example for prorating standardized amount based on a hospital's cost reporting period).

Prorated standard payment per case = Prorated standardized amount × (1 + IME adjustment factor + DSH adjustment factor)

The threshold level for each hospital = Current standard payment per case + [0.75 × (Standard payment per case if reclassified—current standard payment per case)]

A. Determine ratio of cost to payment threshold for Hospital A.

1. Determine prorated standard payments, oefore and after reclassification.

Hospital A's prorated standard amount before reclassification (using current wage index value) = $3,356.55

Hospital A's prorated standard amount if reclassified (calculated usmg MSA Q's wage index values) = $3,442.41

Hospital A's disproportionate share patient percentage = 0.302

Hospital A's disproportionate share adjustment factor, using FY 1993 payment formula = 0.7 × (0.302–0.202) + 0.0562 = 0.1262

Hospital A's IME adjustment factor = 0.0616

Hospital A's prorated standard payment per case before reclassification = $3,356.55 × (1 + 0.1262 + 0.0616) = $3,986.91

Hospital A's prorated standard payment per case if reclassified = $3,442.41 × (1 + 0.1262 + 0.0616) = $4,066.89

2. Determine threshold level for hospital A.

Threshold for Hospital A = $3,986.91 + 0.75 × ($4,066.89 – $3,986.91) = $4,053.40

3. Determine ratio of cost to threshold level for Hospital A.

Hospital A's case mix-adjusted cost per case reduced for outliers = $3,886.54

Threshold for Hospital A = $4,053.40

Ratio for Hospital A = $3,886.54/$4,053.40 = 0.9565

B. Determine the ratio of cost to payment threshold for Hospital B.

1. Determine the prorated standard payments before and after reclassification.

Hospital B's prorated standard amount before reclassification (using current wage index value) = $3,361.95

Hospital B's prorated standard amount if reclassified (using MSA Q's wage index values) = $3,452.75

Hospital B's disproportionate share patient percentage = 0.045

Hospital B's disproportionate share adjustment factor = 0.0

Hospital B's IME adjustment factor = 0.0

Hospital B's prorated standard payment per case before reclassification = $3,361.95

Hospital B's prorated standard payment per case if reclassified = $3,452.75

2. Determine threshold level for Hospital B.

Threshold for Hospital B = $3,361.95 + 0.75 × ($3,452.75 – $3,361.95) = $3,430.05

3. Determine ratio of cost to threshold level for Hospital B.

Hospital B's case mix-adjusted cost per case reduced for outliers = $3,540.36

Threshold for Hospital B = $3,430.05

Ratio for Hospital B = $3,540.36/$3,430.05 = 1.0322

Step 3—Determine whether the hospitals in County Z qualify to be reclassified as part of MSA Q on the basis of cost. The discharge weighted ratio of cost to threshold level for an urban hospital must be at least one.

Hospital A's ratio = 0.9565

Hospital A's share of discharges = 40%

Hospital B's ratio = 1.0322

Hospital B's share of discharges = 60%

Discharge-weighted ratio = (0.9565 × 0.40) + (1.0322 × 0.60) = 1.0019

The hospitals in County Z meet the cost guidelines because their discharge-weighted ratio of cost to payment is greater than one. If the hospitals in County Z also meet the required wage guideline, they would qualify for reclassification to MSA Q.

8. Alternative Guidelines Applicable to Hospital Located in New England County Metropolitan Areas (NECMAS)

These guidelines (at § 412.236) apply only to urban hospitals in New England whose designation is affected by the use of NECMAs to define urban areas, in lieu of MSAS. An individual hospital located in a NECMA may also qualify for redesignation based on the criteria contained in § 412.230.

a. *Guidelines Applicable to Individual NECMA Hospitals.* A hospital currently classified as urban due to its location in a NECMA, may be redesignated as part of another NECMA if it meets the following criterion:

The hospital demonstrates that it would have been classified in a different urban area under the criteria for designating MSAs in New England. For example, part of Bristol County was included in the Boston, Massachusetts MSA. However, under the criteria establishing NECMA boundaries, this area was included in a separate NECMA (that is, the New Bedford-Fall River-Attleboro Massachusetts NECMA). Under this guideline, a hospital located in the section of Bristol County that is included in the Boston MSA may qualify for inclusion in the Boston NECMA.

b. *Guidelines Applicable to All Hospitals Within a NECMA.* All hospitals in a NECMA may qualify for redesignation to another NECMA either by meeting the criteria for group reclassification from one urban area to another urban area at § 412.234 or by meeting the following two criteria:

i. All hospitals in the NECMA apply for redesignation as a group.

ii. The hospitals can show that the NECMA to which they are designated would be combined as part of the NECMA to which they seek redesignation if the criteria for combining NECMAs were the same as the criteria used for combining MSAs. It should be noted that combining MSAs should not be confused with consolidating MSAs. We do not recognize Consolidated MSAs (CMSAs) as a single urban area for purposes of classifying hospitals under the prospective payment system.

These criteria apply regardless of whether the hospitals pay wages comparable to hospitals located in the NECMA to which the hospitals seek redesignation.

The basis for these criteria is section 6 of the Office of Management and Budget Standards for Defining Metropolitan Statistical Areas published on January 3, 1980 (45 FR 960). Section 6 states that

"two adjacent MSAs not included in a consolidation by the above criteria (in section 5) will be combined as a single MSA if:

A. Their largest central cities are within 25 miles of one another, or their urbanized areas are contiguous; and

B. There is definite evidence that the two areas are closely integrated with each other economically and socially * * *; *and*

C. Local opinion in both areas supports the combination."

Definite evidence that the two areas are closely integrated with each other economically and socially is demonstrated by the commuting and urbanized area criteria, as stated in section 5 of the OMB standards (45 FR 960):

The commuting interchange between the two metropolitan statistical areas is equal to:

(1) At least 15 percent of the employed workers residing in the smaller metropolitan statistical area, or

(2) At least 10 percent of the employed workers in the smaller metropolitan statistical area, and

a. The urbanized area of a central city of one metropolitan statistical area is contiguous with the urbanized area of a central city of the other metropolitan statistical area, or

b. A central city in one metropolitan statistical area is included in the same urbanized area as a central city in the other metropolitan statistical area.

For purposes of these guidelines, the criterion involving local opinion is not considered with respect to NECMAs.

Section 14.C of the OMB standards is explicit in stating that section 6 does not apply in New England (45 FR 961). These guidelines are intended to provide that hospitals that are located in NECMAs that would qualify for combination based on standards applicable outside of New England may qualify for this redesignation.

Comment: Hospitals located in a NECMA should be permitted reclassification to another NECMA based on the OMB standards for designating CMSAs (Section 5—Consolidating Adjacent Metropolitan Statistical Areas (45 FR 960; January 3, 1980)) and should not be limited to qualifying under the OMB standards for combining MSAs (Section 6—Combining Adjacent Metropolitan Statistical Areas (45 FR 960; January 3, 1980)).

Response: The September 6, 1990 interim final rule clearly states that CMSAs will not be recognized for classification purposes. This issue was previously addressed in the September 30, 1988, final rule (53 FR 38498) in response to a public comment.

Under the prospective payment system, we have never recognized CMSAs for purposes of defining urban areas. CMSAs are made up of two or more Primary Metropolitan Statistical Areas (PMSAs). A PMSA is recognized as a separate urban area because it demonstrates very strong internal economic and social links in addition to its ties with another portion of a CMSA. In defining urban areas under the prospective payment system, we recognize MSAs and PMSAs only. The criteria for reclassifying hospitals to another NECMA are intended to afford these hospitals the same treatment as they would have received under the MSA definitions. Therefore, since hospitals located in PMSAs cannot be reclassified based on the CMSA designations, we are applying the same restrictions with respect to the NECMA designations.

However, as discussed in section V.B.7 above, we are establishing guidelines whereby all hospitals located in an urban county may seek reclassification to another urban area that is part of the same CMSA. In addition to meeting the cost and wage criteria under § 412.234, hospitals located in an urban county that is part of a NECMA may qualify for reclassification under the provision of § 412.236 based on the OMB standards for designating CMSAs. The guidelines set forth in § 412.234 will be effective for applications to be considered by the MGCRB during Federal FY 1992 for reclassification beginning October 1, 1993.

9. Effect of Decisions of the MGCRB on Payment to Hospitals

Hospitals that are reclassified only for wage index purposes are not considered urban for any other purpose other than the labor market area (for example, the disproportionate share hospital formula). Hospitals that are reclassified only for purposes of the standardized payment amounts are considered urban for all purposes under section 1886(d)(2)(D) of the Act, except for use of the wage index.

With respect to the wage index, section 1886(d)(8)(C) of the Act did not specify prior to the enactment of Public Law 101–508 how reclassifications of individual hospitals were to be treated. We stated in the interim final rule that we would continue to evaluate this issue and that in the FY 1992 proposed prospective payment system update, we would propose a methodology to address the application of the wage index where not all hospitals in a county or MSA have been reclassified.

Subsequently, section 4002(h)(1)(A) of Public Law 101–508 amended section 1886(d)(8)(C) of the Act to provide that for purposes of the wage index, all hospitals that are granted reclassification are to be grouped together based on the MSA to which they have been reclassified. The effect of the reclassification on the wage index value of the affected areas depends on the hypothetical impact the wage data for the reclassified hospitals would have on the wage index value of the area to which they have been reclassified as explained below:

a. *Impact on Wage Index of One Percentage Point or Less.* If the wage data for the reclassified hospitals would reduce the wage index for the MSA or the rural area to which the hospitals are reclassified by one percentage point or less, the reclassified hospitals are subject to the MSA or rural wage index computed exclusive of the reclassified hospitals. If the wage data for the reclassified hospitals would increase the wage index for the MSA or the rural area to which the hospitals are reclassified, the wage data for the reclassified hospitals will be included in the computation of the MSA or rural wage index.

b. *Impact on Wage Index of More Than One Percentage Point.* If the wage data for the reclassified hospitals would reduce the wage index for the MSA or rural area to which the hospitals are reclassified by more than one percentage point, the hospitals that are reclassified are subject to the wage index value of the MSA or rural area that results from including the wage data of the reclassified hospitals. However, the wage index for the reclassified hospitals cannot be less than the wage index value for the rural areas of the State in which the hospitals are located.

Rural areas whose wage index values would be reduced by excluding the data for reclassified hospitals will continue to have their wage index calculated as if no reclassification had occurred. Finally, section 1886(d)(8)(D) of the Act requires that the effect of decisions of the MGCRB be budget neutral. That section also requires that a proportional adjustment to the standardized amount for urban hospitals be made to ensure that total aggregate payments made in the prospective payment system be neither greater than nor less than aggregate payments that would otherwise be made. In addition, that section requires that aggregate payments to those rural hospitals not affected by this provision remain constant.

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Comment: Further clarification is needed on how the wage index will be constructed once all reclassification requests have been decided by the MGCRB. One suggestion was that since a hospital is seeking reclassification based on comparability to an adjacent area, it should be granted the wage index value applicable to that area without any adjustment. Another commenter suggested that in situations where a hospital qualifies for reclassification to more than one area, HCFA allow redesignation to the area that will result in the highest wage index for the hospital. Finally, a commenter asked if a hospital has the option to withdraw from its approved reclassification if the adjusted wage index for the new area turns out to be lower than expected.

Response: The way in which the wage index is applied to redesignated hospitals has been set forth by Congress under section 1886(d)(8)(C) of the Act as amended by section 4002(h)(1)(A) of Public Law 101–508. All hospitals that are granted redesignation are grouped together based on the area to which they have been redesignated. The redesignated hospitals' wage index value is determined by calculating the impact that these hospitals have on the wage index of the MSA or rural area to which they are being reclassified. If the impact of including the reclassified hospitals reduces the wage index by one percent or more, the redesignated hospitals receive a combined wage index value determined by using all the hospitals located in the MSA or rural area and the redesignated hospitals. If the reclassifications result in a reduction in the wage index of less than one percent, the redesignated hospitals will receive the MSA or rural area wage index value without including the redesignated hospitals in that area's wage index value. In addition, the revised wage index value is never less than the rural wage index value for the State in which the reclassified hospitals are located.

In the September 6, 1990 interim final rule, we indicated that the law was silent with respect to the treatment of the wage index value for individual hospitals granted reclassification by the MGCRB and that we would evaluate this issue. This issue has now been clarified by section 4002(h)(1)(A) of Public Law 101–508.

When a hospital submits an application for geographic reclassification, it describes in detail why, and to what area, it believes it should be redesignated. The MGCRB must evaluate the application and decide if the hospital has met the relevant criteria for that particular geographic classification. The MGCRB has no duty to look beyond an application and decide that a more favorable redesignation is supportable. We note that the wage index that will be applicable to the hospital after reclassification cannot be established until the impact of all reclassifications to that geographic area is determined. Redesignated hospitals may not always receive the MSA wage index value without an adjustment. Thus, it is appropriate for the hospital to be responsible for determining to which area it wishes to be reclassified when it qualifies for reclassification to more than one area.

Because hospitals did not know how the wage index value would be computed for redesignated hospitals at the time they submitted applications to the MGCRB for Federal fiscal year 1992 reclassifications, we are allowing hospitals to withdraw their applications even if an MGCRB decision has already been made. A request for the withdrawal of an application after an MGCRB decision will be permitted only for a Federal fiscal year 1992 application, provided that the request for withdrawal is received by the MGCRB within 60 days of publication of this final rule with comment. However, a hospital cannot request a different reclassification to an alternate area within the same Federal fiscal year. A hospital that wishes to be redesignated to an alternative area will have to submit a new application to the MGCRB for the following Federal fiscal year.

In new § 412.273 of these final regulations, we are establishing rules for the withdrawal of applications for reclassification for Federal fiscal year 1993 and thereafter. Under these rules, a hospital may request withdrawal of its application at any time prior to the issuance of an MGCRB decision. The request must be made in writing and will not be considered once a decision has been issued.

Comment: One commenter asked whether an SCH, and RRC, or an MDH that qualifies for a reclassification of its standardized amount will lose its designation as an SCH, RRC, or MDH. The commenter believes that such a hospital should be permitted to retain its special status during the term of the classification or, alternatively, should be allowed to resume such status without meeting requalification criteria should reclassification cease.

Response: The guidelines for geographic reclassification state that a provider reclassified for the purposes of its standardized amount is considered to be reclassified for all purposes other than the wage index (see 55 FR 36761). This is because a rural hospital must be deemed to be located in an urban area under section 1886(d)(2)(D) of the Act before it can be paid the urban standardized amount. Thus, to the extent that a hospital's status as an RRC, SCH, or MDH is dependent upon its being located in a rural area, it will lose its special status if it qualifies for reclassification to an urban area for its standardized amount. This is consistent with our policy with respect to rural hospitals that are deemed to be located in an urban area under section 1886(d)(8) of the Act. Although the hospital will lose its special status as an RRC or rural SCH during the period of reclassification, we believe it is appropriate for these hospitals to continue to be able to qualify for geographic reclassification under the special access provision at § 412.230(a)(4). We are amending § 412.230(a)(4) to clarify this point. If we did not make this revision, hospitals that qualify under § 412.230(a)(4) would not be able to qualify under this provision in subsequent years since they would no longer be an RRC or SCH. We believe this would be contrary to the intent of the guideline.

The hospital's special status as an RRC or SCH will not be held in abeyance during the term of the hospital's geographic reclassification. In the event the hospital's reclassification ceases, it must reapply for special status and must meet all of the applicable qualifying criteria in effect at the time it seeks requalification. There are some exceptions to this policy which are discussed in the individual special status sections below.

We believe this policy is reasonable in light of the fact that each of the special status adjustments is designed to recognize the special needs and patient characteristics of particular categories of hospitals. For instance, RRC status is granted to those hospitals that draw patients from widely diverse geographical locations and offer a broad range of sophisticated services to large numbers of patients. SCH status is available to those hospitals that are isolated by distance, weather conditions, or travel time or that receive a high percentage of the inpatient market share compared to other hospitals in their service area. MDH status is designed to protect small, rural hospitals that have historically served a high percentage of Medicare patients.

Thus, each of these special status adjustments was created to recognize the special characteristics of particular categories of hospitals, and the qualifying criteria for each adjustment are framed to identify those hospitals that should receive the adjustment. A hospital's patient characteristics and operating procedures (and, thus, its ability to meet the qualifying criteria) may be altered either since it initially qualified for special payment status or during its period of geographic reclassification. We, therefore, believe it is reasonable to require a hospital to demonstrate that it meets the criteria for a special payment adjustment when its reclassification status ends. Except in the limited instances discussed below, a hospital approved for geographic reclassification of its standardized amount will be considered to have voluntarily given up its MDH, RRC or rural SCH status. The hospital must meet the provisions at § 412.96(a) to requalify for RRC status or at § 412.92(b)(4) to requalify for SCH status. Since some hospitals may not have understood the effect reclassification would have on their special status, we are permitting hospitals to withdraw their applications for reclassification for FY 1992, even if the MGCRB has issued a decision, providing that the request for withdrawal is received within 60 days of publication of this final rule with comment period.

Rural Referral Centers

All three sets of criteria under which a hospital can qualify as a referral center (§ 412.96) are applicable to hospitals located in rural areas. However, only the criteria at § 412.96(b)(2) are also applicable to urban hospitals. That is, the bed-size criterion (§ 412.96)(b)(1)) and the case-mix index/number of discharges/one-of-three optional criteria (§ 412.96(c)) are applicable only to hospitals located in rural areas. However, the referral pattern criteria at § 412.96(b)(2) are applicable to hospitals located in either urban or rural areas. Thus, a hospital that qualifies for RRC status based on the criteria at § 412.96 (b)(1) or (c) and that is reclassified to an urban area for the purpose of its standardized amount, will lose its RRC status effective with the date that it is reclassified. A hospital qualified as a referral center under the criteria at § 412.96(b)(2) will not lose its referral center status.

Since an RRC's standardized amount is already based on the other urban amount, we anticipate that there will be few qualified RRCs seeking geographic reclassification for purposes of their standardized amount. Only those RRCs that meet the requirements to be reclassified to a large urban standardized amount would benefit from reclassification.

Approved RRCs should keep in mind that if they voluntarily terminate their RRC status (including being approved for reclassification of their standardized amount), and then are not reclassified for a subsequent term, they can refile for RRC status only during the 3-month period preceding the start of their cost reporting period. They must meet the applicable criteria in effect at the time they reapply, and subsequent requalification as an RRC, if approved, will be effective at the start of their cost reporting period. The 3-month filing deadline and the effective date of RRC qualification are statutory requirements specified in section 1886(d)(5)(C)(i)(I) of the Act and, as in the past, there can be no exceptions to these requirements. Thus, a hospital that voluntarily terminates its RRC status in favor of geographic reclassification may face a period of time of being paid the standardized rural payment amounts between the date it loses its geographic reclassification status and the date it can requalify as an RRC.

Sole Community Hospitals

Prior to the implementation of the prospective payment system on October 1, 1983, some hospitals located in urban areas were approved for SCH status. Effective with the implementation of the prospective payment system, we limited the approval of SCH status to only those hospitals located in rural areas. However, we provided that all urban SCHs whose request for SCH status was received by the fiscal intermediary prior to October 1, 1983 and was subsequently approved could retail that status. Thus, since October 1, 1983, approval of new SCHs has been limited to hospitals located in rural areas.

Section 6003(e) of Public Law 101–239 amended section 1886(d)(5) of the Act to provide that an SCH is defined as "* * * any hospital that the Secretary determines is located more than 35 road miles from another hospital, or that, by reason of factors * * * (as determined by the Secretary), is the sole source of inpatient hospital services reasonably available to individuals in a geographic area who are entitled to benefits under part A." When we implemented this change in the law as a part of our April 20, 1990 final rule with comment period, we continued our requirement that only rural hospitals are eligible for SCH status. In response to an issue raised by this commenter, we have reviewed the statutory language carefully and, based on this review, we have decided to revise somewhat our definition of an SCH.

We note that the language of the law does not require that SCHs isolated by more than 35 road miles be located in a rural area. We have, therefore, determined that effective June 4, 1991, hospitals located in urban areas, either large urban or other urban, can qualify for SCH status if they are located more than 35 road miles from the nearest like hospital. We are amending § 412.92(a) to reflect this revision. We are making this revision effective upon publication of this final rule with comment period so that affected hospitals will know with certainty that, even after reclassification to an urban area, they will continue to qualify for SCH status.

The same definitions of "miles" and "like hospital" as are found at § 412.92(c) will apply to urban hospitals seeking SCH status. Likewise, the same criteria regarding all classification procedures as are found at § 412.92(b) will apply. Distances are measured from the front door of the requesting hospital to the front door of the nearest like hospital based on the shortest distance over improved roads. Rounding of mileage is not permissible, that is, 34.9 miles does not meet the standard; 35.0 does.

No urban hospital located fewer than 35 miles from the nearest like hospital can be qualified for SCH status (except those in existence prior to implementation of the prospective payment system and those redesignated pursuant to court order). That is, the provisions such as weather conditions, market share, and travel time that are applicable to rural hospitals located fewer than 35 miles from another hospital do not apply to urban hospitals. We base this decision on the fact that the law does not grant Secretarial discretion for the 35-mile criterion, but it clearly provides that the Secretary should publish the standards to be met for hospitals located fewer than 35 miles from another hospital. Because urban areas generally have better roads, faster snow-clearing, and the choice of more available hospitals, we do not believe SCH status should be granted to an urban hospital located fewer than 35 miles from another like hospital.

With this revision to the criteria for SCH status in mind, we note that any rural SCH that is approved for reclassification of its standardized amount and that is located fewer than 35 miles from the nearest like hospital, will lose its SCH status effective with the date of its reclassification Rural SCHs that are located more than 35 miles from the nearest like hospital will

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not lose their SCH status as a result of geographic reclassification to an urban area.

Hospitals that voluntarily terminate their SCH status in favor of geographic reclassification will no longer be paid based on the highest of the fully Federal rates, 100 percent of their updated 1987 hospital-specific rate, or 100 percent of their updated 1982 hospital specific rate. They will no longer be exempt from the capital reduction and they will not be eligible for the 5 percent volume adjustment for any full cost reporting period during which they were not classified as an SCH.

As with RRCs discussed above, we consider that a rural SCH located fewer than 35 miles from the nearest like hospital that is approved for reclassification of its standardized amount has voluntarily given up its SCH status. Should be hospital not be granted reclassification for subsequent terms, it can requalify for SCH status only if it meets the requirements at § 412.92(b)(4). That is, a hospital cannot be reclassified as an SCH unless one full year has passed since the effective date of its cancellation (including acceptance of geographic reclassification of its standardized amount) and unless it meets the criteria at § 412.92(a) for qualification for SCH status in effect at the time it reapplies.

Medicare Dependent, Small Rural Hospitals

Section 1886(d)(5)(G)(iii) of the Act specifies that MDHs must be located in a rural area. Thus, for this special category of hospitals, it is clear that geographic reclassification to an urban standardized amount immediately cancels MDH status. Such a hospital would no longer be paid based on the highest of the applicable Federal rate, 100 percent of its updated 1987 hospital-specific amount, or 100 percent of its updated 1982 hospital-specific amount. During the term of its reclassification, it will be paid based on the applicable fully Federal rates. It will also not be eligible for the five percent volume adjustment for any full cost reporting period during which it was not classified as an MDH.

Should be previously classified MDH not be approved for subsequent reclassification, it will automatically be reclassified as an MDH effective with discharges occurring on the first day after its reclassification ceases, provided it continues to meet all of the requirements, that is, it is located in a rural area, it is not classified as an SCH, and it has 100 or fewer beds. Regardless of geographic classification, however, the MDH status expires for all hospitals at the end of their last cost reporting ending on or before March 31, 1993.

Comment: A commenter was concerned about potential transition problems when an SCH or MDH whose cost reporting year does not coincide with the Federal fiscal year is reclassified for purposes of the standardized payment amount. The commenter questioned which Federal payment amount would be used in determining the aggregate payment for the year based on the greater of the SCH's or MDH's hospital-specific rate or the Federal payment amount. The commenter is particularly concerned that the intermediary will use a weighted average of the different applicable Federal payment amounts when making the comparison to the hospital-specific rate for purposes of determining the payment rate that results in the greatest aggregate payment amount to the hospital.

Response: As discussed in greater detail in a preceding comment and response, all MDHs and some SCHs will lose their special classification effective with their reclassification to an urban area for purposes of receiving the urban payment amount. In these cases, the hospital will receive payment under the SCH or MDH payment methodology for the part of its cost reporting period prior to the reclassification. For that portion of the cost reporting period, the Federal standardized amount applicable to the hospital before reclassification will be used to determine the hospital's payment under the "greater of" payment methodology. Once the hospital is reclassified and it loses its special status as an SCH or MDH, it will begin receiving payment based on its new Federal payment amount in the same manner as any other hospital. It will no longer be paid based on the greater of its hospital-specific rate or the Federal rate.

Those hospitals that continue to be classified as SCHs after, their geographic reclassification will continue to be paid under the SCH payment methodology. In making the final determination of which rate results in the greatest payment amount, the change in Federal payment amount due to reclassification will be handled in exactly the same way as it currently in when there is a change in the Federal payment amount. As was discussed in detail in the September 4, 1990 prospective payment final rule (55 FR 35994–35998), it is not always possible to determine at the start of an SCH's cost reporting period which of its applicable payment rates results in the greatest aggregate payment for that period. Therefore, interim payment is made on an individual bill basis, using the higher of the hospital's applicable hospital-specific amount (that is, the higher of its FY 1982 or 1987 amount) and the applicable Federal payment amount. This determination is made by the PRICER program used to pay Medicare bills. Each bill is priced based on the Federal rate. In addition, if PRICER determines that the hospital-specific rate would yield, on average, a higher payment, an add-on payment will be made for each discharge based on the estimated difference between the higher hospital-specific rate and the average Federal payment for the DRG to which the discharge is assigned. This methodology can incorporate any number of changes in the Federal payment amount. Therefore, for discharges occurring on or after the effective date of the SCH's reclassification, the new Federal payment amount will be used to determine an individual bill's payment. Of course, when the hospital's cost reporting period is completed, there is a final determination of precisely which of the payment rates resulted in the highest aggregate payment for the period and any necessary adjustments are made.

VI. Changes to the Regulations

This final rule with comment period makes the following changes to the text of regulations:

- Section 412.92 has been revised to state that a hospital need not be located in a rural area to be classified as a sole community hospital, as long as it is located more than 35 miles from other like hospitals.
- The title of 42 CFR part 412, subpart L, has been changed from The Medicare Geographical Classification Review Board to The Medicare Geographic Classification Review Board.
- In § 412.230, paragraph (a)(4)(iv) has been added to clarify that if an SCH or RRC loses its special status as a result of geographic redesignation, it is considered to retain its special status for the purpose of applying for continued geographic redesignation under the special rules for SCHs and RRCs at § 412.230(a)(4). In addition, paragraphs (d)(1) and (e)(1)(ii) of § 412.230 have been revised to clarify that a hospital must demonstrate the necessary geographic relationship specified in paragraphs (a) and (b) of § 412.230 to receive either an adjacent area's standardized amount or its wage index. Last, paragraph (e)(2)(ii) of § 412.230 has been corrected to state that occupational mix data is required only if a hospital is requesting classification under the weighted average hourly wage provision at § 412.230(e)(1)(iii)(B).
- We have added criteria at § 412.234 concerning reclassification of all hospitals in a county located in an urban area to another urban area, and we have moved the alternative criteria for reclassification of all hospitals located in a NECMA from § 412.234 to § 412.236. In addition, the redesignated criteria at § 412.236 have been revised to provide that all the hospitals located in a county in a NECMA may also qualify for redesignation by meeting the new criteria § 412.234.
- In § 412.236, paragraphs (c)(1) and (c)(2) have been revised to state that, at the request of the hospital, the MGCRB may for good cause grant a hospital an extension beyond October 1 to complete its application for reclassification.
- We have added new § 412.273 to provide that a hospital may withdraw its application for reclassification at any time before the MGCRB issues a decision.
- In § 412.278, we have added a new paragraph (c) to provide for discretionary review by the Administrator of any final decision of the MGCRB and a new paragraph (d) setting forth criteria for the Administrator to use in deciding whether to review an MGCRB decision. We have added a new § 412.278(e) to provide for additional communication procedures applicable to the Administrator's review of an MGCRB decision both at a hospital's request or at his or her own discretion. We have also added a new § 412.278(f)(2)(ii) specifying that, in cases of discretionary review, the Administrator issues a decision in writing within 105 days of the MGCRB decision.
- Finally, we have redesignated portions of other sections of regulations to accommodate the addition of these provisions and have made several other technical corrections.

VII. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any final rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, a rule that is likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Hospitals reclassified as a result of this final rule will receive increased Medicare payments. However, in accordance with section 1886(d)(8)(D) of the Act, proportional adjustments will be made to the urban and rural standardized amounts, thereby eliminating any effect of the increased hospital payments on aggregate Medicare payments. Because this rule's effect is budget neutral, this final rule is not a major rule under E.O. 12291 criteria, and a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

1. Introduction

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all prospective payment hospitals to be small entities.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b), we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area (MSA) or a New England County Metropolitan Area (NECMA) and has fewer than 101 beds.

This final rule conforms our regulations to the legislative provisions of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) and the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508), and will specify procedures to be followed in implementing the law.

2. Summary of the Initial Impact Analysis

In the initial regulatory flexibility analysis that was published as part of the September 6, 1990 interim final rule, we explained that we were unable to estimate the impact the rule will have on hospitals because we could not predict which hospitals would apply for reclassification, or how the MGCRB will rule on the applications received by the deadline for consideration for FY 1992. In the initial impact analysis, we estimated that about 300 applications would be submitted to the MGCRB. In point of fact, the MGCRB received over 1,000 complete applications by the closing date of November 6, 1990. The MGCRB has until March 30, 1991 to issue decisions on these applications. Moreover, there is a 105 day time period from the date of an MGCRB decision and completion of Administrator review. Until the MGCRB reaches its decisions on the applications and Administrator review is completed, we will not know what impact this rule will have for FY 1992.

In the initial impact analysis, we presented hypothetical examples to illustrate the potential effects on a hospital's Medicare revenues resulting from a successful reclassification application. Using those hypothetical cases, it is evident that a successful application could not only mean a substantial increase in revenues for a hospital, but could also represent a boost to the local economy. This would be especially true in the case of a successful group application, in which all the hospitals in a particular county were reclassified. The amount of the increased revenues could run into several million dollars, much of which could eventually flow into the surrounding community in the form of increased employment and additional purchases of goods and services. Even the effect of applying section 1886(d)(8)(D) of the Act in order to maintain the budget neutrality of the prospective payment system will not have a substantial impact on reclassified hospitals. The impact of reclassification on those hospitals that are reclassified will be much greater than the offsetting budget neutrality adjustment will be on those same hospitals.

3. Impact of Statutory and Other Changes Implemented in This Final Rule

We did not receive any comments regarding the initial impact analysis. Nor did we receive any data from commenters to assist with our analysis. As a result, we are unable to furnish any additional insight into the possible effects of this final rule above that which we presented in the initial impact analysis. We note, however, several changes in this final rule. Most of these changes are the result of provisions that were enacted by section 4002(h) of Public Law 101–508. As explained above, we cannot estimate the specific effects of these changes because of the unpredictable nature of the application and adjudicative process. We are, therefore, confining our discussion to describing whether the changes being

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implemented will or will not benefit prospective payment hospitals.

a. *Group reclassification of urban hospitals.* One change that is likely to have an impact on prospective payment hospitals is the addition of § 412.234 establishing guidelines for the MGCRB to follow when considering a joint application from hospitals in a county located in an urban area seeking to be reclassified into another urban area. We are adding this section in response to language in the conference committee report accompanying Public Law 101–508 directing the Secretary to establish such guidelines. (H.R. Rep. No. 964, 101st Cong., 2nd Sess. 715 (1990).) These guidelines will apply to all joint urban hospital applications for reclassification for FY 1993.

As stated earlier, the reclassification of groups of hospitals could mean a substantial redistribution of Medicare funds, and this could not only have a substantial impact on reclassified hospitals, but on their communities as well. The increased flow of funds to these hospitals could mean greater employment in the area, which in turn could translate into more sales by local merchants to these employees. Also, direct sales of goods and services to hospitals may increase as a result of the enhanced revenues. If hospitals are able to spend the additional funds for patient care services, then access to care may also increase.

b. *Section 1886(d)(8)(C)(i)(II) of the Act.* Section 1886(d)(8)(C)(i)(II) of the Act modifies the way we compute the wage index value for reclassified hospitals if the reclassification results in a reduction of the wage index value of more than 1.0 percent for the urban area into which the hospital is reclassified. Before enactment of revised section 1886(d)(8)(C)(i)(II) of the Act, if reclassification would have produced a decrease of more than 1.0 percent in the urban wage index value, we maintained the old wage index value (computed without regard to the reclassified hospitals) for those hospitals in the urban area, and computed a separate, county-specific wage index value for the group of hospitals being reclassified. We did not specify how the wage index would be calculated for individual hospitals that were reclassified. With the enactment of revised section 1886(d)(8)(C)(i)(II), of the Act, if the urban wage index value is lowered by more than 1.0 percent, instead of paying the reclassified hospital on the basis of a separate, county-specific wage index value, a reclassified hospital will be paid using a wage index value that combines wages of all reclassified hospitals in a given area and wages of that urban area into which the hospital is being reclassified. The wage index value for the other hospitals in the urban area will continue to be computed without taking into account reclassified hospitals.

We believe that most hospitals applying for reclassification are located in rural areas. Generally, rural area wage index values are lower than the urban area wage index values in the same State. By computing a blended wage index comprise of the wages paid to reclassified hospitals with the wages paid to hospitals in the adjacent urban area, a reclassified hospital will receive an increase in payments over what it would have received before section 1886(d)(8)(C)(i)(II) was revised.

c. *Section 1886(d)(10)(C)(iii)(II) of Act.* Revised section 1886 (d)(10)(C)(iii)(II) of the Act provides the Administrator with the authority to review decisions of the MGCRB at his or her discretion. That is, the Administrator may review a decision by the MGCRB even if the hospital has not requested review. It is highly likely that the Administrator will review some of the MGCRB's decisions and that the Administrator will modify or reverse some of the MGCRB's decisions. However, the likely effect of this provision is unclear because it is impossible to predict how many MGCRB decisions the Administrator will decide to review and how many MGCRB decisions will be modified or reversed. Although those hospitals whose favorable decisions are overturned based on the Administrator's discretionary review will be adversely affected, these adverse effects may be mitigated by a smaller adjustment in the budget neutrality factor for reclassification if the overall effect of the discretionary review results in fewer hospitals being reclassified.

d. *Right to withdraw an application for reclassification.* In response to comments, we added § 412.273 that allows a hospital to withdraw an application for reclassification at any time before the MGCRB issues its decision on the hospital's requested reclassification. This provision will be effective with applications for reclassification for FY 1993 (that is, filed by October 1, 1991).

We cannot predict what percent of those hospitals that withdraw their applications would receive favorable decisions on their reclassification application. However, generally, this provision should benefit a hospital applying for reclassification by allowing it to withdraw its application if it determines that a favorable decision on an application would not be to the hospital's advantage because of changes in either the hospital's wage index value or the wage index value for the area into which the hospital is seeking reclassification.

In addition to this general provision allowing hospitals to withdraw their applications before the MGCRB reaches a decision, for FY 1992 only, we are allowing all hospitals to withdraw their applications after a decision has been issued by the MGCRB, if their request is received by [60 days after date of publication in the **Federal Register**]. Again, it is impossible for us to know what effect this opportunity to withdraw an application for FY 1992 will have on prospective payment hospitals. However, we surmise that it will benefit hospitals.

C. Conclusion

In the absence of data, we are unable to reach any specific, quantifiable conclusions regarding the potential effects of this final rule. We have, however, pointed to the sizable redistributive effects that may flow from some of the MGCRB's decisions (especially those that involve group applications). We have also briefly discussed the possible effects of the changes implemented in this final rule. For the most part, we believe these changes will benefit hospitals applying for geographic reclassification.

VIII. Other Required Information

A. Effective Dates

The September 6, 1990 interim final rule set forth procedures and criteria for the MGCRB to use in making its decisions on hospital applications for geographic reclassification. Nothing in this final rule with comment period changes the effective date of those provisions, which permit hospital reclassifications beginning October 1, 1991 for approved requests filed by November 6, 1990. However, this final rule contains several changes to the September 6, 1990 interim final rule, with various effective dates as described below:

- The revised method for applying the wage index to redesignated hospitals (first set forth at 56 FR 570) is effective for discharges occurring on or after January 1, 1991, as specified by Congress under section 1886(d)(8)(C) of the Act as amended by section 4002(h)(1)(A) of Public Law 101–508.
- The new procedures for review of any MGCRB decision at the discretion of the Administrator at § 412.276(c) are effective June 4, 1991.

- The provision that a hospital may, for an application for reclassification for Federal fiscal year 1992 only, withdraw its application after the MGCRB issues a decision is effective June 4, 1991, through August 5, 1991.
- The provision that a hospital located in an urban area can qualify for sole community hospital status if it is located more than 35 road miles from the nearest like hospital is effective June 4, 1991.
- All other changes implemented by this final rule with comment period are applicable beginning October 1, 1991, that is, for applications for geographic reclassification for Federal fiscal year 1993. These changes include a hospital's right to withdraw an application before the MGCRB issues a decision and the criteria for all hospitals in a county located in an urban area to request reclassification to another urban area.

B. Waiver of Notice of Proposed Rulemaking and 30-day Delay in the Effective Date

We ordinarily publish a notice of proposed rulemaking for a rule to provide a period for public comment. However, we may waive that procedure if we find good cause that prior notice and comment are impractical, unnecessary, or contrary to public interest. We find good cause to issue this rule as a final rule with comment period because the delay involved in prior notice and comment procedures for the new provisions of this rule would be contrary to the public interest.

First, as explained elsewhere in this preamble, the MGCRB faces a statutory deadline of March 30, 1991 for issuing decisions on hospital reclassifications for Federal FY 1992. If hospitals are to receive timely the potential benefits of reclassification, if is necessary that complete appeal procedures immediately be in place. Timely adjudication is also essential to ensure that the budget neutrality requirement imposed by Congress in section 1886(d)(6) of the Act can be met for Federal FY 1992 prospective payment system rates. In addition, section 4207(k) of Public Law 101–508 provides the authority to implement its provisions through a final rule with comment period when necessary. Thus, with regard to the new procedures for discretionary review by the Administrator of MGCRB decisions, a waiver of the notice of proposed rulemaking and prior public comment procedures is necessary and justified.

The only other new provision in this final rule with comment period that did not result solely from a comment on the September 6, 1990 interim final rule is the establishment of criteria for all hospitals located in a county in an urban area to request joint reclassification to another urban area. As noted above, we added this provision based both on a commenter's suggestion and on explicit instructions from Congress in the Conference Committee Report accompanying Public Law 101–508 that the Secretary establish such guidelines at the earliest possible date. Therefore, in order for groups of hospitals to be able to apply for joint reclassification by October 1, 1992 for reclassification for FY 1993, it is necessary that these guidelines be issued as final regulations at this time.

Therefore, we have concluded that it is appropriate to issue a final rule in this instance. However, we are providing a 60-day period for public comment, as indicated at the beginning of this rule, on changes to the September 6, 1990 interim final rule resulting from provisions of Public Law 101–508. After considering comments that are received timely, we will respond to the comments, include any changes in the rule that might be necessitated in light of those comments, and publish a final rule in the **Federal Register**.

We also normally provide a delay of 30 days in the effective date for documents such as this. However, if adherence to this procedure would be impractical, unnecessary, or contrary to public interest, we may waive the delay in the effective date. We find good cause to waive the usual 30-day delay for the provisions scheduled to take effect upon the publication of this final rule with comment period.

As explained above, it is essential that the new administrative review provisions have immediate effect so that the complete appeal procedures to be followed for MGCRB decisions during the current application period will be in place. Any delay in the effective date for this rule would also jeopardize the budget neutrality requirement described above. The provision that a hospital or hospitals may, for an application for reclassification for FY 1992 only, withdraw an application after the MGCRB issues its decision is entirely beneficial to hospitals and needs to take effect as soon as possible after the MGCRB issues a decision. Finally, the provision that a hospital located in an urban area can qualify for SCH status if it is located more than 35 miles from a like hospital also needs to take effect upon publication, so that affected hospitals can know with certainty that even after reclassification to an urban area, they continue to qualify for SCH status.

Thus, a 30-day delay in the effective date would be contrary to the public interest. Therefore, we find good cause to waive the usual 30-day delay in effective date.

C. Paperwork Reduction Act

Sections 412.230, 412.232, 412.234, 412.236, 412.254, 412.260, 412.266 and 412.278 of this final rule with comment contain information collection requirements subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The cited sections have been approved by OMB through October 1993 under OMB control number 0938–0573.

D. Public Comments

Because of the large number of items of correspondence we normally receive concerning regulations, we cannot acknowledge or respond to the comments individually. However, we will respond to all comments received by the date and time specified in the "Dates" section of this preamble, and issue any necessary changes in a final rule.

List of Subjects in 42 CFR Part 412

Health facilities, Medicare, Reporting and recording requirements.

42 CFR part 412 is amended as set forth below:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Subchapter B—Medicare Program

Part 412 is amended as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

A. The authority citation for part 412 is revised to read as follows:

Authority: Sections 1102, 1815(e), 1871, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395g(e), 1395hh, and 1395ww).

B. In subpart G, § 412.92, the introductory text of paragraph (a) is revised; paragraph (a)(1) is removed; paragraphs (a)(2), (a)(3), and (a)(4) are redesignated as paragraphs (a)(1), (a)(2), and (a)(3), respectively; the reference to "paragraph (a)(2)(i)" in newly redesignated paragraph (a)(1)(ii) is revised to read "paragraph (a)(1)(i)"; and the reference to "paragraph (a)(2)(i) or (a)(2)(ii)" in paragraph (b)(1)(ii) is revised to read "paragraphs (a)(1)(i) or (a)(1)(ii)".

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Subpart G—Special Treatment of Certain Facilities

§ 412.92 Special treatment: Sole community hospitals.

(a) *Criteria for classification as a sole community hospital.* HCFA classifies a hospital as a sole community hospital if it is located more than 35 miles from other like hospitals, or it is located in a rural area (as defined in § 412.63(b)) and meets one of the following conditions:

* * * * *

C. Subpart L is amended to read as follows:

1. The title of Subpart L is revised to read as follows:

Subpart L—The Medicare Geographic Classification Review Board

2. In § 412.230, new paragraph (a)(4)(iv) is added; paragraph (d)(1) is revised; the introductory text of paragraphs (e)(1) and (e)(2) are republished; and paragraphs (e)(1)(ii) and (e)(2)(ii) are revised to read as follows:

§ 412.230 Criteria for an individual hospital seeking redesignation to a different rural or urban area.

(a) *General.*

* * * * *

(4) *Special rules for sole community hospitals and rural referral centers.*

* * * * *

(iv) If a sole community hospital or rural referral center loses its special status as a result of redesignation, the hospital is considered to retain its special status for the purpose of applicability of the special rules in paragraph (a)(4) of this section.

* * * * *

(d) *Use of an adjacent area's standardized amount*—(1) *Criteria.* To receive an adjacent area's standardized amount, a hospital must demonstrate that its incurred costs are more comparable to the amount it would be paid if it were reclassified than the amount it would be paid under its current classification, and that it has the necessary geographic relationship (as specified in paragraphs (a) and (b) of this section) with the area to which it seeks redesignation.

* * * * *

(e) *Use of urban or other rural area's wage index*—(1) *Criteria for use of adjacent area's wage index.* To use an adjacent area's wage index, a hospital must demonstrate the following.

* * * * *

(ii) The hospital has the necessary geographic relationship as specified in paragraphs (a) and (b) of this section; and

* * * * *

(2) Appropriate wage data. For a wage index change, the hospital must submit appropriate data as follows:

* * * * *

(ii) For data for other hospitals, the hospital must provide data concerning both of the following:

(A) The average hourly wage in the adjacent area, which is taken from the most recent HCFA hospital wage survey; and

(B) If the hospital is requesting reclassification under § 412.230(e)(1)(iii)(B), occupational-mix data to demonstrate the average occupational mix for each employment category in the adjacent area. Occupational-mix data can be obtained from the Bureau of labor Statistics' survey of a limited number of metropolitan areas; or surveys conducted by the American Hospital Association.

3. Section § 412.234 is redesignated as § 412.236; a new § 412.234 is added; and paragraph (a)(2) of newly redesignated § 412.236 is revised to read as follows:

§ 412.234 Criteria for all hospitals in an urban county seeking redesignation to another urban area.

(a) *General criteria.* For all prospective payment hospitals in an urban county to be redesignated to another urban area, the following conditions must be met:

(1) All hospitals in an urban county must apply for redesignation as a group.

(2) The county in which the hospitals are located must be adjacent to the urban area to which they seek redesignation.

(3) The county in which the hospitals are located must be part of the Consolidated Metropolitan Statistical Area (CMSA) that includes the urban area to which they seek redesignation.

(b) *Wage Criteria*—(1) *Aggregate hourly wage.* The aggregate average hourly wage of all hospitals in the urban county must be at least 85 percent of the average hospital hourly wage in the MSA or NECMA to which the hospitals in the county seek reclassification; or

(2) *Aggregate hourly wage weighted for occupational mix.* The aggregate average hourly wage of all hospitals in the urban county, weighted for occupational categories, is at least 90 percent of the occupationally adjusted hourly wage, in the MSA or NECMA to which the hospitals in the county seek reclassification.

(c) *Standardized amount.*—(1). *Criteria.* The urban hospitals must demonstrate that their average incurred costs are more comparable to the amount the hospitals would be paid if they were reclassified than the amount they would be paid under their current classification.

(2) *Demonstrating comparable costs.* The urban hospitals demonstrate that their costs are more comparable to the average amount they would be paid if they were reclassified if, on average, each hospital's case-mix adjusted cost per case is at least equal to the amount it would be paid under its current classification plus 75 percent of the difference between that amount and the amount the hospital would receive if it were reclassified.

(d) *Appropriate data.*—(1) *Wage data.* The hospitals must submit appropriate wage data as provided for in § 412.230(e)(2).

(2) *Cost data.* The hospitals must submit appropriate data as provided for in § 412.230(d)(3).

§ 412.236 Alternative criteria for hospitals located in an NECMA.

(a) *General.*

* * * * *

(2) All the hospitals in a NECMA may qualify for redesignation by meeting the criteria in either § 412.234 or in paragraph (c) of this section.

* * * * *

§ 412.250 [Amended]

4. In § 412.250, the reference to "§ 412.230 through § 412.234 in paragraph (a) is revised to read "§ 412.230 through § 412.236".

5. In § 412.256, the reference to "§ 412.230 through § 412.234" in paragraph (b)(3) is revised to read "§ 412.230 through § 412.236"; and paragraph (c) is revised to read as follows:

§ 412.256 Application requirements.

* * * * *

(c) *Opportunity to complete a submitted application.* (1) The MGCRB will review an application within 15 days of receipt to determine if the application is complete. If the MGCRB determines that an application is incomplete, the MGCRB will notify the hospital, with a copy to HCFA, within the 15 day period, that it has determined that the application is incomplete and may dismiss the application if a complete application is not filed by October 1.

(2) At the request of the hospital, the MGCRB may, for good cause, grant a hospital that has submitted an application by October 1, an extension beyond October 1 to complete its application.

* * * * *

6. New § 412.273 is added to read as follows:

§ 412.273 Withdrawing an application.

(a) A hospital, or group of hospitals, may withdraw an application at any time before the MGCRB issues a decision.

(b) A request to withdraw an application must be made in writing by all hospitals that are party to the application.

7. In § 412.278, the heading of paragraph (a) and paragraph (b)(1) are revised; the introductory text in paragraph (c), and paragraphs (c)(3), (c)(4), and (c)(5) are redesignated as paragraphs (f)(1), (f)(2), (f)(3), and (f)(4), respectively; new paragraph (c), (d), and (e) are added; and redesignated paragraph (f)(2) is revised to read as follows:

§ 412.278 Administrator's review.

(a) *Hospital's request for review.*

* * * * *

(b) *Procedures for hospital's request for review.* (1) The hospital's request for review must be in writing and sent to the Administrator, in care of the Office of the Attorney Advisor. The request must be received by the Administrator within 15 days after the date the MGCRB issues its decision. A request for Administrator review filed by facsimile (FAX) or other electronic means will not be accepted. The hospital must also mail a copy of its request for review to HCFA's Office of Payment Policy.

* * * * *

(c) *Discretionary review by the Administrator.* (1) The Administrator may, at his or her discretion, review any final decision of the MGCRB.

(2) The Administrator promptly notifies the hospital that he or she has decided to review a decision of the MGCRB. The notice of review indicates the particular issues to be considered and includes copies of any comments submitted to the Administrator by HCFA staff concerning the MGCRB decision.

(3) Within 15 days of the receipt of the Administrator's notice of review, the hospital may submit a response in writing to the Administrator, with a copy of HCFA.

(d) *Criteria for discretionary review.* In deciding whether to review an MGCRB decision, the Administrator normally considers whether it appears that any of the following situations apply:

(1) The MGCRB made an erroneous interpretation of law, regulation, or HCFA Ruling.

(2) The MGCRB's decision is not supported by substantial evidence.

(3) The case presents a significant policy issue having a basis in law and regulations, and review is likely to lead to issuance of a HCFA Ruling or other directive needed to clarify a provision in the law or regulations.

(4) The decision of the MGCRB requires clarification, amplication, or an alternative legal basis.

(5) The MGCRB has incorrectly extended its authority to a degree not provided for by law, regulation, or HCFA Ruling.

(e) *Communication procedures.* All communications between HCFA staff and the Administrator concerning the Administrator's review of an MGCRB decision must be in writing. As specified in paragraphs (b) and (c) of this section, copies of comments by HCFA staff are sent to applicant hospitals within 15 days of receipt of a hospital's request for review, or, in cases in which the Administrator decides to review a case at his or her discretion, are included with the Administrator's notice of review. In the event there are additional communications between HCFA staff and the Administrator concerning MGCRB decisions reviewed by the Administrator under paragraphs (b) or (c) of this section, HCFA furnishes copies of the communications to the hospital or group of hospitals.

(f) *Administrator decision.*

* * * * *

(2) The Administrator issues a decision in writing to the party with a copy to HCFA—

(i) Not later than 90 days following receipt of the party's request for review, or

(ii) Not later than 105 days following issuance of the MGCRB decision in the case of review at the discretion of the Administrator.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: March 24, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administrator.

Approved: May 21, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91-13062 Filed 5-30-91; 12:11 pm]

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Part V

Department of Health and Human Services

Office of Community Services

Request for Applications Under the Office of Community Services' Fiscal Year 1991 Discretionary Grants Program; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Community Services

[Program Announcement No. OCS-91-1]

Request for Applications Under the Office of Community Services' Fiscal Year 1991 Discretionary Grants Program

AGENCY: Office of Community Services, ACF, HHS.

ACTION: Request for applications under the Office of Community Services' Discretionary Grants Program.

SUMMARY: The Administration for Children and Families, Office of Community Services [OCS] announces that competing applications will be accepted for new and continuation grants pursuant to the Secretary's discretionary authority under section 681(a)(2) of the Community Services Block Grant Act of 1981, as amended. This Program Announcement consists of seven parts:

Part A covers information on legislative authorities and defines terms used in the Program Announcement;

Part B lists the three program priority areas under which grants will be made, describes the types of projects that will be considered for funding under each priority area, and defines who is eligible to apply;

Part C provides details on application prerequisites, funds available in each priority area, limitations on grant amounts, project periods, who should benefit from the programs, and other application requirements;

Part D describes the application procedures, including the availability of forms, where and how to submit an application, the criteria used in screening and evaluating applications, and compliance with Federal requirements regarding the drug-free workplace and debarment requirements in submitting the application;

Part E describes the contents of the application package and receipt process;

Part F provides instructions for completing the SF-424 following standard Federal guidelines as well as OCS specific requirements, and describes how the project narrative should be ordered and presented; and

Part G details post-award information and reporting requirements.

CLOSING DATE: The closing date for submission of applications is August 5, 1991.

FOR FURTHER INFORMATION CONTACT: Office of Community Services, Office of State and Project Assistance, 370 L'Enfant Promenade SW., Washington, DC 20447, Telephone (202) 401-9345.

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Part A—Preamble

1. Legislative Authority

Section 681(a)(2) of the Community Services Block Grant Act as amended authorizes the Secretary to make funds available to support program activities of national or regional significance to alleviate the causes of poverty in distressed communities.

2. Departmental Goals

The Secretary has established seven strategic goals guiding the Department of Health and Human Services' policies and programs over the next several years. One of those goals is particularly relevant to OCS' Discretionary Grants Program, i.e. strengthening the American family. The Secretary's Program Directions on how programs should be managed in order to achieve this goal include improving access of youth living in low-income families to needed support services, including employment training and other transition to work services, and improving the integration, coordination and continuity of the various HHS funded services potentially available to families currently living in poverty.

3. Definition of Terms

For purposes of this Program Announcement the following definitions apply:

—*Affiliate:* An entity which has legal and/or financial ties to a community development corporation, and which also meets the statutory requirement that it be governed by a board consisting of residents of the community and business and civic leaders.

—*Community development corporation:* A private, locally initiated, nonprofit entity, governed by a board consisting of residents of the community and business and civic leaders, which has a record of implementing economic develoment projects or whose Articles of Incorporation and/or By-Laws indicate that it has a focus in the area of economic development.

—*Displaced worker:* An individual who is in the labor market but has been unemployed for six months or longer.

—*Distressed community:* A geographic urban neighborhood or rural community of high unemployment and pervasive poverty.

—*Eligible applicant:* (See appropriate Priority Area under part B).

—*Indian tribe:* A tribe, band, or other organized group of Indians recognized in the State in which it resides or which is considered by the Secretary of the Interior to be an Indian tribe or an Indian organization for any purpose.

—*Migrant farmworker:* An individual who works in agricultural employment of a seasonal or other temporary nature who is required to be absent from his/her place of permanent residence in order to secure such employment.

—*Rural:* An area that is not within the outer boundary of a metropolitan entity having a population of 25,000 or more and contiguous communities with a population density of 100 persons or more per square mile according to the latest decennial census. Such an area may be located entirely within one State or made up of contiguous interstate communities.

—*Seasonal farmworker:* Any individual employed in agricultural work of a seasonal or other temporary nature who is able to remain at his/her place of permanent residence while employed.

—*Budget period:* The interval of time into which a grant period of assistance is divided for budgetary and funding purposes.

—*Project period:* The total time for which a project is approved for support, including any approved extensions.

Part B—Program Priority Areas

The program priority areas of the Office of Community Services' Discretionary Grants Program and their purposes are as follows:

Priority Area 1.0 Urban and Rural Community Economic Development.
1.1 Urban and Rural Community Economic Development (Operational).
1.2 Urban and Rural Community Economic Development (HBCU Set-Aside).
1.3 Urban and Rural Community Economic Development (Pre-development).
1.4 Urban and Rural Community Economic Development (YOU Program Set-Aside).
Priority Area 2.0 The Planning and Development of Rural Housing (including rental housing for low-income individuals) and community facilities.
2.1 Rural Housing (including rental housing for low-income individuals).
2.2 Rural Community Facilities Development (Water and Waste Water Treatment Systems Development).
Priority Area 3.0 Assistance for Migrants and Seasonal Farmworkers.
3.1 Assistance for Migrants and Seasonal Farmworkers (Set-Aside).

Priority Area 1.0 Urban and Rural Community Economic Development

The purpose of this priority area is to encourage the creation of projects intended to provide employment and business development opportunities for low-income people through business, physical or commercial development, and generally to improve the quality of the economic and social environment of low-income residents, including displaced workers, at-risk teenagers, individuals residing in public housing, and individuals who are homeless. It is intended to provide resources to eligible applicants but also has the broader objectives of arresting tendencies toward dependency, chronic unemployment, and community deterioration in urban and rural areas.

To this end, the program also seeks to attract additional private capital into distressed communities, including enterprise zones, and to build and/or expand the ability of local institutions to better serve the economic needs of local residents.

Applications under this Priority Area should include an Executive Summary of the proposal not to exceed five pages. This summary must address the program principles within this announcement and document that the proposed project will have national or regional significance.

Priority Area 1.1 Urban and Rural Community Economic Development (Operational)

Funds will be provided for a limited number of private non-profit community development corporations (or affiliates of such corporations) for business development activities at the local level. Funding will be provided for specific projects and will require the submission of business plans or developmental proposals that meet the test of economic feasibility.

Projects must further the Departmental goals of strengthening American families and promoting their self-sufficiency. OCS is particularly interested in receiving applications that stress public-private partnerships that are directed toward the development of economic self-sufficiency through a focus on economic expansion.

Applicants located in State-designated enterprise zones, i.e. an area in which a legislative entity has enacted a program of tax and regulatory relief to encourage business development, are urged to submit applications. Such projects must be linked with—and complement—enterprise zone initiatives, and may request funds for a business development project or a project that demonstrates innovative ways to involve the poverty community in the implementation of the enterprise zone concept.

Applications must show that the proposed project:

(1) Creates full-time permanent jobs. Seventy-five percent (75%) of those jobs created must be filled by low-income residents of the community and must also provide for career development opportunities. Project emphasis should be on employment of individuals who are unemployed or on public assistance, with particular emphasis on at-risk teenagers, individuals residing in public housing, and individuals who are homeless. While projected employment in future years may be included in the application, it is essential that the focus of employment projects concentrate on those jobs created during the duration of the OCS project period; and/or

(2) Creates a significant number of business development opportunities for low-income residents of the community or significantly aids such residents in maintaining economically viable businesses; and

(3) Provides for establishing the self-sufficiency of program participants.

In the evaluation process, favorable consideration will be given to applicants under this priority area who show the lowest cost-per-job created. Unless there are extenuating circumstances, OCS will not fund projects where the cost-per-job in OCS funds exceeds $15,000.

Any applicant which proposes to use the requested OCS funds to make an equity investment such as the purchase of stock, or a loan to a business concern, including a wholly-owned subsidiary, or to make a sub-grant with a portion of the OCS funds, must include in its application a written agreement with the third party that commits the latter to the following:

1. A minimum of 75% of the jobs to be created under the grant will be for low-income individuals.

2. The grantee will have authority to screen applicants for jobs to be filled by low-income individuals and to verify their eligibility.

3. The grantee will have a seat on the Board of Directors of the third party's if the grantee's investment equal 25% or more of the firm's assets. (Not applicable to loans.)

4. Reports will be made on a quarterly basis to the grantee on the use of grant funds.

5. A procedure will be developed to assure that there are no duplicative counts of jobs created.

6. Detailed information will be provided on how the grant funds will be used by the third party. In addition, the agreement will provide details on how the community development corporation will provide support and technical assistance to the firm in areas of recruitment and retention of low-income individuals.

Any funds that are proposed to be used for training purposes must be limited to providing specific job-related training to those poverty level individuals who have been selected for employment in the grant supported project or who have been selected for training or participation in a project where potential jobs have already been identified.

OCS encourages applications that create linkages with community organizations administering the JOBS program which will train and place residents dependent on public assistance into jobs created by the project funded under this priority area.

Projects which would result in the relocation of a business from one geographic area to another with the possible displacement of employees are discouraged.

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OCS will not consider applications that propose to establish or expand revolving loan funds, nor proposals that are geared towards the establishment of Small Business Investment Corporations or Minority Enterprise Small Business Investment Corporations.

OCS does not anticipate approving the funding of applications which propose to sub-grant all or most of the grant activities to an unrelated entity, with the exception of applications eligible for the special set-aside fund described below.

Applicants must be aware that projects funded under this priority area must be operational by the end of the project period, i.e. businesses must be in place, and low-income individuals actually employed in those businesses.

Eligible applicants are private, locally initiated, non-profit community development corporation (or affiliates of such corporations) governed by a board consisting of residents of the community and business and civic leaders which sponsor enterprises providing employment and business development opportunities for low-income residents of the community designed to increase business and employment opportunities in the community.

See part F, 6, for special instructions on developing a work program for this priority area.

Priority Area 1.2 Urban and Rural Community Economic Development (HBCU Set-Aside)

For Fiscal Year 1991, a set-aside fund of $2.5 million will be included under this priority area for eligible applicants that submit projects that will be carried out in conjunction with Historically Black Colleges and Universities through contract or sub-grant. Such projects must conform to the purposes, requirements, and prohibitions applicable to those submitted under Priority Area 1.1.

These projects should reflect a significant partnership role for the college or university and the applicant in doing so will be considered to have fulfilled the goals of the Public-Private Partnerships evaluation criterion and will be granted the maximum number of points in that category. Applications for these set-aside funds which are not funded due to the limited amount of funds available will also be considered competitively within the larger pool of eligible applicants under priority area 1.1.

See Part F, 6, for special instructions on developing a work program for this priority area.

Priority Area 1.3 Urban and Rural Community Economic Development (Pre-developmental)

OCS intends in this priority area to provide funds to recently-establish private, non-profit community development corporations (or affiliates of such corporations) which propose to undertake economic development activities in distressed communities.

OCS recognizes that there are a number of newly-organized non-profit community development corporations who have identified needs in their communities but who have not had the staff or other resources to develop projects to address those needs. This lack of resources also might be affecting their ability to compete for funds, such as those provided under OCS's Urban and Rural Community Development Program (Operational Grants) since their limited resources would preclude them developing a comprehensive business plan and/or mobilizing resources. OCS has an interest in providing support to these new entities in order to enable them to become more firmly established in their communities thereby bringing technical expertise and new resources to these previously unserved or underserved communities. Therefore, OCS is setting aside $500,000 in Fiscal Year 1991 for grants to private non-profit community development corporations, or affiliates of such corporations, which have been in existence for no more than three years and have never received OCS funding. From this sum, grants of up to $500,000 each will be made to eligible applicants.

These grants will be made for a period of six months and will not require matching funds.

The grants will be pre-developmental grants under which CDCs or their affiliates may incur costs to: (1) Evaluate the feasibility of potential projects which address identified needs in the low-income community and which conform to those projects and activities allowable under Priority Areas 1.1 and 1.2; (2) develop a Business Plan related to one of those projects; and (3) mobilize resources to be contributed to the project, including the utilization of Historically Black Colleges and Universities. Based on the availability of funds in Fiscal Year 1992, grantees would be able to compete for any OCS funds and OCS would consider establishing a set-aside. Grants might be for a maximum of $200,000 and competition for those funds restricted to those organizations receiving Fiscal Year 1991 pre-development grants. The Business Plan developed as part of the pre-developmental grants would be submitted as part of the competitive application.

Each application for Fiscal Year 1991 funding under this Priority Area must inlude the following as part of the project narrative in part IV of the SF 424:

1. Description of the impact area, i.e., a description of the low-income area it proposes to address;

2. Analysis of need in the distressed community;

3. Project objectives and measurable impact, i.e., a discussion of the types of projects that might be implemented to address the identified needs and how the proposed projects relate to the applicant's organizational goals and previous experience (if any); and

4. Implementation factors: quarterly work plans with specific task timeliness

Priority Area 1.4 Urban and Rural Community Economic Development (YOU Program Set-Aside)

For Fiscal Year 1991, $1.5 million will be set aside to specifically address the Secretary's Program Direction related to improving the integration, coordination and continuity of HHS funded services potentially available to families curently living in poverty. In this instance, OCS is interested in the integration and coordination of services funded under this priority area with those funded by the Department of Labor under its Youth Opportunities Unlimited Program (YOU).

The YOU Program is a demonstration program aimed at high poverty urban neighborhoods and rural counties. The demonstration concentrates a large amount of resources into a relatively small geographic area (neighborhoods of 25,000 or less) with the goal of fundamentally changing the entire set of opportunities facing youth growing up in the area. In July 1990 grants of $2.7 million each were awarded to seven organizations by the Department of Labor.

This set-aside will be available to applicants eligible for funding under OCS' Urban and Rural Community Economic Development Program who submit applications for projects which will be implemented within the target areas of the YOU demonstration. These target areas are prescribed communities within the cities of Atlanta, Baltimore, Columbus, Los Angeles, Philadelphia, and San Diego and two rural counties within the State of Mississippi. The exact boundaries of these areas are available from the respective YOU coordinators listed in Attachment K to this Program Announcement.

OCS is particularly interested in funding projects under this set-aside that both provide jobs with wages sufficient to support a family and that enhance the long-term economic and social environment of the target area.

Projects funded under this set-aside must conform to the purposes, requirements, and prohibitions applicable to those submitted under Priority Area 1.1. In addition, there must be a formal, cooperative relationship established between the applicant and the agency which received funding under DOL's YOU Program. The application must include a written agreement between the applicant and the YOU Program grantee which contains specific language confirming that the project will be carried out in the target area. The agreement must include the goals and objectives that the applicant and the YOU Program grantee expect to achieve through their collaboration. It also must describe the cooperative relationship, including specific activities and/or actions each of these entities proposes to carry out in support of the project and the mechanism(s) to be used in coordinating those activities if the project is funded by OCS. The extent to which services will be integrated and coordinated and the significance of those services will receive consideration in the review process.

Any applicant which proposes to use the requested OCS funds to make an equity investment such as the purchase of stock, or a loan to a business concern, including a wholly-owned subsidiary, or to make a sub-grant with a portion of the OCS funds, must include in its application a written agreement with the third party that commits the latter to the following:

1. A minimum of 75% of the jobs to be created under the grant will be for low-income individuals.

2. The grantee will have authority to screen applicants for jobs to be filled by low-income individuals and to verify their eligibility.

3. The grantee will have a seat on the Board of Directors of the third party's firm if the grantee's investment equals 25% or more of the firm's assets. (Not applicable to loans made to third parties.)

4. Reports will be made on a quarterly basis to the grantee on the use of grant funds.

5. A procedure will be developed to assure that there are no duplicative counts of jobs created.

6. Detailed information will be provided on how the grant funds will be used by the third party. In addition, the agreement will provide details on how the grantee will provide support and technical assistance to the third party in areas of recruitment and retention of low-income individuals.

OCS will make up to two grants under this set-aside with a maximum of $750,000 to be granted for each project. Only one grant will be made to address problems in a particular target area.

Applications for these set-aside funds which are not funded due to the limited amount of funds available also will be considered competitively within the larger pool of eligible applications under priority area 1.1.

Priority Area 2.0 The Planning and Development of Rural Housing (including rental housing for low-income individuals) and Community Facilities

Priority Area 2.1 Rural Housing (including rental housing for low-income individuals)

The purpose of this priority area is to assist low-income residents in rural communities by providing grants to eligible applicants to: (a) Provide technical assistance to help low-income families and individuals more effectively utilize existing local, State and Federal housing assistance programs; and (b) develop innovative ways to meet the housing needs of low-income people, e.g. the rehabilitation or repair of existing substandard housing units for occupancy by low-income residents, the conversion of non-residential buildings to low-income residential use, and the purchase of homes by low-income people.

OCS encourages applications that will assist low-income homeowners to improve their housing through self-help rehabilitation. These applications should not include projects which can be funded through other existing Federal programs.

OCS also encourages the submission of proposals whose aim is to assist homeless families and those at risk of homelessness. Innovative ways to address housing needs of homeless families is of particular interest to OCS.

Projects should produce the following types of tangible improvements and benefits related to housing conditions for rural poor people: Interior or exterior structural repairs including weatherization and alternative energy systems; jobs created for local unskilled residents while assuring quality work; technical assistance and professional services related to housing and community planning by community-based design and planning organizations. (Such projects should be conducted with maximum use of voluntary services of professional and community personnel, and development of innovative housing strategies to help low-income rural residents acquire housing.)

Applications calling for new construction or "gut" rehabilitation will only be considered if the application documents that there is insufficient existing housing stock that can be economically rehabilitated.

Funds will not be available for the repair or rehabilitation of low-income rental housing unless the structure is either occupied by a low-income owner or the properties to be repaired are (a) owned by a private non-profit organization and (b) covered by a written agreement which will ensure continued occupancy by low-income people for at least three years after completion of repairs and rehabilitation.

Funds will not be available under this program priority area for projects that establish or expand a revolving loan fund.

Eligible applicants are States, public agencies or private non-profit organizations, including Historically Black Colleges and Universities.

OCS is particularly interested in receiving applications from such entities as rural housing development corporations, cooperatives, and other public and private organizations with proven accomplishments in the area of rural housing.

See part F, 6, for special instructions on developing a work program for this priority area.

Priority Area 2.2 Rural Community Facilities Development (Water and Waste Water Treatment Systems Development)

Funds will be provided under this priority area only for non-competitive continuation grants to the seven organizations which received grants under this priority area in FY 1990. Funds will be provided to the FY 1990 grantees based upon a report of satisfactory performance during the first nine months of the FY 1990 grant period.

Priority Area 3.0 Assistance for Migrants and Seasonal Farmworkers

The purpose of this priority area is to fund a limited number of projects which focus exclusively on the problems and special needs of migrants and seasonal farmworkers in order to improve their quality of life and advance self-sufficiency.

OCS will entertain proposals that directly meet farmworker needs in such areas as: Homelessness; crisis nutritional relief; the development of self-help systems of food production; emergency health and social services referral and assistance; home repair,

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rehabilitation, and ownership; direct assistance to low-income farmworkers, including at-risk teenagers, to improve their job skills for them to qualify for long term and permanent full-time employment in agriculture; and/or assistance to low-income farmworkers, including at-risk teenagers, who wish to leave agricultural employment and find jobs in other lines of work. Linkages with the local JOBS program are encouraged wherever appropriate.

Applicants must provide quantifiable objectives for each of the above activities which will be included in the project. OCS encourages applicants to develop linkages with other public and private sector service providers who also are working with migrant and seasonal farmworkers or with issues affecting this target group.

For projects that relate to job skills and training, OCS will not consider applications proposing to use funds exclusively for classroom instruction. Placement must be an integral activity of any training project.

Applications submitted under this priority area must not contain requests for OCS funding for projects that would duplicate Community Services Block Grant funding or activities for which funding is available from other Federal agencies such as the Department of Labor, the Department of Agriculture's Food and Women, Infants and Children (WIC) programs, etc.

Eligible applicants are States, public agencies and private non-profit organizations including Historically Black Colleges and Universities.

See part F, 6, for special instructions on developing a work program for this priority area.

Priority Area 3.1 Assistance for Migrants and Seasonal Farmworkers (Set-Aside)

For Fiscal Year 1991, a fund of $300,000 will be set aside for Historically Black Colleges and Universities to enable them to offer continuing education to migrants and seasonal farmworkers and to increase participant employment opportunities. Applicants must provide quantifiable objectives for each of the activities which will be included in the project. Applications which are not funded within this set-aside due to the limited amount of funds available will also be considered competitively within the larger pool of eligible applicants under priority area 3.0.

See part F, 6, for special instructions on developing a work program for this priority area under priority area 3.0.

Part C—Application Prerequisites

1. Eligible Applicants

Priority areas included in this Program Announcement have differing eligibility requirements. Therefore, eligible applicants are identified in the individual priority area descriptions found in part B, above.

2. Availability of Funds

a. FY 1991 Funds

The Office of Community Services expects to award funds by September 30, 1991 for new grants. The maximum amount of funds available for each Priority Area is summarized below:

Priority area	Fiscal year 1991 funds
1.0 Urban and Rural Community Economic Developments:	
1.1 Urban and Rural Community Economic Development (Operational)	$15,993,734
1.2 Urban and Rural Community Economic Development (HBCU Set-Aside)	2,500,000
1.3 Urban and Rural Community Economic Development (Pre-development)	500,000
1.4 Urban and Rural Community Economic Development (YOU Program Set-Aside)	1,500,000
2.0 Planning and Development of Rural Housing and Community Facilities Development	4,096,947
3.0 Assistance for Migrants and Seasonal Farmworkers	2,724,981
3.1 Assistance for Migrants and Seasonal Farmworkers (Set-Aside)	300,000

b. Grant Amounts

No more than the below stated amounts will be granted for projects under the Priority Areas as indicated:

Priority area	Funding unit
1.1	$500,000
1.2	500,000
1.3	50,000
1.4	750,000
2.0	250,000
3.0	250,000
3.1	75,000

3. Project and Budget Periods

For Priority Areas 1.1, 1.2, and 1.4, applicants may request project and budget periods of up to 36 months and for Priority Areas 2.1, 3.0 and 3.1 up to 17 months. For Priority Area 1.3 applicants may request project and budget periods up to six months. By fully funding the projects in FY 91 funding stability in future years will be insured.

For Priority Area 2.2 only: FY 1990 grantees have been funded for a two-year project period. Based upon a report of satisfactory performance during the first nine months of the FY 1990 grant period, FY 1991 funds will be provided to the seven FY 1990 grantees on a non-competitive basis for the period beginning October 1, 1991.

4. Mobilization of Resources

OCS will give favorable consideration in the review process to applicants who document public/private partnerships which mobilize cash and/or third-party in-kind contributions. (See part D, Criterion IV.)

5. Program Beneficiaries

Projects proposed for funding under this announcement must result in direct benefits to low-income people as defined in the most recent Annual Revision of Poverty Income Guidelines published by DHHS.

Attachment A to this announcement is an excerpt from the guidelines currently in effect (1991). Annual revisions of these guidelines are normally published in the **Federal Register** in February or early March of each year. Grantees will be required to apply the most recent guidelines throughout the project period. These revised guidelines also may be obtained at public libraries, Congressional offices, or by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

No other government agency or privately-defined poverty guidelines are applicable for the determination of low-income eligiblity for these OCS programs.

Note, however, that low-income individuals granted lawful temporary resident status under sections 245A or 210A of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986 (Public law 99-603) may not be eligible for direct or indirect assistance based on financial need under this program for a period of five years from the date such status was granted.

6. Number of Projects in Application

An application may contain only one project (although, except for Priority Area 1.4, activities undertaken may be in a number of communities or impact areas) and this project must be identified as responding to one of the program priority areas stated in this announcement. Applications which are not in compliance with this requirement will be ineligible for funding.

7. Multiple Submittals

There is no limit to the number of applications that can be submitted under a specific program priority area as long as each application contains a proposal for a different project. However, an applicant will receive only one grant in any Priority Area.

8. Sub-contracting or Delegating Projects

OCS does not fund projects where the role of the applicant is primarily to serve as a conduit for funds to organizations other than the applicant. The applicant must have a substantive role in the implementation of the project for which funding is requested.

Part D—Application Procedures

1. Availability of Forms

Attachments B, C and D contain all of the standard forms necessary for the application for awards under these OCS programs. These forms may be photocopied for the application.

Copies of the **Federal Register** containing this announcement are available at most local libraries and Congressional District Offices for reproduction. If copies are not available at these sources, they may be obtained by writing or telephoning the office listed under the section entitled **"FOR FURTHER INFORMATION"** at the beginning of this announcement.

For purposes of this announcement, all applicants will use SF-424, SF-424A, and SF-424B, regardless of the priority area governing the project. Applications proposing construction projects will also present all required financial data using SF-424A. Instructions for completing the SF-424, SF-424A, and SF-424B are found in Attachments B, C, and D.

Part F contains instructions for the project narrative. The project narrative will be submitted on plain bond paper along with the SF-424 and related forms.

Attachment J provides a checklist to aid applicants in preparing a complete application package for OCS.

The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug-free workplace and debarment regulations set forth in Attachments E and F.

2. Application Submission

Applications must be submitted to ACF by the closing date. Refer to "Closing Date" at the beginning of this document for the specific date. Applications may be mailed to: Administration for Children and Families, Division of Grants Management, 6th floor OFM/DGM, 370 L'Enfant Promenade, SW., Washington, DC 20447.

Hand-delivered applications are accepted during normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Grants Management, 6th Floor OFM/DGM, 901 D Street, SW., Washington, DC 20447.

An application will be considered to be received on time if sent on or before the closing date as evidenced by a legible U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier. Private metered postmarks will not be considered acceptable as proof of timely mailing. Applications submitted by any means other than through the U.S. Postal Service or commercial carrier shall be considered as acceptable only if physically received at the above address before close of business on or before the deadline date.

Note: Applicants should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, applicants should check with their local post office. In some instances packages presented for mailing after a pre-determined time are postmarked with the next day's date. In other cases, postmarks are not routinely placed on packages. Applicants are cautioned to verify that there is a date on the package, and that it is the correct date of mailing, before accepting a receipt.

Applications which have a postmark later than the closing date, or which are hand-delivered after the closing date, will be returned to the sender without consideration in the competition.

One signed original application and four copies is required. The first page of the SF-424 must contain in the lower right-hand corner, a designation indicating under which priority area funds are being requested (See Part F.11).

3. Intergovernmental Review

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alaska, Idaho, Kansas, Louisiana, Minnesota, Nebraska, Virginia, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these nine jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards. However, because applications are due 60 days from the date of the announcement and the grants are to be awarded in September, there is not sufficient time to allow for a complete SPOC comment period. Therefore, we have reduced the comment period to July 5, 1991.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rules.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Grants Management, 6th floor, OFM/DGM, 370 L'Enfant Promenade, SW, Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included as appendix H of this announcement.

4. Application Consideration

Applications which meet the screening requirements in sections 5 a and b below will be reviewed competitively. Such applications will be referred to reviewers for a numerical score and explanatory comments based solely on responsiveness to program priority area guidelines and evaluation criteria published in this announcement.

Applications submitted under all priority areas will be reviewed by persons outside of the OCS unit which will be directly responsible for programmatic management of the grant. The results of these reviews will assist the Director and OCS program staff in

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considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications generally will be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since other factors are taken into consideration, including, but not limited to, the timely and proper completion of projects funded with OCS funds granted in the last five (5) years: Comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowances on previous OCS or other Federal agency grants.

OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicant's performance record.

5. Criteria for Screening Applicants

a. Initial Screening

All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this announcement. Only those applications meeting the following requirements will be reviewed and evaluated competitively. Others will be returned to the applicants with a notation that they were unacceptable.

(1) The application must contain a Standard Form 424 "Application for Federal Assistance" (SF–424), a budget (SF–424A), and signed "Assurances" (SF 424B) completed according to instructions published in part F and Attachments B, C, and D of this Program Announcement.

(2) A project narrative must also accompany the standard forms.

(3) The SF–424 and the SF–424B must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally.

(4) The application must be submitted for consideration under one priority area only.

b. Pre-rating Review

Applications which pass the initial screening will be forwarded to reviewers and/or OCS staff prior to the programmatic review to verify that the applications comply with this Program Announcement in the following areas:

(1) *Eligibility:* Applicant meets the eligibility requirements for the priority area under which funds are being requested. Proof of non-profit status must be included in the Appendices of the Project Narrative where applicable. Applicants must also be aware that the applicant's legal name as required in SF–424 (Item 5) *must match* that listed as corresponding to the Employer Identification Number (Item 6).

(2) *Number of Projects:* The application contains only one project which responds to one of the priority areas in this announcement.

(3) *Grant amount:* The amount of funds requested does not exeed the limits indicated in part C, 2, b for the appropriate priority area.

(4) *Cooperative Partnership Agreement* (Priority Area 1.4 only)

(a) The application contains a written agreement signed by the applicant and the YOU Program grantee in the target service area; and

(b) The agreement contains specific language confirming that the project will be carried out in the target area.

(5) *Written Agreement When Applicant Proposes to Make Equity Investment, Loan, or Sub-Grant:* (Priority Areas 1.1 and 1.4 only): The application contains a written agreement signed by the applicant and the third party which includes all of the elements required in part B, Priority Area 1.1 and Priority 1.4.

An application may be disqualified from the competition and returned if it does not conform to one or more of the above requirements.

c. Evaluation Criteria

Applications which pass the pre-rating review will be assessed and scored by reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and weaknesses under each applicable criterion published in the announcement.

The in-depth evaluation and review process will use the following criteria coupled with the specific requirements contained under each program priority area as described in part B.

(Note: The following review criteria reiterate collection of information requirements contained in part F of this announcement. These requirements are approved under OMB Control Number 0970–0062.)

6. Criteria for Review and Evaluation of All Applications except Priority Area 1.3

(a) Criterion I: Analysis of Need (Maximum: 5 points)

The application documents that the project addresses a vital need in a distressed community and provides statistics and other data and information in support of its contention.

(b) Criterion II: Organizational Experience in Program Area and Staff Responsibilities (Maximum: 15 points)

(i) *Organizational Experience in Program Area (sub-rating: 0–5 points).* Documentation provided indicates that projects previously undertaken have been relevant and effective and have provided permanent benefits to the low-income population.

Organizations which propose providing training and technical assistance have detailed competence in the specific program priority area and as a deliverer with expertise in the fields of training and technical assistance. If applicable, information provided by these applicants also addresses related achievements and competence of each cooperating or sponsoring organization.

Applicable to Priority Areas 1.1, 1.2, and 1.4

The applicant has demonstrated: The ability to implement major activities in such areas as business development, commercial development, physical development, or financial services; the ability to mobilize dollars from sources such as the private sector (corporations, banks, etc.), foundations, the public sector, including State and local governments, or individuals; that it has a sound organizational structure and proven organizational capability; and an ability to develop and maintain a stable program in terms of business, physical or community development activities that will provide needed permanent jobs, services, business development opportunities, and other benefits to community residents.

(ii) *Staff Skills, Resources and Responsibilities (sub-rating: 0–10 points).* The application describes in brief resume form the experience and skills of the project director who is not only well qualified, but his/her professional capabilities are relevant to the successful implementation of the project. If the key staff person has not yet been identified, the application contains a comprehensive position description which indicates that the responsibilities to be assigned to the project director are relevant to the

successful implementation of the project. The applicant has adequate facilities and resources (i.e. space and equipment) to successfully carry out the work plan. The assigned responsibilities of the staff are appropriate to the tasks identified for the project and sufficient time of senior staff will be budgeted to assure timely implementation and cost effective management of the project.

(c) Criterion III: Project Implementation (Maximum: 25 points)

The work plan, or Business Plan where appropriate, is both sound and feasible. The project is responsive to the needs identified in the Analysis of Need. It sets forth realistic quarterly time targets by which the various work tasks will be completed. Critical issues or potential problems that might impact negatively on the project are defined and the project objectives can be reasonably attained despite such potential problems.

(d) Criterion IV A: (Applicable to Priority Area 1.1, 1.2, and 1.4) Significant and Beneficial Impact (Maximum: 30 points)

(i) *Significant and Beneficial Impact (sub-rating: 0–15 points).* The application contains a full and accurate description of the proposed use of the requested financial assistance. The proposed project will produce permanent and measurable results that will reduce the incidence of poverty in the community. The OCS grant funds, in combination with private and/or other public resources, are targeted into low-income communities, distressed communities, and/or designated enterprise zones.

(ii) *Cost-per-Job (sub-rating: 0–10 points).* During the project period the proposed project will create new, permanent jobs or maintain permanent jobs for low-income residents at a cost-per-job below $15,000 in OCS funds.

[Note: The maximum number of points will be given to those applicants proposing cost-per-job estimates of $5,000 or less of OCS requested funds. Higher cost-per-job estimates will receive correspondingly fewer points.]

(iii) *Career Development Opportunities (sub-rating: 0–5 points).* The application documents that the jobs to be created for low-income people have career development opportunities which will promote self-sufficiency.

Criterion IV B: (Applicable to Priority Areas 2.1, 2.2, 3.0 and 3.1)

Significant and Beneficial Impact (Maximum: 30 points)

The application contains a full and accurate description of the proposed use of the requested financial assistance. The proposed project will produce permanent and measurable results that will reduce the incidence of poverty in the areas targeted and significantly enhance the self sufficiency of program participants. Results are quantifiable in terms of program area expectations, e.g., number of units of housing rehabilitated, agricultural and non-agricultural job placements, etc. The OCS grant funds, in combination with private and/or other public resources, are targeted into low-income and/or distressed communities and/or designated enterprise zones.

(e) Criterion V: Public-Private Partnerships (Maximum: 20 points) (Applicable to All Priority Areas Except 1.4.)

The application documents that the applicant will mobilize from public and/or private sources cash and/or in-kind contributions valued at an amount equal to the OCS funds requested. Applicants documenting that the value of such contributions will be at least equal to the OCS funds requested will receive the maximum number of points for this Criterion. Lesser contributions will be given consideration based upon the value documented. Applicants under Priority Area 1.2 who are proposing to enter into a partnership with Historically Black Colleges and Universities are deemed to have fully met this criterion and will receive the maximum number of points.

(f) Criterion V: Public-Private Partnerships (Maximum: 20 points) (Applicable to Priority Area 1.4 only.)

(1) Mobilization of resources (sub-rating: 10 points). The application documents that the applicant will mobilize from public and/or private sources cash and/or in-kind contributions valued at an amount equal to half of the OCS funds requested. Applicants documenting that the value of such contributions will be at least equal to half of the OCS funds requested will receive the maximum points (10) of this subcriterion.

(2) Integration/coordination of services (sub-rating: 10 points). The written agreement between the applicant and the organization which received FY 90 funding under the Department of Labor's Youth Opportunities Unlimited Program indicates that the actions to be taken to integrate/coordinate services relate directly to the project for which funds are being requested. The agreement clearly describes the following: (1) The goals and objectives that the applicant and the YOU program grantee expect to achieve through their collaboration; (2) a number of specific activities/actions that will be taken to integrate/coordinate services on an on-going basis; (3) the mechanism(s) to be used in integrating/coordinating activities; (4) how those activities will be significant in relation to the goals and objectives to be achieved through the collaboration; and (5) how those activities will be significant in relation to their impact on the success of the OCS-funded project.

(g) Criterion VI: Budget Appropriateness and Reasonableness (Maximum: 5 points)

Funds requested are commensurate with the level of effort necessary to accomplish the goals and objectives of the project. The application includes a detailed budget break-down for each of the budget categories in the SF–424A. The applicant presents a reasonable administrative cost. The estimated cost to the government of the project also is reasonable in relation to the anticipated results.

7. Criteria for Review and Evaluation of Applications Submitted Under Priority Area 1.3

a. Criterion I: Organizational Capability and Capacity (Maximum: 20 points)

(1) Organizational experience in program area (sub-rating: 5 points). Where the applicant has a history of prior activity or achievement in economic development, the documentation must address the relevance and effectiveness of projects undertaken, especially their cost effectiveness and the relevance and effectiveness of any services and the permanent benefits provided to the targeted population. Applicants must also indicate why they feel that they can successfully implement the project for which they are requesting funding.

(2) Management capacity (sub-rating: 5 points). Applicants must fully detail their ability to implement sound and effective management practices and if they have been recipients of other Federal or other governmental grants, they must also detail that they have consistently complied with financial and program progress reporting and audit requirements. Applicants should submit any available documentation on their management practices and progress reporting procedures along with a certification by a Certified or Licensed Public Accountant as to the sufficiency of the applicant's financial management system to protect adequately any Federal funds awarded under the application submitted.

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(3) Staffing (sub-rating: 5 points). The application must fully describe (e.g. resumes) the experience and skills of key staff showing that they are not only well qualified but that their professional capabilities are relevant to the successful implementation of the project.

(4) Staffing responsibilities (sub-rating: 5 points). The application must describe how the assigned responsibilities of the staff are appropriate to the tasks identified for the project.

b. Criterion II: Significant and beneficial impact (Maximum: 35 points)

A work plan funded under this announcement must show that there is a clearly identified need in a low-income area which is not being effectively addressed currently.

Project funds under this announcement must be used to develop a Business Plan for a project which would produce permanent and measurable results that will reduce the incidence of poverty in the areas targeted and mobilize non-Discretionary Program dollars from private sector individuals, corporations, and foundations if the project is implemented. The project around which the Business Plan is developed with the use of OCS grant funds, must be targeted into low-income communities, and/or designated enterprise zones, with the goal of increasing the economic conditions and social self-sufficiency of residents. Activities must be designated to achieve the specific Program Priority Area 1.3 objectives as defined in this program announcement.

c. Criterion III: Project implementation and evaluation (Maximum: 30 points)

(1) Project Implementation Component (sub-rating: 25 points). The application must contain a detailed and specific work plan that is both sound and feasible. It must set forth realistic quarterly time targets by which the various work tasks will be completed. Because quarterly time schedules are used by OCS as a key instrument to monitor progress, failure to include these time targets may seriously reduce an applicant's point score in this criterion. It must define critical issues or potential problems that might impact negatively on the project and it must indicate how the project objectives will be attained notwithstanding any such potential problems.

(2) Evaluation Component (sub-rating: 5 points). All proposals should include a self-evaluation component. The evaluation data collection and analysis procedures should be specifically oriented to assess the degree to which the stated goals and objectives are achieved. Qualitative and quantitative measures reflective of the scheduling and task delineation in (1) above should be used to the maximum extent possible. This component should indicate the ways in which the potential grantee would integrate qualitative and quantitative measures of accomplishment and specific data into its program progress reports that are required by OCS from all grantees.

d. Criterion IV: Budget appropriateness and reasonableness (Maximum: 15 points)

Each applicant should carefully review the requirements of Program Priority Area 1.3 and the budget submitted must coincide with those requirements.

The proposal request for funds must include a detailed budget breakout for each of the pertinent budget categories in part III, section B of the SF–424. (Please identify any positions for which less than full-time funding is requested.)

Part E—Contents of Application and Receipt Process

1. Contents of Application

Each application, whether involving construction or not, should include one original and four additional copies of the following:

a. A signed "Application for Federal Assistance" (SF–424);

b. "Budget Information-Non-Construction Program" (SF–424A);

c. A signed "Assurances-Non-Construction Program" (SF–424B);

d. A Project Narrative consisting of the following elements preceded by a consecutively numbered Table of Contents that will describe the project in the following order:

(i) Eligibility Confirmation

(ii) Analysis of Need

(iii) Organizational Experience and Staff Responsibilities

(iv) Work Program

(v) Appendices, including By-Laws; Articles of Incorporation; proof of non-profit status where applicable; resumes; Single Point of Contact comments; and, for Priority Area 1.4 only, a written agreement signed by the applicant and an organization funded by the Department of Labor in FY 90 under the YOU Program.

The original must bear the signature of the authorizing representative of the applicant organization.

The total number of pages for the entire application package should not exceed 50 pages.

Applications should be submitted in ring-binders that will allow for easy separation and reassembly.

Applications must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore, applications must be submitted on white 8½ X 11 inch paper only. They must not include colored, oversized or folded materials. Do not include organizational brochures or other promotional materials, slides, films, clips, etc. in the proposal. They will be discarded, if included.

2. Acknowledgement of Receipt

All applicants will receive an acknowledgement postcard with an assigned identification number. Applicants are requested to supply a self-addressed mailing label with their application which can be attached to this acknowledgement postcard. This number and the program priority area letter code must be referred to in all subsequent communication with OCS concerning the application. If an acknowledgement is not received within three weeks after the deadline date, please notify ACF by telephone (202) 401–9230.

Part F—Instructions for Completing Application Package

(Approved by the Office of Management and Budget under Control Number 0970–0062. The standard forms attached to this announcement shall be used to apply for funds for all priority areas described in this announcement.)

It is suggested that you reproduce the SF–424 and SF–424A, and type your application on the copies. If an item on the SF–424 cannot be answered or does not appear to be related or relevant to the assistance requested, write "NA" for "Not Applicable."

Prepare your application in accordance with the standard instructions given in Attachments B and C corresponding to the forms, as well as the OCS specific instructions set forth below:

1. SF–424 "Application for Federal Assistance"

Item

1. For the purposes of this announcement, all projects are considered "Applications"; there are no "pre-Applications." Also for the purposes of this announcement, construction projects are those which involve major renovations or construction. All others are considered nonconstruction. Check the appropriate box under "Application."

5 and 6. The legal name of the applicant must match that listed as corresponding to the Employer Identification Number. Where the applicant is a previous Department of Health and Human Services grantee, enter the Central Registry System Employee Identification Number (CRS/EIN) and the Payment Identifying Number, if one has been assigned, in the Block entitled "Federal Identifier" located at the top right hand corner of the form.

7. If the applicant is a non-profit corporation, enter "N" in the box and specify "non-profit corporation" in the space marked "Other." Proof of non-profit status, such as IRS determination or appropriate sections of the Articles of Incorporation, or By-laws, must be included as an appendix to the project narrative.

8. For the purposes of this announcement, all applications are "New" with the possible exceptions of those submitted under Priority Area 2.2. These applications should be marked "Continuation" if the applicants received funds from OCS in fiscal year 1990 for similar projects.

9. Enter DHHS-ACF/OCS.

10. The Catalog of Federal Domestic Assistance number for OCS programs covered under this announcement is 93.032. The title is "CSBG Discretionary Awards."

11. The following letter program priority area designations must be used:

UR—for Priority Area 1.1. Urban and Rural Community Economic Development (Operational)

HB—for Priority Area 1.2. Urban and Rural Community Economic Development (HBCU Set-Aside)

PD—for Priority Area 1.3. Urban and Rural Community Economic Development (Pre-development)

UY—for Priority Area 1.4. Urban and Rural Community Economic Development (YOU Program Set-Aside)

RH—for Priority Area 2.1. Rural Housing Repairs and Rehabilitation

RF—for Priority Area 2.2. Rural Community Facilities Development (Water and Waste Water Treatment Systems Development)

MS—for Priority Area 3.0. Assistance for Migrants and Seasonal Farmworkers

HM—for Priority Area 3.1. Assistance for Migrants and Seasonal Farmworkers (Set-Aside)

2. SF-424A—"Budget Information—Non-Construction Programs"

See Instructions accompanying this form as well as the instructions set forth below:

In completing these sections, the "Federal Funds" budget entries will relate to the requested OCS discretionary funds only, and "Non-Federal" will include mobilized funds from all other sources—applicant, state, local, and other. Federal funds other than requested OCS discretionary funding should be included in "Non-Federal" entries.

The budget forms in SF–424A are only to be used to present grant administrative costs and major budget categories. Financial data that is generated as part of a project Business Plan or other internal project cost data must be separate and should appear as part of the project Business Plan or other project implementation data.

Sections A and D of SF–424A must contain entries for both Federal (OCS) and non-Federal (mobilized) funds. Section B contains entries for Federal (OCS) funds only. Clearly identified continuation sheets in SF–424A format should be used as necessary.

Section A—Budget Summary

Lines 1–4

Col. (a):

Line 1 Enter "CSBG Discretionary";

Col. (b):

Line 1 Enter "93.032";

Col. (c) and (d):

Columns (c) and (d) should be completed only by those applicants requesting funds for continuation grants (Priority Area 2.2 only), and show the amounts of funds which will be needed after the first 12 month period. All other applicants should leave columns (c) and (d) blank. Column (e)–(g)

For line 1, enter in columns (c), (f) and (g) the appropriate amounts needed to support the project for the budget period.

Line 5 enter the figures from Line 1 for all columns completed as required, (c), (d), (e), (f), and (g).

Section B—Budget Categories

Allowability of costs are governed by applicable cost principles set forth in 45 CFR parts 74 and 92. Columns (1) and (5):

In OCS applications, it is only necessary to complete Columns (1) and (5).

Column 1: Enter the total requirements for OCS Federal funds by the Object Class Categories of this section:

Personnel-Line 6a: Enter the total costs of salaries and wages of applicant/grantee staff only. Do not include costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits—Line 6b: Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate which is entered on line 6j. Provide a breakdown of amounts and percentages that comprise fringe benefit costs.

Travel—Line 6c: Enter total costs of out-of-town travel by employees of the project. Do not enter costs for consultant's travel or local transportation. Provide justification for requested travel costs. (See Line 6h and Line 21 for additional instructions).

Equipment—Line 6d: Enter the total costs of all non-expendable personal property to be acquired by the project. "Non-expendable personal property" means tangible personal property having an acquisition cost per unit of $500 or more for non-profit organizations and $5,000 or more for public organizations and having a useful life of one year. An applicant may use its own definition of non-expendable personal property, provided that such a definition would at least include all tangible personal property as defined in the preceding sentence. (See Line 21 for additional requirements).

Supplies—Line 6e: Enter the total costs of all tangible personal property (supplies) other than that included on line 6d.

Contractual—Line 6f: Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations including delegate agencies and specific project(s) or businesses to be financed by the applicant. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individual service contractors on this line. If available at the time of application, attach a list of contractors indicating the name of the organization, the purpose of the contract and the estimated dollar amount of the award. If the name of contractor, scope of work, or estimated total are not available or have not been negotiated, include these in Line h, "Other". Travel costs for the Executive Director or Project Director to attend a two day national workshop in Washington, DC should be included.

Note: Whenever the applicant/grantee intends to delegate part of the program to another agency, the applicant/grantee must submit sections A and B of this form (SF–424A), completed for each delegate agency by agency title, along with the required supporting information referenced in the applicable instructions. The total costs of all

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such agencies will be part of the amount shown on Line 6f. Provide back-up documentation identifying name of contractor, purpose of contract and major cost elements.

Construction—Line 6g: Enter the costs of renovation, repair, or new construction. Provide narrative justification and breakdown of costs.

Other—Line 6h: Enter the total of all other costs. Such costs, where applicable, may include but are not limited to insurance, food, medical and dental costs (noncontractual), fees and travel paid directly to individual consultants, local transportation (all travel which does not require per diem is considered local travel), space and equipment rentals, printing and publication, computer use, training costs, including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Total Direct Charges—Line 6i: Show the total of Lines 6a through 6h.

Indirect Charges—Line 6j: Enter the total amount of indirect costs. This line should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services or another Federal agency. With the exception of local governments, applicants should enclose a copy of the current rate agreement if it was negotiated with a Federal agency other than the Department of Health and Human Services.

If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately, upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent DHHS Guide for Establishing Indirect Cost Rates, and submit it to the appropriate DHHS Regional Office.

It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not be also charged as direct costs to the grant.

Totals—Line 6k: Enter the total amounts of Lines 6i and 6j. The total amount shown in section B, Column (5), Line 6k, should be the same as the amount shown in section A, Line 5, Column (e).

Program Income—Line 7: Enter the estimated amount of income, if any, expected to be generated from this project. Separately show expected program income generated from OCS support and income generated from other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Column 5: Carry totals from Column 1 to Column 5 for all line items.

Section C—Non-Federal Resources

This section is to record the amounts of "non-Federal" resources that will be used to support the project. "Non-Federal" resources mean other than OCS funds for which the applicant is applying. Therefore, mobilized funds from other Federal programs, such as the Job Training Partnership Act program, should be entered on these lines. Provide a brief listing of the non-Federal resources on a separate sheet and describe whether it is a grantee-incurred cost or a third-party in-kind contribution. The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the Public-Private Partnerships criterion.

Except in unusual situations, this documentation must be in the form of letters of commitment from the organization(s)/individuals from which funds will be received.

Line 8:

Column (a) enter the project title.

Column (b): Enter the amount of contributions to be made by the applicant to the project.

Column (c): Enter the State contribution. If the applicant is a State agency, enter the non-Federal funds to be contributed by the State other than the applicant.

Column (d): Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e): Enter the total of columns (b), (c), and (d).

Lines 9, 10, and 11 should be left blank.

Line 12:

Carry the total of each column of Line 8, (b) through (e). The amount in Column (e) should be equal to the amount on section A, Line 5, Column (f).

Section D—Forecasted Cash Needs

Line 13—Enter the amount of Federal (OCS) cash needed for this grant, by quarter, during the budget period.

Line 14—Enter the amount of cash from all other sources needed by quarter during the budget period.

Line 15—Enter the total of Lines 13 and 14.

Section E—Budget Estimates of Federal Funds Needed for Balance of Project(s)

To be completed by applicants applying under Priority Area 2.2 only.

Section F—Other Budget Information

Line 21—Use this space and continuation sheets as necessary to fully explain and justify the major items included in the budget categories shown in section B. Include sufficient detail to facilitate determination of allowability, relevance to the project, and cost benefits. Particular attention must be given to the explanation of any requested direct cost budget item which requires explicit approval by the Federal agency. Budget items which require identification and justification shall include, but not be limited to, the following:

A. Salary amounts and percentage of time worked for those key individuals who are identified in the project narrative;

B. Any foreign travel;

C. A list of all equipment and estimated cost of each item to be purchased wholly or in part with grant funds which meet the definition of nonexpendable personal property provided on Line 6d, section B. Need for equipment must be supported in program narrative.

D. *Contractual:* Major items or groups of smaller items; and

E. *Other:* Group into major categories all costs for consultants, local transportation, space, rental, training allowances, staff training, computer equipment, etc. Provide a complete breakdown of all costs that make up this category.

Line 22—Enter the type of HHS or other Federal agency approved indirect cost rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved, where applicable. Attach a copy of the rate agreement if it was negotiated with a Federal agency other than the Department of Health and Human Services.

Line 23—Provide any other explanations and continuation sheets required or deemed necessary to justify or explain the budget information.

3. SF–424B "Assurances—Non-Construction"

Fill out, sign and date form found at Attachment D.

4. Restrictions on Lobbying Activities

Certification for Contracts Grants, Loans, and Cooperative Agreements: Fill out, sign and date form found at Attachment H.

5. Disclosure of Lobbying Activities, SF–LLL

Fill out, sign and date form found at Attachment H, if applicable.

6. Project Narrative

The project narrative must address the specific concerns mentioned under the relevant priority area description in part B. The narrative should provide information on how the application meets the evaluation criteria in part D, section 5 c of this Program Announcement and should follow the format below:

a. Eligibility Confirmation

This section must explain how the applicant has complied with each of the basic requirements listed in part D, 5 b (1)–(5), i.e. (1) that the applicant meets the eligibility requirements for the priority area under which funds are being requested; (2) the application contains only one project which responds to one of the priority areas in the announcement; (3) the amount of funds requested does not exceed the limits indicated in part C, section 2, b for the apppropriate priority area; (4) [Priority Area 1.4 only] the application contains a written agreement signed by the applicant and the YOU Program grantee in the target area and the agreement contains specific language confirming the project will be carried out in the YOU Program target area.

b. Analysis of Need

The application should include a description of the target area and population to be served as well as a discussion of the nature and extent of the problem to be solved. It should also include documentation supportive of its needs assessment such as employment statistics, housing statistics, etc.

c. Organizational Experience and Staff Responsibilities

(i) *Organizational Experience.* Each applicant must document competence in the specific program priority area under which an application is submitted.

Documentation must be provided which addresses the relevance and effectiveness of projects previously undertaken in the specific priority area for which funds are being requested and especially their cost effectiveness, the relevance and effectiveness of any services provided, and the permanent benefits provided to the low-income population. Organizations which propose providing training and technical assistance must detail their competence in the specific program priority area and as a deliverer with expertise in the fields of training and technical assistance. If applicable, information provided by these applicants must also address related achievements and competence of each cooperating or sponsoring organization.

Applicable to Priority Areas 1.1, 1.2, and 1.4

Applicants in these priority areas must also document a firmly established and quantifiable performance record that shows the following:

—The ability to implement major activities such as business development, commercial development, physical development, or financial services;
—Successful working relationships within the community including public officials, financial institutions, corporations, other community organizations and residents;
—A sound asset base and organizational structure in terms of (a) net worth, (b) management stability, and (c) organizational capability;
—An ability to develop and maintain a stable program in terms of business, physical or community development activities that will provide needed permanent jobs, services, business development opportunities and other benefits to community residents, and impact on community-wide economic problems and needs;
—Sound administrative and fiscal systems and controls, and the ability to establish and maintain partnerships with the private sector in such forms as financial support, volunteerism or executives on loan.

(ii) *Staff Skills, Resources and Responsibilities.*

The application must fully describe (e.g. a resume or position description) the experience and skills of the proposed project director showing that the individual is not only well qualified but that his/her professional capabilities are relevant to the successful implementation of the project.

The application must include statements regarding who will have the responsibilities of the chief executive officer, who will be responsible for grant coordination with OCS, and how the assigned responsibilities of the staff are appropriate to the tasks indentified for the project. It must show clearly that sufficient time of senior staff will be budgeted to assure timely implementation and cost effective management of the project.

d. Work Program

The application must contain a detailed and specific work program, or Business Plan where appropriate, that is both sound and feasible. (For those applicants submitting proposals under Priority Areas 1.1, 1.2, and 1.4 the Business Plan will be accepted in lieu of the work program.)

The work program will be evaluated according to Criteria III, IV, and V set forth in part D of this announcement: Project Implementation, Significant and Beneficial Impact, and Public-Private Partnerships.

Projects funded under this announcement must be designed to produce permanent and measurable results that will reduce the incidence of poverty in the areas targeted. The OCS grant funds, in combination with private and/or other public resources, must be targeted into low-income communities, distressed communities, and/or designated enterprise zones. Projects must be designed to achieve the specific program priority area objectives defined in this Program Announcement.

It must set forth realistic quarterly time targets by which the various work tasks will be completed. It must identify critical issues or potential problems that might impact negatively on the project and it must indicate how the project objectives will be attained despite such potential problems.

If an applicant is proposing a project which will affect a property listed in, or eligible for inclusion in the National Register of Historic Places, it must identify this property in the narrative and explain how it has complied with the provisions of Section 106 of the National Historic Preservation Act of 1966 as amended. If there is any question as to whether the property is listed in or eligible for inclusion in the National Register of Historic Places, the applicant should consult with the State Historic Preservation Officer. (See Attachment D: SF–424B, Item 13 for additional guidance.) The applicant should contact OCS early in the development of its application for instructions regarding compliance with the Act and data required to be submitted to the Department of Health and Human Services. Failure to comply with the cited Act may result in the application being ineligible for funding consideration.

Applicable to Priority Areas 1.1, 1.2, and 1.4

Applications submitted under Priority Areas 1.1, 1.2 and 1.4 which propose to use the requested OCS funds to make an equity investment or a loan to a business concern, including a wholly-owned subsidiary, or to make a sub-grant with a portion of the OCS funds, much include a writtten agreement

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between the community development corporation and the recipient of the grant funds which contains all of the elements listed in part B under the appropriate Priority Area.

Applications submitted under Priority Areas 1.1, 1.2, and 1.4 must include a complete Business Plan where it is appropriate to the project/venture. An application that does not include a Business Plan where one is appropriate may be disqualified and returned to the applicant.

In some cases a Business Plan may not be required under the Priority Areas. All applicants under the Priority Areas, however, must nevertheless submit the information which is required in sections 7 through 10, as set forth below.

The Business Plan is one of the major components that will be evaluated by OCS to determine the feasibility of an economic development project. It must be well prepared and address all the major issues noted herein.

The following guidelines show what should be included in order to produce a complete and professional Business Plan which makes an orderly presentation of the facts necessary to be judged responsive to the program announcement.

Because the guidelines were written to cover a variety of possibilities, rigid adherence to them is not possible nor even desirable for all projects. For example, a plan for a service business would not require a discussion of manufacturing nor product design.

The Business Plan should include the following:

1. The business and its industry. This section should describe the nature and history of the business and provide some background on its industry.

a. The Business: As a legal entity; the general business category.

b. Description and Discussion of Industry: Current status and prospects for the industry;

2. Products and Services: This section deals with the following:

a. Description: Describe in detail the products or services to be sold.

b. Proprietary Position: Describe priorietary features if any of the product, e.g. patents, trade secrets.

c. Potential: Features of the product or service that may give it an advantage over the competition.

3. Market Research and Evaluation: This section should present sufficient information to show that the product or service has a substantial market and can achieve sales in the face of competition.

a. Customers: Describe the actual and potential purchasers for the product or service by market segment.

b. Market Size and Trends: State the size of the current total market for the product or service offered.

c. Competition: An assessment of the strengths and weaknesses of competitive products and services.

d. Estimated Market Share and Sales: Describe the characteristics of the product or service that will make it competitive in the current market.

4. Marketing Plan: The marketing plan should detail the product, pricing, distribution, and promotion strategies that will be used to achieve the estimated market share and sales projections. The marketing plan must describe what is to be done, how it will be done and who will do it. The plan should address the following topics—Overall Marketing Strategy, Packaging, Service and Warranty, Pricing, Distribution and Promotion.

5. Design and Development Plans: If the product, process or service of the proposed venture requires any design and development before it is ready to be placed on the market, the nature and extent and cost of this work should be fully discussed. The section should cover items such as Development Status and Tasks, Difficulties and Risks, Product Improvement and New Products, and Costs.

6. Manufacturing and Operations Plan: A manufacturing and operations plan should describe the kind of facilities, plant location, space, capital equipment and labor force (part and/or full time and wage structure) that are required to provide the company's product or service.

7. Management Team: The management team is the key in starting and operating a successful business. The management team should be committed with a proper balance of technical, managerial and business skills, and experience in doing what is proposed. This section must include a description of: The key management personnel and their primary duties; compensation and/or ownership; the organizational structure; Board of Directors; management assistance and training needs; and supporting professional services.

8. Overall Schedule: A schedule that shows the timing and interrelationships of the major events necessary to launch the venture and realize its objectives. Prepare, as part of this section, a month-by-month schedule that shows the timing of such activities as product development, market planning, sales programs, and production and operations. Sufficient detail should be included to show the timing of the primary tasks required to accomplish such activity.

9. Critical Risks and Assumptions: The development of a business has risks and problems and the Business Plan should contain some explicit assumptions about them. Accordingly, identify and discuss the critical assumptions in the Business Plan and the major problems that will have to be solved to develop the venture. This should include a description of the risks and critical assumptions relating to the industry, the venture, its personnel, the product's market appeal, and the timing and financing of the venture.

10. Community Benefits: The proposed project must contribute to economic, community and human development within the project's target area. A section that describes and discusses the potential economic and non-economic benefits to low-income members of the community must be included as well as a description of the strategy that will be used to identify and hire individuals being served by public assistance programs and how linkages with community agencies/organizations administering the JOBS program will be developed.

The following project benefits must be described:

Economic

—Number of permanent jobs that will be created for low-income people during the grant period;
—Number of jobs to be created for low-income people that will have career development opportunities and a description of those jobs;
—Number of jobs that will be filled by individuals on public assistance;
—Ownership opportunities created for poverty-level project area residents;
—Specific steps to be taken to promote the self-sufficiency of program participants.

Other benefits which might be discussed are:

Human Development

—New technical skills development and associated career opportunities for community residents;
—Management development and training.

Community Development

—Development of community's physical assets;
—Provision of needed, but currently unsupplied, services or products to community;
—Improvement in the living environment.

11. The Financial Plan: The Financial Plan is basic to the development of a Business Plan. Its purpose is to indicate the project's potential and the timetable for financial self-sufficiency. In developing the Financial Plan, the following exhibits must be prepared for the first three years of the business' operation:

a. Profit and Loss Forecasts—quarterly for each year;
b. Cash Flow Projections—quarterly for each year;
c. Pro forma balance sheets—quarterly for each year;
d. Initial sources of project funds;
e. Initial uses of project funds; and
f. Any future capital requirements and sources.

Applicable to Priority Area 2.1 Only

Each applicant must include a full discussion of the project including the following information:

—*Basic Housing Data for Targeted Area.* Information on the number of sub-standard housing units available to low-income people in the target area, deficiencies of the housing units to be repaired, i.e., lack of or inadequate plumbing, upgrading of electrical systems, etc., new construction inventory, property values, rents and mortgage rates. While specific census data may be included, this information must be project specific. Applicants must show that other Federal programs do not exist to address the rehabilitation needs of the targeted area.
—*Priorities.* Provide a rationale for the strategies and priorities for which OCS support is requested.
—*Participant Application Process.* A description of the participant application process including: (a) Verification of participant need and income eligibility, (b) proposed diagnostic repair forms and contract bid procedures (where applicable), and (c) completion verification and quality workmanship assurance procedures.
—*Types of Work to be Performed.* The quantitative and qualitative measures in the work plan should reflect the types of work to be performed, e.g., (a) technical assistance and training for each proposed organization/community; and/or (b) repairs or rehabilitation or construction work, noting which types of work will be done in order to bring properties up to minimum housing standards, inspection procedures and construction schedules.

Applications proposing to repair or rehabilitate low-income rental housing (see part B, Priority Area 2.1, regarding restrictions) must state the current rents for the units in question as well as what rents will be charged for the rehabilitated units. Applicants should also state the number of low-income residents who will be helped to purchase or acquire adequate housing.

—*Job Creation.* Data regarding the number of direct jobs that will be created in the proposed project, noting the number of low-income residents that will be trained and/or placed in these jobs.
—*Public-Private Partnership.* A description of the degree of involvement by private sector individuals, corporations, and foundations in the implementation of the project and the amount of dollars which will be mobilized.

Applicable to Priority Area 2.2 Only

Each applicant must include a full discussion of how the proposed use of funds will enable low-income rural communities to develop the capability and expertise to establish and maintain affordable, adequate and safe water and waste water systems. Applicants must also discuss how they will disseminate information about water and waste water programs serving rural communities, and how they will better coordinate Federal, State, and local water and waste water program financing and development to assure improved service to rural communities.

Among the benefits that merit discussion under this priority are: The number of rural communities to be provided with technical and advisory services; the number of rural poor individuals who are expected to be directly served by applicant-supported improved water and waste water systems; the decrease in the number of inadequate water systems related to applicant activity; the number of newly-established and applicant-supported treatment systems (all of the above may be expressed in terms of equivalent connection units); the increase in local capacity in engineering and other areas of expertise; and the amount of non-discretionary program dollars expected to be mobilized.

Applicable to Priority Areas 3.0 and 3.1

Each applicant must include a full discussion of the proposed project and how it will address one or more farmworker needs as described in part B.

Among the benefits which merit discussion under this priority area are: The number of farmworkers who are expected to improve their agricultural skills and thus improve their agricultural employment situation; the number of farmworkers and/or their dependents who will be afforded an opportunity to continue their formal education; the number of farmworkers/families who will receive crisis nutritional relief, emergency health and social services referrals and assistance, and assistance in the development of self-help systems of food production; the number of farmworkers who are expected to gain longer term or permanent private sector employment in areas outside agriculture; the number of farmworkers who will receive help in the areas of housing; the number of housing units to be repaired or rehabilitated; the degree and kind of such help; the amount of non-Discretionary program dollars expected to be mobilized, and the degree of private sector involvement that will be utilized in developing and carrying out projects funded under this announcement.

Part G—Post Award Information and Reporting Requirements

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Notice of Grant Award which provides the amount of Federal funds approved for use in the project, the budget period for which support is provided, the terms and conditions of the award, the total project period for which support is contemplated, and the total financial participation from the award recipient.

General Conditions and Special Conditions (where the latter are warranted) which will be applicable to grants, are subject to the provisions of 45 CFR parts 74 and 92.

Grantees will be required to submit quarterly progress and financial reports (SF–269) as well as a final progress and financial report.

Grantees are subject to the audit requirements in 45 CFR parts 74 and 92 and OMB Circular A–128 or A–133. If an applicant will not be requesting indirect costs, it should anticipate in its budget request the cost of having an audit performed at the end of the grant period.

Section 319 of Public Law 101–121, signed into law on October 23, 1989, imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides limited exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their subtier contractors and/or grantees) are prohibited from using appropriated funds for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative

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agreement or loan. In addition, for each award action in excess of $100,000 (or $150,000 for loans) the law requires recipients and their subtier contractors and/or subgrantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists, (2) to submit a declaration setting forth whether payments to lobbyists have been or will be made out of nonappropriated funds and, if so, the name, address, payment details, and purpose of any agreements with such lobbyists whom recipients or their subtier contractors or subgrantees will pay with the nonappropriated funds and (3) to file quarterly up-dates about the use of lobbyists if an event occurs that materially affects the accuracy of the information submitted by way of declaration and certification. The law establishes civil penalties for noncompliance and is effective with respect to contracts, grants, cooperative agreements and loans entered into or made on or after December 23, 1989. See Attachment H for certification and disclosure forms to be submitted with the applications for this program.

Attachment I indicates the regulations which apply to all applicants/grantees under the Discretionary Grants Program.

Dated: May 24, 1991.

Eunice S. Thomas,

Director, Office of Community Services.

Attachment A—1991 Poverty Income Guidelines for all States (Except Alaska and Hawaii) and the District of Columbia

Size of family unit	Poverty guideline
1	$6,620
2	8,880
3	11,140
4	13,400
5	15,660
6	17,920
7	20,180
8	22,440

For family units with more than 8 members, add $2,260 for each additional member.

Poverty Income Guidelines for Alaska

Size of family unit	Poverty guideline
1	$8,290
2	11,110
3	13,930
4	16,750
5	19,570
6	22,390
7	25,210
8	28,030

For family units with more than 8 members, add $2,820 for each additional member.

Poverty Income Guidelines for Hawaii

Size of family unit	Poverty guideline
1	$7,610
2	10,210
3	12,810
4	15,410
5	18,010
6	20,610
7	23,210
8	25,810

For family units with more than 8 members, add $2,600 for each additional member.

BILLING CODE 4150-04-M

Attachment B—SF 424, Application for Federal Assistance and Instructions for the SF 424

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): –

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State H. Independent School Dist.
B. County I. State Controlled Institution of Higher Learning
C. Municipal J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify) _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date | Ending Date

14. CONGRESSIONAL DISTRICTS OF: a. Applicant | b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities)
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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Attachment C—SF 424A, Budget Information—Non-Construction Programs and Instructions for the SF 424A

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)	
21. Direct Charges:	22. Indirect Charges:
23. Remarks	

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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

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INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

Attachment D—SF 424B, Assurances—Non-Construction Programs

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

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Attachment E—U.S. Department of Health and Human Services Certification Regarding Drug-Free Workplace Requirements—Grantees Other Than Individuals

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(Continued on reverse side of this sheet)

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HHS–Certification Regarding Drug-Free Workplace Requirements–continued from reverse page

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

Signature_____ **Date**_____

Title_____

Organization_____

DGMO Form#2 Revised May 1990

BILLING CODE 4150-04-C

Attachment F—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR part 76, certifies to the best of its knowledge and belief that its principals involved:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation for this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services' (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction. The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions", provided below, without modification in all lower tier covered transactions and in all solicitations for lower tier covered actions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusions—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusions—Lower Tier Covered Transactions" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Attachment G—State Single Points of Contact

Alabama

Mrs. Moncell Thornell, State Single Point of Contact, Alabama Department of Economic & Community Affairs, 3465 Norman Bridge Road, Post Office Box 250347, Montgomery, Alabama 36125–0347, Telephone (205) 284–8905.

Arizona

Ms. Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth floor, Phoenix, Arizona 85012, Telephone (602) 280–1315.

Arkansas

Mr. Joseph Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Service, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 371–1074.

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323-7480.

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, room 520, Denver, Colorado 80203, Telephone (303) 866–2156.

Connecticut

Under Secretary, Attn: Intergovernmental Review coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Telephone (203) 566–3410.

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326.

District of Columbia

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, room 416, District Building, 1350 Pennsylvania Avenue, NW., Washington, DC 20004, Telephone (202) 727–9111.

Florida

Karen McFarland, Director, Florida State Clearinghouse, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8114.

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, SW., Atlanta, Georgia 30334, Telephone (404) 656–3855.

Hawaii

Mr. Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol, Honolulu, Hawaii 96813, Telephone (806) 548–3016 or 548–3065.

Illinois

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Telephone (217) 782–8639.

Indiana

Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610.

Iowa

Steven R. McCann, Division for Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725.

Kentucky

Robert Leonard, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor Capital Plaza Tower, Frankfort, Kentucky 40601, Telephone (502) 564–2382

Maine

State Single Point of Contact, Attn: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

Maryland

Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 255–4490

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Massachusetts

State Single Point of Contact, Attn: Beverly Boyle, Executive Office of Communities & Development, 100 Cambridge Street, room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

Michigan

Milton O. Waters, Director of Operations, Michigan Neighborhood Builders Alliance, Michigan Department of Commerce, Telephone (517) 373–7111

Please direct correspondence to: Manager, Federal Project Review, Michigan Department of Commerce, Michigan Neighborhood Builders Alliance, P.O. Box 30242, Lansing, Michigan 48909, Telephone (517) 373–6223.

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, Office of Policy Development, 421 West Pascagoula Street, Jackson, Mississippi 39203, Telephone (601) 960–4280

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

Montana

Deborah Stanton, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Budget and Program Planning, Capitol Station, Room 202—State Capitol, Helena, Montana 59620, Telephone (406) 444–5522

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, ATTN: John B. Walker, Clearinghouse Coordinator

New Hampshire

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

New Jersey

Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613

Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025.

New Mexico

Dorothy E. (Duffy) Rodriguez, Deputy Director, State Budget Division, Department of Finance & Administration, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Carolina 27611, Telephone (919) 733–0499

North Dakota

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Telephone (701) 224–2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698

Oklahoma

Don Strain, State Single Point of Contact, Oklahoma Department of Commerce, Office of Federal Assistance Management, 6601 Broadway Extension, Oklahoma City, Oklahoma 73116, Telephone (405) 843–9770

Oregon

Attn: Dolores Streeter, State Single Point of Contact, Intergovernmental Relations Division, State Clearinghouse, 155 Cottage Street NE., Salem, Oregon 97310, Telephone (503) 373–1998

Pennsylvania

Sandra Kline, Project Coordinator, Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108, Telephone (717) 783–3700

Rhode Island

Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, room 477, Columbia, South Carolina 29201, Telephone (803) 734–0493

South Dakota

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773–3212

Tennessee

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

Texas

Tom Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

Utah

Utah State Clearinghouse, Attn: Carolyn Wright, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Telephone (801) 538–1547

Vermont

Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326

Washington

Marilyn Dawson, Washington Intergovernmental Review Process, Department of Community Development, 9th and Columbia Building, Mail Stop GH–51, Olympia, Washington 98504–4151, Telephone (206) 753–4078

West Virginia

Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010.

Wisconsin

James R. Klauser, Secretary, Wisconsin Department of Administration, 101 South Webster Street, GEF 2, P.O. Box 7864, Madison, Wisconsin 53707–7864, Telephone (608) 266–1741.

Please direct correspondence and questions to: William C. Carey, Section Chief, Federal-State Relations Office, Wisconsin Department of Administration, (608) 266–0267.

Wyoming

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Telephone (307) 777–7574.

Territories

Guam

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472–2285.

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950.

Puerto Rico

Patria Custodio/Israel Soto Marrero, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444.

Virgin Islands

Jose L. George, Director, Office of Management and Budget, No. 32 & 33 Kongens Gade, Charlotte Amalie, V.I. 00802, Telephone (809) 774–0750.

Attachment H—Restrictions on Lobbying

Restrictions on Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Signature

Organization

Date

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DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. **Type of Federal Action:** ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. **Status of Federal Action:** ☐ a. bid/offer/application b. initial award c. post-award	3. **Report Type:** ☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter ____ date of last report _____
4. **Name and Address of Reporting Entity:** ☐ Prime ☐ Subawardee Tier _____, *if known:* **Congressional District,** *if known:*	5. **If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:** **Congressional District,** *if known:*	
6. **Federal Department/Agency:**	7. **Federal Program Name/Description:** CFDA Number, *if applicable:* _____	
8. **Federal Action Number,** *if known:*	9. **Award Amount,** *if known:* $	
10. a. **Name and Address of Lobbying Entity** *(if individual, last name, first name, MI):*	b. **Individuals Performing Services** *(including address if different from No. 10a)* *(last name, first name, MI):*	
(attach Continuation Sheet(s) SF-LLL-A, if necessary)		
11. **Amount of Payment** *(check all that apply):* $ _____ ☐ actual ☐ planned	13. **Type of Payment** *(check all that apply):* ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____	
12. **Form of Payment** *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____		
14. **Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:** *(attach Continuation Sheet(s) SF-LLL-A, if necessary)*		
15. **Continuation Sheet(s) SF-LLL-A attached:** ☐ Yes ☐ No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:** _____	
Federal Use Only:		Authorized for Local Reproduction Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

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DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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Standard Form - LLL-A

BILLING CODE 3150-04-C

Attachment I—DHHS Regulations That Apply to All Applicants/Grantees Under the OCS Discretionary Program

Title 45 of the Code of Federal Regulations:

Part 16—Procedures of the Departmental Grant Appeals Board
Part 74—Administration of Grants (non-governmental)
Part 74—Administration of Grants (state and local governments and Indian Tribal affiliates):
Sections 74.62(a) Non-Federal Audits
74.173 Hospitals
74.174(b) Other Nonprofit Organizations
74.304 Final Decisions in Disputes
74.710 Real Property, Equipment and Supplies
74.715 General Program Income
Part 75—Informal Grant Appeal Procedures
Part 76—Debarment and Suspension form Eligibility for Financial Assistance

Subpart F—Drug Free Workplace Requirements

Part 80—Non-discrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964
Part 81—Practice and Procedures for Hearings Under Part 80 of this Title
Part 83—Nondiscrimination on the basis of sex in the admission of individuals to training programs
Part 84—Non-discrimination on the Basis of Handicap in Programs
Part 91—Non-discrimination on the Basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance
Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (**Federal Register**, March 11, 1988)
Part 93—New Restrictions on Lobbying
Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities

Attachment J—Checklist for Use in Submitting OCS Grant Applications (Optional)

The application should contain:

1. A completed, *signed* SF–424, "Application for Federal Assistance". The letter code for the priority area (TA or TD) should be in the lower right-hand corner of the page;
2. A completed "Budget Information-Non-Construction" (SF–424A);
3. A *signed* "Assurances-Non-Construction" (SF–424A);
4. A Project Narrative beginning with a Table of Contents that describes the project in the following order:
   (a) Analysis of Needs/Priorities
   (b) Work Program
   (c) Significant and Beneficial Impact
   (d) Management History
   (e) Staffing and Resources
5. Appendices including proof of non-profit status, Single Points of Contact comments (where applicable), resumes;
6. A *signed* copy of "Certification Regarding Anti-Lobbying Activities";
7. A completed "Disclosures of Lobbying Activities", if appropriate; and
8. A self-addressed mailing label which can be affixed to a postcard to acknowledge receipt of application.

The application should not exceed a total of 30 pages. It should include one original and four identical copies, printed on white 8½ by 11 inch paper, and be presented in a ring binder. The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug-free workplace and debarment regulations set forth in Attachments D and E.

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Part VI

Department of Health and Human Services

Office of Community Services

Fiscal Year 1991 Job Opportunities for Low-Income Individuals Program (Demonstration Projects); Request for Applications; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Program Announcement No. OCS-91-6]

Request for Applications Under the Office of Community Services' Fiscal Year 1991 Jobs Opportunities for Low-Income Individuals Program (Demonstration Projects)

AGENCY: Office of Community Services, Administration for Children and Families, HHS.

ACTION: Announcement of availability of funds and request for applications under the Office of Community Services' Jobs Opportunities for Low Income Individuals Programs (Demonstration Projects).

SUMMARY: The Administration for Children and Families, Office of Community Services (OCS), announces that competing applications will be accepted for new grants pursuant to the Secretary's discretionary authority under section 505 of the Family Support Act of 1988. This Program Announcement consists of seven parts:

Part A covers information on legislative authorities and defines terms used in the Program Announcement;

Part B describes the types of projects that will be considered for funding;

Part C provides details on application prerequisites, including who is eligible to apply, funds available, limitations on grant amounts, project and budget periods, who should benefit from the programs, prohibition on the use of funds, and other application requirements;

Part D describes the application procedures, including the availability of forms, where and how to submit an application, the criteria used in screening and evaluating applications, and intergovernmental review.

Part E describes the contents of the application package and receipt process;

Part F provides instructions for completing the SF-424 following standard Federal guidelines as well as OCS specific requirements, and describes how the project narrative should be ordered and presented; and

Part G details post-award information and reporting requirements.

CLOSING DATE: The closing date for submission of applications is August 5, 1991.

FOR FURTHER INFORMATION CONTACT: Office of Community Services, 370 L'Enfant Promenade SW., Washington, DC 20447 Telephone (202) 401-2333 Contact: Margaret Washnitzer

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Part A—Preamble

1. Legislative Authority

Section 505 of the Family Support Act of 1988 authorizes the Secretary to enter into agreements with not less than 5 nor more than 10 nonprofit organizations (including community development corporations) for the purpose of conducting demonstration projects to create employment and business opportunities for certain low-income individuals.

2. Departmental Goals

The Secretary has established seven strategic goals guiding the Department of Health and Human Services' policies and programs over the next several years. One of those goals is particularly relevant to OCS' Discretionary Grant Program, i.e. strengthening the American family. The Secretary's Program Directions on how programs should be managed in order to achieve this goal include improving access of youth living in low-income families to needed support services, including employment training and other transition to work services, and improving the integration, coordination and continuity of the various HHS funded services potentially available to families currently living in poverty.

3. Definition of Terms

For purposes of this Program Announcement the following definitions apply:

—*Budget Period:* The interval of time into which a grant period of assistance is divided for budgetary and funding purposes.

—*Community Development Corporation:* A private, locally initiated, nonprofit entity, governed by a board consisting of residents of the community and business and civic leaders, which has a record of implementing economic development projects or whose Articles of Incorporation and/or By-Laws indicate that it has a focus in the area of economic development.

—*Eligible participant/beneficiary:* Any individual eligible to receive Aid to Families with Dependent Children under part A of Title IV of the Social Security Act and any other individual whose income level does not exceed 100 percent of the official poverty line as found in the most recent Annual Revision of Poverty Income Guidelines published by the Department of Health and Human Services. (See Attachment A.)

—*Hypothesis:* An assumption made in order to test its validity. It should assert a relationship between an intervention and an outcome on a target population. For example, there will be a significant increase in the proportion of (target population) making progress toward self-sufficiency (outcome) who receive and/or participate in (intervention) as compared to those who do not. The outcome must be measurable.

—*Intervention:* Any planned activity within a project that is intended to produce changes in the target population and/or the environment and can be formally evaluated. For example, assistance in the preparation of a business plan and loan package are planned interventions.

—*Job Creation:* To bring about, by activities funded under this program, new jobs, that is jobs that were not in existence before the start of the project. These activities can include the development of new businesses or the expansion of existing businesses.

—*Non-profit organizations:* Any organization (including a community development corporation) exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 by reason of paragraph (3) or (4) of section 501(c) of such Code.

—*Outcome evaluation:* Information that is gathered on the measurable results of a program that measure its impact on clients in order to improve it or lead to its replication. It may include definitions and measurements of interventions and goals, assessment, assignment and data collection techniques for the treatment and control groups, the experimental design, and statistical significance. It should answer the question, "Did this program work?"

—*Private employers:* Third-party private non-profit organizations or third-party for-profit businesses located in the same community as the applicant.

—*Process evaluation:* Information that is gathered on the internal dynamics, development and implementation of a program to help improve it or lead to its replication. It may include timeliness, descriptions of treatment and control groups, client selection, descriptions of interventions, partnerships and funding arrangements. It should answer the questions, "WHY DID THIS PROGRAM WORK? NOT WORK?"

—*Project Period:* The term "project period" refers to the total time a project is approved for support, including any extensions.

—*Self-Sufficiency:* A condition where an individual or family, by reason of employment, does not need and is not eligible for public assistance.

Part B—Purpose

The purpose of this program is to demonstrate and evaluate ways of creating new employment and business opportunities for certain low-income individuals through the provision of technical and financial assistance to private employers in the community. A low-income individual eligible to participate in a project conducted under this program is any individual eligible to receive Aid to Families with Dependent Children (AFDC) under Part A of Title IV of the Social Security Act and any other individual whose income level does not exceed 100 percent of the official poverty line. (See Attachment A.) Within these categories, emphasis should be on individuals who are unemployed, those residing in public housing, and those who are homeless.

1. General Projects

OCS will fund projects that hold promises for aiding eligible participants in their progress toward self-sufficiency. Therefore, proposed projects must show promise of increasing self-sufficiency among the target population. OCS expects that the jobs and/or business employment (self-employment) opportunities to be created under this program will contribute to the goal of self-sufficiency by, for example, providing hourly wages that significantly exceed the minimum wage and which provide benefits such as health insurance, transportation, child care, career development opportunities, etc.

Applicants must show that the proposed project will create a significant number of new full-time permanent jobs and/or a significant number of new business development opportunities for eligible participants.

While projected employment in future years may be included in the application, it is essential that the focus of employment opportunities concentrate on new full-time, permanent jobs to be created during the duration of the grant project period and/or on the creation of new business development opportunities for low-income individuals.

In creating self-employment business opportunities for eligible participants, applicant must detail how it will work with private employers in identifying potential entrepreneurs. The assistance to be provided to potential entrepreneurs must include, at a minimum, technical assistance in basic business planning and management concepts, and assistance in preparing a business plan (see section F.6.d.ii for requirements) and loan application.

Any funds that are used for training purposes must be limited to providing specific job-related training to eligible participants who have been selected for employment and/or self-employment business opportunities.

In the review process, favorable consideration will be given to applicants with a demonstrated record of achievement in promoting job and enterprise opportunities for low-income people. Favorable consideration also will be given to those applicants who show the lowest cost-per-job created for low-income individuals. OCS views $15,000 as the maximum amount for the creation of a job and, unless there are extenuating circumstances, will not fund projects where the cost-per-job in OCS funds exceeds this amount. Only those jobs created and filled by low-income people will be counted in the cost-per-job formula.

Technical assistance should be specifically addressed to the needs of the private employer in creating new jobs to be filled by eligible individuals and/or to the individuals themselves such as skills training, job preparation, self-esteem building, etc. Financial assistance also may include assistance to the private employer as well as assistance to the individual. If the technical and/or financial assistance is to be provided to pre-identified businesses that will be expanded or franchised, written comments from the businesses must be included with the application.

The creation of a revolving loan fund with funds received under this program is an allowable activity. However, OCS encourages the use of funds from other sources for this purpose. Points will be awarded in the review process to those applicants who leverage funds from other sources. (See Part D, Criterion VI.) Loans made to eligible beneficiaries for business development activities must be at or below market rate.

Grant funds received under this program may not be used for construction.

A formal, cooperative relationship between the applicant and the agency (State IV-A agency) responsible for administering the Job Opportunities and Basic Skills (JOBS) training program (as provided for under title IV-A of the Social Security Act) in the area served by the project is a requirement for funding. The application must include a signed, written agreement between the applicant and the State IV-A agency, or a letter of intent (contingent only on receipt of OCS funds), which describes the cooperative relationship, including specific activities and/or actions each of these entities proposes to carry out over the course of the grant period in support of the project. The agreement, at a minimum, must cover activities that will be provided to the target population and which are related to one or more of the mandatory or optional components offered by the appropriate State's JOBS program. The mandatory activities offered by the States' JOBS programs consist of the following components: basic education activities; job skills training, job readiness activities, job development and job placement. The optional components offered by the States' JOBS programs include: group and individual job search counseling and training on job seeking skills; on-

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the job-training, work supplementation; and community work experience.

Projects also must include an independent, methodologically sound evaluation of the effectiveness of the activities carried out with the grant in creating new jobs and business opportunities. The use of comparison groups will be required. (See Parts D and F for evaluation criteria and evaluation elements.)

Applications should include a plan for disseminating the results of the project after expiration of the grant period. Applicants may budget up to $1,000 for dissemination purposes.

Priority will be given to applications proposing to serve those areas containing the highest percentage of individuals receiving Aid to Families with Dependent Children under Title IV–A of the Social Security Act. (See Part D, Criterion I.)

Applicants must be aware that it is expected that projects will be operational by the end of the project period, i.e. that the jobs and/or businesses that the applicant committed itself in the application to creating will be in place, and low-income individuals will actually be employed in those jobs and/or businesses.

See Part F, 6, d, for special instructions on developing a work program.

2. Community Development Corporations Set-Aside

For Fiscal Year 1991, a set-aside fund of $1 million will be included for community development corporations. A community development corporation for purposes of this set-aside fund is a private, non-profit entity which has a record of implementing economic development projects or, whose Articles of Incorporation and/or By-Laws indicate that it has a focus in the area of economic development, which has a tax exempt determination under Section 501(a) of the Internal Revenue Code of 1986 by reason of paragraph (3) or (4) of Section 501(c) of such code.

Such projects must conform to the purposes, requirements, and prohibitions applicable to those submitted under Part B, 1—General Projects.

Applications for these set-aside funds which are not funded due to the limited amount of funds available will also be considered competitively within the larger pool of eligible applicants.

HUD/HHS Economic Empowerment Demonstration Grantee Set-Aside

For Fiscal Year 1991, a Set-Aside fund of $1 million will be included for eligible applicants.

An eligible applicant for purposes of this set-aside fund will be any non-profit organization as defined in Part A, 3, Definition of Terms, that receives funding under the HUD/HHS Economic Empowerment Demonstration Program or which has entered into a written agreement with such a recipient.

The HUD/HHS Economic Empowerment Demonstration Program is one of the cooperative actions being taken by the Department of Health and Human Services and the Department of Housing and Urban Development to encourage communities to integrate assistance programs for families receiving welfare who reside in public and Indian housing. A separate Program Announcement will be published by the Department of Health and Human Services regarding this demonstration program.

OCS will make up to two grants under this set-aside with a maximum of $500,000 to be granted for each project.

Projects proposed for funding under this set-aside must conform to the purposes, requirements and prohibitions applicable to those submitted under Part B, 1—General Project and the jobs created must be filled by residents of the public or Indian housing project represented by the applicant or the organization with which the applicant has entered into a written agreement. In addition, if the applicant is not an organization applying for a HUD/HHS Economic Empowerment Demonstration Program grant, the application must include a written agreement between the applicant and such an organization which contains specific language confirming that the jobs that they propose to create under this set-aside will be filled by residents of the public or Indian housing project. The agreement must also describe the cooperative relationship, including specific activities and/or actions, each of these entities proposes to carry out in support of the project and the mechanism(s) to be used in coordinating those activities if the project is funded by OCS.

Eligible applicants as defined under this set-aside may also apply for funding under the General Project fund. If such organizations apply for funding under the General Project fund and are not funded, their application will be considered under the HUD/HHS Economic Empowerment Demonstration Grantee Set-Aside using the score it received when reviewed under the General Project fund.

Eligible applicants that apply for funding under the HUD/HHS Economic Empowerment Demonstration Grantee Set-Aside only will not be considered under the General Project fund, if the application is not funded under the set-aside.

The closing date for submission of applications under this set-aside will be specified in the Program Announcement covering the HUD/HHS Economic Empowerment Demonstration Program (To be issued by ACF Office of Family Assistance).

Part C—Application Prerequisites

1. Eligible Applicants

Eligible applicants are non-profit organizations as detailed under Part A,3, Definiton of Terms and as further defined in Part B, 2 and 3 for applicants submitting proposals under those set-asides.

2. Availability of Funds and Grant Amounts

(1) Office of Community Services expects to award approximately $4,400,000 by September 30, 1991 for new grants under this program to fully fund three year projects.

(2) No more than $500,000 will be granted to any organization under this program in FY 91. Due to the limited funds available under this program only one grant will be allowed to any organization.

3. Project and Budget Periods

Project and budget periods will be 36 months. By fully funding the projects in FY 91 funding stability in future years will be insured.

4. Mobilization of Resources

OCS will give favorable consideration in the review process to applicants who mobilize cash and/or third-party in-kind contributions for direct use in the project. (See Part D, Criterion VI.)

5. Program Participants/Beneficiaries

Projects proposed for funding under this announcement must result in direct benefits to low-income people as defined in the most recent Annual Revision of Poverty Income Guidelines published by DHHS and individuals eligible to receive Aid to Families with Dependent Children under Part A of Title IV of the Social Security Act.

Attachment A to this announcement is an excerpt from the guidelines currently in effect. Annual revisions of these guidelines are normally published in the Federal Register in February or early March of each year. Grantees will be required to apply the most recent guidelines throughout the project period. These revised guidelines also may be obtained at public libraries, Congressional offices, or by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

No other government agency or privately-defined poverty guidelines are applicable for the determination of low-income eligibility for this program.

6. Prohibition on the Use of Funds

The use of funds for new construction or the purchase of real property is prohibited. Costs incurred for rearrangement and alteration of facilities required specifically for the grant program are allowable when specifically approved by OCS in writing.

7. Multiple Submittals

Due to the limited number of grants which will be made under this program, only one proposal from an eligible applicant will be funded by OCS for either the general project fund, the community development corporation set-aside fund or the HUD/HHS Economic Empowerment Demonstration Grantee Set-aside fund.

Part D—Application Procedures

1. Availability of Forms

Attachments B, C and D contain all of the standard forms necessary for the application for awards under this OCS program. These attachments and Parts D and F of this announcement contain all of the instructions required for submittal of applications. These forms may be photocopied for the application.

Copies of the Federal Register containing this announcement are available at most local libraries and Congressional District Offices for reproduction. If copies are not available at these sources, they may be obtained by writing or telephoning the office listed under the section entitled **"FOR FURTHER INFORMATION"** at the beginning of this announcement.

The appliclant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug-free workplace and debarment regulations set forth in Attachments E and F.

Part F contains instructions for the project narrative.

2. Application Submission

Applications must be submitted to FSA by the closing date. Refer to "Closing Date" at the beginning of this document for the specific date for applications submitted under the General Projects category and the Community Development Corporations Set-aside. The Closing Date for applications under the HUD/HHS Economic Empowerment Demonstration Grantee Set-aside will be published in the Program Announcement covering the HUD/HHS Economic Empowerment Demonstration Program.

Applications may be mailed to: Administration for Children and Families, Division of Grants Management, 6th Floor OFM/DGM, 370 L'Enfant Promenade SW., Washington, DC 20447.

Hand-delivered applications are accepted during normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Grants Management, Sixth Floor, 901 D Street SW., Washington, DC 20447.

An application will be considered to be received on time if sent on or before the closing date as evidenced by a legible U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier. Private metered postmarks will not be considered acceptable as proof of timely mailing. Applications submitted by any means other than through the U.S. Postal Service or commercial carrier shall be considered as acceptable only if physically received at the above address before close of business on or before the deadline date.

Note: Applicants should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, applicants should check with their local post offices. In some instances packages presented for mailing after a pre-determined time are postmarked with the next day's date. In other cases, postmarks are not routinely placed on packages. Applicants are cautioned to verify that there is a date on the package, and that it is the correct date of mailing, before accepting a receipt.

Applications which have a postmark later than the closing date, or which are hand-delivered after the closing date, will be returned to the sender without consideration in the competition.

Applications, once submitted, are considered final and no additional materials will be accepted.

One signed original application and four copies should be submitted.

3. Intergovernmental Review

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alaska, Idaho, Kansas, Louisiana, Minnesota, Nebraska, Virginia, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these nine jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants must submit any required material to the SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions, so that the OCS can obtain the review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new awards. However, because applications are due 60 days from the date of the announcement and the grants are to be awarded in September, there is not sufficient time to allow for a complete SPOC comment period. Therefore, we have reduced the comment period to 30 days [from date of publication]. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule under 45 CFR 100.10.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Grants Management, 6th Floor, 370 L'Enfant Promenade SW., Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included as appendix G of this announcement.

4. Application Consideration

Applications which meet the screening requirements in sections 5 a. and b. below will be reviewed competitively. Such applications will be referred to reviewers for a numerical score and explanatory comments based solely on responsiveness to the guidelines and evaluation criteria published in this announcement.

Applications will be reviewed by persons outside of the OCS unit which

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will be directly responsible for programmatic management of the grant. The results of these reviews will assist the Director and OCS program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications generally will be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since other factors are taken into consideration, including, but not limited to, the timely and proper completion of projects funded with OCS funds granted in the last five (5) years; comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowances on previous OCS or other Federal agency grants.

OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicant's performance record.

5. Criteria for Screening Applicants

a. Initial Screening

All timely applicants will receive an acknowledgement with an assigned identification number. This number, along with any identification code, must be referenced in all subsequent communications concerning the application. If an acknowledgement is not received within three weeks after the deadline date, please notify ACF by telephone at (202) 401–9230.

All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this announcement. Only those applications meeting the following requirements will be reviewed and evaluated competitively. Others will be returned to the applicants with a notation that they were unacceptable.

(1) The application must contain a Standard Form 424 "Application for Federal Assistance" (SF–424), a budget (SF–424A), and signed "Assurances" (SF–424B) completed according to instructions published in Part F and Attachments B, C, and D of this Program Announcement.

(2) A project narrative must also accompany the standard forms.

(3) The SF–424 and the SF–424B must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally.

b. Pre-Rating Review

Applications which pass the initial screening will be forwarded to reviewers and/or OCS staff prior to the programmatic review to verify that the applications comply with this Program Announcement in the following areas:

(1) *Eligibility:* Applicant meets the eligibility requirements described in Part C, item 1. Proof of non-profit status must be included in the Appendices to the Project Narrative (see part F, 6).

(2) *Target Populations:* The application clearly targets the specific outcomes and benefits of the project to those types of low-income participants and beneficiaries described in Part C., 5, Program Participants/Beneficiaries and in Part B, 3, for the HUD/HHS Economic Empowerment Demonstration Grantee Set-aside.

(3) *Grant Amount:* The amount of funds requested does not exceed the limits indicated in Part C, 2, b.

(4) *Cooperative Partnership Agreement.* The application contains a written agreement or letter of intent signed by an official of the agency responsible for administering the JOBS program in the area to be served.

(5) *Project Evaluation.* A third-party project evaluation plan is included.

(6) *Third-Party Private Employers.* All applications are not required to include third-party private employers, however when this activity is a part of the proposed project this requirement must be included in the application.

(7) *Eligibility Agreement.* (Applicable to HUD/HHS Economic Empowerment Grantee Set-aside only when applicant is other than a non-profit organization which applied for funds under the HUD/HHS Economic Empowerment Demonstration Program). The application contains a written agreement between the non-profit applicant and the applicant for funds under the HUD/HHS Economic Empowerment Demonstration Program confirming that the jobs will be created for low-income residents of the public or Indian housing project.

An application will be disqualified from the competition and returned if it does not conform to all of the above requirements.

c. Review Criteria

Applications which pass the pre-rating review will be assessed and scored by reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and weaknesses under each applicable criterion published in the announcement.

The in-depth assessment and review process will use the following criteria coupled with the specific requirements described in Part B. Scoring will be based on a total of 100 points.

(Note: the following review criteria reiterate collection of information requirements contained in Part F of this announcement. These requirements are approved under OMB Control Number 0970–0062.)

Criteria for Review and Assessment of All Applications Criterion I: Analysis of Need (Maximum: 10 points)

The application documents that the community in which the project is proposing to operate has a high percentage of individuals receiving Aid to Families with Dependent Children under Title IV–A of the Social Security Act.

Criterion II: Organizational Experience in Program Area and Staff Responsibilities (Maximum: 10 points)

(i) *Organizational Experience in Program Area* (0–5 points)

Documentation provided indicates that projects previously undertaken have been relevant and effective and have provided permanent benefits to the low-income population.

The organization has detailed competence in the specific program area and as a deliverer with expertise in the area of technical assistance. The applicant has demonstrated the ability to implement major activities in such areas as human development, business development, or financial services; the ability to mobilize funds from sources such as the private sector (corporations, banks, etc.), foundations, the public sector, including State and local governments, or individuals; that it has a sound organizational structure and proven organizational capability; and an ability to develop and maintain a stable program in terms of business or job creation activities that will provide needed permanent jobs and/or business development opportunities.

(Note: The maximum number of points will be given only to those organizations with a demonstrated record of achievement in promoting job creation and enterprise opportunities for low-income people.)

(ii) *Staff Skills, Resources and Responsibilities* (0–5 points)

The application describes in brief resume form the experience and skills of the project director who is not only well qualified, but his/her professional capabilities are relevant to the successful implementation of the project. If the key staff person has not yet been identified, the application contains a comprehensive position description which indicates that the responsibilities to be assigned to the project director are relevant to the successful implementation of the project.

The applicant has adequate facilities and resources (i.e. space and equipment) to successfully carry out the work plan. The assigned responsibilities of the staff are appropriate to the tasks identified for the project and sufficient time of senior staff will be budgeted to assure timely implementation and cost effective management of the project.

The applicant has identified the person responsible for the third party evaluation and that person appears to be well qualified or, if not yet identified, an adequate position description has been included.

Criterion III: Project Implementation (Maximum: 25 points)

The work plan and Business Plan(s), where appropriate, are both sound and feasible. The project is responsive to the needs identified in the Analysis of Need. The work plan clearly details key interventions including the types of technical and financial assistance to be provided the recipients, the level of effort, as well as other activities. If the technical and/or financial assistance is to be provided to pre-identified businesses that will be expanded or franchised, written commitments from the businesses are included with the application. The work program sets forth realistic quarterly time targets by which the various work tasks will be completed. Critical issues or potential problems that might impact negatively on the project are defined and the project objectives can be reasonably attained despite such potential problems. The application provides a description of the process evaluation which will culminate in the development of a policies and procedures manual.

Criterion IV: Significant and Beneficial Impact (Maximum: 25 points)

(i) *Quality of JOBS/Business Opportunities* (0–15 points)

The proposed project is expected to produce permanent and measurable results that will reduce the incidence of poverty in the community. Expected results are quantifiable in terms of newly-created, permanent, full-time jobs or business opportunities developed. In developing business opportunities and self-employment for low-income individuals the applicant proposes, at a minimum, to provide basic business planning and management concepts, and assistance in preparing a business plan and loan package. The application documents that:

—The business opportunities to be developed for eligible participants will contribute significantly to their progress toward self-sufficiency; and/or

—Jobs to be created for eligible participants will contribute significantly to their progress toward self-sufficiency, i.e. they provide, for example, wages that exceed the minimum wage, plus benefits such as health insurance, transportation, child care; career development opportunities;

(ii) *Cost-per-Job* (0–10 points)

During the project period the proposed project will create new, permanent jobs or business opportunities for low-income residents at a cost-per-job below $15,000 in OCS funds. [Note: Except in those instances where independent reviewers identify extenuating circumstances related to business development activities, the maximum number of points will be given only to those applicants proposing cost-per-job created estimates of $5,000 or less of OCS requested funds. Higher cost-per-job estimates will receive correspondingly fewer points.]

Criterion V: Third-Party Evaluation (Maximum: 10 points)

The Evaluation Plan:

—Includes a specific working definition (consistent with the broad definition contained in Part A) of "self-sufficiency" for this project that permits the measurement of incremental movement of eligible individuals and their families from dependency toward self-sufficiency. (0–2 points)

—Describe testable hypothesis that is significant and relevant for the target population. (0–2 points)

—Provides for the completion of a process evaluation covering the following elements: the cooperative partnership, staffing, all pertinent policies and procedures, technical and financial assistance to private employers, client outreach, services and processes for service provision, applicant and community linkages, other community resources, changes from original plan, critical elements of program implementation, and an implementation summary. (0–3 points)

—Provides for the completion of an outcomes evaluation which describes the project design, sample size, subject selection, interventions, outcomes, measurement instruments, time and number of measurements, data collection procedures, and analytical techniques. The outcomes evaluation report will yield findings, an interpretation of findings, and identify major issues for replication. (0–3 points)

Criterion VI: Public-Private Partnerships (Maximum: 15 points)

—The cooperative partnership arrangements are fully described and clearly related to the objectives of the proposed project, and the activities include one or more of the mandatory or optional components of the State's JOBS program as described in Part B. (0–10 points)

—The application documents that the applicant will mobilize from public and/or private sources cash and/or third-party in-kind contributions. Applications documenting that the value of such contributions will be at least equal to the OCS funds requested will receive the maximum number of points for this criterion. Lesser contributions will be given consideration based upon the value documented. (0–5 points)

Criterion VII: Budget Appropriateness and Reasonableness (Maximum: 5 points)

Funds requested are commensurate with the level of effort necessary to accomplish the goals and objectives of the project. The application includes a detailed budget break-down for each of the budget categories in the SF–424A. The applicant presents a reasonable administrative cost if an indirect cost rate has not been negotiated with the cognizant Federal agency (See Part F, 2, Section B, Line 6j).

The estimated cost to the government of the project also is reasonable in relation to the anticipated results.

Part E—Contents of Application and Receipt Process

1. Contents of Application

Each application should include one original and four additional copies of the following:

a. A completed Standard Form 424 which has been signed by an official of the organization applying for the grant who has authority to obligate the organization legally. The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug-free workplace and debarment

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regulations set forth in Attachments E and F.

b. "Budget Information-Non-Construction Programs" (SF-424A);

c. A filled out signed, and dated "Assurances-Non-Construction Programs" (SF-424B);

d. Restrictions on Lobbying, Certification for Contracts, Grants, Loans, and Cooperative Agreements: fill out, sign and date form found at attachment H.

e. Disclosure of Lobbying Activities, SF-LLL: Fill out, sign, and date form found at Attachment H, if appropriate.

f. A Project Narrative consisting of the following elements preceded by a consecutively numbered Table of Contents that will describe the project in the following order:

(i) Eligibility Confirmation
(ii) Analysis of Need
(iii) Organizational Experience and Staff Responsibilities
(iv) Work Program/Business Plan
(v) Third-Party Evaluation

g. Cooperative Partnership Agreement.

h. Eligibility Agreement (for certain applicants applying under Part B, 3.).

i. Appendices, including proof of non-profit status; proof that the organization is a community development corporation, if applying under the CDC Set-aside; commitment from officials of businesses that will be expanded or from franchises, where applicable; Single Point of Contact comments if applicable; and resumes. The original SF-424 must bear the signature of the authorizing representative of the applicant organization.

The total number of pages for the entire application package should not exceed 50 pages.

Applications must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore, applications must be submitted on white 8½ × 11 inch paper only. They must not include colored, oversized or folded materials. Do not include organizational brochures or other promotional materials, slides, films, clips, etc. in the proposal. They will be discarded if included. The applications should be two-holed punched at the top center and fastened separately with a compressor slide paper fastener, such as an ACCO clip, or a binder clip. The submission of bound applications, or applications enclosed in binders, if specifically discouraged.

Attachment J provides a checklist to applicants in preparing a complete application package.

2. Acknowledgement of Receipt

Applicants who meet the initial screening criteria outlined in Section D, subsection 5.a. will receive an acknowledgement postcard with an assigned identification number. Applicants are requested to supply a self-addressed mailing label with their application which can be attached to this acknowledgement postcard. This number and the program letter code must be referred to in all subsequent communication with OCS concerning the application. If an acknowledgement is not received within three weeks after the deadline date, please notify ACF by telephone (202) 401-9230.

Part F—Instructions for Completing Application Package

(Approved by the Office of Management and Budget under Control Number 0970-0062.)

The standard forms attached to this announcement shall be used to apply for funds under this program announcement.

It is suggested that you reproduce the SF-424 and SF-424A, and type your application on the copies. If an item on the SF-424 cannot be answered or does not appear to be related or relevant to the assistance requested, write "NA" for "Not Applicable."

Prepare your application in accordance with the standard instructions given in Attachments B and C corresponding to the forms, as well as the OCS specific instructions set forth below:

1. SF-424 "Application for Federal Assistance"

Item

1. For the purposes of this announcement, all submissions are considered "Applications"; there are no "Pre-Applications."

5/6. The legal name of the applicant must match that listed as corresponding to the Employer Identification Number. Where the applicant is a previous Department of Health and Human Services grantee, enter the Central Registry System Employee Identification Number (CRS/EIN) and the Payment Identifying Number, if one has been assigned, in the Block entitled "Federal Identifier" located at the top right hand corner of the form.

7. If the applicant is a non-profit corporation, enter "N" in the box and specify "non-profit corporation" in the space marked "Other." Proof of non-profit status, such as IRS determination, Article of Incorporation, or by-laws, must be included as an appendix to the project narrative.

8. For the purposes of this announcement, all applications are "New".

9. Enter "DHHS-FSA-OCS".

10. The Catalog of Federal Domestic Assistance number for OCS programs covered under this announcement is 93.021. The title is "Jobs Opportunities for Low-Income Individuals Program (Demonstration Projects)".

11. In addition to a brief descriptive title of the project, indicate for which priority area funds are being requested. The following letter designations must be used:

JO—General Project
JS—Community Development Corporation Set-Aside
JH—HUD/HHS Economic Empowerment Demonstration Grantee Set-Aside

2. SF-424A—"Budget Information—Non-Construction Programs"

See Instructions accompanying this form as well as the instructions set forth below:

In completing these sections, the "Federal Funds" budget entries will relate to the requested OCS funds only, and "Non-Federal" will include mobilized funds from all other sources—applicant, state, local, and other. Federal funds other than requested OCS funding should be included in "Non-Federal" entries.

The budget forms in SF-424A are only to be used to present grant administrative costs and major budget categories. Financial data that is generated as part of a project Business Plan or other internal project cost data must be separate and should appear as part of the project Business Plan or other project implementation data.

Sections A and D of SF-424A must contain entries for both Federal (OCS) and non-Federal (mobilized) funds. Section B contains entries for Federal (OCS) funds only. Clearly identified continuation sheets in SF-424A format should be used as necessary.

Section A—Budget Summary

Lines 1–4

Col. (a):
Line 1 Enter "Jobs Opportunities for Low-Income Individuals".
Col. (b):
Line 1 Enter [To Be Inserted].
Col. (c) and (d):
Columns (c) and (d) are not relevant to this program and should not be completed.
Column (e)–(g):
For line 1, enter in columns (e), (f) and (g) the appropriate amounts needed to support the project for the entire project period.

Line 5 Enter the figures from Line 1 for all columns completed (e), (f), and (g).

Section B—Budget Categories

Allowability of costs are governed by the cost principles set forth in OMB Circular A-122 and 45 CFR Part 74.

Columns (1) and (5):
In OCS applications, it is only necessary to complete Columns (2) and (3). This section (B) should contain entries for OCS funds only.

Column 1: Enter the first budget period of 12 months.

Column 2: Enter the second budget period of 12 months.

Column 3: Enter the third budget period of 12 months.

Column 4: Leave blank.

Column 5: Enter the total requirements for Federal funds by the Object Class Categories of this section.

A detailed budget justification should be included separately to explain fully and justify major terms, as indicated below.

Personnel—Line 6a: Enter the total costs of salaries and wages of applicant/grantee staff only. Do not include costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits—Line 6b: Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate which is entered on Line 6j. Provide a breakdown of amounts and percentages that comprise fringe benefit costs.

Travel—Line 6c: Enter total costs of out-of-town travel by employees of the project. Do not enter costs for consultant's travel or local transportation. Provide justification for requested travel costs. (See Line 6h and Line 21 for additional instructions). Three trips to Washington, DC should be included for the project director.

Equipment—Line 6d: Enter the total costs of all non-expendable personal property to be acquired by the project. "Non-expendable personal property" means tangible personal property having an acquisition cost per unit of $500 or more for non-profit organizations and $5,000 or more for public organizations and having a useful life of one year. Only equipment required to conduct the project may be purchased with Federal funds. An applicant may use its own definition of non-expendable personal property, provided that such a definition would at least include all tangible personal property as defined in the preceding sentence. (See Line 21 for additional requirements).

Supplies—Line 6e: Enter the total costs of all tangible personal property (supplies) other than that included on Line 6d.

Contractual—Line 6f: Enter the total costs of all contracts, including (1) third party evaluator—including the costs of three trips to Washington, DC, (2) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (3) contracts with secondary recipient organizations including delegate agencies and specific project(s) or businesses to be financed by the applicant. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individual service contractors on this line. If available at the time of application, attach a list of contractors indicating the name of the organization, the purpose of the contract(s) and the estimated dollar amount of the award. If the name of the contractor(s), scope of work, or estimated total are not available or have not been negotiated, include these in Line h, "Other."

Note: Whenever the applicant intends to delegate part of the program to another agency, the applicant must submit sections A and B of this form (SF-424A), completed for each delegate agency by agency title, along with the required supporting information referenced in the applicable instructions. The total costs of all such agencies will be part of the amount shown on Line 6f. Provide back-up documentation identifying the name of the contractor(s), purpose of the contract(s) and major cost elements.

Construction—Line 6g: Not applicable.

Other—Line 6h: Enter the total of all other costs. Such costs, where applicable, may include but are not limited to insurance, food, medical and dental costs (noncontractual), fees and travel paid directly to individual consultants, local transportation (all travel which does not require per diem is considered local travel), space and equipment rentals, printing and publication, computer use, training costs, including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Total Direct Charges—Line 6i: Show the total of Lines 6a through 6h.

Indirect Charges—Line 6j: Enter the total amount of indirect costs. This line should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services or another cognizant Federal agency. With the exception of local governments, applicants should enclose a copy of the current rate agreement if it was negotiated with a cognizant Federal agency other than the Department of Health and Human Services.

If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent DHHS Guide for Establishing Indirect Cost Rates, and submit it to the appropriate DHHS Regional Office.

Totals—Line 6k: Enter the total amounts of Lines 6i and 6j. The total amount shown in Section B, Column (5), Line 6k, should be the same as the amount shown in Section A, Line 5, Column (e).

Program Income—Line 7: Enter the estimated amount of income, if any, expected to be generated from this project. Separately show expected program income generated from OCS support and income generated from other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Column 5: Carry totals from Column 1 to Column 5 for all line items.

Section C—Non-Federal Resources

This section is to record the amounts of "non-Federal" resources that will be used to support the project. "Non-Federal" resources mean those other than OCS funds. Therefore, mobilized funds from other Federal programs should be entered on these lines. Provide a brief listing of the non-Federal resources on a separate sheet and describe whether it is a grantee-incurred cost or a third-party in-kind contribution. The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the Public-Private Partnerships criterion.

Except in unusual situations, this documentation must be in the form of letters of commitment from the organization(s)/individuals from which funds will be received.

Line 8:

Column (a): Enter the project title.

Column (b): Enter the amount of contributions to be made by the applicant to the project.

Column (c): Enter the State contribution. If the applicant is a State agency, enter the non-Federal funds to be contributed by the State other than the applicant.

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Column (d): Enter the amount of cash and third-party in-kind contributions to be made from all other sources.

Column (e): Enter the total of columns (b), (c), and (d).

Lines 9, 10, and 11 should be left blank.

Line 12: Carry the total of each column of Line 8, (b) through (e). The amount in Column (e) should be equal to the amount on Section A, Line 5, column (f).

Section D—Forecasted Cash Needs

Line 13—Enter the amount of Federal (OCS) cash needed for this grant, by quarter, during the first 12 month budget period.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the total of Lines 13 and 14.

Section E—Budget Estimates of Federal Funds Needed for Balance of Project(s)

Not applicable.

Section F—Other Budget Information

Line 21—Use this space and continuation sheets as necessary to fully explain and justify the major items included in the budget categories shown in Section B. Include sufficient detail to facilitate determination of allowability, relevance to the project, and cost benefits. Particular attention must be given to the explanation of any requested direct cost budget item which requires explicit approval by the Federal agency. Budget items which require identification and justification shall include, but not be limited to, the following:

A. Salary amounts and percentage of time worked for those key individuals who are identified in the project narrative;

B. any foreign travel;

C. a list of all equipment and estimated cost of each item to be purchased wholly or in part with grant funds which meet the definition of nonexpendable personal property provided on Line 6d, Section B. Need for equipment must be supported in program narrative.

D. Contractual: major items or groups of smaller items; and

E. Other: group into major categories all costs for consultants, local transportation, space, rental, training allowances, staff training, computer equipment, etc. Provide a complete breakdown of all costs that make up this category.

Line 22—Enter the type of HHS or other Federal agency approved indirect cost rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved, where applicable. Attach a copy of the rate agreement if it was negotiated with a Federal agency other than the Department of Health and Human Services.

Line 23—Provide any other explanations and continuation sheets required or deemed necessary to justify or explain the budget information.

3. SF–424B "Assurances-Non-Construction"

All applicants must fill out, sign, date and return the "Assurances" with the application.

4. Restriction on Lobbying Activities—Certification for Contracts, Grants, Loans and Cooperative Agreements

Fill out, sign and date the form found at Attachment H.

5. Disclosure of Lobbying Activities

SF–LLL: Fill out, sign and date the form found at Attachment M, in application

6. Project Narrative

The project narrative must address the purposes of this Announcement as set forth in Part B. The narrative should provide information on how the application meets the evaluation criteria in Part D, Section 5c of this Program Announcement and should follow the format below:

a. Eligibility Confirmation

This section must explain how the applicant has complied with each of the basic requirements listed in Part D, 5b (1)–(7), i.e. (1) that the applicant meets the eligibility requirements; (2) the application clearly targets the specific outcomes and benefits of the project to eligible participants/beneficiaries; (3) the amount of funds requested does not exceed the limits indicated in Part C, Section 2, b; (4) documentation regarding cooperative agreements is included; (5) a third-party project evaluation plan is included; (6) when part of the proposed project, third-party private employers are included; and (7) an eligibility agreement for certain applicants under Part B, 3 is included.

b. Analysis of Need

The application should include a description of the geographic area and population to be served as well as a discussion of the nature and extent of the problem to be solved. It should indicate what the unemployment rates are in the geographic areas to be served and (to the extent practicable) the jobs available and skills necessary to fill those vacancies in such areas. It should also include documentation regarding the number and percentage of individuals receiving Aid to Families with Dependent Children and the total number of individuals which make up the population in the area where the project will operate.

c. Organizational Experience and Staff Responsibilities

(i) *Organizational Experience.* Documentation must be provided which addresses the relevance and effectiveness of projects previously undertaken and especially their cost effectiveness, the relevance and effectiveness of any services provided, and the permanent benefits provided to the low-income population. The applicant must address its competence and experience as a deliverer with expertise in the area of technical assistance. Information provided by the applicant must also address related achievements and competence of each cooperating organization or business.

The applicant should describe its organizational structure.

The applicant must also document a firmly established and quantifiable performance record that shows the following:

—The ability to implement major activities such as business development, human development, and/or financial services;

—Successful working relationships within the community including public officials, financial institutions, corporations, other community organizations and residents;

—A sound organizational structure in terms of (a) management stability, and (b) organizational capability;

—An ability to develop and maintain a stable program in terms of business, or community development activities that will provide needed permanent jobs and/or business development opportunities;

—Sound administrative and fiscal systems and controls.

(ii) *Staff Skills, Resources and Responsibilities.* The application must fully describe (e.g. a resume or position description) the experience and skills of the proposed project director showing that the individual is not only well qualified but that his/her professional capabilities are relevant to the successful implementation of the project.

The application must fully describe the experience and skills of the primary person(s) responsible for conducting the third-party evaluation or, if that person has not yet been identified, include a position description.

The application must include statements regarding who will have the responsibilities of the chief executive officer, who will be responsible for grant coordination with OCS, and how the assigned responsibilities of the staff are appropriate to the tasks identified for the project. It must show clearly that sufficient time of senior staff will be budgeted to assure timely implementation and cost effective management of the project.

The applicant must describe the facilities and resources (i.e. space, equipment, etc.) that it has available to carry out the project.

d. Work Program

(i) *General.* The application must contain a detailed and specific work program and Business Plan(s), where appropriate, that are both sound and feasible.

The work program will be evaluated according to Criteria III and IV set forth in Part D of this announcement: Project Implementation and Significant and Beneficial Impact.

Projects funded under this announcement must be designed to produce permanent and measurable results that will reduce the incidence of poverty in the areas targeted. The OCS grant funds, in combination with private and/or other public resources, must be targeted into areas with a high percentage of individuals receiving Aid to Families with Dependent Children. Projects must be designed to achieve the specific goals defined in this Program Announcement.

Each applicant also must include the following in its project design: (1) A hypothesis or hypotheses that includes the key interventions and permits measurement of the extent to which the target population can achieve greater self-sufficiency as a result of its involvement in the project; the hypothesis(es) should be significant, relevant and testable to determine its validity; (2) description of both the major interventions and the methods the applicant will use to measure the extent to which the interventions have caused the eligible participants to achieve greater self-sufficiency; (3) the rationale for the approach being proposed to overcome the problem which will be addressed by the project, an explanation showing how the approach proposed by the applicant is a departure from or a significant modification of previous and current approaches, and why the applicant believes that demonstrating this approach will lead to positive outcomes; (4) a thorough description of the technical and financial assistance to be provided identifying recipients and level of effort and other activities that will be carried out to demonstrate the project's ability to meet the goals of this Announcement with inclusion of quarterly target dates by which the major events will occur; (5) inclusion of measurable objectives, intended project outcomes, and intended impact on the problem(s) that are being addressed; and (6) critical issues or potential problems that might impact negatively on the project and how the project objectives will be attained despite such potential problems.

If the rearrangement or alteration of facilities will be required in implementing the project, the applicant must describe and justify such changes. Specific approval from OCS will be required prior to undertaking such changes.

If an applicant is proposing a project which will affect a property listed in, or eligible for inclusion in the National Register of Historic Places, it must identify this property in the narrative and explain how it has complied with the provisions of Section 106 of the National Historic Preservation Act of 1966 as amended. If there is any question as to whether the property is listed in or eligible for inclusion in the National Register of Historic Places, the applicant should consult with the State Historic Preservation Officer. (See Attachment D: SF–424B, Item 13 for additional guidance.) The applicant should contact OCS early in the development of its application for instructions regarding compliance with the Act and data required to be submitted to the Department of Health and Human Services. Failure to comply with the cited Act may result in the application being ineligible for funding consideration.

(ii) Business Plan. If the applicant is proposing to use project funds to provide technical and/or financial assistance to a third-party private employer to develop or expand a pre-identified business, the application must include a complete Business Plan. Technical assistance provided to low-income entrepreneurs in the completion of a business plan should include at a minimum, elements 1–5, 8, 9 and 11 found in this subsection. An application that does not include a Business Plan where one is appropriate may be disqualified and returned to the applicant.

The Business Plan is one of the major components that will be evaluated by OCS to determine the feasibility of a Jobs Opportunities project. It must be well prepared and address all the major issues noted herein.

The following guidelines show what should be included in order to produce a complete and professional Business Plan which makes an orderly presentation of the facts necessary to be judged responsive to the program announcement.

Because the guidelines were written to cover a variety of possibilities, rigid adherence to them is not possible nor even desirable for all projects. For example, a plan for a service business would not require a discussion of manufacturing nor product design.

The Business Plan should include the following:

1. *The business and its industry.* This section should describe the nature and history of the business and provide some background on its industry.

a. *The Business:* as a legal entity; the general business category;

b. *Description and Discussion of Industry:* Current status and prospects for the industry;

2. *Products and Services:* This section deals with the following:

a. *Description:* Describe in detail the products or services to be sold.

b. *Proprietary Position:* Describe proprietary features if any of the product, e.g. patents, trade secrets.

c. *Potential:* Features of the product or service that may give it an advantage over the competition.

3. *Market Research and Evaluation:* This section should present sufficient information to show that the product or service has a substantial market and can achieve sales in the face of competition.

a. *Customers:* Describe the actual and potential purchasers for the product or service by market segment.

b. *Market Size and Trends:* State the size of the current total market for the product or service offered.

c. *Competition:* An assessment of the strengths and weaknesses of competitive products and services.

d. *Estimated Market Share and Sales:* Describe the characteristics of the product or service that will make it competitive in the current market.

4. *Marketing Plan:* The marketing plan should detail the product, pricing, distribution, and promotion strategies that will be used to achieve the estimated market share and sales projections. The marketing plan must describe what is to be done, how it will be done and who will do it. The plan should address the following topics—Overall Marketing Strategy, Packaging, Service and Warranty, Pricing, Distribution and Promotion.

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5. *Design and Development Plans:* If the product, process or service of the proposed venture requires any design and development before it is ready to be placed on the market, the nature and extent and cost of this work should be fully discussed. The section should cover items such as Development Status and Tasks, Difficulties and Risks, Product Improvement and New Products, and Costs.

6. *Manufacturing and Operations Plan:* A manufacturing and operations plan should describe the kind of facilities, plant location, space, capital equipment and labor force (part and/or full time and wage structure) that are required to provide the company's product or service.

7. *Management Team:* The management team is the key in starting and operating a successful business. The management team should be committed with a proper balance of technical, managerial and business skills, and experience in doing what is proposed. This section must include a description of: the key management personnel and their primary duties; compensation and/or ownership; the organizational structure; Board of Directors; management assistance and training needs; and supporting professional services.

8. *Overall Schedule:* A schedule that shows the timing and interrelationships of the major events necessary to launch the venture and realize its objectives. Prepare, as part of this section, a month-by-month schedule that shows the timing of such activities as product development, market planning, sales programs, and production and operations. Sufficient detail should be included to show the timing of the primary tasks required to accomplish each activity.

9. *Critical Risks and Assumptions:* The development of a business has risks and problems and the Business Plan should contain some explicit assumptions about them. Accordingly, identify and discuss the critical assumptions in the Business Plan and the major problems that will have to be solved to develop the venture. This should include a description of the risks and critical assumptions relating to the industry, the venture, its personnel, the product's market appeal, and the timing and financing of the venture.

10. *Community Benefits:* The proposed project must contribute to economic, community and human development within the project's target area. A section that describes and discusses the potential economic and non-economic benefits to low-income members of the community must be included as well as a description of the strategy that will be used to identify and hire low-income individuals not being served by public assistance programs and how linkages with community agencies/organizations administering the JOBS program will be developed if such linkages are not completely detailed in the cooperative partnership agreement.

11. *The Financial Plan:* The Financial Plan is basic to the development of a Business Plan. Its purpose is to indicate the project's potential and the timetable for financial self-sufficiency. In developing the Financial Plan, the following exhibits must be prepared for the first three years of the business' operation: (a) Profit and Loss Forecasts—quarterly for each year; (b) Cash Flow Projections—quarterly for each year; (c) pro forma balance sheets—quarterly for each year; (d) initial uses of project funds; and (e) any future capital requirements and sources.

e. *Third Party Evaluation.* A plan for a methodologically sound third-party (i.e. independent) evaluation of the demonstration project must be included in the application. The applicant at a minimum, should ensure that the following criteria are used in selecting the third-party evaluator:

The individual must be:

(i) Experienced in conducting experimental or quasi experimental evaluations;

(ii) Knowledgeable and sensitive to the complexity of problems the target population faces;

(iii) Knowledgeable of issues surrounding job creation, expansion of businesses, creation of self-employment or small business opportunities and economic development in low-income neighborhoods; and

(iv) Able to access comparable research findings and data.

The evaluation plan must:

(i) Include provisions for a process evaluation, culminating in written policies and procedures;

(ii) Include a specific working definition of self-sufficiency, consistent with the definition contained in Part A, 3., that permits the measurement of incremental movement of eligible participants and their families from dependency or reliance on inadequate incomes toward self-sufficiency;

(iii) A testable hypothesis that permits measurement of the extent to which the target population has achieved greater self-sufficiency as a result of its involvement in the project;

(iv) Include an adequate sample size in both the participant and nonparticipant comparison group as well as a rationale for subject selection;

(v) Clearly identify the changes (outcome objectives) to be produced, the activities (interventions) that will produce the changes, and the methods (measurement instruments, performance measures, and data collection procedures) for measuring the performance as well as the time and number of measurements and statistical procedures; (NOTE: "Interventions" should be included for the following groups: private employers; eligible participants interested in self-employment ventures; and eligible participants interested in employment opportunities.) and

(vi) Include procedures that will be used to (a) compare information about participants and nonparticipants—the comparison groups—and, (b) isolate and systematically assess competing explanations for the observed outcomes. Where the use of comparison groups is not practicable, the applicant must propose an alternative method to validate the accomplishments of the project; and

(vii) Include a realistic plan for disseminating the project findings, once they have been approved by OCS, to other interested organizations or public agencies.

The applicant must include an assurance that the evaluation will be conducted by an independent entity, i.e. an entity organizationally distinct from, and not under the control of, the applicant.

Applicants who anticipate evaluation procurements that will exceed $10,000 and will be awarded without competition should include a sole source justification in the proposal. For successful applicants, the grant award letter accompanying the Notice of Grant Award will comprise approval of this action.

f. *Cooperative Partnership Agreements.* A cooperative partnership agreement should be attached to the proposal. The agreement should describe the cooperative relationship between the applicant and the agency responsible for administering the Job Opportunities and Basic Skills (JOBS) training program (as provided for under Title IV of the Social Security Act). The agreement, or letter of intent, must be signed by both parties and must include specific activities and/or actions that each of these entities will carry out over the course of the project period in support of the project. The agreement, or letter of intent, must cover at a minimum activities related to one or more of the mandatory or optional components offered by the appropriate State's JOBS program. The letter of intent must be contingent only on receipt of OCS funds.

g. *Eligibility Agreement* (for certain applicants under Part B, 3.). If the applicant is not an organization applying for a HUD/HHS Economic Empowerment Demonstration Program grant, the application must include a written agreement between the applicant and such an organization which contains specific language confirming that the jobs that they propose to create under this set-aside will be filled by residents of a public or Indian housing project. The agreement must also describe the cooperative relationship, including specific activities and/or actions, each of these entities proposes to carry out in support of the project and the mechanism(s) to be used in coordinating those activities if the project is funded by OCS.

Part G—Post Award Information and Reporting Requirements

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Notice of Grant Award which provides the amount of Federal funds approved for use in the project, the project and budget period for which support is provided, the terms and conditions of the award, and the total project period for which support is contemplated.

Project directors and chief evaluators will be required to attend three national evaluation workshops in Washington, DC. A planning evaluation workshop will be scheduled shortly after the effective date of the grant. They also will be required to attend, as presenters, an interim evaluation workshop and final evaluation workshop on utilization and dissemination to be held at the end of the project period.

Grantees will be required to submit quarterly progress and financial reports (SF 269) as well as a final progress and financial reports within 90 days of the expiration of the grant. Interim evaluation reports, along with a written policies and procedures manual based on the findings of the process evaluation, will be due 30 days after the first twelve months, and the second interim evaluation 30 days after the second twelve months, and a final evaluation report will be due 180 days after the expiration of the grant. This final report will cover 36 months of activities related to project participants.

Grantees are subject to the audit requirements in 45 CFR Parts 74 (non-profit organization) and OMB Circular A–133.

Section 319 of Public Law 101–121, signed into law on October 23, 1989, imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides limited exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their subtier contractors and/or grantees) are prohibited from using appropriated funds for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement or loan. In addition, for each award action in excess of $100,000 (or $150,000 for loans) the law requires recipients and their subtier contractors and/or subgrantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists, (2) to submit a declaration setting forth whether payments to lobbyists have been or will be made out of nonappropriated funds and, if so, the name, address, payment details, and purpose of any agreements with such lobbyists whom receipients or their subtier contractors or subgrantees will pay with the nonappropriated funds and (3) to file quarterly up-dates about the use of lobbyists if an event occurs that materially affects the accuracy of the information submitted by way of declaration and certification. The law establishes civil penalties for noncompliance and is effective with respect to contracts, grants, cooperative agreements and loans entered into or made on or after December 23, 1989. See Attachment H for certification and disclosure forms to be submitted with the applications for this program.

Attachment I indicates the regulations which apply to all applicants/grantees under the Discretionary Grants Program.

Eunice S. Thomas,

Director, Office of Community Services.

Attachment A—1991 Poverty Income Guidelines for all States (Except Alaska and Hawaii) and the District of Columbia

Size of family unit	Poverty guideline
1	$6,620
2	8,980
3	11,340
4	13,400
5	15,660
6	17,920
7	20,180
8	22,440

For family units with more than 8 members, add $2,260 for each additional member.

Poverty Income Guidelines for Alaska

Size of family unit	Poverty guideline
1	$8,290
2	11,110
3	13,930
4	16,750
5	19,570
6	22,390
7	25,210
8	28,030

For family units with more than 8 members, add $2,820 for each additional member.

Poverty Income Guidelines for Hawaii

Size of family unit	Poverty guideline
1	$7,610
2	10,210
3	12,810
4	15,410
5	18,010
6	20,610
7	23,210
8	25,810

For family units with more than 8 members, add $2,600 for each additional member.

BILLING CODE 4130-04-M

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ATTACHMENT B—SF 424, APPLICATION FOR FEDERAL ASSISTANCE AND INSTRUCTIONS FOR THE SF–424

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A State; B County; C Municipal; D Township; E Interstate; F Intermunicipal; G Special District; H Independent School Dist; I State Controlled Institution of Higher Learning; J Private University; K Indian Tribe; L Individual; M Profit Organization; N Other (Specify) _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A Increase Award; B Decrease Award; C Increase Duration; D Decrease Duration; Other (specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ • ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date; Ending Date

14. CONGRESSIONAL DISTRICTS OF: a. Applicant; b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (REV 4-88)
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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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ATTACHMENT C—SF 424A, BUDGET INFORMATION—NON-CONSTRUCTION PROGRAMS AND INSTRUCTIONS FOR THE SF–424A

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)	
21. Direct Charges:	22. Indirect Charges:
23. Remarks	

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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year)

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 - Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

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ATTACHMENT D—SF 424B, ASSURANCES—NON-CONSTRUCTION PROGRAMS

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

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ATTACHMENT E—U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES CERTIFICATE REGARDING DRUG-FREE WORKPLACE REQUIREMENTS—GRANTEES OTHER THAN INDIVIDUALS

U.S. Department of Health and Human Services

Certification Regarding Drug-Free Workplace Requirements

Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(Continued on reverse side of this sheet)

HHS—Certification Regarding Drug-Free Workplace Requirements—continued from reverse page

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

Signature_____ **Date**_____

Title_____

Organization_____

DGMO Form#1 Revised May 1990

BILLING CODE 4150-04-C

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Attachment F—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and belief that its principals involved:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation for this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services' (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction. The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions provided below, without modification in all lower tier covered transactions and in all solicitations for lower tier covered actions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusions—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusions—Lower Tier Covered Transactions" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Attachment G—State Single Points of Contact

Alabama

Mrs. Moncell Thornell, State Single Point of Contact, Alabama Department of Economic & Community Affairs, 3465 Norman Bridge Road, Post Office Box 250347, Montgomery, Alabama 36125–0347, Telephone (205) 284–8905.

Arizona

Ms. Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315.

Arkansas

Mr. Joseph Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Service, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 371–1074.

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480.

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone (303) 866–2156.

Connecticut

Under Secretary, Attn: Intergovernmental Review coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Telephone (203) 566–3410.

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326.

District of Columbia

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue, NW., Washington, DC 20004, Telephone (202) 727–0111.

Florida

Karen McFarland, Director, Florida State Clearinghouse, Executive Office of the Governor, Office of Planning and Budgeting The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8114.

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, S.W., Atlanta, Georgia 30334, Telephone (404) 656–3855.

Hawaii

Mr. Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol, Honolulu, Hawaii 96813, Telephone (808) 548–3016 or 548–3085.

Illinois

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Telephone (217) 782–8639.

Indiana

Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610.

Iowa

Steven R. McCann, Division for Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725.

Kentucky

Robert Leonard, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor Capital Plaza Tower, Frankfort, Kentucky 40601, Telephone (502) 564–2382.

Maine

State Single Point of Contact, Attn: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261.

Maryland

Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490.

Massachusetts

State Single Point of Contact, Attn: Beverly Boyle, Executive Office of Communities & Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001.

Michigan

Milton O. Waters, Director of Operations, Michigan Neighborhood Builders Alliance, Michigan Department of Commerce, Telephone (517) 373–7111.

Please direct correspondence to: Manager, Federal Project Review, Michigan Department of Commerce, Michigan Neighborhood Builders Alliance, P.O. Box 30242, Lansing, Michigan 48909, Telephone (517) 373–6223.

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, Office of Policy Development, 421 West Pascagoula Street, Jackson, Mississippi 39203, Telephone (601) 960–4280.

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834.

Montana

Deborah Stanton, State Single Point of Content, Intergovernmental Review Clearinghouse, c/o Office of Budget and Program Planning, Capitol Station, Room 202—State Capitol, Helena, Montana 59620, Telephone (406) 444–5522.

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, NV, 89710, Attn: John B. Walker, Clearinghouse Coordinator.

New Hampshire

Jeffery H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155.

New Jersey

Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613

Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025.

New Mexico

Dorothy E. (Duffy) Rodriquez, Deputy Director, State Budget Divison, Department of Finance & Administration, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640.

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605.

North Carolina

Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Carolina 27611, Telephone (919) 733–0499.

North Dakota

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Telephone (701) 224–2094.

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Board Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698.

Oklahoma

Don Strain, State Single Point of Contact, Oklahoma Department of Commerce, Office of Federal Assistance Management, 6601 Broadway Extension, Oklahoma City, Oklahoma 73116, Telephone (405) 843–9770.

Oregon

Attn: Delores Streeter, State Single Point of Contact, Intergovernmental Relations Division, State Clearinghouse, 155 Cottage Street, NE., Salem, Oregon 97310, Telephone (503) 373–1998.

Pennsylvania

Sandra Kline, Project Coordinator, Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108 Telephone (717) 783–3700.

Rhode Island

Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656.

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0493.

South Dakota

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773–3212.

Tennessee

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Savier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676.

Texas

Tom Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778.

Utah

Utah State Clearinghouse, Attn: Carolyn Wright, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Telephone (801) 538–1547.

Vermont

Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326.

Washington

Marilyn Dawson, Washington Intergovernmental Review Process, Department of Community Development, 9th and Columbia Building, Mail Stop GH–51, Olympia, Washington 98504–4151, Telephone (206) 753–4978.

West Virginia

Fred Cutlip, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, Room 553, Charleston, West Viriginia 25305, Telephone (304) 348–4010.

Wisconsin

James R. Klauser, Secretary, Wisconsin Department of Administration, 101 South Webster Street, GEF 2, P.O. Box 7864, Madison, Wisconsin 53707–7864, Telephone (608) 266–1741.

Please direct correspondence and questions to: William C. Carey, Section Chief, Federal-State Relations Office, Wisconsin Department of Administration, (608) 266–0267.

Wyoming

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Telephone (307) 777–7574.

Territories

Guam

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472–2285.

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950.

Puerto Rico

Patria Custodio/Israel Soto Marrero, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444.

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Virgin Islands

Jose L. George, Director, Office of Management and Budget, No. 32 & 33 Kongens Gade, Charlotte Amalie, V.I. 00802, Telephone (809) 774-0750.

ATTACHMENT H—RESTRICTIONS ON LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Signature

Title

Organization

Date

BILLING CODE 4150-04-M

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (*check all that apply*):	13. Type of Payment (*check all that apply*):
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16.	
Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____

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INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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Attachment I—DHHS Regulations Applying to All Applications/Grantees Under the Jobs Opportunities for Low Income Individuals Program

Title 45 of the *Code of Federal Regulations:*

Part 16—Department of Grant Appeals Process
Part 74—Administration of Grants (non-governmental)
Part 74—Administration of Grants (state and local governments and Indian Tribal affiliates):
Sections:
74.62(a) Non-Federal Audits
74.173 Hospitals
74.174(b) Other Nonprofit Organizations
74.304 Final Decisions in Disputes
74.710 Real Property, Equipment and Supplies
74.715 General Program Income
Part 75—Informal Grant Appeal Procedures
Part 76—Debarment and Suspension From Eligibility for Financial Assistance

Subpart F—Drug Free Workplace Requirements

Part 80—Non-Discrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964
Part 81—Practice and Procedures for Hearings Under Part 80 of This Title
Part 83—Non-discrimination on the Basis of Sex in the Admission of Individuals to Training Programs
Part 84—Non-discrimination on the Basis of Handicap in Programs
Part 91—Non-discrimination on the Basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance
Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (**Federal Register**, March 11, 1988)
Part 93—New Restrictions on Lobbying
Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities

Attachment J—Checklist for Use in Submitting OCS Grant Applications (Optional)

The application should contain:

1. A completed, *signed* SF–424, "Application for Federal Assistance. The letter code for the priority area (JO) should be in the lower right-hand corner of the page.
2. A completed SF–424A, "Budget Information—Non-Construction."
3. A *signed* SF–424B, "Assurances—Non-Construction."
4. A Project Narrative beginning with a Table of Contents that describes the project in the following order:
   (a) Eligibility Confirmation
   (b) Analysis of Need
   (c) Organizational Experience and Staff Responsibilities
   (d) Work Program/Business Plan
   (e) Third Party Evaluation
   (f) Appendices, including proof of non-profit status, Bylaws, Articles of Incorporation, SPOC comments (where applicable), resumes
5. A *signed* copy of "Certification Regarding Anti-Lobbying Activities".
6. A *signed* copy of the Cooperative Partnership Agreement or letter of intent.
7. A completed Disclosure of Lobbying Activities, if applicable.
8. A self-addressed mailing label which can be affixed to a postcard to acknowledge receipt of application.
9. A *signed* copy of eligibility agreement (for certain applicants under Part B, 3.)

The application should not exceed a total of 50 pages. It should include one original and four identical copies, printed on white 8½ by 11 inch paper, two-holed punched at the top center and fastened separately with a compressor slide paper fastener, such as an ACCO clip, or a binder clip. The submission of bound applications, enclosed in binders, is specifically discouraged.

The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug-free workplace and debarment regulations set forth in Attachments E and F.

[FR Doc. 91–13042 Filed 6–3–91; 8:45 am]
BILLING CODE 4150–04–M

federal register

Tuesday
June 4, 1991

Part VII

Department of Health and Human Services

Office of Community Services

Request for Applications Under the Office of Community Services' Fiscal Year 1991 Training and Technical Assistance Program; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

OFFICE OF COMMUNITY SERVICES

[Program Announcement No. OCS 91-3]

Request for Applications Under the Office of Community Services' Fiscal Year 1991 Training and Technical Assistance Program

AGENCY: Office of Community Services, Family Support Administration, HHS.

ACTION: Request for applications under the Office of Community Services' Training and Technical Assistance Program.

SUMMARY: The Office of Community Services (OCS) announces that competing applications will be accepted for new grants pursuant to the Secretary's discretionary authority under section 681(a)(3) of the Community Services Block Grant Act of 1981 (title VI of Public Law 97-35, the Omnibus Budget Reconciliation Act of 1981, 42 U.S.C. 9910(a)(3). This Program Announcement consists of seven parts. Part A covers information on the legislative authority and defines terms used in the Program Announcement. Part B describes the types of activities that will be considered for funding. Part C provides details on who is eligible to apply and application prerequisites. Part D provides information on application procedures including the availability of forms, where to submit an application, criteria for initial screening of applications, and project evaluation criteria. Part E provides guidance on the content of an application package and the application itself. Part F provides instructions for completing an application. Part G details post-award requirements.

CLOSING DATE: The closing date for submission of applications is August 5, 1991.

FOR FURTHER INFORMATION CONTACT: Mae Brooks, Division of Block Grants, Office of Community Services, Family Support Administration, 370 L'Enfant Promenade, SW., Washington, DC 20447. You may also call (202) 401-9343.

Part A—Preamble

1. Legislative Authority

Section 681(a)(3) of the Community Services Block Grant (CSBG) Act authorizes the Secretary of Health and Human Services to make funds available to States and public and private nonprofit organizations to provide for training and technical assistance to aid States in carrying out their responsibilities under the CSBG Act.

2. Definitions of Terms

For purposes of this Program Announcement the following definitions apply:

"Training" is an educational activity or event which is designed to impart knowledge, understanding, or increase the development of skills. Such training activities may be in the form of assembled events such as workshops, seminars, or programs of self-instructional activities.

"Technical assistance" is a problem-solving event generally utilizing the services of an expert. Such services may be provided on-site, by telephone, or other communications. These services address specific problems and are intended to assist with the immediate resolution of a given problem or set of problems.

"State" means all of the States and the District of Columbia. Except where specifically noted, for purposes of this Program Announcement it also means "Territory."

"Territory" refers to the Commonwealth of Puerto Rico, the American Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau.

"Local service providers" are the approximately 1,000 local public or private nonprofit agencies that receive Community Services Block Grant funds from States to provide services to, or undertake activities on behalf of, low income people.

Part B—Purpose

Section 681(a)(3) of the CSBG Act authorizes the Secretary of the Department of Health and Human Services to make grants, loans or guarantees to States and public agencies and private nonprofit organizations, or to enter into contracts or jointly financed cooperative arrangements with States and public agencies and private nonprofit organizations, to provide for training and technical assistance to aid States in carrying out their responsibilities for conducting and administering the CSBG Program.

OCS is soliciting applications which implement this legislative mandate on a national basis. Proposed projects under this Program Announcement must focus on one of the following program priorities:

(1) Training and Technical Assistance: The development of a training and/or technical assistance program to assist staff of local service providers to acquire the skills and information needed to solve management and programmatic problems. In addition to on-site training, OCS is interested in the development of self-instructional materials in the areas of fiscal, program, case management, or personnel management. The programs must include the provision of T&TA to staff of a significant number of local service providers in the most cost effective manner possible. Collaboration with State CSBG coordinators and local service providers will be required in identifying the training and technical assistance needs of staff of local service providers.

(2) Data Collection: The collection, analysis, and dissemination of information on CSBG Programs on a nationwide basis through a process that relies on voluntary State cooperation. The information must be comprehensive enough and disseminated in such a format as to enable States and local service providers to improve their planning, management, and delivery of services.

Submissions which propose the use of grant funds for the development of any printed or visual materials must contain convincing evidence that these materials are not available from other sources. OCS will not provide funding for such items if justification is not sufficient. Any films or visual presentations approved for development under the grant must be submitted to the Office of Community Services for clearance prior to dissemination.

See part F, section 4, for special instructions on developing a work program.

Part C—Application Prerequisites

1. Eligible Applicants

Eligible applicants are States, public agencies and private non-profit organizations with a demonstrated ability to successfully develop and implement programs and activities similar to those enumerated above.

OCS encourages Historically Black Colleges and Universities to submit applications.

2. Available Funds

The amount of funds available for grant awards under the T&TA Program in FY 91 is as follows: $144,000 for training and technical assistance activities and $100,000 for data collection activities.

3. Mobilization of Resources

OCS would like to mobilize as many resources as possible to enhance projects funded under this program. Proposals submitted by applicants whose programs will leverage other matching funds and resources, such as cash or third-party in-kind contributions, will be looked upon favorably and will be eligible to receive additional points in the competitive review process. Applicants that have failed to generate matching funds and resources on prior OCS grants, if identified, will not receive additional points.

4. Grant Duration

OCS will grant funds for 12-month project and budget periods. The application must clearly demonstrate that the project work plan will achieve measurable results and can be successfully completed within one year.

5. Project Beneficiaries

Projects proposed for funding under the training and technical assistance priority area must result in direct benefits to staff of local service providers in carrying out their responsibilities under the Community Services Block Grant Act.

6. Number of Projects in Application

An application may contain only one project and this project must address one of the purposes found in part B. Applications which are not in compliance with these requirements will be ineligible for funding.

7. Sub-Contracting or Delegating Projects

OCS will not fund any project where the role of the eligible applicant is primarily to serve as a conduit for funds to organizations other than the applicant. This prohibition does not bar the making of subgrants or subcontracting for specific services or activities needed to conduct the project.

Part D—Application Procedures

1. Availability of Forms

Attachments A, B and C contain all of the standard forms necessary for the application for awards under these OCS programs. These forms may be photocopied for use in developing the application.

Copies of the **Federal Register** containing this announcement are available at most local libraries and Congressional District Offices for reproduction. If copies are not available at these sources, they may be obtained by writing or telephoning the office listed under the section entitled **"FOR FURTHER INFORMATION"** at the beginning of this announcement.

For purposes of this announcement, all applicants will use SF-424, SF-424A, and SF-424B. Instructions for completing the SF-424, SF-424A, and SF-424B are found in Attachments A, B, and C and Part F.

Part F contains instructions for the project narrative. The project narrative will be submitted on plain bond paper along with the SF-424 and related forms.

Attachment I provides a checklist to aid applicants in preparing a complete application package for OCS.

2. Application Submission

Refer to the section entitled "Closing Date" at the beginning of this Program Announcement for the last day on which applications may be submitted. Applications may be mailed to: Family Support Administration, Division of Grants Management, 6th Floor OFM/DGM, 370 L'Enfant Promenade, SW., Washington, DC 20447.

Hand-delivered applications are accepted during normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays, on or prior to the established closing date at: Family Support Administration, Division of Grants Management, Sixth Floor, 901 D Street, SW., Washington, DC 20447.

An application will be considered to be received on time if sent on or before the closing date as evidenced by a legible U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier. Private metered postmarks will not be considered acceptable as proof of timely mailing. Applications submitted by any means other than through the U.S. Postal Service or commercial carrier shall be considered as acceptable only if physically received at the above address before close of business on or before the deadline date.

Note: Applicants should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, applicants should check with their local post office.

Late applications will be returned to the senders without consideration in the competition.

Applications once submitted are considered final and no additional materials will be accepted by OCS.

One signed original application and four copies should be submitted.

3. Intergovernmental Review

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs" and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alaska, Idaho, Kansas, Louisiana, Minnesota, Nebraska, Virginia, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs).

Applicants from these nine jurisdictions need take no action regarding Executive Order 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of Executive Order 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions, so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424A, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has sixty (60) days from the application deadline to comment on proposed new awards. However, because applications are due 60 days from the date of the announcement and the grants are to be awarded in September, there is not sufficient time to allow for a complete SPOC comment period. Therefore, we have reduced the comment period to 30 days [June 4, 1991.]

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule under 45 CFR 100.10.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Family Support Administration, Division of Grants Management, 6th Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447. A list of the Single Points of Contact for each State and Territory is included as Appendix G of this announcement.

4. Application Consideration

Applications which meet the screening requirements in sections 5a and 5b below will be reviewed competitively. Such applications will be referred to reviewers for a numerical score and explanatory comments based solely on responsiveness to program guidelines and evaluation criteria published in this announcement.

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Applications will be reviewed by persons outside of the OCS unit which would be directly responsible for programmatic management of the grant. The results of these reviews will assist OCS in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications will be ranked and generally considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since the other factors deemed relevant may be considered including, but not limited to, the timely and proper completion of projects funded with OCS funds granted in the past 5 years; comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowances on OCS or other Federal agency grants.

OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicant's performance record.

5. Criteria for Screening Applications

a. Initial Screening

All applicants will receive an acknowledgement with an assigned identification number. This number, along with any other identifying codes, must be referenced in all subsequent communications concerning the application. If an acknowledgement is not received within three weeks after the deadline date, please notify FSA by telephone at (202) 401–9230. All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this announcment. Only those applications meeting the following requirements will be reviewed and evaluated competitively. Others will be returned to the applicants with a notation that they were unacceptable. (1) The application must contain a Standard Form 424 "Application for Federal Assistance" (SF–424), a budget (SF–424A), and signed "Assurances" (SF–424B) completed according to instructions published in part F and attachments A, B, and C of this program announcement.

(2) A project narrative must also accompany the standard forms.

(3) The SF–424 and the SF–424B must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally.

b. Pre-rating Review

Applications which pass the initial screening will be forwarded to reviewers and/or OCS staff to verify prior to the programmatic review, that the applications comply with this Program Announcement in the following areas:

(1) Eligibility: Applicant meets the eligibility requirements found in part C. Applicant also must be aware that the applicant's legal name as required on the SF 424 (Item 5) must match that listed as corresponding to the Employer Identification Number (Item 6).

(2) Number of Projects: The application contains only one project for a duration of 12 months.

(3) Target Populations: The application clearly targets the specific outcomes and benefits of the project to State recipients of CSBG funds and/or local providers of CSBG services and activities.

(4) Program Focus: The application addresses one of the priorities described in part B of this announcement.

An application may be disqualified from the competition and returned to the applicant if it does not conform to one or more of the above requirements.

c. Evaluation Criteria

Applications which pass the pre-rating review will be assessed and scored by reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and major weaknesses under each applicable criterion published in this announcment.

The in-depth evaluation and review process will use the following criteria coupled with the specific requirements contained in part B. (Note: The following review criteria reiterate collection of information requirements contained in part F of this announcement. These requirements are approved under OMB Control Number 0970–0062.)

Criteria for Review and Evaluation of Applications Submitted Under this Program Announcement

(1) Criterion I: Analysis of needs/priorities (Maximum: 10 points).

(a) Nature and extent of problem are minimally described and documented. (0–3 points). OR

(b) Nature and extent of problem are adequately described and documented. (4–6 points). OR

(c) Nature and extent of problem are exceptionally well described and documented. (7–10 points).

(2) Criterion II: Adequacy of Work Program (Maximum: 35 points).

(a) Goals are appropriately related to needs and are specific and measurable (0–10 points).

(b) Activities are adequately described and appropriately related to goals (0–15 points).

(c) Time frames and chronology of key activities are realistic (0–2 points).

(d) The plan for disseminating the information resulting from the project to CSBG grantees, local service providers, and other interested parties is workable and assures that all relevant parties are included in the dissemination. (0–4 points).

(e) The plan for conducting an assessment that will determine the degree to which the stated goals and objectives of the project are achieved is adequate and workable. (0–4 points).

(3) Criterion III: Significant and Beneficial Impact (Maximum 30 points).

(a) Applicant adequately describes how the project will assure long-term program and management improvements for States and/or local providers of CSBG services and activities (0–12 points).

(b) *For T&TA applications:* The project will impact on a significant number of local service providers (0–11 points).

(c) *For data collection applications:* The applicant has the ability to collect data from a significant number of States. (0–11 points).

(d) Project will leverage or mobilize other resources (0–7 points). (NOTE: If applicant failed to mobilize other resources on prior OCS grants, it should receive 0 points for this subcriterion.)

(4) Criterion IV: Ability of Applicant to Perform (Maximum: 20 points).

(a) Quality of staff is such that applicant will be able to operate the project effectively and efficiently (0–10 points).

(b) The application demonstrates that the applicant has experience relevant to the activities that it proposes to undertake (0–10 points).

(5) Criterion V: Adequacy of Budget (Maximum: 5 points).

(a) The resources requested are reasonable and adequate to accomplish the project (0–3 points).

(b) Total costs are reasonable and consistent with anticipated results (0–2 points).

Part E—Contents of Application and Receipt Process

1. Contents of Application

Each application, should include one original and four additional copies of the following:

a. A completed Standard Form 424 which has been signed by an official of the organization applying for the grant who has authority to obligate the organization legally. The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug-free workplace and debarment regulations set forth in attachments D and E.

B. "Budget Information-Non-Construction Programs" (SF–424A).

c. A filled out, signed and dated "Assurances—Non-Construction Programs" (SF–424B), attachment C.

d. Restrictions on Lobbying—Certification for Contracts, Grants, Loans, and Cooperative Agreements: fill out, sign and date form found at attachment F.

e. Disclosure of Lobbying Activities, SF–LLL: fill out, sign and date form found at attachment F, as appropriate.

f. A Project Narrative consisting of the following elements preceded by a consecutively numbered Table of Contents that will describe the project in the following order:

(i) Analysis of Needs/Priorities.
(ii) Work Program.
(iii) Significant and Beneficial Impact.
(iv) Management History.
(v) Staffing and Resources.
(vi) Appendices including By-Laws; Articles of Incorporation; Certification Regarding Lobbying; resumes, etc.

The original must bear the signature of the authorizing official representing the applicant organization. The total number of pages for the entire application package should not exceed 30 pages, including appendices. Pages should be numbered sequentially throughout. If appendices include photocopied materials, they must be legible. Applications should be submitted in ring-binders that will allow for easy separation and reassembly.

Application must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore, applications must be submitted on white 8½ x 11 inch paper only. They must not include colored, oversized or folded materials. Do not include organizational brochures or other promotional materials, slides, films, clips, etc. in the proposal. They will be discarded if included.

Part F—Instructions for Completing Applications

(Approved by the Office of Management and Budget under Control Number 0970–0062.) The standard forms attached to this announcement shall be used to apply for funds under this announcement.

It is suggested that you reproduce the SF–424 and SF–424A (attachments A and B) and type your application on the copy.

If an item cannot be answered or does not appear to be related or relevant to the assistance requested, write "NA" for "not applicable." Prepare your application in accordance with the standard instructions which coincide with the forms, as well as the OCS specific instructions set forth below.

1. SF–424—"Application for Federal Assistance"

Item #1—For purposes of this announcement, all projects are considered "Applications;" there are no "Pre-applications." Also, all projects are considered non-construction. Check the appropriate box under "Application."

Items #5 and #6—The legal name of the applicant must correspond to the name associated with the Employer Identification Number.

Items #7—If applicant is a "nonprofit organization," enter "N" in the box and specify "nonprofit organization" in the space marked "Other." Proof of nonprofit status must be included with the application.

Item #8—All applications are "New."

Item #9—Enter "DHHS–FSA–OCS"

Item #10—The Catalog of Federal Domestic Assistance Number for projects covered under this Announcement is 93.032.

Item #11—In addition to a brief descriptive title of the project, indicate for which priority area funds are being requested. The following letter designations must be used:

TA—for applications proposing training and technical assistance activities
TD—for applications proposing data collection activities

2. SF–424A—"Budget Information—Non-Construction Programs

See instructions accompanying this form. In completing these sections, the "Federal Funds" budget entries will relate to the requested OCS funds only, and "Non-Federal" will include leveraged funds from other sources.

3. SF–424B—"Assurances—Non-Construction"

All applicants must fill out, sign, date, and return the "Assurances" found at attachment C with their application.

4. Project Narrative

The narrative section of the application must address one of the priority areas described in part B and follow the format outlined below.

a. Analysis of Needs/Priorities

The application should identify the management and/or programmatic problem areas in which State recipients of CSBG and/or local service providers are seeking assistance.

b. Work Program

The application must contain a detailed and specific work program that is both sound and feasible. Applicants must address how the proposed project will carry out the legislative mandate and the program activities found in part B. This section of the narrative must include:

(1) Project priorities and rationale for selecting them, (2) goals and objectives, and (3) project activities. Quantitative data must be provided. For projects funded under priority one, applicants must describe how they will identify needs, the activities that they propose to carry out to address those needs, the methods by which they will carry out those activities, and the plan for disseminating T&TA products resulting from the project. Project activities must be described in a quantitative manner, i.e. number of training days, number of workshops, number of persons to be trained, number of local services providers to be impacted, materials to be developed, etc. The application must also include a plan for conducting an assessment of its activities as they relate to the goals and objectives.

For data collection projects, applicants should, at a minimum, describe the methodology to be used to identify the kind of data to be collected, how the data will be collected, how the applicant will assure that the appropriate data will be collected, a plan for data analysis, the methods by which the data will be disseminated and the audiences, and a plan for conducting an assessment of the useful data collected.

Also to be included for both types of projects is a discussion on how the applicant will involve other appropriate organizations in the planning or implementation of the project in order to avoid duplication of effort and to leverage additional resources.

c. Significant and Beneficial Impact

Each applicant also must indicate how the project will have a significant and beneficial impact. At a minimum the applicant must provide (1) a description

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of how the project will result in long-term program and management improvement in the CSBG program, and (2) a description of the impact area of the project [for T&TA applications] OR a description of the mechanism the applicant will use to collect data, how it can assure collections from a significant number of states, and how many states will be willing to submit data to the applicant [for data collection applications].

d. Management History

Organizations must detail their competence in the specific program area. Documentation must be provided which addresses (1) accomplishments relevant to the proposed project, and (2) experience relevant to the CSBG program. Organizations which propose providing training and technical assistance must detail their competence in the specific program priority area and as a deliverer with expertise in the fields of training and technical assistance. If applicable, information provided by these applicants must also address related achievements and competence of each cooperating or sponsoring organization.

e. Staffing and Resources

The application must fully describe (e.g. a resume) the experience and skills of the proposed project director showing that the individual is not only well qualified but that his-her professional capabilities can assure successful implementation of the project. Identify the Chief Executive Officer, and the proposed project director.

Part G—Post Award Information and Reporting Requirements

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Notice of Grant Award which provides the amount of Federal funds approved for use in the project, the project and budget periods for which support is provided, the terms and conditions of the award, and [matching participation will not be included on NGA] the total project period for which support is contemplated.

In addition to the General Conditions and Special Conditions (where the latter are warranted) which will be applicable to grants, grantee will be subject to the provisions of 45 CFR parts 74 (non-governmental) and 92 (governmental) and OMB Circular A-133. Grantees will be required to submit quarterly progress and financial reports (SF–269) as well as a final progress and financial report.

Grantees are subject to the audit requirements in 45 CFR parts 74 (non-governmental) and 92 (governmental) and OMB Circular A–133. Section 1352 of Public Law 101–121, signed into law on October 23, 1989, imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their subtier contractors and/or grantees) are prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement, or loan. In addition, for each award action in excess of $100,000 (or $150,000 for loans) the law requires recipients and their subtier contractors and/or subgrantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists, (2) to disclose the name, address, payment details, and purpose of any agreements with lobbyists whom recipients or their subtier contractors or subgrantees will pay with profits or nonappropriated funds on or after December 22, 1989, and (3) to file quarterly up-dates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for noncompliance. See attachment F for certification and disclosure forms to be submitted with the applications for this program. Attachment H indicates the regulations which apply to all applicants/grantees under this program.

Dated: May 24, 1991.

Eunice S. Thomas,

Director, Office of Community Services.

BILLING CODE 4150-04-M

ATTACHMENT A--SF 424, "APPLICATION FOR FEDERAL ASSISTANCE"

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name: | Organizational Unit:

Address (give city, county, state, and zip code): | Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): –

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State H. Independent School Dist.
B. County I. State Controlled Institution of Higher Learning
C. Municipal J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify) _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date | Ending Date

14. CONGRESSIONAL DISTRICTS OF: a. Applicant | b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

ATTACHMENT B--SF-424A, "BUDGET INFORMATION--NON-CONSTRUCTION PROGRAMS"

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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OMB Approved No. 0348-0041

BUDGET INFORMATION — Construction Programs

NOTE: Certain Federal assistance programs require additional computations to arrive at the Federal share of project costs eligible for participation. If such is the case you will be notified.

COST CLASSIFICATION	a. Total Cost	b. Costs Not Allowable for Participation	c. Total Allowable Costs (Column a-b)
1. Administrative and legal expenses	$ .00	$ .00	$ .00
2. Land, structures, rights-of-way, appraisals, etc.	$ .00	$ .00	$ .00
3. Relocation expenses and payments	$ .00	$ .00	$ .00
4. Architectural and engineering fees	$ .00	$ .00	$ .00
5. Other architectural and engineering fees	$ .00	$ .00	$ .00
6. Project inspection fees	$ .00	$ .00	$ .00
7. Site work	$ .00	$ .00	$ .00
8. Demolition and removal	$ .00	$ .00	$ .00
9. Construction	$ .00	$ .00	$ .00
10. Equipment	$ .00	$ .00	$ .00
11. Miscellaneous	$ .00	$ .00	$ .00
12. SUBTOTAL	$ .00	$ .00	$ .00
13. Contingencies (sum of lines 1-11)	$ .00	$ .00	$ .00
14. SUBTOTAL	$ .00	$ .00	$ .00
15. Project (program) income	$ .00	$ .00	$ .00
16. TOTAL PROJECT COSTS (subtract #15 from # 14)	$ .00	$ .00	$ .00
FEDERAL FUNDING			
17. Federal assistance requested, calculate as follows: Enter eligible costs from line 16c Multiply X ———— % (Consult Federal agency for Federal percentage share). Enter the resulting Federal share.			$ .00

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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

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INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

ATTACHMENT C--SF 424B, "ASSURANCES--NON-CONSTRUCTION PROGRAMS"

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

ATTACHMENT D - U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICS
CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS --
GRANTEES OTHER THAN INDIVIDUALS

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government-wide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(Continued on reverse side of this sheet)

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HHS–Certification Regarding Drug-Free Workplace Requirements–continued from reverse page

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

Signature_____ **Date**_____

Title_____

Organization_____

DGMO Form#2 Revised May 1990

BILLING CODE 4150-04-C

Attachment E—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR part 76, certifies to the best of its knowledge and belief that its principals involved:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation for this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services' (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction. The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions", provided below, without modification in all lower tier covered transactions and in all solicitations for lower tier covered actions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusions—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusions—Lower Tier Covered Transactions" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Attachment F—Certification Regarding Anti-Lobbying Provisions

Certification for Contracts, Grants Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature_____

Title_____

Organization_____

Date_____

BILLING CODE 4150-04-M

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ATTACHMENT F--CERTIFICATION REGARDING THE ANTI-LOBBYING PROVISIONS

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter ____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier ____, *if known*: Congressional District, *if known*:	Congressional District, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (*check all that apply*):	13. Type of Payment (*check all that apply*):
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

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Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

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DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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Attachment G—State Single Points of Contact

Alabama

Mrs. Moncell Thornell, State Single Point of Contact, Alabama Department of Economic & Community Affairs, 3465 Norman Bridge Road, Post Office Box 250347, Montgomery, Alabama 36125–0347, Telephone (205) 284–8905

Arizona

Ms. Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315

Arkansas

Mr. Joseph Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Service, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 371–1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Reserach, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

Colorado

State Single Point of Contact State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone (303) 866–2156

Connecticut

Under Secretary, Attn: Intergovernmental Review coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Telephone (203) 566–3410

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delware 19903, Telephone (302) 736–3326

District of Columbia

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue, NW., Washington, D.C. 20004, Telephone (202) 727–9111

Florida

Karen McFarland, Director, Florida State Clearinghouse, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8114

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street SW., Atlanta, Georgia 30334, Telephone (404) 656–3855

Hawaii

Mr. Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol, Honolulu, Hawaii 96813, Telephone (808) 548–3016 or 548–3085

Illinois

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Telephone (217) 782–8639

Indiana

Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

Iowa

Steven R. McCann, Division for Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

Kentucky

Robert Leonard, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor Capital Plaza Tower, Frankfort, Kentucky 40601, Telephone (502) 564–2382.

Maine

State Single Point of Contact, Attn: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261.

Maryland

Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490.

Massachusetts

State Single Point of Contact, Attn: Beverly Boyle, Executive Office of Communities & Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001.

Michigan

Milton O. Waters, Director of Operations, Michigan Neighborhood Builders Alliance, Michigan Department of Commerce, Telephone (517) 373–7111.

Please direct correspondence to: Manager, Federal Project Review, Michigan Department of Commerce, Michigan Neighborhood Builders Alliance, P.O. Box 30242, Lansing, Michigan 48909, Telephone (517) 373–6223.

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, Office of Policy Development, 421 West Pascagoula Street, Jackson, Mississippi 39203, Telephone (601) 960–4280.

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834.

Montana

Deborah Stanton, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Budget and Program Planning, Capitol Station, Room 202—State Capitol, Helena, Montana 59620. Telephone (406) 444–5522.

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, NV. 89710, ATTN: John B. Walker, Clearinghouse Coordinator.

New Hampshire

Jeffery H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155.

New Jersey

Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613.

Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025.

New Mexico

Dorothy E. (Duffy) Rodriquez, Deputy Director, State Budget Division, Department of Finance & Administration, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640.

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605.

North Carolina

Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Carolina 27611. Telephone (919) 733–0499

North Dakota

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota, 58505 Telephone (701) 224–2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698

Oklahoma

Don Strain, State Single Point of Contact, Oklahoma Department of Commerce, Office of Federal Assistance Management, 6801 Broadway Extension, Oklahoma City, Oklahoma 73116, Telephone (405) 843–9770

Oregon

Attn: Dolores Streeter, State Single Point of Contact, Intergovernmental Relations

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Division, State Clearinghouse, 155 Cottage Street NE., Salem, Oregon 97310, Telephone (503) 373-1998

Pennsylvania

Sandra Kline, Project Coordinator, Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108, Telephone (717) 783-3700

Rhode Island

Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277-2656.

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734-0493

South Dakota

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773-3212

Tennessee

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741-1676

Texas

Tom Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463-1778

Utah

Utah State Clearinghouse, Attn: Carolyn Wright, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Telephone (801) 538-1547

Vermont

Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828-3326

Washington

Marilyn Dawson, Washington Intergovernmental Review Process, Department of Community Development, 9th and Columbia Building, Mail Stop GH-51, Olympia, Washington 98504-4151, Telephone (206) 753-4979

West Virginia

Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348-4010

Wisconsin

James R. Klauser, Secretary, Wisconsin Department of Administration, 101 South Webster Street, GEF 2, P.O. Box 7864, Madison, Wisconsin 53707-7864, Telephone (608) 266-1741.

Please direct correspondence and questions to: William C. Carey, Section Chief, Federal-State Relations Office, Wisconsin Department of Administration, (608) 266-0267.

Wyoming

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Telephone (307) 777-7574

TERRITORIES

Guam

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472-2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Patria Custodio/Israel Soto Marrero, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940-9985, Telephone (809) 727-4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, No. 32 & 33 Kongens Gade, Charlotte Amalie, V.I. 00802, Telephone (809) 774-0750

Attachment H—DHHS Regulations That Apply to all Applicants/Grantees Under the Training and Technical Assistance Program

Title 45 of the Code of Federal Regulations:

Part 16—Procedures of the Departmental Grant Appeals Board
Part 74—Administration of Grants (non-governmental)
Part 74—Administration of Grants (state and local governments and Indian Tribal affiliates):
Sections
74.62(e) Non-Federal Audits
74.173 Hospitals
74.174(b) Other Nonprofit Organizations
74.304 Final Decisions in Disputes
74.710 Real Property, Equipment and Supplies
74.715 General Program Income
Part 75—(Informal Grant Appeal Procedures
Part 76—Debarment and Suspension from Eligibility for Financial Assistance
Subpart F—Drug Free Workplace Requirements
Part 80—Non-discrimination, Under Programs Receiving Federal Assistance through the Department of Health and Human Services, Effectuation of Title VI of the Civil Rights Act of 1964
Part 81—Practice and Procedures for Hearings Under Part 80 of this Title
Part 83—Non-discrimination on the basis of sex in the admission of individuals to training programs
Part 84—Non-discrimination on the Basis of Handicap in Programs
Part 91—Non-discrimination of the Basis of Age in Health and Human Services Programs of Activities Receiving Federal Financial Assistance
Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (Federal Register, March 11, 1988)
Part 93—New Restrictions on Lobbying
Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities

Attachment I—Checklist for use in Submitting OCS Grant Applications (Optional)

The application should contain:

1. A complete, signed SF-424, "Application for Federal Assistance". The letter code for the priority area (TA or TD) should be in the lower right-hand corner of the page;
2. A completed "Budget Information-Non-Construction" (SF-424A);
3. A signed "Assurances-Non-Construction" (SF-424A);
4. A Project Narrative beginning with a Table of Contents that describes the project in the following order:
   (a) Analysis of Needs/Priorities.
   (b) Work Program.
   (c) Significant and Beneficial Impact.
   (d) Management History.
   (e) Staffing and Resources.
5. Appendices including proof of non-profit status, Single Points of Contact comments (where applicable), resumes;
6. A signed copy of "Certification Regarding Anti-Lobbying Activities";
7. A completed "Disclosures of Lobbying Activities", if appropriate; and
8. A self-addressed mailing label which can be affixed to a post-card to acknowledge receipt of application.

The application should not exceed a total of 30 pages. It should include one original and four identical copies, printed on white 8½ by 11 inch paper, and be presented in a ring binder. The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug-free workplace and debarment regulations set forth in attachments D and E

[FR Doc. 91-13043 Filed 6-3-91; 8:45 am]
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federal register

Tuesday,
June 4, 1991

Part VIII

Education Department

National Workplace Literacy Program; Notice Inviting Applications for New Awards for Fiscal Year 1992

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.198]

National Workplace Literacy Program; Notice Inviting Applications for New Awards for Fiscal Year 1992

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), the notice contains all the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: The National Workplace Literacy Program provides assistance for demonstration projects that teach literacy skills needed in the workplace through exemplary education partnerships between business, industry, or labor organizations and educational organizations.

Eligible Applicants:

(a) Awards are provided to exemplary partnerships between—

(1) A business, industry, or labor organization, or private industry council; and

(2) A State educational agency (SEA), local educational agency (LEA), institution of higher education, or school (including an area vocational school, an employment and training agency, or a community-based organization).

(b) A partnership must include as partners at least one entity from paragraph (a)(1) above and at least one entity from paragraph (a)(2) above, and may include more than one entity from each group.

(c)(1) The partners shall apply jointly to the Secretary for funds.

(2) The partners shall enter into an agreement, in the form of a single document signed by all partners, designating one member of the partnership as the applicant and the grantee. The agreement must also detail the role each partner plans to perform, and must bind each partner to every statement and assurance made in the application. Applications are governed by the EDGAR provisions in 34 CFR 75.127–75.129 regarding group applications.

Deadline for Transmittal of Applications: July 19, 1991.

Deadline for Intergovernmental Review: September 17, 1991.

Available Funds: $19,250,750.

Estimated Range of Awards: $50,000–400,000.

Estimated Average Size of Awards: $275,014.

Estimated Number of Awards: 70.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 18 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations), part 75 (Direct Grant Programs), part 77 (Definitions that Apply to Department Regulations) part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 81 (General Education Provisions Act—Enforcement), part 82 (New Restrictions on Lobbying), part 85 (Government-wide Debarment and Suspension (Nonprocurement) and Government-Wide Requirements for Drug-Free Workplace (Grants), and part 86 (Drug-Free Schools and Campuses) and (b) The regulations for this program in 34 CFR Parts 425, 426 and 432.

Description of Program: The Secretary provides grants or cooperative agreements to projects designed to improve the productivity of the workforce through improvement of literacy skills in the workplace by—

(a) Providing adult literacy and other basic skills services and activities;

(b) Providing adult secondary education services and activities that may lead to the completion of a high school diploma or its equivalent;

(c) Meeting the literacy needs of adults with limited English proficiency;

(d) Upgrading or updating basic skills of adult workers in accordance with changes in workplace requirements, technology, products, or processes;

(e) Improving the competency of adult workers in speaking, listening, reasoning, and problem solving; or

(f) Providing educational counseling, transportation, and child care services for adult workers during nonworking hours while the workers participate in the project.

The Secretary wishes to highlight for potential applicants America 2000: The President's Education Strategy to move the Nation toward the national education goals and educational excellence for all Americans. The National Workplace Literacy Program is one means of transforming America into a "Nation of Students" and strengthening the Nation's education effort for yesterday's students who are today's workers. The President believes that learning is a life-long challenge. Approximately 85 percent of America's workers for the year 2000 are already in the workforce. Improving schools for today's and tomorrow's students is not sufficient to ensure a competitive America in the year 2000. The President has called on Americans to move from "A Nation at Risk" to "A Nation of Students" by continuing to enhance the knowledge and skills of all Americans.

Invitational Priority

The Secretary is particularly interested in applications that meet the following invitational priority: Projects that propose—

(a) Assessment and evaluation activities including development of qualitative and quantitative tools that measure the attainment or enhancement of job-specific basic skills and such other workplace outcomes as increased employee-readiness for promotions, decreased error rates and reductions in waste, turnover, lost management time and downtime. Applicants may propose alternative or additional workplace outcomes. The Department respects the proprietary nature of the kinds of workplace data collected and is seeking data only on participant gains and not access to raw data; and

(b) A plan of operation that involves workers, whether union or nonunion, in aspects of project planning and implementation such as project design, curriculum development, recruitment, instruction and peer support. For instance, workers may serve on an advisory committee or undertake other project activities in order to meet both worker and employer literacy goals and needs.

However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Selection Criteria

The Secretary uses the following selection criteria to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses. The Secretary assigns the 15 points, reserved in 34 CFR 432.21(b), as follows: 5 points to selection criterion (a)—Program factors—in 34 CFR 432.22(a) for a total of 20 points for that criterion; 5 points to selection criterion (d)—Plan of Operation—in 34 CFR 432.22(d) for a total of 17 points for that criterion; and 5 points to selection criterion (f)—Evaluation Plan—in 34 CFR 432.22 (f) for a total of 15 points for that criterion.

(a) *Program factors.* (20 points) The Secretary reviews each application to determine the extent to which the project—

(1) Demonstrates a strong relationship between skills taught and the literacy requirements of actual jobs, especially the increased skill requirements of the changing workplace;

(2) Is targeted to adults with inadequate skills for whom the training described is expected to mean new employment, continued employment, career advancement, or increased productivity;

(3) Includes support services, based on cooperative relationships within the partnership and from helping organizations, necessary to reduce barriers to participation by adult workers. Support services could include educational counseling, transportation, and child care during non-working hours while adult workers are participating in a project; and

(4) Demonstrates the active commitment of all partners to accomplishing project goals.

(b) *Extent of need for the project.* (15 points) The Secretary reviews each application to determine the extent to which the project meets specific needs, including consideration of—

(1) The extent to which the project will focus on demonstrated needs for workplace literacy training of adult workers;

(2) The adequacy of the applicant's documentation of the needs to be addressed by the project;

(3) How those needs will be met by the project; and

(4) The benefits to adult workers and their industries that will result from meeting those needs.

(c) *Quality of training.* (15 points) The Secretary reviews each application to determine the quality of the training to be provided by the project, including the extent to which the project will—

(1) Use curriculum materials that are designed for adults and that reflect the needs of the workplace;

(2) Use individualized educational plans developed jointly by instructors and adult learners;

(3) Take place in a readily accessible environment conducive to adult learning; and

(4) Provide training through the partner classified under 34 CFR § 432.2(a)(2), unless transferring this activity to the partner classified under 34 CFR § 432.2(a)(1) is necessary and reasonable within the framework of the project.

(d) *Plan of operation.* (17 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project, and includes—

(i) A description of the respective roles of each member of the partnership in carrying out the plan;

(ii) A description of the activities to be carried out by any contractors under the plan;

(iii) A description of the respective roles, including any cash or in-kind contributions, of helping organizations; and

(iv) A description of the respective roles of any sites;

(3) How well the objectives of the project relate to the purposes of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants, who are otherwise eligible to participate, are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(e) *Applicant's experience and quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the extent of the applicant's experience in providing literacy services to working adults.

(2) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project including—

(i) The qualifications, in relation to project requirements, of the project director, if one is to be used;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (e)(2) (i) and (ii) above will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(3) To determine personnel qualifications under paragraphs (e)(2) (i) and (ii) above, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(f) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are clearly explained and appropriate to the project;

(2) To the extent possible, are objective and produce data that are quantifiable;

(3) Identify expected outcomes of the participants and how those outcomes will be measured;

(4) Include evaluation of effects on job advancement, job performance (including, for example, such elements as productivity, safety and attendance), and job retention; and

(5) Are systematic throughout the project period and provide data that can be used by the project on an ongoing basis for program improvement.

(g) *Budget and cost-effectiveness.* (8 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable and necessary in relation to the objectives of the project; and

(3) The applicant has minimized the purchase of equipment and supplies in order to devote a maximum amount of resources to instructional services.

(Approved under OMB Control No. 1830–0507)

Additional Factor

In making awards under this program, the Secretary may consider, in addition to the selection criteria, whether funding a particular applicant would improve the geographical distribution of projects funded under this program. (Authority: 20 U.S.C. 1211(a))

Intergovernmental Review of Federal Programs:

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants

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proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive Order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on September 17, 1990, pages 38210–38211.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA # 84.198, U.S. Department of Education, room 4161, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.*

Instructions for Transmittal of Applications:

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # 84.198), Washington, DC 20202–4725 or (2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # 84.198), Room # 3633, Regional Office Building # 3, 7th and D Streets, SW., Washington, DC 20202–4725.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 732–2405.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number of the competition under which the application is being submitted.

Application Instructions and Forms:

The first appendix (appendix A) to this notice is divided into four parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Part IV: Partners' Agreement Form.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 434B).

Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED Form 80–0013) and instructions.

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions. (NOTE: ED Form 80–0014 is intended for the use of grantees and should not be transmitted to the Department).

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions, and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

All forms and instructions are included as appendix A of this notice. Questions and answers pertaining to this program are included, as appendix B, to assist potential applicants.

An applicant may submit information on a photostatic copy of the forms in Appendix A. However, each of the pertinent documents must include an original ink signature. All applicants must submit one original signed application, and at least two copies of the signed application. Please mark each application as an original or copy. No grant may be awarded unless a *complete* application form has been received (20 U.S.C. 1241–1391).

FOR FURTHER INFORMATION CONTACT: Nancy Smith Brooks, Special Programs Branch, Division of National Programs, Office of Vocational and Adult Education, U.S. Department of Education, room 4512–MES, 400 Maryland Avenue SW., Washington, DC 20202–7327. Telephone (202) 732–2269. Or, Sarah Newcomb, Program Services Branch, Division of Adult Education and Literacy, Office of Vocational and Adult Education, U.S. Department of Education, room 4428–MES, 400 Maryland Avenue, SW., Washington, DC 20202–7320. Telephone (202) 732–2390. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Authority: 20 U.S.C. 1211(a).

Dated: May 22, 1991.

Betsy Brand,

Assistant Secretary, Office of Vocational und Adult Education.

Appendix A

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OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☒ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify): _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award; B. Decrease Award; C. Increase Duration; D. Decrease Duration; Other (specify): _____

9. NAME OF FEDERAL AGENCY: U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 • 1 9 8
TITLE: National Workplace Literacy

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date: 03/01/92; Ending Date: 08/31/93

14. CONGRESSIONAL DISTRICTS OF: a. Applicant; b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1. Workplace	84.198	$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8. National Workplace Literacy Program	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Nonfederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

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Part II—Budget Information

Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for funds from any one of the grant programs funded by the U.S. Department of Education. For the National Workplace Literacy Program (CFDA No. 84.198) sections A, B, and C should include budget estimates for the entire project period.

Note: Sections D and E need not be completed to apply for this program.

All applications should contain a breakdown by the object class categories shown in section B, Lines 6a through 6j.

Section A. Budget Summary

Line 1. Columns (a) through (g)—Enter on Line 1 the catalog program title in Column (a) and the catalog program number in column (b). Leave Columns (c) and (d) blank. Enter in Columns (e), (f) and (g), the appropriate amounts of funds needed to support the project for the entire project period.

Section B. Budget Categories

Lines 6a through 6i—Fill in the total requirements for Federal funds by object class categories for the entire project period. Line 6a—Personnel: Show salaries and wages to be paid to personnel employed in the project. Fees and expenses for consultants must be included in Line 6f.

Line 6b—Fringe Benefits: include contributions for Social Security, employee insurance, pension plans, etc. Leave blank if fringe benefits to personnel are treated as part of the indirect cost rate.

Line 6c—Travel: Indicate the amount requested for travel of employees.

Line 6d—Equipment: Indicate the cost of nonexpendable personal property which has a useful life of more than two years and an acquisition cost of $5000 or more per unit.

Line 6e—Supplies: Include the cost of consumable supplies to be used in this project. These should be items which cost less than $5000 per unit with a useful life of less than two years.

Line 6f—Contractual: Show the amount to be used for: (a) Procurement contracts (except those which belong on other lines such as supplies and equipment listed above); and (b) payments for consultants.

Line 6g—Construction: Construction expenses are not allowable under the National Workplace Literacy Program (CFDA No 84.198).

Line 6b—Other: Indicate all direct costs not clearly covered by Lines 6a through 6g. Trainee costs or stipends are not allowable.

Line 6i—Total Direct Charges: Show total of Lines 6a through 6h.

Line 6j—Show the amount of indirect cost to be charged to the project.

Line 6k—Enter the total of the amounts on Lines 6i and 6j.

Section C. Non-Federal Resources

Note: Cost sharing is required by program regulations. The local share required refers to a percentage of total project cost, not Federal funds.

Line 8—Enter any amounts of non-Federal resources that will be used on the grant. Contributions may be in the form of cash or in-kind contributions. If any in-kind contributions are included, provide a brief explanation of each contribution on a separate sheet.

Column (b)—Enter the contribution to be made by the applicant. For purposes of column (b), the applicant includes all partners and not merely the applicant designated by the Partners' Agreement Form and on the SF 424. If a partner is a State agency, that partner's contribution should be included in column (b), rather than in column (c).

Column (c)—Enter the amount of the cash and in-kind contributions of any State agency that is not a partner. State agencies (that are partners) should list their (contributions in column (b).)

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter the totals of Columns (b), (c), and (d).

Note: If an SEA or LEA is designated as the grantee for a partnership, the grantee may receive 100 percent of its necessary and reasonable administrative costs incurred in establishing a project during a start-up period. Federal funds may provide no more than 70 percent of any other costs in a project; these include a cost incurred during a projects's operational period by partnerships where an SEA or LEA is the designated grantee and costs incurred in both a project's start-up and operational periods by a partnership where an entity other than an SEA or LEA is the designated grantee. This means that the amount shown on Line 8, Column (e), must be at least 30 percent of the amount shown in Section A, line 1, column (g), unless the first amount is smaller than 30 percent because an SEA or LEA is the designated grantee.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Note: This section does not apply to the National Workplace Literacy Program.

Section F. Other Budget Information

Prepare a detailed Budget Narrative that explains, justifies, and/or clarifies the budget figures shown in section A, B, and C. Explain:

1. The basis used to estimate certain costs (professional personnel), consultants, travel, indirect costs and any other cost that may appear unusual;

2. How the major cost items relate to the proposed project activities;

3. The costs of the project's evaluation component;

4. What matching occurs in each budget category; and

5. For State or local education agencies claiming 100 percent Federal funding for administrative costs incurred in establishing a project during a start-up period, not to exceed 90 days, provide a breakdown of expenditures in the start-up period and in the subsequent operational period. Organizations claiming 100 percent Federal funding during start-up must meet the definition of "LEA" and "SEA" contained in section 312(5) or section 312(6) of the Adult Education Act, as amended by title II, part B of Public Law 100–297.

Instructions for Part III—Application Narrative

Before preparing the Application Narrative, an applicant should read carefully the description of the program, the information regarding the invitational priority, and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a summary of the proposed project;

2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package; and

3. Include any other pertinent information that might assist the Secretary in reviewing the application.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 30 double-spaced, typed, 8½"x11" pages (on one side only), although the Secretary will consider applications of greater length. Be sure that each page of your application is numbered consecutively.

Include as an appendix to the Application Narrative supporting documentation, also on 8½"x11" paper, (e.g., letters of support, footnotes, resumes, etc.) or any other pertinent information that might assist the Secretary in reviewing the application.

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Applicants are advised that:

(1) Under 34 CFR 75.217 of the Education Department General Administrative Regulations (EDGAR), the Department considers only information contained in the application in ranking applications for funding consideration. Letters of support sent separately from the formal application package are not considered in the review by the technical review panels.

(2) In reviewing applications, the technical review panel evaluates each application solely on the basis of the established technical review criteria. Letters of support contained in the application will strengthen the application only insofar as they contain commitments which pertain to the established technical review criteria, such as commitment of resources and placement of successful completers.

Include any other pertinent information that might assist the Secretary in reviewing the application under the Adult Education Act, as amended by title II, part B of Pub. L. 100-297.

Instructions for Part IV—Partners' Agreement Form

Partners must submit a signed Partners' Agreement Form and enclose it with the application. Under 34 CFR 432.2, it is essential that the partners sign and submit this document in order for their application to be considered complete. If the document is not signed by *all* partners and submitted with the application, the Secretary will return the application without further consideration for funding pursuant to 34 CFR 75.216.

Instructions for estimated public reporting burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project, OMB 1830-0507, Washington, DC 20503. (Information collection approved under OMB control number 1830-0507. Expiration date 12/31/91).

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PART IV - PARTNERSHIP AGREEMENT FORM

INSTRUCTIONS: Partners must submit a signed Partners' Agreement form and enclose it with the application. Under 34 CFR 4322 it is essential that the partners sign and submit this document in order for their application to be considered complete. If the document is not signed by all partners and submitted with the application, the Secretary will return the application without further consideration for funding pursuant to 34 CFR 75.216.

Please note that every partnership must include at least one entity from each of the following two categories and may, but need not, include more than one entity from each category. Category 1 includes a business, industry, or labor organization, or private industry council. Category 2 includes a State educational agency, local educational agency, or school (including an area vocational school, and employment and training agency, or a community-based organization). This means that the Partnership Agreement must be signed by at least one Category 1 partner and at least one Category 2 partner and must also be signed by any other partner(s) included in the partnership. Any questions about forming a valid partnership and properly completing the Partnership Agreement may be referred to one of the program officers listed as an information contact in this application notice.

Partners' Agreement

As authorized representatives of our organizations, we agree on their behalf to the following terms with respect to our application number _____ as a condition of applying for and receiving a grant from the National Workplace Literacy Program. We:

- designate partner _____ as the applicant on behalf of the partnership;
- are willing to be partners in this project;
- will perform the role detailed for each of us in the application;
- will be bound by every statement and assurance made in the application including, but not limited to, the assurance that any funds provided to the partnership under Section 371 of Public Law 100-297 will be used to supplement and not supplant funds otherwise available for the purposes of the National Workplace Literacy Program.

Category One Partner	Category Two Partner
_____	_____
Original Ink Signature	Original Ink Signature
_____	_____
Name (Typed)	Name (Typed)
_____	_____
Title (Typed)	Title (Typed)
_____	_____
Organization (Typed)	Organization (Typed)
_____	_____
Date (Typed)	Date (Typed)
_____	_____

Note: Applicant must add signature spaces including the above information for any additional partner(s).

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ASSURANCES — CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program, If you have questions, please contact the Awarding Agency. Further, certain federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
10. Will comply with all Federal statues relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686) which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794) which prohibit discrimination of the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107) which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 93-255), as amended, relating to non-discrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other non-discrimination provisions in the specific statute(s) under which application for Federal assistance is being made, and (j) the requirements on any other non-discrimination Statute(s) which may apply to the application.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

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CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted–

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

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Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract ☐ b. grant ☐ c. cooperative agreement ☐ d. loan ☐ e. loan guarantee ☐ f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/application ☐ b. initial award ☐ c. post-award	3. Report Type: ☐ a. initial filing ☐ b. material change. For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, if known: Congressional District, if known:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable: _____
8. Federal Action Number, if known:	9. Award Amount, if known: $
10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI):	b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (check all that apply): $ _____ ☐ actual ☐ planned	13. Type of Payment (check all that apply): ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (check all that apply): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

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INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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Standard Form - LLL-A

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Appendix B

Potential applicants frequently direct questions to officials of the Department regarding application notices and programmatic and administrative regulations governing various direct grant programs. To assist potential applicants the Department has assembled the following most commonly asked questions.

Q. Can we get an extension of the deadline?

A. No. A closing date may be changed only under extraordinary circumstances. Any change must be announced in the **Federal Register** and apply to all applications. Waivers for individual applications *cannot* be granted, regardless of the circumstances.

Q. We just missed the deadline for a previous Department of Education competition. May we submit the application we prepared for it under this competition?

A. Yes. However the likelihood of success is not good. A properly prepared application must meet the specifications of the competition to which it is submitted.

Q. I'm not sure which competition is most appropriate for my project. What should I do?

A. We are happy to discuss any questions with you and provide clarification on the unique elements of the various competitions.

Q. How can I best ensure that my application is received on time and is considered under the correct competition?

A. Applicants should carefully follow the instructions for filing applications that are set forth in this notice. Be sure to clearly indicate in Block 10 of the face page of their application (Standard form 424) the CFDA number—84.198—and the title of the program—National Workplace Literacy Program—representing the competition in which the application should be considered.

Q. Will you help us prepare our application?

A. We are happy to provide general program information. Clearly, it would not be appropriate for staff to participate in the actual writing of an application, but we can respond to specific questions about application requirements, evaluation criteria, and the priority. Applicants should understand that this previous contact is not required, nor will it in any way influence the success of an application.

Q. How long should an application be?

A. The Department of Education is making a concerted effort to reduce the volume of paperwork in discretionary program applications. However, the scope and complexity of projects is too variable to establish firm limits on length. Your application should provide enough information to allow the review panel to evaluate the significance of the project against the criteria of the competition. We recommend that you address all of the selection criteria in an "Application Narrative" of no more than thirty pages in length. Supporting documentation may be included in appendices to the Application Narrative. Some examples:

(1) Staff qualifications. These should be brief. They should include the person's title and role in the proposed project and contain only information about his or her qualifications that are relevant to the proposed project. Qualifications of consultants should be provided and be similarly brief. Resumes may be included in the appendices.

(2) Copies of evaluation instruments proposed to be used in the project in instances where such instruments are not in general use.

Note that a Budget Narrative describing specific uses of funds requested in the budget form also is required. No applications will be funded without this material. The Budget Narrative is not included in the thirty pages recommended. It may consist of two or three additional pages.

Q. How should my application be organized?

A. The Secretary strongly requests that the application be assembled with the SF 424 on top, followed by the abstract, Partners' Agreement Form, table of contents, SF 424A budget forms, application narrative, assurances and certifications, and appendices. Do not substitute your own cover for the SF 424. Please include one extra, loose copy of the SF 424 for use by the Application Control Center. Please number all pages. The application narrative should be organized to follow the exact sequence of the components in the selection criteria in this notice.

Q. Is travel allowable using project funds?

A. Travel associated with carrying out the project is allowed if necessary and reasonable. The Secretary anticipates that the project director may be asked to attend two staff development meetings. Therefore, you may wish to include the costs of two trips to Washington, DC in the travel budget.

Q. How can I ensure that my application is filed on behalf of a validly formed partnership?

A. The requirements for forming a partnership and filing an application on its behalf are explained in Sec. 432.2 of the program regulations. A partnership requires a signed agreement between at least one entity described in Sec. 432.2(a)(1) and at least one entity described in Sec. 432.2(a)(2). Note that State and local governments—like any other entities—may not qualify as partners unless they fall within these descriptions. For example, under the regulations a State or local educational agency or a municipal employment and training agency is an eligible partner, but a State or city as such is not an eligible partner. No agency of the Federal government is an eligible partner. Federal employees including members of the armed services are not eligible for training. If you are not sure whether a particular entity is an eligible partner, please call one of the program officers listed as an information the application notice.

Q. Must the signed partnership agreement be submitted with the application?

A. Yes. The agreement is required both to establish the partnership's legal eligibility and to ensure each partner's continuing commitment during the workplace literacy project. Prior to submitting an application, partners should ensure that each partner clearly understands its role and responsibilities in the project. The Department wishes to underscore that if any of the entities named as partners in the application have not signed the agreement form, the application will be returned to the applicant without further consideration for funding.

Because partnership requirements are established by law, the Department reviews each agreement form to be certain that it meets the terms of the law requiring all entities named as partners to sign the agreement.

Q. Can entities that are not eligible partners be involved in a workplace literacy project?

A. Yes. They could potentially be involved as "contractors," "helping organizations," or "sites," as defined in Sec. 432.5 of the regulations. Note that entities which are "helpers" or "sites" may not receive funds from the grant.

Q. What is meant by a required percent of non-Federal matching funds?

A. In this program, the recipient of Federal funds is required to "match" the Federal grant by paying at least a minimum percentage of total program costs. Total program costs include both the Federal funds received and the non-Federal contribution. For example, a partnership that is required to pay 30 percent of total program costs would have to contribute $30,000 to match a Federal award of $70,000 ($30,000=30 percent of $100,000 ($30,000 plus $70,000)). All partnerships must contribute at least 30 percent of total program costs, unless this amount is reduced because an SEA or LEA is the partnership's designated grantee. SEAs and LEAs are eligible to receive full—not merely 70 percent—reimbursement for their necessary and reasonable administrative costs incurred in establishing a project during the project start-up period. That period may not exceed 90 days.

Q. May a project provide vocational or job training activities?

A. No. Projects must provide adult education programs that teach literacy skills needed in the workplace. Workplace literacy activities include only the adult education activities listed in the Description of Program section of the Notice Inviting Applications. This list does not include vocational or job training activities such as auto mechanics, dye casting, tailoring, and statistical process control. Workplace literacy instruction, however, may enable individuals to benefit subsequently or simultaneously from advanced vocational skills training. For example, this program could support classes in math skills necessary for statistical process control but not a program of statistical process control training itself. If you are not sure whether a particular activity is eligible under this program, please call one of the program officers listed as an information contact in the application notice.

Q. May a project provide training in operating a computer?

A. Training to operate a computer that is part of the performance of a job is a form of vocational or job training and is not an eligible activity under this program. However, computers could be used as a means of instruction if this were necessary and reasonable under the circumstances of a particular project. In such a context, it would be permissible to ensure that students possessed those rudimentary skills that are necessary to interact with computer-assisted literacy instruction.

Q. How many copies of the application should I submit and must they be bound?

A. The original application should be bound and clearly marked as the original application bearing the original signatures. Current Government-wide policy is that only an original and two copies need be submitted. However, an original and six bound copies will be greatly appreciated. The binding of applications is optional. If six copies are not submitted, then at least one copy (not the original) should be left unbound to facilitate any necessary reproduction. Please mark each application as original or copy. Applications should not include foldouts, photographs, audio-visuals, or other materials that are hard-to-duplicate.

Q. When will I find out if I'm going to be funded?

A. You can expect to receive notification within 8 to 9 months of the application closing date, depending on the number of applications received and the number of competitions with closing dates at about the same time.

Q. Will my application be returned?

A. We do not return original copies of applications. Thus, applicants should retain at least one copy of the application.

Q. What happens during negotiations?

A. During negotiations technical and budget issues may be raised. These are issues that have been identified during panel and staff reviews that require clarification. Sometimes issues are stated as "conditions." These are issues that have been identified as so critical that the award cannot be made unless those conditions are met. Questions may also be raised about the proposed budget. Generally, these issues are raised because there is inadequate justification or explanation of a particular budget item, or because the budget item seems unimportant to the successful completion of the project. If you are asked to make changes that you feel could seriously affect the project's success, you may provide reasons for not making the changes or provide alternative suggestions. Similarly, if proposed budget reductions will, in your opinion, seriously affect the project activities, you may explain why and provide additional justification for the proposed expenses. An award cannot be made until all negotiation issues have been resolved.

Q. Where can copies of the **Federal Register**, program regulations, and Federal statutes be obtained?

A. Copies of these materials can usually be found at your local library. If not, they can be obtained from the Government Printing Office by writing to: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone: (202) 783–3238. When requesting copies of regulations or statutes, it is helpful to use the specific name, public law number, or part number. The materials referenced in this notice should be referred to as follows:

(1) Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Public Law 100–297, Title III, Sections 301–385.

(2) Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 79, 80, 81, 85, or 86.

(3) 34 CFR Part 432 (National Workplace Literacy Program), as published in the **Federal Register** (Vol. 54, No. 159, pages 34418–34420).

[FR Doc. 91–13113 Filed 6–3–91; 8:45 am]
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federal register

Tuesday
June 4, 1991

Part IX

Department of Agriculture

Cooperative State Research Service

7 CFR Part 3403
Small Business Innovation Research Grants Program; Administrative Provisions; Proposed Rule

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DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

7 CFR Part 3403

Small Business Innovation Research Grants Program; Administrative Provisions

AGENCY: Cooperative State Research Service, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: Cooperative State Research Service (CSRS) proposes to amend its regulations relating to the administration of the Small Business Innovation Research (SBIR) Grants Program on the procedures to be followed annually in the solicitation of research grant proposals, the evaluation of such proposals, and the award of competitive research grants under this program. This rule will amend those regulations to require that the space used by a small business awardee to conduct research be space over which it has exclusive control, that proposals include letters of consent from consultants and subcontractors in order for their participation to be evaluated during the review process, limiting equipment in a phase I grant to 10% of the budget, lengthening the period of phase I research in special cases, by offering an incentive to firms with prior USDA–SBIR grant support who summarize their progress in commercializing the results of the research, revising the "proprietary information" and "phase I results" sections, and by making a few additional changes. CSRS proposes to publish these regulations in their entirety in order to enhance their use by the public and to ensure expeditious submission and processing of grant proposals.

DATES: Written comments are invited from interested individuals and organizations. To be considered in the formulation of a final rule, all relevant material must be received on or before July 5, 1991.

ADDRESSES: Written comments should be sent to Terry J. Pacovsky, Director, Awards Management Division, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, room 322, Aerospace Center, Washington, DC 20250–2200.

FOR FURTHER INFORMATION CONTACT: Terry J. Pacovsky at (202) 401–5024.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the collection of information requirements contained in this proposed rule have been approved under OMB Document Nos. 0524–0022, 0524–0025, and 0524–0026.

Classification

This rule has been reviewed under Executive Order 12291, and it has been determined that it is not a major rule because it does not involve a substantial or major impact on the Nation's economy or on large numbers of individuals or businesses. There will be no major increase in cost or prices for consumers, individual industries, Federal, State, or local governmental agencies, or geographic regions. It will not have a significant economic impact on competitive employment, investment, productivity, innovation, or on the ability of U.S. enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, it will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Public Law No. 96–534 (5 U.S.C. 601).

Regulatory Analysis

Not required for this rulemaking.

Environmental Impact Statement

This regulation does not significantly affect the environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969, as amended.

Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.212, Small Business Innovation Research (SBIR Program). For the reasons set forth in the final rule-related notice to 7 CFR part 3015, subpart V, 48 FR 29115, June 24, 1983, and pursuant to the Notice found at 52 FR 22831, June 16, 1987, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background and Purpose

On June 10, 1988, the Department published a final rule in the Federal Register (53 FR 21966–21972), which established part 3403 of title 7, subtitle B, chapter XXXIV of the Code of Federal Regulations, for the purpose of administering the U.S. Department of Agriculture's Small Business Innovation Research (SBIR) Grants Program conducted under the authority of the Small Business Innovation Development Act of 1982, as amended (15 U.S.C. 638) and section 630 of the Act making appropriations for Agriculture, Rural Development, and Related Agencies' programs for fiscal year ending September 30, 1987, and for other purposes, as made applicable by section 101(a) of Public Law No. 99–591, 100 Stat. 3341. This rule established and codified the procedures to be followed in the solicitation of competitive small business innovation research proposals, the evaluation of such proposals, and the award of grants under this program. The administrative regulations governing the Small Business Innovation Research (SBIR) Grants Program are proposed to be changed as follows:

Section 3403.2(g)(2). CSRS proposes to change "Asian-Indian Americans" to "Subcontinent Asian Americans." This change is to conform with the June 1988 issue of the SBIR Policy Directive, as issued by the United States Small Business Administration Office of Innovation Research and Technology.

Section 3403.2(o) (3) and (4). CSRS proposes to revise and delete (o) (3) and (4) from this section and transfer them to § 3403.3 "Eligibility Requirements" where they are considered to be better suited.

Section 3403.3. This section is proposed to be changed to more adequately explain the eligibility requirements of both the small business firm and the principal investigator.

Section 3403.4(a). CSRS proposes to add language to this part that in special cases a period longer than 6 months may be considered for a phase I grant, when a proposed research project requires more than 6 months to complete. This is considered fair to all SBIR applicants and may in some instances result in more detailed and thorough proposals.

Section 3403.6(d). This section shows the 25-page limit for a phase I proposal but not a page limit for a phase II proposal. CSRS proposes to define a page-limit for a phase II proposal of 50 pages.

Section 3403.7(d). The words "and phase II" is proposed to be added after "phase I" because this section also pertains to phase II.

Section 3403.7(f). CSRS proposes to require that proposals must include letters from proposed consultants indicating their willingness to serve in order for such participation to be evaluated during the proposal review process. This will allow for a more in-depth review of the proposal and thus enhance the possibility of the applicant receiving a grant award.

Section 3403.7(g)(3). CSRS proposes to add a paragraph relating to commercializing the results of prior USDA–SBIR grant support. By considering in the award decision past performance in the commercialization process it is believed SBIR applicants will have an incentive to commercialize their research results.

Section 3403.7(i)(2). CSRS proposes to limit the amount for equipment to 10% of a phase I budget. This will eliminate an excessive amount of grant funds being used to purchase equipment for only a 6-month phase I project. A reasonable amount of equipment is expected to be on hand when the proposal is submitted.

Section 3403.7(i)(4). CSRS proposes that applicants with subcontractual arrangements be required to submit with the proposal an agreement or a letter of consent signed by the subcontractor in order for such participation to be evaluated during the proposal review process. This will allow for a more thorough review of a proposal and enhance the prospect of receiving a grant award.

Section 3403.7(i)(5). In the past, proposals have been received with various fee percentages requested by applicants. By proposing a 7% limit on fees CSRS hopes to eliminate any uncertainty about the amount of a fee USDA will accept and at the same time decrease the time and expense involved in compiling a revised grant budget. Also, since Item I of the budget is not considered the appropriate block to enter a fee, because a fee is not a direct cost, we propose to enter the fee amount in block M of the budget sheet. The words "Less Residual Funds (if applicable)" will be deleted from Item M.

Section 3403.7(i)(6). CSRS proposes to add "unless restricted by statute" after the end of the first sentence, regarding use of the indirect cost rate. Normally, an applicant may use its negotiated indirect cost rate with a Federal agency, if it has one, except where a statute requires a specific rate be used for all applicants.

Section 3403.7(j)(1) and 3404.7(i)(2)(iii). CSRS proposes to add information to this part pertaining to laboratory animal care in order to be consistent in informing the public of the guidelines to be applied and observed when conducting research involving special considerations. This part already contains information on recombinant DNA molecules and human subjects at risk.

Section 3403.7(k). CSRS proposes to shorten the legend that must be included on all proposals containing proprietary information. This action and other changes to this part will permit a better understanding by applicants of what is required in proposals regarding the use of proprietary information.

Section 3403.7(l). CSRS proposes to delete the phrase "and are contained in the program solicitation." Forms CSRS–665 and CSRS–666 will not be included in future SBIR solicitations but will be sent to applicants at the time of recommendation for a grant award. This change will eliminate an unnecessary paper flow.

Section 3403.8(c). CSRS proposes to change this paragraph to require an extensive section that lists the phase I objectives and a detailed presentation of phase I results. By proposing to establish the degree to which phase I objectives were met and feasibility of the proposed research project was established, reviewers will be better able to judge the merits of a phase II application.

Section 3403.8(g). CSRS proposes to add a last sentence to read "It will not count as part of the 50-page limit for a phase II application." This will be a comfort to a phase II applicant in knowing it can obtain a contingent commitment for phase III follow-on funding which will not be counted as part of the 50-page limit for a phase II proposal.

Section 3403.12(a). CSRS proposes to insert "and (2)" in this paragraph after "(a)(1)" because (a)(2) is proposed to be of the same weight in importance as (a)(1).

Section 3403.12(a)(2). CSRS proposes to change this paragraph in its entirety to read "Degree to which phase I objectives were met and feasibility was established." This action will increase the importance of (a)(2) and establish equal weight with (a)(1) in the proposal evaluation criteria.

Section 3403.13. The SBIR Policy Directive states "After final award decisions have been announced, the technical evaluations of the proposer's proposal may be provided to the proposer. The identity of the reviewer shall not be disclosed." The Small Business Administration requires CSRS to cite their policy directive in our annual SBIR solicitation regarding this requirement. We are being consistent by proposing to also cite it in these regulations.

Section 3403.17. CSRS proposes to add to this part the USDA implementing regulations that apply to Managing Federal Credit Programs (OMB Circular A–129), 7 CFR parts 1 and 3, the USDA implementing regulations that apply to Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 7 CFR part 3017, as amended, and the USDA implementing regulations that apply to New Restrictions on Lobbying, 7 CFR part 3018. These actions will indicate to the public that there are specific legal requirements in these areas and it is consistent in listing the regulations which apply to this program.

We propose to publish title 7, subtitle B, chapter XXXIV, part 3403, with the proposed amendments incorporated, in its entirety. This action will allow the regulations to appear in one document for easy access and reference by the public and CSRS.

List of Subjects in 7 CFR Part 3403

Grant programs—agriculture, Grant administration.

For the reasons set out in the preamble, title 7, subtitle B, chapter XXXIV, part 3403 of the Code of Federal Regulations is proposed to be revised to read as follows:

PART 3403—SMALL BUSINESS INNOVATION RESEARCH GRANTS PROGRAM

Subpart A—General Information

Sec.
3403.1 Applicability of regulations.
3403.2 Definitions.
3403.3 Eligibility requirements.

Subpart B—Program Description

3403.4 Three-phase program.

Subpart C—Preparation and Submission of Proposals

3403.5 Requests for proposals.
3403.6 General content of proposals.
3403.7 Proposal format for phase I applications.
3403.8 Proposal format for phase II applications.
3403.9 Submission of proposals.

Subpart D—Proposal Review and Evaluation

3403.10 Proposal review.
3403.11 Phase I evaluation criteria.
3403.12 Phase II evaluation criteria.
3403.13 Availability of information.

Subpart E—Supplementary Information

3403.14 Terms and conditions of grant awards.
3403.15 Notice of grant awards.
3403.16 Use of funds; changes.
3403.17 Other Federal statutes and regulations that apply.
3403.18 Other Conditions.

Authority: 5 U.S.C. 301.

Subpart A—General Information

§ 3403.1 Applicability of regulations.

(a) The regulations of this part apply to small business innovation research grants awarded under the general authority of section 630 of the Act making appropriations for Agriculture,

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Rural Development, and Related Agencies' programs for fiscal year ending September 30, 1987, and for other purposes, as made applicable by section 101(a) of Public Law 99-591, 100 Stat. 3341, and the provisions of the Small Business Innovation Development Act of 1982, as amended (15 U.S.C. 638). The Small Business Innovation Development Act of 1982, as amended, mandates that each Federal agency with an annual extramural budget for research or research and development in excess of $100 million participate in a Small Business Innovation Research (SBIR) program by reserving a statutory percentage of its annual extramural budget for award to small business concerns for research or research and development in order to stimulate technological innovation, use small business to meet Federal research and development needs, increase private sector commercialization of innovations derived from Federal research and development, and foster and encourage minority and disadvantaged participation in technological innovation. The U.S. Department of Agriculture (USDA) will participate in this program through the issuance of competitive research grants which will be administered by the Office of Grants and Program Systems, Cooperative State Research Service (CSRS).

(b) The regulations of this part do not apply to research grants awarded by the Department of Agriculture under any other authority.

§ 3403.2 Definitions.

As used in this part:

(a) *Ad hoc reviewers* means experts or consultants, qualified by training and experience in particular scientific or technical fields to render expert advice on the scientific or technical merit of grant applications in those fields, who review on an individual basis one or several of the eligible proposals submitted to this program in their area of expertise and who submit to the Department written evaluations of such proposals.

(b) *Awarding official* means any officer or employee of the Department who has the authority to issue or modify research project grant instruments in behalf of the Department.

(c) *Budget period* means the interval of time into which the project period is divided for budgetary and reporting purposes.

(d) *Department* means the Department of Agriculture.

(e) *Funding agreement* is any contract, grant, or cooperative agreement entered into between any Federal agency and any small business for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government.

(f) *Grantee* means the small business concern designated in the grant award document as the responsible legal entity to whom a grant is awarded under this part.

(g) *Minority and disadvantaged small business* is a concern:

(1) Which is at least 51 percent owned by one or more minority and disadvantaged individuals or, in the case of any publicly owned business, one in which at least 51 percent of the voting stock is owned by one or more minority and disadvantaged individuals; and

(2) Whose management and daily business operations are controlled by one or more such individuals. For purposes of this program, a minority and disadvantaged individual is defined as a member of any of the following groups: Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Subcontinent Asian Americans.

(h) *Peer review group* means experts or consultants, qualified by training and experience in particular scientific or technical fields to give expert advice on the scientific and technical merit of grant applications in those fields, who assemble as a group to discuss and evaluate all of the eligible proposals submitted to this program in their area of expertise.

(i) *Principal investigator* means a single individual designated by the grantee in the grant application and approved by the Department who is responsible for the scientific and technical direction of the project.

(j) *Program solicitation* is a formal request for proposals whereby an agency notifies the small business community of its research or research and development needs and interests in selected areas and invites proposals from small business concerns in response to those needs.

(k) *Project* means the particular activity within the scope of one of the research topic areas identified in the annual solicitation of applications, which is supported by a grant award under this part.

(l) *Project period* means the total length of time that is approved by the Department for conducting the research project as outlined in an approved grant application.

(m) *Research or research and development (R&D)* means any activity which is:

(1) A systematic, intensive study directed toward greater knowledge or understanding of the subject studied;

(2) A systematic study directed specifically toward applying new knowledge to meet a recognized need; or

(3) A systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements.

(n) *Research project grant* means the award by the Department of funds to a grantee to assist in meeting the costs of conducting for the benefit of the public an identified project which is intended and designed to establish, discover, elucidate, or confirm information or the underlying mechanisms relating to a research topic area identified in the annual solicitation of applications.

(o) *Small business* means a concern which at the time of award of phase I and phase II funding agreements meets the following criteria:

(1) Is organized for profit, independently owned or operated, is not dominant in the field in which it is proposing, has its principal place of business located in the United States, has a number of employees not exceeding 500 (full-time, part-time, temporary, or other) in all affiliated concerns owned or controlled by a single parent concern, and meets the other regulatory requirements outlined in 13 CFR part 121. Business concerns, other than licensed investment companies, or State development companies qualifying under the Small Business Investment Act of 1958, 15 U.S.C. 661, et seq., are affiliates of one another when directly or indirectly one concern controls or has the power to control the other or third parties (or party) control or have the power to control both. Control can be exercised through common ownership, common management, and contractual relationships. The term "affiliates" is defined in greater detail in 13 CFR 121.3(a). The term "number of employees" is defined in 13 CFR 121.2(b). Business concerns include, but are not limited to, any individual, partnership, corporation, joint venture, association, or cooperative.

(2) Is at least 51 percent owned, or in the case of a publicly owned business at least 51 percent of its voting stock is owned, by United States citizens or lawfully admitted permanent resident aliens.

(p) *Subcontract* is any agreement, other than one involving an employer-employee relationship, entered into by a Federal Government funding agreement awardee calling for supplies or services required solely for the performance of the original funding agreement.

(q) *United States* means the several States, the territories and possessions of the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the District of Columbia.

(r) *Women-owned small business* means a concern that is at least 51 percent owned by a woman or women who also control and operate it. *Control* as used in this context means exercising the power to make policy decisions. *Operate* as used in this context means being actively involved in the day-to-day management of the concern.

§ 3403.3 Eligibility requirements.

(a) *Eligibility of firm.* Each organization submitting a proposal must qualify as a small business for research purposes, as defined in § 3403.2. Joint ventures and limited partnerships are eligible to apply for and to receive research grants under this program, provided that the entity created qualifies as a small business in accordance with section 2(3) of the Small Business Act (15 U.S.C. 632) and as defined in § 3403.2(o) of this part. For both phase I and phase II the research must be performed in the United States. A minimum of two-thirds of the research or analytical work, as determined by budget expenditures, must be performed by the proposing organization under phase I grants. For phase II awards, a minimum of one-half of the research or analytical effort must be conducted by the proposing firm. The space used by the SBIR awardee to conduct the research must be space over which it has exclusive control for the period of the grant.

(b) *Eligibility of principal investigator.* The primary employment of the principal investigator must be with the proposing firm at the time of award and during the conduct of the proposed research. Primary employment means that more than one-half of the principal investigator's time is spent in the employ of the small business. Primary employment with the small business applicant precludes full-time employment with another organization. If the proposed principal investigator is employed by another organization (e.g., university or another company) at the time of submission of the application, documentation must be submitted with the proposal from the principal investigator's current employer verifying that, in the event of an SBIR award, he/she will become a less-than-half-time employee of such organization and will remain so for the duration of the SBIR project.

Subpart B—Program Description

§ 3403.4 Three-phase program.

The Small Business Innovation Research Grants Program will be carried out in three separate phases described below. The first two phases are designed to assist USDA in meeting its research and development objectives and will be supported with Federal funds. The purpose of the third phase is to pursue the commercial applications or objectives of the research carried out in phases I and II through the use of private, non-Federal funds.

(a) Phase I is the initial stage in which the scientific and technical merit and feasibility of an idea related to one of the research areas described in the program solicitation is evaluated, normally for a period not to exceed 6 months. In special cases, however, where a proposed research project requires more than 6 months to complete, a longer grant period may be considered. In such cases the phase I award will still be limited to $50,000, and the submission of a Phase II proposal will be delayed by one year.

(b) Phase II is the principal research or research and development effort in which the results from Phase I are expanded upon and further pursued, normally for a period not to exceed 24 months. Only those small businesses previously receiving phase I awards are eligible to submit phase II proposals. For each phase I project funded the awardee may apply for a phase II award only once. Phase I awardees who for valid reasons cannot apply for phase II support in the next fiscal year funding cycle may apply for support not later than the second fiscal year funding cycle.

(c) Phase III is the pursuit of commercial objectives resulting from the Federally supported work carried out in phases I and II. This portion of the project is performed by the small business firm and privately funded by a non-Federal source through the use of a follow-on funding commitment. A follow-on funding commitment is an agreement between the small business firm and a provider of follow-on capital for a specified amount of funds to be made available to the small business for further development of their effort upon achieving certain mutually agreed upon technical objectives during phase II.

Subpart C—Preparation and Submission of Proposals

§ 3403.5 Requests for proposals.

(a) *Phase I.* A program solicitation requesting phase I proposals will be prepared each fiscal year in which funds are made available for this purpose. The solicitation will contain information sufficient to enable eligible applicants to prepare grant proposals and will include descriptions of specific research topic areas which the Department will support during the fiscal year involved, forms to be completed and submitted with proposals, and special requirements. A notice will be published in the **Federal Register** informing the public of the availability of the program solicitation.

(b) *Phase II.* For each fiscal year in which funds are made available for this purpose, the Department will send a letter requesting phase II proposals from the phase I grantees eligible to apply for phase II funding in that fiscal year. The letter will contain information sufficient to enable eligible applicants to prepare grant proposals and will include forms to be submitted with proposals as well as special requirements.

§ 3403.6 General content of proposals.

(a) The proposed research must be responsive to one of the USDA program interests stated in the research topic descriptions of the program solicitation.

(b) Proposals must cover only scientific research activities. A firm must not propose product development, technical assistance, demonstration projects, classified research, or patent applications. Literature surveys should be conducted prior to preparing proposals for submission and must not be proposed as a part of the SBIR phase I or phase II effort. Proposals principally for the development of proven concepts toward commercialization or for market research should not be submitted since such efforts are considered the responsibility of the private sector and therefore are not supported by USDA.

(c) A proposal must be limited to only one topic. The same proposal may not be submitted under more than one topic. However, an organization may submit separate proposals on the same topic. Where similar research is discussed under more than one topic, the proposer should choose that topic whose description appears most relevant to the proposer's research concept. Duplicate proposals will be returned to the applicant without review.

(d) Phase I applicants should submit a research proposal of no more than 25 pages, including cover page, budget, and

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all proposal-related enclosures or attachments. The text must be prepared on only one side of the page using standard 8½" x 11" white paper, with no type smaller than elite regardless of whether it is single or double spaced. In the interest of equity to all proposers, no additional attachments, appendixes, or references beyond the 25-page limitation will be considered in the proposal evaluation process, and proposals in excess of the 25-page limitation will not be considered for review or award. In addition, supplementary materials, revisions, and/or substitutions will not be accepted after the due date for proposals. Phase II applicants should submit a research proposal of no more than 50 pages, including cover page, budget, and all proposal-related enclosures or attachments.

§ 3403.7 Proposal format for phase I applications.

(a) *Cover sheet.* Photocopy and complete Form CSRS–667 in the program solicitation. The original of the cover sheet must at a minimum contain the pen-and-ink signatures of the proposed principal investigator(s) and the authorized organizational official. A proposal which does not contain the signature of the authorized organizational official will not be considered a legal document and will be returned to the proposing small business firm without review. All other copies of the proposal must also contain a cover sheet, but facsimile or photocopied signatures will be accepted. The title should be a brief (80-character maximum), clear, specific designation of the research proposed. It will be used to provide information to Congress and also will be used in issuing press releases. Therefore, it should not contain highly technical words. In addition, phrases such as "investigation of" or "research on" should not be used.

(b) *Project summary.* Photocopy and complete Form CSRS–668 in the program solicitation. The technical abstract should include a brief description of the problem or opportunity, project objectives, and a description of the effort. Anticipated results and potential commercial applications of the proposed research also should be summarized in the space provided. Keywords, to be provided in the last block on the page, should characterize the most important aspects of the project. The project summary of successful proposals may be published by USDA and, therefore, should not contain proprietary information.

(c) *Technical content.* The main body of the proposal should include:

(1) *Identification and significance of the problem or opportunity.* Clearly state the specific technical problem or opportunity addressed and its importance.

(2) *Background and rationale.* Indicate the overall background and technical approach to the problem or opportunity and the part that the proposed research plays in providing needed results.

(3) *Relationship with future research or research and development.* Discuss the significance of the phase I effort in providing a foundation for the phase II R&D effort. State the anticipated results of the approach if the project is successful (phases I and II). This should address: The technical, economic, social, and other benefits to the Nation and to users of the results such as the commercial sector, the Federal Government, or other researchers; the estimated total cost of the approach relative to benefits; and, if appropriate, any specific policy issues or decisions which might be affected by the results.

(4) *Phase I technical objectives.* State the specific objectives of the phase I research or research and development effort, including the technical questions it will try to answer to determine the feasibility of the proposed approach.

(5) *Phase I work plan.* This work plan must provide an explicit, detailed description of the phase I research or research and development approach. The plan should indicate the tasks to be performed as well as how and where the work will be carried out. The phase I effort should attempt to determine the technical feasibility of the proposed concept. The work plan should be linked with the technical objectives of the research and the questions the effort is designed to answer. Therefore, it should flow logically from § 3403.7(c)(4) of this part. This section should constitute a substantial portion of the total proposal.

(6) *Related research or research and development.* Describe the significant research or research and development activities from relevant literature that are directly related to the proposed effort, including any conducted by the principal investigator or by the proposing firm, how it relates to the proposed effort, and any planned coordination with outside sources. The proposer must persuade reviewers that he or she is aware of related research in the selected subject.

(d) *Key personnel and bibliography.* Identify key personnel involved in the effort, including information on their directly related education and experience. For each key person, provide a chronological list of the most recent representative publications in the topic area during the preceding 5 years, including those in press. List the authors (in the same order as they appear on the paper), the full title, and the complete reference as these usually appear in journals. Where vitae are extensive, summaries that focus on most relevant experience or publications may be necessary to meet the proposal size limitation in phase I and phase II.

(e) *Facilities and equipment.* Describe the types, location, and availability of instrumentation and physical facilities necessary to carry out the work proposed. Items of equipment to be purchased must be fully justified under this section.

(f) *Consultants.* Involvement of university or other consultants in the planning and research stages of the project is permitted and may be particularly helpful to small firms which have not previously received Federal research awards. If such involvement is intended, it should be described in detail. Proposals must include letters from proposed consultants indicating willingness to serve in order for such participation to be evaluated during the proposal review process.

(g) *Potential post application.* Briefly describe:

(1) Whether and by what means the proposed research appears to have potential commercial application; and

(2) Whether and by what means the proposed research appears to have potential use by the Federal Government. Firms with prior USDA SBIR grant support should summarize their progress in commercializing the results of this research. Past performance in the commercialization process may be a consideration in award decisions.

(h) *Current and pending support.* If a proposal, substantially the same as the one being submitted, has been previously funded or is currently funded, pending, or about to be submitted to another Federal agency or to USDA in a separate action, the proposer must provide the following information:

(1) Name and address of the agency(s) to which a proposal was submitted, or will be submitted, or from which an award is expected or has been received.

(2) Date of actual or anticipated proposal submission or date of award, as appropriate.

(3) Title of proposal or award, identifying number assigned by the agency involved, and the date of program solicitation under which the proposal was submitted or the award was received.

(4) Applicable research topic area for each proposal submitted or award received.

(5) Title of research project.

(6) Name and title of principal investigator for each proposal submitted or award received. USDA will not make awards that duplicate research funded (or to be funded) by other Federal agencies.

(i) *Cost breakdown on proposal budget.* Photocopy and complete Form CSRS–55 in the program solicitation only for the phase under which you are currently applying. (An applicant for phase I funding should not submit both phase I and II budgets.) Please note the following in completing the budget:

(1) *Salaries and wages.* Indicate the number and kind of personnel for whom salary support is sought. For key personnel, also indicate the number of work months of involvement to be supported with USDA funds (see blocks labeled "CSRS Funded Work Months").

(2) *Equipment.* Performing organizations are expected to have appropriate facilities, suitably furnished and equipped. Items of equipment may be requested provided that they are specifically identified and adequately justified, but such requests should normally not exceed 10% of the budget for phase I. Equipment is defined as an article of nonexpendable, tangible personal property having a useful life of more than 2 years and an acquisition cost of $500 or more per unit. Vesting of title to equipment purchased with funds provided under an SBIR funding agreement will be determined by USDA. Awardees should plan to lease expensive equipment.

(3) *Travel.* The inclusion of travel will be carefully reviewed with respect to need and appropriateness for the research proposed. Foreign travel may not be included in the phase I budget.

(4) *Subcontracting limits.* Subcontracting may not exceed one-third of the research or analytical effort during phase I. In addition, subcontractors must perform their portion of the work in the United States. If subcontracting costs are anticipated, they should be indicated in block I, "All Other Direct Costs," on the budget sheet. A breakdown of subcontractual costs is required. For proposals involving subcontractual arrangements, the applicant must submit an agreement or letter of consent signed by the subcontractor in order for such participation to be evaluated during the proposal review process.

(5) *Fee.* A reasonable fee not to exceed 7% is permitted under this program. All fees are subject to negotiation with USDA. If a fee is requested, the amount should be indicated in block M on the budget sheet.

(6) *Indirect costs.* If available, the current rate negotiated with the cognizant Federal negotiating agency should be used, unless restricted by statute. If no rate has been negotiated, a reasonable dollar amount in lieu of indirect costs may be requested, which will be subject to approval by USDA. A proposer may elect not to charge indirect costs and, instead, use all grant funds for direct costs. If a negotiated rate is used, the percentage and base should be indicated in the space allotted under item K on the budget sheet. If indirect costs are not charged, the phrase "None requested" should be written in this space.

(7) *Cost-sharing.* Cost-sharing is permitted for proposals under this program; however, cost-sharing is not required nor will it be an evaluation factor in considering the competitive merit of proposals submitted.

(j) *Research involving special considerations.* (1) If the proposed research will involve either recombinant DNA molecules, laboratory animal care, or human subjects at risk, the proposal must so indicate. In the event that the project is funded, the proposer may be required to have the research plan reviewed and approved by an appropriate "Institutional Review Board" prior to commencing actual substantive work. It is suggested that proposers contact local universities, colleges, or nonprofit research organizations which have established such reviewing mechanisms to have this service performed.

(2) Guidelines to be applied and observed when conducting such research are:

(i) *Recombinant DNA Molecules.* "Guidelines for Research Involving Recombinant DNA Molecules" issued by the National Institutes of Health. (See 51 FR 16958–16985 and any subsequent revisions.)

(ii) *Human Subjects at Risk.* Guidelines issued by the Department of Health and Human Services. (See 45 CFR part 46.)

(iii) *Laboratory Animal Care.* Guidelines issued by the Department of Agriculture. (See 9 CFR parts 1, 2, 3, and 4.)

(k) *Proprietary information.* (1) If a proposal contains proprietary information that constitutes a trade secret, proprietary commercial or financial information, confidential personal information, or data affecting the national security, it will be treated in confidence to the extent permitted by law, provided the information is clearly marked by the proposer with the term "confidential proprietary information" and provided the following legend also appears in the designated area at the bottom of the proposal's cover sheet (Form CSRS–667) and is confined to a separate page or pages:

Note: Following is proprietary (specify) information which (name of proposing organization) requests not be released to persons outside the Government, except for purposes of evaluation.

(2) USDA by law is required to make the final decision as to whether the information is required to be kept in confidence. Information contained in unsuccessful proposals will remain the property of the proposer. However, USDA will retain for one year one file copy of all proposals received; extra copies will be destroyed. Public release of information for any proposal submitted will be subject to existing statutory and regulatory requirements. Any proposal which is funded will be considered an integral part of the award and normally will be made available to the public upon request except for designated proprietary information.

(3) The inclusion of proprietary information is discouraged unless it is necessary for the proper evaluation of the proposal. If proprietary information is to be included, it should be limited, set apart from other text on a separate page, and keyed to the text by numbers. It should be confined to a few critical technical items which, if disclosed, could jeopardize the obtaining of foreign or domestic patents. Trade secrets, salaries, or other information which could jeopardize commercial competitiveness should be similarly keyed and presented on a separate page. Proposals or reports which attempt to restrict dissemination of large amounts of information may be found unacceptable by USDA. Any other legend than that listed in paragaph (k)(1) of this section may be unacceptable to USDA and may constitute grounds for return of the proposal without further consideration. Without assuming any liability for inadvertent disclosure, USDA will limit dissemination of such information to its employees and, where necessary for the evaluation of the proposal, to outside reviewers on a confidential basis. Since technical reports by the principal investigator(s) may be made available to the public, such reports shall not contain any restrictive language purporting to limit their use other than that which is set off on a proprietary page. However, USDA, to the extent permitted by law, normally will honor a request to delay release of

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the report for 6 months, or longer if reasonable, so the proposer may seek patent protection or follow-on-funding where appropriate.

(1) *Organizational management information.* Before the award of an SBIR funding agreement, USDA requires the submission of certain organizational management and financial information to assure the responsibility of the proposer. Form CSRS–668 ("Organizational Information") and Form CSRS–665 ("Assurance of Compliance with the Department of Agriculture Regulations Under Title VI of the Civil Rights Act of 1964, as amended") are used for this purpose. This information is not required unless a project is recommended for funding, and then it is submitted on a one-time basis only.

§ 3403.8 Proposal format for phase II applications.

(a) *Cover sheet.* Follow instructions found in § 3403.7(a) of this part.

(b) *Project summary.* Follow instructions found in § 3403.7(b) of this part.

(c) *Phase I results.* The proposal should contain an extensive section that lists the phase I objectives and makes detailed presentation of the phase I results. This section should establish the degree to which phase I objectives were met and feasibility of the proposed research project was established.

(d) *Proposal.* Since phase II is the principal research and development effort, proposals should be more comprehensive than those submitted under phase I. However, the outline contained in § 3403.7(c) of this part should be followed, tailoring the information requested to the phase II project.

(e) *Cost breakdown on proposal budget.* (1) For phase II, a detailed budget is required for each year of requested support. In addition, a summary budget is required detailing the requested support for the overall project period. Form CSRS–55, "Proposal Budget," is to be used for this purpose and may be photocopied as necessary.

(2) *Travel.* Foreign travel may be included as necessary in the phase II budget. Such a request will be reviewed with respect to need and appropriateness for the research proposed and therefore should be adequately justified in the proposal.

(3) *Subcontracting limits.* The instructions found in § 3403.7(i)(4) of this part apply to phase II proposals except that the subcontracting limit is changed from one-third to one-half of the research or analytical effort.

(f) *Organizational management information.* Each phase II awardee will be asked to submit an updated statement of financial condition.

(g) *Follow-on funding commitment.* If the proposer has obtained a contingent commitment for phase III follow-on funding, it should be forwarded with the phase II application. It will not count as part of the 50-page limit for a phase II application.

§ 3403.9 Submission of proposals.

The program solicitation for phase I proposals and the letter requesting phase II proposals will provide the deadline date for submitting proposals, the number of copies to be submitted, and the address where proposals should be mailed or delivered.

Subpart D—Proposal Review and Evaluation

§ 3403.10 Proposal review.

(a) All research grant applications will be acknowledged.

(b) Phase I and phase II proposals will be judged competitively in a two-stage process, based primarily upon scientific or technical merit. First, each proposal will be screened by USDA scientists to ensure that it is responsive to stated requirements contained in the program solicitation. Proposals found to be responsive will be technically evaluated by peer scientists knowledgeable in the appropriate scientific field using the criteria listed in § 3403.11 or § 3403.12 of this part, as appropriate. Proposals found to be nonresponsive will be returned to the proposing firm without review.

(c) Both internal and external peer reviewers may be used during the technical evaluation stage of this process. Selections will be made from among recognized specialists who are uniquely qualified by training and experience in their respective fields to render expert advice on the merit of proposals received. It is anticipated that such experts will include those located in universities, Government, and non-profit research organizations. If possible, USDA intends that peer review groups shall be balanced with minority and female representation and with an equitable age distribution.

(d) Technical reviewers will base their conclusions and recommendations on information contained in the phase I or phase II proposal. It cannot be assumed that reviewers are acquainted with any experiments referred to within a proposal, with key individuals, or with the firm itself. Therefore, the proposal should be self-contained and written with the care and thoroughness accorded papers for publication.

(e) Final decisions will be made by USDA based upon the ratings assigned by reviewers and consideration of other factors, including the potential commercial application, possible duplication of other research, any critical USDA requirements, program balance, and budget limitation. In addition, the follow-on funding commitment will be a consideration for phase II proposals.

§ 3403.11 Phase I evaluation criteria.

USDA plans to select for award those proposals offering the best value to the Nation, with approximately equal consideration given to each of the following criteria except for paragraph (a) of this section which will receive twice the value of any of the other items:

(a) The scientific/technical quality of the Phase I research plan and its relevance to the stated objectives, with special emphasis on innovativeness and originality.

(b) Importance of the problem or opportunity and anticipated benefits of the proposed research, if successful.

(c) Adequacy of the phase I objectives to show incremental progress toward proving the feasibility of approach.

(d) Qualifications of the principal investigator(s), other key staff and consultants, and the probable adequacy of available or obtainable instrumentation and facilities.

§ 3403.12 Phase II evaluation criteria.

(a) A phase II proposal may be submitted only by a phase I awardee. The phase II proposal will be reviewed for overall merit based on the following criteria with each item receiving approximately equal weight except for paragraphs (a) (1) and (2) of this section, which will receive twice the value of any of the other items:

(1) The scientific/technical quality of the proposed research, with special emphasis on innovativeness and originality.

(2) Degree to which phase I objectives were met and feasibility was established.

(3) The technical, economic, and/or social importance of the problem or opportunity and anticipated benefits if Phase II research is successful.

(4) The adequacy of the phase II objectives to meet the problem or opportunity.

(5) The qualifications of the principal investigator(s) and other key personnel to carry out the proposed work.

(6) Reasonableness of the budget requested for the work proposed.

(b) In the event that two or more phase II proposals are of approximately equal technical merit, the follow-on funding commitment for continued development in phase III will be an important consideration. The value of the commitment will depend upon the degree of commitment made by non-Federal investors, with the maximum value resulting from a signed agreement with reasonable terms for an amount at least equal to the funding requested from USDA in phase II.

§ 3403.13 Availability of information.

Information regarding the peer review process will be made available to the extent permitted under the Freedom of Information Act (5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a), the SBIR Policy Directive, and implementing Departmental and other Federal regulations. Implementing Departmental regulations are found at 7 CFR part 1.

Subpart E—Supplementary Information

§ 3403.14 Terms and conditions of grant awards.

Within the limit of funds available for such purpose, the awarding official shall make research project grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced program areas under the evaluation criteria and procedures set forth in this part. The beginning of the project period shall be no later than September 30 of the Federal fiscal year in which the project is approved for support. All funds granted under this part shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award, the Federal Acquisition Regulation (48 CFR part 31), and the Department's Uniform Federal Assistance Regulations (7 CFR part 3015).

§ 3403.15 Notice of grant awards.

(a) the grant award document shall include, at a minimum, the following:

(1) Legal name and address of performing organization.

(2) Title of project.

(3) Name(s) and address(es) of Principal Investigator(s).

(4) Identifying grant number assigned by the Department.

(5) Project period, which specifies how long the Department intends to support the effort.

(6) Total amount of Federal financial assistance approved during the project period.

(7) Legal authorities under which the grant is awarded.

(8) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award.

(9) Other information or provisions deemed necessary by the Department to carry out its granting activities or to accomplish the purpose of a particular research project grant.

(b) The notice of grant award, in the form of a letter, will provide pertinent instructions and information to the grantee which are not included in the grant award document described above.

§ 3403.16 Use of funds; changes.

(a) *Delegation of fiscal responsibility.* The grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(b) *Change in project plans.* (1) The permissible changes by the grantee, principal investigator(s), or other key project personnel in the approved research project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee and/or the principal investigator(s) are uncertain as to whether a change complies with this provision, the question must be referred to the Department for a final determination.

(2) Changes in approved goals, or objectives, shall be requested by the grantee and approved in writing by the Department prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

(3) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the Department prior to effecting such changes.

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the Department prior to effecting such transfers.

(c) *Changes in project period.* The project period may be extended by the Department without additional financial support for such additional period(s) as the Department determines may be necessary to complete or fulfill the purposes of an approved project. Such extension shall be conditioned upon prior request by the grantee and approval in writing by the Department.

(d) *Changes in approved budget.* Changes in an approved budget shall be requested by the grantee and approved in writing by the Department prior to instituting such changes if the revision will:

(1) Involve transfers of amounts budgeted for indirect costs to absorb increase in direct costs;

(2) Involve transfers of amounts budgeted for direct costs to accommodate changes in indirect cost rates negotiated during a budget period and not approved when a grant was awarded;

(3) Result in a need or claim for the award of additional funds; or

(4) Involve transfers or expenditures of amounts requiring prior approval as set forth in the Departmental regulations or in the grant award.

§ 3403.17 Other Federal statutes and regulations that apply.

Several other Federal statutes and/or regulations apply to grant proposals considered for review or to research project grants awarded under this part. These include but are not limited to:

7 CFR 1.1—USDA implementation of Freedom of Information Act.

7 CFR part 3—USDA implementation of OMB Circular A–129, Managing Federal Credit Programs.

7 CFR part 15, subpart A—USDA implementation of title VI of the Civil Rights Act of 1964, as amended.

7 CFR part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., Circular Nos. A–102, A–110, A–87, A–21, and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly the Federal Grant and Cooperative Agreement Act of 1977, Public Law 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR part 3017, as amended—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), as amended.

7 CFR part 3018—USDA implementation of New Restrictions on Lobbying. Imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

48 CFR part 31—Contract Cost Principles and Procedures of the Federal Acquisition Regulation.

29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and CFR part 15B (USDA implementation of statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 et seq.—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms

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and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

§ 3403.13 Other conditions.

The Department may, with respect to any research project grant, impose additional conditions prior to or at the time of any award when, in the Department's judgment, such conditions are necessary to assure or protect advancement of the approved project, the interests of the public, or the conservation of grant funds.

Done at Washington, DC, this 28th day of May 1991.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 91-13119 Filed 6-3-91; 8:45 am]

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Last List May 29, 1991
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H.J. Res. 141/Pub. L. 102-51
Designating the week beginning May 13, 1991, as "National Senior Nutrition Week". (May 29, 1991; 105 Stat. 259; 1 page) Price: $1.00

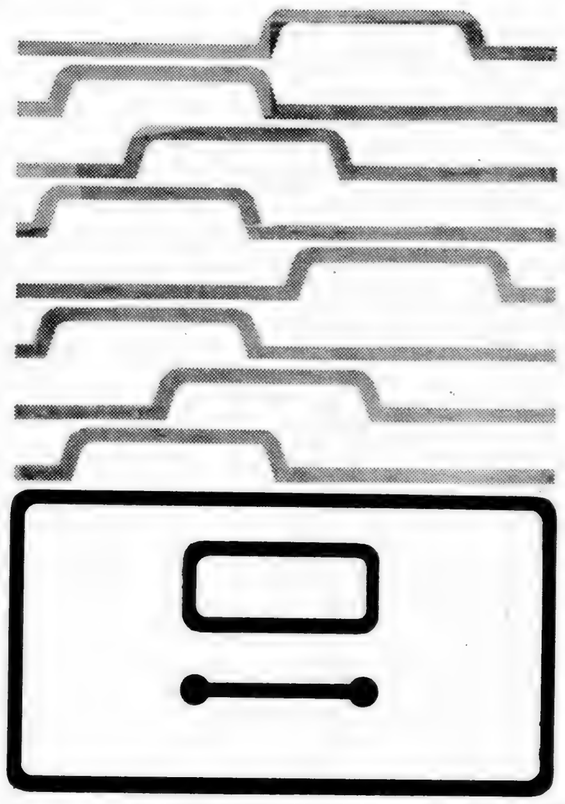

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in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1989
SUPPLEMENT: Revised January 1, 1991

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The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

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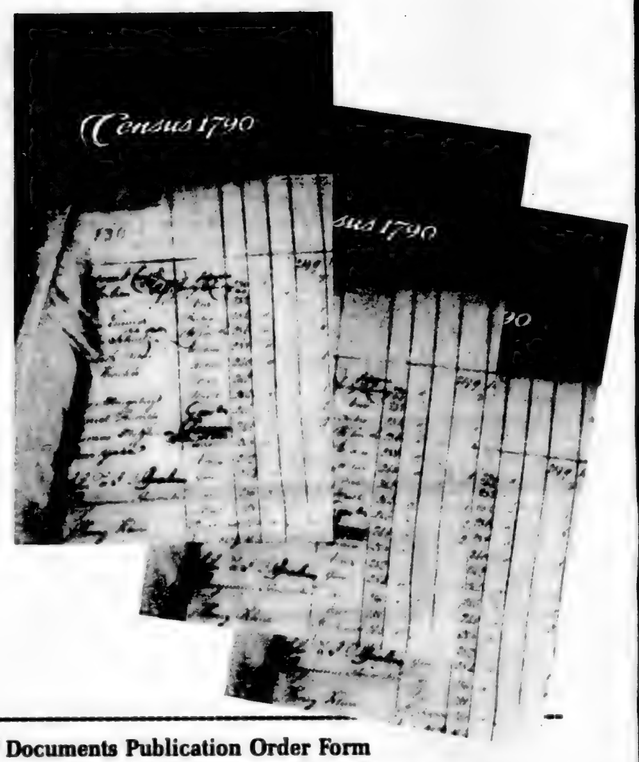

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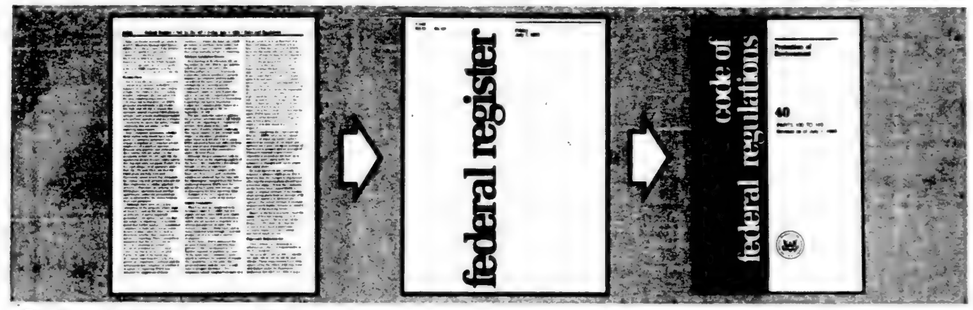

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Administration of George Bush

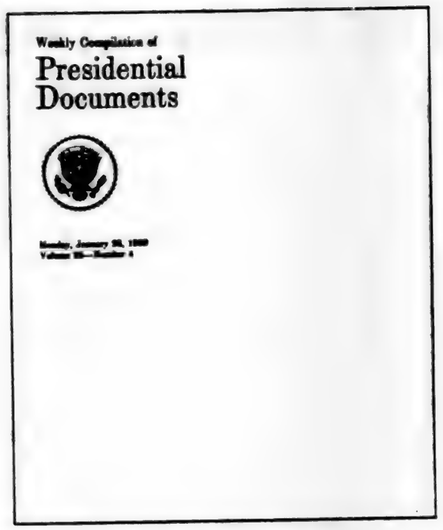

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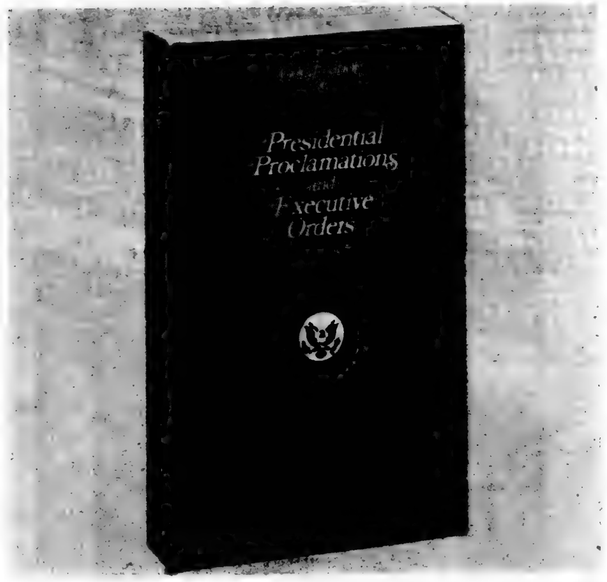

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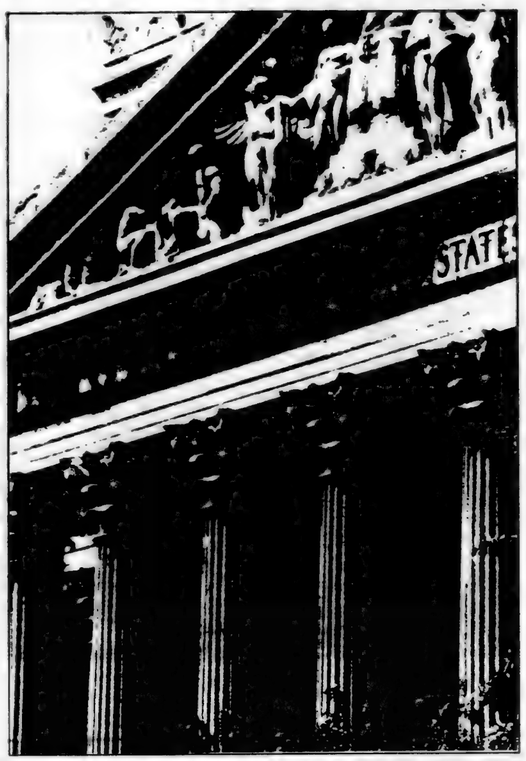

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Presidential Documents

Title 3—

The President

Proclamation 6300 of June 3, 1991

Flag Day and National Flag Week, 1991

By the President of the United States of America

A Proclamation

We call her "Old Glory," but the spendor of our flag is ever new, and the principles for which she stands are timeless. When adopted by the Continental Congress on June 14, 1777, our flag became the symbol of a Nation that was founded on the conviction "that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." Throughout our Nation's history, brave and selfless Americans have labored and sacrificed to defend these ideals, and in every generation they have given renewed meaning to our flag.

Earlier in this century President Woodrow Wilson noted that the American flag "is the embodiment not of a sentiment but of a history . . . ." Indeed, this is what sets the flag apart from other American symbols—no other standard has been carried into battle by generations of American heroes; no other banner recalls the extraordinary achievements of our farmers and workers; and no other emblem symbolizes to more people what America means to the world. For millions of people around the globe, the Stars and Stripes has been a symbol of freedom, strength, and opportunity—a sign of safe haven and hope for the future. For countless others, it has been a sign of help and comfort—a symbol of the traditional generosity and compassion of the American people toward the poor, the hungry, and the dispossessed.

Although our annual observance of Flag Day is rich in emotion, it is not an exercise in mere sentimentalism. It is a day of proud yet meaningful reflection on our national experience and purpose—an occasion made all the more significant this year by the 200th anniversary of our Bill of Rights and by the outstanding performance of our troops in the liberation of Kuwait.

To commemorate the adoption of our flag, the Congress, by a joint resolution approved August 3, 1949 (63 Stat. 492), designated June 14 of each year as Flag Day and requested the President to issue an annual proclamation calling for its observance and for the display of the flag of the United States on all government buildings. The Congress also requested the President, by joint resolution approved June 9, 1966 (80 Stat. 194), to issue annually a proclamation designating the week in which June 14 occurs as National Flag Week and calling upon all citizens of the United States to display the flag during that week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim June 14, 1991, as Flag Day, and the week beginning June 9, 1991, as National Flag Week. I direct the appropriate officials of the government to display the flag of the United States on all government buildings during that week. I urge all Americans to observe Flag Day, June 14, and Flag Week by flying the Stars and Stripes from their homes and other suitable places.

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I also urge the American people to celebrate those days from Flag Day through Independence Day, also set aside by the Congress (89 Stat. 211) as a time to honor America, by having public gatherings and activities at which they can honor their country in an appropriate manner, including publicly reciting the Pledge of Allegiance to the Flag of the United States of America.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of June, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 91-13450
Filed 6-3-91; 4:02 pm]
Billing code 3195-01-M

Presidential Documents

Presidential Determination No. 91-37 of May 29, 1991

Determination Regarding End Strength Level of U.S. Armed Forces in Europe for Fiscal Year 1991

Memorandum for the Secretary of Defense

Consistent with section 406(b) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510; 104 Stat. 1546), I hereby authorize an end strength level of members of the Armed Forces assigned to permanent duty ashore in European member nations of the North Atlantic Treaty Organization in excess of 261,855 for fiscal year 1991, and determine that the national security interests of the United States require such authorization.

You are authorized and directed to notify the Congress of this determination and of the necessity therefor contained in the attached justification, and to publish this determination in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, May 29, 1991.

[FR Doc. 91-13461
Filed 6-3-91; 4:22 pm]
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 30

[TB-88-019]

Tobacco Standards and Reports

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Tobacco Statistics Act authorizes and directs the Secretary of Agriculture to collect and publish statistics on the quantity of leaf tobacco held by all dealers, manufacturers, grower cooperative associations, and owners or agents other than the original growers, in the United States and Puerto Rico on a quarterly basis and publish an annual report on tobacco statistics. The Act specifies that the statistics shall show the quantity of tobacco in such detail as the Secretary shall deem to be practical and necessary for the purposes of the Act. This rule will revise certain sections of the regulations relating to Class 8; Foreign-grown cigar leaf; and Class 9; Foreign-grown types other than cigar leaf. Also, the quarterly report form will be revised.

EFFECTIVE DATE: July 5, 1991.

FOR FURTHER INFORMATION CONTACT: Larry L. Crabtree, Chief, Market Information and Program Analysis Branch, Agricultural Marketing Service, United States Department of Agriculture, P.O. Box 96456, room 506 Annex, Washington, DC 20090-6456, telephone (202) 447-3489.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department will amend the regulations contained in §§ 30.43, 30.44, and 30.60 of 7 CFR part 30.

A proposed rule was published in the **Federal Register** on August 21, 1990, (55 FR 34020). The proposed rule would revise the reporting requirements under the Tobacco Statistics Act (7 U.S.C. 501 *et seq.*). Interested persons were provided 60 days to submit comments. Three comments were received. Two comments were received from tobacco dealers that agreed with the proposals. One comment was received from a manufacturer of tobacco products that questioned the proposed additional data on tobacco sheet. This comment is discussed below.

The proposed rule would revise the regulations contained in §§ 30.43, 30.44, and 30.60 of 7 CFR part 30. Section 30.43 (Class 8; foreign-grown cigar-leaf types) would be amended to replace type designations by individual countries with type designations based on utilization in the same manner as for domestic leaf. The new types would be wrapper, filler, and binder. The agency believes that reporting cigar stocks by individual countries no longer serves any useful function because production and trade patterns have changed and the country of origin no longer indicates likely utilization. The changes would also facilitate direct comparison with stocks of domestic cigar leaf.

Section 30.44 (Class 9; foreign-grown types other than cigar leaf) would be amended to add foreign-grown, fire-cured, and dark air-cured types for stocks reporting purposes. This would bring the section into line with current procedures for the inspection of imported tobacco.

The proposed revisions of §§ 30.43 and 30.44 are adopted in this final rule without change.

It was also proposed that § 30.60 (reports) would be amended to provide for the collection of data on stocks of stems and additional data on stocks of sheet tobacco. The commenter on this section argued that the proposal to list the contents of tobacco sheet would have the effect of disclosing product formulas. They suggested that either (a) a total quantity of tobacco sheet be listed without a breakdown of contents; or (b) list the quantities of the types already in or intended for use in tobacco sheet production.

This comment has merit. The reporting of the quantities of tobacco sheet segregated by the intended use will adequately serve the Department's purposes. Accordingly, § 30.60 as proposed is revised in this final rule to require the reporting of the total quantity of stocks of tobacco sheet owned on the first day of the applicable quarter segregated by intended use between cigar wrapper, cigar binder, cigarettes, or other products.

This rule has been reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq*). The Administrator, Agricultural Marketing Service, has determined that the rule will not have a significant economic impact on a substantial number of small entities. The rule will not substantially affect the normal movement of the commodity in the marketplace.

This rule has been reviewed under Departmental procedures established to implement Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule because it does not meet any of the criteria established for major rules under the executive order.

In compliance with the Office of Management and Budget (OMB) regulations, 5 CFR part 1320 Controlling Paperwork Burdens on the Public, which implements the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35, the information collection and recordkeeping requirements contained in this rule have been submitted to and approved by OMB and assigned control number 05810004.

List of Subjects in 7 CFR Part 30

Administrative practices and procedure, Advisory Committees, Government publications, Imports, Reporting and recordkeeping requirements, Tobacco.

For the reasons set forth in the preamble, the regulations of 7 CFR part 30 are amended as follows:

PART 30—[AMENDED]

1. The authority citation for 7 CFR part 30 is revised to read as follows:

Authority: 7 U.S.C. 502.

2. Section 30.43 is revised to read as follows:

§ 30.43 Class 8; Foreign-grown cigar-leaf types.

No group divisions are established for any of the types in Class 8. Type designations for Class 8 tobacco are based on the utilization of the leaf in the manufacture of cigars with no reference to physical characteristics. For tobacco

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stocks reporting purposes Foreign-grown cigar leaf shall be designated as follows:

(a) Type 81 Foreign-grown cigar wrapper.

(b) Type 82 Foreign-grown cigar filler.

(c) Type 83 Foreign-grown cigar binder.

(d) Type 89 Other Foreign-grown cigar leaf

3. In § 30.44 the following types, paragraphs (d), (e) and (f) are added:

§ 30.44 Class 9; Foreign-grown types other than cigar-leaf.

* * * * *

(d) Type 95 Foreign-grown dark air-cured.

(e) Type 96 Foreign-grown fire-cured.

(f) Type 99 Other Foreign-grown cigarette and dark tobacco.

4. Section 30.60 is amended by revising paragraphs (a) and (b) to read as follows:

§ 30.60 Reports.

* * * * *

(a) Tobacco in leaf form. The pounds of tobacco in leaf form or stems owned on the first day of the applicable quarter, with all stocks reported by types of tobacco and whether stemmed or unstemmed.

(b) Tobacco in sheet form. The pounds of tobacco sheet owned on the first day of the applicable quarter shall be segregated as to whether for cigar wrapper, cigar binder, for cigarettes, or for other products.

Dated: May 29, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91-13118 Filed 6-4-91; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket No. R-0731]

Delegations of Authority

May 20, 1991

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: Pursuant to sections 11 (i) and (k) of the Federal Reserve Act (12 U.S.C. 248 (i) and (k)), the Board is amending its Rules Regarding Delegations of Authority (12 CFR part 265) by reorganizing the rules. The Board also is delegating to its Secretary, with the concurrence of the General Counsel, the authority to make technical corrections to its regulations.

EFFECTIVE DATE: May 17, 1991.

FOR FURTHER INFORMATION CONTACT: John Harry Jorgenson, Senior Attorney (202/452-3778), or Patrick J. McDivitt, Attorney (202/452-3818), Legal Division; for the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544); Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 11(k) of the Federal Reserve Act provides that the Board may delegate any of its functions, other than those related to rulemaking or principally to monetary and credit policies. Section 11(i) authorizes the Board to make regulations necessary to enable the Board to perform its duties effectively. Pursuant to this authority, the Board is making technical amendments to its Rules Regarding Delegation of Authority (12 CFR part 265). The amendments consist of grouping the individual delegations by subject-matter, giving each of them a descriptive title, renumbering them, and providing a table of contents for the rules. These changes are intended to make it easier to locate specific delegations. In addition to these revisions, some references and citations are being corrected, and some obsolete delegations are being deleted.

The Board also is adding a new delegation to these rules that will allow the Secretary of the Board, with the concurrence of the Board's General Counsel, to make technical revisions to its rules, regulations, and orders. Currently, the Secretary has delegated authority to conform references to administrative positions or units in Board rules to changes in administrative structure and to conform citations in Board rules with other regulatory or statutory changes. The new delegation would allow the Secretary, with the concurrence of the Board's General Counsel, to make technical corrections (such as correcting spelling, grammar, construction, and organization) to Board rules, regulations, and orders and other records of Board action.

The table below presents the subject of each delegation, the CURRENT (i.e., old) section location in title 12 of the Code of Federal Regulations, and the NEW [i.e., as reorganized] section location in Title 12. The following abbreviations and references are used in the "SUBJECT" entries.

Abbrev/ref.	Explanation
Statutes:	
APA	Administrative Procedure Act.
BHC Act	Bank Holding Company Act.
CBC Act	Change in Bank Control Act.
FDI Act	Federal Deposit Insurance Act.
FOIA	Freedom of Information Act.
Board rules:	
Regarding Availability of Information.	12 CFR Part 261.
of Procedure	12 CFR Part 262.
of Practice for Hearings.	12 CFR Part 263.
Board regulations	
Regulation D	12 CFR Part 204.
Regulation F	12 CFR Part 206 [Rescinded; part of Regulation H].
Regulation G	12 CFR Part 207.
Regulation H	12 CFR Part 208.
Regulation K	12 CFR Part 211.
Regulation L	12 CFR Part 212.
Regulation M	12 CFR Part 213 [Rescinded; now part of Regulation K].
Regulation P	12 CFR Part 216.
Regulation Q	12 CFR Part 217.
Regulation T	12 CFR Part 220.
Regulation U	12 CFR Part 221.
Regulation X	12 CFR Part 224.
Regulation Y	12 CFR Part 225.
Regulation Z	12 CFR Part 226.
Other terms	
BS&R	Board's Division of Banking Supervision and Regulation.
dpc	Property acquired in satisfaction of a debt previously contracted.
FDIC	Federal Deposit Insurance Corporation.

RULES REGARDING DELEGATION OF AUTHORITY

[Conversion table]

Subject	Current	New
Delegations generally	265.1	265.1, 265.2 and 265.3(d)
Specific functions delegated to Board members	265.1a	265.4
Any Board member designated by Chairman.		
To review appeals under § 552(a)(6) of FOIA and the Board's Rules Regarding Availability of Information	265.1a(a)(1)	265.4(a)(1)

RULES REGARDING DELEGATION OF AUTHORITY—Continued

[Conversion table]

Subject	Current	New
To approve on recommendation of Staff Director for BS&R and General Counsel cease and desist orders approved by the Board pursuant to 12 U.S.C. 1818 (b) and (c)	265.1a(a)(2)	265.4(a)(2)
Any Board member when requested by Secretary of Board. To act on request under Rules of Practice for Hearings	265.1a(b)	265.4(a)(3)
Any 3 Board members designated by the Chairman. To act in the absence of a quorum	265.1a(c)	265.4(b)
Specific functions delegated to Board employees and to Reserve Banks	265.2	265.5–265.11
The Secretary	265.2(a)	265.5
To make information available under the Board's Rules Regarding Availability of Information	265.2(a)(1)	265.5(b)(1)
To furnish reports on competitive factors to the Office of the Comptroller of the Currency and FDIC on a bank merger	265.2(a)(2)	265.5(c)(1)
To take actions a bank could take except for a management interlock with the bank holding company or other company. Laws affected are:	265.2(a)(2)	265.5(c)(2)
§ 18(c) of FDI Act.		
§§ 3(a) and 4(c) of BHC Act.		
§§ 5(a), 5(b), and 7(d) of the Bank Service Corporation Act.		
CBC Act (12 U.S.C. 1817(j)).		
§§ 9,25, and 25(a) of the Federal Reserve Act.		
Regulation Y.		
Regulation K.		
To approve foreign branches of Edge of Agreement corporations under §§ 25 and 25(a) of the Federal Reserve Act and Regulations K and M if conditions are met	265.2(a)(3)	265.5(d)(1)
To grant specific consent to acquisition by an Edge of Agreement corporation of exporting under §§ 25 and 25(a) of the Federal Reserve Act and if Regulations K and M conditions are met	265.2(a)(4)	265.5(d)(2)
To permit Edge and Agreement corporations to exceed limitations in §§ 211.9(b) and conditions are met	265.2(a)(5)	Deleted
To approve the issuance by an Edge or Agreement corporation of debentures or bonds under §§ 25 and 25(a) of the Federal Reserve Act and Regulations K and M if conditions are met	265.2(a)(6)	Deleted
To grant specific consent to ownership by a bank holding company of voting shares of a company in a foreign country under § 4(c)(13) of the BHC Act and § 225.4(f) of Regulation Y if conditions are met	265.2(a)(7)	265.5(d)(2)
To extend the time period for public participation with respect to proposed rules under the provisions of §§ 262.2 (a) and (b) of the Board's Rules of Procedure	265.2(a)(8)	265.5(a)(1)
To report to the Secretary of the Treasury the average predominant prime rate under provisions of § 6621 of the Internal Revenue Code	265.2(a)(9)	265.5(a)(1)
To grant or deny requests for extension of any time period provided in any Board notice or rule	265.2(a)(10)	265.5(b)(3)
To conform references to administrative positions in outstanding Board rules and regulations	265.2(a)(11)	265.5(a)(3)
To approve future annual reports as required under the Privacy Act (5 U.S.C. 522a(p))	265.2(a)(12)	265.5(b)(2)
To permit member banks to waive the penalty for early withdrawal of a time deposit in § 217.4(d) of Regulation Q under § 19(j) of the Federal Reserve Act if conditions are met	265.2(a)(13)	265.5(e)(1)
The General Counsel		
To make control determinations under § 2(g) of the BHC Act	265.2(b)(1)	265.6(c)(1)
To make determinations that a company engaging in financial, fiduciary, or insurance activities falls within the exemption permitting retention by a bank holding company under § 4(c)(8) of the BHC Act	265.2(b)(2)	265.6(c)(2)
To certify for tax purposes assets distributions under §§ 1101–1103 and 6158 of the Internal Revenue Code	265.2(b)(3)	265.6(c)(4)
To issue an order for a hearing in order to determine that a company engaging in financial, fiduciary, or insurance activities falls within the exemption permitting retention by a bank holding company under § 4(c)(8) of the BHC Act	265.2(b)(4)	265.6(c)(2)
To make available information of the Board in the circumstances described in the Board's Rules Regarding Availability of Information	265.2(b)(5)	265.6(b)(1)
To designate Board staff attorneys as Board counsel in any proceeding conducted under § 263.6(d) of the Board's Rules of Practice for Hearings	265.2(b)(6)	265.6(a)(3)
To determine whether or not to grant a request for reconsideration or to deny a request for a stay of any action taken under § 263.3(i) of the Board's Rules of Procedure	265.2(b)(7)	265.6(a)(1)
To approve provisions of Reserve Bank operating circulars related to uniform services	265.2(b)(8)	265.6(a)(5)
To grant exceptions from the provisions of Regulation L when the primary Federal supervisor approves the exception under § 212.4(b) of that regulation	265.2(b)(9)	265.6(d)(1)
To revoke acceptance of and return as incomplete a notice filed under the CBC Act and extend the time during which action must be taken whenever the General Counsel determines, with concurrence of the Staff Director of BS&R, that the notice is materially incomplete or contains material information that is substantially inaccurate	265.2(b)(10)	265.6(c)(3)
To order, with concurrence of appropriate Division directors and Reserve Bank, a public meeting or other proceeding pursuant to § 262.25 of the Board's Rules of Procedure	265.2(b)(11) and 262.25(d))	265.6(a)(2)
To take or authorize others to take actions including administering oaths, taking depositions, under §§ 8(n) and 10(c) of the FDI Act and §§ 5(f) of the BHC Act	265.2(b)(12)	265.6(a)(4)
To grant requests for temporary interlocks, with concurrence of the Staff Director of BS&R, for low-income or minority or women's banks	265.2(b)(13)	265.6(d)(2)
To exercise the authority in § 5(d)(3) of the FDI Act ("Oakar" amendment) with the concurrence of the Staff Director of BS&R when a Reserve Bank concludes that it should not exercise such authority	265.2(b)(14)	265.6(c)(5)
The Staff Director of the Division of Banking Supervision and Regulation	265.2(c)	265.7
To select or approve appointment of examiners under §§ 9 and 25(a) of the Federal Reserve Act, § 5(c) of the BHC Act, and § 7(c)(1) of the Internal Banking Act of 1978	265.2(c)(1)	265.7(e)(4)
To require submission and publication of reports by an Edge corporation	265.2(c)(2)	265.7(d)(2)
To promulgate registration, annual report, and other forms under § 5 of the BHC Act after receiving clearance from and under the APA (5 U.S.C. 553)	265.2(c)(3)	265.7(c)(1)
Under § 12(g) of the Securities Exchange Act to take certain actions	265.2(c)(4)	265.7(f)(1)
Under § 12(d) of the Securities Exchange Act to accelerate effective dates of registration on a national exchange	265.2(c)(5)	265.7(f)(3)
Under § 12(f) of the Securities Exchange Act to issue notices for unlisted trading	265.2(c)(6)	265.7(f)(4)
Under § 12(h) of the Securities Exchange Act to issue notices of exemption from registration	265.2(c)(7)	265.7(f)(2)
To permit mailing of proxy materials under § 206.5 (f) and (i) of Regulation F [now in § 208.16 of Regulation H]	265.2(c)(8)	265.7(f)(6)(i)
To permit omission of financial statements from reports under §§ 206.41–206.43 of Regulation F [now § 208.16 of Regulation H]	265.2(c)(9)	265.7(f)(6)(ii)
To exercise certain functions in (re: branching, dividends, capital stock, premises) when the Reserve Banks are unable or unwilling to perform	265.2(c)(10)	265.7(e)(5)

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RULES REGARDING DELEGATION OF AUTHORITY—Continued

[Conversion table]

Subject	Current	New
To approve increases and reductions in the capital stock of an Agreement corporation and investments in Edge corporations	265.2(c)(11)	265.7(d)(3)
To exercise functions in § 265.2(f)(15) (i), (ii) and (iii) (i.e., security devices) when Reserve Bank is unwilling	265.2(c)(12)	265.7(e)(6)
To require submission of a report of condition, respecting any foreign bank holds stock acquired under Regulation M (now in Regulation K) pursuant to § 25, ¶ 7 of the Federal Reserve Act	265.2(c)(13)	265.7(d)(1)
To permit any member bank to accept drafts or bills of exchange drawn upon it for purposes of furnishing dollar exchange (§ 13(12) of the Federal Reserve Act)	265.2(c)(14)	265.7(e)(2)
To certify to the FDIC that the Board considered the factors in § 6 of the FDI Act when admitting a state bank to membership	265.2(c)(15)	265.7(e)(1)
To accelerate the effective date of a registration statement with respect to a transfer agent. See § 17A(c)(2) of the Securities Exchange Act	265.2(c)(16)	265.7(f)(5)(i)
To withdraw or cancel the transfer agent registration member state bank under § 17A(c)(3)(C) of the Securities Exchange Act	265.2(c)(17)	265.7(f)(5)(ii)
To approve issuance of the list of OTC margin stocks under §§ 207.6(d), 220.17(d) and 221.7(d) of Regulations G, T, and U	265.2(c)(18)	265.7(f)(10)
Reserved	265.2(c)(19)	N/A
To make available reports and other information acquired pursuant to Regulations G, T, U, and X in circumstances described in §§ 261.8(a) (2) and (3) of the Board's Rules Regarding Availability of Information	265.2(c)(20)	265.7(b)(2)
To issue examination manuals and reports for use in connection with §§ 7, 8, 15B, and 17A(c) of the Securities Exchange Act	265.2(c)(21)	265.7(f)(9)
To refuse, with the concurrence of the General Counsel and Reserve Bank, an application to the Board to stay, modify, or terminate a cease and desist order previously issued by the Board under § 8(b) of the FDI Act or any written agreement	265.2(c)(22)	265.7(a)(1)
To grant or deny requests for waiver of examination or waiting periods for municipal securities activities	265.2(c)(23)	265.7(f)(7)
Reserved	265.2(c)(24)	N/A
To Make examination reports of transfer agents, clearing agencies, and municipal securities dealers available to the SEC under § 17(c)(3) of the Securities Exchange Act	265.2(c)(25)	265.7(f)(8)
Reserved	265.2(c)(26)	N/A
To waive the 45 days' prior notice for establishing a branch overseas under §§ 25 and 25(a) of the Federal Reserve Act and §§ 211.3(a)(3) and 211.5(c)(2) of Regulation K	265.2(c)(27)	265.7(d)(4)(i)
To suspend the notification period in § 211.5(c)(2) of Regulation K	265.2(c)(28)	265.7(d)(4)(ii)
To grant or deny requests for a modification for the performance of a commitment or condition made under the BHC Act, the Bank Merger Act, the CBC Act, or the International Banking Act	265.2(c)(29)	265.7(a)(2)
To take actions the Reserve Bank could take under (f)(2)(i) and (f)(2)(ii) if action will avert failure under §§ 3(a) and 4(c)(8) of the BHC Act and the CBC Act	265.2(c)(30)	265.7(c)(2)
To provide written certification of ERISA violations by state member banks to the Labor Department	265.2(c)(31)	265.7(e)(3)
To determine the need to establish a transfer risk reserve under Subpart D and Regulation K	265.2(c)(32)	265.7(d)(6)
To issue, with concurrence of the General Counsel, a notice that a state member bank has insufficient capital under §§ 263.36 and 263.40 of the Board's Rules of Practice for Hearings	265.2(c)(33)	265.7(a)(3)
To permit, after consultation with the General Counsel, a foreign subsidiary of a bank holding company to invest in shares of a U.S. affiliate of the bank holding company under Subpart A of Regulation K	265.2(c)(34)	265.7(d)(5)
To waive, with the concurrence of the Board's General Counsel, the publication requirement of the CBC Act when publication would threaten the safety of the Bank	265.2(c)(35)	265.7(c)(3)
To approve the application of a state member bank or U.S. branch under § 403.5(g) of Treasury regulations (17 CFR § 403.5(g)) implementing the Government Securities Act	265.2(c)(36)	265.7(a)(4)
To exercise the authority in § 5(d)(3) of the FDI Act ("Oakar" amendment) with the concurrence of the General Counsel when a Reserve Bank concludes that it should not exercise such authority	265.2(c)(37)	265.7(c)(5)
To approve requests to engage in underwriting, distributing, and dealing in shares outside the United States, and to approve hedging techniques used to determine the amount of shares held in dealing accounts	265.2(c)(38)	265.7(d)(7)
Reserved	265.2(d)–(e)	N/A
Each Federal Reserve Bank	265.2(f)	265.11
To approve state member bank branches after considering factors under § 9 of the Federal Reserve Act	265.2(f)(1)	265.11(e)(3)
To permit a state member bank to declare dividends under § 9, ¶ 6 of the Federal Reserve Act and R.S. § 5199 (12 U.S.C. 60)	265.2(f)(2)	265.11(e)(4)
To approve or deny the required six month's prior notice of intent to withdraw from membership under § 9, ¶ 10 of the Federal Reserve Act	265.2(f)(3)	265.11(e)(2)
To permit a state member bank to reduce its capital under § 9, ¶ 11 of the Federal Reserve Act	265.2(f)(4)	265.11(e)(5)
To extend the time when which an affiliate of a state member bank must file reports under § 9, ¶ 17 of the Federal Reserve Act	265.2(f)(5)	265.11(a)(1)
To permit a member bank or U.S. branch of a foreign bank subject to reserves to accept drafts or bills of exchange up to 200% of capital	265.2(f)(6)	265.11(e)(6)
To permit a state member bank to invest in bank premises under § 24A of the Federal Reserve Act	265.2(f)(7)	265.11(e)(7)
To extend the time under which an Edge corporation must divest itself of dpc property under § 25(a), ¶ 9 of the Federal Reserve Act	265.2(f)(8)	265.11(a)(2)
To extend the period of corporate existence of an Edge corporation under § 25(a), ¶ 22 of the Federal Reserve Act	265.2(f)(9)	265.11(a)(3)
To extend the time in which a bank holding company must file a registration statement under § 5(a) of the BHC Act	265.2(f)(10)	265.11(a)(4)
To extend the time for a bank holding company to divest of nonbanking organization under § 4(a) of the BHC Act	265.2(f)(11)	265.11(a)(5)
To extend the time for a bank holding company to divest of nonbanking interest acquired dpc under § 4(c)(2) of the BHC Act	265.2(f)(12)	265.11(a)(6)(i)
To require reports under oath to determine whether a company is complying with the BHC Act	265.2(f)(13)	265.11(c)(1)
To extend the time within which a bank surrendering membership must surrender its Federal Reserve Bank stock under § 208.11(c) of Regulation H	265.2(f)(14)	265.11(a)(7)
To require Regulation P compliance	265.2(f)(15)	265.11(e)(8)
To extend time for publication of reports of condition under § 208.10(a) of Regulation H	265.2(f)(16)	265.11(a)(8)
To approve applications for terminations of registration under § 207.3(a)(2) of Regulation G	265.2(f)(17)	265.11(f)(1)
To issue to an Edge corporation a final permit to commence business and to approve amendments to its articles of association under § 25(a)(2) of the Federal Reserve Act and § 211.4(a)(2) of Regulation K	265.2(f)(18)	265.11(d)(2)
Under § 225.23(a)(2) of Regulation Y	265.2(f)(19)	265.11(c)(2)

RULES REGARDING DELEGATION OF AUTHORITY—Continued

[Conversion table]

Subject	Current	New
To notify a bank holding company that additional information is required in connection with the acquisition of a going concern		
To permit a bank holding company, under exigent circumstances, to acquire a going concern without waiting 30 days		
Under § 225.4(b)(1) of Regulation Y and subject to § 265.3 if a person submitting adverse comments that the Reserve Bank has decided are not substantive files a petition for review of that decision	265.2(f)(20)	265.11(c)(3)
To permit a bank holding company to engage *de novo* in activities specified in § 225.4		
To notify a bank holding company that the proposal should not be consummated until authorized by the Reserve Bank or processed under § 225.4(b)(2)		
To permit a bank holding company to consummate the proposal before the 45-day period in § 225.4(b)(1) because of exigent circumstances		
To permit or stay a proposed modification or relocation of activities engaged in on the same basis as *de novo* proposals under § 265.2(f)(20) of the Board's Rules Regarding Delegation of Authority	265.2(f)(21)	265.11(c)(4)
To approve applications and to furnish to the OCC and FDIC reports on competitive factors if conditions are met. Laws covered are:	265.2(f)(22)	265.11(c)(11)
§ 18(c) of the FDI Act.		
§§ 3(a) and 4(c)(8) of the BHC Act.		
§§ 5(a), 5(b), and 7(j) of the Bank Service Corporation Act.		
§§ 225.14 and 225.23 of Regulation Y.		
To approve applications for membership under § 9 of the Federal Reserve Act if conditions are met	265.2(f)(23)	265.11(e)(1)
To grant a bank holding company a 90-day extension for filing an annual report under § 5(c) of the BHC Act	265.2(f)(24)	265.11(a)(9)
To extend the time within which an investor must divest itself of interests in a foreign portfolio acquired dpc under § 211.5(e) of Regulation K	265.2(f)(25)	265.11(a)(10)
With the prior approval of the Staff Director of BS&R and the General Counsel	265.2(f)(26)	265.11(a)(15)
To enter into an agreement with a bank holding company under § 8(b) of the FDI Act.		
To stay, modify or terminate such an agreement.		
To stay or modify an outstanding cease-and-desist order.		
To extend the time within which a company or a bank must divest dpc property under §§ 2(a)(5)(10) and 3(e) of the BHC Act	265.2(f)(27)	265.11(a)(6)(ii)
To determine the informational sufficiency of notices under the CBC Act if conditions are met	265.2(f)(28)	265.11(c)(5)
To approve the appointment of assistant Federal Reserve agents under § 4, ¶ 21 of the Federal Reserve Act	265.2(f)(29)	265.11(a)(16)
To classify member banks for the purposes of director selection under § 4, ¶ 16 of the Federal Reserve Act	265.2(f)(30)	265.11(e)(9)
To extend the time for a bank holding company to acquire shares, or a bank, or to consummate a merger	265.2(f)(31)	265.11(a)(11)
To extend the time within which	265.2(f)(32)	265.11(a)(12)
A state member bank may establish a branch.		
A member bank may establish a foreign branch.		
An Edge or Agreement corporation may establish a branch or agency.		
To extend the time within which an Edge or Agreement corporation or a member bank or bank holding company may purchase stock under § 25 or 25(a) of the Federal Reserve Act or § 4(c)(13) of the BHC Act	265.2(f)(33)	265.11(a)(13)
To extend the time within which membership must be achieved	265.2(f)(34)	265.11(a)(14)
To waive the penalty for deficient reserves	265.2(f)(35)	265.11(e)(10)
To grant time for compliance with Regulation L	265.2(f)(36)	265.11(a)(1)
To enter into an agreement with a foreign bank regarding out-of-state deposits under § 5 of the International Banking Act of 1978	265.2(f)(37)	265.11(d)(5)
To approve an Edge corporation application to establish a foreign branch under § 211.4(c)(2) of Regulation K	265.2(f)(38)	265.11(d)(3)
To grant prior specific consent to an investor for investment in its first subsidiary under § 211.5(c) of Regulation K	265.2(f)(39)	265.11(d)(7)
To require an investor to file an application for specific consent under § 211.5(c)(2) of Regulation K	265.2(f)(40)	265.11(d)(8)
To accept agreements from nonmember banks concerning extensions of credit to finance securities transactions under § 8(a) of the Securities Exchange Act	265.2(f)(41)	265.11(f)(2)
To determine that termination of a bank holding company's grandfathered activities is not warranted under § 4(a)(2) of the BHC Act	265.2(f)(42)	265.11(c)(7)
To approve establishment of a foreign branch by a member bank where the application is not one for a full-service branch under § 211.3(a) of Regulation K	265.2(f)(43)	265.11(d)(4)
To waive the 30 days' prior notice requirement for a foreign bank's change of home state	265.2(f)(44)	265.11(d)(6)
To approve applications by a bank holding company to open additional nonbanking offices under §§ 4(c)(8) and 5(b) of the BHC Act and § 225.4(b) of Regulation Y	265.2(f)(45)	265.11(c)(8)
To issue a notice of intent not to disapprove a proposed investment in an export trading company under § 4(c)(14) of the BHC Act	265.2(f)(46)	265.11(d)(9)
To approve applications by a U.S. banking corporation to establish an Edge corporation under § 25(a) of the Federal Reserve Act	265.2(f)(47)	265.2(d)(1)
With the concurrence of the Staff Director for BS&R and the General Counsel to waive failure to comply with notice requirements under the CBC Act if it would seriously threaten the target	265.2(f)(48)	265.11(c)(6)
To decide not to disapprove notices to establish interlocks with diversified S&L companies under § 205.6 of the Depository Institution Management Interlocks Act	265.2(f)(49)	265.11(g)(2)
To approve a state member bank's proposed subordinated debt issue if certain conditions are met	265.2(f)(50)	265.11(e)(11)
To approve retirement prior to maturity of capital notes issued	265.2(f)(51)	265.11(e)(12)
To exercise authority under § 5(d)(3) of the FDI Act ("Oakar" amendment)	265.2(f)(52)	265.11(c)(10)
To approve futures commission merchant activities with respect to financial instruments	265.2(f)(53)	265.11(d)(10)
Staff Director for International Finance	265.2(g)	265.6
To approve foreign accounts with the New York Reserve Bank under § 14(e) of the Federal Reserve Act	265.2(g)	265.8(a)
Director of the Division of Consumer and Community Affairs	265.2(h)	265.9
To issue examination manuals and reports in consultation with the Legal Division in connection with consumer protection laws	265.2(h)(1)	265.9(a)
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To determine whether a state law is inconsistent with Federal law and regulations under the Truth in Lending Act and the Board's Regulation Z	265.2(h)(3)	265.9(c)(1)
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RULES REGARDING DELEGATION OF AUTHORITY—Continued

[Conversion table]

Subject	Current	New
To determine whether a state law is inconsistent with Federal law and regulations under § 705(f) of the Equal Credit Opportunity Act	265.2(h)(5)	265.9(c)(3)
To determine whether a state law is inconsistent with Federal law and regulations under § 306(a) of the Home Mortgage Disclosure Act	265.2(h)(6)	265.9(c)(4)
Review of action at delegated level	265.3	265.3
Functions delegated to the Secretary of the Federal Open Market Committee	N/A	265.10
To approve records of policy actions for inclusion into the Board's Annual Report.		

Notice and public participation; effective date. The provisions of 5 U.S.C. 553(b) relating to notice and public participation have not been followed in connection with the adoption of these amendments because they amend a rule of agency procedure and practice, and section 553(b) does not apply to such rules. The Board finds that it is impracticable and contrary to the public interest to delay adoption because the reorganization of this rule substantially improves the ability of users to locate specific delegations in the rule, relieving the users of an unnecessary burden.

The provisions of 5 U.S.C. 553(d) generally prescribing 30 days' prior notice of the effective date of a rule have not been followed in connection with the adoption of these amendments. Section 553(d) provides that such prior notice is not necessary whenever a rule reduces regulatory burdens or there is good cause for finding that such notice is contrary to the public interest. This rule, which is procedural and technical in nature, does reduce such a burden, and, as noted, the Board has determined that delaying the effectiveness of that relief is contrary to the public interest.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Public Law No. 96–354, 5 U.S.C. 601 *et seq.*), the Board certifies that the final amendments will not have a significant adverse economic impact on a substantial number of small entities. The final amendments reorganize the Board's Rules Regarding Delegation of Authority and reduce certain regulatory burdens for all depository institutions, reduce certain burdens for small depository institutions, and have no particular adverse effect on other small entities.

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List of Subjects in 12 CFR Part 265

Delegations of authority, Banks, Banking, Federal Reserve System.

For the reasons set forth above, the Board amends 12 CFR Chapter II to read as follows:

Part 265 is revised to read as follows:

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

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265.2 Delegation of functions generally.
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265.7 Functions delegated to Staff Director of Division of Banking Supervision and Regulation.
265.8 Functions delegated to Staff Director of Division of International Finance.
265.9 Functions delegated to Director of Division of Consumer and Community Affairs.
265.10 Functions delegated to Secretary of Federal Open Market Committee.
265.11 Functions delegated to Federal Reserve Banks.

Authority: Section 11(k) of the Federal Reserve Act (12 U.S.C. 248(k)).

§265.1 Authority, purpose, and scope.

(a) Pursuant to section 11(k) of the Federal Reserve Act (12 U.S.C. 248(k)), the Board of Governors of the Federal Reserve System (the "Board") may delegate, by published order or rule, any of its functions other than those relating to rulemaking or pertaining principally to monetary and credit policies to Board members and employees, Reserve Banks, or administrative law judges. Pursuant to section 11(i) of the Federal Reserve Act (12 U.S.C. 248(i)), the Board may make all rules and regulations necessary to enable it to effectively perform the duties, functions, or services specified in that Act. Pursuant to section 5(b) of the Bank Holding Company Act (12 U.S.C. 1844(b)), the Board is authorized to issue such regulations and orders as may be necessary to enable it to administer and carry out the purposes of this Act and prevent evasions thereof. Other provisions of Federal law also may authorize specific delegations by the Board.

(b) The Board's Rules Regarding Delegation of Authority (12 CFR part 265) detail the responsibilities that the Board has delegated. The table of contents, titles, and headings that appear in these rules are used solely for

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their descriptive convenience. Section 265.4 addresses the specific functions delegated to Board members. The functions that have been delegated to Board employees are set forth in §§ 265.5, 6, 7, 8, and 9. The functions that have been delegated to the Secretary of the Federal Open Market Committee are set forth in § 265.10. The functions that have been delegated to the Reserve Banks are set forth in § 265.11. Provisions for review of any action taken pursuant to delegated authority are found in § 265.3. Except as otherwise indicated in these rules, the Board will review a delegated action only if a Board member, at his or her own initiative, requests a review.

§265.2 Delegation of functions generally.

(a) The Board has determined to delegate authority to exercise the functions described in this part.

(b) The Chairman of the Board shall assign responsibility for performing such delegated functions.

§265.3 Board review of delegated actions.

(a) *Request by Board member.* The Board shall review any action taken at a delegated level upon the vote of one member of the Board, either on the member's own initiative or on the basis of a petition for review by any person claiming to be adversely affected by the delegated action.

(b) *Petition for review.* A petition for review of a delegated action must be received by the Secretary of the Board not later than the fifth day following the date of the delegated action.

(c) *Notice of review.* The Secretary shall give notice of review by the Board of a delegated action to any person with respect to whom the action was taken not later than the tenth day following the date of the delegated action. Upon receiving notice, such person may not proceed further in reliance upon the delegated action until notified of the outcome of the review by the Board.

(d) *By action of a delegee.* A delegee may submit any matter to the Board for determination if the delegee considers it appropriate because of the importance or complexity of the matter.

§265.4 Functions delegated to Board members.

(a) *Individual members.* Any Board member designated by the Chairman is authorized:

(1) *Review of denial of access to Board records; FOIA.* To review and determine an appeal of denial of access to Board records under the Freedom of Information Act (5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a), and the Board's rules regarding such access (12 CFR parts 261 and 261a, respectively).

(2) *Approval of amendments to notice of charges or cease and desist orders.* To approve (after receiving recommendations of the Staff Director of the Division of Banking Supervision and Regulation and the General Counsel) amendments to any notice, temporary order, or proposed order previously approved by the Board in a specific formal enforcement matter (including a notice of charges or removal notice) or any proposed or temporary cease and desist order previously approved by the Board under 12 U.S.C. 1818 (b) and (c).

(3) *Requests for permission to appeal rulings.* (i) To act, when requested by the Secretary, upon any request under § 263.10(e) of the Board's Rules of Practice for Hearings (12 CFR part 263) for special permission to appeal from a ruling of the presiding officer on any motion made at a hearing conducted under the rules, and if special permission is granted, the merits of the appeal shall be presented to the Board for decision.

(ii) Notwithstanding § 265.3 of this part, the denial of special permission to appeal a ruling may be reviewed by the Board only if a Board member requests a review within two days of the denial. No person claiming to be adversely affected by the denial shall have any right to petition the Board or any Board member for review or reconsideration of the denial.

(b) *Three member Action Committee.* Any three Board members designated from time to time by the Chairman (the "Action Committee") are authorized:

(1) *Absence of quorum.* To act, upon certification by the Secretary of the Board of an absence of a quorum of the Board present in person, by unanimous vote on any matter that the Chairman has certified must be acted upon promptly in order to avoid delay that would be inconsistent with the public interest except for matters:

(i) Relating to rulemaking;

(ii) Pertaining principally to monetary and credit policies; and

(iii) For which a statute expressly requires the affirmative vote of more than three Board members.

(2) [Reserved.]

§265.5 Functions delegated to Secretary of the Board.

The Secretary of the Board (or the Acting Secretary) is authorized:

(a) *Procedure*—(1) *Extension of time period for public participation in proposed regulations.* To extend, when appropriate under the Board's Rules of Procedure (12 CFR 262.2 (a) & (b)), the time period for public participation with respect to proposed regulations of the Board.

(2) *Extension of time period in notices, orders, rules, or regulations.* (i) To grant or deny requests to extend any time period in any notice, order, rule, or regulation of the Board relating to filing information, comments, opposition, briefs, exceptions, or other matters, in connection with any application, request or petition for the Board's approval, authority, determination, or permission, or any other action by the Board.

(ii) Notwithstanding § 265.3 of this part, no person claiming to be adversely affected by any such extension of time by the Secretary shall have the right to petition the Board or any Board member for review or reconsideration of the extension.

(3) *Conforming citations and references in Board rules and regulations.* (i) To conform references to administrative positions or units in Board rules and regulations with changes in the administrative structure of the Board and in the government and agencies of the United States.

(ii) To conform citations and references in Board rules and regulations with other regulatory or statutory changes adopted or promulgated by the Board or by the government or agencies of the United States.

(4) *Technical corrections in Board rules and regulations.* To make technical corrections, such as spelling, grammar, construction, and organization (including removal of obsolete provisions and consolidation of related provisions), to the Board's rules, regulations, and orders and other records of Board action but only with the concurrence of the Board's General Counsel.

(b) *Availability of information*—(1) *FOIA requests.* To make available, upon request, information in Board records and consider requests for confidential treatment of information in Board records under the Freedom of Information Act (5 U.S.C. 552) and under the Board's Rules Regarding Availability of Information (12 CFR part 261).

(2) *Annual reports on Privacy Act.* To approve annual reports required by the Privacy Act (5 U.S.C. 552a(p)) from the Board to the Office of Management and Budget for inclusion in the President's annual consolidated report to Congress.

(3) *Report on prime rate of commercial banks.* To determine and report, under 26 U.S.C. (IRC) 6621, to the Secretary of the Treasury the average predominant prime rate quoted by commercial banks to large businesses.

(c) *Bank holding companies; Change in bank control; Mergers*—(1) *Reports on competitive factors in bank mergers.* To furnish reports on competitive factors involved in a bank merger to the Comptroller of the Currency and the Federal Deposit Insurance Corporation under the provisions of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)); The Bank Holding Company Act (12 U.S.C. 1842(a), 1843(c)(14)); the Bank Service Corporation Act (12 U.S.C. 1865(a), (b), 1867(d)); the Change in Bank Control Act (12 U.S.C. 1817(j)); and the Federal Reserve Act (12 U.S.C. 321 *et seq.*, 601–604a, 611 *et seq.*).

(2) *Reserve Bank director interlocks.* To take actions the Reserve Bank could take except for the fact that the Reserve Bank may not act because a director, senior officer, or principal shareholder of any holding company, bank, or company involved in the transaction is a director of a Reserve Bank or branch.

(d) *International banking*—(1) *Establishment of foreign branch or foreign agency or of Edge or Agreement Corporations.* To approve, under sections 25 and 25(a) of the Federal Reserve Act (12 U.S.C. 601 and 604) and Regulation K (12 CFR part 211), the establishment, directly or indirectly, of a foreign branch or agency by a member bank or an Edge or Agreement Corporation if all of the following conditions are met:

(i) The appropriate Reserve Bank and relevant divisions of the Board's staff recommend approval;

(ii) No significant policy issue is raised on which the Board has not expressed its view; and

(iii) the application is not for the applicant's first full-service branch in a foreign country.

(2) *Acquisition of foreign company or U.S. company financing exports.* To grant, under sections 25 and 25(a) of the Federal Reserve Act (12 U.S.C. 601 & 604) and section 4(c)(13) of the Bank Holding Company Act (12 U.S.C. 1843(c)(13)) and the Board's Regulations K and Y (12 CFR parts 211 and 225), specific consent to the acquisition, either directly or indirectly, by a member bank, an Edge or Agreement corporation, or a bank holding company of stock of a company chartered under the laws of a foreign country or a company chartered under the laws of a state of the United States that is organized and operated for the purpose of financing exports from the United States, and to approve any such acquisition that may exceed the limitations of section 25(a) of the Federal Reserve Act based on the company's capital and surplus, if all of the following conditions are met:

(i) The appropriate Reserve Bank and all relevant divisions of the Board's staff recommend approval;

(ii) No significant policy issue is raised on which the Board has not expressed its view;

(iii) The acquisition does not result, either directly or indirectly, in the bank, corporation, or bank holding company acquiring effective control of the company, except that this condition need not be met if:

(A) The company is to perform nominee, fiduciary, or other services incidental to the activities of a foreign branch or affiliate of the bank holding company, or corporation; or

(B) The stock is being acquired from the parent bank or bank holding company, or subsidiary Edge or Agreement corporation, as the case may be, and the selling parent or subsidiary holds the stock with the consent of the Board pursuant to Regulations K and Y (12 CFR parts 211 and 225).

(e) *Member banks*—(1) *Waiver of penalty for early withdrawals of time deposits.* To permit depository institutions to waive the penalty for early withdrawal of time deposits under section 19(j) of the Federal Reserve Act (12 U.S.C. 371b) and § 204.2 of Regulation D (12 CFR part 204) if the following conditions are met:

(i) The President declares an area of major disaster or emergency area pursuant to section 301 of the Disaster Relief Act of 1974 (42 U.S.C. 5141);

(ii) The waiver is limited to depositors suffering disaster or emergency related losses in the officially designated area; and

(iii) The appropriate Reserve Bank and all relevant divisions of the Board's staff recommend approval.

(2) [Reserved.]

§265.6 Functions delegated to General Counsel.

The Board's General Counsel (or the General Counsel's delegee) is authorized:

(a) *Procedure*—(1) *Reconsideration of Board action.* To determine whether to grant a request for reconsideration of any Board action on an application under § 262.3(i) of the Board's Rules of Procedure (12 CFR part 262).

(2) *Public meetings.* To order, after consulting with the directors of other interested divisions of the Board and the appropriate Reserve Bank, that a public meeting or other proceeding be held, under § 262.25 of the Board's Rules of Procedure (12 CFR part 262), in connection with any application or notice filed with the Board, and to designate the presiding officer in the proceeding under terms and conditions the General Counsel deems appropriate.

(3) *Designation of Board counsel for hearings.* To designate Board staff attorneys as Board counsel in any proceeding ordered by the Board in accordance with § 263.6 of the Board's Rules of Practice for Hearings (12 CFR part 263).

(4) *Oaths, depositions, subpoenas.* To take, or authorize designated persons to take, with the concurrence of the Staff Director of the Division of Banking Supervision and Regulation, actions permitted under 12 U.S.C. 1818(n), 1820(c), and 12 U.S.C. 1844(f), including administering oaths and affirmations, taking depositions, and issuing, revoking, quashing, or modifying subpoenas duces tecum.

(5) *Operating circulars.* To approve provisions of Reserve Bank operating circulars related to uniform services.

(b) *Availability of Information*—(1) *FOIA requests.* To make available information of the Board of the nature and in the circumstances described in the Board's Rules Regarding Availability of Information (12 CFR part 261).

(2) [Reserved.]

(c) *Bank holding companies; Change in bank control; Mergers*—(1) *Control determinations under section 2(g) of BHC Act.* To determine whether a company that transfers shares under section 2(g) of the Bank Holding Company Act (12 U.S.C. 1841(g)) is incapable of controlling the transferee.

(2) *Control determinations under section 4(c)(8) of BHC Act.* To determine, or issue an order for a hearing to determine, whether a company engaged in financial, fiduciary, or insurance activities falls within the exemption in section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)), permitting retention or acquisition of control thereof by a bank holding company.

(3) *Notices under CBC Act.* To revoke acceptance of and return as incomplete a notice filed under the Change in Bank Control Act (12 U.S.C. 1817(j)) or to extend the time during which action must be taken on a notice where the General Counsel determines, with the concurrence of the Staff Director of the Division of Banking Supervision and Regulation, that the notice is materially incomplete under that Act or Regulation Y (12 CFR part 225) or contains material information that is substantially inaccurate.

(4) *Tax certifications.* To make prior and final certification for federal tax purposes (26 U.S.C. (IRC) 1101–1103, 6158) with respect to distributions

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pursuant to the Bank Holding Company Act (12 U.S.C. 1841 et seq.).

(5) *Acquisition approval under section 5(d)(3) of the FDI Act.* To exercise, with the concurrence of the Staff Director of the Division of Banking Supervision and Regulation, the functions described in § 265.11(c)(10) of this part (which refers to section 5(d)(3) of the FDI Act) in those cases in which the appropriate Federal Reserve Bank concludes that, because of unusual considerations, or for other good cause, it should not take action.

(d) *Management interlocks*—(1) *General exceptions.* To grant exceptions from the prohibitions of Regulation L (12 CFR part 212) when the primary federal supervisor of the depository institution in need of management assistance approves.

(2) *Temporary exceptions.* To grant requests, after consultation with the Staff Director for the Division of Banking Supervision and Regulation, for temporary director interlocks under Regulation L (12 CFR part 212) for newly chartered banks, banks in low income areas, minority banks, women's banks, organizations experiencing conditions endangering their safety or soundness, organizations sponsoring a credit union, and organizations that lose thirty percent or more of their directors or management officials due to changes in circumstances.

§ 265.7 Functions delegated to Staff Director of Division of Banking Supervision and Regulation.

The Board's Staff Director of the Division of Banking Supervision and Regulation (or the Director's delegee) is authorized:

(a) *Procedure*—(1) *Cease and desist orders.* To refuse, with the prior concurrence of the appropriate Reserve Bank and the Board's General Counsel, an application to the Board to stay, modify, terminate, or set aside any effective cease and desist order previously issued by the Board under section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)), or any written agreement between the Board or the Reserve Bank and a bank holding company or any nonbanking subsidiary thereof or a state member bank.

(2) *Modification of commitments or conditions.* To grant or deny requests for modifying, including extending the time for, performing a commitment or condition relied on by the Board or its delegee in taking any action under the Bank Holding Company Act, the Bank Merger Act, the Change in Bank Control Act of 1978, the Federal Reserve Act, or the International Banking Act. In acting on such requests, the Board's Staff Director may take into account changed circumstances and good faith efforts to fulfill the commitments or conditions, and shall consult with the directors of other interested divisions where appropriate. The Board's Staff Director may not take any action that would be inconsistent with or result in an evasion of the provisions of the Board's original action.

(3) *Notice of insufficient capital.* To issue, with the concurrence of the Board's General Counsel, a notice that a state member bank or bank holding company has insufficient capital and which directs the bank or company to file with its regional Reserve Bank a capital improvement plan under subpart D of the Board's Rules of Practice for Hearings (12 CFR part 263).

(4) *Obtaining possession or control of securities; extending time period.* To approve, under § 403.5(g) of the Treasury Department regulations (17 CFR part 403) implementing the Government Securities Act of 1986, as amended (Pub. L. 95–571), the application of a member bank, a state branch or agency of a foreign bank, a foreign bank, or a commercial lending company owned or controlled by a foreign bank, to extend for one or more limited periods commensurate with the circumstances the 30-day time period specified in 17 CFR 403.5(c)(1)(iii), provided the Staff Director is satisfied that the applicant is acting in good faith and that exceptional circumstances warrant such action.

(b) *Availability of Information.*—(1) *FOIA requests.* To make available information of the Board of the nature and in the circumstances described in § 261.11 of the Board's Rules Regarding Availability of Information (12 CFR part 261).

(2) *FOIA; Availability of information.* To make available, under the Board's Rules Regarding Availability of Information (12 CFR part 261), reports and other information of the Board acquired pursuant to the Board's Regulations G, T, U, and X (12 CFR parts 207, 220, 221, 224) of the nature and in circumstances described in §§ 261.8(a) (2) and (3) of these rules.

(c) *Bank holding companies; Change in bank control; Mergers*—(1) *Bank holding company registration forms and annual reports.* To promulgate registration forms and annual reports and other forms for use in connection with the Bank Holding Company Act, after receiving clearance from the Office of Management and Budget (where necessary), under section 5 of the Bank Holding Company Act (12 U.S.C. 1844) and in accordance with 5 U.S.C. 553.

(2) *Emergency action.* To take actions the Reserve Bank could take under this part at § 265.11(d)(5) and (f) if immediate or expeditious action is required to avert failure of a bank or savings association or because of an emergency pursuant to sections 3(a) and 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1842(a), 1843(c)(8)) on the Change in Bank Control Act (12 U.S.C. 1817(j)).

(3) *Waiver of notice.* To waive, dispense with, modify or excuse the failure to comply with the requirement for publication and solicitation of public comment regarding a notice filed under the Change in Bank Control Act (12 U.S.C. 1817(j)), with the concurrence of the Board's General Counsel, provided a written finding is made that such disclosure would seriously threaten the safety or soundness of a bank holding company or a bank.

(4) *Notices for addition or change of directors or officers.* Under section 914(a) of the Financial Institutions Reform, Recovery and Enforcement Act (12 U.S.C. 1831i) and subpart H of Regulation Y (12 CFR part 225), provided that no senior officer or director or proposed senior officer or director of the notificant is also a director of the Reserve Bank or a branch of the Reserve Bank:

(i) To determine the informational sufficiency of notices filed pursuant to § 225.71 of Regulation Y (12 CFR part 225); and

(ii) To waive the prior notice requirements of that section.

(5) *Acquisition approval under section 5(d)(3) of FDI Act.* To exercise, with the concurrence of the General Counsel, the functions described in § 265.11(c)(10) of this part (which refers to section 5(d)(3) of the FDI Act) in those cases in which the appropriate Federal Reserve Bank concludes that, because of unusual considerations, or for other good cause, it should not take action.

(d) *International banking*—(1) *Foreign bank reports.* To require submission of a report of condition respecting any foreign bank in which a member bank holds stock acquired under § 211.5(b) of Regulation K (12 CFR part 211) and section 25 of the Federal Reserve Act (12 U.S.C. 602).

(2) *Edge corporation reports.* To require submission and publication of reports by an Edge corporation under section 25(a) of the Federal Reserve Act (12 U.S.C. 625).

(3) *Capital stock of Edge corporation; articles of association; additional investments in Agreement corporation.* To approve under sections 25 and 25(a) as of the Federal Reserve Act (12 U.S.C. 601 & 604), increases and decreases in the capital stock of and amendments to the articles of association of an Edge corporation and additional investments by a member bank in the stock of an Agreement corporation.

(4) *Waiver or suspension of prior notice; specified consent*—(i) To waive the 45 days' prior notice period for establishing a branch in an additional foreign country under § 211.3(a)(3) of Regulation K (12 CFR part 211).

(ii) To waive or suspend the 45 days' notice period for an investment that qualifies for the prior notice procedures in § 211.5(c)(2) of Regulation K (12 CFR part 211) or require that an investor file an application for the Board's specific consent.

(5) *Investment by foreign subsidiaries in U.S. affiliates.* To permit, after consultation with the Board's General Counsel, a foreign subsidiary of a bank holding company to invest in shares of a U.S. affiliate of the bank holding company where the investment is made as part of an internal corporate reorganization or an internal transfer of funds, subject to any conditions and terms the Staff Director and General Counsel deem appropriate and consistent with the purposes of Regulation K (12 CFR part 211).

(6) *Allocated transfer risk reserves.* To determine the need for establishing and the amount of any allocated transfer risk reserve against specific international assets, and notify the banking institutions of the determination and the amount of the reserve and whether the reserve may be reduced under subpart D of Regulation K (12 CFR part 211).

(7) *Underwriting and dealing authority outside the United States; hedging techniques.* To approve, under § 211.5(d)(14) of Regulation K (12 CFR part 211):

(i) Requests for authority to engage in the activities of underwriting, distributing, and dealing in shares outside the United States, provided that the Staff Director has determined that the internal procedures and operations of the organization and the effect of the proposed activities on capital adequacy are consistent with approval.

(ii) Hedging methods authorized under § 211.5(d)(14)(iii)(A) of Regulation K (12 CFR part 211).

(e) *Member banks*—(1) *Membership certification to FDIC.* To certify, under section 4(b) of the Federal Deposit Insurance Act (12 U.S.C. 1814(b)), to the Federal Deposit Insurance Corporation that the factors specified in section 6 of the Act (12 U.S.C. 1816) were considered with respect to the admission of a state-chartered bank to Federal Reserve membership.

(2) *Dollar exchange.* To permit any member bank to accept drafts or bill of exchange drawn upon it for the purpose of furnishing dollar exchange under section 13(12) of the Federal Reserve Act (12 U.S.C. 373).

(3) *ERISA violations.* To provide to the Department of Labor written notification of possible significant violations of the Employee Retirement Income Security Act (ERISA) member banks, in accordance with section 3004(b) of ERISA and the Interagency Agreement adopted to implement its provisions.

(4) *Examiners.* To select or approve the appointment of Federal Reserve examiners, assistant examiners, and special examiners for the purpose of making examinations for or by the direction of the Board under 12 U.S.C. 325, 338, 625, 1844(c), and 3105(b)(1).

(5) *Capital stock reduction; branch applications; declaration of dividends; investment in bank premises.* To exercise the functions described in § 265.11(e) (5), (11), and (12) of this part (reductions in capital, issuance of subordinated debt, and early retirement of subordinated debt) when the conditions specified in those sections preclude a Reserve Bank's acting on a member bank request for action or the Reserve Bank considers that it should not take action, and to exercise the functions in §§ 265.11(e) (2), (3), and (4) of this part (approving branch applications, declaration of dividends, and investment in bank premises) in cases in which the appropriate Reserve Bank considers that it should not take action.

(6) *Security devices; Regulation P.* To exercise the functions described in § 265.11(a)(8) of this part in those cases in which the appropriate Reserve Bank concludes that it should not take action for good cause.

(f) *Securities*—(1) *Registration statements by member banks.* Under section 12(g) of the Securities Exchange Act (15 U.S.C. 78*l*(g)):

(i) To accelerate the effective date of a registration statement filed by a member bank with respect to its securities;

(ii) To accelerate termination of the registration of a security that is no longer held of record by 300 persons; and

(iii) To extent the time for filing a registration statement by a member bank.

(2) *Exemption from registration.* To issue notices with respect to application by a statement member bank for exemption from registration under section 12(h) of the Securities Exchange Act (15 U.S.C. 78*l*(h)).

(3) *Accelerating registration of security on national securities exchange.* To accelerate the effective date of an application by a state member bank for registration of a security on a national securities exchange under section 12(d) of the Securities Exchange Act (15 U.S.C. 78*l*(d)).

(4) *Unlisted trading in security of state member bank.* To issue notices with respect to an application by a national securities exchange for unlisted trading privileges in a security of a state member bank under section 12(f) of the Securities Exchange Act (15 U.S.C. 78*l*(f)).

(5) *Transfer agent registration; acceleration; withdrawal or cancellation.* (i) To accelerate, under section 17A(c)(2) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78q–1), the effective date of a registration statement for transfer agent activities filed by a member bank or a subsidiary thereof, a bank holding company or a subsidiary thereof that is a bank as defined in section 3(a)(6) of the Act other than a bank specified in clause (i) or (iii) of section 3(a)(34)(B) of the Act (15 U.S.C. 78c).

(ii) To withdraw or cancel, under section 17A(c)(3)(C) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78q–1(c)(3)(C)), the transfer agent registration of a member bank or a subsidiary thereof, a bank holding company, or a subsidiary thereof that is a bank as defined in section 3(a)(6) of that Act other than a bank specified in clause (i) or (iii) of section 3(a)(34)(B) of the Act (15 U.S.C. 78c), that has filed a written notice of withdrawal with the Board or upon a finding that such transfer agent is no longer in existence or has ceased to do business as a transfer agent.

(6) *Proxy solicitation; financial statements.* (i) To permit the mailing of proxy and other soliciting materials by a state member bank before the expiration of the time prescribed therein under § 208.16 of Regulation H (12 CFR part 208).

(ii) To permit the omission of financial statements from reports by a state member bank, or to require other financial statements in addition to, or in substitution for, the statements required therein under § 208.16 of Regulation H (12 CFR part 208).

(7) *Municipal securities dealers.* Under section 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78w).

(i) To grant or deny requests for waiver of examination and waiting period requirements for municipal securities principals and representatives under Municipal Securities Rulemaking Board Rule G–3;

(ii) To grant or deny requests for a determination that a natural person or

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municipal securities dealer subject to a statutory disqualification is qualified to act as a municipal securities representative or dealer under Municipal Securities Rulemaking Board Rule G-4;

(iii) To approve or disapprove clearing arrangements under Municipal Securities Rulemaking Board Rule G-8, in connection with the administration of these rules for municipal securities dealers for which the Board is the appropriate regulatory agency under section 3(a)(34) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(34)).

(8) *Making reports available to SEC.* To make available, upon request, to the Securities and Exchange Commission reports of examination of transfer agents, clearing agencies, and municipal securities dealers for which the Board is the appropriate regulatory agency for use by the Commission in exercising its supervisory responsibilities under the Act under section 17(c)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(c)(3)).

(9) *Issuing examination manuals, forms, and other materials.* To issue examination or inspection manuals, registration, report, agreement, and examination forms, guidelines, instructions, and other similar materials for use in administering sections 7, 8, 15B, and 17A(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78g, 78h, 78o-4, and 78q-1).

(10) *List of OTC margin stocks.* To approve issuance of the list of OTC margin stocks and foreign margin stocks and add, omit, or remove any stock in circumstances indicating that such change is necessary or appropriate in the public interest under § 207.6 of Regulation G (12 CFR part 207), § 220.17(d) of Regulation T (12 CFR part 220), or § 221.7(d) of Regulation U (12 CFR part 221).

§ 265.8 Functions delegated to the Staff Director of the Division of International Finance.

The Board's Staff Director of the Division of International Finance (or the Director's delegee) is authorized:

(a) *Establishment of foreign accounts.* To approve the establishment of foreign accounts and the terms of any account-related agreements with the Federal Reserve Bank of New York under section 14(e) of the Federal Reserve Act (12 U.S.C. 358).

(b) [*Reserved.*]

§ 265.9 Functions delegated to the Director of Division of Consumer and Community Affairs.

The Director of the Board's Division of Consumer and Community Affairs (or the Director's delegee) is authorized:

(a) *Issuing examination manuals, forms, and other materials.* To issue, pursuant to section 11(a) of the Federal Reserve Act (12 U.S.C. 248(a)); sections 108(b), 621(c), 704(b), 814(c), and 917(b) of the Consumer Credit Protection Act (15 U.S.C. 1607(b), 1681s(c), 1691c(b), and 1693o(b)); section 305(c) of the Home Mortgage Disclosure Act (12 U.S.C. 2804(c)); section 18(f)(3) of the Federal Trade Commission Act (15 U.S.C. 57a(f)(3); section 808(c) of the Civil Rights Act of 1968 (42 U.S.C. 3608(c)); and section 5 of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)), examination or inspection manuals; report, agreement, and examination forms; guidelines, instructions, and other similar materials, in consultation with the Legal Division where appropriate, for use in connection with:

(1) Sections 1-921 of the Consumer Credit Protection Act, excluding sections 201-500 (15 U.S.C. 1601-1693r);

(2) Sections 301-312 of the Home Mortgage Disclosure Act (12 U.S.C. 2801-2811);

(3) Section 18(f)(1)-(3) of the Federal Trade Commission Act (15 U.S.C. 57a(f)(1)-(3));

(4) Section 805 of the Civil Rights Act of 1968 (42 U.S.C. 3605) and rules and regulations issued thereunder;

(5) Section 1364 of the National Flood Insurance Act of 1968 (42 U.S.C. 4101(a)), and sections 105(b) and 202(b) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(b), 4106(b));

(6) Section 19(j) of the Federal Reserve Act (12 U.S.C. 371b); and

(7) Sections 801-806 of the Community Reinvestment Act (12 U.S.C. 2901-2905).

(b) *Consumer Advisory Council.* Pursuant to section 703(b) of the Consumer Credit Protection Act (15 U.S.C. 1691(b)), to call meetings of and consult with the Consumer Advisory Council established under that section, approve the agenda for such meetings, and accept any resignations from Consumer Advisory Council Members.

(c) *Determining inconsistencies between state and federal laws.* To determine whether a state law is inconsistent with the following federal acts and regulations:

(1) Sections 111, 171(a), and 186(a) of the Truth in Lending Act (15 U.S.C. 1610(a), 1666j(a), 1667e(a)); § 226.28 of Regulation Z (12 CFR part 226);

(2) Section 919 of the Electronic Fund Transfer Act (15 U.S.C. 1693q), § 205.12 of Regulation E (12 CFR part 205);

(3) Section 705(f) of the Equal Credit Opportunity Act (15 U.S.C. 1691d(f) and § 202.11 of Regulation B (12 CFR part 202);

(4) Section 306(a) of the Home Mortgage Disclosure Act (12 U.S.C. 2805(a)) and Regulation C (12 CFR part 203).

§ 265.10 Functions delegated to Secretary of Federal Open Market Committee

The Secretary of the Federal Open Market Committee (or the Deputy Secretary in the Secretary's absence) is authorized:

(a) Records of policy actions. To approve for inclusion in the Board's Annual Report to Congress, records of policy actions of the Federal Open Market Committee.

(b) [*Reserved.*]

§ 265.11 Functions delegated to Federal Reserve Banks.

Each Federal Reserve Bank is authorized as to a member bank or other indicated organization for which the Reserve Bank is reponsible for receiving applications or registration statements or to take other actions as indicated:

(a) *Procedure*—(1) *Member bank affiliate's reports.* To extend the time for good cause shown, within which an affiliate of a state member bank must file reports under section 9(17) of the Federal Reserve Act (12 U.S.C. 334).

(2) *Edge corporation's divestiture of stock.* To extend the time in which an Edge Act corporation must divest itself of stock acquired in satisfaction of a debt previously contracted under section 25(a)(9) of the Federal Reserve Act (12 U.S.C. 615).

(3) *Edge corporation's corporate existence.* To extend the period of corporate existence of an Edge corporation under section 25(a)(22) of the Federal Reserve Act (12 U.S.C. 628).

(4) *Bank holding company registration statement.* To extend the time within which a bank holding company must file a registration statement under section 5(a) of the Bank Holding Company Act (12 U.S.C. 1844(a)).

(5) *Bank holding company divestiture of nonbanking interests.* To extend the time within which a bank holding company must divest itself of interests in nonbanking organizations under section 4(a) of the Bank Holding Company Act (12 U.S.C. 1843(a)).

(6) *Bank holding company divestiture of dpc interests.* To extend the time within which a bank holding company or any of its subsidiaries must divest

itself of interests acquired in satisfaction of a debt previously contracted:

(i) Under section 4(c)(2) of the Bank Holding Company Act (12 U.S.C. 1843(c)(2)) or § 225.22(c)(1) of Regulation Y (12 CFR part 225); or

(ii) Under sections 2(a)(5)(D) and 3(a) of the Bank Holding Company Act (12 U.S.C. 1841(a)(5)(D) and 1842(a)).

(7) *Member bank's surrender of Reserve Bank stock upon withdrawal from membership.* To extend the time within which a member bank that has given notice of intention to withdraw from membership must surrender its Federal Reserve Bank stock and its certificate of membership under Regulation H (12 CFR 208.11(c)).

(8) *Members bank's reports of condition.* To extend the time for publication of reports of condition under Regulation H (12 CFR part 208) for good cause shown.

(9) *Bank holding company's annual reports.* To grant to a bank holding company a 90-day extension of time in which to file an annual report, and for good cause shown grant an additional extension of time not to exceed 90 days under section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(c)).

(10) *Regulation K—Divestiture of foreign portfolio investment, joint venture, or subsidiary acquired through debt previously contracted.* To extend the time within which an investor must divest itself of interests in a foreign portfolio investment, joint venture, or subsidiary acquired in satisfaction of a debt previously contracted under Regulation K (12 CFR 211.5(e)).

(11) *Bank holding company's acquisition of shares, opening new bank, consummating merger.* To extend the time within which a bank holding company may acquire shares, open a new bank to be acquired, or consummate a merger in connection with an application approved by the Board, if no material change relevant to the proposal has occurred since its approval.

(12) *Member bank's establishing domestic or foreign branch; Edge or agreement corporation's establishing branch or agency.* To extend the times within which:

(i) A member bank may establish a domestic branch;

(ii) A member bank may establish a foreign branch; or

(iii) An Edge or agreement corporation may establish a branch or agency, if no material change has occurred in the bank's (or corporation's) general condition since the application was approved.

(13) *Purchase of stock by Edge or Agreement Corporation, member bank, or bank holding company.* To extend the time within which an Edge or Agreement corporation, member bank, or a bank holding company may accomplish a purchase of stock if no material change has occurred in the general condition of the corporation, the member bank, or bank holding company since such authorization under sections 25 or 25(a) of the Federal Reserve Act or section 4(c)(13) of the Bank Holding Company Act (12 U.S.C. 615, 628, 1843).)

(14) *Federal Reserve Membership.* To extend the time within which Federal Reserve membership must be accomplished, if no material change has occurred in the bank's general condition since the application was approved.

(15) *Enforcement actions; written agreements; cease and desist orders.* With the prior approval of both the Board's Staff Director of the Division of Banking Supervision and Regulation and the Board's General Counsel:

(i) To enter into a written agreement with a bank holding company or any nonbanking subsidiary thereof, with a state member bank, or with any other person or entity subject to the Board's supervisory jurisdiction under 12 U.S.C. 1818(b) concerning the prevention or correction of an unsafe or unsound practice in conducting the business of the bank holding company, nonbanking subsidiary, or state member bank or other entity, or concerning the correction or prevention of any violation of law, rule, or regulation, or any condition imposed in writing by the Board in connection with the granting of any application or other request by the bank or company or any other appropriate matter;

(ii) To stay, modify, terminate, or suspend an agreement entered into pursuant to this paragraph;

(iii) To stay, modify, terminate, or suspend an outstanding cease and desist order that has become final pursuant to 12 U.S.C. 1818 (b) and (k). Any agreement authorized under this paragraph may, by its terms, be enforceable to the same extent and in the same manner as an effective and outstanding cease and desist order that has become final pursuant to 12 U.S.C. 1818 (b) and (k).

(16) *Appointment of assistant Federal Reserve agents.* To approve the appointment of assistant Federal Reserve agents (including representatives or alternate representatives of such agents) under section 4, paragraph 21 of the Federal Reserve Act (12 U.S.C. 306).

(b) *Availability of Information*—(1) *Availability of Information; Board records.* To make available information of the Board of the nature and in the circumstances described in the Board's Rules Regarding Availability of Information (12 CFR 261.11).

(2) [*Reserved.*]

(c) *Bank holding companies; Change in bank control; Mergers*—(1) *Require reports under oath.* To require reports under oath to determine whether a company is complying with section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(c)).

(2) *Acquisition of going concern—authorization of consummation; early consummation.* To notify a bank holding company that, because the circumstances surrounding the application to acquire a going concern indicate that additional information is required or that the acquisition should be considered by the Board, the acquisition should not be consummated until specifically authorized by the Reserve Bank or by the Board.

(ii) To permit a bank holding company to make a proposed acquisition of a going concern before the expiration of the 30-day period referred to in Regulation Y (12 CFR 225.23(a)(2)) because exigent circumstances justify consummation of the acquisition at an earlier time.

(3) *Petition for review of decision that adverse comments are not substantive; permit proposed de novo activities; authorization of consummation; early consummation.* Under § 225.4(b)(1) of Regulation Y (12 CFR part 225) and subject to § 265.3 of this part, if a person submitting adverse comments that the Reserve Bank had decided are not substantive files a petition for review by the Board of that decision:

(i) To permit a bank holding company to engage *de novo* in activities specified in § 225.25 of Regulation Y (12 CFR part 225), or retain shares in a company established *de novo* and engaging in such activities, if the Reserve Bank's evaluation of the considerations specified in section 4(c)(8) of the Bank Holding Company Act leads it to conclude that the proposal can reasonably be expected to produce benefits to the public.

(ii) To notify a bank holding company that the proposal should not be consummated until specifically authorized by the Reserve Bank or by the Board or that the proposal should be processed in accordance with the procedures in § 225.23(a)(2) of Regulation Y (12 CFR part 225).

(iii) To permit a bank holding company to consummate the proposal before the expiration of the 45-day period referred to in § 225.23(a)(1) of Regulation Y because exigent circumstances justify consummation at

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an earlier time under § 225.4(b)(1) of Regulation Y (12 CFR part 225).

(4) *Permit or stay of modification or location of activities.* To permit or stay a proposed *de novo* modification or relocation of activities engaged in by a bank holding company on the same basis as *de novo* proposals under § 265.11(d)(3) of this part.

(5) *Notices under change in Bank Control Act.* With respect to the bank holding company or a state member bank:

(i) To determine the informational sufficiency of notices and reports filed under the Change in Bank Control Act;

(ii) To extend periods for consideration of notices;

(iii) To determine whether a person who is or will be subject to a presumption described in § 225.41(b) of Regulation Y (12 CFR part 225) should file a notice regarding a proposed transaction; and

(iv) To issue a notice of intention not to disapprove a proposed change in control if all the following conditions are met:

(A) No member of the Board has indicated an objection prior to the Reserve Bank's action;

(B) No senior officer or director of an involved party is also a director of a Federal Reserve Bank or branch;

(C) All relevant departments of the Reserve Bank concur;

(D) If the proposal involves shares of a state member bank or a bank holding company controlling a state member bank, the appropriate bank supervisory authorities have indicated that they have no objection to the proposal, or no objection has been received from them within the time allowed by the act; and

(E) No significant policy issue under the change in Bank Control Act, 12 U.S.C. 1817(j) or § 225.41 of Regulation Y (12 CFR part 225) is raised by the proposal as to which the Board has not expressed its view.

(6) *Failure to comply with publication requirement under change in Bank Control Act.* To waive, dispense with, modify, or excuse the failure to comply with the requirement for publication and solicitation of public comment regarding a notice filed under the Change in Bank Control Act, with the concurrence of the Board's Staff Director of the Division of Banking Supervision and Regulation and the Board's General Counsel, provided that a written finding is made that such disclosure or solicitation would seriously threaten the safety or soundness of a bank holding company or bank under the Change in Bank Control Act (12 U.S.C. 1817(j)(2)).

(7) *Grandfathered nonbanking activities.* To determine under section 4(a)(2) of the Bank Holding Company Act (12 U.S.C. 1843(a)(2)) that termination of grandfathered nonbanking activities of a particular bank holding company is not warranted, provided the Reserve Bank is satisfied all of the following conditions are met:

(i) The company or its successor is "a company covered in 1970";

(ii) The nonbanking activities for which indefinite grandfather privileges are being sought do not present any significant unsettled policy issues; and

(iii) The bank holding company was lawfully engaged in such activities as of June 30, 1968 and has been engaged in such activities continuously thereafter.

(8) *Opening of additional nonbanking offices.* To approve applications by a bank holding company under sections 4(c)(8) and 5(b) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8), 1844(b)) and § 225.23(b) of Regulation Y (12 CFR part 225) to open additional offices to engage in nonbanking activities for which the bank holding company previously received approval pursuant to Board order, unless one of the conditions specified in § 265.11(f) (1), (2), (3), or (4), of this part is present.

(9) *Notices for addition or change of directors or officers.* Under section 914(a) of the Financial Institutions Reform, Recovery and Enforcement Act (12 U.S.C. 1831i) and subpart H of Regulation Y (12 CFR part 225), provided that no senior officer or director or proposed senior officer or director of the notificant is also a director of the Reserve Bank or a branch of the Reserve Bank:

(i) To determine the informational sufficiency of notices filed pursuant to § 225.71 of Regulation Y; and

(ii) To waive the prior notice requirements of that section.

(10) *Acquisition approvals under section 5(d)(3) of the FDI Act.* To approve, under section 5(d)(3)(E) of the Federal Deposit Insurance Act, requests by a bank holding company to engage in any transaction described in section 5(d)(3)(A) of that Act.

(11) *Applications requiring Board approval; competitive factors reports for bank mergers.* To approve applications requiring prior approval of the Board and furnish to the Comptroller of the Currency and the Federal Deposit Insurance Corporation reports on competitive factors involved in a bank merger required to be approved by one of those agencies, unless one or more of the following conditions is present.

(i) A member of the Board has indicated an objection prior to the Reserve Bank's action; or

(ii) The Board has indicated that such delegated authority shall not be exercised by the Reserve Bank in whole or in part; or

(iii) A written substantive objection to the application has been properly made; or

(iv) The application raises a significant policy issue or legal question on which the Board has not established its position; or

(v) With respect to bank holding company formations, bank acquisitions or mergers, the proposed transaction involves two or more banking organizations:

(A) That rank among a state's five largest banking organizations, or among the 50 largest banking organizations, in the United States (as measured by total domestic deposits within the relevant area); or

(B) That, upon consummation of the proposal, would control over 30 percent of total deposits in banking offices in the relevant geographic market, or would result in an increase of at least 200 points in the Herfindahl-Hirschman Index (HHI) in a highly concentrated market (a market with a postmerger HHI of at least 1800); or

(C) Where divestitures designed to address any substantial anticompetitive effects are not effected on or before consummation of the proposed transaction; or

(vi) With respect to nonbank acquisitions:

(A) The nonbanking activities involved do not clearly fall within activities that the Board has designated as permissible for bank holding companies under § 225.25(b) of Regulation Y; or

(B) The proposal would involve the acquisition by a banking organization that has total domestic banking assets of $1 billion or more of a nonbanking organization that appears to have a significant presence in a permissible nonbanking activitiy. (FDI Act, 18(c) (12 U.S.C. 1828(c)); BHC Act, 3(a), 4(c)(8) (12 U.S.C. 1842(a), 1843(c)(8)); Bank Service Corp. Act, 5(a), 5(b), 7(d)(12 U.S.C. 1865(a),(b), 1867(d)); Regulation Y, § 225.14, 225.23 (12 CFR part 225).

(d) *International banking*—(1) *Application to establish Edge Corporation.* To approve the application by a U.S. banking organization to establish an Edge corporation under section 25 of the Federal Reserve Act (12 U.S.C. 611) and the Board's Regulation K (12 CFR part 211) if all of the following criteria are met:

(i) The U.S. banking organization meets the capital adequacy guidelines and is otherwise in satisfactory condition;

(ii) The proposed Edge corporation will be a wholly-owned subsidiary of a single banking organization; and

(iii) No other significant policy issue is raised on which the Board has not previously expressed its view.

(2) *Issuance of permit to Edge corporation to commence business.* To issue to an Edge corporation under section 25(a) of the Federal Reserve Act (12 U.S.C. 612) and Regulation K, § 211.4(a) (12 CFR part 211) a final permit to commence business and to approve amendments to the articles of association of any Edge corporation to reflect the following:

(i) Any increase in capital stock where all additional shares are to be acquired by existing shareholders;

(ii) Any change in the location of the home office in the city where the Edge corporation is presently located;

(iii) Any change in the number of members of the board of directors;

(iv) Any change in the name; and

(v) Deletion of the requirements that all directors and shareholders must be U.S. citizens.

(3) *Edge corporation establishing branch abroad.* To approve, under § 211.3(a) Regulation K (12 CFR part 211), an Edge corporation application to establish a branch abroad, provided that no senior officer or director of the involved parties is also a director of a Reserve Bank or branch and that no significant policy issue is raised by the proposal as to which the Board has not expressed its view.

(4) *Member bank establishing foreign branch.* To approve under § 211.3(a) of Regulation K (12 CFR part 211) a member bank's establishing, directly or indirectly, a foreign branch where the application is not one for a full-service branch in a foreign country, provided that no senior officer or director of the involved parties is also a director of a Reserve Bank or branch and that no significant policy issue is raised by the proposal as to which the Board has not expressed its view.

(5) *Agreement with foreign bank concerning deposits of out-of-home-state branch.* To enter into an agreement or undertaking with a foreign bank that it shall receive only such deposits at its out-of-home-state branch as would be permissible for an Edge corporation under section 5 of the International Banking Act (12 U.S.C. 3103).

(6) *Waiver of 30-day prior notification period.* To waive the 30-day prior notification period with respect to a foreign bank's change of home state under § 211.22(c)(1) of Regulation K (12 CFR part 211).

(7) *Granting specific consent.* To grant prior specific consent to an investor for an investment in its first subsidiary or its first joint venture, where such investment does not exceed the general consent limitations under 211.5(c) of Regulation K (12 CFR part 211).

(8) *Requiring application for specific consent.* To suspend the notification period or require that an investor file an application for the Board's specific consent under § 211.5(c)(2) of Regulation K (12 CFR part 211).

(9) *Investment in export trading company.* To issue a notice of intention not to disapprove a proposed investment in an export trading company if all the following criteria are met:

(i) The proposed export trading company will be a wholly-owned subsidiary of a single investor, or ownership will be shared with an individual or individuals involved in the operation of the export trading company;

(ii) A bank holding company investor and its lead bank meet the minimum capital adequacy guidelines of the Board, the Comptroller of the Currency, or the Federal Deposit Insurance Corporation or have enacted capital enhancement plans that have been determined by the appropriate supervisory authority to be acceptable.

(iii) The proposed activities of the export trading company do not include product research or design, product modification, or activities not specifically covered by the list of services contained in 4[c][14][F][ii] of the Bank Holding Company Act [12 U.S.C. 1843(c)[14][F][ii]];

(iv) No other significant policy issue is raised on which the Board has not previously expressed its view under section 4[c](14) of the Bank Holding Company Act [12 U.S.C. 1843(c)[14] and Regulation K [12 CFR 211.31–211.34).

(10) *Futures commission merchant activities.* To approve, under § 211.5(d)[17] of Regulation K (12 CFR part 211), applications to engage in futures commission merchant activities on an exchange that requires members to guarantee or otherwise contract to cover losses suffered by the other members, provided that the Board has previously approved the exchange and the application is on the same terms and conditions on which the Board based its approval of the exchange.

(e) *Member banks*—(1) *Approval of membership applications.* To approve applications for membership in the Federal Reserve System under section 9 of the Federal Reserve Act (12 U.S.C. 321 et seq.) and Regulation H (12 CFR part 208) if the Reserve Bank is satisfied with respect to each of the following criteria:

(i) The financial history and condition of the applying bank and the general character of its management;

(ii) The adequacy of its capital structure in relation to the character and condition of its assets and to its existing and prospective deposit liabilities and other corporate responsibilities and its future earnings prospects;

(iii) The convenience and needs of the community to be served by the bank; and

(iv) Whether its corporate powers are consistent with the purposes of the Federal Reserve Act and the Federal Deposit Insurance Act.

(2) *Waiver of notice of intention to withdraw from membership.* To approve or deny applications by state banks for waiver of the required six months' notice of intention to withdraw from Federal Reserve membership under section 9[16] of the Federal Reserve Act (12 U.S.C. 328).

(3) *Approval of branch applications.* To approve a state member bank's establishment of a domestic branch under section 9 of the Federal Reserve Act (12 U.S.C. 321 *et seq.*) and the Regulation H (12 CFR part 208) if the Reserve Bank is satisfied that approval is warranted after considering:

(i) The bank's capitalization in relation to the character and condition of its assets and to its deposit liabilities and other corporate responsibilities, including the volume of its risk assets and of its marginal and inferior quality assets, all considerd in relation to the strength of its management;

(ii) The ability of the bank's management to cope successfully with existing or foreseeable problems, and to staff the proposed branch without any significant deterioration in the overall management situation;

(iii) The convenience and needs of the community;

(iv) The competitive situation (either actual or potential);

(v) The prospects for profitable operations of the proposed branch within a reasonable time, and the ability of the bank to sustain the operational losses of the proposed branch until it becomes profitable; and

(vi) The reasonableness of the bank's investment in bank premises after the expenditure for the proposed branch.

(4) *Declaration of dividends in excess of net profits.* To permit a state member bank under section 9[9] of the Federal Reserve Act (12 U.S.C. 324 and 60) to declare dividends in excess of net profits for the calendar year combined with the retained net profits of the preceding two years, less any required transfers to surplus or a fund for the

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retirement of any preferred stock, if the Reserve Bank is satisfied that approval is warranted after giving consideration to:

(i) The banks capitalization in relation to the character and condition of its assets and to its deposit liabilities and other corporate responsibilities, including the volume of its risk assets and of its marginal and inferior quality assets, all considered in relation to the strength of its management; and

(ii) The bank's capitalization after payment of the proposed dividends.

(5) *Reduction of capital stock.* To permit a state member bank under section 9(11) of the Federal Reserve Act (12 U.S.C. 329) to reduce its capital stock if its capitalization thereafter will be:

(i) In conformity with the requirements of federal law; and

(ii) Adequate in relation to the character and condition of its assets and to its deposit liabilities and other corporate responsibilities, including the volume of its risk assets and of its marginal and inferior quality assets, all considered in relation to the strength of its management.

(6) *Acceptance of drafts and bills of exchange.* To permit a member bank or a federal or state branch or agency of a foreign bank that is subject to reserve requirements under section 7 of the International Banking Act of 1978 (12 U.S.C. 3105) to accept drafts or bills of exchange under section 13(7) of the Federal Reserve Act (12 U.S.C. 372) in an aggregate amount at any one time up to 200 percent of its paid-up and unimpaired capital stock and surplus, if the Reserve Bank is satisfied that such permission is warranted after giving consideration to the institution's capitalization in relation to the character and condition of its assets and to its deposit liabilities and other corporate responsibilities, including the volume of its risk assets and of its marginal and inferior-quality assets, all considered in relation to the strength of its management.

(7) *Investment in bank premises in excess of capitol stock.* To permit a state member bank to invest in bank premises under section 24A of the Federal Reserve Act (12 U.S.C. 371a) in an amount in excess of its capital stock, if the Reserve Bank is satisfied that approval is warranted after giving consideration to the bank's capitalization in relation to the character and condition of its assets and to its deposit liabilities and other corporate responsibilities, including the volume of its risk assets and of its marginal and inferior quality assets, all considered in relation to the strength of its management.

(8) *Security devices.* To determine whether security devices and procedures of state member banks are deficient in meeting the requirements of Regulation P (12 CFR part 216) and whether such requirements should be varied in the circumstances of a particular banking office, and whether to require corrective action.

(9) *Classifying member banks for election of directors.* To classify member banks for the purposes of electing Federal Reserve Bank class A and class B directors under section 4(16) of the Federal Reserve Act (12 U.S.C. 304), giving consideration to:

(i) The statutory requirement that each of the three groups shall consist as nearly as may be of banks of similar capitalization; and

(ii) The desirability that every member bank have the opportunity to vote for a class A or a class B director at least once every three years.

(10) *Waiver of penalty for deficient reserves.* To waive the penalty for deficient reserves by a member bank if, after a review of all the circumstances relating to the deficiency, the Reserve Bank concludes that waiver is warranted, except that in no case may a penalty be waived if the deficiency in reserves arises out of the bank's gross negligence or conduct inconsistent with the principles and purposes of reserve requirements.

(11) *Approval of subordinated debt.* To approve a state member bank's proposed subordinated debt issue as an addition to the bank's capital structure if all of the following conditions are met:

(i) The terms of the proposed debt issue satisfy the requirements of § 204.2(a)(1)(vii)(C) of Regulation D (12 CFR part 204) and the Board's guideline criteria for approval of subordinated debt as an addition to capital;

(ii) The appropriate Reserve Bank recommends approval; and

(iii) No significant policy issue is raised by the proposed issue as to which the Board has not expressed its view.

(12) *Retirement of subordinated debt.* To approve the retirement prior to maturity of capital notes described in § 204.2(a)(1)(vii)(C) of Regulation D (12 CFR part 204) and issued by a state member bank, provided the Reserve Bank is satisfied that the capital position of the bank will be adequate after the proposed redemption.

(f) *Securities*—(1) *Application for termination of registration.* To approve applications for termination of registration by persons who are registered pursuant to §§ 207.3(a) (1) and (2) of Regulation G (12 CFR part 207).

(2) *Agreements from nonmember banks; extensions of credit.* To accept agreements concerning extensions of credit to finance securities transactions on behalf of the Board from nonmember banks in the form prescribed by the Board under section 8(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78(a)).

(g) *Management interlocks.*—(1) *Change in circumstances requiring termination of management interlocks; Regulation L.* To grant time for compliance with § 121.6 of Regulation L (12 CFR part 212) of up to an aggregate of 15 months from the date on which the change in circumstances as specified in that section occurs when the additional time appears to be appropriate to avoid undue disruption to the depository organizations involved in the management interlocks.

(2) *Depository Institutions Management Interlocks Act.* After consultation with the General Counsel of the Board, to decide not to disapprove notices to establish director interlocks with diversified savings and loan holding companies. (12 U.S.C. 3204(8)).

By order of the Board of Governors of the Federal Reserve System, May 17, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-12241 Filed 6-4-91; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Order No. 1497-91]

Office of International Affairs; Organization, Functions, and Authority Delegations

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order will amend part 0 of title 28 of the Code of Federal Regulations to reflect the establishment of the Office of International Affairs at the Department of Justice. This new Office has been created to increase efficiency within the Department. The order will provide the public with an accessible list of the duties of the Director of International Affairs. It is being added to the Code of Federal Regulations in order to reflect accurately the agency's internal management structure.

EFFECTIVE DATE: May 23, 1991.

FOR FURTHER INFORMATION CONTACT: Robert S. Ross, Jr., Assistant to the Attorney General, U.S. Department of Justice, Washington, DC 20530, Telephone: (202) 514-8672.

SUPPLEMENTARY INFORMATION: This order pertains to a matter of internal Department management. It does not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). It is not a major rule within the meaning of or subject to Executive Order No. 12291.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Whistleblowing.

Accordingly, by virtue of the authority vested in me as Attorney General by 5 U.S.C. 301 and 28 U.S.C. 509, 510, part 0 of title 28 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 0 is revised to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515-519.

§ 0.1 [Amended]

2. Part 0, subpart A, § 0.1 is amended by adding a new entry at the end of the list under "Offices" to read as follows:

§ 0.1 Organizational Units.

* * * * *

Offices

* * * * *

Office of International Affairs.

* * * * *

3. Part 0 is amended by redesignating subparts E-1 (consisting of § 0.27) and E-2 (consisting of § 0.28) as subparts E-2 and E-3, and by adding a new subpart E-1 (consisting of § 0.26) to read as follows:

Subpart E-1—Office of International Affairs

§ 0.26 Organization.

There shall be within the Office of the Attorney General an Office of International Affairs.

(a) *Director.* The Office of International Affairs shall be headed by a Director of International Affairs, appointed by the Attorney General.

(b) *Functions.* The Director of International Affairs shall undertake the following duties:

(1) Serve as an advisor to the Attorney General on all international matters affecting the Department of Justice.

(2) Coordinate all visits by foreign officials and visits by Department of Justice officials to foreign countries.

(3) Coordinate the receipt of all requests for training and technical assistance from foreign nations.

(4) Coordinate all international legal activities undertaken by Department of Justice components.

(5) Coordinate efforts to promote international respect for the rule of law and internationally recognized human rights.

(6) Foster international cooperation in the criminal, civil, administrative and regulatory law areas.

(7) Provide general coordination and policy guidance within the Department of Justice regarding activities carried out abroad pursuant to Administration of Justice Assistance programs.

(8) Maintain a liaison with the Department of State and with other appropriate federal, state and local agencies and non-governmental institutions with regard to policy relating to international law enforcement and international administration of justice.

(9) Perform such other duties and functions as may be specially assigned by the Attorney General.

(c) *Relationship to other Departmental units.* In carrying out the responsibilities under this subpart, the Director shall have the authority to call upon the relevant Departmental units for personnel and other assistance, as approved by the Attorney General or his designee.

(d) *Redelegation of authority.* The Director is authorized to redelegate to any of his subordinates any of the authority, functions or duties vested in the Director by this subpart.

Dated: May 23, 1991.

Dick Thornburgh,

Attorney General.

[FR Doc. 91-12807 Filed 6-4-91; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 286b

[OSD Administrative Instruction No. 81]

Privacy Program

AGENCY: Office of the Secretary of Defense (OSD).

ACTION: Final rule.

SUMMARY: The Office of the Secretary of Defense is publishing a final rule for one exempt system of records subject to the Privacy Act of 1974, as amended. (5 U.S.C. 552a) The system of records is identified as DODDS 25.0 entitled "DoDDS Internal Review Office Project File."

EFFECTIVE DATE: June 5, 1991.

SUPPLEMENTARY INFORMATION: On April 23, 1991, at 56 FR 18556 of the **Federal Register** the Office of the Secretary of Defense published a new exemption rule for a new system of records. No comments were received, therefore, the Office of the Secretary of Defense is adopting the exemption rule as follows:

List of Subjects in 32 CFR Part 286b

Privacy.

Accordingly, the Department of Defense is adding an exemption rule to 32 CFR part 286b as follows:

PART 286b—PRIVACY PROGRAM

1. The authority citation for 32 CFR part 286b continues to read as follows:

Authority: Privacy Act of 1974, Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a)

2. Section 286b.7(c) is amended by adding paragraph designation (6) before SYSID-DMRA&L 02.0, SYSNAME-Educator Application Files, revising newly designated (c)(6), introductory text, and adding a new paragraph (c)(7) as follows:

§ 286b.7 Procedures for exemption.

* * * * *

(c) * * *

(6) *System Identification and Name*—DODDS 02.0, Educator Application Files.

* * * * *

(7) *System Identification and Name*—DODDS 25.0, DoDDS Internal Review Office Project File.

Exemption—Portions of this system that fall within the provisions of 5 U.S.C. 552a(k)(2) are exempt from the following subsections (c)(3), (d), (e)(4)(G), (e)(4)(H), and (f).

Authority—5 U.S.C. 552a(k)(2).

Reasons—From subsection (c)(3) because the release of a disclosure accounting would inform a subject that he or she is under investigation. This information would provide considerable advantage to the subject in providing him or her with knowledge concerning the nature of the investigation and the coordinated investigative efforts and techniques employed by cooperating agencies. This would greatly impede the IRO's criminal law enforcement effectiveness.

From subsection (e)(4)(G) and (e)(4)(H), because notification would alert a subject to the fact that an investigation of that individual is taking place, and might weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy.

From subsection (d) and (f), because access to records and agency rules for access and amendment of records

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unfairly impede the DoDDS IRO criminal investigation activities. Requiring DoDDS IRO to confirm or deny the existence of a record pertaining to a requesting individual may in itself provide an answer to the individual relating to an on-going criminal investigation. The conduct of a successful investigation leading to the indictment of a criminal offender would be jeopardized by agency rules requiring verification of record disclosure of the record to the subject, and record amendment procedures, as normally apply under the requirements of 5 U.S.C. 533(b)(1), (2), and (3), (c) and (e).

* * * * *

Dated: May 30, 1991.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-13155 Filed 6-4-91; 8:45 am]

BILLING CODE 3810-01

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1 91-028]

Safety Zone Regulations: East River, New York, NY

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in the East River, New York. This zone is needed to protect the maritime community from the possible dangers and hazards to navigation associated with a fireworks display. Entry into this zone, or movement within this zone, is prohibited unless authorized by the Captain of the Port, New York.

EFFECTIVE DATES: This regulation becomes effective at 8:30 p.m. local time 4 July 1991. It terminates at 11 p.m. local time 4 July 1991.

FOR FURTHER INFORMATION CONTACT: MST1 S. Whinham of Captain of the Port, New York (212) 668-7934.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to any potential hazards.

Drafting Information

The drafters of this regulation are LTJG C.W. Jennings, project officer, Captain of the Port New York, and LT R.E. Korroch, project attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from the possible dangers and hazards to navigation associated with a fireworks display. This regulation is effective from 8:30 p.m., 4 July 1991 to 11 p.m. 4 July 1991. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security Measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 33 CFR 160.5.

2. A new § 165.T1028 is added to read as follows:

§ 165.T1028 Safety Zone: East River, New York, NY.

(a) *Location.* The following area has been declared a Safety Zone: That portion of the waters of the East River north of a line drawn between 14th Street Manhattan to a point due east on the Brooklyn Shore, south of a line drawn between Lawrence Point and Stoney Point, and south of the Harlem River Foot Bridge.

(b) *Effective date.* This regulation becomes effective at 8:30 p.m. local time 4 July 1991. It terminates at 11 p.m. local time 4 July 1991.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part entry into or movement within this zone is prohibited unless authorized by the Captain of the Port.

Dated: May 21, 1991.

R. M. Larrabee,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 91-13183 Filed 6-4-91; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[CGD1 91-041]

Safety Zone Regulations: Upper Bay, New York and New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in the Upper Bay, New York and New Jersey. This zone is needed to protect the maritime community from the possible dangers and hazards to navigation associated with a fireworks display. Entry into this zone, or movement within this zone, is prohibited unless authorized by the Captain of the Port, New York.

EFFECTIVE DATES: This regulation becomes effective at 8:30 p.m. local time 7 June 1991. It terminates at 10 p.m. local time 7 June 1991.

FOR FURTHER INFORMATION CONTACT: MST1 S. Whinham of Captain of the Port, New York (212) 668-7934.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to any potential hazards.

Drafting Information

The drafters of this regulation are LTJG C. W. Jennings, project officer, Captain of the Port New York, and LT R. E. Korroch, project attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from the possible dangers and hazards to navigation associated with a fireworks display. This regulation is effective from 8:30 p.m., 7 June 1991 to 10 p.m. 7 June 1991. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security Measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 33 CFR 160.5.

2. A new § 165.T1041 is added to read as follows:

§ 165.T1041 Safety Zone: Upper Bay, New York and New Jersey.

(a) *Location.* The following area has been declared a Safety Zones: All waters within a 300 radius of the fireworks barge located in Federal Anchorage 20C east of Liberty Island.

(b) *Effective date.* This regulation becomes effective at 8:30 p.m. local time 7 June 1991. It terminates at 10 p.m. local time 7 June 1991.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part entry into or movement within this zone is prohibited unless authorized by the Captain of the Port.

Dated: 01 May 1991.

R.M. Larrabee,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 91-13184 Filed 6-4-91; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[CGD1 91-043]

Safety Zone Regulations: Upper Bay, New York and New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in the Upper Bay, New York and New Jersey. This zone is needed to protect the maritime community from the possible dangers and hazards to navigation associated with a fireworks display. Entry into this zone, or movement within this zone, is prohibited unless authorized by the Captain of the Port, New York.

EFFECTIVE DATES: This regulation becomes effective at 8:30 p.m. local time 28 June 1991. It terminates at 10:30 p.m. local time 28 June 1991.

FOR FURTHER INFORMATION CONTACT: MST1 S. Whinham of Captain of the Port, New York (212) 668-7934.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to any potential hazards.

Drafting Information.

The drafters of this regulation are LTJG C.W. Jennings, project officer, Captain of the Port, New York, and LT R. E. Korroch, project attorney, First Coast Guard District Legal Office.

Discussion of Regulation.

The circumstances requiring this regulation result from the possible dangers and hazards to navigation associated with a fireworks display. This regulation is effective from 8:30 p.m., 28 June 1991 to 10:30 p.m. 28 June 1991. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security Measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 33 CFR 160.5.

2. A new § 165.T1043 is added to read as follows:

§ 165.T1043 Safety Zone: Upper Bay, New York and New Jersey.

(a) *Location.* The following area has been declared a Safety Zone: All waters within a 300 yard radius of the fireworks barge located in Federal Anchorage 20C east of Liberty Island.

(b) *Effective date.* This regulation becomes effective at 8:30 p.m. local time 28 June 1991. It terminates at 10:30 p.m. local time 28 June 1991.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part entry into or movement within this zone is prohibited unless authorized by the Captain of the Port.

Dated: 01 May 1991.

R. M. Larrabee,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 91-13185 Filed 6-4-91; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[CGD1-91-044]

Safety Zone Regulations: New York Harbor, New York, NY

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone to protect the maritime community from the possible dangers and hazards to navigation associated with a parade of vessels traveling northward through New York Harbor in close proximity to each other. Entry into or movement within this zone, this Safety Zone, is prohibited unless authorized by the Captain of the Port, New York.

EFFECTIVE DATES: This zone becomes effective on 06 June 1991 at 6 a.m. It terminates on 06 June 1991 at 8 p.m.

FOR FURTHER INFORMATION CONTACT: MST1 S. T. Whinham of Captain of the Port, New York (212) 668-7934.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to any potential hazards to vessels operating in the vicinity of the "Parade of Ships".

Drafting Information

The drafters of this regulation are LTJG C. W. Jennings, project officer for the Captain of the Port, LT R. E. Korroch, project attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from the desire to protect the maritime public from possible dangers and hazards to navigation associated with a parade of large deep draft vessels traveling through New York Harbor in close proximity. This action is needed due to the unique nature of this event, the participants, and the duration of the event.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security Measures, Vessels, Waterways.

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Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. A new § 165.T1044 is added to read as follows:

§ 165.T1044 Safety Zone: New York Harbor, New York, NY.

(a) *Definition.* "Parade of Ships" means those Coast Guard, Navy and certain commercial vessels authorized by the Captain of the Port to participate in the parade.

(b) *Location.* That portion of the waters of the Lower Bay north of a line drawn from Norton's Point due west to the Staten Island shore and south of the Verrazano Bridge; that portion of the waters of the Upper Bay including The Narrows and the Anchorage Channel; the waters of the Hudson River south of the George Washington Bridge. In all situations, vessels not authorized to participate in the "Parade of Ships" must stay at least 200 yards from the parade participants.

(c) *Effective dates.* This zone will be effective on 08 June 1991 at 6 a.m. local time. It terminates on 08 June 1991 at 6 p.m. local time, or when vessels are safely moored whichever is sooner.

(d) *Regulation.* In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port, New York.

Dated: May 20, 1991.

R. M. Larrabee

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 91-13186 Filed 6-4-91; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[CGD1 91-054]

Safety Zone Regulations: Upper Bay and East River, New York, NY

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in the Upper Bay and East River, New York. This zone is needed to protect the maritime community from the possible dangers and hazards to navigation associated with a fireworks display. Entry into this zone, or movement within this zone, is prohibited unless authorized by the Captain of the Port, New York.

EFFECTIVE DATES: This regulation becomes effective at 8:30 p.m. local time 3 July 1991. It terminates at 10:30 p.m. local time 3 July 1991.

FOR FURTHER INFORMATION CONTACT: MST1 S. Whinham of Captain of the Port, New York (212) 668–7934.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to any potential hazards.

Drafting Information

The drafters of this regulation are LTJG C.W. Jennings, project officer, Captain of the Port New York, and LT R.E. Korroch, project attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from the possible dangers and hazards to navigation associated with a fireworks display. This regulation is effective from 8:30 p.m., 3 July 1991 to 10:30 p.m. 3 July 1991. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security Measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. A new § 165.T1054 is added to read as follows:

§ 165.T1054 Safety Zone: Upper Bay and East River, New York.

(a) *Location.* The following area is declared a Safety Zone: All waters of the East River south of the Brooklyn Bridge, north of a line drawn between the Brooklyn Battery Tunnel Ventilator on Governors Island and Pier 7 Brooklyn, and east of a line drawn between the Brooklyn Tunnel Ventilator on Governors Island and Slip 7 Manhattan.

(b) *Effective date.* This regulation becomes effective at 8:30 p.m. local time 3 July 1991. It terminates at 10:30 p.m. local time 3 July 1991.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part entry into or movement within this zone is prohibited unless authorized by the Captain of the Port.

Dated: 15 May 1991.

R.M. Larrabee,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 91-13187 Filed 6-4-91; 8:45 am]

BILLING CODE 4910-14-M

Coast Guard

33 CFR Part 165

[CGD1-91-058]

Safety Zone Regulations: Port of New York

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a moving safety zone in the waters of the Ambrose Channel, Lower Bay, Upper Bay and Hudson River in New York and New Jersey. This zone is needed to protect the maritime community from the possible dangers and hazards to navigation associated with the movement of large naval vessels with limited maneuverability operating in restricted waters. Entry into or movement within this Safety Zone is prohibited unless authorized by the Captain of the Port, New York.

EFFECTIVE DATES: This zone becomes effective on 08 June 1991 at 0:01 a.m. It terminates on 11 June 1991 at 8 p.m. local time, unless terminated sooner by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: MST1 S. T. Whinham of Captain of the Port, New York (212)–668–7934.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to respond to any potential hazards to vessels operating in the vicinity of these vessels as they transit the port.

Drafting Information

The drafters of this regulation are LTJG C. W. Jennings, project officer for the Captain of the Port, LT R.E. Korroch, project attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from the desire to protect the maritime public from possible dangers and hazards to navigation associated with the movement of large naval vessels with limited maneuverability operating in restricted waters.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. A new § 165.T1058 is added to read as follows:

§ 165.T1058 Safety Zone: Port of New York.

(a) *Location.* That portion of the waters of Ambrose Channel, Lower Bay, Upper Bay and Hudson River within 500 yards fore and aft, and 200 yards port and starboard of the vessels USS America and USS Nassau anytime they are underway and making way in those waters.

(b) *Effective dates.* This zone will be effective on 08 June 1991 at 0:01 a.m. local time. It terminates on 11 June 1991 at 8 p.m. local time, unless terminated sooner by the Captain of the Port.

(c) *Regulation.* In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port, New York.

Dated: May 20, 1991.

R. M. Larrabee,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 91-13188 Filed 6-4-91; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 91-146]

Modification of policy statement and final rule on reconsideration

AGENCY: Federal Communications Commission.

ACTION: Modification of Policy Statement and Final Rule on Reconsideration.

SUMMARY: The Commission's Policy Statement and Order, 55 FR 23082 (1990), is modified by amending 47 CFR 1.65(c) to provide additional time for the filing of reports relating to final adverse adjudications by any court or administrative body bearing on a broadcast permittee's or licensee's character qualifications. The effect of the change is to require such reports to be filed within 90 days of the date that the permittee or licensee becomes aware of the adverse action.

EFFECTIVE DATE: The revised 47 CFR 1.65(c) will be effective July 5, 1991.

FOR FURTHER INFORMATION CONTACT: Martin Blumenthal, Office of General Counsel, Federal Communications Commission, (202) 254–6530.

SUPPLEMENTARY INFORMATION: As adopted in the Policy Statement and Order, the new § 1.65(c) imposes a collection of information burden on the public. On August 2, 1990, the Office of Management and Budget (OMB) approved that reporting requirement. (OMB control No. 3060–0449). As modified in this Memorandum Opinion and Order, the revised section 1.65(c) provides respondents with additional time within which to report relevant adjudications. In all other respects, the reporting burden remains the same, and the revision to section 1.65(c) is not a "substantive or material modification" that would require further approval from OMB under the Paperwork Reduction Act. See 5 CFR 1320.11(h).

This is a summary of the Commission's Memorandum Opinion and Order, adopted May 1, 1991, FCC 91–146. The full text of this Commission Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Docket Branch (room 230), 1919 M Street, NW., Washington, DC. The full text of this Memorandum Opinion and Order may also be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452–1422. Commissioner Duggan is issuing a separate statement.

Title: Policy Regarding Character Qualifications in Broadcast Licensing; Amendment of Part 1, the Rules of Practice and Procedure, Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Applicants, Permittees, and Licensees, and the Reporting of Information Regarding Character Qualifications (Memorandum Opinion and Order)

Summary of Memorandum Opinion and Order

1. The Commission has before it petitions for reconsideration of our Policy Statement and Order in this proceeding.[1] 5 FCC Rcd 3252, 55 Fed. Reg. 23082 (1990) (hereinafter referred to as 1990 Character Policy Statement). The 1990 Character Policy Statement generally broadened the previously enunciated range of licensee misconduct that would be considered relevant in judging the character qualifications of a broadcast applicant. We also required broadcast licensees to report adjudications of relevant misconduct to the Commission within thirty days of the final decisions in such cases. See 47 CFR 1.65(c).

A. The Range of Relevant Non-FCC Misconduct

2. MAP suggests that the Commission's inquiry into an applicant's character should include consideration of all civil judgments that involve misrepresentation, whether or not the misrepresentation is made to a governmental unit, and the Commission should consider convictions for non-

[1] The petitions were filed jointly by (1) Media Access Project and Telecommunications Research and Action Center (hereinafter referred to as MAP) and (2) Chronicle Broadcasting Co., Post-Newsweek Stations, Inc., The Providence Journal Company, Shenandoah Valley Educational Television Corporation, and the Spartan Radiocasting Company (Joint Petitioners). Comments were filed by the National Association of Broadcasters (NAB); the National Broadcasting Company, Inc. (NBC); EZ Communications, Inc. (with Great American Television and Radio Company, Inc., McGraw-Hill Broadcasting Company, Inc., and Renaissance Communications Corporation); and Cox Enterprises, Inc. (with HSN Communications, Inc.). LIN Broadcasting Corporation and Vermont ETV, Inc. filed statements in support of the Joint Petition. MAP filed reply comments.

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serious as well as serious misdemeanors. MAP also argues that the Commission should consider stipulations of facts in plea bargains, consent decrees, and settlements, where those facts are sufficient to raise substantial and material questions concerning an applicant's character.

3. Our 1986 and 1990 policy statements identified the categories of non-FCC misconduct that are most clearly relevant to an applicant's qualifications. We continue to believe the public interest would not be served by expenditure of Commission and applicant resources on routine consideration of other, less relevant categories of misdeeds. Specifically, as to civil matters, we continue to believe that judgments relating to fraudulent representations to a governmental unit or mass media related violations of antitrust or anticompetitive laws bear most directly on an applicant's qualification to be a broadcast licensee. Based on our experience, we believe that the category of civil misrepresentation is too broad to be presumptively relevant to a broadcaster's qualifications. We may, however, consider such matters on a case-by-case basis. Similarly, we do not believe that, as a general matter, misdemeanor convictions presumptively have relevance, and broadening the category of misdemeanors as suggested by MAP would effectively require that we routinely evaluate the relevance of virtually all misdemeanor convictions, and, in the vast majority of cases, would most probably lead to prolonged litigation without countervailing public interest benefits. We also continue to believe that allegations of relevant non-FCC related misconduct should generally be resolved by the forum in which the litigation is pending.[3] Where that litigation has ended in a settlement agreement, consent decree, or acquittal and there is no admission or finding of unlawful misconduct, we believe it is generally inappropriate for us to reach legal conclusions on the basis of any stipulated facts.[3] As we indicated in the 1990 Character Policy Statement, however, although we intend to be guided by these policies, we remain "free to exercise * * * discretion in situations that arise." 5 FCC Rcd at 3252, citing *Guardian Federal Savings & Loan Ass'n* v. *Federal Savings & Loan Insurance Co.*, 589 F2d 658, 666 (D.C. Cir. 1978).

B. Scope of Reportable Misconduct

4. Consistent with its suggestion that we broaden the range of relevant misconduct, MAP urges us to require applicants and licensees to report all civil and criminal violations of law involving misrepresentation, all misdemeanors, consent decrees, and indictments. In contrast, the Joint Petitioners and Cox, noting that we may consider "serious misdemeanor convictions in appropriate or compelling cases," seek clarification as to which misdemeanors are "serious" and therefore presumably reportable. The Joint Petitioners, as well as NAB and Cox, also suggest that we require reporting of adjudicated non-FCC misconduct only where a licensee principal (i.e., a person with an attributable interest in the licensee) is a named defendant in the adjudication.

5. Although we may consider serious misdemeanor convictions in appropriate or compelling cases, consistent with our view that misdemeanors in the vast majority of cases are not relevant to our character concerns, we will not require that misdemeanor convictions be reported to us. We will determine which misdemeanors are serious and the effect of any such convictions on a case-by-case basis as such matters are brought to our attention by concerned parties. Similarly, in light of our determination that civil misrepresentation not involving governmental units is not generally relevant, we will not require reporting of such adjudications. In this regard, we note that applicants must report indictments, as well as other pending cases involving relevant misconduct, and, in appropriate cases, information on pending cases of relevant misconduct may form the basis of a condition on the grant of the application. 1990 Character Policy Statement, 5 FCC Rcd at 5253. In the case of licensees for which no applications are pending, however, there is no grant upon which to place such a condition.

6. We also reject Joint Petitioners' request that principals of a licensee be required to report adjudicated non-FCC misconduct only if they are a named defendant. In our attribution rules, we generally determined that officers, directors and persons holding a five percent or greater voting interest may exercise influence or control over a licensee. *See* 47 CFR 73.3555 Note 2; see also Attribution of Ownership, 97 FCC 2d 997 (1984).[4] In light of this conclusion, it logically follows that such persons may also affect management of a non-licensee company.

C. Timing of the Reports Required by § 1.65(c)

7. The Joint Petitioners contend that reporting adverse adjudications of relevant misconduct within 30 days of the adjudication imposes a substantial burden, and licensees need more time to monitor and report on their own litigation activities and those of any person or entity holding an attributable interest in the licensee. To ease the burden of continually monitoring such litigation, the Joint Petitioners suggest that the Commission require only annual litigation reports, filed at the same time as the annual ownership report.

8. Section 1.65(c) requires permittees and licensees to report final adverse adjudications of misconduct that would be reportable on an application for renewal.[5] Under the 1990 Character Policy Statement, renewal applicants will be required to report adverse final action taken by any court or administrative body with respect to the applicant or parties to the application relating to any felony, mass media related antitrust or unfair competition, criminal fraud, fraud before another governmental unit, or discrimination. We believe that the Commission's regulatory goals would not be adversely affected by requiring the reports to be filed within 90 days of the time a permittee or licensee becomes knowledgeable of the adjudicated misconduct. In this regard, permittees and licensees have an obligation to make reasonable, good faith efforts to become informed of reportable adjudications of relevant misconduct. The additional time will give permittees and licensees the opportunity to focus on the filing of complete and accurate reports, without unduly impeding the commencement of whatever action the Commission deems appropriate in a particular case. Section 1.65(c) is being amended accordingly.

[3] We retain the discretion to condition grants on the outcome of pending litigation involving relevant non-FCC related misconduct. *See 1990 Character Policy Statement*, 5 FCC Rcd at 3253.

[3] A plea bargain generally involves a plea of guilty to one or more criminal charges. As a result of that plea, the defendant is convicted of the crime. Such a conviction is an adjudication for purposes of applying our character policy.

[4] Note 2 provides for exceptions to this general rule for: minority interests in corporations if there is a single holder of more than 50% of the voting stock; certain investment companies, insurance companies and bank trust departments; insulated limited partnership interests; and certain officers and directors of diversified corporations or parent corporations.

[5] Applicants are required to update their applications by reporting the initiation or adjudication of relevant actions within 30 days of their occurrence pursuant to section 1.65(b). That requirement remains unchanged by this Memorandum Opinion and Order.

D. Other Matters

9. **Comparative Consideration of Character. MAP suggests that we consider non-disqualifying misconduct in comparative proceedings. We continue to believe that character is essentially a matter of an applicant's basic qualifications. Our experience has been that there is little to be gained from comparative consideration of non-FCC related misconduct that is insufficient to warrant disqualification. Thus, as we determined in the 1986 Policy Statement, the public interest is better served by eliminating such considerations from comparative proceedings. See Alden Communications Corp., 3 FCC Rcd 5047 (Rev. Bd. 1988), recon. denied, 3 FCC Rcd 6601, 6602 (Rev. Bd. 1988), review denied, 4 FCC Rcd 5413 (1989), aff'd., D.C. Cir. 89-1486 (Oct. 30, 1990) (mem.). FCC-related misconduct will, however, continue to be relevant to a renewal applicant's ability to obtain a renewal expectancy. See 1986 Policy Statement, 102 FCC 2d at 1232 n.125.**

10. **Conditions on Grants. MAP asks that we announce a new policy of deferring action on applications where appropriate and specifically conditioning all grants on the review of any subsequent adjudication of potentially disqualifying conduct, including misconduct by station assignors or transferors. The 1990 Character Policy Statement indicated that, in appropriate cases, we would condition grants on the outcome of pending proceedings in other forums. We do not believe it would be appropriate to adopt a policy of blanket conditions in all cases or to adopt a general deferral policy. Rather, we will review all such cases on their merits to determine whether a condition is appropriate and the parameters of any such conditions.**

11. **Section 312(a). Cox argues that midterm reports of adverse adjudications are unnecessary as the Communications Act does not empower the Commission to revoke a license on the basis of such adjudications. Section 312(a)(2) provides that the Commission may revoke a station license "because of conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on an original application." 47 U.S.C. § 312(a)(2). We believe that the provision permits the revocation of a license for "conditions" occurring during the license term. See Radio Para La Raza, 27 RR 2d 836, 840 (1973) (section 312(a)(2)) permits the Commission to look at events following the grant of an application); *cf. Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367, n.3 (1969) (a requirement of operation in the public interest is implicit in section 312(a)(2) revocation authority).**

E. Conclusion

12. **Accordingly, *it is ordered* that the Petition for reconsideration filed jointly by the Media Access Project and the Telecommunications Research and Action Center is denied.**

13. ***It is further ordered*** **that the Petition for Reconsideration filed jointly by Chronicle Broadcasting Co., Post-Newsweek Stations, Inc., The Providence Journal Company, Shenandoah Valley Educational Television Corporation, and the Spartan Radiocasting Company is granted to the extent indicated above, and is denied in all other respects.**

14. ***It is further ordered*** **that § 1.65(c) of the Commission's rules IS amended as set forth below effective July 5, 1991.[6]**

15. **The action herein is taken pursuant to sections 4(i), 303(r), 308(b), 312, 319(a) and 403 of the Communications Act of 1934, as amended.**

Federal Communications Commission.

William F. Caton,

Acting Secretary.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Radio.

Rule Changes

Part 1 of title 47 of the CFR is amended as follows:

1. The authority citation for part 1 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement. 5 U.S.C. 552, unless otherwise noted.

2. Section 1.65 is amended by revising paragraph (c) to read as follows:

§ 1.65 Substantial and significant changes in information furnished by applicants to the Commission.

* * * * *

(c) All broadcast permittees and licensees must report to the Commission any adverse finding or adverse final action taken by any court or administrative body that involves conduct bearing on the permittee's or licensee's character qualifications and that would be reportable in connection with an application for renewal as reflected in the renewal form. The report required by this subsection must be filed within 90 days of the date that the permittee or licensee becomes knowledgable of any such reportable adverse findings or adverse final actions not previously reported to the Commission. Permittees and licensees bear the obligation to make reasonable, good faith efforts to become knowledgable of any such reportable adjudicated misconduct.

[6] Licensees are currently required to file § 1.65(c) reports within 30 days of the relevant adjudication. In light of our decision to increase the time within which to file such reports, we will not enforce the existing rule prior to the effective date of the revised rule.

[FR Doc. 91-13151 Filed 6-4-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Parts 1 and 73

[Docket No. 90-264; FCC 91-154]

Practice and Procedure; Comparative Hearing Process for New Applicants

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Memorandum Opinion and Order provides clarification of and certain procedural adjustments to the Report and Order which was intended to substantially reduce the time consumed in the conduct of comparative hearings and agency review in cases involving applicants for new broadcast facilities. This action was taken in order to speed service to the public.

EFFECTIVE DATE: This rule is effective on July 1, 1991, except § 73.1620 which is effective August 1, 1991. The modification of the Ruarch policy announced in the Report and Order, as modified in this Memorandum Opinion and Order, shall become effective on August 1, 1991.

FOR FURTHER INFORMATION CONTACT: Martin Blumenthal, Office of General Counsel, Federal Communications Commission, (202) 254-6530.

SUPPLEMENTARY INFORMATION: The collection of information contained in the rules adopted in the Report and Order was submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452-1422. The Office of Management and Budget approved that collection of information on March 22, 1991. The amendment to the collection of information adopted in this Memorandum Opinion and Order is not a substantive or material modification that would require further approval from OMB under the Paperwork Reduction Act.

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OMB Number: 3060-0471

Title: Proposals To Reform the Commission's Comparative Hearing Process To Expedite the Resolution of Cases (Memorandum Opinion and Order in General Docket 90-264)

Summary of Memorandum Opinion and Order

This is a summary of the Commission's Memorandum Opinion and Order, adopted May 9, 1991, and released May 15, 1991, FCC 91-154. The full text of this Commission Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Docket Branch (room 230), 1919 M Street, NW., Washington, DC. The full text of this Memorandum Opinion and Order may also be purchased from the Commission's copy contractor.

1. This Memorandum Opinion and Order provides clarification of and certain procedural adjustments to the Report and Order in this proceeding, reflecting the Commission's efforts to reduce substantially the time consumed in the conduct of comparative hearings and agency review in cases involving applicants for new broadcast facilities. 56 F.R. 787 (January 9, 1991); 6 FCC Rcd 157. Petitions for reconsideration of the action were filed by: the Federal Communications Bar Association (FCBA); Timothy K. Brady, *et al.* (Brady); Black Citizens for a Fair Media, *et al.* (BCFM); and the National Association for the Advancement of Colored People, *et al.* (NAACP).[1]

2. The FCBA requests clarification of rule changes regarding the payment of the hearing fee before an application is designated for hearing. The following clarification is provided. Hearing fee payments will be triggered by the Public Notice announcing the acceptance of an application for filing. That Public Notice will also specify a date for the payment of the hearing fee. All commercial broadcast applications that have not been the subject of such a Public Notice released prior to July 1, 1991 (the effective date of the rule change), must pay the hearing fee on a date established in the Public Notice announcing the acceptance of the application for filing. All commercial broadcast applications that have been the subject of such a Public Notice released prior to July 1, 1991, will be required to pay their hearing fee by July 15, 1991, unless such applications are designated for hearing before that date. All applicants designated for hearing before July 15, 1991, should pay their hearing fee with their Notices of Appearance. Appendix A of the Memorandum Opinion and Order specifies the procedures for payment of the hearing fee by applicants that were accepted for filing before the effective date of this rule change. We wish to emphasize that this hearing fee payment requirement also applies to renewal applicants that face a comparative challenge.[2]

3. The Report and Order limited the ability of a successful applicant to "withdraw" divestiture and integration proposals under the Ruarch policy to cases in which a "global" settlement was entered into and filed with the presiding judge on or before the notice of appearance deadline. The FCBA suggests that a later date, after the completion of discovery, would be more appropriate. Recognizing that discovery often aids the settlement process, we will apply the Ruarch policy and permit applicants to withdraw divestiture and integration proposals in conjunction with settlement agreements filed up until the date established for the exchange of exhibits in the case, that is, after the completion of discovery in the case. After the exhibit exchange date, the successful applicant will be expected to fulfill its divestiture and integration proposals.

4. The FCBA and Brady offer a number of suggestions to fine tune the revised discovery procedures. The FCBA suggests that the initial exchange of documents and integration statements be delayed until a date five days after the notice of appearance deadline. We agree that a five-day delay would permit applicants to avoid the burden and costs of serving materials on applicants that no longer wish to participate in the case, and we will amend our rules accordingly.[3] The FCBA also seeks clarification of the requirement to submit "initial" supplemental document requests within ten days of the first document exchange. That requirement is intended to expedite requests for additional relevant documents that were not covered in the categories of the standardized document production order or are revealed in the materials exchanged pursuant to that order or in the standardized integration statement. The failure to request such documents within the ten-day period would not foreclose an applicant's right to request other documents identified in future discovery, including depositions.

5. With regard to the conduct of depositions, the FCBA suggests that we reinstate the 21-day notice rule for depositions of an applicant's principals,[4] and Brady suggests that we should further limit the location of depositions, requiring them to be held in the community of license of the proposed station, unless the parties agree to some other location. Under our new discovery rules, an applicant's principals are on notice that they may be called for depositions during the period commencing with the initial document exchange and ending 90 days after the release of the designation order. In these circumstances, requiring an additional 21-days' advance notice of the depositions of principals would needlessly delay the proceedings. We believe that, within the period provided for depositions, the applicants and their attorneys will be able to work out reasonable schedules for the conduct of depositions of principals. Nor do we believe that limiting the deponent's option to select the deposition location would facilitate discovery. Our purpose in creating the option is to eliminate, to the extent possible, disputes over the location of deposition sessions. Whether sessions are held in Washington, DC or the proposed community of license, someone will have to travel to the session. We agree with Brady that bringing all principals and attorneys together in one place for deposition sessions may have a salutory effect on the settlement process, but we do not believe that we should mandate such collective deposition sessions by limiting the deponent's option to the proposed community of license.

6. The FCBA asks us to make it clear that a party requesting enlargement of issues is not foreclosed from supplementing a discovery request included in such motions on the basis of the opposing party's responsive pleading or information developed during the discovery on the enlarged issue. Such supplemental requests are not foreclosed, although any such requests are subject ultimately to control by the presiding judge.

7. The Report and Order amended § 1.248 of our rules to make it clear that ALJs should permit oral testimony and cross examination only where material issues of decisional fact cannot adequately be resolved without oral evidentiary hearing procedures or the public interest otherwise requires oral evidentiary proceedings. The FCBA suggests that the application of this new rule will engender litigation over the need for oral testimony and thereby waste, rather than save, time. Although there may be cases that involve disputes over the need for a witness's testimony, we believe that, overall, more time will be saved by reasonable limitations on oral testimony than would be lost in the resolution of such disputes. In this regard, we note that a determination of whether a witness's testimony is needed resides in the exercise of the presiding judge's sound discretion.

8. With regard to pleading cycles, the FCBA argues that the 45 days provided for in the Report and Order is inadequate to prepare meaningful findings that would be of assistance to the ALJ in preparing the Initial Decision.[5] We continue to believe that in the routine case, proposed findings can reasonably be prepared within the 45-day time guideline. However, it was not our intention to circumscribe the exercise of an ALJ's discretion to set longer time limits, particularly in cases involving numerous parties and complex questions of fact and/or law. Similarly, we believe that the 25 page limit is reasonable for exceptions to initial decisions, but the Review Board may grant waivers of that limit, particularly in complex cases.

9. The Report and Order gave ALJs the authority to impose forfeitures up to the maximum amount permitted by statute. See 47 U.S.C. 503(b)(2)(A). The FCBA argues that forfeitures for serious misconduct should be applied by the Mass Media Bureau, pursuant to a uniform policy so that applicants are not assessed different forfeitures for essentially the same misconduct. We are confident that ALJs, utilizing decisions in other forfeiture cases, will exercise this authority equitably, and any party that believes it has been treated unfairly can avail itself of review procedures. Thus, we believe that the presiding judge is in the best position to make a determination on the underlying misconduct and assess a forfeiture, if appropriate.

10. However, we are concerned that applicants not be able to escape possible forfeiture liability by simply dismissing their applications, by settlement or otherwise, before the ALJ has rendered a decision on the forfeiture. Thus, where an applicant subject to a potential forfeiture is dismissed, the Commission will determine whether a forfeiture is appropriate in light of the alleged misconduct, and we are amending § 1.80 of our rules to provide that any order dismissing an applicant facing a potential forfeiture will be forwarded to the Commission for possible action. 47 CFR 1.80. Under section 1.117, the Commission will have 40 days to determine whether it should pursue the forfeiture. 47 CFR 1.117.[6]

11. The FCBA raises a number of questions on how the new procedures will be applied to proceedings in progress. Generally, in the cases designated for hearing before the effective date of these changes, the timing of discovery and the setting of other procedural dates are under the control of presiding judges. We are confident that, in the exercise of their discretion, ALJs will not permit such cases to languish on a "slow track" while subsequently designated cases are expedited by the application of these procedures.

12. BCFM seeks clarification of the requirement in the new section 73.1620(g) that certain reports must be filed by applicants "granted as a result of a settlement or other decision in a comparative hearing." The petitioner believes that the reporting requirement should be applicable to the successful applicant whenever the grant is a result of a decision on the comparative merits of the applicants, a settlement, or the other applicants are simply dismissed. The petitioner also asks that the one-year holding period relating to the transfer or assignment of construction permits and/or licenses be applied in a similar fashion. See 47 CFR 73.3597(a)(1).

13. It was not our intention to apply the reporting requirements of section 73.1620(g) to applicants granted after designation for a comparative hearing where the competing applications are abandoned through inaction or voluntary dismissal. The reporting requirement was adopted to ensure that applicants fulfill comparative promises that were either relied upon by the Commission in deciding the case or taken into consideration by competitors in post-designation settlements. In this regard, our experience indicates an applicant's decision simply to abandon its application normally is influenced by factors that bear no relation to a competitor's comparative promises. We shall therefore require reports only from applicants that were granted after consideration of their comparative merits in a hearing or pursuant to post-designation settlements. Having determined that § 73.1620(g) should not be amended to read as suggested by BCFM, the petitioner's assertion that § 73.3597 be similarly amended is moot.[7] However, we will amend § 73.1620(g) to make it clear that reports are not required from applicants unless their grant was the result of a post-designation settlement or a decision favoring them after comparative consideration of mutually exclusive applicants.[8]

14. The Report and Order noted that certain suggestions offered by the NAACP dealing with comparative evaluation factors were beyond the scope of this proceeding. Petitioner argues that its proposals were within the scope of our invitation to commenters to submit "other proposals designed to achieve [expedition in the resolution of comparative broadcast proceedings]." Proposals to Reform the Comparative Hearing Process to Expedite the Resolution of Cases (NPRM), 5 FCC Rcd 4050, 4055 (1990). In the alternative, the NAACP asks that its filing be treated as a petition for rulemaking. In comments on the NAACP petition, Rochlis requests that we establish a "pioneer's preference" in FM comparative

[1] No oppositions to the Petitions for Reconsideration were filed, but on March 8, 1991, Jeffrey Rochlis (Rochlis) filed comments on the NAACP petition. No reply pleadings were filed.

[2] The challenging applicant must pay its hearing fee on the date established in the Public Notice announcing the acceptance for filing of that application, and we believe it is only fair that the renewal applicant should pay its hearing fee at the same time. Thus, the date for fee payment established in the Public Notice of acceptance of the challenging application will also be the date on which the renewal applicant must pay its hearing fee. Where the challenging application was accepted for filing in a Public Notice released before July 1, 1991, appendix A specifies the method of hearing fee payment for both the renewal applicant and challenger.

[3] With further regard to the standardized document production order and integration statement, we agree with the FCBA's comment that disputes over the sufficiency of an exchange should not be elevated to a question of whether an applicant should be dismissed. However, a failure to exchange any materials would constitute a failure to prosecute, resulting in the dismissal of an applicant. Moreover, as the FCBA suggests, the submission of a standard integration statement after designation for hearing does not give rise to an opportunity to upgrade any previously submitted integration proposal.

[4] Twenty one days notice is required for depositions of persons who are not principals of an applicant in the case.

[5] The Report and Order provided 60 days for the filing of findings and replies, including 45 days for findings and 15 days for replies. We noted, however, that if delays in obtaining hearing transcripts is not a factor, findings should be filed within 30 days.

[6] After hearings, an ALJ's decision to assess a forfeiture would be rendered under section 1.80(g) of our rules. 47 CFR 1.80(g). However, where the ALJ does not render a decision on the forfeiture matter because the application is dismissed, any Commission decision on the forefeiture matter would be rendered pursuant to § 1.80(f) of our rules. 47 CFR 1.80(f).

[7] In any event, although BCFM and other parties suggested modification of the holding period rule in this proceeding, no change in that provision was proposed, and we consider the matter beyond the scope of this proceeding.

[8] The reporting requirement in section 73.1620(g) was approved by the Office of Management and Budget on March 22, 1991. OMB No. 3060-0471. The amendment to the rule being adopted herein is not a "substantive or material modification" that would require further approval from OMB under the Paperwork Reduction Act. See 5 CFR 1320.11(h).

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proceedings. The preference would be available to the applicant that successfully petitioned for rulemaking to add the channel to the FM Table of Allotments. See 47 CFR part 202.

15. This proceeding is not intended to focus on the criteria by which the Commission makes comparative evaluations between mutually exclusive broadcast applicants. Rather, it is concerned with the process by which facts relevant to those criteria are brought before the Commission for decision with the goal of expediting those decisions. Both the NAACP and Rochlis note that we had specifically proposed changes to the Ruarch policy and the Anax doctrine. See Ruarch Associates, 103 FCC 2d 1178 (1986); Anax Broadcasting, Inc., 87 FCC 2d 483 (1981); see also NPRM 5 FCC Rcd at 4052, 4053 (1990). However, neither our Ruarch nor Anax proposals evidenced any intention on the part of the Commission to change the underlying comparative criteria. Moreover, the rule and policy changes adopted in the Report and Order in this proceeding were limited to the procedural aspects of comparative proceedings, not the criteria that would be used to evaluate the comparative merits of applicants. 6 FCC Rcd at 159–160, 161–162 (1990). Although the changes in the comparative criteria proposed by the NAACP and Rochlis could also serve to expedite hearings by making the comparative process less attractive for participation by some potential competing applicants, we believe that any changes in our comparative criteria would be inappropriate in this proceeding.

16. The rule changes being adopted on reconsideration have been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, and found to impose no new or modified requirements or burdens on the public.

17. Accordingly, *it is ordered* that the Petition for Partial Reconsideration filed by the Federal Communications Bar Association is granted to the extent indicated above and is denied in all other respects.

18. *It is further ordered* that the Petition for Partial Reconsideration filed by Timothy K. Brady, *et al.* is denied.

19. *It is further ordered* that the Petition for Reconsideration and/or Clarification filed by Black Citizens for a Fair Media, *et al. is granted insofar as clarification is provided above and is denied in all other respects.*

20. *It is further ordered* that the Petition for Reconsideration, or in the Alternative Petition for Rulemaking filed by the National Association for the Advancement of Colored People, *et al.* is denied insofar as it requests reconsideration, but that pleading and the comments thereon filed by Jeffrey Rochlis will be treated as a petition for rulemaking.

21. *It is further ordered* that parts 1 and 73 of the Commission's rules, 47 CFR parts 1 and 73, are amended as set forth below.

22. *It is further ordered* that the rule changes adopted in the Report and Order in this proceeding, as modified herein, shall become effective on July 1, 1991, except that the modification of the Ruarch policy enunciated in the Report and Order in this proceeding, as modified herein shall become effective on August 1, 1991, and it shall apply to all requests for approval of agreements filed on that date and thereafter.

23. *It is further ordered* that all commercial broadcast applications that have been the subject of a public notice released prior to July 1, 1991, announcing the acceptance for filing of mutually exclusive applications, shall pay their hearing fee by July 15, 1991, unless an order designating such applications for hearing is released before that date. All applicants designated for hearing by orders released before July 15, 1991, should pay their hearing fee with their Notices of Appearance.

24. This action is taken pursuant to authority contained in sections 4(i), 4(j), 5(b), 5(c), 303(r) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 155(b), 155(c), 303(r) and 309.

For further information concerning this proceeding, contact Martin Blumenthal, Office of General Counsel (202) 254–6530.

List of Subjects

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 73

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

47 CFR parts 1 and 73 are amended as follows:

PART 1—[AMENDED]

1. The authority citation for part 1 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

2. Section 1.80 is amended by adding a new paragraph (g)(3) to read as follows:

§ 1.80 Forfeiture proceedings.

* * * * *

(g) * * *

(3) Where the possible assessment of a forfeiture is an issue in a hearing case to determine which pending application should be granted, and the applicant facing a potential forfeiture is dismissed pursuant to a settlement agreement or otherwise, and the presiding judge has not made a determination on the forfeiture issue, the order of dismissal shall be forwarded to the attention of the full Commission. Within the time provided by § 1.117, the Commission may, on its own motion, proceed with a determination of whether a forfeiture against the dismissing applicant is warranted. If the Commission so proceeds, it will provide the applicant with a reasonable opportunity to respond to the forfeiture issue (see paragraph (f)(3) of this section) and make a determination under the procedures outlined in paragraph (f) of this section.

* * * * *

3. Section 1.221 is amended by removing paragraph (c)(1) and adding new paragraphs (f) and (g) to read as follows:

§ 1.221 Notice of hearing; appearances.

* * * * *

(f) A fee must accompany each written appearance filed with the Commission in certain cases designated for hearing. See subpart G, part 1 for the amount due. Except as provided in paragraph (g) of this section, the fee must accompany each written appearance at the time of its filing and must be in conformance with the requirements of subpart G of the rules. A written appearance that does not contain the proper fee, or is not accompanied by a deferral request as per § 1.1115 of the rules, shall be dismissed and returned to the applicant by the fee processing staff. The presiding judge will be notified of this action and may dismiss the applicant with prejudice for failure to prosecute if the written appearance is not resubmitted with the correct fee within the original 20 day filing period.

Note: If the parties file a settlement agreement prior to filing the Notice of Appearance or simultaneously with it, the hearing fee need not accompany the Notice of Appearance. In filing the Notice of Appearance, the applicant should clearly indicate that a settlement agreement has been filed. [The fact that there are ongoing negotiations that may lead to a settlement does not affect the requirement to pay the fee.) If a settlement agreement is not effectuated, the Presiding Judge will require immediate payment of the fee.

(g) In comparative broadcast proceedings involving applicants for new facilities, where the hearing fee was paid before designation of the applications for hearing as required by the Public Notice described at § 73.3571(c), 73.3572(d), or 73.3573(g) of this chapter, a hearing fee payment should not be made with the filing of the Notice of Appearance.

4. Section 1.229 is amended by revising paragraph (e) to read as follows:

§ 1.229 Motions to enlarge, change, or delete issues.

* * * * *

(e) In comparative broadcast proceedings involving applicants for only new facilities, in addition to the showing with respect to the requested issue modification described in paragraph (d) of this section, the party requesting the enlargement of issues against an applicant in the proceeding shall identify those documents the moving party wishes to have produced and any other discovery procedures the moving party wishes to employ in the event the requested issue is added to the proceeding.

(1) In the event the motion to enlarge issues is granted, the Commission or delegated authority acting on the motion will also rule on the additional discovery requests, and, if granted, such additional discovery will be scheduled to be completed within 30 days of the action on the motion.

(2) The moving party may file supplemental discovery requests on the basis of information provided in responsive pleadings or discovered as a result of initial discovery on the enlarged issue. The grant or denial of any such supplemental requests and the timing of the completion of such supplemental discovery are subject to the discretion of the presiding judge.

(3) The 30-day time limit for completion of discovery on enlarged issues shall not apply where the persons subject to such additional discovery are not parties to the proceeding. In such case, additional time will be required to afford such persons adequate notice of the discovery procedures being employed.

* * * * *

5. Section 1.325 is amended by revising paragraph (c) introductory text, (c)(1) introductory text, (c)(2) introductory text and (c)(3) to read as follows:

§ 1.325 Discovery and production of documents and things for inspection, copying, or photographing.

* * * * *

(c) In comparative broadcast proceedings involving applicants for only new facilities, all applicants will serve the materials listed in the Standard Document Production Order and the Standardized Integration Statement on all other parties in the case that have filed Notices of Appearance. The exchange of these materials must be accomplished within five days after the date established for filing notices of appearance (see § 1.221).

(1) *Standard Document Production Order.* The following documents must be produced or objected to on grounds of privilege (Unless otherwise directed by the presiding officer, copies of these documents should not be filed with the presiding officer):

* * * * *

(2) *Standardized Integration Statement.* On the same day that documents are exchanged pursuant to the Standardized Document Production Order, the following information must also be provided by all applicants (Copies of this statement should be filed with the presiding officer and served on all parties to the proceeding that have filed Notices of Appearance):

* * * * *

(3) *Supplemental document production.* Parties may request additional relevant documents, not called for in the Standard Document Production Order, at any time after the release of the designation order. Supplemental requests for documents based on materials exchanged pursuant to the Standardized Document Production Order and Standardized Integration Statement must be filed no later than ten days after those standardized exchanges. Other supplemental document requests must be filed no later than ten days after receipt of the information on which those requests are based. Supplemental document requests will be handled under the procedures established in paragraph (a) of this section. To facilitate the resolution of disputes concerning the production of documents, the presiding officer may convene a pre-hearing conference to hear argument on and dispose of any such disputes.

PART 73—[AMENDED]

6. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

7. Section 73.1620 is amended by revising paragraph (g) introductory text to read as follows:

§ 73.1620 Program tests.

* * * * *

(g) *Reports required.* In their application for a license to cover a construction permit (FCC Form 302) and on the first anniversary of the commencement of program tests, applicants for new broadcast facilities that were granted after designation for a comparative hearing as a result of a post designation settlement or a decision favoring them after comparative consideration must report.

* * * * *

[FR Doc. 91–12791 Filed 6–4–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 90

[DA 91–647]

Private Land Mobile Radio Services; Acceptance of 220–222 MHz Private Land Mobile Applications

AGENCY: Federal Communications Commission.

ACTION: Final rule; order.

SUMMARY: The Chief, Private Radio Bureau, released this Order freezing acceptance of 220–222 MHz applications. It was necessary to take this action to begin the sizable administrative task of processing the more than 50,000 applications received during the first month applications were accepted for land mobile use in the band, to prepare for any necessary lotteries for applications in the band, and to permit the Bureau to continue to process pending applications in all radio services it administers without severely adversely affecting speed of service.

DATES: Applications for the 220–222 MHz band filed on or after May 25, 1991, are not being accepted for filing.

FOR FURTHER INFORMATION CONTACT: Federal Communications Commission, Private Radio Bureau, Licensing Division, Consumer Assistance Branch (717) 337–1212.

SUPPLEMENTARY INFORMATION:

Order

Adopted: May 24, 1991; Released: May 24, 1991.

By the Chief, Private Radio Bureau:

1. On March 14, 1991, the Commission adopted service rules for private land mobile use of the 220–222 MHz spectrum.[1] The Commission provided

[1] Report and Order, PR Docket No. 89–552, FCC 91–74 (April 17, 1991).

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that applications for this new spectrum would be accepted beginning the second day after publication of a summary of the Report and Order in PR Docket No. 89-552 was published in the Federal Register. The summary of that Report and Order was published in the Federal Register on April 29, 1991.[5] The Commission began accepting applications for the 220-222 MHz frequency band on May 1, 1991.

2. The Licensing Division typically receives in the neighborhood of 10,000 applications per month for the land mobile radio services administered by the Bureau. In the past three weeks, however, the Licensing Division has received well over 50,000 applications just for the 220-222 MHz band. This influx of applications has created, at a minimum, an additional workload of one-half year for the entire Licensing Division.

3. Effective midnight May 24, 1991, no new applications for the 220-222 MHz band will be accepted for filing by the Federal Communications Commission. Applications for the 220-222 MHz band filed on or after May 25, 1991, will not be accepted for filing.[6]

4. This action is necessary to permit the Bureau to begin the sizable administrative task of processing the applications for the 220-222 MHz band and preparing for any necessary lotteries for applications in this band.[7] This action is also necessary to permit the Bureau to continue to process pending applications in all other radio services it administers without severely adversely affecting speed of service.

5. This action will not place prospective applicants for the 220-222 MHz frequency band at a disadvantage, because applications are considered on a first-come, first-served basis from day-to-day.[8] Any applications that would have been filed from this point forward would have been considered only after all other pending applications had been resolved. The relative position of any new applications with respect to all previously filed applications will thus remain unchanged irrespective of whether these new applications were filed in the near future or, alternatively, at such time as the freeze is lifted. Additionally, prospective applicants are not prejudiced by this action because they will have complete access to any available spectrum remaining after we have completed processing of applications already on file.

6. This action is taken pursuant to the provisions of section 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(j), and §§ 0.131 and 0.331 of the Commission's Rules, 47 CFR 0.131 and 0.331.[9] This freeze on Commission acceptance of applications for the 220-222 MHz band will remain in full force and effect until such time as additional action is taken to resume acceptance of these applications.

7. For further information contact the Consumer Assistance Branch, Licensing Division, Private Radio Bureau, (717) 337-1212.

List of Subjects in 47 CFR Part 90

Business and industry, Radio, Trunking.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 91-13250 Filed 6-4-91; 8:45 am]

BILLING CODE 6712-01-M

[5] 56 FR 19666 (1991).

[6] Because imposition of this freeze on acceptance of 220-222 MHz applications is procedural in nature, it is not subject to the notice and comment provisions of the Administrative Procedure Act (APA). *See Kessler v. FCC*, 326 F.2d 673 (DC Cir. 1963). Further, because this freeze is procedural in nature it is not subject to the 30 day effective date provisions of the APA. In any event, good cause exists to place the freeze on acceptance of 220-222 MHz applications in immediate effect because advance notification would likely prompt the filing of additional applications and thus defeat the administrative purpose of the freeze.

[7] This action is not in any way related to the Emergency Motion for Stay in PR Docket No. 89-552 filed by Walker, Berdelon, Hamlin, Theriot & Hardy on behalf of itself and Ashton R. Hardy and Bradford D. Carey. This action is purely administrative in nature, and reflects no consideration of the merits of the pending Emergency Motion for Stay. Nor does it constitute any ruling upon the pending Emergency Motion for Stay.

[8] See Report and Order, PR Docket No. 89-552, FCC 91-74 (April 17, 1991), at paras. 58-68; 47 CFR 90.711(a); Public Notice, Report No. 12666 (April 17, 1991), at pages 4-5.

[9] The Commission has broad discretion to freeze acceptance of new applications. *Kessler v. FCC*, 326 F.2d 673 (DC Cir. 1963). This action is akin to and consistent with prior actions taken by the Commission and by delegated authority to freeze acceptance of applications in certain radio services where the public interest, convenience and necessity warrent such action. See e.g., Order, 5 FCC Rcd 2139 (1988) (action by the Commission restricting acceptance of AM broadcast applications); Public Notice, 1 FCC Rcd 1264 (1986) (action by the Commission placing a temporary freeze on acceptance of AM daytime broadcast applications); Public Notice, Report No. 1287 (December 6, 1983) (action by the Private Radio Bureau suspending filing of 2.5 GHz applications).

Proposed Rules

Federal Register
Vol. 56, No. 108
Wednesday, June 5, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Parts 207 and 220

[Docket No. R-0732; Regulations G and T]

Amendments to Margin Regulations To Accommodate Deposit Requirements of Regulated Clearing Agencies

May 30, 1991.

AGENCY: Board of Governors of the Federal Reserve, System.

ACTION: Proposed rule.

SUMMARY: The Board is proposing to amend Regulation G and Regulation T to exclude from the limitations of the margin rules the deposit of margin securities with clearing agencies regulated by the Commodity Futures Trading Commission or the Securities and Exchange Commission, provided these deposits are made in connection with action by the clearing agency to issue options or to guarantee performance on futures contracts or options on futures contracts.

DATES: Comments should be received on or before July 15, 1991.

ADDRESSES: Comments, which should refer to Docket No. R-0732, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, or delivered at the C Street entrance between 8:45 a.m. and 5:15 p.m. weekdays to room B-2223. Comments may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Laura Homer, Securities Credit Officer, or Scott Holz, Attorney, Division of Banking Supervision and Regulation (202) 452-2781; for the hearing impaired, only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson, (202) 452-3544.

SUPPLEMENTARY INFORMATION: Regulation G requires registration of persons other than banks, brokers or dealers who extend or maintain credit (over prescribed minimum amounts) secured directly or indirectly by margin stock. If the credit is to purchase or carry margin stock, limitations are placed on the valuation of the stock collateral. Regulation T prohibits a broker-dealer from borrowing in the ordinary course of business on the collateral of exchange-traded stock from any lender other than a bank. On prior occasions the Board has found guarantees and certain business relationships to involve an extension of credit. Therefore, registration of a clearing firm under Regulation G would be required under the Board's traditional view of the term if margin securities are deposited as collateral. Broker-dealers would also be prohibited from borrowing from the non-bank lenders under that reasoning.

In May, 1983, in conjunction with a completely revised and simplified Regulation T (48 FR 23161, May 24, 1983), the Board added a provision permitting clearing members of an options clearing agency to deposit certain margin stock with the clearing agency as the required margin for options transactions. No changes in Regulation G were made at that time as the persons who would make the deposit were all subject to Regulation T and it was felt that the corollary Regulation G issue was implicitly decided. In March of 1984, the provision was expanded (49 FR 9559) in conjunction with an SEC action on the issue. The present rule provides that the provisions of Regulation T do not apply to the deposit of securities with an options clearing agency registered with the SEC provided the deposit complies with the rules approved by the SEC.

Options and futures exchanges trade standardized contracts and the clearing agency guarantees settlement. A person wishing to offset an obligation or take a profit in these markets does not need to search for the original counterparty to the contract as the clearing agency has been substituted for both sides. This fungibility of contracts and substitution enables a person to pay the price or receive the profit at any time as long as someone is willing to take similar action on the other side of the contract. The deposit, changed daily at both futures and options clearing agencies, reflects the current value of the underlying product, security or index established by trades on the exchange.

The proposed rule will eliminate the need for registration and regulation under Regulation G of clearing agencies for the regulated futures markets, provided the deposit complies with rules of the CFTC. It will accord the clearing arm of the CME and other futures clearing agencies the same exemptive treatment in performing the clearing function that the Board has given to an options clearing agency.

Regulatory Flexibility Act

The Board believes there will be no significant economic impact on a substantial number of small entities if this proposal is adopted. Comments are invited on this statement.

Paperwork Reduction Act

No additional reporting requirements or modifications to existing reporting requirements are proposed.

List of Subjects

12 CFR Part 207

Banks, Banking, Brokers, Credit, Federal Reserve System, Investment companies, Investments, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 220

Banks, Banking, Bonds, Brokers, Commodity futures, Credit, Federal Reserve System, Foreign currencies, Investment companies, Investments, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

For the reasons set out in this notice, and pursuant to the Board's authority under sections 3, 7, 8, 17, and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78c, 78g, 78h, 78q, and 78w), the Board proposes to amend 12 CFR parts 207 and 220 as follows:

PART 207—SECURITIES CREDIT BY PERSONS OTHER THAN BANKS, BROKERS, OR DEALERS

1. The authority citation for part 207 continues to read as follows:

Authority: Secs. 3, 7, 8, 17 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78c, 78g, 78h, 78q, and 78w).

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2. Section 207.1 is amended by adding a new sentence at the end of paragraph (b):

§ 207.1 Authority, purpose, and scope.

* * * * *

(b) Purpose and scope. * * * This part does not apply to clearing agencies regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission that accept deposits of margin stock in connection with the issuance of options on any security, certificate of deposit, securities index or foreign currency or the guarantee of contracts of sale of a commodity for future delivery or options on such contracts.

PART 220—CREDIT BY BROKERS AND DEALERS

1. The authority citation for part 220 continues to read as follows:

Authority: Secs. 3, 7, 8, 17 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78c, 78g, 78h, 78q, and 78w).

2. In § 220.14 the section heading and paragraph (b) are revised to read as follows:

§ 220.14 Clearance of Securities, Options, and Futures.

* * * * *

(b) *Deposit of securities with a clearing agency.* The provisions of this part shall not apply to the deposit of securities with an options or futures clearing agency for the purpose of meeting the deposit requirements of the agency if:

(1) The clearing agency issues options on any security, certificate of deposit, securities index or foreign currency or guarantees performance of contracts of sale of a commodity for future delivery or options on such contracts;

(2) The clearing agency is registered with the Securities and Exchange Commission or is the clearing agency for a contract market regulated by the Commodity Futures Trading Commission; and

(3) The deposit consists of any margin security and complies with the rules of the clearing agency that have been approved by the Securities and Exchange Commission or the Commodity Futures Trading Commission.

By order of the Board of Governors of the Federal Reserve System, May 30, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-13192 Filed 6-4-91; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF JUSTICE

28 CFR Part 20

[Order No. 1502-91]

Juvenile Records

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule would modify 28 CFR 20.32(a)–(b) to authorize inclusion of juvenile records in the FBI criminal history information system. The current rule excludes offenses committed by juvenile offenders unless a juvenile is tried as an adult. The proposed change is necessary to implement an element of the comprehensive violent crime control initiative that was announced by President Bush in 1989.

DATES: Comments must be received by July 5, 1991.

ADDRESSES: Comments should be addressed to: Paul J. McNulty, Acting Director, Office of Policy Development, room 4234, Main Justice Building, Constitution Ave. & 10th St., NW., Washington, DC, 20530.

FOR FURTHER INFORMATION CONTACT: David J. Karp, Attorney Advisor, Office of Policy Development, United States Department of Justice, at (202) 514–3273. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Section 534(a)(1) of title 28, United States Code, provides that the Attorney General shall "acquire, collect, classify, and preserve identification, criminal identification, crime, and other records." The function of maintaining criminal history record information is delegated to the Federal Bureau of Investigation pursuant to 28 CFR 0.85(b) and 20.31.

The proposed amendment, authorizing inclusion of juvenile records in the FBI records system, is necessary to implement an element of the President's comprehensive violent crime control initiative which calls on the states to "maintain records and report on all serious crimes committed by juveniles who frequently continue their criminal careers into adulthood, but often escape early identification as repeat offenders and recidivists because their juvenile records are not reported." White House Fact Sheet of May 15, 1989, at 8. The same point was endorsed by the Attorney General's Task Force on Violent Crime in 1981, Final Report at 82–83, which stated that states should be encouraged to make available criminal history information for juveniles Convicted of serious crimes, and that such information should be entered into the FBI criminal records system.

Empirical data confirms that the Unavailability of juvenile criminal records is a substantial concern in relation to serious offenders. For example, the Bureau of Justice Statistics has estimated that 55 percent of armed robbers in state prisons in 1986 had previously been sentenced to probation or incarceration as a juvenile, and that 15 percent had a prior juvenile, but no adult, sentence. Corresponding figures for other crime categories include the following:

Offense	Prior juvenile sentence (percent)	Prior juvenile sentence only (percent)
Homicide	38	13
Sexual assault	36	11
Aggravated assault	43	9
Robbery	54	15
Kidnapping	50	15
Burglary	58	9
Larceny	49	8
Arson	43	14

Similarly, information compiled by the Federal Bureau of Investigation in the Uniform Crime Reports shows that a substantial proportion of arrests for serious crimes involve juveniles. In 1988, for example, the figures for arrests reported to the FBI showed that persons under the age of 18 accounted for 1,634,790 arrests, comprising over 16 percent of the total. The corresponding figures concerning reported arrests for particular crimes in 1988 include the following:

Offense	Arrests of persons under 18	Percent of all arrests (percent)
Willful homicide	1,765	11
Forcible rape	4,118	14
Aggravated assault	30,536	13
Robbery	24,337	22
Burglary	111,284	34
Larceny-theft	351,133	30
Motor vehicle theft	61,301	40
Arson	6,216	43

The availability of records of juvenile arrests and convictions for law enforcement purposes is currently limited, however, by a rule that generally bars inclusion of juvenile records in the national system of criminal records maintained by the FBI. The proposed amendment would address this problem by authorizing the inclusion of juvenile records for serious crimes in the FBI records system.

Section 20.32 of title 28, Code of Federal Regulations, defines the offenses that will be accepted in the FBI records system. Paragraph (a) of the rule

states that information is to be included concerning serious and/or significant offenses. Paragraph (b) states that nonserious offenses are excluded, such as drunkenness, vagrancy, disturbing the peace, curfew violations, loitering, false fire alarm, non-specific charges of suspicion or investigation, and traffic infractions. However, the second sentence of paragraph (b) states a blanket exclusion of offenses committed by juveniles, unless the juvenile was tried as an adult. The amendment would delete this sentence, and would make a conforming change in paragraph (a), to make it clear that both "adult and juvenile" offenses are to be included.

A complementary change in 18 U.S.C. 5038, which governs reporting of records of juveniles who are federally prosecuted, has been proposed in section 601 of the Administration's proposed Comprehensive Violent Crime Control Act of 1991. The statutory change would require reporting of records for federally prosecuted juveniles who are convicted of the serious violent crimes and drug crimes that support the exercise of Federal jurisdiction pursuant to clause (3) of the first paragraph of 18 U.S.C. 5032. It would also authorize reporting of records as permitted by the law of the state in which a federal juvenile delinquency proceeding takes place.

In accordance with 5 U.S.C. 605(b), it is certified that this rule will not have a significant economic impact on a substantial number of small entities. This is not a major rule within the meaning of section (1)(b) of E.O. 12991, and it does not have federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

List of Subjects in 28 CFR Part 20

Classified information, Crime, Intergovernmental relations, Investigations, Law Enforcement, Privacy.

Therefore, by virtue of the authority vested in me by law, including 28 U.S.C. 509, 510, 5 U.S.C. 301, and 28 U.S.C. 534, it is proposed that part 20 of title 28, Code of Federal Regulations, be amended as follows:

1. The authority citation for Part 20 continues to read as follows:

Authority: Pub. L. 93–83; 87 Stat. 197 (42 U.S.C. 3701, et seq.; 28 U.S.C. 534); Pub. L. 92–544, 86 Stat. 1115; Pub. L. 99–169, 99 Stat. 1002, 1008–1011, as amended by Pub. L. 99–569, 100 Stat. 3190, 3196.

§ 20.32 [Amended]

2. Section 20.32 is amended by inserting the words "adult and juvenile" before the word "offenses" in paragraph (a) and by removing the second sentence in paragraph (b).

Dated: May 29, 1991.

Dick Thornburgh,

Attorney General.

[FR Doc. 91-13163 Filed 6-4-91; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 242

Flood Plain Management Services Program Establishment of Fees for Cost Recovery

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Proposed rule.

SUMMARY: The Department of the Army is instituting procedures to recover the costs of services to be provided to Federal agencies and private persons under the U.S. Army Corps of Engineers Flood Plain Management Services Program, pursuant to section 321 of the Water Resources Development Act of 1990 (Pub. L. 101–640). By offsetting the costs to the Federal Government, cost recovery would enable the Corps to continue to offer Flood Plain Management Services to Federal agencies and private persons. The proposed Fee Schedule has been developed to provide a standard method of cost recovery for all Corps Major Subordinate Commands and District Commands, and to minimize the administrative costs of collecting fees for the services provided.

DATES: Written comments must be received by July 5, 1991.

ADDRESSES: Send comments to HQUSACE, ATTN: CECW–PF, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Jerome Q. Peterson, Chief, Flood Plain Management Services and Coastal Resources Branch, 202/272–0169.

SUPPLEMENTARY INFORMATION:

Background

The Corps of Engineers Flood Plain Management Services Program provides a wide range of flood plain and related assistance in response to numerous requests from the public and private sectors. In the past, these services have been provided at no charge. Section 321 of the Water Resources Development Act of 1990 (Pub. L. 101–640) is a legislative change that applies the "Beneficiary Pay" principle to the Flood Plain Management Services Program by authorizing the Secretary of the Army to establish and collect fees to recover the costs of services provided to Federal agencies and private persons. Section 321 also prohibits the collection of fees from State, regional, or local governments or other non-federal public agencies for those services. The procedures described herein have been developed to initiate cost recovery during Fiscal Year 1991 for Flood Plain Management Services that are requested by Federal agencies and private persons. They involve the use of a nonnegotiable Fee Schedule and negotiated agreements to recover costs. This proposed rule involves only the Fee Schedule. However, for information purposes, all of the cost recovery procedures are briefly described herein.

Description of Service Groups

Through the Flood Plain Management Services Program, the Corps compiles and disseminates data on floods and flood damage potential and provides this information and guidance for flood-related planning. This includes flood hazard information, interpretation, and guidance for sites or short reaches of flood prone areas along streams, lakes, and coasts in addition to follow-up technical and planning assistance designed to support the actions of others to reduce future flood damages. Services are only provided upon request.

For cost recovery purposes, the services provided to Federal agencies and private persons have been grouped according to the level of effort and staffing required to respond to a request. Group 1 includes services that can be provided in ten minutes or less. Group 2 includes services based on existing data and requiring from ten minutes to one day to provide. Group 3 includes services requiring the development of new data and taking over one day and up to one work week (five days) to provide. Group 4 includes services requiring more than one work week to provide.

Cost Recovery Procedures

The following procedures have been developed to recover costs and to minimize the additional administrative costs associated with the cost recovery process. Note that only the Fee Schedule used to recover the cost of Group 2 services is the subject of this rule-making.

There will be no charge for Group 1 services. Procedures to recover the costs of services which can be provided in ten minutes or less would be infeasible because of the accounting and

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administrative costs involved. Therefore, no cost recovery procedure was developed.

A Fee Schedule will be used to charge for services requiring more than ten minutes and up to one day (Group 2 services). The proposed Fee Schedule divides the services covered by this group into five levels according to the complexity of the task. Level 1 includes the provision of basic information from readily available data that does not require technical evaluation or documentation and is transmitted by form letter to the customer. Level 2 includes the provision of information from readily available data that requires minimal technical evaluation and is transmitted by form letter to the customer. Level 3 includes the provision of information that requires some file search, a brief technical evaluation, and documentation of results by a form letter or brief composed letter to the customer. Level 4 includes the provision of information and assistance that requires moderate file search, a brief technical evaluation, and documentation of results in a composed letter to the customer. Level 5 includes the provision of information and assistance that requires significant file search or retrieval of archived data, a moderate technical evaluation, and documentation of results in a brief letter report to the customer. The responding office will use the proposed Fee Schedule to select the Level that best applies to the specific request for services and charge the related fee for that level of effort. The services will be provided on a first-come, first-served basis after payment is received.

A Letter Request will be used to recover the cost of services requiring more than one day and up to one work week (five days) to provide (Group 3 services). The responding office will first negotiate the cost of the service with the requester. The requester, in turn, will send a letter requesting the service and including payment in full to the responding office. After receipt of the Letter Request, the work will be completed in a timely manner and the services will be furnished to the requester with a minimum of additional coordination.

Letters of Agreement, Interagency Agreements, and Memorandums of Agreement will be the formal instruments used to recover the cost of services that require more than one work week to provide (Group 4 services). The responding office will negotiate an agreement with the requester which includes, but is not limited to, a statement describing the work to be done, a time and cost estimate, and a completion schedule. For private persons, the agreement will be in the form of a Letter of Agreement signed by both parties and work will be scheduled and accomplished after receipt of payment. For Federal agencies, the agreement will be in the form of an Interagency Agreement or Memorandum of Agreement and work will be scheduled and accomplished on a reimbursable basis after receipt of the fully executed Memorandum of Agreement or Interagency Agreement. By keeping the agreements simple and as accurate as possible, administrative costs will be kept to a minimum.

Cost Recovery Charges

Where appropriate, charges will be developed to recover approximately 100% of the total costs for providing services to Federal agencies and private persons.

There will be no charge for Group 1 services.

The proposed Fee Schedule will be used Corps-wide to charge for Group 2 services. In developing the proposed fees for each level of Group 2 services, approximate costs based on current staffing, estimates of the work required, and related administrative costs were collected from each Major Subordinate Command and District Command. The proposed fees for each level are Corps-wide averages of these approximate costs.

Once established, these fees will be reviewed each fiscal year using the most current cost data available. If necessary, the Fee Schedule will be revised after public notice and comment.

Letters of Request, Letters of Agreement, Interagency Agreements, and Memorandums of Agreement will be used to charge for Group 3 and Group 4 services. The charges for these services will vary according to the complexity of the request and the time and staff involved in providing the service.

Note 1: The Department of the Army has determined that the proposed regulations do not contain a major proposal requiring the preparation of a regulatory impact analysis under Executive Order 12291.

Note 2: The Department of the Army has determined that this proposed rule will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 33 CFR Part 242

Administrative practice and procedure, Flood plains, Floods, and Water resources.

For the reasons set out in the preamble, 33 CFR part 242 is proposed to be established as set forth below:

Dennis C. Cochrane,

Colonel, GS, Executive, OASA(CW).

PART 242—FLOOD PLAIN MANAGEMENT SERVICES PROGRAM ESTABLISHMENT OF FEES FOR COST RECOVERY

Sec.
242.1 Purpose.
242.2 Applicability.
242.3 References.
242.4 Definitions.
242.5 General.
242.6 Fee Schedule.

Authority: Section 321 of Public Law 101–640, Water Resources Development Act of 1990.

§ 242.1 Purpose.

This regulation gives general instructions on the implementation of section 321 of Public Law 101–640 as it applies to the use of a Fee Schedule for recovering the cost of providing Flood Plain Management Services to Federal agencies and private persons.

§ 242.2 Applicability.

This regulation applies to all HQUSACE elements, Major Subordinate Commands, and District Commands of the Corps of Engineers having Civil Works responsibilities.

§ 242.3 References.

(a) Section 321, Public Law 101–640, Water Resources Development Act of 1990.

(b) Corps of Engineers Engineering Regulation 1105–2–100, Planning Guidance Notebook.

(c) Corps of Engineers Engineering Pamphlet 37–1–4, Cost of Doing Business.

§ 242.4 Definitions.

As used in this part—

Private persons means all entities in the private sector, including but not limited to individuals, private institutions, sole proprietorships, partnerships, and corporations.

Total cost means total labor charges which include adjustments for benefits, administrative overhead, and technical indirect costs. These terms are described in Reference 242.3(c).

§ 242.5 General.

(a) The Corps of Engineers Flood Plain Management Services Program provides a wide range of flood plain and related assistance upon request. Depending on the complexity of the request, either a Fee Schedule or a negotiated agreement will be used to recover the cost of services provided to Federal agencies and private persons.

(b) State, regional, or local governments or other non-Federal public agencies will be provided Flood Plain Management Services without charge.

§ 242.6 Fee Schedule.

(a) *General.* The Fee Schedule described herein will be used to recover the cost for Flood Plain Management Services requiring more than ten minutes and up to one work day to provide. The Fee Schedule has been designed to minimize administrative costs and to allow the flexibility needed to recover the approximate total costs for services provided to Federal agencies and private persons.

(b) *Level of effort.* For establishing charges, services covered by the Fee Schedule have been divided into five levels as follows:

(1) Level 1 includes the provision of basic information from readily available data that does not require technical evaluation or documentation and is transmitted by form letter to the customer.

(2) Level 2 includes the provision of information from readily available data that requires minimal technical evaluation and is transmitted by form letter to the customer.

(3) Level 3 includes the provision of information that requires some file search, a brief technical evaluation, and documentation of results by a form letter or brief composed letter to the customer.

(4) Level 4 includes the provision of information and assistance that requires moderate file search, a brief technical evaluation, and documentation of results in a composed letter to the customer.

(5) Level 5 includes the provision of information and assistance that requires significant file search or retrieval of archived data, a moderate technical evaluation, and documentation of results in a brief letter report to the customer.

(c) *Charge determination.* The Fee Schedule will be used Corps-wide. As requests are received, the responding office will select the appropriate level on the Fee Schedule to determine the charge for providing the service.

(d) *Provision of services.* The services will be provided on a first-come, first-served basis after payment has been received.

(e) *Fees.* The Fee Schedule, including a brief description of the services in each of the five levels and the related charges, is shown in Table 1 below. The fee for each level is based on a Corps-wide average of estimated current costs for providing that level of service.

(f) *Review and revision of fees.* The fees shown in the Fee Schedule will be reviewed each fiscal year using the most current cost data available. If necessary, the Fee Schedule will be revised after public notice and comment.

TABLE 1.—FEE SCHEDULE; STANDARD CORPS-WIDE CHARGES FOR FPMS TASKS REQUIRING MORE THAN TEN MINUTES AND UP TO ONE DAY

Level	Description of work	Fee
1.	Basic information from readily available data that does not require technical evaluation or documentation and is transmitted by form letter..	$25
2.	Information from readily available data that requires minimal technical evaluation which is transmitted by form letter..	55
3.	Information that requires some file search, brief technical evaluation, and documentation of results of a form letter or by a brief composed letter..	105
4.	Information and assistance that requires moderate file search, brief technical evaluation, and documentation of results in a composed letter..	165
5.	Information and assistance that requires significant file search or retrieval of archived data, moderate technical evaluation, and documentation of results in a brief letter report..	325

[FR Doc. 91–12897 Filed 6–4–91; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AD97

Dependency and Income

AGENCY: Department of Veterans Affairs.

ACTION: Proposed Rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations regarding dependency and income for determining entitlement to benefits under certain need-based programs. These amendments are required because of recent legislation which removed certain income sources from consideration in entitlement determinations, and recent opinions of the VA General Counsel dealing with income computations. The intended results of these changes are to ensure that the income sources identified by legislation are excluded from computations in determining eligibility for certain need-based programs and income computation procedures are in accordance with VA regulations.

DATES: Comments must be received on or before July 5, 1991. This amendment is proposed to be effective 30 days after the date of publication of the final rule. Comments will be available for public inspection until July 15, 1991.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this amendment to Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132, at the above address between the hours of 8:00 a.m. and 4:30 pm., Monday through Friday (except holidays), until July 15, 1991.

FOR FURTHER INFORMATION CONTACT: Don England, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, (202) 233–3005.

SUPPLEMENTARY INFORMATION: The regulations regarding exclusions of income for VA pension and parents' dependency and indemnity compensation (DIC) programs are being expanded to exclude income received from three sources. Section 653, Public Law 100–456, authorizes payment of an annuity to qualified surviving spouses of veterans who died before November 1, 1953, and who were entitled to retired or retainer pay on the date of death. This annuity, paid by the Department of Defense, is to be in addition to any death pension benefits paid by VA, and the income from the annuity is not to be considered as income in computing entitlement to such pensions.

Public Laws 101–201 and 100–687 remove, respectively, one specific and one generalized category of income from consideration in entitlement computations for pension and/or parents' DIC programs. Public Law 101–201 provides that any payment received pursuant to the settlement in the case of In re Agent Orange Product Liability Litigation in the United States District Court for the Eastern District of New York (MDL No. 381) be treated by VA as reimbursement for previously unreimbursed medical expenses and not counted as income for entitlement computation purposes. (Section 1203 of Public Law 100–687 provided a similar, but somewhat narrower exclusion, and provided a later effective date.) Section 1402 of Public Law 100–687 amends 38

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U.S.C. 415(f)(1)(I) and 503(a)(5) to exclude from income, for entitlement computations in parents' DIC and improved pension programs, all reimbursements for any casualty loss up to an amount equaling the greater of the fair market value or the reasonable replacement value of the property involved at the time immediately preceding the loss. Formerly only proceeds from fire insurance were excluded by the statute, and that exclusion is being retained for old-law and section 306 pension programs which were not changed by the law.

We are proposing to amend 38 CFR 3.261, 3.262, and 3.272 to exclude payments from the Agent Orange settlement funds (effective January 1, 1989), and 38 CFR 3.262, 3.272, and 3.261 to exclude the special Department of Defense survivor annuity from income computations for pension purposes. We are also proposing to amend 38 CFR 3.263 and 3.275 to exclude payments from the Agent Orange settlement funds from net worth determinations for pension and parents' DIC purposes. We are also proposing to amend 38 CFR 3.261, 3.272, and 3.262 to exclude reimbursement for all casualty losses, as limited by the revised statute, from income computations in determining entitlement to parents' DIC and improved pension benefits. The amendment to 38 CFR 3.262 also includes the exclusion of fire insurance proceeds from other need-based determinations.

We are proposing to amend 38 CFR 3.271(a) to add definitions of recurring, irregular, and nonrecurring income. We are also proposing to amend 38 CFR 3.271(f) by redesignating the introductory text as paragraph (1) and adding paragraph (2) which establishes procedures in cases where dependents with income are claimed by a beneficiary but cannot be included on an award of benefits due to lack of necessary evidence of birth, marriage, or relationship. This proposed rule will preclude the creation of an overpayment in a pension case where dependents with countable incomes are established retroactively.

We are proposing to revise the language of 38 CFR 3.273, 3.660, and 3.661 to remove references to the terms "annual," "year," and "calendar year" and, where required, substituting the term "12-month annualization period." In § 3.661(b)(1), regarding discontinuance and resumptions of old-law and section 306 pension cases, we are proposing to add the word "calendar" preceding references to "year." These amendments are to update terminology so as to avoid confusion over references to periods of time as these periods relate to existing pension programs.

We are proposing to add a sentence to 38 CFR 3.273(a) to specify that recomputations of improved pension rates following the effective date of entitlement because of changes in the maximum annual pension rate or changes in a beneficiary's income will be accomplished under the rules for running awards which are shown in paragraph (b) of this section. This addition is to add specificity of procedure for computations of entitlement for initial awards.

We are proposing to add 38 CFR 3.273(d) providing regulatory authority for income computations based on changes in recurring and irregular income. This amendment will bring consistency to this regulation by including these new categories with existing methodology for nonrecurring income.

We are proposing to change the paragraph heading of 38 CFR 3.660(a)(2) from "Contingency" to "Effective dates" as that title more clearly describes the content of the paragraph.

We are proposing amendments to 38 CFR 3.661 changing references to "income and net worth questionnaires" to "Eligibility Verification Reports," which is current terminology.

We are proposing technical amendments to 38 CFR 3.261 through 3.277 and 3.660 through 3.665 which update terminology and make language gender neutral.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that these regulatory amendments are non-major for the following reasons.

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

(The Catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, and 64.110)

Approved: August 15, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

PART 3—[AMENDED]

38 CFR part 3, Adjudication, is proposed to be amended as follows:

0. The authority citation for Part 3 continues to read as follows:

Authority: 72 Stat. 1114, 38 U.S.C. 210, unless otherwise noted.

§ 3.261 [Amended]

1. In § 3.261 remove the words "protected", "widows", and "Public Law 86–211" in the columnar headings and add, in their place, the words "old-law", "surviving spouses" and "section 306", respectively.

2. In § 3.261 revise item (28), and add item 35 to read as follows:

§ 3.261 Character of income: exclusions and estates.

(28) Reimbursement for casualty loss	Excluded	Excluded	Excluded	Excluded	§ 3.262(t).
Other fire insurance (Pub. L. 100–687)	Included	Excluded	Included	Included	§ 3.262(t).
(35) Agent Orange settlement payments	Excluded	Excluded	Excluded	Excluded	§ 3.262(s)
(a) Deduction of amounts paid by claimant:					
(1) Unusual medical expenses	Not authorized	Not authorized	Not authorized	Not authorized	§§ 3.262(b) (i), & (l).
(2) Veteran: just debts, expenses of last illness and burial.	Not authorized	Not authorized, except debts.	Not authorized	Not authorized	§§ 3.262(m) & (o).
(3) Veteran's spouse or child: expenses of last illness and burial.	Not authorized	Not authorized	Not authorized	Not authorized	§ 3.262(n).
(4) Parent's spouse: just debts, expenses of last illness and burial.	Not authorized	Authorized			§ 3.262(o).
(5) Prepayments on real property mortgages after death of spouse (Pub. L. 91–588).	Not authorized	Not authorized	Not authorized	Authorized	§ 3.262(k)(6).
(b) Corpus of estate	Considered conditionally.	Not considered	Not considered	Considered	§ 3.263.

(Authority: Pub. L. 101-201)

3. In § 3.262 paragraphs (l)(1) through (1)(4) and the authority citation are revised and paragraphs (r), (s) and (t) are added to read as follows:

§ 3.262 Evaluation of income.

* * * * *

(l) * * *

(1) Veterans. For the purpose of section 306 pension, there will be excluded unreimbursed amounts paid by the veteran for unusual medical expenses of self, spouse, and other relatives of the veteran in the ascending as well as descending class who are members or constructive members of the veteran's household and for whom the veteran has a moral or legal obligation to support.

(2) Surviving spouses. For the purpose of section 306 pension, there will be excluded unreimbursed amounts paid by the surviving spouse for the unusual medical expenses of self, the veteran's children, and other relatives of the surviving spouse in the ascending as well as descending class who are members or constructively members of the surviving spouse's household and for whom the surviving spouse has a moral or legal obligation to support.

(3) Children. For the purpose of section 306 pension, there will be excluded unreimbursed amounts paid by a child for the unusual medical expenses of self, parent, and brothers and sisters of the child.

(4) Parents. For dependency and indemnity compensation purposes there will be excluded unreimbursed amounts paid by the parent for the unusual medical expenses of self, spouse, and other relatives of the parent in the ascending as well as descending class who are members or constructively members of the parent's household and for whom the surviving spouse has a moral or legal obligation to support. If the combined annual income of the parent and the parent's spouse is the basis for dependency and indemnity compensation the exclusion is applicable to the combined annual income and extends to the unusual unreimbursed medical expenses of the spouse's relatives in the ascending as well as descending class who are members or constructively members of the household and for whom the parent's spouse has a moral or legal obligation to support.

(Authority: 38 U.S.C. 415(f)(3) and 503(c))

* * * * *

(r) Survivor benefit annuity. Annuity paid by the Department of Defense under the authority of section 653, Public Law 100–456 to qualified surviving spouses of veterans who died prior to November 1, 1953. (September 29, 1988)

(Authority: Pub. L. 100–456)

(s) Agent Orange settlement payments. Payments received by any person in the case of In re Agent Orange Product Liability Litigation in the United States District Court for the Eastern District of New York (MDL No. 381). (January 1, 1989)

(Authority: Public Law 101–201)

(t) Reimbursement for casualty loss. The following sources of reimbursements for casualty loss will not be considered as income in determining entitlement to benefits under the programs specified. Amounts to be excluded from computation in parents' dependency and indemnity compensation claims are limited to amounts of reimbursement which do not exceed the greater of the fair market value or the reasonable replacement cost of the property involved at the time immediately preceding the loss.

(1) Reimbursement for casualty loss of any kind in determining entitlement to parents' dependency and indemnity compensation benefits. For purposes of paragraph (t) of this section, the term "casualty loss" means the complete or partial destruction of property resulting from an identifiable event of a sudden, unexpected or unusual nature.

(2) Proceeds from fire insurance in determining dependency of a parent for compensation purposes or in determining entitlement to old-law and section 306 pension benefits.

(Authority: 38 U.S.C. 415(f))

§ 3.262 [Amended]

4. In § 3.262(g)(2), third sentence, remove the words "Where eligibility to pension is subject to determination under Public Law 86-211 (73 Stat. 432)" and add, in their place, the words "For purposes of section 306 pension".

5. In § 3.262(h), second sentence, remove the word "widow" and add, in its place, the words "surviving spouse".

6. In § 3.262(j)(2), first sentence, remove the words "under Pub. L. 86–211 (Stat. 432)" and "under Pub. L. 86–211" and add the words "section 306" in front of the word "pension" wherever it appears.

7. In § 3.262(j)(3) remove the word "protected" in the paragraph heading and add, in its place, the word "old-law".

8. In § 3.262(k)(1), second sentence, remove the words "pension purposes under the provisions of Pub. L. 86–211 (73 Stat. 432)" and add, in their place, the words "section 306 pension purposes" and revise the authority citation to read "(Authority: 38 U.S.C. 503 (15); Pub. L. 91–588)".

9. In § 3.262 (k)(5) and (k)(6) remove the words "Pub. L. 86–211" and "Pub. L. 86–211 (73 Stat. 432)" wherever they appear, and add, in their place the words "section 306 pension".

10. In § 3.262(m) introductory text, remove the words "Pub. L. 86–211 (73 Stat. 432)" and add, in their place, the words "section 306"; in paragraph (m)(l), remove the word "widow" and add, in its place the words "surviving spouse" and remove the words "she, as wife".

11. In § 3.263(m)(2) remove the word "widow" wherever it appears and add, In its place, the words "surviving spouse"; remove the word "his" where it appears, and add, in its place, the words "the veteran's"; and remove the words "for the expenses of his".

12. In § 3.263(m) the authority is revised to read "(Authority: 38 U.S.C. 503(a))".

13. In § 3.262(n) introductory text, remove the words "Pub. L. 86–211 (73

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Stat. 432)" and add, in their place, the words "section 308"; in paragraph (n)(1), remove the words "him" and "his" and add, in their place, the words "the veteran" and "the veteran's"; in paragraph (n)(2), remove the words "wife or widow", and "her as wife or widow" and add, in their place, the words "spouse or surviving spouse", and "the spouse or surviving spouse", and revise the authority citation to read "(Authority: 38 U.S.C. 503(a))".

14. In § 3.262(o) the authority citation appearing at the end of the paragraph is revised to read "(Authority: 38 U.S.C. 415(f))".

15. In § 3.262(p) remove the words "the wife or husband" and add, in their place, the words "spouse or surviving spouse" and remove the words "widow, widower".

§ 3.263 [Amended]

16. In § 3.263(a) remove the words "widow, widower" wherever they appear and add, in their place, the words "surviving spouse".

17. In § 3.263 add paragraph (e) to read as follows:

§ 3.263 Corpus of estate; net worth.

* * * * *

(e) Agent Orange settlement payments. There shall be excluded from the corpus of estate or net worth of a claimant any payment made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.). (January 1, 1989)

(Authority: Pub. L. 101–201)

§ 3.271 [Amended]

18. In § 3.271 paragraphs (a) (1) through (3) are added and paragraph (f) is amended by redesignating the introductory text as paragraph (f)(1) and adding paragraph (f)(2) to read as follows:

§ 3.271 Computation of income.

(a) * * *

(1) Recurring income. Recurring income means income which is received or anticipated in equal amounts and regular intervals (e.g., weekly, monthly, quarterly, etc.) which will continue throughout an entire 12-month annualization period. The amount of recurring income for pension purposes will be the amount received or anticipated during a 12-month annualization period. Recurring income which terminates prior to being counted for at least one full 12-month annualization period will be treated as nonrecurring income for computation purposes.

(2) Irregular income. Irregular income means income which is received or anticipated during a 12-month annualization period, but which is received in unequal amounts or at irregular intervals. The amount of irregular income for pension purposes will be the amount received or anticipated during a 12-month annualization period.

(3) Nonrecurring income. Nonrecurring income means income received or anticipated on a one-time basis during a 12-month annualization period (e.g., an inheritance). Pension computations of income will include nonrecurring income for a full 12-month annualization period following receipt of the income.

* * * * *

(f) * * *

(2) When a claimed dependent is shown to have income which exceeds the additional amount of benefits payable based on the claimed dependency, but evidence requirements of §§ 3.204, 3.205, 3.209, or 3.210 have not been met, the maximum annual rate of improved pension shall be determined without consideration of the claimed dependency. This amount shall be reduced by an amount which includes the income of the unestablished dependent. Adjustments in computation of the maximum annual rate of improved pension shall occur following receipt of evidence necessary to establish the dependency.

(Authority: 38 U.S.C. 210(c))

* * * * *

19. In § 3.272 paragraph (d) and its authority citation are revised and paragraphs (n) and (o) are added to read as follows:

§ 3.272 Exclusions from income.

* * * * *

(d) Reimbursement for casualty loss. Reimbursement of any kind for any casualty loss. The amount to be excluded is not to exceed the greater of the fair market value or the reasonable replacement cost of the property involved at the time immediately preceding the loss. For purposes of this paragraph, the term "casualty loss" means the complete or partial destruction of property resulting from an identifiable event of a sudden, unexpected or unusual nature.

(Authority: Pub. L. 101–201)

* * * * *

(n) Survivor benefit annuity. Annuity paid by the Department of Defense under the authority of section 653, Public Law 100–456 to qualified surviving spouses of veterans who died prior to November 1, 1953. (September 29, 1988)

(Authority: Pub. L. 100–456)

(o) Agent Orange settlement payments. Payments received by any person in settlement of the case of In re Agent Orange Product Liability Litigation in the United States District Court for the Eastern District of New York (M.D.L. No. 381). (January 1, 1989)

(Authority: Pub. L. 101–201)

20. In § 3.273 add an introductory text, add a sentence at the end of paragraph (a), and add paragraph (d) to read as follows:

§ 3.273 Rate computation.

The commencement date of change in benefit payments based on rate computations under the provisions of this section will be determined under the provisions of § 3.31 or § 3.660.

(a) * * * Recomputation of rates due to changes in the maximum annual pension rate or rate of income following the initial date of entitlement are subject to the provisions of paragraph (b) of this section.

* * * * *

(d) Recurring and irregular income. The amount of recurring and irregular income anticipated or received by a beneficiary shall be added to determine the beneficiary's annual rate of income for a 12-month annualization period commencing at the beginning of that 12-month annualization period.

§ 3.273 [Amended]

21. In § 3.273(a) and (b)(1) remove the words "annual rate of".

22. In § 3.273(b)(2) remove the words "annual rate" and add, in their place, the word "amount".

23. In § 3.273(c) remove the words "12-month period" and add, in their place, the words "12-month annualization period".

§ 3.275 [Amended]

24. In § 3.275 add paragraph (f) to read as follows:

* * * * *

(f) Agent Orange settlement payments. There shall be excluded from the corpus of the estate or net worth of a claimant any payment made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.). (January 1, 1989)

(Authority: Pub. L. 101–201)

§ 3.277 [Amended]

25. In § 3.277 the authority citation appearing at the end of the section is revised to read "(Authority: 38 U.S.C. 506)".

§ 3.660 [Amended]

26. In § 3.660(a)(2) remove the word "Contingency" in the paragraph heading and add, in its place, the words "Effective dates".

27. In § 3.660(b) introductory text remove the words "year", and "a calendar year" and add, in their place, the words "12-month annualization period" and "the following 12-month annualization period", respectively.

28. In § 3.660(b)(1) remove the words "January 1 of that year" and add, in their place, the words "the beginning of the appropriate 12-month annualization period".

29. In § 3.661(b)(2) remove the word "year" the first two times it appears and the words "within that year" and add, in their place, the words "12-month annualization period" and "within that period", respectively.

§ 3.661 [Amended]

30. In § 3.661, remove the words *"Income and net worth questionnaires"* in the section heading and add, in their place, the words *"Eligibility Verification Reports"*.

31. In § 3.661, paragraphs (a)(1) and (b) heading, remove the word "questionnaire" wherever it appears and add, in its place, the word "report".

32. In § 3.661(b)(1) add the word "calendar" before the word "year" each time it appears.

33. In § 3.661(b)(2) remove the words "year" and "income questionnaire", wherever they appear, and add, in their place, the words "12-month annualization period" and "Eligibility Verification Report", respectively.

Editorial note: This document was received at the Office of the Federal Register on May 29, 1991.

[FR Doc. 91–12991 Filed 6–4–91; 8:45 am]
BILLING CODE 8320–01–M

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38 CFR Part 8

RIN 2900–AF17

Discount Rate for Premiums Paid in Advance

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs proposes to amend its regulations to increase the discount which National Service Life Insurance (NSLI), Veterans Special Life Insurance (VSLI), and Veterans Reopened Insurance (VRI) policyholders receive for paying premiums in advance of the monthly due date. This action is administratively and actuarially sound and complies with relevant statutory authority.

DATES: Comments must be received on or before July 5, 1991. Comments will be available for public inspection until July 15, 1991. This amendment is proposed to be effective 30 days after publication of the final rule.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed regulation to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays) until July 15, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Koons, Assistant Director for Insurance, Department of Veterans Affairs Regional Office and Insurance Center, P. O. Box 8079, Philadelphia, Pennsylvania 19101, (215) 951–5360.

SUPPLEMENTARY INFORMATION: Section 729 of title 38 U.S.C. authorizes the Secretary of Veterans Affairs to adjust the discount rates for premiums paid in advance on NSLI, VSLI, and VRI policies, provided the Secretary determines that the adjustment is administratively and actuarially sound for the program of insurance involved. Section 729 further stipulates that the discount rate may not be adjusted lower than the program's guaranteed values. Under sections 702, 723, and 725 of title 38 U.S.C., the guaranteed values for the NSLI, VSLI, and VRI programs are 3%, 2½%, and 3½%, respectively. This amendment proposes to increase the discount for all three programs by adjusting the interest basis used to calculate the discount rate. The new interest rate basis will be 7½% for all three programs. Based on a determination by the Chief of the Insurance Services Actuarial Staff, this adjustment is consistent with the Contribution Principle and the Source of Earnings Method of distributing surplus earnings on investments as recommended by the American Academy of Actuaries and, therefore, it is administratively and actuarially sound.

The 7½% interest basis will be used to calculate the discount for advance premium payments made on or after the effective date of the amendment only.

The Secretary of Veterans Affairs hereby certifies that this proposed amendment to regulations, if promulgated, will not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), this proposed amendment to regulations is, therefore, exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that this amendment to regulations will affect only certain Government Life Insurance policyholders. It will, therefore, have no significant direct impact on small entities in terms of compliance costs, paperwork requirements, or effects on competition.

VA has determined that this proposed amendment to regulations is nonmajor in accordance with Executive Order 12291, Federal Regulation. This amendment will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not otherwise have any significant adverse economic effects.

The Catalog of Federal Domestic Assistance number for this proposed regulation is 64.103.

List of Subjects in 38 CFR Part 8

Disability benefits, Life insurance, Veterans.

Approved: 8, 1991.

Edward Derwinski,

Secretary of Veterans Affairs.

38 CFR part 8, National Service Life Insurance, is amended to read as follows:

PART 8—[AMENDED]

1. The third sentence of § 8.5 is revised and the authority citation for § 8.5 is added at the end of the section to read as follows:

§ 8.5 Due Date of Premiums

* * * In any case in which premiums are paid in advance, the premium payable will be the sum of the monthly premiums for the period discounted at the same interest rate as that on which the premium charges are based as set forth in § 8.3, except that for premiums paid in advance on participating National Service Life Insurance, Veterans Special Life Insurance, and Veterans Reopened Insurance on or after July 5, 1991, the discount shall be based on a 7½ percent interest rate.

* * *

Authority: 38 U.S.C. 729.

[FR Doc. 91–13179 Filed 6–4–91; 8:45 am]
BILLING CODE 8320–01–M

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 91-139; FCC No. 91-150]

Higher Output Power on Certain Fire Radio Service Frequencies

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This docket proposes to increase the available transmitter output power on the fire radio service frequency 153.83 MHz and requests comment on whether the increase should also include 33.42 MHz and 46.30 MHz. This action was initiated by a petition for rule making filed by the International Association of Fire Chiefs, Inc. and the International Municipal Signal Association. The effect of the proposed rules would be enhanced on-the-scene fire-fighting communications.

DATES: Comments must be filed on or before July 22, 1991, and reply comments must be filed on or before August 6, 1991.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Steve Sharkey, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, PR Docket No. 91-139, FCC 91-150, adopted May 7, 1991, and released May 30, 1991. The full text of this notice of Proposed Rule Making is available for inspection during normal business hours in the FCC Dockets Branch, Room 230, 1919 M Street, NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20026, telephone (202) 452-1422.

Summary of Notice of Proposed Rule Making

The International Association of Fire Chiefs ("IAFC") and the International Municipal Signal Association ("IMSA") have filed a petition for rule making to increase the maximum output power for transmitters operating on 153.83 MHz from 10 watts to 100 watts. This frequency is used by the Fire Radio Service for on-the-scene fire-fighting communications. The petitioners claim, however, that because many of the vehicular radio units operate with 100 watts output power, the 10 watt power limit precludes necessary communications on the 153.83 MHz frequency between these vehicular units and fire-fighting personnel using lower power hand-held units. Accordingly, to allow complete communications at the scene of fires the Commission proposes to increase the maximum output power on 153.83 MHz to 100 watts. Currently though, the 10 watt transmitter output power limits the practical use of this frequency to its intended purpose, if the available power is increased, this frequency may become attractive for uses incompatible with on-the-scene fire-fighting communications. Comments are requested on how to best preserve this frequency for its intended purpose. The Commission also requests comment on whether any changes in regulation of 153.83 MHz should be extended to the 33.42 MHz and 46.30 MHz frequencies. Although the petitioners did not mention these frequencies they are intended for the same purpose as 153.83 MHz and are covered by the same rules and restrictions.

Initial Regulatory Flexibility Analysis

Reason for action

This proposal is intended to improve communications between on-the-scene fire-fighting personnel utilizing the fire radio frequencies. This will result in safer and more effective fire-fighting efforts.

Legal Basis

Sections 4(i), 303(g), 303(r) and 303(a) of the Communications Act of 1934, as amended.

Reporting, Recordkeeping, and Other Compliance Requirements

None.

Federal Rules Which Overlap, Duplicate or Conflict With This Rule

None.

Description, Potential Impact and Number of Small Entities Involved

The increase in power for these fire radio frequencies will result in improved communications and safety for fire-fighting units, many of which are small local organizations. Beyond this, we are unable to quantify the potential effects on small entities. We therefore invite specific comments on this point by interested parties.

Any Significant Alternative Minimizing the Impact on Small Entities and Consistent with the Stated Objectives

None.

Paperwork Reduction Act Statement

The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to propose no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements, and will not increase burden hours imposed upon the public.

List of Subject in 47 CFR Part 90

Special emergency services, Communications equipment, Radio.

Amendatory Text

A. It is proposed to amend part 90 of the Commission's Rules, 47 CFR part 90 to read as follows:

PART 90—[AMENDED]

1. The authority citation for part 90 continues to read as follows:

Authority: Section 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

2. 47 CFR 90.21 is amended by revising the entry for § 153.63 in the table in paragraph (b) and by adding paragraph (c)(18) to read as follows:

§ 90.21 Fire radio service.

* * * * *

(b) * * *

Frequency or band	Class of station(s)	Limitations
*	*	*
153.83	Mobile	17
*	*	*

(c) * * *

(18) The maximum output power of any transmitter authorized to operate on this frequency shall not exceed 100 watts.

* * * * *

3. 47 CFR 90.555 is amended by revising the entry for § 153.830 in the table in paragraph (b) to read as follows:

§ 90.555 Combined Frequency Listing.

* * * * *

(b) * * *

Frequency	Services	Special Limitations
*	*	*
153.830	PF	Max. Power 100 W.
*	*	*

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 91-13152 Filed 6-14-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[Docket No. RAR-4, Notice No. 2]

Railroad Accident Reporting; Open Meeting

AGENCY: Federal Railroad Administration, Department of Transportation.

ACTION: Notice of open meeting

SUMMARY: On March 14, 1990, the Federal Railroad Administration (FRA) issued an advance notice of proposed rulemaking (ANPRM) soliciting comments and suggestions from the public regarding methods of improving FRA's injury and accident reporting system and its governing regulations (55 FR 9469). The responses to that public notice have provided additional information and identified further issues or subissues related to the issues discussed in the ANPRM. In order to explore matters related to the accident/incident reporting system, FRA will hold an informal open meeting on June 13, 1991, in Washington, DC, with members of the Association of American Railroads (AAR) Uniformity Committee. The meeting will be open to any interested persons who wishes to attend as an observer. FRA may schedule additional, informal meetings to the extent that interest is expressed by other parties.

DATES: The open meeting will be held on Thursday, June 13, 1991 at 1 p.m.

ADDRESSES: The open meeting will be held in Room 4338, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Principal Program Person: Stan Ellis, Office of Safety, FRA, Washington, DC 20590. Telephone: (202) 366-2760 (FTS 366-2760).

Principal Attorney: Billie Stultz, Office of the Chief Counsel, FRA, Washington, DC 20590. Telephone: (202) 366-0635 (FTS 366-0635).

SUPPLEMENTARY INFORMATION: On March 14, 1990, FRA issued an ANPRM requesting comments and suggestions on how to improve all aspects of its accident/incident reporting system and the requirements in part 225 (49 CFR 225). Interested parties were invited to participate in a public hearing on May 17, 1990, and to file written comments prior to May 25, 1990.

The written comments received by FRA have provided additional information and raised further issues and subissues related to the matters discussed in the ANPRM. In addition, FRA has received significant oral comments on same subject. Representatives of the railroads participating in the AAR Uniformity Committee have expressed an interest in exploring possibilities concerning the format in which accident/incident data is gathered pursuant to the FRA Guide for Preparing Accident/Incident Reports. Since these issues bear on regulatory obligations and may touch on issues within the scope of the advance notice, FRA determined that the meeting should be open to any interested person who wishes to observe. FRA would endeavor to favorably entertain requests for additional meetings of this type from other interested parties. Consequently, FRA has scheduled the open meeting for Thursday, June 13, 1991, at 1 p.m., in Room 4338 of the Nassif Building, 400 Seventh Street, NW., Washington, DC.

Issued in Washington, DC on May 31, 1991.

Grady C. Cothen, Jr.,

Associate Administrator for Safety.

[FR Doc. 91-13233 Filed 6-4-91; 8:45 am]

BILLING CODE 4910-06-M

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Notices

Federal Register
Vol. 56, No. 108
Wednesday, June 5, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Information Collection Request Under Review

AGENCY: Action.

SUMMARY: This notice sets forth certain information about an information collection proposal by ACTION, The Federal Domestic Volunteer Agency.

SUMMARY: Under the Paperwork Reduction Act (44 U.S.C., chapter 35), the Office of Management and Budget (OMB) reviews and acts upon proposals to collect information from the public or to impose recordkeeping requirements. ACTION has submitted the information collection proposal described below to OMB. OMB and ACTION will consider comments on the proposed collection of information and recordkeeping requirements. Copies of the proposed forms and supporting documents (requests for clearance (SF 83), supporting statement, instructions, transmittal clearance officer.

DATES: OMB and ACTION will consider comments received on or before July 5, 1991. Comments are to be directed to both of the following addresses:

Janet Smith, ACTION Clearance Officer, ACTION, 1100 Vermont Ave. NW., Washington, DC 20525, tel. (202) 634–9245.

Daniel Chenok, Desk Office for ACTION, Office of Management and Budget, 3200 New Executive Office Bldg., Washington, DC 20503, tel. (202) 395–7316.

SUPPLEMENTARY INFORMATION:

Office of ACTION Issuing Proposal: Domestic Operations/VISTA.

Title of Forms: VISTA Volunteer Application and Reference Forms.

Need and use: The VISTA Volunteer application and attendant reference forms are the documents by which essential information is gathered on every VISTA applicant. The data submitted on these forms by applicants and those identified as references by the applicant will be used by ACTION to evaluate the skills, experience, motivation, and suitability of individuals of full-time, full-year VISTA Volunteer service pursuant to the Domestic Volunteer Service Act of 1973, as amended, Public Law 93–113.

Type of Request: Revision.

Frequency of Collection: Annually.

General Description of Respondents: Volunteer applicants.

Estimated Number of Responses: 2,200.

Estimated Annual Reporting or Disclosure Burden: 3,850 hours.

Dated: May 3, 1991.

Janet Smith,

Clearance Officer, ACTION.

[FR Doc. 91–13182 Filed 6–4–91; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

May 31, 1991.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W, Administration Building, Washington, DC 20250, (202) 447–2118.

Revision

• Foreign Agricultural Service, 7 CFR 1493—Regulations Covering CCC's Export Credit Guarantee Program (GSM–102) and CCC's Intermediate Export Credit Guarantee Program (GSM–103), Recordkeeping; On occasion, Businesses or other for-profit; Small businesses or organizations; 35,582 responses; 8,007 hours, L.T. McElvain, (202) 447–6211.

• Foreign Agricultural Service, Licensing of Sugar Free from Quota, FAS–947, Recordkeeping; On occasion, Businesses or other for-profit; 545 responses; 1000 hours, Cleveland Marsh, (202) 475–5676.

Extension

• Foreign Agricultural Service, CFR 1494—Regulations Governing CCC's Export Enhancement Program, Recordkeeping; On occasion, Businesses or other for-profit; Small businesses or organizations; 8,974 responses; 4,274 hours, L. T. McElvain, (202) 447–6211.

• Food and Nutrition Service, 7 CFR part 210, National School Lunch Program, Recordkeeping; Monthly; Annually; Biennially, State or local governments; Federal agencies or employees; Nonprofit institutions; 2,232,247 responses; 22,390,798 hours, Marian Stroud, (703) 756–3607.

New Collection

• National Agricultural Statistics Service, Cotton Ginnings Survey, Semi-annually; Annually; Semi-monthly September–January, Businesses or other for-profit; Small businesses or organizations; 14,590 responses; 1,151 hours, Larry Gambrell, (202) 447–7737.

• Agricultural Stabilization and Conservation Service, 7 CFR part 1435—Sugar, CCC–80, Monthly, Businesses or other for-profit; Small businesses or organizations; 630 responses; 945 hours, Matt Smargiasso, (202) 382–0011.

Reinstatement

• Food and Nutrition Service, 7 CFR 251—Emergency Food Assistance Program Regulations, Recordkeeping; On occasion; Monthly; Quarterly; Semi-annually; Annually, State or local governments; Federal agencies or employees; Non-profit institutions; 1,826 responses; 677,705 hours, Diane Berger, (703) 756–3660.

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 91–13239 Filed 6–4–91; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

Easton Ridge Timber Sale, Wenatchee National Forest, Kittitas County, Washington

AGENCY: Forest Service, USDA.

ACTION: Revision of a notice of intent to prepare an environmental impact statement.

SUMMARY: Comments concerning the scope and environmental analysis for this USDA-Forest Service proposal on the Cle Elum Ranger District of the Wenatchee National Forest should be received by June 15, 1991. The **Federal Register** on May 2, 1991 (56 FR 20184) is revised to show that the comments for Easton Ridge Timber Sale should be received by June 15, 1991 and not May 1, 1991 as printed.

ADDRESSES: Submit written comments to John W. Lowery, District Ranger, Cle Elum Ranger District, 803 West Second, Cle Elum, WA 98922.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this EIS should be directed to John W. Lowery, District Ranger, Cle Elum Ranger District, 803 West Second, Cle Elum, WA 98922, phone (509) 674–4411.

Dated: May 28, 1991.

John W. Lowery,

District Ranger.

[FR Doc. 91–13211 Filed 6–4–91; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Current Population Survey—Control Card.

Form Number(s): CPS–1, CPS–260, CPS–262.

Agency Approval Number: 0607–0049.

Type of Request: Revision of a currently approved collection.

Burden: 17,745 hours.

Number of Respondents: 57,000.

Avg Hours Per Response: One and one–half minutes

Needs and Uses: The Current Population Survey is a monthly survey conducted in approximately 57,000 households throughout the United States. Data on demographic and labor force characteristics are collected from a sample of households which represent the U.S. population. The basic monthly questionnaire is periodically supplemented with additional questions which address specific needs. The Bureau of the Census uses the data to compile monthly averages of household size and composition, age, education, ethnicity, marital status and various other characteristics at the U.S. level. The Bureau of Labor Statistics also uses the data in their monthly calculations of employment and unemployment.

Affected Public: Individuals or households.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 31, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91–13240 Filed 6–4–91; 8:45 am]

BILLING CODE 3510–07–F

Bureau of Export Administration

[Docket Nos. 9102–01, 9102–02, 9102–50, 9102–51]

Marek Cieslak, Individually and doing business as M.C. Electronics and Anna Koziel Individually and doing business as Datelcomp AB, Respondent

Order

On May 1, 1991, the Administrative Law Judge (ALJ) entered his Recommended Decision and Order in the above-referenced matter. The Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. Having examined the record and based on the facts in this case, I hereby affirm the Decision and Order of the ALJ.

This constitutes final agency action in this matter.

Dated: May 29, 1991.

Joan M. McEntee,

Acting Under Secretary for Export Administration.

Decision Adding Related Persons

Appearance for Respondent: Anna Koziel (pro se); Datelcomp AB, Drabantvagen 21, 17530 Jarfalla, Sweden.

Appearance for Agency: Louis K. Rothberg, Esq., Office of Chief Counsel for Export Administration, U.S. Department of Commerce, room H–3839, 14th & Constitution Ave., NW., Washington, DC 20230.

Order

On July 14,1989, Marek Cieslak, individually and doing business as M.C. Electronics was denied all U.S. export privileges for a period of 20 years (54 FR 30436 (1989)). That denial was based upon evidence relating to illegal export activity involving microprocessors from the United States to Sweden without the required U.S. export licenses. That conduct was also the subject of a criminal proceeding and conviction based upon Cieslak's plea of guilty.

The Bureau of Export Administration by Counsel now requests that the names of Anna Koziel and Datelcomp AB be added to the table of denied parties on the representation that they are parties related to Respondent Marek Cieslak and are subject to such denial by virtue of their business relationship.

The Agency has produced evidence which reflects that Datelcomp AB was established in Stockholm, Sweden. Further, the two board members listed in the official government certification are Anna Koziel and Marek Cieslak and the persons authorized to sign for the company Datelcomp are Koziel and Cieslak individually. Other reports in the record demonstrate that Anna Koziel is the sole shareholder and Marek Cieslak is the Business Manager of Datelcomp. The identity of these two named individuals as the Respondents in these proceedings is demonstrated by the confirmation of business and residence addresses, the business reports, and the admission of Anna Koziel that Marek Cieslak is employed in her business.

Agency Counsel's assertion that the denied party Marek Cieslak appears to be using Koziel as a "front" to evade the 20 year denial order presently outstanding against him and his company M.C. Electronics (See 54 FR 30436 (1989)) is a valid conclusion which I also draw from the evidence received. Respondent Koziel's submission acknowledges an employment

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relationship which is sufficient to conclude that she is a party related by affiliation to an individual on the Table of Denied Parties (15 CFR part 788 Supp. No. 1).

Accordingly, pursuant to the provisions of 15 CFR 788.3(c), paragraph III of the above cited Order Denying Export Privileges is modified to substitute the following as Paragraph III:

After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondents are now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services. Those persons now known to be affiliated with at least one of the Respondents and who are accordingly subject to the provisions of the order are—Anna Koxiel, individually and doing business as Datelcomp AB, Drabantvägen 21, 17530 Järfälla, Sweden and Kattfotsvägen 4, 175 74 Järfälla, Sweden.

Dated: May 1, 1991.

Hugh J. Dolan,

Administrative Law Judge.

This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. 2412(c)(1)).

To be considered in the 30 day statutory review process which is mandated by section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW., room 3898B, Washington, DC, 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 788.23(b), 50 FR 53134 (1985). Pursuant to section 13(c)(3) of the Act, the order of the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

[FR Doc. 91-13212 Filed 6-4-91; 8:45 am]

BILLING CODE 3510-DT-M

[Docket Nos. 0110-01 and 0110-02]

Alexander Kovar, Individually and Doing Business as CAE Services; Respondent; Order

On April 29, 1991, the Administrative Law Judge entered his Recommended Decision and Order in the matter referred to above. The Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action.

1. I affirm the finding of the ALJ that the Respondent violated §§ 787.2 and 787.3(b) of the Regulations, as alleged in the Charging Letter.

2. The Administrative Law Judge recommended the denial of the Respondent's U.S. export privileges for a period of three years, with two suspended. The Administrative Law Judge based his recommendation on the disparity of the penalty sought by the Department with a penalty imposed in a consent agreement in a related case. A disparity between the denial period imposed in a consent agreement and the denial period imposed on a Respondent who exercises the right to contest the charges administratively is not unconscionable. Based on the seriousness of the Respondent's violations, I am modifying the Order of the Administrative Law Judge to provide for a denial of the Respondent's U.S. export privileges for a period of twenty years, as sought by the Department.

In all other respects, having examined the record and based on the facts in the case, I hereby affirm the Decision and Order of the Administrative Law Judge.

This constitutes final agency action in this matter.

Dated: May 29, 1991.

Joan McEntee,

Acting Under Secretary for Export Administration.

Decision and Order

Appearance for Respondent: Mr. Alexander Kovar (pro se), CAE Services, Loewengasse 2A, A-1030 Vienna, Austria.

Appearance for Agency: Louis K. Rothberg, Esq., Office of Chief Counsel for Export Administration, U.S. Department of Commerce, Room H-3839, 14th and Constitution Avenue, NW., Washington, DC 20230.

Preliminary Statement

On June 28, 1990, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (the Agency), issued a Charging Letter to Respondent Alexander Kovar, individually and doing business as CAE Services (Kovar), pursuant to the Export Administration Act of 1979 (50 U.S.C.A. app. 2401-2420), as amended (the Act),[1] and the Export Administration Regulations (the Regulations).

The Charging Letter alleged that Respondent committed one violation of 15 CFR 787.3(b) and one violation of 15 CFR 787.2. Respondent filed a timely answer to the Charging Letter, but did not request a hearing. Subsequent to the filing of evidentiary testimony by both parties, the record closed for decision on January 2, 1991.

Facts

In April 1988, Telega Company of West Germany contacted Mr. Reiner Schaaf (Schaaf) (doing business as Awitex and Digitex in West Germany)[2] regarding the purchase of a VAX 8550 computer for a July or August 1988 delivery to Dubai, United Arab Emirates. The stated end use in Dubai was an electrical control device for an oil pumping station. (Agency Ex. 1).

In response to Telega's order on behalf of Universal Group, Schaaf began negotiating for the purchase of A VAX 8550 computer with International Computer Exchange, Inc. (ICEX), a computer distributor in Louisville, Colorado. Schaaf represented to ICEX that the end user was Telega in West Germany (Agency Ex. 5 and 8). On May 27, 1988, Schaaf ordered the system from ICEX (Agency Ex. 3). The system was shipped to Schaaf on July 28, 1988. It was consigned to Awitex (Agency Ex. 4). During this period the VAX system was classified under ECCN 1565A and would have required Department of Commerce reexport authorization from West Germany to the United Arab Emirates. There was a presumption of approval for such an export (Agency Ex. 9).

Financing arrangements for the system appear to have been initiated on May 3, 1988. On that date an irrevocable letter of credit (number IMP/22107/SH/88 covering "electrical control devices for a pump station as per contract no. SL/UG/TR 58550/05-87") was opened in favor of Alutrade Ltd., Nicosia, Cyprus by Investment Bank for Trade, Sharjah, United Arab Emirates for the account of Universal Group for General Trading, Sharjah, United Arab Emirates (Agency's Submission on the Record at 3).

This letter of credit was amended on May 26, 1988 by credit document No. 25-390/ZG389 issued by Swiss Bank Corporation, Zug, Switzerland, naming Alutrade as the applicant and Respondent as beneficiary in the amount of 1,900,000 West German marks (DM) (Agency Ex. 2).

On June 6, 1988, Respondent amended the Letter of Credit by adding a description of the VAX 8550 computer system destined for delivery to the United Arab Emirates (Agency Ex. 10). The amendment, which is signed by Respondent, names both Digitex and Respondent as parties and references the previous version of the letter of credit (no. 25.390/ZG/389). On July 26, 1988, the Letter of Credit was amended for a third time. These amendments, which stated that the shipment was "for the account of Alexander Kovar": 1. Named the United Arab Emirates as the final destination of the system; 2. called for the system to be shipped from West Germany to the United Arab Emirates rather than from Cyprus; 3. extended the shipment date to August 8, 1988; and, 4. named Digitex as a beneficiary for the amount of 1,150,000 DM (Agency Ex. 11).

Finally, Respondent signed a commercial invoice attesting that the "electronical [sic] control devices for a pump station as per contract No. SL-UG/TR 58550/05-87" were of "U.S.C. origin . . . and are not of Israeli origin nor Israeli production and contain no Israeli materials" (Agency Ex. 12). The contract number recited in the commercial invoice is the same one that appears in the original, May 3, letter of credit.

Discussion

The Agency first alleges that Respondent conspired with Schaaf, individually and doing business as Awitex and Digitex, to reexport the VAX system from West Germany to United Arab Emirates without authorization from the Agency as required under § 774.1 of the Regulations. The facts, as presented by the Agency and not contradicted by Respondent, show that Schaaf informed the computer distributer, ICEX, that the end user was Telega in West Germany, despite Schaaf's knowledge that the system was to be reexported to United Arab Emirates.

From the evidence submitted by the Agency, Respondent's role begins in May 1988, when his name appears as beneficiary on a letter of credit that is subsequently linked to the shipment of the VAX from West Germany to the United Arab Emirates. The Link is established by Respondent's June 6, 1988 amendment to the letter of credit where he adds a description of the VAX system and names both himself and Schaaf as parties. His second amendment to the letter of credit in August 8, 1988 served to reinforce his role.

Respondent does not controvert either his participation in processing the letter of credit or his connection to Schaaf. Regarding the letter of credit, he states, "The fact of the existence [sic] of a letter of credit does not prove that the deal happened. This letter of credit was not used, it expired unused." Regarding Schaaf, he states, "It was never my duty to apply for a reexport license [sic]. It was Mr. Schaaf's [sic] duty and he always confirmed, that he has to and will cover [sic] this activity".

Thus, Respondent's statements confirm the evidence presented by the Agency showing that Respondent participated in the reexport from West Germany to the United Arab Emirates of equipment obtained by Schaaf in the United States. Respondent's attestation in the commercial invoice that the equipment was of United States and not Israeli origin, in addition to letter of credit amendments naming both Respondent and Schaaf as parties to the transaction, support the conclusion that he was involved in a conspiracy to bring about an unauthorized reexport of the VAX to the United Arab Emirates.

By so conspiring, Respondent violated § 787.3(b) of the Regulations. Whether or not the letter of credit was used is not essential. It is the agreement among the participants and their knowledge that counts. Nor is it relevant whether Respondent had knowledge of all details of the transaction or participated in every phase of the scheme. See, *e.g., United States* v. *Carter*, 760 F.2d 1568 (11th Cir. 1985).

The Agency asserts that by twice amending the letter of credit to facilitate the financing of or payment for the VAX 8550 computer system in connection with its unauthorized reexport from West Germany to the United Arab Emirates, and by signing a required commercial invoice containing a standard Arab League Israeli boycott clause, Respondent acted to aid and abet an unlawful intended reexport of the system in violation of § 787.2 of the Regulations. The Agency's submission and evidence supports the second charge.

Conclusion

I conclude that the evidence presented by Agency Counsel supports the conclusion that Respondent actively participated in a conspiracy to reexport U.S.-origin computer equipment from West Germany to the United Arab Emirates, without the required export license, in violation of § 787.3(b) of the Regulations. By aiding and abetting an unlawful intended reexport of the system, he also committed a violation of § 787.2 of the Regulations.

However, in the related proceeding against Schaaf, Agency Counsel has reached a settlement agreement wherein Schaaf will pay $50,000 and be denied export privileges for one year (two years denial, with one year suspended). The disparity in penalties is unconscionable. Particularly since the culpability of these separate parties is almost identical based on the facts of record. It appears that Schaaf would be allowed to buy significant relief from denied party status, whereas Kovar is to be denied for 20 years. An exorbitant price for him to pay for pursuing of administrative adjudication.

Furthermore, the stated end use of the product, i.e., as an electrical control device for an oil pumping station, does not appear to threaten this country's national security. There is no allegation in the submissions that an end use other than that specified was contemplated. In all likelihood, a license to reexport the equipment to the United Arab Emirates would have been granted had Schaaf or Telega applied for one. Agency exhibit 9 indicates that there is a presumption of approval for such authorization.

For these reasons, the violations committed by Respondent warrant significantly less than the 20-year sanction proposed by the Agency.

Order

I. For a period of 3 years from the date of the final Agency action, Respondent, Alexander Kovar, individually and doing business as CAE Services, Loewengasse 2A, A-1030 Vienna, Austria and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Commencing one year from the date that this Order becomes effective, the denial of export privileges set forth above shall be suspended, in accordance with § 788.16 of the Regulations, for the remainder of the three year period set forth in paragraph I above, and shall be remitted at the end of such three year period without further action, provided that Respondent has committed no further violations of the Act, the Regulations, or the final Order entered in this proceeding. During the two year suspension period, Respondent may participate in transactions involving the export of the U.S.-origin commodities or technical data from the United States or abroad in accordance with the requirements of the Act and the Regulations. The provisions of paragraphs III, V, and VI are also suspended during the two-year suspension period.

[1] The Act expired on September 30, 1990. Executive Order 12730 (55 FR 40373 (1990)) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701-1706 (Supp. 1990)).

[2] Reiner Schaaf, individually and doing business as Awitex and Digitex, is the subject of a separate Charging Letter, also dated June 28, 1990, which is based on the same facts and circumstances as those alleged here.

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III. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to participation:

(i) As a party or as a representative of a party to a validated or general export license application;

(ii) In preparing or filing any export license application or request for reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to those commodities and technical data which are subject to the Act and the Regulations.

IV. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

V. All outstanding individual validated export licenses in which Respondent(s) appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent(s)'s privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

VI. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VII. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. 2412(c)(1)).

To be considered in the 30 day statutory review process which is mandated by section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW., room 3898B, Washington, DC, 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 788.23(b), 50 FR 53134 (1985). Pursuant to section 13(c)(3) of the Act, the order of the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

Dated: April 29, 1991.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 91-13194 Filed 6-4-91; 8:45 am]

BILLING CODE 3510-DT-M

[Docket Nos. 0110-01, 0110-02, 0109-01, 0109-01, 0109-03]

Reiner Schaaf, Individually and Doing Business as Awitex and Digitex, Respondent; Export Privileges

Order

On April 29, 1991, the Administrative Law Judge entered his Recommended Decision and Order in the matter referred to above. The Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final actions. The Decision and Order affirms a Consent agreement between the parties to settle the matter. I am modifying the Order in one respect. The first sentence of Paragraph II of the Consent Agreement is modified to read in full as follows:

II. The denial of export privileges set forth in Paragraph I above shall be suspended, in accordance with § 788.16 of the Regulations, and shall be terminated at the end of the two year period, provided that during the two year period Respondent has committed no violation of the Act, the Regulations, or the final Order entered in this proceeding, provided further that there is no outstanding charging letter issued by the Agency during the period of suspension charging the Respondent with such a violation.

In all other respects, having examined the record and based on the facts in the case, I hereby affirm the Decision and Order of the Administrative Law Judge.

This constitutes final agency action in this matter.

Dated: May 29, 1991.

Joan McIntee,

Acting Under Secretary for Export Administration.

Appearance for Respondent: Werner Hein, Esq., Wilkinson, Barker, Knauer and Quinn, 1735 New York Avenue NW., Washington, DC 20006.

Appearance for Agency: Louis K. Rothberg, Esq., Office of Chief Counsel for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave. NW., Washington, DC 20230.

Preliminary Statement

This proceeding against the above named Respondents commenced with the issuance and service on this Tribunal of a charging letter dated June 26, 1990, by the Office of Export Enforcement (Agency), U.S. Department of Commerce. The charging letter was issued under the authority of the Export Administration Act of 1979 (50 U.S.C.A. app. §§ 2401-2420 as amended (Act) [1] and the Export Administration Regulations CFR part 788 (Regulations).

The charging letter alleges that between April and September 1988 Respondent and others conspired to acquire a computer representing that it was to be exported for end use in West Germany, intending at the time to reexport to another country without the required reexport determination. It is separately charged that the above scheme was effected by making a false and misleading statement and misrepresentation respecting the ultimate destination.

Respondent answered the charging letter acknowledging participation in the purchase and export to Germany of the computer but denied participation in any conspiracy or violation of the Export Administration Act. It is asserted that the computer was sold to another entity in West Germany and that it and the U.S. distributor were informed and aware of the requirements for an export license for the planned reexport.[2]

[1] The Act expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 3, 1990) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701-1706 (Supp. 1990)).

Discussion

Following extensive pre-hearing exchanges and discussions over the past six months between Agency Counsel and the Respondent, the parties have submitted a Consent Settlement pursuant to § 788.17(a) of the Regulations. It acknowledges that: in the administrative proceeding Respondent Schaaf was charged with violating §§ 787.5(b) and 787.5 of the Regulations in that:

Between April 1988 and September 1988, Schaaf conspired with Alexander Kovar, individually and doing business as CAE Services, and others, to acquire a U.S.-origin VAX 8650 computer for reexport to the United Arab Emirates without obtaining from United States Department of Commerce, the reexport authorization required by the Regulations and further, in connection with the shipment of the computer system, Schaaf made a false representation that West Germany was the country of ultimate end use.

The parties have stipulated and agreed that Respondent neither admits nor denies the allegations contained in the charging letter; that the Agency will settle and dispose on behalf of both parties all of the allegations made in the charging letter and waive all rights to refund the civil penalty imposed as well as all the agreements stipulating jurisdiction; that Respondent agreed to be bound by the Secretarial order implementing the Consent Agreement; that Respondent will provide for payment of a civil penalty of $50,000 in installments; and that Respondent will be denied export privileges for a period of two years all of which is suspended. The parties further agree that the charging letter, consent agreement and order will be publically disclosed; that the agreement is for settlement purposes only; that it binds only the parties thereto that may not be varied by external agreements, understanding or representation and that it becomes effective only upon entry of the final Order of the Under Secretary.

The Consent Agreement negotiated by the parties, to settle this matter, is transmitted herewith. Those terms are implemented by the Order set forth below.

Order

I. For a period of 2 years from the date of the final Agency actions, Respondent Reiner Schaaf, individually and doing business as

Awitex
and also doing business as
Digitex
with address at
Geigelsteinweg 7, 8081 Maisach, West Germany
and
Ohmstrasse 12, 8047 Karsfeld, West Germany
and
Ganghoferstrasse 31, 8031 Maisach, West Germany

and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. The denial of export privileges set forth in Paragraph I above shall be suspended, in accordance with § 788.16 of the Regulations, and shall be terminated at the end of the two year period, provided that Respondent has committed no violation of the Act, the Regulations, or the final Order entered in this proceeding. During the two-year suspension period, Respondent may participate in transactions involving the export of U.S.-origin commodities or technical data from the United States or abroad in accordance with the requirements of the Act and the Regulations. The provisions of Paragraphs IV, VI, and VII of this Order shall also be suspended during such two-period.

III. A civil penalty in the amount of $50,000 is assessed against Respondent Schaaf. He shall pay to the Agency the sum of $10,000 within 30 days from the date of the entry of the final Order and the remaining balance due of $40,000 shall be paid in four $10,000 installments each on the following dates: June 1, 1991, September 1, 1991, December 1, 1991 and March 1, 1992. Payment shall be made in the manner specified in the instructions furnished. In the event that Respondent Schaaf fails to make any required payment on or before the date it is due, the entire unpaid balance shall become immediately due and payable in full.

IV. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated or general export license application;

(ii) In preparing or filing any export license application or request for export authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying or negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to those commodities and technical data which are subject to the Act and the Regulations.

V. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

VI. All outstanding individual validated export licenses in which Respondent(s) appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent(s)'s privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

VII. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward,

[2] The decision in *Kovar, et al.*, of this date, contains a more complete statement of details.

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transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VIII. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. 2412(C)(1)).

Dated: April 29, 1991.

Hugh J. Dolan,

Administrative Law Judge.

To be considered in the 30 day statutory review process which is mandated by section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave. NW., room 3898B, Washington, DC, 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 788.23(b), 50 FR 53134 (1985). Pursuant to section 13(c)(3) of the Act, the order of the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

[FR Doc. 91-13197 Filed 6-4-91; 8:45 am]
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[Docket Nos. 01111-01, 0111-02]

Aime Richardt, Individually and Doing Business as Les Accessoires Scientifiques, Respondents; Export Privileges

Summary

Pursuant to the April 29, 1991, Decision and Order of the Administrative Law Judge ("ALJ"), which Decision and Order is hereby affirmed in part and modified in part in accordance with section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. sections 2401-2420 (1991)) ("the Act") [1], Aime Richardt is denied export privileges for a period of three months from the date hereof. Les Accessoires Scientifiques is denied export privileges for a period of three years from the date hereof and will pay a civil penalty of $15,000 within 30 days hereof. The denial of export privileges shall be suspended, in accordance with § 788.16 of the Regulations, and shall be terminated without further action at the end of that period provided Respondents have committed no violations of the Act, the Regulations, or the final Order entered in this proceeding, and provided further that there is no outstanding charging letter issued by the Agency during the period of suspension charging Respondent with such a violation.

Background

On July 3, 1990, the Office of Export Administration, U.S. Department of Commerce ("Agency"), issued a charging letter against Aime Richardt, individually and doing business as Les Accessoires Scientifiques ("Respondents"), alleging that, despite being subject to a series of six temporary denial orders Respondents ordered, bought, and received a U.S.-origin ion generator in violation of § 787.4 of the Regulations. Respondents are also separately charged with soliciting the commission of exports while denied export privileges in violation of § 787.3(a) of the Regulations. Respondents answered the charging letter acknowledging participation in the purchase and export of the ion generator, but asserted that the value and nature of the spare part involved rendered it a *de minimis* transaction. Subsequently, the Agency and Respondents entered into a consent agreement and submitted the consent agreement to the ALJ for his consideration. The ALJ approved the consent agreement on April 29, 1991, finding its terms to be reasonable. Nevertheless, the ALJ proposed additional language regarding the suspension of a portion of the denial period imposed. The Order of the ALJ provides that:

> Commencing one year from the date that this Order becomes effective, the denial of export privileges set forth above shall be suspended, in accordance with § 788.16 of the Regulations, and will be remitted without further action at the end of that period provided Respondent has committed no violations of the Act, the Regulations, or the final Order entered in this proceeding.

On May 10, 1991, in accordance with § 788.23 of the Regulations, the Agency filed its Initial Submission which asks that this language be modified to provide as follows: For Richardt:

> As authorized by § 788.16(c) of the Regulations, the denial period herein provided for against Aime Richardt shall be suspended for a period of three months beginning from the date of entry of this Order, and shall thereafter be waived, provided that, during the period of suspension, Aime Richardt has committed no violation of the Act of any regulation, order or license issued under the Act.

For Les Accessoires Scientifiques:

> As authorized by § 788.16(C) of the Regulations, the denial period herein provided for against Les Accessoires Scientifiques shall be suspended for a period of two years beginning one year from the date of entry of this Order, and shall thereafter be waived, provided that, during the period of suspension, Les Accessoires Scientifiques has committed no violation of the Act or any regulation, order or license issued under the Act.

The Agency argued that the language proposed by the ALJ "unduly limits the ability of the Agency to move to revoke any suspended portion of the denial period in the event that respondents commit a violation during the suspension period." The Respondents objected to this language because a specific time limit is not stated in which the Department must act to revoke a suspension for a breach of a probationary term that occurred during the period of suspension. Respondent's replied:

> [t]o the extent the Department seeks some open-ended period during which it can pursue unilateral reinstatement of suspended sanctions (which presumably would be based on conduct during the suspension period which otherwise would constitute a violation), without giving Respondents the requisite due process protection guaranteed them by the Act and the Regulations, Respondents respectfully object.

Respondents therefore requested that the ALJ's Decision and Order be affirmed without modification. In a Final Submission, the Department reiterated its position, adding to the argument only the statement that "[i]mposing a specific time limit will seriously impede the ability of the Department to enforce the terms of probation and revoke the suspensions".

Discussion

On April 29, 1991, the ALJ issued his Decision and Order in this proceeding approving the consent agreement as negotiated by the parties. However, the ALJ proposed in paragraph III, regarding the suspension of a portion of the denial imposed against Richardt: "The denial of export privileges * * * will be remitted without further action at the end of that period * * *" The ALJ proposed the same for Les Accessoires Scientifiques in paragraph V: "The period of denial * * * will be remitted at the end of that period * * *."

I agree with the Agency that the ALJ's Order may unduly limit the ability of the Department to take action after the expiration of the suspension period. At the same time, giving the Agency an open-ended period of time to act following the expiration of the suspension period would unfairly prejudice the Respondent's due process protections. In order to balance these interests, I believe that the ALJ's recommended Order should be modified to provide that the denial of export privileges shall be suspended, and will be terminated without further action at the end of that period provided Respondents have committed no violations of the Act, the Regulations, or the final Order entered in this proceeding, and provided further that there is no outstanding charging letter issued by the Agency during the period of suspension charging Respondents with such a violation. Under this latter provision, the Agency would not be required to establish the violation within the suspension period, but would need to have reason to believe Respondents had committed a violation sufficient to justify the issuance of a charging letter. 15 CFR 788.4(a).

Order

I. The ALJ's Decision to affirm the Consent Agreement, as negotiated by the parties, is hereby affirmed, striking that portion of the ALJ's Decision and Order which states that the denial of export privileges will be remitted without further action at the end of the period of suspension.[2]

II. The ALJ's Order is modified to read as follows:

Respondent Les Accessoires Scientifiques is assessed a civil penalty of $15,000, which shall be fully paid within 30 days from the date of this Order. As authorized by section 11(d) of the Act, the timely payment of the penalty is a condition of the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted to Les Accessoires Scientifiques. Failure to make the timely payment of the civil penalty shall result in a denial of all of Les Accessoires Scientifiques export privileges for a period of one year from the date of this Order.

III. For a period of 3 years from the date of this Order, Respondent, Les Accessoires Scientifiques, BP 1 Conflans-Sur-Lanterne, 70800 St. Loup Sur Semouse, France, and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

IV. Commencing one year from the date this Order becomes effective, the denial of export privileges for Les Accessoires Scientifiques shall be suspended for two years, in accordance with § 788.16(c) of the Regulations, and shall be terminated without further action at the end of that period provided Les Accessoires Scientifiques has committed no violations of the Act, the Regulations or the final Order entered in this proceeding, and provided further that there is no outstanding charging letter issued by the Agency during the period of suspension charging Les Accessoires Scientifiques with such a violation. During the two-year suspension period, Les Accessoires Scientifiques may participate in transactions involving the export of U.S.-origin commodities or technical data from the United States or abroad in accordance with the requirements of the Act and the Regulations. The provisions of paragraphs VII, IX, and X of this Order will also be suspended.

V. For a period of three months form the date of this Order, Respondent, Aime Richardt, c/o Les Accessoires Scientifiques, BP 1 Conflans-Sur-Lanterne, 70800 St. Loup Sur Semouse, France, and all successors, assignees, officers, partners, representatives, agents, and employees, hereby are denied all privileges or participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported form the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

VI. The denial of export privileges shall be suspended for three months, in accordance with § 788.16(c) of the Regulations, and shall be terminated without further action at the end of that period provided Aime Richardt has committed no violations of the Act, the Regulations, or the final Order entered in this proceeding and provided further that there is no outstanding charging letter issued by the Agency during the period of suspension charging Aime Richardt with such a violation. During the three month suspension period, Aime Richardt may participate in transactions involving the export of U.S.-origin commodities or technical data from the United States or abroad in accordance with the requirements of the Act and the Regulations. The provisions of paragraphs VII, IX, and X of this Order are also suspended.

VII. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to participation:

(i) As a party or as a representative of a party to a validated or general export license application;

(ii) In preparing or filing any export license application or request for reexport authorization, or any document to submitted therewith;

(iii) In obtaining or using any validated or general export license of the export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing, of in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to those commodities and technical data which are subject to the Act and the Regulations.

VIII. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent(s) is now or hereafter may be related by affiliation, ownership, position of responsibility, or other connection in the conduct of trade or related services.

IX. All outstanding individual validated export licenses in which Respondent(s) appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent(s)'s privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

X. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization for the Office of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

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[1] The Act expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701-1706 (1991)).

[2] In order to avoid any confusion regarding what terms of the ALJ's Order apply, I have set forth herein a complete order in this case. Accordingly, since this order constitutes the final agency order in this proceeding, and since it does not incorporate the ALJ's Recommended Order, the latter is not being published in the Federal Register.

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(i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transhipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transhipment or diversion of any commodity or technical data exported or to be exported from the United States.

This constitutes the final agency action in this matter.

Dated: May 29, 1991.

Joan M. McEntee,

Acting Under Secretary for Export Administration.

Decision and Order on Consent

Appearance for Respondent: Mr. Richard L. Cys, Esq., Davis, Wright, Tremaine, 1752 N Street NW., Suite 800, Washington, DC 20036.

Appearance for Agency: Louis K. Rothberg, Esq., Office of Chief Counsel for Export Administration, U.S. Department of Commerce, Room H-3839, 14th & Constitution Ave. NW., Washington, DC 20230.

Preliminary Statement

This proceeding against Respondent Aime Richardt individually and doing business as Les Accessoires Scientifiques was initiated with the issuance of a charging letter dated July 3, 1990 by the Office of Export Enforcement ("the Agency"), Bureau of Export Administration, U.S. Department of Commerce. The charging letter was issued under the authority of the Export Administration Act of 1979 (50 U.S.C.A. app. 2401–2420), as amended ("the Act") [1] and the Export Administration Regulations ("the Regulations").

The charging letter alleges that, despite being subject to a series of six temporary denial orders, Respondent Richardt, acting on behalf of Respondent Les Accessoires Scientifiques, ordered, bought, and received a U.S.-origin ion generator in violation of § 787.4 of the Regulations. Respondents are also separately charged with soliciting the commission of exports while denied export privileges in violation of § 787.3(a) of the Regulations.

[1] The Act expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (Supp. 1990)).

Respondents answered the charging letter acknowledging participation in the purchase and export of the ion generator, but asserted that the value and nature of the spare part involved rendered it a *de minimis* transaction. In that submission, they denied causing or soliciting General Ionex to export to a denied party.[2]

Discussion

The parties have submitted a Consent Agreement pursuant to § 788.17 (a) of the Regulations. It acknowledges that: In the administrative proceeding Respondents were charged with violating §§ 787.3(a) and 787.4 of the Regulations in that: 1. While Respondents were "persons denied export privileges", as defined in § 787.12(b) of the Regulations, they ordered, bought and received U.S.-origin commodities, and 2. between April 1986 and April 1987, Respondents solicited the commission of, and attempted to bring about violations of the Act and the Regulations.

The parties have stipulated and agreed that Respondent Les Accessoires Scientifiques will pay a civil penalty of $15,000 within 30 days of entry of a final Order. The Company is also to be denied export privileges for three years from entry of the final order, the latter two years of which will be automatically suspended with provision for automatic remission. Respondent Aime Richardt will be denied export privileges for three months. However, the three month denial period is to be suspended with provision for automatic remission.

The conditions that apply to Respondent Richardt render the denial period for Respondent Les Accessoires Scientifiques meaningless. Under these terms, Respondent Richardt may simply export in his own name. Further, since Respondent Les Accessoires Scientifiques is acknowledged to be wholly owned by another corporation, transactions could also be handled in that company's name.

The parties further agree that the Act and regulations confer jurisdiction with respect to the matters identified in the charging letter; and, that they wish to settle and dispose of all allegations made in the Charging Letter by the Consent Agreement and agree to be bound by the final Order when entered.

While the compromise effected here may appear to reward rather than sanction the violators [3] with the ebb of the cold war and the perceived imminent demise of the particular controls involved, this disposition appears to be a pragmatically acceptable resolution.

Order

I. Respondent Les Accessoires Scientifiques is assessed a civil penalty of $15,000, which shall be fully paid within 30 days from the date of final Agency action. As authorized by § 11(d) of the Act, the timely payment of the penalty is a condition of the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted to Les Accessoires Scientifiques. Failure to make the timely payment of the civil penalty shall result in a denial of all of Les Accessoires Scientifiques export privileges for a period of one year from the date this Order becomes effective.

II. For a period of 3 years from the date of the final Agency action, Respondent, Les Accessoires Scientifiques, BP 1 Conflans-Sur-Lanthern, 70800 St. Loup Sur Semouse, France and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

III. commencing one year from the date that this Order becomes effective, the denial or export privileges set forth above shall be suspended, in accordance with § 788.16 of the Regulations, and will be remitted without further action at the end of that

[2] No further explanation of General Ionex's participation appears in the record. Nor does the record reflect the disposition of the investigation respecting La Physique Applique Industrie, the principal and apparently the parent company named in the series of temporary denial orders. It is also noted that Respondent Richardt was not named *in propria persona* in those orders. Nor has he been the subject of a related person determination pursuant to 15 CFR 788.3(c) by this Tribunal.

The inference to be drawn from the overall circumstances presented here is that Respondent Richardt was in fact a party related to one or both of the above named companies cited in the temporary denial orders. The answer and the consent agreement appear to affirm that conclusion. Absent some specific finding or showing, it is difficult to ascertain how an individual or company not so named in a denial order should be considered as "denied" to a third party customer, supplier, or merchant dealing with such an individual.

[3] The six consecutive temporary denial orders were issued during 1986 and 1987 to inhibit deliberately covert and imminent additional violations which would constitute a continued serious threat to national security by Respondent Les Accessoires Scientifiques. They were published as follows: 51 FR 15955 (1986), 51 FR 23256 (1986), 51 FR 30888 (1986), 51 FR 37776 (1986), 51 FR 46889 (1986), and 52 FR 5808 (1987).

period provided Respondent has committed no violations of the Act, the Regulations, or the final Order entered in this proceeding. During the two-year suspension period, respondent may participate in transactions involving the export of U.S.-origin commodities or technical data from the United States or abroad in accordance with the requirements of the Act and the Regulations. The provisions of paragraphs VI, VIII, and IX of this Order will also be suspended.

IV. For a period of three months from the date of the final Agency action, Respondent, Aime Richardt, c/o Les Accessoires Scientifiques, BP 1 Conflans-Sur-Lanterne, 70800 St. Loup Sur Semouse, France, and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly, or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

V. The period of denial set forth above is hereby suspended for three months from the date on which this Order becomes final, in accordance with § 788.16(c) of the Regulations, and will be remitted at the end of that period provided Respondent has committed no violations of the Act, the Regulations, or the final Order entered in this proceeding. During the three month suspension period, Respondent may participate in transactions involving the export of U.S.-origin commodities or technical data from the United States or abroad in accordance with the requirements of the Act and the Regulations. The provisions of paragraphs VI, VIII, and IX of this Order are also suspended.

VI. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated or general export license application;

(ii) In preparing or filing any export license application or request for reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extent to those commodities and technical data which are subject to the Act and the Regulations.

VII. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent(s) is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

VIII. All outstanding individual validated export licenses in which Respondent(s) appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent(s)'s privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

IX. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

X. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. 2412(c)(1)).

Dated: April 29, 1991.

Hugh J. Dolan,

Administrative Law Judge.

To be considered in the 30 day statutory review process which is mandated by section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave. NW., Room 3898B, Washington, DC, 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 788.23(b), 50 FR 53134 (1985). Pursuant to section 13(c)(3) of the Act, the order of the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

[FR Doc. 91-13213 Filed 6-4-91; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Docket 30-91]

Foreign-Trade Zone 50—Long Beach, California; Application for Subzone Datatape Tape Recording Equipment Plant, Pasadena, CA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Board of Harbor Commissioners of the City of Long Beach, California, grantee of FTZ 50, requesting special-purpose subzone status for the tape recording equipment manufacturing plant of Datatape Incorporated (Datatape) (subsidiary of the Eastman Kodak Company) located in Pasadena, California. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 24, 1991.

The Datatape plant (17 acres) is located at 360 Sierra Madre Villa Avenue in Pasadena, California, some 15 miles northeast of Los Angeles. The facility employs 660 persons and is used to manufacture magnetic tape recording equipment including rotary-head digital recorders, flight recorders, high density digital cassette tape recorders, and computer data mass-storage systems. Some 16 percent of its components are foreign sourced, including tape transports, cassette recorders, recorder parts and accessories, magnetic tape, switching apparatus, printed circuit boards, electric motors, and fasteners. Currently, 13 percent of the finished equipment is exported.

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Zone procedures would exempt Datatape from Customs duty payments on the foreign components used in equipment produced for export. On sales to the U.S. Department of Defense (DOD), the company would be able to enter the products duty free under the provisions of Harmonized Tariff System Chapter 98, Subchapter VIII. On other domestic sales, the company would be able to choose the duty rate that applies to finished tape recording equipment (3.7 percent). The duty rates on most components range from 3.7 to 3.9 percent. The application indicates that zone savings will help improve Datatape's international competitiveness and increase export sales.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; John Heinrich, District Director, U.S. Customs Service, Pacific Region, Room 2017, 300 South Ferry Street, Terminal Island, San Pedro, California 90731; and, Colonel Charles S. Thomas, District Engineer, U.S. Army Engineer District Los Angeles, P.O. Box 2711, Los Angeles, California 90053-2325.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before July 22, 1991.

A copy of the application is available for public inspection at each of the following locations:

Office of the District Director, U.S. Department of Commerce, Room 800, 11777 San Vincente Blvd., Los Angeles, CA 90049.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Room 3716, Washington, DC 20230.

Dated: May 30, 1991.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 91-13241 Filed 6-4-91; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 28-91]

Foreign-Trade Zone 176—Rockford, IL; Application for Subzone Milk Specialties Company, Animal Feed Manufacturing Plant, Dundee, IL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Rockford Airport Authority, grantee of FTZ 176, requesting special-purpose subzone status for the animal feed manufacturing plant of Milk Specialties Company (MSC), located in Dundee, Illinois. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on May 16, 1991.

The MSC plant (2.5 acres/66,200 sq. ft.) is located at 310 River Street in Dundee (northern Kane County), some 45 miles southeast of the Greater Rockford Airport in Rockford, Illinois. The facility produces milk-based animal feeds by blending dried milk, sugar, soy flour, animal fats, lecithin, proteins and oils.

The company is requesting the use of zone procedures so that it can use ex-quota foreign sugar and dried milk to produce animal feed for export. Zone procedures for export manufacturing would also exempt the company from Customs duty payments on the foreign milk and sugar as well as other foreign ingredients, such as casein, whey protein concentrate, dried whey, and coconut oil. Zone procedures would not be used for manufacturing products destined for the domestic market. The applicant indicates that subzone status would help improve MSC's competitiveness in Asian and South American markets.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Richard Roster, District Director, U.S. Customs Service, North Central Region, 610 South Canal Street, Chicago, IL 60607; and, Colonel John R Brown, District Engineer, U.S. Army Engineer District Rock Island, P.O. Box 2004, Clock Tower Building, Rock Island, IL 61204-2004.

Comments concerning the proposed foreign-trade subzone are invited from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before July 18, 1991.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Customs Service, Greater Rockford Airport, 4 Airport Circle, Rockford, Illinois 61109.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: May 28, 1991.

John J. DePonte, Jr.,

Executive Secretary.

[FR Doc. 91-13242 Filed 6-4-91; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 29-91]

Foreign-Trade Zone 43—Battle Creek, MI; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Battle Creek, Michigan, grantee of FTZ 43, requesting authority to expand its zone to include a site in Zeeland Township, Ottawa County, Michigan, adjacent to the Grand Rapids Customs port of entry, which would be operated by TLC Warehousing Services, Inc. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 21, 1991.

FTZ 43 was approved on October 19, 1978 (Board Order 138, 43 FR 50233, 10/27/78), and expanded on December 27, 1990 (Board Order 490, 56 FR 675, 1/8/91). The present zone (1,824 acres) is located within the Fort Custer Industrial Park in Battle Creek. An application is already pending which involves a site operated by TLC Warehousing Services, Inc. (TLC), in Texas Township, Kalamazoo County, some 25 miles west of Battle Creek (FTZ Docket 48-90, 55 FR 51306, 12/13/90).

This application requests authority to further expand FTZ 43 to include another site (22 acres) operated by TLC, which is located at 8250 Logistic Drive, Zeeland Township, Ottawa County, Michigan, some 20 miles southwest of Grand Rapids. No manufacturing authority is being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; William L. Morandini, District Director, U.S. Customs Service, North Central Region, Patrick V. McNamara Building, 477 Michigan Avenue, Detroit, Michigan 48226-2568; and Colonel John D. Glass, District Engineer, U.S. Army Engineer District Detroit, P.O. Box 1027, Detroit, Michigan 48231-1037.

Comments concerning the proposed expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before July 19, 1991.

A copy of the application is available for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, 4950 West Dickman Road, Battle Creek, Michigan 49106.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., room 3716, Washington, DC 20230.

Dated: May 28, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91-13243 Filed 6-4-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Antidumping or Countervailing Duty Order Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

BACKGROUND: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with section 353.22 or 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

OPPORTUNITY TO REQUEST A REVIEW: Not later than June 30, 1991, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in June for the following periods:

Antidumping duty proceedings	Period
Belgium: Sugar (A-423-077)	06/01/90-05/31/91
Canada: Oil Country Tubular Goods (A-122-506)	06/01/90-05/31/91
Canada: Red Raspberries (A-122-401)	06/01/90-05/31/91
France: Large Power Transformers (A-427-030)	06/01/90-05/31/91
France: Sugar (A-427-078)	06/01/90-05/31/91
Italy: Large Power Transformers (A-475-031)	06/01/90-05/31/91
Italy: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured (A-475-802)	06/01/90-05/31/91
Japan: Butadine Acryonitrile Copolymer Synthetic Rubber (A-588-706)	06/01/90-05/31/91
Japan: Fishnetting of Man-Made Fibers (A-588-029)	06/01/90-05/31/91
Japan: Forklift Trucks (A-588-703)	06/01/90-05/31/91
Japan: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured (A-588-807)	06/01/90-05/31/91
Japan: Large Power Transformers (A-588-032)	06/01/90-05/31/91
Japan: 64K DRAMS (A-588-503)	06/01/90-05/31/91
Romania: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished (A-485-602)	06/01/90-05/31/91
Singapore: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured (A-559-802)	06/01/90-05/31/91
Sweden: Stainless Steel Plated (A-401-040)	06/01/90-05/31/91
Taiwan: Carbon Steel Plate (A-583-060)	06/01/90-05/31/91
Taiwan: Fireplace Mesh Panels (A-583-003)	06/01/90-05/31/91
Taiwan: Oil Country Tubular Goods (A-583-505)	06/01/90-05/31/91
The Hungarian People's Republic: Tapered Roller Bearing and Parts Thereof, Finished and (A-437-601)	06/01/90-05/31/91
The People's Republic of China: Tapered Roller Bearing and Parts Thereof, Finished and Unfinished (A-570-601)	06/01/90-05/31/91
The Federal Republic of Germany: Barium Carbonate (A-428-061)	06/01/90-05/31/91
The Federal Republic of Germany: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured (A-428-802)	06/01/90-05/31/91
The Federal Republic of Germany: Sugar, (A-428-082)	06/01/90-05/31/91

In accordance with § 353.22(a) of the Commerce regulations, an interested party may request in writing that the Secretary conduct an administrative review of specified individual producers or resellers covered by an order, if the requesting person states why the person desires the Secretary to review those particular producers or resellers. If the interested party intends for the Secretary to review sales of merchandise by a reseller (or a producer if that producer also resells merchandise from other suppliers) which was produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically which reseller(s) and which countries of origin for each reseller the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230. Further, in accordance with section 353.31 of the Commerce Regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review", for requests received by June 30, 1991.

If the Department does not receive by June 30, 1991 a request for eview of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: May 24, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-13247 Filed 6-4-91; 8:45 am]

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[A-570-807]

Preliminary Determinations of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce ("the Department") preliminarily determines that oscillating fans and ceiling fans from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value. If these investigations proceed normally, we will make our final determinations by August 12, 1991.

EFFECTIVE DATE: June 5, 1991.

FOR FURTHER INFORMATION CONTACT: Steven Lim or David Goldberger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-4087 or (202) 377-4136, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determinations

We preliminarily determine that imports of oscillating fans and ceiling fans (collectively "fans") from the PRC are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the publication of the notice of initiation on November 27, 1990, (55 FR 49320), the following events have occurred. On December 3, 1990, we sent letters to the Embassy of the PRC and the petitioner, requesting that they address the question of whether the PRC is a nonmarket economy country (NME) relative to the industries under investigation. On December 13, 1990, petitioner responded saying that the PRC is an NME within the meaning of section 771(18) of the Act, and argued that the statute requires a determination based on the entire economy, rather than the characteristics of a particular sector or industry within that economy.

Subsequent to issuing the request for information regarding whether the PRC is an NME, we received entries of appearance on behalf of several oscillating fan and ceiling fan producers in the PRC. In numerous submissions, the various fan producers and the China Chamber of Commerce of Exporters and Importers of Machinery and Electronics (China Chamber), argued that the oscillating fan and ceiling fan industries in the PRC are not state controlled within the meaning of the statute. Petitioner submitted several rebuttal arguments.

On December 17, 1990, the ITC preliminarily determined that there is a reasonable indication that industries in the United States are being materially injured by reason of imports of oscillating fans and ceiling fans from the PRC (55 FR 53203, December 27, 1990).

For purposes of identifying potential respondents to our antidumping duty questionnaire, on December 21, 1990, the Department issued a survey to interested parties requesting information on producers and exporters of subject merchandise in the PRC.

On January 31, 1991, we issued our antidumping questionnaires to the China Chamber and the other known producers of oscillating fans and ceiling fans in the PRC. We received questionnaire responses and supplemental information from four oscillating fan producers and four ceiling fan producers in February, March, and April 1991. The following four oscillating fan respondents accounted for more than 60 percent of exports of the subject merchandise to the United States during the period of investigation (POI): (1) Esteem Industries Ltd./Holmes Products Corp./HASM Manufacturing Co., Ltd. ("Esteem"); (2) Durable Electrical Metal Factory Ltd./Parawind Ltd./Paragon Industries ("Durable"); (3) Wuxi Electric Fan Factory ("Wuxi"); and (4) Polaray Industrial Corporation/Paragon Industries (China) Inc./Polaray Industrial (Hong Kong) Corporation, Ltd. ("Polaray"). The following four ceiling fan respondents accounted for more than 60 percent of exports to the United States during the POI: (1) CEC Electrical Manufacturing (International) Company, Ltd./CEC Industries (Shenzhen) Ltd./CEC (USA) Texas Group, Inc. ("CEC"); (2) Wing Tat Electric Manufacturing Co., Ltd./China Miles Co., Ltd. ("Wing Tat"); (3) Shell Electric Mfg. (China) Co./SMC Electric Mfg. (Sian Hua) Co./SMC Marketing Corporation ("Shell"); and (4) Xinhui Electric Motor Factory ("Xinhui").

On February 22, 1991, the Department determined that these investigations are extraordinarily complicated and postponed the date of the preliminary determinations until not later than May 29, 1991 (56 FR 8742, March 1, 1991). We determined that these cases are extraordinarily complicated because: (1) They involve a large number of respondents, most of which are part of complex related entities involving exporters, importers, and/or foreign affiliated companies; and (2) a variety of novel methodological issues have been raised.

On March 4, 1991, petitioner alleged that critical circumstances exist with regard to imports of oscillating fans from the PRC. We requested information from oscillating fan respondents regarding petitioner's allegation of critical circumstances on April 2, 1991.

Separate Rates

In order to determine whether company-specific dumping margins should be calculated in these investigations, we asked respondents to provide information on company ownership and relationships, sources of inputs, manufacturing processes, distribution channels, involvement of trading companies, controls on external trade, profit retention, and other facets of their production and sale of fans. As stated in the Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China ("Sparklers") (56 FR 20588, May 6, 1991), we will issue separate rates if respondents can demonstrate both a *de jure* and *de facto* absence of central control. Evidence supporting, though not requiring, a finding of *de jure* absence of central control would include: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; and (2) any legislative enactments devolving central control of export trading companies. Evidence supporting a finding of *de facto* absence of central control with respect to exports would include: (1) Whether each exporter sets its own export prices independently of the government and other exporters; and (2) whether each exporter can keep the proceeds from its sales.

Based on our analysis of the information provided by each of the respondents, we preliminarily determine that company-specific dumping margins are warranted. The bases for this determination are outlined in a memo to the file dated May 28, 1991.

Scope of the Investigations

Imports covered by these investigations constitute two separate classes or kinds of merchandise: (1) Oscillating fans; and (2) ceiling fans.

Oscillating fans are electric fans that direct a flow of air using a fan blade/motor unit that pivots back and forth on a stationary base ("oscillates"). Oscillating fans incorporate a self-contained electric motor of an output not exceeding 125 watts.

Ceiling fans are electric fans that direct a downward and/or upward flow of air using a fan blade/motor unit. Ceiling fans incorporate a self-contained electric motor of an output not exceeding 125 watts. Ceiling fans are designed for permanent or semi-permanent installation.

Window fans and industrial or commercial ventilator fans are not included in these investigations.

The Harmonized Tariff Schedule (HTS) subheading under which oscillating fans are classified is 8414.51.0090. The HTS subheading under which ceiling fans are classified is 8414.51.0030. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Periods of Investigation

The POI for all respondents in the ceiling fans investigation is May 1, 1990 through October 31, 1990.

On January 11 and 16, and February 27, 1991, Esteem and Durable requested that the POI in the oscillating fans proceeding be extended beyond the "normal" six-month period because most of their sales of oscillating fans occur during months other than the six-month POI. Petitioner and the China Chamber argued against expanding the POI. On March 19, 1991, the Department expanded the POI for Esteem and Durable, determining that the sales during the POI for those respondents covered a very small percentage of their annual volume and value of sales. Accordingly, the POI for Esteem and Durable was expanded to cover the period from November 1, 1989 through October 31, 1990. The POI for all other respondents in the oscillating fans investigation is May 1, 1990 through October 31, 1990.

Fair Value Comparisons

To determine whether sales of fans from the PRC to the United States were made at less than fair value, we compared the United States price to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

I. Oscillating Fans

For Esteem, Durable, Polaray, and Wuxi, we based United States price on purchase price where sales were made directly to unrelated parties prior to importation into the United States, in accordance with section 772(b) of the Act. We used purchase price as defined in section 772 of the Act, both because the fans were sold to unrelated purchasers in the United States prior to importation into the United States, and because ESP methodology was not indicated by other circumstances.

For Esteem and Durable, where sales to the first unrelated purchaser took places after importation into the United States, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act.

Given that we had no data on general expenses and that we used the ten percent statutory minimum for general expenses as best information available on the foreign market value side, we made no adjustments to ESP, other than for movement charges. To do so would have required an arbitrary division of general expenses into amounts for direct and indirect selling, and other general and administrative expense. Furthermore, to reduce ESP selling expenses without making corresponding adjustments to FMV would have resulted in an unfair and unreasonable inflation of any difference between ESP and FMV.

A. Esteem

For Esteem, we calculated both purchase price and ESP based on packed, FOB Hong Kong or delivered prices to unrelated customers in the Untied States. We made deductions, where appropriate, for foreign inland freight, foreign inland insurance, customs declaration fees, marine insurance, ocean freight, U.S. duties, U.S. brokerage and handling, U.S. inland insurance, and U.S. inland freight.

B. Durable

For Durable, we calculated both purchase price and ESP based on packed, CIF duty paid or delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, marine insurance, ocean freight, U.S. duties, U.S. brokerage and handling, U.S. inland insurance, U.S. inland freight, and other movement epxenses, including customs declaration fees. We excluded from our analysis certain reported purchase price sales of oscillating fans not manufactured by Durable. These sales also appear to have been reported by the respondent related to the products' manufacturer. We will seek further information about these circumstances at verification.

We calculated ESP based on packed, FOB Hong Kong or delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, customs declaration fees, ocean freight, marine insurance, U.S. duties, U.S. brokerage and handling, and U.S. inland freight.

C. Polaray

For Polaray, we calculated purchase price based on packed FOB Hong Kong prices to unrelated customers in the United States. We made deductions for foreign inland freight and foreign brokerage.

In its response, Polaray stated that it granted two types of discounts: (1) A "defective allowance discount"; and (2) a discount for free parts. We have disallowed these price adjustments because there is conflicting evidence as to whether they were actually discounts (which we would allow) or selling expenses (which we would not allow in this case).

D. Wuxi

For Wuxi, we calculated purchase price based on packed, FOB Shanghai prices to unrelated customers in the United States. We made deductions for foreign inland freight. We based the deduction for foreign inland freight on freight rates in Pakistan, as Wuxi reported the use of PRC transportation services in incurring this charge.

II. Ceiling Fans

For CEC, Wing Tat, Shell, and Xinhui, we based United States price on purchase price where sales were made directly to unrelated parties prior to importation into the United States, in accordance with section 772(b) of the Act. We used purchase price as defined in section 772 of the Act, both because the fans were sold to unrelated purchasers in the United States prior to importation into the United States, and because ESP methology was not indicated by other circumstances.

For CEC and Shell, where sales to the first unrelated purchaser took place after importation into the United States, we based United States price on ESP, in accordance with section 772(c) of the Act.

For the reason described above under oscillating fans, we made no adjustments to ESP, other than movement charges.

A. CEC

For CEC, we calculated purchase price based on packed, FOB Hong Kong prices to unrelated customers in the

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United States. We made deductions, where appropriate, for foreign inland freight and customs declaration fees.

We calculated ESP based on packed, CIF duty paid, U.S. port prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, customs declaration fees, ocean freight, marine insurance, U.S. brokerage, and U.S. duties.

B. Wing Tat

For Wing Tat, we calculated purchase price based on packed, FOB Hong Kong prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign inland insurance, and customs declaration fees.

C. Shell

For Shell, we calculated purchase price based on packed, FOB Hong Kong or C&F U.S. Port prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign inland insurance, customs declaration fees, ocean freight, and discounts.

We calculated ESP based on packed, FOB warehouse or C&F U.S. customer prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign inland insurance, customs declaration fees, ocean freight, marine insurance, U.S. duties, U.S. inland freight, and U.S. brokerage.

The foreign inland insurance and customs declaration fees reported in Shell's sales listing were not consistent with the methodology explained in the questionnaire response. We have recalculated these expenses based on information in the narrative portion of the questionnaire response.

On May 17, 1991, Shell, reporting that it inadvertently omitted a number of ESP sales made during the POI from its sales listings, provided a new sales listing on computer tape. We receive this information too late for consideration in the preliminary determination. In addition, we were unable to compare certain ESP sales with the appropriate FMV due to missing or inconsistent FMV data in Shell's computer tape. For these two sets of sales, we have estimated a margin based on the highest single margin calculated for any of Shell's ESP sales, excluding those sales with extraordinarily high dumping margins, as best information available.

D. Xinhui

For Xinhui, we calculated purchase price based on packed, CIF U.S. port prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, ocean freight, and marine insurance. We based the deduction for foreign inland freight on freight rates in Pakistan, as Xinhui reported the use of PRC transportation services in incurring this charge.

Foreign Market Value

Section 773(c)(1) of the Act provides that the Department shall determine FMV using a factors of production methodology if (1) the merchandise is exported from an NME country, and (2) the information does not permit the calculation of FMV using home market prices, third country prices, or constructed value under section 773(a).

Pursuant to section 771(18) of the Act and based on determinations in prior proceedings, the PRC is an NME. (See e.g., Final Determination of Sales at Less than Fair Value: Natural Menthol From the People's Republic of China (46 FR 24614, May 1, 1981); Initiation of Antidumping Duty Investigation: Refined Antimony Trioxide From the People's Republic of China (56 FR 23549, May 22, 1991). Respondents have not refuted this determination. However, several of the respondents claim that available information permits the use of section 773(a) of the Act to calculate FMV.

Respondents Esteem and Durable have claimed that the oscillating fans sector (or an individual firm) is not sufficiently state controlled to allow the use of factors of production for FMV. Citing the criteria of section 771(18) of the Act, these respondents contend that the Department should find that the industrial sector (or an individual firm) producing oscillating fans is sufficiently free of state control to allow calculation of FMV based on market economy methodologies, *i.e.*, home market sales, third country sales, or constructed value, as appropriate. These respondents argue that their location in an NME does not distort their costs of production in such a manner that FMV cannot accurately be determined based on their own prices or cost structures. Respondents cite the following as evidence of a lack of distortion of costs and, therefore, the reasonableness of using their third country prices for FMV:

- The companies are privately owned and operate on market principles without interference from the state;
- The overwhelming majority of material inputs are sourced from abroad or from other foreign investment projects in southern China;
- All output is sold outside the PRC; and
- The labor market in southern China is competitive.

Further, based on the above facts and the alleged lack of cost and price distortion, these respondents argue that the Act permits the Department to make its determination under section 773(c)(1)(B) on a factory-by-factory basis. Alternatively, these respondents argue that if the Department confines its analysis to an industrial sector, the sector should be defined as foreign investment factories producing oscillating fans.

Respondents CEC and Wing Tat cite the criteria set forth in Certain Headwear from the PRC ("Headwear") (54 FR 11983, March 23, 1989) and argue that the industrial sector producing ceiling fans is not state controlled. They contend that in at least one investigation (Certain Steel Wire Nails from Yugoslavia (50 FR 47788, February 3, 1986)), the Department concluded that, while the economy of the country under investigation exhibited elements of state control, the economy was not state controlled for purposes of the industry in question. Accordingly, these respondents contend that FMV may be calculated based on their third country prices or constructed value.

Citing Headwear, CEC and Wing Tat contend that, in assessing whether a particular industrial sector is not state controlled, the Department examines criteria including: (1) The degree of government ownership of the means of production; (2) the degree of centalized government control over inputs or the allocation of resources; (3) the degree of centralized government control over output; (4) the relative convertibility of the country's currency; and (5) the degree of government control over foreign trade. These respondents argue that:

- They are foreign-owned;
- The PRC government has no control over type or volume of production, prices charged, or distribution of profits;
- The vast majority of inputs are sourced in market economies;
- PRC-sourced inputs are purchased at market prices negotiated at arm's length;
- The government exercises no control over input prices;
- Labor is essentially free of government involvement;
- The companies are free to hire, fire, and contract freely with employees;
- The government does not restrict the companies' rights to obtain, use, or dispose of capital;
- The companies purchase electricity at a rate which is higher than the rate in Hong Kong; and
- There are no foreign exchange controls imposed on the companies.

The China Chamber argues that the oscillating fans and ceiling fans sectors are not state controlled within the meaning of the Act. The China Chamber contends that oscillating fans and ceiling fans are "category three" products which "are not regulated at varying degrees, and sometimes not at all" and are to some extent not subject to state or foreign trade planning. (Letter from Skadden, Arps, Slate, Meagher & Flom dated December 21, 1990, at page 6.) The China Chamber further asserts that manufacturers of these products do not receive assistance or allocations from any level of government in the PRC, their operations are not subject to interference or supervision by the government, and that prices, production quantities, style, marketing, profit allocation, capital expenditures, and labor policy are independently detemined by the manufacturers and exporters.

These assertions, and our understanding of the circumstances under which these respondents produce and sell the subject merchandise, require us to consider how any industrial sector or any commercial entity in an NME can be said to be operating on market principles such that costs and prices are acceptable, reliable measures of FMV. The legislative history of section 773(c)(1)(B) of the Act simply paraphrases the statutory language and provides no additional guidance in its interpretation or application. Our preliminary conclusion is that absent a showing that all costs and prices are market-oriented, FMW in an NME cannot be based on home market prices, third country prices, or constructed value, but must be based on a factors of production methodology.

In these investigations, while some respondents report that they source substantially all of their material inputs from market economies, significant inputs such as labor and the subcomponents of overhead are obtained from sources in the PRC. The available information does not permit us to determine that these domestic inputs are market-based. Regarding labor for example, while some respondents have alleged that they are free to hire, fire, and set wages, government controls on labor mobility and other restrictions in the PRC indicate that labor rates are substantially less free than in market economies. There is also evidence on the record in these investigations that some of the foreign-owned respondents are prohibited from selling their products, parts, or raw materials in the local PRC markets. In addition, a State Department cable indicates that at least Guangdong Province, the location of most of the respondents' factories, has imposed minimum export prices for a variety of products including "electric fans."

Accordingly, we conclude for purposes of these preliminary determinations that because all inputs are not market based, respondents' costs and prices are not accurate, reliable measures of FMV. Therefore, we preliminarily determine in accordance with section 773(c)(1) of the Act that the use of factors of production is required to determine FMV.

Section 773(c) further requires the Department to value the factors of production, to the extent possible, in one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country under investigation, and that are significant producers of comparable merchandise. Once we find that a country is an NME, it is our presumption that no domestic production factor is valued on market principles, and that all factors must be valued in an appropriate surrogate market. However, this presumption can be overcome for individual factors by individual respondents with a showing that the NME value is market driven.

It is the Department's practice to value factor of production inputs at actual acquisition prices if it can be established that those inputs are purchased from a market economy country. (See, *e.g.*, Sparklers, supra.) If a party is able to establish that inputs purchased in an NME are purchased at market-oriented prices, we may likewise be able to accept them for purposes of a factors of production analysis.

If at the time of these final determinations we are satisfied that the cost of inputs sourced in the PRC, including materials, labor, water, electricity, and rent, are valued on the basis of market principles, we may substitute those market values for surrogate country values in individual firm calculations. The Department has not accepted the assertions of respondents that these factors are market based for these preliminary determinations because of the nature of a command economy. We must find that the claimed market bases of the PRC-sourced inputs are sufficient to overcome the controls inherent to an NME prior to any use of those factor values in the final determinations.

For these preliminary determinations, we calculated FMV based on the factors of production reported by each respondent.

For PRC-sourced parts (except as noted below), we valued the reported factor of production using the surrogate values. We used data for the values of the factors of production provided by the U.S. posts in Pakistan. This information was obtained from local Pakistani producers of oscillating fans and ceiling fans, and was the most complete information received from the countries that are known producers of oscillating fans and ceiling fans, and that are comparable to the PRC in terms of per capita GNP, the national distribution of labor, and growth rate in per capita GNP. For these factors for which we did not obtain values from Pakistan, we have relied on alternative published sources of Pakistani data and data from India.

Shortly before these preliminary determinations, we received information from the U.S. Embassy in India which included costs for many factors of production used in our calculations. This information was received too late for consideration in our preliminary determinations. However, we may be able to use this information in our final determinations. This information is part of the public file in these investigations; we invite comment on the appropriateness of changing the surrogate values for the final determinations.

For certain material inputs, we were unable to obtain appropriate surrogate values from any of our surrogate country sources. While some of these parts might be included in the surrogate information categories of "other hardware parts" or "plastic parts", for example, we could not reasonably assign surrogate values to some of the other components for certain respondents. In addition, some foreign-owned respondents have reported U.S. or Hong Kong dollar prices or values for PRC-origin parts because the items were purchased in Hong Kong from sources unknown to us, or their PRC prices were converted into U.S. dollars. We cannot normally accept such prices because they are based on NME costs and inputs, for which a true market value has yet to be established. There is no other information on the record at this time for us to use to value these material inputs. As best information available for purposes of these preliminary determinations, we have assigned the values reported by the respective respondent for these material inputs. For the final determinations, we will attempt to obtain more appropriate surrogate values for these items.

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Materials sourced from market-economy countries and paid for in convertible currencies were valued using the actual market prices reported by the respondents.

To the factors for materials and labor, we added an amount for factory overhead based on Pakistani experience.

For selling, general, and administrative expenses (SG&A), we used the statutory minimum of ten percent, as we did not receive timely information on the actual SG&A expenses incurred by surrogate oscillating fans and ceiling fans producers. Finally, we added an amount for profit based on the experience of Pakistani oscillating fans and ceiling fans producers because these profit percentages were higher than the statutory eight percent minimum.

To this constructed FMV, we added an amount for packing, where appropriate.

We made currency conversions in accordance with 19 CFR 353.60(a).

Critical Circumstances

On March 4, 1991, petitioner alleged that "critical circumstances" exist with respect to imports of oscillating fans from the PRC. Section 733(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reasonsble basis to believe or suspect:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

We asked the oscillating fans respondents, Esteem, Durable, Polaray, and Wuxi, to supply monthly shipment volume data from January 1989 through March 1991. We received the information from Esteem, Durable, and Polaray, on April 16, and from Wuxi on April 22, 1991.

We examined recent antidumping cases and found that there are currently no findings of dumping in the United States or elsewhere of oscillating fans by PRC manufacturers. However, it is our standard practice to impute knowledge of dumping under section 735(a)(3)(A) of the Act when the estimated margins in our determinations are of such a magnitude that the importer should realize that dumping exists with regard to the subject merchandise. Normally, we consider estimated margins of 25% or greater to be sufficient. However, in cases where the foreign manufacturer sells through a related company (*i.e.*, on an ESP basis), we consider that lower margins may be sufficient. All of the preliminary margins for the respondents are below 25 percent, and for those respondents who also sell on an ESP basis, the margins are below 15 percent. Therefore, we find that the requirements of section 735(a)(3)(A) are not met.

Accordingly, we do not need to consider whether there have been massive imports, and we preliminarily determine that critical circumstances do not exist with respect to imports of oscillating fans from the PRC.

Verification

As provided in section 776(b) of the Act, we will verify all information used in making our final determinations.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of oscillating fans from the PRC, (except for those of Esteem and Polaray), and all entries of ceiling fans form the PRC, (except for those of CEC and Xinhui), as defined in the "Scope of Investigations" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

I. Oscillating Fans

Manufacturer/producer/exporter	Margin percentage
Esteem Industries Ltd./HASM Manufacturing Co., Ltd./Holmes Products Corp.	0.00
Durable Electrical Metal Factory Ltd./Parawind Ltd./Paragon Industries	1.00
Polaray Industrial Corporation/Paragon Industries (China) Inc./Polaray Industrial (Hong Kong) Corporation, Ltd.	0.00
Wuxi Electric Fan Factory	19.12
All others	4.91

II. Ceiling Fans

Manufacturer/producer/exporter	Margin percentage
CEC Electrical Manufacturing (International) Company, Ltd./CEC Industries (Shenzhen) Ltd./CEC (USA) Texas Group, Inc.	0.37. (*de minimis*).
Wing Tat Electric Manufacturing Co., Ltd./China Miles Co., Ltd.	4.24.
Shell Electric Mfg. (China) Co./SMC Electric Mfg. (Sian Hua) Co./SMC Marketing Corporation.	4.87.
Xinhui Electric Motor Factory.	0.00.
All others	4.64.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to these investigations. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determinations are affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industries before the later of 120 days after the date of these preliminary determinations or 45 days after our final determinations.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than July 2, 1991, and rebuttal briefs no later than July 9, 1991. In accordance with 19 CFR 353.38(b), we will hold public hearings, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the oscillating fan and ceiling fan hearings will be held on July 12, 1991, at 9 a.m. and 1:30 p.m., respectively, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearings 48 hours before the scheduled time.

Interested parties who wish to participate in the hearings must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, within ten days of the publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

These determinations are published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15.

Dated: May 29, 1991

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-13244 Filed 6-4-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-814]

Antidumping Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In its investigation, the U.S. Department of Commerce determined that polyethylene terephthalate film, sheet, and strip, (PET film) from Japan was being sold in the United States at less than fair value. In a separate investigation, the U.S. International Trade Commission (ITC) determined that a U.S. industry is being materially injured by reason of these imports.

Therefore, based on these findings, all unliquidated entries or warehouse withdrawals of PET film from Japan, made on or after November 30, 1990, the dae of publication in the **Federal Register** of the Department's affirmative preliminary determination (55 FR 49666), will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries or warehouse withdrawals made on or after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: June 5, 1991.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230: (202) 377-4136.

Scope of Order

The product covered by this order is all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. The firms excluded from the scope of this order are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches (0.254 micrometers) thick.

PET film is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 3920.62.00.00. The HTS subheading is provided for convenience and customs purposes. The written description remains dispositive as to the scope.

SUPPLEMENTARY INFORMATION: In accordance with section 735(a) of the Tariff Act of 1930, as amended (19 USC 1673d(a)) (the Act), on April 22, 1991, the Department of Commerce (Department) made its final determination that PET film from Japan is being sold at less than fair value (56 FR 16300). On May 29, 1991, in accordance with section 735(d) of the Act, the ITC notified the Department that such imports materially injure a U.S. Industry.

Therefore, in accordance with section 736 of the Act, the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of PET film from Japan. These anitdumping duties will be assessed on all unliquidated entries of PET film from Japan entered, or withdrawn from warehouse, for consumption on or after November 30, 1990, the date on which the Department published its preliminary determination notice in the **Federal Register**.

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average dumping margin, as shown below.

Manufacturer/producer/exporter	Margin percentage
Teijin Limited	3.03
Toray Industries, Inc	14.00
All Others	6.32

This constitutes the antidumping duty order with respect to PET film from Japan, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published pursuant to section 736(a) of the Act (19 U.S.C. 1673e(a)) and 19 CFR 353.21

Dated: May 31, 1991

Eric I. Garfinkel

Assistant Secretary for Import Administration.

[FR Doc. 91-13245 Filed 6-4-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-807]

Antidumping Duty Order and Amendment to Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In its investigation, the U.S. Department of Commerce (the Department) determined that polyethylene terephthalate film, sheet, and strip (PET film) from the Republic of Korea was being sold in the United States at less than fair value. In a separate investigation, the U.S. International Trade Commission (ITC) determined that a U.S. industry is being materially injured by reason of these imports.

Therefore, based on these findings, all unliquidated entries or warehouse withdrawals of PET film from the Republic of Korea, made on or after November 30, 1990, the date of publication in the **Federal Register** of the department's affirmative preliminary determination (55 FR 49668), will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries or warehouse withdrawals made on or after the date of publication of this antidumping duty order in the **Federal Register**.

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We are amending the final results of the antidumping duty investigation of PET film from the Republic of Korea (56 FR 16305, April 22, 1991) to correct a clerical error in the calculations. The correct cash deposit rate for Cheil Synthetics, Ltd. (Cheil) is 3.71 percent. The correct cash deposit rate for the "All Others" category of producer/exporters is 4.82 percent.

EFFECTIVE DATE: June 5, 1991.

FOR FURTHER INFORMATION CONTACT: Steven Lim, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department fo Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–4087.

SCOPE OF ORDER: The product covered by this order is all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. The films excluded from the scope of this order are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer mroe than 0.00001 inches (0.254 micrometers) thick.

PET film is currently classifiable under the Harmonized Tariff Schedule (HTS) subheading 3920.62.00.00. The HTS subheading is provided for convenience customs purposes. The written description remains dispositive as to the scope of the product coverage.

SUPPLEMENTARY INFORMATION:

In accordance with section 735(a) of the Tariff Act of 1930, as amended (19 USC 1673(d)(a)) (the Act), on April 22, 1991, the Department of Commerce published its final determination that PET film from the Republic of Korea is being sold at less than fair value (56 FR 16305). On May 29, 1991, in accordance with section 735(d) of the Act, the ITC notified the Department that such imports materially injure a U.S. industry. After publication of our final results, Cheil alleged that the Department committed a ministerial error in its calculation of constructed value (CV). Specifically, Cheil alleged that the Department overstated CV by double counting a portion of severance pay expense already included in the company's reported PET film manufacturing costs. We agree with Cheil. After correcting the calculations, the final estimated margin percentage for Cheil changes from the 3.88 percent published in the final determination to 3.71 percent. The "All Others" rate changes from the 4.88 percent published in the final determinaton to 4.82 pecent.

Accordingly, pursuant to section 735(e) of the Act, we are correcting the ministerial error in the final determination of sales at less than fair value. The cash deposit rate for Cheil is now 3.71 percent. The cash deposit rate for the "All Others" category is now 4.82 percent. The cash deposit rate for SKC Limited remains unaffected by this amendment to the final determination.

Therefore, in accordance with section 736 of the Act, the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of PET film from the Republic of Korea. These antidumping duties will be assessed on all unliquidated entries of PET film from the Republic of Korea entered, or withdrawn from warehouse, for consumption on or after November 30, 1990, the date on which the Department published its preliminary determination notice in the **Federal Register**.

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties of this merchandise, a cash deposit equal to the estimated weighted-average dumping margin, as shown below.

Manufacturer/producer/exporter	Margin percentage
SKC Limited and SKC America, Inc.	5.38
Cheil Synthetics, Inc.	3.71
All Others	4.82

This constitutes the antidumping duty order with respect to PET film from the Republic of Korea, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published pursuant to sections 735(d) and 736(a) of the Act (19 USC 1673(d), 1673e(a)) and 19 CFR 353.21 and 353.28(c).

Dated: May 31, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–13246 Filed 6–4–91; 8:45 am]

BILLING CODE 3510–DS–M

[C–351–005]

Frozen Concentrated Orange Juice from Brazil; Determination Not To Terminate Suspended Investigation and Notification of Withdrawal of Review Request

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of determination not to terminate suspended investigation and notice of withdrawal of review request.

SUMMARY: The Department of Commerce is notifying the public of its determination not to terminate the suspended countervailing duty investigation on frozen concentrated orange juice from Brazil and the withdrawal of the request to conduct an administrative review covering the period January 1, 1990 through December 31, 1990.

EFFECTIVE DATE: June 5, 1991.

FOR FURTHER INFORMATION CONTACT: Millie Mack or Barbara Williams, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–3793.

SUPPLEMENTARY INFORMATION:

Background

The Secretary may conclude that a suspension agreement is no longer of interest to interested parties, and may terminate the suspended investigation, if for four consecutive annual anniversary months, no interested party requests an administrative review.

This suspension agreement became effective March 2, 1983 (48 FR 8839). As there have been no requests for review for more than four consecutive anniversary months, on March 6, 1991, the Department of Commerce ("the Department") published in the **Federal Register** (56 FR 9345) notice of its intent to terminate the suspended countervailing duty investigation on frozen concentrated orange juice from Brazil (March 2, 1983, 48 FR 8839).

However, on March 28, 1990, the petitioner, Florida Citrus Mutual, and certain producers of frozen concentrated orange juice objected to the Department's intent to terminate this suspended investigation. Therefore, we no longer intend to terminate the suspended investigation.

In addition, on April 1, 1991, the respondent filed a request for review covering the period January 1, 1990 through December 31, 1990. We published an initiation notice on April 19, 1991 (56 FR 15956). However, this

request was withdrawn on April 30, 1991, in accordance with section 355.25(a)(3) of the Commerce Department's regulations.

This notice is in accordance with section 355.25(d)(4) of the Commerce Department's regulations.

Dated: May 29, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91–13248 Filed 6–4–91; 8:45 am]

BILLING CODE 3510–DS–M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application for an amendment to an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs , International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be amended.

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Export Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll–free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be amended. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 88–3A016."

OETCA has received the following application for an amendment to Export Trade Certificate of Review No. 88–00016, issued on February 3, 1989 (54 FR 6312, February 9, 1989).

Summary of the Application

Applicant: Wood Machinery Manufacturers of America (WMMA), 1900 Arch Street, Philadelphia, Pennsylvania 19103.

Contact: John S. Sataga j, WMMA Counsel, 1156 15th Street NW., Suite 510, Washington, DC 20005. Telephone: (202) 639–8888.

Application No.: 88–3A016.

Date Deemed Submitted: May 22, 1991.

WMMA seeks to amend its Certificate to add the following companies as "Members" of the Certificate: Carter Products Co., Inc., Grand Rapids, MI; Fletcher Machine Co., Lexington, NC; Unique Machine & Tool Co., Tempe, AZ; and VETS, Inc., Fridley, MN.

Dated: May 30, 1991.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 91–13195 Filed 6–4–91; 8:45 am]

BILLING CODE 3510–DR–M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 91–00003.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to Fabiano & Associates, Inc. ("FAI"). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1990) (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. *Products*—All Products.
2. *Services*—All Services.
3. *Export Trade Facilitation Services (as they relate to the Export of Products and Services).*

Export Trade Facilitation Services including professional services in the areas of government relations, foreign trade and business protocol, marketing, marketing research, negotiations, joint ventures, shipping, export management, advertising, documentation, insurance and financing, trade show exhibitions, organizational development, management strategies and transfer of technology.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. To engage in Export Trade in the Export Markets, FAI as an Export Intermediary, may:

a. Provide and/or arrange for the provisions of Export Trade Facilitation Services;

b. Engage in promotional and marketing activities;

c. Enter into exclusive export sales agreements with Suppliers for the export of Products and/or Services for sale in the Export Markets; such agreements may prohibit Suppliers from exporting independently of FAI;

d. Enter into exclusive agreements with distributors in the Export Markets;

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e. Establish the price of products and/or Services for sale in the Export Markets;

f. Allocate export orders among its Suppliers; and

g. Enter into contracts for shipping.

2. FAI and individual Suppliers may regularly exchange information on a one-on-one basis regarding inventories and near-term production schedules in order that the availability of supplies for export can be determined and effectively coordinated by FAI with its distributors in the Export Markets.

3. FAI may require and Supplier wishing to terminate its export sales agreement to give FAI six months written notice. FAI may require a former Supplier not to sell through foreign distributors with whom FAI deals for a period of two years following termination.

Definitions

1. *Export Intermediary* means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. *Supplier* means a person who produces, provides, or sells a Product and/or Service.

A copy of the Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Dated: May 30, 1991.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 91-13198 Filed 6-4-91; 8:45 am]

BILLING CODE 3510-DR-M

National Institute of Standards and Technology

[Docket No. 910519-1119]

Notice of Approval of Amendments to Voluntary Product Standard PS20-70 (86), "American Softwood Lumber Standard"

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: Several amendments to Voluntary Product Standard PS20-70 "American Softwood Lumber Standard" became effective on May 7, 1991. Copies of these amendments are available from the Office of Standards Services, A625—Administration Building, National Institute of Standards and Technology, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Barbara M. Meigs, Office of Standards Services, National Institute of Standards and Technology, Gaithersburg, MD 20899, (301) 975-4025.

Authority: 15 U.S.C. 272 and 15 CFR part 10.

Dated: May 31, 1991.

John W. Lyons,

Director.

[FR Doc. 91-13254 Filed 6-4-91; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Western Pacific Fishery Management Council; Teleconference

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council will hold a teleconference on May 30, 1991, at 1 p.m. (Hawaiian Standard Time). The Council will discuss and take action on a housekeeping item regarding the Pelagics Fishery Management Plan (FMP).

The Council will discuss action on a change to the Pelagics FMP. At its February 28–March 1, 1991, meeting, the Council voted to allow Northwestern Hawaiian Islands lobster vessels that do not: (1) Qualify to fish under the NWHI limited entry plan for bottomfish, or (2) qualify to use pelagic longline gear under the terms of the current longline moratorium, to obtain a limited entry longline permit issued under the terms of the longline moratorium.

This action was approved for the proposed amendment to the FMP, but was overlooked at the Council's May 15–16, 1991, meeting when technical changes were made to the emergency rule that implemented the longline moratorium. The Council had intended to make this allowance for lobster boats effective during the emergency action that established the longline moratorium, but did not as an oversight.

This special telephone conference will be held for housekeeping purposes so that the Council can allow these lobster boats to obtain limited entry permits during the emergency action.

For more information contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813; telephone: (808) 523-1368.

Dated: May 30, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-13175 Filed 6-4-91; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Proposed Automobile Insurance Futures and Futures Option Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and futures option contracts.

SUMMARY: The Chicago Board of Trade (CBT or Exchange) has applied for designation as a contract market in automobile insurance futures and as a contract market in automobile insurance futures options. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation § 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before July 5, 1991.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CBT automobile insurance futures contract or automobile insurance option contract.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, at (202) 254-7303.

SUPPLEMENTARY INFORMATION: In addition to requesting comment on the terms and conditions of the proposed futures and futures option contracts, the Division also is requesting comment on the merits of a petition filed by the CBT pursuant to § 33.11 of the Commission's option rules. The petition requests exemptive relief from the trading volume tests for options on futures as set forth in Commission rule 33.4(a)(5)(iii).

Copies of the terms and conditions of the proposed contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CBT in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or argument on the terms and conditions of the proposed contracts, or with respect to other materials submitted by the CBT in support of the applications, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC, 20581, by the specified date.

Issued in Washington, DC on May 30, 1991.

Gerald Gay,

Director.

[FR Doc. 91-13154 Filed 6-4-91; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Base Closure and Realignment Commission; Meeting

ACTION: Public Hearing of the Defense Base Closure and Realignment Commission.

SUMMARY: An open public hearing of the Defense Base Closure and Realignment Commission will be held in room 2167, Rayburn House Office Building, Washington, DC, beginning at 10 a.m. The hearing will be concerned primarily with the realignment of Army Corps of Engineers activities.

Less than 15 days notice is being given due to the recent receipt of the Corps of Engineers realignment plan by the Commission.

FOR FURTHER INFORMATION CONTACT: Defense Base Closure and Realignment Commission, Mr. Cary Walker, Director of Communications and Public Affairs, 202-653-0823.

Dated: May 31, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-13274 Filed 6-4-91; 8:45 am]

BILLING CODE 3810-01-M

Defense Base Closure and Realignment Commission; Meetings

ACTION: Announcement of public deliberation meetings of the Defense Base Closure and Realignment Commission.

SUMMARY: Open public meetings of the Defense Base Closure and Realignment Commission will be held in Washington, DC in accordance with the following dates and times, with specific meeting locations as shown below, or to be determined and published in the **Federal Register**: Thursday/Friday, June 6-7, 9:30 AM, Office of Thrift Supervision Amphitheater, 17th & F Streets N.W., "Commission deliberation hearings on closure/realignment candidates;" Thursday/Friday, June 13-14, 9:30 AM, General Services Administration Auditorium, 18th & L Streets NW., "Commission deliberation hearings on closure/realignment candidates;" Monday/Tuesday, June 17-18, 9:30 a.m. location to be determined, "Commission deliberation hearings on closure/realignment candidates."

In some instance, less than 15 days notice is being given due to difficulties in confirming appropriate locations in the Washington, DC area to accommodate large public hearings.

FOR FURTHER INFORMATION CONTACT: Defense Base Closure and Realignment Commission, Mr. Cary Walker, Director of Communications and Public Affairs, 202-653-0823.

Dated: May 30, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-13156 Filed 6-4-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Intent To Prepare Environmental Impact Statement on United States Air Force, National Guard Bureau Aircraft Conversions at Barnes Municipal Airport, Westfield, Massachusetts and Bradley ANG Base, East Granby, Connecticut

The United States Air Force (USAF), National Guard Bureau (NGB) intends to begin preparing an Environmental Impact Statement (EIS) on proposed aircraft conversions at Barnes Municipal Airport, Westfield MA and Bradley ANG Base, East Granby, CT. The EIS will assess all impacts as they relate to this conversion including construction of facilities to support the action, aircraft air to ground bombing range use at Fort Drum, NY, Warren Grove NJ and Fort Indiantown Gap PA, and special use airspace in the states of NY, NJ, PA, ME, VT and over the Atlantic Ocean.

The USAF, NGB will be the lead agency for the EIS. The Federal Aviation Administration (FAA) is being invited to be a cooperating agency.

The USAF, NGB is planning to conduct scoping meeting to determine the issues and concerns that should be addressed in the EIS. Notice of time and place of the planned scoping meetings will be made to public officials and agencies and announced in the news media in areas where the scoping meetings will be held.

To assure the USAF, NGB will have sufficient time to consider public inputs on issues to be included in developing the EIS, comments should be forwarded to the address below by July 31, 1991. The USAF NGB will accept comments any time during the environmental impact analysis process.

For further information concerning the proposed conversions at Barnes Municipal Airport and Bradley ANG Base contact: Mr. Ronald M. Watson, Environmental Division, National Guard Bureau, Stop 18, Building 3500, Andrews AFB, MD 20331-6008.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91-13191 Filed 6-4-91; 8:45 am]

BILLING CODE 3910-01-M

Department of the Navy

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act [5 U.S.C. app. 2], notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Defense Subpanel Task Force will meet June 6, 1991 from 9 a.m. to 5 p.m., in the CNO's

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Conference Room, Pentagon 4E830, Washington, DC. This session will be closed to the public.

The purpose of this meeting is to discuss policy and budgetary matters of immediate Navy interest. The entire agenda for the meeting will consist of discussions of key issues regarding national security, maritime defense needs, defense policy, planning, and budgetary matters of immediate Navy interest in the aftermath of Desert Shield/Storm and its impact on Congressional actions. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

This notice is being published late because of administrative delays which constitute an exceptional circumstance, not allowing Notice to be published in the **Federal Register** at least 15 days before the date of this meeting. For more information concerning this meeting, contact: Judith A. Holden, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, room 601, Alexandria, Virginia 22302-0268, Phone (703) 756-1205.

Dated: May 29, 1991.

G.B. Roberts,

Federal Register Liaison Officer.

[FR Doc. 91-13284 Filed 6-4-91; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Availability of Restricted Eligibility Solicitation, DE-PS01-91RW00231, for the Conduct of Feasibility Studies for the Siting of a Monitored Retrievable Storage Facility

AGENCY: U.S. Department of Energy.

ACTION: Notice of Availability to make grants of financial assistance on a restricted eligibility basis pursuant to 10 CFR 600.7(b)(1) in response to applications received from eligible States, Indian tribes and affected units of local government pursuant to section 406 (b) of the Nuclear Waste Policy Act of 1982, as amended.

SUMMARY: On May 8, 1991, the Department of Energy published a Notice of Intent to Issue a Restricted Eligibility Solicitation for the Conduct of Feasibility Studies for the siting of a Monitored Retrievable Storage (MRS) Facility. (Vol. 56, No. 89, Page 21,360)

By means of this Notice, a restricted eligibility solicitation is now available inviting the submission by eligible States, Indian tribes and affected units of local government of applications for grants of financial assistance. Executive Order 12372, Intergovernmental Review of Federal Programs, as implemented by 10 CFR part 1005, applies to this program.

ADDRESSES: Requests for copies of the solicitation must be in writing to: U.S. Department of Energy, Office of Placement and Administration, Attn: Ms. Kristin Wright/PR-322.2, 1000 Independence Ave. SW., Washington, DC 20585.

For further information contact Ms. Wright on (202) 586-4285.

Issued in Washington, DC on May 28, 1991.

Thomas S. Keefe,

Director, Operations Division "B", Office of Placement and Administration.

[FR Doc. 91-13143 Filed 6-4-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 2711-001, Wisconsin]

Northern States Power Co.; Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

May 29, 1991.

The license for the Trego Hydro Project No. 2711-001, located on the Namekagan River in Washington County, Wisconsin, expires on March 31, 1993. The statutory deadline for filing an application for new license was March 31, 1991. An application for new license has been filed as follows:

Project No.	Applicant	Contact
P-2711-001	Northern States Power Company, 100 N. Barstow Street, P.O. Box 8, Eau Claire, WI 54702.	Mr. Anthony G. Schuster, Vice President, Power Supply, Northern States Power Co., Eau Claire, WI 54702.

The following is an approximate schedule and procedures that will be followed in processing the application(s).

Date	Action
May 15, 1991	Commission issued public notice of the accepted application establishing dates for filing motions to intervene, comments, protests, and agency recommendations.
May 10, 1991	Commission notifies applicant of the need for additional information which is due June 24, 1991.
July 24, 1991	Commission's deadline for applicant to file a final amendment, if any, to its application.

Upon receipt of all additional information and the information filed in response to the public notice of the acceptance of the application, the Commission will evaluate the application in accordance with applicable statutory requirements and take appropriate action on the application.

Any questions concerning this notice should be directed to Mary Golato at 8-299-2804 or (202) 219-2804.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13162 Filed 6-4-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-2006-000, et al.]

El Paso Natural Gas Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. El Paso Natural Gas Co.

[Docket No. CP91-2006-00]

May 22, 1991.

Take notice that on May 9, 1991, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP91-2006-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a segment of loop pipeline, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso requests authorization to construct approximately 3.3 miles of 24-inch diameter pipeline loop between its Keystone mainline station and Keystone field plant site in Winkler County, Texas. El Paso states that the construction and operation of the proposed loop will permit it to receive an additional 60 MMcf per day of gas from Northern Natural Gas Company, A Division of Enron Corp.

El Paso states that the cost of the proposed facilities is approximately $1.68 million. El Paso indicates that it will finance the proposed construction with internally generated funds.

Comment date: June 12, 1991, in accordance with Standard Paragraph F at the end of this notice.

2. Northwest Pipeline Corporation

[Docket No. CP91-2057-000]

May 22, 1991.

Take notice that on May 15, 1991, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP90-578-000 a request pursuant to § 157.205 (18 CFR 157.205) of the Commission's Regulations for approval to partially abandon existing Redmond Meter Station metering facilities in King County, Washington and to construct and operate upgraded metering facilities at the Redmond Meter Station in order to accommodate existing firm delivery obligations to Washington Natural Gas Company (WN) under Northwest's blanket certificate issued in Docket No. CP82-433-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest states the existing station, which has a design delivery capacity of approximately 16,000 Dths per day, is inadequate to meet Northwest's current firm maximum daily obligation of up to 32,791 Dths per day to WN. Northwest would upgrade the existing Redmond facilities by replacing the two six-inch orifice meter runs and the two-inch regulators with two eight-inch orifice meter runs and two four-inch regulators, increasing the design capacity to 43,330 Dths per day at 400 psig, at a cost of $70,150.

Comment date: July 8, 1991, in accordance with standard Paragraph G at the end of this notice.

3. Northwest Pipeline Corporation

[Docket No. CP91-2058-000]

May 22, 1991.

Take notice that on May 15, 1991, Northwest Pipeline Corporation (NW), 295 Chipeta Way, Salt Lake City, Utah 84158, filed a request with the Commission in Docket No. CP91-2058-000 pursuant to section 7(b) of the Natural Gas Act (NGA), as amended, and part 157 of the Commission's Regulations thereunder for permission and approval to abandon by sale to Snyder Oil Company (Snyder) its Chorney Federal No. 1B well line and to abandon by removal the associated meter station facilities and dehydrator in Carbon County, Wyoming, all as more fully set forth in the request which is open to public inspection.

NW states that since the Chorney Federal No. 1B well line is located approximately 100 miles from its mainline transmission system and it is not economical to tow and operate, and since NW no longer purchases any gas produced from this well, NW has arranged to divest itself of these facilities. NW and Snyder have entered into an agreement whereby NW would sell to Snyder for $3,000 all rights, title and interest in the Chorney Federal No. 1B line. It is stated that Snyder would operate the line as a non-jurisdictional gathering facility. Further, it is stated that the meter and dehydration facilities on the well line would not be sold to Snyder, but would be removed and salvaged by NW.

Comment date: June 12, 1991, in accordance with Standard Paragraph F at the end of this notice.

4. National Fuel Gas Supply Corporation

[Docket No. CP91-2071-000]

May 22, 1991.

Take notice that on May 16, 1991, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP91-2071-000 a request pursuant to §§ 157.205, 157.211 and 157.212 of the Regulations under the Natural Gas Act (18 CFR 157.205, 157.211 and 157.212) to: (1) Construct and operate sales tap facilities to attach new residential customers of National Fuel Gas Distribution Corporation (Distribution) and one sales tap connection to attach a new cogeneration customer of Distribution; (2) to construct and operate a sales tap facility with respect to a firm transportation customer, Northern Consolidated Power, Inc. (Norcon); and (3) to add a delivery point to an existing sales customer, Tennessee Gas Pipeline Company (Tennessee); under National Fuel's blanket certificate issued in Docket No. CP83-4-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

National Fuel proposes to construct and operate ten sales tap facilities to serve residential customers in Monroe Township, Clarion County, New York; Hempfield and Otter Creek Townships, Mercer County; Barnett, Eldred and Winslow Townships, Jefferson County; Sandy Township, Clearfield County; Barnett Township, Forest County; Washington Township, Erie County and Millston Township, Elk County, in Pennsylvania, and one sales tap facility in the Town of Tonawanda, Erie County, New York, to serve one cogeneration customer of Distribution. It is stated that the total peak deliveries for the residential customers are estimated to be 16 Mcf and 1,500 annually and would have minimal impact on National's peak day and annual deliveries. (See the attached appendix for the quantities of natural gas proposed to be delivered to the customers at the new sales taps.) In addition, National Fuel proposes to construct and operate a sales tap in North East, Pennsylvania, for the delivery of gas for the account of Norcon with a peak day delivery of up to 16,500 dth. Finally, National Fuel proposes to add a delivery point for Tennessee, with respect to sales under National Fuel's Rate Schedules V-1 and V-2. It is stated that delivery point would be located at the terminus of the UTOS pipeline in Cameron Parish, Louisiana. Also the proposed quantities would be 630,000 dth per year for Tennessee's system supply. National Fuel states that no facilities will be constructed in connection with this change.

Comment date: July 8, 1991, in accordance with standard Paragraph G at the end of this notice.

APPENDIX—RESIDENTIAL CUSTOMERS

Name	Line	Twp & County	Mcf
1. Amos A. Augustine	H-M 175	Hempfield Twp., Mercer Co., PA	150
2. Dales R. King	H-M 175	Otter Creek Twp., Mercer Co., PA	150
3. Dan Snyder	K-4	Barnett Twp., Jefferson Co., PA	150
4. William A. Kulbacki	F-M 96	Sandy Twp., Clearfield Co., PA	150
5. David J. Meane	K-182	Barnett Twp., Forest Co., PA	150
6. Loye D. Starzell	K-166	Eldred Twp., Jefferson Co., PA	150
7. Kenneth L. Sturm	Q-18	Washington Twp., Erie Co., PA	150
8. Donald W. Boarts	F-82	Millston Twp., Elk Co., PA	150

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APPENDIX—RESIDENTIAL CUSTOMERS—Continued

Name	Line	Twp & County	Mcf
9. Randy L. Snyder	F-52	Winslow Twp., Jefferson Co., PA	150
10. Paul A. Neely	T-9	Monroe Twp., Clarion Co., NY	150

COMMERCIAL CUSTOMERS

Customer	Line	Location	Peak day annual deliveries (dth)
OXBOW Power of North Tonawanda, NY, Inc.	X	City of North Tonawanda, Niagara County, NY	13,500 4,927,500

5. Colorado Interstate Gas Co., Texas Gas Transmission Corp.; Stingray Pipeline Co.

[Docket Nos. CP91-2072-000; CP91-2073-000, CP91-2074-000, CP91-2075-000]

May 22, 1991.

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also states that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: July 8, 1991, in accordance with standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day [1] avg. annual	Points of Receipt	Points of Delivery	Start up date, rate schedule	Related [2] dockets
CP91-2072-000 5/17/91	Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, CO. 80944.	Texaco Gas Marketing, Inc.	91,680 20,000 7,300,000	WY	TX	TI-1, Interruptible 4/1/91.	CP86-589-000, ST91-8615-000.
CP91-2073-000 5/17/91	Texas Gas Transmission Corporation, 3800 Frederica Street, Owensboro KY 42301.	Graham Energy Marketing Corporation.	45,000 40,000 14,500,000	Offshore LA, TX, OH, IL, KY, AR, IN.	MS	IT, Interruptible 4/12/91.	CP88-686-000, ST91-8362-000.
CP91-2074-000 5/17/91	Texas Gas Transmission Corporation, 3800 Frederica Street, Owensboro KY 42301.	Equitable Resources Marketing Company.	50,000 12,000 4,380,000	Offshore LA, TX, OH, IL, KY, IN, TN.	MS	IT, Interruptible 4/12/91.	CP88-686-000, ST91-8358-000.
CP91-2075-000 5/17/91	Stingray Pipeline Company, 701 Eat 22nd Street, Lombard, IL 60148.	American Central Gas Companies, Inc.	50,000 25,000 9,125,000	Offshore LA, TX	LA, Offshore TX	ITS, Interruptible 3/7/91.	Order No. 509, ST91-8027-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

6. United Gas Pipe Line Co.

[Docket Nos. CP91-2082-000, CP91-2083-000, CP91-2084-000]

May 22, 1991.

Take notice that on May 17, 1991, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77251-1478, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: July 8, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No.[3] (date filed)	Shipper name	Peak day [1], avg. annual	Points of [2] Receipt	Points of [2] Delivery	Start up date, rate schedule, service type	Related docket, contract date
CP91-2082-000 (5-17-91)	Seagull Marketing Services, Inc.	10,300 10,300 3,759,500	OLA, OTX	OLA, OTX	4-5-91, ITS, Interruptible.	ST91-8588-000, 8-11-86 [4].
CP91-2083-000 (5-17-91)	Bishop Pipeline Corporation.	41,200 41,200 15,038,000	AL, FL, LA, MS, TX	LA, TX	4-21-91, ITS, Interruptible.	ST91-8585-000, 3-24-88 [5].
CP91-2084-000 (5-17-91)	Enron Gas Marketing, Inc.	515,000 515,000 187,975,000	AL, FL, LA, MS, TX	AL, LA, MS, OLA, TX	4-19-91, ITS Interruptible.	ST91-8624-000, 1-20-89 [6].

[1] Quantities are shown in MMBtu.
[2] Offshore Louisiana and Offshore Texas are shown as OLA and OTX.
[3] If an ST docket is shown, 120-day transportation service was reported in it.
[4] Amended 2-4-91.
[5] Amended 3-25-91.
[6] Amended 1-3-91.

Northern Natural Gas Co.

[Docket No. CP91-2085-000]

May 23, 1991.

Take notice that on May 20, 1991, Northern Natural Gas Company (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP91-2085-000 a request pursuant to §§ 157.205, 157.212, and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212, and 284.223) for authorization to (1) operate and maintain certain existing delivery points and appurtenant facilities as delivery points for jurisdictional service under a Part 284 Subpart G IT-1 Service Agreement and (2) transport natural gas on behalf of Cibola Corporation (Cibola), a marketer of natural gas, beyond the 120 day period provided for in § 284.223(c) of the Commission's Regulations for the entire duration of the IT-1 service Agreement, under the authorization issued in Docket Nos. CP82-401-000 and CP86-435-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern alleges that this proposal will permit Cibola to obtain flexibility of services at eleven delivery points. The eleven existing delivery points were installed and operated by Northern pursuant to section 311 of the Natural Gas Policy Act and § 284.3(c) of the Commission's Regulations and are restricted to use for Section 311 transportation.[3] Northern contends that the maximum estimated volumes to be transported and delivered to Cibola at the affected delivery points is up to 100,000 MMbtu per day with a corresponding impact on Northern's peak day and annual deliveries. Northern states that the volumes to be transported and delivered to Cibola at the proposed delivery points would be made pursuant to an Interruptible Transportation Service Agreement IT-1 Rate Schedule dated February 22, 1991 (transportation agreement no. 5767). It is alleged that Cibola would make the volumes available to various end users. Northern assets that the proposed activity is not prohibited by its existing tariff and that it has sufficient capacity to accommodate the proposed changes without detriment or disadvantage to Northern's other customers.

Comment date: July 8, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] See the attached appendix for a list of the eleven delivery points.

APPENDIX—DELIVERY POINTS TO BE CERTIFICATED

Location of project	Description of project	In-service date
Section 16, T106N, R10W, Winona County, Minnesota	TBS	11/26/90
Section 23, T80, R20W, Jasper County, Iowa	TBS	11/8/90
Section 8, T8N, R9E, Otoe County, Nebraska	TBS	12/8/90
Section 29, T115N, R32W, Renville County, Minnesota	TBS	12/8/90
Section 25, T12N, R13E, Cass County, Nebraska	Farm Tap	8/14/90

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APPENDIX—DELIVERY POINTS TO BE CERTIFICATED—Continued

Location of project	Description of project	In-service date
Section 22, T86N, R22W, Hardin County, Iowa	TBS	11/1/90
Section 9, T80N, R25W, Polk County, Iowa	TBS	12/6/90
Section 22, T4N, R16E, Walworth County, Wisconsin	TBS	11/15/90
Section 36, T87N, R2E, Dubeque County, Iowa	TBS	11/19/90
Section 11, T114N, R23W, Scott County, Minnesota	TBS	12/27/90
Section 12, T100N, R31W, Martin County, Minnesota	TBS	11/7/90

8. High Island Offshore System

[Docket No. CP91-2095-000]

May 24, 1991.

Take notice that on May 22, 1991, High Island Offshore System (HIOS), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP91-2095-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Texarkoma Transportation Company, a marketer, under the blanket certificate issued by the Commission's Order No. 509 corresponding to the rates, terms and conditions filed in Docket No. RP89-82-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

NIOS states that, pursuant to an agreement dated April 1, 1990, under its Rate Schedule IT, it proposes to transport up to 5,000 Mcf per day of natural gas. HIOS indicates that the gas would be transported from Offshore Texas, and would be redelivered in Offshore Texas, and Offshore Louisiana. HIOS further indicates that it would transport 5,000 Mcf on an average day and 1,825,000 Mcf annually.

HIOS advises that service under § 284.223(a) commenced March 14, 1991, as reported in Docket No. ST91-8203-000.

Comment date: July 8, 1991, in accordance with Standard Paragraph G at the end of this notice.

9. Transcontinental Gas Pipe Line Corporation

[Docket No. CP91-2098-000]

May 24, 1991.

Take notice that on May 22, 1991, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP91-2098-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Citrus Marketing, Inc., a marketer, under the blanket certificate issued in Docket No. CP88-328-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Transco states that, pursuant to an agreement dated March 21, 1991, under its Rate Schedule IT, it proposes to transport up to 100,000 dt per day equivalent of natural gas. Transco indicates that it would transport 100,000 dt on an average day and 36,500,000 dt annually. Transco further indicates that the gas would be transported from Offshore Louisiana, and would be redelivered in Louisiana.

Transco advises that service under § 284.223(a) commenced April 1, 1991, as reported in Docket No. ST91-8435.

Comment date: July 8, 1991, in accordance with Standard Paragraph G at the end of this notice.

10. Ashland Exploration, Inc.

[Docket No. CP91-2070-000]

May 24, 1991.

Take notice that on May 16, 1991, Ashland Exploration, Inc. (Ashland), 14701 St. Mary's Lane, Houston, Texas 77079, filed in Docket No. CP91-2070-000 an application pursuant to section 7 of the Natural Gas Act and subpart F of part 157 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the construction and operation of certain facilities, for permission and approval to abandon certain facilities, and to perform other minor transactions eligible thereunder, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that such a certificate would allow Ashland, among other things, to make miscellaneous rearrangements and additions to its facilities with a minimum of delay in order to more effectively provide service through its facilities. Ashland states that it has no outstanding budget-type certificates and has no storage service rate schedules. Ashland states that it sells gas produced by it and transported through its jurisdictional facilities to Mountaineer Gas Company, which sale is exempt from the provision of the NGA under Section 601 of the NGPA. Ashland states that it will comply with the terms, conditions, and procedures specified in subpart F of part 157 of the Commission's Regulations.

Comment date: June 14, 1991, in accordance with Standard Paragraph F at the end of this notice.

11. CNG Transmission Corporation

[Docket No. CP91-2077-000]

May 24, 1991.

Take notice that on May 17, 1991, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26302-2450, filed in Docket No. CP91-2077-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for thirteen shippers, as listed in the appendix below, under CNG's blanket certificate issued in Docket No. CP86-311-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CNG proposes to transport gas for the shippers listed below on an interruptible basis from various receipt points on its system to various interconnections between CNG and certain local distribution companies and pipelines.

Comment date: July 8, 1991, in accordance with Standard Paragraph G at the end of this notice.

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Shipper	Date	ST docket	Peak day; avg., annual vol. (Dt)
Fulton Cogeneration Associates	4/1/91	ST91-8547	12,300; 10,969, 4,003,685
Indeck Energy Services Inc.	4/1/91	ST91-8558	5,000; 3,042, 1,110,330
Bethlehem Steel Corporation	4/2/91	ST91-8552	50,000; 15,000, 5,475,000
Citizen's Gas Supply Corp.	4/3/91	ST91-8553	25,000; 10, 3,650
Citizen's Gas Supply Corp.	4/3/91	ST91-8554	25,000; 10, 3,650
Access Energy Corporation	4/3/91	ST91-8549	750; 331, 120,815
Santanna Natural Gas Corp.	3/26/91	ST91-8413	11,225; 50, 18,250
Santanna Natural Gas Corp.	3/26/91	ST91-8414	11,225; 50, 18,250
Phoenix Diversified Ventures, Inc.	3/27/91	ST91-8412	3,000; 200, 73,000
American Central Gas Companies, Inc.	4/16/91	ST91-8555	75,000; 48, 17,520
American Central Gas Companies, Inc.	4/16/91	ST91-8546	75,000; 48, 17,520
Bethlehem Steel Corporstion	4/8/91	ST91-8557	6,000; 50, 18,250
Wabash Alloyd Division-Connell	4/11/91	ST91-8551	5,000; 1,575, 574,875

12. Transwestern Pipeline Co.; Florida Gas Transmission Co.; Florida Gas Transmission Co.

[Docket Nos. CP91-2087-000, CP91-2088-000, CP91-2089-000]

May 24, 1991.

Take notice that Transwestern Pipeline Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, and Florida Gas Transmission Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to traxsport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP88-133-000 and Docket No. CP89-555-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[4]

[4] These prior notice requests are not consolidated.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: July 8, 1991, in accordance with Standard Paragraph G at the end of this notice.

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Docket No. (date filed)	Shipper name (type)	Peak day average day annual MMBtu	Receipt points [1]	Delivery points	Contract date rate schedule service type	Related docket, start up date
CP91-2087-000 (5-21-91)	Gulf Gas Utilities Co. (marketer).	6,000 4,500 2,230,000	AZ, NM, OK, TX	NM, OK, TX	3-20-91, ITS-1, Interruptible.	ST91-8699, 5-6-91.
CP91-2088-000 (5-21-91)	City of Starke	340 72 26,040	TX, OTX, OLA, LA, MS, AL, FL.	FL	5-1-91, FTS-1, Firm.	ST91-8652, 5-1-91.
CP91-2089-000 (5-21-91)	HGX Gas Transmission Corp.	10,000 7,500 3,650,000	TX, OTX, OLA, LA, MS, LA, FL.	TX	5-1-91, ITS-1, Interruptible.	ST91-8651, 5-1-91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

13. Texas Eastern Transmission Corporation

[Docket No. CP88-136-026]

May 24, 1991.

Take notice that on May 10, 1991, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056-5310, filed in Docket No. CP88-13-026 an application pursuant to section 7 of the Natural Gas Act to amend its certificate of public convenience and necessity issued in Docket No. CP88-136-000, as amended, to increase the level of annual transportation quantity level authorized for Associated Natural Gas Company (Associated), all as more fully described in the petition to amend that is on file with the Commission and open to public inspection.

Texas Eastern seeks authority to increase the annual transportation quantity level for Associated from 875,000 Dth to 1,825,000 Dth in order to receive their authorized maximum daily transportation quantity (MDQT) for 365 days a year. Texas Eastern states that it is authorized by Commission order issued September 29, 1988 in Docket No. CP88-136-000, as amended August 22, 1989 in CP88-135-007, to provide various services to customers desiring to convert their sales entitlement with Texas Eastern to new service agreements under rate schedules CD-1, CD-2, FT-1, and IT-1. It is further stated that in compliance with the Commission's order Texas Eastern filed a new FT-1 service agreement for Associated which established an annual transportation quantity (ATQ) level of 875,000 Dth while the MDTQ level was 5,000 Dth. It is stated that Associated has been unable to take their authorized MDTQ 365 days a year under this service

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agreement because of the lower ATQ authorized.

Texas Eastern states that pursuant to a service agreement dated April 16, 1991, it will offer firm transportation service under Rate Schedule FT-1 at the originally certificated MDTQ 365 days a year.

Comment date: June 14, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

14. South Georgia Natural Gas Co.

[Docket No. CP91-2076-000]

May 24, 1991.

Take notice that on May 17, 1991, South Georgia Natural Gas Company (South Georgia), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed a request with the Commission in Docket No. CP91-2076-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to increase the contract delivery pressures at two existing delivery points, pursuant to its blanket certificate issued in Docket No. CP82-548-000, all as more fully described in the request which is open to public inspection.

South Georgia proposes to increase the contract delivery pressures at the Albany Nos. 1 and 2 delivery points, Dougherty County, Georgia, used for delivering natural gas it sells to the Water, Gas and Light Commission of Albany (Albany). At Albany's request, South Georgia proposes to increase the delivery pressure at Albany No. 1 from 30-150 psig to 300-500 psig. South Georgia also proposes to increase the delivery pressure at Albany No. 2 from 30-150 psig to 150-300 psig. South Georgia would not have to construct or remove any facilities as a result of the proposed changes in delivery pressures.

South Georgia also states that the proposed increases in delivery pressures would not cause any termination of service, nor result in any change to Albany's contract demand. The proposed increase in delivery pressures would have no significant impact on South Georgia's peak day and annual deliveries. South Georgia's tariff does not prohibit changes in delivery pressures.

Comment date: July 8, 1991, in accordance with Standard Paragraph G at the end of this notice.

15. Stingray Pipeline Co.

[Docket No. CP91-2090-000]

May 24, 1991.

Take notice that on May 22, 1991, Stingray Pipeline Company (Stingray), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP91-2090-000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to transport natural gas for Transtate Gas Service Company (Transtate), a marketer of natural gas, under Stingray's Order No. 509 blanket authorization pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Stingray states that it would transport, on an interruptible basis, up to 50,000 MMBtu equivalent of natural gas on a peak day, 25,000 MMBtu equivalent on an average day and 9,125,000 MMBtu equivalent on an annual basis. It is stated that Stingray would receive the gas receipt points on Stingray's system in Louisiana, offshore Louisiana and offshore Texas and would deliver equivalent volumes of gas in Louisiana and offshore Texas. It is further stated that the transportation service would be effected using existing facilities and would require no construction of additional facilities. It is explained that the transportation service commenced February 16, 1990, under the automatic authorization provisions of § 284.223 of the Commission's Regulations and reported in Docket No. ST91-6029.

Comment date: July 8, 1991, in accordance with Standard Paragraph G at the end of this notice.

16. ANR Pipeline Co., Northern Natural Gas Co., Trunkline Gas Co.

[Docket Nos. CP91-2096-000, CP91-2099-000, CP91-2100-000, CP91-2101-000, CP91-2102-000]

May 24, 1991.

Take notice that on May 23, 1991, Applicants filed in the above-referenced dockets prior notice requests pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued to Applicants pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[5]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix A. Applicants' addresses and transportation blanket certificates are shown in the attached appendix B.

Comment date: July 8, 1991, in accordance with Standard Paragraph G at the end of this notice.

[5] These prior notice requests are not consolidated.

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Docket No. (date filed)	Shipper name (type)	Peak day average day annual Dth	Receipt points [1]	Delivery points	Contract date rate schedule service type	Related docket, start up date
CP91-2098-000 (5-23-91)	Fort Howard Corporation (End-user).	1,650 1,650 602,250	OLA, LA	WI	2-25-91, FTS-1, Firm.	ST91-8242-000, 4-2-91.
CP91-2099-000 (5-23-91)	Briggs & Stratton Corporation (End-user).	1,400 1,173 428,145	MI, WI	MI, WI	1-15-91, FTS-1, Firm.	ST91-8235-000, 4-1-91.
CP91-2100-000 (5-23-91)	Wolverine Power Supply Cooperative, Inc. (End-user).	1,000 1,000 365,000	OLA, OTX, LA, OK, KS, TX	MI	3-7-91, ITS, Interruptible.	ST91-8273-000, 4-2-91.
CP91-2101-000 (5-23-91)	Salmon Resources, Ltd. (Marketer).	500,000 375,000 [2]82,500,000	IA, SD, MN	TX, KS, WI, IA	3-1-88, IT-1, Interruptible.	ST88-2550-000, [3] 1-31-88.

Docket No. (date filed)	Shipper name (type)	Peak day average day annual Dth	Receipt points [1]	Delivery points	Contract date rate schedule service type	Related docket, start up date
CP91-2102-000 (5-23-91)	Exxon Corporation (Producer).	25,000 25,000 [3] 9,125,000	OLA, OTX, IL, LA, TN, TX	LA	4-15-91, PT, Interruptible.	ST91-8627-000, 4-18-91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2] Service terminated May 29, 1988.
[3] Northern's quantities are in MMBtu.
[4] Trunkline's quantities are in Mcf.

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Applicant's address	Blanket docket
ANR Pipeline Co., 500 Renaissance Center, Detroit, Michigan 48243.	CP88-532-000
Northern Natural Gas Co., 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188.	CP86-435-000
Trunkline Gas Co., P.O. Box 1642, Houston, Texas 77251-1642.	CP88-586-000

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be take but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13159 Filed 6-4-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-2030-000, et al.]

Natural Gas Certificate Filings; Transcontinental Gas Pipe Line Corp., et al.

1. Transcontinental Gas Pipe Line Corp.

[Docket No. CP91-2030-000]

May 28, 1991.

Take notice that on May 13, 1991, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP91-2030-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for Citizens Gas Supply Corporation (Citizens) under the blanket certificate issued in Docket No. CP88-328-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco states that it would receive the gas at specified points located in onshore and offshore Texas and Louisiana, Mississippi, and Pennsylvania and redeliver the gas at specified points located in New York and offshore Texas. Transco estimates peak day, average day, and annual volumes of 250,000, 60,000, and 21,900,000 dt equivalent of natural gas, respectively. It is stated that Transco initiated a 120-day transportation service for Citizens on July 1, 1990, as reported in Docket No. ST91-6570-000.

Transco states that no new facilities would be required to implement the service and that it would charge rates as provided on Sheet No. 19 of Transco's FERC Gas Tariff, Second Revised Volume No. 1.

Comment date: July 12, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. Northern Natural Gas Co.

[Docket Nos. CP91-2091-000,[1] CP91-2092-000, CP91-2093-000]

May 28, 1991.

Take notice that on May 22, 1991, Northern Natural Gas Company (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas on behalf of various shippers under its blanket certificates issued in Docket No. CP86-435-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the contract date of the interruptible transportation agreement between Northern and the respective shipper, the transportation agreement number, function of the shipper, i.e.,

[1] These prior notice requests are not consolidated.

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marketer, producer, intrastate pipeline, etc., the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket number and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Northern and is included in the attached appendix.

Northern alleges that it would provide the proposed service for each shipper under an executed gas transportation agreement and would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: July 12, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (trans. agree. tran. agr. No.)	Shipper name	Shipper's function	Peak day [1] avg. annual	Points of Receipt	Points of Delivery	Start up date rate schedule service type	Related [2] Dockets
CP91-2091-000 4-18-91 (5875)	Union Pacific Fuels, Inc.	Marketer	88,457 66,343 32,266,805	OFF TX, TX, & LA	OFF LA & LA	4-18-91, IT-1, Interruptible.	ST91-8580-000.
CP91-2092-000 4-26-91 (5981)	Richardson Products Company.	Marketer	75,000 56,250 27,375,000	Various Existing Points.	TX	4-26-91, IT-1, Interruptible.	ST91-8635-000.
CP91-2093-000 5-2-91 (5997)	Elf Exploration, Inc	Producer	20,000 15,000 7,300,000	TX	TX	5-2-91, IT-1, Interruptible.	ST91-8636-000.

[1] Quantities are shown in MMBtu.
[2] The ST docket indicates that 120-day transportation service was initiated under Section 284.223(a) of the Commission's Regulations.

3. El Paso Natural Gas Co.

[Docket No. CP91-2094-000]

May 29, 1991.

Take notice that on May 22, 1991, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP91-2094-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation sevice for PSI Gas Marketing, Inc./Utilicorp, a broker, under the blanket certificate issued in Docket No. CP88-433-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso states that, pursuant to an agreement dated March 28, 1991, under its Rate Schedule T1, it proposes to transport up to 56,650 MMBtu per day equivalent of natural gas. El Paso indicates that the gas would be transported from receipt points located in Colorado, and New Mexico, and would be redelivered at delivery points located in New Mexico. El Paso further indicates that it would transport 10,000 MMBtu on an average day and 3,650,000 MMBTu annually.

El Paso advises that service under § 284.223(a) commenced April 1, 1991, as reported in Docket No. ST91-8201.

Comment date: July 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

4. Arkla Energy Resources; a Division of Arkla, Inc.

[Docket No. CP91-2069-000]

May 29, 1991.

Take notice that on May 16, 1991, Arkla Energy Resources (AER), a division of Arkla, Inc., 525 Milam Street, Shreveport, Louisiana 71151, filed in Docket No. CP91-2069-000, an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities in connection with the realignment of pipelines connecting AER's northern and southern systems and for authority to abandon a segment of its existing transmission facilities in that area, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, AER requests authority to increase from 800 psig to 1,000 psig the maximum allowable operating pressure of its Line S-3-S which Line was originally constructed pursuant to § 2.55 of the Commission's Regulations as a replacement for Line S, and to install connections permitting Line S-3-S to assist in satisfying requirements served from existing Line L and the proposed reactivated segment of Line S.

AER also proposes to install facilities permitting the return to service of a segment of Line S (a) between AER's Perla Regulator Station (Perla) and AER's Beirne Compressor Station (Beirne) to provide backup capability for the performance of the service currently provided by AER's Lines A and L, (b) to provide a new source of supply to that portion of Line L between Beirne and the Hamilton plant site (Hamilton), and (c) between Perla and Hamilton to perform some of the services currently performed by AER's replacement Line S-3-S.

Further AER proposes to make the modifications necessary to permit the use of AER's Line L between Perla and Beirne to perform the services currently performed by Lines A and L between the same points; and to abandon the portion of AER's Line A between Perla and Beirne.

AER states that the estimated cost of the proposed facilities is $4,043,481. The proposed facility cost will be financed through internally generated funds.

AER asserts that its proposal will enhance the reliability and safety of the service AER renders and increase the pipeline capacity by approximately 83,000 Mcf per day and operational flexibility in a critical portion of AER's system.

Comment date: June 19, 1991, in accordance with Standard Paragraph G at the end of this notice.

Columbia Gulf Transmission Co., et al.

[Docket Nos. CP91-2109-000, CP91-2110-000, CP91-2111-000, CP91-2112-000, CP91-2113-000]

May 29, 1991.

Take notice that on May 24, 1991, Applicants filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued to Applicants pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached Appendix A. Applicants' addresses and transportation blanket certificates are shown in the attached appendix B.

Comment date: July 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Appendix A—page 1 of 1

Docket No. (date filed)	Shipper name (type)	Peak day average day annual MMBtu	Receipt points [1]	Delivery points	Contract date rate schedule service type	Related docket, start up date
CP91-2109-000 (5-24-91)	Hadson Gas Systems, Inc. (Marketer).	121,500 50,000 18,250,000	OLA, LA	OLA, LA	4-1-87 [3], ITS-2, Interruptible.	ST91-8614-000, 4-13-91.
CP91-2110-000 (5-24-91)	Clinton Gas Marketing, Inc. (Marketer).	108,770 87,016 39,701,050	Various	[3]	9-6-90 [3], ITS, Interruptible.	ST91-7885-000, 3-18-91.
CP91-2111-000 (5-24-91)	Yuma Gas Corporation (Marketer).	50,000 40,000 18,250,000	Various	NC	9-10-90, ITS, Interruptible.	ST91-8429-000, 4-1-91.
CP91-2112-000 (5-24-91)	Appalachian Gas Sales (Marketer).	10,000 8,000 3,650,000	Various	Various	11-1-89 [3], ITS, Interruptible.	ST91-8253-000, 3-27-91.
CP91-2113-000 (5-24-91)	Coastal Gas Marketing Company (Marketer).	19,699 [4] 7,263,135 [5]	ND, MT, WY	WY, ND, SD, MT	6-19-90 [3], IT-1, Interruptible.	ST91-8539-000, 4-29-91.

[1] Offshore Louisiana is shown as OLA.
[3] As amended.
[3] The gas would be delivered to Equitrans, PA, for the account of Clinton.
[4] Williston Basin advises that Coastal estimates there would be no increase in average day quantities as a result of the proposal. It is stated that this filing is being made to reflect an amendment dated April 29, 1991, which provides for increase in peak day quantities of 19,899 dekatherms (Maximum Daily Contract Quantity of 71,484 dekatherms). It is stated that previous related authorizations were issued in Docket Nos. CP90-1765-000 and CP91-943-000.
[5] Williston Basin's quantities are in dekatherms.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,
Secretary.

[FR Doc. 91-13161 Filed 6-4-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP88-227-023]

Paiute Pipeline Co.; Proposed Changes in FERC Gas Tariff

May 29, 1991.

Take notice that Paiute Pipeline Company (Paiute) on May 28, 1991 tendered for filing certain tariff sheets to be substituted in lieu of their counterparts tendered in Paiute's April 25, 1991 compliance filing as part of Paiute's proposed First Revised Volume No. I-A:

Substitute Original Sheet No. 23
Substitute Original Sheet No. 63
Substitute Original Sheet No. 64
Substitute Original Sheet No. 65
Substitute Original Sheet No. 66
Substitute Original Sheet No. 67
Substitute Original Sheet No. 68
Substitute Original Sheet No. 69

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Substitute Original Sheet No. 70
Substitute Original Sheet No. 72
Substitute Original Sheet No. 74
Substitute Original Sheet No. 75
Substitute Original Sheet No. 76
Substitute Original Sheet No. 77
Originnl Sheet No. 77A

Paiute reiterates its request in its compliance filing that its proposed First Revised Volume No. 1-A, including the above substitute tariff sheets, be accepted and placed into effect on June 1, 1991.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such protests should be filed on or before June 5, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.
[FR Doc. 91-13160 Filed 6-4-91; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 91-16-NG]

Husky Gas Marketing, Inc.; Order Granting Blanket Authorization to Import Natural Gas From Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an order granting blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order granting Husky Gas Marketing, Inc. blanket authorization to import up to 50 Bcf of Canadian natural gas for a two-year term beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 29, 1991.

Clifford P. Tomaszewski,
Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.
[FR Doc. 91-13236 Filed 6-4-91; 8:45 am]
BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed During the Week of April 26 through May 3, 1991

During the Week of April 26 through May 3, 1991, the appeal and applications for other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: May 29, 1991.

George B. Breznay,
Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of April 26 through May 3, 1991]

Date	Name and location of applicant	Case No.	Type of submission
05/01/91	Arco/Manassas Ice and Fuel Co., Washington, DC	RR304-12	Request for Modification/Rescission in the Arco Refund Proceeding. If granted: The December 6, 1989 Decision and Order (Case No. RF304-2939) issued to Manassas Ice and Fuel Company, Inc. would be modified regarding the firm's application for refund submitted in the Arco refund proceeding.
05/01/91	Gulf/Holmes Oil Company, Inc. Washington, DC	RR300-21	Request for Modification/Rescission in the Gulf Refund Proceeding. If granted: The March 20, 1989 Decision and Order (Case No. RF300-5228) issued to Holmes Oil Company, Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
05/02/91	Texaco/231 Texaco, Ranburne, AL	RR321-62	Request for Modification/Rescission in the Texaco Refund Proceeding. If granted: The April 16, 1991 Decision and Order (Case Nos. RF321-13477 & 13859) issued to 231 Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
05/02/91	Ronald B. O'Dowd, Albuquerque, NM	LFA-0117	Reconsideration of an Information Request Decision and Order. If granted: The Department of Energy would reconsider its March 4, 1991 Decision and Order remanding a request for information submitted by Keith D. Britt to the Albuquerque Operations Office.

REFUND APPLICATIONS RECEIVED

[Week of April 26 to May 3, 1991]

Date received	Name of refund proceeding/name of refund applicant	Case No.
04/29/91	Swanville Sch Dist.	RF272-89300
04/29/91	Transportation Lease Corp.	RF272-89301
04/29/91	Tri State Gas & App. Co., Inc.	RF272-89302
04/29/91	Hangar One, Inc.	RF315-10144
04/29/91	Western Furnaces, Inc.	RF315-10145
04/29/92	State of North Carolina.	RA272-39
04/30/91	Rogers Texaco Service Station.	RF272-89303
04/30/91	Tri-State Propane, Inc.	RF272-89304
04/30/91	Stratford Board of Education.	RF272-89305
04/30/91	Calumet Public Schools Dist.	RF272-89306
04/30/91	Mountainside School District.	RF272-89307
04/30/91	Seaboard Asphalt Products Co.	RF272-89308
04/30/91	Pachirrer Asphalt Co.	RF272-89309
04/30/91	Champagne Beverage Co.	RF272-89310
04/30/91	A-1 Paving	RF272-89311
04/30/91	Marion Wachel, Jr.	RF307-10187
05/01/91	Vincent Ganduglia Trucking.	RF327-4
05/01/91	Vincent Ganduglia Trucking.	RF328-3
05/03/91	Benefield Distributing Co.	RF326-267
05/02/91	Huff Petroleum Co.	RF334-8
05/03/91	Clarence J. Rulon.	RF307-10188
04/23/91	Chrysler Motors Corp.	RA272-38
04/26/91 thru 05/03/91	Gulf Oil Refund Applications Received.	RF300-14659 thru RF300-16656
04/26/91 thru 05/03/91	Texaco Refund Applications Received.	RF321-14960 thru RF321-15014
04/26/91 thru 05/03/91	Atlantic Richfield Applications Received.	RF304-12219 thru RF304-12282
04/26/91 thru 05/03/91	Quantum Chemical Corp. Applications Received.	RF330-2 thru RF330-19

[FR Doc. 91-13237 Filed 6-4-91; 8:45 am]
BILLING CODE 6450-01-M

Southeastern Power Administration

Order Confirming and Approving Power Rates on an Interim Basis

AGENCY: Southeastern Power Administration (Southeastern), Department of Energy.

ACTION: Notice of approval on an interim basis of the Georgia-Alabama-South Carolina Projects' rates.

SUMMARY: On May 24, 1991, the Deputy Secretary confirmed and approved, on an interim basis, a new Rate Schedule GAMF-3-A, for Georgia-Alabama-South Carolina Projects' power. The rates were approved on an interim basis through September 30, 1993, and are subject to confirmation and approval by the Federal Energy Regulatory Commission on a final basis.

DATES: Approval of rates on an interim basis is effective on June 1, 1991.

FOR FURTHER INFORMATION CONTACT:

Leon Jourolmon, Jr., Director, Power Marketing Division, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635.

Rodney L. Adelman, WDC, Director, Washington Liaison Office, Forrestal Building, 1000 Independence Ave. SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission by Order issued April 3, 1991, in Docket No. EF90-3011-000 confirmed and approved Wholesale Power Rate Schedules GA-1-C, GA-2-C, GA-3-B, GU-1-C, ALA-1-G, ALA-3-C, MISS-1-G, MISS-2-C, SC-3-B, SC-4-A, SC-5-A, CAR-3-B, CAR-4-A, SCE-2-B, SCE-4-A, and GAMF-2-F through September 30, 1993. Rate Schedule GAMF-3-A is a new rate schedule.

Issued in Washington, DC, May 24, 1991.

W. Henson Moore,
Deputy Secretary.

In the Matter of:
Southeastern Power Administration—Georgia-Alabama-South Carolina Projects' Power Rates

Rate Order No. SEPA-29

Order Confirming and Approving Power Rates on an Interim Basis

Pursuant to sections 302(a) and 310(b) of the Department of Energy Organization Act, Public Law 95-91, the functions of the Secretary of the Interior and the Federal Power Commission under section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southeastern Power Administration (Southeastern) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204-108, effective May 30, 1986, 51 FR 19744 (May 30, 1986), the Secretary of Energy delegated to the Administrator the authority to develop power and transmission rates, and delegated to the Under Secretary the authority to confirm, approve, and place in effect such rates on an interim basis and delegated to the Federal Energy Regulatory Commission the authority to confirm and approve on a final basis or to disapprove rates developed by the Administrator under the delegation. On August 3, 1990, the Secretary of Energy issued Notice SEN-10D-90, published in 56 FR 14519 (April 10, 1991), granting the Deputy Secretary sign off authority respecting matters for which the Assistant Secretary, Conservation and Renewable Energy, is responsible. The Southeastern, Southwestern, and Alaska Power Administrations organizationally report to the Assistant Secretary, Conservation and Renewable Energy. This rate order is issued by the Deputy Secretary pursuant to said notice.

Background

Power from the Georgia-Alabama-South Carolina System of Projects is presently sold under Wholesale Power Rate Schedules GA-1-C, GA-2-C, GA-3-B, GU-1-C, ALA-1-G, ALA-3-C, MISS-1-G, MISS-2-C, SC-3-B, SC-4-A, SC-5-A, CAR-3-B, CAR-4-A, SCE-2-B, SCE-4-A, and GAMF-2-F. All of these rate schedules were approved by the FERC on April 3, 1991, for a period ending September 30, 1993.

Public Notice and Comment

Opportunities for public review and comment on the Rate Schedules proposed for use during the period June 1, 1991, through September 30, 1993, were announced by Notice published in the **Federal Register** on March 8, 1991, and all customers were notified by mail. A Public Information and Comment Forum was held in Atlanta, Georgia, on April 9, 1991, and written comments were invited by the Notice through April 24, 1991. Oral comments were presented at the forum and no written comments were received prior to April 24, 1991. There were no substantive comments received.

Discussion

System Repayment

Southeastern Power Administration proposed a set of rate schedules effective October 1, 1990, which were approved on a final basis by the Federal Energy Regulatory Commission on April 3, 1991. Those rates did not anticipate Southeastern buying pumping energy

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and delivering the generated energy to the preference customers. Southeastern expected the present arrangement to continue where the Southern Companies would provide the pumping energy and receive the generated energy. Southeastern is proposing this amendment to the rate filing to pass the costs of the unanticipated costs to the preference customers.

Environmental Impact

Southeastern has reviewed the possible environmental impacts of the rate adjustment under consideration and has concluded with Departmental concurrence that, because the increased rates would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, the proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

Availability of Information

Information regarding these rates, including studies, and other supporting materials is available for public review in the offices of Southeastern Power Administration, Samuel Elbert Building, Elberton, Georgia 30635, and in the Washington Liaison Office, James Forrestal Building, 1000 Independence Avenue SW. Washington, DC 20585.

Submission to the Federal Energy Regulatory Commission

The rates hereinafter confirmed and approved on an interim basis, together with supporting documents, will be submitted promptly to the Federal Energy Regulatory Commission for confirmation and approval on a final basis for a period beginning June 1, 1991, and ending no later than September 30, 1993.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective June 1, 1991, attached Wholesale Power Rate Schedule GAMF-3-A. The rate schedule shall remain in effect on an interim basis through September 30, 1993, unless such period is extended to until the Federal Energy Regulatory Commission confirms and approves them or substitute rate schedules on a final basis.

Issued in Washington, DC, this 24 day of May 1991.

W. Henson Moore,

Deputy Secretary.

GEORGIA-ALABAMA SYSTEM

[Comparison of Current and Proposed Rates and Revenues]

	Rates			Revenues (in thousands of dollars)			
	Present	Proposed		Present		Proposed	
		10/01/90 through 05/31/91	06/01/91 through 09/30/93	10/01/90 through 05/31/91	06/01/91 through 09/30/93	10/01/90 through 05/31/91	06/01/91 through 09/30/93
GA-1-C							
Capacity—$/kw/mo	$1.76	$2.57	$2.67	$7,573	$6,869	$11,185	$13,610
Energy—mills/kwh	8.50	7.21	7.21	6,437	6,437	5,460	5,460
Other transmission—$/kw/mo	0.20	0.20	0.20	870	1,019	870	1,019
Transmission—$/kw/mo	(0.11)	(0.10)	(0.10)	(479)	(560)	(435)	(509)
GA-2-C							
Capacity—$/kw/mo	1.74	2.57	2.67	9,730	11,326	14,372	17,380
Energy—mills/kwh	8.50	7.21	7.21	8,347	8,347	7,080	7,080
Other transmission—$/kw/mo	0.20	0.20	0.20	1,118	1,302	1,118	1,302
Transmission—$/kw/mo	(0.11)	(0.10)	(0.10)	(615)	(715)	(559)	(650)
GA-3-B							
Capacity—$/kw/mo	1.74	2.57	2.67	50	58	73	80
Energy—mills/kwh	8.50	7.21	7.21	142	142	121	121
Other transmission—$/kw/mo	0.20	0.20	0.20	6	7	6	7
Transmission—$/kw/mo	2.85	2.86	2.86	81	95	81	95
ALA-3-C							
Capacity—$/kw/mo	1.74	2.57	2.67	4,500	5,345	6,847	8,292
Energy—mills/kwh	8.50	7.21	7.21	3,939	3,939	3,342	3,342
Other transmission—$/kw/mo	0.20	0.20	0.20	517	614	517	614
Transmission—$/kw/mo	1.43	1.44	1.44	3,899	4,394	3,724	4,424
MISS-2-C							
Capacity—$/kw/mo	1.74	2.57	2.67	1,118	1,295	1,851	1,986
Energy—mills/kwh	8.50	7.21	7.21	954	954	809	809
Other transmission—$/kw/mo	0.20	0.20	0.20	128	149	129	149
Transmission—$/kw/mo	0.86	0.87	0.087	553	640	559	648
GU-1-C							
Capacity—$/kw/mo	1.74	2.57	2.67	142	167	210	256
Energy—mills/kwh	8.50	7.21	7.21	123	123	104	104
Other transmission—$/kw/mo	0.20	0.20	0.20	16	19	16	19
Transmission—$/kw/mo	1.69	1.70	1.70	138	162	139	163
GAMF-2-F							
Capacity—$/kw/mo	1.59	2.26		5,266		7,485	
ALA-1-G							
Capacity—$/kw/mo	1.99	2.26	2.26	1,736	1,736	2,488	2,488
Energy—mills/kwh	8.50	7.21	7.21	1,469	1,469	1,246	1,246
Other transmission—$/kw/mo	0.20	0.26	0.20	218	218	218	218
Transmission—$/kw/mo		(0.10)	(0.10)			(109)	(109)
MISS-1-G							
Capacity—$/kw/mo	1.58	2.26	2.26	1,164	1,164	1,654	1,654
Energy—mills/kwh	8.50	7.21	7.21	736	736	624	624
Other transmission—$/kw/mo	0.20	0.20	0.20	148	148	146	146
Transmission—$/kw/mo	0.59	0.60	0.60	432	432	439	439

GEORGIA-ALABAMA SYSTEM—Continued

[Comparison of Current and Proposed Rates and Revenues]

	Rates			Revenues (in thousands of dollars)			
	Present	Proposed		Present		Proposed	
		10/01/90 through 05/31/91	06/01/91 through 09/30/93	10/01/90 through 05/31/91	06/01/91 through 09/30/93	10/01/90 through 05/31/91	06/01/91 through 09/30/93
SC-4-A							
Capacity—$/kw/mo	1.59	2.26	2.26	2,003	2,003	2,848	2,848
Energy—mills/kwh	4.88	7.21	7.21	1,001	1,001	1,479	1,479
Energy surcharge—mills/kwh		1.96	1.96		402	402	402
Other transmission—$/kw/mo		0.20	0.20	252	252	252	252
Transmission—$/kw/mo	0.20						
SC-5-A							
Capacity—$/kw/mo	1.66	2.35	2.35	1,992	1,992	2,820	2,820
Energy—mills/kwh	4.88	7.21	7.21	1,252	1,252	1,849	1,849
Energy surcharge—mills/kwh		1.96	1.96			503	503
Other transmission—$/kw/mo							
Transmission—$/kw/mo	1.42	1/42	1.42	1,704	1,704	1,704	1,704
Transmission—$/kw/mo	0.20	0.20	0.20	240	240	240	240
SC-3-B							
Capacity—$/kw/mo	1.66	2.35	2.35	120	120	169	169
Energy—mills/kwh	8.50	7.21	7.21	131	131	111	111
Other transmission—$/kw/mo	0.20	0.20	0.20	14	14	14	14
Transmission—$/kw/mo	1.42	1.42	1.42	102	102	102	102
CAR-4-A							
Capacity—$/kw/mo	1.95	2.77	2.77	659	659	936	936
Energy—mills/kwh	4.88	7.21	7.21	328	328	464	464
Energy surcharge—mills/kwh		1.96	1.96			132	132
Other transmission—$/kw/mo	0.20	0.20	0.20	68	68	68	68
Transmission—$/kw/mo	1.33	1.33	1.33	449	449	449	449
CAR-3-B							
Capacity—$/kw/mo	1.95	2.77	2.77	3,892	3,892	5,529	5,529
Energy—mills/kwh	8.50	7.21	7.21	2,674	2,674	2,268	2,268
Other transmission—$/kw/mo	0.20	0.20	0.20	399	399	399	399
Transmission—$/kw/mo	1.33	1.33	1.33	2,655	2,655	2,655	2,655
SCE-4-A							
Capacity—$/kw/mo	1.96	2.78	2.78	38	38	53	53
Energy—mills/kwh	4.88	7.21	7.21	7	7	10	10
Energy surcharge—mills/kwh		1.96	1.96			3	3
Other transmission—$/kw/mo	0.20	0.20	0.20	4	4	4	4
Transmission—$/kw/mo	1.87	1.87	1.87	36	36	36	36
SCE-2-B							
Capacity—$/kw/mo	1.96	2.78	2.78	268	268	380	380
Energy—mills/kwh	8.50	7.21	7.21	82	82	70	70
Other transmission—$/kw/mo	0.20	0.20	0.20	27	27	27	27
Transmission—$/kw/mo	1.87	1.87	1.87	256	256	256	256
GAMF-3-A							
Energy—mills/kwh			23.33				4,910
Total Power Revenues				80,908	80,682	97,642	103,569
Estimated Headwater Benefits				796	796	796	796
Estimated Corps Revenues				2,292	2,406	2,292	2,406
Total Revenue				83,996	83,884	100,730	106,771

Wholesale Power Rate Schedule GAMF-3-A

Availability: This rate schedule shall be available to public bodies and cooperatives (any one of whom is hereinafter called the Customer) in Georgia, Alabama, Mississippi, or Florida, owning distribution systems, to whom power may be wheeled pursuant to contracts between the Government and the Georgia Power Company, or Alabama Power Company, or Mississippi Power Company, or Gulf Power Company, or Municipal Electric Authority of Georgia, or Water, Light and Sinking Fund Commission of the City of Dalton, or Oglethorpe Power Corporation, or Alabama Electric Cooperative (any one of whom is hereinafter called the Facilitator or Facilitators).

Applicability: This rate schedule shall be applicable to the sale of wholesale energy generated from pumping operations at the Carters Project and sold under appropriate contracts between the Government and the Customer.

Character of Service: The electric energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 Hertz delivered at the delivery points of the Customer on the Facilitator's transmission and distribution system.

Monthly Rate: The rate for energy sold under this rate schedule for the months specified shall be:

Energy Rate = $(C_{wpv} \div F) \div (1\text{-}L_d)$ [computed to the nearest $.00001 (1/100 mill) per kwh]

(The weighted average cost of energy for pumping divided by the energy conversion factor, quantity divided by one minus losses for delivery.)

Where:

$C_{wpv} = C_T \div E_T$

(The weighted average cost of energy for pumping is equal to the total cost of energy for pumping divided by the total energy for pumping.)

$C_T = C_p + C_s$

(Total cost of energy for pumping is equal to the cost of energy purchased plus the cost of energy in storage carried over from the month preceding the specified month.)

$E_T = E_p X(1-L_p) + E_s^{t-1}$

(Total energy for pumping is equal to the energy purchased, after losses, plus the energy for pumping in storage as of the end of the month preceding the specified month.)

$C_s = C_{wpv}^{t-1} X(E_s^{t-1}$

(Cost of energy in storage is equal to the weighted average cost of energy for pumping for the month preceding the specified month times the energy for pumping in storage at the

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end of the month preceding the specified month.)

F = Energy conversion factor for pumping at the Carters Project (by contract, .70 or 70 percent.)

L_w = Weighted average energy loss factor on energy delivered by the facilitator to the customer. (This value will be a constant, currently estimated to be .0515 or 5.15 percent.)

C_p = Dollars cost of energy purchased for pumping during the specified month, including all direct costs to deliver energy to the project. (Wheeling charges are expected to be $.027 per mwh.)

E_p = Kilowatt-hours of energy purchased for pumping during the specified month.

L_p = Energy loss factor for transmission on energy purchased for pumping (Expected to be .03 or three percent.)

E_s^{t-1} = Kilowatt-hours of energy in storage as of the end of the month immediately preceding the specified month.

C_{wp}^{t-1} = Weighted average cost of energy for pumping for the month immediately preceding the specified month.

Energy to be Furnished by the Government: The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Facilitator (less any losses required by the Facilitator). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Facilitator's system.

Billing Month: The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

Conditions of Service: The Customer shall at its own expense provide, install, and maintain the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment shall be coordinated with that which is installed by and at the expense of the Facilitator on its side of the delivery point.

Dated: June 1, 1991.

[FR Doc. 91-13238 Filed 6-4-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-34013; FRL 3893-4]

Availability of Pesticide Reregistration Eligibility Document for Sulfur

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability for public comment.

SUMMARY: This Notice announces the availability of the final Reregistration Eligibility Document (RED) for Sulfur and the establishment of a public comment period. The RED is the Agency's formal regulatory assessment of the health and environmental data base for sulfur and presents the Agency's determination regarding which uses of sulfur are eligible for reregistration.

DATES: Written comments on the Sulfur RED must be submitted by August 5, 1991.

ADDRESSES: Three copies of comments identified with the docket number "OPP-34013" should be submitted to: By mail: Public Information Branch, Field Operations Division [H7506C], Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 246, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA. To request a copy of the RED or a RED Fact Sheet for sulfur, contact the Public Information Branch, in room 246 at the address given above (703-557-2805). Requests should be submitted in time to allow sufficient time for receipt before the close of the comment period.

Information submitted as a comment in response to this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket and docket index will be available for public inspection in room 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Eric Ferls for Technical questions concerning the RED. (Call through the Federal Information Relay Service at 1-800-877-8339. When the operator answers, ask to call Mr. Ferls at (703) 308-8048.)

SUPPLEMENTARY INFORMATION: EPA has issued a final Reregistration Eligibility Document for Sulfur. Under the provisions of the Federal Insecticide, Fungicide and Rodenticide Act, as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate most existing pesticides to make sure they meet current scientific and regulatory standards. Sulfur has a complete data base and the Agency has determined that the registered uses do not cause unreasonable adverse effects to people or the environment. All registered uses of sulfur are eligible for reregistration. All registrants of sulfur have been sent the RED and must respond to the labeling requirements within 8 months of receipt. The 60 day public comment period does not affect the registrant's response due date.

EPA's rationale for issuing the Sulfur RED as a final document with a 60 day comment period is based on the Agency's experience with Registration Standards and comments received from the public at a reregistration workshop sponsored by the Agency in September 1990. Most of the participants at the September 1990 workshop, which included several hundred registrants, State and Federal agency representatives and public interest groups, expressed a desire to have an opportunity to comment on a draft RED prior to the Agency issuing the final document. Most comments were from affected registrants and involved clarification of data requirements and/or questions about the appropriateness of certain data and or labeling changes; public comments on the Registation Standards were limited. The Agency believes registrants will have ample opportunity to raise additional issues prior to the due date of their responses or in their responses. Although the Agency is issuing the Sulfur final RED it believes that the establishment of a 60 day comment period will provide sufficient opportunity for public input and allow a mechanism for any subsequent amendments to the RED. The Agency believes this approach is necessary to reduce the time required to complete the regulatory assessment and issue RED's for all affected pesticides and meet the congressionally mandated time frames for completion of the reregistration program.

Dated: May 10, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 91-13235 Filed 6-4-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Advisory Committee on Advanced Television Service Planning Subcommittee Meeting

A meeting of the Planning Subcommittee of the Advisory Committee on Advanced Television Service will be held on: July 9, 1991, 10 a.m., Commission Meeting Room [Room 856], 1919 M Street, NW., Washington, DC.

The purpose of this meeting is to receive the reports of the Subcommittee's working parties and to review the work statement for the fifth period of Planning Subcommittee activities.

The agenda for the meeting is as follows:

1. Call to Order by the Chairman.
2. Adoption of the Minutes of the Seventh Meeting.
3. Introductory Remarks.
4. Status Reports by the Working Party and Advisory Group Chairs.
5. Review of work for fifth period.
6. Other Business.
7. Date and Location of the Next Subcommittee Meeting.
8. Adjournment.

This meeting is open to the public.

Parties may submit written statements prior to or at the time of the meeting. Oral statements and discussion will be permitted under the direction of the Subcommittee Chairman.

Any questions regarding this meeting should be directed to Joseph A. Flaherty at (212) 975-2213 or William Hassinger at (202) 632-6460.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 91-13251 Filed 6-4-91; 8:45 am]

BILLING CODE 6712-01-M

The Commission's New FM Translator Rules Will Become Effective and the Freeze Will be Lifted on June 1, 1991

May 31, 1991.

By *Order* in MM Docket No. 88-140 (*"Order"*), DA 91-527 released May 3, 1991, the Commission suspended the effective date of the FM translator rules adopted in the *Report and Order* in MM Docket No. 88-140 (*"Report"*), 5 FCC Rcd 7212 (1990) and the date for lifting the freeze on the acceptability for filing of FM translator applications proposing operation on the commercial band (Channels 221-300) until June 1, 1991. Although the *Report* established March 1, 1991, as the effective date for the rule revisions, and May 1, 1991, as the date for termination of the freeze, both dates were suspended by the *Order* until June 1, 1991, pending approval by the Office of Management and Budget ("OMB") of the new and modified requirements resulting from the *Report*.

The new and modified requirements resulting from the *Report* received OMB approval on May 29, 1991. Therefore, the suspension of the effective date of the new requirements and the date for lifting the FM translator application freeze will terminate on June 1, 1991. Applications filed thereafter must be filed in conformance with our new FM translator rules.

Until the updated application from (FCC Form 349—Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station) is available, applicants can continue to use the current version of the form supplemented by exhibits containing the additional information as required by the new FM translator rules. Because June 1, 1991, is a Saturday, the first filing date for applications will be June 3, 1991. Additionally, applications that are pending as of June 1, 1991, must be amended to conform to the new rules within 60 days after the freeze is lifted, *i.e.*, August 1, 1991.

For additional information you may contact Ricardo M. Durham of the Auxiliary Services Branch at (202) 634-6307.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 91-13252 Filed 6-4-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89-777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Royal Cruise Line Limited, One Maritime Plaza, suite 1400, San Francisco, CA 94111.
Vessel: Royal Odyssey

Dated May 30, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91-13190 Filed 6-4-91; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89-777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Royal Cruise Line Limited, One Maritime Plaza, suite 1400, San Francisco, CA 94111.
Vessel: Royal Odyssey

Dated: May 30, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91-13188 Filed 6-4-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Consumer Advisory Council; Solicitation of Nominations for Membership

May 30, 1991.

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Solicitation of nominations for membership on the Board's Consumer Advisory Council.

SUMMARY: The Board is asking the public to nominate qualified individuals for appointment to its Consumer Advisory Council, which is comprised of representatives both of consumer and community interests and of the financial services industry. Thirteen new members will be selected for three-year terms that will begin in January 1992. The Board expects to announce the selection of new members by year-end 1991.

DATES: Nominations should be received by August 30, 1991.

ADDRESSES: Nominations should be submitted in writing to Dolores S. Smith, Assistant Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Information about nominees will be available for inspection upon request.

FOR FURTHER INFORMATION CONTACT: Bedelia Calhoun, Staff Specialist, Division of Consumer and Community Affairs, (202) 452-2412; or for Telecommunications Device for the Deaf (TDD) users only, Dorothea Thompson (202) 452-3544; Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Consumer Advisory Council was established in 1976 at the direction of Congress to advise the Federal Reserve Board on the exercise of its duties under the Consumer Credit Protection Act and on other consumer-related matters. The

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Council by law represents the interests both of consumers and of the financial community. Members serve three-year terms that are staggered to provide the Council with continuity.

New members will be selected this year for terms beginning January 1, 1991, to replace members whose terms expire this year. Nominations should include the address and telephone number of the nominee, information about past and present positions held, and a description of special knowledge, interests or experience related to consumer credit or other consumer financial services. Persons may nominate themselves as well as other candidates.

The Board is interested in candidates who are willing to express their viewpoints and who have some familiarity with consumer financial services. Candidates do not have to be experts on all levels of consumer financial services, but they should possess some basic knowledge of the area. In addition, they should be able to make the necessary time commitment to prepare for and attend meetings (usually two days long including committee meetings) three times a year.

In making the appointments, the Board will seek to complement the qualifications of continuing council members in terms of affiliation and geographic representation, and to ensure the representation of women and minority groups. The Board expects to announce its selection of new members by year-end.

The Council's meetings are held in Washington, DC. Council members (and the expiration date of each term of office) are listed below:

Members Whose Terms Expire in 1991

James W. Head, Executive Director, National Economic Development and Law Center, Berkeley, California.
Linda K. Page, President and Chief Operating Officer, Star Bank, Columbus, Ohio.
George H. Braasch, Corporate General Counsel, Spiegel Incorporated, Oakbrook, Illinois.
Cliff E. Cook, Vice President and Compliance Officer, Puget Sound National Bank, Tacoma, Washington.
R.B. Dean, Jr., Administrator of Community and Consumer Affairs, South Carolina National Bank, Columbia, South Carolina.
William C. Dunkelberg, Dean of the School of Business and Management, Temple University, Philadelphia, Pennsylvania.
James Fletcher, President and Director, South Shore Bank of Chicago, Chicago, Illinois.
Barbara Kaufman, Co-Director, KCBS Call for Action, San Francisco, California.
Michelle S. Meier, Counsel for Government Affairs, Consumers Union, Washington, DC.
Vincent P. Quayle, Director, St. Ambrose Housing Aid Center, Baltimore, Maryland.
Clifford N. Rosenthal, Executive Director, National Federation of Community Development Credit Unions, New York, New York.
Alan M. Silberstein, Executive Vice President, Chemical Bank, New York, New York.
David B. Ward, Counsel, Gebhardt and Kiefer, Clinton, New Jersey.

Members Whose Terms Continue Through 1992 and 1993

Veronica E. Barela, Executive Director, NEWSED Community Development Corporation, Denver, Colorado, December 1993.
Dr. Toyo L. Brown, Director, Freedom House Inc., Boston, Massachusetts, December, 1993.
Denny D. Dumler, Senior Vice President, Consumer Banking for Colorado National Bank of Denver, Denver, Colorado, December 1993.
George C. Galster, Professor of Economics, College of Wooster, Wooster, Ohio, December 1992.
E. Thomas Garman, Professor of Consumer Studies at the College of Human Resources, Virginia Polytechnic Institute and State University, Blacksburg, Virginia, December 1992.
Donald A. Glas, President, First State Federal Savings and Loan Association, Hutchinson, Minnesota, December 1993.
Deborah B. Goldberg, Reinvestment Specialist on the Neighborhood Revitalization Project, Center for Community Change, Washington, DC, December 1992.
Michael M. Greenfield, Professor of Law, Washington University, St. Louis, Missouri, December 1992.
Joyce Harris, President and Chief Executive Officer, Telco Community Credit Union, Madison, Wisconsin, December 1993.
Julia Hiler, Executive Vice President, Sunshine Mortgage Corporation, Marietta, Georgia, December 1993.
Henry Jaramillo, President, Ranchers State Bank of Belen, Belen, New Mexico, December 1993.
Kathleen E. Keest, Staff Attorney, National Consumer Law Center, Boston, Massachusetts, December 1992.
Colleen D. McCarthy, Executive Director, Kansas City Neighborhood Alliance, Kansas City, Missouri, December 1992.
Bernard F. Parker, Jr., Executive Director, Community Resource Projects, Detroit Michigan, December 1992.
Otis Pitts, Jr., President, Tacolcy Economic Development Corporation, Miami, Florida, December 1993.
Nancy Harvey Steorts, President, Nancy Harvey Steorts and Associates, Dallas, Texas, December 1992.
Sandra Willett, Second Vice President—Consumer Affairs, John Hancock Financial Services, Boston, Massachusetts, December 1993.

Board of Governors of the Federal Reserve System, May 30, 1991.
William W. Wiles,
Secretary of the Board.
[FR Doc. 91-13193 Filed 6-4-91; 8:45 am]
BILLING CODE 6210-01-M

BanPonce Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 24, 1991.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. BanPonce Corporation, Hato Rey, Puerto Rico; to acquire Spring Financial Services, Inc., Mt. Laurel, New Jersey, and its subsidiaries, Spring Financial Mortgage Company, Mt. Laurel, New Jersey; Equity One, Incorporated, Langhorne, Pennsylvania; Equity One Consumer Discount Company, Langhorne, Pennsylvania; and Spring Mortgage Servicing Company, Mt. Laurel, New Jersey; and thereby engage in making and servicing loans pursuant to § 225.25(b)(1), and insurance agency and underwriting activities pursuant to § 225.25(b)(8)(i) and (ii) of the Board's Regulation Y. These activities will be conducted in the United States, Puerto Rico and U.S. Virgin Islands.

Board of Governors of the Federal Reserve System, May 30, 1991.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 91-13200 Filed 6-4-91; 8:45 am]
BILLING CODE 6210-01-F

RCN Holding Company; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 24, 1991.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. RCN Holding Company, Sisseton, South Dakota; to become a bank holding company by acquiring 94.8 percent of the voting shares of Roberts County National Bank, Sisseton, South Dakota.

In connection with this application, Applicant also proposes to acquire Powell-Kouba-Torness Insurance Agency Partnership, Sisseton, South Dakota, and thereby engage in general insurance agency business in Sisseton, South Dakota, a town with a population of less than 5,000 persons pursuant to § 225.25(b)(8) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 30, 1991.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 91-13201 Filed 6-4-91; 8:45 am]
BILLING CODE 6210-01-F

RMB Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than June 24, 1991.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. RMB Bancshares, Inc., Marceline, Missouri; to become a bank holding company by acquiring at least 90 percent of the voting shares of Regional Missouri Bank, Marceline, Missouri.

Board of Governors of the Federal Reserve System, June 24, 1991.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 91-13202 Filed 6-4-91; 8:45 am]
BILLING CODE 6210-01-F

John Bradford Stacks, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 24, 1991.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. John Bradford Stacks, Damascus, Arkansas; to acquire 11.16 percent of the voting shares of Clin-Ark Bankshares, Inc., Clinton, Arkansas, and thereby indirectly acquire First National Bank, Clinton, Arkansas.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Alan Hann, Dickinson, North Dakota; to acquire an additional 0.75 percent of the voting shares of

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Dickinson Bancorporation, Inc., Dickinson, North Dakota, for a total of 25.59 percent, and thereby indirectly acquire Liberty National Bank and Trust Company, Dickinson, North Dakota.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Ray Kandt, Prarie Village, Kansas; to acquire 3.9 percent, and State Line Eye Consultants Profit Sharing Trust, Kansas City, Missouri, to acquire 8.6 percent of the voting shares of State Bank and Trust, Colorado Springs, Colorado.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. James R. Lightner, Dallas, Texas; to acquire an additional 4.37 percent of the voting shares for a total of 13.67 percent; and Robert L. Carrel, Dallas, Texas, to acquire an additional 4.37 percent for a total of 13.20 percent of the voting shares of Equitable Bankshares, Inc., Dallas, Texas, and thereby indirectly acquire Equitable Bank, N.A., Arlington, Texas, and Equitable Bank, Dallas, Texas.

Board of Governors of the Federal Reserve System, May 30, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-13203 Filed 6-4-91; 8:45 am]

BILLING CODE 6210-01-F

Terrapin Bancorp, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

CORRECTION

This notice corrects a previous *Federal Register* notice (FR Doc. 91-12597) published at page 24194 of the issue for Wednesday, May 29, 1991.

Under the Federal Reserve Bank of Chicago, the entry for Terrapin Bancorp, Inc. is amended to read as follows:

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Terrapin Bancorp, Inc., Elizabeth, Illinois; to acquire a portfolio of general property insurance business from Marvin Wurster and thereby engage in conducting general insurance activities in Elizabeth, Illinois, a town with a population of less than 5,000 people, pursuant to § 225.25(b)(8) of the Board's Regulation Y.

Comments on this application must be received by June 24, 1991.

Board of Governors of the Federal Reserve System, May 30, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-13204 Filed 6-4-91; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Employee Thrift Advisory Council; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), a notice is hereby given of the following committee meeting:

Name: Employee Thrift Advisory Council.
Time and date: 10 a.m., June 19, 1991.
Place: 5th Floor, Conference Room, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC.
Status: Open.
Matters to be considered: Approval of the minutes of the February 28, 1991, meeting; report of the Executive Director on the status of the Thrift Savings Plan; employee survey highlights; status of Desert Storm legislation; frequency of Council meetings; and new business.

Any interested person may attend, appear before, or file statements with the Council. For further information contact John J. O'Meara, Committee Management Officer, on (202) 523-6367.

Dated: May 30, 1991.

Francis X. Cavanaugh,

Executive Director.

[FR Doc. 91-13249 Filed 6-4-91; 8:45 am]

BILLING CODE 6710-01-M

GENERAL SERVICES ADMINISTRATION

Multiple Award Federal Supply Schedule

Notice is hereby given that the Office Supplies and Paper Products Commodity Center, Federal Supply Service, is developing technical requirements for various items currently on Multiple Award Federal Supply Schedule for conversion to competitive award. The items include: Diskettes, erasable ball point pens, ribbons, liftoff tapes, note trays, tape flags (repositionable), writing paper pads (repositionable), suspended file folders and colored file folders. Some sizes, colors, types, styles, etc. within an item category may be removed from the Multiple Award Schedule for competitive award while other sizes, colors, types, styles, etc. may continue being supplied from the Schedule. Upon their availability, the technical requirements will be made available to all interested parties for comment. Request for the technical requirements should be submitted to Mr. John Marrone, Engineering and Commodity Management Division, room 20-130, 26 Federal Plaza, New York, NY 10278. Requests for the technical requirements should be made within thirty days from the date of this notice.

Dated: May 28, 1991.

A. Troglio,

Acting Director, Office Supplies and Paper Products Commodity Center (2FY).

[FR Doc. 91-13150 Filed 6-4-91; 8:45 am]

BILLING CODE 6820-24-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 1205-2]

Proposed Modifications to the Harmonized Tariff Schedule of the United States, Pursuant to Section 1205 of the Omnibus Trade and Competitiveness Act of 1988

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

EFFECTIVE DATE: May 28, 1991.

FOR FURTHER INFORMATION, CONTACT: Eugene A. Rosengarden, Director, Office of Tariff Affairs and Trade Agreements (telephone 202-252-1592), or Dave Beck, Supervisory Nomenclature Analyst (202-252-1604), U.S. International Trade Commission, Washington, DC 20436.

Background and Scope of Investigation: On May 24, 1991, the Commission instituted investigation No. 1205-2, Proposed Modifications to the Harmonized Tariff Schedule of the United States, Pursuant to section 1205 of the Omnibus Trade and Competitiveness Act of 1988. Section 1205 directs the Commission to keep the Harmonized Tariff Schedule of the United States (HTS) under continuous review and to recommend modifications to the HTS (1) when amendments to the International Convention on the Harmonized Commodity Description and Coding System (Harmonized System) and the Protocol thereto, are recommended by the Customs Cooperation Council (CCC) for adoption, and (2) as other circumstances warrant. This investigation represents the Commission's second under section 1205. The Commission forwarded recommendations to the President on March 26, 1991, in the form of a memorandum, which has been designated as USITC investigation No. 1205-1.

Investigation No. 1205-2 will address two questions affecting the HTS. The first question arises from the determination by the CCC's Harmonized System Committee (6th Session) that frozen concentrated orange juice with added calcium is classifiable not as orange juice of HS heading 2009, but as a food preparation of HS heading 2106.

In a letter dated April 4, 1991, the Commissioner of Customs requested that the Commission recommend to the President appropriate modifications to the HTS to permit the Customs Service to follow the Harmonized System Committee's decision on orange juice. A copy of the Customs Commissioner's letter is attached.

The second question arises from the determination by the CCC's Harmonized System Committee (5th Session) that extracted oleoresins (also known as prepared oleoresins) are properly classifiable in HS subheading 3301.90, not in HS subheading 3301.30. In this case, it is proposed that subheadings 3301.30.10, 3301.30.50, and 3301.90.00 of the HTS be deleted, and the following be substituted in lieu thereof:

"3301.30.00	Resinoids	Free		Free
3301.90	Other:			
3301.90.10	Extracted oleoresins	6%	Free (A, CA, E, IL)	25%
3301.90.90	Other	Free		20%"

Pubic Hearing: A public hearing in connection with its investigation will be held in the Main Hearing Room (room 101) of the U.S. International Trade Commission, 500 E Street SW., Washington, DC., on July 15, 1991, at 9:30 a.m. All persons shall have the right to appear by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, not later than noon, July 8, 1991. Written prehearing comments (original and 14 copies) should be filed not later than noon, July 8, 1991. Post-hearing comments may be submitted by no later than July 22, 1991.

Written Submissions: Interested parties (including other Federal agencies) are invited to submit written statements concerning the subject of the report. Such statements must be submitted by no later than July 22, 1991, in order to be considered by the Commission. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on 202-252-1809.

Issued: May 24, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Dear Chairman Brunsdale:

As you know, pursuant to Section 1205 of the Omnibus Trade and Competitiveness Act of 1988, the International Trade Commission is charged with keeping the Harmonized Tariff Schedule of the United States (HTSUS) under continuous review and, as circumstances warrant, to promote the uniform application of the Harmonized System Convention and particularly the annex thereto. The purpose of this letter is to bring to your attention a matter which we believe warrants the exercise of this authority.

At its fourth session in October 1989, the Harmonized System Committee of the Customs Cooperation Council (CCC) examined the classification of certain orange juice which was fortified with calcium. After discussion, the Committee voted to classify the product as a food preparation not elsewhere specified or included in heading 21.06 rather than as orange juice of heading 20.09. The United States entered a reservation to this decision, pursuant to Article 8 of the Harmonized System Convention, setting forth its view that the addition of calcium to the product did not change the classification of the product under the Harmonized System, citing the General Rules of Interpretation to the system and the heading text.

In accordance with Article 8 of the Convention, the Customs Cooperation Council referred the question back to the Harmonized System Committee for reexamination at its sixth session in November 1990. The United States presented at considerable length the basis for its view that the addition of calcium did not alter the classification of the product. After discussion, however, the Committee affirmed its previous decision that the product was not classified as orange juice.

The United States Customs Service continues to be of the opinion that the product that was the subject of these decisions is properly classifiable as orange juice under the Harmonized System and under the Harmonized Tariff Schedule of the United States. However, in the interest of uniformity of application of the Harmonized System Convention, the Customs Service would like to be able to classify the product under the U.S. tariff in accordance with the HSC decision. Accordingly, we request that the Commission recommend to the President such modifications as are necessary or appropriate to promote the uniform application of the Harmonized System Convetion by conforming the HTSUS to the CCC decision.

Your attention to this matter is appreciated.

Sincerely,

Carol Hallett,

Commissioner.

The Honorable Anne E. Brunsdale, Acting Chairman, United States International Trade Commission, Washington, DC 20436.

[FR Doc. 91-13221 Filed 6-4-91; 8:45 am]

BILLING CODE 7020-02-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-324

Certain Acid-Washed Denim Garments and Accessories; Decision To Review and Affirm an Initial Determination Amending the Complaint To Add Ten Firms as Respondents

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined to review and affirm the presiding administrative law judge's (ALJ's) initial determination (ID) (Order No. 6) granting a motion by complainants Greater Texas Finishing Corporation and Golden Trade S.r.L. to amend the complaint in the above-captioned investigation to add ten firms as respondents. The Commission also ordered that the notice of investigation be amended to include the ten firms as additional respondents.

FOR FURTHER INFORMATION CONTACT: William T. Kane, Esq., Office of the General Counsel, U.S. International Trade Commision, 500 E Street SW., Washington, DC 20436; telephone: (202)-

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252–1116. Copies of the ID, the Commission's Order, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436; telephone: (202)–252–1000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202)–252–1810.

SUPPLEMENTARY INFORMATION: The Commission voted to institute this investigation on January 28, 1991. The notice of investigation was published in the **Federal Register** on February 6, 1991 (56 FR 4651). The complaint alleges a violation of section 337 in the importation, sale for importation, or sale after importation of certain acid-washed denim garments and accessories by reason of infringement of claims 6 and 14 of U.S. Letters Patent 4,740,213.

On April 4, 1991, complainant moved pursuant to Commission interim rule 210.22(a) to amend the complaint to add ten firms as respondents (Motion Docket No. 324–7). The Commission investigative attorney filed a submission in support of the motion. On April 26, 1991, the ALJ issued an ID granting the motion. No petitions for review or agency comments were received.

In a separate Order, the Commission amended its notice of investigation to include the ten firms as additional respondents. These ten firms are: (1) Hsieh Hsing Washing and Dyeing Company, Ltd., (2) Chu Hsing Garments Manufacturing Company, Ltd., (3) Jeng Huei Garment Company, Ltd., (4) Chi Sheng Wash and Dye Factory, (5) Tai Develop Textile Company, Ltd., (6) Bun Tai Enterprise Company, Ltd., (7) Yeh Hua Garments Manufacturing Company, Ltd., (8) Sociedad Exportadora Ltda., (9) Adamson Sales Corp., and (10) Arcadia Enterprises, Inc.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rules 210.55 and 210.56 (19 CFR 210.55 and 210.56, as amended).

Issued: May 29, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–13223 Filed 6–4–91; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–326]

Certain Bathtubs and Other Bathing Vessels and Materials Used Therein; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 1, 1991, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, on behalf of American Standard Inc., 1114 Avenue of the Americas, New York, New York 10036–7701. The complaint was supplemented on May 22, 1991. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain bathtubs and other bathing vessels by reason of alleged infringement of U.S. Registered Trademark No. 1,519,822, and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue permanent general exclusion orders and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., room 112, Washington, DC 20436, telephone 202–252–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

FOR FURTHER INFORMATION CONTACT: Sarah C. Middleton, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–252–1576.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on May 29, 1991, Ordered That—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(C) in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain bathtubs and other bathing vessels and materials used therein, by reason of infringement of U.S. Registered Trademark No. 1,519,822; and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this Notice of Investigation shall be served:

(a) The complainant is: American Standard Inc., 1114 Avenue of the Americas, New York, New York 10036–7701.

(b) The respondents are the following companies alleged to be in violation of section 337, and the parties upon which the complaint is to be served:

EBI Ltd., 1751 Robin Hood Road, Vista, California 92084.

Franz Kaldewei GmbH & Co., Postfach 460, 4730 Ahlen, Germany.

SWC Industries, Inc., 1505 Industrial Drive, P.O. Box 210, Henderson, TX 75653–0210.

(c) Sarah C. Middleton, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., room 401M, Washington, DC 20436, shall be the Commission investigative attorney; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint and the Notice of Investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to §§ 210.16(d) and 210.21(a) of the Commission's Rules, 19 CFR 210.16(d) and 210.21(a), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint and this Notice of Investigation. Extensions of time for submitting responses to the complaint and Notice of Investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this Notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this Notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this Notice, and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order, or a cease and desist order, or both, directed against such respondent.

Issued: May 30, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–13224 Filed 6–4–91; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–327]

Certain Food Trays With Lockable Lids; Change of Commission Investigative Attorney

Notice is hereby given that, as of this date, Juan S. Cockburn, Esq., of the Office of Unfair Import Investigations is designated as the Commission investigative attorney in the above-cited investigation instead of James M. Gould, Esq.

The Secretary is requested to publish this Notice in the **Federal Register.**

Dated: May 30, 1991.

Respectfully submitted,

Lynn I. Levine,

Director, Office of Unfair Import Investigations, 500 E Street SW., Washington, DC 20436.

[FR Doc. 91–13225 Filed 6–4–91; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 731–TA–458 and 459 (Final)]

Polyethylene Terephthalate Film, Sheet, and Strip From Japan and the Republic of Korea

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act), that an industry in the United States is materially injured by reason of imports from Japan and the Republic of Korea of polyethylene terephthalate film, sheet, and strip,[3] provided for in subheading 3920.62.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective November 28, 1990, following preliminary determinations by the Department of Commerce that imports of polyethylene terephthalate film, sheet, and strip (PET film) from Japan and the Republic of Korea were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 19, 1990 (55 FR 52105). Subsequently, the Department of Commerce extended the date for its final determinations in the investigations and the Commission revised its schedule to conform with Commerce's new schedule (56 FR 872, January 9, 1991). The hearing was held in Washington, DC, on April 18, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 29, 1991. The views of the Commission are contained in USITC Publication 2383 (May 1991), entitled "Polyethylene Terephthalate Film, Sheet, and Strip from Japan and the Republic of Korea: Determinations of the Commission in Investigations Nos. 458 and 459 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

Issued: May 30, 1991.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–13226 Filed 6–4–91; 8:45 am]

BILLING CODE 7020–02–M

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Acting Chairman Brunsdale dissenting.

[3] The product subject to investigation by the Department of Commerce is all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. The films excluded from the scope of these investigations are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches (0.254 micrometers) thick.

[Investigation No. 731–TA–52 (Final)]

Sheet Piling From Canada

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Canada of sheet piling, provided for in subheading 7301.10.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted the continuation of final investigation 731–TA–52 effective November 29, 1990, following the cancellation of the suspension agreement concerning sheet piling from Canada by the Department of Commerce because sales at less than fair value were found during the period of administrative review. As a consequence, Commerce resumed its antidumping investigation as if its affirmative preliminary determination was made on the date of the publication of its notice to resume the investigation. Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 19, 1991 (55 FR 52106). The hearing was held in Washington, DC, on April 17, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 29, 1991. The views of the Commission are contained in USITC Publication 2384 (May 1991), entitled "Sheet Piling from Canada: Determination of the Commission in Investigation No. 731–TA–52 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: May 29, 1991.

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

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By order of the Commission.
Kenneth R. Mason,
Secretary.
[FR Doc. 91-13227 Filed 6-4-91; 8:45 am]
BILLING CODE 7020-02-M

[332-311]

Services: U.S. and Mexico Sector Profiles and Mexican Impediments to Trade

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

EFFECTIVE DATE: May 24, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Kollins (202-252-1441), Office of Industries, U.S. International Trade Commission, Washington, DC 20436.

Background and Scope of Investigation: The Commission instituted investigation No. 332-311, following receipt on May 17, 1991 of a letter from the United States Trade Representative (USTR), requesting, under authority delegated by the President, that the Commission conduct an investigation pursuant to section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) to provide information for use by USTR in preparing for negotiations on trade in services in connection with negotiations with Mexico and Canada on a North American Free Trade Agreement.

As requested by the USTR, the Commission will provide a report as follows with respect to each of the service sectors listed below—(1) A brief U.S. industry profile, (2) a comprehensive Mexican industry profile, (3) an identification of Mexican nontariff measures which impede U.S. participation in the Mexican market, and (4) an assessment of the impact of such measures on U.S. service providers. The service sectors identified by the USTR include accounting; advertising; agricultural; architecture, construction, and engineering; entertainment; health and medical; insurance; land transportation; legal; oilfield; telecommunication and information; tourism; and others, if any, that are significant and are unique to border trade.

In addition, with respect to U.S.-Canada trade in services, the USTR has requested, and the Commission will seek to provide in its report, any significant new information that has come to the Commission's attention since completion of the Commission's investigation on Canadian service sectors in investigation No. 332-235.

As requested by USTR, the Commission intends to submit a report to the USTR no later than August 2, 1991 on the sectors specified above with the exception of agricultural and oilfield services. A supplemental report on these two sectors, as well as any additional significant service sectors unique to U.S.-Mexico border trade, will be provided to the USTR not later than October 15, 1991.

Written Submissions: No public hearing has been scheduled in this matter. However, interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a submitting party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rule of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons. To be assured of consideration by the Commission, written statements should be submitted at the earliest possible date for all sectors, with the exception of agricultural services and oilfield services, and should be received by no later than July 2, 1991 to be included in the first report. Written statements on agricultural and oilfield services sectors, as well as any additional information on other sectors that could not be provided by the July 2 deadline, will be accepted through September 17, 1991. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal at (202) 252-1810.

Issued: May 28, 1991.
By order of the Commission.
Kenneth R. Mason,
Secretary.
[FR Doc. 91-13222 Filed 6-4-91; 8:45 am]
BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-352X]

Brandywine Valley Railroad Co.—Abandonment Exemption—In Palm Beach County, FL; Exemption

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments to abandon its 1.5-mile line of railroad between mileposts 970.5 and 972.0 at Cane, Palm County, FL.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employes affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 5, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by June 17, 1991.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by June 25, 1991, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Steven R. Lacey, 50 South First Avenue, Coatesville, PA 19320.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by May 31, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: May 29, 1991.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.
Sidney L. Strickland, Jr.,
Secretary.
[FR Doc. 91-13131 Filed 6-4-91; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 31623]

Rutherford Railroad Development Corporation—Exemption—49 U.S.C. Subtitle IV

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Commission exempts Rutherford Railroad Development Corporation from all obligations under subtitle IV (including the need to seek Commission authority for any future abandonment) arising from its purchase from CSX Transportation, Inc., of 3.56 miles of rail line between Forest City and Bostic in Rutherford County, NC. This exemption is subject to a condition requiring consultation with the U.S. Army Corps of Engineers prior to possible future salvage activity and subject to the Commission's retention of jurisdiction to impose labor protective conditions.

DATES: This exemption will be effective on July 10, 1991. Petitions for stay must be filed by June 20, 1991, and petitions for reconsideration must be filed by July 1, 1991.

ADDRESSES: Send pleadings referring to Finance Docket No. 31623 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's Representatives:
John D. Heffner, Gerst, Heffner, Carpenter & Podgorsky, Suite 1107, 1700 K Street NW., Washington, DC 20006.
James M. Bowen, Hamrick, Bowen, Nanney & Dalton, 301 West Court Street, Post Office Drawer 790, Rutherfordton, NC 28139.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245 [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289-4537/4539. [Assistance for the hearing impaired is available through TDD services (202) 275-1721].

Decided: May 29, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.
Sidney L. Strickland, Jr.,
Secretary.
[FR Doc. 91-13218 Filed 6-4-91; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 31670]

Texas and Oklahoma R.R. Co.—Acquisition and Operation Exemption—the Atchison, Topeka and Santa Fe Railway Company; Exemption

Texas and Oklahoma R.R. Co. (T&O), a noncarrier, has filed a notice of exemption to acquire and operate approximately 351 miles of rail line owned by The Atchison, Topeka and Santa Fe Railway Company (ATSF). T&O will become a class III rail carrier.

The track to be purchased, known as the North Orient Line, consists of two segments: (1) Between Altus Subdivision milepost 301+1,013.9 feet, near Cherokee, OK, and Sayard Subdivision milepost 636+3,583.6 feet, near Orient Junction, TX; and (2) between Sayard Subdivision milepost 642+2,098.3 feet, near Shaufler, TX, and Sayard Subdivision milepost 658+3,148 feet, near Maryneal, TX.

T&O will also acquire from ATSF, for a term of 99 years, incidental limited overhead trackage rights over: (1) Connecting rail line between Sayard Subdivision milepost 636+3,583.6 feet, near Orient Junction, and milepost 642+2,098.3 feet, near Shaufler, including ATSF's yard track at Sweetwater, TX; and (2) track and side track connecting at Cherokee, OK, between Altus Subdivision mileposts 300+101.9 feet and 301+1,013.9 feet, including Cherokee Yard track numbers 1 and 2. Consummation [1] was to occur on May 17, 1991.[2]

T&O intends to operate the involved lines, providing common carrier rail service to shippers and receivers located thereon, through the 1991 grain harvest season. Because of the light traffic density on certain of the line segments, however, T&O will be evaluating the economics of these operations from their very inception. T&O will seek authority from the Commission to discontinue service on or abandon any of these lines that it finds cannot be operated profitably.

Any comments must be filed with the Commission and served on Richard H. Streeter, Barnes & Thornburg, suite 800, 1815 H Street NW., Washington, DC 20006.

T&O shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the lines that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: May 29, 1991.

[1] By petition filed May 13, 1991, the Committee of Texas Shippers and Communities (Texas Committee) requested that the Commission stay consummation of the transaction and provide for notice and comment procedures, including discovery and oral hearing. T&O replied. By decision served May 17, 1991, as corrected by decision served May 20, 1991, the Commission stayed consummation of the transaction for 30 days and permitted the Texas Committee to file additional evidence. On May 17, 1991, T&O filed a petition for reconsideration and termination of the stay, or in the alternative, for shortening of the comment period. ATSF filed a pleading in support of T&O's petition. The Texas Committee replied. By decision served May 29, 1991, the Commission lifted its order that the above-entitled transaction not be consummated and denied, in all other respects, the Texas Committee's petition for stay.

The Texas Committee's "protest"/petition for revocation of the exemption will be considered in a subsequent decision.

[2] The notice of exemption in this proceeding was filed May 3, 1991. Under the Commission's rules, the exemption is effective seven days after the notice is filed, or May 10, 1991. 49 CFR 1150.32(b).

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By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-13130 Filed 6-4-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on February 17, 1991, Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Coca Leaves (9040)	II
Opium, Raw (9600)	II
Poppy Straw (9650)	II
Poppy Straw Concentrate (CPS) (9670).	II

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 5, 1991.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e) and (f) are satisfied.

Dated: May 20, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 91-13158 Filed 6-4-91; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirements is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Employment Standards Administration.

Wage Statement.

1215-0148; WH-1501 and 501R(S).

Every pay day or every two weeks.

Individuals or households; State or local governments; farms; businesses or other for-profit; Federal agencies or employees; small businesses or organizations.

52,000 recordkeepers; 60,666 total recordkeeping burden; 1 minute per form; total annual burden 60,666.

The Immigration and Nationality Act requires employers of replenishment workers to provide a report to the worker certifying their employment with each wage payment. The Migrant and Seasonal Agricultural Worker Protection Act requires employers of agricultural workers to maintain specific weekly payroll information and provide written copies to each worker and the person furnished the worker.

Employment and Training Administration, Service Delivery Area Reorganization Plan Appeal.

1205-0243

State and local governments.

20 respondents; 40 hours; 2 hours per response; no forms.

The information collection will be used to determine whether JTPA recipients denial of a reorganization plan for a service delivery area is in conformance with JTPA.

Occupational Safety and Health Administration.

1218-0048.

Occupational Exposure to Noise.

On Occasion.

Business or other for-profit; small business or organizations 1,328 respondents; 106 burden hours; 0798 hours per response; 0 forms.

The Occupational Exposure to Noise Standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to noise. The standard requires that OSHA have access to various records to ensure that employers are complying with the provisions of the noise standard (29 CFR 1910.95).

Signed at Washington, DC this 30th day of May, 1991.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 91-13219 Filed 6-4-91; 8:45 am]

BILLING CODE 4510-02-M

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of May 1991.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations of the firm.

TA-W-25,465; Jantzen, Inc., Vancouver, WA

TA-W-25,252; General Electric Plastics, Mount Vernon, IL

TA-W-25,607; Revere Transducers, Inc., Wallingford, CT

TA-W-25,631; Parker Hannifin Corp., Marion, OH

TA-W-25,602; Mould Service, Inc., Malden, MA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA-W-25,640; CAC Microcircuits, Inc., Mt. Carmel, IL

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,641; Code-A-Phone Corp., Clackamas, OR

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,643; Customized Transportation, Inc., Kansas City, KS

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,590; D/X Imaging, Ironville, PA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,555; The Lee Co., Quindaro Plt, Kansas City, KS

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,555A; The Lee Co., Prospect Plt, Kansas City, MO

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,555B; The Lee Co., Forrest Plt, Kansas City, MO

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,622; Freeport Brick Co., Freeport, PA

U.S. imports of clay and non clay refractory brick declined absolutely in 1989 compared to 1988 and in 1990 compared to 1989.

TA-W-25,774; Evans, New York, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,758; Supreme Processors, Newark, NJ

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,632; Pennsylvania Shipbuilding Co., Chester, PA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-25,638; Boise Cascade, Inc., Rumford, ME

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations

TA-W-25,579; Otis Elecator NAO, Tucson, AZ

A certification was issued covering all workers separated on or after March 6, 1990.

TA-W-25,447; Westpac Moulding of Texas, Clifton, TX

A certification was issued covering all workers separated on or after February 1, 1990 and before April 1, 1991.

TA-W-25,600; Kal Drilling, Inc., Oklahoma City, OK

A certification was issued covering all workers separated on or after March 15, 1990.

TA-W-25,601; Lightolier, Inc., Norwich, CT

A certification was issued covering all workers separated on or after January 1, 1991and before March 31, 1991.

TA-W-25,605; Pickham Industries, Oconto, WI

A certification was issued covering all workers separated on or after March 26, 1990, and before September 30, 1990.

TA-W-25,627; Jonbil, Inc., Danville, VA

A certification was issued covering all workers separated on or after March 26, 1990.

TA-W-25,627A; Jonbil, Inc., Chase City, VA

A certification was issued covering all workers separated on or after March 26, 1990.

TA-W-25,609; Tag-Agri Development (USA) Ltd, Plattsburgh, NY

A certification was issued covering all workers separated on or after March 9, 1990, and before April 1, 1991.

TA-W-25,646; Farah Manufacturing Co., El Paso, TX

A certification was issued covering all workers separated on or after March 25, 1990.

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TA-W-25,679; New Jersey Tanning Co., Newark, NJ

A certification was issued covering all workers separated on or after March 11, 1990.

TA-W-25,603 & TA-W-25,604; Northern Paper Div., Georgia Pacific Corp., East Millinocket & Millinocket, ME

A certification was issued covering all workers separated on or after February, 1990.

TA-W-25,597; Jane Darling Dresses, Inc., Bloomfield, NJ

A certification was issued covering all workers separated on or after March 12, 1990, and before May 30, 1990.

TA-W-25,511; PPG Industry, Inc., Crystal City, MO

A certification was issued covering all workers separated on or after February 4, 1990.

TA-W-25,732; Arrow Co., Buchanan, GA

A certification was issued covering all workers separated on or after April 19, 1990.

TA-W-25,611; ABE Schrader Corp., Secaucus, NJ

A certification was issued covering all workers separated on or after March 21, 1990.

TA-W-25,612; ABE Schrader Corp., New York, NY

A certification was issued covering all workers separated on or after March 21, 1990.

TA-W-25,464; J. Landis Shoe Co., Palmyra, PA

A certification was issued covering all workers separated on or after February 13, 1990.

TA-W-25,620; Elkem Metals Co., Ashtabula, OH

A certification was issued covering all workers separated on or after February 1, 1990.

TA-W-25,570; National Industries, Inc., Plant #5, Wetumpka, AL

A certification was issued covering all workers separated on or after February 25, 1990.

TA-W-25,588; Arrow Co., Cedartown, GA

A certification was issued covering all workers separated on or after March 13, 1990.

TA-W-25,588A; Arrow Co., Albertville, GA

A certification was issued covering all workers separated on or after March 13, 1990.

I hereby certify that the aforementioned determinations were issued during the month of May, 1991. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: May 29, 1991.

Ronald Putz,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-13220 Filed 6-4-91; 8:45 am]

BILLING CODE 4510-30-M

MARTIN LUTHER KING, JR. FEDERAL HOLIDAY COMMISSION

Meeting

AGENCY: The Martin Luther King, Jr. Federal Holiday Commission.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463 as amended, the Martin Luther King, Jr. Federal Holiday Commission announces a forthcoming meeting of the Commission.

DATES: June 18, 1991.

TIME: 1-3 p.m.

LOCATION: Rayburn House Office Building, Room 2203, Washington, DC.

Topics to be Addressed:

Review of Commission Activities for 1991.

Reports from Committees of the Commission.

Financial Report.

FOR FURTHER INFORMATION CONTACT: Madeline Y. Lawson, the Martin Luther King, Jr. Federal Holiday Commission, Washington, DC 20410 (202) 708-1005.

Dated: May 16, 1991.

Madeline Y. Lawson,

Deputy Executive Director.

[FR Doc. 91-13164 Filed 6-4-91; 8:45 am]

BILLING CODE 4210-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-219]

GPU Nuclear Corp. and Jersey Central Power & Light Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR-16 issued to GPU Nuclear Corporation, et al. (the licensee), for operation of the Oyster Creek Nuclear Generating Station, located in Ocean County, New Jersey.

Environmental Assessment

Identification of Proposed Action

The amendment would revise the Technical Specifications (TS) surveillance intervals for table 4.1.1: item 1—High Reactor Pressure; item 3—Low Reactor Water Level; item 4—Low-Low Reactor Water Level; item 5b—High Water Level in the Scram Discharge Volume Analog Scram; item 27a—Scram Discharge Volume Water Level High Analog Rod Block; and item 5a—High Water Level in the Scram Discharge Volume Digital Scram. A change correcting the bases for the control functions of the High Drywell Pressure Trip System, referenced in TS section 3.1, was also proposed.

The proposed amendment is in accordance with GPU Nuclear Corporation's application dated November 19, 1990.

The Need for the Proposed Action

The proposed changes to the Technical Specifications are needed so that surveillance intervals which are correct for analog instrument can be added and to extend the digital surveillance test interval based on switch performance data.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the Technical Specifications. The proposed revision modifies the calibration interval for High Reactor Pressure, Low Reactor Water Level, Low-Low Reactor Water Level, and High Water Level in the Scram Discharge Volume.

Based on its review, the Commission concludes that the proposed Technical Specification changes are acceptable and, the proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that these proposed actions would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed changes to the Technical Specifications involve several components in the plant which are located within the restricted area as defined in 10 CFR part 20. They do not affect nonradiological plant effluents and have no other environmental impacts. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed actions, any alternatives with equal or greater environmental impacts need not be evaluated.

Alternative Use of Resources

The action would involve no use of resources not previously considered in the Final Environmental Statement (FES) for the Oyster Creek Nuclear Generating Station dated December 1974.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The staff has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed actions will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated November 19, 1990, which is available for public inspection in the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, 20555 and the Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Rockville, Maryland, this 29th day of May 1991.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-13228 Filed 6-4-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-298]

Nebraska Public Power District Cooper Nuclear Station; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of proposed amendments to Facility Operating License No. DPR-46, issued to Nebraska Public Power District (NPPD), for operation of the Cooper Nuclear Station, located in Nemaha County, Nebraska.

Identification of Proposed Action

The amendment would consist of changing the license to extend the expiration date. Specifically, the expiration date for Operating License (OL) No. DPR-46 would be changed from June 4, 2008 to January 18, 2014.

Summary of Environmental Assessment

The Commission's staff has reviewed the potential environmental impact of the proposed change in the expiration date of the OL for Cooper Nuclear Station. This evaluation considered the previous environmental studies, including the Final Environmental Statement (FES) dated February 1973, and more recent NRC policy.

Radiological Impacts

The demographic stability of the region near the Cooper Nuclear Station noted in the FES continues to be a valid assessment. The area remains predominantly rural and agricultural and is expected to remain so through the life of the plant. The estimated population doses from the operation of the unit will be maintained as low as reasonably achievable by the radioactive waste and effluent release systems and the controls which govern their operation. As stated in the no significant hazards consideration determination published on November 15, 1989 (54 FR 47607), the change in the expiration date is consistent with the originally engineered design life of the plant, i.e, 40 years of operation. The original design and such consideration as surveillances, inspections testing and maintenance programs ensure that the probability or consequences of accidents are not increased and that adequate safety margins are maintained. Accordingly, radiological impacts to the general public, considering both routine operations and potential accidents, are not significantly affected by the extension of the Cooper license to January 18, 2014.

Regarding the uranium fuel cycle and transportation of fuel and waste, the major assumptions of the FES continue to bound the operation of the unit. Although the additional years of operation will proportionally increase the total fissile uranium required, implementation of 18 month fuel cycles will actually result in the discharge of fewer total fuel assemblies. The fuel parameters such as enrichment and burnup are bounded by the assumptions used in the "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation" (53 FR 20355). The annual production of low-level waste has been significantly below the FES assumptions and is not expected to significantly increase during the additional years of operation.

Cooper has consistently maintained occupational exposures significantly below that experienced at other BWR units. The licensee has implemented numerous ALARA-related programs and no significant increase in the annual collective occupational exposures to workers during the additonal years of plant operation is anticipated.

Non-Radiological Impacts

The Commission has concluded that the proposed extension will not introduce any significant impacts over those discussed in the FES.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed action. The staff has reviewed the proposed license amendments relative to the requirements set forth in 10 CFR part 51. Based on this assessment, the staff concludes that there are no significant radiological or non-radiological impacts associated with the proposed action and that the proposed action will not change any conclusions reached by the Commission in the FES. Therefore, pursuant to 10 CFR 51.31, an environmental impact statement need not be prepared for this action. Based upon this environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see (1) The application for amendment dated August 31, 1989, (2) the Final Environmental Statement related to operation to Cooper issued February 1973, and (3) the Environmental Assessment dated May 22, 1991. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555 and at the Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Dated at Rockville, Maryland, this 22nd day of May 1991.

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Director, Project Directorate IV-1, Division of Reactor Projects III, IV, and V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-13229 Filed 6-4-91; 8:45 am]

BILLING CODE 7590-01-M

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[Docket No. 50-245]

Northeast Nuclear Energy Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from the requirements of 10 CFR part 50, appendix J to the Northeast Nuclear Energy Company (the licensee) for Millstone Nuclear Power Station, Unit No. 1, located at the licensee's site in New London County, Connecticut.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant exemptions from 10 CFR part 50, Appendix J, § III.C concerning Type C leakage testing for certain containment isolation valves. The proposed action is in accordance with the licensee's request for exemption dated April 29, 1988, as supplemented by letters dated May 19, 1989 and November 8, 1990.

The Need for the Proposed Action

Appendix J to 10 CFR part 50 defines "Type C Tests" as ". . . tests intended to measure containment isolation valve leakage rates." The testing and repair (as needed) of containment isolation valves assures that these valves will not be the source of unacceptable containment leakage, and thus, environmental impact, following a design basis accident. The licensee has requested that they be exempted from Type C test requirements for certain containment isolation valves. In some cases, alternate tests were proposed.

The basis for the proposed exemptions is that Type C testing of the subject valves would not serve the underlying purpose of the rule (appendix J § III.C) and thus is not necessary.

Environmental Impacts of the Proposed Action

The NRC staff has completed its evaluation of 15 relief requests concerning appendix J § III.C. These 15 relief requests fall into one of the following classifications:

- The request is unacceptable—In 10 cases, the NRC staff determined that the licensee had not sufficiently justified the need for the proposed exemptions. In these cases, there will be no environmental impact in that no exemptions will be granted.
- No exemption is needed—In one case, the NRC staff determined that the subject containment isolation valves fall outside the scope of appendix J Type C testing and that no exemption is required. In this case, there will be no environmental impact in that the subject valves need not have been included in the Type C test program.
- The request is acceptable and the exemption may be granted—In four case, the requested exemptions were found to be acceptable. In these cases, the licensee proposed acceptable, alternative testing. While the alternative testing was not considered to be equivalent to the required testing, it was judged to be adequate to detect potential leakage that could increase post-accident releases from containment. Accordingly, use of the proposed alternative testing would have no environmental impact since any significant leakage would be detected and repaired as part of the routine test program.

Based upon the above, the Commission concludes that there are no environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impat associated with the proposed exemptions, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemptions would be to deny the requested exemptions. Such action would not enhance the protection of the environment and would result in unjustified costs for the licensee.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for Millstone, Unit 1.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemptions.

For further details with respect to this proposed action, see the licensee's letter dated April 29, 1988 and the supplements dated May 19, 1989 and November 8, 1990. This letter and the supplements are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street NW., Washington, DC, and at the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockville, Maryland this 30th day of May 1991.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-13230 Filed 6-4-91; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

Application for a License To Export Nuclear Material

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following application for an export license. Copies of the application are on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of the application for a license to export special nuclear material noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the material to be exported. The information concerning this application follows.

NRC EXPORT LICENSE APPLICATION

Name of applicant, date of appl., date received, application No.	Material type	Material in (kilograms)		End use	Country of destination
		Total element	Total isotope		
Transnuclear, Inc. 05/07/91, 05/10/91, XSNM02611.	93.45% Enriched Uranium	38.285	35.8	Fuel for HFR/Petten Reactor	The Netherlands.

Dated this 29th day of May 1991 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Ronald D. Hauber,

Assistant Director for Exports, Security, and Safety Cooperation, International Programs, Office of Governmental and Public Affairs.

[FR Doc. 91-13231 Filed 6-4-91; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE NUCLEAR WASTE NEGOTIATOR

Operating Procedures; Intent To Coordinate on Feasibility Assessment Grants; and Intent To Negotiate Agreements

AGENCY: Office of Nuclear Waste Negotiator.

ACTION: Notice of operating procedures; notice of intent to coordinate with the Department of Energy on the review and evaluation of financial assistance feasibility grants; and notice of intent to negotiate agreements with potential host jurisdictions.

SUMMARY: Title IV of the Nuclear Waste Policy Act of 1982, as amended, 42 U.S.C. 10101 et seq., (Act), authorizes the Office of the Nuclear Waste Negotiator (NWN) to negotiate with the interested Governor of any States and with the interested governing body of any Indian tribes, regarding the voluntary hosting of a high-level nuclear waste (HLW) permanent repository or a temporary monitored retrievable storage (MRS) facility within those jurisdictions. By this notice the Negotiator announces:

(1) The basic operating procedures which will be utilized in the solicitation of interest, subsequent negotiation, and presentation of proposed agreements to Congress;

(2) The intent to coordinate with the Department of Energy (DOE) in the review and evaluation process for requests for financial assistance received from potential host jurisdictions interested in studying the feasibility of siting an MRS facility under section 406(b) of the Act; and

(3) The intent to negotiate an agreement containing reasonable and appropriate terms and conditions (including financial and institutional arrangements) with the Governor of any States and the governing body of any Indian tribes interested in the potential hosting of a repository or MRS facility as authorized by section 403 of the Act.

ADDRESSES: Office of the Nuclear Waste Negotiator, 3050 North Lakeharbor Lane, Suite 100, Boise, Idaho 83703; FAX (208) 334-9880.

FOR FURTHER INFORMATION CONTACT: Charles B. Lempesis, Chief of Staff, at the address above, telephone (208) 334-9876.

SUPPLEMENTARY INFORMATION:

(1) Mission of the NWN

The Act charges the Negotiator with four primary tasks which include:

(a) To seek a preliminary dialogue with the Governor of any States and the governing body of any Indian tribes in order to make available to them credible information and resources from which they may determine for themselves upon what terms and conditions, if any, they would be willing to host a permanent geologic repository or MRS facility.

Sec. 402(b)(2) states: The Negotiator shall attempt to find a State or Indian tribe willing to host a repository or monitored retrievable storage facility at a technically qualified site on reasonable terms and shall negotiate with any State or Indian tribe which expresses an interest in hosting a repository or monitored retrievable storage facility.

(b) To determine if there is an interested jurisdiction, and if so, to negotiate an agreement with such jurisdiction in a manner that encourages constructive public involvement, forthrightly addresses all concerns of the prospective host and affected and interested parties, and achieves mutual benefit for the host jurisdiction and the federal government on terms and in a manner that will lead to a formal agreement and lasting cooperation.

Sec. 403(a)(1)(A) states: The Negotiator shall seek to enter into negotiations on behalf of the United States, with—

(i) the Governor of any state in which a potential site is located; and

(ii) the governing body of any Indian tribe on whose reservation a potential site is located; * * *

Sec. 403(a)(1)(B) states: The Negotiator shall attempt to reach a proposed agreement between the United States and any such State or Indian tribe specifying the terms and conditions under which such State or tribe would agree to host a repository or monitored retrievable storage facility within such State or reservation.

(c) To present any reasonable proposed agreement to the Congress of the United States for enactment into law, and where circumstances require, facilitate the resolution of differences between the host jurisdiction and the Federal government relevant to the consummation of such a formal agreement.

(d) To consult with any State, affected unit of local government, or Indian tribe that may be affected by the siting of a repository or MRS facility.

Sec. 403(b) states: * * * the Negotiator shall consult with any State, affected unit of local government, or any Indian tribe that the Negotiator determines may be affected by the siting of a repository or monitored retrievable storage facility and may include in any proposed agreement such terms and conditions relating to the interest of such States, affected units of local government, or Indian tribes as the Negotiator determines to be reasonable and appropriate.

(2) Goals of the NWN

The Negotiator has adopted key program goals to ensure that the mission of the NWN is accomplished as required by the Act. Each of these goals is derived from the language and intent of the legislation. These program goals include:

—Establishing itself as a Federal office that is independent of other agencies or departments involved with current or previous efforts to site a HLW repository or MRS facility in the United States;

—Establishing a program that addresses and recognizes at the outset and throughout, the needs and concerns of the jurisdictions that are being asked to consider the possibility of hosting the nation's first HLW management facilities;

—Designing a communication process that enables all interested jurisdictions, interest groups, the public, Congress, and other entities to participate in an open dialogue about the important issues surrounding the

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management and disposal of HLW in the U.S.;
—Creating a centralized body of knowledge regarding the voluntary siting of controversial facilities by negotiation and similar initiatives;
—Creating an environment in which interested jurisdictions can become equal partners in defining the specific terms and conditions under which they could consider hosting a HLW management facility.

(3) Basic Operating Procedures

Sec. 408 of the Act provides that the Negotiator shall seek to enter into negotiations on behalf of the United States leading to a proposed agreement with a State or Indian tribe. Section 403(d)(1) provides that the proposed agreement shall be submitted to Congress along with an environmental assessment for the site concerned. Section 403(d)(2) provides that the proposed agreement shall contain terms and conditions including financial and institutional arrangements, as the Negotiator and the host State or Indian tribe determine to be reasonable and appropriate, including such provisions as are necessary for preserving any right of participation or compensation of such State, Indian tribe, or affected unit of local government under section 118(c), 117 and 116(b) of the Act. The terms State, Indian tribe, and affected unit of local government, are defined at section 401, 2(15), and 2(31) of the Act, respectively.

The basic operating procedures which will be utilized in the solicitation of interest, subsequent negotiation, and presentation of proposed agreements to Congress, are as follows:

—On May 3, 1991, the Negotiator sent a letter of introduction to all States and Indian tribes that included informational materials on the NWN and the Act. Additional informational materials will be provided to States and Indian tribes by the Negotiator as they become available and upon request.
—In this same issue of the Federal Register, DOE is publishing a notice of availability of grants to assess the feasibility of hosting an MRS facility. Subsequent to this notice, States, Indian tribes, and affected units of local government may request grant funding to assess feasibility issues. Feasibility grants will be awarded by DOE.
—On or about October 1, 1991, the Negotiator will issue a formal request for expressions of interest to States and Indian tribes. Prior to that time, the Negotiator will be prepared to conduct preliminary discussions with any interested State or Indian tribe.
—Interested States or Indian tribes, based on grant-funded feasibility assessments or other information, may decide to proceed to enter into negotiations with the Negotiator to develop a mutually acceptable written agreement for the construction and operation of a facility at a site within their jurisdiction. Such agreements will contain terms and conditions (including financial and institutional arrangements) as the Negotiator and the host State or Indian tribe determine to be reasonable and appropriate.
—As negotiations commence, the preparation of an environmental assessment under sec. 404 of the Act will begin and public hearings to address issues that need to be analyzed in the environmental assessment will be held.
—The Negotiator will initiate a consultation with Federal agencies concerning the technical suitability of any site under negotiation.
—As the Negotiator and the interested State or Indian tribe complete a negotiated agreement, the environmental assessment will also be finished.
—The Negotiator will formally submit the negotiated agreement and environmental assessment to Congress and the agreement will become effective when acted on by Congress and signed by the President into law.

The Negotiator is available at this time to receive requests for further information, to accept public comments, or to begin preliminary discussions with States and Indian tribes. As noted above, on or about October 1, 1991, the Negotiator will issue a formal written request for expressions of interest from States and Indian tribes.

(4) Financial Assistance for Feasibility Assessment

DOE, on May 8, 1991, at Volume 56, Number 89, page 21360 of the Federal Register, gave notice of intent to make grants of financial assistance for feasibility assessment studies for an MRS facility available to States, Indian tribes, and affected units of local government pursuant to sec. 116(b) of the Act. In this issue of the Federal Register DOE is announcing the availability of those grants. DOE will provide information to the Negotiator about any grant application requests received. The Negotiator may review and comment on the requests prior to the time that DOE takes action to grant or deny a request.

(5) Negotiation of Terms, Conditions and Equities

States and Indian tribes shall determine for themselves whether entering into a negotiation to address the possible terms and conditions of a proposed agreement is appropriate to their circumstances. Any discussion or negotiation undertaken with the Negotiator shall be entirely voluntary and may be terminated at will by the potential host jurisdiction. The Negotiator also reserves the right to terminate negotiations. It is not necessary for a State or Indian tribe to specify a specific site or sites for any facility when expressing an initial interest or engaging in a preliminary dialogue with the Negotiator. An interested jurisdiction may discuss and negotiate either an MRS facility or a repository, or both, depending on the jurisdiction's own feasibility assessment and level of interest.

All aspects of a potential agreement are subject to discussion and negotiation. The Negotiator desires to engage in the broadest possible discussion of such terms and conditions as the potential host believes are relevant to a final determination of the feasibility of siting a facility. The Negotiator envisions that among the important issues to be discussed and negotiated may be the host jurisdiction's choices and concerns as to assurances of safety, participation and oversight, choices of technology, mitigation of real and perceived costs, restoration and enhancement of the environment, and other related ecological or human impacts and considerations, as well as the possibility of private sector participation.

Section 403(d)(2) authorizes the Negotiator to address for inclusion in any proposed agreement, the means of achieving equity with any State or Indian tribe which provides assistance to the Nation by hosting a permanent repository or MRS facility. To achieve equity with the host jurisdiction for its contribution in resolving the storage and disposal issue the Negotiator is authorized to negotiate and include in a proposed agreement benefits and resources to assist the host jurisdiction. In addition to the other terms and conditions important to the host, negotiations may include reasonable institutional and fiscal arrangements for achieving equity, which, for purposes of example only, could include federal contributions to the following types of public programs, projects and problem solving:

(a) Infrastructure improvements including highways, railroads, waterways, airports or other public projects;
(b) Environmental improvements including the cleanup of existing air, water or waste problems;
(c) Public school assistance programs;
(d) Higher education programs;
(e) Health care programs;
(f) Proposed co-locations of other federal projects or existing federal program expansions;
(g) General economic development programs;
(h) The transfer of ownership of federal properties;
(i) Tax subsidy or property value protection programs;
(j) Public recreation improvement projects;
(k) Direct financial assistance;
(l) Local employment or products purchasing agreements;
(m) Any other type of assurance, equity or assistance desired by the State or Indian tribe.

Any type of benefit or equity arrangement may be specified for negotiation by the potential host. Benefits sought need not be directly related to the proposed facility. All proposals for benefits and the total fiscal impact of any proposed agreement are subject to the review of Congress.

Section 405(b) provides that prior to the construction of either a repository or MRS, a construction authorization must be approved by the Nuclear Regulatory Commission. Under section 403(b) of the Act, the Negotiator is directed to consult with any State, affected unit of local government, or Indian tribe that may be affected by the siting of a repository or MRS facility in another jurisdiction and may include terms relating to their interest in any proposed agreement.

Written comments or requests for further information are encouraged through the agency contact address.

David H. Leroy,
Negotiator.
[FR Doc. 91-13232 Filed 6-4-91; 8:45 am]
BILLING CODE 6820-01-M

POSTAL RATE COMMISSION

[A91-4]

San Francisco Main Post Office, California 94101 (Paul A. Lovinger, et al., Petitioners); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued May 30, 1991.

Docket Number: A91-4.
Name of Affected Post Office: San Francisco Main Post Office, California 94101.
Name(s) of Petitioner(s): Paul Lovinger and others.
Type of Determination: Closing.
Date of Filing of Appeal Papers: May 21, 1991.
Categories of Issues Apparently Raised:

1. Whether Postal Service's action is subject to the requirements of 39 U.S.C. 404(b)
2. Effect on the community [39 U.S.C. 404(b)(2)(A)].
3. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission Orders

(A) The record in this appeal shall be filed on or before June 5, 1991.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission.

Charles L. Clapp,
Secretary.

Appendix—San Francisco Main Post Office, California 94101

May 21, 1991—Filing of Petition
May 30, 1991—Notice and Order of Filing of Appeal
June 17, 1991—Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)].
June 25, 1991—Petitioners' Participant Statement or Initial Brief [*see* 39 CFR 3001.115(a) and (b)].
July 16, 1991—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].
July 31, 1991—Petitioners' Reply Brief should Petitioners choose to file one [*see* 39 CFR 3001.115(d)].
August 7, 1991—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].
September 18, 1991—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 91-13176 Filed 6-4-91; 8:45 am]
BILLING CODE 7710-FW-M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meetings

Notice is hereby given of the meetings of the Prospective Payment Assessment Commission on Tuesday and Wednesday, June 18-19, 1991, at The Madison Hotel, 15th & M Streets NW., Washington, DC.

The Subcommittee on Hospital Inpatient Care (formerly Hospital Productivity and Cost-Effectiveness) will meet in Executive Rooms 1, 2 and 3 at 9 o'clock a.m., June 18, 1991. The Subcommittee on Hospital Outpatient and Other Facility Services (formerly Diagnostic and Therapeutic Practices) will convene at the same time and date in Drawing Rooms I and II.

The Full Commission will convene at 1:30 p.m. January 18, 1991, and at 9 o'clock a.m. on January 19, 1991, in Executive Rooms 1, 2 and 3.

All meetings are open to the public.

Donald A. Young,
Executive Director.
[FR Doc. 91-13153 Filed 6-4-91; 8:45 am]
BILLING CODE 6820-BW-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29241; File No. SR-Amex-90-28; Amendment No. 3]

Self-Regulatory Organizations; American Stock Exchange Inc.; Notice of Filing of Proposed Rule Change Relating to Accrued Dividend Equivalent Applicable to Equity Index Participation.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 7, 1991, the American Stock Exchange, Inc. ("Amex") or ("Exchange") filed with the Securities and Exchange Commission ("Commission"), the proposed rule change as described in items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to adopt rule 900F(b)(6) to define "Dividend Equivalent Day," and to add Commentary .01 to rule 904F to describe the "Accrued Dividend Equivalent." The

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text of the proposed rule change is attached as exhibit A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange has previously proposed amendments to Amex Rules 903F (Liquidating Index Value), 904F (Cash-Out Privilege), and 910F (Exercise of Physical Delivery or Cash-Out Privilege) in order to accommodate daily exercise of the Equity Index Participation ("EIPs") cash-out privilege. (*See* SR–Amex–90–28, Release No. 34–28687 (December 10, 1990) 55 FR 51980; Amendment No. 1, Release No. 34–28781 (January 14, 1991) 56 FR 2569. The Exchange has proposed further amendments to Rules 903F, 904F and 910F to provide that the liquidating index value applicable to exercises of the quarterly delivery privilege or the cash-out privilege on any trading day will be derived from opening prices reported by the primary market for component EIP index stocks on the next succeeding trading day; and to specify procedures for notice of exercise of the physical delivery or cash-out privilege. (*See* SR–Amex–90–28, Amendment No. 2, Release No. 34–29032 (April 1, 1991) 56 FR 1440.

In Amendment No. 2, the Exchange described certain modifications to the dividend equivalent payment feature to provide that an EIP holder exercising the cash-out privilege on any trading day would receive a dividend equivalent payment representing the accrued dividend equivalent from writers of the assigned short positions. The Exchange is not proposing to codify these modifications in its rules and to set forth procedures for calculation by the Reporting Authority of the accrued dividend equivalent.

New Commentary .01 to Rule 904F ("Cash-Out Privilege") would specify that the Reporting Authority, which may include the Exchange or another entity designated by the Exchange, shall determine the accrued dividend equivalent each business day for each class of EIPs. The Exchange will report this number to The Option Clearing Corporation ("OCC") for purposes of facilitating payment to persons exercising the daily cash-out privilege or the quarterly physical delivery privilege, and to all EIPs holders on the business day preceding the quarterly Dividend Equivalent Day. The term "Dividend Equivalent Day" is defined in proposed Rule 900F(b)(6).

The accrued dividend equivalent includes ordinary cash dividends accrued during the quarter for each underlying index stock with an ex-dividend date during the quarter. Such amount will represent the cash dividend paid by each index company adjusted to reflect the relative weight of the security in the index. Cash dividends other than ordinary dividends as well as stock dividends will be excluded insofar as they are the subject of an adjustment to the underlying index divisor.

The quarterly dividend accrual period is specified as beginning on the first business day following the dividend equivalent day (*e.g.*, the Monday following the third Friday in March, June, September and December) and extending through and including the next quarterly dividend equivalent day.

Rule 904F would be amended to clarify that a holder exercising the cash-out privilege on any business day will receive an accrued dividend equivalent payment as well as the liquidating index value. Rule 905F would clarify that persons exercising the quarterly physical delivery privilege would receive an accrued dividend equivalent payment as well as physical delivery of index shares.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has discussed the proposed rule changes with OCC staff.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex.

All submissions should refer to (File No., SR–Amex–90–28 and should be submitted by June 26, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 28, 1991.

Jonathan G. Katz,

Secretary.

Exhibit A—American Stock Exchange, Inc.; Proposed Rule Change (Brackets indicate deletions from current Exchange rules; italics indicate proposed additions to current rules.)

Rule 900F(b)

(6) Dividend Equivalent Day—The term "dividend equivalent day" in respect of a class of Equity Index Participations means the business day in each calendar quarter on which all holders of one or more minimum trading units of Equity Index Participations as of the close of trading on the preceding business day are entitled to receive, and all persons with short positions in one or more minimum trading units of Equity Index Participations are obligated to pay the accrued dividend equivalent, in accordance with rules and procedures of the Options Clearing Corporation. The dividend equivalent day shall be the third Friday of March, June, September and December, or such other day in each calendar quarter as the Exchange may specify. Any change to the dividend equivalent day in respect of a class of Equity Index Participations shall be announced by the Exchange prior to the beginning of the quarter to which it is applicable.

Cash-Out Privilege

Rule 904F. The holder of an Equity Index Participation who has not exercised the *physical* delivery privilege with respect to such participations shall have the right to obtain [on each cash-out time,] *the following upon exercise of the cash-out privilege* in accordance with the Rules of The Options Clearing Corporation [.]:

(1) the liquidating index value of such Equity Index Participation [.], *and (2) the accrued dividend equivalent payment as of the business day following exercise the cash-out privilege. A holder may exercise of the cash-out privilege on any business day.*

Commentary .01 The Reporting Authority shall determine on each business day the accrued dividend equivalent with respect to a class of Equity Index Participations. The accrued dividend equivalent shall include ordinary cash dividends accrued during each quarterly period for all stocks in the index underlying a class of Equity Index Participations with an ex-dividend date during such quarterly period. The calculation by the Reporting Authority shall represent the amount of ordinary cash dividends payable with respect to each component stock with an ex-dividend date up to and including the date the accrued dividend equivalent is determined, adjusted to reflect the relative weight of the security in the index. As a general rule, such amount shall exclude any cash or stock dividend that is the subject of an adjustment to the underlying index divisor; provided, however, that the Exchange shall have the power to determine, on a case by case basis, whether a dividend constitutes an "ordinary cash dividend" for purposes of this rule. The quarterly accrual period shall begin on the first business day following the dividend equivalent day and shall extend through and include the following dividend equivalent day. The accrued dividend equivalent as determined by the Reporting Authority shall be reported each business day by the Exchange to The Options Clearing Corporation and shall be deemed final.

Physical Delivery Privilege

Rule 905F. **The holder of one or more delivery units that has not exercised the cash-out privilege with respect to such units shall have the right to obtain on each delivery time, upon exercise of one or more full delivery units in accordance with the Rules of The Options Clearing Corporation, the physical delivery of the proportionate number of shares of each stock comprising the underlying index, *and payment of the accrued dividend equivalent,* subject to the following conditions:**

(*See* File No. SR–Amex–90–28, Release No. 34–28687, December 10, 1990 for proposed changes to rule 905F, paragraphs (f) and (h)).

[FR Doc. 91–13166 Filed 6–4–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–29239; International Series Release No. 277; File No. SR–AMEX–91–06]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Addition of One Expiration Month for the Japan Index Option

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 26, 1991, the American Stock Exchange, Inc. ("AMEX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The AMEX proposes to add one expiration month in the current calendar year for the Japan Index ("JPN") Option.

The text of the proposed rule change is available at the Office of the Secretary, AMEX, and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

JPN options currently trade with three near-term expiration months plus five additional long-term months with consecutive June and December expirations extending into successive years. The Exchange is proposing to have the ability to add one additional JPN expiration month (March or September) in the current calendar year in order to permit JPN options to mirror the expiration cycle for Nikkei futures contracts traded on the Chicago Mercantile Exchange ("CME"). Since the Nikkei future trades on a March expiration cycle, *i.e.*, March, June, September and December expirations, and the Exchange currently lists June and December expiration months, the ability to list March or September expirations would provide JPN options investors with a continuous hedging vehicle. For example, the Exchange currently lists expirations of May, June, July and December 1991, and would upon approval of this proposal, add a September 1991 expiration. According to the AMEX, this additional expiration month will enhance the ability of investors in JPN options to hedge with CME-traded Nikkei futures, thereby increasing the depth and liquidity of the JPN options market.

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The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules thereunder applicable to the Exchange since it is designed to give investors the ability to hedge their JPN positions with the future while increasing the depth and liquidity of the market. Therefore, the Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act which provides, in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade, and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The AMEX believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not received any formal comments regarding the proposed or existing rule.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated approval pursuant to section 19(b)(2) of the Act. The Commission finds that the proposed rule change to add an additional expiration month for JPN options is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) thereunder.[1]

In particular, the Commission believes that the proposed rule change is designed to provide investors with an additional means and flexibility to hedge their JPN options positions, thereby providing greater depth and liquidity to the JPN options market and contributing to the protection of investors and the maintenance of fair and orderly markets. Specifically, by allowing investors an additional expiration month in JPN options in order to mirror the expiration cycle for Nikkei futures contracts traded on the CME, the AMEX proposal will permit investors to better protect their positions from adverse market moves. In addition, the AMEX proposal provides investors with an improved hedge for the options positions without significantly increasing concerns regarding intermarket manipulations or disruptions of either the options, futures or underlying stock markets.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** because of the importance of enhancing the depth and liquidity of JPN options markets. Accordingly, since May 17, 1991 is an Expiration Friday, the addition of the September series would have to be made after the May series expire, in order to mirror the expiration cycle of the Nikkei futures. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with section 6 of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 26, 1991.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[2] that the proposed rule change (SR-AMEX-91-08) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 28, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-13169 Filed 6-4-91; 8:45 am]

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[1] 15 U.S.C. 78f(b)(5)(1982).

[2] 15 U.S.C. 78s(b)(1982).

[Release No. 34-29246; File No. SR-CBOE-88-24, Amendment No. 2]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing of Amendment to Proposed Rule Change Relating to the Concentration of Options Market-Maker Business

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 13, 1991, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE hereby proposes to amend proposed rule 4.10 in order to limit the Exchange's ability to disapprove or condition transactions subject to the rule involving a subject member's guarantee of the liabilities of another person engaged in the business of effecting, executing, clearing or financing transactions in securities or futures products. The amendment would limit the Exchange's authority under the rule to those instances in which the subject member is acquiring directly or indirectly all or substantially all of the assets of the person whose liabilities are subject to the guarantee. The text of the proposed rule change is attached as exhibit A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The CBOE has prepared summaries, set forth in sections (A) (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The original proposed amendments to rule 4.10 provide that CBOE members must provide prior notice to the Exchange market maker clearing for certain substantial business transactions ("SBTs") involving among other things, mergers, consolidations, and acquisitions with, or transfers of accounts from, another entity engaged in the securities or futures business. The proposal also provides that certain CBOE members with high concentrations of Exchange market maker clearing business must obtain prior approval from the CBOE to effectuate SBTs. The purpose of the proposed rule is to allow the Exchange to review transactions of certain of its clearing members that would increase market-maker clearing business, which could potentially adversely affect the financial or operational integrity of Exchange market-maker transactions.

As originally proposed, an SBT included any type of guaranty or assumption of liability not in the ordinary course of business. The current proposed amendment limits the review to the guarantee or assumption of liabilities of another entity engaged in the securities or futures business only if it is in connection with a direct or indirect acquisition of all or substantially all of that equity's assets. The CBOE believes this amendment is consistent with the stated purposes of the CBOE and will result in the rule 4.10 covering only those transactions that might warrant the prior review and approval procedures the CBOE is seeking to impose.

(2) Basis

The proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it serves to protect investors and the public interest through the maintenance of a strong financial and operational system for the clearance of market-maker transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

One written comment was received with respect to the first amendment of the proposed rule (*See* Securities Exchange Act Release No. 28958 (March 11, 1991), 56 FR 11474). The revision as proposed herein specifically addresses the concerns raised in that comment.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organizations consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW. Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and written communications relating to the proposed rule change between the Commission and any person other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-88-24 and should be submitted by June 26, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 29, 1991.

Jonathan G. Katz,

Secretary.

Exhibit A—Proposed Rule Change Chicago Board Options Exchange, Incorporated

Additions reflected by italics, deletions by brackets.

Rule 4.10—Financial or Operational Problems

(a)—No change

(b)(1)(i) through (b)(1)(ii)—No change

(b)(1)(iii)—The assumption or guarantee by the member of liabilities, [otherwise than in the ordinary cause of business,] or another person engaged in the business of effecting, executing, clearing or financing transactions in securities or futures products, in connection with a direct or indirect acquisition of all or substantially all of that person's assets.

(b)(1)(iv) through (b)(1)(vii)—No change

(b)(2) through (b)(9)—No change

[FR Doc. 91-13171 Filed 6-4-91; 8:45 am]

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[Release No. 34-29250; File No. SR-GSCC-91-02]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Modification to Rule 26 Concerning Billing Procedures

May 29, 1991.

Pursuant to section 19(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b), notice is hereby given that on April 25, 1991, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission the proposed rule change as described in items I, II, and III below, which Items have been prepared by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would extend GSCC's authority to bill its members at the beginning of each month for the member's anticipated fee obligations for that month and for the following month. The advance billing would take into account any overcharge or undercharge made with respect to the member's activity during the previous month. Members would continue to be obligated to pay the charges upon receipt of the billing, and in no event later than the tenth day of the month in which the billing is received.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The test of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B),

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and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) On January 4, 1980, the Commission approved rule filing SR-GSCC-89-15, which authorized GSCC to bill its members at the beginning of each month for such member's anticipated fee obligations for that month and for the following month (with an adjustment made to take into account any overcharge or undercharge made with regard to the member's activity during the previous month). The Commission's approval was issued on an accelerated, temporary basis until July 31, 1990.[1]

On August 6, 1990, the Commission approved rule filing SR-GSCC-90-04, which requested an extension, until July 31, 1991, of GSCC's authority to pre-bill members.[2]

As an appropriate, prudent measure that will help ensure that GSCC remains in a financially sound cash position as it continues to gradually increase its level of participant base, GSCC now requests an extension of one year, until July 31, 1992, of the effective period of the current advance billing procedure. The Board of Directors and management of GSCC anticipate that, prior to July 1992, GSCC will file a request with the Commission for permanent authority to charge members on the tenth business day of a month for services rendered for that month only (with any necessary adjustments being made to the previous month's bill), and *not* for the next month as well. At the time of such a change, there would be a return made to GSCC members of one month's billed charges.

(b) The proposed rule change will promote the prompt and accurate clearance of securities transactions for which GSCC is responsible and is, therefore, consistent with the requirements of Section 17A of the Act, as amended, and the rules and regulations thereunder applicable to self-regulatory organizations.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have an impact on, or impose a burden on, competition.

[1] Securities Exchange Act Release No. 27567 (January 4, 1990), 55 FR 1151.

[2] Securities Exchange Act Release No. 28315 (August 6, 1990), 55 FR 32719.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change have not been solicited or received. Members will be notified of the rule filing, and comments will be solicited, by an Important Notice. GSCC will notify the Securities and Exchange Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to File No. SR-GSCC-91-02 and should be submitted by June 26, 1991.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-13167 Filed 6-4-91; 8:45 am]

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[Release No. 34-29245; File No. SR-NASD-91-10]

National Association of Securities Dealers, Inc.; Order Approving Proposed Amendments to Reporting Structure Plan Pursuant to Rule 17a-5(a)(4)

May 29, 1991.

Pursuant to rule 17a-5(a)(4) under the Securities Exchange Act of 1934 ("Act") [1] the National Association of Securities Dealers, Inc. ("NASD") requested approval from the Securities and Exchange Commission ("Commission") for several amendments to the NASD's Reporting Structure Plan ("Plan").[2] The amendments were submitted in conjunction with a proposed rule change, File No. SR-NASD-91-10, filed under section 19(b)(1) of the Act.[3] SR-NASD-91-10 incorporated the substance of the proposed Plan amendments to the NASD's rules by changing the NASD practice of accepting from broker-dealers who are members of the NASD parts I, II, or IIA of Form X-17A-5 and the accompanying schedules ("FOCUS reports") in physical form. The Commission published SR-NASD-91-10 in the **Federal Register** of March 18, 1991 [4] and received no letters of comment. SR-NASD-91-10 was subsequently approved by delegated authority on April 18, 1991.[5] For the reasons discussed below, the Commission is approving the proposed changes to the Plan.

Pursuant to the provisions of rule 17a-5(a)(3) under the Act, a registered broker or dealer is required to file FOCUS reports with the Commission's principal office in Washington, DC and the regional office of the Commission for the region in which the broker or dealer has its principal place of business.[6] Rule 17a-5(a)(4), however, allows a broker or dealer to file FOCUS reports with a national securities exchange or a registered national securities association of which it is a member, if, "pursuant to a plan, procedures and provisions of which have been submitted to and declared effective by the Commission," said organization: (i) Maintains records containing the

[1] 17 CFR 240.17a-5(a)(4).

[2] Letter from the National Association of Securities Dealers, Inc. ("NASD") to Katherine A. England, Branch Chief, Over-the-Counter Regulation (February 15, 1991).

[3] 15 U.S.C. 78s(b)(1).

[4] Securities Exchange Act Release No. 28957 (March 11, 1991), 56 FR 11477 (March 18, 1991).

[5] Securities Exchange Act Release No. 29105 (April 18, 1991), 56 FR 16131 (April 25, 1991).

[6] 17 CFR 240.17a-5(a)(3).

FOCUS reports filed by such member, and (ii) transmits to the Commission a copy of the applicable parts of Form X-17A-5 filed by such member.[7]

In 1975, the NASD filed a plan pursuant to rule 17a-5(a)(4) under the Act, setting forth specific procedures to enable members to file FOCUS reports in physical form with the NASD. The proposed plan also established the manner in which the NASD would forward collected FOCUS reports to the Commission. On December 17, 1975, the Commission approved the proposed plan, declaring it effective as of January 1, 1976.[8]

The NASD proposes to amend the Plan to require NASD members subject to the criteria set forth below to file FOCUS reports through a centralized electronic mail filing system, rather than in physical form:

1. NASD members subject to the requirements of rule 15c3-3(e) under the Act [9] shall file with the NASD a monthly Part I of Form X-17A-5 and a quarterly part II of Form X-17A-5.

2. NASD members conducting a business in accordance with the exemptive provisions of rule 15c3-3(k)(2)(i) under the Act [10] shall file with the NASD a monthly part I of Form X-17A-5 and a quarterly part II of Form X-17A-5.

3. NASD members that conduct business in accordance with the exemptive provisions of rule 15c3-3(k)(2)(ii) under the Act [11] shall file a monthly part I of Form X-17A-5 and a quarterly part IIA of Form X-17A-5.

4. NASD members that conduct business in accordance with the exemptive provisions of rule 15c3-3(k)(1) or (k)(3) under the Act [12] shall file a quarterly part IIA of Form X-17A-5.

5. NASD members subject to the requirements of rule 15c-3(e) under the Act [13] or NASD members conducting a business in accordance with the exemptive provisions of rule 15c3-3(k)(1), (k)(2)(i), (k)(2)(ii) or (k)(3) under the Act [14] that receive written notice from NASD that they have exceeded parameters of financial and operational condition established by the NASD shall file, monthly, or on such other basis as determined by the NASD, parts II or IIA of Form X-17A-5, in addition to other financial and operational information.

6. All NASD members shall file schedule I of Form X-17A-5 for the fourth quarter ending December 31 of each year.

The proposed amendments requiring NASD members to file electronically would not apply to the annual audited financial statement filed pursuant to rule 17a-5(d) under the Act.[15] In addition, the proposal to amend the Plan would delete the requirement that NASD members having annual gross revenues related to the securities business of not less than $10 million for the calendar year file schedule III of Form X-17A-5.

The proposed amendments would not alter the NASD's commitment to share FOCUS reports with the Commission. Pursuant to the Plan, the NASD will continue to supply the Commission, on a quarterly basis, with edited data from the information contained in parts II and IIA of Form X-17A-5 filed by NASD members. This data will be supplied on "magnetic computer tape in a format compatible, to the extent technically possible, with the computer tape criteria specified by * * *" the Commission.[16] Upon the Commission's request, the NASD also will furnish the Commission with information contained in part I of Form X-17A-5 in a format mutually agreed upon by the NASD and the Commission.[17]

Rule 17a-5(a)(4) requires that the Commission review the proposed amendments to the Plan, "having due regard for the fulfillment of the Commission's duties and responsibilities under the provisions of the Act." [18] In particular, section 17 of the Act directs the Commission to prescribe and administer rules relating to financial reporting requirements in a manner consistent with the "public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title." [19]

As stated by the Commission, the proposed amendments are consistent with the requirements of the Act and, in particular, with the provisions of section 15A(b)(6) of the Act.[20] This section of the Act requires that the rules of a national securities association designed to "foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market." [21]

Requiring electronic filing of FOCUS reports will ease the administrative burden and is expected to reduce the cost related to the filing and analysis of FOCUS reports. At the same time, the proposed amendments also will facilitate the timely and accurate reporting of FOCUS reports.

The filing of financial date in automated form will facilitate the analysis of the information provided by brokers or dealers. Expeditious analysis of financial data will provide both the NASD and the Commission with a timely updated picture of the financial condition of brokers and dealers. This, in turn, will allow more rapid detection of brokers or dealers who might be enduring financial distress.

For the reasons stated above, the Commission, having due regard for the public interest and the protection of investors and the fulfillment of the Commission's functions under the provisions of the Act, hereby approves the proposed amendments to the NASD's Plan.

It is therefore ordered, pursuant to the provisions of rule 17a-5(a)(4) under the Act,[22] that the proposed amendments to the NASD's Plan be, and are hereby, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[23]

Jonathan G. Katz,

Secretary.

[FR Doc. 91-13168 Filed 6-4-91; 8:45 am]

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[7] 17 CFR 240.17a-5(a)(4).

[8] Securities Exchange Act Release No. 11935 (December 17, 1975), 40 FR 59706, 59710-11 (December 30, 1975).

[9] 17 CFR 240.15c3-3(e).

[10] 17 CFR 240.15c3-3(k)(2)(i).

[11] 17 CFR 240.15c3-3(k)(2)(ii).

[12] 17 CFR 240.15c3-3 (k)(1)(i), (k)(1)(ii), (k)(1)(iii) or (k)(3).

[13] 17 CFR 240.15c3-3(e).

[14] 17 CFR 240.15c3-3 (k)(1)(i), (k)(1)(ii), (k)(1)(iii), (k)(2)(i), (k)(2)(ii) or (k)(3).

[15] 17 CFR 240.17a-5(d).

[16] Amended Plan 8.

[17] *Id.* at 9.

[18] 17 CFR 240.17a-5(a)(4).

[19] 15 U.S.C. 78q(a)(1).

[20] 15 U.S.C. 78o-3(b)(6). Securities Exchange Act Release No. 29105, *supra* note 5 at 19132.

[Release No. 34-29249; File No. SR-NYSE-91-15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Listing of Index Warrants Based on the Standard & Poor's 500 Composite Stock Price Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 6, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II and III below, which Items have been prepared by the self-regulatory organization. The

[21] 15 U.S.C. 78o-3(b)(6).

[22] 17 CFR 240.17a-5(a)(4).

[23] 17 CFR 200.30-3(a)(30).

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Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to approve for listing and trading under § 703.17 of its Listed Company Manual index warrants based on the Standard & Poor's 500 Composite Stock Price Index ("S&P 500 Index" or "Index"), a broad-based, capitalization-weighted index containing a representative sample of 500 common stocks, constructed by industry group, that trade on the NYSE and the American Stock Exchange and also contains over-the-counter stocks that are a part of the National Market System.

The text of the proposed rule change is available at the Office of the Secretary of the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under § 703.17 (Index Warrants) of the Exchange's Listed Company Manual, the Exchange may list index warrants based on established foreign and domestic indices.

The NYSE is now proposing to list index warrants based on the S&P 500 Index, a broad-based, capitalization-weighted index of 500 stocks. The listing and trading of these index warrants on the NYSE, however, will be subject to the issuer receiving authorization from the Standard & Poor's Corporation to use the S&P 500 Index in connection with the warrants.

The NYSE represents that such Index warrant issues will conform to the listing guidelines under § 703.17, which provide that (1) the issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed the size and earnings requirements in Section 102.01 of the Listed Company Manual; (2) the term of the warrants shall be for a period of at least one year from the date of issuance; and (3) the minimum public distribution of such issues shall be 1,100,000 warrants, together with a minimum of 400 public holders, and the warrants shall have an aggregate market value of $4,000,000.

S&P 500 Index warrants will be direct obligations of their issuer subject to cash-settlement during their term, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the S&P 500 has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the S&P has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

The NYSE has adopted suitability standards applicable to recommendations to customers of index warrants and transactions in customer accounts. Specifically, Exchange Rule 405, Supplementary Material .30 applies the options suitability standard in Exchange Rule 723 to recommendations regarding index warrants. The Exchange also requires that S&P 500 Index warrants be sold only to options-approved accounts. In addition, Exchange Rule 408, Supplementary Material .10 requires a Senior Registered Options Principal or a Registered Options Principal to approve and initial a discretionary order in Index warrants on the day the order is entered. Finally, the NYSE, prior to the commencement of trading in S&P 500 Index warrants, will distribute a circular to its membership calling attention to specific risks associated with warrants on the S&P 500 Index.

The Exchange believes that the proposed rule change is consistent with the requirements of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 26, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 29, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-13170 Filed 6-4-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-18168; 812-7580]

EBI Series Trust; Notice of Application

May 28, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: EBI Flex Fund of the EBI Series Trust (the "Trust"), and EBI Equity Fund, EBI Income Fund, and EBI Cash Management Fund of The EBI Funds, Inc. (the "Company").

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) of the 1940 Act from the provisions of sections 29(a)(32), 2(a)(35), 22(c) and 22(d) of the 1940 Act and Rule 22c-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order amending an existing order (Investment Company Release No. 16873, March 17, 1989) ("Existing Order") which currently permits the assessment and waiver of a contingent deferred sales load ("CDSL"). The amended order would permit Applicants to change the way in which the CDSL is calculated.

FILING DATES: The application was filed on July 12, 1990, and amendments to the application were filed on March 25 and May 23, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 27, 1991, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicants, Suite 500, 1315 Peachtree Street, NE., Atlanta, Georgia 30309.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust and the Company are both registered under the 1940 Act as open-end investment companies. EBI Flex Fund is a separate series of the Trust, and EBI Equity Fund, EBI Income Fund and EBI Cash Management Fund ("EBI Cash") are separate series of the Company (collectively, the "Funds"). INVESCO Services, Inc. ("Distributor") serves as principal underwriter for each of the Applicants.

2. The Existing Order conditionally exempts the Applicants from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the 1940 Act and rule 22c-1 thereunder to permit the assessment and waiver of a CDSL. The Existing Order, which amended three earlier orders (Investment Company Release No. 16285 (February 23, 1988); Investment Company Release No. 14916 (January 27, 1986); and Investment Company Release No. 13789 (February 24, 1984)), covers the Applicants and any additional series or classes of shares the Company or the Trust may offer in the future on substantially the same basis as the Funds (other than EBI Cash) now offer their shares.

3. Applicants now request that the Existing Order be amended to change the way in which the CDSL is calculated for shares of EBI Flex Fund, EBI Equity Fund and EBI Income Fund. Under the Existing Order, a CDSL is imposed, unless waived under certain circumstances, if an investor makes a partial or complete redemption of shares purchased under a plan of distribution pursuant to Rule 12b-1 under the 1940 Act (the "Rule 12b-1 Plans"). Each of the Funds (except EBI Cash) distributes its shares pursuant to separate Rule 12b-1 Plans. Because EBI Cash does not presently have a Rule 12b-1 Plan its shares are not subject to a CDSL. The Rule 12b-1 Plans provide that the applicable Fund, subject to an annual limitation of 1.25% of its average daily net assets, may pay the Distributor a commission equal to 5% of the total purchase price of each Fund's shares made by or through the Distributor.

4. The amount of the CDSL declines from 5% to 0% depending on the length of time the investment has been held in the Funds. The amount of a CDSL payable upon redemption is calculated as being the lesser of (a) the net asset value of the shares redeemed, or (b) the total purchase price of such shares. No CDSL is imposed on redemption proceeds derived from (a) increases in the value of an investor's account above

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration (ConferTech International, Inc., Common Stock, $.01 Par Value) File No. 1-9744

May 30, 1991.

ConferTech International, Inc. ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and rule 12d2-2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the Boston Stock Exchange ("BSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The stock is currently traded on the National Market System ("NMS") of the National Association of Securities Dealers Automated Quotation ("NASDAQ") system, and on the BSE. In light of an adequate trading market for the Company's stock in the NASDAQ/NMS, and no trading of the Company's stock on the BSE for the past year, the Company believes that continued listing on the BSE is unnecessary. The Company's stock will continue to be traded on NASDAQ/NMS.

Any interested person may, on or before June 20, 1991 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan Katz,

Secretary.

[FR Doc. 91-13172 Filed 6-4-91; 8:45 am]

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the total cost of such shares due to increases in the net asset value per share of the Funds, (b) shares acquired through reinvestment of dividend income and capital gains distributions, or (c) shares which, together with exchanged shares, have been held continuously for 60 months (or, for shareholders acquiring shares before May 15, 1989, 30 months). In determining the rate of any applicable CDSL, shares not subject to the CDSL will be redeemed first.

5. Under the existing CDSL, the amount of any CDSL is calculated by determining the month during which the purchase payment which was the source of the investment being redeemed was made and applying the appropriate percentage to the amount of the redemption subject to the charge. Under the current way of calculating the amount subject to the CDSL, the capital appreciation portion of the net asset value of the shares not redeemed reduces the amount of the redemption proceeds subject to the CDSL.

6. Under the proposed amended order the CDSL will be imposed, subject to the same waivers, if an investor makes a partial or complete redemption of shares purchased with respect to which commissions were paid for a 60 month period and will be assessed according to the same schedule as under the Existing Order. The manner in which the CDSL will be calculated under the proposed amended order differs from the way in which the CDSL is calculated under the Existing Order because, under the Existing Order, the CDSL amount is calculated based upon the amount by which an investor's account is reduced by the redemption below the amount of the investor's initial purchase payment. Under the proposed amendment, the CDSL amount will be calculated based upon the lesser of net asset value or cost of each share being redeemed. Except for the above-described change in the manner in which the CDSL will be calculated, the CDSL will be imposed in the same manner as it is being imposed under the Existing Order. The proposed modifications of the CDSL would not affect the existing exchange privileges of current shareholders.

Applicants' Legal Analysis

1. Applicants request an order amending the Existing Order and exempting Applicants, to the extent necessary, from sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the 1940 Act and Rule 22c-1 thereunder. Applicants assert that such an exemption, as required by the standards for an exemption under section 6(c) of the 1940 Act, is in the public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants assert that the proposed amendment of the CDSL is fair and in the best interests of their shareholders. Applicants claim that changing the way of calculating the CDSL will result in (a) distribution expenses being allocated among shareholders on a more equitable basis and (b) distribution expenses being recovered more fairly. They state that calculating the amount of the CDSL as proposed will more fairly allocate distribution expenses among shareholders by charging shares being redeemed with the amount of distribution expenses chargeable to them without taking into account the appreciated net asset value of shares that are not being redeemed and without giving redeeming shareholders the benefit of any future decrease in the net asset value of those shares to the detriment of remaining shareholders. Under the proposed amendment to the Existing Order, the burden of reimbursement for distribution expenses would be placed on a more direct basis on those shareholders with respect to which distribution expenses were incurred, with such shareholders paying their fair share of unrecovered expenses.

3. Furthermore, the revised manner for calculating the CDSL will be implemented on a prospective basis, commencing on the date of issuance of the requested amended order and only after the revised computation method is set forth in the respective Funds' prospectuses, and, accordingly, the Applicants submit that permitting them to use the revised method for computing the CDSL will not harm any shareholder who purchased Fund shares under the CDSL as presently calculated. Finally, calculating the amount of a CDSL as proposed will enable Applicants to take advantage of new computer technology which allows for the function of determining the amount of a CDSL to be computerized.

Applicants' Conditions

If the requested amended order is granted, Applicants agree to the following conditions:

1. Applicants will comply with proposed Rule 6c-10 under the 1940 Act, as such Rule is currently proposed and as it may be reproposed, adopted, or amended.

2. Applicants will only calculate the CDSL under the revised computation method for those shares of the EBI Flex Fund, EBI Equity Fund, and EBI Income Fund subject to a CDSL purchased after the date of issuance of the requested amended order, and only after the revised computation method is set forth in the current prospectuses of those Funds.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-13217 Filed 6-4-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18167; 812-7623]

The Infinity Mutual Funds, Inc., et al.

May 28, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an Exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: The Infinity Mutual Funds, Inc. ("Fund") on behalf of its Correspondent Cash Reserves Money Market Portfolio ("Taxable Portfolio") and its Correspondent Cash Reserves Municipal Portfolio ("Municipal Portfolio") and Concord Holding Corporation ("CHC") and Concord Financial Group, Inc. ("CFG"), and on behalf of each other series of the Fund now or hereafter established (such series, together with each Portfolio, referred to as "Series") for which CHC or any affiliate serves as administrator, or CFG or any affiliate serves as distributor.

RELEVANT SECTION OF THE ACT: Exemption requested under section 6(c) from the provisions of sections 18(f)(1), 18(g), and 18(i).

SUMMARY OF APPLICATION: Applicants seek an order permitting the Fund to issue and sell separate classes of shares representing interests in the same investment portfolio, which classes would be identical in all respects except for class designation, voting rights, exchange privileges, and the allocation of certain expenses.

FILING DATE: The application was filed on November 6, 1990 and amended on April 22, 1991 and May 24, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 25, 1991 and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, The Infinity Mutual Funds, Inc., 156 West 56th Street, Suite 1902, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Kimberly Warren, Staff Attorney, at (202) 272-3026, or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch

Applicant's Representations

1. The Fund is a Maryland corporation and a registered open-end management investment company under the Act. To date, the Fund has established five series: the Municipal Portfolio, the Taxable Portfolio, the Pegasus Prime Portfolio, the Alpha Prime Portfolio and the Alpha Government Securities Portfolio.[1] The shares of each series are registered under the Securities Act of 1933 and the Act. Each portfolio is a money market mutual fund.

2. The distributor of the fund is CFG. CHC is the administrator of the Fund. Mitchell Hutchins Asset Management Inc. ("MHAM"), an affiliate of PaineWebber Incorporated ("PaineWebber"), serves as investment adviser to the Taxable Portfolio and the Municipal Portfolio. Other entities unaffiliated with MHAM serve and, in the future, may serve as investment adviser to other Series.

3. The Fund proposes to file an amendment to its registration statement to permit shares of the Municipal Portfolio and the Taxable Portfolio to be divided into two separate classes, Class A and Class B. Class A shares will be offered for purchase only by certain securities dealers that have entered into clearing arrangements with PaineWebber ("correspondent firms") on behalf of their retail customers. Class B shares will be offered for purchase only by institutional investors that may include bank trust departments.

4. The Fund has adopted a plan pursuant to rule 12b-1 of the Act ("12b-1 Plan") with respect to the Class A shares of the Taxable Portfolio and the Municipal Portfolio. Pursuant to the 12b-1 Plan, the Fund is authorized to pay fees to correspondent firms ("Service Providers") under agreements related to such plan ("Plan Agreements"). The Class B shares will not bear expenses under a 12b-1 Plan.

5. Classes of shares relating to other Series would likewise differ in that they may incur expenses as a result of certain classes of shares being of shares being offered in conjunction with 12b-1 Plans while other classes may be offered in conjunction with non-rule 12b-1 shareholder services plans ("Shareholder Service Plans") with payment made by the Fund; with administrative plans with payments made by the adviser ("Administrative Plans"); or with no such plan at all; or with combinations of one or more of these arrangements. Expenses under a plan are referred to as "Plan Payments."

6. Payments made under the 12b-1 Plan currently adopted by the Fund shall not exceed .60 of 1% (annualized) of the average daily net asset value of those shares beneficially owned by customers of the Services Provider with respect to which services and assistance are provided under a Plan Agreement. This maximum payment level may be increased only with shareholder approval by the affected class. For other Series, the payment level pursuant to a 12b-1 Plan or other plan may vary based upon an independent determination by the Board of Directors and subject to any necessary shareholder approval by the affected class.

7. The provision of support services and distribution assistance under the 12b-1 Plan will augment, and not be duplicative of, the services that would otherwise have been provided to the Fund by MHAM (or other investment adviser). CHC, CFG and the Fund's transfer agent and custodian under various service contracts.

8. In addition to expenses incurred under a rule 12b-1 Plan or Shareholder Services Plan, each class of shares will bear certain expenses specifically attributable to the particular class as described in condition 1 ("Class Expenses"). The determination of which Class Expenses will be allocated to a particular class and any subsequent changes thereto will be determined by the Fund's Board of Directors in the manner described in condition 3.

9. Each class of shares may be exchanged only for shares of the same class of another Series. For example, Class A shares of the Municipal Portfolio may only be exchanged for Class A shares of the Taxable Portfolio.

10. Each class of shares of a Series will represent an equal *pro rata* interest in such Series and will have identical voting, dividend, liquidation and other rights, preferences, powers, restrictions, limitations, qualifications, designations and terms and conditions, except that: (a) Each class would have a different designation; (b) each class of shares offered in connection with a 12b-1 Plan or Shareholder Services Plan would bear the expense of payments made by the Fund under the Plan Agreements entered into with respect to such class; (c) each class of shares would bear certain Class Expenses; (d) only shareholders of the affected class would be entitled to vote on matters pertaining to the 12b-1 Plan and the Plan Agreements relating to such class in accordance with the procedures set forth in rule 12b-1; and (e) each class would have different exchange privileges.

11. The net asset value of all outstanding shares representing interests in a Series would be computed on the same days and at the same times by adding the value of all portfolio securities and other assets belonging to such Series, subtracting the liabilities charged to the Series, and dividing the result by the number of outstanding shares attributable to such Series. The Series' gross income would be allocated on the basis of net assets to each class and then divided by the number of outstanding shares of such class. Expenses of the Series will be apportioned to each class of shares depending upon the nature of the expense item. Fund Expenses and Series Expenses will be allocated among the classes of shares based on the value of their relative net assets at the end of the day. Class Expenses will be allocated to the particular class to which they are attributable.

12. Because of the Plan Payments and Class Expenses that would be borne by a class of shares, the net income of, and dividends payable to, such class would be somewhat lower than the net income of the matched class of shares that is not making such Plan Payments or bearing Class Expenses. Dividends paid to each class in a Series, however, would be declared and paid on the same days and at the same times, and, except as noted above, would be determined in the same manner and paid in the same amounts.

13. The representations in the application and the conditions imposed by any order will apply to any other Series relying on the order.

[1] The application describes only the Taxable Portfolio and the Municipal Portfolio as the Fund has no current intention of availing itself of the requested relief with respect to the other series.

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Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act to the extent that the proposed issuance and sale of shares representing interests in a Series might result in a "senior security" within the meaning of section 18(g), and be prohibited by section 18(f)(1), or violate the equal voting provisions of section 18(i) of the Act.

2. Applicants assert that the proposed allocation of expenses and voting rights is equitable and would not discriminate against any group of shareholders. Investors purchasing shares offered in connection with a 12b–1 Plan would bear the costs associated with services rendered pursuant to the 12b–1 Plan and would possess exclusive shareholder voting rights with respect to matters affecting such 12b–1 Plan. Investors purchasing shares that are not covered by such 12b–1 Plan would not bear such expenses or possess such voting rights. The same is true for Series or classes which adopt a Shareholder Services Plan. With the exception of obtaining voting rights, the protections offered by rule 12b–1 would be accorded to shareholders of a class adopting a Shareholder Services Plan.

3. Applicants submit that the requested exemption is appropriate in the public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the proposed arrangement does not involve borrowing and will not increase the speculative character of the shares in a Series because all shares will participate in all of the Series' income and expenses on a pro rata basis with the exception of expenses assessed to a class pursuant to a 12b–1 Plan or Shareholder Services Plan and Class Expenses.

Applicants' Conditions

If the requested order is granted, applicants agree to the following conditions:

1. The classes will each represent interests in the same portfolio of investments of a Series, and be identical in all respects except for certain differences related to: (a) The method of financing certain Class Expenses, which are limited to: (i) transfer agent fees as identified by the transfer agent as being attributable to a specific class; (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses and proxies to current shareholders; (iii) Blue Sky registration fees incurred by a class of shares; (iv) SEC registration fees incurred by a class of shares; (v) the expense of administrative personnel and services as required to support the shareholders of a specific class; (vi) litigation or other legal expenses relating solely to one class of shares; (vii) directors' fees incurred as a result of issues relating to one class of shares; (b) expenses assessed to a class resulting from Plan Payments; (c) the related voting rights as to matters exclusively affecting one class of shares; (d) exchange privileges; and (e) class designation differences. Any additional incremental expenses not specifically identified above which are subsequently identified and determined to be properly allocated to one class of shares shall not be so allocated until approved by the SEC.

2. The Fund's Directors, including a majority of the noninterested Directors, will approve the offering of different classes of shares of a Series ("Distribution System"), prior to the implementation of the Distribution System. The minutes of the Directors' meetings regarding their deliberations with respect to the approvals necessary to implement the Distribution System will reflect in detail the reasons for the Directors' determination that the proposed Distribution System is in the best interests of both a Series and its shareholders.

3. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the Fund's Board of Directors, including a majority of the noninterested Directors. Any person authorized to direct the allocation and disposition of monies paid or payable by the Fund to meet Class Expenses shall provide to the Board of Directors, and the Directors shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. On an ongoing basis, the Fund's Directors, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the Fund for the existence of any material conflicts among the interests of the classes of shares. The Directors, including a majority of the non-interested Directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Series' investment adviser and CHC will be responsible for reporting any potential or existing conflicts to the Directors. If a conflict arises, such investment adviser and CHC at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

5. CFG will adopt compliance standards as to when each class of shares may be sold to particular investors. Applicants will require all persons selling shares of the Series to agree to conform to such standards.

6. Each 12b–1 Plan relating to the sale of any class of shares of a Series will be approved and reviewed by the Fund's Directors in accordance with the requirements and procedures set forth in rule 12b–1, currently and as that rule may be amended in the future. Any 12b–1 Plan adopted by the Directors to permit the assessment of a rule 12b–1 fee on any class of shares which has not had its 12b–1 Plan approved by the public shareholders of that class will be submitted to the public shareholders of such class for approval at the next meeting of shareholders after the initial issuance of the class of shares. Such meeting is to be held within 16 months of the date that the registration statement relating to such class first becomes effective or, if applicable, the date the amendment to the registration statement necessary to offer such class first becomes effective.

7. If any class will be subject to a Shareholder Services Plan, such Shareholder Services Plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1(b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders will not enjoy the voting rights specified in rule 12b–1. In evaluating the Shareholder Services Plan, the Directors will specifically consider whether: (a) the Shareholder Services Plan is in the best interest of the applicable classes and their respective shareholders; (b) the services to be performed pursuant to the Shareholder Services Plan are required for the operation of the applicable classes; (c) the Service Providers can provide services at least equal in nature and quality to those provided by others, including the Fund, providing similar services; and (d) the fees for such services are fair and reasonable in light of the usual and customary charges made by other entities, especially nonaffiliated entities, for services of the same nature and quality.

8. If any class will be subject to a Shareholder Services Plan, each Plan Agreement entered into pursuant to the Shareholder Services Plan will contain a representation by the Service Provider that any compensation payable to the Service Provider in connection with the investment of its customer's assets in a Series: (a) Will be disclosed by it to its customers; (b) will be authorized by its customers; and (c) will not result in an excessive fee to the Service Provider.

9. If any class will be subject to a Shareholder Services Plan, each Plan Agreement entered into pursuant to the Shareholder Services Plan will provide that, in the event an issue pertaining to the Shareholder Services Plan is submitted for shareholder approval, the Service Provider will vote any shares held for its own account in the same proportion as the vote of those shares held for its customers' accounts.

10. The Fund's Directors will receive quarterly and annual statements concerning 12b–1 Plan and Shareholder Services Plan expenditures complying with rule 12b–1(b)(3)(ii), as it may be amended from time to time. In the statements, only expenditures properly attributable to a particular class will be used to justify any fee charged to that class. Expenditures not related to a particular class will not be presented to the Directors to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the non-interested Director's in the exercise of their fiduciary duties.

11. Dividends paid by the Fund with respect to a class of shares in a Series will be calculated in the same manner, at the same time, on the same day, and will be in the same amount as dividends paid by the Fund with respect to each others class of shares in the same Series, except that Class Expenses and payments made pursuant to a 12b–1 Plan or Shareholder Services Plan will be allocated exclusively to that class.

12. The methodology and procedures for calculating the net asset value and dividend distribution of the various classes and the allocation of expenses among the classes has been reviewed by an expert (the "Expert") who has rendered a report to the Applicants, which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an on-going basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Fund that the calculations and allocations are being made properly. The Expert's report shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The Expert's work papers with respect to such reports, following request by the Fund (which the Fund agrees to provide), will be available for inspection by the SEC staff upon the written request to the Fund for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrators or Associated and Assistant Administrators. The initial report of the Expert will be a "Special Purpose" report on the "Design of a System" and ongoing reports would be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in Statement of Auditing Standards No. 44 of the American Institute of Certified Public Accountants ("AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

13. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividend/distributions of the various classes and the proper allocation of expenses among the classes and this representation has been concurred with by the Expert in the initial report referred to in Condition 12 above and will be concurred with by the Expert or an appropriate substitute Expert on an ongoing basis at least annually in the on-going reports referred to in that condition. Applicants agree to take immediate corrective action if the Expert, or appropriate substitute Expert, does not so concur in the on-going reports.

14. The prospectus of each class will contain a statement to the effect that any person entitled to receive compensation for selling Series shares may receive different compensation with respect to one particular class of shares over another in the Series.

15. The conditions pursuant to which an exemptive order requested by the Application may be granted and the duties and responsibilities of the Directors of the Fund with respect to the multi-class distribution system described in the application will be set forth in guidelines which will be furnished to the Fund's Directors.

16. Each Series will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges, if any, applicable to each class of shares in such series in every prospectus pertaining to such Series, regardless of whether all classes of shares are offered through each prospectus. The Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report pertaining to such Series. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares of a Series, it will also disclose the respective expenses and/or performance data applicable to all classes of shares of such Series. The information provided by Applicants for publication in any newspaper or similar listing of a Series' net asset value and public offering price will present each class of shares separately.

17. Applicants acknowledge that the grant of the exemptive order requested by the Application will not imply Commission approval, authorization or acquiescence in any particular level of payments that the Fund may make pursuant to 12b–1 Plans or Shareholder Services Plans in reliance on the exemptive order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–13216 Filed 6–4–91; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 17–91]

Treasury Notes, Series AB–1993

Washington, May 23, 1991.

The Secretary announced on May 22, 1991, that the interest rate on the notes designated Series AB–1993, described in Department Circular—Public Debt Series—No. 17–91 dated May 16, 1991, will be 6¾ percent. Interest on the notes will be payable at the rate of 6¾ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91–13177 Filed 6–4–91; 8:45 am]

BILLING CODE 4810–40–M

[Supplement to Department Circular—Public Debt Series—No. 18–91]

Treasury Notes, Series P–1996

Washington, May 24, 1991.

The Secretary announced on May 23, 1991, that the interest rate on the notes designated Series P–1996, described in Department Circular—Public Debt Series—No. 18–91 dated May 16, 1991, will be 7⅝ percent. Interest on the notes

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will be payable at the rate of 7¾ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 91-13178 Filed 6-4-91; 8:45 am]

BILLING CODE 4810-40-M

Office of Thrift Supervision

Far West Federal Bank, S.B.; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Far West Federal Bank, S.B., Portland, Oregon (OTS No. 3091), on May 23, 1991.

Dated: May 30, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-13206 Filed 6-4-91; 8:45 am]

BILLING CODE 6720-01-M

Progressive Savings Bank, FSB; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Progressive Savings Bank, FSB, Pasadena, California, on May 24, 1991.

Dated: May 30, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-13207 Filed 6-4-91; 8:45 am]

BILLING CODE 6720-01-M

Boonslick Federal Savings and Loan Association; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Boonslick Federal Savings and Loan Association, Boonville, Missouri ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on May 24, 1991.

Dated: May 30, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-13208 Filed 6-4-91; 8:45 am]

BILLING CODE 6720-01-M

Progressive Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(C) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Progressive Savings Bank, Pasadena, California, OTS No. 6962, on May 24, 1991.

Dated: May 30, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-13209 Filed 6-4-91; 8:45 am]

BILLING CODE 6720-01-M

Security Homestead FSA; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Security Homestead FSA, New Orleans, Louisiana ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on May 24, 1991.

Dated: May 30, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-13210 Filed 6-4-91; 8:45 am]

BILLING CODE 6720-01-M

Sunshine Act Meetings

Federal Register

Vol. 56, No. 108

Wednesday, June 5, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10: a.m., Wednesday, June 5, 1991.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

Section 15 and Section 37 Interpretive Rules.

MATTERS TO BE CONSIDERED: The Commission will consider **Federal Register** documents proposing amendments to the Commission's rules interpreting Section 15 of the CPSA and proposing a rule interpreting Section 37 of the CPSA.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 492-6800.

Dated: May 30, 1991.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 91-13410 Filed 6-3-91; 1:52 pm]

BILLING CODE 6355-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, June 6, 1991.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda Maryland.

STATUS: Open to the Public.

1. Mid-Year Review.

MATTERS TO BE CONSIDERED: The Commission will consider mid-year review issues including proposed operating plan changes and new funding proposals.

2. Reloadable Aerial Shell Fireworks.

The staff will brief the Commission on a final rule to ban reloadable shell devices that use shells larger than 1.75 inches in outer diameter.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 (301) 492-6800.

Dated: May 30, 1991.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 91-13411 Filed 6-3-91; 1:52 pm]

BILLING CODE 6355-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Joint Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet jointly with the Board of Directors of the Resolution Trust Corporation in open session at 2:00 p.m. on Tuesday, June 4, 1991, to consider the following matter:

Statement of Policy Regarding the Payment of State and Local Property Taxes.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Deputy Executive Secretary of the Corporation, at (202) 898-6757.

Dated: May 30, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91-13346 Filed 6-3-91; 12:02 pm]

BILLING CODE 6714-0-M

FEDERAL HOUSING FINANCE BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 56 FR 22198, May 14, 1991.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:30 a.m., Wednesday May 22, 1991.

STATUS: Closed.

CHANGES IN THE MEETING: Addition of the following closed items to the meeting:

- The designation of elected directors' seats in each of the twelve Bank Districts.
- The Housing Finance Directorate Report.
- The Deloitte & Touche contract for audit of the Bank System in 1989.
- The meaning of the term "prior year" as used in 12 U.S.C. § 1441b(f)(2)(C).

CONTACT PERSON FOR MORE INFORMATION: Elaine Baker, Executive Secretary to the Board, (202) 408-2837.

J. Stephen Britt,

Executive Director.

[FR Doc. 91-13337 Filed 6-3-91; 10:32 am]

BILLING CODE 6725-01-M

FEDERAL TRADE COMMISSION

TIME AND DATE: 2:00 p.m., Thursday, June 6, 1991.

PLACE: Federal Trade Commission Building, Room 532, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions Open to Public:

(1) Oral Argument in Coca-Cola Company, Docket 9207.

Portions Closed to the Public:

(2) Executive Session to follow Oral Argument in Coca-Cola Company, Docket 9207.

CONTACT PERSON FOR MORE INFORMATION: Bonnie Jansen, Office of Public Affairs: (202) 326-2161, Recorded Message: (202) 326-2711.

Donald S. Clark,

Secretary.

[FR Doc. 91-13393 Filed 6-3-91; 1:51 pm]

BILLING CODE 6750-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 9:30 a.m., Tuesday, June 11, 1991.

PLACE: Filene Board Room, 7th Floor, 1776 G Street NW., Washington, DC 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meetings.
2. Administrative Actions under Section 201 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9) (A)(ii), and (9)(B).
3. NCUA Delegations of Authority. Closed pursuant to exemption (2).
4. Midsession Budget Review. Closed pursuant to exemptions (2) and (9)(B).

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FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682–9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 91–13381 Filed 6–3–91; 12:15 pm]

BILLING CODE 7535–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 10:00 a.m., Friday, June 14, 1991.

PLACE: Holiday Inn Madison West, Superior Room, 1313 John Q. Hammons Drive, Middleton, Wisconsin 53562, (608) 831–2000.

STATUS: Open.

BOARD BRIEFINGS:

1. Economic Commentary.
2. Central Liquidity Facility Report and Report on CLF Lending Rate.
3. Insurance Fund Report.
4. Long Range Plan Progress Report.
5. Legislative Update.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682–9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 91–13382 Filed 6–3–91; 12:15 pm]

BILLING CODE 7535–01–M

Corrections

Federal Register
Vol. 56, No. 108
Wednesday, June 5, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 56

[Docket No. PY-91-001]

RIN 0581-AA19

Increase in Fees and Charges for Egg Products Inspection and Egg, Poultry, and Rabbit Grading

Correction

In rule document 91-10070 beginning on page 19542, in the issue of Monday, April 29, 1991, make the following correction:

§ 56.52 [Corrected]

On page 19543, in the third column, in § 56.52, in the first line of the heading, "performance" should read "performed".

BILLING CODE 1505-01-D

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Labeling Requirements for Art Materials and Other Products Subject to the FHSA Presenting Chronic Hazards; Guidelines for Determining Chronic Toxicity; Supplemental Definition of "Toxic"

Correction

In proposed rule document 91-8809 beginning on page 15672 in the issue of Wednesday, April 17, 1991, make the following corrections:

The word "casual" should read "causal" in the following places:

1. On page 15675, in the 1st column, in the 1st complete paragraph, in the 17th line.

2. On page 15676, in the first column, (a) in the second complete paragraph, in the first line; (b) in the paragraph designated "i", in the fifth line; (c) in the paragraph designated "ii", in the third and fifth lines; and (d) in the paragraph designated "iii", in the fifth line.

3. On page 15683, in the third column, in the paragraph designated "a." in the third line from the end.

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 90-313; FCC 91-116]

Common Carriers; Operator Service Providers

Correction

In rule document 91-9349 beginning on page 18519, in the issue of Tuesday, April 23, 1991, make the following correction:

§ 64.708 [Corrected]

On page 18524, in the second column, in § 64.708(h), in the next to last line, after "using a" insert "provider of".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-91-4212-24; N-44642]

Realty Actions; Airport Lease Application; Nevada

Correction

In notice document 91-7976 appearing on page 14120, in the issue of Friday, April 5, 1991, in the third column, in the land description, under "T. 19 S., R. 60 E.," the second line of sec. 17 should read "E½SW¼SW¼, NW¼SW¼SW¼, N½SE¼".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

[T.D. 91-33]

Customs Regulations Amendments Relating to User Fees

Correction

In rule document 91-6789 beginning on page 15036 in the issue of Monday, April 15, 1991, make the following corrections:

1. On page 15037, in the first column, under **Background**, in the first paragraph, in the tenth line, "10 U.S.C." should read "19 U.S.C."

§ 24.17 [Corrected]

2. On page 15038, in the third column, in § 24.17(a)(12), in the third line "purposes" should read "purpose".

§ 24.23 [Corrected]

3. On page 15039, in the first column, in § 24.23(a)(3), in the fifth line"soley" should read "solely", and in the seventh line "consigment" should read "consignment".

4. On the same page, in the second column, in § 24.23(a)(5), in the last line, "proceding", should read "preceding".

5. On the same page, in the same column, in § 24.23(b)(1)(i)(B), in the fifth line, "resepctively" should read "respectively".

BILLING CODE 1505-01-D

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federal register

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Part II

Environmental Protection Agency

40 CFR Part 86

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Gaseous and Particulate Emission Regulations for 1994 and Later Model Year Light-Duty Vehicles and Light-Duty Trucks; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL-3906-2]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Gaseous and Particulate Emission Regulations for 1994 and Later Model Year Light-Duty Vehicles and Light-Duty Trucks; Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule establishes new gaseous and particulate tailpipe emission standards, referred to as the Tier 1 standards, for use in certifying new light-duty vehicles and light-duty trucks. Included are new standards for currently regulated pollutants (carbon monoxide, nitrogen oxides, and particulate matter), as well as the addition of hydrocarbon standards determined on a non-methane basis. In general, the new standards are functions of vehicle class, weight class, engine cycle (diesel or Otto), fuel, and useful life. New intermediate and full useful life levels, as well as new weight classes are defined. Both petroleum and methanol-fueled vehicles are affected by the rule. The new standards are implemented in phases, beginning with the 1994 model year.

In addition, for the first time, separate in-use tailpipe emission standards and useful life levels are created for light-duty vehicles and light-duty trucks. Many aspects of the Tier 1 certification standards apply to the new in-use standards as well, including a phase-in schedule beginning with the 1994 model year, new weight class definitions, and promulgation of both intermediate- and full-life standards. Both the Tier 1 and in-use standards are by and large mandated by the Clean Air Act Amendments of 1990, and EPA is afforded no discretion in the setting of these standards. Accompanying the Tier 1 and in-use standards are a limited number of regulations amending the measurement techniques associated with the emission standards.

EFFECTIVE DATE: This final rule is effective on July 5, 1991.

ADDRESSES: Materials relevant to this final rule are contained in EPA Air Docket LE-131, Attention: Docket No. A-90-43, located at the Air Docket Section, U.S. Environmental Protection Agency, Room M-1500, 401 M Street SW., Washington, DC 20460 telephone (202) 382-7548. The docket may be inspected between the hours of 8:30 a.m. to 12 noon and from 1:30 to 3:30 p.m. weekdays. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: James A. McCargar, Certification Division, U.S. Environmental Protection Agency, Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan 48105. Telephone (313) 668-4244.

SUPPLEMENTARY INFORMATION:

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II. Introduction

The Clean Air Act Amendments of 1990 (hereafter referred to as "the Amendments") were signed into law by the President on November 15, 1990, marking the first significant alteration of this benchmark legislation since 1977. A cornerstone of the Amendments was a set of revisions to the Federal Motor Vehicle Control Program, including revised certification tailpipe emission standards for all light-duty vehicles (LDVs) and light-duty trucks (LDTs). These new standards, commonly referred to as the Tier 1 standards, were prescribed in section 203 of the Amendments, which added new sections 202(g) and 202(h) to the Clean Air Act ("CAA" or "the Act"). The Tier 1 requirements were required to be phased in beginning with the 1994 model year. Section 203(d) of the Amendments called upon the Environmental Protection Agency (EPA, or the Agency) to promulgate the new standards and the "measurement techniques on which such standards are based" within 180 days of enactment of the Amendments.

Most of the Tier 1 standards themselves are explicitly prescribed in the Amendments. Nevertheless, upon review of the final language of the Amendments, the Agency determined that its statutory obligations could not be met by simply promulgating the Tier 1 standards and procedures directly in a final rule. Certain issues, notably the methods for determining compliance with the phase-in of the standards, enforcement based on noncompliance with the phase-in, and the choice of measurement techniques for certain newly-regulated pollutants, promised to involve sufficient EPA discretion to justify an Agency proposal and opportunity for public comment before development and promulgation of a final Tier 1 rule.

The need for new measurement technique regulations was apparent in two cases: Non-methane hydrocarbon (NMHC) measurement for all light-duty vehicles and particulate measurement for Otto-cycle vehicles and light trucks. Agency regulations were in place for the remaining pollutants and standards; Section 203(d) of the Amendments did not require EPA to promulgate new measurement techniques in such cases.

In the course of developing a Tier 1 Notice of Proposed Rulemaking (NPRM), the advantage of coupling one closely related requirement to the Tier 1 rule became clear. Section 210 of the Amendments modified section 207(c) of the Act by establishing new tailpipe emission standards for LDVs and LDTs for purposes of determining in-use compliance and liability for recall. Although the statute itself sufficed to implement these new in-use requirements, they are closely related to the Tier 1 certification standards; concurrent promulgation promised to clarify the rights and obligations of the regulated community in certification as well as in-use.

The NPRM proposing the Tier 1 regulations was published in the **Federal Register** on March 7, 1991 (56 FR 9754). The notice integrated the Tier 1 requirements of the Amendments into the structure of EPA's existing regulations and outlined the issues of potential interest to commenters. A public hearing was held at the Agency's Motor Vehicle Emission Laboratory in Ann Arbor, Michigan, on March 26, 1991, where oral and written statements in response to the NPRM were submitted. Seventeen individuals or organizations contributed comments to the docket, either during the public hearing or during the ensuing comment period. Comments were accepted to the docket for 30 days following the public hearing, through April 25, 1991.

The two following sections of this preamble describe the approaches that have been adopted in the final rule (section III) and the consideration of public comment that led to those approaches (section IV). The final sections of the preamble describe the economic, environmental, and cost-benefit impacts of the rule, and certain administrative requirements.

III. Description of the Action

A. Certification Standards

The new light-duty tailpipe certification standards promulgated in today's action are taken explicitly from the Amendments. As mentioned previously, promulgation of the standards themselves within 180 days was required by section 203 of the Amendments.

The Agency has continued the conventions brought forward in the NPRM for the naming of the various categories of emission standards. Thus, consistent with common usage during Congressional action on the Amendments, EPA uses the term "Tier 1" to refer to the new light-duty certification standards and useful life levels chosen by Congress for implementation beginning in the 1994 model year. The new term "Tier 0" refers generally to the light-duty tailpipe standards and associated useful life levels currently in place.

Congress prescribed several determinants of the Tier 1 emission standards to be applied to a given vehicle. Among them are the vehicle type (LDV or LDT), weight, engine cycle (Otto or diesel), motor fuel, and vehicle useful life. In addition, the new standards are phased in beginning with the 1994 model year; that is, minimum percentages of vehicles of a given vehicle type in a given model year must meet the Tier 1 standards, and the balance must meet the older Tier 0 standards.

The traditional separation of LDV and LDT requirements into distinct sections of the regulations is perpetuated in the Tier 1 rule. Given the complexity of the system for determining the appropriate emission standards for a vehicle, EPA has chosen for the first time to promulgate the certification emission standards in tabular form; thus, the LDV and LDT sections contain the tables of standards which are appropriate to the respective vehicle type.

Within the LDTs, the historical division according to Gross Vehicle Weight Rating (GVWR) is maintained, with LDTs up through 6000 lbs gross vehicle weight rating (GVWR) generally having distinct standards from LDTs of greater than 6000 lbs GVWR. Again for convenience, EPA is adopting the terms "light light-duty trucks" (LLDTs) and "heavy light-duty trucks" (HLDTs) to distinguish these two truck categories based on GVWR. Standards for the two light truck classes are contained in separate sets of tables.

For the most part, the standards applicable to the LLDTs correspond to the standards for LDVs, acknowledging the similar weights, engines, and emission controls shared by the vehicles and the lighter trucks.

Based on the requirements of the Amendments, each of the two light truck categories is further subdivided into two groups by weight, but the weight definitions differ. The LLDTs are split at 3750 lbs "loaded vehicle weight," or LVW, which maintains its current definition: curb weight plus 300 lbs. The trucks up through 3750 lbs LVW make up a subclass called light-duty-trucks-1, or LDT1. Those greater than 3750 lbs LVW but less than or equal to 6000 lbs GVWR are the subclass light-duty-trucks-2, or LDT2. Thus, the subclasses of LDT1 and LDT2, defined by loaded vehicle weight, make up the LLDT vehicle class.

The HLDTs are divided at 5750 lbs "adjusted loaded vehicle weight," or ALVW. Adjusted loaded vehicle weight is the average of curb weight and GVWR; in essentially all cases, ALVW will therefore exceed LVW. The HLDTs that are up through 5750 lbs ALVW are called light-duty-trucks-3, or LDT3. Those above 5750 lbs ALVW but less than or equal to 8500 lbs GVWR (the upper bound of the light-truck category) are light-duty-trucks-4, or LDT4.[1] Thus, the LDT3 and LDT4 subclasses, defined by adjusted loaded vehicle weight, together make up the HLDT vehicle class.

The Agency has also adopted the new term "equivalent test weight basis," or more simply, "test weight basis," in this rulemaking. This is the basis on which the equivalent test weight (ETW) is determined, for purposes of setting the chassis dynamometer and loading the vehicle for testing. The test weight basis for both subclasses of LLDTs is loaded vehicle weight; the test weight basis for the two HLDT subclasses is adjusted loaded vehicle weight. This change is reflected in the table and associated text of the § 86.129-94, "Road load power test weight and inertia weight class determination."

Two other determinants of the tailpipe standards are motor fuel and engine cycle. Thus, for example, some standards might apply only to diesel-fueled LDTs or only to diesel-cycle LDVs.

The final significant determinant of the Tier 1 standards is vehicle useful life. Section 203 of the Amendments established new useful life levels both by amending section 202(d) of the Clean Air Act and by setting emission standards that apply at specific mileage intervals. In general, the Amendments prescribe both intermediate- and full-useful-life standards for each vehicle subclass. For LDVs and the LLDTs, the Tier 1 standards prescribed in sections 202(g) and 202(h) are established at the intermediate useful life of five years or 50,000 miles (5/50,000), whichever occurs first, and a full useful life of ten years or 100,000 miles (10/100,000), whichever occurs first. The analogous intermediate- and full-useful-life levels for the HLDTs are 5/50,000 and 11/120,000, respectively. Measured against the Tier 0 useful-life levels, the effect is to add a 10/100,000 useful life requirement for light-duty vehicles, a 5/50,000 requirement for all light-duty trucks, and to truncate the full-life level for light light-duty trucks, which is currently 11/120,000.

Changes in the useful lives for the various vehicle classes will dictate changes in EPA's durability program, but such changes were not required within the 180-day deadline for promulgation of the Tier 1 rule. Consequently, the Agency is pursuing a separate rulemaking to revise the light-duty durability procedures. A public workshop on this topic was held on January 30, 1991, as the first step in that process.[2]

For similar reasons, and as indicated in the NPRM, the continued availability of nonconformance penalties (NCPs) for heavy light-duty trucks certifying to Tier 1 standards will also be addressed separately. The Amendments include no requirements for NCPs for the heavy

[1] As noted in the Tier 1 NPRM, Section 233(a) of the Amendments (new section 216(8) of the Act) defines "test weight" as the average of the curb weight and GVWR. The Agency chose to use the term "adjusted loaded vehicle weight" in place of the "test weight" term from the Amendments, in order to prevent confusion with the term "equivalent test weight," which is used interchangeably with "test weight" throughout current regulations and EPA test procedures.

[2] The Notice of Public Workshop, with a detailed description of the issues for the durability rulemaking, may be found at 55 FR 52277 (December 21, 1990).

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light-duty truck fleet. Determining the appropriateness of NCPs within the new statutory context, as well as considering for which standards NCPs might be offered and what penalty rates would be appropriate, was neither mandated nor practical within the six-month Tier 1 timeline.

The pollutants encompassed by the Tier 1 standards are hydrocarbons, carbon monoxide (CO), nitrogen oxides (NOx), and particulate matter (PM), all measured in grams per mile (g/mi). Hydrocarbons are designated as total hydrocarbons (THC) and non-methane hydrocarbons (NMHC) for gasoline and diesel-fueled engines, and are designated as organic material hydrocarbon equivalents (OMHCE) and organic material non-methane hydrocarbon equivalents (OMNMHCE) for methanol-fueled engines.

The complexity in the array of standards determined by the various factors cited above precludes a comprehensive itemization in this preamble. However, adoption of the Tier 1 standards brings with it several elements worthy of note. First, NMHC standards are established for all gasoline- and diesel-fueled LDVs and LDTs; numerically equivalent OMNMHCE standards are established for equivalent useful lives for methanol-fueled vehicles. As noted in the NPRM, the application of the Tier 1 standards to methanol-fueled vehicles was consistent with the approach taken in the Agency's 1989 promulgation of methanol vehicle standards comparable in stringency to those applicable to conventional vehicles. Second, the Tier 0 THC and OMHCE standards for these same vehicle groups are carried forward into Tier 1. The 50,000-mile CO standards are left intact for light-duty vehicles, but the full-life CO standards are made more stringent for all subclasses of light-duty trucks. The NOx standards are tightened for both vehicles and light trucks. The PM standards are tightened for diesel-cycle light-duty vehicles and light-duty trucks; particulate standards are also applied for the first time to Otto-cycle engines.

The phase-in of the Tier 1 CO, NOx, NMHC, and OMNMHCE standards begins in the 1994 model year, when at least 40 percent of a manufacturer's actual sales of LDVs and LLDTs must meet the new standards. In the 1995 model year, the minimum sales requirement for these pollutants and vehicle subgroups reaches 80 percent. For each of the model years 1994 and 1995, the final rule provides the option for manufacturers to combine the LDVs and LLDTs into a single pool for determination of compliance with the phase-in percentages for the indicated pollutants. All LDVs and LLDTs must comply with the Tier 1 standards for these pollutants in model year 1996.

Particulate standards are applied to Otto-cycle vehicles for the first time, and they continue to apply to diesel-cycle vehicles. The Tier 1 particulate standards for LDVs phase in according to the same schedule as the Tier 1 NMHC, CO, and NOx standards. The three-year phase-in of the LLDT particulate standards, however, begins one year later, in model year 1995. Because the phase-in schedules of the particulate standards do not coincide, EPA does not permit the merging of the LDV and LLDT categories for determining compliance with the PM phase-in percentages. Thus, 1995 model year LDVs must comply with the Tier 1 PM standards at an 80 percent or better rate, while the LLDTs of the same model year must comply at a 40 percent or better rate.

Heavy light-duty trucks begin the phase-in of all pollutants in the 1996 model year at 50 percent of actual sales and reach 100 percent the following year.

Because the Agency anticipates no compliance problems for current-technology Otto-cycle vehicles and light trucks tested for particulate on current certification fuels, waiver provisions are included for that testing. A similar waiver option is provided for compliance with the THC standard, where the new NMHC standards are anticipated to be controlling. The technical justifications for these waivers are discussed in greater detail in the sections to follow.

Another Tier 1 standard of note is the NOx standard for diesel-fueled light-duty vehicles and LDT1s. Beginning with the 1994 model year, the intermediate useful life NOx standard for these vehicles is 1.0 g/mi, rising to 1.25 g/mi at full useful life. The comparable standards for non-diesel vehicles at intermediate and full useful life are 0.4 and 0.6 g/mi, respectively.

Current EPA regulations do not permit averaging for light-duty vehicles or light-duty trucks, except for PM in the case of light-duty vehicles and PM and NOx for light-duty trucks. These provisions are unaltered for vehicles certifying to the Tier 0 standards. As stated in the NPRM, averaging is not permitted for any of the Tier 1 standards.

The standards of the Tier 1 regulations are written to apply to all manufacturers. However, the Agency recognizes that small volume manufacturers, with a limited number of families as candidates for Tier 1 compliance, would have been granted little or no flexibility by the phase-in. In addition, the reliance of such manufacturers on the larger companies for vehicle components limits their available vehicle design options; thus, a strict requirement that each manufacturer meet the phase-in percentages could place the small volume manufacturers at a competitive disadvantage, potentially causing market distortions. Finally, because the proportion of annual U.S. sales attributable to small volume manufacturers is so small (less than 0.1%), EPA considers the air quality effects to be *de minimis*. Therefore, manufacturers that meet the EPA definition for small volume manufacturer status are exempted from the minimum phase-in percentages until the final year (that is, the full compliance year) of each phase-in. Small volume manufacturers include independent commercial importers as defined in 40 CFR part 85, subpart P.

The Tier 1 standards promulgated here are "all-altitude" standards. The one exception is THC (or OMHCE, in the methanol-fueled vehicle case). As mentioned above, the current THC and OMHCE standards are carried forward intact for vehicles certifying to the Tier 1 standards; thus the separate high- and low-altitude THC and OMHCE standards from current regulations apply to the Tier 1 vehicles as well. However, section 230(8)(C) of the Amendments generated a change to section 206(f) of the Act that requires model year 1995 and later light-duty trucks to comply with emission standards regardless of altitude. In effect, this eliminates separate LDT high altitude standards, as well as the performance adjustments previously required to enable light-duty trucks to meet the high altitude standards, beginning in model year 1995. Thus, the separate high- and low-altitude standards carried forward for Tier 1 vehicles are available only for model year 1994, and the high-altitude provisions of current regulations remain in place only for model year 1994 vehicles certifying to the Tier 0 standards. The so-called low-power exemptions available under the current regulations for vehicles certifying to all-altitude standards are carried forward to Tier 1 vehicles, as for example in § 86.094-9 (h) through (i).

B. In-Use Standards

The new tailpipe in-use standards in today's rule represent a change in the structure of standards applicable to certified vehicles. In the past, the standards applied in-use were the standards to which vehicles had been certified. Section 210 of the Amendments, however, modified CAA section 207(c) by establishing separate in-use standards, which sometimes differ from certification standards, for NMHC, CO, and NOx.

The in-use standards promulgated here are those prescribed in section 210. Where no separate in-use standards were prescribed in the Amendments (as for total HC and PM), the general rule currently followed is observed and the certification standard will apply for in-use purposes as well as for certification purposes. This new structure of standards is accommodated in today's rule by the creation of the new subpart H. No longer will subpart A be the only place one must look in the regulations to find standards that apply to a given vehicle. For a discussion of the phase-in schedule and how minimum percentages are determined, see the later discussion entitled "Phase-in Enforcement."

The use of the terms "Tier 1" and "Tier 0" in the in-use context is consistent with their use for certification purposes, including the carryover of the THC standards from Tier 0 into Tier 1. In addition, the nature of the phase-in for in-use purposes has required a third term, Tier 1_i to indicate those "interim" in-use Tier 1 standards which are phased-in beginning in model year 1994 and phased-out by model year 1998 and which have only one useful life period of 5 years/50,000 miles.

One other aspect of the in-use and certification tables of standards deserves mention. In several of the in-use tables, intermediate useful life standards that are numerically equivalent to the full-life in-use standards are provided, although these intermediate standards do not appear in the statute.[3] They are included because conformance with the full-life in-use standards implies conformance at prior mileages; providing no number in the intermediate-life table would have implied that no nonconformance liability existed at the intermediate mileage. In the parallel points of the intermediate useful life certification tables, the only entries are those actually specified in the statute or those (such as THC) which carry forward from previous requirements. Full-life values are not "carried back" into the certification intermediate-life tables, lest they imply an obligation for the manufacturer to submit additional deterioration calculations or determinations of conformity at the intermediate useful life mileage.

The basic divisions described previously for the certification standards apply to the in-use standards as well. Generally the Tier 1 standards are phased in for in-use purposes on a schedule delayed from the certification schedule by two years. However, one additional complexity exists only in the in-use standards: the interim standards referred to previously. These standards, which phase in on the same schedule as the Tier 1 standards for purposes of certification, are applicable for only 5 years/50,000 miles and are slightly higher numerically than the Tier 1 standards.

As previously explained, current EPA regulations which permit averaging of light-duty vehicles for particulate and light-duty trucks for particulate and NOx remain unaltered for vehicles certified to the Tier 0 standards. However, no averaging of families certified to either the Tier 1_i or the Tier 1 standards is allowed.

C. Measurement Techniques

As mentioned in the "Introduction", modifications to the current EPA measurement procedures in this final rule are limited to regulations that address the addition of the Tier 1 NMHC standards and the extension of PM standards to Otto-cycle vehicles and light trucks.

The NMHC measurement technique promulgated by EPA is the method currently employed by the California Air Resources Board for certification testing of vehicles destined for sale in California.[4] The method relies on measurement of the methane fraction in the dilute exhaust sample, which is otherwise gathered for measurement of THC, CO, and NOx according to existing Federal test procedure regulations. NMHC is determined by subtracting the methane fraction from THC; total hydrocarbons are measured exactly as in the current Federal regulations, with a separate flame ionization detector (FID). The additional equipment required includes a gas chromatograph to remove the non-methane fraction and a FID to measure the remaining methane. The regulations are also adapted to include methane calibration gases and calibration procedures and insertion of NMHC into the mass emission calculations.

The California NMHC techniques are currently in use by vehicle manufacturers seeking to introduce vehicles into commerce in California and by EPA in confirmatory testing of vehicles with California certification. Thus, the hardware and associated techniques are already available, and both EPA and the manufacturers have familiarity with applying those techniques to the emissions certification of light-duty vehicles and light-duty trucks.

Measurement of particulate emissions from Otto-cycle light-duty vehicles and light-duty trucks also necessitated the promulgation of measurement technique regulations. Although the authority to regulate such emissions was provided in section 202(a)(1) of the Clean Air Act, EPA has previously declined to do so because, based on the best available data, there was no basis for anticipating compliance problems from catalyst-equipped Otto-cycle vehicles. In 1980, EPA found the particulate emissions from a typical catalyst-equipped gasoline-fueled vehicle to be 0.008 g/mi, or about one fortieth the emissions of comparable diesel-fueled vehicles.[6] Final particulate regulations were adopted by EPA in that year, applicable only to diesel light-duty vehicles and light-duty trucks, beginning with the 1982 model year. Diesel vehicles certified to the new standards were still projected to emit fifteen times the particulate of a typical catalyst-equipped gasoline vehicle.[6] [7]

While no measurement technique regulations for Otto-cycle particulate emissions have previously been necessary, related techniques have existed since 1984 for diesel-cycle light-duty vehicles and light-duty trucks, groups that are subject to the same Tier 1 particulate standards as the Otto-cycle vehicles. These diesel-cycle particulate techniques are based upon measuring the particulate mass of a proportional sample of the exhaust, collected on a filter and corrected for the total system flow. The sampling system is based upon a constant volume sampler employing either a positive displacement pump or a critical flow venturi; in either case, the systems make

[3] Thus, for example, the intermediate-life 0.98 g/mi diesel NOx standard from Table H94-15 matches the full-useful life standard in Table H94-16.

[4] "California Non-Methane Hydrocarbon Test Procedures," State of California Air Resources Board (May 24, 1978, as amended May 15, 1990, and effective July 15, 1991). Available in the public docket for review. Proposals before the Board, but not yet adopted, would amend the California procedures somewhat. A discussion of this issue appears in the Public Participation section.

[6] "Regulatory Analysis: Light-Duty Diesel Particulate Regulations," MSAPC, EPA, pp. 5, 37 (February 20, 1980).

[6] "Standard for Emission of Particulate Regulation for Diesel-Fueled Light-Duty Vehicles and Light-Duty Trucks," 45 FR 14496 (March 5, 1980)

[7] "Regulatory Analysis: Light-Duty Diesel Particulate Regulations," MSAPC, EPA, p. 17 (February 20, 1980).

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use of a dilution tunnel and heat exchanger.

The Otto-cycle particulate measurement technique is accommodated by simple extensions of the diesel-cycle particulate regulations to Otto-cycle vehicles. Light-duty vehicles and light-duty trucks which are tested for particulate will therefore require a site equipped with a dilution tunnel, heat exchanger, and a constant volume sample based on either a positive displacement pump or a critical flow venturi. The particulate sampling is accomplished by drawing a proportional sample of the exhaust through a filter which is then subjected to precision weighing, as in the diesel-cycle case.

Nevertheless, the Agency continues to believe that Otto-cycle vehicles are not likely to exceed particulate standards when tested on existing certification test fuels. On that basis, and as noted above, a waiver provision is provided that may preclude the need for a manufacturer to perform PM testing on its Otto-cycle vehicles. If a waiver is granted, however, vehicles remain subject to the standard and, therefore, may be confirmatory tested at EPA's option.

D. Selective Enforcement Auditing

For purposes of Selective Enforcement Audit (SEA) testing, the Administrator is authorized to test new motor vehicles in order to determine whether vehicles being manufactured by a manufacturer do, in fact, conform with the regulations with respect to which a certificate of conformity was issued. Therefore, vehicles certified to meet Tier 1 standards are subject to such standards in an SEA.

The Agency has not determined its plans with regard to testing Otto-cycle engines for particulate emissions in the SEA program. However, EPA is charged with the responsibility to enforce the Act and believes it appropriate to have the right to include such testing in an SEA audit. The EPA recognizes that many current Otto cycle vehicles are inherently low in particulate output relative to the standards and that particulate testing such vehicles may therefore serve a limited purpose. Consequently, the final rule includes a minor revision to the certification regulations regarding selective enforcement audits to permit manufacturers to request the omission of particulate measurement during Otto cycle testing.

E. Recall

Section 86.094–2 of this rule establishes useful life periods for light-duty vehicles, light light-duty trucks, and heavy light-duty trucks. In the event that the Administrator finds that any class or category of vehicles fails to conform to the applicable emission standards as determined by section 207(c), the manufacturer shall be required to remedy, at the manufacturer's expense, all properly maintained and used vehicles which experienced the nonconformity during their useful lives, regardless of the vehicle's age and mileage at the time of the remedy.

While the in-use useful life period is in many cases extended to 10 years/100,000 miles, no recall testing of vehicles will occur beyond 7 years/75,000 miles. Similarly, where the in-use useful life is extended to 11 years or 120,000 miles, recall testing will be limited to 7 years or 90,000 miles. These limitations on recall testing are required by sections 202(d)(1) and 207(c)(5–6) of the Act.

F. Phase-in Enforcement

This section provides a summary of how a manufacturer must comply with the phase-in schedules of the Tier 1 certification standards and final in-use standards. For purposes of discussion the Tier 1 and final in-use standards will be collectively referred to as phase-in standards. In addition, the interim in-use standards are phase-in standards in model years 1994 and 1995 and phase-out standards in model years 1996 and 1997.

Phase-in enforcement was the facet of the proposed rule which received the most comment. The phase-in enforcement policy encompasses a number of important elements, including the use of actual sales as the basis for phase-in compliance, the legitimacy of using production data in lieu of actual sales data, credit for vehicles certified for sale in California or states adopting California emission standards, and whether the certificates for entire engine families are to be voided for phase-in noncompliance. These issues are only of significance where the phase-in percentages are less than full compliance; once the compliance requirement reaches 100 percent, the additional reporting requirements regarding sales information, and enforcement with respect to the phase-in, disappear. The final rule, which combines elements of both the California enforcement program and EPA's NPRM, will result in added flexibility to the manufacturing industry in complying with the statutory requirements of the Act.

In reviewing the statute and the legislative history, EPA has concluded that Congressional intent was to base phase-in compliance on actual sales. In addition to a plain language reading of the statute itself, this position is supported by the conference report which states that the phase-in schedules apply to a specified percentage of "vehicles sold." [8]

However, EPA has considered that the submittal of actual production data could be equivalent to submittal of actual sales data. Therefore, as stated in the NPRM, compliance with the phase-in of Tier 1 standards will be determined based upon actual sales, but the final rule allows a manufacturer to request permission to submit actual production data rather than actual sales data so long as the manufacturer can demonstrate to EPA that production and sales data are functionally equivalent. In order to use production data rather than actual sales, a manufacturer must petition the Agency by providing information demonstrating functional equivalence of production and sales data. Such petition shall be made to the Manufacturers Operations Division no later than 30 days following the end of the model year. Approval of the use of production data will be presumed unless otherwise notified by the Agency within 30 days of submittal. EPA retains the authority to determine actual sales data independently in order to confirm that there is no significant discrepancy between actual sales and production numbers.

The Agency proposed in the NPRM that vehicles sold in California and in states adopting the California program via section 177 of the Act (hereafter referred to as "section 177 states") be excluded from the calculation of a manufacturer's compliance with the Tier 1 phase-in requirements. Based upon comments received from several manufacturers, EPA has decided to allow the manufacturer to include California sales and sales to section 177 jurisdictions in determining compliance with the phase-in schedule. For EPA to make a compliance determination at the time of certification, a manufacturer must submit in the application for certification its projected sales in the United States for all relevant vehicle classes; this submission may include sales in California and section 177 states. Having chosen to include the California and section 177 vehicles in its applications for certification, the manufacturer will be evaluated for actual sales compliance on the same basis.

Since EPA has decided to permit vehicles sold in California and section

[8] H.R. Rep. 101–952, Clean Air Act Amendments of 1990, Conf. Rep. to Accompany S. 1630, at 337 (Oct. 26, 1990).

177 states to count against the phase-in requirements, the location of the ultimate purchaser is no longer relevant for phase-in enforcement purposes. Therefore, EPA has decided to define actual sales as sales to dealers, distributors, fleet operators, brokers, or any other entity which comprises the point of first sale.

Based in part upon the comments received, EPA has decided to enforce the phase-in percentages on a per vehicle basis rather than voiding the certificate of conformity for engine family(ies) which cause the manufacturer to exceed the percentage limitations. Therefore, each vehicle certified to the phase-out standards but sold in excess of the allowed percentages will be viewed as a vehicle sold in violation of the terms in which the certificate of conformity was issued and, therefore, as a vehicle which is not covered by a certificate of conformity for purposes of the Act.

While the existence of a violation will depend solely on whether the manufacturer achieves the applicable phase-in percentage, the Agency reserves the right to exercise enforcement discretion in the assessment of civil penalties for that violation. The EPA recognizes that a manufacturer, notwithstanding its best efforts, may fail to achieve the required phase-in percentage due to circumstances beyond its control (e.g., a fire at a plant that produces Tier 1 vehicles). Thus, in seeking civil penalties for a violation, EPA will exercise its enforcement discretion according to the circumstances surrounding a violation. In practice, EPA does not intend to bring an enforcement action against a manufacturer if both of the following circumstances exist: the shortfall in actual sales from the required percentage is less than or equal to ten percent of the required phase-in percentage, and there is no indication that the shortfall resulted from bad faith on the part of the manufacturer.

For example, when a 40 percent phase-in requirement applies, ten percent of the phase-in requirement would be four percent. Thus, the lower bound for the first criterion would be 36 percent (40 percent less four percent). In this case, EPA does not intend to bring an enforcement action against a manufacturer if the manufacturer obtained Tier 1 sales of 36 percent during the model year, and there was no indication that any shortfall was a result of bad faith. By a similar computation for a case where the phase-in requirement is 80 percent, EPA would not initiate enforcement action if the Tier 1 sales were 72 percent or greater and there was no indication that the shortfall was a result of bad faith on the part of the manufacturer. As mentioned above, application of this enforcement policy applies only to cases where the phase-in levels are below 100 percent; in the full-compliance years, all vehicles must comply with the applicable standards.

If the Agency determines that an enforcement action is appropriate, EPA would, of course, have some discretion in choosing the appropriate penalties. Such penalties would be assessed on the basis of the deviation between the required phase-in percentage (for example, 40 or 80 percent) and the percentage of Tier 1 sales actually achieved. The Agency will consider mitigating factors such as the voluntary recall of vehicles certified to phase-out standards.

IV. Public Participation

A number of interested parties commented on EPA's March 7, 1991, NPRM. The comments include written submittals to the rulemaking docket and those presented at the March 26, 1991, public hearing, which was held in Ann Arbor, Michigan. The Agency has fully considered these comments in developing today's final rule.

The following section presents a brief synopsis of the comments received on the NPRM and the EPA responses to those comments. A separate and more detailed Summary and Analysis of Comments on the NPRM has been prepared, and is available in the public docket. The interested reader is referred to that document for a more complete discussion of the comments, including some of the minor concerns which, though evaluated, are not presented here.

A. Scope of the Rulemaking

Summary of the Comments

In overview, the motor vehicle manufacturers and their associations acknowledged the need for improving air quality, and noted that they support the Tier 1 standards in general. However, a common theme throughout manufacturer comments was that the EPA should conform closely to the requirements mandated in the 1990 Amendments and avoid the promulgation of additional, discretionary requirements. California's approach to a set of standards similar to Tier 1 was often cited as the model for the Amendments, and the manufacturers based many of their recommendations on their stated belief that Congressional intent was to not deviate from that model in any significant way.

These general comments by the manufacturers served as the foundation for their comments on a range of specific issues. Most prominent among these were comments on implementation of particulate standards (PM) for Otto-cycle vehicles, retention of the total hydrocarbon (THC) standard, the basis for determining compliance with phase-in percentages, and the enforcement system to be implemented in cases of noncompliance with the phase-in requirements. Also addressed was the applicability of the Tier 1 phase-in requirements to small volume manufacturers. By and large, the manufacturers agreed on the suggested changes to the rule in these areas of concern.

With few exceptions, the remaining commenters tended to focus on a subset of the same issues that were raised by the manufacturers. Questions and comments from Rep. Dingell addressed aspects of the phase-in and the PM standard. Rep. Waxman also addressed phase-in issues, but added comments on the high altitude provisions and the implications of the Tier 1 rule for subsequent Tier 2 regulations. Comments from the American Gas Association and Natural Gas Vehicle Coalition (AGA/NGVC) focused on retention of the THC standard and the applicability of the NMHC standard to vehicles fueled with compressed natural gas (CNG). The California Air Resources Board (CARB) submitted information on the compliance and enforcement aspects of phase-in approaches in the California motor vehicle control program.

EPA Response to the Comments

In general, EPA agrees with commenters that this rulemaking should conform closely to Congressional intent and should limit the number of additional, discretionary requirements. However, the Agency disagrees in several instances with commenters' legal interpretation of the statutory language, as well as their reading of Congressional intent. Specifically, EPA believes that the statute requires continuation of the total HC standard as well as application of the PM standard to Otto-cycle vehicles, and that the legislative history supports this view of these provisions. The Agency has also determined that, while Congress indeed used the California Tier 1 program as a general model for the Federal requirements, it did not intend to follow the California program in each and every respect.

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On the other hand, EPA has reconsidered its position on several discretionary issues based on comments received. These areas include the grouping of vehicles for the phase-in, implementation of the phase-in percentages with regard to small volume manufacturers, the basis for determining compliance with the phase-in and subsequent enforcement provisions in cases where the percentages are not met, and inclusion of vehicles sold as part of the California Tier 1 program in the Federal phase-in.

Finally, the final rule has been changed from that proposed to incorporate two sets of technical changes. The first involves deletion of standards for the 2004 model year. The second concerns high altitude provisions for 1995 and later model year light-duty trucks.

These issues are discussed in the following sections. As noted above, additional detail on these topics, as well as a discussion of several minor topics which do not warrant attention here, is provided in the Summary and Analysis of Comments available in the docket.

B. Particulate Standards Applied to Otto-Cycle Vehicles

Summary of the Proposal

The NPRM proposed for the first time to apply PM standards to Otto-cycle vehicles, including those fueled by gasoline or methanol. Agency legal staff determined that sections 202(g) and (h) of the revised Act do not permit EPA to limit the application of the Tier 1 PM standards to diesel-fueled vehicles. Analysis by technical staff indicated that current-technology Otto-cycle vehicles operating on existing certification fuels would pose no compliance problems under the new standards. On this basis, a waiver system was proposed in the NPRM, allowing manufacturers to demonstrate compliance with engineering analyses or test data. As a safeguard against currently unforeseen compliance problems, EPA reserved the right to perform confirmatory tests during certification and Selective Enforcement Audit (SEA) tests during production.

Summary of the Comments

Numerous manufacturers and MVMA commented that the application of particulate standards to Otto-cycle vehicles was wasteful and burdensome. Several of these commenters, including Rep. Dingell, disputed EPA's claim that it lacked discretion on promulgation of the Otto-cycle particulate standards and predicted no air quality benefit associated with the standards. A legal analysis focused on an interpretation that the wording of the statute itself (section 202(g) of the revised Act) refers to the regulations currently in existence, which apply only to diesel vehicles. These commenters contended that the legislative history does not indicate Congress intended to expand the application of particulate standards beyond diesel-fueled vehicles.

Commenters on this issue supported EPA's judgment on the lack of a compliance threat from current vehicles tested on conventional certification fuels and, thus, concluded promulgation of the new PM standards was unnecessary. The MVMA and several manufacturers noted, however, that despite the testing waiver provision, they might nevertheless feel compelled to perform PM testing as a defense against potentially erroneous EPA confirmatory testing indicating failure of the standard. The lack of necessary testing facilities and the costs for constructing or upgrading sites to accommodate such testing were cited as unduly burdensome for the achieved benefit. One manufacturer commented that separate dilution tunnels would be necessary for diesel testing and gasoline/methanol testing, with a concomitant need for new testing facilities.

Some suggestions were made to reduce the testing burden in the event that the PM standards were retained for Otto-cycle vehicles. One manufacturer suggested modifications to the waiver provisions that would limit the reporting and testing requirements necessary to obtain a waiver by ruling out the need for new testing by every manufacturer, allowing a single waiver for a manufacturer's entire fleet, and providing for multi-year waivers. Another manufacturer suggested "market surveillance or periodic particulate surveys" as a mechanism to accomplish EPA monitoring of actual PM performance.

EPA Response to the Comments

The EPA disagrees with the comments regarding its ability to limit the Tier 1 PM standards to diesel-fueled vehicles. The Agency believes that the commenters' interpretation of the statute is erroneous. With respect to PM standards, neither section 202(g)(2), for LDVs and LLDTs, nor section 202(h), for HDLTs, indicates that the PM standards should be applied only to diesel-fueled vehicles. In contrast, other sections of title II expressly differentiate between gasoline and diesel-fueled vehicles (*see, e.g.*, sections 202(g)(1), 202(h), 202(k), and 207(c)(4)). Congress was clearly capable of stating that standards apply only to diesel or to gasoline-fueled vehicles when it desired to do so, and the lack of any such specification with respect to PM standards leads to the conclusion that Congress did not intend to limit the applicability of PM standards to diesel-fueled vehicles.

The Agency believes that the waiver provision as included in the proposal adequately addresses concerns about an unnecessary PM testing burden in those cases where there is little actual risk of a compliance problem. It is EPA's intention and conclusion that a manufacturer shoul ` face no obligation to build new PM testing facilities, either at development sites or at manufacturing facilities, as long as it continues to believe no PM compliance problems exist for its Otto-cycle vehicles. In the limited cases where a manufacturer possesses not even a conventional diesel facility capable of use for Otto-cycle testing, contracted services could suffice to provide the minimal engineering data necessary to support a petition for waiver.

The Agency structured the confirmatory and SEA testing options not to scrutinize vehicles which it knows to have negligible chance of failure, but rather to protect its legitimate right to confirm or audit the performance of test vehicles when good judgment points to the need. Thus, the Agency has no specific plan on routinely testing a sample of Otto-cycle vehicles for PM, nor does it see the need for manufacturers to routinely perform such tests at this time. Thus, EPA projects no facility upgrade costs. On the other hand, if a manufacturer determines that there is sufficient cause for concern with one of its new designs to warrant construction of facilities or pursuit of significant testing, EPA believes it is likewise appropriate that the Agency shall have retained the right to perform confirmatory and SEA tests.

The EPA has considered the impact of back-to-back diesel and gasoline testing in a test cell equipped for PM measurement and finds that vehicle pass/fail decisions should be unaffected. Nevertheless, the Agency is willing to entertain suggestions for accuracy improvements in the PM test procedures as they apply to all vehicles.

The Agency finds it inappropriate to explicitly rule out the need for new testing by every manufacturer in support of requests for Otto-cycle PM waivers, since the manufacturers themselves are in the best position to judge the adequacy of their own data and supporting analysis, and thus the need for additional testing. Agency practice in the evaluation of current waivers clearly allows the applicability of test data and engineering evaluations across a broad range of engine families. However, EPA will require the manufacturer to reapply for the waiver for each new certificate, if merely to state that the standard is addressed through the waiver option. Nevertheless, EPA believes the reporting burdens associated with the waiver are quite limited; thus, the Agency is adopting the Otto-cycle PM waiver option in parallel with existing waivers made available through section 86.090-23 of the current regulations.

C. Retention of Total Hydrocarbon Standards

Summary of the Proposal

Sections 202(g) and 202(h) of the Act require EPA to promulgate new Tier 1 non-methane hydrocarbon (NMHC) standards for LDVs and LDTs. The Tier 1 NPRM proposed these new standards to supplement, rather than replace, the existing total hydrocarbon (THC) standards. Agency legal staff concluded that Congress did not provide discretion for the Administrator to eliminate the THC standards in favor of the new standards.[9]

The Tier 1 NPRM also proposed organic material hydrocarbon equivalent (OMHCE) and organic material nonmethane hydrocarbon equivalent (OMNMHCE) standards applicable to methanol-fueled vehicles. Consistent with the approach in EPA's 1989 methanol rulemaking, the OMHCE and OMNMHCE methanol-vehicle standards were numerically equivalent to the THC and NMHC standards applicable to conventional petroleum-fueled vehicles.

Summary of the Comments

Several manufacturers, MVMA, and AGA/NGVC commented that retention of the THC standard was neither required by statute nor productive in air quality terms. The statutory argument was based on an alternative reading of the legislative history (primarily the committee report on the House-passed bill) and rejection of the Senate-passed language in conference. The MVMA contended, however, that there were some inconsistencies in the legislative history.

The air quality arguments of the commenters concluded that emissions from current vehicles run on conventional petroleum or methanol fuels would be limited by the new NMHC standards, not the old THC standards, and that vehicle design would likewise be driven by the NMHC standard. It was noted, however, that this was not assured to be true for future vehicles. Several commenters also suggested that THC standards should be eliminated as a result of their effect on clean fuel vehicle standards.

Despite the attention given to this issue in comments and the public hearing, commenters indicated that the requirement was a nuisance rather than an extreme burden. Some manufacturers commented that the different useful lives applicable to the THC standard and the new Tier 1 standards could complicate durability demonstrations, particularly for alternative durability cycles (now under consideration by EPA in a separate rulemaking). To help alleviate the nuisance factor, Ford suggested that EPA could provide a waiver provision, whereby demonstration that vehicles met the 0.25 NMHC standards would be sufficient indication that they also met the 0.41 THC standard.

EPA Response to the Comments

Upon review of sections 202(g) and (h) of the revised Act, EPA continues to believe that it has no legal basis on which to eliminate the existing THC standards. The EPA is prohibited from doing so by section 202(b)(1)(C) of the Act, which states that "Any revised standard shall require a reduction of emissions from the standard that was previously applicable." Eliminating the THC standard would not comply with this requirement.

The Agency further believes that the commenters' interpretation of the legislative history is erroneous. Both the House and Senate committees indicated their intention to retain THC standards as well as impose the California NMHC standards; the House stated in its Committee Report (at page 298) that the existing THC standards were to be retained, while the Senate proposed tighter THC levels (see section 201(a) of the Senate Bill). The Agency believes rejection of the Senate approach by the Conference Committee was a rejection of the tighter THC levels, rather than the entire THC concept.

The EPA has drawn no conclusions on the specific hydrocarbon standards that might be applied in future rulemakings to vehicles using alternative fuels. At this writing, the Agency anticipates that it will soon publish an NPRM regarding vehicles fueled by compressed natural gas (CNG). Issues surrounding the setting of standards for CNG vehicles will be addressed in that rulemaking. Furthermore, the applicability of the THC standard to clean fuel vehicles will be addressed as part of the implementation of the clean fuels programs under Title II, Part C, of the amended Act.

Agency technical staff and commenters agree that the new NMHC standards, not the THC standards, will control vehicle design where conventional petroleum or methanol fuels are employed. The measurement technique finalized by EPA for NMHC requires measurement of THC as part of the procedure; therefore, the increased burden of the THC standard is mostly the extra reporting requirement for THC in the certification application and the possible impact on durability determinations. Although the Agency views these burdens as slight, the suggestion by Ford will nonetheless be pursued. Thus, for those vehicles where the manufacturer concludes that the NMHC standard is controlling, a waiver option akin to that proposed for the PM standard will be incorporated into § 86.094-23 of the final rule.

D. High Altitude Requirements

Summary of the Proposal

The absence of separate high-altitude standards in the Amendments indicated that Congress did not intend separate high-altitude corollaries of the Tier 1 standards. Thus, for those pollutants specifically mandated for revision under the Tier 1 provisions, the NPRM eliminated any distinct high-altitude standards for Tier 1 LDVs and LDTs. Separate high altitude standards and associated procedures already in existence for pollutants not revised by the Tier 1 provisions (specifically, THC and idle CO for light-duty trucks) remained in place.

Summary of the Comments

Written comments from Rep. Waxman indicated that a technical amendment to section 206(f) of the Clean Air Act, from section 230(8)(C) of the Amendments, required all model year 1995 and later LDTs to meet all certification standards regardless of altitude. His comments indicated that this provision was apparently not incorporated into the proposal.

EPA Response to the Comments

Due to an oversight, the technical amendment cited by Rep. Waxman was indeed overlooked in the NPRM. Since the requirements of the clause are straightforward, appropriate revisions have been made in the final rule. These revisions comprise the deletion of all separate high-altitude standards for model year 1995 and later LDTs, and the elimination of provisions allowing performance adjustments; thus, LDTs and LDVs are treated equivalently for

[9] See Note 6 at 56 FR 9256.

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high altitude locations, beginning in model year 1995.

For manufacturers who might wish to comply in advance with the LDT all-altitude requirement on Tier 0 vehicles, the 1995 statutory requirement cited above is made optional for the 1994 model year. This precludes the need to republish the entire standards section for model year 1995. However, the mandatory "sunsetting" of the performance adjustment regulations for light trucks in 1995 has prompted republishing of some sections (85.095–14, 85.095–24, 85.095–28, 85.095–30, and 85.095–35) in the final rule.

E. Phase-in Bins

Summary of the Proposal

The Tier 1 NPRM proposed to group vehicles into three categories for purposes of determining compliance with the minimum percentages of the phase-in schedule. The categories were (1) LDVs; (2) light LDTs (LDTs with gross vehicle weight ratings or GVWR up through 6000 lb, referred to as LLDTs); and (3) heavy LDTs (LDTs with GVWR between 6000 lb and 8500 lb, referred to as HLDTs). Compliance with the phase-in schedule would be determined separately for each of the three bins.

Summary of the Comments

A number of manufacturers commented in response to EPA's request in the NPRM for comments on this topic, all supporting the use of two, rather than three, phase-in bins. In such a scheme, the LDVs and light LDTs would be combined for compliance purposes into one bin. Commenters voiced the opinion that the California program was the model for the Tier 1 provisions, and that program permits the combining of the LDV and LLDT groups during the phase-in. It was also noted that the two-group approach is more consistent with the organization of the Amendments.

Several manufacturers also cited a potential competitive disadvantage for small manufacturers under the three-bin approach; with smaller numbers of families, such manufacturers would have reduced flexibility in meeting the minimum requirements. Finally, one commenter suggested that the differential air quality impact between the proposed and California approaches was probably too small to justify the higher costs of three bins.

EPA Response to the Comments

As noted in the NPRM preamble, the Agency believed several options existed for separating LDVs and LDTs into bins for determining phase-in compliance, each of which could meet the statutory requirements. The Agency agrees with commenters that the two-bin approach allows greater flexibility in meeting the phase-in requirements, and is more consistent with the structure of the Amendments, as well as with the California program. The Agency also believes that the environmental effect of moving from three bins to two is minimal. In the final rule, EPA will therefore modify §§ 86.094–8 and 86.094–9 to provide an option for manufacturers to combine LDVs with LLDTs for purposes of meeting the Tier 1 phase-in requirements. The in-use regulations of subpart H (§§ 86.706–94 and 86.709–94) are similarly modified.

Congress provided that the phase-in of the Tier 1 PM standards for LDVs would begin in model year 1994, but the comparable phase-in for LDTs begins in model year 1995, resulting in different phase-in percentages for the two classes during a given model year. Therefore, there will be no option to combine LDVs and LLDTs for PM phase-in compliance.

F. Exclusion of California and Section 177 States

Summary of the Proposal

As mentioned in section II above, the Agency proposed in the NPRM that vehicles sold in California and in section 177 states be excluded from the calculation of a manufacturer's compliance with the Tier 1 phase-in requirements. The justification was an Agency judgment that mandatory compliance with higher phase-in percentages in California and section 177 states in model years 1994 and 1995 could lead to proportionately fewer Tier 1 vehicles sold in the remaining states, with the consequent disproportionate benefit across the nation.

Summary of the Comments

The MVMA and several manufacturers raised a number of objections to the approach in the NPRM. First, MVMA and some manufacturers argued that the Amendments did not require exclusion of California and section 177 vehicles, and the Agency had unnecessarily opted for increased stringency in the proposal. Second, some commenters stated that the added burden of separately counting vehicles for the creditable and non-creditable vehicle fleets was not justified by the benefits. Third, they commented that the two-year minimum leadtime allowed by states adopting the California program through section 177 is not sufficient for manufacturers to revise sales projections for the remaining states and execute a compliance plan. Fourth, one manufacturer showed that the approach proposed in the NPRM would lead to minimum phase-in compliance levels that exceeded 40 percent on a national basis in the first year of the phase-in period, and that this constituted a requirement greater than the mandated minimum levels. Finally, the manufacturers argued that since the Federal standards were closely modelled after the California standards, the latter standards allow essentially equivalent protection of the public health and welfare, and thus should be creditable toward the Federal phase-in.

EPA Response to the Comments

The Agency agrees that the California motor vehicle control program was the basis for significant portions of the Federal Tier 1 program adopted by Congress in the 1990 Amendments. The phase-in schedule for the California analogues of the Tier 1 standards generally begins one year earlier.

Only California and New York are clear candidates for exclusion from the Tier 1 compliance calculation under the system proposed in the NPRM.[10] The Agency has analyzed the possible impact of counting the California and section 177 vehicles from these states towards phase-in compliance, and believes those impacts to be insignificant in the context of the overall phase-in period and the benefits to be gained from the Tier 1 provisions.

In response to the comments of the public, EPA agrees that the Amendments did not explicitly exclude California and section 177 vehicles from being creditable towards Tier 1 compliance, and that the Act permits such vehicles (in the event they comply with the Tier 1 standards) to be counted toward compliance with the Tier 1 phase-in requirements. The Agency also agrees with the comments that the NPRM approach leads to 50-state compliance requirements that exceed the phase-in percentages in the statute. The Agency is less persuaded by arguments based on increases in the tracking burden. To the extent that other states adopt the California standards, manufacturers would already be forced by those requirements to project sales of vehicles in the section 177 states and to

[10] To date, New York is the only state which has adopted California vehicle emission standards under section 177. The New York Department of Environmental Conservation (NYDEC) issued final regulations adopting the California standards in November 1990. In January 1991, however, an industry coalition filed suit against NYDEC in the New York Supreme Court to overturn these standards on various procedural and substantive grounds. This suit is pending.

submit explanations for deviations in actual sales data from the required phase-in levels.

On balance, the Agency finds the strength of comment on the statutory intent and the limited benefit of the NPRM approach sufficient to modify that position in the final rule. In the final rule, manufacturers may credit towards phase-in compliance all vehicles in the applicable model year that meet certain standards for that model year referred to in title 13, "California Code of Regulations, Section 1960.1, and the incorporated California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-duty Trucks, and Medium-Duty Vehicles." The relevant standards from that source are those designated as phase-in standards for certain pollutants (including NMHC) and which were first applied in the 1993 model year, as well as those standards for all remaining pollutants (including NOx) that require compliance at the 100 percent level. These standards are numerically equivalent to the Federal Tier 1 standards. The intent is therefore that vehicles complying with the California equivalents of the Tier 1 standards will be creditable towards the Tier 1 phase-in minimums. This implies, however, that all vehicles, including those *not* built to the Tier 1 standards or the California equivalents, regardless of the jurisdiction of sale, must be included in the overall vehicle count used as the denominator for calculating compliance with the phase-in percentages.

G. Enforcement of Phase-in Based on Actual Sales

Summary of the Proposal

The Agency concluded in reviewing the legislative history that Congressional intent was to base phase-in compliance on actual sales. Thus, the proposal required an initial determination of compliance at the time of vehicle certification based on submission of projected sales data, but followed this with a requirement for submission of actual sales data. The proposed regulations state that the certificates for engine families determined to cause a violation of the required phase-in percentages "may be deemed void." The burden of proof fell to the manufacturer to demonstrate to the Administrator's satisfaction that the conditions of the certificate had either been "satisfied or excused."

Summary of the Comments

This was the most commented-upon element of the NPRM. Rep. Waxman commented that the Agency's regulations must rely on actual sales and could not permit deviations from the required implementation schedule. However, several manufacturers and their associations commented to the contrary. Their comments made two arguments. They disputed EPA's interpretation of Congressional intent regarding actual sales, arguing instead that the question is discretionary, and that Congress intended to follow California's regulations, which refer to projected sales.

Further, they argued that reliance on actual sales makes the manufacturers unfairly susceptible to fluctuations in the market that are beyond their control. Several commenters stated that the threatened sanction of a nullified certificate in case of erroneous projections was an extreme enforcement mechanism, and suggested that EPA adopt other enforcement mechanisms.

In 21 March 1991 testimony before the House Subcommittee on Health and the Environment, and in correspondence with the Administrator authored the following day, Rep. Dingell generally supported and cited vehicle manufacturer arguments on this issue.

CARB submitted a letter to EPA describing its policies regarding the enforcement of the California phase-in requirements. Attached to that letter were two documents (Manufacturer's Advisory Correspondence, or MACs) that had been sent to manufacturers notifying them of CARB's enforcement policies. According to the letter and the attached MACs, CARB's enforcement policy combines elements of both projected sales and actual sales.

EPA Response to the Comments

EPA believes that the plain language of sections 202(g) and 202(h) requires the Agency to determine compliance with the phase-in requirements on the basis of actual sales. EPA also believes that that reading of the Act is confirmed by the legislative history. Consequently, in the final rule EPA will determine compliance on the basis of actual sales, not projected sales. EPA believes, however, that it does have discretion to modify its proposal concerning the method of enforcement of the phase-in requirements (i.e., by voiding certificates or through some other means).

The starting point of any analysis of the actual sales issue is the statutory language itself. Sections 202(g) and 202(h) state that "emissions from a percentage of each manufacturer's sales volume" shall comply with the specified percentages. EPA believes that the plain meaning of the statutory language requires that compliance with the phase-in percentages be determined on the basis of actual sales. The phrase "sales volume" means a volume of sales, which has the connotation of a volume of completed sales transactions. Thus, absent an adjective such as "projected," the phrase "sales volume" means actual sales.

Congress explicitly used the term "projected sales" in another provision of Title II of the Clean Air Act. That provision, Section 206(a)(1), concerns EPA's testing authority and limits the testing requirements for manufacturers whose "projected sales" will not exceed 300 in a model year. Clearly, Congress knew how to use the term "projected sales" when it desired to do so.

The conclusion that the statutory phrase "sales volume" does not extend to projected sales is confirmed by the Joint Explanatory Statement of the Committee of Conference, which states the Tier 1 standards phase in "beginning with 40 percent of the vehicles sold in 1994 and increasing to 100 percent of vehicles sold in 1998." (H.R. Rep. 101–952, Clean Air Act Amendments of 1990, Conf. Rep. to Accompany S. 1630, at 337 (Oct. 26, 1990).) The phrase "vehicles sold" clearly indicates that the phase-in percentages are to be applied to actual sales, not some projection of sales.

The House Committee Report also supports this reading of the term "sales volume." In explaining the language in the House Committee Bill, which is identical to the language in the Amendments with respect to this issue, the House Committee Report (at page 298) described the Tier 1 phase-in schedule in terms of percentages of each automaker's "passenger cars and light-duty trucks." This again confirms that sales volume should be read as actual sales because reliance solely on a projection could lead to a situation under which less than that percentage of the manufacturer's vehicles in fact met the Tier 1 standards.

Many commenters contended that EPA should follow California's approach to phase-in compliance, which they said was based on the concept of good faith sales projections, because Congress based the Tier 1 standards and their implementation on California's program. EPA notes that the House Committee Report does state that "They essentially adopt the so-called 'California' standards." (House Comm. Rep. at p. 298.) The Committee Report does not state that the bill adopted the California procedures, however.

Moreover, the very general statement regarding the adoption of the California standards itself contains nothing on its face inconsistent with the plain

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statutory language. The "essentially adopt" language can be read as merely descriptive: Congress adopted a program based on, or conforming in its general outlines to, the California program. Furthermore, the Tier 1 phase-in schedule begins one year later than California's, thereby indicating that while the standards themselves may be virtually identical, their implementation is not. Significantly, in the clean-fuels provisions in Part C of Title II, where Congress also based standards on the standards adopted by California, Congress incorporated a provision expressly directing EPA to follow California's approach to the administration and enforcement of the standards (CAA Section 244). The absence of such a provision in connection with the Tier 1 provisions confirms that Congress did not intend for EPA to be tied strictly to California's implementation procedures in the context of Tier 1.

EPA also notes that while California does rely on the concept of "good faith" sales projections, California has also issued an enforcement policy stating that civil penalties can be assessed in situations where a manufacturer's actual sales fall short of the required phase-in percentages. Consequently, it appears that California itself does not rely solely on the concept of good faith sales projections.

With respect to the issue of EPA's proposed enforcement mechanism, commenters contended that EPA does not have the authority to void certificates of conformity on an engine family basis with respect to the engine families that caused the manufacturer to exceed the percentage limitations set forth in the phase-in schedule. EPA disagrees. Such voiding is consistent with other enforcement mechanisms utilized under Title II of the Clean Air Act, such as the remedies for banking, trading and averaging programs and for violations of the recordkeeping and reporting requirements. EPA believes that such actions are authorized where, pursuant to EPA's authority under Section 206(a) of the Act to condition certificates upon such terms as the Administrator "may prescribe", EPA has placed a condition in the certificate.

Nevertheless, EPA has decided to modify the approach proposed in the NPRM to narrow its scope and to eliminate any issues attendant to the voiding of certificates. The approach contained in the final rule will still be based on the concept of conditioning the certificates of conformity upon compliance with the phase-in percentages on the basis of actual sales. If a manufacturer fails to meet this condition, however, the vehicles causing the violation will be considered not covered by the certificate applicable to the engine family. The EPA will not void the certificate. This provision differs from the proposed rule in that penalties may be assessed on an individual vehicle basis rather than only on an engine family basis. This approach is also more consistent with California's enforcement approach than was EPA's NPRM. The sale of vehicles not covered by a certificate is a violation under section 203(a) of the Act. Civil penalties in the amount of up to 25,000 dollars per vehicle are possible under section 205 of the Act. As noted earlier, EPA has enforcement discretion with respect to its enforcement activities.

H. Sales Reporting Requirements

Summary of the Proposal

The NPRM proposed to determine phase-in compliance based on sales to the ultimate purchaser, but also addressed vehicles still in the sales "chain" as of the deadline for reporting. Selection of this policy by the Agency was based in part on the parallel decision to isolate California and section 177 states from the compliance calculation. Thus, the use of actual sales to the ultimate purchaser achieved, to the best extent deemed reasonable, assurances that the phase-in compliance calculation would reflect the actual distribution of vehicles in the field, with the proportional accrual of clean air benefits.

Summary of the Comments

The MVMA and domestic manufacturers commented that reliance on actual sales to the ultimate purchaser would require implementation of entirely new tracking systems, extending the manufacturer's interest in post-dealer events to an unreasonable level. In support of this contention, commenters noted that manufacturers sell to dealers rather than ultimate purchasers. Therefore, the point-of-first-sale information is the only actual sales data reasonably available to them. For this reason, manufacturers do not have access to the bill of sale as required in the NPRM.

By and large, manufacturer comments supported the use of actual production data rather than either sales to dealers or ultimate purchasers, for three reasons. First, several commenters noted that production data is already available as part of a year-end report submitted to EPA under Title 40 of the Code of Federal Regulations section 86.085–37. Ford suggested that, if EPA desired sales data, this report could be slightly expanded to include point of first sale information during the years of the phase-in. Second, GM stated that production data is more accurate than actual sales data. Third, it was noted that California accepts production data for verification of compliance with the phase-in.

EPA Response to the Comments

Given that the Agency has decided to include vehicles sold in California and section 177 states in the calculation of phase-in percentages, the location of the ultimate purchaser is no longer of importance in determining compliance with the phase-in. The Agency also deems the additional tracking systems required of manufacturers to determine ultimate sales to be a hardship with little environmental benefit. Therefore, EPA agrees with commenters that point of first sale is the most reasonable basis for determining compliance. Inasmuch as the Act speaks only in terms of "sales volume," and does not specify to whom the sales are made, such an approach is permissible under the Act.

Additionally, a review of actual sales versus production data shows that the difference between the two is likely to be of no significance in most cases. In the eleven-year period from 1979 through 1989, for example, MVMA data show that actual production of passenger cars exceeded actual factory sales of passenger cars by an average of only 1.0 percent.[11] In the last three model years, the mean difference has dropped to 0.2 percent. The differences in the production and sales figures can be attributed to differences in assigning the cutoff dates for determining the two figures and losses incurred in transportation, as well as other factors. The Agency sees little likelihood that these or other factors would provide a rationale for manufacturers to produce significant numbers of vehicles that would not actually be sold. Thus, the final rule allows a manufacturer to use actual production data in lieu of actual sales data, at the option of the manufacturer, if the manufacturer can demonstrate that the two sources are functionally equivalent. As mentioned in section II above, in order to use production data rather than actual sales, a manufacturer must petition the Agency no later than 30 days following the end of the model year, providing analysis demonstrating functional equivalence of production and sales data. Approval of the use of production data will be presumed unless otherwise notified by the Agency within 30 days of submittal.

[11] *MVMA Motor Vehicle Facts & Figures '90*, Motor Vehicle Manufacturers Association of the United States, Inc., p. 8.

The Agency has determined that it is appropriate to require the submission of actual sales (or production data) within 90 days after the end of the model year so that timely enforcement decisions can be made; this aspect of the NPRM is therefore unchanged in the final rule. A manufacturer may combine this report with annual production reports under § 86.085–37, but it is the "within 90 days" requirement of newly promulgated § 86.094–23 which will control the timing of submission. This reporting requirement is consistent with those previously promulgated for banking and trading and averaging.

I. Model Year 2004 Requirements

Summary of the Proposal

The Tier 1 NPRM included sections proposing standards and related regulations for model year 1994 LDVs and LDTs, and analogous sections for model year 2004 LDVs and LDTs. The model year 2004 sections served two purposes. First, all obsolete standards and sections, including the Tier 0 standards and phase-in requirements dating back to the 1994 regulations, were deleted, thus clarifying the requirements remaining in place after completion of the phase-in Second, the Agency responded to a footnote to Table G of section 202(g)(1) of the Act, which stated that the NOx standards for diesel-fueled vehicles were to be less stringent than the non-diesel standards "before model year 2004"; thus, standards were republished for model year 2004 in such a way as to bring the gasoline and diesel NOx standards into equivalence.

Summary of the Comments

Rep. Waxman commented that the Tier 2 standards as established in section 202(i) of the revised Act were to take effect in model year 2004, to be superseded only if an Agency study showed just cause. In his view, the standards proposed by EPA in the Tier 1 NPRM implied an inappropriate prejudgment of the lack of need for the Tier 2 standards. The City of New York Department of Environmental Protection (DEP) commented that default Tier 2 standards should have been included in the proposal, since it had not yet been determined that alternative Tier 2 standards were "unnecessary, unachievable, nor cost effective." This last comment also apparently arose because EPA proposed model year 2004 standards in the Tier 1 NPRM.

EPA Response to the Comments

The Agency disagrees with the comment that the model year 2004 sections of the NPRM prejudged the need for the Tier 2 standards; EPA did not intend for its Tier 1 proposal to be interpreted in that manner. The Tier 1 proposal, undertaken pursuant to a six-month statutory deadline, was not intended to cover the tier 2 standards. The Agency will pursue the study of the Tier 2 standards called for by section 202(i) of the Act, and will address the Tier 2 standards in a subsequent rule. To remove any potential confusion, however, EPA has chosen to delete the model year 2004 sections from the final Tier 1 rule. The change in the diesel NOx standard referenced in the footnote to Table G of section 202(g)(1) of the Act will be addressed in the Tier 2 rulemaking. However, the Agency still desires to provide an updated version of the regulations with the phase-in requirements and obsolete standards deleted; this will be accomplished in the final rule through promulgation of 1996 and 1997 model year sections that reflect the appropriate deletions (§§ 86.096–8 and 86.097–8).

J. Small Volume Manufacturers

Summary of the Proposal

The NPRM proposed compliance with the Tier 1 phase-in schedule by all manufacturers, regardless of size. This approach was based on the language of sections 202(g) and 202(h) of the Act, which required compliance by a "percentage of each manufacturer's sales volume."

Summary of the Comments

Rolls Royce indicated concern over the impacts of the Tier 1 phase-in requirements on small volume manufacturers. Its comments focused on the reliance of many small volume manufacturers on larger manufacturers for supplies of their control systems, the potential vulnerability of small manufacturers if their suppliers choose slower-than-desired schedules for Tier 1 "upgrades" to those systems, and the potential constraints for manufacturers with limited numbers of engine families. Chrysler also observed that small manufacturers "with few engine families could be forced to certify virtually 100 percent of their products in the first year."

EPA Response to the Comments

The Agency acknowledges the concerns of the commenters that small volume manufacturers face an unusual burden in the face of the Tier 1 phase-in. Most such manufacturers rely on a single engine family; a few have two engine families. With phase-in compliance determined at the engine family level, those manufacturers with a single engine family effectively face 100 percent compliance requirements in the first year of the phase-in.

The Agency agrees that small volume manufacturers rely on larger manufacturers for the supply of emission controls, or even entire engine/emission-control systems. In this situation, the ability of the small volume manufacturer to comply with the Tier 1 phase-in requirements lies in the hands of another company. The risk exists that a small volume manufacturer may be unable to produce its product in a given year, representing a distortion of the marketplace that the EPA believes was not intended by Congress. Alternatively, the Agency is concerned that small volume manufacturers could experience inappropriate pressure to reach subsidiary arrangements with larger manufacturers, as a means to avoid any phase-in noncompliance they might face as an independent company. In the Agency's view, such a situation would again be anticompetitive.

The magnitude of the impact from small volume manufacturers during the phase-in period is almost certain to be negligible; they accounted for less than 10,300 vehicles in model year 1990, or considerably less than one-tenth of one percent of the 1990 model year fleet. On this basis, EPA concludes that the impact of imposing the Tier 1 phase-in schedule on the small volume manufacturers would be all but immeasurable in terms of the portion of the nationwide fleet affected.

The Agency has also reviewed the issue of whether it has any authority to grant an exemption from the phase-in requirements for certain small volume manufacturers. Upon that review, EPA believes that, although the Tier 1 provisions are drafted in terms of the phase-in requirements applying to "each manufacturer," EPA nevertheless has the authority to grant such an exemption pursuant to its authority to exempt *de minimis* situations from statutory commands. See *Alabama Power Co.* v. *Costle*, 636 F. 2d 323, 360–61 (D.C. Cir. 1979).

In *Alabama Power*, the court indicated that EPA had the implicit authority under the Clean Air Act to exempt *de minimis* situations. The court stated that "[c]ategorical exemptions may also be permissible as an exercise of agency power, inherent in most statutory schemes, to overlook circumstances that in context may fairly be considered *de minimis*." 636 F.2d at

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360. The court emphasized, however, that the ability "to exempt *de minimis* situations from a statutory command is not an ability to depart from the statute, but rather a tool to be used in implementing the legislative design." *Id.* The Agency believes that this authority provides a basis for establishing a small volume exemption from the phase-in requirements for the reasons described above.

The Agency also notes that the California motor vehicle control program, used by Congress as the model for much of the Tier 1 program, provides that small volume manufacturers may choose to delay compliance until the last year of the phase-in for any given vehicle group. In the final Tier 1 rule, EPA is taking a similar approach. This option applies only to manufacturers whose total annual U.S. sales volume falls below 10,000 units.

K. NMHC Measurements and Calculations

Summary of the Proposal

The Tier 1 NPRM proposed to adopt, essentially intact, the NMHC measurement techniques adopted by CARB for use in certifying vehicles in the state of California. The Agency stated its belief that the CARB procedures were adequate for the purposes intended by the Amendments.

Summary of the Comments

Ford commented that although EPA intended to adopt California's NMHC procedure, several important differences existed between the CARB procedure and that proposed by EPA in the Tier 1 NPRM, for both gasoline-fueled and methanol-fueled vehicles.

One difference claimed by Ford for gasoline-fueled vehicles was CARB's inclusion of a response (R) factor to correct for the response of the THC Flame Ionization Detector (FID) to methane. A second difference cited was the method in which background concentrations were taken into account.

For methanol-fueled vehicles, Ford echoed for OMNMHCE its comment on background concentrations. Second, Ford claimed that CARB does not include formaldehyde in its definition of NMHC for methanol-fueled vehicles, while EPA did. Ford commented that the dilution factors for CARB and EPA are defined differently. Finally, Ford repeated the comment that R factors to account for THC FID response were not included in the EPA proposal, while they were for CARB.

Ford suggested that some of these deviations arose because the CARB procedure was revised subsequent to the version used by EPA as the model for Tier 1 proposal.

AGA/NGVC commented that the proposed procedure would be inaccurate if applied to natural gas vehicles, and thus should be limited to fuels other than natural gas. They note that CARB's current procedure would also be inaccurate, but that CARB has promised to revise it.

EPA's Response to the Comments

The Agency disagrees with the comment that differences between the NPRM and CARB procedures arise because a subsequent version of the CARB procedure is now in effect. The procedure employed as the template for the Tier 1 NPRM was the CARB procedure as revised on 15 May 1990 and made effective 15 July 1990. On 3 January 1991, CARB published a proposal for a revision to their NMHC procedure that has yet to be finalized. The Agency's understanding is that the basis for the revision was CARB's move to the use of non-methane organic gas (NMOG) standards in conjunction with its low emitting vehicle regulations, an approach that EPA has not yet undertaken. The CARB proposal does include THC FID response factors in the calculation of NMHC. The Agency will reconsider this issue in the event that CARB finalizes the regulations to include the R factors. At the present time, however, the Agency considers the issue of appropriate R factors to be unresolved. The EPA may also wish to examine the importance of other aspects of the test procedure concurrently with any examination of FID response factors.

Likewise, it is not the case that present CARB and proposed EPA methods for calculating the dilution factor differ. Until CARB implements a change to its procedure, the two methods match. The difference between the current procedure and the one proposed by CARB lies in the inclusion of the R factor in the dilution factor computation for the purpose of correcting for FID response to methane concentration. Again, this issue can be revisited should CARB implement new procedures.

The NMHC and OMNMHCE calculations proposed by EPA and adopted by CARB do differ in the order in which background concentrations are taken into account. This difference arises because EPA and CARB regulations have historically differed in the order in which the terms of concentration equations are considered, not because the numerical result is different. Revising the order of calculation to match CARB for Tier 1 would have implied a similar revision in the remainder of the EPA calculation section, which was unjustified given the identical numerical result.

The Agency disagrees with Ford's comment that formaldehyde is treated inconsistently by the EPA and CARB for methanol vehicles. It is true that CARB maintains a separate formaldehyde standard for methanol vehicles, but its methanol vehicle hydrocarbon standards also include formaldehyde, as with EPA.

In response to the comment of AGA/NGVC, EPA agrees that the calculation methodology from the NPRM would need modification for it to be applied to CNG vehicles. As pointed out in section 2.2.3 above, however, a separate and subsequent EPA rulemaking is underway to address CNG issues.

L. Miscellaneous Issues

Several other issues were mentioned by individual commenters. First, Ford noted that the adoption of a new test weight basis for HLDTs warrants a fuel economy adjustment factor for labelling and Corporate Average Fuel Economy (CAFE) purposes. While this issue fell beyond the statutory mandate for completion of a Tier 1 rulemaking within six months following adoption of the 1990 Amendments, EPA will take Ford's suggestions under advisement and respond as appropriate in the future.

Second, Ford also suggested that the proposed underhood labelling provisions be revised to eliminate the requirement to list applicable certification and in-use standards on the label. Ford viewed this requirement as adding unneeded complexity, and stated that the engine family name would be sufficient to determine applicable standards. While EPA agrees that the requirement adds complexity to the label, the Agency considers it important for a user to be able to determine, without access to databases or extensive records, which of the many possible combinations of standards apply to a given vehicle. This need outweighs the burden on the manufacturer which can, with relative ease, obtain the appropriate information to be printed on the label. Thus the Agency has retained the labelling approach as proposed. No sunsetting provision for this requirement has been included in the final rule; however, if it becomes apparent after completion of the phase-in that this need no longer exists, the Agency will consider requests to revoke this requirement.

Revisions to the durability procedures were another area of concern for some commenters. Specifically, Rep. Waxman and the New York DEP noted that the lack of such procedures leaves the Tier 1 provisions incomplete, and should be included as part of the standards themselves. One manufacturer commented that the Tier 1 NPRM provided adequate guidance in this area, and supported EPA's intention as stated in the NPRM to revise the durability procedures in a separate rulemaking. The Agency agrees that aspects of the durability procedures are in need of revision, and that leadtime is short for the manufacturers to apply those procedures in the 1994 model year. Nevertheless, the Agency continues to believe, as stated in the NPRM, that the issues in that revision are too complex to have been addressed in the Tier 1 rule, and that it is proceeding legally and appropriately with the separate durability rulemaking.

On another issue, Ford provided six specific technical amendments to the test procedures of Subpart B as they were proposed in the NPRM. The suggestions, each of which is minor and noncontroversial, address inconsistencies in parallel sections or inadvertently omitted words from the NPRM. Four of the amendments suggested were appropriate to the Tier 1 rule and will be incorporated; the final two will be addressed through a separate rulemaking, now underway, to provide selected technical amendments to the existing EPA methanol test procedures. Chevron U.S.A., Inc., also commented on aspects of the existing methanol test procedures, recommending heating of the entire sampling system for methanol vehicles to ensure high collection efficiencies for oxygenated components of the exhaust, and requirements for attaining high collection efficiencies during certification testing. As with the two Ford comments mentioned above, these comments were not specific to the Tier 1 rule, and will be addressed in the technical amendments to EPA's methanol test procedures, currently underway.

Finally, the Agency notes that at a number of points in the NPRM, the construction "[Reserved]. For guidance see § 86.09x–yy" was used to indicate points where provisions from existing regulations were unchanged by the Tier 1 rulemaking. In some of these cases, EPA has chosen in the final rule to carry forward the unchanged text into the new Tier 1 sections, where the clarity of the language and the ease of use would be enhanced. This includes cases where the unchanged paragraphs were short or where the continuity of a complex section would have been unnecessarily broken.

V. Economic, Environmental, and Cost-Benefit Impacts

Because promulgation of the Tier 1 standards and the associated measurement procedures was mandated by statute, Congress has implicitly judged the economic, environmental, and cost-benefit implications of the new standards to be acceptable. The information provided in this section is based upon the analyses available to Congress as it debated and resolved the final form of the Amendments. It is provided here not as a comprehensive analysis of the economic and environmental issues, but rather as examples of the data Congress used in making its legislative judgments. In recognition of the non-discretionary nature of the rulemaking and the timeline for its promulgation, no new analysis in these areas has been undertaken by the Agency specifically in preparation for this final rule.

The principal economic impacts of the new standards will be those felt by the automobile manufacturers as they design and install new emission control components, alter existing components, or apply existing technologies to automobiles where these technologies had not been previously applied, in efforts to come into compliance with the new standards. Various relevant cost analyses have been prepared by E.H. Pechan & Associates, Inc.[13] An Agency contract to update these analyses to incorporate the final Clean Air Act Amendment package as signed by the President is in progress. Absent the current availability of such information, estimates presented in this analysis refer to analyses of the House and Senate bills contained in the previous Pechan reports.

For purposes of analysis, the principal economic impacts of the Tier 1 standards can be broken down into the following three categories: 1) those impacts caused by the change in the hydrocarbon standard; 2) the impacts caused by the change in the nitrogen oxides (NOx) standard; and 3), the impact of the extension of vehicle useful life from 50,000 miles to 100,000 miles. The estimated costs presented below are in addition to the baseline costs required to meet the current tailpipe standards.

The Agency estimates that the average cost per vehicle of meeting the light-duty vehicle and LDT1 NMHC standard is $37. EPA has made similar estimates of the cost required to meet the tightened NOx standards, arriving at a figure of $115 per light-duty vehicle or LDT1. The total cost to manufacturers of complying with the light-duty vehicle and LDT1 Tier 1 standards is therefore approximately $152 per vehicle.[13] The total cost to manufacturers of complying with the LDT2 through LDT4 Tier 1 standards is projected by EPA to be somewhat lower, at $57 per truck, owing to lower costs of compliance with both the NMHC and NOx standards.

The environmental impacts of the Tier 1 standards will not be fully appreciated until the standards are fully phased in. According to the June 15, 1990, analysis of projected costs and VOC reductions, prepared by Pechan & Associates, the national reduction of VOCs is projected to be about 8,000 tons in 1995 when compared to current policy and standards. By 2000 the projected annual VOC reductions for non-attainment areas climb to about 0.4 percent, and by 2005 the tons reduced nationally is projected to reach 160,000, a 0.6 percent reduction in nonattainment areas. Emission reduction estimates for the standards in the final statutory language are not currently available.

In their January 26, 1990, report, Pechan & Associates estimated the cost per ton of national VOC reductions in 2005—after full implementation of the NMHC phase-in—to be $3700. The $3700 figure does not incorporate discounting of either the national cost or national emissions reduction. An additional EPA analysis of cost-effectiveness on a per vehicle basis and incorporating a 10 percent discount rate yields a cost per ton of $6018.78.[14] This figure should be considered roughly comparable to the $3700 Pechan value, with the discounting calculation accounting for the numerical difference. Because the emissions reduction estimates for NOx are not yet available, no cost effectiveness numbers associated with NOx have been provided.

[13] See, for example, "Ozone Nonattainment Analysis: A comparison of Bills," E. H. Pechan and Associates, Inc., prepared for USEPA Office of Air and Radiation, January 28, 1990, p. 57, in the public docket.

[13] "Recent CAA Cost Developments," Note from Philip A. Lorang to Richard D. Wilson and Charles L. Gray, Jr., Emission Control Technology Division, Office of Mobile Sources, USEPA (23 January 1990). Available in the public docket for review.

[14] Memo from James McCargar to Robert Maxwell, "Analysis of NMHC Cost-Effectiveness," EPA, Office of Mobile Sources (January 31, 1991). Available in the public docket for review.

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VI. Administrative Requirements

A. Administrative Designation and Regulatory Impact Analysis

Under the Executive Order 12291, EPA has determined that this regulation is major. A Regulatory Impact Analysis has been prepared and is available from the address provided under "**FOR FURTHER INFORMATION CONTACT.**"

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any EPA response to those comments are in the public docket for this rulemaking.

B. Information Collection Requirements

The information collection requirements in this final rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2060–0104. An Information Collection Request has been prepared by EPA (ICR No.783) and a copy may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M St., SW. (PM–223); Washington, DC 20460, or by calling (202) 382–2740. No official comments were submitted to the docket regarding the information collection requirements developed for the NPRM.

Public reporting burden for this collection of information is estimated to be 2,766 hours per respondent annually, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Paperwork Reduction Project (OMB #2060–0104), Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

C. Impact on Small Entities

The Regulatory Flexibility Act of 1980 requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis (RFA).

EPA has determined that the regulations adopted today will not have a significant impact on a substantial number of small entities. This regulation will affect only manufacturers of motor vehicles and motor vehicle engines, a group which does not contain a substantial number of small entities.

Therefore, as required under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.*, I certify that this regulation does not have a significant impact on a substantial number of small entities.

VII. Statutory Authority

The promulgation of these regulations is authorized by sections 202, 203, 206, 207(c), 208, and 301(a) of the Clean Air Act as amended by the Clean Air Act Amendments of 1990 (42 U.S.C. 7521, 7522, 7525, 7541(c), 7542, and 7601(a)).

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Air pollution control, Gasoline, Labeling, Motor vehicles, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: May 21, 1991.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, part 86 of title 40 of the Code of Federal Regulations is amended as follows:

PART 86—[AMENDED]

1. The title for part 86 is revised to read as follows:

PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

2. The authority citation for part 86 continues to read as follows:

Authority: Secs. 202, 203, 206, 207, 208, 215, 301(a), Clean Air Act as amended (42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550 and 7601(a)).

Subpart A—[Amended]

3. The heading for subpart A of part 86 is revised to read as follows:

Subpart A—General Provisions for Emission Regulations for 1977 and Later Model Year New Light-Duty Vehicles, Light-Duty Trucks, and Heavy-Duty Engines, and for 1985 and Later Model Year New Gasoline-Fueled and Methanol-Fueled Heavy-Duty Vehicles

4. The table of contents of subpart A of part 86 is republished for the convenience of the reader to read as follows:

Subpart A—General Provisions for Emission Regulations for 1977 and Later Model Year New Light-Duty Vehicles, Light-Duty Trucks, and Heavy-Duty Engines, and for 1985 and Later Model Year New Gasoline-Fueled and Methanol-Fueled Heavy-Duty Vehicles

Sec.
86.078–3 Abbreviations.
86.078–6 Hearings on certification.
86.078–7 Maintenance of records; submittal of information; right of entry.
86.079–31 Separate certification.
86.079–32 Addition of a vehicle or engine after certification.
86.079–33 Changes to a vehicle or engine covered by certification.
86.079–36 Submission of vehicle identification numbers.
86.079–39 Submission of maintenance instructions.
86.080–12 Alternative certification procedures.
86.081–8 Emissions standards for 1981 light-duty vehicles.
86.082–2 Definitions.
86.082–8 Emission standards for 1982 and later light-duty vehicles.
86.082–14 Small-volume manufacturer certification procedures.
86.082–34 Alternative procedure for notification of additions and changes.
86.083–30 Certification.
86.084–2 Definitions.
86.084–4 Section numbering; construction.
86.084–5 General standards; increase in emissions; unsafe conditions.
86.084–14 Small-volume manufacturers certification procedures.
86.084–15 Emission standards for 1984 model year heavy passenger cars.
86.084–26 Mileage and service accumulation; emission measurements.
86.084–40 Automatic expiration of reporting and recordkeeping requirements.
86.085–1 General applicability.
86.085–2 Definitions.
86.085–8 Emission standards for 1985 and later model year light-duty vehicles.
86.085–9 Emission standards for 1985 and later model year light-duty trucks.
86.085–10 Emission standards for 1985 and later model year gasoline-fueled heavy-duty engines and vehicles.
86.085–11 Emission standards for 1985 and later model year diesel heavy-duty engines.
86.085–13 Alternative durability program.
86.085–20 Incomplete vehicles, classification.
86.085–21 Application for certification.
86.085–22 Approval of application for certification; test fleet selections; determinations of parameters subject to adjustment for certification and Selective Enforcement Audit, adequacy of limits, and physically adjustable ranges.
86.085–23 Required data.
86.085–24 Test vehicles and engines.
86.085–25 Maintenance.
86.085–27 Special test procedures.

Sec.
86.085–28 Compliance with emission standards.
86.085–29 Testing by the Administrator.
86.085–30 Certification.
86.085–35 Labeling.
86.085–37 Production vehicles and engines.
86.085–38 Maintenance instructions.
86.087–2 Definitions.
86.087–8 Emission standards for 1987 light-duty vehicles.
86.087–9 Emission standards for 1987 and later model year light-duty trucks.
86.087–10 Emission standards for 1987 and later model year gasoline-fueled heavy-duty engines and vehicles.
86.087–21 Application for certification.
86.087–23 Required data.
86.087–25 Maintenance.
86.087–28 Compliance with emission standards.
86.087–29 Testing by the Administrator.
86.087–30 Certification.
86.087–35 Labeling.
86.087–38 Maintenance instructions.
86.088–2 Definitions.
86.088–9 Emission standards for 1988 and later model year light-duty trucks.
86.088–10 Emission standards for 1988 and later model year gasoline-fueled heavy-duty engines and vehicles.
86.088–11 Emission standards for 1988 and later model year diesel heavy-duty engines.
86.088–21 Application for certification.
86.088–23 Required data.
86.088–25 Maintenance.
86.088–28 Compliance with emission standards.
86.088–29 Testing by the Administrator.
86.088–30 Certification.
86.088–35 Labeling.
86.090–1 General applicability.
86.090–2 Definitions.
86.090–3 Abbreviations.
86.090–5 General standards; increase in emissions; unsafe conditions.
86.090–8 Emission standards for 1990 and later model year light-duty vehicles.
86.090–9 Emission standards for 1990 and later model year light-duty trucks.
86.090–10 Emission standards for 1990 and later model year Otto-cycle heavy-duty engines and vehicles.
86.090–11 Emission standards for 1990 and later model year diesel heavy-duty engines and vehicles.
86.090–14 Small-volume manufacturers certification procedures.
86.090–21 Application for certification.
86.090–22 Approval of application for certification; test fleet selections; determinations of parameters subject to adjustment for certification and Selective Enforcement Audit, adequacy of limits, and physically adjustable ranges.
86.090–23 Required data.
86.090–24 Test vehicles and engines.
86.090–25 Maintenance.
86.090–26 Mileage and service accumulation; emission requirements.
86.090–27 Special test procedures.
86.090–28 Compliance with emission standards.
86.090–29 Testing by the Administrator.
86.090–30 Certification.
86.090–35 Labeling.
86.091–2 Definitions.
86.091–9 Emission standards for 1991 and later model year light-duty trucks.
86.091–10 Emission standards for 1991 and later model year Otto-cycle heavy-duty engines and vehicles.
86.091–11 Emission standards for 1991 and later model year diesel heavy-duty engines and vehicles.
86.091–21 Application for certification.
86.091–23 Required data.
86.091–28 Compliance with emission standards.
86.091–29 Testing by the Administrator.
86.091–30 Certification.
86.091–35 Labeling.
86.092–1 General applicability.
86.092–2 Definitions.
86.092–14 Small-volume manufacturers certification procedures.
86.092–24 Test vehicles and engines.
86.092–26 Mileage and service accumulation; emission measurements.
86.092–35 Labeling.
86.094–2 Definitions.
86.094–3 Abbreviations.
86.094–7 Maintenance of records; submittal of information; right of entry.
86.094–8 Emission standards for 1994 and later model year light-duty vehicles.
86.094–9 Emission standards for 1994 and later model year light-duty trucks.
86.094–11 Emission standards for 1994 and later model year diesel heavy-duty engines and vehicles.
86.094–21 Application for certification.
86.094–23 Required data.
86.094–30 Certification.
86.094–35 Labeling.
86.095–14 Small-volume manufacturers certification procedures.
86.095–24 Test vehicles and engines.
86.095–26 Mileage and service accumulation; emission measurements.
86.095–30 Certification.
86.095–35 Labeling.
86.096–8 Emission standards for 1996 and later model year light-duty vehicles.
86.097–9 Emission standards for 1997 and later model year light-duty trucks.

5. A new § 86.094–2 is added to subpart A to read as follows:

§ 86.094–2 Definitions.

The definitions of § 86.092–2 remain effective. The definitions listed in this section apply beginning with the 1994 model year.

Adjusted Loaded Vehicle Weight means the numerical average of vehicle curb weight and GVWR.

Equivalent test weight means the weight, within an inertia weight class, which is used in the dynamometer testing of a vehicle and which is based on its loaded vehicle weight or adjusted loaded vehicle weight in accordance with the provisions of subparts A and B of this part.

Heavy light-duty truck means any light-duty truck rated greater than 8000 lbs GVWR.

Light-duty truck 1 means any light light-duty truck up through 3750 lbs loaded vehicle weight.

Light-duty truck 2 means any light light-duty truck greater than 3750 lbs loaded vehicle weight.

Light-duty truck 3 means any heavy light-duty truck up through 5750 lbs adjusted loaded vehicle weight.

Light-duty truck 4 means any heavy light-duty truck greater than 5750 lbs adjusted loaded vehicle weight.

Light light-duty truck means any light-duty truck rated up through 6000 lbs GVWR.

Test weight basis means the basis on which equivalent test weight is determined in accordance with § 86.129–94 of subpart B of this part.

Useful life means:

(a) For light-duty vehicles, and for model year 1994 and later light light-duty trucks not subject to the Tier 0 standards of paragraph (a) of § 86.094–9, intermediate useful life and/or full useful life. Intermediate useful life is a period of use of 5 years or 50,000 miles, whichever occurs first. Full useful life is a period of use of 10 years or 100,000 miles, whichever occurs first, except as otherwise noted in § 86.094–9.

(b) For light light-duty trucks subject to the Tier 0 standards of paragraph (a) of § 86.094–9, and for heavy light-duty truck engine families, intermediate and/or full useful life. Intermediate useful life is a period of use of 5 years or 50,000 miles, whichever occurs first. Full useful life is a period of use of 11 years or 120,000 miles, whichever occurs first.

(c) For an Otto-cycle heavy-duty engine family, a period of use of 8 years or 110,000 miles, whichever first occurs.

(d) For a diesel heavy-duty engine family:

(1) For light heavy-duty diesel engines, period of use of 8 years or 110,000 miles, whichever first occurs.

(2) For medium heavy-duty diesel engines, a period of use of 8 years or 185,000 miles, whichever first occurs.

(3) For heavy heavy-duty diesel engines, a period of use of 8 years or 290,000 miles, whichever first occurs.

(e) As an option for both light-duty trucks under certain conditions and heavy-duty engine families, an alternative useful life period assigned by the Administrator under the provisions of paragraph (f) of § 86.094–21.

(f) The useful-life period for purposes of the emissions defect warranty and emissions performance warranty shall be a period of 5 years/50,000 miles, whichever first occurs, for light-duty

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trucks, Otto-cycle heavy-duty engines and light heavy-duty diesel engines. For all other heavy-duty diesel engines the aforementioned period is 5 years/100,000 miles, whichever first occurs. However, in no case may this period be less than the manufacturer's basic mechanical warranty period for the engine family.

6. A new § 86.094–3 is added to subpart A to read as follows:

§ 86.094–3 Abbreviations.

(a) The abbreviations in § 86.090–3 remain effective. The abbreviations in this section apply beginning with the 1994 model year.

(b) The abbreviations in this section apply to this subpart, and also to subparts B, C, E, F, M, N, and P of this part, and have the following meanings:

ALVW—Adjusted Loaded Vehicle Weight.
OMNMHCE—Organic Material Non-Methane Hydrocarbon Equivalent.
PM—Particulate Matter.
THC—Total Hydrocarbons.

7. A new § 86.094–7 is added to subpart A to read as follows:

§ 86.094–7 Maintenance of records; submittal of information; right of entry.

Section 86.094–7 includes text that specifies requirements that differ from § 86.091–7. Where a paragraph in § 86.091–7 is identical and applicable to § 86.094–7, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.091–7." Where a corresponding paragraph of § 86.091–7 is not applicable, this is indicated by the statement "[Reserved]."

(a) Introductory text through (a)(2) [Reserved]. For guidance see § 86.091–7.

(a)(3) All records, other than routine emission test records, required to be maintained under this subpart shall be retained by the manufacturer for a period of eight (8) years after issuance of all certificates of conformity to which they relate. Routine emission test records shall be retained by the manufacturer for a period of one (1) year after issuance of all certificates of conformity to which they relate. Records may be retained as hard copy or reduced to microfilm, punch cards, etc., depending on the record retention procedures of the manufacturer, provided, that in every case all the information contained in the hard copy shall be retained.

(b) Through (c)(2) [Reserved]. For guidance see § 86.091–7.

(c)(3) The manufacturer (or contractor for the manufacturer, if applicable) shall retain all records required to be maintained under this section for a period of eight (8) years from the due date for the end-of-model year averaging, trading, and banking reports. Records may be retained as hard copy or reduced to microfilm, ADP files, etc., depending on the manufacturer's record retention procedure, provided that in every case all the information contained in the hard copy is retained.

(c)(4) Through (d)(1)(v) [Reserved]. For guidance see § 86.091–7.

(d)(1)(vi) Any facility where any record or other document relating to the information specified in paragraph (h) of this section is located.

(2) Upon admission to any facility referred to in paragraph (d)(1) of this section, any EPA Enforcement Officer or any EPA authorized representative shall be allowed:

(i) To inspect and monitor any part or aspect of such procedures, activities, and testing facilities, including, but not limited to, monitoring vehicle (or engine) preconditioning, emissions tests and mileage (or service) accumulation, maintenance, and vehicle soak and storage procedures (or engine storage procedures), and to verify correlation or calibration of test equipment;

(ii) To inspect and make copies of any such records, designs, or other documents, including those records specified in § 86.091–7(c); and

(iii) To inspect and make copies of any such records, designs or other documents including those records specified in paragraph (h) of this section; and

(iv) To inspect and/or photograph any part or aspect of any such certification vehicle (or certification engine) and any components to be used in the construction thereof.

(d)(3) Through (g) [Reserved]. For guidance see § 86.091–7.

(h)(1) The manufacturer (or contractor for the manufacturer, if applicable) of any new model year 1994 through 1997 light-duty vehicle or light light-duty truck, or model year 1998 through 1998 heavy light-duty truck that is certified shall establish, maintain and retain the following adequately organized and indexed records for each such vehicle:

(i) EPA engine family;
(ii) Vehicle identification number;
(iii) Model year and production date;
(iv) Shipment date;
(v) Purchaser; and
(vi) Purchase contract.

(2) In addition, the manufacturer (or contractor for the manufacturer, if applicable) of each certified engine family shall establish, maintain and retain adequately organized records of the actual U.S. sales volume for the model year for each engine family. The manufacturer may petition the Administrator to allow actual volume produced for U.S. sale to be used in lieu of actual U.S. sales. Such petition shall be submitted within 30 days of the end of the model year to the Manufacturers Operations Division. For the petition to be granted, the manufacturer must establish to the satisfaction of the Administrator that actual production volume is functionally equivalent to actual sales volume.

(3) The manufacturer (or contractor for the manufacturer, if applicable) shall retain all records required to be maintained under this section for a period of eight (8) years from the due date for the applicable end-of-model year report. Records may be retained as hard copy or reduced to microfilm, ADP files, etc., depending on the manufacturer's record retention procedure, provided that in every case all the information contained in the hard copy is retained.

(4) Nothing in this section limits the Administrator's discretion in requiring the manufacturer to retain additional records or submit information not specifically required by this section.

(5) Pursuant to a request made by the Administrator, the manufacturer shall submit to him the information that is required to be retained.

(6) EPA may void ab initio a certificate of conformity for a vehicle certified to Tier 0 certification standards for which the manufacturer fails to retain the records required in this section or to provide such information to the Administrator upon request.

(i) Any voiding ab initio of a certificate under § 86.091–7 (c) and paragraph (h) of this section will be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.614 for light-duty vehicles or under § 86.1014 for light-duty trucks and heavy-duty engines.

8. A new § 86.094–8 is added to subpart A to read as follows:

§ 86.094–8 Emission standards for 1994 and later model year light-duty vehicles.

Section 86.094–8 includes text that specifies requirements that differ from § 86.090–8. Where a paragraph in § 86.090–8 is identical and applicable to § 86.094–8, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.090–8." Where a corresponding paragraph of § 86.090–8 is not applicable, this is indicated by the statement "[Reserved]."

(a)(1) *Standards.* (i) Exhaust emissions from 1994 and later model year light-duty vehicles shall meet all standards in Tables A94–2, A94–3, A94–5 and A94–6 in the rows designated with the applicable fuel type, according to the implementation schedule in Tables A94–1 and A94–4, as follows:

(A)(*1*)(*i*) A minimum of the percentage shown in Table A94–1 of a manufacturer's sales of the applicable model year's light-duty vehicles shall not exceed the applicable Tier 1 standards in Table A94–2 and shall not exceed the applicable Tier 1 standards in Table A94–3. The remaining vehicles shall not exceed the applicable Tier 0 standards in Table A94–2.

(*ii*) Optionally, a minimum of the percentage shown in Table A94–1 of a manufacturer's combined sales of the applicable model year's light-duty vehicles and light light-duty trucks shall not exceed the applicable Tier 1 standards. Under this option, the light-duty vehicles shall not exceed the applicable Tier 1 standards in Table A94–2 and shall not exceed the applicable Tier 1 standards in Table A94–3. Further, the light light-duty trucks shall not exceed the applicable Tier 1 standards in Table A94–8 of § 86.094–9 and shall not exceed the applicable Tier 1 standards of Table A94–9 of § 86.094–9. The remaining percentage of the manufacturer's combined sales of the applicable model year's light-duty vehicles and light light-duty trucks shall not exceed the corresponding Tier 0 standards.

(*2*) A minimum of the percentage shown in Table A94–4 of a manufacturer's sales of the applicable model year's light-duty vehicles shall not exceed the applicable Tier 1 standards in Table A94–5 and shall not exceed the applicable Tier 1 standards in Table A94–6. The remaining vehicles shall not exceed the applicable Tier 0 standards in Table A94–5.

TABLE A94–1.—IMPLEMENTATION SCHEDULE FOR LIGHT-DUTY VEHICLES FOR HCS, CO AND NOX

Model year	Tier 1 percentage
1994	40
1995	80
After 1995	100

TABLE A94–2.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES FOR HCS, CO AND NOX

Fuel	Standards	THC	NMHC	OMHCE	OMNMHCE	CO	NOx
Gasoline	Tier 0	0.41				3.4	1.0
Gasoline	Tier 1	0.41	0.25			3.4	0.4
Diesel	Tier 0	0.41				3.4	1.0
Diesel	Tier 1	0.41	0.25			3.4	1.0
Methanol	Tier 0			0.41		3.4	1.0
Methanol	Tier 1			0.41	0.25	3.4	0.4

TABLE A94–3.—FULL USEFUL LIFE STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES FOR HCS, CO AND NOX

Fuel	Standards	THC	NMHC	OMHCE	OMNMHCE	CO	NOx
Gasoline	Tier 0						
Gasoline	Tier 1		0.31			4.2	0.6
Diesel	Tier 0						
Diesel	Tier 1		0.31			4.2	1.25
Methanol	Tier 0						
Methanol	Tier 1				0.31	4.2	0.6

TABLE A94–4.—IMPLEMENTATION SCHEDULE FOR LIGHT-DUTY VEHICLES FOR PM

Model year	Tier 1 percentage
1994	40
1995	80
After 1995	100

TABLE A94–5.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES FOR PM

Fuel	Standards	PM
Gasoline	Tier 0	
Gasoline	Tier 1	0.08
Diesel	Tier 0	0.20
Diesel	Tier 1	0.08
Methanol	Tier 0	[1] 0.20
Methanol	Tier 1	0.08

[1] Applicable only to diesel-cycle vehicles.

TABLE A94–6.—FULL USEFUL LIFE STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES FOR PM

Fuel	Standards	PM
Gasoline	Tier 0	
Gasoline	Tier 1	0.10
Diesel	Tier 0	
Diesel	Tier 1	0.10
Methanol	Tier 0	
Methanol	Tier 1	0.10

(B)(*1*)(*i*) Sales percentages for the purposes of determining compliance with paragraph (a)(1)(i)(A) of this section shall be based on total actual U.S. sales of light-duty vehicles of the applicable model year by a manufacturer to a dealer, distributor, fleet operator, broker, or any other entity which comprises the point of first sale. If the option of paragraph (a)(1)(i)(A)(*1*)(*ii*) of this section is taken, such sales percentages shall be based on the total actual combined U.S. sales of light-duty vehicles and light light-duty trucks of the applicable model year by a manufacturer to a dealer, distributor, fleet operator, broker, or any other entity which comprises the point of first sale.

(*ii*) The manufacturer may petition the Administrator to allow actual volume produced for U.S. sale to be used in lieu of actual U.S. sales for purposes of determining compliance with the implementation schedule sales percentages of Tables A94–1 and A94–4 of this section. Such petition shall be submitted within 30 days of the end of the model year to the Manufacturers Operations Division. For the petition to be granted, the manufacturer must establish to the satisfaction of the Administrator that actual production volume is functionally equivalent to actual sales volume.

(*iii*) The manufacturer may count toward the sales percentages light-duty vehicles of the applicable model year

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that meet certain standards for that same model year contained in Title 13, California Code of Regulations, Section 1960.1, and the incorporated "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles." (Copies may be obtained from Barclays Law Publishers, P.O. Box 3066, San Francisco, CA 94060.) The relevant standards from that source are those that are designated as phase-in standards for selected pollutants and were first applied in the 1993 model year, as well as those for all remaining pollutants that require compliance at the one hundred percent level. If this option is taken, all light-duty vehicles sold in jurisdictions adopting such standards shall be counted toward the total upon which the sales percentage is based. If this option is not taken, light-duty vehicles sold in such jurisdictions are to be excluded from counting toward either the total upon which the sales percentage is based or the sales percentage itself.

(*iv*) Small volume manufacturers, as defined in § 86.092–14 (b)(1) and (2), are exempt from the implementation schedules of Tables A94–1 and A94–4 of this section for model years 1994 and 1995. For small volume manufacturers, Tier 0 standards of Tables A94–2 and A94–5 continue to apply until model year 1996 when one hundred percent compliance with the Tier 1 standards of Tables A94–2, A94–3, A94–5, and A94–6 is required. This exemption does not apply to small volume engine families as defined in § 86.092–14 (b)(5).

(*2*)(*i*) Where the required implementation schedule sales percentages for in-use purposes, as prescribed in subpart H of this part, are the same in a given model year as the required implementation schedule sales percentages for certification purposes, as prescribed in this section, the same engine families must comprise the respective percentages.

(*ii*) Where the required implementation schedule sales percentages for in-use purposes differ from implementation schedule sales percentages for certification purposes in a particular model year, the manufacturer must designate, at the time of Application for Certification, which families will meet each applicable in-use phase-in percentage.

(*3*) The manufacturer must state at the time of Application for Certification, based on projected U.S. sales or projected production for U.S. sale, which families will be used to attain the required implementation schedule sales percentages for certification purposes.

(*4*) A manufacturer can not use one set of engine families to meet its intermediate useful life standards and another to meet its full useful life standards. The same families which are used to meet the intermediate useful life standards will be required without deviation to meet the corresponding full useful life standards.

(*ii*) A manufacturer may elect to include all or some of its diesel-cycle light-duty vehicle engine families subject to the Tier 0 standards in the appropriate particulate averaging program (petroleum or methanol), provided that vehicles produced for sale in California or in designated high-altitude areas may be averaged only within each of these areas. Averaging is not permitted between fuel types. If the manufacturer elects to average light-duty vehicles and light-duty trucks together in the appropriate particulate averaging program, its composite particulate standard applies to the combined set of light-duty vehicles and light-duty trucks included in the average and is calculated as defined in § 86.090–2.

(2) The standards set forth in paragraph (a)(1)(i) of this section refer to the exhaust emitted over a driving schedule as set forth in subpart B of this part and measured and calculated in accordance with those procedures. The test weight basis for light-duty vehicles, for the purposes of determining equivalent test weight as prescribed in § 86.129–94, shall be loaded vehicle weight.

(b) through (h) [Reserved]. For guidance see § 86.090–8.

(i)(1) The manufacturers may exempt 1994 and later model year vehicles from compliance at low altitude with the emission standards set forth in paragraph (a) of this section and § 86.090–8 (b) if the vehicles:

(i) Are not intended for sale at low altitude; and

(ii) Are equipped with a unique, high-altitude axle ratio (rear-wheel drive vehicles) or a unique, high-altitude drivetrain (front-wheel drive vehicles) with a higher N/V ratio than other configurations of that model type which are certified in compliance with the emission standards of paragraph (a) of this section and § 86.090–8 (b) under low-altitude conditions.

(2) The sale of a vehicle for principal use at low altitude that has been exempted as set forth in paragraph (i)(1) of this section will be considered a violation of section 203(a)(1) of the Clean Air Act.

(j) Any exempted light-duty vehicle that a manufacturer wishes to certify for sale under the provisions of § 86.090–8 (h) or paragraph (i) of this section is subject to the provisions of subpart Q of this part.

(Approved by the Office of Management and Budget under control number 2060–0104)

9. A new § 86.094–9 is added to subpart A to read as follows:

§ 86.094–9 Emission standards for 1994 and later model year light-duty trucks.

(a)(1) *Standards*—(i) *Light light-duty trucks.* Exhaust emissions from 1994 and later model year light light-duty trucks shall meet all standards in Tables A94–8, A94–9, A94–11 and A94–12 in the rows designated with the applicable fuel type and loaded vehicle weight, according to the implementation schedule in Tables A94–7 and A94–10 as follows:

(A)(*1*)(*i*) A minimum of the percentage shown in Table A94–7 of a manufacturer's sales of the applicable model year's light light-duty trucks shall not exceed the applicable Tier 1 standards in Table A94–8 and shall not exceed the applicable Tier 1 standards in Table A94–9. The remaining vehicles shall not exceed the applicable Tier 0 standards in Table A94–9.

(*ii*) Optionally, a minimum of the percentage shown in Table A94–7 of a manufacturer's combined sales of the applicable model year's light-duty vehicles and light light-duty trucks shall not exceed the applicable Tier 1 standards. Under this option, the light-duty vehicles shall not exceed the applicable Tier 1 standards in Table A94–2 of § 86.094–8 and shall not exceed the applicable Tier 1 standards in Table A94–3 of § 86.094–8. Further, the light light-duty trucks shall not exceed the applicable Tier 1 standards in Table A94–8 and shall not exceed the applicable Tier 1 standards of Table A94–9. The remaining percentage of the manufacturer's combined sales of the applicable model year's light-duty vehicles and light light-duty trucks shall not exceed the corresponding Tier 0 standards.

(*2*) A minimum of the percentage shown in Table A94–10 of a manufacturer's sales of the applicable model year's light light-duty trucks shall not exceed the applicable Tier 1 standards in Table A94–11 and shall not exceed the applicable Tier 1 standards in Table A94–12. The remaining vehicles shall not exceed the applicable Tier 0 standards in Table A94–12.

TABLE A94–7.—IMPLEMENTATION SCHEDULE FOR LIGHT LIGHT-DUTY TRUCKS FOR HCs, CO, AND NOx

Model year	Tier 1 percentage
1994	40
1995	80
After 1995	100

TABLE A94–8.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS FOR HCs, CO AND NOx

Fuel	LVW (lbs)	Standards	THC	NMHC	OMHCE	OMNMHCE	CO	NOx
Gasoline	0–3750	Tier 0						
Gasoline	0–3750	Tier 1		0.25			3.4	0.4
Gasoline	3751–5750	Tier 0						
Gasoline	3751–5750	Tier 1		0.32			4.4	0.7
Diesel	0–3750	Tier 0						
Diesel	0–3750	Tier 1		0.25			3.4	1.0
Diesel	3751–5750	Tier 0						
Diesel	3751–5750	Tier 1		0.32			4.4	
Methanol	0–3750	Tier 0						
Methanol	0–3750	Tier 1				0.25	3.4	0.4
Methanol	3751–5750	Tier 0						
Methanol	3751–5750	Tier 1				0.32	4.4	0.7

TABLE A94–9.—FULL USEFUL LIFE STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS FOR HCs, CO AND NOx

Fuel	LVW (lbs)	Standards	THC [1]	NMHC	OMHCE [1]	OMNMHCE	CO	NOx
Gasoline	0–3750	Tier 0	0.80				10	1.2
Gasoline	0–3750	Tier 1	0.80	0.31			4.2	0.6
Gasoline	3751–5750	Tier 0	0.80				10	1.7
Gasoline	3751–5750	Tier 1	0.80	0.40			5.5	0.97
Diesel	0–3750	Tier 0	0.80				10	1.2
Diesel	0–3750	Tier1	0.80	0.31			4.2	1.25
Diesel	3751–5750	Tier 0	0.80				10	1.7
Diesel	3751–5750	Tier 1	0.80	0.40			5.5	0.97
Methanol	0–3750	Tier 0			0.80		10	1.2
Methanol	0–3750	Tier 1			0.80	0.31	4.2	0.6
Methanol	3751–5750	Tier 0			0.80		10	1.7
Methanol	3751–5750	Tier 1			0.80	0.40	5.5	0.97

[1] Applicable useful life is 11 years or 120,000 miles, whichever occurs first.

TABLE A94–10.—IMPLEMENTATION SCHEDULE FOR LIGHT LIGHT-DUTY TRUCKS FOR PM

Model year	Tier 1 Percentage
1994	0
1995	40
1996	80
After 1996	100

TABLE A94–11.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS FOR PM

Fuel	LVW (lbs)	Standards	PM
Gasoline	0–3750	Tier 0	
Gasoline	0–3750	Tier 1	0.08
Gasoline	3751–5750	Tier 0	
Gasoline	3751–5750	Tier 1	0.08
Diesel	0–3750	Tier 0	
Diesel	0–3750	Tier 1	0.08
Diesel	3751–5750	Tier 0	
Diesel	3751–5750	Tier 1	0.08
Methanol	0–3750	Tier 0	
Methanol	0–3750	Tier 1	0.08
Methanol	3751–5750	Tier 0	
Methanol	3751–5750	Tier 1	0.08

TABLE A94–12.—FULL USEFUL LIFE STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS FOR PM

Fuel	LVW (lbs)	Standards	PM
Gasoline	0–3750	Tier 0	
Gasoline	0–3750	Tier 1	0.10

TABLE A94–11.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS FOR PM—Continued

Fuel	LVW (lbs)	Standards	PM
Diesel	0–3750	Tier 0	
Diesel	0–3750	Tier 1	0.08
Diesel	3751–5750	Tier 0	
Diesel	3751–5750	Tier 1	0.08
Methanol	0–3750	Tier 0	
Methanol	0–3750	Tier 1	0.08
Methanol	3751–5750	Tier 0	
Methanol	3751–5750	Tier 1	0.08

TABLE A94–12.—FULL USEFUL LIFE STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS FOR PM—Continued

Fuel	LVW (lbs)	Standards	PM
Gasoline	3751–5750	Tier 0	
Gasoline	3751–5750	Tier 1	0.10
Diesel	0–3750	Tier 0	0.26
Diesel	0–3750	Tier 1	0.10
Diesel	3751–5750	Tier 0	0.13
Diesel	3751–5750	Tier 1	0.10
Methanol	0–3750	Tier 0	[1] 0.26
Methanol	0–3750	Tier 1	0.10
Methanol	3751–5750	Tier 0	[1] 0.13
Methanol	3751–5750	Tier 1	0.10

[1] Applicable only to diesel-cycle vehicles.

(B)(1)(i) Sales percentages for the purposes of determining compliance with paragraph (a)(1)(i)(A) of this section shall be based on total actual U.S. sales of light light-duty trucks of the applicable model year by a

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manufacturer to a dealer, distributor, fleet operator, broker, or any other entity which comprises the point of first sale. If the option of paragraph (a)(1)(i)(A)(*1*)(*ii*) of this section is taken, such sales percentages shall be based on the total actual combined U.S. sales of light-duty vehicles and light light-duty trucks of the applicable model year by a manufacturer to a dealer, distributor, fleet operator, broker, or any other entity which comprises the point of first sale.

(*ii*) The manufacturer may petition the Administrator to allow actual volume produced for U.S. sales to be used in lieu of actual U.S. sales for purposes of determining compliance with the implementation schedule sales percentages of Tables A94–7 and A94–10 of this section. Such petition shall be submitted within 30 days of the end of the model year to the Manufacturers Operations Division. For the petition to be granted, the manufacturer must establish to the satisfaction of the Administrator that actual production volume is functionally equivalent to actual sales volume.

(*iii*) The manufacturer may count toward the sales percentages light light-duty trucks of the applicable model year that meet certain standards for that same model year contained in Title 13, "California Code of Regulations, Section 1960.1, and the incorporated California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles." (Copies may be obtained from Barclays Law Publishers, P.O. Box 3066, San Francisco, CA 94080.) The relevant standards from that source are those that are designated as phase-in standards for selected pollutants and were first applied in the 1993 model year, as well as those for all remaining pollutants that require compliance at the one hundred percent level. If this option is taken, all light light-duty trucks sold in jurisdictions adopting such standards shall be counted toward the total upon which the sales percentage is based. If this option is not taken, light light-duty trucks sold in such jurisdictions are to be excluded from counting toward either the total upon which the sales percentage is based or the sales percentage itself.

(*iv*) Small volume manufacturers, as defined in § 86.092–14(b) (1) and (2), are exempt from the implementation schedules of Table A94–7 of this section for model years 1994 and 1995 and from the implementation schedules of Table A94–10 of this section for model years 1995 and 1996. For small volume manufacturers, the Tier 0 standards of Table A94–9 continue to apply until model year 1996, and the Tier 0 standards of Table A94–12 continue to apply until model year 1997, when one hundred percent compliance with the Tier 1 standards of Tables A94–8, A94–9, A94–11, and A94–12 is required. This exemption does not apply to small volume engine families as defined in § 86.092–14(b)(5).

(*2*)(*i*) Where the required implementation schedule sales percentages for in-use purposes, as prescribed in subpart H of this part, are the same in a given model year as the required implementation schedule sales percentages for certification purposes, as prescribed in this section, the same engine families must comprise the respective percentages.

(*ii*) Where the required implementation schedule sales percentages for in-use purposes differ from implementation schedule sales percentages for certification purposes in a particular model year, the manufacturer must designate, at the time of Application for Certification, which families will meet each applicable in-use phase-in percentage.

(*3*) The manufacturer must state at the time of Application for Certification, based on projected U.S. sales or projected production for U.S. sale, which families will be used to attain the required implementation schedule sales percentages for certification purposes.

(*4*) A manufacturer can not use one set of engine families to meet its intermediate useful life standards and another to meet its full useful life standards. The same families which are used to meet the intermediate useful life standards will be required without deviation to meet the corresponding full useful life standards.

(ii) *Heavy light-duty trucks.* Exhaust emissions from 1994 and later model year heavy light-duty trucks shall meet all standards in Tables A94–14 and A94–15 in the rows designated with the applicable fuel type and loaded vehicle weight or adjusted loaded vehicle weight, as applicable, according to the implementation schedule in Table A94–13, as follows:

(A) A minimum of the percentage shown in Table A94–13 of a manufacturer's sales of the applicable model year's heavy light-duty trucks shall not exceed the applicable Tier 1 standards in Table A94–14 and shall not exceed the applicable Tier 1 standards in Table A94–15. The remaining vehicles shall not exceed the applicable Tier 0 standards in Table A94–15.

TABLE A94–13.—IMPLEMENTATION SCHEDULE FOR HEAVY LIGHT-DUTY TRUCKS FOR HCs, CO, NOx AND PM

Model year	Tier 1 percentage
1994	0
1995	0
1996	50
after 1996	100

TABLE A94–14.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR HEAVY LIGHT-DUTY TRUCKS FOR HCs, CO, NOx AND PM

Fuel	ALVW (lbs)	Standards	THC	NMHC	OMHCE	OMNMHCE	CO	NOx	PM
Gasoline	3751–5750	Tier 0					4.4	0.7	
Gasoline	3751–5750	Tier 1		0.32					
Gasoline	>5750	Tier 0					5.0	1.1	
Gasoline	>5750	Tier 1		0.39					
Diesel	3751–5750	Tier 0					4.4		
Diesel	3751–5750	Tier 1		0.32					
Diesel	>5750	Tier 0					5.0		
Diesel	>5750	Tier 1		0.39					
Methanol	3751–5750	Tier 0				0.32	4.4	0.7	
Methanol	3751–5750	Tier 1							
Methanol	>5750	Tier 0				0.39	5.0	1.1	
Methanol	>5750	Tier 1							

TABLE A94–15.—FULL USEFUL LIFE STANDARDS (G/MI) FOR HEAVY LIGHT-DUTY TRUCKS FOR HCs, CO, NOx AND PM

Fuel	LVW (lbs)	ALVW (lbs)	Standards	THC	NMHC	OMHCE	OMNMHCE	CO	NOx	PM
Gasoline	0–3750		Tier 0	0.80				10	1.2	
Gasoline	>3750		Tier 0	0.80				10	1.7	
Gasoline		3751–5750	Tier 1	0.80	0.46			6.4	0.98	0.10
Gasoline		>5750	Tier 1	0.80	0.56			7.3	1.53	0.12
Diesel	0–3750		Tier 0	0.80				10	1.2	0.26
Diesel	>3750		Tier 0	0.80				10	1.7	0.13
Diesel		3751–5750	Tier 1	0.80	0.46			6.4	0.98	0.10
Diesel		>5750	Tier 1	0.80	0.56			7.3	1.53	0.12
Methanol	0–3750		Tier 0			0.80		10	1.2	[1] 0.26
Methanol	>3750		Tier 0			0.80		10	1.7	[1] 0.13
Methanol		3751–5750	Tier 1			0.80	0.46	6.4	0.98	0.10
Methanol		>5750	Tier 1			0.80	0.56	7.3	1.53	0.12

[1] Applicable only to diesel-cycle vehicles.

(B)(*1*)(*i*) Sales percentages for the purposes of determining compliance with paragraph (a)(1)(ii)(A) of this section shall be based on total actual U.S. sales of heavy light-duty trucks of the applicable model year by a manufacturer to a dealer, distributor, fleet operator, broker, or any other entity which comprises the point of first sale.

(*ii*) The manufacturer may petition the Administrator to allow actual volume produced for U.S. sale to be used in lieu of actual U.S. sales for purposes of determining compliance with the implementation schedule sales percentages of Table A94–13 of this section. Such petition shall be submitted within 30 days of the end of the model year to the Manufacturers Operations Division. For the petition to be granted, the manufacturer must establish to the satisfaction of the Administrator that actual production volume is functionally equivalent to actual sales volume.

(*iii*) The manufacturer may count toward the sales percentages heavy light-duty trucks of the applicable model year that meet certain standards for that same model year contained in Title 13, California Code of Regulations, Section 1960.1, and the incorporated "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles." The relevant standards from that source are those that are designated as phase-in standards for selected pollutants and were first applied in the 1995 model year, as well as those for all remaining pollutants that require compliance at the one hundred percent level. If this option is taken, all heavy light-duty trucks sold in jurisdictions adopting such standards shall be counted toward the total upon which the sales percentage is based. If this option is not taken, heavy light-duty trucks sold in such jurisdictions are to be excluded from counting toward either the total upon which the sales percentage is based or the sales percentage itself.

(*iv*) Small volume manufacturers, as defined in § 86.092–14(b) (1) and (2), are exempt from the implementation schedule of Table A94–13 of this section for model year 1996. For small volume manufacturers, the Tier 0 standards of Table A94–15 continue to apply until model year 1997, when one hundred percent compliance with the Tier 1 standards of Tables A94–14 and A94–15 is required. This exemption does not apply to small volume engine families as defined in § 86.092–14(b)(5).

(*2*)(*i*) Where the required implementation schedule sales percentages for in-use purposes, as prescribed in subpart H of this part, are the same in a given model year as the required implementation schedule sales percentages for certification purposes, as prescribed in this section, the same engine families must comprise the respective percentages.

(*ii*) Where the required implementation schedule sales percentages for in-use purposes differ from implementation schedule sales percentages for certification purposes in a particular model year, the manufacturer must designate, at the time of Application for Certification, which families will meet each applicable in-use phase-in percentage.

(*3*) The manufacturer must state at the time of Application for Certification, based on projected U.S. sales or projected production for U.S. sale, which families will be used to attain the required implementation schedule sales percentages for certification purposes.

(*4*) A manufacturer cannot use one set of engine families to meet its intermediate useful life standards and another to meet its full useful life standards. The same families which are used to meet the intermediate useful life standards will be required without deviation to meet the corresponding full useful life standards.

(iii) Exhaust emissions of carbon monoxide from 1994 and later model year light-duty trucks shall not exceed 0.50 percent of exhaust gas flow at curb idle at a useful life of 11 years or 120,000 miles, whichever first occurs (for Otto-cycle and methanol-fueled diesel-cycle light-duty trucks only).

(iv)(A) A manufacturer may elect to include all or some of its light-duty truck engine families subject to the Tier 0 standards in the NOx averaging program, provided that it does not elect to pay an NCP for noncompliance with any emission standard applicable to that light-duty truck family. Trucks produced for sale in California or in designated high-altitude areas may be averaged only within each of those areas. Petroleum-fueled and methanol-fueled engine families may not be averaged together. Otto-cycle and diesel engines families also may not be averaged together. If the manufacturer elects to participate in the NOx averaging program, individual family NOx emission limits may not exceed 2.0 grams per mile. If the manufacturer elects to average together NOx emissions of light-duty trucks subject to different standards based on GVWR and loaded vehicle weight, its composite NO_x standard applies to the combined fleets of light-duty trucks of all weight categories included in the average, and is calculated as defined in § 86.088–2.

(B) A manufacturer may elect to include any diesel light-duty truck engine families subject to the Tier 0 standards in the appropriate particulate averaging program (petroleum or methanol), provided that it does not elect to pay an NCP for noncompliance with any emission standard applicable to that light-duty truck family. Trucks produced for sale in California or in designated high-altitude areas may be averaged only within each of those areas, and light-duty trucks greater than 3750 lbs loaded vehicle weight may be averaged only with other light-duty

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trucks greater than 3750 lbs loaded vehicle weight. Averaging is not permitted between fuel types. If the manufacturer elects to average both light-duty trucks 3750 lbs loaded vehicle weight or less and light-duty vehicles together in the appropriate particulate averaging program, its composite particulate standard applies to the combined set of light-duty vehicles and light-duty trucks included in the average and is calculated as defined in § 86.088–2.

(2) The standards set forth in paragraphs (a)(1)(i) and (a)(1)(ii) of this section refer to the exhaust emitted over a driving schedule as set forth in subpart B of this part and measured and calculated in accordance with those procedures. The test weight basis for light light-duty trucks, and for heavy light-duty trucks certified to the Tier 0 standards of this section, for the purposes of determining equivalent test weight as prescribed in § 86.129–94, shall be loaded vehicle weight. The test weight basis for heavy light-duty trucks certified to the Tier 1 standards of this section, for the purposes of determining equivalent test weight as prescribed in § 86.129–94, shall be adjusted loaded vehicle weight. The standard set forth in paragraph (a)(1)(iii) of this section refers to the exhaust emitted at curb idle and measured and calculated in accordance with the procedures set forth in subpart P of this part.

(b) Fuel evaporative emissions from 1994 and later model year light-duty trucks shall not exceed:

(1) *Hydrocarbons (for gasoline-fueled light-duty trucks).* 2.0 grams per test.

(2) *Organic Material Hydrocarbon Equivalent (for methanol-fueled light-duty trucks).* 2.0 grams per test.

(3) The standards set forth in paragraphs (b) (1) and (2) of this section refer to a composite sample of the fuel evaporative emissions collected under the conditions set forth in Subpart B of this part and measured in accordance with those procedures.

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any 1994 and later model year light-duty truck.

(d) The CO, NOx, and particulate standards set forth in paragraphs (d)(1)(ii)(A), (d)(1)(iii), and (d)(1)(iv) of this section, respectively, are applicable only to model year 1994 light-duty trucks certified to the Tier 0 standards of paragraphs (a)(1)(i) and (a)(1)(ii) of this section. The HC, OMHCE, and idle CO standards set forth in paragraphs (d)(1)(i)(A), (d)(1)(i)(B) and (d)(1)(ii)(B) of this section, respectively, are applicable only to model year 1994 light-duty trucks.

(1) Model year 1994 light-duty trucks sold for principal use at a designated high-altitude location shall be capable of meeting the following exhaust emission standards when tested under high-altitude conditions:

(i)(A) *Hydrocarbons (for petroleum-fueled Otto-cycle and diesel light-duty trucks).* 1.0 grams per vehicle mile (0.62 grams per vehicle kilometer).

(B) *Organic Material Hydrocarbon Equivalent (for methanol-fueled Otto-cycle and diesel light-duty trucks).* 1.0 gram per vehicle mile (0.62 gram per vehicle kilometer).

(ii) *Carbon Monoxide.* (A) 14 grams per vehicle mile (8.7 grams per vehicle kilometer).

(B) 0.50 percent of exhaust gas flow at curb idle (for Otto-cycle and methanol-fueled diesel light-duty trucks only).

(iii) *Oxides of Nitrogen.* (A) For light-duty trucks up to and including 3,750 lbs. loaded vehicle weight, 1.2 grams per vehicle mile (0.75 grams per vehicle kilometer).

(B) For light-duty trucks 3,751 lbs. and greater loaded vehicle weight, 1.7 grams per vehicle mile (1.1 grams per vehicle kilometer).

(iv) *Particulate (for diesel light-duty trucks only).* (A) For light-duty trucks up to and including 3,750 lbs. loaded vehicle weight, 0.28 gram per vehicle mile (0.18 gram per vehicle kilometer).

(B) For light-duty trucks 3,751 lbs. and greater loaded vehicle weight, 0.13 gram per vehicle mile (0.08 gram per vehicle kilometer).

(2) The standards set forth in paragraphs (d)(1)(i), (d)(1)(ii)(A), (d)(1)(iii), and (d)(1)(iv) of this section refer to the exhaust emitted over a driving schedule as set forth in subpart B of this part and measured and calculated in accordance with those procedures. The standard set forth in paragraph (d)(1)(ii)(B) of this section refers to the exhaust emitted at curb idle and measured and calculated in accordance with the procedures set forth in subpart P of this part.

(e) Fuel evaporative emissions from 1994 model year light-duty trucks sold for principal use at a designated high-altitude location, when tested under high-altitude conditions, shall not exceed:

(1) *Hydrocarbons (for gasoline-fueled light-duty trucks).* 2.6 grams per test.

(2) *Organic Material Hydrocarbon Equivalent (for methanol-fueled light-duty trucks).* 2.6 grams per test.

(3) The standards set forth in paragraphs (e) (1) and (2) of this section refer to a composite sample of the fuel evaporative emissions collected under the conditions set forth in subpart B of this part and measured in accordance with those procedures.

(f) No crankcase emissions shall be discharged into the ambient atmosphere from any 1994 model year light-duty trucks sold for principal use at a designated high-altitude location.

(g)(1) Any model year 1994 light-duty truck that a manufacturer wishes to certify for sale at low altitude must be capable of meeting high-altitude emission standards (specified in paragraphs (d) through (f) of this section). The manufacturer may specify vehicle adjustments or modifications to allow the vehicle to meet high-altitude standards but these adjustments or modifications may not alter the vehicle's basic engine, inertia weight class, transmission configuration, and axle ratio.

(i) A manufacturer may certify unique configurations to meet the high-altitude standards but is not required to certify these vehicle configurations to meet the low-altitude standards.

(ii) Any adjustments or modifications that are recommended to be performed on vehicles to satisfy the requirements of paragraph (g)(1) of this section:

(A) Shall be capable of being effectively performed by commercial repair facilities, and

(B) Must be included in the manufacturer's application for certification.

(2) Any model year 1995 and later light-duty truck and optionally model year 1994 light-duty truck that a manufacturer wishes to certify for sale shall meet the emission standards of paragraphs (a) through (c) of this section under both low- and high-altitude conditions as specified in § 86.082–2, except as provided in paragraphs (h) and (i) of this section. Vehicles shall meet emission standards under both low- and high-altitude conditions without manual adjustments or modifications. Any emission control device used to meet emission standards under high-altitude conditions shall initially actuate (automatically) no higher than 4,000 feet above sea level.

(h) The manufacturer may exempt 1994 and later model year light-duty trucks from compliance at high altitude with the emission standards set forth in paragraphs (a) and (b) of this section, and may exempt 1994 model year light-duty trucks from compliance with the high-altitude emission standards set forth in paragraphs (d) and (e) of this section, if the vehicles are not intended for sale at high altitude and if the requirements of paragraphs (h)(1) and (2) of this section are met.

(1) A vehicle configuration shall only be considered eligible for exemption under paragraph (h) of this section if the requirements of any of paragraphs (h)(1)(i), (ii), (iii), or (iv) of this section are met.

(i) Its design parameters (displacement-to-weight ratio (D/W) and engine speed-to-vehicle-speed ratio (N/V)) fall within the exempted range for that manufacturer for that year. The exempted range is determined according to the following procedure:

(A) The manufacturer shall graphically display the D/W and N/V data of all vehicle configurations it will offer for the model year in question. The axis of the abscissa shall be D/W (where (D) is the engine displacement expressed in cubic centimeters and (W) is the gross vehicle weight (GVW) expressed in pounds), and the axis of the ordinate shall be N/V (where (N) is the crankshaft speed expressed in revolutions per minute and (V) is the vehicle speed expressed in miles per hour). At the manufacturer's option, either the 1:1 transmission gear ratio or the lowest numerical gear ratio available in the transmission will be used to determine N/V. The gear selection must be the same for all N/V data points on the manufacturer's graph. For each transmission/axle ratio combination, only the lowest N/V value shall be used in the graphical display.

(B) The product line is then defined by the equation, $N/V = C(D/W)^{-0.9}$ where the constant, C, is determined by the requirement that all the vehicle data points either fall on the line or lie to the upper right of the line as displayed on the graphs.

(C) The exemption line is then defined by the equation, $N/V = C(0.84\ D/W)^{-0.9}$ where the constant, C, is the same as that found in paragraph (h)(1)(i)(B) of this section.

(D) The exempted range includes all values of N/V and D/W which simultaneously fall to the lower left of the exemption line as drawn on the graph.

(ii) Its design parameters fall within the alternate exempted range for that manufacturer that year. The alternate exempted range is determined by substituting rated horsepower (hp) for displacement (D) in the exemption procedure described in paragraph (h)(1)(i) of this section and by using the product line $N/V = C(hp/W)^{-0.9}$.

(A) Rated horsepower shall be determined by using the Society of Automotive Engineers Test Procedure J 1349 (copies may be obtained from SAE, 400 Commonwealth Dr., Warrendale, PA 15096), or any subsequent version of that test procedure. Any of the horsepower determinants within that test procedure may be used, as long as it is used consistently throughout the manufacturer's product line in any model year.

(B) No exemptions will be allowed under paragraph (h)(1)(ii) of this section to any manufacturer that has exempted vehicle configurations as set forth in paragraph (h)(1)(i) of this section.

(iii) Its acceleration time (the time it takes a vehicle to accelerate from 0 to a speed not less than 40 miles per hour and not greater than 50 miles per hour) under high-altitude conditions is greater than the largest acceleration time under low-altitude conditions for that manufacturer for that year. The procedure to be followed in making this determination is:

(A) The manufacturer shall list the vehicle configuration and acceleration time under low-altitude conditions of that vehicle configuration which has the highest acceleration time under low-altitude conditions of all the vehicle configurations it will offer for the model year in question. The manufacturer shall also submit a description of the methodology used to make this determination.

(B) The manufacturer shall then list the vehicle configurations and acceleration times under high-altitude conditions of all those vehicle configurations which have higher acceleration times under high-altitude conditions than the highest acceleration time at low altitude identified in paragraph (h)(1)(iii)(A) of this section.

(iv) In lieu of performing the test procedure of paragraph (h)(1)(iii) of this section, its acceleration time can be estimated based on the manufacturer's engineering evaluation, in accordance with good engineering practice, to meet the exemption criteria of paragraph (h)(1)(iii) of this section.

(2) A vehicle shall only be considered eligible for exemption under this paragraph if at least one configuration of its model type (and transmission configuration in the case of vehicles equipped with manual transmissions, excluding differences due to the presence of overdrive) is certified to meet emission standards under high-altitude conditions as specified in paragraphs (a) through (g) of this section. The Certificate of Conformity (the Certificate) covering any exempted configuration(s) will also apply to the corresponding non-exempt configuration(s) required under this subparagraph. As a condition to the exemption, any suspension, revocation, voiding, or withdrawal of the Certificate as it applies to a non-exempt configuration for any reason will result in a suspension of the Certificate as it applies to the corresponding exempted configuration(s) of that model type, unless there is at least one other corresponding non-exempt configuration of the same model type still covered by the Certificate. The suspension of the Certificate as it applies to the exempted configuration(s) will be terminated when any one of the following occurs:

(i) Another corresponding non-exempt configuration(s) receive(s) coverage under the Certificate; or

(ii) Suspension of the Certificate as it applies to the corresponding non-exempt configuration(s) is terminated; or

(iii) The Agency's action(s), with respect to suspension, revocation, voiding or withdrawal of the Certificate as it applies to the corresponding non-exempt configuration(s), is reversed.

(3) The sale of a vehicle for principal use at a designated high-altitude location that has been exempted as set forth in paragraph (h)(1) of this section will be considered a violation of section 203(a)(1) of the Clean Air Act.

(i)(1) The manufacturers may exempt 1994 and later model year light-duty trucks from compliance at low altitude with the emission standards set forth in paragraphs (a) and (b) of this section if the vehicles:

(i) Are not intended for sale at low altitude; and

(ii) Are equipped with a unique, high-altitude axle ratio (rear-wheel drive vehicles) or a unique, high-altitude drivetrain (front-wheel drive vehicles) with a higher N/V ratio than other configurations of that model type which are certified in compliance with the emission standards of paragraphs (a) and (b) of this section under low-altitude conditions.

(2) The sale of a vehicle for principal use at low altitude that has been exempted as set forth in paragraph (i)(1) of this section will be considered a violation of section 203(a)(1) of the Clean Air Act.

(j) Any light-duty truck that a manufacturer wishes to certify for sale under the provisions of paragraphs (h) or (i) of this section is subject to the provisions of subpart Q of this part.

(Approved by the Office of Management and Budget under control number 2060-0104)

10. A new § 86.094–21 is added to subpart A to read as follows:

§ 86.094–21 Application for certification.

Section 86.094–21 includes text that specifies requirements that differ from § 86.091–21. Where a paragraph in § 86.091–21 is identical and applicable to § 86.094–21, this may be indicated by

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specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.091–21." Where a corresponding paragraph of § 86.091–21 is not applicable, this is indicated by the statement "[Reserved]."

(a) through (b)(1) [Reserved]. For guidance see § 86.091–21.

(b)(2) Projected U.S. sales data sufficient to enable the Administrator to select a test fleet representative of the vehicles (or engines) for which certification is requested, and, for model year 1994 through 1995 light-duty vehicles and light light-duty trucks and model year 1998 heavy light-duty trucks, data sufficient to determine projected compliance with the Tier 1 standards implementation schedules of § 86.094–8 and § 86.094–9. The data shall also include the altitude of intended sale for model year 1994 light-duty trucks certified to the Tier 0 standards of § 86.094–9. Volume projected to be produced for U.S. sale may be used in lieu of projected U.S. sales.

(3) A description of the test equipment and fuel proposed to be used.

(4)(i) For light-duty vehicles and light-duty trucks, a description of the test procedures to be used to establish the evaporative emission deterioration factors required to be determined and supplied in § 86.094–23(b)(2).

(ii) For heavy-duty vehicles equipped with gasoline-fueled or methanol-fueled engines, the Administrator does not assume that each evaporative emission family-evaporative emission control system combination will deteriorate in a unique manner during the useful life of the vehicle. The manufacturer shall therefore identify those evaporative emission deterioration factors which shall be applied to the various evaporative emission family-evaporative emission control system combinations which are expected to exhibit similar deterioration characteristics during the useful life of the vehicle.

(5)(i)(A) A description of the test procedures to be used to establish the durability data or the exhaust emission deterioration factors required to be determined and supplied in § 86.094–23(b)(1).

(B) For each light-duty truck engine family provided an optional useful life period under the provisions of paragraph (f) of this section, and for each heavy-duty engine family, a statement of the useful life.

(b)(5)(i)(C) through (b)(7) [Reserved]. For guidance see § 86.091–21.

(b)(8) For each light-duty vehicle or light-duty truck engine family, the exhaust emission standards (or family emission limits, if applicable) to which the engine family is to be certified, and the corresponding exhaust emission standards (or family emission limits, if applicable) which the engine family must meet in-use.

(c) Complete copies of the application and of any amendments thereto, and all notifications under § 86.079–32, § 86.079–33, and § 86.082–34 shall be submitted in such multiple copies as the Administrator may require.

(d) Incomplete light-duty trucks shall have a maximum completed curb weight and maximum completed frontal area specified by the manufacturer.

(e) For vehicles equipped with gasoline-fueled or methanol-fueled heavy-duty engines, the manufacturer shall specify a maximum nominal fuel tank capacity for each evaporative emission family-evaporative emission control system combination.

(f) Light-duty truck and heavy-duty engine manufacturers who believe that the useful life periods of § 86.094–2 are significantly unrepresentative for one or more engine families (either too long or too short), may petition the Administrator to provide an alternative useful-life period. This petition must include the full rationale behind the request together with any supporting data and other evidence. Based on this or other information the Administrator may assign an alternative useful-life period. Any petition should be submitted in a timely manner, to allow adequate time for a thorough evaluation. For model year 1994 and later light-duty trucks not subject to the Tier 0 standards of § 86.094–9, alternative useful life periods will be granted only for THC, OMHCE, and idle CO requirements.

(Approved by the Office of Management and Budget under control number 2060–0104)

11. A new § 86.094–23 is added to subpart A to read as follows:

§ 86.094–23 Required data.

Section 86.094–23 includes text that specifies requirements that differ from § 86.091–23. Where a paragraph in § 86.091–23 is identical and applicable to § 86.094–23, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.091–23." Where a corresponding paragraph of § 86.091–23 is not applicable, this is indicated by the statement "[Reserved]."

(a) The manufacturer shall perform the tests required by the applicable test procedures, and submit to the Administrator the following information: *Provided, however,* That if requested by the manufacturer, the Administrator may waive any requirement of this section for testing of vehicle (or engine) for which emission data are available or will be made available under the provisions of § 86.091–29.

(b)(1)(i) Exhaust emission durability data on such light-duty vehicles tested in accordance with applicable test procedures and in such numbers as specified, which will show the performance of the systems installed on or incorporated in the vehicle for extended mileage, as well as a record of all pertinent maintenance performed on the test vehicles.

(ii) Exhaust emission deterioration factors for light-duty trucks and heavy-duty engines, and all test data that are derived from the testing described under § 86.094–21(b)(5)(i)(A), as well as a record of all pertinent maintenance. Such testing shall be designed and conducted in accordance with good engineering practice to assure that the engines covered by a certificate issued under § 86.094–30 will meet the emission standards (or family emission limits, as appropriate) in § 86.094–9, § 86.091–10, or § 86.091–11 as appropriate, in actual use for the useful life of the engine.

(2) For light-duty vehicles and light-duty trucks, evaporative emission deterioration factors for each evaporative emission family-evaporative emission control system combination and all test data that are derived from testing described under § 86.094–21(b)(4)(i) designed and conducted in accordance with good engineering practice to assure that the vehicles covered by a certificate issued under § 86.094–30 will meet the evaporative emission standards in § 86.094–8 or § 86.094–9, as appropriate, for the useful life of the vehicle.

(3) For heavy-duty vehicles equipped with gasoline-fueled or methanol-fueled engines, evaporative emission deterioration factors for each evaporative emission family-evaporative emission control system combination identified in accordance with § 86.094–21(b)(4)(ii). Furthermore, a statement that the test procedure(s) used to derive the deterioration factors includes, but need not be limited to, a consideration of the ambient effects of ozone and temperature fluctuations, and the service accumulation effects of vibration, time, and vapor saturation and purge cycling. The deterioration factor test procedure shall be designed and conducted in accordance with good engineering practice to assure that the vehicles covered by a certificate issued under § 86.094–30 will meet the evaporative emission standards in § 86.091–10 and § 86.091–11 in actual use for the useful life of the engine.

Furthermore, a statement that a description of the test procedure, as well as all data, analyses, and evaluations, is available to the Administrator upon request.

(4)(i) For heavy-duty vehicles with a Gross Vehicle Weight Rating of up to 26,000 lbs and equipped with gasoline-fueled or methanol-fueled engines, a written statement to the Administrator certifying that the manufacturer's vehicles meet the standards of § 86.091–10 or § 86.091–11 (as applicable) as determined by the provisions of § 86.091–28. Furthermore, a written statement to the Administrator that all data, analyses, test procedures, evaluations, and other documents, on which the above statement is based, are available to the Administrator upon request.

(ii) For heavy-duty vehicles with a Gross Vehicle Weight Rating of greater than 26,000 lbs and equipped with gasoline-fueled or methanol-fueled engines, a written statement to the Administrator certifying that the manufacturer's evaporative emission control systems are designed, using good engineering practice, to meet the standards of § 86.091–10 or § 86.091–11 (as applicable) as determined by the provisions of § 86.091–28. Furthermore, a written statement to the Administrator that all data, analyses, test procedures, evaluations, and other documents, on which the above statement is based, are available to the Administrator upon request.

(c) *Emission data.* (1) Emission data, including, in the case of methanol fuel, methanol, formaldehyde, and organic material hydrocarbon equivalent, on such vehicles tested in accordance with applicable test procedures and in such numbers as specified. These data shall include zero-mile data, if generated, and emission data generated for certification as required under § 86.090–26(a)(3)(i) or § 86.090–26(a)(3)(ii). In lieu of providing emission data the Administrator may, on request of the manufacturer, allow the manufacturer to demonstrate (on the basis of previous emission tests, development tests, or other information) that the engine will conform with certain applicable emission standards of § 86.094–8 or § 86.094–9. Standards eligible for such manufacturer requests are those for idle CO emissions, smoke emissions, or particulate emissions from methanol-fueled diesel-cycle certification vehicles, and those for particulate emissions from model year 1994 and later gasoline-fueled or methanol-fueled Otto-cycle certification vehicles that are not certified to the Tier 0 standards of § 86.094–9 (a)(1)(i), (a)(1)(ii), or § 86.094–8(a)(1)(i). Also eligible for such requests are standards for total hydrocarbon emissions from model year 1994 and later certification vehicles that are not certified to the Tier 0 standards of § 86.094–9 (a)(1)(i), (a)(1)(ii) or § 86.094–8(a)(1)(i). By separate request, including appropriate supporting test data, the manufacturer may request that the Administrator also waive the requirement to measure particulate emissions when conducting Selective Enforcement Audit testing of Otto-cycle vehicles.

(c)(2) through (k) [Reserved]. For guidance see § 86.091–23.

(l) Additionally, manufacturers certifying vehicles shall submit for each model year 1994 through 1997 light-duty vehicle and light light-duty truck engine family and each model year 1996 through 1998 heavy light-duty truck engine family:

(1) In the application for certification the projected sales volume of engine families certifying to the respective standards, and the in-use standards that each engine family will meet. Volume projected to be produced for U.S. sale may be used in lieu of projected U.S. sales.

(2) End-of-year reports for each engine family.

(i) These end-of-year reports shall be submitted within 90 days of the end of the model year to: Director, Manufacturers Operations Division (EN–340F), U.S. Environmental Protection Agency, 401 M. Street, SW., Washington, DC 20460.

(ii) These reports shall indicate the model year, engine family and the actual U.S. sales volume. The manufacturer may petition the Administrator to allow volume produced for U.S. sale to be used in lieu of U.S. sales. Such petition shall be submitted within 30 days of the end of the model year to the Manufacturers Operations Division. For the petition to be granted, the manufacturer must establish to the satisfaction of the Administrator that production volume is functionally equivalent to sales volume.

(iii) The U.S. sales volume for end-of-year reports shall be based on the location of the point of sale to a dealer, distributor, fleet operator, broker, or any other entity which comprises the point of first sale.

(iv) Failure by a manufacturer to submit the end-of-year report within the specified time may result in certificate(s) for the engine family(ies) certified to Tier 0 certification standards being voided ab initio plus any applicable civil penalties for failure to submit the required information to the Agency.

(v) These reports shall include the information required under § 86.094–7(h)(1) of this subpart. The information shall be organized in such a way as to allow the Administrator to determine compliance with the Tier 1 standards implementation schedules of § 86.094–8 and § 86.094–9, and the Tier 1 and Tier I_1 implementation schedules of § 86.709–94 and § 86.709–94.

(Approved by the Office of Management and Budget under control number 2060–0104)

12. A new § 86.094–30 is added to subpart A to read as follows:

§ 86.094–30 Certification.

Section 86.094–30 includes text that specifies requirements that differ from § 86.091–30. Where a paragraph in § 86.091–30 is identical and applicable to § 86.094–30, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.091–30." Where a corresponding paragraph of § 86.091–30 is not applicable, this is indicated by the statement "[Reserved]."

(a)(1)(i) If, after a review of the test reports and data submitted by the manufacturer, data derived from any inspection carried out under § 86.078–7(c) and any other pertinent data or information, the Administrator determines that a test vehicle(s) (or test engine(s)) meets the requirements of the Act and of this subpart, he will issue a certificate of conformity with respect to such vehicle(s) (or engine(s)) except in cases covered by paragraph (a)(1)(ii) of this section and § 86.091–30(c).

(ii) *Gasoline-fueled and methanol-fueled heavy-duty vehicles.* If, after a review of the statement(s) of compliance submitted by the manufacturer under § 86.094–23(b)(4) and any other pertinent data or information, the Administrator determines that the requirements of the Act and this subpart have been met, he will issue one certificate of conformity per manufacturer with respect to the evaporative emission family(ies) covered by § 86.091–30(c).

(2) Such certificate will be issued for such period not to exceed one model year as the Administrator may determine and upon such terms as he may deem necessary or appropriate to assure that any new motor vehicle (or new motor vehicle engine) covered by the certificate will meet the requirements of the Act and of this part.

(3)(i) One such certificate will be issued for each engine family. For gasoline-fueled and methanol-fueled light-duty vehicles and light-duty trucks, one such certificate will be issued for

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each engine family evaporative emission family combination.

(A) *Light-duty vehicles.* Each certificate will certify compliance with no more than one set of in-use and certification standards (or family emission limits, as appropriate).

(B) *Light-duty trucks.* Each certificate will certify compliance with no more than one set of in-use and certification standards (or family emission limits, as appropriate), except where there are both low-altitude standards and high altitude standards applicable. The certificate shall state that it covers vehicles sold or delivered to an ultimate purchaser for principal use at a designated high-altitude location only if the vehicle conforms in all material respects to the design specifications that apply to those vehicles described in the application for certification at high altitude.

(a)(3)(ii) through (a)(11) [Reserved]. For guidance see § 86.091–30.

(a)(12) For all light-duty vehicles certified to standards under § 86.094–8 or to which standards under § 86.708–94 are applicable:

(i) All certificates issued are conditional upon the manufacturer complying with all provisions of § 86.094–8 and § 86.708–94 both during and after model year production.

(ii) Failure to meet the required implementation schedule sales percentages as specified in § 86.094–8 and § 86.708–94 will be considered to be a failure to satisfy the conditions upon which the certificate(s) was issued and the vehicles sold in violation of the implementation schedule shall not be covered by the certificate.

(iii) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied.

(b) through (d)(7) [Reserved]. For guidance see § 86.091–30.

(d)(8) Any voiding of the certificate under § 86.091–30(a)(10) will be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.614.

(e) introductory text through (e)(7) [Reserved]. For guidance see § 86.091–30.

(e)(8) Any voiding of the certificate under § 86.091–30 (a)(10) or (a)(11) will be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.1014.

(Approved by the Office of Management and Budget under control numbers 2060–0049 and 2060–0104)

13. A new § 86.094–35 is added to subpart A to read as follows:

§ 86.094–35 Labeling.

Section 86.094–35 includes text that specifies requirements that differ from § 86.092–35. Where a paragraph in § 86.092–35 is identical and applicable to § 86.094–35, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.092–35." Where a corresponding paragraph of § 86.092–35 is not applicable, this is indicated by the statement "[Reserved]."

(a) introductory text through (a)(1)(iii)(E) [Reserved]. For guidance see § 86.092–35.

(a)(1)(iii)(F) The exhaust emission standards (or family emission limits, if applicable) to which the engine family is certified, and the corresponding exhaust emission standards (or family emission limits, if applicable) which the engine family must meet in-use;

(G) For vehicles that have been exempted from compliance with the emission standards at high altitude, as specified in § 86.090–8(h):

(*1*) A highlighted statement (e.g., underscored or boldface letters) that the vehicle is certified to applicable emission standards at low altitude only,

(*2*) A statement that the vehicle's unsatisfactory performance under high-altitude conditions makes it unsuitable for principal use at high altitude, and

(*3*) A statement that the emission performance warranty provisions of 40 CFR part 85, subpart V do not apply when the vehicle is tested at high altitude;

(H) For vehicles that have been exempted from compliance with the emission standards at low altitude, as specified in § 86.094–8(i):

(*1*) A highlighted statement (e.g., underscored or boldface letters) that the vehicle is certified to applicable emission standards at high altitude only, and

(*2*) A statement that the emission performance warranty provisions of 40 CFR part 85, subpart V do not apply when the vehicle is tested at low altitude;

(I) The vacuum hose routing diagram applicable to the vehicles if the vehicles are equipped with vacuum actuated emission and emission-related components. The manufacturer may, at its option, use a separate label for the vacuum hose routing diagram provided that the vacuum hose diagram is placed in a visible and accessible position as provided in this section;

(J) Vehicles granted final admission under § 85.1505 of this chapter must comply with the labeling requirements contained in § 85.1510 of this chapter.

(*2*) *Light-duty trucks.* (i) A legible permanent label shall be affixed in a readily visible position in the engine compartment.

(ii) The label shall be affixed by the vehicle manufacturer who has been issued the certificate of conformity for such vehicle, in such a manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label:

(A) The label heading: Important Vehicle Information;

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement (in cubic inches) and engine family identification;

(D) Engine tune-up specifications and adjustments, as recommended by the manufacturer in accordance with the applicable emission standards (or family emission limits, as appropriate), including but not limited to idle speed(s), ignition timing, the idle air-fuel mixture setting procedure and value (e.g., idle CO, idle air-fuel ratio, idle speed drop), high idle speed, initial injection timing, and valve lash (as applicable), as well as other parameters deemed necessary by the manufacturer. These specifications should indicate the proper transmission position during tune-up and what accessories (e.g., air conditioner), if any, should be in operation. If adjustments or modifications to the vehicle are necessary to insure compliance with

emission standards (or family emission limits, as appropriate) at either high or low altitude, the manufacturer shall either include the instructions for such adjustments on the label, or indicate on the label where instructions for such adjustments may be found. The label shall indicate whether the engine tune-up or adjustment specifications are applicable to high altitude, low altitude or both;

(E)(*1*) *Light-duty trucks.* The prominent statement, "This vehicle conforms to U.S. EPA regulations applicable to 19XX Model Year New Light-Duty Trucks."

(*2*) *Heavy-duty vehicles optionally certified in accordance with the light-duty truck provisions.* The prominent statement, "This heavy-duty vehicle conforms to the U.S. EPA regulations applicable to 19XX Model Year Light-Duty Trucks under the special provision of 40 CFR 86.092–1(b).";

(F) If the manufacturer is provided an alternate useful life period under the provisions of § 86.094–21(f), the prominent statement: "This vehicle has been certified to meet U.S. EPA standards for a useful life period of XXX years or XXX miles of operation, whichever occurs first. This vehicle's actual life may vary depending on its service application." The manufacturer may alter this statement only to express the assigned alternate useful life in terms other than years or miles (e.g., hours, or miles only);

(G) A statement, if applicable, that the adjustments or modifications indicated on the label are necessary to ensure emission control compliance at the altitude specified;

(H) A statement, if applicable, that the high-altitude vehicle was designated or modified for principal use at high altitude. This statement must be affixed by the manufacturer at the time of assembly or by any dealer who performs the high-altitude modification or adjustment prior to sale to an ultimate purchaser;

(I) For vehicles that have been exempted from compliance with the high-altitude emission standards, as specified in § 86.094–8(g)(2):

(*1*) A highlighted statement (e.g., underscored or boldface letters) that the vehicle is certified to applicable emission standards at low altitude only;

(*2*) A statement that the vehicle's unsatisfactory performance under high-altitude conditions makes it unsuitable for principal use at high altitude; and

(*3*) A statement that the emission performance warranty provisions of 40 CFR part 85, subpart V do not apply when the vehicle is tested at high altitude;

(J) The exhaust emission standards (or family emission limits, if applicable) to which the engine family is certified, and the corresponding exhaust emission standards (or family emission limits, if applicable) which the engine family must meet in-use;

(a)(2)(iii)(K) [Reserved].

(a)(2)(iii)(L) through (a)(3)(iii)(H) [Reserved]. For guidance see § 86.092–35.

(a)(3)(iii)(I) If the manufacturer is provided with an alternate useful life period under the provisions of § 86.094–21(f), the prominent statement: "This engine has been certified to meet U.S. EPA standards for a useful-life period of XXX miles or XXX hours of operation, whichever occurs first. This engine's actual life may vary depending on its service application." The manufacturer may alter this statement only to express the assigned alternate useful life in terms other than miles or hours (e.g., years, or hours only);

(a)(3)(iii)(J) through (b) [Reserved]. For guidance see § 86.092–35.

(c)(1) The manufacturer of any light-duty vehicle or light-duty truck subject to the emission standards (or family emission limits, as appropriate) of this subpart shall, in addition and subsequent to setting forth those statements on the label required by the Department of Transportation (DOT) pursuant to 49 CFR 567.4, set forth on the DOT label or an additional label located in proximity to the DOT label and affixed as described in 49 CFR 567.4(b), the following information in the English language, lettered in block letters and numerals not less than three thirty-seconds of an inch high, of a color that contrasts with the background of the label:

(i) The heading: "Vehicle Emission Control Information."

(ii)(A) *For light-duty vehicles,* The statement: "This Vehicle Conforms to U.S. EPA Regulations Applicable to 19XX Model Year New Motor Vehicles."

(B) *For light-duty trucks,* (*1*) The statement: "This vehicle conforms to U.S. EPA regulations applicable to 19XX Model Year New Light-Duty Trucks."

(*2*) If the manufacturer is provided an alternate useful life period under the provisions of § 86.094–21(f), the prominent statement: "This vehicle has been certified to meet U.S. EPA standards for a useful-life period of XX years or XX miles of operation, whichever occurs first. This vehicle's actual life may vary depending on its service application." The manufacturer may alter this statement only to express the assigned alternate useful life in terms other than years or miles (e.g., hours, or miles only).

(iii) One of the following statements, as applicable, in letters and numerals not less than six thirty-seconds of an inch high and of a color that contrasts with the background of the label:

(A) For all vehicles certified as noncatalyst-equipped: "NON-CATALYST";

(B) For all vehicles certified as catalyst-equipped which are included in a manufacturer's catalyst control program for which approval has been given by the Administrator: "CATALYST—APPROVED FOR IMPORT";

(C) For all vehicles certified as catalyst-equipped which are not included in a manufacturer's catalyst control program for which prior approval has been given by the Administrator: "CATALYST".

(2) In lieu of selecting either of the labeling options of paragraph (c)(1) of this section, the manufacturer may add the information required by paragraph (c)(1)(iii) of this section to the label required by paragraph (a) of this section. The required information will be set forth in the manner prescribed by paragraph (c)(1)(iii) of this section.

(d) Incomplete light-duty trucks or incomplete heavy-duty vehicles optionally certified in accordance with the light-duty truck provisions shall have one of the following prominent statements, as applicable, printed on the label required by paragraph (a)(2) of this section in lieu of the statement required by paragraph (a)(2)(iii)(E) of this section.

(1) *Light-duty trucks.* The statement, "This vehicle conforms to U.S. EPA regulations applicable to 19XX Model Year New Light-Duty Trucks when it does not exceed XX pounds in curb weight, XX pounds in gross vehicle weight rating, and XX square feet in frontal area."

(d)(2) through (h) [Reserved]. For guidance see § 86.092–35.

(Approved by the Office of Management and Budget under control number 2060–0104)

14. A new § 86.095–14 is added to subpart A to read as follows:

§ 86.095–14 Small-volume manufacturers certification procedures.

Section 86.095–14 includes text that specifies requirements that differ from § 86.092–14. Where a paragraph in § 86.092–14 is identical and applicable to § 86.095–14, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.092–14." Where a corresponding paragraph of § 86.092–14 is not applicable, this is indicated by the statement "[Reserved].

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(a) through (c)(11)(ii)(B)(*15*) [Reserved]. For guidance see § 86.092–14.

(c)(11)(ii)(B)(*16*) A description of vehicle adjustments or modifications required by § 86.094–8(j) and 86.094–9(j), if any, to assure that light-duty vehicles and light-duty trucks covered by a certificate of conformity conform to the regulations while being operated at any altitude locations, and a statement of the altitude at which the adjustments or modifications apply.

(*17*) A description of the light-duty vehicles and light-duty trucks which are exempted from the high-altitude emission standards.

(*18*) Proof that the manufacturer has obtained or entered an agreement to purchase, when applicable, the insurance policy, required by § 85.1510(b) of this chapter. The manufacturer may submit a copy of the insurance policy or purchase agreement as proof that the manufacturer has obtained or entered an agreement to purchase the insurance policy.

(C) The results of all emission tests the manufacturer performs to demonstrate compliance with the applicable standards.

(D)(*1*) The following statement signed by the authorized representative of the manufacturer: "The vehicles (or engines) described herein have been tested in accordance with (list of the applicable subparts A, B, D, I, M, N, or P) of part 86, title 40, Code of Federal Regulations, and on the basis of those tests are in conformance with that subpart. All of the data and records required by that subpart are on file and are available for inspection by the EPA Administrator. We project the total U.S. sales of vehicles (engines) subject to this subpart (including all vehicles and engines imported under the provisions of 40 CFR 85.1505 and 40 CFR 85.1509) to be fewer than 10,000 units."

(*2*) A statement as required by and contained in § 86.092–14(c)(5) signed by the authorized representative of the manufacturer.

(*3*) A statement that the vehicles or engines described in the manufacturer's application for certification are not equipped with auxiliary emission control devices which can be classified as a defeat device as defined in § 86.092–2 of this subpart.

(*4*) A statement of compliance with section 208(a)(3) of the Clean Air Act.

(*5*) A statement that, based on the manufacturer's engineering evaluation and/or emission testing, the light-duty vehicles and light-duty trucks comply with emission standards at high altitude unless exempt under § 86.094–8(h) or § 86.094–9(h) of this subpart.

(c)(11)(ii)(D)(*6*) [Reserved]

(c)(11)(ii)(D)(*7*) through (c)(15) [Reserved]. For guidance see § 86.092–14.

(Approved by the Office of Management and Budget under control number 2060–0104)

15. A new § 86.095–24 is added to subpart A to read as follows:

§ 86.095–24 Test vehicles and engines.

Section 86.095–24 includes text that specifies requirements that differ from § 86.092–24. Where a paragraph in § 86.092–24 is identical and applicable to § 86.095–24, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.092–24." Where a corresponding paragraph of § 86.092–24 is not applicable, this is indicated by the statement "[Reserved]."

(a) through (b)(1)(iv) [Reserved]. For guidance see § 86.092–24.

(b)(1)(v) For high-altitude exhaust emission compliance for each engine family, the manufacturer shall follow one of the following procedures:

(A) The manufacturer will select for testing under high-altitude conditions the vehicle expected to exhibit the highest emissions from the nonexempt vehicles selected in accordance with § 86.092–24(b)(1) (ii), (iii), and (iv) or,

(B) In lieu of testing vehicles according to paragraph (b)(1)(v)(A) of this section, a manufacturer may provide a statement in its application for certification that, based on the manufacturer's engineering evaluation of such high-altitude emission testing as the manufacturer deems appropriate that all light-duty vehicles and light-duty trucks not exempt under § 86.090–8 (h) or § 86.094–9 (h) comply with the emission standards at high altitude.

(vi) If 90 percent or more of the engine family sales will be in California, a manufacturer may substitute emission-data vehicles selected by the California Air Resources Board criteria for the selections specified in paragraphs (b)(1)(i), (ii), and (iv) of this section.

(vii)(A) Vehicles of each evaporative emission family will be divided into evaporative emission control systems.

(B) The Administrator will select the vehicle expected to exhibit the highest evaporative emissions, from within each evaporative family to be certified, from among the vehicles represented by the exhaust emission-data selections for the engine family, unless evaporative testing has already been completed on the vehicle expected to exhibit the highest evaporative emissions for the evaporative family as part of another engine family's testing.

(C) If the vehicles selected in accordance with paragraph (b)(1)(vii)(B) of this section do not represent each evaporative emission control system then the Administrator will select the highest expected evaporative emission vehicle from within the unrepresented evaporative system.

(viii) For high-altitude evaporative emission compliance for each evaporative emission family, the manufacturer shall follow one of the following procedures:

(A) The manufacturer will select for testing under high-altitude conditions the one nonexempt vehicle previously selected under paragraphs (b)(1)(vii) (B) or (C) of this section which is expected to have the highest level of evaporative emissions when operated at high altitude, or

(B) In lieu of testing vehicles according to § 86.092–24 (b)(1)(viii)(A), a manufacturer may provide a statement in its application for certification that, based on the manufacturer's engineering evaluation of such high-altitude emission testing as the manufacturer deems appropriate, that all light-duty vehicles and light-duty trucks not exempt under § 86.090–8 (h) or § 86.094–9 (h) comply with the emission standards at high altitude.

(ix) Vehicles selected under paragraph (b)(1)(v)(A) of this section may be used to satisfy the requirements of paragraph (b)(1)(viii)(A) of this section.

(b)(1)(x) [Reserved].

(b)(2) through (h) [Reserved]. For guidance see § 86.092–24.

(Approved by the Office of Management and Budget under control number 2060–0104)

16. A new § 86.095–26 is added to subpart A to read as follows:

§ 86.095–26 Mileage and service accumulation; emission measurements.

Section 86.095–26 includes text that specifies requirements that differ from § 86.092–26. Where a paragraph in § 86.092–26 is identical and applicable to § 86.095–26, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.092–26." Where a corresponding paragraph of § 86.092–26 is not applicable, this is indicated by the statement "[Reserved]."

(a) through (b)(4)(i)(C) [Reserved]. For guidance see § 86.092–26.

(b)(4)(i)(D) For each engine family, the manufacturer will either select one vehicle previously selected under § 86.092–24(b)(1)(i) through (iv) to be tested under high altitude conditions o provide a statement in accordance with § 86.095–24(b)(1)(v) Vehicles shall meet

emission standards under both low- and high-altitude conditions without manual adjustments or modifications. In addition, any emission control device used to conform with the emission standards under high-altitude conditions shall initially actuate (automatically) no higher than 4000 feet above sea level.

(ii) *Diesel.* (A) The manufacturer shall determine, for each engine family, the mileage at which the engine-system combination is stabilized for emission-data testing. The manufacturer shall maintain, and provide to the Administrator if requested, a record of the rationale used in making this determination. The manufacturer may elect to accumulate 4,000 miles on each test vehicle within an engine family without making a determination. The manufacturer must accumulate a minimum of 2,000 miles (3,219 kilometers) on each test vehicle within an engine family. All test vehicle mileage must be accurately determined, recorded, and reported to the Administrator. Any vehicle used to represent emission-data vehicle selections under § 86.092–24(b)(1) shall be equipped with an engine and emission control system that has accumulated the mileage the manufacturer chose to accumulate on the test vehicle. Fuel economy data generated from certification vehicles selected in accordance with § 86.092–24(b)(1) with engine-system combinations that have accumulated more than 10,000 kilometers (6,200 miles) shall be factored in accordance with § 600.006–87(c) of this chapter. Complete exhaust emission tests shall be conducted for each emission-data vehicle selection under § 86.092–24(b)(1). The Administrator may determine under § 86.092–24(f) that no testing is required.

(B) Emission tests for emission-data vehicle(s) selected for testing under § 86.092–24 (b)(1)(v) shall be conducted at the mileage (2,000 mile minimum) at which the engine-system combination is stabilized for emission testing or at the 6,436 kilometer (4,000 mile) test point under high-altitude conditions.

(C) Exhaust and evaporative emission tests for emission-data vehicle(s) selected for testing under § 86.092–24 (b)(1) (ii), (iii), and (iv) shall be conducted at the mileage (2,000 mile minimum) at which the engine-system combination is stabilized for emission testing or at the 6,436 kilometer (4,000 mile) test point under low-altitude conditions.

(D) For each engine family, the manufacturer will either select one vehicle previously selected under § 86.092–24(b)(1)(i) through (iv) to be tested under high altitude conditions or provide a statement in accordance with § 86.095–24(b)(1)(v). Vehicles shall meet emission standards under both low- and high-altitude conditions without manual adjustments or modifications. In addition, any emission control device used to conform with the emission standards under high-altitude conditions shall initially actuate (automatically) no higher than 4,000 feet above sea level.

(b)(4)(iii) through (d) [Reserved]. For guidance see § 86.092–26.

(Approved by the Office of Management and Budget under control number 2060–0104)

17. A new § 86.095–30 is added to subpart A to read as follows:

§ 86.095–30 Certification.

Section 86.095–30 includes text that specifies requirements that differ from § 86.091–30. Where a paragraph in § 86.091–30 is identical and applicable to § 86.095–30, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.091–30." Where a corresponding paragraph of § 86.091–30 is not applicable, this is indicated by the statement "[Reserved]."

(a)(1)(i) If, after a review of the test reports and data submitted by the manufacturer, data derived from any inspection carried out under § 86.078–7(c) and any other pertinent data or information, the Administrator determines that a test vehicle(s) (or test engine(s)) meets the requirements of the Act and of this subpart, he will issue a certificate of conformity with respect to such vehicle(s) (or engine(s)) except in cases covered by paragraph (a)(1)(ii) of this section and § 86.091–30 (c).

(ii) *Gasoline-fueled and methanol-fueled heavy-duty vehicles.* If, after a review of the statement(s) of compliance submitted by the manufacturer under § 86.094–23(b)(4) and any other pertinent data or information, the Administrator determines that the requirements of the Act and this subpart have been met, he will issue one certificate of conformity per manufacturer with respect to the evaporative emission family(ies) covered by § 86.091–30 (c).

(2) Such certificate will be issued for such period not to exceed one model year as the Administrator may determine and upon such terms as he may deem necessary or appropriate to assure that any new motor vehicle (or new motor vehicle engine) covered by the certificate will meet the requirements of the Act and of this part.

(3)(i) One such certificate will be issued for each engine family. For gasoline-fueled and methanol-fueled light-duty vehicles and light-duty trucks, one such certificate will be issued for each engine family evaporative emission family combination. Each certificate will certify compliance with no more than one set of in-use and certification standards (or family emission limits, as appropriate).

(ii) For gasoline-fueled and methanol fueled heavy-duty vehicles, one such certificate will be issued for each manufacturer and will certify compliance for those vehicles previously identified in that manufacturer's statement(s) of compliance as required in § 86.094–23(b)(4) (i) and (ii).

(iii) For diesel light-duty vehicles and light-duty trucks, or diesel heavy-duty engines, included in the applicable particulate averaging program, the manufacturer may at any time during production elect to change the level of any family particulate emission limit by demonstrating compliance with the new limit as described in §§ 86.091–28(a)(6) and 86.091–28(b)(5)(i). New certificates issued under this paragraph will be applicable only for vehicles (or engines) produced subsequent to the date of issuance.

(iv) For light-duty trucks or heavy-duty engines included in the applicable NOx averaging program, the manufacturer may at any time during production elect to change the level of any family NOx emission limit by demonstrating compliance with the new limit as described in § 86.091–28(b)(5)(ii) New certificates issued under this paragraph will be applicable only for vehicles (or engines) produced subsequent to the day of issue.

(4)(i) For exempt light-duty vehicles and light-duty trucks under the provisions of § 86.094–8(j) or § 86.094–9(j), an adjustment or modification performed in accordance with instructions provided by the manufacturer for the altitude where the vehicle is principally used will not be considered a violation of section 203(a)(3) of the Clean Air Act.

(ii) A violation of section 203(a)(1) of the Clean Air Act occurs when a manufacturer sells or delivers to an ultimate purchaser any light-duty vehicle or light-duty truck, subject to the regulations under the Act, under any of the conditions specified in paragraph (a)(4)(ii) of this section.

(A) When a light-duty vehicle or light-duty truck is exempted from meeting high altitude requirements as provided in § 86.090–8(h) or 86.094–9(h);

(*1*) At a designated high altitude location, unless such manufacturer has reason to believe that such vehicle will not be sold to an ultimate purchaser for principal use at a designated high-altitude location; or

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(2) At a location other than a designated high altitude location, when such manufacturer has reason to believe that such motor vehicle will be sold to an ultimate purchaser for principal use at a designated high altitude location.

(B) When a light-duty vehicle or light-duty truck is exempted from meeting low-altitude requirements, as provided in § 86.094–8(i) or § 86.094–9(i):

(1) At a designated low-altitude location, unless such manufacturer has reason to believe that such vehicle will not be sold to an ultimate purchaser for principal use at a designated low-altitude location.

(2) At a location other than a designated low-altitude location, when such manufacturer has reason to believe that such motor vehicle will be sold to an ultimate purchaser for principal use at a designated low-altitude location.

(iii) A manufacturer shall be deemed to have reason to believe that a light-duty vehicle or light-duty truck that has been exempted from compliance with emission standards at high altitude, will not be sold to an ultimate purchaser for principal use at a designated high altitude location if the manufacturer has informed its dealers and field representatives about the terms of those high altitude regulations, has not caused the improper sale itself, and has taken reasonable action which shall include, but shall not be limited to, either paragraph (a)(4)(iii)(A) or (B) and paragraph (a)(4)(iii)(C) of this section:

(A) Requiring dealers in designated high-altitude locations to submit written statements to the manufacturer signed by the ultimate purchaser that a vehicle which is not configured to meet high-altitude requirements will not be used principally at a designated high-altitude location; requiring dealers in counties contiguous to designated high-altitude locations to submit written statements to the manufacturer, signed by the ultimate purchaser who represents to the dealer in the normal course of business that he or she resides in a designated high-altitude location, that a vehicle which is not configured to meet high-altitude requirements will not be used principally at a designated high-altitude location; and for each sale or delivery of fleets of ten or more such vehicles in a high-altitude location or in counties contiguous to high-altitude locations, requiring either the selling dealer or the delivering dealer to submit written statements to the manufacturer, signed by the ultimate purchaser who represents to the dealer in the normal course of business that he or she resides in a designated high-altitude location, that a vehicle which is not configured to meet high-altitude requirements will not be used principally at a designated high-altitude location. In addition, the manufacturer will make available to EPA, upon reasonable written request (but not more frequently than quarterly, unless EPA has demonstrated that it has substantial reason to believe that an improperly configured vehicle has been sold), sales, warranty, or other information pertaining to sales of vehicles by the dealers described above maintained by the manufacturer in the normal course of business relating to the altitude configuration of vehicles and the locations of ultimate purchasers; or

(B) Implementing a system which monitors factory orders of low-altitude vehicles by high-altitude dealers, or through other means, identifies dealers that may have sold or delivered a vehicle not configured to meet the high-altitude requirements to an ultimate purchaser for principal use at a designated high-altitude location; and making such information available to EPA upon reasonable written request (but not more frequently than quarterly, unless EPA has demonstrated that it has substantial reason to believe that an improperly configured vehicle has been sold); and

(C) Within a reasonable time after receiving written notice from EPA or a State or local government agency that a dealer may have improperly sold or delivered a vehicle not configured to meet the high-altitude requirements to an ultimate purchaser residing in a designated high-altitude location, or based on information obtained pursuant to paragraph (a)(4)(iii) of this section that a dealer may have improperly sold or delivered a significant number of such vehicles to ultimate purchasers so residing, reminding the dealer in writing of the requirements of these regulations, and, where appropriate, warning the dealer that sale by the dealer of vehicles not configured to meet high-altitude requirements may be contrary to the terms of its franchise agreement with the manufacturer and the dealer certification requirements of § 85.2108 of this chapter.

(iv) A manufacturer shall be deemed to have reason to believe that a light-duty vehicle or light-duty truck which has been exempted from compliance with emission standards at low altitude, as provided in § 86.094–8(i) or § 86.094–9(i), will not be sold to an ultimate purchaser for principal use at a designated low-altitude location if the manufacturer has informed its dealers and field representatives about the terms of the high-altitude regulations, has not caused the improper sale itself, and has taken reasonable action which shall include, but not be limited to either § 86.091–30(a)(4)(iv) (A) or (B) and § 86.091–30(a)(4)(iv)(C):

(a)(4)(iv)(A) through (e)(11) [Reserved]. For guidance see § 86.091–30.

(a)(12) For all light-duty vehicles certified to standards under § 86.094–8 or to which standards under § 86.708–94 are applicable:

(i) All certificates issued are conditional upon the manufacturer complying with all provisions of § 86.094–8 and § 86.708–94 both during and after model year production.

(ii) Failure to meet the required implementation schedule sales percentages as specified in § 86.094–8 and § 86.708–94 will be considered to be a failure to satisfy the conditions upon which the certificate(s) was issued and the vehicles sold in violation of the implementation schedule shall not be covered by the certificate.

(iii) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied.

(13) For all light-duty trucks certified to Tier 0 standards under § 86.094–9 and to which standards under § 86.709–94 are applicable:

(i) All certificates issued are conditional upon the manufacturer complying with all provisions of § 86.094–9 and § 86.709–94 both during and after model year production.

(ii) Failure to meet the required implementation schedule sales percentages as specified in § 86.094–9 and § 86.709–94 will be considered to be a failure to satisfy the conditions upon which the certificate(s) was issued and the individual vehicles sold in violation of the implementation schedule shall not be covered by the certificate.

(iii) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied.

(b) through (d)(7) [Reserved]. For guidance see § 86.091–30.

(d)(8) Any voiding of the certificate under § 86.091–30(a)(10) will be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.614.

(e) introductory text through (e)(7) [Reserved]. For guidance see § 86.091–30.

(e)(8) Any voiding of the certificate under § 86.091–30 (a)(10) or (a)(11) will be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.1014.

(Approved by the Office of Management and Budget under control numbers 2060–0049 and 2060–0104)

18. A new § 86.095–35 is added to subpart A to read as follows:

§ 86.095–35 Labeling.

Section 86.095–35 includes text that specifies requirements that differ from § 86.092–35. Where a paragraph in § 86.092–35 is identical and applicable to § 86.095–35, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.092–35." Where a corresponding paragraph of § 86.092–35 is not applicable, this is indicated by the statement "[Reserved]."

(a) introductory text through (a)(1)(iii)(E) [Reserved]. For guidance see § 86.092–35.

(a)(1)(iii)(F) The exhaust emission standards (or family emission limits, if applicable) to which the engine family is certified, and the corresponding exhaust emission standards (or family emission limits, if applicable) which the engine family must meet in-use;

(G) For vehicles that have been exempted from compliance with the emission standards at high altitude, as specified in § 86.090–8(h):

(1) A highlighted statement (e.g., underscored or boldface letters) that the vehicle is certified to applicable emission standards at low altitude only;

(2) A statement that the vehicle's unsatisfactory performance under high-altitude conditions makes it unsuitable for principal use at high altitude; and

(3) A statement that the emission performance warranty provisions of 40 CFR part 85, subpart V do not apply when the vehicle is tested at high altitude;

(H) For vehicles that have been exempted from compliance with the emission standards at low altitude, as specified in § 86.094–8(i):

(1) A highlighted statement (e.g., underscore or boldface letters) that the vehicle is certified to applicable emission standards at high altitude only; and

(2) A statement that the emission performance warranty provisions of 40 CFR part 85, subpart V do not apply when the vehicle is tested at low altitude;

(I) The vacuum hose routing diagram applicable to the vehicles if the vehicles are equipped with vacuum actuated emission and emission-related components. The manufacturer may, at its option, use a separate label for the vacuum hose routing diagram provided that the vacuum hose diagram is placed in a visible and accessible position as provided in this section;

(J) Vehicles granted final admission under § 85.1505 of this chapter must comply with the labeling requirements contained in § 85.1505 of this chapter;

(K) Vehicles which have been certified under the provisions of § 86.094–8(j) must comply with the labeling requirements contained in § 86.1606.

(2) *Light-duty truck and heavy-duty vehicles optionally certified in accordance with the light-duty truck provisions.* (i) A legible, permanent label shall be affixed in a readily visible position in the engine compartment.

(ii) The label shall be affixed by the vehicle manufacturer who has been issued the certificate of conformity for such vehicle, in such a manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label.

(A) The label heading: Important Vehicle Information;

(B) Full corporate name and trademark of the manufacturer;

(C) Engine displacement (in cubic inches or liters) and engine family identification;

(D) Engine tune-up specifications and adjustments, as recommended by the manufacturer in accordance with the applicable emission standards (or family emission limits, as appropriate), including but not limited to idle speed(s), ignition timing, the idle air-fuel mixture setting procedure and value (e.g., idle CO, idle air-fuel ratio, idle speed drop), high idle speed, initial injection timing, as well as other parameters deemed necessary by the manufacturer. These specifications should indicate the proper transmission position during tune-up and what accessories (e.g., air conditioner), if any, should be in operation;

(E)(1) *Light-duty trucks.* The prominent statement, "This vehicle conforms to U.S. EPA regulations applicable to 19XX Model Year New Light-Duty Trucks."

(E)(2) *Heavy-duty vehicles optionally certified in accordance with the light-duty truck provisions.* The prominent statement, "This heavy-duty vehicle conforms to the U.S. EPA regulations applicable to 19XX Model Year Light-Duty Trucks under the special provision of 40 CFR 86.092–1(b).";

(F) If the manufacturer is provided an alternate useful life period under the provisions of § 86.094–21(f), the prominent statement: "This vehicle has been certified to meet U.S. EPA standards for a useful life period of XXX years or XXX miles of operation, whichever occurs first. This vehicle's actual life may vary depending on its service application." The manufacturer may alter this statement only to express the assigned alternate useful life in terms other than years or miles (e.g., hours, or miles only);

(G) For light-duty trucks that have been exempted from compliance with the emission standards at high altitude, as specified in § 86.094–9(h):

(1) A highlighted statement (e.g., underscored or boldface letters) that the vehicle is certified to applicable emission standards at low altitude only;

(2) A statement that the vehicle's unsatisfactory performance under high-altitude conditions makes it unsuitable for principal use at high altitude; and

(3) A statement that the emission performance warranty provisions of 40 CFR part 85, subpart V do not apply when the vehicle is tested at high altitude;

(H) For light-duty trucks that have been exempted from compliance with the emission standards at low altitude, as specified in § 86.094–9(i):

(1) A highlighted statement (e.g., underscored or boldface letters) that the vehicle is certified to applicable emission standards at high altitude only; and

(2) A statement that the emission performance warranty provisions of 40 CFR part 85, subpart V do not apply when the vehicle is tested at low altitude;

(I) Light-duty trucks which have been certified under the provisions of § 86.094–9(j) must comply with the labeling requirements contained in § 86.1606;

(J) The exhaust emission standards (or family emission limits, if applicable) to which the engine family is certified, and the corresponding exhaust emission standards (or family emission limits, if applicable) which the engine family must meet in-use.

(a)(2)(iii)(K) [Reserved].

(a)(2)(iii)(L) through (a)(3)(iii)(H) [Reserved]. For guidance see § 86.092–35.

(a)(3)(iii)(I) If the manufacturer is provided with an alternate useful life period under the provisions of § 86.094–21(f), the prominent statement: "This engine has been certified to meet U.S. EPA standards for a useful-life period of XXX miles or XXX hours of operation, whichever occurs first. This engine's actual life may vary depending on its service application." The manufacturer

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may alter this statement only to express the assigned alternate useful life in terms other than miles or hours (e.g., years, or hours only);

(a)(3)(iii)(J) through (b) [Reserved]. For guidance see § 86.092–35.

(c)(1) The manufacturer of any light-duty vehicle or light-duty truck subject to the emission standards (or family emission limits, as appropriate) of this subpart shall, in addition and subsequent to setting forth those statements on the label required by the Department of Transportation (DOT) pursuant to 49 CFR 567.4, set forth on the DOT label or an additional label located in proximity to the DOT label and affixed as described in 49 CFR 567.4(b), the following information in the English language, lettered in block letters and numerals not less than three thirty-seconds of an inch high, of a color that contrasts with the background of the label:

(i) The heading: "Vehicle Emission Control Information."

(ii)(A) *For light-duty vehicles,* The statement: "This Vehicle Conforms to U.S. EPA Regulations Applicable to 19XX Model Year New Motor Vehicles."

(B) *For light-duty trucks, (1)* The statement: "This vehicle conforms to U.S. EPA regulations applicable to 19XX Model Year New Light-Duty Trucks."

(2) If the manufacturer is provided an alternate useful life period under the provisions of § 86.094–21(f), the prominent statement: "This vehicle has been certified to meet U.S. EPA standards for a useful-life period of XX years or XX miles of operation, whichever occurs first. This vehicle's actual life may vary depending on its service application." The manufacturer may alter this statement only to express the assigned alternate useful life in terms other than years or miles (e.g., hours, or miles only).

(iii) One of the following statements, as applicable, in letters and numerals not less than six thirty-seconds of an inch high and of a color that contrasts with the background of the label:

(A) For all vehicles certified as noncatalyst-equipped: "NON-CATALYST";

(B) For all vehicles certified as catalyst-equipped which are included in a manufacturer's catalyst control program for which approval has been given by the Administrator: "CATALYST—APPROVED FOR IMPORT";

(C) For all vehicles certified as catalyst-equipped which are not included in a manufacturer's catalyst control program for which prior approval has been given by the Administrator: "CATALYST".

(2) In lieu of selecting either of the labeling options of paragraph (c)(1) of this section, the manufacturer may add the information required by paragraph (c)(1)(iii) of this section to the label required by paragraph (a) of this section. The required information will be set forth in the manner prescribed by paragraph (c)(1)(iii) of this section.

(d) Incomplete light-duty trucks or incomplete heavy-duty vehicles optionally certified in accordance with the light-duty truck provisions shall have one of the following prominent statements, as applicable, printed on the label required by paragraph (a)(2) of this section in lieu of the statement required by paragraph (a)(2)(iii)(E) of this section.

(1) *Light-duty trucks.* The statement, "This vehicle conforms to U.S. EPA regulations applicable to 19XX Model Year New Light-Duty Trucks when it does not exceed XX pounds in curb weight, XX pounds in gross vehicle weight rating, and XX square feet in frontal area."

(d)(2) through (h) [Reserved]. For guidance see § 86.092–35.

(Approved by the Office of Management and Budget under control number 2060–0104)

19. A new § 86.096–8 is added to subpart A to read as follows:

§ 86.096–8 Emission standards for 1996 and later model year light-duty vehicles.

Section 86.096–8 includes text that specifies requirements that differ from § 86.090–8. Where a paragraph in § 86.090–8 is identical and applicable to § 86.096–8, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.090–8." Where a corresponding paragraph of § 86.090–8 is not applicable, this is indicated by the statement "[Reserved]."

(a)(1) *Standards.* (i) Exhaust emissions from 1996 and later model year light-duty vehicles shall meet all standards in Tables A96–1 and A96–2 in the rows designated with the applicable fuel type. Light-duty vehicles shall not exceed the applicable standards in Table A96–1 and shall not exceed the applicable standards in Table A96–2.

TABLE A96–1.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES

Fuel	THC	NMHC	OMHCE	OMNMHCE	CO	NOx	PM
Gasoline	0.41	0.25			3.4	0.4	0.08
Diesel	0.41	0.25			3.4	1.0	0.08
Methanol			0.41	0.25	3.4	0.4	0.08

TABLE A96–2.—FULL USEFUL LIFE STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES

Fuel	THC	NMHC	OMHCE	OMNMHCE	CO	NOx	PM
Gasoline		0.31			4.2	0.6	0.10
Diesel		0.31			4.2	1.25	0.10
Methanol				0.31	4.2	0.6	0.10

(ii)(A) Vehicles subject to the standards of paragraph (a)(1)(i) of this section shall be all actual U.S. sales of light-duty vehicles of the applicable model year by a manufacturer.

(B) A manufacturer can not use one set of engine families to meet its intermediate useful life standards and another to meet its full useful life standards. The same families which are used to meet the intermediate useful life standards will be required without deviation to meet the corresponding full useful life standards.

(2) The standards set forth in paragraph (a)(1)(i) of this section refer to the exhaust emitted over a driving schedule as set forth in subpart B of this part and measured and calculated in accordance with those procedures. The test weight basis for light-duty vehicles, for the purposes of determining equivalent test weight as prescribed in

§ 86.129–94, shall be loaded vehicle weight.

(b) through (h) [Reserved]. For guidance see § 86.090–8.

(i)(1) The manufacturers may exempt 1996 and later model year vehicles from compliance at low altitude with the emission standards set forth in paragraph (a) of this section and § 86.090–8(b) if the vehicles:

(i) Are not intended for sale at low altitude; and

(ii) Are equipped with a unique, high-altitude axle ratio (rear-wheel drive vehicles) or a unique, high-altitude drivetrain (front-wheel drive vehicles) with a higher N/V ratio than other configurations of that model type which are certified in compliance with the emission standards of paragraph (a) of this section and § 86.090–8(b) under low-altitude conditions.

(2) The sale of a vehicle for principal use at low altitude that has been exempted as set forth in paragraph (i)(1) of this section will be considered a violation of section 203(a)(1) of the Clean Air Act.

(j) Any exempted light-duty vehicle that a manufacturer wishes to certify for sale under the provisions of § 86.090–8 (h) or paragraph (i) of this section is subject to the provisions of subpart Q of this part.

(Approved by the Office of Management and Budget under control number 2060–0104)

20. A new § 86.097–9 is added to subpart A to read as follows:

§ 86.097–9 Emission standards for 1997 and later model year light-duty trucks.

(a)(1) *Standards*—(i) *Light light-duty trucks.* (A) Exhaust emissions from 1997 and later model year light light-duty trucks shall meet all standards in Tables A97–1 and A97–2 in the rows designated with the applicable fuel type and loaded vehicle weight. Light light-duty trucks shall not exceed the applicable standards in Table A97–1 and shall not exceed the applicable standards in Table A97–2.

TABLE A97–1.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS

Fuel	LVW (lbs)	THC	NMHC	OMHCE	OMNMHCE	CO	NOx	PM
Gasoline	0–3750		0.25			3.4	0.4	0.08
Gasoline	3751–5750		0.32			4.4	0.7	0.08
Diesel	0–3750		0.25			3.4	1.0	0.08
Diesel	3751–5750		0.32			4.4		0.08
Methanol	0–3750				0.25	3.4	0.4	0.08
Methanol	3751–5750				0.32	4.4	0.7	0.08

TABLE A97–2.—FULL USEFUL LIFE STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS

Fuel	LVW (lbs)	THC [1]	NMHC	OMHCE [1]	OMNMHCE	CO	NOx	PM
Gasoline	0–3750	0.80	0.31			4.2	0.6	0.10
Gasoline	3751–5750	0.80	0.40			5.5	0.97	0.10
Diesel	0–3750	0.80	0.31			4.2	1.25	0.10
Diesel	3751–5750	0.80	0.40			5.5	0.97	0.10
Methanol	0–3750			0.80	0.31	4.2	0.6	0.10
Methanol	3751–5750			0.80	0.40	5.5	0.97	0.10

[1] Applicable useful life is 11 years or 120,000 miles, whichever occurs first.

(B)(*1*) Vehicles subject to the standards of paragraph (a)(1)(i)(A) of this section shall be all actual U.S. sales of light-duty vehicles of the applicable model year by a manufacturer.

(2) A manufacturer can not use one set of engine families to meet its intermediate useful life standards and another to meet its full useful life standards. The same families which are used to meet the intermediate useful life standards will be required without deviation to meet the corresponding full useful life standards.

(ii) *Heavy light-duty trucks.* (A) Exhaust emissions from 1997 and later model year heavy light-duty trucks shall meet all standards in Tables A97–3 and A97–4 in the rows designated with the applicable fuel type and adjusted loaded vehicle weight. Heavy light-duty trucks shall not exceed the applicable standards in Table A97–3 and shall not exceed the applicable standards in Table A97–4.

TABLE A97–3.—INTERMEDIATE USEFUL LIFE STANDARDS (G/MI) FOR HEAVY LIGHT-DUTY TRUCKS

Fuel	ALVW (lbs)	THC	NMHC	OMHCE	OMNMHCE	CO	NOx	PM
Gasoline	3751–5750		0.32			4.4	0.7	
Gasoline	>5750		0.39			5.0	1.1	
Diesel	3751–5750		0.32			4.4		
Diesel	>5750		0.39			5.0		
Methanol	3751–5750				0.32	4.4	0.7	
Methanol	>5750				0.39	5.0	1.1	

TABLE A97–4.—FULL USEFUL LIFE STANDARDS (G/MI) FOR HEAVY LIGHT-DUTY TRUCKS

Fuel	ALVW (lbs)	THC	NMHC	OMHCE	OMNMHCE	CO	NOx	PM
Gasoline	3751–5750	0.80	0.46			6.4	0.98	0.10
Gasoline	>5750	0.80	0.56			7.3	1.53	0.12

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TABLE A97-4.—FULL USEFUL LIFE STANDARDS (G/MI) FOR HEAVY LIGHT-DUTY TRUCKS—Continued

Fuel	ALVW (lbs)	THC	NMHC	OMHCE	OMNMHCE	CO	NOx	PM
Diesel	3751-5750	0.80	0.48			6.4	0.99	0.10
Diesel	>5750	0.80	0.56			7.3	1.53	0.12
Methanol	3751-5750			0.80	0.48	6.4	0.99	0.10
Methanol	>5750			0.80	0.56	7.3	1.53	0.12

(B)(*1*) Vehicles subject to the standards of paragraph (a)(1)(ii)(A) of this section shall be all actual U.S. sales of light-duty vehicles of the applicable model year by a manufacturer.

(*2*) A manufacturer can not use one set of engine families to meet its intermediate useful life standards and another to meet its full useful life standards. The same families which are used to meet the intermediate useful life standards will be required without deviation to meet the corresponding full useful life standards.

(iii) Exhaust emissions of carbon monoxide from 1997 and later model year light-duty trucks shall not exceed 0.50 percent of exhaust gas flow at curb idle at a useful life of 11 years or 120,000 miles, whichever first occurs (for Otto-cycle and methanol-fueled diesel-cycle light-duty trucks only)

(2) The standards set forth in paragraphs (a)(1)(i) and (a)(1)(ii) of this section refer to the exhaust emitted over a driving schedule as set forth in subpart B of this part and measured and calculated in accordance with those procedures. The test weight basis for light light-duty trucks, for the purposes of determining equivalent test weight as prescribed in § 86.129–94, shall be loaded vehicle weight. The test weight basis for heavy light-duty trucks, for the purposes of determining equivalent test weight as prescribed in § 86.129–94, shall be adjusted loaded vehicle weight. The standard set forth in paragraph (a)(1)(iii) of this section refers to the exhaust emitted at curb idle and measured and calculated in accordance with the procedures set forth in subpart P of this part.

(b) Fuel evaporative emissions from 1997 and later model year light-duty trucks shall not exceed:

(1) *Hydrocarbons (for gasoline-fueled light-duty trucks).* 2.0 grams per test.

(2) *Organic Material Hydrocarbon Equivalent (for methanol-fueled light-duty trucks).* 2.0 grams per test.

(3) The standards set forth in paragraphs (b) (1) and (2) of this section refer to a composite sample of the fuel evaporative emissions collected under the conditions set forth in Subpart B of this part and measured in accordance with those procedures.

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any 1997 and later model year light-duty truck.

(d) through (f) [Reserved]

(g) Any model year 1997 and later light-duty truck that a manufacturer wishes to certify for sale shall meet the emission standards under both low- and high-altitude conditions as specified in § 86.082–2, except as provided in paragraphs (h) and (i) of this section. Vehicles shall meet emission standards under both low- and high-altitude conditions without manual adjustments or modifications. Any emission control device used to meet emission standards under high-altitude conditions shall initially actuate (automatically) no higher than 4,000 feet above sea level.

(h) The manufacturer may exempt 1997 and later model year light-duty trucks from compliance at high altitude with the emission standards set forth in paragraphs (a) and (b) of this section, if the vehicles are not intended for sale at high altitude and if the requirements of paragraphs (h) (1) and (2) of this section are met.

(1) A vehicle configuration shall only be considered eligible for exemption under paragraph (h) of this section if the requirements of any of paragraphs (h)(1)(i), (ii), (iii), or (iv) of this section are met.

(i) Its design parameters (displacement-to-weight ratio (D/W) and engine speed-to-vehicle-speed ratio (N/V)) fall within the exempted range for that manufacturer for that year. The exempted range is determined according to the following procedure:

(A) The manufacturer shall graphically display the D/W and N/V data of all vehicle configurations it will offer for the model year in question. The axis of the abscissa shall be D/W (where (D) is the engine displacement expressed in cubic centimeters and (W) is the gross vehicle weight (GVW) expressed in pounds), and the axis of the ordinate shall be N/V (where (N) is the crankshaft speed expressed in revolutions per minute and (V) is the vehicle speed expressed in miles per hour). At the manufacturer's option, either the 1:1 transmission gear ratio or the lowest numerical gear ratio available in the transmission will be used to determine N/V. The gear selection must be the same for all N/V data points on the manufacturer's graph. For each transmission/axle ratio combination, only the lowest N/V value shall be used in the graphical display.

(B) The product line is then defined by the equation, $N/V = C(D/W)^{-e.s}$ where the constant, C, is determined by the requirement that all the vehicle data points either fall on the line or lie to the upper right of the line as displayed on the graphs.

(C) The exemption line is then defined by the equation, $N/V = C(0.84\ D/W)^{-e.s}$ where the constant, C, is the same as that found in paragraph (h)(1)(i)(B) of this section.

(D) The exempted range includes all values of N/V and D/W which simultaneously fall to the lower left of the exemption line as drawn on the graph.

(ii) Its design parameters fall within the alternate exempted range for that manufacturer that year. The alternate exempted range is determined by substituting rated horsepower (hp) for displacement (D) in the exemption procedure described in paragraph (h)(1)(i) of this section and by using the product line $N/V = C(hp/W)^{-e.s}$.

(A) Rated horsepower shall be determined by using the Society of Automotive Engineers Test Procedure J 1349 (copies may be obtained from SAE, 400 Commonwealth Dr., Warrendale, PA 15096), or any subsequent version of that test procedure. Any of the horsepower determinants within that test procedure may be used, as long as it is used consistently throughout the manufacturer's product line in any model year.

(B) No exemptions will be allowed under paragraph (h)(1)(ii) of this section to any manufacturer that has exempted vehicle configurations as set forth in paragraph (h)(1)(i) of this section.

(iii) Its acceleration time (the time it takes a vehicle to accelerate from 0 to a speed not less than 40 miles per hour and not greater than 50 miles per hour) under high-altitude conditions is greater than the largest acceleration time under low-altitude conditions for that manufacturer for that year. The procedure to be followed in making this determination is:

(A) The manufacturer shall list the vehicle configuration and acceleration time under low-altitude conditions of that vehicle configuration which has the highest acceleration time under low-altitude conditions of all the vehicle configurations it will offer for the model year in question. The manufacturer shall also submit a description of the methodology used to make this determination.

(B) The manufacturer shall then list the vehicle configurations and acceleration times under high-altitude conditions of all those vehicles configurations which have higher acceleration times under high-altitude conditions than the highest acceleration time at low altitude identified in paragraph (h)(1)(iii)(A) of this section.

(iv) In lieu of performing the test procedure of paragraph (h)(1)(iii) of this section, its acceleration time can be estimated based on the manufacturer's engineering evaluation, in accordance with good engineering practice, to meet the exemption criteria of paragraph (h)(1)(iii) of this section.

(2) A vehicle shall only be considered eligible for exemption under this paragraph if at least one configuration of its model type (and transmission configuration in the case of vehicles equipped with manual transmissions, excluding differences due to the presence of overdrive) is certified to meet emission standards under high-altitude conditions as specified in paragraphs (a) through (g) of this section. The Certificate of Conformity (the Certificate) covering any exempted configuration(s) will also apply to the corresponding non-exempt configuration(s) required under this subparagraph. As a condition to the exemption, any suspension, revocation, voiding, or withdrawal of the Certificate as it applies to a non-exempt configuration for any reason will result in a suspension of the Certificate as it applies to the corresponding exempted configuration(s) of that model type, unless there is at least one other corresponding non-exempt configuration of the same model type still covered by the Certificate. The suspension of the Certificate as it applies to the exempted configuration(s) will be terminated when any one of the following occurs:

(i) Another corresponding non-exempt configuration(s) receive(s) coverage under the Certificate; or

(ii) Suspension of the Certificate as it applies to the corresponding non-exempt configuration(s) is terminated; or

(iii) The Agency's action(s), with respect to suspension, revocation, voiding or withdrawal of the Certificate as it applies to the corresponding non-exempt configuration(s), is reversed.

(3) The sale of a vehicle for principal use at a designated high-altitude location that has been exempted as set forth in paragraph (h)(1) of this section will be considered a violation of section 203(a)(1) of the Clean Air Act.

(i)(1) The manufacturers may exempt 1997 and later model year light-duty trucks from compliance at low altitude with the emission standards set forth in paragraphs (a) and (b) of this section if the vehicles:

(i) Are not intended for sale at low altitude; and

(ii) Are equipped with a unique, high-altitude axle ratio (rear-wheel drive vehicles) or a unique, high-altitude drivetrain (front-wheel drive vehicles) with a higher N/V ratio than other configurations of that model type which are certified in compliance with the emission standards of paragraphs (a) and (b) of this section under low-altitude conditions.

(2) The sale of a vehicle for principal use at low altitude that has been exempted as set forth in paragraph (i)(1) of this section will be considered a violation of section 203(a)(1) of the Clean Air Act.

(j) Any light-duty truck that a manufacturer wishes to certify for sale under the provisions of paragraphs (h) or (i) of this section is subject to the provisions of subpart Q of this part.

(Approved by the Office of Management and Budget under control number 2060–0104)

Subpart B—[Amended]

21. The table of contents of subpart B of part 86 is republished for the convenience of the reader to read as follows.

Subpart B—Emission Regulations for 1977 and Later Model Year New Light-Duty Vehicles and New Light-Duty Trucks; Test Procedures.

Sec.
86.101 General applicability.
86.102 Definitions.
86.103 Abbreviations.
86.104 Section numbering; construction.
86.105 Introduction; structure of subpart.
86.106–82 Equipment required; overview.
86.106–90 Equipment required; overview.
86.106–94 Equipment required; overview.
86.107–78 Sampling and analytical system; evaporative emissions.
86.107–90 Sampling and analytical system; evaporative emissions.
86.108–79 Dynamometer.
86.109–82 Exhaust gas sampling system; gasoline-fueled vehicles.
86.109–90 Exhaust gas sampling system; Otto-cycle vehicles.
86.109–94 Exhaust gas sampling system; Otto-cycle vehicles not requiring particulate emissions measurements.
86.110–82 Exhaust gas sampling system; diesel vehicles.
86.110–90 Exhaust gas sampling system; diesel vehicles.
86.110–94 Exhaust gas sampling system; diesel-cycle vehicles, and Otto-cycle vehicles requiring particulate emissions measurements.
86.111–82 Exhaust gas analytical system.
86.111–90 Exhaust gas analytical system.
86.111–94 Exhaust gas analytical system.
86.112–82 Weighing chamber (or room) and microgram balance specifications.
86.112–91 Weighing chamber (or room) and microgram balance specifications.
86.113–82 Fuel specifications.
86.113–86 Fuel specifications.
86.113–90 Fuel specifications.
86.114–79 Analytical gases.
86.114–94 Analytical gases.
86.115–78 EPA urban dynamometer driving cycles.
86.116–82 Calibrations, frequency and overview.
86.116–90 Calibrations, frequency and overview.
86.116–94 Calibrations, frequency and overview.
86.117–78 Evaporative emission enclosure calibrations.
86.117–90 Evaporative emission enclosure calibrations.
86.118–78 Dynamometer calibration.
86.119–78 CVS calibration.
86.119–90 CVS calibration.
86.120–82 Gas meter or flow instrumentation calibration; particulate measurement.
86.121–82 Hydrocarbon analyzer calibration.
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86.126–78 Calibration of other equipment.
86.126–90 Calibration of other equipment.
86.127–82 Test procedures; overview.
86.127–90 Test procedures; overview.
86.127–94 Test procedures; overview.
86.128–79 Transmissions.
86.129–80 Road load power, test weight, and inertia weight class determination.
86.129–94 Road load power test weight and inertia weight class determination.
86.130–78 Test sequence; general requirements.
86.131–78 Vehicle preparation.
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86.135–90 Dynamometer procedure.
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Sec.
86.135–82 Engine starting and restarting.
86.135–90 Engine starting and restarting.
86.137–8 Dynamometer test run, gaseous and particulate emissions.
86.137–90 Dynamometer test run, gaseous and particulate emissions.
86.137–94 Dynamometer test run, gaseous and particulate emissions.
86.138–78 Hot-soak test.
86.138–90 Hot-soak test.
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86.141 [Reserved]
86.142–82 Records required.
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86.143–78 Calculations; evaporative emissions.
86.143–90 Calculations; evaporative emissions.
86.144–78 Calculations; exhaust emissions.
86.144–90 Calculations; exhaust emissions.
86.144–94 Calculations; exhaust emissions.
86.145–82 Calculations; particulate emissions.

22. Section 86.105 of subpart B is revised to read as follows:

§ 86.105 Introduction; structure of subpart.

(a) This subpart describes the equipment required and the procedures to follow in order to perform gaseous exhaust, particulate, and evaporative emission tests on light-duty vehicles and light-duty trucks. Subpart A of this part sets forth testing requirements and test intervals necessary to comply with EPA certification procedures. Not all emission measurement techniques described in this subpart will be necessary for all vehicles. Subpart A of this part defines the conditions under which vehicles may be exempted from measuring methane and/or waived from measuring particulate matter.

(b) Three topics are addressed in this subpart. Sections 86.106 through 86.115 set forth specifications and equipment requirements; §§ 86.116 through 86.126 discuss calibration methods and frequency; test procedures and data requirements are listed (in approximate order of performance) in §§ 86.127 through 86.145.

23. A new § 86.106–94 is added to subpart B to read as follows:

§ 86.106–94 Equipment required; overview.

(a) This subpart contains procedures for exhaust emission tests on petroleum-fueled and methanol-fueled light-duty vehicles and light-duty trucks, and for evaporative emission tests on gasoline-fueled and methanol-fueled light-duty vehicles and light-duty trucks. Certain items of equipment are not necessary for a particular test, e.g., evaporative enclosure when testing diesel-cycle vehicles. Alternate sampling systems and calculation methods may be used if shown to yield equivalent or superior results, and if approved in advance by the Administrator. Equipment required and specifications are as follows:

(1) *Evaporative emission tests, gasoline-fueled and methanol-fueled vehicles.* The evaporative emission test is closely related to and connected with the exhaust emission test. All vehicles tested for evaporative emissions must be tested for exhaust emissions. Further, unless the evaporative emission test is waived by the Administrator under § 86.090–26, all gasoline-fueled and methanol-fueled vehicles must undergo both tests. (Diesel-cycle vehicles are excluded from the evaporative emission standard.) Section 86.107 specifies the necessary equipment.

(2) *Exhaust emission tests.* All vehicles subject to this subpart are subject to testing for both gaseous and particulate exhaust emissions using the CVS concept (§ 86.109), except where exemptions or waivers are expressly provided in subpart A of these regulations. Vehicles subject to the "Tier 0" (i.e., phase-out) standards described under subpart A are exempted from testing for methane emissions. Otto-cycle vehicles subject to the "Tier 0" standards are waived from testing for particulates. For vehicles waived from the requirement for measuring particulate emissions, use of a dilution tunnel is not required (§ 86.109). The CVS must be connected to the dilution tunnel if particulate emission sampling is required (§ 86.110). Petroleum- and methanol-fueled diesel-cycle vehicle testing requires that a PDP–CVS or CFV with heat exchanger be used. (This equipment may be used with methanol-fueled Otto-cycle vehicles; however, particulates need not be measured for vehicles that are waived from the requirement). All gasoline-fueled and methanol-fueled vehicles are either tested for evaporative emissions or undergo a diurnal heat build. Petroleum-fueled diesel-cycle vehicles are excluded from this requirement. Equipment necessary and specifications appear in §§ 86.108 through 86.114.

(3) *Fuel, analytical gas, and driving schedule specifications.* Fuel specifications for exhaust and evaporative emission testing and for mileage accumulation for petroleum-fueled and methanol-fueled vehicles are specified in § 86.113. Analytical gases are specified in § 86.114. The EPA Urban Dynamometer Driving Schedule (UDDS) for use in petroleum-fueled and methanol-fueled exhaust emission tests is specified in § 86.115 and appendix I to this part.

(b) [Reserved].

24. A new § 86.109–94 is added to subpart B to read as follows:

§ 86.109–94 Exhaust gas sampling system; Otto-cycle vehicles not requiring particulate emission measurements.

(a)(1) *General.* The exhaust gas sampling system described in this paragraph is designed to measure the true mass of gaseous emissions in the exhaust of either Otto-cycle light-duty vehicles or light-duty trucks which are waived from requirements for the measurement of particulate emissions. In the CVS concept of measuring mass emissions, two conditions must be satisfied: the total volume of the mixture of exhaust and dilution air must be measured, and a continuously proportioned volume of sample must be collected for analysis. Mass emissions are determined from the sample concentration and total flow over the test period.

(2) *Vehicle tailpipe to CVS Duct.* For methanol-fueled vehicles, cooling of the exhaust gases in the duct connecting the vehicle tailpipe to the CVS shall be minimized. This may be accomplished by:

(i) Using a duct of unrestricted length maintained at 235 °±15 °F (113 °±8 °C), heating and possible cooling capabilities are required; or

(ii) Using a short duct (up to 12 feet long) constructed of smooth wall pipe with a minimum of flexible sections, maintained at 235 °±15 °F (113 °±8 °C) prior to the test and during the 10 minute hot soak segment and uninsulated during the test (insulation may remain in place and/or heating may occur during testing provided maximum temperature is not exceeded); or

(iii) Using smooth wall duct less than five feet long with no required heating; or

(iv) Omitting the duct and performing the exhaust gas dilution function at the vehicle tailpipe exit.

(3) *Positive displacement pump.* The Positive Displacement Pump-Constant Volume Sampler (PDP–CVS), Figure B94–1 satisfies the first condition by metering at a constant temperature and pressure through the pump. The total volume is measured by counting the revolutions made by the calibrated positive displacement pump. The proportional samples for the bag sample, and for methanol-fueled vehicles, the methanol sample (Figure B94–2) and the formaldehyde sample (Figure B94–3), are achieved by sampling at a constant flow rate. For methanol-fueled vehicles, the sample lines for the methanol and formaldehyde samples are heated to 235 °±5 °F (113 °±8 °C).

Note: For 1990 through 1994 model year methanol-fueled vehicles, methanol and formaldehyde sampling may be omitted provided the bag sample (hydrocarbons and methanol) is analyzed using a HFID calibrated with methanol.

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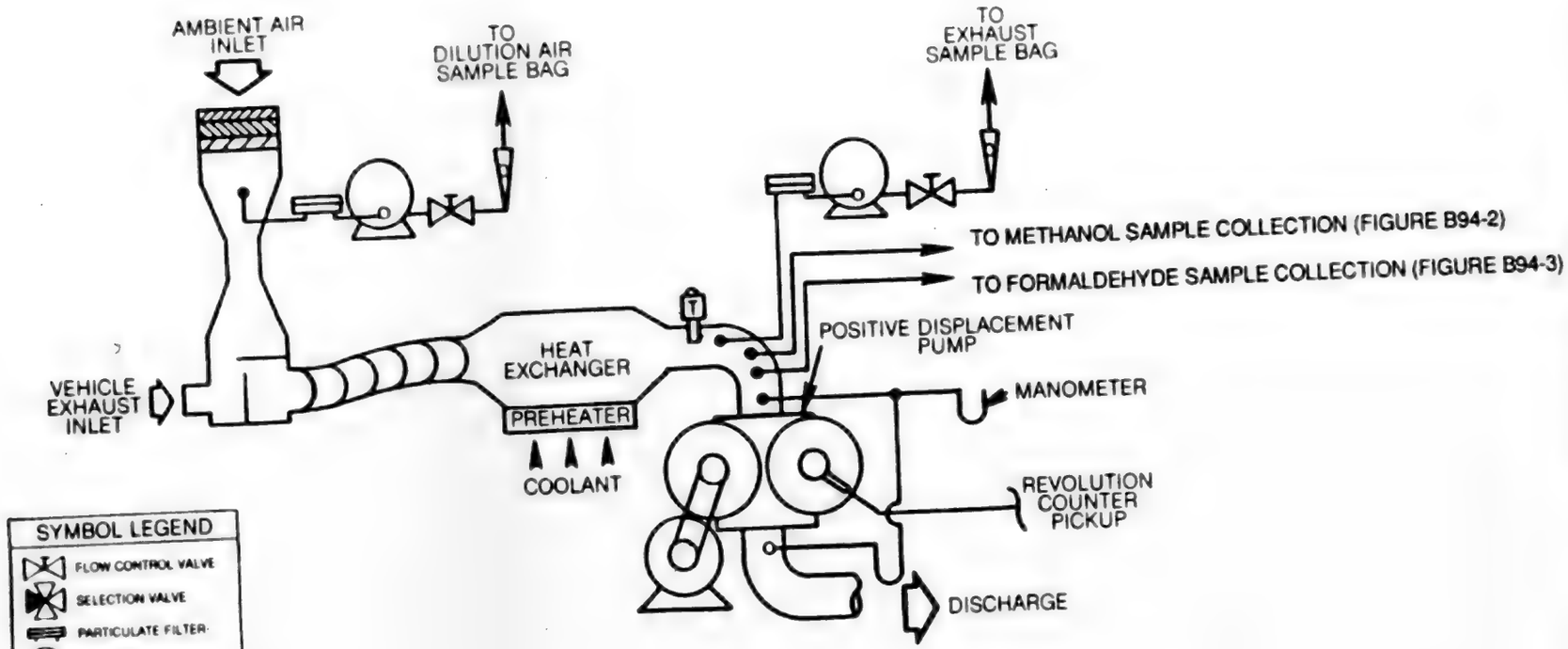

FIGURE B94-1 EXHAUST GAS SAMPLING SYSTEM (PDP-CVS)
(FOR VEHICLES NOT REQUIRING PARTICULATE MEASUREMENT)

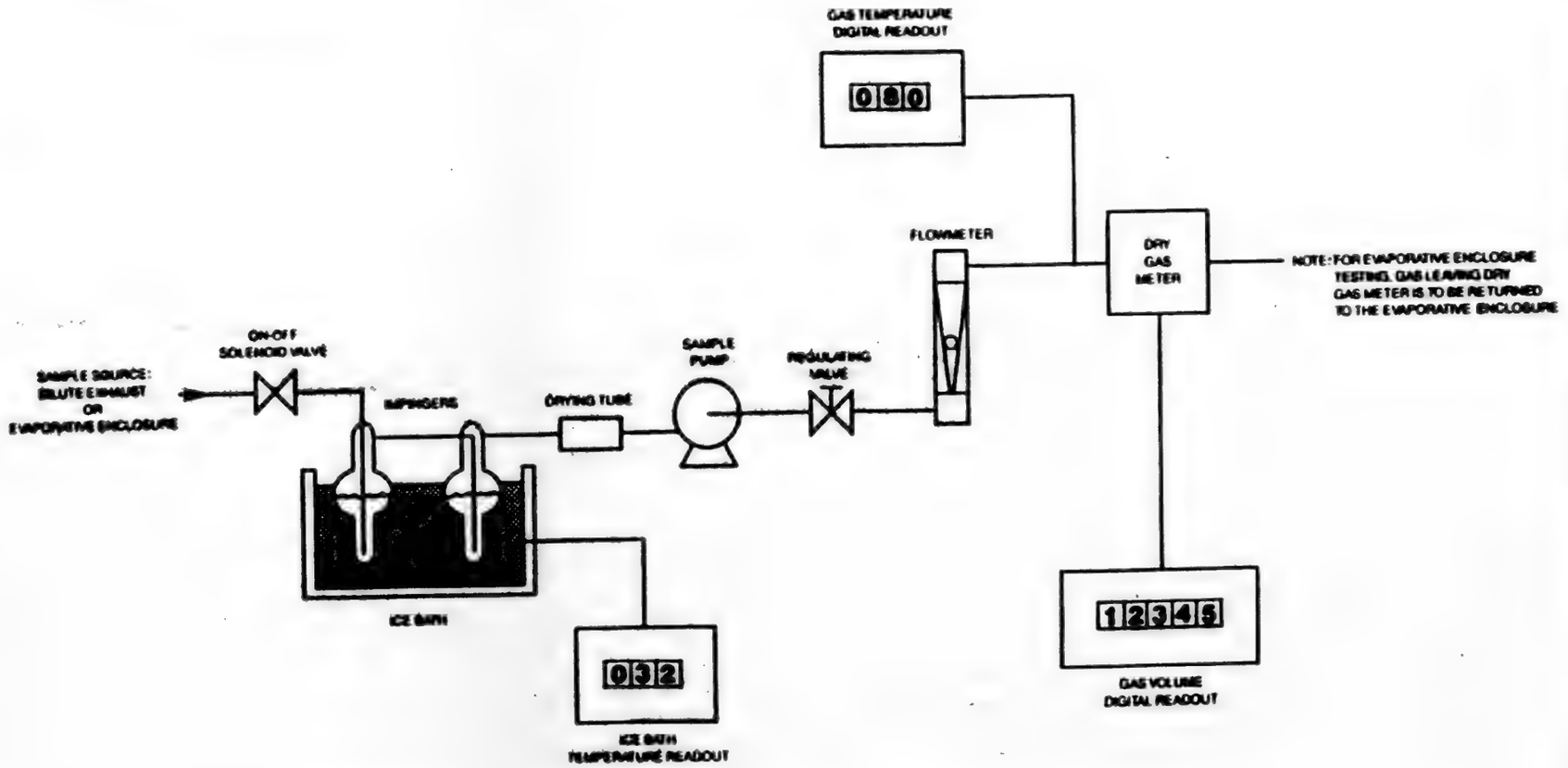

FIGURE B94-2 METHANOL SAMPLE COLLECTION FLOW SCHEMATIC

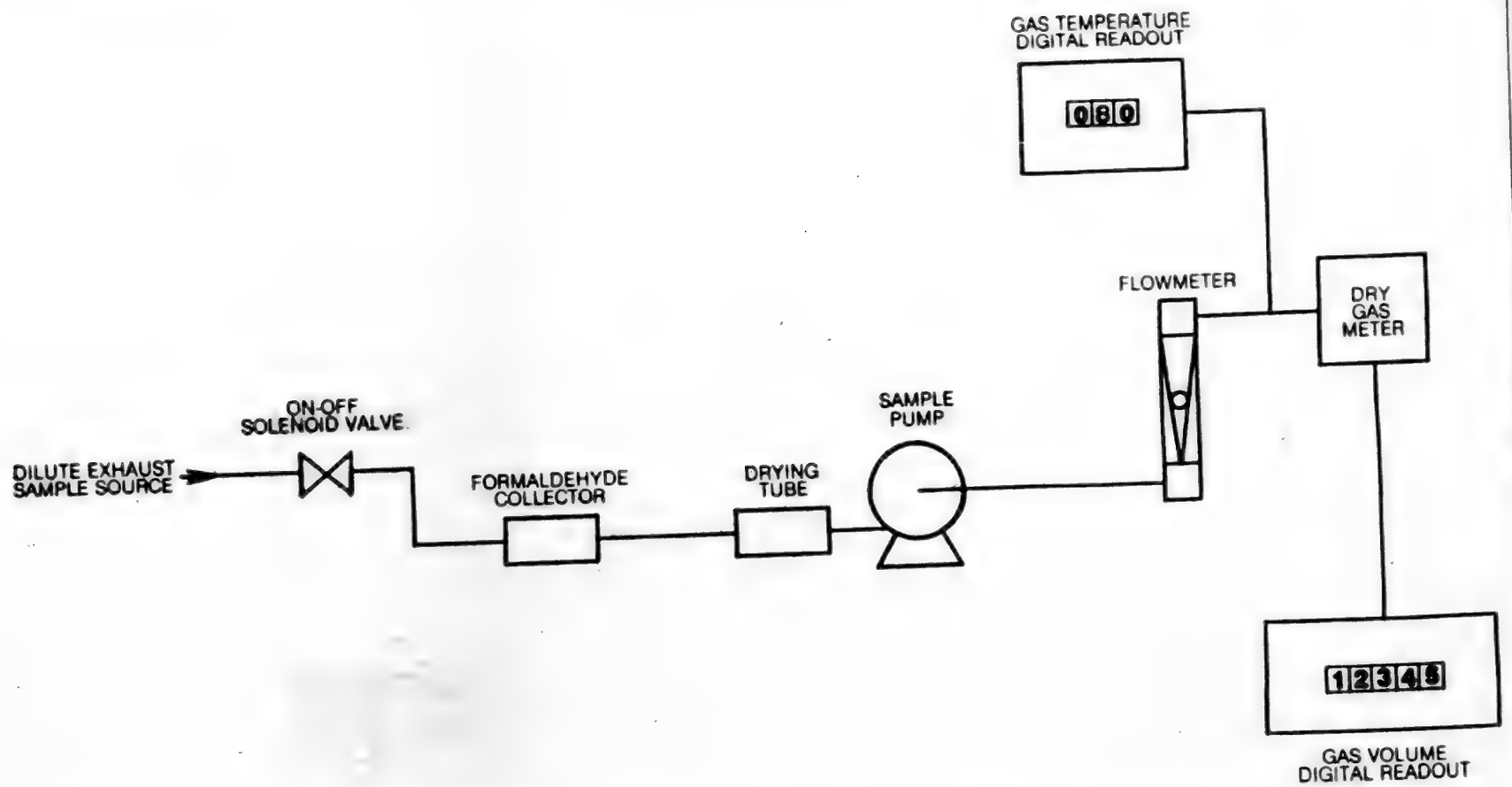

FIGURE B94-3 FORMALDEHYDE SAMPLE COLLECTION FLOW SCHEMATIC

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(4) *Critical flow verturi.* The operation of the Critical Flow Venturi—Constant Volume Sampler (CFV–CVS) sample system, Figure B94–4, is based upon the principles of fluid dynamics associated with critical flow. Proportional sampling throughout temperature excursions is maintained by use of small CFVs in the sample lines (for methanol-fueled vehicles, one line supplies sample for the bag sample, another line supplies sample for the methanol sample, and a third line supplies sample for the formaldehyde sample.) The methanol and formaldehyde sample lines are heated to 235 °±15 °F (113 °±8 °C) with care being taken to ensure that the CFVs of the sample probes are not heated since heating of the CFVs would cause loss of proportionality. The variable mixture flow rate is maintained at sonic velocity, is inversely proportional to the square root of the gas temperature, and is computed continuously. Since the pressure and temperature are the same at all venturi inlets, the sample volume is proportional to the total volume.

Note: For 1990 through 1994 model year methanol-fueled vehicles, methanol and formaldehyde sampling may be omitted provided the bag sample (hydrocarbons and methanol) is analyzed using a HFID calibrated with methanol.

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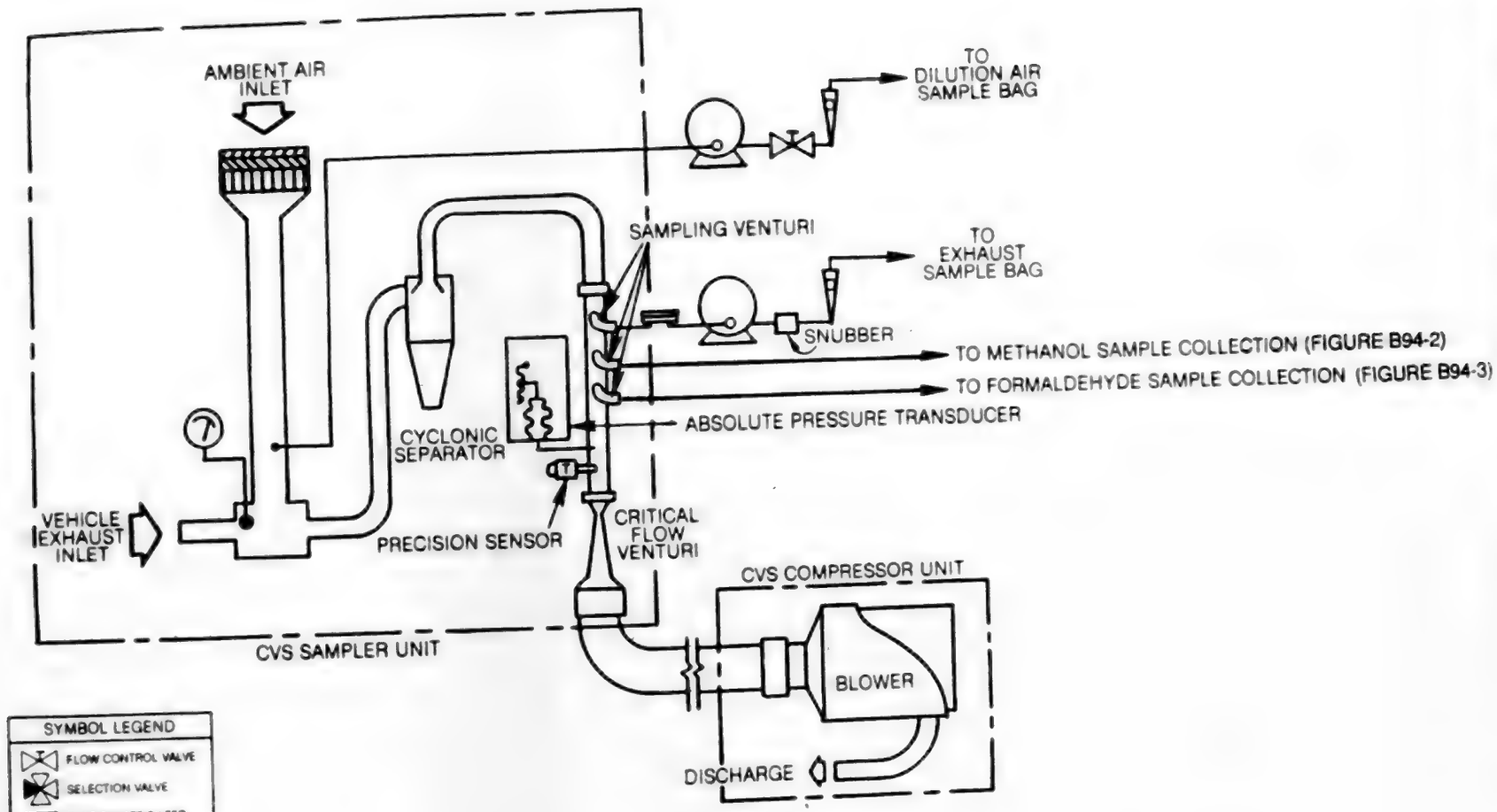

FIGURE B94-4 EXHAUST GAS SAMPLING SYSTEM (CFV-CVS)

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(5) *Other systems.* Other sampling systems may be used if shown to yield equivalent or superior results, and if approved in advance by the Administrator.

(b) *Component description, PDP–CVS.* The PDP–CVS, Figure B94–1, consists of a dilution air filter and mixing assembly, heat exchanger, positive displacement pump, sampling systems (see Figure B94–2 for methanol sampling system and Figure B94–3 for formaldehyde sampling system), sampling lines which are heated to 235 °±15 °F (113 °±8 °C) in the case of the methanol-fueled vehicles (heating of the sample lines may be omitted, provided the methanol and formaldehyde sample collection systems are close coupled to the probes, thereby preventing loss of sample due to cooling and resulting condensation in the sample lines), and associated valves, pressure and temperature sensors. The PDP–CVS shall conform to the following requirements:

(1) Static pressure variations at the tailpipe(s) of the vehicle shall remain within ±5 inches of water (1.2 kPa) of the static pressure variations measured during a dynamometer driving cycle with no connection to the tailpipe(s). (Sampling systems capable of maintaining the static pressure to within ±1 inch of water (0.25 kPa) will be used by the Administrator if a written request substantiates the need for this closer tolerance.)

(2) The gas mixture temperature, measured at a point immediately ahead of the positive displacement pump, shall be within ±10 °F (±5.6 °C) of the designed operating temperature at the start of the test. The gas mixture temperature variation from its value at the start of the test shall be limited to ±10 °F (±5.6 °C) during the entire test. The temperature measuring system shall have an accuracy and precision of ±2 °F (1.1 °C).

(3) The pressure gauges shall have an accuracy and precision of ±1.6 inches of water (0.4 kPa).

(4) The flow capacity of the CVS shall be large enough to eliminate water condensation in the system. (300 to 350 cfm (0.142 to 0.165 m^3/s) is sufficient for most petroleum-fueled vehicles. Higher flow rates are required for methanol-fueled vehicles. Procedures for determining CVS flow rates are detailed in "Calculation of Emissions and Fuel Economy When Using Alternative Fuels," EPA 460/3–83–009. (Copies may be obtained from U.S. Department of Commerce, NTIS, Springfield, Virginia 22161; order #PB 84104702.))

(5) Sample collection bags for dilution air and exhaust samples shall be of sufficient size so as not to impede sample flow. A single dilution air sample, covering the total test period, may be collected for determination of formaldehyde background (methanol-fueled vehicles).

(6) The methanol sample collection system and the formaldehyde sample collection system shall each be of sufficient capacity so as to collect samples of adequate size for analysis without significant impact on the volume of dilute exhaust passing through the PDP.

(c) *Component description, CFV–CVS.* The CFV–CVS sample system, Figure B94–4, consists of a dilution air filter and mixing assembly, a cyclone particulate separator, unheated sampling venturies for the bag samples, and for the methanol and formaldehyde samples from methanol fueled vehicles, samples lines heated to 235 °±15 °F (113 °±8 °C) for the methanol and formaldehyde samples from methanol fueled vehicles (heating of the sample lines may be omitted provided, the methanol and formaldehyde sample collection systems are close coupled to the probes thereby preventing loss of sample due to cooling and resulting condensation in the sample lines), a critical flow venturi, and assorted valves, and pressure and temperature sensors. The CFV sample system shall conform to the following requirements:

(1) Static pressure variations at the tailpipe(s) of the vehicle shall remain within ±5 inches of water (1.2 kPa) of the static pressure variations measured during a dynamometer driving cycle with no connection to the tailpipe(s). (Sampling systems capable of maintaining the static pressure to within ±1 inch of water (0.25 kPa) will be used by the Administrator if a written request substantiates the need for this closer tolerance.)

(2) The temperature measuring system shall have an accuracy and precision of ±2 °F (1.1 °C) and a response time of 0.100 seconds to 62.5 percent of a temperature change (as measured in hot silicone oil).

(3) The pressure measuring system shall have an accuracy and precision of ±1.6 inches of water (0.4 kPa).

(4) The flow capacity of the CVS shall be large enough to virtually eliminate water condensation in the system (300 to 350 cfm (0.142 to 0.165 m3/s) is sufficient for most petroleum-fueled vehicles). Higher flow rates are required with methanol-fueled vehicles. Procedures for determining CVS flow rates are detailed in "Calculation of Emissions and Fuel Economy When Using Alternative Fuels," EPA 460/3–83–009.

(5) Sample collection bags for dilution air and exhaust samples shall be of sufficient size so as not to impede sample flow. A single dilution air sample covering the total test period may be collected for determination of formaldehyde background for methanol-fueled vehicles.

(6) The methanol sample collection system and the formaldehyde sample collection system shall each be of sufficient capacity so as to collect samples of adequate size for analysis without significant impact on the volume of dilute exhaust passing through the CFV–CVS.

25. A new § 86.110–94 is added to subpart B to read as follows:

§ 86.110–94 Exhaust gas sampling system; diesel-cycle vehicles, and Ottocycle vehicles requiring particulate emissions measurements.

Section 86.110–94 includes text that specifies requirements that differ from § 86.110–90. Where a paragraph in § 86.110–90 is identical and applicable to § 86.110–94, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.110–90." Where a corresponding paragraph of § 86.110–90 is not applicable, this is indicated by the statement "[Reserved]."

(a) *General.* The exhaust gas sampling system described in this paragraph is designed to measure the true mass of both gaseous and particulate emissions in the exhaust of either diesel-cycle or Otto-cycle light-duty vehicles and light-duty trucks. This system utilizes the CVS concept (described in § 86.109) of measuring mass emissions. The mass of gaseous emissions is determined from the sample concentration and total flow over the test period. The mass of particulate emissions is determined from a proportional mass sample collected on a filter and from the total flow over the test period. General requirements are as follows:

(1) This sampling system requires the use of a PDP–CVS or a CFV sample system with heat exchanger connected to a dilution tunnel. Figure B94–5 is a schematic drawing of the PDP system. Figure B94–6 is a schematic drawing of the CFV system.

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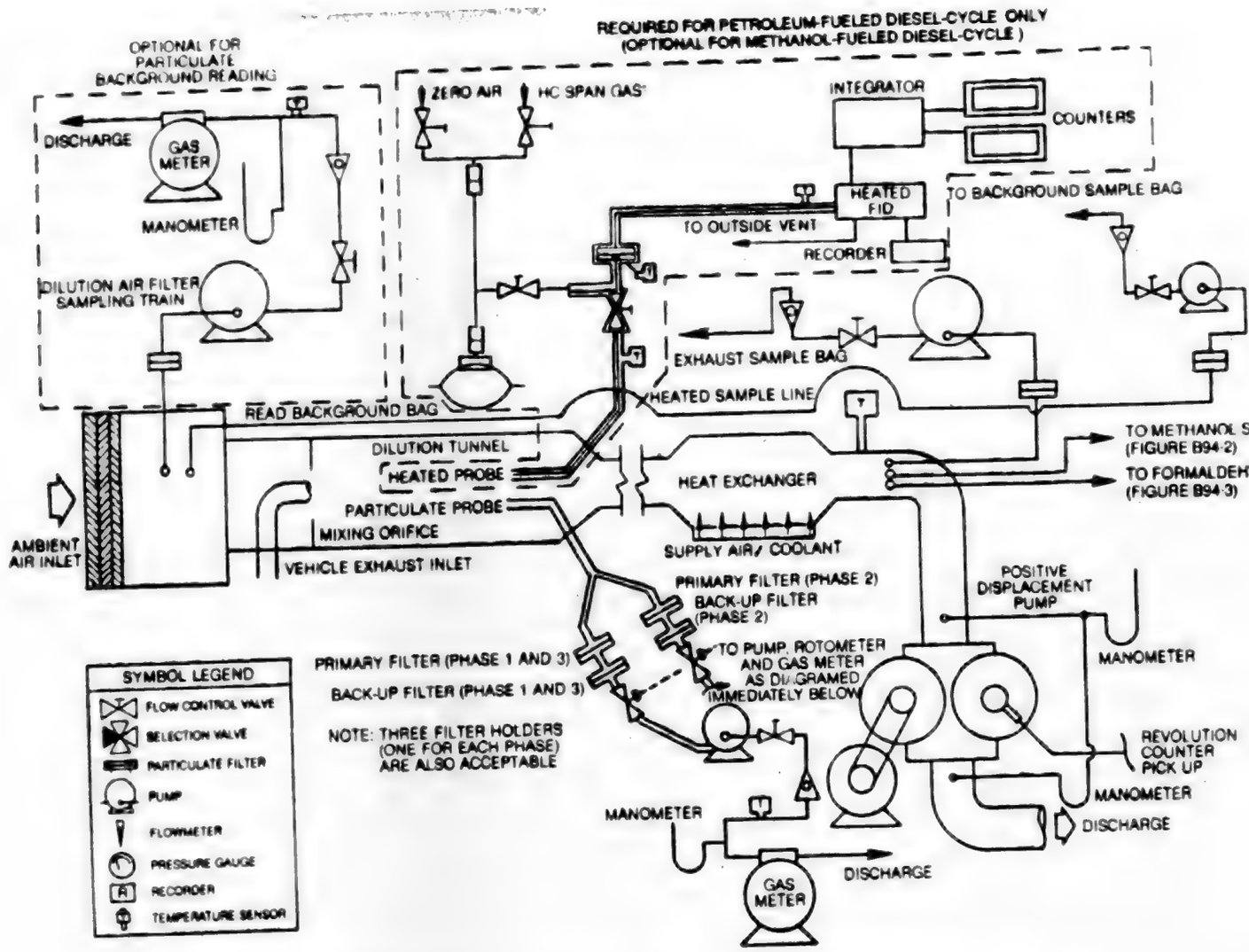

FIGURE B94-5 EXHAUST GAS SAMPLING SYSTEM (PDP-CVS)
(FOR VEHICLES REQUIRING PARTICULATE MEASUREMENT)

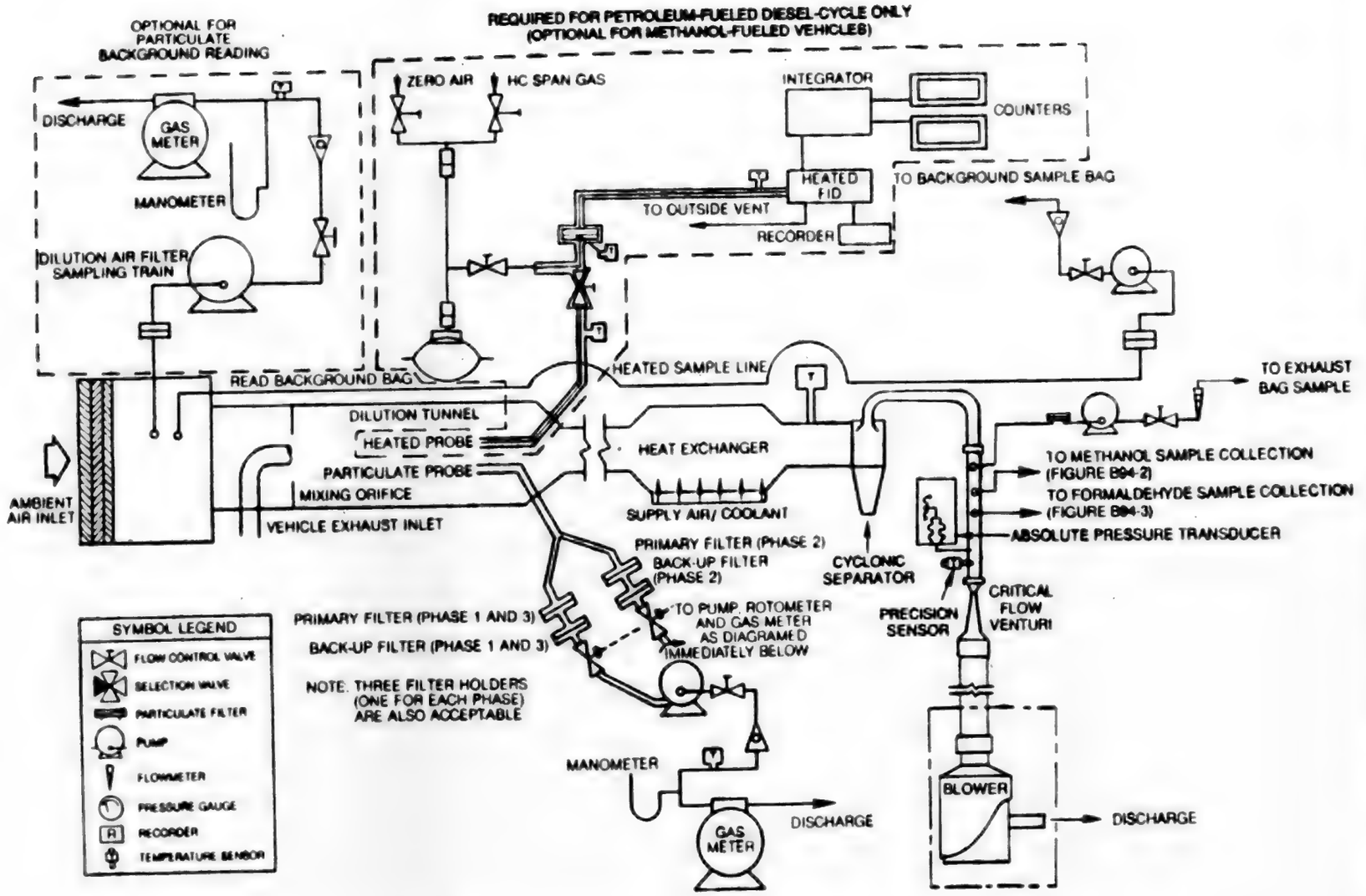

FIGURE B94-6 EXHAUST GAS SAMPLING SYSTEM (CFV-CVS)
(FOR VEHICLES REQUIRING PARTICULATE MEASUREMENT)

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(2) Bag, continuous HFID (required for petroleum-fueled diesel-cycle and optional for methanol-fueled diesel-cycle vehicles), and particulate sampling capabilities as shown in Figure B94–5 (or Figure B94–6) are required to provide both gaseous and particulate emissions sampling capabilities from a single system.

(3) Petroleum-fueled diesel-cycle vehicles require a heated flame ionization detector (HFID) (375 °±20 °F (191 °±11 °C)) sample for total hydrocarbon (THC) analysis. The HFID sample must be taken directly from the diluted exhaust stream through a heated probe in the dilution tunnel.

(4) Methanol-fueled vehicles require the use of a heated flame ionization detector (HFID) (235 °±15 °F (113 °±8 °C)) for hydrocarbon analysis. With an HFID, the hydrocarbon analysis can be made on the bag sample and the methanol and formaldehyde analyses are performed on the samples collected for these purposes (Figures B94–2 and B94–3).

Note: For 1990 through 1994 model year methanol-fueled vehicles, methanol and formaldehyde sampling may be omitted provided the bag sample is analyzed using a HFID calibrated with methanol.

(5) For methanol-fueled vehicles, the vehicle tailpipe-to-dilution tunnel connection shall be made by:

(i) A duct of unrestricted length maintained at 235 °±15 °F (113 °±8 °C) through heating and cooling as required; or

(ii) A short duct (up to 12 feet long) constructed of smooth wall pipe with a minimum of flexible sections maintained at 235 °±15 °F (113 °±8 °C) prior to the test and during breaks in testing (insulation may remain in place and/or heating may occur during testing provided maximum temperature is not exceeded); or

(iii) A smooth wall duct less than five feet long with no required heating; or

(iv) By omitting the duct and performing the exhaust gas dilution function at the vehicle tailpipe exit.

(6) Since various configurations can produce equivalent results, exact conformance with these drawings is not required. Additional components such as instruments, valves, solenoids, pumps, and switches may be used to provide additional information and coordinate the functions of the component systems.

(7) Other sampling systems may be used if shown to yield equivalent or superior results and if approved in advance by the Administrator.

(b) *Component description—Otto-cycle and petroleum-fueled diesel-cycle vehicles.* The components necessary for Otto-cycle and petroleum-fueled diesel-cycle vehicle exhaust sampling shall meet the following requirements:

(1) The PDP–CVS, Figure B94–5, shall conform to all of the requirements listed for the exhaust gas PDP–CVS (§ 86.109(b)), with one exception: a flow rate of sufficient volume is required to maintain the diluted exhaust stream, from which the particulate sample flow is taken, at a temperature of 125 °F (52 °C) or less.

(2) The CFV sample system, Figure B94–6, shall conform to all of the requirements listed for the exhaust gas CFV sample system (§ 86.109(c)), with four exceptions:

(i) A flow rate of sufficient volume is required to maintain the diluted exhaust stream, from which the particulate sample flow is taken, at a temperature of 125 °F (52 °C) or less.

(ii) A heat exchanger is required.

(iii) The gas mixture temperature, measured at a point immediately ahead of the critical flow venturi, shall be within ±20 °F (11 °C) of the designed operating temperature at the start of the test. The gas mixture temperature variation from its value at the start of the test shall be limited to ±20 °F (11 °C) during the entire test. The temperature measuring system shall have an accuracy and precision of ±2 ° (1.1 °C).

(iv) The cyclonic separator is optional.

(3) For gasoline-fueled Otto-cycle and petroleum-fueled diesel-cycle vehicles, the transfer of heat from the vehicle exhaust gas shall be minimized between the point where it leaves the vehicle tailpipe(s) and the point where it enters the dilution tunnel airstream. To accomplish this, a short length (not more than 12 feet (365 cm) if uninsulated, or not more than 20 feet (610 cm) if insulated) of smooth stainless steel tubing from the tailpipe to the dilution tunnel is required. This tubing shall have a maximum inside diameter of 4.0 inches (10.2 cm). Short sections of flexible tubing at connection points are allowed.

(4) The vehicle exhaust shall be directed downstream at the point where it is introduced into the dilution tunnel.

(5) The dilution air shall be between 68 °F (20 °C) and 86 °F (30 °C) during the test.

(6) The dilution tunnel shall be:

(i) Sized to permit development of turbulent flow (Reynold's No. $<<4000$) and complete mixing of the exhaust and dilution air between the mixing orifice and each of the two sample probes (i.e., the particulate probe and the heated THC sample probe). It is recommended that uniform mixing be demonstrated by the user.

(ii) At least 8.0 inches (20.3 cm) in diameter.

(iii) Constructed of electrically conductive material which does not react with the exhaust components.

(iv) Grounded.

(7) The temperature of the diluted exhaust stream inside of the dilution tunnel shall be sufficient to prevent water condensation. However, the sample zone dilute exhaust temperature shall not exceed 125 °F (52 °C) at any time during the test.

(8) The particulate sample probe shall be:

(i) Installed facing upstream at a point where the dilution air and exhaust are well mixed (i.e., near the tunnel centerline, approximately 10 tunnel diameters downstream from the point where the exhaust enters the dilution tunnel).

(ii) Sufficiently distant (radially) from the THC probe (when the THC probe is required) so as to be free from the influence of any wakes or eddies produced by the THC probe.

(iii) 0.5 inch (1.27 cm) minimum inside diameter.

(iv) The distance from the sampling tip to the filter holder shall be at least 5 probe diameters (for filters located inside of the tunnel), but not more than 40.0 inches (102 cm) for filters located outside of the dilution tunnel.

(v) Free from sharp bends.

(vi) Configured so that a clean particulate filter (including back-up filter) can be selected simultaneously with the selection of an empty gaseous emissions bag.

(9) The flow rate through the particulate probe shall be maintained to a constant value within ±5 percent of the set flow rate.

(10) The particulate sample pump shall be located sufficiently distant from the dilution tunnel so that the inlet gas temperature is maintained at a constant temperature (±5.0 °F (2.8 °C)).

(11) The gas meters or flow instrumentation shall be located sufficiently distant from the tunnel so that the inlet gas temperature remains constant (±5.0 °F (2.8 °C)).

(12) The THC probe (when the THC probe is required) shall be:

(i) Installed facing upstream at a point where the dilution air and exhaust are well mixed (i.e., approximately 10 tunnel diameters downstream from the point where the exhaust enters the dilution tunnel).

(ii) Sufficiently distant (radially) from the particulate probe so as to be free from the influence of any wakes or eddies produced by the particulate probe.

(iii) Heated and insulated over the entire length to maintain a 375 °±20 °F (191 °±11 °C) wall temperature.

(iv) 0.19 in. (0.48 cm) minimum inside diameter.

(13) It is intended that the THC probe be free from cold spots (i.e., free from spots where the probe wall temperature is less than 355 °F). This will be determined by a temperature sensor located on a section of the probe wall outside of the dilution tunnel. The temperature sensor shall be insulated from any heating elements on the probe. The sensor shall have an accuracy and precision of ±2 °F (1.1 °C).

(14) The dilute exhaust gas flowing in the THC sample system shall be:

(i) At 375 °F±10 °F (191 °C±6 °C) immediately before the heated filter. This will be determined by a temperature sensor located immediately upstream of the filter. The sensor shall have an accuracy and precision of ±2 °F (1.1 °C).

(ii) At 375 °F±10 °F (191 °C ±6 °C) immediately before the HFID. This will be determined by a temperature sensor located at the exit of the heated sample line. The sensor shall have an accuracy and precision of ±2 °F (1.1 °C).

(15) It is intended that the dilute exhaust gas flowing in the THC sample system be between 365 °F and 385 °F (185 °C and 197 °C).

(c) *Component description—methanol-fueled diesel-cycle vehicles.* The components necessary for methanol-fueled diesel-cycle vehicle exhaust sampling shall meet the following requirements:

(1) The PDP–CVS, Figure B94–5 shall conform to all of the requirements listed for the exhaust gas PDP–CVS (§ 86.109 (a)(3) and (b)), with one exception: a flow rate of sufficient volume is required to maintain the diluted exhaust stream, from which the particulate sample flow is taken, at a temperature of 125 °F (52 °C) or less and shall prevent the condensation of water vapor in the dilution tunnel.

(2) The CFV sample system, Figure B94–6 shall conform to all of the requirements listed for the exhaust gas CFV sample system (§ 86.109 (a)(4) and (c)), with four exceptions:

(c)(2)(i) through (c)(8)(i) [Reserved]. For guidance see § 86.110–90.

(c)(8)(ii) Sufficiently distant (radially) from the THC probe so as to be free from the influence of any wakes or eddies produced by the THC probe.

(c)(8)(iii) through (c)(12) [Reserved]. For guidance see § 86.110–90.

(c)(13) It is intended that the THC probe be free from cold spots (i.e., free from cold spots where the probe wall temperature is less than 220 °F.) This will be determined by a temperature sensor located on a section of the probe wall outside of the dilution tunnel. The temperature sensor shall be insulated from any heating elements on the probe. The sensor shall have an accuracy and precision of ±2 °F (1.1 °C).

(c)(14) through (d) [Reserved]. For guidance see § 86.110–90.

28. A new § 86.111–94 is added to subpart B to read as follows:

§ 86.111–94 Exhaust gas analytical system.

Section 86.111–94 includes text that specifies requirements that differ from § 86.111–90. Where a paragraph in § 86.111–90 is identical and applicable to § 86.111–94, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.111–90." Where a corresponding paragraph of § 86.111–90 is not applicable, this is indicated by the statement "[Reserved]."

(a) *Schematic drawings.* Figure B94–7 is a schematic drawing of the exhaust gas analytical system for samples from bag sampling systems for analysis of total hydrocarbon (THC) (hydrocarbon plus methanol in the case of methanol-fueled vehicles), methane (CH_4) (for vehicles subject to the NMHC and OMNMHCE standards), carbon monoxide (CO), carbon dioxide (CO_2), and oxides of nitrogen (NO_x). The schematic diagram of the continuous THC analysis train (and for THC plus methanol for methanol-fueled diesel-cycle vehicles) is shown as part of Figure B94–5 (or Figure B94–6). Since various configurations can produce accurate results, exact conformance with either drawing is not required. Additional components such as instruments, valves, solenoids, pumps, and switches may be used to provide additional information and coordinate the functions of the component systems.

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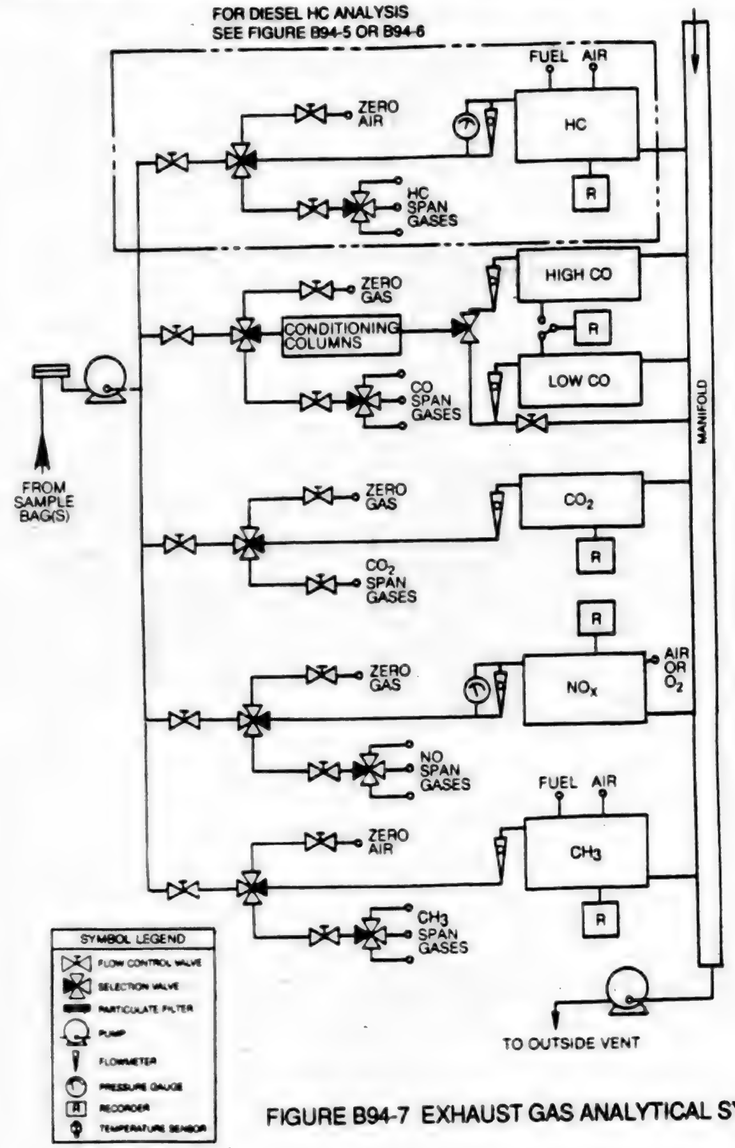

FIGURE B94-7 EXHAUST GAS ANALYTICAL SYSTEM

(b) *Major component description.* The exhaust gas analytical system, Figure B94–7, consists of a flame ionization detector (FID) (heated, 235 °±15 °F (113 ±8 °C) for methanol-fueled vehicles) for the determination of THC, a methane analyzer (consisting of a gas chromatograph combined with a FID) for the determination of CH_4 (for vehicles subject to the NMHC and OMNMHCE standards, where applicable), non-dispersive infrared analyzers (NDIR) for the determination of CO and CO_2 and a chemiluminescence analyzer (CL) for the determination of NOx. A heated flame ionization detector (HFID) is used for the continuous determination of THC from petroleum-fueled diesel-cycle vehicles (may also be used with methanol-fueled diesel-cycle vehicles), Figure B94–5 (or B94–6). The analytical system for methanol consists of a gas chromatograph (GC) equipped with a flame ionization detector. The analysis for formaldehyde is performed using high pressure liquid chromatography (HPLC) of 2,4-dinitrophenylhydrazine (DNPH) derivatives using ultraviolet (UV) detection. The exhaust gas analytical system shall conform to the following requirements:

(1) The CL requires that the nitrogen dioxide present in the sample be converted to nitric oxide before analysis. Other types of analyzers may be used if shown to yield equivalent results and if approved in advance by the Administrator.

(2) The carbon monoxide (CO) NDIR analyzer may require a sample conditioning column containing $CaSO_4$, or indicating silica gel to remove water vapor, and containing ascarite to remove carbon dioxide from the CO analysis stream.

(i) If CO instruments which are essentially free of CO_2 and water vapor interference are used, the use of the conditioning column may be deleted, see §§ 86.122 and 86.144.

(ii) A CO instrument will be considered to be essentially free of CO_2 and water vapor interference if its response to a mixture of 3 percent CO_2 in N_2 which has been bubbled through water at room temperature produces an equivalent CO response, as measured on the most sensitive CO range, which is less than 1 percent of full scale CO concentration on ranges above 300 ppm full scale or less than 3 ppm on ranges below 300 ppm full scale, see § 86.122.

(3) For petroleum-fueled diesel-cycle vehicles (and if selected, for methanol-fueled diesel-cycle vehicles) a continuous THC sample shall be measured using a heated analyzer train as shown in Figure B94–5 (or B94–6). The train shall include a heated probe, a heated continuous sampling line, a heated particulate filter, and a heated THC instrument (HFID) complete with heated pump, filter, and flow control system.

(i) The response time of this instrument shall be less than 1.5 seconds for 90 percent of full scale respon. e.

(ii) The continuous THC sample system may use an "overflow" zero and span system; see § 86.140–82(b)(4). In this type of system (figures B82–3A and B82–4A), zero or span gas is introduced into the heated sample line at a flow rate that exceeds the sample flow rate to the HFID. The excess gas overflows the sample probe into the dilution tunnel. This method assures that the reference gas enters HFID in the same concentration as the injected reference gas and at the same rate as the sample exhaust gas. In addition to zero and span checks, it may also be used to calibrate the THC analyzer per § 86.121–82(b). The overflow gas flow rate into the sample line shall be greater than 125 percent of the HFID flow rate with the CVS blower operating. A lower flow rate may be used if it has been experimentally shown to produce equivalent results and current documentation is maintained. The overflow gases shall enter the heated sample line as close as practicable to the outside surface of the dilution tunnel.

(iii) No other analyzers may draw a sample from the continuous THC sample probe, line, or system, unless a common sample pump is used of all analyzers and the single sample line system design reflects good engineering practice.

(iv) Sample transport time from sampling point to inlet of instrument shall be less than 4 seconds.

(v) For petroleum-fueled diesel-cycle vehicles, the sample line and filter shall be heated to maintain a sample gas temperature of 375 °±10 °F (191 °±6 °C) before the filter and before the HFID.

(vi) For methanol-fueled diesel-cycle vehicles, the sample line and filter shall be heated to maintain a sample gas temperature of 235 °±15 °F (113 °±8 °C) before the filter and before the HFID.

(c) *Other analyzers and equipment.* Other types of analyzers and equipment may be used if shown to yield equivalent or superior results and if approved in advance by the Administrator.

27. A new § 86.112–91 is added to subpart B to read as follows:

§ 86.112–91 Weighing chamber (or room) and microgram balance specifications.

(a) *Ambient conditions*—(1) *Temperature.* The temperature of the chamber in which the particulate filters are conditioned and weighed shall be maintained to within ±10 °F (6 °C) of a set point between 68 °F (20 °C) and 86 °F (30 °C) during all filter conditioning and filter weighing. A continuous recording of the temperature is required.

(2) *Humidity.* The relative humidity of the chamber in which the particulate filters are conditioned and weighed shall be maintained to within ±10 percent of a set point between 30 and 70 percent during all filter conditioning and filter weighing. A continuous recording of the temperature is required.

(3) The environment shall be free from any ambient contaminants (such as dust) that would settle on the particulate filters during their stabilization.

(4) It is required that two unused reference filters remain in the weighing room at all times in covered (to reduce dust contamination) but unsealed (to permit humidity exchange) petri dishes. These reference filters shall be placed in the same general area as the sample filters. These reference filters shall be weighed within 4 hours of, but preferably just prior to, the pre- and post-test sample filter weighings.

(5) If the weight of either of the reference filters changes between pre- and post-test sample filter weighings by more than ±2.0 percent of the test average primary filter loading (recommended minimum of 0.5 milligrams) or ±0.010 milligrams, whichever is greater, then the post-test sample filter weights are invalid. However, the post-test weighing procedure can be repeated to obtain valid weights within the time limits as specified in § 86.139.

(6) The reference filters shall be changed at least once per month, but never between pre- and post-test weighings of a given sample filter. The reference filters shall be the same size and material as the sample filters.

(b) *Microgram balance specifications.* The microgram balance used to determine the weights of all filters shall have a precision (standard deviation) and a readability of one microgram.

(c) *Other procedures and equipment.* Other procedures and equipment may be used if shown to yield equivalent or superior results and if approved in advance by the Administrator.

28. A new § 86.114–94 is added to subpart B to read as follows:

§ 86.114–94 Analytical gases.

(a) *Analyzer gases.* (1) Gases for the CO and CO_2 analyzers shall be single blends of CO and CO_2 respectively using nitrogen as the diluent.

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(2) Gases for the THC analyzer shall be single blends of propane using air as the diluent.

(3) Gases for the methane analyzer shall be single blends of methane using air as the diluent.

(4) Gases for the NOx analyzer shall be single blends of NO named as NOx, with a maximum NO_2 concentration of 5 percent of the nominal value, using nitrogen as the diluent.

(5) Fuel for the evaporative emission enclosure FID and the methane analyzer shall be a blend of 40 ±2% hydrogen with the balance being helium. The mixture shall contain less than 1 ppm equivalent carbon response. 98 to 100 percent hydrogen fuel may be used with advance approval by the Administrator.

(6) The allowable zero gas (air or nitrogen) impurity concentrations shall not exceed 1 ppm equivalent carbon response, 1 ppm carbon monoxide, 0.04 percent (400 ppm) carbon dioxide, and 0.1 ppm nitric oxide.

(7) "Zero grade air" includes artificial "air" consisting of a blend of nitrogen and oxygen with oxygen concentrations between 18 and 21 mole percent.

(8) The use of precision blending devices (gas dividers) to obtain the required calibration, as defined below, is acceptable, provided that the calibration curves they produce name a calibration gas within 2 percent of its certified concentration. This verification shall be performed at between 15 and 50 percent of the full scale concentration of the range and shall be included with each gas calibration incorporating a blending device. Alternative procedures to verify the validity of the analyzer calibration curves generated using a gas divider are acceptable provided the procedures are approved in advance by the Administrator.

(b) Calibration gases shall be traceable to within 1 percent of NIST (formerly NBS) gas standards, or other gas standards which have been approved by the Administrator.

(c) Span gases shall be accurate to within 2 percent of true concentration, where true concentration refers to NIST (formerly NBS) gas standards, or other gas standards which have been approved by the Administrator.

29. A new § 86.116–94 is added to subpart B to read as follows:

§ 86.116–94 Calibrations, frequency and overview.

(a) Calibrations shall be performed as specified in § 86.117 through § 86.126.

(b) At least yearly or after any maintenance which could alter background emission levels, evaporative enclosure background emission measurements shall be performed.

(c) At least monthly or after any maintenance which could alter calibration, the following calibrations and checks shall be performed:

(1) Calibrate the THC analyzers (both evaporative and exhaust instruments), methane analyzer, carbon dioxide analyzer, carbon monoxide analyzer, oxides of nitrogen analyzer, methanol analyzer, and formaldehyde analyzer (certain analyzers may require more frequent calibration depending on particular equipment and uses).

(2) Calibrate the dynamometer. If the dynamometer receives a weekly performance check (and remains within calibration) the monthly calibration need not be performed.

(3) Perform a hydrocarbon and methanol (if methanol fuel is used) retention check and calibration on the evaporative emission enclosure.

(4) Calibrate the gas meters or flow instrumentation used for providing total flow measurement for particulate sampling.

(d) At least weekly or after any maintenance which could alter calibration, the following calibrations and checks shall be performed:

(1) Check the oxides of nitrogen converter efficiency, and

(2) Perform a CVS system verification, and

(3) Run a performance check on the dynamometer. This check may be omitted if the dynamometer has been calibrated within the preceding month.

(e) The CVS positive displacement pump or Critical Flow Venturi shall be calibrated following initial installation, major maintenance, or as necessary when indicated by the CVS system verification (described in § 86.119).

(f) Sample conditioning columns, if used in the CO analyzer train, should be checked at a frequency consistent with observed column life or when the indicator of the column packing begins to show deterioration.

30. Section § 86.125–94 is added to subpart B to read as follows:

§ 86.125–94 Methane analyzer calibration.

Prior to introduction into service and monthly thereafter, the methane analyzer shall be calibrated:

(a) Follow the manufacturer's instructions for instrument startup and operation. Adjust the analyzer to optimize performance.

(b) Zero the methane analyzer with zero-grade air.

(c) Calibrate on each normally used operating range with CH_4 in air with nominal concentrations of 15, 30, 45, 60, 75, and 90 percent of that range. Additional calibration points may be generated. For each range calibrated, if the deviation from a least-squares best-fit straight line is 2 percent or less of the value at each data point, concentration values may be calculated by use of a single calibration factor for that range. If the deviation exceeds 2 percent at any point, the best-fit non-linear equation which represents the data to within 2 percent of each test point shall be used to determine concentration.

31. A new § 86.127–94 is added to subpart B to read as follows:

§ 86.127–94 Test procedures; overview.

The procedures described in this and subsequent sections are used to determine the conformity of vehicles with the standards set forth in subpart A of this part for light-duty vehicles and light-duty trucks.

(a) The overall test consists of prescribed sequences of fueling, parking, and operating conditions. Vehicles are tested for any or all of the following emissions:

(1) Gaseous exhaust THC, CO, NOx, CO_2 (for petroleum-fueled vehicles), plus CH_3OH and HCHO for methanol-fueled vehicles, plus CH_4 (for vehicles subject to the NMHC and OMNMHCE standards). (Measurement of CH_3OH and HCHO may be omitted for 1990 through 1994 model year methanol-fueled vehicles provided a HFID calibrated on methanol is used for measuring THC plus CH_3OH.)

(2) Particulates.

(3) Evaporative HC (for gasoline-fueled and methanol-fueled vehicles) and CH_3OH (for methanol-fueled vehicles). A separate CH_3OH measurement may be omitted for 1990 through 1994 model year methanol-fueled vehicles provided a HFID calibrated on methanol is used for measuring HC plus CH_3OH.

(b) The Otto-cycle exhaust emission test is designed to determine gaseous THC, CO, CO_2, CH_4, NOx, and particulate mass emissions from gasoline-fueled and methanol-fueled Otto-cycle vehicles as well as methanol and formaldehyde from methanol-fueled Otto-cycle vehicles, while simulating an average trip in an urban area of 7.5 miles (12.1 kilometers). The test consists of engine startups and vehicle operation on a chassis dynamometer, through a specified driving schedule. A proportional part of the diluted exhaust is collected continuously for subsequent analysis, using a constant volume (variable dilution) sampler or critical flow venturi sampler.

(c) The diesel-cycle exhaust emission test is designed to determine particulate and gaseous mass emissions during a test similar to the test in § 86.127(b). For petroleum-fueled diesel-cycle vehicles, diluted exhaust is continuously analyzed for THC using a heated sample line and analyzer; the other gaseous emissions (CH_4, CO, CO_2, and NOx) are collected continuously for analysis as in § 86.127(b). For methanol-fueled vehicles, THC, methanol, formaldehyde, CO, CO_2, CH_4, and NOx are collected continuously for analysis as in § 86.127(b). THC, methanol, and formaldehyde are collected using heated sample lines, and a heated FID is used for THC analyses. Simultaneous with the gaseous exhaust collection and analysis, particulates from a proportional part of the diluted exhaust are collected continuously on a filter. The mass of particulate is determined by the procedure described in § 86.139. This testing requires a dilution tunnel as well as the constant volume sampler.

(d) The evaporative emission test (gasoline-fueled vehicles and methanol-fueled vehicles) is designed to determine hydrocarbon and methanol evaporative emissions as a consequence of diurnal temperature fluctuation, urban driving, and hot soaks during parking. It is associated with a series of events representative of a motor vehicle's operation, which result in hydrocarbon and/or methanol vapor losses. The test procedure is designed to measure:

(1) Diurnal breathing losses resulting from daily temperature changes, measured by the enclosure technique;

(2) Running losses from suspected sources (if indicated by engineering analysis or vehicle inspection) resulting from a simulated trip on a chassis dynamometer, measured by carbon traps; and

(3) Hot soak losses, which result when the vehicle is parked and the hot engine is turned off, measured by the enclosure technique.

(e) Except in cases of component malfunction or failure, all emission control systems installed on or incorporated in a new motor vehicle shall be functioning during all procedures in this subpart. Maintenance to correct component malfunction or failure shall be authorized in accordance with § 86.090–25.

32. A new § 86.129–94 is added to subpart B to read as follows:

§ 86.129–94 Road load power test weight and inertia weight class determination.

Section 86.129–94 includes text that specifies requirements that differ from § 86.129–80. Where a paragraph in § 86.129–80 is identical and applicable to § 86.129–94, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.129–80." Where a corresponding paragraph of § 86.129–80 is not applicable, this is indicated by the statement "[Reserved]."

(a) Flywheels, electrical, or other means of simulating test weight as shown in the following table shall be used. If the equivalent test weight specified is not available on the dynamometer being used, the next higher equivalent test weight (not to exceed 250 pounds) available shall be used.

Road load power at 50 mi/hour light-duty trucks[1, 2, 3]	Test weight basis[4, 5]	Equivalent test weight (pounds)	Inertia weight class (pounds)
	Up to 1,062	1,000	1,000
	1,063 to 1,187	1,125	1,000
	1,188 to 1,312	1,250	1,250
	1,313 to 1,437	1,375	1,250
	1,438 to 1,562	1,500	1,500
	1,563 to 1,687	1,625	1,500
	1,688 to 1,812	1,750	1,750
	1,813 to 1,937	1,875	1,750
	1,938 to 2,062	2,000	2,000
	2,063 to 2,187	2,125	2,000
	2,188 to 2,312	2,250	2,250
	2,313 to 2,437	2,375	2,250
	2,438 to 2,562	2,500	2,500
	2,563 to 2,687	2,625	2,500
	2,688 to 2,812	2,750	2,750
	2,813 to 2,937	2,875	2,750
	2,938 to 3,062	3,000	3,000
	3,063 to 3,187	3,125	3,000
	3,188 to 3,312	3,250	3,000
	3,313 to 3,437	3,375	3,500
	3,438 to 3,562	3,500	3,500
	3,563 to 3,687	3,625	3,500
	3,688 to 3,812	3,750	3,500
	3,813 to 3,937	3,875	4,000
	3,938 to 4,125	4,000	4,000
	4,126 to 4,375	4,250	4,000
	4,376 to 4,625	4,500	4,500
	4,626 to 4,875	4,750	4,500
	4,876 to 5,125	5,000	5,000
	5,126 to 5,375	5,250	5,000
	5,376 to 5,750	5,500	5,500
	5,751 to 6,250	6,000	6,000
	6,251 to 6,750	6,500	6,500
	6,751 to 7,250	7,000	7,000
	7,251 to 7,750	7,500	7,500
	7,751 to 8,250	8,000	8,000
	8,251 to 8,750	8,500	8,500
	8,751 to 9,250	9,000	9,000
	9,251 to 9,750	9,500	9,500
	9,751 to 10,000	10,000	10,000

[1] For all light-duty trucks except vans, and for heavy duty vehicles optionally certified as light-duty trucks, the road load power (horsepower) at 50 mi/h shall be 0.58 times B (defined below) rounded to the nearest 1/2 hp.

[2] For vans, the road load power at 50 mi/h (horsepower) shall be 0.50 times B (defined below) rounded to the nearest 1/2 hp.

[3] B is the basic vehicle frontal area (square foot) plus the additional frontal area (square foot) of mirrors and optional equipment exceeding 0.1 ft^2 which are anticipated to be sold on more than 33 pct. of the car line. Frontal area measurements shall be computed to the nearest 10th of a square foot using a method approved in advanced by the administrator.

[4] For model year 1994 and later heavy light-duty trucks not subject to the Tier 0 standards of § 86.094–9 of subpart A, test weight basis shall be adjusted loaded vehicle weight, as defined in § 86.094–2 of subpart A. For all other vehicles, test weight basis shall be loaded vehicle weight, as defined in § 86.082–2 of subpart A.

[5] Light-duty vehicles over 5,750 lb. loaded vehicle weight shall be tested at a 5,500 lb. equivalent test weight.

(b) through (c) [Reserved]. For guidance see § 86.129–80.

33. A new § 86.135–94 is added to subpart B to read as follows:

§ 86.135–94 Dynamometer procedure.

Section 86.135–94 includes text that specifies requirements that differ from § 86.135–90. Where a paragraph in § 86.135–90 is identical and applicable to § 86.135–94, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.135–90." Where a corresponding paragraph of § 86.135–90 is not applicable, this is indicated by the statement "[Reserved]."

(a) *Overview.* The dynamometer run consists of two tests, a "cold" start test, after a minimum 12-hour and a maximum 36-hour soak according to the provisions of §§ 86.132 and 86.133, and a "hot" start test following the "cold" start by 10 minutes. Engine startup (with all accessories turned off), operation over the UDDS, and engine shutdown make a complete cold start test. Engine startup and operation over the first 505 seconds of the driving schedule complete the hot start test. The exhaust emissions are diluted with ambient air in the dilution tunnel as shown in Figure B94–5 and Figure B94–6. A dilution tunnel is not required for testing vehicles waived from the requirement to measure particulates. Six particulate samples are collected on filters for weighing; the first sample plus back-up is collected during the first 505 seconds of the cold start test; the second sample plus back-up is collected during the remainder of the cold start test (including shutdown); the third sample plus back-up is collected during the hot start test. Continuous proportional samples of gaseous emissions are collected for analysis during each test phase. For gasoline-fueled Otto-cycle vehicles, the composite samples collected in bags are analyzed for THC, CO, CO_2, CH_4, and NOx. For petroleum-fueled diesel-cycle vehicles (optional for methanol-fueled diesel-cycle vehicles), THC is sampled and analyzed continuously according to the provisions of § 86.110. Parallel samples of the dilution air are similarly analyzed for THC, CO, CO_2, CH_4, and NOx. For methanol-fueled vehicles, bag samples are collected and analyzed for THC (if not sampled continuously), CO, CO2, CH4, and NOx. Methanol and formaldehyde samples are taken for both exhaust emissions and dilution air (a single dilution air formaldehyde sample, covering the total test period may be collected). Parallel bag samples of dilution air are analyzed for THC, CO, CO_2, CH_4, and NOx. Methanol and

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formaldehyde samples may be omitted for 1990 through 1994 model years when a FID calibrated on methanol is used.

(b) through (i) [Reserved]. For guidance see § 86.135–90.

(Approved by the Office of Management and Budget under control number 2060–0104)

34. A new § 86.137–94 is added to subpart B to read as follows:

§ 86.137–94 Dynamometer test run, gaseous and particulate emissions.

Section 86.137–94 includes text that specifies requirements that differ from § 86.137–90. Where a paragraph in § 86.137–90 is identical and applicable to § 86.137–94, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.137–90." Where a corresponding paragraph of § 86.137–90 is not applicable, this is indicated by the statement "[Reserved]."

(a) *General.* The dynamometer run consists of two tests, a cold start test, after a minimum 12-hour and a maximum 36-hour soak according to the provisions of § 86.132, and a hot start test following the cold start test by 10 minutes. The vehicle shall be stored prior to the emission test in such a manner that precipitation (*e.g.*, rain or dew) does not occur on the vehicle. The complete dynamometer test consists of a cold start drive of 7.5 miles (12.1 km) and simulates a hot start drive of 7.5 miles (12.1 km). The vehicle is allowed to stand on the dynamometer during the 10 minute time period between the cold and hot start tests. The cold start test is divided into two periods. The first period, representing the cold start "transient" phase, terminates at the end of the deceleration which is scheduled to occur at 505 seconds of the driving schedule. The second period, representing the "stabilized" phase, consists of the remainder of the driving schedule including engine shutdown. The hot start test, similarly, consists of two periods. The first period, representing the hot start "transient" phase, terminates at the same point in driving schedule as the first period of the cold start test. The second period of the hot start test, "stabilized" phase, is assumed to be identical to the second period of the cold start test. Therefore, the hot start test terminates after the first period (505 seconds) is run.

(b) The following steps shall be taken for each test:

(1) Place drive wheels of vehicle on dynamometer without starting engine.

(2) Open the vehicle engine compartment cover and position the cooling fan.

(3) For all vehicles, with the sample selector valves in the "standby" position, connect evacuated sample collection bags to the dilute exhaust and dilution air sample collection systems.

(4) For methanol-fueled vehicles, with the sample selector valves in the "standby" position, insert fresh sample collection impingers into the methanol sample collection system, the formaldehyde sample collection system, and fresh impingers (or capsules for formaldehyde) into the dilution air sample collection systems for methanol and formaldehyde (may be omitted for 1990 through 1994 model years).

(5) Start the CVS (if not already on), the sample pumps (except the particulate sample pump, if applicable), the temperature recorder, the vehicle cooling fan, and the heated THC analysis recorder (diesel-cycle only). (The heat exchanger of the constant volume sampler, if used, petroleum-fueled diesel-cycle THC analyzer continuous sample line and filter, methanol-fueled vehicle THC, methanol and formaldehyde sample lines, if applicable, should be preheated to their respective operating temperatures before the test begins).

(6) Adjust the sample flow rates to the desired flow rate and set the gas flow measuring devices to zero.

(i) For gaseous bag samples (except THC samples), the minimum flow rate is 0.17 cfm (0.08 1/sec).

(ii) For THC samples, the minimum FID (or HFID in the case of diesel-cycle and methanol-fueled Otto-cycle vehicles) flow rate is 0.066 cfm (0.031 1/sec).

(iii) For methanol samples, the minimum flow rate is 0.14 cfm (0.067 1/sec).

(iv) For formaldehyde samples, the minimum flow rate is 0.036 cfm (0.017 1/s) with capsule collector and 0.14 cfm (0.067 1/s) with impinger.

Note: CFV sample flow rate is fixed by the venturi design.

(7) Attach the exhaust tube to the vehicle tailpipe(s).

(8) Carefully install a particulate sample filter into each of the filter holders. The filters must be handled only with forceps or tongs. Rough or abrasive filter handling will result in erroneous weight determination.

(9) Start the gas flow measuring device, position the sample selector valves to direct the sample flow into the "transient" exhaust sample bag, the "transient" methanol exhaust sample, the "transient" formaldehyde exhaust sample, the "transient" dilution air sample bag, the "transient" methanol dilution air sample and the "transient" formaldehyde dilution air sample (turn on the petroleum-fueled diesel-cycle THC analyzer system integrator, mark the recorder chart, start particulate sample pump No. 1, and record both gas meter or flow measurement instrument readings, if applicable), turn the key on, and start cranking the engine.

(10) Fifteen seconds after the engine starts, place the transmission in gear.

(11) Twenty seconds after the engine starts, begin the initial vehicle acceleration of the driving schedule.

(12) Operate the vehicle according to the Urban Dynamometer Driving Schedule (§ 86.115).

Note: During particulate testing, adjust the flow rate through the particulate sample probe to maintain a constant value within ±5 percent of the set flow rate. Record the average temperature and pressure at the gas meter or flow instrument inlet. If the set flow rate cannot be maintained because of high particulate loading on the filter, the test shall be terminated. The test shall be rerun using a lower flow rate, or larger diameter filter, or both.

(13) At the end of the deceleration which is scheduled to occur at 505 seconds, simultaneously switch the sample flows from the "transient" bags and samples to the "stabilized" bags and samples, switch off gas flow measuring device No. 1, switch off the No. 1 petroleum-fueled diesel hydrocarbon integrator and the No. 1 particulate sample pump, mark the petroleum-fueled diesel hydrocarbon recorder chart, and close valves isolating particulate filter No. 1, if applicable, start gas flow measuring device No. 2, and start the petroleum-fueled diesel hydrocarbon integrator No. 2 and the No. 2 particulate sample pump and open valves isolating particulate filter No. 2, if applicable. Before the acceleration which is scheduled to occur at 510 seconds, record the measured roll or shaft revolutions and reset the counter or switch to a second counter. As soon as possible transfer the "transient" exhaust and dilution air samples to the analytical system and process the samples according to § 86.140 obtaining a stabilized reading of the bag exhaust sample on all analyzers within 20 minutes of the end of the sample collection phase of the test. Obtain methanol and formaldehyde sample analyses, if applicable, within 24 hours of the end of the sample collection phase of the test.

(14) Turn the engine off 2 seconds after the end of the last deceleration (at 1,369 seconds).

(15) Five seconds after the engine stops running, simultaneously turn off gas flow measuring device No. 2 and, if applicable, turn off the hydrocarbon integrator No. 2, mark the hydrocarbon

recorder chart, turn off the No. 2 particulate sample pump and close the valves isolating particulate filter No. 2, and position the sample selector valves to the "standby" position (and open the valves isolating particulate filter No. 1, if applicable). Record the measured roll or shaft revolutions (both gas meter or flow measurement instrumentation readings), and re-set the counter. As soon as possible, transfer the "stabilized" exhaust and dilution air samples to the analytical system and process the samples according to § 86.140, obtaining a stabilized reading of the exhaust bag sample on all analyzers within 20 minutes of the end of the sample collection phase of the test. Obtain methanol and formaldehyde sample analyses, if applicable, within 24 hours of the end of the sample period. If applicable, carefully remove both pairs of particulate sample filters from their respective holders, place each in a separate petri dish, and cover.

(b)(16) through (b)(24) [Reserved]. For guidance see § 86.137–90.

35. A new § 86.140–94 is added to subpart B to read as follows:

§ 86.140–94 Exhaust sample analysis.

The following sequence shall be performed in conjunction with each series of measurements:

(a) For CO, CO_2, CH_4, NOx, and for Otto-cycle and methanol-fueled diesel-cycle vehicle THC:

(1) Zero the analyzers and obtain a stable zero reading. Recheck after tests.

(2) Introduce span gases and set instrument gains. In order to avoid errors, span and calibrate at the same flow rates used to analyze the test sample. Span gases should have concentrations equal to 75 to 100 percent of full scale. If gain has shifted significantly on the analyzers, check the calibrations. Show actual concentrations on chart.

(3) Check zeroes; repeat the procedure in paragraphs (a) (1) and (2) of this section if required.

(4) Check flow rates and pressures.

(5) Measure THC, CO, CO_2, CH_4, and NOx concentrations of samples.

(6) Check zero and span points. If difference is greater than 2 percent of full scale, repeat the procedure in paragraphs (a) (1) through (5) of this section.

(b) For petroleum-fueled diesel-cycle vehicle THC:

(1) Zero HFID analyzer and obtain a stable zero reading.

(2) Introduce span gas and set instrument gains. Span gas should have concentration equal to 75 to 100 percent of full scale.

(3) Check zero as in paragraph (b)(1) of this section.

(4) Introduction of zero and span gas into the analyzer can be accomplished by either of the following methods:

(i) Close heated valve in THC sample (see Figures B94–5 or B94–6) and allow gases to enter HFID. Extreme care should be taken not to introduce gases under high pressure.

(ii) Connect zero and span line directly to THC sample probe and introduce gases at a flow rate greater than 125 percent of the HFID flow rate with the CVS blower operating (see Figures B94–5 or B94–6). Excess flow must be allowed to exit probe inlet.

Note: In order to minimize errors, HFID flow rate and pressure during zero and span (and background bag reading) must be exactly the same as that used during testing.

(5) Continuously record (integrate electronically if desired) dilute THC emission levels during test. Background samples are collected in sample bags and analyzed as in paragraphs (b)(4) (i) or (ii) of this section.

(6) Check zero and span as in paragraphs (b) (1) through (4) of this section. If difference is greater than 2 percent of full scale, void test and check for THC "hangup" or electronic drift in analyzer.

(c) For CH_3OH (methanol-fueled vehicles):

(1) Introduce a reference sample of methanol (the concentration of methanol in deionized water is known and is CMR in the calculations) into the gas chromatograph and measure the area of the response peak. This reference sample peak area is AMR in the calculations.

(2) Introduce test samples into the gas chromatograph and measure the area of the response peak. This peak area is AMS in the calculations.

(d) *For HCHO (methanol-fueled vehicles):* (1) Introduce a reference sample of formaldehyde (the concentration of formaldehyde as a dinitrophenylhydrazine derivative in acetonitrile is known (CFR)) into the high pressure liquid chromatograph (HPLC) and measure the area of the response peak. This reference sample peak area is AFR in the calculations.

(2) Introduce test samples into the high pressure liquid chromatograph and measure the area of the responses peak. This peak area is AFS in the calculations.

(e) For CH_4 analysis:

(1) In the event that the procedure results in negative $NMHC_{wm}$ values (as may occur with high methane fractions), any negative $NMHC_{wm}$ value whose absolute value is less than 10 percent of the NMHC standard shall be rounded to zero. Negative $NMHC_{wm}$ values whose absolute value is more than 10 percent of the NMHC standard shall require sample remeasurement. If the 10 percent criterion cannot be met after remeasurement, the test will be void.

(2) Other sampling procedures may be used if shown to yield equivalent or superior results and if approved in advance by the Administrator.

36. A new § 86.144–94 is added to subpart B to read as follows:

§ 86.144–94 Calculations; exhaust emissions.

The final reported test results shall be computed by use of the following formula:

(a) For light-duty vehicles and light duty trucks:

$$Y_{wm} = 0.43 \left(\frac{(Y_{ct} + Y_s)}{(D_{ct} + D_s)} \right) + 0.57 \left(\frac{(Y_{ht} + Y_s)}{(D_{ht} + D_s)} \right)$$

Where:

(1) Y_{wm} = Weighted mass emissions of each pollutant, i.e., THC, CO, OMHCE, NMHC, OMNMHCE, NOx, or CO_2, in grams per vehicle mile.

(2) Y_{ct} = Mass emissions as calculated from the "transient" phase of the cold start test, in grams per test phase.

(3) Y_{ht} = Mass emissions as calculated from the "transient" phase of the hot start test, in grams per test phase.

(4) Y_s = Mass emissions as calculated from the "stabilized" phase of the cold start test, in grams per test phase.

(5) D_{ct} = The measured driving distance from the "transient" phase of the cold start test, in miles.

(6) D_{ht} = The measured distance from the "transient" phase of the hot start test, in miles.

(7) D_a = The measured driving distance from the "stabilized" phase of the cold start test, in miles.

(b) The mass of each pollutant for each phase of both the cold start test and the hot start test is determined from the following:

(1) Total hydrocarbon mass:

$$HC_{mass} = V_{mix} \times Density_{HC} \times (HC_{conc}/1{,}000{,}000)$$

(2) Oxides of nitrogen mass:

$$NOx_{mass} = V_{mix} \times Density_{NOX} \times K_H \times (NO_{Xconc}/1{,}000{,}000)$$

(3) Carbon monoxide mass:

$$CO_{mass} = V_{mix} \times Density_{CO} \times (CO_{conc}/1{,}000{,}000)$$

(4) Carbon dioxide mass:

$$CO_{2mass} = V_{mix} \times Density_{CO2} \times (CO_{2conc}/100)$$

(5) Methanol mass:

$$CH_3OH_{mass} = V_{mix} \times Density_{CH3OH} \times (CH_3OH_{conc}/1{,}000{,}000)$$

(6) Formaldehyde mass:

$$HCHO_{mass} = V_{mix} \times Density_{HCHO} \times (HCHO_{conc}/1{,}000{,}000)$$

(7) Organic material hydrocarbon equivalent mass:

$$OMHCE_{mass} = HC_{mass} + \frac{13.8756}{32.042}(CH3OH_{mass}) + \frac{13.8756}{30.0262}(HCHO_{mass})$$

(8) Non-methane hydrocarbon mass:

$$NMHC_{mass} = V_{mix} \times Density_{NMHC} \times (NMHC_{conc}/1{,}000{,}000)$$

(9) Organic material non-methane hydrocarbon equivalent mass:

$$OMNMHCE_{mass} = NMHC_{mass} + \frac{13.8756}{32.042}(CH_3OH_{mass}) + \frac{13.8756}{30.0262}(HCHO_{mass})$$

(c) Meaning of symbols:

(1)(i) HC_{mass} = Total hydrocarbon emissions, in grams per test phase.

(ii) $Density_{HC}$ = Density of total hydrocarbon is 16.33 g/ft³ (0.5766 kg/m³), assuming an average carbon to hydrogen ratio of 1:1.85, at 68 °F (20 °C) and 760 mm Hg (101.3 kPa) pressure.

(iii)(A) HC_{conc} = Total hydrocarbon concentration of the dilute exhaust sample corrected for background, in ppm carbon equivalent, i.e., equivalent propane ×3.

(B) $HC_{conc} = HC_e - HC_d(1-1/DF)$.

Where:

(iv)(A) HC_e = Total hydrocarbon concentration of the dilute exhaust sample or, for diesel-cycle (or methanol-fueled vehicles, if selected), average hydrocarbon concentration of the dilute exhaust sample as calculated from the integrated THC traces, in ppm carbon equivalent.

(B) HC_e = FID $HC_e - (r)C_{CH3OHe}$.

(v) FID HC_e = Concentration of total hydrocarbon plus methanol in dilute exhaust as measured by the FID, ppm carbon equivalent.

(vi) r = FID response to methanol.

(vii) C_{CH3OHe} = Concentration of methanol in dilute exhaust as determined from the dilute exhaust methanol sample in ppm carbon. For vehicles not fueled with methanol, C_{CH3OHe} equals zero.

(viii)(A) HC_d = Total hydrocarbon concentration of the dilution air as measured, in ppm carbon equivalent.

(B) HC_d = FID $HC_d - (r)C_{CH3OHd}$.

(ix) FID HC_d = Concentration of total hydrocarbon plus methanol in dilution air as measured by the FID, ppm carbon equivalent.

(x) C_{CH3OHd} = Concentration of methanol in dilution air as determined from dilution air methanol sample in ppm carbon. For vehicles not fueled with methanol, C_{CH3OHd} equals zero.

(2)(i) NOx_{mass} = Oxides of nitrogen emissions, in grams per test phase.

(ii) $Density_{NOX}$ = Density of oxides of nitrogen is 54.16 g/ft3 (1.913 kg/m³) assuming they are in the form of nitrogen dioxide, at 68 °F (20 °C) and 760 mm Hg (101.3kPa) pressure.

(iii)(A) NOx_{conc} = Oxides of nitrogen concentration of the dilute exhaust sample corrected for background, in ppm.

(B) $NOx_{conc} = NOx_e - NOx_d(1-(1/DF))$.

Where:

(iv) NOx_e = Oxides of nitrogen concentration of the dilute exhaust sample as measured, in ppm.

(v) NOx_d = Oxides of nitrogen concentration of the dilution air as measured, in ppm.

(3)(i) CO_{mass} = Carbon monoxide emissions, in grams per test phase.

(ii) $Density_{CO}$ = Density of carbon monoxide is 32.97 g/ft³ (1.164 kg/m3), at 68 °F (20 °C) and 760 mm Hg (101.3 kPa) pressure.

(iii)(A) CO_{conc} = Carbon monoxide concentration of the dilute exhaust sample corrected for background, water vapor, and CO_2 extraction, in ppm.

(B) $CO_{conc} = CO_e - CO_d(1-(1/DF))$.

Where:

(iv)(A) CO_e = Carbon monoxide concentration of the dilute exhaust volume corrected for water vapor and carbon dioxide extraction, in ppm.

(B) $CO_e = (1-0.01925CO_{2e}-0.000323R)CO_{em}$ for petroleum fuel with hydrogen to carbon ratio of 1.85:1.

(C) $CO_e = [1-(0.01+0.005HCR)CO_{2e}-0.000323R]CO_{em}$ for methanol fuel, where HCR is hydrogen-to-carbon ratio as measured for the fuel used.

(v) CO_{em} = Carbon monoxide concentration of the dilute exhaust sample as measured, in ppm.

(vi) CO_{2e} = Carbon dioxide concentration of the dilute exhaust sample, in percent.

(vii) R = Relative humidity of the dilution air, in percent (see § 86.142(n)).

(viii)(A) CO_d = Carbon monoxide concentration of the dilution air corrected for water vapor extraction, in ppm.

(B) $CO_d = (1-0.000323R)CO_{dm}$.

Where:

(ix) CO_{dm} = Carbon monoxide concentration of the dilution air sample as measured, in ppm.

Note: If a CO instrument which meets the criteria specified in § 86.111 is used and the conditioning column has been deleted, CO_{em} must be substituted directly for CO_e and CO_{dm} must be substituted directly for CO_d.

(4)(i) CO_{2mass} = Carbon dioxide emissions, in grams per test phase.

(ii) Density CO_2 = Density of carbon dioxide is 51.81 g/ft³ (1.830 kg/m³), at 68 °F (20 °C) and 760 mm Hg (101.3 kPa) pressure.

(iii)(A) CO_{2conc} = Carbon dioxide concentration of the dilute exhaust sample corrected for background, in percent.

(B) $CO_{2conc} = CO_{2e} - CO_{2d}(1-(1/DF))$.

Where:

(iv) CO_{2d} = Carbon dioxide concentration of the dilution air as measured, in percent.

(5)(i) CH_3OH_{mass} = Methanol emissions corrected for background, in grams per test phase.

(ii) $Density_{CH3OH}$ = Density of methanol is 37.71 g/ft³ (1.332 kg/m³), at 68 °F (20 °C) and 760 mmHg (101.3kPa) pressure.

(iii)(A) CH_3OH_{conc} = Methanol concentration of the dilute exhaust corrected for background, ppm.

(B) $CH_3OH_{conc} = C_{CH3OHe} - C_{CH3OHd}(1-(1/DF))$.

Where:

(iv)(A) C_{CH3OHe} = Methanol concentration in the dilute exhaust, ppm.

(B) C_{CH3OHe} =

$$\frac{3.813\times10^{-5}\times C_{CH3OHe}\times T_{EM}[(A_e1\times AV_b1)+(A_e2\times AV_b2)]}{(A_{CH3OHe}\times P_B\times V_{mix})}$$

(v)(A) C_{CH3OHd} = Methanol concentration in the dilution air, ppm.

(B) C_{CH3OHd} =

$$\frac{3.813\times10^{-5}\times C_{CH3OHd}\times T_{DM}[(A_d1\times AV_b1)+(A_d2\times AV_b2)]}{(A_{CH3OHd}\times P_B\times V_{DM})}$$

(vi) C_{CH3OHe} = Concentration of methanol in standard sample for calibration of GC, μg/ml.

(vii) A_{CH3OHe} = GC peak area of standard sample.

(viii) T_{EM} = Temperature of methanol sample withdrawn from dilute exhaust, °R.

(ix) T_{DM} = Temperature of methanol sample withdrawn from dilution air, °R.

(x) P_B = Barometric pressure during test, mm Hg.

(xi) V_{EM} = Volume of methanol sample withdrawn from dilute exhaust, ft³.

(xii) V_{DM} = Volume of methanol sample withdrawn from dilution air, ft³.

(xiii) A_e = GC peak area of sample drawn from dilute exhaust.

(xiv) A_b = GC peak area of sample drawn from dilution air.

(xv) AV_b = Volume of absorbing reagent (deionized water) in impinger through which methanol sample from dilute exhaust is drawn, ml.

(xvi) AV_b = Volume of absorbing reagent (deionized water) in impinger through which methanol sample from dilution air is drawn, ml.

(xvii) 1 = first impinger.

(xviii) 2 = second impinger.

(6)(i) $HCHO_{mass}$ = Formaldehyde emissions corrected for background, in grams per test phase.

(ii) $Density_{HCHO}$ = Density of formaldehyde is 35.36 g/ft³ (1.249 kg/m³), at 68 °F (20 °C) and 760 mmHg (101.3 kPa) pressure.

(iii)(A) $HCHO_{conc}$ = Formaldehyde concentration of the dilute exhaust corrected for background, in ppm.

(B) $HCHO_{conc} = C_{HCHOe} - C_{HCHOd}(1-(1/DF))$.

Where:

(iv)(A) C_{HCHOe} = Formaldehyde concentration in dilute exhaust, in ppm.

(B) C_{HCHOe} =

$$\frac{4.069\times10^{-5}\times C_{PDE}\times V_{AE}\times Q\times T_{EF}}{V_{EE}\times P_B}$$

(v)(A) C_{HCHOd} = Formaldehyde concentration in dilution air in ppm.

(B) C_{HCHOd} =

$$\frac{4.069\times10^{-5}\times C_{PDA}\times V_{AA}\times Q\times T_{DF}}{V_{EA}\times P_B}$$

(vi) C_{PDE} = Concentration of DNPH derivative of formaldehyde from dilute exhaust sample in sampling solution, μg/ml.

(vii) V_{AE} = Volume of sampling solution for dilute exhaust formaldehyde sample, ml.

(viii)(A) Q = Ratio of molecular weights of formaldehyde to its DNPH derivative.

(B) Q = 0.1429.

(ix) T_{EF} = Temperature of formaldehyde sample withdrawn from dilute exhaust, °R.

(x) V_{EE} = Volume of formaldehyde sample withdrawn from dilute exhaust, ft³.

(xi) P_B = Barometric pressure during test, mm Hg.

(xii) C_{PDA} = Concentration of DNPH derivative of formaldehyde from dilution air sample in sampling solution, μg/ml.

(xiii) V_{AA} = Volume of sampling solution for dilution air formaldehyde sample, ml.

(xiv) T_{DF} = Temperature of formaldehyde sample withdrawn from dilution air, °R.

(xv) V_{EA} = Volume of formaldehyde sample withdrawn from dilution air, ft³.

(7)(i) $DF = 13.4/[CO_{2e} + (HC_e + CO_e)10^{-4}]$ for petroleum-fueled vehicles.

(ii) DF =

$$100\times\left(\frac{x}{x+y/2+3.76(x+y/4-z/2)}\right)$$

$$CO_{2e}+(HC_e+CO_e+C_{CH3OHe})10^{-4}$$

for methanol-fueled vehicles where fuel composition is $C_xH_yO_z$ as measured for the fuel used.

(iii)(A) K_H = Humidity correction factor.

(B) $K_H = 1/[1-0.0047(H-75)]$.

(C) *For SI units,* $K_H = 1/[1-0.0329(H-10.71)]$.

Where:

(iv)(A) H = Absolute humidity in grains (grams) of water per pound (kilogram) of dry air.

(B) $H = [(43.478)R_e \times P_d]/[P_B - (P_d \times R_e/100)]$.

(C) *For SI units,* $H = [(6.211)R_e \times P_d]/[P_B - (P_d \times R_e/100)]$.

(v) R_e = Relative humidity of the ambient air, percent.

(vi) P_d = Saturated vapor pressure, mm Hg (kPa) at the ambient dry bulb temperature.

(vii) P_B = Barometric pressure, mm Hg (kPa).

(viii)(A) V_{mix} = Total dilute exhaust volume in cubic feet per test phase corrected to standard conditions (528 °R (293 °K) and 760 mm Hg (101.3 kPa)).

(B) For PDP–CVS, V_{mix} is:

$$V_{mix} = \frac{(V_o \times N \times (P_B - P_t) \times 528}{760 \times T_p}$$

(C) *For SI units,*

$$V_{mix} = \frac{(V_o \times N \times (P_B - P_t) \times 293}{101.3 \times T_p}$$

Where:

(ix) V_o = Volume of gas pumped by the positive displacement pump, in cubic feet (m³) per revolution. This volume is dependent on the pressure differential across the positive displacement pump.

(x) N = Number of revolutions of the positive displacement pump during the test phase while samples are being collected.

(xi) P_B = Barometric pressure, mm Hg (kPa).

(xii) P_t = Pressure depression below atmospheric measured at the inlet to the positive displacement pump, in mm Hg (kPa) (during an idle mode).

(xiii) T_p = Average temperature of dilute exhaust entering positive displacement pump during test, °R(°K).

(8)(i) $NMHC_{mass} = HC_{mass} - CH_{4mass}$

(ii) $Density_{NMHC}$ = The density of non-methane hydrocarbon, is 16.33 g/ft³ (0.5766 kg/m³), assuming an average carbon to hydrogen ratio of 1:1.85 at 68°F (20°C) and 760 mm Hg (101.3 kPa) pressure.

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(iii)(A) $CH_{4_{comp}}$ = Methane concentration of the dilute exhaust sample corrected for background, in ppm carbon equivalent.

(B) $CH_{4_{comp}} = CH_{4_e} - CH_{4_d}(1-1/DF)$

Where:

(iv) CH_{4_e} = Methane exhaust bag concentration in ppm carbon equivalent.

(v) CH_{4_d} = Methane concentration of the dilution air in ppm carbon equivalent.

(d) For petroleum-fueled vehicles, example calculation of mass values of exhaust emissions using positive displacement pump:

(1) For the "transient" phase of the cold start test assume the following:

$V_o = 0.29344$ ft³/rev; N = 10,485; R = 48.0 pct; $R_a = 48.2$ percent; $P_B = 762$ mm Hg; $P_d = 22.225$ mm Hg; $P_1 = 70$ mm Hg; $T_p = 570$ °R; $HC_e = 105.8$ ppm, carbon equivalent; $NOx_e = 11.2$ ppm; $CO_{em} = 306.6$ ppm; $CO_{2_e} = 1.43$ percent; $CH_{4_e} = 10.74$ ppm; $HC_d = 12.1$ ppm; $NOx_d = 0.8$ ppm; $CO_{dm} = 15.3$ ppm; $CO_{2d} = 0.032$ percent; $CH_{4d} = 2.20$ ppm; $D_{td} = 3.598$ miles.

Then:

(i) $V_{mix} = (0.29344)(10,485)(762-70)(528)/(760)(570) = 2595.0$ ft³ per test phase.

(ii)

$$H = \frac{(43.478)(48.2)(22.225)}{762-(22.225)(48.2/100)}$$

= 62 grains of water per pound of dry air.

(iii) $K_H = 1/[1-0.0047(62-75)] = 0.9424$.

(iv) $CO_e = [1-0.01925(1.43)-0.000323(48)](306.6) = 293.4$ ppm.

(v) $CO_d = [1-0.000323(48)](15.3) = 15.1$ ppm.

(vi) $DF = 13.4/[1.43+10^{-}¶ 105.8+293.4)] = 9.116$.

(vii) $HC_{comp} = 105.8-12.1(1-1/9.116) = 95.03$ ppm.

(viii) $HC_{mass} = (2595)(16.33)(95.03/1,000,000) = 4.027$ grams per test phase.

(ix) $NOx_{comp} = 11.2-0.8(1-1/9.116) = 10.49$ ppm.

(x) $NOx_{mass} = (2595)(54.16)(10.49/1,000,000)(0.9424) = 1.389$ grams per test phase.

(xi) $CO_{comp} = 293.4-15.1(1-1/9.116) = 280.0$ ppm.

(xii) $CO_{mass} = (2595)(32.97)(280/1,000,000) = 23.96$ grams per test phase.

(xiii) $CO_{2comp} = 1.43-0.032(1-1/9.116) = 1.402$ percent.

(xiv) $CO_{2mass} = (2595.0)(51.85)(1.402/100) = 1886$ grams per test phase.

(xv) $CH_{4comp} = 10.74-2.2(1-1/9.116) = 8.78$ ppm.

(xvi) $NMHC_{comp} = 95.03-8.78 = 86.25$ ppm.

(xvii) $NMHC_{mass} = (2595)(16.33)(86.25)/1,000,000 = 3.655$ grams per test phase.

(2) For the stabilized portion of the cold start test assume that similar calculations resulted in the following:

(i) $HC_{mass} = 0.62$ gram per test phase.

(ii) $NOx_{mass} = 1.27$ grams per test phase.

(iii) $CO_{mass} = 5.98$ grams per test phase.

(iv) $CO_{2mass} = 2346$ grams per test phase.

(v) $D_s = 3.902$ miles.

(vi) $NMHC_{mass} = 0.50$ gram per test phase.

(3) For the "transient" portion of the hot start test assume that similar calculations resulted in the following:

(i) $HC_{mass} = 0.51$ gram per test phase.

(ii) $NOx_{mass} = 1.38$ grams per test phase.

(iii) $CO_{mass} = 5.01$ grams per test phase.

(iv) $CO_{2mass} = 1758$ grams per test phase.

(v) $D_{ht} = 3.598$ miles.

(vi) $NMHC_{mass} = 0.44$ grams per test phase.

(4) Weighted mass emission results:

(i) $HC_{wm} = 0.43[(4.027+0.62)/(3.598+3.902)]+0.57[(0.51+0.62)/(3.598+3.902)] = 0.352$ gram per vehicle mile.

(ii) $NOx_{wm} = 0.43[(1.389+1.27)/(3.598+3.902)]+0.57[(1.38+1.27)/(3.598+3.902)] = 0.354$ gram per vehicle mile.

(iii) $CO_{wm} = 0.43[(23.96+5.98)/(3.598+3.902)]+0.57[(5.01+5.98)/(3.598+3.902)] = 2.55$ grams per vehicle mile.

(iv) $CO_{2wm} = 0.43[(1886+2346)/(3.598+3.902)]+0.57[(1758+2346)/(3.598+3.902)] = 555$ gram per vehicle mile.

(v) $NMHC_{wm} = 0.43[(3.655+0.50)/(3.598+3.902)]+0.57[(5.01+0.50)/(3.598+3.902)] = 0.310$ gram per vehicle mile.

(e) For methanol-fueled vehicles with measured fuel composition of $CH_{3.14}O_{0.5}$, example calculation of exhaust emissions using positive displacement pump:

(1) For the "transient" phase of the cold start test assume the following:

$V_o = 0.29344$ ft³/rev; N = 10,485; R = 48.0 pct; $R_a = 48.2$ percent; $P_B = 762$ mm Hg; $P_d = 22.225$ mm Hg; $P_1 = 70$ mm Hg; Tp 570 °R; FID $HC_e = 81.6$ ppm, carbon equivalent; r = 0.75; $C_{CH3OH} = 71$ μg/ml; $T_{FM} = 567$ °R; $A_{CH3OH} = 3660$; $V_{FM} = 1.18$ ft³; $A_s1 = 4460$; $AV_s1 = 25.2$ ml; $A_s2 = 360$; $AV_s2 = 24.9$ ml; $T_{PM} = 532$ °R; $V_{PM} = 1.17$ ft³; $A_p1 = 110$; $AV_p1 = 25.0$ ml; $A_p2 = 10$; $AV_p2 = 25.1$ ml; $C_{FDB} = 20$ μg/ml; $V_{AB} = 5.0$ ml; Q = 0.1429; $T_{BP} = 569$ °R; $V_{BP} = 0.30$ ft³; $C_{FBA} = 1$ μg/ml; $V_{AA} = 5.0$ ml; $T_{BP} = 532$ °R; $V_{BA} = 0.31$ ft³; $NOx_e = 11.2$ ppm; $CO_{em} = 306.6$ ppm; $CO_{2e} = 1.43$ pct; $CH_{4e} = 10.74$ ppm; FID $HC_d = 12.1$ ppm; $NOX_d = 0.8$ ppm; $CO_{dm} = 15.3$ ppm; $CO_{2d} = 0.032$ percent; $CH_{4d} = 2.20$ ppm; $D_{td} = 3.598$ miles.

Then:

(i) $V_{mix} = (0.29344)(10,485)(762-70)(528)/(760)(570) = 2595.0$ ft³ per test phase.

(ii) $H = (43.478)(48.2)/(22.225)/[762-(22.225\times 48.2/100)] = 62$ grains of water per pound of dry air.

(iii) $K_H = 1/[1-0.0047(62-75)] = 0.9424$.

(iv) $CO_e = [1-(0.01+0.005\times 3.14\times 1.43)-0.000323(48)]\times 306.6 = 291.9$ ppm.

(v) $CO_d = (1-0.000323(48))\times 15.3 = 15.1$ ppm

(vi) $C_{CH3OHe} =$

$$\frac{(3.813\times 10^{-5})(71)(567)[(4460)(25.2)+(360)(24.9)]}{(3660)(762)(1.18)}$$

= 56.60 ppm.

(vii) DF =

$$\frac{100(1/[1+(3.14/2)+3.76(1+(3.14/4)-(0.6/2))])}{1.43+10_4[81.6+291.9+(1-0.75)(56.60)]}$$

= 8.350

(viii) $C_{CH3OHd} =$

$$\frac{(3.813\times 10_4)(71)(532)[(110)(25.0)+(10)(25.1)],}{(3660)(762)(1.17)}$$

= 1.32 ppm

(ix) $CH3OH_{comp} = 56.60-1.32(1-1/8.350) = 55.44$ ppm.

(x) $CH3OH_{mass} = 2595.0\times 37.71\times(55.44/1,000,000) = 5.43$ grams per test phase.

(xi) $HC_{comp} = [81.6-(0.75)(56.60)]-[12.1-(0.75)(1.32)](1-1/8.350) = 29.34$ ppm.

(xii) $HC_{mass} = (2595)(16.33)(29.34/1,000,000) = 1.24$ grams per test phase.

(xiii) $C_{HCHOe} =$

$$\frac{4.069\times 10_4(20)(5)(0.1429)(569)}{(0.30)(762)} = 1.4473 \text{ ppm.}$$

(xiv) $C_{HCHOd} =$

$$\frac{4.069\times 10_4(1)(5)(0.1429)(532)}{(0.31)(762)} = 0.0655 \text{ ppm.}$$

(xv) $HCHO_{comp} = 1.4473-0.0655(1-1/8.350) = 1.3896$ ppm.

(xvi) $HCHO_{mass} = (2595)(35.36)(1.3896/1,000,000) = 0.1275$ grams per test phase.

(xvii) $OMHCE = 1.24+(13.8756/32.042)(5.43)+(13.8756/30.0262)(0.1275) = 3.65$ grams per test phase.

(xviii) $NOx_{comp} = 11.2-(0.8)(1-1/8.350) = 10.50$ ppm.

(xix) $NOx_{mass} = (2595)(54.16)(10.50/1,000,000)(0.9424) = 1.380$ grams per test phase.

(xx) $CO_{comp} = 291.9-15.1(1-1/8.350) = 278.61$ ppm.

(xxi) $CO_{mass} = (2595.0)(32.97)(278.69/1,000,000) = 23.84$ grams per test phase.

(xxii) $CO_{2comp} = 1.43-0.032(1-1/8.350' = 1.402$ percent.

(xxiii) $CO_{2mass} = (2595.0)(51.85)(1.402/100) = 1886$ grams

(xxiv) $CH_{4comp} = 10.74-2.20(1-1/8.350) = 8.80$ ppm.

(xxv) $NMHC_{comp} = 29.34$ ppm − 8.80 ppm = 20.54 ppm.

(xxvi) $NMHC_{mass} = (2595.0)(16.33)(20.54/1,000,000) = 0.870$ grams per test phase.

(xxvii) $OMNMHCE_{mass} = 0.870+(13.8756/32.042)(5.43)+(13.8756/30.0262)(0.1275) = 3.28$ grams per test phase.

(2) For the stabilized portion of the cold start test assume that similar calculations resulted in the following:

(i) OMHCE = 0.55 grams per test phase.

(ii) $NOx_{mass} = 1.27$ grams per test phase.

(iii) $CO_{mass} = 5.98$ grams per test phase.

(iv) $CO_{2mass} = 2346$ grams per test phase.

(v) $D_s = 3.902$ miles.

(vi) OMNMHCE = 0.50 grams per test phase.

(3) For the "transient" portion of the hot start test assume that similar calculations resulted in the following:

(i) OMHCE = 0.67 grams as carbon equivalent per test phase.

(ii) $NOx_{mass} = 1.38$ grams per test phase.

(iii) $CO_{mass} = 5.01$ grams per test phase.

(iv) $CO_{2mass} = 1758$ grams per test phase.

(v) $D_{ht} = 3.598$ miles.

(vi) OMNMHCE = 0.44 grams per test phase.

(4) Weighted emission results:

(i) $OMHCE_{wm} = 0.43[(3.65+0.55)/(3.598+3.902)]+0.57[(0.67+0.55)/(3.598+3.902)] = 0.334$ grams as carbon equivalent per mile.

(ii) $NOx_{wm} = 0.43[(1.390+1.27)/(3.598+3.902)]+0.57[(1.38+1.27)/(3.598+3.902)] = 0.354$ grams per vehicle mile.

(iii) $CO_{wm} = 0.43[(23.84+5.98)/(3.598+3.902)]+0.57[(5.01+5.98)/(3.598+3.902)] = 2.54$ grams per vehicle mile.

(iv) $CO_{2wm} = 0.43[(1886+2346)/(3.598+3.902)]+0.57[(1758+2346)/(3.598+3.902)] = 555$ grams per vehicle mile.

(v) $OMNMHCE = 0.43[(3.28+0.50)/(3.598+3.902)]+0.57[(0.44+0.55)/(3.598+3.902)] = 0.292$ grams as carbon equivalent per mile.

(Approved by the Office of Management and Budget under control number 2060-0104)

37. A new subpart H is added to part 86 to read as follows:

Subpart H—General Provisions for In-use Emission Regulations for 1994 and Later Model Year Light-Duty Vehicles and Light-Duty Trucks

Sec.

86.701-94 General Applicability.
86.702-94 Definitions.
86.703-94 Abbreviations.
86.704-94 Section numbering; construction.
86.705-94 through 86.707-94 [Reserved]
86.708-94 In-use emission standards for 1994 and later model year light duty vehicles.
86.708-96 In-use emission standards for 1996 and later model year light duty vehicles.
86.709-94 In-use emission standards for 1994 and later model year light-duty trucks.
86.709-99 In-use emission standards for 1999 and later model year light-duty trucks.

Subpart H—General Provisions for In-use Emission Regulations for 1994 and Later Model Year Light-Duty Vehicles and Light-Duty Trucks

§ 86.701-94 General applicability.

The provisions of this subpart apply to: 1994 and later model year Otto-cycle and diesel light-duty vehicles; 1994 and later model year Otto-cycle and diesel light-duty trucks; and 1994 and later model year Otto-cycle and diesel heavy-duty engines. The provisions of subpart B of this part apply to this subpart.

§ 86.702-94 Definitions.

The definitions in subparts A and B of this part apply to this subpart.

§ 86.703-94 Abbreviations.

The abbreviations in subparts A and B of this part apply to this subpart.

§ 86.704-94 Section numbering; construction.

Section 86.104 of subpart B applies to this subpart.

§ 86.705-94—§ 86.707-94 [Reserved]

§ 86.708-94 In-use emission standards for 1994 and later model year light duty vehicles.

Section 86.708-94 includes text that specifies requirements that differ from § 86.090-8 of subpart A of this part. Where a paragraph in § 86.090-8 is identical and applicable to § 86.708-94, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.090-8." Where a corresponding paragraph of § 86.090-8 is not applicable, this is indicated by the statement "[Reserved]."

(a)(1) *Standards.* (i) In-use exhaust emissions from 1994 and later model year light-duty vehicles shall meet all standards in Tables H94-3 and H94-4 in the rows designated with the applicable fuel type, according to the implementation schedules in Tables H94-1 and H94-2, and shall meet all standards in Tables H94-6 and H94-7 in the rows designated with the applicable fuel type, according to the implementation schedules in Table H94-5, as follows:

(A)(*1*)(*i*) For model years 1994 and 1995, a minimum of the percentage shown in Table H94-1 of a manufacturer's sales of the applicable model year's light-duty vehicles shall not exceed the applicable Tier 1[1] standards in Table H94-3. The remaining vehicles, if any, shall not exceed the applicable Tier 0 standards in Table H94-3.

(*ii*) For model years 1996 and beyond, a minimum of the percentages shown in Table H94-2 of a manufacturer's sales of the applicable model year's light-duty vehicles shall not exceed the applicable Tier 1[1] standards in Table H94-3 and

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H94–4. The remaining vehicles, if any, shall not exceed the applicable Tier 1_1 standards in Tables H94–3.

(*2*) *Particulates.* For in-use exhaust emissions for 1994 and later, a minimum of the percentage shown in Table H94–5 of a manufacturer's sales of the applicable model year's light-duty vehicles shall not exceed the applicable Tier 1^1 standards in Tables H94–6 and H94–7. The remaining vehicles, if any, shall not exceed the applicable Tier 0 standards in Table H94–6.

(*3*) Optionally, compliance with the Tier 1^1 and Tier 1 implementation schedules of this section may be based on the combined sales of light-duty vehicles and light light-duty trucks, if such option was taken for certification as allowed in § 86.094–8 and § 86.094–9 of subpart A of this part. Vehicles meeting Tier 1_1 in-use standards shall only be combined for this purpose with other vehicles meeting Tier 1_1 standards, and those meeting Tier 1 standards shall only be combined with those meeting the Tier 1 standards.

TABLE H94–1.—IMPLEMENTATION SCHEDULE FOR LIGHT-DUTY VEHICLES FOR HCs, CO AND NOx

Model year	Tier 1 percentage
1994	40
1995	80
1996	60
1997	20
After 1997	0

TABLE H94–2.—IMPLEMENTATION SCHEDULE FOR LIGHT-DUTY VEHICLES FOR HCs, CO AND NOx

Model year	Tier 1 percentage
1994	0
1995	0
1996	40
1997	80
After 1997	100

TABLE H94–3.—INTERMEDIATE USEFUL LIFE [1] STANDARDS (g/mi) FOR LIGHT-DUTY VEHICLES FOR HCs, CO AND NOx

Fuel	Standards	THC	NMHC	OMHCE	OMNMHCE	CO	NOx
Gasoline	Tier 0	0.41				3.4	1.0
Gasoline	Tier 1_1	0.41	0.32			3.4	0.4
Gasoline	Tier 1	0.41	0.25			3.4	0.4
Diesel	Tier 0	0.41				3.4	1.0
Diesel	Tier 1_1	0.41	0.32			3.4	1.0
Diesel	Tier 1	0.41	0.25			3.4	1.0
Methanol	Tier 0			0.41		5.4	1.0
Methanol	Tier 1_1			0.41	0.32	3.4	0.4
Methanol	Tier 1			0.41	0.25	3.4	0.4

[1] The applicable useful life is 5 years or 50,000 miles, whichever first occurs.

TABLE H94–4.—FULL USEFUL LIFE [1] STANDARDS (g/mi) FOR LIGHT-DUTY VEHICLES FOR HCs, CO AND NOx

Fuel	Standards	THC	NMHC	OMHCE	OMNMHCE	CO	NOx
Gasoline	Tier 0						
Gasoline	Tier 1		0.31			4.2	0.6
Diesel	Tier 0						
Diesel	Tier 1		0.31			4.2	1.25
Methanol	Tier 0						
Methanol	Tier 1				0.31	4.2	0.6

[1] The applicable useful life is 10 years or 100,000 miles, whichever first occurs, except that no enforcement testing will be done beyond 7 years or 75,000 miles, whichever first occurs.

TABLE H94–5.—IMPLEMENTATION SCHEDULE FOR LIGHT-DUTY VEHICLES FOR PM

Model year	Tier 1 percentage
1994	40
1995	80
After 1995	100

TABLE H94–6.—INTERMEDIATE USEFUL LIFE [1] STANDARDS (G/ML) FOR LIGHT-DUTY VEHICLES FOR PM

Fuel	Standards	PM
Gasoline	Tier 0	
Gasoline	Tier 1	0.08
Diesel	Tier 0	0.20
Diesel	Tier 1	0.08
Methanol	Tier 0	[2] 0.20

TABLE H94–6.—INTERMEDIATE USEFUL LIFE [1] STANDARDS (G/ML) FOR LIGHT-DUTY VEHICLES FOR PM—Continued

Fuel	Standards	PM
Methanol	Tier 1	0.08

[1] The applicable useful life is 5 years or 50,000 miles, whichever first occurs.
[2] Applicable only to diesel-cycle vehicles.

TABLE H94–7.—FULL USEFUL LIFE [1] STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES FOR PM

Fuel	Standards	PM
Gasoline	Tier 0	
Gasoline	Tier 1	0.10
Diesel	Tier 0	
Diesel	Tier 1	0.10

TABLE H94–7.—FULL USEFUL LIFE [1] STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES FOR PM—Continued

Fuel	Standards	PM
Methanol	Tier 0	
Methanol	Tier 1	0.10

[1] The applicable useful life is 10 years or 100,000 miles, whichever first occurs, except that no enforcement testing will be done beyond 7 years or 75,000 miles, whichever first occurs.

(B)(*1*)(*i*) Sales percentages for the purposes of determining compliance with paragraph (a)(1)(i) of this section shall be based on total actual U.S. sales of light-duty vehicles of the applicable model year by a manufacturer to a dealer, distributor, fleet operator, broker, or any other entity which comprises the point of first sale. If the option of paragraph (a)(1)(i)(A)(*3*) is taken, such sales percentages shall be based on the total actual combined U.S. sales of light-duty vehicles and light light-duty trucks of the applicable model year by a manufacturer to a dealer, distributor, fleet operator, broker, or any other entity which comprises the point of first sale.

(*ii*) The manufacturer may petition the Administrator to allow actual volume produced for U.S. sales to be used in lieu of actual U.S. sales for purposes of determining compliance with the implementation schedule sales percentages of Tables H94–1, H94–2 and H94–5 of this section. Such petition shall be submitted within 30 days of the end of the model year to the Manufacturers Operations Division. For the petition to be granted, the manufacturer must establish to the satisfaction of the Administrator that actual production volume is functionally equivalent to actual sales volume.

(*iii*) The vehicles that are counted toward the implementation schedule sales percentage, or toward the total on which such percentage is based, for certification purposes as prescribed by § 86.094–8 (a)(1)(i)(B)(*1*)(*iii*) of subpart A of this part, shall be the same vehicles that are counted toward the implementation schedule sales percentage, or the total on which it is based, for in-use purposes.

(*iv*) Small volume manufacturers, as defined in § 86.092–14 (b) (1) and (2), are exempt from the implementation schedules of Tables H94–1 and H94–2 of this section for model years 1994 through 1997, and from the implementation schedule of Table H94–5 of this section for model years 1994 and 1995. For small volume manufacturers, Tier 0 standards of Table H94–6 continue to apply until model year 1998 and Tier 0 standards of Table H94–3 continue to apply until model year 1998, when one hundred percent compliance with the Tier 1 standards of Tables H94–3, H94–4, H94–6, and H94–7 is required. This exemption does not apply to small volume engine families as defined in § 86.092–14 (b)(5).

(*2*)(*i*) For 1994 and 1995 model year light-duty vehicles, the engine families which comprise the required implementation schedule percentage of sales meeting Tier 1 standards for HCs, CO, and NOx, for purposes of certification, shall be the same engine families which comprise the required implementation schedule percentage of sales meeting the interim in-use standards (labeled "Tier 1_1" in the tables of in-use standards) for in-use purposes.

(*ii*) For 1996 and 1997 model year light-duty vehicles the engine families which comprise the required implementation schedule percentage of sales meeting interim in-use standards (labeled "Tier 1_1" in the tables of in-use standards) and final in-use standards (labeled "Tier 1" in the tables of in-use standards) respectively, for HCs, CO, and NOx, for in-use purposes, shall be designated by the manufacturer at the time of Application for Certification.

(*iii*) For 1994 and 1995 model year light-duty vehicles, the engine families which comprise the required implementation schedule percentage of sales meeting Tier 1 standards, for PM, for purposes of certification, shall be the same engine families which comprise the required implementation schedule percentage of sales meeting the final in-use standards (labeled "Tier 1" in the tables of in-use standards) for PM for in-use purposes.

(*3*) The manufacturer must state at the time of Application for Certification, based on projected U.S. sales or projected production for U.S. sale, which families will be used to attain the required implementation schedule sales percentages for in-use purposes.

(*4*) A manufacturer cannot use one set of engine families to meet its in-use intermediate useful life standards and another to meet its in-use full useful life standards. The same families which are used to meet the intermediate useful life standards will be required without deviation to meet the corresponding full useful life standards.

(ii) Engine families participating in the particulate averaging program as specified in § 86.094–8 (a)(1)(ii) shall be subject, for purposes of in-use compliance, to the particulate family emission limit determined for that engine family for certification purposes, in lieu of the appropriate particulate standard shown in the tables of in-use standards in this section.

(2) The standards set forth in paragraph (a)(1)(i) of this section refer to the exhaust emitted over a driving schedule as set forth in subpart B of this part and measured and calculated in accordance with those procedures. The test weight basis for light-duty vehicles, for the purposes of determining equivalent test weight as prescribed in § 86.129–94, shall be loaded vehicle weight.

(b) The provisions of § 86.090–6 (b) through (h) of subpart A of this part apply to this section. The provisions of § 86.094–8 (i) through (j) of subpart A of this part apply to this section.

§ 86.708–98 In-use emission standards for 1998 and later model year light duty vehicles.

Section 86.708–98 includes text that specifies requirements that differ from § 86.090–6 of subpart A of this part. Where a paragraph in § 86.090–6 is identical and applicable to § 86.708–98, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.090–6." Where a corresponding paragraph of § 86.090–6 is not applicable, this is indicated by the statement "[Reserved]."

(a)(1)(i) In-use exhaust emissions from 1998 and later model year light-duty vehicles shall meet all standards in Tables H98–1 and H98–2 in the rows designated with the applicable fuel type.

TABLE H98–1.—INTERMEDIATE USEFUL LIFE [1] STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES

Fuel	THC	NMHC	OMHCE	OMNMHCE	CO	NOx	PM
Gasoline	0.41	0.25			3.4	0.4	0.08
Diesel	0.41	0.25			3.4	1.0	0.08
Methanol			0.41	0.25	3.4	0.4	0.08

[1] The applicable useful life is 5 years or 50,000 miles, whichever first occurs.

Table H98–2.—FULL USEFUL LIFE [1] STANDARDS (G/MI) FOR LIGHT-DUTY VEHICLES

Fuel	THC	NMHC	OMHCE	OMNMHCE	CO	NOx	PM
Gasoline		0.31			4.2	0.6	0.10
Diesel		0.31			4.2	1.25	0.10

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Table H96-2.—Full Useful Life [1] Standards (g/mi) for Light-Duty Vehicles—Continued

Fuel	THC	NMHC	OMHCE	OMNMHCE	CO	NOx	PM
Methanol				0.31	4.2	0.6	0.10

[1] The applicable useful life is 10 years or 100,000 miles, whichever first occurs, except that no enforcement testing will be done beyond 7 years or 75,000 miles, whichever first occurs.

(ii)(A) Vehicles subject to the standards of paragraph (a)(1)(i) of this section shall be all actual U.S. sales of light-duty vehicles of the applicable model year by a manufacturer.

(B) A manufacturer cannot use one set of engine families to meet its in-use intermediate useful life standards and another to meet its in-use full useful life standards. The same families which are used to meet the intermediate useful life standards will be required without deviation to meet the corresponding full useful life standards.

(2) The standards set forth in paragraph (a)(1) of this section refer to the exhaust emitted over a driving schedule as set forth in subpart B of this part and measured and calculated in accordance with those procedures. The test weight basis for light-duty vehicles, for the purposes of determining equivalent test weight as prescribed in § 86.129-94, shall be loaded vehicle weight.

(b) The provisions of § 86.090-8 (b) through (h) of subpart A of this part apply to this section. The provisions of § 86.096-8 (i) through (j) of subpart A of this part apply to this section.

§ 86.709-94 In-use emission standards for 1994 and later model year light-duty trucks.

Section 86.709-94 includes text that specifies requirements that differ from § 86.091-9 of subpart A of this part. Where a paragraph in § 86.091-9 is identical and applicable to § 86.709-94, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.091-9." Where a corresponding paragraph of § 86.091-9 is not applicable, this is indicated by the statement "[Reserved]."

(a)(1) *Standards*—(i) *Light light-duty trucks.* In-use exhaust emissions from 1994 and later model year light light-duty trucks shall meet all standards in Tables H94-9 and H94-10 in the rows designated with the applicable fuel type and loaded vehicle weight, according to the implementation schedule in Table H94-8, and shall meet all standards in Tables H94-12 and H94-13 in the rows designated with the applicable fuel type and loaded vehicle weight, according to the implementation schedules in Table H94-11, as follows:

(A)(*1*)(*i*) For model year 1994 and 1995, a minimum of the respective percentages shown in the Tier 1_1 column of Table H94-8 of a manufacturer's sales of the applicable model year's light light-duty trucks shall not exceed the applicable Tier 1_1 standards in Tables H94-9 and H94-10. The remaining vehicles, if any, shall not exceed the applicable Tier 0 standards in Tables H94-9 and H94-10.

(*ii*) For model years 1996 and 1997, a minimum of the percentages shown in the Tier 1 percentage column of Table H94-8 of a manufacturer's sales of the applicable model year's light light-duty trucks shall not exceed the applicable Tier 1 standards in Table H94-9 and H94-10, and the remaining vehicles, if any, shall not exceed the applicable Tier 1_1 standards in Tables H94-9 and H94-10.

(*iii*) For model year 1998 and beyond, a minimum of the percentage shown in the Tier 1 percentage column of Table H94-8 of a manufacturer's sales of the applicable model year's light light-duty trucks shall not exceed the applicable Tier 1 standards in Tables H94-9 and H94-10.

(*2*) *Particulates.* For in-use exhaust emissions for 1994 and later, a minimum of the percentage shown in Table H94-11 of a manufacturer's sales of the applicable model year's light light-duty trucks shall not exceed the applicable Tier 1 standards in Tables H94-12 and H94-13. The remaining light light-duty trucks, if any, shall not exceed the applicable Tier 0 standards in Tables H94-12 and H94-13.

(*3*) Optionally, compliance with the Tier 1_1 and Tier 1 implementation schedules of this section may be based on the combined sales of light-duty vehicles and light light-duty trucks, if such option was taken for certification as allowed in § 86.094-8 and § 86.094-9 of subpart A of this part. Vehicles meeting Tier 1_1 in-use standards shall only be combined for this purpose with other vehicles meeting Tier 1_1 standards, and those meeting Tier 1 standards shall only be combined with those meeting the Tier 1 standards.

Table H94-8.—Implementation Schedule for Light Light-Duty Trucks for HCs, CO and NOx

Model year	Tier 1_1 percentage	Tier 1 percentage
1994	40	0
1995	80	0
1996	60	40
1997	20	80
1998	0	100

Table H94-9.—Intermediate Useful Life [1] Standards (g/mi) for Light Light-Duty Trucks for HCs, CO and NOx

Fuel	LVW (lbs)	Standards	THC	NMHC	OMHCE	OMNMHCE	CO	NOx
Gasoline	0-3750	Tier 0	0.80				10	1.2
Gasoline	0-3750	Tier 1_1	0.80	0.32			5.2	0.4
Gasoline	0-3750	Tier 1	0.80	0.25			3.4	0.4
Gasoline	3751-5750	Tier 0	0.80				10	1.7
Gasoline	3751-5750	Tier 1_1	0.80	0.41			6.7	0.7
Gasoline	3751-5750	Tier 1	0.80	0.32			4.4	0.7
Diesel	0-3750	Tier 0	0.80				10	1.2
Diesel	0-3750	Tier 1_1	0.80	0.32			5.2	1.2
Diesel	0-3750	Tier 1	0.80	0.25			3.4	1.0
Diesel	3751-5750	Tier 0	0.80				10	1.7
Diesel	3751-5750	Tier 1_1	0.80	0.41			6.7	1.7
Diesel	3751-5750	Tier 1	0.80	0.32			4.4	0.97
Methanol	0-3750	Tier 0			0.80		10	1.2
Methanol	0-3750	Tier 1_1			0.80	0.32	5.2	0.4

Table H94-9.—Intermediate Useful Life [1] Standards (g/mi) for Light Light-Duty Trucks for HCs, CO and NOx—Continued

Fuel	LVW (lbs)	Standards	THC	NMHC	OMHCE	OMNMHCE	CO	NOx
Methanol	0-3750	Tier 1			0.80	0.25	3.4	0.4
Methanol	3751-5750	Tier 0			0.80		10	1.7
Methanol	3751-5750	Tier 1_1			0.80	0.41	6.7	0.7
Methanol	3751-5750	Tier 1			0.80	0.32	4.4	0.7

[1] The applicable useful life is 5 years or 50,000 miles, whichever first occurs.

Table H94-10.—Full Useful Life Standards (g/mi) for Light Light-Duty Trucks for HCs, CO and NOx

Fuel	LVW (lbs)	Standards	THC [2]	NMHC [1]	OMHCE [2]	OMNMHCE [1]	CO [1]	NOx [1]
Gasoline	0-3750	Tier 0	0.80				10	1.2
Gasoline	0-3750	Tier 1_1	0.80					
Gasoline	0-3750	Tier 1	0.80	0.31			4.2	0.60
Gasoline	3751-5750	Tier 0	0.80				10	1.7
Gasoline	3751-5750	Tier 1_1	0.80					
Gasoline	3751-5750	Tier 1	0.80	0.40			5.5	0.97
Diesel	0-3750	Tier 0	0.80				10	1.2
Diesel	0-3750	Tier 1_1	0.80					
Diesel	0-3750	Tier 1	0.80	0.31			4.2	1.25
Diesel	3751-5750	Tier 0	0.80				10	1.7
Diesel	3751-5750	Tier 1_1	0.80					
Diesel	3751-5750	Tier 1	0.80	0.40			5.5	0.97
Methanol	0-3750	Tier 0			0.80		10	1.2
Methanol	0-3750	Tier 1_1			0.80			
Methanol	0-3750	Tier 1			0.80	0.31	4.2	0.60
Methanol	3751-5750	Tier 0			0.80		10	1.7
Methanol	3751-5750	Tier 1_1			0.80			
Methanol	3751-5750	Tier 1			0.80	0.40	5.5	0.97

[1] The applicable useful life is 10 years or 100,000 miles, whichever first occurs, except that no enforcement testing will be done beyond 7 years or 75,000 miles, whichever first occurs.
[2] The applicable useful life is 11 years or 120,000 miles, whichever first occurs.

Table H94-11.—Implementation Schedule for Light Light-Duty Trucks for PM

Model year	Tier 1 percentage
1994	0%
1995	40%
1996	80%
after 1996	100%

Table H94-12.—Intermediate Useful Life [1] Standards (g/mi) for Light Light-Duty Trucks for PM

Fuel	LVW (lbs)	Standards	PM
Gasoline	0-3750	Tier 0	
Gasoline	0-3750	Tier 1	0.08
Gasoline	3751-5750	Tier 0	
Gasoline	3751-5750	Tier 1	0.08
Diesel	0-3750	Tier 0	0.26
Diesel	0-3750	Tier 1	0.08
Diesel	3751-5750	Tier 0	0.13
Diesel	3751-5750	Tier 1	0.08
Methanol	0-3750	Tier 0	
Methanol	0-3750	Tier 1	0.08
Methanol	3751-5750	Tier 0	
Methanol	3751-5750	Tier 1	0.08

[1] The applicable useful life is 5 years or 50,000 miles, whichever first occurs.

Table H94-13.—Full Useful Life [1] Standards (g/mi) for Light Light-Duty Trucks for PM

Fuel	LVW (lbs)	Standards	PM
Gasoline	0-3750	Tier 0	
Gasoline	0-3750	Tier 1	0.10
Gasoline	3751-5750	Tier 0	

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TABLE H94-13.—FULL USEFUL LIFE [1] STANDARDS (G/ML) FOR LIGHT LIGHT-DUTY TRUCKS FOR PM—Continued

Fuel	LVW (lbs)	Standards	PM
Gasoline	3751-5750	Tier 1	0.10
Diesel	0-3750	Tier 0	0.26
Diesel	0-3750	Tier 1	0.10
Diesel	3751-5750	Tier 0	0.13
Diesel	3751-5750	Tier 1	0.10
Methanol	0-3750	Tier 0	.....
Methanol	0-3750	Tier 1	0.10
Methanol	3751-5750	Tier 0	.....
Methanol	3751-5750	Tier 1	0.10

[1] The applicable useful life is 10 years or 100,000 miles, whichever first occurs, except that no enforcement testing will be done beyond 7 years or 75,000 miles, whichever first occurs.

(B)(*1*)(*i*) Sales percentages for the purposes of determining compliance with paragraph (a)(1)(i)(A) of this section shall be based on total actual U.S. sales of light-duty vehicles of the applicable model year by a manufacturer to a dealer, distributor, fleet operator, broker, or any other entity which comprises the point of first sale. If the option of paragraph (a)(1)(i)(A)(*3*) is taken, such sales percentages shall be based on the total actual combined U.S. sales of light-duty vehicles and light light-duty trucks of the applicable model year by a manufacturer to a dealer, distributor, fleet operator, broker, or any other entity which comprises the point of first sale.

(*ii*) The manufacturer may petition the Administrator to allow actual volume produced for U.S. sale to be used in lieu of actual U.S. sales for purposes of determining compliance with the implementation schedule sales percentages of Tables H94-8 and H94-11 of this section. Such petition shall be submitted within 30 days of the end of the model year to the Manufacturers Operations Division. For the petition to be granted, the manufacturer must establish to the satisfaction of the Administrator that actual production volume is functionally equivalent to actual sales volume.

(*iii*) The vehicles that are counted toward the implementation schedule sales percentage, or toward the total on which such percentage is based, for certification purposes as prescribed by § 86.094-9(a)(1)(i)(B)(*1*)(*iii*) of subpart A of this part, shall be the same vehicles that are counted toward the implementation schedule sales percentage, or the total on which it is based, for in-use purposes.

(*iv*) Small volume manufacturers, as defined in § 86.092-14(b) (1) and (2), are exempt from the implementation schedules of Table H94-8 of this section for model years 1994 through 1997 and from the implementation schedules of Table H94-11 of this section for model years 1995 and 1996. For small volume manufacturers, Tier 0 standards of Tables H94-9 and H94-10 continue to apply until model year 1998 and the Tier 0 standards of Tables H94-12 and H94-13 continue to apply until model year 1997, when one hundred percent compliance with the Tier 1 standards of such tables is required. This exemption does not apply to small volume engine families as defined in § 86.092-14 (b)(5).

(*2*)(*i*) For 1994 and 1995 model year light light-duty trucks, the engine families which comprise the required implementation schedule percentage of sales meeting Tier 1 standards for HCs, CO, and NOx, for purposes of certification, shall be the same engine families which comprise the required implementation schedule percentage of sales meeting the interim in-use standards (labeled "Tier 1_i" in the tables of in-use standards) for in-use purposes.

(*ii*) For 1996 and 1997 model year light light-duty trucks, the engine families which comprise the required implementation schedule percentage of sales meeting interim in-use standards (labeled "Tier 1_i" in the tables of in-use standards) and final in-use standards (labeled "Tier 1" in the tables of in-use standards) respectively, for HCs, CO, and NOx, for in-use purposes, shall be designated by the manufacturer at the time of certification.

(*iii*) For 1995 and 1996 model year light light-duty trucks, the engine families which comprise the required implementation schedule percentage of sales meeting Tier 1 standards, for PM, for purposes of certification, shall be the same engine families which comprise the required implementation schedule percentage of sales meeting the final in-use standards (labeled "Tier 1" in the tables of in-use standards) for PM for in-use purposes.

(*3*) The manufacturer must state at the time of Application for Certification, based on projected U.S. sales or projected production for U.S. sale, which families will be used to attain the required implementation schedule sales percentages for in-use purposes.

(*4*) A manufacturer can not use one set of engine families to meet its in-use intermediate useful life standards and another to meet its in-use full useful life standards. The same families which are used to meet the intermediate useful life standards will be required without deviation to meet the corresponding full useful life standards.

(ii) *Heavy light-duty trucks.* In-use exhaust emissions from 1994 and later model year heavy light-duty trucks shall meet all standards in Tables H94-15 and H94-16 in the rows designated with the applicable fuel type and loaded vehicle weight or adjusted loaded vehicle weight, as applicable, according to the implementation schedule in Table H94-14, and shall meet all standards in Tables H94-18 and H94-19 in the rows designated with the applicable fuel type and loaded vehicle weight or adjusted loaded vehicle weight, as applicable, according to the implementation schedules in Table H94-17, as follows:

(A)(*1*)(*i*) For model years 1994 through 1997, a minimum of the percentage shown in the Tier 1_i column of Table H94-14 of a manufacturer's sales of the applicable model year's heavy light-duty trucks shall not exceed the applicable Tier 1_i standards in Tables H94-15 and H94-16. The remaining vehicles, if any, shall not exceed the applicable Tier 0 standards in Tables H94-15 and H94-16.

(*ii*) For model year 1998, a minimum of the percentage shown in Table H94-14 of a manufacturer's sales of the applicable model year's heavy light-duty trucks shall not exceed the applicable Tier 1 standards in Tables H94-15 and H94-16. The remaining vehicles shall not exceed the applicable Tier 1_i standards in Tables H94-15 and H94-16.

(*iii*) For model years 1999 and later, a minimum of the percentage shown in Table H94-14 of a manufacturer's sales of the applicable model year's heavy light-duty trucks shall not exceed the applicable Tier 1 standards in Tables H94-15 and H94-16.

(*2*) *Particulates.* For in-use exhaust emissions for model year 1994 and later, a minimum of the percentage shown in Table H94-17 of a manufacturer's sales of the applicable model year's heavy light-duty trucks shall not exceed the applicable Tier 1 standards in Tables H94-18 and H94-19. The remaining heavy light-duty trucks, if any, shall not exceed the applicable Tier 0 standards in Tables H94-18 and H94-19.

TABLE H94-14.—IMPLEMENTATION SCHEDULE FOR HEAVY LIGHT-DUTY TRUCKS FOR HCs, CO AND NOx

Model year	Tier 1, PERCENTAGE	Tier 1 percentage
1994	0%	0%
1995	0%	0%
1996	50%	0%
1997	100%	0%
1998	50%	50%
after 1998	0%	100%

TABLE H94-15.—INTERMEDIATE USEFUL LIFE [1] STANDARDS (G/MI) FOR HEAVY LIGHT-DUTY TRUCKS FOR HCs, CO AND NOx

Fuel	LVW (lbs)	ALVW (lbs)	Standards	THC	NMHC	OMHCE	OMNMHCE	CO	NOx
Gasoline	0-3570		Tier 0	0.80				10	1.2
Gasoline	> 3750		Tier 0	0.80				10	1.7
Gasoline		3751-5750	Tier 1_i	0.80	0.40			5.5	0.88
Gasoline		3751-5750	Tier 1	0.80	0.32			4.4	0.7
Gasoline		> 5750	Tier 1_i	0.80	0.49			6.2	1.38
Gasoline		> 5750	Tier 1	0.80	0.39			5.0	1.1
Diesel	0-3570		Tier 0	0.80				10	1.2
Diesel	> 3750		Tier 0	0.80				10	1.7
Diesel	0-3750	3751-5750	Tier 1_i	0.80	0.40			5.5	1.2
Diesel	> 3750	3751-5750	Tier 1_i	0.80	0.40			5.5	1.7
Diesel		3751-5750	Tier 1	0.80	0.32			4.4	0.98
Diesel	0-3750	> 5750	Tier 1_i	0.80	0.49			6.2	1.2
Diesel	> 3750	> 5750	Tier 1_i	0.80	0.49			6.2	1.7
Diesel		> 5750	Tier 1	0.80	0.39			5.0	1.53
Methanol	0-3750		Tier 0	0.80				10	1.2
Methanol	> 3750		Tier 0	0.80				10	1.7
Methanol		3751-5750	Tier 1_i			0.80	0.40	5.5	0.88
Methanol		3751-5750	Tier 1			0.80	0.32	4.4	0.7
Methanol		> 5750	Tier 1_i			0.80	0.49	6.2	1.38
Methanol		> 5750	Tier 1			0.80	0.39	5.0	1.1

[1] The applicable useful life is 5 years or 50,000 miles, whichever first occurs.

TABLE H94-16.—FULL USEFUL LIFE STANDARDS (G/MI) FOR HEAVY LIGHT-DUTY TRUCKS FOR HCs, CO AND NO_x

Fuel	LVW (lbs)	ALVW (lbs)	Standards	THC[2]	NMHC[1]	OMHCE[2]	OMNMHCE[1]	CO[1]	NO_x[1]
Gasoline	0-3750		Tier 0	0.80				10	1.2
Gasoline	> 3750		Tier 0	0.80				10	1.7
Gasoline		3751-5750	Tier 1_i	0.80					
Gasoline		3751-5750	Tier 1	0.80	0.46			6.4	0.98
Gasoline		> 5750	Tier 1_i	0.80					
Gasoline		> 5750	Tier 1	0.80	0.56			7.3	1.53
Diesel	0-3750		Tier 0	0.80				10	1.2
Diesel	> 3750		Tier 0	0.80				10	1.7
Diesel		3751-5750	Tier 1_i	0.80					
Diesel		3751-5750	Tier 1	0.80	0.46			6.4	0.98
Diesel		> 5750	Tier 1_i	0.80					
Diesel		> 5750	Tier 1	0.80	0.56			7.3	1.53
Methanol	0-3750		Tier 0			0.80		10	1.2
Methanol	> 3750		Tier 0			0.80		10	1.7
Methanol		3751-5750	Tier 1_i			0.80			
Methanol		3751-5750	Tier 1			0.80	0.46	6.4	0.98
Methanol		> 5750	Tier 1_i			0.80			
Methanol		> 5750	Tier 1			0.80	0.56	7.3	1.53

[1] The applicable useful life is 11 years or 120,000 miles, whichever first occurs, except that no enforcement testing will be done beyond 7 years or 90,000 miles, whichever first occurs.

[2] The applicable useful life is 11 years or 120,000 miles, whichever first occurs.

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TABLE H94–17.—IMPLEMENTATION SCHEDULE FOR HEAVY LIGHT-DUTY TRUCKS FOR PM

Model year	Tier 1 percentage
1994	0
1995	0
1996	50
after 1996	100

TABLE H94–18.—INTERMEDIATE USEFUL LIFE [1] STANDARDS (G/MI) FOR HEAVY LIGHT-DUTY TRUCKS FOR PM

Fuel	LVW (lbs)	ALVW (lbs)	Standards	PM
Gasolines	0–3750		Tier 0	
Gasoline	> 3750		Tier 0	
Gasoline		3751–5750	Tier 1	0.10
Gasoline		> 5750	Tier 1	0.12
Diesel	0–3750		Tier 0	0.26
Diesel	> 3750		Tier 0	0.13
Diesel		3751–5750	Tier 1	0.10
Diesel		> 5750	Tier 1	0.12
Methanol	0–3750		Tier 0	
Methanol	> 3750		Tier 0	
Methanol		3751–5750	Tier 1	0.10
Methanol		> 5750	Tier 1	0.12

[1] The applicable useful life is 5 years or 50,000 miles, whichever first occurs.

TABLE H94–19.—FULL USEFUL LIFE [1] STANDARDS (G/MI) FOR HEAVY LIGHT-DUTY TRUCKS FOR PM

Fuel	LVW (lbs)	ALVW (lbs)	Standards	PM
Gasoline	0–3750		Tier 0	
Gasoline	> 3750		Tier 0	
Gasoline		3751–5750	Tier 1	0.10
Gasoline		> 5750	Tier 1	0.12
Diesel	0–3750		Tier 0	0.26
Diesel	> 3750		Tier 0	0.13
Diesel		3751–5750	Tier 1	0.10
Diesel		> 5750	Tier 1	0.12
Methanol	0–3750		Tier 0	
Methanol	> 3750		Tier 0	
Methanol		3751–5750	Tier 1	0.10
Methanol		> 5750	Tier 1	0.12

[1] The applicable useful life is 11 years or 120,000 miles, whichever first occurs, except that no enforcement testing will be done beyond 7 years or 90,000 miles, whichever first occurs.

(B)(*1*)(*i*) Sales percentages for the purposes of determining compliance with paragraph (a)(1)(ii)(A) of this section shall be based on total actual U.S. sales of light-duty vehicles of the applicable model year by a manufacturer to a dealer, distributor, fleet operator, broker, or any other entity which comprises the point of first sale.

(*ii*) The manufacturer may petition the Administrator to allow actual volume produced for U.S. sales to be used in lieu of actual U.S. sales for purposes of determining compliance with the implementation schedule sales percentages of Tables H94–14 and H94–17 of this section. Such petition shall be submitted within 30 days of the end of the model year to the Manufacturers Operations Division. For the petition to be granted, the manufacturer must establish to the satisfaction of the Administrator that actual production volume is functionally equivalent to actual sales volume.

(*iii*) The vehicles that are counted toward the implementation schedule sales percentage, or toward the total on which such percentage is based, for certification purposes as prescribed by § 86.094–9(a)(1)(ii)(B)(*1*)(*iii*) of subpart A of this part, shall be the same vehicles that are counted toward the implementation schedule sales percentage, or the total on which it is based, for in-use purposes.

(*iv*) Small volume manufacturers, as defined in § 86.092–14(b) (1) and (2), are exempt from the implementation schedules of Tables H94–14 of this section for model years 1996 through 1998 and from the implementation schedules of Table H94–17 of this section for model year 1996. For small volume manufacturers, Tier 0 standards of Tables H94–15 and H94–16 continue to apply until model year 1999 and the Tier 0 standards of Tables H94–18 and H94–19 continue to apply until model year 1997, when one hundred percent compliance with the Tier 1 standards of such tables is required. This exemption does not apply to small volume engine families as defined in § 86.092–14(b)(5).

(*2*)(*i*) For 1996 and 1997 model year heavy light-duty trucks, the engine families which comprise the required implementation schedule percentage of sales meeting Tier 1 standards for HCs, CO, and NOx, for purposes of certification, shall be the same engine families which comprise the required implementation schedule percentage of sales meeting the interim in-use standards (labeled "Tier 1_i" in the tables of in-use standards) for in-use purposes.

(*ii*) For 1998 model year heavy light-duty trucks the engine families which comprise the required implementation schedule percentage of sales meeting interim in-use standards (labeled "Tier 1_i" in the tables of in-use standards) and final in-use standards (labeled "Tier 1" in the tables of in-use standards) for HCs, CO, and NOx, for in-use purposes, shall be designated by the manufacturer at the time of certification.

(*iii*) For 1996 model year heavy light-duty trucks, the engine families which comprise the required implementation schedule percentage of sales meeting Tier 1 standards, for PM, for purposes of certification, shall be the same engine families which comprise the required implementation schedule percentage of sales meeting the final in-use standards (labeled "Tier 1" in the tables of in-use standards) for PM for in-use purposes.

(*3*) The manufacturer must state at the time of Application for Certification, based on projected U.S. sales or projected production for U.S. sale, which families will be used to attain the required implementation schedule sales percentages.

(*4*) A manufacturer can not use one set of engine families to meet its in-use intermediate useful life standards and another to meet its in-use full useful life standards. The same families which are used to meet the intermediate useful life standards will be required without deviation to meet the corresponding full useful life standards.

(iii) Exhaust emissions of carbon monoxide from 1994 and later model year light-duty trucks shall not exceed 0.50 percent of exhaust gas flow at curb idle at a useful life of 11 years or 120,000 miles, whichever first occurs (for Otto-cycle and methanol-fueled diesel-cycle light-duty trucks only).

(iv)(A) Engine families participating in the applicable NOx averaging program as specified in § 86.094–9(a)(1)(iv)(A) shall be subject, for purposes of in-use compliance, to the NOx family emission limit determined for that engine family for certification purposes, in lieu of the appropriate NOx standard shown in the tables of in-use standards in this section.

(B) Engine families participating in the applicable particulate averaging program as specified in § 86.094–9 (a)(1)(iv)(B) shall be subject, for purposes of in-use compliance, to the particulate family emission limit determined for that engine family for certification purposes, in lieu of the appropriate particulate standard shown in the tables of in-use standards in this section.

(2) The standards set forth in paragraphs (a)(1)(i) and (a)(1)(ii) of this section refer to the exhaust emitted over a driving schedule as set forth in subpart B of this part and measured and calculated in accordance with those procedures. The test weight basis for light light-duty trucks, and for heavy light-duty trucks certified to the Tier 0 standards of this section, for the purposes of determining equivalent test weight as prescribed in § 86.129–94, shall be loaded vehicle weight. The test weight basis for heavy light-duty trucks certified to the Tier 1 or Tier 1_i standards of this section, for the purposes of determining equivalent test weight as prescribed in § 86.129–94, shall be adjusted loaded vehicle weight. The standard set forth in paragraph (a)(1)(iii) of this section refers to the exhaust emitted at curb idle and measured and calculated in accordance with the procedures set forth in subpart P of this part.

(b) The provisions of § 86.094–9 (b) through (j) of subpart A of this part apply to this section.

§ 86.709–99 In-use emission standards for 1999 and later model year light-duty trucks.

Section 86.709–99 includes text that specifies requirements that differ from § 86.091–9 of subpart A of this part. Where a paragraph in § 86.091–9 is identical and applicable to § 86.709–99, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.091–9." Where a corresponding paragraph of § 86.091–9 is not applicable, this is indicated by the statement "[Reserved]."

(a)(1)(i)(A) *Light light-duty trucks.* In-use exhaust emissions from 1999 and later model year light light-duty trucks shall meet all standards in Tables H99–1 and H99–2 in the rows designated with the applicable fuel type and loaded vehicle weight.

TABLE H99–1.—INTERMEDIATE USEFUL LIFE [1] STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS

Fuel	LVW (lbs)	THC	NMHC	OMHCE	OMNMHCE	CO	NOx	PM
Gasoline	0–3750	0.80	0.25			3.4	0.4	0.08
Gasoline	3751–5750	0.80	0.32			4.4	0.7	0.08
Diesel	0–3750	0.80	0.25			3.4	1.0	0.08
Diesel	3751–5750	0.80	0.32			4.4	0.97	0.08
Methanol	0–3750			0.80	0.25	3.4	0.4	0.08
Methanol	3751–5750			0.80	0.32	4.4	0.7	0.08

[1] The applicable useful life is 5 years or 50,000 miles, whichever first occurs.

TABLE H99–2.—FULL USEFUL LIFE STANDARDS (G/MI) FOR LIGHT LIGHT-DUTY TRUCKS

Fuel	LVW (lbs)	THC[2]	NMHC[1]	OMHCE[2]	OMNMHCE[1]	CO[1]	NOx[1]	PM[1]
Gasoline	0–3750	0.80	0.31			4.2	0.6	0.10
Gasoline	3751–5750	0.80	0.40			5.5	0.97	0.10
Diesel	0–3750	0.80	0.31			4.2	1.25	0.10
Diesel	3751–5750	0.80	0.40			5.5	0.97	0.10
Methanol	0–3750			0.80	0.31	4.2	0.6	0.10
Methanol	3751–5750			0.80	0.40	5.5	0.97	0.10

[1] The applicable useful life is 10 years or 100,000 miles, whichever first occurs, except that no enforcement testing will be done beyond 7 years or 75,000 miles, whichever first occurs.
[2] The applicable useful life is 11 years or 120,000 miles, whichever first occurs.

(B)(*1*) Vehicles subject to the standards of paragraph (a)(1)(i)(A) of this section shall be all actual U.S. sales of light light-duty trucks of the applicable model year by a manufacturer.

(*2*) A manufacturer can not use one set of engine families to meet its in-use intermediate useful life standards and another to meet its in-use full useful life standards. The same families which are used to meet the intermediate useful life standards will be required without deviation to meet the corresponding full useful life standards.

(ii)(A) *Heavy light-duty trucks.* In-use exhaust emissions from 1999 and later model year heavy light-duty trucks shall meet all standards in Tables H99–3 and H99–4 in the rows designated with the applicable fuel type and adjusted loaded vehicle weight.

TABLE H99–3.—INTERMEDIATE USEFUL LIFE [1] STANDARDS (G/MI) FOR HEAVY LIGHT-DUTY TRUCKS

Fuel	ALVW (lbs)	THC	NMHC	OMHCE	OMNMHCE	CO	NOx	PM
Gasoline	3751–5750	0.80	0.32			4.4	0.7	0.10
Gasoline	>5750	0.80	0.39			5.0	1.1	0.12
Diesel	3751–5750	0.80	0.32			4.4	0.98	0.10
Diesel	>5750	0.80	0.39			5.0	1.53	0.12
Methanol	3751–5750			0.80	0.32	4.4	0.7	0.10
Methanol	>5750			0.80	0.39	5.0	1.1	0.12

[1] The applicable useful life is 5 years or 50,000 miles, whichever first occurs.

TABLE H99–4.—FULL USEFUL LIFE1 STANDARDS (G/MI) FOR HEAVY LIGHT-DUTY TRUCKS

Fuel	ALVW (lbs)	THC[2]	NMHC[1]	OMHCE[2]	OMNMHCE[1]	CO[1]	NOx[1]	PM[1]
Gasoline	3751–5750	0.80	0.46			6.4	0.98	0.10
Gasoline	>5750	0.80	0.56			7.3	1.53	0.12
Diesel	3751–5750	0.80	0.46			6.4	0.98	0.10
Diesel	>5750	0.80	0.56			7.3	1.53	0.12
Methanol	3751–5750			0.80	0.46	6.4	0.98	0.10
Methanol	>5750			0.80	0.56	7.3	1.53	0.12

[1] The applicable useful life is 11 years or 120,000 miles, whichever first occurs, except that no enforcement testing will be done beyond 7 years or 90,000 miles, whichever first occurs.
[2] The applicable useful life is 11 years or 120,000 miles, whichever first occurs.

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(B)(*1*) Vehicles subject to the standards of paragraph (a)(1)(ii)(A) of this section shall be all actual U.S. sales of heavy light-duty trucks of the applicable model year by a manufacturer.

(*2*) A manufacturer can not use one set of engine families to meet its in-use intermediate useful life standards and another to meet its in-use full useful life standards. The same families which are used to meet the intermediate useful life standards will be required without deviation to meet the corresponding full useful life standards.

(iii) Exhaust emissions of carbon monoxide from 1999 and later model year light-duty trucks shall not exceed 0.50 percent of exhaust gas flow at curb idle at a useful life of 11 years or 120,000 miles, whichever first occurs (for Otto-cycle and methanol-fueled diesel-cycle light-duty trucks only)

(2) The standards set forth in paragraphs (a)(1)(i) and (a)(1)(ii) of this section refer to the exhaust emitted over a driving schedule as set forth in subpart B of this part and measured and calculated in accordance with those procedures. The test weight basis for light light-duty trucks, for the purposes of determining equivalent test weight as prescribed in § 86.129–94, shall be loaded vehicle weight. The test weight basis for heavy light-duty trucks, for the purposes of determining equivalent test weight as prescribed in § 86.129–94, shall be adjusted loaded vehicle weight. The standard set forth in paragraph (a)(1)(iii) of this section refers to the exhaust emitted at curb idle and measured and calculated in accordance with the procedures set forth in subpart P of this part.

(b) The provisions of § 86.097–9 (b), (c), and (g) through (j) of subpart A of this part apply to this section.

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June 5, 1991

Part III

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 405 and 415
Medicare Program; Fee Schedule for Physicians' Services; Proposed Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 415

[BPD-2-P]

RIN 0938-AE91

Medicare Program; Fee Schedule for Physicians' Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule sets forth a fee schedule for payment for physicians' services beginning January 1, 1992. Establishment of this fee schedule is required by section 6102(a) of the Omnibus Budget Reconciliation Act of 1989, as amended by the Omnibus Budget Reconciliation Act of 1990. This proposed rule explains which services would be included in the fee schedule and sets forth the formula for computing payment amounts. Application of transition rules during 1992 through 1995 is also described, as well as other adjustments to fee schedule payment amounts.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on August 5, 1991.

ADDRESSES: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-712-P, P.O. Box 26688, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments. In commenting, please refer to file code BPD-712-P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309-G of the Department's offices at 200 Independence Avenue SW., Washington, DC., on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-245-7890).

If you wish to submit comments on the information collection requirements contained in this proposed rule, you may submit comments to: Allison Herron, HCFA Desk Officer, Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503.

Copies: To order copies of the Federal Register containing this document, send your request to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9325. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 783-3238 or by faxing to (202) 275-6802. The cost for each copy (in paper or microfiche form) is $1.50. In addition, you may view and photocopy the Federal Register document at most libraries designated as U.S. Government Depository Libraries and at many other public and academic libraries throughout the country that receive the Federal Register. The order desk operator will be able to tell you the location of the Government Depository Library nearest to you.

FOR FURTHER INFORMATION CONTACT: Terrence L. Kay, (301) 966-4494.

SUPPLEMENTARY INFORMATION:

Overview

In this proposed rule, we explain in detail the statutory authority for the physician fee schedule and the provisions of the regulations we propose under that authority. Addenda to the rule provide technical documentation to the fee schedule tables, tables containing proposed relative values for physician services and geographic practice cost index values, and information to assist readers in obtaining documents referenced in the proposed rule.

This proposed rule would add a new 42 CFR part 415 to apply to physicians' services furnished beginning on January 1, 1992. Existing rules pertaining to reasonable charge payment at 42 CFR part 405 subpart E would be amended to reflect the narrower application of reasonable charge principles once the physician fee schedule becomes effective.

The information in this proposed rule updates the information supplied September 4, 1990 in the model fee schedule notice (55 FR 36178). Comments on the model fee schedule have been considered in developing the policies proposed here. (If commenters wish to have their comments summarized and responded to in the Federal Register, they should comment on this proposed rule and we will respond to them in the final rule.)

To assist readers in referencing sections contained in this proposed rule, we are providing the following table of contents:

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In addition, because of the many agencies and terms to which we refer by acronym in this proposed rule, we are listing those acronyms and their corresponding terms in alphabetical order below:

AA—Anesthetist assistant
ACR—American College of Radiology
ACS—American College of Surgeons
AMA—American Medical Association
ASC—Ambulatory surgical center
BMAD—[Part] B Medicare Annual Data
CAT—Computerized axial tomography
CBO—Congressional Budget Office
CF—Conversion factor
CFR—Code of Federal Regulations
CHER—Center for Health Economics Research
CNIBM Laser—CoverageHPLAIID.PKSdition (copyrighted by the American Medical Association (1991))
CRNA—Certified registered nurse anesthetist
CSW—Clinical social worker
CWF—Common working file
CY—Calendar year
DHHS—Department of Health and Human Services
DME—Durable medical equipment
DO—Doctor of Osteopathy
DRG—Diagnosis-related group
EEG—Electroencephalogram
EKG—Electrocardiogram
EO—Executive Order
FY—Fiscal year
GAF—Geographic adjustment factor
GPCI—Geographic practice cost index
HHA—Home health agency
HCFA—Health Care Financing Administration
HCPCS—HCFA Common Procedure Coding System
HHS—Department of Health and Human Services
HI—Hospital Insurance (Part A of the Medicare Program)
HMO—Health maintenance organization
HMSA—Health Manpower Shortage Area
ICF—Intermediate care facility
ID—Identification
IIC—Inflation-indexed charge
MAAC—Maximum Allowable Actual Charge
MAC—Monitored Anesthesia Care
MCP—Monthly Capitation Payment
MD—Doctor of Medicine
MEI—Medicare Economic Index
MP—Multiple patient
MRI—Magnetic resonance imaging
MSA—Metropolitan statistical area
MVPS—Medicare volume performance standards
NAMCS—National Ambulatory Medical Care Survey
NCH—National Claims History
NCHS—National Center for Health Statistics
NF—Nursing facility
NM—Nurse midwife
NP—Nurse practitioner
OBRA—Omnibus Budget Reconciliation Act
OIG—Office of the Inspector General
OMB—Office of Management and Budget
OT—Occupational therapist
PA—Physician assistant
PBP—Provider-based physician
PET—Provider Education and Training
PHS—Public Health Service
Pub. L.—Public Law
PPRC—Physician Payment Review Commission
PPR—Physician Payment Reform
PROs—[Utilization and Quality Control] Peer Review Organizations

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PT—Physical therapist
RFA—Regulatory Flexibility Act
RVU—Relative value unit
S&I—Supervision and interpretation (relates to coding of radiological services)
SMI—Supplementary Medical Insurance (Part B of the Medicare Program)
SNF—Skilled nursing facility
SP—Single patient
TEFRA—Tax Equity and Fiscal Responsibility Act of 1982
UI—Urban Institute

Background

I. Legislative History

The Medicare program was established in 1965 by the addition of title XVIII to the Social Security Act (the Act). The Social Security Amendments of 1965 created two insurance programs: Medicare Part A or Hospital Insurance and Medicare Part B or Supplementary Medical Insurance. These original statutory provisions established the principles of reasonable charge payment for physicians' services and certain other services under part B. The key provisions governing the reasonable charge payment methodology are set forth in sections 1833 and 1842(b) of the Act and in 42 CFR part 405, subpart E. While statutory amendments have moved certain part B services such as radiologists' services, durable medical equipment (DME) and clinical laboratory services from reasonable charge payment to a fee schedule, physicians' services have generally been paid based on reasonable charge principles throughout the first 25 years of the program's operation.

In general, the reasonable charge for a physician's service is the lowest of (1) the physician's actual charge, (2) the physician's customary charge, or (3) the prevailing charge in the locality for similar services. The customary charge is the median charge of the physician for the service during the July through June data collection period preceding the current calendar year. These charges are arrayed in ascending order and the median or midpoint of the charge data is selected as the customary charge. The prevailing charge limit for a particular service in a locality is an amount set high enough to cover the full customary charges of the physicians whose billings have accounted for at least 75 percent of the charges in the locality for that service. Since 1975, changes in prevailing charge limits from year to year have been constrained by statute to the amount of inflation in medical costs as measured by the Medicare Economic Index (MEI).

A major change in Medicare physician payment rules was enacted as part of the Omnibus Budget Reconciliation Act (OBRA) of 1989 (Pub. L. 101–239) on December 19, 1989. Section 6102 of Pub. L. 101–239 amended title XVIII of the Act by adding a new section 1848, "Payment for Physicians' Services". The new section contains three major elements: (1) Establishment of volume performance standard rates of increase for physician services expenditures; (2) replacement of the reasonable charge payment mechanism with a new fee schedule for physicians' services; and (3) replacement of the maximum actual allowable charge (MAAC), which constrains the total amounts that non-participating physicians can charge Medicare beneficiaries for covered services, with a new limiting charge.

On November 5, 1990, Congress enacted Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990, which contained several modifications and clarifications to the Public Law 101–239 provisions establishing the physician payment fee schedule. These modifications have been taken into account throughout this proposed rule. Public Law 101–508 also made a number of revisions to physician payment amounts for 1991, which will affect payment amounts under the fee schedule, given the budget neutrality requirement for 1992 and the transition rules. (Budget neutrality is explained more fully below in the discussion of the conversion factor (CF).)

This proposed rule is being issued in accordance with section 1848(b)(1) of the Act as added by section 6102 of Public Law 101–239, which requires that: "Before January 1 of each year beginning with 1992, the Secretary shall establish, by regulation, fee schedules that establish payment amounts for all physicians' services furnished in all fee schedule areas * * *for the year * * *." Section 1848 requires that the fee schedule include national uniform relative values for all physicians' services. The relative value of each service must be the sum of relative value units (RVUs) representing physician work, practice expenses net of malpractice expenses, and the cost of professional liability insurance (malpractice insurance). Nationally uniform relative values must be adjusted for each locality by a geographic adjustment factor (GAF). (Only one-fourth of the physician work relative value is subject to adjustment.) The CF (converting total RVUs into dollar payment amounts) is to be budget neutral, so that had the fee schedule been applied during 1991 it would have resulted in the same level of aggregate payments as would be made under the reasonable charge system. The new fee schedule must be phased in over 4 years, beginning in 1992, with the new rules fully effective in 1996. During 1992 through 1995, transition provisions generally blend the old payment amounts with the new. In addition, this proposed rule sets forth a limit on amounts that nonparticipating physicians can charge beneficiaries under section 1848(g) of the Act.

II. Early Development of the Fee Schedule

Development of the concepts and methodology underlying the new physician fee schedule has been under way for a number of years. Based on Congressional mandates contained in Public Law 99–272 (Consolidated Omnibus Budget Reconciliation Act of 1985), Public Law 99–509 (OBRA of 1986) and Public Law 100–203 (OBRA of 1987), we have devoted considerable effort to the development of a physician fee schedule based on a relative value scale. We have been assisted in this task by a number of experts inside and outside of government, including the research team at the Harvard University School of Public Health led by William Hsiao, Ph.D. The Harvard research team produced "A National Study of Resource-Based Relative Value Scales for Physician Services" (September 1988) and "A National Study of Resource-Based Relative Value Scales for Physician Services Phase II" (November 1990) under a cooperative agreement with us. Other invaluable contributions were made by the Physician Payment Review Commission (PPRC), whose analyses and recommendations have been extremely helpful to us at every stage of fee schedule development. The Urban Institute and the Center for Health Economics Research (UI/CHER) were instrumental in the creation and refinement of the geographic practice cost indices (GPCIs), which were used to create the GAFs. CHER also provided assistance in providing data and analyses in support of developing the global surgery and anesthesia service payment policies.

Under the statutory mandates listed above, we submitted three reports to Congress in October of 1989 ("Volume and Intensity of Physician Services", "Relative Value Scales for Physician Services", and "Implementation of a National Fee Schedule") that summarized the results of extensive research and analysis relating to the possible implementation of a Medicare physician fee schedule. These reports reviewed both the theoretical and practical ramifications of the transition to a fee schedule and simulated the effects of the change under various assumptions.

When Public Law 101–239 was enacted 2 months after the submission of these reports, the new law prescribed many of the procedures and methods to be used in implementation of the fee schedule on January 1, 1992, but a number of key payment policy and technical issues were left to the Secretary for resolution. Thus section 6102(f)(11) of Public Law 101–239 required the Secretary to submit to the Congress and make available to the public a "model fee schedule" by September 1, 1990, in order to provide an early opportunity for public review of the fee schedule methodology. The model fee schedule was to include "* * * as many services as the Secretary concludes can be assigned valid relative values".

The model fee schedule was published on September 4, 1990 as part of a notice with comment period (55 FR 36178). Its narrative portions described the statutory requirements, listed and explained the technical and policy issues left to the Secretary's discretion, and described steps that had been taken and that were planned in order to resolve the outstanding issues. Preferred options were identified in some cases; in other cases, options were discussed without identification of a preferred approach. The addenda to the model fee schedule notice provided preliminary estimates of the relative values associated with the approximately 1,400 services studied as part of the Harvard Phase I study as well as preliminary values for GPCIs for all existing Medicare localities. Using these tables, readers could compute very preliminary estimates of payment amounts for particular services in particular localities under the fee schedule. A 60-day public comment period was provided; comments received were considered carefully and were helpful to us in developing this proposed rule.

III. Future Implementation Steps

Since the publication of the model fee schedule on September 4, 1990, we have received the Phase II final report of the Harvard research team, which contains relative values for more than 4,000 services, representing about 95 percent of Medicare payments for physicians' services for the included specialties. In Phase II, 15 additional medical and surgical specialties were studied that were not studied in Phase I. In addition, seven Phase I specialties were restudied, with four of these restudies funded by the specialty societies. Not only did Phase II almost triple the number of services for which RVUs have been produced, but it refined the RVUs for the original 1,400 services.

Phase III of the Harvard study is now in progress; it is expected to produce RVUs for most of the remaining Medicare-covered services. In addition, use of small groups of physicians to detect and correct anomalous values in the existing set of RVUs (especially values based on extrapolation) is included in Phase III. Phase III results are expected during the summer of 1991. (More detail on the Harvard study is provided in section IV. C. 1. concerning physician work RVUs.)

Section 1848(d)(1)(C) of the Act requires publication of the CF between October 16 and October 31 of 1991. Publication of the final rule by this date will allow us to incorporate almost all the Phase III results (that is, those received by June 1991) as well as more current data with respect to historical charges than was available for this proposed rule. This schedule for the final rule will also allow time for incorporation of any changes in response to comments on the proposed rule received during the 60-day comment period. A 60-day comment period should also allow adequate time for the Medicare carriers, which process claims for physicians' services, to make final adjustments to their systems before implementation on January 1, 1992. We expect that the 1992 participating physician enrollment will be conducted during the period November 16, 1991 through December 31, 1991. As has been our practice in the past, we intend to send physicians a letter informing them of the program changes and the upcoming participation decision. With the letter, we expect to send them fee schedule rates as specified in section 1848(h) of the Act.

Description of Specific Statutory Requirements and Proposed Implementing Regulations

IV. Description of the Fee Schedule

A. Services to be Included in the Fee Schedule

1. Physicians' Services—General

Section 1848(a)(1) of the Act (as added by section 6102 of Public Law 101–239) requires that payment be made under a Medicare fee schedule for "* * * all physicians' services (as defined in subsection (j)(3)) * * *" Subsection (j)(3) of section 1848 of the Act defines "physicians' services" for purposes of the Medicare fee schedule as including:

Items and services described in paragraphs (1), (2)(A), (2)(D), (3) and (4) of section 1861(s) (other than clinical diagnostic laboratory tests and such other items and services as the Secretary may specify).

The services identified in the law and the sections of the Act where they appear follow:

1861(s)(1)—"physicians' services"—these services are defined as the professional services of physicians as defined in sections 1861(q) and (r).

1861(s)(2)(A)—"services and supplies * * * furnished as an incident to a physician's professional service * * *."

1861(s)(2)(D)—"outpatient physical therapy services and outpatient occupational therapy services."

1861(s)(3)—"diagnostic X-ray tests * * *, diagnostic laboratory tests, and other diagnostic tests."

1861(s)(4)—"X-ray, radium, and radioactive isotope therapy, including materials and services of technicians."

If the service is one of the enumerated services and is currently paid based on reasonable charges or on a fee schedule basis in the case of radiologist services, payment would be made under the physician fee schedule regardless of whether a physician or other entity (for example, an independently practicing physical therapist (PT)) furnished the service. If the service is currently paid on a reasonable cost basis, payment would continue on a reasonable cost basis (for example, physical therapy furnished by a home health agency (HHA) to an HHA patient or the technical component of radiology services furnished in a hospital outpatient department to a hospital patient). Other nonphysician services not enumerated in section 1848(j)(3) of the Act such as ambulance services and DME or services under their own fee schedules such as clinical laboratory services would be excluded from the physician fee schedule.

2. Limited Licensed Practitioner Services

Optometrists, dentists, oral and maxillofacial surgeons, podiatrists, and chiropractors are considered to be physicians by Medicare according to section 1861(r) of the Act if they furnish services specified in section 1861(q) of the Act. These types of physicians are often called "limited licensed practitioners".

Because they are defined as physicians by section 1861(r) for a limited range of services, and because the fee schedule under section 1848 of the Act would apply to "physicians' services," the fee schedule would apply to them if they furnish specific services

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for which the law considers them to be physicians.

3. Services of Nonphysician Practitioners

There are seven categories of nonphysician practitioners for whom there is separate coverage and payment under Medicare. (See section IV. A. 5. for a discussion of services furnished incident to a physician's service.) A nonphysician practitioner includes the following:

- Physical/occupational therapist (PT/OT).
- Physician assistant (PA).
- Nurse practitioner (NP) or clinical nurse specialist (CNS).
- Certified registered nurse anesthetist (CRNA).
- Nurse midwife (NM).
- Clinical psychologist (CP).
- Clinical social worker (CSW).

Medicare coverage and payment rules vary for each of these practitioners. They all have some payment made on the same basis as physician payments or are limited by physician payments and would, therefore, be affected by the physician fee schedule in 1992.

The coding of the services of nonphysician practitioners for which there is separate coverage and payment under Medicare is currently not uniform. Some carriers instruct nonphysician practitioners to use alpha-numeric HCFA Common Procedure Coding System (HCPCS) codes for the services for which they may bill and other carriers instruct nonphysician practitioners to use codes from the Current Procedural Terminology, 4th Edition (copyrighted by the American Medical Association (1991)) (CPT) for the services they furnish. The CPT is a listing of descriptive terms and numeric identifying codes and modifiers for reporting medical services and procedures performed by physicians. The HCPCS includes CPT descriptive terms and numeric identifying codes and modifiers for reporting medical services and procedures and other materials contained in the CPT, which are copyrighted by the AMA. As part of the standardization of carrier payment practices, we plan to instruct all carriers to have nonphysician practitioners use CPT codes to bill their services if there is an applicable CPT code for the service. We intend to delete the alpha-numeric HCPCS codes that duplicate CPT codes. We would continue to maintain alpha-numeric codes for those services not included in the CPT. Although we show RVUs for the physical therapy codes for physical therapy modalities and treatments that are contained in the CPT (97010 through 97145), we are considering basing payment upon the alpha-numeric HCPCS codes for physical therapy visits (M0005 through M0008), which bundle the payment for the treatments and modalities into payment for the physical therapy visit. We request comment upon these alternative approaches to payment for physical therapy services.

Carriers would determine the payment amount for the nonphysician practitioner's service as described below, based on the type of nonphysician practitioner and the amount contained in the physician fee schedule for the service as represented by the CPT code. For purposes of data collection, we intend to develop standard nonphysician practitioner specialty designations to be used by all nonphysician practitioners billing independently using either CPT or HCPCS codes.

When a nonphysician practitioner furnishes a service that is covered as "incident to a physician's service", the service will generally be billed and paid as though a physician furnished it. This will be true, for example, for the services of NPs, PAs, and registered nurses. However, for other services, such as physical therapy furnished incident to a physician's service, payment for the physical therapy will be at the same level as if furnished by an independently practicing PT. Further discussion of these services follows with discussion of payment for all items and services that are covered as "incident to a physician's service."

Section 6102(e)(7) of Public Law 101-239 requires the PPRC to conduct a study of the effects of the physician fee schedule on nonphysician practitioners. The results of the study, which addressed payment levels for these services, were summarized in the PPRC's 1991 Report to Congress.

a. Physical/occupational therapists (PT/OTs). Section 1848(j) of the Act defines "physicians' services for payment under the physician fee schedule" as including outpatient physical and occupational therapy services covered under section 1861(s)(2)(D). Section 1848(a)(1) states that the fee schedule applies only to physicians' services otherwise paid on a reasonable charge basis.

Outpatient physical therapy, occupational therapy, and speech pathology are covered when furnished by a provider of servces (for example, a hospital, skilled nursing facility (SNF), HHA, a clinic, a rehabilitation agency, or a public health agency). These services are paid on a cost basis according to sections 1832(a)(2)(C) and 1833(a)(2)(B) of the Act and would not be affected by the physician fee schedule.

In addition, the services of PTs and OTs (but not speech pathologists) in independent practice are also covered by Medicare. Because these services are currently paid on a reasonable charge basis (according to section 1833(a)(2)(C) of the Act), they would be included under the physician fee schedule. We intend to provide relative values for these services and they would be paid like all other physicians' services under the fee schedule. There would be no difference in payment amounts for these services whether performed by physicians, by their employees, or by PTs or OTs in independent practice. However, the annual coverage limitation of $750, as mandated by section 1833(g) of the Act, would continue to apply to the services of independently practicing PTs and OTs.

b. Physician assistants (PAs). Section 1861(s)(2)(K)(i) of the Act provides for coverage of the services of PAs who are legally authorized to furnish these services in their State, under the supervision of a physician if the services are (1) furnished in a hospital, SNF, or nursing facility (NF), or (2) assistant-at-surgery services, or (3) furnished in a Health Manpower Shortage Area (HMSA). Payments for the services of PAs are presently limited by the amounts paid to physicians for the same service in accordance with section 1842(b)(12)(A) of the Act. For assistant-at-surgery services, prevailing charges of PAs are limited to 65 percent of the amount that would otherwise be recognized if the service was performed by a physician. This limit would be continued under the physician fee schedule.

For services furnished in a hospital, other than assistant-at-surgery services, PA prevailing charges are presently limited to 75 percent of nonspecialty physician prevailing charges. Section 6102(f)(4) of Pub. L. 101-239 changes this limit to 75 percent of the fee schedule amount effective January 1, 1992.

For all other covered services, PA prevailing charges are presently limited to 85 percent of nonspecialty physician prevailing charges. Section 6102(f)(4) of Public Law 101-239 changes this limit to 85 percent of the fee schedule amount effective January 1, 1992.

Even after implementation of the fee schedule on January 1, 1992, we would need to continue to compute customary and prevailing charges for services by PAs and NPs (as described below). This is because section 6102(f)(4) of Public Law 101-239 only limits PA and NP payment amounts by the specified

percentages of the physician fee schedule, but does not replace the current reasonable charge system for these services. Thus, payments for PA and NP services would be the lower of the actual charge, the customary charge submitted by the PA or NP, the area prevailing charge for the PA or NP, the inflation-indexed charge (IIC), or the specified percentage of the physician fee schedule (except for services of NPs in rural areas newly covered under section 1861(s)(2)(K)(iii) of the Act as added by section 4155 of Public Law 101-508; see section IV. A. 3. c. for details).

c. Nurse practitioners (NPs) and clinical nurse specialists (CNSs). The services of NPs are covered under two provisions of the law. First, in accordance with sections 1861(s)(2)(K)(ii) and 1842(b)(12)(A) and (B) as amended by section 6114 of Public Law 101-239, services of NPs are covered if furnished in SNFs and nursing facilities (NFs) and are subject to the same payment limitations as PAs. Therefore, NP prevailing charges for these services are presently limited to 85 percent of nonspecialty physician prevailing charges and would be limited by 85 percent of the fee schedule amount effective January 1, 1992.

Second, in accordance with section 1861(s)(2)(K)(iii) of the Act, as added by section 4155 of Public Law 101-508, the services of NPs and CNSs are covered in all settings effective January 1, 1991 if furnished in rural areas as defined under section 1886(d)(2)(D) for the hospital prospective payment system. Under sections 1833(a)(1)(M) and 1833(r) (as added by section 4155 of Public Law 101-508), allowed amounts must be limited to the lower of the actual charge or 75 percent of the physician prevailing charge (75 percent of the physician fee schedule amount for services furnished beginning January 1, 1992) for services furnished in a hospital (including assistant-at-surgery services), and 65 percent of the physician prevailing charge (85 percent of the fee schedule amount for services furnished beginning January 1, 1992) for all other services. (Services of NPs and CNSs furnished in these rural areas under the rural health clinic benefit provided for in section 1832(a)(2)(D) of the Act continue to be paid on a reasonable cost basis under section 1833(a)(3) of the Act).

d. Certified registered nurse anesthetists (CRNAs). With the exception of certain rural hospitals, payments for the services of CRNAs are made under the CRNA fee schedule in accordance with section 1833(a)(1)(H) of the Act. The initial CRNA fee schedule legislation allowed us to develop an appropriate methodology for paying CRNA services so that aggregate payments for the services of CRNAs under the fee schedule would remain budget neutral with respect to pre-fee schedule payments. Under the initial fee schedule, we developed State-specific CFs for both medically directed and nonmedically directed CRNAs. The initial fee schedule was effective for CRNA services furnished after December 31, 1988.

Under the CRNA fee schedule, payment for CRNA services is determined by multiplying the appropriate CRNA CF by the sum of allowable base and time units. The base units are the same as those used to determine payment for physician anesthesia services. The time units are calculated in 15 minute units with a partial time unit for fractions of 15 minutes.

We designed the CRNA fee schedule so that it is very similar to the payment system for physician anesthesia services. Since we are proposing to eliminate time as a separate payment element for physician anesthesia services, we are proposing the same policy for CRNA services furnished beginning January 1, 1992.

Section 4160 of Public Law 101-508 specified the CFs for the CRNA fee schedule for CRNA services furnished after December 31, 1990. For nonmedically directed CRNAs, the CFs were set at $15.50 in 1991, $15.75 in 1992, $16 in 1993, $16.25 in 1994, $16.50 in 1995, and $16.75 in 1996. For medically directed CRNAs, the CFs were set at $10.50 in 1991, $10.75 in 1992, $11 in 1993, $11.25 in 1994, $11.50 in 1995, and $11.75 in 1996. For years after 1996, these CFs are increased by whatever update factor is applied to physician anesthesia services. The statute also specified in section 1833(1)(4)(D) of the Act that CFs for CRNAs may not exceed CFs for physician anesthesia services in the locality.

We currently use the same relative value guide for payment of CRNAs and anesthesiologists. We would prefer to continue to use the same relative value scale for anesthesia services furnished by anesthesiologists and CRNAs. We believe that it would be simpler for physicians, CRNAs, hospitals, and carriers.

It is our understanding that the CRNA CFs were established by the Congress based on an estimate of anesthesiologist CFs under the fee schedule using data from Phase I of the Harvard study. Further, there is an indication that Congress intended that the non-medically directed rate be approximately equal to the national average anesthesiologist rate and that the medically directed CRNA CF be approximately 70 percent of the non-medically directed CRNA CF. (See Joint Committee Report—House Committee on Ways and Means, House Committee on Energy and Commerce, Senate Committee on Finance; 101st Cong., 2nd Sess., p. 11 (1990)).

Based on our current estimates of payments to anesthesiologists under the fee schedule, payments for non-medically directed CRNA services would be higher than physician anesthesia rates unless an adjustment is made. On average, the non-medically directed CRNA CFs would yield a payment level of about 30 percent higher than the amount we would pay to anesthesiologists who personally perform the procedure. This is inconsistent with the law. While the statutory language specifies that the CRNA CF may not exceed the CF for physician anesthesia services, it is clear that what is intended is that the CRNA payment level not exceed what is paid to anesthesiologists. This point is critical since the relative value scale and CF for physician services can be scaled to any particular number. Moreover, if we limit payments only to non-medically directed CRNAs, because only these payments exceed payment to anesthesiologists, we cannot preserve the relationship now reflected in section 4160 between medically directed and non-medically directed CRNA CFs and anesthesiologist rates.

There are three objectives that we would like to satisfy in determining relative values for physician anesthesia services and applying the necessary adjustments to payment amounts for CRNA services. First, we would prefer to keep the same relative values for both physician anesthesia services and CRNA services. Second, we would want to assure that payments to a non-medically directed CRNA are limited to the fee schedule amount for personally performed physician anesthesia services in the locality. To accomplish this, we could apply an adjustment to the payment amount for non-medically directed CRNAs to assure that payments using the CRNA statutory CFs and the scale under the physician fee schedule do not exceed what we would pay for a personally performed physician anesthesia service. Finally, we would note that under our current estimates, payments for medically directed CRNA services would be 95 to 100 percent of the payment level for physician anesthesia services. If the adjustment were made only to the payment amount

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for non-medically directed CRNAs, the relationship between medically directed and non-medically directed CRNA services intended by the Congress would be lost. We are continuing to explore how we can maintain that relationship.

We invite public comment on the issues of using the same relative value scale for CRNAs as for physicians and applying an adjustment factor to the payment amount for non-medically directed CRNA services to assure that payments are not in excess of the payment for physician anesthesia services. Finally, we invite comments on the issue of how we could maintain the relationship between medically directed and non-medically directed CRNA payments.

e. Nurse midwives (NMs). Payments for the services of NMs are presently made under a special fee schedule in accordance with section 1833(a)(1)(K) of the Act. The allowed amounts under the NM fee schedule, set forth in section 5257 of the Medicare Carriers Manual, are the lower of the actual charge or 65 percent of the prevailing charges of obstetrician-gynecologists or, if no specialties are recognized, 65 percent of the nonspecialists' prevailing charges. Section 6102(f)(7) of Public Law 101–239 changes this limit to 65 percent of the physician fee schedule amount effective January 1, 1992.

f. Clinical psychologists (CPs). There are two types of services that can be independently billed by CPs: (1) Therapeutic services and (2) diagnostic tests. Allowed amounts for the therapeutic services of CPs are presently limited to the lower of the actual charge or 80 percent of the prevailing charges of psychiatrists. A CP is a psychologist who meets the requirements now in manual instructions promulgated by the Secretary to implement section 6113(a) of Public Law 101–239 (which eliminates a restriction on psychologists' services to services furnished at community mental health centers). We are developing a separate rule for paying for the therapeutic services of clinical psychologists. Diagnostic tests furnished by psychologists—whether certified CPs or otherwise—have been covered and paid for under the diagnostic test provision of section 1861(s)(3) of the Act, even before the qualified psychologist benefit provision was enacted. Diagnostic tests furnished by independent psychologists who are not CPs are paid under the reasonable charge system; diagnostic tests furnished by CPs are paid a fee schedule amount equal to 90 percent of the locality prevailing charge for psychologists who enlisted before the CP benefit was enacted. (The 90 percent reflects the fact that the average allowance is about 90 percent of prevailing charges.) Section 1848(j)(3) of the Act defines "physicians' services" covered under the physician fee schedule as including diagnostic services (other than clinical diagnostic laboratory tests) described in section 1861(s)(3). It is our intention that diagnostic tests furnished by CPs would be paid under the physician fee schedule like all other fee schedule services beginning on January 1, 1992. Psychological diagnostic testing furnished by psychologists who are not CPs would be covered under the fee schedule if the testing is furnished incident to a physician's service. The payment amount for a diagnostic service would be the same whether the service was done by a psychologist or a physician.

g. Clinical social workers (CSWs). In accordance with section 1833(a)(1)(F) of the Act, allowed amounts for the services of CSWs are the lower of the actual charge or 75 percent of the allowed amounts for CPs. The same distinction between therapeutic and diagnostic services that applies to CPs also applies to CSWs. The allowed amounts for CSW therapeutic services would therefore be limited to 75 percent of the CP fee schedule amount. Any diagnostic services furnished by CSWs would be paid like all other services under the physician fee schedule.

4. Services of physicians to patients in provider settings and services of teaching physicians

Services of physicians to patients in provider settings (for example, hospitals, SNFs, or CORFs) are subject to a number of special requirements. These requirements, which are presently contained in §§ 405.550 through 405.556, distinguish between: (1) Services that benefit an individual patient and are generally payable by the carrier on a reasonable charge basis; and (2) services that are considered related to general patient care by the provider and are payable by the intermediary through the prospective payment system or on a reasonable cost basis.

Converting from the current payment system to the fee schedule will affect the amount of payment to physicians who furnish services in provider settings, including teaching physicians. However, it will not change the requirements that must be met for the services of provider-based physicians (PBPs) to qualify for payment as physicians' services under part B. That is, payment for physicians' services to patients in a provider setting would be payable under the fee schedule only if, as under the present system, the services are personally furnished for an individual patient by a physician; the services contribute directly to the diagnosis or treatment of an individual patient; and the services ordinarily require the services of a physician (§ 405.550(b)). Additional specific requirements apply for anesthesiology, radiology, and physician laboratory services (§§ 405.552, 405.554, 405.556, and 405.557). While physicians' services to individual patients in provider settings are generally paid on a reasonable charge basis, there are currently two methods for determining payments for physicians who are compensated by non-teaching providers for their direct patient care services. Under one method, the carrier bases the customary charges on the amount of compensation the physician receives for the direct patient care services. These are referred to as compensation-related charges, and the methodology for their construction is set forth in § 405.551.

The second method presently available under § 405.551(d)(3) is the per diem or per visit method. Under this method, payment for these physician services may be made directly to the provider on the basis of a single per diem, per visit, or other time-related rate, if the provider, or the particular department in which the services are furnished, has a uniform all-inclusive rate for services to patients. This method is not widely used and is mainly used by government hospitals.

For teaching physicians (that is, physicians who involve interns and residents in the care of their patients), there are special requirements for determining whether their services are covered as "attending physician" services and for determining customary charges. Under the fee schedule, the payment level for teaching ("attending") physicians would be the same as for all other physicians since customary charges are no longer applicable.

In addition, section 1861(b)(7) of the Act and implementing regulations (§§ 405.465 and 405.521(d)) currently allow a hospital to be paid on a cost basis for the direct medical and surgical services of teaching physicians if certain conditions are met. While Public Law 101–239 did not specifically repeal this cost election provision, continuation of the cost election option would appear inconsistent with the overall purpose of the physician fee schedule. However, if no change in this law is enacted before implementation of the fee schedule in 1992, this cost election would continue to be available to certain qualified teaching hospitals.

Section 1848 of the Act requires that all physicians' services currently payable on a reasonable charge basis be paid under the fee schedule beginning January 1, 1992. Therefore, the direct patient care services of PBPs—including those in teaching hospitals with the exception of those under the cost election provision—would be paid for under the fee schedule on the same basis as other physicians. There no longer would be any need for computation of compensation-related customary charges or per diem or per visit charges since reasonable charges no longer would be the basis for payment of physicians' services once the fee schedule becomes effective. Section 1848, rather than the reasonable charge rules established to pay for the services of hospital-based and teaching physicians, controls payment for these services, particularly anesthesiology, radiology, and physician laboratory services. As noted above, however, we are retaining the policies for distinguishing physician services furnished to individual provider patients, which would be paid under the fee schedule, from services furnished under the prospective payment system or reasonable cost payment. We have, therefore, revised §§ 405.550 through 405.552, 405.554, and 405.556 and transferred them to subpart F. We have removed obsolete §§ 405.553, 405.555, and 405.557.

We are retaining the requirements in the regulations and operating instructions for determining when a teaching physician is considered an attending physician and can bill for services performed by an intern or resident under his or her direction. (For a more detailed explanation of the attending physician criteria, see § 405.521(b) and Intermediary Letter 372.) These attending physician criteria for teaching physicians would remain in effect under the fee schedule. (That is, the fee schedule would change the amount that Medicare pays, but not the services for which it pays.)

On February 7, 1989, we published a proposed rule (54 FR 5946) setting forth changes in the requirements for determining when a teaching physician can bill for services involving the supervision of interns and residents and changes in the policies for determining the customary charge of a teaching physician. The payment aspects for this rule would largely be irrelevant since customary charges would no longer be applicable under the fee schedule. We have, therefore, modified §§ 405.521, 405.522, and 405.580 to reflect the change to the fee schedule. Those portions of the regulations for determining when a teaching physician's services are covered (that is, when the attending physician requirement is met) would be retained. With respect to the proposed changes in the attending physician criteria that were the subject of the aforementioned proposed rule, we plan to finalize this rule in the future.

5. Payment for supplies, services, and drugs furnished incident to a physician's service.

a. Supplies. Section 415.32 sets forth the policies we are considering to address payment for services and supplies incident to a physician's service. This proposed policy on payment for supplies is consistent with our preferred approach to a site of service differential explained later in section VI. A. Specifically, in § 415.32(a), we propose that, except for drugs and certain supplies, office medical supplies are considered to be part of a physician's practice expense and payment for them is included in the practice expense portion of the payment to the physician for the medical or surgical service to which they are incidental. Because some carriers have made separate payment for some of these supplies under the current customary, prevailing, and reasonable charge system, in developing the fee schedule, we are considering allocating dollars currently paid for these supplies across all practice expense RVUs for office-based procedures.

In § 415.32(a), for certain facility-based services performed in office settings, we propose to establish a separate fee schedule allowance for the following medical supplies if they are used:

- Lumbar puncture trays.
- Venous access catheters.
- Thoracentesis trays.
- Cystoscopy trays.
- Surgical trays.
- Catheter insertion trays.
- Bone marrow aspiration trays.

These are relatively expensive, disposable supplies that are dedicated to the use of a single beneficiary and are essential to the performance of procedures that can usually be safely and effectively performed in a physician's office. The following list provides examples of services for which we might allow a separate fee schedule payment when the procedure is performed in a physician's office:

CPT–4 code*	Procedure
12020	Treatment of superficial wound dehiscence; simple closure.
32000	Thoracentesis, puncture of pleural cavity for aspiration, initial or subsequent.
36495	Insertion of implantable intravenous infusion pump or venous access port.
62270	Spinal puncture, lumbar, diagnostic.
85095	Bone marrow smear and/or cell block; aspiration only.

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We considered several options for making payment for these expensive supplies under section 1848(c)(4) of the Act, which gives us authority to establish ancillary policies:

Option 1—Bundle these supplies into the payment for the relevant services. However, we are concerned that we could not properly identify all of the procedures for which some of these supplies could properly be used (for example, surgical trays).

Option 2—Exclude these supplies from the fee schedule and leave it to each carrier to pay for these items on a reasonable charge basis.

Option 3—Permit separate billing for these supplies, but pay a national fee schedule add-on for these supplies.

We are considering adopting Option 3. We considered and rejected the idea of adjusting the fee schedule amount for these office medical supplies by the GPCI. Since we have no reason to believe that the prices for the items vary substantially by geographic area, we would base the fee schedule on the estimated national average allowed charge for the item. We believe that making payment for disposable supplies used for ASC, inpatient hospital, and outpatient based procedures performed in the office setting may add an incentive to move these procedures to the office setting, when medically appropriate.

Part B Medicare Annual Data (BMAD) files do not contain the detailed data needed to establish separate allowances for our proposed list of supplies. There are only 3 HCPCS codes under which these types of supplies are currently coded: A4550—"surgical tray", A4300—"implantable vascular access portal catheters" and 99070—"supplies and materials (except spectacles), provided by the physician over and above those usually included in the office visit or other services rendered."

Therefore, we sent a survey questionnaire to all carriers to collect data on their current allowances for the items included in our list. From those carriers stating that they have a policy to pay separately for supplies, we

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propose to determine national average allowed charges for these supplies. We are also in the process of obtaining catalogs from national surgical supply companies to review information on list prices for the supplies for which we are considering allowing a separate payment. Based on our analysis of these data performed thus far, we expect to establish a fee schedule payment amount for selected supplies used for a facility-based procedure when it is performed in the physician's office. We are also considering limiting this proposed policy to only ASC procedures or to some other subset of procedures. We will continue to study this issue, and invite comments on the proposed policy.

We are especially interested in receiving comments on the issues of (1) our method of establishing fee schedule amounts for these office medical supplies, (2) the content of the list of office medical supplies for which we propose to provide separate payment, and (3) whether payment for such supplies, if made, should be limited to procedures on the ASC list or some other subset of procedures. Commenters who want additional office medical supplies to be placed on this list should provide a specific rationale for why the supply should not be considered to be routine practice expense and should provide supporting information on the cost of the office medical supply to physicians. Reference to items such as "trays" or "packs" should itemize the specific contents.

b. Services furnished incident to a physician's service. We propose in § 415.32(b) that services of nonphysicians that are covered as incident to a physician's service would be paid under the fee schedule as if the physician had furnished the service. This is a continuation of current practice under reasonable charge payment in which the physician bills reasonable charges for the services of staff that are incident to the care as if the physician had furnished the services personally. These services and items typically include the services of health professionals such as nurses or PAs who furnish a service under the direct supervision of a physician, for which the physician bills. For example, a registered nurse under the supervision of a physician may see a patient on the physician's behalf to administer an injection. The physician would bill for the injection as if the physician had administered it. Several CPT codes (for example, minimal established office visits and physical medicine codes) acknowledge these arrangements.

We request public comment on whether the policy of paying the same amount for the service whether furnished personally by a physician or by someone incident to a physician's service should continue. The salary of the nonphysician staff is a practice expense and the physician work in these services is arguably non-existent or at least something less than if the physician furnished the service directly. Because physicians bill for these services as if they furnished them personally, we do not know to what extent these services furnished by physician staff without a patient encounter are billed and paid as physician services. We are considering whether to require use of a modifier when these services are furnished by physician staff so that we can evaluate both their frequency and the amount of payments made for them.

c. Drugs. The program currently pays for drugs furnished in physician's offices that are not self-administrable under the "incident to" provision set forth in section 1861(s)(2) of the Act. For the most part, drugs paid for under the "incident to" benefit consist of drugs furnished by injection or by infusion. This includes chemotherapy agents. Generally, carriers base payment for the drug on the physician's estimated cost of the drug using one of the wholesale price guides such as the Red Book. However, some carriers base payment on actual acquisition costs determined on the basis of carrier surveys.

We considered the following options for paying for drugs under the fee schedule:

Option 1—Establish a fee schedule payment amount for each drug.

Option 2—Bundle the payment for the drug into payment for the visit or consultation service.

Option 3—Make a separate payment for a drug and leave the pricing of the drug to each carrier.

Option 4—Make a separate payment for a drug but require a consistent method in pricing to be used by the carriers.

We believe that ultimately there should be a national fee schedule allowance for all "incident to" drugs. However, given the large number of different drugs and the myriad of dosage levels, we have decided that it is not practical for us to consider establishing a national drug fee schedule at this time. However, we will consider this issue in the future. Section 1848(j)(3) of the Act gives us the authority to specify that items and services be excluded from the fee schedule. Thus, we have decided to exclude the cost of drugs from the national fee schedule and to continue to pay for them under the current "reasonable charge" system. We believe, however, that there is a need for greater consistency in how drugs are paid for under the program and for this reason we have chosen Option 4. For purposes of payment for drugs furnished incident to a physician's service, the term "drug" includes those covered drugs and biologicals that cannot be self-administered. Also, we are proposing that we will instruct all carriers to base payment for drugs on 85 percent of the national average wholesale price of the drug (as published in the Red Book and similar price listings), but we welcome comments regarding the appropriate discount.

Medicare policy, since the beginning of the Medicare program, has been to base payment for "incident to" drugs on the estimated acquisition costs. However, based on studies by the Office of the Inspector General (OIG) ("Changes to the Medicaid Prescription Drug Program Could Save Millions" (ACN 06-40216) and "Use of Average Wholesale Prices in Reimbursing Pharmacies in Medicaid and the Medicare Prescription Drug Program" (A-06-89-00037)) and other information, we believe that the Red Book and other wholesale price guides substantially overstate the true cost of drugs. The OIG reports indicate that pharmacies are getting an average discount of 15.9 percent off the published wholesale price. We have no reason to believe prices paid by physicians are any higher than pharmacies pay. Moreover, we are proposing for very high volume drugs that payment for the drug would be limited to the lower of the estimated acquisition cost for the drug as determined by us and specified in instructions to carriers or 85 percent of the national average wholesale price for the drug. The listing of the high volume drugs and payment limits for them will be included in the Medicare Carriers Manual.

We propose this payment policy for drugs that are incident to physician services under the authority of section 1842(b)(8) of the Act, which permits us to establish limits on charges based on inherent reasonableness. This provision of the law is implemented in regulations at § 405.502(g). The regulations permit us to establish a limit on the reasonable charge for an item or service if we determine that charge is grossly lower than or in excess of acquisition or production costs for the item or service (§ 405.502(g)(1)(vi)).

As indicated in our previous discussion, we base the payment limitation for drugs on the findings of the OIG with regard to the discounting of drugs to pharmacies below the average wholesale price. We believe that physicians also have the opportunity to achieve these discounts from drug manufacturers and wholesalers, since drug sales are dependent upon the drugs a physician prescribes for his or her patients, not only for administration in the physician's office, but also for self-administration or administration in a hospital or other institution. Therefore, we believe that physicians are in an excellent position to demand discounts such as those that the OIG study finds are typically given to pharmacies.

We believe that the impact of this special charge on physician services will be minimal because the drugs to which this provision applies are incidental to the physician's professional services and, to be covered, the law requires that they be "* * * of kinds which are commonly furnished in physicians' offices and are commonly either rendered without charge or included in the physicians' bills." (section 1861(s)(2)(A) of the Act). Since the physician has great leverage with the entity from which he or she purchases drugs to acquire a significant discount for the drug, we do not anticipate that there will be an adverse effect upon quality, access, beneficiary liability, assignment rates, reasonable charge reductions on unassigned claims, and participation rates of physicians.

Currently, the program usually pays a separate charge for an injection by a physician or by other health personnel incident to a physician's service (see the Medicare Carriers Manual, section 5202). If the customary practice in the area is not to charge for the injection furnished in the course of a visit, no payment is currently made for the injection. If the purpose of a visit is only to receive an injection, payment for the injection is made and payment for the visit is not allowed. If special skills are needed for the injection, payment is made based on the reasonable charge practices in the area (the Medicare Carriers Manual, section 5202.2). We propose to change this current policy with implementation of the fee schedule. In general, when a physician provides a visit or other service to a beneficiary and, in the course of that encounter, the beneficiary also receives a subcutaneous, intramuscular, intravenous, or intra-arterial injection, no additional payment would be made for the administration of the injection. The drug would be paid separately as discussed above. Payment for both the cost of non-drug supplies and administration of the drug would be included in the payment for the visit or other service. Generally, if a beneficiary receives an injection, we expect that the physician would bill for a minimal office visit. We believe it is rare when a beneficiary who needs an injection does not also need at least a minimal level of involvement of a physician as part of the service.

In those unusual circumstances in which no evaluation and management service or other service is furnished to the beneficiary and the physician bills only for the injection (for example, a routine B12 injection for pernicious anemia), payment for the injection would be based on the RVUs for the applicable injection code.

This general policy would also apply to subcutaneous, intramuscular, intravenous, and intra-arterial injections for purposes of cancer chemotherapy. However, infusion of cancer chemotherapy drugs (CPT 96410, 96412, 96414, 96422, 96423, 96425) and administration of cancer chemotherapeutic agents into specialized body cavities (CPT 96440, 96445, 96450) are considered to be procedures, not injections, for purposes of this policy. Therefore, we propose to pay separately for chemotherapy infusions and chemotherapy administration into specialized body cavities regardless of whether these services occur during a visit, infusion of another drug, or while another service is furnished. We would also pay separately for drugs and chemotherapy agents as discussed in this section.

Of course, when cancer chemotherapy is administered to a hospital patient by personnel other then those practitioners authorized to bill separately under Part B for their professional services (that is, a physician, PA, NM, CRNA, or CP), the chemotherapy administration is a hospital service and cannot be billed by a practitioner. Chemotherapy administration can be billed by a physician only when it is furnished by the physician or staff outside a hospital setting. Chemotherapy furnished by the physician's staff may be paid by Medicare only when the requirements for coverage as "incident to a physician's service" contained in Medicare Carriers Manual, section 2050 are met. The proposed regulations for the payment of drugs beginning January 1, 1992 appear in new § 415.34.

B. Formula for Computing Payment Amounts

Section 1848(a) of the Act specifies that payment for Medicare physicians' services must be based on the lesser of the actual charge or the payment amount computed under the fee schedule. Although the law refers to the fee schedule values as "payment amounts," in fact under the statutory formula the amount paid to a physician (often referred to as the "allowed charge") would be 80 percent of the actual charge or 80 percent of the fee schedule payment amount, whichever was less. The beneficiary is required to pay the remaining 20 percent. Throughout the preamble of this proposed rule and in the proposed regulation itself, we have used the terms "fee schedule payment amount," "payment amount," and "payment" as used in the statute to include the amounts for which both the beneficiary and Medicare are responsible.

Under the formula set forth in section 1848(b)(1) of the Act, payment amounts for particular services under the physician fee schedule would be computed as the product of three factors: (1) A relative value for the service, (2) the GAF for the fee schedule area, and (3) a nationally uniform dollar CF. (Although we generally describe a single nationally uniform CF, different CFs for surgical services and other services may be established as part of the Medicare volume performance standards (MVPS) and annual update process. (See section IV.E.4. for further explanation.) This general formula can be expressed as:

$$\text{Payments} = \text{RVU}_t \times \text{GAF}_{ta} \times \text{CF}$$

where

RVUt = Total relative value units for the service

GAFt = Total geographic adjustment factor for the fee schedule area

CF = Uniform national conversion factor

$_t$ = Service

$_a$ = Fee schedule area

Section 1848(e)(2) of the Act requires the total GAF for a fee schedule area be the sum of three components, relating to the three components of the total RVU for a service. The three components are: (1) Physician work; (2) practice expenses or overhead such as rent, staff salaries, equipment, and supplies, exclusive of professional malpractice liability insurance costs; and (3) professional liability insurance or malpractice costs.

Section 1848(c)(1) of the Act defines the components of the RVU for a physician service. The physician work RVU must reflect the physician resources required to furnish the service, including time and intensity of effort. Under the formula specified at section 1848(c)(2)(C), the practice expense and malpractice RVUs are based on

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historical data for practice expense as a fraction of total physician revenue, weighted by specialty, applied to estimated 1991 average allowed charges under the customary, prevailing, and reasonable charge methodology.

Separate GPCIs have been developed for the three components of the fee schedule. Under section 1848(e) of the Act, the GAF is equal to a weighted average of these three GPCIs. Thus, when the GAF is expressed as the sum of its three components, the formula becomes:

$$\text{Payments} = \text{RVU}_s \times [(\text{GPCIw}_a \times w_s\%) + (\text{GPCIpe}_a \times pe_s\%) + (\text{GPCIm}_a \times m_s\%)] \times \text{CF}$$

where

GPCIw_a = GPCI value reflecting one-fourth of geographic variation in physician work applicable in the fee schedule area

GPCIpe_a = GPCI value for practice expense applicable in the fee schedule area

GPCIm_a = GPCI value for malpractice expense applicable in the fee schedule area

$w\%_s$ = Work percentage for service s

$pe\%_s$ = Practice expense percentage for service s

$m\%_s$ = Malpractice percentage for service s

The work, practice expense, and malpractice percentages are the fraction of the total RVUs for a service represented by the work, practice expense, and malpractice RVUs, respectively; they sum to 100 percent.

In effect, this statutory formula accomplishes separate adjustment of each of the three components of the total RVUs for each service by the value for the fee schedule area of a GPCI specific to that component. (The statute specifies, however, that only one-fourth of the geographic variation in physician work resource costs is to be taken into account in the formula.) The three GPCI-adjusted RVU values are summed to produce a total RVU value, which is converted into a dollar payment amount specific to that service and that fee schedule area by application of a uniform, national CF. Thus, for ease of computation and understanding, we have transformed the original formula stated above into an algebraic equivalent as follows:

$$\text{Payments} = [(\text{RVUw}_s \times \text{GPCIw}_a) + (\text{RVUpe}_s \times \text{GPCIpe}_a) + (\text{RVUm}_s \times \text{GPCIm}_a)] \times \text{CF}$$

where

RVUw_s = Physician work relative value units for the service

RVUpe_s = Practice expense relative value units for the service

RVUm_s = Malpractice relative value units for the service

Sources of each of these elements of the payment formula are explained in more detail in the sections below. Included within the discussion of the CF computation below is an explanation of payment rules during the transition years 1992 through 1995.

C. Sources of Relative Value Units (RVUs)

1. Physician work RVUs

Section 1848(c)(2)(A) of the Act, as added by Public Law 101-239, authorizes the Secretary to establish the relative values for the physician fee schedule after considering recommendations of the PPRC and consulting with organizations representing physicians. The physician work RVUs that form the basis of the fee schedule (see Addendum B) were developed by a research team at Harvard University under a cooperative agreement with us. A complete discussion of the methodology and results of that study to date is contained in the Harvard team's Phase I and II reports. [Hsiao, Braun, and Becker et al., 1988 and 1990 are available through the National Technical Information Service. See Addendum D for ordering information for these and other major reports related to the physician fee schedule.) In addition, the Harvard team presented a summary of the first phase of the study in the Journal of the American Medical Association (Hsiao, Braun, Kelly, Becker, October 1988). A summary of the Phase I results is also provided in the Secretary's October 1989 report to Congress on "Relative Value Scales for Physician Services."

In essence, the Harvard researchers constructed a relative value scale by investigating the physician resource inputs used to produce physicians' services. They devoted most of their effort to quantifying the amount of physician work involved in producing a service. In the first phase of their study, vignettes or descriptions of physicians' services were developed for 372 services performed by one or more of 18 specialties (not limited to Medicare covered services) and assigned to the appropriate CPT. About 200 unique CPT codes were represented. A national random sample of approximately 185 physicians in each of the 18 specialties was selected. About 100 physicians in each specialty evaluated services described by each vignette in terms of requirements of work, time, and intensity, which consists of technical skill and physical effort, mental effort, and stress due to risk.

A process of magnitude estimation was used to obtain measurements of intra-service work (that is, work for the procedure excluding pre- and post-service time) and its dimensions relative to a reference standard procedure in each specialty. (Magnitude estimation is a technique that rates each dimension in relation to a reference service using a ratio scale.)

The survey data were used to create scales of relative intra-service work for each of the specialties. The specialty scales were linked by identifying same or equivalent services provided by several specialties. This process reduced the number of scales from 18 to 1 while keeping the relationships within the individual specialties essentially unchanged. Finally, estimates of pre- and post-service work (for example, post-surgery hospital visits) were added to yield total work values for each of the surveyed services.

While only 372 unique services, representing about 200 unique CPT codes, were investigated through surveys in Phase I of the study, by extrapolation the Harvard team developed physician work RVUs for about 1400 services. These 1400 RVUs represent about 1200 unique CPT codes (combinations of procedure and modifier codes increased the number of unique services to 1400). Some questions arose about the face validity of the extrapolated values, about the applicability of the values for visits across specialties, and about other issues in Phase I of the study.

The cooperative agreement between us and Harvard was extended into a second phase. The additional specialties investigated in the second phase of this study were: cardiology, emergency medicine, gastroenterology, hematology/oncology, infectious diseases, nephrology, neurology, neurosurgery, nuclear medicine, osteopathy, physical/rehabilitation medicine, plastic surgery, pulmonary medicine, and radiation oncology. As part of Phase II, Harvard also resurveyed general surgery, internal medicine, and orthopedic surgery. Other organizations funded resurveys of dermatology, ophthalmology, pathology, and psychiatry.

In Phase II, the Harvard study team also refined some of its methods to resolve criticisms of the Phase I study, including methods of aligning specialties, estimating pre- and post-service work, and data used for extrapolation.

Phase II of the study also focused on further review and development of

values for visits and for global surgery services, using a broader global fee policy (that is including post-surgery visits within 90 days after surgery). It also investigated the validity of using a small group process to develop RVUs for services that were not surveyed.

With the results of Phase II, we have work values for 460 unique CPT codes from survey data and with extrapolated data, we will have values for over 4000 codes representing a large percent of Medicare dollars. Phase II of the study indicates that a small group process can be used to develop RVUs for remaining services for which we have no work RVUs. Therefore, we have entered into another cooperative agreement with Harvard for a third phase of its study, which will focus primarily on using the small group process tested in Phase II to generate values for the remaining services and to review RVUs for all extrapolated services. Another important function of Phase III was to generate appropriate values for physician visits under the new code definitions recently developed by the CPT Editorial Panel (discussed more fully in the visit coding section).

The values for physician work shown in Addendum B are primarily based on Phase II results, as well as some initial Phase III results. Addendum B contains 4,149 codes with a total of 5,757 RVUs. (There are more RVUs than codes because certain codes have both a professional and a technical component.) This represents about 85 percent of Medicare dollars. We expect Harvard's recommended values for almost all the remaining codes to be provided by June 30, 1991. We expect to use those values in the final rule. With the receipt of values from Phase III of the Harvard study, we expect to be able to determine relative values for physician work for the codes that account for almost all Medicare payment for physician services.

Individuals or organizations that have comments on the RVUs contained in Addendum B should comment in response to the publication of this proposed rule. While we will carefully consider all comments made in response to this proposed rule, comments that are substantiated by the presentation of new objective data or that are substantiated by analysis of pre-existing studies of physician work would be most persuasive.

Some of these RVUs may change as we continue to receive results of Phase III of the Harvard study. Phase III of the Harvard study will create relative work values for CPT codes that were not given values or were given values by extrapolation in the first two phases of the study. In Phase III, these values will be generated using a small group process. As described above, in Phase II, Harvard experimented with several small group processes to test whether a panel of physicians could replicate values that were generated from the national survey. (Chapter 11 of the final Harvard Phase II report). They found that a well organized structured panel consisting of 11 to 14 physicians in a specialty can produce estimates of work that are quite similar to the survey estimates. Consequently, Harvard has been organizing 26 expert panels and elicit survey information about intra-service work in a manner quite similar to that which was used in the first two phases of the study. These panels will also be used to estimate pre- and post-service work for a number of surgical services and to estimate total work for global surgery packages. Since only a limited amount of preliminary Phase III results are included in this proposed rule, there will be no opportunity for comment on many of the Phase III values before the final rule is published. Therefore, we will consider the relative values included in the final rule to be interim values and we will request public comment on these relative values. We will subsequently publish a **Federal Register** notice that will respond to the public comments and announce any revisions to the interim relative values.

2. Charge-based relative value scale to provide RVUs for gaps

We could develop a charge-based relative value scale that would be used to fill the remaining gaps for services that are not being studied by Harvard (for example, the values for the single covered chiropractic service and the infrequently covered dental services not listed in the CPT). This approach could also be used to fill in gaps if we do not receive all of the Harvard Phase III values in time for the final rule. We would develop this charge-based relative value scale based upon current average allowed charges. We believe it is reasonable to use charge-based RVUs for these services (which are expected to represent only a very small percent of Medicare payment for physician services), because we currently have no basis for establishing resource-based relative values for these services since they do not belong to any of the procedure "families" studied by Harvard.

We would create the charge-based relative value scale by calculating the practice expense and malpractice expense portions of the average allowed charges for each service according to the statutory formula. We would deduct the practice expense and malpractice insurance portions from the average allowed charge for the service to derive the current average allowed charge that represents physician work.

For some very low frequency procedures, the charge data will be unreliable. If we have no data for a service from the Harvard study and no reliable charge data, we intend to consult with carrier medical directors and possibly medical specialty societies to establish an interim value.

3. Unlisted procedures and local codes

The CPT contains about 100 codes for "unlisted" services or procedures. These codes are used for services within a family of a service which is not specifically addressed by the existing CPT codes (for example 90899, "Unlisted medical service, general"; 33999, "Unlisted procedure, cardiac surgery"). These codes generally end with the digit "9" and are often used for services that are furnished so rarely that creation of a national code would not be efficient. We do not have relative values from Harvard for these services because Harvard could not develop a resource-based work relative value for a service in which the work is not specified. We propose to permit carriers to individually value services billed under the unlisted procedure codes after review of pertinent medical information that describes the service furnished.

Similarly, we propose that new procedures for which there is no national code would be coded using a local carrier-unique code and would be paid under the fee schedule using "interim" relative values determined by the carrier until there is a national code and value for the service. We have recently completed a project in which we reviewed and eliminated most local codes for physician services because these services were already covered by the CPT or HCPCS codes. We intend to minimize the use of local codes when the fee schedule is implemented by: (1) Requiring that carriers acquire prior approval from HCFA central office for the use of local codes for physician services; (2) annually reviewing all local codes to identify those that should be moved to the national coding system; and (3) establishing national HCPCS codes for new services deemed not appropriate for inclusion in the CPT. (See section V.A.1. on definitions of services that discusses HCPCS codes more fully.)

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4. RVUs for limited licensed practitioner services

As previously stated in section IV.A.2., optometrists, dentists, oral and maxillofacial surgeons, podiatrists, and chiropractors are considered to be physicians by Medicare under the conditions specified in section 1861(r) of the Act. These types of physicians are often called "limited licensed practitioners".

Section 1848(c)(6) of the Act prohibits the Secretary from imposing different RVUs or a different CF "* * * for a physicians' service based on whether the physician furnishing the service is a specialist or based on the type of specialty of the physician."

For codes that overlap with those of doctors of medicine (MDs) and doctors of osteopathy (DOs), we either have physician work RVUs from Harvard Phases I or II or expect to receive them as part of subsequent work. One of the limited licensed specialties (oral surgery) was surveyed as part of Harvard Phase I. Although limited licensed practitioners perform many of the same services as MDs and DOs and bill using the same codes, some codes are unique to the limited licensed practitioners. Thus a few limited licensed practitioner services that are covered by Medicare are outside the CPT coding system and presently are paid under HCFA-developed alpha-numeric HCPCS codes (for example, manipulation of the spine by a chiropractor). Harvard will provide RVUs for services performed by MDs, DOs, and for a few services performed by oral surgeons.

Since we do not expect a relative value from Harvard for the one Medicare-covered service furnished by chiropractors (manipulation of the spine under certain conditions), we propose to develop an RVU for that service based on average allowed charges and other charge data. We considered basing the RVU value on the values Harvard has provided for spinal manipulation that are contained within the CPT, but rejected this option. We did not have sufficient evidence that the CPT service and the chiropractor service are equivalent services requiring the same amount of physician work.

An important question that arises under the physician fee schedule is whether these limited licensed physicians furnish the same services as MDs and DOs when they bill under a procedure code that is also used by MDs and DOs. We propose that "limited licensed" and "fully licensed" physicians would be paid the same under the fee schedule. However, we request public comment with regard to whether the services of limited licensed practitioners are substantially different from the identically coded services of MDs and DOs. If we were to become convinced that the work for an identically coded service furnished by an MD or DO differs materially from the work for the service furnished by a limited licensed practitioner, we could reflect that difference by either (1) computing the payment for the service by a limited licensed physician as a percentage of the MD's or DO's payment, or (2) we could establish a separate code to more accurately reflect the service furnished by a limited licensed practitioner.

5. Radiology services

a. Integration of existing radiologist fee schedule into physician fee schedule. In establishing the physician fee schedule, the language of Public Law 101–239 acknowledges that special rules are already in effect with respect to payment for radiologist services. Section 4049(a) of Public Law 100–203, as amended in part by section 411 of Public Law 100–360, added a new section 1834(b) to the Act establishing fee schedules for radiologist services for use in making payments for certain radiological procedures furnished beginning January 1, 1989. Under the fee schedules for radiologist services, payment is equal to 80 percent of the lesser of the actual charge for the procedure or the fee schedule amount. The fee schedule amount is determined by multiplying national relative units for a radiology procedure by a locality-based CF. The radiologist fee schedule applies to radiology services (as defined in § 405.530(c)) furnished by or under the supervision of a physician certified or eligible to be certified by the American Board of Radiology or by a physician for whom radiology services account for at least 50 percent of the total amount of charges made under Medicare Part B. (Until January 1, 1992, the radiology services of other physicians continue to be payable under the customary, prevailing, and reasonable charge methodology, although, effective April 1, 1990, payment for over 90 radiology procedures is limited to the radiologist fee schedule amount under the "designated specialty" provision. Imposed by section 1842(b)(15) of the Act, as added by section 6108(b)(1) of Public Law 101–239, this rule is applied in carrier localities in which prevailing charges differ by physician specialty. In addition, section 4102(c) of Public Law 101–508 limits the prevailing charge for all radiology services (except for nuclear medicine services) to the radiologist fee schedule amount, for services furnished in 1991.)

Radiologist fee schedule values are based on a relative value scale developed by the American College of Radiology (ACR), which conducted both surveys of radiologists and radiological facilities and a consensus panel process for refinement and extrapolation of the survey-generated values. We accepted the ACR's values for all services other than the technical component of interventional radiology procedures such as angiography. We believe the low volume of these procedures furnished in nonhospital settings at the time of the ACR's surveys was an insufficient basis upon which to determine appropriate relative units for the technical components of these procedures. Under the fee schedules for radiologist services, carriers determine local values for global and technical component billing of these procedures (Medicare Carriers Manual, Section 5262.C.1.). (We published an interim final rule with comment period on March 2, 1989 (54 FR 8994) that set forth the relative value scale for and methodology for determining fee schedule payment for part B radiologist services.)

Under the fee schedules for radiologist services, two CFs were computed for nearly every carrier locality. One CF was applied to the services of portable x-ray suppliers, while the other applied to all other services payable under the fee schedules. The CFs thus reflected historic charging patterns of the physicians and suppliers whose services were payable under the fee schedules.

As required by section 1834(b)(4) of the Act, the initial fee schedule CFs were developed to produce the same total payments for radiologist services under the fee schedules in 1989 as would have been the case under the prior payment system. Also, as required by the law, the actual CFs used to make payments in 1989 were reduced by 3 percent. Section 1834(b)(4) also provided that the fee schedules would be updated in future years by the MEI. We interpreted this requirement to mean that the CFs would be updated yearly by the MEI. Thus, the radiologist fee schedules were budget neutral less 3 percent, locality by locality in 1989. Section 6105(a) of Public Law 101–239 amended section 1834(b)(4) of the Act to reduce the CFs in effect as of December 31, 1989 (other than the CFs for the services of portable x-ray suppliers) by 4 percent for services furnished beginning April 1, 1990 and no update was

provided. The 1990 MEI update for the portable x-ray CFs was zero.

Section 4102(a) of Public Law 101–508 amended section 1834(b) of the Act to revise the level of CFs, other than those for the services of portable x-ray suppliers, effective for services furnished beginning January 1, 1991. This revision requires the Secretary to compute a national weighted average CF for 1990 and to reduce that average amount by 13 percent. No 1991 locality CF can be set at less than 60 percent of the national CF before this 13 percent reduction is applied. The locality CF is determined in a two-step process. In the first step, a CF is derived by multiplying the reduced 1990 national CF by the ratio of the locality's 1990 CF to produce a locally adjusted amount. In the second step, a CF is derived by multiplying the national weighted average CF by the locality's GPCI for the professional and technical components. One-half of the professional and technical component GPCI-adjusted amounts are separately added to one-half of the locally-adjusted amounts to produce a professional component and a technical CF for each locality. In some localities, this results in different CFs for professional and technical components. However, in most localities, they are the same. No 1990 CF was reduced by more than 9.5 percent in setting the 1991 CFs. We computed the revised 1991 CFs and distributed them to the carriers.

Section 4102 of Public Law 101–508 made additional changes affecting payments for radiology services. Section 4102(b) provided for modified transition rules for radiology services (both those currently paid under the radiologist fee schedule and those paid under the reasonable charge rules) for 1992. Under these rules, more radiology services would be paid under a transitional formula and fewer would be paid immediately under the physician fee schedule than would have been the case without these modifications. Further details are provided in the discussion of the transition.

Section 4102(c) of Public Law 101–508 placed a cap on prevailing charges for radiology services payable on a reasonable charge basis in 1991 at the level of the radiologist fee schedule amount payable in the locality for a procedure. Nuclear medicine procedures were excluded from this limitation. Section 4102(d) reduced the amounts payable for the technical components of magnetic resonance imaging procedures and computerized axial tomography procedures effective for services furnished after December 31, 1990. In the case of global billing, this reduction would apply only to the portion of the procedure represented by the technical component.

b. Rescaling values for the physician fee schedule. In establishing the overall physician fee schedule, section 1848(b)(2)(A) of the Act (as added by section 6102 of Public Law 101–239) specifies for radiology services that "the Secretary shall base the relative values on the * * * (existing radiologist fee schedule), with appropriate modifications of the relative values to assure that the relative values established for radiology services which are similar or related to other physicians' services are consistent with the relative values established for those similar or related services." This language indicates that while the relationships among the radiology service RVUs established in the existing fee schedule are to be preserved, the radiologist fee schedule must be rescaled to link radiology services to equivalent nonradiology physician services in the overall physician fee schedule, which is based primarily on the Harvard study physician work relative values.

In order to do this rescaling, we must determine which value from the existing radiologist fee schedule is equivalent to the Harvard physician work RVU for a given service. This determination is complicated by the fact that radiology services have professional and technical components and may also be billed globally. Briefly, the "professional component" of a service is the professional service furnished by the physician (for example, reading a chest x-ray), while the "technical component" includes the specialized supplies, equipment, and staff that are necessary to do the service (for example, the creation of the film to be read). The professional component service, similar to other physician services, includes work, practice expense, and malpractice components. The technical component service does not involve a professional physician service and includes practice expense and malpractice components only. We discuss the methodology for dividing the current radiologist fee schedule RVUs into work, practice expense, and malpractice components and the process for rescaling the practice expense and malpractice portions in section VI. B. of this preamble. The following simple example illustrates our proposed rescaling methodology.

PHYSICIAN WORK RVU

Code	Existing Fee Schedule	Harvard Study	Ratio of RVUs for Harvard Study to Existing Fee Schedule
a	2	1	.50
b	5	2	.40
c	9	3	.33
Mean			.41

We would convert RVUs for the existing fee schedule to the Harvard scale as follows:

(1) Standardize each current RVU by dividing the existing radiologist fee schedule scale by the Harvard RVU. (In the model fee schedule notice, we discussed weighting the RVUs by frequency. However, we believe using a weight of 1 for each surveyed procedure is an appropriate way of rescaling the radiology relative value scale to the Harvard value.)

(2) Place all values on the Harvard scale by multiplying by the mean ratio value of .41

Code	RVU
a	0.82
b	2.05
c	3.69

For the final rule, we are continuing to consider whether to use the mean or the median ratio in rescaling the radiology values.

c. Portable x-ray. Services of portable x-ray suppliers include a transportation component in addition to the professional and technical components. This component consists of payment for the transportation of the equipment to the patient and the setting up of the equipment at the patient's bedside.

In the interim final rule implementing the fee schedule for radiologist services (54 FR 8999), we instructed carriers to establish CFs for the services of portable x-ray suppliers separate from the CFs applicable to the services of all other entities. This action was taken under the authority of section 1834(b)(3)(B), which provided that we might consider specialty differentials in developing the radiologist relative value scale and fee schedule. Under the radiologist fee schedule, the global and technical component RVUs established under the radiology national relative value scale for radiologist services generally were multiplied by this separate CF when bills were submitted by portable x-ray suppliers. In addition, the carriers were instructed to develop

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local RVUs for the HCPCS R codes (that is, level II diagnostic radiology services) that portable x-ray suppliers use to bill for the transportation component, and these local RVUs were multiplied by the separate CFs to compute the fee schedule amounts for the transportation component.

Section 1848(c)(6) precludes the recognition of specialty differentials in setting payment levels under the fee schedule that is the subject of this proposed rule. Thus, the authority we used as a basis for establishing the separate CFs for the services of portable x-ray suppliers under the radiologist fee schedule will no longer exist under the fee schedule for physicians' services.

Therefore, we are proposing that all three components of the services of portable x-ray suppliers be paid under the fee schedule for physicians' services using the same CF as is applicable to all other services payable under that fee schedule. We are currently studying how to standardize the billing and RVUs assigned to the transportation component and specifically invite comments on this issue. If we do not standardize these payments in the final rule, the carriers will continue to establish RVUs for the transportation components based on the circumstances under which portable x-ray services are furnished in their service areas.

d. Other radiology issues. There are several issues associated with the current fee schedule for radiologist services that result from differing past payment practices among carriers under the reasonable charge system. Some of these divergent payment practices were continued on a temporary basis under the initial implementation of the radiologist fee schedule with the understanding that standard payment procedures would be established at a later date. We need to standardize these policies as a part of the physician fee schedule implementation.

One area of divergent payment practices involves interventional radiological services. Many interventional radiological procedures have dual CPT codes differentiating between the "complete procedure" (the radiological aspect of the procedure plus the injection of contrast materials and other pre-injection and post-injection services) and the "supervision and interpretation (S&I)" portion (the radiological aspect) of the complete procedure.

Under the CPT coding descriptions, if a physician furnishes all aspects of the interventional procedure, the physician must use the complete procedure code in billing for the procedure. However, if the complete procedure is furnished by a radiologist-nonradiologist physician team, the S&I code must be used for the radiological portion of the procedure while the other services are billed using nonradiological codes. Thus, the latter services are payable on a reasonable charge basis even though the S&I portion of the complete procedure became payable under the radiologist fee schedule beginning April 1, 1989.

In the process of developing payment procedures for the radiologist fee schedule, we discovered that the individual practices of Medicare carriers varied in the application of these codes. Some carriers permitted or required radiologists who performed complete procedures not to bill using the single complete procedure codes. Therefore, those physicians split their billings between the S&I radiologic codes and surgical or other nonradiologic codes even though they furnished the complete procedure. The national organizations representing physicians who furnish interventional procedures strongly advocated the continuation of this component-part billing and the exclusion of complete procedure codes under the radiologist fee schedule. We decided that individual carriers' past practices regarding the strict application of the CPT coding descriptions would be continued during the first year of the radiologist fee schedule. Subsequently, section 8105(c) of Public Law 101-239 required that this continuation of component-part billing be applied in 1990 on the same basis as it was applied in 1989. Section 4102(h) of Public Law 101-508 extended this policy through 1991.

Our proposal to standardize payment procedures for interventional radiological services effective with the implementation of the overall fee schedule follows:

- Discontinue the use by carriers of the CPT complete procedure codes that describe interventional radiological services.
- Pay for the radiological aspect of interventional procedures as described by supervision and interpretation (S&I) CPT codes and the primary nonradiological service associated with the procedure, as described by a nonradiological procedure code, such as a surgical code at the full fee schedule amounts subject to the deductible and coinsurance.
- For any other procedure code associated with the procedure, pay 50 percent of the amount that would be otherwise payable for the first additional procedure, 20 percent for the second, and 10 percent for each additional procedure. Do not reduce payments for any procedure code for which the RVUs already reflect a reduction. For example, the CPT code 75774 ("Angiography, selective, each additional vessel studied after basic examination; supervision and interpretation only") is assigned a reduced value that reflects the fact that it is performed at the same time as the basic examination.

Addressing this matter has been difficult because of the complexity of the issues involved and the apparent lack of general agreement as to the component parts of a complete interventional procedure. There have been several meetings between HCFA and representatives of the physicians who furnish these types of services, and there seems to be a reluctance on the part of the latter group to define the components of even normal, uncomplicated interventional procedures. In the absence of specific information, any standardization of carrier payment procedures utilizing both complete and S&I procedures would be problematic. The whole matter is further complicated by the fact that, under the proposed payment system, the RVUs of the nonradiological components of interventional procedures were established under the Harvard study while the radiological procedure values were established under a different system and adapted to the Harvard system. At this time, it is not clear that the complete procedure RVUs developed by the American College of Radiology and accepted by us are appropriately related to the values assigned to the nonradiological services associated with interventional procedures under the Harvard study.

This "split-billing" problem originally came to our attention in the latter stages of development of the fee schedule for radiologist services. At that time, the problem was viewed, essentially, as one of inconsistent application of the CPT coding system by Medicare carriers. That is, there was no problem when a radiologist-nonradiologist physician team furnished the services since the use of S&I codes plus component-part billing on a reasonable charge basis for the other services was clearly appropriate. It had previously been decided that injection codes billed in connection with radiological procedures would not be payable under the radiologist fee schedule since these codes generally described services furnished by physicians other than radiologists. There was no problem when complete procedure codes were used since the injection procedures would, in effect, be payable under the radiologist fee schedule through the complete procedure payments. The problem arose when the same physician (or physician group) furnished the complete interventional procedure but, contrary to the CPT coding descriptions, were allowed or required by carriers to bill on an S&I plus component-part basis. It may be presumed that this situation most often resulted in higher payment levels under the fee schedule for radiologist services than would have been the case had the CPT requirement to use complete procedure codes been followed.

Because of the problems associated with identifying the nonradiological services that were furnished in connection with interventional procedures and entering the payment amounts and RVUs in the locality-based CFs, a decision on the whole matter was deferred during the initial implementation of the fee schedule. At that time, we fully expected that the payment amount and RVUs of the nonradiological services would be included in recomputing 1990 CFs for the affected carriers, and that a national policy of strict adherence to CPT coding by all carriers would be established.

However, as has been pointed out earlier in this discussion, Congress has acted on two occasions to preclude the imposition of conformity with the CPT coding system in this matter and to preserve the ability of physicians who furnish the entire interventional procedure to bill separately for the component parts of the procedures. In effect, this policy permits these physicians to bill for their services on the same basis as physicians who only furnish components of the interventional procedures. Therefore, we believe that our proposed approach to this matter is consistent with Congressional intent as expressed in the two actions noted above. Further, it is consistent with our goal, as expressed in the model fee schedule discussion of this issue, that Medicare pays the same amount regardless of how the services are billed.

Under our proposal, carriers would pay the full amount payable under the fee schedule for both the radiological and the primary medical/surgical service associated with the complete interventional procedure. Additional services furnished would be payable at a reduced amount. We would pay 50 percent of the otherwise payable fee schedule amount for the first additional procedure, 20 percent for the second procedure, and 10 percent for each additional procedure. This reduction is consistent with our policy regarding payment for multiple surgical procedures described elsewhere.

A second area of divergent payment procedures under the radiologist fee schedule involves payments for the delivery of radiation therapy services that recognize the type of equipment used in treating individual patients. This is an issue that affects payments only for the technical component of these procedures since the professional component services are unaffected by the equipment used.

Under the fee schedules for radiologist services, the national relative value scale did not provide for payment differentials based on the equipment used in the delivery of radiation therapy services. This is because the CPT coding system has not generally based its procedure descriptions on the type of radiation therapy equipment used.

In the past, several carriers, primarily located in one area of the country, instituted local codes for use in paying for radiation therapy services that specified the type of equipment. Because of the long-standing status of those local codes, certain carriers who factored them into the radiologist fee schedule CF calculations were permitted to continue to recognize them for payment purposes. The use of these local codes was restricted to freestanding radiation therapy centers that billed only for the technical component of radiation therapy services. In general, no other equipment-specific differentials are made.

As of 1991 (effective March 1, 1991 for Medicare purposes), the CPT coding system includes codes for radiation treatment delivery (codes 77401 through 77414) that take into account the various energy levels used in radiation therapy services. We view this change in coding structure as an opportunity to eliminate equipment-specific local codes and to base payment differentials on the actual energy level furnished to the beneficiary rather than the capability of the equipment.

We have modified the instructions in section 5262K of the Medicare Carriers Manual to take these new codes for radiation therapy services into account as of their March 1, 1991 effective date. Since the CPT revision creates separate codes for the professional and technical components and provides for four energy levels of technical component weekly treatment management code, global billing for these types of radiation therapy services is no longer practical.

Therefore, under the revised manual instructions, we have ended global billings for radiotherapy weekly treatment management codes 77420, 77425, and 77430. These 3 codes are now professional component-only codes and are billed separately from the 13 new technical component-codes that specify the energy levels used on an individual occasion of service within the simple, intermediate, and complex categories described by the 3 weekly management codes. The revised instructions provide RVUs that are based on the values assigned to their predecessor codes. That is, the five new treatment delivery codes applicable to simple treatment management carry the relative value units previously assigned to the technical component of CPT code 77400, "Daily megavoltage treatment management; simple". This aspect of the change in procedures is budget-neutral since the payment level for the technical components of radiation therapy services has not been changed. We are proposing that any future change in the technical component RVUs to reflect energy differentials will likewise be budget-neutral, and local codes and RVUs that reflect equipment will not be used under the overall fee schedule effective for services furnished beginning January 1, 1992.

A third area of divergent payment practices relates to the use of low osmolar contrast media for radiological studies. In April 1989, when the radiologist fee schedule was implemented, the question of the treatment of low osmolar contrast material, also known as non-ionic contrast material, was raised. At issue was the concern that there was no definitive study showing that the benefits of using this material justified the very high additional costs. Some estimates showed that if all radiologic studies requiring contrast materials were to use non-ionic materials, the increased costs to the Medicare program would be very substantial. The purported benefit of non-ionic contrast media was to lessen the incidence of adverse reactions to radiologic contrast media.

We surveyed Medicare carriers about their payment policies for low osmolar contrast materials. We found that some carriers made separate payments and others were paying for these materials through the payment for the diagnostic procedure. As a result of our concern over the use of low osmolar materials, we froze the payment policies of each carrier in place as of April 1989 while we studied the issue. We announced this policy in the Medicare Carriers Manual (section 5262.1.).

Since our policy on non-ionic materials was announced, a major clinical study on adverse reactions to

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contrast media was published by Katayama et al. in Radiology 1990; 175:621–628. In addition, in late 1990, the American College of Radiology (ACR) adopted as policy a report entitled "The Current Criteria for the Use of Water Soluble Contrast Agents for Intravenous Injections". We are proposing to accept the ACR criteria, with some modifications, as the basis for a policy that separate payments be made for low osmolar contrast media in intravenous radiological procedures when it is used for patients with one or more of the following characteristics:

- A history of a previous adverse reaction to contrast material, with the exception of a sensation of heat, flushing, or a single episode of nausea or vomiting.
- A history of asthma or allergy.
- Significant cardiac dysfunction including recent or imminent cardiac decompensation, severe arrhythmias, unstable angina pectoris, recent myocardial infarction, and pulmonary hypertension.
- Generalized severe debilitation.
- Sickle cell disease.

We have not yet developed a fee schedule allowance for the non-ionic contrast material and are in the process of obtaining cost information from manufacturers and other sources. We welcome comments on this issue as well as comments on the proposed criteria for payment. Furthermore, we are developing estimates as to the additional costs that will be incurred by the program for the contrast media. We intend to take this estimate into account in computing the budget neutral CF.

Finally, there are a few more details of the radiologist fee schedule that we are proposing to clarify. CPT–4 procedure codes 77336 and 77370 describe medical radiation physics consultations in support of the therapeutic radiologist. As such, they do not represent services of the physician; rather, they are services furnished by physicists who are not physicians. We are proposing to change the distribution of the RVUs assigned to these two codes from an allocation between professional and technical components to technical component-only codes. This change would primarily affect payments for services furnished to hospital inpatients and outpatients since there would no longer be carrier payments under these codes. Consultations by physicists furnished to hospital inpatients would be payable through the DRG payments to the hospital, and consultations by physicists furnished to hospital outpatients would be payable by intermediaries as hospital services. Payment in free-standing radiology centers or physicians' offices would essentially be unchanged by this new policy because payment would be based on the current global RVU (but would be for a technical service only).

We are also proposing to designate CPT–4 codes 78990 and 79900 as technical component-only codes. These codes describe the furnishing of diagnostic and therapeutic radionuclide(s) associated with nuclear medicine procedures and represent a variety of substances. They are and will continue to be locally priced by carriers depending on the substance used.

6. Anesthesia Services

Anesthesia services are paid on the basis of a reasonable charge that is determined by multiplying a reasonable charge CF by the sum of allowable base and time units. The base unit is a specified numerical value assigned to the anesthesia procedure. The time unit is calculated from the amount of "anesthesia time" associated with the anesthesia procedure.

Before March 1, 1989, each carrier was allowed the choice of a relative value scale; this led to considerable variation across the carriers in the number of base units allowed per procedure. In addition, with the exception of a few carriers, surgical codes, not anesthesia codes, were used to report anesthesia services. Section 4048(b) of Pub. L. 100–203, mandated that the Secretary develop a uniform relative value guide for physician anesthesia services and ensure that expenditures under the uniform relative guide did not exceed the amount of the expenditures that would otherwise have occurred.

Proposed regulations were published January 26, 1989 (54 FR 3794). We issued instructions to our carriers in February of 1989 (Medicare Carriers Manual Transmittal No. 1287) for implementing the uniform relative value guide. The uniform relative value guide was implemented by the carriers effective for anesthesia services furnished beginning March 1, 1989.

Under the uniform relative value guide, each CPT anesthesia code is assigned a base unit value. There are approximately 250 anesthesia codes. The base units vary from a low of 3 units for a procedure such as anesthesia for biopsy of a clavicle to a high of 30 units for anesthesia for a liver transplant. The base unit reflects the value of all physician anesthesia services except the time actually spent in anesthesia care. The base value includes usual pre-operative and post-operative visits, the administration of fluids and blood incident to the anesthesia care, and monitoring procedures. The base unit for an anesthesia procedure that is medically directed by a physician differs from the base unit for an anesthesia procedure that is personally performed by the physician. A physician can medically direct more than one procedure simultaneously. For anesthesia procedures furnished after March 31, 1988 but before January 1, 1996, the base units are reduced by 10 percent for each of 2 concurrent medically directed procedures, by 25 percent for each of 3 concurrent medically directed procedures, and by 40 percent for each of 4 concurrent medically directed procedures.

Anesthesia time starts when the physician or anesthetist begins to prepare the patient for induction and ends when the patient may be safely placed under post-operative supervision and the physician or anesthetist is no longer in personal attendance. The number of allowable time units is calculated by dividing anesthesia time in minutes by a denominator of 15 or 30 minutes. The denominator of 15 minutes is used if the physician personally performs the anesthesia procedure. The denominator of 30 minutes is used if the physician medically directs concurrent anesthesia procedures involving qualified anesthetists. As a result of section 6106 of Pub. L. 101–239, only the actual time of the fractional time unit is allowed for anesthesia services furnished after March 31, 1990. Previously, a fractional time unit was considered a full time unit. For example, before April 1, 1990, if a personally performed procedure took 67½ minutes, 5 time units would have been allowed (67.5 minutes divided by 15 minutes equals 4 full units and/fractional unit that was rounded to a full unit). For the same procedure performed after April 1, 1990, only 4½ time units would be counted.

a. Integration of anesthesia services into the physician fee schedule. Section 1848 of the Act contains a specific provision governing payment for anesthesia services under the physician fee schedule. Section 1848(b)(2)(B) requires the Secretary to use, to the extent practicable, the uniform relative value guide, with appropriate adjustment of the CF, in a manner to assure that the fee schedule amounts for anesthesia services are consistent with the fee schedule amounts for other services determined by the Secretary to be of comparable value. In addition, the Secretary must adjust the anesthesia CFs by GAFs in the same manner as the adjustment is made for other physicians' services. The legislation is silent on time units and whether they must be incorporated as a separate element under the fee schedule.

b. Elimination or continuation of recognition of time units. The inclusion of actual elapsed time in computing payments is unique to anesthesia services. There are three options for handling anesthesia time under the fee schedule. We could eliminate actual anesthesia time altogether and combine base and time units per procedure into a single work unit value. This would be accomplished by determining an average time unit value per procedure for both personally performed and medically directed anesthesia procedures. Conversely, we could recognize only actual time associated with surgical time and increase the base unit to include pre- and post-surgical anesthesia time. Lastly, we could continue the current policy that recognizes actual anesthesia time by procedure.

There are several reasons for eliminating the use of actual time for anesthesia services. First, program administration would be simplified. Second, physician anesthesia services would be treated the same as other physician services. Finally, the opportunity for physicians to manipulate payment, by varying time, would be eliminated. Pre- and post-anesthesia times, in particular, are determined by the anesthesiologist and could be manipulated in individual circumstances.

The major justification for recognizing only actual time associated with the surgical time is that surgical time is not controllable by the anesthesiologist. The merging of only pre- and post-anesthesia times into the RVU would remove any incentive or ability the anesthesiologist has to increase pre- or post-surgical anesthesia time. This option has some appeal, and we are exploring sources of data to establish pre- and post-anesthesia times per anesthesia procedure.

The justification for continuing the current policy that recognizes actual anesthesia time is the impact that the elimination of actual time would have on certain types of anesthesia practice arrangements. The American Society of Anesthesiologists (ASA) has asserted that the use of average time would systematically result in decreased payments to teaching anesthesiologists and increased payments to anesthesiologists who work in ambulatory surgical centers (ASCs). The ASA has expressed concern that some of the anesthesia codes involve surgical procedures with widely different operative times so that an averaging concept may not yield equitable results for a given case or for an individual anesthesiologist. We are willing to consider adding CPT codes for anesthesia with varying operative times to deal with this problem and invite ASA and other commenters to offer recommendations on anesthesia codes that need to be expanded. To assure that the result is budget neutral, we need to keep the average relative values for the expanded codes equivalent to the value for the current anesthesia code. To accomplish this, we need to consider the relative frequency of the surgical codes comprising the anesthesia code, and derive average time from a variety of sources including expert advice, BMAD files, and data on operative time from the Harvard study and other sources.

The GAO conducted a study on anesthesia time units in accordance with section 4048 of Public Law 100–203. In its report "Medicare Variation in Payments to Anesthesiologists Linked to Anesthesia Time" (GAO–HRD–91–43), the GAO recommended that we either completely eliminate actual time or link anesthesia time to surgical time. This recommendation was supported by findings that there were significant unjustified variations in presurgical anesthesia time.

We previously announced, in both the January 26, 1989 proposed rule and the August 7, 1989 final rule (55 FR 32078), to implement the uniform relative value guide, our intention to eliminate the separate time unit element of the anesthesia payment system. We announced that time would be eliminated within two years of the effective date (September 7, 1990) of the final uniform relative value guide. Consistent with this intention, we are now proposing, in this rule, the elimination of time units effective for physician anesthesia services furnished beginning January 1, 1992.

Under the physician fee schedule payment system, anesthesia services would be paid in a manner consistent with the payment methodology for other physicians. Payment would be determined by multiplying a national CF by a GAF and by RVU per anesthesia procedure that is composed of work, practice cost, and malpractice components. Since we would have the same general CF for all physician services, we would adjust the average base and average time units per anesthesia procedure so that they are on the same Harvard work scale as all other physician services. We would develop different average units which incorporate different base unit values depending upon whether the anesthesia procedure was personally performed, medically directed as one of two, three, or four concurrent procedures, or medically supervised. There would be different numbers of units because of the different payment rules that apply to anesthesia depending on the way in which the services were furnished.

c. Method for integrating anesthesia services. Since anesthesia services would be treated no differently than other physicians' services for payment purposes, we computed a single CF applicable to all physicians' services, that is, both anesthesia and nonanesthesia services alike.

We have work values from the Harvard study for 19 anesthesia services. (Data were provided for 23 services commonly furnished by anesthesiologists, of which 4 are medical/surgical services.)

We computed total work, practice expense, and malpractice RVUs for the 19 surveyed anesthesia procedures on the assumption that these 19 procedures are representative of the universe of anesthesia procedures. In effect, the allowed charges and the actual frequencies for the 19 anesthesia procedures are adjusted upward as if these 19 procedures represent all anesthesia services. Because the unit values for work, practice expense, and malpractice would differ across anesthesia practice arrangements, we had to calculate the adjusted allowed charges and adjusted frequencies associated with each of the five different anesthesia practice arrangements. The five different practice arrangements are personally performed, two, three or four concurrent medically directed procedures and medically supervised procedures. The CHER provided us with data derived from the 1989 BMAD files that allows us to calculate the distribution of the five anesthesia practice arrangements for the 19 anesthesia procedures.

The actual work values for the 19 procedures differ, but not materially, from the reported Harvard work values. This is due to rescaling. To compute work values for the unsurveyed anesthesia procedures, we calculated the relationship between the work values for the 19 surveyed procedures and the base and average time unit value for the same procedures. In computing this rescale factor, we weighted equally each of the 19 procedures. We used this rescale factor with the base and average time unit value per procedure to derive work values for all anesthesia services, including the 19 surveyed procedures. Average time unit values per procedure

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were calculated from a sample of personally performed anesthesia services from the 1990 National Claims History (NCH) file.

We identified the anesthesia codes when the NCH sample size was too small (fewer than 50 occurrences) to be used for computing the average time unit value per procedure code. Approximately 45 percent of the anesthesia codes fell into this category. For these codes, we imputed an average time unit. The imputed time unit average was derived by grouping all anesthesia procedures with the same base unit value into a single category and computing an average time unit value by category. For example, the average time unit value for all anesthesia procedures that have a base unit value of 3 units is 4.6 time units. If a certain procedure code with a base unit value of 3 units had less than 50 reported cases, we substituted the value of 4.6 units for the actual time unit value.

Practice expense and malpractice relative values were calculated for each anesthesia procedure for each type of practice arrangement. The national average allowed charge per procedure was computed by multiplying the national average CF by the sum of base and average time units per procedure. The practice expense RVU was computed by multiplying the national average allowed charge per procedure by the anesthesia specialty practice expense percentage, that is 23.2 percent. A similar calculation was performed to determine the malpractice RVU per procedure. (A detailed discussion on the computation of practice expense and malpractice RVUs appears in section IV.C.8.)

For each anesthesia procedure code, there are 5 different relative values per code, depending upon whether it is personally performed; medically directed as two, three, or four concurrent procedures; or medically supervised.

d. Payment for specialized services furnished by anesthesiologists. The policies of carriers are mixed with respect to recognition of separate payment for the insertion of Swan-Ganz catheters, intra-arterial lines, and central venous pressure lines. There are fewer than 10 carriers who do not recognize separate payment for the insertion of Swan-Ganz catheters by an anesthesiologist when it is performed as part of an anesthesia procedure. However, there are almost 20 carriers who do not recognize separate payment for the insertion of intra-arterial lines or central venous pressure lines. Almost all carriers that do not recognize payment for the insertion of intra-arterial lines also do not recognize separate payment for the insertion of central venous pressure lines. The carriers that do not recognize separate payment for the insertion of catheters or lines do so on the basis that payment for this service is included with the payment for the anesthesia service. Payment by these carriers for the insertion of lines or catheters would be reflected in the aggregate expenditures for physician anesthesia services but not separately identified. In total, these specialized procedures account for less than 3 percent of total anesthesia procedures.

There are essentially two options for developing a standardized national policy regarding this issue. We could bundle payment for these specialized procedures into the anesthesia payment. An advantage to bundling is we would be ending what appears to be at least partial duplicate payment. Since anesthesia services are paid on a base and time unit basis, we are paying time and also allowing separate payment for the insertion of catheters or lines. We are effectively paying twice for the episode during which the physician inserts the line or catheter. Bundling also could simplify future program administration but would be difficult to accomplish through the initial fee schedule calculation. These specialized procedures are not procedure specific, that is, they do not take place every time a certain anesthesia procedure is performed. Rather, they are patient specific, that is, a patient who is classified into a poor physical health status will require the specialized procedure. A further problem with bundling would be how to determine payment if a cardiologist or other nonanesthesiologist physician specialist performs the procedure and seeks payment. Presumably this could be handled in a manner consistent with what we do when a surgeon performs less than the complete global service, that is, by reducing payment to the anesthesiologist.

The alternative to bundling is to allow separate payment for these specialized procedures. This approach would be consistent with the coding system. Under the coding system, these specialized procedures are listed as surgical or medical services. Since a package-type payment is being made only for anesthesia services, the package-type payment does not include payment for other medical and surgical services that an anesthesiologist may furnish. Also, a large percentage of these services are furnished by nonanesthesiologist specialists, and virtually all carriers permit separate payment for these services when furnished by nonanesthesiologists.

Because we are eliminating anesthesia time, we are proposing to allow separate payment for specialized procedures when these procedures are furnished in conjunction with an anesthesia procedure or as an unrelated procedure. It is likely that nonanesthesiologists are furnishing the specialized services and are being separately paid in those carriers when no separate payment is currently allowed for the anesthesiologist's performance of the specialized service. If this assumption is correct, we would not have to make any adjustments to ensure a budget neutral result. However, if the converse is true, we may have to adjust upward the frequency count of specialized procedures.

e. Monitored anesthesia care. The furnishing of anesthesia services may involve general or monitored anesthesia care (MAC). Under MAC, a patient may be anesthetized by the surgeon or anesthesiologist, using a local or regional anesthetic, while the anesthesiologist continually monitors or medically directs the monitoring of the patient's condition. Payment for the medically necessary MAC services is made in the same manner as for general anesthesia. There is presently no process to identify monitored anesthesia care cases from general anesthesia cases.

The OIG has prepared a final report entitled "Medicare Coverage and Reimbursement for Monitored Anesthesia Care". This report recommends that monitored anesthesia care be specifically identified on the claim form with a uniform modifier. We are adopting this recommendation and providing for a uniform modifier to be used with the anesthesia code to identify monitored anesthesia care. This will also allow us to determine the extent to which monitored anesthesia care cases are furnished and whether there is a need to establish a different payment policy for these procedures.

f. Other anesthesia issues. There are different payment policies for the physician's anesthesia services depending upon whether the anesthesiologist is directing or supervising interns or residents, CRNAs, or student nurse anesthetists.

We allow the teaching physician to be paid on an unreduced reasonable charge basis when the teaching physician fulfills the "attending physician" requirements and is present when the intern or resident furnishes physicians' services (§ 405.521). For anesthesia services, this means that we allow payment on the basis of unreduced base units and one time unit per 15 minutes when the anesthesiologist establishes an attending physician relationship with a patient by involving an intern or resident in the patient's care. In addition, when there are unusual circumstances, our program instructions, section 8310.F. of the Medicare Carriers Manual, allow the teaching anesthesiologist to be paid the unreduced reasonable charge for two concurrent cases involving interns or residents. We are aware, however, that this policy is not being administered uniformly by the carriers. Some carriers routinely recognized unreduced reasonable charge payments whenever the teaching anesthesiologist becomes involved in two concurrent cases involving interns or residents.

On February 7, 1989 (54 FR 5946), we published proposed regulations (FR) on payments for physicians' services furnished in teaching hospitals. To promote program uniformity and to establish a policy consistent with anesthesia practices of teaching hospitals, we proposed to recognize an attending physician relationship if an anesthesiologist is concurrently involved with two intern or resident cases. In addition, we proposed to recognize an attending physician relationship if an anesthesiologist concurrently directs one intern or resident and no more than one CRNA or other qualified individual. The majority of commenters, who were principally teaching anesthesiologists, commented favorably on our proposal. However, one organization, the American Association of Nurse Anesthetists, commented that this payment system would create financial incentives to use interns or residents rather than CRNAs.

Our payment rules on medical direction apply whenever the anesthesiologist medically directs two, three, or four concurrent procedures involving qualified anesthetists. Under the medical direction payment rules, payment is based on reduced base units plus one time unit per 30 minutes. The base units are reduced by 10 percent for each of two concurrent procedures, 25 percent for each of three concurrent procedures, and 40 percent for each of four concurrent procedures.

A major concern with these policies is that when there is a choice of using an intern or resident or other qualified nonphysician anesthetist, there is a financial incentive for the anesthesiologist to choose the intern or resident because payment will not be reduced.

We have re-evaluated our previous published proposed policy and have decided to remove the incentive to choose an intern or resident over a nonphysician anesthetist. We also wish to establish a medical direction payment policy that is consistent for concurrent procedures regardless of whether they involve interns, residents or CRNAs. To accomplish this goal, we are proposing to recognize an attending physician relationship only if a teaching anesthesiologist is involved with a single procedure involving an intern or resident (§ 415.42).

7. Physician Pathology Services

In the model fee schedule, we mentioned that section 6102(g) of Public Law 101–239 required implementation of a separate fee schedule for physician pathology services on January 1, 1991—1 year before implementation of the overall physician fee schedule. Shortly after the model fee schedule was published, Congress enacted section 4104 of Public Law 101–508, which repealed both this requirement and section 4050 of Public Law 100–203, which required us to develop a relative value scale for physician pathology services. Thus, physician pathology services would be treated like other physician services under the fee schedule, beginning January 1, 1992.

Of the approximately 1100 services listed in the pathology section of the CPT, only 57 services qualify as physician services. The remainder of pathology services are considered clinical laboratory services and are excluded from the physician fee schedule by section 1848(j)(3) of the Act. As part of its cooperative agreement with us, the Harvard study team has provided relative values for the physician work associated with physician pathology services. While the Harvard findings will allow us to compute payment amounts for the professional component of physician pathology services, section 4104(c) of Public Law 101–508 also requires that we develop an appropriate adjustment to reflect the technical component of furnishing physician pathology services through a laboratory that is independent of a hospital and separate from a physician's office. The problems associated with developing relative values for the technical components of pathology services are discussed below when we discuss technical components generally.

8. Charge-Based Computation of Practice Expense and Malpractice RVUs

Section 1848(c)(2)(C) of the Act prescribes that the Secretary compute practice expense and malpractice RVUs by applying historical practice cost percentages to a base allowed charge for each service. The base allowed charge would be computed by estimating the 1991 national average allowed charge for a service. Historical charge and frequency data for 1989 would be adjusted to approximate 1991 charges, accounting for changes in payment rules between 1989 and 1991 and the most current definitions of units of service, such as the global surgery policy.

The historical practice cost percentages would be computed as follows. First, the average percentage division of resources among the work, practice expense, and malpractice components for each medical specialty would be determined, using practice expense and malpractice cost data from a 1989 survey of office-based physicians conducted by the AMA. For specialties not included in the AMA study sample we requested estimated percentages directly from national specialty societies.

We are using data supplied by the American Optometric Association, the American Podiatric Medical Association, and the American Chiropractic Association. Additionally, for clinics and other group practices, we are using data from the Medical Group Management Association. In computations for this proposed rule, when no other data were available, we used averages across all physicians. A summary of the historical practice cost data used in computing practice expense and malpractice RVUs for this proposed rule is provided in the following table.

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Physician Revenues, Net Income and Practice Expenses - 1989 05/23/91

AMA Specialty	HCFA Specialty	HCFA SPECIALTY CODE	As a % of Mean Total Revenue: MEAN NET INCOME	MEAN EXPENSES NET LIABILITY	MEAN LIABILITY EXPENSES
All Physicians			54.2%	41.0%	4.8%
General/Family Practice	Family Practice	08	43.9	52.2	3.9
	General Practice	01	43.9	52.2	3.9
Internal Medicine			50.8	46.4	2.8
General Internal Medicine	Internal Medicine	11	50.8	46.4	2.8
Cardiovascular Disease	Cardiovascular Disease	06	61.2	36.1	2.7
Other	Allergy	03	56.9	40.5	2.6
	Gastroenterology	10	56.9	40.5	2.6
	Geriatrics	38	56.9	40.5	2.6
	Nephrology	39	56.9	40.5	2.6
	Pulmonary Disease	29	56.9	40.5	2.6
Surgery			60.8	31.8	7.4
General Surgery	General Surgery	02	60.8	31.8	7.4
Otolaryngology	Otology, Laryngology, Rhinology	04	49.9	45.2	4.9
Orthopedic Surgery	Orthopedic Surgery	20	47.4	45.2	7.4
Ophthalmology	Ophthalmology	18	53.3	44.4	2.3
	Ophthalmology, Otology, Laryngology	17	53.3	44.4	2.3
Urological Surgery	Urology	34	56.2	39.9	3.9
Other	Hand Surgery	40	53.5	38.9	7.6
	Neurological Surgery	14	53.5	38.9	7.6
	Peripheral Vascular Disease or Surgery	23	53.5	38.9	7.6
	Plastic Surgery	24	53.5	38.9	7.6
	Proctology	28	53.5	38.9	7.6
	Thoracic Surgery	33	53.5	38.9	7.6
Pediatrics	Pediatrics	37	47.6	49.3	3.1
Obstetrics/Gynecology	Gynecology	09	53.2	38.0	8.8
	Obstetrics	15	53.2	38.0	8.8
	Obstetrics-Gynecology	16	53.2	38.0	8.8
Radiology	Diagnostic X-Ray (Groups) 1\	71	46.2	50.5	3.3
	Radiation Therapy	32	59.8	37.2	3.0
	Radiology	30	59.8	37.2	3.0
	Roentgenology, Radiology	31	59.8	37.2	3.0
Psychiatry	Psychiatry	26	69.9	26.4	3.7
	Psychiatry, Neurology	27	69.9	26.4	3.7
Anesthesiology	Anesthesiology	05	69.5	23.2	7.3
Pathology	Diagnostic Laboratory (Groups) 1\	72	46.2	50.5	3.3
	Pathologic Anatomy, clinical	21	69.6	28.5	1.9
	Pathology	22	69.6	28.5	1.9
Emergency Medicine	No HCFA Match (used for 90500-90590)		65.4	30.1	4.5
Other Specialty					
Other	Dermatology	07	56.7	40.3	3.0
	Occupational Therapy (Groups) 1\	74	46.2	50.5	3.3
	Other Medical Care (Groups) 1\	75	46.2	50.5	3.3
	Neurology	13	56.7	40.3	3.0
	Nuclear Medicine	36	56.7	40.3	3.0
	Physical Medicine and Rehabilitation	25	56.7	40.3	3.0
No AMA Match	Clinic or Other Group Practice (Groups) 1\	70	46.2	50.5	3.3
No AMA Match	Oral Surgery 2\	19	40.9	54.7	4.4
No AMA Match	Optometrist 3\	41	47.0	52.9	0.1
No AMA Match	Podiatry 4\	48	48.0	47.8	4.2
No AMA Match	Chiropractor, Licensed 5\	35	39.8	56.4	1.8
No AMA Match 6\	Manipulative Therapy	12	54.2	41.0	4.8
	Miscellaneous	49	54.2	41.0	4.8
	Physical Therapy	65	54.2	41.0	4.8
	Occupational Therapist	67	54.2	41.0	4.8
	Physiotherapy	73	54.2	41.0	4.8

Source: American Medical Association, 1988-1990 Socioeconomic Monitoring System Core surveys except where indicated.
1\ Source: Medical Group Management Association, 1990 Cost and Survey Production Report
2\ Source: American Association of Oral and Maxillofacial Surgeons
3\ Source: American Optometry Association
4\ Source: American Podiatric Medical Association
5\ Source: American Chiropractic Association
6\ For these remaining specialities, we are using the practice cost percents from the AMA for all physicians.

Second, the proportion of each service (or class of services for low volume procedures) performed by each specialty would be determined using Part B claims data. As discussed under data options for fee schedule development, we used 1989 BMAD files for this purpose in computing actual fee schedule values for this proposed rule.

Third, using this specialty-share information, an average practice expense percentage and an average malpractice percentage would be computed for each service (or class of services for low volume procedures). More precisely, the average practice expense percentage for a service or class of services would be calculated to be the sum for all specialties of the product of the average practice expense percentage for each specialty, multiplied by the proportion of that service performed by that specialty. The average malpractice percentage would be computed in the same way.

For example, consider the computation of a practice cost percentage for drainage of an eyelid abscess. Assume that this service is performed 20 percent of the time by family practitioners and 80 percent of the time by ophthalmologists. Further assume that, on average, family practitioners' practice expenses are 44.5 percent of total revenues and ophthalmologists' practice expenses are 45.3 percent of total revenues. The average practice percentage for this service would be calculated as follows:

$(44.5\%)(.2)+(45.3\%)(.8)=45.1\%$

The final step in computing practice expense and malpractice RVUs would be to multiply the average practice expense or malpractice percentage for a service by the base allowed charge for that service. For the service described in our example, the practice expense percentage of 45.1 percent could be applied to a hypothetical $100 base allowed charge to yield a practice expense RVU of 45.1. A parallel computation would yield a malpractice RVU on the same scale.

We will use the methodology described above to determine the RVUs for practice expense and malpractice for all physician services except emergency department services (CPT codes 90500 through 90590). For these services, we are proposing to use the practice expense and malpractice percentages for emergency physicians (30 percent for practice expense and 4.5 percent for malpractice) that will be applied directly to the base allowed charge. We would not determine the average percentage division of resources among all specialties furnishing these services. We propose this method for emergency department services for the following reason.

We have not established a separate specialty code for emergency medicine. (However, we do intend to establish emergency medicine as a physician specialty in the future). Because emergency medicine is not an HCFA-defined specialty, physicians providing emergency department services have used other specialty codes. Our 1989 BMAD files reveal that over 90 percent of the services in the 90500 through 90590 range are associated with the specialties of general practice, family practice, internal medicine, and clinics or other group practices. For these physician specialties, the practice expense portion of gross revenues is between 46 and 52 percent compared with only 30 percent for emergency medicine. We are proposing that the lower practice expense percentage be used for services in the 90500 through 90590 range because we believe it better represents the lower practice expenses likely to be incurred when physicians perform these services in emergency departments.

As discussed later in section V. A., we are proposing to pay for office visits, hospital visits, and consultations based on new code definitions established by the CPT. Work RVUs for these codes are available through Phase III of the Harvard study. However, we cannot directly compute practice expense and malpractice RVUs for these new codes because we have no historical charge data for them. Therefore, we propose to base these practice expense and malpractice RVUs on aggregate allowed charges for existing codes, by class of visit or consultation (for example, office visits for established patients). We will allocate total practice expense and malpractice RVUs, by class of visit or consultation code, to new visit and consultation codes in proportion to work RVUs established for each code. For example, we would calculate practice expense (PE) RVUs for the new visit codes as follows:

Step 1: Compute PE RVUs for old codes and sum the amounts.

Old code [1]	Visit count (millions)	PE RVUs per visit	PE RVUs (millions)	Sum PE RVUs (millions)
90000	.60	10.70	6.42	149.90
90010	1.60	13.00	20.80	
90015	2.50	15.40	38.50	
90017	.90	17.20	15.48	
90020	3.00	22.90	68.70	

[1] Copyright 1991 American Medical Association.

Step 2: Determine distribution of work RVUs for new codes.

New codes	Visit count (millions)	Work RVUs per visit	Work RVUs (millions)	Sum work RVUs (millions)
Level I	.60	13.00	7.80	220.70
Level II	1.60	17.00	27.20	
Level III	2.50	21.00	52.50	
Level IV	.90	28.00	25.20	
Level V	3.00	36.00	108.00	

Step 3: Distribute current total PE RVUs to new codes in proportion to work.

New codes	Percentage of all work RVUs	PE RVUs in new codes (millions)	PE RVUs per visit for new codes
Level I	.04	5.30	8.80
Level II	.12	18.47	11.55
Level III	.24	35.66	14.26
Level IV	.11	17.12	19.02
Level V	.49	73.35	24.45

We would compute malpractice RVUs for the new codes in a similar manner. For purposes of this example, we have assumed that the frequency distribution for the new visit codes would be equal to the frequency distribution for the old visit codes. However, for some classes of visits, there are fewer new codes than currently exist (for example, there are currently 5 CPT codes for subsequent hospital care but only 3 new codes for this type of care). For these cases, we would combine the frequency counts as needed to achieve a mapping between the two coding systems. For example, for the current subsequent hospital visits, we would combine the frequencies for the two highest and lowest codes.

9. Combining Work, Practice Expense, and Malpractice RVUs Onto a Common Scale

Once the separate work, practice expense, and malpractice RVUs are computed for each service, they must be combined in a manner to produce a single relative value for each service, as required by section 1848(c)(2)(A) of the

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Act. As explained above, the work RVU was initially scaled in units selected by the Harvard study, whereas the practice expense and malpractice RVUs were initially computed in dollar units. To combine these RVUs, we need to place the practice expense on a common scale with the Harvard work RVUs, which would be summed to provide a single RVU per service. We would further note that the scaling for all RVUs is essentially arbitrary because the RVUs and CFs jointly determine fee schedule payments. Increasing (or decreasing) the RVU scale merely requires a corresponding decrease (or increase) in the CF.

We have chosen to first convert Harvard work RVUs to dollar units and then to rescale all RVUs relative to the new Level 3 established office visit. We decided to rescale all RVUs in relation to the mid-level office visits for established patients because this procedure is performed by virtually all specialties and is one of the most frequently performed services. By assigning this procedure an RVU of "1", all specialties can more easily see the relative relationship of one procedure to another. This rescaling was accomplished as follows. First we multiplied Harvard work RVUs by a CF specific to the work component. This work CF is computed by dividing total allowed charges currently allocated for work (that is, average work percentage applied to allowed charges across all services furnished by all physicians) by the sum of all work RVUs for these services. Thus, the work CF, when multiplied by the Harvard work RVUs for any service, would yield a new work RVU value for the service expressed in dollars. This dollar-based work RVU value was added to the practice expense and malpractice RVUs for the service to produce a total RVU for that service. We then rescaled all RVUs using as the base the RVUs for the new Level 3 established office visits code (OE019). Thus, the rescaled RVUs for code OE019 sum to 1.0, and the values of all other services in Addendum B are displayed relative to code OE019.

10. Periodic review and adjustments in RVUs

Section 1848(c)(2)(B) of the Act addresses periodic review and adjustments in relative values. Specifically, section 1848(c)(2)(B)(i) requires the Secretary to review the relative values for physician services not less often than every 5 years. In addition, section 1848(c)(2)(B)(ii)(I) requires that the Secretary must adjust the number of RVUs to take into account changes in medical practice, coding changes, new data on relative value components, or the addition of new procedures and must publish an explanation of the basis for these adjustments.

Section 1848(c)(2)(B)(ii)(II) specifies that the adjustments may not cause the amount of expenditures under part B for the year to differ by more than $20 million from the expenditures that would have been made had the adjustments not been made. We describe the process by which we would implement these requirements for an ongoing review and adjustment process in § 415.24.

a. Proposed policy for review and adjustments. In § 415.24(a), we propose to announce RVUs for new services and changes in RVUs already in effect by publishing a proposed notice in the **Federal Register** with an opportunity for public comment no less often than every 5 years. After reviewing the public comments, we would publish a final notice in the **Federal Register** to announce additions or revisions to RVUs. While the statute requires that we review the RVUs already in effect no less frequently than every 5 years, we plan to publish annual proposed and final notices in the **Federal Register** to discuss the results of our review of the RVUs, the comments we have received throughout the year, and our proposed changes and additions, including interim values as discussed below. This ongoing process would be the mechanism by which we would conduct a periodic review of all RVUs as required by section 1848(c)(2)(B)(i) and our adjustment of the RVUs as required by section 1848(c)(2)(B)(ii)(1) of the Act.

We considered conducting periodic reviews of all RVUs on a less frequent basis than yearly (for example, every 5 years as permitted by the statute). The law gives us the flexibility to perform periodic reviews of RVUs more frequently than every 5 years. We believe that more frequent reviews would be more efficient and appropriate, given the frequent changes in coding, medical practice, and health care technology. This ongoing approach to review and adjustment of RVUs would not prevent us from periodically conducting a more extensive review of all RVUs. For example, we might undertake a research effort (similar to the Harvard study) that would systematically review the relative value of physicians' services so that we could rebase all of the RVUs on the most current research findings at that time.

b. Establishment of interim RVUs for new or revised services. In § 415.24(b), we propose that we would, as needed, establish interim RVUs for new services or to recognize changes in definitions of codes for services. We believe that section 1848(c)(4) of the Act permits us to provide for the creation of interim values, as an ancillary policy "* * * necessary to implement this section."

We propose to establish interim values for services with revised definitions as well as for new services.

c. Options for establishing and revising RVUs for existing, revised, and new services. We considered several ways of establishing RVUs for new or revised services and of reviewing and adjusting existing RVUs before deciding to propose this option. The options we considered follow:

(1) If we made all additions and changes to RVUs (standing/new/revised) via proposed and final notices with no provision for interim changes due to new or revised codes, this approach would—

- Provide for full public comment on RVUs for new services and revisions to RVUs (whether caused by revised codes or otherwise); and
- Result in an absence of national uniformity in payment during the year in which we would implement RVUs for new or revised codes through proposed and final notices. During that period, carriers would set payment amounts at their own discretion.

(2) If we made all changes to RVUs (standing/new/revised) through an administrative process, not through rulemaking, but published periodically in the **Federal Register** an explanation in a final notice (probably once a year), this approach would—

- Provide sufficient flexibility for us to establish or change RVUs as needed.
- Appear to be permissible by the law, which requires us only to publish an explanation of any adjustments we make to RVUs (section 1848(c)(2)(B)(ii) of the Act). Consultation with PPRC and physician groups (required by section 1848(c)(2)(B)(iii) of the Act) could be informal.
- Not provide the public with the opportunity to comment on changes in RVUs for existing services, or RVUs for new or revised codes.

(3) If we made changes to RVUs (standing/new/revised) through publication of proposed and final notices in the **Federal Register** but provided an "interim value" process that would allow us to quickly implement national RVUs for new/revised codes, this approach would—

- Provide a vehicle for quickly establishing interim RVUs and payment amounts for new or revised codes. (We would issue interim RVUs for new or revised codes through updates to the Medicare Carriers Manual. RVU changes for established codes would only be made through a public notice and comment process.)
- Maximize national uniformity in payment since, absent national payment amounts, carriers would have authority to set payment amounts.
- Provide opportunity for public comment on RVUs for new services and revisions to standing RVUs.

We believe Option 3 is the best option available to us. This option provides for an open public process for establishing values for new services and for changing standing values, while also permitting us the flexibility we need to keep the fee schedule as up to date and nationally uniform as possible. It is important to note that no retroactive changes in RVU values would be made; changes from interim to final values would be made prospectively. We believe that this policy for establishing and revising RVUs for existing, revised, and new services is the sort of ancillary policy that Congress intended to authorize under section 1848(c)(4) of the Act.

d. Creation and review of RVUs for new or revised services. We anticipate that the "interim value" process would result in interim values being added to the ¼physician fee schedule each year because the CPT revises and deletes some codes each year. The AMA has proposed that the CPT process be expanded to produce recommendations regarding RVUs for newly coded services, RVUs for services with revised codes, and changes to standing RVUs. Under the AMA proposal, the establishment, review, and adjustment of the RVUs would remain our responsibility, but the CPT process would be expanded to provide a recommended RVU. The AMA, in its proposal, also raised the possibility of including limited license practitioners in the RVU creation activity.

We would carefully consider recommendations from the CPT process regarding new or revised codes with advice, when necessary, from carrier medical directors, before we would use them as interim values. Moreover even if the AMA process were used, it would not constitute the exclusive means for us to receive advice and recommendations on new or revised values. Specialty societies or other groups would, of course, be free to submit their recommendations directly to us and we would carefully consider them. Finally, these interim values would be included in the proposed and final **Federal Register** notices before they could become standing RVUs. Changes to standing RVUs would only be implemented through publication of the proposed and final **Federal Register** notices.

Along with the AMA proposal, we are also considering other means of acquiring recommended RVUs for new and revised services and review of standing RVUs. We could develop new and revised RVUs or review standing RVUs through either of the following processes, or a combination thereof:

- Use of a contractor.
- Creation of a special Technical Advisory Group of representatives of carriers and physician organizations.

We request public comment on each of these alternatives for acquiring recommendations for interim RVUs for new and revised codes and for changes to standing RVUs. We would, of course, also consider recommendations with respect to RVUs for new, revised, or existing codes from other sources, including individual specialty societies.

The responsibility for establishing or revising the RVUs clearly rests with the Secretary. We believe, however that it is in the best interests of all parties for the development of new RVUs and the review of existing RVUs to begin with recommendations from physicians, whether these recommendations are made by the AMA, by other entities representing physicians, or by physicians within another context.

e. Implementation of the $20 million limitation. Section 1848(c)(2)(B)(ii)(II) of the Act requires that adjustments to RVUs that are made as a result of changes in medical practice, coding changes, new data on relative value components, or the addition of new procedures may not cause the amount of expenditures under Part B of the year to differ by more than $20 million from the expenditures that would have been paid had the adjustments not been made. Therefore, the adjustments must be essentially budget neutral (within a $20 million tolerance per year), based on the expected expenditures for the year.

The $20 million threshold applies to changes in aggregate expenditures in comparison with what they otherwise would have been had the adjustment not been made. We do not see this limitation having any practical effect on the initial establishment of relative values for totally new services. Thus, if a new technology is covered for the first time and is estimated to add more than $20 million of net expenditures based on the predicted volume and proposed relative value to be assigned, we would not need to reduce the relative value for this service and other services to bring the estimated expenditure increase within the $20 million limitation.

We would include in a proposed **Federal Register** notice a discussion of the basis for any adjustments we would make to RVUs. The proposed notice also would discuss how the adjustments proposed would satisfy the requirement that the adjustments may not cause the amount of expenditures for physician services for the year to differ by more than $20 million from the payments that would have been made if the adjustments had not been made. It may be necessary to rescale RVUs for all physician services in order to meet this requirement. If RVUs must be rescaled, the proposed notice would discuss the reasons and the methodology used to comply with the limit.

D. Geographic Adjustment Factors (GAFs)

As previously discussed in section IV. B. on the formula for computing payment amounts, the total RVUs for a service must be adjusted by the GAF. The GAF is equal to a weighted average of the individual adjustment factors or GPCIs for each of the three RVU components—work, practice expense (exclusive of malpractice), referred to hereafter simply as "practice expense," and malpractice.

Section 1848(e) of the Act requires the Secretary to develop GAFs for all physician fee schedule areas. It requires an index to reflect the relative cost of practice expenses other than malpractice compared to the national average; an index to reflect the relative cost of malpractice compared to the national average; and an index to reflect one-quarter of the relative cost of physicians' work compared to the national average. The law does not specify the methodology to be used in developing these GPCIs, instead it leaves the methodology to the discretion of the Secretary.

Components of a GAF were already under development as a result of Public Law 99-509, which required the Secretary to develop an index by December 31, 1989 to measure "justifiable" geographic differences in physicians' costs of furnishing services. As a result of this provision, alternative GPCIs were developed by the joint efforts of the Urban Institute and the Center for Health Economics Research (UI/CHER). See Addendum D for information regarding how to obtain copies of their reports.

Indices were developed that measure the relative differences in the cost of a "market basket" of goods across areas by comparing the area cost to the national average. In this case, the "market basket" consists of the resource

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inputs required to operate a private medical practice. The inputs and their average weights across all specialties were obtained from the AMA's Socioeconomic Characteristics of Medical Practice (1987). The input components and their weights follow:

Input component	Percentage of practice costs
Physician Work (Net Income)	54.2
Employee Wages	15.7
Office Rents	11.1
Medical Equipment, Supplies, and "Other" Expenses	13.4
Malpractice Insurance	5.6
	100.0

Once the components and their weights were determined, a data source had to be found to measure the cost of each of the components in a given area compared to the national average. Because it would be prohibitively expensive to collect the detailed locality level data needed, data sources were limited to readily available already existing sources. Proxies were selected for each component as follows:

• Physician work—The average hourly earnings of workers, based on a 20 percent sample of 1980 census data, in professional specialty occupations (for example, teachers and engineers) with 5 or more years of college. Adjustments were made to produce a standard occupational mix in each area. The actual reported earnings of physicians were not used to adjust geographical differences in fees because these fees are, in large part, the determinants of the earnings, that is, using physician earnings would be "circular."

• Employee wages—Wages of clerical workers, registered nurses, licensed practical nurses, and health technicians, were also based on a 20 percent sample of 1980 census data.

• Rents—Apartment rental data produced annually by the U.S. Department of Housing and Urban Development were used because there were insufficient data on commercial rents.

• Malpractice—Premiums (1985 through 1986) for a "claims made" policy (that is, a policy that covers malpractice claims during the covered period) providing $100,000/$300,000 of coverage were used. Adjustments were made to incorporate the costs of $1 million/$3 million coverage and mandatory patient compensation fund requirements. In States with differential premiums among areas, the rate applicable in each area was used. Data were collected on premiums for physicians in three risk classes: Low-risk (general practitioners who do not do surgery), moderate-risk (general surgeons), and high-risk (orthopedic surgeons). A "Medicare-weighted" risk group premium was created according to the share of Medicare spending accounted for by each risk class. The malpractice GPCI values in this proposed rule reflect differences from the values published in the model fee schedule because (1) a technical "mapping" error has been corrected; (2) $1 million/$3 million limits in coverage was substituted for $100,000/$300,000 coverage used in the model fee schedule; and (3) the effect of mandatory patient compensation fund requirements in Kansas, Pennsylvania, and Wisconsin was recognized.

• Medical equipment, supplies, and "other" expenses—UI/CHER assumed that this component is represented by a national market and costs do not vary appreciably among areas. This component's index is 1 for all areas to indicate no variation from the national average.

The areas selected for measurement purposes were the Metropolitan Statistical Areas (MSAs). Non-MSA areas within a State were aggregated into one rural area. MSAs satisfied the criteria of (1) homogeneity in input prices within the area, and (2) large enough size so that market areas are self-contained to minimize border crossing; that is, physicians would not move their offices a few miles to secure higher payment and patients would tend to receive services within their area. Sections 1848(e) and (j)(2) of the Act require, however, that geographic adjustments be made according to Medicare payment localities (see "Locality" discussion in section V. B.). Where localities crossed MSA boundaries, MSA indices were converted to Medicare locality indices by population weight.

As mentioned earlier, for fee schedule computation, section 1848(e) of the Act requires a GAF that reflects three separate components as follows: Work, practice expense, and malpractice expense. In addition to the overall GPCIs by locality already described, UI/CHER computed the three separate GPCI values for each locality. Using the indices as developed by UI/CHER for the locality of Birmingham, Alabama, as an example, the components as required by section 1848(e) must be computed as follows:

INDICES

Work	Wages	Rents	Other practice expenses	Malpractice
0.924	0.947	0.761	1.000	0.824

• Work—As specified in section 1848(e)(1)(A)(iii) of the Act, the work index value must reflect one-fourth of the difference between the relative value of physicians' work effort in a particular locality and the national average. (The index is constructed so that a value of 1 represents the national average.)

$$\text{Work} = 1 - [(1 - 924)(.25)] = (.75)(1) + (.25)(.924) = .961$$

• Practice expense exclusive of malpractice—This would mean combining the values of wages, rents, and other expenses (including medical equipment and supplies) and dividing by their total national weight.

$$\text{Practice Expense} = \frac{(.157)(.947) + (.111)(.761) + (.134)(1)}{.157 + .111 + .134} = .913$$

• Malpractice—This is simply the malpractice index (0.824).

The GPCI components for purposes of determining payments under the fee schedule for the locality of Birmingham, Alabama would look like this:

Work	Practice expense	Malpractice
0.961	0.913	0.824

A list of the GPCIs for all current Medicare localities in the form required by section 1848(e) of the Act can be found at Addendum C. Two sets of GPCI values require an explanation. First, since there were not data available to measure the cost of practice in the Virgin Islands, it was assigned the national average of 1.000 for each GPCI component. Second, the GPCI values listed for carrier 10240 (Travelers, Minnesota) are for all of the physicians in the area of Minnesota serviced by Travelers, including those at the Mayo Clinic. Under the reasonable charge system, customary and prevailing charges for Mayo Clinic physicians were calculated separately from other physicians in the area. Since the intent

of the fee schedule is to vary payment according to geographic, not provider-specific, differences in resource costs, fee schedule payments will be the same for Mayo Clinic physicians as for all other physicians in the Travelers' service area. We are also including, for informational purposes, a list of Statewide GPCIs for those interested in the possibility of establishing Statewide localities (Addendum C, table 2). Some changes may be made in the malpractice index if better and more recent data and additional information on State malpractice insurance requirements become available before publication of the final rule. We are not likely to make changes in the work and practice expense indices until after the 1990 census data become available some time in 1993. Given the time that it will take to analyze the census data and compute revised GPCI values, we do not expect any major revisions until 1995, the fourth year under the fee schedule. This timing would be consistent with the statutory requirement (described in more detail below) that the GPCIs be reviewed at least every 3 years.

The PPRC is required to report to Congress by July 1, 1991 on the appropriateness of existing geographic localities and on a number of GPCI issues, including the extent to which existing GPCI indices accurately reflect practice costs and malpractice costs in rural areas. In addition, the UI is currently doing an analysis of the locality issue for us.

As explained earlier in the discussion on computing payment amounts, the national level RVUs for each component—work, practice expense, malpractice—must be multiplied by the respective locality level GPCI and summed to arrive at a total GAF-adjusted relative value for a service. This total must be multiplied by the national CF to arrive at a fee schedule amount for each service within each locality.

In summary, the GAF to be used in the physician fee schedule is based on the research performed by UI/CHER. The GAF defined by section 1848(e) of the Act uses separate geographic indices for work, practice costs, and malpractice costs. The geographic work index and the geographic malpractice index are derived by measuring the variation of costs in fee schedule areas from the national average for these factors based on the data described above. The practice expense index is derived by weighting and combining the fee schedule area variations from the national average for employee wages, office rent and equipment, and "other" expenses. (Section 1848(e)(1)(B) allows the establishment of different practice expense indices for different classes of physicians' services if the application of a single practice expense index would yield inequitable results because of differences in the mix of goods and services comprising practice expenses for the different classes of services. We have no data to justify the establishment of different practice expense indices at this time.) The GAF for a procedure in a locality is constructed by multiplying these component GPCIs for work, practice expense, and malpractice costs by the percent of the relative value for the procedure allocated to work, practice expense, and malpractice expenses, respectively.

The studies of the GPCIs being conducted by us and the PPRC may result in future changes in the GPCIs. In addition, section 4118(c) of Pub. L. 101-508 revised section 1848(e)(1) to require that the Secretary review, and revise if necessary, the GPCIs at least every 3 years. The law also provides that if more than 1 year has elapsed since the last revision, only one-half of the adjustment must be made in the first year. If revisions are made, we would announce the changes in the Federal Register, along with an explanation of the reason for the changes—more recent data, a new methodology, locality changes, and so forth. We envision a notice and public comment process for revised GPCI values similar to that described earlier for new and revised RVUs.

E. Conversion Factor (CF)

1. Computation of Budget-Neutral CF

As explained earlier, we must compute the general formula for a payment amount under the fee schedule by multiplying a relative value for a service by a GAF for a fee schedule area by a CF. Thus the CF can be viewed as a multiplier that transforms relative values into payment amounts. The CF is a single national value that must apply to all services paid under the fee schedule. Section 1848(d)(1)(B) of the Act specifies that the CF for the first year of the fee schedule (1992) must be established as follows. First, a base year CF must be computed that is budget neutral relative to 1991 predicted expenditure levels. That is, this base CF must produce total payments under the fee schedule that are the same as total payments that are expected in 1991 under the current payment rules (generally based on the customary, prevailing, and reasonable charge methodology). The CF for 1992 must be established by updating this base year CF by the annual update factor.

The initial CF must be the value that when applied to the product of the RVUs and GAFs for each procedure, and adjusted with the 1992 historical payment limits, will yield total allowed charges for 1991 (the lesser of the fee schedule and the actual charges) that equate to that year's estimated physician payments. This prediction of 1991 allowed charges takes into account all changes in law and regulations affecting physician payments, including the Public Law 101-508 provisions, such as the overpriced procedure payment reductions and the continuation of reduced payments to new physicians. Section 4106(c) of Public Law 101-508 requires the Secretary to compute the CF for 1992 as if the new physician reductions, including the reductions to be made during the third and fourth years of physician practice (which are effective for years after 1990 and 1991, respectively) had been in effect throughout 1991. Section 4109 of Public Law 101-508 requires the Secretary to subtract from total 1991 RVUs and physician payments any amounts for separate interpretation of electrocardiograms (EKGs) provided in conjunction with a visit or consultation for which payment was also made. (This provision is explained in more detail in section VI. B. of this preamble.)

In addition, section 4105(b)(2) of Public Law 101-508 requires that increases in program payment in 1991 that are made as a result of statutory changes to the primary care payment floor may not be included in the calculation of the budget neutral CF. (The primary care payment floor prohibits the prevailing charge for a primary care service in a locality from falling below a specified percentage of the weighted national average prevailing charge for that service. Section 4105(b)(1) of Public Law 101-508 increased the percentage from 50 to 60.)

This computation of predicted 1991 outlays would also need to take into account the effect of the GAF adjustments in order to produce a budget neutral CF. The GAF adjustments affect budget neutrality because different volumes of services are furnished in each geographic area. As prescribed by the statute, this CF, computed using predicted 1991 expenditures, must be updated by the 1992 annual update factor to establish the initial fee schedule CF. Also, for some services, payments established by this initial CF may be adjusted during the 1992 through 1995 fee schedule transition period, as detailed below.

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2. Accounting for Transition Payment Rules in CF Calculation

Under the transition rules, as set forth in section 1848(a)(2) of the Act, the fee schedule would be phased in from calendar years (CYs) 1992 through 1995. The phase-in would begin with computation of an adjusted historical payment basis or amount for each service in each fee schedule area. For non-radiology services, this is defined in section 1848(a)(2)(D)(i) of the Act as the weighted average prevailing charge in the area in CY 1991 with consideration of customary charges below the prevailing and other payment limitations, adjusted by the annual update applicable to CY 1992 payments. (Computation of this update amount is detailed at the end of this CF discussion.) A separate adjusted historical payment basis must be calculated for each procedure in each fee schedule area. Services from July 1, 1989 through June 30, 1990 will be used as the base for calculating the adjusted historical payment basis.

For radiology services, the adjusted historical payment basis is defined as the CY 1991 radiologist fee schedule amount adjusted by the CY 1992 update, except for nuclear medicine services. For all nuclear medicine services, the adjusted historical payment basis would be the amount computed for 1991 using the special rule provided in section 6105(b)(2) of Public Law 101–239. This policy with respect to treatment of nuclear medicine services during the fee schedule transition is based on section 4102(g)(2)(B) of Public Law 101–508.

This historical payment is calculated as an average amount for all physicians in all specialties performing a given service in a locality and would reflect all legislative changes affecting CY 1991 payments. The transition rules for CYs 1992 through 1995 involve comparing this historical payment amount with the new fee schedule amount. The effect of these rules on payments to individual physicians would depend on an individual physician's historical charging patterns. The transition rules consider only the average amount for a service in a fee schedule area, not an individual physician's charges under the prior payment rules. Under the statutory transition provisions, if the historical payment amount for a service in a fee schedule area is from 85 to 115 percent of the fee schedule amount, maximum payment to all physicians in the fee schedule area would be at that fee schedule amount in CY 1992. However, if the historical payment amount is below 85 percent of the fee schedule amount, the payment amount for the service would be the historical payment amount plus 15 percent of the fee schedule amount. On the other hand, if the historical payment amount is more than 115 percent of the fee schedule amount, the payment amount for CY 1992 would be the historical payment amount minus 15 percent of the fee schedule amount.

These rules would not limit increases or decreases in CY 1992 to 15 percent of the historical payment amount as the short title of section 1848(a)(2)(A) of the Act could be construed to say. Rather, for services subject to the transition provisions, increases and decreases would be limited by a fixed dollar amount (that is, 15 percent of the new fee schedule payment). Thus, increases can be more than 15 percent of the historical payment amount while decreases would always be less than 15 percent. A service would receive a higher percentage increase the farther its historic payment basis is below the fee schedule amount or a lower percentage decrease the farther its historic payment basis is above the fee schedule amount.

Under section 1848(a)(2)(C) of the Act, as amended by section 4102(b) of Public Law 101–508, special transition rules would apply to radiology services in CY 1992. For those services, whether or not they were included in the radiologist fee schedule, the transition provisions limiting reductions in payment amounts would apply if the historical payment amount exceeds 109 percent of the fee schedule amount, rather than the 115 percent applicable to other services. For those radiology services subject to reduction under the transition rules, the amount payable would be equal to the historical payment amount minus 9 percent (rather than 15 percent) of the fee schedule amount for the service. Otherwise, the transition rules governing increases and decreases in payment amounts for radiology services would be the same as for other services. These rules would provide for a more gradual transition for radiology service payments that would be reduced in order to conform with the new fee schedule.

In addition, we propose to establish special transition rules for the new CPT visit and consultation codes. Special treatment of these codes for purposes of the transition are necessary because we have no historical charge data that could be used for purposes of determining transition payment amount for each newly established visit and consultation code.

However, the CPT is maintaining the current classes of visit and consultation codes (for example, office visits for new patients). Therefore, we could determine transition payment amounts for these new codes by class of visit or consultation code. We could—(1) Compute within each payment area, an adjusted historical payment for each class of visit or consultation code; and (2) Compare this historical payment amount with the estimated average fee schedule payment for the comparable class of visit or consultation code for each payment area. If the historical payment amount is from 85 percent to 115 percent of the estimated average fee schedule payment, payments for all new codes in the class would be made at the fee schedule amount with no transition. Otherwise, payments for all new codes in the class would be subject to a transition in which each new code would be increased or decreased as necessary to satisfy the transition requirements. This possible approach is illustrated as follows:

Transition From Old Payment for Old Visit Codes to Fee Schedule Payment for New Visit Codes by Class of Visits

Step 1: Determine the historical payment amount for each class of visits for each locality by calculating a weighted average allowed charge for the class of visits.

Locality/code	Frequency of visits per code	Sum of visits for the class	Allowed charges per code	Sum of charges for the class	Weighted average for the class
A 1	10,000	100,000	$100,000	$2,200,000	$22
2	50,000		1,200,000		
3	30,000		900,000		
B 1	30,000	100,000	300,000	1,800,000	18
2	60,000		1,200,000		
3	10,000		300,000		

Step 2: Determine the weighted average fee schedule amount for the class of services using the distributions of old codes within the locality.

Locality/code	Frequency of visits per code	Sum of visits for the class	Fee schedule payment per code	Fee schedule payment for the class	Weighted average for the class
A 1	10,000	100,000	$12.50	$2,750,000	$27.50
2	60,000		25.00		
3	30,000		37.50		
B 1	30,000	100,000	12.50	2,250,000	22.50
2	60,000		25.00		
3	10,000		37.50		

Step 3: Determine the transition tolerances by taking 85 percent and 115 percent of the weighted average fee schedule amount for the class of services.

Locality	Weighted average fee schedule amount	0.85 fee schedule amount	1.15 fee schedule amount
A	$27.50	$23.38	$31.63
B	22.50	19.13	5.88

Step 4: Compare the weighted average allowed charge for the class of services (from step 2) to the transition tolerances for the weighted average fee schedule amount to determine if the tolerances are exceeded.

Locality	Wghtd average allowed charge for class of visits	.85 fee schedule amount	1.15 fee schedule amount
A	$22.00	$23.38	$31.63
B	18.00	19.13	25.88

In both cases, the weighted average allowed charge for the class of visits is below 85 percent of the fee schedule amount for the class of visits and so transition rules apply to all visit codes in the class.

Step 5: Calculate the first year's transitional weighted average payment amount for the class of codes by adding 15 percent of the weighted average fee schedule amount for the class of codes to the historic weighted average allowed charge for the class of codes.

Locality	Weighted average fee schedule payment for class	Weighted average historic payment amount for class	15 percent of weighted average fee schedule payment	First year transitional weighted average payment amount for class
A	$27.50	$22.00	$4.13	$26.13
B	22.50	18.00	3.38	21.38

Step 6: Calculate the first year's transition adjustment factor to be applied to each visit code in the class by dividing the first year's transitional weighted average fee schedule amount for the class of codes by the weighted average fee schedule amount for the class of codes.

Locality	Weighted average fee schedule payment for class of codes	First year transition weighted average payment for class	First year transition adjustment factor
A	$27.50	$26.13	.957
B	22.50	21.38	.950

Step 7: Calculate the first year transition amount for each new code by multiplying the fee schedule amount for each new code by the first year's transition adjustment factor.

Locality/code	Fee schedule payment per code	Adjustment factor	First year transition fee schedule amount
A 1	$12.50	.957	$11.88
2	25.00	.957	23.75
3	37.50	.957	35.63
B 1	12.50	.950	11.88
2	25.00	.950	23.75
3	37.50	.950	35.63

An alternative approach in which we would establish a one-for-one mapping between the old codes and the new codes is illustrated as follows:

Step 1: Compare the historic payment amount for the old code to the transition tolerances for the fee schedule amount for the new code.

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	Locality/code	Historic payment amount old code	Fee schedule amount new code	.85 of fee schedule amount	1.15 of fee schedule amount
A	1	$10	$12.50	$10.63	$14.38
	2	20	25.00	21.25	28.75
	3	30	37.50	31.88	43.13
B	1	10	12.50	10.63	14.38
	2	20	25.00	21.25	28.75
	3	30	37.50	31.88	43.13

Step 2: Calculate first year transition amounts for each code.

	Locality/code	Historic payment amount old code	Fee schedule amount new code	.15 of fee schedule amount	Historic payment plus .15 fee schedule amount
A	1	$10	$12.50	$1.88	$11.88
	2	20	25.00	3.75	23.75
	3	30	37.50	5.63	35.63
B	1	10	12.50	1.88	11.88
	2	20	25.00	3.75	23.75
	3	30	37.50	5.63	35.63

Rules for the transition during CYs 1993 through 1995 are set forth in section 1848(a)(2)(B) of the Act. During those years, payment amounts for services subject to the transition provisions in CY 1992 would be brought closer to the fee schedule amount through application of a blended formula as follows:

- In CY 1993, payment would equal 75 percent of the amount determined for CY 1992 adjusted by the update for CY 1993, plus 25 percent of the CY 1993 fee schedule amount.
- In CY 1994, payment would equal 67 percent of the amount determined for CY 1993 adjusted by the update for CY 1994, plus 33 percent of the CY 1994 fee schedule amount.
- In CY 1995, payment would equal 50 percent of the amount determined for CY 1994 adjusted by the update for CY 1995, plus 50 percent of the CY 1995 fee schedule amount.
- In CY 1996, payment for all services would be fully based on the fee schedule.

These transition rules are set forth in § 415.40 of the proposed regulations.

Nonphysician practitioners who receive payment computed as a percentage of a physician fee schedule amount would be affected by the transition rules if the physicians in their fee schedule areas performing the same services are affected by the transition rules. In other words, if a nonphysician practitioner would receive a percentage of what a physician would be paid for a given service in a fee schedule area, the nonphysician's payment amount would be computed as a percentage of the physician payment amount after any applicable transition rules had been applied.

Public Law 101-239 does not specify precisely how the application of the transition rules as described above for CY 1992 is to be reconciled with the budget neutrality requirement for CY 1992. Through an iterative process, we have computed a CF resulting in payment amounts that would be budget neutral with 1991 expenditures and that would meet the statutory transition requirements. We estimate this CF is 6.2 percent lower than a CF computed without regard to the transition provisions. We have not been able to find any way of computing the CF that would both preserve budget neutrality throughout the transition and be consistent with the statutory transition requirements. There is no statutory requirement for the fee schedule to be budget neutral for years after CY 1992.

3. Determining the Initial CF

The statute requires that implementation of the fee schedule be budget neutral in 1992. That is, payment rates must be determined so that outlays under the new system equal the outlays that would have occurred under the old system. The statute does not specifically require budget neutrality in years after 1992.

The statute specifically requires that the budget neutrality determination be made with respect to 1991 outlays. The initial budget neutral CF based on 1991 outlays is updated by the 1992 update determined under the Medicare Volume Performance Standards (MVPS).

Computation of the budget neutral CF would require predictions for CY 1991 with respect to: (1) Fees for each procedure in each area (adjusted by the GAF), consistent with the application of the transition provisions; and (2) the frequency with which each procedure is performed. These predictions are difficult, given that fee schedule implementation involves not only major changes in Medicare fees, but also simultaneous changes with respect to the uniform definition of services for surgical global fees and medical visits.

These two types of services (surgery and visits) account for more than 70 percent of Medicare payments for physician services. Currently, carrier definitions with respect to the pre-operative, intra-operative, and post-operative procedures included in the global fee vary significantly. When the uniform definition becomes effective there may be many services that are now paid for in global fees (or which are otherwise not now billed) that would be billed separately under the fee schedule. Conversely, services now billed and paid separately in some carrier areas would no longer be separately billable. Likewise, some of the options now under serious consideration for change in visit coding (for example, incorporation of time in visit code definitions) could change the array of visit codes and descriptors available to physicians.

In moving to the physician fee schedule, any significant change or

clarification of the service content of the codes would have major financial implications. In order to simulate the budgetary impacts, there is a need to be able to cross reference the old and new coding of the same service. This process has been termed the "crosswalk." For visits and consultations, the codes would be revised significantly because the current codes do not clearly delineate differences among levels of services and there is wide variation in the way these codes are used in practice. In approaching the problem of the crosswalk, the principal question that must be answered is how visits and consultations would be coded under the new coding structure. That is, how does one map the existing codes to the new code structure?

In addressing this question, we emphasize that the crosswalk is not intended to serve as a blueprint of how services should be coded in the future. Under the fee schedule, visits and consultations must be reported based on the new descriptors. Any attempt to report services based on the crosswalk described here would lead to serious errors since the new code descriptors have undergone significant change. The crosswalk is critical, however, because it would be used in setting the CF, determining practice expense and malpractice components for visits and consultations, and could be used for determining transition payment levels.

The development of the crosswalk is complex and, of necessity, involves making assumptions about a number of variables that simply cannot be verified at this time. The assumptions we have made are described below. We believe they are valid but recognize that different assumptions could also be valid, and we welcome comments on this subject.

In constructing the crosswalk for office visits, hospital visits, and initial consultations, we used four major sources of information:

(1) Data from the AMA/HCFA coding pilot. The field portion of this study provides the only source of data in which physicians coded actual visits using both current and new codes. This approach provides the information we need, but the data are limited because the physicians in the sample may be unrepresentative and the response rate has been only about 50 percent;

(2) Harvard data. In Phase II of the Harvard study, physicians were asked to use existing CPT codes to code a limited number of vignettes in addition to providing their estimates of time and work involved in performing the service represented by the vignette. This approach provides times for current CPT codes that can be compared to the "typical" times defined in the new codes, which is an indirect estimate of future coding practices. These data are of limited value because the number of vignettes studied in this way is small, and they are adequate only for established patient office visits and subsequent hospital visits;

(3) The National Ambulatory Medical Care Survey (NAMCS). Each encounter reported on the survey includes the face-to-face time spent with the physician. Thus, NAMCS can be used to predict the frequency distribution of codes under the new system based on the frequency distribution of the visit lengths reported in the survey. However, the data are of limited value because they do not reflect the many other factors in addition to face-to-face time, which determine the appropriate code level; and

(4) Analysis of the content descriptors in the current and the new codes. This approach seeks to identify the parallels in definitions in the current and the new codes. Given that one of the major reasons for the new system is that the old system is imprecise and not uniformly applied, this approach has obvious limitations.

We developed our assumptions starting from a one-to-one crosswalk from old codes to new codes. This exact crosswalk is potentially possible for new patient office visits, initial hospital visits, and initial consultations, if the number of new codes is the same as the number of old codes. For the established patient office visits and subsequent hospital care, it is necessary to condense a larger number of old codes into a smaller number of new codes in order to reach this starting point. We then examined all available data sources. In general, we placed greatest reliance on our analysis of the content descriptors and on data from the field study, less on the Hsiao data, and least on the NAMCS data. The crosswalk we used for this proposed rule follows:

Old code*	Thousands of bills	New code
New Office:		
90000	575	ON005
90010	1706	ON007
90015	2719	ON009
90017	1046	ON011
90020	3334	ON011 (70%), ON013 (30%)
Established Office:		
90030	2403	OE015
90040	12198	OE017
90050	47162	OE019
90060	47611	OE019
90070	9873	OE021
90080	4367	OE023
Initial Hospital:		
90200	511	IH110
90215	1890	IH113
90220	5800	IH113 (50%), IH115 (50%)
Subsequent Hospital:		
90240	7021	SH200
90250	24842	SH200 (80%), SH210 (20%)
90260	31974	SH200 (50%), SH210 (50%)
90270	7607	SH210
90280	2567	SH215
Initial Consultation:		
90600	1655	IC299
90605	1044	IC300
90610	1254	IC310
90620	5659	IC320
90630	1423	IC330
Subsequent Consultation:		
90640	243	FC400
90641	527	FC410
90642	978	FC410
90643	382	FC415

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The crosswalk we used is quite consistent with how physicians actually coded these services in the field study, in which physicians coded visits using both the current and the new definitions. We are, however, continuing to examine the issue of the distribution of codes to use for crosswalk purposes and we specifically invite comments on this issue.

In addition, as discussed in more detail later, there would be simultaneous changes in payment conventions and billing rules for a number of items such as multiple surgeries, co-surgeons, and bilateral surgery. Application of uniform payment policies presents two problems in projecting volumes. First, billings for these "modified" services have been inconsistently reported in the past. Second, the reduction in payment for surgeries may lead physicians to bill for services furnished but not now billed for or may encourage some physicians to bill for additional services, for example, to serve as assistants at surgery for one another.

Overall, implementation of the physician fee schedule would be a massive change in Medicare payment for physicians' services and clearly the most fundamental change in part B since the enactment of the Medicare program in 1965. Despite this massive change, the statute requires that implementation of the fee schedule be budget neutral in 1992. The setting of the 1992 CF is particularly important not only because of the statutory budget neutral requirement, but also because it serves

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as the basis for all future updates in payment. Moreover, the statute does not provide any authority to rebase the CF in subsequent years, and as is noted elsewhere in this preamble, MVPS is not a timely nor an adequate substitute for our need to estimate anticipated volume of services as accurately as possible in setting the CF.

We would further note that anticipating the volume and mix of services was also a problem when the hospital prospective payment system (PPS) was implemented. The diagnosis-related group (DRG) case mix index for the first year of the new system increased by 9 percent. Only a small fraction of the change was due to an actual change in case mix. The balance was attributable to changes in coding practices. The physician fee schedule is significantly more complex given the number of physicians versus the number of hospitals (500,000 versus 6,000), the number of codes involved (475 DRG codes versus 7,000 CPT codes), the beneficiary impact under the fee schedule, and the multitude of ancillary policies and payment issues associated with the physician fee schedule. Another major difference is that hospitals are paid a bundled payment while physicians are paid a separate fee for each individual service, increasing the opportunity for increased volume. Thus, the possibility of a response to the physician fee schedule of significant magnitude must be taken into account along with other factors in predicting the initial volume of services, given that some physicians will face changes in payments per procedure under the new fee schedule.

More specifically, physicians and beneficiaries could respond to the implementation of the fee schedule in the following ways:

- Physicians could appropriately bill under our proposed new definitions of services and associated payment conventions for services for which they do not currently bill.
- Beneficiaries could seek additional services because of lower out-of-pocket costs.
- Some physicians could bill for a higher level of services, particularly visits, or furnish more concurrent care, consultations, assistants at surgery, and diagnostic tests under the fee schedule.

It has been suggested by some physician groups that we are expecting that physicians would respond to losses under the fee schedule by increasing the volume of services furnished by 50 percent and that we would reduce the CF by the same percent. This is an exaggeration of the magnitude of the adjustment, as discussed elsewhere in this preamble. However, as noted above, we believe changes would occur on the part of both physicians and beneficiaries and could be due to changes in definitions of service, changes in payment levels, or changes in out-of-pocket costs. Whatever the source, we do expect there to be a volume response to the set of changes that would occur with implementation of the fee schedule. Indeed, in setting an initial budget-neutral CF and predicting frequencies of services, it is not necessary to determine a specific cause of a change in volume. It is only necessary for us to judge that a response is anticipated and incorporate this judgment in fulfilling the statutory budget-neutral requirement. In its 1991 annual report to Congress, the PPRC reviewed the literature on behavioral adjustments, and concluded that the results of several time-series studies, including one by the PPRC staff, suggest that the volume of services is affected by fee changes.

The fourth factor in the MVPS incorporates changes in law or regulations that affect the baseline rate of increase. In setting the MVPS for FY 1990 and FY 1991, we used actuarial estimates of the savings to be achieved from the provisions of Public Law 101-239 and Public Law 101-508. Estimates of the savings provisions included a behavioral adjustment. (This may lead to higher fee increases in the future.) If we used savings figures without a behavioral adjustment, the MVPS for those years would have been substantially lower.

In predicting services and frequencies for CY 1991 in order to compute the CF in a manner consistent with the budget neutrality requirement, we had to account for the changes due to factors such as physician use of new uniform service definitions and associated payment rules as well as for changes in the volume of services resulting from changes in fees.

While we have done our best to predict frequencies of services under the standard definitions, using the best available data, we believe that historical experience in the Medicare program shows that it is also necessary to incorporate estimates of aggregate volume and intensity increases resulting from changes in pricing policies to better predict future program outlays. If a failure to account for these increases resulted in a CF set too high, this would be contrary to Congressional intent under Public Law 101-239. It would also mean that the part B trust fund outlays would be larger than anticipated. This would not only increase the overall Federal budget deficit, but could also create pressure on Congress to increase the part B premium above the rates currently specified in Public Law 101-508 in order to minimize the impact on the budget deficit.

Using the annual update process (linked to the MVPS described below) to correct for a CF set too high due to estimation errors is not a good solution for several reasons. First, under the default provision, we are severely limited as to the amount the update can be reduced if the MVPS is exceeded. The maximum reductions in the update is 2 percentage points for 1992 and 1993, 2.5 percentage points for 1994 and 1995, and 3 percentage points for 1996 and thereafter. Therefore, if we set the 1992 CF 10 percent too high, the maximum reduction in the 1994 update under the default provision would be 2.5 percentage points. Second, even if our projections in setting the 1992 CF were underestimated by only 2 percent so that we could adjust the 1994 update by the full amount of the excess, there would still be a permanent loss to the trust funds of $1.6 billion for just CY 1992 and 1993. Third, and perhaps most significantly, the default MVPS does not correct for the increase in the base that occurs if we underestimate the aggregate volume and mix of services in setting the initial CF. This is because the MVPS is a "rolling standard" with the base changing each year. Thus, even if we adjust the 1994 update as indicated above, the resulting higher expenditures in FY 1992 and FY 1993 would serve as the base for the FY 1993 and FY 1994 standards, respectively.

Fourth, if we underestimate the aggregate volume and mix of services, not only would the base increase to which the default MVPS is applied, but also the default MVPS and the Medicare physician spending baseline would increase. This occurs because the statutory formula for the MVPS is based on several factors including an aggregate volume and intensity factor. The statute specifies that the default include the average historical aggregate volume and intensity increase for a particular 5-year period (that is, the 5 FYs ending with the preceding FY). Thus, if we fail to make a behavioral adjustment in FY 1992 and a response occurs, actual expenditures in FY 1992 would be higher than estimated. Those higher expenditures would be reflected in a higher volume and intensity factor for the default MVPS for each of the fiscal years in which FY 1992 is included in the default MVPS calculation. These higher MVPS defaults would drive the physician spending baseline up from

that established based on the initial estimate of the CY 1992 CF.

For these reasons, our calculation of the CF for CY 1992 must take into account expected aggregate changes in the volume and mix of services as a result of responses to implementation of the fee schedule and we cannot completely rely on the MVPS to correct the problem.

We have refined our thinking about applying adjustments for behavioral changes. In the past both the Congressional Budget Office (CBO) and we have assumed that changes occur to offset about half of the savings that would otherwise have been achieved by reductions in fees.

The behavioral effect for the physician fee schedule is more complex, however, because we must predict responses to both increases and decreases in payments for various services, standardization of coding and other policies, etc. The same physician may experience increases in fees for some services and decreases in fees for other services. Therefore, we believe that it is appropriate to apply behavioral adjustments to the net change in Medicare revenue of a physician practice. The information on physician mix of service needed to estimate behavioral effects using this approach has been derived through analysis of the BMAD provider file.

Another issue is whether physicians would reduce, increase, or not change the volume of services furnished in response to increases in their fees and Medicare revenue. On the one hand, physicians might be more willing to supply services as the Medicare fee increases. Alternatively, some physicians might respond to increases in Medicare fees by furnishing fewer services to Medicare beneficiaries or by spending more time with the same number of Medicare patients. We have much less experience with observing behavioral responses to increases in fees. We have considered the issue of the behavior of "winning" and "losing" physicians for purposes of determining the CF for this proposed rule. Only one study, which was conducted in the 1970s and was limited to one State, has addressed the issue of behavioral responses to increases in fees. Based on this lack of data, it is our judgment that no adjustment would be appropriate for "winning" physicians. The CF developed for this proposed rule reflects this conclusion.

Another issue in predicting outlays under the new system is whether physicians with charges below the new fee schedule payment amounts (or transition payment amounts) would raise their actual charges up to the maximum payment allowed under the new system. Under section 1848(a)(1) of the Act, Medicare payments to physicians must be the lesser of the actual charge or the fee schedule amount. In computing the CF for this proposed rule, we assumed that all submitted charges would be at or above the fee schedule amount. Although a relatively small number of physicians presently submit bills to Medicare carriers for amounts less than the prevailing charge for the locality, we believe that the fee schedule amounts will be sufficiently well known that virtually all physicians would conform their charge structures to the fee schedule amounts.

With respect to "losing" physicians, that is, physicians predicted to experience a net loss of Medicare revenues, we have assumed volume and intensity changes sufficient to offset 50 percent of the Medicare revenues that would otherwise occur. This means that if a physician practice with Medicare revenues of $100,000 would have these revenues reduced under the fee schedule to $90,000, we are assuming that 50 percent of the loss or $5000 would be made up for through volume and intensity increases. We emphasize that this is not a 50 percent increase in volume.

This adjustment has the effect of lowering average payments in CY 1992 by 3 percent. Because the law provides for budget neutrality in CY 1992 to be established only through the CF, this 3 percent reduction in average fees would be achieved through a l0.5 percent reduction in the CF. This is because of the so-called "leveraging" effect. That is, because the statute requires that the CF for 1992 be budget neutral, the effect of the behavioral adjustment can only be applied to the CF. The CF would bear all the "weight" of the behavioral adjustment; thus, the 3 percent behavioral adjustment that would apply to all fees in 1992 would be leveraged to a 10.5 percent CF adjustment for 1992.

As noted previously, the statute requires budget neutrality only in 1992. The statute does not specifically require budget neutrality in the other years of the transition. Had we been given the authority to apply budget neutrality throughout the transition and make behavioral adjustments for fee changes in each year of the transition, the 1996 CF would be reduced by approximately the same 10.5 percent we are projecting for the CF adjustment for behavior in 1992 only (resulting from the "leveraging" effect).

Further, the PPRC in its 1991 annual report to the Congress recommends a 1 percent reduction in Medicare fees (3.0 percent reduction in the CF) to account for behavioral adjustments to the fee schedule. This recommendation is roughly consistent with a model that assumes 50 percent of net losses would be offset by increases in volume and that 35 percent of net gains would be offset by reductions in volume. While we agree with the 50 percent offset for "losing" physicians, as noted earlier, we do not think there is sufficient evidence to support a volume offset for "winning" physicians.

In summary, the statute requires the Secretary to determine a CF that is budget-neutral to the Medicare outlays that would otherwise have been paid without the fee schedule in 1992. The scope and magnitude of the changes in payments, limiting charges, standardized coding and other policy changes makes the task of predicting frequencies for individual services all the more difficult. Experience suggests that there would be responses to the multitude of changes that are occurring. We do not believe that the MVPS is an adequate mechanism to address volume responses. It is our judgment that to fulfill the statutory budget neutrality requirement, an aggregate adjustment to the CF would need to be made to account for anticipated changes. Taking all these factors into account, we propose a conversion factor of $26.873. This does not reflect any update for 1992.

4. Future Updates of CF

Beginning in CY 1991, section 1848(d)(2) of the Act requires the Secretary to recommend to Congress by April 15 of each year an update to the fee schedule CF for the following calendar year. In making the recommendation, the Secretary is required to consider the increase in the MEI (a measurement of inflation in the cost of running a private medical practice), the percent increase in aggregate expenditures for physicians' services in the first preceding fiscal year (FY) over the second preceding FY compared to the performance standard rate of increase set for the first preceding FY, access to services, changes in volume and intensity of services, and other factors he considers appropriate. (The performance standard rate of increase was described earlier as a central feature of the MVPS.)

Congress may choose to enact the Secretary's recommendation, enact some other update amount, or not act at all. If Congress does not act, the annual update is set according to a "default" mechanism in the law. The law states

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that the update must equal the "appropriate update index" adjusted by the amount actual expenditures for the first FY preceding the recommendations were greater or less than the performance standard rate of increase for that FY (referred to below as the "performance adjustment").

Section 1848(d)(3)(A)(ii) defines the "appropriate update index" as the index that was in effect in 1989 for a category of services. In 1989, physicians' services, services and supplies incident to physicians' services, and the services of certified registered nurse anesthetists and certified nurse midwives were subject to the MEI. Other services, such as the services of other nonphysician practitioners (See section IV. A. 3., Services of Nonphysician Practitioners.) and technical components of diagnostic tests billed separately by suppliers were subject to the IIC in 1989.

Many of these services currently updated by the IIC, such as diagnostic tests billed by suppliers and the services of some nonphysician practitioners (independently practicing PTs and OTs) are specifically covered under the fee schedule under the broader definition of physicians' services in section 1848(j)(3) of the Act. Having differential updates for services covered under the fee schedule based on the type of practitioner furnishing the services would be confusing and inconsistent with other objectives of the fee schedule, including the elimination of specialty differentials. It would result in having two fee schedules in an area with different payment amounts for physicians and suppliers furnishing the same service. We believe that the same index should be used to update all services covered under the fee schedule, and we are proposing that it be the MEI (§ 415.30).

Payments for the services of the remaining nonphysician practitioners (PAs, NPs, CNSs, psychologists, and CSWs) are currently limited by the prevailing charges of physicians and although not directly covered under the fee schedule, will be limited by a percentage of the physician fee schedule amount beginning in 1992. Thus, while they are presently updated by the IIC, in reality they are ultimately controlled by the MEI. The IIC is not mandated by statute. It was implemented through regulations (§ 405.509) to limit annual increases in reasonable charge payments for nonphysician services as we believed that section 1842(b)(3)(K) limited the application of the MEI to physicians' services. With the broader definition of physicians' services in section 1848(j)(3), and with nonphysician practitioners' services tied to the physician fee schedule and therefore the MEI, we also propose to recognize the MEI as the "appropriate index" for updating payment levels for the services of these practitioners since they are tied to the fee schedule.

Under the default mechanism, the update would equal the MEI plus or minus the performance adjustment. Since there are different performance standard rates of increase for different categories of services, the performance adjustment could yield different CF updates. For FY 1991, there were different rates for surgery and nonsurgery. For example, given that the performance standard rate of increase for FY 1990 is 9.1 percent, assume that actual expenditures for FY 1990 increase by 10.1 percent over FY 1989. If Congress does not set the update, the default mechanism would take effect. For example, if the MEI for CY 1992 were 4 percent, the CF update for CY 1992 would be 3 percent, because actual expenditures for FY 1990 exceeded the performance standard by 1 percentage point. Conversely, if the actual expenditures for FY 1990 increased by 8.1 percent over FY 1989, the CF update would be 5 percent (4+1) because actual expenditures were 1 percentage point less than the performance standard. The law limits the downward adjustment to 2 percentage points for CYs 1992 and 1993, 2.5 percentage points for CYs 1994 and 1995, and 3 percentage points thereafter. There is no limit on the upward adjustment.

F. Data Used to Develop the Fee Schedule

1. Sources of Data

In this proposed rule, national level claims data were used to: (1) Compute RVUs for practice expense and malpractice costs, (2) convert Harvard relative work values into units on a common scale, with practice expense and malpractice RVUs, and (3) compute the CF, with adjustments for the 1992 through 1995 transition rules. We considered two possible sources of national data containing procedure level data we currently collected for completing these fee schedule development tasks: (1) The National Claims History (NCH) and (2) BMAD files (Procedure, Provider, and Beneficiary files). Both the NCH and BMAD are routine data-gathering systems that provide detailed data for Medicare beneficiaries (except those enrolled in risk HMOs) and were potentially useful for computing both national average charges and the CF.

The BMAD files are submitted annually by the carriers whereas NCH is a repository for all claims reported by carriers through nine Common Working File (CWF) host sites on a daily flow basis. The CWF process was not fully implemented nationwide until 1991; however, calendar year 1990 NCH data were available for 35 of the 56 carriers. The most current BMAD files available for all carriers except the Rhode Island carrier were from 1989. The latest data available for Rhode Island were from the 1988 BMAD files. BMAD 1990 data will not be available until late fall of 1991.

Because we wanted to use the most current and complete data available, we primarily used the 1989 BMAD files for calculating the national CF and for calculating the practice expense and malpractice RVUs.

Extensive efforts were made to validate both the NCH and BMAD files. The BMAD files, for a selected number of carriers, were compared with 100 percent claims data from NCH and two other independent data sources. In our data validation effort, CFs were calculated using Harvard's Phase I RVUs and the total allowed charges for each of the various data sources. Each of the CFs derived from the independent data was compared with the BMAD/NCH data-derived CF. This comparison showed that the CFs varied by no more than one percent for most carriers that were studied. Data validation also included the comparison of the allowed charges, allowed services, and the average allowed charge for 50 selected HCPCS codes. Further details of this validation process are provided in the next section. After analyzing the results of these data comparisons, we believe that BMAD and NCH are reliable sources of data for establishing the fee schedule.

One concern using 1989 BMAD and 1990 NCH data is that we are required to compute a CF that would provide budget neutral outlays for 1991. Therefore we updated these data to: (1) Reflect 1991 payment rules, as discussed later, and (2) account for estimated changes between 1989 and 1991 in the mix of services furnished. (This second adjustment would not significantly affect our estimates of average charges per service upon which the practice expense and malpractice RVUs are based, but it could affect the computation of the budget neutral CF. For example, a CF computed using the 1989 service mix could be too high if services with low relative values (for example, visits) increase more rapidly than services with high relative values (for example, major surgical procedures) during this time period.)

2. Description of Data Files

a. Part B Medicare annual data (BMAD). The BMAD files are annual data submissions by the Medicare Part B carriers. The BMAD consist of four files—three utilization files (Procedure, Provider and Beneficiary files) and one pricing file (Prevailing/Pricing file). The utilization files contain data for services furnished in the calendar year and processed through March 31 of the following year. The pricing file contains prevailing and pricing screens for the current year in which the file is submitted.

(1) Procedure file. The Procedure file is an aggregate file representing nearly 100 percent of part B claims. It provides frequency of allowed services and allowed charges for each procedure code by carrier, locality, specialty, place of service, and type of service. We used the 1989 Procedure file and made adjustments to reflect 1991 program payments. This file was used to calculate the relative values for practice expense and malpractice costs and to convert Harvard relative work values into units on a common scale with practice expense and malpractice RVUs.

(2) Provider file. The Provider file provides detailed claims data for a 5 percent sample of physicians' and suppliers' profiling identification (ID) numbers. For each provider ID number there is detailed line item data for each service furnished by that provider in the calendar year. These line items include procedure code, frequency, charge amounts, specialty, place of service, type of service, locality, assignment indicator, dates of service, processing indicators, and payment screen indicators. This file was used to compute the CF adjustment attributable to expected behavior offsets.

(3) Beneficiary file. The Beneficiary file provides detailed claims data for a 5 percent sample of beneficiaries using services and submitting at least one claim. The file also contains detailed data for 100 percent of all beneficiaries entitled to Medicare due to end stage renal disease. For each beneficiary ID number, there is detailed line item data for all services furnished to the beneficiary in the calendar year. Each line item includes the beneficiary ID number, provider ID number, procedure code, frequency, charge amounts, specialty, place of service, type of service, locality, assignment indicator, dates of service, processing indicators, and payment screen indicators. This file was used to estimate the impact of standardizing payment policies (for example, global fees) and impact on beneficiary liability.

(4) Prevailing/Pricing file. The Prevailing/Pricing file contains pricing data generated by the carriers during the reasonable charge update. It contains prevailing charges or fee schedule amounts (whichever is appropriate) for every procedure code in the carriers' pricing files. This file was used to "age" the 1989 Procedure File to reflect 1991 payment rules.

b. National Claims History (NCH). The NCH is a national repository of all Medicare claims processed by our fiscal agents. The NCH was implemented simultaneously with the CWF, a major innovation in the way that Medicare claims are processed. The CWF is a decentralized benefit authorization process in which nine host sites review all claims and authorize payment by the carriers and intermediaries. At the point of payment authorization, all claims data are transmitted to the NCH for use in program evaluation and program development. As of January 1, 1990, 35 of Medicare's 56 carriers were using the CWF. The remainder entered the system at varying dates during 1990. Although the NCH data were not available to us in time to be used in this proposed rule's calculations, we expect to use 1990 NCH data to compute the initial CF for the final rule, supplemented by adjusted 1989 BMAD files for those carriers not using the CWF for the full year to compute the initial CF for the final rule.

3. Data Validation

The BMAD files were validated by comparing the BMAD Procedure file data for selected carriers to the most recently available (that is, 1987 or 1988) 100 percent Medicare claims data collected by independent sources. There were 10 carriers for which data were available for comparison, representing approximately 21 percent of Medicare allowed charges. The NCH was one of the sources used in the comparison. The other two sources of data were files that were brought in by independent contractors commissioned by us to collect 100 percent Part B data for other analytical studies. Some of these files had to be slightly modified so that they would be analogous to the BMAD files.

The following files were used in the data comparison:

1987—Claims history data for Northern Minnesota, Southern Minnesota, South Carolina, North and South Dakota, Delaware, District of Columbia, and Washington. These data were collected from the carriers by Mandex Incorporated.

1988—Claims history data collected from Pennsylvania by H. K. Research Corporation.

1988—We extracted from the NCH the claims processing data for Maryland and Texas.

Total allowed services, total allowed charges and average allowed charges from BMAD were compared for each carrier with an independent data source. The same variables were compared by specialty, by place of service, and by type of service from the same sources. In addition to aggregate analyses, utilization was compared for 50 selected procedure (HCPCS) codes for each of the data sources. Since one of the major reasons for performing these data comparisons was to determine whether BMAD was accurate enough for calculation of a national CF, CFs were calculated for each carrier using the different data sources. The calculation of the CFs for this comparison was based on Harvard's Phase I RVUs and the GAFs obtained from UI/CHER. The following CFs resulted:

Carrier/carrier number	BMAD file	Independent data source
1987 Data:		
Delaware (00570)	0.93	0.91
District of Columbia (00580)	1.04	1.03
Northern Minnesota (00720)	0.78	0.78
Southern Minnesota (10240)	0.90	0.89
South Carolina (00880)	0.90	0.91
North/South Dakota (00820)	1.02	0.96
Washington (00930)	0.98	0.97
1988 Data:		
Pennsylvania (00865)	0.98	0.98
Maryland (00690)	1.01	1.00
Texas (00900)	1.11	1.10

After comparing the CFs noted above and making other data comparisons for both aggregate data and selected procedure (HCPCS) codes between BMAD and the independent data sources, we concluded that, although there were some data reporting differences, overall the data were accurate and reliable.

Some of the problems encountered in these data analyses such as truncated data should not occur when the initial CF is actually calculated for the final rule because it will be based on NCH data that is line item data (by individual service) that will be supplemented with BMAD Beneficiary files, which is also line item data. Here, the data comparison focused mostly on the BMAD Procedure file because it represents virtually 100 percent of total charges and was to serve as the basis

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for computing the practice expense and malpractice RVUs.

4. Aging of Data To Reflect 1991 Payment Rules and Expenditures

Because we are required to compute a CF that would provide budget neutral outlays for 1991, the BMAD files have been adjusted to reflect 1991 payment rules. In general this aging process has been accomplished by adjusting 1989 and 1990 prevailing charges for both Public Law 101–239 and Public Law 101–508.

These adjusted prevailing charges were appended to the 1989 BMAD Procedure, Provider and Beneficiary files. These data were compared to the average allowed charge calculated based on the utilization reported in those files. These data were used in conjunction with assumed increases in actual and customary charges to determine allowed charges for 1991.

a. Public Law 101–239 payment provisions requiring data adjustments for 1990. The sections of Public Law 101–239 specified below set forth provisions requiring data adjustments. Accordingly, the adjustments we made follow:

• Overvalued procedures—We reduced the prevailing charge for 245 overvalued procedures by the amount equal to one-third of the amount that the procedure was overvalued in each locality but not more than 15 percent (section 6401).

• Designated specialty—For certain procedures, we capped the prevailing charge at the prevailing charge level of the specialty most frequently performing the procedure (section 6401).

• Radiology reduction—We made a 4 percent reduction in the CFs for radiology services subject to the fee schedule (section 6105).

• MEI differential updates—We made the following adjustments:

—4.2 percent increase for primary care services.
—0 percent increase for radiology services paid for on a reasonable charge basis (section 6107).
—0 percent increase for portable x-ray suppliers paid on a fee-for-service basis.
—0 percent increase for anesthesia services, including CRNA fee schedule services.
—0 percent increase and possible decrease for overvalued procedures.
—2 percent increase for all other physician services.

b. Public Law 101–508 payment provisions requiring data adjustments. The sections of Public Law 101–508 specified below set forth additional provisions requiring data adjustments. Accordingly, we made the following adjustments:

• Overvalued procedures—Effective January 1, 1991, we again reduced payments for the same procedures reduced under Public Law 101–239 by the same amount as they were reduced in 1990 (section 4101).

• Primary care floor—Effective January 1, 1991, we raised the primary care floor from 50 percent to 60 percent of the national weighted average. The statute requires that the CF be determined without regard to this provision (section 4105)

• Anesthesiology reduction—Effective January 1, 1991, we reduced anesthesiology CFs by up to 15 percent based on comparisons with adjusted local amounts (section 4103).

• Radiology reductions—Effective January 1, 1991, we reduced radiology fee schedule CFs up to 9.5 percent based on comparisons with adjusted local amounts. Also, we reduced all radiology prevailing charges paid on a reasonable charge basis to the fee schedule amount (section 4102).

• Assistants-at-surgery—Effective January 1, 1991, we limited payments to physicians used as assistants-at-surgery to 16 percent of the surgical global fee. Also, we may no longer pay for assistants-at-surgery for procedures in which a physician is used as an assistant-at-surgery in fewer than 5 percent of the cases (section 4107).

• Reduction of 6.5 percent—Effective January 1, 1991, we reduced prevailing charges for all physician procedures other than the overvalued procedures, radiology, primary care services, anesthesia, pathology and diagnostic test technical components, and certain other specified services by 6.5 percent (section 4101).

• Pathology services—Effective January 1, 1991, we reduced prevailing charges for physician pathology services by 7 percent (section 4104). (Independent laboratories that bill for a professional and technical component, in some circumstances, would be an exception to this requirement.)

• Technical component of diagnostic tests—Effective January 1, 1991, payment for the technical component of high volume diagnostic tests was capped at the median across all localities (section 4108).

• Primary care services—We allowed a 2 percent increase in the prevailing charges for primary care services and 0 percent for all other services (section 4105).

• Technical components of certain scanning services—Payments for technical components of magnetic resonance imaging (MRI) services and computerized axial tomography (CAT) services furnished after December 31, 1990, were reduced by 10 percent (section 4102).

• Interpretation of EKGs—Effective January 1, 1992, separate payment for interpretation of an EKG may not be made if payment is made for a visit in which an EKG was performed or ordered to be performed. The statute requires that the CF be determined as if the provision were in effect in 1991 (section 4109).

• New physicians, PTs, and OTs—The new physician policy has been expanded to include other practitioners. Payment in the first year of practice must be based on 80 percent of the prevailing charge or fee schedule, 85 percent in the second year, 90 percent in the third year, and 95 percent in the fourth year. (The "first year of practice" is the first full CY during the first 6 months of which the physician, PT, or OT furnishes professional services for which payment may be made under part B plus any portion of the prior calendar year if that prior year does not meet the first 6 months' test. The "second, third, and fourth years of practice" are the first, second, and third CYs following the first year of practice, respectively.) Primary care services or those furnished in a rural HMSA are exempt. The statute requires the CF to be determined as if the provision were fully in effect in 1991.

These files must be further adjusted as follows:

• Procedure code changes—Carrier-defined local procedure codes and deleted procedure codes have been crosswalked to established HCPCS codes. Data for new and revised procedure codes (for example, visit codes) have been estimated.

• Standardization of payment policies—Data adjustments have been made to allow for standardization of modifiers recognized for payment purposes, global surgery fees, site of service differentials, and limited payment for services and supplies furnished incident to a physician's service.

V. Definitions

A. Defining a Unit of Service

1. Coding of Medical Visit Services

Section 1848(c)(5) of the Act requires the Secretary to establish a uniform procedure coding system for the coding of all physicians' services, including an appropriate coding structure for visits and consultations. As part of the process of establishing a uniform coding system, the Secretary is required to consult with the PPRC and "other organizations representing physicians."

Section 6102(e)(4) of Public Law 101–239 requires the Secretary to conduct a study of the desirability of including time as a factor in establishing visit codes and report to Congress by not later than July 1, 1991. The report must include the desirability of modifying the number of visits codes, whether use of time would result in greater uniformity than modification of clinical descriptors, and the ability to audit physician time accurately. (Section 4118(d) of Public Law 101–508 removed a restriction previously imposed by Public Law 101–239 that had prohibited the use of time for coding visits and consultations before January 1993.)

In 1983, we announced the requirement that physicians and carriers use the HCPCS to code and bill for physicians' services. The HCPCS has three levels:

Level 1—CPT.
Level 2—Alpha-numeric HCPCS codes.
Level 3—Carrier-unique local codes.

The CPT is a listing of descriptive terms and numeric identifying codes and modifiers for reporting medical services and procedures performed by physicians. The HCPCS includes CPT descriptive terms and numerical identifying codes and modifiers for reporting medical services and procedures and other materials contained in CPT that are copyrighted by the AMA.

We have an agreement with the AMA to use the CPT for coding of physician services. Under that agreement, we are represented by one voting member on the CPT Editorial Panel, the organization that is responsible for establishing the codes and their definitions. Although we use the CPT for coding purposes, we establish the Medicare payment rules with respect to these codes. Services that are not specifically coded in CPT (for example, chiropractor services) are coded in the alphanumeric codes of level 2 HCPCS that we establish and maintain. Services that are not included in either level 1 or level 2 of HCPCS may be coded by carriers using carrier-unique local codes.

Similarly, there are three levels of modifiers for codes. The CPT has modifiers as part of that coding system. We also have additional national HCPCS modifiers that are used for payment, billing, and medical review purposes. Lastly, carriers are permitted to use carrier-unique modifiers for payment and administrative purposes.

There are several major issues pertaining to the use of these codes to generate payment for physician services under the physician fee schedule. Three of these issues pertain to defining a unit of service:

• How to define visits so that visit codes are used reliably and consistently by all physicians and all carriers.

• Which services would be included in the global surgery fee for a specific procedural code, since the services to be included would determine the RVUs to be associated with the code.

• When and to what extent to permit use of local codes in a national payment system.

A fourth major issue of when to provide a payment differential based on the presence of a modifier is contained in our discussion of adjustments to payments.

a. Current Use of CPT Visit Codes. Under the current system, Medicare spends approximately $10 billion or one third of total physician dollars on medical visits and consultations. This figure could increase as the fee schedule is phased in, since the Harvard study results have shown cognitive services such as visits generally to have been undervalued relative to other services under the customary, prevailing, and reasonable charge payment methodology. The BMAD files also show that about 13 percent of physician dollars pay for office visits, while another 10 percent are for hospital visits. Smaller sums are spent for specialized visits (5 percent of physician dollars), consultations (4 percent), and nursing home and home patient visits (1 percent).

The CPT currently distinguishes among visit services for six sites of service: office, home, inpatient hospital, emergency department, SNF, and domiciliary care facilities. The CPT also differentiates between new and established patients for several sites; in the other sites, a distinction is made between initial and subsequent visits. Depending on the site of service and new/established or initial/subsequent categories, the CPT contains three to six levels of service for visits. In addition, CPT contains specialized visit codes for several categories of services, including psychiatric, dialysis, ophthalmologic, and critical care visits. Visits are defined separately from consultations.

b. Variation in Coding of Medical Visit Services. There currently is wide variation in the coding of physician visits. This variation must be reduced in order to ensure that payment for visits under the fee schedule is rational and equitable. Much of the variation in coding is due to the very subjective nature of the current CPT visit definitions.

Results of our review of 1989 BMAD files support the view that there is significant variation in the use of the CPT codes for physician visits. For example, one carrier showed 61 percent of its total billings for office visits for established patients under code 90060, "Office and other outpatient medical service, established patient; intermediate service," while another carrier showed only 11 percent of its billings for this same code. Code 90060 is third from the top in an array of 6 levels of visits of increasing complexity.

Similarly, the final report of phase II of the Harvard study revealed that physicians vary in how they code the same service, even when they agree on the work estimates for the service. The Harvard research team asked physicians who were participating in the survey of work to code some of the vignettes as they would code them if they were billing Medicare. The codes that physicians used frequently were often not the same codes that the writers of the vignettes had assigned to the vignettes, but were often adjacent codes.

The most common explanation offered for the variation in the use of visit codes is that the current CPT definitions for these services are not clearly differentiated from one another. In addition, a number of other features of the CPT visit codes and their use have been cited as causes of the wide variation in the way these codes are used in practice.

Separation of the detailed descriptions from the listing of visit codes in the CPT is believed to discourage some physicians from reading the descriptions at all. In addition, many believe that current narrative descriptions of the codes do not clearly delineate differences among levels of service. Further, because the terminology for levels of service (for example, limited or intermediate) is not neutral, it may encourage physicians to upcode. For example, a visit that meets the criteria to be billed as a "limited" service may not be billed as a "limited" service because the physician does not view the service as being "limited" (that is, less than a "standard" or "full" service).

Another difficulty with the use of the current CPT visit codes is that when the transition to the CPT required carriers to map their prior coding system to the new codes, some carriers had fewer levels of service than the CPT (for example, 3 levels vs. 5 or 6) and therefore crosswalked according to other criteria (for example, payment levels). In addition, we have not made

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any comprehensive effort to require carriers to tell physicians how to use the different levels of codes properly. Physicians often use only three or fewer levels of service to report their visits (although no three levels are used consistently). Some preprinted "superbills" only list the three most expensive levels of visit codes and therefore discourage use of the least expensive two or three categories. Thus, while a 5- or 6-level coding structure for a given visit service may be in place in the CPT, in practice, not all the levels may be in use and the levels used are subject to varying interpretation.

c. HCFA goals for new visit codes. Our goal for the development of new visit and consultation codes was that the new codes meet two criteria:

- They should be used reliably and consistently by all physicians and carriers; that is, the same service should be coded the same way by different physicians.
- They should be defined in a way that enables us to properly crosswalk the new codes to the relative values for the Harvard vignettes so valid RVUs for work are assigned to the new codes.

d. Recent studies to support the creation of new visit and consultation codes. Since the model fee schedule was published in the **Federal Register** on September 4, 1990 (55 FR 16378), there have been two studies that have provided information for use in the creation of new visit codes. Phase II of the Harvard study focused much of its effort on a more intensive study of visits and consultations than Phase I. In addition, the PPRC sponsored a consensus process that produced recommendations for new visit codes. These two studies contributed substantially to the development of the proposed new visit codes by the CPT Editorial Panel that were subsequently field tested, as described in detail in section V. A. 1. g.

e. Harvard Study Phase II. In Phase II of its study, Harvard surveyed visits for 15 specialties that had not been surveyed in Phase I and resurveyed 4 specialties. Therefore, in Phases I and II, Harvard had surveyed a total of 31 specialties for a total of 414 visit vignettes. More detail on which specialties estimated the work involved in the vignettes in Phases I and II can be found in the final reports from Harvard. Information regarding how to acquire those reports is contained in Addendum D.

The Harvard study provided work values and time values for all vignettes surveyed and relative values for each CPT visit code by physician specialty. These relative values are contained in the list of physician work values as Addendum B.

Review of the work values for each CPT visit code by physician specialty indicates that the range of work values by the current CPT codes varies significantly. The information on physician work that was acquired from the Harvard study for these visit vignettes was used by the CPT Editorial Panel in its development of new codes for office visits, hospital visits, and consultations.

f. CPT panel development of new visit codes. The CPT Editorial Panel developed new visit codes for office visits, hospital visits, and consultations at its November 2 through November 4, 1990 meeting. The CPT Editorial Panel carefully considered the recommendations of the PPRC Consensus Panel and the findings from Phase II of the Harvard study in its development of new visit codes. In addition, in developing the new visit codes, the CPT Editorial Panel considered the issues we raised in our discussion of visit codes in the model fee schedule notice (55 FR 36178; September 4, 1990, part IV). These issues included the appropriateness of using time in visit coding, the levels of service, the need for different codes for different sites of service, the definition of consultations versus visits, and the need for different codes for new and established patients.

The proposed CPT codes for office/outpatient visits for new and established patients, initial and subsequent hospital visits, and initial and subsequent consultations are contained in Addendum E.

We have not yet come to a decision regarding the coding of physician visits. Based on our review of research performed by the Harvard team, however, we believe that characteristics of a visit such as duration of the service, condition of the patient, new versus established patient for office visits and initial versus subsequent encounter for hospital visits are related to the physician work in a visit and may be appropriate elements of a coding system for visits.

However, we intend to carefully review the comments we receive on the proposed CPT visit codes, and to examine the results from the pilot test of those proposed codes (discussed more fully in the following section) before we decide how we will establish uniform coding of visits as required by the law.

g. Pilot test of new visit codes. In January of 1991, we initiated a pilot test of the proposed new visit codes jointly with the AMA. The pilot test consisted of two parts: A reliability test and a field test.

(1) The reliability test. The reliability test was intended to answer the question: "Will different physicians bill the same services using the same codes?" That is, will the codes result in reliable coding?

To test the hypothesis that different physicians would code the same service similarly under the proposed new coding system, we (AMA and HCFA) had representatives of physician specialty societies develop clinical descriptions of typical patient visits. The description of each case included the information that would be available to the physician if he or she performed the services identified in the clinical description. We asked a group of physicians to code the case studies. The participants were then asked to provide feedback on the new codes or any aspect of the study with which they had concern.

In addition, we also replicated the reliability study with carrier medical directors using the same training provided during the AMA meeting.

(2) The field test. A field test of the new codes was conducted as a supplement to the reliability study in order to determine how well the new codes work for coding actual patient visits. It was also intended to help determine whether the variation in coding between carriers would likely be reduced by the new coding system.

The proposed new visit and consultation codes were field tested in the States of California, Kentucky, New York, and South Carolina. Two different carrier areas were selected in California and New York so that we had a total of 6 areas, each served by a different carrier. Sixty-four physicians from each of the 6 areas participated, resulting in the participation of about 384 physicians in total.

We wish to gratefully acknowledge the cooperation and assistance of the medical societies in these States and the AMA in providing field test data for our further analysis of the new visit codes.

The physicians or their office staff participating in the field test were asked to complete a diary log for 40 visits beginning on January 10, 1991. For each visit, they were asked to enter the code they would use under the current CPT system, the new code they would assign to the visit, and whether the payor was Medicare or another payor. All patient identifying information was removed from the log before it was forwarded to the AMA for processing. There was also a summary sheet to be completed by each physician that requested the physician's specialty and asked for

comments on problems or questions that arose in using the new codes.

We have not yet completed our analysis of the information provided by the reliability and field tests. This analysis should be completed by the time we publish the final rule. We plan to use it when we make our decision regarding the visit codes that will be used in the physician fee schedule. We plan to discuss the results of the pilot tests in the preamble of the final rule.

h. Revising the other visit codes. In addition to the office, hospital, and consultation codes described above, the CPT Editorial Panel has developed new draft descriptors for other classes of evaluation and management services that are presently in the CPT. These draft descriptors will be forwarded by the AMA to the members of the CPT Advisory Committee for comment. The CPT Editorial Committee will consider all comments and recommendations and will finalize the new codes for publication in the 1992 edition of the CPT.

The following is a summary of the existing classes of codes and the revisions that are being considered. We invite comments on the direction the CPT Editorial Panel is taking. Comments we receive on these revisions will be shared with the CPT Editorial Panel and considered by them prior to finalizing the codes.

(1) Home medical services (90100–90170). At the present time, there are 4 levels of service for new patients and 5 levels of service for established patients. The Panel reviewed the work values of the surveyed vignettes in the Harvard Study and noted that the range of work across the class is not large. Consequently, they are considering reducing the number of levels for both new and established patients.

(2) SNF, ICF, or long-term care facility medical services (90300–90370). At the present time, there are 3 levels of service for Initial Care and 4 levels of service for Subsequent Care. The Panel reviewed the requirements in the statute and regulations pertaining to NF services and noted that the nature of the physician work in NFs has changed and is, to a large extent, related to the requirements that NFs must conduct comprehensive, accurate, standardized and reproducible assessments of each resident's functional capacity using a Resident Assessment Instrument.

Consequently, the Panel is considering 2 classes of NF services: (1) assessments and (2) follow-up care. The codes within each class would take into account the physicians' work as it relates to the NF requirements to perform assessments and establish or revise plans of care.

(3) Rest home, domiciliary, or custodial care facility medical services (90400–90470). At the present time, there are 4 levels of service for new patients and 5 levels of service for established patients. The Panel noted the wide variations in the regulatory oversight of domiciliary care and concluded that the patients receiving domiciliary care are more like patients receiving home care than they are like patients receiving NF care. Nonetheless, the Panel recognized that there are situations when physician work could vary based on State regulatory requirements. Comments as to whether unique code descriptors for domiciliary visits should be developed or whether the code descriptors should follow the descriptors for NF visits or home visits will be welcomed.

(4) Emergency department services (90500–90580). At the present time, there are 6 levels of service for new patients and 6 levels of service for established patients. The Panel noted the concerns and problems of emergency physicians in distinguishing new from established patients and agreed that the nature and extent of physicians' work does not vary significantly based on whether the patient is new or established. Consequently, the Panel is considering eliminating the classes of new and established patients and has drafted codes for 5 levels of service that would apply to all emergency department patients, regardless of whether they are new or established.

(5) Preventive medicine (90750–90778). At the present time, there are 5 levels of service for new patients and 5 levels of service for established patients. The codes are based on patient age. Although the preventive medicine codes are not covered by Medicare, the Panel is considering revising the current descriptors as part of its overall effort to reform the coding of evaluation and management services. The Panel reviewed the recommendations of preventive medicine physicians and agreed that the age ranges in the current codes could be made consistent with the age ranges specified in the U.S. Preventive Service Task Force report. The Panel is also considering separate codes for counseling and risk factor reduction interventions furnished to healthy individuals.

There are also separate CPT codes for some ophthalmological and critical care visits. In the model fee schedule, we raised the question of whether these visits should continue to be coded separately, or whether some or all of these codes should be collapsed into the new visit codes to be developed by the CPT Editorial Panel. The CPT Editorial Panel is currently considering appropriate revisions to properly reflect the services being furnished. We anticipate that this process will continue through the year as more information becomes available (for example, the Phase III values for the new visit codes). We intend to participate in this review through our participation on the CPT Editorial Panel. We will continue to work with the CPT Editorial Panel on clarifying the use of codes other than the general visit codes.

2. Scope of the Global Surgery Policy

a. Background and current carrier procedures. As mentioned earlier, under the physician fee schedule based on the Harvard study, national uniform relative values would be established for all physician services. A national CF would be calculated. The GPCIs or GAF would be incorporated to produce local physician fee schedules.

Since the fee schedule is based on national relative values, uniform definitions of services must be established. Without standard definitions, it would not be possible to compute a budget neutral CF with any degree of accuracy. Standardization is also necessary to produce equitable payment amounts, that is, to assure that, nationwide, payment is made for the same amount of work and resources involved in furnishing the specific service. Standardization of surgical procedures is a special problem because of the concept of global surgery. Surgical services make up about one-third of all billings for physicians' services and are expected to be about $9 billion in FY 1990.

The surgery billing guidelines in the AMA's CPT state that "Listed surgical procedures include the operation per se, local infiltration, metacarpal/digital block or topical anesthesia when used, and the normal, uncomplicated follow-up care. This concept is referred to as a 'package' for surgical procedures." Under this concept, surgeons bill a single fee for all their services usually associated with the surgery. This global fee includes all intra-operative services necessary for the surgery itself, and follow-up care such as hospital and office visits and services such as removal of sutures and casts. In some cases, pre-operative visits may also be included.

Each of the Medicare carriers uses the concept of global fees for surgery. However, there are significant variations among carriers as to what periods constitute pre-operative and post-operative care and what specific services are included in these periods. For example, in a recent survey we

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conducted of carrier practices, 53 percent of carriers included pre-operative care in the global surgery fee. While 100 percent of the carriers include post-operative care in most global surgery fees, the number of days in post-operative care varies by procedure and carrier. The number of days included in post-operative care ranged from 0 to 270 days after surgery.

b. Harvard study assumptions. As discussed in section IV. C. 1., the physician work RVUs in the fee schedule would be primarily based on Phase II of the Harvard study. The global surgical service in the Harvard study included pre-operative visits on the day before surgery or the day of surgery, the hospital admission work-up, the primary operation, immediate post-operative care including dictating operative notes, talking with the family and other physicians, writing orders, the evaluation of the patient in the recovery room, post-operative follow-up on the day of surgery, and post-operative hospital and office visits. The surgeon's initial evaluation or consultation was excluded.

The global service for surgery in an ambulatory setting included pre-operative visits and work-up; dressing, scrubbing, and waiting before the operation; the primary operation; post-operative care on the day of surgery; and post-operative visits. Again, the surgeon's initial evaluation or consultation was excluded.

The work RVUs for surgical Services received from Harvard reflected, to a great extent, our preferred national uniform global surgery policy that is discussed below. In some cases, minor modifications were necessary for us to compute the work RVUs for surgical services in Addendum B.

c. Proposed definitions. We are proposing the following uniform, national global surgery policy. This policy was also proposed in the notice "National Standardization of 'Global Surgery' Policy" (BPD–698–PN), published in the **Federal Register** on January 8, 1991 (56 FR 699). This policy would apply in all settings. Although there is considerable existing variation among carriers and no existing national "norm," we believe that our proposal reflects the existing policy of many carriers and, to a certain extent, the way that physicians already bill.

(1) Initial evaluation or consultation by a surgeon. About 40 percent of all carriers currently include in their global surgery fee the initial evaluation or consultation by the surgeon to determine the need for surgery. However, they only do so if the consultation occurs within 3 to 7 days before the surgery. If the decision is made not to do the surgery, the surgeon is allowed to bill separately for the consultation in all cases.

We are proposing that the initial evaluation/consultation be paid separately. It is a distinct, readily identifiable service that is furnished whether or not the surgery is performed. Furthermore, the value of the work performed for the evaluation/consultation is the same whether the surgery is performed or not. Since it is always billed when the surgery is not performed, we believe it is preferable from both a policy and an operational standpoint to pay for the surgical evaluation/consultation separately. The underlying concept of the fee schedule is to uniformly base payment on the resources involved in furnishing a service. Paying the initial evaluation or consultation by the surgeon separately in all cases would do this. A disadvantage of allowing separate billing of the consultation is that it subjects the program to possible upcoding of the level of consultation billed (that is, consultations are billed using three levels of codes reflecting varying levels of effort). However, we have adjusted the budget-neutral CF calculation by factoring in the additional consultations that are now included in the global surgery fee by some carriers that would be billed by surgeons.

(2) Pre-operative visits. The majority of carriers presently have a global surgery policy that includes pre-operative hospital and office visits for periods averaging 3 to 5 days. We believe a global surgery policy should reflect the total work required for the surgeon to complete the service once the decision for surgery is made. We prefer a pre-operative policy that includes all pre-operative visits, in or out of the hospital, by the surgeon from the time of the evaluation/consultation when the decision to have the surgery is made. (Surgeons could bill separately for services unrelated to the surgery regardless of when they were furnished.)

We believe this is the practice that most surgeons already follow today. A recent study by the Center for Health Economics Research (CHER) of the 100 most frequently performed surgical procedures paid by Medicare shows that in the overwhelming majority of cases, physician follow the global billing concept, that is, they submit a single bill for all visits associated with the surgery. (Packaging Diagnostic Test Interpretation and Surgical Procedures with Office Visits. Center for Health Economic Research, April 25, 1989. J. Bogen, R. Boutwell, and J. Mitchell, under HCFA Cooperative Agreement No. 99–C–985241–04.) (See Addendum D for information concerning how to obtain a copy of this study.)

We realize, however, that for operational purposes a specific number of days constituting the pre-operative period may be necessary. After consulting with our own medical staff, carrier medical directors, and outside physician groups, and after examining carrier billing data, we are proposing a pre-operative period of 30 days. It would be highly unusual for the surgery to occur more than 30 days from the time of the initial evaluation/consultation when the decision to have the surgery is made. This period also would be sufficient to cover the few billings we presently receive for pre-operative visits.

One possible objection to this policy is that it would not allow the surgeon to bill for services furnished to seriously ill patients who need to be stabilized before surgery. When the surgeon is actively involved in treating the patient by furnishing visits before surgery, we would allow payment when documentation justifying the need for the surgeon's service is submitted. We would also pay for services of other physicians when furnished to seriously ill patients who need to be stabilized before surgery.

(3) Intra-operative services. The AMA's CPT contains codes and concise descriptions of all physicians' services. There is a general understanding by physicians and insurers that intra-operative services that are normally a usual and necessary part of a surgical procedure are included as part of the global surgery policy. We are proposing that these intra-operative services be included in the national global surgery policy.

We believe any inconsistencies that exist concerning the specific services that should be included as part of a surgical procedure should be eliminated so that we would have a national uniform global surgery policy. Our carrier medical directors have expressed concern that there is an even greater potential for unbundling of the intra-operative services than for pre- and post-operative services. We are working with the physician community, the PPRC, and the carrier medical directors to arrive at a clear understanding for all global surgery packages as to exactly what are the usual and necessary intra-operative services for such surgery.

(4) Complications following surgery. As discussed in the model fee schedule notice published in the **Federal Register** on September 4, 1990 (55 FR 36178), and in the proposed notice, "National Standardization of Global Surgery Policy", published in the **Federal Register** on January 8, 1991 (56 FR 966), we proposed to include services furnished during additional trips to the operating room to correct for common complications (for example, replacing stitches) within our global surgery package. We believe this is currently the practice of most surgeons, and that they do not usually bill separately for these services. We were considering three methods of implementing this policy.

One method would be to include in the global fee all re-operations for complications that occur within a specific time period after the initial surgery. This period could be 24 hours, 72 hours, or the remainder of the inpatient stay. An exceptions process could be established for dealing with re-operations in highly unusual cases.

Another method would be to compile a list of complications which if required, should be done at no extra charge by the surgeon. Examples of these complications include wound complications such as dehiscence, infection, and hemorrhage. Additional payment would be allowed outside of the global fee for re-operations, which because of the severity of the illness or other circumstances, could not ordinarily be anticipated or prevented.

A third method would be to use a combination of a specific time period and lists. That is, a list of complications that should always be included in the global surgery fee, regardless of the time period, would be combined with a time period during which no payment would be made for re-operations unless documentation of the highly unusual circumstances justifying additional payment is submitted.

The issue of complications was discussed with our own medical staff, carrier medical directors, the American College of Surgeons, and physicians with the Public Health Service, the Center for Disease Control, the Veteran's Administration, and the Department of Defense. As a result of these discussions, we have modified our position.

We now believe that the global surgery fee should include all additional medical or surgical services required of the surgeon because of complications, which do not require additional trips to the operating room. For example, surgeons say that simple services, such as a "stitch pop", would normally be done at the bedside with no extra payment made. All medically necessary return trips to the operating room, for any reason and without regard to "fault", could be separately billed and paid for, but at a reduced rate. All other medical and/or surgical care by the surgeon for post-operative complications would be included in the global fee.

We believe this policy is fair to beneficiaries, physicians, and the Medicare program. It would not be fair to beneficiaries to deny payment for necessary return trips to the operating room. It would not be fair to physicians to deny payment, even at a reduced rate, since additional work is required.

We also believe this is the best policy from an implementation standpoint. To attempt to base payment for correction of complications on whether the complications are the "fault" of the surgeon would be difficult at best, and impossible in many if not most cases. Although Medicare is required by law to make medical necessity determinations, the question of "fault" has legal and malpractice implications that are beyond the scope of the definition of "global surgery."

We do not believe that paying for a surgeon's services during return trips to the operating room would result in abuse. We do not believe physicians would subject their patients to risk merely to secure additional payment. Nor do we believe that hospitals or peer review groups would permit this practice to continue if it did occur.

We are proposing setting the payment level for re-operations to deal with complications at the value of the intra-operative services being performed when there is a CPT code to describe these services, for example, 32120, "Thoracotomy, major; for post-operative complications." Codes exist to describe re-operations for complications for various body areas. When no code exists, the appropriate unlisted procedure code from the surgery section of the CPT—for example, 43999, "Unlisted procedure, stomach"—would be used. We propose setting the payment level at 50 percent of the value of the intra-operative services originally performed. Since the pre- and post-operative services would have been paid as part of the original global surgery fee, no additional payment for these services would be made. We are requesting comments on our proposed complications policy and on the 50 percent payment level.

(5) Post-operative visits. All carriers currently include post-operative services in their global package. The number of days varies by carrier and procedure. We are proposing a standard 90-day post-operative period that would include all visits by the primary surgeon during this period unless the visit is for a problem unrelated to the diagnosis for which the surgery is performed or is for an added course of treatment other than normal recovery from the surgery. For example, if after surgery for prostate cancer, the urologist who performed the surgery subsequently administers chemotherapy services, these services would not be part of the global surgery package. Although 90 days is ample time for most surgeries, some—such as open heart surgery and certain orthopedic procedures—require a longer period for complete recovery.

We propose to include all post-operative visits furnished within 90 days for complete recovery, and we request that the commenters identify the number of days in which complete recovery could be expected. We also request comments concerning whether the post-operative period should be defined on a procedure-specific basis.

We believe a global surgery policy should be no less stringent than the policy that is used by most carriers today. Indeed, a case could be made for a more stringent global surgery policy than exists today because of the added incentive for "unbundling" under the fee schedule. In either case, we do not believe the physician community would be disadvantaged in the aggregate by our recommendation as the CHER data show that physicians rarely bill outside of the proposed global surgery policy now, regardless of the carrier global fee policy.

d. Computing RVUs for global surgery. Once the definitions of global surgery services are established, RVUs for work, practice expense, and malpractice costs would have to be computed to reflect the definitions. Phase I of the Harvard RVUs primarily represented only in-hospital services. Phase II of the Harvard study provided relative values for global surgery closely based on our proposed policy, as will Phase III. Analyses by CHER of current billing patterns by surgeons during the preoperative period indicated no need to increase RVUs to add in the value associated with additional pre-surgical visits. We have no evidence that, in general, surgeons are providing a significant number of additional visits in the pre-operative period. Also, if they document that they participated in patient care before surgery, we pay for those visits separately (outside the global surgical fee). As stated in § 415.22, practice expense and malpractice RVUs would be based on a percentage of the current average allowed charge. The work, practice expense, and malpractice RVUs would be added to arrive at the total RVUs for a global surgical service.

Other issues related to global surgery—multiple surgery, bilateral

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surgery—are discussed in section VI. C. on payment modifiers.

3. Minor Surgery and Nonincisional Procedures

a. Minor surgery. In addition to the major global surgeries in the Surgery section of the CPT, there are a number of minor surgeries designated by a "star" following the procedure code number. These relatively minor surgical services involve a readily identifiable surgical procedure but include variable pre-operative and post-operative services (for example, incision and draining of an abscess) and are not traditionally paid using a global surgery policy. Because of the difference in pre-operative and post-operative services, the CPT instructs physicians to bill separately for the procedure itself and any associated services or visits (for example, hospital or office visit, and cast change). However, the CPT is used for Medicare reporting purposes only, whereas we must establish payment rules for billing purposes.

b. Nonincisional procedures ("scopies"). In addition to major and minor surgeries, the surgery section of the CPT also includes the "scopies." These are diagnostic and therapeutic procedures (for example, colonoscopy, and cystourethroscopy) that are frequently performed by nonsurgeons and may or may not involve actual surgery (for example, removal of a polyp). They are done in both hospital and ambulatory settings. The CPT does not specify whether visits are to be billed in addition to the "scopy" if a readily identifiable service (for example, patient evaluation) is performed in addition to the "scopy." CPT billing instructions state that when the scopy is diagnostic, follow-up care for the "scopy" includes only care related to recovery from the procedure itself. Care of the condition for which the diagnostic procedure was performed or other concomitant conditions is not included and may be billed separately.

c. Preferred approach. Presently, most carriers report that they conform to CPT coding rules with minor variations as to when visits are allowed in addition to the surgery or "scopy" being performed. However, in research on this issue, using 1986 claims data, CHER found that physicians do not often bill for office visits when performing endoscopies. Visit bills were submitted for only 18 percent of proctosigmoidoscopies, 10 percent of sigmoidoscopies, and 2 percent of other common scopies.

Under the relative value scale concept, our payments should reflect the actual work performed. If the sole purpose of an encounter is to have a minor surgical procedure or "scopy" performed, there would be no justification in paying for both a visit and the procedure. On the other hand, if documented evaluative services are performed in addition to the surgical procedure or "scopy", payment could be made for a visit. For example, a new patient is referred to a gastroenterologist for a possible scopy. The gastroenterologist conducts a thorough examination to first determine if the patient is a candidate for a scopy, and immediately proceeds to do the scopy. In this case, both a visit and a scopy could be billed if the visit is clearly documented. On the other hand, if a gastroenterologist has been following an established patient, examines the patient on Monday, and schedules the patient for a scopy on Tuesday, only a scopy could be billed for the Tuesday encounter since that was the sole purpose of the encounter.

We believe post-operative visit services related to recovery from the procedure (for example, removal of sutures) should be included in the payment for the procedure. This would guard against excess billings for procedures not previously billed. However, follow-up treatment for the condition for which a diagnostic endoscopy was performed, for example, would be payable separately from the endoscopy.

We are therefore proposing for minor surgeries and "scopies" that no visit generally be allowed in addition to the surgical procedure or scopy unless a documented, separately identifiable service is furnished and post-operative services related to recovery from the procedure be included for a period of 30 days. The minor surgeries and "scopies" that would be included in this policy will be identified in carrier instructions.

B. Defining Geographic Payment Localities

1. Current System.

Under the present customary and prevailing reasonable charge system of payment for physicians' services, a Medicare locality is the geographic area that the carrier uses to determine the prevailing charges for services. There are presently 240 Medicare localities, which were developed by carriers, based on their knowledge of local medical practice and economic conditions. Some of the localities reflect political boundaries, such as counties or cities; others are zip code areas or metropolitan areas; and some are as small as parts of cities or as large as States. Many localities are actually noncontiguous areas that are treated as a single locality because the areas share common characteristics. Medicare locality boundaries have remained relatively stable since the inception of the program in 1965.

2. Localities Under the Fee Schedule

Section 1848(j)(2) of the Act defines fee schedule areas as Medicare payment localities. However, recognizing the lack of consistency among current localities and the fact that significant demographic and economic changes may have occurred since the existing localities were established, we are studying and reviewing recommendations on the possible reconfiguration of existing localities. One such study is being conducted for us by the Urban Institute. Also, Congress required in section 6102(d)(6) of Public Law 101-239 that the PPRC conduct a study to determine the feasibility of using some other configuration, such as States or MSAs, for payment areas under the fee schedule. The PPRC included the results of this study in its 1991 annual report. The PPRC recommended that current carrier localities be replaced with Statewide fee schedule payment areas except in States with high intra-State price variation. In each of these States—California, Florida, Georgia, Illinois, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New York, Pennsylvania, Texas, and Virginia—up to five payment areas would be defined, corresponding to MSA population categories. Each MSA that crosses State borders would have a uniform index value and would be considered as falling entirely within the State that contains the largest portion of the MSA's population. Any State that is currently a Statewide locality would continue to be defined as a Statewide area. This would reduce the number of payment areas from 240 to 97. We are interested in receiving comments on the PPRC's proposal. Completion of our internal review and the PPRC report may result in recommendations to reconfigure existing localities at a future time.

We occasionally receive inquiries from physicians and their Congressional representatives in individual States concerning the possibility of converting to a single Statewide locality. Once we point out that a conversion will result in both payment increases (usually in rural areas) and decreases (usually in urban areas), it becomes more difficult to demonstrate widespread support within the State physician community for the change. Section 4117 of Public Law 101-508 provides that Statewide localities be established under the fee schedule for Oklahoma and Nebraska if we receive by April 1, 1991, written expression of support from (1) each member of the congressional delegation from the State, and (2) organizations representing urban and rural physicians in the State. However, in the press release announcing his signing of Public Law 101-508, the President stated that this provision is unconstitutional because it (1) vests significant authority to execute Federal law in persons not appointed by the President, and (2) attempts to confer lawmaking power on individual members of Congress. He instructed the Secretary that this provision was without legal force.

Section 1848(j)(2) of the Act defines a fee schedule area as a locality used to compute payment amounts under the present reasonable charge system. We do not believe, however, that this precludes us from making locality changes under the present system, nor that it mandates maintaining all existing payment areas under the fee schedule. We propose to allow conversion to Statewide localities in States if overwhelming support from the physician community for the change can be demonstrated. Any changes made under this policy would be effective on January 1, 1992. Because we have already received a demonstration of support from physicians in Nebraska and Oklahoma, we are proposing that those States be converted to Statewide localities on January 1, 1992 under the authority of sections 1848(j)(2) and 1842(b)(3).

Under the current system, carriers are often required to "gap-fill" to compute prevailing charges. This occurs when insufficient charge data exist within a locality for a specific procedure or for a type of service or a certain physician specialty. One type of gap-filling involves combining data from all localities within a carrier area to compute a carrier wide (usually State) prevailing charge for a given service. Some carriers (typically those with a large number of localities within their service areas, for example, Texas) construct a "super-locality"—a combination of localities. These super-localities may even be assigned separate locality codes. This would not be necessary under the fee schedule.

As previously discussed in section IV. D. on GAFs, GPCIs have been developed and proposed for all existing payment localities. Since a relative value would be computed for every service for every locality. Even if a service was never previously furnished in a given locality, a fee schedule amount would exist if that service is ever billed to the carrier in the future. All payments under the fee schedule would thus be made at the normal locality level, making existing "super-localities" or gap-filled State prevailing charge localities obsolete.

All fee schedule localities are listed along with their GPCIs in Addendum C—Geographic Practice Cost Indices by Fee Schedule Areas. As discussed in section IV. D. on GAFs; the Mayo Clinic, which is its own locality under the current system, will be included in carrier 10240 locality 1 based on its geographic location. Also, the Virgin Islands, which is considered part of New York carrier 803 locality 3 under the current system, will be its own locality under the fee schedule with the national average GPCI value of 1.000.

As under the current payment system, carriers would continue to compute and make payments under the fee schedule. We would, however, establish the payment amounts based on a national CF, national relative values, and locality GPCIs. Payment localities and GPCIs would therefore correspond. Once the initial fee schedule payment areas and their respective GPCIs are established, carriers would not be allowed to modify them. The establishment of and any changes in localities would no longer be left to the discretion of the carrier, but would be done by us. The initial fee schedule areas are listed in Addendum C. Any subsequent changes, along with the corresponding GPCI changes, would be announced in the Federal Register.

VI. Adjustments to Fee Schedule Payments

A. Site of Service Differential

1. General

Payments under the physician fee schedule are designed to reflect the resource inputs used by a physician to furnish a service. Measurements of these resources are incorporated into RVUs that, as described earlier, are the basis for determining the Medicare fee. The relative value is comprised of work, practice expense, and malpractice costs components.

The practice expense and malpractice cost components of the relative value may vary by site of service. Some practice expense and malpractice costs—those directly associated with furnishing a service—may vary depending upon whether the service is performed in a physician's office or in the outpatient department. For example, a physician may incur the costs of equipment, supplies, and personnel when performing a service in the office. However, these costs may be incurred by the outpatient department when the service is performed there. Regardless of where the service is performed, the physician will incur malpractice costs and indirect costs such as billing expenses.

As payment under the fee schedule is intended to reflect resource costs, payment should vary by site of service if practice expenses differ between the office and outpatient department. The discussion that follows is limited to physicians' services that can be performed in more than one setting. (Radiology and diagnostic test procedures represent a "special case." Later, we discuss setting payment amounts for professional and technical components of these services.)

Differential payment based on site of service is also intended to provide incentives for physicians to perform procedures in the most appropriate setting. For instance, if a procedure is performed in a hospital or outpatient department, we make separate payments to both the physician and facility. By providing additional payment for services that can be safely performed in an office, we would encourage furnishing the services in offices and we would incur lower total costs than if the procedures continued to be performed in outpatient hospital settings. Additionally, a payment limit on office-based procedures (procedures routinely or typically performed in offices) performed in the outpatient department would reflect differences in practice expenses and maintain incentives for furnishing these services in physicians' offices.

Currently, there are two situations (for services other than diagnostic tests and radiology services) when the Medicare rules either limit or provide additional payment for a physician service depending upon where the service is furnished. The two situations are as follows:

- Outpatient Limit—Sections 1842(b)(3) and 1861(v)(1)(K) of the Act as enacted by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) authorize us to limit payment for a service routinely performed in a physicians' office if the service is furnished in an outpatient hospital setting. Implementing regulations at § 405.502(f) establish the limit at 60 percent of the prevailing charge. The outpatient limit does not apply to services furnished in rural health clinics, surgical services that are covered ASC services, bonafide emergency services

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(as defined in section 5031 of the Medicare Carriers Manual) furnished in hospital emergency rooms and anesthesiology and radiology services.

As a portion of the payment for a physician service includes practice expenses, the outpatient limit is applied to avoid paying both the physician and hospital for the cost of practice expenses such as equipment and supplies that are incurred by the hospital. The outpatient limit has been criticized for discounting all practice expenses from the physicians' fees without recognizing that some practice expenses (for example, billing and malpractice) are borne by the physician regardless of the site of service.

• Payment for Incidentals—Payment for services and supplies which are incidental to a physician's service is currently made separately by some carriers. In this case, additional payment is made when a service that is routinely performed in a hospital is furnished in the physician's office. The additional payment is made to compensate the physician for the extra cost of incidentals that would otherwise be borne by the hospital.

Additional payment for designated services is currently provided when a surgical procedure routinely performed in a hospital inpatient setting is furnished in an ASC. An ASC can be a doctor's office or part of a hospital that has been certified to receive Medicare payment for certain inpatient procedures that have been determined to be safe to perform in an ambulatory setting. For those procedures that can be performed in ASCs, Medicare would pay both the physician's surgical fee plus a separate facility fee. The additional payment, the ASC fee, is provided to give physicians an incentive to move a service from a hospital inpatient setting to a less expensive outpatient setting.

2. Options Under a Fee Schedule

As detailed earlier, Public Law 101–239, prescribes a methodology for computing practice expense and malpractice RVUs by applying historical practice cost percentages to base allowed charges. Section 1848(c)(3) of the Act as added by Public Law 101–239 also gives the Secretary the authority to develop policies with respect to the use of modifiers and other "ancillary policies" needed to establish a physician fee schedule based on RVUs. Based on these legislative authorities, there are several options regarding differential payments based on site-of-service under the fee schedule. The options we considered are described below.

• Option 1—Pay the Same Amount Regardless of Site of Service

Under this option, payment would not vary by site of service. Payments would be the same regardless of whether the service was performed in an office or outpatient department. There are two general approaches under this option that we considered.

• Option 1(a)—Base Payment on Practice Costs in the Dominant Site of Service

Although payments would not vary by site of service under this option, practice expense and malpractice costs would be based on the dominant site of service. For services performed predominantly in an office, payment would reflect practice expense and malpractice costs in the office setting. For services performed predominantly in outpatient settings, payment would reflect non-office practice expense and malpractice costs. There would be no limitation for office-based procedures performed in outpatient departments or additional payment for facility-based procedures performed in an office.

We did not select this option because payments would not appropriately reflect the resource costs for furnishing a service nor would there be incentives to perform a service in the most appropriate setting. Because payments would reflect practice costs incurred in the dominant site of service, payments would be too high or too low when the service was furnished in the site that did not predominate. For instance, if the office site were dominant, payment to the physician would be too high when the service was furnished in the outpatient setting. This would occur because practice expense not incurred by the physician would be included in the payment. In this case, there would be inappropriate incentives to perform a service in the outpatient setting. Conversely, if a non-office site were dominant, payment to the physician would be too low when a service was performed in an office. This would occur because practice expense and malpractice costs incurred by the physician in an office would not be included in the payment. In this case, physicians would not have a financial incentive to perform facility-based procedures in their offices.

• Option 1(b)—Base Payment on Practice Costs Averaged Across All Sites of Service

Under this option, there would be one practice expense relative value based on the weighted average practice costs across all sites. Similar to option 1(a), payment would not vary by site of service.

Again, we did not choose this option because it would result in payments that do not appropriately reflect the physicians' resource costs nor would it provide incentives to perform a service in the most appropriate setting. Option 1(b) would provide payments that are too high or too low regardless of whether the service is furnished in the predominant site of service. Since a physician's practice costs are less in the hospital setting, providing compensation based on a weighted average would lead to excessive payment for services furnished in hospitals. Conversely, services furnished in the office would be underpaid. This approach would also provide incentives to perform services in a hospital that may be more appropriately performed in an office.

• Option 2—Vary Payment by Site of Service

Under this option, payment would vary by site of service. Again, there are two general approaches.

• Option 2(a)—Base Payment on Office or Non-Office Practice Costs

Under Option 2(a), different practice expense and malpractice cost relative values would be developed for office and outpatient settings. The appropriate practice expense RVU would be applied to determine the physician's fee. For instance, if a service is performed in an office, the payment amount would reflect office specific practice expense and malpractice cost RVUs. If the service is performed in outpatient settings, payment would reflect the non-office practice expense and malpractice cost RVUs.

An advantage of this approach would be that payments would reflect incurred practice expense and malpractice costs regardless of where the service was furnished. Under this option, physicians might have incentives to perform facility based procedures in their offices since, by performing facility-based procedures in their offices, they could receive higher Medicare payments.

Although the higher payment would reflect office practice costs, the administrative convenience of performing services in their offices could provide inappropriate incentives to move services furnished in a facility to the office setting. This problem would be alleviated if a list of facility-based services that could safely be performed in an office setting were developed.

While we believe that ideally site-of-service differentials should reflect actual practice cost differences by procedure in office and outpatient settings, unfortunately data do not presently exist for this purpose. The PPRC is currently exploring estimating practice costs through surveys of physicians' practice and from studies of individual medical practices. However, this work is not expected to yield the comprehensive and detailed data that would be needed for Option 2(a) in time for the initial fee schedule implementation.

• Option 2(b)—Provide Differential Payments in Limited Circumstances

Another approach would vary payment based on site of service following, to a large extent, the framework in present law; thus, it would be much more feasible to implement by January 1, 1992 than Option 2(a). Under this approach, payment would be as follows:

—Services that are primarily performed in office settings when performed in outpatient departments would be subject to a payment limit. For these procedures, we would pay a reduced percentage of the practice expense RVUs. Payment would be the lower of the actual charge or the reduced fee schedule amount.

—As discussed in detail in section IV. A. 5. a., for a specified list of facility-based procedures that are sometimes performed in physician offices, physicians would be permitted to bill separately for the cost of a specified list of expensive supplies if those supplies are used to perform the procedure in the office. We would not allow separate billing for inexpensive supplies such as gauze. Those minor supply costs would be included as part of the physician payment.

We propose to adopt option 2(b) under the physician fee schedule under the statutory authority of section 1848(c)(4) of the Act. This policy would retain the ASC payment and the current outpatient limit for physician services, making it similar in many respects to current policy. The payment limit on physician services in the outpatient department would differ somewhat from our current policy.

We are proposing to publish a national list of procedures subject to the site of service limitation, which are performed predominately (that is, at least 50 percent of the time) in office settings. We are also considering extending this limit to include procedures that are performed less than 50 percent of the time in an office setting but that exceed an annual aggregate volume threshold. Finally, the limit is applied only to the practice expense RVUs and not the entire payment. The limitation on the practice expense RVUs would reflect lower practice costs incurred in the outpatient department. We expect malpractice costs would be less for services furnished in the outpatient department because the provider would likely share the malpractice risk. However, we are not proposing that malpractice payments vary by site of service because we have no supporting data.

Additionally, we would determine the practice expense RVUs according to practice costs incurred in the dominant site-of-service and not the average of practice costs across all settings. Therefore, if a physician performs an office-based service in the office, payment would reflect practice expense costs incurred in the office. If a physician performs an office-based service in an outpatient department, payment would reflect only a portion of practice costs incurred in the office. If a physician performs an office-based service in an outpatient department, we would only pay that portion of practice costs considered applicable to a service in the outpatient department. We are excluding the professional component of radiology and diagnostic services from the application of this limit because we believe most of the practice expense for these services is accounted for by the technical component.

We would also eliminate the current exception for emergency services. Since the basis for the adjustment is the lower practice costs in provider settings, we believe it should apply whether or not the service is classifiable as an emergency. However, services of physicians assigned to the emergency department and who bill under codes 90500 through 90580 would not be subject to the outpatient limit for these services. These codes are not used by physicians in office practice. The practice expense RVUs assigned to their services would be based on current average allowed charges, which would reflect prior application of the outpatient limit to the extent it was previously applied.

Based on our analysis of available data, we propose to reduce the practice expense RVU by 50 percent when an office-based service is performed in an outpatient department. As practice expense costs represent about 41 percent of total revenues on average, limiting the practice expense RVU by 50 percent is equivalent to an average reduction in the overall fee by approximately 21 percent (.41×.5). (As stated earlier, we currently pay 60 percent of the prevailing charge or reduce the overall payment by 40 percent when an office-based service is furnished in an outpatient hospital setting.)

To derive the 50 percent figure, we used more detailed 1989 practice costs data that we obtained from the AMA. These data provide detail on physicians' practice expenses by category of service and are the best available to us now.

Practice expense	Percentage of total expenses	Percentage limit on practice RVU
All practice costs	100	50
Nonphysician employees	39	19.5
Office	27	13.5
Medical equipment	6	0
Medical supplies	12	0
Other	17	17

The first column provides a percentage distribution of all physicians' practice costs by type of expense. The second column shows how we derived the 50 percent reduction rule. The outpatient department is generally responsible for equipment and supply costs, so we made no allowance for these costs when office-based services are performed in the outpatient department. We also believe that physicians have significantly lower practice expenses for these services, for employee and office costs. (For this purpose, we assumed about one half of these expenses would be borne by the facility.) The sum of the percentage in the second column provides the percentage limit we propose. We are proposing a 50 percent limit on the practice expense RVU when office-based services are performed in an outpatient department, based on the assumption that physicians do not incur the direct costs of furnishing a service in this instance. We note that, using survey data from a few multi-specialty clinics in different parts of the country, the PPRC reported that, on average, 52.6 percent of practice expenses are attributable to direct costs.

Services for which an ASC facility payment is made, by definition, are routinely performed in hospital settings and would not be subject to the limitation.

A final distinction between this option and the current policy is that the limit on services in the outpatient department would apply to a nationally developed list of services. The current policy leaves to each carrier the determination of whether a service is currently performed in physicians' offices in each area.

B. Professional/Technical Component Services

"Professional" and "technical" modifiers (or separate codes for professional and technical component services) have been established for

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some part B physician services in order to acknowledge in the payment system that physicians should be compensated differently depending on the portion of the service they actually furnish. The professional component is presumed to include the physician's work in interpreting the test result in the case of diagnostic services that require a separate interpretation and in managing the administration of therapy in the case of therapeutic radiology services. The technical component encompasses the cost of the equipment, the salary of a technician, films, etc. A "global" charge in this context refers to both professional and technical components of a service.

In some cases, the professional/technical component modifiers serve much the same purpose as a site of service differential, since whether a physician, such as a radiologist, incurs the costs of employing technicians and purchasing equipment used to furnish a service will often depend on whether the service is being furnished in the physician's office or in a hospital or other facility. However, when a physician furnishes a service to a hospital inpatient or outpatient, the physician is permitted to bill only for the professional component. (This is true even if the service for a hospital inpatient is performed in a physician's office because of the requirement in §§ 405.310(m) and 405.550(b) that all nonphysician services furnished to hospital patients be paid only to the hospital.) Moreover, even radiologists furnishing services in their offices may need to bill only for a professional component payment if, for example, the only service furnished was interpretation of an x-ray, while the actual test was conducted elsewhere. Thus, the distinction between the professional and technical components hinges on the site of the service, the status of the patient, and the nature of the service actually furnished.

Under the current payment system there are three types of physicians' services that distinguish between the professional and technical components. One group is diagnostic and therapeutic radiology services (already introduced at section IV. C. 5.); a second is certain diagnostic tests that involve a physician's interpretation. These include, for example, the cardiac stress test and an electroencephalogram (EEG).

The third group is made up of physician pathology services (primarily anatomic pathology), which are currently paid on a customary, prevailing, and reasonable charge basis. Physician pathology services are usually furnished in a hospital setting or by an independent laboratory. These services include the professional services of the physician in studying the specimen and interpreting the test result (the professional component) and the preparation of the material by technicians (the technical component). If services are performed in a hospital setting, the physician bills only for the professional component, since costs associated with the technical component are presumed included in the Medicare payment to the hospital through the fiscal intermediary. If a physician pathology service is performed in an independent laboratory, a global billing for both components is submitted. Billing and payment only for the technical component of a physician pathology service is rare.

Most carriers maintain two separate payment screens for physician pathology services; one for the professional component furnished by hospital pathologists and another for the technical and the professional component furnished by independent laboratories. Some carriers maintain only one set of screens for all physician pathology services regardless of the entity that furnishes the services. At the time we were developing a separate pathology fee schedule (the requirement for which has since been repealed by Pub. L. 101–508), we considered how we might establish technical component values for physician pathology services furnished by independent laboratories. In examining BMAD files for these services, we found that professional component billings represented about 75 percent of total physician pathology billings, with independent laboratory billings representing about 25 percent. We also found that average submitted charges for professional component billings were higher than charges for independent laboratory billings for about 80 percent of the 57 codes. There was no distinguishable pattern to explain why or when these professional and independent laboratory billings differed. At that time we concluded that it would be inappropriate to use charge data for attaching a value to the technical component of physician pathology services furnished by independent laboratories. Our current approach to developing technical component values for physician pathology services, given this lack of charge data, is explained later in section VI.B.3.

We propose to treat professional and technical component services under the fee schedule as follows:

1. Radiology Services

The global RVU would be the sum of the professional component and technical component RVUs. The professional component RVU from the existing radiologist fee schedule would be divided into physician work, practice expense, and malpractice components for the purposes of rescaling and applying GAFs. The allocation of RVUs into these components would be based on historical practice cost percentages for radiologists who do not own their own equipment. We used practice cost data for 1989 obtained from the AMA.

We rescaled the work portion of the current professional component RVUs using the following process:

- For the radiology codes surveyed by Harvard, we determined the ratio of the Harvard work value to the current professional component work RVU for each code. We used the mean ratio as a rescaling factor.
- We multiplied the work portion of the current RVU by the rescaling factor to obtain a rescaled RVU for the work portion of the professional component.

The practice expense and malpractice RVUs for the professional component are based on the radiologist fee schedule.

The technical component relative value unit from the existing radiologist fee schedule would be treated essentially as practice costs are treated for all other physician services. That is, the technical component RVUs under the fee schedule would be equal to the estimated average allowances for each technical component service based on the radiologist fee schedule. However, as the technical component does not include a professional physician services, we would divide the technical component into practice expense and malpractice expense components only for the purposes of rescaling and applying GAFs. The portion of the technical component RVU attributable to practice expense and malpractice would be derived from historical practice cost data (for radiologists who own their own equipment) to allocate all RVUs between the two components—practice expense and malpractice. For example, assume that the technical component RVU for a service was 100. Historical practice cost data shows practice expense costs equal 47.8 percent of revenue and malpractice costs equal 3.0 percent of revenue. Setting work RVUs equal to zero, the total RVUs of 100 percent would be allocated—94.1 percent to practice expense and 5.9 percent to malpractice. As with the professional component, the practice expense and malpractice portions would be multiplied by the national average CF to obtain practice expense and malpractice RVUs on a dollar scale.

When the radiologist fee schedule was implemented in April 1989, global and technical component RVUs for about 230 radiological services were not published as part of the fee schedule. These radiological services were generally interventional radiological services and were almost exclusively performed in hospital settings. We published the professional component relative values for these services as appendix B of the implementing MCM instructions (section 5262) and in the March 2, 1989 interim final rule. Because these services were not generally furnished in physicians' offices or freestanding centers, there was little data available from which to establish and validate RVUs for these services. The ACR established values for these services using a base unit value that represented their estimate of the basic facility costs for the service such as equipment, space, overhead, and administrative costs, which was supplemented by a time factor to arrive at the technical component relative value. To determine the time factor, the number of minutes that it took to perform the procedure was estimated and multiplied times a charge per minute.

The ACR then attempted to validate these values by collecting information on the cost of the technical portion of radiology services through a survey of its members. However, because of technical difficulties, the ACR was not able to use the information provided from the cost survey. Therefore, we did not publish the ACR's technical component values since there was no independent charge data or any cost data to use to validate the relative values. In the absence of values for these procedures, we instructed the Medicare carriers to develop local relative values to pay for the services when they were performed in a non-hospital setting.

For this rule, we are proposing to develop technical component values for the radiology procedure codes for which technical component relative values were not published with the implementation of the original radiology fee schedule in 1989. Since these services are usually not performed in a setting other than the hospital, we still cannot rely on part B physician and supplier data to provide us with credible technical component billing information. Therefore, we are proposing to use hospital cost and charge information to estimate selected technical component values.

For all procedures with a volume of at least 1000 bills, we determined the average hospital charge for these radiology services from hospital bill records and we multiplied this value by the national average cost to charge ratio for radiology services of 0.6 to approximate the average hospital cost for the procedure. For lower volume procedures (that is, those services with fewer than 1000 hospital bills), we used the ACR relative values for the technical components and the values derived for the high volume procedures as described above to extrapolate values for the remainder of the procedures. We invite comments on this process for developing the relative values for these technical components.

Using the methodology described earlier with respect to work RVUs, all these RVUs on the scale of the existing radiologist fee schedule would be rescaled so that they would be expressed in the same units used for other services included in the physician fee schedule before payment amounts would be computed.

2. Diagnostic Tests

a. General. Under the fee schedule, there is a need to define: (1) Which services are considered diagnostic tests and include a technical component; and (2) the method to be used to establish the technical component relative value. Generally, for non-diagnostic and non-radiology services, a single Medicare benefit (that is, the physician's service benefit) applies and a single payment—encompassing payment for the professional and practice expense aspects of a service—is made. However, in the case of diagnostic services, two Medicare benefits apply (that is, the physician's service and the diagnostic test) and two payments (that is, to two separate entities) may have to be made. Although global billings and payments are frequently made for diagnostic services (that is, a single payment to one entity for both the physician's service and the diagnostic service), different business or organizational entities are entitled to separately perform and bill for the two different services. As a consequence, we must treat each diagnostic service as two separate services for purposes of establishing payments—a professional component or physician's service and a technical component service. This means that, under the fee schedule, we must establish physician work, practice expense, and malpractice relative values for the physician's service aspect of the diagnostic test and practice expense and malpractice relative values for the technical component aspect of the diagnostic test. The physician work relative value for the latter would always be zero. (As noted later, some diagnostic services are comprised of solely a technical component aspect.)

In trying to arrive at a definition, we considered classifying a service as a diagnostic test when the procedure involved the use of diagnostic equipment and/or utilized technicians in the performance of a diagnostic service. That definition, however, could result in classifying the taking of blood pressure and many ophthalmological visit services as diagnostic tests at least in part. We believe therefore that the definition should be decided on very pragmatic grounds rather than on the basis of some theoretical distinction in classifying services. Our proposed definition of a diagnostic test includes the following three criteria:

- The service is diagnostic as opposed to therapeutic in nature.
- The physician's professional service is separable from the technical component of the test. This means that the professional diagnostic service is not so integrally related to the performance of the test so as to make separation a practical impossibility.
- Physicians have traditionally separated the professional and technical components of the service for billing purposes.

Using this standard, endoscopic procedures that are diagnostic in nature would be considered to be only a physician's service with no technical component since the physician does the entire service and there is no diagnostic "test" that can be practically separated. Similarly, we would not establish a separate technical component for ophthalmology visit services (for example, 92002) since the service has always been billed as a physician service with no separable technical component. In addition, no technical component would be recognized for services including the use of diagnostic equipment, which is of very nominal cost and when the "diagnostic" service is considered to be covered by the visit. "Handheld" x-ray equipment and pocket dopplers fall into this category.

As a practical matter, we used three general measures to determine whether we could establish a separate technical component value for a diagnostic service. First, we reviewed the site of the service. If the service was furnished in an office setting 90 percent or more of the time or in a hospital setting 90 percent or more of the time, we did not

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create a separate technical component. Second, using the global average allowed charge, we compared it with the professional component average allowed charge. If the difference was less than 25 percent, we did not create a separate technical component. Third, if the frequency of the service for either the global or the professional component was less than 1,000 nationally, we did not create a separate technical component value and considered the service to be a physician's service with no technical component.

A number of anomalous situations were created when technical component values were determined from the subtraction of professional average allowed charges from global allowed charges. These anomalies occur when technical values are created for a particular procedure and no technical component, or a substantially different value, is created for a very similar procedure. We invite comments on the issue of creating separate technical components for certain diagnostic procedures and on methods of determining technical component values.

The fact that a service is classified as a diagnostic test does not automatically mean that there is a separate professional component. There is, of course, no professional component for clinical diagnostic laboratory services. Rather, payment for the interpretation of these tests is considered to be included in payment for the related visit or consultation. Similarly, there are other diagnostic tests that traditionally have not had separate interpretation fees. It is our intention to follow traditional billing practices under the fee schedule and not to encourage additional billings by creating separate interpretation (professional component) relative values for diagnostic tests that have not been separately billed in the past. An example is audiology tests (CPT 92561ff).

If a diagnostic test service is found to have separate professional and technical components, it would be treated as follows under the fee schedule. The professional component RVU would be the Harvard physician work RVU plus practice expense and malpractice RVUs based on current average allowed charges. (The professional component service would be treated like other physicians' services under the fee schedule, including application of the GAFs.)

The relative value for the technical component would be based on the difference between the average allowed charge for the global service and the average allowed charge for the professional component. Thus, we would establish the RVU for code 93017 (tracing only, for a cardiovascular stress test) based on the difference between the allowance for 93015 (cardiovascular stress test with interpretation and report) and code 93018 (interpretation and report only). The RVU for the global service (for example, 93015) would be equal to the sum of the RVUs for the professional service (for example, 93018) and the RVUs for the technical component (93017). Note that we are not proposing to use the current charge data for the technical component in the computation because there is an insignificant number of billings for technical-component-only services.

For services that do not have a professional component (for example, the various audiologic function tests, 92551 through 92589), the RVUs would be based on the average allowance for the service itself. Finally, for diagnostic services for which there is no reliable technical component charge data (for example, cardiac catheterization), the RVUs would be derived through alternative means as discussed below.

For diagnostic tests without a professional component, the question arises as to whether we will classify the service as a physician service subject to the GAF for physician services or as a technical component without physician work, that is, subject to the practice expense and malpractice GAFs only. We are proposing the latter course even though Harvard has provided physician work values for audiology and other types of tests. Our rationale is that the services are billed frequently by nonphysician suppliers such as audiologists and at charge levels that are frequently higher than billings by physicians. Also, when the supplier does bill we have no indication that the requesting physician bills for an "interpretation" of the test. The facts support our view that the service should be treated as not containing a professional component. Thus, GAFs would be applied to the technical component RVUs generally as described above for radiology services. Physician work would be presumed equal to zero; the division of the technical component RVUs into practice cost and malpractice portions would be based on historical practice cost data for physicians performing the service.

The following are the services that are being classified as diagnostic tests for purposes of the physician fee schedule and the basis we propose to use to establish the technical component RVUs for the service.

DIAGNOSTIC TESTS

Procedure code	Type	Pricing of tech. Comp.
M0520	Pacemaker analysis	1
M0525	Ekg w/pacemaker anely.	1
M0526	Ecg	1
M0535	Above 12-24 hrs	1
M0540	Ekg signal avg	1
51795	Urodynamics	1
51797	Urodynamics	1
92546	Otorhin	1
92547	Otorhin	2
92551	Audiologic	2
92552	Audiologic	2
92553	Audiologic	2
92555	Audiologic	2
92556	Audiologic	2
92557	Audiologic	2
92559	Audiologic	2
92560	Audiologic	2
92561	Audiologic	2
92562	Audiologic	2
92563	Audiologic	2
92564	Audiologic	2
92565	Audiologic	2
92566	Audiologic	2
92567	Audiologic	2
92568	Audiologic	2
92569	Audiologic	2
92571	Audiologic	2
92572	Audiologic	2
92573	Audiologic	2
92574	Audiologic	2
92575	Audiologic	2
92576	Audiologic	2
92577	Audiologic	2
92578	Audiologic	2
92580	Audiologic	2
92581	Audiologic	2
92582	Audiologic	2
92583	Audiologic	2
92584	Audiologic	2
92585	Audiologic	2
92589	Audiologic	2
92596	Audiologic	2
93005	Ekg	2
93012	Ekg	2
93015	Ekg	1
93017	Ekg	2
93040	Ekg	1
93041	Ekg	2
93202	Ekg	2
93208	Ekg	2
93221	Ekg	2
93224	Ekg	1
93225	Ekg	2
93226	Ekg	2
93231	Ekg	2
93232	Ekg	2
93236	Ekg	2
93307	Echo	1
93308	Echo	1
93312	Echo	1
93320	Echo	1
93325	Echo	2
93720	Vasc study	1
93721	Vasc study	2
93731	Vasc study	1
93732	Vasc study	1
93733	Vasc study	1
93734	Vasc study	1
93735	Vasc study	1
93736	Vasc study	1
93762	Vasc study	1
93850	Noninv vasc	1
93860	Noninv vasc	1
93870	Noninv vasc	1
93890	Noninv vasc	1
93910	Noninv vasc	1
93950	Noninv vasc	1

DIAGNOSTIC TESTS—Continued

Procedure code	Type	Pricing of tech. Comp.
93960	Noninv vasc	1
94010	Pulmonary	1
94060	Pulmonary	1
94070	Pulmonary	1
94200	Pulmonary	1
94240	Pulmonary	1
94250	Pulmonary	1
94260	Pulmonary	1
94350	Pulmonary	1
94360	Pulmonary	1
94370	Pulmonary	1
94375	Pulmonary	1
94620	Pulmonary	1
94680	Oxygen/gases	1
94681	Oxygen/gases	1
94715	Oxygen/gases	1
94720	Oxygen/gases	1
94725	Oxygen/gases	1
94750	Oxygen/gases	1
94762	Oxygen/gases	1
95000	Allergy testing	2
95001	Allergy testing	2
95002	Allergy testing	2
95003	Allergy testing	2
95005	Allergy testing	2
95006	Allergy testing	2
95007	Allergy testing	2
95011	Allergy testing	2
95014	Allergy testing	2
95016	Allergy testing	2
95017	Allergy testing	2
95018	Allergy testing	2
95020	Allergy testing	2
95021	Allergy testing	2
95022	Allergy testing	2
95023	Allergy testing	2
95027	Allergy testing	2
95030	Allergy testing	2
95031	Allergy testing	2
95032	Allergy testing	2
95033	Allergy testing	2
95034	Allergy testing	2
95040	Allergy testing	2
95041	Allergy testing	2
95042	Allergy testing	2
95043	Allergy testing	2
95051	Allergy testing	2
95056	Allergy testing	2
95060	Allergy testing	2
95065	Allergy testing	2
95070	Allergy testing	2
95071	Allergy testing	2
95075	Allergy testing	2
95078	Allergy testing	2
95080	Allergy testing	2
95081	Allergy testing	2
95082	Allergy testing	2
95819	EEG	1
95822	EEG	1
95823	EEG	1
95827	EEG	1
95828	Neurology	1
95863	Neurology	1
95864	Neurology	1
95925	Neurology	1
95937	Neurology	1
95950	Neurology	1
95951	Neurology	1

(1) Technical Component=Global minus Professional
(2) Technical Component only

b. Electrocardiograms. Section 4109 of Public Law 101–508 provides that effective with services furnished beginning January 1, 1992, separate payment can no longer be made for the interpretation of EKGs that are performed or ordered to be performed as part of or in conjunction with a visit or consultation. In addition, physicians who knowingly and willfully bill beneficiaries for separate interpretations that cannot be paid for under the Medicare program are subject to sanctions in accordance with section 1842(j)(2) of the Act. For this purpose, the conference committee indicates in report language (Conference Report No. 101–964 to accompany H.R. 5835) that the following CPT codes are covered under this provision: 93000, 93010, 93040, and 93042. (Code number 93041 is listed in the conference committee report as an interpretation code; however, this is clearly erroneous since the code is a tracing only code without an interpretation.) We believe that virtually all EKGs are performed as part of or ordered in conjunction with a visit. This would include the following types of situations:

- A physician performs an EKG during a visit and does the interpretation himself. The interpretation would not be separately payable although payment would be made for the technical component.
- A family physician refers a patient with a suspected cardiac problem to a cardiologist for a consultation. The cardiologist performs a complete workup including taking and interpreting an EKG. The interpretation would not be separately payable although payment would be made for the technical component.
- An EKG is ordered for a hospital inpatient by a surgeon for a patient scheduled for surgery. The EKG is interpreted by a cardiologist who does not see the patient. The EKG is considered to have been ordered in conjunction with the visit to the surgeon and is therefore not separately payable.
- A patient is brought to a hospital emergency room with chest pains. The ER physician orders an EKG. Whether the test results are interpreted by the ER physician or a cardiologist, the interpretation is not separately payable under the Medicare program since it was ordered during the ER visit.

We are presuming for purposes of calculating the CF that we will no longer be paying for any separate EKG interpretation fees under any of the aforementioned codes. We are, however, establishing relative values for EKG interpretations under these codes because of the possibility that some situation will be presented that involves the separate interpretation of an EKG not related to a visit. Furthermore, we will still be paying for the interpretation of very specialized EKGs under other codes not included within the scope of the statutory provision. This list would include codes 93201, 93204, 93205, 93209, 93220, 93222, 93224, 93227, 93230, 93235, and 93237. (See section VI.B for a description of how we propose to compute professional and technical component RVUs for diagnostic tests, including EKGs, under the physician fee schedule.)

We are proposing to incorporate additional RVUs into visit codes to reflect the work for EKG interpretations. Specifically, we performed an analysis of claims data to determine the number of RVUs to add to the total for each visit code to account for EKG interpretations. To each visit code, we would add some fraction of the 17 total work RVUs for an EKG interpretation, based on the historical frequency of EKGs associated with each of three types of visits—office visits (excluding minimal office visits), hospital visits, and consultations. Data for all specialties were used and these increased RVUs would apply to visits performed by all physicians. Examples of RVUs for selected office visits as adjusted to reflect EKG interpretation follow:

CHANGES TO WORK RELATIVE VALUES FOR SELECTED VISIT CODES WHEN EKG INTERPRETATION VALUES ARE INCLUDED

[RVUs to add to office visits=2.2]

CPT code [1]		Visit RVU	Visit EKG RVU	Percent increase
90040	Office/ Outpatient visit, est., brief.	36	38.2	6.1
90050	Office/ Outpatient visit, est., ltd..	53	55.2	4.2
90060	Office/ Outpatient visit, est., interm..	53	55.2	4.2
90070	Office/ Outpatient visit, est., extended.	86	88.2	2.6
90080	Office/ Outpatient visit, est., compreh..	136	138.2	1.6

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We expect to conduct additional analyses to further refine our methodology to more accurately allocate RVUs for EKGs to specific visit codes.

c. Technical component of cardiac catheterization services. Cardiac catheterization services, in the past, have been performed almost exclusively

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in the hospital setting. With some exceptions, only a professional component billing has been necessary for payment to be made to physicians. However, recently, we have provided coverage criteria that must be met before diagnostic cardiac catheterization can be performed in a free-standing facility. The Medicare carriers were instructed in section 5246.9 of the Medicare Carriers Manual that cardiac catheterization procedures can be covered in free-standing facilities if, in consultation with the appropriate PRO, they can determine that the services can be performed appropriately and safely in the facility.

In addition, we suggested two methods of establishing an inherently reasonable allowance for the technical portion of the diagnostic catheterization procedures. The two methods were:

- Use hospital cost and charge data to estimate the cost of furnishing cardiac catheterization in the hospital setting; or,
- Use cost data supplied by the freestanding cardiac catheterization facility as a basis for the technical component payment.

We surveyed the Medicare carriers to determine how they priced these procedures. We found that there was a wide range of payments being made by the carriers and that they used several variations on our payment guidelines to develop the Medicare payment amount for the technical component. In addition, we found that there was not widespread use of free-standing facilities and that hospitals continue to dominate the performance of cardiac catheterization. We do not believe that the Medicare payment data obtained from the carriers is sufficient to become the basis for determining the value of the technical component of cardiac catheterization for the fee schedule.

We believe that the number of procedures done in free-standing cardiac catheterization facilities will increase; therefore, there is a need to establish a technical component value for the service. We propose to use data taken from outpatient hospital bills to calculate the estimated cost for cardiac catheterization furnished in the hospital outpatient department and to use these costs as the technical component for cardiac catheterization services. We propose to apply the average cost to charge ratio for the hospitals when these services are performed to arrive at a national average cost for cardiac catheterization. We plan to publish these technical component values in the final rule. We invite comments on our methodology to calculate the technical component values for cardiac catheterization procedures.

d. Purchased diagnostic tests. Section 1842(n)(1) (as added by Pub. L. 100-203) provides for the elimination of the physician markup for purchased diagnostic tests. In essence, if a physician bills for a diagnostic test performed by an outside supplier, payment to the physician may not exceed the lowest of: (1) The supplier's net charge to the physician, (2) the physician's actual charge, (3) the fee schedule amount for the test that would be allowed if the supplier billed directly. Moreover, nonparticipating physicians may not bill beneficiaries amounts other than the allowable payment amount as determined above; participating physicians may not bill the beneficiary amounts other than the allowable payment amount and any applicable deductible or coinsurance.

The objective of this provision was twofold: (1) To save program costs by eliminating the profit when a physician buys a diagnostic service from an outside supplier, and (2) to reduce provision of unnecessary services by taking away the markup. The diagnostic tests in question are considered to be physicians' services under the fee schedule and subject to the general payment rules under section 1848 of the Act. We are preserving the purchased diagnostic test limit under the fee schedule. The original justification for it is still valid, and we have incorporated this provision into § 415.46.

3. Physician Pathology Services

At the time we were developing the separate pathology fee schedule that is no longer required, we asked organizations representing pathologists and independent laboratories for assistance in deriving an appropriate difference between professional and global allowances. Although they all agreed that there was some technical component and that logic dictated that global allowances be higher than professional allowances, they declined to recommend an appropriate differential because of a lack of data. Our own analysis of charge data at that time led us to conclude that it is difficult to arrive at reasonable estimates of the value of the technical components of pathology services. Some carriers do not distinguish between professional and global pathology services. In other cases, the payment distinctions reflected in historical charges appear irrational. (For example, professional charges were sometimes higher than global charges.)

Section 4104(c) of Public Law 101-508 requires that in implementing the physician fee schedule we consider an appropriate adjustment to reflect the technical component of furnishing physician pathology services through a laboratory that is independent of a hospital and separate from a physician's office. We understand that the College of American Pathologists will be obtaining some analysis related to this issue from Abt Associates, but no findings have been provided to us yet. Therefore, in the absence of alternative data upon which to base a technical component value, we propose to assume that the technical component of physician pathology services is equal to 15 percent of the 1991 adjusted historical charge. This is the assumption employed by the Congress in section 4104(a) of Public Law 101-508, which limits reductions in prevailing charges for global pathology services furnished by a physician through an independent laboratory to no less than 115 percent of the professional component prevailing charge for the same service when furnished by a hospital-based physician in the same locality.

In drafting this provision, Congress seems to have assumed that the technical component of the services in an independent laboratory is approximately 15 percent of the professional component. We will use this Congressional direction as a starting point for valuation of the technical component of physician pathology services. If the Abt data or other data become available to us during the next few months, we may adjust this figure up or down in the final rule for the physician fee schedule.

GAFs would be applied to the technical component RVUs generally in the same way as described above for radiology and diagnostic tests. Physician work would be presumed equal to zero; the division of the technical component RVUs into practice cost and malpractice portions would be based on historical practice cost data for pathologists.

4. Future Plans

We do not consider the methods outlined above for determining the technical component fee schedule amount to be satisfactory for long term use. Rather than basing the fee schedule payment on historic average allowed charges, we believe the technical component payment should be derived based on analysis of the actual costs of producing the service by an efficient physician or supplier. Given the absence of this data now, we have no choice but to use historic charges. However, over the next several years, we plan to gather needed cost data to revise the fee schedule over time. Priority will be given to services involving the highest expenditure level or when we question the appropriateness of payment amounts or both.

C. Payment Modifiers

There are two types of modifiers under the current payment systems. Modifiers to the procedure codes are used either to establish different payment amounts or to record descriptive information that does not affect payment levels. There are three levels of modifiers for HCPCS codes: Level 1 are CPT modifiers, Level 2 are national HCPCS modifiers established by HCFA, and Level 3 are local carrier-unique modifiers. Carriers have always had autonomy in the use of other modifiers to reflect local practices (including local carrier-unique modifiers). Transition to a national physician fee schedule requires standardization in the use of all modifiers.

We propose that only modifiers for which we establish a national payment policy would affect payment. If there is no national payment policy governing the use of a modifier, there would be no differential payment based on the presence or absence of that modifier. However, we expect to permit carriers to continue to use local modifiers when they are used for purposes other than payment (for example, utilization or medical review screening).

1. Multiple Surgery (CPT Modifier 51)

Sometimes surgeons perform more than one procedure on the same patient on the same day, resulting in the use of the multiple surgery modifier in billing for the procedures. The BMAD files for 1988 indicate that the multiple surgery modifier was used for over 1.5 million allowed services. When more than one procedure is performed, the issue arises whether Medicare should increase payment for the surgeons' services. Since payment for most surgical services is made on a global fee basis, we need to determine whether additional procedures performed are separate procedures that are separately billable or whether these additional procedures are incidental to the primary surgery and thus not separately billable.

As a practical matter, this requires a precise definition of the intra-operative procedures included as part of a primary surgery procedure so that we do not inappropriately make duplicate payments for procedures that are already included in the global fee for the primary surgery. We are working with the PPRC, physician groups, and carriers to develop these definitions and means of identifying when the use of multiple surgical modifiers is appropriate and inappropriate. As discussed in section V. B., the clarification of intra-operative procedures would affect the estimated frequency of services needed for computing the budget neutral CF.

Carriers generally make additional payments to surgeons for additional procedures not incidental to the primary surgery. Carriers vary in the amounts of these adjustments, but most carriers make an additional payment of 50 percent for the next highest procedure, and additional payments of 20 percent to 50 percent for other procedures. Some carriers add adjustments for an infinite number of procedures, and some carriers add adjustments for no more than 3 procedures.

The Harvard study did not measure or assign work values to the amount of added work associated with performing multiple surgical procedures. This is an area that needs to be studied in the future. Until better data are available, we see several different approaches for establishing the national policy for payments for multiple surgeries. For example, we could establish a general policy using standard percentages like those frequently used now, that would be applied to the global payment amounts for any multiple surgery. Alternatively, we could base the adjustment on either the relative values or a standard percentage of the intra-operative work for the specific procedures that were performed.

If we establish a general policy using standard percentages that would be applied to the global fee amounts for the procedures performed, the policy would be easy to understand and easy to administer. We could apply the current practices of many carriers to the fee schedule by providing for 100 percent payment for the most expensive procedure, 50 percent payment for the second highest procedure, and 20 percent for the third highest procedure, with a limit of payment for 3 procedures, regardless of the number actually performed.

A variation of this option would be to pay a different percentage, say, 40 percent (rather than 50 percent) of the fee schedule amount for the second procedure. Another option would be to base the add-on only on the intra-operative work of the second and subsequent procedures. The rationale for this option is that the intra-operative work would be less if additional surgery is performed on the same day. Further, the pre- and post-operative work of multiple procedures does not increase to the same degree as the intra-operative work. Thus, we could pay a specified percentage, perhaps 40 or 50 percent, of the intra-operative work value for the second procedure, with lower percentages applying to any other procedures performed.

Yet another option would be to include payment for multiple procedures in the payment for the primary procedure. This could be done, for example, by raising the relative values for the primary procedure by a proportional amount to reflect the average occurrence of bills for secondary procedures. This could be justified on the basis that payments for second and third procedures would average out among physicians performing primary procedures.

We are proposing to pay for multiple surgeries using the option of paying 100 percent of the global fee for the highest value procedure only, 50 percent of the global fee for the second most expensive procedure, 20 percent of the global fee for the third most expensive procedure, and 10 percent of the global fee for each succeeding procedure. Our proposed policy is similar to that currently used by many carriers and is familiar to physicians. We believe that it is equitable to the program and physicians alike. We do not have any objective data for valuing the incremental work associated with performing multiple surgeries. As we acquire more information and experience with the physician fee schedule, we will review our policy on payment for multiple surgeries. We welcome comments on our proposed policy.

If several surgeons each perform distinctly different, unrelated procedures on the same day, the multiple modifier would not be used unless one of the surgeons performed multiple surgeries. Each physician would be paid for the surgery performed (for example, multiple trauma). In these cases, an unusual services modifier 22 should be used. (See the following section for unusual services.)

We are concerned that there are some procedures in the surgery section of the CPT, specifically endoscopies and excision of skin lesions, that do not readily lend themselves to the proposed multiple surgery policy. For example, in the course of performing a fiberoptic colonoscopy (45378), a physician might biopsy one lesion (45380) and, from a different part of the colon, remove a polyp (45385). We believe that paying 100 percent of the global RVUs for the highest valued procedure (45385) and 50 percent of the intra-operative RVUs for the second highest procedure (45380) would result in excessive RVUs for the second highest procedure (45380), and would result in excessive payment as

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both the CPT codes 45380 and 45385 have the value of the basic colonoscopy (45378) built in, and we would in effect be counting it twice. This could overvalue the total work involved in performing the biopsy and polyp removal. We also believe that paying for multiple excisions of skin lesions under our proposed policy would similarly overvalue the work and also result in excessive payment. We are specifically requesting comments on these and other procedures when the multiple surgery policy would result in inequitable payment.

2. Bilateral Surgery (CPT Modifier 50)

The bilateral modifier is used to indicate cases in which a procedure was performed on both sides of the body. The BMAD files for 1988 indicate that there were almost 900,000 Medicare-allowed services under this modifier. The issues in determining the payment adjustment to make when the bilateral modifier is shown are quite similar to the issues that arise with regard to the multiple surgery modifier. The CPT identifies surgical procedures that are typically bilateral in nature. CPT code 27395, for example, is used for "Lengthening of the hamstring tendon; multiple, bilateral." For these codes, the bilateral modifier would not result in increased payment.

Carriers have typically paid 150 percent of the payment amount when they believed that the use of the bilateral modifier justified increased payment to the surgeon. We considered variations of this approach, such as paying 40 percent (rather than 50 percent) of the fee schedule amount for the second procedure.

Another option considered was to adjust the payment to the surgeon by adding the intra-operative work RVUs on a procedure-by-procedure basis so that the surgeon would be paid the full work RVUs for the intra-operative work, but for no additional pre-operative or post-operative work. The payment adjustment would be more complex, including the additional complexity of determining whether there had been duplication within the intra-operative work (for example, if only one incision is needed) that should be removed.

We propose to continue the historic practice of paying 150 percent of the global fee. In the absence of any evidence with respect to the actual difference in work for bilateral procedures, we believe paying 150 percent of the global fee is the fairest approach and avoids providing inappropriate incentives to physicians to schedule separate surgical procedures instead of doing the bilateral procedure in a single session.

3. Providers Furnishing Less Than the Global Fee Package (CPT Modifiers 54, 55, and 56)

When more than one physician furnishes services that are part of a global surgery fee package, the following modifiers are used to identify the services furnished by each:

- Surgical care only: Modifier 54.
- Pre-operative management only: Modifier 56.
- Post-operative management: Modifier 55.

The BMAD files for 1988 indicated almost 18,000 allowed services in which only intra-operative services were billed (modifier 54), about 117,000 allowed services in which only post-operative services were billed (modifier 55), and about 72,000 allowed services in which only pre-operative services were billed (modifier 56).

Under the current reasonable charge policy, the sum of all allowances for all practitioners who furnished parts of the services included in a global fee (and who billed using one or more of these modifiers) are not to exceed the total amount of the allowance that would have been paid to a single practitioner under the global fee for the procedure. This has been an issue, in particular, for global surgery packages in which some services are furnished by ophthalmologists and optometrists. It has also been an issue when cardiologists furnish some of the post-operative services included in a global fee for cardiac surgery furnished by a thoracic surgeon.

We propose to continue to pay the same amount for surgical services when they are furnished by several physicians as we would pay if only one physician furnished all of the services in the global package. However, we need to establish national policies regarding how payment for these services would be made. Specifically, we need to decide how carriers would pay each physician separately for his or her part of the service: whether there would be a standard percentage distribution that would apply to all global surgeries or whether the division would vary by procedure.

We propose to pay each physician directly for the services furnished to the beneficiary based on the RVUs of the component furnished. This could be difficult for carriers to administer if physicians do not use the appropriate modifiers; overpayments and/or denials could result, and resolution becomes problematic.

In order to reduce duplicate payments, we could use computer matching to identify instances when several physicians billed for services for the same patient within a time period around the use of an operating room and check whether reduced modifiers were being used appropriately. However, computer-matching would not fully resolve these issues because patients may have multiple conditions and several physicians may be appropriately billing unreduced modifiers during any given time period. Detailed medical review to determine legitimate unmodified bills from duplicate bills may also be required to the extent administratively feasible and cost justifiable. We are consulting with carriers, physicians, and others knowledgeable about diagnostic and procedure coding to develop reporting conventions that will facilitate administration of the policy. Specific reporting instructions will be issued by carriers before the fee schedule implementation.

In the unusual cases in which several physicians furnish post-operative services, the payment for the post-operative services would be divided between the physicians based on the number of days for which each physician was responsible for furnishing post-operative care. In these cases, the physicians would be required to indicate when responsibility for the post-operative care shifted from one physician to the other so that carriers could calculate the payments on an individual case basis.

We also considered establishing a standard split (for example, 5 percent pre-operative, 80 percent intra-operative and 15 percent post-operative) that would be applied to the global fee regardless of the procedure (or combination of procedures). This would be easy to administer and easy to understand. However, regardless of the percentages we choose, it is unlikely that we could choose one that would apply equitably to all procedures.

We will be providing breakdowns of all surgical RVUs on a pre-, intra-, and post-operative basis. We will use a benchmark procedure within each family. We will use the percentage breakdown of components for that procedure as a standard percentage for the whole surgical family. The following table shows examples of these preliminary percentages for families of procedures.

PERCENT OF TOTAL RVUS FOR SELECTED PROCEDURE CODE FAMILIES

Procedure [1]	Procedure code family*	Percent of total		
		Preop	Intraop	Postop
25605	25000–25931	11	34	55
28292	28001–28825	12	50	37
31535	31300–31595	23	57	20
33210	33010–33972	15	33	52
42145	42000–42281	12	50	38
43840	43500–43885	10	48	42
49600	49000–49900	12	50	38
55250	54000–55865	15	44	41
61154	61000–64907	14	37	49
69437	69400–69745	21	40	39

[1] Copyright 1991 American Medical Association.

4. Physicians Who Assist at Surgery (CPT Modifiers 80, 81, and 82)

There are circumstances in which a surgeon requires the assistance of another physician in surgery. Before 1991, § 405.502(a)(9) provided that payment for an assistant-at-surgery could not exceed 20 percent of the prevailing charge for the surgical service. Section 4107 of Public Law 101–508 changes this amount to 6 percent of the prevailing charge in 1991, and amends section 1848(i) of the Act to provide that under the fee schedule, payment for an assistant-at-surgery may not exceed 16 percent of the fee schedule amount for the global surgical service. Section 1848(i) of the Act also provides that no payment may be made for assistants-at-surgery when the most recent data show that for a surgical procedure (or class of surgical procedures) the national average percentage of cases in which an assistant was used is less than 5 percent. A listing of procedures falling into this category is contained in section 5039 of the Medicare Carriers Manual.

We propose to set the payment level for assistants-at-surgery at the lower of the actual charge or 16 percent of the fee schedule amount for the global surgical service. Section 1848(i) of the Act sets 16 percent as a limit, and we believe that it allows us to select a lower percentage if we so choose. We propose to lower the percentage from the current 20 percent to 16 percent, as required by Public Law 101–508.

5. Two Surgeons and Surgical Team (CPT Modifiers 62 and 66)

We recognize that there are valid circumstances when the procedure being done requires the participation of two surgeons or a surgical team (more than 2 surgeons). In these cases, the additional physicians are not acting as assistants-at-surgery, but because of the procedure (or procedures) or the patient's particular condition or both, two surgeons or a surgical team are required to meet the patient's surgical needs.

In the model fee schedule notice, we stated that we had no specific information as to whether the total work involved in performing a surgery is greater when done by two or more surgeons than when performed by a single surgeon. After consulting with our medical advisors, we believe that there are instances in which co-surgeons or a surgical team are necessary and that the payment amount should be greater in these instances.

For co-surgeons (modifier 62), we propose to continue the current predominant carrier practice of paying 125 percent of the global fee and dividing the payment equally between the two surgeons. No payment would be made for an assistant-at-surgery in these cases.

Team surgery (modifier 66) is only necessary in unusual cases. Under the current system, these procedures are individually paid on a by report basis. Although relative values may be available for some of the services usually done by a surgical team, our medical advisors believe that each situation is unique, and that team surgery procedures should continue to be paid on a report basis. We agree, and propose to continue to allow our carrier medical consultants to determine the payment amounts for team surgery on an individual basis.

Additional payment for both modifiers 62 and 66 is, of course, dependent upon the carrier determining that it was medically necessary to have more than one surgeon perform the surgery.

6. Unusual Services (CPT Modifier 22) or Reduced Services (CPT Modifier 52)

There are cases in which the service furnished is greater than or less than that usually required for the listed procedure. In these cases, the unusual services modifier (22) or the reduced services modifier (52) is used. In 1988, the BMAD files indicated modifier 22 was reported in about 1.5 million allowed services and modifier 52 was used for almost 4.3 million allowed services. In recognition that some flexibility is needed, we would continue to permit carriers to increase or decrease payment for very unusual circumstances, for example, severe trauma as a result of an automobile accident, based on their review of applicable medical records or other documentation. We would expect these cases to be very rare because the RVU-based payment would be computed as an average payment, recognizing that there is variation among individual patients treated. We would monitor the use of these modifiers to prevent their excessive use and the creation of local rather than national RVUs.

7. Multiple Modifiers (CPT Modifier 99)

Carriers vary in how they pay for and process claims with multiple modifiers. In practice, all modifiers that apply are used on the claim unless the carrier's claims processing system cannot accept multiple modifiers. In that case the CPT modifier "99" is used to flag the claim for manual processing.

A national policy regarding the application of multiple modifiers is necessary in order to establish nationally uniform and consistent payments. There are several different approaches. We could apply each of the separate payment adjustments that apply to each modifier. However, under this option, the potential exists for the payment to far exceed what the payment would have been for the procedure without modifiers. Moreover, the appropriateness of the payment adjustments becomes increasingly difficult to judge when there are multiple modifiers.

Another possibility is to specifically limit the total payment adjustments that could be made to a fixed percentage of the base payment for the procedure. For example, we could limit payment to no

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more than 160 percent of the global fee, regardless of the number of modifiers that apply. However, this policy could be difficult to define and to apply since several of the most commonly used modifiers are used when more than one procedure is performed (for example, multiple surgeries and bilateral surgeries).

A third option is for us to specifically limit the number of modifiers that could apply. For example, we might only adjust payment for a maximum of two modifiers. Physicians would be instructed to include a maximum of two modifiers on the bill and carriers would apply the applicable modifier policies if they determined that the two modifiers were appropriate.

In many cases, multiple modifiers are now used, for example, to identify services furnished in an HMSA that qualify for subsequent bonus payments. We believe with further study we can dramatically reduce the magnitude of the problem by examining other reporting methods. We are continuing to analyze the use of multiple modifiers and will develop operational instructions to carriers on how to pay for claims with multiple modifiers.

8. Multiple Patients and Single Patient Modifiers on Nursing Home Visit Bills (HCPCS Alpha-Numeric Modifiers MP and SP)

The multiple patient (MP) and single patient (SP) modifiers are currently used to identify visits to patients in nursing homes (other than patients receiving covered Part A care in SNFs). Our current payment policy limits payment for routine visits to MPs in these facilities to payment that would be made for a follow-up office visit. Payment for a routine visit to an SP in one of these facilities is limited to what payment would be for a follow-up home visit. Payment for a visit to treat an acute condition is made at whatever visit level reflects the services furnished, regardless of the number of patients seen at the facility.

We propose to pay for all visits to patients in facilities classified by Medicare as SNFs or by Medicaid as NFs without regard to the number of patients the physician sees at the facility. We believe that this change from longstanding policy is appropriate because the relative values for the services will reflect the physician work in the visit to a SNF or NF patient. Moreover, we believe that the overwhelming majority of visits to these facilities involve seeing more than one patient. Additionally, Public Law 100-203 essentially removed the staffing distinctions between NFs and SNFs; we have never applied the multiple visit policy to SNFs. Therefore, the payment amounts for visits to these patients would reflect the physician work and no modifier would be appropriate. In computing practice expense and malpractice RVUs for these visits, we would base the allowance on charge data for all services without regard to whether a single or multiple patient modifier is present. Thus, the RVU would reflect the weighted average costs for the mix of patients seen.

9. Modifiers That Would Not Affect Payment Levels

The presence or absence of the following modifiers would not increase or decrease payment levels under the physician fee schedule, although the modifiers may continue to be used for administrative purposes, including utilization reviews.

a. Current CPT modifiers that would not affect payment.

- 20 Microsurgery.
- 23 Unusual anesthesia.
- 32 Mandated services.
- 47 Anesthesia by surgeon.
- 75 Concurrent care.
- 76 Repeat procedure by same physician.
- 77 Repeat procedure by another physician.
- 90 Reference laboratory.

Similarly, we expect to exclude from consideration for payment purposes CPT codes for special services and reports that serve a similar purpose as the unusual services modifier (CPT codes 99000-99090). For example:

- "After hours" services codes 99050 and 99052.
- Extra supplies and materials codes 99070 and 99071.
- Prolonged physician attendance codes 99150 and 99151.
- Unusual travel code 99082.

b. HCPCS alpha-numeric modifiers that would not affect fee schedule payment amount.

- AT (Acute treatment).
- ET (Emergency treatment).
- LT (Left side of body).
- RT (Right side of body).
- SF (Second opinion ordered by a PRO).
- YY (Second surgical opinion).
- ZZ (Third surgical opinion).

We plan to establish, for administrative purposes only, modifiers to identify monitored anesthesia care and to identify office visits furnished solely by a non-physician practitioner under the "incident to a physician's service" provision. These changes would be made in the final rule.

c. Carrier-unique local modifiers (HCPCS level 3 modifiers beginning with the letters w through z).

No payment differential would be allowed based on carrier-unique local modifiers, although carriers may continue to use carrier-unique local modifiers for medical review, screening, and administrative purposes.

10. Travel

We considered whether there were circumstances in which separate payment for physician travel expenses would be appropriate. Based on our own analysis of carrier practices and other information as well as the advice of carrier medical directors, we propose not to make separate payment for these expenses. We believe that travel expenses incurred by physicians are viewed as part of the practice expense of a medical practice and therefore compensated adequately through the practice expense component of the relative value for a service. This policy seems consistent with the statutory provisions governing how practice expense must be calculated under the fee schedule.

D. New Physician/Practitioner Adjustment

1. General and To Whom It Applies

In § 415.38(d), we propose to reduce the fee schedule payment for physicians and independently practicing PTs and OTs who are in their first through fourth years of practice if certain conditions are met. This reduction for new physicians is required by section 1848(a)(4) of the Act, as added by section 4106(b) of Public Law 101-508. The reduction for new PTs and OTs in independent practice is required by section 1842(b)(4)(F) of the Act.

Section 1842(b)(4)(F)(i) of the Act applies the new physician reductions not only to the determination of reasonable charge payment for physicians in their first 4 years of practice, but also to other health care practitioners paid under fee schedules. The definition of "health care practitioner" at section 1842(b)(4)(F)(ii)(I) includes PTs and OTs. PTs and OTs in independent practice must be paid on the basis of reasonable charges until January 1, 1992 when payment for their services must be set at the rates contained in the fee schedule for physician services. Because the provisions of section 1842(b)(4)(F)(i) apply to PTs and OTs in independent practice whether paid on a reasonable charge or on a fee schedule basis, the reductions will continue to apply to these practitioners when payment for their services is made under the physician fee schedule.

2. Exceptions

In § 415.38(b)(2), we specify that the reduction required in this paragraph does not apply to primary care services furnished by physicians as defined in section 1842(i)(4) of the Act or to services furnished by physicians or PTs or OTs in a rural area as defined in section 1886(d)(2)(D) that is designated under section 332(a)(1)(A) of the Public Health Service Act, as an HMSA. The definition of "primary care" services is a longstanding statutory definition. Similarly, the definition of a "rural area" as defined in section 1886(d)(2)(D) that is designated under section 332(a)(1)(A) of the Public Health Service Act as an HMSA has long existed within the hospital prospective payment system regulations at § 412.62(f)(1)(iii).

3. Amounts of Adjustments

In § 415.38(d)(3), we set forth proposed amounts of adjustment for the services of new physicians. As specified in section 1848(a)(4) of the Act, the payment for the service of a new physician would be 80 percent of the fee schedule amount in the first year, 85 percent of the fee schedule amount in the second year, 90 percent of the fee schedule amount in the third year, and 95 percent of the fee schedule amount in the fourth year. These adjustments would be applied to the fee schedule payment amount calculated under §§ 415.20 and 415.40.

4. Years of Practice

In § 415.38(c), we set forth proposed definitions of "years of practice" for purposes of determining which payment adjustment applies during a period as specified in section 1848(a)(4) of the Act. Specifically, we propose that the "first year of practice" is the first full CY during the first 6 months of which the physician or independently practicing PT or OT furnishes professional services for which payment may be made under Part B plus any portion of the prior CY if that prior year does not meet the first 6 months test.

We propose that the second, third, and fourth years of practice be the first, second, and third CYs respectively, following the first year of practice, as specified in section 1848(c)(3) of the Act. Thus, if a physician first begins practicing and billing Medicare in March of 1992, he or she would be considered in the first year of practice from March of 1992 through December of 1993 since the first CY in which services were furnished throughout the January to June period would be 1993. In 1994, he or she would be in the second year of practice.

These reductions would apply to each physician based on his or her status as a "new physician", regardless of whether the new physician is a member of a group practice. This is a change from the comparable longstanding policy for setting customary charges for new physicians.

Until now, the customary charge for a group practice became the customary charge of a new physician who joined a group practice. Therefore, a new physician who joined a group practice was insulated from the restrictions on customary charges for new physicians, and was bound by the customary charge of the group. However, effective January 1, 1992, the new physician reductions will apply to all physicians, regardless of the type of practice in which they participate.

There is no basis in the law for excluding members of group practices from the specific provisions of section 1848(a)(4) of the Act. Moreover, one of the foremost goals of the physician fee schedule is to maximize equity among physicians. To exempt a physician from the new physician reductions based on the nature of the practice in which they choose to participate would be contrary to that goal. Because of the prior exclusion of members of groups from the new physician provisions, carriers would be instructed to identify all physicians who have less than 4 years practice as of January 1, 1992.

E. Participating Physician Differential

Section 1842(h) of the Act, as enacted by Public Law 98-369 (the Deficit Reduction Act of 1984, enacted on July 18, 1984), defined a "Medicare participating physician or supplier" as one who agrees voluntarily to accept Medicare payment as payment in full for all part B services. Over the years a number of incentives have been established in the law to encourage physicians and suppliers to participate in the program. One of the most important of these incentives is a higher payment for Medicare services performed. Under the customary, prevailing, and reasonable charge rules set forth in section 1842(b)(4)(A)(iv) of the Act, the nonparticipating physician reasonable charge for a service may not exceed 95 percent of the participating physician prevailing charge for a service.

Under the physician fee schedule, as specified in section 1848(a)(3) of the Act, the participating physician differential has been retained. More precisely, payments to nonparticipating physicians may not exceed 95 percent of the fee schedule amount. (As under the old rules, the participating physician differential applies to services furnished by a physician or, incident to a physician's service.) During the transition years, nonparticipating physicians may receive a payment no larger than 95 percent of the transition payment amount payable to a participating physician for the same service. The participating physician differential must be taken into account in calculating the budget neutral CF for 1992.

F. Health Manpower Shortage Area Bonus Payment

Under section 1833(m) of the Act, payments in addition to the amounts otherwise payable under Part B are made to physicians who furnish covered services to Medicare beneficiaries in designated HMSAs. Section 6102(d) of Public Law 101-239 amended section 1833(m) to increase the amount of this bonus payment from 5 percent to 10 percent for services furnished after December 31, 1990. In addition, the amendment broadened the applicability of the bonus to include all designated HMSAs, eliminating the restriction under prior law to Class 1 and 2 areas. These manpower shortage areas, which are identified by the PHS under statutory guidelines, include both rural and urban areas, and bonus payments may be made in both rural and urban areas as of January 1, 1991. Under the statutory authority cited above, the bonus would be applied to payment amounts derived from the fee schedule (or under the transition rules) beginning in 1992. The HMSA bonus is a payment made in addition to any amount payable under the fee schedule.

G. Comparability and Inherent Reasonableness Rules

1. Comparability Rule

Under the Medicare Part B customary, prevailing, and reasonable charge payment methodology currently used to compute physician payments, a statutory provision referred to as "comparability" authorizes adjustments to the payment amounts that would otherwise apply. Section 1842(b)(3)(B) of the Act provides that reasonable charge payments must not be higher than the carriers' private business payments to their own policyholders and subscribers for comparable services under comparable circumstances. For a number of reasons, some carriers have found it difficult to enforce this provision vigorously, while others have applied the principle more strictly.

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While the provisions of Public Law 101–239 establishing the physician fee schedule did not directly address the continued applicability of the comparability rule under the fee schedule, Public Law 101–508 did include a provision making it clear that payments under the fee schedule are not subject to the comparability adjustment. Specifically, section 4118(k) of Public Law 101–508 amended section 1848(i) of the Act.

2. Inherent Reasonableness Rule

Under the customary, prevailing, and reasonable charge payment system used to compute physician payments, the Secretary is authorized by sections 1842(b) (8) and (9) of the Act to establish special reasonable charge limits for physicians' services when Medicare prevailing charges are found to be "grossly excessive" or "grossly deficient". According to the statute, these authorities exist so that the Secretary is able to correct aberrant charges that are determined to be "inherently unreasonable" and to substitute a reasonable charge that is "realistic and equitable."

While the Public Law 101–239 provisions establishing the physician fee schedule did not directly address the continued applicability of the inherent reasonableness adjustment authority under the fee schedule, Public Law 101–508 did clarify this point. Section 4118(k) of Public Law 101–508 amended section 1848(i) of the Act to prohibit any use of the 1842(b)(8) and 1842(b)(9) inherent reasonableness authorities to adjust payment amounts computed under the fee schedule.

VII. Limiting Charge on Nonparticipating Physicians

Section 1848(g) of the Act limits the amount that nonparticipating physicians can charge beneficiaries called the "limiting charge". Effective January 1, 1991, the limiting charge replaced the Maximum Allowable Actual Charge (MAAC). The MAAC was specific to each physician because it was based on physicians' actual historical charges. The limiting charge continues to reflect physicians' historical actual charge until 1993. Beginning January 1, 1993, the limiting charge will be based solely on the payment allowance, that is, the fee schedule amount.

Effective January 1, 1991, the limiting charge is the same percentage (but no more than 25 percent) above the 1991 prevailing charge for nonparticipating physicians as the percentage by which a physician's 1990 MAAC exceeded the 1990 prevailing charge for nonparticipating physicians.

Example	Dr. X	Dr. Y
A. 1990 MAAC	$1150	$1300
B. 1990 Prevailing Charge	$1000	$1000
C. Percentage Difference Between A and B	15%	30%
D. 1991 Prevailing Charge	$1050	$1050
E. 1991 Limiting Charge (D increased by lower of C or 25%)	$1207	$1312

For evaluation and management services (visits and consultations) in 1991 only, limiting charge is the same percentage (but no more than 40 percent) above the 1991 prevailing charge for nonparticipating physicians as the percentage by which a physician's 1990 MAAC exceeded the 1990 prevailing charge for nonparticipating physicians.

Example (Evaluation & Management Services)	Dr. X	Dr. Y
A. 1990 MAAC	$1300	$1500
B. 1990 Prevailing Charge	$1000	$1000
C. Percentage Difference Between A and B	30%	50%
D. 1991 Prevailing Charge	$1050	$1050
E. 1991 Limiting Charge (D increased by lower of C or 40 percent)	$1365	$1470

Effective January 1, 1992, a nonparticipating physician's limiting charge is the same percentage (but no more than 20 percent) above the 1992 fee schedule amount for nonparticipating physicians as the percentage by which the physician's 1991 limiting charge exceeded the 1991 prevailing charge for nonparticipating physicians.

Example	Dr. X	Dr. Y
A. 1991 Limiting Charge	$1207.50	$1312.50
B. 1991 Prevailing Charge	$1050	$1050
C. Percentage Difference Between A and B	15%	25%
D. 1992 Fee Schedule Amount	$1100	$1100
E. 1992 Limiting Charge (D increased by lower of C or 20 percent)	$1265	$1320

Effective January 1, 1993, and thereafter, the limiting charge is 115 percent of the fee schedule amount for nonparticipating physicians.

Example	Dr. X	Dr. Y
A. 1993 Fee Schedule Amount	$1200	$1200
B. 1993 Limiting Charge (A increased by 15 percent)	$1380	$1380

Nonparticipating physicians who knowingly and willfully bill beneficiaries in excess of the limiting charge would be subject to sanctions as specified in the statute.

Other Information

VIII. Information Collection Requirements

This proposed rule contains no information collection requirements. Consequently, this rule need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

IX. Responses to Comments

Because of the large number of items of correspondence we normally receive on a proposed notice, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "**DATE**" section of this preamble, and we will respond to the comments in the preamble of the final notice.

X. Regulatory Impact Analysis

A. Executive Order 12291 and Regulatory Flexibility Act

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all physicians are considered to be small entities.

This proposed rule would implement those portions of section 6102 of Public Law 101–239 that establish: (1) A fee schedule for physicians' services; and (2) a limiting charge to constrain the amounts that non-participating physicians can charge Medicare beneficiaries in excess of the allowed charge for covered services. The physician fee schedule replaces the existing customary, prevailing, and reasonable (CPR) charge payment system with new standardized payment amounts computed as the product of an RVU for the service, a GAF for the fee schedule area, and a uniform national dollar CF. The statute requires that the CF for the first year be budget neutral, such that, had the fee schedule applied during 1991, it would result in the same level of aggregate payments as would be made under the reasonable charge system. The new limiting charge replaces the MAAC mandated by prior law with new percentage limits on the amounts that nonparticipating physicians can charge beneficiaries in excess of the amounts allowed by Medicare.

We are preparing a regulatory impact analysis because the provisions of the statute and the proposed regulations are expected to have major effects on the distribution of Medicare physician payments across specialties and across geographic areas. We anticipate that virtually all of the approximately 500,000 physicians who furnish covered services to Medicare beneficiaries would be affected by these policies. There may also be significant effects on beneficiary out-of-pocket costs in some cases. In addition, we have prepared an impact analysis to reflect our proposed change in payment for drugs furnished "incident to" a physician's service. Under this proposed rule, drugs would be paid for outside the physician fee schedule; therefore changes in payment for drugs would not have to be budget neutral.

In addition, because of the complexity of the physician fee schedule and the large number of individuals who would be affected by it, we believe there may be many questions and comments. Based on the comments we received on the Model Fee Schedule published September 4, 1990 (55 FR 36178), we expect a great deal of interest in the methodology for calculating the GPCI values, the refinements to the relative values for various services from the original Harvard work to the later versions, the calculation of the budget neutral CF, the establishment of an adjusted historical payment basis for purposes of the transition, the revised visit codes and descriptors, and many other issues. The following discussion describes what we know about the impact of the statute and the proposed rule on affected entities and is intended to fulfill the requirements of both E.O. 12291 and the RFA.

1. Effects on Physician Payments

a. Impact estimation methodology. Physician fee schedule impacts were estimated by comparing predicted physician payments under a continuation of the current CPR charge payment system to estimated payments under the physician fee schedule, including the transition rules in effect during 1992 through 1995. As explained in detail in section IV.F., projections of future payments were developed by aging or updating 1989 Medicare claims data from BMAD to reflect various statutory changes and other changes. Details on the process of data source selection, data validation, and data aging are provided in section IV.F. Throughout the impact analyses an assumption was made that claims for all services would be billed at or above the fee schedule amount.

b. Overall fee schedule impact. Throughout the discussion below regarding the impacts of fee schedule implementation, it is important to bear in mind that payment amounts for all services would be strongly affected by two major factors. First, the transition to the fee schedule as specified by statute would be asymmetric because, in 1992, payments for relatively undervalued services would increase to a greater extent than payments for overvalued services would decrease. Payment increases and reductions are both limited to 15 percent of the fee schedule amount, therefore, services experiencing increases move a larger fraction of the way to the full fee schedule than services experiencing decreases. In other words, the transition has a net cost.

Because of this systematic asymmetry that is built into the statutory transition rules, we must reduce payments in order to re-establish budget neutrality. The only statutorily authorized method for

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re-establishing budget neutrality is to reduce the fee schedule CF. The effect of this CF adjustment would be to reduce payments per service by about 6 percent by the time of full fee schedule implementation in 1996. (If we could have established budget neutrality in 1992 by lowering all payments to account for the asymmetrical transition instead of only those services subject to the full fee schedule, this adjustment would have been 2 percent rather than 6 percent.)

Second, in establishing the CF, which is statutorially required to be budget neutral relative to 1991 spending levels, we would apply a behavioral adjustment in anticipation of physician and beneficiary responses to changes in payment levels and policy standardization. As explained in section IV.E.3., we would adopt the assumption that responses per physician practice would be sufficient to recoup 50 percent of the net loss of Medicare payments that "losing" physicians would otherwise experience. No volume response by "winning" physicians would be assumed.

In order to achieve budget neutrality, we reduced payments per service (that is, the price of a service) by an additional 10.5 percent by 1996 for a total CF reduction of 16 percent when interaction between the two adjustments is taken into account.

It is important to emphasize that the outlay effect of the statute in FY 1996 would be only a 6 percent reduction and this reduction would be phased in gradually over the transition to the fee schedule. Further, many factors could intervene between now and 1996 that could affect these projections. Moreover, the actual effect on outlays could be more or less depending upon actual responses to the fee schedule.

In addition, it is important to consider the effect of these adjustments relative to overall increases in Medicare spending for physicians' services. Even with the 6 percent decreases in payments relative to CPR payments that could occur under these simulations (taking into account interactions between the CF adjustments), we expect the rapid rise in total spending would continue during 1992 to 1996 at an annualized rate of about 10 percent. This converts to an estimated 63 percent cumulative increase in 1996 physician expenditures over 1991 expenditures. Put differently, despite the reductions in payments per service associated with the fee schedule described above, total physician outlays would rise at an average annual rate of 10.3 percent, only about 1.4 percentage points less than the 11.7 percent increase that would be expected under a continuation of the CPR payment. The 10.3 percent average annual rate of increase in physician outlays that we expect between 1992 and 1996 is substantially higher than anticipated growth in the nation's economy. Over the same period, nominal Gross National Product growth is predicted to average 6.9 percent annually.

Finally, recent payment reductions required by Public Law 101-239 and Public Law 101-508 have affected payment levels for all physicians because the total outlay amount upon which the budget-neutral CF has been computed is less than it would have otherwise been.

In the discussion below of differential impacts by category (by specialty and by State), the effect of fee schedule implementation on any individual practitioner would depend not only on his or her specialty and locality, but on his or her own historical charging patterns and mix of services furnished. For example, even though family practitioners overall (or in a given locality) are expected to experience increases in total Medicare payment, an individual family practitioner whose historical charges were unusually high or who performed more procedural services than is typical could experience a small increase or even a decrease in Medicare payment.

In the tables included at the end of this section (displaying fee schedule impact by specialty and State), the estimates for Year 1 (1992) take into account the transition rules, under which payments for some services in some localities would reflect a blending of old and new payment amounts. In Year 5 (1996), the fee schedule is fully effective. The columns marked "Change in Payments per Service" assume no change in service frequencies; these are the changes that result simply from the new fee schedule payment rates as compared with payments under the current CPR charge payment system. The columns marked "Change in Payments" take into account not only the rate change per service but also anticipated changes in the volume and intensity of services in response to the fee changes.

The columns under the heading "Percent Increase in Total Budget Outlays under Fee Schedule" do not compare fee schedule payments to hypothetical payments under a continuation of CPR charge payment; these percentages measure year-to-year changes in budget outlays for physician payments made under the fee schedule. These estimates reflect not only the responses to the fee and other changes, but also all the other anticipated payment updates, changes in volume, mix of services, and enrollment that are traditionally part of budget estimation for Medicare.

c. Specialty level effects. Table 1 of this section shows the estimated percentage change in Medicare physician payment from the old to the new payment system by specialty and projected total budget outlays under the fee schedule by specialty. In general, those specialties that account for more visits and fewer procedures are expected to experience larger total increases in Medicare payments than procedurally oriented specialties, including surgical specialties.

Thus the estimates show, for example, that total Medicare payments to family practitioners and general practitioners would increase nationally at an annual rate of about 15 percent from 1991 to 1996, whereas the total increase in Medicare payments to physicians specializing in ophthalmology, radiology, pathology, and thoracic surgery would increase at a lower annual rate of about 8 percent. These figures can be compared against a national average rate of increase of 10 percent.

Comparing the fee schedule payments against a hypothetical continuation of CPR rules, table 1 also shows that on a per service basis, payment levels under the fully phased-in fee schedule would decrease by about 16 percent across all specialties (3 percent during the first year) relative to the CPR system. Again, results vary significantly by specialty. The specialties predicted to receive the largest increases in total Medicare payments relative to CPR charge payments are general and family practice, with 14 and 15 percent increases respectively in payments per service under the fully phased in fee schedule. Payments for these two specialties would be 16 and 17 percent higher than under the CPR payment system in 1996. Ophthalmologists and anesthesiologists are expected to receive the largest decreases in total Medicare payments relative to a continuation of the current system. Both physician groups can expect a 35 percent reduction in payments per service and a 16 percent reduction in payments, as compared against a continuation of CPR rules, when the fee schedule is fully effective. (However, as noted above, their increases in total Medicare income—including expected growth in volume and intensity, enrollment increases, and annual payment updates—are expected to be about 8 percent per year so that even

"losing" specialties are expected to have higher Medicare income than they currently receive.) Differences from the CPR payment system are much smaller in the first transition year; an 8 percent reduction in payments per service and a 3 percent reduction in payments relative to a continuation of the CPR system is estimated for both ophthalmologists and anesthesiologists.

We have explained that Medicare-covered services furnished by limited licensed practitioners who are not MDs or DOs but who are defined as "physicians" in Medicare law are included within the scope of the fee schedule. While the statute is clear on this point, the Secretary was left with some discretion to determine precisely how these services would be coded and thus how payment amounts would be calculated. As described earlier, we propose to pay these limited licensed practitioners the same as MDs and DOs for services billed under the same CPT code. For those services unique to limited licensed practitioners, we would develop relative values based on charge data.

Included on table 1 are the effects of the change to fee schedule payment on physicians for three of the limited licensed practitioner specialties—chiropractors, optometrists, and podiatrists. Like all other physician specialties, the limited licensed practitioners are expected to receive increasing payments from Medicare from 1991 through 1996, with all three groups predicted to experience rates of increase at or above the national cumulative 5-year increase of 63 percent. Relative to CPR payments, payments to optometrists and podiatrists are predicted to be higher under the fee schedule, as they begin to receive payments in all cases on a par with MDs and DOs when they perform the same service. Chiropractors, whose one Medicare-covered service is performed only by them, would receive fee schedule payments based on national historical charges for that service. As a result, chiropractors as a group can expect payments lower than under a continuation of the CPR rules, generally due to the transition and behavioral effects adjustments to the CF explained earlier.

Table 2 provides, by specialty, percentage changes in allowed charges relative to the national effect of the fee schedule (that is, table 2 displays selected data from table 1 after adjustments for the national effect of the fee schedule). This Table shows the relative gains and losses by specialty as compared to the national average. For example, while 1996 payments per service for internists could decrease 3 percent relative to CPR payments (see table 1), In comparison to the average for all specialties, payments per service for internists would be 16 percent higher than the national average.

Although all specialty groups can expect smaller gains or larger losses in payments per service than under earlier published scenarios for reasons discussed above, the general pattern of interspecialty redistribution is similar to that in previous simulations—those published as part of the early Harvard work, in HCFA's 1989 report to Congress ("Relative Value Scale (RVS) for Physician Services"), and in the August 8, 1990 article in the Journal of the American Medical Association by various HCFA analysts. However, when total payments are considered, the spread between specialties is reduced. In all these studies, use of a payment system based on the relative value of these services as a substitute for the present reasonable charge system has consistently improved payment for visit and consultation services relative to procedural services, including surgery. Our impact analysis by specialty supports this generalization and is therefore consistent with the earlier studies, although the statutory formulas and policies proposed here differ in some ways from the assumptions used in those earlier efforts.

Also, in the past, our impact analyses generally did not incorporate behavioral response assumptions. Use of these assumptions does change the pattern of interspecialty redistribution somewhat, by moderating the effects of the fee schedule on "losing" specialties.

d. State level effects. Tables 3 and 4 illustrate the effects of fee schedule implementation on Medicare payments by State, making clear that the fee schedule would redistribute payments not only across specialties, but across geographic areas as well. Geographic redistribution would occur for a number of reasons. First, the fee schedule would replace the current CPR charge-based payment system in which payments vary greatly and somewhat arbitrarily among States and localities (because it is based on historical charging patterns), with more standardized payment rates that vary geographically based on actual data pertaining to geographic variation in costs. Second, physician specialties that experience increases and decreases in payment per service under the fee schedule would be concentrated in different geographic areas. (For example, there are more surgeons in urban areas than in rural areas.) Third, the mix of procedures performed varies geographically even within specialties. (General practitioners do more procedural services in rural areas than in urban areas.)

The estimates in table 3 show that total Medicare payments to physicians nationally are expected to increase at an average annualized rate of 10 percent from 1991 to 1996, with modestly higher increases in some States and modestly lower increases in others. Predicted rates of increase vary from 9 percent in Alaska, Florida, and Nevada to 12 percent in Mississippi. Total cumulative increases in Medicare spending for physicians' services from 1991 to 1996 are predicted to range from 55 percent in Florida to 74 percent in Mississippi. (Nationwide the cumulative increase is expected to be 63 percent.) As explained earlier, these budget outlay estimates take into account not only changes in payments per service and volume/billing changes resulting from fee schedule implementation, but also the annual updates, historical volume and intensity trends, enrollment growth, and other factors used by the actuaries in Medicare budget estimation.

Table 3 also allows comparison of fee schedule payments by State against payments that would result under a hypothetical continuation of the CPR charge rules through 1996. First year payments per procedure would be slightly higher than CPR payments in several States; Minnesota payments are expected to exceed CPR payments by the largest margin. Relative to continuation of the CPR charge payment system, payments per service would rise by 4 percent and payments overall by 6 percent. When the fee schedule is fully effective, Mississippi would be the State experiencing the smallest reductions in payment overall as a result of the fee schedule. In that State, payments per service would be 2 percent less than they would have been under a continuation of the CPR payment rules and payments overall would be almost the same as under the CPR charge payment system. Among States experiencing the largest reductions relative to the CPR system would be Hawaii, Florida, and Nevada. In the first transition year, physicians in Hawaii are predicted to experience a 9 percent reduction in payments per service and a 3 percent reduction in payments overall. When the fee schedule is fully effective, physicians in Florida and Nevada would experience a 25 percent reduction in payments per service and a 10 percent reduction in payments overall, relative to a continuation of CPR payments.

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Finally, table 4 provides, by State, percentage changes in allowed charges relative to the national effect of the fee schedule (that is, table 4 displays selected data from table 3 after adjustments for the national effect of the fee schedule). This table shows the relative gains and losses by State relative to the national average. For example, while 1996 payments per service in North Carolina could decrease 14 percent relative to CPR payments (see table 3), in comparison to the average for all States, North Carolina would be 3 percentage points higher than the national average.

Like specialty level effects, these State level effects are generally consistent with those shown in earlier analyses. Payments in all States would be affected by the CF adjustments for the transition and behavioral effects, but the pattern of inter-State redistribution remains essentially unchanged.

There will also be redistributions of payments within States. Changes in payment levels could vary more widely if we compared smaller geographic areas than States, such as fee schedule areas. Variation at the fee schedule area level could be greater than at the State level, since the effects within States tend to offset one another. (For example, many States contain both urban and rural areas. Increases in rural areas may be offset by decreases in urban areas.)

e. Effects of separate payment for drugs. We have estimated the budgetary effects of our proposed policy for separate payment for certain drugs. As explained in section IV.A.5.c., carriers generally base payment for covered drugs on the physician's estimated cost of the drug using one of the wholesale price guides such as the Red Book, which is an annual pharmacists' reference published by the Medical Economics Company, Inc., Oradell, New Jersey. Under our proposed policy, carriers would be instructed to base payment for drugs on 85 percent of the national average wholesale price of the drug as published in the Red Book and similar price listings. Our policy would therefore reduce payments for drugs by approximately $10 million in FY 1992, $30 million in FY 1993, $30 million in FY 1994, $40 million in FY 1995, and $40 million in FY 1996.

2. Effects on Beneficiaries' Costs and Access to Services

Medicare beneficiaries incur out-of-pocket expenses in relation to their Medicare-covered services arising from (1) the monthly part B premium ($29.90 in 1991), (2) the annual deductible (increased from $75 in 1990 to $100 in 1991), (3) the 20 percent coinsurance, and (4) balance billing (that is, billing the beneficiary for an amount in excess of the Medicare allowed charge if the claim is not assigned). The implementation of the Medicare physician fee schedule and the limiting charge on balance billing as required by law and set forth in this proposed rule would have important effects on the amounts of beneficiary coinsurance and the amounts of balance billing permitted.

Concern about rising beneficiary out-of-pocket costs has led to an increasing emphasis over the past several years in encouraging physicians' Medicare participation (which requires accepting assignment for all cases), in increasing assignment rates, and limiting the amounts of balance billing. In fact, since Public Law 98-369 (the Deficit Reduction Act of 1984) established the participating physician program with its differential payment rates for participating and nonparticipating physicians, enrollment in the Medicare participating physician program has increased to 44.1 percent (April 1990 figure). Creation of the MAAC limits on balance billing (enacted as part of Public Law 99-509) gave physicians an additional incentive to participate. Participating physician charges represented approximately 63 percent of Medicare physician covered charges during CY 1990. At the same time, assignment rates have also increased steadily so that by CY 1990 the assignment rate based on total charges (physician and suppliers) had increased to 85.3 percent. With this increase in assigned claims and the MAAC limits that took effect in 1987, balance billing decreased from its CY 1986 high of $2.9 billion to a CY 1990 total of $2.2 billion, unadjusted for inflation or enrollment growth during this period.

Offsetting these declines in balance billing have been the recent increase in the deductible already mentioned, and continuing annual increases in the premium rate and increases in the amounts of coinsurance as the charges per service and volume and intensity of services have grown. Beneficiaries' aggregate coinsurance liabilities have increased at the same rate as part B benefit expenditures, about 15 percent annually. (The coinsurance rate has remained constant at 20 percent.)

The net effect of all these factors on beneficiary out-of-pocket costs has been as follows. Medicare has paid an increasing fraction of the total physician bill (up from 53 percent in 1977 to 61 percent in 1987). However, because total physician expenditures have risen so much, beneficiaries have had significant increases in out-of-pocket costs (even though they represent a smaller fraction of total costs). These out-of-pocket costs include premiums paid to both Medicare and supplemental (Medigap) insurers as well as amounts paid directly to physicians.

Under the fee schedule, some beneficiaries would pay more coinsurance, while others would pay less, depending on the effects of the fee schedule in their fee schedule area and the mix of services they receive. Typically, coinsurance for visits and consultations would increase, while coinsurance for surgical and imaging services would decrease. On the other hand, virtually all beneficiaries who receive services from nonparticipating physicians would benefit from the more stringent balance billing limits. And, the numbers of participating physicians and assigned claims would likely increase as more physicians find the higher payment rates available to participating physicians outweighing the possibility for income enhancement through balance billing.

A simulation done with 1987 data in conjunction with the October 1989 Report to Congress: Medicare Physician Payment, under assumptions similar although not identical to those later enacted into law, showed that while the percentage of beneficiaries who have coinsurance liability from 0 to $100 would decrease slightly and the percentage with liability from $101 to $250 would increase slightly, there would be no appreciable change in the percentage with liability of $500 or more. A more recent HCFA simulation that applied a 115 percent balance billing limit to 1988 claims data (without fee schedule effects) predicted that total balance billing would be reduced by approximately two-thirds—more than offsetting the slight increases in coinsurance for the typical beneficiary. Balance billing of more than $1,000 per year would be almost eliminated and 90 percent of beneficiaries who pay balance bills would pay less than $100 (as opposed to 74 percent currently). Based on the Report to Congress simulation, beneficiary cost sharing would be sharply decreased by the effects of the fee schedule and the billing limit changes. (This simulation assumed the old law deductible of $75 and a 120 percent balance billing limit.) The percent of beneficiaries with total liability of over $1000 for physician services would be reduced from approximately 5 percent to approximately 1 percent and there would also be decreases in the percentages with liability in the $250 to $500 range and in the $501 to $1,000 range. None of these simulations estimated the likely increase in assignment rates under the new billing limits, which would make the amounts of balance billing even smaller.

In a Summer 1990 article in Inquiry, Janet B. Mitchell and Terri Menke analyzed possible effects of the physician fee schedule and balance billing limit on beneficiary out-of-pocket costs, using their own simulation model (derived in part from work done by the PPRC staff). Using somewhat different assumptions from the HCFA models and a 1986 data base, they reached conclusions similar to those listed above—the slight increases in coinsurance were more than offset by large decreases in balance billing for most beneficiaries. In addition, they did some analysis of the effects by beneficiary subgroup. Two points seem noteworthy. First, they observed that since primary care (usually physician visits) makes up a large proportion of Medicare billings in rural areas, coinsurance increases for visits under the fee schedule may hit harder in some rural areas (where historical charges were lower than the new fee schedule amounts). However, balance billing is also more prevalent in rural areas and thus rural beneficiaries may benefit disproportionately from the new balance billing limit.

A second insight provided by Mitchell and Menke is that the balance billing limits, which assist beneficiaries in all demographic subgroups, constitute a sort of "catastrophic coverage program" for high cost patients. Their simulations show that patients with multiple hospital admissions may experience decreases in out-of-pocket costs averaging about 30 percent, reducing their costs by $700 to $800. This point is supported by our simulation data cited above, which showed sharp decreases in the numbers of beneficiaries with balance billing liability of $1000 or more under a 115 percent limit.

Finally, some have hypothesized that beneficiaries will further benefit from implementation of the fee schedule because it may equalize incentives to physicians across procedures. On the basis of revenues, physicians should be more financially neutral in choosing procedures. This could result in more appropriate care being furnished to Medicare beneficiaries. We welcome comments on the question of whether shifts in the services provided to beneficiaries are likely to result from implementation of the fee schedule and, if so, what impact this might have on patient care.

3. Effects on Carriers

The major costs and workloads associated with the transition to the physician fee schedule and balance billing limits are incurred in the first two years for systems changes and the need for increased capacity to train providers and respond to beneficiary inquiries. Ongoing carrier costs associated with maintenance of the fee schedule and balance billing limits are expected to be minimal.

In FY 1991, carriers will spend an estimated $38.5 million on activities related to implementation of these two physician payment provisions. Limiting charge instructions were implemented in January 1991. Carriers were allocated $1.85 million for responding to beneficiary inquiries related to balance billing. In addition, $9.1 million is expected to be expended for professional relations (carrier communication with physicians and physician organizations). The major portion of additional funds needed by carriers to implement the physician fee schedule is the $22.9 million to be spent on standardizing coding conventions, developing new claims processing software, calculating historical payment amounts for the transition, standardizing the global surgical definition and other standardization requirements.

In FY 1992, funds would also be needed to complete the standardization of coding conventions, the global surgical package, and other claims processing changes. In addition, when the fee schedule becomes effective on January 1, 1992, there would be costs associated with additional pre-payment and post-payment monitoring. These costs are expected to total $11.6 million in FY 1992. Responding to beneficiary inquiries would cost an estimated $3.7 million and professional relations an estimated $11.3 million. Thus FY 1992 carrier costs for implementation of the two provisions would be $26.6 million.

Finally, during FY 1993 through FY 1996 there would be some small continuing costs for the carriers. Programming changes to accommodate the annual fee schedule update would cost an estimated $0.1 million per year. Monitoring of standardized payment policies and balanced billing would cost $5.7 million per year. Total costs per year associated with the fee schedule and balance billing limit during this period would be $5.8 million.

B. Rural Hospital Impact Statement

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of sections 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This proposed rule, which implements the fee schedule for physician payment and the limiting charge, would have little direct effect on payments to rural hospitals, since this rule would change only payments made to physicians and certain other practitioners under part B of the Medicare program and would make no change in payments to hospitals under part A. However, widespread changes in physician payments with differential effects by geographic area and specialty could have an indirect effect (both positive and negative) on some rural hospitals. In particular, the limits on outpatient department radiology and diagnostic services could be affected. Because of the interaction of the effects of the RVUs, the GAF, and the elimination of specialty differentials, it is virtually impossible to generalize about the impact of the fee schedule on rural hospitals. It should be noted, however, that payment differentials between urban and rural physicians would be much narrower than under the current CPR charge payment system and would exist only to the extent justified by the cost of the practice index. This should make it less likely that physicians would leave rural areas to relocate to urban areas solely to receive higher fees for procedures from Medicare. Moreover, the newly increased HMSA bonus payments would also provide an incentive for physicians to continue practicing in many rural areas.

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TABLE 1.—PHYSICIAN FEE SCHEDULE IMPACT BY SPECIALTY

Percent change in allowed charges for fee schedule relative to CPR	Specialty				Percent increase in total budget outlays under fee schedule **	
	Year 1 (1992) change in:		Year 5 (1996) change in:		Avg. annualized	Cumulative
	Payments per service	Payments*	Payments per service	Payments*	1991–1996	1991–1996
All physician specialties	−3	0	−16	−6	10	63
Family practice	13	14	15	17	15	103
General practice	14	15	14	16	15	101
Cardiology	−5	−2	−17	−8	10	60
Dermatology	−2	−1	−15	−7	10	62
Internal medicine	0	0	−3	−1	11	72
Gastroenterology	−7	−2	−25	−11	9	54
Nephrology	−4	−1	−15	−7	10	62
Neurology	−4	−1	−9	−4	11	66
Psychiatry	−9	−3	−5	−2	11	69
Pulmonary	−4	−1	−8	−4	11	67
Urology	−4	−1	−15	−7	10	62
Radiology	−6	−2	−32	−14	8	49
Anesthesiology	−8	−3	−35	−16	8	46
Pathology	−6	−2	−30	−14	8	50
General Surgery	−5	−2	−20	−9	10	58
Neurosurgery	−6	−2	−25	−11	9	54
Opinthalmology	−8	−3	−35	−16	8	47
Orthopedic Surgery	−6	−2	−19	−9	10	59
Otolaryngology	2	3	−4	−2	11	70
Plastic Surgery	−6	−2	−17	−8	10	60
Thoracic Surgery	−7	−2	−31	−14	8	50
Clinics	−1	0	−11	−5	11	65
Optometry	13	14	12	14	15	97
Chiropractic	−8	−3	−14	−6	10	63
Podiatry	5	6	16	18	15	105

* Includes changes in payments per service as well as anticipated volume/intensity responses. See text.
** Incorporates changes in payment per service and anticipated volume/intensity responses to payment changes for that specialty. In addition, for each specialty, we have assumed the same volume/intensity baseline, growth in patient population, and payment updates.
Note: All estimates based on assumption that all submitted charges would be at or above the fee schedule payment amounts.

TABLE 2.—GAINS AND LOSSES BY SPECIALTY RELATIVE TO THE NATIONAL AVERAGE

Specialty	Percentage Gains and Losses Relative to the National Average			
	Year 1 (1992) change in:		Year 5 (1996) change in:	
	Payments per service	Payments*	Payments per service	Payments *
All physician specialties	0	0	0	0
Family Practice	16	14	37	24
General Practice	18	15	36	23
Cardiology	−3	−2	−1	−2
Dermatology	0	−1	1	−1
Internal medicine	2	0	16	5
Gastroenterology	−4	−2	−10	−6
Nephrology	−1	−1	1	−1
Neurology	−1	−1	5	2
Psychiatry	−7	−3	13	4
Pulmonary	−1	−1	9	2
Urology	−2	−1	1	−1
Radiology	−3	−2	−19	−9
Anesthesiology	−5	−3	−22	−11
Pathology	−4	−2	−17	−8
General Surgery	−2	−2	−5	−3
Neurosurgery	−4	−2	−10	−6
Ophthalmology	−6	−3	−22	−10
Orthopedic Surgery	−4	−2	−3	−3
Otolaryngology	5	3	−14	4
Plastic Surgery	−3	−2	−1	−2
Thoracic Surgery	−5	−2	−18	−9
Clinics	2	0	7	1
Optometry	16	14	33	21
Chiropractic	−6	−3	3	−1
Podiatry	8	6	39	25

* Includes changes in payments per service as well as anticipated volume/intensity responses. See text.
Note: All estimates based on assumption that all submitted charges would be at or above the fee schedule payment amounts.

TABLE 3.—PHYSICIAN FEE SCHEDULE IMPACT BY STATE

State	Percent change in allowed charges for fee schedule relative to CPR				Percent increase in total budget outlays under fee schedule **	
	Year 1 (1992) change in:		Year 5 (1996) change in:		Avg. Annualized	Cumulative
	Payments per service	Payments *	Payments per service	Payments *	1991–1996	1991–1996
All States	−3	−3	−16	−6	10	63
Alabama	−3	−1	−16	−7	10	62
Alaska	−7	−2	−23	−9	9	57
Arizona	−7	−2	−21	−9	10	58
Arkansas	−1	1	−16	−7	10	62
California	−6	−2	−21	−9	10	58
Colorado	2	4	−3	−1	11	72
Connecticut	−5	−2	−16	−7	10	62
Delaware	−1	1	−14	−6	10	64
District of Columbia	−4	−2	−15	−6	10	62
Florida	−7	−2	−25	−10	9	55
Georgia	−2	0	−16	−7	10	62
Hawaii	−9	−3	−22	−9	10	58
Idaho	2	4	−6	−3	11	69
Illinois	−2	0	−14	−6	10	63
Indiana	−1	1	−12	−5	11	65
Iowa	1	3	−4	−2	11	71
Kansas	0	2	−13	−6	10	64
Kentucky	0	2	−11	−5	11	65
Louisiana	−3	−1	−17	−7	10	61
Maine	0	2	−11	−5	11	66
Maryland	−5	−2	−19	−8	10	60
Massachusetts	−3	−1	−13	−6	10	64
Michigan	0	2	−8	−3	11	69
Minnesota	4	6	−6	−2	11	69
Mississippi	2	4	−2	0	12	74
Missouri	0	2	−10	−4	11	66
Montana	−1	1	−13	−5	10	64
Nebraska	−3	−1	−10	−4	11	66
Nevada	−7	−3	−25	−10	9	55
New Hampshire	2	4	−5	−2	11	70
New Jersey	−1	1	−13	−6	10	64
New Mexico	−3	−1	−19	−8	10	60
New York	−2	0	−13	−5	10	64
North Carolina	0	2	−14	−6	10	64
North Dakota	−2	0	−15	−6	10	63
Ohio	−2	0	−16	−7	10	62
Oklahoma	−6	−2	−14	−6	10	63
Oregon	−2	0	−13	−5	10	64
Pennsylvania	−2	0	−14	−6	10	64
Rhode Island	0	2	−10	−4	11	66
South Carolina	1	3	−8	−3	11	68
South Dakota	1	3	−10	−4	11	66
Tennessee	1	3	−13	−5	10	64
Texas	−3	−1	−21	−9	10	58
Utah	1	3	−6	−3	11	69
Vermont	1	3	−10	−4	11	66
Virginia	0	2	−9	−4	11	67
Washington	−2	0	−12	−5	11	65
West Virginia	−2	0	−17	−7	10	61
Wisconsin	−1	1	−12	−5	11	65
Wyoming	2	4	−4	−2	11	71

*Includes changes in payments per service as well as anticipated volume/intensity. See text.
**Incorporates changes in payment per service and anticipated volume/intensity responses to payment changes for that state. In addition, for each state, we have assumed the same volume/intensity baseline, growth in patient population, and payment updates.
Note: All estimates based on assumption that all submitted charges would be at or above the fee schedule payment amounts.

TABLE 4.—GAINS AND LOSSES BY STATE RELATIVE TO THE NATIONAL AVERAGE

State	Percentage Gains and Losses Relative to the National Average			
	Year 1 (1992) change in:		Year 5 (1996) change in:	
	Payments per service	Payments *	Payments per service	Payments *
All States	0	0	0	0
Alabama	0	−1	1	0
Alaska	−4	−2	−7	−3
Arizona	−4	−2	−5	−3
Arkansas	2	1	1	0
California	−4	−2	−6	−3
Colorado	5	4	16	6

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TABLE 4.—GAINS AND LOSSES BY STATE RELATIVE TO THE NATIONAL AVERAGE—Continued

State	Percentage Gains and Losses Relative to the National Average			
	Year 1 (1992) change in:		Year 5 (1996) change in:	
	Payments per service	Payments *	Payments per service	Payments *
Connecticut	−2	−2	0	0
Delaware	2	1	3	1
District of Columbia	−2	−2	1	0
Florida	−5	−2	−10	−4
Georgia	1	0	0	0
Hawaii	−6	−3	−7	−3
Idaho	4	4	12	4
Illinois	1	0	2	0
Indiana	2	1	5	1
Iowa	4	3	15	5
Kansas	3	2	4	1
Kentucky	3	2	6	2
Louisiana	0	−1	−1	−1
Maine	3	2	7	2
Maryland	−2	−2	−3	−2
Massachusetts	0	−1	4	1
Michigan	3	2	12	4
Minnesota	6	6	13	4
Mississippi	5	4	17	7
Missouri	3	2	8	2
Montana	2	1	4	1
Nebraska	0	−1	8	2
Nevada	−5	−3	−10	−4
New Hampshire	5	4	13	5
New Jersey	1	1	4	1
New Mexico	0	−1	−3	−2
New York	1	0	4	1
North Carolina	2	2	3	1
North Dakota	1	0	2	0
Ohio	0	0	1	0
Oklahoma	−3	−2	3	1
Oregon	0	0	4	1
Pennsylvania	0	0	3	1
Rhode Island	3	2	8	3
South Carolina	4	3	10	3
South Dakota	4	3	7	2
Tennessee	4	3	5	1
Texas	0	−1	−5	−3
Utah	4	3	12	4
Vermont	4	3	7	2
Virginia	3	2	9	3
Washington	1	0	5	2
West Virginia	0	0	−1	−1
Wisconsin	1	1	6	2
Wyoming	5	4	15	5

* Includes changes in payments per service as well as anticipated volume/intensity responses. See text.
Note: All estimates based on assumption that all submitted charges would be at or above the fee schedule payment amounts.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 415

Administrative practice and procedure, Health facilities, Health professions, Medicare, physicians, Reporting and recordkeeping requirements.

42 CFR chapter IV would be amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart E—Criteria for Determination of Reasonable Charges; Reimbursement for Services of Hospital Interns, Residents, and Supervising Physicians

A. Part 405, subpart E, is amended as set forth below:

1. The authority citation for subpart E is revised to read as follows:

Authority: Secs. 1102, 1814(b), 1832, 1833(a), 1834(b), 1842 (b) and (h), 1848, 1861 (b) and (v), 1862(a)(14), 1866(a), 1871, 1881, 1886, 1887, and 1889 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395k, 13951(a), 1395m(b), 1395u (b) and (h), 1395w–4, 1395x (b) and (v), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww, 1395xx, and 1395zz).

2. In § 405.502, paragraph (f) is revised to read as follows:

§ 405.502 Criteria for determining reasonable charges.

* * * * *

(f) *Determining payments for certain physician services furnished in outpatient hospital settings*—

(1) *General rule.* If physician services of the type routinely furnished in physicians' offices are furnished in outpatient hospital settings, carriers determine the fee schedule amount for those services by applying the limits described in paragraph (f)(5) of this section.

(2) *Definition.* As used in this paragraph (f), *outpatient settings* include the following facilities:

(i) Hospital outpatient departments, including clinics and emergency rooms.

(ii) Comprehensive outpatient rehabilitation facilities.

(3) *Services covered by limits.* HCFA establishes a list of services routinely furnished in physicians' offices nationally. Services furnished at least 50 percent in physicians' offices are subject to this limit.

(4) *Services excluded from limits.* The limits established under this paragraph do not apply to the following:

(i) Rural health clinic services.

(ii) Surgical services included on the ambulatory surgical center list of procedures published under § 416.65(c) of this chapter.

(iii) Anesthesiology services and diagnostic and therapeutic radiology services.

(5) *Limit on services in an outpatient setting.* For services subject to the limit on services in an outpatient setting, the carrier applies the limit by reducing the practice expense RVU for a service by 50 percent.

(6) *Application of limits.* Payment for physician services of the type described in paragraph (f)(3) of this section that are furnished in an outpatient setting is the lower of the actual charge or the payment amount determined after applying the limit to the practice expense RVU as described in paragraph (f)(5) of this section.

* * * * *

3. In § 405.509, a new paragraph (c) is added to read as follows:

§ 405.509 Determining the inflation-indexed charge.

* * * * *

(c) The inflation-indexed charge does not apply to any services, supplies, or equipment furnished after December 31, 1991, that are covered under or limited by the fee schedule for physicians' services established under section 1848 of the Act and part 415 of this chapter. These services are subject to the Medicare Economic Index described in § 415.30 of this chapter.

4. Sections 405.521 through 405.524 are revised to read as follows:

§ 405.521 Services of attending physicians supervising interns and residents.

(a) *Basic rules.* (1) Attending physicians' services furnished to beneficiaries in a teaching setting are covered under Medicare Part B; and

(2) The payment for these services is on the same fee schedule basis as other physician services except in those hospitals that have elected cost reimbursement under paragraph (d)(2) of this section.

(b) *Physician direction requirements.* (1) Payment on the basis of the physician fee schedule applies to the professional services furnished to a beneficiary by the attending physician when the attending physician furnishes personal and identifiable direction to interns or residents who are participating in the care of the patient.

(2) In the case of major surgical procedures and other complex and dangerous procedures or situations, the attending physician must personally supervise the residents and interns whom the physician involves in the care of the patients.

(3) Part B payment may be made for the services of an attending physician who involves residents and interns in the care of a patient only if the physician assumes and fulfills the same responsibilities for this patient as for other paying patients.

(4) The carrying out by the physician of these responsibilities is demonstrated by actions such as: Reviewing the patient's history and physical examination and personally examining the patient within a reasonable period after admission; confirming or revising diagnosis; determining the course of treatment to be followed; ensuring that any supervision needed by the interns and residents is furnished; and making frequent reviews of the patient's progress.

(c) *Billing procedures.* (1) Charges for the services of the attending physician may be billed either directly by him or by the hospital under arrangements between the physicians and the hospital.

(2) In either case, the amount payable is determined using the same criteria that are used in applying the physician fee schedule to services that the physician furnishes to other patients. (The physician fee schedule rules are set forth in part 415 of this chapter.)

(d) *Payment to the hospital.* (1) For services to patient that involve the participation of residents or interns, the hospital can receive payment for an appropriate share of the compensation it pays its residents and interns as described in § 413.86 of this chapter.

(2) A hospital with an approved teaching program may elect to receive payment on a reasonable cost basis for the direct medical and surgical services of its physicians in lieu of any payment on a reasonable charge or fee schedule basis that might otherwise be payable for these services.

(3) A hospital may elect to receive cost reimbursement only if—

(i) All physicians who furnish Medicare-covered services in the hospital agree not to bill charges for these services; or

(ii) All the physicians are employees of the hospital and as a condition of employment are precluded from billing for these services.

(4) If the requirements of paragraph (d)(3) of this section are met, the payment provisions of § 405.465 apply.

(5) For cost reporting periods beginning after June 30, 1985, a teaching hospital that elects payment for the direct medical and surgical services of its physicians in accordance with paragraph (d)(2) of this section must, for purposes of calculating the per resident amounts described in § 413.86(e) of this chapter, remove from its graduate medical education base period costs, as defined in § 413.86(d) of this chapter, those costs relating to the supervision of interns and residents in approved programs related to the care of individual patients.

(e) Nothing in this section restricts the disposition of payments received either from Medicare or from beneficiaries.

§ 405.522 Interns' and residents' services in approved teaching programs.

(a) *Approved teaching programs.* Title XVIII of the Act recognizes residency programs in providers that are duly approved in their respective fields by the Accreditation Council for Graduate Medical Education of the American Medical Association, by the Committee on Hospitals of the Bureau of Professional Education of the American Osteopathic Association, by the Council on Dental Education of the American Dental Association, or, for provider cost reporting periods beginning after December 31, 1972, by the Council on Podiatric Medicine Education of the American Podiatric Medical Association.

(b) *Basis for payment.* (1) Services of interns and residents in these approved programs furnished in hospitals are explicitly excluded from the definition of "physicians' services" and are not payable as such. These services are covered as hospital services. This exclusion applies whether or not the intern or resident is authorized to practice as a physician under the laws of the State in which the intern or resident performs the services.

(2) Medicare pays for the costs of approved residency programs in hospitals and hospital-based providers as set forth in § 413.86 of this chapter. Medicare pays for the cost of the services of interns and residents, specifically as a component of allowable costs defined by the principles of

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payment for provider costs set forth in § 413.85 of this chapter.

(3) For purposes of payment for services of interns and residents in accordance with these principles, recording and reporting by the hospital of the specific services furnished to individual beneficiaries is not necessary.

§ 405.523 Interns' and residents' services not in approved teaching programs.

(a) *Payment under Medicare Part B.* The services of a hospital resident or intern who is not under an approved hospital teaching program are paid to the hospital on a reasonable cost basis under Medicare Part B. Even if these services are furnished to inpatients, the cost of the services is not an allowable cost under Medicare Part A, but is allowable under Medicare Part B. For purposes of this section, these services include services of a physician employed by the hospital who is authorized to practice only in a hospital setting.

(b) *Amount of payment.* Medicare Part B payment for services discussed in paragraph (a) of this section is made to the hospital in an amount of 80 percent of the reasonable cost of services minus any applicable deductible amount. The beneficiary incurs the expense of the deductible and coinsurance amounts as determined on the basis of the hospital's charges to the beneficiary for its services that are covered under Medicare Part B.

§ 405.524 Interns' and residents' services outside the hospital.

(a) *Medicare Part A payment.* Payment is made under Medicare Part A for interns' and residents' services furnished in the following settings that meet the specified requirements:

(1) *Skilled nursing facility.* Payment to a participating SNF may include the cost of services of an intern or resident who is under an approved teaching program in a hospital with which the facility has a transfer agreement under § 405.1133 that provides, in part, for the transfer of patients and the interchange of medical records.

(2) *Home health agency.* A participating home health agency may receive payment for the cost of the services of an intern or resident who is under an approved teaching program of a hospital with which the home health agency is affiliated or under common control when these services are furnished as part of the posthospital home health visits for a Medicare beneficiary. (However, see § 413.86 for the costs of approved residency programs in hospital-based providers.)

(b) *Medicare Part B payment.* Medical services of a resident or intern of a hospital that are furnished by a freestanding skilled nursing facility or home health agency are paid under Medicare Part B on an 80 percent of allowable cost basis if payment is not provided under Medicare Part A.

§§ 405.530–405.533 [Removed]

5. Sections 405.530 through 405.533 are removed.

6. The undesignated centered heading above § 405.550 and §§ 405.553, 405.555, and 406.557 are removed.

7. Sections 405.550 through 405.552, 405.554, 405.556, and 405.580 are transferred from Subpart E to a new Subpart F and revised to read as follows:

Subpart F—Services of Physicians in Providers

Sec.

405.550 Conditions for payment of charges for physician services to patients in providers: General provisions.
405.551 Amount of payment for physician services in providers.
405.552 Conditions for payment: Anesthesiology services.
405.554 Conditions for payment: Radiology services.
405.556 Conditions for payment: Physician laboratory services.
405.580 Conditions for payment: Assistants at surgery in teaching hospitals.

Authority: Secs. 1102, 1814(b), 1832, 1833(a), 1834(b), 1842 (b) and (h), 1848, 1861 (b) and (v), 1862(a) (14), 1866(a), 1871, 1881, 1886, 1887, and 1889 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395k, 1395l(a), 1395m(b), 1395u (b) and (h), 1395w–4, 1395x (b) and (v), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww, 1395xx, and 1395aa).

Subpart F—Services of Physicians in Providers

§ 405.550 Conditions for payment of charges for physician services to patients in providers: General provisions.

(a) *Scope.* This section provides general conditions that must be met in order for services furnished by physicians in providers to be paid for on the basis of the physician fee schedule under this subpart. Section 405.551 sets forth general requirements for determining the amounts of payment for services that meet the conditions of this section. Sections 405.552, 405.554, and 405.556 set forth additional conditions for payment for physician services in the specialities of anesthesiology, radiology, and pathology (laboratory services).

(b) *Conditions for payment for services of physicians to provider patients.* The carrier pays for services of physicians to patients of providers on a fee schedule basis only if the following requirements are met:

(1) The services are personally furnished for an individual patient by a physician.

(2) The services contribute directly to the diagnosis or treatment of an individual patient.

(3) The services ordinarily require performance by a physician.

(4) In the case of anesthesiology, radiology, or laboratory services, the additional requirements in §§ 405.552, 405.554, or 405.556 are met.

(c) *Services of physicians to providers.* If a physician furnishes services in a provider that do not meet the requirements in paragraph (b) of this section but are related to the provision of patient care by the provider, the intermediary will pay for those services, if otherwise covered, under the rules in §§ 405.480 and 405.481 on reasonable cost payment for physician services to providers.

(d) *Effect of billing charges for physician services in a provider.*—(1) For services performed by a physician that may be paid under the reasonable cost rules in § 405.480 or § 405.481 or would be paid under those rules except for the prospective payment rules in part 412 of this chapter, neither provider nor physician may seek charge payment from the carrier, beneficiary, or another insurer.

(2) The carrier will not pay on a fee schedule basis for services furnished by a physician to an individual patient if the services do not meet the applicable conditions in paragraph (b) of this section and §§ 405.552, 405.554, and 405.556.

(3) If the physician, the provider, or another entity bills the carrier or the beneficiary for physician services to the provider, as described in section 405.480(a), the provider in which and to which the services were furnished may be considered to have violated its provider participation agreement, and that agreement may be terminated. See part 489 of this chapter for rules governing provider agreements.

(e) *Effect of physician's assumption of operating costs.* If a physician or other entity enters into an agreement (such as a lease or concession) with a provider, under which the physician (or entity) assumes some or all of the operating costs of the provider department in which the physician furnishes physician services in the provider, the following rules apply:

(1) If the conditions set forth in paragraph (b) of this section are met, the carrier pays under the physician fee schedule in part 415 of this chapter.

(2) To the extent the provider incurs a cost reimbursable on a reasonable cost basis under part 413 of this chapter, the intermediary pays the provider on a reasonable cost basis for the costs associated with producing these services, including overhead, supply, and equipment costs, and services furnished by nonphysician personnel.

(3) The physician (or other entity) is treated as related to the provider within the meaning of § 413.17 of this chapter.

(4) The physician (or other entity) must make its books and records available to the provider and the intermediary as necessary to verify the nature and extent of the costs of the services furnished by the physician (or other entity).

§ 405.551 Amounts of payment for physician services in providers.

(a) *Scope.* The carrier determines amounts of payment for physician services to patients in providers in accordance with the general rules governing fee schedule payment in part 415 of this chapter, except as provided in paragraph (b) of this section.

(b) *Application in certain settings.*—(1) *Teaching hospitals.* In determining whether fee schedule payment should be made for physician services to individual patients in a teaching hospital, the carrier applies the rules in § 405.521 in addition to those in this section.

(2) *Hospital-based ESRD facilities.* In determining the amount of payment for physician services to individual patients furnished in a hospital-based end-stage renal disease (ESRD) facility certified under Subpart U of this part, the carrier applies the rules in § 405.542 instead of those in this section.

§ 405.552 Conditions for payment: Anesthesiology services.

(a) *Services furnished directly or concurrently.* The carrier pays a physician for anesthesiology services furnished to patients in a provider on a fee schedule basis only if the services meet the conditions in § 405.550(b) and the following additional conditions:

(1) For each patient, the physician—

(i) Performs a pre-anesthetic examination and evaluation;

(ii) Prescribes the anesthesia plan;

(iii) Personally participates in the most demanding procedures in the anesthesia plan, including induction and emergence;

(iv) Ensures that any procedures in the anesthesia plan that he or she does not perform are performed by a qualified individual;

(v) Monitors the course of anesthesia administration at frequent intervals;

(vi) Remains physically present and available for immediate diagnosis and treatment of emergencies; and

(vii) Provides indicated postanesthesia care.

(2) The physician either performs the procedure directly, without the assistance of an anesthetist, or directs no more than four anesthesia procedures concurrently, and does not perform any other services while he or she is directing the concurrent procedures.

(b) *Supervision of more than four procedures concurrently.* If the physician is involved in furnishing more than four procedures concurrently, or is performing other services while directing the concurrent procedures, the concurrent anesthesia services are physician services to the provider in which the procedures are performed. In these cases, the physician is not required to meet the criteria of paragraphs (a)(1)(iii) and (vii) of this section personally, but must ensure that a qualified individual performs any procedure in which the physician does not personally participate. In these cases, the intermediary pays for the services under the rules in §§ 405.480 and 405.481 on reasonable cost payment for physician services to providers or under the rules in part 412 for payment under the prospective payment system.

§ 405.554 Conditions for payment: Radiology services.

(a) *Services to patients.* The carrier pays for radiology services furnished by a physician to an individual patient on a fee schedule basis only if the services meet the conditions in § 405.550(b) and are identifiable, direct, and discrete diagnostic or therapeutic services to an individual patient, such as interpretation of X-ray plates, angiograms, myelograms, pyelograms, or ultrasound procedures.

(b) *Services to providers.* The carrier does not pay on a fee schedule basis for physician services to the provider (for example, administrative or supervisory services) or for provider services needed to produce the X-ray films or other items that are interpreted by the radiologist. However, the intermediary pays the provider for these services in accordance with § 405.480 for provider costs, and § 405.550(e)(2) for costs borne by a physician, such as under a lease or concession agreement, and part 412 of this chapter for payment under the prospective payment system.

§ 405.556 Conditions for payment charges: Physician laboratory services.

(a) *Physician laboratory services.* The carrier pays for laboratory services furnished by a physician to an individual patient on a fee schedule basis only if the services meet the conditions for payment in § 405.550(b) and are—

(1) Anatomical pathology services;

(2) Consultative pathology services that meet the requirements in paragraph (b) of this section; or

(3) Services performed by a physician in personal administration of test devices, isotopes, or other materials to an individual patient.

(b) *Consultative pathology services.* For purposes of this section, consultative pathology services must—

(1) Be requested by the patient's attending physician;

(2) Relate to a test result that lies outside the clinically significant normal or expected range in view of the condition of the patient;

(3) Result in a written narrative report included in the patient's medical record; and

(4) Require the exercise of medical judgment by the consultant physician.

(c) *Independent laboratory services furnished to hospital inpatients.* Laboratory services furnished to a hospital inpatient by an independent laboratory (as defined in § 488.52) are paid on a fee schedule basis under this subpart only if they are physician laboratory services as described in paragraph (a) of this section. Payment for nonphysician services furnished to a hospital inpatient by an independent laboratory are made by the intermediary to the hospital in accordance with parts 412 and 413 of this chapter.

§ 405.580 Conditions of payment: Assistants at surgery in teaching hospitals.

(a) *Basis, purpose, and scope.* This section describes the conditions under which Medicare pays on a fee schedule basis for the services of an assistant at surgery in a teaching hospital. This section is based on section 1842(b)(6)(D)(i) of the Act and applies only to hospitals with an approved residency program. Except as specified in paragraph (c) of this section, fee schedule payment is not available for assistants at surgery in hospitals with—

(1) A training program relating to the medical specialty required for the surgical procedure; and

(2) A qualified individual on the staff of the hospital available to serve as an assistant at surgery.

(b) *Definitions.* "Assistant at surgery" means a physician who actively assists the physician in charge of a case in performing a surgical procedure.

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"Teaching hospital" means a hospital with a graduate education program approved as specified in § 405.522(a).

"Team physicians" means a group of physicians, each performing a discrete, unique function integral to the performance of a complex medical procedure that requires the special skills of more than one physician.

"Qualified individual on the staff of the hospital" means a resident in a training program relating to the specialty required for the surgery.

(c) *Conditions for payment for assistants at surgery.* Beginning January 1, 1992, payment on a fee schedule basis is made for the services of an assistant at surgery in a teaching hospital only if the services meet one of the following conditions:

(1) Are required due to exceptional medical circumstances.

(2) Are performed by team physicians needed to perform complex medical procedures.

(3) Constitute concurrent medical care relating to a medical condition that requires the presence of, and active care by, a physician of another specialty during surgery.

(4) Are medically required and are furnished by a physician who is primarily engaged in the field of surgery and the primary surgeon does not use interns and residents in the surgical procedures that the surgeon performs (including preoperative and postoperative care).

(5) Are not related to a surgical procedure for which HCFA determines that assistants are used less than 5 percent of the time.

B. Part 415 is added to read as follows:

PART 415—FEE SCHEDULE FOR PHYSICIANS' SERVICES

Subpart A—General Provisions

Sec.

415.1 Basis and scope.
415.2 Definitions.
415.4 Fee schedule areas.
415.20 Formula for computing payment amounts.
415.22 Relative value units (RVUs).
415.24 Review, revision, and addition of RVUs for physician's services.
415.26 Determining the GAF.
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415.30 Conversion factor update.
415.32 Payment for services and supplies incident to a physician's service.
415.34 Payment for drugs incident to a physician's service.
415.36 Coding and ancillary policies.
415.38 Adjustment for first 4 years of practice.
415.40 Transition rules.
415.42 Additional rules for anesthesia services.
415.44 Limits on actual charges of nonparticipating physicians.
415.46 Physician billing for purchased diagnostic tests.
415.48 Payment for physician assistants' and nurse practitioners' services.
415.50 Payment for certified nurse midwives' services.
415.52 Payment for nurse practitioners' and clinical nurse specialists' services in rural areas.
415.54 Payment of charges for physicians' services to patients in providers.
415.56 Payment for the services of certified registered nurse anesthetists.
415.58 Payment for the therapeutic services of clinical social workers.

Subpart B—[Reserved]

Authority: Secs. 1102, 1832, 1834, 1842, 1848, 1861 (b) and (s), 1862, 1866, and 1871 of the Social Security Act as amended (42 U.S.C. 1302, 1395k, 1395m, 1395u, 1395w–4, 1395x (b) and (s), 1395y, 1395cc, and 1395rr).

Subpart A—General Provisions

§ 415.1 Basis and scope.

This part implements the requirements of section 1848 of the Act by establishing a fee schedule for payment of physicians' services. Section 1848 requires that payment for all physicians' services otherwise payable on a reasonable charge basis be made under the physician fee schedule effective for services furnished after December 31, 1991.

§ 415.2 Definitions.

As used in this part, unless the context indicates otherwise—

CF stands for "conversion factor."

CY stands for "calendar year."

FY stands for "fiscal year."

GAF stands for "geographic adjustment factor."

GPCI stands for "geographic practice cost index."

HCPCS stands for "HCFA Common Procedure Coding System."

Physicians' services means the following services to the extent that they are covered by Medicare:

(1) Professional services of doctors of medicine and osteopathy (including osteopathic practitioners), doctors of optometry, doctors of podiatry, doctors of dental surgery and dental medicine, and doctors of chiropracty.

(2) Supplies and services covered "incident to" physicians' services (excluding drugs as specified in § 415.34).

(3) Outpatient physical and occupational therapy services if furnished by a person or an entity that is not a Medicare provider of services as defined in § 400.202 of this chapter.

(4) Diagnostic X-ray tests and other diagnostic tests (excluding diagnostic laboratory tests).

(5) X-ray, radium, and radioactive isotope therapy, including materials and services of technicians.

RVU stands for "relative value unit."

§ 415.4 Fee schedule areas.

(a) *General.* Except for the localities described in paragraph (b) of this section, HCFA establishes fee schedule areas that conform to the localities in existence before January 1, 1992.

(b) *Exceptions.* HCFA establishes Statewide fee schedule areas for Nebraska and Oklahoma.

§ 415.20 Formula for computing payment amounts.

Under the formula set forth in section 1848(b)(1) of the Act, the fee schedule payment amount for a service defined as a "physicians' service" in section 1848(j)(3) of the Act and is computed as the product of the following amounts:

(a) The relative value for the service.

(b) The geographic adjustment factor (GAF) for the fee schedule area.

(c) The conversion factor (CF).

§ 415.22 Relative value units (RVUs).

HCFA establishes RVUs for physician work, physician practice expense, and malpractice insurance.

(a) *Physician work RVUs*—(1) *General rule.* Physician work RVUs are established using a resource-based relative value scale in which the value of the physician's work for a particular service is rated relative to the value of work for other physicians' services.

(2) *Special RVUs for anesthesia and radiology services*—(i) *Anesthesia services.* The rules for determining RVUs for anesthesia services are set forth in § 415.42.

(ii) *Radiology services.* HCFA bases the RVUs for all radiology services on the relative value scale developed under section 1834(b)(1)(A) of the Act, with appropriate modifications to ensure that the RVUs established for radiology services that are similar or related to other physicians' services are consistent with the RVUs established for those similar or related services.

(b) *Practice expense RVUs.* (1) Practice expense RVUs are computed for each service or class of service by applying average historical practice cost percentages to the average charge by carriers during the base period.

(2) The average practice expense percentage for a service or class of services is computed as follows:

(i) Multiply the average practice expense percentage for each specialty by the proportion of a particular service or class of service performed by that specialty.

(ii) Add the products for all specialties.

(c) *Malpractice insurance RVUs.* (1) Malpractice insurance RVUs are computed for each service or class of services by applying average malpractice insurance historical practice cost percentages to the average charge allowed by carriers during the base period.

(2) The average malpractice insurance percentage for a service or class of services is computed as follows:

(i) Multiply the average malpractice insurance percentage for each specialty by the proportion of a particular service or class of services performed by that specialty.

(ii) Add all the products for all the specialties.

§ 415.24 Review, revision, and addition of RVUs for physicians' services.

(a) *General rule.* (1) HCFA reviews RVUs for new services and changes in existing RVUs.

(2) HCFA publishes a proposed notice in the **Federal Register** to announce RVUs for new services and changes in existing RVUs for services in HCFA Common Procedure Coding System (HCPCS) levels 1 and 2 and provides an opportunity for public comment no less often than every 5 years. After considering public comments, HCFA publishes a final notice in the **Federal Register** to announce additions or revisions to RVUs.

(3) The RVU additions or revisions for services in HCPCS levels 1 and 2 are effective prospectively for services furnished beginning on the effective date specified in the final notice.

(b) *Interim values for new or revised codes.* (1) *General.* HCFA announces interim changes to the physician fee schedule to incorporate interim RVUs for new services coded under HCPCS levels 1 and 2 and to reflect changes in these HCPCS codes.

(2) *Publication for comment.* HCFA publishes any interim value added or changed under paragraph (b)(1) of this section in the next notice of proposed changes to the physician fee schedule published in accordance with paragraph (a) of this section.

(c) *Values for local codes (HCPCS Level 3).* (1) Carriers establish relative values for local codes for services not included in HCPCS levels 1 or 2.

(2) Carriers must not establish local codes for services that meet the definition of "physician services" in § 415.2 without prior approval from HCFA.

§ 415.26 Determining the GAF.

HCFA establishes a GAF for each service in each fee schedule area.

(a) *Geographic indices.* HCFA uses the following indices to establish the GAF:

(1) An index that reflects one-fourth of the difference between the relative value of physicians' work effort in each of the different fee schedule areas as determined under § 415.22(a) and the national average of that work effort.

(2) An index that reflects the relative costs of the mix of goods and services comprising practice expenses (other than malpractice expenses) in each of the different fee schedule areas as determined under § 415.22(b) compared to the national average of those costs.

(3) An index that reflects the relative costs of malpractice expenses in each of the different fee schedule areas as determined under § 415.22(c) compared to the national average of those costs.

(b) *Class-specific practice cost indices.* If the application of a single index to different classes of services would be substantially inequitable because of differences in the mix of goods and services comprising practice expenses for the different classes of services, more than one index may be established under paragraph (a)(2) of this section.

(c) *Computation of GAF.* The GAF for each fee schedule area is the sum of the physicians' work adjustment factor, the practice expense adjustment factor, and the malpractice cost adjustment factor, as defined in this section:

(1) The geographic physicians' work adjustment factor for a service is the product of the proportion of the total relative value for the service that reflects the RVUs for the work component, and the geographic physicians' work index value established under paragraph (a)(1) of this section.

(2) The geographic practice expense adjustment factor for a service is the product of the proportion of the total relative value for the service that reflects the RVUs for the practice expense component, multiplied by the geographic practice cost index (GPCI) value established under paragraph (a)(2) of this section.

(3) The geographic malpractice adjustment factor for a service is the product of the proportion of the total relative value for the service that reflects the RVUs for the malpractice component, multiplied by the GPCI value established under paragraph (a)(3) of this section.

§ 415.28 Conversion factors.

HCFA establishes CFs in accordance with section 1848(d) of the Act.

(a) *Base-year CFs.* HCFA established the CF for 1992 so that had section 1848 of the Act applied during 1991, it would have resulted in the same aggregate amount of payments for physicians' services as the estimated aggregate amount of these payments in 1991, adjusted by the update for 1992 computed as specified in § 415.30.

(b) *Subsequent CFs.* Beginning January 1, 1993, the CF for each year is equal to the CF for the previous year, adjusted in accordance with § 415.30.

§ 415.30 Conversion factor update.

Unless Congress acts in accordance with section 1848(d)(3)(A) of the Act—

(a) *General rule.* The CF update for a CY equals the Medicare Economic Index increased or decreased by the percent by which the percentage increase in expenditures for physicians' services (or for a particular category of physicians' services, such as surgical services) in the second preceding FY over the third preceding FY exceeds the performance standard rate of increase established for the second preceding FY.

(b) *Downward adjustment.* The downward adjustment may not exceed the following percentages:

(1) For CYs 1992 and 1993, 2 percent.

(2) For CYs 1994 and 1995, 2.5 percent.

(3) For CY 1996 and thereafter, 3 percent.

§ 415.32 Payment for services and supplies incident to a physician's service.

(a) *Medical supplies.* (1) Except as otherwise specified in this paragraph, office medical supplies are considered to be part of a physician's practice expense and payment for them is included in the practice expense portion of the payment to the physician for the medical or surgical service to which they are incidental.

(2) If physician services of the type routinely furnished in provider settings are furnishing in a physician's office, separate payment may be made for certain supplies furnished incident to that physician service. For the purpose of this paragraph, provider settings are limited to the following settings:

(i) Hospital inpatient and outpatient departments.

(ii) Ambulatory surgical centers.

(3) HCFA establishes a list of services routinely furnished in a provider setting, based on the services being furnished 50 percent or more of the time in a provider setting.

(4) HCFA establishes the list of supplies for which additional payment

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may be made. Payment is only made for medical supplies when these items are disposable and are dedicated to the use of a single beneficiary.

(5) The fee schedule amount for a year is based on estimated average allowed charges for 1991 for the supplies, adjusted by the CF update described in § 415.30 without a geographic adjustment for practice costs.

(b) *Services of nonphysicians that are incident to a physician's service.* Services of nonphysicians that are covered as incident to a physician's service are paid as if the physician had personally furnished the service.

§ 415.34 Payment for drugs incident to a physician's service.

(a) *General.* Payment for drugs incident to a physician's service is not made under the fee schedule.

(b) *Payment rule.* Except as specified in paragraph (d) of this section, payment for drugs furnished incident to a physician's service is limited to 85 percent of the national average wholesale price of the drug as determined by HCFA.

(c) *Payment for high volume drugs.* HCFA identifies high volume drugs or high cost drugs and establishes payment limits for them in instructions to carriers. Payment for these drugs is limited to the lower of the estimated acquisition cost for the drug as determined by HCFA and specified in instructions or 85 percent of the national average wholesale price for the drug.

§ 415.36 Coding and ancillary policies.

(a) *General rule.* HCFA establishes uniform national definitions of services, codes to represent services, and payment modifiers to the codes.

(b) *Specific types of policies.* HCFA establishes uniform national ancillary policies necessary to implement the fee schedule for physicians' services. This includes, but is not limited to, the following policies:

(1) Global surgery policy (for example, post- and pre-operative periods and services, and intra-operative services).

(2) Professional and technical components (for example, payment for services, such as an EEG, which typically comprise a technical component (the taking of the test) and a professional component (the interpretation)).

(3) Payment modifiers (for example, assistant-at-surgery, multiple surgery, bilateral surgery, split surgical global services, team surgery, unusual services, and multiple nursing home visits).

§ 415.38 Adjustment for first 4 years of practice.

(a) *General rule.* Except as specified in paragraph (b) of this section, the fee schedule payment amount must be reduced as specified in paragraph (d) of this section for physicians, physical therapists (PTs), and occupational therapists (OTs), who are in their first through fourth years of practice.

(b) *Exception.* The reduction required in paragraph (d) of this section does not apply to primary care services furnished by physicians as defined in section 1842(i)(4) of the Act or to services furnished by physicians, PTs, or OTs in a rural area as defined in section 1886(d)(2)(D) of the Act that is designated under section 332(a)(1)(A) of the Public Health Service Act as a Health Service Manpower Shortage Area.

(c) *Definition of years of practice.* (1) The *first year of practice* is the first full CY during the first 6 months of which the physician, PT, or OT furnishes professional services for which payment may be made under Medicare Part B, plus any portion of the prior CY if that prior year does not meet the first 6 months test.

(2) The *second, third, and fourth years of practice* are the first, second, and third CYs following the first year of practice, respectively.

(d) *Amounts of adjustment.* The fee schedule payment for the service of a new physician, PT, or OT is limited to the following percentages for each of the indicated years:

(1) First year—80 percent.
(2) Second year—85 percent.
(3) Third year—90 percent.
(4) Fourth year—95 percent.

§ 415.40 Transition rules.

(a) *Adjusted historical payment basis*—(1) *All services other than radiology and nuclear medicine services.* For all physicians' services other than radiology services, furnished in a fee schedule area, the adjusted historical payment basis is the estimated weighted average prevailing charge applied in the fee schedule area for the service in CY 1991, as determined by HCFA without regard to physician specialty and as adjusted to reflect payments for services below the prevailing charge, adjusted by the update established for CY 1992.

(2) *Radiology services.* For radiology services, the adjusted historical payment basis is the amount paid for the service in the fee schedule area in CY 1991 under the fee schedule established under section 1834(b), adjusted by the update established for CY 1992.

(3) *Nuclear medicine services.* For nuclear medicine services, the adjusted historical payment basis is the amount paid for the service in the fee schedule area in CY 1991 under the fee schedule established under section 6105(b) of Public Law 101–239 and section 4102(g) of Public Law 101–508, adjusted by the update established for CY 1992.

(b) *Adjustment of 1992 payments for physicians' services other than radiology services.* For physicians' services furnished during CY 1992 the following rules apply:

(1) If the adjusted historical payment basis is from 85 percent to 115 percent of the fee schedule amount for the area for services furnished in 1992, payment is at the fee schedule amount.

(2) If the adjusted historical payment basis is less than 85 percent of the fee schedule amount for the area for services furnished in 1992, an amount equal to the adjusted historical payment basis plus 15 percent of the fee schedule amount is substituted for the fee schedule amount.

(3) If the adjusted historical payment basis is greater than 115 percent of the fee schedule amount for the area for services furnished in 1992, an amount equal to the adjusted historical payment basis minus 15 percent of the fee schedule amount is substituted for the fee schedule amount.

(c) *Adjustment of 1992 payments for radiology services.* For radiology services furnished during CY 1992 the following rules apply:

(1) If the adjusted historical payment basis is from 85 percent to 109 percent of the fee schedule amount for the area for services furnished in 1992, payment is at the fee schedule amount.

(2) If the adjusted historical payment basis is less than 85 percent of the fee schedule amount for the area for services furnished in 1992, an amount equal to the adjusted historical payment basis plus 15 percent of the fee schedule amount is substituted for the fee schedule amount.

(3) If the adjusted historical payment basis is greater than 109 percent of the fee schedule amount for the area for services furnished in 1992, an amount equal to the adjusted historical payment basis minus 9 percent of the fee schedule amount is substituted for the fee schedule amount.

(d) *Computation of payments for CY 1993.* For physicians' services subject to the transition rules in CY 1992 and furnished during CY 1993, the carrier pays an amount equal to 75 percent of the amount that would have been paid in the fee schedule area under the 1992 transition rules, adjusted by the amount of the 1993 update, plus 25 percent of the 1993 fee schedule amount.

(e) *Computation of payments for CY 1994.* For physicians' services subject to the transition rules in CY 1993, and furnished during CY 1994, the carrier pays an amount equal to 67 percent of the amount that would have been paid in the fee schedule area under the 1993 transition rules, adjusted by the amount of the 1994 update, plus 33 percent of the 1994 fee schedule amount.

(f) *Computation of payments for CY 1995.* For physicians' services subject to the transition rules in CY 1994 and furnished during CY 1995, the carrier pays an amount equal to 50 percent of the amount that would have been paid in the fee schedule area under the 1994 transition rules, adjusted by the amount of the 1995 update, plus 50 percent of the 1995 fee schedule amount.

§ 415.42 Additional rules for anesthesia services.

The specific rules of this section apply to payment for physician anesthesia services in addition to the other rules set forth in this part.

(a) *General rules.* (1) Except for the requirement in paragraph (a)(2) of this section, physician anesthesia services are paid in accordance with the formula set forth in § 415.20.

(2) For each anesthesia procedure, there are five relative values used to compute payment for the procedure, depending upon whether the procedure is personally furnished; medically directed as one of two, three, or four concurrent procedures; or medically supervised.

(b) *Physician personally performs anesthesia procedures.* (1) HCFA determines the fee schedule payment for an anesthesia procedure based on the personally performed RVU under one of the following circumstances:

(i) The physician personally performs the entire anesthesia procedure.

(ii) The physician is continuously involved in a single case involving a certified registered nurse anesthetist (CRNA), anesthesiologist assistant (AA), or qualified student nurse anesthetist.

(iii) The physician establishes an attending physician relationship in a single case involving an intern or resident described in § 405.521 of this chapter.

(2) No payment is made under the CRNA fee schedule for the CRNA or AA service unless it is determined to be medically necessary for both the physician and the CRNA or AA to be involved in the case.

(c) *Physician directs anesthesia procedures.* If the physician medically directs concurrent anesthesia procedures (that meet the conditions for payment set forth in § 405.552) before January 1, 1996, HCFA determines the fee schedule payment for anesthesia procedures based on the applicable RVU assigned to two, three, four, or more than 4 concurrent procedures.

(d) *Payment for medical or surgical services furnished by a physician while furnishing anesthesia services.* (1) Separate payment under the fee schedule is allowed for certain reasonable and medically necessary medical or surgical services furnished by the physician while furnishing anesthesia services to the patient. These medical or surgical services are limited to CPT codes—36101, 36489, 36491, 36620, 36625, 63780, and 93503.

(2) Separate payment is not allowed for other medical or surgical services, such as the pre-anesthesia examination of the patient, pre- or post-operative visits, or usual monitoring functions, that have been included in the anesthesia procedure-specific RVU.

§ 415.44 Limits on actual charges of nonparticipating physicians.

(a) *General rules.* A nonparticipating physician may charge a beneficiary an amount up to the limiting charge described in paragraph (b) of this section.

(b) *Specific limits.* The following requirements pertain to a nonparticipating physician's limiting charge for each specified period:

(1) For CY 1991, the limiting charge is the same percentage (but no more than 25 percent) above the 1991 prevailing charge for nonparticipating physicians as the percentage by which a physician's 1990 maximum actual allowable charge (MAAC) exceeded the 1990 prevailing charge for nonparticipating physicians.

(2) For CY 1991, for most visits and consultations, the limiting charge is the same percentage (but no more than 40 percent) above the 1991 prevailing charge for nonparticipating physicians as the percentage by which a physician's 1990 MAAC exceeded the 1990 prevailing charge for nonparticipating physicians.

(3) For CY 1992, the limiting charge is the same percentage (but no more than 20 percent) above the 1992 fee schedule amount for nonparticipating physicians as the percentage by which the physician's 1991 limiting charge exceeded the 1991 prevailing charge for nonparticipating physicians.

(4) Beginning January 1, 1993, the limiting charge is 115 percent of the fee schedule amount for nonparticipating physicians.

§ 415.46 Physician billing for purchased diagnostic tests.

(a) *General rule.* If a physician bills for a diagnostic test performed by an outside supplier, the payment to the physician less the applicable deductibles and coinsurance may not exceed the lowest of the following amounts:

(1) The supplier's net charge to the physician.

(2) The physician's actual charge.

(3) The fee schedule amount for the test that would be allowed if the supplier billed directly.

(b) *Restriction on payment.* The physician must identify the supplier and indicate the supplier's net charge for the test. If the physician fails to provide this information, HCFA makes no payment to the physician and the physician may not bill the beneficiary.

(1) Physicians who accept Medicare assignment may bill beneficiaries for only the applicable deductibles and coinsurance.

(2) Physicians who do not accept Medicare assignment may not bill the beneficiary more than the payment amount described in paragraph (a) of this section.

§ 415.48 Payment for physician assistants' and nurse practitioners' services.

Allowed amounts for the services of a physician assistant or a nurse practitioner (as described in sections 1861(s)(2)(K) (i) and (ii) of the Act) furnished after December 31, 1991, may not exceed the following limits:

(a) For assistant-at-surgery services, 65 percent of the amount that would be allowed under the physician fee schedule if the assistant-at-surgery service was furnished by a physician.

(b) For services (other than assistant-at-surgery services) furnished in a hospital, 75 percent of the physician fee schedule amount for the service.

(c) For all other services, 85 percent of the physician fee schedule amount for the service.

§ 415.50 Payment for certified nurse midwives' services.

For services furnished after December 31, 1991, allowed amounts under the fee schedule established under section 1833(a)(1)(K) of the Act for the payment of certified nurse midwife services may not exceed 65 percent of the physician fee schedule amount for the service.

§ 415.52 Payment for nurse practitioners' and clinical nurse specialists' services in rural areas.

For services furnished after December 31, 1991, allowed amounts for the services of a nurse practitioner or a

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clinical nurse specialist (as described in section 1861(aa)(2)(K)(iii) of the Act) may not exceed the following limits:

(a) For services furnished in a hospital (including assistant-at-surgery services), 75 percent of the physician fee schedule amount for the service.

(b) For all other services, 85 percent of the physician fee schedule amount for the service.

§ 415.54 Payment of charges for physicians' services to patients in providers.

(a) *Payment under the physician fee schedule.* In addition to the special conditions for payment in §§ 405.550 through 405.580, HCFA establishes payment for physicians' services to patients in providers under the physician fee schedule in accordance with §§ 415.1 through 415.46.

(b) *Teaching hospitals.* Services furnished by physicians in teaching hospitals may be made on a reasonable cost basis set forth in § 405.465 of this chapter if the hospital exercises the election described in § 405.521(c)(2) of this chapter.

§ 415.56 Payment for the services of certified registered nurse anesthetists.

For services furnished after December 31, 1991, allowed amounts that would otherwise be recognized under § 414.450 of this chapter for the services of a certified registered nurse anesthetist may not exceed the physician fee schedule amount for the service.

§ 415.58 Payment for the therapeutic services of clinical social workers.

For services furnished after December 31, 1991, allowed amounts for the therapeutic services of clinical social workers may not exceed 75 percent of the allowed amounts under the fee schedule established under section 1833(a)(1)(L) of the Act for the services of clinical psychologists.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 11, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: May 21, 1991.

Louis W. Sullivan,

Secretary.

Addendum A—Technical Documentation/Explanation and Guide to Use of Physician Fee Schedule Tables

As explained in the preamble to this proposed rule, Public Law 101–239 provides that fee schedule payment amounts [1] are the product of three elements—a relative value for the service, a geographic adjustment factor (GAF) for the fee schedule area, and a nationally uniform dollar conversion factor (CF). The law also provides for, in effect, separate adjustment of the work, practice expense, and malpractice components of the total RVUs by a GAF appropriate to that component. (As explained earlier, GPCI values are used to fulfill the statutory requirement for GAFs.) Thus we have developed this working formula for computing a payment amount for a procedure in a fee schedule area:

Payment = [(RVUw × GPCIw) + (RVUpe × GPCIpe) + (RVUm × GPCIm)] × CF

Where

RVUw = physician work relative value units for the service

RVUpe = practice expense relative value units for the service

RVUm = malpractice relative value units for the service

GPCIw = geographic practice cost index value for physician work applicable in the fee schedule area [2]

GPCIpe = geographic practice cost index value for practice expense applicable in the fee schedule area

GPCIm = geographic practice cost index value for malpractice applicable in the fee schedule area

CF = uniform national conversion factor

To compute a payment amount for a specific service in a particular fee schedule area using the preliminary estimates computed for this proposed rule, use the listing of HCPCS codes in Addendum B to locate that service. Then make a note of the RVUs for work, practice expense, and malpractice for that service. Next use Addendum C to obtain work, practice expense, and malpractice geographic practice cost index (GPCI) for the particular fee schedule area.

Finally, use 26.873 as the uniform national CF. Combining the elements as specified in the formula above will yield an estimated payment amount. For example, to compute the payment amount for skin biopsy (HCPCS code 11100) in Birmingham, Alabama, first located HCPCS code 11100 in Addendum B. Note that the RVUs for work, practice expense, and malpractice are as follows:

Work RVU (RVUw) = 0.52.
Practice expense RVU (RVUpe) = 0.55.
Malpractice RVU (RVUm) = 0.04.

Next, locate Birmingham in Addendum C. Note that the GPCI values for work, practice expense, and malpractice are as follows:

Work GPCI (GPCIw) = 0.961.
Practice expense GPCI (GPCIpe) = 0.913.
Malpractice GPCI (GPCIm) = 0.824.

Finally, using 26.873 as the uniform national CF, place the values into the formula provided and compute:

Payment = [(0.52 × 0.961) + (0.55 × 0.913) + (0.04 × .824)] × 26.873
Payment = [(0.51) + (0.50) + (0.03)] × 26.873
Payment = [1.04] × 26.873
Payment = $27.95 (Full Fee Schedule Payment)

This example does not reflect any effects of the transition rule or any payment updates after 1991.

BILLING CODE 4120-01-M

[1] As explained in the preamble of the proposed rule, the amount actually payable to a physician would be 80 percent of the actual charge or 80 percent of the fee schedule payment amount, whichever is less. Also, the transition rules for 1992 through 1995 would produce fee schedule amounts for some services in some fee schedule areas different from those produced by the methodology set forth below.

[2] This value reflects only one-fourth of the variation in physician work, as required by Public Law 101–239.

ADDENDUM B - Proposed Relative Value Units (RVUS) for Physician Work, Practice Expense, Malpractice and Total

Modifier definitions:

Anesthesia procedures	AA - physician personally performed procedure D2 - two concurrent procedures, medically directed D3 - three concurrent procedures, medically directed D4 - four concurrent procedures, medically directed AD - supervised more than four concurrent procedures
Diagnostic procedures	26 - professional component TC - technical component

NOTE: RVUS for practice expense and malpractice for some procedures in this addendum may be revised based on further analyses of data reliability. Asterisks are used to indicate the procedures requiring further analyses.

One asterisk indicates RVUs for practice expense and malpractice that were based on less than 100 allowed services.

Two asterisks indicate RVUs for practice expense and malpractice which we are continuing to examine because of possible data reporting problems.

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PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
FC400		CONSULT, FOLLOW UP - LEVEL 1	0.50	0.33	0.03	0.86
FC410		CONSULT, FOLLOW UP - LEVEL 2	0.97	0.46	0.03	1.46
FC415		CONSULT, FOLLOW UP - LEVEL 3	1.42	0.70	0.05	2.17
IC0		CONSULT, INITIAL - LEVEL 1	0.60	0.63	0.07	1.30
IC300		CONSULT, INITIAL - LEVEL 2	1.19	0.77	0.08	2.04
IC310		CONSULT, INITIAL - LEVEL 3	1.57	0.97	0.10	2.64
IC320		CONSULT, INITIAL - LEVEL 4	2.31	1.28	0.11	3.70
IC330		CONSULT, INITIAL - LEVEL 5	3.05	1.63	0.14	4.82
IH110		HOSPITAL, INITIAL - LEVEL 1	1.14	0.71	0.06	1.91
IH113		HOSPITAL, INITIAL - LEVEL 2	1.85	1.10	0.09	3.04
IH115		HOSPITAL, INITIAL - LEVEL 3	2.56	1.19	0.09	3.84
OE015		OFFICE VISIT, EST - LEVEL 1	0.19	0.18	0.02	0.39
OE017		OFFICE VISIT, EST - LEVEL 2	0.41	0.29	0.03	0.73
OE019		OFFICE VISIT, EST - LEVEL 3	0.59	0.38	0.03	1.00
OE021		OFFICE VISIT, EST - LEVEL 4	0.94	0.54	0.04	1.52
OE023		OFFICE VISIT, EST - LEVEL 5	1.48	0.81	0.07	2.36
ON005		OFFICE VISIT, NEW - LEVEL 1	0.41	0.38	0.04	0.83
ON007		OFFICE VISIT, NEW - LEVEL 2	0.78	0.48	0.05	1.31
ON009		OFFICE VISIT, NEW - LEVEL 3	1.16	0.55	0.06	1.77
ON011		OFFICE VISIT, NEW - LEVEL 4	1.70	0.79	0.08	2.57
ON013		OFFICE VISIT, NEW - LEVEL 5	2.24	0.88	0.09	3.21
SH200		HOSP, FOLLOW UP - LEVEL 1	0.58	0.39	0.03	1.00
SH210		HOSP, FOLLOW UP - LEVEL 2	0.93	0.46	0.03	1.42
SH215		HOSP, FOLLOW UP - LEVEL 3	1.26	0.60	0.04	1.90
00100	AA	ANESTH, SKIN SURGERY	2.70	1.46	0.46	4.62
00100	D2	ANESTH, SKIN SURGERY	1.76	0.95	0.30	3.01
00100	D3	ANESTH, SKIN SURGERY	1.61	0.87	0.27	2.75
00100	D4	ANESTH, SKIN SURGERY	1.45	0.78	0.26	2.49
00100	AD	ANESTH, SKIN SURGERY	0.78	0.42	0.13	1.33
00102	AA	ANESTH, REPAIR OF CLEFT LIP	3.42	1.85	0.58	5.85
00102	D2	ANESTH, REPAIR OF CLEFT LIP	2.33	1.26	0.40	3.99
00102	D3	ANESTH, REPAIR OF CLEFT LIP	2.10	1.14	0.36	3.60
00102	D4	ANESTH, REPAIR OF CLEFT LIP	1.86	1.01	0.34	3.21
00102	AD	ANESTH, REPAIR OF CLEFT LIP	0.78	0.42	0.13	1.33
00104	AA	ANESTH FOR ELECTROSHOCK	1.37	0.74	0.23	2.34
00104	D2	ANESTH FOR ELECTROSHOCK	1.10	0.60	0.19	1.89
00104	D3	ANESTH FOR ELECTROSHOCK	0.95	0.51	0.16	1.62
00104	D4	ANESTH FOR ELECTROSHOCK	0.79	0.43	0.14	1.36
00104	AD	ANESTH FOR ELECTROSHOCK	0.78	0.42	0.13	1.33
00120	AA	ANESTHESIA FOR EAR SURGERY	3.08	1.67	0.52	5.27
00120	D2	ANESTHESIA FOR EAR SURGERY	2.06	1.11	0.35	3.52
00120	D3	ANESTHESIA FOR EAR SURGERY	1.86	1.01	0.32	3.19
00120	D4	ANESTHESIA FOR EAR SURGERY	1.67	0.90	0.30	2.87
00120	AD	ANESTHESIA FOR EAR SURGERY	0.78	0.42	0.13	1.33
00124	AA	ANESTHESIA FOR EAR EXAM	2.23	1.21	0.38	3.82
00124	D2	ANESTHESIA FOR EAR EXAM	1.53	0.83	0.26	2.62
00124	D3	ANESTHESIA FOR EAR EXAM	1.37	0.74	0.23	2.34
00124	D4	ANESTHESIA FOR EAR EXAM	1.22	0.66	0.22	2.10
00124	AD	ANESTHESIA FOR EAR EXAM	0.78	0.42	0.13	1.33
00126	AA	ANESTH, TYMPANOTOMY	2.23	1.21	0.38	3.82
00126	D2	ANESTH, TYMPANOTOMY	1.53	0.83	0.26	2.62
00126	D3	ANESTH, TYMPANOTOMY	1.37	0.74	0.23	2.34
00126	D4	ANESTH, TYMPANOTOMY	1.22	0.66	0.22	2.10
00126	AD	ANESTH, TYMPANOTOMY	0.78	0.42	0.13	1.33

[1]All numeric CPT HCPCS Copyright 1991 American Medical Association

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
00140	AA	ANESTH, PROCEDURES ON EYE	2.51	1.36	0.43	4.30
00140	D2	ANESTH, PROCEDURES ON EYE	1.77	0.96	0.30	3.03
00140	D3	ANESTH, PROCEDURES ON EYE	1.58	0.85	0.27	2.70
00140	D4	ANESTH, PROCEDURES ON EYE	1.38	0.75	0.25	2.38
00140	AD	ANESTH, PROCEDURES ON EYE	0.78	0.42	0.13	1.33
00142	AA	ANESTHESIA FOR LENS SURGERY	2.20	1.19	0.37	3.76
00142	D2	ANESTHESIA FOR LENS SURGERY	1.51	0.82	0.26	2.59
00142	D3	ANESTHESIA FOR LENS SURGERY	1.36	0.74	0.23	2.33
00142	D4	ANESTHESIA FOR LENS SURGERY	1.21	0.65	0.22	2.08
00142	AD	ANESTHESIA FOR LENS SURGERY	0.78	0.42	0.13	1.33
00144	AA	ANESTH, CORNEAL TRANSPLANT	3.37	1.82	0.57	5.76
00144	D2	ANESTH, CORNEAL TRANSPLANT	2.30	1.25	0.39	3.94
00144	D3	ANESTH, CORNEAL TRANSPLANT	2.07	1.12	0.35	3.54
00144	D4	ANESTH, CORNEAL TRANSPLANT	1.84	1.00	0.33	3.17
00144	AD	ANESTH, CORNEAL TRANSPLANT	0.78	0.42	0.13	1.33
00145	AA	ANESTH, VITRECTOMY	3.50	1.89	0.60	5.99
00145	D2	ANESTH, VITRECTOMY	2.37	1.28	0.40	4.05
00145	D3	ANESTH, VITRECTOMY	2.14	1.16	0.37	3.67
00145	D4	ANESTH, VITRECTOMY	1.90	1.03	0.36	3.26
00145	AD	ANESTH, VITRECTOMY	0.78	0.42	0.13	1.33
00147	AA	ANESTHESIA PROCEDURES ON EYE	2.23	1.21	0.38	3.82
00147	D2	ANESTHESIA PROCEDURES ON EYE	1.53	0.83	0.26	2.62
00147	D3	ANESTHESIA PROCEDURES ON EYE	1.37	0.74	0.23	2.34
00147	D4	ANESTHESIA PROCEDURES ON EYE	1.22	0.66	0.22	2.10
00147	AD	ANESTHESIA PROCEDURES ON EYE	0.78	0.42	0.13	1.33
00148	AA	ANESTHESIA FOR EYE EXAM	2.23	1.21	0.38	3.82
00148	D2	ANESTHESIA FOR EYE EXAM	1.53	0.83	0.26	2.62
00148	D3	ANESTHESIA FOR EYE EXAM	1.37	0.74	0.23	2.34
00148	D4	ANESTHESIA FOR EYE EXAM	1.22	0.66	0.22	2.10
00148	AD	ANESTHESIA FOR EYE EXAM	0.78	0.42	0.13	1.33
00160	AA	ANESTH, NOSE, SINUS SURGERY	2.82	1.53	0.48	4.83
00160	D2	ANESTH, NOSE, SINUS SURGERY	1.93	1.04	0.33	3.30
00160	D3	ANESTH, NOSE, SINUS SURGERY	1.74	0.94	0.30	2.98
00160	D4	ANESTH, NOSE, SINUS SURGERY	1.54	0.83	0.28	2.65
00160	AD	ANESTH, NOSE, SINUS SURGERY	0.78	0.42	0.13	1.33
00162	AA	ANESTH, NOSE, SINUS SURGERY	4.07	2.29	0.69	6.96
00162	D2	ANESTH, NOSE, SINUS SURGERY	2.78	1.49	0.47	4.72
00162	D3	ANESTH, NOSE, SINUS SURGERY	2.49	1.35	0.42	4.26
00162	D4	ANESTH, NOSE, SINUS SURGERY	2.22	1.20	0.40	3.82
00162	AD	ANESTH, NOSE, SINUS SURGERY	0.78	0.42	0.13	1.33
00164	AA	ANESTH, BIOPSY OF NOSE	2.23	1.21	0.38	3.82
00164	D2	ANESTH, BIOPSY OF NOSE	1.53	0.83	0.26	2.62
00164	D3	ANESTH, BIOPSY OF NOSE	1.37	0.74	0.23	2.34
00164	D4	ANESTH, BIOPSY OF NOSE	1.22	0.66	0.22	2.10
00164	AD	ANESTH, BIOPSY OF NOSE	0.78	0.42	0.13	1.33
00170	AA	ANESTH, PROCEDURE ON MOUTH	2.75	1.49	0.47	4.71
00170	D2	ANESTH, PROCEDURE ON MOUTH	1.89	1.02	0.32	3.23
00170	D3	ANESTH, PROCEDURE ON MOUTH	1.70	0.92	0.29	2.91
00170	D4	ANESTH, PROCEDURE ON MOUTH	1.50	0.81	0.27	2.58
00170	AD	ANESTH, PROCEDURE ON MOUTH	0.78	0.42	0.13	1.33
00172	AA	ANESTH, CLEFT PALATE REPAIR	3.42	1.85	0.58	5.85
00172	D2	ANESTH, CLEFT PALATE REPAIR	2.33	1.26	0.40	3.99
00172	D3	ANESTH, CLEFT PALATE REPAIR	2.10	1.14	0.36	3.60
00172	D4	ANESTH, CLEFT PALATE REPAIR	1.86	1.01	0.34	3.21
00172	AD	ANESTH, CLEFT PALATE REPAIR	0.78	0.42	0.13	1.33
00174	AA	ANESTH, PHARYNGEAL SURGERY	3.42	1.85	0.58	5.85
00174	D2	ANESTH, PHARYNGEAL SURGERY	2.33	1.26	0.40	3.99

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
00174	D3	ANESTH, PHARYNGEAL SURGERY	2.10	1.14	0.36	3.60
00174	D4	ANESTH, PHARYNGEAL SURGERY	1.86	1.01	0.34	3.21
00174	AD	ANESTH, PHARYNGEAL SURGERY	0.78	0.42	0.13	1.33
00176	AA	ANESTH, PHARYNGEAL SURGERY	4.07	2.20	0.69	6.96
00176	D2	ANESTH, PHARYNGEAL SURGERY	2.76	1.49	0.47	4.72
00176	D3	ANESTH, PHARYNGEAL SURGERY	2.49	1.35	0.42	4.26
00176	D4	ANESTH, PHARYNGEAL SURGERY	2.22	1.20	0.40	3.82
00176	AD	ANESTH, PHARYNGEAL SURGERY	0.78	0.42	0.13	1.33
00190	AA	ANESTH, FACIAL BONE SURGERY	3.29	1.78	0.56	5.63
00190	D2	ANESTH, FACIAL BONE SURGERY	2.16	1.17	0.37	3.70
00190	D3	ANESTH, FACIAL BONE SURGERY	1.97	1.07	0.34	3.38
00190	D4	ANESTH, FACIAL BONE SURGERY	1.77	0.96	0.32	3.05
00190	AD	ANESTH, FACIAL BONE SURGERY	0.78	0.42	0.13	1.33
00192	AA	ANESTH, FACIAL BONE SURGERY	4.07	2.20	0.69	6.96
00192	D2	ANESTH, FACIAL BONE SURGERY	2.76	1.49	0.47	4.72
00192	D3	ANESTH, FACIAL BONE SURGERY	2.49	1.35	0.42	4.26
00192	D4	ANESTH, FACIAL BONE SURGERY	2.22	1.20	0.40	3.82
00192	AD	ANESTH, FACIAL BONE SURGERY	0.78	0.42	0.13	1.33
00210	AA	ANESTH, OPEN HEAD SURGERY	6.01	3.25	1.02	10.26
00210	D2	ANESTH, OPEN HEAD SURGERY	4.15	2.24	0.70	7.09
00210	D3	ANESTH, OPEN HEAD SURGERY	3.72	2.01	0.63	6.36
00210	D4	ANESTH, OPEN HEAD SURGERY	3.29	1.78	0.60	5.67
00210	AD	ANESTH, OPEN HEAD SURGERY	0.78	0.42	0.13	1.33
00212	AA	ANESTH, SKULL DRAINAGE	2.72	1.47	0.46	4.65
00212	D2	ANESTH, SKULL DRAINAGE	1.88	1.02	0.32	3.22
00212	D3	ANESTH, SKULL DRAINAGE	1.69	0.91	0.29	2.89
00212	D4	ANESTH, SKULL DRAINAGE	1.49	0.81	0.27	2.57
00212	AD	ANESTH, SKULL DRAINAGE	0.78	0.42	0.13	1.33
00214	AA	ANESTH, SKULL DRAINAGE	4.27	2.31	0.73	7.31
00214	D2	ANESTH, SKULL DRAINAGE	3.07	1.66	0.52	5.25
00214	D3	ANESTH, SKULL DRAINAGE	2.72	1.47	0.46	4.65
00214	D4	ANESTH, SKULL DRAINAGE	2.37	1.28	0.43	4.08
00214	AD	ANESTH, SKULL DRAINAGE	0.78	0.42	0.13	1.33
00216	AA	ANESTH, HEAD VESSEL SURGERY	7.80	4.22	1.33	13.35
00216	D2	ANESTH, HEAD VESSEL SURGERY	5.45	2.95	0.93	9.33
00216	D3	ANESTH, HEAD VESSEL SURGERY	4.87	2.63	0.83	8.33
00216	D4	ANESTH, HEAD VESSEL SURGERY	4.29	2.32	0.78	7.39
00216	AD	ANESTH, HEAD VESSEL SURGERY	0.78	0.42	0.13	1.33
00218	AA	ANESTH, SPECIAL HEAD SURGERY	6.22	3.37	1.06	10.65
00218	D2	ANESTH, SPECIAL HEAD SURGERY	4.45	2.41	0.76	7.62
00218	D3	ANESTH, SPECIAL HEAD SURGERY	3.95	2.14	0.67	6.76
00218	D4	ANESTH, SPECIAL HEAD SURGERY	3.44	1.86	0.63	5.93
00218	AD	ANESTH, SPECIAL HEAD SURGERY	0.78	0.42	0.13	1.33
00220	AA	ANESTH, SPINAL FLUID SHUNT	4.35	2.36	0.74	7.45
00220	D2	ANESTH, SPINAL FLUID SHUNT	3.21	1.74	0.55	5.50
00220	D3	ANESTH, SPINAL FLUID SHUNT	2.82	1.53	0.48	4.83
00220	D4	ANESTH, SPINAL FLUID SHUNT	2.43	1.32	0.44	4.19
00220	AD	ANESTH, SPINAL FLUID SHUNT	0.78	0.42	0.13	1.33
00222	AA	ANESTH, HEAD NERVE SURGERY	3.42	1.85	0.58	5.85
00222	D2	ANESTH, HEAD NERVE SURGERY	2.33	1.26	0.40	3.99
00222	D3	ANESTH, HEAD NERVE SURGERY	2.10	1.14	0.36	3.60
00222	D4	ANESTH, HEAD NERVE SURGERY	1.86	1.01	0.34	3.21
00222	AD	ANESTH, HEAD NERVE SURGERY	0.78	0.42	0.13	1.33
00300	AA	ANESTH, SKIN SURGERY, NECK	2.82	1.42	0.44	4.48
00300	D2	ANESTH, SKIN SURGERY, NECK	1.83	0.99	0.31	3.13
00300	D3	ANESTH, SKIN SURGERY, NECK	1.63	0.88	0.28	2.79
00300	D4	ANESTH, SKIN SURGERY, NECK	1.44	0.78	0.26	2.48

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
00300	AD	ANESTH, SKIN SURGERY, NECK	0.78	0.42	0.13	1.33
00320	AA	ANESTH, NECK ORGAN SURGERY	2.96	1.61	0.51	5.10
00320	D2	ANESTH, NECK ORGAN SURGERY	2.11	1.14	0.36	3.61
00320	D3	ANESTH, NECK ORGAN SURGERY	1.88	1.02	0.32	3.22
00320	D4	ANESTH, NECK ORGAN SURGERY	1.64	0.89	0.30	2.83
00320	AD	ANESTH, NECK ORGAN SURGERY	0.78	0.42	0.13	1.33
00322	AA	ANESTH, BIOPSY OF THYROID	1.97	1.07	0.34	3.38
00322	D2	ANESTH, BIOPSY OF THYROID	1.30	0.70	0.22	2.22
00322	D3	ANESTH, BIOPSY OF THYROID	1.18	0.64	0.20	2.02
00322	D4	ANESTH, BIOPSY OF THYROID	1.06	0.57	0.19	1.82
00322	AD	ANESTH, BIOPSY OF THYROID	0.78	0.42	0.13	1.33
00350	AA	ANESTH, NECK VESSEL SURGERY	4.97	2.69	0.85	8.51
00350	D2	ANESTH, NECK VESSEL SURGERY	3.52	1.91	0.60	6.03
00350	D3	ANESTH, NECK VESSEL SURGERY	3.13	1.70	0.53	5.36
00350	D4	ANESTH, NECK VESSEL SURGERY	2.75	1.49	0.50	4.74
00350	AD	ANESTH, NECK VESSEL SURGERY	0.78	0.42	0.13	1.33
00352	AA	ANESTH, NECK VESSEL SURGERY	2.33	1.26	0.40	3.99
00352	D2	ANESTH, NECK VESSEL SURGERY	1.69	0.91	0.29	2.89
00352	D3	ANESTH, NECK VESSEL SURGERY	1.49	0.81	0.25	2.55
00352	D4	ANESTH, NECK VESSEL SURGERY	1.30	0.70	0.23	2.23
00352	AD	ANESTH, NECK VESSEL SURGERY	0.78	0.42	0.13	1.33
00400	AA	ANESTH, CHEST SKIN SURGERY	1.89	1.02	0.32	3.23
00400	D2	ANESTH, CHEST SKIN SURGERY	1.26	0.68	0.21	2.15
00400	D3	ANESTH, CHEST SKIN SURGERY	1.14	0.62	0.19	1.95
00400	D4	ANESTH, CHEST SKIN SURGERY	1.02	0.55	0.18	1.75
00400	AD	ANESTH, CHEST SKIN SURGERY	0.78	0.42	0.13	1.33
00402	AA	ANESTH, SURGERY OF BREAST	3.96	2.15	0.68	6.79
00402	D2	ANESTH, SURGERY OF BREAST	2.50	1.35	0.43	4.28
00402	D3	ANESTH, SURGERY OF BREAST	2.30	1.25	0.39	3.94
00402	D4	ANESTH, SURGERY OF BREAST	2.11	1.14	0.38	3.63
00402	AD	ANESTH, SURGERY OF BREAST	0.78	0.42	0.13	1.33
00404	AA	ANESTH, SURGERY OF BREAST	3.31	1.79	0.57	5.67
00404	D2	ANESTH, SURGERY OF BREAST	2.18	1.18	0.37	3.73
00404	D3	ANESTH, SURGERY OF BREAST	1.98	1.07	0.34	3.39
00404	D4	ANESTH, SURGERY OF BREAST	1.79	0.97	0.32	3.08
00404	AD	ANESTH, SURGERY OF BREAST	0.78	0.42	0.13	1.33
00406	AA	ANESTH, SURGERY OF BREAST	6.37	3.45	1.09	10.91
00406	D2	ANESTH, SURGERY OF BREAST	4.53	2.45	0.77	7.75
00406	D3	ANESTH, SURGERY OF BREAST	4.03	2.18	0.69	6.90
00406	D4	ANESTH, SURGERY OF BREAST	3.52	1.91	0.64	6.07
00406	AD	ANESTH, SURGERY OF BREAST	0.78	0.42	0.13	1.33
00410	AA	ANESTH, CORRECT HEART RHYTHM	1.56	0.84	0.26	2.66
00410	D2	ANESTH, CORRECT HEART RHYTHM	1.19	0.64	0.20	2.03
00410	D3	ANESTH, CORRECT HEART RHYTHM	1.03	0.56	0.18	1.77
00410	D4	ANESTH, CORRECT HEART RHYTHM	0.86	0.48	0.16	1.52
00410	AD	ANESTH, CORRECT HEART RHYTHM	0.78	0.42	0.13	1.33
00420	AA	ANESTH, SKIN SURGERY, BACK	2.80	1.51	0.48	4.79
00420	D2	ANESTH, SKIN SURGERY, BACK	1.92	1.04	0.33	3.29
00420	D3	ANESTH, SKIN SURGERY, BACK	1.72	0.93	0.29	2.94
00420	D4	ANESTH, SKIN SURGERY, BACK	1.53	0.83	0.28	2.64
00420	AD	ANESTH, SKIN SURGERY, BACK	0.78	0.42	0.13	1.33
00450	AA	ANESTH, SURGERY OF SHOULDER	2.72	1.47	0.46	4.65
00450	D2	ANESTH, SURGERY OF SHOULDER	1.88	1.02	0.32	3.22
00450	D3	ANESTH, SURGERY OF SHOULDER	1.69	0.91	0.29	2.89
00450	D4	ANESTH, SURGERY OF SHOULDER	1.49	0.81	0.27	2.57
00450	AD	ANESTH, SURGERY OF SHOULDER	0.78	0.42	0.13	1.33
00452	AA	ANESTH, SURGERY OF SHOULDER	3.42	1.85	0.58	5.85

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PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
00452	D2	ANESTH, SURGERY OF SHOULDER	2.33	1.26	0.40	3.99
00452	D3	ANESTH, SURGERY OF SHOULDER	2.10	1.14	0.36	3.60
00452	D4	ANESTH, SURGERY OF SHOULDER	1.86	1.01	0.34	3.21
00452	AD	ANESTH, SURGERY OF SHOULDER	0.78	0.42	0.13	1.33
00454	AA	ANESTH, COLLARBONE BIOPSY	1.97	1.07	0.34	3.38
00454	D2	ANESTH, COLLARBONE BIOPSY	1.30	0.70	0.22	2.22
00454	D3	ANESTH, COLLARBONE BIOPSY	1.18	0.64	0.20	2.02
00454	D4	ANESTH, COLLARBONE BIOPSY	1.06	0.57	0.19	1.82
00454	AD	ANESTH, COLLARBONE BIOPSY	0.78	0.42	0.13	1.33
00470	AA	ANESTH, REMOVAL OF RIB	3.24	1.75	0.55	5.54
00470	D2	ANESTH, REMOVAL OF RIB	2.24	1.21	0.38	3.83
00470	D3	ANESTH, REMOVAL OF RIB	2.01	1.09	0.34	3.44
00470	D4	ANESTH, REMOVAL OF RIB	1.77	0.96	0.32	3.05
00470	AD	ANESTH, REMOVAL OF RIB	0.78	0.42	0.13	1.33
00472	AA	ANESTH, CHEST WALL REPAIR	5.36	2.90	0.91	9.17
00472	D2	ANESTH, CHEST WALL REPAIR	3.72	2.01	0.63	6.36
00472	D3	ANESTH, CHEST WALL REPAIR	3.33	1.80	0.57	5.70
00472	D4	ANESTH, CHEST WALL REPAIR	2.94	1.59	0.53	5.06
00472	AD	ANESTH, CHEST WALL REPAIR	0.78	0.42	0.13	1.33
00474	AA	ANESTH, SURGERY OF RIB(S)	6.37	3.45	1.09	10.91
00474	D2	ANESTH, SURGERY OF RIB(S)	4.53	2.45	0.77	7.75
00474	D3	ANESTH, SURGERY OF RIB(S)	4.03	2.18	0.69	6.90
00474	D4	ANESTH, SURGERY OF RIB(S)	3.52	1.91	0.64	6.07
00474	AD	ANESTH, SURGERY OF RIB(S)	0.78	0.42	0.13	1.33
00500	AA	ANESTH, ESOPHAGEAL SURGERY	8.42	4.56	1.43	14.41
00500	D2	ANESTH, ESOPHAGEAL SURGERY	5.77	3.12	0.98	9.87
00500	D3	ANESTH, ESOPHAGEAL SURGERY	5.18	2.80	0.88	8.86
00500	D4	ANESTH, ESOPHAGEAL SURGERY	4.60	2.49	0.83	7.92
00500	AD	ANESTH, ESOPHAGEAL SURGERY	0.78	0.42	0.13	1.33
00520	AA	ANESTH, CHEST PROCEDURE	2.70	1.46	0.46	4.62
00520	D2	ANESTH, CHEST PROCEDURE	1.97	1.07	0.34	3.38
00520	D3	ANESTH, CHEST PROCEDURE	1.74	0.94	0.30	2.98
00520	D4	ANESTH, CHEST PROCEDURE	1.50	0.81	0.27	2.58
00520	AD	ANESTH, CHEST PROCEDURE	0.78	0.42	0.13	1.33
00522	AA	ANESTH, CHEST LINING BIOPSY	2.23	1.21	0.38	3.82
00522	D2	ANESTH, CHEST LINING BIOPSY	1.53	0.83	0.26	2.62
00522	D3	ANESTH, CHEST LINING BIOPSY	1.37	0.74	0.23	2.34
00522	D4	ANESTH, CHEST LINING BIOPSY	1.22	0.66	0.22	2.10
00522	AD	ANESTH, CHEST LINING BIOPSY	0.78	0.42	0.13	1.33
00524	AA	ANESTH, CHEST DRAINAGE	2.23	1.21	0.38	3.82
00524	D2	ANESTH, CHEST DRAINAGE	1.53	0.83	0.26	2.62
00524	D3	ANESTH, CHEST DRAINAGE	1.37	0.74	0.23	2.34
00524	D4	ANESTH, CHEST DRAINAGE	1.22	0.66	0.22	2.10
00524	AD	ANESTH, CHEST DRAINAGE	0.78	0.42	0.13	1.33
00528	AA	ANESTH, CHEST PARTITION VIEW	3.39	1.84	0.58	5.81
00528	D2	ANESTH, CHEST PARTITION VIEW	2.52	1.37	0.43	4.32
00528	D3	ANESTH, CHEST PARTITION VIEW	2.22	1.20	0.38	3.80
00528	D4	ANESTH, CHEST PARTITION VIEW	1.90	1.03	0.35	3.28
00528	AD	ANESTH, CHEST PARTITION VIEW	0.78	0.42	0.13	1.33
00530	AA	ANESTH, PACEMAKER INSERTION	2.57	1.39	0.44	4.40
00530	D2	ANESTH, PACEMAKER INSERTION	1.70	0.92	0.29	2.91
00530	D3	ANESTH, PACEMAKER INSERTION	1.54	0.83	0.26	2.63
00530	D4	ANESTH, PACEMAKER INSERTION	1.38	0.78	0.26	2.38
00530	AD	ANESTH, PACEMAKER INSERTION	0.78	0.42	0.13	1.33
00540	AA	ANESTH, CHEST SURGERY	6.30	3.41	1.07	10.78
00540	D2	ANESTH, CHEST SURGERY	4.50	2.43	0.77	7.70
00540	D3	ANESTH, CHEST SURGERY	3.99	2.16	0.68	6.83

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
00540	D4	ANESTH, CHEST SURGERY	3.46	1.89	0.63	6.00
00540	AD	ANESTH, CHEST SURGERY	0.78	0.42	0.13	1.33
00542	AA	ANESTH, RELEASE OF LUNG	7.80	4.22	1.33	13.35
00542	D2	ANESTH, RELEASE OF LUNG	5.45	2.95	0.93	9.33
00542	D3	ANESTH, RELEASE OF LUNG	4.87	2.63	0.83	8.33
00542	D4	ANESTH, RELEASE OF LUNG	4.29	2.32	0.78	7.39
00542	AD	ANESTH, RELEASE OF LUNG	0.78	0.42	0.13	1.33
00544	AA	ANESTH, CHEST LINING REMOVAL	7.80	4.22	1.33	13.35
00544	D2	ANESTH, CHEST LINING REMOVAL	5.45	2.95	0.93	9.33
00544	D3	ANESTH, CHEST LINING REMOVAL	4.87	2.63	0.83	8.33
00544	D4	ANESTH, CHEST LINING REMOVAL	4.29	2.32	0.78	7.39
00544	AD	ANESTH, CHEST LINING REMOVAL	0.78	0.42	0.13	1.33
00546	AA	ANESTH, LUNG, CHESTWALL SURG	7.80	4.22	1.33	13.35
00546	D2	ANESTH, LUNG, CHESTWALL SURG	5.45	2.95	0.93	9.33
00546	D3	ANESTH, LUNG, CHESTWALL SURG	4.87	2.63	0.83	8.33
00546	D4	ANESTH, LUNG, CHESTWALL SURG	4.29	2.32	0.78	7.39
00546	AD	ANESTH, LUNG, CHESTWALL SURG	0.78	0.42	0.13	1.33
00548	AA	ANESTH, TRACHEA,BRONCHI SURG	7.80	4.22	1.33	13.35
00548	D2	ANESTH, TRACHEA,BRONCHI SURG	5.45	2.95	0.93	9.33
00548	D3	ANESTH, TRACHEA,BRONCHI SURG	4.87	2.63	0.83	8.33
00548	D4	ANESTH, TRACHEA,BRONCHI SURG	4.29	2.32	0.78	7.39
00548	AD	ANESTH, TRACHEA,BRONCHI SURG	0.78	0.42	0.13	1.33
00560	AA	ANESTH, HEART VESSEL REPAIR	7.33	3.97	1.25	12.55
00560	D2	ANESTH, HEART VESSEL REPAIR	5.22	2.83	0.89	8.94
00560	D3	ANESTH, HEART VESSEL REPAIR	4.64	2.51	0.79	7.94
00560	D4	ANESTH, HEART VESSEL REPAIR	4.05	2.19	0.74	6.98
00560	AD	ANESTH, HEART VESSEL REPAIR	0.78	0.42	0.13	1.33
00562	AA	ANESTH, HEART VESSEL REPAIR	10.28	5.57	1.75	17.60
00562	D2	ANESTH, HEART VESSEL REPAIR	7.21	3.90	1.23	12.34
00562	D3	ANESTH, HEART VESSEL REPAIR	6.44	3.49	1.10	11.03
00562	D4	ANESTH, HEART VESSEL REPAIR	5.66	3.06	1.03	9.75
00562	AD	ANESTH, HEART VESSEL REPAIR	0.78	0.42	0.13	1.33
00580	AA	ANESTH,HEART/LUNG TRANSPLANT	10.31	5.58	1.76	17.65
00580	D2	ANESTH,HEART/LUNG TRANSPLANT	7.23	3.91	1.23	12.37
00580	D3	ANESTH,HEART/LUNG TRANSPLANT	6.45	3.49	1.10	11.04
00580	D4	ANESTH,HEART/LUNG TRANSPLANT	5.67	3.07	1.03	9.77
00580	AD	ANESTH,HEART/LUNG TRANSPLANT	0.78	0.42	0.13	1.33
00600	AA	ANESTH, SPINE, CORD SURGERY	5.59	3.03	0.95	9.57
00600	D2	ANESTH, SPINE, CORD SURGERY	3.83	2.08	0.65	6.56
00600	D3	ANESTH, SPINE, CORD SURGERY	3.44	1.86	0.59	5.89
00600	D4	ANESTH, SPINE, CORD SURGERY	3.08	1.65	0.56	5.27
00600	AD	ANESTH, SPINE, CORD SURGERY	0.78	0.42	0.13	1.33
00604	AA	ANESTH, SURGERY OF VERTEBRA	6.37	3.45	1.09	10.91
00604	D2	ANESTH, SURGERY OF VERTEBRA	4.53	2.45	0.77	7.75
00604	D3	ANESTH, SURGERY OF VERTEBRA	4.03	2.18	0.69	6.90
00604	D4	ANESTH, SURGERY OF VERTEBRA	3.52	1.91	0.64	6.07
00604	AD	ANESTH, SURGERY OF VERTEBRA	0.78	0.42	0.13	1.33
00620	AA	ANESTH, SPINE, CORD SURGERY	5.85	3.17	1.00	10.02
00620	D2	ANESTH, SPINE, CORD SURGERY	3.96	2.15	0.68	6.79
00620	D3	ANESTH, SPINE, CORD SURGERY	3.57	1.94	0.61	6.12
00620	D4	ANESTH, SPINE, CORD SURGERY	3.19	1.72	0.58	5.49
00620	AD	ANESTH, SPINE, CORD SURGERY	0.78	0.42	0.13	1.33
00622	AA	ANESTH, REMOVAL OF NERVES	6.37	3.45	1.09	10.91
00622	D2	ANESTH, REMOVAL OF NERVES	4.53	2.45	0.77	7.75
00622	D3	ANESTH, REMOVAL OF NERVES	4.03	2.18	0.69	5.90
00622	D4	ANESTH, REMOVAL OF NERVES	3.52	1.91	0.64	6.07
00622	AD	ANESTH, REMOVAL OF NERVES	0.78	0.42	0.13	1.33

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PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
00630	AA	ANESTH, SPINE, CORD SURGERY	4.69	2.54	0.80	8.03
00630	D2	ANESTH, SPINE, CORD SURGERY	3.17	1.72	0.54	5.43
00630	D3	ANESTH, SPINE, CORD SURGERY	2.86	1.55	0.49	4.90
00630	D4	ANESTH, SPINE, CORD SURGERY	2.55	1.38	0.46	4.38
00630	AD	ANESTH, SPINE, CORD SURGERY	0.78	0.42	0.13	1.33
00632	AA	ANESTH, REMOVAL OF NERVES	4.07	2.20	0.69	6.96
00632	D2	ANESTH, REMOVAL OF NERVES	2.76	1.49	0.47	4.72
00632	D3	ANESTH, REMOVAL OF NERVES	2.49	1.35	0.42	4.26
00632	D4	ANESTH, REMOVAL OF NERVES	2.22	1.20	0.40	3.82
00632	AD	ANESTH, REMOVAL OF NERVES	0.78	0.42	0.13	1.33
00634	AA	ANESTH FOR CHEMONUCLEOLYSIS	5.36	2.90	0.91	9.17
00634	D2	ANESTH FOR CHEMONUCLEOLYSIS	3.72	2.01	0.63	6.36
00634	D3	ANESTH FOR CHEMONUCLEOLYSIS	3.33	1.80	0.57	5.70
00634	D4	ANESTH FOR CHEMONUCLEOLYSIS	2.94	1.59	0.53	5.06
00634	AD	ANESTH FOR CHEMONUCLEOLYSIS	0.78	0.42	0.13	1.33
00670	AA	ANESTH, SPINE, CORD SURGERY	7.80	4.22	1.33	13.35
00670	D2	ANESTH, SPINE, CORD SURGERY	5.25	2.84	0.89	8.98
00670	D3	ANESTH, SPINE, CORD SURGERY	4.74	2.57	0.81	8.12
00670	D4	ANESTH, SPINE, CORD SURGERY	4.23	2.29	0.77	7.29
00670	AD	ANESTH, SPINE, CORD SURGERY	0.78	0.42	0.13	1.33
00700	AA	ANESTH, ABDOMINAL WALL SURG	2.26	1.23	0.39	3.90
00700	D2	ANESTH, ABDOMINAL WALL SURG	1.45	0.78	0.25	2.48
00700	D3	ANESTH, ABDOMINAL WALL SURG	1.33	0.72	0.23	2.28
00700	D4	ANESTH, ABDOMINAL WALL SURG	1.22	0.66	0.22	2.10
00700	AD	ANESTH, ABDOMINAL WALL SURG	0.78	0.42	0.13	1.33
00702	AA	ANESTHESIA FOR LIVER BIOPSY	2.23	1.21	0.38	3.82
00702	D2	ANESTHESIA FOR LIVER BIOPSY	1.53	0.83	0.26	2.62
00702	D3	ANESTHESIA FOR LIVER BIOPSY	1.37	0.74	0.23	2.34
00702	D4	ANESTHESIA FOR LIVER BIOPSY	1.22	0.66	0.22	2.10
00702	AD	ANESTHESIA FOR LIVER BIOPSY	0.78	0.42	0.13	1.33
00730	AA	ANESTH, ABDOMINAL WALL SURG	2.54	1.37	0.43	4.34
00730	D2	ANESTH, ABDOMINAL WALL SURG	1.79	0.97	0.30	3.06
00730	D3	ANESTH, ABDOMINAL WALL SURG	1.59	0.86	0.27	2.72
00730	D4	ANESTH, ABDOMINAL WALL SURG	1.40	0.76	0.25	2.41
00730	AD	ANESTH, ABDOMINAL WALL SURG	0.78	0.42	0.13	1.33
00740	AA	ANESTH, GI VISUALIZATION	2.10	1.14	0.36	3.60
00740	D2	ANESTH, GI VISUALIZATION	1.57	0.85	0.27	2.69
00740	D3	ANESTH, GI VISUALIZATION	1.37	0.74	0.23	2.34
00740	D4	ANESTH, GI VISUALIZATION	1.18	0.64	0.21	2.03
00740	AD	ANESTH, GI VISUALIZATION	0.78	0.42	0.13	1.33
00750	AA	ANESTH, REPAIR OF HERNIA	2.46	1.33	0.42	4.21
00750	D2	ANESTH, REPAIR OF HERNIA	1.64	0.89	0.28	2.81
00750	D3	ANESTH, REPAIR OF HERNIA	1.49	0.81	0.25	2.55
00750	D4	ANESTH, REPAIR OF HERNIA	1.33	0.72	0.24	2.29
00750	AD	ANESTH, REPAIR OF HERNIA	0.78	0.42	0.13	1.33
00752	AA	ANESTH, REPAIR OF HERNIA	3.11	1.68	0.53	5.32
00752	D2	ANESTH, REPAIR OF HERNIA	2.18	1.18	0.37	3.73
00752	D3	ANESTH, REPAIR OF HERNIA	1.94	1.05	0.33	3.32
00752	D4	ANESTH, REPAIR OF HERNIA	1.71	0.93	0.31	2.95
00752	AD	ANESTH, REPAIR OF HERNIA	0.78	0.42	0.13	1.33
00754	AA	ANESTH, REPAIR OF HERNIA	4.07	2.20	0.69	6.96
00754	D2	ANESTH, REPAIR OF HERNIA	2.76	1.49	0.47	4.72
00754	D3	ANESTH, REPAIR OF HERNIA	2.49	1.35	0.42	4.26
00754	D4	ANESTH, REPAIR OF HERNIA	2.22	1.20	0.40	3.82
00754	AD	ANESTH, REPAIR OF HERNIA	0.78	0.42	0.13	1.33
00756	AA	ANESTH, REPAIR OF HERNIA	4.07	2.20	0.69	6.96
00756	D2	ANESTH, REPAIR OF HERNIA	2.76	1.49	0.47	4.72

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
00756	D3	ANESTH, REPAIR OF HERNIA	2.49	1.35	0.42	4.26
00756	D4	ANESTH, REPAIR OF HERNIA	2.22	1.20	0.40	3.82
00756	AD	ANESTH, REPAIR OF HERNIA	0.78	0.42	0.13	1.33
00770	AA	ANESTH, BLOOD VESSEL REPAIR	7.93	4.29	1.35	13.57
00770	D2	ANESTH, BLOOD VESSEL REPAIR	5.52	2.99	0.94	9.45
00770	D3	ANESTH, BLOOD VESSEL REPAIR	4.93	2.67	0.84	8.44
00770	D4	ANESTH, BLOOD VESSEL REPAIR	4.35	2.36	0.79	7.50
00770	AD	ANESTH, BLOOD VESSEL REPAIR	0.78	0.42	0.13	1.33
00790	AA	ANESTH, SURGERY OF ABDOMEN	3.96	2.15	0.68	6.79
00790	D2	ANESTH, SURGERY OF ABDOMEN	2.71	1.47	0.46	4.64
00790	D3	ANESTH, SURGERY OF ABDOMEN	2.43	1.32	0.42	4.17
00790	D4	ANESTH, SURGERY OF ABDOMEN	2.16	1.17	0.39	3.72
00790	AD	ANESTH, SURGERY OF ABDOMEN	0.78	0.42	0.13	1.33
00792	AA	ANESTH, PART LIVER REMOVAL	6.37	3.45	1.09	10.91
00792	D2	ANESTH, PART LIVER REMOVAL	4.53	2.45	0.77	7.75
00792	D3	ANESTH, PART LIVER REMOVAL	4.03	2.18	0.69	6.90
00792	D4	ANESTH, PART LIVER REMOVAL	3.52	1.91	0.64	6.07
00792	AD	ANESTH, PART LIVER REMOVAL	0.78	0.42	0.13	1.33
00794	AA	ANESTH, PANCREAS REMOVAL	4.95	2.68	0.84	8.47
00794	D2	ANESTH, PANCREAS REMOVAL	3.30	1.79	0.56	5.65
00794	D3	ANESTH, PANCREAS REMOVAL	2.99	1.62	0.51	5.12
00794	D4	ANESTH, PANCREAS REMOVAL	2.68	1.45	0.49	4.62
00794	AD	ANESTH, PANCREAS REMOVAL	0.78	0.42	0.13	1.33
00796	AA	ANESTH, FOR LIVER TRANSPLANT	16.81	10.18	3.20	32.19
00796	D2	ANESTH, FOR LIVER TRANSPLANT	12.51	6.77	2.13	21.41
00796	D3	ANESTH, FOR LIVER TRANSPLANT	11.36	6.14	1.93	19.42
00796	D4	ANESTH, FOR LIVER TRANSPLANT	10.18	5.51	1.85	17.54
00796	AD	ANESTH, FOR LIVER TRANSPLANT	0.78	0.42	0.13	1.33
00800	AA	ANESTH, ABDOMINAL WALL SURG	2.20	1.19	0.37	3.76
00800	D2	ANESTH, ABDOMINAL WALL SURG	1.41	0.77	0.24	2.42
00800	D3	ANESTH, ABDOMINAL WALL SURG	1.30	0.70	0.22	2.22
00800	D4	ANESTH, ABDOMINAL WALL SURG	1.18	0.64	0.21	2.03
00800	AD	ANESTH, ABDOMINAL WALL SURG	0.78	0.42	0.13	1.33
00802	AA	ANESTH, FAT LAYER REMOVAL	2.72	1.47	0.46	4.65
00802	D2	ANESTH, FAT LAYER REMOVAL	1.88	1.02	0.32	3.22
00802	D3	ANESTH, FAT LAYER REMOVAL	1.69	0.91	0.29	2.89
00802	D4	ANESTH, FAT LAYER REMOVAL	1.49	0.81	0.27	2.57
00802	AD	ANESTH, FAT LAYER REMOVAL	0.78	0.42	0.13	1.33
00806	AA	ANESTH, PELVIC VISUALIZATION	3.21	1.74	0.55	5.50
00806	D2	ANESTH, PELVIC VISUALIZATION	2.23	1.21	0.38	3.82
00806	D3	ANESTH, PELVIC VISUALIZATION	1.99	1.08	0.34	3.41
00806	D4	ANESTH, PELVIC VISUALIZATION	1.76	0.96	0.32	3.03
00806	AD	ANESTH, PELVIC VISUALIZATION	0.78	0.42	0.13	1.33
00810	AA	ANESTH, INTESTINE ENDOSCOPY	2.41	1.30	0.41	4.12
00810	D2	ANESTH, INTESTINE ENDOSCOPY	1.83	0.99	0.31	3.13
00810	D3	ANESTH, INTESTINE ENDOSCOPY	1.59	0.86	0.27	2.72
00810	D4	ANESTH, INTESTINE ENDOSCOPY	1.36	0.74	0.25	2.35
00810	AD	ANESTH, INTESTINE ENDOSCOPY	0.78	0.42	0.13	1.33
00820	AA	ANESTH, ABDOMINAL WALL SURG	3.76	2.03	0.64	6.43
00820	D2	ANESTH, ABDOMINAL WALL SURG	2.40	1.30	0.41	4.11
00820	D3	ANESTH, ABDOMINAL WALL SURG	2.20	1.19	0.37	3.76
00820	D4	ANESTH, ABDOMINAL WALL SURG	2.01	1.09	0.37	3.47
00820	AD	ANESTH, ABDOMINAL WALL SURG	0.78	0.42	0.13	1.33
00830	AA	ANESTH, REPAIR OF HERNIA	2.51	1.36	0.43	4.30
00830	D2	ANESTH, REPAIR OF HERNIA	1.67	0.90	0.29	2.86
00830	D3	ANESTH, REPAIR OF HERNIA	1.51	0.82	0.26	2.59
00830	D4	ANESTH, REPAIR OF HERNIA	1.36	0.74	0.25	2.35

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PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
00830	AD	ANESTH, REPAIR OF HERNIA	0.78	0.42	0.13	1.33
00832	AA	ANESTH, REPAIR OF HERNIA	3.21	1.74	0.55	5.50
00832	D2	ANESTH, REPAIR OF HERNIA	2.23	1.21	0.38	3.82
00832	D3	ANESTH, REPAIR OF HERNIA	1.99	1.08	0.34	3.41
00832	D4	ANESTH, REPAIR OF HERNIA	1.78	0.95	0.32	3.03
00832	AD	ANESTH, REPAIR OF HERNIA	0.78	0.42	0.13	1.33
00840	AA	ANESTH, SURGERY OF ABDOMEN	3.83	2.08	0.65	6.56
00840	D2	ANESTH, SURGERY OF ABDOMEN	2.54	1.37	0.43	4.34
00840	D3	ANESTH, SURGERY OF ABDOMEN	2.30	1.25	0.39	3.94
00840	D4	ANESTH, SURGERY OF ABDOMEN	2.07	1.12	0.37	3.56
00840	AD	ANESTH, SURGERY OF ABDOMEN	0.78	0.42	0.13	1.33
00842	AA	ANESTH, AMNIOCENTESIS	2.23	1.21	0.38	3.82
00842	D2	ANESTH, AMNIOCENTESIS	1.53	0.83	0.26	2.62
00842	D3	ANESTH, AMNIOCENTESIS	1.37	0.74	0.23	2.34
00842	D4	ANESTH, AMNIOCENTESIS	1.22	0.66	0.22	2.10
00842	AD	ANESTH, AMNIOCENTESIS	0.78	0.42	0.13	1.33
00844	AA	ANESTH, PELVIS SURGERY	5.05	2.73	0.86	8.64
00844	D2	ANESTH, PELVIS SURGERY	3.25	1.76	0.55	5.56
00844	D3	ANESTH, PELVIS SURGERY	2.98	1.61	0.51	5.10
00844	D4	ANESTH, PELVIS SURGERY	2.71	1.47	0.49	4.67
00844	AD	ANESTH, PELVIS SURGERY	0.78	0.42	0.13	1.33
00846	AA	ANESTH, HYSTERECTOMY	5.05	2.73	0.86	8.64
00846	D2	ANESTH, HYSTERECTOMY	3.36	1.82	0.57	5.75
00846	D3	ANESTH, HYSTERECTOMY	3.04	1.65	0.52	5.21
00846	D4	ANESTH, HYSTERECTOMY	2.75	1.48	0.50	4.71
00846	AD	ANESTH, HYSTERECTOMY	0.78	0.42	0.13	1.33
00848	AA	ANESTH, PELVIC ORGAN SURG	4.95	2.66	0.84	8.47
00848	D2	ANESTH, PELVIC ORGAN SURG	3.30	1.79	0.56	5.65
00848	D3	ANESTH, PELVIC ORGAN SURG	2.99	1.62	0.51	5.12
00848	D4	ANESTH, PELVIC ORGAN SURG	2.66	1.45	0.46	4.62
00848	AD	ANESTH, PELVIC ORGAN SURG	0.78	0.42	0.13	1.33
00850	AA	ANESTH, CESAREAN SECTION	4.07	2.20	0.69	6.96
00850	D2	ANESTH, CESAREAN SECTION	2.76	1.49	0.47	4.72
00850	D3	ANESTH, CESAREAN SECTION	2.49	1.35	0.42	4.26
00850	D4	ANESTH, CESAREAN SECTION	2.22	1.20	0.40	3.82
00850	AD	ANESTH, CESAREAN SECTION	0.78	0.42	0.13	1.33
00855	AA	ANESTH, HYSTERECTOMY	4.95	2.66	0.84	8.47
00855	D2	ANESTH, HYSTERECTOMY	3.30	1.79	0.56	5.65
00855	D3	ANESTH, HYSTERECTOMY	2.99	1.62	0.51	5.12
00855	D4	ANESTH, HYSTERECTOMY	2.66	1.45	0.49	4.62
00855	AD	ANESTH, HYSTERECTOMY	0.78	0.42	0.13	1.33
00857	AA	ANALGESIA, LABOR & C-SECTION	4.07	2.20	0.69	6.96
00857	D2	ANALGESIA, LABOR & C-SECTION	2.76	1.49	0.47	4.72
00857	D3	ANALGESIA, LABOR & C-SECTION	2.49	1.35	0.42	4.26
00857	D4	ANALGESIA, LABOR & C-SECTION	2.22	1.20	0.40	3.82
00857	AD	ANALGESIA, LABOR & C-SECTION	0.78	0.42	0.13	1.33
00860	AA	ANESTH, SURGERY OF ABDOMEN	3.78	2.05	0.64	6.47
00860	D2	ANESTH, SURGERY OF ABDOMEN	2.51	1.36	0.43	4.30
00860	D3	ANESTH, SURGERY OF ABDOMEN	2.28	1.23	0.39	3.90
00860	D4	ANESTH, SURGERY OF ABDOMEN	2.05	1.11	0.37	3.53
00860	AD	ANESTH, SURGERY OF ABDOMEN	0.78	0.42	0.13	1.33
00862	AA	ANESTH, KIDNEY, URETER SURG	4.36	2.36	0.74	7.45
00862	D2	ANESTH, KIDNEY, URETER SURG	2.90	1.57	0.50	4.97
00862	D3	ANESTH, KIDNEY, URETER SURG	2.63	1.42	0.45	4.50
00862	D4	ANESTH, KIDNEY, URETER SURG	2.36	1.28	0.43	4.07
00862	AD	ANESTH, KIDNEY, URETER SURG	0.78	0.42	0.13	1.33
00864	AA	ANESTH, REMOVAL OF BLADDER	7.38	4.00	1.26	12.64

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
00864	D2	ANESTH, REMOVAL OF BLADDER	4.52	2.45	0.77	7.74
00864	D3	ANESTH, REMOVAL OF BLADDER	4.21	2.28	0.72	7.21
00864	D4	ANESTH, REMOVAL OF BLADDER	3.90	2.11	0.71	6.72
00864	AD	ANESTH, REMOVAL OF BLADDER	0.78	0.42	0.13	1.33
00866	AA	ANESTH, REMOVAL OF ADRENAL	5.36	2.90	0.91	9.17
00866	D2	ANESTH, REMOVAL OF ADRENAL	3.72	2.01	0.63	6.36
00866	D3	ANESTH, REMOVAL OF ADRENAL	3.33	1.80	0.57	5.70
00866	D4	ANESTH, REMOVAL OF ADRENAL	2.94	1.59	0.53	5.06
00866	AD	ANESTH, REMOVAL OF ADRENAL	0.78	0.42	0.13	1.33
00868	AA	ANESTH, KIDNEY TRANSPLANT	6.84	3.70	1.17	11.71
00868	D2	ANESTH, KIDNEY TRANSPLANT	4.45	2.41	0.76	7.62
00868	D3	ANESTH, KIDNEY TRANSPLANT	4.07	2.20	0.69	6.96
00868	D4	ANESTH, KIDNEY TRANSPLANT	3.68	1.99	0.67	6.34
00868	AD	ANESTH, KIDNEY TRANSPLANT	0.78	0.42	0.13	1.33
00870	AA	ANESTH, BLADDER STONE SURG	2.72	1.47	0.46	4.65
00870	D2	ANESTH, BLADDER STONE SURG	1.88	1.02	0.32	3.22
00870	D3	ANESTH, BLADDER STONE SURG	1.69	0.91	0.29	2.89
00870	D4	ANESTH, BLADDER STONE SURG	1.49	0.81	0.27	2.57
00870	AD	ANESTH, BLADDER STONE SURG	0.78	0.42	0.13	1.33
00872	AA	ANESTH,KIDNEY STONE DESTRUCT	3.44	1.86	0.59	5.89
00872	D2	ANESTH,KIDNEY STONE DESTRUCT	2.45	1.32	0.42	4.19
00872	D3	ANESTH,KIDNEY STONE DESTRUCT	2.18	1.18	0.37	3.73
00872	D4	ANESTH,KIDNEY STONE DESTRUCT	1.90	1.03	0.35	3.28
00872	AD	ANESTH,KIDNEY STONE DESTRUCT	0.78	0.42	0.13	1.33
00873	AA	ANESTHESIA FOR LITHOTRIPSY	2.72	1.47	0.46	4.65
00873	D2	ANESTHESIA FOR LITHOTRIPSY	1.88	1.02	0.32	3.22
00873	D3	ANESTHESIA FOR LITHOTRIPSY	1.69	0.91	0.29	2.89
00873	D4	ANESTHESIA FOR LITHOTRIPSY	1.49	0.81	0.25	2.55
00873	AD	ANESTHESIA FOR LITHOTRIPSY	0.78	0.42	0.13	1.33
00880	AA	ANESTH, ABDOMEN VESSEL SURG	8.06	4.36	1.37	13.79
00880	D2	ANESTH, ABDOMEN VESSEL SURG	5.58	3.02	0.95	9.55
00880	D3	ANESTH, ABDOMEN VESSEL SURG	5.00	2.71	0.85	8.56
00880	D4	ANESTH, ABDOMEN VESSEL SURG	4.42	2.39	0.80	7.61
00880	AD	ANESTH, ABDOMEN VESSEL SURG	0.78	0.42	0.13	1.33
00882	AA	ANESTH, MAJOR VEIN LIGATION	5.36	2.90	0.91	9.17
00882	D2	ANESTH, MAJOR VEIN LIGATION	3.72	2.01	0.63	6.36
00882	D3	ANESTH, MAJOR VEIN LIGATION	3.33	1.80	0.57	5.70
00882	D4	ANESTH, MAJOR VEIN LIGATION	2.94	1.59	0.53	5.06
00882	AD	ANESTH, MAJOR VEIN LIGATION	0.78	0.42	0.13	1.33
00884	AA	ANESTH, MAJOR VEIN REVISION	2.72	1.47	0.46	4.65
00884	D2	ANESTH, MAJOR VEIN REVISION	1.88	1.02	0.32	3.22
00884	D3	ANESTH, MAJOR VEIN REVISION	1.69	0.91	0.29	2.89
00884	D4	ANESTH, MAJOR VEIN REVISION	1.49	0.81	0.27	2.57
00884	AD	ANESTH, MAJOR VEIN REVISION	0.78	0.42	0.13	1.33
00900	AA	ANESTH, PERINEAL PROCEDURE	1.81	0.98	0.31	3.10
00900	D2	ANESTH, PERINEAL PROCEDURE	1.22	0.66	0.21	2.09
00900	D3	ANESTH, PERINEAL PROCEDURE	1.10	0.60	0.19	1.89
00900	D4	ANESTH, PERINEAL PROCEDURE	0.98	0.53	0.18	1.69
00900	AD	ANESTH, PERINEAL PROCEDURE	0.78	0.42	0.13	1.33
00902	AA	ANESTH, ANORECTAL SURGERY	2.07	1.12	0.35	3.54
00902	D2	ANESTH, ANORECTAL SURGERY	1.45	0.78	0.25	2.48
00902	D3	ANESTH, ANORECTAL SURGERY	1.30	0.70	0.22	2.22
00902	D4	ANESTH, ANORECTAL SURGERY	1.14	0.62	0.21	1.97
00902	AD	ANESTH, ANORECTAL SURGERY	0.78	0.42	0.13	1.33
00904	AA	ANESTH, PERINEAL SURGERY	5.13	2.78	0.87	8.78
00904	D2	ANESTH, PERINEAL SURGERY	3.29	1.78	0.56	5.63
00904	D3	ANESTH, PERINEAL SURGERY	3.02	1.63	0.51	5.16

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PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
00904	D4	ANESTH, PERINEAL SURGERY	2.75	1.48	0.50	4.74
00904	AD	ANESTH, PERINEAL SURGERY	0.78	0.42	0.13	1.33
00906	AA	ANESTH, REMOVAL OF VULVA	2.23	1.21	0.38	3.82
00906	D2	ANESTH, REMOVAL OF VULVA	1.53	0.83	0.26	2.62
00906	D3	ANESTH, REMOVAL OF VULVA	1.37	0.74	0.23	2.34
00906	D4	ANESTH, REMOVAL OF VULVA	1.22	0.66	0.22	2.10
00906	AD	ANESTH, REMOVAL OF VULVA	0.78	0.42	0.13	1.33
00908	AA	ANESTH, REMOVAL OF PROSTATE	4.53	2.45	0.77	7.75
00908	D2	ANESTH, REMOVAL OF PROSTATE	2.89	1.57	0.49	4.95
00908	D3	ANESTH, REMOVAL OF PROSTATE	2.66	1.44	0.45	4.55
00908	D4	ANESTH, REMOVAL OF PROSTATE	2.42	1.31	0.44	4.17
00908	AD	ANESTH, REMOVAL OF PROSTATE	0.78	0.42	0.13	1.33
00910	AA	ANESTH, TRANSURETHRAL PROC	1.71	0.83	0.29	2.93
00910	D2	ANESTH, TRANSURETHRAL PROC	1.17	0.63	0.20	2.00
00910	D3	ANESTH, TRANSURETHRAL PROC	1.05	0.57	0.18	1.80
00910	D4	ANESTH, TRANSURETHRAL PROC	0.93	0.50	0.17	1.60
00910	AD	ANESTH, TRANSURETHRAL PROC	0.78	0.42	0.13	1.33
00912	AA	ANESTH, BLADDER TUMOR SURG	2.33	1.26	0.40	3.99
00912	D2	ANESTH, BLADDER TUMOR SURG	1.69	0.91	0.29	2.89
00912	D3	ANESTH, BLADDER TUMOR SURG	1.49	0.81	0.25	2.55
00912	D4	ANESTH, BLADDER TUMOR SURG	1.30	0.70	0.23	2.23
00912	AD	ANESTH, BLADDER TUMOR SURG	0.78	0.42	0.13	1.33
00914	AA	ANESTH, REMOVAL OF PROSTATE	2.70	1.46	0.46	4.62
00914	D2	ANESTH, REMOVAL OF PROSTATE	1.86	1.01	0.32	3.19
00914	D3	ANESTH, REMOVAL OF PROSTATE	1.67	0.90	0.29	2.86
00914	D4	ANESTH, REMOVAL OF PROSTATE	1.48	0.80	0.27	2.55
00914	AD	ANESTH, REMOVAL OF PROSTATE	0.78	0.42	0.13	1.33
00916	AA	ANESTH, BLEEDING CONTROL	2.43	1.32	0.42	4.17
00916	D2	ANESTH, BLEEDING CONTROL	1.74	0.94	0.30	2.98
00916	D3	ANESTH, BLEEDING CONTROL	1.54	0.83	0.26	2.63
00916	D4	ANESTH, BLEEDING CONTROL	1.35	0.73	0.24	2.32
00916	AD	ANESTH, BLEEDING CONTROL	0.78	0.42	0.13	1.33
00918	AA	ANESTH,TRANSURETHRAL SURGERY	2.72	1.47	0.46	4.65
00918	D2	ANESTH,TRANSURETHRAL SURGERY	1.88	1.02	0.32	3.22
00918	D3	ANESTH,TRANSURETHRAL SURGERY	1.69	0.91	0.29	2.89
00918	D4	ANESTH,TRANSURETHRAL SURGERY	1.49	0.81	0.27	2.57
00918	AD	ANESTH,TRANSURETHRAL SURGERY	0.78	0.42	0.13	1.33
00920	AA	ANESTH, GENITALIA SURGERY	1.92	1.04	0.33	3.29
00920	D2	ANESTH, GENITALIA SURGERY	1.27	0.69	0.22	2.18
00920	D3	ANESTH, GENITALIA SURGERY	1.15	0.63	0.20	1.98
00920	D4	ANESTH, GENITALIA SURGERY	1.03	0.56	0.18	1.78
00920	AD	ANESTH, GENITALIA SURGERY	0.78	0.42	0.13	1.33
00922	AA	ANESTH, SPERM DUCT SURGERY	3.42	1.85	0.58	5.85
00922	D2	ANESTH, SPERM DUCT SURGERY	2.33	1.26	0.40	3.99
00922	D3	ANESTH, SPERM DUCT SURGERY	2.10	1.14	0.36	3.60
00922	D4	ANESTH, SPERM DUCT SURGERY	1.86	1.01	0.34	3.21
00922	AD	ANESTH, SPERM DUCT SURGERY	0.78	0.42	0.13	1.33
00924	AA	ANESTH, TESTIS EXPLORATION	2.23	1.21	0.38	3.82
00924	D2	ANESTH, TESTIS EXPLORATION	1.53	0.83	0.26	2.62
00924	D3	ANESTH, TESTIS EXPLORATION	1.37	0.74	0.23	2.34
00924	D4	ANESTH, TESTIS EXPLORATION	1.22	0.66	0.22	2.10
00924	AD	ANESTH, TESTIS EXPLORATION	0.78	0.42	0.13	1.33
00926	AA	ANESTH, REMOVAL OF TESTIS	2.23	1.21	0.38	3.82
00926	D2	ANESTH, REMOVAL OF TESTIS	1.53	0.83	0.26	2.62
00926	D3	ANESTH, REMOVAL OF TESTIS	1.37	0.74	0.23	2.34
00926	D4	ANESTH, REMOVAL OF TESTIS	1.22	0.66	0.22	2.10
00926	AD	ANESTH, REMOVAL OF TESTIS	0.78	0.42	0.13	1.33

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
00928	AA	ANESTH, REMOVAL OF TESTIS	3.39	1.84	0.58	5.81
00928	D2	ANESTH, REMOVAL OF TESTIS	2.32	1.25	0.39	3.96
00928	D3	ANESTH, REMOVAL OF TESTIS	2.09	1.13	0.36	3.58
00928	D4	ANESTH, REMOVAL OF TESTIS	1.85	1.00	0.34	3.19
00928	AD	ANESTH, REMOVAL OF TESTIS	0.78	0.42	0.13	1.33
00930	AA	ANESTH, TESTIS SUSPENSION	2.23	1.21	0.38	3.82
00930	D2	ANESTH, TESTIS SUSPENSION	1.53	0.83	0.26	2.62
00930	D3	ANESTH, TESTIS SUSPENSION	1.37	0.74	0.23	2.34
00930	D4	ANESTH, TESTIS SUSPENSION	1.22	0.66	0.22	2.10
00930	AD	ANESTH, TESTIS SUSPENSION	0.78	0.42	0.13	1.33
00932	AA	ANESTH, AMPUTATION OF PENIS	2.23	1.21	0.38	3.82
00932	D2	ANESTH, AMPUTATION OF PENIS	1.53	0.83	0.26	2.62
00932	D3	ANESTH, AMPUTATION OF PENIS	1.37	0.74	0.23	2.34
00932	D4	ANESTH, AMPUTATION OF PENIS	1.22	0.66	0.22	2.10
00932	AD	ANESTH, AMPUTATION OF PENIS	0.78	0.42	0.13	1.33
00934	AA	ANESTH, PENIS, NODES REMOVAL	3.42	1.85	0.58	5.85
00934	D2	ANESTH, PENIS, NODES REMOVAL	2.33	1.26	0.40	3.99
00934	D3	ANESTH, PENIS, NODES REMOVAL	2.10	1.14	0.36	3.60
00934	D4	ANESTH, PENIS, NODES REMOVAL	1.86	1.01	0.34	3.21
00934	AD	ANESTH, PENIS, NODES REMOVAL	0.78	0.42	0.13	1.33
00936	AA	ANESTH, PENIS, NODES REMOVAL	4.95	2.68	0.84	8.47
00936	D2	ANESTH, PENIS, NODES REMOVAL	3.30	1.79	0.56	5.65
00936	D3	ANESTH, PENIS, NODES REMOVAL	2.99	1.62	0.51	5.12
00936	D4	ANESTH, PENIS, NODES REMOVAL	2.68	1.45	0.49	4.62
00936	AD	ANESTH, PENIS, NODES REMOVAL	0.78	0.42	0.13	1.33
00938	AA	ANESTH, INSERT PENIS DEVICE	3.08	1.67	0.52	5.27
00938	D2	ANESTH, INSERT PENIS DEVICE	1.96	1.06	0.33	3.35
00938	D3	ANESTH, INSERT PENIS DEVICE	1.80	0.97	0.31	3.08
00938	D4	ANESTH, INSERT PENIS DEVICE	1.64	0.89	0.30	2.83
00938	AD	ANESTH, INSERT PENIS DEVICE	0.78	0.42	0.13	1.33
00940	AA	ANESTH, VAGINAL PROCEDURES	1.56	0.84	0.26	2.66
00940	D2	ANESTH, VAGINAL PROCEDURES	1.09	0.59	0.18	1.86
00940	D3	ANESTH, VAGINAL PROCEDURES	0.97	0.53	0.17	1.67
00940	D4	ANESTH, VAGINAL PROCEDURES	0.86	0.46	0.15	1.47
00940	AD	ANESTH, VAGINAL PROCEDURES	0.78	0.42	0.13	1.33
00942	AA	ANESTH, SURGERY ON VAGINA	2.70	1.46	0.46	4.62
00942	D2	ANESTH, SURGERY ON VAGINA	1.76	0.95	0.30	3.01
00942	D3	ANESTH, SURGERY ON VAGINA	1.61	0.87	0.27	2.75
00942	D4	ANESTH, SURGERY ON VAGINA	1.45	0.78	0.26	2.49
00942	AD	ANESTH, SURGERY ON VAGINA	0.78	0.42	0.13	1.33
00944	AA	ANESTH, VAGINAL HYSTERECTOMY	3.83	2.06	0.65	6.56
00944	D2	ANESTH, VAGINAL HYSTERECTOMY	2.54	1.37	0.43	4.34
00944	D3	ANESTH, VAGINAL HYSTERECTOMY	2.30	1.25	0.39	3.94
00944	D4	ANESTH, VAGINAL HYSTERECTOMY	2.07	1.12	0.37	3.56
00944	AD	ANESTH, VAGINAL HYSTERECTOMY	0.78	0.42	0.13	1.33
00946	AA	ANESTH, VAGINAL DELIVERY	2.72	1.47	0.46	4.65
00946	D2	ANESTH, VAGINAL DELIVERY	1.88	1.02	0.32	3.22
00946	D3	ANESTH, VAGINAL DELIVERY	1.69	0.91	0.29	2.89
00946	D4	ANESTH, VAGINAL DELIVERY	1.49	0.81	0.27	2.57
00946	AD	ANESTH, VAGINAL DELIVERY	0.78	0.42	0.13	1.33
00948	AA	ANESTH, REPAIR OF CERVIX	2.23	1.21	0.38	3.82
00948	D2	ANESTH, REPAIR OF CERVIX	1.53	0.83	0.26	2.62
00948	D3	ANESTH, REPAIR OF CERVIX	1.37	0.74	0.23	2.34
00948	D4	ANESTH, REPAIR OF CERVIX	1.22	0.66	0.22	2.10
00948	AD	ANESTH, REPAIR OF CERVIX	0.78	0.42	0.13	1.33
00950	AA	ANESTH, VAGINAL ENDOSCOPY	2.72	1.47	0.46	4.65
00950	D2	ANESTH, VAGINAL ENDOSCOPY	1.88	1.02	0.32	3.22

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PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
00950	D3	ANESTH, VAGINAL ENDOSCOPY	1.69	0.91	0.29	2.89
00950	D4	ANESTH, VAGINAL ENDOSCOPY	1.49	0.81	0.25	2.55
00950	AD	ANESTH, VAGINAL ENDOSCOPY	0.78	0.42	0.13	1.33
00952	AA	ANESTH, UTERINE ENDOSCOPY	2.12	1.15	0.36	3.63
00952	D2	ANESTH, UTERINE ENDOSCOPY	1.58	0.85	0.27	2.70
00952	D3	ANESTH, UTERINE ENDOSCOPY	1.38	0.75	0.23	2.36
00952	D4	ANESTH, UTERINE ENDOSCOPY	1.19	0.64	0.22	2.05
00952	AD	ANESTH, UTERINE ENDOSCOPY	0.78	0.42	0.13	1.33
00955	AA	ANALGESIA, VAGINAL DELIVERY	2.23	1.21	0.38	3.82
00955	D2	ANALGESIA, VAGINAL DELIVERY	1.53	0.83	0.26	2.62
00955	D3	ANALGESIA, VAGINAL DELIVERY	1.37	0.74	0.23	2.34
00955	D4	ANALGESIA, VAGINAL DELIVERY	1.22	0.66	0.22	2.10
00955	AD	ANALGESIA, VAGINAL DELIVERY	0.78	0.42	0.13	1.33
01000	AA	ANESTH, SKIN SURGERY, PELVIS	2.12	1.15	0.36	3.63
01000	D2	ANESTH, SKIN SURGERY, PELVIS	1.37	0.74	0.23	2.34
01000	D3	ANESTH, SKIN SURGERY, PELVIS	1.26	0.68	0.21	2.15
01000	D4	ANESTH, SKIN SURGERY, PELVIS	1.14	0.62	0.21	1.97
01000	AD	ANESTH, SKIN SURGERY, PELVIS	0.78	0.42	0.13	1.33
01110	AA	ANESTH, SKIN SURGERY, PELVIS	2.70	1.46	0.46	4.62
01110	D2	ANESTH, SKIN SURGERY, PELVIS	1.86	1.01	0.32	3.19
01110	D3	ANESTH, SKIN SURGERY, PELVIS	1.67	0.90	0.29	2.86
01110	D4	ANESTH, SKIN SURGERY, PELVIS	1.48	0.80	0.27	2.55
01110	AD	ANESTH, SKIN SURGERY, PELVIS	0.78	0.42	0.13	1.33
01120	AA	ANESTH, PELVIS SURGERY	3.19	1.72	0.54	5.45
01120	D2	ANESTH, PELVIS SURGERY	2.22	1.20	0.38	3.80
01120	D3	ANESTH, PELVIS SURGERY	1.98	1.07	0.34	3.39
01120	D4	ANESTH, PELVIS SURGERY	1.75	0.95	0.32	3.02
01120	AD	ANESTH, PELVIS SURGERY	0.78	0.42	0.13	1.33
01130	AA	ANESTH, BODY CAST PROCEDURE	1.97	1.07	0.34	3.38
01130	D2	ANESTH, BODY CAST PROCEDURE	1.30	0.70	0.22	2.22
01130	D3	ANESTH, BODY CAST PROCEDURE	1.18	0.64	0.20	2.02
01130	D4	ANESTH, BODY CAST PROCEDURE	1.06	0.57	0.19	1.82
01130	AD	ANESTH, BODY CAST PROCEDURE	0.78	0.42	0.13	1.33
01140	AA	ANESTH, HINDQUARTER AMPUT	7.80	4.22	1.33	13.35
01140	D2	ANESTH, HINDQUARTER AMPUT	5.45	2.95	0.93	9.33
01140	D3	ANESTH, HINDQUARTER AMPUT	4.87	2.63	0.83	8.33
01140	D4	ANESTH, HINDQUARTER AMPUT	4.29	2.32	0.78	7.39
01140	AD	ANESTH, HINDQUARTER AMPUT	0.78	0.42	0.13	1.33
01150	AA	ANESTH, PELVIC TUMOR SURGERY	4.96	2.68	0.84	8.47
01150	D2	ANESTH, PELVIC TUMOR SURGERY	3.30	1.79	0.56	5.65
01150	D3	ANESTH, PELVIC TUMOR SURGERY	2.99	1.62	0.51	5.12
01150	D4	ANESTH, PELVIC TUMOR SURGERY	2.68	1.45	0.49	4.62
01150	AD	ANESTH, PELVIC TUMOR SURGERY	0.78	0.42	0.13	1.33
01160	AA	ANESTH, PELVIS PROCEDURE	2.23	1.21	0.38	3.82
01160	D2	ANESTH, PELVIS PROCEDURE	1.53	0.83	0.26	2.62
01160	D3	ANESTH, PELVIS PROCEDURE	1.37	0.74	0.23	2.34
01160	D4	ANESTH, PELVIS PROCEDURE	1.22	0.66	0.22	2.10
01160	AD	ANESTH, PELVIS PROCEDURE	0.78	0.42	0.13	1.33
01170	AA	ANESTH, PELVIS SURGERY	4.96	2.68	0.84	8.47
01170	D2	ANESTH, PELVIS SURGERY	3.30	1.79	0.56	5.65
01170	D3	ANESTH, PELVIS SURGERY	2.99	1.62	0.51	5.12
01170	D4	ANESTH, PELVIS SURGERY	2.68	1.45	0.49	4.62
01170	AD	ANESTH, PELVIS SURGERY	0.78	0.42	0.13	1.33
01180	AA	ANESTH, PELVIS NERVE REMOVAL	1.97	1.07	0.34	3.38
01180	D2	ANESTH, PELVIS NERVE REMOVAL	1.30	0.70	0.22	2.22
01180	D3	ANESTH, PELVIS NERVE REMOVAL	1.18	0.64	0.20	2.02
01180	D4	ANESTH, PELVIS NERVE REMOVAL	1.06	0.57	0.19	1.82

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
01180	AD	ANESTH, PELVIS NERVE REMOVAL	0.78	0.42	0.13	1.33
01190	AA	ANESTH, PELVIS NERVE REMOVAL	2.23	1.21	0.38	3.82
01190	D2	ANESTH, PELVIS NERVE REMOVAL	1.53	0.83	0.26	2.62
01190	D3	ANESTH, PELVIS NERVE REMOVAL	1.37	0.74	0.23	2.34
01190	D4	ANESTH, PELVIS NERVE REMOVAL	1.22	0.66	0.22	2.10
01190	AD	ANESTH, PELVIS NERVE REMOVAL	0.78	0.42	0.13	1.33
01200	AA	ANESTH, HIP JOINT PROCEDURE	1.97	1.07	0.34	3.38
01200	D2	ANESTH, HIP JOINT PROCEDURE	1.40	0.76	0.24	2.40
01200	D3	ANESTH, HIP JOINT PROCEDURE	1.24	0.67	0.21	2.12
01200	D4	ANESTH, HIP JOINT PROCEDURE	1.09	0.59	0.20	1.88
01200	AD	ANESTH, HIP JOINT PROCEDURE	0.78	0.42	0.13	1.33
01202	AA	ANESTH, ARTHROSCOPY OF HIP	2.23	1.21	0.38	3.82
01202	D2	ANESTH, ARTHROSCOPY OF HIP	1.53	0.83	0.26	2.62
01202	D3	ANESTH, ARTHROSCOPY OF HIP	1.37	0.74	0.23	2.34
01202	D4	ANESTH, ARTHROSCOPY OF HIP	1.22	0.66	0.22	2.10
01202	AD	ANESTH, ARTHROSCOPY OF HIP	0.78	0.42	0.13	1.33
01210	AA	ANESTH, HIP JOINT SURGERY	3.42	1.85	0.58	5.85
01210	D2	ANESTH, HIP JOINT SURGERY	2.33	1.26	0.40	3.99
01210	D3	ANESTH, HIP JOINT SURGERY	2.10	1.14	0.36	3.60
01210	D4	ANESTH, HIP JOINT SURGERY	1.86	1.01	0.34	3.21
01210	AD	ANESTH, HIP JOINT SURGERY	0.78	0.42	0.13	1.33
01212	AA	ANESTH, HIP DISARTICULATION	5.36	2.90	0.91	9.17
01212	D2	ANESTH, HIP DISARTICULATION	3.72	2.01	0.63	6.36
01212	D3	ANESTH, HIP DISARTICULATION	3.33	1.80	0.57	5.70
01212	D4	ANESTH, HIP DISARTICULATION	2.94	1.59	0.53	5.06
01212	AD	ANESTH, HIP DISARTICULATION	0.78	0.42	0.13	1.33
01214	AA	ANESTH, REPLACEMENT OF HIP	5.52	2.99	0.94	9.45
01214	D2	ANESTH, REPLACEMENT OF HIP	3.79	2.05	0.65	6.49
01214	D3	ANESTH, REPLACEMENT OF HIP	3.41	1.84	0.58	5.83
01214	D4	ANESTH, REPLACEMENT OF HIP	3.02	1.63	0.55	5.20
01214	AD	ANESTH, REPLACEMENT OF HIP	0.78	0.42	0.13	1.33
01220	AA	ANESTH, PROCEDURE ON FEMUR	2.23	1.21	0.38	3.82
01220	D2	ANESTH, PROCEDURE ON FEMUR	1.53	0.83	0.26	2.62
01220	D3	ANESTH, PROCEDURE ON FEMUR	1.37	0.74	0.23	2.34
01220	D4	ANESTH, PROCEDURE ON FEMUR	1.22	0.66	0.22	2.10
01220	AD	ANESTH, PROCEDURE ON FEMUR	0.78	0.42	0.13	1.33
01230	AA	ANESTH, SURGERY OF FEMUR	3.57	1.94	0.61	6.12
01230	D2	ANESTH, SURGERY OF FEMUR	2.41	1.30	0.41	4.12
01230	D3	ANESTH, SURGERY OF FEMUR	2.18	1.18	0.37	3.73
01230	D4	ANESTH, SURGERY OF FEMUR	1.94	1.06	0.35	3.34
01230	AD	ANESTH, SURGERY OF FEMUR	0.78	0.42	0.13	1.33
01232	AA	ANESTH, AMPUTATION OF FEMUR	2.72	1.47	0.46	4.65
01232	D2	ANESTH, AMPUTATION OF FEMUR	1.88	1.02	0.32	3.22
01232	D3	ANESTH, AMPUTATION OF FEMUR	1.69	0.91	0.29	2.89
01232	D4	ANESTH, AMPUTATION OF FEMUR	1.49	0.81	0.27	2.57
01232	AD	ANESTH, AMPUTATION OF FEMUR	0.78	0.42	0.13	1.33
01234	AA	ANESTH, RADICAL FEMUR SURG	4.96	2.68	0.84	8.47
01234	D2	ANESTH, RADICAL FEMUR SURG	3.30	1.79	0.56	5.65
01234	D3	ANESTH, RADICAL FEMUR SURG	2.99	1.62	0.51	5.12
01234	D4	ANESTH, RADICAL FEMUR SURG	2.68	1.45	0.49	4.62
01234	AD	ANESTH, RADICAL FEMUR SURG	0.78	0.42	0.13	1.33
01240	AA	ANESTH, UPPER LEG SKIN SURG	2.05	1.11	0.35	3.51
01240	D2	ANESTH, UPPER LEG SKIN SURG	1.33	0.72	0.23	2.28
01240	D3	ANESTH, UPPER LEG SKIN SURG	1.22	0.66	0.21	2.09
01240	D4	ANESTH, UPPER LEG SKIN SURG	1.10	0.60	0.20	1.90
01240	AD	ANESTH, UPPER LEG SKIN SURG	0.78	0.42	0.13	1.33
01250	AA	ANESTH, UPPER LEG SURGERY	2.51	1.36	0.43	4.30

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PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
01250	D2	ANESTH, UPPER LEG SURGERY	1.67	0.90	0.29	2.86
01250	D3	ANESTH, UPPER LEG SURGERY	1.51	0.82	0.26	2.59
01250	D4	ANESTH, UPPER LEG SURGERY	1.36	0.74	0.25	2.35
01250	AD	ANESTH, UPPER LEG SURGERY	0.78	0.42	0.13	1.33
01260	AA	ANESTH, UPPER LEG VEINS SURG	2.51	1.36	0.43	4.30
01260	D2	ANESTH, UPPER LEG VEINS SURG	1.57	0.85	0.27	2.69
01260	D3	ANESTH, UPPER LEG VEINS SURG	1.45	0.78	0.25	2.48
01260	D4	ANESTH, UPPER LEG VEINS SURG	1.33	0.72	0.24	2.29
01260	AD	ANESTH, UPPER LEG VEINS SURG	0.78	0.42	0.13	1.33
01270	AA	ANESTH, THIGH ARTERIES SURG	5.36	2.90	0.91	9.17
01270	D2	ANESTH, THIGH ARTERIES SURG	3.51	1.90	0.60	6.01
01270	D3	ANESTH, THIGH ARTERIES SURG	3.20	1.73	0.55	5.48
01270	D4	ANESTH, THIGH ARTERIES SURG	2.89	1.57	0.52	4.98
01270	AD	ANESTH, THIGH ARTERIES SURG	0.78	0.42	0.13	1.33
01272	AA	ANESTH, FEMORAL ARTERY SURG	2.23	1.21	0.38	3.82
01272	D2	ANESTH, FEMORAL ARTERY SURG	1.53	0.83	0.26	2.62
01272	D3	ANESTH, FEMORAL ARTERY SURG	1.37	0.74	0.23	2.34
01272	D4	ANESTH, FEMORAL ARTERY SURG	1.22	0.66	0.22	2.10
01272	AD	ANESTH, FEMORAL ARTERY SURG	0.78	0.42	0.13	1.33
01274	AA	ANESTH, FEMORAL EMBOLECTOMY	3.65	1.98	0.62	6.25
01274	D2	ANESTH, FEMORAL EMBOLECTOMY	2.45	1.32	0.42	4.19
01274	D3	ANESTH, FEMORAL EMBOLECTOMY	2.22	1.20	0.38	3.80
01274	D4	ANESTH, FEMORAL EMBOLECTOMY	1.96	1.07	0.36	3.41
01274	AD	ANESTH, FEMORAL EMBOLECTOMY	0.78	0.42	0.13	1.33
01300	AA	ANESTH, SKIN SURGERY, KNEE	2.12	1.15	0.36	3.63
01300	D2	ANESTH, SKIN SURGERY, KNEE	1.37	0.74	0.23	2.34
01300	D3	ANESTH, SKIN SURGERY, KNEE	1.26	0.68	0.21	2.15
01300	D4	ANESTH, SKIN SURGERY, KNEE	1.14	0.62	0.21	1.97
01300	AD	ANESTH, SKIN SURGERY, KNEE	0.78	0.42	0.13	1.33
01320	AA	ANESTH, KNEE AREA SURGERY	2.51	1.36	0.43	4.30
01320	D2	ANESTH, KNEE AREA SURGERY	1.67	0.90	0.29	2.86
01320	D3	ANESTH, KNEE AREA SURGERY	1.51	0.82	0.26	2.59
01320	D4	ANESTH, KNEE AREA SURGERY	1.36	0.74	0.25	2.35
01320	AD	ANESTH, KNEE AREA SURGERY	0.78	0.42	0.13	1.33
01340	AA	ANESTH, KNEE AREA PROCEDURE	2.23	1.21	0.38	3.82
01340	D2	ANESTH, KNEE AREA PROCEDURE	1.53	0.83	0.26	2.62
01340	D3	ANESTH, KNEE AREA PROCEDURE	1.37	0.74	0.23	2.34
01340	D4	ANESTH, KNEE AREA PROCEDURE	1.22	0.66	0.22	2.10
01340	AD	ANESTH, KNEE AREA PROCEDURE	0.78	0.42	0.13	1.33
01360	AA	ANESTH, KNEE AREA SURGERY	3.55	1.92	0.60	6.07
01360	D2	ANESTH, KNEE AREA SURGERY	2.29	1.24	0.39	3.92
01360	D3	ANESTH, KNEE AREA SURGERY	2.10	1.14	0.36	3.60
01360	D4	ANESTH, KNEE AREA SURGERY	1.90	1.03	0.35	3.28
01360	AD	ANESTH, KNEE AREA SURGERY	0.78	0.42	0.13	1.33
01380	AA	ANESTH, KNEE JOINT PROCEDURE	1.35	0.73	0.23	2.31
01380	D2	ANESTH, KNEE JOINT PROCEDURE	0.99	0.53	0.17	1.69
01380	D3	ANESTH, KNEE JOINT PROCEDURE	0.87	0.47	0.15	1.49
01380	D4	ANESTH, KNEE JOINT PROCEDURE	0.75	0.41	0.14	1.30
01380	AD	ANESTH, KNEE JOINT PROCEDURE	0.78	0.42	0.13	1.33
01382	AA	ANESTH, KNEE ARTHROSCOPY	2.28	1.23	0.39	3.90
01382	D2	ANESTH, KNEE ARTHROSCOPY	1.45	0.78	0.25	2.48
01382	D3	ANESTH, KNEE ARTHROSCOPY	1.33	0.72	0.23	2.28
01382	D4	ANESTH, KNEE ARTHROSCOPY	1.22	0.66	0.22	2.10
01382	AD	ANESTH, KNEE ARTHROSCOPY	0.78	0.42	0.13	1.33
01390	AA	ANESTH, KNEE AREA PROCEDURE	1.97	1.07	0.34	3.38
01390	D2	ANESTH, KNEE AREA PROCEDURE	1.30	0.70	0.22	2.22
01390	D3	ANESTH, KNEE AREA PROCEDURE	1.18	0.64	0.20	2.02

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
01390	D4	ANESTH, KNEE AREA PROCEDURE	1.06	0.57	0.19	1.82
01390	AD	ANESTH, KNEE AREA PROCEDURE	0.78	0.42	0.13	1.33
01392	AA	ANESTH, KNEE AREA SURGERY	3.03	1.64	0.52	5.19
01392	D2	ANESTH, KNEE AREA SURGERY	1.93	1.04	0.33	3.30
01392	D3	ANESTH, KNEE AREA SURGERY	1.77	0.96	0.30	3.03
01392	D4	ANESTH, KNEE AREA SURGERY	1.62	0.88	0.29	2.79
01392	AD	ANESTH, KNEE AREA SURGERY	0.78	0.42	0.13	1.33
01400	AA	ANESTH, KNEE JOINT SURGERY	2.72	1.47	0.46	4.65
01400	D2	ANESTH, KNEE JOINT SURGERY	1.77	0.96	0.30	3.03
01400	D3	ANESTH, KNEE JOINT SURGERY	1.62	0.88	0.28	2.78
01400	D4	ANESTH, KNEE JOINT SURGERY	1.46	0.79	0.27	2.52
01400	AD	ANESTH, KNEE JOINT SURGERY	0.78	0.42	0.13	1.33
01402	AA	ANESTH, TOTAL KNEE REPLACED	4.56	2.47	0.78	7.81
01402	D2	ANESTH, TOTAL KNEE REPLACED	3.00	1.63	0.51	5.14
01402	D3	ANESTH, TOTAL KNEE REPLACED	2.73	1.48	0.47	4.68
01402	D4	ANESTH, TOTAL KNEE REPLACED	2.46	1.33	0.45	4.24
01402	AD	ANESTH, TOTAL KNEE REPLACED	0.78	0.42	0.13	1.33
01404	AA	ANESTH, KNEE DISARTICULATION	2.72	1.47	0.46	4.65
01404	D2	ANESTH, KNEE DISARTICULATION	1.88	1.02	0.32	3.22
01404	D3	ANESTH, KNEE DISARTICULATION	1.69	0.91	0.29	2.89
01404	D4	ANESTH, KNEE DISARTICULATION	1.49	0.81	0.27	2.57
01404	AD	ANESTH, KNEE DISARTICULATION	0.78	0.42	0.13	1.33
01420	AA	ANESTH, KNEE JOINT CASTING	1.97	1.07	0.34	3.38
01420	D2	ANESTH, KNEE JOINT CASTING	1.30	0.70	0.22	2.22
01420	D3	ANESTH, KNEE JOINT CASTING	1.18	0.64	0.20	2.02
01420	D4	ANESTH, KNEE JOINT CASTING	1.06	0.57	0.19	1.82
01420	AD	ANESTH, KNEE JOINT CASTING	0.78	0.42	0.13	1.33
01430	AA	ANESTH, KNEE VEINS SURGERY	1.97	1.07	0.34	3.38
01430	D2	ANESTH, KNEE VEINS SURGERY	1.30	0.70	0.22	2.22
01430	D3	ANESTH, KNEE VEINS SURGERY	1.18	0.64	0.20	2.02
01430	D4	ANESTH, KNEE VEINS SURGERY	1.06	0.57	0.19	1.82
01430	AD	ANESTH, KNEE VEINS SURGERY	0.78	0.42	0.13	1.33
01432	AA	ANESTH, KNEE VESSEL SURG	2.72	1.47	0.46	4.65
01432	D2	ANESTH, KNEE VESSEL SURG	1.88	1.02	0.32	3.22
01432	D3	ANESTH, KNEE VESSEL SURG	1.69	0.91	0.29	2.89
01432	D4	ANESTH, KNEE VESSEL SURG	1.49	0.81	0.27	2.57
01432	AD	ANESTH, KNEE VESSEL SURG	0.78	0.42	0.13	1.33
01440	AA	ANESTH, KNEE ARTERIES SURG	2.72	1.47	0.46	4.65
01440	D2	ANESTH, KNEE ARTERIES SURG	1.88	1.02	0.32	3.22
01440	D3	ANESTH, KNEE ARTERIES SURG	1.69	0.91	0.29	2.89
01440	D4	ANESTH, KNEE ARTERIES SURG	1.49	0.81	0.27	2.57
01440	AD	ANESTH, KNEE ARTERIES SURG	0.78	0.42	0.13	1.33
01442	AA	ANESTH, KNEE ARTERY SURG	4.95	2.68	0.84	8.47
01442	D2	ANESTH, KNEE ARTERY SURG	3.30	1.79	0.56	5.65
01442	D3	ANESTH, KNEE ARTERY SURG	2.99	1.62	0.51	5.12
01442	D4	ANESTH, KNEE ARTERY SURG	2.68	1.45	0.49	4.62
01442	AD	ANESTH, KNEE ARTERY SURG	0.78	0.42	0.13	1.33
01444	AA	ANESTH, KNEE ARTERY REPAIR	4.95	2.68	0.84	8.47
01444	D2	ANESTH, KNEE ARTERY REPAIR	3.30	1.79	0.56	5.65
01444	D3	ANESTH, KNEE ARTERY REPAIR	2.99	1.62	0.51	5.12
01444	D4	ANESTH, KNEE ARTERY REPAIR	2.68	1.45	0.49	4.62
01444	AD	ANESTH, KNEE ARTERY REPAIR	0.78	0.42	0.13	1.33
01460	AA	ANESTH, LOWER LEG SKIN SURG	1.89	1.02	0.32	3.23
01460	D2	ANESTH, LOWER LEG SKIN SURG	1.26	0.68	0.21	2.15
01460	D3	ANESTH, LOWER LEG SKIN SURG	1.14	0.62	0.19	1.95
01460	D4	ANESTH, LOWER LEG SKIN SURG	1.02	0.55	0.18	1.75
01460	AD	ANESTH, LOWER LEG SKIN SURG	0.78	0.42	0.13	1.33

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
01462	AA	ANESTH, LOWER LEG PROCEDURE	1.71	0.83	0.29	2.93
01462	D2	ANESTH, LOWER LEG PROCEDURE	1.17	0.63	0.20	2.00
01462	D3	ANESTH, LOWER LEG PROCEDURE	1.05	0.57	0.18	1.80
01462	D4	ANESTH, LOWER LEG PROCEDURE	0.93	0.50	0.17	1.60
01462	AD	ANESTH, LOWER LEG PROCEDURE	0.78	0.42	0.13	1.33
01464	AA	ANESTH, ANKLE ARTHROSCOPY	1.97	1.07	0.34	3.38
01464	D2	ANESTH, ANKLE ARTHROSCOPY	1.30	0.70	0.22	2.22
01464	D3	ANESTH, ANKLE ARTHROSCOPY	1.18	0.64	0.20	2.02
01464	D4	ANESTH, ANKLE ARTHROSCOPY	1.06	0.57	0.19	1.82
01464	AD	ANESTH, ANKLE ARTHROSCOPY	0.78	0.42	0.13	1.33
01470	AA	ANESTH, LOWER LEG SURGERY	2.10	1.14	0.36	3.60
01470	D2	ANESTH, LOWER LEG SURGERY	1.36	0.74	0.23	2.33
01470	D3	ANESTH, LOWER LEG SURGERY	1.24	0.67	0.21	2.12
01470	D4	ANESTH, LOWER LEG SURGERY	1.13	0.61	0.20	1.94
01470	AD	ANESTH, LOWER LEG SURGERY	0.78	0.42	0.13	1.33
01472	AA	ANESTH, ACHILLES TENDON SURG	2.72	1.47	0.46	4.65
01472	D2	ANESTH, ACHILLES TENDON SURG	1.86	1.02	0.32	3.22
01472	D3	ANESTH, ACHILLES TENDON SURG	1.69	0.91	0.29	2.89
01472	D4	ANESTH, ACHILLES TENDON SURG	1.49	0.81	0.27	2.57
01472	AD	ANESTH, ACHILLES TENDON SURG	0.78	0.42	0.13	1.33
01474	AA	ANESTH, LOWER LEG SURGERY	2.72	1.47	0.46	4.65
01474	D2	ANESTH, LOWER LEG SURGERY	1.86	1.02	0.32	3.22
01474	D3	ANESTH, LOWER LEG SURGERY	1.69	0.91	0.29	2.89
01474	D4	ANESTH, LOWER LEG SURGERY	1.49	0.81	0.27	2.57
01474	AD	ANESTH, LOWER LEG SURGERY	0.78	0.42	0.13	1.33
01480	AA	ANESTH, LOWER LEG BONE SURG	2.36	1.29	0.41	4.06
01480	D2	ANESTH, LOWER LEG BONE SURG	1.50	0.81	0.26	2.57
01480	D3	ANESTH, LOWER LEG BONE SURG	1.36	0.76	0.23	2.36
01480	D4	ANESTH, LOWER LEG BONE SURG	1.27	0.69	0.23	2.19
01480	AD	ANESTH, LOWER LEG BONE SURG	0.78	0.42	0.13	1.33
01482	AA	ANESTH, RADICAL LEG SURGERY	2.46	1.33	0.42	4.21
01482	D2	ANESTH, RADICAL LEG SURGERY	1.64	0.89	0.28	2.81
01482	D3	ANESTH, RADICAL LEG SURGERY	1.49	0.81	0.25	2.55
01482	D4	ANESTH, RADICAL LEG SURGERY	1.33	0.72	0.24	2.29
01482	AD	ANESTH, RADICAL LEG SURGERY	0.78	0.42	0.13	1.33
01484	AA	ANESTH, LOWER LEG REVISION	2.23	1.21	0.38	3.82
01484	D2	ANESTH, LOWER LEG REVISION	1.53	0.83	0.26	2.62
01484	D3	ANESTH, LOWER LEG REVISION	1.37	0.74	0.23	2.34
01484	D4	ANESTH, LOWER LEG REVISION	1.22	0.66	0.22	2.10
01484	AD	ANESTH, LOWER LEG REVISION	0.78	0.42	0.13	1.33
01486	AA	ANESTH, ANKLE REPLACEMENT	4.07	2.20	0.69	6.96
01486	D2	ANESTH, ANKLE REPLACEMENT	2.76	1.49	0.47	4.72
01486	D3	ANESTH, ANKLE REPLACEMENT	2.49	1.35	0.42	4.26
01486	D4	ANESTH, ANKLE REPLACEMENT	2.22	1.20	0.40	3.82
01486	AD	ANESTH, ANKLE REPLACEMENT	0.78	0.42	0.13	1.33
01490	AA	ANESTH, LOWER LEG CASTING	1.97	1.07	0.34	3.38
01490	D2	ANESTH, LOWER LEG CASTING	1.30	0.70	0.22	2.22
01490	D3	ANESTH, LOWER LEG CASTING	1.18	0.64	0.20	2.02
01490	D4	ANESTH, LOWER LEG CASTING	1.06	0.57	0.19	1.82
01490	AD	ANESTH, LOWER LEG CASTING	0.78	0.42	0.13	1.33
01500	AA	ANESTH, LEG ARTERIES SURG	5.58	3.03	0.96	9.57
01500	D2	ANESTH, LEG ARTERIES SURG	3.63	1.96	0.62	6.21
01500	D3	ANESTH, LEG ARTERIES SURG	3.31	1.79	0.57	5.67
01500	D4	ANESTH, LEG ARTERIES SURG	3.00	1.63	0.55	5.18
01500	AD	ANESTH, LEG ARTERIES SURG	0.78	0.42	0.13	1.33
01502	AA	ANESTH, LOWERLEG EMBOLECTOMY	3.42	1.86	0.58	5.85
01502	D2	ANESTH, LOWERLEG EMBOLECTOMY	2.33	1.26	0.40	3.99

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
01502	D3	ANESTH, LOWERLEG EMBOLECTOMY	2.10	1.14	0.36	3.60
01502	D4	ANESTH, LOWERLEG EMBOLECTOMY	1.86	1.01	0.34	3.21
01502	AD	ANESTH, LOWERLEG EMBOLECTOMY	0.78	0.42	0.13	1.33
01520	AA	ANESTH, LOWER LEG VEIN SURG	1.97	1.07	0.34	3.38
01520	D2	ANESTH, LOWER LEG VEIN SURG	1.30	0.70	0.22	2.22
01520	D3	ANESTH, LOWER LEG VEIN SURG	1.18	0.64	0.20	2.02
01520	D4	ANESTH, LOWER LEG VEIN SURG	1.06	0.57	0.19	1.82
01520	AD	ANESTH, LOWER LEG VEIN SURG	0.78	0.42	0.13	1.33
01522	AA	ANESTH, LOWER LEG VEIN SURG	2.72	1.47	0.46	4.65
01522	D2	ANESTH, LOWER LEG VEIN SURG	1.86	1.02	0.32	3.22
01522	D3	ANESTH, LOWER LEG VEIN SURG	1.69	0.91	0.29	2.89
01522	D4	ANESTH, LOWER LEG VEIN SURG	1.49	0.81	0.27	2.57
01522	AD	ANESTH, LOWER LEG VEIN SURG	0.78	0.42	0.13	1.33
01600	AA	ANESTH, SHOULDER SKIN SURG	1.99	1.08	0.34	3.41
01600	D2	ANESTH, SHOULDER SKIN SURG	1.31	0.71	0.22	2.24
01600	D3	ANESTH, SHOULDER SKIN SURG	1.19	0.64	0.20	2.03
01600	D4	ANESTH, SHOULDER SKIN SURG	1.08	0.58	0.19	1.85
01600	AD	ANESTH, SHOULDER SKIN SURG	0.78	0.42	0.13	1.33
01610	AA	ANESTH, SURGERY OF SHOULDER	3.16	1.71	0.54	5.41
01610	D2	ANESTH, SURGERY OF SHOULDER	2.10	1.14	0.36	3.60
01610	D3	ANESTH, SURGERY OF SHOULDER	1.90	1.03	0.32	3.25
01610	D4	ANESTH, SURGERY OF SHOULDER	1.71	0.93	0.31	2.95
01610	AD	ANESTH, SURGERY OF SHOULDER	0.78	0.42	0.13	1.33
01620	AA	ANESTH, SHOULDER PROCEDURE	1.86	1.01	0.32	3.19
01620	D2	ANESTH, SHOULDER PROCEDURE	1.35	0.73	0.23	2.31
01620	D3	ANESTH, SHOULDER PROCEDURE	1.18	0.64	0.20	2.03
01620	D4	ANESTH, SHOULDER PROCEDURE	1.03	0.56	0.19	1.78
01620	AD	ANESTH, SHOULDER PROCEDURE	0.78	0.42	0.13	1.33
01622	AA	ANESTH, SHOULDER ARTHROSCOPY	2.88	1.56	0.49	4.93
01622	D2	ANESTH, SHOULDER ARTHROSCOPY	1.85	1.00	0.31	3.16
01622	D3	ANESTH, SHOULDER ARTHROSCOPY	1.70	0.92	0.29	2.91
01622	D4	ANESTH, SHOULDER ARTHROSCOPY	1.54	0.83	0.28	2.65
01622	AD	ANESTH, SHOULDER ARTHROSCOPY	0.78	0.42	0.13	1.33
01630	AA	ANESTH, SURGERY OF SHOULDER	3.21	1.74	0.55	5.50
01630	D2	ANESTH, SURGERY OF SHOULDER	2.12	1.15	0.36	3.63
01630	D3	ANESTH, SURGERY OF SHOULDER	1.93	1.04	0.33	3.30
01630	D4	ANESTH, SURGERY OF SHOULDER	1.74	0.94	0.31	2.99
01630	AD	ANESTH, SURGERY OF SHOULDER	0.78	0.42	0.13	1.33
01632	AA	ANESTH, SURGERY OF SHOULDER	3.42	1.85	0.58	5.85
01632	D2	ANESTH, SURGERY OF SHOULDER	2.33	1.26	0.40	3.99
01632	D3	ANESTH, SURGERY OF SHOULDER	2.10	1.14	0.36	3.60
01632	D4	ANESTH, SURGERY OF SHOULDER	1.86	1.01	0.34	3.21
01632	AD	ANESTH, SURGERY OF SHOULDER	0.78	0.42	0.13	1.33
01634	AA	ANESTH, SHOULDER JOINT AMPUT	4.22	2.29	0.72	7.23
01634	D2	ANESTH, SHOULDER JOINT AMPUT	3.04	1.65	0.52	5.21
01634	D3	ANESTH, SHOULDER JOINT AMPUT	2.70	1.46	0.46	4.62
01634	D4	ANESTH, SHOULDER JOINT AMPUT	2.34	1.27	0.43	4.04
01634	AD	ANESTH, SHOULDER JOINT AMPUT	0.78	0.42	0.13	1.33
01636	AA	ANESTH, FOREQUARTER AMPUT	7.80	4.22	1.33	13.35
01636	D2	ANESTH, FOREQUARTER AMPUT	5.45	2.95	0.93	9.33
01636	D3	ANESTH, FOREQUARTER AMPUT	4.87	2.63	0.83	8.33
01636	D4	ANESTH, FOREQUARTER AMPUT	4.29	2.32	0.78	7.39
01636	AD	ANESTH, FOREQUARTER AMPUT	0.78	0.42	0.13	1.33
01638	AA	ANESTH, SHOULDER REPLACEMENT	5.98	3.21	1.01	10.15
01638	D2	ANESTH, SHOULDER REPLACEMENT	4.00	2.17	0.68	6.85
01638	D3	ANESTH, SHOULDER REPLACEMENT	3.61	1.96	0.62	6.19
01638	D4	ANESTH, SHOULDER REPLACEMENT	3.23	1.76	0.57	5.56

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PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
01638	AD	ANESTH, SHOULDER REPLACEMENT	0.78	0.42	0.13	1.33
01650	AA	ANESTH, SHOULDER ARTERY SURG	3.26	1.77	0.56	5.59
01650	D2	ANESTH, SHOULDER ARTERY SURG	2.25	1.22	0.38	3.85
01650	D3	ANESTH, SHOULDER ARTERY SURG	2.02	1.10	0.34	3.46
01650	D4	ANESTH, SHOULDER ARTERY SURG	1.79	0.97	0.32	3.08
01650	AD	ANESTH, SHOULDER ARTERY SURG	0.78	0.42	0.13	1.33
01652	AA	ANESTH, SHOULDER VESSEL SURG	5.36	2.90	0.91	9.17
01652	D2	ANESTH, SHOULDER VESSEL SURG	3.72	2.01	0.63	6.36
01652	D3	ANESTH, SHOULDER VESSEL SURG	3.33	1.80	0.57	5.70
01652	D4	ANESTH, SHOULDER VESSEL SURG	2.94	1.59	0.53	5.06
01652	AD	ANESTH, SHOULDER VESSEL SURG	0.78	0.42	0.13	1.33
01654	AA	ANESTH, SHOULDER VESSEL SURG	4.96	2.66	0.84	8.47
01654	D2	ANESTH, SHOULDER VESSEL SURG	3.30	1.79	0.56	5.65
01654	D3	ANESTH, SHOULDER VESSEL SURG	2.99	1.62	0.51	5.12
01654	D4	ANESTH, SHOULDER VESSEL SURG	2.68	1.45	0.49	4.62
01654	AD	ANESTH, SHOULDER VESSEL SURG	0.78	0.42	0.13	1.33
01656	AA	ANESTH, ARM-LEG VESSEL SURG	5.36	2.90	0.91	9.17
01656	D2	ANESTH, ARM-LEG VESSEL SURG	3.72	2.01	0.63	6.36
01656	D3	ANESTH, ARM-LEG VESSEL SURG	3.33	1.80	0.57	5.70
01656	D4	ANESTH, ARM-LEG VESSEL SURG	2.94	1.59	0.53	5.06
01656	AD	ANESTH, ARM-LEG VESSEL SURG	0.78	0.42	0.13	1.33
01670	AA	ANESTH, SHOULDER VEIN SURG	2.49	1.35	0.42	4.26
01670	D2	ANESTH, SHOULDER VEIN SURG	1.66	0.90	0.28	2.84
01670	D3	ANESTH, SHOULDER VEIN SURG	1.50	0.81	0.26	2.57
01670	D4	ANESTH, SHOULDER VEIN SURG	1.35	0.73	0.24	2.32
01670	AD	ANESTH, SHOULDER VEIN SURG	0.78	0.42	0.13	1.33
01680	AA	ANESTH, SHOULDER CASTING	1.97	1.07	0.34	3.38
01680	D2	ANESTH, SHOULDER CASTING	1.30	0.70	0.22	2.22
01680	D3	ANESTH, SHOULDER CASTING	1.18	0.64	0.20	2.02
01680	D4	ANESTH, SHOULDER CASTING	1.06	0.57	0.19	1.82
01680	AD	ANESTH, SHOULDER CASTING	0.78	0.42	0.13	1.33
01682	AA	ANESTH, AIRPLANE CAST	2.23	1.21	0.38	3.82
01682	D2	ANESTH, AIRPLANE CAST	1.53	0.83	0.26	2.62
01682	D3	ANESTH, AIRPLANE CAST	1.37	0.74	0.23	2.34
01682	D4	ANESTH, AIRPLANE CAST	1.22	0.66	0.22	2.10
01682	AD	ANESTH, AIRPLANE CAST	0.78	0.42	0.13	1.33
01700	AA	ANESTH, ELBOW AREA SKIN SURG	2.10	1.14	0.36	3.60
01700	D2	ANESTH, ELBOW AREA SKIN SURG	1.36	0.74	0.23	2.33
01700	D3	ANESTH, ELBOW AREA SKIN SURG	1.24	0.67	0.21	2.12
01700	D4	ANESTH, ELBOW AREA SKIN SURG	1.13	0.61	0.20	1.94
01700	AD	ANESTH, ELBOW AREA SKIN SURG	0.78	0.42	0.13	1.33
01710	AA	ANESTH, ELBOW AREA SURGERY	2.06	1.11	0.35	3.51
01710	D2	ANESTH, ELBOW AREA SURGERY	1.33	0.72	0.23	2.28
01710	D3	ANESTH, ELBOW AREA SURGERY	1.22	0.66	0.21	2.09
01710	D4	ANESTH, ELBOW AREA SURGERY	1.10	0.60	0.20	1.90
01710	AD	ANESTH, ELBOW AREA SURGERY	0.78	0.42	0.13	1.33
01712	AA	ANESTH, UPPERARM TENDON SURG	2.72	1.47	0.46	4.65
01712	D2	ANESTH, UPPERARM TENDON SURG	1.88	1.02	0.32	3.22
01712	D3	ANESTH, UPPERARM TENDON SURG	1.69	0.91	0.29	2.89
01712	D4	ANESTH, UPPERARM TENDON SURG	1.49	0.81	0.27	2.57
01712	AD	ANESTH, UPPERARM TENDON SURG	0.78	0.42	0.13	1.33
01714	AA	ANESTH, UPPERARM TENDON SURG	2.72	1.47	0.46	4.65
01714	D2	ANESTH, UPPERARM TENDON SURG	1.88	1.02	0.32	3.22
01714	D3	ANESTH, UPPERARM TENDON SURG	1.69	0.91	0.29	2.89
01714	D4	ANESTH, UPPERARM TENDON SURG	1.49	0.81	0.27	2.57
01714	AD	ANESTH, UPPERARM TENDON SURG	0.78	0.42	0.13	1.33
01716	AA	ANESTH, BICEPS TENDON REPAIR	2.72	1.47	0.46	4.65

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
01716	D2	ANESTH, BICEPS TENDON REPAIR	1.88	1.02	0.32	3.22
01716	D3	ANESTH, BICEPS TENDON REPAIR	1.69	0.91	0.29	2.89
01716	D4	ANESTH, BICEPS TENDON REPAIR	1.49	0.81	0.27	2.57
01716	AD	ANESTH, BICEPS TENDON REPAIR	0.78	0.42	0.13	1.33
01730	AA	ANESTH, UPPERARM PROCEDURE	1.97	1.07	0.34	3.38
01730	D2	ANESTH, UPPERARM PROCEDURE	1.30	0.70	0.22	2.22
01730	D3	ANESTH, UPPERARM PROCEDURE	1.18	0.64	0.20	2.02
01730	D4	ANESTH, UPPERARM PROCEDURE	1.06	0.57	0.19	1.82
01730	AD	ANESTH, UPPERARM PROCEDURE	0.78	0.42	0.13	1.33
01732	AA	ANESTH, ELBOW ARTHROSCOPY	1.97	1.07	0.34	3.38
01732	D2	ANESTH, ELBOW ARTHROSCOPY	1.30	0.70	0.22	2.22
01732	D3	ANESTH, ELBOW ARTHROSCOPY	1.18	0.64	0.20	2.02
01732	D4	ANESTH, ELBOW ARTHROSCOPY	1.06	0.57	0.19	1.82
01732	AD	ANESTH, ELBOW ARTHROSCOPY	0.78	0.42	0.13	1.33
01740	AA	ANESTH, UPPER ARM SURGERY	2.90	1.57	0.50	4.97
01740	D2	ANESTH, UPPER ARM SURGERY	1.88	1.01	0.32	3.19
01740	D3	ANESTH, UPPER ARM SURGERY	1.71	0.93	0.29	2.93
01740	D4	ANESTH, UPPER ARM SURGERY	1.50	0.84	0.26	2.68
01740	AD	ANESTH, UPPER ARM SURGERY	0.78	0.42	0.13	1.33
01742	AA	ANESTH, HUMERUS SURGERY	2.72	1.47	0.46	4.65
01742	D2	ANESTH, HUMERUS SURGERY	1.88	1.02	0.32	3.22
01742	D3	ANESTH, HUMERUS SURGERY	1.69	0.91	0.29	2.89
01742	D4	ANESTH, HUMERUS SURGERY	1.49	0.81	0.27	2.57
01742	AD	ANESTH, HUMERUS SURGERY	0.78	0.42	0.13	1.33
01744	AA	ANESTH, HUMERUS REPAIR	2.72	1.47	0.46	4.65
01744	D2	ANESTH, HUMERUS REPAIR	1.88	1.02	0.32	3.22
01744	D3	ANESTH, HUMERUS REPAIR	1.69	0.91	0.29	2.89
01744	D4	ANESTH, HUMERUS REPAIR	1.49	0.81	0.27	2.57
01744	AD	ANESTH, HUMERUS REPAIR	0.78	0.42	0.13	1.33
01756	AA	ANESTH, RADICAL HUMERUS SURG	3.42	1.85	0.58	5.85
01756	D2	ANESTH, RADICAL HUMERUS SURG	2.33	1.26	0.40	3.99
01756	D3	ANESTH, RADICAL HUMERUS SURG	2.10	1.14	0.36	3.60
01756	D4	ANESTH, RADICAL HUMERUS SURG	1.88	1.01	0.34	3.21
01756	AD	ANESTH, RADICAL HUMERUS SURG	0.78	0.42	0.13	1.33
01758	AA	ANESTH, HUMERAL LESION SURG	2.72	1.47	0.46	4.65
01758	D2	ANESTH, HUMERAL LESION SURG	1.88	1.02	0.32	3.22
01758	D3	ANESTH, HUMERAL LESION SURG	1.69	0.91	0.29	2.89
01758	D4	ANESTH, HUMERAL LESION SURG	1.49	0.81	0.27	2.57
01758	AD	ANESTH, HUMERAL LESION SURG	0.78	0.42	0.13	1.33
01760	AA	ANESTH, ELBOW REPLACEMENT	4.07	2.20	0.69	6.96
01760	D2	ANESTH, ELBOW REPLACEMENT	2.76	1.49	0.47	4.72
01760	D3	ANESTH, ELBOW REPLACEMENT	2.49	1.35	0.42	4.26
01760	D4	ANESTH, ELBOW REPLACEMENT	2.22	1.20	0.40	3.82
01760	AD	ANESTH, ELBOW REPLACEMENT	0.78	0.42	0.13	1.33
01770	AA	ANESTH, UPPERARM ARTERY SURG	4.07	2.20	0.69	6.96
01770	D2	ANESTH, UPPERARM ARTERY SURG	2.86	1.55	0.48	4.90
01770	D3	ANESTH, UPPERARM ARTERY SURG	2.56	1.38	0.43	4.36
01770	D4	ANESTH, UPPERARM ARTERY SURG	2.24	1.21	0.41	3.86
01770	AD	ANESTH, UPPERARM ARTERY SURG	0.78	0.42	0.13	1.33
01772	AA	ANESTH, UPPERARM EMBOLECTOMY	3.21	1.74	0.55	5.50
01772	D2	ANESTH, UPPERARM EMBOLECTOMY	2.23	1.21	0.38	3.82
01772	D3	ANESTH, UPPERARM EMBOLECTOMY	1.99	1.08	0.34	3.41
01772	D4	ANESTH, UPPERARM EMBOLECTOMY	1.76	0.95	0.32	3.03
01772	AD	ANESTH, UPPERARM EMBOLECTOMY	0.78	0.42	0.13	1.33
01780	AA	ANESTH, UPPER ARM VEIN SURG	1.97	1.07	0.34	3.38
01780	D2	ANESTH, UPPER ARM VEIN SURG	1.30	0.70	0.22	2.22
01780	D3	ANESTH, UPPER ARM VEIN SURG	1.18	0.64	0.20	2.02

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PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
01780	D4	ANESTH, UPPER ARM VEIN SURG	1.06	0.57	0.19	1.82
01780	AD	ANESTH, UPPER ARM VEIN SURG	0.78	0.42	0.13	1.33
01782	AA	ANESTH, UPPERARM VEIN REPAIR	2.23	1.21	0.38	3.82
01782	D2	ANESTH, UPPERARM VEIN REPAIR	1.53	0.83	0.26	2.62
01782	D3	ANESTH, UPPERARM VEIN REPAIR	1.37	0.74	0.23	2.34
01782	D4	ANESTH, UPPERARM VEIN REPAIR	1.22	0.66	0.22	2.10
01782	AD	ANESTH, UPPERARM VEIN REPAIR	0.78	0.42	0.13	1.33
01800	AA	ANESTH, LOWER ARM SKIN SURG	2.07	1.12	0.35	3.54
01800	D2	ANESTH, LOWER ARM SKIN SURG	1.35	0.73	0.23	2.31
01800	D3	ANESTH, LOWER ARM SKIN SURG	1.23	0.67	0.21	2.11
01800	D4	ANESTH, LOWER ARM SKIN SURG	1.11	0.60	0.20	1.91
01800	AD	ANESTH, LOWER ARM SKIN SURG	0.78	0.42	0.13	1.33
01810	AA	ANESTH, LOWER ARM SURGERY	2.05	1.11	0.35	3.51
01810	D2	ANESTH, LOWER ARM SURGERY	1.33	0.72	0.23	2.28
01810	D3	ANESTH, LOWER ARM SURGERY	1.22	0.66	0.21	2.09
01810	D4	ANESTH, LOWER ARM SURGERY	1.10	0.60	0.20	1.90
01810	AD	ANESTH, LOWER ARM SURGERY	0.78	0.42	0.13	1.33
01820	AA	ANESTH, LOWER ARM PROCEDURE	1.79	0.97	0.30	3.06
01820	D2	ANESTH, LOWER ARM PROCEDURE	1.21	0.65	0.21	2.07
01820	D3	ANESTH, LOWER ARM PROCEDURE	1.09	0.59	0.18	1.86
01820	D4	ANESTH, LOWER ARM PROCEDURE	0.97	0.53	0.17	1.67
01820	AD	ANESTH, LOWER ARM PROCEDURE	0.78	0.42	0.13	1.33
01830	AA	ANESTH, LOWER ARM SURGERY	2.36	1.29	0.41	4.06
01830	D2	ANESTH, LOWER ARM SURGERY	1.50	0.81	0.26	2.57
01830	D3	ANESTH, LOWER ARM SURGERY	1.38	0.75	0.23	2.36
01830	D4	ANESTH, LOWER ARM SURGERY	1.27	0.69	0.23	2.19
01830	AD	ANESTH, LOWER ARM SURGERY	0.78	0.42	0.13	1.33
01832	AA	ANESTH, WRIST REPLACEMENT	3.42	1.86	0.58	5.85
01832	D2	ANESTH, WRIST REPLACEMENT	2.33	1.26	0.40	3.99
01832	D3	ANESTH, WRIST REPLACEMENT	2.10	1.14	0.36	3.60
01832	D4	ANESTH, WRIST REPLACEMENT	1.86	1.01	0.34	3.21
01832	AD	ANESTH, WRIST REPLACEMENT	0.78	0.42	0.13	1.33
01840	AA	ANESTH, LOWERARM ARTERY SURG	3.37	1.82	0.57	5.76
01840	D2	ANESTH, LOWERARM ARTERY SURG	2.30	1.25	0.39	3.94
01840	D3	ANESTH, LOWERARM ARTERY SURG	2.07	1.12	0.35	3.54
01840	D4	ANESTH, LOWERARM ARTERY SURG	1.84	1.00	0.33	3.17
01840	AD	ANESTH, LOWERARM ARTERY SURG	0.78	0.42	0.13	1.33
01842	AA	ANESTH, LOWERARM EMBOLECTOMY	3.21	1.74	0.55	5.50
01842	D2	ANESTH, LOWERARM EMBOLECTOMY	2.23	1.21	0.38	3.82
01842	D3	ANESTH, LOWERARM EMBOLECTOMY	1.99	1.08	0.34	3.41
01842	D4	ANESTH, LOWERARM EMBOLECTOMY	1.76	0.95	0.32	3.03
01842	AD	ANESTH, LOWERARM EMBOLECTOMY	0.78	0.42	0.13	1.33
01844	AA	ANESTH, VASCULAR SHUNT SURG	3.44	1.86	0.59	5.89
01844	D2	ANESTH, VASCULAR SHUNT SURG	2.34	1.27	0.40	4.01
01844	D3	ANESTH, VASCULAR SHUNT SURG	2.11	1.14	0.36	3.61
01844	D4	ANESTH, VASCULAR SHUNT SURG	1.88	1.02	0.34	3.24
01844	AD	ANESTH, VASCULAR SHUNT SURG	0.78	0.42	0.13	1.33
01850	AA	ANESTH, LOWER ARM VEIN SURG	1.97	1.07	0.34	3.38
01850	D2	ANESTH, LOWER ARM VEIN SURG	1.30	0.70	0.22	2.22
01850	D3	ANESTH, LOWER ARM VEIN SURG	1.18	0.64	0.20	2.02
01850	D4	ANESTH, LOWER ARM VEIN SURG	1.06	0.57	0.19	1.82
01850	AD	ANESTH, LOWER ARM VEIN SURG	0.78	0.42	0.13	1.33
01852	AA	ANESTH, LOWERARM VEIN REPAIR	2.23	1.21	0.38	3.82
01852	D2	ANESTH, LOWERARM VEIN REPAIR	1.53	0.83	0.26	2.62
01852	D3	ANESTH, LOWERARM VEIN REPAIR	1.37	0.74	0.23	2.34
01852	D4	ANESTH, LOWERARM VEIN REPAIR	1.22	0.66	0.22	2.10
01852	AD	ANESTH, LOWERARM VEIN REPAIR	0.78	0.42	0.13	1.33

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
01860	AA	ANESTH, LOWER ARM CASTING	1.97	1.07	0.34	3.38
01860	D2	ANESTH, LOWER ARM CASTING	1.30	0.70	0.22	2.22
01860	D3	ANESTH, LOWER ARM CASTING	1.18	0.64	0.20	2.02
01860	D4	ANESTH, LOWER ARM CASTING	1.06	0.57	0.19	1.82
01860	AD	ANESTH, LOWER ARM CASTING	0.78	0.42	0.13	1.33
01900	AA	ANESTH, UTERUS/TUBE INJECT	1.97	1.07	0.34	3.38
01900	D2	ANESTH, UTERUS/TUBE INJECT	1.30	0.70	0.22	2.22
01900	D3	ANESTH, UTERUS/TUBE INJECT	1.18	0.64	0.20	2.02
01900	D4	ANESTH, UTERUS/TUBE INJECT	1.06	0.57	0.19	1.82
01900	AD	ANESTH, UTERUS/TUBE INJECT	0.78	0.42	0.13	1.33
01902	AA	ANESTH, BURR HOLES, SKULL	4.22	2.29	0.72	7.23
01902	D2	ANESTH, BURR HOLES, SKULL	3.04	1.65	0.52	5.21
01902	D3	ANESTH, BURR HOLES, SKULL	2.70	1.46	0.46	4.62
01902	D4	ANESTH, BURR HOLES, SKULL	2.34	1.27	0.43	4.04
01902	AD	ANESTH, BURR HOLES, SKULL	0.78	0.42	0.13	1.33
01904	AA	ANESTH, SKULL X-RAY INJECT	4.07	2.20	0.69	6.96
01904	D2	ANESTH, SKULL X-RAY INJECT	2.76	1.49	0.47	4.72
01904	D3	ANESTH, SKULL X-RAY INJECT	2.49	1.35	0.42	4.26
01904	D4	ANESTH, SKULL X-RAY INJECT	2.22	1.20	0.40	3.82
01904	AD	ANESTH, SKULL X-RAY INJECT	0.78	0.42	0.13	1.33
01906	AA	ANESTH, LUMBAR MYELOGRAPHY	2.72	1.47	0.46	4.65
01906	D2	ANESTH, LUMBAR MYELOGRAPHY	1.88	1.02	0.32	3.22
01906	D3	ANESTH, LUMBAR MYELOGRAPHY	1.69	0.91	0.29	2.89
01906	D4	ANESTH, LUMBAR MYELOGRAPHY	1.49	0.81	0.27	2.57
01906	AD	ANESTH, LUMBAR MYELOGRAPHY	0.78	0.42	0.13	1.33
01908	AA	ANESTH, CERVICAL MYELOGRAPHY	2.72	1.47	0.46	4.65
01908	D2	ANESTH, CERVICAL MYELOGRAPHY	1.88	1.02	0.32	3.22
01908	D3	ANESTH, CERVICAL MYELOGRAPHY	1.69	0.91	0.29	2.89
01908	D4	ANESTH, CERVICAL MYELOGRAPHY	1.49	0.81	0.27	2.57
01908	AD	ANESTH, CERVICAL MYELOGRAPHY	0.78	0.42	0.13	1.33
01910	AA	ANESTH, SKULL MYELOGRAPHY	4.22	2.29	0.72	7.23
01910	D2	ANESTH, SKULL MYELOGRAPHY	3.04	1.65	0.52	5.21
01910	D3	ANESTH, SKULL MYELOGRAPHY	2.70	1.46	0.46	4.62
01910	D4	ANESTH, SKULL MYELOGRAPHY	2.34	1.27	0.43	4.04
01910	AD	ANESTH, SKULL MYELOGRAPHY	0.78	0.42	0.13	1.33
01912	AA	ANESTH, LUMBAR DISCOGRAPHY	2.72	1.47	0.46	4.65
01912	D2	ANESTH, LUMBAR DISCOGRAPHY	1.88	1.02	0.32	3.22
01912	D3	ANESTH, LUMBAR DISCOGRAPHY	1.69	0.91	0.29	2.89
01912	D4	ANESTH, LUMBAR DISCOGRAPHY	1.49	0.81	0.27	2.57
01912	AD	ANESTH, LUMBAR DISCOGRAPHY	0.78	0.42	0.13	1.33
01914	AA	ANESTH, CERVICAL DISCOGRAPHY	3.42	1.86	0.58	5.85
01914	D2	ANESTH, CERVICAL DISCOGRAPHY	2.33	1.26	0.40	3.99
01914	D3	ANESTH, CERVICAL DISCOGRAPHY	2.10	1.14	0.36	3.60
01914	D4	ANESTH, CERVICAL DISCOGRAPHY	1.86	1.01	0.34	3.21
01914	AD	ANESTH, CERVICAL DISCOGRAPHY	0.78	0.42	0.13	1.33
01916	AA	ANESTH, HEAD ARTERIOGRAM	2.58	1.40	0.44	4.43
01916	D2	ANESTH, HEAD ARTERIOGRAM	1.81	0.98	0.31	3.10
01916	D3	ANESTH, HEAD ARTERIOGRAM	1.62	0.88	0.28	2.78
01916	D4	ANESTH, HEAD ARTERIOGRAM	1.43	0.77	0.26	2.46
01916	AD	ANESTH, HEAD ARTERIOGRAM	0.78	0.42	0.13	1.33
01918	AA	ANESTH, LIMB ARTERIOGRAM	2.72	1.47	0.46	4.65
01918	D2	ANESTH, LIMB ARTERIOGRAM	1.88	1.02	0.32	3.22
01918	D3	ANESTH, LIMB ARTERIOGRAM	1.69	0.91	0.29	2.89
01918	D4	ANESTH, LIMB ARTERIOGRAM	1.49	0.81	0.27	2.57
01918	AD	ANESTH, LIMB ARTERIOGRAM	0.78	0.42	0.13	1.33
01920	AA	ANESTH, CATHETERIZE HEART	3.81	2.06	0.65	6.52
01920	D2	ANESTH, CATHETERIZE HEART	2.63	1.42	0.45	4.50

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PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
01920	D3	ANESTH, CATHETERIZE HEART	2.36	1.28	0.40	4.04
01920	D4	ANESTH, CATHETERIZE HEART	2.09	1.13	0.38	3.60
01920	AD	ANESTH, CATHETERIZE HEART	0.78	0.42	0.13	1.33
01921	AA	ANESTH, VESSEL SURGERY	3.16	1.71	0.54	5.41
01921	D2	ANESTH, VESSEL SURGERY	2.30	1.25	0.39	3.94
01921	D3	ANESTH, VESSEL SURGERY	2.03	1.10	0.35	3.48
01921	D4	ANESTH, VESSEL SURGERY	1.76	0.95	0.32	3.03
01921	AD	ANESTH, VESSEL SURGERY	0.79	0.42	0.13	1.33
01922	AA	ANESTH, CAT OR MRI SCAN	4.07	2.20	0.69	6.96
01922	D2	ANESTH, CAT OR MRI SCAN	2.76	1.49	0.47	4.72
01922	D3	ANESTH, CAT OR MRI SCAN	2.49	1.35	0.42	4.26
01922	D4	ANESTH, CAT OR MRI SCAN	2.22	1.20	0.40	3.82
01922	AD	ANESTH, CAT OR MRI SCAN	0.78	0.42	0.13	1.33
01990	AA	SUPPORT FOR ORGAN DONOR	4.07	2.20	0.69	6.96
01990	D2	SUPPORT FOR ORGAN DONOR	2.76	1.49	0.47	4.72
01990	D3	SUPPORT FOR ORGAN DONOR	2.49	1.35	0.42	4.26
01990	D4	SUPPORT FOR ORGAN DONOR	2.22	1.20	0.40	3.82
01990	AD	SUPPORT FOR ORGAN DONOR	0.78	0.42	0.13	1.33
01995	AA	REGIONAL ANESTHESIA, LIMB	2.72	1.47	0.46	4.65
01995	D2	REGIONAL ANESTHESIA, LIMB	1.86	1.02	0.32	3.22
01995	D3	REGIONAL ANESTHESIA, LIMB	1.69	0.91	0.29	2.89
01995	D4	REGIONAL ANESTHESIA, LIMB	1.49	0.81	0.27	2.57
01995	AD	REGIONAL ANESTHESIA, LIMB	0.78	0.42	0.13	1.33
01996	AA	MANAGE DAILY DRUG THERAPY	1.97	1.07	0.34	3.38
01996	D2	MANAGE DAILY DRUG THERAPY	1.30	0.70	0.22	2.22
01996	D3	MANAGE DAILY DRUG THERAPY	1.18	0.64	0.20	2.02
01996	D4	MANAGE DAILY DRUG THERAPY	1.06	0.57	0.19	1.82
01996	AD	MANAGE DAILY DRUG THERAPY	0.78	0.42	0.13	1.33
10040		ACNE SURGERY	0.68	0.33	0.03	1.24
10060		DRAINAGE OF SKIN ABSCESS	0.61	0.45	0.04	1.10
10061		DRAINAGE OF SKIN ABSCESS	2.63	0.84	0.09	3.56
10080		DRAINAGE OF PILONIDAL CYST	1.12	0.51	0.05	1.68
10081		DRAINAGE OF PILONIDAL CYST	2.56	1.05	0.15	3.75
10120		REMOVE FOREIGN BODY	0.77	0.48	0.04	1.29
10121		REMOVE FOREIGN BODY	2.81	0.96	0.13	3.92
10140		DRAINAGE OF HEMATOMA	0.97	0.51	0.05	1.53
10141		DRAINAGE OF HEMATOMA	2.44	0.78	0.10	3.32
10160		PUNCTURE DRAINAGE OF LESION	0.74	0.38	0.04	1.16
10180		COMPLEX DRAINAGE, WOUND	2.33	0.96	0.17	3.46
11000		SURGICAL CLEANSING OF SKIN	3.27	0.42	0.04	3.73
11001		ADDITIONAL CLEANSING OF SKIN	2.37	0.29	0.03	2.68
11040		SURGICAL CLEANSING, ABRASION	2.83	0.41	0.04	3.28
11041		SURGICAL CLEANSING OF SKIN	4.76	0.58	0.07	5.43
11042		CLEANSING OF SKIN/TISSUE	3.33	0.68	0.10	4.11
11043		CLEANSING OF TISSUE/MUSCLE	6.84	1.77	0.31	8.92
11044		CLEANSING TISSUE/MUSCLE/BONE	7.97	2.66	0.45	11.08
11051		TRIM 2 TO 4 SKIN LESIONS	0.56	0.43	0.04	1.03
11100		BIOPSY OF LESION	0.82	0.58	0.04	1.11
11101		BIOPSY, EACH ADDED LESION	0.26	0.29	0.02	0.57
11200		REMOVAL OF SKIN TAGS	0.41	0.43	0.03	0.87
11400		REMOVAL OF SKIN LESION	1.11	0.52	0.05	1.68
11401		REMOVAL OF SKIN LESION	1.35	0.67	0.06	2.08
11402		REMOVAL OF SKIN LESION	1.66	0.90	0.10	2.66
11406		REMOVAL OF SKIN LESION	2.85	1.92	0.32	5.12
11421		REMOVAL OF SKIN LESION	1.57	0.72	0.07	2.36
11422		REMOVAL OF SKIN LESION	1.82	0.95	0.10	2.87
11423		REMOVAL OF SKIN LESION	1.95	1.33	0.16	3.44

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
11440		REMOVAL OF SKIN LESION	1.26	0.68	0.06	2.00
11441		REMOVAL OF SKIN LESION	1.66	0.96	0.08	2.60
11442		REMOVAL OF SKIN LESION	1.85	1.10	0.11	3.06
11444		REMOVAL OF SKIN LESION	3.57	1.46	0.16	5.19
11600		REMOVAL OF SKIN LESION	1.23	1.03	0.09	2.35
11601		REMOVAL OF SKIN LESION	2.00	1.37	0.12	3.49
11602		REMOVAL OF SKIN LESION	2.17	1.79	0.17	4.13
11606		REMOVAL OF SKIN LESION	3.25	3.22	0.51	6.98
11621		REMOVAL OF SKIN LESION	2.04	1.81	0.16	4.01
11622		REMOVAL OF SKIN LESION	2.44	2.20	0.21	4.85
11623		REMOVAL OF SKIN LESION	2.88	2.59	0.29	5.76
11640		REMOVAL OF SKIN LESION	1.87	1.68	0.15	3.40
11641		REMOVAL OF SKIN LESION	2.37	2.13	0.19	4.69
11642		REMOVAL OF SKIN LESION	2.83	2.63	0.26	5.72
11644		REMOVAL OF SKIN LESION	4.78	3.87	0.42	8.87
11700		SURGICAL CLEANSING OF NAILS	0.80	0.34	0.03	1.17
11701		SURGICAL CLEANSING OF NAILS	0.47	0.21	0.02	0.70
11710		SURGICAL CLEANSING OF NAILS	0.46	0.33	0.03	0.82
11711		SURGICAL CLEANSING OF NAILS	0.37	0.17	0.02	0.56
11730		REMOVAL OF NAIL PLATE	0.70	0.45	0.04	1.18
11731		REMOVAL OF SECOND NAIL PLATE	0.73	0.49	0.04	1.26
11732		REMOVE ADDED NAIL PLATE	0.50	0.24	0.02	0.76
11740		DRAIN BLOOD FROM UNDER NAIL	0.83	0.41	0.03	1.27
11750		REMOVAL OF NAIL BED	1.77	2.24	0.21	4.22
11752		REMOVE NAIL BED/FINGER TIP	2.52	2.41	0.30	5.23
11760		RECONSTRUCTION OF NAIL BED	1.84	0.82	0.08	2.65
11762		RECONSTRUCTION OF NAIL BED	3.02	2.49	0.25	5.76
11770		REMOVAL OF PILONIDAL LESION	2.71	2.37	0.35	5.43
11771		REMOVAL OF PILONIDAL LESION	5.48	4.73	0.96	11.17
11772		REMOVAL OF PILONIDAL LESION	6.75	4.93	1.01	12.69
11900		INJECTION INTO SKIN LESIONS	0.42	0.25	0.02	0.69
12001		REPAIR SUPERFICIAL WOUND(S)	1.02	0.60	0.05	1.67
12002		REPAIR SUPERFICIAL WOUND(S)	1.18	0.82	0.06	2.06
12004		REPAIR SUPERFICIAL WOUND(S)	1.58	1.14	0.10	2.82
12005		REPAIR SUPERFICIAL WOUND(S)	2.86	1.44	0.13	4.55
12006		REPAIR SUPERFICIAL WOUND(S)	3.85	1.66	0.17	5.68
12007		REPAIR SUPERFICIAL WOUND(S)	4.32	1.41	0.13	5.86
12011		REPAIR SUPERFICIAL WOUND(S)	0.94	0.76	0.06	1.76
12013		REPAIR SUPERFICIAL WOUND(S)	1.33	1.04	0.08	2.45
12014		REPAIR SUPERFICIAL WOUND(S)	2.56	1.29	0.10	3.96
12015		REPAIR SUPERFICIAL WOUND(S)	3.33	1.62	0.13	5.08
12016		REPAIR SUPERFICIAL WOUND(S)	4.11	2.14	0.18	6.43
12017	•	REPAIR SUPERFICIAL WOUND(S)	4.95	3.20	0.30	8.45
12018	•	REPAIR SUPERFICIAL WOUND(S)	5.82	2.29	0.20	8.31
12020		CLOSURE OF SPLIT WOUND	2.73	1.14	0.17	4.04
12021		CLOSURE OF SPLIT WOUND	1.90	0.61	0.10	2.61
12031		LAYER CLOSURE OF WOUND(S)	1.41	0.71	0.07	2.19
12032		LAYER CLOSURE OF WOUND(S)	1.76	1.06	0.10	2.92
12034		LAYER CLOSURE OF WOUND(S)	3.06	1.48	0.16	4.68
12035		LAYER CLOSURE OF WOUND(S)	3.58	2.02	0.24	5.84
12036		LAYER CLOSURE OF WOUND(S)	4.25	2.33	0.36	6.94
12037		LAYER CLOSURE OF WOUND(S)	4.91	3.05	0.47	8.43
12041		LAYER CLOSURE OF WOUND(S)	1.98	0.84	0.06	2.58
12042		LAYER CLOSURE OF WOUND(S)	2.87	1.16	0.11	4.16
12044		LAYER CLOSURE OF WOUND(S)	3.27	1.66	0.16	5.08
12045		LAYER CLOSURE OF WOUND(S)	3.82	2.01	0.22	6.05
12046		LAYER CLOSURE OF WOUND(S)	4.46	2.59	0.32	7.37

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
12047	•	LAYER CLOSURE OF WOUND(S)	4.86	3.58	0.48	8.94
12051		LAYER CLOSURE OF WOUND(S)	1.63	0.96	0.09	2.68
12052		LAYER CLOSURE OF WOUND(S)	2.35	1.46	0.13	3.94
12053		LAYER CLOSURE OF WOUND(S)	3.25	1.82	0.17	5.24
12054		LAYER CLOSURE OF WOUND(S)	3.63	2.62	0.24	6.49
12055		LAYER CLOSURE OF WOUND(S)	4.65	3.01	0.33	7.99
12056	•	LAYER CLOSURE OF WOUND(S)	5.51	4.32	0.47	10.30
12057	•	LAYER CLOSURE OF WOUND(S)	3.26	2.58	0.22	6.06
13100		REPAIR OF WOUND OR LESION	2.97	1.13	0.13	4.23
13101		REPAIR OF WOUND OR LESION	3.52	2.04	0.25	5.81
13120		REPAIR OF WOUND OR LESION	2.66	1.38	0.17	4.41
13121		REPAIR OF WOUND OR LESION	3.71	2.72	0.33	6.76
13131		REPAIR OF WOUND OR LESION	3.43	2.06	0.24	5.73
13132		REPAIR OF WOUND OR LESION	4.08	4.68	0.52	9.28
13150		REPAIR OF WOUND OR LESION	3.53	1.83	0.25	5.61
13151		REPAIR OF WOUND OR LESION	4.18	2.70	0.36	7.25
13152		REPAIR OF WOUND OR LESION	5.88	5.22	0.70	11.81
13160		LATE CLOSURE OF WOUND	9.00	3.36	0.60	12.96
13300		REPAIR OF WOUND OR LESION	4.74	5.70	0.85	11.29
14000		SKIN TISSUE REARRANGEMENT	4.66	3.44	0.45	8.55
14001		SKIN TISSUE REARRANGEMENT	8.63	4.94	0.79	12.36
14020		SKIN TISSUE REARRANGEMENT	5.25	5.23	0.66	11.14
14021		SKIN TISSUE REARRANGEMENT	8.17	6.56	0.96	15.71
14040		SKIN TISSUE REARRANGEMENT	7.17	7.16	0.85	15.18
14041		SKIN TISSUE REARRANGEMENT	9.51	8.63	1.08	19.22
14060		SKIN TISSUE REARRANGEMENT	4.82	8.16	1.09	14.17
14061		SKIN TISSUE REARRANGEMENT	10.55	10.96	1.33	22.84
14300		SKIN TISSUE REARRANGEMENT	10.32	11.80	1.90	24.02
14350		SKIN TISSUE REARRANGEMENT	9.49	5.74	0.97	16.20
15000		SKIN GRAFT PROCEDURE	2.08	3.12	0.53	5.73
15050		SKIN PINCH GRAFT PROCEDURE	3.80	1.46	0.22	5.48
15100		SKIN SPLIT GRAFT PROCEDURE	8.18	4.66	0.92	13.76
15260		SKIN FULL GRAFT PROCEDURE	8.11	7.97	1.06	17.14
15400		SKIN HETEROGRAFT PROCEDURE	4.17	0.92	0.14	5.23
15730		PREPARATION FOR SKIN GRAFT	5.33	11.29	1.74	18.36
15740		ISLAND PEDICLE FLAP GRAFT	8.14	10.22	1.59	19.95
15750		NEUROVASCULAR PEDICLE GRAFT	8.52	10.52	1.81	20.85
15755		MICROVASCULAR FLAP GRAFT	27.07	29.30	5.16	61.53
15791		CHEMICAL PEEL, OF SKIN	4.90	0.43	0.03	5.36
15851		REMOVAL OF SUTURES	0.57	0.31	0.03	0.91
15920		REMOVAL OF TAIL BONE ULCER	7.83	2.67	0.51	11.01
15922		REMOVAL OF TAIL BONE ULCER	9.74	5.25	0.87	15.86
15931		REMOVE SACRUM PRESSURE SORE	8.63	2.79	0.53	11.95
15933		REMOVE SACRUM PRESSURE SORE	10.24	7.10	1.47	18.81
15934		REMOVE SACRUM PRESSURE SORE	12.11	7.60	1.52	21.23
15935		REMOVE SACRUM PRESSURE SORE	13.86	11.67	2.37	27.90
15936		REMOVE SACRUM PRESSURE SORE	12.02	8.46	1.71	22.21
15937		REMOVE SACRUM PRESSURE SORE	13.75	13.10	2.60	29.46
15940		REMOVAL OF PRESSURE SORE	8.70	3.40	0.69	12.79
15941		REMOVAL OF PRESSURE SORE	10.75	7.19	1.42	19.39
15944		REMOVAL OF PRESSURE SORE	10.82	9.18	1.79	21.79
15945		REMOVAL OF PRESSURE SORE	12.03	11.16	2.07	25.26
15946		REMOVAL OF PRESSURE SORE	17.83	17.32	3.37	38.52
15950		REMOVE THIGH PRESSURE SORE	7.22	2.91	0.56	10.69
15951		REMOVE THIGH PRESSURE SORE	10.17	7.75	1.60	19.52
15952		REMOVE THIGH PRESSURE SORE	10.82	7.30	1.41	19.53
15953		REMOVE THIGH PRESSURE SORE	12.10	7.42	1.59	21.11

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
15954	•	REMOVE THIGH PRESSURE SORE	12.33	7.19	1.53	21.05
15955	•	REMOVE THIGH PRESSURE SORE	12.81	11.08	2.30	26.19
15956		REMOVE THIGH PRESSURE SORE	14.80	17.44	3.44	35.68
15958		REMOVE THIGH PRESSURE SORE	14.74	19.05	3.75	37.54
15960		REMOVE HEEL PRESSURE SORE	6.72	2.01	0.37	9.10
15961		REMOVE HEEL PRESSURE SORE	9.33	5.42	1.10	15.85
15964		REMOVE HEEL PRESSURE SORE	8.77	3.05	0.54	12.36
15965	•	REMOVE HEEL PRESSURE SORE	10.97	7.78	1.49	20.24
15966	•	REMOVE HEEL PRESSURE SORE	9.73	4.75	0.90	15.38
15967	•	REMOVE HEEL PRESSURE SORE	11.48	8.80	1.81	22.09
15970	•	REMOVE LEG PRESSURE SORE	6.92	1.44	0.29	8.65
15971	•	REMOVE LEG PRESSURE SORE	8.21	3.90	0.72	12.83
15972		REMOVE LEG PRESSURE SORE	8.06	4.30	0.67	13.03
15973	•	REMOVE LEG PRESSURE SORE	10.77	9.00	1.73	21.50
15974	•	REMOVE LEG PRESSURE SORE	12.66	10.43	2.06	25.17
15975	•	REMOVE LEG PRESSURE SORE	13.42	11.26	2.15	26.83
15980	•	REMOVE KNEE PRESSURE SORE	7.65	3.70	0.67	12.02
15981	•	REMOVE KNEE PRESSURE SORE	9.20	11.94	2.08	23.22
15982	•	REMOVE KNEE PRESSURE SORE	10.81	6.12	1.23	18.16
15983	•	REMOVE KNEE PRESSURE SORE	12.76	4.30	0.91	17.97
16000		INITIAL TREATMENT OF BURN(S)	0.57	0.35	0.03	0.95
16010		TREATMENT OF BURN(S)	0.72	0.32	0.03	1.07
16015		TREATMENT OF BURN(S)	2.05	1.67	0.31	4.03
16020		TREATMENT OF BURN(S)	0.46	0.34	0.03	0.86
16025		TREATMENT OF BURN(S)	1.49	0.46	0.05	2.00
16030		TREATMENT OF BURN(S)	1.66	0.53	0.07	2.26
16035		INCISION OF BURN SCAB	4.80	1.55	0.23	6.58
17000		DESTRUCTION OF FACE LESION	0.38	0.43	0.03	0.81
17001		DESTRUCTION OF ADDED LESIONS	0.05	0.20	0.02	0.27
17002		DESTRUCTION OF ADDED LESIONS	0.06	0.08	0.01	0.15
17100		DESTRUCTION OF SKIN LESION	0.25	0.36	0.03	0.64
17101		DESTRUCTION OF 2ND LESION	0.09	0.16	0.01	0.26
17102		DESTRUCTION OF ADDED LESIONS	0.03	0.08	0.01	0.12
17304		CHEMOSURGERY OF SKIN LESION	4.36	4.25	0.34	8.95
19000		DRAINAGE OF BREAST LESION	0.54	0.35	0.07	0.99
19001		DRAIN ADDED BREAST LESION	0.32	0.23	0.04	0.59
19020		INCISION OF BREAST LESION	3.57	1.41	0.27	5.25
19030		INJECTION FOR BREAST X-RAY	1.98	0.69	0.06	2.73
19100		BIOPSY OF BREAST	0.85	0.62	0.10	1.27
19101		BIOPSY OF BREAST	3.32	2.43	0.47	6.22
19110		NIPPLE EXPLORATION	4.42	2.48	0.53	7.44
19112	•	EXCISE BREAST DUCT FISTULA	3.75	1.96	0.24	5.97
19120		REMOVAL OF BREAST LESION	5.14	2.98	0.63	8.75
19140		REMOVAL OF BREAST TISSUE	5.20	4.42	0.93	10.55
19160		REMOVAL OF BREAST TISSUE	5.60	4.17	0.89	10.66
19162		REMOVE BREAST TISSUE, NODES	10.54	9.96	2.09	22.59
19180		REMOVAL OF BREAST	8.88	5.74	1.19	15.59
19182		REMOVAL OF BREAST TISSUE	7.74	5.21	1.30	15.25
19200		EXTENSIVE BREAST SURGERY	13.18	10.81	2.27	26.26
19220		EXTENSIVE BREAST SURGERY	16.12	11.22	2.50	29.84
19240		EXTENSIVE BREAST SURGERY	13.29	8.94	2.10	25.33
19260		REMOVAL OF CHEST WALL LESION	14.75	4.87	0.98	20.63
19271		REVISION OF CHEST WALL	16.14	11.72	2.43	32.29
19272	•	EXTENSIVE CHEST WALL SURGERY	20.68	7.29	1.61	29.58
20000		INCISION OF ABSCESS	1.05	0.85	0.08	1.98
20200		MUSCLE BIOPSY	1.87	1.14	0.18	3.29
20205		DEEP MUSCLE BIOPSY	3.81	1.88	0.32	6.02

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PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
20206		NEEDLE BIOPSY, MUSCLE	0.72	0.91	0.12	1.75
20220		BONE BIOPSY, TROCAR/NEEDLE	1.47	1.35	0.09	2.91
20225		BONE BIOPSY, TROCAR/NEEDLE	3.11	2.24	0.24	5.59
20240		BONE BIOPSY, EXCISIONAL	4.13	1.93	0.19	6.24
20245		BONE BIOPSY, EXCISIONAL	4.91	3.50	0.42	8.83
20250		OPEN BONE BIOPSY	5.64	3.17	0.37	9.38
20251		OPEN BONE BIOPSY	6.37	5.29	0.81	12.47
20500		INJECTION OF SINUS TRACT	0.44	0.37	0.03	0.84
20501		INJECT SINUS TRACT FOR X-RAY	0.45	0.39	0.03	0.87
20520		REMOVAL OF FOREIGN BODY	1.03	0.70	0.08	1.81
20525		REMOVAL OF FOREIGN BODY	4.64	2.07	0.29	7.00
20550		INJECTION TREATMENT	0.47	0.38	0.04	0.89
20600		DRAINAGE JOINT/BURSA/CYST	0.37	0.50	0.05	0.92
20605		DRAINAGE JOINT/BURSA/CYST	0.40	0.47	0.05	0.92
20610		INJECT/DRAIN JOINT/BURSA	0.48	0.47	0.05	1.00
20615		TREATMENT OF BONE CYST	2.37	0.50	0.05	2.92
20650		INSERT AND REMOVE BONE PIN	1.22	1.07	0.13	2.42
20660		APPLY,REMOVE FIXATION DEVICE	4.11	1.55	0.20	5.86
20661		APPLICATION OF HEAD BRACE	6.13	3.80	0.62	10.35
20662	•	APPLICATION OF PELVIS BRACE	7.46	5.25	0.71	13.42
20663	•	APPLICATION OF THIGH BRACE	0.77	1.80	0.27	2.84
20665		REMOVAL OF FIXATION DEVICE	0.60	0.52	0.07	1.19
20670		REMOVAL OF SUPPORT IMPLANT	0.98	0.77	0.11	1.86
20680		REMOVAL OF SUPPORT IMPLANT	3.48	3.39	0.53	7.38
20690		APPLY BONE FIXATION DEVICE	2.69	3.20	0.51	6.40
20902		REMOVAL OF BONE FOR GRAFT	7.17	5.07	0.82	13.06
20920	•	REMOVAL OF FASCIA FOR GRAFT	5.16	2.48	0.29	7.91
20950	•	RECORD FLUID PRESSURE,MUSCLE	2.47	1.03	0.16	3.66
20962	•	MICROVASCULAR BONE GRAFT	21.83	8.66	1.40	31.89
20974		ELECTRICAL BONE STIMULATION	1.43	2.47	0.36	4.26
20975		ELECTRICAL BONE STIMULATION	5.93	2.58	0.39	8.87
21240		RECONSTRUCTION OF JAW JOINT	16.72	23.79	2.12	42.63
21320		TREATMENT OF NOSE FRACTURE	2.49	2.83	0.34	5.66
21365		REPAIR CHEEK BONE FRACTURE	14.85	12.51	1.66	29.02
21455		REPAIR LOWER JAW FRACTURE	9.06	8.70	0.81	18.57
21470		REPAIR LOWER JAW FRACTURE	15.06	15.70	1.61	32.39
21501		DRAIN NECK/CHEST LESION	4.93	1.58	0.22	6.74
21502	•	DRAIN CHEST LESION	6.65	4.04	0.72	11.61
21510		DRAINAGE OF BONE LESION	8.88	3.51	0.47	12.86
21550		BIOPSY OF NECK/CHEST	3.11	0.86	0.11	4.08
21555		REMOVE LESION NECK/CHEST	4.34	1.56	0.23	6.13
21556		REMOVE LESION NECK/CHEST	5.61	3.84	0.65	10.10
21557		REMOVE TUMOR, NECK OR CHEST	7.58	7.09	1.24	15.92
21600		PARTIAL REMOVAL OF RIB	6.66	4.49	0.88	12.02
21610		PARTIAL REMOVAL OF RIB	6.36	1.56	0.17	8.09
21615	•	REMOVAL OF RIB	9.59	10.09	1.96	21.64
21616	•	REMOVAL OF RIB AND NERVES	11.80	13.00	2.65	27.45
21620		PARTIAL REMOVAL OF STERNUM	7.96	5.83	1.11	14.92
21627		STERNAL DEBRIDEMENT	6.83	4.31	0.80	11.94
21630	•	EXTENSIVE STERNUM SURGERY	14.08	12.46	2.23	28.77
21632	•	EXTENSIVE STERNUM SURGERY	17.12	8.56	1.70	27.38
21633		EXTENSIVE STERNUM SURGERY	14.58	13.35	2.50	30.23
21600		TREATMENT OF RIB FRACTURE	1.46	0.80	0.07	2.36
21920		BIOPSY SOFT TISSUE OF BACK	2.14	0.73	0.10	2.97
22102	•	REMOVE PART, LUMBAR VERTEBRA	9.33	4.46	0.64	14.43
22140		RECONSTRUCT NECK SPINE	23.58	14.90	2.35	40.43
22305		TREAT SPINE PROCESS FRACTURE	4.27	2.30	0.31	6.88

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
22310		TREAT SPINE FRACTURE	6.31	4.43	0.66	11.40
22315		TREAT SPINE FRACTURE	8.88	5.27	0.83	14.98
22325	•	REPAIR OF SPINE FRACTURE	18.25	6.97	1.05	26.27
22326	•	REPAIR NECK SPINE FRACTURE	19.58	14.33	2.38	36.29
22327	•	REPAIR THORAX SPINE FRACTURE	18.65	6.35	0.88	25.88
22548	•	NECK SPINE FUSION	25.58	23.13	3.88	52.59
22554		NECK SPINE FUSION	15.03	20.57	3.85	39.25
22556		THORAX SPINE FUSION	24.62	15.77	2.85	43.24
22558		LUMBAR SPINE FUSION	23.50	18.22	3.11	44.83
22590		SPINE & SKULL SPINAL FUSION	20.14	21.74	3.46	45.34
22595		NECK SPINAL FUSION	20.43	22.39	3.85	46.67
22600		NECK SPINE FUSION	19.17	15.48	2.83	37.48
22610		THORAX SPINE FUSION	21.53	17.55	2.68	41.76
22612		LUMBAR SPINE FUSION	20.69	19.50	3.13	43.32
22625		LUMBAR SPINE FUSION	21.15	22.44	3.64	47.23
22630		LUMBAR SPINE FUSION	22.22	18.74	3.18	44.14
22802		FUSION OF SPINE	22.76	28.30	4.63	55.69
22820		HARVESTING OF BONE	5.74	4.34	0.72	10.80
22830		EXPLORATION OF SPINAL FUSION	10.86	12.45	2.03	25.34
22840		INSERT SPINE FIXATION DEVICE	21.78	13.89	2.53	38.00
22842		INSERT SPINE FIXATION DEVICE	21.20	21.59	3.53	46.32
22900		REMOVE ABDOMINAL WALL LESION	6.97	3.00	0.60	10.57
23065		BIOPSY SHOULDER TISSUES	2.37	0.69	0.09	3.15
23066		BIOPSY SHOULDER TISSUES	4.26	1.22	0.12	5.60
23075		REMOVAL OF SHOULDER LESION	2.48	1.62	0.27	4.38
23076		REMOVAL OF SHOULDER LESION	6.30	3.52	0.65	10.47
23077		REMOVE TUMOR OF SHOULDER	11.66	6.76	1.23	19.66
23100	•	BIOPSY OF SHOULDER JOINT	5.98	7.72	1.23	14.94
23101		SHOULDER JOINT SURGERY	5.53	7.24	1.19	13.96
23106		REMOVE SHOULDER JOINT LINING	8.23	10.29	1.69	20.21
23106	•	INCISION OF COLLARBONE JOINT	5.90	7.32	1.20	14.42
23120		PARTIAL REMOVAL, COLLARBONE	7.06	4.63	0.74	12.43
23125	•	REMOVAL OF COLLARBONE	9.46	9.82	1.46	20.74
23130		PARTIAL REMOVAL,SHOULDERBONE	7.69	7.02	1.13	16.04
23140		REMOVAL OF BONE LESION	5.84	3.88	0.66	11.39
23145	•	REMOVAL OF BONE LESION	9.06	5.32	0.87	15.25
23146	•	REMOVAL OF BONE LESION	7.80	4.73	0.81	13.44
23150	•	REMOVAL OF HUMERUS LESION	8.26	5.31	0.71	14.30
23155	•	REMOVAL OF HUMERUS LESION	10.19	9.70	1.52	21.41
23156	•	REMOVAL OF HUMERUS LESION	8.50	4.93	0.81	14.24
23170	•	REMOVE COLLARBONE LESION	6.65	3.75	0.58	10.98
23172	•	REMOVE SHOULDER BLADE LESION	6.62	2.15	0.27	9.04
23174	•	REMOVE HUMERUS LESION	8.56	6.85	1.31	16.72
23180		REMOVE COLLARBONE LESION	7.69	3.63	0.57	11.89
23182	•	REMOVE SHOULDERBLADE LESION	7.91	4.54	0.76	13.21
23184	•	REMOVE HUMERUS LESION	9.15	7.82	1.19	18.16
23190	•	PARTIAL REMOVAL OF SCAPULA	7.21	5.26	0.84	13.30
23195	•	REMOVAL OF HEAD OF HUMERUS	9.56	8.90	1.45	19.91
23200	•	REMOVAL OF COLLARBONE	11.74	4.32	0.62	16.68
23210	•	REMOVAL OF SHOULDERBLADE	12.10	12.23	1.86	26.19
23220	•	PARTIAL REMOVAL OF HUMERUS	14.15	14.30	2.41	30.86
23221	•	PARTIAL REMOVAL OF HUMERUS	17.65	3.62	0.24	21.51
23222	•	PARTIAL REMOVAL OF HUMERUS	17.69	16.76	2.88	39.33
23330		REMOVE SHOULDER FOREIGN BODY	1.90	0.56	0.06	2.52
23331		REMOVE SHOULDER FOREIGN BODY	7.32	1.16	0.22	8.69
23332	•	REMOVE SHOULDER FOREIGN BODY	11.24	10.63	1.67	23.54
23350		INJECTION FOR SHOULDER X-RAY	1.36	0.56	0.08	1.99

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PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
23395	•	MUSCLE TRANSFER,SHOULDER/ARM	13.19	16.00	2.58	31.77
23397	•	MUSCLE TRANSFERS	16.18	17.22	2.89	36.29
23400	•	FIXATION OF SHOULDERBLADE	13.76	6.20	0.92	20.88
23405	•	INCISION OF TENDON & MUSCLE	8.46	3.98	0.55	12.99
23406	•	INCISE TENDON(S) & MUSCLE(S)	10.97	11.10	1.88	23.95
23410		REPAIR OF TENDON(S)	12.63	11.39	1.62	25.64
23412		REPAIR OF TENDON(S)	13.48	13.98	2.25	29.71
23415		RELEASE OF SHOULDER LIGAMENT	10.11	4.63	0.73	15.47
23420		REPAIR OF SHOULDER INJURY	13.38	15.53	2.49	31.40
23430		REPAIR BICEPS TENDON RUPTURE	10.17	7.09	1.15	18.41
23440	•	REMOVAL/TRANSPLANT TENDON	10.71	7.03	1.14	18.88
23450		REPAIR SHOULDER CAPSULE	13.65	12.76	2.01	28.42
23455	•	REPAIR SHOULDER CAPSULE	14.68	16.08	2.58	33.34
23460	•	REPAIR SHOULDER CAPSULE	15.58	14.32	2.27	32.17
23462	•	REPAIR SHOULDER CAPSULE	15.52	12.94	2.12	30.58
23465	•	REPAIR SHOULDER CAPSULE	16.08	15.30	2.46	33.84
23466	•	REPAIR SHOULDER CAPSULE	14.50	15.85	2.36	32.71
23470		RECONSTRUCT SHOULDER JOINT	17.12	17.46	2.77	37.35
23472		RECONSTRUCT SHOULDER JOINT	17.09	31.83	5.08	54.00
23480	•	REVISION OF COLLARBONE	11.23	5.21	0.72	17.16
23485	•	REVISION OF COLLARBONE	13.47	9.47	1.55	24.49
23490	•	REINFORCE CLAVICLE	12.02	0.30	0.02	12.34
23491	•	REINFORCE SHOULDER BONES	14.48	10.50	1.74	26.72
23500		TREAT CLAVICLE FRACTURE	2.55	1.01	0.20	4.36
23505		TREAT CLAVICLE FRACTURE	3.76	2.48	0.36	6.60
23510	•	REPAIR CLAVICLE FRACTURE	5.51	1.84	0.20	7.35
23515		REPAIR CLAVICLE FRACTURE	7.48	6.97	1.10	15.52
23520	•	TREAT CLAVICLE DISLOCATION	2.70	1.36	0.19	4.25
23525	•	TREAT CLAVICLE DISLOCATION	3.62	2.03	0.27	5.92
23530	•	REPAIR CLAVICLE DISLOCATION	7.46	7.67	1.06	16.19
23532	•	REPAIR CLAVICLE DISLOCATION	8.06	12.06	1.97	22.09
23540		TREAT CLAVICLE DISLOCATION	2.58	1.49	0.18	4.25
23545		TREAT CLAVICLE DISLOCATION	3.25	1.97	0.28	5.50
23550		REPAIR CLAVICLE DISLOCATION	7.06	6.86	1.02	14.94
23552	•	REPAIR CLAVICLE DISLOCATION	8.31	12.47	2.00	22.78
23570		TREAT SHOULDERBLADE FRACTURE	2.64	1.73	0.25	4.62
23575		TREAT SHOULDERBLADE FRACTURE	4.11	2.48	0.38	6.97
23580	•	REPAIR SCAPULA FRACTURE	5.22	2.98	0.32	8.40
23585	•	REPAIR SCAPULA FRACTURE	8.93	7.67	1.26	17.86
23600		TREAT HUMERUS FRACTURE	3.10	2.83	0.41	6.34
23605		TREAT HUMERUS FRACTURE	4.89	4.61	0.73	10.17
23610		REPAIR HUMERUS FRACTURE	6.07	4.80	0.73	11.60
23615		REPAIR HUMERUS FRACTURE	8.72	11.37	1.83	21.92
23620		TREAT HUMERUS FRACTURE	2.69	2.63	0.39	5.71
23625		TREAT HUMERUS FRACTURE	3.87	3.57	0.56	8.00
23630		REPAIR HUMERUS FRACTURE	7.32	7.46	1.20	15.98
23650		TREAT SHOULDER DISLOCATION	3.44	2.09	0.23	5.76
23655		TREAT SHOULDER DISLOCATION	4.54	2.96	0.44	7.94
23656	•	REPAIR SHOULDER DISLOCATION	6.41	2.39	0.39	9.19
23660		REPAIR SHOULDER DISLOCATION	7.53	7.29	1.09	15.91
23665		TREAT DISLOCATION/FRACTURE	4.43	3.50	0.54	8.47
23670		REPAIR DISLOCATION/FRACTURE	7.81	9.63	1.44	18.98
23675		TREAT DISLOCATION/FRACTURE	5.94	4.06	0.64	10.63
23680		REPAIR DISLOCATION/FRACTURE	10.03	13.39	2.16	25.58
23700		FIXATION OF SHOULDER	1.46	1.86	0.30	3.70
23800	•	FUSION OF SHOULDER JOINT	14.16	12.90	1.89	28.95
23802	•	FUSION OF SHOULDER JOINT	15.56	19.06	3.12	37.80

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
23931		DRAINAGE OF ARM BURSA	1.73	0.74	0.10	2.57
24065		BIOPSY ARM/ELBOW SOFT TISSUE	2.18	0.80	0.10	3.06
24066		BIOPSY ARM/ELBOW SOFT TISSUE	5.28	2.40	0.37	8.05
24075		REMOVE ARM/ELBOW LESION	4.02	1.88	0.31	6.22
24076		REMOVE ARM/ELBOW LESION	6.39	3.69	0.88	10.76
24077		REMOVE TUMOR OF ARM/ELBOW	11.88	7.28	1.35	20.51
24100	•	BIOPSY ELBOW JOINT LINING	4.97	5.97	0.84	11.78
24101		EXPLORE/TREAT ELBOW JOINT	8.19	8.65	1.42	18.26
24102		REMOVE ELBOW JOINT LINING	8.03	11.14	1.81	20.98
24105		REMOVAL OF ELBOW BURSA	3.65	3.97	0.67	8.29
24110	•	REMOVE HUMERUS LESION	7.52	7.43	1.17	16.12
24115	•	REMOVE/GRAFT BONE LESION	9.44	9.88	1.67	20.79
24116	•	REMOVE/GRAFT BONE LESION	11.82	9.62	1.45	22.89
24120		REMOVE ELBOW LESION	6.75	5.58	0.87	13.20
24125	•	REMOVE/GRAFT BONE LESION	7.86	3.40	0.41	11.67
24130		REMOVAL OF HEAD OF RADIUS	8.33	4.96	1.11	14.40
24134	•	REMOVAL OF ARM BONE LESION	9.53	3.88	0.84	13.75
24136	•	REMOVE RADIUS BONE LESION	7.79	5.14	0.54	13.47
24138	•	REMOVE ELBOW BONE LESION	8.80	4.62	0.79	12.21
24140	•	PARTIAL REMOVAL OF ARM BONE	9.10	8.81	1.46	19.37
24145	•	PARTIAL REMOVAL OF RADIUS	7.87	4.54	0.82	12.93
24147		PARTIAL REMOVAL OF ELBOW	8.67	8.34	1.03	14.04
24150	•	EXTENSIVE HUMERUS SURGERY	13.20	13.44	2.14	28.78
24151	•	EXTENSIVE HUMERUS SURGERY	15.57	18.57	2.84	36.98
24152	•	EXTENSIVE RADIUS SURGERY	10.11	11.27	1.87	23.05
24153	•	EXTENSIVE RADIUS SURGERY	11.64	9.03	1.48	22.15
24155	•	REMOVAL OF ELBOW JOINT	11.80	12.85	2.02	26.47
24200		REMOVAL OF ARM FOREIGN BODY	1.82	0.56	0.06	2.44
24435		REPAIR HUMERUS WITH GRAFT	12.96	18.80	2.98	34.55
24500		TREAT HUMERUS FRACTURE	3.97	2.40	0.33	6.30
24505		TREAT HUMERUS FRACTURE	5.12	4.81	0.73	10.46
24506		TREAT HUMERUS FRACTURE	6.09	7.91	1.27	17.21
24510	•	REPAIR HUMERUS FRACTURE	7.74	5.64	0.90	14.28
24515		REPAIR HUMERUS FRACTURE	11.93	10.03	1.62	23.58
24530		TREAT HUMERUS FRACTURE	3.87	2.81	0.39	6.87
24531	•	TREAT HUMERUS FRACTURE	6.84	3.08	0.44	10.36
24535		TREAT HUMERUS FRACTURE	8.91	4.94	0.79	12.64
24536	•	TREAT HUMERUS FRACTURE	9.50	4.39	0.80	13.69
24538		TREAT HUMERUS FRACTURE	9.41	8.56	1.35	19.31
24540	•	TREAT HUMERUS FRACTURE	7.58	1.96	0.19	9.73
24542	•	TREAT HUMERUS FRACTURE	10.02	8.25	1.35	19.62
24545		REPAIR HUMERUS FRACTURE	12.91	10.29	1.65	24.84
24560		TREAT HUMERUS FRACTURE	3.43	2.12	0.28	5.83
24565	•	TREAT HUMERUS FRACTURE	5.54	3.36	0.53	9.43
24570	•	REPAIR HUMERUS FRACTURE	8.40	3.59	0.58	10.58
24575		REPAIR HUMERUS FRACTURE	10.53	5.77	1.02	17.32
24576		TREAT HUMERUS FRACTURE	3.76	2.15	0.32	6.25
24577	•	TREAT HUMERUS FRACTURE	5.79	3.91	0.61	10.31
24578	•	REPAIR HUMERUS FRACTURE	7.90	6.10	1.00	15.00
24579		REPAIR HUMERUS FRACTURE	11.52	8.81	1.36	21.52
24580		TREAT ELBOW FRACTURE	6.03	3.17	0.43	9.63
24581		TREAT ELBOW FRACTURE	8.12	5.63	0.89	14.64
24583	•	REPAIR ELBOW FRACTURE	9.46	5.36	0.94	15.79
24585		REPAIR ELBOW FRACTURE	13.88	13.10	2.09	29.08
24586	•	REPAIR ELBOW FRACTURE	15.26	12.45	1.92	29.63
24587	•	REPAIR ELBOW FRACTURE	15.15	16.24	2.56	33.95
24588	•	REPAIR ELBOW FRACTURE	15.95	14.52	2.38	32.85

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PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
24600		TREAT ELBOW DISLOCATION	4.39	1.94	0.25	6.58
24605		TREAT ELBOW DISLOCATION	5.40	2.31	0.36	8.07
24610	•	REPAIR ELBOW DISLOCATION	7.71	3.93	0.61	12.25
24615		REPAIR ELBOW DISLOCATION	9.32	9.55	1.52	20.39
24620		TREAT ELBOW FRACTURE	7.03	3.92	0.60	11.55
24625	•	REPAIR ELBOW FRACTURE	9.30	5.43	0.83	15.56
24635		REPAIR ELBOW FRACTURE	13.19	11.46	1.84	26.49
24640	•	TREAT ELBOW DISLOCATION	0.48	1.03	0.08	1.59
24650		TREAT RADIUS FRACTURE	2.81	2.20	0.28	5.29
24655		TREAT RADIUS FRACTURE	4.44	2.97	0.45	7.86
24660	•	REPAIR RADIUS FRACTURE	5.71	3.33	0.45	9.49
24665		REPAIR RADIUS FRACTURE	8.98	7.45	1.19	17.62
24666	•	REPAIR RADIUS FRACTURE	9.43	10.68	1.67	21.78
24670		TREATMENT OF ULNA FRACTURE	3.37	1.98	0.27	5.62
24675		TREATMENT OF ULNA FRACTURE	4.79	3.32	0.50	8.61
24680	•	REPAIR ULNA FRACTURE	6.03	4.09	0.69	11.71
24685		REPAIR ULNA FRACTURE	9.93	8.31	1.32	19.56
24800	•	FUSION OF ELBOW JOINT	11.42	5.88	0.79	17.89
24802	•	FUSION/GRAFT OF ELBOW JOINT	13.58	15.88	2.60	32.06
24900		AMPUTATION OF UPPER ARM	9.32	7.93	1.44	18.69
25000		INCISION OF TENDON SHEATH	3.36	3.99	0.63	7.98
25023	•	DECOMPRESSION OF FOREARM	12.54	5.84	1.01	19.49
25065		BIOPSY FOREARM SOFT TISSUES	2.54	0.68	0.07	3.29
25066		BIOPSY FOREARM SOFT TISSUES	4.10	1.46	0.21	5.77
25075		REMOVAL OF FOREARM LESION	3.84	2.01	0.33	6.18
25076		REMOVAL OF FOREARM LESION	5.06	3.84	0.69	9.59
25077	•	REMOVE TUMOR, FOREARM/WRIST	9.82	6.90	1.31	18.03
25085	•	INCISION OF WRIST CAPSULE	5.46	5.33	0.82	11.61
25100	•	BIOPSY OF WRIST JOINT	3.90	4.74	0.77	9.41
25101		EXPLORE/TREAT WRIST JOINT	4.71	4.82	0.80	10.43
25105		REMOVE WRIST JOINT LINING	5.90	7.17	1.20	14.27
25107	•	REMOVE WRIST JOINT CARTILAGE	6.26	5.86	1.01	13.13
25110		REMOVE WRIST TENDON LESION	4.02	2.83	0.47	7.32
25111		REMOVE WRIST TENDON LESION	3.44	3.36	0.58	7.38
25112		REREMOVE WRIST TENDON LESION	4.68	3.80	0.67	9.12
25115		REMOVE WRIST/FOREARM LESION	6.64	6.92	1.17	14.73
25116		REMOVE WRIST/FOREARM LESION	6.50	8.16	1.39	16.05
25118		EXCISE WRIST TENDON SHEATH	4.37	5.94	0.99	11.30
25119		PARTIAL REMOVAL OF ULNA	6.00	8.05	1.33	15.38
25120	•	REMOVAL OF FOREARM LESION	6.06	6.67	1.15	13.88
25125	•	REMOVE/GRAFT FOREARM LESION	7.50	9.78	1.50	18.78
25126	•	REMOVE/GRAFT FOREARM LESION	7.57	9.43	1.54	18.54
25130	•	REMOVAL OF WRIST LESION	5.40	4.14	0.66	10.20
25135	•	REMOVE & GRAFT WRIST LESION	6.99	6.28	1.11	14.38
25136	•	REMOVE & GRAFT WRIST LESION	6.03	4.76	0.85	11.64
25145	•	REMOVE FOREARM BONE LESION	6.36	4.26	0.52	11.14
25150	•	PARTIAL REMOVAL OF ULNA	6.97	4.77	0.78	12.52
25151	•	PARTIAL REMOVAL OF RADIUS	7.29	6.21	1.10	14.60
25170	•	EXTENSIVE FOREARM SURGERY	11.10	13.09	2.00	26.19
25210		REMOVAL OF WRIST BONE	5.89	4.83	0.79	11.51
25215	•	REMOVAL OF WRIST BONES	7.86	9.20	1.50	18.56
25230	•	PARTIAL REMOVAL OF RADIUS	5.15	5.10	0.76	11.01
25240		PARTIAL REMOVAL OF ULNA	5.21	5.34	0.87	11.42
25246	•	INJECTION FOR WRIST X-RAY	1.90	0.50	0.05	2.45
25260		REPAIR FOREARM TENDON/MUSCLE	7.78	4.44	0.75	12.97
25263	•	REPAIR FOREARM TENDON/MUSCLE	7.63	3.32	0.60	11.75
25265	•	REPAIR FOREARM TENDON/MUSCLE	10.14	5.94	1.06	17.14

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
25270		REPAIR FOREARM TENDON/MUSCLE	6.07	3.23	0.54	9.84
25272	•	REPAIR FOREARM TENDON/MUSCLE	7.18	3.10	0.51	10.79
25274	•	REPAIR FOREARM TENDON/MUSCLE	8.97	6.72	1.14	16.83
25280		REVISE WRIST/FOREARM TENDON	7.24	4.20	0.68	12.12
25290		INCISE WRIST/FOREARM TENDON	5.35	2.51	0.42	8.28
25295		RELEASE WRIST/FOREARM TENDON	5.64	2.78	0.49	9.91
25300	•	FUSION OF TENDONS AT WRIST	8.98	5.43	0.84	15.25
25301	•	FUSION OF TENDONS AT WRIST	8.50	5.22	0.86	14.68
25310		TRANSPLANT FOREARM TENDON	8.17	7.19	1.18	16.54
25312	•	TRANSPLANT FOREARM TENDON	9.65	8.43	1.42	19.50
25315	•	REVISE PALSY HAND TENDON(S)	9.97	11.38	1.81	23.16
25316	•	REVISE PALSY HAND TENDON(S)	12.06	9.33	1.57	22.96
25317	•	REVISE HAND CONTRACTURE	10.50	8.01	1.20	19.71
25320		REPAIR/REVISE WRIST JOINT	9.71	8.37	1.42	19.50
25330	•	REVISE WRIST JOINT	11.52	8.55	1.29	21.36
25331		REVISE WRIST JOINT	13.38	14.27	2.33	29.98
25332	•	REVISE WRIST JOINT	11.50	10.87	1.78	24.15
25335	•	REALIGNMENT OF HAND	12.85	1.46	0.35	14.66
25350	•	REVISION OF RADIUS	8.74	7.50	1.25	17.49
25355	•	REVISION OF RADIUS	10.16	12.63	2.07	24.86
25360	•	REVISION OF ULNA	8.37	6.10	0.91	15.38
25365	•	REVISE RADIUS & ULNA	12.35	9.21	1.41	22.97
25370	•	REVISE RADIUS OR ULNA	11.90	4.62	0.76	17.28
25375	•	REVISE RADIUS & ULNA	13.03	0.78	0.05	13.84
25390	•	SHORTEN RADIUS/ULNA	10.46	11.40	1.94	23.80
25391	•	LENGTHEN RADIUS/ULNA	13.54	11.88	2.06	27.48
25392	•	SHORTEN RADIUS & ULNA	13.86	12.47	2.04	28.37
25393	•	LENGTHEN RADIUS & ULNA	16.83	8.93	1.46	26.21
25400	•	REPAIR RADIUS OR ULNA	10.94	10.14	1.61	22.69
25405		REPAIR/GRAFT RADIUS OR ULNA	14.33	12.59	2.05	28.97
25415	•	REPAIR RADIUS & ULNA	13.43	8.36	1.64	23.45
25420	•	REPAIR/GRAFT RADIUS & ULNA	16.30	16.64	2.60	35.54
25425	•	REPAIR/GRAFT RADIUS OR ULNA	13.23	10.28	1.59	25.10
25426	•	REPAIR/GRAFT RADIUS & ULNA	15.86	15.81	2.87	34.54
25440	•	REPAIR/GRAFT WRIST BONE	10.56	11.03	1.83	23.42
25441	•	RECONSTRUCT WRIST JOINT	13.02	12.57	2.10	27.69
25442	•	RECONSTRUCT WRIST JOINT	10.98	6.10	1.07	18.15
25443	•	RECONSTRUCT WRIST JOINT	10.50	9.15	1.48	21.13
25444	•	RECONSTRUCT WRIST JOINT	11.30	10.05	1.64	22.99
25445		RECONSTRUCT WRIST JOINT	9.84	10.65	1.77	22.26
25446		WRIST REPLACEMENT	16.49	21.17	3.53	41.19
25447		REPAIR WRIST JOINT(S)	12.07	9.46	1.51	23.04
25449	•	REMOVE WRIST JOINT IMPLANT	14.63	7.30	1.08	23.01
25450	•	REVISION OF WRIST JOINT	8.14	5.83	0.92	14.89
25455	•	REVISION OF WRIST JOINT	9.71	7.43	1.22	18.36
25490	•	REINFORCE RADIUS	9.68	5.44	0.89	16.01
25491	•	REINFORCE ULNA	10.14	6.10	1.00	17.24
25492	•	REINFORCE RADIUS AND ULNA	12.48	11.77	1.93	26.18
25500		TREAT FRACTURE OF RADIUS	2.86	2.32	0.28	5.46
25505		TREAT FRACTURE OF RADIUS	5.29	3.69	0.54	9.52
25510	•	REPAIR FRACTURE OF RADIUS	6.35	4.38	0.85	11.41
25515		REPAIR FRACTURE OF RADIUS	9.17	7.88	1.27	18.32
25530		TREAT FRACTURE OF ULNA	2.73	2.39	0.33	5.45
25535		TREAT FRACTURE OF ULNA	5.21	3.57	0.54	9.32
25540	•	REPAIR FRACTURE OF ULNA	6.07	4.07	0.81	10.75
25545		REPAIR FRACTURE OF ULNA	8.86	7.62	1.21	17.69
25560		TREAT FRACTURE RADIUS & ULNA	3.15	2.28	0.26	5.69

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PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
25565		TREAT FRACTURE RADIUS & ULNA	5.63	4.80	0.73	11.16
25570	•	REPAIR FRACTURE RADIUS/ULNA	7.54	5.37	0.79	13.70
25575		REPAIR FRACTURE RADIUS/ULNA	11.50	11.08	1.79	24.37
25600		TREAT FRACTURE RADIUS/ULNA	3.06	2.76	0.37	6.21
25605		TREAT FRACTURE RADIUS/ULNA	5.76	4.04	0.63	10.43
25610		REPAIR FRACTURE RADIUS/ULNA	5.53	5.18	0.83	11.54
25611		REPAIR FRACTURE RADIUS/ULNA	7.03	6.39	1.03	14.45
25615		REPAIR FRACTURE RADIUS/ULNA	6.76	4.94	0.76	12.46
25620		REPAIR FRACTURE RADIUS/ULNA	9.35	7.37	1.18	17.90
25622		TREAT WRIST BONE FRACTURE	3.09	2.19	0.30	5.58
25624		TREAT WRIST BONE FRACTURE	4.56	3.51	0.55	8.62
25626	•	REPAIR WRIST BONE FRACTURE	6.15	4.94	0.81	11.90
25628	•	REPAIR WRIST BONE FRACTURE	8.29	5.73	0.93	14.95
25630		TREAT WRIST BONE FRACTURE	2.97	2.14	0.28	5.39
25635		TREAT WRIST BONE FRACTURE	4.43	3.27	0.50	8.20
25640	•	REPAIR WRIST BONE FRACTURE	5.66	4.14	0.82	10.62
25645	•	REPAIR WRIST BONE FRACTURE	7.28	4.62	0.87	12.77
25650		REPAIR WRIST BONE FRACTURE	3.05	2.41	0.31	5.77
25660	•	TREAT WRIST DISLOCATION	4.80	1.61	0.22	6.63
25665	•	REPAIR WRIST DISLOCATION	6.10	3.43	0.40	9.93
25670	•	REPAIR WRIST DISLOCATION	7.96	8.74	1.37	18.09
25675	•	TREAT WRIST DISLOCATION	4.72	2.16	0.31	7.21
25676	•	REPAIR WRIST DISLOCATION	8.01	5.76	0.87	14.66
25680	•	TREAT WRIST FRACTURE	6.99	4.89	0.74	11.62
25685	•	REPAIR WRIST FRACTURE	9.80	9.20	1.50	20.50
25690	•	TREAT WRIST DISLOCATION	5.49	3.70	0.54	9.73
25695	•	REPAIR WRIST DISLOCATION	8.44	8.07	1.33	17.84
25800		FUSION OF WRIST JOINT	9.78	11.29	1.86	22.93
25805	•	FUSION/GRAFT OF WRIST JOINT	11.23	13.72	2.22	27.17
25810		FUSION/GRAFT OF WRIST JOINT	10.40	13.32	2.16	25.88
25820	•	FUSION OF HAND BONES	7.59	8.96	1.51	18.06
25825		FUSION HAND BONES WITH GRAFT	9.16	12.61	2.07	23.74
25900		AMPUTATION OF FOREARM	8.66	7.37	1.36	17.39
26010		DRAINAGE OF FINGER ABSCESS	0.84	0.47	0.05	1.36
26011		DRAINAGE OF FINGER ABSCESS	1.26	1.44	0.22	2.92
26020		DRAIN HAND TENDON SHEATH	4.26	3.26	0.54	8.06
26025		DRAINAGE OF PALM BURSA	4.60	3.90	0.63	9.13
26030		DRAINAGE OF PALM BURSA(S)	5.69	5.01	0.82	11.52
26034		TREAT HAND BONE LESION	5.57	3.96	0.68	10.21
26035	•	DECOMPRESS FINGERS/HAND	6.65	4.67	0.76	12.08
26037	•	DECOMPRESS FINGERS/HAND	7.10	14.53	2.36	24.01
26040		RELEASE PALM CONTRACTURE	3.27	2.76	0.46	6.50
26045		RELEASE PALM CONTRACTURE	5.80	4.22	0.73	10.55
26055		INCISE FINGER TENDON SHEATH	2.71	3.59	0.59	6.89
26060		INCISION OF FINGER TENDON	2.68	0.85	0.12	3.65
26070		EXPLORE/TREAT HAND JOINT	3.55	2.22	0.30	6.07
26075		EXPLORE/TREAT FINGER JOINT	3.66	3.31	0.51	7.48
26080		EXPLORE/TREAT FINGER JOINT	3.34	3.11	0.50	6.95
26160		REMOVE TENDON SHEATH LESION	3.19	2.42	0.42	6.03
26255	•	EXTENSIVE HAND SURGERY	12.38	7.91	1.36	21.66
26320		REMOVAL OF IMPLANT FROM HAND	3.87	2.38	0.36	6.66
26418		REPAIR FINGER TENDON	4.37	3.57	0.60	8.54
26550	•	CONSTRUCT THUMB REPLACEMENT	14.34	1.23	0.14	15.71
26562	•	REPAIR OF WEB FINGER	9.80	1.47	0.11	11.38
26600		TREAT METACARPAL FRACTURE	2.19	1.51	0.18	3.88
26605		TREAT METACARPAL FRACTURE	2.55	2.25	0.33	5.13
26860		FUSION OF FINGER JOINT	4.76	4.44	0.71	9.91

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
26910		AMPUTATE METACARPAL BONE	7.63	5.27	0.95	13.85
26951		AMPUTATION OF FINGER/THUMB	4.69	2.85	0.49	8.03
26990		DRAINAGE OF PELVIS LESION	7.19	2.91	0.49	10.59
27025	•	INCISION OF HIP FASCIA	10.80	7.56	1.12	19.48
27040		BIOPSY OF SOFT TISSUES	3.39	0.70	0.10	4.19
27077	•	EXTENSIVE HIP SURGERY	22.61	16.45	2.81	41.87
27091		REMOVAL OF HIP PROSTHESIS	21.75	20.04	3.19	44.98
27093		INJECTION FOR HIP X-RAY	1.63	0.80	0.10	2.53
27095		INJECTION FOR HIP X-RAY	1.84	0.90	0.12	2.86
27097	•	REVISION OF HIP TENDON	8.59	5.85	0.96	15.40
27098	•	TRANSFER TENDON TO PELVIS	8.59	8.97	1.47	19.03
27100	•	TRANSFER OF ABDOMINAL MUSCLE	11.23	3.42	0.40	15.05
27105	•	TRANSFER OF SPINAL MUSCLE	11.96	2.76	0.29	15.01
27110	•	TRANSFER OF ILIOPSOAS MUSCLE	13.26	7.86	1.35	22.49
27111	•	TRANSFER OF ILIOPSOAS MUSCLE	12.16	5.63	0.74	18.53
27120	•	RECONSTRUCTION OF HIP SOCKET	17.45	13.07	2.14	32.66
27122		RECONSTRUCTION OF HIP SOCKET	14.40	18.34	2.97	35.71
27125		REVISE HIP WITH PROSTHESIS	14.04	19.66	3.17	36.87
27130		TOTAL HIP JOINT REPLACEMENT	19.85	30.58	4.66	55.26
27132		TOTAL HIP JOINT REPLACEMENT	22.78	33.70	5.43	61.91
27134		REVISE HIP JOINT REPLACEMENT	26.06	39.67	6.35	72.06
27137		REVISE HIP JOINT COMPONENT	19.64	31.93	5.14	56.91
27138		REVISE HIP JOINT COMPONENT	20.11	30.89	4.92	55.92
27140	•	TRANSPLANT OF FEMUR RIDGE	12.14	9.79	1.50	23.43
27146	•	INCISION OF HIP BONE	14.56	9.27	1.17	25.00
27147	•	REVISION OF HIP BONE	18.68	12.54	1.90	33.12
27151	•	INCISION OF HIP BONES	19.74	21.72	3.56	45.02
27156	•	REVISION OF HIP BONES	21.41	24.01	4.03	49.45
27158	•	REVISION OF PELVIS	19.23	12.04	1.82	33.09
27161	•	INCISION OF NECK OF FEMUR	16.15	13.38	2.24	31.75
27165		INCISION/FIXATION OF FEMUR	17.22	16.90	2.65	36.77
27170		REPAIR/GRAFT FEMUR HEAD/NECK	15.83	16.84	2.72	35.39
27175		TREAT SLIPPED EPIPHYSIS	7.36	1.22	0.19	8.77
27176	•	TREAT SLIPPED EPIPHYSIS	11.58	13.96	2.21	27.75
27177	•	REPAIR SLIPPED EPIPHYSIS	14.61	18.25	3.02	35.88
27178	•	REPAIR SLIPPED EPIPHYSIS	11.43	18.89	2.80	33.12
27179	•	REVISE HEAD/NECK OF FEMUR	12.42	13.22	2.17	27.81
27181	•	REPAIR SLIPPED EPIPHYSIS	14.85	7.42	1.65	23.72
27187		REINFORCE HIP BONES	13.35	17.82	2.83	34.00
27190		TREATMENT OF SACRUM FRACTURE	3.97	2.31	0.32	6.60
27192	•	REPAIR OF SACRUM FRACTURE	12.73	5.96	0.91	19.59
27195	•	TREAT PELVIS DISLOCATION	6.07	2.48	0.40	8.95
27196	•	TREAT PELVIS DISLOCATION	9.29	1.61	0.20	11.10
27200		TREAT TAIL BONE FRACTURE	2.71	1.37	0.15	4.23
27201	•	REPAIR TAIL BONE FRACTURE	5.83	2.63	0.46	9.12
27202	•	REPAIR TAIL BONE FRACTURE	6.92	3.71	0.49	11.12
27210		TREAT PELVIS FRACTURE	5.26	4.01	0.81	9.88
27212	•	REPAIR PELVIS FRACTURE(S)	9.22	5.07	0.81	15.10
27214		REPAIR PELVIS FRACTURE(S)	13.54	14.21	2.27	30.02
27220		TREAT HIP SOCKET FRACTURE	6.18	3.85	0.57	10.60
27222		TREAT HIP SOCKET FRACTURE	11.63	5.26	0.84	17.73
27224		REPAIR HIP SOCKET FRACTURE	15.60	11.38	1.97	28.95
27225		REPAIR HIP SOCKET FRACTURE	20.28	13.50	2.47	36.25
27230		TREAT FRACTURE OF FEMUR	5.67	3.08	0.37	9.12
27232		TREAT FRACTURE OF FEMUR	9.89	7.86	1.29	19.04
27234		REPAIR FRACTURE OF FEMUR	12.56	12.03	1.98	26.59
27236		REPAIR OF FEMUR FRACTURE	11.92	17.04	2.72	31.68

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PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
27236		REPAIR OF FEMUR FRACTURE	15.02	17.57	2.82	35.41
27238		TREATMENT OF FEMUR FRACTURE	7.25	3.99	0.53	11.77
27240		TREATMENT OF FEMUR FRACTURE	11.53	8.08	1.29	20.90
27244		REPAIR OF FEMUR FRACTURE	15.36	16.62	2.70	34.68
27252		TREAT HIP DISLOCATION	10.29	4.46	0.71	15.46
27280	•	FUSION OF SACROILIAC JOINT	12.55	5.20	0.92	18.67
27282	•	FUSION OF PUBIC BONES	11.23	13.03	2.26	25.52
27284	•	FUSION OF HIP JOINT	16.59	13.12	2.00	31.71
27286	•	FUSION OF HIP JOINT	16.63	15.80	2.22	34.65
27290	•	AMPUTATION OF LEG AT HIP	23.03	25.42	4.36	52.81
27295		AMPUTATION OF LEG AT HIP	16.30	16.81	3.00	36.20
27301		DRAIN THIGH/KNEE LESION	6.36	2.19	0.34	8.87
27303		DRAINAGE OF BONE LESION	8.17	5.74	0.94	14.85
27305		INCISE THIGH TENDON & FASCIA	5.76	3.36	0.63	9.75
27306	•	INCISION OF THIGH TENDON	4.55	2.07	0.33	6.95
27307	•	INCISION OF THIGH TENDONS	6.64	2.66	0.39	8.69
27310		EXPLORATION OF KNEE JOINT	8.77	10.05	1.57	20.39
27315	•	PARTIAL REMOVAL, THIGH NERVE	6.91	6.93	1.23	15.07
27320	•	PARTIAL REMOVAL, THIGH NERVE	6.27	7.02	0.99	14.26
27323		BIOPSY THIGH SOFT TISSUES	2.88	0.93	0.13	3.91
27324		BIOPSY THIGH SOFT TISSUES	4.90	2.29	0.39	7.47
27327		REMOVAL OF THIGH LESION	4.60	2.18	0.37	7.15
27328		REMOVAL OF THIGH LESION	5.65	4.05	0.72	10.42
27329		REMOVE TUMOR, THIGH/KNEE	12.47	10.68	1.96	25.10
27330		BIOPSY KNEE JOINT LINING	5.00	5.36	0.75	11.13
27331		EXPLORE/TREAT KNEE JOINT	5.84	9.69	1.54	17.07
27332		REMOVAL OF KNEE CARTILAGE	6.34	11.23	1.76	21.33
27333		REMOVAL OF KNEE CARTILAGE	7.23	11.01	1.77	20.01
27334		REMOVE KNEE JOINT LINING	6.45	11.43	1.80	21.68
27335		REMOVE KNEE JOINT LINING	9.78	13.22	2.13	25.11
27340		REMOVAL OF KNEECAP BURSA	4.15	4.06	0.66	8.86
27345		REMOVAL OF KNEE CYST	6.99	5.75	0.96	12.70
27350		REMOVAL OF KNEECAP	7.89	9.78	1.57	19.24
27355		REMOVE FEMUR LESION	7.50	7.46	1.20	16.15
27356	•	REMOVE FEMUR LESION/GRAFT	9.14	8.77	1.43	19.34
27357	•	REMOVE FEMUR LESION/GRAFT	10.22	9.72	1.58	21.53
27358	•	REMOVE FEMUR LESION/FIXATION	10.94	11.56	1.83	24.33
27360		PARTIAL REMOVAL LEG BONE(S)	9.29	8.87	1.45	19.61
27365		EXTENSIVE LEG SURGERY	14.70	10.83	1.85	27.38
27370		INJECTION FOR KNEE X-RAY	1.70	0.55	0.05	2.30
27380		REPAIR OF KNEECAP TENDON	7.04	8.36	1.36	16.75
27381		REPAIR/GRAFT KNEECAP TENDON	10.26	11.52	1.85	23.63
27385		REPAIR OF THIGH MUSCLE	7.62	9.02	1.44	18.08
27386		REPAIR/GRAFT OF THIGH MUSCLE	10.32	12.96	2.06	25.35
27390	•	INCISION OF THIGH TENDON	5.19	4.87	0.75	10.51
27391	•	INCISION OF THIGH TENDONS	7.06	5.66	0.94	13.67
27392	•	INCISION OF THIGH TENDONS	9.04	9.06	1.36	19.46
27393	•	LENGTHENING OF THIGH TENDON	6.32	5.79	0.95	13.06
27394	•	LENGTHENING OF THIGH TENDONS	8.46	5.63	0.92	15.01
27395	•	LENGTHENING OF THIGH TENDONS	11.64	10.70	1.68	24.02
27396	•	TRANSPLANT OF THIGH TENDON	7.78	8.80	1.37	17.95
27397	•	TRANSPLANTS OF THIGH TENDONS	9.90	12.62	2.07	24.60
27400	•	REVISE THIGH MUSCLES/TENDONS	8.99	10.38	1.63	21.00
27403	•	REPAIR OF KNEE CARTILAGE	8.28	8.51	1.39	18.18
27405		REPAIR OF KNEE LIGAMENT	8.46	10.46	1.72	20.64
27407	•	REPAIR OF KNEE LIGAMENT	10.03	7.26	1.34	18.63
27409	•	REPAIR OF KNEE LIGAMENTS	12.54	15.66	2.55	30.74

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
27418	•	REPAIR DEGENERATED KNEECAP	10.43	10.25	1.63	22.31
27420		REVISION OF UNSTABLE KNEECAP	9.71	11.62	1.83	23.16
27422		REVISION OF UNSTABLE KNEECAP	9.67	11.85	1.89	23.41
27424	•	REVISION/REMOVAL OF KNEECAP	9.70	12.26	1.92	23.88
27425		LATERAL RETINACULAR RELEASE	5.31	5.68	0.92	12.11
27427		RECONSTRUCTION, KNEE	9.22	14.14	2.25	25.61
27428	•	RECONSTRUCTION, KNEE	11.34	14.96	2.57	28.87
27429	•	RECONSTRUCTION, KNEE	12.60	19.66	3.21	35.67
27430		REVISION OF THIGH MUSCLES	9.48	9.24	1.48	20.20
27435		INCISION OF KNEE JOINT	9.30	6.66	1.06	17.02
27437		REVISE KNEECAP	8.23	9.30	1.40	18.93
27438		REVISE KNEECAP WITH IMPLANT	10.92	12.15	1.90	24.97
27440		REVISION OF KNEE JOINT	10.09	10.19	1.89	22.17
27441	•	REVISION OF KNEE JOINT	10.42	17.53	2.90	30.85
27442		REVISION OF KNEE JOINT	11.63	19.22	3.11	34.16
27443		REVISION OF KNEE JOINT	11.52	19.11	3.11	33.74
27445		REVISE KNEE JOINT, IMPLANT	17.41	19.02	3.02	39.45
27446		REVISION OF KNEE JOINT	15.97	25.79	4.06	45.82
27447		TOTAL KNEE REPLACEMENT	20.03	32.77	5.24	58.04
27448	•	INCISION OF FEMUR	10.89	13.30	2.13	26.32
27450		INCISION OF FEMUR	13.89	14.76	2.35	31.00
27454	•	REALIGNMENT OF FEMUR	13.02	11.67	2.15	26.84
27455		REALIGNMENT OF KNEE	12.78	11.96	1.95	26.69
27457		REALIGNMENT OF KNEE	13.38	12.43	1.99	27.80
27465	•	SHORTENING OF FEMUR	13.84	14.04	2.30	29.98
27466	•	LENGTHENING OF FEMUR	16.02	21.36	3.62	41.00
27468	•	REVISION OF FEMURS	16.78	23.69	3.86	46.33
27470		REPAIR OF FEMUR	15.74	12.52	2.11	30.37
27472		REPAIR/GRAFT OF FEMUR	17.42	20.43	3.25	41.10
27475	•	REPAIR OF FEMUR EPIPHYSIS	8.63	8.01	1.20	17.84
27477		REPAIR LOWER LEG EPIPHYSES	9.89	15.67	2.45	28.01
27479	•	REPAIR OF LEG EPIPHYSES	12.96	13.30	2.18	28.43
27485	•	REPAIR OF LEG EPIPHYSIS	8.82	5.44	0.72	14.98
27486		REVISE TOTAL KNEE REPAIR	17.67	28.65	4.56	50.88
27487		REVISE TOTAL KNEE REPAIR	23.05	39.31	6.31	68.67
27488		REMOVAL OF KNEE PROSTHESIS	15.37	15.83	2.54	33.84
27495		REINFORCE FEMUR	15.15	17.66	2.84	35.65
27500		TREATMENT OF FEMUR FRACTURE	7.21	4.97	0.72	12.90
27502		TREATMENT OF FEMUR FRACTURE	9.45	7.94	1.26	18.65
27504	•	REPAIR OF FEMUR FRACTURE	12.36	10.00	1.64	23.99
27506		REPAIR OF FEMUR FRACTURE	16.43	16.76	2.68	35.87
27508		TREATMENT OF FEMUR FRACTURE	6.32	4.26	0.65	11.23
27510		TREATMENT OF FEMUR FRACTURE	8.70	6.60	1.04	16.34
27512	•	REPAIR OF FEMUR FRACTURE	13.12	8.49	1.39	23.00
27514		REPAIR OF FEMUR FRACTURE	16.96	15.98	2.58	35.52
27516	•	TREATMENT OF FEMUR EPIPHYSIS	7.02	4.92	0.74	12.68
27517	•	TREATMENT OF FEMUR EPIPHYSIS	8.71	6.68	1.13	16.72
27518	•	REPAIR OF FEMUR EPIPHYSIS	12.28	6.53	1.07	19.88
27519	•	REPAIR OF FEMUR EPIPHYSIS	14.68	9.86	1.73	26.26
27520		TREAT KNEECAP FRACTURE	4.17	2.85	0.40	7.42
27522	•	REPAIR OF KNEECAP FRACTURE	7.64	3.28	0.54	11.46
27524		REPAIR OF KNEECAP FRACTURE	9.96	10.67	1.70	22.32
27530		TREATMENT OF KNEE FRACTURE	5.22	3.46	0.53	9.21
27532		TREATMENT OF KNEE FRACTURE	7.23	5.39	0.86	13.48
27534	•	REPAIR OF KNEE FRACTURE	11.70	5.09	0.75	17.54
27536		REPAIR OF KNEE FRACTURE	13.47	12.29	1.97	27.73
27537		REPAIR/GRAFT KNEE FRACTURE	17.30	17.06	2.67	38.03

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PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
27536	*	TREAT KNEE FRACTURE(S)	4.93	3.16	0.48	8.59
27540	*	REPAIR OF KNEE FRACTURE	13.15	11.22	1.77	26.14
27550		TREAT KNEE DISLOCATION	5.86	2.23	0.29	8.38
27552		TREAT KNEE DISLOCATION	7.85	3.49	0.55	11.89
27554	*	REPAIR OF KNEE DISLOCATION	10.51	11.96	1.96	24.43
27556	*	REPAIR OF KNEE DISLOCATION	14.25	12.87	2.02	29.14
27557	*	REPAIR OF KNEE DISLOCATION	16.79	15.25	2.54	34.58
27560		TREAT KNEECAP DISLOCATION	4.12	1.24	0.13	5.49
27562	*	TREAT KNEECAP DISLOCATION	5.82	2.54	0.37	8.73
27564	*	REPAIR KNEECAP DISLOCATION	9.43	1.16	0.14	10.73
27566		REPAIR KNEECAP DISLOCATION	12.20	10.86	1.71	24.77
27590		AMPUTATE LEG AT THIGH	11.46	9.54	1.88	22.87
27591		AMPUTATE LEG AT THIGH	11.78	12.33	2.20	26.31
27592		AMPUTATE LEG AT THIGH	9.31	8.34	1.67	19.32
27594		AMPUTATION FOLLOW-UP SURGERY	8.08	3.57	0.66	12.31
27596		AMPUTATION FOLLOW-UP SURGERY	10.23	7.77	1.50	19.50
27598		AMPUTATE LOWER LEG AT KNEE	10.17	10.44	1.84	22.45
27600		DECOMPRESSION OF LOWER LEG	5.34	3.48	0.65	9.47
27601	*	DECOMPRESSION OF LOWER LEG	6.31	3.53	0.70	9.54
27602		DECOMPRESSION OF LOWER LEG	7.04	4.09	0.77	11.90
27603		DRAIN LOWER LEG LESION	4.69	1.91	0.30	6.90
27610		EXPLORE/TREAT ANKLE JOINT	6.33	7.15	1.09	14.57
27613		BIOPSY LOWER LEG SOFT TISSUE	2.25	0.70	0.09	3.04
27614		BIOPSY LOWER LEG SOFT TISSUE	5.63	2.09	0.33	8.05
27615		REMOVE TUMOR, LOWER LEG	12.53	7.62	1.29	21.44
27618		REMOVE LOWER LEG LESION	5.24	1.97	0.29	7.50
27619		REMOVE LOWER LEG LESION	8.47	3.82	0.63	12.92
27620		EXPLORE, TREAT ANKLE JOINT	6.04	3.07	0.35	9.46
27625		REMOVE ANKLE JOINT LINING	6.38	5.77	1.29	13.44
27626	*	REMOVE ANKLE JOINT LINING	9.01	12.15	1.31	22.47
27630		REMOVAL OF TENDON LESION	4.94	3.01	0.44	8.39
27635		REMOVE LOWER LEG BONE LESION	7.75	8.36	1.32	17.45
27637	*	REMOVE/GRAFT LEG BONE LESION	9.70	10.07	1.69	21.46
27638	*	REMOVE/GRAFT LEG BONE LESION	10.51	9.71	1.62	21.84
27640		PARTIAL REMOVAL OF TIBIA	10.29	9.83	1.57	21.69
27641		PARTIAL REMOVAL OF FIBULA	8.87	7.24	1.19	17.30
27645	*	EXTENSIVE LOWER LEG SURGERY	13.96	11.79	2.02	27.77
27646	*	EXTENSIVE LOWER LEG SURGERY	12.42	15.43	2.45	30.30
27647	*	EXTENSIVE ANKLE/HEEL SURGERY	11.91	6.95	0.88	19.74
27648	*	INJECTION FOR ANKLE X-RAY	1.32	0.59	0.07	1.98
27650		REPAIR ACHILLES TENDON	7.67	9.25	1.46	18.38
27676	*	REPAIR LOWER LEG TENDONS	8.36	8.46	1.27	18.09
27750		TREATMENT OF TIBIA FRACTURE	4.21	3.31	0.48	8.00
27752		TREATMENT OF TIBIA FRACTURE	5.49	5.21	0.83	11.53
27754		REPAIR OF TIBIA FRACTURE	7.04	5.85	0.90	13.79
27756		REPAIR OF TIBIA FRACTURE	10.82	11.01	1.77	23.60
27758		REPAIR OF TIBIA FRACTURE	12.97	14.04	2.26	29.27
27760		TREATMENT OF ANKLE FRACTURE	3.52	2.42	0.33	6.27
27762		TREATMENT OF ANKLE FRACTURE	5.09	3.50	0.54	9.13
27764	*	REPAIR OF ANKLE FRACTURE	6.24	3.96	0.58	10.78
27766		REPAIR OF ANKLE FRACTURE	8.09	8.18	1.32	17.58
27780		TREATMENT OF FIBULA FRACTURE	3.30	1.95	0.23	5.48
27781		TREATMENT OF FIBULA FRACTURE	4.46	3.06	0.45	7.96
27782	*	REPAIR OF FIBULA FRACTURE	4.87	3.70	0.48	9.05
27784		REPAIR OF FIBULA FRACTURE	6.86	5.03	0.76	12.65
27786		TREATMENT OF ANKLE FRACTURE	3.62	2.46	0.33	6.40
27788		TREATMENT OF ANKLE FRACTURE	4.51	3.21	0.50	8.22

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
27790	*	REPAIR OF ANKLE FRACTURE	5.29	3.64	0.50	9.43
27792		REPAIR OF ANKLE FRACTURE	7.48	7.78	1.23	16.49
27800		TREAT LOWER LEG FRACTURES	4.28	3.46	0.47	8.21
27802		TREAT LOWER LEG FRACTURES	5.78	6.59	1.05	13.42
27804		REPAIR LOWER LEG FRACTURES	8.56	8.16	1.31	18.03
27806		REPAIR LOWER LEG FRACTURES	10.38	12.49	2.01	24.88
27808		TREATMENT OF ANKLE FRACTURE	3.67	2.75	0.38	6.80
27810		TREATMENT OF ANKLE FRACTURE	5.11	5.11	0.81	11.03
27812	*	REPAIR OF ANKLE FRACTURE	6.26	5.92	0.97	13.15
27814		REPAIR OF ANKLE FRACTURE	10.49	10.49	1.69	22.67
27816		TREATMENT OF ANKLE FRACTURE	3.78	3.70	0.53	8.01
27818		TREATMENT OF ANKLE FRACTURE	5.40	6.19	0.98	12.57
27820	*	REPAIR OF ANKLE FRACTURE	7.48	6.71	1.09	15.26
27822		REPAIR OF ANKLE FRACTURE	8.91	12.29	1.96	23.16
27860	*	FIXATION OF ANKLE JOINT	1.63	1.37	0.22	3.22
27870		FUSION OF ANKLE JOINT	11.07	14.53	2.30	27.90
27871	*	FUSION OF TIBIOFIBULAR JOINT	8.08	12.35	1.85	23.28
27880		AMPUTATION OF LOWER LEG	11.35	8.71	1.67	21.73
27881		AMPUTATION OF LOWER LEG	11.58	11.25	1.94	24.77
27882		AMPUTATION OF LOWER LEG	8.26	7.47	1.43	17.16
27884		AMPUTATION FOLLOW-UP SURGERY	7.86	3.01	0.57	11.44
27886		AMPUTATION FOLLOW-UP SURGERY	8.96	7.41	1.38	17.65
27888		AMPUTATION OF FOOT AT ANKLE	9.25	9.90	1.71	20.86
27889	*	AMPUTATION OF FOOT AT ANKLE	9.37	8.43	1.55	19.35
28001		DRAINAGE OF BURSA OF FOOT	2.00	0.53	0.05	2.58
28002		TREATMENT OF FOOT INFECTION	2.80	1.91	0.26	4.97
28003		TREATMENT OF FOOT INFECTION	7.95	2.91	0.44	11.30
28005		TREAT FOOT BONE LESION	5.15	4.06	0.61	12.62
28008		INCISION OF FOOT FASCIA	4.45	2.69	0.28	7.42
28010		INCISION OF TOE TENDON	3.16	3.34	0.29	6.79
28011		INCISION OF TOE TENDONS	4.24	1.72	0.19	6.15
28020		EXPLORATION OF A FOOT JOINT	5.04	4.04	0.52	9.60
28022		EXPLORATION OF A FOOT JOINT	4.69	2.64	0.29	7.62
28024		EXPLORATION OF A TOE JOINT	4.37	2.31	0.23	6.91
28030	*	REMOVAL OF FOOT NERVE	6.14	3.43	0.34	9.91
28035		DECOMPRESSION OF TIBIA NERVE	5.12	7.09	0.94	13.15
28043		EXCISION OF FOOT LESION	3.63	1.51	0.17	5.31
28045		EXCISION OF FOOT LESION	4.74	4.12	0.48	9.34
28046	*	RESECTION OF TUMOR, FOOT	10.00	5.18	0.74	15.92
28050	*	BIOPSY OF FOOT JOINT LINING	4.24	5.06	0.59	9.89
28052		BIOPSY OF FOOT JOINT LINING	3.93	3.53	0.38	7.84
28054	*	BIOPSY OF TOE JOINT LINING	3.40	2.03	0.24	5.67
28060		PARTIAL REMOVAL FOOT FASCIA	5.37	4.17	0.53	10.07
28062		REMOVAL OF FOOT FASCIA	6.61	7.29	0.89	14.79
28070	*	REMOVAL OF FOOT JOINT LINING	5.02	4.41	0.47	9.90
28072	*	REMOVAL OF FOOT JOINT LINING	4.60	3.04	0.39	8.03
28080		REMOVAL OF FOOT LESION	3.38	4.47	0.49	8.34
28086	*	EXCISE FOOT TENDON SHEATH	4.79	3.56	0.51	8.86
28088	*	EXCISE FOOT TENDON SHEATH	3.88	3.45	0.38	7.68
28090		REMOVAL OF FOOT LESION	4.54	3.09	0.35	7.98
28092		REMOVAL OF TOE LESIONS	3.71	1.99	0.23	5.93
28100		REMOVAL OF ANKLE/HEEL LESION	5.70	3.86	0.46	10.02
28102	*	REMOVE/GRAFT FOOT LESION	7.76	5.82	0.71	14.29
28103	*	REMOVE/GRAFT FOOT LESION	6.48	5.19	0.62	12.29
28104		REMOVAL OF FOOT LESION	5.15	4.50	0.51	10.16
28106	*	REMOVE/GRAFT FOOT LESION	7.17	5.31	0.65	13.13
28107	*	REMOVE/GRAFT FOOT LESION	5.49	5.10	0.51	11.10

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PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
28106		REMOVAL OF TOE LESIONS	4.26	4.39	0.40	9.05
28110		PART REMOVAL OF METATARSAL	4.06	3.51	0.39	7.95
28111		PART REMOVAL OF METATARSAL	4.93	5.09	0.66	10.68
28112		PART REMOVAL OF METATARSAL	4.50	3.97	0.45	8.92
28113		PART REMOVAL OF METATARSAL	4.34	4.27	0.47	9.08
28114		REMOVAL OF METATARSAL HEADS	7.61	10.54	1.48	19.63
28116	*	REVISION OF FOOT	6.55	5.51	0.58	12.64
28118		REMOVAL OF HEEL BONE	5.90	5.67	0.69	12.46
28119		REMOVAL OF HEEL SPUR	5.43	5.38	0.58	11.39
28120		PART REMOVAL OF ANKLE/HEEL	6.96	5.09	0.66	12.69
28122		PARTIAL REMOVAL OF FOOT BONE	6.56	4.63	0.57	11.76
28124		PARTIAL REMOVAL OF TOE	4.66	4.35	0.40	9.41
28126		PARTIAL REMOVAL OF TOE	3.61	3.94	0.38	7.93
28130	*	REMOVAL OF ANKLE BONE	7.79	7.14	0.86	15.80
28140		REMOVAL OF METATARSAL	6.86	5.03	0.63	12.52
28150		REMOVAL OF TOE	4.07	3.39	0.39	7.85
28153		PARTIAL REMOVAL OF TOE	3.62	4.01	0.34	7.97
28160		PARTIAL REMOVAL OF TOE	3.82	4.06	0.36	8.26
28171	*	EXTENSIVE FOOT SURGERY	9.53	5.69	0.83	15.76
28173	*	EXTENSIVE FOOT SURGERY	8.69	5.84	0.72	15.25
28175	*	EXTENSIVE FOOT SURGERY	5.93	4.31	0.47	10.71
28190		REMOVAL OF FOOT FOREIGN BODY	1.22	0.54	0.06	1.81
28192		REMOVAL OF FOOT FOREIGN BODY	4.77	1.77	0.22	6.76
28193		REMOVAL OF FOOT FOREIGN BODY	5.78	2.23	0.27	8.28
28285		REVISION OF HAMMERTOE	3.80	4.52	0.42	8.74
28292		CORRECTION OF BUNION	6.17	7.44	0.78	14.39
28470		TREAT METATARSAL FRACTURE	1.96	1.73	0.20	3.79
28705	*	FUSION OF FOOT BONES	11.36	11.37	1.68	24.41
28715		FUSION OF FOOT BONES	10.44	12.78	1.97	25.19
28725		FUSION OF FOOT BONES	9.21	10.07	1.54	20.82
28730		FUSION OF FOOT BONES	8.28	9.27	1.37	18.92
28735	*	FUSION OF FOOT BONES	10.89	10.10	1.47	22.26
28737	*	REVISION OF FOOT BONES	7.52	9.03	1.23	17.38
28740		FUSION OF FOOT BONES	6.56	5.09	0.71	12.32
28750		FUSION OF BIG TOE JOINT	5.06	5.43	0.63	11.32
28755		FUSION OF BIG TOE JOINT	4.76	3.67	0.45	8.88
28760		FUSION OF BIG TOE JOINT	5.81	5.08	0.60	11.43
28800		AMPUTATION OF MIDFOOT	7.83	6.85	1.22	15.90
28805		AMPUTATION THRU METATARSAL	8.01	6.55	1.29	15.82
28810		AMPUTATION TOE & METATARSAL	5.86	4.05	0.78	10.69
28820		AMPUTATION OF TOE	6.43	2.59	0.47	9.49
28825		PARTIAL AMPUTATION OF TOE	4.42	2.42	0.41	7.25
29000		APPLICATION OF BODY CAST	2.15	1.41	0.14	3.70
29010	*	APPLICATION OF BODY CAST	1.95	1.90	0.24	4.09
29015	*	APPLICATION OF BODY CAST	2.32	0.82	0.11	3.25
29020	*	APPLICATION OF BODY CAST	2.00	1.30	0.16	3.46
29025	*	APPLICATION OF BODY CAST	2.31	0.57	0.10	2.98
29035		APPLICATION OF BODY CAST	1.64	1.73	0.27	3.64
29040	*	APPLICATION OF BODY CAST	2.12	1.46	0.18	3.76
29044	*	APPLICATION OF BODY CAST	2.01	2.07	0.33	4.41
29046	*	APPLICATION OF BODY CAST	2.32	1.99	0.30	4.61
29049	*	APPLICATION OF SHOULDER CAST	0.72	0.36	0.05	1.13
29055		APPLICATION OF SHOULDER CAST	1.65	1.18	0.17	3.00
29058	*	APPLICATION OF SHOULDER CAST	1.16	0.66	0.09	1.91
29065		APPLICATION OF LONG ARM CAST	0.70	0.90	0.12	1.62
29075		APPLICATION OF FOREARM CAST	0.58	0.62	0.09	1.29
29085		APPLY HAND/WRIST CAST	0.70	0.81	0.07	1.28

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
29105		APPLY LONG ARM SPLINT	0.70	0.54	0.07	1.31
29125		APPLY FOREARM SPLINT	0.40	0.37	0.04	0.81
29126		APPLY FOREARM SPLINT	0.58	0.40	0.06	1.04
29130		APPLICATION OF FINGER SPLINT	0.30	0.17	0.02	0.49
29131		APPLICATION OF FINGER SPLINT	0.37	0.28	0.04	0.67
29200		STRAPPING OF CHEST	0.46	0.26	0.02	0.74
29220		STRAPPING OF LOW BACK	0.45	0.37	0.05	0.87
29240		STRAPPING OF SHOULDER	0.52	0.25	0.03	0.80
29260		STRAPPING OF ELBOW OR WRIST	0.37	0.21	0.03	0.61
29280		STRAPPING OF HAND OR FINGER	0.32	0.18	0.02	0.52
29305		APPLICATION OF HIP CAST	1.93	1.68	0.30	4.11
29325		APPLICATION OF HIP CASTS	2.23	1.93	0.27	4.43
29345		APPLICATION OF LONG LEG CAST	1.25	1.03	0.16	2.44
29355		APPLICATION OF LONG LEG CAST	1.39	1.14	0.17	2.70
29358		APPLY LONG LEG CAST BRACE	1.28	1.96	0.31	3.57
29365		APPLICATION OF LONG LEG CAST	1.02	0.88	0.14	2.04
29405		APPLY SHORT LEG CAST	0.69	0.79	0.11	1.59
29425		APPLY SHORT LEG CAST	0.83	0.95	0.13	1.91
29435		APPLY SHORT LEG CAST	1.02	1.20	0.18	2.40
29440		ADDITION OF WALKER TO CAST	0.37	0.24	0.03	0.64
29450		APPLICATION OF LEG CAST	0.84	0.38	0.04	1.26
29505		APPLICATION LONG LEG SPLINT	0.50	0.60	0.07	1.17
29515		APPLICATION LOWER LEG SPLINT	0.55	0.49	0.05	1.09
29580		APPLICATION OF PASTE BOOT	0.37	0.31	0.04	0.72
29590		APPLICATION OF FOOT SPLINT	0.57	0.28	0.03	0.88
29705		REMOVAL/REVISION OF CAST	0.94	0.36	0.05	1.35
29815		SHOULDER ARTHROSCOPY	6.10	4.45	0.70	11.25
29819	*	SHOULDER ARTHROSCOPY/SURGERY	7.78	9.64	1.57	18.99
29820		SHOULDER ARTHROSCOPY/SURGERY	7.23	10.32	1.69	19.24
29821	*	SHOULDER ARTHROSCOPY/SURGERY	7.90	13.52	2.16	23.58
29822		SHOULDER ARTHROSCOPY/SURGERY	7.59	10.60	1.73	20.12
29823		SHOULDER ARTHROSCOPY/SURGERY	8.35	14.73	2.39	25.47
29825		SHOULDER ARTHROSCOPY/SURGERY	7.79	12.58	2.00	22.37
29826	*	SHOULDER ARTHROSCOPY/SURGERY	9.25	13.25	2.17	24.67
29830	*	ELBOW ARTHROSCOPY	5.96	3.06	0.43	9.49
29834	*	ELBOW ARTHROSCOPY/SURGERY	8.52	10.89	1.78	19.19
29835	*	ELBOW ARTHROSCOPY/SURGERY	6.72	9.67	1.58	17.97
29836	*	ELBOW ARTHROSCOPY/SURGERY	7.83	9.40	1.43	18.66
29837	*	ELBOW ARTHROSCOPY/SURGERY	7.14	11.81	1.93	20.88
29838	*	ELBOW ARTHROSCOPY/SURGERY	7.89	10.29	1.66	19.84
29840	*	WRIST ARTHROSCOPY	5.72	2.56	0.34	8.61
29843	*	WRIST ARTHROSCOPY/SURGERY	8.23	5.84	0.91	12.78
29844	*	WRIST ARTHROSCOPY/SURGERY	8.60	11.37	1.93	19.90
29845	*	WRIST ARTHROSCOPY/SURGERY	7.80	8.12	1.33	17.25
29846	*	WRIST ARTHROSCOPY/SURGERY	7.01	9.71	1.63	18.35
29847	*	WRIST ARTHROSCOPY/SURGERY	7.36	4.27	0.56	12.19
29870		KNEE ARTHROSCOPY	5.24	4.22	0.68	10.14
29871		KNEE ARTHROSCOPY/DRAINAGE	6.66	6.97	0.99	14.63
29874		KNEE ARTHROSCOPY/SURGERY	7.22	10.40	1.61	19.23
29875		KNEE ARTHROSCOPY/SURGERY	6.54	10.91	1.78	19.21
29876		KNEE ARTHROSCOPY/SURGERY	7.87	12.78	2.07	22.62
29877		KNEE ARTHROSCOPY/SURGERY	7.49	11.89	1.91	21.29
29879		KNEE ARTHROSCOPY/SURGERY	8.10	13.72	2.21	24.03
29880		KNEE ARTHROSCOPY/SURGERY	8.60	14.53	2.34	25.47
29881		KNEE ARTHROSCOPY/SURGERY	7.93	12.02	1.94	21.89
29882		KNEE ARTHROSCOPY/SURGERY	8.75	12.43	2.03	23.21
29883		KNEE ARTHROSCOPY/SURGERY	9.56	17.76	2.90	30.22

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
29884		KNEE ARTHROSCOPY/SURGERY	7.35	10.08	1.64	19.07
29885	•	KNEE ARTHROSCOPY/SURGERY	9.17	14.64	2.40	26.21
29886	•	KNEE ARTHROSCOPY/SURGERY	7.57	8.26	1.35	17.18
29887	•	KNEE ARTHROSCOPY/SURGERY	9.12	11.33	1.84	22.29
29888	•	KNEE ARTHROSCOPY/SURGERY	11.35	15.38	2.45	29.18
29889	•	KNEE ARTHROSCOPY/SURGERY	11.43	10.64	1.74	23.81
29894	•	ANKLE ARTHROSCOPY/SURGERY	7.38	9.80	1.53	18.71
29895	•	ANKLE ARTHROSCOPY/SURGERY	7.15	8.89	1.53	18.57
29897	•	ANKLE ARTHROSCOPY/SURGERY	7.35	8.80	1.32	17.47
29898		ANKLE ARTHROSCOPY/SURGERY	8.54	12.05	1.85	22.44
29909		ARTHROSCOPY OF JOINT	8.89	16.62	2.63	28.14
30100		INTRANASAL BIOPSY	1.18	0.71	0.06	1.95
30110		REMOVAL OF NOSE POLYP(S)	1.66	1.35	0.14	3.17
30115		REMOVAL OF NOSE POLYP(S)	4.51	2.57	0.27	7.35
30117		REMOVAL OF INTRANASAL LESION	3.24	2.28	0.25	5.77
30118		REMOVAL OF INTRANASAL LESION	9.80	7.32	0.84	17.96
30120		REVISION OF NOSE	5.47	7.09	1.01	13.57
30124		REMOVAL OF NOSE LESION	3.19	1.30	0.15	4.64
30125	•	REMOVAL OF NOSE LESION	7.22	5.56	0.69	13.47
30130		REMOVAL OF TURBINATE BONES	3.37	1.69	0.17	5.13
30140		REMOVAL OF TURBINATE BONES	3.49	2.72	0.30	6.51
30200		INJECTION TREATMENT OF NOSE	0.51	0.34	0.04	0.89
30210		NASAL SINUS THERAPY	0.37	0.21	0.02	0.60
30220		INSERT NASAL SEPTAL BUTTON	1.58	1.40	0.14	3.12
30300		REMOVE NASAL FOREIGN BODY	0.57	0.46	0.04	1.07
30400	•	RECONSTRUCTION OF NOSE	9.90	8.37	1.15	19.42
30410		RECONSTRUCTION OF NOSE	12.07	13.12	1.79	26.98
30420		RECONSTRUCTION OF NOSE	10.59	17.96	2.27	30.81
30430	•	REVISION OF NOSE	6.78	3.20	0.46	10.44
30435	•	REVISION OF NOSE	8.87	7.41	0.99	17.27
30450	•	REVISION OF NOSE	11.66	8.83	1.18	21.67
30520		REPAIR OF NASAL SEPTUM	8.69	9.25	1.01	18.15
30540	•	REPAIR NASAL DEFECT	7.83	4.06	0.37	12.35
30560		RELEASE OF NASAL ADHESIONS	0.77	0.56	0.06	1.39
30580		REPAIR UPPER JAW FISTULA	6.69	6.00	0.56	13.45
30600		REPAIR MOUTH/NOSE FISTULA	6.24	2.89	0.27	9.40
30620		RECONSTRUCTION INNER NOSE	8.24	9.86	1.11	19.21
30630		REPAIR NASAL SEPTUM DEFECT	8.58	5.06	0.60	14.24
30805		CAUTERIZATION INNER NOSE	2.11	0.91	0.10	3.12
30901		CONTROL OF NOSEBLEED	0.90	0.56	0.05	1.51
30905		CONTROL OF NOSEBLEED	1.71	1.80	0.17	3.68
30915		LIGATION NASAL SINUS ARTERY	7.14	4.27	0.45	11.86
30930		THERAPY FRACTURE OF NOSE	1.30	0.70	0.07	2.07
31000		IRRIGATION MAXILLARY SINUS	0.78	0.46	0.05	1.29
31002		IRRIGATION SPHENOID SINUS	1.58	0.41	0.04	2.04
31030		EXPLORATION MAXILLARY SINUS	8.94	5.59	0.91	15.44
31032		EXPLORE SINUS,REMOVE POLYPS	6.50	10.07	1.06	17.63
31087	•	REMOVAL OF FRONTAL SINUS	12.88	11.76	1.72	26.37
31090		EXPLORATION OF SINUSES	9.19	20.12	2.20	31.51
31200		REMOVAL OF ETHMOID SINUS	7.92	4.33	0.46	12.71
31201		REMOVAL OF ETHMOID SINUS	8.41	8.99	0.74	18.11
31230		REMOVAL OF UPPER JAW	22.37	22.37	2.53	47.27
31250		NASAL ENDOSCOPY, DIAGNOSTIC	1.16	1.37	0.14	2.67
31252		NASAL ENDOSCOPY, POLYPECTOMY	3.17	2.91	0.32	6.40
31254		REVISION OF ETHMOID SINUS	4.79	6.13	0.66	11.58
31255		REMOVAL OF ETHMOID SINUS	7.39	10.44	1.12	18.95
31256		EXPLORATION MAXILLARY SINUS	3.50	3.74	0.41	7.65

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
31258	•	NASAL ENDOSCOPY, SURGICAL	2.45	1.50	0.16	4.21
31260		ENDOSCOPY, MAXILLARY SINUS	2.31	2.16	0.24	4.71
31263	•	ENDOSCOPY, MAXILLARY SINUS	4.41	4.75	0.59	9.75
31265		ENDOSCOPY, MAXILLARY SINUS	3.16	5.55	0.60	9.33
31267		ENDOSCOPY, MAXILLARY SINUS	3.26	7.13	0.77	11.16
31268	•	ENDOSCOPY, MAXILLARY SINUS	3.39	6.12	0.59	10.10
31270	•	ENDOSCOPY, SPHENOID SINUS	2.81	1.00	0.10	3.91
31275		SPHENOID ENDOSCOPY, SURGICAL	3.93	5.92	0.64	10.49
31277		SPHENOID ENDOSCOPY, SURGICAL	4.37	7.25	0.78	12.40
31300		REMOVAL OF LARYNX LESION	11.34	8.42	1.08	21.84
31320	•	DIAGNOSTIC INCISION LARYNX	10.26	4.46	0.57	15.33
31360		REMOVAL OF LARYNX	16.28	20.50	2.32	41.19
31365		REMOVAL OF LARYNX	27.36	26.71	3.27	59.36
31367		PARTIAL REMOVAL OF LARYNX	20.91	17.83	1.93	40.67
31368		PARTIAL REMOVAL OF LARYNX	25.17	26.85	3.24	57.06
31370		PARTIAL REMOVAL OF LARYNX	18.98	14.70	1.74	36.40
31375		PARTIAL REMOVAL OF LARYNX	16.84	12.43	1.32	30.59
31380	•	PARTIAL REMOVAL OF LARYNX	17.89	17.29	1.87	36.85
31382	•	PARTIAL REMOVAL OF LARYNX	18.11	16.85	1.86	36.82
31390	•	REMOVAL OF LARYNX & PHARYNX	24.78	23.32	3.41	51.51
31395	•	RECONSTRUCT LARYNX & PHARYNX	30.71	37.61	4.48	72.80
31400	•	REVISION OF LARYNX	12.14	15.05	1.76	28.95
31420	•	REMOVAL OF EPIGLOTTIS	11.26	11.49	1.19	23.94
31500		INSERTION OF WINDPIPE AIRWAY	5.35	1.19	0.13	6.67
31505		DIAGNOSTIC LARYNGOSCOPY	0.85	0.41	0.04	1.10
31512	•	REMOVAL OF LARYNX LESION	2.18	2.34	0.27	4.80
31515		LARYNGOSCOPY FOR ASPIRATION	1.90	1.07	0.12	3.09
31520	•	DIAGNOSTIC LARYNGOSCOPY	2.71	1.68	0.19	4.58
31525		DIAGNOSTIC LARYNGOSCOPY	2.60	2.26	0.25	5.03
31526		DIAGNOSTIC LARYNGOSCOPY	2.73	3.23	0.35	6.31
31527	•	LARYNGOSCOPY FOR TREATMENT	3.48	2.90	0.29	6.67
31528		LARYNGOSCOPY AND DILATATION	2.52	2.69	0.30	5.51
31529	•	LARYNGOSCOPY AND DILATATION	2.86	2.94	0.30	6.10
31530		OPERATIVE LARYNGOSCOPY	3.81	3.65	0.38	7.64
31531		OPERATIVE LARYNGOSCOPY	3.86	5.33	0.60	9.88
31535		OPERATIVE LARYNGOSCOPY	3.36	4.30	0.48	8.14
31536		OPERATIVE LARYNGOSCOPY	3.56	5.90	0.63	10.09
31540		OPERATIVE LARYNGOSCOPY	4.39	5.76	0.63	10.78
31541		OPERATIVE LARYNGOSCOPY	3.76	7.38	0.78	11.84
31570		LARYNGOSCOPY WITH INJECTION	4.10	6.08	0.65	10.83
31571		LARYNGOSCOPY WITH INJECTION	3.75	6.82	0.74	11.31
31575		FIBEROPTIC LARYNGOSCOPY	1.16	1.58	0.17	2.92
31576		FIBEROPTIC LARYNGOSCOPY	2.10	2.89	0.31	5.30
31577		FIBEROPTIC LARYNGOSCOPY	2.82	3.43	0.34	6.39
31578	•	FIBEROPTIC LARYNGOSCOPY	3.02	4.43	0.48	7.91
31579		FIBEROPTIC LARYNGOSCOPY	2.41	2.09	0.23	4.73
31580	•	REVISION OF LARYNX	11.79	14.14	1.56	27.39
31582	•	REVISION OF LARYNX	14.37	16.14	1.96	34.46
31584	•	REPAIR OF LARYNX FRACTURE	14.73	14.18	1.65	30.57
31585	•	REPAIR OF LARYNX FRACTURE	4.68	1.76	0.18	6.62
31586	•	REPAIR OF LARYNX FRACTURE	7.69	5.74	0.57	14.00
31588		REVISION OF LARYNX	11.82	13.82	1.51	27.15
31590	•	REINNERVATE LARYNX	11.89	12.99	2.05	26.93
31595	•	LARYNX NERVE SURGERY	8.05	2.53	0.34	10.92
31600		INCISION OF WINDPIPE	7.47	4.22	0.69	12.38
31601	•	INCISION OF WINDPIPE	6.84	4.37	0.80	11.81
31603		INCISION OF WINDPIPE	6.94	4.44	0.69	12.07

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PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
31605		INCISION OF NECK CARTILAGES	5.57	4.24	0.50	10.31
31610		INCISION OF WINDPIPE	8.36	6.10	0.83	15.29
31612		PUNCTURE/CLEAR WINDPIPE	2.80	1.06	0.10	3.96
31613		REPAIR WINDPIPE OPENING	4.50	2.03	0.24	6.77
31614		REPAIR WINDPIPE OPENING	6.50	6.79	0.74	14.03
31615		VISUALIZATION OF WINDPIPE	2.22	1.97	0.22	4.41
31622		DIAGNOSTIC BRONCHOSCOPY	2.97	3.78	0.35	7.10
31625		BRONCHOSCOPY WITH BIOPSY	3.57	3.95	0.36	7.88
31626		BRONCHOSCOPY WITH BIOPSY	3.49	5.26	0.37	9.14
31629		BRONCHOSCOPY WITH BIOPSY	3.44	4.63	0.34	8.41
31630		BRONCHOSCOPY WITH REPAIR	4.05	3.92	0.53	8.50
31631		BRONCHOSCOPY WITH DILATION	4.64	3.54	0.42	8.60
31635		REMOVE FOREIGN BODY, AIRWAY	3.82	4.63	0.56	9.10
31640		BRONCHOSCOPY & REMOVE LESION	5.24	4.36	0.60	10.20
31641		BRONCHOSCOPY, TREAT BLOCKAGE	5.35	7.90	0.85	14.10
31645		BRONCHOSCOPY, CLEAR AIRWAYS	3.36	3.71	0.30	7.37
31646		BRONCHOSCOPY,RECLEAR AIRWAYS	2.89	3.22	0.28	6.39
31656		BRONCHOSCOPY,INJECT FOR XRAY	2.30	3.44	0.31	6.05
31659		BRONCHOSCOPIC PROCEDURES	2.79	4.56	0.35	7.70
31755		REPAIR OF WINDPIPE	8.80	6.95	0.75	16.30
31760	•	REPAIR OF WINDPIPE	22.19	5.22	0.68	28.09
31800	•	REPAIR OF WINDPIPE INJURY	9.41	3.90	0.55	13.86
31805	•	REPAIR OF WINDPIPE INJURY	10.80	6.64	0.79	18.03
31820		CLOSURE OF WINDPIPE LESION	4.36	3.36	0.44	8.16
32000		DRAINAGE OF CHEST	0.98	0.93	0.08	1.99
32005		TREAT LUNG LINING CHEMICALLY	3.11	1.11	0.15	4.37
32020		TREATMENT OF COLLAPSED LUNG	4.18	2.73	0.44	7.35
32095		BIOPSY THROUGH CHEST WALL	5.34	7.57	1.30	17.21
32100		EXPLORATION/BIOPSY OF CHEST	11.83	11.67	2.18	25.68
32220		RELEASE OF LUNG	16.01	16.36	3.10	35.46
32400		NEEDLE BIOPSY CHEST LINING	1.20	1.49	0.11	2.80
32405		BIOPSY, LUNG OR MEDIASTINUM	2.31	2.15	0.18	4.64
32420		PUNCTURE/CLEAR LUNG	1.32	1.48	0.12	2.92
32440		REMOVAL OF LUNG	18.32	19.31	3.69	41.32
32480		PARTIAL REMOVAL OF LUNG	18.57	18.21	3.43	40.21
32500		PARTIAL REMOVAL OF LUNG	12.49	14.20	2.69	29.38
32815	•	CLOSE BRONCHIAL FISTULA	18.19	15.12	2.64	36.95
32820	•	RECONSTRUCT INJURED CHEST	20.69	16.21	3.15	40.05
32900		REMOVAL OF RIB(S)	18.84	9.66	1.68	29.98
32960		THERAPEUTIC PNEUMOTHORAX	1.28	0.73	0.09	2.10
33010		DRAINAGE OF HEART SAC	1.52	1.55	0.13	3.20
33025		INCISION OF HEART SAC	8.42	14.11	2.62	25.15
33100		REMOVAL OF HEART SAC	17.86	20.47	3.64	41.96
33120		REMOVAL OF HEART LESION	23.56	25.51	4.01	53.08
33207		INSERTION OF HEART PACEMAKER	7.21	9.64	1.42	18.27
33208		INSERTION OF HEART PACEMAKER	8.54	12.39	1.66	22.59
33210		INSERTION OF HEART ELECTRODE	4.68	3.52	0.27	8.47
33212		INSERTION OF PULSE GENERATOR	5.31	5.52	0.90	11.73
33219		REPAIR OF PACEMAKER	4.62	5.93	0.94	11.69
33300		REPAIR OF HEART WOUND	15.54	12.64	2.27	30.45
33320	•	REPAIR MAJOR BLOOD VESSEL(S)	14.24	14.22	2.50	30.96
33405		REPLACEMENT OF AORTIC VALVE	25.25	32.30	5.66	63.21
33425		REPAIR OF MITRAL VALVE	25.02	31.66	5.45	62.13
33430		REPLACEMENT OF MITRAL VALVE	25.12	36.79	6.45	68.36
33460		REVISION OF TRICUSPID VALVE	20.13	25.97	4.65	50.75
33474	•	REVISION OF PULMONARY VALVE	20.02	21.63	2.40	44.05
33512		CORONARY ARTERIES BYPASS	25.63	38.90	6.81	71.34

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
33542		REMOVAL OF HEART LESION	25.47	25.97	4.85	56.29
33641		REPAIR HEART SEPTUM DEFECT	16.26	26.70	4.71	47.67
33670	•	REPAIR OF HEART CHAMBERS	23.56	6.67	0.73	31.16
33681		REPAIR HEART SEPTUM DEFECT	22.88	27.66	4.88	55.64
33692	•	REPAIR OF HEART DEFECTS	25.04	30.66	7.75	75.45
33720		REPAIR OF HEART DEFECT	25.34	0.95	0.08	26.36
33738	•	REVISION OF HEART CHAMBER	13.46	7.56	0.92	21.93
33750		MAJOR VESSEL SHUNT	16.24	2.46	0.28	21.00
33766	•	MAJOR VESSEL SHUNT	19.15	15.84	3.10	38.19
33820	•	REVISE MAJOR VESSEL	12.01	14.57	2.86	29.44
33860		ASCENDING AORTA GRAFT	31.25	20.11	3.41	65.77
33875		THORACIC AORTA GRAFT	27.00	32.70	5.83	65.53
33910	•	REMOVE LUNG ARTERY EMBOLI	25.66	16.89	3.53	48.08
33945		TRANSPLANTATION OF HEART	44.13	49.24	9.17	102.54
33970		AORTIC CIRCULATION ASSIST	11.60	7.76	1.03	20.39
33971		AORTIC CIRCULATION ASSIST	9.78	5.18	0.83	15.74
34001		REMOVAL OF ARTERY CLOT	12.42	9.84	1.77	23.53
34051	•	REMOVAL OF ARTERY CLOT	14.47	9.68	1.37	24.72
34101		REMOVAL OF ARTERY CLOT	9.20	8.68	1.78	19.73
34111		REMOVAL OF ARM ARTERY CLOT	7.63	7.92	1.64	17.09
34151		REMOVAL OF ARTERY CLOT	19.83	12.32	2.46	34.61
34201		REMOVAL OF ARTERY CLOT	9.88	9.18	1.83	20.84
34203		REMOVAL OF LEG ARTERY CLOT	11.75	8.90	1.75	22.30
34401		REMOVAL OF VEIN CLOT	12.36	7.71	1.33	21.40
34421		REMOVAL OF VEIN CLOT	8.46	7.63	1.54	18.62
34451	•	REMOVAL OF VEIN CLOT	15.04	11.02	2.20	27.16
34471		REMOVAL OF VEIN CLOT	9.68	3.51	0.54	13.73
34490		REMOVAL OF VEIN CLOT	6.91	7.58	1.60	16.04
34501	•	REPAIR VALVE, FEMORAL VEIN	9.01	6.71	1.22	16.94
34510	•	TRANSPOSITION OF VEIN VALVE	9.95	13.09	1.70	24.74
34520	•	CROSS-OVER VEIN GRAFT	10.23	11.42	1.43	23.08
34530	•	LEG VEIN FUSION	9.26	12.16	2.51	23.95
35001		REPAIR DEFECT OF ARTERY	17.21	17.90	3.39	37.60
35002	•	REPAIR ARTERY RUPTURE, NECK	17.55	20.67	3.91	42.11
35005	•	REPAIR DEFECT OF ARTERY	15.62	13.48	2.22	31.27
35011		REPAIR DEFECT OF ARTERY	14.13	14.48	2.95	31.56
35013	•	REPAIR ARTERY RUPTURE, ARM	13.96	15.56	3.29	33.15
35021	•	REPAIR DEFECT OF ARTERY	15.20	16.90	2.62	34.72
35022	•	REPAIR ARTERY RUPTURE, CHEST	17.00	16.58	2.03	35.56
35045		REPAIR DEFECT OF ARM ARTERY	10.59	12.79	2.59	25.97
35081		REPAIR DEFECT OF ARTERY	21.03	22.76	4.44	49.13
35082		REPAIR ARTERY RUPTURE, AORTA	22.03	24.25	4.84	51.10
35091		REPAIR DEFECT OF ARTERY	22.33	23.89	4.47	50.69
35092		REPAIR ARTERY RUPTURE, BELLY	24.00	27.47	5.45	56.92
35102		REPAIR DEFECT OF ARTERY	21.00	23.60	4.61	49.21
35103		REPAIR ARTERY RUPTURE, GROIN	26.93	27.73	5.52	60.18
35111	•	REPAIR DEFECT OF ARTERY	16.06	14.47	3.22	33.75
35112	•	REPAIR ARTERY RUPTURE,SPLEEN	17.77	14.33	3.03	35.13
35121		REPAIR DEFECT OF ARTERY	17.89	20.48	3.93	42.30
35122	•	REPAIR ARTERY RUPTURE, BELLY	19.14	19.81	4.37	43.32
35131		REPAIR DEFECT OF ARTERY	15.06	16.80	3.26	37.94
35132		REPAIR ARTERY RUPTURE, GROIN	19.63	19.51	3.73	43.07
35141		REPAIR DEFECT OF ARTERY	14.11	15.67	3.07	32.85
35142		REPAIR ARTERY RUPTURE, THIGH	15.00	12.33	2.70	30.03
35151		REPAIR DEFECT OF ARTERY	14.93	16.16	3.10	34.19
35152		REPAIR ARTERY RUPTURE, KNEE	15.40	4.00	1.08	20.48
35161		REPAIR DEFECT OF ARTERY	16.37	13.68	2.84	33.09

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HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
35182	*	REPAIR BLOOD VESSEL LESION	16.67	8.89	2.05	27.81
35180	*	REPAIR BLOOD VESSEL LESION	12.92	8.99	1.58	23.49
35182	*	REPAIR BLOOD VESSEL LESION	16.03	10.87	1.65	28.55
35184		REPAIR BLOOD VESSEL LESION	11.46	9.58	1.93	22.97
35188	*	REPAIR BLOOD VESSEL LESION	13.05	10.44	2.02	25.51
35189	*	REPAIR BLOOD VESSEL LESION	17.07	12.32	2.16	31.55
35190		REPAIR BLOOD VESSEL LESION	11.15	10.60	2.19	23.94
35201		REPAIR BLOOD VESSEL LESION	9.46	10.05	1.91	21.42
35206		REPAIR BLOOD VESSEL LESION	9.01	10.25	2.04	21.30
35207		REPAIR BLOOD VESSEL LESION	8.15	9.39	1.65	19.19
35211	*	REPAIR BLOOD VESSEL LESION	15.16	14.77	2.82	35.75
35216	*	REPAIR BLOOD VESSEL LESION	17.40	14.49	2.81	34.70
35221		REPAIR BLOOD VESSEL LESION	13.42	10.84	2.14	26.40
35226		REPAIR BLOOD VESSEL LESION	8.68	10.62	2.03	21.33
35231		REPAIR BLOOD VESSEL LESION	11.43	14.33	2.67	28.43
35236		REPAIR BLOOD VESSEL LESION	9.96	12.90	2.57	25.43
35241	*	REPAIR BLOOD VESSEL LESION	18.54	9.97	1.92	30.43
35246	*	REPAIR BLOOD VESSEL LESION	14.05	6.42	0.63	21.10
35251	*	REPAIR BLOOD VESSEL LESION	14.88	16.06	3.56	36.50
35256		REPAIR BLOOD VESSEL LESION	10.77	12.35	2.37	25.49
35261	*	REPAIR BLOOD VESSEL LESION	11.05	10.03	2.07	23.15
35266		REPAIR BLOOD VESSEL LESION	10.26	11.82	2.43	24.51
35271	*	REPAIR BLOOD VESSEL LESION	18.20	14.50	2.98	35.68
35276	*	REPAIR BLOOD VESSEL LESION	17.89	10.87	2.28	31.04
35281	*	REPAIR BLOOD VESSEL LESION	14.83	16.43	3.22	34.48
35286		REPAIR BLOOD VESSEL LESION	11.45	11.54	2.30	25.29
35301		RECHANNELING OF ARTERY	14.76	15.28	2.97	33.01
35311		RECHANNELING OF ARTERY	15.71	23.44	4.89	44.04
35321		RECHANNELING OF ARTERY	10.71	14.11	2.93	27.75
35331		RECHANNELING OF ARTERY	15.96	12.35	2.42	30.75
35341		RECHANNELING OF ARTERY	15.22	16.14	3.69	37.05
35351		RECHANNELING OF ARTERY	12.40	15.74	3.13	31.27
35355		RECHANNELING OF ARTERY	13.57	16.16	3.14	32.89
35361		RECHANNELING OF ARTERY	16.87	20.06	4.00	41.03
35363	*	RECHANNELING OF ARTERY	18.57	23.31	4.50	46.38
35371		RECHANNELING OF ARTERY	11.15	13.30	2.65	27.10
35381		RECHANNELING OF ARTERY	12.54	14.71	2.92	30.17
35450		REPAIR ARTERIAL BLOCKAGE	9.58	12.93	1.33	23.84
35452	*	REPAIR ARTERIAL BLOCKAGE	10.66	13.69	1.88	26.23
35454		REPAIR ARTERIAL BLOCKAGE	12.24	9.28	1.53	23.03
35456		REPAIR ARTERIAL BLOCKAGE	10.22	10.26	1.64	22.12
35458	*	REPAIR ARTERIAL BLOCKAGE	10.91	9.17	1.70	21.78
35501		ARTERY BYPASS GRAFT	16.58	17.91	3.18	37.67
35506		ARTERY BYPASS GRAFT	15.34	20.03	3.80	39.17
35507	*	ARTERY BYPASS GRAFT	15.33	18.21	3.68	37.22
35508	*	ARTERY BYPASS GRAFT	15.37	18.31	4.11	37.79
35509	*	ARTERY BYPASS GRAFT	15.15	16.70	3.85	37.70
35511	*	ARTERY BYPASS GRAFT	14.82	16.49	3.41	36.72
35515	*	ARTERY BYPASS GRAFT	15.04	20.36	3.64	39.04
35516	*	ARTERY BYPASS GRAFT	15.16	17.57	3.58	36.31
35518	*	ARTERY BYPASS GRAFT	14.45	17.84	3.43	35.72
35521		ARTERY BYPASS GRAFT	13.99	14.82	2.77	31.58
35526	*	ARTERY BYPASS GRAFT	15.27	19.58	3.81	38.66
35531		ARTERY BYPASS GRAFT	16.06	20.95	4.05	41.06
35533		ARTERY BYPASS GRAFT	18.11	21.85	4.60	42.56
35536	*	ARTERY BYPASS GRAFT	16.59	20.79	4.20	41.58
35541		ARTERY BYPASS GRAFT	15.78	20.07	3.73	39.58

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
35546		ARTERY BYPASS GRAFT	16.90	22.27	4.43	43.60
35548	*	ARTERY BYPASS GRAFT	16.81	15.80	3.51	36.12
35549		ARTERY BYPASS GRAFT	18.06	23.83	4.69	46.58
35551		ARTERY BYPASS GRAFT	17.79	16.96	3.88	40.63
35556		ARTERY BYPASS GRAFT	16.02	19.65	3.89	39.56
35558		ARTERY BYPASS GRAFT	12.03	17.18	3.29	32.50
35560		ARTERY BYPASS GRAFT	16.64	20.85	4.06	41.75
35563	*	ARTERY BYPASS GRAFT	14.10	4.26	1.15	19.51
35565		ARTERY BYPASS GRAFT	14.71	18.34	3.60	36.65
35566		ARTERY BYPASS GRAFT	16.43	20.96	4.15	41.54
35571		ARTERY BYPASS GRAFT	15.23	19.91	3.97	39.11
35582		VEIN BYPASS GRAFT	15.77	24.17	5.00	44.94
35583		VEIN BYPASS GRAFT	14.96	21.69	4.32	40.99
35585		VEIN BYPASS GRAFT	17.90	24.15	4.88	46.93
35587		VEIN BYPASS GRAFT	16.43	22.47	4.31	43.21
35601		ARTERY BYPASS GRAFT	14.78	18.62	3.26	36.66
35606		ARTERY BYPASS GRAFT	14.91	18.06	3.62	36.58
35612	*	ARTERY BYPASS GRAFT	15.28	17.51	3.46	36.25
35616		ARTERY BYPASS GRAFT	14.90	17.68	3.85	36.43
35621		ARTERY BYPASS GRAFT	14.06	19.96	3.97	37.99
35626	*	ARTERY BYPASS GRAFT	15.58	20.80	4.10	40.48
35631		ARTERY BYPASS GRAFT	19.67	18.29	3.65	41.61
35636	*	ARTERY BYPASS GRAFT	14.74	19.37	3.57	37.68
35637	*	ARTERY BYPASS GRAFT	14.90	18.02	3.66	36.58
35638	*	ARTERY BYPASS GRAFT	14.21	21.45	4.36	40.02
35641		ARTERY BYPASS GRAFT	21.96	21.25	4.23	47.44
35642	*	ARTERY BYPASS GRAFT	15.16	10.39	1.50	27.05
35645	*	ARTERY BYPASS GRAFT	15.16	21.36	3.92	40.44
35646		ARTERY BYPASS GRAFT	16.16	25.03	4.97	46.16
35650		ARTERY BYPASS GRAFT	13.86	17.81	3.70	35.37
35651		ARTERY BYPASS GRAFT	15.44	25.15	4.89	45.48
35654		ARTERY BYPASS GRAFT	14.96	23.32	4.69	42.97
35656		ARTERY BYPASS GRAFT	15.43	18.86	3.77	38.06
35661		ARTERY BYPASS GRAFT	12.56	17.05	3.37	32.97
35663	*	ARTERY BYPASS GRAFT	14.10	18.67	3.93	36.90
35665		ARTERY BYPASS GRAFT	14.53	18.51	3.72	36.76
35666		ARTERY BYPASS GRAFT	18.81	20.21	4.03	43.05
35671		ARTERY BYPASS GRAFT	16.16	21.70	4.20	42.06
35681		ARTERY BYPASS GRAFT	18.15	13.27	2.71	34.13
35701		EXPLORATION, CAROTID ARTERY	5.56	6.59	1.21	13.36
35721		EXPLORATION, FEMORAL ARTERY	7.93	4.96	1.00	13.89
35741		EXPLORATION POPLITEAL ARTERY	8.37	5.40	1.08	14.85
35761		EXPLORATION OF ARTERY/VEIN	7.96	5.43	1.05	14.44
35800		EXPLORE NECK VESSELS	8.44	4.90	0.90	14.24
35820		EXPLORE CHEST VESSELS	12.36	8.19	1.48	22.03
35840		EXPLORE ABDOMINAL VESSELS	11.23	7.35	1.47	20.05
35860		EXPLORE LIMB VESSELS	8.20	5.42	1.07	14.69
35870		REPAIR VESSEL GRAFT DEFECT	16.16	14.22	2.91	33.29
35875		REMOVAL OF CLOT IN GRAFT	9.06	8.54	1.73	19.33
35900		REMOVE VESSEL GRAFT	10.45	6.90	1.41	18.76
35910		REVISE CIRCULATION	15.86	12.57	2.45	30.88
36000		ESTABLISH ACCESS TO VEIN	0.33	0.44	0.03	0.80
36010		ESTABLISH ACCESS TO VEIN	2.58	2.15	0.33	5.06
36100		ESTABLISH ACCESS TO ARTERY	3.53	2.35	0.26	6.14
36120		ESTABLISH ACCESS TO ARTERY	3.86	2.40	0.30	6.56
36140		ESTABLISH ACCESS TO ARTERY	3.79	1.43	0.25	5.47
36145		ARTERY TO VEIN SHUNT	2.48	2.71	0.32	5.51

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PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
36160		ESTABLISH ACCESS TO AORTA	4.45	2.44	0.38	7.27
36200		ESTABLISH ACCESS TO AORTA	3.66	2.87	0.28	6.81
36215		ESTABLISH ACCESS TO AORTA	4.75	1.52	0.15	6.42
36230		ESTABLISH ACCESS TO ARTERIES	5.05	3.10	0.25	8.40
36245		ESTABLISH ACCESS TO AORTA	5.39	1.50	0.14	7.03
36260		INSERTION OF INFUSION PUMP	9.84	6.86	1.42	18.12
36261		REVISION OF INFUSION PUMP	5.36	0.90	0.21	6.47
36262		REMOVAL OF INFUSION PUMP	3.93	1.80	0.37	6.10
36400		ESTABLISH ACCESS TO VEIN	1.12	0.09	0.01	1.22
36405		ESTABLISH ACCESS TO VEIN	0.64	0.32	0.02	0.96
36406		ESTABLISH ACCESS TO VEIN	1.02	0.14	0.01	1.17
36410		ESTABLISH ACCESS TO VEIN	0.63	0.23	0.02	0.88
36420		ESTABLISH ACCESS TO VEIN	2.16	0.40	0.03	2.59
36425		ESTABLISH ACCESS TO VEIN	1.96	0.09	0.03	2.08
36430		BLOOD TRANSFUSION SERVICE	1.18	0.46	0.03	1.67
36440	•	BLOOD TRANSFUSION SERVICE	0.61	0.52	0.04	1.17
36450	•	EXCHANGE TRANSFUSION SERVICE	2.37	0.14	0.01	2.52
36455		EXCHANGE TRANSFUSION SERVICE	2.58	2.74	0.31	5.63
36470		INJECTION THERAPY OF VEIN	0.67	0.26	0.03	0.96
36471		INJECTION THERAPY OF VEINS	0.88	0.36	0.04	1.28
36488		INSERTION OF CATHETER, VEIN	1.20	0.98	0.13	2.31
36489		INSERTION OF CATHETER, VEIN	1.30	1.08	0.17	2.55
36490		INSERTION OF CATHETER, VEIN	1.54	1.37	0.20	3.11
36491		INSERTION OF CATHETER, VEIN	1.70	1.83	0.29	3.82
36495		IMPLANT INFUSION PUMP	5.12	4.96	1.06	11.16
36496		REVISE INFUSION PUMP	5.09	2.90	0.52	8.41
36497		REMOVE INFUSION PUMP	3.43	1.90	0.37	5.60
36500		INSERTION OF CATHETER, VEIN	1.67	0.10	0.02	1.79
36510		INSERTION OF CATHETER, VEIN	0.83	0.32	0.02	1.17
36520		PLASMA AND/OR CELL EXCHANGE	2.46	1.66	0.10	4.21
36600		WITHDRAWAL OF ARTERIAL BLOOD	0.33	0.24	0.02	0.59
36620		ESTABLISH ACCESS TO ARTERY	1.22	0.66	0.13	2.01
36625		ESTABLISH ACCESS TO ARTERY	2.23	0.87	0.18	3.28
36640		INSERTION CATHETER, ARTERY	2.23	2.02	0.31	4.56
36660	•	INSERTION CATHETER, ARTERY	1.13	0.61	0.05	1.79
36600		INSERTION OF CANNULA	3.69	2.22	0.27	6.18
36810		INSERTION OF CANNULA	5.78	4.32	0.67	10.77
36815		INSERTION OF CANNULA	4.53	3.00	0.80	8.22
36620		INSERTION OF CANNULA	4.39	6.93	1.43	12.75
36821		ARTERY-VEIN FUSION	8.91	7.61	1.55	18.07
36825		ARTERY-VEIN GRAFT	9.83	11.58	2.28	23.79
36830		ARTERY-VEIN GRAFT	8.27	11.61	2.43	22.51
36860		CANNULA DECLOTTING	4.60	1.66	0.27	6.75
36861		CANNULA DECLOTTING	3.77	4.48	0.91	9.17
37140		REVISION OF CIRCULATION	16.96	13.90	2.95	33.80
37145	•	REVISION OF CIRCULATION	14.04	17.14	1.75	32.93
37160		REVISION OF CIRCULATION	17.00	13.27	2.78	33.05
37180	•	REVISION OF CIRCULATION	17.12	18.81	3.85	40.78
37181		SPLICE SPLEEN/KIDNEY VEINS	18.20	14.36	2.79	35.37
37190		REPAIR OF CIRCULATION DEFECT	9.89	6.76	1.45	18.10
37565		LIGATION OF NECK VEIN	4.80	3.72	0.88	9.20
37600		LIGATION OF NECK ARTERY	6.82	6.08	0.77	12.77
37605	•	LIGATION OF NECK ARTERY	8.63	5.15	0.96	14.74
37606	•	LIGATION OF NECK ARTERY	9.37	6.24	0.63	16.24
37609		TEMPORAL ARTERY PROCEDURE	2.42	2.29	0.39	5.10
37615	•	LIGATION OF NECK ARTERY	8.45	3.99	0.86	13.20
37616		LIGATION OF CHEST ARTERY	15.60	4.10	0.76	20.46

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
37617		LIGATION OF ABDOMEN ARTERY	15.08	6.31	1.27	22.66
37618		LIGATION OF EXTREMITY ARTERY	6.23	5.27	1.05	12.55
37620		REVISION OF MAJOR VEIN	11.17	9.73	1.87	22.77
37650		REVISION OF MAJOR VEIN	5.50	3.86	0.48	9.84
37660	•	REVISION OF MAJOR VEIN	10.25	5.71	1.02	16.98
37700		REVISE LEG VEIN	3.76	3.63	0.73	8.12
37720		REMOVAL OF LEG VEIN	6.85	5.17	1.04	13.06
37730		REMOVAL OF LEG VEINS	7.76	6.93	1.39	16.10
37735		REMOVAL OF LEG VEINS/LESION	10.52	8.16	1.62	20.30
37760		REVISION OF LEG VEINS	6.26	7.61	1.55	15.42
37780	•	REVISION OF LEG VEIN	4.02	1.93	0.35	6.30
37785		REVISE SECONDARY VARICOSITY	3.78	0.99	0.18	4.95
38100		REMOVAL OF SPLEEN, TOTAL	12.73	8.80	1.85	23.38
38101	•	REMOVAL OF SPLEEN, PARTIAL	12.50	5.89	1.13	19.52
38115		REPAIR OF RUPTURED SPLEEN	13.69	7.43	1.44	22.56
38200	•	INJECTION FOR SPLEEN X-RAY	3.30	1.53	0.14	4.97
38230	•	BONE MARROW COLLECTION	3.36	7.59	0.74	11.69
38300		DRAINAGE LYMPH NODE LESION	1.03	0.59	0.09	1.71
38305		DRAINAGE LYMPH NODE LESION	4.50	1.91	0.34	6.75
38308		INCISION OF LYMPH CHANNELS	4.83	3.07	0.42	8.32
38380	•	THORACIC DUCT PROCEDURE	6.93	5.99	0.96	13.88
38381	•	THORACIC DUCT PROCEDURE	8.72	7.10	1.41	17.23
38382	•	THORACIC DUCT PROCEDURE	9.22	4.28	1.00	14.50
38500		BIOPSY/REMOVAL,LYMPH NODE(S)	3.01	1.59	0.30	4.90
38505		NEEDLE BIOPSY,LYMPH NODE(S)	1.64	1.11	0.16	2.91
38510		BIOPSY/REMOVAL,LYMPH NODE(S)	4.13	2.61	0.45	7.19
38520		BIOPSY/REMOVAL,LYMPH NODE(S)	5.15	3.09	0.59	8.83
38525		BIOPSY/REMOVAL,LYMPH NODE(S)	4.64	2.70	0.57	7.91
38530	•	BIOPSY/REMOVAL,LYMPH NODE(S)	6.18	3.02	0.60	9.80
38542		EXPLORE DEEP NODE(S), NECK	5.75	4.31	0.60	10.66
38550		REMOVAL NECK/ARMPIT LESION	6.28	3.11	0.62	10.01
38555		REMOVAL NECK/ARMPIT LESION	10.53	5.91	1.09	17.53
38562		REMOVAL, PELVIC LYMPH NODES	10.25	6.74	1.17	18.16
38564		REMOVAL, ABDOMEN LYMPH NODES	10.61	6.86	1.38	18.85
38700		REMOVAL OF LYMPH NODES, NECK	9.28	9.31	1.24	19.83
38720		REMOVAL OF LYMPH NODES, NECK	13.05	16.76	2.15	31.96
38724		REMOVAL OF LYMPH NODES, NECK	14.05	14.78	2.07	30.90
38740		REMOVE ARMPIT LYMPH NODES	6.67	4.52	0.96	12.15
38745		REMOVE ARMPITS LYMPH NODES	8.59	8.45	1.80	18.84
38760		REMOVE GROIN LYMPH NODES	7.83	6.44	1.31	15.58
38765		REMOVE GROIN LYMPH NODES	13.46	10.73	2.14	26.33
38770		REMOVE PELVIS LYMPH NODES	13.26	15.61	1.75	30.62
38780		REMOVE ABDOMEN LYMPH NODES	16.11	16.46	3.20	35.77
38790		INJECTION FOR LYMPHATIC XRAY	1.85	2.45	0.22	4.52
38794	•	ACCESS THORACIC LYMPH DUCT	4.30	1.85	0.24	6.39
39010		EXPLORATION OF MEDIASTINUM	12.14	9.84	1.62	23.60
39020		EXPLORATION OF MEDIASTINUM	11.52	13.48	2.41	27.41
39400		VISUALIZATION OF MEDIASTINUM	4.88	5.54	1.03	11.45
39501		REPAIR DIAPHRAGM LACERATION	11.64	9.19	1.49	22.32
39502		REPAIR PARAESOPHAGEAL HERNIA	15.07	12.28	2.52	29.87
39503	•	REPAIR OF DIAPHRAGM HERNIA	16.73	6.95	0.99	24.67
39520		REPAIR OF DIAPHRAGM HERNIA	12.38	12.81	2.50	27.69
39530	•	REPAIR OF DIAPHRAGM HERNIA	15.11	14.40	2.81	32.32
39531	•	REPAIR OF DIAPHRAGM HERNIA	15.70	16.78	3.01	35.49
39540		REPAIR OF DIAPHRAGM HERNIA	13.34	9.37	1.84	24.55
39541		REPAIR OF DIAPHRAGM HERNIA	13.83	12.39	2.41	28.63
39545	•	REVISION OF DIAPHRAGM	13.05	16.10	3.07	32.22

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
39547	*	REVISION OF DIAPHRAGM	13.49	11.69	1.43	26.61
40490		BIOPSY OF LIP	1.71	0.76	0.07	2.54
40500		PARTIAL EXCISION OF LIP	6.71	7.15	0.97	14.83
40510		PARTIAL EXCISION OF LIP	4.85	5.61	0.76	11.22
40520		PARTIAL EXCISION OF LIP	4.82	4.61	0.70	10.13
40525		RECONSTRUCT LIP WITH FLAP	7.71	9.42	1.45	18.58
40527	*	RECONSTRUCT LIP WITH FLAP	9.27	11.24	1.65	22.16
40530		PARTIAL REMOVAL OF LIP	5.47	4.77	0.70	10.94
40650		REPAIR LIP	3.47	3.66	0.47	7.60
40652	*	REPAIR LIP	4.12	5.05	0.73	9.90
40654	*	REPAIR LIP	4.97	6.83	0.94	12.54
40700	*	REPAIR CLEFT LIP	11.80	2.94	0.30	15.04
41000		DRAINAGE OF MOUTH LESION	0.78	0.70	0.07	1.55
41005	*	DRAINAGE OF MOUTH LESION	0.92	0.61	0.06	1.59
41006	*	DRAINAGE OF MOUTH LESION	3.22	1.20	0.12	4.54
41007	*	DRAINAGE OF MOUTH LESION	3.06	1.26	0.13	4.45
41008		DRAINAGE OF MOUTH LESION	3.36	1.03	0.10	4.49
41009	*	DRAINAGE OF MOUTH LESION	3.56	1.23	0.12	4.91
41010	*	INCISION OF TONGUE FOLD	1.64	0.41	0.04	2.09
41015	*	DRAINAGE OF MOUTH LESION	3.95	0.87	0.09	4.91
41016	*	DRAINAGE OF MOUTH LESION	4.91	1.36	0.14	6.41
41017		DRAINAGE OF MOUTH LESION	5.31	1.10	0.10	6.51
41018	*	DRAINAGE OF MOUTH LESION	5.58	1.92	0.18	7.68
41100		BIOPSY OF TONGUE	1.68	0.81	0.08	2.57
41105		BIOPSY OF TONGUE	1.47	1.03	0.11	2.61
41108		BIOPSY OF FLOOR OF MOUTH	1.06	0.88	0.09	2.03
41110		EXCISION OF TONGUE LESION	1.55	1.21	0.13	2.89
41112		EXCISION OF TONGUE LESION	2.80	2.45	0.26	5.51
41113		EXCISION OF TONGUE LESION	3.27	3.08	0.32	6.67
41114	*	EXCISION OF TONGUE LESION	8.37	5.65	0.69	14.71
41115	*	EXCISION OF TONGUE FOLD	1.80	1.26	0.12	3.20
41116		EXCISION OF MOUTH LESION	2.51	2.36	0.26	5.15
41120		PARTIAL REMOVAL OF TONGUE	9.38	7.57	0.90	17.85
41130		PARTIAL REMOVAL OF TONGUE	10.90	9.41	1.17	21.48
41135		TONGUE AND NECK SURGERY	20.19	21.45	2.63	44.27
41140	*	REMOVAL OF TONGUE	24.92	13.52	1.85	40.29
41145	*	TONGUE REMOVAL; NECK SURGERY	22.80	11.51	2.05	36.16
41150		TONGUE, MOUTH, JAW SURGERY	20.57	19.79	2.57	42.93
41153		TONGUE, MOUTH, NECK SURGERY	22.50	19.18	2.49	44.17
41155		TONGUE, JAW, & NECK SURGERY	28.69	31.63	3.89	62.21
41250		REPAIR TONGUE LACERATION	1.16	1.01	0.10	2.27
41251	*	REPAIR TONGUE LACERATION	1.54	0.92	0.10	2.56
41252	*	REPAIR TONGUE LACERATION	2.29	2.14	0.23	4.66
41500	*	FIXATION OF TONGUE	3.72	1.32	0.10	5.14
41510	*	TONGUE TO LIP SURGERY	3.53	4.32	0.57	8.42
41520	*	RECONSTRUCTION, TONGUE FOLD	2.79	1.41	0.13	4.33
42000		DRAINAGE MOUTH ROOF LESION	0.73	0.61	0.05	1.39
42100		BIOPSY ROOF OF MOUTH	1.34	0.79	0.08	2.21
42104		EXCISION LESION, MOUTH ROOF	1.69	1.00	0.16	3.45
42106		EXCISION LESION, MOUTH ROOF	2.90	2.16	0.21	5.17
42107		EXCISION LESION, MOUTH ROOF	4.46	4.33	0.46	9.25
42145		REPAIR,PALATE,PHARYNX/UVULA	7.48	14.13	1.51	23.12
42160		TREATMENT MOUTH ROOF LESION	1.85	1.31	0.14	3.30
42182	*	REPAIR PALATE	4.48	2.03	0.21	6.72
42200	*	RECONSTRUCT CLEFT PALATE	9.18	9.18	0.94	18.25
42205	*	RECONSTRUCT CLEFT PALATE	9.51	9.66	0.81	19.98
42210	*	RECONSTRUCT CLEFT PALATE	10.63	20.59	1.56	33.06

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
42215	*	RECONSTRUCT CLEFT PALATE	8.95	11.67	1.26	22.08
42220	*	RECONSTRUCT CLEFT PALATE	7.06	7.70	1.15	15.91
42225	*	RECONSTRUCT CLEFT PALATE	9.66	11.88	1.85	23.39
42226	*	LENGTHENING OF PALATE	10.02	8.90	0.87	19.79
42235	*	REPAIR PALATE	7.96	5.35	0.47	13.78
42281	*	INSERTION, PALATE PROSTHESIS	1.67	3.00	0.29	5.16
42300		DRAINAGE OF SALIVARY GLAND	1.65	0.94	0.11	2.56
42305		DRAINAGE OF SALIVARY GLAND	5.83	1.97	0.24	8.14
42310		DRAINAGE OF SALIVARY GLAND	1.06	0.90	0.10	2.06
42320	*	DRAINAGE OF SALIVARY GLAND	1.85	1.75	0.21	3.81
42325	*	CREATE SALIVARY CYST DRAIN	2.83	1.84	0.19	4.86
42326	*	CREATE SALIVARY CYST DRAIN	3.86	2.61	0.19	6.58
42330		REMOVAL OF SALIVARY STONE	2.29	1.09	0.11	3.49
42335		REMOVAL OF SALIVARY STONE	3.49	2.34	0.25	5.99
42340		REMOVAL OF SALIVARY STONE	4.75	3.56	0.42	8.73
42400		BIOPSY OF SALIVARY GLAND	0.47	0.77	0.10	1.34
42408		EXCISION OF SALIVARY CYST	4.89	2.79	0.30	7.69
42409	*	DRAINAGE OF SALIVARY CYST	2.88	2.69	0.27	5.74
42410		EXCISE PAROTID GLAND/LESION	9.44	5.36	0.85	15.65
42415		EXCISE PAROTID GLAND/LESION	14.80	13.38	1.77	30.03
42420		EXCISE PAROTID GLAND/LESION	18.86	15.45	1.94	35.47
42425		EXCISE PAROTID GLAND/LESION	13.13	10.88	1.41	25.52
42426		EXCISE PAROTID GLAND/LESION	24.41	23.19	3.35	52.96
42440		EXCISION SUBMAXILLARY GLAND	7.02	8.32	1.02	16.36
42450		EXCISION SUBLINGUAL GLAND	4.95	3.18	0.32	8.15
42500		REPAIR SALIVARY DUCT	4.31	4.37	0.47	9.15
42505	*	REPAIR SALIVARY DUCT	8.29	7.41	0.87	14.57
42507	*	PAROTID DUCT DIVERSION	6.85	6.79	0.90	14.02
42508	*	PAROTID DUCT DIVERSION	9.16	12.34	1.42	22.94
42509	*	PAROTID DUCT DIVERSION	11.77	4.25	0.72	16.74
42510	*	PAROTID DUCT DIVERSION	8.20	2.19	0.21	10.59
42600	*	CLOSURE OF SALIVARY FISTULA	4.96	3.63	0.44	9.13
42650		DILATION OF SALIVARY DUCT	0.90	0.39	0.04	1.03
42700		DRAINAGE OF TONSIL ABSCESS	0.83	0.82	0.09	1.84
42720		DRAINAGE OF THROAT ABSCESS	2.77	1.67	0.20	4.64
42800		BIOPSY OF THROAT	1.42	0.76	0.08	2.26
42802		BIOPSY OF THROAT	1.56	1.01	0.11	2.70
42804		BIOPSY OF UPPER NOSE/THROAT	1.27	1.06	0.12	2.45
42806		BIOPSY OF UPPER NOSE/THROAT	1.63	1.36	0.15	3.14
42808		EXCISE PHARYNX LESION	2.39	2.11	0.23	4.73
42809		REMOVE PHARYNX FOREIGN BODY	1.86	0.81	0.08	2.75
42810		EXCISION OF NECK CYST	4.22	2.42	0.37	7.01
42815		EXCISION OF NECK CYST	7.16	8.71	1.13	17.02
42820	*	REMOVE TONSILS AND ADENOIDS	3.82	2.42	0.32	6.56
42821		REMOVE TONSILS AND ADENOIDS	4.36	4.03	0.48	8.87
42825	*	REMOVAL OF TONSILS	3.40	3.75	0.45	7.60
42826		REMOVAL OF TONSILS	3.39	4.06	0.45	7.87
42830	*	REMOVAL OF ADENOIDS	2.64	2.23	0.31	5.18
42831	*	REMOVAL OF ADENOIDS	2.77	2.82	0.27	5.56
42836	*	REMOVAL OF ADENOIDS	3.29	1.84	0.20	5.33
42842		EXTENSIVE SURGERY OF THROAT	8.63	6.30	0.71	15.64
42844	*	EXTENSIVE SURGERY OF THROAT	13.51	10.66	1.29	25.65
42845	*	EXTENSIVE SURGERY OF THROAT	23.84	10.55	1.25	35.04
42860		EXCISION OF TONSIL TAGS	2.27	1.75	0.19	4.21
42870	*	EXCISION OF LINGUAL TONSIL	6.49	2.80	0.25	9.04
42880		EXCISE NOSE/THROAT LESION	6.89	4.16	0.47	11.04
42890		PARTIAL REMOVAL OF PHARYNX	12.40	8.58	0.97	21.95

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PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
42892	•	REVISION OF PHARYNGEAL WALLS	14.82	10.99	1.28	27.09
42894	•	REVISION OF PHARYNGEAL WALLS	21.98	14.67	1.69	38.34
42900	•	REPAIR THROAT WOUND	5.31	2.85	0.31	8.47
42950		RECONSTRUCTION OF THROAT	8.18	9.84	1.09	19.11
42955	•	SURGICAL OPENING OF THROAT	6.90	2.80	0.34	10.04
42960	•	CONTROL THROAT BLEEDING	2.43	1.01	0.11	3.55
42961	•	CONTROL THROAT BLEEDING	5.50	1.79	0.19	7.48
42962	•	CONTROL THROAT BLEEDING	7.05	2.77	0.31	10.13
42970		CONTROL NOSE/THROAT BLEEDING	5.07	1.00	0.09	6.16
42971	•	CONTROL NOSE/THROAT BLEEDING	5.90	2.91	0.33	9.14
42972	•	CONTROL NOSE/THROAT BLEEDING	6.96	2.32	0.36	9.64
43000		INCISION OF ESOPHAGUS	7.05	3.30	0.35	10.70
43020	•	INCISION OF ESOPHAGUS	9.21	3.98	0.43	12.62
43030		THROAT MUSCLE SURGERY	7.60	10.21	1.25	19.06
43040	•	INCISION OF ESOPHAGUS	10.50	7.81	0.93	19.24
43045	•	INCISION OF ESOPHAGUS	20.00	9.07	1.42	30.49
43100	•	EXCISION OF ESOPHAGUS LESION	8.99	7.33	0.90	17.22
43101	•	EXCISION OF ESOPHAGUS LESION	12.62	13.03	2.57	28.22
43105	•	REMOVAL OF UPPER ESOPHAGUS	17.54	17.14	2.10	36.78
43106	•	REMOVAL OF UPPER ESOPHAGUS	21.15	29.64	3.30	54.29
43110		PARTIAL REMOVAL OF ESOPHAGUS	27.51	22.09	4.30	53.90
43111	•	PARTIAL REMOVAL OF ESOPHAGUS	23.85	17.27	3.80	44.92
43115	•	PARTIAL REMOVAL OF ESOPHAGUS	25.38	25.03	4.67	55.08
43119		REMOVAL OF ESOPHAGUS	24.13	22.50	4.41	51.04
43120		REMOVE ESOPHAGUS & STOMACH	24.32	21.45	4.19	49.96
43130		REMOVAL OF ESOPHAGUS POUCH	11.49	10.90	1.66	24.05
43135		REMOVAL OF ESOPHAGUS POUCH	12.19	12.17	2.24	26.60
43136	•	FIXATION OF ESOPHAGUS POUCH	10.86	10.45	1.57	22.88
43200		ESOPHAGUS ENDOSCOPY	2.50	2.73	0.26	5.49
43202		ESOPHAGUS ENDOSCOPY, BIOPSY	2.78	3.46	0.33	6.57
43204		ESOPHAGUS ENDOSCOPY & INJECT	4.63	5.63	0.38	10.84
43215		ESOPHAGUS ENDOSCOPY	4.07	4.55	0.49	9.11
43217		ESOPHAGUS ENDOSCOPY	4.06	4.65	0.38	9.11
43219		ESOPHAGUS ENDOSCOPY	3.31	4.06	0.34	9.71
43220		ESOPHAGUS ENDOSCOPY,DILATION	3.41	3.41	0.30	7.12
43226		ESOPHAGUS ENDOSCOPY,DILATION	3.14	3.96	0.27	7.37
43227		ESOPHAGUS ENDOSCOPY, REPAIR	4.63	5.20	0.35	10.38
43228		ESOPHAGUS ENDOSCOPY, REPAIR	4.99	4.85	0.39	10.23
43234		UPPER GI ENDOSCOPY, EXAM	2.42	3.20	0.32	5.94
43235		UPPER GI ENDOSCOPY,DIAGNOSIS	2.54	3.86	0.30	6.70
43239		UPPER GI ENDOSCOPY, BIOPSY	3.08	4.43	0.34	7.85
43241		UPPER GI ENDOSCOPY WITH TUBE	4.04	4.85	0.39	9.28
43245		OPERATIVE UPPER GI ENDOSCOPY	4.42	5.03	0.42	9.87
43246		OPERATIVE UPPER GI ENDOSCOPY	4.61	6.16	0.54	11.31
43247		OPERATIVE UPPER GI ENDOSCOPY	4.36	5.04	0.40	9.80
43251		OPERATIVE UPPER GI ENDOSCOPY	4.56	5.63	0.44	10.63
43255		OPERATIVE UPPER GI ENDOSCOPY	4.73	5.98	0.40	11.11
43258		OPERATIVE UPPER GI ENDOSCOPY	4.99	5.64	0.40	11.03
43260		ENDOSCOPY,BILE DUCT/PANCREAS	5.18	6.29	0.41	11.88
43262		ENDOSCOPY,BILE DUCT/PANCREAS	7.46	9.48	0.82	17.56
43263		ENDOSCOPY,BILE DUCT/PANCREAS	6.70	5.42	0.36	12.48
43264		ENDOSCOPY,BILE DUCT/PANCREAS	7.15	9.10	0.83	16.68
43267		ENDOSCOPY,BILE DUCT/PANCREAS	6.91	7.57	0.49	14.97
43268		ENDOSCOPY,BILE DUCT/PANCREAS	7.66	9.14	0.60	17.40
43271		ENDOSCOPY,BILE DUCT/PANCREAS	7.38	7.73	0.51	15.59
43272	•	ENDOSCOPY,BILE DUCT/PANCREAS	7.24	6.97	0.51	14.72
43300		REPAIR OF ESOPHAGUS	9.26	5.67	0.66	15.61

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
43305	••	REPAIR ESOPHAGUS AND FISTULA	14.82	12.67	1.68	28.57
43310	••	REPAIR OF ESOPHAGUS	14.90	16.48	3.10	34.48
43312	••	REPAIR ESOPHAGUS AND FISTULA	14.71	21.10	3.49	39.30
43320		FUSE ESOPHAGUS & STOMACH	15.13	10.45	1.68	27.26
43321	••	FUSE ESOPHAGUS & STOMACH	15.70	13.40	2.63	31.73
43324		REVISE ESOPHAGUS & STOMACH	14.87	12.49	2.63	29.99
43325		REVISE ESOPHAGUS & STOMACH	15.84	11.48	2.23	29.25
43330		REPAIR OF ESOPHAGUS	15.14	7.85	1.15	24.26
43331		REPAIR OF ESOPHAGUS	15.84	14.25	2.65	32.54
43340		FUSE ESOPHAGUS & INTESTINE	15.86	10.16	1.92	27.18
43341	••	FUSE ESOPHAGUS & INTESTINE	16.21	16.99	2.59	35.39
43350	••	SURGICAL OPENING, ESOPHAGUS	11.86	5.81	0.87	18.28
43351	••	SURGICAL OPENING, ESOPHAGUS	14.25	7.43	1.18	22.86
43352		SURGICAL OPENING, ESOPHAGUS	11.90	8.57	1.42	21.59
43400	••	LIGATE ESOPHAGUS VEINS	16.52	10.23	1.49	28.24
43401	••	ESOPHAGUS SURGERY FOR VEINS	17.26	12.96	2.53	32.37
43410	••	REPAIR ESOPHAGUS WOUND	10.21	8.17	1.47	20.85
43415		REPAIR ESOPHAGUS WOUND	16.66	15.21	2.61	32.67
43420		REPAIR ESOPHAGUS OPENING	10.63	2.86	0.29	14.08
43425	••	REPAIR ESOPHAGUS OPENING	16.55	8.82	1.41	26.48
43450		DILATE ESOPHAGUS	1.15	0.72	0.05	1.92
43451		REDILATE ESOPHAGUS	1.02	0.61	0.05	1.68
43453		DILATE ESOPHAGUS	3.76	1.85	0.10	5.41
43455		DILATE ESOPHAGUS	5.15	2.07	0.14	7.36
43456	••	DILATE ESOPHAGUS	5.18	2.35	0.25	7.78
43460		PRESSURE TREATMENT ESOPHAGUS	5.29	1.70	0.15	7.24
43500		SURGICAL OPENING OF STOMACH	9.07	4.96	0.88	13.91
43501		SURGICAL REPAIR OF STOMACH	11.81	8.41	1.75	21.97
43510		SURGICAL OPENING OF STOMACH	9.84	9.91	0.91	18.76
43520	••	INCISION OF PYLORIC MUSCLE	7.43	4.66	0.78	12.27
43600		BIOPSY OF STOMACH	2.47	0.51	0.04	3.02
43605		BIOPSY OF STOMACH	8.74	5.66	1.28	15.68
43610		EXCISION OF STOMACH LESION	10.73	8.50	1.79	21.02
43620		REMOVAL OF STOMACH	22.34	15.82	3.26	41.42
43625		REMOVAL OF STOMACH	23.80	17.41	3.96	45.17
43630		PARTIAL REMOVAL OF STOMACH	15.76	12.65	2.71	31.12
43635		PARTIAL REMOVAL OF STOMACH	19.25	13.45	2.88	35.58
43638		PARTIAL REMOVAL OF STOMACH	19.01	12.99	2.78	34.78
43640		VAGOTOMY & PYLORUS REPAIR	15.37	10.63	2.30	28.30
43641	••	VAGOTOMY & PYLORUS REPAIR	17.15	10.62	2.23	30.00
43750		PLACE GASTROSTOMY TUBE	6.23	4.36	0.57	11.16
43760		CHANGE GASTROSTOMY TUBE	0.56	0.65	0.08	1.32
43800		RECONSTRUCTION OF PYLORUS	10.80	7.01	1.50	18.51
43810		FUSION OF STOMACH AND BOWEL	10.71	7.43	1.49	19.63
43820		FUSION OF STOMACH AND BOWEL	11.99	8.31	1.79	21.39
43825		FUSION OF STOMACH AND BOWEL	13.46	11.27	2.36	27.18
43830		SURGICAL OPENING OF STOMACH	6.66	6.71	1.21	14.80
43831		SURGICAL OPENING OF STOMACH	6.62	4.73	0.74	12.29
43832		SURGICAL OPENING OF STOMACH	11.34	8.65	1.40	20.79
43840		REPAIR OF STOMACH LESION	11.10	7.99	1.69	20.78
43844	••	GASTRIC BYPASS FOR OBESITY	15.82	5.99	1.00	23.71
43845	••	GASTRIC REVISION FOR OBESITY	16.99	15.56	2.88	33.42
43846	••	GASTRIC BYPASS FOR OBESITY	18.86	14.80	3.30	36.99
43850		REVISE STOMACH-BOWEL FUSION	15.14	11.56	2.23	28.95
43855	••	REVISE STOMACH-BOWEL FUSION	17.06	12.67	2.82	32.67
43860		REVISE STOMACH-BOWEL FUSION	17.12	11.60	2.58	31.50
43865		REVISE STOMACH-BOWEL FUSION	18.22	13.83	3.14	35.29

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HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
43870		REPAIR STOMACH OPENING	6.97	5.55	1.06	13.58
43880		REPAIR STOMACH-BOWEL FISTULA	15.11	6.94	1.39	23.44
43885		REVISE STOMACH PLACEMENT	10.52	7.84	1.66	20.02
44005		FREEING OF BOWEL ADHESION	10.77	8.55	1.81	21.13
44010		INCISION OF SMALL BOWEL	11.89	6.95	1.43	20.27
44015		INSERT NEEDLE CATHETER,BOWEL	5.57	3.41	0.66	9.64
44020		EXPLORATION OF SMALL BOWEL	11.35	8.05	1.70	21.10
44021		DECOMPRESS SMALL BOWEL	10.83	7.00	1.46	19.29
44025		INCISION OF LARGE BOWEL	11.76	7.86	1.63	21.25
44040		EXTERIORIZATION OF BOWEL	12.92	10.05	2.17	25.14
44050		REDUCE BOWEL OBSTRUCTION	10.67	7.97	1.67	20.31
44055		CORRECT MALROTATION OF BOWEL	12.66	7.67	1.61	21.94
44110		EXCISION OF BOWEL LESION(S)	9.57	7.77	1.60	18.94
44111		EXCISION OF BOWEL LESION(S)	11.74	10.02	2.22	23.98
44120		REMOVAL OF SMALL INTESTINE	11.91	10.07	2.15	24.13
44125		REMOVAL OF SMALL INTESTINE	13.98	10.88	2.32	27.19
44130		BOWEL TO BOWEL FUSION	11.78	9.12	1.95	22.85
44140		PARTIAL REMOVAL OF COLON	13.29	12.14	2.57	28.00
44141		PARTIAL REMOVAL OF COLON	12.99	12.68	2.73	28.40
44143		PARTIAL REMOVAL OF COLON	15.64	13.11	2.81	31.56
44144		PARTIAL REMOVAL OF COLON	14.81	12.81	2.69	30.31
44145		PARTIAL REMOVAL OF COLON	17.25	14.37	3.03	34.65
44146		PARTIAL REMOVAL OF COLON	18.15	16.13	3.39	37.67
44147		PARTIAL REMOVAL OF COLON	17.83	16.21	3.49	37.53
44150		REMOVAL OF COLON	20.22	15.61	3.34	39.17
44151	•	REMOVAL OF COLON/ILEOSTOMY	19.08	17.46	3.78	40.32
44152	•	REMOVAL OF COLON/ILEOSTOMY	21.37	16.63	3.59	41.59
44153	•	REMOVAL OF COLON/ILEOSTOMY	26.23	16.61	3.50	46.34
44155		REMOVAL OF COLON	20.74	17.69	3.72	42.15
44156	•	REMOVAL OF COLON/ILEOSTOMY	21.75	18.81	4.13	44.69
44160		REMOVAL OF COLON	14.97	13.30	2.87	31.14
44300		OPEN BOWEL TO SKIN	8.26	6.25	1.34	15.85
44310		ILEOSTOMY	10.70	7.93	1.66	20.29
44312		REVISION OF ILEOSTOMY	5.67	2.58	0.38	8.63
44314		REVISION OF ILEOSTOMY	10.38	6.49	1.18	18.05
44316	•	DEVISE BOWEL POUCH	14.43	17.16	2.55	34.14
44320		COLOSTOMY	13.11	7.71	1.63	22.45
44322		COLOSTOMY WITH BIOPSIES	10.95	9.12	1.90	21.97
44345		REVISION OF COLOSTOMY	10.67	4.82	1.02	16.51
44346		REVISION OF COLOSTOMY	11.82	6.76	1.40	19.98
44360		SMALL BOWEL ENDOSCOPY	4.43	3.69	0.30	8.42
44361		SMALL BOWEL ENDOSCOPY,BIOPSY	4.90	4.95	0.34	10.19
44363	•	SMALL BOWEL ENDOSCOPY	5.66	4.05	0.43	10.14
44364	•	SMALL BOWEL ENDOSCOPY	5.78	3.56	0.57	9.89
44366		SMALL BOWEL ENDOSCOPY	6.26	6.18	0.46	12.90
44369		SMALL BOWEL ENDOSCOPY	6.09	7.24	0.50	13.83
44380		SMALL BOWEL ENDOSCOPY	2.46	2.27	0.20	4.93
44382		SMALL BOWEL ENDOSCOPY	3.07	3.16	0.27	6.50
44385		ENDOSCOPY OF BOWEL POUCH	2.75	2.83	0.32	5.90
44386	•	ENDOSCOPY,BOWEL POUCH,BIOPSY	3.01	2.53	0.23	5.77
44388		COLON ENDOSCOPY	3.30	3.90	0.54	7.74
44389		COLONOSCOPY WITH BIOPSY	3.43	4.50	0.47	8.40
44390	•	COLONOSCOPY FOR FOREIGN BODY	4.21	5.26	0.55	10.02
44391	•	COLONOSCOPY FOR BLEEDING	4.88	5.14	0.51	10.53
44392		COLONOSCOPY & POLYPECTOMY	4.46	5.49	0.70	10.65
44393		COLONOSCOPY, LESION REMOVAL	4.65	5.45	0.70	10.80
44600		REPAIR OF BOWEL LESION	10.32	7.76	1.65	19.75

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
44605		REPAIR OF BOWEL LESION	13.06	9.49	2.05	24.60
44610		REPAIR OF BOWEL LESIONS	13.74	9.22	1.98	24.94
44620		REPAIR BOWEL OPENING	10.25	8.25	1.32	17.82
44625		REPAIR BOWEL OPENING	11.27	10.03	2.13	23.43
44640		REPAIR BOWEL-SKIN FISTULA	14.18	5.86	1.20	21.24
44650		REPAIR BOWEL FISTULA	14.61	7.37	1.47	23.45
44660		REPAIR BOWEL-BLADDER FISTULA	13.97	7.82	1.09	22.88
44661		REPAIR BOWEL-BLADDER FISTULA	16.40	14.57	2.63	33.60
44680		SURGICAL REVISION, INTESTINE	13.18	10.03	2.21	25.42
44800		EXCISION OF BOWEL POUCH	10.74	5.13	1.05	16.92
44820		EXCISION OF MESENTERY LESION	9.88	5.09	1.09	16.06
44850	•	REPAIR OF MESENTERY	9.18	5.46	1.15	15.79
44900		DRAINAGE OF APPENDIX ABSCESS	8.35	4.37	0.89	13.61
44950		APPENDECTOMY	8.43	5.18	1.07	12.68
44955		APPENDECTOMY	3.93	2.46	0.50	6.89
44960		APPENDECTOMY	10.39	6.36	1.35	18.10
45000		DRAINAGE OF PELVIC ABSCESS	4.56	1.56	0.22	6.34
45005		DRAINAGE OF RECTAL ABSCESS	2.08	1.24	0.20	3.53
45020		DRAINAGE OF RECTAL ABSCESS	4.66	2.63	0.52	7.83
45100		BIOPSY OF RECTUM	3.59	1.59	0.25	5.43
45108	•	REMOVAL OF ANORECTAL LESION	4.56	4.73	0.97	10.26
45110		REMOVAL OF RECTUM	23.03	16.74	3.52	43.29
45111		PARTIAL REMOVAL OF RECTUM	15.91	11.46	2.42	29.79
45112		REMOVAL OF RECTUM	25.52	15.52	3.23	44.27
45114		PARTIAL REMOVAL OF RECTUM	22.52	13.31	2.92	38.75
45116	•	PARTIAL REMOVAL OF RECTUM	20.26	11.04	2.39	33.71
45120	•	REMOVAL OF RECTUM	16.64	13.18	2.30	32.12
45121	•	REMOVAL OF RECTUM AND COLON	18.09	18.26	3.40	39.75
45130		EXCISION OF RECTAL PROLAPSE	13.83	9.10	1.83	24.76
45135		EXCISION OF RECTAL PROLAPSE	16.30	16.03	3.58	35.91
45150	•	EXCISION OF RECTAL STRICTURE	5.58	2.92	0.55	9.05
45160		EXCISION OF RECTAL LESION	13.11	6.49	1.23	20.83
45170		EXCISION OF RECTAL LESION	8.31	4.53	0.93	13.77
45180		REMOVAL OF RECTAL LESION	8.22	5.10	1.05	14.37
45300		PROCTOSIGMOIDOSCOPY	0.87	0.57	0.06	1.50
45302		PROCTOSIGMOIDOSCOPY	1.21	0.77	0.11	2.09
45303		PROCTOSIGMOIDOSCOPY	1.67	0.78	0.11	2.56
45305		PROCTOSIGMOIDOSCOPY; BIOPSY	1.36	0.88	0.13	2.37
45307		PROCTOSIGMOIDOSCOPY	1.90	1.28	0.18	3.36
45310		PROCTOSIGMOIDOSCOPY	2.09	1.14	0.19	3.42
45315		PROCTOSIGMOIDOSCOPY	2.65	1.19	0.18	4.02
45317		PROCTOSIGMOIDOSCOPY	2.30	1.27	0.18	3.75
45320		PROCTOSIGMOIDOSCOPY	2.40	1.80	0.31	4.51
45321		PROCTOSIGMOIDOSCOPY	2.54	1.45	0.26	4.25
45330		SIGMOIDOSCOPY	1.10	1.37	0.11	2.58
45331		SIGMOIDOSCOPY AND BIOPSY	1.38	1.82	0.15	3.35
45332		SIGMOIDOSCOPY	2.39	1.74	0.15	4.28
45333		SIGMOIDOSCOPY & POLYPECTOMY	2.95	2.25	0.26	5.46
45334		SIGMOIDOSCOPY FOR BLEEDING	3.18	2.66	0.22	6.06
45336		SIGMOIDOSCOPY,LESION REMOVAL	3.43	3.30	0.31	7.04
45337		SIGMOIDOSCOPY, DECOMPRESSION	2.93	3.32	0.36	6.61
45355		SURGICAL COLONOSCOPY	3.35	1.22	0.12	4.69
45378		DIAGNOSTIC COLONOSCOPY	3.34	4.40	0.41	8.15
45379		COLONOSCOPY	4.11	5.71	0.48	10.31
45380		COLONOSCOPY AND BIOPSY	3.82	5.04	0.42	9.08
45382		COLONOSCOPY,CONTROL BLEEDING	5.29	6.18	0.43	11.90
45383		COLONOSCOPY, LESION REMOVAL	4.83	6.26	0.54	11.63

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PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
45385		COLONOSCOPY, LESION REMOVAL	4.51	7.06	0.62	12.19
45500		REPAIR OF RECTUM	7.00	4.50	0.77	12.27
45505		REPAIR OF RECTUM	5.87	6.46	1.27	13.60
45520		TREATMENT OF RECTAL PROLAPSE	1.67	0.62	0.10	2.39
45540		CORRECT RECTAL PROLAPSE	12.72	10.27	2.18	25.17
45541		CORRECT RECTAL PROLAPSE	10.40	10.54	2.11	23.05
45550		REPAIR RECTUM;REMOVE SIGMOID	14.21	9.22	1.81	25.24
45560		REPAIR OF RECTOCELE	7.94	4.82	0.98	13.74
45800		REPAIR RECTUMBLADDER FISTULA	13.54	7.03	1.04	21.61
45805	•	REPAIR FISTULA; COLOSTOMY	18.02	12.37	2.41	30.80
45820	•	REPAIR RECTOURETHRAL FISTULA	14.15	9.97	1.37	25.49
45825	•	REPAIR FISTULA; COLOSTOMY	16.41	8.25	1.70	26.36
45900		REDUCTION OF RECTAL PROLAPSE	1.07	0.60	0.10	1.77
45905		DILATION OF ANAL SPHINCTER	0.84	0.81	0.10	1.55
45910		DILATION OF RECTAL NARROWING	1.97	0.78	0.11	2.86
45915		REMOVE RECTAL OBSTRUCTION	1.43	0.78	0.09	2.28
46000		INCISION OF ANAL FISTULA	1.56	1.22	0.18	2.96
46030	•	REMOVAL OF RECTAL MARKER	0.83	0.42	0.07	1.32
46040		INCISION OF RECTAL ABSCESS	5.20	1.67	0.32	7.19
46045		INCISION OF RECTAL ABSCESS	4.14	1.82	0.38	6.34
46050		INCISION OF ANAL ABSCESS	0.86	0.81	0.10	1.37
46060		INCISION OF RECTAL ABSCESS	5.35	5.47	1.14	11.96
46070	•	INCISION OF ANAL SEPTUM	2.80	0.88	0.20	3.88
46080		INCISION OF ANAL SPHINCTER	1.72	2.00	0.41	4.13
46083		INCISE EXTERNAL HEMORRHOID	1.43	0.66	0.08	2.17
46200		REMOVAL OF ANAL FISSURE	4.92	3.42	0.70	9.04
46210		REMOVAL OF ANAL CRYPT	3.32	0.73	0.12	4.17
46211	•	REMOVAL OF ANAL CRYPTS	4.32	1.80	0.36	6.48
46220		REMOVAL OF ANAL TAB	2.03	0.63	0.12	2.78
46221		LIGATION OF HEMORRHOID(S)	1.48	0.66	0.13	2.30
46230		REMOVAL OF ANAL TABS	3.73	0.83	0.11	4.67
46250		HEMORRHOIDECTOMY	4.57	2.68	0.50	7.76
46255		HEMORRHOIDECTOMY	5.25	4.03	0.73	10.01
46257		REMOVE HEMORRHOIDS & FISSURE	6.24	5.23	1.07	12.54
46258		REMOVE HEMORRHOIDS & FISTULA	6.64	5.92	1.23	13.79
46260		HEMORRHOIDECTOMY	7.11	5.22	1.30	14.63
46261		REMOVE HEMORRHOIDS & FISSURE	6.64	5.79	1.38	15.11
46262		REMOVE HEMORRHOIDS & FISTULA	7.20	6.71	1.38	15.29
46270		REMOVAL OF ANAL FISTULA	3.73	2.48	0.53	6.73
46275		REMOVAL OF ANAL FISTULA	4.62	5.67	1.17	11.46
46280		REMOVAL OF ANAL FISTULA	5.97	6.30	1.30	13.57
46285	•	REMOVAL OF ANAL FISTULA	4.11	2.17	0.41	6.69
46320		REMOVAL OF HEMORRHOID CLOT	1.68	0.72	0.10	1.90
46500		INJECTION INTO HEMORRHOIDS	1.06	0.33	0.06	1.45
46600		DIAGNOSTIC ANOSCOPY	0.67	0.28	0.03	1.18
46602		DIAGNOSTIC ANOSCOPY	1.06	0.42	0.03	1.50
46604		ANOSCOPY AND DILATION	1.13	0.37	0.06	1.56
46606		ANOSCOPY AND BIOPSY	1.06	0.33	0.05	1.44
46608		ANOSCOPY;REMOVE FOREIGN BODY	1.63	0.97	0.10	2.70
46610		ANOSCOPY; REMOVE LESION	1.54	0.85	0.14	2.53
46612	•	ANOSCOPY; REMOVE LESIONS	2.00	1.18	0.17	3.36
46614		ANOSCOPY; CONTROL BLEEDING	1.97	1.58	0.23	3.78
46700		REPAIR OF ANAL STRICTURE	6.81	6.37	1.29	14.47
46705	•	REPAIR OF ANAL STRICTURE	6.78	6.88	1.46	15.13
46715	•	REPAIR OF ANOVAGINAL FISTULA	6.18	3.22	0.36	10.76
46716	•	REPAIR OF ANOVAGINAL FISTULA	8.95	6.17	1.73	16.85
46730	•	CONSTRUCTION OF ABSENT ANUS	13.27	4.17	0.49	17.93

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
46735	•	CONSTRUCTION OF ABSENT ANUS	15.54	13.54	3.15	32.23
46740	•	CONSTRUCTION OF ABSENT ANUS	15.34	7.60	1.30	24.24
46750		REPAIR OF ANAL SPHINCTER	7.61	6.00	1.22	15.03
46751	•	REPAIR OF ANAL SPHINCTER	8.27	5.44	1.27	14.98
46753		RECONSTRUCTION OF ANUS	6.42	4.22	0.78	11.42
46754	•	REMOVAL OF SUTURE FROM ANUS	2.76	1.46	0.28	4.50
46760	•	REPAIR OF ANAL SPHINCTER	11.27	7.97	1.59	20.83
46761	•	REPAIR OF ANAL SPHINCTER	10.80	7.57	1.50	19.87
46762	•	IMPLANT ARTIFICIAL SPHINCTER	9.83	8.79	1.86	20.48
46900		DESTRUCTION, ANAL LESION(S)	1.37	0.40	0.05	1.82
46910		DESTRUCTION, ANAL LESION(S)	1.51	0.63	0.07	2.21
46916		CRYOSURGERY, ANAL LESION(S)	2.28	0.62	0.05	2.93
46917		LASER SURGERY,ANAL LESION(S)	2.43	1.83	0.28	4.54
46922		EXCISION OF ANAL LESION(S)	2.85	1.21	0.22	4.28
46924		DESTRUCTION, ANAL LESION(S)	4.13	2.07	0.37	6.57
46934		DESTRUCTION OF HEMORRHOIDS	4.08	1.21	0.16	5.45
46935		DESTRUCTION OF HEMORRHOIDS	2.55	1.52	0.20	4.27
46936		DESTRUCTION OF HEMORRHOIDS	4.44	2.21	0.23	6.88
46937	•	CRYOTHERAPY OF RECTAL LESION	2.83	2.26	0.39	5.48
46938	•	CRYOTHERAPY OF RECTAL LESION	4.70	3.53	0.74	8.97
46940		TREATMENT OF ANAL FISSURE	2.44	0.51	0.09	3.04
46942	•	TREATMENT OF ANAL FISSURE	2.46	0.38	0.06	2.90
46945		LIGATION OF HEMORRHOIDS	3.24	0.63	0.11	3.98
46946		LIGATION OF HEMORRHOIDS	2.48	0.90	0.17	3.55
47000		NEEDLE BIOPSY OF LIVER	2.02	1.42	0.13	3.57
47010		DRAINAGE OF LIVER LESION	12.26	6.06	0.98	19.31
47100		WEDGE BIOPSY OF LIVER	7.18	3.23	0.66	11.07
47120		PARTIAL REMOVAL OF LIVER	25.33	12.38	2.55	40.26
47122	•	EXTENSIVE REMOVAL OF LIVER	28.22	18.34	3.75	50.31
47125		PARTIAL REMOVAL OF LIVER	22.97	17.43	3.59	43.99
47130		PARTIAL REMOVAL OF LIVER	27.16	15.30	3.32	45.78
47135	•	TRANSPLANTATION OF LIVER	47.06	63.16	9.27	119.49
47300		SURGERY FOR LIVER LESION	9.31	7.51	1.53	18.35
47350		REPAIR LIVER WOUND	11.99	7.50	1.50	20.99
47355	•	REPAIR LIVER WOUND	12.95	5.50	0.93	19.38
47360	•	REPAIR LIVER WOUND	16.30	9.70	1.74	27.74
47400	•	INCISION OF LIVER DUCT	20.07	7.67	1.15	28.89
47420		INCISION OF BILE DUCT	14.04	9.81	2.07	25.92
47425		INCISION OF BILE DUCT	19.74	12.05	2.55	34.34
47440		INCISION OF BILE DUCT	19.44	10.77	2.25	32.46
47460		INCISE BILE DUCT SPHINCTER	15.30	16.50	1.91	33.71
47480		INCISION OF GALLBLADDER	10.65	7.30	1.52	19.47
47490		INCISION OF GALLBLADDER	8.01	3.43	0.35	11.79
47500		INJECTION FOR LIVER X-RAYS	2.38	1.40	0.13	3.92
47510		INSERT CATHETER, BILE DUCT	5.10	3.18	0.28	8.56
47525		CHANGE BILE DUCT CATHETER	2.22	1.44	0.14	3.80
47530		REVISE, REINSERT BILE TUBE	4.12	1.48	0.16	5.76
47550		BILE DUCT ENDOSCOPY	2.03	1.54	0.33	3.90
47552	•	BILIARY ENDOSCOPY, THRU SKIN	3.36	1.17	0.18	4.71
47553	•	BILIARY ENDOSCOPY, THRU SKIN	3.66	2.12	0.36	6.14
47554		BILIARY ENDOSCOPY, THRU SKIN	4.23	3.85	0.66	8.74
47555	•	BILIARY ENDOSCOPY, THRU SKIN	4.38	2.65	0.30	7.34
47600		REMOVAL OF GALLBLADDER	9.81	5.03	1.70	16.54
47605		REMOVAL OF GALLBLADDER	11.10	8.66	1.86	21.64
47610		REMOVAL OF GALLBLADDER	13.56	9.98	2.14	25.68
47612		REMOVAL OF GALLBLADDER	15.66	14.67	3.20	33.73
47620		REMOVAL OF GALLBLADDER	16.76	11.88	2.50	31.17

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PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
47630		REMOVE BILE DUCT STONE	7.70	3.53	0.38	11.61
47700		EXPLORATION OF BILE DUCTS	14.50	7.36	1.48	23.44
47701	*	BILE DUCT REVISION	16.66	5.36	1.25	23.31
47710	*	EXCISION OF BILE DUCT TUMOR	18.56	12.01	2.42	34.02
47715	*	EXCISION OF BILE DUCT CYST	16.40	8.78	2.03	27.21
47716	*	FUSION OF BILE DUCT CYST	13.32	8.33	2.17	24.82
47720		FUSE GALLBLADDER & BOWEL	12.63	8.47	2.01	24.11
47721		FUSE UPPER GI STRUCTURES	16.30	11.90	2.59	29.78
47740		FUSE GALLBLADDER & BOWEL	14.80	10.58	2.22	27.60
47760		FUSE BILE DUCTS AND BOWEL	17.18	12.06	2.63	31.87
47765		FUSE LIVER DUCTS & BOWEL	20.22	14.61	2.97	37.80
47780		FUSE BILE DUCTS AND BOWEL	17.63	13.70	2.66	34.39
47800	*	RECONSTRUCTION OF BILE DUCTS	18.82	11.74	2.10	32.66
47801		PLACEMENT, BILE DUCT SUPPORT	11.98	4.37	0.64	16.99
47802	*	FUSE LIVER DUCT & INTESTINE	17.00	11.70	2.32	31.02
48000		DRAINAGE OF ABDOMEN	12.76	7.11	1.41	21.31
48020	*	REMOVAL OF PANCREATIC STONE	13.76	8.60	1.31	21.69
48100		BIOPSY OF PANCREAS	10.83	3.87	0.72	15.42
48102		NEEDLE BIOPSY, PANCREAS	4.00	2.46	0.26	6.72
48120		REMOVAL OF PANCREAS LESION	13.59	7.30	1.60	22.48
48140		PARTIAL REMOVAL OF PANCREAS	17.32	13.38	2.82	33.50
48145	*	PARTIAL REMOVAL OF PANCREAS	20.26	14.98	3.29	38.53
48146	*	REMOVAL OF PANCREATIC DUCT	14.62	9.62	1.97	26.21
48150		PARTIAL REMOVAL OF PANCREAS	28.90	23.72	5.01	57.63
48151	*	PARTIAL REMOVAL OF PANCREAS	19.66	18.31	4.02	43.01
48155		REMOVAL OF PANCREAS	20.65	21.43	4.44	46.52
48160	*	FUSE PANCREAS AND BOWEL	18.95	12.80	2.67	34.42
48500	*	SURGERY OF PANCREAS CYST	12.79	8.86	1.73	23.38
48510		DRAIN PANCREATIC PSEUDOCYST	11.02	7.33	1.41	20.66
48520		FUSE PANCREAS CYST AND BOWEL	13.77	10.58	2.23	26.58
48540		FUSE PANCREAS CYST AND BOWEL	18.78	10.22	2.27	29.25
49000		EXPLORATION OF ABDOMEN	9.54	7.09	1.47	18.10
49002		REEXPLORATION OF ABDOMEN	9.99	6.21	1.25	17.45
49010		EXPLORATION BEHIND ABDOMEN	11.69	7.14	1.35	20.38
49020		DRAIN ABDOMINAL ABSCESS	10.68	4.83	0.91	16.62
49040		DRAIN ABDOMINAL ABSCESS	9.30	6.53	1.29	17.12
49060		DRAIN ABDOMINAL ABSCESS	11.21	5.18	0.94	17.33
49080		PUNCTURE, PERITONEAL CAVITY	0.98	0.85	0.08	1.95
49081		REMOVAL OF ABDOMINAL FLUID	1.76	0.75	0.07	2.58
49085		REMOVE ABDOMEN FOREIGN BODY	8.41	3.16	0.63	12.20
49180		BIOPSY, ABDOMINAL MASS	1.11	1.75	0.19	3.05
49200		REMOVAL OF ABDOMINAL LESION	9.76	8.88	1.77	20.21
49201		REMOVAL OF ABDOMINAL LESION	14.44	9.93	2.13	26.50
49215	*	EXCISE SACRAL SPINE TUMOR	12.37	8.65	1.60	22.62
49220		MULTIPLE SURGERY, ABDOMEN	14.51	12.88	2.64	30.03
49250		EXCISION OF UMBILICUS	7.89	4.47	0.96	13.32
49255		REMOVAL OF OMENTUM	10.94	5.42	1.14	17.50
49300		PERITONEOSCOPY	5.31	3.97	0.45	9.73
49301		PERITONEOSCOPY WITH BIOPSY	4.28	5.24	0.52	10.04
49302	*	PERITONEOSCOPY WITH X-RAY	3.98	4.96	0.48	9.42
49303	*	PERITONEOSCOPY,XRAY & BIOPSY	4.00	5.14	0.62	9.76
49400	*	AIR INJECTION INTO ABDOMEN	1.53	0.64	0.10	2.27
49401	*	AIR INJECTION INTO ABDOMEN	1.30	0.49	0.07	1.86
49420		INSERT ABDOMINAL DRAIN	1.79	1.58	0.19	3.54
49421		INSERT ABDOMINAL DRAIN	5.18	4.21	0.83	10.22
49425		INSERT ABDOMEN-VENOUS DRAIN	10.86	8.78	1.83	21.45
49426		REVISE ABDOMEN-VENOUS SHUNT	8.10	4.88	0.92	14.90

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
49500		REPAIR INGUINAL HERNIA	3.71	5.13	0.97	9.81
49505		REPAIR INGUINAL HERNIA	5.12	4.75	0.98	10.85
49510		REPAIR HERNIA, REMOVE TESTIS	6.97	5.44	1.09	13.50
49515		REPAIR INGUINAL HERNIA	6.24	5.53	1.10	12.87
49520		REREPAIR INGUINAL HERNIA	7.03	5.51	1.16	13.70
49525		REPAIR INGUINAL HERNIA	6.55	5.83	1.23	13.61
49530		REPAIR INCARCERATED HERNIA	7.27	5.22	1.11	13.60
49535		REPAIR STRANGULATED HERNIA	10.23	5.94	1.27	17.44
49540		REPAIR LUMBAR HERNIA	8.41	5.42	1.16	14.99
49550		REPAIR FEMORAL HERNIA	4.88	4.75	0.99	10.42
49552		REPAIR FEMORAL HERNIA	6.72	6.43	1.35	14.50
49555		REPAIR FEMORAL HERNIA	7.75	6.35	1.31	15.41
49560		REPAIR ABDOMINAL HERNIA	8.11	5.92	1.24	15.27
49565		REREPAIR ABDOMINAL HERNIA	8.86	6.73	1.43	17.02
49570		REPAIR EPIGASTRIC HERNIA	4.74	4.53	0.94	10.21
49575		REPAIR EPIGASTRIC HERNIA	6.82	5.94	1.24	14.00
49580		REPAIR UMBILICAL HERNIA	4.29	4.76	0.97	10.02
49581		REPAIR UMBILICAL HERNIA	5.25	4.59	0.95	10.79
49590		REPAIR ABDOMINAL HERNIA	6.96	5.93	1.29	14.18
49600	*	REPAIR UMBILICAL LESION	7.52	3.34	0.34	11.20
49605	*	REPAIR UMBILICAL LESION	11.45	8.95	1.89	22.29
49606	*	REPAIR UMBILICAL LESION	10.89	7.79	0.90	19.38
49610	*	REPAIR UMBILICAL LESION	10.44	5.92	1.37	17.73
49611	*	REPAIR UMBILICAL LESION	8.76	7.77	0.53	17.06
50010		EXPLORATION OF KIDNEY	15.31	9.79	1.16	26.26
50020		DRAINAGE OF KIDNEY ABSCESS	13.16	8.54	0.79	20.51
50040		DRAINAGE OF KIDNEY	14.65	6.77	0.61	22.03
50045	*	EXPLORATION OF KIDNEY	15.37	9.82	0.89	26.08
50060		REMOVAL OF KIDNEY STONE	19.12	8.62	0.90	28.64
50065	*	INCISION OF KIDNEY	20.84	13.56	1.33	35.73
50070	*	INCISION OF KIDNEY	20.33	7.34	0.70	28.37
50075		REMOVAL OF KIDNEY STONE	25.55	17.11	1.65	44.31
50080		REMOVAL OF KIDNEY STONE	14.96	12.72	1.20	28.78
50081		REMOVAL OF KIDNEY STONE	21.86	15.68	1.54	39.28
50100	*	REVISE KIDNEY BLOOD VESSELS	17.58	3.00	0.32	20.88
50120	*	EXPLORATION OF KIDNEY	15.94	9.63	1.05	26.62
50125	*	EXPLORE AND DRAIN KIDNEY	17.17	10.26	1.08	28.51
50130		REMOVAL OF KIDNEY STONE	17.96	12.89	1.24	31.89
50135	*	EXPLORATION OF KIDNEY	21.38	17.80	1.70	40.89
50200		BIOPSY OF KIDNEY	2.86	2.80	0.21	5.47
50205		BIOPSY OF KIDNEY	13.48	5.71	0.70	19.89
50220		REMOVAL OF KIDNEY	16.98	13.89	1.50	32.37
50225		REMOVAL OF KIDNEY	20.11	17.16	1.74	39.01
50230		REMOVAL OF KIDNEY	21.84	19.15	1.90	42.89
50234		REMOVAL OF KIDNEY & URETER	22.42	16.99	1.69	41.10
50236		REMOVAL OF KIDNEY & URETER	24.78	18.37	1.78	44.93
50240		PARTIAL REMOVAL OF KIDNEY	21.51	13.21	1.54	36.26
50280		REMOVAL OF KIDNEY LESION	15.54	10.98	1.18	27.70
50290	*	REMOVAL OF KIDNEY LESION	14.54	9.10	1.07	24.71
50300	*	REMOVAL OF DONOR KIDNEY	10.63	16.11	1.88	28.62
50320		REMOVAL OF DONOR KIDNEY	13.94	16.46	2.22	32.62
50340		REMOVAL OF KIDNEY	11.39	8.29	1.68	21.36
50360		TRANSPLANTATION OF KIDNEY	31.90	25.12	4.41	61.43
50365	*	TRANSPLANTATION OF KIDNEY	31.37	33.24	4.05	68.66
50370		REMOVE TRANSPLANTED KIDNEY	11.80	11.45	1.99	25.24
50380	*	REIMPLANTATION OF KIDNEY	17.51	17.13	2.38	37.03
50390		DRAINAGE OF KIDNEY LESION	2.69	1.66	0.15	4.50

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
50392		INSERT KIDNEY DRAIN	5.21	1.95	0.17	7.33
50393		INSERT URETERAL TUBE	4.83	2.50	0.22	7.55
50394		INJECTION FOR KIDNEY X-RAY	2.18	0.50	0.04	2.72
50395		CREATE PASSAGE TO KIDNEY	5.48	3.25	0.28	9.01
50396	•	MEASURE KIDNEY PRESSURE	2.22	1.03	0.10	3.35
50398		CHANGE KIDNEY TUBE	1.03	0.51	0.05	1.59
50400		REVISION OF KIDNEY/URETER	19.19	13.83	1.39	34.41
50405		REVISION OF KIDNEY/URETER	23.85	17.96	1.81	43.64
50500	•	REPAIR OF KIDNEY WOUND	19.41	9.87	1.17	30.45
50520	•	CLOSE KIDNEY-SKIN FISTULA	16.93	9.00	1.03	26.96
50525	•	REPAIR RENAL-ABDOMEN FISTULA	21.87	8.67	1.37	31.91
50540	•	REVISION OF HORSESHOE KIDNEY	20.33	8.15	0.76	29.24
50551		KIDNEY ENDOSCOPY	5.94	1.86	0.17	7.97
50553		KIDNEY ENDOSCOPY	6.37	1.42	0.13	7.92
50555	•	KIDNEY ENDOSCOPY & BIOPSY	6.93	3.00	0.29	10.22
50557	•	KIDNEY ENDOSCOPY & TREATMENT	7.03	3.00	0.31	10.34
50559	•	RENAL ENDOSCOPY; RADIOTRACER	7.21	1.38	0.13	8.73
50561		KIDNEY ENDOSCOPY & TREATMENT	8.06	3.86	0.37	12.29
50570	•	KIDNEY ENDOSCOPY	10.14	1.27	0.12	11.53
50572	•	KIDNEY ENDOSCOPY	11.00	1.77	0.17	12.94
50574	•	KIDNEY ENDOSCOPY & BIOPSY	11.70	2.71	0.24	14.65
50576	•	KIDNEY ENDOSCOPY & TREATMENT	11.67	1.13	0.10	12.90
50580	•	KIDNEY ENDOSCOPY & TREATMENT	12.60	3.17	0.30	16.07
50590		FRAGMENTING OF KIDNEY STONE	10.22	10.66	1.02	21.90
50600		EXPLORATION OF URETER	15.70	8.36	0.85	24.91
50605		INSERT URETERAL SUPPORT	15.29	4.86	0.52	20.69
50610		REMOVAL OF URETER STONE	15.79	12.05	1.20	29.04
50620		REMOVAL OF URETER STONE	15.07	11.77	1.18	28.02
50630		REMOVAL OF URETER STONE	14.83	13.27	1.30	29.40
50650		REMOVAL OF URETER	17.39	12.31	1.24	30.94
50660	•	REMOVAL OF URETER	18.60	15.56	1.91	37.07
50684		INJECTION FOR URETER X-RAY	1.65	0.50	0.05	2.40
50686		MEASURE URETER PRESSURE	1.86	0.37	0.03	2.26
50688		CHANGE OF URETER TUBE	0.73	0.36	0.03	1.12
50690		INJECTION FOR URETER X-RAY	1.23	0.33	0.03	1.59
50700		REVISION OF URETER	17.40	10.35	1.08	28.83
50715		RELEASE OF URETER	19.92	11.56	1.52	33.00
50722	•	RELEASE OF URETER	18.96	5.53	1.06	25.57
50725	•	RELEASE/REVISE URETER	20.88	6.59	0.76	28.23
50740	•	FUSION OF URETER & KIDNEY	20.17	12.95	1.77	34.89
50750	•	FUSION OF URETER & KIDNEY	20.81	14.73	1.33	36.87
50760		FUSION OF URETERS	20.81	13.78	1.52	36.09
50770		SPLICING OF URETERS	23.02	13.45	1.45	37.92
50780		REIMPLANT URETER IN BLADDER	19.10	13.90	1.48	34.48
50785		REIMPLANT URETER IN BLADDER	22.36	15.84	1.85	40.05
50800	•	IMPLANT URETER IN BOWEL	17.27	14.90	1.54	33.71
50810	•	FUSION OF URETER & BOWEL	22.87	12.83	1.60	37.30
50815	•	URINE SHUNT TO BOWEL	23.50	19.48	2.78	45.76
50820		CONSTRUCT BOWEL BLADDER	24.38	19.00	2.51	45.89
50825	•	CONSTRUCT BOWEL BLADDER	32.14	26.07	2.73	60.94
50830	•	REVISE URINE FLOW	31.11	18.51	2.01	51.63
50840	•	REPLACE URETER BY BOWEL	22.63	21.12	2.20	46.15
50860		TRANSPLANT URETER TO SKIN	14.87	11.02	1.17	27.06
50900	•	REPAIR OF URETER	13.37	9.84	1.14	24.35
50920	•	CLOSURE URETER/SKIN FISTULA	14.05	11.43	1.06	26.54
50930	•	CLOSURE URETER/BOWEL FISTULA	18.71	6.10	0.60	25.41
50940	•	RELEASE OF URETER	14.30	6.62	0.68	21.60

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
50951		ENDOSCOPY OF URETER	6.19	1.56	0.16	7.91
50953		ENDOSCOPY OF URETER	6.62	1.42	0.13	8.17
50955	•[1]	URETER ENDOSCOPY & BIOPSY	7.16	2.13	0.21	9.52
50957	•[1]	URETER ENDOSCOPY & TREATMENT	7.22	2.28	0.23	9.73
50959	•	URETER ENDOSCOPY & TRACER	4.68	1.86	0.18	6.72
50961		URETER ENDOSCOPY & TREATMENT	6.43	2.57	0.26	9.26
50970	•	URETER ENDOSCOPY	7.36	1.12	0.11	8.62
50972	•	URETER ENDOSCOPY & CATHETER	7.32	1.69	0.17	9.18
50974	•	URETER ENDOSCOPY & BIOPSY	9.74	3.04	0.29	13.07
50976	•	URETER ENDOSCOPY & TREATMENT	9.60	1.30	0.20	11.10
50978	•	URETER ENDOSCOPY & TRACER	5.43	2.20	0.26	7.89
50980		URETER ENDOSCOPY & TREATMENT	7.26	2.00	0.19	9.47
51000		DRAINAGE OF BLADDER	0.54	0.41	0.04	0.99
51005		DRAINAGE OF BLADDER	0.73	0.48	0.04	1.25
51010		DRAINAGE OF BLADDER	2.70	0.94	0.10	3.74
51020		INCISE & TREAT BLADDER	9.12	6.06	0.61	15.81
51030	•	INCISE & TREAT BLADDER	8.84	5.28	0.45	14.57
51040		INCISE & DRAIN BLADDER	4.33	7.52	0.77	12.62
51045		INCISE BLADDER, DRAIN URETER	8.58	4.40	0.45	13.43
51050		REMOVAL OF BLADDER STONE	9.57	7.28	0.72	17.57
51060	•	REMOVAL OF URETER STONE	12.40	10.48	1.02	23.91
51065		REMOVAL OF URETER STONE	10.98	6.19	0.65	17.82
51080		DRAINAGE OF BLADDER ABSCESS	8.85	4.49	0.49	13.83
51500	•	REMOVAL OF BLADDER CYST	10.14	5.72	1.01	16.87
51520		REMOVAL OF BLADDER LESION	9.23	8.40	0.87	18.50
51525		REMOVAL OF BLADDER LESION	13.57	10.57	1.04	25.18
51530		REMOVAL OF BLADDER LESION	12.03	7.47	0.71	20.21
51535	•	REPAIR OF URETER LESION	12.23	7.57	1.13	20.93
51550		PARTIAL REMOVAL OF BLADDER	15.23	10.86	1.19	27.28
51555		PARTIAL REMOVAL OF BLADDER	20.82	12.57	1.34	34.73
51565		REVISE BLADDER & URETER(S)	21.26	11.51	1.56	34.33
51570		REMOVAL OF BLADDER	23.85	15.00	1.58	40.13
51575		REMOVAL OF BLADDER & NODES	29.67	23.18	2.32	55.17
51580		REMOVE BLADDER; REVISE TRACT	33.17	7.43	1.18	41.78
51585	•	REMOVAL OF BLADDER & NODES	37.56	25.37	2.44	65.39
51590		REMOVE BLADDER; REVISE TRACT	36.46	18.29	2.17	56.91
51595		REMOVE BLADDER; REVISE TRACT	32.66	35.63	3.51	72.03
51596		REMOVE BLADDER, CREATE POUCH	47.86	28.50	3.31	79.69
51597		REMOVAL OF PELVIC STRUCTURES	41.37	31.23	4.43	77.03
51600		INJECTION FOR BLADDER X-RAY	0.63	0.27	0.03	0.93
51605		PREPARATION FOR BLADDER XRAY	1.19	0.30	0.03	1.52
51610		INJECTION FOR BLADDER X-RAY	1.69	0.31	0.03	2.03
51700		IRRIGATION OF BLADDER	0.63	0.22	0.02	0.87
51705		CHANGE OF BLADDER TUBE	0.80	0.20	0.04	1.03
51710		CHANGE OF BLADDER TUBE	1.03	0.58	0.05	1.64
51720		TREATMENT OF BLADDER LESION	2.09	0.48	0.04	2.59
51725		SIMPLE CYSTOMETROGRAM	2.01	0.63	0.06	2.70
51726		COMPLEX CYSTOMETROGRAM	1.82	0.89	0.09	2.80
51736		URINE FLOW MEASUREMENT	0.89	0.29	0.03	1.16
51739		SOUND RECORD OF URINE STREAM	0.97	0.27	0.03	1.27
51741		ELECTRO-UROFLOWMETRY, FIRST	1.67	0.41	0.04	2.12
51772		URETHRA PRESSURE PROFILE	1.71	0.60	0.06	2.37
51785		ANAL/URINARY MUSCLE STUDY	1.64	0.64	0.06	2.34
51792		URINARY REFLEX STUDY	1.16	0.69	0.07	1.91
51795	26	URINE VOIDING PRESSURE STUDY	1.63	0.57	0.06	2.26
51795	TC	URINE VOIDING PRESSURE STUDY	0.09	0.29	0.03	0.32
51797	26	INTRAABDOMINAL PRESSURE TEST	1.70	0.48	0.06	2.23

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PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]		MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
51797		TC	INTRAABDOMINAL PRESSURE TEST	0.00	0.23	0.02	0.25
51800			REVISION OF BLADDER/URETHRA	17.33	12.35	1.51	31.19
51820	•		REVISION OF URINARY TRACT	17.71	5.94	0.99	24.64
51840			ATTACH BLADDER/URETHRA	10.39	9.48	1.31	21.18
51841			ATTACH BLADDER/URETHRA	14.42	11.49	1.56	27.47
51845			REPAIR BLADDER NECK	8.68	11.29	1.14	21.11
51860			REPAIR OF BLADDER WOUND	11.87	7.62	0.92	20.41
51865			REPAIR OF BLADDER WOUND	14.87	11.16	1.30	27.33
51880			REPAIR OF BLADDER OPENING	7.66	3.66	0.38	11.70
51900	•		REPAIR BLADDER/VAGINA LESION	19.37	10.81	1.28	31.46
51920	•		CLOSE BLADDER-UTERUS FISTULA	16.05	2.22	0.21	18.48
51925	•		HYSTERECTOMY/BLADDER REPAIR	22.18	19.84	4.59	46.61
51940	•		CORRECTION OF BLADDER DEFECT	31.25	0.18	0.01	31.44
51960	•		REVISION OF BLADDER & BOWEL	27.65	22.42	2.39	52.46
51980	•		CONSTRUCT BLADDER OPENING	11.09	10.28	1.03	22.40
52000			CYSTOSCOPY	1.62	1.40	0.14	3.36
52005			CYSTOSCOPY & URETER CATHETER	2.52	2.33	0.23	5.08
52007			CYSTOSCOPY AND BIOPSY	4.42	2.93	0.29	7.64
52010			CYSTOSCOPY & DUCT CATHETER	3.76	1.80	0.18	5.74
52204			CYSTOSCOPY	3.21	2.51	0.25	5.97
52214			CYSTOSCOPY AND TREATMENT	4.92	2.76	0.27	7.95
52224			CYSTOSCOPY AND TREATMENT	4.37	3.01	0.29	7.67
52234			CYSTOSCOPY AND TREATMENT	6.13	4.65	0.45	11.23
52235			CYSTOSCOPY AND TREATMENT	7.81	8.76	0.85	17.42
52240			CYSTOSCOPY AND TREATMENT	10.55	11.06	1.06	22.69
52250			CYSTOSCOPY & RADIOTRACER	5.92	2.86	0.29	9.07
52260			CYSTOSCOPY & TREATMENT	5.10	2.25	0.23	7.58
52265			CYSTOSCOPY & TREATMENT	3.30	0.61	0.09	4.00
52270			CYSTOSCOPY & REVISE URETHRA	5.02	3.43	0.35	8.80
52275			CYSTOSCOPY & REVISE URETHRA	5.90	3.30	0.32	9.52
52276			OPTICAL INTERNAL URETHROTOMY	5.18	4.82	0.47	10.47
52277			CYSTOSCOPY AND TREATMENT	8.58	4.79	0.47	13.84
52281			CYSTOSCOPY AND TREATMENT	3.62	2.43	0.24	6.29
52283			CYSTOSCOPY AND TREATMENT	5.05	1.56	0.15	6.76
52285			CYSTOSCOPY AND TREATMENT	4.71	3.00	0.30	8.01
52290			CYSTOSCOPY AND TREATMENT	5.84	2.38	0.24	8.46
52300			CYSTOSCOPY AND TREATMENT	6.85	3.51	0.35	10.71
52305			CYSTOSCOPY AND TREATMENT	7.06	3.26	0.31	10.63
52310			CYSTOSCOPY AND TREATMENT	3.70	3.09	0.30	7.09
52315			CYSTOSCOPY AND TREATMENT	6.71	4.20	0.41	11.32
52317			REMOVE BLADDER STONE	8.99	6.13	0.59	15.71
52318			REMOVE BLADDER STONE	12.14	8.12	0.79	21.05
52320			CYSTOSCOPY AND TREATMENT	6.86	5.13	0.50	12.61
52325			CYSTOSCOPY, STONE REMOVAL	8.78	6.88	0.67	16.33
52330			CYSTOSCOPY AND TREATMENT	7.21	3.65	0.36	11.22
52332			CYSTOSCOPY AND TREATMENT	4.19	3.33	0.32	7.84
52334			CREATE PASSAGE TO KIDNEY	7.49	3.12	0.32	10.93
52335			ENDOSCOPY OF URINARY TRACT	7.71	4.70	0.46	12.87
52336			CYSTOSCOPY, STONE REMOVAL	10.16	10.66	1.04	21.86
52337			CYSTOSCOPY, STONE REMOVAL	9.64	11.39	1.11	22.14
52338			CYSTOSCOPY AND TREATMENT	9.52	6.09	0.60	16.21
52340			CYSTOSCOPY AND TREATMENT	8.25	5.08	0.50	13.83
52500			REVISION OF BLADDER NECK	8.30	7.83	0.76	16.89
52601			PROSTATECTOMY (TUR)	12.23	12.65	1.23	26.11
52606			CONTROL POSTOP BLEEDING	7.97	3.33	0.33	11.63
52612			PROSTATECTOMY, FIRST STAGE	12.50	6.20	0.82	19.52
52614			PROSTATECTOMY, SECOND STAGE	11.15	7.45	0.72	19.32

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]		MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
52620			REMOVE RESIDUAL PROSTATE	9.46	5.36	0.52	15.34
52630			REMOVE PROSTATE REGROWTH	9.97	12.43	1.21	23.61
52640			RELIEVE BLADDER CONTRACTURE	8.78	6.85	0.66	16.29
52650	•		PROSTATECTOMY	11.23	5.98	0.72	17.93
52700			DRAINAGE OF PROSTATE ABSCESS	6.71	1.67	0.17	8.55
53000			INCISION OF URETHRA	5.61	1.52	0.14	7.27
53010			INCISION OF URETHRA	8.21	3.32	0.33	11.86
53020			INCISION OF URETHRA	1.87	0.78	0.08	2.73
53025	•		INCISION OF URETHRA	1.20	0.48	0.05	1.73
53040			DRAINAGE OF URETHRA ABSCESS	6.38	1.90	0.19	8.48
53060	•		DRAINAGE OF URETHRA ABSCESS	2.74	0.54	0.07	3.35
53080	•		DRAINAGE OF URINARY LEAKAGE	6.24	2.46	0.26	8.96
53085	•		DRAINAGE OF URINARY LEAKAGE	10.27	8.97	0.93	20.17
53200			BIOPSY OF URETHRA	3.07	1.11	0.12	4.30
53210			REMOVAL OF URETHRA	12.44	5.70	0.58	18.72
53215			REMOVAL OF URETHRA	15.49	9.81	0.94	26.24
53220			TREATMENT OF URETHRA LESION	6.99	4.64	0.48	12.11
53230			REMOVAL OF URETHRA LESION	9.80	7.58	0.77	18.05
53235			REMOVAL OF URETHRA LESION	10.20	3.90	0.46	14.56
53240	•		SURGERY FOR URETHRA POUCH	6.41	3.23	0.32	9.96
53250	•		REMOVAL OF URETHRA GLAND	6.04	1.42	0.11	7.57
53260			TREATMENT OF URETHRA LESION	3.11	1.08	0.15	4.34
53265			TREATMENT OF URETHRA LESION	3.25	1.57	0.18	5.00
53270			REMOVAL OF URETHRA GLAND	3.11	0.80	0.18	4.09
53275			REPAIR OF URETHRA DEFECT	4.64	2.37	0.24	7.25
53400			REVISE URETHRA, 1ST STAGE	10.49	7.43	0.75	18.67
53405	•		REVISE URETHRA, 2ND STAGE	12.06	7.24	0.73	20.03
53410			RECONSTRUCTION OF URETHRA	13.12	8.40	0.82	22.34
53415	•		RECONSTRUCTION OF URETHRA	16.38	11.62	1.14	29.14
53420			RECONSTRUCT URETHRA, STAGE 1	11.37	5.50	0.44	17.31
53425	•		RECONSTRUCT URETHRA, STAGE 2	13.57	13.39	1.28	28.24
53430			RECONSTRUCTION OF URETHRA	13.75	6.33	0.71	20.79
53440			CORRECT BLADDER FUNCTION	12.21	13.40	1.43	27.04
53442	•		REMOVE PERINEAL PROSTHESIS	8.15	4.55	0.65	13.35
53443	•		RECONSTRUCTION OF URETHRA	17.48	11.16	1.33	29.97
53445			CORRECT URINE FLOW CONTROL	13.98	21.05	2.09	37.12
53447			REMOVE ARTIFICIAL SPHINCTER	13.14	9.15	0.89	23.18
53449			CORRECT ARTIFICIAL SPHINCTER	9.73	8.58	0.83	19.14
53450			REVISION OF URETHRA	6.06	2.82	0.28	9.16
53460			REVISION OF URETHRA	7.11	2.50	0.25	9.86
53502	•		REPAIR OF URETHRA INJURY	7.66	2.20	0.26	10.12
53505	•		REPAIR OF URETHRA INJURY	7.66	4.81	0.51	12.98
53510	•		REPAIR OF URETHRA INJURY	10.17	6.95	0.71	17.83
53515	•		REPAIR OF URETHRA INJURY	13.50	8.25	0.79	22.54
53520	•		REPAIR OF URETHRA DEFECT	8.72	2.92	0.29	11.93
53600			DILATE URETHRA STRICTURE	0.87	0.33	0.03	1.23
53601			DILATE URETHRA STRICTURE	0.66	0.29	0.03	0.98
53605			DILATE URETHRA STRICTURE	0.91	0.45	0.04	1.40
53620			DILATE URETHRA STRICTURE	1.20	0.49	0.05	1.74
53621			DILATE URETHRA STRICTURE	0.96	0.36	0.03	1.35
53640			RELIEVE BLADDER RETENTION	1.16	0.59	0.06	1.81
53660			DILATION OF URETHRA	0.43	0.28	0.03	0.74
53661			DILATION OF URETHRA	0.44	0.25	0.03	0.72
53665			DILATION OF URETHRA	0.47	0.35	0.04	0.86
53670			INSERT URINARY CATHETER	0.34	0.22	0.02	0.58
53675			INSERT URINARY CATHETER	1.21	0.48	0.04	1.73
54000	•		SLITTING OF PREPUCE	1.58	0.65	0.07	2.30

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PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
54001		SLITTING OF PREPUCE	2.27	0.87	0.09	3.23
54015	•	DRAIN PENIS LESION	5.46	0.82	0.08	6.39
54050		DESTRUCTION, PENIS LESION(S)	0.74	0.36	0.03	1.12
54055		DESTRUCTION, PENIS LESION(S)	0.96	0.59	0.06	1.61
54056		CRYOSURGERY, PENIS LESION(S)	1.04	0.51	0.04	1.59
54057		LASER SURG, PENIS LESION(S)	4.31	1.73	0.18	6.22
54060		EXCISION OF PENIS LESION(S)	2.43	1.16	0.11	3.69
54065		DESTRUCTION, PENIS LESION(S)	2.58	2.16	0.21	4.95
54100		BIOPSY OF PENIS	2.41	0.64	0.06	3.11
54105		BIOPSY OF PENIS	4.43	0.99	0.10	5.52
54110	•	TREATMENT OF PENIS LESION	10.26	5.18	0.53	15.97
54111	•	TREAT PENIS LESION, GRAFT	13.63	7.34	0.79	21.96
54112	•	TREAT PENIS LESION, GRAFT	16.06	13.19	1.40	30.67
54115	•	TREATMENT OF PENIS LESION	6.03	3.58	0.37	9.98
54120		PARTIAL REMOVAL OF PENIS	9.61	6.67	0.64	17.12
54125		REMOVAL OF PENIS	13.60	11.52	1.17	26.29
54130	•	REMOVE PENIS & NODES	20.10	17.58	1.58	39.26
54135	•	REMOVE PENIS & NODES	26.57	20.97	2.05	49.59
54150		CIRCUMCISION	1.86	0.55	0.05	2.46
54152		CIRCUMCISION	2.41	1.73	0.19	4.33
54160	•	CIRCUMCISION	2.58	1.43	0.19	4.20
54161		CIRCUMCISION	3.41	2.23	0.23	5.87
54200		TREATMENT OF PENIS LESION	0.59	0.32	0.03	0.94
54205	•	TREATMENT OF PENIS LESION	7.65	3.75	0.37	11.77
54220		TREATMENT OF PENIS LESION	3.38	1.37	0.14	4.89
54230		PREPARE PENIS STUDY	1.58	0.63	0.06	2.27
54235		PENILE INJECTION	1.27	0.43	0.04	1.74
54240		PENIS PRESSURE STUDY	2.32	0.69	0.07	3.08
54250		TEST PENILE ERECTION/RIGID	2.36	0.57	0.06	2.97
54300	•	REVISION OF PENIS	10.67	2.24	0.28	13.19
54304	•	REVISION OF PENIS	12.86	9.66	0.97	23.51
54308	•	RECONSTRUCTION OF URETHRA	9.41	1.38	0.14	10.93
54312	•	RECONSTRUCTION OF URETHRA	13.98	6.31	0.62	20.92
54316	•	RECONSTRUCTION OF URETHRA	16.97	8.90	0.87	26.74
54318	•	RECONSTRUCTION OF URETHRA	11.13	16.25	2.37	29.75
54322	•	RECONSTRUCTION OF URETHRA	11.87	9.73	0.95	22.05
54324	•	RECONSTRUCTION OF URETHRA	16.43	10.49	1.03	27.95
54326	•	RECONSTRUCTION OF URETHRA	15.73	14.98	1.46	32.17
54328	•	REVISE PENIS, URETHRA	15.72	14.57	1.69	31.98
54332	•	REVISE PENIS, URETHRA	17.17	17.82	1.51	36.50
54336	•	REVISE PENIS, URETHRA	16.79	1.46	0.11	18.36
54340	•	SECONDARY URETHRAL SURGERY	9.06	2.58	0.25	11.91
54344	•	SECONDARY URETHRAL SURGERY	16.17	7.64	0.50	24.31
54348	•	SECONDARY URETHRAL SURGERY	17.36	16.92	1.65	35.96
54352	•	RECONSTRUCT URETHRA, PENIS	25.34	17.79	1.66	44.79
54360	•	PENIS PLASTIC SURGERY	9.64	6.82	0.71	17.17
54380	•	REPAIR PENIS	13.37	7.23	0.59	21.19
54385	•	REPAIR PENIS	15.66	8.60	0.74	25.00
54400		INSERT SEMI-RIGID PROSTHESIS	9.12	13.76	1.34	24.22
54402		REMOVE PENIS PROSTHESIS	9.21	5.64	0.56	15.41
54405		INSERT MULTI-COMP PROSTHESIS	13.42	22.35	2.17	37.94
54407		REMOVE MULTI-COMP PROSTHESIS	13.40	11.21	1.10	25.71
54409		REVISE PENIS PROSTHESIS	12.25	7.72	0.76	20.73
54420	•	REVISION OF PENIS	11.42	10.24	1.10	22.76
54430	•	REVISION OF PENIS	10.16	10.40	1.03	21.59
54435	•	REVISION OF PENIS	5.97	5.21	0.49	11.67
54440	•	REPAIR OF PENIS	13.81	6.67	0.66	21.16

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
54450		PREPUTIAL STRETCHING	1.43	0.70	0.07	2.20
54500	•	BIOPSY OF TESTIS	1.59	0.44	0.05	2.08
54505		BIOPSY OF TESTIS	4.37	1.86	0.22	6.45
54510		REMOVAL OF TESTIS LESION	5.57	2.87	0.35	8.79
54520		REMOVAL OF TESTIS	5.23	5.51	0.55	11.29
54530		REMOVAL OF TESTIS	8.55	7.16	0.75	16.46
54535	•	EXTENSIVE TESTIS SURGERY	12.14	8.79	1.04	21.97
54550		EXPLORATION FOR TESTIS	7.82	4.68	0.54	13.04
54560	•	EXPLORATION FOR TESTIS	11.12	9.73	1.09	21.94
54600	•	REDUCE TESTIS TORSION	7.00	3.97	0.47	11.44
54620	•	SUSPENSION OF TESTIS	4.97	2.30	0.23	7.50
54640		SUSPENSION OF TESTIS	8.96	7.74	0.90	15.60
54660	•	REVISION OF TESTIS	5.09	2.15	0.18	7.42
54670	•	REPAIR TESTIS INJURY	7.81	0.75	0.06	8.62
54680	•	RELOCATION OF TESTIS(ES)	12.25	12.04	1.18	25.47
54700		DRAINAGE OF SCROTUM	3.59	0.90	0.10	4.59
54800	•	BIOPSY OF EPIDIDYMIS	2.23	0.34	0.03	2.60
54820	•	EXPLORATION OF EPIDIDYMIS	5.94	2.48	0.26	8.68
54830		REMOVE EPIDIDYMIS LESION	5.39	3.37	0.37	9.13
54840		REMOVE EPIDIDYMIS LESION	5.33	4.94	0.50	10.77
54860		REMOVAL OF EPIDIDYMIS	6.39	5.34	0.52	12.25
54861		REMOVAL OF EPIDIDYMIS	9.06	7.60	0.76	17.42
54900	•	FUSION OF SPERMATIC DUCTS	13.40	2.62	0.20	16.22
54901	•	FUSION OF SPERMATIC DUCTS	18.35	12.35	1.21	31.94
55000		DRAINAGE OF HYDROCELE	0.80	0.40	0.04	1.24
55040		REMOVAL OF HYDROCELE	5.48	5.04	0.58	11.10
55041		REMOVAL OF HYDROCELES	7.84	7.71	0.83	16.38
55060		REPAIR OF HYDROCELE	5.53	4.36	0.53	10.42
55100		DRAINAGE OF SCROTUM ABSCESS	2.09	0.62	0.07	2.78
55110		EXPLORE SCROTUM	5.81	3.30	0.35	9.26
55120	•	REMOVAL OF SCROTUM LESION	5.07	1.68	0.19	6.94
55150		REMOVAL OF SCROTUM	7.03	5.56	0.59	13.18
55175	•	REVISION OF SCROTUM	5.23	3.90	0.40	9.53
55180	•	REVISION OF SCROTUM	10.69	6.36	0.77	17.82
55200	•	INCISION OF SPERM DUCT	4.41	1.98	0.20	6.59
55250		REMOVAL OF SPERM DUCT(S)	3.40	2.74	0.29	6.43
55300	•	PREPARATION,SPERM DUCT X-RAY	4.55	1.57	0.14	6.26
55400	•	REPAIR OF SPERM DUCT	9.76	6.82	0.65	16.23
55450	•	LIGATION OF SPERM DUCT	4.14	1.08	0.13	5.35
55500		REMOVAL OF HYDROCELE	5.81	4.19	0.48	10.28
55520		REMOVAL OF SPERM CORD LESION	8.08	2.90	0.50	9.48
55530	•	REVISE SPERMATIC CORD VEINS	5.79	5.26	0.61	11.66
55535	•	REVISE SPERMATIC CORD VEINS	8.63	5.72	0.68	14.03
55540		REVISE HERNIA & SPERM VEINS	7.70	4.34	0.85	12.89
55600	•	INCISE SPERM DUCT POUCH	6.45	4.29	0.57	11.31
55605	•	INCISE SPERM DUCT POUCH	8.07	5.11	0.51	13.69
55650	•	REMOVE SPERM DUCT POUCH	11.96	8.77	0.90	21.63
55680	•	REMOVE SPERM POUCH LESION	5.11	9.37	0.79	15.27
55700		BIOPSY OF PROSTATE	2.10	1.53	0.15	3.78
55705		BIOPSY OF PROSTATE	5.12	3.35	0.33	8.80
55720		DRAINAGE OF PROSTATE ABSCESS	8.00	2.35	0.21	10.56
55725	•	DRAINAGE OF PROSTATE ABSCESS	8.18	7.97	0.79	16.94
55740		REMOVAL OF PROSTATE STONE	10.89	13.62	1.32	25.83
55801		REMOVAL OF PROSTATE	17.27	13.03	1.47	31.77
55810		EXTENSIVE PROSTATE SURGERY	22.53	18.82	1.86	43.21
55812	•	EXTENSIVE PROSTATE SURGERY	29.43	20.49	2.15	52.07
55815		EXTENSIVE PROSTATE SURGERY	32.90	26.05	2.51	61.46

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
55821		REMOVAL OF PROSTATE	13.60	14.17	1.40	29.37
55831		REMOVAL OF PROSTATE	15.19	15.14	1.50	31.83
55840		EXTENSIVE PROSTATE SURGERY	25.23	17.03	1.68	43.94
55842		EXTENSIVE PROSTATE SURGERY	28.40	19.81	1.95	50.16
55845		EXTENSIVE PROSTATE SURGERY	24.12	26.41	2.57	53.10
55860		SURGICAL EXPOSURE, PROSTATE	14.17	6.39	0.64	21.20
55862	*	EXTENSIVE PROSTATE SURGERY	18.16	10.42	1.19	29.77
55865		EXTENSIVE PROSTATE SURGERY	23.00	25.63	2.50	51.13
56000		DRAINAGE OF PERINEAL ABSCESS	0.80	0.68	0.11	1.59
56100		BIOPSY OF PERINEUM	0.67	0.64	0.13	1.44
56200		REPAIR OF PERINEUM	4.22	2.86	0.53	7.41
56400		DRAINAGE OF VULVA ABSCESS	0.73	0.78	0.14	1.65
56420		DRAINAGE OF VULVA ABSCESS	0.70	0.63	0.12	1.65
56440		SURGERY FOR VULVA LESION	2.97	2.69	0.54	6.19
56501		DESTRUCTION, VULVA LESION(S)	1.57	0.57	0.11	2.25
56515		DESTRUCTION, VULVA LESION(S)	1.96	2.65	0.58	5.40
56600		BIOPSY OF VULVA	0.38	0.68	0.14	1.20
56620		PARTIAL REMOVAL OF VULVA	7.74	6.58	1.42	15.74
56625		REMOVAL OF VULVA	8.81	10.36	2.20	21.16
56630		EXTENSIVE VULVA SURGERY	12.17	16.10	3.33	31.60
56635		EXTENSIVE VULVA SURGERY	14.49	21.12	4.46	40.07
56640	*	EXTENSIVE VULVA SURGERY	15.42	19.75	4.45	39.62
56680	*	REMOVAL OF CLITORIS	4.91	1.86	0.36	7.13
56685	*	EXTENSIVE CLITORIS SURGERY	5.62	2.11	0.42	8.45
56700	*	PARTIAL REMOVAL OF HYMEN	2.57	1.18	0.23	3.98
56720	*	INCISION OF HYMEN	0.37	1.01	0.22	1.60
56740		REMOVE VAGINA GLAND LESION	3.83	2.96	0.58	7.37
56800	*	REPAIR OF VAGINA	3.96	2.99	0.55	7.40
57000		EXPLORATION OF VAGINA	3.10	1.86	0.26	5.02
57010		DRAINAGE OF PELVIC ABSCESS	5.75	2.57	0.51	8.83
57020		DRAINAGE OF PELVIC FLUID	1.58	0.65	0.13	2.37
57061		DESTRUCTION VAGINA LESION(S)	1.26	0.77	0.18	2.20
57065		DESTRUCTION VAGINA LESION(S)	2.71	2.90	0.63	6.24
57100		BIOPSY OF VAGINA	0.72	0.60	0.12	1.44
57105		BIOPSY OF VAGINA	1.99	1.47	0.30	3.76
57106		PARTIAL REMOVAL OF VAGINA	6.04	5.16	1.08	12.20
57110		REMOVAL OF VAGINA	6.90	6.04	1.79	16.73
57120		CLOSURE OF VAGINA	7.15	7.08	1.46	15.67
57130	*	REMOVE VAGINA LESION	2.55	2.13	0.44	5.12
57135		REMOVE VAGINA LESION	2.81	1.70	0.33	4.84
57150		TREAT VAGINA INFECTION	0.37	0.19	0.03	0.59
57160		INSERTION OF PESSARY	0.33	0.25	0.05	0.63
57170		FITTING OF DIAPHRAGM	0.36	0.30	0.06	0.70
57180		TREAT VAGINAL BLEEDING	1.63	0.58	0.10	2.29
57200		REPAIR OF VAGINA	3.92	2.60	0.55	6.97
57210		REPAIR VAGINA/PERINEUM	5.02	2.90	0.54	8.46
57220		REVISION OF URETHRA	4.10	4.50	0.80	9.40
57230	*	REPAIR OF URETHRAL LESION	5.39	3.17	0.58	9.14
57240		REPAIR BLADDER & VAGINA	5.72	5.62	1.12	12.46
57250		REPAIR RECTUM & VAGINA	5.29	5.26	1.12	11.67
57260		REPAIR OF VAGINA	6.06	8.23	1.79	16.08
57265		EXTENSIVE REPAIR OF VAGINA	7.62	8.56	2.07	18.45
57268		REPAIR OF BOWEL BULGE	6.68	7.06	1.51	15.12
57270		REPAIR OF BOWEL POUCH	7.52	6.65	1.44	16.09
57280		SUSPENSION OF VAGINA	8.66	8.81	1.90	19.57
57282		REPAIR OF VAGINAL PROLAPSE	6.57	6.29	1.80	16.66
57288		REPAIR BLADDER DEFECT	7.56	11.13	1.43	19.91

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
57289		REPAIR BLADDER & VAGINA	8.81	6.50	1.18	17.49
57291	*	CONSTRUCTION OF VAGINA	7.93	15.63	3.50	27.06
57292	*	CONSTRUCT VAGINA WITH GRAFT	10.19	14.46	3.06	27.71
57300		REPAIR RECTUM-VAGINA FISTULA	7.23	6.96	1.50	15.69
57305		REPAIR RECTUM-VAGINA FISTULA	9.23	7.72	1.59	18.54
57307	*	FISTULA REPAIR & COLOSTOMY	10.67	10.51	2.19	23.37
57310	*	REPAIR URETHROVAGINAL LESION	6.46	7.87	0.99	15.34
57311	*	REPAIR URETHROVAGINAL LESION	7.88	12.98	0.96	21.62
57320	*	REPAIR BLADDER-VAGINA LESION	7.79	10.08	1.39	19.26
57330	*	REPAIR BLADDER-VAGINA LESION	8.63	15.50	1.51	25.64
57400		DILATION OF VAGINA	0.45	0.31	0.05	0.81
57410		PELVIC EXAMINATION	0.34	0.35	0.04	0.73
57450		PELVIS ENDOSCOPY VIA VAGINA	1.20	0.95	0.15	2.30
57451	*	PELVIS ENDOSCOPY & BIOPSY	1.74	1.60	0.32	3.66
57452		EXAMINATION OF VAGINA	0.74	0.61	0.12	1.47
57454		VAGINA EXAMINATION & BIOPSY	0.89	1.26	0.26	2.51
57500		BIOPSY OF CERVIX	0.72	0.59	0.11	1.42
57505		ENDOCERVICAL CURETTAGE	1.15	0.65	0.13	1.93
57510		CAUTERIZATION OF CERVIX	1.26	0.53	0.09	1.88
57511		CRYOCAUTERY OF CERVIX	0.52	0.82	0.15	1.49
57513		LASER SURGERY OF CERVIX	2.55	2.68	0.57	5.80
57520		BIOPSY OF CERVIX	3.63	3.59	0.76	7.98
57530		REMOVAL OF CERVIX	4.70	3.63	0.78	9.11
57540	*	REMOVAL OF RESIDUAL CERVIX	6.39	6.31	1.26	13.96
57545	*	REMOVE CERVIX, REPAIR PELVIS	7.84	6.06	1.56	14.46
57550		REMOVAL OF RESIDUAL CERVIX	5.21	7.35	1.53	14.09
57555		REMOVE CERVIX, REPAIR VAGINA	8.64	10.62	2.29	21.55
57556	*	REMOVE CERVIX, REPAIR BOWEL	8.03	10.74	2.31	21.08
57700	*	REVISION OF CERVIX	3.51	1.22	0.12	4.85
57720	*	REVISION OF CERVIX	4.10	1.98	0.31	6.34
57800		DILATION OF CERVICAL CANAL	0.48	0.48	0.09	1.05
57820		D&C OF RESIDUAL CERVIX	1.72	2.15	0.39	4.26
58100		BIOPSY OF UTERUS LINING	0.90	0.66	0.13	1.29
58102		CURETTAGE OF UTERUS LINING	1.51	0.95	0.20	2.66
58120		DILATION AND CURETTAGE	2.60	2.99	0.51	6.10
58140		REMOVAL OF UTERUS LESION	8.08	8.06	1.64	17.78
58145	*	REMOVAL OF UTERUS LESION	7.82	8.59	1.66	18.07
58150		TOTAL HYSTERECTOMY	8.57	10.24	2.22	22.03
58152		TOTAL HYSTERECTOMY	9.89	12.75	2.77	25.41
58180		PARTIAL HYSTERECTOMY	7.75	10.13	2.18	20.06
58200		EXTENSIVE HYSTERECTOMY	12.26	13.88	3.02	29.16
58210		EXTENSIVE HYSTERECTOMY	18.43	15.22	4.22	41.87
58240		REMOVAL OF PELVIS CONTENTS	26.67	20.77	4.08	51.52
58260		VAGINAL HYSTERECTOMY	7.94	9.89	2.20	20.12
58267		HYSTERECTOMY & VAGINA REPAIR	10.00	12.00	2.55	24.55
58270		HYSTERECTOMY & VAGINA REPAIR	8.48	10.90	2.38	21.75
58275		HYSTERECTOMY, REVISE VAGINA	9.97	10.98	2.31	23.26
58280		HYSTERECTOMY, REVISE VAGINA	10.34	11.14	2.46	23.94
58285	*	EXTENSIVE HYSTERECTOMY	14.25	14.09	3.29	31.63
58300	*	INSERT INTRAUTERINE DEVICE	0.54	0.62	0.11	1.27
58301	*	REMOVE INTRAUTERINE DEVICE	0.25	0.31	0.05	0.61
58310	*	ARTIFICIAL INSEMINATION	0.44	0.35	0.08	0.87
58340		INJECT FOR UTERUS/TUBE X-RAY	0.56	0.67	0.10	1.33
58350	*	REOPEN FALLOPIAN TUBE	0.81	0.53	0.12	1.26
58400		SUSPENSION OF UTERUS	6.01	5.88	1.20	13.04
58410	*	SUSPENSION OF UTERUS	7.21	6.96	1.32	16.51
58520	*	REPAIR OF RUPTURED UTERUS	6.74	4.04	0.88	11.66

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HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
58540	*	REVISION OF UTERUS	9.12	9.76	2.27	21.17
58600	*	DIVISION OF FALLOPIAN TUBE	3.97	7.04	1.38	12.39
58605	*	DIVISION OF FALLOPIAN TUBE	3.50	4.32	0.90	8.72
58611	*	LIGATE OVIDUCT(S)	1.90	4.41	0.89	7.20
58615	*	OCCLUDE FALLOPIAN TUBE(S)	4.37	5.62	1.30	11.29
58700		REMOVAL OF FALLOPIAN TUBE	6.29	6.45	1.33	14.07
58720		REMOVAL OF OVARY/TUBE(S)	6.58	7.37	1.60	15.55
58740		REVISE FALLOPIAN TUBE(S)	5.62	8.32	1.80	15.74
58750	*	REPAIR OVIDUCT(S)	9.37	11.49	2.66	23.52
58752	*	REVISE OVARIAN TUBE(S)	8.44	3.01	0.37	11.82
58760	*	REMOVE TUBAL OBSTRUCTION	7.61	12.05	1.64	21.30
58770	*	CREATE NEW TUBAL OPENING	7.39	14.84	3.10	25.33
58800	*	DRAINAGE OF OVARIAN CYST(S)	4.00	2.23	0.41	6.64
58805	*	DRAINAGE OF OVARIAN CYST(S)	5.78	5.03	1.08	11.89
58820	*	DRAINAGE OF OVARIAN ABSCESS	4.21	2.09	0.34	6.64
58822	*	DRAINAGE OF OVARIAN ABSCESS	6.56	5.20	1.18	12.94
58825	*	TRANSPOSITION, OVARY(S)	5.96	4.97	1.15	12.10
58900		BIOPSY OF OVARY(S)	5.83	4.64	0.94	11.41
58920	*	PARTIAL REMOVAL OF OVARY(S)	6.67	6.64	1.38	14.69
58925		REMOVAL OF OVARIAN CYST(S)	6.81	6.72	1.41	14.94
58940		REMOVAL OF OVARY(S)	6.94	6.57	1.34	14.85
58943		REMOVAL OF OVARY(S)	12.14	12.41	2.70	27.25
58950		RESECT OVARIAN MALIGNANCY	12.26	11.27	2.41	25.96
58951		RESECT OVARIAN MALIGNANCY	15.69	17.07	3.65	36.41
58952		RESECT OVARIAN MALIGNANCY	16.61	17.42	3.76	37.81
58960		EXPLORATION OF ABDOMEN	10.77	13.84	3.03	27.44
58980		LAPAROSCOPY OF PELVIS	3.90	4.91	1.06	9.87
58983		LAPAROSCOPY; TUBAL BLOCK	3.79	6.23	1.30	11.32
58984	*	LAPAROSCOPY OF PELVIS	4.48	4.97	1.01	10.46
58985		LAPAROSCOPY OF PELVIS	4.07	5.30	1.07	10.44
58986		PELVIS LAPAROSCOPY & BIOPSY	3.97	5.37	0.97	10.31
58987		LAPAROSCOPY OF PELVIS	3.99	5.34	1.17	10.50
58990		DIAGNOSTIC HYSTEROSCOPY	2.54	1.90	0.41	4.85
58992	*	TREATMENT HYSTEROSCOPY	3.41	3.05	0.64	7.10
58994	*	TREATMENT HYSTEROSCOPY	4.09	3.92	0.85	8.86
59000		AMNIOCENTESIS	1.03	0.88	0.17	2.08
59015	*	CHORION BIOPSY	1.98	1.23	0.09	3.30
59020	*	FETAL OXYTOCIN STRESS TEST	0.47	0.83	0.16	1.46
59025		FETAL NON-STRESS TEST	0.34	0.46	0.09	0.89
59030	*	FETAL SCALP BLOOD SAMPLE	1.88	0.74	0.10	2.72
59050	*	FETAL MONITOR W/REPORT	2.49	0.72	0.12	3.33
59100	*	REMOVE UTERUS LESION	6.35	5.25	1.22	12.82
59120	*	TREAT ECTOPIC PREGNANCY	7.56	6.71	1.15	15.42
59121	*	TREAT ECTOPIC PREGNANCY	7.43	7.65	1.50	16.58
59130	*	TREAT ECTOPIC PREGNANCY	8.37	4.60	0.51	13.48
59135	*	TREAT ECTOPIC PREGNANCY	9.44	11.81	2.74	23.99
59140	*	TREAT ECTOPIC PREGNANCY	5.41	2.56	0.28	8.25
59151	*	TREAT ECTOPIC PREGNANCY	7.69	6.73	0.50	14.92
59160		D&C AFTER DELIVERY	2.63	2.81	0.46	5.90
59200	*	INSERT CERVICAL DILATOR	0.63	0.47	0.07	1.37
59300	*	EPISIOTOMY OR VAGINAL REPAIR	3.50	1.00	0.10	4.60
59325	*	REVISION OF CERVIX	5.31	2.25	0.22	7.78
59400		OBSTETRICAL CARE	13.80	7.90	1.49	23.19
59410		OBSTETRICAL CARE	6.79	6.13	1.14	14.06
59412	*	ANTEPARTUM MANIPULATION	1.58	1.23	0.29	3.10
59420		CARE BEFORE DELIVERY	7.01	0.37	0.07	7.45
59430		CARE AFTER DELIVERY	2.76	0.38	0.07	3.23

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
59510		CESAREAN DELIVERY	17.14	12.14	2.58	31.86
59515		CESAREAN DELIVERY	10.13	10.31	2.05	22.49
59525	*	REMOVE UTERUS AFTER CESAREAN	4.57	4.83	0.96	10.36
59812	*	TREATMENT OF MISCARRIAGE	3.29	3.10	0.67	7.06
59820		CARE OF MISCARRIAGE	4.43	3.75	0.76	8.94
59840		ABORTION	3.76	2.79	0.59	7.14
59841	*	ABORTION	3.11	3.89	0.78	7.78
59850	*	ABORTION	5.80	3.10	0.65	9.55
59851	*	ABORTION	5.96	4.92	1.01	11.89
59852	*	ABORTION	6.18	3.01	0.50	11.69
60000		DRAIN THYROID/TONGUE CYST	1.20	0.55	0.07	1.82
60100		BIOPSY OF THYROID	0.72	1.09	0.12	1.93
60200		REMOVE THYROID LESION	9.36	6.12	1.06	16.56
60220		PARTIAL REMOVAL OF THYROID	10.48	8.76	1.66	20.90
60225		PARTIAL REMOVAL OF THYROID	12.36	10.76	1.98	25.12
60240		REMOVAL OF THYROID	14.89	11.05	2.05	28.09
60245		PARTIAL REMOVAL OF THYROID	12.77	9.35	1.82	23.94
60246		PARTIAL REMOVAL OF THYROID	15.05	12.42	2.34	29.81
60252		REMOVAL OF THYROID	16.36	13.56	2.54	32.48
60254		EXTENSIVE THYROID SURGERY	17.72	19.17	3.02	39.91
60260		REPEAT THYROID SURGERY	15.39	1.86	0.19	17.45
60270		REMOVAL OF THYROID	17.48	12.40	2.18	32.04
60280		REMOVE THYROID DUCT LESION	7.82	6.02	1.11	16.65
60281	*	REMOVE THYROID DUCT LESION	8.50	6.45	1.40	18.35
60500		EXPLORE PARATHYROID GLANDS	13.41	11.73	2.40	27.54
60502	*	RE-EXPLORE PARATHYROIDS	16.17	11.78	2.42	32.37
60505		EXPLORE PARATHYROID GLANDS	21.17	11.03	2.21	34.41
60520		REMOVAL OF THYMUS GLAND	16.16	13.89	2.49	34.56
60540		EXPLORE ADRENAL GLAND	16.89	12.34	2.12	31.15
60545		EXPLORE ADRENAL GLAND	19.87	15.02	2.46	37.15
60600	*	REMOVE CAROTID BODY LESION	17.13	10.38	1.51	29.02
60605	*	REMOVE CAROTID BODY LESION	19.32	12.79	2.16	34.27
61000		REMOVE CRANIAL CAVITY FLUID	1.16	0.97	0.14	2.27
61001	*	REMOVE CRANIAL CAVITY FLUID	1.09	0.90	0.17	2.16
61020		REMOVE BRAIN CAVITY FLUID	1.11	1.21	0.19	2.51
61026		INJECTION INTO BRAIN CANAL	1.25	1.95	0.20	3.40
61055		INJECTION INTO BRAIN CANAL	1.19	1.87	0.19	3.25
61070		BRAIN CANAL SHUNT PROCEDURE	0.82	0.47	0.07	1.16
61105		DRILL SKULL FOR EXAMINATION	4.75	6.17	1.12	12.04
61106	*	DRILL SKULL FOR EXAM/SURGERY	4.90	6.15	1.16	12.21
61107		DRILL SKULL FOR IMPLANTATION	2.94	6.72	1.22	10.88
61108		DRILL SKULL FOR DRAINAGE	10.43	12.06	2.20	24.69
61120		PIERCE SKULL FOR EXAMINATION	5.84	5.91	0.92	15.61
61130	*	PIERCE SKULL, EXAM/SURGERY	10.22	6.47	0.86	15.55
61140		PIERCE SKULL FOR BIOPSY	15.77	12.09	2.20	30.06
61150		PIERCE SKULL FOR DRAINAGE	17.39	15.05	2.71	35.15
61151	*	PIERCE SKULL FOR DRAINAGE	14.21	1.87	0.34	16.52
61154		PIERCE SKULL, REMOVE CLOT	12.85	18.52	3.41	34.88
61156		PIERCE SKULL FOR DRAINAGE	16.16	16.30	3.10	35.76
61210		PIERCE SKULL; IMPLANT DEVICE	3.34	8.52	1.55	13.41
61215		INSERT BRAIN-FLUID DEVICE	10.67	8.56	1.57	20.80
61250	*	PIERCE SKULL & EXPLORE	11.72	8.73	1.53	21.98
61253	*	PIERCE SKULL & EXPLORE	13.80	11.34	2.05	27.19
61304		INCISE SKULL FOR EXPLORATION	21.81	27.09	4.99	53.99
61305		INCISE SKULL FOR EXPLORATION	28.32	24.80	4.52	55.64
61312		INCISE SKULL FOR DRAINAGE	21.92	24.88	4.51	51.31
61313		INCISE SKULL FOR DRAINAGE	20.17	24.42	4.45	49.04

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HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
61314		INCISE SKULL FOR DRAINAGE	24.19	26.63	4.85	55.67
61315		INCISE SKULL FOR DRAINAGE	27.53	24.65	4.52	56.70
61320		INCISE SKULL FOR DRAINAGE	25.39	15.43	2.90	43.72
61321	•	INCISE SKULL FOR DRAINAGE	28.32	23.58	4.19	56.09
61332	•	EXPLORE/BIOPSY EYE SOCKET	27.71	16.76	2.05	46.52
61333	•	EXPLORE ORBIT; REMOVE LESION	29.16	23.51	3.81	56.48
61343	•	INCISE SKULL,PRESSURE RELIEF	29.61	21.82	4.24	55.67
61345	•	RELIEVE CRANIAL PRESSURE	26.93	23.43	4.20	54.56
61440	•	INCISE SKULL FOR SURGERY	26.34	24.77	3.57	54.68
61450	•	INCISE SKULL FOR SURGERY	25.80	17.46	2.85	45.91
61458		INCISE SKULL FOR BRAIN WOUND	27.59	27.80	4.94	60.33
61460		INCISE SKULL FOR SURGERY	28.42	26.61	4.34	59.37
61500		REMOVAL OF SKULL LESION	18.00	15.18	2.61	35.79
61501	•	REMOVE INFECTED SKULL BONE	17.97	11.85	1.69	31.51
61510		REMOVAL OF BRAIN LESION	24.84	27.95	5.06	57.85
61512		REMOVE BRAIN LINING LESION	25.77	29.84	5.44	61.15
61514	•	REMOVAL OF BRAIN ABSCESS	24.95	25.60	4.74	55.29
61516	•	REMOVAL OF BRAIN LESION	24.26	26.14	4.47	54.87
61518		REMOVAL OF BRAIN LESION	34.26	30.62	5.61	70.51
61519		REMOVE BRAIN LINING LESION	35.95	32.69	6.09	74.73
61520		REMOVAL OF BRAIN LESION	40.73	35.21	6.19	82.13
61521	•	REMOVAL OF BRAIN LESION	41.94	34.20	6.05	82.19
61522	•	REMOVAL OF BRAIN ABSCESS	29.27	27.86	5.35	62.48
61524	•	REMOVAL OF BRAIN LESION	27.64	27.90	5.22	60.76
61526		REMOVAL OF BRAIN LESION	25.40	22.15	3.77	51.32
61530	•	REMOVAL OF BRAIN LESION	46.68	36.54	5.26	88.50
61533	•	INSERT BRAIN ELECTRODES	20.99	21.38	4.19	46.57
61536	•	REMOVAL OF BRAIN LESION	31.26	27.06	4.51	62.85
61538		REMOVAL OF BRAIN TISSUE	29.79	22.40	4.23	56.42
61539	•	REMOVAL OF BRAIN TISSUE	31.92	28.05	4.96	64.93
61541	•	INCISION OF BRAIN TISSUE	26.83	26.81	4.77	60.31
61546		REMOVAL OF PITUITARY GLAND	31.16	27.23	4.91	63.30
61548		REMOVAL OF PITUITARY GLAND	21.40	24.92	3.99	50.31
61550	•	RELEASE OF SKULL SEAMS	15.13	7.60	0.77	23.50
61570	•	REMOVE BRAIN FOREIGN BODY	24.31	24.38	4.49	53.18
61571	•	INCISE SKULL FOR BRAIN WOUND	26.06	26.12	4.64	56.84
61575	•	SKULL BASE/BRAINSTEM SURGERY	34.35	24.47	3.26	62.10
61580	•	INTRACRANIAL VESSEL SURGERY	41.72	34.34	5.77	81.83
61582	•	INTRACRANIAL VESSEL SURGERY	62.43	34.71	6.34	103.48
61584	•	INTRACRANIAL VESSEL SURGERY	47.45	28.36	5.06	80.89
61586	•	INTRACRANIAL VESSEL SURGERY	68.40	35.90	6.56	110.86
61590	•	INTRACRANIAL VESSEL SURGERY	35.93	26.29	4.21	66.43
61592	•	INTRACRANIAL VESSEL SURGERY	49.44	32.23	5.63	87.30
61700		INNER SKULL VESSEL SURGERY	37.00	30.99	5.60	73.59
61702		INNER SKULL VESSEL SURGERY	52.73	35.25	6.29	94.27
61703	•	CLAMP NECK ARTERY	17.29	22.06	4.13	43.48
61705	•	REVISE CIRCULATION TO HEAD	36.63	25.65	4.30	66.58
61706	•	REVISE CIRCULATION TO HEAD	35.68	21.76	1.78	59.22
61710		REVISE CIRCULATION TO HEAD	29.89	15.10	1.58	46.57
61711	•	FUSION OF SKULL ARTERIES	36.78	26.81	4.98	70.57
61790		TREAT TRIGEMINAL NERVE	10.95	16.67	2.91	30.53
61880	•	REVISE/REMOVE NEUROELECTRODE	6.08	8.95	1.23	16.26
62141		REPAIR OF SKULL DEFECT	13.28	16.17	3.36	34.81
62223		ESTABLISH BRAIN CAVITY SHUNT	13.13	17.41	3.18	33.72
62230		REPLACE/REVISE BRAIN SHUNT	10.31	10.17	1.86	22.36
62270		SPINAL FLUID TAP, DIAGNOSTIC	0.90	0.74	0.06	1.70
62278		INJECT SPINAL ANESTHETIC	1.16	1.01	0.26	2.43

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
62279		INJECT SPINAL ANESTHETIC	1.23	0.83	0.24	2.30
62284		INJECTION FOR MYELOGRAM	1.08	2.32	0.34	3.74
62289		INJECTION INTO SPINAL CANAL	1.16	1.08	0.29	2.55
63001		REMOVAL OF SPINAL LAMINA	14.61	20.30	3.63	38.54
63003		REMOVAL OF SPINAL LAMINA	14.96	18.75	3.37	37.08
63005		REMOVAL OF SPINAL LAMINA	15.72	19.14	3.31	38.17
63011	•	REMOVAL OF SPINAL LAMINA	13.74	11.06	1.95	26.75
63015		REMOVAL OF SPINAL LAMINA	17.62	24.40	4.45	46.47
63016		REMOVAL OF SPINAL LAMINA	16.51	23.42	4.31	46.24
63017		REMOVAL OF SPINAL LAMINA	17.82	24.37	4.28	46.47
63020		NECK SPINE DISK SURGERY	13.32	18.96	3.45	35.63
63030		LOW BACK DISK SURGERY	11.58	16.78	2.97	31.31
63035		ADDED SPINAL DISK SURGERY	3.35	3.97	0.70	8.02
63040		NECK SPINE DISK SURGERY	17.13	24.34	4.40	45.87
63042		LOW BACK DISK SURGERY	16.81	25.49	4.56	46.86
63045		REMOVAL OF SPINAL LAMINA	16.26	24.45	4.42	45.13
63046		REMOVAL OF SPINAL LAMINA	15.51	25.67	4.77	45.95
63047		REMOVAL OF SPINAL LAMINA	13.55	26.95	4.69	45.19
63048		REMOVAL OF SPINAL LAMINA	3.47	5.67	1.00	10.14
63064	•	DECOMPRESS SPINAL CORD	21.93	24.39	4.23	50.85
63075		NECK SPINE DISK SURGERY	14.54	17.89	3.25	35.68
63185		INCISE SPINAL COLUMN/NERVES	14.71	16.01	3.00	33.72
63250	•	REVISE SPINAL CORD VESSELS	41.07	12.03	2.21	55.31
63251	•	REVISE SPINAL CORD VESSELS	41.26	22.52	4.29	68.09
63252	•	REVISE SPINAL CORD VESSELS	41.27	21.41	4.18	66.86
63265	•	EXCISE INTRASPINAL LESION	21.29	21.56	3.75	46.60
63266		EXCISE INTRASPINAL LESION	21.93	24.84	4.42	51.19
63267		EXCISE INTRASPINAL LESION	17.74	23.30	4.16	45.20
63268	•	EXCISE INTRASPINAL LESION	18.35	27.93	5.46	51.74
63270	•	EXCISE INTRASPINAL LESION	26.40	18.86	3.59	48.85
63271	•	EXCISE INTRASPINAL LESION	26.51	27.33	4.90	58.74
63272	•	EXCISE INTRASPINAL LESION	25.17	22.66	4.17	52.00
63273	•	EXCISE INTRASPINAL LESION	24.06	21.70	4.16	49.92
63275	•	BIOPSY/EXCISE SPINAL TUMOR	23.43	27.78	5.07	56.28
63276		BIOPSY/EXCISE SPINAL TUMOR	23.11	24.77	4.55	52.43
63277		BIOPSY/EXCISE SPINAL TUMOR	20.72	23.16	4.14	48.02
63278	•	BIOPSY/EXCISE SPINAL TUMOR	20.43	23.24	4.31	47.98
63280	•	BIOPSY/EXCISE SPINAL TUMOR	28.39	30.43	5.39	64.21
63281		BIOPSY/EXCISE SPINAL TUMOR	26.06	28.56	5.12	61.73
63282	•	BIOPSY/EXCISE SPINAL TUMOR	26.51	24.43	4.55	55.49
63283	•	BIOPSY/EXCISE SPINAL TUMOR	25.03	26.90	5.02	56.95
63285	•	BIOPSY/EXCISE SPINAL TUMOR	36.37	28.74	5.24	70.35
63286	•	BIOPSY/EXCISE SPINAL TUMOR	36.06	29.13	5.02	70.21
63287	•	BIOPSY/EXCISE SPINAL TUMOR	36.87	26.74	4.78	68.09
63290	•	BIOPSY/EXCISE SPINAL TUMOR	37.23	24.54	4.23	66.00
63300	•	REMOVAL OF VERTEBRAL BODY	21.05	24.57	3.85	49.47
63600		REMOVE SPINAL CORD LESION	13.89	11.25	2.78	27.92
63610		STIMULATION OF SPINAL CORD	11.46	6.91	2.14	20.51
63615	•	REMOVE LESION OF SPINAL CORD	16.36	18.95	3.37	38.68
63650		IMPLANT NEUROELECTRODES	6.37	10.09	2.13	18.59
63655		IMPLANT NEUROELECTRODES	9.50	20.42	3.55	33.47
63657	•	IMPLANT NEUROELECTRODES	9.76	14.54	1.42	25.72
63658	•	IMPLANT NEUROELECTRODES	10.77	16.19	3.12	30.08
63660		REVISE/REMOVE NEUROELECTRODE	5.87	7.10	1.35	14.32
63685		IMPLANT NEURORECEIVER	6.68	7.27	1.43	15.38
63688		REVISE/REMOVE NEURORECEIVER	5.06	6.97	1.30	13.33
63700	•	REPAIR OF SPINAL HERNIATION	12.35	10.42	1.91	24.68

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PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
63702	•	REPAIR OF SPINAL HERNIATION	15.01	13.09	2.64	30.74
63704	•	REPAIR OF SPINAL HERNIATION	14.94	17.76	2.56	35.26
63706	•	REPAIR OF SPINAL HERNIATION	19.19	16.05	3.14	38.38
63707		REPAIR SPINAL FLUID LEAKAGE	10.77	14.52	2.43	27.52
63709		REPAIR SPINAL FLUID LEAKAGE	14.09	16.35	3.03	33.50
63710	•	GRAFT REPAIR OF SPINE DEFECT	13.81	7.16	1.12	22.11
63740		INSTALL SPINAL SHUNT	10.14	16.66	3.09	29.89
63744		REVISION OF SPINAL SHUNT	6.75	6.89	1.50	15.21
63746	•	REMOVAL OF SPINAL SHUNT	5.06	5.81	1.11	11.80
63750		INSERT SPINAL CANAL CATHETER	7.86	11.48	2.43	21.59
63780		INSERT SPINAL CANAL CATHETER	6.60	1.96	0.52	9.05
64408	•	INJECTION FOR NERVE BLOCK	0.92	1.02	0.10	2.04
64410	•	INJECTION FOR NERVE BLOCK	0.94	0.56	0.06	1.61
64421		INJECTION FOR NERVE BLOCK	1.03	0.83	0.17	2.03
64425		INJECTION FOR NERVE BLOCK	0.92	0.56	0.10	1.57
64430		INJECTION FOR NERVE BLOCK	0.87	0.86	0.11	1.74
64435		INJECTION FOR NERVE BLOCK	0.87	0.46	0.09	1.52
64440		INJECTION FOR NERVE BLOCK	0.86	0.79	0.09	1.74
64441		INJECTION FOR NERVE BLOCK	1.34	1.02	0.12	2.48
64445		INJECTION FOR NERVE BLOCK	1.01	0.50	0.06	1.57
64450		INJECTION FOR NERVE BLOCK	0.77	0.56	0.05	1.38
64508	•	INJECTION FOR NERVE BLOCK	0.57	0.50	0.03	1.10
64510		INJECTION FOR NERVE BLOCK	0.79	0.73	0.19	1.71
64600		INJECTION TREATMENT OF NERVE	3.62	1.56	0.15	5.27
64605	•	INJECTION TREATMENT OF NERVE	5.90	1.56	0.29	7.69
64610		INJECTION TREATMENT OF NERVE	8.11	5.59	0.99	14.69
64620		INJECTION TREATMENT OF NERVE	3.36	0.97	0.18	4.51
64622		INJECTION TREATMENT OF NERVE	3.87	1.75	0.33	5.75
64623		INJECTION TREATMENT OF NERVE	1.05	0.88	0.18	2.12
64630	•	INJECTION TREATMENT OF NERVE	3.48	1.00	0.23	4.71
64640		INJECTION TREATMENT OF NERVE	3.47	0.95	0.11	4.53
64702		REVISE FINGER/TOE NERVE	4.27	3.83	0.84	8.84
64704		REVISE HAND/FOOT NERVE	4.72	5.04	0.69	10.45
64708		REVISE ARM/LEG NERVE	6.07	7.52	1.27	14.86
64712	•	REVISION OF SCIATIC NERVE	7.63	9.17	1.65	18.45
64713	•	REVISION OF ARM NERVE(S)	10.96	9.10	1.65	21.76
64714		REVISE LOW BACK NERVE(S)	10.49	6.22	1.41	18.12
64718		REVISE ULNAR NERVE AT ELBOW	5.92	7.06	1.18	14.05
64719		REVISE ULNAR NERVE AT WRIST	5.01	5.17	0.88	11.06
64721		REVISE MEDIAN NERVE AT WRIST	4.22	5.15	0.87	10.24
64722		RELIEVE PRESSURE ON NERVE(S)	4.74	6.80	1.11	12.65
64726		RELEASE FOOT/TOE NERVE	4.22	0.86	0.08	5.15
64727		INTERNAL NERVE REVISION	6.84	2.97	0.51	10.32
64734		INCISION OF CHEEK NERVE	4.91	4.58	0.66	10.15
64740	•	INCISION OF TONGUE NERVE	5.57	3.40	0.47	9.44
64766	•	INCISE HIP/THIGH NERVE	8.62	4.75	0.83	14.20
64782		REMOVE LIMB NERVE LESION	6.17	4.95	0.49	11.61
64790		REMOVAL OF NERVE LESION	11.63	6.87	1.19	19.69
64792	•	REMOVAL OF NERVE LESION	15.29	9.14	1.69	26.12
64795		BIOPSY OF NERVE	5.77	2.36	0.37	8.50
64818		REMOVE SYMPATHETIC NERVES	10.02	8.68	1.75	20.45
64856		REPAIR/TRANSPOSE NERVE	13.61	8.36	1.49	23.46
64890	•	NERVE GRAFT, HAND OR FOOT	15.25	9.07	1.61	25.93
65091		REVISE EYE	8.48	6.95	0.47	15.90
65093		REVISE EYE WITH IMPLANT	6.88	10.32	0.55	17.75
65101		REMOVAL OF EYE	8.92	8.90	0.49	18.31
65103		REMOVE EYE/INSERT IMPLANT	7.50	9.88	0.52	17.90

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
65105		REMOVE EYE/ATTACH IMPLANT	8.30	10.69	0.58	19.57
65110		REMOVAL OF EYE	14.02	13.78	1.14	28.94
65112	•	REMOVE EYE, REVISE SOCKET	16.40	16.94	1.62	36.96
65114	•	REMOVE EYE, REVISE SOCKET	17.62	20.06	2.54	40.22
65130	•	INSERT OCULAR IMPLANT	7.18	6.89	0.41	14.48
65135	•	INSERT OCULAR IMPLANT	7.36	9.41	0.59	17.36
65140	•	ATTACH OCULAR IMPLANT	7.93	7.24	0.66	15.83
65150		REVISE OCULAR IMPLANT	6.36	10.88	0.57	17.81
65155	•	REINSERT OCULAR IMPLANT	8.72	14.50	0.93	24.15
65175		REMOVAL OF OCULAR IMPLANT	6.30	7.18	0.41	13.89
65205		REMOVE FOREIGN BODY FROM EYE	0.43	0.36	0.02	0.81
65210		REMOVE FOREIGN BODY FROM EYE	0.48	0.49	0.03	1.00
65220		REMOVE FOREIGN BODY FROM EYE	0.35	0.56	0.04	0.95
65222		REMOVE FOREIGN BODY FROM EYE	0.59	0.62	0.03	1.24
65235		REMOVE FOREIGN BODY FROM EYE	7.25	2.86	0.18	10.29
65260	•	REMOVE FOREIGN BODY FROM EYE	11.00	6.09	0.35	17.44
65265	•	REMOVE FOREIGN BODY FROM EYE	12.79	7.51	0.42	20.72
65270		REPAIR OF EYE WOUND	1.22	1.06	0.07	2.35
65272	•	REPAIR OF EYE WOUND	3.79	1.82	0.10	5.71
65273	•	REPAIR OF EYE WOUND	4.12	2.99	0.19	7.30
65275		REPAIR OF EYE WOUND	5.38	0.89	0.04	6.09
65280		REPAIR OF EYE WOUND	7.54	8.79	0.48	16.81
65285		REPAIR OF EYE WOUND	12.81	12.57	0.66	26.04
65286		REPAIR OF EYE WOUND	5.49	4.20	0.24	9.93
65290	•	REPAIR OF EYE SOCKET WOUND	5.38	5.63	0.33	11.34
65400		REMOVAL OF EYE LESION	5.95	5.11	0.27	11.33
65410		BIOPSY OF CORNEA	1.16	1.50	0.10	2.76
65420		REMOVAL OF EYE LESION	4.22	4.35	0.23	8.80
65426		REMOVAL OF EYE LESION	5.37	7.51	0.40	13.28
65430		CORNEAL SMEAR	0.70	0.56	0.03	1.29
65435		CURETTE/TREAT CORNEA	0.74	0.78	0.04	1.56
65436		CURETTE/TREAT CORNEA	2.94	1.54	0.08	4.56
65450		TREATMENT OF CORNEAL LESION	3.25	4.42	0.24	7.91
65600	•	REVISION OF CORNEA	3.34	2.53	0.14	6.01
65710		CORNEAL TRANSPLANT	10.12	17.14	1.24	28.50
65730		CORNEAL TRANSPLANT	12.57	26.24	1.37	40.18
65750		CORNEAL TRANSPLANT	13.37	27.00	1.41	41.78
65770	•	REVISE CORNEA WITH IMPLANT	17.59	12.66	0.49	30.93
65772		CORRECTION OF ASTIGMATISM	4.26	5.27	0.28	9.83
65775		CORRECTION OF ASTIGMATISM	5.78	9.11	0.47	15.36
65800		DRAINAGE OF EYE	1.56	1.68	0.09	3.33
65805		DRAINAGE OF EYE	0.93	1.77	0.09	2.79
65810		DRAINAGE OF EYE	4.85	5.23	0.29	10.37
65815		DRAINAGE OF EYE	5.04	4.37	0.23	9.64
65820		RELIEVE INNER EYE PRESSURE	8.48	9.80	0.54	18.82
65850		INCISION OF EYE	7.96	14.17	0.74	22.87
65855		LASER SURGERY OF EYE	4.94	10.07	0.53	15.54
65865		INCISE INNER EYE ADHESIONS	5.76	7.87	0.42	14.05
65870		INCISE INNER EYE ADHESIONS	8.29	5.77	0.30	12.36
65875		INCISE INNER EYE ADHESIONS	8.53	8.36	0.34	13.23
65880	•	INCISE INNER EYE ADHESIONS	7.10	6.94	0.36	14.40
65900	•	REMOVE EYE LESION	9.64	7.24	0.42	17.30
65920		REMOVE IMPLANT FROM EYE	8.40	8.31	0.43	17.14
66020		INJECTION TREATMENT OF EYE	1.65	2.35	0.12	4.12
66030		INJECTION TREATMENT OF EYE	0.93	0.60	0.03	1.56
66130		REMOVE EYE LESION	4.00	4.24	0.22	8.46
66150		INCISION OF EYE	8.07	11.10	0.60	19.77

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PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
66155		INCISION OF EYE	7.94	10.06	0.52	18.52
66160		INCISION OF EYE	10.07	11.37	0.59	22.03
66165		INCISION OF EYE	7.76	12.28	0.64	20.68
66170		INCISION OF EYE	9.79	11.81	0.62	22.22
66220	•	REPAIR EYE LESION	7.77	13.17	0.83	21.77
66225	•	REPAIR/GRAFT EYE LESION	11.21	17.03	0.88	29.12
66250		FOLLOW-UP SURGERY OF EYE	5.97	6.87	0.37	13.31
66500		INCISION OF IRIS	3.81	5.10	0.27	9.18
66505	•	INCISION OF IRIS	4.17	5.58	0.29	10.04
66600		REMOVE IRIS AND LESION	8.74	9.56	0.54	18.66
66605	•	REMOVAL OF IRIS	8.75	12.27	0.69	21.71
66625		REMOVAL OF IRIS	5.25	9.81	0.51	15.57
66630		REMOVAL OF IRIS	6.17	9.27	0.49	15.93
66635		REMOVAL OF IRIS	8.27	8.45	0.49	16.21
66680		REPAIR IRIS & CILIARY BODY	5.47	6.49	0.34	12.30
66682		REPAIR IRIS AND CILIARY BODY	6.23	7.01	0.37	13.61
66761		REVISION OF IRIS	4.61	8.62	0.46	13.68
66762		REVISION OF IRIS	4.00	11.13	0.55	15.68
66770		REMOVAL OF INNER EYE LESION	5.17	9.12	0.48	14.77
66820		INCISION, SECONDARY CATARACT	3.99	5.29	0.28	9.56
66821		LASERING, SECONDARY CATARACT	2.95	7.15	0.37	10.47
66830		REMOVAL OF LENS LESION	8.26	7.94	0.41	16.63
66840		REMOVAL OF LENS MATERIAL	7.97	10.81	0.57	19.35
66850		REMOVAL OF LENS MATERIAL	9.20	13.82	0.75	23.77
66920		EXTRACTION OF LENS	8.98	11.86	0.64	21.50
66930		EXTRACTION OF LENS	10.35	11.03	0.60	21.98
66940		EXTRACTION OF LENS	9.00	12.98	0.68	22.66
66983		REMOVE CATARACT, INSERT LENS	8.67	16.83	1.00	26.50
66984		REMOVE CATARACT, INSERT LENS	10.90	18.06	0.99	30.97
66985		INSERT LENS PROSTHESIS	8.39	13.18	0.69	22.24
67005		PARTIAL REMOVAL OF EYE FLUID	7.04	19.67	1.05	27.76
67010		PARTIAL REMOVAL OF EYE FLUID	7.06	20.18	1.07	28.33
67015		RELEASE OF EYE FLUID	7.10	5.86	0.33	13.09
67025		REPLACE EYE FLUID	6.85	6.20	0.33	13.38
67036		REMOVAL OF INNER EYE FLUID	12.04	29.47	1.54	43.05
67107		REPAIR DETACHED RETINA	14.87	22.15	1.16	38.18
67121		REMOVE EYE IMPLANT MATERIAL	10.81	9.33	0.49	20.63
67210		TREATMENT OF RETINAL LESION	6.91	9.55	0.49	16.85
67228		TREATMENT OF RETINAL LESION	6.93	9.73	0.50	17.16
67250	•	REINFORCE EYE WALL	8.87	5.90	0.50	15.27
67255		REINFORCE/GRAFT EYE WALL	9.91	16.90	0.88	26.69
67311		REVISE EYE MUSCLE	6.69	9.05	0.48	16.22
67312		REVISE TWO EYE MUSCLES	8.01	10.37	0.55	18.93
67320	•	REVISE EYE MUSCLE(S)	8.77	10.91	0.60	20.28
67331	•	EYE SURGERY FOLLOW-UP	8.21	10.17	0.56	18.93
67332		REREVISE EYE MUSCLES	9.13	11.26	0.60	20.99
67335		REVISE EYE MUSCLES	9.04	5.80	0.31	15.15
67346	•	DESTROY NERVE OF EYE MUSCLE	2.34	1.43	0.07	3.84
67350	•	BIOPSY EYE MUSCLE	4.47	4.18	0.22	8.87
67400		EXPLORE/BIOPSY EYE SOCKET	9.77	11.11	0.64	21.52
67405	•	EXPLORE/DRAIN EYE SOCKET	7.88	9.29	0.62	17.80
67412		EXPLORE/TREAT EYE SOCKET	9.70	12.38	0.70	22.78
67413	•	EXPLORE/TREAT EYE SOCKET	10.37	5.31	0.44	16.12
67415		BIOPSY OF EYE	2.79	1.92	0.11	4.82
67420		EXPLORE/TREAT EYE SOCKET	14.20	16.99	1.12	32.31
67430	•	EXPLORE/TREAT EYE SOCKET	13.56	11.71	0.88	25.95
67440		EXPLORE/DRAIN EYE SOCKET	13.20	17.12	1.03	31.35

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
67450	•	EXPLORE/BIOPSY EYE SOCKET	13.60	15.11	0.86	29.57
67500		INJECT/TREAT EYE SOCKET	0.55	0.75	0.06	1.36
67505		INJECT/TREAT EYE SOCKET	1.06	1.01	0.05	2.12
67515		INJECT/TREAT EYE SOCKET	0.42	0.58	0.03	1.03
67550	•	INSERT EYE SOCKET IMPLANT	10.29	9.37	0.59	20.35
67560	•	REVISE EYE SOCKET IMPLANT	10.72	7.71	0.45	18.88
67700		DRAINAGE OF EYELID ABSCESS	0.66	0.49	0.03	1.18
67710		INCISION OF EYELID	0.38	1.00	0.06	1.44
67715		INCISION OF EYELID FOLD	0.60	1.57	0.08	2.25
67800		REMOVE EYELID LESION	1.44	0.97	0.05	2.46
67801		REMOVE EYELID LESIONS	1.96	1.49	0.08	3.53
67805		REMOVE EYELID LESIONS	2.30	1.46	0.08	3.84
67808		REMOVE EYELID LESION(S)	3.77	2.10	0.12	5.99
67810		BIOPSY OF EYELID	1.24	0.85	0.05	2.14
67820		REVISE EYELASHES	0.33	0.36	0.02	0.71
67825		REVISE EYELASHES	0.70	0.83	0.04	1.57
67830		REVISE EYELASHES	1.76	2.30	0.13	4.19
67835		REVISE EYELASHES	5.75	8.88	0.48	15.11
67840		REMOVE EYELID LESION	1.28	1.24	0.07	2.59
67850		TREAT EYELID LESION	0.98	0.81	0.04	1.83
67880		REVISION OF EYELID	3.77	3.96	0.23	7.96
67882		REVISION OF EYELID	5.06	6.43	0.37	11.86
67901		REPAIR EYELID DEFECT	7.24	10.00	0.66	17.90
67902		REPAIR EYELID DEFECT	7.31	11.09	0.75	19.15
67903		REPAIR EYELID DEFECT	8.60	12.97	0.77	20.34
67904		REPAIR EYELID DEFECT	6.35	12.52	0.75	19.62
67906	•	REPAIR EYELID DEFECT	7.05	9.40	0.63	17.08
67907	•	REPAIR EYELID DEFECT	6.67	12.34	0.84	19.85
67908		REPAIR EYELID DEFECT	5.26	10.24	0.56	16.08
67909		REVISE EYELID DEFECT	5.54	7.44	0.50	13.48
67911		REVISE EYELID DEFECT	5.41	11.36	0.81	17.58
67914		REPAIR EYELID DEFECT	3.83	5.78	0.35	9.96
67915		REPAIR EYELID DEFECT	3.29	1.35	0.07	4.71
67916		REPAIR EYELID DEFECT	5.46	6.67	0.38	12.51
67917		REPAIR EYELID DEFECT	6.21	8.21	0.49	14.91
67921		REPAIR EYELID DEFECT	3.53	3.83	0.24	7.60
67922		REPAIR EYELID DEFECT	3.17	1.13	0.06	4.36
67923		REPAIR EYELID DEFECT	6.06	6.99	0.38	13.43
67924		REPAIR EYELID DEFECT	6.00	8.15	0.44	14.59
67930		REPAIR EYELID WOUND	3.76	1.16	0.07	5.03
67935		REPAIR EYELID WOUND	6.45	3.17	0.19	9.81
67938		REMOVE EYELID FOREIGN BODY	1.36	0.55	0.03	1.94
67950		REVISION OF EYELID	6.00	7.29	0.43	13.72
67961		REVISION OF EYELID	5.84	7.84	0.51	14.29
67966		REVISION OF EYELID	6.79	10.54	0.67	18.00
67971		RECONSTRUCTION OF EYELID	10.17	10.41	0.63	21.21
67973		RECONSTRUCTION OF EYELID	13.37	14.25	0.97	28.59
67974		RECONSTRUCTION OF EYELID	13.34	13.19	0.84	27.37
67975		RECONSTRUCTION OF EYELID	9.46	3.72	0.22	13.40
68020		INCISE/DRAIN EYELID LINING	1.40	0.51	0.03	1.94
68040		TREATMENT OF EYELID LESIONS	0.90	0.49	0.02	1.36
68100		BIOPSY OF EYELID LINING	1.78	0.95	0.05	2.78
68110		REMOVE EYELID LINING LESION	1.83	1.24	0.06	3.13
68115		REMOVE EYELID LINING LESION	2.49	1.80	0.10	4.49
68130		REMOVE EYELID LINING LESION	5.04	3.58	0.19	8.81
68135		REMOVE EYELID LINING LESION	1.10	0.69	0.03	1.82
68200		TREAT EYELID BY INJECTION	0.31	0.52	0.03	0.86

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HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
68320		REVISE/GRAFT EYELID LINING	5.30	7.72	0.42	13.44
68325	•	REVISE/GRAFT EYELID LINING	7.38	10.04	0.62	18.05
68326		REVISE/GRAFT EYELID LINING	7.18	8.77	0.50	16.45
68328	•	REVISE/GRAFT EYELID LINING	8.27	12.10	0.83	21.20
68330		REVISE EYELID LINING	4.80	5.46	0.29	10.55
68335	•	REVISE/GRAFT EYELID LINING	7.22	12.00	0.85	20.07
68340		SEPARATE EYELID ADHESIONS	4.15	2.24	0.12	6.51
68360		REVISE EYELID LINING	4.37	5.81	0.33	10.51
68362		REVISE EYELID LINING	7.37	7.83	0.41	15.61
68400		INCISE/DRAIN TEAR GLAND	1.74	0.98	0.05	2.77
68420		INCISE/DRAIN TEAR SAC	2.39	0.97	0.05	3.41
68440		INCISE TEAR DUCT OPENING	0.33	0.74	0.04	1.11
68500	•	REMOVAL OF TEAR GLAND	11.13	2.58	0.23	13.95
68505	•	PARTIAL REMOVAL TEAR GLAND	11.04	7.22	0.44	18.70
68510	•	BIOPSY OF TEAR GLAND	5.77	1.80	0.13	7.70
68520		REMOVAL OF TEAR SAC	7.56	9.23	0.52	17.31
68525	•	BIOPSY OF TEAR SAC	5.43	1.64	0.10	7.17
68530		CLEARANCE OF TEAR DUCT	3.84	2.44	0.14	6.42
68540	•	REMOVE TEAR GLAND LESION	10.72	10.12	0.61	21.45
68550	•	REMOVE TEAR GLAND LESION	13.46	15.93	1.04	30.42
68700		REPAIR TEAR DUCTS	6.58	2.70	0.16	9.44
68705		REVISE TEAR DUCT OPENING	2.14	0.83	0.05	3.12
68720		CREATE TEAR SAC DRAIN	8.17	13.02	0.76	21.95
68745	•	CREATE TEAR DUCT DRAIN	8.74	14.95	1.09	24.78
68750		CREATE TEAR DUCT DRAIN	8.72	14.46	0.80	23.97
68760		CLOSE TEAR DUCT OPENING	1.79	0.90	0.04	2.73
68770		CLOSE TEAR SYSTEM FISTULA	7.03	4.06	0.22	11.31
68800		DILATE TEAR DUCT OPENING(S)	0.45	0.41	0.02	0.88
68820		EXPLORE TEAR DUCT SYSTEM	0.75	0.58	0.03	1.36
68825		EXPLORE TEAR DUCT SYSTEM	1.64	1.29	0.07	3.00
68830		REOPEN TEAR DUCT CHANNEL	2.25	2.02	0.10	4.37
68840		EXPLORE/IRRIGATE TEAR DUCTS	0.61	0.48	0.03	1.12
68850		INJECTION FOR TEAR SAC X-RAY	0.56	0.55	0.03	1.14
69000		DRAIN EXTERNAL EAR LESION	0.79	0.33	0.03	1.15
69005		DRAIN EXTERNAL EAR LESION	2.16	0.91	0.10	3.19
69020		DRAIN OUTER EAR CANAL LESION	0.84	0.43	0.04	1.31
69100		BIOPSY OF EXTERNAL EAR	0.84	0.68	0.07	1.59
69105		BIOPSY OF EXTERNAL EAR CANAL	1.06	0.82	0.09	1.99
69110		PARTIAL REMOVAL EXTERNAL EAR	3.55	2.66	0.36	6.57
69120		REMOVAL OF EXTERNAL EAR	4.19	0.66	0.08	4.93
69140		REMOVE EAR CANAL LESION(S)	7.27	7.82	0.84	15.73
69145		REMOVE EAR CANAL LESION(S)	2.70	2.10	0.23	5.03
69150		EXTENSIVE EAR CANAL SURGERY	13.81	10.12	1.21	25.14
69155	•	EXTENSIVE EAR/NECK SURGERY	23.34	20.85	2.27	46.46
69200		CLEAR OUTER EAR CANAL	0.96	0.38	0.03	1.37
69205		CLEAR OUTER EAR CANAL	1.22	0.90	0.09	2.21
69210		REMOVE IMPACTED EAR WAX	0.70	0.23	0.02	0.95
69220		CLEAN OUT MASTOID CAVITY.	1.03	0.42	0.04	1.49
69222		CLEAN OUT MASTOID CAVITY	1.44	0.74	0.08	2.26
69310		REBUILD OUTER EAR CANAL	11.24	8.67	0.90	20.81
69320	•	REBUILD OUTER EAR CANAL	17.63	8.34	1.00	27.97
69400		INFLATE MIDDLE EAR CANAL	0.88	0.43	0.04	1.35
69401		INFLATE MIDDLE EAR CANAL	0.67	0.24	0.03	0.94
69405		CATHETERIZE MIDDLE EAR CANAL	2.74	0.52	0.04	3.30
69420		INCISION OF EARDRUM	0.74	0.70	0.08	1.52
69421		INCISION OF EARDRUM	0.70	1.14	0.12	1.96
69424		REMOVE VENTILATING TUBE	1.09	0.60	0.06	1.75

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
69433		CREATE EARDRUM OPENING	0.94	1.35	0.14	2.43
69436		CREATE EARDRUM OPENING	1.38	2.10	0.23	3.72
69440		EXPLORATION OF MIDDLE EAR	7.76	8.80	0.94	17.50
69450	•	EARDRUM REVISION	5.78	7.49	0.79	14.06
69501	•	MASTOIDECTOMY	9.36	10.93	1.17	21.46
69502		MASTOIDECTOMY	12.98	14.08	1.53	28.59
69505		REMOVE MASTOID STRUCTURES	13.35	16.85	1.84	32.04
69511		EXTENSIVE MASTOID SURGERY	13.33	17.77	1.91	33.01
69530	•	EXTENSIVE MASTOID SURGERY	19.16	10.24	1.04	30.44
69535	•	REMOVE PART OF TEMPORAL BONE	31.85	22.84	2.50	57.19
69540		REMOVE EAR LESION	1.22	1.26	0.13	2.61
69550	•	REMOVE EAR LESION	11.36	15.36	1.59	28.33
69552	•	REMOVE EAR LESION	16.90	18.13	2.04	37.07
69554	•	REMOVE EAR LESION	27.30	38.42	4.42	70.23
69601	•	MASTOID SURGERY REVISION	12.58	14.11	1.57	28.26
69602	•	MASTOID SURGERY REVISION	13.99	17.21	1.85	33.05
69603	•	MASTOID SURGERY REVISION	13.96	17.46	1.86	33.30
69604		MASTOID SURGERY REVISION	14.10	24.15	2.60	40.85
69605	•	MASTOID SURGERY REVISION	18.11	18.84	2.10	38.85
69610		REPAIR OF EARDRUM	4.66	0.65	0.07	5.37
69620		REPAIR OF EARDRUM	6.10	10.84	1.15	18.09
69631		REPAIR EARDRUM STRUCTURES	10.16	15.87	1.70	27.73
69632		REBUILD EARDRUM STRUCTURES	13.18	16.92	1.82	31.92
69633		REBUILD EARDRUM STRUCTURES	12.50	17.64	1.87	32.01
69635		REPAIR EARDRUM STRUCTURES	13.63	18.81	2.02	34.66
69636		REBUILD EARDRUM STRUCTURES	18.81	20.20	2.19	38.20
69637		REBUILD EARDRUM STRUCTURES	16.69	21.34	2.28	39.31
69641		REVISE MIDDLE EAR & MASTOID	14.16	18.38	1.94	34.48
69642		REVISE MIDDLE EAR & MASTOID	17.30	21.74	2.31	41.44
69643		REVISE MIDDLE EAR & MASTOID	15.73	23.17	2.61	41.51
69644		REVISE MIDDLE EAR & MASTOID	17.46	26.13	2.84	46.45
69645		REVISE MIDDLE EAR & MASTOID	16.79	24.39	2.59	43.77
69646		REVISE MIDDLE EAR & MASTOID	16.43	25.43	2.56	44.42
69650	•	RELEASE MIDDLE EAR BONE	9.99	11.19	1.22	22.40
69660		REVISE MIDDLE EAR BONE	13.17	17.42	1.87	32.46
69661		REVISE MIDDLE EAR BONE	16.27	18.94	1.99	37.20
69662	•	REVISE MIDDLE EAR BONE	15.97	17.58	1.86	35.41
69666		REPAIR MIDDLE EAR STRUCTURES	9.95	16.86	1.84	28.65
69667		REPAIR MIDDLE EAR STRUCTURES	9.97	16.30	1.72	27.99
69670	•	REMOVE MASTOID AIR CELLS	12.27	13.05	1.40	26.72
69676	•	REMOVE MIDDLE EAR NERVE	9.80	13.76	1.39	24.95
69700	•	CLOSE MASTOID FISTULA	8.46	1.74	0.18	10.39
69720		RELEASE FACIAL NERVE	14.85	16.15	1.60	32.60
69725	•	RELEASE FACIAL NERVE	16.81	17.87	1.83	36.51
69740	•	REPAIR FACIAL NERVE	16.35	15.96	1.85	34.16
69745	•	REPAIR FACIAL NERVE	17.10	14.06	1.21	32.37
69801	•	INCISE INNER EAR	9.70	17.09	1.89	27.68
69802	•	INCISE INNER EAR	13.21	24.58	2.46	40.25
69805	•	EXPLORE INNER EAR	10.90	18.13	1.99	31.02
69806		EXPLORE INNER EAR	12.56	23.96	2.60	39.14
69820	•	ESTABLISH INNER EAR WINDOW	10.77	9.18	0.72	20.67
69840	•	REVISE INNER EAR WINDOW	10.68	7.69	0.47	18.84
69905	•	REMOVE INNER EAR	11.36	19.04	2.15	32.55
69915	•	INCISE INNER EAR NERVE	21.12	23.66	2.71	47.49
69930	•	IMPLANT COCHLEAR DEVICE	14.88	32.12	3.31	50.31
69950	•	INCISE INNER EAR NERVE	22.47	25.12	3.17	50.76
69955	•	RELEASE FACIAL NERVE	23.50	24.24	2.77	50.51

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HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
69960 •		RELEASE INNER EAR CANAL	20.98	10.73	1.17	32.88
69970 •		REMOVE INNER EAR LESION	23.69	22.66	2.57	48.94
70010	26	CONTRAST X-RAY OF BRAIN	1.15	0.56	0.08	1.79
70010	TC	CONTRAST X-RAY OF BRAIN	0.00	4.38	0.28	4.66
70015	26	CONTRAST X-RAY OF BRAIN	1.15	0.56	0.08	1.79
70015	TC	CONTRAST X-RAY OF BRAIN	0.00	1.37	0.09	1.46
70030	26	X-RAY EYE FOR FOREIGN BODY	0.17	0.08	0.01	0.26
70030	TC	X-RAY EYE FOR FOREIGN BODY	0.00	0.42	0.03	0.45
70100	26	X-RAY EXAM OF JAW	0.18	0.09	0.01	0.28
70100	TC	X-RAY EXAM OF JAW	0.00	0.53	0.03	0.56
70110	26	X-RAY EXAM OF JAW	0.24	0.12	0.02	0.38
70110	TC	X-RAY EXAM OF JAW	0.00	0.63	0.04	0.67
70120	26	X-RAY EXAM OF MASTOIDS	0.18	0.09	0.01	0.28
70120	TC	X-RAY EXAM OF MASTOIDS	0.00	0.63	0.04	0.67
70130	26	X-RAY EXAM OF MASTOIDS	0.32	0.16	0.02	0.50
70130	TC	X-RAY EXAM OF MASTOIDS	0.00	0.80	0.05	0.85
70134	26	X-RAY EXAM OF MIDDLE EAR	0.32	0.16	0.02	0.50
70134	TC	X-RAY EXAM OF MIDDLE EAR	0.00	0.74	0.05	0.79
70140	26	X-RAY EXAM OF FACIAL BONES	0.18	0.09	0.01	0.28
70140	TC	X-RAY EXAM OF FACIAL BONES	0.00	0.63	0.04	0.67
70150	26	X-RAY EXAM OF FACIAL BONES	0.25	0.12	0.02	0.39
70150	TC	X-RAY EXAM OF FACIAL BONES	0.00	0.80	0.05	0.85
70160	26	X-RAY EXAM OF NASAL BONES	0.17	0.08	0.01	0.26
70160	TC	X-RAY EXAM OF NASAL BONES	0.00	0.53	0.03	0.56
70170	26	X-RAY EXAM OF TEAR DUCT	0.28	0.14	0.02	0.44
70170	TC	X-RAY EXAM OF TEAR DUCT	0.00	0.96	0.06	1.02
70190	26	X-RAY EXAM OF EYE SOCKETS	0.21	0.10	0.02	0.33
70190	TC	X-RAY EXAM OF EYE SOCKETS	0.00	0.63	0.04	0.67
70200	26	X-RAY EXAM OF EYE SOCKETS	0.27	0.13	0.02	0.42
70200	TC	X-RAY EXAM OF EYE SOCKETS	0.00	0.80	0.05	0.85
70210	26	X-RAY EXAM OF SINUSES	0.17	0.08	0.01	0.26
70210	TC	X-RAY EXAM OF SINUSES	0.00	0.63	0.04	0.67
70220	26	X-RAY EXAM OF SINUSES	0.24	0.12	0.02	0.38
70220	TC	X-RAY EXAM OF SINUSES	0.00	0.80	0.05	0.85
70240	26	X-RAY EXAM PITUITARY SADDLE	0.19	0.09	0.01	0.29
70240	TC	X-RAY EXAM PITUITARY SADDLE	0.00	0.42	0.03	0.45
70250	26	X-RAY EXAM OF SKULL	0.23	0.11	0.02	0.36
70250	TC	X-RAY EXAM OF SKULL	0.00	0.63	0.04	0.67
70260	26	X-RAY EXAM OF SKULL	0.32	0.16	0.02	0.50
70260	TC	X-RAY EXAM OF SKULL	0.00	0.90	0.06	0.96
70300	26	X-RAY EXAM OF TEETH	0.10	0.05	0.01	0.16
70300	TC	X-RAY EXAM OF TEETH	0.00	0.27	0.02	0.29
70310	26	X-RAY EXAM OF TEETH	0.15	0.07	0.01	0.23
70310	TC	X-RAY EXAM OF TEETH	0.00	0.42	0.03	0.45
70320	26	FULL MOUTH X-RAY OF TEETH	0.21	0.10	0.02	0.33
70320	TC	FULL MOUTH X-RAY OF TEETH	0.00	0.80	0.05	0.85
70328	26	X-RAY EXAM OF JAW JOINT	0.18	0.08	0.01	0.28
70328	TC	X-RAY EXAM OF JAW JOINT	0.00	0.50	0.03	0.53
70330	26	X-RAY EXAM OF JAW JOINTS	0.23	0.11	0.02	0.36
70330	TC	X-RAY EXAM OF JAW JOINTS	0.00	0.85	0.05	0.90
70332	26	X-RAY EXAM OF JAW JOINT	0.54	0.26	0.04	0.84
70332	TC	X-RAY EXAM OF JAW JOINT	0.00	2.12	0.13	2.25
70336	26	MAGNETIC IMAGE JAW JOINT	0.92	0.45	0.06	1.43
70336	TC	MAGNETIC IMAGE JAW JOINT	0.00	12.60	0.79	13.39
70350	26	X-RAY HEAD FOR ORTHODONTIA	0.16	0.08	0.01	0.25
70350	TC	X-RAY HEAD FOR ORTHODONTIA	0.00	0.37	0.02	0.39
70355	26	PANORAMIC X-RAY OF JAWS	0.19	0.10	0.01	0.30

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
70355	TC	PANORAMIC X-RAY OF JAWS	0.00	0.58	0.03	0.61
70360	26	X-RAY EXAM OF NECK	0.16	0.08	0.01	0.25
70360	TC	X-RAY EXAM OF NECK	0.00	0.42	0.03	0.45
70370	26	THROAT X-RAY & FLUOROSCOPY	0.30	0.15	0.02	0.47
70370	TC	THROAT X-RAY & FLUOROSCOPY	0.00	1.32	0.08	1.40
70371	26	SPEECH EVALUATION, COMPLEX	0.81	0.40	0.06	1.27
70371	TC	SPEECH EVALUATION, COMPLEX	0.00	2.12	0.13	2.25
70373	26	CONTRAST X-RAY OF LARYNX	0.43	0.21	0.03	0.67
70373	TC	CONTRAST X-RAY OF LARYNX	0.00	1.80	0.11	1.91
70380	26	X-RAY EXAM OF SALIVARY GLAND	0.17	0.08	0.01	0.26
70380	TC	X-RAY EXAM OF SALIVARY GLAND	0.00	0.69	0.04	0.73
70390	26	X-RAY EXAM OF SALIVARY DUCT	0.36	0.17	0.03	0.56
70390	TC	X-RAY EXAM OF SALIVARY DUCT	0.00	1.80	0.11	1.91
70450	26	CAT SCAN OF HEAD OR BRAIN	0.83	0.41	0.06	1.30
70450	TC	CAT SCAN OF HEAD OR BRAIN	0.00	5.30	0.33	5.63
70460	26	CONTRAST CAT SCAN OF HEAD	1.09	0.53	0.08	1.70
70460	TC	CONTRAST CAT SCAN OF HEAD	0.00	6.37	0.40	6.77
70470	26	CONTRAST CAT SCANS OF HEAD	1.23	0.60	0.09	1.92
70470	TC	CONTRAST CAT SCANS OF HEAD	0.00	7.96	0.50	8.46
70480	26	CAT SCAN OF SKULL	1.24	0.61	0.09	1.94
70480	TC	CAT SCAN OF SKULL	0.00	5.30	0.33	5.63
70481	26	CONTRAST CAT SCAN OF SKULL	1.34	0.66	0.10	2.10
70481	TC	CONTRAST CAT SCAN OF SKULL	0.00	6.37	0.40	6.77
70482	26	CONTRAST CAT SCANS OF SKULL	1.41	0.69	0.10	2.20
70482	TC	CONTRAST CAT SCANS OF SKULL	0.00	7.96	0.50	8.46
70486	26	CAT SCAN OF FACE, JAW	1.10	0.54	0.08	1.72
70486	TC	CAT SCAN OF FACE, JAW	0.00	5.30	0.33	5.63
70487	26	CONTRAST CAT SCAN, FACE/JAW	1.26	0.62	0.09	1.97
70487	TC	CONTRAST CAT SCAN, FACE/JAW	0.00	6.37	0.40	6.77
70488	26	CONTRAST CAT SCANS FACE/JAW	1.38	0.68	0.10	2.16
70488	TC	CONTRAST CAT SCANS FACE/JAW	0.00	7.96	0.50	8.46
70490	26	CAT SCAN OF NECK TISSUE	1.24	0.61	0.09	1.94
70490	TC	CAT SCAN OF NECK TISSUE	0.00	5.30	0.33	5.63
70491	26	CONTRAST CAT OF NECK TISSUE	1.34	0.66	0.10	2.10
70491	TC	CONTRAST CAT OF NECK TISSUE	0.00	6.37	0.40	6.77
70492	26	CONTRAST CAT OF NECK TISSUE	1.41	0.69	0.10	2.20
70492	TC	CONTRAST CAT OF NECK TISSUE	0.00	7.96	0.50	8.46
70540	26	MAGNETIC IMAGE, FACE, NECK	1.43	0.70	0.10	2.23
70540	TC	MAGNETIC IMAGE, FACE, NECK	0.00	12.60	0.79	13.39
70551	26	MAGNETIC IMAGE, BRAIN	1.43	0.70	0.10	2.23
70551	TC	MAGNETIC IMAGE, BRAIN	0.00	12.60	0.79	13.39
70552	26	MAGNETIC IMAGE, BRAIN	1.72	0.84	0.12	2.68
70552	TC	MAGNETIC IMAGE, BRAIN	0.00	15.12	0.95	16.07
71010	26	X-RAY EXAM OF CHEST	0.17	0.09	0.01	0.27
71010	TC	X-RAY EXAM OF CHEST	0.00	0.48	0.03	0.51
71015	26	STEREO X-RAY EXAM OF CHEST	0.20	0.10	0.01	0.31
71015	TC	STEREO X-RAY EXAM OF CHEST	0.00	0.53	0.03	0.56
71020	26	X-RAY EXAM OF CHEST	0.21	0.10	0.02	0.33
71020	TC	X-RAY EXAM OF CHEST	0.00	0.63	0.04	0.67
71021	26	X-RAY EXAM OF CHEST	0.25	0.12	0.02	0.39
71021	TC	X-RAY EXAM OF CHEST	0.00	0.74	0.05	0.79
71022	26	X-RAY EXAM OF CHEST	0.30	0.16	0.02	0.47
71022	TC	X-RAY EXAM OF CHEST	0.00	0.74	0.05	0.79
71023	26	CHEST X-RAY AND FLUOROSCOPY	0.36	0.18	0.03	0.57
71023	TC	CHEST X-RAY AND FLUOROSCOPY	0.00	0.80	0.05	0.85
71030	26	X-RAY EXAM OF CHEST	0.30	0.15	0.02	0.47
71030	TC	X-RAY EXAM OF CHEST	0.00	0.80	0.05	0.85

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HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
71034	26	CHEST X-RAY & FLUOROSCOPY	0.45	0.22	0.03	0.70
71034	TC	CHEST X-RAY & FLUOROSCOPY	0.00	1.46	0.09	1.55
71035	26	X-RAY EXAM OF CHEST	0.17	0.09	0.01	0.27
71035	TC	X-RAY EXAM OF CHEST	0.00	0.53	0.03	0.56
71036	26	X-RAY GUIDANCE FOR BIOPSY	0.54	0.26	0.04	0.84
71036	TC	X-RAY GUIDANCE FOR BIOPSY	0.00	1.50	0.10	1.60
71037	26	X-RAY GUIDANCE FOR BIOPSY	2.50	1.27	0.16	4.04
71037	TC	X-RAY GUIDANCE FOR BIOPSY	0.00	1.50	0.10	1.60
71038	26	X-RAY GUIDANCE FOR BIOPSY	0.54	0.26	0.04	0.84
71038	TC	X-RAY GUIDANCE FOR BIOPSY	0.00	1.76	0.10	1.80
71040	26	CONTRAST X-RAY OF BRONCHI	0.57	0.26	0.04	0.89
71040	TC	CONTRAST X-RAY OF BRONCHI	0.00	1.46	0.08	1.58
71060	26	CONTRAST X-RAY OF BRONCHI	0.72	0.35	0.05	1.12
71060	TC	CONTRAST X-RAY OF BRONCHI	0.00	2.23	0.14	2.37
71090	26	X-RAY & PACEMAKER INSERTION	0.54	0.26	0.04	0.84
71090	TC	X-RAY & PACEMAKER INSERTION	0.00	1.70	0.10	1.80
71100	26	X-RAY EXAM OF RIBS	0.21	0.10	0.02	0.33
71100	TC	X-RAY EXAM OF RIBS	0.00	0.56	0.05	0.61
71101	26	X-RAY EXAM OF RIBS, CHEST	0.26	0.13	0.02	0.41
71101	TC	X-RAY EXAM OF RIBS, CHEST	0.00	0.68	0.04	0.73
71110	26	X-RAY EXAM OF RIBS	0.26	0.13	0.02	0.41
71110	TC	X-RAY EXAM OF RIBS	0.00	0.80	0.05	0.85
71111	26	X-RAY EXAM OF RIBS, CHEST	0.30	0.15	0.02	0.47
71111	TC	X-RAY EXAM OF RIBS, CHEST	0.00	0.89	0.06	0.96
71120	26	X-RAY EXAM OF BREASTBONE	0.19	0.10	0.01	0.30
71120	TC	X-RAY EXAM OF BREASTBONE	0.00	0.66	0.04	0.70
71130	26	X-RAY EXAM OF BREASTBONE	0.21	0.10	0.02	0.33
71130	TC	X-RAY EXAM OF BREASTBONE	0.00	0.72	0.04	0.76
71250	26	CAT SCAN OF CHEST	1.12	0.55	0.08	1.75
71250	TC	CAT SCAN OF CHEST	0.00	6.63	0.42	7.05
71260	26	CONTRAST CAT SCAN OF CHEST	1.21	0.59	0.09	1.89
71260	TC	CONTRAST CAT SCAN OF CHEST	0.00	7.96	0.50	8.46
71270	26	CONTRAST CAT SCANS OF CHEST	1.34	0.66	0.10	2.10
71270	TC	CONTRAST CAT SCANS OF CHEST	0.00	9.95	0.62	10.57
71550	26	MAGNETIC IMAGE, CHEST	1.56	0.76	0.11	2.43
71550	TC	MAGNETIC IMAGE, CHEST	0.00	12.60	0.79	13.39
72010	26	X-RAY EXAM OF SPINE	0.43	0.21	0.03	0.67
72010	TC	X-RAY EXAM OF SPINE	0.00	1.03	0.06	1.09
72020	26	X-RAY EXAM OF SPINE	0.14	0.07	0.01	0.22
72020	TC	X-RAY EXAM OF SPINE	0.00	0.42	0.03	0.45
72040	26	X-RAY EXAM OF NECK SPINE	0.21	0.10	0.02	0.33
72040	TC	X-RAY EXAM OF NECK SPINE	0.00	0.61	0.04	0.65
72050	26	X-RAY EXAM OF NECK SPINE	0.30	0.15	0.02	0.47
72050	TC	X-RAY EXAM OF NECK SPINE	0.00	0.90	0.06	0.96
72052	26	X-RAY EXAM OF NECK SPINE	0.34	0.17	0.03	0.54
72052	TC	X-RAY EXAM OF NECK SPINE	0.00	1.14	0.07	1.21
72069	26	RADIOLOGIC EXAM (SCOLIOSIS)	0.21	0.10	0.02	0.33
72069	TC	RADIOLOGIC EXAM (SCOLIOSIS)	0.00	0.51	0.03	0.54
72070	26	X-RAY EXAM OF THORAX SPINE	0.21	0.10	0.02	0.33
72070	TC	X-RAY EXAM OF THORAX SPINE	0.00	0.66	0.04	0.70
72072	26	X-RAY EXAM OF THORACIC SPINE	0.21	0.10	0.02	0.33
72072	TC	X-RAY EXAM OF THORACIC SPINE	0.00	0.74	0.05	0.79
72074	26	X-RAY EXAM OF THORACIC SPINE	0.21	0.10	0.02	0.33
72074	TC	X-RAY EXAM OF THORACIC SPINE	0.00	0.94	0.05	0.99
72080	26	X-RAY EXAM OF TRUNK SPINE	0.21	0.10	0.02	0.33
72080	TC	X-RAY EXAM OF TRUNK SPINE	0.00	0.69	0.04	0.73
72090	26	X-RAY EXAM OF TRUNK SPINE	0.26	0.13	0.02	0.41

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
72090	TC	X-RAY EXAM OF TRUNK SPINE	0.00	0.69	0.04	0.73
72100	26	X-RAY EXAM OF LOWER SPINE	0.21	0.10	0.02	0.33
72100	TC	X-RAY EXAM OF LOWER SPINE	0.00	0.69	0.04	0.73
72110	26	X-RAY EXAM OF LOWER SPINE	0.30	0.15	0.02	0.47
72110	TC	X-RAY EXAM OF LOWER SPINE	0.00	0.93	0.06	0.99
72114	26	X-RAY EXAM OF LOWER SPINE	0.34	0.17	0.03	0.54
72114	TC	X-RAY EXAM OF LOWER SPINE	0.00	1.19	0.07	1.26
72120	26	X-RAY EXAM OF LOWER SPINE	0.21	0.10	0.02	0.33
72120	TC	X-RAY EXAM OF LOWER SPINE	0.00	0.90	0.06	0.96
72125	26	CAT SCAN OF NECK SPINE	1.12	0.55	0.08	1.75
72125	TC	CAT SCAN OF NECK SPINE	0.00	6.63	0.42	7.05
72126	26	CONTRAST CAT SCAN OF NECK	1.18	0.58	0.08	1.84
72126	TC	CONTRAST CAT SCAN OF NECK	0.00	7.96	0.50	8.46
72127	26	CONTRAST CAT SCANS OF NECK	1.23	0.60	0.09	1.92
72127	TC	CONTRAST CAT SCANS OF NECK	0.00	9.95	0.62	10.57
72128	26	CAT SCAN OF THORAX SPINE	1.12	0.55	0.08	1.75
72128	TC	CAT SCAN OF THORAX SPINE	0.00	6.63	0.42	7.05
72129	26	CONTRAST CAT SCAN OF THORAX	1.18	0.58	0.08	1.84
72129	TC	CONTRAST CAT SCAN OF THORAX	0.00	7.96	0.50	8.46
72130	26	CONTRAST CAT SCANS OF THORAX	1.23	0.60	0.09	1.92
72130	TC	CONTRAST CAT SCANS OF THORAX	0.00	9.95	0.62	10.57
72131	26	CAT SCAN OF LOWER SPINE	1.12	0.55	0.08	1.75
72131	TC	CAT SCAN OF LOWER SPINE	0.00	6.63	0.42	7.05
72132	26	CONTRAST CAT OF LOWER SPINE	1.18	0.58	0.08	1.84
72132	TC	CONTRAST CAT OF LOWER SPINE	0.00	7.96	0.50	8.46
72133	26	CONTRAST CAT SCANS,LOW SPINE	1.23	0.60	0.09	1.92
72133	TC	CONTRAST CAT SCANS,LOW SPINE	0.00	9.95	0.62	10.57
72141	26	MAGNETIC IMAGE, NECK SPINE	1.56	0.76	0.11	2.43
72141	TC	MAGNETIC IMAGE, NECK SPINE	0.00	12.60	0.79	13.39
72142	26	MAGNETIC IMAGE, NECK SPINE	1.67	0.91	0.13	2.91
72142	TC	MAGNETIC IMAGE, NECK SPINE	0.00	15.12	0.95	16.07
72147	26	MAGNETIC IMAGE, CHEST SPINE	1.67	0.91	0.13	2.91
72147	TC	MAGNETIC IMAGE, CHEST SPINE	0.00	15.12	0.95	16.07
72149	26	MAGNETIC IMAGE, LUMBAR SPINE	1.72	0.84	0.12	2.68
72149	TC	MAGNETIC IMAGE, LUMBAR SPINE	0.00	15.12	0.95	16.07
72170	26	X-RAY EXAM OF PELVIS	0.16	0.08	0.01	0.25
72170	TC	X-RAY EXAM OF PELVIS	0.00	0.53	0.03	0.56
72190	26	X-RAY EXAM OF PELVIS	0.20	0.10	0.01	0.31
72190	TC	X-RAY EXAM OF PELVIS	0.00	0.69	0.04	0.73
72192	26	CAT SCAN OF PELVIS	1.05	0.51	0.07	1.63
72192	TC	CAT SCAN OF PELVIS	0.00	6.63	0.42	7.05
72193	26	CONTRAST CAT SCAN OF PELVIS	1.12	0.55	0.08	1.75
72193	TC	CONTRAST CAT SCAN OF PELVIS	0.00	7.69	0.48	8.17
72194	26	CONTRAST CAT SCANS OF PELVIS	1.18	0.58	0.08	1.84
72194	TC	CONTRAST CAT SCANS OF PELVIS	0.00	9.55	0.60	10.15
72196	26	MAGNETIC IMAGE, PELVIS	1.56	0.76	0.11	2.43
72196	TC	MAGNETIC IMAGE, PELVIS	0.00	12.60	0.79	13.39
72200	26	X-RAY EXAM SACROILIAC JOINTS	0.17	0.08	0.01	0.26
72200	TC	X-RAY EXAM SACROILIAC JOINTS	0.00	0.53	0.03	0.56
72202	26	X-RAY EXAM SACROILIAC JOINTS	0.19	0.09	0.01	0.29
72202	TC	X-RAY EXAM SACROILIAC JOINTS	0.00	0.63	0.04	0.67
72220	26	X-RAY EXAM OF TAILBONE	0.17	0.08	0.01	0.26
72220	TC	X-RAY EXAM OF TAILBONE	0.00	0.58	0.03	0.61
72240	26	CONTRAST X-RAY OF NECK SPINE	0.88	0.43	0.06	1.37
72240	TC	CONTRAST X-RAY OF NECK SPINE	0.00	4.79	0.30	5.09
72255	26	CONTRAST X-RAY THORAX SPINE	0.88	0.43	0.06	1.37
72255	TC	CONTRAST X-RAY THORAX SPINE	0.00	4.38	0.28	4.66

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PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
72265	26	CONTRAST X-RAY LOWER SPINE	0.80	0.38	0.06	1.25
72265	TC	CONTRAST X-RAY LOWER SPINE	0.00	4.11	0.26	4.37
72270	26	CONTRAST X-RAY OF SPINE	1.29	0.63	0.09	2.01
72270	TC	CONTRAST X-RAY OF SPINE	0.00	6.17	0.39	6.56
72285	26	X-RAY OF NECK SPINE DISK	0.80	0.39	0.06	1.25
72285	TC	X-RAY OF NECK SPINE DISK	0.00	8.49	0.53	9.02
72295	26	X-RAY OF LOWER SPINE DISK	0.80	0.39	0.06	1.25
72295	TC	X-RAY OF LOWER SPINE DISK	0.00	7.96	0.50	8.46
73000	26	X-RAY EXAM OF COLLARBONE	0.15	0.07	0.01	0.23
73000	TC	X-RAY EXAM OF COLLARBONE	0.00	0.53	0.03	0.56
73010	26	X-RAY EXAM OF SHOULDER BLADE	0.16	0.08	0.01	0.25
73010	TC	X-RAY EXAM OF SHOULDER BLADE	0.00	0.53	0.03	0.56
73020	26	X-RAY EXAM OF SHOULDER	0.14	0.07	0.01	0.22
73020	TC	X-RAY EXAM OF SHOULDER	0.00	0.48	0.03	0.51
73030	26	X-RAY EXAM OF SHOULDER	0.17	0.08	0.01	0.26
73030	TC	X-RAY EXAM OF SHOULDER	0.00	0.58	0.03	0.61
73040	26	CONTRAST X-RAY OF SHOULDER	0.54	0.26	0.04	0.84
73040	TC	CONTRAST X-RAY OF SHOULDER	0.00	2.12	0.13	2.25
73050	26	X-RAY EXAM OF SHOULDERS	0.18	0.08	0.01	0.29
73050	TC	X-RAY EXAM OF SHOULDERS	0.00	0.69	0.04	0.73
73060	26	X-RAY EXAM OF HUMERUS	0.16	0.08	0.01	0.25
73060	TC	X-RAY EXAM OF HUMERUS	0.00	0.58	0.03	0.61
73070	26	X-RAY EXAM OF ELBOW	0.14	0.07	0.01	0.22
73070	TC	X-RAY EXAM OF ELBOW	0.00	0.53	0.03	0.56
73080	26	X-RAY EXAM OF ELBOW	0.17	0.08	0.01	0.26
73080	TC	X-RAY EXAM OF ELBOW	0.00	0.58	0.03	0.61
73085	26	CONTRAST X-RAY OF ELBOW	0.54	0.26	0.04	0.84
73085	TC	CONTRAST X-RAY OF ELBOW	0.00	2.12	0.13	2.25
73090	26	X-RAY EXAM OF FOREARM	0.15	0.07	0.01	0.23
73090	TC	X-RAY EXAM OF FOREARM	0.00	0.53	0.03	0.56
73092	26	X-RAY EXAM OF ARM, INFANT	0.14	0.07	0.01	0.22
73092	TC	X-RAY EXAM OF ARM, INFANT	0.00	0.50	0.03	0.53
73100	26	X-RAY EXAM OF WRIST	0.14	0.07	0.01	0.22
73100	TC	X-RAY EXAM OF WRIST	0.00	0.50	0.03	0.53
73110	26	X-RAY EXAM OF WRIST	0.17	0.08	0.01	0.26
73110	TC	X-RAY EXAM OF WRIST	0.00	0.56	0.03	0.59
73115	26	CONTRAST X-RAY OF WRIST	0.54	0.29	0.04	0.84
73115	TC	CONTRAST X-RAY OF WRIST	0.00	1.58	0.10	1.69
73120	26	X-RAY EXAM OF HAND	0.14	0.07	0.01	0.22
73120	TC	X-RAY EXAM OF HAND	0.00	0.50	0.03	0.53
73130	26	X-RAY EXAM OF HAND	0.17	0.08	0.01	0.26
73130	TC	X-RAY EXAM OF HAND	0.00	0.56	0.03	0.59
73140	26	X-RAY EXAM OF FINGER(S)	0.12	0.06	0.01	0.19
73140	TC	X-RAY EXAM OF FINGER(S)	0.00	0.42	0.03	0.45
73200	26	CAT SCAN OF ARM	1.05	0.51	0.07	1.63
73200	TC	CAT SCAN OF ARM	0.00	5.57	0.35	5.92
73201	26	CONTRAST CAT SCAN OF ARM	1.12	0.55	0.08	1.75
73201	TC	CONTRAST CAT SCAN OF ARM	0.00	6.63	0.42	7.05
73202	26	CONTRAST CAT SCANS OF ARM	1.18	0.58	0.08	1.84
73202	TC	CONTRAST CAT SCANS OF ARM	0.00	8.35	0.52	8.87
73220	26	MAGNETIC IMAGE, ARM, HAND	1.43	0.70	0.10	2.23
73220	TC	MAGNETIC IMAGE, ARM, HAND	0.00	12.60	0.79	13.39
73221	26	MAGNETIC IMAGE, JOINT OF ARM	0.92	0.45	0.06	1.43
73221	TC	MAGNETIC IMAGE, JOINT OF ARM	0.00	12.60	0.79	13.39
73500	26	X-RAY EXAM OF HIP	0.16	0.08	0.01	0.25
73500	TC	X-RAY EXAM OF HIP	0.00	0.48	0.03	0.51
73510	26	X-RAY EXAM OF HIP	0.20	0.10	0.01	0.31

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
73510	TC	X-RAY EXAM OF HIP	0.00	0.58	0.03	0.61
73520	26	X-RAY EXAM OF HIPS	0.25	0.12	0.02	0.39
73520	TC	X-RAY EXAM OF HIPS	0.00	0.69	0.04	0.73
73525	26	CONTRAST X-RAY OF HIP	0.54	0.26	0.04	0.84
73525	TC	CONTRAST X-RAY OF HIP	0.00	2.12	0.13	2.25
73530	26	X-RAY EXAM OF HIP	0.26	0.14	0.02	0.44
73530	TC	X-RAY EXAM OF HIP	0.00	0.53	0.03	0.56
73540	26	X-RAY EXAM OF PELVIS & HIPS	0.20	0.10	0.01	0.31
73540	TC	X-RAY EXAM OF PELVIS & HIPS	0.00	0.58	0.03	0.61
73550	26	X-RAY EXAM OF THIGH	0.17	0.08	0.01	0.26
73550	TC	X-RAY EXAM OF THIGH	0.00	0.58	0.03	0.61
73560	26	X-RAY EXAM OF KNEE	0.15	0.07	0.01	0.23
73560	TC	X-RAY EXAM OF KNEE	0.00	0.53	0.03	0.56
73562	26	X-RAY EXAM OF KNEE	0.18	0.09	0.01	0.28
73562	TC	X-RAY EXAM OF KNEE	0.00	0.58	0.03	0.61
73564	26	X-RAY EXAM OF KNEE	0.21	0.10	0.02	0.33
73564	TC	X-RAY EXAM OF KNEE	0.00	0.63	0.04	0.67
73565	26	RADIOLOGIC EXAMINATION, KNEE;	0.15	0.07	0.01	0.23
73565	TC	RADIOLOGIC EXAMINATION, KNEE;	0.00	0.50	0.03	0.53
73580	26	CONTRAST X-RAY OF KNEE JOINT	0.54	0.26	0.04	0.84
73580	TC	CONTRAST X-RAY OF KNEE JOINT	0.00	2.65	0.17	2.82
73590	26	X-RAY EXAM OF LOWER LEG	0.15	0.07	0.01	0.23
73590	TC	X-RAY EXAM OF LOWER LEG	0.00	0.53	0.03	0.56
73592	26	X-RAY EXAM OF LEG, INFANT	0.14	0.07	0.01	0.22
73592	TC	X-RAY EXAM OF LEG, INFANT	0.00	0.50	0.03	0.53
73600	26	X-RAY EXAM OF ANKLE	0.14	0.07	0.01	0.22
73600	TC	X-RAY EXAM OF ANKLE	0.00	0.50	0.03	0.53
73610	26	X-RAY EXAM OF ANKLE	0.17	0.08	0.01	0.26
73610	TC	X-RAY EXAM OF ANKLE	0.00	0.56	0.03	0.59
73615	26	CONTRAST X-RAY OF ANKLE	0.54	0.26	0.04	0.84
73615	TC	CONTRAST X-RAY OF ANKLE	0.00	2.12	0.13	2.25
73620	26	X-RAY EXAM OF FOOT	0.14	0.07	0.01	0.22
73620	TC	X-RAY EXAM OF FOOT	0.00	0.50	0.03	0.53
73630	26	X-RAY EXAM OF FOOT	0.17	0.08	0.01	0.26
73630	TC	X-RAY EXAM OF FOOT	0.00	0.56	0.03	0.59
73650	26	X-RAY EXAM OF HEEL	0.14	0.07	0.01	0.22
73650	TC	X-RAY EXAM OF HEEL	0.00	0.48	0.03	0.51
73660	26	X-RAY EXAM OF TOE(S)	0.12	0.06	0.01	0.19
73660	TC	X-RAY EXAM OF TOE(S)	0.00	0.42	0.03	0.45
73700	26	CAT SCAN OF LEG	1.05	0.51	0.07	1.63
73700	TC	CAT SCAN OF LEG	0.00	5.57	0.35	5.92
73701	26	CONTRAST CAT SCAN OF LEG	1.12	0.55	0.08	1.75
73701	TC	CONTRAST CAT SCAN OF LEG	0.00	6.63	0.42	7.05
73702	26	CONTRAST CAT SCANS OF LEG	1.18	0.58	0.08	1.84
73702	TC	CONTRAST CAT SCANS OF LEG	0.00	8.35	0.52	8.87
73720	26	MAGNETIC IMAGE, LEG, FOOT	1.43	0.70	0.10	2.23
73720	TC	MAGNETIC IMAGE, LEG, FOOT	0.00	12.60	0.79	13.39
73721	26	MAGNETIC IMAGE, JOINT OF LEG	0.92	0.45	0.06	1.43
73721	TC	MAGNETIC IMAGE, JOINT OF LEG	0.00	12.60	0.79	13.39
74000	26	X-RAY EXAM OF ABDOMEN	0.17	0.09	0.01	0.27
74000	TC	X-RAY EXAM OF ABDOMEN	0.00	0.53	0.03	0.56
74010	26	X-RAY EXAM OF ABDOMEN	0.22	0.11	0.02	0.35
74010	TC	X-RAY EXAM OF ABDOMEN	0.00	0.58	0.03	0.61
74020	26	X-RAY EXAM OF ABDOMEN	0.26	0.13	0.02	0.41
74020	TC	X-RAY EXAM OF ABDOMEN	0.00	0.63	0.04	0.67
74022	26	X-RAY EXAM SERIES, ABDOMEN	0.30	0.15	0.02	0.47
74022	TC	X-RAY EXAM SERIES, ABDOMEN	0.00	0.74	0.05	0.79

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PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
74150	26	CAT SCAN OF ABDOMEN	1.15	0.56	0.08	1.79
74150	TC	CAT SCAN OF ABDOMEN	0.00	6.37	0.40	6.77
74160	26	CONTRAST CAT SCAN OF ABDOMEN	1.23	0.60	0.09	1.92
74160	TC	CONTRAST CAT SCAN OF ABDOMEN	0.00	7.89	0.48	8.17
74170	26	CONTRAST CAT SCANS, ABDOMEN	1.36	0.67	0.10	2.13
74170	TC	CONTRAST CAT SCANS, ABDOMEN	0.00	9.55	0.60	10.15
74181	26	MAGNETIC IMAGE, ABDOMEN	1.56	0.76	0.11	2.43
74181	TC	MAGNETIC IMAGE, ABDOMEN	0.00	12.60	0.79	13.39
74210	26	CONTRAST XRAY EXAM OF THROAT	0.33	0.17	0.03	0.53
74210	TC	CONTRAST XRAY EXAM OF THROAT	0.00	1.19	0.07	1.26
74220	26	CONTRAST XRAY EXAM,ESOPHAGUS	0.45	0.22	0.03	0.70
74220	TC	CONTRAST XRAY EXAM,ESOPHAGUS	0.00	1.19	0.07	1.26
74230	26	CINEMA XRAY THROAT/ESOPHAGUS	0.52	0.28	0.04	0.82
74230	TC	CINEMA XRAY THROAT/ESOPHAGUS	0.00	1.32	0.08	1.40
74235	26	REMOVE ESOPHAGUS OBSTRUCTION	1.15	0.56	0.08	1.79
74235	TC	REMOVE ESOPHAGUS OBSTRUCTION	0.00	2.65	0.17	2.82
74240	26	X-RAY EXAM UPPER GI TRACT	0.67	0.33	0.06	1.05
74240	TC	X-RAY EXAM UPPER GI TRACT	0.00	1.48	0.08	1.56
74241	26	X-RAY EXAM UPPER GI TRACT	0.67	0.33	0.05	1.05
74241	TC	X-RAY EXAM UPPER GI TRACT	0.00	1.51	0.10	1.61
74245	26	X-RAY EXAM UPPER GI TRACT	0.88	0.43	0.06	1.37
74245	TC	X-RAY EXAM UPPER GI TRACT	0.00	2.42	0.15	2.57
74246	26	CONTRAST XRAY UPPER GI TRACT	0.67	0.33	0.05	1.05
74246	TC	CONTRAST XRAY UPPER GI TRACT	0.00	1.67	0.10	1.77
74247	26	CONTRAST XRAY UPPER GI TRACT	0.67	0.33	0.05	1.05
74247	TC	CONTRAST XRAY UPPER GI TRACT	0.00	1.70	0.10	1.80
74249	26	CONTRAST XRAY UPPER GI TRACT	0.88	0.43	0.06	1.37
74249	TC	CONTRAST XRAY UPPER GI TRACT	0.00	2.60	0.16	2.76
74250	26	X-RAY EXAM OF SMALL BOWEL	0.48	0.23	0.03	0.72
74250	TC	X-RAY EXAM OF SMALL BOWEL	0.00	1.32	0.08	1.40
74260	26	X-RAY EXAM OF SMALL BOWEL	0.49	0.24	0.03	0.76
74260	TC	X-RAY EXAM OF SMALL BOWEL	0.00	1.51	0.10	1.61
74270	26	CONTRAST X-RAY EXAM OF COLON	0.67	0.33	0.05	1.05
74270	TC	CONTRAST X-RAY EXAM OF COLON	0.00	1.72	0.11	1.83
74280	26	CONTRAST X-RAY EXAM OF COLON	0.96	0.47	0.07	1.50
74280	TC	CONTRAST X-RAY EXAM OF COLON	0.00	2.25	0.14	2.39
74283	26	CONTRAST X-RAY EXAM OF COLON	1.95	0.96	0.14	3.05
74283	TC	CONTRAST X-RAY EXAM OF COLON	0.00	2.59	0.16	2.75
74290	26	CONTRAST X-RAY, GALLBLADDER	0.30	0.15	0.02	0.47
74290	TC	CONTRAST X-RAY, GALLBLADDER	0.00	0.74	0.05	0.79
74291	26	CONTRAST X-RAYS, GALLBLADDER	0.19	0.10	0.01	0.30
74291	TC	CONTRAST X-RAYS, GALLBLADDER	0.00	0.42	0.03	0.45
74300	26	X-RAY BILE DUCTS, PANCREAS	0.35	0.17	0.03	0.55
74301	26	ADDITIONAL X-RAYS AT SURGERY	0.20	0.10	0.01	0.31
74305	26	X-RAY BILE DUCTS, PANCREAS	0.41	0.20	0.03	0.64
74305	TC	X-RAY BILE DUCTS, PANCREAS	0.00	0.80	0.05	0.85
74320	26	CONTRAST X-RAY OF BILE DUCTS	0.54	0.26	0.04	0.84
74320	TC	CONTRAST X-RAY OF BILE DUCTS	0.00	3.18	0.20	3.38
74327	26	X-RAY FOR BILE STONE REMOVAL	0.68	0.33	0.05	1.06
74327	TC	X-RAY FOR BILE STONE REMOVAL	0.00	1.78	0.11	1.89
74328	26	XRAY FOR BILE DUCT ENDOSCOPY	0.68	0.33	0.05	1.06
74328	TC	XRAY FOR BILE DUCT ENDOSCOPY	0.00	3.18	0.20	3.38
74329	26	X-RAY FOR PANCREAS ENDOSCOPY	0.68	0.33	0.05	1.06
74329	TC	X-RAY FOR PANCREAS ENDOSCOPY	0.00	3.18	0.20	3.38
74330	26	XRAY,BILE/PANCREAS ENDOSCOPY	0.68	0.33	0.05	1.06
74330	TC	XRAY,BILE/PANCREAS ENDOSCOPY	0.00	3.18	0.20	3.38
74340	26	X-RAY GUIDE FOR GI TUBE	0.84	0.26	0.04	0.84

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
74340	TC	X-RAY GUIDE FOR GI TUBE	0.00	2.65	0.17	2.82
74350	26	X-RAY GUIDE, STOMACH TUBE	0.74	0.36	0.05	1.15
74350	TC	X-RAY GUIDE, STOMACH TUBE	0.00	3.18	0.20	3.38
74351	26	X-RAY GUIDE, STOMACH TUBE	3.99	1.96	0.28	6.23
74351	TC	X-RAY GUIDE, STOMACH TUBE	0.00	2.65	0.17	2.82
74355	26	X-RAY GUIDE, INTESTINAL TUBE	0.74	0.36	0.05	1.15
74355	TC	X-RAY GUIDE, INTESTINAL TUBE	0.00	2.65	0.17	2.82
74356	26	X-RAY GUIDE, INTESTINAL TUBE	3.99	1.96	0.28	6.23
74356	TC	X-RAY GUIDE, INTESTINAL TUBE	0.00	2.65	0.17	2.82
74360	26	X-RAY GUIDE, GI DILATION	0.54	0.26	0.04	0.84
74360	TC	X-RAY GUIDE, GI DILATION	0.00	3.18	0.20	3.38
74361	26	X-RAY GUIDE, GI DILATION	3.95	1.94	0.28	6.17
74361	TC	X-RAY GUIDE, GI DILATION	0.00	3.18	0.20	3.38
74400	26	CONTRAST X-RAY URINARY TRACT	0.48	0.23	0.03	0.74
74400	TC	CONTRAST X-RAY URINARY TRACT	0.00	1.70	0.10	1.80
74405	26	CONTRAST X-RAY URINARY TRACT	0.48	0.23	0.03	0.74
74405	TC	CONTRAST X-RAY URINARY TRACT	0.00	2.02	0.13	2.15
74410	26	CONTRAST X-RAY URINARY TRACT	0.48	0.23	0.03	0.74
74410	TC	CONTRAST X-RAY URINARY TRACT	0.00	1.97	0.12	2.09
74415	26	CONTRAST X-RAY URINARY TRACT	0.48	0.23	0.03	0.74
74415	TC	CONTRAST X-RAY URINARY TRACT	0.00	2.15	0.14	2.29
74420	26	CONTRAST X-RAY URINARY TRACT	0.33	0.17	0.03	0.53
74420	TC	CONTRAST X-RAY URINARY TRACT	0.00	2.65	0.17	2.82
74425	26	CONTRAST X-RAY URINARY TRACT	0.33	0.17	0.03	0.53
74425	TC	CONTRAST X-RAY URINARY TRACT	0.00	1.32	0.08	1.40
74430	26	CONTRAST X-RAY OF BLADDER	0.30	0.15	0.02	0.47
74430	TC	CONTRAST X-RAY OF BLADDER	0.00	1.06	0.07	1.13
74440	26	XRAY EXAM MALE GENITAL TRACT	0.36	0.17	0.03	0.56
74440	TC	XRAY EXAM MALE GENITAL TRACT	0.00	1.14	0.07	1.21
74445	26	X-RAY EXAM OF PENIS	1.10	0.54	0.08	1.72
74445	TC	X-RAY EXAM OF PENIS	0.00	1.14	0.07	1.21
74450	26	X-RAY EXAM URETHRA/BLADDER	0.31	0.15	0.02	0.48
74450	TC	X-RAY EXAM URETHRA/BLADDER	0.00	1.49	0.09	1.58
74455	26	X-RAY EXAM URETHRA/BLADDER	0.31	0.15	0.02	0.48
74455	TC	X-RAY EXAM URETHRA/BLADDER	0.00	1.59	0.10	1.69
74470	26	X-RAY EXAM OF KIDNEY LESION	0.54	0.26	0.04	0.84
74470	TC	X-RAY EXAM OF KIDNEY LESION	0.00	1.27	0.08	1.35
74475	26	XRAY CONTROL CATHETER INSERT	0.54	0.26	0.04	0.84
74475	TC	XRAY CONTROL CATHETER INSERT	0.00	4.11	0.26	4.37
74480	26	XRAY CONTROL CATHETER INSERT	0.54	0.26	0.04	0.84
74480	TC	XRAY CONTROL CATHETER INSERT	0.00	4.11	0.26	4.37
74485	26	X-RAY GUIDE, GU DILATION	0.54	0.26	0.04	0.84
74485	TC	X-RAY GUIDE, GU DILATION	0.00	3.18	0.20	3.38
74486	26	X-RAY GUIDE, GU DILATION	5.02	2.46	0.36	7.84
74486	TC	X-RAY GUIDE, GU DILATION	0.00	3.18	0.20	3.38
74710	26	X-RAY MEASUREMENT OF PELVIS	0.32	0.16	0.02	0.50
74710	TC	X-RAY MEASUREMENT OF PELVIS	0.00	1.06	0.07	1.13
74740	26	X-RAY FEMALE GENITAL TRACT	0.36	0.17	0.03	0.56
74740	TC	X-RAY FEMALE GENITAL TRACT	0.00	1.32	0.08	1.40
74775	26	X-RAY EXAM OF PERINEUM	0.61	0.30	0.04	0.95
74775	TC	X-RAY EXAM OF PERINEUM	0.00	1.49	0.09	1.58
75500	26	CINEMA X-RAY HEART VESSELS	1.10	0.54	0.08	1.72
75500	TC	CINEMA X-RAY HEART VESSELS	0.00	11.68	0.73	12.41
75505	26	X-RAY EXAM OF HEART VESSELS	1.10	0.54	0.08	1.72
75505	TC	X-RAY EXAM OF HEART VESSELS	0.00	11.68	0.73	12.41
75507	26	X-RAY EXAM OF HEART VESSELS	1.27	0.62	0.09	1.98
75507	TC	X-RAY EXAM OF HEART VESSELS	0.00	11.68	0.73	12.41

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PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
75519	26	HEART X-RAY/CATHETERIZATION	0.81	0.40	0.06	1.27
75519	TC	HEART X-RAY/CATHETERIZATION	0.00	11.68	0.73	12.41
75523	26	HEART X-RAY/CATHETERIZATION	0.81	0.40	0.06	1.27
75523	TC	HEART X-RAY/CATHETERIZATION	0.00	11.68	0.73	12.41
75527	26	HEART X-RAY/CATHETERIZATION	1.45	0.71	0.10	2.26
75527	TC	HEART X-RAY/CATHETERIZATION	0.00	11.68	0.73	12.41
75552	26	MAGNETIC IMAGE, MYOCARDIUM	1.56	0.76	0.11	2.43
75552	TC	MAGNETIC IMAGE, MYOCARDIUM	0.00	12.60	0.79	13.39
75600	26	CONTRAST X-RAY EXAM OF AORTA	0.48	0.23	0.03	0.74
75600	TC	CONTRAST X-RAY EXAM OF AORTA	0.00	12.75	0.80	13.55
75605	26	CONTRAST X-RAY EXAM OF AORTA	1.10	0.54	0.08	1.72
75605	TC	CONTRAST X-RAY EXAM OF AORTA	0.00	12.75	0.80	13.55
75625	26	CONTRAST X-RAY EXAM OF AORTA	1.10	0.54	0.08	1.72
75625	TC	CONTRAST X-RAY EXAM OF AORTA	0.00	12.75	0.80	13.55
75627	26	CONTRAST X-RAY EXAM OF AORTA	1.10	0.54	0.08	1.72
75627	TC	CONTRAST X-RAY EXAM OF AORTA	0.00	12.75	0.80	13.55
75630	26	X-RAY AORTA, LEG ARTERIES	1.27	0.62	0.09	1.98
75630	TC	X-RAY AORTA, LEG ARTERIES	0.00	13.29	0.83	14.12
75650	26	ARTERY X-RAYS, HEAD & NECK	1.44	0.70	0.10	2.24
75650	TC	ARTERY X-RAYS, HEAD & NECK	0.00	12.75	0.80	13.55
75652	26	ARTERY X-RAYS, HEAD & NECK	1.44	0.70	0.10	2.24
75652	TC	ARTERY X-RAYS, HEAD & NECK	0.00	12.75	0.80	13.55
75654	26	ARTERY X-RAYS, HEAD & NECK	1.94	0.95	0.14	3.03
75654	TC	ARTERY X-RAYS, HEAD & NECK	0.00	12.75	0.80	13.55
75656	26	ARTERY X-RAYS, HEAD & NECK	2.44	1.20	0.17	3.81
75656	TC	ARTERY X-RAYS, HEAD & NECK	0.00	13.84	0.87	14.71
75658	26	X-RAY EXAM OF ARM ARTERIES	1.27	0.62	0.09	1.98
75658	TC	X-RAY EXAM OF ARM ARTERIES	0.00	12.75	0.80	13.55
75660	26	ARTERY X-RAYS, HEAD & NECK	1.27	0.62	0.09	1.98
75660	TC	ARTERY X-RAYS, HEAD & NECK	0.00	12.75	0.80	13.55
75662	26	ARTERY X-RAYS, HEAD & NECK	1.61	0.79	0.11	2.51
75662	TC	ARTERY X-RAYS, HEAD & NECK	0.00	12.75	0.80	13.55
75665	26	ARTERY X-RAYS, HEAD & NECK	1.27	0.62	0.09	1.98
75665	TC	ARTERY X-RAYS, HEAD & NECK	0.00	12.75	0.80	13.55
75671	26	ARTERY X-RAYS, HEAD & NECK	1.61	0.79	0.11	2.51
75671	TC	ARTERY X-RAYS, HEAD & NECK	0.00	12.75	0.80	13.55
75676	26	ARTERY X-RAYS, NECK	1.27	0.62	0.09	1.98
75676	TC	ARTERY X-RAYS, NECK	0.00	12.75	0.80	13.55
75680	26	ARTERY X-RAYS, NECK	1.61	0.79	0.11	2.51
75680	TC	ARTERY X-RAYS, NECK	0.00	12.75	0.80	13.55
75685	26	ARTERY X-RAYS, SPINE	1.27	0.62	0.09	1.98
75685	TC	ARTERY X-RAYS, SPINE	0.00	12.75	0.80	13.55
75690	26	ARTERY X-RAYS, NECK SPINE	1.27	0.62	0.09	1.98
75690	TC	ARTERY X-RAYS, NECK SPINE	0.00	12.75	0.80	13.55
75695	26	ARTERY X-RAYS, NECK SPINE	1.61	0.79	0.11	2.51
75695	TC	ARTERY X-RAYS, NECK SPINE	0.00	12.75	0.80	13.55
75705	26	ARTERY X-RAYS, SPINE	2.11	1.03	0.15	3.29
75705	TC	ARTERY X-RAYS, SPINE	0.00	12.75	0.80	13.55
75710	26	ARTERY X-RAYS, ARM/LEG	1.10	0.54	0.08	1.72
75710	TC	ARTERY X-RAYS, ARM/LEG	0.00	12.75	0.80	13.55
75716	26	ARTERY X-RAYS, ARMS/LEGS	1.27	0.62	0.09	1.98
75716	TC	ARTERY X-RAYS, ARMS/LEGS	0.00	12.75	0.80	13.55
75718	26	ARTERY X-RAYS, ARMS/LEGS	4.07	2.00	0.29	6.36
75718	TC	ARTERY X-RAYS, ARMS/LEGS	0.00	12.75	0.80	13.55
75722	26	ARTERY X-RAYS, KIDNEY	1.10	0.54	0.08	1.72
75722	TC	ARTERY X-RAYS, KIDNEY	0.00	12.75	0.80	13.55
75724	26	ARTERY X-RAYS, KIDNEYS	1.44	0.70	0.10	2.24

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
75724	TC	ARTERY X-RAYS, KIDNEYS	0.00	12.75	0.80	13.55
75726	26	ARTERY X-RAYS, ABDOMEN	1.10	0.54	0.08	1.72
75726	TC	ARTERY X-RAYS, ABDOMEN	0.00	12.75	0.80	13.55
75731	26	ARTERY X-RAYS, ADRENAL GLAND	1.10	0.54	0.08	1.72
75731	TC	ARTERY X-RAYS, ADRENAL GLAND	0.00	12.75	0.80	13.55
75733	26	ARTERY X-RAYS,ADRENAL GLANDS	1.27	0.62	0.09	1.98
75733	TC	ARTERY X-RAYS,ADRENAL GLANDS	0.00	12.75	0.80	13.55
75736	26	ARTERY X-RAYS, PELVIS	1.10	0.54	0.08	1.72
75736	TC	ARTERY X-RAYS, PELVIS	0.00	12.75	0.80	13.55
75741	26	ARTERY X-RAYS, LUNG	1.27	0.62	0.09	1.98
75741	TC	ARTERY X-RAYS, LUNG	0.00	12.75	0.80	13.55
75743	26	ARTERY X-RAYS, LUNGS	1.61	0.79	0.11	2.51
75743	TC	ARTERY X-RAYS, LUNGS	0.00	12.75	0.80	13.55
75746	26	ARTERY X-RAYS, LUNG	1.10	0.54	0.08	1.72
75746	TC	ARTERY X-RAYS, LUNG	0.00	12.75	0.80	13.55
75750	26	ARTERY X-RAYS, HEART	1.10	0.54	0.08	1.72
75750	TC	ARTERY X-RAYS, HEART	0.00	12.75	0.80	13.55
75752	26	ARTERY X-RAYS, HEART	1.10	0.54	0.08	1.72
75752	TC	ARTERY X-RAYS, HEART	0.00	12.75	0.80	13.55
75754	26	ARTERY X-RAYS, HEART	1.28	0.63	0.09	2.00
75754	TC	ARTERY X-RAYS, HEART	0.00	12.75	0.80	13.55
75756	26	ARTERY X-RAYS, CHEST	1.10	0.54	0.08	1.72
75756	TC	ARTERY X-RAYS, CHEST	0.00	12.75	0.80	13.55
75762	26	CORONARY BYPASS X-RAY	1.10	0.54	0.08	1.72
75762	TC	CORONARY BYPASS X-RAY	0.00	12.75	0.80	13.55
75766	26	CORONARY BYPASS X-RAY	1.27	0.62	0.09	1.98
75766	TC	CORONARY BYPASS X-RAY	0.00	12.75	0.80	13.55
75774	26	ARTERY X-RAY, EACH VESSEL	0.33	0.17	0.03	0.53
75774	TC	ARTERY X-RAY, EACH VESSEL	0.00	12.75	0.80	13.55
75790	26	VISUALIZE A-V SHUNT	1.78	0.67	0.13	2.78
75790	TC	VISUALIZE A-V SHUNT	0.00	1.37	0.09	1.46
75801	26	LYMPH VESSEL X-RAY, ARM/LEG	0.76	0.38	0.05	1.21
75801	TC	LYMPH VESSEL X-RAY, ARM/LEG	0.00	5.48	0.34	5.82
75803	26	LYMPH VESSEL X-RAY,ARMS/LEGS	1.13	0.55	0.08	1.76
75803	TC	LYMPH VESSEL X-RAY,ARMS/LEGS	0.00	5.48	0.34	5.82
75805	TC	LYMPH VESSEL X-RAY, TRUNK	0.00	6.17	0.39	6.56
75807	26	LYMPH VESSEL X-RAY, TRUNK	1.13	0.55	0.08	1.76
75807	TC	LYMPH VESSEL X-RAY, TRUNK	0.00	6.17	0.39	6.56
75810	26	VEIN X-RAY, SPLEEN/LIVER	1.10	0.54	0.08	1.72
75810	TC	VEIN X-RAY, SPLEEN/LIVER	0.00	12.75	0.80	13.55
75820	26	VEIN X-RAY, ARM/LEG	0.68	0.33	0.05	1.06
75820	TC	VEIN X-RAY, ARM/LEG	0.00	0.96	0.06	1.02
75822	26	VEIN X-RAY, ARMS/LEGS	1.02	0.50	0.07	1.59
75822	TC	VEIN X-RAY, ARMS/LEGS	0.00	1.50	0.10	1.60
75825	26	VEIN X-RAY, TRUNK	1.10	0.54	0.08	1.72
75825	TC	VEIN X-RAY, TRUNK	0.00	12.75	0.80	13.55
75827	26	VEIN X-RAY, CHEST	1.10	0.54	0.08	1.72
75827	TC	VEIN X-RAY, CHEST	0.00	12.75	0.80	13.55
75831	26	VEIN X-RAY, KIDNEY	1.10	0.54	0.08	1.72
75831	TC	VEIN X-RAY, KIDNEY	0.00	12.75	0.80	13.55
75833	26	VEIN X-RAY, KIDNEYS	1.44	0.70	0.10	2.24
75833	TC	VEIN X-RAY, KIDNEYS	0.00	12.75	0.80	13.55
75840	26	VEIN X-RAY, ADRENAL GLAND	1.10	0.54	0.08	1.72
75840	TC	VEIN X-RAY, ADRENAL GLAND	0.00	12.75	0.80	13.55
75842	26	VEIN X-RAY, ADRENAL GLANDS	1.44	0.70	0.10	2.24
75842	TC	VEIN X-RAY, ADRENAL GLANDS	0.00	12.75	0.80	13.55
75860	26	VEIN X-RAY, NECK	1.10	0.54	0.08	1.72

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HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
75860	TC	VEIN X-RAY, NECK	0.00	12.75	0.80	13.55
75870	26	VEIN X-RAY, SKULL	1.10	0.54	0.08	1.72
75870	TC	VEIN X-RAY, SKULL	0.00	12.75	0.80	13.55
75872	26	VEIN X-RAY, SKULL	1.10	0.54	0.08	1.72
75872	TC	VEIN X-RAY, SKULL	0.00	12.75	0.80	13.55
75880	26	VEIN X-RAY, EYE SOCKET	0.68	0.33	0.05	1.06
75880	TC	VEIN X-RAY, EYE SOCKET	0.00	0.96	0.06	1.02
75885	26	VEIN X-RAY, LIVER	1.40	0.69	0.10	2.19
75885	TC	VEIN X-RAY, LIVER	0.00	12.75	0.80	13.55
75887	26	VEIN X-RAY, LIVER	1.40	0.69	0.10	2.19
75887	TC	VEIN X-RAY, LIVER	0.00	12.75	0.80	13.55
75889	26	VEIN X-RAY, LIVER	1.10	0.54	0.08	1.72
75889	TC	VEIN X-RAY, LIVER	0.00	12.75	0.80	13.55
75891	26	VEIN X-RAY, LIVER	1.10	0.54	0.08	1.72
75891	TC	VEIN X-RAY, LIVER	0.00	12.75	0.80	13.55
75893	26	VENOUS SAMPLING BY CATHETER	0.54	0.26	0.04	0.84
75893	TC	VENOUS SAMPLING BY CATHETER	0.00	12.75	0.80	13.55
75894	26	XRAYS, TRANSCATHETER THERAPY	1.27	0.62	0.09	1.98
75894	TC	XRAYS, TRANSCATHETER THERAPY	0.00	24.43	1.53	25.96
75896	26	XRAYS, TRANSCATHETER THERAPY	1.27	0.62	0.09	1.98
75896	TC	XRAYS, TRANSCATHETER THERAPY	0.00	21.34	1.33	22.57
75898	26	FOLLOW-UP ANGIOGRAM	1.80	0.79	0.11	2.50
75898	TC	FOLLOW-UP ANGIOGRAM	0.00	1.06	0.07	1.13
75940	26	X-RAY PLACEMENT, VEIN FILTER	0.54	0.26	0.04	0.84
75940	TC	X-RAY PLACEMENT, VEIN FILTER	0.00	12.75	0.80	13.55
75950	26	VASCULAR BLOCK, TEMPORARY	1.27	0.62	0.09	1.98
75950	TC	VASCULAR BLOCK, TEMPORARY	0.00	24.43	1.53	25.96
75955	26	VASCULAR BLOCK, PERMANENT	1.27	0.62	0.09	1.98
75955	TC	VASCULAR BLOCK, PERMANENT	0.00	24.43	1.53	25.96
75961	26	RETRIEVAL, BROKEN CATHETER	4.12	2.02	0.29	6.43
75961	TC	RETRIEVAL, BROKEN CATHETER	0.00	10.62	0.67	11.29
75962	26	REPAIR ARTERIAL BLOCKAGE	0.54	0.26	0.04	0.84
75962	TC	REPAIR ARTERIAL BLOCKAGE	0.00	15.89	1.00	16.93
75964	26	REPAIR ARTERY BLOCKAGE, EACH	0.33	0.17	0.03	0.53
75964	TC	REPAIR ARTERY BLOCKAGE, EACH	0.00	8.99	0.53	9.03
75966	26	REPAIR ARTERIAL BLOCKAGE	1.27	0.62	0.09	1.98
75966	TC	REPAIR ARTERIAL BLOCKAGE	0.00	15.89	1.00	16.93
75968	26	REPAIR ARTERY BLOCKAGE, EACH	0.33	0.17	0.03	0.53
75968	TC	REPAIR ARTERY BLOCKAGE, EACH	0.00	8.99	0.53	9.03
75970	26	VASCULAR BIOPSY	0.80	0.39	0.06	1.25
75970	TC	VASCULAR BIOPSY	0.00	11.68	0.73	12.41
75978	26	REPAIR VENOUS BLOCKAGE	0.54	0.26	0.04	0.84
75980	26	CONTRAST XRAY EXAM BILE DUCT	1.40	0.68	0.10	2.19
75980	TC	CONTRAST XRAY EXAM BILE DUCT	0.00	5.48	0.34	5.82
75982	26	CONTRAST XRAY EXAM BILE DUCT	1.40	0.68	0.10	2.19
75982	TC	CONTRAST XRAY EXAM BILE DUCT	0.00	6.17	0.39	6.56
75984	26	XRAY CONTROL CATHETER CHANGE	0.70	0.34	0.05	1.09
75984	TC	XRAY CONTROL CATHETER CHANGE	0.00	1.97	0.12	2.09
75989	26	ABSCESS DRAINAGE UNDER X-RAY	1.16	0.57	0.08	1.81
75989	TC	ABSCESS DRAINAGE UNDER X-RAY	0.00	3.18	0.20	3.38
75990	26	ABSCESS DRAINAGE UNDER X-RAY	5.04	2.47	0.36	7.87
75990	TC	ABSCESS DRAINAGE UNDER X-RAY	0.00	3.18	0.20	3.38
76000	26	FLUOROSCOPE EXAMINATION	0.15	0.07	0.01	0.23
76000	TC	FLUOROSCOPE EXAMINATION	0.00	1.32	0.08	1.40
76001	26	FLUOROSCOPE EXAM, EXTENSIVE	0.86	0.32	0.05	1.03
76001	TC	FLUOROSCOPE EXAM, EXTENSIVE	0.00	2.65	0.17	2.82
76003	26	NEEDLE LOCALIZATION BY X-RAY	0.54	0.26	0.04	0.84

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
76003	TC	NEEDLE LOCALIZATION BY X-RAY	0.00	1.32	0.08	1.40
76010	26	X-RAY, NOSE TO RECTUM	0.17	0.09	0.01	0.27
76010	TC	X-RAY, NOSE TO RECTUM	0.00	0.53	0.03	0.56
76020	26	X-RAYS FOR BONE AGE	0.19	0.09	0.01	0.29
76020	TC	X-RAYS FOR BONE AGE	0.00	0.53	0.03	0.56
76040	26	X-RAYS, BONE EVALUATION	0.26	0.13	0.02	0.41
76040	TC	X-RAYS, BONE EVALUATION	0.00	0.80	0.05	0.85
76061	26	X-RAYS, BONE SURVEY	0.43	0.21	0.03	0.67
76061	TC	X-RAYS, BONE SURVEY	0.00	1.01	0.06	1.07
76062	26	X-RAYS, BONE SURVEY	0.54	0.26	0.04	0.84
76062	TC	X-RAYS, BONE SURVEY	0.00	1.46	0.09	1.55
76065	26	X-RAYS, BONE EVALUATION	0.26	0.13	0.02	0.41
76065	TC	X-RAYS, BONE EVALUATION	0.00	0.74	0.05	0.79
76066	26	JOINT(S) SURVEY, SINGLE FILM	0.30	0.15	0.02	0.47
76066	TC	JOINT(S) SURVEY, SINGLE FILM	0.00	1.11	0.07	1.18
76070	26	CT SCAN, BONE DENSITY STUDY	0.24	0.12	0.02	0.38
76070	TC	CT SCAN, BONE DENSITY STUDY	0.00	3.32	0.21	3.53
76080	26	X-RAY EXAM OF FISTULA	0.54	0.26	0.04	0.84
76080	TC	X-RAY EXAM OF FISTULA	0.00	1.06	0.07	1.13
76086	26	X-RAY OF MAMMARY DUCT	0.35	0.17	0.03	0.55
76086	TC	X-RAY OF MAMMARY DUCT	0.00	2.65	0.17	2.82
76088	26	X-RAY OF MAMMARY DUCTS	0.43	0.21	0.03	0.67
76088	TC	X-RAY OF MAMMARY DUCTS	0.00	3.71	0.23	3.94
76090	26	X-RAY EXAM OF BREAST	0.24	0.12	0.02	0.38
76090	TC	X-RAY EXAM OF BREAST	0.00	1.06	0.07	1.13
76091	26	X-RAY EXAM OF BREASTS	0.39	0.19	0.03	0.61
76091	TC	X-RAY EXAM OF BREASTS	0.00	1.32	0.08	1.40
76096	26	X-RAY EXAM, BREAST NODULE	0.95	0.47	0.07	1.49
76096	TC	X-RAY EXAM, BREAST NODULE	0.00	2.65	0.17	2.82
76097	26	X-RAY EXAM, BREAST NODULE	0.54	0.26	0.04	0.84
76097	TC	X-RAY EXAM, BREAST NODULE	0.00	1.06	0.07	1.13
76098	26	X-RAY EXAM, BREAST SPECIMEN	0.14	0.07	0.01	0.22
76098	TC	X-RAY EXAM, BREAST SPECIMEN	0.00	0.42	0.03	0.45
76100	26	X-RAY EXAM OF BODY SECTION	0.57	0.28	0.04	0.89
76100	TC	X-RAY EXAM OF BODY SECTION	0.00	1.27	0.08	1.35
76101	26	COMPLEX BODY SECTION X-RAY	0.57	0.28	0.04	0.89
76101	TC	COMPLEX BODY SECTION X-RAY	0.00	1.43	0.09	1.52
76102	26	COMPLEX BODY SECTION X-RAYS	0.57	0.28	0.04	0.89
76102	TC	COMPLEX BODY SECTION X-RAYS	0.00	1.75	0.11	1.86
76120	26	CINEMATIC X-RAYS	0.36	0.18	0.03	0.57
76120	TC	CINEMATIC X-RAYS	0.00	1.06	0.07	1.13
76125	26	CINEMATIC X-RAYS	0.25	0.12	0.02	0.39
76125	TC	CINEMATIC X-RAYS	0.00	0.80	0.05	0.85
76150	TC	X-RAY EXAM, DRY PROCESS	0.00	0.42	0.03	0.45
76355	26	CAT SCAN FOR LOCALIZATION	1.17	0.58	0.08	1.83
76355	TC	CAT SCAN FOR LOCALIZATION	0.00	9.28	0.58	9.86
76360	26	CAT SCAN FOR NEEDLE BIOPSY	1.12	0.55	0.08	1.75
76360	TC	CAT SCAN FOR NEEDLE BIOPSY	0.00	9.28	0.58	9.86
76365	26	CAT SCAN FOR CYST ASPIRATION	1.12	0.55	0.08	1.75
76365	TC	CAT SCAN FOR CYST ASPIRATION	0.00	9.28	0.58	9.86
76370	26	CAT SCAN FOR THERAPY GUIDE	0.83	0.41	0.06	1.30
76370	TC	CAT SCAN FOR THERAPY GUIDE	0.00	3.32	0.21	3.53
76375	26	CAT SCANS, OTHER PLANES	0.14	0.07	0.01	0.22
76375	TC	CAT SCANS, OTHER PLANES	0.00	3.98	0.25	4.23
76400	26	MAGNETIC IMAGE, BONE MARROW	1.56	0.78	0.11	2.43
76400	TC	MAGNETIC IMAGE, BONE MARROW	0.00	12.60	0.79	13.39
76506	26	ECHO EXAM OF HEAD	0.82	0.30	0.04	0.96

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
76506	TC	ECHO EXAM OF HEAD	0.00	1.43	0.09	1.52
76511	26	ECHO EXAM OF EYE	0.54	0.26	0.04	0.84
76511	TC	ECHO EXAM OF EYE	0.00	1.27	0.08	1.35
76512	26	ECHO EXAM OF EYE	0.64	0.32	0.04	1.00
76512	TC	ECHO EXAM OF EYE	0.00	1.54	0.10	1.64
76513	26	ECHO EXAM OF EYE, WATER BATH	0.64	0.32	0.04	1.00
76513	TC	ECHO EXAM OF EYE, WATER BATH	0.00	1.54	0.10	1.64
76516	26	ECHO EXAM OF EYE	0.53	0.26	0.04	0.83
76516	TC	ECHO EXAM OF EYE	0.00	1.27	0.08	1.35
76519	26	ECHO EXAM OF EYE	0.53	0.26	0.04	0.83
76519	TC	ECHO EXAM OF EYE	0.00	1.27	0.08	1.35
76529	26	ECHO EXAM OF EYE	0.57	0.28	0.04	0.89
76529	TC	ECHO EXAM OF EYE	0.00	1.38	0.09	1.47
76536	26	ECHO EXAM OF HEAD AND NECK	0.55	0.27	0.04	0.86
76536	TC	ECHO EXAM OF HEAD AND NECK	0.00	1.43	0.09	1.52
76604	26	ECHO EXAM OF CHEST	0.55	0.27	0.04	0.86
76604	TC	ECHO EXAM OF CHEST	0.00	1.32	0.08	1.40
76645	26	ECHO EXAM OF BREAST	0.53	0.26	0.04	0.83
76645	TC	ECHO EXAM OF BREAST	0.00	1.06	0.07	1.13
76700	26	ECHO EXAM OF ABDOMEN	0.76	0.36	0.05	1.21
76700	TC	ECHO EXAM OF ABDOMEN	0.00	1.99	0.12	2.11
76705	26	ECHO EXAM OF ABDOMEN	0.58	0.28	0.04	0.90
76705	TC	ECHO EXAM OF ABDOMEN	0.00	1.43	0.09	1.52
76770	26	ECHO EXAM ABDOMEN BACK WALL	0.72	0.35	0.05	1.12
76770	TC	ECHO EXAM ABDOMEN BACK WALL	0.00	1.99	0.12	2.11
76775	26	ECHO EXAM ABDOMEN BACK WALL	0.57	0.28	0.04	0.88
76775	TC	ECHO EXAM ABDOMEN BACK WALL	0.00	1.43	0.09	1.52
76778	26	ECHO EXAM KIDNEY TRANSPLANT	0.72	0.35	0.05	1.12
76778	TC	ECHO EXAM KIDNEY TRANSPLANT	0.00	1.99	0.12	2.11
76800	26	ECHO EXAM SPINAL CANAL	1.09	0.53	0.08	1.70
76800	TC	ECHO EXAM SPINAL CANAL	0.00	1.43	0.09	1.52
76805	26	ECHO EXAM OF PREGNANT UTERUS	0.86	0.47	0.07	1.50
76805	TC	ECHO EXAM OF PREGNANT UTERUS	0.00	2.12	0.13	2.25
76815	26	ECHO EXAM OF PREGNANT UTERUS	0.63	0.31	0.04	0.98
76815	TC	ECHO EXAM OF PREGNANT UTERUS	0.00	1.43	0.09	1.52
76816	26	ECHO EXAM FOLLOWUP OR REPEAT	0.57	0.28	0.04	0.89
76816	TC	ECHO EXAM FOLLOWUP OR REPEAT	0.00	1.11	0.07	1.18
76818	26	FETAL BIOPHYSICAL PROFILE	0.74	0.37	0.05	1.16
76818	TC	FETAL BIOPHYSICAL PROFILE	0.00	1.64	0.10	1.74
76825	26	ECHO EXAM OF FETAL HEART	0.74	0.36	0.05	1.15
76825	TC	ECHO EXAM OF FETAL HEART	0.00	1.99	0.12	2.11
76830	26	ECHO EXAM, TRANSVAGINAL	0.67	0.33	0.05	1.05
76830	TC	ECHO EXAM, TRANSVAGINAL	0.00	1.54	0.10	1.64
76855	26	ECHO EXAM OF PELVIS	0.59	0.29	0.04	0.92
76855	TC	ECHO EXAM OF PELVIS	0.00	1.43	0.09	1.52
76856	26	ECHO EXAM OF PELVIS	0.67	0.33	0.05	1.05
76856	TC	ECHO EXAM OF PELVIS	0.00	1.54	0.10	1.64
76857	26	ECHO EXAM OF PELVIS	0.36	0.17	0.03	0.56
76857	TC	ECHO EXAM OF PELVIS	0.00	1.06	0.07	1.13
76870	26	ECHO EXAM OF SCROTUM	0.62	0.30	0.04	0.96
76870	TC	ECHO EXAM OF SCROTUM	0.00	1.54	0.10	1.64
76872	26	ECHO EXAM OF PROSTATE	0.67	0.33	0.05	1.05
76872	TC	ECHO EXAM OF PROSTATE	0.00	1.54	0.10	1.64
76880	26	ECHO EXAM OF EXTREMITY	0.58	0.28	0.04	0.90
76880	TC	ECHO EXAM OF EXTREMITY	0.00	1.43	0.09	1.52
76925	26	ECHO EXAM OF BLOOD FLOW	0.72	0.35	0.05	1.12
76925	TC	ECHO EXAM OF BLOOD FLOW	0.00	1.64	0.10	1.74

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
76926	26	ECHO EXAM OF HEAD & TRUNK	0.72	0.35	0.05	1.12
76926	TC	ECHO EXAM OF HEAD & TRUNK	0.00	1.64	0.10	1.74
76930	26	ECHO GUIDE FOR HEART SAC TAP	0.65	0.32	0.04	1.01
76930	TC	ECHO GUIDE FOR HEART SAC TAP	0.00	1.54	0.10	1.64
76932	26	ECHO GUIDE FOR HEART BIOPSY	0.65	0.32	0.04	1.01
76932	TC	ECHO GUIDE FOR HEART BIOPSY	0.00	1.54	0.10	1.64
76933	TC	ECHO GUIDE FOR HEART BIOPSY	0.00	1.54	0.10	1.64
76934	26	ECHO GUIDE FOR CHEST TAP	0.65	0.32	0.04	1.01
76934	TC	ECHO GUIDE FOR CHEST TAP	0.00	1.54	0.10	1.64
76938	26	ECHO EXAM FOR DRAINAGE	0.65	0.32	0.04	1.01
76938	TC	ECHO EXAM FOR DRAINAGE	0.00	1.54	0.10	1.64
76942	26	ECHO GUIDE FOR BIOPSY	0.65	0.32	0.04	1.01
76942	TC	ECHO GUIDE FOR BIOPSY	0.00	1.54	0.10	1.64
76946	26	ECHO GUIDE FOR AMNIOCENTESIS	0.36	0.17	0.03	0.56
76946	TC	ECHO GUIDE FOR AMNIOCENTESIS	0.00	1.54	0.10	1.64
76948	26	ECHO GUIDE, OVA ASPIRATION	0.36	0.17	0.03	0.56
76948	TC	ECHO GUIDE, OVA ASPIRATION	0.00	1.54	0.10	1.64
76950	26	ECHO GUIDANCE RADIOTHERAPY	0.57	0.28	0.04	0.89
76950	TC	ECHO GUIDANCE RADIOTHERAPY	0.00	1.32	0.08	1.40
76960	26	ECHO GUIDANCE RADIOTHERAPY	0.57	0.28	0.04	0.89
76960	TC	ECHO GUIDANCE RADIOTHERAPY	0.00	1.32	0.08	1.40
76970	26	ULTRASOUND EXAM FOLLOW-UP	0.38	0.19	0.03	0.60
76970	TC	ULTRASOUND EXAM FOLLOW-UP	0.00	1.06	0.07	1.13
76986	26	ECHO EXAM AT SURGERY	1.17	0.57	0.08	1.82
76986	TC	ECHO EXAM AT SURGERY	0.00	2.65	0.17	2.82
77261	26	RADIATION THERAPY PLANNING	1.35	0.66	0.10	2.11
77262	26	RADIATION THERAPY PLANNING	2.04	1.00	0.14	3.18
77263	26	RADIATION THERAPY PLANNING	3.04	1.49	0.22	4.75
77280	26	SET RADIATION THERAPY FIELD	0.68	0.33	0.05	1.06
77280	TC	SET RADIATION THERAPY FIELD	0.00	3.08	0.19	3.27
77285	26	SET RADIATION THERAPY FIELD	1.01	0.50	0.07	1.58
77285	TC	SET RADIATION THERAPY FIELD	0.00	4.84	0.31	5.25
77290	26	SET RADIATION THERAPY FIELD	1.51	0.74	0.11	2.36
77290	TC	SET RADIATION THERAPY FIELD	0.00	5.78	0.36	6.12
77300	26	RADIATION THERAPY DOSE PLAN	0.61	0.30	0.04	0.95
77300	TC	RADIATION THERAPY DOSE PLAN	0.00	1.19	0.07	1.26
77305	26	RADIATION THERAPY DOSE PLAN	0.68	0.33	0.05	1.06
77305	TC	RADIATION THERAPY DOSE PLAN	0.00	1.64	0.10	1.74
77310	26	RADIATION THERAPY DOSE PLAN	1.01	0.50	0.07	1.58
77310	TC	RADIATION THERAPY DOSE PLAN	0.00	2.06	0.13	2.19
77315	26	RADIATION THERAPY DOSE PLAN	1.51	0.74	0.11	2.36
77315	TC	RADIATION THERAPY DOSE PLAN	0.00	2.35	0.15	2.50
77321	26	RADIATION THERAPY PORT PLAN	0.92	0.45	0.06	1.43
77321	TC	RADIATION THERAPY PORT PLAN	0.00	3.57	0.23	3.80
77326	26	RADIATION THERAPY DOSE PLAN	0.90	0.44	0.06	1.40
77326	TC	RADIATION THERAPY DOSE PLAN	0.00	2.10	0.13	2.23
77327	26	RADIATION THERAPY DOSE PLAN	1.35	0.66	0.10	2.11
77327	TC	RADIATION THERAPY DOSE PLAN	0.00	3.08	0.19	3.27
77328	26	RADIATION THERAPY DOSE PLAN	2.02	0.99	0.14	3.15
77328	TC	RADIATION THERAPY DOSE PLAN	0.00	4.40	0.28	4.68
77331	26	SPECIAL RADIATION DOSIMETRY	0.85	0.42	0.06	1.33
77331	TC	SPECIAL RADIATION DOSIMETRY	0.00	0.45	0.03	0.48
77332	26	RADIATION TREATMENT AID(S)	0.53	0.26	0.04	0.83
77332	TC	RADIATION TREATMENT AID(S)	0.00	1.19	0.07	1.26
77333	26	RADIATION TREATMENT AID(S)	0.81	0.40	0.06	1.27
77333	TC	RADIATION TREATMENT AID(S)	0.00	1.85	0.10	1.76
77334	26	RADIATION TREATMENT AID(S)	1.20	0.58	0.08	1.86

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HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
77334	TC	RADIATION TREATMENT AID(S)	0.00	2.68	0.18	3.06
77336	TC	RADIATION PHYSICS CONSULTATION	0.00	2.64	0.17	2.81
77370	TC	RADIATION PHYSICS CONSULTATION	0.00	3.10	0.19	3.29
77401	TC	RADIATION TREATMENT DELIVERY	0.00	1.57	0.10	1.67
77402	TC	RADIATION TREATMENT DELIVERY	0.00	1.57	0.10	1.67
77403	TC	RADIATION TREATMENT DELIVERY	0.00	1.57	0.10	1.67
77404	TC	RADIATION TREATMENT DELIVERY	0.00	1.57	0.10	1.67
77406	TC	RADIATION TREATMENT DELIVERY	0.00	1.57	0.10	1.67
77407	TC	RADIATION TREATMENT DELIVERY	0.00	1.86	0.12	1.98
77408	TC	RADIATION TREATMENT DELIVERY	0.00	1.86	0.12	1.98
77409	TC	RADIATION TREATMENT DELIVERY	0.00	1.86	0.12	1.98
77411	TC	RADIATION TREATMENT DELIVERY	0.00	1.86	0.12	1.98
77412	TC	RADIATION TREATMENT DELIVERY	0.00	2.05	0.13	2.18
77413	TC	RADIATION TREATMENT DELIVERY	0.00	2.05	0.13	2.18
77414	TC	RADIATION TREATMENT DELIVERY	0.00	2.05	0.13	2.18
77416	TC	RADIATION TREATMENT DELIVERY	0.00	2.05	0.13	2.18
77417	TC	THERAPEUTIC RADIOLOGY PT FILMS	0.00	0.53	0.03	0.56
77420	26	WEEKLY RADIATION THERAPY	1.56	0.77	0.11	2.44
77425	26	WEEKLY RADIATION THERAPY	2.36	1.16	0.17	3.69
77430	26	WEEKLY RADIATION THERAPY	3.49	1.71	0.25	5.45
77431	26	RADIATION THERAPY MANAGEMENT	1.75	0.86	0.12	2.73
77431	TC	RADIATION THERAPY MANAGEMENT	0.00	5.15	0.32	5.47
77470	26	SPECIAL RADIATION TREATMENT	2.02	0.99	0.14	3.15
77470	TC	SPECIAL RADIATION TREATMENT	0.00	9.87	0.62	10.49
77600	26	HYPERTHERMIA TREATMENT	1.51	0.74	0.11	2.36
77600	TC	HYPERTHERMIA TREATMENT	0.00	3.08	0.19	3.27
77605	26	HYPERTHERMIA TREATMENT	2.02	0.99	0.14	3.15
77605	TC	HYPERTHERMIA TREATMENT	0.00	4.11	0.26	4.37
77610	26	HYPERTHERMIA TREATMENT	1.51	0.74	0.11	2.36
77610	TC	HYPERTHERMIA TREATMENT	0.00	3.08	0.19	3.27
77615	26	HYPERTHERMIA TREATMENT	2.02	0.99	0.14	3.15
77615	TC	HYPERTHERMIA TREATMENT	0.00	4.11	0.26	4.37
77620	26	HYPERTHERMIA TREATMENT	1.51	0.74	0.11	2.36
77620	TC	HYPERTHERMIA TREATMENT	0.00	3.08	0.19	3.27
77750	26	INFUSE RADIOACTIVE MATERIALS	4.44	2.19	0.31	6.93
77750	TC	INFUSE RADIOACTIVE MATERIALS	0.00	1.35	0.09	1.44
77761	26	RADIOELEMENT APPLICATION	3.45	1.69	0.24	5.38
77761	TC	RADIOELEMENT APPLICATION	0.00	2.22	0.14	2.36
77762	26	RADIOELEMENT APPLICATION	5.19	2.54	0.37	8.09
77762	TC	RADIOELEMENT APPLICATION	0.00	3.21	0.20	3.41
77763	26	RADIOELEMENT APPLICATION	7.76	3.81	0.55	12.12
77763	TC	RADIOELEMENT APPLICATION	0.00	3.99	0.25	4.24
77776	26	RADIOELEMENT APPLICATION	4.51	2.21	0.32	7.04
77776	TC	RADIOELEMENT APPLICATION	0.00	2.20	0.14	2.34
77777	26	RADIOELEMENT APPLICATION	6.77	3.32	0.48	10.57
77777	TC	RADIOELEMENT APPLICATION	0.00	4.28	0.27	4.55
77778	26	RADIOELEMENT APPLICATION	10.14	4.97	0.72	15.83
77778	TC	RADIOELEMENT APPLICATION	0.00	5.18	0.32	5.50
77781	26	REMOTE AFTERLOADING HIGH INTSY	1.50	0.74	0.10	2.34
77781	TC	REMOTE AFTERLOADING HIGH INTSY	0.00	20.56	1.29	21.85
77782	26	REMOTE AFTERLOADING HIGH INTSY	2.26	1.11	0.16	3.53
77782	TC	REMOTE AFTERLOADING HIGH INTSY	0.00	20.56	1.29	21.85
77783	26	REMOTE AFTERLOADING HIGH INTSY	3.38	1.66	0.24	5.28
77783	TC	REMOTE AFTERLOADING HIGH INTSY	0.00	20.56	1.29	21.85
77784	26	REMOTE AFTERLOADING HIGH INTSY	5.07	2.49	0.36	7.92
77784	TC	REMOTE AFTERLOADING HIGH INTSY	0.00	20.56	1.29	21.85
77789	26	RADIOELEMENT APPLICATION	1.01	0.50	0.07	1.58

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
77789	TC	RADIOELEMENT APPLICATION	0.00	0.45	0.03	0.48
77790	26	RADIOELEMENT HANDLING	1.01	0.50	0.07	1.58
77790	TC	RADIOELEMENT HANDLING	0.00	0.45	0.03	0.48
78000	26	NUCLEAR EXAM OF THYROID	0.18	0.08	0.01	0.28
78000	TC	NUCLEAR EXAM OF THYROID	0.00	0.98	0.06	1.04
78001	26	NUCLEAR EXAMS OF THYROID	0.25	0.12	0.02	0.39
78001	TC	NUCLEAR EXAMS OF THYROID	0.00	1.32	0.08	1.40
78003	26	SPECIAL THYROID NUCLEAR EXAM	0.31	0.16	0.02	0.49
78003	TC	SPECIAL THYROID NUCLEAR EXAM	0.00	0.98	0.06	1.04
78006	26	THYROID IMAGING, WITH UPTAKE	0.48	0.23	0.03	0.74
78006	TC	THYROID IMAGING, WITH UPTAKE	0.00	2.42	0.15	2.57
78007	26	THYROID IMAGING, WITH UPTAKE	0.50	0.24	0.03	0.77
78007	TC	THYROID IMAGING, WITH UPTAKE	0.00	2.60	0.16	2.76
78010	26	NUCLEAR SCAN OF THYROID	0.38	0.18	0.03	0.59
78010	TC	NUCLEAR SCAN OF THYROID	0.00	1.83	0.11	1.94
78011	26	NUCLEAR SCAN, THYROID FLOW	0.44	0.22	0.03	0.69
78011	TC	NUCLEAR SCAN, THYROID FLOW	0.00	2.44	0.15	2.59
78015	26	NUCLEAR SCAN OF THYROID	0.66	0.32	0.05	1.03
78015	TC	NUCLEAR SCAN OF THYROID	0.00	2.60	0.16	2.76
78016	26	EXTENSIVE THYROID SCAN	0.79	0.39	0.06	1.24
78016	TC	EXTENSIVE THYROID SCAN	0.00	3.53	0.22	3.75
78017	26	MULTIPLE NUCLEAR SCANS	0.84	0.41	0.06	1.31
78017	TC	MULTIPLE NUCLEAR SCANS	0.00	3.77	0.23	4.00
78018	26	WHOLE BODY NUCLEAR SCANS	0.92	0.45	0.06	1.43
78018	TC	WHOLE BODY NUCLEAR SCANS	0.00	5.49	0.34	5.83
78070	26	NUCLEAR SCAN OF PARATHYROID	0.50	0.25	0.03	0.78
78070	TC	NUCLEAR SCAN OF PARATHYROID	0.00	1.83	0.11	1.94
78075	26	NUCLEAR SCAN OF ADRENALS	0.72	0.35	0.05	1.12
78075	TC	NUCLEAR SCAN OF ADRENALS	0.00	5.49	0.34	5.83
78102	26	NUCLEAR SCAN OF BONE MARROW	0.54	0.26	0.04	0.84
78102	TC	NUCLEAR SCAN OF BONE MARROW	0.00	2.07	0.13	2.20
78103	26	NUCLEAR SCAN OF BONE MARROW	0.73	0.36	0.05	1.14
78103	TC	NUCLEAR SCAN OF BONE MARROW	0.00	3.21	0.20	3.41
78104	26	NUCLEAR SCAN OF BONE MARROW	0.77	0.38	0.05	1.20
78104	TC	NUCLEAR SCAN OF BONE MARROW	0.00	4.11	0.26	4.37
78110	26	NUCLEAR EXAM, PLASMA VOLUME	0.18	0.08	0.01	0.28
78110	TC	NUCLEAR EXAM, PLASMA VOLUME	0.00	0.96	0.06	1.02
78111	26	NUCLEAR EXAM, PLASMA VOLUME	0.21	0.10	0.02	0.33
78111	TC	NUCLEAR EXAM, PLASMA VOLUME	0.00	2.60	0.16	2.76
78120	26	NUCLEAR EXAM OF RBC MASS	0.22	0.11	0.02	0.35
78120	TC	NUCLEAR EXAM OF RBC MASS	0.00	1.76	0.11	1.88
78121	26	NUCLEAR EXAM OF RBC MASS	0.30	0.15	0.02	0.47
78121	TC	NUCLEAR EXAM OF RBC MASS	0.00	2.94	0.18	3.12
78122	26	NUCLEAR EXAM, BLOOD VOLUME	0.43	0.21	0.03	0.67
78122	TC	NUCLEAR EXAM, BLOOD VOLUME	0.00	4.67	0.29	4.96
78130	26	RED CELL SURVIVAL EXAM	0.50	0.30	0.04	0.84
78130	TC	RED CELL SURVIVAL EXAM	0.00	2.89	0.18	3.07
78135	26	RED CELL SURVIVAL EXAM	0.62	0.30	0.04	0.96
78135	TC	RED CELL SURVIVAL EXAM	0.00	4.83	0.31	5.24
78140	26	NUCLEAR EXAM,RED BLOOD CELLS	0.50	0.30	0.04	0.84
78140	TC	NUCLEAR EXAM,RED BLOOD CELLS	0.00	3.98	0.25	4.23
78160	26	NUCLEAR EXAM OF PLASMA IRON	0.31	0.15	0.02	0.48
78160	TC	NUCLEAR EXAM OF PLASMA IRON	0.00	3.71	0.23	3.94
78162	26	NUCLEAR EXAM,IRON ABSORPTION	0.43	0.21	0.03	0.67
78162	TC	NUCLEAR EXAM,IRON ABSORPTION	0.00	3.23	0.20	3.43
78170	26	NUCLEAR EXAM, RED CELL IRON	0.40	0.19	0.03	0.62
78170	TC	NUCLEAR EXAM, RED CELL IRON	0.00	5.38	0.34	5.72

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
78172	26	NUCLEAR EXAM,TOTAL BODY IRON	0.52	0.26	0.04	0.82
78185	26	NUCLEAR SCAN OF SPLEEN	0.38	0.19	0.03	0.60
78185	TC	NUCLEAR SCAN OF SPLEEN	0.00	2.38	0.15	2.54
78186	26	NUCLEAR SCAN OF SPLEEN	0.45	0.22	0.03	0.70
78186	TC	NUCLEAR SCAN OF SPLEEN	0.00	2.92	0.18	3.10
78190	26	KINETICS, STUDY OF PLATELET	1.05	0.51	0.07	1.63
78190	TC	KINETICS, STUDY OF PLATELET	0.00	5.78	0.36	6.14
78191	26	NUCLEAR EXAM OF PLATELETS	0.60	0.30	0.04	0.94
78191	TC	NUCLEAR EXAM OF PLATELETS	0.00	7.43	0.47	7.90
78192	26	NUCLEAR EXAM, WBC SCAN	0.77	0.38	0.05	1.20
78192	TC	NUCLEAR EXAM, WBC SCAN	0.00	3.45	0.22	3.67
78193	26	NUCLEAR EXAM, WBC SCAN	0.85	0.42	0.06	1.33
78193	TC	NUCLEAR EXAM, WBC SCAN	0.00	9.87	0.62	10.49
78195	26	NUCLEAR SCAN OF LYMPH SYSTEM	0.68	0.34	0.05	1.07
78195	TC	NUCLEAR SCAN OF LYMPH SYSTEM	0.00	4.11	0.26	4.37
78201	26	NUCLEAR SCAN OF LIVER	0.42	0.21	0.03	0.66
78201	TC	NUCLEAR SCAN OF LIVER	0.00	2.39	0.15	2.54
78202	26	NUCLEAR SCAN OF LIVER	0.50	0.25	0.03	0.78
78202	TC	NUCLEAR SCAN OF LIVER	0.00	2.92	0.18	3.10
78205	26	NUCLEAR SCAN OF LIVER (3D)	0.69	0.34	0.05	1.08
78205	TC	NUCLEAR SCAN OF LIVER (3D)	0.00	5.97	0.37	6.34
78215	26	NUCLEAR SCAN, LIVER & SPLEEN	0.48	0.23	0.03	0.74
78215	TC	NUCLEAR SCAN, LIVER & SPLEEN	0.00	2.97	0.19	3.16
78216	26	NUCLEAR SCAN, LIVER/SPLEEN	0.56	0.27	0.04	0.87
78216	TC	NUCLEAR SCAN, LIVER/SPLEEN	0.00	3.53	0.22	3.75
78220	26	NUCLEAR SCAN, LIVER FUNCTION	0.48	0.24	0.03	0.75
78220	TC	NUCLEAR SCAN, LIVER FUNCTION	0.00	3.77	0.23	4.00
78223	26	NUCLEAR SCAN, BILIARY TRACT	0.81	0.40	0.06	1.27
78223	TC	NUCLEAR SCAN, BILIARY TRACT	0.00	3.71	0.23	3.94
78225	26	NUCLEAR SCAN, LIVER/LUNG	0.52	0.26	0.04	0.82
78225	TC	NUCLEAR SCAN, LIVER/LUNG	0.00	4.01	0.25	4.26
78230	26	NUCLEAR SCAN, SALIVARY GLAND	0.44	0.22	0.03	0.69
78230	TC	NUCLEAR SCAN, SALIVARY GLAND	0.00	2.20	0.14	2.34
78231	26	NUCLEAR SCANS,SALIVARY GLAND	0.51	0.25	0.03	0.79
78231	TC	NUCLEAR SCANS,SALIVARY GLAND	0.00	3.21	0.20	3.41
78232	26	NUCLEAR EXAM, SALIVARY GLAND	0.46	0.23	0.03	0.72
78232	TC	NUCLEAR EXAM, SALIVARY GLAND	0.00	3.58	0.23	3.81
78258	26	NUCLEAR IMAGING OF ESOPHAGUS	0.72	0.35	0.05	1.12
78258	TC	NUCLEAR IMAGING OF ESOPHAGUS	0.00	2.92	0.18	3.10
78261	26	NUCLEAR SCAN, GASTRIC MUCOSA	0.67	0.33	0.05	1.05
78261	TC	NUCLEAR SCAN, GASTRIC MUCOSA	0.00	4.14	0.26	4.40
78262	26	GULLET REFLUX NUCLEAR EXAM	0.66	0.32	0.05	1.03
78262	TC	GULLET REFLUX NUCLEAR EXAM	0.00	4.30	0.27	4.57
78264	26	NUCLEAR EXAM, STOMACH	0.76	0.37	0.05	1.18
78264	TC	NUCLEAR EXAM, STOMACH	0.00	4.16	0.26	4.42
78270	26	VIT B-12 ABSORPTION EXAMS	0.20	0.10	0.01	0.31
78270	TC	VIT B-12 ABSORPTION EXAMS	0.00	1.57	0.10	1.67
78271	26	VIT B-12 ABSORPTION EXAMS	0.20	0.10	0.01	0.31
78271	TC	VIT B-12 ABSORPTION EXAMS	0.00	1.67	0.10	1.77
78272	26	VIT B-12 ABSORPTION EXAMS	0.26	0.13	0.02	0.41
78272	TC	VIT B-12 ABSORPTION EXAMS	0.00	2.33	0.15	2.48
78278	26	NUCLEAR EXAM, GI BLOOD LOSS	0.69	0.34	0.05	1.08
78278	TC	NUCLEAR EXAM, GI BLOOD LOSS	0.00	3.23	0.20	3.43
78278	26	NUCLEAR SCAN, GI BLOOD LOSS	0.96	0.47	0.07	1.50
78278	TC	NUCLEAR SCAN, GI BLOOD LOSS	0.00	4.93	0.31	5.24
78280	26	G.I. BLOOD LOSS EXAM	0.36	0.18	0.03	0.57
78280	TC	G.I. BLOOD LOSS EXAM	0.00	3.29	0.21	3.50

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
78282	26	G.I. PROTEIN LOSS EXAM	0.36	0.18	0.03	0.57
78290	26	NUCLEAR SCAN OF BOWEL	0.66	0.33	0.05	1.04
78290	TC	NUCLEAR SCAN OF BOWEL	0.00	3.08	0.19	3.27
78291	26	TEST VENOUS DRAIN, ABDOMEN	0.85	0.42	0.06	1.33
78291	TC	TEST VENOUS DRAIN, ABDOMEN	0.00	3.10	0.19	3.29
78300	26	NUCLEAR SCAN OF BONE	0.61	0.30	0.04	0.95
78300	TC	NUCLEAR SCAN OF BONE	0.00	2.52	0.16	2.68
78305	26	NUCLEAR SCAN OF BONES	0.80	0.39	0.06	1.25
78305	TC	NUCLEAR SCAN OF BONES	0.00	3.71	0.23	3.94
78306	26	NUCLEAR SCAN OF SKELETON	0.83	0.41	0.06	1.30
78306	TC	NUCLEAR SCAN OF SKELETON	0.00	4.32	0.27	4.59
78310	26	BONE BLOOD FLOW SCAN	0.53	0.26	0.04	0.83
78310	TC	BONE BLOOD FLOW SCAN	0.00	1.19	0.07	1.26
78315	26	NUCLEAR SCAN OF BONE	0.98	0.48	0.07	1.53
78315	TC	NUCLEAR SCAN OF BONE	0.00	4.83	0.30	5.13
78320	26	NUCLEAR SCAN OF BONE (3D)	1.00	0.49	0.07	1.56
78320	TC	NUCLEAR SCAN OF BONE (3D)	0.00	5.97	0.37	6.34
78350	26	BONE MINERAL CONTENT STUDY	0.21	0.10	0.02	0.33
78350	TC	BONE MINERAL CONTENT STUDY	0.00	0.77	0.05	0.82
78414	26	NUCLEAR EXAM OF HEART FLOW	0.43	0.21	0.03	0.67
78415	26	NUCLEAR SCAN OF HEART BLOOD	0.45	0.22	0.03	0.70
78415	TC	NUCLEAR SCAN OF HEART BLOOD	0.00	2.73	0.17	2.90
78425	26	NUCLEAR SCAN, HEART MUSCLE	0.38	0.18	0.03	0.59
78425	TC	NUCLEAR SCAN, HEART MUSCLE	0.00	0.80	0.05	0.85
78428	26	NUCLEAR EXAM, HEART SHUNT	0.76	0.37	0.05	1.18
78428	TC	NUCLEAR EXAM, HEART SHUNT	0.00	2.28	0.14	2.42
78435	26	NUCLEAR SCAN OF HEART FLOW	0.48	0.23	0.03	0.74
78435	TC	NUCLEAR SCAN OF HEART FLOW	0.00	3.66	0.23	3.89
78445	26	NUCLEAR SCAN OF BLOOD FLOW	0.48	0.23	0.03	0.74
78445	TC	NUCLEAR SCAN OF BLOOD FLOW	0.00	1.91	0.12	2.03
78455	26	NUCLEAR SCAN OF VEIN CLOT	0.71	0.35	0.05	1.11
78455	TC	NUCLEAR SCAN OF VEIN CLOT	0.00	4.03	0.25	4.28
78457	26	NUCLEAR SCAN VEIN THROMBOSIS	0.74	0.37	0.05	1.16
78457	TC	NUCLEAR SCAN VEIN THROMBOSIS	0.00	2.68	0.17	2.85
78458	26	NUCLEAR SCAN VEIN THROMBOSIS	0.87	0.43	0.06	1.36
78458	TC	NUCLEAR SCAN VEIN THROMBOSIS	0.00	4.06	0.25	4.31
78460	26	NUCLEAR SCAN, HEART MUSCLE	0.84	0.41	0.06	1.31
78460	TC	NUCLEAR SCAN, HEART MUSCLE	0.00	2.39	0.15	2.54
78461	26	NUCLEAR SCAN, HEART MUSCLE	1.19	0.59	0.09	1.87
78461	TC	NUCLEAR SCAN, HEART MUSCLE	0.00	4.77	0.30	5.07
78464	26	NUCLEAR SCAN, HEART MUSCLE	1.05	0.52	0.07	1.64
78464	TC	NUCLEAR SCAN, HEART MUSCLE	0.00	7.16	0.45	7.61
78465	26	NUCLEAR SCAN, HEART MUSCLE	1.41	0.69	0.10	2.20
78465	TC	NUCLEAR SCAN, HEART MUSCLE	0.00	11.94	0.75	12.69
78466	26	NUCLEAR SCAN, HEART MUSCLE	0.67	0.33	0.05	1.05
78466	TC	NUCLEAR SCAN, HEART MUSCLE	0.00	2.65	0.17	2.82
78467	26	NUCLEAR SCAN, HEART MUSCLE	0.72	0.35	0.05	1.12
78467	TC	NUCLEAR SCAN, HEART MUSCLE	0.00	3.18	0.20	3.38
78468	26	NUCLEAR SCAN, HEART MUSCLE	0.77	0.38	0.05	1.20
78468	TC	NUCLEAR SCAN, HEART MUSCLE	0.00	3.71	0.23	3.94
78469	26	NUCLEAR SCAN, HEART MUSCLE	0.88	0.43	0.06	1.38
78469	TC	NUCLEAR SCAN, HEART MUSCLE	0.00	5.30	0.33	5.63
78470	26	NUCLEAR STUDY, HEART OUTPUT	0.43	0.21	0.03	0.67
78470	TC	NUCLEAR STUDY, HEART OUTPUT	0.00	3.74	0.23	3.97
78471	26	NUCLEAR SCAN, HEART MUSCLE	0.95	0.47	0.07	1.49
78471	TC	NUCLEAR SCAN, HEART MUSCLE	0.00	5.30	0.33	5.63
78472	26	NUCLEAR SCAN, HEART MUSCLE	0.95	0.47	0.07	1.49

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PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
78472	TC	NUCLEAR SCAN, HEART MUSCLE	0.00	5.57	0.35	5.92
78474	26	NUCLEAR SCAN, HEART MUSCLE	1.00	0.49	0.07	1.56
78474	TC	NUCLEAR SCAN, HEART MUSCLE	0.00	6.10	0.38	6.48
78475	26	NUCLEAR SCAN, HEART MUSCLE	1.18	0.58	0.08	1.79
78475	TC	NUCLEAR SCAN, HEART MUSCLE	0.00	9.55	0.60	10.15
78476	26	NUCLEAR SCAN, HEART MUSCLE	1.18	0.58	0.08	1.79
78476	TC	NUCLEAR SCAN, HEART MUSCLE	0.00	10.09	0.63	10.66
78477	26	NUCLEAR SCAN, HEART MUSCLE	1.19	0.59	0.09	1.87
78477	TC	NUCLEAR SCAN, HEART MUSCLE	0.00	10.59	0.69	11.67
78479	26	NUCLEAR SCAN, HEART MUSCLE	1.03	0.50	0.07	1.60
78481	26	NUCLEAR SCAN, HEART MUSCLE	0.86	0.47	0.07	1.40
78481	TC	NUCLEAR SCAN, HEART MUSCLE	0.00	5.30	0.33	5.63
78484	26	NUCLEAR SCAN, HEART MUSCLE	1.00	0.49	0.07	1.56
78484	TC	NUCLEAR SCAN, HEART MUSCLE	0.00	6.10	0.38	6.48
78485	26	NUCLEAR SCAN, HEART MUSCLE	1.18	0.58	0.08	1.79
78486	TC	NUCLEAR SCAN, HEART MUSCLE	0.00	9.55	0.60	10.15
78486	26	NUCLEAR SCAN, HEART MUSCLE	1.18	0.58	0.08	1.79
78486	TC	NUCLEAR SCAN, HEART MUSCLE	0.00	10.09	0.63	10.66
78487	26	NUCLEAR SCAN, HEART MUSCLE	1.19	0.59	0.09	1.87
78487	TC	NUCLEAR SCAN, HEART MUSCLE	0.00	10.59	0.69	11.67
78488	26	NUCLEAR SCAN, HEART MUSCLE	1.03	0.50	0.07	1.60
78580	26	NUCLEAR SCAN OF LUNG	0.71	0.35	0.05	1.11
78580	TC	NUCLEAR SCAN OF LUNG	0.00	5.47	0.22	5.69
78581	26	NUCLEAR SCAN OF LUNG	0.67	0.33	0.05	1.06
78581	TC	NUCLEAR SCAN OF LUNG	0.00	2.42	0.15	2.57
78582	26	NUCLEAR SCAN OF LUNG	0.88	0.43	0.06	1.37
78582	TC	NUCLEAR SCAN OF LUNG	0.00	3.82	0.24	4.06
78584	26	NUCLEAR SCAN OF LUNG	0.86	0.47	0.07	1.50
78584	TC	NUCLEAR SCAN OF LUNG	0.00	3.23	0.20	3.43
78585	26	NUCLEAR SCAN OF LUNG	1.05	0.52	0.07	1.64
78585	TC	NUCLEAR SCAN OF LUNG	0.00	5.70	0.36	6.06
78586	26	NUCLEAR SCAN OF LUNG	0.38	0.19	0.03	0.60
78586	TC	NUCLEAR SCAN OF LUNG	0.00	2.63	0.17	2.80
78587	26	NUCLEAR SCAN OF LUNG	0.46	0.23	0.05	0.74
78587	TC	NUCLEAR SCAN OF LUNG	0.00	2.84	0.18	3.02
78591	26	NUCLEAR SCAN OF LUNG	0.38	0.19	0.03	0.60
78591	TC	NUCLEAR SCAN OF LUNG	0.00	2.89	0.18	3.07
78593	26	NUCLEAR SCAN OF LUNG	0.46	0.23	0.05	0.74
78593	TC	NUCLEAR SCAN OF LUNG	0.00	3.50	0.22	3.72
78594	26	NUCLEAR SCAN OF LUNG	0.88	0.26	0.04	0.82
78594	TC	NUCLEAR SCAN OF LUNG	0.00	5.04	0.31	5.35
78596	26	PULMONARY QUANTITATIVE DIFF	1.23	0.61	0.09	1.93
78596	TC	PULMONARY QUANTITATIVE DIFF	0.00	7.27	0.46	7.73
78600	26	NUCLEAR SCAN OF BRAIN	0.43	0.21	0.03	0.67
78600	TC	NUCLEAR SCAN OF BRAIN	0.00	2.92	0.18	3.10
78601	26	NUCLEAR SCAN OF BRAIN	0.51	0.25	0.03	0.79
78601	TC	NUCLEAR SCAN OF BRAIN	0.00	3.45	0.22	3.67
78605	26	NUCLEAR SCAN OF BRAIN	0.52	0.26	0.04	0.82
78605	TC	NUCLEAR SCAN OF BRAIN	0.00	3.45	0.22	3.67
78606	26	NUCLEAR SCAN OF BRAIN	0.62	0.30	0.04	0.96
78606	TC	NUCLEAR SCAN OF BRAIN	0.00	3.92	0.25	4.17
78607	26	NUCLEAR SCAN OF BRAIN (3D)	1.19	0.59	0.09	1.87
78607	TC	NUCLEAR SCAN OF BRAIN (3D)	0.00	6.63	0.42	7.05
78610	26	NUCLEAR SCAN OF BRAIN	0.28	0.14	0.02	0.44
78610	TC	NUCLEAR SCAN OF BRAIN	0.00	1.59	0.10	1.69
78615	26	CEREBRAL BLOOD FLOW SCAN	0.41	0.20	0.03	0.64
78615	TC	CEREBRAL BLOOD FLOW SCAN	0.00	3.90	0.24	4.14

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
78630	26	CEREBROSPINAL FLUID SCAN	0.66	0.32	0.05	1.03
78630	TC	CEREBROSPINAL FLUID SCAN	0.00	5.09	0.32	5.41
78635	26	CEREBROSPINAL FLUID SCAN	0.60	0.30	0.04	0.94
78635	TC	CEREBROSPINAL FLUID SCAN	0.00	2.57	0.16	2.73
78645	26	CEREBROSPINAL FLUID SCAN	0.57	0.28	0.04	0.89
78645	TC	CEREBROSPINAL FLUID SCAN	0.00	3.47	0.22	3.69
78650	26	CEREBROSPINAL FLUID SCAN	0.59	0.29	0.04	0.92
78650	TC	CEREBROSPINAL FLUID SCAN	0.00	4.70	0.30	5.00
78652	26	CEREBROSPINAL FLUID SCAN(3D)	0.88	0.43	0.06	1.37
78652	TC	CEREBROSPINAL FLUID SCAN(3D)	0.00	5.97	0.37	6.34
78655	26	NUCLEAR EXAM OF EYE LESION	0.55	0.27	0.04	0.86
78655	TC	NUCLEAR EXAM OF EYE LESION	0.00	5.04	0.31	5.35
78660	26	NUCLEAR EXAM OF TEAR FLOW	0.52	0.26	0.04	0.82
78660	TC	NUCLEAR EXAM OF TEAR FLOW	0.00	2.15	0.14	2.29
78700	26	NUCLEAR SCAN OF KIDNEY	0.43	0.21	0.03	0.67
78700	TC	NUCLEAR SCAN OF KIDNEY	0.00	3.08	0.19	3.27
78701	26	NUCLEAR SCAN OF KIDNEY	0.48	0.23	0.03	0.74
78701	TC	NUCLEAR SCAN OF KIDNEY	0.00	3.81	0.23	3.84
78704	26	NUCLEAR SCAN OF KIDNEY	0.72	0.35	0.05	1.12
78704	TC	NUCLEAR SCAN OF KIDNEY	0.00	4.01	0.25	4.26
78707	26	NUCLEAR SCAN OF KIDNEY	0.91	0.44	0.06	1.41
78707	TC	NUCLEAR SCAN OF KIDNEY	0.00	4.54	0.29	4.83
78710	26	NUCLEAR SCAN OF KIDNEY (3D)	0.64	0.32	0.04	1.00
78710	TC	NUCLEAR SCAN OF KIDNEY (3D)	0.00	5.97	0.37	6.34
78715	26	NUCLEAR EXAM OF KIDNEY	0.29	0.14	0.02	0.45
78715	TC	NUCLEAR EXAM OF KIDNEY	0.00	1.59	0.10	1.69
78725	26	NUCLEAR EXAM OF KIDNEY	0.36	0.17	0.03	0.56
78725	TC	NUCLEAR EXAM OF KIDNEY	0.00	1.80	0.11	1.91
78726	26	NUCLEAR EXAM OF KIDNEY	0.84	0.42	0.06	1.32
78726	TC	NUCLEAR EXAM OF KIDNEY	0.00	2.99	0.19	3.18
78727	26	NUCLEAR EXAM RENAL SURGERY	0.96	0.47	0.07	1.50
78727	TC	NUCLEAR EXAM RENAL SURGERY	0.00	4.05	0.25	4.26
78730	26	NUCLEAR EXAM OF BLADDER	0.33	0.17	0.03	0.53
78730	TC	NUCLEAR EXAM OF BLADDER	0.00	1.46	0.09	1.58
78740	26	NUCLEAR EXAM OF URETER	0.57	0.28	0.04	0.89
78740	TC	NUCLEAR EXAM OF URETER	0.00	2.15	0.14	2.29
78760	26	NUCLEAR SCAN OF TESTES	0.64	0.31	0.04	0.99
78760	TC	NUCLEAR SCAN OF TESTES	0.00	2.70	0.17	2.87
78761	26	SCAN OF TESTES/BLOOD FLOW	0.68	0.34	0.05	1.08
78761	TC	SCAN OF TESTES/BLOOD FLOW	0.00	3.23	0.20	3.43
78800	26	NUCLEAR EXAM OF LESION	0.63	0.31	0.04	0.98
78800	TC	NUCLEAR EXAM OF LESION	0.00	3.45	0.22	3.67
78801	26	NUCLEAR EXAM OF LESIONS	0.78	0.37	0.05	1.19
78801	TC	NUCLEAR EXAM OF LESIONS	0.00	4.27	0.27	4.54
78802	26	NUCLEAR EXAM OF LESIONS	0.84	0.41	0.06	1.31
78802	TC	NUCLEAR EXAM OF LESIONS	0.00	5.60	0.35	5.95
78803	26	NUCLEAR SCAN OF TUMOR (3D)	1.06	0.52	0.07	1.64
78803	TC	NUCLEAR SCAN OF TUMOR (3D)	0.00	6.63	0.42	7.05
78805	26	NUCLEAR EXAM OF ABSCESS	0.66	0.32	0.05	1.03
78805	TC	NUCLEAR EXAM OF ABSCESS	0.00	3.45	0.22	3.67
78806	26	NUCLEAR EXAM OF ABSCESS	0.82	0.40	0.06	1.28
78806	TC	NUCLEAR EXAM OF ABSCESS	0.00	5.60	0.35	5.95
78890	26	AUTOMATED DATA, NUCLEAR MED	0.05	0.03	0.00	0.08
78890	TC	AUTOMATED DATA, NUCLEAR MED	0.00	1.32	0.08	1.40
78891	26	AUTOMATED DATA, NUCLEAR MED	0.10	0.06	0.01	0.16
78891	TC	AUTOMATED DATA, NUCLEAR MED	0.00	2.65	0.17	2.82
79000	26	NUCLEAR THERAPY, THYROID	1.74	0.85	0.12	2.71

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PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
79000	TC	NUCLEAR THERAPY, THYROID	0.00	2.65	0.17	2.82
79001	26	NUCLEAR THERAPY, THYROID	1.01	0.50	0.07	1.58
79001	TC	NUCLEAR THERAPY, THYROID	0.00	1.32	0.08	1.40
79020	26	NUCLEAR THERAPY, THYROID	1.75	0.86	0.12	2.73
79020	TC	NUCLEAR THERAPY, THYROID	0.00	2.65	0.17	2.82
79030	26	NUCLEAR THERAPY, THYROID	2.03	1.00	0.14	3.17
79030	TC	NUCLEAR THERAPY, THYROID	0.00	2.65	0.17	2.82
79035	26	NUCLEAR THERAPY, THYROID	2.43	1.19	0.17	3.79
79035	TC	NUCLEAR THERAPY, THYROID	0.00	2.65	0.17	2.82
79100	26	NUCLEAR THERAPY, BLOOD	1.25	0.65	0.09	2.00
79100	TC	NUCLEAR THERAPY, BLOOD	0.00	2.65	0.17	2.82
79200	26	RADIONUCLIDE THERAPY	1.83	0.96	0.14	3.02
79200	TC	RADIONUCLIDE THERAPY	0.00	2.65	0.17	2.82
79300	26	RADIONUCLIDE THERAPY	1.56	0.76	0.11	2.42
79400	26	RADIONUCLIDE THERAPY	1.80	0.63	0.13	2.96
79400	TC	RADIONUCLIDE THERAPY	0.00	2.65	0.17	2.82
79420	26	RADIONUCLIDE THERAPY	1.40	0.71	0.10	2.27
79440	26	RADIONUCLIDE THERAPY	1.83	0.95	0.14	3.02
79440	TC	RADIONUCLIDE THERAPY	0.00	2.65	0.17	2.82
80500		LAB PATHOLOGY CONSULTATION	0.32	0.21	0.01	0.54
80502		LAB PATHOLOGY CONSULTATION	1.45	0.31	0.02	1.78
85060	26	BLOOD SMEAR INTERPRETATION	0.40	0.18	0.01	0.59
85060	TC	BLOOD SMEAR INTERPRETATION	0.00	0.08	0.01	0.09
85097		BONE MARROW INTERPRETATION	0.87	0.46	0.03	1.36
85100	26	BONE MARROW EXAMINATION	1.24	1.01	0.07	2.32
85100	TC	BONE MARROW EXAMINATION	0.00	0.37	0.03	0.40
85102		BONE MARROW BIOPSY	0.63	0.89	0.06	1.58
85105		BONE MARROW, INTERPRETATION	0.96	0.44	0.03	1.13
86078		PHYSICIAN BLOOD BANK SERVICE	0.96	0.36	0.02	1.34
88104	26	CYTOPATHOLOGY	0.65	0.23	0.02	0.90
88104	TC	CYTOPATHOLOGY	0.00	0.11	0.01	0.12
88160	26	CYTOPATHOLOGY	0.70	0.17	0.01	0.88
88160	TC	CYTOPATHOLOGY	0.00	0.08	0.01	0.09
88173	26	INTERPRETATION OF SMEAR	1.16	0.48	0.03	1.67
88173	TC	INTERPRETATION OF SMEAR	0.00	0.21	0.01	0.22
88300	26	SURG. PATH, GROSS	0.09	0.11	0.01	0.21
88300	TC	SURG. PATH, GROSS	0.00	0.05	0.00	0.05
88302	26	SURG PATH, GROSS AND MICRO	0.13	0.26	0.02	0.41
88302	TC	SURG PATH, GROSS AND MICRO	0.00	0.12	0.01	0.13
88304	26	SURG PATH, GROSS AND MICRO	0.23	0.35	0.02	0.60
88304	TC	SURG PATH, GROSS AND MICRO	0.00	0.16	0.01	0.17
88305	26	SURG PATH, GROSS AND MICRO	0.79	0.56	0.04	1.39
88305	TC	SURG PATH, GROSS AND MICRO	0.00	0.26	0.02	0.28
88307	26	SURG PATH, GROSS AND MICRO	1.69	0.80	0.05	2.54
88307	TC	SURG PATH, GROSS AND MICRO	0.00	0.38	0.03	0.41
88309	26	SURG PATH, GROSS AND MICRO	2.29	0.99	0.07	3.35
88309	TC	SURG PATH, GROSS AND MICRO	0.00	0.47	0.03	0.50
88311	26	DECALCIFY TISSUE	0.09	0.16	0.01	0.18
88311	TC	DECALCIFY TISSUE	0.00	0.06	0.00	0.06
88312	26	SPECIAL STAINS	0.59	0.13	0.01	0.73
88312	TC	SPECIAL STAINS	0.00	0.06	0.00	0.06
88313	26	SPECIAL STAINS	0.30	0.10	0.01	0.41
88313	TC	SPECIAL STAINS	0.00	0.05	0.00	0.05
88331	26	CONSULTATION DURING SURGERY	1.13	0.60	0.04	1.77
88331	TC	CONSULTATION DURING SURGERY	0.00	0.29	0.02	0.31
88332	26	CONSULTATION DURING SURGERY	0.56	0.29	0.02	0.81
88332	TC	CONSULTATION DURING SURGERY	0.00	0.14	0.01	0.15

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
90801		DIAGNOSTIC INTERVIEW	1.98	0.68	0.06	2.74
90843		INDIVIDUAL PSYCHOTHERAPY	0.83	0.22	0.03	1.08
90844		INDIVIDUAL PSYCHOTHERAPY	1.37	0.40	0.06	1.83
90845	•	MEDICAL PSYCHOANALYSIS	1.43	0.25	0.03	1.71
90846	•	SPECIAL FAMILY THERAPY	1.77	0.47	0.07	2.31
90847		SPECIAL FAMILY THERAPY	1.97	0.32	0.04	2.33
90853		SPECIAL GROUP THERAPY	0.34	0.13	0.02	0.49
90862		PHARMOCOLOGY MANAGEMENT	0.86	0.18	0.03	1.07
90870		ELECTROCONVULSIVE THERAPY	1.58	0.53	0.08	2.19
90880		MEDICAL HYPNOTHERAPY	1.08	0.48	0.05	1.56
90887		CONSULTATION WITH FAMILY	1.57	0.30	0.04	1.91
90900		BIOFEEDBACK, ELECTROMYOGRAM	0.95	0.60	0.05	1.60
90935		HEMODIALYSIS, SINGLE EVAL.	0.84	1.40	0.09	2.33
90937		HEMODIALYSIS, REPEATED EVAL.	1.95	2.91	0.18	5.04
90945		DIALYSIS, SINGLE EVALUATION	0.83	1.22	0.08	2.13
90947		DIALYSIS, REPEATED EVAL.	1.79	2.02	0.13	3.94
91000		ESOPHAGEAL INTUBATION	1.05	0.17	0.02	1.24
91010		ESOPHAGUS MOTILITY STUDY	1.76	1.26	0.09	3.11
91011		ESOPHAGUS MOTILITY STUDY	2.11	1.57	0.10	3.78
91012		ESOPHAGUS MOTILITY STUDY	2.04	1.83	0.12	3.99
91020		ESOPHAGOGASTRIC STUDY	2.01	0.94	0.07	3.02
91030		ACID PERFUSION OF ESOPHAGUS	1.28	0.32	0.03	1.63
91032		ESOPHAGUS, ACID REFLUX TEST	1.69	1.20	0.10	2.99
91055		GASTRIC INTUBATION FOR SMEAR	1.38	0.54	0.04	1.94
91060		GASTRIC SALINE LOAD TEST	0.48	0.50	0.03	1.01
91065		BREATH HYDROGEN TEST	0.47	0.62	0.04	1.13
91100		PASS INTESTINE BLEEDING TUBE	1.13	0.50	0.04	1.67
92082		VISUAL FIELD EXAMINATION(S)	0.46	0.50	0.02	0.98
92083		VISUAL FIELD EXAMINATION(S)	0.55	0.85	0.04	1.44
92100		SERIAL TONOMETRY EXAM(S)	0.44	0.26	0.01	0.71
92225		EXTENDED OPHTHALMOSCOPY, NEW	0.62	0.46	0.02	1.10
92235		OPHTHALMOSCOPY/ANGIOGRAPHY	0.59	1.62	0.08	2.29
92260		SPECIAL EYE EVALUATION	0.34	0.84	0.05	1.23
92286		INTERNAL EYE PHOTOGRAPHY	0.70	1.23	0.06	1.99
92311		SPECIAL CONTACT LENS FITTING	0.97	0.89	0.03	1.89
92511		NASOPHARYNGOSCOPY	0.88	0.86	0.09	1.84
92541		SPONTANEOUS NYSTAGMUS TEST	0.43	0.46	0.05	0.94
92547	TC	SUPPLEMENTAL ELECTRICAL TEST	0.00	0.54	0.05	0.59
92552	TC	PURE TONE AUDIOMETRY, AIR	0.00	0.43	0.04	0.47
92553	TC	AUDIOMETRY, AIR & BONE	0.00	0.67	0.07	0.74
92555	TC	SPEECH THRESHOLD AUDIOMETRY	0.00	0.36	0.04	0.40
92556	TC	SPEECH AUDIOMETRY, COMPLETE	0.00	0.56	0.06	0.62
92557	TC	COMPREHENSIVE AUDIOMETRY	0.00	1.17	0.13	1.30
92560	TC	BEKESY AUDIOMETRY, SCREEN	0.00	0.47	0.04	0.51
92561	TC	BEKESY AUDIOMETRY, DIAGNOSIS	0.00	0.64	0.06	0.70
92562	TC	LOUDNESS BALANCE TEST	0.00	0.32	0.03	0.35
92563	TC	TONE DECAY HEARING TEST	0.00	0.33	0.03	0.36
92564	TC	SISI HEARING TEST	0.00	0.39	0.04	0.43
92565	TC	STENGER TEST, PURE TONE	0.00	0.37	0.03	0.40
92566	TC	IMPEDANCE TESTING	0.00	0.57	0.06	0.63
92567	TC	TYMPANOMETRY	0.00	0.47	0.05	0.52
92568	TC	ACOUSTIC REFLEX TESTING	0.00	0.31	0.03	0.34
92569	TC	ACOUSTIC REFLEX DECAY TEST	0.00	0.37	0.04	0.41
92571	TC	FILTERED SPEECH HEARING TEST	0.00	0.36	0.04	0.40
92572	TC	STAGGERED SPONDAIC WORD TEST	0.00	0.11	0.01	0.12
92573	TC	LOMBARD TEST	0.00	0.33	0.04	0.37
92574	TC	SWINGING STORY TEST	0.00	1.11	0.08	1.19

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PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
92575	TC	SENSORINEURAL ACUITY TEST	0.00	0.30	0.03	0.33
92576	TC	SYNTHETIC SENTENCE TEST	0.00	0.43	0.05	0.48
92577	TC	STENGER TEST, SPEECH	0.00	0.68	0.07	0.75
92578	TC	DELAYED AUDITORY FEEDBACK	0.00	0.54	0.05	0.59
92580	TC	ELECTRODERMAL AUDIOMETRY	0.00	0.63	0.06	0.69
92581	TC	EVOKED RESPONSE AUDIOMETRY	0.00	3.57	0.31	3.88
92582	TC	CONDITIONING PLAY AUDIOMETRY	0.00	0.68	0.07	0.75
92583	TC	SELECT PICTURE AUDIOMETRY	0.00	0.77	0.08	0.85
92584	TC	ELECTROCOCHLEOGRAPHY	0.00	2.26	0.24	2.50
92585	TC	BRAINSTEM EVOKED AUDIOMETRY	0.00	3.25	0.29	3.54
92589	TC	AUDITORY FUNCTION TEST(S)	0.00	0.51	0.05	0.56
92596	TC	EAR PROTECTOR EVALUATION	0.00	0.46	0.05	0.51
92950		HEART/LUNG RESUSCITATION	2.83	2.26	0.17	5.26
92960		HEART ELECTROCONVERSION	3.92	1.92	0.15	5.99
92982		CORONARY ARTERY DILATION	10.29	17.24	1.27	28.80
92984		CORONARY ARTERY DILATION	1.93	5.69	0.43	8.05
93005	TC	ELECTROCARDIOGRAM, TRACING	0.00	0.45	0.03	0.48
93010	26	ELECTROCARDIOGRAM REPORT	0.16	0.16	0.01	0.35
93012	TC	TRANSMISSION OF ECG	0.00	0.77	0.06	0.83
93041	TC	RHYTHM ECG, TRACING	0.00	0.14	0.01	0.15
93042	26	RHYTHM ECG, REPORT	0.16	0.12	0.01	0.29
93202	TC	PHONOCARDIOGRAM & ECG LEAD	0.00	0.62	0.06	0.68
93204	26	PHONOCARDIOGRAM & ECG LEAD	0.44	0.20	0.01	0.65
93325	TC	DOPPLER COLOR FLOW	0.00	2.80	0.23	3.03
93501		RIGHT HEART CATHETERIZATION	4.33	3.85	0.35	8.53
93503		INSERT/PLACE HEART CATHETER	4.48	2.47	0.37	7.32
93505		BIOPSY OF HEART LINING	5.37	3.26	0.30	8.93
93510		LEFT HEART CATHETERIZATION	5.62	4.11	0.30	10.03
93511		LEFT HEART CATHETERIZATION	6.50	2.39	0.18	9.07
93514	•	LEFT HEART CATHETERIZATION	8.54	4.76	0.39	13.68
93524		LEFT HEART CATHETERIZATION	7.92	4.39	0.31	12.62
93526		RT & LT HEART CATHETERS	6.82	7.11	0.50	14.43
93527		RT & LT HEART CATHETERS	8.27	7.71	0.54	16.52
93529	•	RT, LT HEART CATHETERIZATION	5.63	8.27	0.60	14.50
93536		INSERT CIRCULATION ASSIST	7.34	7.85	0.71	15.90
93547		HEART CATHETER & ANGIOGRAM	7.11	8.43	0.61	16.15
93549		HEART CATHETER & ANGIOGRAM	7.95	10.67	0.77	19.39
93552		HEART CATHETER & ANGIOGRAM	8.67	10.56	0.78	20.01
93736	26	TELEPHONE ANALYSIS,PACEMAKER	0.40	0.27	0.02	0.69
93736	TC	TELEPHONE ANALYSIS,PACEMAKER	0.00	0.39	0.03	0.42
93850	26	CEREBRAL ARTERY STUDY	0.23	0.42	0.05	0.70
93850	TC	CEREBRAL ARTERY STUDY	0.00	1.36	0.16	1.52
93860	26	CAROTID ARTERY STUDY	0.26	0.70	0.07	1.03
93860	TC	CAROTID ARTERY STUDY	0.00	1.40	0.16	1.56
93870	26	CAROTID ARTERY IMAGING	0.51	0.96	0.10	1.56
93870	TC	CAROTID ARTERY IMAGING	0.00	2.96	0.34	3.29
93890	26	UPPER LIMB ARTERY STUDY	0.33	0.61	0.07	1.01
93890	TC	UPPER LIMB ARTERY STUDY	0.00	2.26	0.24	2.50
93910	26	LOWER LIMB ARTERY STUDY	0.64	0.60	0.08	1.32
93910	TC	LOWER LIMB ARTERY STUDY	0.00	1.58	0.20	1.78
93950	26	LIMB VEIN STUDY	0.37	0.46	0.05	0.88
93950	TC	LIMB VEIN STUDY	0.00	0.91	0.11	1.02
93960	26	VENOUS FLOW STUDY, CALF	0.37	0.50	0.06	0.93
93960	TC	VENOUS FLOW STUDY, CALF	0.00	1.47	0.17	1.64
94010	26	BREATHING CAPACITY TEST	0.25	0.26	0.02	0.53
94010	TC	BREATHING CAPACITY TEST	0.00	0.42	0.03	0.45
94060	26	BRONCHOSPASM EVALUATION	0.23	0.37	0.03	0.63

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL (continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
94060	TC	BRONCHOSPASM EVALUATION	0.00	0.86	0.06	0.92
94656		INITIAL VENTILATION ASSIST	1.30	1.11	0.10	2.51
94657		CONTINUED VENTILATION ASSIST	0.88	0.66	0.05	1.59
95000 ••	TC	ALLERGY SKIN TESTS, 1-30	0.00	0.07	0.00	0.07
95001 ••	TC	ALLERGY SKIN TESTS, 31-60	0.00	0.08	0.01	0.09
95002 ••	TC	ALLERGY SKIN TESTS, 61-90	0.00	0.08	0.01	0.09
95003 ••	TC	ALLERGY SKIN TESTS, OVER 90	0.00	0.06	0.00	0.06
95005 ••	TC	SENSITIVITY SKIN TESTS, 1-5	0.00	0.12	0.01	0.13
95006 ••	TC	SENSITIVITY SKIN TESTS, 6-10	0.00	0.05	0.00	0.05
95007 ••	TC	SENSITIVITY SKIN TESTS,11-15	0.00	0.08	0.01	0.09
95011 ••	TC	SENSITIVITY SKIN TESTS, 15+	0.00	0.06	0.00	0.06
95014 ••	TC	SENSITIVITY SKIN TESTS, 1-5	0.00	0.14	0.01	0.15
95016 ••	TC	SENSITIVITY SKIN TESTS, 6-10	0.00	0.12	0.01	0.13
95017 ••	TC	SENSITIVITY SKIN TESTS,11-15	0.00	0.21	0.02	0.23
95018 ••	TC	SENSITIVITY SKIN TESTS, 15+	0.00	0.10	0.01	0.11
95020 ••	TC	ALLERGY SKIN TESTS, 1-10	0.00	0.12	0.01	0.13
95021 ••	TC	ALLERGY SKIN TESTS, 11-20	0.00	0.11	0.01	0.12
95022 ••	TC	ALLERGY SKIN TESTS, 21-30	0.00	0.12	0.01	0.13
95023 ••	TC	ALLERGY SKIN TESTS, OVER 30	0.00	0.10	0.01	0.11
95027 ••	TC	SKIN END POINT TITRATION	0.00	0.18	0.02	0.20
95030 ••	TC	ALLERGY SKIN TESTS, 2	0.00	0.19	0.02	0.21
95031 ••	TC	ALLERGY SKIN TESTS, 3-4	0.00	0.17	0.01	0.18
95032 ••	TC	ALLERGY SKIN TESTS, 5-6	0.00	0.22	0.02	0.24
95033 ••	TC	ALLERGY SKIN TESTS, 7-8	0.00	0.20	0.01	0.21
95034 ••	TC	ALLERGY SKIN TESTS, OVER 8	0.00	0.06	0.00	0.06
95040 ••	TC	ALLERGY PATCH TESTS, 1-10	0.00	0.10	0.01	0.11
95041 ••	TC	ALLERGY PATCH TESTS, 11-20	0.00	0.12	0.01	0.13
95042 ••	TC	ALLERGY PATCH TESTS, 21-30	0.00	0.11	0.01	0.12
95043 ••	TC	ALLERGY PATCH TESTS, OVER 30	0.00	0.10	0.01	0.11
95051 ••	TC	PHOTO PATCH TESTS, OVER 10	0.00	0.14	0.01	0.15
95056 ••	TC	PHOTOSENSITIVITY TESTS	0.00	0.17	0.01	0.18
95060 ••	TC	EYE ALLERGY TESTS	0.00	0.34	0.02	0.36
95065 ••	TC	NOSE ALLERGY TEST	0.00	0.18	0.01	0.19
95070 ••	TC	BRONCHIAL ALLERGY TESTS	0.00	1.12	0.08	1.20
95071 ••	TC	BRONCHIAL ALLERGY TESTS	0.00	0.67	0.05	0.72
95075 ••	TC	INGESTION CHALLENGE TEST	0.00	0.59	0.04	0.63
95078 ••	TC	PROVOCATIVE TESTING	0.00	0.25	0.02	0.27
95080 ••	TC	PASSIVE TRANSFER TESTS, 1-10	0.00	1.03	0.17	1.20
95081 ••	TC	PASSIVE TRANSFER TESTS,11-20	0.00	0.96	0.07	1.05
95082 ••	TC	PASSIVE TRANSFER TESTS, 20+	0.00	0.69	0.10	0.79
95135		IMMUNOTHERAPY, ONE ANTIGEN	0.17	0.09	0.01	0.27
95150		ANTIGEN THERAPY SERVICES	0.64	0.06	0.01	0.71
95819	26	ELECTROENCEPHALOGRAM (EEG)	0.40	0.53	0.04	0.97
95819	TC	ELECTROENCEPHALOGRAM (EEG)	0.00	1.22	0.10	1.32
95860		ELECTROMYOGRAPHY, ONE LIMB	1.06	0.99	0.08	2.15
95861		ELECTROMYOGRAPHY, TWO LIMBS	1.65	1.46	0.11	3.22
95900		MOTOR NERVE CONDUCTION TEST	0.47	0.40	0.03	0.90
95904		SENSE NERVE CONDUCTION TEST	0.38	0.39	0.03	0.80
95935		"H" OR "F" REFLEX STUDY	0.63	0.40	0.03	1.06
97010		HOT OR COLD PACKS THERAPY	0.21	0.19	0.02	0.42
97012		MECHANICAL TRACTION THERAPY	0.22	0.20	0.02	0.44
97014		ELECTRIC STIMULATION THERAPY	0.22	0.20	0.02	0.44
97016		VASOPNEUMATIC DEVICE THERAPY	0.25	0.23	0.03	0.51
97018		PARAFFIN BATH THERAPY	0.26	0.24	0.03	0.53
97020		MICROWAVE THERAPY	0.18	0.18	0.02	0.38
97022		WHIRLPOOL THERAPY	0.21	0.20	0.02	0.43
97024		DIATHERMY TREATMENT	0.20	0.20	0.02	0.42

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PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL
(continued)

HCPCS[1]	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
97026		INFRARED THERAPY	0.21	0.19	0.02	0.42
97028		ULTRAVIOLET THERAPY	0.18	0.16	0.01	0.35
97039		PHYSICAL THERAPY TREATMENT	0.30	0.26	0.03	0.59
97110		THERAPEUTIC EXERCISES	0.26	0.22	0.03	0.51
97112		NEUROMUSCULAR REEDUCATION	0.25	0.22	0.02	0.49
97114		FUNCTIONAL ACTIVITY THERAPY	0.21	0.18	0.02	0.41
97116		GAIT TRAINING THERAPY	0.22	0.18	0.02	0.42
97118		MANUAL ELECTRIC STIMULATION	0.25	0.24	0.02	0.51
97120		ELECTRIC CURRENT THERAPY	0.26	0.25	0.03	0.56
97122		MANUAL TRACTION THERAPY	0.20	0.19	0.02	0.41
97124		MASSAGE THERAPY	0.22	0.19	0.02	0.43
97126		CONTRAST BATHS THERAPY	0.21	0.18	0.02	0.41
97128		ULTRASOUND THERAPY	0.21	0.20	0.02	0.43
97139		PHYSICAL MEDICINE PROCEDURE	0.36	0.30	0.03	0.69
97145		EXTENDED PHYSIOTHERAPY	0.14	0.11	0.01	0.26
97220		HYDROTHERAPY	0.41	0.36	0.04	0.81
97221		EXTENDED HYDROTHERAPY	0.13	0.10	0.01	0.24
97240		HYDROTHERAPY	0.46	0.39	0.05	0.90
97241		EXTENDED HYDROTHERAPY	0.12	0.10	0.02	0.24
97260		REGIONAL MANIPULATION	0.19	0.21	0.02	0.42
97261		SUPPLEMENTAL MANIPULATIONS	0.11	0.10	0.01	0.22
97500		ORTHOTICS TRAINING	0.31	0.27	0.03	0.61
97501		SUPPLEMENTAL TRAINING	0.17	0.15	0.02	0.34
97520		PROSTHETIC TRAINING	0.37	0.30	0.03	0.70
97521		SUPPLEMENTAL TRAINING	0.20	0.16	0.02	0.38
97530		KINETIC THERAPY	0.36	0.32	0.04	0.74
97531		ADDED KINETIC THERAPY	0.17	0.15	0.02	0.34
97540		TRAINING FOR DAILY LIVING	0.44	0.37	0.03	0.84
97541		SUPPLEMENTAL TRAINING	0.21	0.16	0.01	0.38
97700		TRAINING CHECKOUT	0.40	0.35	0.04	0.79
97701		SUPPLEMENTAL CHECKOUT	0.20	0.17	0.02	0.39
97720		EXTREMITY TESTING	0.42	0.36	0.04	0.82
97721		SUPPLEMENTAL LIMB TESTING	0.24	0.19	0.02	0.45
97752		MUSCLE TESTING WITH EXERCISE	0.40	0.37	0.04	0.81

[1]All numeric CPT HCPCS Copyright 1991 American Medical Association

PROPOSED RELATIVE VALUE UNITS (RVUS) FOR PHYSICIAN WORK, PRACTICE EXPENSE, MALPRACTICE AND TOTAL
(continued)

HCPCS	MODIFIER	DESCRIPTION	WORK RVUS	PRACTICE EXPENSE RVUS	MAL-PRACTICE RVUS	TOTAL RVUS
A2000		MANIPULATION OF SPINE	0.20	0.30	0.01	0.51
H5300		OCCUPATIONAL THERAPY	0.33	0.24	0.03	0.60
M0702		BRIEF, OSTEOPATHIC MANIP THER	0.47	0.25	0.02	0.74
M0704		LIMITED, OSTEOPATHIC MANIP TH	0.66	0.36	0.03	1.05
M0706		INTERM. OSTEOPATHIC MANIP THER	0.93	0.37	0.03	1.33
M0710		COMP. OSTEOPATHIC MANIP THER	1.26	0.37	0.03	1.66
M0724		LIMITED INPAT HOSP OMT	0.70	0.57	0.04	1.31
M0726		EXTENDED INPAT HOSP OMT	1.08	0.35	0.03	1.46
Q0047	AA	ANESTHESIA FOR BLEPHAROPLASTY	2.23	1.21	0.38	3.82
Q0047	D2	ANESTHESIA FOR BLEPHAROPLASTY	1.53	0.83	0.26	2.62
Q0047	D3	ANESTHESIA FOR BLEPHAROPLASTY	1.37	0.74	0.23	2.34
Q0047	D4	ANESTHESIA FOR BLEPHAROPLASTY	1.22	0.66	0.22	2.10
Q0047	AD	ANESTHESIA FOR BLEPHAROPLASTY	0.78	0.42	0.13	1.33
Q0069	26	MR - BRAIN	2.29	1.12	0.16	3.57
Q0069	TC	MR - BRAIN	0.00	25.19	1.58	26.77
Q0070	26	MR - SPINAL CANAL	2.49	1.22	0.17	3.88
Q0070	TC	MR - SPINAL CANAL	0.00	25.19	1.58	26.77
Q0071	26	MR - SPINAL CANAL	2.49	1.22	0.17	3.88
Q0071	TC	MR - SPINAL CANAL	0.00	25.19	1.58	26.77
Q0072	26	MR - SPINAL CANAL	2.29	1.12	0.16	3.57
Q0072	TC	MR - SPINAL CANAL	0.00	25.19	1.58	26.77

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ADDENDUM C
TABLE 1

GEOGRAPHIC PRACTICE COST INDICES BY MEDICARE CARRIER LOCALITY

CARRIER NUMBER	LOCALITY NUMBER	LOCALITY NAME	WORK	PRACTICE EXPENSE	MALPRACTICE
510	5	BIRMINGHAM, AL	0.981	0.913	0.824
510	4	MOBILE, AL	0.954	0.911	0.824
510	2	NORTH CENTRAL AL	0.970	0.897	0.824
510	1	NORTHWEST AL	0.986	0.899	0.824
510	6	REST OF AL	0.975	0.851	0.824
510	3	SOUTHEAST AL	0.972	0.863	0.824
1020	1	ALASKA	1.106	1.255	1.042
1030	5	FLAGSTAFF (CITY), AZ	0.983	0.911	1.255
1030	1	PHOENIX (CITY), AZ	1.003	1.016	1.255
1030	7	PRESCOTT (CITY), AZ	0.983	0.911	1.255
1030	99	REST OF ARIZONA	0.987	0.943	1.255
1030	2	TUCSON (CITY), AZ	0.987	0.989	1.255
1030	8	YUMA (CITY), AZ	0.983	0.911	1.255
520	13	ARKANSAS	0.960	0.856	0.302
2050	26	ANAHEIM-SANTA ANA, CA	1.046	1.220	1.370
542	14	BAKERSFIELD, CA	1.026	1.050	1.370
542	11	FRESNO/MADERA, CA	1.006	1.009	1.370
542	13	KINGS/TULARE, CA	0.999	1.001	1.370
2050	18	LOS ANGELES, CA (1ST OF 8)	1.060	1.196	1.370
2050	19	LOS ANGELES, CA (2ND OF 8)	1.060	1.196	1.370
2050	20	LOS ANGELES, CA (3RD OF 8)	1.060	1.196	1.370
2050	21	LOS ANGELES, CA (4TH OF 8)	1.060	1.196	1.370
2050	22	LOS ANGELES, CA (5TH OF 8)	1.060	1.196	1.370
2050	23	LOS ANGELES, CA (6TH OF 8)	1.060	1.196	1.370
2050	24	LOS ANGELES, CA (7TH OF 8)	1.060	1.196	1.370
2050	25	LOS ANGELES, CA (8TH OF 8)	1.060	1.196	1.370
542	3	MARIN/NAPA/SOLANO, CA	1.012	1.198	1.370
542	10	MERCED/SURR. CNTYS, CA	1.018	1.009	1.370
542	12	MONTEREY/SANTA CRUZ, CA	1.023	1.108	1.370
542	1	N. COASTAL CNTYS, CA	1.003	1.072	1.370
542	2	NE RURAL CA	1.001	0.990	1.370
542	7	OAKLAND-BERKELEY, CA	1.028	1.258	1.370
542	27	RIVERSIDE, CA	1.026	1.080	1.370
542	4	SACRAMENTO/SURR. CNTYS, CA	1.026	1.088	1.370
542	15	SAN BERNADINO/E.CENTRAL CA	1.025	1.077	1.370
2050	28	SAN DIEGO/IMPERIAL, CA	1.026	1.090	1.370
542	5	SAN FRANCISCO, CA	1.038	1.303	1.370
542	6	SAN MATEO, CA	1.038	1.303	1.370
2050	16	SANTA BARBARA, CA	1.012	1.073	1.370
542	9	SANTA CLARA, CA	1.048	1.286	1.370
542	8	STOCKTON/SURR. CNTYS, CA	1.019	1.027	1.370
2050	17	VENTURA, CA	1.034	1.132	1.370
550	1	COLORADO	0.999	0.988	0.683
10230	4	EASTERN CONN.	0.999	1.053	1.036

GEOGRAPHIC PRACTICE COST INDICES BY MEDICARE CARRIER LOCALITY

CARRIER NUMBER	LOCALITY NUMBER	LOCALITY NAME	WORK	PRACTICE EXPENSE	MALPRACTICE
10230	1	NW AND N.CENTRAL CONN.	1.002	1.071	1.025
10230	3	SOUTH CENTRAL CONN.	1.018	1.103	1.188
10230	2	SW CONNECTICUT	1.053	1.139	1.231
570	1	DELAWARE	1.026	1.018	0.664
580	1	D.C. + MD/VA SUBURBS	1.059	1.168	0.947
590	3	FORT LAUDERDALE, FL	0.993	0.981	1.376
590	4	MIAMI, FL	1.034	1.025	1.641
590	2	N/NC FLORIDA CITIES	0.975	0.932	1.108
590	1	REST OF FLORIDA	0.966	0.871	1.108
1040	1	ATLANTA, GA	0.975	1.022	0.752
1040	4	REST OF GEORGIA	0.956	0.841	0.752
1040	2	SMALL GA CITIES 02	0.962	0.895	0.752
1040	3	SMALL GA CITIES 03	0.961	0.869	0.752
1120	1	HAWAII	1.003	1.094	1.025
5130	12	NORTH IDAHO	0.965	0.917	0.889
5130	11	SOUTH IDAHO	0.967	0.936	0.889
621	10	CHAMPAIGN-URBANA, IL	0.965	0.920	1.137
621	16	CHICAGO, IL	1.044	1.114	1.773
621	3	DE KALB, IL	0.978	0.925	1.137
621	11	DECATUR, IL	0.981	0.927	1.137
621	12	EAST ST. LOUIS, IL	0.989	0.958	1.579
621	6	KANKAKEE, IL	0.972	0.925	1.137
621	8	NORMAL, IL	0.997	0.968	1.137
621	1	NORTHWEST, IL	0.974	0.896	1.137
621	5	PEORIA, IL	1.009	1.031	1.137
621	7	QUINCY, IL	0.974	0.896	1.137
621	4	ROCK ISLAND, IL	0.995	0.958	1.137
621	2	ROCKFORD, IL	1.010	1.018	1.137
621	13	SOUTHEAST IL	0.974	0.896	1.137
621	14	SOUTHERN IL	0.974	0.896	1.137
621	9	SPRINGFIELD, IL	0.996	0.966	1.137
621	15	SUBURBAN CHICAGO, IL	1.020	1.097	1.137
630	1	METROPOLITAN INDIANA	0.998	0.963	0.547
630	3	REST OF INDIANA	0.979	0.896	0.516
630	2	URBAN INDIANA	0.980	0.905	0.516
640	5	DES MOINES(POLK/WARREN),IA	0.997	0.966	0.666
640	8	IOWA CITY (CITY LIMITS)	0.960	0.967	0.666
640	3	NORTH CENTRAL IOWA	0.971	0.916	0.666
640	2	NORTHEAST IOWA	0.972	0.918	0.666
640	6	NORTHWEST IOWA	0.969	0.890	0.666
640	4	S.CEN. IA(EXCL DES MOINES)	0.962	0.881	0.666
640	1	SE IOWA (EXCL IOWA CITY)	0.978	0.929	0.666
640	7	SOUTHWEST IOWA	0.968	0.900	0.666
740	5	KANSAS CITY, KS	0.978	0.964	1.134
650	1	REST OF KANSAS	0.953	0.893	1.134
740	4	SUBURBAN KANSAS CITY, KS	0.978	0.964	1.134
660	1	LEXINGTON & LOUISVILLE, KY	0.984	0.917	0.667

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GEOGRAPHIC PRACTICE COST INDICES BY MEDICARE CARRIER LOCALITY

CARRIER NUMBER	LOCALITY NUMBER	LOCALITY NAME	WORK	PRACTICE EXPENSE	MALPRACTICE
660	3	REST OF KENTUCKY	0.974	0.875	0.667
660	2	SM CITIES (CITY LIMITS) KY	0.976	0.898	0.667
528	7	ALEXANDRIA, LA	0.985	0.889	0.808
528	3	BATON ROUGE, LA	0.991	0.966	0.808
528	6	LAFAYETTE, LA	0.982	0.926	0.808
528	4	LAKE CHARLES, LA	0.975	0.907	0.808
528	5	MONROE, LA	0.979	0.880	0.808
528	1	NEW ORLEANS, LA	0.994	1.003	1.185
528	50	REST OF LOUISIANA	0.972	0.880	0.824
528	2	SHREVEPORT, LA	1.003	0.940	0.808
21200	2	CENTRAL MAINE	0.942	0.903	0.716
21200	1	NORTHERN MAINE	0.947	0.912	0.716
21200	3	SOUTHERN MAINE	0.956	0.980	0.716
690	1	BALTIMORE/SURR. CNTYS, MD	1.027	1.040	0.927
690	3	SOUTH + E. SHORE MD	1.011	1.010	0.820
690	2	WESTERN MARYLAND	1.006	1.013	0.843
700	2	MASS.SUBURBS/RURAL(CITIES)	0.997	1.072	0.855
700	1	MASSACHUSETTS URBAN	1.002	1.131	0.855
710	1	DETROIT, MI	1.059	1.091	1.736
710	2	MICHIGAN, NOT DETROIT	1.010	0.971	1.196
720	2	NORTHERN MINNESOTA	0.983	0.919	0.748
720	4	SOUTHERN MINNESOTA	0.979	0.901	0.748
10240	1	ST. PAUL-MINNEAPOLIS, MN	1.014	1.024	0.748
10250	1	REST OF MISSISSIPPI	0.960	0.838	0.650
10250	2	URBAN MS (CITY LIMITS)	0.966	0.902	0.650
740	3	K.C. (JACKSON COUNTY), MO	0.978	0.964	1.179
740	2	N. K.C. (CLAY/PLATTE), MO	0.978	0.964	1.179
11260	3	REST OF MO	0.950	0.847	1.179
740	6	RURAL NW COUNTIES, MO	0.953	0.866	1.179
11260	2	SM. E.CITIES+JEFF.CNTY,MO	0.973	0.907	1.179
740	1	ST. JOSEPH, MO	0.950	0.867	1.179
11260	1	ST. LOUIS/LG. E.CITIES, MO	0.988	0.963	1.366
751	1	MONTANA	0.967	0.926	0.718
655	15	OMAHA + LINCOLN, NE	0.971	0.929	0.435
655	16	REST OF NEBRASKA	0.952	0.849	0.435
655	17	URBAN (CNTY POP>25000) NE	0.956	0.865	0.435
1290	3	ELKO & ELY (CITIES), NV	0.984	1.026	1.144
1290	1	LAS VEGAS,ET AL(CITIES),NV	1.036	1.062	1.144
1290	2	RENO, ET AL (CITIES), NV	1.008	1.141	1.144
1290	99	REST OF NEVADA	1.020	1.079	1.144
780	40	NEW HAMPSHIRE	0.962	1.011	0.602
860	2	MIDDLE NEW JERSEY	1.034	1.070	1.153
860	1	NORTHERN NEW JERSEY	1.040	1.131	1.153
860	3	SOUTHERN NEW JERSEY	1.016	1.030	1.153
1360	1	NEW MEXICO	0.981	0.925	0.767
801	1	BUFFALO/SURR. CNTYS, NY	1.006	0.942	0.963
803	1	MANHATTAN, NY	1.059	1.255	1.647

GEOGRAPHIC PRACTICE COST INDICES BY MEDICARE CARRIER LOCALITY

CARRIER NUMBER	LOCALITY NUMBER	LOCALITY NAME	WORK	PRACTICE EXPENSE	MALPRACTICE
801	3	N. CENTRAL CITIES, NY	0.997	0.952	0.963
803	2	NYC SUBURBS/LONG I., NY	1.060	1.229	1.929
803	3	POUGHKPSIE/N.NYC SUBURBS	1.004	1.018	1.325
14330	4	QUEENS, NY	1.059	1.255	1.861
801	2	ROCHESTER/SURR. CNTYS, NY	1.021	1.017	0.963
801	4	REST OF NEW YORK	0.988	0.935	0.963
5535	95	REST OF NORTH CAROLINA	0.963	0.883	0.378
5535	94	URBAN (CITY LIMITS) NC	0.975	0.926	0.378
820	1	NORTH DAKOTA	0.965	0.895	0.688
16360	1	AKRON, OH	0.993	0.944	0.920
16360	2	CINCINATI, OH	0.989	0.956	0.920
16360	3	CLEVELAND, OH	1.011	0.968	0.920
16360	4	COLUMBUS, OH	0.983	0.956	0.920
16360	5	DAYTON, OH	0.999	0.935	0.920
16360	9	E. CENTRAL (STEUBENVL), OH	0.974	0.912	0.920
16360	7	MANSFIELD, OH	0.972	0.906	0.920
16360	13	MARION + SURR. CNTYS., OH	0.971	0.911	0.920
16360	6	NORTHWEST (LIMA) OH	0.973	0.919	0.920
16360	14	SCIOTO VALLEY, OH	0.977	0.936	0.920
16360	15	SOUTHEAST (OHIO VALLEY) OH	0.973	0.909	0.920
16360	8	SPRINGFIELD, OH	1.004	0.940	0.920
16360	10	TOLEDO (LUCAS/WOOD), OH	0.991	0.996	0.920
16360	12	W. CENTR (LAKE PLAINS), OH	0.969	0.906	0.920
16360	11	YOUNGSTOWN, OH	0.987	0.937	0.920
1370	1	OK CITY, ET AL (CITIES),OK	0.969	0.961	0.516
1370	99	REST OF OKLAHOMA	0.967	0.877	0.516
1370	4	SM. CITIES (NORTHERN), OK	0.961	0.874	0.516
1370	3	SM. CITIES (SOUTHERN), OK	0.967	0.865	0.516
1370	2	TULSA, ET AL (CITIES), OK	0.978	0.953	0.516
1380	2	EUGENE, ET AL (CITIES), OR	0.968	1.008	0.951
1380	1	PORTLAND,ET AL (CITIES),OR	0.993	1.033	0.951
1380	99	REST OF OREGON	0.979	0.997	0.951
1380	3	SALEM, ET AL (CITIES), OR	0.974	0.991	0.951
1380	12	SW OR. CITIES(CITY LIMITS)	0.974	0.988	0.951
865	2	LG. PENNSYLVANIA CITIES	1.007	1.001	1.433
865	1	PHILLY/PITT MED SCHS/HOSPS	1.014	1.014	1.552
865	4	REST OF PENNSYLVANIA	0.976	0.935	0.988
865	3	SMALL PENNSYLVANIA CITIES	0.984	0.941	0.986
973	20	PUERTO RICO	0.882	0.763	0.466
870	1	RHODE ISLAND	1.009	0.988	0.734
880	1	SOUTH CAROLINA	0.971	0.874	0.448
820	2	SOUTH DAKOTA	0.951	0.857	0.688
5440	35	TENNESSEE	0.969	0.896	0.407
900	29	ABILENE, TX	0.971	0.898	0.504
900	26	AMARILLO, TX	0.972	0.900	0.504
900	31	AUSTIN, TX	0.969	0.958	0.504
900	20	BEAUMONT, TX	0.998	0.955	0.504

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GEOGRAPHIC PRACTICE COST INDICES BY MEDICARE CARRIER LOCALITY

CARRIER NUMBER	LOCALITY NUMBER	LOCALITY NAME	WORK	PRACTICE EXPENSE	MALPRACTICE
900	9	BRAZORIA, TX	1.025	0.955	0.504
900	10	BROWNSVILLE, TX	0.980	0.888	0.504
900	24	CORPUS CHRISTI, TX	0.976	0.944	0.504
900	11	DALLAS, TX	0.996	0.971	0.504
900	12	DENTON, TX	0.996	0.971	0.504
900	14	EL PASO, TX	0.995	0.894	0.504
900	28	FORT WORTH, TX	0.973	0.936	0.504
900	15	GALVESTON, TX	0.982	0.968	0.504
900	16	GRAYSON, TX	0.964	0.903	0.504
900	18	HOUSTON, TX	1.014	0.982	0.656
900	33	LAREDO, TX	0.968	0.856	0.504
900	17	LONGVIEW, TX	0.968	0.929	0.504
900	21	LUBBOCK, TX	0.950	0.881	0.504
900	19	MC ALLEN, TX	0.945	0.873	0.504
900	23	MIDLAND, TX	1.023	0.998	0.504
900	2	NORTHEAST RURAL TEXAS	0.969	0.884	0.504
900	13	ODESSA, TX	1.008	0.971	0.504
900	25	ORANGE, TX	0.998	0.955	0.504
900	30	SAN ANGELO, TX	0.954	0.902	0.504
900	7	SAN ANTONIO, TX	0.973	0.929	0.504
900	3	SOUTHEAST RURAL TEXAS	0.973	0.894	0.504
900	6	TEMPLE, TX	0.969	0.886	0.504
900	8	TEXARKANA, TX	0.953	0.883	0.504
900	27	TYLER, TX	0.984	0.931	0.504
900	32	VICTORIA, TX	0.976	0.973	0.504
900	22	WACO, TX	0.981	0.871	0.504
900	4	WESTERN RURAL TEXAS	0.961	0.852	0.504
900	34	WICHITA FALLS, TX	0.969	0.896	0.504
910	9	UTAH	0.993	0.952	0.739
780	50	VERMONT	0.942	0.941	0.533
10490	1	RICHMOND+CHARLOTTESVL, VA	0.975	0.953	0.462
10490	4	REST OF VIRGINIA	0.967	0.888	0.522
10490	3	SM. TOWN/INDUSTRIAL VA	0.971	0.892	0.531
10490	2	TIDEWATER+N. VA COUNTIES	0.989	0.994	0.703
973	50	VIRGIN ISLANDS	1.000	1.000	1.000
930	4	E.CEN+NE WA (EXCL SPOKANE)	0.991	0.979	1.064
930	2	SEATTLE (KING CNTY), WA	1.019	1.049	1.064
930	3	SPOKANE+RICHLND(CITIES),WA	0.997	0.997	1.064
930	1	W + SE WA (EXCL SEATTLE)	1.008	0.992	1.064
16510	16	CHARLESTON, WV	0.987	0.962	0.688
16510	18	EASTERN VALLEY, WV	0.962	0.881	0.688
16510	19	OHIO RIVER VALLEY, WV	0.962	0.881	0.688
16510	20	SOUTHERN VALLEY, WV	0.960	0.876	0.688
16510	17	WHEELING, WV	0.975	0.900	0.688
951	13	CENTRAL WISCONSIN	0.960	0.888	0.762
951	40	GREEN BAY, WI (NORTHEAST)	0.979	0.913	0.762
951	54	JANESVILLE, WI (S-CENTRAL)	0.970	0.905	0.762

GEOGRAPHIC PRACTICE COST INDICES BY MEDICARE CARRIER LOCALITY

CARRIER NUMBER	LOCALITY NUMBER	LOCALITY NAME	WORK	PRACTICE EXPENSE	MALPRACTICE
951	19	LA CROSSE, WI (W-CENTRAL)	0.974	0.922	0.762
951	15	MADISON, WI (DANE COUNTY)	0.977	0.979	0.762
951	46	MILWAUKEE SUBURBS, WI (SE)	1.010	1.008	0.762
951	4	MILWAUKEE, WI	1.008	1.009	0.762
951	12	NORTHWEST WISCONSIN	0.970	0.898	0.762
951	60	OSHKOSH, WI (E-CENTRAL)	0.974	0.911	0.762
951	14	SOUTHWEST WISCONSIN	0.960	0.888	0.762
951	36	WAUSAU, WI (N-CENTRAL)	0.971	0.898	0.762
5530	21	WYOMING	0.988	0.938	0.641

Note: Work GPCI is the 1/4 work GPCI required by OBRA 89.

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TABLE 2

GEOGRAPHIC PRACTICE COST INDICES BY STATE

STATE	WORK	PRACTICE EXPENSE	MALPRACTICE
ALABAMA	0.975	0.875	0.824
ALASKA	1.106	1.255	1.042
ARIZONA	0.995	0.984	1.255
ARKANSAS	0.960	0.856	0.302
CALIFORNIA	1.038	1.162	1.370
COLORADO	0.999	0.988	0.683
CONNECTICUT	1.014	1.087	1.102
DELAWARE	1.026	1.018	0.664
DIST. OF COLUMBIA	1.059	1.168	0.922
FLORIDA	0.988	0.951	1.258
GEORGIA	0.965	0.921	0.752
HAWAII	1.003	1.094	1.025
IDAHO	0.967	0.931	0.889
ILLINOIS	1.018	1.046	1.458
INDIANA	0.987	0.927	0.529
IOWA	0.973	0.914	0.666
KANSAS	0.958	0.906	1.134
KENTUCKY	0.976	0.886	0.667
LOUISIANA	0.983	0.929	0.913
MAINE	0.948	0.931	0.716
MARYLAND	1.033	1.073	0.921
MASSACHUSETTS	1.000	1.111	0.855
MICHIGAN	1.032	1.027	1.447
MINNESOTA	0.999	0.971	0.748
MISSISSIPPI	0.962	0.855	0.650
MISSOURI	0.970	0.914	1.247
MONTANA	0.967	0.926	0.718
NEBRASKA	0.960	0.883	0.435
NEVADA	1.022	1.093	1.144
NEW HAMPSHIRE	0.962	1.011	0.602
NEW JERSEY	1.035	1.103	1.153
NEW MEXICO	0.981	0.925	0.767
NEW YORK	1.037	1.131	1.547
NORTH CAROLINA	0.965	0.890	0.378
NORTH DAKOTA	0.965	0.895	0.688
OHIO	0.991	0.946	0.920
OKLAHOMA	0.969	0.911	0.516
OREGON	0.981	1.007	0.951
PENNSYLVANIA	0.997	0.978	1.268
PUERTO RICO	0.882	0.763	0.466
RHODE ISLAND	1.009	0.998	0.734
SOUTH CAROLINA	0.971	0.874	0.448
SOUTH DAKOTA	0.951	0.857	0.688
TENNESSEE	0.969	0.896	0.407

GEOGRAPHIC PRACTICE COST INDICES BY STATE

STATE	WORK	PRACTICE EXPENSE	MALPRACTICE
TEXAS	0.983	0.926	0.530
UTAH	0.993	0.952	0.739
VERMONT	0.942	0.941	0.533
VIRGINIA	0.990	0.971	0.632
VIRGIN ISLANDS	1.000	1.000	1.000
WASHINGTON	1.009	1.008	1.064
WEST VIRGINIA	0.970	0.903	0.688
WISCONSIN	0.985	0.948	0.762
WYOMING	0.988	0.938	0.641

Note: Work GPCI is the 1/4 work GPCI required by OBRA 89.

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Addendum D—Information for Obtaining Sources of Data Underlying Physician Fee Schedule

A. NTIS/GPO Documents

National Technical Information Service (NTIS); phone 1–800–336–4700, or (703) 487–4650, Springfield, VA 22161.

Government Printing Office (GPO); phone (202) 783–3238 for orders, (202) 275–3050 for service inquiries, (202) 275–3054 for complaints; mail to Superintendent of Documents, U.S.G.P.O., Washington, DC 20402.

1. Harvard Phase I Volumes, NTIS:
Volume I, Executive Summary, PB89–101828
Volume II, Data description and analysis, PB89–101836
Volume III, Results and conclusions for surveyed procedures, PB89–101844
Volume IV, Copies of surveys and other information, PB89–101851
Volume IVA, Visit and consultation methodology and results, PB89–164412
Volume V, Documentation for the data tape, PB89–101869
Volume VI, Final values and components, PB89–164420
Survey data tape (including Volume IV and Volume V documentation), PB89–101810
Phase I final values data tape, PB89–164404

2. Harvard Phase II Volumes, NITS:
Volume I, Executive Summary, PB91–172189
Volume II, Final Report, PB91–172197
Volume III, Appendices, PB91–172205
Volume IV, Data Files Documentation, PB91–172213
Volume V, Data Files (paper copy), PB91–172221
Data Files (diskette), PB91–507251
Five-volume Set, PB91–172171

3. October 1989 Reports to Congress "Medicare Physician Payment" (HCFA Pub. No. 03287); composed of three reports:
—"Volume and Intensity of Physician Services"
—"Relative Value Scales for Physician Services" and
—"Implementation of a National Fee Schedule"
NTIS accession # PB90–148370
GPO stock number 017–060–00314–6

4. Center for Health Economics Research (CHER) report on "Geographic Variation in Surgical Fees," NTIS PB90–122466.

5. Center for Health Economics Research (CHER) report on "Global Fees for Surgery," NTIS PB91–113498.

6. Urban Institute GPCI report "The Geographic Medicare Index: Alternative Approaches;" NTIS PB89–216592.
Supplement to "The Geographic Medicare Index: Alternative Approaches," Tuesday, September 4, 1990 **Federal Register**, Vol. 55 No. 171; NTIS PB91–113506

7. Urban Institute Report "Refining the Malpractice Geographic Practice Cost Index: February 1991;" NTIS PB91–155218.
Personal computer diskette (tables and documentation); NTIS PB91–506899

8. "Model Fee Schedule," Tuesday September 4, 1990 **Federal Register**, Vol. 55 No. 171.
GPO stock number 069–001–00023–8

B. Documents from Other Sources

1. Physician Payment Review Commission Visit Coding Recommendations—
Physician Payment Review Commission, 2120 L Street, NW., Suite 510, Washington, DC 20037.

2. Harvard Phase II Study for Dermatology Services—
American Academy of Dermatology, 1567 Maple Avenue, P.O. Box 3116 Evanston, Illinois 60204–3116, Phone: (708) 869–4382.
Attention: Raymond W. Harrington, Jr., Assistant Executive Director, Division of Health Policy and Public, Affairs.

3. Harvard Phase II Study for Pathology Services—
College of American Pathologists, 1101 Vermont Avenue, NW., Suite 604, Washington, DC 20005, Phone: (202) 371–6617.
Attention: Professional Relations

4. Harvard Phase II Study for Psychiatry Services (Contract 278–87–0024, NTIS accession number pending)—
National Institute of Mental Health, Division of Applied and Services Research, 5600 Fishers Lane, Room 18–C–14, Rockville, Maryland 20857, Phone: (301) 443–4233.
Attention: Paul Widem.

5. Harvard Phase II Study for Ophthalmology Services—
American Academy of Ophthalmology, 1101 Vermont Avenue, NW, Suite 300, Washington, DC 20005, Phone: (202) 737–6662.
Attention: Stephanie Mensh, Assistant Director for Federal, Economic Policy.

Addendum E—CPT Definitions for Visit Codes

The descriptors for office and outpatient medical services, inpatient hospital visits, and consultations contained in this Addendum have been approved by the CPT Editorial Panel for pilot testing. Pilot testing began in January 1991 and is expected to be completed in April 1991.

This addendum represents the Editorial Panel's deliberations on generic descriptors and is not intended to be a stand–alone document. Specialty specific examples, which will assist physicians in application of these generic descriptors, are under development by the CPT Editorial Panel and will be an important component of the revised coding system for both pilot testing and implementation purposes.

These generic descriptors do not address the entire scope of the visit and consultation services. Additional work is underway on several outstanding issues including—
- Emergency department services;
- Observation unit services;
- Home medical services;
- Skilled and other nursing facility services;
- Preventive medicine; and
- Ophthalmology medical services.

We anticipate, however, that descriptors for these services will follow a similar format.

Physicians participating in the pilot testing of the proposed CPT visit and consultation codes and using codes that include time in the code descriptor or are coding a hypothetical visit summary, should note that the stated times do not include the time it would take to complete a procedure that is performed at the time of the visit if the procedure can be separately reported (for example, arthrocentesis).

These physicians should also review carefully the definition of "Initial Inpatient Hospital Care" and note that all visit and consultation services provided by a physician in conjunction with an admission are considered part of initial inpatient hospital care when performed within 24 hours before admission.

Definitions

Certain key words and phrases are used throughout the proposed visit and consultation codes. To reduce the potential for differing interpretations and to increase the consistency of reporting by physicians in differing specialties, the CPT Editorial Panel developed definitions for those key words and phrases.

History

The extent of the history obtained by a physician relates to the amount of work and the duration of time required to perform a given level of service. Consequently, the extent of the history is a key element in distinguishing one level of service from another. The proposed codes recognize four types of history that are defined as follows:

- Problem Focused—chief complaint; brief history of present illness or problem.
- Expanded Problem Focused—chief complaint; brief history of present illness; problem pertinent system review.
- Detailed—chief complaint; extended history of present illness; extended system review; pertinent past, family and social history.
- Comprehensive—chief complaint; extended history of present illness; complete system review; complete past, family and social history.

Examinations

The extent of the examination obtained by a physician relates to the amount of work and the duration of time required to perform a given level of service. Consequently, the extent of the examination is a key element in distinguishing one level of service from another. The proposed codes recognize four types of examination that are defined as follows:

- Problem Focused—an examination that is limited to the affected body area or organ system.
- Expanded Problem Focused—an examination of the affected body area or organ system and other symptomatic or related organ systems.

- Detailed—an extended examination of the affected body area(s) and other symptomatic or related organ system(s).
- Comprehensive—a complete single system specialty examination or a complete multi-system examination.

Appropriate Counseling

Counseling consistent with the nature of the problem and the patient's and family's needs.

Dimensions of Counseling

A discussion with the patient and family or both concerning one or more of the following areas:
- Diagnostic impressions.
- Prognosis.
- Risks and benefits of management (treatment) options.
- Instructions for management (treatment) and follow-up.
- Importance of compliance with chosen management (treatment) option.
- Risk factor reduction.
- Patient and family education.

Severity

The potential for or the existence of significant complications, prolonged functional impairment, organ failure, and mortality.

Problem

Disease, condition, illness, injury, symptom, sign, finding, complaint, or other reason for encounter, with or without a diagnosis being established at the time of the encounter.

Self-limited

A problem that runs a definite and proscribed course, is transient in nature and is not likely to permanently alter health status, for example, a cold or simple contact dermatitis.

Straightforward

Presenting in a frank and clear manner; clear cut.

New Patient

An encounter with a patient who has not received any professional service from the physician for any problem within the past 3 years.

Established Patient

An encounter with a patient who has received professional services from the physician for any problem, within the past 3 years. If a physician is on call for or covering for another physician, the patient's encounter will be classified as an established patient visit. If a patient would have been new to the physician who is not available, the patient's encounter may be classified as a new patient visit.

Initial Inpatient Hospital Care

New or Established Patient

The first hospital inpatient encounter with the patient by the admitting physician. If the patient is admitted to the hospital in the course of an encounter in another site of service (for example, hospital emergency room, physician's office, or skilled nursing facility) all visit and consultation services furnished by the physician in conjunction with that admission are considered part of the initial hospital care when performed within 24 hours before admission. The inpatient care level of service reported by the admitting physician must encompass the services he or she furnished in the other sites of service as well as those services furnished in the inpatient setting. Visit and consultation services furnished in other sites that are related to the admission must not be reported separately.

Consultation

A consultation is a type of evaluation/management service furnished by a physician whose opinion or advice is requested by a physician or other appropriate source for further evaluation and management of a specific problem. A consultant may initiate diagnostic and therapeutic services.

The request for a consultation from the attending physician or other appropriate source and the need for consultation must be documented in the patient's medical record. The consultant's opinion and any services that were ordered or performed must also be documented in the patient's medical record and communicated to the attending physician or other appropriate source.

Patient and family initiated requests for "consultations" are not reported using the initial consultation or office visits, as appropriate. If a confirmatory consultation is required, for example, by a third party payor, the modifier—32 (Mandated services) must also be reported. Any specifically identifiable procedure performed on or after the date of the consultation must be reported separately.

Evaluation/management services of a physician following the transfer of the total care of the patient to him or her, do not constitute a consultation. These services must be reported using the appropriate level of service code.

If a consultant participated in the care of a patient in the hospital, (that is, furnishes concurrent care) for one or more conditions, the physician must report the services after the completion of the consultation using the appropriate subsequent hospital care code. In the office setting, the appropriate established patient code must be used.

Follow-up Consultation

If a consultant needs to see a patient more than once before an opinion is rendered, the consultant must report the services subsequent to the initial consultation, using the appropriate follow-up consultation codes. If a consultant participates in the care of a patient in the hospital, (that is, furnishes concurrent care) for one or more conditions, the physician must report the services subsequent to the completion of the consultation using the appropriate subsequent hospital care code. In the office setting, the appropriate established patient code must be used.

Concurrent Care

The furnishing of similar services, for example, hospital visits, to the same patient by more than one physician on the same day.

Office and Other Outpatient Medical Services

The following codes must be used to report the services furnished to patients in the physician's office or in an outpatient or other ambulatory facility. A patient is considered an outpatient until an inpatient admission is made to a health care facility.

Medical services represented by these codes encompass wide variations in skill, effort, time, responsibility, and medical decisionmaking to prevent, diagnose and treat illness, as well as to promote optimal health. The levels of service are classified as "new patient" and "established patient" (see the definitions contained in this Addendum). Please note that there are 5 levels in each category, but that the levels are not interchangeable. That is, the first level in the new patient classification does not have the same definition or content of service as the first level of the established patient classification.

Office and Other Outpatient Medical Services

New Patient (ON005–ON013)

Pilot Test Code

ON005

Evaluation and management of one or more self-limited or minor problems. This level of service requires: a problem focused history, a problem focused examination, and appropriate counseling.

Medical decisionmaking is straightforward, diagnostic testing is

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usually limited, and coordination of care with other providers or agencies is rarely necessary. Physicians, on average, spend 10 minutes face-to-face with the patient and family.

ON007

Evaluation and management of one or more problems of low to moderate severity. This level of services requires: an expanded problem focused history, an expanded problem focused examination, and appropriate counseling.

Medical decisionmaking is straightforward, diagnostic testing is usually limited and coordination of care with other providers or agencies is rarely necessary. Physicians, on average, spend 20 minutes face-to-face with the patient and family.

ON009

Evaluation and management of one or more problems of moderate severity. This level of service requires: a detailed history, a detailed examination, and appropriate counseling.

Medical decisionmaking is of low complexity and includes considering a limited number of diagnoses or weighing a limited number of management options. Diagnostic testing is usually limited and coordination of care with other providers or agencies is occasionally necessary. Physicians, on average, spend 30 minutes face-to-face with the patient and family.

ON011

Evaluation and management of one or more problems of moderate to high severity. This level of service requires: a comprehensive history, a comprehensive examination, and appropriate counseling.

Medical decisionmaking is moderately complex and includes considering multiple diagnoses or weighing multiple management options. Diagnostic testing may be extensive and coordination of care with other providers or agencies is frequently necessary. Physicians, on average, spend 45 minutes face-to-face with the patient and family.

ON013

Evaluation and management of one or more problems of moderate to high severity. This level of service requires: a comprehensive history, a comprehensive examination, and appropriate counseling.

Medical decisionmaking is highly complex, requires extensive skill and judgment, and includes considering multiple diagnoses or weighing multiple management options. Diagnostic testing may be extensive and coordination of care with other providers or agencies is frequently necessary. Physicians, on average, spend 60 minutes face-to-face with patient and family.

Established Patient (OE015–OE023)

OE015

Evaluation and management of one or more minimal problems, which may not require the presence of a physician, but which is performed under the physician's supervision (for example, for an injection, dressing change, blood pressure monitoring). On average, 5 minutes are spent performing or supervising these services with the patient and family.

OE017

Evaluation and management (including follow-up and periodic re-evaluation) of one or more self-limited or minor problems. This level of service requires: a problem focused history, a problem focused examination, or appropriate counseling, or any combination of these services.

Medical decisionmaking is straightforward, diagnostic testing is usually limited, and coordination of care with other providers and agencies is rarely necessary. Physicians, on average, spend 10 minutes face-to-face with the patient and family.

OE019

Evaluation and management (including follow-up and periodic reevaluation) of one or more problems of low to moderate severity. This level of service requires: an expanded problem focused history, a expanded problem focused examination, or appropriate counseling, or any combination of these services.

Medical decisionmaking is of low complexity and includes considering a limited number of diagnoses or weighing a limited number of management options. Diagnostic testing is usually limited and coordination of care with other providers or agencies is occasionally necessary. Physicians, on average, spend 15 minutes face-to-face with the patient and family.

OE021

Evaluation and management (including follow-up and periodic re-evaluation) of one or more problems of moderate to high severity. This level of service requires: a detailed history, a detailed examination, or appropriate counseling, or any combination of these services.

Medical decisionmaking is moderately complex and includes considering multiple diagnoses or weighing management options. Diagnostic testing may be extensive and coordination of care with other providers or agencies is frequently necessary. Physicians, on average, spend 25 minutes face-to-face with the patient and family.

OE023

Evaluation and management (including follow-up and periodic re-evaluation) of one or more problems of moderate to high severity. This level of service requires: a comprehensive history, a comprehensive examination, or appropriate counseling, or any combination of these services.

Medical decisionmaking is highly complex, requires extensive skill and judgement, and includes considering multiple diagnoses or weighing multiple management options. Diagnostic testing may be extensive and coordination of care with other providers or agencies is frequently necessary. Physicians, on average, spend 40 minutes face-to-face with the patient and family.

Initial Inpatient Hospital Care New or Established Patient (IH110–IH115)

IH110

Evaluation and management of a patient admitted with one or more problems of low severity. This level of service requires: A comprehensive history, a comprehensive examination, and appropriate counseling.

Medical decisionmaking is straightforward or of low complexity and includes considering a limited number of diagnoses or weighing a limited number of management options. Diagnostic testing is usually limited and coordination of care with the providers or agencies is rarely necessary. Physicians on average, spend 30 minutes, at the bedside or on the patient's floor unit.

IH113

Evaluation and management of a patient admitted with one or more problems of moderate severity. This level of service requires: a comprehensive history, a comprehensive examination, and appropriate counseling.

Medical decisionmaking is moderately complex and includes considering multiple diagnoses or weighing multiple management options. Diagnostic testing is usually moderate and coordination of care with other providers or agencies is occasionally necessary. Physicians, on average, spend 50 minutes, at the bedside or on the patient's floor or unit.

IH115

Evaluation and management of a patient admitted with one or more problems of high severity. This level of service requires: A comprehensive history, a comprehensive examination, and appropriate counseling.

Medical decisionmaking is highly complex, requires extensive skill and judgement, and includes considering multiple diagnoses or weighing multiple management options. Diagnostic testing may be extensive and coordination of care with other providers or agencies is frequently necessary. Physicians, on average, spend 70 minutes, at the bedside or on the patient's floor or unit.

Subsequent Inpatient Hospital Care (SH200–SH215)

All levels of service include reviewing the medical record and diagnostic studies and changes in the patient's status, (changes in history, physical condition and response to management) since the last assessment by the physician.

SH200

Re-evaluation and management of a patient who is stable, recovering or improving. This level of service requires: a problem focused interval history, a problem focused examination, or appropriate counseling, or any combination of these services.

Medical decisionmaking is straightforward or of low complexity and includes considering a limited number of diagnoses or weighing a limited number of management options. Diagnostic testing is usually limited and coordination of care with other providers or agencies is rarely necessary. Physicians on average, spend 15 minutes at the bedside or on the patient's floor or unit.

SH210

Re-evaluation and management of a patient who is inadequately responding to therapy or who has developed a minor complication. This level of service requires an expanded problem focused interval history, an expanded problem focused examination, or appropriate counseling, or any combination of these services.

Medical decisionmaking is moderately complex and includes considering multiple diagnoses or weighing multiple management options. Diagnostic testing is usually moderate and coordination of care with other providers or agencies is occasionally necessary. Physicians, on average, spend 25 minutes at the bedside or on the patient's floor or unit.

SH215

Re-evaluation and management of patient who is unstable or has developed a significant complication or a significant new problem. This level of service requires: a detailed interval history, a detailed physical examination, or appropriate counseling, or any combination of these services.

Medical decisionmaking is highly complex, requires extensive skill and judgement, and includes considering multiple diagnoses or weighing multiple management options. Diagnostic testing may be extensive and coordination of care with other providers or agencies is frequently necessary. Physicians on average, spend 35 minutes at the bedside or on the patient's floor or unit.

Initial Consultation Office or Inpatient (IC300–IC330)

IC300

A consultation for a patient with one or more problems of low severity. This level of service requires: a problem focused history, a problem focused examination, or appropriate counseling, or any combination of these services.

Medical decisionmaking is straightforward or of low complexity and includes considering a limited number of diagnoses or weighing a limited number of management options. The number of records and tests that are reviewed is limited, and it is rarely necessary to coordinate care with providers other than the attending physician. Physicians on average spend 30 minutes face to face with the patient and family.

IC____

During its February 1991 meeting, the CPT Editorial Panel voted to establish a fifth consultation code at the low end of the range with a face-to-face encounter time of 15 minutes. The wording of the description has not been finalized.

IC310

A consultation for a patient with one or more problems of moderate severity. This level of service requires: an expanded problem focused history, an expanded problem focused examination, or appropriate counseling, or any combination of these services.

Medical decisionmaking is straightforward or of low complexity and includes considering a limited number of diagnoses or weighing a limited number of management options. The number of records and tests that are reviewed is moderate, and it is occasionally necessary to coordinate care with providers other than the attending physician. Physicians on average, spend 40 minutes face to face with the patient and family.

IC320

A consultation for a patient with one or more problems of moderate to high severity. This level of service requires: a detailed history, a detailed examination, or appropriate counseling, or any combination of these services.

Medical decisionmaking is moderately complex and includes considering multiple diagnoses or weighing management options. The number of records and diagnostic tests that are reviewed is extensive, and it is frequently necessary to coordinate care with providers other than the attending physician. Physicians on average spend 60 minutes face to face with the patient and family.

IC330

A consultation for a patient with one or more problems of moderate to high severity. This level of service requires a comprehensive history, a comprehensive examination, or appropriate counseling, or any combination of these services.

Medical decisionmaking is highly complex, requires extensive skill and judgement, and includes considering multiple diagnoses or weighing multiple management options. The number of records and diagnostic tests that are reviewed is extensive, and it is frequently necessary to coordinate care with providers other than the attending physician. Physicians on average spend 80 minutes face to face with the patient and family.

Follow-Up Consultations

All levels of service include reviewing the medical record and diagnostic studies and changes in the patients' status (changes in history, physical condition and response to management), since the last assessment by the physician. Follow-up consultations may include a re-examination of the patient.

FC400

A follow-up visit by a consultant before the completion of his or her consultation and the rendering of an opinion for a patient with one or more problems of low severity. Medical decisionmaking is straightforward or of low complexity and includes considering a limited number of diagnoses or weighing a limited number of management options.

FC410

A follow-up visit by a consultant before the completion of his or her consultation and the rendering of an opinion for a patient with one or more problems of moderate severity. Medical decisionmaking is moderately complex

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and includes considering multiple diagnoses or weighing multiple management options.

PC415

A follow-up visit by a consultant before the completion of his or her consultation and the rendering of an opinion for a patient with one or more problems of high severity. Medical decisionmaking is highly complex and includes considering multiple diagnoses or weighing multiple management options.

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Part IV

Department of Justice

Technical Assistance Grants To Promote Voluntary Compliance With the Americans With Disabilities Act; Notice of Availability of Funds and of Solicitation for Grant Applications

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DEPARTMENT OF JUSTICE

The Americans With Disabilities Act Technical Assistance Grants To Promote Voluntary Compliance With the Act

AGENCY: Office on the Americans with Disabilities Act (OADA), Coordination and Review Section, Civil Rights Division, U.S. Department of Justice.

ACTION: Notice of availability of funds and of solicitation for grant applications.

SUMMARY: The Office on the Americans with Disabilities Act of the United States Department of Justice (DOJ) announces the availability of up to $2.5 million to conduct projects to inform individuals with disabilities and covered entities about their rights and responsibilities under titles II and III of the Americans with Disabilities Act of 1990 (ADA), and to facilitate voluntary compliance with the regulations implementing titles II and III of the ADA. Grants will be awarded to selected applicants who propose cost-effective and efficient approaches of disseminating information, and producing voluntary compliance with the requirements of the ADA. Proposals should focus on encouraging voluntary compliance to reduce the need to file complaints or conduct litigation. DOJ encourages covered entities and persons with disabilities to work together to achieve compliance on a voluntary basis and will favor solicitations for grant funds that are joint ventures. It is anticipated that grants awarded will range in size from $85,000 to $200,000.

DATES: All applications must be received by the close of business (5:30 p.m. EDT) on July 22, 1991.

ADDRESSES: Applications shall be submitted to the Office on the Americans with Disabilities Act, 320 First Street NW., room 854, Washington DC 20035.

FOR FURTHER INFORMATION CONTACT: James D. Bennett or Philip L. Breen, Office on the Americans with Disabilities Act, Civil Rights Division, U.S. Department of Justice, P.O. Box 66118, Washington, DC 20035–6118 at (202) 307–2220 or (202) 307–2228, respectively, or (202) 514–0383 (TDD). This notice and other related information, with exception of standard forms, is available in accessible formats, i.e., braille, large print, audiotape, electronic file, computer disk, and electronic bulletin board (202) 514–6193.

BACKGROUND: On July 26, 1990, President Bush signed into law the landmark Americans with Disabilities Act of 1990, which provides comprehensive civil rights protections to individuals with disabilities in the areas of employment, public accommodations, transportation, State and local government services, and telecommunications.

The Americans with Disabilities Act provides individuals with disabilities civil rights protections that are parallel to those provided to individuals on the basis of race, color, national origin, sex, and religion. Title II of the ADA prohibits discrimination on the basis of disability in State and local government services. Title III prohibits discrimination on the basis of disability in public accommodations such as hotels, restaurants, theaters, and shopping centers, and in commercial facilities such as factories and office buildings.

Section 506 of the ADA requires the Department to render technical assistance to individuals and entities that have rights or duties under title II (subtitle A) (State and local government services) and title III (public accommodations). Under section 506(d), the Department of Justice has the authority to award grants to individuals and to nonprofit entities for the purpose of providing technical assistance.

Note that the term "covered entities" is used to refer to all businesses, institutions, State and local governments, and other organizations that have duties under titles II and III of the ADA.

PROGRAM DESCRIPTION: The program is designed to develop and implement cost-effective and efficient approaches for disseminating information about the rights of individuals and responsibilities of covered entities, and to bring about compliance with the ADA on a voluntary basis. Proposals should address the four key elements of the program discussed below.

I. Targeted Populations and Issues

The activities conducted under the grant should be directed to persons with disabilities, operators of public accommodations and commercial facilities, State or local governmental entities providing public services, or a combination of these three groups. Proposals should define the characteristics of the population group(s) targeted by describing such factors as location, disability, type of governmental unit, or business type.

The Department is particularly interested in soliciting applications that focus on developing methods for making readily achievable accessibility modifications and providing a full range of auxiliary aids in six types of covered entities:

- Restaurants;
- Hotels and motels;
- Retail stores;
- Hospitals and health care facilities;
- Daycare centers; and
- Places of assembly (e.g. stadiums, theaters, and convention centers.)

In addition, the Department encourages applications that address:

- The training of law enforcement personnel so that they more effectively interact with persons with epilepsy or other disabilities, whose behavior is sometimes mistakenly interpreted as disorderly conduct induced by drug or alcohol use; or
- The provision of auxiliary aids and modifications that will enable persons with disabilities to participate in courses and examinations.

Applicants should explain their reasons for targeting particular populations and issues. Applicants must submit information that demonstrates that they have access to the targeted population and that the applicant dan effectively reach the targeted population. Applicants are encouraged to address how businesses and persons with disabilities can be involved jointly in reaching the targeted population.

II. Program Strategy

Proposals must discuss the components of the program strategy, detail the reasons supporting the choice of each component, and explain how each component will contribute to the achievement of the overall objective of cost-effective and efficient dissemination of information and compliance assistance to the targeted population. Discussions of the strategy and supporting rationale should be clear, concise, and based on sound evidence and reasoning.

For most entities that are covered by titles II and III of the ADA, the ADA becomes effective on January 26, 1992. In anticipation of the effective date, DOJ wants accurate information and useful technical assistance to be made available to covered entities and persons with disabilities as soon as possible. Applicants should describe how they will reduce startup time and begin making information and assistance available soon after the grant award date. Start-up of various grant activities might be staggered to allow the applicant to concentrate on getting initial activities going quickly.

Although not required, several program activities are suggested.

- *Achieving specific cases of voluntary compliance.* Applicants may focus their attention on providing information to individual covered entities on how to achieve compliance in specific facilities. The Department considers this type of activity to be very important. Applicants may also want to consider how their efforts to create the capability to achieve specific cases of voluntary compliance might be "leveraged," that is, how efforts sponsored with grant funds might be used to create the capacity to achieve voluntary compliance in a wider range of similarly situated covered entities over time at no additional cost to the government.
- *Material Development and Dissemination.* Applicants may consider the development and dissemination of material explaining the ADA. If applicants plan to disseminate basic information about the ADA, they are required to use material produced by DOJ and other Federal agencies, as the development of new materials of this type is time consuming and expensive and would merely duplicate existing information that is generic in nature. (DOJ will provide grantees with a camera-ready copy of DOJ-produced materials to facilitate printing such materials.) The development of new, more specialized material is encouraged where such information is necessary to provide a particular targeted population with more specialized information. For example, a pamphlet could be developed to provide strategies on making "readily achievable" changes to physical barriers commonly found in a particular type of covered entity. All materials that are used or developed must be approved by the Department of Justice in advance of use, and all materials developed must be made available to the public in accessible formats. All videotape and other audiovisual material must be captioned.
- *Telephone information lines.* In an effort to provide localized assistance relevant to particular populations, and reduce the burden on DOJ's ADA Information Line, applications for grants may include telephone information lines. Proposals should discuss how overlap with other projects that use telephone lines will be eliminated and what methods will be used to ensure a high standard of accuracy in the information given out over the telephone. Proposals also should present a plan explaining how the information line will be publicized to reach the targeted population. All information lines must be available in both voice and TDD.
- *Training.* Applicants may develop a variety of training courses to facilitate compliance with the ADA. Proposals should describe to whom the training activities will be directed, how the targeted population will be reached, and how the training will result in concrete voluntary compliance efforts. Applicants are encouraged to involve businesses and the disability community jointly in training. Applicants may also want to consider how their training efforts might be "leveraged," that is, how efforts sponsored with grant funds might be used to create a training capability that can then be marketed to a larger audience without additional cost to the government. Proposals must indicate the type of training that will be offered, the training objectives, the numbers of persons to be trained, and how skill levels attained will be verified.
- *Development of model programs.* Applicants may develop a model or exemplary program, and then use that program as an example to stimulate the voluntary compliance of others. Each proposal must indicate the process by which a model is selected or created, and, most importantly, describe in detail the procedure the applicant intends to use in order to promote the model as an example for others to replicate. Types of activities amenable to treatment as model or exemplary programs include, but are not limited to, dispute resolution techniques and programs to reach populations with special communication needs.
- *Dispute resolution.* Applicants are encouraged to develop programs that will offer a means of informal, negotiated resolution of differences between persons with disabilities and entities with compliance obligations under the Act. The Department believes that many of the techniques and procedures relevant to voluntary dispute resolution already exist. Applicants are encouraged to utilize existing techniques and procedures, modifying them where appropriate to make them more useful in the context of the ADA.

III. Coordination With Other Federally Sponsored ADA-Related Activities

An important aspect of proposals submitted is a description of how the applicant will coordinate, where appropriate, its proposed activities with other Federally sponsored ADA activities, including those of the National Institute of Disability Rehabilitation Research (NIDRR), the Rehabilitation Services Administration (RSA), and the Equal Employment Opportunity Commission (EEOC). The purpose of this coordination is to avoid duplication of effort and enable applicants to refer to and otherwise use the resources sponsored by the agencies described below.

NIDRR proposes to establish ten Regional Disability and Business Accommodation Centers (RDABACs). These Centers will address a wide range of issues related to the implementation of the ADA, but will place particular emphasis on issues relating to employment and public accommodations. At the same time, NIDRR will support three projects to produce a core set of training materials, resources, and references that will be used by the centers in their technical assistance efforts and by others providing training and technical assistance related to the employment, public accommodations, and telecommunications requirements of the ADA. NIDRR is also planning to develop national peer training projects to enhance knowledge of the ADA. For further information regarding these and other programs operated by NIDRR, contact: David Esquith, (Tel. (202) 732–5801 (voice) or TDD (202) 732–5316.)

RSA proposes to sponsor two initiatives that will provide services for individuals with disabilities. One RSA initiative will be to sponsor statewide pilot projects to provide protection and advocacy services to certain individuals with severe disabilities. RSA will give preference to proposals that provide protection and advocacy services aimed at helping those individuals with severe disabilities who receive independent living services under title VII of the Rehabilitation Act obtain those services and pursue rights under the Rehabilitation Act, the Fair Housing Amendments Act of 1988, the ADA, and other applicable Federal, State, and local laws necessary to achieve their independent living goals. Also, RSA has proposed an initiative to provide short-term training courses for preservice educators and postemployment trainers of personnel working in State vocational rehabilitation agencies, centers for independent living, client assistance programs, rehabilitation facilities, and community-based programs for individuals with disabilities. National in scope, the proposed programs would be initiated after the publication of the final regulations for titles I and III of the ADA. For more information regarding these and other related programs operated by RSA, contact Beverly Stafford, (Tel. (202) 732–1331 (voice). TDD users may contact Ms. Stafford via the Federal Dual Party Relay Service at 1–800–877–8339 (in Washington, DC use (202) 708–9300) between 8 a.m. and 7 p.m. EST.

The Equal Employment Opportunity Commission (EEOC) and DOJ are planning to jointly fund a contract to train a cross-section of persons with disabilities. The contractor will be

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responsible for holding workshops, conducting training, and providing follow- up technical assistance. The objectives of the contract are to assist the target group of disabled persons to understand and communicate the requirements of titles I, II, and III of the ADA, to assist the target group to develop specific training projects to educate other persons with disabilities, employers, operators of public accommodations and commercial facilities, and State and local governments, and to assist the target group to develop skills in alternative dispute resolution techniques and other informal methods of resolving disagreements. For more information regarding this contract contact: Chris Bell, (Telephone (202) 663–4177 (voice), (202) 663–4494) or James Bennett, (Telephone (202) 307–2220 (voice), (202) 514–0383 (TDD)).

In addition, applicants should be cognizant of programs related to the ADA sponsored by State and local government agencies, and, where possible, seek to coordinate their proposed activities with existing State and local government programs.

IV. Evaluation of the Strategy

One goal of this program is to determine what information dissemination, education, and compliance assistance strategies are most effective. In planning future efforts, the Office on the ADA needs to know what works and what does not. It is therefore essential that each proposal describe reliable criteria to evaluate the effectiveness of the program at the conclusion of the period of performance.

Each proposal must explain the methods the applicant intends to use to measure the effectiveness of the program, and how the proposed evaluation criteria will indicate to what degree the program succeeded in meeting its goals.

Selection Criteria: Prospective applicants are advised that the awards will be made by the Assistant Attorney General for Civil Rights and after careful evaluation of each proposal by a panel comprised of Civil Rights Division personnel. The panel results are advisory in nature and not binding. Each panelist will evaluate the proposals for acceptability with emphasis on the factors enumerated below.

Program Proposal Evaluation Point System

1. Program Design (55 points)

Proposals will be evaluated on the degree to which they reflect sound program design and cost-effective and efficient strategies for dissemination of information to targeted population(s), the extent to which the program design addresses important ADA issues, and the extent to which voluntary compliance is achieved as a result of the proposed program activities. Areas that will be closely examined will include the following:

A. Evidence of an in-depth knowledge of the ADA, an understanding of the importance of the ADA issues being addressed, and familiarity with the specific nature of the targeted population and the specific information and assistance the population needs to help it bring about voluntary compliance. (15 points)

B. The description of a strategy to disseminate information and provide compliance assistance to members of the targeted group(s) and the rationale supporting the choice of strategy(ies). The description of the strategy to be employed by the applicant must include an articulation of the project's goals and objectives, a description of the project's major activities, events, and products, and a timetable for the accomplishment of the project's goals. Applicants should explain how proposed project activities will be coordinated, if appropriate, with other Federal, State, and local ADA activities. Preference will be given to proposals that:

- Include joint projects between the disability community and organizations representing covered entities;
- Reflect an ability to begin program activities in an expedited manner; and
- Address one or more of the targeted issues and covered entities highlighted in the section entitled Targeted Population and Issues. (25 points)

C. The methods proposed by the applicant to measure the effectiveness of the program, and how the proposed evaluation criteria will document to what degree the program succeeds in meeting its goals. (15 points)

2. Administrative Capability. (20 points)

Proposals will be rated in terms of the capability of the applicant to select and reach an appropriate target population and implement the program strategy, coordination, and evaluation components of the proposal. *(No letters of reference)*

A. Evidence of proven organizational ability to provide high quality results, including:

1. Past and present grants and contracts; and

2. Specific experience implementing similar projects. (10 points)

B. Evidence that the applicant will be able to implement the project and complete it on schedule. (10 points)

3. Staff Capability. (25 points) *(No Letters of Reference)*

Applications will be evaluated in terms of:

A. The degree to which the duties outlined for grant-funded positions appear appropriate to the work that will be conducted under the award. (5 points)

B. The degree to which the qualifications of proposed staff for grant-funded positions appear to match the requirements of these positions. Applicants should submit resumes and job descriptions. (10 points)

C. The degree to which the applicant demonstrates that proposed staff has successfully carried out programs or work of a similar nature in the past. (10 points)

Eligible applicants: This grant competition is open to individuals and to not-for-profit organizations, including community-based disability organizations, national and local organizations representing persons with disabilities, trade associations or their subsidiaries, other organizations representing entities covered by the ADA, State and local government agencies, and organizations representing State and local governments or their employees.

Grant period and award amount: The period of performance will be twelve months from the date of grant award. A total of up to $2,500,000 is available; it is anticipated that a number of grants will be awarded, with most grants ranging in size from $85,000 to $200,000.

Postaward monitoring: The Department intends to provide grantees with the maximum amount of postaward guidance and technical assistance possible within budget and staff constraints. Applicants are advised that DOJ staff will make periodic site visits to provide grantees with guidance and technical assistance and to monitor the progress of the grant. The Office of Justice Programs (OJP), a component of the Department of Justice, will provide financial management and other services in support of the OADA in the administration of this program. Applicants are advised that copies of the quarterly reports sent to OJP must also be sent to the OADA.

Application deadline: All applications must be received by the close of business (5:30 p.m. EDT) on July 22, 1991 at the Office on the Americans with Disabilities Act, 320 First Street NW., room 854, Washington, DC 20035.

Application requirements: Applicants must submit an original and eight copies of a signed SF 424 (Revision 1988) with the following attachments:

- A narrative program description that addresses (Narrative must be limited to twenty (20) pages):

(1) The target population and issues;

(2) The program strategy including a description of the project's goals and objectives, major activities, events and products, and a timetable for the accomplishment of the project's goals;

(3) Coordination with other Federally sponsored ADA related activities; and

(4) The program evaluation strategy.

- A one page abstract of the proposal.
- A budget narrative required by the SF 424 (Revision 1988)
- Job descriptions for positions that are proposed to be funded under the grant.
- Resumes of individuals who will fill the grant positions.
- Certification regarding drug-free workplace requirements (OJP Form 4061/3 (2/89)).
- Certification regarding debarment, suspension, and other responsibility matters (OJP Form 4061/2 (Rev 2/89)).
- Certification regarding lobbying (SF #LLL).

Dated: May 30, 1991.

John R. Dunne,

Assistant Attorney General, Civil Rights Division.

[FR Doc. 91–13165 Filed 6–4–91; 8:45 am]

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Part V

Environmental Protection Agency

40 CFR Part 721
Significant New Uses of Certain Chemical Substances; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50587A; FRL-3876-2]

RIN 2070-AB27

Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a significant new use rule ("SNUR") under section 5(a)(2) of the Toxic Substances Control Act ("TSCA") for several chemical substances which were the subject of premanufacture notices (PMNs), and are subject to TSCA section 5(e) consent orders issued by EPA. This rule requires certain persons who intend to manufacture, import, or process these substances for a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing activity designated by this SNUR as a significant new use. The required notice will provide EPA with the opportunity to evaluate the intended use and, if necessary, prohibit or limit that activity before it can occur.

EFFECTIVE DATE: This rule shall be promulgated for purposes of judicial review at 1 p.m. Eastern Standard Time on June 19, 1991. The effective date of this rule is August 5, 1991.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, rm. EB-543-B 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: This SNUR will require certain persons to notify EPA at least 90 days before commencing any activity designated herein as a significant new use. The supporting rationale and background to this rule are more fully set out in the preamble to EPA's first SNURs issued under the Expedited Follow-Up Rule and published at 55 FR 17376 on April 24, 1990. This document promulgates SNURs for substances for which EPA originally proposed SNURs prior to the adoption of the expedited process. The original proposals have been revised and restructured in the new format established for regulation under 40 CFR part 721. The following table lists the substances that are the subjects of this rule, the citations to the original **Federal Register** publications and the redesignated citations in this rule.

Table.— Chemicals Subject to This Significant New Use Rule

[Publication History]

Chemical	Proposed CFR Cite	Publication Data	Redesignated
P-83-769	40 CFR 721.240	49 FR 38310, 9/28/84	40 CFR 721.860
P-83-817	40 CFR 721.300	49 FR 42960, 10/25/84	40 CFR 721.850
P-83-818	40 CFR 721.300	49 FR 42960, 10/25/84	40 CFR 721.850
P-83-906	40 CFR 721.240	49 FR 38303, 9/28/84	40 CFR 721.1029
P-83-908	40 CFR 721.104	49 FR 38303, 9/28/84	40 CFR 721.315
P-83-909	40 CFR 721.100	49 FR 38303, 9/28/84	40 CFR 721.305
P-83-910	40 CFR 721.125	49 FR 38303, 9/28/84	40 CFR 721.425
P-83-1023	40 CFR 721.140	49 FR 36880, 9/20/84	40 CFR 721.1600
P-83-1085	40 CFR 721.54	50 FR 34500, 8/26/85	40 CFR 721.235
P-84-7	40 CFR 721.1017	51 FR 1396, 1/13/86	40 CFR 721.2150
P-84-176	40 CFR 721.65	50 FR 12046, 3/27/85	40 CFR 721.285
P-84-180	40 CFR 721.65	50 FR 12046, 3/27/85	40 CFR 721.285
P-84-181	40 CFR 721.65	50 FR 12046, 3/27/85	40 CFR 721.285
P-84-182	40 CFR 721.65	50 FR 12046, 3/27/85	40 CFR 721.285
P-84-183	40 CFR 721.65	50 FR 12046, 3/27/85	40 CFR 721.285
P-84-184	40 CFR 721.65	50 FR 12046, 3/27/85	40 CFR 721.285
P-84-341	40 CFR 721.76	51 FR 11591, 4/4/86	40 CFR 721.285
P-84-342	40 CFR 721.76	51 FR 11591, 4/4/86	40 CFR 721.285
P-84-343	40 CFR 721.76	51 FR 11591, 4/4/86	40 CFR 721.285
P-84-344	40 CFR 721.76	51 FR 11591, 4/4/86	40 CFR 721.285
P-84-417	40 CFR 721.440	50 FR 11391, 3/21/85	40 CFR 721.1425
P-84-1042	40 CFR 721.433	51 FR 10027, 3/24/86	40 CFR 721.1375
P-85-703	40 CFR 721.76	51 FR 22831, 6/23/86	40 CFR 721.285
P-86-83	40 CFR 721.175	51 FR 26557, 7/24/86	40 CFR 721.460
P-86-542	40 CFR 721.330	52 FR 26557, 3/25/87	40 CFR 721.1025

Consult the preamble to each proposal for further information on the objectives, rationale, and procedures for the rules and the basis for significant new use designations including provisions for developing test data.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.25.

II. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Other provisions for SNURs appear under subparts B, C, and D of 40 CFR part 721. (See 54 FR 31306, July 27, 1989.) These provisions describe standard significant new use designations, recordkeeping requirements, and expedited SNUR procedures. Rules on user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the

information submission requirements of section 5(d)(1) and 5(b), the exemptions authorized by section 5(h)(1), (2), (3), and (5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under sections 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUR notice. If EPA does not take action, EPA is required under section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28 and must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the import certification appears at 40 CFR part 707.

III. Background

The Agency proposed a SNUR for these substances which was published in the **Federal Register** of November 9, 1990 (55 FR 47286). The background of each PMN and the reasons for proposing the SNUR are set forth in the preamble to the proposed rule. The Agency received no public comment concerning the proposed rule. As a result EPA will promulgate these SNURs as in the proposed rule.

IV. Objectives and Rationale of this Rule

During review of the PMNs submitted for the chemical substances that are the subjects of this SNUR, EPA concluded that, for all except two of the substances, regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health or environmental effects of the substance. The basis for such findings is outlined in the preamble of the proposed rule for these substances. Based on these findings, section 5(e) consent orders requiring the use of appropriate controls were negotiated with the PMN submitters, and SNURs were proposed for such substances which are consistent with the provisions of the section 5(e) orders.

In the case of P-83-817 and P-83-818, for which the proposed uses are not regulated under a section 5(e) order, EPA determined that one or more of the criteria of concern established at 40 CFR 721.170 were met. EPA is promulgating SNURs for 25 specific chemical substances which have undergone premanufacture review to ensure the following objectives:

(1) EPA will receive notice of any company's intent to manufacture, import, or process a listed chemical substance for a significant new use before that activity begins.

(2) EPA will have an opportunity to review and evaluate data submitted in a SNUR notice before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for a significant new use.

(3) When necessary to prevent unreasonable risks, EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before a significant new use of that substance occurs.

(4) All manufacturers, importers, and processors of the same chemical substance which is subject to a section 5(e) order are subject to similar requirements.

V. Test Data and Other Information

EPA recognizes that section 5 of TSCA does not require persons to develop any particular test data before submission of a SNUR notice. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. The studies specified in the section 5(e) order may not be the only means of addressing the potential risks of the substance. SNUR notice submitters should be aware that the Agency will be better able to evaluate SNUR notices which provide detailed information on:

(1) Human exposure and environmental release that may result from the significant new use of the chemical substances.

(2) Potential benefits of the substances.

(3) Information on risks posed by the substances compared to risks posed by potential substitutes.

VI. Applicability of Proposed Rule to Uses Occurring Before Effective Date of the Final Rule

For a use to be a significant "new" use, EPA must determine that the use is not ongoing. When the PMN submitter begins manufacture or import of the substances, the submitter must send EPA a Notice of Commencement of Manufacture/Import (NOC) and the substances will be added to the Inventory. In those cases where a section 5(e) order has been issued, the notice submitters are prohibited by the section 5(e) orders from undertaking activities which the Agency is designating as a significant new use. In addition, because most of these substances have CBI chemical identities and only a very few *bona fide* inquiries have been received for substances that have undergone PMN review, there is little chance that others are undertaking activities which the Agency is designating as a significant new use. Therefore, at this time, EPA has concluded that the uses are not ongoing. However, EPA recognizes in cases when chemical substances identified in these SNURs are added to the Inventory prior to their promulgation, the substances may be manufactured, imported, or processed by other persons for a significant new use as defined in this proposal before promulgation of the rule. Each chemical substance which is the subject of a SNUR in this document was originally proposed as noted in the table under SUPPLEMENTARY INFORMATION. These proposed rules were issued prior to the effective date of the Expedited Follow-Up Rule. These original proposals have been revised and restructured in the new format established for regulation under 40 CFR part 721 with terms that are generally equivalent to those in the original proposals. EPA believes that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of the publication of the original proposal rather than as of the effective date of the rule. If uses which had commenced between the date of the publication of the original proposal and the effective date were considered ongoing, rather than new, any person could defeat the SNURs by initiating a significant new use before the effective date. This would make it difficult for EPA to establish SNUR notice requirements. Thus, persons who begin commercial manufacture, import, or processing of the substances regulated through this SNUR will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA, not wishing to unnecessarily disrupt the activities of persons who begin commercial manufacture, import, or processing for a proposed significant new use before the effective date of the SNUR, has promulgated provisions to allow such persons to comply with this proposed SNUR before it is promulgated. If a person were to meet the conditions of advance compliance as codified at § 721.45(h) (53 FR 28354, July 17, 1988), the person will be considered to have met the requirements of the final SNUR

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for those activities. If persons who begin commercial manufacture, import, or processing of the substance between proposal and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

VII. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substances contained in this rule. The Agency's complete economic analysis is available in the public record for this rule (OPTS-50587A).

VIII. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS-50587A). The record includes basic information considered by the Agency in developing this rule. EPA will supplement the record with additional information as it is received. A public version of the record without any confidential information is available in the TSCA Public Docket Office from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in rm. NE-G004, 401 M St., SW., Washington, DC.

IX. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule would not be a "major" rule because it would not have an effect on the economy of $100 million or more, and it would not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this rule, EPA estimates that the cost for submitting a significant new use notice would be approximately $4,500 to $11,000, including a $2,500 user fee payable to EPA to offset EPA costs in processing the notice. EPA believes that, because of the nature of the rule and the substances involved, there would be few significant new use notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact would be limited because such factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule will likely be small businesses. However, EPA expects to receive few SNUR notices for the substances. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and have been assigned OMB control number 2070-0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA"

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: May 30, 1991.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding new § 721.235 to subpart E to read as follows:

§ 721.235 Halogenated-N-(2-propenyl)-N-(substituted phenyl) acetamide.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as halogenated-*N*-(2-propenyl)-*N*-(substituted phenyl) acetamide (P-83-1085) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (a)(3).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(g).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (e), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

3. By adding new § 721.285 to subpart E to read as follows:

§ 721.285 Certain acrylates.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as alkanetriol dimethacrylate, substituted (P-84-176); polyalkylene glycol monomethacrylate, substituted (P-84-180); polyalkyl alkanediol monoacrylate, substituted (P-84-181); alkanetriol polyalkylene glycol ester acrylate, substituted (P-84-182); alkylene glycol monomethacrylate, substituted (P-84-183); polyalkyl alkanediol monomethacrylate, substituted (P-84-184); 2-oxepanone, homopolymer, ester with 3-hydroxy-2,2-dimethylpropanoic acid (2:1), di-2-propenoate (P-84-341); 2-oxepanone, homopolymer, 2-propenoate, (tetrahydro-2-furanyl) methyl ester, (P-84-342); 2-oxepanone, homopolymer, 2-propenoate, ester with 2,2'-[oxybis (methylene)]bis(2-hydroxymethyl)-1,3-propanediol (P-84-343); 2-propenoic acid, [2-[1,1-dimethyl-2-[(1-oxo-2-propenyl)oxyethyl]-5-ethyl-1,3-dioxan-5-yl] methyl ester (P-84-344); and 2-propanol, 1-amino-, reaction products with melamine, polymer with 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane, 2-hydroxyethyl, acrylate-blocked (P-85-703), are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b)(concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(2), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), and (g)(2)(v). The statement "when spray applied" shall appear with the statements required under (g)(2)(ii) and (g)(2)(iv).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 720.80(o).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

4. By adding new § 721.305 to subpart E to read as follows:

§ 721.305 Aminophenol.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as aminophenol (P-83-909) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (a)(3).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(1)(i)(D) and (g)(2)(v). The provision of § 721.72(g) requiring placement of specific information in an MSDS does not apply when an MSDS is not required under § 721.72(c).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a), (b), (c), (d), (f), and (g).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

5. By adding new § 721.315 to subpart E to read as follows:

§ 721.315 Ethylated aminophenol.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as ethylated aminophenol (P-83-908) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (a)(3).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(1)(i)(D) and (g)(2)(v). The provision of § 721.72(g) requiring placement of specific information in an MSDS does not apply when an MSDS is not required under § 721.72(c).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a), (b), (c), (d), (f), and (g).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

6. By adding new § 721.425 to subpart E to read as follows:

§ 721.425 Anilino ether.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as anilino ether (P-83-910) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (a)(3).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(1)(i)(D) and (g)(2)(v). The provision of § 721.72(g) requiring placement of specific information in an MSDS does not apply when an MSDS is not required under § 721.72(c).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a), (b), (c), (d), (f), and (g).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

7. By adding new § 721.460 to subpart E to read as follows:

§ 721.460 Benzenamine, 3-chloro-2,6-dinitro-N,N-dipropyl-4-(trifluoromethyl)-.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified as benzenamine, 3-chloro-2,6-dinitro-*N,N*-dipropyl-4-(trifluoromethyl)-(P-86-83) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(3), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vi), (g)(1)(vii), (g)(1)(ix), (g)(2)(i), and (g)(2)(v). The provision of § 721.72(d) requiring that employees be provided with information on the location and availability of MSDSs does not apply when an MSDS is not required under § 721.72(c). The provision of § 721.72(g) requiring placement of specific information in an MSDS or label does not apply when an MSDS and label are not required under § 721.72(c).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 720.80(h).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(3), (b)(1), (b)(3), (c)(1), and (c)(3).

(b) *Specific requirements.* The provisions of subpart A of this part

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apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (f), (i), and (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

8. By adding new § 721.860 to subpart E to read as follows:

§ 721.860 Substituted bromothiophene.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted bromothiophene (P–83–769) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(4), (a)(5)(i), (a)(5)(ii), (a)(5)(iii), (a)(5)(iv), (a)(5)(v), and (a)(6)(i).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(1)(i)(D) and (g)(2)(iv). The provision of § 721.72(g) requiring placement of specific information in an MSDS does not apply when an MSDS is not required under § 721.72(c).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a), (b), (c), (d), (f), and (g).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

9. By adding new § 721.850 to subpart E to read as follows:

§ 721.850 [(Dinitrophenyl)azo]-[2,4-diamino-5-methoxybenzene] derivatives.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as [(dinitrophenyl)azo]-[2,4-diamino-5-methoxybenzene] derivatives (P–83–817 and P–83–818) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(v)(1), (v)(2), (w)(1), (w)(2), (x)(1), and (x)(2).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a), (b), (c), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

10. By adding new § 721.1025 to subpart E to read as follows:

§ 721.1025 Ethanol, 2-amino-, compound with N-hydroxy-N-nitrosobenzenamine (1:1).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as ethanol, 2-amino-, compound with *N*-hydroxy-*N*-nitrosobenzenamine (1:1) (P–86–542), is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(3), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(2), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iv), (g)(1)(vii), (g)(2)(i), and (g)(2)(v).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 720.80(k) (monomer stabilizer).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragaph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

11. By adding new § 721.1029 to subpart E to read as follows:

§ 721.1029 Brominated arylalkyl ether.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as brominated arylalkyl ether (P–83–906) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (a)(3).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(b)(1)(i)(D) and (g)(2)(v). The provision of § 721.72(g) requiring placement of specific information in an MSDS does not apply when an MSDS is not required under § 721.72(c).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a), (b), (c), (d), (f), and (g).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

12. By adding new § 721.1375 to subpart E to read as follows:

§ 721.1375 Carbamodithioic acid, methyl-, compound with methanamine (1:1).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as carbamodithioic acid, methyl-, compound with methanamine (1:1) (P–84–1042), is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(3), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(2), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vii), (g)(1)(vi), and (g)(2)(i). The provision of § 721.72(d) requiring that employees be provided

with information on the location and availability of MSDSs does not apply when an MSDS is not required under § 721.72(c). The provision of § 721.72(g) requiring placement of specific information in an MSDS does not apply when an MSDS is not required under § 721.72(c).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 720.80(k).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(2), (b)(2), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (g), (i), and (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

13. By adding new § 721.1425 to subpart E to read as follows:

§ 721.1425 Methylphenol, bis(substituted)alkyl.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as methylphenol, bis(substituted)alkyl (P–84–417) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(3), (b)(concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(2), (c), (d), (e)(concentration set at 1.0 percent), (f), (g)(1)(ii), (g)(1)(iv), (g)(2)(i), and (g)(2)(v).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 720.80(k) (antioxidant/stabilizer for polymers) and (q).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a) through (g), (i), and (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this significant new use rule.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

14. By adding new § 721.1600 to subpart E to read as follows:

§ 721.1600 Phosphine, dialkylphenyl.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as phosphine dialkylphenyl (P–83–1023) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(i), (a)(5)(ii), (a)(5)(iii), (a)(6)(i), (b) (concentration set at 1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(2), (d), (e) (concentration set at 1 percent), (f), (g)(1)(iii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), and (g)(2)(v). The provision of § 721.72(d) requiring that employees be provided with information on the location and availability of MSDSs does not apply when an MSDS is not required under § 721.72(c). The provision of § 721.72(g) requiring placement of specific information in an MSDS does not apply when an MSDS is not required under § 721.72(c).

(iii) *Disposal.* Requirements as specified in § 721.85 (a)(2); (b)(2); and (c)(2).

(iv) *Release to Water.* Requirements as specified in § 721.90(a)(3), (b)(3), and (c)(3).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (g), (i), (j), and (k).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

15. By adding new § 721.2150 to subpart E to read as follows:

§ 721.2150 N,N,N',N'-Tetrakis(oxiranylmethyl)-1,3-cyclohexane dimethanamine.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified as *N,N,N',N'*-tetrakis(oxiranylmethyl)-1,3-cyclohexanedimethanamine (P–84–7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(3), (a)(4), (a)(5)(i), (a)(5)(ii), (a)(5)(iii), (a)(5)(iv), (a)(5)(v), (a)(5)(vi), (a)(6)(ii), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b)(2), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vii), (g)(1)(viii), (g)(2)(i), (g)(2)(ii), (g)(2)(iv), and (g)(2)(v).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (h).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

[FR Doc. 91–13234 Filed 6–4–91; 8:45 am]
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Reader Aids

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Vol. 56, No. 108
Wednesday, June 5, 1991

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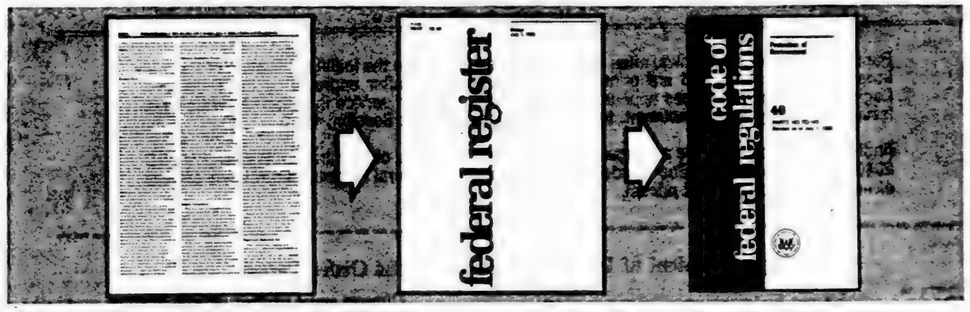

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102d Congress, 1st Session, 1991

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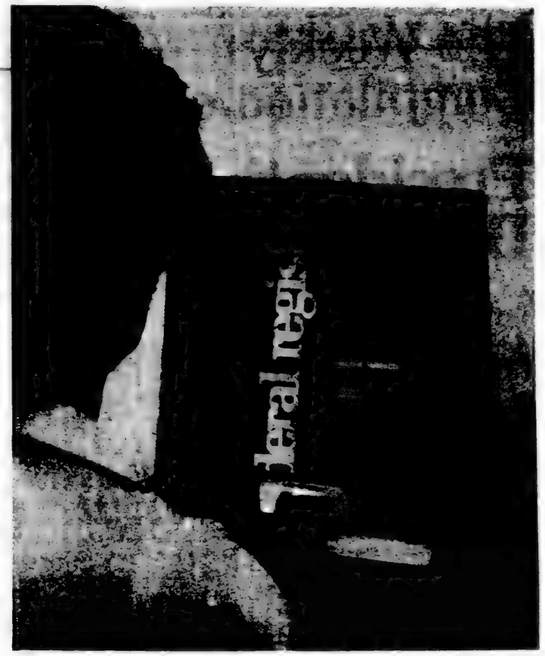

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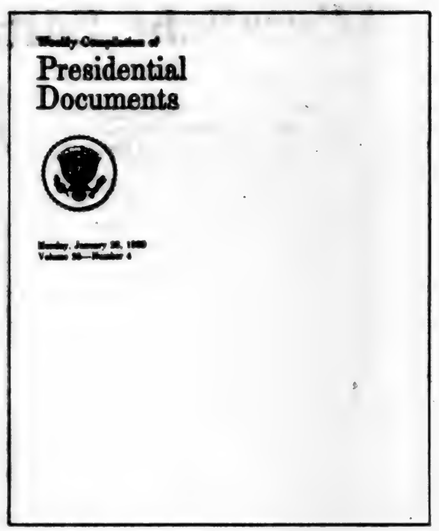

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Title 3—

The President

Executive Order 12762 of June 4, 1991

Amendment Relating to Basic Allowance for Quarters

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in accordance with section 403(j)(1) of title 37 of the United States Code, it is hereby ordered as follows:

Section 403(a) of Executive Order No. 11157, June 22, 1964, as amended, is amended—

(1) by striking out "seven consecutive days" and inserting in lieu thereof "thirty consecutive days"; and

(2) by striking out "7-day" both places it appears and inserting in lieu thereof "30-day".

THE WHITE HOUSE,
June 4, 1991.

[FR Doc. 91-13615
Filed 6-4-91; 5:07 pm]
Billing code 3195-01-M

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Presidential Documents

Executive Order 12763 of June 4, 1991

Facilitating the Operation of the Advisory Commission on Conferences in Ocean Shipping

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and in order to facilitate the operation of the Advisory Commission on Conferences in Ocean Shipping ("Commission"), established by section 18 of the Shipping Act of 1984 (46 U.S.C. App. 1717(d)), it is hereby ordered that the Secretary of Transportation shall perform all of the President's functions under the Federal Advisory Committee Act, as amended (5 U.S.C. App.), that relate to the Commission, except that of receiving the Commission's report.

THE WHITE HOUSE,
June 4, 1991.

[FR Doc. 91-13618
Filed 6-4-91; 5:07 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 56, No. 109
Thursday, June 6, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN: 3206-AE08

Federal Employees Health Benefits Program: Direct Payment of FEHB Premiums for Annuitants

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing an interim regulation that implements section 1 of Public Law 101-303. This law allows all annuitants to make direct payment of premiums for their Federal Employees Health Benefits (FEHB) coverage when their annuity is too low to cover the insurance premiums. Previously, only annuitants in the Federal Employees Retirement System (FERS) were allowed to make direct payment of their FEHB premiums.

DATES: This interim regulation is effective May 29, 1990. Comments must be received on or before August 5, 1991.

ADDRESSES: Written comments may be sent to Andrea Minniear Farran, Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, PO Box 57, Washington, DC 20044, or delivered to OPM, Room 4351, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Abby L. Block, (202) 606-0780, extension 207.

SUPPLEMENTARY INFORMATION: On October 22, 1987, OPM published an interim regulation in the **Federal Register** (52 FR 39493), and on August 25, 1988, a final regulation in the **Federal Register** (53 FR 32367) that, among other actions, implemented the direct payment of FEHB premiums for FERS annuitants whose immediate or survivor annuities are insufficient to cover their health benefits premiums. On May 29, 1990, Public Law 101-303 was enacted. Section 1 of Public Law 101-303, extends the right to make direct payment of Federal Employees Health Benefits (FEHB) premiums to all individuals entitled to any annuity which is not sufficient to cover their share of the total premium.

This interim regulation implements section 1 of Public Law 101-303 by providing that annuitants whose immediate or survivor annuities, excluding annuities of the Thrift Savings Plan, are insufficient to cover the withholdings required for enrollment in a particular FEHB plan may enroll, or remain enrolled, in such a plan by paying the FEHB premiums directly to the retirement system. This regulation also amends the direct payment provisions for former spouses to make them conform with the provisions for annuitants.

The regulation provides that any annuitant whose enrollment has been terminated because his or her annuity was insufficient to cover the withholdings for the plan in which he or she was enrolled may apply to his or her retirement system to be reinstated in any available FEHB plan or option. In addition, any annuitant who can show evidence that he or she changed enrollment to a lower cost option, plan, or to a self-only enrollment because his or her annuity was insufficient to cover the withholdings for the plan in which he or she was enrolled, may apply to his or her retirement system to change his or her enrollment to any available FEHB plan or option in the FEHB Program in which the enrollee's share of the total premium exceeds his or her monthly annuity.

The annuitant may choose the effective date of the reinstatement or the change of enrollment to be either the 1st day of the 1st pay period that begins after the health benefits registration form is received by the retirement system; or, the later of the date enrollment was terminated or changed, or May 29, 1990. Retroactive reinstatement or change of enrollment is contingent upon payment of appropriate premiums retroactive to the effective date of the reinstatement or the change of enrollment.

Direct payment must be made for the annuitant's full share of the premium. Thus, the annuitant may not have a portion of the premium withheld from the annuity and make direct payment for the balance. Further, once an annuitant is in direct-pay status for health benefits, he or she must continue to pay premiums directly even if the annuity later exceeds the amount of the premium.

In addition, § 890.306 has been arranged in a more logical sequence by moving the general rule for the effective date of coverage to the beginning of the section.

Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking and making this regulation effective in less than 30 days. The notice is being waived because the entitlements conferred by Public Law 101-303 addressed in this regulation were effective beginning May 29, 1990.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal annuitants, and former spouses.

List of Subjects in 5 CFR part 890

Administrative practice and procedure, Government employees, Health insurance, Retirement.

U.S. Office of Personnel Management.
Constance Berry Newman,
Director.

Accordingly, OPM is amending 5 CFR part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 is revised to read as follows:

Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c

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and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064.

2. Section 890.301(q) is revised to read as follows:

§ 890.301 Opportunities to register to enroll and change enrollment.

* * * * *

(q) *Annuity insufficient to pay withholdings.* (1) If the annuity of an annuitant is insufficient to pay the withholdings for the plan in which the annuitant is enrolled, the retirement system will provide information to the annuitant regarding the available plans and notify him or her in writing of the opportunity to either: Register to be enrolled in any plan in which the enrollee's share of the premium is not in excess of the annuity; or make payment of the premium directly to the retirement system in accordance with § 890.502(f). If the annuitant is enrolled in the high option of a plan that has two options, and does not elect a plan at a cost to him or her not in excess of the annuity or does not elect to pay premiums directly, he or she is deemed to have selected enrollment in the standard option of the same plan unless the annuity is insufficient to pay the withholdings for standard option.

(2) An annuitant whose enrollment was terminated on account of such annuitant's annuity being insufficient to cover the enrollee's share of the premium may apply to be reinstated in any available plan or option.

(3) An annuitant who can show evidence that he or she previously changed to a lower cost option, plan, or to a self-only enrollment prior to May 29, 1990, because the annuity was insufficient to cover the withholdings for the plan in which he or she was enrolled, may apply to change his or her enrollment to any available plan or option in which the enrollee's share of the total premium exceeds his or her monthly annuity.

* * * * *

3. In § 890.304, paragraph (b)(2) is redesignated (b)(4), paragraphs (b)(1) and (b)(3) are revised and new paragraph (b)(2) is added to read as follows:

§ 890.304 Termination of enrollment.

* * * * *

(b) *Annuitants.* (1) If the annuity of an annuitant is insufficient to pay the withholdings for the plan in which the annuitant is enrolled, the annuitant may elect one of the two opportunities offered under § 890.301(q) of this part (electing a plan with a withholding not in excess of the annuity; or, paying premiums directly to the retirement system in accordance with § 890.502(f) of this part). The retirement system will send two notices to the annuitant, including one by certified mail return receipt requested. Continuation of coverage rests upon electing direct payment or new coverage within 15 days (45 days for annuitants residing overseas) after receipt of the final notice. Except as provided in paragraph (b)(3) of this section, the enrollment of an individual who fails to make an election within the specified time frame will be terminated. An annuitant whose enrollment is terminated because of failure to make an election may not reenroll or reinstate coverage, except as provided in paragraph (b)(2) of this section. Each annuitant whose enrollment is so terminated is entitled to a 31-day extension of coverage for conversion.

(2) If the individual was prevented by circumstances beyond his or her control from making an election within the time limit after receipt of the final notice, he or she may request reinstatement of coverage by writing to the retirement system. The retirement system will determine if the individual is eligible for reinstatement of coverage; and, when the determination is affirmative, the individual's coverage may be reinstated retroactively to the date of termination or prospectively. If the determination is negative, the individual may request reconsideration of the decision from OPM.

(3) If the annuitant does not make an election under paragraph (b)(1) of this section and is enrolled in the high option of a plan that has two options, the annuitant is deemed to have elected enrollment in the standard option of the same plan unless the annuity is insufficient to pay the withholdings for the standard option.

* * * * *

4. In § 890.306:

a. Paragraph (i) is removed.

b. Paragraphs (b), (d), (f), (g), and (h) are redesignated as paragraphs (d), (f), (h), (i), and (j) respectively.

c. Paragraph (e) is redesignated as paragraph (g) and amended by removing the designation "(1)", and by removing the reference to "§ 890.306(c)" and replacing it with a reference to "§ 890.306(e)".

d. Paragraph (c) is redesignated as paragraph (e) and amended by removing the reference to "§ 890.301(d)(2)" and replacing it with a reference to "§ 890.301(d)(1)".

e. Paragraph (a) is redesignated as paragraph (c).

f. New paragraphs (a), (b), and (k) are added to read as follows:

§ 890.306 Effective dates.

(a) *Generally.* Except as set forth in the following paragraphs, the effective date of an enrollment or change of enrollment is the 1st day of the 1st pay period that begins after the health benefits registration form is received by the employing office and that follows a pay period during any part of which the employee or annuitant is in pay or annuity status.

(b) *Survivor annuity restored.* The effective date of an enrollment under § 890.301(s) of this part is either (1) the 1st day of the month after the date the retirement system receives the health benefits registration form; or (2) the date of restoration of the survivor annuity or October 1, 1976, whichever is later.

* * * * *

(k) *Annuitant's enrollment reinstated or changed under § 890.301(q).* (1) The effective date of the reinstatement of enrollment of an annuitant whose enrollment was terminated, or the change of enrollment of an annuitant who changed to a lower cost option, plan, or to a self-only enrollment because his or her annuity was insufficient to cover the enrollee's share of the total premium of his or her plan of choice, and who elects to pay premiums directly to the retirement system in accordance with § 890.502(f) of this part is either: (i) The 1st day of the 1st pay period that begins after the health benefits registration form is received by the retirement system; or, (ii) the later of the date the enrollment was terminated or changed, or May 29, 1990.

(2) Retroactive reinstatement or change of enrollment is contingent upon payment of appropriate contributions retroactive to the effective date of the reinstatement or the change of enrollment. For the purpose of this paragraph, a previous cancellation of enrollment because of insufficient annuity to cover the full amount of the withholdings is deemed to be a termination of enrollment.

5. In § 890.502:

a. Paragraph (a)(2) is amended by removing "retiring under 5 U.S.C. chapter 84" and removing the reference to "paragraph (d)" and replacing it with a reference to "paragraph (f)".

b. The heading for paragraph (f) is revised as set forth below.

c. Paragraph (f)(1) is revised as set forth below.

d. Paragraph (f)(2) is amended by removing "retiring under 5 U.S.C. chapter 84".

e. Paragraph (f)(4) is amended by removing the reference to "paragraph (d)(5)" in the last sentence and replacing it with a reference to "paragraph (f)(5)".

f. Paragraph (f)(6) is amended by removing the reference to "paragraph (d)(4)" and replacing it with a reference to "paragraph (f)(4)".

§ 890.502 Employee withholdings and contributions.

* * * * *

(f) *Direct premium payments for annuitants.* (1) If an annuity, excluding an annuity under subchapter III of chapter 84 (Thrift Savings Plan), is too low to cover the health benefits premium due or if a surviving spouse receives a basic employee death benefit, the retirement system will provide information to the annuitant regarding the available plans and notify him or her in writing of the opportunity to either: Register to be enrolled in any plan in which the enrollee's share of the premium is not in excess of the annuity; or make payment of the premium directly to the retirement system.

* * * * *

§ 890.806 [Amended]

6. In § 890.806, paragraph (b) is amended by removing "receiving an annuity under 5 U.S.C. chapter 83".

7. In § 890.807, paragraphs (c) and (d) are redesignated as paragraphs (d) and (e) respectively, and a new paragraph (c) is added to read as follows:

§ 890.807 Termination of enrollment.

* * * * *

(c) *Failure to make an election under § 890.808(e).* (1) If the annuity of a former spouse is insufficient to pay the full health benefits premium due for the plan in which the former spouse is enrolled, the former spouse may elect one of the two opportunities offered under § 890.808(e) of this part (electing a plan with a full premium not in excess of the annuity; or, paying premiums directly to the retirement system in accordance with § 890.808(d) of this part). The retirement system will send two notices to the former spouse, including one by certified mail return receipt requested. Continuation of coverage rests upon electing direct payment or new coverage within 15 days (45 days for former spouses residing overseas) after receipt of the final notice. Except as provided in paragraph (c)(3) of this section, the enrollment of an individual who fails to make an election within the specified time frame will be terminated. A former spouse whose enrollment is terminated because of failure to make an election may not reenroll or reinstate coverage, except as provided in paragraph (c)(2) of this section. Each former spouse whose enrollment is so terminated is entitled to a 31-day extension of coverage for conversion.

(2) If the individual was prevented by circumstances beyond his or her control from making an election within the time limit after receipt of the final notice, he or she may request reinstatement of coverage by writing to the retirement system. The retirement system will determine if the individual is eligible for reinstatement of coverage; and, when the determination is affirmative, the individual's coverage may be reinstated retroactively to the date of termination or prospectively. If the determination is negative, the individual may request reconsideration of the decision from OPM.

(3) If the former spouse does not make an election under paragraph (c)(1) of this section and is enrolled in the high option of a plan that has two options, the former spouse is deemed to have elected enrollment in the standard option of the same plan unless the annuity is insufficient to pay the full withholdings for the standard option.

* * * * *

8. Section 890.808 is amended by revising the last sentence of paragraph (e) as set forth below:

§ 890.808 Employing office responsibilities.

* * * * *

(e) *Withholding from annuity.* * * * When the annuity is insufficient to cover the full amount of health benefits premium due, the retirement system will provide information to the former spouse regarding the available plans and notify him or her in writing of the opportunity to either: register to be enrolled in any plan with a full premium not in excess of the annuity; or make payment of the premium directly to the retirement system in accordance with § 890.808(d). If the former spouse is enrolled in the high option of a plan that has two options, and does not elect a plan at a cost to him or her not in excess of the annuity or does not elect to pay premiums directly, he or she is deemed to have elected enrollment in the standard option of the same plan unless the annuity is insufficient to pay the full withholdings for the standard option.

[FR Doc. 91 13265 Filed 6–5–91; 8:45 am]
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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

[Docket No. 90–022]

Revision of Delegation of Authority

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document revises the delegation of authority from the Secretary and general officers of the Department to assign responsibilities to the Assistant Secretary for Marketing and Inspection Services and the Administrator, Animal and Plant Health Inspection Service for implementing the provisions of 35 U.S.C. 156 relating to procedures for extension of patents on certain animal drugs and veterinary biologicals and methods of using or manufacturing these products.

EFFECTIVE DATE: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. Frank Y. Tang, Biotechnologist, Animal and Plant Health Inspection Service, United States Department of Agriculture, room 851, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–4833.

SUPPLEMENTARY INFORMATION: Section 201 of the Generic Animal Drug and Patent Term Restoration Act of 1988 (Pub. L. 100–670), amended section 156 of title 35, United States Code to authorize the Secretary of Agriculture to implement procedures to allow holders of patents for certain animal drugs and veterinary biologicals, and patents for methods of using or manufacturing these products, to apply for an extension of the term of their patent. This document delegates that authority to the Assistant Secretary for Marketing and Inspection Services and to the Administrator, Animal and Plant Health Inspection Service. The authority to make determinations as to whether the applicant acted with due diligence is reserved to the Assistant Secretary for Marketing and Inspection Services as required by section 201(f) of Public Law 100–670. This action is necessary to implement the provisions of 35 U.S.C. 156 in the Department of Agriculture.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291.

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This action is not a rule as defined by Public Law 96-354, the Regulatory Flexibility Act and is thus exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, 7 CFR part 2 is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for 7 CFR part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.17 is amended by adding a new paragraph (b) (41) to read as follows:

§ 2.17 Delegations of authority to the Assistant Secretary for Marketing and Inspection Services.

* * * * *

(b) * * *

(41) The provisions of 35 U.S.C. 156.

* * * * *

Subpart F—Delegations of Authority by the Assistant Secretary for Marketing and Inspection Services

3. Section 2.51 is amended by adding paragraphs (a)(45) and (b) to read as follows:

§ 2.51 Delegations of authority to the Administrator, Animal and Plant Health Inspection Service.

(a) *Delegations.* * * *

(45) The provisions of 35 U.S.C. 156.

(b) *Reservations.* The following authority is reserved to the Assistant Secretary for Marketing and Inspection Services: The authority to make determinations under 35 U.S.C. 156 as to whether the applicant acted with due diligence.

For subpart C:

Dated: May 22, 1991.

Edward Madigan,

Secretary of Agriculture.

For subpart F:

Dated: May 22, 1991.

Jo Ann Smith,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 91-13117 Filed 6-5-91; 8:45 am]

BILLING CODE 3410-34-M

Commodity Credit Corporation

7 CFR Part 1493

CCC Export Credit Guarantee Program (GSM-102) and CCC Intermediate Export Credit Guarantee Program (GSM-103)

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Commodity Credit Corporation (CCC) is issuing this interim rule which revises the regulations for the Export Credit Guarantee Program (GSM-102) and the Intermediate Export Credit Guarantee Program (GSM-103). Regulations for these programs are currently codified at 7 CFR part 1493. In addition to making changes intended to improve and update the current regulations, this interim rule also incorporates material required by the Agricultural Trade Act of 1978, as amended by section 1531 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101-624) (hereinafter referred to as the 1990 Act), which became law on November 28, 1990.

DATES: Interim rule effective July 8, 1991; comments must be submitted on or before August 5, 1991.

ADDRESSES: Comments must be submitted in writing to L.T. McElvain, Director, CCC Operations Division, USDA, FAS, room 4503-S, 1400 Independence Avenue, SW., Washington, DC, 20250-1000, telephone (202) 447-6211. All comments received will be available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: L.T. McElvain, Director, CCC Operations Division, USDA, FAS, room 4503-S, 1400 Independence Avenue, SW., Washington, DC, 20250-1000, telephone (202) 447-6211.

SUPPLEMENTARY INFORMATION:

Regulatory Requirements

This interim rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been designated as "nonmajor." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

The paperwork requirements which would be imposed by this interim rule were approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. The Office of Management and Budget assigned number for those requirements is OMB No. 0551-0004. Public reporting burden for these collections is estimated to average 13 minutes per response, including time for reviewing instructions, searching existing sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404-W, Washington DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0551-0004), Washington, DC 20503.

These programs are not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Background

The Commodity Credit Corporation's (CCC) Export Credit Guarantee Program (GSM-102) and the CCC Intermediate Export Credit Guarantee Program (GSM-103) have been administered by the Foreign Agricultural Service, U.S. Department of Agriculture (FAS/USDA), on behalf of CCC, pursuant to program regulations codified at 7 CFR part 1493 and through the issuance of "Program Announcements" and "Notices to Participants" that are consistent with, and in addition to, these program regulations. This interim rule incorporates several previous operational requirements announced by FAS/USDA through notices to participants. All outstanding Notices to Participants are superseded by this interim rule or withdrawn. Notices to participants that are superseded by this interim rule are referenced in the discussion of the particular section where their content has been incorporated into the regulations. Some supplemental notices to participants were issued as reminders to exporters of various program requirements or contained informational requirements for specific commodities. These Notices are not appropriate for inclusion in the regulations for the GSM-102 and GSM-103 programs and are hereby withdrawn. The Notices to Participants which are withdrawn, by date of issuance and a short description of their content are: December 22, 1987, Reminder regarding evidence of export submissions; October 27, 1989, Policy and reminder in paragraphs (a) non-agricultural content and (c) penalties for false statement or certification (paragraphs b and d are superseded); and December 7, 1989, Reminder regarding importance of adequate records/documentation; February 12, 1990, Policy regarding price review procedures for cotton.

The 1990 Act contains a number of provisions which require changes to the GSM-102 and GSM-103 regulations, and this interim rule includes these changes. Finally, several provisions previously contained in 7 CFR part 1493 have been clarified to promote more efficient administration of the GSM-102 and GSM-103 programs.

This interim rule reorganizes the previous regulations into two subparts. Subpart A contains information about restrictions relating to the GSM-102 and GSM-103 programs and the criteria to be applied in determining the annual level of individual allocations for countries participating in these programs and allocations for commodities which may be exported to those countries. Subpart B contains the regulations governing the operation of these programs. Some previously existing provisions of the regulations have been rewritten in a manner intended to simplify material, enhance clarity, eliminate duplication and facilitate their use. This interim rule contains several new provisions which expand upon definitions in the previous regulations and clarify the requirements concerning information which applicants must submit to CCC for program participation.

This revision of the GSM-102 and GSM-103 regulations is being issued as an interim rule because section 404 of the Agricultural Trade Act of 1978, as amended by section 1531 of the 1990 Act, requires that "[n]ot later than 180 days after the date of enactment of this Act [November 28, 1990], the Secretary shall issue regulations implementing the provisions of this Act * * *" 7 U.S.C. 5664. The changes made in these revised regulations are either expressly mandated by the provisions of the Agricultural Act of 1978, as amended by the 1990 Act, or are consistent with policies and procedures currently followed by CCC in operating the GSM-102 and GMS-103 programs under provisions of the previous regulations.

Section-by-Section Analysis

The numbering system of this interim rule differs from that in the prior regulations. Several sections have been added, some sections have been deleted and others have been reordered. For the purposes of this discussion, the numbering of the interim rule will be used, except where otherwise indicated.

Subpart A—Restrictions and Criteria for Export Credit Guarantee Programs

In accordance with sections 202 and 403(a)(1) of the Agricultural Trade Act of 1978 (7 U.S.C. 5622 and 5663(a)(1)), as amended by section 1531 of the 1990 Act, this interim rule sets forth the restrictions which apply to the use of credit guarantees under the GSM-102 and GSM-103 programs and the criteria considered in evaluating and approving proposals for annual allocations of credit guarantees with respect to the various participating countries. However, these restrictions and criteria are applied during a process which occurs prior to CCC's approval of individual exporters' applications for payment guarantees and, therefore, they are largely unrelated to the day-to-day operation of the programs. Accordingly, these restrictions and criteria are codified in a separate subpart (subpart A) of part 1493.

Section 1493.1 General Statement

The restrictions and criteria contained in subpart A of this interim rule will be considered by CCC during each annual program cycle in determining those countries for which export sales will be eligible for credit guarantees under the GSM-102 and GSM-103 programs; the program level for each country; the particular commodities to be included in a country's allocation; and the level of credit guarantees made available for each included commodity.

Section 1493.2 Purposes of Programs

This section of the interim rule has been added to set forth the purposes of the GSM-102 and GSM-103 programs, as specified in section 202(d) of the Agricultural Trade Act of 1978 (7 U.S.C. 5622(d)), as amended by section 1531 of the 1990 Act.

Section 1493.3 Restrictions on Programs and Cargo Preference Statement

This section of the interim rule has been added to set forth the restrictions on the use of credit guarantees and the cargo preference statement, as specified in sections 202 (e) and (f) of the Agricultural Trade Act of 1978 (7 U.S.C. 5622 (e) and (d)), as amended by section 1531 of the 1990 Act. A reference to the cargo preference laws, similar to the one contained in § 1493.1(c) of the previous regulations, is now included in § 1493.3(c) of this interim rule.

Section 1493.4 Criteria for Country Allocations

This section of the interim rule has been added in accordance with section 403(a)(1) of the Agricultural Trade Act of 1978 (7 U.S.C. 5663(a)(1)), as amended by section 1531 of the 1990 Act, which requires the Secretary of Agriculture to "specify by regulations the criteria used to evaluate and approve proposals" for each agricultural export program. The criteria for country allocations are considered by CCC in determining if a proposal for a specific country will meet the purposes of the GSM-102 and GSM-103 programs and if that country can adequately service the debt associated with allocations of payment guarantees under consideration.

Section 1493.5 Criteria for Agricultural Commodity Allocations

This section of the interim rule has been added in accordance with section 403(a)(1) of the Agricultural Trade Act of 1978 (7 U.S.C. 5663(a)(1)), as amended by section 1531 of the 1990 Act. The criteria for commodity allocations are considered by CCC to determine if a proposal to designate a specific commodity allocation to a specific country will best meet the purposes of the GSM-102 and GSM-103 programs.

Section 1493.6 Additional Required Determinations for GSM-103

This section of the interim rule has been added to set forth the required

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determinations that must be made, in accordance with sections 202 (b) and (c) of the Agricultural Trade Act of 1978 (7 U.S.C. 5622 (b) and (c)), as amended by section 1531 of the 1990 Act, before CCC may make country and commodity allocations under the GSM–103 program.

Subpart B—CCC Export Credit Guarantee Program (GSM–102) and CCC Intermediate Export Credit Guarantee Program (GSM–103) Operations

Section 1493.10 General Statement

This section revises the statement contained in § 1493.1 of the previous regulations to provide a more comprehensive general statement about the operation of the GSM–102 and GSM–103 programs. This section contains general statements regarding the following: (a) An overview of the GSM–102 and GSM–103 programs, (b) an overview of the credit facility mechanism, (c) the responsibilities for program administration within the Department of Agriculture, and (d) the mechanism for country allocations and program announcements.

The last sentence of § 1493.1(a)(2) of the prior regulations has been revised and incorporated in § 1493.10(a) in order to be consistent with the program purpose provision in section 202(d) of the Agricultural Trade Act of 1978 (7 U.S.C. 5622(d)), as amended by section 1531 of the 1990 Act. The previous § 1493.1(c) has been deleted because the cargo preference laws are now discussed in § 1493.3(b) of this interim rule.

Section 1494.10(d), "Country Allocations and Program Announcements," provides a general statement of how CCC will announce a GSM–102 or GSM–103 allocation for a country and designate specific commodity allocations under that country allocation. The paragraph also incorporates the policy changes announced in a Notice to Participants issued on August 25, 1987, which is superseded by this interim rule. With this interim rule, the "Program Announcement" which announces a country's allocation will contain a requirement that the exporter's sales contract contain a shipping deadline by a given date which will be stated in the "Program Announcement." The payment guarantee issued by CCC will automatically show the final date to export as one month, as determined by CCC, after the contractual shipping deadline as indicated in § 1493.60(d) of this interim rule. Further, § 1493.10(d) provides that country allocations may contain an "undesignated" or "unallocated" dollar amount for the purpose that if dollar amounts for a commodity allocation for that country become fully used, a commodity allocation from the "unallocated" or "undesignated" portion of the total country allocation may then be designated for a specific commodity.

Section 1493.20 Definition of Terms

The definition of "Assistant General Sales Manager" contained in § 1493.2(a) of the previous regulations has been deleted. The General Sales Manager (GSM) has the authority to administer the GSM–102 and GSM–103 programs. The authority to perform specific administrative functions can be delegated by the GSM to the Assistant General Sales Manager, the Treasurer of CCC, the Director of the CCC Operations Division, or other officials. For the purpose of these regulations, the authority to administer these programs will remain with the GSM. Where appropriate, specific functions may be delegated by internal delegations of authority.

A definition for the term "Contacts P/R" has been added at § 1493.20(c). This CCC press release, bearing the designation cited, will inform exporters, financial institutions and other interested parties of specific addresses and telephone and facsimile numbers of USDA offices to contact to obtain further information regarding operations of the GSM–102 and GSM–103 programs (the interim rule also deletes the addresses contained in other sections of the previous regulations). Information of the nature contemplated for inclusion in the "Contracts P/R" is subject to change and therefore is not appropriately contained in the regulations.

Section 1493.20(g), "Eligible Interest," is a revision of § 1493.2(e) of the previous regulations. The previous definition has been further simplified to refer to the interest rate indicated in the payment guarantee.

The interim rule establishes at § 1493.20(f) a definition of "Discounts and Allowances"; this term was referenced but undefined in the previous regulations. The requirement that the port value of the commodity must be net any discounts or allowances was previously emphasized in Notices to Participants issued January 25, 1988, December 5, 1989, and January 9, 1991. This interim rule supersedes these previously issued Notices.

The interim rule revises the definition of "exporter" found at § 1493.2(g) of the previous regulations. The definition of "Exporter," found in this interim rule at § 1494.20(i), has been simplified because a separate section has been added at § 1493.30 of this interim rule to specify the "Information Required for Program Participation."

The interim rule adds a definition of "GSM," at § 1493.20(1), since the terms "GSM" and "General Sales Manager" were previously undefined.

The interim rule revises the definitions of "GSM–102" and "GSM–103" at §§ 1494.20(m) and (n), respectively, to incorporate the policy announced December 17, 1982, by a FAS Report press release which is superseded by this interim rule. This notice confirmed CCC's policy of covering interest accrued prior to the date of export, although the payment guarantee does not become effective until the date of export. Interest may begin to accrue prior to the date of export in export sales made on the basis of FOB, U.S. interior points of loading, such as sales to Mexico shipped in trucks or railcars. The definitions of "GSM–102" and "GSM–103" now indicate that the credit period can either begin upon the date of export or on the date that interest begins to accrue, whichever is earlier.

The definition for "Incoterms" in § 1493.20(q) includes the terms FAS, FOB, C&F and CIF and states that these terms will be as defined by the International Chamber of Commerce. These terms, although used in the previous regulations and generally known, were undefined.

A definition of an "Intervening Purchaser" is provided in § 1493.20(r) since this term, although used in the previous regulations, was undefined.

The interim rule establishes a definition of "Late Interest" at § 1493.20(s). This term was used and explained in previous regulations but was undefined. The interim rule defines the term "late interest," as used by CCC.

The interim rule adds two definitions involving GSM–102 and GSM–103 program announcements or notices. A definition has been added at § 1493.20(u) for "Notice to Participants." This definition relates to CCC press releases which serve one or more of the following functions: to remind program participants of the requirements of the program; to clarify the program requirements contained in these regulations, in a manner which is not inconsistent with the regulations; to instruct exporters to provide additional information in applications for payment guarantees under specified country and/or commodity allocations; and to supplement the provisions of a payment guarantee, in a manner not inconsistent with these regulations. Such supplemental provisions of the payment guarantee will apply only to those guarantees issued subsequent to such Notice to Participants. A definition has been added at § 1493.20(w) for "Program Announcement." This definition relates to CCC press releases which provide information on country and commodity allocations. These "Program Announcements" provide country specific information, e.g., identification of eligible agricultural commodities, length of credit periods which may be covered, dollar limitations and other information and requirements.

A definition of "Related Obligation" has been added in this interim rule at § 1493.20(x). This term was previously undefined but it is integral to CCC's administration of assignments of the proceeds payable under payment guarantees and CCC's review of any claims for loss.

The interim rule provides a definition for the "United States" at § 1493.20(y). While this term was previously undefined, this definition is necessitated by provisions of the 1990 Act.

A definition has been added at § 1493.20(z) for a "U.S. Agricultural Commodity," in accordance with section 102(7) of the Agricultural Trade Act of 1978 (7 U.S.C. 5602(7)), as amended by section 1531 of the 1990 Act.

Finally, this interim rule incorporates non-substantive changes to other definitions, which have been slightly revised or reformatted to achieve greater clarity.

Section 1493.30 Information Required for Program Participation

In the previous regulations, § 1493.2(g) required an exporter seeking to participate in the GSM–102 or GSM–103 programs to be: "(1) [F]inancially responsible; (2) engaged in the business of buying or selling commodities for export and for this purpose maintains a bona fide business office in the United States, its territories or possessions, and has someone on whom service of judicial process may be had within the United States; and (3) not suspended or debarred from contracting with or participating in any program adminstered by CCC on the date of issuance of the payment guarantee." These were the eligibility standards in the previous regulations for exporters to participate in the GSM–102/103 programs. This interim rule provides additional guidance on how these standards are applied by CCC in determining whether exporters are qualified to participate in the programs.

Section 1493.30(a) of this interim rule provides that an exporter seeking a payment guarantee under the GSM–102 or GSM–103 programs must furnish to CCC, prior to the time of its application for a payment guarantee, the following: (1) The name and address of the applicant; (2) its agent in the U.S. for service of process; (3) the legal form of doing business of the applicant; (4) the name and address of an office of the applicant within the United States, if the applicant is a foreign corporation or other foreign entity; (5) a certified statement describing the applicant's participation, if any, during the past three years in U.S. Government programs, contracts or agreements; and (6) a certification that the applicant; any owner, in whole or in part; or any employee has not been debarred or suspended from contracting with or participating in programs administered by any U.S. Government agency.

Section 1493.30(b) provides that, if the information cited above has already been submitted to CCC, CCC may simply require that the exporter certify that the information has not changed at the time that the exporter applies for a payment guarantee.

Section 1493.30(d) provides that, based on the information furnished in accordance with these provisions, CCC will determine whether the applicant is eligible for participation in the program, including whether that applicant is financially responsible. If, based on the information provided, CCC is unable to determine that an applicant is eligible for participation, the applicant will be given an opportunity, pursuant to § 1493.30(c), to submit additional information for consideration, including, but not limited to, financial statements, bank references or similar information.

In § 1493.2(g) of the previous regulations, the term "exporter" was defined as an entity that had not been debarred or suspended from contracting with CCC or participating in any program administered by CCC. This was to protect the integrity of the GSM–102 and GSM–103 programs by excluding from participation any entity that had previously exhibited a lack of honesty or business integrity in its dealings with CCC. However, the previous regulations did not specifically exclude from participation an entity that had been suspended from contracting with or participating in programs administered by other agencies of the U.S. Government. It has been determined that suspension or debarment of an entity by another U.S. Government agency is sufficient indication of lack of business integrity or honesty to make it prudent for CCC to avoid dealing with that entity as well. Therefore, with this interim rule, a provision has been added at § 1493.30(d) to provide that an applicant will be ineligible for program participation if there is insufficient evidence of the financial responsibility of the exporter, as determined by CCC, or the exporter has been suspended or debarred by any U.S. Government agency. Moreover, this provision makes it clear that the suspension or debarment of individual owners, directors or employees of an applicant seeking a payment guarantee under the GSM–102 and GSM–103 programs will also result in CCC finding the applicant ineligible to participate in these programs.

Section 1493.40 Application for a Payment Guarantee

This section of the interim rule is a revision of § 1493.3 of the previous regulations. Several minor clarifications and format changes have been made, including the deletion of any reference to § 1493.15 of the prior regulations, which has been deleted in this interim rule. The reference to that section, which contained a specific address for submission of the application for a payment guarantee, has been replaced with a reference to the Contacts P/R.

Section 1493.40(a) of the interim rule states that "[a] firm export sale must exist before an exporter submits an application for a payment guarantee." This requirement was emphasized in a Notice to Participants issued on November 23, 1987, which is superseded by this interim rule.

Section 1493.40(a)(8) of the interim rule requires the exporter to state the mean quantity, contract loading tolerance and, if necessary, to request CCC to reserve coverage up to the maximum quantity permitted by the contract loading tolerance. The provision for the request for reserve coverage is incorporated from a Notice to Participants issued June 3, 1982, which is superseded by this interim rule and discussed further in relation to § 1494.60(e) of this interim rule.

Section 1493.40(a)(9) of the interim rule requires the exporter to state the unit sales price of the commodity, or the mechanism to establish the price, as agreed between the exporter and the importer. This information was previously required by a Notice to Participants dated December 14, 1989, which is superseded by this interim rule.

Section 1493.40(a)(9) also requires the exporter to specify the value of freight for a commodity sold on a C&F basis, and the value of freight and of marine and war risk insurance, for a commodity sold on a CIF basis. CCC is requiring this information only for the purpose of a general assessment of the terms of sale. If the application for a payment

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guarantee is approved for C&F or CIF guarantee coverage, CCC, in the price review process, will evaluate the sales price on that basis. If the application for a payment guarantee is approved on a FAS or FOB basis, the value of the freight and, if applicable, marine and war risk insurance, are considered as estimates at the time of application. The actual FAS or FOB value would be determined at the time of the submission of the evidence of export when actual freight and, if applicable, marine and war risk insurance costs, are provided by the exporter.

Section 1493.40(a)(10) requires the exporter to submit information regarding discounts and allowances, if any, that will be provided to the importer. Some discounts and allowances are commonly extended for specific agricultural commodity exports, such as dairy cattle or hatching eggs. These discounts and allowances may entail veterinary or other technical services. This is an example of a type of discount and allowance that is permitted in contracts for export sales which are eligible for GSM–102 and GSM–103 payment guarantees but cannot be included in the amount of credit extended under CCC's guarantee coverage. In all instances, the value of discounts and allowances must be reported to CCC and deducted from the port value and exported value of the agricultural commodity. However, a discount or allowance may be determined by CCC to be extraneous to the transaction. The certification submitted by the exporter in accordance with § 1493.50(b) states that there are no items extraneous to the transaction, provided financed or guaranteed in connection with it. If CCC determines that a discount or allowance is extraneous to the transaction, CCC will reject an application for a payment guarantee.

In order to facilitate control of and coordination between CCC and other USDA programs, § 1493.40(a)(16) requires the exporter to report to CCC any instances in which the export credit sales for which the exporter is applying for a payment guarantee are also being used as the basis for an application for participation in other CCC or USDA export program, specifically, the Export Enhancement Program (EEP), Dairy Export Incentive Program (DEIP), Sunflowerseed Oil Assistance Program (SOAP), or Cottonseed Oil Assistance Program (COAP).

Section 1493.40(a)(17) requires the exporter also include in the application for a payment guarantee "other information as specified in Notice to Participants, as applicable." This subparagraph has been included in the interim rule to allow CCC to obtain from the exporter information such as, but not limited to, specific information about specific agricultural commodities needed by CCC to review and process the application for a payment guarantee. An example of this type of information was in the Notice to Participants issued on February 12, 1990, which required exporters to submit a detailed description of cotton sold under a credit guarantee and other information particular to such cotton sale. This Notice to Participants is withdrawn and will be reissued to be consistent with the provisions of this interim rule.

To facilitate the exporter making the required certifications in conjunction with each application for a payment guarantee, § 1493.40(a)(18) provides that the exporter may make the following statement: "ALL SECTION 1493.50 CERTIFICATIONS ARE BEING MADE IN THIS APPLICATION." This statement, when included in the exporter's application for a payment guarantee, will constitute a certification that it is in compliance with all the requirements contained in § 1493.50. The exporter will be required to provide further explanation or documentation with regard to applications that do not include this statement.

Section 1493.40(b) of the interim rule provides that an application for a payment guarantee may be approved as submitted, approved with modifications agreed to by the exporter, or rejected by the GSM. This provision was contained in § 1493.3(b) of the prior regulations. Section 1493.40(b) of the interim rule also includes the provision that if, based upon a price review, the unit sales price of the commodity does not fall within the prevailing commercial market level ranges, as determined by CCC, the application will not be approved. This determination was previously contained in a Notice to Participants dated December 14, 1989, which is superseded by this interim rule.

Section 1493.50 Certification Requirements for Payment Guarantees

This section has been added to the regulations. Previously, CCC issued various Notices to Participants requiring certain certifications to be included in the application for a payment guarantee and in the evidence of export. These supplemental notices were issued pursuant to §§ 1493.1(d) and § 1493.4(c) of the previous regulations, which provided, respectively, that "GSM–102 and GSM–103 may be supplemented by USDA announcements" and "the payment guarantee may contain such additional terms, conditions, and limitations as are deemed necessary or desirable by the Assistant General Sales Manager."

In this interim rule, § 1493.50 codifies three certification statements previously required from exporters through Notices to Participants. These previously required certification statements have been reworded to comply with provisions of the Agricultural Trade Act of 1978, as amended by section 1531 of the 1990 Act.

Sections 102(7) and 202(h) of the Agricultural Trade Act of 1978 (7 U.S.C. 5602(7) and 5622(h)), as amended by section 1531 of the 1990 Act, provide a definition of a U.S. agricultural commodity or product and restrict CCC from guaranteeing the value of any foreign agricultural component. Section 1493.50(a) of this interim rule requires exporters to certify that the agricultural commodity or product to be exported under the export sale for which a payment guarantee is requested is a United States agricultural commodity or a product thereof, as defined by § 1493.20(z). This certification is similar to that previously required by the USDA Announcement issued on September 21, 1988, which was supplemented by the USDA Announcement issued on February 15, 1989. These previous Notices to Participants are superseded by this interim rule.

Section 1493.50(b) requires exporters to certify that there have not been and will not be any corrupt payments or extra sales services or other items extraneous to the transaction to be provided, financed or guaranteed in connection with the transaction, and that the transaction complies with applicable United States law. This provision implements section 401(a) of the Agricultural Trade Act of 1978 (7 U.S.C. 5661(a)), as amended by section 1531 of the 1990 Act. This interim rule supersedes the USDA Announcement issued on January 8, 1991, which required, in paragraph 5, the exporter to submit a certification regarding the prohibition against providing corrupt payments or after sales services in connection with GSM–102 and GSM–103 payment guarantees.

Section 1493.50(c) requires exporters to certify that, if the agricultural commodity is vegetable oil or a vegetable oil product, none of the agricultural commodity or product has been or will be used as a basis for a duty drawback claim pursuant to section 313 of the Tariff Act of 1930. The certification now required by this interim rule is identical to that previously required by the USDA Announcement issued on February 5, 1990, which is now superseded, and it is also in accordance with section 416(b) of the Agricultural Trade Act of 1978 (7 U.S.C. 5676(b)), as amended by section 1531 of the 1990 Act.

Section 1493.50(d) requires exporters to certify that no person or selling agency has been employed or retained to solicit or secure the payment guarantee and that there is no agreement or understanding for commission, percentage, brokerage, or contingent fee, except in the case of bona fide employees or bona fide established commercial or selling agencies maintained by the exporter for the purpose of securing business. This requirement was contained in § 1493.12, "Covenant against contingent fees" of the previous regulations and in this interim rule has been incorporated into the certifications required from exporters at the time of an application for a payment guarantee.

Additionally, § 1493.50(e) of this interim rule requires the exporter to certify that the information provided by it to CCC pursuant to § 1493.30 has not changed, it still meets all of the qualification and program eligibility requirements of § 1493.30, and it will immediately notify CCC if there is a change of circumstances which should cause it to fail to meet such requirements. This certification simplifies the qualification process and ensures that an exporter which is suspended or debarred will not participate in the GSM–102 or GSM–103 programs.

Section 1493.60 Payment Guarantee

Section 1493.60 revises and reformats § 1493.4 of the previous regulations in order to simplify and clarify the section and to add subparagraph titles. The statement of CCC's obligation, now contained in § 1493.60(a), has been revised to make it more accurate.

Section § 1493.60(b), "Period of Guarantee Coverage," has been revised to incorporate the policy announced December 17, 1982 by a FAS Report press release which is superseded by this interim rule. This notice confirmed CCC's policy of covering interest accured prior to the date of export, although the payment guarantee does not become effective until the date of export. Interest may begin to accrue prior to the date of export in export sales made on the basis of FOB, U.S. interior points of loading, such as sales to Mexico shipped in trucks or railcars. The provisions of § 1493.60(b) now indicate that the credit period can either begin upon the date of export or on the date that interest begins to accrue, whichever is earlier.

Section 1493.60(c), "Terms of the CCC Payment Guarantee," has been added to this interim rule to state that the terms of the exporter's payment guarantee include the provisions of this subpart, which may be supplemented by any Program Announcements and Notices of Participants in effect at the time of approval of the payment guarantee by CCC.

Section 1493.60(d), "Final Date to Export," has been added to the interim rule to incorporate the policy announced in the Notice to Participants issued on March 10, 1982. This Notice, which is superseded by this interim rule, provided that the final date to export specified in the payment guarantee would be later than the deadline for shipping contained in the exporter's sales contract with the buyer. This policy was adopted to avoid unnecessary paperwork and delays due to late arrival of vessels and resulting amendments to a payment guarantee's final date to export. In incorporating this policy, § 1493.60(d) provides that the final date to export shown on the payment guarantee will be stated as one month, as determined by CCC, after the contractual deadline for shipping.

Section § 1493.60(e), "Reserve Coverage for Loading Tolerances," has been added to incorporate the policy announced in the Notice to Participants issued on June 3, 1982, which is superseded by this interim rule. This Notice provided that exporters could apply for payment guarantee coverage for an amount which would include the maximum contractual loading tolerance. Assuming that there was sufficient credit guarantee availability at the time of the exporter's application, CCC would reserve coverage to account for the upward tolerance thus assuring the exporter that it could obtain guarantee coverage for the entire sale. This policy was adopted to assure exporters of their ability to purchase coverage on the quantity actually lifted, but at the same time to avoid imposing unnecessary costs of requiring the payment of a guarantee fee for the maximum quantity permitted by the contract loading tolerance when the maximum quantity might not be exported. In incorporating this policy, § 1493.60(e) provides that, if requested by the exporter in the application for a payment guarantee, CCC may approve a payment guarantee for the mean quantity of the U.S. agricultural commodity specified in the export sales contract and, if available at the time of application for a payment guarantee, CCC will reserve coverage up to the maximum quantity allowed by the contractual loading tolerance.

Section 1493.60(f) incorporates provisions which were contained in § 1494.4(b) of the previous regulations.

Section 1493.60(g) has been added in this interim rule to implement section 202(h) of the Agricultural Trade Act of 1978 (7 U.S.C. 5662(h)), as amended by section 1531 of the 1990 Act, which states that CCC may provide guarantee coverage only for United States agricultural commodities (as defined in § 1493.20(z) of this interim rule) and may not provide guarantee coverage for the value of any foreign agricultural component.

Section 1493.60(h) incorporates provisions which were contained in § 1494.4(c) of the previous regulations.

Section 1493.60(i) incorporates provisions which were contained in § 1494.4(d) of the previous regulations.

Section 1493.70 Guarantee Rates and Fees

The provisions relating to guarantee fee rates and guarantee fees contained in §§ 1493.5 and 1493.6 of the previous regulations have been combined into § 1493.70 in this interim rule. Section 1493.70 adds subparagraph titles and replaces the references to § 1493.15 in the prior regulations with a reference to the "Contacts P/R."

Section 1493.80 Evidence of Export

Section 1493.80 of this interim rule is a revision of § 1493.7 of the previous regulations. It contains some changes made for the sake of clarity and others mandated by the 1990 Act.

Section 1493.80(a)(6) requires the exporter to state the unit sales price of the commodity. If the unit sales price at export differs from the unit sales price indicated in the application for a payment guarantee, the exporter is also required to submit a statement explaining the reason for the difference This provision in this interim rule supersedes the USDA Announcement issued on July 17, 1990.

In the case of sales made on the basis of C&F or CIF, where the exporter applies for guarantee coverage on a FAS or FOB basis, § 1493.80(a)(6) also requires the exporter to specify the actual cost of freight for a commodity sold on a C&F basis, and the actual cost of freight and of marine and war risk insurance, for a commodity sold on a CIF basis. Although similar information was previously obtained from exporters with respect to sales submitted for guarantee coverage on this basis, this provision has been added to clarify CCC's informational requirement.

Section 1493.80(a)(7) requires the exporter to submit information regarding

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any discounts and allowances, if any, that were or will be provided to the importer. As previously indicated in the discussion of § 1493.80(a)(10), some types of discounts and allowances are permitted in contracts for export sales which are eligible for GSM–102 and GSM–103 payment guarantees, but the value of such discounts and allowances must be reported to CCC and deducted from the port value and exported value of the agricultural commodity.

As previously indicated in the discussion of § 1494.40(a)(16), § 1493.80(a)(8) requires the exporter to report to CCC any instances in which the export credit sales for which the exporter is applying for a payment guarantee are also being used as the basis for an application for participation in other CCC or USDA export programs, specifically the EEP, DEIP, SOAP, or COAP, and to indicate the number of the Agreement assigned by USDA to that transaction.

To facilitate CCC's receipt and review of required certifications, § 1493.80(a)(9) requires the exporter to include the statement that "ALL SECTION 1493.90 CERTIFICATIONS ARE BEING MADE IN THIS EVIDENCE OF EXPORT." The exporter's submission of this statement in the evidence of export will constitute a certification that it is in compliance with all the requirements contained in § 1493.90.

Section 1493.80(b), entitled "Time Limit for Submission of Evidence of Export," has been revised in this interim rule. Section 1493.80(b) now states that the time limit for the submission of evidence of export may be extended if such extension is determined by the GSM to be in the best interest of CCC, but, in any event, an extension will not be granted if payments by the foreign bank are past due.

A Notice to Participants emphasizing the importance of submitting complete, accurate and timely reports of export was issued by USDA on December 22, 1987. This Notice is superseded by this interim rule.

Section 1493.80(c), "Export Sales Reporting," has been added in this interim rule as a reminder that exporters may have a mandatory reporting responsibility under section 602 of the Agricultural Trade Act of 1978 (7 U.S.C. 5712), as amended by section 1531 of the 1990 Act, for exports of wheat and wheat flour, feed grains, oilseeds, cotton, and other agricultral commodities and products thereof. This reminder was previously contained in a Notice to Paticipaants issued on August 29, 1990 and for the purposes of the GSM–102 and GSM–103 programs, this Notice is superseded by this interim rule.

Section 1493.90 Certification Requirements for the Evidence of Export

This section has been added in the interim rule and contains provisions similar to those of § 1493.50. Exporters were previously required by supplemental announcements to submit some of these certification statements in connection with the application for a payment guarantee, but these supplemental announcements did not require similar certification statements to be made at the time of submission of the evidence of export.

In this interim rule, §§ 1493.90 (a) and (e) incorporates two certification statements previously required from exporters at the time of application for a payment guarantee. CCC has determined that certain certifications made at the time of application should be made again by the exporter after the export has been completed. CCC therefore requires exporters to furnish similar certification statements at the time of submission of the evidence of export. The previously required certification statements have been reworded to comply with provisions of the Agricultural Trade Act of 1978, as amended by section 1531 of the 1990 Act.

Section 1493.90(a) requires exporters to certify that the agricultural commodity or product exported under the export sale for which the payment guarantee has been requested is a United States agricultural commodity or product thereof, as defined in § 1493.20(z) of this interim rule. This certification is similar to and supersedes the certifications previously required by the USDA Announcements issued on September 21, 1988 and February 15, 1989.

Section 1493.90(b) requires exporters to certify that agricultural commodities of the grade, quality and quantity called for in the exporter's sales contract with the importer have been exported to the country specified in the payment guarantee. This provision was contained in § 1493.7(a)(6) of the prior regulations.

Section 1493.90(c) requires exporters to retain documents evidencing the obligation of the foreign bank for a period of five years after the due date of the final installment payment to be made by the foreign bank to the exporter or the exporter's assignee, in accordance with section 402(a)(1) of the Agricultural Trade Act of 1978 (7 U.S.C. 5662(a)(1)), as amended by section 1531 of the 1990 Act. A requirement for the maintenance of records for three years was contained in § 1493.7(a)(7) of the prior regulations.

Section 1493.90(d) requires exporters to certify that a letter of credit has been opened in favor of the exporter by the foreign bank shown in the payment guarantee to cover the port value of the commodity exported. This requirement was contained in § 1493.7(a)(8) of the prior regulations.

Section 1493.90(e) has been added in the interim rule, in accordance with section 401(a) of the Agricultural Trade Act of 1978 (7 U.S.C. 5661(a)), as amended by section 1531 of the 1990 Act, and requires exporters to certify that there have not been and will not be any corrupt payments or extra sales services or other items extraneous to the transaction to be provided, financed or guaranteed in connection with the transaction, and that the transaction complies with applicable United States law.

Additionally, § 1493.90(f) of the interim rule requires exporters to certify that the information provided to CCC pursuant to § 1493.30 has not changed, they still meet all of the qualification and program eligibility requirements of § 1493.30, and they will immediately notify CCC if there is a change of circumstances which should cause them to fail to meet such requirements.

Section 1493.100 Proof of Entry

This section of the interim rule has been added in accordance with sections 401(a)(1) and (b) of the Agricultural Trade Act of 1978 (7 U.S.C. 5661(a)(1) and (b)), as amended by section 1531 of the 1990 Act. Section 1493.100(a) of the interim rule implements section 401(b), which prohibits the unauthorized diversion of exported commodities covered by a payment guarantee under GSM–102 or GSM–103. Section 1493.100(b) of the interim rule implements section 401(a)(1), which requires "the exporter to maintain records of an official or customary commercial nature or other documents as the Secretary may require, and have access to such documents or records as needed to verify the arrival of agricultural commodities exported in connection with such programs in the countries that were the intended destination of such commodities." This requirement to maintain records verifying arrival was also stipulated in paragraph 4 of the Notice to Participants issued on January 8, 1991. This Notice to Participants is superseded by this interim rule. Because the timeliness, form and content of arrival documents may vary widely among importing countries, § 1493.100(b) allows for considerable flexibility with respect to the types of arrival documentation that are deemed to be of an official or customary commercial nature.

Section 1493.110 Notice of Default and Claims for Loss

Section 1493.110 of this interim rule is a revision of § 1494.8 of the previous regulations. Several changes of a clarifying nature have been made and subparagraph titles have been added. The reference to the address for the Treasurer, CCC, has been replaced with a reference to the Contacts P/R.

Section 1493.110(a) of this interim rule continues to require, as did § 1493.8(a) of the prior regulations, that the exporter or the exporter's assignee notify CCC of defaults as soon as possible, but not later than 10 calendar days after the date that payment was due from the foreign bank. A sentence has been added to this paragraph to state that the time limit for filing a notice of default may be extended only under extraordinary circumstances and if such extension is determined by the Controller, CCC, to be in the best interest of CCC.

Section 1493.110 (b) of this interim rule incorporates and simplifies the procedure contained in §§ 1493.8(b) and (c) of the prior regulations. Subsection (b) required that the exporter or the exporter's assignee file a claim for loss within 30 days after the notice of default or any extension thereof. Subsection (c) provided that a claim for loss would not be honored if it was made later than six months from the date of default. It has been determined that these provisions should be revised to require that the claim for loss must be filed not later than six months from the date that the payment was due from the foreign bank. CCC incurs no additional liability in making this change, because it is left to the exporter or the exporter's assignee to determine, within the specified time frame, whether and, if so, when to make a claim to CCC for loss.

Section 1493.110(b) provides greater detail regarding the documents required to file a claim for loss. It also sets forth various means by which the related obligation between the U.S. financial institution and the foreign bank can be satisfactorily demonstrated.

Section 1493.120 Payment for Loss

Section 1493.120 of this interim rule is a revision of § 1493.9 of the previous regulations. Several changes of a clarifying nature have been made and subparagraph titles have been added. Cross references to other sections in the regulations have been updated.

Section 1493.9(d) of the prior regulations, which is found at § 1493.120(e) of the interim rule, has been revised in accordance with section 401(c) of the Agricultural Trade Act of 1978 (7 U.S.C. 5661(c)), as amended by section 1531 of the 1990 Act. Section 401(c) not only includes a "Good Faith" provision, which is implemented in § 1493.130(e) of this interim rule, but it also focuses on the assignee's "knowledge" of improper reporting or certifications made by the exporter, rather than on the assignee's "control" which was the focus in § 1493.9(d) of the prior regulations. With this change in § 1493.120(e) to focus on the assignee's knowledge, the provisions of § 1493.120(e) and § 1493.130(e) will not be in conflict.

Section 1493.130 Recovery of Losses

Section 1493.130 of this interim rule is a revision of § 1493.10 of the previous regulations. Several changes of a clarifying nature have been made and subparagraph titles have been added. Cross references to other sections in the regulations have been updated.

Section 1493.130(b) in this interim rule is a revision of § 1493.10(b) of the previous regulations. Section 1493.130(b) incorporates page 3, items 1 and 2 of the Supplemental Announcement issued on August 28, 1985. This portion of this Supplemental Announcement contained requirements and time frames for the payment of late interest in connection with of monies received in the event of a recovery of losses by either the exporter or the exporter's assignee in pro rata payment to CCC or CCC's receipt of monies in the event of a recovery of losses and pro rata payments to the exporter or the exporter's assignee. This Supplemental Announcement is superseded by this interim rule.

Section 1493.130(c) in this interim rule clarifies § 1493.10(c) of the previous regulations and includes a reference to "Appendix A to § 1493.130—Illustration of Pro Rata Allocation of Recoveries," which has been established by this interim rule and supersedes the Supplemental Announcement issued on August 28, 1985.

Section 1493.10(d) of the previous regulations provided that "[n]otwithstanding any other terms of the payment guarantee, the exporter *shall* be liable to CCC under the payment guarantee when it is determined by CCC that the exporter has been or is in breach of *any* contractual obligation, certification or warranty made by the exporter for the purpose of obtaining the payment guarantee or in fulfilling obligations under GSM–102 or GSM–103, and the exporter's assigne may be liable to CCC for *any* amounts paid by CCC under the payment guarantee when and if it is determined by CCC that the exporter's assignee has not fulfilled *any* of the assignee's obligations under GSM–102 or GSM–103." (emphasis added).

Section 402(b) of the Agricultal Trade Act of 1978 (7 U.S.C. 5662(b)), as amended by section 1531 of the 1990 Act, requires that "[i]f any exporter, assignee or other participant has engaged in fraud with respect to the programs authorized under this Act, or has otherwise violated program requirements under this Act, the Commodity Credit Corporation *may*—(1) hold such exporter, assignee, or participant liable for any and all losses to the Corporation resulting from such fraud or violation" (emphasis added). Section 1493.10(d) of the previous regulations, which is found at § 1493.130(d) of the interim rule, has been revised in accordance with section 402(b).

Section 1493.130(e) of this interim rule has been added in accordance with section 401(c) of the Agricultural Trade Act of 1978 (7 U.S.C. 5661(c)), as amended by section 1531 of the 1990 Act. Section 401(c) is a "Good Faith" provision, which states that the failure of an exporter participating in the GSM–102 or GSM–103 program or other person to comply with statutory provisions regarding (1) the maintenance of proof of entry documents; (2) the prohibition against providing corrupt payments, extra sales services, or other items extraneous to the transaction in connection with an export sale covered by a payment guarantee; or (3) the diversion of the agricultural commodities exported in connection with a payment guarantee to a country other than the intended destination, will not affect the validity of any guarantee with respect to any exporter or person who had no knowledge of such failure to comply at the time such exporter or person was assigned the payment guarantee.

Section 1493.140 Miscellaneous Provisions

Section 1493.140 of this interim rule is a revision of §§ 1493.11 through 1493.17 of the previous regulations. Minor changes have been made for the sake of clarity and consistency, e.g., the replacement of the address for the Treasurer, CCC, with a reference to the Contacts P/R; some sections have been deleted; some subsections have been added.

Provisions have been added at § 1493.140 (b) and (c) to implement

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section 202(i) of the Agricultural Trade Act of 1978 (7 U.S.C. 5622(i)), as amended by section 1531 of the 1990 Act. Section 202(i) specifies conditions which would make certain financial institutions ineligible to receive an assignment of proceeds which may become payable under a payment guarantee or to receive proceeds payable under a payment guarantee approved by CCC. The provisions of this interim rule regarding the ineligibility of financial institutions supersede paragraph 3 of the USDA Announcement issued on January 8, 1991. For the purposes of §§ 1493.140 (b) and (c), "sound financial condition" will be determined as of the time of assignment of a payment guarantee. The prohibition in § 1493.4(e) of the prior regulations that the assignee shall not be a branch, agency or the home office of the foreign bank issuing the letter of credit has been incorporated into §§ 1493.140 (b) and (c) of this interim rule. "Home office" in this context is interpreted to be the U.S. parent of a U.S. bank (branch or affiliate) located in a foreign country.

With regard to the eligibility of a financial institution to receive proceeds payable under a payment guarantee, it has been determined that the requirement that the financial institution be in sound financial condition is applicable only at the time of the assignment of the payment guarantee. If such financial institution is determined by the Treasurer, CCC, not to be in a sound financial condition on any day after the day of assignment, this will not preclude a financial institution from receiving proceeds payable under a payment guarantee. CCC will determine on the day of default or before CCC makes payment for a loss whether any of the other conditions specified in § 1493.140(c) would apply so as to make a financial institution ineligible to receive proceeds.

Section 1493.140(e) of this interim rule is a revision of § 1493.14 of the previous regulations, dealing with "Exporter's records and accounts." The previous requirement for record retention was three years. However, sections 402(a) (1) and (2) of the Agricultural Trade Act of 1978 (7 U.S.C. 5662 (a) and (b)), as amended by section 1531 of the 1990 Act, requires that records be maintained and made accessible to authorized USDA officials for a period of five years after the date of expiration of the coverage of the payment guarantee. Section 1493.140(e) of the interim rule incorporates this new five-year requirement.

The description of the types of records which the exporter or the exporter's assignee are required to maintain and make available has been expanded in § 1493.140(e). It has been determined that the maintenance of, and access to, these additional records is necessary for authorized USDA officials to verify that no corrupt practices were connected with the export sale.

Reminders regarding the maintenance of records and access to such records by authorized USDA officials were issued to Notices to Participants on October 27 and December 7, 1989. These Notices to Participants are superseded by this interim rule.

Section 1493.140(f) has been added in this interim rule to inform program participants of their responsibility to review and acquaint themselves with all regulations, Program Announcements, and Notices to Participants relating to the GSM–102 and GSM–103 programs and to notify applicants that they will be bound by any terms contained in applicable Program Announcements or Notices to Participants issued prior to the date of approval of a payment guarantee.

Section 1493.140(g) has been added in this interim rule to require that all submissions to CCC be signed by a principal or officer of the exporter or the exporter's assignee, and that the exporter or the exporter's assignee must ensure that all information/reports required under these regulations are submitted within the required time limits. This section also provides that CCC will acknowledge the receipt of submitted information/reports, if requested by the exporter or the exporter's assignee.

List of Subjects in 7 CFR Part 1493

Administrative practice and procedures, Agricultural commodities, Credit, Exports, Financing, Guarantees, Reporting and record keeping requirements.

Accordingly, 7 CFR chapter XIV, part 1493 is revised to read as follows:

PART 1493—CCC EXPORT CREDIT GUARANTEE PROGRAMS

Subpart A—Restrictions and Criteria for Export Credit Guarantee Programs

Sec.

1493.1 General statement.
1493.2 Purposes of programs.
1493.3 Restrictions on programs and cargo preference statement.
1493.4 Criteria for country allocations.
1493.5 Criteria for agricultural commodity allocations.
1493.6 Additional required determinations for GSM–103.

Subpart B—CCC Export Credit Guarantee Program (GSM–102) and CCC Intermediate Export Credit Guarantee Program (GSM–103) Operations

Sec.

1493.10 General statement.
1493.20 Definition of terms.
1493.30 Information required for program participation.
1493.40 Application for payment guarantee.
1493.50 Certification requirements for obtaining payment guarantees.
1493.60 Payment guarantee.
1493.70 Guarantee rates and fees.
1493.80 Evidence of export.
1493.90 Certification requirements for the evidence of export.
1493.100 Proof of entry.
1493.110 Notice of default and claims for loss.
1493.120 Payment for loss.
1493.130 Recovery of losses.
Appendix A to § 1493.130—Illustration of Pro Rata Allocation of Recoveries
1493.140 Miscellaneous provisions.

Authority: 15 U.S.C. 714b(d), 714c(f); 7 U.S.C. 5602, 5622, 5661, 5662, 5663, 5664, 5676.

Subpart A—Restrictions and Criteria for Export Credit Guarantee Programs

§ 1493.1 General statement.

This subpart sets forth the restrictions which apply to the use of credit guarantees under the Commodity Credit Corporation (CCC) Export Credit Guarantee Program (GSM–102) and the Intermediate Credit Guarantee Program (GSM–103) and the criteria considered by CCC in determining the annual allocations of credit guarantees to be made available with respect to each participating country. The criteria considered by CCC in the review and approval of proposed allocation levels for GSM–102 and/or GSM–103 credit guarantees which may be made available in connection with export sales of specific U.S. agricultural commodities to these countries are also set forth. These restrictions and criteria are interrelated and will be applied and considered together in the process of determining which sales opportunities under GSM–102 or GSM–103 will best meet the purposes of the programs.

§ 1493.2 Purposes of programs.

CCC may use export credit guarantees:

(a) To increase exports of U.S. agricultural commodities;

(b) To compete against foreign agricultural exports;

(c) To assist countries, particularly developing countries, in meeting their food and fiber needs; and

(d) For such other purposes as the Secretary of Agriculture determines appropriate, consistent with the provisions of § 1493.6.

§ 1493.3 Restrictions on programs and cargo preference statement

(a) *Restrictions on Use of Credit Guarantees.*

(1) Export credit guarantees authorized under these regulations shall not be used for foreign aid, foreign policy, or debt rescheduling purposes.

(2) CCC shall not make the credit guarantees available in connection with sales of agricultural commodities to any country that the Secretary determines cannot adequately service the debt associated with such sales.

(b) *Cargo Preference Laws.* The provisions of the cargo preference laws shall not apply to export sales with respect to which credit is guaranteed under these programs.

§ 1493.4 Criteria for country allocations.

The criteria considered by CCC in reviewing proposals for country allocations under the GSM–102 or GSM–103 programs, will include, but not be limited to, the following:

(a) Potential benefits that the extension of export credit guarantees would provide for the development, expansion or maintenance of the market for particular U.S. agricultural commodities in the importing country;

(b) Financial and economic ability of the importing country to adequately service CCC guaranteed debt;

(c) Financial status of participating banks in the importing country as it would affect their ability to adequately service CCC guaranteed debt;

(d) Political stability of the importing country as it would affect its ability to adequately service CCC guaranteed debt; and

(e) Current status of debt either owed by the importing country to CCC or to lenders protected by CCC's guarantees.

§ 1493.5 Criteria for Agricultural Commodity Allocations.

The criteria considered by CCC in reviewing proposals for specific U.S. commodity allocations within a specific country allocations will include, but not be limited to, the following:

(a) Potential benefits that the extension of export credit guarantees would provide for the development, expansion or maintenance of the market in the importing country for the particular U.S. agricultural commodity under consideration;

(b) The best use to be made of the export credit guarantees in assisting the importing country in meeting its particular needs for food and fiber, as may be determined through consultations with private buyers and/or representatives of the government of the importing country;

(c) Evaluation, in terms of program purposes, of the relative benefits for providing payment guarantee coverage for sales of the U.S. agricultural commodity under consideration compared to providing coverage for sales of other U.S. agricultural commodities; and

(d) Evaluation of the near and long term potential for sales on a cash basis of the U.S. commodity under consideration.

§ 1493.6 Additional Required Determinations for GSM–103.

Notwithstanding any other provision under this part, CCC shall not guarantee under the GSM–103 program the repayment of credit made available to finance an export sale unless the Secretary of Agriculture determines that such sale will:

(a) Develop, expand or maintain the importing country as a foreign market, on a long-term basis, for the commercial sale and export of U.S. agricultural commodities, without displacing normal commercial sales;

(b) Improve the capability of the importing country to purchase or use, on a long-term basis, U.S. agricultural commodities; or

(c) Otherwise promote the export of U.S. agricultural commodities.

Subpart B—CCC Export Credit Guarantee Program (GSM–102) and CCC Intermediate Export Credit Guarantee Program (GSM–103) Operations.

§ 1493.10 General statement.

(a) *Overview.* (1) This subpart contains the regulations governing the operations of the Export Credit Guarantee Program (GSM–102) and the Intermediate Credit Guarantee Program (GSM–103). The GSM–102 and GSM–103 programs of the Commodity Credit Corporation (CCC) were developed to expand U.S. agricultural exports by making available export credit guarantees to encourage U.S. private sector financing of foreign purchases of U.S. agricultural commodities on credit terms. Under GSM–102 credit guarantees are issued for terms of up to three years. Under GSM–103, credit guarantees are issued for terms of from three to ten years.

(2) The programs operate in cases where credit is necessary to increase or maintain U.S. exports to a foreign market and where private U.S. financial institutions would be unwilling to provide financing without CCC's guarantee. The programs are operated in a manner intended not to interfere with markets for cash sales. The programs are targeted toward those countries where the guarantees are necessary to secure financing of the exports but which have sufficient financial strength so that foreign exchange will be available for payments as scheduled. In providing this credit guarantee facility, CCC seeks to expand market opportunities for U.S. agricultural exporters and assist long-term market development for U.S. agricultural commodities.

(3) The credit facility created by these programs is the CCC payment guarantee. The payment guarantee is an agreement by CCC to pay the exporter, or the U.S. financial institution that may take assignment of the exporter's right to proceeds, specified amounts of principal and interest due from but not paid by the foreign bank issuing an irrevocable letter of credit in connection with the export sale to which CCC's guarantee coverage pertains. By approving an exporter's application for a payment guarantee, CCC encourages private sector, rather than governmental, financing and incurs a substantial portion of the risk of default by the foreign bank. CCC assumes this risk, in order to be able to operate the programs for the purposes specified in § 1493.2 of this part.

(b) *Credit Facility Mechanism.* Typically, in export sales of U.S. agricultural commodities, payment by the importer is made under an irrevocable letter of credit. For the purpose of the GSM–102 and GSM–103 programs, CCC will consider applications for payment guarantees only in connection with sales of U.S. agricultural commodities where the payment for the agricultural commodities will be made in one of the two following ways:

(1) An irrevocable foreign bank letter of credit, issued in favor of the exporter, specifically stating the deferred payment terms under which the foreign bank is obligated to make payments in U.S. dollars as such payments become due; or

(2) An irrevocable foreign bank letter of credit, issued in favor of the exporter, that is supported by a related obligation specifically stating the deferred payment terms under which the foreign bank is obliged to make payment to the exporter, or the eporter's assignee, in U.S. dollars as such payments become due.

The exporter may assign the right to proceeds under the letter of credit or related obligation to a U.S. bank or

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financial institution so that the exporter may realize the proceeds of the sale prior to the deferred payment date(s) as set forth in the irrevocable foreign bank letter of credit or its related obligation. The GSM–102 and GSM–103 programs are designed to protect the exporter or the exporter's assignee against those losses specified in the payment guarantee resulting from defaults, whether for commercial or noncommercial reasons, by the foreign bank obligated under the letter of credit or related obligation.

(c) *Program Administration.* The GSM–102 and GSM–103 programs will be administered pursuant to this part and any Program Announcements and Notices to Participants issued by CCC pursuant to and not inconsistent with this part. These programs are under the general administrative responsibility of the General Sales Manager (GSM), Foreign Agricultural Service (FAS/USDA). The review and payment of claims for loss will be administered by the Office of the Controller, CCC. Information regarding specific points of contact for the public, including names, addresses, and telephone and facsimile numbers of particular USDA or CCC offices, will be announced by a public press release (see § 1493.20(c), "Contacts P/R").

(d) *Country Allocations and Program Announcements.* From time to time, CCC will issue a Program Announcement to announce a GSM–102 and/or GSM–103 program allocation for a specific country. The Program Announcement for a country allocation will designate specific allocations for U.S. agricultural commodities or products. Exporters may negotiate export sales to buyers in that country for one of the commodities specified in the Program Announcement and seek payment guarantee coverage within the dollar amounts of specified coverage for that commodity. The Program Announcement will contain a requirement that the exporter's sales contract contain a shipping deadline within the applicable program year. The final date for a contractual shipping deadline will be stated in the Program Announcement. Program Announcements may also contain a specified "undesignated" or "unallocated" dollar amount for the purpose that if dollar amounts specified for a specific commodity for a country become fully used, an additional allocation from the "unallocated" or "undesignated" portion of the total country allocation may be then designated for a specific commodity. Program Announcements that include an "unallocated" or "undesignated" dollar amount will contain further information on the "unallocated" or undesignated" portion of the country allocation.

§ 1493.20 Definition of terms.

Terms set forth in this part, in CCC Program Announcements and Notices to Participants, and in any CCC-originated documents pertaining to the GSM–102 and GSM–103 programs will have the following meaning:

(a) *Assignee*—A financial institution in the United States which, for adequate consideration given, has obtained the legal rights to receive the payment of proceeds under the payment guarantee.

(b) *CCC*—The Commodity Credit Corporation, an agency and instrumentality of the United States within the Department of Agriculture, authorized pursuant to the Commodity Credit Corporation Charter Act of 1948 (15 U.S.C. 714 *et seq.*), and subject to the general supervision and direction of the Secretary of Agriculture.

(c) *Contacts P/R*—A notice issued by FAS/USDA by public press release which contains specific names, addresses, and telephone and facsimile numbers of contacts within FAS/USDA and CCC for use by persons interested in obtaining information concerning the operations of the GSM–102 or GSM–103 program. The Contacts P/R also contains details about where to submit information required to qualify for program participation, applications for payment guarantees, requests for amendments of payment guarantees, submissions of evidence of export, and notices of default and claims for loss.

(d) *Date of Export*—One of the following dates, depending upon the method of shipment: The on-board date of an ocean bill of lading or the on-board ocean carrier date of an intermodal bill of lading; the on-board date of an airway bill; or, if exported by rail or truck, the date of entry shown on an entry certificate or similar document issued and signed by an official of the government of the importing country.

(e) *Date of Sale*—The earliest date on which a contractual obligation exists between the exporter or an intervening purchaser, if applicable, and the importer under which a firm dollar-and-cent price for the sale of agricultural commodities to the importer has been established or a mechanism to establish such price has been agreed upon.

(f) *Discounts and Allowances*—Any consideration provided directly or indirectly, by or on behalf of the exporter or an intervening purchaser, to the importer in connection with a sale of an agricultural commodity, above and beyond the commodity's value, stated on the appropriate FOB, FAS, C&F or CIF basis. Discounts and allowances include, but are not limited to, the provision of additional goods, services or benefits; the promise to provide additional goods, services or benefits in the future; financial rebates; the assumption of any financial or contractual obligations; the whole or partial release of the importer from any financial or contractual obligations; or settlements made in favor of the importer for quality, weight, demurrage or detention.

(g) *Eligible Interest*—The maximum amount of interest, based on the interest rate indicated in CCC's payment guarantee or any amendments to such payment guarantee, which CCC agrees to pay the exporter or the exporter's assignee in the event that CCC pays a claim for loss. The maximum interest rate stated in the payment guarantee, when determined or adjusted by CCC, will not exceed the average investment rate of the most recent Treasury 52-week bill auction in effect at that time.

(h) *Exported Value*—(1) Where CCC announces coverage on a FAS or FOB basis and:

(i) Where the commodity is sold on a FAS or FOB basis, the value, FAS or FOB basis, U.S. point of export, of the export sale, reduced by the value of any discounts or allowances granted to the importer in connection with such sale; or

(ii) Where the commodity was sold on a C&F or CIF basis, point of entry, the value of the export sale, FAS or FOB, point of export, is measured by the C&F or CIF value of the agricultural commodity less the actual cost of ocean freight and, in the case of CIF sales, less the actual cost of marine and war risk insurance, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity; or

(2) Where CCC announces coverage on a C&F or CIF basis, and where the commodity is sold on a C&F or CIF basis, point of entry, the total value of the export sale, C&F or CIF basis, point of entry, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity.

(3) When a C&F or CIF commodity export sale involves the performance of non-freight services to be performed outside the United States (e.g., services such as bagging bulk cargo) which are not normally included in ocean freight contracts, the value of such services and any related materials not exported from the U.S. with the commodity must also be deducted from the C&F or CIF sales price in determining the exported value.

(i) *Exporter*—A seller of an U.S. agricultural commodity or product which has qualified in accordance with the provisions of § 1493.30 of this subpart.

(j) *FAS/USDA*—The Foreign Agricultural Service, U.S. Department of Agriculture.

(k) *Foreign Bank Letter of Credit*—An irrevocable commercial letter of credit, subject to the current revision of the Uniform Customs and Practices for Documentary Credits (International Chamber of Commerce Publication No. 400), providing for payment in U.S. dollars against stipulated documents and issued in favor of the exporter by a CCC-approved foreign banking institution.

(l) *GSM*—The General Sales Manager, FAS/USDA, acting in his capacity as Vice President, CCC, or his designee.

(m) *GSM–102*—A CCC program, also referred to as the "Export Credit Guarantee Program," under which payment guarantees are approved for a credit period not exceeding 3 years from the date(s) of export or from the date interest begins to accrue, whichever is earlier.

(n) *GSM–103*—A CCC program, also referred to as the "Intermediate Export Credit Guarantee Program," under which payment guarantees are approved for a credit period exceeding 3 years but not exceeding 10 years from the date(s) of export or from the date interest begins to accrue, whichever is earlier.

(o) *Guaranteed Value*—The maximum amount, exclusive of interest, that CCC agrees to pay the exporter or assignee under CCC's payment guarantee, as indicated on the face of the payment guarantee.

(p) *Importer*—A foreign buyer that enters into a contract with an exporter, or with an intervening purchaser, for an export sale of agricultural commodities to be shipped from the U.S. to the foreign buyer.

(q) *Incoterms*—The following terms, which shall be as defined by the International Chamber of Commerce: (1) Free Alongside Ship (FAS), (2) Free on Board (FOB), (3) Cost and Freight (C&F), and (4) Cost Insurance and Freight (CIF).

(r) *Intervening Purchaser*—A party that agrees to purchase U.S. agricultural commodities from an exporter and sell the same agricultural commodities to an importer.

(s) *Late Interest*—Interest, in addition to the interest due under the payment guarantee, which CCC agrees to pay in connection with a claim for loss, accruing during the period beginning on the first day after which the claim for loss is found in good order by CCC and ending on the day on which payment is made on such claim for loss.

(t) *Payment Guarantee*—An agreement under which CCC, in consideration of a fee paid, in reliance upon the statements and declarations of the exporter, and subject to the terms set forth in the written guarantee, this subpart and any applicable Program Announcements or Notices to Participants, agrees to pay the exporter or the exporter's assignee in the event of a default by a foreign bank on its payment obligation under the foreign bank letter of credit issued in connection with a guaranteed sale or under the foreign bank's related obligation.

(u) *Notice to Participants*—A notice issued by CCC by public press release which serve one or more of the following functions: To remind program participants of the requirements of the program; to clarify the program requirements contained in these regulations, in a manner which is not inconsistent with the regulations; to instruct exporters to provide additional information in applications for payment guarantees under specific country and/or commodity allocations; and to supplement the provisions of a payment guarantee, in a manner not inconsistent with these regulations, before the exporter's application for such payment guarantee is approved.

(v) *Port Value*—(1) Where CCC announces coverage on a FAS or FOB basis and: (i) Where the commodity is sold on a FAS or FOB basis, U.S. point of export, the value, FAS or FOB basis, U.S. point of export, of the export sale, including the upward tolerance, if any, as provided by the export sales contract, reduced by the value of any discounts or allowances granted to the importer in connection with such sale; or

(ii) Where the commodity was sold on a C&F or CIF basis, point of entry, the value of the export sale, FAS or FOB, point of export, including the upward tolerance, if any, as provided by the export sales contract, is measured by the C&F or CIF value of the agricultural commodity less the value of ocean freight and, in the case of CIF sales, less the value of marine and war risk insurance, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity; or

(2) Where the CCC announces coverage on a C&F or CIF basis and where the commodity was sold on C&F or CIF basis, point of entry, the total value of the export sale, C&F or CIF basis, point of entry, including the upward tolerance, if any, as provided by the export sales contract, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity; or

(3) When a C&F or CIF commodity export sale involves the performance of non-freight services to be performed outside the United States (e.g., services such as bagging bulk cargo), which are not normally included in ocean freight contracts, the value of such services and any related materials not exported from the U.S. with the commodity must also be deducted from the C&F or CIF sales price in determining the port value.

(w) *Program Announcement*—An announcement issued by CCC which provides information on specific country and commodity allocations and may identify eligible agricultural commodities and countries, length of credit periods which may be covered, specify dollar limitations for CCC exposure in particular countries, and include other information and requirements.

(x) *Related Obligation*—A contractual commitment by the foreign bank issuing the letter of credit in connection with an export sale to make payment(s) on principal amount(s), plus any contractual interest, in U.S. dollars, to a financial institution in the United States on deferred payment terms consistent with those permitted under CCC's credit guarantee programs. The U.S. financial institution is entitled to such payments because it has purchased draft(s) drawn under such letter of credit.

(y) *United States or U.S.*—All of the 50 states, the District of Columbia, and the territories and possessions of the United States.

(z) *U.S. Agricultural Commodity*—(1) With respect to any agricultural commodity other than a product of an agricultural commodity, an agricultural commodity entirely produced in the United States; and

(2) with respect to a product of an agricultural commodity:

(i) A product all of the agricultural components of which are entirely produced in the United States; or

(ii) Any other product the Secretary may designate that contains any agricultural component that is not entirely produced in the United States if:

(A) Such component is an added, de minimus component;

(B) Such component is not commercially produced in the United States; and

(C) There is no acceptable substitute for such component that is commercially produced in the United States.

(For purposes of this paragraph, fish entirely produced in the United States include fish harvested by a documented

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fishing vessel as defined in title 46, United States Code, in waters that are not waters (including the territorial sea) of a foreign country.)

(aa) USDA—United States Department of Agriculture.

§ 1493.30 Information required for program participation.

Before CCC will accept an application for a payment guarantee under either the GSM–102 program or the GSM–103 program, the applicant must qualify for participation in these programs. Based upon the information submitted by the applicant and other publicly available resources, CCC will determine whether the applicant is eligible for participation in the programs, including whether the applicant is financially responsible.

(a) *Submission of Documentation.* In order to qualify for participation in the GSM–102 and GSM–103 programs, an applicant must submit to CCC, at the address specified in the Contacts P/R, the following information:

(1) The address of the applicant's headquarters office and the name and address of an agent in the U.S. for the service of process;

(2) The legal form of doing business of the applicant, e.g., sole proprietorship, partnership, corporation, etc.;

(3) The place of incorporation of the applicant, if the applicant is a corporation;

(4) The name and U.S. address of the office(s) of the applicant, and a statement indicating whether the applicant is a U.S. domestic corporation, a foreign corporation or another foreign entity. If the applicant has multiple offices, the address included in the information should be that which is pertinent to the particular GSM–102 or GSM–103 export sale contemplated by the applicant;

(5) A certified statement describing the applicant's participation, if any, during the past three years in U.S. Government programs, contracts or agreements; and

(6) A certification that the applicant; any owner, in whole or in part; or any employee is not currently debarred or suspended from contracting with or participating in programs administered by any U.S. Government agency.

(b) *Previous Qualification.* Any exporter that has already qualified under this section may submit applications for GSM–102 or GSM–103 payment guarantees. Each application must include the statement required by § 1493.40(a)(18) incorporating the certifications of § 1493.50, including the certification in § 1493.50(e) that the information previously provided pursuant to paragraph (a) of this section has not changed. If the exporter is unable to provide such certification, such exporter must update the information required by paragraph (a) of this section which has changed and certify that the remainder of the information previously provided has not changed.

(c) *Additional Submissions.* CCC will promptly notify applicants that have submitted information required by this section whether they have qualified to participate in the program. Any applicant failing to qualify will be given any opportunity to provide additional information for consideration by CCC including, but not limited to, financial statements, bank references, or similar information.

(d) *Ineligibility for Program Participation.* An applicant will be ineligible to qualify for participation in the GSM–102 and GSM–103 programs if:

(1) There is insufficient evidence of the financial responsibility of such applicant, as determined by CCC;

(2) Such applicant is currently debarred or suspended from contracting with or participating in any program administered by a U.S. Government agency;

(3) Such applicant is controlled or can be controlled, in whole or in part, by any individuals or entities currently debarred or suspended from contracting with or participating in programs administered by any U.S. Government agency; or

(4) Such applicant employs any individual currently debarred or suspended from contracting with or participating in programs administered by any agency of the U.S. Government.

§ 1493.40 Application for payment guarantee.

(a) A firm export sale must exist before an exporter may submit an application for a payment guarantee. An application for a payment guarantee may be submitted in writing or may be made by telephone, but, if made by telephone, it must be confirmed in writing to the office specified in the Contacts P/R. An application must identify the name and address of the exporter and include the following information:

(1) Name of the destination country.

(2) Name and address of the importer.

(3) Name and address of the intervening purchaser, if any, and a statement that the commodity will be shipped directly to the importer in the destination country.

(4) Date of sale.

(5) Exporter's sale number.

(6) Delivery period as agreed between the exporter and the importer.

(7) A full description of the commodity (including packaging, if any).

(8) Mean quantity, contract loading tolerance and, if necessary, a request for CCC to reserve coverage up to the maximum quantity permitted by the contract loading tolerance.

(9) Unit sales price of the commodity, or a mechanism to establish the price, as agreed between the exporter and the importer. If the commodity was sold on the basis of C&F or CIF, the value of freight and, in the case of sales made on a CIF basis, the value of marine and war risk insurance must be specified.

(10) Description and value of discounts and allowances, if any.

(11) Port value, including upward loading tolerance.

(12) Guaranteed value.

(13) Guarantee fee.

(14) Name and address of the foreign bank issuing the letter of credit.

(15) The term length for the credit being extended, the intervals between principal payments for each shipment to be made under the export sale, and the estimated principal payment due dates and amounts due.

(16) A statement indicating whether any portion of the export sale for which the exporter is applying for a payment guarantee is also being used as the basis for an application for participation in the following CCC or USDA export programs: Export Enhancement Program, Dairy Export Incentive Program, Sunflowerseed Oil Assistance Program, or Cottonseed Oil Assistance Program.

(17) Other information as specified in Notices to Participants, as applicable.

(18) The exporter's statement, "All Section 1493.50 Certifications are being made in this application" which, when included in the application by the exporter, will constitute a certification that it is in compliance with all the requirements set forth in § 1493.50.

(b) An application for a payment guarantee may be approved as submitted, approved with modifications agreed to by the exporter, or rejected by the GSM. In the event that the application is approved, the GSM will cause a payment guarantee to be issued in favor of the exporter. Such payment guarantee will become effective at the time specified in § 1493.60(b). If, based upon a price review, the unit sales price of the commodity does not fall within the prevailing commercial market level ranges, as determined by CCC, the application will not be approved.

§ 1493.50 Certification requirements for obtaining payment guarantees.

By providing the statement in § 1493.40(a)(18), the exporter is certifying that the information provided in the application is true and correct and further that all requirements set forth in this section have been or will be met. The exporter will be required to provide further explanation or documentation with regard to applications that do not include this statement. The exporter, in submitting an application for a payment guarantee and providing the statement set forth in § 1493.40(a)(18), certifies that:

(a) The agricultural commodity or product to be exported under the payment guarantee is a United States agricultural commodity or a product thereof, as defined in § 1493.20(z);

(b) There have not been and will not be any corrupt payments or extra sales services or other items extraneous to the transaction to be provided, financed, or guaranteed in connection with the transaction, and that the transaction complies with applicable United States law;

(c) If the agricultural commodity is vegetable oil or a vegetable oil product, that none of the agricultural commodity or product has been or will be used as a basis for a claim of a refund, as drawback, pursuant to section 313 of the Tariff Act of 1930, 19 U.S.C. 1313, of any duty, tax or fee imposed under Federal law on an imported commodity or product;

(d) No person or selling agency has been employed or retained to solicit or secure the payment guarantee and that there is no agreement or understanding for a commission, percentage, brokerage, or contingent fee, except in the case of bona fide employees or bona fide established commercial or selling agencies maintained by the exporter for the purpose of securing business; and

(e) The information provided pursuant to § 1493.30 has not changed, the exporter still meets all of the qualification requirements of § 1493.30, and the exporter will immediately notify CCC if there is a change of circumstances which would cause it to fail to meet such requirements.

If the exporter breaches or violates these certifications with respect to a GSM–102 or GSM–103 payment guarantee, CCC will have the right, notwithstanding any other rights provided under this subpart, to annul guarantee coverage for any commodities not yet exported and/or to proceed against the exporter.

§ 1493.60 Payment guarantee.

(a) *CCC's Obligation.* The payment guarantee will provide the CCC agrees to pay the exporter or the exporter's assignee an amount not to exceed the guaranteed value, plus eligible interest, in the event that the foreign bank fails to pay under the foreign bank letter of credit or the related obligation. Payment by CCC will be in U.S. dollars.

(b) *Period of Guarantee Coverage.* The payment guarantee will apply to the period beginning either on the date(s) of export(s) or on the date when interest begins to accrue, whichever is earlier, and will continue during the credit term specified in the payment guarantee or amendments thereto. However, the payment guarantee becomes effective on the date(s) of export(s) of the agricultural commodities or products specified in the exporter's application for a payment guarantee.

(c) *Terms of the CCC Payment Guarantee.* The terms of CCC's coverage will be set forth in the payment guarantee, as approved by CCC, and will include the provisions of this subpart, which may be supplemented by any Program Announcements and/or Notices to Participants in effect at the time that the payment guarantee is approved by CCC.

(d) *Final Date To Export.* The final date to export shown on the payment guarantee will be one month, as determined by CCC, after the contractual deadline for shipping.

(e) *Reserve Coverage for Loading Tolerances.* The exporter may apply for a payment guarantee, and pay the guarantee fee, based on the mean quantity of the export sales contract; however, the exporter may also request that CCC reserve additional guarantee coverage to accommodate any upward loading tolerance specified in the export sales contract. If such additional guarantee coverage is available at the time of application and CCC determines to make such reservation, it will so indicate to the exporter. In the event that the exporter ships a quantity greater than the mean quantity in connection with such sale, it may obtain the additional coverage from CCC, up to the amount of the upward loading tolerance, by filing for an amendment to the payment guarantee, and by paying the additional amount of fee applicable.

(f) *Ineligible Exports.* Commodities with a date of export prior to the date of receipt by CCC of the exporter's telephonic or written application for a payment guarantee, or with a date of export made after the final date for export shown on the payment guarantee or any amendments thereof, are ineligible for GSM–102 or GSM–103 guarantee coverage, except where it is determined by the GSM to be in the best interests of CCC to provide guarantee coverage on such commodities.

(g) *Foreign Agricultural Component.* CCC may approve payment guarantees under this subpart only in connection with sales of United States agricultural commodities as defined in § 1493.20(z). CCC may not provide guarantee coverage under this subpart on credit extended for the value of any foreign agricultural component.

(h) *Additional Requirements.* The payment guarantee may contain such additional terms, conditions, and limitations as are deemed necessary or desirable by the GSM. Such additional terms, conditions or qualifications, as stated in the payment guarantee are binding on the exporter or the exporter's assignee.

(i) *Amendments.* A request for an amendment of a payment guarantee may be submitted only by the exporter (with the concurrence of the assignee, if any). CCC will consider such a request only if the amendment sought is inconsistent with this subpart and any applicable Program Announcements and Notices to Participants. Amendments may include, but will not be limited to, a change in the credit period or an extension of time to export. Any amendment to the payment guarantee may result in an increase in the guarantee fee. (Technical corrections to the actual payment schedule or corrections of a clerical error which may be submitted by the exporter or the exporter's assignee are not viewed as amendments.)

§ 1493.70 Guarantee rates and fees.

(a) *Guarantee Fee Rates.* The payment guarantee fee rates will be based upon the length of the payment terms provided for in the export sale contract the degree of risk that CCC assumes, as determined by CCC, and any other factors which CCC determines appropriate for consideration. A current schedule of the guarantee fee rates charged by CCC under GSM–102 and GSM–103 will be available upon request from the FAS/USDA office specified in the Contacts P/R.

(b) *Calculation of Fee.* The guarantee fee will be computed by multiplying the guaranteed value by the guarantee fee rate.

(c) *Payment of Fee.* The exporter shall remit, with his written application, the full amount of the guarantee fee. Applications will not be approved until the guarantee fee has been received by CCC. The exporter's check for the guarantee fee shall be made payable to

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CCC and mailed or delivered by courier to the office specified in the Contacts P/R.

(d) *Refunds of Fee.* Guarantee fees paid in connection with approved applications will ordinarily not be refundable. CCC's approval of the application will be final and refund of the guarantee fee will not be made after approval unless the GSM determines that such a refund will be in the best interests of CCC. If the application for a payment guarantee is not approved or is approved only for a part of the guarantee coverage requested, a full or pro rata refund of the remittance will be made.

§ 1493.80 Evidence of Export.

(a) *Report of Export.* The exporter must provide a written report to the office specified in the Contacts P/R within 30 calendar days following each date of export of commodities covered under a payment guarantee. This report must include the following:

(1) Payment guarantee number.
(2) Date of export.
(3) Exporter's sale number.
(4) Exported value.
(5) A full description of the commodity exported.
(6) Unit sales price received for the commodity exported and the basis (e.g., FOB, C&F, CIF). Where the unit sales price at export differs from the unit sales price indicated in the exporter's application for a payment guarantee, the exporter is also required to submit a statement explaining the reason for the difference. In the case of sales made on a C&F or CIF basis, where guarantee coverage is on a FAS or FOB basis, the exporter must also specify its actual cost of freight and, in the case of sales made on a CIF basis, the actual cost of marine and war risk insurance.
(7) Description and value of discounts and allowances, if any.
(8) Number of the Agreement assigned by USDA under another program if any portion of the export sale was also approved for participation in the following CCC or USDA export programs: Export Enhancement Program, Dairy Export Incentive Program, Sunflowerseed Oil Assistance Program, or Cottonseed Oil Assistance Program.
(9) A final payment schedule showing the payment due dates and the amounts, separately for both the principal and the interest. If the interest to be paid is based upon a variable rate, the estimated interest amounts may be shown.
(10) The exporter's statement, "All section 1493.90 certifications are being made in this evidence of export" which, when included in the evidence of export by the exporter, will constitute a certification that it is in compliance with all the requirements set forth in § 1493.90.

(b) *Time Limit for Submission of Evidence of Export.* If the report required by paragraph (a) of this section is not received by CCC within 30 calendar days after the date of export of each shipment of commodities, the payment guarantee will become null and void with respect to any payment(s) applicable to such shipment. This time limit may be extended if such extension is determined by the GSM to be in the best interests of CCC, but in no event will an extension be granted if scheduled payments by the foreign bank are past due under the payment guarantee.

(c) *Export Sales Reporting.* Exporters may have a mandatory reporting responsibility under section 602 of the Agricultural Trade Act of 1978 (7 U.S.C. 5712), as amended by section 1531 of the Food, Agriculture, Conservation, and Trade Act of 1990 for exports of wheat and wheat flour, feed grains, oil seeds, cotton, and other agricultural commodities and products thereof.

§ 1493.90 Certification requirements for the evidence of export.

By providing the statement contained in § 1493.80(a)(10), the exporter is certifying that the information provided in the report of evidence of export is true and correct and, further, that all requirements set forth in this section have been or will be met. The exporter will be required to provide further explanation or documentation with regard to reports that do not include this statement. The exporter, in submitting the evidence of export and providing the statement set forth in § 1493.80(a)(10), certifies that:

(a) The agricultural commodity or product exported under a payment guarantee is a United States agricultural commodity or a product thereof, as defined in § 1493.20(z);

(b) Agricultural commodities of the grade, quality, and quantity called for in the exporter's sales contract with the importer have been exported to the country specified in the payment guarantee;

(c) The exporter or the exporter's assignee has documents evidencing the obligation of the foreign bank and that such documents will be retained until five years after the final installment due date as called for in the payment guarantee;

(d) A letter of credit has been opened in favor of the exporter by the foreign bank shown in the payment guarantee to cover the port value of the commodity exported;

(e) There have not been and will not be any corrupt payments or extra sales services or other items extraneous to the transaction provided, financed, or guaranteed in connection with the transaction, and that the transaction complies with applicable United States law; and

(f) The information provided pursuant to § 1493.30 has not changed, the exporter still meets all of the qualification requirements of § 1493.30, and the exporter will immediately notify CCC if there is a change of circumstances which would cause it to fail to meet such requirements.

If the exporter breaches or violates these certifications with respect to a GSM–102 or GSM–103 payment guarantee, CCC will have the right, notwithstanding any other rights provided under this subpart, to annul guarantee coverage for any commodities not yet exported and/or to proceed against the exporter.

§ 1493.100 Proof of entry.

(a) *Diversion.* The diversion of commodities covered by a GSM–102 or GSM–103 payment guarantee to a country other than that shown on the payment guarantee is prohibited, unless expressly authorized by the GSM.

(b) *Records of Proof of Entry.* Exporters must obtain and maintain records of an official or customary commercial nature and grant authorized USDA officials access to such documents or records as may be necessary to demonstrate the arrival of the agricultural commodities exported in connection with the GSM–102 or GSM–103 programs in the country that was the intended destination of such commodities. Records demonstrating proof of entry must be in English or be accompanied by a certified or other translation acceptable to CCC. Records acceptable to meet this requirement include an original certification of entry signed by a duly authorized customs or port official of the importing country, by the importer, by an agent or representative of the vessel or shipline which delivered the agricultural commodity to the importing country, or by a private surveyor in the importing country, or other documentation deemed acceptable by the GSM showing:

(1) That the agricultural commodity entered the importing country;
(2) The identification of the export carrier;
(3) The quantity of the agricultural commodity;

(4) The kind, type, grade and/or class of the agricultural commodity; and
(5) The date(s) and place(s) of unloading of the agricultural commodity in the importing country.

(Records of proof of entry need not be submitted with a claim for loss, except as may be provided in § 1493.110(b)(4)(ii).)

§ 1493.110 Notice of default and claims for loss.

(a) *Notice of Default.* If the foreign bank issuing the letter of credit fails to make payment pursuant to the terms of the foreign bank letter of credit or related obligation, the exporter or the exporter's assignee must submit a notice of default to CCC as soon as possible, but not later than 10 calendar days after the date that payment was due from the foreign bank (the due date). A notice of default must be submitted in writing to the Treasurer, CCC, at the address specified in the Contacts P/R. If the exporter or the exporter's assignee fails to promptly notify CCC of defaults in accordance with this paragraph, CCC may make the payment guarantee null and void with with respect to any payment(s) applicable to such default. This time limit may be extended only under extraordinary circumstances and if such extension is determined by the Controller, CCC, to be in the best interests of CCC. The notice of default must include:

(1) Payment guarantee number;
(2) Name of the country;
(3) Name of the defaulting bank;
(4) Due date;
(5) Total amount of the defaulted payment due, indicating separately the amounts for principal and interest;
(6) Date of foreign bank's refusal to pay, if applicable; and
(7) Reason for foreign bank's refusal to pay, if known.

(b) *Filing a Claim for Loss.* A claim for a loss by the exporter or the exporter's assignee will not be paid if it is made later than six months from the due date of the defaulted payment. A claim for loss must be submitted in writing to the Treasurer, CCC, at the address specified in the Contacts P/R. The claim for loss must include the following information and documents:

(1) Payment guarantee number.
(2) A certification that the scheduled payment has not been received.
(3) A certification of the amount of accrued interest in default, the date interest began to accrue and the interest rate on foreign bank obligation applicable to the claim.
(4) A copy of each of the following documents, with a cover document containing a signed certification by the exporter or the exporter's assignee that each page of each document is a true and correct copy:

(i) (A) The foreign bank letter of credit securing the export sale, and

(B) If applicable, the document(s) evidencing the related obligation owed by the foreign bank to the assignee financial institution which is related to the foreign bank's letter of credit issued in favor of the exporter. Such related obligation must be demonstrated in one of the following ways:

(*1*) The related obligation, including a specific promise to pay on deferred payment terms, may be contained in the letter of credit as a special instruction from the issuing bank directly to the U.S. financial institution to refinance the amounts paid by the U.S. financial institution for drafts drawn according to the tenor of the letter of credit; or

(*2*) The related obligation may be memorialized in a separate document(s) specifically identified and referred to in the letter of credit as the agreement under which the foreign bank is obliged to repay the U.S. financial institution on deferred payment terms; or

(*3*) The letter of credit payment obligations may be specifically identified in a separate document(s) setting forth the related obligation, or in a duly executed amendment thereto, as having been financed by the U.S. financial institution pursuant to, and subject to repayment in accordance with the terms of, such related obligation; or

(*4*) The related obligation may be memorialized in the form of a promissory note executed by the foreign bank issuing the letter of credit in favor of the U.S. financial institution submitting the claim.

(ii) Depending upon the method of shipment, the negotiable ocean carrier or intermodal bill(s) of lading signed by the shipping company with the onboard ocean carrier date for each shipment, or the airway bill; or, if shipped by rail or truck, the entry certificate or similar document signed by an official of the importing country.

(iii) (A) The exporter's invoice showing, as applicable, the FAS, FOB, C&F or CIF values; or (B) If there was an intervening purchaser, both the exporter's invoice to the intervening purchaser and the intervening purchaser's invoice to the importer.

(iv) An instrument, in form and substance satisfactory to CCC, subrogating to CCC the respective rights of the exporter and the exporter's assignee, if applicable, to the amount of payment in default under the applicable export sale. The instrument must reference the applicable foreign bank letter of credit and the related obligation, if applicable.

(v) A copy of the report(s) of export previously submitted by the exporter to CCC pursuant to § 1493.80(a).

§ 1493.120 Payment for loss.

(a) *Determination of CCC's Liability.* Upon receipt in good order of the information and documents required under § 1493.110, CCC will determine whether or not a loss has occurred for which CCC is liable under the applicable payment guarantee, this subpart and any applicable supplemental Program Announcements and Notices to Participants. If CCC detetmines that it is liable to the exporter and/or the exporter's assignee, CCC will pay the exporter or the exporter's assignee in accordance with paragraphs (b) and (c) of this section.

(b) *Amount of CCC's Liability.* CCC's maximum liability for any claims for loss submitted with respect to any payment guarantee, not including any late interest payments due in accordance with paragraph (c) of this section, will be limited to the lesser of:

(1) The guaranteed value as stated in the payment guarantee, plus eligible interest; or

(2) The guaranteed percentage (as indicated in the payment guarantee) of the exported value indicated in the evidence of export, plus eligible interest.

(c) *Late Interest Payment.* If a claim is not paid within one day of receipt of a claim which CCC has determined to be in good order, late interest will accrue in favor of the exporter or the exporter's assignee beginning with the first day after the claim was received by CCC in good order and continuing until and including the date that payment is made by CCC. Late interest will be paid on the guaranteed amount, as determined by paragraphs (b) (1) and (2) of this section, and will be calculated based on the latest average investment rate of the most recent Treasury 52-week bill auction as announced by the Department of Treasury as of the due date.

(d) *Accelerated Payments.* CCC will pay claims only for losses on amounts not paid as scheduled. CCC will not pay claims for amounts due under an accelerated payment clause in the export sales contract, the foreign bank's letter of credit, or any obligation owed by the foreign bank to the assignee U.S. financial institution which is related to the foreign bank's letter of credit issued in favor of the exporter, unless it is determined to be in the best interests of CCC by the Controller, CCC. Notwithstanding the foregoing, CCC at

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its option may declare the entire amount of the unpaid balance, plus accrued interest, in default and make payment to the exporter or the exporter's assignee in addition to such other claimed amount as may be due from CCC.

(e) *Action Against the Assignee.* Notwithstanding any other provision in this subpart to the contrary, with regard to commodities covered by a payment guarantee, CCC will not hold the assignee responsible or take any action or raise any defense against the assignee for any action, omission or statement by the exporter of which the assignee has no knowledge, provided that:

(1) The exporter complies with the reporting requirements under §§ 1493.80 and 1493.90; and

(2) The exporter or the exporter's assignee furnishes the statements and documents specified in § 1493.110.

§ 1493.130 Recovery of Losses.

(a) *Notification.* Upon payment of loss to the exporter or the exporter's assignee, CCC will notify the foreign bank of CCC's rights under the subrogation agreement to recover all moneys in default.

(b) *Receipt of Monies.*

(1) In the event that monies for a defaulted payment are recovered by the exporter or the exporter's assignee from the importer, the foreign bank or any other source whatsoever, such monies shall be immediately paid to the Treasurer, CCC. If such monies are not received by CCC within 15 business days from the date of recovery by the exporter or the exporter's assignee, the exporter or the exporter's assignee will owe to CCC interest from the date of recovery to the date of receipt by CCC. This interest will be calculated based on the latest average investment rate of the most recent Treasury 52-week bill auction, as announced by the Department of Treasury, in effect on the date of recovery and will accrue from such date to the date of payment by the exporter or the exporter's assignee to CCC. Such interest will be charged only on CCC's share of the recovery.

(2) If CCC recovers monies that should be applied to a payment guarantee for which a claim has been paid by CCC, CCC will pay the holder of the payment guarantee its pro rata share immediately, provided that the required information necessary for determining pro rata distribution has been furnished. If payment is not made by CCC within 15 business days from the date of recovery or 15 business days from receiving the required information for determining pro rata distribution, whichever is later, CCC will pay interest calculated on the latest average investment rate of the most recent Treasury 52-week bill auction, as announced by the Department of Treasury, in effect on the date of recovery and will accrue from such date to the date of payment by CCC. The interest will apply only to the portion of the recovery payable to the holder of the payment guarantee.

(c) *Allocation of Recoveries.* Recoveries made by CCC from the importer or the foreign bank, and recoveries received by CCC from the exporter, the exporter's assignee or any other source whatsoever, will be allocated by CCC to the exporter or the exporter's assignee and to CCC on a pro rata basis determined by their respective interests in such recoveries. The respective interest of each party will be determined on a pro rata basis, based on the combined amount of principal and interest in default. Once CCC has paid out a particular claim under a GSM–102 or GSM–103 payment guarantee, CCC prorates any collections it receives and shares these collections proportionately with the holder of the guarantee until both CCC and the holder of the guarantee have been reimbursed in full. Appendix A to § 1493.130—Illustration of Pro Rata Allocation of Recoveries—provides an example of the methodology used by CCC in applying this paragraph.

(d) *Liabilities to CCC.* Notwithstanding any other terms of the payment guarantee, the exporter may be liable to CCC for any amounts paid by CCC under the payment guarantee when and if it is determined by CCC that the exporter has engaged in fraud, or has been or is in breach of any contractual obligation, certification or warranty made by the exporter for the purpose of obtaining the payment guarantee or in fulfilling obligations under GSM–102 or GSM–103. Further, the exporter's assignee may be liable to CCC for any amounts paid by CCC under the payment guarantee when and if it is determined by CCC that the exporter's assignee has engaged in fraud or otherwise violated program requirements.

(e) *Good Faith.* The violation by an exporter of the certifications in § 1493.50(b) and § 1493.90(e) or the failure of an exporter to comply with the provisions of § 1493.100 or § 1493.140(e) will not affect the validity of any payment guarantee with respect to an assignee which had no knowledge of such violation or failure to comply at the time such exporter applied for the payment guarantee or at the time of assignment of the payment guarantee.

(f) *Cooperation in Recoveries.* Upon payment by CCC of a claim to the exporter or the exporter's assignee, the exporter or the exporter's assignee will cooperate with CCC to effect recoveries from the foreign bank and/or the importer.

Appendix A to § 1493.130—Illustration of Pro Rata Allocation of Recoveries

The following example illustrates CCC's policy, as set forth in § 1493.130(c), regarding pro rata sharing of recoveries made for claims filed under the GSM–102 and GSM–103 programs. A typical case might be as follows:

1. The U.S. bank enters into a $300,000 three-year credit arrangement with the foreign bank calling for equal annual payments of principal and interest at a rate of 10 percent per annum and a penalty interest rate of 12 percent per annum on overdue amounts until the overdue amount is paid.

2. The foreign bank fails to make the final principal payment of $100,000 and an interest payment of $10,000, both due on January 31.

3. On February 10, the U.S. bank files a claim in good order with CCC.

4. CCC's guarantee states that CCC's maximum liability is limited to 98 percent of the principal amount due ($98,000) and interest at a rate of 8 percent per annum (basis 365 days) on 98 percent of the principal ($7,840).

5. CCC pays the claim on February 22.

6. The latest bond equivalent rate of the 52-week Treasury bill auction average which has been published by the Department of Treasury in effect on the date of nonpayment (January 31) is 9 percent.

Computation of Obligations

Using the above case, CCC's payment to the holder of the payment guarantee would be computed as follows:

1. CCC's Obligation under the Payment Guarantee:

(a) Principal coverage—(98% × $100,000)	$98,000.00
(b) Interest coverage—(8% × $98,000)	$7,840.00
	$105,840.00
(c) Late interest due from CCC (9% per annum for 11 days × $105,840)	$287.08
(d) Amount paid by CCC on February 22	$106,127.07

2. Foreign Bank's Obligation under the Letter of Credit or the Related Obligation:

(a) Principal due January 31	$100,000.00
Interest due January 31 (10% × $100,000)	$10,000.00
Amount owed by foreign bank as of January 31	$110,000.00
(b) Penalty interest due (12% per annum for 22 days × $100,000)	$795.62
(c) Amount owed by foreign bank as of February 22	$110,795.62

3. Amount of Foreign Bank's Obligation Not Covered by CCC's Payment Guarantee: $4,668.55

Computation of Pro Rata Sharing in Recovery of Losses

In establishing each party's respective interest in any recovery of losses, the total amount due under the foreign bank obligation would be determined as of the date the claim is paid by CCC (February 22). Using the above example in which the amount owed by the foreign bank is $110,000, CCC would be entitled to 95.79 percent ($106,127.07 divided by $110,795.62) and the holder of the payment guarantee would be entitled to 4.21 percent ($4,668.55 divided by $110,795.62) of any recoveries of losses after settlement of the claim. Since in this example, the losses were recovered after the claim had been paid by CCC, § 1493.130(b) would apply.

§ 1493.140 Miscellaneous provisions.

(a) *Assignment.*

(1) The exporter may assign the proceeds which are, or may become, payable by CCC under a payment guarantee or the right to such proceeds only to a financial institution in the U.S. The assignment must cover all amounts payable under the payment guarantee not already paid, may not be made to more than one party, and may not, unless approved in advance by CCC, be subject to further assignment.

(2) An original and two copies of the written notice of assignment signed by the parties thereto must be filed by the assignee with the Treasurer, CCC, at the address specified in the Contacts P/R.

(3) Receipt of the notice of assignment will ordinarily be acknowledged in writing by an officer of CCC. In cases where a financial institution is determined to be ineligible to receive an assignment, in accordance with paragraph (b) of this section, CCC will provide notice thereof to such financial institution in lieu of an acknowledgment of assignment.

(4) The name and address of the assignee bank must be included on the written notice of assignment.

(b) *Ineligibility of Financial Institutions to Receive an Assignment.* A financial institution will be ineligible to receive an assignment of proceeds which may become payable under a payment guarantee if, at the time of assignment, such financial institution:

(1) Is not in sound financial condition, as determined by the Treasurer of CCC; or

(2) Is the financial institution issuing the letter of credit or a branch, agency or subsidiary of such institution; or

(3) Is owned or controlled by an entity that owns or controls the financial institution issuing the letter of credit; or

(4) Is the U.S. parent of the foreign bank issuing the letter of credit.

(c) *Ineligibility of Financial Institutions to Receive Proceeds.* A financial institution will be ineligible to receive proceeds payable under a payment guarantee approved by CCC if such financial institution:

(1) At the time of assignment of a payment guarantee, is not in sound financial condition, as determined by the Treasurer of CCC;

(2) Is the financial institution issuing the letter of credit or a branch, agency or subsidiary of such institution; or

(3) Is owned or controlled by an entity that owns or controls the financial institution issuing the letter of credit; or

(4) Is the U.S. parent of the foreign bank issuing the letter of credit.

(d) *Alternative Satisfaction of Payment Guarantee.* CCC may, with the agreement of the exporter (or if the right to proceeds payable under the payment guarantee has been assigned, of the exporter's assignee), establish procedures, terms and/or conditions for the satisfaction of CCC's obligations under a payment guarantee other than those provided for in this subpart if CCC determines that those alternative procedures, terms and/or conditions are appropriate in rescheduling the debts arising out of any transaction covered by the payment guarantee and would not result in CCC paying more than the amount of CCC's obligation.

(e) *Maintenance of Records and Access to Premises.*

(1) For a period of five years after the date of expiration of the coverage of a payment guarantee, the exporter or the exporter's assignee, as applicable, must maintain and make available all records pertaining to sales and deliveries of and extension of credit for agricultural commodities exported in connection with a GSM–102 or GSM–103 payment guarantee, including those records generated and maintained by agents, intervening purchasers and related companies involved in special arrangements with the exporter. The Secretary of Agriculture and the Comptroller General of the United States, through their authorized representatives, must be given full and complete access to the premises of the exporter or the exporter's assignee, as applicable, during regular business hours from the effective date of the payment guarantee until the expiration of such five-year period to inspect, examine, audit and make copies of the exporter's, exporter's assignee's, agent's, intervening purchaser's or related company's books, records and accounts concerning transactions relating to the payment guarantee, including, but not limited to, financial records and accounts pertaining to sales, inventory, processing, and administrative and incidental costs, both normal and unforeseen. During such period, the exporter or the exporter's assignee may be required to make available to the Secretary of Agriculture or the Controller General of the United States, through their authorized representatives, records that pertain to transactions conducted outside the program, if, in the opinion of the GSM, such records would pertain directly to the review of transactions undertaken by the exporter in connection with the payment guarantee.

(2) The exporter must maintain the proof of entry required by § 1493.100(b), and must provide access to such document if requested by the Secretary of Agriculture or his authorized representative for the five-year period specified in paragraph (e)(1) of this section.

(f) *Responsibility of Program Participants.* It is the responsibility of all program participants to review, and fully acquaint themselves with, all regulations, Program Announcements, and Notices to Participants relating to the GSM–102 or GSM–103 program, as applicable. Applicants for payment guarantees under these programs are hereby on notice that they will be bound by any terms contained in applicable Program Announcements or Notices to Participants issued prior to the date of approval of payment guarantee.

(g) *Submission of Documents by Principal Officers.* All required submissions, including certifications, applications, or reports, or requests, such as requests for amendments, by exporters or exporters' assignees under this subpart must be signed by a principal or officer of the exporter or exporter's assignee. Further, the exporter or exporter's assignee must ensure that all information/reports required under these regulations are submitted within the required time limits. If requested in writing, CCC will acknowledge receipt of a submission by the exporter or the exporter's assignee. If acknowledgment of receipt is requested, the exporter or exporter's assignee must submit an extra copy of each document and a stamped self-addressed envelope for the return by U.S. mail. If courier services are desired for the return receipt, the exporter or exporter's assignee must also submit a self-addressed courier service order

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which includes the recipient's billing code for such service.

(h) *Officials Not to Benefit.* No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the payment guarantee or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the payment guaranteed if made with a corporation for its general benefit.

(i) *OMB Control Number Assigned Pursuant to the Paperwork Reduction Act.* The information collection requirements contained in this part (7 CFR part 1493) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. chapter 35 and have been assigned OMB Control Number 0551–0004.

Signed this 30th day of May, 1991 at Washington, DC.

F. Paul Dickerson,

General Sales Manager and Vice President, Commodity Credit Corporation.

[FR Doc. 91–13215 Filed 6–5–91; 8:45 am]

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 214, 251, and 258

[INS No. 1418–91]

Denial of Crewman Status in the Case of Certain Labor Disputes and Specifications of Authorized Employment

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule implements sections 202 and 203 of the Immigration Act of 1990 (IMMACT), Public Law 101–649, November 29, 1990, by clarifying the types of employment in which a crewman may be employed while in the United States, denying crewman status as defined in section 101(a)(15)(D) of the Act in the case of certain labor disputes, and by providing guidelines concerning limitations on alien crewmen in performing longshore work. This rule is necessary to comply with the increased restrictions placed on alien crewmen as required by IMMACT.

DATES: This rule is effective May 28, 1991 through December 31, 1991. The Immigration and Naturalization Service (INS) will issue a final rule on or before the last effective date of this interim rule and after INS has had an opportunity to review public and agency comments. Interested persons are invited to submit written comments on or before July 8, 1991.

ADDRESSES: Please submit written comments in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., room 5304, Washington, DC 20536. Please include INS number 1418–91 on the mailing envelope to ensure proper and timely handling.

FOR FURTHER INFORMATION CONTACT: Diane Hinckley, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street NW., room 7123, Washington, DC 20536, telephone number (202) 514–2725.

SUPPLEMENTARY INFORMATION: Section 202 of IMMACT 90 amends section 214 of the Act to deny crewman status under section 101(a)(15)(D) of the Act to an alien who intends to land for the purpose of performing service as a crewman on a United States carrier during a labor dispute where there is a strike or lockout in the bargaining unit of that employer. This restriction does not apply to a nonimmigrant crewman who has been an employee of the air carrier or vessel for at least twelve months prior to the strike or lockout, has served as a crewman for that employer at least once during three different months in the year preceding the strike or lockout, and who will continue to provide the same crewman services to the employer as previously.

Pursuant to the provisions of 8 CFR 214.2(d)(2), alien crewmen who are not former employees are to be refused admission to the United States upon determination that a strike or other labor dispute involving a work stoppage is in progress in the bargaining unit of the employer. During such a labor dispute nonimmigrant crewmen may not be paroled into the United States in lieu of being admitted unless the parole of such an alien is deemed to be necessary to protect the national security of the United States. Further, such alien crewmen shall not be considered to be bona fide crewmen under section 252(b) of the Act.

Section 203 of IMMACT 90 added section 258 to the Immigration and Nationality Act. This section redefines crewmen under section 101(a)(15)(D)(i) of the Act to exclude longshore work from the term "normal operation and service on board a vessel." In general, under only three exceptions may alien crewmen serving on board a vessel perform longshore work at a port in the United States. If alien crewmen engage in longshore work not covered by the exceptions, the crewmen are considered out of status and detained on board the vessel; and the owner of the vessel is subject to a fine.

This interim regulation will require that the master or agent of the vessel clearly indicate on the arrival manifest at the first port of entry if any alien crewmen will be engaged in longshore work and if so, under which exception such work is permitted. Masters of vessels or their agents are required to submit manifests containing information about the crew. This regulation will require additional information as permitted under section 251 of the Immigration and Nationality Act (Act). The inspecting immigration officer will indicate on the receipt given for the manifest whether any alien crewman will engage in longshore work at any port of call in the United States and will document compliance with section 258 of the Act. A negative response by the master or agent will also be noted on the receipt. Any violations of the reporting requirements of section 251 will result in the imposition of fines.

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the "good cause" exception found at 5 U.S.C. 553. The reason and the necessity for immediate implementation of this interim rule is that the denial of crewmen status during a strike was effective January 29, 1991.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

The information collection requirement contained in this rule has been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The OMB control number for this collection is contained in 8 CFR 299.5.

List of Subjects

8 CFR Part 214

Administrative practice and procedure, Aliens.

8 CFR Part 251

Air carriers, Airmen, Aliens, Maritime carriers, Reporting and recordkeeping requirements, Seamen.

8 CFR Part 258

Aliens, Longshore work, Maritime carriers, Reporting and recordkeeping requirements, Seamen.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1186a, 1187, and 8 CFR part 2.

2. In section 214.2, paragraph (d) is revised to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(d) *Crewmen.* (1) The provisions of parts 252, 253, and 258 of this chapter shall govern the landing of crewmen as nonimmigrants of the class defined in section 101(a)(15)(D) of the Act. An alien in this status may be employed only in a crewman capacity on the vessel or aircraft of arrival, or on a vessel or aircraft of the same transportation company, and may not be employed in connection with domestic flights or movements of a vessel or aircraft.

(2) *Denial of crewman status in the case of certain labor disputes (D nonimmigrants).* (i) An alien shall be denied crewman D status as described in section 101(a)(15)(D) of the Act if:

(A) The alien intends to land for the purpose of performing service on:

(*1*) A vessel of the United States (as defined in 46 U.S.C. 2101(46)) or

(*2*) An aircraft of an air carrier (as defined in section 101(3) of the Federal Aviation Act of 1958); and

(B) A labor dispute consisting of a strike or lockout exists in the bargaining unit of the employer in which the alien intends to perform such service; and

(C) The alien is not already an employee of the company (as described in paragraph (d)(2)(iv) of this section).

(ii) *Refusal to land.*

(A) Any alien (except a previous employee as described in paragraph (d)(2)(iv) of this section) who the examining immigration officer determines intends to land for the purpose of performing service on a vessel or aircraft of the United States when a strike or lockout is in progress in the bargaining unit of the employer shall be refused a conditional landing permit under section 252 of the Act. The immigration officer shall detain any such alien crewman on board the vessel until the strike or lockout has ended or the vessel leaves the port. If this alien crewman is in possession of a Form I–184, Alien Crewman Landing Permit and Identification Card, the immigration officer shall lift the Form I–188 and deliver it to the master or agent of the vessel with instructions to return it to the alien after the vessel has departed from the port affected by the strike or lockout.

(B) Any alien (except a previous employee) who the examining immigration officer determines intends to land for the purpose of performing service on an aircraft or an air carrier of the United States when a strike or lockout is in progress in the bargaining unit of the employer shall be refused permission to land under 252 of the Act and shall be returned to the point of embarkation on the next available flight.

(iii) *Ineligibility for parole.* An alien described in paragraph (d)(20)(i) of this section may not be paroled into the United States under section 212(d)(5) of the Act unless the Attorney General determines that the parole of such alien is necessary to protect the national security of the United States.

(iv) *Previous employees.* Paragraphs (d)(2)(i), (d)(2)(ii), and (d)(2)(iii) of this section do not apply to an alien who is already an employee of the owner or operator of the vessel or air carrier and that employer provides work records that satisfy the Attorney General that the alien:

(A) Has been an employee of such employer for a period of not less than one year preceding the date that a strike or lawful lockout commenced;

(B) Has served as a qualified crewman for such employer at least once in three different months during the 12-month period preceding the date that the strike or lockout commenced; and

(C) Shall continue to provide the same crewman services that he or she previously provided to the employer.

(v) *Strike or lockout determination.* These provisions will take effect if the Attorney General, through the Commissioner of the Immigration and Naturalization Service or his or her designee, after consultation with the Secretary of Labor, or his or her designee, determines that a strike, lockout, or labor dispute involving a work stoppage is in progress in the bargaining unit of the employer for whom the alien intends to perform such service.

* * * * *

PART 251—ARRIVAL MANIFESTS AND LIST; SUPPORTING DOCUMENTS

3. The authority citation for part 251 is revised to read as follows:

Authority: 66 Stat. 173, 182, as amended, 195, 219, 220; 8 U.S.C. 1103, 1182, 1221, 1281, 1282.

4. In § 251.1, paragraphs (a) and (d) are revised to read as follows:

§ 251.1 Arrival manifests and lists.

(a) *Vessels.* The master or agent of every vessel arriving in the United States from a foreign place or an outlying possession of the United States shall present to the immigration officer at the port where the immigration inspection is performed a manifest of all crewmen on board on Form I–418, Passenger List-Crew List, in accordance with the instructions contained thereon. In addition, the master of the vessel or his or her agent shall indicate in writing immediately below the name of the last alien listed on the from each port in the United States at which the vessel will call before it departs. Under each port of call the master or agent will note whether or not any alien crewmen intend to do longshore work at that port. If any crewmen intend to do longshore work, the master or agent shall note under which exception in 8 CFR 258.2 such longshore work is permitted. A manifest shall not be required for crewmen aboard a vessel of United States, Canadian, or British registry engaged solely in traffic on the Great Lakes, or the St. Lawrence River, and connecting waterways herein designated as a Great Lakes vessel, unless nonimmigrant crewmen intend to do longshore work at any port in the United States. If nonimmigrant crewmen will do longshore work, the master or agent of the vessel shall note on the manifest at which port the crewmen will perform longshore work and under which exception in 8 CFR 258.2 such work is permitted. A manifest shall be required for crewmen of other than United States, Canadian, or British citizenship and shall contain the same information regarding the vessel's ports of call, whether or not alien crewmen intend to do longshore work at any port, and if so, under which exception such work is permitted. After submission of a mainfest on the first voyage of a calendar year, a manifest shall not be required on subsequent arrivals unless a nonimmigrant crewman of other than Canadian or British citizenship is employed on the vessel who was not aboard and listed on the last prior manifest, or unless nonimmigrant crewmen intend to do longshore work in

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the United States which was not noted on the last prior manifest together with the exception permitting it. The master or agent of a vessel that only bunkers at a United States port pursuant to 8 CFR 235.1(d)(7) must annotate Form I–418 to indicate the time, date, and place of bunkering.

* * * * *

(d) *Notations on arrival manifests.* Upon completion of the examination of each crewman listed on the Form I–418 presented by the master or agent of an arriving vessel, the examining immigration officer shall place one of the following symbols in column (5) of the Form I–418 opposite the name of the crewman: "USC" for a crewman admitted as a United States citizen; "RP" or "ARC" to indicate respectively the presentation of a reentry permit or an alien registration receipt card, Form I–151 or I–551, for a crewman admitted as a lawful permanent resident; "D–1" for an alien granted a conditional landing permit under section 252(a)(2) of the Act; "Parolee" for an alien crewman paroled pursuant to section 212(d)(5) of the Act; and "Refused" for a nonimmigrant crewman whose request for a landing permit has been refused. The examining immigration officer shall sign his or her name, title, and the date of the inspection following the last entry in column (5) of the Form I–418 when the examination of the crew is completed. The master of the vessel shall be furnished Form I–410 as a receipt for the Form I–418 arrival manifest, and the immigration officer shall list on that form the names of all crewman who have been refused conditional landing permits. The immigration officer shall also list on such form the vessel's ports of call, whether or not nonimmigrant crewman will perform longshore work at each port of call, and under which exception in 8 CFR 258.2 such longshore work is permitted. If nonimmigrant crewman will perform longshore work, the examining immigration officer will also note what documentation accompanied the manifest to support the exception claimed to the general prohibition against nonimmigrant crewman performing longshore work.

5. A new part 258 is added to read as follows:

PART 258—LIMITATION ON PERFORMANCE OF LONGSHORE WORK BY ALIEN CREWMAN

Sec.
258.1 Limitation—General.
258.2 Exceptions.
258.3 Action upon arrival.

Authority: 8 U.S.C. 1101, 1103, 1281; and 8 CFR part 2.

§ 258.1 Limitations—General.

(a) *Longshore work defined.* Longshore work means any activity relating to the loading and unloading of cargo, the operation of cargo-related equipment [whether or not integral to the vessel], and the handling of mooring lines on the dock when the vessel is made fast or let go, in the United States or the coastal waters thereof.

(b) Longshore work is not in the term "normal operation and service on board a vessel" for the purposes of section 101(a)(15)(D)(i) of the Act.

(c) A vessel that uses nonimmigrant crewmen to perform longshore work, other than the activities allowed in particular circumstances under paragraphs (b)(2), (c) or (d) of this section, shall be subject to a fine under section 251(d) of the Act.

§ 258.2 Exceptions.

Any master or agent who uses nonimmigrant crewmen to perform longshore work at any United States port under the exceptions provided for in paragraphs (b)(2), (c), or (d) of this section must so indicate on the crew manifest. The master or agent shall annotate the manifest to show all ports of call at which the vessel will land while in the United States, whether or not nonimmigrant crewmen will perform longshore work at any port, and if so, which nonimmigrant crewmen will perform the longshore work and under which exception such work will be performed.

(a) *Hazardous cargo.*

(1) The term "longshore work" does not include the loading and unloading of any cargo for which the Secretary of Transportation has prescribed regulations under authority contained in chapter 37 of title 46, United States Code, section 311 of the Federal Water Pollution Control Act, section 4106 of the Oil Pollution Act of 1909, or section 105 or 106 of the Hazardous Materials Transportation Act which govern:

(i) The handling or stowage of such cargo,

(ii) The manning of vessels and the duties, qualifications, and training of the officers and crew of vessels carrying such cargo; and

(iii) The reduction or elimination of discharge during ballasting, tank cleaning, or handling of such cargo.

(2) In order to invoke this exception for safety and environmental protection, the master or agent shall annotate the manifest that the vessel carries hazardous cargo and shall cite the body of regulations issued by the Secretary of Transportation that govern the handling of the cargo.

(b) *Prevailing practice exception.*

(1) Nonimmigrant crewman may perform longshore work under this exception if:

(i) There is an effect in the local port one or more collective bargaining agreements, each covering at least 30 percent of the persons performing longshore work at the port, and each such agreement permits the longshore activity to be performed by the nonimmigrant crewman, or

(ii) There is no collective bargaining agreement in effect in the local port covering at least 30 percent of the persons performing longshore work at the port, and the employer of the crewmen has filed an attestation with the Secretary of Labor that the Secretary of Labor has accepted.

(2) *Documentation to present under the prevailing practice exception.*

(i) If the master or agent states on the manifest, Form I–418, that nonimmigrant crewmen will perform longshore work at a port under the prevailing practice exception as permitted by all collective bargaining agreements covering 30 percent or more of the persons performing longshore work at the port, then a copy of each such agreement must be presented to the examining immigration officer with the manifest.

(ii) Where there is no collective bargaining agreement in effect at a port covering at least 30 percent of the persons who do longshore work, and the master or agent states on the manifest that nonimmigrant crewmen will perform such work under the prevailing practice exception, then the master or agent shall present a copy of the attestation submitted to the Secretary of Labor for that port together with notification received from the Secretary of Labor that the attestation has been accepted.

(iii) Section 258(c) allows the master or agent of a vessel to file an attestation with the Secretary of Labor up to the date on which crewmen perform longshore work when an unanticipated emergency occurs. Therefore, at times the master or agent will not have the attestation to present at inspection, or not have a notice from the Secretary of Labor that the attestation has been accepted. At times an emergency will arise after the inspection of the vessel. In these circumstances when supporting documents are not ready to present at the time of inspection because of an unanticipated emergency, or the emergency arises after the inspection, then the documents required in paragraph (i) or (ii) of this section shall be submitted after inspection but no later than 14 days after the longshore work is performed. When documents are submitted after inspection, the master or agent shall also submit a notarized affidavit with the documents stating under oath the date and port at which the longshore work was performed, the crewmen who performed it, the exception that allowed it, and the reason that the documents were not submitted at inspection. If the reason that the documents were not presented at inspection involves an unanticipated emergency, then a concise description of the emergency shall be included in the affidavit. If the master or agent presents incomplete documentation at the time of inspection that is not completed within 14 days of crewmen doing longshore work, then the vessel is subject to a fine under section 251(d) of the Act. If crewmen on a vessel perform longshore work at a port at which the manifest states they will not perform such work, and the change is not followed up within 14 days of the longshore work being done with complete documentation consisting of an attestation, notice of acceptance of the attestation from the Secretary of Labor, and an affidavit as described in this paragraph, then the vessel is subject to fine under section 251 of the Act. All documents submitted after inspection shall be sent to the Immigration and Naturalization Service seaport office that inspected the vessel.

(iv) Attestations are valid for one year from the date of filing and cover nonimmigrant crewmen landing during that period if the master or agent states on the manifest that the vessel's crew continue to comply with the conditions in the attestation. When the vessel's master or agent intends to use a previously accepted attestation that is still valid, the master or agent will submit a copy with the manifest at each arrival in the United States.

(3) *Use of automated self-unloading conveyor belt or vacuum-actuated system on a vessel.* An automated self-unloading conveyor belt or a vacuum-actuated system may be operated by a nonimmigrant crewman under the prevailing practice exception when no collective bargaining agreement at the local port prevents it. The master or agent is not required to file an attestation for nonimmigrant crewmen to perform such activity in such a circumstance unless the Secretary of Labor has determined that such activity is not the prevailing practice at that port, and has publicized this finding. When invoking this exception, the master or agent of the vessel shall annotate the manifest that the longshore work consists of operating a self-unloading conveyor belt or a vacuum-actuated system on the vessel under the prevailing practice exception.

(4) *Notification by the Secretary of Labor regarding attestations.* If the Attorney General is notified by the Secretary of Labor that an entity has either misrepresented facts in the attestation or failed to meet a condition attested to, the Attorney General will take steps to impose the sanctions stated in section 258(c)(4)(E)(i) of the Act. First time violators of this section of the Act will not be subject to the maximum sanction stated in the section, which is the prohibiting of any vessel owned or chartered by the violating entity from landing at any United States port for one year.

(c) *Reciprocity exception.* Nonimmigrant crewmen may perform longshore work in a United States port under this exception if:

(1) The particular activity to be performed is stated on the manifest;

(2) The vessel on which the crewmen serve is registered in a country that does not prohibit the particular activity by crewmen aboard United States vessels when such vessels land in that country, as determined by the Secretary of State; and

(3) The master or agent presents documentation that shows that a majority of the vessel's owners are nationals of a country or countries that do not prohibit such longshore activity by crewmen aboard United States vessels when they land in those countries.

§ 258.3 Action upon arrival.

(a) The master or agent of the vessel shall state on the manifest at the first port of entry.

(1) The ports of call in the United States at which the vessel will land before departing the United States;

(2) For each port of call, whether or not nonimmigrant crewmen will perform longshore work at that port;

(3) If any nonimmigrant crewmen will perform longshore work, who those crewmen are;

(4) If nonimmigrant crewmen will perform longshore work, under which exception in section 258 of the Act the work will be performed. The master or agent of the vessel shall also submit the supporting documents required by the exception claimed.

(5) The examining immigration officer shall give the master or agent a receipt for the manifest, Form I–410, on which the officer shall note whether or not nonimmigrant crewmen will do longshore work at any port of call, and if so, under which exception. The officer shall also note which documentation supporting the exception claimed accompanied the manifest, and any lack of documentation that must be submitted by the master or agent subsequently.

(b) If an unanticipated emergency arises that precludes reporting the longshore work and submission of documents at the time of inspection, failure to report the change and submit any documentation required within 14 days of the longshore work being performed are subject to fine under section 251 of the Act.

(c) If some activity of longshore work is performed at a port in an emergency situation to prevent the imminent destruction of property or possible injury or death to a person, a report of the incident shall be made to the Immigration and Naturalization Service (INS) seaport office that performed the inspection. No further documentation is required whether or not the activity was covered by an exception listed in section 258 of the Act.

(d) Changes to statements on the manifest regarding longshore work shall be reported to the INS office that performed the inspection.

(e) Using a nonimmigrant crewman to perform longshore work not included in the normal operation and service on board the vessel and not covered by an exception will result in fine proceedings against the owner, agent, consignee, master, or commanding officer under section 251 of the Act.

(f) Failure to deliver complete, true, and correct information on the manifest will result in fine proceedings against the owner, agent, consignee, master, or commanding officer under section 251 of the Act.

Dated: March 18, 1991.

Gene McNary,
Commissioner, Immigration and Naturalization Service.

[FR Doc. 91–12891 Filed 6–5–91; 8:45 am]
BILLING CODE 4410–10–M

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8 CFR Part 280

[INS Number: 1437–91]

Imposition of Collection of Fines

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: Section 280 of the Immigration and Nationality Act and the

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regulations relating to section 280 consists of the authority to impose fines, bonds, procedures, etc. The Immigration Act of 1990 (IMMACT 1990) Public Law No. 101-649, 104 Stat. 4978, amended the Immigration and Nationality Act (INA) by revising and adding various sections including fine amounts. This action amends title 8 of the Code of Federal Regulations Part 280 to conform with the changes enacted by IMMACT 1990.

DATES: This interim rule is effective June 6, 1991. Written comments must be submitted on or before July 8, 1991.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5304, Washington, DC 20536. To ensure proper handling please reference the INS number on your correspondence.

FOR FURTHER INFORMATION CONTACT: Kathryn Sheehan, Director, Enforcement Implementation Team, Immigration and Naturalization Service, 425 I St., NW., room 2108, Washington, DC 20536, telephone (202) 514-0612.

SUPPLEMENTARY INFORMATION: Section 542 of IMMACT 1990 directed that the increase in penalties collected resulting from the amendments made by sections 203(b) (increasing penalties on the performance of certain longshore work by alien crewmen), 543(a) (increasing certain penalties), and 544 (establishing civil penalties for document fraud) of IMMACT 1990 be credited to the Immigration and Naturalization Service appropriation for activities that enhance enforcement including the identification, investigation, and apprehension of criminal aliens, the implementation of the system described in section 242(a)(3)(A), and the repair, maintenance, or construction on the United States border, in areas experiencing high levels of apprehensions of illegal aliens, of structures to deter illegal entry into the United States; and the Executive Office for Immigration Review appropriation for the purpose of removing the backlogs in the transcripts of deportation proceedings.

The amendments made by sections 2403(b), 543(a) and 544 of IMMACT 1990 not only changed or created fine amounts, but with the exception of the amendments made to sections 231(d), 237(b), 254(a), 257, 271(a), 273(b) and 274C of the INA, also authorized the Commissioner of the Immigration and Naturalization Service to receive bonds pending determination of the question of liability to the payment of any fine, or while the fine remains unpaid. The Service is amending the pertinent sections to reflect this change in authority.

The Service is also amending the Regulation as it pertains to the payment, collection and deposit of fines and penalties under sections 280 and 286 of the Act. These changes will bring this Regulation into conformity with the statute as revised.

The Service's implementation of this rule as an interim rule, with provisions for post-promulgation public comment, is based upon the "good cause" exception found at 5 U.S.C. 553(d). The reason and these changes have been mandated by the passage of Public Law 101-649 and became effective on January 1, 1991.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have significant adverse economic impact on a substantial number of small entities. This rule is not a major rule as defined in section 1(b) of E.O. 12991, nor does this rule have Federalism implications warranting the preparation of the Federalism Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 280

Administrative practice and procedure, Immigration, Penalties.

Accordingly, part 280 chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 280—IMPOSITION AND COLLECTION OF FINES

1. The authority citation for part 280 continues to read as follows:

Authority: 8 U.S.C. 1103, 1221, 1223, 1227, 1229, 1253, 1281, 1283, 1284, 1285, 1286, 1322, 1323, and 1330; 66 Stat. 173, 195, 197, 201, 203, 212, 219, 221, 223, 226, 227, 230.

§ 280.2 [Amended]

2. Section 280.2 is amended by removing at the end of the first sentence the phrase "district director of customs" and adding in its place "Commissioner".

§ 280.7 [Amended]

3. Section 280.7 is amended by removing the "." at the end of the paragraph and by adding to the end of the paragraph the text "with the exception of sections 239, 251(d), 255, 256, 272, and 273(d) in which the Commissioner of the Immigration and Naturalization Service is authorized to approve the bond or accept the sum of money which is being offered for deposit."

4. Section 280.52 is revised to read as follows:

§ 280.52 Payment of fines.

(a) All fines assessed pursuant to sections 231(d); 237(b); 239; 251(d); 254(a); 255; 256; 271(a); 272, 273 and 274(c) of the Act shall be made payable to and collected by the Service.

(b) All fines collected pursuant to sections 271(a) and 273 of the Act shall be deposited in the Immigration User Fee Account established in accordance with the provisions of section 286 of the Act.

(c) From the amounts collected under paragraphs (a) and (b) of this section, the increase in penalties collected resulting from the amendments made by sections 203(b), 543(a), and 544 of the Immigration Act of 1990, shall be credited to the appropriation for activities authorized under section 280(b) of the Act.

Dated: April 25, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 91-13303 Filed 6-5-91; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-CE-09-AD; Amendment 39-7023; AD 91-12-12]

Airworthiness Directives; Beech 90, 99, and 100 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Beech 90, 99, and 100 series airplanes. This action requires a one-time inspection of the rudder trim tab drainage area. Improper drainage provisions have caused water to become trapped in the rudder trim tabs on several of the affected airplanes. This condition, if not detected and corrected, could cause structural damage or imbalance to the rudder. The actions specified in this AD are intended to assure proper drainage of water from the rudder trim tab.

DATES: Effective July 15, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of July 15, 1991.

ADDRESSES: Beech Service Bulletin No. 2365, dated January 1991, that is discussed in this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Don Campbell, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Beech 90, 99, and 100 series airplanes was published in the **Federal Register** on March 7, 1991 (56 FR 9661). The action proposed a one-time inspection of the drainage area of the rudder trim tab in accordance with the instructions in Beech Service Bulletin No. 2365, dated January 1991.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The economic analysis paragraph that is discussed below, has been revised to increase the specified hourly labor rate from $40 an hour (as was cited in the preamble of the notice of proposed rulemaking (NPRM)) to $55 an hour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD action to account for various inflationary costs in the aviation industry.

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the change in the economic analysis and minor editorial corrections. These minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

It is estimated that 2,032 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 hour per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $111,760.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

AD 91-12-12 Beech: Amendment 39-7023; Docket No. 91-CE-09-AD.

Applicability: Models 65-90, 65-A90, 65-A90-1; 65-A90-2, 65-A90-3, 65-A90-4, B90, and C90 airplanes (all serial numbers (S/N)); Model C90A airplanes (S/N LJ-1063 through LJ-1244); Models E90, H90, 99, 99A, A99A, B99, C99, 100, A100, and B100 airplanes (all S/N), certificated in any category.

Compliance: Required within the next 150 hours time-in-service after the effective date of this AD, unless already accomplished.

To assure proper water drainage from the rudder trim tab and prevent the structural damage and the unbalanced condition that could occur from trapped water, accomplish the following:

(a) Inspect the rudder trim tab for proper moisture drainage provisions in accordance with the instructions in Beech Service Bulletin (SB) No. 2365, dated January 1991. If the correct drainage provisions do not exist, prior to further flight, modify the tab in accordance with the instructions in the referenced SB.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

(d) The inspection and possible modification required by this AD shall be done in accordance with Beech Service Bulletin No. 2365, dated January 1991. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW; room 8401, Washington, DC.

This amendment becomes effective on July 15, 1991.

Issued in Kansas City, Missouri, on May 21, 1991.

Herman C. Belderok,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-13315 Filed 6-5-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-CE-57-AD; Amendment 39-7021; AD 91-12-10]

Airworthiness Directives; Beech Models B200, B200C, B200T, 300, and 300LW Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Beech Models B200, B200C, B200T, 300, and 300LW airplanes. This action establishes more restrictive life limits for the lower forward wing attach fittings unless the wing spar attachment is modified. A test article equipped with an unmodified spar bushing of the same type design of the affected airplanes failed prior to the published 15,000-hour time-in-service (TIS) interim life limit. The actions specified by this AD are intended to prevent in-service fatigue failures and to allow continued operation of the interim safe life limit of 15,000 hours TIS for the lower forward wing attach fittings.

EFFECTIVE DATE: July 15, 1991.

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ADDRESSES: Beech Kit No. 101–4050 that is discussed in this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. Information that is applicable to this AD may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Don Campbell, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4409.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Beech Models B200, B200C, B200T, 300, and 300LW airplanes was published in the **Federal Register** on February 20, 1991 (56 FR 6813). The action proposed more restrictive life limits for the lower forward wing attach fittings unless the wing spar attachment is modified by the installation of Beech Kit No. 101–4050.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The commenter supports the AD action but believes that the manufacturer should incur the expense involved in installing Beech Kit 101–4050 because the modification is necessary to achieve the certificated interim life limit of 15,000 hours time-in-service. The FAA does not take into consideration warranty issues when mandating AD action to assure the safety of aircraft. This concern should be addressed by the operator/owner directly to the manufacturer.

The economic analysis paragraph that is discussed below, has been revised to increase the specified hourly labor rate from $40 an hour (as was cited in the preamble of the notice of proposed rulemaking (NPRM)) to $55 an hour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD action to account for various inflationary costs in the aviation industry.

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the change in the economic analysis labor rate and minor editorial corrections. These minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

It is estimated that 344 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 60 hours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $3,900 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,476,800.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

AD 91–13–10 Beech: Amendment 39–7021; Docket No. 90–CE–57–AD.

Applicability: Models B200, B200C, and B200T airplanes (serial numbers (S/N) BB–1158, S/N BB–1167, S/N BB–1193 through BB–1203, S/N BB–1207 through BB–1312, S/N BB–1314 through BB–1334, S/N BL–124 through BL–132, and S/N BT–33), and Models 300 and 300LW airplanes (S/N FA–2 through FA–190), certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent in-service fatigue failures and to allow continued operation of the interim safe life limit of 15,000 hours TIS for the lower forward wing attach fittings, accomplish the following:

(a) For Model 300LW airplanes, upon the accumulation of 8,300 hours TIS or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, modify the wing spar attachment by installing Beech Kit No. 101–4050.

(b) For Model 300 airplanes, upon the accumulation of 9,000 hours TIS or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, modify the wing spar attachment by installing Beech Kit No. 101–4050.

(c) For Models B200, B200C, and B200T airplanes, upon the accumulation of 9,500 hours TIS or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, modify the wing spar attachment by installing Beech Kit No. 101–4050.

Note: Section 4–00–00 of the Beech 200 and 300 series maintenance manuals contains information related to this AD.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, room 100, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

(f) All persons affected by this directive may obtain the service kit and maintenance manual information referred to herein upon request to the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085; or may examine information that is applicable to this AD at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on July 15, 1991.

Issued in Kansas City, Missouri, on May 21, 1991.

Herman C. Belderok,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–13314 Filed 6–5–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 90–NM–36–AD; Amendment 39–7027; AD 91–12–15]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which requires a modification to the center hydraulic system to prevent the loss of fluid from all hydraulic systems as a result of structural damage to the vertical and/or the horizontal stabilizers. This amendment is prompted by review and analysis of the Model 757 flight control system functional redundancy as it relates to the ability of the airplane to continue safe flight and landing after structural failure. This condition, if not corrected, could result in loss of controllability of the airplane if, following a single event of structural failure, damage occurs to all three hydraulic systems.

EFFECTIVE DATE: July 15, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. G.M. Dail, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM–130S; telephone (206) 227–2674. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Model 757 series airplanes, which would require a modification to the center hydraulic system to prevent the loss of fluid from all hydraulic systems, was published in the **Federal Register** on November 26, 1990 (55 FR 49065).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association of America (ATA), on behalf of one operator, requested that the compliance time be changed from the proposed 3,600 hours time-in-service to 7,200 hours time-in-service or two years after the effective date of the AD in order that the modification could be scheduled during a "Mid-D" check at a main maintenance base. The manufacturer recommended that the compliance time be extended to 36 calendar months instead of 3,600 hours in-service. This request is based on the manufacturer's belief that the type of event that prompted the proposed modification is remote. Upon reconsideration, the FAA partially concurs with these requests to extend the compliance period. The FAA has determined that an acceptable level of safety can be maintained by revising the compliance period from the proposed 3,600 hours time-in-service, to "3,600 hours time-in-service or 24 calendar months, whichever occurs later." The final rule has been revised accordingly.

The airplane manufacturer pointed out that in certain damage scenarios other than structural damage to the vertical and/or horizontal stabilizers of the airplane, which is addressed by this rulemaking action, the possibility exists for the loss of all three hydraulic systems. The FAA acknowledges the existence of other damage scenarios; however, the intent of the rule is to protect against the most likely damage event that could lead to loss of control of the airplane, i.e., damage to the stabilizers. Therefore, the FAA has determined that installation of the modification required by this AD action will preclude loss of control of the airplane in the event of such damage, based upon the location of the hydraulic devices in the empennage that are required to be installed in accordance with paragraph A. of this AD.

Paragraph B. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternative methods of compliance.

Since the issuance of the NPRM, the manufacturer has revised the referenced service bulletin to delete two components from the required modification kit and update the kit price. The FAA reviewed and approved Boeing Alert Service Bulletin 757–29A0030, Revision 3, dated February 7, 1991. The final rule has been revised to reference the later service bulletin revision as the appropriate service information source. Additionally, the economic analysis paragraph, below, has been revised to account for the updated kit price.

The economic analysis paragraph also has been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA determined that it is necessary to use the increased rate in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 199 Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 100 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Required parts are estimated at $9,822 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,048,200.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator,

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the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39 — [AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-12-15. Boeing: Amendment 39-7027. Docket No. 90-NM-36-AD.

Applicability: Model 757 series airplanes, line numbers 001 through 199, on which Production Revision Release (PRR) 53736 has not been incorporated, certificated in any category.

Compliance: Required within the next 3,600 hours time-in-service or 24 calendar months after the effective date of this AD, whichever occurs later, unless previously accomplished.

To prevent loss of fluid from all three hydraulic systems, accomplish the following:

A. Modify the center hydraulic system in accordance with the instructions contained in Boeing Alert Service Bulletin 757-29A0030, Revision 3, dated February 7, 1991.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment (39-7027, AD 91-12-15) becomes effective July 15, 1991.

Issued in Renton, Washington, on May 28, 1991.

Jim Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-13318 Filed 6-5-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-37-AD; Amendment 39-7028; AD 91-12-16]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which requires a modification to the left hydraulic system to prevent the loss of fluid from all hydraulic systems as a result of structural damage to the horizontal or the vertical stabilizers. This amendment is prompted by review and analysis of the Model 767 flight control system functional redundancy as it relates to the ability of the airplane to continue safe flight and landing after structural failure. This condition, if not corrected, could result in loss of controllability of the airplane if, following a single event of structural failure, damage occurs to all three hydraulic systems.

EFFECTIVE DATE: July 15, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. G. M. Dail, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2674. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Model 767 series airplanes, which would require a modification to the left hydraulic system to prevent the loss of fluid from all hydraulic systems, was published in the **Federal Register** on November 26, 1990 (55 FR 49066).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association of America (ATA) provided comments to the docket on behalf of several member operators. Two members each requested that the proposed compliance time be extended to 15 or 18 months after the effective date of the proposed rule. One member requested that it be extended to 6,000 flight hours. The commenters explained that these extended compliance times would allow the installation of the modification to be accomplished during scheduled maintenance at a main base. The manufacturer recommended that the compliance time be extended to 36 calendar months instead of the proposed 3,600 hours time-in-service; this was based on the manufacturer's belief that the type of event that prompted the proposed modification is remote. Upon reconsideration, the FAA partially concurs with these requests to extend the compliance time. The FAA has determined that an acceptable level of safety can be maintained by revising the compliance time from the proposed 3,600 hours time-in-service, to "3,600 hours time-in-service or 24 calendar months, whichever occurs later." The final rule has been revised accordingly.

The airplane manufacturer pointed out that in certain damage scenarios other than structural damage to the vertical and/or horizontal stabilizers of the airplane, which is addressed in this rulemaking action, the possibility exists for the loss of all three hydraulic systems. The FAA acknowledges the existence of other damage scenarios; however, the intent of this rule is to protect against the most likely damage event that could lead to loss of control of the airplane, i.e., damage to the stabilizers. Therefore, the FAA has determined that installation of the modification required by this AD action would preclude loss of control of the airplane in the event of such damage based upon the location of the hydraulic devices in the empennage that are required to be installed in accordance with paragraph A. of this AD.

Paragraph B. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternative methods of compliance.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to use the increased rate in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither significantly increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 255 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 114 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Required parts are estimated at $7,442 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $973,788.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-12-16. Boeing: Amendment 39-7028. Docket No. 90-NM-37-AD.

Applicability: Model 767 series airplanes, line numbers 001 through 255, on which Production Revision Release (PRR) 11546-2 has not been incorporated, certificated in any category.

Compliance: Required within the next 3,600 hours time-in-service or 24 calendar months after the effective date of this AD, whichever occurs later, unless previously accomplished.

To prevent loss of fluid in the left hydraulic system, accomplish the following:

A. Modify the left hydraulic system in accordance with the instructions contained in Boeing Alert Service Bulletin 767-29A0038, Revision 1, dated August 3, 1989.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment (39-7028, AD 91-12-16) becomes effective July 15, 1991.

Issued in Renton, Washington, on May 28, 1991.

Jim Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-13317 Filed 6-5-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-AEA-20]

Alteration of Transition Area; Ocean City, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends the 700 foot Transition Area established at Ocean City, MD, for the Ocean City Municipal Airport. This action establishes that amount of controlled airspace to support the development of a new Localizer Runway 14 Standard Instrument Approach Procedure (SIAP) to the airport. Additionally, the airport name and geographic coordinates are being updated to reflect the actual airport name and location.

EFFECTIVE DATE: 0901 U.T.C. July 25, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA-530, F.A.A. Eastern Region, Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917-0857.

SUPPLEMENTARY INFORMATION:

History

On January 31, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the 700 foot Transition Area established at Ocean City, MD, for the Ocean City Municipal Airport (56 FR 6592) due to the development of a new Localizer Runway 14 SIAP to the airport. The proposed action would establish that amount of controlled airspace necessary to contain arriving aircraft at the Ocean City Municipal Airport, Ocean City, MD. Subsequent to the issuance of the original proposal, it was discovered that portions of the original description were duplicated. This notice merely incorporates and simplifies the description of the 700 foot Transition Area.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments on the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6G, September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends the 700 foot Transition Area established at Ocean City, MD, for the Ocean City Municipal Airport due to the development of a new Localizer Runway 14 SIAP to the airport. This action would establish that amount of controlled airspace necessary to contain arriving aircraft at the Ocean City Municipal Airport, Ocean City, MD.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies

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and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Ocean City, MD [Revised]

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of the center, lat. 38°18'37"N., long. 75°07'28"W., of Ocean City Municipal Airport, Ocean City, MD; within 4 miles either side of the Runway 14 Localizer Course extending from the 7.3-mile radius to 10.7 miles NW of the airport.

Issued in Jamaica, New York, on May 16, 1991.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 91-13320 Filed 6-5-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 90-AEA-18]

Alteration of VOR Federal Airway V-10; PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of Federal Airway V-10 located in the State of Pennsylvania. This airway alteration will extend the route from Revloc to Lancaster, PA. This action will simplify the routings, improve navigation, and make better use of the airspace.

EFFECTIVE DATE: 0901 UTC, July 25, 1991.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

History

On March 8, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the description of V-10 located in the State of Pennsylvania (56 FR 9914). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters Federal Airway V-10 located in the State of Pennsylvania. Modifying V-10 will establish an extension to the airway from Revloc to Lancaster, PA. This modification to the airway will simplify the routings, improve navigation, and make better use of the airspace.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-10 [Amended]

By removing the words "Clarion, PA, 222° radials; Revloc, PA." and substituting the words "Revloc, PA, 300° radials; Revloc; INT Revloc 107° and Lancaster, PA, 280° radials; Lancaster."

Issued in Washington, DC, on May 23, 1991

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 91-13321 Filed 6-5-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 91-ASO-12]

Amend Using Agency for Restricted Areas R-2931, R-2932, R-2933, R-2934, R-2935 Cape Canaveral, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the name of the using agency for Restricted Areas R-2931, R-2932, R-2933, R-2934, and R-2935 Cape Canaveral, FL, from U.S. Air Force, Eastern Space and Missile Center/Range Operations Scheduling (ROS) to U.S. Air Force, Eastern Space and Missile Center/Range Resource Real-Time Scheduling (RRS). This is an administrative change only which updates the title of the using agency office. It does not affect the configuration of, nor the activities conducted within the restricted areas.

EFFECTIVE DATE: 0901 u.t.c. July 25, 1991. 1991.

FOR FURTHER INFORMATION CONTACT: Rob Bellamy, Military Operations Program Office (ATM-420), Office of Air Traffic System Management, Federal

Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8328.

SUPPLEMENTARY INFORMATION:

The Rule

This admendment to part 73 of the Federal Aviation Regulations changes the using agency for Restricted Areas R-2931, R-2932, R-2933, R-2934, and R-2935 Cape Canaveral, FL, from United States Air Force, Eastern Space and Missile Center/ROS, FL, to United States Air Force, Eastern Space and Missile Center/RRS, FL. This administrative change was initiated by the Department of the Air Force to reflect the using agency's correct title. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Section 73.29 of part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 73 of the Federal Aviation Regulations (14 CFR part 73) is amended, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.29 [Amended]

2. § 73.29 is amended as follows:

R-2931, R-2932, R-2933, R-2934, R-2935 Cape Canaveral, FL [Amended]

By removing the present Using agency and substituting the following:

Using agency. U.S. Air Force, Eastern Space and Missile Center/RRS, Cape Canaveral AFS, FL.

Issued in Washington, DC, on May 23,1991.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 91-13318 Filed 6-5-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 26561; Amdt. No.1453]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP

DATES: Effective: An effective date for each SIAP IS specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1,1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

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amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard Instrument, Incorporation by reference. Issued in Washington, DC on May 24, 1991.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

PART 97 [AMENDED]

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective July 25, 1991

Troy, AL—Troy Muni, NDB RWY 7, Amdt. 9
Troy, AL—Troy Muni, ILS RWY 7, Amdt. 6
Troy, AL—Troy Muni, RADAR-1, Amdt. 5
Huntsville, AR—Huntsville-Madison Co. Regional, VOR/DME RWY 12, Orig.
Bedford, IN—Virgil I. Grisson Muni, VOR/DME RWY 13, Amdt. 9
Bedford, IN—Virgil I. Grisson Muni, VOR/DME RWY 31, Amdt. 8
Bedford, IN—Virgil I. Grisson Muni, NDB RWY 13, Amdt. 7
Bedford, IN—Virgil I. Grisson Muni, NDB RWY 31, Amdt. 7
Bloomington, IN—Monroe County, VOR RWY 6, Amdt. 16
Bloomington, IN—Monroe County, VOR RWY 17, Amdt. 11
Bloomington, IN—Monroe County, VOR RWY 24, Amdt. 10
Bloomington, IN—Monroe County, VOR/DME RWY 35, Amdt. 13
Bloomington, IN—Monroe County, NDB RWY 35, Amdt. 4
Bloomington, IN—Monroe County, ILS RWY 35, Amdt. 4
Keokuk, IA—Keokuk Muni, NDB RWY 14, Amdt. 11
Keokuk, IA—Keokuk Muni, NDB RWY 26, Orig.
Pascagoula, MS—Jackson County, VOR-A, Orig.
Philadelphia, MS—Philadelphia Muni, NDB RWY 36, Orig.
New York, NY—LaGuardia, NDB RWY 22, Amdt. 12
Hickory, NC—Hickory Regional, VOR/DME RWY 6, Orig.
Sunriver, OR—Sunriver, VOR/DME RWY 16, Orig.
Marion/Wytheville, VA—Mountain Empire, NDB-A, Amdt. 1, CANCELLED
Marion/Wytheville, VA—Mountain Empire, NDB RWY 28, Orig.
Everett, WA—Snohomish County (Paine Field), VOR RWY 16, Amdt. 3, CANCELLED
Everett, WA—Snohomish County (Paine Field), VOR/RWY 34, Orig., CANCELLED
Everett, WA—Snohomish County (Paine Field), VOR/DME RWY 34L, Amdt. 4
Everett, WA—Snohomish County (Paine Field), NDB RWY 16R, Amdt. 11.
Everett, WA—Snohomish County (Paine Field), ILS RWY 16R, Amdt. 17

Effective June 27, 1991

Dublin, GA—W.H. "Bud" Barron, LOC RWY 2, Amdt. 3
Tulsa, OK—Richard Lloyd Jones Jr., VOR RWY 1L, Amdt. 3
Tulsa, OK—Richard Lloyd Jones Jr., VOR/DME-A, Amdt. 5
Minocqua/Woodruff, WI—Lakeland/Noble F. Lee Memorial Field, NDB RWY 18, Amdt. 11
Minocqua/Woodruff, WI—Lakeland/Noble F. Lee Memorial Field, NDB RWY 28, Amdt. 10
Minocqua/Woodruff, WI—Lakeland/Noble F. Lee Memorial Field, NDB RWY 36, Amdt. 7

Effective May 23, 1991

Lewistown, MT—Lewistown Muni, VOR RWY 7, Amdt. 13

Effective May 21, 1991

Red Bluff, CA—Red Bluff Muni, VOR-DME RWY 15, Amdt. 4
Red Bluff, CA—Red Bluff Muni, VOR RWY 33, Amdt. 5

Effective May 16, 1991

Flagstaff, AZ—Pulliam, NDB/DME RWY 21, Amdt. 1
Fort Worth, TX—Fort Worth Alliance, ILS RWY 34, Amdt. 1
Decatur, TX—Decatur Muni, VOR-A, Amdt. 4

[FR Doc. 91-13319 Filed 6-5-91; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC-18177; S7-7-91]

RIN: 3235-AD91

Amendment to Rule 2a-7 Under the Investment Company Act

AGENCY: Securities and Exchange Commission.

ACTION: Final rule amendment.

SUMMARY: The Commission is adopting an amendment to § 270.2a-7 under the Investment Company Act of 1940 affecting money market funds. The amendment excludes tax exempt money market funds from the requirement that the board of directors of a fund approve or ratify the acquisition of any security that is unrated, or is rated by only one rating agency.

EFFECTIVE DATE: The amendment will be effective June 1, 1991.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Berman, Special Council, or Lawrence B. Stoller, Attorney, (202) 272-2107, Office of Disclosure and Adviser Regulation, Division of Investment Management, Securities and Exchange

Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is adopting an amendment to rule 2a-7 (17 CFR 270.2a-7) under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) ("1940 Act") to exclude tax exempt money market funds ("tax exempt funds") [1] from the requirement that the fund board of directors approve or ratify the acquisition of any security that is unrated or is rated by only one nationally recognized statistical rating organization ("NRSRO").[2] This ratification requirement was added to rule 2a-7 in amendments that were adopted by the Commission on February 13, 1991 [3] and become effective on June 1, 1991.

I. Discussion

On February 13, 1991, the Commission adopted several amendments to rules and forms affecting money market funds, including rule 2a-7 under the 1940 Act.[4] The amendments were designed both to reduce the likelihood that a money market fund will not be able to maintain a stable net asset value,[5] and to increase investor awareness that investing in a money market fund is not without risk.[6]

The amended rule limits money market fund investments to United States dollar-denominated obligations that are determined to present "minimal credit risks" and are "Eligible Securities." [7] "Eligible Securities" are defined as either securities rated by at least two NRSROs (or by the only NRSRO that has rated the security) in one of the two highest short-term rating categories, or comparable unrated securities.[8] This limitation applies to all money market funds, including tax exempt funds. In the case of securities rated by only one NRSRO or unrated securities, the amendments require the fund's board of directors either to approve these securities prior to their purchase of subsequently to ratify their purchase.[9] The ratification requirement was intended to provide an additional level of review when a fund invests in securities the credit risks of which have been subject to more limited independent analysis.

The Commission expected that for most money market funds, the ratification requirement would be performed relatively infrequently. However, after adoption of the amendments, the Commission was advised that the ratification requirement would impose a significant burden on tax exempt funds because a large number of the instruments in which they invest are unrated or rated by only one NRSRO. Thus, the requirement that the board of directors approve or ratify any purchase of an unrated or single-rated security would involve tax exempt fund boards far more extensively in fund management than had been contemplated. In view of the effect of the requirement on tax exempt funds, on April 8, 1991 the Commission proposed that tax exempt funds be excluded from the requirement.[10]

The Commission received seven comments on the proposal. While all of the commenters supported the Commission's proposal to remove the ratification requirement as to single-rated securities, two commenters argued that the requirement should be retained for unrated securities because of the reduced amount of information available on these securities and the uncertain financial condition of some state and local government issuers, which would make board approval or ratification of a tax exempt fund's purchase of unrated securities a useful exercise. However, the other commenters asserted that the imposition of a ratification requirement for a tax exempt fund's purchase of both unrated and single-rated securities would impose a significant burden on these funds. Given the substantial percentage of unrated and single-rated tax exempt fund portfolio securities, requiring board approval or ratification of the purchase of either of these types of securities would involve tax exempt fund boards in daily portfolio management activities far more than was anticipated or would be practical. Consequently, the Commission is eliminating the ratification requirement for investments by tax exempt money market funds.

Rule 2a-7 will continue to require tax exempt funds to determine that unrated or singlerated securities have minimal credit risks and are Eligible Securities. Where a tax exempt fund's board has delegated to the investment adviser the authority to make these determinations, the board must maintain sufficient oversight of the investment adviser, as required by paragraph (e) of the rule.[11]

Several commenters argued that taxable money market funds also should be exempt from the ratification requirement. Although these commenters did not disagree with the Commission's assessment that the ratification requirement will be triggered infrequently for taxable funds, they argued that it imposes a duty that is outside the scope of the board's proper responsibilities. These commenters argued that board members may lack the specialized, technical knowledge needed to perform a rigorous credit analysis, and that the requirement could interfere with the board's fulfillment of other, more important responsibilities that must be discharged during quarterly meetings.

Although the Commission preliminarily believes that subjecting taxable money market fund purchases of unrated and single-rated securities to review by a fund's board of directors will not create undue administrative burdens or unnecessarily involve those boards in day-to-day management of the fund's portfolio, the Commission is sensitive to the concerns raised by the

[1] Paragraph (a)(17) of rule 2a-7, as amended (17 CFR 270.2a-7(a)(17)), defines "tax exempt fund" as any money market fund that holds itself out as distributing income exempt from regular federal income tax.

[2] The term "nationally recognized statistical rating organization" is used in the Commission's uniform net capital rule (17 CFR 240.15c3-1(c)(2)(vi)(E), (F) and (H)).

[3] Investment Company Act Rel. No. 18005 (Feb. 20, 1991) (56 FR 8113 (Feb. 27, 1991)) ("Release 18005"). The amendments were proposed in Investment Company Act Rel. No. 17589 (July 17, 1990) (55 FR 30239 (July 25, 1990).

[4] Release 18005, *supra* note 3.

[5] Rule 2a-7 (17 CFR 270.2a-7) exempts money market funds from the general requirement applicable to mutual funds that the value of portfolio securities be marked to market on a daily basis, subject to certain risk-limiting conditions. *See* Release 18005, *supra* note 3, at nn. 2-9, and accompanying text.

[6] *Id.*

[7] Paragraph (c)(3) of rule 2a-7, as amended (17 CFR 270.2a-7(c)(3)).

[8] Paragraph (a)(5) of rule 2a-7, as amended (17 CFR 270.2a-7(a)(5)). The term "Requisite NRSROs" is defined in paragraph (a)(13) of rule 2a-7, as amended (17 CFR 270.2a-7(a)(13)).

[9] Paragraph (c)(3) of rule 2a-7, *supra* note 7.

[10] Investment Company Act Rel. No. 18080 (Apr. 8, 1991) (56 FR 14901 (Apr. 12, 1991)) ("Release 18080"). The Commission also proposed, and is adopting as proposed, an amendment to correct a typographical error in paragraph (c)(6)(ii)(C) of rule 2a-7, as amended (17 CFR 270.2a-7(c)(6)(ii)(C)).

[11] *See* paragraph (e) of rule 2a-7, (17 CFR 270.2a-7(e)). The board may delegate to the investment adviser the responsibility to make the determinations required by rule 2a-7, other than certain determinations specified in paragraph (e), provided that the board:

(1) Establishes and periodically reviews written guidelines (including guidelines for determining whether instruments present minimal credit risks as required in paragraph (c)(3) of (rule 2a-7) and procedures under which the delegates makes such determinations; and

(2) Exercises adequate oversight (through periodic reviews of fund investments and the delegate's procedures in connection with investment decisions and prompt review of the adviser's actions in the event of the default of a security that requires notification of the Commission under paragraph (c)(5)(iii) of (rule 2a-7) to assure that the guidelines and procedures are being followed.

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commenters. However, the Commission has determined not to eliminate the ratification requirement for taxable money market funds at this time. Nevertheless, the Commission is interested in receiving comment from members of the industry on their experience with the requirement and would consider amending the rule if it appears that the requirement is unecessarily burdensome. In addition to comments on the practical effect of the ratification requirement on a fund's board of directors, the Commission also is soliciting comment on the policy implications of the ratification requirement applicable to taxable funds under paragraph (c)(3) of the rule, as well as the non-delegable assessment required by paragraph (c)(5)(i)(B) (17 CFR 2a-7(c)(5)(i)(B)).

Under the current requirement, which will take effect on June 1, 1991, the specific manner in which a money market fund satisfies the ratification requirement is left to the fund to determine, based on the investment objectives and policies of the fund and the securities with respect to which approval or ratification is required.[13] However, approval or ratification requires something beyond the mere adoption of guidelines and periodic monitoring of the adviser, the procedures followed when the board is delegating responsibilities. While the establishment of guidelines for unrated and single-rated securities may facilitate the approval and ratification process, paragraph (c)(3) requires that the board approve or ratify each investment. In meeting its responsibility under this provision, the board would have to have available to it, at a minimum: (i) the name and other pertinent identifying information of each unrated or single-rated security that it is to approve or ratify, and (ii) sufficient credit-related information with respect to the security to permit the board reasonably to determine that the investment is appropriate in light of the fund's objectives and policies and the requirement of rule 2a-7 that the security present minimal credit risks. This information could be presented to the board in the form of a summary of the information relied on by the adviser is recommending or purchasing the security and the basis for the adviser's recommendation.

[13] In Release 18005, *supra* note 3, at n. 78, the Commission noted that it would not be necessary to convene the board of directors every time the fund acquires such a security. The board of directors could establish an approved list of securities, provided that it periodically makes the requisite credit risk determinations with respect to the securities on the list. In addition, the adviser could acquire a security in accordance with guidelines established by the board, but the board would have to ratify the acquisition at its next meeting.

II. Final Regulatory Flexibility Analysis

A summary of the Initial Regulatory Flexibility Analysis regarding the proposed rule amendments was published in the proposing release. No comments were received. The Commission has prepared a Final Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603, a copy of which may be obtained by contacting Lawrence B. Stoller, Mail Stop 10-6, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

III. Text of Rule Amendments

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission is amending chapter II, part 270, title 17 of the Code of Federal Regulations as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The general authority citation for part 270 is revised to read as follows:

Authority: 15 U.S.C. 80a-1 *et seq.*, 80a-37, 80a-39 unless otherwise noted;

* * * * *

§§ 270.2a-7, 270.2a-41 and 270.12d3-1 [Amended]

2. The specific authority for §§ 270.2a-7, 270.2a41-1 and 270.12d3-1 is revised to read as follows:

Authority * * *

Sections 270.2a-7, 270.2a41-1 and 270.12d3-1 are also issued under 15 U.S.C. 80a-6(c), 80a-8(b), 80a-22, 80a-33 and 80a-37;

* * * * *

3. By revising paragraphs (c)(3) introductory text and (c)(6)(ii)(C) of Section 270.2a-7 to read as follows:

§ 270.2a-7 Money market funds.

* * * * *

(c) *Share Price Calculations.* * * *

(3) *Portfolio Quality.* The money market fund will limit its portfolio investments, including Puts and repurchase agreements, to those United States dollar-denominated instruments that its board of directors determines present minimal credit risks (which determination must be based on factors pertaining to credit quality in addition to the rating assigned to such instruments by a NRSRO) *and* which are at the time of acquisition Eligible Securities. In the case of an Unrated Security (including a demand instrument) other than a Government security, or a security that is an Eligible Security based on the rating of one NRSRO, unless the fund is a tax exempt fund, the acquisition of each such security by the money market fund must be approved or ratified by the money market fund's board of directors. For purposes of this section:

* * * * *

(6) * * *

(ii) * * *

(C) Where the board of directors believes the extent of any deviation from the money market fund's amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall cause the fund to take such action as it deems appropriate to eliminate or reduce to the extent reasonably practicable such dilution or unfair results.

* * * * *

Dated: May 31, 1991.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-13404 Filed 6-5-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations No. 4]

RIN 0960-None Assigned

Federal Old-Age, Survivors and Disability Insurance (1950-); Determining Disability and Blindness; Extension of Expiration Date for Cardiovascular System Listing

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: We are extending the expiration date of the cardiovascular system listing found in appendix 1 of part 404, subpart P, from June 6, 1991, to June 6, 1992. We have made no revisions in the medical criteria in the cardiovascular listings; they remain the same as they now appear in the Code of Federal Regulations. We are presently considering revisions to update the medical criteria contained in part A and part B of the listing, and any revised criteria will be published as a proposed rule when we have completed our review. Insofar as Medicare eligibility is based on entitlement to disability insurance benefits under title II of the Act, this proposed regulation affects the Medicare program. To the extent that Medicaid eligibility is based on title XVI eligibility, this proposed regulation affects the Medicaid program.

EFFECTIVE DATE: This final rule will be effective June 6, 1991.

FOR FURTHER INFORMATION CONTACT: Irving Darrow, Esq., Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235 (301) 966-0512.

SUPPLEMENTARY INFORMATION: On December 6, 1985, a revised Listing of Impairments in appendix 1 to subpart P of part 404 was published in the **Federal Register** (50 FR 50068). The Listing of Impairments describes, for each of the 13 major body systems, impairments that are considered severe enough to preclude a person from engaging in any gainful activity (part A), or in the case of a child under the age of 18, impairments that are severe enough to prevent the child from functioning independently, appropriately, and effectively in an age-appropriate manner (part B). The Listing of Impairments is used for evaluating disability and blindness under the Social Security disability program and the supplemental security income for the aged, blind, and disabled program.

When the revised Listing of Impairments was published in 1985, we indicated that disability evaluation and treatment and program experience would require that the listing be periodically reviewed and updated. Accordingly, expiration dates were established ranging from 4 to 8 years for each of the specific body systems. A termination date of December 6, 1989, was established for part A of the cardiovascular system listing at that time. Part B of the listing has a termination date of December 6, 1993.

The potential program impact of the changes to update the listings required careful analysis and consideration within the agency. As our study and analysis continued, it became evident that we would be unable to publish a proposed and then a final regulation containing revised criteria for part A of the cardiovascular listings by December 6, 1989. We, therefore, published in the **Federal Register** of December 5, 1989 (54 FR 50233), a final regulation extending the current cardiovascular listing for a period of 18 months to June 6, 1991.

A decision issued in June 1990 by the United States Court of Appeals for the Second Circuit in *State of New York* v. *Sullivan* (906 F.2d 910), with which we are complying, also caused us to review the current listings with considerable care. The court's decision dealt with our use of treadmill exercise tests in the evaluation of ischemic heart disease. As a result of this continuing and careful review of the listings, we now find that we will not have sufficient time to publish a notice of proposed rulemaking (with a 60-day period for public comment), setting out proposed revisions to the current listings and then publish a final regulation in the **Federal Register** by June 6, 1991. We have, therefore, decided to extend the current cardiovascular listings without change for a period of 12 months—from the present expiration date of June 6, 1991 to June 6, 1992. We believe this extension will give us sufficient time to publish revised listings as a proposed rule (with a 60-day period for public comment), and then publish final regulations in the **Federal Register** by June 6, 1992.

Regulatory Procedures

The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The Administrative Procedure Act provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking and public comment procedures on this rule because it only extends the expiration date of part A of the cardiovascular listings and makes no substantive changes to these listings. The current regulations expressly provide that the listings may be extended by the Secretary, as well as revised and promulgated again. Because we are not making any revisions to the current listings, use of public comment procedures is not contemplated by the existing regulations and is unnecessary under the Administrative Procedure Act. After our review of the existing cardiovascular listings is completed, proposed revisions to the existing criteria will be published for public comment.

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because this regulation does not meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects disability claimants under titles II and XVI of the Act.

Paperwork Reduction Act

This regulation imposes no reporting or recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.802, Social Security Disability Insurance; No. 93.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, survivors and disability insurance.

Dated: May 8, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: June 3, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

PART 404—FEDERAL OLD-AGE SURVIVORS AND DISABILITY INSURANCE

For the reasons set forth in the preamble, part 404, title 20 of the Code of Federal Regulations is amended as set forth below.

20 CFR part 404, subpart P—is amended as follows:

1. The authority citation for subpart P is revised to read as follows:

Authority: Secs. 202, 205 (a), (b), and (d)–(h), 216(i), 221 (a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405 (a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 1302.

Appendix 1 to Subpart P [Amended]

2. Appendix 1, subpart P, is amended by revising the fourth paragraph of the introductory text to read as follows: "The cardiovascular system (4.00) will no longer be effective on June 6, 1992."

[FR Doc. 91-13494 Filed 6-4-91; 11:29 am]

BILLING CODE 4190-29-M

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DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 51

[Order No. 1496-91]

Voting Rights Act of 1965; Procedural Amendments

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This amendment indicates that the Department of Justice has received approval from the Office of Management and Budget pursuant to the Paperwork Reduction Act for the continuation of the collection of information requirements contained in the Procedures for the Administration of section 5 of the Voting Rights Act of 1965, as amended.

EFFECTIVE DATE: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: David H. Hunter, Attorney, Voting Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66128, Washington, DC 20035-6128, 202-307-2898, or Larry E. Miesse, Department of Justice Clearance Officer, Justice Management Division, U.S. Department of Justice, Washington, DC 20530, 202-514-4312.

SUPPLEMENTARY INFORMATION: This amendment reflects neither a substantive nor a procedural change in the administration of section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, but merely the renewal of approval under the Paperwork Reduction Act, 44 U.S.C. chapter 35. That approval has been extended from February 28, 1991 to February 28, 1994, under OMB control number 1190-0001, which is unchanged.

List of Subjects in 28 CFR Part 51

Administrative practice and procedure, Archives and records, Authority delegations (government agencies), Civil rights, Elections, Political committees and parties, Reporting and recordkeeping requirements, Voting rights.

Accordingly, 28 CFR part 51 is amended as set forth below.

PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; and 42 U.S.C. 1973c.

2. Section 51.26(g) is amended by removing the year "1991" and adding in its place the year "1994".

Dated: May 29, 1991.

Dick Thornburgh,

Attorney General.

[FR Doc. 91-13282 Filed 6-5-91; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 220

Accounting Procedures for Determining Net Profit Share Payment for Outer Continental Shelf Oil and Gas Leases

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of training seminar.

SUMMARY: Minerals Management Service (MMS) hereby gives notice that it will conduct a training seminar at the location and on the date identified below, on Net Profit Share Lease (NPSL) regulations that were published in the Federal Register on May 30, 1980 (45 FR 36784) under 30 CFR part 290. These regulations were subsequently transferred to 30 CFR Chapter II and redesignated as 30 CFR part 261 (48 FR 1182) and further redesignated as 30 CFR part 290 (48 FR 35642). The seminar will address specific issues regarding NPSL's and the reporting problems encountered since the regulations become effective May 14, 1990.

DATES: See Supplementary Information.

ADDRESSES: See Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Mr. David A. Hubbard, Chief, Economic Valuation Branch, Royalty Valuation and Standards Division, (303) 231-3254, or (FTS) 328-3154, or Ms. Renee Gyles, Economic Valuation Branch, Royalty Valuation and Standards Division (303) 231-3738, or (FTS) 328-3738.

SUPPLEMENTARY INFORMATION: The NPSL regulations that were published in the Federal Register on May 30, 1980, set forth accounting procedures for Outer Continental Shelf NPSL's. The regulations set forth the proper methodology to be used to account for costs and revenues on NPSL's.

The training seminar will include discussion of the following topics:

- History and overview of NPSL regulations.
- The role of the Royalty Valuation and Standards Division, the Royalty Compliance Division, and MMS offshore operations in relation to NPSL's.
- NPSL reporting requirements.
- NPSL accounting examples.
- Common NPSL questions and issues.

Location and Date

The seminar will be held from 8 a.m. to 5 p.m. on the date and at the location shown below:

Date	Location
July 25, 1991	Holiday Inn Crown Plaza, 333 Poydras, New Orleans, LA 70130, (504) 525-9444.

Reservations

Persons interested in attending the seminar should make a reservation with our office by telephone on or before July 5, 1991, to Ms. Renee Gyles at (303) 231-3738 or (FTS) 328-3738. Reservations should be confirmed in writing to Ms. Renee Gyles, Minerals Management Service, Royalty Management Program, Royalty Valuation and Standards Division, P.O. Box 25165, MS 3500, Denver, Colorado 80225-0165.

Persons requesting reservations should specify the number of attendees for the seminar. Due to space limitations, the number of attendees may be limited. Reservations will be provided on a first-come-first-served basis.

If insufficient interest is shown in attending the training session, the session may be canceled and alternate arrangements will be made for those who expressed interest.

Dated: May 31, 1991.

Donald T. Sant,

Acting Associate Director for Royalty Management.

[FR Doc. 91-13333 Filed 6-5-91; 8:45 am]

BILLING CODE 4310-MR-M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Regulatory Program; Revision of Administrative Rule and the Ohio Revised Code

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of proposed Program Amendment Number 50 to the Ohio permanent regulatory program

(hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment revises one rule in the Ohio Administrative Code and one section of the Ohio Revised Code. Ohio submitted this amendment to be consistent with one provision of the Federal Omnibus Budget Reconciliation Act of 1990. Ohio proposes to increase to 300,000 tons the maximum annual coal production under which a mine operator is eligible for participation in the Small Operator Assistance Program effective October 1, 1991.

EFFECTIVE DATE: October 1, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232; (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982, Federal Register (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Submission of Amendment

By letter dated January 31, 1991 (Administrative Record No. OH-1452), the Ohio Department of Natural Resources, Division of Reclamation (Ohio), submitted proposed Ohio Program Amendment Number 50. This amendment revised Ohio Administrative Code (OAC) 1501:13-6-03 and Ohio Revised Code (ORC) section 1513.07(B)(4). Ohio submitted this amendment to be consistent with the amended eligibility criterion for the Small Operator Assistance Program enacted through the Federal Omnibus Budget Reconciliation Act of 1990.

OSM announced receipt of the proposed amendment in the February 21, 1991, Federal Register (56 FR 7002), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on March 25, 1991.

During its review of the proposed amendment, OSM was unclear as to how Ohio would apply the SOAP eligibility requirements. On May 6, 1991 (Ohio Administrative Record No. OH-1516), OSM requested that Ohio further clarify the proposed amendment. By letter of May 9, 1991 (Ohio Administrative Record No. OH-1524), Ohio clarified that the revisions to the SOAP eligibility requirements will apply only to small operators who receive assistance under SOAP after October 1, 1991.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Ohio program submitted on January 31, 1991.

Ohio proposes to amend ORC section 1513.07(B)(4). This statutory change is identical to what section 6011 of the Federal Omnibus Budget Reconciliation Act of 1990 does to section 507(c) of SMCRA. Section 6011 of the Omnibus Budget Reconciliation Act of 1990 revises section 507(c) of SMCRA, effective October 1, 1991, to increase from 100,000 tons to 300,000 tons the maximum annual coal production under which a mine operator is eligible for participation in the Small Operator Assistance Program (SOAP). Ohio is proposing to make a corresponding change in the SOAP eligibility tonnage figures in the Ohio statute. Ohio proposes to substitute the 300,000-ton eligibility limit for the existing 100,000-ton eligibility limit at ORC section 1513.07 paragraph (B)(4). This Ohio amendment will apply only to small operators who receive assistance under SOAP after October 1, 1991. Therefore, the Director finds this amendment to ORC section 1513.07(B)(4) to be substantively identical to section 507(c) of SMCRA, as amended, by the Federal Omnibus Budget Reconciliation Act of 1990 and is no less stringent than section 507(c) of SMCRA, as amended.

Ohio's current rules at OAC 1501:13-6-03 paragraphs (C)(1)(b) through (C)(2), (I)(1)(d), and (I)(1)(e) are substantively identical to and no less effective than their Federal counterparts at 30 CFR 795.6(a)(2), 795.12(a)(2), and 795.12(a)(3), respectively. As discussed above, effective October 1, 1991, however, the eligibility limit under section 507(c) of SMCRA will increase from 100,000 tons to 300,000 tons as amended by the Federal Omnibus Budget Reconciliation Act of 1990 (the 1990 Act). Ohio is proposing to substitute in their regulations the 300,000-ton eligibility limit for the existing 100,000-ton eligibility limit. OSM has not promulgated any regulations reflecting this change.

The Federal regulation at 30 CFR 795.6(a)(2) states that an operator/applicant is eligible for SOAP assistance if he or she establishes that his or her probable total and actual production from all locations during any consecutive 12-month period will not exceed 100,000 tons. Subsection (a)(2) goes on to describe when coal production will be attributed to the applicant. The Ohio rules at OAC 1501:13-6-03(C)(1)(b) and (C)(2) are substantively identical to the Federal rule, except that the proposed amendment to OAC 1501:13-6-03(C)(1)(b) substitutes 300,000 for 100,000 for applicants who receive assistance under SOAP after October 1 1991. Thus, there appears to be an inconsistency between the Ohio regulation and the Federal regulation. However, section 507(c) of SMCRA, as amended by the 1990 Act, supersedes in part 30 CFR 795.6(a)(2), to the extent that applicants who receive assistance under SOAP grants after October 1, 1991, may receive such grants if their probable total and actual production from all locations during any consecutive 12-month period does not exceed 300,000 tons. Thus, the Director finds the amendment to OAC 1501:13-6-03(C)(1)(b) to be no less effective than 30 CFR 795.6(a)(2) as superseded in part by amended section 507(c) of SMCRA.

The Federal regulation at 30 CFR 795.12(a)(2) requires an applicant to reimburse the regulatory authority if the applicant's actual and attributed coal production from all locations exceeds 100,000 tons during any 12-month period. The Federal regulation at 30 CFR 795.12(a)(3) requires an applicant and/or his/her successor to reimburse the regulatory authority if the permit is sold, transferred or assigned to another person and that person's total actual and attributed production exceeds 100,000 tons during any 12-month period. The Ohio rules at OAC 1501:13-6-03(I)(1)(d) and (I)(1)(e) are substantively identical to the Federal rules, except that the proposed amendments to OAC 1501:13-6-03(I)(1)(d) and (I)(1)(e) substitute 300,000 for 100,000 for applicants who receive assistance under SOAP after October 1, 1991. Again, there appears to be an inconsistency between the regulations. However, section 507(c) of SMCRA, as amended, supersedes in part 30 CFR 795.12 (a)(2) and (a)(3), to the extent that applicants who receive

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assistance under SOAP grants after October 1, 1991, do not have to reimburse the regulatory authority if their probable total and actual production during any consecutive 12-month period does not exceed 300,000 tons. Thus, the Director finds the amendments to OAC 1501:13-6-(I)(1)(d) and (I)(1)(e) to be no less effective than 30 CFR 795.12 (a)(2) and (a)(3) as superseded in part by amended section 507(c) of SMCRA.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the February 21, 1991, **Federal Register** (56 FR 7002) closed on March 25, 1991. No comments from the public were received and the scheduled public hearing was not held because no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Ohio Program. The U.S. Environmental Protection Agency, the U.S. Department of Agriculture, Soil Conservation Service, the U.S. Army Corps of Engineers, and the U.S. Department of Labor, Mine Safety and Health Administration, responded that they had no comments on the proposed amendment. No other comments were received.

V. Director's Decision

Based on the above findings, the Director is approving Ohio Program Amendment Number 50 as submitted by Ohio on January 31, 1991, and as clarified by the May 9, 1991, letter which states that the amendment will apply only for small operators who receive assistance under SOAP after October 1, 1991. This approved program amendment does not apply to existing grantees. The Federal regulations at 30 CFR part 935 codifying decisions concerning the Ohio program are being amended to implement this decision. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no such provisions and that EPA concurrence is therefore, unnecessary.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act:

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Jeffrey Jarrett,

Acting Assistant Director, Eastern Support Center.

Dated: May 24, 1991.

For the reasons set out in the preamble, Title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In Section 935.15, a new paragraph (yy) is added to read as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(yy) The following amendment to the Ohio regulatory program, as submitted to OSM on January 31, 1991, and clarified by the May 9, 1991, letter is approved, effective October 1, 1991: Amendment Number 50 which consists of a revision to the Ohio Revised Code (ORC) at 1513.07 paragraph (B)(4) and Ohio Administrative Code (OAC) at 1501:13-6-03 paragraphs (C)(1)(b), (I)(1)(d), and (I)(1)(e) which concern the maximum annual coal production under which a mine operator is eligible for participation in the Small Operator Assistance Program (SOAP).

[FR Doc. 91-13208 Filed 6-5-91; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 570

Kuwaiti Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This rule amends the Kuwaiti Assets Control Regulations, 31 CFR part 570, 55 FR 49856 (Novermber 30, 1990), as amended at 56 FR 5351 (February 11, 1991), 56 FR 10356 (March 11, 1991), and 56 FR 12450 (March 26, 1991) (the "KACR"), to authorize transactions involving property in which the seven blocked Kuwaiti banks have an interest. In addition a reporting requirement is eliminated. This action effectively unblocks their assets and authorizes all transactions between the banks and U.S. persons.

EFFECTIVE DATE: June 4, 1991.

FOR FURTHER INFORMATION CONTACT: Willam B. Hoffman, Chief Counsel (tel.: 202/535-6020), or Steven I. Pinter, Chief of Licensing (tel.: 202/535-6449), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: The KACR were originally published on November 30, 1990, to implement the sanctions imposed by the President in Executive Orders 12723 and 12725. In Executive Order 12723 and Section 1 of Executive Order 12725, the President blocked all property and interests in property of the Government of Kuwait as a protective measure requested by the Government of Kuwait. Consistent with this blocking, § 570.201 of the KACR prohibits all transactions involving blocked property which is located in the United States or is in the possession or control of a United States person.

On March 25, 1991, at the request of the Government of Kuwait, the Office of Foreign Assets Control ("FAC") amended the KACR to permit transactions which involve property or interests in property of the Government of Kuwait located in the United States. The only property not effectively unblocked by the amendment was the property and interest in property of seven blocked Kuwait banks—Al Ahli Bank of Kuwait, The Bank of Kuwait & The Middle East, Burgan Bank, Commercial Bank of Kuwait, The Gulf Bank, The Industrial Bank of Kuwait, and Kuwait Real Estate Bank. The seven banks were at that time in the process of settling obligations which arose prior to August 2, 1990, under procedures authorized by FAC.

The KACR is being amended through this rule to authorize transactions involving property or property interests of the seven Kuwaiti banks. This action effectively unlocks their assets, and authorizes all transactions between the banks and U.S. persons.

In addition, a reporting requirement imposed on U.S. financial institutions is eliminated in light of the unblocking of Kuwaiti assets effective through this and earlier amendments.

Because the KACR involve a foreign affairs function, Executive Order 12291 and the provision of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rule making is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

List of Subjects in 31 CFR Part 570

Iraq, Kuwait, Banks, Banking, Finance, Blocking of assets, Imports, Exports, Loan programs, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 31 CFR part 570 is amended as follows:

PART 570—KUWAITI ASSETS CONTROL REGULATIONS

1. The authority citation for part 570 continues to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; 50 U.S.C. 1601 *et seq.*; 22 U.S.C. 287c; Pub. L. 101-513, 104 Stat. 2047-55 (Nov. 5, 1990); E.O. 12722, 55 FR 31803 (Aug. 3, 1990); E.O. 12723, 55 FR 31805, (Aug. 3, 1990); E.O. 12725, 55 FR 33091 (Aug. 13, 1990).

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

2. Section 570.523 is amended by revising paragraph (b) to read as follows:

§ 570.523 Authorization of certain new transactions with respect to blocked Government of Kuwait property.

* * * * *

(b) Notwithstanding the provisions of § 570.201, all transactions affecting property or interests in property of the following entities are authorized on or after June 4, 1991: Al Ahli Bank of Kuwait, The Bank of Kuwait & The Middle East, Burgan Bank, Commercial Bank of Kuwait, The Gulf Bank, The Industrial Bank of Kuwait, and Kuwait Real Estate Bank.

§ 570.603 [Removed]

3. Section 570.602 is removed.

Dated: May 31, 1991.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved June 3, 1991.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 91-13521 Filed 6-4-91; 1:36 pm]

BILLING CODE 4810-25-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AD63

Veterans Education; The Veterans' Benefits and Programs Improvement Act of 1988 and the Montgomery GI Bill—Active Duty

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations; correction.

SUMMARY: The Department of Veterans Affairs is correcting errors in § 21.7076, Entitlement Charges and section 21.7220, Course Approval which appeared in the **Federal Register** on May 2, 1991 (56 FR pages 20134 through 20136).

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer at (202) 233-2092.

SUPPLEMENTARY INFORMATION: On May 2, 1991, VA promulgated regulations making final those provisions of the Veterans' Benefits and Programs Improvement Act of 1988 (Pub. L. 100-689) which affect the Montgomery GI Bill—Active Duty. Section 21.7076, Entitlement Charges and § 21.7220, Course Approval contained errors affecting alphabetized paragraph designation which are corrected by this notice.

The following corrections are made in **Federal Register** Vol. 56, No. 85, pages 20134 through 20136, dated May 2, 1991:

1. On page 20134, third column, line 55, change "(d)(7)" to "(b)(7)".

2. On page 20134, third column, line 56, change "(d)(8)" to "(b)(8)".

3. On page 20134, third column, line 59, change "(d)" to "(b)".

4. On page 20136, second column, lines 63 and 64, remove "paragraphs (h) and (i) are redesignated (f) and (g)".

Dated: May 29, 1991.

B. Michael Berger,

Records Management Service.

[FR Doc. 91-13257 Filed 6-5-91; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6861

[MT-930-4214-10; MTM 79264]

Withdrawal of Public Land for Rattler Gulch Limestone Cliffs Area of Critical Environmental Concern; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 20 acres of public land from surface entry and mining for 20 years for the Bureau of Land Management to protect the Rattler Gulch Limestone Cliffs Area of Critical Environmental Concern. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406-255-2935.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C., ch. 2), but not from leasing under the mineral leasing laws, to protect the Rattler Gulch Limestone Cliffs Area of Critical Environmental Concern:

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The area described contains 20 acres in Granite County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: May 28, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-13281 Filed 6-5-91; 8:45 am]

BILLING CODE 4310-DN-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 90-14; Notice 02]

RIN 2127-AC84

Federal Motor Vehicle Safety Standards; Occupant Protection in Interior Impact

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: Vehicle manufacturers must comply with Standard No. 201 which specifies occupant impact protection requirements for interior vehicle components that are likely to be struck by a lap-belted occupant during a crash. Those components include instrument panels, seat backs, sun visors and armrests. This final rule alters the impact protection requirements concerning the instrument panel for vehicles with passenger-side air bags. Today's notice will encourage greater availability of passenger-side air bags and thus result in a net safety benefit.

DATES: The amendments made by this final rule to the Code of Federal Regulations are effective June 6, 1991. Petitions for reconsideration of this final rule must be filed by July 8, 1991.

ADDRESSES: Petitions for reconsideration of this final rule should refer to the docket and notice number of this notice and be submitted to Administrator, room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. It is requested, but not required, that 10 copies be submitted.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Cohen, Chief, Frontal Crash Protection Division, NRM-12, Office of Motor Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-2264).

SUPPLEMENTARY INFORMATION:

The Standard

Standard No. 201, Occupant Protection in Interior Impact, specifies occupant impact protection requirements for interior vehicle components likely to be struck by a lap-belted occupant in a crash. Such components include instrument panels, seat backs, sun visors, and armrests. In addition, the Standard requires that interior compartment doors (e.g., glove compartment doors) remain closed during a crash.

To comply with Standard No. 201's impact requirements, vehicle manufacturers install energy absorbing materials in the portions of the instrument panel within the "head impact area," as defined in 49 CFR 571.3. The requirements specify that when those portions are impacted by a head form at 15 miles per hour (mph), the deceleration of the head form must not exceed 80g continuously for more than 3 milliseconds. Installation of appropriate energy absorbing materials in the upper and middle surfaces of the instrument panel to meet the requirement can prevent or reduce the severity of chest and head injuries resulting from contacts with the panel.

Petition for Rulemaking and Request for Comments

NHTSA received a petition for rulemaking from Chrysler Corporation (Chrysler) on August 17, 1988. The petition requested an exclusion from the impact protection requirements of Standard No. 201 for those portions of the instrument panel which are ahead of front seat passengers who are protected by air bag systems which meet the requirements of Standard No. 208, Occupant Crash Protection. NHTSA granted the petition on April 28, 1989 and requested comment on issues related to the petition in a document published in the **Federal Register** on August 10, 1989 (54 FR 32830).

NHTSA received 11 responses to its request for comments. Comments were received from the Insurance Institute for Highway Safety (IIHS), the Automotive Occupant Restraints Council, and 9 motor vehicle manufacturers or importers. No commenter opposed a modification of Standard No. 201 to facilitate the installation of top-mounted, passenger-side air bags.

Motor vehicle manufacturers commented that they have had problems complying with Standard No. 201 when dealing with top-mounted, passenger-side air bags. The primary problem apparently occurs because, in order to optimize air bag deployment with such a system, the air bag housing should not be located more than 1 inch below the instrument panel surface. Yet to meet the Standard's head form impact test at 15 mph, the equivalent of about 2 inches of energy absorbing material is needed. The "head impact areas" in the instrument panels of some top-mounted rearward-deployment air bag systems have been able to meet the Standard's requirements, although it has been difficult to do so. However, commenters stated that, with padding limited to 1 inch, compliance would be very difficult, if not impossible, for upward deployment systems.

Manufacturers identified a number of benefits from installation of top-mounted, upward-deployment air bags, instead of rearward-deployment ones. The major benefit is the reduced risk of injury to out-of-position occupants or standing children. Other advantages listed by commenters include the following: The top portion of the instrument panel provides more space for locating and supporting the air bag module; the air bag module is more remote from the knee impact surface and is thus less likely to adversely affect knee and femur loads; since the mass of the air bag module is closer to the body structure, shorter and stiffer supporting members can be used, resulting in a more stable platform for deployment; and instrument panel design is simplified due to reduced interference between the air bag system and the glove box.

In addition, a change in Standard No. 201 to facilitate installation of top-mounted, upward-deployment air bags may increase the installation rate of passenger-side air bags. In its comments, Ford Motor Company (Ford) stated that improved "feasibility of a top-mounted, upward-deployment supplemental passenger air bag system may substantially increase availability of passenger air bags, particularly in compact and subcompact cars, by helping to reduce overall risks to out-of-position occupants. Modification of S3.1 of Standard 201 would aid in establishing feasibility of the upward-deployment supplemental air bag."

In the request for comments, NHTSA also asked whether lap/shoulder belts should be required to be provided for all positions for which the requirements of Standard No. 201 might be relaxed. No commenter opposed requiring lap/shoulder belts to be provided for the front outboard passenger. One commenter opposed such a requirement for the middle passenger position, believing that lap/shoulder belts would be unnecessary and counterproductive for that seating position. NHTSA did not propose to require installation of lap/shoulder belts for the center front seating position, nor did it mean to imply that the lap/shoulder belt requirement should apply to this position.

Notice of Proposed Rulemaking

On July 18, 1990, after considering the public comments and further analyzing the issues, NHTSA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Standard No. 201 to relax the impact protection requirements for vehicles equipped with passenger-side air bags (55 FR 29238). The agency proposed to reduce the head form impact velocity specified by Standard No. 201 from 15 mph to 12 mph for vehicles equipped with passenger-side air bags. The proposal also required the installation of lap/shoulder belts at the right front seating position if the manufacturer elects to meet the requirements of Standard No. 201 at the 12 mph head impact velocity. In the NPRM, NHTSA stated that it believes that this additional requirement would provide protection in crashes where the air bag is unlikely to deploy. Examples of such crashes include frontal crashes under 12 mph; crashes involving a car whose air bag has previously been deployed, but not replaced; rear crashes in which the unrestrained occupant rebounds from his or her seat back and strikes the instrument panel; side crashes; and rollover crashes.

NHTSA requested that commenters provide data or estimates of the possible greater safety benefits of upward-deploying air bags or other information on how such air bags are preferable. Because NHTSA wanted to ensure that the rulemaking resulted in net safety benefits, the agency also solicited comments on a number of issues, including the number of passenger-side air bags that manufacturers planned to install, with and without the amendment; means of limiting the test speed reduction to the areas of the instrument panel necessary to accommodate the top-mounted air bag; and data on the manufacturers' current and projected deployment speed thresholds for air bags.

NHTSA proposed to make the amendment effective upon publication of the final rule in the **Federal Register** since the amendment would not establish additional requirements, but would instead establish an alternative for manufacturers to choose at their option. In addition, an immediate effective date would allow motor vehicle manufacturers the greatest flexibility in designing vehicles with passenger-side air bags.

NHTSA received eight comments in response to the NPRM. All of these comments were considered in connection with the final rule, and the most significant are discussed below.

Comments on the Proposed Rule and Final Rule

All eight commenters expressed support for the agency's proposals. No comments in opposition to the proposed amendments were received. After reviewing the comments, NHTSA has decided to adopt the amendment in this final rule without substantive change. The agency revised the regulatory text of the proposed amendment to improve consistency with the wording of the previous text. In accordance with the proposal, NHTSA has decided to reduce the head form impact velocity specified for Standard No. 201 from 15 to 12 mph for any vehicle equipped with a passenger-side air bag, not just those with upward-deployment air bag systems. The agency has determined that the amendment will result in either the increased use of passenger-side air bags, or the earlier introduction of such systems. The agency has also determined that a requirement for different portions of an instrument panel to comply with different impact speed requirements might not be practicable and could negate or reduce the incentive for manufacturers to install passenger-side air bags. Finally, NHTSA determined that the amendment will likely result in a reduction in the number of serious injuries and fatalities and that the amendment will have a net positive safety impact. A discussion of the responses to the proposed rule and their subsequent consideration in the formulation of the final rule follows.

Upward-Deploying versus Rearward Deploying Air Bags

Ford, citing its earlier response, restated its belief that improved "feasibility of a top-mounted, upward-deployment supplemental passenger air bag system may substantially increase availability of passenger air bags, particularly in compact and subcompact cars, by helping to reduce overall risks to out-of-position occupants." GM commented that it did not have sufficient field data to support an argument that upward-deploying air bags are preferable to rearward deploying air bags. GM's analysis, however, indicated that upward-deploying air bags may pose less risk of injury to out-of-position occupants than rearward-deploying bags.

As stated above, the agency has decided to reduce the head form impact velocity specified for Standard No. 201 from 15 to 12 mph for any vehicle equipped with a passenger-side air bag, not just those with upward-deployment systems. By not limiting the type of air bag system that must be used, this Final Rule is intended to result in the introduction of more effective air bag designs. In addition, the Final Rule is intended to provide an incentive for the increased use of passenger-side air bag systems.

Effect of Proposed Amendment on Manufacturers' Plans to Introduce Passenger-Side Air Bags

Chrysler stated in its comment that although the amendment will not increase the number of its passenger-side air bag installations, the effect of the amendment would be to reduce its passenger-side air bag system development time. Chrysler also stated that, without the amendment, air bag development might have to be delayed or cancelled. Ford commented that lowering the impact test speed would encourage Ford to "consider extensive usage of the top-mounted, upward-deploying passenger supplemental air bag." General Motors Corporation (GM) stated that it was unable to provide information on the effect of the amendment on the introduction of passenger-side air bags. GM did say, however, that tests of its air bag systems that are under development indicate that those systems will have "serious difficulty" in meeting the current test requirements. Nissan Motor Co., Ltd. (Nissan) commented that it does not intend immediately to alter its plan for installing passenger-side air bags. Nissan did, however, believe that the amendment, as proposed, would encourage manufacturers to offer passenger-side air bags "by the earliest dates."

All of the commenters who submitted responses to this request stated or

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implied that this Final Rule will result in either increased use of air bags or, at the very least, use of the same number of air bags as previously planned but at an earlier introduction date. By either measure, there will be a net safety benefit from this Final Rule. As discussed in the NPRM, although there are not yet enough crash data to evaluate conclusively the extent of the real-world effectiveness of various automatic restraint systems, the agency believes that the installation of air bags has greater potential for total safety benefits compared to automatic safety belts because air bags provide supplemental protection in addition to the basic protection of a safety belt system.

Means of Limiting the Test Speed Reduction to Only Those Areas on the Instrument Panel Necessary to Accommodate the Top-Mounted Air Bag.

Ford stated that the reduced impact speed criteria should be uniformly applied to all areas of the instrument panel affected by Standard No. 201. Ford asserted that having a "two-level criteria" would "impose considerable added design, testing, manufacturing, and quality control complexity on vehicle manufacturers." Finally, Ford stated that if the agency were to limit the areas covered by the test speed reduction, the area should be "the instrument panel between a vertical longitudinal plane positioned 3.25 inches inboard of the air bag module's inboard extremity and a vertical longitudinal plane located 3.25 inches outboard of the air bag module's outboard extremity." GM commented that it knew of no way to create a uniform specification to limit the 12 mph test area that would not also restrict air bag design. The area affected by an air bag installation, GM said, is vehicle-specific and is the result of several factors. Those factors include occupant compartment geometry, module design, configuration of the instrument panel, and the required module supporting structure. Chrysler commented that it could limit the area affected by the test speed reduction to the air bag cover or door itself and an area three inches from any point of the cover or door. Nissan commented in favor of application of the reduced test speed to all portions of the instrument panel that are within the head impact area. Nissan also believes that the area affected by installation of a passenger-side air bag would depend on numerous vehicle-specific factors. Even assuming that the specific area to be affected could be defined, Nissan argued that having two different requirements would complicate instrument panel design and manufacturing processes.

The agency has decided not to limit the test speed reduction to only those areas on the instrument panel necessary to accommodate the top-mounted air bag. With only one exception, all commenters who responded to this request for comments stressed the difficulties of limiting the area for use of a reduced test speed. The areas affected by an air bag installation will be different for different manufacturers and for different models produced by the same manufacturer. Those areas are not capable of being delineated by a simple definition. Finally, design of the instrument panels to comply with different impact speed requirements might not be practicable and could negate or reduce the incentive for manufacturers to install passenger-side air bags.

Current and Projected Deployment Speed Thresholds for Air Bags

Ford commented that it does not perform tests to determine the exact air bag deployment speed. It does, however, perform tests to ensure that no air bags deploy at speeds below 8 mph and that all air bags deploy by 14 mph, barrier equivalent velocity (BEV). Ford believes that there is a trend by manufacturers to use higher deployment speeds in order to reduce repair costs in minor accidents. Repair costs are increased if a vehicle's air bag system has to be replaced or repaired after an accident. If new technologies lowered repair costs associated with air bag systems, Ford asserted, manufacturers would be able to lower deployment speeds. On the other hand, if a particular passenger-side air bag deployment design caused damage to the instrument panel when it deployed, the manufacturer may raise deployment speeds in order to reduce repair costs. GM stated that the BEV for air bag deployment is vehicle-specific and depends on a number of factors, including crash pulse and interior compartment design. However, GM said that a "0-degree barrier equivalent speed of approximately 12–14 mph appears to be the predominant desired deployment threshold" for passenger-side air bags currently under development. Nissan has set the deployment speed threshold for its air bag system at 12 mph, for a head-on collision into a fixed barrier.

Based on the comments that were received, it appears that the amendments to the test speed contained in this final rule should ensure that instrument panels maintain sufficient energy-absorbing capabilities, by meeting the 80g requirements, at all speeds below that at which most air bags deploy. The agency has reexamined its previous crash testing data to determine how a vehicle's BEV is related to the velocity at which an occupant impacts the interior of the vehicle. The Standard No. 201 head impact test, run at an occupant impact speed of 15 mph, is designed to provide a measurement of such interior impact forces. Occupant impact velocity is dependent upon many factors, including: the friction between the occupant and the seat, crash speed, crash pulse and duration, occupant size, distance from the occupant to the object struck, and the effect of restraint systems. From these data, the agency has determined that an occupant typically impacts the vehicle interior at a velocity that is 90 percent of the vehicle's BEV. Thus, given that a 14 mph BEV is the highest air bag deployment speed reported by the commenters, the speed at which the head impact test would have to be run to assure that occupants are protected by the instrument panel at all speeds below which the air bag would deploy is 12.6 mph (90% of 14 mph). Given this information, the agency has determined that there is no justification for a reduction in the test speed below 12 mph.

A reduction in the test speed from 15 mph to 12 mph may produce some increase in minor-to-moderate injuries in low-speed vehicle crashes. On the other hand, greater use of passenger-side air bags will likely result in a reduction in the number of serious injuries and fatalities. The agency believes that this reduction will outweigh any potential increase in less serious injuries that could result from a reduction in the test speed, and that this Final Rule will have a net positive safety impact.

Requirement for Lap/Shoulder Belts at the Right Front Seating Position

No comments were received in opposition to this proposal. The agency has determined that lap/shoulder belts provide an important supplement to air bag systems, especially in accidents involving rear impacts or rollovers. Therefore, the amendment is adopted as proposed.

Miscellaneous Comment

Volkswagen of America, Inc. (Volkswagen) asked that the language of the proposed amendment to S3.1 of Standard No. 201 be revised in order to be consistent with the current wording. Volkswagen asked that the words "that area of any frontal interior surface" be revised to read "that area of the instrument panel."

The agency has revised the wording of the amendment in response to this request. NHTSA defines the scope of the test impact area to include that portion of the instrument panel that lies within the head impact area as defined by 49 CFR 571.3.

Effective Date

NHTSA proposed to make the amendment effective upon publication of the final rule in the **Federal Register** since the amendment would not establish additional requirements, but would instead establish an alternative for manufacturers to choose at their option. In addition, an immediate effective date would allow motor vehicle manufacturers the greatest flexibility in designing vehicles with passenger-side air bags. No commenter objected to the proposed effective date. NHTSA has determined that good cause exists to make the amendment effective immediately upon its publication.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The agency has analyzed the economic and other effects of this final rule and determined that they are neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The amendment will not establish additional requirements, but will instead establish an alternative for manufacturers to choose at their option. Lap/shoulder belts would be required if the passenger-side air bag option is chosen. Most manufactures already voluntarily provide lap/shoulder belts at this position in conjunction with an air bag, and, again, they would only be required to provide those belts if they voluntarily choose to install a passenger side air bag. A final regulatory evaluation for this rulemaking is included in the docket.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this proposed action on small entities. Based upon this evaluation, I certify that the amendments will not have a significant economic impact on a substantial number of small entities. As stated above, this amendment merely allows an alternative for manufacturers to choose at their option. Lap/shoulder belts would only be required if the air bag option is chosen. Thus, neither manufacturers of motor vehicles, nor small businesses, small organizations, and small governmental units which purchase motor vehicles, would be significantly affected by the amendments. Accordingly, no regulatory flexibility analysis has been prepared.

Executive Order 12612 (Federalism)

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The amendment has no impact on any state laws.

National Environmental Policy Act

The agency has also analyzed this rule for the purpose of the National Environmental Policy Act, and determined that it would not have any significant impact on the quality of the human environment. As part of another rulemaking, the agency has analyzed the environmental consequences of requiring automatic crash protection for light trucks, vans, and small buses. The Environmental Assessment for that rulemaking concluded that the requirement would not have a significant detrimental impact on the environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.201 [Amended]

2. Section 571.201 is amended by revising S3.1 to read as follows:

S3.1 *Instrument panels.* Except as provided in S3.1.1., when that area of the instrument panel that is within the head impact area is impacted in accordance with S3.1.2 by a 15-pound, 6.5-inch diameter head form at—

(a) A relative velocity of 15 miles per hour for all vehicles except those specified in paragraph (b) of this section,

(b) A relative velocity of 12 miles per hour for vehicles that meet the occupant crash protection requirements of S5.1 of 49 CFR 571.208 by means of inflatable restraint systems and meet the requirements of S4.1.2.1(c)(2) of 49 CFR 571.208 by means of a Type 2 seat belt assembly at the right front designated seating position, the deceleration of the head form shall not exceed 80g continuously for more than 3 milliseconds.

* * * * *

Issued on May 31, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91-13310 Filed 6-5-91; 8:45 am]

BILLING CODE 4910-59-M

49 CFR Part 571

[Docket No. 87-08; Notice 7]

RIN 2127-AD92

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA); DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: In response to two petitions for reconsideration, this notice amends Standard No. 208, *Occupant Crash Protection*, to remove the prohibition against pushbutton mechanisms as the means of detaching belts for readily removable seats. The agency has concluded that there is no evidence to support its concerns regarding possible misuse of pushbutton releases in this application. Vehicle manufacturers will benefit from the additional design flexibility allowed by this rule.

DATES: The amendments made by this rule are effective on July 8, 1991. Any petitions for reconsideration of this rule must be received by NHTSA no later than July 8, 1991.

ADDRESSES: Any petitions for reconsideration should refer to Docket No. 87-08; Notice 7 and be submitted to: Administrator, NHTSA, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Daniel Cohen, Chief, Frontal Crash Protection Division, NRM-12, room 5320, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Mr. Cohen can be reached by telephone at (202) 366-2264.

SUPPLEMENTARY INFORMATION: On November 29, 1988 (53 FR 47982), NHTSA published a notice of proposed rulemaking (NPRM) proposing to require that rear seat lap/shoulder belts be installed in certain new vehicles. Specifically, this NPRM proposed to require passenger cars (including convertibles), light trucks, light multipurpose passenger vehicles

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(MPVs), and small buses to be equipped with lap/shoulder safety belts at all forward-facing rear outboard seating positions. Additionally, the NPRM proposed that these rear seat lap/shoulder belts be equipped with a particular type of retractor, that such belts be integral (i.e., the shoulder belt could not be detachable from the lap belt), and that such belts comply with some of the comfort and convenience requirements in Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208).

The agency received more than 70 comments on this NPRM. The consensus of commenters was that passenger cars other than convertibles should be equipped with rear seat lap/shoulder belts. Hence, to ensure the earliest possible implementation of such a requirement, NHTSA published a final rule on June 14, 1989 (54 FR 25275). That rule addressed only passenger cars other than convertibles, and required that all such vehicles manufactured on or after December 11, 1989, be equipped with rear seat lap/shoulder belts. That rule also expressly deferred resolution of all of the other issues proposed in the NPRM until a later date.

NHTSA published a final rule addressing the other issues raised in the NPRM, including the other vehicle types required to have rear seat lap/shoulder belts, the types of retractors with which those safety belts should be equipped, and the other performance attributes those safety belts should have, on November 2, 1989 (54 FR 46257). This rule included special provisions for lap/shoulder belts installed at rear outboard seating positions on readily removable seats, by expressly providing that shoulder belts for readily removable seats could be detachable at the upper anchorage. The agency also responded to comments by Ford Motor Company (Ford) and General Motors (GM) concerning a March 1, 1985 interpretation letter from NHTSA's Chief Counsel to Mr. Hiroshi Shimizu of Tokai Rika Co. by stating in the preamble to this rule that the Shimizu interpretation did not preclude the use of all designs of detachable safety belt systems. More specifically, the agency explained that the Shimizu interpretation would preclude the use of pushbutton mechanisms to release shoulder belt anchorages. However, the agency expressly stated that the Shimizu interpretation did not preclude the use of other release mechanisms, such as slide buttons or slide collars, for shoulder belt anchorages.

The agency received 14 petitions for reconsideration of this rule. In a final rule responding to those petitions for reconsideration, published on July 30, 1990 (55 FR 30814), the agency made several changes to the November 1989 final rule. Ford's petition for reconsideration raised two issues regarding lap/shoulder belts at readily removable seats. Ford asked the agency to amend the 1989 rule to permit lap/shoulder belts on readily removable seats to be detached at either the upper or lower anchorage and to permit the means of detachment to consist of a pushbutton release.

With respect to the first issue, Ford asserted that limiting the detachment point to the upper anchorage point was "overly design restrictive." According to Ford, there was no safety reason for permitting the belt system to detach at the upper, but not the lower, shoulder belt anchorage point. The agency was persuaded by Ford's argument. While there were legitimate safety reasons for permitting the belts to be detachable at only one point, there was no apparent safety purpose served by specifying that the single point must be the upper, and not the lower, shoulder belt anchorage point. Accordingly, the notice amended Standard No. 208 to permit lap/shoulder belt systems installed at outboard seating positions on readily removable seats to detach at either the upper or lower shoulder belt anchorages, but not both.

With respect to the second issue, Ford asked in its petition that Standard No. 208 be amended to permit the means of detachment to be a pushbutton release, asserting that a slide button or slide collar release "tends to rattle and provides less control over * * * the fit of the shoulder belt." NHTSA did not believe that this was a sufficient reason to permit the use of a pushbutton release as the means for detaching the lap/shoulder belt from the vehicle. NHTSA explained that the prohibition of a pushbutton mechanism as the means of detaching a safety belt from its anchorage helped ensure that an occupant could not easily release either the lap belt or shoulder belt portion of the safety belt system and use only the unreleased portion of the safety belt system. The agency again concluded that a slide button or slide collar used as the means of detaching a shoulder belt would permit the belt to be detached when the readily removable seat is removed, and would also minimize the possibility that an occupant will detach a portion of the lap/shoulder belt system when the readily removable seat is in place in the vehicle. To emphasize the agency's intent, express language was added to the standard prohibiting the use of pushbutton mechanisms to detach lap/shoulder belt systems installed for readily removable seats.

Petitions for reconsideration of this July 1990 response to Ford were received from GM and Chrysler Corporation (Chrysler). These petitions again asked NHTSA to permit the use of pushbutton releases to detach the anchorages of safety belts installed at readily removable seats.

Chrysler, in its petition, contended that there was no demonstrated safety need for the prohibition. Chrysler stated that it will use the pushbutton release in certain rear seating positions in one of its 1991 models because of the "proven performance" of the design and because the parts were readily available. In addition, Chrysler stated that it has taken steps to help ensure that the release is not improperly used, through use of a pushbutton cover that requires a special tool to depress the release and includes the warning, "Caution—Press for seat removal only." Finally, Chrysler argued that the Shimizu interpretation was erroneous. According to Chrysler, S7.2 of Standard No. 208 does not preclude the use of a pushbutton release in the manner requested by its petition, but merely requires that a seat belt user be able to release both the lap and shoulder portions of the belt by means of a single release.

In its petition, GM argued that although the preamble to the November 1989 final rule discussed the issue of pushbutton releases as the mechanism for detaching shoulder belts, the use of a pushbutton was not expressly disallowed in the regulatory language. Hence, GM claimed that, under section 553 of the Administrative Procedure Act (5 U.S.C. 553), it did not have an adequate notice and opportunity to comment on the prohibition. As regards the merits of the prohibition of pushbutton releases, GM asserted that alternate release mechanisms, such as a slide button or collar, may be easier to unfasten than certain pushbutton designs, and, in fact, a prohibition of the pushbutton release would permit the use of a simple hook to attach a safety belt assembly to an anchorage. GM also asserted that the agency has not shown a demonstrated safety need for the rule. In support of its position, GM stated that it has delivered over 400,000 vehicles equipped with a pushbutton release and is not aware of any complaints or cases of misuse concerning the system. GM concluded that this experience did not support the agency's position that a pushbutton release is more likely to be misused.

NHTSA has reexamined its previous decision in response to these petitions. With respect to GM's procedural objection, NHTSA rejects GM's assertion that the public did not have notice of and an opportunity to comment on the prohibition of pushbutton release mechanisms. 5 U.S.C. 553 requires notices of proposed rulemaking to include either "the terms or substance of the proposed rule or a description of the subjects and issues involved." The courts have interpreted this language to mean that the notice must be sufficiently descriptive of the subjects and issues involved so that interested parties may offer informed criticism and comments. See, *e.g., Portland Cement Ass'n* v. *Ruckelshaus*, 486 F.2d 375, 392–394 (DC Cir. 1973), *cert den.*, 417 U.S. 921 (1974). However, the publication of a proposed rule for comment does not of necessity bind an agency to undertake a new round of notice and comment before it adopts a rule which is different—even substantially different—from the proposed rule. *American Iron & Steel Institute* v. *Environmental Protection Agency*, 568 F.2d 284, 293 (3rd Cir. 1977); *International Harvester Co.* v. *Ruckelshaus*, 478 F.2d 615, 632 n.51 (DC Cir. 1973). The adequacy of the notice is tested by determining whether it fairly apprised interested persons of the "subjects and issues" before the agency. *Trans-Pacific Freight* v. *Federal Maritime Commission*, 650 F.2d 1235, 1248–1249 (D.C. Cir. 1980); *Ethyl Corp.* v. *Environmental Protection Agency*, 541 F.2d 1, 48 (D.C. Cir.), *cert den.* 426 U.S. 941 (1976).

Judged by these criteria, NHTSA concludes that the NPRM was sufficient to apprise all interested persons that the agency was addressing the issue of whether to permit safety belts for readily removable seats to be detachable from the vehicle and what, if any, restrictions should be imposed on the means of detachment. In the preamble to the NPRM, the agency stated: "The agency also believes that manufacturers are capable of designing an integral lap/shoulder belt systems that would be nearly as convenient as a nonintegral shoulder belt in MPV's with readily removable seats. For instance, a shoulder belt that is readily detachable at the anchorage could be used for the outboard seating positions." 53 FR 47982, at 47990; November 29, 1988. In response to this discussion in the preamble, both Ford and GM commented that, while they agreed with the agency's intent to permit detachable shoulder belts for readily removable seats, the Shimizu interpretation appeared to prohibit such belt designs. The GM comment may be found on page 7 of Enclosure 1 in NHTSA Docket No. 87–06–N02–003. In response to these comments, the preamble to the final rule explained that the Shimizu interpretation did not prohibit all detachable belt system, only those belt systems that used a pushbutton as the means of detachment. See 54 FR 46257, at 46283; November 2, 1989.

This record shows that the public had notice of and the opportunity to comment on the issue of detachable belts at readily removable seats. The type of release mechanism for detachable belts is one aspect of the issue of detachability. Since the public had express notice that permitting detachable belts at readily removable seats was one of the subjects and issues before the agency, and since the commenters specifically addressed this issue and the Shimizu interpretation in their comments, GM's suggestion that the Administrative Procedure Act required further notice is incorrect.

However, the central point of the Chrysler and GM petitions, asserting that there is no reasonable safety justification for prohibiting pushbuttons as the means of detaching belts, has merit. NHTSA denied Ford's earlier request that pushbuttons be permitted because of the agency's concern that a pushbutton mechanism that detached a safety belt assembly from the vehicle at an anchorage point would increase the ease with which an occupant could detach either the lap belt or shoulder belt portion of the belt system and use only one part of the safety belt. Upon reconsideration, NHTSA agrees with the petitioners that pushbuttons are not inherently more susceptible to misuse than other release designs that would be permitted under the July 1990 final rule. Indeed, a pushbutton design such as was described in Chrysler's petition may be less likely to be misused than most other designs. Additionally, GM stated that it has equipped more than 400,000 of its vehicles that have readily removable rear seats with pushbutton releases. GM stated that it has no indication that these releases have been misused. NHTSA likewise has no evidence of misuse. Upon reconsideration, then, NHTSA has concluded that there is no justification for prohibiting pushbutton mechanisms as the means of detaching belts for readily removable seats. Standard No. 208 is amended to remove that prohibition.

The Shimizu interpretation is, therefore, superseded to the extent that it is inconsistent with the new regulatory provisions for readily removable seats. However, the Shimizu interpretation is still an accurate expression of the requirements of Standard No. 208 for safety belts on seats that are not readily removable.

This rule relieves a restriction, by allowing manufacturers additional design flexibility in determining which release mechanism should be used for the safety belts at readily removable seats. It does not impose any additional obligations on any party. Those manufacturers that wish to use pushbutton releases will now be free to do so, while those manufacturers that wish to use releases other than pushbutton will also be free to do so. Accordingly, NHTSA finds for good cause that this rule should become effective 30 days after publication, instead of no sooner than 180 days after publication, as generally required by the Safety Act.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The agency has analyzed the economic and other effects of this final rule and determined that they are neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The agency has determined that the economic effects of the amendments are so minimal that a full regulatory evaluation is not required. These amendments should slightly reduce costs to vehicle manufacturers because those manufacturers can use existing seat belt release technology. Manufacturers who have prepared designs using release mechanisms without pushbuttons will not be precluded by these amendments from using those designs and will benefit from the additional design flexibility allowed by these amendments.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the amendments will not have a significant economic impact on a substantial number of small entities. As stated above, these amendments merely allow another seat belt release type to be used by vehicle manufacturers and will only slightly affect costs. Thus, neither manufacturers of motor vehicles, nor small businesses, small organizations, and small governmental units which purchase motor vehicles,

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will be significantly affected by the amendments. Accordingly, no regulatory flexibility analysis has been prepared.

Executive Order 12612 (Federalism)

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The amendment has no impact on any state laws.

National Environmental Policy Act

The agency has also analyzed this rule for the purpose of the National Environmental Policy Act, and determined that it will not have any significant impact on the quality of the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.208 [Amended]

2. S4.1.4. of Standard No. 208 is amended by revising S4.1.4.2.2 to read as follows:

S4.1.4 *Passenger cars manufactured on or after September 1, 1989.*

* * * * *

S4.1.4.2.2 Any rear outboard designated seating position on a readily removable seat (that is, a seat designed to be easily removed and replaced by means installed by the manufacturer for that purpose) in a vehicle manufactured on or after September 1, 1992 shall meet the requirements of S4.1.4.2 and may use an upper torso belt that detaches at either its upper or lower anchorage points, but *not* both anchorage points, to meet those requirements. The means for detaching the upper torso belt may use a pushbutton action.

3. S4.2.4. of Standard No. 208 is amended by revising S4.2.4.3 to read as follows:

S4.2.4 *Trucks and multipurpose passenger vehicles manufactured on or after September 1, 1991 with a GVWR of 10,00 pounds or less.*

* * * * *

S4.2.4.3 Any rear outboard designated seating position on a readily removable seat (that is, a seat designed to be easily removed and replaced by means installed by the manufacturer for that purpose) in a vehicle manufactured on or after September 1, 1992 shall meet the requirements of S4.2.4 and may use an upper torso belt that detaches at either its upper or lower anchorage point, but not both anchorage points, to meet those requirements. The means for detaching the upper torso belt may use a pushbutton action.

4. S4.4.3 of Standard No. 208 is amended by revising S4.4.3.2.3 to read as follows:

S4.4.3 *Buses manufactured on or after September 1, 1991.*

* * * * *

S4.4.3.2.3 Any rear outboard designated seating position on a readily removable seat (that is, a seat designed to be easily removed and replaced by means installed by the manufacturer for that purpose) in a vehicle manufactured on or after September 1, 1992 shall meet the requirements of S4.4.3.2 and may use an upper torso belt that detaches at either its upper or lower anchorage point, but not both anchorage points, to meet those requirements. The means for detaching the upper torso belt may use a pushbutton action.

* * * * *

Issued on May 31, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91-13311 Filed 6-5-91; 8:45 am]

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Proposed Rules

Federal Register
Vol. 56, No. 109
Thursday, June 6, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 11

[Docket No. 91-025]

Horse Protection Inspection Guidelines

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Horse Protection regulations to revise the procedures to be followed by Designated Qualified Persons in conducting inspections at horse shows, exhibitions, and sales or auctions. We believe these amendments are necessary to provide practicable inspection procedures that protect horses under the Horse Protection Act (Act).

DATES: Consideration will be given only to comments received on or before July 8, 1991.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91-025. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. R. L. Crawford, Director, Animal Care Staff, Regulatory Enforcement and Animal Care, APHIS, USDA, room 565, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7833.

SUPPLEMENTARY INFORMATION:

Background

The practice known as "soring" is the causing of suffering in show horses to affect their performance in the show ring. In 1970, Congress passed the Horse Protection Act (15 U.S.C. 1821-1831), referred to below as the Act, to eliminate the practice of soring, by prohibiting the showing or selling of sored horses. Exercising our rulemaking power under the Act, we issued regulations published at 9 CFR part 11, referred to below as the regulations, that prohibit devices and methods that might sore horses. In 1979, in response to an amendment to the Act, we established guidelines under which show managements must, to avoid liability for any sore horses which are shown, hire individuals trained to conduct preshow inspections. These individuals, referred to as Designated Qualified Persons (DQP's), are trained and licensed under industry-sponsored DQP programs that we certify and monitor.

The requirements for DQP licensing are set forth in § 11.7 of the regulations. As part of the licensing process, prospective DQP's are trained in procedures we have established for examining a horse prior to exhibition or sale. The inspection procedures include both examination by palpation of the horse's pasterns and visual examination of the horse.

Inspection Procedures

On October 17, 1990, we published in the **Federal Register** a final rule (55 FR 41989-41994, Docket No. 90-071) amending the Horse Protection regulations to expand and clarify the procedures to be followed by DQP's at horse shows, exhibitions, sales, and auctions. In general, we continue to consider the changes we made necessary for the protection of horses. However, members of the horse industry, including DQP organizations, have expressed concern that a certain few of the regulation changes either are not workable, or might lead to potentially dangerous situations for inspectors. We have carefully reviewed these concerns and believe that, in certain cases, changes need to be made in the regulations to allow for inspection procedures that are practicable and safe, and that continue to protect the horses being inspected. Therefore, we are proposing to amend the Horse Protection regulations, as described below.

Inspection of Horses

Section 11.21(a)(2) provides that DQP's shall examine the rear limbs of all horses inspected after showing. Concern has been raised by the horse industry that mandatory inspection of the rear limbs of all horses after showing is dangerous and could lead to DQP's' being seriously injured. We continue to believe that adequate inspection of horses requires that DQP's examine the rear limbs of horses exhibiting lesions on the rear legs or unusual movement of the rear legs, and are so specifying in this proposed rule. However, our experience enforcing the Act indicates that the incidences of soring on the rear limbs of horses does not justify requiring examination of the rear limbs of all horses after showing. Therefore, we are proposing to amend § 11.21(a)(2) to provide that, except for the situations described above, it shall be left to the DQP's discretion whether to examine the rear limbs of all horses inspected after showing, and the rear limbs of any horse examined preshow or on the showgrounds.

The current regulations require the weighing and/or measuring of all action devices, pads, and other equipment to determine if they are in compliance with the regulations. Checking pads and devices on a horse requires six to eight measurements per horse. Members of the horse industry have expressed concern that such a requirement delays inspections and hurries inspectors unnecessarily, because certain horses are entered in several classes, and therefore need not have their equipment weighed and measured each time they are entered. Based on information supplied to us by our field personnel, we believe that in many cases it is possible to assure visually that pads and other equipment are in compliance. We also believe that it is not always necessary for adequate protection of horses to weigh and/or measure their equipment more than once during a show or on the same night. We are therefore proposing to amend § 11.21(a)(3) to provide that all action devices, pads, and other equipment shall be observed and/or examined to assure they are in compliance with the regulations. We continue to consider it necessary, however, to require that the equipment

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on certain horses be weighed and/or measured. We are therefore proposing to provide in § 11.21(a)(3) that all horses examined postshow (which includes all Tennessee Walking Horses and racking horses tyed first in their class or event), and all horses examined preshow that are not clearly in compliance, shall have their pads and action devices weighed and/or measured.

The current regulations require that horses be inspected no more than one class ahead of the time they are to be shown. However, members of the horse industry, including DQP organizations, have expressed concern that if a show class has a large number of horses, or if the previous class has a small number of horses, it might be difficult for a DQP to give adequate attention to all horses if they are inspected no more than one class ahead of the time they are to be shown. We have carefully considered these concerns, and believe that, in order to allow time for adequate inspections, it is necessary to amend the regulations regarding how far ahead of showing a horse may be examined. The current regulations require that horses be confined to a special area after preshow inspection. This holding area is under observation, and greatly reduces the opportunity for tampering with the horses after inspection. We are therefore proposing to amend § 11.21(b) to provide that, except as discussed below, the DQP shall inspect horses no more than three classes ahead of the time the inspected horses are to be shown. At smaller shows, however (those with fewer than 150 horses), the DQP will have more time to conduct adequate inspections, and can inspect horses closer to the time they are shown. We are therefore proposing to provide that at shows having fewer than 150 horses, the horses must be inspected no more than two classes ahead of the time they are to be shown.

Section 11.21(b) of the current regulations also limits the individuals who may be present in the designated holding area to the rider, and either a groom or the trainer. Members of the horse industry have noted, however, that three people are required to prepare properly each horse for showing (the trainer, the rider, and a groom). We consider this observation to have merit, and believe that it will not adversely affect the DQP's enforcement capabilities to allow one more individual in the designated holding area. We are therefore proposing to amend the regulations to allow the rider, groom, and trainer to be present in the holding area. Additionally, in order to avoid any confusion at a show, we are proposing to specify that DQP's and APHIS representatives may also be present in the holding area.

Required Number of DQP's

The current regulations require that the management of any horse show, exhibition, sale, or auction that designates and appoints a DQP to inspect horses must appoint and designate at least two DQP's when more than 100 horses are entered. Members of the horse industry have noted, however, that most of the small charity-sponsored horse shows have over 100 horses, and that the requirement for two DQP's places a prohibitive financial burden on many of these shows. Most of these charity-sponsored shows have fewer than 150 horses. Based on our experience enforcing the Act, we believe that increasing the number of houses requiring the DQP's from 100 to 150 would not significantly alter the enforcement capabilities of the DQP's conducting the inspections. We are therefore proposing to make such a change in § 11.20(c) of the regulations.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291 and Departmental Regulation 1512-1, and have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprise to compete with foreign-based enterprises in domestic or export markets.

The proposed change regarding inspection procedures would provide for practicable, safe inspection procedures. We expect the implementation of these regulations would not cause a significant change in the number of shows inspected by DOP's.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 11

Animal welfare, Horses, Humane animal handling, Soring of horses

PART 11—HORSE PROTECTION REGULATIONS

Accordingly, 9 CFR part 11 would be amended as follows:

1. The authority citation for part 11 would continue to read as follows:

Authority: 15 U.S.C. 1823, 1824, 1825, and 1828; 44 U.S.C. 3506.

§ 11.20 [Amended]

2. In § 11.20, paragraph (c), the number "100" would be removed and the number "150" would be added in its place.

§ 11.21 [Amended]

3. In § 11.21, paragraph (a)(2), the fifth sentence would be revised to read as follows: "The DQP may examine the rear limbs of all horses inspected after showing, and may examine the rear limbs of any horse examined preshow or on the showgrounds when he deems it necessary, except that the DQP shall examine the rear limbs of all horses exhibiting lesions on, or unusual movement of, the rear legs."

4. In § 11.21, paragraph (a)(3), the second sentence would be revised to read as follows: "All action devices, pads, and other equipment shall be observed and/or examined to assure that they are in compliance with the regulations. All such equipment on horses examined postshow, and on horses examined preshow that are not clearly in compliance, shall be weighed and/or measured."

5. In § 11.21, paragraph (b), the first sentence would be revised to read as follows: "The DQP shall inspect horses no more than three classes ahead of the time the inspected horses are to be shown, except that, in shows with fewer than 150 horses, the DQP shall inspect horses no more than 2 classes ahead of the time the inspected horses are to be shown."; and the last sentence would be revised to read as follows: "Only the horse, the rider, the groom, the trainer, the DQP(s) and APHIS representatives shall be allowed in the designated area."

Done in Washington, DC, this 3rd day of June 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-13369 Filed 6-5-91; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91-AEA-06]

Proposed Revocation of Transition Area; Sutton, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FAA is proposing to revoke the 700 foot Transition Area established at Sutton, WV, for the Braxton County Airport, Sutton, WV. This action is proposed due to the cancellation of all Standard Instrument Approach Procedures (SIAPs) to this airport. The intended effect of this proposed action is to return that amount of controlled airspace not needed by the FAA to contain aircraft operating under instrument flight rules, back to the public. Additionally, the airport status would be changed from IFR to VFR.

DATES: Comments must be received on or before July 3, 1991.

ADDRESSES: Send comments on the rule in triplicate to: Edward R. Trudeau, Manager, System Management Branch, AEA-530, Docket No. 91-AEA-06, F.A.A. Eastern Region, Federal Building No. 111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, AEA-7, F.A.A. Eastern Region, Federal Building No. 111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the System Management Branch, AEA-530, F.A.A. Eastern Region, Federal Building No. 111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA-530, F.A.A. Eastern Region, Federal Building No. 111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone (718) 917-0857.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91-AEA-06". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA-7, F.A.A. Eastern Region, Federal Building No. 111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke the 700 foot Transition Area established at Sutton, WV, for the Braxton County Airport, Sutton, WV, due to the cancellation of all SIAPs to this airport. The airport status would be changed from IFR to VFR. 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (14 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air nagivation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Sutton, WV [Removed]

Issued in Jamaica, New York, on May 16, 1991.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 91-13322 Filed 6-5-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2550

Participant Directed Individual Account Plans (ERISA Section 404(c) Plans); Hearing; Correction

AGENCY: Department of Labor.

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ACTION: Notice of hearing regarding a proposed rule; correction.

SUMMARY: This document corrects errors in a notice of a public hearing published in the **Federal Register** on May 31, 1991 (56 FR 24764), regarding a proposed regulation under section 404(c) of title I of the Employee Retirement Income Security Act of 1974 (ERISA) on participant directed individual account plans.

FOR FURTHER INFORMATION CONTACT: Deborah S. Hobbs, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210 (202) 523–7901 (not a toll free number), or Daniel J. Maguire, Esq., Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210 (202) 523–9592 (not a toll free number).

SUPPLEMENTARY INFORMATION: On May 31, 1991, the Department of Labor published a notice of public hearing in the **Federal Register** (56 FR 24764) regarding a proposed regulation under section 404(c) of title I of ERISA. The proposed regulation, which was published in the **Federal Register** on March 13, 1991 (56 FR 10724), relates to participant directed individual account plans.

The last full paragraph of the May 31, 1991 **Federal Register** notice of public hearing contained errors relating to the dates of the hearing which are corrected by this document.

Correction

The last full paragraph in the third column on page 24764 is revised to read as follows:

Notice of Public Hearing

Notice is hereby given that a public hearing will be held on Thursday, July 11, 1991 and Friday, July 12, 1991, regarding a proposed regulation (published at 56 FR 10724) under section 404(c) of ERISA relating to participant directed individual account plans. The hearing will be held beginning at 9:15 a.m. e.s.t. on each day in room N3437 of the Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC.

Dated: May 31, 1991.

Robert J. Doyle,

Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 91–13376 Filed 6–5–91; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 91–16; Notice 1]

RIN 2127–AD87

Federal Motor Vehicle Safety Standards; Impact Protection for the Driver from the Steering Control System

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice solicits comments on a proposal to amend Standard No. 203, *Impact Protection for the Driver from the Steering Control System*, to update the reference to the SAE recommended practice J944, from the December 1965 version to the June 1980 version. This proposal is intended to clarify the positioning of the torso-shaped body block for compliance testing.

DATES: Comments must be received by July 22, 1991. If addopted, the proposed amendment would become effective on the date of publication.

ADDRESSES: Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket Room hours are 9:30 a.m.–4 p.m., Monday through Friday)

FOR FURTHER INFORMATION CONTACT: Mr. Clarke B. Harper, NRM–12, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590, Telephone: (202) 366–2264.

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard No. 203, *Impact Protection for the Driver from the Steering Control System*, sets performance requirements to protect the driver from steering-assembly related injuries in a crash. The standard specifies an impact test in which a block simulating the human torso strikes the steering assembly at 15 mph. The force measured on the steering column during the impact cannot exceed 2,500 pounds except for intervals whose cumulative duration is not more than 3 milliseconds.

Currently, the positioning procedure in Standard No. 203 references Society of Automotive Engineers (SAE) recommended practice J944, "Steering Wheel Assembly Laboratory Test Procedure," December 1965 (SAE J944 Dec 65). This recommended practice specifies that the SAE 2-Dimensional manikin specified in SAE J826 "Devices for the Use of Defining and Measuring Vehicle Seating Accommodation" be place in the seat, with the seat in the full-forward position, and moved forward until the steering wheel rim contacts the abdomen of the manikin.

During compliance testing, the agency has exprienced problems with this procedure because it fails to relate the steering wheel rim-manikin contact point to the position of the torso-shaped body block, nicknamed "Blak Tuffy." In November 1968, the SAE revised J944 to correct this problem (SAE J944 Nov 68). The June 1980 version, SAE J944 Jun 80, is identical to SAE J944 Nov 68.

The agency proposes to amend Standard No. 203 to use the updated SAE J944 Jun 80, as this procedure clearly positions the body block reference line 0.75 inches above the Seating Reference Point (SRP) of the driver.

The fact that SAE J944 Jun 80 references SRP is not expected to pose a problem even though a new definition of SRP was proposed in a Supplemental Notice of Proposed Rulemaking on September 13, 1990 (55 Fed. Reg 37719). Both the proposed definition and the existing definition of SRP in SAE J944 Jun 80 reference SAE J826. The definition of SRP in SAE J944 Jun 80 does not give the date of the version of SAE J826 which is to be used. Therefore, the agency believes that this proposal is compatible with the previously proposed definition of SRP.

The agency also notes that the new test setup might result in the Blak Tuffy dummy being aligned approximately one quarter of an inch lower than in the old test setup. This estimate is made based on several assumptions. First, the agency assumed that the Blak Tuffy is relatively the same size as the 2–D manikin. Next, the agency assumed average occupant seat dimensions. The old test setup is conducted with the seat completely forward. The new test setup would be conducted with the seat well back, at the SRP. The agency assumed an elevation difference from the front to the back of approximately ¾ of an inch.

Because of the one quarter inch difference in alignment of the Blak Tuffy, the agency recognizes that, if this proposal becomes a final rule, some vehicle manufacturers or steering column manufacturers might feel obligated to recertify the steering systems. It is conceivable, but the agency believes unlikely, that realignment of the test device could cause a failure requiring redesign of the steering system. The agency is seeking comments from manufacturers regarding

the possibility of a need for redesign, and any costs this would entail.

The only other significance between the December 1965 and June 1980 versions of SAE J944 concerns instrumentation. The June 1980 version permits any intrumentation capable of recording the required data. The December 1965 version, currently referenced in Standard No. 203, provides detailed drawings of the load cell to be incorporated in the steering column. The agency believes the newer (1980) version is an improvement, as it allows for use of advanced electronics. In addition, as the December 1965 instrumentation would still be permitted, this difference should not impose any additional cost on manufacturers who do not wish to change their instrumentation.

Finally, the agency proposes to delete the phrase "or an approved equivalent" in the standard. This phrase was included in the initial Federal motor vehicle safety standards to make it clear that the manufacturers have flexibility in their selection of a test procedure. Since the manufacturers would retain this flexibility if the phrase were deleted, the phrase is not necessary. Although the agency must follow the test procedure specified in the standard in conducting its compliance testing, motor vehicle manufacturers need not do so.

Economic and Other Impacts

NHTSA has examined the impact of this rulemaking action and determined that it is not major within the meaning of E.O. 12291 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has also determined that the economic and other impacts of this rulemaking action are so minimal that a formal regulatory evaluation is not required. The agency believes that most manufacturers are using the more recent version of the proposed test procedure for their compliance testing. Therefore, the agency does not anticipate any additional costs for the new compliance test procedure.

NHTSA has also considered the impacts of this rulemaking action under the Regulatory Flexibility Act. For the reasons stated below, I hereby certify that it would not have a significant economic impact on a substantial number of small entities.

Few, if any, vehicle manufacturers would qualify as small entities. Small organizations and governmental units should not be significantly affected since the amendment should not affect the purchase price of new vehicles. Accordingly, the agency has not prepared a preliminary regulatory flexibility analysis.

NHTSA has also analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Finally, NHTSA has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612, and the agency has determined that this proposal does not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, it is proposed that 49 CFR 571.203 be amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.203 [Amended]

2. S5.1 would be revised as follows:

S5.1 When the steering control system is impacted by a body block in accordance with Society of Automotive Engineers Recommended Practice J944, "Steering Control System—Passenger Car—Laboratory Test Procedure," June 1980, at a relative velocity of 15 miles per hour, the impact force developed on the chest of the body block transmitted to the steering control system shall not exceed 2,500 pounds, except for intervals whose cumulative duration is not more than 3 milliseconds.

Issued on May 31, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91–13312 Filed 6–5–91; 8:45 am]

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Notices

Federal Register
Vol. 56, No. 109
Thursday, June 6, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TB-91-010]

Flue-Cured Tobacco Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. app.) announcement is made of the following committee meeting:

Name: Flue-Cured Tobacco Advisory Committee.
Date: June 25, 1991.
Time: 2 p.m.
Place: Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Flue-Cured Tobacco Cooperative Stabilization Corporation Building, 1306 Annapolis Drive, Raleigh, North Carolina 27605.

Purpose: To discuss market opening dates, selling schedules, and related matters for the 1991 flue-cured tobacco marketing season.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact the Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting.

Dated: May 31, 1991.

Daniel D. Haley,
Administrator.

[FR Doc. 91-13370 Filed 6-5-91; 8:45 am]
BILLING CODE 3410-02-M

Forest Service

Ridge Area Timber Sales, Including Ridge and Milk Timber Sales, Okanogan National Forest, Okanogan County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) for projects within the Ridge Area. The proposed projects include two timber sales: Ridge Timber Sale, selling in 1992, and harvesting 10.0 million board feet of timber with 15 miles of road construction; and Milk Timber Sale, selling in 1993, and harvesting 4.0 million board feet of timber with 6 miles of road construction. The purpose of the EIS will be to develop and evaluate a range of alternatives for timber harvest and road construction levels. The alternatives will include a no action alternative, involving no timber harvest or road construction, and additional alternatives to respond to issues generated during the public involvement (scoping) process. The proposed project will be in compliance with the direction in the Okanogan National Forest Land and Resource Management Plan (Forest Plan) which provides the overall guidance for management of the area and the proposed projects for the next ten years. The agency invites written comments on the scope of this project. In addition, the agency gives notice of this analysis so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis should be received prior to June 28, 1991.

ADDRESSES: Submit written comments to Jennifer Klepach, IDT Leader, Twisp Ranger District, P.O. Box 188, Twisp, WA 98856.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this EIS should be directed to Jennifer Klepach, IDT Leader, Twisp Ranger District, P.O. Box 188, Twisp, WA 98856; phone (509)997-2131.

SUPPLEMENTARY INFORMATION: The Forest Service proposal includes timber harvest and road construction involving two timber sales, portions of which propose entry into the Hungry Ridge and Sawtooth roadless areas. The area being analyzed is approximately 30,000 acres, and is located in T32N, R20E, WM; T31N, R21E, WM; and T30N, R21E, WM. These two proposed timber sales are combinations of sales listed in the timber program activity schedule, displayed in the Okanogan National Forest Land and Resource Management Plan (Forest Plan), appendix D, as Mayfly, page D-5; Ridge, page D-6; Buckhorn, page D-7; Ichabod, page D-8; and Milk, page D-10. The Ridge, Buckhorn, and Ichabod sales have been combined to make up the Ridge Timber Sale, and Milk and Mayfly have been combined into the Milk Timber Sale. Due to geographic proximity, similarity of issues, and the schedule of the proposed timber sales, the environmental analysis for both sales will be considered and documented in one EIS.

This draft EIS will be tiered to the Forest Plan. The Plan's direction for this project area is in the following management areas (MA): MA5, maintaining and enhancing roaded recreation opportunities within a predominately natural appearing landscape; MA14, providing deer winter range habitat conditions to sustain desired deer population levels; MA25, intensively managing the timber and range resources; and MA26, managing deer winter range to provide optimum habitat conditions for deer. The major issues that have been identified to date reflect entering an inventoried roadless area, maintaining high quality deer winter range, and protecting the visual resource.

The analysis will evaluate a range of alternatives. Alternatives to be evaluated include no action (or no harvesting or road building at this time), the proposed project (harvesting 14 million board feet of timber and constructing/reconstructing 21 miles of road), and alternatives with varying levels of harvest and construction.

Public meetings will be held during the analysis process to allow review and comment of information. Notification of the dates and times of the meetings will be published in the Omak Chronicle and Methow Valley News two weeks prior to the dates. Public participation will be especially important at several times during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies, Native American Tribes, and other individuals or organizations who may be interested in or affected by the proposed actions. This information will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Identified issues which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by October 1991. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register**. It is very important that those interested in the management of the Okanogan National Forest participate at that time.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed (see Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NHDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after the completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 f. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them in the final EIS.

The final EIS is scheduled to be completed by March 1992. In the final FIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal. Sam Gehr, Forest Supervisor, Okanogan National Forest, is the responsible official, and will make a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject of Forest Service Appeal Regulations (36 CFR 217).

Dated: May 29, 1991.

John R. Hook,
Acting Forest Supervisor.

[FR Doc. 91-13331 Filed 6-5-91; 8:45 am]
BILLING CODE 3410-11-M

APPALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMMISSION

Meeting

AGENCY: Appalachian States Low-Level Radioactive Waste Commission.

ACTION: Open meeting.

SUMMARY: The Appalachian States Low-Level Radioactive Waste Commission will hold its annual meeting on June 12, 1991. The meeting is open to the public.

DATES: June 12, 1991, 9 a.m.-5 p.m..

ADDRESSES: The Holiday Inn Center City, 23 South Second Street, Harrisburg, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Marc S. Tenan, Executive Director, 207 State Street, Harrisburg, PA 17101, 717-234-6295.

SUPPLEMENTARY INFORMATION: The Appalachian States Low-Level Radioactive Waste Commission (Commission) was established by the Appalachian States Low-Level Radioactive Waste Compact Consent Act (Pub. L. 100-319, May 19, 1988). The Commission represents the states of Delaware, Maryland, and West Virginia, and the Commonwealth of Pennsylvania to assist in the establishment of a regional low-level radioactive waste disposal facility as required by the Low-Level Radioactive Waste Policy Amendments Act (Pub. L. 99-240, January 15, 1986).

The Commission will adopt bylaws, hire legal counsel and an auditing firm, adopt a 1992-93 budget, adopt a Waste Inventory Reporting System, and consider a variety of other administrative matters.

Marc S. Tenan,
Executive Director.

[FR Doc. 91-13290 Filed 6-5-91; 8:45 am]

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the North Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the North Carolina Advisory Committee to the Commission will be held from 10 a.m. until 1 p.m. on Thursday, June 27, 1991, at the Quality Suites Hotel, 4400 Capital Blvd., Raleigh, North Carolina 27604.

The purposes of the meeting are to release a report on school desegregration in the state, to conduct discussions regarding a followup to the report, and to adopt program plans for FY 1992.

Persons desiring additional information should contact Southern Regional Director Bobby Doctor at (404) 730-2476; TDD (404) 730-2481. Hearing-imparied persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC., June 3, 1991.

Carol-Lee Hurley,
Chief, Regional Programs Coordination Unit.

[FR Doc. 91-13394 Filed 6-5-91; 8:45 am]
BILLING CODE 6335-01-M

Agenda and Notice of Public Meeting of the Oregon Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Oregon Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 4 p.m. on June 20, 1991, at the Red Lion-Lloyd Center, 1000 N.E. Multnomah, Portland, Oregon 97232. The purpose of the meeting is to plan activities and programming for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson, H.J.

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Hamilton or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 3, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91–13395 Filed 6–5–91; 8:45am]

BILLING CODE 6335–01–M

Agenda and Notice of Public Meeting of the South Carolina Advisory Committee

Notice is hereby given, pursuant to the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the South Carolina Advisory Committee to the Commission will convene at 10 a.m. on Tuesday, June 25, 1991, at the Marriot Hotel, 1200 Hampton Street, Columbia, South Carolina, and adjourn at 1 p.m.

The purposes of the meeting are to release a report on minority political participation in the state; to conduct discussions regarding a followup to the report; and, to adopt program plans for FY 1992.

Persons desiring additional information, or planning a presentation to the Advisory Committee, should contact South Carolina Chairperson Gilbert Zimmerman (803/525–7538), or Southern Regional Division Director Bobby Doctor at (404/730–2476; TDD 404/730–2481). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Southern Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the Rules and Regulations of the Commission.

Dated at Washington, DC, June 3, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91–13396 Filed 6–5–91; 8:45 am]

BILLING CODE 6335–01–M

Agenda and Notice of Public Meeting of the Washington Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Washington Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 4 p.m. on June 25, 1991, at the Red Lion Hotel Sea/Tac, 18740 Pacific Highway South, Seattle, Washington 98188. The purpose of the meeting is to review current civil rights developments in the State, and provide an orientation for new Committee members.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson, Sharon Bumala or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 3, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91–13397 Filed 6–5–91; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–080]

Carbon Steel Plate from Taiwan; Intent to Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on carbon steel plate from Taiwan. Interested parties who object to this revocation must submit their comments in writing not later than June 30, 1991.

EFFECTIVE DATE: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: Michael Rill or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–1131.

SUPPLEMENTARY INFORMATION:

Background

On June 13, 1979, the Department of the Treasury published an antidumping finding on carbon steel plate from Taiwan (44 FR 33877). The Department of Commerce ("the Department") has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this finding.

Opportunity to Object

Not later than June 30, 1991, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by June 30, 1991, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by June 30, 1991, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: May 30, 1991.

Joseph A. Spetrini

Deputy Assistant Secretary for Compliance.

[FR Doc. 91–13413 Filed 6–5–91; 8:45 am]

BILLING CODE 3510–DS–M

[A–570–003]

Preliminary Results of Antidumping Duty Administrative Review; Cotton Shop Towels From the People's Republic of China

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: In response to a request by Milliken & Company (the petitioner), the Department of Commerce is conducting an administrative review of the antidumping duty order on cotton shop towels from the People's Republic of China (PRC). The review, which covers exports of this merchandise to the United States during the period October 1, 1988 through September 30, 1989, indicates the existence of dumping margins.

EFFECTIVE DATE: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: Michael Ready, Office of Antidumping Investigations, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2813.

SUPPLEMENTARY INFORMATION:

Scope of the Review

The products covered by this review are cotton shop towels from the PRC. For the first part of the review period, cotton shop towels were classified under item 366.2840 of the Tariff Schedules of the United States Annotated (TSUSA). Effective January 1, 1989, cotton shop towels were classified under Harmonized Tariff Schedule (HTS) item 6307.10.2005. The TSUSA and HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Background

On February 1, 1991, the Department of Commerce (the Department) published in the Federal Register (56 FR 4040) the final results of its most recent administrative review (1987–88) of the antidumping duty order on shop towels of cotton from the PRC (48 FR 45277, October 4, 1983). In accordance with 19 CFR 353.22(a), the petitioner requested that we conduct an administrative review covering exports from October 1988 to September 1989 of the following producers/resellers: Tianjin Arts & Crafts Import & Export Corporation (TAC), China National Arts & Crafts Import & Export Corporation, China National Native Produce & Animal By-products Import & Export Corporation, China National Textiles Import & Export Corporation, Transatlantic Sales Co., Ltd., Fabric Enterprise Limited, Cuisininere Company Limited, and China Resources Transportation & Godown Co., Ltd. We published the notice of initiation on November 20, 1989 (54 FR 48010). The Department is now conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

On December 19, 1989, questionnaires were issued to the producers/resellers listed above. Other than the third-country resellers, the only company to answer the Department's questionnaire was TAC, which until January 1, 1989, was named China National Arts and Crafts Import and Export Corporation, Tianjin Branch (CNART). The third-country resellers reported that they had no shipments during the review period.

In response to a request made by the Department, on May 29, 1991, TAC submitted arguments explaining why certain of its sales were not reported in its questionnaire response.

Best Information Available

Pursuant to section 771(18) of the Act, and based on determinations in prior proceedings, the PRC is a nonmarket economy country (NME). (See e.g., Final Determination of Sales at Less than Fair Value: Natural Menthol From the People's Republic of China (46 FR 24614, May 1, 1981); Initiation of Antidumping Duty Investigation: Refined Antimony Trioxide From the People's Republic of China (56 FR 23549, (May 22, 1991). Respondents have not refuted this determination. Given that we have determined that the PRC is an NME, and that we have no basis to believe that we could calculate foreign market value under section 773(a) of the Act, we would have calculated dumping margins by comparing United States price with foreign market value based on the factors of production. However, invoices provided by the Customs Service have led us to conclude that TAC failed to report a significant number of entries of cotton shop towels in its questionnaire response. As such, pursuant to section 776(c) of the Act, we have based these preliminary results (with the exception of the results as they apply to the Hong Kong resellers) on best information available (BIA).

In deciding what to use as BIA, 19 CFR 353.37(b) provides that the Department may take into account whether a party refused to provide requested information. When a company refuses to provide the information requested in the form required, or significantly impedes the Department's review (which the Chinese exporters have done in this case), the Department will normally assign the highest margin for the subject merchandise of either (1) the highest margin calculated for that company in any previous review or the original investigation, or (2) the highest calculated margin for any respondent that supplied adequate responses for the current review.

In the current review, no respondent has submitted an adequate response. Furthermore, we stated in the Final Results of Antidumping Administrative Review: Iron Construction Castings from the PRC (56 FR 2742, January 24, 1991) that absent a clear showing of legal, financial and economic independence on the part of different exporters, we would assign a single country-wide rate to all exporters. See also Final Determination of Sales of less than Fair Value: Sparklers from the PRC (56 FR 20588, May 6, 1991. There has been no demonstration of independence in this review. Therefore, we are publishing a single country-wide rate applicable to all exporters located within the PRC. Accordingly, for purposes of deciding what to use as BIA for this administrative review, we have selected the highest rate assigned to any PRC-based company in any previous review or the original investigation. As such, we have assigned all exporters, other than the three named resellers, a BIA margin of 122.81 percent, which is the highest margin assigned to any Chinese company in the second administrative review.

Preliminary Results of the Review

We preliminarily determine that the following margins exist:

Exporter	Margin (percent)
Cuisininere	[1]37.20
Fabric Enterprise	[1]37.20
Trans-Atlantic Sales	[1]66.50
All others	122.81

[1] Third-country reseller with no shipments during the period; rate is from last review in which there were shipments.

The cash deposit rate for all producers or exporters of Chinese shop towels will be that established in the final results of this administrative review. These deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of Chinese shop towels entered, or withdrawn from warehouse, for consumption on or after that publication date, as provided by section 751(a)(1) of the Act. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Public Comment

In accordance with 19 CFR 353.38, case briefs or any other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than 30 days after the date of this notice, and rebuttal briefs no later than 7 days after case briefs are due. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. The hearing will be held at 9:30 a.m. on July 22, 1991, at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time,

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date, and place of the hearing 48 hours before the scheduled time. Interested parties who wish to request or participate in a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the reasons for attending; (3) a list of the issues to be discussed; and (4) the number of participants. In accordance with 19 CFR 353.38(b), an interested party may make an affirmative oral presentation only on arguments included in its briefs.

This administrative review and notice are in accordance with section 751 (a)(1) of the Act and 19 CFR 353.22 (1990).

Dated: May 31, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-13414 Filed 6-5-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-583-505]

Oil Country Tubular Goods From Taiwan Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on oil country tubular goods from Taiwan. Interested parties who object to this revocation must submit their comments in writing not later than June 30, 1991.

EFFECTIVE DATE: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: Barbara Victor or Thomas Futtner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377-4851.

SUPPLEMENTARY INFORMATION:

Background

On June 18, 1980, the Department of Commerce published an antidumping duty order on oil country tubular goods from Taiwan (51 FR 21258). The Department of Commerce ("the Department") has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

Not later than June 30, 1991, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by June 30, 1991, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by June 30, 1991, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: May 30, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-13415 Filed 6-5-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-401-040]

Stainless Steel Plate from Sweden Intent To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on stainless steel plate from Sweden. Interested parties who object to this revocation must submit their comments in writing not later than June 30, 1991.

EFFECTIVE DATE: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On June 8, 1973, the Department of Treasury published an antidumping finding on stainless steel plate from Sweden (38 FR 15079). The Department of Commerce ("the Department") has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this finding.

Opportunity to Object

Not later than June 30, 1991, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by June 30, 1991, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by June 30, 1991, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: May 30, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-13416 Filed 6-5-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-423-077]

Sugar from Belgium; Intent to Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on sugar from Belgium. Interested parties who object to this revocation must submit their comments in writing not later than June 30, 1991.

EFFECTIVE DATES: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On June 13, 1979, the Department of Treasury published an antidumping finding on sugar from Belgium (44 FR 33878). The Department of Commerce ("the Department") has not received requests to conduct administrative reviews of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this finding.

Opportunity to Object

Not later than June 30, 1991, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by June 30, 1991, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by June 30, 1991, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: May 30, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-13417 Filed 6-5-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-427-078]

Sugar From France; Intent To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on sugar from France. Interested parties who object to this revocation must submit their comments in writing not later than June 30, 1991.

EFFECTIVE DATE: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On June 13, 1979, the Department of Treasury published an antidumping finding on sugar from France (44 FR 33878). The Department of Commerce ("the Department") has not received requests to conduct administrative reviews of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this finding.

Opportunity to Object

Not later than June 30, 1991, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by June 30, 1991, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by June 30, 1991, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: May 30, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-13418 Filed 6-5-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-082]

Sugar from Germany Intent to Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on sugar from Germany. Interested parties who object to this revocation must submit their comments in writing not later than June 30, 1991.

EFFECTIVE DATE: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On June 13, 1979, the Department of Treasury published an antidumping finding on sugar from Germany (44 FR 33878). The Department of Commerce ("the Department") has not received requests to conduct administrative reviews of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this finding.

Opportunity to Object

Not later than June 30, 1991, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by June 30, 1991, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by June 30, 1991, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

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This notice is in accordance with 19 CFR 353.25(d).

Dated: May 30, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

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[A-588-054]

Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On December 13, 1990, the Department of Commerce published the preliminary results of its 1987-88 administrative review of the antidumping finding on tapered roller bearings, four inches or less in outside diameter, and certain components thereof, from Japan. The review covers three manufacturers/exporters of this merchandise to the United States during the period August 1, 1987, through July 31, 1988.

We gave interested parties the opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have adjusted the margins for some companies.

EFFECTIVE DATE: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: Maureen Price, Joseph Hanley, or Laurie Lucksinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5253.

SUPPLEMENTARY INFORMATION:

Background

On December 13, 1990, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping finding (41 FR 34974, August 18, 1976 (the 1976 finding)) on tapered roller bearings, four inches or less in outside diameter, and certain components thereof, from Japan, in the **Federal Register** (55 FR 51308). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

Imports covered by the review are sales or entries of tapered roller bearings (TRBs), four inches or less in outside diameter when assembled, including inner race or cone assemblies and outer race or cups, sold either as a unit or separately. During the review period, such merchandise was classifiable under item numbers 680.3932, 680.3934, and 680.3938 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item numbers 8482.20.00 and 8482.99.30. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers three manufacturers/exporters of TRBs during the period August 1, 1987, through July 31, 1988: Koyo Seiko, K.K. (Koyo), Nachi-Fujikoshi Corporation, and Nippon Seiko, K.K. (NSK).

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. At the request of the petitioner and two respondents, we held a hearing on February 26, 1991. We received case and rebuttal briefs from petitioner, Koyo, and NSK.

Comments by the Timken Company

Comment 1: The petitioner, The Timken Company (Timken), argues that the model match methodology used in this proceeding is inconsistent with the methodology the Department used in the final determination of sales at less than fair value on Tapered Roller Bearings Over Four Inches From Japan (52 FR 30700, August 17, 1987) (the 1987 LTFV determination). In the 1987 LTFV determination, the Department used the "largest single deviation" methodology, in which the largest difference in a single criterion is measured, to determine comparison merchandise. In this and previous reviews of the 1976 finding (55 FR 22369, June 1, 1990; 55 FR 38721, September 20, 1990), the Department used the "sum of the deviations" methodology, in which the sum of the differences in U.S. and home market model criteria are measured.

Timken insists that the "largest single deviation" methodology yields the home market bearing that is most like the bearing sold in the United States, according to section 771(16)(B)(ii) of the Tariff Act, since it more closely approximates the concerns of customers who focus on the degree of difference in specific physical criteria when making a purchase. Timken also believes that there are interrelationships between the criterion with the largest deviation and the rest of the criteria. For example, if the width of the bearing is increased, the load rating and the Y factor will be directly affected. Thus, Timken believes that the greatest single deviation is sufficient to produce the most similar match. Further, Timken argues that, because the criterion with the greatest single deviation has a relationship with the other model match criteria, the sum of the deviations method is redundant, since it uses criteria already accounted for by the criterion with the greatest single deviation. Timken urges the Department to reevaluate the selection methodology and use the "largest single deviation" technique used in the 1987 LTFV determination.

Department's Position: In the 1987 LTFV determination, the Department used five criteria to match models employing the "largest single deviation" methodology. In this review of the 1976 finding, we also used the five criteria to match models; however, we employed the "sum of the deviations" methodology, which arose in litigation on final results for other parties under this 1976 finding (*Timken* v. *United States*, Slip Op. 84-63 (7 CIT 319) (June 5, 1984) (*Timken*), *Timken* v. *United States*, 630 F. Supp. 1327 (CIT 1986) (*Timken I*), and *Timken* v. *United States*, 673 F. Supp. 495 (CIT 1987) (*Timken II*)).

Because of concerns expressed by petitioner and respondents involving the aforementioned inconsistency, the Department extensively reevaluated the selection methodology. We requested input by parties-to-the-proceeding and a TRB manufacturer subject only to the antidumping duty order on TRBs over four inches and parts thereof, from Japan: Timken favored the "greatest single deviation" method; two respondents had no preference; and one respondent favored the "sum of the deviations" method. The sum of the deviations method seeks the model with the lowest overall deviation for all criteria combined, while the greatest single deviation method seeks the model with the lowest greatest deviation of any single criterion. However, the sum of the deviations method chooses the most similar model by taking into account all five criteria, not just one.

The Department believes the sum of the deviations method is preferable because it uses all five criteria in determining which home market model is the most similar. The greatest single deviation method relies on only one criterion, to the exclusion of all other criteria. Therefore, it gives only one criterion deciding weight when the parties to this proceeding have agreed that all five criteria are important factors to use when determining the similarity of merchandise. There is no evidence that any particular single criterion should be the deciding factor.

Furthermore, because the sum of the deviations method uses all five criteria, it is more likely to produce fewer ties for most similar among the pool of possible matches. The combination of five criteria is more discriminating than a single criterion.

Under the greatest single deviation method, the criterion that matches a U.S. model with a home market model will change from one U.S. model to another. Thus, the model match exercise becomes based on arbitrary criteria. Timken asserts that customers choose a bearing by a single criterion. While this may be true, the criterion that may be important for one customer may be different from what is important to another. We do not know that, for each model, all customers would rely on the same single criterion in making their choice of model to purchase. Therefore, the greatest single deviation method does not, as Timken asserts, base its selection on the same criterion all customers would use in their selection, and we conclude that the "sum of the deviations" methodology, which employs the information on all of the criteria, produces the most accurate match.

Comment 2: Timken and Koyo agree that the criteria used to match cups and cones were incorrect. Since cups and cones do not have inner or outer diameters, respectively, the Department should consider four, rather than five, physical criteria in these components.

Department's Position: The Department agrees and has corrected the criteria for model match for these final results of review.

Comment 3: Timken argues that the Department should release public versions of all SAS and Lotus computer programs.

Department's Position: We have released public versions of the computer programs for this review.

Comment 4: Timken argues that, according to section 778 of the Tariff Act, the Department should collect interest on under-deposits of antidumping duties from Koyo and NSK, *i.e.*, interest on the bonds posted previous to the time the Department imposed cash deposit requirements on entries of the subject merchandise.

Department's Position: We disagree. Section 778 of the Tariff Act provides that interest shall be payable on overpayments and underpayments of "amounts deposited". We have concluded that the words "amounts deposited" refer only to cash deposits of estimated antidumping duties upon entry, and not to other kinds of security, such as a bond. This proceeding concerns a 1976 finding, under which bonds, not cash deposits, were required. The Trade Agreements Act of 1979 contained no provision for the conversion from bonds to cash deposits for existing antidumping findings, except through the administrative review process. Cash deposits were first required on entries of merchandise manufactured by Koyo and NSK on June 1, 1990. Consequently, interest will only be collected or refunded on under- or overpayments of cash deposits on entries after that date.

Comment 5: Timken renews its request for a full accounting of the status of entries of TRBs. Timken asserts that Customs has failed to collect cash deposits on all entries of TRBs from Japan since the total entered value during the review period and the total sales value reported by Koyo and NSK cannot be reconciled. Timken suggests, therefore, that the Department did not suspend liquidation of or impose duty deposits on the full amount of entries of TRBs subject to the finding.

Department's Position: We continue to instruct Customs on the proper implementation of our instructions to suspend liquidation on entries of TRBs and collect a cash deposit, as appropriate. We are not aware of improperly liquidated entries for this review period.

Comment 6: Timken argues that Koyo's response should be rejected as substantially incomplete. Timken's argument is based on the assertion that Koyo failed to provide complete production costs, excluded home market sample sales, and failed to establish that sales to related parties were at arm's-length prices.

Department's Position: We disagree with Timken's assertion that Koyos response should be rejected in its entirety. In instances where a home market model, for which we lack a cost of production figure, is chosen as such or similar to a U.S. model, we have used the best information available to calculate a margin for the U.S. sales involved. While Koyo did not provide all the data requested, its response was substantially complete, and we have used Koyo's response to the extent possible and applied best information available only to the missing information.

Our analysis of Koyo's home market sales data revealed that prices to related customers were at arm's length, since, on average, they were higher than prices to unrelated customers. Therefore, pursuant to 19 CFR 353.45(a), we included Koyo's sales to related parties in our pool of home market sales. Finally, due to the significant volume of home market sales, we are satisfied that the results of this review are not meaningfully affected by the exclusion of sample sales.

Comment 7: Timken argues that Koyo's adjustment for rebates in the home market should be disallowed on the basis that they were granted on terms that are inconsistent with normal commercial practice. Timken argues that Koyo has not shown that customers were aware at the time of the sale that rebates had been or would be granted. In addition, Timken asserts that, since Koyo was unable to support its claimed figure for total rebates in the verification of the previous review, the Department should deny Koyo an adjustment for rebates in this review.

Department's Position: In most cases, the "rebates" reported by Koyo are post-sale price adjustments. We disagree with Timken's assertion that these adjustments granted by Koyo are inconsistent with normal commercial practice. These adjustments to price after the date of sale are a common occurrence in the bearing industry and are well within normal commercial practices. Timken is incorrect in asserting that the Department's decision to accept or reject adjustments in this segment of the proceeding should be based on the verification results of previous segments of the proceeding. Timken is raising issues which are relevant to a different segment of the proceeding and are not pertinent to this review. However, since Koyo failed to tie post-sale price adjustments directly to sales the TRBs, we reclassified these adjustments in the home market as an indirect selling expense.

Comment 8: Timken argues that Koyo's advertising expenses in the home market should not include expenses for materials such as financial statements and corporate profiles. Timken asserts that such expenses bear no relationship to the merchandise under review.

Department's Position: We disagree. While such advertising expenses do not affect directly the sale of zero to four inch TRBs, they promote corporate image and thereby affect indirectly the sale of all Koyo products. Koyo properly classified these advertising expenses as indirect selling expenses (Final Determination of Sales at Less Than Fair Value, Industrial Forklift Trucks from Japan (53 FR 12552, April 15, 1988)).

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Comment 9: Timken argues that the Department did not implement its stated intention in its analysis of Koyo and NSK to use constructed value when the most similar home market model failed the twenty percent difference in merchandise deviation test. However, Timken asserts that the Department should not resort to constructed value when the most similar home market model fails the difference in merchandise deviation test. Timken, citing section 771(16) of the Tariff Act, argues that the Department should resort to the next most similar bearing when the deviation of differences in merchandise exceed twenty percent.

Department's Position: We agree and have changed our comparisons for the final results of review. We have relied on constructed value when no home market model could be considered similar within the meaning of section 771(16) of the Tariff Act by falling within the twenty percent difference in merchandise deviation test.

Comment 10: Timken contends that the Department should disregard commissions paid by NSK and Koyo to related parties in the home market. Timken argues that commissions paid to related parties should be regarded as intracompany transfers and not as an adjustment to price.

Department's Position: We agree. An adjustment for commissions paid to related parties is not a proper basis for adjusting price, since such commissions are viewed as intracompany transfers of funds and are considered part of the general expenses of the company (Final Determination of Sales at Less Than Fair Value, Porcelain-on-Steel Cooking Ware from Mexico (51 FR 36435, October 10, 1986)). Since neither Koyo nor NSK has demonstrated that the commissions in question are arm's length in nature, we have not allowed the claim for an adjustment to home market price for commission expenses (*LMI—LaMetalli Industriale* v. *United States*, Court No. 89–1532 (CAFC, August 17, 1990)).

Comment 11: Timken argues that indirect selling expenses incurred by related distributors should be allocated only to sales made through that distributor.

Department's Position: We disagree. A company and its related distributors are one corporate entity. Therefore, our decision to cumulate indirect selling expenses incurred by Koyo and its related distributors, and reallocate them over all sales, is consistent with our practice of using one indirect selling expense factor to adjust all home market sales.

Comment 12: Timken argues that the Department should disallow both Koyo's and NSK's interest income offset when calculating cost of production, because both firms failed to provide an adequate description or documentation of the source of the interest income it received.

Department's Position: When calculating cost of production, the Department requires that claims for interest income offset be related to the production of the merchandise subject to the finding. We are satisfied that the interest income offset claimed by these firms meets this requirement.

Comment 13: Timken notes that the Department's recalculation of Koyo's credit expenses in the U.S. market did not include an imputed interest expense for inventory carrying costs. In addition, Timken argues that the Department should use Koyo's short-term borrowing rate in the United States in the calculation of inventory carrying costs for the period from entry to the U.S. to sale to the first unrelated party.

Department's Position: We agree. For the final results we have accepted Koyo's credit expense adjustment which includes a calculation of inventory carrying cost using Koyo's short-term borrowing rate in the United States.

Comment 14: Timken contends that NSK did not demonstrate that sales to related parties were at arm's-length prices, or comparable to prices NSK charged to unrelated parties. Therefore, Timken argues that, absent evidence that prices to related parties are at arm's length, NSK's response should be rejected.

Department's Position: We have determined that NSK's sales to related parties were at arm's-length prices. See our response to comment 6.

Comment 15: Timken argues that the calculation of NSK's home market inland freight, which includes freight expense from the factory to the distribution center, is erroneous. In its supplemental questionnaire response, NSK estimated the freight expense from the factory to the distribution center as a percentage of the total freight expense reported in the original response. Timken asserts that adjustments must be based upon proof of actual costs or prices, not estimates, approximations, or averages, citing *F.W. Myers & Co.* v. *United States*, 72 Cust. Ct. 219, C.D. 4544, 376 F. Supp. 860, 1974. Also, Timken asserts that inland freight from the factory to the distribution center is pre-sale transportation and, therefore, is a production cost. Thus, this should not be an adjustment to the home market sales price. At the very least, the Department should treat the freight expense from the factory to the distribution center as an indirect expense, as it did in the preliminary results of review.

Department's Position: We disagree. In the past, the Department has treated pre-sale movement expenses incurred on home market sales as either production costs or indirect selling expenses. However, we have reconsidered our treatment of these expenses. The Department does not distinguish between pre-sale and post-sale movement charges when calculating an ex-factory U.S. price. Therefore, to ensure an "apples-to-apples" comparison, the Department has deducted all movement charges, pre-sale and post-sale, from foreign market value (Final Determination of Sales at Less than Fair Value, Gray Portland Cement and Clinker from Mexico (55 FR 29244, July 18, 1990)).

Comment 16: Timken argues that no adjustment should be made for post-sale rebates given by NSK to home market customers, since NSK failed to present any evidence that the rebates were directly related to sales of the merchandise within the meaning of 19 CFR 353.56(a). Timken asserts that NSK must demonstrate that customers were aware at the time of purchase that such rebates might be granted, and that the amount of such rebates was in accordance with commercial practices in the trade.

Department's Position: We have accepted the post-sale price adjustments claimed by NSK as an adjustment to the home market sales price, since such post-sale price adjustments are an established and accepted commercial practice in the TRB industry. However, since NSK cannot tie the post-sale price adjustments to sales of TRBs, we have classified these post-sale price adjustments as indirect expenses.

Comment 17: Timken maintains that the Department should adjust NSK's cost of production to remove the effect of gains related to the disposal of securities. Timken argues that it is the Department's practice to include such gains only if the asset is related to the production operations of the merchandise subject to review.

Department's Position: NSK did not include gains from the sale of securities in its cost of production calculation.

Comment 18: Timken alleges that, since NSK's U.S. inland freight adjustment is based on the sales value of bearings, not weight, the freight figure is inherently distortive. NSK's calculation results in an over-allocation of freight expenses to more expensive bearings. Also, Timken notes that the Department has a stated preference for an allocation of freight based on the unit weight of the individual products (Final Determination of Sales at Less Than Fair Value, Antifriction Bearings from Various Countries (54 FR 19044, May 3, 1989)). Timken proposes that, if NSK is unwilling or unable to allocate freight charges on the basis of weight, the Department should use the highest actual freight charge as the best information otherwise available as the deduction for U.S. inland freight.

Department's Position: We agree that allocations of freight costs by volume, weight, distance, or a combination of these, are preferable to allocations based on sales value. However, NSK does not maintain records based on weight (Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings four Inches or Less in Outside Diameter From Japan (55 FR 22372, June 1, 1990)). Therefore, we determined that the allocation of freight expense based on value is reasonable and does not produce distorted results.

Comment 19: Timken asserts that a portion of NSK's corporate advertising expenses incurred in Japan should be allocated to U.S. sales, since NSK incurs no "customer-directed" advertising expenses in the U.S. market.

Department's Position: Although NSK reported that it incurred no direct or "customer-directed" advertising in the U.S. for TRBs, it correctly reported indirect or corporate advertising as part of its U.S. indirect selling expenses. The Department also agrees with the petitioner that the portion of NSK's corporate advertising expenses incurred in Japan for export market sales are an additional indirect advertising expense attributable to U.S. sales. However, since the expense is insignificant, *i.e.*, less than 0.33%, we have not made the adjustment for U.S. sales, in accordance with 19 CFR 353.59(a).

Comment 20: Timken asserts that the Department should apply Koyo's dumping margin as best information available to NSK's U.S. transactions of bearings for which NSK did not provide difference in merchandise data.

Department's Position: Where NSK has not provided cost data (materials, labor, and variable overhead) for U.S. models for the difference in merchandise adjustment, we have used twenty percent of the home market cost data for the difference in merchandise between home market and U.S. similar models as best information available. Twenty percent is the maximum difference in merchandise allowed between the U.S. and home market models for the purpose of comparison. However, where NSK has not provided physical criteria for U.S. models, we have used Koyo's rate, the highest dumping margin calculated for this review, as best information available because, without these criteria, we can make no comparison.

Comments by Koyo Seiko

Comment 21: Koyo argues that the Department should terminate the 1987–88 review. It asserts that the Department was able to initiate this proceeding only because the Department acted in an improper fashion in conducting its review of the 1974–79 period. Koyo believes that the margins for those years should have been zero. Had the Department completed its earlier review, the finding would have been revoked with respect to Koyo, and its shipments during the 1987–88 period would not have been subject to review. If the present review is not terminated, it should be discontinued until the disposition of the 1974–79 review is resolved.

Department's Position: Koyo is raising issues which are relevant to a different segment of the proceeding, and we have addressed those issues in our final results of review for the 1974–79 period, published June 1, 1990, in the Federal Register. The issues in those final results are not pertinent to this segment of the proceeding. Judicial proceedings for the 1974–79 segment are underway. Based on our final results of review for the 1974–79 and 1986–87 periods, the Department is required to proceed with subsequent administrative reviews.

Comment 22: Koyo argues that it is not liable for interest on antidumping duties that are assessed on entries of TRBs where Koyo has not been ordered to make cash deposits on such entries.

Department's Position: We agree. See our response to comment 4.

Comment 23: Koyo argues that section 777A of the Tariff Act authorizes the Department to use averaging techniques to establish U.S. price and foreign market value (FMV) only when such averaging techniques yield fair and representative results. Koyo believes that the Department's comparison of annual weighted-average FMVs with individual U.S. prices yields margin calculations that are not representative. Koyo asserts that, particularly since negative margins are disregarded, the Department must calculate weighted-average U.S. prices on the same basis as FMV to produce fair and representative results.

Koyo also argues that, if the Department intends to continue to compare annual weighted-average FMVs with individual U.S. prices, it should discard any annual FMVs which vary from the monthly FMV by more than ten percent. These outliers cause distortions, thereby making the annual weighted-average FMV less representative.

Finally, Koyo argues that the Department's decision to replace the monthly weighted-average FMV with an annual weighted-average FMV without notifying Koyo is contrary to the purpose of U.S. antidumping law. Koyo asserts that the methodology used by the Department to calculate FMV must be predictable to allow the foreign manufacturers the opportunity to adjust their pricing policies.

Department's Position: We agree that section 777A of the Tariff Act authorizes the use of averaging techniques only when the results are representative. Before adopting use of an annual weighted-average FMV, we conducted two studies to insure that the results produced are representative. First, we compared the monthly weighted-average price to the annual weighted-average price. We found that the annual weighted-average price for more than 90 percent of the products sold came within 10 percent of the monthly weighted-average price. Second, we tested whether home market prices of the subject merchandise consistently rose or fell during the period of review. We found that no significant correlation existed between price and time. That is, prices did not consistently rise or fall so as to make annual weighted-average prices unrepresentative of home market prices. Therefore, the results of these tests demonstrate that Koyo's pricing practices remained stable during the review period, thus insuring that an annual weighted-average FMV is as representative of home market prices as the traditional monthly weighted-average FMV.

We disagree with Koyo's assertion that, to insure representative results, we must average U.S. prices on the same basis as FMV. An average U.S. price has been, and continues to be, unacceptable, because it would allow a foreign producer to mask dumping margins by offsetting dumped prices with prices above FMV. That is, a foreign producer could sell half its merchandise in the U.S. at less than FMV, and the other half at more than FMV, and arrive at a zero dumping margin. Except in instances where the Department has conducted reviews of seasonal merchandise which has very significant price fluctuations due to perishability (Final Results of Antidumping Duty Administrative Review, Certain Fresh Cut Flowers from Columbia (55 FR 20495, May 17, 1990)), the idea of averaging U.S. prices has been rejected (Final Results of

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Antidumping Administrative Review, Pressure Sensitive Plastic Tape from Italy (54 FR 13091, March 30, 1989)). Since the merchandise under review is not a perishable product, there is no reason to believe that averaging of U.S. prices is needed to take into account very significant price fluctuations.

While almost all large data sets contain outliers, our analysis of the data shows that an annual weighted-average FMV is as representative of home market prices as the traditional monthly weighted-average FMV. In fact, as we mentioned earlier, over 90 percent of the products sold have an annual weighted-average price that falls within 10 percent of the monthly weighted-average price. Therefore, a traditional monthly weighted-average FMV is as likely to include outliers as the representative annual weighted-average FMV used in this review. Indeed, discarding the outliers would make our annual weighted-average FMV less representative of respondents' selling practices in the home market.

We disagree with Koyo's assertion that our change in methodology has removed predictability from the process. Since such a high percentage of the sales have an annual weighted-average price which falls within 10 percent of the monthly weighted-average price, the calculation of an annual weighted-average FMV, which the Department has used in this review, is no less predictable than the calculation of a monthly weighted-average FMV.

Comment 24: Koyo argues that the Department improperly used best information available for a portion of the home market credit expense calculation. Koyo claims that, because the Department elected not to conduct a verification in this review, it is obliged to use the credit calculation submitted, since the identical methodology had been verified and accepted in the 1986–87 review. In addition, Koyo claims that the Department did not ask any questions regarding the home market credit calculation in its supplemental questionnaire, thereby not affording Koyo the opportunity to address any deficiencies which may have existed.

Department's Position: We disagree with Koyo's assertion that we are obliged to accept information in this segment of the proceeding simply because similar information was accepted in a previous segment of the proceeding. Our decision to accept or reject information submitted in this segment of the proceeding is not bound by decisions or verifications made during previous reviews. Additionally, Koyo is incorrect in its assertion that we did not ask any questions regarding credit expense in our supplemental questionnaire. Question seven of our supplemental questionnaire asked Koyo to provide us with further clarifications of the calculation of home market credit expense.

Based on the additional information in the supplemental response, we concluded that two aspects of Koyo's credit expense calculation methodology were inappropriate.

First, Koyo used the minimum and maximum number of days of outstanding payment to calculate the average days outstanding for each of the top twenty customers in the home market. Since numerous transactions occur with each customer during the period of review, the use of two payments outstanding (minimum and maximum) to calculate average days outstanding is not representative of actual payment experience. Therefore, we rejected the calculation of average days outstanding as unrepresentative. Instead, we need the minimum days outstanding as the best information available.

Second, we rejected Koyo's use of an average credit rate for all customers, since it failed to recognize the different credit terms granted to each individual customer. Instead, we used a customer-specific rate for each of the top twenty customers. Since the remaining customers constitute a smaller portion of Koyo's sales, we accepted the average credit rate for the remaining customers.

Comment 25: Koyo argues that the Department's model match methodology is flawed because the Department used constructed value when the most similar home market model failed the twenty percent difference in merchandise deviation test. Koyo argues that, since the antidumping statute indicates a preference for the use of actual home market prices rather than constructed value, the Department should attempt to match U.S. models with at least four potential home market matches before resorting to constructed value.

Department's Position: We agree. See our response to comment 9.

Comment 26: Koyo argues that, due to a clerical error, the Department failed to recognize potential home market matches for a number of U.S. sales.

Department's Position: We agree and have corrected our analysis for the final results.

Comment 27: Koyo argues that the Department improperly rejected Koyo's calculation of home market freight expenses. Koyo believes the Department committed two errors in its recalculation of home market freight.

First, Koyo argues that the Department should not have reclassified direct freight expenses incurred by related distributors as indirect expenses. Koyo asserts that, because these freight expenses are attributable to sales to unrelated customers, they should be classified as direct freight expenses. Second, Koyo argues that the Department should not have reallocated freight expenses on the basis of quantity. Koyo believes that since the Department did not address the issue in a supplemental questionnaire and chose not to verify the response, the Department should accept the freight expense calculation as reported.

Department's Position: See our response to comment 15 for an explanation of our classification of home market freight expenses.

Similar to our discussion in response to comment 18, Koyo does not incur its home market freight expense on the basis of weight shipped. Koyo's methodology of allocating this expense on the basis of sales value is not inappropriate and does not distort the results. Therefore, we have accepted it for the final results (Final Results of Antidumping Duty Administrative Review, Tapered Roller Bearings Four Inches or Less in Outside Diameter (55 FR 38722, September 20, 1990)).

Comment 28: Koyo argues that the Department improperly rejected its calculation of indirect selling expenses incurred by related distributors. Koyo asserts that the Department indicated that it rejected these expenses because they were too high.

Department's Position: We did not reject the indirect selling expenses incurred by Koyo's related distributors. See our response to comment 11 for an explanation of our treatment of indirect selling expenses incurred by related distributors.

Comment 29: Koyo notes that the Department committed a clerical error in its calculations by adding indirect selling expenses to FMV.

Department's Position: We have corrected this error for the final results.

Comment 30: Koyo argues that the Department should not have adjusted the cost of production figures in the response for cost variance, since the figures reported were already adjusted to reflect actual cost experience.

Department's Position: We disagree. We require that cost of production figures be adjusted for both material cost variance *and* manufacturing cost variance. Koyo's reported cost of production figures were only adjusted for material cost variance. Therefore, we used the best information available for manufacturing cost variance to arrive at a fully adjusted cost of production. The best information available was the manufacturing variance Koyo reported for its Kokobu Plant in the public version of its 1987–88 (A–588–804) supplemental questionnaire response dated September 14, 1990.

Comment 31: Koyo argues that the Department's use of best information available in its recalculation of U.S. duty expenses was improper.

Department's Position: We have changed our calculation for the final results and have used Koyo's U.S. duty expenses as reported.

Comment 32: Koyo argues that the Department's use of best information available for U.S. discount expenses was inappropriate and unreasonable. Koyo asserts that, since the Department accepted the same methodology in the previous review, chose not to verify this review, and did not inform Koyo of any deficiencies regarding this expense, the Department is obligated to accept U.S. discount expenses as reported. In addition, Koyo claims that the Department mistakenly used the highest eligible discount rate during the period of review when, according to the analysis memorandum, the Department's intention was to use the highest observed discount rate as the best information available.

Department's Position: We disagree that our decision to accept or reject information in this segment of the proceeding is bound by decisions made in previous segments of the proceeding. Koyo's methodology of calculating one discount factor for all bearing sales and assigning it to a group of customers is not representative of actual TRB sales experience, since it fails to tie the actual discounts granted to the sales to which they apply. However, we agree with Koyo that the highest observed rate rather than the highest eligible rate in the U.S. market is the best information available and have used that rate.

Comment 33: Koyo notes that the Department deducted warranty expenses from exporter's sales price (ESP) twice. Koyo asserts that, although the Department reclassified warranty expenses as an indirect expense, the margin calculations included a deduction for warranty as a direct expense.

Department's Position: We agree and have deducted warranty expense from ESP as a direct expense, as reported.

Comments by Nippon Seiko, K.K.

Comment 34: NSK asserts that the results of this review, the results of the 1986–87 review, and the results of the 1974–80 review are null and void because the Department acted in an unlawful fashion in conducting its review of the 1974–80 period. NSK claims that, had the 1974–80 review been conducted properly, no or *de minimis* margins would have been found, revocation would have occurred, and NSK would not have participated in the 1986–87 or the 1987–88 reviews.

Department's Position: We disagree. See our response to comment 21.

Comment 35: NSK argues that the Department's rejection of inventory time in this review due to the rejection of inventory time in the previously verified review period (1986–87) was not warranted. The Department rejected inventory time and used best information available in the 1986–87 review due to the lack of any supporting documentation for the calculation at verification, not because the figures were found to be inaccurate or based on an erroneous methodology. NSK calculated inventory time in this review according to the same methodology used in the 1986–87 review, and, since the methodology was never in question, the Department should accept NSK's calculation. The Department had the opportunity to verify inventory time or to request the supporting documentation in the supplemental questionnaire, but did neither. Also, the Department should resort to best information available only when the respondent has been uncooperative or unable to produce information. This was not the case. Therefore, NSK argues that it is inappropriate to reject inventory time because of the presumption that a deficiency found during a previous review would remain in this review.

Department's Position: Although NSK failed the verification of time in inventory in the previous review, we acknowledge that we should not automatically reject this calculation in this review period. Therefore, we agree that NSK's calculation of inventory time is reasonable and have accepted the claim for the final results.

Comment 36: NSK objects to the use of the U.S. short-term credit rate in the calculation of inventory carrying cost. NSK, Japan, gives NSK Corporation (NSKC) in the U.S. six months to pay for its merchandise, therefore, NSK, Japan, carries the cost of keeping the goods in inventory for those six months. As a result, the Japanese interest rate should be used to calculate the inventory carrying cost for the first six months based on the cost to NSK, Japan. Also, the use of the U.S. short-term credit rate during the first six months is commercially unrealistic, since it assumes that NSK, Japan, would borrow at the U.S. interest rate, which was double that of the Japanese interest rate during the same period.

Department's Position: The inventory carrying cost measures the opportunity cost incurred by NSKC for storing TRBs in inventory. Since this opportunity cost is attributed to where it takes place, *i.e.*, at NSKC's facilities in the U.S. and not NSK, Japan, we have used the U.S. interest rate in our calculation from the time the merchandise enters inventory to the sale date.

Comment 37: NSK objects to the use of the sales price as the base upon which the Department calculated inventory carrying cost. This results in an excessive adjustment to ESP, since the value of the inventory was the transfer price, not the sales price. Therefore, in order to accurately calculate the inventory carrying cost, the allocation factor should be applied to the CIF or transfer price from the time of shipment to importation, and applied to the CIF price plus duty from the time of importation to date of sale in the U.S.

Department's Position: We agree and have used the CIF price plus duty in the final results.

Comment 38: NSK argues that any U.S. sales with negative quantities which reflect returns, or zero prices which reflect samples, should be excluded from the Department's margin calculation.

Department's Position: We agree. NSK's indirect selling expenses include a line item expense for sample sales. Therfore, it would be improper to analyze sample sales which have zero prices, since they are already accounted for in the adjustment for indirect selling expenses. Since a return is not a sale, we have not included returns in our analysis.

Comment 39: NSK opposes the Department's practice of deducting U.S. direct selling expenses from ESP rather than adding them to FMV. NSK argues that the Court concluded in *Timken II* that direct selling expenses should be added to FMV accounding to section 773(a)(4) of the Tariff Act.

Department's Position: We respectfully disagreed with the Court's position on this issue in the Final Results of Redetermination Pursuant to Court Remand (March 22, 1990). We maintain that section 773 of the Tariff Act does not preclude us from deducting selling expenses from ESP. Consequently, we have applied our longstanding practice of making adjustments for direct expenses in ESP cases under section 772 of the Tariff Act.

Comment 40: NSK argues that, when the Department finds that 90 percent or more of sales of a model are at prices below the cost of production, it is inappropriate to disregard all sales of

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that model. The Deparment cannot presume that such sales were over an extended period of time, or that a copany cannot recover its costs for these sales within a reasonable period. Furthermore, the Department made no determination, or inquiry of NSK, regarding the recovery of costs within a reasonable period of time requirement. According to section 773(b) of the Tariff Act, the Department may disregard sales only if they were made below cost over an extended period of time and in substantial quantities, and that such sales are not at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade.

Department's Position: Our preliminary results did not reflect our intent to examine the time over which below-cost sales of more than 90 percent of a model's sales occurred. We have reviewed our test of sales below cost and made the following decisions regarding below-cost sales:

1. Where between zero and 10 percent of the sales were below cost, all sales of the model were accepted, since there are insubstantial quantities of the sale of the model below cost;
2. Where between 10 and 90 percent of the sales were below cost, we disregarded only sales of the model which were below cost when below-cost sales occurred over an extended period of time;
3. Where between 90 and 100 percent of the sales were below cost, and the below-cost sales occurred over an extended period of time, we disregarded all sales of the model, since inadequate quantities of above-cost sales remained; and
4. Where between 90 and 100 percent of the sales were below cost, but below-cost sales did not occur over an extended period of time, we used all sales of the model.

However, the Department does not believe that sales made at less than the cost of production were at prices which permit the recovery of all costs within a reasonable period of time within the normal course of trade. Review of the legislative history regarding this provision indicates that Congress recognized that certain industries have enormous start-up costs which might cause initial sales to be below the cost of production. These industries, such as the commercial airliner industry mentioned in the House and Senate reports, may incur large research and development or technology costs which are not immediately recovered by sales (see, *e.g.*, House Report No. 571, 93rd Cong., 1st Sess. 71 (1973)). However, because it is clear that these costs benefit future sales, Congress would not have the Department disregard the below-cost sales if the costs would be recovered, by those future sales, in a reasonable period of time. The Japanese tapered roller bearing industry is a mature industry, and NSK is an established manufacturer. There is no information on record to support a belief that NSK experienced high start-up costs, or other unusually high expenses in the review period, which would have been recovered by, and benefitted, future sales.

Comment 41: NSK argues that the Department departed, without explanation, from the practice followed in earlier reviews by first matching an identical or similar home market model with the U.S. model and then determining whether sales of that home market model were made at prices below the cost of production. If the model was disregarded for failing the statutory cost test, the Department went directly to constructed value as the vasis of FMV, instead of searching for the next most similar home market model. NSK asserts that there are a number of closely similar models in the bearing industry which can be used to compare models on the basis of price, as if preferred by the statute, and that resorting to constructed value is inappropriate.

Department's Position: The Department's model match methodology is extremely accurate and can determine the *most* similar home market model based on the five criteria submitted by the respondent. In first matching the U.S. and home market models and then testing the chosen home market model for sales below cost, the Department is adhering to its interpretation of the statute whereby, if sales were disregarded as below cost and "the Secretary * * * concludes that the remaining sales at not less than cost of production are inadequate for calculating foreign market value, the Secretary will calculate foreign market value based on constructed value under § 353.50" (19 CFR 353.51(b)). The Department has determined that "remaining sales" refer to the remaining sales of the chose identical or most similar model. Therefore, the use of constructed value as the basis of FMV is appropriate when we disregard the chosen home market model.

Comment 42: NSK claims that the Department erred in its recalculation of NSK's home market credit expense by failing to properly reflect the cost of NSK's compensating deposits. NSK asserts that, in the 1986–87 review, the Department accepted the credit cost associated with compensating balances, and that, in this review, it had intended to also include the cost, but was confused by a typographical error in NSK's credit calculation.

Department's Position: Contrary to NSK's assertion, we did not intend to incorporate compensating balances into the credit calculation for this review. We have reviewed our position and have determined that the credit expense measures NSK's real cost (*i.e.*, interest expense minus interest income) of extending credit to its customer while waiting for payment. Including the cost of compensating balances in the credit expense would calculate an imputed expense on funds available for use, not a real expense on funds borrowed. Therefore, the Department maintains that credit expense is the real interest expense incurred by the company times days of payment outstanding.

Comment 43: NSK claims that the Department erred in its recalculation of NSK's home market credit expense. NSK extends further credit, in the form of promissory notes, to a percentage of sales in addition to the original credit extended to all sales in its accounts receivable. NSK asserts that the Department determined that a percentage of sales obtained credit in the form of promissory notice and that the remainder obtained credit from accounts receivable, and, therefore, did not account for the interest on accounts receivable accurately.

Department's Position: We agree and have changed our calculation for the final results.

Comment 44: NSK contends that the Department understated the deductions from constructed value by applying the deduction percentage for home market credit expense, packing and indirect selling expenses against the cost of manufacture instead of the full constructed value. These deductions were reported as a percentage of gross selling price, and should, therefore, be calculated as a percentage of the full constructed value which includes general expenses and profit, and not the cost of manufacture, which includes only materials, labor, and overhead.

Department's Position: We agree and have changed our calculation for the final results.

Comment 45: NSK contends that the Department neglected to split the cost of manufacture of sets when splitting sales of sets. Since the cost of manufacture was the basis for difference in merchandise data, this resulted in the Department's use of constructed value as FMV for an excessive number of U.S. sales because it appeared that NSK had not supplied the home market difference in merchandise data for the cups and cones resulting from split sets.

Department's Position: We agree and have changed our calculation for the final results.

Comment 46: NSK notes that the Department made a clerical error by failing to convert U.S. packing to U.S. dollars when adding to constructed value.

Department's Position: We agree and have changed our calculation for the final results.

Final Results of Review

As a result of our comparison of United States price to foreign market value, we determine that the following margins exist for the period August 1, 1987, to July 31, 1988:

Manufacturer/exporter	Margin Percent
Koyo Seiko, K.K.	47.63
Nippon Seiko, K.K.	18.63
Nachi-Fujikoshi	[1] 18.07

[1] No shipments; margin from last review in which there were shipments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties, based on the above margins, shall be required on shipments to TRBs from Japan. For any shipments of this merchandise manufactured or exported by the remaining known manufacturers and/or exporters not covered in this review, the cash deposit will continue to be at the rate published in the final results of the last administrative review for those firms.

For any future entries of this merchandise from an exporter not covered in this or prior reviews, whose first shipments of the merchandise occurred after July 31, 1988, and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 47.63% percent shall be required. These deposit requirements are effective for all shipments of the covered merchandise entered, or withdrawn from warehouse for consumption on or after the date of this notice.

This administrative review and notice are in accordance with sections 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: May 24, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-13420 Filed 6-5-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-015]

Television Receivers, Monochrome and Color, from Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by two domestic parties to the proceeding, the Department of Commerce is conducting an administrative review of the antidumping finding on television receivers, monochrome and color, from Japan. The review covers one manufacturer/exporter of this merchandise to the United States, the Sharp Corporation, and the periods March 1, 1986, through February 28, 1987, and March 1, 1988, through February 28, 1989. The review indicates the existence of dumpiung margins for Sharp Corporation during these periods.

As a result of this review, the Department has preliminarily determined to assess antidumping duties equal to the differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Melissa Skinner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-4851.

SUPPLEMENTARY INFORMATION:

Background

On February 8, 1989, the Department of Commerce (the Department) published a notice of "Opportunity to Request an Administrative Review" (54 FR 6372) of the antidumping finding on television receivers, monochrome and color, from Japan (36 FR 4597, March 10, 1971). Two domestic parties to the proceeding, Zenith Electronics Corporation (Zenith) and the International Brotherhood of Electrical Workers, the International Union of Electronic, Electrical, Technical, Salaried, Machine and Furniture Workers, AFL-CIO; and the Industrial Union Department, AFL-CIO (the Unions), requested an administrative review in accordance with 19 CFR 353.22(a). On April 28, 1989, we published a notice of initiation of this review (54 FR 18320), which cover Sharp Corporation (Sharp) and the periods March 1, 1986, through February 28, 1987, and March 1, 1988, through February 28, 1989. The Department is now conducting this review pursuant to section 751 of the Tariff Act of 1930 (the Tariff Act). The final results of the most recently completed administrative review of this finding, covering Sharp and the period March 1, 1987 through February 28, 1988, were published in the **Federal Register** on April 19, 1991 (56 FR 16069).

Scope of the Review

Imports covered by the review are shipments of television receiving sets, monochrome and color, from Japan. Television receiving sets include, but are not limited to, units known as projection televisions, receiver monitors, and kits (containing all parts necessary to receive a broadcast television signal and produce a video image). Not included are certain monitors not capable of receiving a broadcast signal, certain combination units, and certain subassemblies not containing the components essential for receiving a broadcast television signal and producing a video image. During the review periods, television receivers, monochrome and color, were classifiable under item numbers 684.9230, 684.9232, 684.9234, 684.9236, 684.9238, 684.9240, 684.9245, 684.9246, 684.9248, 684.9250, 684.9252, 684.9253, 684.9255, 684.9256, 684.9258, 684.9262, 684.9263, 684.9265, 684.9270, 684.9275, 684.9400, and 684.9655 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under item numbers 8528.10.80 and 8528.20.00 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

The review covers one manufacturer/exporter of Japanese television receivers, monochrome and color, Sharp, and the periods March 1, 1986, through February 28, 1987, and March 1, 1988, through February 28, 1989.

United States Price

In calculating United States price, the Department used purchase price (PP) or exporter's sales price (ESP), both as defined in section 772 of the Tariff Act, as appropriate. United States price was based on the packed f.o.b., c.i.f., or

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delivered price to unrelated purchasers in the United States. We made deductions from both PP and ESP for Japanese inland freight and insurance and Japanese brokerage and handling as related to U.S. exports. We made additional deductions from ESP for ocean freight, marine insurance, U.S. inland freight, U.S. brokerage and handling charges, U.S. customs duties, discounts, rebates, commissions to unrelated parties, credit and warranty expenses, advertising and sales promotion expenses, export selling expenses incurred in Japan, and U.S. subsidiaries' selling expenses. We also added an amount to both PP and ESP for the Japanese commodity tax that was not collected by reason of the exportation of the merchandise, as specified in section 772(d)(1)(C) of the Tariff Act. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value (FMV), the Department used home market price, or constructed value, as defined in section 773 of the Tariff Act, as appropriate.

Zenith alleged that Sharp sold televisions in the home market at prices below the cost of production. We considered the allegations sufficient to warrant an investigation of possible sales below the cost of production. As a result of our investigation, we found below-cost sales. When more than 10 percent of the sales of a particular model were determined to be below cost, we excluded those sales from our calculation of FMV. When more than 90 percent of the sales of a particular model were determined to be sold below the cost of production, we used the constructed value, as defined in section 773 of the Tariff Act. We also used constructed value when, as a result of the exclusions of below cost sales, there were no contemporaneous sales of such or similar merchandise sold in the home market. Constructed value includes materials, fabrication, general expenses, profit, and packing. We used: (1) Actual general expenses, since these exceeded the statutory minimum requirement of 10 percent of materials and fabrication, (2) the statutory 8 percent for profit, because actual profit was less than the statutory minimum, and (3) packing costs for merchandise exported to the United States.

We made adjustments for inland freight, brokerage and handling expenses, discounts, rebates, royalties, credit, advertising and sales promotion expenses, warranty expenses, and differences in commodity taxes, packing, and physical characteristics of the merchandise. In PP comparisons we added direct U.S. credit. In ESP comparisons we deducted indirect selling expenses from FMV not exceeding the amount of U.S. indirect selling expenses. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our review, we preliminarily determine the following margin exists:

Manufacturer	Review No.	Period of review	Margin (per-cent)
Sharp	8	03/01/86–02/28/87	21.06
Sharp	10	03/01/88–02/28/88	30.57

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held as early as convenient for the parties, but no later than 44 days after the date of publication of this notice, or the first workday thereafter. Interested parties may submit case briefs or written comments not later than 30 days after the date of publication. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 7 days after submission of the case briefs. The Department will publish the final results of this admnistrative review, including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service will assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties of 30.57 percent will be required for Sharp. For any shipments of this merchandise manufactured by Funai, Fujitsu General, Hitachi, Matshushita, Mitsubishi, NEC, Sanyo, Seiko Epson, Toshiba, or Victor, the cash deposit will continue to be the same as the rates published in the final results of the last administrative review for these firms (56 FR 5392, February 11, 1991). For any future entries of this merchandise from an exporter not covered in this or in prior reviews, who is unrelated to Sharp or any previously reviewed firm, a cash deposit of estimated duties of 38.26 percent shall be required. These cash deposit requirement will be effective for all shipments of Japanese television receivers, monochrome or color, entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: May 31, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-13421 Filed 6-5-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-331-601]

Certain Fresh Cut Flowers From Ecuador; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on certain fresh cut flowers from Ecuador. We preliminarily determine the total bounty or grant to be zero for five companies and 1.12 percent *ad valorem* for all other companies during the period January 1, 1989 through December 31, 1989. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: Elizabeth Levy or Michael Rollin, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5260.

SUPPLEMENTARY INFORMATION:

Background

On January 24, 1990, the Department of Commerce (the Department) published a notice of "Opportunity to Request Administrative Review" (44 FR 2398) for the countervailing duty order on certain fresh cut flowers from Ecuador. On January 30, 1990, the petitioner, the Floral Trade Council, requested an administrative review of the order. We initiated the review, covering the period January 1, 1989 through December 31, 1989, on March 22, 1990 (55 FR 10642). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). The final results of the last administrative review of this order were published in the Federal Register on March 22, 1991 (56 FR 12172).

Scope of Review

Imported products covered by this review are Ecuadoran fresh cut miniature (spray) carnations, standard carnations, standard chrysanthemums and pompon chrysanthemums. This merchandise is currently classifiable under item numbers 0603.10.30, 0603.10.70 and 0603.10.80 of the Harmonized Tariff Schedule (HTS). Daisies are excluded from the scope of the order. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This review covers the period January 1, 1989 through December 31, 1989, and nine programs.

Analysis of Programs

(1) FOPEX Export Credit

The Fund for the Promotion of Exports (FOPEX) is a line of financing of the National Finance Corporation, a governmental financing source responsible for industrial development financing operations. FOPEX provides both short- and long-term credit. Because FOPEX loans are available only for export-related purposes, we preliminarily determine that they are countervailable to the extent that they are provided at preferential rates.

a. Short-Term FOPEX Export Credit

Under FOPEX, the government grants short-term loans to promote the export of non-traditional goods through the financing of export transactions. Such loans are provided for up to 180 days, with interest and principal due at maturity.

Four companies received short-term FOPEX loans that matured during the review period. To calculate the benefit from the short-term FOPEX loans, we used as our benchmark the effective rate for the predominant source of short-term financing as published in the IL&T Ecuador, International Corp., November 1990. We compared the benchmark rate to the effective preferential interest rate in effect for each FOPEX loan interest payment made during the review period and allocated the benefit over each company's exports of merchandise to all markets. We then weight-averaged the results by each company's share of exports of the subject merchandise to the United States, excluding those companies with significantly different aggregate benefits. On this basis, we preliminarily determine the benefit from short-term FOPEX loans to be zero for Flores Del Ecuador, S.A.; Flores La Antonia, S.A.; Floricola, S.A.; Quito Flores, S.A.; and Victor Guala Salazar; and 0.54 percent *ad valorem* for all other companies.

b. Long-Term FOPEX Loans

Flower exporters are eligible to receive loans of two years or more to finance fixed assets and invest in the expansion or modernization of existing companies in agriculture, agro-industry, and industrial sectors whose sales are destined for export. Interest is due every calendar quarter. One company received long-term, variable-rate FOPEX loans with interest payments due in 1989. The loan was received in two disbursements.

Effective August 12, 1986, Monetary Board Regulation No. 463-87 authorized lending institutions to lend at variable interest rates on all loans of two years or more. Although our preferred benchmark for comparison to long-term variable-rate government loans is a long-term variable-rate commercial loan commonly available in the country, no such loans are offered in Ecuador. In our final determination on Certain Fresh Cut Flowers from Ecuador (52 FR 1361; January 13, 1987), we determined that long-term financing under the Bonos de Fomento program is not limited to a specific enterprise or industry, or group of enterprises or industries. We are, therefore, using as our benchmark the Bonos de Fomento effective interest rate as published in the IL&T Ecuador for long-term FOPEX loans.

To calculate the benefit from the long-term FOPEX loans, we compared the benchmark rate to the effective preferential interest rate in effect for each FOPEX loan interest payment made during the review period and allocated the benefit over the company's exports to all markets. We then weight-averaged the results by the company's share of exports of the subject merchandise to the United States, excluding those companies with significantly different aggregate benefits. On this basis, we preliminarily determine the benefit from long-term FOPEX loans to be zero for Flores Del Ecuador, S.A.; Flores La Antonia, S.A.; Floricola, S.A.; Quito Flores, S.A.; and Victor Guala Salazar; and 0.03 percent *ad valorem* for all other companies.

(2) Fund for the Development of Exportable Production

The Fund for the Development of Exportable Production (FDEP), under the Fondos Financieros program established by decree on April 12, 1973, provides fixed and variable rate short- and long-term loans to exporters to finance investments in new, or expansion of existing, companies that gear their production to exportation of non-traditional goods. Such loans are provided for up to seven years with grace periods of up to two years. In all instances, loan recipients must self-finance at least ten percent of the project. Where a loan greater than 3,000,000 sucres is sought, the recipient must self-finance at least 20 percent of the project. Because these loans are available only to exporters, we preliminarily determine that they are countervailable to the extent that they are provided at preferential rates.

Five companies had fixed-rate and one company had a variable-rate long-term FDEP loans with principal outstanding during the review period. Ordinarily, for long-term, fixed- and variable-rate loans, we use as a benchmark interest rates of other long-term, fixed- and variable-rate loans received at commercial rates by the companies in the same year. As our benchmark for fixed- and variable-rate loans of two years or more, we are using the individual company's commercial interest rate for fixed and variable-rate loans of two years or more, where such loans exist. For any company that did not receive commercial loans of two-years or more in the year they received the FDEP loans, we used the same Bonos de Fomento interest rate used in calculating the long-term FOPEX loan benefit.

To calculate the benefit from the fixed-rate loans, we found the difference between the annual amounts of principal and interest the companies actually paid and the annual amounts of principal and interest the companies would have paid if they had received the loans at our benchmark rate. We then calculated the "grant equivalent" of each loan. The grant equivalent is the amount of money equal to the value, at the time the preferential loan was made, of all the annual payment differentials that would occur during the life of the loan. Using our declining balance methodology with the long-term benchmark as the discount rate, we allocated the grant equivalents over the life of each loan to yield the annual benefits. We then allocated the benefits from the loans over the value of each

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company's total exports and weight-averaged the result by each company's share of exports of the subject merchandise to the United States, excluding those companies with significantly different aggregate benefits.

To calculate the benefit from the variable-rate loan, we compared the effective benchmark interest rate to the effective preferential interest rate in effect for each FDEP loan interest payment made during the review period and allocated the benefit over the company's exports to all markets. We then weight-averaged the results by the company's share of exports of the subject merchandise to the United States, excluding those companies with significantly different aggregate benefits. On this basis, we preliminarily determine the benefit from long-term fixed- and variable-rate FDEP loans to be zero for Flores Del Ecuador, S.A.; Flores La Antonia, S.A.; Floricola, S.A.; Quito Flores, S.A.; and Victor Guala Salazar; and 0.55 percent *ad valorem* for all other companies.

(3) Other Programs

We also examined the following programs and preliminarily determine that Ecuadoran flower exporters did not use them during the period of review:

a. Short-term FDEP Loans.
b. Tax Deductions for New Investment.
c. Tax Holidays.
d. Tax Exemptions for Transfer of Real Estate.
e. Sales and Income Tax Exemptions.
f. Government Refinancing of Private Debt.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be zero for Flores Del Ecuador, S.A.; Flores La Antonia, S.A.; Floricola, S.A.; Quito Flores, S.A.; and Victor Guala Salazar; and 1.12 percent *ad valorem* for all other companies during the period January 1, 1989 through December 31, 1989.

The Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from Flores Del Ecuador, S.A.; Flores La Antonia, S.A.; Floricola, S.A.; Quito Flores, S.A.; and Victor Guala Salazar; and to assess countervailing duties of 1.12 percent of the f.o.b. invoice price on shipments of this merchandise from all other companies exported on or after January 1, 1989 and on or before December 31, 1989.

Further, the Department intends to instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on shipments of this merchandise from Flores Del Ecuador, S.A.; Flores La Antonia, S.A.; Floricola, S.A.; Quito Flores, S.A.; and Victor Guala Salazar; and to collect a cash deposit of 1.12 percent of the f.o.b. invoice price on shipments of this merchandise from all other companies entered, or withdrawn from the warehouse, for consumption, on or after the date of publication of the final results of this administrative review.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 355.38(c), are due.

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: May 30, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-13422 Filed 6-5-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-505]

Porcelain-on-Steel Cookingware From Mexico; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On March 7, 1991, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on porcelain-on-steel cookingware from Mexico. We have now completed that review and determine the net subsidy to be 0.48 percent *ad valorem* for CINSA, S.A., and 1.70 percent *ad valorem* for all other firms during the period January 1, 1989 through December 31, 1989. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

EFFECTIVE DATE: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: Anne Driscoll or Michael Rollin, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 9675) the preliminary results of its administrative review of the countervailing duty order on porcelain-on-steel cookingware from Mexico (51 FR 44827; December 12, 1986). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Tariff Act").

Scope of Review

Imports covered by this review are shipments of porcelain-on-steel cookingware from Mexico. The products are porcelain-on-steel cookingware (except teakettles), which do not have self-contained electric heating elements. All of the foregoing are constructed of steel, and are enameled or glazed with vitreous glasses. During the review period, such merchandise was classifiable under item number 7323.94.0020 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1989 through December 31, 1989, and 9 programs: (1) FOMEX; (2) FONEI; (3) PITEX; (4) CEPROFI; (5) FOGAIN; (6) Bancomext preferential financing; (7) Import duty reductions and exemptions; (8) Article 15 loans; and (9) State tax incentives.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. On April 8, 1991, we received a written comment from the respondents, Aceros Porcelanizado, S.A. ("APSA") and CINSA, S.A.

Comment: The respondents contend that the Department incorrectly calculated the country-wide countervailing duty rate applicable to APSA by excluding companies with zero or *de minimis* aggregate benefits from its calculations. In *IPSCO, Inc.* and *IPSCO Steel* V. *United States*, 899 F. 2d 1192 (Fed. Cir. 1990) (*IPSCO*), the Court of Appeals for the Federal Circuit (CAFC) ruled that the countervailing duty should not exceed the weighted-average benefit received by all companies that produce or export the subject merchandise, including those companies that receive little or no subsidy. While it is appropriate for the Department to exclude companies with zero or *de minimis* aggregate benefits from the assessment of countervailing duties, these companies must be included in any calculation of the weighted-average subsidy applicable to the remaining non-*de minimis* companies, and the assessment and cash deposit rates found in the preliminary results of this review should be recalculated accordingly.

Department's Position: We disagree. In calculating the benefits received during the review period, we followed the methodology described in the preamble to 19 CFR 355.20(d) (53 FR 52325; December 27, 1988). First, we calculated a country-wide rate, weight-averaging the benefits of all companies to determine the overall subsidy benefitting exports of the subject merchandise to the United States; we did not ignore zero or *de minimis* rates, consistent with the CAFC holding in *IPSCO*.

Because the country-wide rate in this review was above *de minimis*, we proceeded to the next step in our analysis and examined the *ad valorem* rates that we had calculated to determine whether individual company rates differed significantly from the weighted-average country-wide rate. CINSA's rate was *de minimis*, by definition significantly different from the country-wide rate, and must be treated separately for assessment and cash deposit purposes. APSA's rate was not significantly different and, consistent with our regulations and established Department practice, this rate was used to establish the "all other" rate for this review period. *See e.g.*, Ceramic Tile from Mexico; Final Results of Countervailing Duty Administrative Review (55 FR 50746; December 10, 1990); Certain Cotton Yarn Products from Brazil; Final Results of Countervailing Duty Administrative Review (55 FR 3446; February 1, 1990).

Contrary to respondents's contention, *IPSCO* does not preclude the establishment of an "all other" rate for APSA for the purposes of this review. In *IPSCO*, the CAFC was only addressing the first step in this process, the measurement of the overall subsidy and the establishment of a country-wide rate. In that particular case, the CAFC found that the Department had erroneously excluded nine companies with *de minimis* or zero benefits from its calculation of the country-wide rate. Because the country-wide rate when properly calculated proved to be *de minimis*, the CAFC did not have to reach the second step whereby the Department ascertains whether any company's individual benefit differs significantly from the country-wide rate.

Finally, to the extent that the language respondents quote from *IPSCO* is applicable here, our calculation of a 1.70 percent "all other" rate does not conflict with the CAFC's holding that any countervailing duty should not exceed the weighted-average benefit received by all companies that produce or export the subject merchandise to the United States. Because APSA is being assessed countervailing duties at a rate directly attributable to the benefits received on its exports, and CINSA is not being assessed countervailing duties, the Customs Service will collect a lesser, not higher amount of countervailing duties than it would have if we had applied a country-wide rate to both CINSA and APSA exports. To apply the lower country-wide rate to APSA's exports while waiving assessment on CINSA's exports, as the respondents argue, would result in a gross undercollection of countervailing duties.

Final Results of Review

After reviewing the comment received, we determine the net subsidy to be 0.48 percent *ad valorem* for CINSA and 1.70 percent *ad valorem* for all other firms during the period January 1, 1989 through December 31, 1989. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

The Department will therefore instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of this merchandise from CINSA, and to assess countervailing duties of 1.70 percent of the f.o.b. invoice price on all other shipments of this merchandise exported on or after January 1, 1989 and on or before December 31, 1989.

Further, as provided by section 751(a)(1) of the Tariff Act, the Department will instruct the Customs Service to waive cash deposits of estimated countervailing duties on shipments of this merchandise from CINSA, and to collect a cash deposit of estimated countervailing duties of 1.70 percent of the f.o.b. invoice price on all other shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of kthe next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: May 31, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-13423 Filed 6-5-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-405]

Certain Textile Mill Products from Mexico; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on certain textile mill products from Mexico for the period January 1, 1988 through December 31, 1988. We preliminarily determine the total bounty or grant to be zero or *de minimis* for 22 companies, 6.22 percent *ad valorem* for Derivados Acrilicos, S.A., and 1.84 percent *ad valorem* for all other companies. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: Dana S. Mermelstein or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone (202) 377-2786.

SUPPLEMENTARY INFORMATION:

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Background

On February 28, 1989, the Department of Commerce (the Department) published a notice of "Opportunity to Request Administrative Review" (54 FR 8372) for the countervailing duty order on certain textile mill products from Mexico (50 FR 10824; March 18, 1985). On March 28, 1989, Tapetes Luxor, S.A. de C.V., an exporter of certain textile mill products from Mexico, requested an administrative review of the order for the period January 1, 1988 through December 31, 1988. On March 30, 1989, the Government of Mexico requested a review for this period. On March 31, 1989, Barth & Dreyfus, an importer of certain textile mill products from Mexico, also requested an administrative review for this period. We initiated the review on April 28, 1989 (54 FR 18320). The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of certain textile mill products from Mexico. During the review period, such merchandise was classifiable under item numbers of the Tariff Schedules of the United States Annotated (TSUSA) listed in appendix A. This merchandise is currently classifiable under item numbers of the Harmonized Tariff Schedule listed in appendix B.

We verified the questionnaire response of the Government of Mexico from August 13, 1990 through August 22, 1990. The review covers the period January 1, 1988 through December 31 1988, and nine programs.

Analysis of Programs

(1) FOMEX

The Fund for the Promotion of Exports of Mexican Manufactured Products (FOMEX) is a trust of the Mexican Treasury Department, with the National Bank of Foreign Trade acting as trustee for the program. The National Bank of Foreign Trade, through financial institutions, makes FOMEX loans available at preferential rates to manufacturers and exporters for two urposes: Pre-export financing and export financing. We consider both pre-export and export FOMEX loans to be export bounties or grants since these loans are given only on merchandise destined for export.

We found that the annual rate charged to the textiles exporters with peso-denominated FOMEX pre-export loans payable during the review period ranged from 37 percent to 130 percent; the annual rate for dollar-denominated FOMEX export loans payable during the review period rangd from 7.2 to 9.5 percent.

We consider the benefit from loans to occur when the interest is paid. Interest on FOMEX pre-export loans is paid at maturity; loans that matured during the review period were obtained from November 1987 through November 1988. Since interest on FOMEX export loans is pre-paid, we calculated benefits based on FOMEX export loans received during the review period.

The Banco de Mexico stopped publishing data on nominal and effective commercial lending rates after 1984. Therefore, as a basis for our benchmark, we have relied in part on the rates published for the years 1981 through 1984, as published in the Banco de Mexico's Indicadores Economicos y Moneda (I.E.). We calculated the average difference between the Costo Porcentual Promedio (CPP) rates, the average cost of short-term funds to banks, and the I.E. effective rates for the period 1981 through 1984. We added this average difference to the 1987 and 1988 CPP rates for the review period. For pre-export peso loans obtained in 1987, we calculated an annual average benchmark of 8.53 percent per month. Because the CPP rates published monthly in the first quarter of 1988 were substantially higher than those during the remainder of 1988, we determine that a benchmark for peso-denominated loans calculated on a quarterly basis is more appropriate than an annual average. Hence, we calculated a benchmark of 11.06 percent per month for pre-export peso loans received in the first quarter of 1988, and 5.88 percent, 3.99 percent and 4.18 percent for those received in the second, third, and fourth quarters, respectively.

To determine the effective interest rate benchmark for dollar loans, we used an average of the quarterly weighted-average effective interest rates published in the Federal Reserve Bulletin, which was 10.53 percent in 1988.

We found that many textiles exporters used FOMEX pre-export and export financing during the review period. Because we found that the exporters were able to tie their FOMEX loans to specific countries, we measured the benefit only from FOMEX loans tied to shipments to the United States. We allocated each company's FOMEX benefit over the value of its total exports of the subject merchandise to the United States during the review period. We then weight-averaged the resulting benefits by each company's proportion of exports of the subject merchandise to the United States, excluding companies with significantly different aggregate benefits. On this basis, we preliminarily determine the benefit from this program to be zero or *de minimis* for 22 companies, zero for Derivados Acrilicos, S.A., and 1.59 percent *ad valorem* for all other companies.

(2) FOGAIN

The Guarantee and Development Fund for Medium and Small Industries (FOGAIN) is a program that provides long-term loans to small- and medium-sized companies in Mexico. The interest rates available under the program vary depending upon whether a small- or medium-sized business has been granted priority status, and whether a business is located in a zone targeted for industrial growth. Although FOGAIN loans are available to all small- and medium-sized companies in Mexico, regardless of the type of industry or location, some companies get more beneficial rates than others. Therefore, to the extent that this program provides financing at rates below the least beneficial rate available under FOGAIN, we consider it countervailable.

During the review period, two companies had long-term variable-rate FOGAIN loans on which interest payments were due. Because the interest rate was variable, we treated each loan as a series of short-term loans.

To calculate the benefit, we used as our benchmark the least beneficial interest rate in effect for each FOGAIN loan payment and compared it to the FOGAIN preferential rate for the loan payments made during the review period. We divided the benefit from the loans by each company's total sales to all markets and then weight-averaged the resulting benefit by each company's proportion of total exports of the subject merchandise to the United States, excluding companies with significantly different aggregate benefits. On this basis, we preliminarily determine the benefit from this program to be zero or *de minimis* for 22 companies, zero for Derivados Acrilicos, S.A., and 0.002 percent *ad valorem* for all other companies.

(3) FONEI

The Fund for Industrial Development (FONEI), administered by the Banco de Mexico, is a specialized financial development fund that provides long-term loans at below market rates. FONEI loans are available under various provisions having different eligibility requirements. The plant expansion provision is designed for the creation, expansion, or modernization of enterprises in order to promote the efficient production of goods capable of competing in the international market or to meet the objectives of the National Development Plan (NDP), which include industrial decentralization. We consider this FONEI loan provision to confer a subsidy because it restricts loan benefits to those enterprises located outside Zone IIIA.

Two companies had variable-rate, peso-denominated FONEI loans, one for equipment and one for investment, outstanding during the review period. We treated these variable rate loans as a series of short-term loans. To calculate the benefit, we used the same benchmark as for the FOMEX peso-denominated pre-export loans and compared them with preferential interest rates in effect for each FONEI loan payment made during the review period. We divided the benefit from the loans by each company's total sales to all markets and then weight-averaged the resulting benefit by each company's proportion of exports of subject merchandise to the United States during the review period, excluding companies with significantly different aggregate benefits. On this basis, we preliminarily determine the benefit from this program to be zero or *de minimis* for 22 companies, zero for Derivados Acrilicos, S.A., and 0.003 percent *ad valorem* for all other companies.

(4) PITEX

The Program for Temporary Importation of Products used in the Production of Exports (PITEX) was established by a decree published in the Diario Oficial on May 9, 1985, and amended in the Diario Oficial on September 19, 1986, and May 3, 1990. The program is jointly administered by the Ministry of Commerce and Industrial Development (SECOFI) and the Customs Administration. Under PITEX, manufacturers with a proven export record may receive authorization to temporarily import merchandise to be used in the production of exports for up to five years without having to pay the import duties normally applicable to those imports. PITEX allows for the exemption of import duties for the following categories of merchandise used in export production: Raw materials, packing materials, fuels and lubricants, machinery used to manufacture products for export, and other machinery. The importer must post a bond or other security to guarantee the reexportation of the temporary imports.

Six companies used PITEX during the review period for temporary imports of both physically incorporated and non-physically incorporated merchandise. The Department does not consider the nonexcessive exemption, remission, deferral or drawback of import charges levied on goods that are physically incorporated in the exported products (making normal allowances for waste) to confer a countervailable benefit. Duty drawback is a practice acceptable under U.S. countervailing duty law and consistent with item (i) of the Illustrative List of Export Subsidies appended to the Agreement on the Interpretation and Application of articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (Subsidies Code). Therefore, we preliminarily determine that PITEX provides countervailable benefits to the extent that it provides duty exemptions on temporary imports of merchandise not physically incorporated into the exported products.

To calculate the benefit from this program, we divided the amount of duties not paid on machinery and equipment temporarily imported under PITEX by each company's total exports. We then weight-averaged the resulting benefits by each company's proportion of exports of subject merchandise to the United States, excluding companies with significantly different aggregate benefits. On this basis, we preliminarily determine the benefit from this program to be zero or *de minimis* for 22 companies, 6.22 percent *ad valorem* for Derivados Acrilicos, S.A., and 0.24 percent *ad valorem* for all other companies.

(5) Other Programs

We also examined the following programs and preliminarily determined that exporters of certain textile mill products did not use them during the review period:

(A) Certificates of Fiscal Promotion (CEPROFI);
(B) Article 15 Loans;
(C) Bancomext loans;
(D) State Tax Incentives; and
(E) Import Duty Reductions and Exemptions.

Firms Not Receiving Benefits

We preliminarily determine that the following firms have received zero or *de minimis* aggregate benefits:

(1) Acytex, S. de R.L.
(2) Boneteria Wabi, S.A. de C.V.
(3) Celanese Mexicana, S.A.
(4) Desarollo Industrial FITEC
(5)El Pilar, S.A. de C.V.
(6) Encajes Mexicanos, S.A. de C.V.
(7) Fabrica Hilados y Tejidos Sindec
(8) Fabrica la Estrella, S.A. de C.V.
(9) Fieltros Finos, S.A. de C.V.
(10) Grupo HYTT, S.A. de C.V.
(11) Hilaturas de la Laguna, S.A. de C.V.
(12) Hilaturas Maya, S.A. de C.V.
(13) Industrias Leyva Osorio, S.A. de C.V.
(14) Jeramex, S.A. de C.V.
(15) Nobilis Lees, S.A. de C.V.
(16) Milyon, S.A. de C.V.
(17) Percotex, S.A. de C.V.
(18) Ryltex, S.A. de C.V.
(19) Tamacani, S.A.
(20) Tapetes Luxor, S.A. de C.V.
(21) Tejidos de Punto Wabi, S.A. de C.V.
(22) Textiles el Centenario, S.A.

Preliminary Results of Review

As a result of our review, we preliminarily determined the total bounty or grant to be zero or *de minimis* for 22 companies, 6.22 percent *ad valorem* for Derivados Acrilicos, S.A., and 1.84 percent *ad valorem* for all other companies during the period January 1, 1988 through December 31, 1988.

Upon completion of this review, the Department intends to instruct Customs to liquidate, without regard to countervailing duties, shipments of this merchandise from the 22 companies listed above, and to assess countervailing duties of 6.22 percent of the f.o.b. invoice price on shipments of this merchandise from Derivados acrilicos, S.A., and 1.84 percent of the f.o.b. invoice price on shipments of this merchandise from all other companies exported on or after January 1, 1988 and on or before December 31, 1988.

Further, the Department intends to instruct Customs to waive the cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on shipments of this merchandise from the 22 companies listed above, and to collection a cash deposit of 6.22 percent of the f.o.b. invoice price on shipments of this merchandise from Derivados Acrilicos, S.A. and 1.84 percent of the f.o.b. invoice price on shipments of this merchandise from all other companies entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than ten days from the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication of this notice. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for the submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

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Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 355.38(c), are due.

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: May 31, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

Appendix A—Certain Textile Mill Products from Mexico C–201–405

1988 TSUSA Numbers			
	300.6005	320.0103 through	320.0903
	300.6010	320.0121 through	320.0921
	300.6024	320.0122 through	320.0922
	300.6028	320.0134 through	320.0934
301.0100 through	301.0900	320.0138 through	320.0938
301.1000 through	301.1900	320.0145 through	320.0945
301.2000 through	301.2900	320.0149 through	320.0949
302.3000 through	302.3900	320.0154 through	320.0954
302.0124 through	302.0924	320.0157 through	320.0957
302.1024 through	302.1924	320.0163 through	320.0963
302.1028 through	302.1928	320.0166 through	320.0966
302.2020 through	302.2920	320.0177 through	320.0977
302.2024 through	302.2924	320.0180 through	320.0980
302.2026 through	302.2926	320.0198 through	320.0998
302.2028 through	302.2928	320.1034 through	320.1934
302.3024 through	302.3924	320.1045 through	320.1945
302.3026 through	302.3926	320.1063 through	320.1963
302.3028 through	302.3928	320.1071 through	320.1971
302.4026 through	302.4926	320.1077 through	320.1977
	303.2040	321.0134 through	321.0934
	303.2042	321.1071 through	321.1971
	307.7000	321.1077 through	321.1977
	310.0106	322.0162 through	322.0962
	310.0107	322.0163 through	322.0963
	310.0108	322.1006 through	322.1906
	310.0110	322.1015 through	322.1915
	310.0114	322.1025 through	322.1925
	310.0130	322.1034 through	322.1934
	310.0149		
	310.0150		
	310.0206		
	310.0207		
	310.0208		
	310.0249		
	310.0250		
	310.0270		
	310.0510		
	310.1015		
	310.1070		
	310.1205		
	310.1210		
	310.1555		
	310.1570		
	310.2150		
	310.4027		
	310.4047		
	310.4050		
	310.5046		
	310.5047		
	310.5049		
	310.6034		
	310.9000		
	310.9310		
	310.9320		
	310.9500		
	316.5500		
	316.5800		
	316.7000		

1987 TSUSA Numbers					
322.1036 through	322.1936	324.2031 through	324.2931		338.5013
322.1037 through	322.1937	324.2038 through	324.2938		338.5016
322.1045 through	322.1945	324.2042 through	324.2942		338.5021
322.1047 through	322.1947	324.2049 through	324.2949		338.5023
322.1048 through	322.1948	324.2054 through	324.2954		338.5024
322.1050 through	322.1950	324.2057 through	324.2957		338.5026
322.1051 through	322.1951	324.2072 through	324.2972		338.5027
322.1052 through	322.1952	324.2080 through	324.2980		338.5030
322.1053 through	322.1953	324.2098 through	324.2998		338.5031
322.1055 through	322.1955	324.8072 through	324.8972		338.5036
322.1056 through	322.1956	324.8074 through	324.8974		338.5037
322.1065 through	322.1965	324.8080 through	324.8980		338.5041
322.1066 through	322.1966	324.8098 through	324.8998		338.5043
322.1068 through	322.1968	325.1051 through	325.1951		338.5044
322.1071 through	322.1971	325.1052 through	325.1952		338.5045
322.1075 through	322.1975	325.1085 through	325.1985		338.5046
322.1077 through	322.1977	325.1089 through	325.1989		338.5048
322.1079 through	322.1979	325.1091 through	325.1991		338.5049
322.1081 through	322.1981	325.1095 through	325.1995		338.5051
322.1084 through	322.1984	325.8022 through	325.8922		338.5054
322.1085 through	322.1985	325.8024 through	325.8924		338.5055
322.1086 through	322.1986	327.2021 through	327.2921		338.5059
322.1088 through	322.1988	327.2022 through	327.2922		338.5060
322.1089 through	322.1989	327.2031 through	327.2931		338.5064
322.1090 through	322.1990	327.2038 through	327.2938		338.5065
322.1091 through	322.1991	327.2042 through	327.2942		338.5069
322.1095 through	322.1995	327.2049 through	327.2949		338.5073
322.1097 through	322.1997	327.2054 through	327.2954		338.5075
322.2016 through	322.2916	327.2057 through	327.2957		338.5076
322.2023 through	322.2923	327.3003 through	327.3903		338.5079
322.2069 through	322.2969	327.3021 through	327.3921		338.5080
322.2073 through	322.2973	327.3022 through	327.3922		338.5082
322.4003 through	322.4903	327.3038 through	327.3938		338.5084
322.4021 through	322.4921	327.3049 through	327.3949		338.5085
322.4022 through	322.4922	327.3054 through	327.3954		338.5087
322.4038 through	322.4938	327.3057 through	327.3957		338.5088
322.4042 through	322.4942	328.2003 through	328.2903		338.5092
322.4049 through	322.4949	328.2021 through	328.2921		338.5095
322.4054 through	322.4954	328.2022 through	328.2922		338.5098
322.4057 through	322.4957	328.2031 through	328.2931		345.4000
322.4072 through	322.4972	328.2038 through	328.2938		345.5553
322.4080 through	322.4980	328.2049 through	328.2949		345.5555
322.4098 through	322.4998	328.2054 through	328.2954		345.5557
322.5014 through	322.5914	328.2057 through	328.2957		345.5575
322.5015 through	322.5915	328.2072 through	328.2972		345.5585
322.5016 through	322.5916	328.2080 through	328.2980		346.5850
322.5017 through	322.5917	328.2098 through	328.2998		346.6265
322.5023 through	322.5923	331.2022 through	331.2922		346.7000
322.5069 through	322.5969	331.2024 through	331.2924		347.6040
322.5073 through	322.5973	331.2031 through	331.2931		347.6800
322.8016 through	322.8916	331.2038 through	331.2938		348.0065
322.8023 through	322.8923	331.2049 through	331.2949		351.3000
322.8069 through	322.8969	331.2054 through	331.2954		351.5010
322.8073 through	322.8973	331.2057 through	331.2957		351.5060
322.9003 through	322.9903	331.2072 through	331.2972		351.6010
322.9021 through	322.9921	331.2074 through	331.2974		351.7060
322.9022 through	322.9922	331.2080 through	331.2980		351.8060
322.9038 through	322.9938	331.2098 through	331.2998		351.9060
322.9042 through	322.9942		336.1540		352.2060
322.9049 through	322.9949		336.6280		352.8010
322.9054 through	322.9954		336.6270		352.8060
322.9057 through	322.9957		336.6275		353.1000
322.9072 through	322.9972		338.4004		353.5012
322.9080 through	322.9980		338.5006		353.5052
322.9098 through	322.9998		338.5007		355.1610
324.2022 through	324.2922		338.5009		355.1620
324.2024 through	324.2924		338.5010		355.1630
			338.5011		355.2510

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355.2520		365.6960		5407.42.00	5515.91.00	5806.32.10	
355.2530		366.1720		5407.43.20	5515.92.00	5806.40.00	
355.2540		366.2460		5407.44.08	5516.11.00	5809.90.00	
355.2550		366.3660		5407.52.28	5516.12.00	5810.10.00	
355.2560		366.4280		5407.53.10	5516.13.00	5810.91.00	
355.4530		366.4960		5407.53.39	5516.14.00	5810.92.00	
355.8500		366.4790		5407.54.00	5516.21.00	5811.00.20	
357.4500		366.5100		5407.60.05	5516.22.05	5901.10.20	
357.7010		366.5760		5407.60.10	5516.23.00	5901.90.40	
357.8080		366.7825		5407.60.28	5516.24.00	5902.10.00	
358.0290		366.7830		5407.71.00	5516.41.00	5902.20.00	
358.3500		366.8460		5407.72.08	5516.42.00	5902.90.00	
358.5040		367.3280		5407.73.20	5516.43.00	5903.10.20	
359.1010		367.3380		5407.74.08	5516.44.00	5903.90.20	
359.1030		367.6825		5407.81.00	5516.91.00	5903.90.30	
360.0800		367.6940		5407.82.00	5516.92.00	5905.00.00	
360.1200		367.6980		5407.83.00	5516.93.00	5906.91.20	
360.2500				5407.84.00	5516.94.00	5906.99.20	
360.4225				5407.91.05	5601.10.20	5907.00.00	
360.4335				5407.91.20	5601.22.00	5911.10.20	
360.4625				5407.92.05	5602.10.10	5911.20.10	
360.4635				5407.92.20	5602.10.60	5911.31.00	
360.7000				5407.93.05	5602.21.00	5911.32.00	
360.7800				5407.93.20	5602.90.20	5911.40.00	
360.8300				5407.94.05	5602.90.30	6001.10.20	
361.0530				5407.94.20	5602.90.90	6001.10.80	
361.0540				5408.10.00	5603.00.90	6001.22.00	
361.2410				5408.21.00	5604.20.00	6001.92.00	
361.4200				5408.22.00	5604.90.00	6002.10.00	
361.4500				5408.23.20	5606.00.00	6002.20.10	
361.4600				5408.24.00	5607.41.00	6002.30.20	
361.4800				5408.31.05	5607.49.15	6002.30.40	
361.5420				5408.31.20	5607.49.35	6002.30.20	
361.5428				5408.32.05	5607.49.20	6002.43.00	
361.6000				5408.32.90	5607.50.20	6002.93.00	
361.7010				5408.33.05	5607.50.40	6301.10.00	
363.0510				5408.33.90	5607.90.20	6301.20.00	
363.0515				5408.34.05	5608.11.00	6301.30.00	
363.1020				5408.34.90	5608.19.10	6301.40.00	
363.1040				5508.10.00	5701.10.10	6301.90.00	
363.2000				5508.20.09	5701.10.20	6302.10.00	
363.2562				5509.12.00	5701.90.20	6302.21.20	
363.2564				5509.21.00	5702.10.90	6302.22.10	
363.2575				5509.22.00	5702.31.10	6302.22.20	
363.2583				5509.31.00	5702.31.20	6302.29.00	
363.2585				5509.32.00	5702.32.10	6302.51.20	
363.2587				5509.41.00	5702.32.20	6302.32.10	
363.2590				5509.51.20	5702.39.20	6302.32.20	
363.4505				5509.51.80	5702.41.10	6302.38.00	
363.4510				5509.53.00	5702.41.20	6302.40.10	
363.6040				5509.62.20	5702.42.10	6302.40.20	
363.8050				5509.69.40	5702.42.20	6302.51.10	
363.8540				5509.99.20	5702.49.10	6302.51.20	
363.8506				5509.99.40	5702.51.20	6302.51.30	
363.8500				5511.10.00	5702.51.40	6302.51.40	
363.8515				5511.20.00	5702.52.00	6302.52.10	
363.8525				5511.30.00	5702.59.10	6302.52.20	
363.8545				5512.11.00	5702.59.20	6302.53.00	
363.8550				5512.19.00	5702.91.30	6302.56.00	
363.8555				5512.21.00	5702.91.40	6302.60.00	
364.1300				5512.29.00	5702.92.00	6302.91.00	
364.2000				5512.91.00	5702.99.10	6302.92.00	
364.2300				5512.99.00	5702.99.20	6302.93.20	
364.3000				5513.11.00	5703.10.00	6302.99.20	
365.5060				5513.13.00	5703.20.10	6303.12.00	
365.6615				5513.19.00	5703.20.20	6303.19.00	
365.6625				5513.21.00	5703.30.00	6303.92.00	
365.6665				5513.23.00	5704.10.00	6303.99.00	
365.8400				5513.29.00	5704.90.00	6304.11.10	
365.8700				5513.33.00	5705.00.20	6304.11.20	
365.8910				5513.39.00	5801.31.00	6304.11.30	
365.8920				5513.41.00	5801.33.00	6304.19.05	
365.8940				5513.43.00	5801.34.00	6304.19.15	
365.8970				5513.49.00	5801.35.00	6304.19.20	
				5514.11.00	5801.36.00	6304.19.30	
				5514.19.00	5802.30.00	6304.91.00	
				5514.21.00	5803.10.00	6304.92.00	
				5514.29.00	5803.90.30	6304.93.00	
				5514.41.00	5804.10.00	6304.99.15	
				5514.49.00	5804.21.00	6304.99.20	
				5515.11.00	5804.29.00	6304.99.60	
				5515.12.00	5804.30.00	6307.10.20	
				5515.13.05	5805.00.25	7019.20.10	
				5515.19.00	5805.00.30	9404.90.90	
				5515.21.00	5805.00.40		
				5515.29.00	5806.31.00		

Appendix B—Certain Textile Mill Products From Mexico, C–201–405

Harmonized Tariff System (HTS) Numbers for Duty Deposit Purposes

3918.10.32	5206.45.80	5210.21.80
3921.12.19	5207.10.90	5210.22.00
3921.13.19	5207.90.00	5210.29.40
3921.90.19	5208.11.20	5210.39.60
3921.90.21	5208.12.40	5210.91.40
4008.21.00	5208.13.60	5210.91.60
4010.10.10	5208.19.40	5210.92.00
5106.10.00	5208.21.20	5210.39.40
5106.20.00	5208.21.40	5210.99.60
5107.10.00	5208.22.40	5210.51.40
5107.20.00	5208.22.80	5210.51.60
5108.10.60	5208.23.00	5210.52.00
5108.20.60	5208.29.40	5210.59.40
5109.10.60	5208.29.60	5210.59.60
5109.90.00	5208.31.40	5211.31.00
5111.11.60	5208.31.80	5211.39.00
5111.19.20	5208.31.40	5211.51.00
5111.19.60	5208.32.20	5211.59.00
5111.20.60	5208.32.40	5212.21.00
5111.30.60	5208.32.80	5212.22.00
5112.19.60	5208.33.00	5212.23.00
5112.20.00	5208.39.20	5212.24.00
5112.30.00	5208.39.80	5212.25.00
5204.11.00	5208.39.80	5401.10.00
5204.19.00	5208.41.40	5401.20.00
5204.20.00	5208.41.60	5402.10.30
5205.11.10	5208.41.80	5402.20.30
5205.12.10	5208.42.20	5402.20.60
5205.12.20	5208.42.40	5402.31.30
5205.13.10	5208.42.50	5402.31.60
5205.13.20	5208.43.00	5402.32.30
5205.14.10	5208.49.40	5402.32.60
5205.22.00	5208.51.40	5402.33.30
5205.23.00	5208.51.60	5402.33.60
5205.24.00	5208.51.80	5402.39.30
5205.25.00	5208.52.20	5402.39.60
5205.31.00	5208.52.40	5402.41.00
5205.32.00	5208.52.50	5402.42.00
5205.33.00	5208.53.00	5402.43.00
5205.34.00	5208.59.20	5402.49.00
5205.42.00	5208.59.60	5402.51.00
5205.43.00	5208.59.80	5402.52.00
5205.44.00	5209.11.00	5402.59.00
5206.11.00	5209.19.00	5402.61.00
5206.12.00	5209.21.00	5402.62.00
5206.13.00	5209.29.00	5402.69.00
5206.14.00	5209.31.60	5403.10.30
5206.15.00	5209.32.00	5403.20.30
5206.31.00	5209.39.00	5403.20.60
5206.32.00	5209.41.60	5403.31.00
5206.33.00	5209.42.00	5403.32.00
5206.34.00	5209.43.00	5403.33.00
5206.35.00	5209.49.00	5403.39.00
5206.41.00	5209.51.60	5406.10.00
5206.42.00	5209.52.00	5406.20.00
5206.43.00	5209.59.00	5407.10.00
5206.44.00	5210.21.40	5407.41.00

[FR Doc. 91–13424 Filed 6–5–91; 8:45 am]
BILLING CODE 3510–DS–M

National Institute of Standards and Technology

[Docket No. 910524–1124]

National Voluntary Laboratory Accreditation Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice; publication of 1990 NVLAP fourth quarterly supplement.

SUMMARY: The National Institute of Standards and Technology (NIST) announces the publication of the fourth supplement to the *1990 Directory of NVLAP Accredited Laboratories*. The supplement lists laboratories accredited as of March 1, 1991. To obtain a copy, write to the National Voluntary Laboratory Accreditation Program (NVLAP), National Institute of Standards and Technology, Building 411, room A124, Gaithersburg, MD 20899. Please include a self-addressed mailing label.

FOR FURTHER INFORMATION CONTACT: Nancy M. Trahey, Chief, Laboratory Accreditation Program, National Institute of Standards and Technology, Bldg. 411, room A124, Gaithersburg, MD 20899, (301) 975–4016.

SUPPLEMENTARY INFORMATION: The Directory of NVLAP Accredited Laboratories (NISTIR 90–4280) is published annually pursuant to 7.6(a) of the National Voluntary Laboratory Accreditation Program (NVLAP) Procedures (title 15, part 7 of the Code of Federal Regulations). The supplements to the Directory are published quarterly. Previous supplements are superseded with this notice.

Dated: June 3, 1991.

John W. Lyons,

Director.

[FR Doc. 91–13425 Filed 6–5–91; 8:45 am]
BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Caribbean Fishery Management Council (Council) will hold public hearings on a proposed regulatory amendment to the Fishery Management Plan for the Shallow-water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands. Interested persons are invited to attend and participate. Oral and/or written presentations will be accepted.

DATES: Written comments will be received from May 20, 1991, to June 20, 1991. The hearings are scheduled as follows:

1. June 10, 1991, 2 p.m., Mayaguez, Puerto Rico.
2. June 11, 1991, 2 p.m., Fajardo, Puerto Rico.
3. June 12, 1991, 7:30 p.m., Christiansted, St. Croix, U.S.V.I.
4. June 13, 1991, 7:30 p.m., St. Thomas, U.S.V.I.

ADDRESSES: Comments should be addressed to Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, suite 1108, Banco de Ponce Building, Hato Rey, Puerto Rico 0098–2577.

The hearings will be held at the following locations:

1. Mayaguez—Club Nautico de Mayaguez, Los Locos Adams, Guanajibo #368, Mayaguez, Puerto Rico.
2. Fajardo—Restaurante El Meson Criollo, Carr. #937, Las Croabas, Fajardo, Puerto Rico.
3. Christiansted—Conference Room, Legislature Building, Christiansted, St. Croix, U.S.V.I.
4. St. Thomas—Conference Room, Legislature Building, St. Thomas, U.S.V.I.

FOR FURTHER INFORMATION CONTACT: Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, (809) 766–5926.

SUPPLEMENTARY INFORMATION: The proposed regulatory amendment will provide relief to fishermen who have an excessive supply of 1.5 inch mesh wire that was stockpiled after Hurricane Hugo in August 1990. The Council requested the hearings to gather public opinion on the proposed regulatory amendment that will modify the implementation of the mesh size requirements for fish traps as follows:

- Traps fabricated of bare hexagonal mesh wire of 1.5 inches in the smallest dimension (2.25 inches in the largest dimension) or wire mesh of 2 inches bar measure (2.8 inches in the largest dimension) must have openings (8 x 8 inches) on each of two opposing sides of the trap (excluding the top, bottom, and side with funnel opening). The 8 x 8 inch openings must be covered with a panel of wire of a mesh size no less than that of which the trap is constructed and attached with untreated jute of a maximum diameter of 1/8 inch. Jute used to secure the panels may not be wrapped or overlapped to extend degradation time.
- Traps constructed with square-mesh bare wire of 1.5 x 1.5 inches must have openings of 9 x 9 inches covered with a panel of a mesh of no less than 2-inch square-mesh wire on each of two opposing sides of the trap (excluding the top, bottom, and side with funnel opening) and attached with untreated jute as described above. All 1.5-inch square-mesh wire will be disallowed in the fishery beginning September 14, 1993.
- All wire mesh measurements are from center of strand to center of strand in accordance with manufacturers specifications.
- Plastic traps and vinyl-coated wire traps must conform to the same mesh measurements and escape panel requirements for bare wire traps. The dimensions of the mesh openings in plastic and vinyl-coated wire traps must be equivalent to the mesh opening specifications for bare wire traps.

Dated: May 31, 1991.

Joe P. Clem,

Acting Director of Office Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–13409 Filed 6–5–91; 8:45 am]
BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Application for Scientific Research Permit, James D. Gilardi (P483).

SUMMARY: Notice is hereby given that an applicant has applied in due form for a Scientific Research Permit involving low impact, non-invasive monitoring and cateloguing of a small population of Hawaiian spinner dolphins as authorized by the Marine Mammal Protection Act of 1972 (26 U.S.C. 1361–1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. Applicant: James D. Gilardi, University of California, 641 G Street #D, Davis, California 95616 (916) 756–6090.
2. Type of Permit: Scientific Research.
3. Name and Number of Animals: Undetermined number of Hawaiian spinner dolphins (*Stenella longirostris*).

Type of Take: The applicant requests authorization to: (1) Determine the stability of the population of the Hawaiian spinner dolphins by cataloguing individual dolphins using above- and below-water still and video

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photography; and (2) to identify immigrating and disappearing (through emigration or mortality) individuals as to sex and age class. The dolphins will be studied from the small craft (14' Avon, or 14' Boston Whaler) and from a swimmer at the surface. All above-surface still photographic work will be done with two 35mm cameras (Cannon EOS 630 with 100–300mm F4.5–5.6 USM) using black and white film (Kodak TMAS 400 asa). Underwater stills will be made with a 35mm underwater camera (Nikonos II with a uw 35mm f3.5). Videography will be accomplished with a HI-band 8mm camcorder (Cannon model H–800) outfitted with a custom housing for underwater recording. Vocalizations will be recorded on the video camera, which has stereo, digitally-recorded sound capabilities and a frequency response up to 20 kHz. No animals will be collected, captured, drugged, marked or tagged.

Location and Duration of Activity: The study is proposed to take place between July 1 and September 30, 1991, at Midway Atoll NWR on the northwest end of the Hawaiian Island chain (177° W, 28° N.).

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Highway, room 7324, SSMC1, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices: Office of Protected Resources, NMFS, NOAA, 1335 East-West Highway, SSMC1, room 7324, Silver Spring, Maryland 20910 (301) 427–2289; Director, Southwest Region, NMFS, NOAA, 300 South Ferry Street, Terminal Island, California 90731–7415 (213) 514–6194; and Pacific Area Office, NMFS, NOAA, 2570 Dole Street, room 106, Honolulu, Hawaii 96822–2396 (808) 541–2927.

Dated: May 31, 1991.

David S. Crestin,

Acting Assistant Administrator for Fisheries.

[FR Doc. 91–13276 Filed 6–5–91; 8:45 am]

BILLING CODE 3510–22–M

COMMISSION ON AGRICULTURAL WORKERS

Workshop and Hearing

AGENCY: Commission on Agricultural Workers.

ACTION: Announcement of workshop and hearing.

SUMMARY: The Commission on Agricultural Workers will hold a workshop on farm worker organizing followed by a public hearing in Grand Rapids, Michigan on June 25, 1991.

The Commission, established by the Immigration Reform and Control Act (IRCA) of 1986 under section 304 is charged with evaluating the Special Agricultural Worker (SAW) provisions of IRCA and with reviewing several specific aspects relating to the demand for and supply of agricultural labor. The workshop will address the impact of IRCA on farmworker organizing from a national perspective. The hearing will focus on specific agricultural issues concerning the state of Michigan.

The workshop and hearing will be open to the public.

DATES: June 25, Workshop—8:30 a.m.–11:30 a.m., Hearing—1 p.m.–4 p.m.

ADDRESSES: June 25—President Ford Room, Amway Grand Plaza Hotel, Pearl Street and Monroe Avenue, Grand Rapids, Michigan. For further information contact: Brett Endres, telephone (202) 673–5348.

Aaron Bodin,

Executive Director.

[FR Doc. 91–13275 Filed 6–5–91; 8:45 am]

BILLING CODE 6820–63–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Active Duty Service Determinations for Civilian or Contractual Groups

On May 3, 1991, the Secretary of the Air Force determined that the service of the group known as the "Honorably Discharged Members of the American Volunteer Group (Flying Tigers) Who Served During the Period December 7, 1941 to July 18, 1942" shall be considered active duty for the purposes of all laws administered by the Department of Veterans Affairs.

To receive recognition, each applicant must meet the following eligibility criteria:

Must have served honorably with the American Volunteer Group (AVG) in China during the period beginning December 7, 1941 through July 17, 1942 as evidenced by:

a. An AVG Honorable discharge certificate or letter; or

b. Identification as an Honorably discharged AVG member in other credible publications or documents.

Application Procedures

Before an individual can receive any Department of Veterans Affairs (VA) Benefits, the person must first apply for an Armed Forces Discharge Certificate by filling out a DD Form 2168 and sending it to the following address (Note: Do not use the Air Force Address on the DD Form 2168 as that will delay application processing): HQ AFMPC/DPMARS2, Randolph AFB, TX 78150–6001, ATTN: TSgt Williamson.

Applicants should attach copies of any supporting documents they possess to their DD Form 2168. DD Forms 2168 are available from any VA office or from the Air Force offices listed in this notice.

For further information contact Lt Col Larry Harris at the Secretary of the Air Force Personnel Council (AFPC), Washington, DC 20330–1000, telephone (703) 692–4747.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91–13282 Filed 6–5–91; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Army Science Board; Partially Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meetings:

Name of the Committee: Army Science Board (ASB).

Dates/Time of Meeting: 17 June 1991.

Time: 0900–1000 hours Open. 1015–1600 hours Closed. 18 June 1991. 0900–1600 hours Closed.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board Liquid Propellant Study Subgroup will meet with government and private sector representatives to discuss liquid propellant technical and developmental maturity, propellant composition, processing, manufacturing, safety and environmental controls and procedures, and future facilitization and production planning. This meeting will be closed to the public (where indicated) in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91–13338 Filed 6–5–91; 8:45 am]

BILLING CODE 3710–8–M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 27 & 28 June 1991.

Time: 0800–1700 hours.

Place: Fort Belvoir, VA.

Agenda: The Army Science Board (ASB) Infrastructure and Environment Panel will meet to discuss a study on the "Requirements for Predicting Outyear Resource Requirements for Maintaining, Repairing, and Operating Army Facilities." The meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91–13341 Filed 6–5–91; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 18 & 19 July 1991.

Time: 0800–1700 hours.

Place: Fort Belvoir, VA & vicinity.

Agenda: The Army Science Board (ASB) Infrastructure and Environment Panel will meet to receive briefings on the study of the "Requirements for Predicting Outyear Resource Requirements for Maintaining, Repairing, and Operating Army Facilities." The meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91–13342 Filed 6–5–91; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers, Department of the Army

Intent to Prepare a Draft Environmental Impact Statement (DEIS) for the Proposed Reallocation of Storage at Jennings Randolph Lake in Mineral County, West Virginia and Garrett County, Maryland

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Baltimore District, U.S. Army Corps of Engineers is investigating the feasibility of reallocating existing storage (flood control and/or water quality) to water supply storage at Jennings Randolph Lake. Jennings Randolph Lake is located on the North Branch Potomac River in Mineral County, West Virginia, and Garrett County, Maryland. A feasibility study of the proposed action is being conducted under authority of the Water Supply Act of 1958, the Flood Control Act of 1970, and the Water Resources Development Act of 1986. The State of Maryland is the non-Federal sponsor for the feasibility phase of the reallocation study.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by Ms. Claire O'Neill, Project Manager, Baltimore District, U.S. Army Corps of Engineers, ATTN: CENAB-PL-B, P.O. Box 1715, Baltimore, Maryland 21203–1715, telephone (301) 962–4958.

SUPPLEMENTARY INFORMATION: 1. Jennings Randolph Lake is located on the North Branch Potomac River, approximately 8 miles upstream of its confluence with the Savage River. It is situated on the border between Mineral County, West Virginia, and Garrett County, Maryland, about 230 miles upstream of Washington DC. The dam was completed in 1981, and is operated by the Corps of Engineers. The dam controls 263 square miles of drainage and is authorized to provide flood control, water supply, water quality control, and recreation. The reservoir storage is currently allocated to water supply (41,000 acre-feet), water quality control (51,000 acre-feet) and flood control (36,200 acre-feet). The present use of the Jennings Randolph water quality storage has produced significant improvements to the North Branch Potomac River downstream of the dam, particularly during low flow conditions; however, extensive lake drawdowns have resulted from water quality releases.

Jennings Randolph Lake extends 5.5 miles covering 952 acres at the full conservation pool of 1,466 feet, mean sea level. The 4,700 acres of project lands lie in a densely wooded winding gorge in the Appalachian Highlands. A variety of recreational opportunities exist along the lake. The major attractions offered at Jennings Randolph Lake are a nature trail, sightseeing at two project overlooks, picnic facilities, campgrounds, fishing access, and a boat launch.

2. Increasing population, industrial development and economic growth in the Potomac River basin are causing demands on the basin's water and related land resources. The State of Maryland recently enacted consumptive use legislation which regulates facilities that withdraw water from the Potomac River and its tributaries. Durings periods of low flow, the Maryland regulation mandates that consumptive users replace their consumptive loss or, alternatively, shut down their operation. Several water users are interested in the purchase of storage at Jennings Randolph Lake to meet their consumptive use requirements. The proposed action consists of reallocating some of the existing storage (flood control and/or water quality) to water supply storage.

3. The Jennings Randolph Reallocation Feasibility Study will investigate a range of alternatives including:

(a) No action.

(b) Reallocation of the present water quality storage to water supply. No increase in the present conservation lake elevation would occur. The maximum amount of storage to be considered for reallocation is 6,000 acre-feet.

(c) Reallocation of the present flood control storage to water supply. The present conservation pool elevation would be increased. Several levels of reallocation will be investigated ranging from a minimum of a 6-foot rise to a maximum of an 18-foot rise in the present conservation lake level which would mean an additional 5,800 to 18,200 acre-feet of water supply storage, respectively. Water quality releases would continue to have a significant influence on lake operations.

The feasibility study will evaluate the beneficial and adverse impacts of the proposed reallocation alternatives including the following issues: additional water supply releases, lake

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drawdowns beyond the current operations, decreased flood control storage, and decreased water quality storage.

4. The Baltimore District is preparing a Draft Environmental Impact Statement (DEIS) which will describe the impacts of the proposed action on the environmental, cultural, and recreational resources in the study area, as well as the existing level of flood protection. The overall public interest will also be addressed. If applicable, the DEIS will also apply guidelines issued by the Environmental Protection Agency, under authority of section 404(b)(1) of the Clean Water Act of 1977 (Public Law 95–217).

5. A notice of study initiation will be distributed to interested private individuals and organizations, as well as Federal, state, and local agencies informing them of the study and our intent to prepare a DEIS, and requesting their comments. A scoping meeting is not planned at this time. The Baltimore District invites potentially affected Federal, state, and local agencies, and other interested organizations and parties to participate in this study. Agencies that will be involved in the feasibility study and EIS process include, but are not limited to, the U.S. Environmental Protection Agency; U.S. Fish and Wildlife Service; U.S. Geological Survey; U.S. Soil Conservation Service; National Park Service; West Virginia Department of Natural Resources; Maryland Department of Natural Resources; Maryland Department of the Environment; Maryland Historical Trust; West Virginia Department of Culture and History; Mineral County, West Virginia; Garrett County, Maryland; the Interstate Commission on the Potomac River Basin; the Tri-County Council for Western Maryland and the Upper Potomac River Commission. Additional study newsletters, notices and workshops will be included as part of the public involvement program, as needed.

6. The DEIS is tentatively scheduled to be available for public review in April 1993.

Frank R. Finch,

Colonel, Corps of Engineers,

District Engineer.

[FR Doc. 91–13335 Filed 6–5–91; 8:45 am]

BILLING CODE 3710–41–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Education; Meeting

ACTION: Notice of closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming closed meeting of the Achievement Levels Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES: June 12, 1991.

TIME: 9 a.m. to 1 p.m. (M.D.T.).

LOCATION: Colorado State Department of Education, 201 East Colfax Avenue, Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, U.S. Department of Education, 1100 L Street, NW., suite 7322, Washington, DC 20001–4013. Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Act (NAEP Improvement Act), Title III–C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297); (20 USC 1221e–1).

The Board is established to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons. On June 12, 1991, the Achievement Levels Committee will convene in a closed meeting to review and discuss recommendations on achievement levels as the draft report of the Achievement Levels Setting for the 1990 Mathematics Assessment is being finalized before results are released to the public. The discussion will include references to specific items from the 1990 Mathematics Assessment, the disclosure of which would significantly frustrate implementation of the NAEP. Further, premature disclosure of these data may be misleading and could have serious consequences for third parties, whose performance could be misinterpreted, leading to decisions being taken by the Department and/or others, that would be based on incomplete, confusing, or erroneous inferrences being drawn. Such matters are protected by exemption 9(B) of section 552b(c) of title 5 U.S.C. The meeting will begin at 9 a.m. and conclude approximately 1 p.m. A summary of the activities and related matters, which are informative to the public and consistent with the policy of section 5 U.S.C. 552b, will be available to the public within 14 days after the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, 1100 L Street, NW., suite 7322, Washington, DC, from 8:30 a.m. to 5 p.m.

Dated: June 3, 1991.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 91–13462 Filed 6–5–91; 8:45 am]

BILLING CODE 4000–01–M

National Assessment Governing Board; Teleconference Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming teleconference meeting of the Joint Executive and Achievement Levels Committee of the National Assessment Governing Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: June 19, 1991.

TIME: 22 a.m. e.d.t.

PLACE: National Assessment Governing Board, suite 7322, 1100 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, suite 7322, 1100 L Street, NW., Washington, DC 20005–4013. Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III–C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), (20 U.S.C. 1221e–1).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. It is responsible for developing specifications for test design and methodology and for developing guidelines and standards for analysis plans and for reporting and disseminating results. The Board also has responsibility for selecting subject areas to be assessed, identifying achievement goals for each age and grade tested, and establishing standards and procedures for interstate, regional, and national comparisons. The Joint Executive and Achievement Levels Committee of the National Assessment Governing Board will meet via teleconference on June 19, 1991, from 11 a.m. e.d.t., until the completion of business. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Committee's deliberations. This meeting is being held to review and to approve the release and dissemination plans for the Board's Achievement Levels Report. Following the joint meeting the Executive Committee will continue in session to consider and act on several items including Fiscal Year 1993 budget request, a possible assessment schedule for years beyond 1994, and pending legislative proposals. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, suite 7322, 1100 L Street, NW., Washington, DC, from 8:30 a.m. to 5 p.m., Monday through Friday.

Dated: June 3, 1991.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 91–13463 Filed 6–5–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number or responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before July 8, 1991. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586–2171.

SUPPLEMENTARY INFORMATION: The first energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC–500.
3. 1902–0058.
4. Application for Licensee for Water Projects 5MW Capacity.
5. Revision.
6. On occasion.
7. Mandatory.
8. Individuals or households, State or local governments, Businesses or other for-profit, and Small businesses or organizations.
9. 49 respondents.
10. 1 response.
11. 832 hours per response.
12. 40,768 hours.
13. Rule RM89–7 requires the Commission to carry out the requirements of section 10(j) of the Federal Power Act. These requirements were brought about by changes made by the Electric Consumers Protection Act of 1986 (ECPA), concerning the licensee making information readily available regarding the construction and operation of the licensee project for public information.

The second energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC–505.
3. 1902–0115.
4. Application for Licensee for Water Projects 5MW or less Capacity.
5. Revision.
6. On occasion.
7. Mandatory.
8. Individuals or households, State or local governments, Businesses or other for-profit, and small businesses or organizations.
9. 70 respondents.
10. 1 response.
11. 178 hours per response.
12. 12,460 hours.
13. Rule RM89–7 requires the Commission to carry out the requirements of section 10(j) of the Federal Power Act. These requirements were brought about by changes made by the Electric Consumers Protection Act of 1986 (ECPA), concerning the licensee making information readily available regarding the construction and operation of the licensee project for public information.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

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Issued in Washington, DC, May 31, 1991.
Yvonne Bishop,
Director, Statistical Standards, Energy Information Administration.
[FR Doc. 91-13385 Filed 6-5-91; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 2368-001 Maine]

Maine Public Service Co.; Availability of Environmental Assessment

May 30, 1991.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for license for the Squa Pan Hydroelectric Project, located on the Squa Pan Stream in Aroostook County, Maine, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the environmental impacts of the project and has concluded that approval of the project, with appropriate enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,
Secretary.
[FR Doc. 91-13307 Filed 6-5-91; 8:45 am]
BILLING CODE 6717-01-M

Application Filed With the Commission

May 31, 1991.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. Type of Application: Declaration of Intention.

b. Docket No: EL91-35.

c. Date Filed: May 14, 1991.

d. Applicant: Ms. Debra Whitehead.

e. Name of Project: Old Columbia Dam.

f. Location: On the Duck River at River Mile 133.53 in Maury County, Tennessee.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. Applicant Contact: Ms. Debra Whitehead, Route 2, Box 340, Hohenwald, TN 38462, (615) 796-4139.

i. FERC Contact: Diane M. Scire, (202) 219-2882.

j. Comment Date: July 18, 1991.

k. Description of Project: The proposed project would utilize the existing Old Columbia Dam and Reservoir, owned by the City of Columbia, Tennessee, and would consist of: (1) An existing concrete gravity dam approximately 572 feet long and 22 feet high, with four spillway sections; (2) a reservoir having minimal pondage; (3) an existing powerhouse, located near the center of the dam, to be renovated and equipped with 2 turbine-generator units having a total rated capacity of 730 kilowatts; (4) a tailrace returning flow to the river immediately downstream of the dam; (5) a new transmission line about 250 feet long; and (6) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. Purpose of Project: Project energy would be sold to the Tennessee Valley Authority.

m. This notice also consists of the following standard paragraphs: B, C, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATIONS," "PROTEST" or "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: The Director, Division of Project Compliance and Administration, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1165UCP, at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

D2. Agency Comments—The Commission invites federal, state, and local agencies to file comments on the described application. (Agencies may obtain a copy of the application directly from the applicant.) If an agency does not file comments within the time specified for filing comments, the Commission will presume that the agency has none. One copy of an agency's comments must also be sent to the applicant's representatives.

Lois D. Cashell,
Secretary.
[FR Doc. 91-13300 Filed 6-5-91; 8:45 am]
BILLING CODE 6717-01-M

K N Energy, Inc.; Notice of Self-Implementing Transactions

[Docket Nos. ST91-7960-000 through ST91-8462-000]

May 30, 1991.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) and section 5 of the Outer Continental Shelf Lands Act.[1]

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

The "Recipient" column in the following table indicates the entity receiving or puchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G-S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G-LT" or "G-LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "G-HT" or "G-HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's regulations.

A "K-S" indicates transportation of natural gas on the Outer Continental Shelf by an intrastate pipeline on behalf of shippers other than interstate pipelines pursuant to § 284.303 of the Commission's regulations.

Lois D. Cashell,
Secretary.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]
ST91-7960	K N Energy, Inc	Colorado Interstate Gas Co	04-01-91	G	5,000
ST91-7961	Texas Eastern Transmission Corp	Clajon Marketing, L.P.	04-01-91	G-S	250,000
ST91-7962	Texas Eastern Transmission Corp	Tenngasco Corp	04-01-91	G-S	200,000
ST91-7963	Texas Eastern Transmission Corp	Equitable Gas Co	04-01-91	B	10,000
ST91-7964	Natural Gas Pipeline Co. of America	BP Gas Transmission Co	04-01-91	G-S	160,000
ST91-7965	Panhandle Eastern Pipe Line Co	Indiana Gas Co	04-01-91	G-S	51,431
ST91-7966	Panhandle Eastern Pipe Line Co	NGC Transportation Inc	04-01-91	G-S	5,000
ST91-7967	CNG Transmission Corp	Enron Gas Marketing	04-01-91	G-S	50,000
ST91-7968	CNG Transmission Corp	Panhandle Trading	04-01-91	G-S	200,000
ST91-7969	CNG Transmission Corp	Panhandle Trading	04-01-91	G-S	200,000
ST91-7970	CNG Transmission Corp	Panhandle Trading	04-01-91	G-S	200,000
ST91-7971	CNG Transmission Corp	Panhandle Trading	04-01-91	G-S	15,000
ST91-7972	CNG Transmission Corp	O & R Energy	04-01-91	G-S	50,000
ST91-7973	CNG Transmission Corp	Enron Gas Marketing	04-01-91	G-S	50,000
ST91-7974	CNG Transmission Corp	Enron Gas Marketing	04-01-91	G-S	250,000
ST91-7975	Transwestern Pipeline Co	PSI Gas Marketing, Inc	04-01-91	B	30,000
ST91-7976	Northern Natural Gas Co	Mountain Front Pipeline Co., Inc	04-01-91	G-S	80,000
ST91-7977	Columbia Gulf Transmission Co	O & R Energy, Inc	04-01-91	G-S	516
ST91-7978	Columbia Gas Transmission Co	Gulf Ohio Corp	04-01-91	G-S	1,500
ST91-7979	Columbia Gas Transmission Co	Jessop Steel Co	04-01-91	G-S	40,000
ST91-7980	Columbia Gas Transmission Co	Northeast Ohio Gas Marketing, Inc	04-01-91	G-S	380,000
ST91-7981	Columbia Gas Transmission Co	Phibro Energy, Inc	04-02-91	G-S	10,000
ST91-7982	Natural Gas Pipeline Co. of America	Trinity Pipeline, Inc	04-02-91	G-S	100,000
ST91-7983	Natural Gas Pipeline Co. of America	Seagull Marketing Services, Inc	04-02-91	C	10,000
ST91-7984	Enogex, Inc	Enron Industrial Natural Gas Co	04-02-91	C	50,000
ST91-7986	ONG Transmission Co	Williams Natural Gas Co	04-02-91	G-S	225,000
ST91-7987	Transcontinental Gas Pipe Line Co	Citizens Gas Supply Corp	04-02-91	B	606
ST91-7988	South Georgia Natural Gas Co	City of Dawson	04-02-91	G-S	10,000
ST91-7989	South Georgia Natural Gas Co	Gold Kist, Inc	04-02-91	B	6,000
ST91-7990	Southern Natural Gas Co	Cullman-Jefferson Counties Gas District	04-02-91	B	609
ST91-7991	Southern Natural Gas Co	City of Dawson	04-02-91	G-S	10,000
ST91-7992	Southern Natural Gas Co	South Georgia Natural Gas Co	04-03-91	B	100,000
ST91-7993	Trailblazer Pipeline Co	Northern Indiana Public Service Co	04-03-91	B	55,000
ST91-7994	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	04-03-91	G-S	123,600
ST91-7995	United Gas Pipe Line Co	Graham Energy Marketing Corp	04-03-91	B	40,000
ST91-7996	Transcontinental Gas Pipe Line Co	Valero Transmission Co., Et Al	04-03-91	G-S	15,000
ST91-7997	Transcontinental Gas Pipe Line Co	Hunt Petroleum Corp	04-03-91	G-S	35,000
ST91-7998	Columbia Gulf Transmission Co	Stellar Gas Co	04-03-91	G-S	25,000
ST91-7999	Columbia Gulf Transmission Co	Unical Exploration Corp	04-04-91	C	18,000
ST91-8000	Lone Star Gas Co	Transwestern Pipeline Co	04-04-91	G-S	40,000
ST91-8002	Williams Natural Gas Co	Continental Natural Gas Inc	04-04-91	G-S	75,000
ST91-8003	Trunkline Gas Co	Equitable Resources Marketing Co	04-04-91	G-S	35,000
ST91-8004	Trunkline Gas Co	Coast Energy Group, Inc	04-04-91	E	100,000
ST91-8005	Trunkline Gas Co	Commonwealth Gas Co., et al	04-04-91	G-S	200,000
ST91-8006	Trunkline Gas Co	Entrade Corp	04-04-91	B	30,000
ST91-8007	Midwestern Gas Transmission Co	Northern Indiana Public Service Co	04-05-91	B	30,000

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Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]
ST91-8008	Tennessee Gas Pipeline Co	Williams Gas Marketing Co	04-05-91	G-S	100,000
ST91-8009	ANR Pipeline Co	Exxon Corp	04-05-91	G-S	15,000
ST91-8010	Natural Gas Pipeline Co. of America	Western Gas Processors, Ltd	04-05-91	G-S	30,000
ST91-8011	Natural Gas Pipeline Co. of America	PSI Gas Marketing, Ind	04-05-91	G-S	250,000
ST91-8012	Gulf Energy Pipeline Co	Trunkline Gas Co	04-05-91	C	19,000
ST91-8013	Texas Gas Transmission Corp	Coast Energy Group	04-05-91	G-S	500,000
ST91-8014	Texas Gas Transmission Corp	Gibson County Utility District	04-05-91	B	4,142
ST91-8015	Texas Gas Transmission Corp	ARCO Natural Gas Marketing, Inc	04-05-91	G-S	250,000
ST91-8016	Delhi Gas Pipeline Corp	Southern California Gas Co	04-05-91	C	99,909
ST91-8017	Delhi Gas Pipeline Corp	Transwestern Pipeline Co	04-05-91	C	10,000
ST91-8018	Phillips Gas Pipeline Co	Phillips Natural Gas Co	04-05-91	B	35,000
ST91-8019	Tennessee Gas Pipeline Co	North Penn Gas Co	04-05-91	B	1,000
ST91-8020	Louisiana Resources, Inc	Louisiana Gas Marketing Co	04-05-91	C	30,000
ST91-8021	Columbia Gas Transmission Corp	Tenngasco Corp	04-05-91	G-S	50,000
ST91-8022	ANR Pipeline Co	Batesville Water & Gas Utility, et al	04-08-91	B	40,000
ST91-8023	ANR Pipeline Co	Northern Indiana Public Service Co	04-08-91	B	150,000
ST91-8024	ANR Pipeline Co	Shell Western E&P Inc	04-08-91	G-S	15,000
ST91-8025	ANR Pipeline Co	Northern Illinois Gas Co	04-08-91	B	4,500
ST91-8026	ANR Pipeline Co	Consolidated Edison Co. of NY, Inc	04-08-91	B	250,000
ST91-8027	Stingray Pipeline Co	American Central Gas Companies, Inc	04-08-91	K-S	50,000
ST91-8028	Stingray Pipeline Co	American Central Gas Marketing Co	04-08-91	K-S	75,000
ST91-8029	Stingray Pipeline Co	Transtate Gas Service Co	04-08-91	K-S	50,000
ST91-8030	Enogex, Inc	Phillips Gas Pipeline Co	04-08-91	C	25,000
ST91-8031	Enogex, Inc	Phillips Gas Pipeline Co	04-08-91	C	20,000
ST91-8032	Enogex, Inc	Panhandle Eastern Pipeline Co	04-08-91	C	45,000
ST91-8033	Enogex, Inc	Natural Gas Pipeline Co. of America	04-08-91	C	50,000
ST91-8034	Enogex, Inc	ANR Pipeline Co	04-08-91	C	50,000
ST91-8035	Enogex, Inc	Panhandle Eastern Pipe Line Co	04-08-91	C	20,000
ST91-8036	Texas Eastern Transmission Corp	Henley & Bird	04-09-91	B	800,000
ST91-8037	Texas Eastern Transmission Corp	New Jersey Natural Gas Co	04-09-91	B	800,000
ST91-8038	Texas Eastern Transmission Corp	Philadelphia Electric Co	04-09-91	B	800,000
ST91-8039	Texas Eastern Transmission Corp	National Fuel Gas Distribution Corp	04-09-91	B	800,000
ST91-8040	Texas Eastern Transmission Corp	T W Phillips Gas & Oil Co	04-09-91	B	800,000
ST91-8041	United Gas Pipe Line Co	Pennzoil Gas Marketing Co	04-09-91	G-S	206,000
ST91-8042	Equitrans	Polaris Pipeline Corp	04-09-91	G-S	50,604
ST91-8043	Enogex, Inc	Arkla Energy Resources	04-09-91	C	20,000
ST91-8044	Natural Gas Pipeline Co. of America	Niagara Mohawk Power Corp	04-09-91	B	150,000
ST91-8045	Natural Gas Pipeline Co. of America	Iowa-Illinois Gas and Electric Co	04-09-91	B	150,000
ST91-8046	Panhandle Eastern Pipe Line Co	Gastrak Corp	04-09-91	G-S	100,000
ST91-8047	Tennessee Gas Pipeline Co	Indeck-Yerkes Limited Partnership	04-09-91	G-S	12,000
ST91-8048	Monterey Pipeline Co	Trunkline Gas Co., et al	04-09-91	C	7,500
ST91-8049	ONG Transmission Co	Northern Natural Gas Co	04-10-91	C	75,000
ST91-8050	Natural Gas Pipeline Co. of America	Peoples Gas Light & Coke Co	04-10-91	B	20,000
ST91-8051	Natural Gas Pipeline Co. of America	Central Illinois Public Service Co	04-10-91	B	15,000
ST91-8052	Northern Natural Gas Co	Northern Minnesota Utilities	04-10-91	B	300,000
ST91-8053	[3] Northern Natural Gas Co	Wisconsin Power & Light Co	04-10-91	B	100,000
ST91-8054	[3] Northern Natural Gas Co	V.H.C. Gas Systems, L.P	04-10-91	G-S	250,000
ST91-8055	[3] Texas Eastern Transmission Corp	Citizens Gas Supply Corp	04-10-91	G-S	2,590,000
ST91-8056	[3] Texas Eastern Transmission Corp	Citizens Gas Supply Corp	04-10-91	G-S	2,590,000
ST91-8057	[3] Texas Eastern Transmission Corp	Citizens Gas Supply Corp	04-10-91	G-S	2,590,000
ST91-8058	[3] Texas Eastern Transmission Corp	Citizens Gas Supply Corp	04-10-91	G-S	2,590,000
ST91-8059	[3] Texas Eastern Transmission Corp	Citizens Gas Supply Corp	04-10-91	G-S	2,590,000
ST91-8060	[3] Texas Eastern Transmission Corp	Citizens Gas Supply Corp	04-10-91	G-S	2,590,000
ST91-8061	[3] Texas Eastern Transmission Corp	Citizens Gas Supply Corp	04-10-91	G-S	2,590,000
ST91-8062	[3] Texas Eastern Transmission Corp	Appalachian Gas Sales	04-10-91	G-S	10,000
ST91-8063	[3] Texas Eastern Transmission Corp	Citizens Gas Supply Corp	04-10-91	G-S	2,590,000
ST91-8064	[3] Texas Eastern Transmission Corp	Citizens Gas Supply Corp	04-10-91	G-S	2,590,000
ST91-8065	[3] Texas Eastern Transmission Corp	Citizens Gas Supply Corp	04-10-91	G-S	2,590,000
ST91-8066	[3] Texas Eastern Transmission Corp	Citizens Gas Supply Corp	04-10-91	G-S	2,590,000
ST91-8067	[3] Texas Eastern Transmission Corp	Citizens Gas Supply Corp	04-10-91	G-S	2,590,000
ST91-8068	[3] Texas Eastern Transmission Corp	Citizens Gas Supply Corp	04-10-91	G-S	2,590,000
ST91-8069	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8070	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8071	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	20,000
ST91-8072	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8073	[3] Arkla Energy Resources	Continental Natural Gas, Inc	04-10-91	G-S	50,000
ST91-8074	[3] Arkla Energy Resources	Sunbelt Oilfield Services, Inc	04-10-91	G-S	15,000
ST91-8075	[3] Arkla Energy Resources	Panda Resources, Inc	04-10-91	G-S	10,000
ST91-8076	[3] Arkla Energy Resources	Continental Natural Gas, Inc	04-10-91	G-S	50,000
ST91-8077	[3] Arkla Energy Resources	Conagra Frozen Foods	04-10-91	G-S	3,200
ST91-8078	[3] Arkla Energy Resources	Hadson Gas System	04-10-91	G-S	12,400
ST91-8079	[3] Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8080	[3] Arkla Energy Resources	Union Natural Gas Pipeline Co	04-10-91	G-S	5,000
ST91-8081	[3] Arkla Energy Resources	Reliance Gas Marketing Co	04-10-91	G-S	20,000
ST91-8082	[3] Arkla Energy Resources	International Paper Co	04-10-91	G-S	112,000
ST91-8083	[3] Arkla Energy Resources	Agrico Chemical Co	04-10-91	G-S	49,000
ST91-8084	[3] Arkla Energy Resources	ARCO Natural Gas Marketing, Inc	04-10-91	G-S	140,000
ST91-8085	[3] Arkla Energy Resources	ARCO Natural Gas Marketing, Inc	04-10-91	G-S	150,000
ST91-8086	[3] Arkla Energy Resources	American Central Gas Co	04-10-91	G-S	10,000

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]
ST91-8087	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8088	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	20,000
ST91-8089	[3] Arkla Energy Resources	American Central Gas Co	04-10-91	G-S	10,000
ST91-8090	[3] Arkla Energy Resources	ARCO Natural Gas Marketing, Inc	04-10-91	G-S	150,000
ST91-8091	[3] Arkla Energy Resources	Hadson Gas System	04-10-91	G-S	12,400
ST91-8092	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8093	[3] Arkla Energy Resources	International Paper Co	04-10-91	G-S	112,000
ST91-8094	[3] Arkla Energy Resources	Reliance Gas Marketing Co	04-10-91	G-S	20,000
ST91-8095	[3] Arkla Energy Resources	Mega Natrural Gas Co	04-10-91	G-S	150,000
ST91-8096	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8097	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	112,000
ST91-8098	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8099	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8100	[3] Arkla Energy Resources	ARCO Natural Gas Marketing, Inc	04-10-91	G-S	150,000
ST91-8101	[3] Arkla Energy Resources	American Central Gas Co	04-10-91	G-S	10,000
ST91-8102	[3] Arkla Energy Resources	Continental Natural Gas, Inc	04-10-91	G-S	50,000
ST91-8103	[3] Arkla Energy Resources	Panda Resources, Inc	04-10-91	G-S	10,000
ST91-8104	[3] Arkla Energy Resources	Reliance Gas Marketing Co	04-10-91	G-S	20,000
ST91-8105	[3] Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8106	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	20,000
ST91-8107	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8108	[3] Arkla Energy Resources	ARCO Natural Gas Marketing, Inc	04-10-91	G-S	150,000
ST91-8109	[3] Arkla Energy Resources	International Paper Co	04-10-91	G-S	112,000
ST91-8110	[3] Arkla Energy Resources	American Central Gas Co	04-10-91	G-S	10,000
ST91-8111	[3] Arkla Energy Resources	Panda Resources, Inc	04-10-91	G-S	10,000
ST91-8112	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	20,000
ST91-8113	[3] Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8114	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8115	[3] Arkla Energy Resources	American Central Gas Co	04-10-91	G-S	10,000
ST91-8116	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8117	[3] Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8118	[3] Arkla Energy Resources	Panda Resources, Inc	04-10-91	G-S	10,000
ST91-8119	[3] Arkla Energy Resources	ARCO Natural Gas Marketing, Inc	04-10-91	G-S	150,000
ST91-8120	[3] Arkla Energy Resources	Panda Resources, Inc	04-10-91	G-S	10,000
ST91-8121	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8122	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	20,000
ST91-8123	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	20,000
ST91-8124	[3] Arkla Energy Resources	ARCO Natural Gas Marketing, Inc	04-10-91	G-S	150,000
ST91-8125	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8126	[3] Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8127	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8128	[3] Arkla Energy Resources	ARCO Natural Gas Marketing, Inc	04-10-91	G-S	150,000
ST91-8129	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8130	[3] Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8131	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8132	[3] Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8133	[3] Arkla Energy Resources	ARCO Natural Gas Marketing, Inc	04-10-91	G-S	150,000
ST91-8134	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8135	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8136	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8137	[3] Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8138	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8139	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8140	[3] Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8141	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8142	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8143	[3] Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8144	[3] Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8145 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8146 [3]	Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8147 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8148 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8149 [3]	Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8150 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8151 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8152 [3]	Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8153 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8154 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000

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ST91-8155 [3]	Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8156 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8157 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8158 [3]	Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8159 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8160 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8161 [3]	Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8162 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8163 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8164 [3]	Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8165 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8166 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8167 [3]	Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8168 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8169 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8170 [3]	Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8171 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8172 [3]	Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8173 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8174 [3]	Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8175 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8176 [3]	Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8177 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8178 [3]	Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8179 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8180 [3]	Arkla Energy Resources	Mega Natural Gas Co	04-10-91	G-S	150,000
ST91-8181 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8182 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8183 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8184 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8185 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8186 [4]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8187 [3]	Arkla Energy Resources	Vesta Energy Co	04-10-91	G-S	25,000
ST91-8188	Great Lakes Gas Transmission L.P	Natural Gas Pipeline Co. of America	04-10-91	G	171,325
ST91-8189	United Gas Pipe Line Co	Tejas Hydrocarbons Co	04-10-91	G-S	154,500
ST91-8190	Midwestern Gas Transmission Co	Women's Natural Gas Corp	04-11-91	G-S	46,000
ST91-8191	Trailblazer Pipeline Co	Northwestern Public Service Co	04-11-91	B	177,000
ST91-8192 [3]	Natural Gas Pipeline Co. of America	Northern Illinois Gas Co	04-11-91	G-S	55,000
ST91-8193	United Gas Pipe Line Co	Consolidated Fuel Corp	04-11-91	G-S	77,250
ST91-8194	Texas Eastern Transmission Corp	Orange & Rockland Utilities, Inc	04-11-91	B	200,000
ST91-8195	Texas Eastern Transmission Corp	North Alabama Gas District	04-11-91	B	800,000
ST91-8196 [3]	Natural Gas Pipeline Co. of America	Hadson Gas Systems, Inc	04-12-91	G-S	300,000
ST91-8197 [3]	Natural Gas Pipeline Co. of America	Hadson Gas Systems, Inc	04-12-91	G-S	50,000

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]
ST91-8198	Louisiana-Nevada Transit Co	Holnam, Inc	04-12-91	G-S	4,300
ST91-8199	Columbia Gulf Transmission Co	United Cities Gas Co	04-12-91	B	10,250
ST91-8200	Transcontinental Gas Pipe Line Corp	South Jersey Gas Co	04-12-91	B	2,260,000
ST91-8201	El Paso Natural Gas Co	PSI Gas Marketing, Inc	04-12-91	G-S	56,850
ST91-8202	Red River Pipeline	Caprock Pipeline Co	04-15-91	C	250,000
ST91-8203	High Island Offshore System	Texaforma Transportation Co	04-12-91	K-S	5,000
ST91-8204	High Island Offshore System	CMS Gas Marketing Co	04-12-91	K-S	145,000
ST91-8205	High Island Offshore System	Catamount Natural Gas, Inc	04-12-91	K-S	1,450,000
ST91-8206	United Gas Pipe Line Co	NGC Transportation, Inc	04-12-91	G-S	5,150
ST91-8207	United Gas Pipe Line Co	Tex/Con Gas Pipeline Co	04-12-91	G-S	25,750
ST91-8208	Delhi Gas Pipeline Corp	El Paso Natural Gas Co	04-12-91	C	5,000
ST91-8209	Delhi Gas Pipeline Corp	Transwestern Pipeline Co	04-12-91	C	5,000
ST91-8210	Tennessee Gas Pipeline Co	CNG Transmission Corp	04-12-91	G	1,000
ST91-8211	Northern Natural Gas Co	Peoples Natural Gas Co	04-12-91	B	9,248
ST91-8212	Kansas Pipeline Partnership	KPL Gas Service Co	04-12-91	G-HT	50,000
ST91-8213	Kansas Pipeline Partnership	KPL Gas Service Co	04-12-91	G-HT	46,332
ST91-8214	Kansok Partnership	KPL Gas Service Co	04-12-91	C	50,000
ST91-8215	Kansas Natural Partnership	KPL Gas Service Co	04-12-91	C	35,000
ST91-8216	Kansas Natural Partnership	KPL Gas Service Co	04-12-91	C	46,332
ST91-8217	Kansas Natural Partnership	KPL Gas Service Co	04-12-91	C	50,000
ST91-8218	Riverside Pipeline Co., L.P	KPL Gas Service Co	04-12-91	B	50,000
ST91-8219	Riverside Pipeline Co., L.P	KPL Gas Service Co	04-12-91	B	46,332
ST91-8220	Riverside Pipeline Co., L.P	KPL Gas Service Co	04-12-91	B	21,000
ST91-8221	Florida Gas Transmission Co	West Florida Natural Gas Co	04-15-91	G-S	9,650
ST91-8222	Florida Gas Transmission Co	Peoples Gas System, Inc	04-15-91	G-S	6,081
ST91-8223	Northern Natural Gas Co	K N Gas Marketing, Inc	04-15-91	G-S	150,000
ST91-8224	U-T Offshore System	Catamount Natural Gas, Inc	04-15-91	K-S	200,000
ST91-8225	Transcontinental Gas Pipe Line Corp	Coast Energy Group	04-15-91	G-S	650,000
ST91-8226	Transcontinental Gas Pipe Line Corp	UGI Corp	04-15-91	B	605,000
ST91-8227	Transcontinental Gas Pipe Line Corp	CNG Producing Co	04-15-91	G-S	60,000
ST91-8228	Midwestern Gas Transmission Co	North Canadian Marketing Corp	04-15-91	G-S	150,000
ST91-8229	Viking Gas Transmission Co	Mobil Oil Canada	04-15-91	G-S	100,000
ST91-8230	Tennessee Gas Pipeline Co	Equitrans, Inc	04-15-91	G	2,073
ST91-8231	Williston Basin Interstate P/L Co	North Canadian Resources, Inc	04-15-91	G-S	40,167
ST91-8232	Williston Basin Interstate P/L Co	Rainbow Gas Co	04-15-91	G-S	84,190
ST91-8233	Lone Star Gas Co	Transwestern Pipeline Co	04-15-91	C	50,000
ST91-8234	ANR Pipeline Co	Philadelphia Electric Co	04-15-91	B	50,000
ST91-8235	ANR Pipeline Co	Briggs & Stratton Corp	04-15-91	G-S	1,400
ST91-8236	ANR Pipeline Co	Unigas Energy, Inc	04-15-91	G-S	100,000
ST91-8237	ANR Pipeline Co	Iowa Southern Utilities Co	04-15-91	B	2,798
ST91-8238	ANR Pipeline Co	Dayton Power & Light Co	04-15-91	B	200,000
ST91-8239	ANR Pipeline Co	Iowa Southern Utilities Co	04-15-91	B	4,402
ST91-8240	ANR Pipeline Co	Iowa Southern Utilities Co	04-15-91	B	2,796
ST91-8241	ANR Pipeline Co	City of Hamilton	04-15-91	B	10,000
ST91-8242	ANR Pipeline Co	Fort Howard Corp	04-15-91	G-S	1,650
ST91-8243	South Georgia Natural Gas Co	City of Sylvester	04-15-91	B	379
ST91-8244	South Georgia Natural Gas Co	Southeastern Gas Gathering, Ltd	04-15-91	G-S	100,000
ST91-8245	Southern Natural Gas Co	Graysville Municipal Gas System	04-15-91	B	3,706
ST91-8246	Southern Natural Gas Co	Jasper Utilities Board	04-15-91	B	4,216
ST91-8247	Southern Natural Gas Co	Yuma Gas Corp	04-15-91	G-S	25,000
ST91-8248	Mississippi River Transmission Corp	City of Chester	04-15-91	B	32,880
ST91-8249	Mississippi River Transmission Corp	City of Waterloo	04-15-91	B	35,880
ST91-8250	Mississippi River Transmission Corp	City of Potosi	04-15-91	B	40,080
ST91-8251	Mississippi River Transmission Corp	City of Bismarck	04-15-91	B	6,120
ST91-8252	Mississippi River Transmission Corp	Village of Dupo	04-15-91	B	17,760
ST91-8253	Columbia Gas Transmission Corp	Appalachian Gas Sales	04-15-91	G-S	10,000
ST91-8254	Transok, Inc	Arkla Energy Resources	04-15-91	C	20,000
ST91-8255	Trunkline Gas Co	Texas Power Corp	04-15-91	G-S	80,000
ST91-8256	Gulf Energy Pipeline Co	Natural Gas Pipeline Co. of America	04-16-91	C	30,000
ST91-8257	Transco-Louisiana Intrastate P/L Co	Texas Gas Transmission Corp	04-16-91	C	200,000
ST91-8258	Texas Gas Transmission Corp	Polaris Corp	04-16-91	B	100,000
ST91-8259	Texas Gas Transmission Corp	Bridgeline Gas Distribution Co	04-16-91	B	200,000
ST91-8260	Texas Gas Transmission Corp	Bridgeline Gas Distribution Co	04-16-91	B	55,000
ST91-8261	Texas Gas Transmission Corp	Bridgeline Gas Distribution Co	04-16-91	B	100,000
ST91-8262	Natural Gas Pipeline Co. of America	Mega Natural Gas Co	04-15-91	G-S	50,000
ST91-8263	Transcontinental Gas Pipe Line Corp	Tropicana Products, Inc	04-17-91	G-S	20,000
ST91-8264	Trunkline Gas Co	Seagull Marketing Services, Inc	04-17-91	G-S	90,000
ST91-8265	ONG Transmission Co	Arkla Energy Resources	04-17-91	C	50,000
ST91-8266	ONG Transmission Co	ANR Pipeline Co	04-17-91	C	50,000
ST91-8267	Delhi Gas Pipeline Co	Northern Natural Gas Co	04-17-91	C	420,000
ST91-8268	Delhi Gas Pipeline Co	Mississippi River Transmission Corp	04-17-91	C	15,000
ST91-8269	ANR Pipeline Co	Wisconsin Natural Gas Co	04-17-91	B	100,000
ST91-8270	ANR Pipeline Co	Northern Indiana Public Service Co	04-17-91	B	90,000
ST91-8271	ANR Pipeline Co	Michigan Gas Co	04-17-91	B	4,000
ST91-8272	ANR Pipeline Co	Michigan Gas Co	04-17-91	B	20,000
ST91-8273	ANR Pipeline Co	Wolverine Power Supply Cooperative, Inc	04-17-91	G-S	1,000
ST91-8274	ANR Pipeline Co	Semco Pipeline Co	04-17-91	B	152,738
ST91-8275	Arkla Energy Resources	City of Bismarck, et al	04-17-91	B	722
ST91-8276	United Gas Pipe Line Co	Seagull Marketing Services, Inc	04-17-91	G-S	515,000

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Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]
ST91-8277	Columbia Gulf Transmission Co	CNG Transmission Corp	04-16-91	G	120,000
ST91-8278	Mid Louisiana Gas Co	Quintana Petroleum Corp	04-18-91	G-S	8,000
ST91-8279	ANR Pipeline Co	Transok, Inc	04-18-91	B	100,000
ST91-8280	ANR Pipeline Co	Northern Indiana Public Service Co	04-18-91	B	100,000
ST91-8281	ANR Pipeline Co	Northern Indiana Public Service Co	04-18-91	B	100,000
ST91-8282	ANR Pipeline Co	Vesta Energy Co	04-18-91	G-S	10,000
ST91-8283	ANR Pipeline Co	Dekalb Energy Canada, Ltd	04-18-91	G	30,000
ST91-8284	Transwestern Pipeline Co	Williams Gas Marketing Co	04-18-91	G	50,000
ST91-8285	Natural Gas Pipeline Co. of America	BP Gas, Inc	04-18-91	G	150,000
ST91-8286	Exxon Gas System, Inc	Transcontinental Gas Pipe Line Corp	04-18-91	C	50,000
ST91-8287	Louisiana Resources Co	Stingray Pipe Line Co	04-18-91	C	50,000
ST91-8288	Aquila Gas Systems Corp	Panhandle Eastern Pipe Line Co	04-18-91	C	6,000
ST91-8289	National Fuel Gas Supply Corp	Paragon Gas Transmission	04-18-91	G-S	7,028
ST91-8290	National Fuel Gas Supply Corp	Brooklyn Union Gas Co	04-18-91	G-S	30,000
ST91-8291	National Fuel Gas Supply Corp	Enron Gas Marketing, Inc	04-18-91	G-S	125,000
ST91-8292	National Fuel Gas Supply Corp	Consolidated Fuel Corp	04-18-91	G-S	7,150
ST91-8293	National Fuel Gas Supply Corp	Proctor & Gamble Paper Products	04-18-91	G-S	20,000
ST91-8294	Midwestern Gas Transmission Co	North Canadian Marketing Corp	04-19-91	G-S	150,000
ST91-8295	Transwestern Pipeline Co	Hadson Gas Systems, Inc	04-19-91	G-S	50,000
ST91-8296	Northern Natural Gas Co	West Texas Gas, Inc	04-19-91	B	1,000
ST91-8297	Llano, Inc	Santa Fe Energy Operating Partners, Ltd	04-19-91	C	8,000
ST91-8298	Llano, Inc	Richardson Products Co	04-19-91	C	760
ST91-8299	Llano, Inc	Pacific Enterprises Oil Co	04-19-91	C	2,000
ST91-8300	Llano, Inc	Kiowa Gas Co	04-19-91	C	100
ST91-8301	Columbia Gas Transmission Corp	Cincinnati Gas & Electric Co	04-19-91	B	40,000
ST91-8302	Columbia Gas Transmission Corp	Union Light, Heat & Power Co	04-19-91	B	7,000
ST91-8303	Columbia Gas Transmission Corp	Commissioners of Public Works	04-19-91	B	12,500
ST91-8304	Columbia Gas Transmission Corp	Transport Gas Corp	04-19-91	G-S	9,667
ST91-8305	Williston Basin Interstate P/L Co	Portage Energy, Inc	04-19-91	G-S	73,000
ST91-8306	Trunkline Gas Co	Clinton Gas Transmission, Inc	04-19-91	G-S	5,000
ST91-8307	Texas Eastern Transmission Corp	Texas Southeastern Gas Corp	04-19-91	B	20,000
ST91-8308	Natural Gas Pipeline Co. of America	BP Gas, Inc	04-22-91	G-S	100,000
ST91-8309	El Paso Natural Gas Co	Conoco, Inc	04-22-91	G-S	51,500
ST91-8310	Northern Natural Gas Co	Panda Resources, Inc	04-22-91	G-S	50,000
ST91-8311	Peach Ridge Pipeline Inc	El Paso Natural Gas Co	04-22-91	C	3,000
ST91-8312	Enogex Inc	Enron Industrial Natural Gas Co	04-22-91	C	10,000
ST91-8313	Enogex Inc	Enron Industrial Natural Gas Co	04-22-91	C	150,000
ST91-8314	Enogex Inc	Enron Industrial Natural Gas Co	04-22-91	C	50,000
ST91-8315	Tex/Con Gas Pipeline Co	Plymouth Resources, Inc	04-22-91	C	5,000
ST91-8316	Natural Gas Pipeline Co. of America	Wisconsin Natural Gas Co	04-23-91	B	100,000
ST91-8317	Natural Gas Pipeline Co. of America	Houston Pipe Line Co	04-23-91	B	150,000
ST91-8318	Natural Gas Pipeline Co. of America	Stellar Gas Co	04-23-91	G-S	50,000
ST91-8319	Valero Transmission, L.P.	Transwestern Pipeline Co	04-23-91	C	10,000
ST91-8320	Valero Transmission, L.P.	Tennessee Gas Pipeline Co	04-23-91	C	20,000
ST91-8321	Valero Transmission, L.P.	El Paso Natural Gas Co	04-23-91	C	50,000
ST91-8322	Viking Gas Transmission Co	Cibola Corp	04-23-91	G-S	100,000
ST91-8323	Midwestern Gas Transmission Co	Clinton Gas Transmission, Inc	04-23-91	G-S	120,000
ST91-8324	Midwestern Gas Transmission Co	Entrade Corp	04-23-91	G-S	150,000
ST91-8325	Tennessee Gas Pipeline Co	Interstate Gas Marketing, Inc	04-23-91	G-S	10,000
ST91-8326	Tennessee Gas Pipeline Co	Pennsylvania Gas & Water Co	04-23-91	B	26,000
ST91-8327	Tennessee Gas Pipeline Co	City of Decatur	04-23-91	B	6,000
ST91-8328	Tennessee Gas Pipeline Co	East Ohio Gas Co	04-23-91	B	10,000
ST91-8329	Transcontinental Gas Pipe Line Corp	Commonwealth Gas Services	04-23-91	B	6,377
ST91-8330	Wintershall Pipeline Corp	Texas Gas Transmission Corp	04-24-91	C	3,234
ST91-8331	Valero Transmission, L.P.	Tennessee Gas Pipeline Co	04-24-91	C	4,000
ST91-8332	ONG Transmission Co	Panhandle Eastern Pipe Line Co	04-24-91	C	50,000
ST91-8333	Western Gas Interstate Co	Mercado Gas Services, Inc	04-24-91	G-S	10,000
ST91-8334	Western Gas Interstate Co	Monfort, Inc	04-24-91	G-S	3,000
ST91-8335	Panhandle Eastern Pipe Line Co	Battle Creek Gas Co	04-24-91	B	500
ST91-8336	Panhandle Eastern Pipe Line Co	Amoco Energy Trading Corp	04-24-91	G-S	75,000
ST91-8337	Panhandle Eastern Pipe Line Co	Amgas, Inc	04-24-91	G-S	70
ST91-8338	Panhandle Eastern Pipe Line Co	Bishop Pipeline Corp	04-24-91	G-S	20,000
ST91-8339	Panhandle Eastern Pipe Line Co	Amgas, Inc	04-24-91	G-S	22
ST91-8340	Panhandle Eastern Pipe Line Co	Amgas, Inc	04-24-91	G-S	26
ST91-8341	Panhandle Eastern Pipe Line Co	Amgas, Inc	04-24-91	G-S	200
ST91-8342	Panhandle Eastern Pipe Line Co	Amgas, Inc	04-24-91	G-S	150
ST91-8343	Panhandle Eastern Pipe Line Co	Amgas, Inc	04-24-91	G-S	50
ST91-8344	Panhandle Eastern Pipe Line Co	A. P. Green Industries, Inc	04-24-91	G-S	4,188
ST91-8345	Panhandle Eastern Pipe Line Co	Amgas, Inc	04-24-91	G-S	90
ST91-8346	Northern Natural Gas Co	Great Plains Natural Gas Co	04-24-91	B	50,000
ST91-8347	Northern Natural Gas Co	Union Texas Products Corp	04-24-91	G-S	30,000
ST91-8348	Transcontinental Gas Pipe Line Corp	Sabine Gas Transmission Co	04-24-91	B	100,000
ST91-8349	Transcontinental Gas Pipe Line Corp	United Texas Trans., et al	04-24-91	B	250,000
ST91-8350	Natural Gas Pipeline Co. of America	United Gas Pipe Line Co	04-25-91	G	300,000
ST91-8351	Natural Gas Pipeline Co. of America	Consolidated Edison Co. of NY, Inc	04-25-91	B	270,000
ST91-8352	Tennessee Gas Pipeline Co	North Canadian Marketing Corp	04-25-91	G-S	150,000
ST91-8353	Tennessee Gas Pipeline Co	Columbia Gas Transmission Corp	04-25-91	G	5,000
ST91-8354	Texas Gas Transmission Corp	TXG Gas Marketing Co	04-25-91	G-S	500
ST91-8355	Texas Gas Transmission Corp	TEX/CON Gas Marketing Co	04-25-91	G-S	1,200

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]
ST91-8356	Texas Gas Transmission Corp	NGC Transportation Inc	04-25-91	G-S	3,000
ST91-8357	Texas Gas Transmission Corp	Seagull Marketing Services, Inc	04-25-91	G-S	20,000
ST91-8358	Texas Gas Transmission Corp	Equitable Resources Marketing Co	04-25-91	G-S	50,000
ST91-8359	Texas Gas Transmission Corp	Coast Energy Group	04-25-91	G-S	200,000
ST91-8360	Texas Gas Transmission Corp	Bridgeline Gas Distribution Co	04-25-91	B	10,000
ST91-8361	Texas Gas Transmission Corp	Polaris Pipeline Corp	04-25-91	G-S	100,000
ST91-8362	Texas Gas Transmission Corp	Graham Energy Marketing Corp	04-25-91	G-S	45,000
ST91-8363	Arkla Energy Resources	East Ohio Gas Co., et al	04-25-91	B	57,232
ST91-8364	Arkla Energy Resources	Louisiana Intrastate Gas Corp	04-25-91	B	200,000
ST91-8365	Arkla Energy Resources	Coastal Gas Marketing	04-25-91	G-S	2,000
ST91-8366	Arkla Energy Resources	Arkla Energy Marketing Co	04-25-91	G-S	50,000
ST91-8367	Arkla Energy Resources	Arkla Energy Marketing Co	04-25-91	G-S	4,200
ST91-8368	Arkla Energy Resources	National Gas & Oil Corp	04-25-91	B	100,000
ST91-8369	Arkla Energy Resources	Minnigasco, Inc	04-25-91	B	12,750
ST91-8370	Arkla Energy Resources	CAN-AM Absorbents Co., Inc	04-25-91	G-S	1,000
ST91-8371	Arkla Energy Resources	Louisiana Intrastate Gas Corp	04-25-91	B	115,000
ST91-8372	Arkla Energy Resources	Arkla Energy Marketing Co	04-25-91	G-S	8,000
ST91-8373	Arkla Energy Resources	Arkla Energy Marketing Co	04-25-91	G-S	115,000
ST91-8374	Arkla Energy Resources	Enogex Inc	04-25-91	B	100,000
ST91-8375	Arkla Energy Resources	Louisiana Intrastate Corp	04-25-91	B	150,000
ST91-8376	Arkla Energy Resources	Transok Inc	04-25-91	B	100,000
ST91-8377	Northern Natural Gas Co	City of Pender, et al	04-25-91	B	124
ST91-8378	Transwestern Pipeline Co	Amarillo Natural Gas, Inc	04-25-91	G-S	300
ST91-8379	United Gas Pipe Line Co	Mobil Natural Gas Inc	04-25-91	G-S	51,500
ST91-8380	United Gas Pipe Line Co	Fina Natural Gas Co	04-25-91	G-S	41,383
ST91-8381	United Gas Pipe Line Co	Laser Marketing Co	04-25-91	G-S	618,000
ST91-8382	Trunkline Gas Co	Panhandle Trading Co	04-25-91	G-S	25,000
ST91-8383	Trunkline Gas Co	Panhandle Trading Co	04-25-91	G-S	125,000
ST91-8384	Trunkline Gas Co	North Canadian Marketing Corp	04-25-91	G-S	150,000
ST91-8385	Trunkline Gas Co	Panhandle Trading Co	04-25-91	G-S	25,000
ST91-8386	Trunkline Gas Co	Coast Energy Group, Inc	04-25-91	G-S	35,000
ST91-8387	Trunkline Gas Co	Clinton Gas Transmission, Inc	04-25-91	G-S	5,000
ST91-8388	Trunkline Gas Co	Panhandle Trading Co	04-25-91	G-S	25,000
ST91-8389	Trunkline Gas Co	Panhandle Trading Co	04-25-91	G-S	25,000
ST91-8390	Trunkline Gas Co	Panhandle Trading Co	04-25-91	G-S	25,000
ST91-8391	Trunkline Gas Co	Clinton Gas Transmission, Inc	04-25-91	G-S	50,000
ST91-8392	Trunkline Gas Co	Panhandle Trading Co	04-25-91	G-S	25,000
ST91-8393	Trunkline Gas Co	Access Energy Corp	04-25-91	G-S	60,000
ST91-8394	Trunkline Gas Co	Citizens Gas Supply Corp	04-25-91	G-S	200,000
ST91-8395	Transcontinental Gas Pipe Line Corp	City of Commerce	04-25-91	B	1,233
ST91-8396	Transcontinental Gas Pipe Line Corp	City of Covington	04-25-91	B	2,964
ST91-8397	Transcontinental Gas Pipe Line Corp	City of Bowman	04-25-91	B	110
ST91-8398	Transcontinental Gas Pipe Line Corp	City of Buford	04-25-91	B	2,181
ST91-8399	Transcontinental Gas Pipe Line Corp	City of Madison	04-25-91	B	500
ST91-8400	Transcontinental Gas Pipe Line Corp	Maplesville Water & Gas Board	04-25-91	B	231
ST91-8401	Transcontinental Gas Pipe Line Corp	City of Elberton	04-25-91	B	1,534
ST91-8402	Columbia Gas Transmission Corp	Public Service Electric & Gas Co	04-25-91	B	100,000
ST91-8403	Williams Natural Gas Co	Enogex, Inc	04-25-91	B	10,000
ST91-8404	Equitrans, Inc	Angerman Associates, Inc	04-25-91	G-S	10,120
ST91-8405	High Island Offshore System	Diamond Shamrock Offshore, L.P.	04-25-91	K-S	27,100
ST91-8406	Transcontinental Gas Pipe Line Corp	City of Hartwell	04-25-91	B	1,339
ST91-8407	Transcontinental Gas Pipe Line Corp	City of Monroe	04-25-91	B	2,769
ST91-8408	Transcontinental Gas Pipe Line Corp	City of Royston	04-25-91	B	785
ST91-8409	Transcontinental Gas Pipe Line Corp	City of Social Circle	04-25-91	B	531
ST91-8410	Transcontinental Gas Pipe Line Corp	City of Lawrenceville	04-25-91	B	2,905
ST91-8411	Transcontinental Gas Pipe Line Corp	City of Toccoa	04-25-91	B	2,112
ST91-8412	CNG Transmission Corp	Phoenix Diversified, Inc	04-25-91	G-S	3,000
ST91-8413	CNG Transmission Corp	Santana Natural Gas Co	04-25-91	G-S	11,225
ST91-8414	CNG Transmission	Santana Natural Gas Co	04-25-91	G-S	11,225
ST91-8415	Delhi Gas Pipeline Corp	Transwestern Pipeline Co	04-26-91	C	5,000
ST91-8416	ONG Transmission Co	Natural Gas Pipeline Co. of America	04-26-91	C	50,000
ST91-8417	Colorado Interstate Gas Co	Midwest Gas	04-26-91	B	45,000
ST91-8418	Natural Gas Pipeline Co. of America	Columbia Gas Distribution Co	04-26-91	B	300,000
ST91-8419	Natural Gas Pipeline Co. of America	Lone Star Gas Co	04-26-91	B	20,000
ST91-8420	Natural Gas Pipeline Co. of America	NGC Gas Transportation, Inc	04-26-91	G-S	100,000
ST91-8421	Williams Natural Gas Co	KPL Gas Service	04-26-91	B	750
ST91-8422	Black Marlin Pipeline Co	Transok, Inc	04-26-91	B	1,000
ST91-8423	Panhandle Eastern Pipe Line Co	Clinton Gas Transmission, Inc	04-26-91	G-S	50,000
ST91-8424	Panhandle Eastern Pipe Line Co	Access Energy Pipeline Corp	04-26-91	B	30,000
ST91-8425	Panhandle Eastern Pipe Line Co	Kal Kan Foods, Inc	04-26-91	G-S	700
ST91-8426	Panhandle Eastern Pipe Line Co	Northern Illinois Gas Co	04-26-91	B	25,000
ST91-8427	Williston Basin Interstate P/L Co	Rainbow Gas Co	04-26-91	G-S	71,175
ST91-8428	Midwestern Gas Transmission Co	Peoples Gaslight & Coke Co	04-26-91	B	50,000
ST91-8429	Columbia Gas Transmission Corp	Yuma Gas Corp	04-26-91	G-S	50,000
ST91-8430	Columbia Gas Transmission Corp	Stand Energy Corp	04-26-91	G-S	150
ST91-8431	Tennessee Gas Pipeline Co	Sipco Gas Transmission Corp	04-26-91	B	10,000
ST91-8432	Tennessee Gas Pipeline Co	Riverside Pipeline Co	04-26-91	B	11,745
ST91-8433	Tennessee Gas Pipeline Co	Energy Development Corp	04-26-91	G-S	500,000
ST91-8434	Acacia Natural Gas Corp	Natural Gas Pipeline Co. of America	04-29-91	C	20,000

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Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity [2]
ST91-8435	Transcontinental Gas Pipe Line Corp	Citrus Marketing, Inc	04-29-91	G-S	100,000
ST91-8436	Transcontinental Gas Pipe Line Corp	City of Winder	04-29-91	B	2,964
ST91-8437	Transcontinental Gas Pipe Line Corp	City of Sugar Hill	04-29-91	B	802
ST91-8438	Transcontinental Gas Pipe Line Corp	City of Alexander City	04-29-91	B	2,000
ST91-8439	Transcontinental Gas Pipe Line Corp	Tri-County Natural Gas Co	04-29-91	B	1,567
ST91-8440	Transcontinental Gas Pipe Line Corp	Town of Wedowee	04-29-91	B	191
ST91-8441	Delhi Gas Pipeline Corp	Seagas Pipeline	04-29-91	C	300,000
ST91-8442	Delhi Gas Pipeline Corp	Arkla Energy Resources	04-29-91	C	300,000
ST91-8443	Delhi Gas Pipeline Corp	Mississippi River Transmission Corp	04-29-91	C	2,500
ST91-8444	Delhi Gas Pipeline Corp	Transcontinental Gas Pipe Line Corp	04-29-91	C	15,000
ST91-8445	Delhi Gas Pipeline Corp	Natural Gas Pipeline Co. of America	04-29-91	D	10,000
ST91-8446	National Fuel Gas Supply Corp	Bershire Gas Co	04-29-91	G-S	2,667
ST91-8447	National Fuel Gas Supply Corp	Endevco Oil & Gas	04-29-91	G-S	50,000
ST91-8448	National Fuel Gas Supply Corp	Honeoye Central School	04-29-91	G-S	50,000
ST91-8449	National Fuel Gas Supply Corp	Penntech Papers, Inc	04-29-91	G-S	50,000
ST91-8450	National Fuel Gas Supply Corp	Penntech Papers, Inc	04-29-91	G-S	50,000
ST91-8451	National Fuel Gas Supply Corp	Nortech Energy Corp	04-29-91	G-S	50,000
ST91-8452	National Fuel Gas Supply Corp	Angelica Healthcare Service	04-29-91	G-S	50,000
ST91-8453	Natural Gas Pipeline Co. of America	Pacific Gas and Electric Co	04-30-91	B	50,000
ST91-8454	Florida Gas Transmission Co	Peoples Gas System, Inc	04-30-91	B	2,930
ST91-8455	Florida Gas Transmission Co	Lake Apopka Natural Gas District	04-30-91	G-S	2,043
ST91-8456	Arkla Energy Resources	Laclede Gas Co	04-30-91	B	100,000
ST91-8457	Columbia Gulf Transmission Co	Catex Energy, Inc	04-30-91	G-S	100,000
ST91-8458	Columbia Gulf Transmission Co	Enron Gas Marketing, Inc	04-30-91	G-S	130,000
ST91-8459	Columbia Gulf Transmission Co	Columbia Gas of Ohio, Inc	04-30-91	B	20,000
ST91-8460	Columbia Gulf Transmission Co	Kerr-McGee Corp	04-30-91	G-S	40,000
ST91-8461	Columbia Gulf Transmission Co	NGC Transportation, Inc	04-30-91	G-S	30,000
ST91-8462	Columbia Gulf Transmission Co	Elf Exploration, Inc	04-30-91	G-S	20,000
Below are six st-docketed initial reports which are noticed out of sequence. These initial reports were not noticed previously because they required additional commission staff review.					
ST91-0485 [3]	Panhandle Eastern Pipe Line Co	Access Energy Corp	10-15-90	G-S	90,000
ST91-3876	ANR Pipeline Co	Delhi Gas Pipeline Corp	11-19-90	G-S	6,000
ST91-5303 [3]	Tennessee Gas Pipeline Co	Endevoc Marketing Co	12-03-90	G-S	15,000
ST91-5307 [3]	Tennessee Gas Pipeline Co	Hadson Gas Systems, Inc	12-03-90	G-S	200,000
ST91-7150	East Texas Gas Systems	Tennessee Gas Pipeline	03-01-91	C	125,000
ST91-7169	Westar Transmission Co	El Paso Natural Gas Co	03-04-91	C	25,000

[1] Notice of transactions does not constitute a determination that filings comply with commission regulations in accordance with order no. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372, 10/10/85).
[2] Estimated maximum daily volumes includes volumes reported by the filing company in MMBTU, MCF and DT.
[3] Transportation service converted from authority under 18 C.F.R. Section 284.106, Subpart B, to authority under 18 C.F.R. Section 284.233(f)(1), Subpart G-S.

[FR Doc. 91-13306 Filed 6-5-91; 8:45 am]
BILLING CODE 6717-01-M

State of Wyoming Oil and Gas Conservation Commission; Notice of Determinations Designating Tight Formations

[FERC Nos. JD91-06671T, JD91-06672T, JD91-06673T]

May 31, 1991

Take notice that on May 22, 1991, the State of Wyoming, Oil and Gas Conservation Commission submitted the above-referenced notices of determination to the Commission, pursuant to § 271.703(c)(3) of the Commission's regulations, that the Blair and Frontier Formations in Sweetwater County,[1] the Baxter Formation in Lincoln and Sublette Counties,[2] and the Frontier Formation in Lincoln and Sublette Counties,[3] Wyoming, qualify as tight formations under section 107(b) of the Natural Gas Policy Act of 1978. The notices of determination include Wyoming's findings that the formations meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

Wyoming's notice of determination for the Blair and Frontier Formations, which consists of identical geographical areas for each formation in Sweetwater County, covers all of sections 5–8 and 18 in Township 18 North, Range 97 West, all of sections 1–3, 10–16, 21, 22, 27–29, 32, and 33 in Township 18 North, Range 98 West, all of sections 4, 5, 8, 9, 15–22, and 28–32 in Township 19 North, Range 97 West, and all of sections 24–26 and 34–36 in Township 19 North, Range 98 West.

Wyoming's notice of determination for the Baxter Formation in Lincoln and Sublette Counties covers all of Sections 2, 4, and 11 and part of sections 1, 5, and 12 in Township 26 North, Range 113 West, all of sections 6 and 7 in Township 26 North, Range 112 West, all of sections 30 and 31 in Township 27 North, Range 112 West, all of sections 35 and 36 and part of Sections 28, 29, 32, and 33 in Township 27 North, Range 113 West, all of Sections 6, 7, 18, 19, 30, and 31 in Township 28 North, Range 112 West, all of Sections 1–5, 8–17, 20–29, and 32–36, Resurvey Tracts 37–42, 43A–43D, 44, 45, 46A, 46B, 47–49, 50A–50D and 53 and part of Sections 19 and 31 in Township 28 North, Range 113 West, and all of sections 1–3, 10–15, 22–27, and 34–36 in Township 29 North, Range 113 West.

Wyoming's notice of determination for the Frontier Formation in Lincoln and Sublette Counties covers all of sections 17 and 18 in Township 26 North, Range 112 West, all of sections 9, 13–15, and 22–24, Resurvey Tracts 38–41, and portions of sections 10 and 16 in Township 26 North, Range 113 West, all of Sections 4, 5, 8, 9, and 16, and portions of sections 6, 7, 17, and 21 in Township 27 North, Range 112 West, and all of sections 4, 23–26, 36 and Resurvey Tracts 44, 45, 46A, 46B, and 47 in Township 28 North, Range 113 West.

The notices of determination are available for inspection, except for material which is confidential under 18 CFR section 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to any of these determinations may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,
Secretary.

[FR Doc. 91-13304 Filed 6-5-91; 8:45 am]
BILLING CODE 6717-01-M

[1] FERC No. JD91-06671T, Wyoming-19.
[2] FERC No. JD91-06672T, Wyoming-20.
[3] FERC No. JD91-06673T, Wyoming-21.

Federal Energy Regulatory Commission

[Docket No. PR91-19-000]

Arkla Energy Resources, a division of Arkla, Inc.; Notice of Petition for Rate Approval

May 30, 1991

Take notice that on May 20, 1991, Arkla Energy Resources, a division of Arkla, Inc. (AER) filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of $0.7007 per MMBtu for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

AER states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA and operates 70 miles of intrastate facilities located in Caddo, Bossier and DeSoto Parishes, Louisiana. AER's previous maximum interruptible transportation rate of $0.6345 per MMBtu for section 311(a)(2) service was approved by the Commission January 31, 1989 in Docket No. ST88-3758-000.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before June 19, 1991. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91-13305 Filed 6-5-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ES91-31-000]

Centel Corp., Notice of Application

May 29, 1991

Take notice that on May 22, 1991, Centel Corporation ("Applicant") filed an application with the Federal Energy Regulatory Commission pursuant to Section 204 of the Federal Power Act for authority to issue not more than 3 million shares of its common stock, $2.50 par value, to be issued in connection with its Stock Option Plan.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 21, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91-13298 Filed 6-5-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP89-249-004 and RP90-107-009]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

May 30, 1991.

Take notice that Columbia Gulf Transmission Company (Columbia Gulf) on May 24, 1991, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective April 1, 1990:

Substitute First Revised Sheet No. 024
First Revised Sheet No. 043
First Revised Sheet No. 044
Second Revised Original Sheet No. 079
Original Sheet No. 079A
First Revised Original Sheet No. 081
Original Sheet No. 081A
Substitute First Revised Sheet No. 089
Substitute First Revised Sheet No. 120
Original Sheet No. 120A
First Revised Sheet No. 122
Original Sheet No. 122A
Substitute First Revised Sheet No. 127
First Revised Original Sheet No. 155
Original Sheet No. 155A
First Revised Original Sheet No. 156
Original Sheet No. 156A
Substitute First Revised Sheet No. 162
First Revised Original Sheet No. 185
Original Sheet No. 185A
First Revised Original Sheet No. 186
Original Sheet No. 186A
Substitute First Revised Sheet No. 192

Columbia Gulf states that these tariff sheets are being filed pursuant to the Order of the Federal Energy Regulatory Commission (Commission) issued February 7, 1991, approving a settlement filed by Columbia Gas Transmission Corporation (Columbia) and Columbia Gulf settling all cost of service, throughput, and rate issues in Docket Nos. RP89-250 and RP89-249.

Also tendered for filing to its FERC Gas Tariff, First Revised Volume No. 1, to be effective June 1, 1991, are the following proposed changes:

Fourth Revised Sheet No. 021
Second Revised Sheet No. 024

Columbia Gulf states that these two tariff sheets are also being filed pursuant to the Commission's February 7, 1991 Order, to reflect (1) changes in depreciation rates in accordance with Article IV, Section A of the Stipulation and (2) to revise Columbia Gulf's rates in Docket No. RP90-107 to reflect a return on equity one-half of one percent below that used by Columbia in Docket No. RP90-108.

Columbia Gulf states that it will make cash refunds to its customers for the period April 1, 1990, through October 31, 1990 in accordance with Article I, Section D of the Stipulation, and for the period of November 1, 1990 through May 31, 1991, based upon the rates established in Docket No. RP90-107. The refunds for the period November 1, 1990 through May 31, 1991 will be made approximately 45 days from the date of this filing due to lack of actual billing data through May 31, 1991.

Columbia Gulf states that copies of the filing were served upon the Company's jurisdictional customers and state commissions, and upon all parties on the Commission's official service list in Docket Nos. RP89-249-000, *et al.* and RP90-107-000 *et al.*

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Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 6, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13301 Filed 6-5-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-210-005, RP89-105-011]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 30, 1991.

Take notice that on May 24, 1991, Columbia Gas Transmission Corporation (Columbia) submitted for filing the tariff sheets listed on appendix A attached to the filing in accordance with the provisions of the Offer of Settlement filed in Docket No. RP89-250 on September 21, 1990 (Stipulation). The Stipulation was approved by the Commission by its Order issued on February 7, 1991, and rehearing was denied on April 10, 1991. The rates submitted in the filing bear a proposed effective date of June 1, 1991. The remaining tariff sheets submitted constitute the *pro forma* tariff sheets submitted and approved as a part of the Stipulation. These tariff sheets bear a proposed effective date of April 1, 1990, in accordance with Article IV, section D of the Stipulation, except for certain tariff sheets necessary to make technical conforming changes effective on November 1, 1990, and March 4, 1991.

Columbia states that copies of the filing were served by the company upon each of its wholesale customers, interested state commissions and to each of the parties set forth on the official service list in the consolidated proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 6, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13302 Filed 6-5-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-8-37-000]

Northwest Pipeline Corp.; Notice of Proposed Change in FERC Gas Tariff

May 30, 1991

Take notice that on May 24, 1991, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance the following tariff sheets:

Second Revised Volume No. 1

Tenth Revised Sheet No. 10
Tenth Revised Sheet No. 11
Sixth Revised Sheet No. 13

First Revised Volume No. 1-A

Sixth Revised Sheet No. 201

Original Volume No. 2

Twenty-Third Revised Sheet No. 2.3

Northwest states that the purpose of this filing is to update its Commodity SSP Charge effective July 1, 1991, to reflect (1) interest applicable to April, May and June 1991, and 2) the amortization of principal and interest. The proposed Commodity SSP Charge contained in this instant filing is 4.64¢ per MMBtu for the three months commencing July 1, 1991.

Northwest states that a copy of this filing has been served upon all parties of record in Docket No. RP89-137 and upon Northwest's jurisdictional customer list and affected state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 6, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13303 Filed 6-5-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 91-12-NG]

DEKALB Energy Co.; Order Granting Blanket Authorization To Import Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to import natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting DEKALB Energy Company, blanket authorization to import up to 73 Bcf of natural gas over a two-year period beginning on the date of first delivery after June 1, 1991.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 29, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-13384 Filed 6-5-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Notice of Issuance of Proposed Decisions and Orders; Week of May 6 through May 10, 1991

During the week of May 6 through May 10, 1991, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: May 30, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

Coilonial Gas Company, Lowell, MA,
LEE-0016 *Natural Gas*

Colonial Gas Company (Colonial) filed an Application for Exception from the provisions of Form EIA-857. The exception request, if granted, would permit Colonial to be relieved of the obligation to prepare and complete Form EIA-857. On May 9, 1991, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 91-13386 Filed 6-5-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-00304; FRL-3929-2]

State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committees; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 3-day meeting of the State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committees on Enforcement and Certification, and Registration and Classification. This notice announces the location and times for the meetings and sets forth tentative agenda topics. The meetings are open to the public.

DATES: The SFIREG Working Committee on Enforcement and Certification will meet on Wednesday, June 12, 1991, from 8:30 a.m. to 5 p.m. On Thursday, June 13, 1991, there will be a joint meeting of the Enforcement and Certification Working Committee and the Working Committee on Registration and Classification to discuss issues of mutual interest. This meeting will begin at 8:30 a.m. and adjourn at approximately 4:30 p.m. The Working Committee on Registration and Classification will meet on Friday, June 14, 1991, beginning at 8:30 a.m. and adjourning at approximately 4:30 p.m.

ADDRESSES: The meeting will be held at: Ramada Inn, 1117 Williston Road, South Burlington, VT 05407, (802) 658-0250.

FOR FURTHER INFORMATION CONTACT: By mail: Arty Williams, Office of Pesticide Programs (H7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1100E, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-7371.

SUPPLEMENTARY INFORMATION: The tentative agenda of the Working Committee on Enforcement and Certification includes the following:

1. Multi-media enforcement.
2. Office of Compliance Monitoring 4-year strategy.
3. Generic compliance monitoring strategy.
4. Association of American Pesticide Control Officials (AAPCO) Model Drift Policy.
5. Label enforceability.
6. EPA's Project Officers' Oversight Manual.
7. Other topics as appropriate.

The tentative agenda of the joint meeting of the Enforcement and Certification Working Committee and the Working Committee on Registration and Classification includes the following:

1. Status of issues being addressed by the State Labeling Issues Committee (SLIC).
2. Report on the development of a National Training Committee for Regions and States.
3. Farm Bill recordkeeping requirements.
4. Crop rotation restrictions on 24(c) registrations.
5. Endangered Species Protection Program update and discussion of current request for jeopardy opinions.
6. Food Safety.
7. Office of Pesticide Programs' and Office of Compliance Monitoring's 4-year strategies.
8. Other topics as appropriate.

The tentative agenda for the Working Committee on Registration and Classification includes the following:

1. Section 18 emergency exemptions.
2. Section 18's for purposes other than enhanced production.
3. Liability issues related to third-party special local need registrations.
4. "Natural" products that lack federal registration.
5. Research greenhouse use of pesticides for protection of experimental plants.
6. Statements of practical treatment.
7. Policy to encourage registration of less environmentally offensive products.
8. Other topics as appropriate.

Dated: May 30, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 91-13387 Filed 6-5-91; 8:45 am]

BILLING CODE 6560-50-F

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Report Forms Under OMB Review

AGENCY: Equal Employment Opportunity Commission.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. The proposed report form under review is listed below.

DATES: Comments must be received on or before July 22, 1991. If you anticipate commenting on a report form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Copies of the proposed report form, the request for clearance (Standard Form 83), supporting statement, instructions, transmittal letters, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

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Comments on the item listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT: EEOC Agency Clearance Officer: Margaret P. Ulmer, Office of Management, room 2220, 1801 L Street, NW., Washington, DC 20507; telephone (202) 663-4279.

OMB Reviewer: Joseph Lackey, Office of Information and Regulatory Affairs, Human Resources and Housing Branch, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503; Telephone (202) 395-7316.

Type of Request: Extension (No change).

Title: Local Union Report EEO-3.

Form Number: EEOC FORM 274.

Frequency of Report: Biennial.

Type of Respondent: Business/other institutions.

Standard Industrial Classification (SIC) Code: 863.

Description of Affected Public: Referral Unions with 100 or more members.

Responses: 3,000.

Reporting Hours: 4,500.

Federal Cost: $43,500.

Applicable under section 3504(h) of Public Law 96-511: Not applicable.

Number of Forms: 1.

Abstract—Needs/Uses: Data are used to investigate charges of employment discrimination against local unions and apprenticeship programs. Data are shared with 38 State and 102 local Fair Employment Practice Commission agencies, and other Federal agencies.

For the Commission.

R. Edison Elkins,

Management Director, Equal Employment Opportunity Commission.

[FR Doc. 91-13412 Filed 6-5-91; 8:45 am]

BILLING CODE 6570-06-M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS91-1]

Appraisal Subcommittee; Revised Guidelines Regarding State Certification and Licensing of Appraisers

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council.

ACTION: Notice of Revised Guidelines.

SUMMARY: The Appraisal Subcommittee ("Subcommittee") of the Federal Financial Institutions Examination Council ("FFIEC") today issued Revised Guidelines for state certification and licensing of real estate appraisers. These Revised Guidelines are intended to assist the States, territories and the District of Columbia ("States") in establishing effective certification and licensing procedures for real estate appraisers involved in federally related transactions.[1] Certified or licensed appraisers must be used for certain transactions starting January 1, 1992.[2] The Revised Guidelines include changes based on comments received on their original issuance and also incorporate later Subcommittee advisories and opinions.[3]

SUPPLEMENTAL INFORMATION: States are authorized to establish procedures under title XI of FIRREA ("title XI")[4] for the certification and licensing of individuals who are qualified to perform appraisals in connection with federally related transactions, including a code of professional responsibility. Title XI and the subsequent establishment of the Subcommittee, as well as the adoption of appraisal regulations by the federal financial institutions regulatory agencies, are intended to protect federal financial and public policy interests in real estate-related financial transactions requiring the services of an appraiser. Additionally, title XI at a minimum requires an appraisal performed in connection with a federally related transaction to meet the standards set forth in the Uniform Standards of Professional Appraisal Practice ("USPAP"),[5] as adopted by the Appraisal Standards Board ("ASB") of the Appraisal Foundation.[6]

Section 1102 of title XI, 12 U.S.C. 3310, established the Subcommittee and placed it within the FFIEC. The Subcommittee consists of a representative appointed by the heads of each FFIRA and the Department of Housing and Urban Development. The Subcommittee has permanent staff to assist the Subcommittee and provide advice to the States and to carry out Subcommittee rules, interpretations, policies and directives.

The Subcommittee has several statutory duties under title XI. First, the subcommittee must monitor the appraisal regulations adopted by the FFIRAs and the RTC. Those regulations set out appraisal standards for federally related transactions and define those federally related transactions requiring the services of a State certified or State licensed appraiser. Second, the Subcommittee must monitor and review the practices, procedures, activities, and organizational structure of the Appraisal Foundation. Third, the subcommittee must monitor each State's certification and licensing programs for real estate appraisers. In that regard, each State with an appraiser certifying and licensing agency is responsible for transmitting to the subcommittee a roster of these individuals, along with an annual registry fee. The subcommittee must maintain a national registry of all state-certified and licensed appraisers who are eligible to perform appraisals in federally related transactions. The subcommittee also must review each State's compliance with the requirements of title XI and is authorized by title XI to take action against non-complying States.[7]

These Revised Guidelines are intended to assist each State in its efforts to establish and maintain a real estate appraiser regulatory system conforming with title XI. More specifically, the Revised Guidelines are intended to: (1) Facilitate the timely implementation of State certification and licensing programs, (2) promote the independence of State appraisal regulatory functions, (3) reduce the potential for conflicts of interest, and (4) address concerns regarding, among other things, exemptions, grandfathering, mandatory dual licensing, discrimination and reciprocity.

[1] The term "federally related transaction" means any real estate-related financial transaction which a federal financial institutions regulatory agency ("FFIRA") or the Resolution Trust Company ("RTC") engages in, contracts for, or regulates, and which requires the services of an appraiser. The FFIRAs are the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Office of Thrift Supervision and the National Credit Union Administration. Title XI, Section 1121(6), 12 U.S.C. 3350(6).

[2] The Subcommittee extended this effective date from July 1 to December 31, 1991, pursuant to Section 1119(a)(2) of title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), 12 U.S.C. 3348(a)(2). 56 FR 20002 (May 1, 1991).

[3] The Subcommittee originally issued these Guidelines for public comment on January 16, 1990, as Docket AS90-1, 55 FR 2409 (January 24, 1990) ("Initial Guidelines"). Clarifications were issued on February 28, 1990, August 8, 1990 (Advisory 90-4), November 28, 1990 (Advisory 90-2), and January 25, 1991 (Advisory 91-1).

[4] Public Law No. 101-73, 103 Stat. 811 (1989); 12 U.S.C. 3310, 3331-3351.

[5] The FFIRAs and the RTC published pertinent portions of USPAP as an appendix to their respective appraisal regulations. See 55 FR 51510 (December 31, 1990).

[6] The Appraisal Foundation was incorporated in Illinois on November 30, 1987, by several professional appraisal organizations as a not-for-profit corporation to enhance the quality of professional appraisals. The Foundation is headquartered in Washington, DC.

[7] See title XI, Section 1118, 12 U.S.C. 3347.

EFFECTIVE DATE: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: Edwin W. Baker, Executive Director, or Marc L. Weinberg, General Counsel; Appraisal Subcommittee, Federal Financial Institutions Examination Council; 1776 G Street, NW.; suite 850B; Washington, DC 20006; (202) 357-0133.

SUMMARY OF COMMENTS: On January 18, 1990, the subcommittee solicited public comment on its Initial Guidelines to the States regarding certification and licensing of real estate appraisers. The subcommittee received 163 comments from interested individuals and organizations, including 44 individual appraisers and appraisal firms, 27 members of Congress, 23 state regulatory agencies, and 24 appraiser trade groups. The remaining 45 comments were submitted by real estate brokers and broker associations, banks and bank trade associations, savings and loan associations, attorneys and law firms, an accounting trade group, a federal agency and a federal department. The principal issues raised by the respondents are discussed below.

Authority, Purpose and Scope

A few respondents suggested the subcommittee had exceeded its authority in title XI when it issued the Initial Guidelines. Repondents believed the Guidelines mandated the structure of State appraiser regulatory schemes, therefore exceeding the subcommittee's limited statutory role of monitoring State compliance with title XI.[8] The subcommittee's Initial and now-Revised Guidelines are not requirements. They provide each State with an understanding of how the Subcommittee will evaluate the State's compliance with title XI. Additionally, consistent with title XI and the intent of Congress, the Guidelines promote the establishment of uniformity and a level regulatory playing field among the States.

Location of Agency

Forty-one respondents questioned the need for a State's real estate appraiser regulatory agency ("Appraiser Agency") to be totally independent from existing State regulatory agencies having responsibilities over affected industries.[9] Most respondents believed that the appraiser function could be supervised by an umbrella regulatory agency or real estate commission, provided that adequate safeguards existed to minimize the potential for undue influence. To comply with this Guideline, some States determined their laws and constitutions would require amendment, which they indicated would be a costly and burdensome process (particularly for less populous States).

The subcommittee's Initial and Revised Guidelines strongly encourage States to create a totally independent Appraiser Agency. The Subcommittee, however, recognizes that this may not be possible for every State because of fiscal or other appropriate reasons. When such reasons exist, the subcommittee expects the State to structure its Appraisal Agency to eliminate undue influence by any affected industry.[10]

Appointment of the Agency Head

The Initial Guidelines stated that the appointment of an Appraiser Agency head or members of the appraiser board should be made by an individual or committee not associated with an affected industry. All fifteen respondents, including appraisers and appraisal firms, supported this position, and the subcommittee has included it in the Revised Guidelines.

Independence From Affected Industries

The Initial Guidelines called for the individual head of the Appraiser Agency to be independent from the appraisal profession and affected industries while in office and for a reasonable time thereafter. For an Appraiser Agency headed by a board or commission, the Initial Guidelines also indicated that board or commission-led Appraiser Agencies should represent the broad public interest and should not be dominated by any one industry or profession.

A majority of the 94 respondents on this issue believed that the Initial Guidelines precluded the best source of appraisal expertise from serving on appraiser regulatory boards or commissions. The Subcommittee recognizes that significant appraiser representation on an appraiser regulatory board or commission can help to ensure that the regulatory body has adequate knowledge and experience. This type of representation has long been allowed on other professional and industry regulatory boards. In fact, on February 28, 1990, the subcommittee issued a clarification of the Initial Guidelines to reflect that an appraiser board or commission comprised of a majority of appraisers likely would not result by itself in subcommittee disapproval or rejection of a State's appraiser regulatory system.[11] The subcommittee has incorporated this clarification into the Revised Guidelines. The subcommittee continues its strong view that, as a matter of sound public policy, state appraiser boards or commissions should adequately represent the broad public interest and should include meaningful public representation.

Independence of Decision Making

The Initial Guidelines stressed that decisions of an Appraiser Agency should not be made by the same officials responsible for decisions regarding affected industries. Thirty-five respondents addressed this point, several being States with either umbrella regulatory schemes or real estate commissions. Most respondents indicated that sufficient safeguards exists to ensure the integrity of decisions made by the appraiser regulatory body.

The Subcommittee continues its strong preference that the State appraiser regulatory function be established as a totally independent agency answerable to a high ranking state official, *e.g.*, a State cabinet level officer, who has no regulatory responsibility over realty related activities. The subcommittee, however, understands that this could be a burden on some States. As a result, the Revised Guidelines permit other administrative structures so long as adequate safeguards exist to eliminate the influences of affected industries.

The Initial Guidelines also stated that the appraiser regulatory body's decisions should be final and subject only to judicial review. While most respondents agreed with this position, many believed that some existing State laws that dictate the State's regulatory structure may conflict with this aspect of the Guidelines. In this regard, the subcommittee believes that any State regulatory structure allowing any affected industry regulatory body to have "veto power" over the actions of the Appraiser Agency would adversely

[8] Title XI provides the States with a great deal of flexibility in structuring their regulatory programs.

[9] An "affected industry" includes entities that have a direct or indirect pecuniary interest in appraisals, such as real estate brokers, financial institutions, and construction companies.

[10] An example of undue influence by an affected industry would be if the majority members on the Appraiser Agency were real estate brokers or representatives of the real estate financing industry.

[11] The Revised Guidelines contain the clarification that the subcommittee generally will evaluate each State's system for regulating appraisers in its entirety, including the adequacy of safeguards to prevent conflicts of interest, before considering any adverse action against a particular State's appraisal regulatory system.

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affect the indpendence of the decision-making power of the Appraiser Agency and would be inconsistent with title XI.

Requirements for Certified and Licensed Appraisers

Under title XI, States may establish requirements for individuals obtaining real estate appraiser certification or licensure. Each State's certification requirements must meet the minimum standards adopted by the Appraiser Qualifications Board ("AQB") of the Appraisal Foundation, and each State certified appraiser must pass a suitable State examination. The examination must be endorsed by the AQB and must follow the AQB's Uniform State Certification Examination Outline.

Licensing is treated differently. While each State may establish its own licensing requirements, the subcommittee believes that, to comply with the spirit and intent of title XI, States should include meaningful education, testing, experience, and continuing education requirements.[12] As guidance to the States, the subcommittee has indicated that the AQB's qualifications for "Licensed Real Property Appraiser" are acceptable as meaningful standards for licensing.

Several respondents pointed out that some State's appraiser classification terms differ from those used by the subcommittee. Moreover, a few States with a significant quantity of very high priced single family homes have expressed the need for a "residential certified appraiser" classification.

The subcommittee prefers that States use the same designation terms as title XI, *i.e.*, "State Certified" and "State Licensed." Nevertheless, the subcommittee, in Advisory 91-1, agreed to accept the "certified residential appraiser" classification if a State determines it necessary. The subcommittee reaffirms the Advisory by incorporating it in the Revised Guidelines, and notes that a State adopting this second certification classification must follow the AQB's "Certified Residential Real Property Appraiser" qualification standards.[13] The State also must require applicants to pass an examination that is endorsed by the AQB.

Appraiser Qualifications Criteria

Thirty-four respondents had several concerns about the AQB's qualifications criteria for certification and licensing.

First, some commented that the AQB failed to provide adequate due process safeguards for establishing and modifying its criteria. The subcommittee does not agree with the respondents. The AQB went through a detailed, public proceeding in arriving at the criteria. On July 24, 1990, the AQB issued its standards for "Residential Real Property Appraiser" and "General Real Property Appraiser." [14] Over the next several months, the AQB worked closely with its members and the subcommittee to refine the criteria, and, on December 20, 1990, the AQB issued several exposure drafts proposing revised criteria for comment. After consideration of comments received from interested members of the public and the subcommittee, the AQB, on March 27, 1991, adopted its revised standards for the certified general and certified residential classifications and its recommendations for the licensed real property appraiser classification.

Second, respondents questioned the number of classroom hours required to meet the education criteria, as well as a person's ability to sit for the examination before completing the required course work. The Revised Guidelines incorporate Advisory 90-2, in which the subcommittee expressed its willingness to recognize, on a transitional basis, State licensed appraisers who: (1) Have passed the examination; and (2) have met either the experience or the education requirements established by the States. Licensed appraisers, however, would need to satisfy the missing requirement within no more than two years after passing the appropriate test and being provisionally licensed by the State. The subcommittee urges each State to limit the issuance of transitional licenses to the first two years after implementation of its licensing program.[15]

Third, many respondents questioned the appraiser experience requirements, including the acceptability of real estate related experience. The subcommittee addressed these comments when it issued Advisory 90-2. There, the subcommittee advised the States that real estate related experience (such as real estate lending or real estate brokering) should be considered acceptable for licensure, if that experience included the actual performance or professional review of appraisals. The subcommittee has incorporated this Advisory into the Revised Guidelines.

Exemptions and Grandfathering

The Initial Guidelines stated that no group of individuals should be exempt from meeting the certification or licensing criteria. Twenty-five respondents had a wide range of views on this subject. Some indicated that no groups of certified or licensed appraisers should be "grandfathered," while others thought that a grandfathering provision for licensed appraisers would be appropriate.

The subcommittee's position on not allowing exemptions and grandfathering remains unchanged. States, however, can carry over an individual or group's existing certification or licensure status, if the person or group satisfies the State's certification or licensing requirements and those requirements are consistent with title XI.

Mandatory Dual Licensing

The Revised Guidelines reiterate the subcommittee's position that State laws should not require any applicant for appraisal certification or licensing to hold another professional license as a condition for obtaining an appraisal license or certification. The majority of respondents agreed with this position.

Code of Professional Responsibility

Several respondents agreed with the subcommittee's Initial Guidelines that each State should include an appropriate code of professional responsibility in its certification and licensing requirements. The Revised Guidelines refer specifically to the Ethics Provision of the USPAP, as adopted by the ASB, as being an appropriate code of professional responsibility.

Other Issues

Several respondents raised various items that were not discussed in the Initial Guidelines such as: Reciprocity among States, discrimination, the role of the Appraisal Foundation, USPAP, title XI implementation costs, and States' rights. Where appropriate, the subcommittee has addressed these comments at various points in the preamble and the Revised Guidelines.

Conclusion

In response to public comment received on the Initial Guidelines, the subcommittee is now issuing the Revised Guidelines. The Revised Guidelines replace the Initial Guidelines and clarifications.[16]

The subcommittee, as necessary, may release new Advisories clarifying the Revised Guidelines.

Dated: May 29, 1991.

Fred D. Finke,

Chairman, Appraisal Subcommittee, Federal Financial Institutions Examination Council.

Introduction

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA")[17] established the Appraisal Subcommittee ("subcommittee") of the Federal Financial Institutions Examination Council ("FFIEC"). The purpose of title XI is to protect federal financial and public policy interests in real estate-related financial transactions [18] requiring the services of an appraiser. Among other duties, the subcommittee must monitor the requirements established by the States, territories, and the District of Columbia ("States") for certification and licensing of individuals who are qualified to perform appraisals in connection with federally related transactions.[19] The subcommittee also must monitor the activities of the FFIRAs and the RTC, the States, and the Appraisal Foundation in meeting the requirements of title XI.

In exercising its oversight responsibilities over the States, the subcommittee must review each State's overall regulatory scheme to determine compliance with title XI. This does not mean that all matters must be covered by legislative enactment. Many can be a matter of regulation, procedure, and practice. Conversely, an otherwise adequate set of statutes or regulations can be invalidated by inadequate implementation. Consequently, while the subcommittee will continue to review and give comments on State regulatory programs, its comments are not and cannot be taken as a formal approval or disapproval. Any State scheme is valid unless the subcommittee formally rejects or disapproves the State regulatory scheme using the procedures in title XI.

In addition to establishing the Subcommittee, major aspects of title XI include:

—The requirement that the FFIRAs and the RTC set real estate appraisal standards for federally related transactions;

—A framework in which each State may establish a real estate appraiser certification and licensing scheme;

—The establishment of the Uniform Standards of Professional Appraisal Practice ("USPAP") by the Appraisal Standards Board ("ASB") of the Appraisal Foundation as the minimum standards for real estate appraisals for federally related transactions; and

—The establishment of minimum qualification requirements by the Appraiser Qualifications Board ("AQB") of the Appraisal Foundation for certified real estate appraisers as well as the requirement that appraisals for all federally related transactions over $1 million be performed by a state certified appraiser.

Purpose

The Guidelines were originally issued for comment in January 1990 ("Initial Guidelines"), with subsequent Advisories and clarifications in February 1990, August 1990, November 1990, and January 1991. Based on public comments and Subcommittee interpretations, the Subcommittee has adopted these Revised Guidelines to assist the States further in implementing title XI. The Subcommittee is issuing these Revised Guidelines to assist the States in establishing appropriate organizational and regulatory structures for the certification and licensing of real estate appraisers. The Revised Guidelines reflect the general framework that the Subcommittee will use in reviewing a State's program for compliance with title XI. The Initial Guidelines, Advisories and clarifications are obsolete and rescinded.

State Regulatory Structure

The Subcommittee does not intend to impose any particular organizational structure upon the States. It recognizes that each State has fiscal, regulatory or other valid constraints that could influence the structure and location of a real estate appraiser regulatory agency. The legislative history of title XI indicates, however, that States should adopt an organizational structure for implementing their appraiser licensing, certification and supervision functions in a manner to avoid potential conflicts of interest. Any state choosing to locate its appraiser regulatory function in a department that regulates real estate licensing, promotion, development, or financing functions ("realty related activities") must ensure that adequate safeguards exist to protect the independence of the appraiser regulatory function.

Real Estate Appraiser Regulatory Agency

A State's real estate appraiser regulatory body ("Agency") may be a board, commission, or individual. The organizational structure should provide maximum insulation for the Agency from the influence of any industry or organization whose members have a direct or indirect financial interest in the outcome of the Agency's decisions.

Agency Location Within State Government

The subcommittee believes each State should establish a totally independent Agency. The Agency should be answerable only to the governor or to a cabinet level officer who has no regulatory responsibility for realty related activities. If, due to fiscal or other appropriate constraints, a totally independent Agency is not feasible, the State may choose to locate the Agency within an existing state regulatory body. Adequate safeguards, however, must exist to eliminate any possible influence from realty related activities.

Agency Head and Member Appointment

Persons appointing the Agency head or members of an appraiser board or commission should not be associated or affiliated with an affected industry.[20] For example, an autonomous agency head, appointed by the governor and subject to confirmation by the state legislature, most likely would be considered an acceptable independent appointment.

Under a board or commission regulatory structure, the subcommittee believes that as a matter of sound public policy, state appraiser boards or

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[12] In general, the subcommittee encourages the States to adopt meaningful, but not overly restrictive, licensing requirements.

[13] The residential certification standards were adopted by the AQB on March 27, 1991.

[14] In its Initial Guidelines, the subcommittee endorsed the "General Real Property Appraiser" qualifications criteria as the minimum standard for a state certified appraiser and the "Residential Real Property Appraiser" qualifications criteria as meaningful standards for a state licensed appraiser.

[15] The Revised Guidelines clarify that State transitional certification provisions are inconsistent with title XI because the AQB's certification criteria compel the completion of all education requirements before a person can take the certification examination.

[16] See note 3 *supra*.

[17] Public Law No. 101-73, 103 Stat. 511 (1989); 12 U.S.C. 3301, 3331-3351.

[18] A "real estate-related financial transaction" means any transaction involving the sale, lease, purchase, investment in or exchange of real property, including interests in property, or financing thereof; the refinancing of real property or interest in real property; and the use of real property or interest in property as security for a loan or investment, including mortgage-backed securities.

[19] The term "federally related transaction" means any real estate-related financial transaction which a federal financial institutions regulatory agency ("FFIRA") or the Resolution Trust Corporation ("RTC") engages in, contracts for, or regulates, and which requires the services of an appraiser. The FFIRAs are the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision. Title XI, Section 1121(6), 12 U.S.C. 3350(6).

[20] An individual would be affiliated or associated with an affected industry if the individual has a direct or indirect financial interest in real estate licensing, promotion, development or financing.

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commissions should adequately represent the broad public interest. With this in mind, an Agency should not be dominated in any way by any industry or profession.[21] The Subcommittee, however, recognizes that members of the appraisal industry should be significantly represented on the appraiser board or commission. Indeed, the subcommittee believes that a board or commission may contain a majority of appraisers. Appraisers can help ensure that the Agency has sufficient expertise and resources to carry out its functions properly.

Agency Independence from Affected Industries

If an Agency is directed by an individual, the Agency head should not be actively engaged in the appraisal business or in any other realty related activities for the individual's term of appointment or employment, and for a reasonable period thereafter. If an Agency consists of a board or commission, its members should represent the broad public interest.

Independence of Agency Decision Making

The subcommittee strongly urges that Agency decisions, especially those relating to license or certification issuance, revocation, and disciplinary actions, should not be made by state officials who also are responsible for realty related activities. Additionally, such Agency decisions should be final administrative actions subject to appropriate judicial review.

Appraiser Qualification Criteria

Title XI requires that real estate appraisals performed in connection with federally related transactions be performed by competent individuals. To demonstrate competency, the subcommittee believes that appraisers subject to title XI must be qualified by meeting appropriate education, testing, and experience requirements.

The decision whether to engage a certified or a licensed appraiser for a specific federally related transaction is prescribed by each FFIRA and the RTC in their real estate appraisal regulations. Title XI, however, mandates that certified real estate appraisers perform all appraisals in connection with federally related transactions over $1 million and complex 1-to-4 family residential properties.

[21] The subcommittee believes that domination or majority control of the Agency by representatives of affected industries would be considered inappropriate and inconsistent with title XI.

The subcommittee recognizes a minimum of two classifications of appraisers: State licensed and state certified. These two designations are appropriate for most States. Some States with a significant quantity of 1-to-4 family residential transactions that are above $1 million or of a complex nature, however, may want to have a second certification classification called "certified residential appraiser." The AQB on March 27, 1991, approved that designation, and the subcommittee has recognized it. If a State wants to use all three designations, it must develop and implement procedures to insure that each certification type is easily distinguished from the other. This will avoid confusion by appraiser users, regulators, and other interested persons.[22]

State Certified General Appraiser

A state certified general appraiser is a person who: (1) Meets at least the minimum criteria for "Certified General Real Property Appraiser," which were adopted by the AQB on March 27, 1991; and (2) passes a state administered examination issued or endorsed by the AQB. The AQB criteria include 165 classroom hours in courses related to specified real estate appraisal matters [23], 2,000 hours of appraisal experience (with at least 50 percent in non-residential appraising) and 10 classroom hours of continuing education course work for each year during the period preceding certification renewal. Additional qualifications may be required by any State or FFIRA and the RTC that considers such qualifications necessary to carry out its responsibilities under title XI.

State Certified Residential Appraiser

A State choosing to establish this certification classification must at a minimum follow the "Certified Residential Real Property Appraiser" qualifications criteria which were adopted by the AQB on March 27, 1991, and require individuals to pass an examination issued or endorsed by the AQB. The AQB criteria for this classification also include 2,000 hours of appraisal exerience and 10 classroom hours of continuing education for each year during the period preceding certification renewal. Until January 1, 1994, 105 classroom hours of real estate appraisal education courses will be needed. After that date, an applicant will need 165 classroom hours of course work, just like a state certified general appraiser.

State Licensed Appraiser

States are free to establish meaningful, not overly restrictive, qualification criteria for licensed appraisers, including education, testing, experience, and continuing education requirements that demonstrate knowledge and competency. If States choose, they may base their licensing standards on the AQB's "Licensed Real Property Appraiser" classification and related ICs, which were adopted by the AQB on March 27, 1991. All States should require persons to pass a meaningful written test before receiving a license. Such a test may be one issued or endorsed by the AQB, but, in any event, should be independently reviewed and validated by a qualified source.[24]

The Subcommittee considers the AQB's two-year experience recommendation for the "Licensed Real Property Appraiser", *i.e.*, a minimum of 2,000 hours, to be reasonable. It should help ensure that licensed individuals have sufficient appraisal experience.[25] Appraisal experience includes, but is not limited to: Fee and staff appraisals, *ad valorem* tax appraisals, review appraisals, appraisal analyses, real estate counseling, highest and best use analyses, feasibilty analyses/studies and teaching of appraisal courses. A State, consistent with title XI, may choose to accept real estate related experience, *e.g.*, work as a real estate lending officer or a real estate broker, for some or all of its experience requirement. That type of experience, however, may be recognized only if it includes the actual performance or professional review of real estate appraisals. Each State is expected to adopt adequate procedures to document and verify the experience used to satisfy the requirement.

[22] The subcommittee is concerned about the potential for confusion and will pay particular attention to designations when reviewing state appraiser regulatory schemes.

[23] The AQB, on March 27, 1991, adopted an Interpretation/Clarification ("IC") of the education criteria that stated: "[C]orrespondence courses are not acceptable to meet the classroom requirement." This IC applies to the AQB's certification requirements and to its licensing recommendations.

A State may recognize credit for course work prior to July 1, 1990, where an appraiser obtains credit for a course through a challenge examination without actually attending the course. It has been common practice for appraisers to obtain education credits through the challenge examination method. An Agency should review the quality of each challenge examination to determine the acceptability of the course for credit. The AQB's certification and licensing criteria recognize this limited acceptability of challenge examinations.

[24] The subcommittee beleives the AQB's National Uniform Examination Content Outline for Residential Real Property Appraiser represents a useful guide to the States.

[25] The subcommittee notes that the time to achieve the necessary hours of experience is treated as cumulative and does not have to be obtained in a set time frame.

The subcommittee, likewise, acknowledges that the AQB's education criterion for a "Licensed Real Property Appraiser" reflects meaningful education criteria for licensed appraisers. That standard currently is 75 classroom hours in specific subjects listed in the published criteria. A State may establish other appropriate education requirements, so long as they are consistent with title XI. The subcommittee will review each State's education requirements to ensure that they are meaningful, both as to the breadth of subject matter and length of required study. The subcommittee believes it important that States include continuing education as a licensing requirement. Continuing education should help to ensure that licensed appraisers maintain and enhance their appraisal skills and knowledge. The subcommittee is of the view that the AQB's continuing education recommendation for a licensed real property appraiser, which is 10 classroom hours for each year of the period preceding the renewal of the license, is meaningful and should be adopted by the States.

Transitional Licenses and Certifications

A State may issue transitional licenses to an applicant who has passed the appropriate test, but who lacks either the educational or the experience requirements adopted by the State. Transitionally-licensed appraisers, however, should satisfy the missing requirements within no more than two years after being tested and provisionally licensed by the State. The subcommittee urges each State to limit the issuance of such transitional licenses to the first two years after implementation of its licensing program. Each transitional license should indicate clearly its transitional nature, period of validity, and a non-extendable termination date.

Title XI requires that the States establish certification criteria that, at a minimum, are consistent with the AQB's certification qualifications. At this time, these qualifications compel persons to complete all education requirements before they can take a certification examination.

Other Guidelines

A State should consider the following subcommittee Guidelines when structuring its appraiser regulatory program.

Exemptions and Grandfathering

A State cannot exempt or "grandfather" any individual or group from meeting its certification or licensing criteria. States, however, can carry over an individual or group's existing certification or licensure status, if the person or group satisfies the State's certification or licensing requirements and those requirements are consistent with title XI.

Appraisal Standards

Title XI requires, at a minimum, that real estate appraisals for federally related transactions be performed in accordance with USPAP,[26] as adopted by the ASB. Moreover, each FFIRA and the RTC have issued under title XI additional appraisal standards as they deem appropriate.

Written Appraisal Reports

Title XI specifically mandates that all appraisals performed in connection with federally related transactions be in written form.[27] The written appraisal must adequately explain the certified or licensed appraiser's opinion of the property's value as of a specific date with a description of the property and presentation of the relevant market information with supporting analysis.

Temporary Practice and Reciprocity

Title XI requires a State appraisal regulatory agency to recognize on a temporary basis the certification or license of an appraiser from another State provided: (1) The property to be appraised is part of a federally related transaction; (2) the appraiser's business is of a temporary nature; and (3) the appraiser registers with the State appraiser regulatory agency in the State of temporary practice.[28]

The Subcommittee believes that States should not require temporary practitioners to obtain a certification or license in the State of temporary practice. Instead, the State should recognize the certificate or license issued by the individual's State of permanent certification or licensure. A State, however, may establish meaningful and reasonable temporary practice and registration procedures. These procedures should measure "temporary" by specific appraiser assignments and not by a fixed time period or number of properties to be appraised.[29]

Other than the temporary practice provisions, no federal requirements exist regarding permanent State reciprocity agreements. The Subcommittee encourages the States to consider permanent reciprocity arrangements to address the needs of appraisers who practice on a non-temporary, multi-state basis.

Prohibition Against Discrimination

Title XI and its legislative history express Congressional intent that certain discriminatory practices be avoided. In particular, Congress was concerned that applicants for licensing and certification might be discriminated against on the basis of membership or non-membership in certain appraisal organizations. Although the prohibition against discrimination provision in Title XI explicitly refers to conduct on the part of federal regulatory agencies,[30] the Subcommittee has determined that, under Title XI and its legislative history, such conduct also is inappropriate in the establishment and administration of a State's licensing and certification system. The Subcommittee urges States to adopt legislation or regulations specifically prohibiting such discriminatory practices. The Subcommittee will review the implementation of each State's system to ensure that the system prevents such discriminatory practices.

Codes of Professional Conduct

States should ensure that an appropriate code of professional responsibility is incorporated into their certification and licensing requirements. The States should refer to USPAP, which provides standards for appraiser conduct, management, confidentiality, and record keeping for guidance.

Registry Fees for State Certified or Licensed Appraisers

Each State must transmit to the Subcommittee a roster of individuals who have received State certification or licensure. Further instructions on the transmittal of the State's data on certified and licensed appraisers will be provided at a later time.

Each State also must collect an annual $25.00 registry fee from each of its

[26] USPAP was originally released by the Ad Hoc Committee on Uniform Standards of the Appraisal Foundation on April 27, 1987. On January 30, 1989, the ASB established and adopted USPAP as its initial standards. On June 5, 1990, the ASB revised and amended USPAP's Ethics Provision, Preamble and Standards 1 through 5. The FFIRAs and the RTC published these revisions in the **Federal Register** as an appendix to their respective appraisal rules. 55 FR 53610 (December 31, 1990).

[27] Title XI, section 1101, 12 U.S.C. 3331; section 1110, 12 U.S.C. 3339; and 1121(10), 12 U.S.C. 3350(10).

[28] Title XI, section 1122(a); 12 U.S.C. 3351(a).

[29] A State may choose to charge a reasonable fee for temporary registration.

[30] See title XI, section 1122(c); 12 U.S.C. 3351(c).

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certified and licensed appraisers[81] who perform or seek to perform appraisals in federally related transactions and must transmit this fee to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council. If an appraiser is licensed or certified in more than one State, or registry fee is due from each State in which the appraiser is licensed or certified on a non-temporary basis.

Clarifications and Amendments to These Guidelines

These Revised Guidelines will remain the position of the Subcommittee unless later amended by reissuance or clarified through publication of an "Advisory."

[FR Doc. 91-13289 Filed 6-5-91; 8:45 am]
BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM

Century Bancorp, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than June 27, 1991.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Century Bancorp, Inc., Medford, Massachusetts; to acquire Century Financial Services, Inc., Medford, Massachusetts, and thereby engage in providing securities brokerage services to retail customers solely as agent or combined with non-fee investment advisory activities pursuant to §§ 225.25(b)(15) and (b)(4) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Eastern Iowa Bancshares, Ltd., Onslow, Iowa; to acquire Midland Insurance Agency, Onslow, Iowa, and thereby engage in the sale of all forms of insurance with the exception of health insurance, for personal, commercial, and farm needs pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. This activity will be conducted in Onslow, Iowa.

Board of Governors of the Federal Reserve System, May 31, 1991.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 91-13326 Filed 6-5-91; 8:45 am]
BILLING CODE 6210-01-F

[81] The Subcommittee may raise this fee up to $50.00 per year, subject to FFIEC approval.

Correction

This notice corrects a previous Federal Register notice (FR Doc. 91-11954) published at page 23295 of the issue for Tuesday, May 21, 1991.

Under the Federal Reserve Bank of Atlanta, the entry for *Interban Holding Company Limited* is amended to read as follows:

1. Interban Holding Company Limited, Nassau, Bahamas ("Interban"), and Interbank Holding Corp., Miami, Florida ("Interbank"); to become bank holding companies by acquiring an additional 47.2 percent of the voting shares of Grovegate Bank, Coconut Grove, Florida, for a total of 53.33 percent. Interbank is wholly owned by Interban. Interban is wholly owned by Luis A. Ortega, Leonidas Ortega, Jaime Ortega, Jorge Ortega, Gustavo Ortega, and Fabian Ortega, all of Guayaquil, Ecuador, each of whom owns approximately 16.7 percent of the shares of Interban.

Comments on this application must be received by July 8, 1991.

Board of Governors of the Federal Reserve System, May 31, 1991.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 91-13329 Filed 6-5-91; 8:45 am]
BILLING CODE 6210-01-F

Robert Rauworth, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 27, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Robert Rauworth, Manhattan, Illinois; to acquire an additional 3.94 percent of the voting shares of Manhattan Bancshares, Inc., Manhattan, Illinois, for a total of 14.46 percent, and thereby indirectly acquire First National Bank of Manhattan, Manhattan, Illinois.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. William H. Zabel, to acquire an additional 35 percent of the voting shares of WRZ Bankshares, Inc., Plainview, Minnesota, for a total of 54 percent, and thereby indirectly acquire Peoples State Bank of Plainview, Plainview, Minnesota.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. John A. O'Leary, as Trustee of the John A. O'Leary, Jr., Trust No. 1, to acquire an additional 63.3 percent and Sidney A. Reitz, as Trustee for the John A. O'Leary, Jr. Trust No. 1 and the John A. O'Leary, Sr. Trust No. 2, to acquire 75.4 percent of the voting shares of Luray Bankshares, Inc., Luray, Kansas, and thereby indirectly acquire The Peoples State Bank, Luray, Kansas.

Board of Governors of the Federal Reserve System, May 31, 1991.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 91-13327 Filed 6-5-91; 8:45 am]
BILLING CODE 6210-01-F

Williamsburg Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 27, 1991.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Williamsburg Bancorp, Inc., Corbin, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Williamsburg National Bank, Williamsburg, Kentucky.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Volunteer Bancshares, Inc., Jackson, Tennessee; to acquire 100 percent of the voting shares of Citizens State Bank, Trenton, Tennessee.

Board of Governors of the Federal Reserve System, May 31, 1991.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 91-13328 Filed 6-5-91; 8:45 am]
BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 051391 AND 052491

Name of acquiring person, name of acquired person, name of acquired entity	PMN NO.	Date terminated
Peter Gilbert, The Harper Group, Inc., The Harper Group, Inc	91-0882	05/13/91
The Harper Group, Inc., Peter Gilbert, Darrell J. Sekin and Co., Inc	91-0883	05/13/91
Arthur J. Gallagher & Co., Leonard and Roslyn Newman, Leonard Newman Agency, L.P	91-0901	05/13/91
Diamond Shamrock, Inc., H.T. Strasburger, H.T. Strasburger	91-0909	05/13/91
Battle Mountain Gold Company, Mr. Johnny Mitchell, Westworld Resources, Inc	91-0874	05/14/91
George Soros, FFL Partners, Food 4 Less Supermarkets, Inc	91-0907	05/14/91
MA Associates, L.P., The News Corporation Limited, News America Publishing, Inc	91-0916	05/14/91
William Davidson, Falconer Glass Industries, Inc., Falconer Glass Industries, Inc	91-0823	05/15/91
Eastern American Energy Corporation, Edisto Resources Corporation, NRM Operating Company, L.P	91-0837	05/15/91
Kerr-McGee Corporation, Sonat Inc., Sonat Exploration Company	91-0905	05/15/91
Burlington Resources, Inc., Freeport-McMoRan Inc., Freeport-McMoRan Inc	91-0910	05/15/91
Armco Inc., Thomas E. Raleigh, trustee, Estate of William Stoecker, Douglas Dynamics, Inc	91-0930	05/15/91
HMC/Neodata, L.P., Meredith Corporation, Meredith Corporation	91-0873	05/16/91
Richmond Oil & Gas PLC, Mobil Corporation, Mobil Producing Texas & New Mexico Inc	91-0580	05/17/91
Chevron Inc., Mobil Corporation, Mobil Oil Exploration & Producing Southeast Inc	94-0820	05/17/91
Mobil Corporation, Chevron Inc., Chevron U.S.A. Inc	91-0821	05/17/91
Mellon Bank Corporation, Meridian Bancorp, Inc., Meridian Bank and Delaware Trust Company	91-0913	05/17/91
United Asset Management Corporation, Angeles Corporation, First Pacific Advisors, Inc	91-0918	05/17/91
Leucadia National Corporation, FPL Group, Inc., Colonial Penn Group, Inc	91-0919	05/17/91
Kmart Corporation, American Stores Company, American Drug Stores, Inc	91-0921	05/17/91
JWP Inc., H. Michael Cavanaugh, Hyre Electric Company	91-0924	05/17/91
Soc. Franco Hispano Americaine D'Expansion Comm. et Imm, Hyper Shoppes, Inc., Hyper Shoppes, Inc	91-0928	05/17/91
Horizon Gold Corporation, AMAX Inc., Amax Potash Corporation	91-0812	05/20/91
Resurgens Communications Group, Inc., Werner K. Rey, Com Systems, Inc	91-0812	05/20/91
Cellcom Corp., Cellular Telephone Comp. of America, Inc. (Joint-Venture), Cellular Telephone Comp. of America, Inc. (Joint-Venture)	91-0839	05/20/91
New Line Cinema Corporation, NHI Nelson Holdings International Ltd., Nelson Entertainment Holdings Inc	91-0923	05/20/91
UtiliCorp United Inc., Centel Corporation, Centel Corporation	91-0850	05/21/91
Ariadne Australia Limited, LDDS Communications, Inc., LDDS Communications, Inc. Inc	91-0888	05/21/91

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TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 051391 AND 052491—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN NO.	Date terminated
LDDS Communications, Inc., Ariadne Australia Limited, MidAmerican Technologies, Inc	91-0869	05/21/91
BellSouth Corporation, Craig O. McCaw, sixteen entities	91-0902	05/21/91
NYNEX Corporation, Warburg, Pincus Capital Company, L.P., ComputerLand Corp	91-0854	05/22/91
Warburg, Pincus Capital Company, L.P., NYNEX Corporation, Business Information Systems Company	91-0855	05/22/91
National Intergroup, Inc., Ashland Oil, Inc., Ashland Oil, Inc	91-0890	05/22/91
Ashland Oil, Inc., National Intergroup, Inc., The Permian Corporation, Permian Producers, Inc	91-0891	05/22/91
Mitsui & Co., Ltd., Monsanto Company, Monsanto Company	91-0893	05/23/91
Mitsui & Co., Ltd., Nawco, Nawco	91-0894	05/23/91
Nippon Soda Co., Ltd., Nawco, Nawco	91-0895	05/23/91
Reed International PLC, The Time Mirror Company, Broadcasting Publications, Inc	91-0676	05/24/91
Valmont Industries, Inc., Inacomp Computer Centers, Inc., Inacomp Computer Centers, Inc	91-0897	05/24/91
C. Itoh & Co., Ltd., Media Incorporated, Capelco Financial Services Group, Inc	91-0881	05/24/91
Fox Valley Corporation, HPM Investors, Inc., Howard Paper Group, Limited Partnership	91-0898	05/24/91
General Electric Company, Manufacturers Hanover Corporation, Manufacturers Hanover Wholesale, Inc	91-0945	05/24/91
Mellon Bank Corporation, Meridian Bancorp, Inc., Meridian Bank and Delaware Trust Company	91-0949	05/24/91
Quantum Fund, N.V., Digicon Inc., Digicon Inc	91-0950	05/24/91
Liberty Media Corporation, QVC Network, Inc., QVC Network, Inc	91-0951	05/24/91
Chemed Corporation, Philip N. Bradesen and Andrea Conte, Convenient Home Services, Inc	91-0958	05/24/91
Intelligent Electronics, Inc., BizMart, Inc., BizMart, Inc	91-0963	05/24/91
Green Equity Investors, L.P., Almac's Supermarkets Inc., Almac's Supermarkets Inc	91-0964	05/24/91
Liberty Media Corporation, QVC Network, Inc., QVC Network, Inc	91-0972	05/24/91

FOR FURTHER INFORMATION CONTACT:

Sandra M. Peay
or
Renee A. Horton
Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 91–13368 Filed 6–5–91; 8:45 am]

BILLING CODE 6750–01–M

[File No. 892 3151]

American Body Armor and Equipment, Inc.; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a company that manufactures and sells body armor, or bullet-resistant vests, from making false claims, misrepresentations regarding the government certification status of the body armor, and unsubstantiated performance claims regarding any treatment applied to the ballistic panels of body armor. Respondent would be required to provide replacement body armor to eligible purchasers.

DATES: Comments must be received on or before August 5, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Lisa Hellerman, FTC/S–4002, Washington, DC 20580. (202) 326–3139.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of American Body Armor and Equipment, Inc., a corporation, hereinafter referred to as proposed respondent, and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of certain acts and practices being investigated,

It is hereby agreed by and between American Body Armor and Equipment, Inc., by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. Proposed respondent American Body Armor and Equipment, Inc. is a Florida corporation, with its principal place of business located at 85 Nassau Place, Yulee, Florida 32097.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached or in any other manner.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to the proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the Complaint and decision containing the agreed-to order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

1. For purposes of this Order, *body armor* or *vest* shall mean any garment intended to protect the wearer's torso against gunfire.

2. For purposes of this order, *.03 Standard* shall mean the U.S. Department of Justice, National Institute of Justice ("NIJ"), Ballistic Resistance of Police Body Armor (Standard 0101.03) (April 1987).

3. For purposes of this Order *NIJ-certified* shall mean certified by the National Institute of Justice under the current .03 Standard, under any subsequent modification, amendment or revision of that Standard, or under any new Standard for body armor promulgated by NIJ.

4. For purposes of this Order, *eligible purchaser* shall mean any individual or organization that purchased in the United States body armor manufactured by respondent that is labeled or otherwise represented in any manner as complying with or certified under the .03 Standard, where the manufacture of said body armor took place (a) prior to January 1, 1990; or (b) between January 1, 1990 and the date of service of this Order if the body armor differs from the corresponding NIJ-certified model in any of the following respects, excluding minor deviations unavoidable due to the manufacturing process:

i. Waterproofing on the ballistic panels;

ii. Configuration of stitching on the ballistic panels, including label-stitching through the ballistic panels, or stitching of the ballistic panels that penetrates the cover;

iii. The method of closure of the vest (*e.g.*, front closure or side closure);

iv. The number of ballistic panels that comprise the vest;

v. The removability of the ballistic panel from the cover; and

vi. Any other change: (a) To the ballistic elements; or (b) that otherwise may diminish the level of ballistic protection provided by the vest.

5. For purposes of this Order, *purchaser eligible for replacement covers* shall mean any individual or organization that purchased in the United States body armor manufactured by respondent that is labeled or otherwise represented in any manner as complying with or certified under the .03 Standard, where said purchase took place between January 1, 1990 and the date of service of this Order and the body armor differs from the corresponding NIJ-certified model only as to the cover and in no other respects excluding minor deviations unavoidable due to the manufacturing process.

6. For purposes of this Order, *concealable body armor* shall mean body armor intended to be worn underneath the wearer's clothing, except for the "concealable tactical" vest.

7. For purposes of this Order, *tactical body armor* shall mean body armor intended to be worn over the wearer's clothing and shall include the "concealable tactical" vest.

8. For purposes of this Order, *purchased in the United States* shall mean (a) purchased in the United States or its possessions or territories; or (b) sold to any individual who is a citizen of the United States or its possessions or territories, any organization incorporated in the United States or its possessions or territories, or any United States government entity.

I

It is ordered That respondent American Body Armor and Equipment, Inc. ("ABA"), a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labelling, packaging, offering for sale, sale or distribution of any body armor in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, directly or by implication, in any manner:

A. That any such body armor is or has been certified under or in compliance with the .03 Standard, is NIJ-certified, or is approved, endorsed, or sanctioned by the National Institute of Justice;

B. That any such body armor is equivalent to, comparable to, the same as, or similar to any other body armor that is NIJ-certified; and

C. That any such body armor is certified under or in compliance with any performance standard, or is approved, endorsed, or sanctioned by any governmental body or private organization.

II

It is further ordered That respondent, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labelling, packaging, offering for sale, sale or distribution of any body armor purchased in the United States in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, in any manner, that any such body armor provides any specified threat level or degree of ballistic protection or is tested, approved, endorsed, certified or sanctioned, unless such body armor:

A. Is NIJ-certified at the represented threat level, or

B. Has been certified to meet the specified threat level under a different ballistic standard or test, *provided that* respondent discloses, clearly and prominently in close proximity to the representation

(1) The standard or test under which the body armor is certified or tested, including the person or organization that promulgated that standard or conducted the test, and

(2) That the standard used or test conducted is different from the National

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Institute of Justice Standard, if any National Institute of Justice body armor standard is then in effect.

III

It is further ordered That respondent, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labelling, packaging, offering for sale, sale or distribution of any body armor in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, in any manner, the ballistic efficacy or performance of Black Magic or any other treatment applied to the ballistic panel of any body armor unless, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

For purposes of this provision, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies or other evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in the profession or science to yield accurate and reliable results.

IV

It is further ordered That respondent, its successors and assigns, and its officers, employees, agents and representatives, shall offer replacement body armor or replacement covers to purchasers of respondent's body armor, in accordance with the provisions of this Part.

A. Notification of eligible purchasers

1. Within 45 days from the date of service of this Order, respondent shall:

a. Compile a current mailing list containing the names and last known addresses of eligible purchasers following the procedures set out below.

(i) Respondent shall search its own files for the names and addresses of such purchasers; and

(ii) Respondent shall use its best efforts to identify other such purchasers, including but not limited to sending the letter set forth in appendix A to all of its wholesalers, distributors, retailers or others to whom it sold or provided body armor for resale to the public. In the event that any such entity fails to provide any names or addresses of eligible purchasers in its possession, respondent shall provide the names and addresses of all such entities to the Federal Trade Commission within sixty (60) days of service of this Order.

b. Mail the following items by first class mail, certified, return receipt requested, to the last known address of each eligible purchaser named on the mailing list compiled in accordance with part IV.A.1(a):

(i) A dated and signed armor notification letter in the form set forth in appendix B to this Order ("armor notification");

(ii) A replacement program description in the form set forth in appendix C to this Order;

(iii) An armor application in the form set forth in appendix D to this Order ("armor application");

(iv) A price list in the form set forth in appendix E to this Order;

(v) A copy of the most recent edition of respondent's catalog containing all models of respondent's body armor listed on appendix E; and

(vi) A request for extension of time in the form set forth in appendix F to this Order ("extension form").

The front of the envelope transmitting the above items shall be in the form set forth in appendix G to this Order. The phrase "ATTENTION: BODY ARMOR REPLACEMENT PROGRAM" shall appear on the front of the envelope in typeface equal or larger in size to that set forth in appendix G. The envelope shall be addressed to the head of the organization to which it is sent (if an organization), and the words "Forward & Address Correction Requested" shall appear in the upper, left-hand corner one-quarter of an inch beneath the return address. Except as otherwise provided by this Order, no information other than that required by this part shall be included in or added to the above items, nor shall any other material be transmitted therewith.

2. Respondent shall also mail the items listed in part IV.A.1(b)(i)–(vi) to any person or organization not on the mailing list prescribed in part IV.A.1(a) about whom respondent later receives information indicating that the person or organization is likely to be an eligible purchaser, and to any purchaser whose armor notification is returned by the U.S. Postal Service as undeliverable and for whom respondent thereafter obtains a corrected address. The mailing required by this subpart shall be made within ten (10) days of respondent's receipt of a corrected address or information identifying each such purchaser.

3. Respondent shall also mail the items listed in part IV.A.1(b)(i)–(vi) to any person or organization who otherwise meets the definition of "eligible purchaser" contained in this order but has failed to make all payments due for the body armor to be replaced. Said mailing shall include an additional letter stating that the purchaser is not eligible for participation in the replacement program until the purchaser has made payment in full for the body armor to be replaced, and stating the amount due.

B. Notification of purchasers eligible for replacement covers

1. Within 45 days from the date of service of this Order, respondent shall:

a. Compile a current mailing list containing the name and last known address of each purchaser eligible for replacement covers following the procedures set out below.

(i) Respondent shall search its own files for the names and addresses of such purchasers; and

(ii) Respondent shall use its best efforts to identify other such purchasers, including but not limited to sending the letter set forth in appendix A to all of its wholesalers, distributors, retailers or others to whom it sold or provided body armor for resale to the public. In the event that any such entity fails to provide any names or addresses or purchasers eligible for replacement covers in its possession, respondent shall provide the names and addresses of all such entities to the Federal Trade Commission within sixty (60) days of service of this Order.

b. Mail the following items by first class mail, certified, return receipt requested, to each purchaser on the mailing list prescribed in part IV.B.1(a):

(i) A dated and signed cover notification letter in the form set forth in appendix H to this Order ("cover notification");

(ii) A cover replacement program description in the form set forth in appendix I to this Order; and

(iii) A cover application form in the form set forth in appendix J to this Order ("cover application").

The front of the envelope transmitting the above items shall be in the form set forth in appendix K to this Order. The phrase "Attention: Body Armor Cover Replacement Program" shall appear on the front of the envelope in typeface equal or larger in size to that set forth in appendix K. The envelope shall be addressed to the head of the organization to which it is sent (if an organization), and the words "Forward & Address Correction Requested" shall appear in the upper, left-hand corner one-quarter of an inch beneath the return address. Except as otherwise provided by this Order, no information other than that required by this part shall be included in or added to the above items, nor shall any other material be transmitted therewith.

2. Respondent shall also mail the items listed in part IV.B.1(b) (i)–(iii) to any person or organization not on the mailing list prescribed in part V.B.1(a) about whom respondent later receives information indicating that the person or organization is likely to be eligible for a replacement cover, and to any purchaser whose cover notification is returned by the U.S. Postal Service as undeliverable and for whom respondent thereafter obtains a corrected address. The mailing required by this subpart shall be made within ten (10) days of respondent's receipt of a corrected address or information identifying each such purchaser.

3. Respondent shall also mail the items listed in part IV.B.1(b) (i)–(iii) to any person or organization who otherwise meets the definition of "purchaser eligible for replacement covers" contained in this order but has failed to make all payments due to respondent for the body armor for which the covers are to be replaced. Said mailing shall include an additional letter stating that the purchaser is not eligible for participation in the replacement cover program until the purchaser has made payment in full for the body armor for which the covers are to be replaced, and stating the amount due.

C. Respondent's Obligation to Provide Replacement Body Armor or Covers

1. Respondent shall provide replacement body armor to each eligible purchaser who submits a completed armor application and any payment required by this Order to respondent within one-hundred and twenty (120) days after the purchaser's receipt of the armor notification and other items required by part IV.A.1(b) of this Order.

a. Respondent shall not charge any such purchaser who complies with the requirements of this part an amount greater than that listed in appendix E to this Order for the selected model, *provided that* respondent shall not impose any additional charge, on the basis of a late payment or a late return of the body armor to be replaced, on any purchaser who meets said requirements within ten (10) business days of the deadlines provided for by subparts IV.C.1(g) and IV.C.1(i).

b. Respondent shall extend the time for submitting a completed application for each eligible purchaser who, within 120 days of his or her receipt of the armor notification, returns a completed and signed extension form to respondent or otherwise notifies respondent in writing that he or she is unable to apply for replacement body armor within 120 days due to specified procurement or purchasing regulations, procedures, policies or other official requirements, and requests an extension of time to apply. Respondent shall extend the time for application in the amount of time requested by the purchaser up to a maximum of eighteen (18) months from the date of receipt of the armor notification.

c. In any case where respondent is unable to provide replacement body armor to a purchaser due to an incomplete or deficient armor application, respondent shall within five (5) business days of receipt of the application mail to the purchaser a written notice of the deficiency. The purchaser shall have the amount of time remaining in the 120-day period, but in any case no less than fifteen (15) days from the date of receipt of the notice, in which to submit a completed armor application.

d. The replacement body armor shall be in the sizes and models specified by the purchaser. The purchaser shall have the option of selecting any model offered by respondent of the same threat level of the replaced body armor; *provided that* respondent shall not be required to provide a tactical body armor model as a replacement for concealable body armor.

e. The replacement body armor shall be new and shall not differ from the corresponding NIJ-certified model, other than differences in size, color and minor deviations unavoidable due to the manufacturing process, unless the purchaser requests in writing modification(s) to the body armor, respondent agrees to such modification(s) to the body armor, respondent agrees to such modification(s), and respondent informs the purchaser in writing that such differences may affect the NIJ-certification status of the body armor. *Provided that* if any binding law, rule, or regulation is promulgated that prohibits the sale of distribution of body armor which is not NIJ-certified, this Order shall not be construed to authorize respondent to make any modifications to a purchaser's replacement body armor that would cause the body armor to violate such law, rule or regulation.

f. Respondent shall ship, at its cost, all replacement body armor selected by the purchaser within sixty (60) days of its receipt of the completed armor application and any payment required by this Order.

g. Respondent shall not require the tendering of any payment for the replacement body armor except as follows:

(i) For law enforcement units, governmental entities, military units, businesses, firms, educational institutions or other institutional purchasers:

(a) An amount not to exceed twenty-five percent (25%) of the total cost to the purchaser at the time the armor application is submitted; *provided that* no payment shall be due prior to the purchaser's receipt of the replacement body armor if the purchaser has, within 120 days of receipt of the armor notification, returned a completed extension form to respondent or otherwise has notified respondent in writing that he or she is unable to make a pre-payment because of specified procurement or purchasing regulations, procedures, policies or other official requirements; and

(b) The remaining balance owed no earlier than thirty (30) days after the purchaser's receipt of the replacement body armor.

(ii) For individual purchasers, full payment at the time of the delivery of the replacement body armor (C.O.D.).

h. Respondent shall notify the Commission or its designated staff of its intent to refuse a request for an extension of time in which to submit an armor application or a request for waiver of 25% prepayment. The final determination of eligibility for an extension of time shall rest with the Commission or its designated staff and shall be made within a reasonable time. If the Commission or its designated staff determine that the purchaser is not eligible for an extension of time, respondent shall, within five (5) business days of receiving the determination of ineligibility, send to the purchaser by first class mail, certified, return receipt requested, a written notice of his or her ineligibility. The purchaser shall have the amount of time remaining in the 120 day period, but in any case no less than fifteen (15) days from the date of receipt of the notice of ineligibility, to submit a completed armor application.

i. Respondent shall not require the return to it by the purchaser of the body armor to be replaced until sixty (60) days after the purchaser's receipt of the replacement body armor.

2. Respondent shall replace the covers of all body armor of each purchaser eligible for replacement covers who (a) submits a completed cover application to respondent within ninety (90) days after the purchaser's receipt of the cover notification and other items required by part IV.B.1(b) of this Order, and (b) returns his or her body armor to respondent for re-covering within one-hundred eighty (180) days after the purchaser's receipt of the cover notification.

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a. Respondent shall impose no charge on the purchaser for replacing the covers.

b. The replacement covers shall not differ from the covers on the corresponding NIJ-certified model other than differences in size, color and minor deviations unavoidable due to the manufacturing process.

c. Respondent shall ship, at its cost, all body armor fitted with replacement covers to the purchaser within ten (10) business days of its receipt of a completed cover application and the body armor.

d. Respondent shall not damage the ballistic panel of the body armor in any manner in replacing the covers. In any case where the removal of the old cover or fitting of the replacement cover results in any damage to the ballistic panel, respondent shall provide to the purchaser replacement body armor of the same model that does not differ from the corresponding NIJ-certified model other than minor deviations unavoidable due to the manufacturing process.

e. In any case where respondent is unable to provide replacement covers to a purchaser due to an incomplete or deficient cover application, respondent shall within five (5) business days of receipt of the application mail to the purchaser a written notice of the deficiency. The purchaser shall have the amount of time remaining in the 90 day period, but in any case no less than fifteen (15) days from the date of receipt of the notice, to submit a completed cover application.

D. Respondent's Record-Keeping Requirements

Respondent, its successors and assigns, shall, for three (3) years after the date of service of this order, maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

1. Sufficient records to identify:

a. The name and address of each eligible purchaser and purchaser eligible for replacement covers;

b. The name and last known address of each person sent an armor notification pursuant to part IV.A.1(b) of this Order and the date the armor notification was mailed;

c. The name and last known address of each person sent an armor notification pursuant to part IV.A.2 of this Order and the date the armor notification was mailed;

d. The name and last known address of each person sent an armor notification pursuant to part IV.A.3 of this Order and the date the armor notification was mailed;

e. The name and address of each purchaser sent a cover notification pursuant to part IV.B.1(b) of this Order and the date the cover notification was mailed;

f. The name and address of each purchaser sent a cover notification pursuant to part IV.B.2 of this Order and the date the cover notification was mailed;

g. The name and address of each purchaser sent a cover notification pursuant to part IV.B.3 of this Order and the date the cover notification was mailed;

h. The name and address of each purchaser who returns an extension form or otherwise notifies respondent in writing that he or she in unable to file an armor application within 120 days, or is unable to make prepayment, due to procurement or purchasing regulations, procedures, policies or other official requirements and requests an extension of time, and the disposition of each such request.

i. The name and address of each purchaser who is notified by respondent that his or her armor or cover application is deficient.

j. The name and address of each wholesaler, distributor, retailer, or other sent a letter pursuant to part IV.A.1(a)(ii) of this Order and the date the letter was mailed;

k. For each purchaser who applied for replacement body armor pursuant to part IV.C.1:

1. The name and last known address;

2. The date the armor application was received;

3. The date the replacement body armor was shipped;

4. The model number and threat level of the replacement body armor;

5. The total number of body armor units replaced;

6. The total price paid for the replacement body armor.

l. For each purchaser who applied for body armor replacement covers pursuant to part IV.C.2:

1. The name and last known address;

2. The date the cover application was received by respondent;

3. The date the body armor was received by respondents;

4. The date the body armor with replacement covers was shipped to the purchaser;

5. The total number of body armor units with replacement covers shipped.

2. The name and last known address of each person who requested replacement body armor or covers and was refused, the reason for each refusal and the dates of the request and refusal.

3. Sample copies of all letters, descriptions, applications and forms sent to purchasers or other pursuant to this Order.

4. Each and every armor application received from respondent's purchasers.

5. Each and every cover application received from respondents' purchasers.

6. Each and every extension form received from respondent's purchasers.

7. All correspondence relating to any purchaser's request for an extension of time in which to file an application for replacement body armor or waiver of 25% prepayment.

8. All correspondence and written memorializations of oral communications, not otherwise covered by this Part, relating to the replacement of respondent's body armor or body armor covers pursuant to this Order between respondent and any person.

V

It is further ordered: That respondent, its successors and assigns, shall, for three (3) years after the date of the last dissemination of the representation to which they pertain, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon by respondent in disseminating any representation covered by this Order; and

B. All reports, tests, studies, surveys, demonstration or other evidence in respondent's possession or control that contradict, qualify, or call into question such representation, or the basis upon which respondent relied for such representation, including complaints from consumers.

VI

It is further ordered: That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as a dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in this corporation that may affect compliance obligations under this Order. The respondent shall require, as a condition precedent to the closing of any sale of other disposition of all or a substantial part of its assets, that the acquiring party file with the Commission, prior to the closing of such sale or other disposition, a written agreement to be bound by the provisions of this Order.

VII

It is further ordered: That within 45 days from the date of service of this Order, respondent shall mail a letter in the form set forth in appendix L to this Order to all operating divisions, subsidiaries, officers, managerial employees, all of its employees engaged in the preparation and placement of advertisements, labels, or promotional materials covered by this Order, and to all of its wholesalers, distributors and retailers of body armor,

VIII

It is further ordered: That respondent shall, within sixty (60) days after service upon it of this Order and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Appendix A—ABA letterhead

Date

Dear [name of wholesaler, distributor or retailer]:

This letter is to request your assistance in a very important program involving American Body Armor & Equipment, Inc.'s customers.

We have settled a dispute with the Federal Trade Commission ("FTC") regarding the certification of ABA body armor by the National Institute of Justice ("NIJ"). The FTC has charged that ABA misrepresented that its vests are certified under the National Institute of Justice ("NIJ") 0101.03 Standard. As you are probably aware, manufacturers may voluntarily submit vests to NIJ for ballistic testing. Models that pass the test are then certified by NIJ as complying with the standard.

Certain ABA vests that were sold as certified by the NIJ were re-tested according to the NIJ standard and failed those tests due to bullet penetrations. In some cases, there were multiple penetrations. The FTC is concerned that some ABA vests could fail in actual use to provide the claimed level of protection.

The FTC has observed differences between ABA vests sold as NIJ-certified and the sample vests that were tested as part of the certification procedure. The differences that FTC has observed include: (1) the lack of NIJ-required labels stitched through the ballistic panels; (2) the lack of waterproofing on the ballistic panels; and (3) the use of different kinds of vest covers. The FTC has charged that, in some cases, there were other, additional differences in the vests. The FTC believes that these difference may make the vests less effective than claimed, and that vests with these changes should have been retested and therefore are not certified.

We deny these charges and believe our vests are effective. To our knowledge, in actual use, no ABA vest has ever failed to provide the level of protection that the vest was designed to provide under the NIJ standard. Nevertheless, as part of our settlement with the FTC, we have agreed to provide replacement vests at a reduced price to purchasers of ABA body armor represented to be certified under NIJ's 0101.03 standard. (A summary of the FTC's order is enclosed.)

As part of our agreement with the FTC, we are required to compile a mailing list containing the names and addresses of ABA customers. In order to do this, we must request from you and our other trade customers a list containing the names of all persons or organizations who purchased ABA body armor from you prior to January 1, 1990, that was labeled or otherwise represented as complying with the 0101.03 standard. We are also requesting that you provide us with a separate list of names of customers who purchased ABA .03 body armor from you after January 1, 1990. In both cases we will need the following information for each customer:

1. Name of individual or organization and contact person
2. Address and phone number
3. Number of vests purchased
4. Date of purchase
5. Model number(s) and threat level(s)
6. Serial numbers
7. Any amount of money that is due and unpaid from each customer.

Please provide us with these lists as soon as possible, but no later than 30 days after receiving this letter.

You should be aware that the FTC's order requires us to provide the FTC with the names of any wholesaler, distributor or retailer who does not provide us with this information.

Because we realize this may cause you some inconvenience, we are willing to assist you in compiling these lists. Please contact us at (904) 261–4035 to discuss any questions you have. We appreciate your cooperation.

Very truly yours,

Name
Title
Enc.: Summary of Consent Agreement

Appendix B

Dear American Body Armor Customer:

We are writing to inform you of the Federal Trade Commission's ("FTC") concerns that certain body armor sold by American Body Armor & Equipment, Inc. ("ABA") could fail in actual use to provide the level of ballistic protection claimed.

This armor was represented as complying with the 0101.03 standard of the National Institute of Justice ("NIJ"), but, the FTC has charged, may not in fact comply with that standard. Certain ABA vests that were sold as certified by the NIJ were retested according to the NIJ standard and failed those tests due to bullet penetrations. In some cases, there were multiple penetrations. The FTC is concerned that some ABA vests could fail in actual use to provide the claimed level of protection.

Although ABA denies the FTC's allegations, there should be no question when it comes to the safety of our customers. Therefore, we have agreed to send this letter and offer a replacement program to settle the FTC charges without costly litigation.

ABA is offering to replace vests purchased by you and other customers at a small cost to the purchaser. The replacement program is described more fully in materials enclosed with this letter. You must notify us within 120 days if you wish to participate in this program, so your prompt attention is necessary.

The FTC has charged that ABA misrepresented that its vests are certified under the NIJ 0101.03 standard (".03 standard"). As you are probably aware, manufacturers may voluntarily submit vests to NIJ for ballistic testing. Models that pass the test are then certified by NIJ as complying with the standard.

The FTC has observed differences between ABA vests sold as NIJ-certified and the sample vests that were tested as part of the certification procedure. The differences that FTC has observed include: (1) The lack of NIJ-required labels stitched through the ballistic panels; (2) the lack of waterproofing on the ballistic panels; and (3) the use of different kinds of vest covers. The FTC has charged that, in some cases, there were other, additional differences in the vests. The FTC believes that these difference may make the vests less effective than claimed and that vests with these changes should have been retested and therefore are not certified.

ABA believes that none of these differences affect the ballistic performance of its vests, that it complied with NIJ standards and procedures, and that its vests are effective. To our knowledge, in actual use, no ABA vest has ever failed to provide the level of protection that the vest was designed to provide under the NIJ standard.

If you choose to participate in the replacement program, you must agree to relinquish any and all claims you may have against ABA with respect to the vests being replaced.

The FTC recommends that you discuss the replacement program with the appropriate persons in your organization so that you can determine the best course of action for you.

If you have any questions, you can contact us at (904) 261–4035, or you can call Lisa Hellerman at the Federal Trade Commission at (202) 326–3139.

Very truly yours,

Name, Position
American Body Armor and Equipment, Inc.

Enclosures:
"The Body Armor Replacement Program" information sheet
Body armor application

Appendix C—The Body Armor Replacement Program

American Body Armor ("ABA") has agreed to replace certain body armor at a small cost to the purchaser. Your body armor, manufactured by ABA and represented as certified under the National Institute of Justice's 0101.03 standard, is eligible for replacement under this program if it has not been rendered unusable by ballistic testing or other destructive damage.

The replacement vests will be as identical as possible in construction to the corresponding models that were submitted for certification testing. However, the FTC will not be inspecting all replacement vests.

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In this replacement program, you can choose any vest of the same level of protection ("threat level") that you originally ordered, except that you may not select a tactical vest (including the "tactical concealable" vest) to replace a concealable vest. Our records indicate that the vest(s) you purchased was (were) represented to be threat level _____. You can therefore choose as a replacement any ABA vest certified at that threat level. The vest you receive will be covered by ABA's standard warranty. Enclosed is an ABA catalogue. Models _____ are certified vests at threat level _____.

To help defray the costs of the program, you must contribute a small amount to the cost of the replacement vest(s). The enclosed price list shows the current list prices for our vests. It also shows your price for each model under this program.

If you choose to participate in this program, you must turn in your old vest(s) to ABA, but not until after you receive your replacements. If you want to replace your body armor under this program, you must fill out and mail to us the enclosed application within 120 days of your receipt of this letter, specifying the model number(s) and size(s) of the vest(s) you are ordering. We will ship your replacement vests within sixty (60) days after we receive your application.

The payment terms for your new vests are as follows:

—If you are an individual purchaser, full payment is due C.O.D. when the vests are delivered.

—If you are an institutional purchaser (police department, government agency, business firm, military, etc.) 25% of the total cost is due with your application, and the balance is due within 30 days of your receipt of the new body armor.

If you are unable to order replacement vests within 120 days—or you cannot make the 25% prepayment—due to procurement or purchasing regulations, procedures, policies, or other official requirements, an exception can be made for you. You must complete the enclosed Extension Form, sign it and return it to ABA within 120 days. Please explain the specific circumstances why you need the extension or why you cannot submit the 25% prepayment. If you need an extension of time to make your order, you will receive the amount of time shown to be necessary (up to 18 months). If you cannot make the 25% prepayment, full payment will be due within 30 days of your receipt of the new vests.

To qualify for the special terms of this replacement program, you must make all payments when required and return the old vest(s) to ABA no later than 60 days after receiving the replacement vests.

Appendix D—Application for Replacement Vests

To replace your vest(s) with an ABA certified vest of the same threat level, complete this form, sign it, and mail it to ABA within 120 days of your receipt of this letter.

Complete one application for each vest or group of vests that are the same model and style. If you are replacing vests of different models or styles, make copies of the blank application and complete a different application for each vest or group of vests you are replacing that are the same model or style.

You need not complete separate applications for vests of different sizes.

You may choose the color vest you prefer. The choices are:_____.

Please Print or Type

Information about you

1. Name of person or organization _____

2. Contact person (if organization) _____

3. Address _____

City, State, zip code_____

4. Telephone number (daytime)
( )_____

5. Telephone number (evening)
( )_____

Information about the vests you want replaced

6. Total number of vests to be replaced _____

7. Serial number, place of purchase and date of purchase of vests to be replaced (please attach additional sheets if necessary):

Serial #	Place of purchase	Date of purchase

Information about the vests you want as replacement

8. Please send

_____ of Model _____ in color _____, size_____
(Number)
_____ of Model _____ in color _____, size_____.
_____ of Model _____ in color _____, size_____.
_____ of Model _____ in color _____, size_____.
_____ of Model _____ in color _____, size_____.
_____ of Model _____ in color _____, size_____.
_____ of Model _____ in color _____, size_____.
_____ of Model _____ in color _____, size_____.
_____ of Model _____ in color _____, size_____.
_____ of Model _____ in color _____, size_____.

(Reminder: the model you select must be one of the models listed in the third paragraph of your information sheet on "*The Replacement Program.*")

9. Cost to you for each replacement vest_____ (From the enclosed price list.)

10. Total cost _____ (Cost of each replacement vest multiplied by number of vests to be replaced.)

If you are an institutional purchaser, 25% of the total cost (#10) is due with this Application. Please pay with a check made out to American Body Armor & Equipment, Inc.

Reminder:

You need not submit this 25% prepayment with your application if you are prohibited by procurement or purchasing regulations, procedures, policies, or other official requirements from submitting partial payment before receiving your replacement vests. Fill out and send to us the enclosed Extension form explaining the circumstances that prevent the prepayment. The total cost (#10) will be due within thirty (30) days of receiving your replacement vest(s).

If you are an individual purchaser, the total cost (#10) is due at the time the vests are delivered (C.O.D.).

By requesting and accepting replacement vest(s), I understand that I waive any and all claims I may have against American Body Armor and Equipment, Inc. with respect to the vest(s) being replaced. I also understand that I must pay all balances when required and return each old vest for which I have received a replacement within sixty (60) days after receiving the replacement in order to qualify for the special terms of this repalcement program. I will send those old vests to: American Body Armor and Equipment, Inc., 85 Nassau Place, Yulee, Florida 32097.

Signed: _____

Name: _____

(Print or type name of person who signed)

Position:_____

Date: _____

Send this completed and signed from, with any payment due, and the Extension form (if applicable) to: American Body Armor and Equipment, Inc., 85 Nassau Place, Yulee, Florida 32097.

APPENDIX E—PRICE LIST

Model	Style	Threat Level	Replacement Price	List
Body Armor Vest Male Contour				
ABA 505	I Contour removable (I–C–R)	I	94.00	332.00
ABA 505	I Contour nylon (I–C–N)	I	94.00	332.00
ABA 505	I Contour tricot (I–C–T)	I	94.00	332.00
American IIA	IIA contour removable (IIA–C–R)	IIA	128.00	460.00
American IIA	IIA contour nylon (IIA–C–N)	IIA	128.00	460.00
American IIA	IIA contour tricot (IIA–C–T)	IIA	128.00	460.00
ABA–NC	II contour removable (II–C–R)	II	149.00	523.00
ABA–NC	II contour nylon (II–C–N)	II	149.00	523.00
ABA–NC	II contour tricot (II–C–T)	II	149.00	523.00
A1–IIIA	IIIA contour removable (IIIA–C–R)	IIIA	163.00	631.00
A1–IIIA	IIIA contour nylon (IIIA–C–N)	IIIA	163.00	631.00
A1–IIIA	IIIA contour tricot (IIIA–C–T)	IIIA	163.00	631.00
Body Armor Vest Male Fullside Coverage				
ABA 505	I fullside removable (I–FS–R)	I	100.00	357.00
ABA 505	I fullside nylon (I–FS–N)	I	100.00	357.00
ABA 505	I fullside tricot (I–FS–T)	I	100.00	357.00
American IIA	IIA fullside removable (IIA–FS–R)	IIA	143.00	496.00
American IIA	IIA fullside nylon (IIA–FS–N)	IIA	143.00	496.00
American IIA	IIA fullside tricot (IIA–FS–T)	IIA	143.00	496.00
ABA–NC	II fullside removable (II–FS–R)	II	165.00	556.00
ABA–NC	II fullside nylon (II–FS–N)	II	165.00	556.00
ABA–NC	II fullside tricot (II–FS–T)	II	165.00	556.00
A1–IIIA	IIIA fullside removable (IIIA–FS–R)	IIIA	178.00	665.00
A1–IIIA	IIIA fullside nylon (IIIA–FS–N)	IIIA	178.00	665.00
A1–IIIA	IIIA fullside tricot (IIIA–FS–T)	IIIA	178.00	665.00
Body Armor Vest Female Contour				
ABA 505–F	Female I contour removable (F–I–C–R)	I	94.00	332.00
ABA 505–F	Female I contour nylon (F–I–C–N)	I	94.00	332.00
ABA 505–F	Female I contour tricot (F–I–C–T)	I	94.00	332.00
American IIA–F	Female IIA contour removable (F–IIA–C–T)	IIA	128.00	460.00
American IIA–F	Female IIA contour nylon (F–IIA–C–N)	IIA	128.00	460.00
American IIA–F	Female IIA contour tricot (F–IIA–C–T)	IIA	128.00	460.00
ABA–NC–F	Female II contour removable (F–II–C–R)	II	149.00	523.00
ABA–NC–F	Female II contour nylon (F–II–C–N)	II	149.00	523.00
ABA–NC–F	Female II contour tricot (F–II–C–T)	II	149.00	523.00
A1–IIIA–F	Female IIIA contour removable (F–IIIA–C–R)	IIIA	178.00	631.00
A1–IIIA–F	Female IIIA contour nylon (F–IIIA–C–N)	IIIA	178.00	631.00
A1–IIIA–F	Female IIIA contour tricot (F–IIIA–C–T)	IIIA	178.00	631.00
Body Armor Vest Female Fullside Coverage				
ABA 505–F	Female I fullside removable (F–I–FS–R)	I	100.00	357.00
ABA 505–F	Female I fullside nylon (F–I–FS–N)	I	100.00	357.00
ABA 505–F	Female I fullside tricot (F–I–FS–T)	I	100.00	357.00
American IIA–F	Female IIA fullside removable (F–IIA–FS–R)	IIA	143.00	496.00
American IIA–F	Female IIA fullside nylon (F–IIA–FS–N)	IIA	143.00	496.00
American IIA–F	Female IIA fullside tricot (F–IIA–FS–T)	IIA	143.00	496.00
ABA–NC–F	Female II fullside removable (F–II–FS–R)	II	165.00	556.00
ABA–NC–F	Female II fullside nylon (F–II–FS–N)	II	165.00	556.00
ABA–NC–F	Female II fullside tricot (F–II–FS–T)	II	165.00	556.00
A1–IIIA–F	Female IIIA fullside removable (F–IIIA–FS–R)	IIIA	178.00	665.00
A1–IIIA–F	Female IIIA fullside nylon (F–IIIA–FS–N)	IIIA	178.00	665.00
A1–IIIA–F	Female IIIA fullside tricot (F–IIIA–FS–T)	IIIA	178.00	665.00
Body Armor Vest—Male Weaver				
American IIA	IIA weaver removable (IIA–W–R)	IIA	150.00	601.00
American IIA	IIA weaver nylon (IIA–W–N)	IIA	150.00	601.00
American IIA	IIA weaver tricot (IIA–W–T)	IIA	150.00	601.00
Body Armor Vest—Armitron Airflow				
ABA 201	ABA 201	IIIA	192.00	712.00
Body Armor Vest—Male Weaver				
ABA–NC	II Weaver removable (II–W–R)	II	168.00	651.00
ABA–NC	II weaver nylon (II–W–N)	II	168.00	651.00
ABA–NC	II weaver tricot (II–W–T)	II	168.00	651.00
A1–IIIA	IIIA weaver removable (IIIA–W–R)	IIIA	187.00	797.00
A1–IIIA	IIIA weaver nylon (IIIA–W–N)	IIIA	187.00	797.00
A1–IIIA	IIIA weaver tricot (IIIA weaver tricot (IIIA–W–T)	IIIA	187.00	797.00

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APPENDIX E—PRICE LIST—Continued

Model	Style	Threat Level	Replacement Price	List
Body Armor Vest—Female Weaver				
American IIA–F	Female IIA weaver removable (F–IIA–W–R)	IIA	150.00	601.00
American IIA–F	Female IIA weaver nylon (F–IIA–W–N)	IIA	150.00	601.00
American IIA–F	Female IIA weaver tricot (F–IIA–W–T)	IIA	150.00	601.00
ABA–NC–F	Female II weaver removable (F–II–W–R)	II	166.00	651.00
ABA–NC–F	Female II weaver nylon (F–II–W–N)	II	166.00	651.00
ABA–NC–F	Female II weaver tricot (F–II–W–T)	II	166.00	651.00
A1–IIIA–F	Female IIA weaver removable (F–IIIA–W–R)	IIIA	187.00	797.00
A1–IIIA–F	Female IIIA weaver nylon (F–IIIA–W–N)	IIIA	187.00	797.00
A1–IIIA–F	Female IIIA weaver tricot (F–IIIA–W–T)	IIIA	187.00	797.00
Police Jacket				
ABA 505/VC (velcro closure)	I PJ (I–PJ)	I	138.00	677.00
American IIA/VC (velcro closure).	IIA PJ (IIA–PJ)	IIA	251.00	1,094.00
ABA–NC/VC (velcro closure)	II PJ (II–PJ)	II	278.00	1,169.00
A1–IIA/VC (velcro closure)	IIIA PJ (IIIA–PJ)	IIIA	299.00	1,383.00
Executive Vest				
ABA 505	I–EV (I–EV)	I	117.00	458.00
American IIA	IIA–EV (IIA–EV)	IIA	152.00	833.00
ABA–NC	II–EV (II–EV)	II	213.00	905.00
A1–IIIA	IIIA–EV (IIIA–EV)	IIIA	230.00	1,092.00
M65 Jacket				
American IIA/VC (velcro closure).	IIA M65 (IIA–M65)	IIA	235.00	1,038.00
ABA–NC/VC (velcro closure)	II M65 (II–M65)	II	264.00	1,111.00
A1–IIIA/VC (velcro closure)	IIIA M65 (IIIA–M65)	IIIA	354.00	1,330.00
Narcotic Vest				
American IIA/VC (velcro closure).	IIA NV (IIA–NV)	IIA	205.00	830.00
ABA–NC/VC (velcro closure)	II NV (II–NV)	II	226.00	921.00
A1–IIIA/VC (velcro closure)	IIIA NV (IIIA–NV)	IIIA	243.00	1,121.00
Concealable Tactical Body Armor				
ABA–NC	II TAC FS nylon (II–TAC–FS–N)	II	167.00	564.00
ABA–NC	II TAC FS fire retardant (II–TAC–FS–FR)	II	186.00	647.00
A1–IIIA	IIIA TAC FS nylon (IIIA–TAC–FS–N)	IIIA	180.00	672.00
A1–IIIA	IIIA TAC FS fire retardant (IIIA–TAC–FS–FR)	IIIA	198.00	755.00
Tactical Assault Vest				
ABA–NC	II TAC ALT nylon (II–TAC–A–N)	II	211.00	827.00
ABA–NC	II TAC ALT fire retardant (II–TAC–A–FR)	II	257.00	959.00
A1–IIIA	IIIA TAC ALT nylon (IIIA–TAC–A–N)	IIIA	226.00	1,001.00
A1–IIIA	IIIA TAC ALT fire retardant (IIIA–TAC–A–FR)	IIIA	273.00	1,134.00
AK–47 Light Weight Military Body Armor				
ABA–NC	II AK–47 nylon (II–AK–47–N)	II	275.00	1,296.00
ABA–NC	II AK–47 fire retardant (II–AK–47–FR)	II	322.00	1,429.00
A1–IIIA	IIIA AK–47 nylon (IIIA–AK–47–N)	IIIA	295.00	1,521.00
A1–IIIA	IIIA AK–47 fire retardant (IIIA–AK–47–FR)	IIIA	342.00	1,653.00
Flak Jacket USA				
ABA–NC/VC (velcro closure)	II FLAK USA nylon (II–FLAK–N)	II	276.00	1,135.00
ABA–NC/VC (velcro closure)	II FLAK USA fire retardant (II–FLAK–FR)	II	323.00	1,268.00
A1–IIIA/VC (velcro closure)	IIIA FLAK USA nylon (IIIA–FLAK–N)	IIIA	297.00	1,378.00
A1–IIIA/VC (velcro closure)	IIIA FLAK USA fire retardant (IIIA–FLAK–FR)	IIIA	344.00	1,511.00
High Coverage Tactical Armor				
ABA–ESU	IIIA NYPD nylon (IIIA–NYPD–N)	IIIA	456.00	2,150.00
ABA–ESU	IIIA NYPD fire retardant (IIIA–NYPD–FR)	IIIA	503.00	2,283.00
Tactical Jacket				
ABA–NC/ZC (zipper closure)	II tactical jacket nylon (II–TJ–N)	II	353.00	1,320.00
ABA–NC/ZC (zipper closure)	II tactical jacket fire ret. (II–TJ–FR)	II	400.00	1,453.00
A1–IIIA/ZC (zipper closure)	IIIA tactical jacket nylon (IIIA–TJ–N)	IIIA	380.00	1,652.00

APPENDIX E—PRICE LIST—Continued

Model	Style	Threat Level	Replacement Price	List
A1–IIIA/ZC (zipper closure)	IIIA tactical jacket fire ret. (IIIA–TJ–FR)	IIIA	426.00	1,764.00
Delta Lightweight Tactical Armor				
ABA–NC	II Delta nylon (II–DELT–N)	II	355.00	1,287.00
ABA–NC	II Delta fire retardant (II–DELT–FR)	II	402.00	1,419.00
A1–IIIA	IIIA Delta nylon (IIIA–DELT–N)	IIIA	383.00	1,486.00
A1–IIIA	IIIA Delta fire retardant (IIIA–DELT–FR)	IIIA	430.00	1,619.00
AV–1 Aviators Crew Support Vest				
A1–IIIA/ZC (zipper closure)	IIIA AV–1 nylon (IIIA–AV–1–N)	IIIA	401.00	1,062.00
A1–IIIA/ZC (zipper closure)	IIIA AV–1 fire retardant (IIIA–AV–1–FR)	IIIA	448.00	1,090.00
AV–2 Aviators Vest				
A1–IIIA	IIIA AV–2 nylon (IIIA–AV–2–N)	IIIA	295.00	780.00
A1–IIIA	IIIA AV–2 fire retardant (IIIA–AV–2–FR)	IIIA	332.00	888.00
Passive/Active Flotation Vest				
A1–IIIA	IIIA P/A–FV nylon (IIIA–P/A–FV–N)	IIIA	339.00	1,582.00
A1–IIIA	IIIA P/A–FV fire retardant (IIIA–P/A–FV–FR)	IIIA	366.00	1,715.00
Aviation Float Vest				
A1–IIIA	IIIA AFV nylon (IIIA–AFV–N)	IIIA	353.00	1,282.00
A1–IIIA	IIIA AFV fire retardant (IIIA–AFV–FR)	IIIA	400.00	1,389.00
Armored Load Bearing Vest				
A1–IIIA/ZC (zipper closure)	IIIA ALB nylon (IIIA–ALB–N)	IIIA	366.00	1,466.00
A1–IIIA/ZC (zipper closure)	IIIA ALB fire retardant (IIIA–ALB–FR)	IIIA	413.00	1,599.00
Griffin Medic Protective Vest				
American IIA/VC (velcro closure).	IIA MPV Cordura (IIA–MPV–C)	IIA	297.00	1,147.00
American IIA/VC (velcro closure).	IIA MPV fire retardant (IIA–MPV–FR)	IIA	394.00	1,820.00
ABA–NC/VC (velcro closure)	II MPV Cordura (II–MPV–C)	II	321.00	1,206.00
ABA–NC/VC (velcro closure)	II MPV fire retardant (II–MPV–FR)	II	429.00	1,683.00
A1–IIIA/VC (velcro closure)	IIIA MPV Cordura (IIIA–MPV–C)	IIIA	344.00	1,383.00
A1–IIIA/VC (velcro closure)	IIIA MPV fire retardant (IIIA–MPV–FR)	IIIA	460.00	1,857.00

Add 20% extended shoulder coverage.
Added charge of 10% for size 50–52, 20% for size 54–56 and 30% for size 58–60.

Appendix F—Request for Extension of Time

You must complete this form if you need an extension of time beyond 120 days to order your replacement body armor, or if you are an institutional purchaser and cannot make the 25% prepayment for your armor. The extension or waiver of prepayment must be based on procurement or purchasing regulations, procedures, policies or other official requirements.

Please check the applicable box(es), provide the requested information, sign the form, and return it to: American Body Armor and Equipment, Inc., 85 Nassau Place, Yulee, Florida 32097.

This form must be returned within 120 days.

☐ Request for extension of time to order body armor. Amount of additional time needed (up to 18 months):

☐ Request for waiver of 25% prepayment.

The additional time requested, and/or waiver of 25% prepayment is necessary to comply with the following procurement or purchasing regulations, procedures, policies or other official requirements (please be specific):

We understand that this request for extension of time does not obligate this organization to order and pay for replacement body armor, but it is our present intention to do so, subject to compliance with the requirements specified above.

Name

Title or position

Appendix G

American Body Armor & Equipment, Inc., 85 Nassau Place, Yulee, FL 32097

Forward and Address Correction Requested

Attention: Body Armor Replacement Program

Chief of Police
Anywhere Police Department
Anywhere, USA 10000

Dear American Body Armor Customer: We are writing to inform you that the Federal Trade Commission ("FTC") has raised questions about covers used on body armor sold by American Body Armor & Equipment, Inc. ("ABA") in the past several months. The FTC alleges that some covers are different from the ones used on models submitted for government certification, and may be less effective than claimed. Although ABA denies the FTC's allegations, there should be no question when it comes to the safety of our customers. Therefore, we have agreed to send this letter and offer to replace the covers on

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your vests to settle the FTC charges without litigation.

ABA is offering to replace the covers on the vests at no cost to the purchaser. The replacement program is described more fully in materials enclosed with this letter. You must submit an application for replacement covers within 90 days, so your prompt attention is necessary.

The FTC has charged that ABA misrepresented that its vests are certified under the National Institute of Justice ("NIJ") 0101.03 Standard. As you are probably aware, manufacturers may voluntarily submit vests to NIJ for ballistic testing. Models that pass the test are then certified by NIJ as complying with the standard.

The FTC has observed differences in the covers used on ABA vests sold as NIJ-certified and the sample vests that were tested as part of the certification procedure. These differences include, among other things, differences in cover material and foam padding under the cover. The FTC believes that these differences may make the vests less effective than claimed, and that vests with these changes required certification as new models or new styles under the NIJ procedures.

ABA believes that none of these differences affects the ballistic performance of its vests, that it complied with NIJ standards and procedures, and that its vests are effective.

If you choose to participate in the replacement program, you must agree to relinquish any and all claims you may have against ABA with respect to the covers being replaced.

If you have any questions, you can contact us at (904) 261–4035, or you can call Lisa Hellerman at the Federal Trade Commission at (202) 326–3139.

Very truly yours,

Name, Position
American Body Armor and Equipment, Inc.
Enclosures: "The Replacement Cover Program" information sheet Cover application.

Appendix I—The Replacement Cover Program

American Body Armor ("ABA") has agreed to replace the covers of certain body armor purchased by our customers. Your body armor, manufactured by ABA and represented as certified under the National Institute of Justice's 0101.03 standard, is eligible for replacement under this program.

The replacement covers will be identical in construction to the covers of the corresponding models that were submitted for certification testing. However, the FTC will not be inspecting all replacement covers.

In this replacement program, you can choose any color of cover. The colors available are: _____. The new cover you receive will be covered by ABA's standard body armor cover warranty.

There is no charge to you for the replacement covers.

If you choose to replace your body armor cover under this program, you must fill out and mail to us the enclosed cover application within 90 days of your receipt of this letter. You can send us your vests with your application, if you wish. Or, you can send them later, up to 180 days after your receipt of this letter. If you have many vests, you may wish to send them in stages, but make sure they are all sent within the 180 day deadline.

We will ship your re-covered vest(s) within ten (10) business days after we receive your vest(s).

Appendix J—Cover Application

To replace the covers on your ABA vest(s) with certified covers, complete this form, sign it, and mail it to ABA within 90 days of your receipt of this letter. All vests to be re-covered must be sent to us within 180 days of your receipt of this letter.

You can choose the color of cover you prefer. The colors you can choose from are: _____. Complete one application for each vest or group of vests for which you want the *same color* cover. Make copies of the blank application if necessary so that you can submit a separate application for each vest or group of vests whose covers you are replacing with the same color cover. Send each group of vests to ABA separately with a completed application (or a copy of it if you sent the application in earlier.

ABA will ship your vests back to you with the new covers within 10 (ten) business days of receiving your vests and this application.

Please Print or Type

Information about you

1. Name of person or organization _____
2. Contact person (if organization) _____
3. Address _____. City, state, zip code _____
4. Telephone number (daytime) (_____) _____
5. Telephone number (evening) (_____) _____

Information about the covers you want

6. Total number of vests to be re-covered: _____. Color: _____

By requesting and accepting replacement cover(s), I understand that I waive any and all claims I may have against American Body Armor and Equipment, Inc. with respect to the cover(s) being replaced.

Signed: _____
Name: _____
(Print or type name of person who signed)
Position: _____
Date: _____

This form, and your vests, should be sent to: American Body Armor and Equipment, Inc., 85 Nassau Place, Yulee, Florida 32097.

Appendix K

American Body Armor & Equipment, Inc., 85 Nassau Place, Yulee, FL 32097

Forward and Address Correction Requested

Attention: Body Armor Cover Replacement Program

Chief of Police
Anywhere Police Department
Anywhere, USA 10000

Appendix L—Summary of FTC Consent Agreement With American Body Armor

The Federal Trade Commission has entered into a consent order with American Body Armor & Equipment, Inc. ("ABA") settling its charges against ABA. The FTC alleged that ABA misrepresented that certain of the body armor it sold was certified by the National Institute of Justice, when, according to FTC's charges, this armor was not certified because it differed in certain significant ways from the models that had been certified. The FTC has also alleged that ABA did not have substantiation for its claims that its "Black Magic" treatment effectively improves the ballistic performance of its body armor. ABA denies all charges that it has violated the law, but has agreed to enter into the consent order. The following is a summary of the requirements of the Order.

First, the Order prohibits ABA from misrepresenting that its body armor is certified under the NIJ standard unless it has been tested and certified strictly in accordance with the NIJ's procedures; it also prohibits ABA from falsely claiming (that is, misrepresenting) that its body armor carries the approval, endorsement, or sanction of NIJ or any other organization, or that its body armor is the same as or similar to NIJ-approved body armor.

Second, the Order prohibits ABA from representing that its body armor provides any specified degree of ballistic protection, or is tested, approved, endorsed or certified, unless the armor is either:

a. NIJ-certified at the represented threat level, or

b. certified under a different standard or test, so long as ABA discloses the identity of the standard or test and that it is different from the NIJ standard.

Third, the Order requires ABA to have competent and reliable scientific evidence to substantiate any claims of ballistic efficacy or performance it makes for Black Magic or any other ballistic treatment.

Fourth, the Order requires ABA to offer replacement body armor or replacement covers to purchasers of ABA vests represented as certified by NIJ under its 0101.03 standard. All U.S. purchasers of ABA .03 vests are eligible for replacement vests, except those who purchased their vests after January 1, 1990, and whose vests differ from the certified models only in their covers. The latter group of purchasers is eligible for replacement covers on their existing vests.

The Order requires that ABA compile a list of all purchasers eligible for replacement vests or covers from its own files and by contacting wholesalers, distributors and retailers of ABA vests. Within 45 days after the Order is entered, ABA must mail to the purchasers a letter and replacement program description, an ABA catalog and price list, and application forms. The letter explains the FTC's charges against ABA and its concern that the vests ABA sold could fail in actual use to provide the level of ballistic protection claimed, and contains ABA's denial of these allegations and its belief that the vests are effective. Purchasers who have not yet fully paid for their vests, but are otherwise eligible, will be sent an additional letter by ABA explaining their need to complete payments to be eligible for the program.

The Order further requires ABA to provide replacement body armor to eligible purchasers who apply for it within 120 days of their receipt of the letter. In those cases where the purchaser cannot meet the 120-day deadline due to procurement or purchasing regulations, procedures, policies or other official requirements, they may submit an application form specifying the official requirements in order to receive an extension of time to apply of up to 18 months.

Under the Order, the purchaser may request any model of armor of the same threat level as the vests to be replaced. However, tactical vests cannot be ordered as replacements for concealable vests. The vests will be provided in the color and size specified by the purchaser. The replacement armor will be new and cannot differ from the corresponding certified model except for minor deviations unavoidable due to the manufacturing process. However, if the purchaser requests a modification from the certified model, ABA may elect to supply the modified vest if it informs the purchaser that the modification may affect its certification by NIJ.

The Order provides for partial payment by the purchaser for the replacement vests in order to defray some of ABA's costs. The cost to the purchaser varies by model. Nearly all replacement costs fall between 24% and 29% of ABA's current list price for the vest. The Order further specifies the payment terms. ABA will ship the replacement vests, at its cost, within 60 days of the application and any required pre-payment. The purchaser then has another 30 days in which to pay all remaining balance due for the replacement vests, and 60 days to return the old vests to ABA, which cannot have been destroyed by ballistic testing or other destructive damage.

The Order also requires ABA to provide free replacement covers to purchasers eligible for that offer who return their application within 90 days of receiving their notification letter. The replacement covers will not differ from the covers on the NIJ-certified models except as to size, color, and minor manufacturing deviations. Purchasers must ship their armor to ABA within 180 days, and ABA will return them with new covers within 10 business days.

Under the Order, ABA must keep records and file reports of their compliance with the provisions of the Order, notify the FTC of changes in its corporate structure, and provide a copy of this Summary to its affiliates, officers, managers, advertising employees, and trade customers. This Summary is not intended to constitute an official interpretation of the Order or to modify in any way its terms.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted subject to final approval an agreement containing a consent order from American Body Armor & Equipment, Inc. ("ABA" or "respondent"), a company that manufactures and sells body armor, also known as bullet-resistant vests.

The consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will decide whether it should withdraw from the agreement and take other appropriate action, or make final the order contained in the agreement.

This matter concerns ABA's representations regarding the certification of its body armor under a voluntary performance standard, known as the 0101.03 standard (".03 standard"), promulgated by the National Institutes of Justice ("NIJ"), an Offices of Justice Program within the United States Department of Justice. This matter also involves respondent's representations regarding the efficacy and performance of "Black Magic," a substance ABA applies to its body armor. The body armor is sold to police officers and others for protection against gunfire, and consists of a "ballistic panel" of layers of bullet-resistant fabric enclosed in a cover.

The Commission's complaint in this matter alleges that ABA falsely represented that certain of the body armor it sold was certified by NIJ under the .03 standard. According to the FTC's charges, this armor was not certified because it differed in certain significant ways from the models that had been certified. These differences relate, among other things, to waterproofing on the ballistic panel of the vest; the type of material used on the vest cover; the presence or absence of foam padding for the vest cover; the removability of the cover from the ballistic panel; and the method of closure of the vest. The Commission also has charged that ABA falsely represented that it had a reasonable basis for its claims that its "Black Magic" treatment effectively improves the ballistic performance of its body armor.

The consent order contains provisions designed to prevent repetition of the false claims, to prevent any misrepresentations regarding the certification status of respondent's body armor, and to prevent future unsubstantiated performance claims regarding any treatment applied to the ballistic panels of body armor. The order also sets up a program whereby eligible past purchasers of respondent's body armor may order replacement body armor at a small cost. Other purchasers may order replacement body armor covers at no cost.

Part I of the Order prohibits respondent from misrepresenting that its body armor is certified under the NIJ .03 or any other standard, or is approved, endorsed, or sanctioned by the NIJ or any other organization. This Part also prohibits ABA from misrepresenting that its body armor is comparable to, the same as or similar to NIJ-certified body armor.

Part II of the Order prohibits ABA from representing that its body armor provides any specified threat level or degree of ballistic protection, or is tested, approved, endorsed, certified or sanctioned, unless the armor is either:

a. NIJ-certified at the represented threat level, or

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b. Certified to meet the specified threat level under a different standard or test, so long as ABA identifies the standard or test, and discloses that it is different from the NIJ standard.

Part III of the Order prohibits ABA from making unsubstantiated ballistic efficacy or performance claims for Black Magic or any other treatment applied to the ballistic panels of body armor. Prior to making such claims, respondent must have competent and reliable scientific evidence that supports the claims.

Part IV of the Order requires ABA to offer replacement body armor or replacement covers to purchasers of ABA vests represented as certified by NIJ under its 0101.03 standard. Purchasers eligible for replacement vests include those who bought .03 certified vests prior to 1990, and 1990 purchasers whose vests differ in specified ways from the certified models. Purchasers in 1990 whose vests differ from the certified models only with respect to their covers are eligible for replacement covers on their existing vests.

The Order requires that ABA compile a list of all purchasers eligible for replacement body armor or body armor covers from its own files and by contacting wholesalers, distributors and retailers of its vests. Within 45 days after the Order is entered, ABA must mail to purchasers eligible for replacement armor or covers information about the replacement program, along with application forms. A letter explains the FTC's charges against ABA and its concern that the vests ABA sold could fail in actual use to provide the level of ballistic protection claimed, and contains ABA's denial of these allegations.

ABA must provide replacement body armor to eligible purchases who apply for it within 120 days of their notification. The purchaser may request any model of armor of the same threat level as the vests to be replaced. ABA must provide new vests which are the color and size specified by the purchaser, and which do not differ from the corresponding certified model except for minor deviations unavoidable due to the manufacturing process. However, if the purchaser requests a modification from the certified model, ABA may supply a modified vest if it informs the purchaser that the modification may affect its certification by NIJ.

The Order provides for partial payment by the purchaser for the replacement vests in order to defray some of ABA's costs. The cost to the purchaser varies by model. Nearly all replacement costs fall between 24% and 29% of ABA's current list price for the vest. Institutional purchasers may pay 25% of the total cost at the time they apply for replacement vests, with the remaining balance due thirty days after they receive the replacement armor. Individual purchasers must make full payment at the time of delivery of the replacement body armor (C.O.D.). The Order allows for an extension of time to apply for the program (up to 18 months) and for a waiver of the 25 percent prepayment to those purchasers whose procurement policies or other official requirements necessitate it.

ABA must ship the replacement vests, at its cost, within 60 days of the application and any required pre-payment. The purchaser then has another 30 days in which to pay all remaining balance due for the replacement vests, and 60 days to return the old vests to ABA.

ABA must provide free replacement covers to purchasers eligible for that offer who return their application within 90 days of receiving their notification. The replacement covers must not differ from the covers on the NIJ-certified models except as to size, color, and minor manufacturing deviations. Purchasers must ship their armor to ABA within 180 days, and ABA will return them with new covers within 10 business days.

Subpart IV.D of the Order sets forth respondent's record-keeping requirements relating to the replacement program. ABA must maintain sufficient records showing its compliance with each step of the replacement program.

Part V requires respondent to keep records concerning claims covered by the Order.

Part VI requires respondent to notify the Commission of any change in its corporate structure that might affect its compliance with the Order.

Part VIII requires respondent to provide a copy of a summary of the Order to its operating divisions, subsidiaries, officers, managers, advertising employees, and its wholesalers, distributors and retailers of body armor.

Part VIII requires respondent to file compliance reports with the Commission.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify any of their terms.

Donald S. Clark,

Secretary.

Dissenting Statement of Commissioner Andrew J. Strenio, Jr.

American Body Armor & Equipment, Inc., Docket No. 892 3151

I agree with the Commission majority that there is reason to believe American Body Armor & Equipment, Inc. falsely claim that its bullet-resistant vests were certified as meeting standards established by the National Institute of Justice ("NIJ"), an Offices of Justice Program within the U.S. Department of Justice. However, it seems to me that stronger relief than that contained in the consent agreement is warranted. Accordingly, I respectfully dissent.

[FR Doc. 91-13365 Filed 6-5-91; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-331]

American Stair-Glide Corporation, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, American Stair-Glide to grant a non-exclusive perpetual license to Cheney's technology involved in the production of curved stairway lifts, straight stairway lifts, and vertical wheelchair lifts, and a perpetual exclusive license to sell such products under the Cheney name and certain trade names, to a Commission-approved licensee, pursuant to a Commission-approved licensing agreement.

DATES: Complaint and order issued May 17, 1991.[1]

FOR FURTHER INFORMATION CONTACT: Howard Morse, FTC/S-2308, Washington, DC 20580. (202) 326-2949.

SUPPLEMENTARY INFORMATION: On Wednesday, January 30, 1991, there was published in the **Federal Register**, 56 FR 3474, a proposed consent agreement with analysis In the Matter of American Stair-Glide Corporation, et al., for the purpose of soliciting public comment.

[1] Copies of the Complaint, the Decision and Order, and the dissenting statement are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18.

Donald S. Clark,

Secretary.

[FR Doc. 91-13386 Filed 6-5-91; 8:45 am]

BILLING CODE 6750-01-M

[File No. 891 0063]

Madison County Veterinary Medical Association, et al.; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, an Alabama association and four individual veterinarians from entering into any agreement: To refuse to deal with any person or program promoting the sale of veterinary services at discounted prices; or to fix or standardize the manner of sale, promotion or advertising of veterinary goods or services.

DATES: Comments must be received on or before August 5, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Chris Couillou, Atlanta Regional Office, Federal Trade Commission, 1718 Peachtree Street, NW., room 1000, Atlanta, GA. 30367. (404) 347-4836.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of Madison County Veterinary Medical Association, Robert Neil Cole, D.V.M., Donald Butler Popejoy, D.V.M., Billy Joe Renfroe, D.V.M., and Charles L. Smith, D.V.M.

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Madison County Veterinary Medical Association ("MCVMA"), a corporation, and Robert Neil Cole, Donald Butler Popejoy, Billy Joe Renfroe, and Charles L. Smith, and it now appears that the Madison County Veterinary Medical Association ("MCVMA"), a corporation, and Robert Neil Cole, Donald Butler Popejoy, Billy Joe Renfroe, and Charles L. Smith, hereinafter sometimes referred to as proposed respondents, are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed, by and between the Madison County Veterinary Medical Association ("MCVMA"), by its duly authorized officer, and Robert Neil Cole, Donald Butler Popejoy, Billy Joe Renfroe, and Charles L. Smith and their attorney and counsel for the Federal Trade Commission, that:

Paragraph one: Proposed respondent Madison County Veterinary Medical Association ("MCVMA") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Alabama, with its office and principal place of business at 106 Rainbow Drive, Madison, Alabama 35758.

Paragraph two: Proposed respondent MCVMA is a professional association formed to represent the interests of veterinarians who practice in and around Huntsville, Alabama.

Paragraph three: Members of proposed respondent MCVMA are engaged in the business of providing veterinary health care services for a fee.

Paragraph four: Proposed individual respondents Robert Neil Cole, Donald Butler Popejoy, Billy Joe Renfroe, and Charles L. Smith are members of MCVMA and are veterinarians practicing in Madison County, Alabama.

Paragraph five: The following are the business addresses of the proposed individual respondents:

Robert Neil Cole, D.V.M., 3415 Governors Drive, SW., Huntsville, AL 35805.

Donald Butler Popejoy, D.V.M., 7708 Carlton Drive, SW., Huntsville, AL 35802.

Billy Joe Renfroe, D.V.M., 931 Cook Avenue, NW., Huntsville, AL 35801.

Charles L. Smith, D.V.M., 3303 North Memorial Parkway, Huntsville, AL 35810.

Paragraph seven: Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusion of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

Paragraph eight: This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

Paragraph nine: This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

Paragraph ten: This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so

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entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

Paragraph eleven: Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order I

It is ordered that, for the purposes of this order, the following definitions shall apply:

A. "MCVMA" means the Madison County Veterinary Medical Association.

B. "Veterinary goods" means any commodity used in the care or treatment of animals.

C. "Veterinary service" means any service that a person duly registered and licensed to practice veterinary medicine in Alabama is authorized to perform.

II

It is further ordered that respondents, directly or indirectly, or through any device in connection with activities in or affecting commerce, as commerce is defined in section 4 of the Federal Trade Commission Act, as amended, forthwith cease and desist from:

A. Organizing, agreeing or combining, attempting to agree or combine, threatening to agree or combine, or taking any action in furtherance of any agreement or combination with any person to refuse to deal, or to deal only on collectively determined terms, with any person or any program that offers or promotes the sale to consumers of veterinary services at discounted prices; and

B. Organizing, agreeing or combining, attempting to agree or combine, threatening to agree or combine, or taking any action in furtherance of any agreement or combination with any person to adopt, establish, fix, maintain or standardize the manner of sale, promotion or advertising of veterinary goods or services.

III

It is further ordered that respondent MCMVA, directly or indirectly, or through any device, for a period of ten (10) years after the date this order becomes final, forthwith cease and desist from:

A. Continuing a formal or informal meeting after:

(1)(a) Any person makes any statement concerning one or more veterinarians' intentions or decisions with respect to refusing to enter into, threatening to refuse to enter into, threatening to withdraw from, or withdrawing from any existing or proposed program that offers or promotes the sale to consumers of veterinary services at discounted prices and MCVMA fails to eject such person from the meeting, or (b) two persons make such statements; or

(2)(a) Any person makes any statement concerning adopting, establishing, fixing, maintaining or standardizing the manner of sale, promotion or advertising of veterinary goods or services and MCVMA fails to eject such person from the meeting, or (b) two persons make such statements;

B. Communicating to any veterinarian or veterinary firm any information concerning any other veterinarian's intention or decision with respect to (1) refusing to enter into, threatening to refuse to enter into, threatening to withdraw from, or withdrawing from any existing or proposed program that offers or promotes the sale to consumers of veterinary services at discounted prices, or (2) adopting, establishing, fixing, maintaining or standardizing the manner of sale, promotion or advertising of veterinary goods or services; and

C. Providing comments or advice to any veterinarian or veterinary firm on the desirability or appropriateness of (1) participating in any existing or proposed program that offers or promotes the sale to consumers of veterinary services at discounted prices or (2) adopting, establishing, fixing, maintaining or standardizing the manner of sale, promotion or advertising of veterinary goods or services.

Provided that nothing in this order shall be construed to prevent respondents from exercising rights permitted under the First Amendment to the United States Constitution to petition any federal or state government executive agency or legislative body, concerning legislation, rules, programs or procedures, or to participate in any Federal or State administrative or judicial proceeding. Provided further that nothing in this paragraph shall prohibit MCVMA from communicating to any veterinarian or veterinary firm purely factual information describing the terms and conditions of any program offered or proposed by an independent third party that offers or promotes the sale to consumers of veterinary services at discounted prices.

IV

It is further ordered that respondents Robert Neil Cole, Donald Butler Popejoy, Billy Joe Renfroe, and Charles L. Smith, directly or indirectly, or through any device, for a period of ten (10) years after the date this order becomes final, forthwith cease and desist from stating or communicating in any way to any veterinarian or to any veterinary firm an intention, decision or advice with respect to (1) refusing to enter into, threatening to refuse to enter into, threatening to withdraw from, or withdrawing from any existing or proposed program that offers or promotes the sale to consumers of veterinary services at discounted prices, or (2) adopting, establishing, fixing, maintaining or standardizing the manner of sale, promotion or advertising of veterinary goods or services.

V

It is further ordered That respondent MCVMA:

A. Within sixty days of the date this order becomes final, send a copy of this order and accompanying complaint by first class mail to each and every one of its members;

B. For a period of five years, commencing on the date this order becomes final, provide a copy of this order and accompanying complaint to each new member of MCVMA; and

C. Within sixty days of the date this order becomes final, send a copy of this order and accompanying complaint by first class mail to Judy Scott, Customer Service Manager, Bell South Advertising and Publishing Company, 400 Chase Park South, Birmingham, Alabama 35244.

VI

It is further ordered That each respondent:

A. Within ninety days after the date this order becomes final, annually for a period of five years on or before the anniversary of the date on which this order becomes final and at such other times as the Federal Trade Commission may by written notice to the respondents require, submit a verified written report to the Federal Trade Commission setting forth in detail the manner in which that respondent has complied and is complying with this order;

B. For a period of five years after the date this order becomes final, maintain and make available to the Federal Trade Commission staff for inspection and copying, upon reasonable notice, records adequate to describe in detail all action taken in connection with any activity covered by paragraphs II, III, and IV of this order, including all written communication and all summaries of oral communication.

Provided that if a respondent other than MCVMA retires from the practice of veterinary medicine, he shall be exempted from future compliance with paragraph VI(A) for the period subsequent to his retirement if he files, within one month of his retirement, a verified written report stating that he has retired from the practice of veterinary medicine and the date of his retirement and setting forth in detail the manner in which he has complied and is complying with this order. In the event that respondent ends his retirement and resumes the practice of veterinary medicine, he shall once again be subject to the requirements of paragraph VI(A).

VII

It is further ordered That MCVMA shall notify the Commission at least thirty days prior to any proposed change in MCVMA, such as dissolution or reorganization resulting in the emergence of a successor corporation or association, or any other change in the corporation or association which may affect compliance obligations arising out of this order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondents Madison County Veterinary Medical Association, Robert Neil Cole, D.V.M., Donald Butler Popejoy, D.V.M., Billy Joe Renfroe, D.V.M., and Charles L. Smith, D.V.M.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that respondents have engaged in unfair methods of competition in violation of Section Five of the Federal Trade Commission Act by combining or conspiring with themselves or others to restrain competition in the provision of spaying and neutering services and to restrain competition in the promotion or advertising of veterinary services. Specifically, the complaint alleges that respondents have agreed not to participate or cease participation in a program offered through the National Animal Welfare Association promoting low cost spays and neuters and agreed to restrict the nature of their listings in the Yellow Pages for Huntsville, Alabama.

The proposed consent order prohibits the respondents from entering into, attempting to enter into, or taking action in facilitation of any agreement or combination to (1) refuse to deal with any person or program promoting the sale of veterinary services at discounted prices or (2) fix or standardize the manner of sale, promotion or advertising of veterinary goods or services. In addition, the order prohibits facilitating conduct that would be conducive to the formation of prohibited agreements. For instance, the order provides that MCVMA must not continue any meeting where a member makes any statement concerning intention to participate in a program promoting discounted veterinary services or concerning fixing or standardizing the manner of sale, promotion or advertising of veterinary goods or services unless the member making the statement is removed from the meeting. The order provides further that MCVMA must not continue any meeting if more than one person makes such statements. Respondents are also prohibited from communicating their intentions or advice concerning participation in programs promoting low cost veterinary services or fixing or standardizing the manner of sale, promotion or advertising of veterinary goods or services. By proviso, the order exempts from prohibition conduct pursuant to the First Amendment right to petition the government. The order also affirmatively states that MCVMA is not prohibited from communicating purely factual information to members concerning the terms and conditions of programs that promote discount veterinary services.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 91-13367 Filed 6-5-91; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Community-Based Employment and Service Integration Model Demonstration Program for Criminally At Risk Youth

There is a well documented serious need for innovative service delivery models that are effective in building the interpersonal, technical skills, personal autonomy, and self-respect needed to transition young Americans from criminal activities and self-destructive lifestyles into jobs with real career and monetary potential. This grant announcement, issued by the U.S. Department of Health and Human Services (DHHS), Office of the Assistant Secretary for Planning and Evaluation (OASPE), in cooperation with the U.S. Department of Labor (DOL), Office of Strategic Planning and Policy Development (OSPPD) provides initial support for the development of model demonstration projects which address such a need.

Pursuant to section 1110 of the Social Security Act (and as specifically requested by the United States Congress [1]), and with anticipated funding from title IV of the Job Training Partnership Act (JTPA; 29 U.S.C. 1732), the Assistant Secretary for Planning and Evaluation, DHHS, and the Assistant Secretary for Employment and Training, DOL, are seeking applications for model demonstration projects in the area of nonresidential community-based employment and integrated services for adjudicated and criminally at risk youth. Applications will be accepted from States, other public organizations (including institutions of higher education), private non-profit organizations, and for-profit organizations. These applications will be for three years. However, each project will be funded only for the first year with funding for years two and three subject to the government's determination to continue the project.

[1] House of Representatives Report No. 101-591, 101st Congress, 2d Session, Committee on Appropriations, p. 124.

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Currently few programs in the country provide a comprehensive mixture of services across multiple service providers integrated into one case managed coordinated system that is nonresidential and community-based, and has a goal of sustained employment and independent community living. However, approximations of this concept can be found, for example: private providers, such as Associated Marine Institutes, Tampa, FL; public state systems, such as Day Treatment Programs through Kentucky; and alternative public high school programs, such as Tall Oaks Vocational High School, Bowie, MD.

The overall goal of this program is to provide assistance to communities interested in developing a flexible system that is longitudinal (i.e., capable of serving individuals from 14 to 22 years old for several years, if the severity of their problems requires prolonged assistance), nonresidential, based in the local community, and is designed to transition at risk or adjudicated youth into jobs or higher education, and into independent community living. The Federal government primarily is interested in testing innovative solutions to the problem of effecting such transitions. The demonstrations will be carefully evaluated in order to estimate the impact of these innovative solutions.

A. Type of Application Requested

1. Background [1]

Individuals under 18 years of age are being incarcerated in record numbers in the United States (U.S.). In 1988, 53,000 youth were incarcerated in secure public facilities (with an additional 40,000 in secure private facilities)—the largest number in the history of the U.S.—and the number continues to rise (Krisberg, Austin, & Steele, 1989; Sarri, 1961). In addition, in 1987, 1.7 million youth under 18 were arrested (Uniform Crime Reports, 1988). Approximately half of the youth arrested are released or dismissed, and remain at risk of incarceration with little systematic intervention aimed at preventing subsequent criminal activity.

Of those who are arrested, judged, and committed, the vast majority are placed in large residential facilities, referred to as training schools, where often skills or experience in gang behavior, intimidation/extortion, sexual and physical abuse are acquired or improved, while traditional educational and rehabilitative services largely are ignored (Silberman, 1986).

From a civil rights perspective, there is evidence of an overinclusion of minority youth in the most restrictive placements with African-American youth four times as likely, and Hispanic-American youth two times as likely to be committed to secure facilities as whites (Krisberg, 1990). Approximately 14 percent of the U.S. population is African-American and nine percent Hispanic-American (U.S. Bureau of Census, 1990), while 39 percent of youth in locked facilities are African-American and 15 percent are Hispanic-American (Juvenile Justice Bulletin, 1988).

It costs approximately $15 to $20 billion each year to process and commit the exceedingly large number of youth who are arrested (Bureau of Justice Statistics, 1987). Training schools, the most expensive option, conservatively average $40,000 per person yearly, and are considered ineffective, providing incarceration with no appreciable effect on recidivism (Greenwood & Zimring, 1985).

There is a growing body of support for expanded development of community-based alternatives to institutionalization or prison for youthful offenders who have been arrested and committed, or, from the perspective of prevention, arrested and released. The number of studies is small, and the definition of the primary measure of success, recidivism (i.e., committing new offenses after and/or during intervention), varies largely across studies. In addition, due in large part to the intrusion it places on the independence of the court, and the ethical issue of withholding treatment, only a few studies have utilized randomization procedures for placement in alternatives, and appropriate control groups.

For example, in a longitudinal study in Wisconsin, Shannon (1966) found that youth convicted of felonies, but not institutionalized, committed fewer subsequent felonies than those institutionalized. Butts (1988) cites preliminary findings of 30% rearrested and 13% reincarcerated for youth deinstitutionalized in Maryland following the closing of Montrose Training School. Krisberg, Austin and Steele (1989) found 10% fewer rearrests, and 30% fewer reincarcerations for youth in community-based alternative programs in Massachusetts versus institutionalized youth in California.

In an analysis of data from 10,000 cases, Schneider, Griffith, and Schneider (1982) found a reoffense rate of only 1.39% per month for youth completing restitution sentences (i.e., community employment/services to repay victim). In a later randomized study, Schneider and Schneider (1985) found even more encouraging results with a reoffense rate of .74 per youth during one year. In an analysis of four comparative randomized studies, Schneider (1985) found only a 10% difference in reoffenses between restitution and institutionalized groups. Finally, Schneider and Schneider (1984) demonstrated a lower reoffense rate (.74 per year) for youth completing restitution, than for youth not completing restitution (1.04 per year).

Although such data can not be considered conclusive due to methodological problems, it is sufficiently encouraging to justify further experimentation with community-based alternatives to institutionalization. Alternatives to training school placement (i.e., institutionalization) have been emerging across the country since Massachusetts initiated the process in 1972 by closing all such facilities simultaneously, however, alternative models have not yet become the norm. It took nearly ten years after Massachusetts began its process of deinstitutionalization for other states to follow, with Utah's efforts frequently cited as the most comprehensive (Blackmore, Brown, & Krisberg, 1988).

The modest research results together with the sheer volume of youth involved in criminal activity, and the exorbitant financial and personal costs incurred are sufficiently compelling to justify new interventions. However, as delineated by Krisberg (1990), a variety of additional factors further underscores the seriousness of this problem and emphasizes the need for a unified system that can deal equally with the needs of adjudicated youth, as well as youth who present a profile of being at risk of criminal activity. First, it is alarming to note that while the number of adolescents in the United States is declining, the number of youth arrested continues to rise. Second, the number of children raised in single parent families with incomes below the poverty level has increased in the last decade. Such child rearing situations present an increased risk for child abuse and poor parenting skills, factors that are commonly linked to delinquent behavior (Greenwood & Zimring, 1985).

Third, growing numbers of homeless youth present another complicating factor. Krisberg (1990), points out that in New York City alone there are more than 10,000 youth living in shelters, and less than half attend school on a regular basis. This same situation can be found in most major cities around the country. Clearly, this largely unsupervised youth population is at risk for potential criminal activity; and, of equal importance, is not acquiring the education needed to break their de facto incarceration in a cycle of poverty and crime.

The use of drugs has increased among minority and poor individuals, according to recent surveys, while declining among middle class Americans (National Institute on Drug Abuse, 1989), creating a lucrative illegal employment option within poor communities. Estimates cite that more than five million Americans from 16 to 24 years are high school dropouts without the basic educational skills necessary to secure employment in our rapidly changing, highly technological workforce (Berlin & Sum, 1988). This leaves a choice for many youth among unskilled, low status minimum wage jobs, hardcore unemployment, or remunerative criminal activity, such as drug trafficking. Add to this mixture the prediction that the adolescent population in the U.S. will decline 38% by the year 2000 (Fullerton, 1987), and collectively these points yield an unpleasant picture of a dwindling work force with a high percentage of undereducated numbers.

Furthermore, just in terms of space, alternatives to institutionalization are needed (Margolis, 1988). Currently, enrollment in training schools is 52% over capacity, and in detention centers (i.e., secure placement before adjudication) it is 40% over allowable occupancy (Krisberg, 1990). Such overcrowding renders the concept of rehabilitation meaningless, and has engendered a host of class action law suits, for example, *Jerry M., et. al.* v. *District of Columbia* (1986), *R.L. et. al.* v. *State of Maryland* (1986), and, *Bobby M.* v. *Graham* (1983), in Florida.

Significant effort has been expended, especially in the last 15 years, to improve the outcome of treatment for juvenile offenders, and to attempt to prevent delinquent behavior. The Office of Juvenile Justice and Delinquency Prevention (OJJDP) within the Department of Justice (DOJ) has provided the primary federal leadership, with support from DHHS. Clearly, the federal goal during the last 15 years has been to encourage the creation of community-based alternatives to secure incarceration, or institutionalization. Although this goal has been achieved in part for status offenders[2], it has not been realized yet for other juvenile offenders. A wide variety of agencies across many disciplines, such as, public health, welfare, education, community development organizations, recreation, and religious organizations, have developed delinquency prevention programs. Yet, due in part to the fact that these agencies are independent, a prevention effort that is comprehensive and systematic has not evolved.

Although it is very difficult to precisely identify the areas that new research and demonstration efforts must explore, certain topics seem worthy of consideration.

Academic Instruction—Within the educational program provided by training schools or alternative community-based programs there appears to be an empasis on acquiring basic academic skills with the primary outcome measure being a high school diploma or General Education Degree (GED). Acquiring basic academic skills is extremely important, however, an academic curriculum that ends simply with a GED may not go far enough. At issue is not whether someone can read at an eighth grade level, for example, but whether they can functionally use these skills in acquiring goods and services, performing various domestic living tasks, utilizing recreational services, and on the job. Academic skills instruction is complicated further by the fact that six to 14 percent of the school age population is considered handicapped, while 28 to 42 percent of incarcerated youth are labelled handicapped (Krisberg, 1990); and, 34 percent of incarcerated youth are functionally illiterate (Gerry, 1985). Given documented slower rates of skill acquisition among handicapped learners, programs must make sure that adequate time is reserved for demonstrating the functional use of academics. In order to ensure that this happens, curriculum content should be derived in part from an analysis of actual community living and job skills with academics taught in context where they functionally occur while learning to use stores, services, or on the job. However, students should not be excluded from concentrated academic instruction. Certainly choices should be encouraged. But regardless of the choice made, community living skills, and the functional use of academics within the context of daily living should be verified, if not taught directly.

Vocational Instruction—Although many programs state that they provide vocational instruction, in general, it does not appear to be a high priority. Furthermore, there appears to be an assumption that the remediation of academic deficits is a prerequisite to vocational instruction. When vocational instruction is provided, it generally falls into the category of job orientation training, such as interviewing skills, preparation for work, and using newspaper wants ads. These skills are taught in isolation of actual jobs. Vocational instruction does not necessarily lead to placement in an actual job, and task analyzed skill sequences with on the job training (OJT), whether with a staff job coach or a coworker as a coach, rarely are used. Vocational programs need to be organized around actual jobs in the communities where the youths reside with the specific related skills concurrently taught in context. Programs must include training on a rotating basis across several potential jobs in order to assist youths to make an informed job choice. However, regardless of the actual system used, instruction in a vocational program must result in employment in jobs that have reasonable status, and pay more than minimum wage, if lower recidivism is to be achieved.

Transitions—Completing a placement and moving back home, or from one type of program to another (e.g., residential to nonresidential) are natural points of transition. Smooth transitions often are difficult to achieve. The fact that most placements, whether they are training schools or community-based alternatives, provide all educational and related services themselves in segregated settings, automatically results in the need for transition. The question is whether such segregated programs are necessary. Part of the responsibility for this situation is the historical rejection of delinquent youth by traditional community agencies, most notably, public schools, coupled with the programming convenience of centralized services. In addition delinquent youth themselves often have rejected these community institutions and want no further involvement with them. However, service delivery systems should not be based on assumptions grounded in rejection and convenience. A greater effort must be made to have delinquent youth receive necessary services in the same settings as nondelinquent youth. If a delinquent youth has rejected a community institution, a functionally equivalent community substitute should be explored. For example, a community college or a union apprenticeship

[1] The information contained in this section is presented in an expanded version in Carte, N.J. & Gerry, M.H. (1991). Alternative programs for delinquent youth. Journal for Juvenile Justice and Detention Services. June, in press.

[2] Status offenders are youths who have been charged with violations that would not be considered criminal if committed by an adult, such as, truancy, or running away from home.

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program might be selected. Several beneficial outcomes could accrue: nondelinquent peer groups/values acquired; community service providers adapt programs to the needs of delinquent youth; individuals exhibiting delinquent behavior are no longer automatically rejected by community service providers; reduction of duplicated services lowers costs; elimination or minimization of need to transition. Intensive probation or outreach/tracking programs are a step in this direction. But they seem to focus solely on the offender, and not the simultaneous reform of the community institutions upon which the offender relies.

Placement—Placement decisions appear to be based more on type of offense than on the type of services needed by the offender (*Gerry, 1985*). Even in states where a variety of residential and nonresidential alternatives exist, violent offenders, for example, typically are placed in secure residential facilities regardless of the need. In those states where training schools are the secure facility, education and especially vocational services are minimal at best, making the problems of transitions even harder. And even at the best small secure facilities developed as alternatives to training schools in some states, vocational training, as described above, could not be accomplished. Second, once a placement decision has been made the focus should be on the objectively verified acquisition of the educational, interpersonal, and related skills needed for successful transition to the next environment following release. This is especially critical since the duration of placements is relatively brief and skill acquisition needs generally are substantial.

Women—Women comprise approximately 20% of the admissions to both detention centers prior to adjudication and programs after adjudication, yet women are more likely to be placed in secure facilities or adult prisons than young men (Chesney-Lind, 1988). This situation is even more alarming when one notes that only two percent of the young women arrested have committed serious violent offenses, and 46% of all women arrested under 18 are either shoplifters or runaways (Federal Bureau of Investigation, 1985). The primary reason for the overuse of the most restrictive placement options for young women appears to be the lack of any other alternatives. Less restrictive alternatives for young women are critically needed and have been advocated for years (Stehno & Young, 1990).

Coordination—In order to maximize effective placement transitions and improve prevention efforts, communication and coordination among diverse agencies must improve. Programs should address the needs of juvenile offenders and youth at risk of criminal activity holistically. Achieving such an objective requires the involvement of multiple service providers integrated into a unified system.

Personnel—Delinquent youth have multidisciplinary needs, yet personnel who work with these youth typically are trained in only one area (e.g., Psychology, Social Work, Criminology, Education). Personnel preparation programs need to include coursework across disciplines so that graduates can provide more direct services with proper consultation, and be better informed case managers and consumers of other services.

There is a critical need for new, innovative service delivery models that attempt to demonstrate solutions to the problems and address the issues delineated above. This program announcement focuses support for model demonstration projects to explore such solutions.

2. Project Requirements for All Organizations Receiving Grants From This Announcement

All organizations receiving grants under this announcement must develop an innovative flexible system that is longitudinal (i.e., capable of serving individuals from 14 to 22 years old for multiple years, if the severity of their problems requires prolonged assistance, and allowing easy re-entry if new problems occur), nonresidential, based in the local community, and designed to transition at risk or adjudicated youth into jobs or higher education and into dependent community living. The specific tasks each grantee must accomplish are listed below.

a. *Operational System.* Each grantee must develop an operational system which accomplishes the tasks listed below.

i. *Integrated Services.* Integrate a comprehensive array of employment, education, community living, leisure, social, health, mental health, mentoring, and respite services in a coordinated proactive case management delivery system involving a variety of relevant service providers for this population. These systems should avoid establishing separate centers that serve only adjudicated or at risk youth in order to maintain access to more hetergeneous peer groups. Systems should attempt to integrate clients within existing programs providing on going consultation and other support services to maintain such placements. The goal of this system will be to achieve stability and independence for clients. Therefore, the system must be flexible to allow youths to leave when immediate goals are met, and return when new needs arise. Client participation should be voluntary, except for adjudicated youth placed by the local juvenile authority. However, the system also should have a mechanism for sanctions against clients, specifying clear conditions and alternative placements for those extreme cases when a client would be dropped from the program as a consequence for repeated infringement of critical rules.

ii. *Assessment.* Develop a comprehensive case management/advocacy function, as the key element of the integrated service system, which assesses client needs and, through a participatory process involving clients, families, mentors, and other relevant individuals, develops, and oversees the implementation and evaluation of a Comprehensive Integrated Service Plan annually for each client.

iii. *Employment.* Transition adjudicated and criminally at risk youth into jobs with career and monetary advancement potential, and followup all placements for two years, providing retraining when necessary. Employment training should begin immediately for all clients, and should not be postponed pending acquisition of presumed prerequisite skills, or resolution of presumed interfering social problems. In addition, job adaptations should be considered to circumvent apparent skill deficits in order to place clients in more personally interesting and/or better paying positions. For example, limited understanding of measurement should not necessarily exclude a client from a construction job, such as a dry wall mechanic, if templates of varying sizes could be substituted to judge distances between joints. Finally, employment training should be provided on the job, and not in simulated, or otherwise artificial settings.

iv. *Independent Living.* Depending on client age and individual need, transition youth into independent living and followup all transitions for two years.

v. *Leisure Skills.* Develop individualized leisure skill repertoires that facilitate lawful use of leisure time with emphasis on teaching skills in areas where there is opportunity for long term growth and development (e.g., group and individual sports, art, music).

vi. *School Restructuring.* Work with education agencies to restructure public school and community and four year college programs to better accommodate to the educational needs of this population.

vii. *Functional Skills.* Teach functional skills (i.e., employment, community living, leisure, etc.) in actual community environments under naturally occurring conditions as opposed to simulated or artificial school/facility settings.

viii. *Family Interactions.* Improve the relationship and communication between youths and their families, and/or transition youth to independent living, when necessary.

ix. *Mentors.* Develop a support system comprised of peers and others who may serve as mentors to whom youths may turn for counseling, advice, and other types of personal support outside their immediate family.

x. *Provider Coalitions.* Involve relevant, but less utilized service providers or organizations in the development of various aspects of the project, for example, trade unions, large corporations, local business organizations, local JTPA program, Private Industry Councils (PICs), local chapters of national advocacy groups, and advocacy attorneys.

xi. *Advisory Board.* Establish a consumer dominated advisory board made up of clients, clients' family members (or mentor/advocates), local businesses, direct line service staff, and representatives of the various service providers involved in the system.

xii. *Population.* Work with at least 30 youth each year from 14 to 22 years old that have been adjudicated, and youth that are at risk of criminal activity, including youth that have substance abuse problems, and/or have been involved in drug trafficking. In addition, comparison groups of youths from these two subpopulations must be identified for purposes of evaluation.

b. *Evaluation and Dissemination.* In addition to the Operational System tasks, each grantee must develop a system for evaluation and information dissemination which accomplishes the tasks listed below.

i. *Impact.* Evaluate the project impact on employability and improvements in independent community living for project youth. This information should be broken down into component subpopulations including youths identified at time of referral as drug traffickers and/or substance abusers. Outcome measures must include at least: rate and type of offenses, duration of abstinence from abusive substances, number and percent of clients employed, duration of employment, number and percent of clients living independently in community, and duration of independent living.

ii. *Third Party Evaluation.* Cooperate with the Federally designated third party contractor who will conduct project evaluations. Identify comparison groups of adjudicated and at risk youth, and provide access to records.

iii. *Faculty.* Identify faculty from institutions of higher education who have evaluation background and access to students interested in evaluation, and are interested in assisting the Federal third party contractor in data collection and analysis efforts related to project evaluation.

iv. *Research and Training.* Develop an active performing community of researchers and data-based practitioners through the involvement of faculty and students from institutions of higher education in project model development, and by functioning as a practicum site for students in training.

v. *Technical Assistance.* Provide technical assistance to other systems interested in replicating salient project model components.

vi. *Dissemination.* Publicize nationally the effectiveness of nonresidential approaches for this population by means such as professional journal articles and conference presentations.

c. *Reports.* Each grantee must submit the reports listed below.

i. *Planning Report.* In conjunction with the Federal third party evaulator, prepare the final plan for implementing the operational system and for evaluating the project during the first three months after receipt of award. Submit the planning report to project officer for approval before services to clients are initiated.

ii. *Progress Reports.* At the request of the project officer submit an annual summary of accomplishments by objectives.

iii. *Final Report.* Produce a practical description of the completed project which delineates and discusses topics such as: the model; clients served; the operation of the integrated system, including methods of coordinating and scheduling service delivery; financing of the system; implementation problems and solutions; strategy used to secure jobs; techniques used to motivate students to work, and a listing of job skills taught, categorized by type of employment; a listing of leisure skills taught organized into categories, such as group or individual activities, or types of recreation; presentation of outcome data; and other relevant information. The specific format and content for this report will be provided by the project officer prior to planned implementation.

3. Definitions

For the purposes of this grant announcement, the definitions included in this section apply.

a. *Nonresidential* refers to the delivery of services without lodging.

b. *Community-based* means serving clients within the local geographic area in which they resided prior to any involvement with legal authorities.

c. *Adjudicated youth* refers to young men and women between and including the ages of 14 and 22 years who have been convicted of and sentenced for a criminal act.

d. *Criminally at risk youth* refers to young men and women between and including the ages of 14 and 22 years who have been arrested for a criminal act and released without conviction and sentencing, or youth within this age range who have repeated histories of child abuse, parental neglect or abandonment, truancy, shool failure, fights, or substance abuse.

e. *Model* is a system for determining, scheduling, coordinating, and delivering services; assessing client progress; and evaluating program effectiveness related to employment, education, and personal needs of adjudicated and criminally at risk youth.

f. *Respite* involves voluntary, client or family requested, temporary, overnight lodging for youths in response to a specific crisis or family need.

g. *Employment training* involves placement and systematic instruction of specific job and job related skills at actual job settings culminating in clients being hired and earning wages with follow up checks, as needed, to maintain continued employment, with system staff providing consultation and support to employers, and direct client training only when absolutely necessary.

h. *Community living skills* are skills needed to cook, clean, shop, care for children, and independently maintain a residence in typical community settings.

i. *Leisure skills* refer to the responses or sequences of responses needed to engage in age-appropriate preferential activities during nonworking or nonschool hours.

j. *Interpersonal skills* include leisure, employment, community living, or school related interactions with peers or non-peers, and interactions with family members, as well as, improvements in personal mental health, including substance abuse problems.

k. *Academic skills* refer to reading, mathematics, English, science, social studies, and other skill areas

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traditionally taught to high school age students.

1. *Functional academic skills* refer to the specific academic skills needed to perform employment, leisure, community living, or interpersonal activities.

m. *Comprehensive Integrated Service Plan* is an individualized, written, joint agreement between client, staff, family, and court personnel (if applicable) which specifies in observable terms the employment, leisure, community living, interpersonal, academic, and/or functional academic goals and ojbectives, the services required for their achievement, a schedule for service delivery, and data sheets for verifying progress for each client.

5. Content and Organization of the Applications

The application must contain a title page, a table of contents, and the sections listed below. All pages of the narrative should be numbered. Each applicant must comply with the following specific requirements for each section.

a. *Abstract.* Provide a one page summary of the proposed project.

b. *Rationale.* Include a brief overview which documents the local need for the proposed project, justifies the approach to be taken, and identifies any theoretical or empirical basis for the model along with appropriate supporting professional literature citations.

c. *Goals and Objectives.* Present the goals of the project and related objectives in observable terms. They should be used in the development of the evaluation criteria.

d. *Population.* Define the population of adjudicated and at risk youth to be served by the project or in comparison groups in terms of number and types of presenting problems. In addition, any subpopulations of juvenile offenders or at risk youths that will *not* be eligible for project services must be identified.

e. *Integrated Service System.* Provide a detailed description of the components of the integrated service delivery system to be developed by the project, highlighting innovative aspects of the model. Also provide a detailed description of the services the project will provide clients, and delineate different service system providers that the applicant intends to involve in the project (append documentation for those providers who have formally agreed to participate). At a minimum, this listing of providers must include the local public schools, a local human service provider, local juvenile justice authority, and local JTPA program. Identify the services each system or provider will deliver, where services will be delivered, and how services will be coordinated. Include a chart that depicts the relationship across service providers/systems.

Even though the focus of the program is nonresidential, applicants can propose a residential component if such a component is established solely to teach independent community living skills, and not for the purposes of incarceration. If such an option is elected, applicants are encouraged to form linkages with existing independent community living programs to address this need. And, finally, if this option is elected, it must be designed to culminate in the transition of youth to independent living.

f. *Employment Training.* Present the system or methodology to be used to: identify potential jobs (including the minimum criteria all jobs must meet); delineate the direct and indirect (supportive) work skills related to each job; provide a sufficient number of job experiences to enable clients to make an informed employment decision; establish co-worker support/job coaching; provide on site consultation to clients' direct supervisors, and/or provide on the job training when no less obtrusive alternative exists; provide placement services; and provide maintenance checks and retraining, if needed. Identify the service provider, if different than the applicant, who will be responsible for this component along with their experience in this area. Append an initial listing of potential employers (with commitments, if available).

g. *Implementation Plan.* Prepare a general plan for all three years of the project clearly showing the required initial three month planning period following award, and any other anticipated differences across each year. In addition, a detailed listing of activities cross referenced by objective must be included in the narrative for the first year of the project.

h. *Evaluation.*—Describe the system and methodology for determining progress in achieving goals included in each client's Comprehensive Integrated Service Plan. Although final evaluation plans must be coordinated through the Federal third party evaluator, applicants must present a comprehensive evaluation plan including questions, outcome measures, and methodology. In addition, applicants must identify and append a letter of agreement from faculty of institutions of higher education who have agreed to assist the Federal third party evaluator in the evaluation of the project.

i. *Research.* Identify and document linkages with institutions of higher education designed to encourage applied research which addresses practical, project related questions or issues.

j. *Personnel Preparation.* Identify and document agreements with personnel preparation programs (e.g., justice, public health, social work, education) at institutions of higher education to use utilize of the project as a practicum training site for students in training.

k. *Staffing.* List primary staff, identifying the agency for which they work, the percentage of time they will commit to the project, and whether Federal funds will be used to pay for their services. Job descriptions and a staffing chart showing lines of authority also must be included. Curriculum Vitae for staff must be appended.

l. *Organization.* Briefly point out the applicant's (or larger coalition's) organizational experience in this area.

m. *Advisory Board.* Present a plan for appointing a consumer dominated advisory board.

n. *Budget.* Submit a request for Federal funds (see Standard Form 424A) for all three years of the project. In addition, include a detailed breakdown of all costs along with a brief narrative description or justification of these line items. This detailed breakdown should separate items for which Federal funds are requested from items to be provided by other sources with these other sources identified.

B. Applicable Regulations

1. "Grants Programs Administered by the Office of the Assistant Secretary for Planning and Evaluation" (45 CFR part 63).

2. "Administration of Grants" (45 CFR part 74).

C. Effective Date and Duration

1. The grants awarded pursuant to this announcement are expected to be made on or about September 1, 1991; however, some may be made subsequent to this date.

2. In order to avoid unnecessary delays in the preparation and receipt of applications, this notice is effective immediately. The closing dates are specified in Section F and G below.

3. Projects will be 12 months in duration with second and third year funding subject to the government's determination to continue the project. Grantees may be asked to update the second and third year sections of their applications.

D. Statement of Funds Available/Cost Sharing

1. $750,000 has been set aside for grants to be awarded in Fiscal Year 1991 under this announcement. Applications may be for any amount, but it is expected that most awards will be made between $200,000 and $250,000.

2. All applicants must contribute at least 25 percent (i.e., $1 for every $3 of Federal funds) of the total cost of the project. For example, an applicant who applies for $150,000 in Federal funding for the first year must provide, at least, $50,000 towards the project, with a total project cost of $200,000. The applicant share of project costs must be derived from non-Federal sources and may be made in cash or in-kind contributions from the applicant, or third parties. The cost sharing formula applies for all three years. Documentation must be appended which verifies the cost sharing contribution and identifies the source.

3. Nothing in this application should be construed as committing the Assistant Secretary to make any award.

E. Application Processing

1. Applicants will be initially screened for compliance with the requirements for all grantees set forth in section A. 2 (as well as additional areas of interest persuasively shown to be relevant by the applicant). If judged in compliance, and if the application meets the 25 per cent cost sharing requirement, the application then will be reviewed by government personnel, augmented by outside experts where appropriate. Three (3) copies of each application are required. Applicants are encouraged to send an additional seven (7) copies of their application to ease processing, but applicants will not be penalized if these extra copies are not included.

2. Applications will be judged according to the criteria set forth in item 5.

3. An unacceptable rating on any individual criterion may render the application unacceptable. Consequently, applicants should take care to ensure that all criteria are fully addressed in the application.

4. Although there is no limitation imposed on the length of the narrative, applicants are encouraged to respond within 25 double-spaced typed pages exclusive of forms, abstract, curriculum vitae, and proposed budget. In addition, supporting documentation should not be unduly elaborate or voluminous.

5. *Criteria for Evaluation.* Evaluation of applications will employ the following criteria. The relative weights are shown in parentheses.

a. Goals, Objectives, and Need for Assistance (10 points)

i. *Rationale:* Is there a clear rationale for the project, including a documented need, with appropriate literature citations?

ii. *Goals and Objectives:* Are the goals and objectives presented in observable, measurable terms, and how well do they reflect the specific program requirements delineated in the grant announcement?

iii. *Population:* Is the population to be addressed clearly defined in terms of characteristics, age, and number to be served; and is it representative of the target population the grant announcement addresses? Is the expected number of clients sufficient to meet evaluation needs?

b. Project Design and Approach (40 points)

i. *Comprehensive Services:* Does the integrated service system proposed address the comprehensive service needs of the target population identified in the program requirements in the grant announcement? Are assurances from other systems to participate appended?

ii. *Employment:* Does the employment component demonstrate a clear understanding of the instructional and motivational problems in transitioning the target population to work; is it carefully designed to ensure successful transition to employment?

iii. *Coordination:* Is the mechanism for coordinating services for each client and communicating across systems or providers sufficiently specified to ensure success?

iv. *Implementation Plan:* Is the three year plan reasonable? Are the activities listed for each objective sufficiently detailed to ensure successful, timely implementation? Do they demonstrate an adequate level of understanding by the applicant of the practical problems involved in executing such a complex project?

c. Evaluation (25 points)

i. *Client Progress:* Will the proposed methodology for determining client progress produce an objective measure of the acquisition of individual goals delineated in the *Comprehensive Integrated Service Plans?*

ii. *Maintenance:* Is maintenance of client gains adequately addressed in terms of how it will be measured and how long?

iii. *Model:* Is the discussion of overall project evaluation complete and reasonable? Is there a commitment to cooperate with the Federal third party evaluator? Are agreements appended from faculty of institutions of higher education to assist in evaluation?

iv. *Satisfaction:* Is client and/or family satisfaction part of the evaluation plan?

d. Staff (25 points)

i. *Positions:* Are the number and type of staff positions sufficient to achieve project objectives?

ii. *Expertise:* Do staff have appropriate background to implement this project as documented in curriculum vitae?

iii. *Organization:* Does the organization(s) have sufficient experience to ensure success?

F. Deadline for Submittal Applications

The closing date for submittal of applications under this announcement is August 5, 1991. Applications must be postmarked or hand-delivered to the application receipt point no later than 53 pm on August 5, 1991.

Hand delivered applications will be accepted Monday through Friday, excluding Federal holidays, prior to and on August 5, 1991 during the working hours of 9 am to 5 pm in the lobby of the Hubert H. Humphrey building located at 200 Independence Avenue, SW. in Washington, DC. When hand-delivering an application, call (202) 245–1794 from the lobby for pick up. A staff person will be available to receive applications.

An application will be considered as meeting the deadline if it is either: (1) Received at, or hand-delivered to, the mailing address on or before August 5, 1991, or (2) Postmarked before midnight of the deadline date, August 5, 1991 and received in time to be considered during the competitive review process within two weeks of the deadline date).

When mailing applications, applicants are strongly advised to obtain a legibly dated receipt from a commercial carrier (such as UPS, Federal Express, etc.) or from the U.S. Postal Service as proof of mailing by the deadline date. If there is a question as to when an application was mailed, applicants will be asked to provide proof of mailing by the deadline date. When Proof is not provided, an application will not be considered for funding. Private metered postmarks are not acceptable as proof of timely mailing.

Applications which do not meet the August 5, 1991 deadline are considered late applications and will not be considered or reviewed in the current competition. DHHS will send a letter to this effect to each late applicant.

DHHS reserves the right to extend the deadline for all proposals due to acts of God, such as, floods, hurricanes, or

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earthquakes; due to acts of war; if there is widespread disruption of the mail; or if DHHS determines a deadline extension to be in the best interest of the Government. However, DHHS will not waive or extend the deadline for any applicant unless the deadline is waived or extended for all applicants.

G. Disposition of Applications

1. *Approval, disapproval, or deferral.* On the basis of the review of the application, the Assistant Secretary (DHHS/OASPE) will either (a) approve the application as a whole or in part; (b) disapprove the application; or (c) defer action on the application for such reasons as lack of funds or a need for further review.

2. *Notification of disposition.* The Assistant Secretary (DHHS/OASPE) will notify the applicants of the disposition of their application. If approved, a signed notification of the grant award will be issued to the contact person listed in block 4 of the application to notify the applicant of the approved application.

H. Application Instructions and Forms

Copies of applications should be requested from and submitted to: Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW., room 426F, Hubert H. Humphrey Building, Washington, DC 20201, Phone (202) 245–1794. Questions concerning the preceding information should be submitted to the Grants Officer at the same address. Neither questions nor requests for applications should be submitted after August 5, 1991. IMPORTANT—Application for Federal Assistance (Standard Form 424) must be submitted on the new form revised 4/88.

I. Federal Domestic Assistance Catalog

This announcement is not listed in the Federal Domestic Assistance Catalog.

J. State Single Point of Contact (E.O. 12372)

DHHS has determined that this program is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs," because it is a program that is national in scope and does not directly affect State and local governments. Applicants are not required to seek intergovernmental review of their applications within the constraints of E.O. 12372.

Dated: May 29, 1991.

Martin H. Gerry,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 91–13262 Filed 6–5–91; 8:45 am]

BILLING CODE 4110–94–M

Food and Drug Administration

[Docket No. 91M–0157]

C. R. Bard, Inc.; Premarket Approval of the USCI® Probe™ III Balloon-on-a-Wire™ Dilatation System With 2.5 Centimeters (CM) Tip

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by C. R. Bard, Inc., Murray Hill, NJ, for premarket approval, under the Medical Device Amendments of 1976, of the USCI ® Probe ™ III Balloon-on-a-Wire ™ Dilatation System with 2.5 centimeters (cm) Tip and 2.0 millimeters (mm), 2.5 mm, and 3.0 mm balloon diameters. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of April 17, 1991, of the approval of the application.

DATES: Petitions for administrative review by July 8, 1991.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Lynne Reamer, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1197.

SUPPLEMENTARY INFORMATION: On August 29, 1989, C. R. Bard, Inc., Murray Hill, NJ 07974, submitted to CDRH an application for premarket approval of the USCI® Probe™ III Balloon-on-a-Wire ™ Dilatation System with 2.5 cm Tip. The system is intended for use in percutaneous transluminal coronary angioplasty. The following patient selection criteria have been established for this procedure:

(1) Patients must be acceptable candidates for coronary artery bypass surgery;

(2) Patients with single vessel atherosclerotic lesions which are judged to be noncalcific and accessible to dilatation with a catheter;

(3) Certain patients with multivessel disease; and

(4) Certain patients who have undergone previous aorta-coronary bypass surgery with the recurrence of symptoms and the progression of disease in the coronary artery, or stenosis and closure of the grafts.

On April 30, 1990, the Circulatory System Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On April 17, 1991, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Lynne Reamer (HFZ–450), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before July 8, 1991 file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 30, 1991.

Elizabeth D. Jacobson,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 91–13336 Filed 6–5–91; 8:45 am]

BILLING CODE 4160–01–M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: Nashville District Office, chaired by Raymond K. Hedblad, District Director. The topic to be discussed is food labeling.

DATES: Tuesday, June 18, 1991, 10:30 a.m.

ADDRESSES: Marshall Technical School, 6917 Highway 431 South, Guntersville, AL 35976.

FOR FURTHER INFORMATION CONTACT: Sandra S. Baxter, Public Affairs Specialist, Food and Drug Administration, 297 Plus Park Blvd., Nashville, TN 37217, 615–781–5372.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district officers, and to contribute to the agency's policymaking decisions on vital issues.

Dated: May 31, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91–13258 Filed 6–5–91; 8:45 am]

BILLING CODE 4160–01–M

Indian Health Service

Availability of Funds for Health Professions Preparatory, Pregraduate and Indian Health Professions Scholarship Programs

AGENCY: Indian Health Service (IHS), HHS.

ACTION: Notice.

SUMMARY: The Indian Health Service announces the availability of $2,927,200 to fund scholarships for the Health Professions Preparatory and Pregraduate Scholarship Programs for FY 1991 awards. These programs are authorized by section 102 of Public Law 100–713 as amended. The Health Professions Scholarship program, authorized by section 104 of Public Law 100–713, has $7,243,100 available for FY 1991 awards.

DATES: The application deadline is July 8, 1991. Applications shall be considered as meeting the deadline if they are received by the appropriate Scholarship Coordinator on or before the deadline and received in time for submission to the review panel. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

ADDRESSES: Application materials may be obtained by calling or writing to the addresses listed below. The application form number is IHS 856. Completed application materials should be returned to the same addresses.

Ms. Gayle Martin, Scholarship Coordinator, IHS Aberdeen Area, Federal Building, 115 4th Avenue, SE., Aberdeen, SD 57401, Tele: 605–226–7553.

Ms. Ann Breazeale, Scholarship Coordinator, IHS Alaska Area, 250 Gambell Street, Anchorage, Alaska 99501, Tele: 907–257–1408.

Ms. Alvina Waseta, Scholarship Coordinators, IHS Albuquerque Area, 505 Marquette, NW., suite 1502, Albuquerque, NM 87102, Tele: 505–766–1627.

Ms. Barbara Fairbanks, Scholarship Coordinator, IHS Bemidji Area, 203 Federal Building, Bemidji, MN 56601, Tele: 218–759–3350, Ext. 250.

Mr. Virgil L. Davis, Scholarship Coordinator, IHS Navajo Area, P.O. Box G, Window Rock, AZ 86515, Tele: 602–871–5831.

Mr. Jim Ingram, Scholarship Coordinator, IHS Oklahoma City Area, 215 Dean A. McGee Street, NW., Oklahoma City, OK 73102–3477, Tele: 405–231–4448.

Ms. Rosh Foley, Scholarship Coordinator, IHS Phoenix Area, 3738 N. 16th Street–suite A, Phoenix, AZ 85016–2066, Tele: 602–340–2066.

Ms. Darlene Marcellay, Scholarship Coordinator, IHS Portland Area, 1220 SW. 3rd Street, room 315, Portland, OR 97204–2892, Tele: 503–326–2019.

Mr. Sandy Macdonald, Scholarship Coordinator, IHS Billings Area, P.O. Box 2143, Billings, MT 59103–6601, Tele: 218–759–3350, Ext. 250.

Mr. John Kinnison, Scholarship Coordinator, IHS California Area, 1825 Bell Street–suite 200, Sacramento, CA 95825–1097, Tele: 916–978–4202.

Mr. Gary Farris, Scholarship Coordinator, Indians Into Medicine (INMED), 501 N. Columbia Road, P.O. Box 68, Grand Forks, ND 58201, Tele: 701–777–3037.

Mr. Edwin McLemore, Scholarship Coordinator, IHS Nashville Area, 3310 Perimeter Hill Drive, Nashville, TN 37211, Tele: 615–781–5522.

Ms. Eileen Preston, Scholarship Coordinator, IHS Tucson Area, 7900 S.J. Stock Road, Tucson, AZ 85746, Tele: 602–629–5014.

Ms. Belinda Harris, Scholarship Coordinator, Lumbee Regional Development Association, Pembroke, NC 28372, Tele: 919–521–8602.

FOR FURTHER INFORMATION CONTACT: Please address inquiries to the appropriate Indian Health Service Area Scholarship Coordinator. Other inquiries may be addressed to Mr. Wesley J. Picciotti, Chief, Scholarship Branch, Indian Health Service, Twinbrook Metro Plaza, suite 100, 12300 Twinbrook Parkway, Rockville, Maryland 20852; Telephone 301–443–6197. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Health Professions Preparatory and Pregraduate Scholarship Programs are authorized by section 102 of the Indian Health Care Improvement Act, Public Law 94–437 as amended by Public Law 96–537, Indian Health Care Amendments of 1980 and Public Law 100–713, Indian Health Care Amendments of 1988.

The Indian Health Scholarship Program, formerly authorized by section 338I of the Public Health Service Act (42 U.S.C. 254r), is now authorized by section 102 and section 104 of the Indian Health Care Amendments of 1988, Public Law 100–713. These programs are intended to encourage American Indians and Alaska Natives to enter the health professions and to assure the availability of Indian health professionals to serve Indians.

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Awards will be made in accord with regulations at 42 CFR part 36.320, incorporated in the application materials, for Health Professions Preparatory Scholarship Program for Indians and 42 CFR part 36.370, incorporated in the application materials, for Health Professions Pregraduate Scholarship Program for Indians. Approximately 187 awards, 171 of which are continuing, will be made under the Health Profession Preparatory Scholarship Program for Indians. The awards are for 9 months in duration and the average award is for approximately $13,000. Approximately $2,063,000 is available for continuation awards. Approximately $284,000 is available for new awards.

Awards for the Indian Health Scholarship Program will be made in accord with 42 CFR 36.330, except that pursuant to section 104 of the Indian Health Care Amendments of 1988, Public Law 100-713, only Indian applicants shall receive awards and the service obligation provided in Section 338G(b)(2) of the Public Health Service Act shall be met:

(1) In the Indian Service;

(2) In a program conducted under a contract entered into under the Indian Self-Determination Act;

(3) In a program assisted under title V of the Indian Health Care Improvement Act (Pub. L. 94-437) and its amendments; and

(4) In private practice of his or her profession if, the practice (1) is situated in a health manpower shortage area, designated under section 332 of the Public Health Service Act and (2) addresses the health care needs of a substantial number of Indians as determined by the Secretary in accordance with guidelines of the Service.

Only after IHS and Public Law 93-696 Tribally administered program vacancies are filled will consideration be given to the other legislated options.

Approximately 477 awards, 214 of which are continuing, will be made under the Health Profession Preparatory Scholarship Program for Indians. The awards are for 12 months in duration and the average award is for approximately $16,000. Approximately $3,340,000 is available for continuation awards and $4,104,000 is available for new awards.

Regulations at 42 CFR 36.304 provide that the IHS shall, from time to time, publish a list of health professions eligible for consideration for the award of Health Professions Preparatory and Pregraduate Scholarships and Health Professions Scholarships. Section 104(b)(1) of the Indian Health Care Amendments of 1988, Public Law 100-713, authorizes the determination of specific health professions for which Indian Health Scholarships will be awarded. The lists of priority health professions that follow, by scholarship program, are based upon the needs of the IHS as well as upon the needs of the American Indians and Alaska Natives for additional service by specific health profession.

PRIORITY CATEGORIES: Health Professions Preparatory Scholarship Program for Indians (Below is the list of disciplines to be supported and priority is based on academic level: Sophomore, Freshman)

A. Pre-Engineering.
B. Pre-Medical Technology.
C. Pre-Nursing.
D. Pre-Pharmacy.
E. Pre-Physical Therapy.
F. Pre-Sanitation.

Pre-Graduate Program (Below is the list of disciplines to be supported and priority is based on academic level: Senior, Junior, Sophomore, Freshman)

A. Pre-Dentistry.
B. Pre-Medicine.

Indian Health Scholarship Program (Below is the list of disciplines to be supported and priority is based on academic level, unless specified: Graduate, Senior, Junior, Sophomore, Freshman)

A. Chemical Dependency Counseling: Masters level only.
B. Substance Abuse Services: Masters of Science in Management (MSM)
C. Clinical Psychology: PH.D. only.
D. Counseling Psychology: PH.D. only.
E. Dental Hygiene: Associate and B.S.
F. Dentistry:
G. Dietician: B.S.
H. Engineering: B.S. Civil, Environmental and Mechanical.
I. Health Education: Masters level only.
J. Health Records: A.R.T. and R.R.T.
K. Medical Technology: B.S.
L. Medical Social Work: Masters level only.
M. Medicine: Allopathic and Osteopathic.
N. Nurse Practitioner: R.N.A., C.N.M. and F.N.P.
O. Nursing: A.D.N., B.S.N. and M.S.N.
P. Optometry:
Q. Pharmacy: B.S.
R. Physician Assistant: B.S.
S. Physical Therapy:
T. Public Health: M.P.H. only. (Applicants must be enrolled or accepted in a school of public health and must have two years of health delivery experience).
U. Public Health Nutrition: Masters level only.
V. Radiologic Technology:
W. Sanitarian: B.S. Environmental Health, Environmental Science and Occupational Safety and Health.
X. Sonography:

Note: Priority consideration will be given to Registered Nurses employed by the Indian Health Service; in a program assisted under a contract entered into under the Indian Self-Determination Act; or in a program assisted under title V of the Indian Health Care Improvement Act.

Interested individuals are reminded that the list of eligible health and allied health professions is initially effective for the applicants for the 1991-1992 academic year. These priorities will remain in effect until superseded. Applicants for health and allied health professions not on the above priority list will be considered pending the availability of funds and dependent upon the availability of qualified applicants in the priority areas.

The Health Professions Preparatory and Pregraduate Scholarship Program is listed as No. 13.971 in the OMB Catalog of Federal Domestic Assistance. The Indian Health Scholarship Program is listed as NO. 13.972 in the catalog.

Dated: April 4, 1991.

Everett R. Rhoades,

Assistant Surgeon General, Director.

[FR Doc. 91-13250 Filed 6-5-91; 8:45 am]

BILLING CODE 4160-16-M

Health Care Financing Administration

[ORD-063-N]

Medicare and Medicaid Programs Health Care Financing Research and Demonstration Cooperative Agreements and Grants for Fiscal Year 1991

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the availability of HCFA funding under cooperative agreements and grants for projects that will focus on major issues in the financing and delivery of health care under the Medicare and Medicaid programs. The notice contains information about the subject areas for cooperative agreements and grants that will be given priority, project requirements, application procedures, and other relevant information.

DATES: Cooperative agreement and grant applications for priority areas, as described in sections I. and III. of this notice, must be submitted by August 1, 1991 in order to be considered under this funding cycle. Letters of intent for applications outside the priority areas, as described in section II. of this notice, must be submitted by July 8, 1991 in order to be considered under this funding cycle. For an explanation of timely submission, see section IX. of this notice.

ADDRESSES: Standard application forms and related instructions are available from and must be formally submitted to: Paul McKeown, Grants Officer, Health Care Financing Administration, Office of Budget and Administration, Office of Acquisitions and Grants, room 364 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207-5187 (301) 966-5157. Mr. McKeown is also available to answer questions and to provide guidance regarding completion of the application forms.

FOR FURTHER INFORMATION CONTACT: Carl Hackerman, Health Care Financing Administration, Office of Research and Demonstrations, Division of Program Support, 2-C-9 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207 (301) 966-6644.

SUPPLEMENTARY INFORMATION:

I. HCFA's Research and Demonstration Projects Awarded as Cooperative Agreements and Grants

HCFA's research and demonstration program conducts studies whose goal is to assess the current health care delivery/financing system and to develop innovative ways to improve the quality and cost-effectiveness of the nation's major health care financing programs. HCFA supports the conduct of research and demonstration projects principally through two award mechanisms: Procurements (contracts) and assistance awards (cooperative agreements and grants). This announcement concerns projects that will be awarded as cooperative agreements and grants. (Announcements of planned procurement awards are made through notices published in the "Commerce Business Daily.")

The principal purpose of HCFA's cooperative agreements and grants program is to stimulate and support statutorily authorized research and demonstration projects and to assist in the resolution of major health financing issues, particularly as they affect the Medicare and Medicaid programs and beneficiaries. We hope to advance knowledge in issues of health care financing and delivery and to develop ways of applying that knowledge to improve the administration of health care programs. We believe that this assistance will serve a long term and vital purpose: To increase the efficiency and effectiveness of the entire health care system by improving the ways in which health care is financed and delivered.

Payments for health care services, primarily through the Medicare and Medicaid programs, constitute one of the largest single segments of Federal and State budgets. Access to and quality of care, cost-effectiveness of current delivery systems, and impact of recent program changes on program beneficiaries; each of these areas continues to be of significant research interest as we continually reassess current methods of payment for publicly-financed health care programs and look for innovative methods for paying for health care services in the future.

This notice describes the application procedures, general policy considerations, criteria to be used in reviewing applications, and selection criteria for HCFA cooperative agreement and grants. Our current research and demonstration interest is for applications that address the following seven areas:

1. Research and demonstrations in the area of coordinated care systems as alternatives to traditional fee-for-service (FFS).
2. Research in the area of access to care under Medicare and Medicaid.
3. Research in the area of prospective payment systems for outpatient care.
4. Research studies in the hospital payment area.
5. Research studies in the physician payment area.
6. Research studies in the area of end-stage renal disease (ESRD).
7. Research and demonstrations in the area of Medicaid.

II. Applications Outside the Priority Areas—Letter of Intent

We also encourage interested organizations to submit applications to conduct innovative projects that offer to significantly advance knowledge on other major health care financing issues. Although we have decided to issue a solicitation for applications that focus specifically on the seven areas mentioned above (and discussed more fully below), we continue to be interested in other areas of health care research. We continue to conduct a comprehensive research and demonstration program with emphases in seven major program areas:

1. Quality of care.
2. Physician and ambulatory care payment systems.
3. Capitated payment systems.
4. Hospital payment.
5. Program efficiencies, analyses, and refinements.
6. Health care prevention and access.
7. Subacute and long-term care.

Therefore, we encourage applications that seek to make significant contributions to knowledge in any of these areas. Only interested organizations that expect to submit an application that falls outside the seven priority areas discussed below must submit a letter of intent to the address listed in the "Addresses" section above. This letter of intent must be submitted by July 8, 1991 and contain the following:

1. Title of the proposed project.
2. Brief summary of the application (2-3 paragraphs).
3. Statement of relevance (2-3 paragraphs) describing how the proposed project would significantly advance knowledge in the area.
4. Name, address, and telephone number of contact person.

Failure to submit a letter of intent may result in the application being returned to the applicant without further action by HCFA.

III. Current Priorities for HCFA Funding of New Cooperative Agreements and Grants

A. Coordinated Care Systems

Coordinated care offers opportunities for more cost-efficient use of health resources, expanded choices of health service delivery systems for consumers, and better health outcomes through effective care management. We are interested in research and demonstration projects to develop, test and evaluate a variety of approaches to promoting coordinated care in the Medicare and Medicaid programs.

Our interest in coordinated care encompasses a wide range of alternative service delivery, care management and payment systems that encourage or facilitate a cost-effective continuum of care, or that otherwise foster efficiency in health service delivery through management of the volume, intensity and appropriateness of care.

We will fund research and demonstration projects in two major areas: (1) coordinated care service delivery models and (2) coordinated care payment systems.

1. Coordinated care service delivery models

We are interested in expanding our current understanding of how coordinated care systems might best be structured to provide cost-effective, quality care to beneficiaries. In

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promoting coordinated care systems for program beneficiaries as a cost effective alternative to traditional service delivery models, we realize more work still needs to be done to examine the cost-effectiveness of such systems, how to improve the cost-effectiveness, and how to design coordinated care systems for specific beneficiary populations.

a. Evaluating approaches to improve efficiency. Although much work has been done to develop various approaches to ensure more cost-effective management of service utilization, more work is needed to develop techniques for analysis of either provider or beneficiary claims history data, or both, to identify excessive or inappropriate utilization of services. In addition, more work is needed to develop methodologies to assess the cost-effectiveness and relative value of alternative utilization management interventions, such as: provider education efforts; Provider incentives to reduce utilization; more intensive prior or concurrent review interventions applied to selected providers, specialties or services; and beneficiary-oriented utilization management interventions, including case management or "gatekeeper" systems to minimize the risks of excessive or inappropriate service use, or consumer information and counseling approaches.

We are interested in evaluating the effectiveness of the various approaches that have been developed and implemented—either in the private sector or by States—to improve the efficiency and cost effectiveness of providers and delivery systems, or both, and the impact of these approaches on utilization, costs of care, and health outcomes. These studies should attempt to determine those components of the various approaches that have potential application to Medicare and Medicaid. For example, what role does the primary care case manager play? What characteristics of effective profiling or intervention systems have relevance to Medicare and Medicaid?

b. Cost effectiveness of coordinated care versus fee-for-service. We are also interested in supporting an examination of the current relative cost-effectiveness of coordinated, capitated systems versus traditional delivery systems. Although some prior studies have been done on this issue, a number of payment reforms have occurred in the interim that may have changed the relative cost-effectiveness of the systems.

c. Quality of care and access. We are interested in studies that assess health maintenance organization (HMO) internal quality assurance systems to determine how these systems focus on outcomes of care, utilize clinical data sets, and foster continuous quality improvement. We are also interested in studies examining the quality of care among coordinated care systems and whether there are differences between the quality of care provided under these systems and under traditional fee-for-service systems. Similarly, we are interested in studies examining whether there are differences in access to and utilization of certain types of services in coordinated care systems versus traditional delivery systems. For example, what type and levels of preventive services are provided in HMOs? Are there differences in rates of expensive technologies (hip replacement, coronary artery bypass graft, organ transplants, etc.)?

d. Effectiveness of coordinated care for special population subgroups. We are also interested in examining the effectiveness of coordinated care approaches tailored to the unique needs of special populations, particularly high-risk populations such as the frail elderly (including persons with Alzheimer's disease), the non-elderly disabled (including children and persons with selected disabilities such as AIDs), and subgroups of the Medicaid-eligible population, such as inner-city teenagers and minority males. How do existing coordinated care entities, such as HMOs and preferred provider organizations (PPOs), manage the care of these special populations? Are methods different than those used for younger, healthier populations, and if so, are the adaptations effective?

We also encourage the development of innovative approaches and incentives to encourage participation by high-risk subgroups in coordinated care systems, and in innovative benefit packages and care management techniques tailored to their special needs and interests. Examples might include:

- Coordinated care communication and outreach programs oriented to special high-risk populations;
- Alternative "menus" of benefit packages applicable to the special needs of different groups, or flexible benefits that can be triaged to meet individual or changing health needs, within an overall limit on coverage costs; and
- Care management techniques oriented to the more chronic and complex health conditions of the elderly, including, for example, health risk assessments by multi-disciplinary teams, alternative settings (for example, in the home, adult daycare or senior centers) for needs assessment and service delivery, drug regimen review, involvement of geriatric specialists in care management and communications with the elderly, use of elder volunteers for health support services and crisis intervention, and projects to promote a sense of well-being and functional independence for high-risk elders.

These projects should address the constraints and opportunities for effective integration of available medical and social support services to clearly demonstrate the potential for more cost-efficient and clinically effective use of multiple resources currently available to meet the special needs of subpopulations with common problems.

e. Beneficiary understanding of coordinated care systems. We are also interested in examining more effective methods for addressing the problems of either Medicare- or Medicaid-eligible populations, or both, in understanding, accessing, or effectively using coordinated care systems. We are particularly interested in administrative remedies to promote informed choice, reduce burden, and minimize biased selection in consumer access to managed care systems, such as coordinated open enrollment, or enrollment through independent entities capable of facilitating unbiased access to coordinated care systems (for example, Social Security District Offices, State/local government or community service agencies, or private sector "brokers" who might assume broad responsibility for promoting and managing access to alternative service delivery systems in a geographic area.)

f. Opportunities for expansion of coordinated care systems. In our efforts to promote the availability of coordinated care systems, we are interested in examining potential constraints and opportunities for expanded availability of coordinated care systems for Medicare beneficiaries and Medicaid eligibles in medically-underserved (for example, rural or inner-city) areas, and for the Medicaid-eligible population generally. We are interested in supporting evaluations of innovative, successful experiences among State Medicaid programs in various approaches to coordinated care, including:

- Studies to assess the prospects for and potential impacts of direct State sponsorship of coordinated care systems, such as State owned and operated HMOs, State/private sector HMO joint ventures, or State-sponsored preferred provider networks;
- State experiences in creating commercially viable coordinated care systems in medically underserved areas;
- Innovative approaches to assuring access to and quality of care for Medicaid enrollees in coordinated care systems, and development of alternative measures and methods for assessing quality in HMOs serving a predominantly Medicaid-eligible population; and
- Administrative approaches to establishing greater coordination of care among individual providers currently serving high concentrations of Medicaid eligibles and among Medicaid eligibles (particularly pregnant women) relying on these providers.

g. Alternative capitation models.

Finally, we are interested in studies of alternative risk-based capitated payment coordinated care models. A number of models have been developed, including:

- Open-ended HMOs in which enrollees could choose to use out-of-plan providers but incur higher out-of-pocket costs;
- Coordinated care models for selected acute care episodes, including studies to define packages of medical services and service delivery timeframes to be bundled within an episode-based payment;
- Diagnosis-based coordinated care models, to define benefit packages and capitated payment rates for services commonly provided in a continuum of care for individuals with selected chronic conditions; and
- Payment methods that include a combination of capitation and reinsurance for individual or aggregate expenses above threshold limits.

We want to examine the feasibility of these approaches and are particularly interested in evaluations of the impact of these alternative systems.

2. Coordinated Care Payment Systems

We have supported and conducted efforts in the past to develop and refine payment systems for coordinated care systems under Medicare and Medicaid, and will continue to support these studies in the future.

a. Alternative Medicare approaches. A number of studies have explored the possible advantages of partial, rather than full, capitation for Medicare. We are particularly interested in examining new payment methods that include partial, rather than full, risk on the part of managed care providers (including strategies employing catastrophic individual or aggregate stop-loss insurance by HCFA), and would expect these studies to simulate various loss levels and risk corridors to examine liability under various enrollment selection scenarios.

Another concept worth considering is providing multi-year contracts to managed care providers in which payment rates are fixed for the total contract period. Rates would not be subject to the usual annual average per capita cost updating but may be subject to some specified adjustments to reflect new coverage or eligibility provisions.

Some researchers believe that moving from the present FFS-based pricing system for Medicare HMOs to a more market-based, competitive pricing system would bring increased efficiency to coordinated care systems under Medicare. We are interested in studies that would develop mechanisms to establish the Medicare premium on a more market-oriented basis.

We are also interested in rate setting methodologies and administrative approaches to establishing payments for alternative coordinated care models described above; that is, open-ended HMOs and coordinated care models limited to selected episodes or diagnoses, including the establishment of actuarially sound cost-effective risk-based payments for these alternative models; and feasibility studies using independent entities ("brokers") to negotiate risk-based payment rates with potential providers for limited (episode- or diagnosis-based) coordinated care models, and to assume related administrative responsibilities in soliciting, evaluating and overseeing performance of selected participating providers.

b. Payment approaches within coordinated care systems. Recognizing that coordinated care models also involve providers paid on a FFS basis, such as PPO networks and providers affected by various utilization or case management systems, or both, we are interested in studies to develop cost-effective payment methods for FFS-based coordinated care models. Issues of interest include:

- Methodologies to establish and assure cost-effective payments for the administrative costs of entities that manage the coordinated care systems, such as PPOs or case management entities, including incentive payment arrangements based on measures of program benefit savings (or losses) achieved by these entities.
- Approaches to establishing cost-effective FFS payments to affected providers, or otherwise control costs (through, for example, negotiated discounts, bundled payments, incentive arrangements with participating providers, or flexible allocation of coverage and payment allowances within pre-established limits).
- The applicability of these mechanisms (the methodologies and approaches mentioned in the two preceding paragraphs) in the Medicare or Medicaid programs, or both, including use of independent entities such as PPOs or "brokers" to establish alternative payment arrangements within FFS-based coordinated care models.

c. Improved Medicaid rate-setting. Under Medicaid, we are interested in supporting research to improve rate-setting methodology. Examples of studies that would assist States include the following:

- Development of appropriate historical data files to construct base rates, both on a national and State-specific basis.
- Specification of the type or actuarial analysis required to develop appropriate rate-setting methodologies.
- Identification of appropriate ways of adjusting future rates when FFS data no longer exist; or, for States that have an eroding FFS base due to substantial enrollment in managed care plans, development of actuarially sound alternatives to basing State capitated payment rates on current State FFS costs, including applicability thresholds of managed care versus FFS penetration.
- Analysis of the financial effects on States and HMOs of different stop-loss mechanisms for high-risk enrollee groups, such as AIDs patients, technology-dependent children, and high-risk pregnant women. Stop-loss mechanisms that may exist among States for analysis might include: the State acting as reinsurer to the HMO, States reimbursing HMO costs of reinsurance purchased from third parties, or higher capitation rate(s) of FFS payments for high risk enrollee subgroups.

3. Private Sector Coordinated Care

We believe that the coordinated care efforts and initiatives of the private sector offer the opportunity to better understand events occurring in existing managed care initiatives within the Medicare and Medicaid programs and, more importantly, to recommend actions that would promote expanded coordinated care in both programs. We convened a Technical Advisory Panel (TAP) comprised of experts in the field of managed care to summarize available information and to assess the need for additional information. This TAP identified a number of issues cross-cutting the two areas of interest discussed above (service delivery models and payment systems) and which concern what we might learn from the private sector coordinated care experience:

- More appropriate dimensions along which to categorize coordinated care

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plans, for example, provider choice, coinsurance, and access to services. The relationship of these dimensions to performance measures, such as quality of service, enrollee satisfaction, and efficiency.

• The relationship of the financial performance of hybrid HMOs to the mix of financial incentives and utilization management within the organization.

• Effects of various regulations, such as net equity requirements, insurance requirements, and mandated minimum benefit packages, on market entry and exit.

• Economic analyses of the behavior of health plans within the context of the local market for health care. Studies of the effect of a competitive environment on costs, provider behavior, organization of health services, and impact on Medicare and Medicaid beneficiaries.

• Experience of HMOs in negotiating premiums and benefits, and implications in comparison with Medicare's methodology for paying HMOs.

• Relationships with health care providers, including payment arrangements to encourage cost-effective service delivery (for example, either discounts or incentive payment and risk/savings sharing, or both) and innovative care management roles for traditional providers, particularly primary care physicians.

• Quality assurance measures, protocols and oversight practices in coordinated care systems.

• Obstacles and opportunities for greater private sector coordinated care systems in medically underserved areas, particularly inner cities and rural areas, apart from the general problems of providing medical care in these areas.

• Extent to which financial performance in the Medicare and Medicaid markets reflects the overall financial experience of HMOs.

B. Access to Care

The Medicare and Medicaid programs were established in large measure to ensure that the nation's elderly, disabled, and poor received access to necessary care. Increasingly, concerns have been raised as to:

• Whether the programs are continuing to provide adequate access to care for all program participants; and

• Whether large numbers of individuals not eligible for program participation and with no private health insurance coverage (that is, the uninsured) are receiving inadequate access to care.

We plan to examine these two sets of issues to better understand the impact of recent program changes on the ability of the programs to provide adequate health care to the nation's elderly, disabled, and poor and to examine the extent to which segments of the nation's population have inadequate access to health care.

The goal of this solicitation is to encourage research that will provide valuable information in areas of vital public importance:

• Improved methods for measuring access to care (particularly access to services that are clearly medically necessary); and

• The relationship between changes in program characteristics (for example, introduction of the Medicare fee schedule) and changes in access to care or changes in appropriate utilization of services.

1. Background: Five Widely-Used Measures of Access.

• Rates of provision of certain medically necessary services such as immunization for children, prenatal care for the pregnant, and cancer screening for older adults.

• Differences among populations (especially comparisons of vulnerable and less vulnerable populations) in rates of services whose appropriate rates are less clearly defined, such as coronary artery surgery, total hip replacement, and office visits.

• Rates of use of services such as office visits, adjusted for such measures of need as health status or functional impairment.

• Patient-reported rates of inability to secure desired services or services in a time of apparent need.

• Rates of certain adverse events that are at least partially preventable such as communicable diseases, cervical cancer, and diabetic amputation.

The National Center for Health Statistics and the Robert Wood Johnson Foundation have conducted periodic surveys related to access. These studies focused on certain specific indicators that would suggest or show underservice and provided extensive information on use of services by the insured and uninsured. In addition, they adjusted for reported general health and functional status. The best-known analyses of underservice have addressed prenatal care. In the area of relative provision of services to different demographic groups, we have recently published rates for a number of major surgical procedures for all Medicare beneficiaries.

An important theme in recent work on access is the multifactorial character of access barriers. This work has emphasized that factors other than payment levels, such as the absolute supply of nursing home beds, the availability of physicians in inner cities or rural areas, or the problems of enrolling in Medicaid, may be extremely important in determining the accessibility or use of services for those eligible for Medicaid and Medicare.

A second important theme is that payment mechanisms may shift the site of services without changing the volume of services a patient gets. For example, there is some evidence that raising Medicaid payment levels results in more care in physician offices and less care from clinics and emergency rooms with little change in the overall number of visits. Although office-based care may provide more continuity and better treatment, there is little evidence as to the impact of changes in site of service on health outcomes.

We are interested in supporting efforts that go beyond studies that count services with relatively crude adjustment for need and focus on situations in which access barriers lead to underservice (failure to receive necessary care) that is clearly related, in turn, to adverse health outcomes. In addition, it is important to link evidence on services received to variation or changes in specific Medicare and Medicaid program characteristics.

This solicitation focuses on situations in which medically necessary services are not received. Both Medicare and Medicaid legislation emphasize medically necessary services as a central program goal. Access to care means, in the context of this solicitation, ability to secure necessary services. Our focus is not intended, however, to minimize the importance of access to care in situations where medical necessity is poorly defined. Rather, the goal is to begin with areas where need can be most sharply identified and where findings are therefore likely to be most widely recognized as persuasive.

We are specifically interested in efforts that examine access to care for Medicare beneficiaries and Medicaid eligibles. Considering these two groups together may be more productive for some purposes than considering them separately, and it is appropriate to consider other vulnerable groups (such as the uninsured poor and uninsured pregnant women) that are being considered for coverage under various proposals for Medicaid expansions. Other groups, such as the privately insured, may be of interest for comparisons to Medicare and Medicaid.

We are principally interested in studies that would use existing data or data that can be collected under existing programs or initiatives. We do not intend to promote major survey research. We are especially interested in creative ways of using and combining available data. We expect applicants to be aware of survey, claims, and vital records data that are available as well as surveys that are either in the field or in the stage of contract solicitation.

2. Request for proposals.

We seek proposals that address the following issues:

a. Measures of access. We are interested in ways to use clinically-based measures of access to track and assess the performance of the Medicare and Medicaid programs. Historically, access has often been measured in terms of numbers of services per person, with limited evidence as to either need for, or effectiveness of, the service. We seek proposals that will assess program performance by measuring either medically necessary services or avoidable adverse outcomes. We are especially interested in proposals that use billing data such as the data maintained by Medicare and Medicaid. Proposals might, for example, make use of methods that:

• Identify populations (for example, pregnant women, patients after hip fractures) for which the need for services is either universal or has a known definite rate.

• Identify outcomes that provide evidence of access problems even in the absence of specific evidence regarding services provided.

Proposals should establish a spectrum of conditions and should rely on established clinical evidence.

b. Relationship between access and program policies/changes. We are interested in studies that will provide more quantitative understanding of factors that may function as barriers to access for Medicare and Medicaid eligibles. How can we best measure access barriers that might be related to Medicare and Medicaid policies or program changes and those that exist independent of program policies? These barriers might include:

• Direct economic barriers for patients such as deductibles, coinsurance, and balance billing.

• Indirect economic barriers, geographic barriers, information barriers, disability, technology dependence, and other barriers for patients.

• Barriers, such as payment policies, that may influence physician willingness to provide services to groups of patients.

We are especially interested in studies that will differentiate barriers whose removal would improve access from barriers whose removal would have less effect.

C. Outpatient Prospective Payment Research

Since 1985, Medicare benefit payments for outpatient hospital services increased two to three times faster than for inpatient services. Total Medicare outpatient hospital charges increased more than 48 percent between 1985 and 1987. Outpatient surgery has contributed in large part to the increased expenditures for outpatient care. In 1980, 16 percent of hospital operations were done in outpatient settings, whereas by 1988, 40 percent of operations were done on an outpatient basis.

There has been increasing interest in recent years in developing alternative payment methodologies to encourage provider efficiency, allow payors to better control costs, and maintain access to quality care.

Over the past several years, we have been in the forefront in sponsoring research to examine various issues relating to payment for outpatient services and development of possible models for a prospective payment system (PPS) for outpatient services. We have sponsored research on a number of topics, including descriptive analyses of outpatient services, development of alternative classification systems, development of alternative payment approaches, etc.

While much research is already underway, we are interested in supporting and stimulating additional efforts in this area, including the following:

1. Further Development of Outpatient Prospective Payment Systems

We have sponsored research into several alternative outpatient PPS typologies and payment methodologies. One such system, ambulatory patient groups (APGs), classifies patients with similar clinical characteristics and similar resource use and costs. Alternative classification systems include HCFA's current classification system for ambulatory surgical centers (ASCs). We are interested in sponsoring further development of outpatient PPS and analyses of the potential impact of changes in the payment method in several areas including:

• Payments for emergency room services for patients who vary widely in urgency and severity;

• Classification and payment weights for therapy encounters that are not presently coded in the "Physician's Current Procedural Terminology," Fourth Edition, 1990 (CPT-4) for Medicare outpatients, including physical therapy, and therapy for mental illness, drug and alcohol abuse; and

• The implications of reducing the number of payment categories and the effects of such a change.

2. Analysis of Actual Facility Resource Costs

These types of analyses could attempt to use industrial engineering, operations research, or other resource costing methods to attempt to measure actual facility resource costs for ambulatory care in a variety of settings, including outpatient departments and freestanding ambulatory care facilities. One issue is the extent to which payments for outpatient services are overstated due to cost allocation shifts as a result of the inpatient PPS. Another issue is the extent to which weights developed under alternative classification systems reflect actual facility costs in outpatient departments of different kinds of hospitals. Some studies have used physician time as a proxy for facility resource costs, though this key assumption has not been validated.

3. Efficient Providers

These types of analyses would examine cost data for outpatient departments or ASCs, or both, to attempt to distinguish between efficient and inefficient providers and identify determinants of efficient performance for high quality care. Studies might examine characteristics of efficient hospitals, particularly within a major category of hospitals (for example, urban/rural, teaching/nonteaching, size) in providing outpatient care.

4. Episode-based Systems

Many of the alternative payment systems base payment on a visit or major procedure. We are interested in analyses of the feasibility of developing episode-based systems which cover the anchor procedure, the package of services related to the anchor procedure, and the appropriate time period for the episode. Another issue is a comparison of the likely effect of an episode-based system versus a procedure/visit system on the volume of services furnished.

5. Impact of New Technologies and Program Changes

New technologies, changes in standards of medical practice, or the impact of payment reforms for other services may have implications on outpatient departments. For example, advances in surgical techniques (for example, for cataract surgery), changes in hospital or physician payment

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methods, growth in freestanding facilities, etc., may effect the provision or costs of care in outpatient departments. We are interested in studies that examine these issues.

6. Bundling of Services

The extent to which services such as diagnostic services (for example, laboratory tests, radiology and other tests), physician professional services, or other services, or any combination of the three services, are bundled into the payment for the visit is an important issue. Bundling gives providers incentives to use the packaged services more efficiently. We encourage additional research on alternative methods and approaches (for example, separate payment for bundled services, payment for bundled services combined with the facility payment) to bundle diagnostic, physician professional, or other services, or any combination of these services, as well as an evaluation of potential provider responses to bundling various types of services.

D. Hospital Payment

After a brief slowdown in the growth of hospital costs under Medicare that accompanied the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248, enacted on September 3, 1982) and the introduction of PPS in 1984 based on the Social Security Amendments of 1983 (Pub. L. 98–21), hospital costs are again rising at near double digit annual rates. The hospital industry has expressed concern about the decline in profit margins that results from faster growth in costs than in payments and argues for higher payments. Under these circumstances, a thorough understanding of hospital costs, their growth, and their relationship to hospitals, financial status are critical to the formulation of hospital payment policy. We are interested in studies that address the following:

1. Determinants of Costs and Their Growth

The resource intensity of inpatient care continues to grow unabated, raising questions about the roles of new technology, nonprice competition, and the absence of effective financing controls. The issue of procedure volume and intensity growth has received special attention in the physician payment area; however, the issue is equally important for hospitals. In this regard, we are interested in studies that explore linkages between physician behavior and hospital costs. We are also interested in how procedure volume and intensity growth affects hospitals, demand for labor and capital inputs.

2. Cost Differences Among Hospitals

Considerable progress has been made in the last decade in explaining hospital cost differences, largely as a result of the increased availability of cost data and improved measures of case mix. However, the measurement of efficiency remains elusive as a result of continued weaknesses in the ability of researchers to account for differences in hospital "outputs" and input prices. We are interested in innovative attempts to cope with these problems of examining cost difference between "efficient" and "inefficient" providers and what characteristics contribute to efficiency/inefficiency. Econometric efforts might be supplemented by in-depth examination of hospitals whose costs are persistently well above or below predicted values. Case studies or limited special data collections, or both, are worthy of consideration. Quality of care differences are another dimension for which these studies need to account.

3. Measures of Financial Status

Attempts to assess hospitals' financial status with the available data suffer from a variety of limitations: charity care, payor discounts, bad debt, or uncompensated care, or a combination of these limitations, may be inconsistently defined or poorly measured, or both; governmental or other subsidies may be omitted; separate legal entities may have been established for related organizations such as a doctors' office building or a nursing home. We are interested in studies that would evaluate the relative importance of these data limitations on assessments of financial status and would explore ways to improve the data. We would also like to know more about hospitals' financial relationships with other entities such as home health agencies, skilled nursing facilities, and ambulatory surgical centers.

4. Cost Measurement

By changing the basis for payment to diagnostically related groups (DRGs), PPS fostered new accounting systems and software that allocate operating and capital costs to DRGs. We know very little about DRG-based and other micro-costing systems and would be interested in a study that describes and evaluates the types of systems currently in use. We are interested in the number and characteristics of institutions that use them, their impacts on the business operations of the institutions, as well as their long run potential for improving Medicare cost data.

5. Changes in Hospital Market Structure

The data indicate that large, sophisticated, expensive hospitals have been more financially successful than small, less expensive hospitals in recent years. We are interested in a study that would examine these changes in hospital market structure, possibly within one or more urban areas. We would like to know more about the possible effects on the elderly, inner city residents, and the hospitals that have traditionally served these groups. The effects on Medicare expenditures of Medicare patients shifting to more expensive hospitals would also be of interest.

6. Graduate Medical Education Costs

There have been many econometric estimates of the relationship between teaching hospital costs and the relative intensity of their teaching programs. However, relatively little is known about the specific ways in which teaching activities yield indirect costs. Though often attributed to residents' ordering of extra diagnostic tests, there is little direct evidence about the magnitude of this effect and how it might differ in teaching programs of different sizes, types, and settings. In addition, little is known about the extent to which the costs of graduate medical education may be offset by the value of services provided. Actions such as the recent New York State limitation on residents' hours of work may provide an opportunity to study the role of residents in providing care and the extent to which residents substitute for other employees. In general, we are interested in studies of different types and sizes of teaching programs and their impacts on hospital costs.

7. Non-labor Input Prices

Section 4002(e)(2) of Public Law 101–508 requires that the Secretary collect sufficient data to determine the extent to which non-labor price variation explains geographical differences in Medicare operating costs per discharge. The mandate also calls for recommendations about how an adjustment for non-labor input price variation might be incorporated into PPS. We are interested in supporting studies in this area.

E. Physician Payment Research

HCFA sponsored research has played a large role in the formulation and implementation of the Medicare physician payment reform legislation enacted in the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101239, enacted on December 19, 1989). The legislation provided for:

- Volume performance standards to constrain the rate of growth of expenditures.
- A resource-based fee schedule, adjusted by geographic practice cost indices.
- Limits on billing to protect beneficiaries financially.

This major payment reform has significant implications for Medicare beneficiaries, physicians, and third-party payors.

We are currently sponsoring research and demonstration projects in physician pricing, technology impacts, volume and intensity factors, medical malpractice premiums, the scale and scope of physician practices, and physican coding and billing patterns. We are particularly interested in more research in three areas:

- First, we are interested in basic approaches for containing overall increases in physician spending. Such approaches might examine physician-at-risk arrangements, growth targeting approaches like Medicare volume performance standards (MVPS), innovative bundling systems, and various preferred provider arrangements.
- Second, we are interested in new methods for measuring physician practice costs as well as practice cost differences by setting and across geographic areas. In particular, we are interested in innovative approaches to measure and allocate practice costs (including malpractice) across procedures, sites of service, and geographic areas.
- Third, we are interested in studies that describe and analyze private sector pricing, coverage and utilization management practices. These studies might include analyses of private sector fee levels for different medical procedures, private sector policies concerning coverage of medical services and new technologies, and private sector utilization management techniques and their effectiveness.

F. End-Stage Renal Disease Research Studies

Medicare covers about 93 percent of all ESRD patients in the United States. For these patients, Medicare pays the bulk of all ESRD patients' medical treatment costs, both renal and non-renal related. Our decisions regarding payment rates and covered services partially determine the types and quantities of medical services available to ESRD patients.

Since the implementation of the Medicare ESRD program in 1973, there have been a number of studies to better understand various aspects and dynamics of the ESRD program. HCFA-sponsored studies have focused on understanding program trends in incidence, prevalence, mortality, and reimbursements. These issues have been examined in terms of cause of renal failure, treatment modalities, site of care, and the demographic characteristics of the ESRD population.

Congress in section 9335 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509, enacted on October 21, 1986) reaffirmed its interest and concerns about the ESRD program by mandating ongoing analyses of ESRD treatment costs and cost-effectiveness to evaluate the cost and quality of ESRD medical care and to aid in the administration of the ESRD program. Section 9335(i) of Public Law 99–509 directed the Secretary to establish a national ESRD patient registry in order to assemble and analyze data to permit:

- Preparation of an annual report to the Congress;
- Identification of the economic impact, cost-effectiveness, and medical efficacy of alternative modalities of treatment;
- Evaluation of the most appropriate allocation of resources for the treatment of and research into the cause of ESRD;
- Determination of patient mortality and morbidity rates, trends in such rates, and other indices of quality of care;
- Other analyses relating to the treatment and management of ESRD as will assist the Congress in managing the ESRD program.

One part of the registry is the United States Renal Data System (USRDS), being developed under a National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) contract with an outside firm. NIDDK will direct most of the analyses relating to medical efficacy, mortality and morbidity rates, and medical research. However, the USRDS will not contain the cost or financial data needed to conduct many of Congress's requests. HCFA data files contain data to do some of the required studies, in particular, the economic impact, cost-effectiveness and quality of care studies; other data bases may also be useful. Use of HCFA's ESRD Program Management Medical Information System (PMMIS) will be available to the successful offerers.

We have assumed the responsibility for studies about the economic impact and cost effectiveness of alternative treatment modalities, and determination of patient quality of care. We are, therefore, interested in studies in the following areas:

1. Disability, Quality of Life, Work Status, and ESRD

Many ESRD beneficiaries are also legally disabled (that is, covered by disability insurance or receiving Supplemental Security Income), either from ESRD complications or from other independent causes. ESRD alone is not generally considered to be disabling, although it is thought that some disabled ESRD beneficiaries have no other medically indicated causes. Studies in this area would examine the disabled ESRD population, the costs of treating this population, possibility for rehabilitation and policies influencing rehabilitation. Specific topics might include the potential impacts of treatment options (for example, transplantation, erythropoietin (EPO)) on disability and workforce participation; rehabilitation (for example, return to work, removal from disability eligibility) following transplantation; and policies that effect workforce participation.

2. Impact of Complicating Diseases on ESRD Outcomes and Costs

Renal disease is often complicated by a number of other problems such as heart disease, infections, bone disease, etc. In the case of kidney transplants, some of these conditions may be associated with post-transplant immunosuppressive therapy. Studies in this area would seek to identify patterns of complicating illnesses among the ESRD population, potentially as they relate to treatment patterns, and the impact of these conditions both on patient outcomes and program costs.

3. Analyses of Physician Charges for ESRD Beneficiaries by Medical Specialty.

Physicians influence the majority of treatment decisions affecting patients. Studies in this area would examine which medical specialists are most involved in ESRD care and the relationships between specialty and type of treatment, place of care, type of provider, and primary versus referral provider.

Other studies that might assist in better understanding the ESRD program are also of interest, and include the following:

4. Non-Medicare ESRD Population

Medicare eligibility rules result in coverage of the vast majority of the U.S. ESRD population. However, as much as 7 percent of ESRD patients are not covered by the program. Little is known about this population, in terms of demographics, geographic location, and

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sources of payment. Studies in this area would seek to describe this population and determine the extent to which they provide a special problem for the health care system, in terms of access to care or payment for services.

5. Non-Medicare Covered Services

Although Medicare pays for the bulk of medical care used by ESRD patients there is still considerable beneficiary burded for noncovered services. For example, Medicare pays for immunosuppressive care only for 1 year after a kidney transplant. It has been alleged both that immunosuppressive costs are a deterrent to receiving a transplant and that failure to continue coverage beyond 1 year is responsible for some graft loss. Another noncovered service is ambulatory drug usage. Prescription medicines are often an important part of the dialysis patient treatment regimen. In addition, most long-term care is not Medicare covered. We do not know what percent of the ESRD population is currently in long term care facilities. We are interested in studies that would identify the total burden of noncovered services on Medicare's ESRD population and sources of payment for these services.

6. Access to ESRD Treatment for Beneficiaries Medically Unable To Drive or Use Public Transportation

Related to the home bound patient issue are transportation issues. Some ESRD patients experience difficulties getting to dialysis facilities. Although some facilities provide transportation services, a few beneficiaries have requested staff-assisted home dialysis or the use of ambulances as their regular transportation to dialysis sessions. Transportation to and from dialysis clinics is apparently done by ambulance for a number of beneficiaries. The ESRD program accounts for a disproportionately high percent (8.7) of total Medicare ambulance charges. The very high users of ambulance services among dialysis patients are less than one-hundredth of 1 percent of the total Medicare population, yet account for almost 7 percent of total Medicare ambulance service charges. Studies in this area could examine this issue with respect to Medicare and non-Medicare (for example, Medicaid) funding of transportation, patient groups with high need for special transportation service, and alternative solutions for transportation access.

7. Home Dialysis Payment Methods

Persons who dialyze at home may choose either of two methods for acquiring dialysis supplies. Under Method I, dialysis facilities furnish supplies to the patient and bill HCFA a capitated amount. Patients choosing Method II contract directly with the supplier(s) of their choice and submit the bills to HCFA for reimbursement. Method II was modified effective February 1, 1990 and continues to be of concern. Studies in this area would examine: Characteristics of persons choosing Method II; the relative advantages and disadvantages of the two methods; the relative cost, outcome, and length of time on home dialysis; and who covers the patient's co-payment.

9. Studies of the Dialysis Industry

The number of dialysis facilities grew from 1,027 in 1980 to 1,757 in 1988, a compounded growth rate of 6.9 percent. Most of the new providers were freestanding, for-profit facilities providing only dialysis and dialysis-related services. Data about facilities exist in the form of annual cost reports, annual facility survey responses, and the PMMIS that permits linking providers with their patients. Studies in this area would include staffing issues, the cost of different treatment methods, ownership and management concerns, economies of scale and scope, and reimbursement policy issues. These studies need not be concerned solely with business or economic issues. For example, many of the items specified above may affect patient survival, use of hospital services, or quality of care.

Applicants may propose projects not addressed under these issues; however, they should discuss in their application the relevance and importance of the proposed research and how it will advance current knowledge in the area.

G. Medicaid

Over the past several years, there have been several expansions of Medicaid program eligibility, particularly focusing on low-income pregnant women, young children, and infants. Programs have also been instituted to make Medicaid eligibility more understandable to potential population groups. States have also engaged in innovative programs to increase provider participation and to better target services.

In addition to our continuing interest in testing innovative State programs, we are interested in supporting research studies that focus on the following issues:

- Effectiveness of Medicaid program expansions and innovative State programs to provide improved access to prenatal and child health services and increase provider participation.
- Reasons for the large increase in Medicaid expenditures over past several years (over the past 2 years, the Federal share of Medicaid expenditures has increased by 50 percent, from about $34.4 billion to $51.6 billion).

1. Impact of Innovative Programs and Medicaid Program Expansions.

Over the past several years, Congress has expanded the Medicaid program, particularly for maternal and child health services. The expansions have included broadening coverage for pregnant women, young children, and infants by mandating higher income eligibility levels and by severing the traditional link between Medicaid and Aid to Families with Dependent Children income eligibility criteria. In addition, many creative programs to provide prenatal care and to improve child health services have been developed by State and local jurisdictions. Some private organizations also have developed mechanisms to serve both the Medicaid and the uninsured populations, including the use of managed care.

We are interested in supporting research to examine the effects these efforts have had on access to care and, to the extent it can be determined, on lowering infant mortality and improving health care outcomes. Studies are also encouraged that examine the effects of State efforts under Medicaid to improve access through expanded eligibility or other program changes (for example, presumptive eligibility, outposting eligibility workers, form simplification, adjunct eligibility and "one stop shopping") on access to and use of prenatal and postnatal care.

2. Provider Participation

The level of provider participation and incentives for providers to participate are important determinants of Medicaid patient access to care. We are currently sponsoring a major study of physician participation in Medicaid; we are interested in additional studies that examine the effects of State initiatives on increasing Medicaid provider or physician participation or characteristics of State programs, or both, that have been successful in increasing provider/physician participation.

3. Medicaid Expenditure Growth

The Federal expenditures under the Medicaid program have increased by 50 percent over the past 2 years. We are interested in supporting research studies to examine potential reasons for the large growth in Medicaid expenditures.

IV. Purpose and Content of Cooperative Agreements and Grants

A. General Considerations

The cooperative agreements and grants we award are intended to assist in the resolution of major health financing issues or in developing new methods for administration of our programs. Our cooperative agreement and grant program focuses primarily on analyses, experiments, pilot projects, and demonstrations that provide information useful for the Medicare and Medicaid programs. Applications that fit one of the priority areas will be considered to be solicited.

B. Cooperative Agreements and Grants

All cooperative agreements will include an explicit statement of the nature, character, and intent of anticipated Federal programmatic involvement to ensure that the responsibilities of both parties are understood. Each cooperative agreement will incorporate the requirements of 45 CFR part 74 or part 92 or both, as applicable, among its terms and conditions.

Cooperative agreements will not be awarded to a State Medicaid agency for section 1115 (of the Act) projects in which only waivers of Federal regulations or costs not otherwise matchable under section 1115(a)(2) are approved to carry out a demonstration. The instrument to be used for this award will be a grant (without discretionary funds) of waivers and cost authorized under section 1115(a)(2).

Cooperative agreements may be awarded for section 1115 projects with discretionary funds, even if waivers and costs under section 1115(a)(2) also are involved. In these cases, the cooperative agreement conditions will apply to the entire operation and management of the project. Cooperative agreements may be used for projects awarded under all other authorities listed in section V. C., "Authorities."

We may suspend or terminate any cooperative agreement or grant in whole, or in part, at any time before the date of expiration, whenever we determine that the awardee has materially failed to comply with the terms of the cooperative agreement or grant. We will promptly notify the awardee in writing of the determination and the reasons for the suspension or termination together with the effective date. In addition, we reserve the right to withdraw waivers at any time if we determine that continuing the waivers would no longer be in the public interest. If a waiver is withdrawn, we will be liable only for normal closeout costs.

C. Waivers

1. Demonstrations Requiring Waiver of Medicaid Rules

Researchers who wish to conduct demonstrations that would require Medicaid rules to be waived must coordinate their applications with the appropriate State Medicaid agency. Private agencies that wish to ask for Medicaid or Medicare waivers are strongly encouraged to coordinate with researchers or research firms in order to ensure that the experimental design and evaluation protocol are of the highest quality.

2. Section 1115(a) Projects

Under section 1115(a)(1) of the Act, compliance with statutory Medicaid State plan requirements (section 1902 of the Act) may be waived in order to enable a State Medicaid agency to carry out a demonstration project that will further the general objectives of the Medicaid program.

Under section 1115(a)(2) of the Act, we may consider costs of a section 1115(a) project that otherwise would not properly be included as expenditures under the State plan and thus subject to Federal financial participation (FFP).

Unless they are specifically waived, all requirements of the Act, the Code of Federal Regulations, and other issuances that pertain to the title XIX program apply to a project approved under section 1115(a).

If a State Medicaid agency applies for a section 1115(a) project, it should give special attention to the preparation of the budget. The agency must provide estimates of the cost or savings attributable to the demonstration project, contrasted with the normal Federal program costs. That is, the agency must furnish the estimated yearly cost before waivers, and after waivers, for both service costs and administrative costs. These budgets are substantially more extensive than the budget for other applications.

3. Other Waivers

Waivers of the requirements of titles XVIII and XIX of the Act, and of corresponding HCFA regulations, may be requested for projects conducted under section 222(a) of the Social Security Amendments of 1972 (Pub. L. 92-603, enacted on October 30, 1972), as amended, and section 402 of the Social Security Amendments of 1967 (Pub. L. 90-248, enacted on January 2, 1968), as amended. The waivers requested must relate to an experimental or demonstration project that involves changes in the benefit package or method of payment. In applying for these waivers or changes in reimbursement or FFP, the applicant must provide sufficient budgeting information to permit estimates of the likely cost or savings of the project compared to the normal Federal program costs. That is, the application must furnish the estimated yearly cost, before waivers and after waivers, for both program and administrative costs.

4. Methodology for Estimating Gross Cost of Projects Involving Waivers

We will define the methodology to be used in estimating gross and net waiver costs. A description of this methodology may be obtained by contacting the individual named at the beginning of this notice. This methodology is subject to change and applicants are therefore instructed to ensure they are using the most current methodology for future solicitations.

V. Cooperative Agreements and Grants—General Information

A. FY 1991 Funds for Cooperative Agreements and Grants

A review of the requirements for existing priorities and our expected FY 1991 budget indicates that approximately $4.5 million may be available to the Office of Research and Demonstrations (ORD), HCFA to fund new cooperative agreements and grants for research and demonstration projects.

B. Eligibility Requirements

Applications for cooperative agreements and grants may be submitted to HCFA by private or public nonprofit agencies or organizations, including State agencies that administer the Medicaid program. Private for-profit organizations may apply for cooperative agreements and grants (discretionary funds) under sections 1110(a)(1), 1875(a) and 1861(f) of the Act; section 402(a)(1) of Public Law 90-248, as amended; section 222(a) of Public Law 92-603, as amended; and section 9335 of Public Law 99-509.

C. Authorities

Our authority for making these awards is based on the following:

1. The Social Security Act, section 1110, 42 U.S.C. 1310, concerning Medicaid cooperative research or demonstration projects, and section 1115(a), 42 U.S.C. 1315(a), concerning demonstration projects;

2. The Social Security Act, section 1875, 42 U.S.C. 1395ll concerning studies and recommendations for cooperative

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agreements only, and section 1881(f), 42 U.S.C. 1395rr(f), concerning end-stage renal disease experiment and pilot projects;

3. Section 402 of the Social Security Amendments of 1967 (Pub. L. 90–248), as amended, 42 U.S.C. 1395b–1, concerning experiments and demonstration projects;

4. Section 222(a) of the Social Security Amendments of 1972 (Pub. L. 92–603), as amended, 42 U.S.C. 1395b–1 (note), concerning experiments and demonstration projects pertaining to prospectively-based payment systems; and

5. 42 U.S.C. 1395rr(c)(7), as added by section 9335 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509), concerning the national end-stage renal disease registry.

D. Regulations

General policies and procedures that govern the administration of all Department of Health and Human Services (HHS) cooperative agreements and grants are located in title 45 of the Code of Federal Regulations (CFR), parts 74 and 92. Applicants are urged to review the requirements contained in those regulations.

E. Number and Size of Projects

Most awards range from $100,000 to $350,000 per year. We also may award some projects for larger amounts. The number of cooperative agreements and grants depends on the availability of funds; needs of projects that are continuing from prior years; priority interest areas established by us; and technical quality of applications.

F. Duration of Funding

We fund projects for a period of 1 year at a time and may continue funding on a noncompetitive basis, generally for up to 3 years, if we made the original award as a multiple year project. Continuation funding is contingent on the availability of future year funds, the applicant's ability to meet prior year project objectives, and continued funding is in the best interest of the government.

We treat applications that seek to continue a project for a longer period of time than that stated in the original awards as new projects. Thus, they must compete for available funds, and we will review these applications competitively along with all other new applications.

Under this announcement, HCFA does not intend to award grants or cooperative agreements with periods of performance of greater than 3 years. Applications received for projects of more than 3 years will be considered, but they will be carefully analyzed to determine if the period of performance can be shortened by curtailing some of the activities. Under rare circumstances, and if the Government determines that the time period cannot be reduced, awards of more than 3 years are possible.

VI. Application Procedures

A. Priority Area Designation

Each application should be limited to one of the seven priority areas described earlier. The application must include, in the project title block, the priority area title to which the applicant is responding. The priority area designation also must be clearly marked on the outside of the package or envelope. If we determine a different priority area is a more appropriate area for consideration of a proposal, we reserve the right to change priority area designation without notifying the applicant. (An application being submitted for an unsolicited area should identify the program area—from among the seven listed earlier—into which the application most clearly fits.)

B. Criteria for Screening and Reviewing Applications

1. Screening Requirements

In order for an application to be in conformance, it must meet all of the following requirements:

a. Length. The applicant should provide a brief (1 or 2 paragraph) abstract summarizing the objectives of the proposal. A summary, not to exceed 5 pages, of the proposed project must be included. This summary should discuss the project objectives, hypotheses to be examined, data to be used and its source(s), model type(s) and structure(s) to be used in analyses, resources available to conduct the project, and amount and duration of support requested. The narrative portion of the application should be typewritten single-sided, and should not exceed 50 (for a research proposal) or 80 (for a demonstration proposal) double-spaced pages, exclusive of resumes, forms, and so forth. Applications should be neither unduly elaborative nor contain voluminous or unnecessary documentation.

b. Number of copies. An original signed application and 14 copies must be submitted. Medicaid State agencies are required to submit an original signed application and 2 copies.

c. HCFA priorities. Those projects that specifically address a priority area/topic stated in this announcement generally will receive preference. Applications determined by HCFA or the review panel to be unrelated to the announced HCFA priorities will not generally be considered for funding.

Note: As stated previously, interested organizations planning to submit an application not fitting into one of the seven priority areas must submit a letter by July 8, 1991 stating their intent to submit that application. Failure to submit the letter of intent will generally result in the application being returned to the applicant without further action by HCFA. We reserve the right to review and consider for funding those applications that are determined to be particularly research-relevant, irrespective of whether they respond to one of the priority areas discussed above. In those instances, an independent review panel will be convened to evaluate the application(s), using the evaluation criteria discussed below.

d. Title XIX demonstration proposals. Demonstration proposals involving the Medicaid program must be submitted by the single State agency responsible for administration of the Medicaid program in that State.

Applications that do not meet these screening requirements will not be considered for funding/approval by the review panels.

2. Evaluation Criteria

Applications that meet the screening criteria will be reviewed by a technical review panel composed of at least three individuals. Reviewers will score the applications, basing their scoring decisions and approval recommendations on the following criteria. Relative weights are shown in parentheses.

a. Project methodology/design (40 points). The application describes specific plans for conducting the project in terms of the tasks to be performed. It includes relevant information about:

- Hypotheses to be tested (if applicable).
- Concise and clear statement of goals and measurable/achievable objectives.
- What the project will do and how it relates to similar work done in the area.
- How the project will be conducted.
- Data to be collected (including specification of data sources).
- Plan for data analysis.
- Milestones/phases in the progress of the project.

Specifically, the proposal should contain the following:

(i) A clear, quantifiable statement of the project goals and objectives.

(ii) An explicit description of the research design, including the questions to be addressed and the methods and data to be used. The methodology must be well defined and scientifically valid.

(iii) If the project is a demonstration proposal, the applicant should include separate sections on both the research design and the evaluation design. The research design section should include a detailed description of the reimbursement methodology and other programmatic changes. The evaluation section should provide an indication of the applicant's understanding of the evaluation issues and the various approaches to them. Should an award be made, the applicant may be required to collect data in a standardized manner to facilitate evaluation efforts. We will have the option of determining whether the applicant or HCFA will be responsible for the evaluation.

(iv) Demonstrations must contain a phase-down/phase-out plan that: (A) Ensures that Medicare and Medicaid beneficiaries, as well as any other project participants, are phased out of any special programs that were initiated and exist as reimbursable or covered health services only under the auspices of the project, or ensures that plans are in effect to provide other care for the project participants by the date the project is scheduled to end; and (B) ensures that any new payment methods initiated by the project will cease to apply at the scheduled end of the project (that is, the project in and of itself cannot commit the Medicare or Medicaid programs to an indefinite use of the payment methodology beyond the scheduled end of the project).

(v) The tasks and milestones must be clearly described and must include a schedule of reports to be submitted to HCFA. (Progress and Financial Reports as required by 45 CFR parts 74 and 92.)

(vi) The application must contain information specifying the availability of the data to be used, if data are to be collected. The discussion must describe the nature of the data sought, the sample design and size, controls, and comparisons (if any), and the problems that might be encountered in collection. Data that are collected under a HCFA cooperative agreement or grant must be available to HCFA or its agents. The applicant, however, must ensure the confidentiality of any personally identifiable information collected under the auspices of any HCFA cooperative agreement or grant. The application must contain detailed plans to protect the confidentiality of all information that identifies individuals under the project. The plan must specify that this information is confidential, that it may not be disclosed directly or indirectly except for purposes directly connected with the conduct of the project, and that in all cases where disclosure takes place, the informed written consent of the individual must be obtained.

(vii) Projects that require waivers (for example, those under section 1115(a) of the Act, section 222(a) of Public Law 92–603, as amended, and section 402(b) of Public Law 90–248, as amended) must define the services, list the waivers, discuss the implications if these waivers are granted, and state the effect on Federal, State, and local laws as well as the effect (beneficial or adverse) on individuals enrolled in the project.

If the project involves both Medicare and Medicaid waivers, a request for Medicaid waivers from the State agency administering the Medicaid program must be included with the application. Applicants should contact HCFA for further information if questions arise in these cases.

b. Knowledge/experience/capability in area: (20 points). The application describes the applicant's prior experience in the area or in related areas. The principal investigator and other key staff are qualified and possess the experience in this or related areas and the variety of skills required to produce final results that are readily comprehensible and usable. The application should provide evidence of understanding and knowledge of prior and ongoing work in the area. Specific information also must be provided concerning how the personnel are to be organized in the project, to whom they will report, and how they will be used to accomplish specific objectives or portions of the project.

c. Level of effort: (20 points). The resources that will be needed to conduct the project are specified, including personnel, time, budget, and facilities. The staffing pattern clearly links responsibilities/levels of efforts to project tasks. The project's costs are reasonable in view of the anticipated results. Any collaborative effort (including subcontracts) with other organizations is clearly identified and written assurances included. A description by category (personnel, travel, consultants, and so forth) of the total of the Federal funds required is included. Funds are specified for each budget period. Specifically, the application should contain the following:

(i) Information specifying the availability of adequate facilities and equipment for the project or clearly state how these are to be obtained.

(ii) The budget must be developed in detail with justifications and explanations for the amount requested. The estimated costs must be reasonable considering the anticipated results.

(iii) Applicants are expected to contribute towards the project costs. Generally, 5 percent of the total costs is considered acceptable. No demonstration project will be awarded that covers 100 percent of the project's costs. The budget may not include costs for construction or remodeling or for project activities that take place before the applicant has received official notification of HCFA approval of the project.

(iv) For demonstration projects involving waivers, budget estimates for the administrative and service costs must be prepared in accordance with the prescribed methodology.

Waiver-only applications also must contain estimates, prepared in accordance with the prescribed methodology in this announcement, of the amount of program and administrative expenditures that will occur under the waivers and a comparison of these expenditures to those that are projected to occur in the programs in the absence of the waivers.

(v) Each application must include a statement that if the project is awarded, the awardee will furnish quarterly expenditures for administrative and program costs (and, for demonstration projects involving waivers, for service costs) for the project within the approved budget, in the format to be specified under special terms and conditions in the cooperative agreement or grant.

d. Project objectives and expected outcomes: (20 points). How closely do the project objectives fit those of the solicitation? What is the intrinsic merit of the research/study? The need for the project is discussed in terms of the importance of the issues to be addressed and the particular project proposed, as well as how the proposed project builds on and expands previous work in the area. The application should discuss plans for utilization of the project's results for the potential usefulness of the anticipated results and expected benefits to HCFA and other target groups.

VII. Other Considerations

A. Selection Criteria for Funding New Projects

Although the recommendations of the technical review panels are a major factor in making the decision about an application, review scores and recommendations are not the only factors. The compatibility of applications to HCFA priorities as judged by HCFA Senior Staff, the availability of HCFA resources, and the

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comments of other HCFA and Department staff are considered in making funding decisions.

B. Other Requirements

1. This program is not covered by Executive Order 12372, "Intergovernmental Review of Federal Programs".

2. Applications approved by HCFA for funding will contain a specific set of special terms and conditions that are applicable upon the applicant's acceptance of the award. These include the following:

a. The HCFA project officer will be notified before formal presentation of any report or statistical or analytical material based on information obtained through this cooperative agreement. Formal presentation includes papers, articles, professional publications, speeches, and testimony. In the course of this research, whenever the principal investigator determines that a significant new finding has been developed, he or she will immediately communicate it to the HCFA project officer before formal dissemination to the general public.

As required by section 511 of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act of 1990 (Pub. L. 101–166, enacted on November 21, 1989), the awardee, whenever issuing statements, press releases, requests for proposals, bid solicitations, and other documents (including reports and published articles) concerning this project, or findings and results from this project, must clearly state (1) the percentage of the total cost of the project financed with Federal money, (2) the dollar amount of Federal funds for the project, and (3) the percentage and dollar amount of the total costs of the project financed by nongovernmental sources.

The final report may not be released or published without permission from the HCFA project officer within the first 4 months following receipt of the report by the HCFA project officer. The final report will contain a disclaimer that the opinions expressed are those of the awardee and do not necessarily reflect the opinions of HCFA.

b. At any phase of the project, including the project's conclusion, the awardee, if requested by HCFA, must submit the analytic data file(s), with appropriate documentation, representing the data developed/used in endproduct analyses generated under the award. The analytic file(s) may include primary data collected, acquired or generated under the award and/or data furnished v HCFA. The content, format, documentation, and schedule for production of the data will be agreed upon by the principal investigator and the HCFA project officer. The negotiated format(s) could include both file(s) that would be limited to HCFA internal use and file(s) that HCFA could make available to the general public.

c. At any phase of the project, including at the project's conclusion, the awardee, if so requested by HCFA, must deliver to HCFA any materials, systems, or other items developed, refined or enhanced in the course of or under the award. The awardee agrees that HCFA will have royalty-free nonexclusive and irrevocable rights to reproduce, publish or otherwise use and to authorize others to use the items for Federal government purposes.

d. Any additional specific project requirements.

3. When a project is completed, the awardee must submit a final report. As a minimum, the report must contain the following:

a. Identification of the project director, principal investigator, cooperative agreement or grant number, awardee, and title of the project;

b. Acknowledgment of the support received from HCFA, and a disclaimer to the effect that the findings do not necessarily reflect the opinions or policies of HCFA;

c. An executive summary (one or two pages) that provides an overview of the project and highlights significant findings;

d. A description of the initial hypotheses, objectives, and scope of the project;

e. An explanation of the study methodology; and

f. A discussion of significant findings and demonstration or research results (and the implications of these results, if any).

On a semi-annual basis during the course of the project, the awardee must provide a list and copies of all papers presented, and of all articles, reports, and other types of publications that result from the project, for inclusion in a subject bibliography system maintained by ORD, HCFA. It is further requested that the awardee continue to provide the updated information for 2 years after the project's completion.

The ORD "Author's Guidelines for Cooperative Agreements, Grants and Contracts" should be used in preparing the final report. This document is available on request from the ORD Publications Coordinator, room 1–C–9 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207, (301) 966–6885.

C. Multiple Applications

The applicant must indicate when the same or a similar application is submitted to another HHS agency; for example, the Social Security Administration, the Office of Human Development Services, or to one of the Public Health Service programs.

D. Cooperative Agreement and Grant Policies

Projects are funded through a competitive process and chosen from among the applications submitted in response to this announcement. In the case of demonstration projects, all awardees are expected to share directly in the costs of the projects. Normally, this sharing must be at least 5 percent of the total project costs. For section 1115(a) of the Act projects, the amount that the single State's agency will be expected to provide generally must be at least 5 percent of the special Federal project funds.

If, following review of a proposed activity, we determine that a research or demonstration project presents a danger to the physical or mental well-being of a participant of the project, then Federal funds will not be made available for that project without the written, informed consent of each participant.

Other policies including responsibilities, awarding and payment procedures, special provisions, and assurances may be found in 45 CFR parts 74 and 92.

It is a national policy to place a fair share of purchases with small, minority-owned, and woman-owned business firms. HHS is strongly committed to the objectives of this policy and encourages all recipients of its cooperative agreements and grants to take affirmative steps to ensure such fairness, in particular, recipients should—(1) place small, minority-owned, and woman-owned business firms on bidders' mailing lists; (2) solicit these firms whenever they are potential sources of supplies, equipment, construction, or services; (3) where feasible, divide total requirements into smaller needs and set delivery schedules that will encourage participation by these firms; and (4) use the assistance of the Minority Business Development Agency of the Department of Commerce, the Office of Small and Disadvantaged Business Utilization, HHS, and similar available State and local government agencies.

VIII. Review of Applications

An independent review will be conducted by a panel of not less than three experts. The panel will include experts from both HHS and the private sector.

There will be at least one independent review panel for each priority area. An ORD chairperson will coordinate the panel's review but will not vote. The chairperson will also prepare the panel's recommendation (summary statement) to the Director, ORD. The panel's recommendation will contain numerical ratings (based on the specified rating criteria), ranking of all applications, and a written assessment of each application. These will be summarized in a ranking and approval list and a matrix that will be prepared for each application. When the panel determines that an application is unrelated to the announced funding priorities, numerical ratings will generally not be assigned to the application, and the application will generally not be considered for funding.

Applicants may request in writing a copy of the summary statement on the review of their application after they have received from HCFA the letter announcing approval or disapproval. Summary statements will be made available subject to the applicable limitations of the Freedom of Information Act (5 U.S.C. 552), the Federal Advisory Committee Act (5 U.S.C. app I.), the Privacy Act (5 U.S.C. 552a), and 45 CFR parts 5, 5b, and 11.

IX. Closing Date and Time

In order to be considered under this funding cycle, a cooperative agreement and grant application, as described in sections I. and III. of this notice, must be submitted to HCFA by August 1, 1991. Letters of intent for applications outside the priority areas, as described in section II. of this notice, must be submitted by July 8, 1991 in order to be considered under this funding cycle.

Applications mailed through the U.S. Postal Service or a commercial delivery service will be "on time" if they are received on or before the closing date, or sent on or before the closing date and received in time for submission to the independent review group. Applicants are cautioned to request a legible U.S. Postal Service postmark or to obtain a legibly dated receipt from the commercial carrier or the U.S. Postal Service. Privately metered postmarks will not be acceptable as proof of timely mailing.

Applications that do not meet the above criteria will be considered late applications. Those submitting late applications will be notified that the applications were not considered in the current competition.

Authority: (Sections 1110, 1115(a), 1875, 1881(c)(7) and 1881(f) of the Social Security Act (42 U.S.C. 1310, 1315(a), 1395ll, 1395rr(c)(7) and 1395rr(f)); section 402 of the Social Security Amendments of 1967, as amended (42 U.S.C. 1395b–1); section 222(a) of the Social Security Amendments of 1972, as amended (42 U.S.C. 1395b–1 (note)).

(Catalog of Federal Domestic Assistance Program No. 93.779, Health Financing Research, Demonstrations and Experiments)

Dated: April 14, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration

[FR Doc. 91–13392 Filed 6–5–91; 8:45am]

BILLING CODE 4120–01–M

National Institutes of Health

National Cancer Institute (Division of Cancer Treatment Board of Scientific Counselors); Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, DCT, National Cancer Institute, National Institutes of Health, June 10–11, 1991, Building 31C, Conference room 6, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on June 10 from 8:30 a.m. to approximaely 5:45 p.m., and again on June 11 from approximately 10 a.m., until adjournment, to review program plans, concepts of contract recompetitions and budget for the DCT program. In addition, there will be scientific reviews by several programs in the Division. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public on June 11 from 8:30 a.m. to approximately 10 a.m., for the review, discussion and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Carole Frank, Committee Management Officer, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301–496–5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Bruce A. Chabner, Director, Division of Cancer Treatment, National Cancer Institute, Building 31, room 3A44, National Institutes of Health, Bethesda, Maryland 20892 (301–496–4291) will furnish substantive program information.

Dated: May 22, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91–13398 Filed 6–5–91; 8:45 am]

BILLING CODE 4140–01–M

Meeting of the Ad Hoc Hearing and Hearing Impairment Subcommittee of the National Deafness and Other Communication Disorders Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Ad Hoc Hearing and Hearing Impairment Subcommittee of the National Deafness and Other Communication Disorders Board on June 13, 1991. The meeting will take place from 10:30 a.m. to 4:30 p.m. in room 6A–28, Building 31, A-Wing, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public from 10:30 a.m. to 2 p.m. so that the Subcommittee may compare the research portfolio of the Institute to the National Strategic Research Plan, identify changes in the field since the Plan was developed, recommend levels and areas of research activity, and suggest potential initiatives. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public from 2 p.m. until adjournment for the discussion and recommendation of individuals to serve on a scientific panel to update the Hearing and Hearing Impairment Section of the National Strategic Research Plan. This discussion could reveal personal information concerning these individuals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the Subcommittee meeting and a roster of members may be obtained from Mrs. Monica Davies, National Institute on Deafness and Other Communication Disorders, Building 31, room B2C06, National Institutes of Health, Bethesda, Maryland 20892, 301–402–1129, upon request.

(Catalog of Federal Domestic Assistance Program No. 13.173 Biological Research Related to Deafness and Other Communicative Disorders.)

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Dated: May 22, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-13399 Filed 6-5-91; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meeting—Board of Scientific Counselors, Division of Cancer Biology, Diagnosis, and Centers

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Biology, Diagnosis, and Centers, National Cancer Institute, June 24, 1991. The meeting will be held in Building 31C, Conference Room 7, National Institutes of Health, Bethesda, Maryland 20892.

This meeting will be open to the public from 8:30 a.m. to 3 p.m. for concept review of proposed research projects. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sec. 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the meeting will be closed to the public from 3 p.m. to adjournment for the review and discussion of previous site visit reports and responses, including consideration of personnel qualifications and performance, the competence of individual investigators, medical files of individual research subjects, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summary minutes of the meeting and roster of committee members.

Dr. Ihor J. Masnyk, Deputy Director, Division of Cancer Biology, Diagnosis, and Centers, National Cancer Institute, Building 31, room 3A03, National Institutes of Health, Bethesda, Maryland 20892 (301/496-3251) will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: May 22, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-13400 Filed 6-5-91; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting

Notice is hereby given of the meeting of the National Cholesterol Education Program Coordinating Committee, sponsored by the National Heart, Lung, and Blood Institute on Tuesday, June 18, 1991, from 9 a.m. to 3 p.m., at the Bethesda-Holiday Inn Hotel, 8120 Wisconsin Avenue, Bethesda, Maryland, 20814, (301) 652-2000.

The entire meeting is open to the public. The Coordinating Committee is meeting to define the priorities, activities, and needs of the participating groups in the National Cholesterol Education Program. Attendance by the public will be limited to space available.

For the detailed program information, agenda, list of participants, and meeting summary, contact: Dr. James I. Cleeman, Coordinator, National Cholesterol Education Program, Office of Prevention, Education and Control, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, room 4A05, Bethesda, Maryland 20892, (301) 496-0554.

Dated: May 30, 1991.

Bernadine Healy,

Director, NIH.

[FR Doc. 91-13401 Filed 6-5-91; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Deafness and Other Communication Disorders; Meeting of the Ad Hoc Voice and Voice Disorders Subcommittee of the National Deafness and Other Communication Disorders Advisory Board

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Ad Hoc Voice and Voice Disorders Subcommittee of the National Deafness and Other Communication Disorders Board on July 11, 1991. The meeting will take place from 10:30 a.m. to 4:30 p.m. in room 3C-05, Building 31, C-Wing, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public from 10:30 a.m. to 2 p.m. so that the Subcommittee may compare the research portfolio of the Institute to the National Strategic Research Plan, identify changes in the field since the Plan was developed, recommend levels and areas of research activity, and suggest potential initiatives. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public from 2 p.m. until adjournment for the discussion and recommendation of individuals to serve on a scientific panel to update the Voice and Voice Disorders Section of the National Strategic Research Plan. This discussion could reveal personal information concerning these individuals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Summaries of the Subcommittee meeting and a roster of members may be obtained from Mrs. Monica Davies, National Institute on Deafness and Other Communication Disorders, Building 31, room B2C06, National Institutes of Health, Bethesda, Maryland 20892, 301-402-1129, upon request.

(Catalog of Federal Domestic Assistance Program No. 13.173 Biological Research Related to Deafness and Other Communicative Disorders.)

Dated: May 22, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-13402 Filed 6-5-91; 8:45 am]

BILLING CODE 4140-01-M

National Institute of General Medical Sciences; Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the committees of the National Institute of General Medical Sciences for June and July 1991.

These meetings will be open to the public to discuss administrative details relating to committee business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available.

These meetings will be closed thereafter in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion, and evaluation of individual research training grant and research center grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, room 4A52, Bethesda, Maryland 20892 (Telephone: 301-496-7301), will provide a summary of the meeting and a roster of committee members.

Substantive program information may be obtained from each scientific review administrator whose name, room number, and telephone number are listed below each committee.

Name of Committee: Pharmacological Sciences Review Committee.

Scientific Review Administrator: Dr. Irene Glowinski, room 9A10, Westwood Building, Telephone: 301-496-7125.

Dates of Meeting: June 10-11, 1991.

Place of Meeting: Building 31C, Conference Room 7, National Institutes of Health.

Open: June 10, 8:30 a.m.-9:30 a.m.

Closed: June 10, 9:30 a.m.-5 p.m., June 11, 8:30 a.m.-adjournment.

Name of Committee: Cellular and Molecular Basis of Disease Review Committee.

Scientific Review Administrator: Dr. Carole Latker, room 9A10, Westwood Building, Telephone: 301-496-7125.

Dates of Meeting: June 12-13, 1991.

Place of Meeting: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, Maryland 20814.

Open: June 12, 8:30 a.m.-9:30 a.m.

Closed: June 12, 9:30 a.m.-5 p.m., June 13, 8:30 a.m.-adjournment.

Name of Committee: Genetic Basis of Disease Review Committee.

Scientific Review Administrator: Dr. Arthur Zachary, room 9A12, Westwood Building, Telephone: 301-496-7125.

Dates of Meeting: June 13, 1991.

Place of Meeting: Building 31, Conference Room 8, National Institutes of Health.

Open: June 13, 8:30 a.m.-9:30 a.m.

Closed: June 13, 9:30 a.m.-5 p.m.

Name of Committee: Minority Programs Review Committee.

Name of Subcommittee: Minority Access to Research Careers Subcommittee.

Scientific Review Administrator: Dr. Norka Ruiz Bravo, room 9A18, Westwood Building, Telephone: 301-496-7585.

Dates of Meeting: June 17-18, 1991.

Place of Meeting: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Open: June 17, 8:30 a.m.-9:30 a.m.

Closed: June 17, 9:30 a.m.-5 p.m., June 18, 8:30 a.m.-adjournment.

Name of Committee: Minority Programs Review Committee.

Name of Subcommittee: Minority Biomedical Research Support Subcommittee.

Scientific Review Administrator: Dr. Mary Stephens, room 9A13, Westwood Building, Telephone: 301-402-0635.

Dates of Meeting: July 18-19, 1991.

Place of Meeting: Building 31C, Conference Room 10, National Institutes of Health.

Open: July 18, 8:30 a.m.-9:30 a.m.

Closed: July 18, 9:30 a.m.-5 p.m., July 19, 8:30 a.m.-adjournment.

(Catalog of Federal Domestic Assistance Program No. 13-859, 13-862, 13-863, 13-880, National Institute of General Medical Sciences, National Institutes of Health)

Dated: May 22, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-13403 Filed 6-5-91; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Health Resources and Services Administration; Title XXVI of the Public Health Service Act, HIV Health Care Services

Notice is hereby given that in furtherance of the delegation of authority to the Assistant Secretary for Health on February 21, 1991 (56 FR 9226, March 5, 1991) by the Secretary of Health and Human Services, the Assistant Secretary for Health has delegated to the administrator, Health Resources and Services Administration, the following authorities under title XXVI of the Public Health Services Act, as amended hereafter, pertaining to the HIV Health Care Services:

1. All of the authorities under part A, for Emergency Relief for Areas with Substantial Need for Services, excluding the authority under section 2601(b), pertaining to the Requirement Regarding Confirmation of Cases;

2. All of the authorities under part B, for the Care Grant Program;

3. All of the authorities under part C, subpart II, for Categorical Grants; and

4. All of the authorities under Part D, for General Provisions, as it pertains to the functions assigned to the Health Resources and Services Administration, excluding the authority under section 2671(c)(2), pertaining to the analysis and evaluation of research protocol; the authority under section 2672, pertaining to provisions relating to blood banks; and the authority under section 2673, pertaining to Research, Evaluation, and Assessment Program.

The delegation excluded the authorities to issue regulations, submit reports to Congress or a congressional committee, establish advisory committees and councils, and select members to advisory councils.

Redelegation

This authority may be redelegated.

Prior Delegations

None.

Effective date

The above delegation was effective on May 24, 1991.

In addition, I hereby affirm and ratify any actions taken by the Administrator, Health Resources and Services Administration, or any subordinates which, in effect, involved the exercise of the authorities delegated herein prior to the effective date of the delegation.

Dated: May 24, 1991.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 91-13261 Filed 6-5-91; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health; Title XXVI of the Public Health Service Act; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority to the Assistant Secretary for Health on February 21, 1991, by the Secretary of Health and Human Services, the Assistant Secretary for Health has delegated to the Director, National Institutes of Health (NIH), authority under title XXVI of the Public Health Service Act, section 2671, Demonstration Grants for Research and Services for Pediatric Patients Regarding Acquired Immune Deficiency Syndrome, as amended, insofar as this authority pertains to the functions assigned to NIH.

The delegation excluded the authority to promulgate regulations, submit reports to the Congress, establish advisory committees or national commissions, and appoint members to such committees or commissions.

The NIH shall exercise the authority under section 2671 in accordance with the policies established by the Assistant Secretary for Health regarding coordination and integration of HIV-related information.

In addition, the Assistant Secretary for Health affirmed and ratified any actions taken by NIH involving the exercise of the authorities delegated herein prior to the effective date of the delegation.

Redelegation

This authority may be redelegated.

Effective Date

This delegation became effective on May 24, 1991.

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Dated: May 24, 1991.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 91-13260 Filed 6-5-91; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-967-4230-15; AA-14015]

Alaska Native Claims Selection; Notice for Publication

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14(h)(8) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(8), will be issued to Sealaska Corporation for approximately 9,581 acres. The lands involved are in part of the Tongass National Forest in southeast Alaska.

Copper River Meridian, Alaska

T. 43 S., R. 60 E.
Sec. 21;
Sec. 22.
T. 55 S., R. 72 E.
Sec. 13;
Sec. 24;
Secs. 25 and 36.
T. 55 S., R. 73 E.
Sec. 35.
T. 56 S., R. 73 E.
Sec. 2;
Sec. 10;
Sec. 15.
T. 72 S., R. 80 E.
Sec. 17.
T. 75 S., R. 80 E.
Sec. 11;
Sec. 12;
Sec. 13;
Sec. 14.
T. 75 S., R. 81 E.
Sec. 18;
Sec. 19;
Sec. 30;
Sec. 31.
T. 73 S., R. 82 E.
Sec. 1;
Sec. 12.
T. 79 S., R. 82 E.
Sec. 2;
Sec. 3;
Sec. 4.
T. 80 S., R. 82 E.
Sec. 12.
T. 80 S., R. 83 E.
Sec. 7;
Sec. 8;
Sec. 17;
Sec. 18.
T. 72 S., R. 85 E.
Sec. 18;
Sec. 21.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Juneau Empire. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until July 8, 1991, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Patricia K. Underwood,

Acting Chief, Branch of KCS Adjudication.

[FR Doc. 91-13330 Filed 6-5-91; 8:45 am]

BILLING CODE 4310-JA-M

[AK-964-4230-15; F-14943-B]

Alaska Native Claims Selection; Notice for Publication

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of secs. 14(a) and 22(j) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), 1621(j), will be issued to Tanacross, Inc., for approximately 50,300 acres. The lands involved, certain lands within the following townships, are in the vicinity of Tok, Alaska.

Copper River Meridian, Alaska

T. 18 N., R. 9 E.
T. 19 N., R. 9 E.
T. 18 N., R. 10 E.
T. 19 N., R. 10 E.
T. 20 N., R. 10 E.
T. 18 N., R. 11 E.
T. 20 N., R. 11 E.
T. 18 N., R. 12 E.
T. 19 N., R. 12 E.
T. 20 N., R. 12 E.
T. 21 N., R. 12 E.
T. 18 N., R. 13 E.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Fairbanks Daily News Miner. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((906) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until July 8, 1991, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Donald E. Runberg,

Chief, Branch of Doyon/Northwest Adjudication.

[FR Doc. 91-13332 Filed 6-5-91; 8:45 am]

BILLING CODE 4310-JA-M

[CA-943-01-4211-14]

Mineral Leasing Act Common Carrier Requirements; CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Mineral Leasing Act of 1920, section 28(r) (43 U.S.C. 185), requires that pipelines and related facilities authorized under the Act shall be constructed, operated, and maintained as common carriers. The owners or operators of pipelines shall accept, convey, transport, or purchase without discrimination all oil or gas delivered to the pipeline without regard to whether such oil or gas was produced on Federal or non-Federal lands. These common carrier requirements do not apply to any natural gas pipeline operated by any person subject to regulation under the Natural Gas Act or by any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the State or municipality.

The Secretary of the Interior is vested with the authority to enforce the common carrier requirements of the Act. Whenever the Secretary has reason to believe that any owner or operator subject to these requirements is not operating any oil or gas pipeline in accordance with its obligations as a common carrier under the Act, he may (1) request the Attorney General of the United States to prosecute an appropriate proceeding before the Secretary of Energy or Federal Energy Regulatory Commission or any appropriate State agency or the United States district court to enforce such obligation or impose penalties; or (2) suspend or terminate the grant of right-of-way authorizing the pipeline for noncompliance with the common carrier provisions of the Act.

Any compliance alleging that a holder of a right-of-way crossing federal lands in the State of California is not in compliance with the common carrier requirements shall be filed with the BLM California State Director. The State Director will initiate an inquiry to determine if the compliance has merit and what followup action, if any, is necessary.

FOR FURTHER INFORMATION CONTACT: Rob Nauert, BLM California State Office, 2800 Cottage Way, Sacramento, California 95825, (916) 978-4761.

SUPPLEMENTARY INFORMATION: Any complaince alleging noncompliance with the common carrier provisions of the Mineral Leasing Act occurring in California must be submited to the BLM California State Director, California State Office, 2800 Cottage Way, Sacramento, California 95825. The complaint must contain sufficient information to enable BLM to make a determination as to its merit. Complaints involving Mineral Leasing Act rights-of-way in other states should be addressed to the appropriate BLM State Director.

William A. Kennedy,

Deputy State Director, Operations.

[FR Doc. 91-13355 Filed 6-5-91; 8:45 am]

BILLING CODE 4310-40-M

[CA-050-09-4212-14; CA 28241]

Realty Action; Trinity Co., CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; noncompetitive sale of public lands in Trinity County; California.

SUMMARY: The following public land has been found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 USC 1713), at the estimated fair market value of $1,250.00 (formerly segregated for exchange by **Federal Register** document in vol. 56, no. 17, dated 1-25-91). The land will not be offered for sale until at least 60 days after the date of this notice.

Mount Diablo Meridian

T. 32N., R. 9 W.
Section 32: Lot 8 (portion of).
Containing 1.59 acres, more or less.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

This land is being offered by direct sale to Lloyd and Jane Remly. It has been determined that the subject parcel contains no known mineral values; therefore, mineral interests may be conveyed simultaneously. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests.

DATES: On or before July 22, 1991, interested parties may submit comments to the Area Manager, Redding Resource Area, 355 Hemsted Drive, Redding, California 96002. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

ADDRESSES: Detailed information concerning this action is available for review at the office listed above.

FOR FURTHER INFORMATION CONTACT: Patricia Cook, Realty Specialist, Redding Resource Area, at the above address.

SUPPLEMENTARY INFORMATION: The patent, when issued, will contain a reservation to the United States for ditches and canals.

Mark T. Morse,

Area Manager.

[FR Doc. 91-13353 Filed 6-5-91; 8:45 am]

BILLING CODE 4310-40-M

[CA-060-43-7122 08 1016]

Realty Action, California Desert District, Exchange of Public and Private Lands in San Bernardino County, Kern County and Los Angeles County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of Public Lands, San Bernardino County, Kern County and Los Angeles County, California.

SUMMARY: BLM proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership. Portions of all public land within the following townships, ranges and sections are being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

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	T. 4 N., R. 7 W.
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4	Sec. 4.
5	Sec. 10.
	T. 4 N., R. 9 W.
6	Sec. 2.
7	Sec. 3.
8	Sec. 11.
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	T. 4 N., R. 10 W.
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	T. 5 N., R. 7 W.
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	T. 5 N., R. 9 W.
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	T. 5 N., R. 10 W.
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	T. 5 N., R. 11 W.
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	T. 5 N., R. 13 W.
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	T. 6 N., R. 4 W.
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39	Sec. 17.
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45	Sec. 27.
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47	Sec. 32.
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50	Sec. 12.
	T. 6 N., R. 7 W.
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52	Sec. 8.
53	Sec. 9.
54	Sec. 13.
55	Sec. 18.
56	Sec. 19.
57	Sec. 20.
	T. 6 N., R. 8 W.
58	Sec. 1.

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	T. 6 N., R. 13 W.
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64	Sec. 18,
65	Sec. 24.
	T. 6 N., R. 14 W.
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	T. 9 N., R. 4 W.
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197	Sec. 10,
198	Sec. 11,
199	Sec. 14,
200	Sec. 15.
	T. 9 N., R. 14 W.
201	Sec. 4,
202	Sec. 6,
203	Sec. 8.
	T. 9 N., R. 15 W.
204	Sec. 18.
	T. 9 N., R. 16 W.
205	Sec. 20.
	T. 10 N., R. 2 W.
206	Sec. 32,
207	Sec. 34,
208	Sec. 35.
	T. 10 N., R. 3 W.
209	Sec. 2,
210	Sec. 3,
211	Sec. 4,
212	Sec. 8,
213	Sec. 10,
214	Sec. 18,
215	Sec. 20,
216	Sec. 24,
217	Sec. 31.
	T. 10 N., R. 4 W.
218	Sec. 4,
219	Sec. 8,
220	Sec. 14,
221	Sec. 15,
222	Sec. 20,
223	Sec. 22,
224	Sec. 23,
225	Sec. 24,
226	Sec. 26,
227	Sec. 27,
228	Sec. 35.
	T. 10 N., R. 7 W.
229	Sec. 6.
	T. 10 N., R. 11 W.
230	Sec. 2,
231	Sec. 6,
232	Sec. 10,
233	Sec. 12.
	T. 10 N., R. 12 W.
234	Sec. 6,
235	Sec. 8,
236	Sec. 10,
237	Sec. 18,
238	Sec. 34.
	T. 10 N., R. 13 W.
239	Sec. 8,
240	Sec. 12,

Tract No.	
241	Sec. 14,
242	Sec. 22,
243	Sec. 34.
	T. 10 N., R. 14 W.
244	Sec. 4,
245	Sec. 6,
246	Sec. 8,
247	Sec. 10,
248	Sec. 18.
	T. 10 N., R. 15 W.
249	Sec. 2,
250	Sec. 10,
251	Sec. 12,
252	Sec. 14,
253	Sec. 24,
254	Sec. 26,
255	Sec. 28,
256	Sec. 32.
	T. 11 N., R. 3 W.
257	Sec. 34.
	T. 11 N., R. 4 W.
258	Sec. 7,
259	Sec. 18.
	T. 11 N., R. 6 W.
260	Sec. 30.
	T. 11 N., R. 7 W.
261	Sec. 6,
262	Sec. 8,
263	Sec. 18,
264	Sec. 20,
265	Sec. 22,
266	Sec. 26,
267	Sec. 28,
268	Sec. 30.
	T. 11 N., R. 8 W.
269	Sec. 4,
270	Sec. 6,
271	Sec. 8,
272	Sec. 10,
273	Sec. 12,
274	Sec. 18,
275	Sec. 24,
276	Sec. 26.
	T. 11 N., R. 9 W.
277	Sec. 2,
278	Sec. 4,
279	Sec. 10,
280	Sec. 18,
281	Sec. 34.
	T. 11 N., R. 10 W.
282	Sec. 20,
283	Sec. 24,
284	Sec. 28.
	T. 11 N., R. 11 W.
285	Sec. 2,
286	Sec. 6,
287	Sec. 10,
288	Sec. 12,
289	Sec. 14,
290	Sec. 22.
	T. 11 N., R. 12 W.
291	Sec. 32,
292	Sec. 34.
	T. 11 N., R. 13 W.
293	Sec. 2,
294	Sec. 6,
295	Sec. 10,
296	Sec. 14.
	T. 11 N., R. 14 W.
297	Sec. 22,
298	Sec. 26,
299	Sec. 28,
300	Sec. 30,
301	Sec. 32,
302	Sec. 34.
	T. 11 N., R. 15 W.
303	Sec. 24,
304	Sec. 34.
	T. 12 N., R. 7 W.
305	Sec. 32.
	T. 12 N., R. 8 W.
306	Sec. 32.
	T. 12 N., R. 9 W.
307	Sec. 32.
	T. 12 N., R. 10 W.
308	Sec. 32.
	T. 12 N., R. 12 W.
309	Sec. 32.
	T. 12 N., R. 13 W.
310	Sec. 32,
311	Sec. 34.
	MOUNT DIABLO MERIDIAN, CALIFORNIA
	T. 32 S., R. 35 E.
312	Sec. 26,
313	Sec. 28,
314	Sec. 32,
315	Sec. 34.
	T. 32 S., R. 38 E.
316	Sec. 12,
317	Sec. 20,
318	Sec. 26,
319	Sec. 28,
320	Sec. 34.

Comprising 108,160 acres, more or less. Copies of the complete legal descriptions may be obtained from the Barstow Resource Office, address shown below.

In Exchange for the above public lands, BLM will acquire private lands of equal value. As the specific private lands to be acquired are identified, an amended Notice of Realty Action will be published.

EFFECTIVE DATE: June 6, 1991.

FOR FURTHER INFORMATION CONTACT: For a period of forty-five (45) days, interested parties may submit comments by specific tract numbers, to Karla Swanson, Barstow Resource Area, 150 Coolwater Lane, Barstow, California 92311.

SUPPLEMENTARY INFORMATION: In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the affected public lands from appropriation under the public land laws, and the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying title to such lands; or upon publication in the **Federal Register** of a notice of termination of the segregation, in whole or in part; or the expiration of two years from the date of publication, whichever occurs first.

The disposal of the aforementioned public lands has been analyzed in the environmental impact statement/environmental impact report for the Western Mojave Land Tenure Adjustment Project and are all consistent with the proposed amendment to the California Desert Conservation Area Plan and the Record of Decision of January 1, 1991. Land exchanges are the main means of implementation of the Western Mojave Land Tenure Adjustment Project.

Multiple Agency objectives are part of the project purpose and need. Existing checkerboard ownership causes scattered development with threats to resource management by BLM, airspace use by the Air Force, and logical and orderly development of private lands as overseen by the County. Consideration of public lands through exchange for isolated public lands reduces these threats.

Prior to each exchange, a mineral report will be prepared assessing the potential for development of mineral resources. The values of the exchanges will be on an equal value basis. Independent appraisals will establish the fair market value of the public and private land based on highest and best use of the parcels, taking into consideration the conclusions of the mineral report. Acreage of the public land will be adjusted to approximate equal values. Full equalization of values will be achieved by a cash payment not to exceed 25 percent of the value of the public lands.

Authorized rights-of-way of record and any other authorized land uses will be identified as prior existing rights and will be noted on any amended Notice of Realty Action, associated with this Project.

Dated: May 7, 1991.

Gerald E. Hillier,

District Manager.

[FR Doc. 91-13349 Filed 6-5-91; 8:45 am]

BILLING CODE 4310-40-M

[CA-010-01-4111-06]

Availability of Planning Criteria

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Planning Criteria.

SUMMARY: Notice is hereby given that the Planning Criteria for an Amendment to the Hollister Resource Management Plan and Environmental Impact

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Statement to address oil and gas leasing in the Hollister Resource Area is available for public review and comment.

DATES: Comments are being accepted from the public until July 8, 1991.

FOR FURTHER INFORMATION CONTACT: Steve Addington, Team Leader, Hollister Resource Area, 20 Hamilton Court, Hollister, CA 95024.

SUPPLEMENTARY INFORMATION: The Hollister Resource Area, Bureau of Land Management, U.S. Department of the Interior, is amending the current land use plan (Hollister Resource Management Plan) and preparing an Environmental Impact Statement to address oil and gas leasing within the resource area. The Hollister Resource Area includes approximately 310,000 acres of public lands and 385,000 acres of private land with federal ownership of subsurface minerals. These lands are located in the central California counties of Monterey, San Benito, Fresno, Madera, and Merced.

The proposed planning criteria describe the applicable laws and regulations that will guide development of the resource management plan amendment. They are keyed to specific issues that will be considered in the plan amendment. The criteria also includes a brief discussion of proposed alternative actions to be analyzed in the amendment and EIS.

Dated: May 29, 1991.

Robert E. Beehler,

Area Manager.

[FR Doc. 91-13348 Filed 6-5-91; 8:45 am]

BILLING CODE 4310-40-M

[OR-942-00-4730-12: GPI-237]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 27 S., R. 10 W., accepted April 19, 1991
T. 27 S., R. 10 W., accepted April 19, 1991
T. 13 S., R. 11 W., accepted April 12, 1991
(Sheets 1 and 2)
T. 37 S., R. 14 W., accepted April 19, 1991
T. 38 S., R. 14 W., accepted April 19, 1991

Washington

T. 13 N., R. 9 E., accepted April 19, 1991
T. 12 N., R. 8 E., accepted May 10, 1991
(Sheets 1 and 2)
T. 5 N., R. 18 E., accepted May 7, 1991

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1300 NE 44th Avenue, Portland, Oregon 97213, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director wihtin thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1300 NE 44th Avenue, P.O. Box 2965, Portland, Oregon 97208.

Dated: May 22, 1991.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91-13347 Filed 6-5-91; 8:45 am]

BILLING CODE 4310-33-M

[CA-940-01-4214-10; CACA 3872]

Cancellation of Proposed Withdrawal, California

May 28, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect of a proposed withdrawal on 15 acres of National Forest System land requested by the U.S. Department of Agriculture, Forest Service. This action will open 15 acres of land to location and entry under the United States mining laws. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: July 8, 1991.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, 2800 Cottage Way, room E-2845, Sacramento, California 95825, 916-978-4820.

SUPPLEMENTARY INFORMATION: A notice of Proposed Withdrawal and Reservation of Lands was published in the **Federal Register**, 42 FR 10903, February 24, 1977. The purpose of the application was to establish a buffer zone and overflow camping area to the existing Middle Meadows Campground. The U.S. Department of Agriculture has determined that a right-of-way will adequately provide for the proposed use.

1. The segregative effect is hereby terminated as to the following described land:

Mount Diablo Meridian

Eldorado National Forest

T. 14 N., R. 13 E.,
Sec. 24, S½SE¼NW¼NE¼ and NE¼ SW¼NE¼.
The area described contains 15 acres in Placer County.

2. At 10 a.m. on July 8, 1991, the lands shall be opened to location and entry under the United States mining laws. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

The land described in paragraph 1 is withdrawn for Project No. 2079 of the Federal Power Commission (now Federal Energy Regulatory Commission), and all applications and offers under the mineral leasing laws and locations under the United States mining laws are subject to the provisions of the Act of August 11, 1955 (30 U.S.C. 621) (Pub. L. 359).

Robert C. Nauert,

Chief, Branch of Adjudication and Records.

[FR Doc. 91-13350 Filed 6-5-91; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-01-4214-10; CACA 3613]

Cancellation of Proposed Withdrawal, California

May 28, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect of a proposed withdrawal on 15 acres of National Forest System land requested by the U.S. Department of Agriculture, Forest Service. This action will open 15 acres of land to location and entry under the United States mining laws. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: July 8, 1991.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, 2800 Cottage Way, room E-2845, Sacramento, California 95825, 916-978-4820.

SUPPLEMENTARY INFORMATION: A notice of proposed withdrawal and reservation of lands was published in the **Federal Register**, 41 FR 27404, July 2, 1976, and republished at 42 FR 37256, July 20, 1977. To segregate additional land, a notice of proposed withdrawal and opportunity for public meeting was published in the **Federal Register**, 53 FR 9709, March 24, 1988. The purpose of the application was to protect the Bald Mountain Lookout Administrative Site. The U.S. Department of Agriculture has determined that a right-of-way will adequately provide for the proposed use.

1. The segregative effect is hereby terminated as to the following described land:

Mount Diablo Meridian Eldorado National Forest

T. 12 N., R. 11 E.,
sec. 12, N½NE¼NW¼SW¼ and SE¼ SW¼NW¼.
The area described contains 15 acres in El Dorado County.

2. At 10 a.m. on July 8, 1991, the lands shall be opened to location and entry under the United States mining laws. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Robert C. Nauert,

Chief, Branch of Adjudication and Records.

[FR Doc. 91-13351 Filed 6-5-91; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-01-4214-10; CACA 3599]

Cancellation of Proposed Withdrawal, California

May 28, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect of a proposed withdrawal on 10 acres of National Forest System land requested by the U.S. Department of Agriculture, Forest Service. This action will open 10 acres of land to location and entry under the United States mining laws. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: July 8, 1991.

FOR FURTHER INFORMATION CONTACT: Viola A. Andrade, BLM State Office, 2800 Cottage Way, room E-2845, Sacramento, California 95825, 916-978-4820.

SUPPLEMENTARY INFORMATION: A notice of Proposed Withdrawal and Reservation of Lands was published in the **Federal Register**, 41 FR 27404, July 2, 1976, and republished at 42 FR 38434, July 28, 1977. The purpose of the application was to protect the Hell Hole Guard Station Administrative Site. The U.S. Department of Agriculture has determined that a right-of-way will adequately provide for the proposed use.

1. The segregative effect is hereby terminated as to the following described land:

Mount Diablo Meridian, Eldorado National Forest

T. 14 N., R. 14 E.,
sec. 16, W½NE¼NW¼NW¼ and E½ NW¼NW¼NW¼.
The area described contains 10 acres in Placer County.

2. At 10 a.m. on July 8, 1991, the lands shall be opened to location and entry under the United States mining laws. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

The land described in paragraph 1 is withdrawn for Project No. 2079 of the Federal Power Commission (now Federal Energy Regulatory Commission), and all applications and offers under the mineral leasing laws and locations under the United States mining laws are subject to the provisions of the Act of August 11, 1955 (30 U.S.C. 621) (Pub. L. 359).

Robert C. Nauert,

Chief, Branch of Adjudication and Records.

[FR Doc. 91-13352 Filed 6-5-91; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-01-4214-10; CACA 3620]

Cancellation of Proposed Withdrawal, California

May 28, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect of a proposed withdrawal on 145 acres of National Forest System land requested by the U.S. Department of Agriculture, Forest Service. This action will open 145 acres of land to location and entry under the United States mining laws. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: July 8, 1991.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, 2800 Cottage Way, room E-2845, Sacramento, California 95825, 916-978-4820.

SUPPLEMENTARY INFORMATION: A notice of Proposed Withdrawal and Reservation of Lands was published in the **Federal Register**, 41 FR 27096, June 30, 1976, and republished at 42 FR 47881, September 22, 1977. The purpose of the application was to protect the Stumpy Meadows Recreation Area. The U.S. Department of Agriculture has determined that a right-of-way will adequately provide for the proposed use.

1. The segregative effect is hereby terminated as to the following described land:

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Mount Diablo Meridian, Eldorado National Forest

T. 12 N., R. 12 E.,
Sec. 12, S½SW¼SW¼NE¼, S½S½NW¼, N½SW¼, and W½NW¼SE¼.

The area described contains 145 acres in El Dorado County.

2. At 10 a.m. on July 8, 1991, the lands shall be opened to location and entry under the United States mining laws. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Robert C. Nauert,
Chief, Branch of Adjudication and Records.
[FR Doc. 91-13354 Filed 6-5-91; 8:45 am]
BILLING CODE 4310-40-M

Fish and Wildlife Service

Availability of a Draft Recovery Plan for Swamp Pink for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft Swamp Pink Recovery Plan. This species occurs on private and public lands in New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia. The Service solicits review and comment from the public on this draft Plan.

DATES: Comments on the draft Recovery Plan must be received on or before August 5, 1991 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft Recovery Plan may obtain a copy from the Northeast Regional Office, U.S. Fish and Wildlife Service, One Gateway Center, suite 700, Newton Corner, Massachusetts 02158 (617/965-5100 ext. 316) or at the New Jersey Field Office, U.S. Fish and Wildlife Service, 927 North Main Street, Building D, Pleasantville, New Jersey 08232 (609/646-0620). Comments on the plan should be addressed to Mary Parkin at the Northeast Regional Office at the above address. The plan is available for public inspection, by appointment, during normal business hours at the above addresses.

FOR FURTHER INFORMATION CONTACT: Mary Perkin (see Addresses).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plan to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare Recovery Plans for most of the listed species native to the United States. Recovery Plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of Recovery Plans for listed species unless such a Plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during Recovery Plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing Recovery Plans.

The document submitted for review is the draft Swamp Pink (*Helonias bullata*) Recovery Plan. This distinctive member of the Lily family is known to exist at 112 sites in seven states along the Atlantic coast, with over 50 percent of the known populations located in New Jersey. Historically, the plant was recorded at approximately 200 locations in eight states; the sole known population in New York is now considered extirpated. Extant swamp pink populations vary widely in size and habitat quality.

The swamp pink was listed as a threatened species on September 9, 1988, due to population declines and threats to its habitat. Swamp pink is a wetland species, occurring along streams and seepage areas in freshwater swamps and other wetland habitats. The species continues to be threatened by habitat loss and degraduation due to encroaching development, sedimentation, pollution, succession, and wetland drainage. Other threats include plant collection and trampling.

The proposed recovery objective is to stabilize the current range-wide status of the plant by securing permanent protection for viable populations and their essential habitat. This will be accomplished through: acquiring qualified habitats on a willing seller basis, securing effective long-term regulatory protection for the species, characterizing extant populations and delineating essential habitat, minimizing on- and off-site threats to the species, and increasing public awareness of the need to protect this species. If the recovery objective is met, delisting of the swamp pink will be considered.

This recovery plan is being submitted for agency review. After consideration of comments received during the review period, the plan will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the Recovery Plan described. All comments received by the date specified above will be considered prior to approval of the Plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: May 24, 1991.

Nancy M. Kaufman,
Regional Director.
[FR Doc. 91-13309 Filed 6-5-91; 8:45 am]
BILLING CODE 4310-55-M

National Park Service

Kennesaw Mountain National Battlefield Park, Georgia; Jurisdictional Transfer

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Honorable Zell Miller, Governor of Georgia, by Agreement signed on February 25, 1991, has approved the request of the National Park Service to convey concurrent jurisdictional over lands and roadways situated within the administration boundaries of Kennesaw Mountain National Battlefield Park in the State of Georgia. Jurisdiction was accepted by National Park Service Deputy Director, Herbert S. Cables, Jr., by Agreement dated April 22, 1991.

DATES: Concurrent jurisdiction pursuant to the Agreement became effective upon acceptance by the National Park Service on April 22, 1991.

SUPPLEMENTARY INFORMATION: On December 14, 1982, the United States acting under the authority of 16 U.S.C. 1a-3 and 40 U.S.C. 255, and the State of Georgia, acting in accordance with the provisions of sections 15-302.1 and 15-306 of the Georgia Code, entered into an agreement whereby concurrent jurisdiction was established over lands and waters within certain specified units of the National Park System within the State of Georgia. This agreement also extended concurrent jurisdiction to "all lands owned by the United States within the exterior boundaries of the Kennesaw Mountain National Battlefield Park." It was recently determined that the roadways within the park were not covered by this 1982 cession agreement.

This current transfer document rectifies this error, and amends 1982 agreement by "extending concurrent jurisdiction over all lands and roadways situated within the administrative boundaries" of the park.

C.W. Ogle,
Regional Director, National Park Service, Southeast Region.
[FR Doc. 91-13377 Filed 6-5-91; 8:45 am]
BILLING CODE 4310-70-M

U.S. Geological Survey

Information Collection submitted to the Office of Management and Budget for review under the Paperwork Reduction Act

The proposal for the collection of information described below has been submitted to the Office of Management and Budget for extension of the expiration date under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information, related forms, and explanatory material may be obtained by contacting the Bureau's clearance officer at the telephone number listed below. Comments and suggestions on the requirements should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1028-0046), Washington, DC 20503, telephone (202) 395-7340.

Title: Water Resources Research Program and Water Resources Technology Development Program, 30 CFR part 402.

Abstract: Respondents submit proposals containing plans for water-resources research or technology-development projects. This information will be used as the basis for selection and award of projects meeting the program objectives. Annual reports for multi-year awards and final reports are required on each selected project to assess scientific performance.

Bureau Form Number: None.

Frequency: Annual proposals, annual and final reports.

Description of Respondents: Educational institutions, private foundations, private firms, individuals, and agencies of local or State governments.

Estimated Completion Time: 72.

Total Responses: 339.

Total Burden Hours: 24,408.

Bureau Clearance Officer: Geraldine A. Wilson, telephone (703) 648-7309.

Dated: April 19, 1991.

John N. Fischer,
Acting Chief Hydrologist.
[FR Doc. 91-13283 Filed 6-5-91; 8:45 am]
BILLING CODE 4310-31-M

National Park Service

Vancouver Historical Study Commission; Meetings

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meetings of Vancouver Historical Study Commission.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), of the next five scheduled meetings of the Vancouver Historical Study Commission. The next five meetings will be held on Tuesday, June 25, 1991; Tuesday, July 30, 1991; Tuesday, August 27, 1991; Tuesday, October 1, 1991; and on Tuesday, November 12, 1991. All five meetings will be held in the Vancouver, Washington, City Council Chambers, 210 East 13th Street, Vancouver, Washington. Commission meetings start at 1 p.m., and are planned to adjourn no later than 5 p.m.

The purpose of the meetings is for the Vancouver Historical Study Commission to conduct discussions on the preparation of a study report for Congress which will make recommendations regarding the following:

(1) The preservation, protection, enhancement, enjoyment, and utilization of the historic, cultural, natural, and recreational resources of the Area.

(2) The feasibility of establishing a Vancouver National Historical Reserve.

All commission meetings are open to the public. Seating space and facilities at the Vancouver City Council Chambers to accommodate members of the public are somewhat limited, and persons will be accommodated on a first-come, first served basis. Anyone may file with the Commission a written statement concerning matters to be discussed. At each meeting, the public will be provided an opportunity to provide both written and verbal comment to the Commission. However, the Commission Chairman may restrict the length of public statements as necessary to allow the Commission to complete its agenda within the allotted time.

Persons wishing further information concerning the meeting, or who wish to submit written statements, may contact Mr. Keith Dunbar, Chief of Planning and Environmental Compliance, Pacific Northwest Region, National Park Service, 83 South King Street, suite 212, Seattle Washington 98104 or telephone 206-553-4579.

Draft summary minutes of each Commission meeting will be available for public inspection approximately three (3) weeks after the meeting in Park Headquarters, Fort Vancouver National Historic Site, 612 East Reserve Street, Vancouver, Washington.

Dated: May 28, 1991.

Rory D. Westberg,
Acting Regional Director.
[FR Doc. 91-13378 Filed 6-5-91; 8:45 am]
BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 22, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by June 21, 1991. [15 days after publication date]

Carol D. Shull,
Chief of Registration, National Register.

COLORADO

Denver County

Colorado State Capitol Annex Building and Boiler Plant, 1341 Sherman St., Denver, 91000824

LOUISIANA

Orleans Parish

Lower Central Business District, Roughly bounded by Canal, Tchoupitoulas, Poydras, O'Keefe, Common and S. Saratoga, New Orleans, 91000825

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NEW JERSEY

Hunterdon County

Readington Village Historic Village, Jct. of Readington, Hillcrest, Centerville and Brookview Rds., Readington Township, Readington, 91000827

NEW MEXICO

San Miguel County

Pecos National Monument, NM 63 SW of jct. with NM 50, Pecos, 91000822.

SOUTH CAROLINA

York County

Rock Hill Downtown Historic District [Rock Hill MPS], Roughly, S. Oakland Ave. from S of Peoples Pl. to E. Main St., Rock Hill, 91000828

TENNESSEE

Bedford County

Heidt Tavern—Singleton Residence, 115 Dr. Jackson Rd., Wartrace vicinity, 91000823

Davidson County

Smith Farmhouse [Boundary Increase], 8600 TN 100, N and W of original boundaries, Pasquo vicinity, 91000816

Fentress County

Allardt Presbyterian Church [Fentress County MPS], TN 52, Allardt, 91000818
Forbus Historic District [Fentress County MPS], TN 28 E of Davidson, Forbus, 91000821
Gernt Office [Fentress County MPS], TN 52, Allardt, 9100819
Youngs Historic District [Fentress County MPS], Jct. of Indiana and Portland Aves., Allardt, 91000820

Marion County

First National Bank of South Pittsburg, 204 W. Third St., South Pittsburg, 91000826

Sullivan County

Mount Ida (Boundary Decrease), Bounded by Stone Dr., Fairmont Ave., Sevier Terrace Dr. and Lynn Garden Dr., excepting 1010—1012 Sevier Terrace Dr., Kingsport, 9100817

[FR Doc. 91-13289 Filed 6-5-91; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Extension of the Comment Period on a Draft Environmental Impact Statement

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of the extension of the comment period on a Draft Environmental Impact Statement.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the United States Department of the Interior is extending the public comment period on the Draft Environmental Impact Statement OSM–EIS–29 (DEIS) for the Proposed Revision to the Permanent Program Regulations Implementing section 522(e) of the Surface Mining Control and Reclamation Act of 1977. The DEIS was prepared to assist OSM in determining the environmental impacts of the various regulatory options under consideration. OSM is extending the comment period in order to provide more time for public review.

DATES: The comment period on the DEIS is extended until 5 p.m. Eastern time on August 5, 1991.

ADDRESSES: Single copies of the DEIS may be obtained by contacting the Branch of Environmental and Economic Analysis, Office of Surface Mining, 1951 Constitution Avenue, NW., room 5415–L, Washington, DC 20240; Telephone (202) 343–1476 or (FTS) 343–1476.

Written comments may be hand delivered to the Office of Surface Mining, Administrative Record, room 5131, 1100 L St. NW., Washington, DC; or mailed to the Office of Surface Mining, Administrative Record, room 5131–L, 1951 Constitution Avenue, NW., Washington, DC 20240

FOR FURTHER INFORMATION CONTACT: Andrew F. DeVito, Branch of Environmental and Economic Analysis, Office of Surface Mining, 1951 Constitution Avenue, NW., room 5415–L, Washington, DC 20240; Telephone (202) 343–5150 or (FTS) 343–5150.

SUPPLEMENTARY INFORMATION: On April 19, 1991 (56 FR 16111), OSM published a notice of availability of the DEIS for a Proposed Revision to the Permanent Program Regulations Implementing section 522(e) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSM is extending the public comment period on the DEIS in order to provide more time for public review.

The DEIS describes the environmental impacts that would result from amending regulations that address the issue of VER and the application of the prohibitions of section 522(e) of SMCRA to the subsidence effects of underground mining. Section 522(e) prohibits, subject to VER, surface coal mining operations on lands within units of the National Park System; the National Wildlife Refuge System; the National System of Trails; the National Wilderness Preservation System; the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act; and National Recreation Areas designated by act of Congress. In addition, surface mining operations without VER are prohibited (with certain exceptions) if they will adversely affect places listed on the National Register of Historic Places or any publicly owned park, or are within a National Forest. Such operations also are prohibited within 100 feet of cemeteries and public roads, and within 300 feet of occupied dwellings, public buildings, schools, churches, and public parks.

The combined regulatory options for the VER and 522(e) rulemakings are presented as eleven alternatives in the DEIS. The DEIS considers the general and site-specific effects on the quality of the human environment that might occur as a result of coal mining under the various alternatives. Under each alternative, more or less coal would be available depending on what standard is used for VER and how the subsidence restrictions are applied. Comments from the public on the DEIS are welcomed.

Dated: May 31, 1991.

Brent Wahlquist,

Assistant Director, Reclamation and Regulatory Policy.

[FR Doc. 91-13267 Filed 6-5-91; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Correction of Meeting Date of the Advisory Committee for the U.S. Trade and Development Program

In FR Doc. 91-12254 published in the **Federal Register** at 56 FR 23722 on Thursday, May 23, 1991, the meeting date of July 21, 1991 is corrected to read June 21, 1991.

The other information in the notice remains the same as published.

Dated: May 31, 1991.

Priscilla Rabb Ayres,

Director.

[FR Doc. 91-13264 Filed 6-5-91; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31682]

Chicago and North Western Transportation Co.—Trackage Rights Exemption—Over Wisconsin Central Ltd.

Wisconsin Central Ltd. (WCL) has agreed to grant overhead trackage rights to Chicago and North Western Transportation Company (CNW) over approximately 141 miles of WCL's line between approximately WCL milepost 96.3 at Cameron, WI, and approximately WCL milepost 129.4 at Ladysmith, WI, and between approximately WCL milepost 353.0 at Ladysmith and approximately WCL milepost 48.45 at Wisconsin Rapids, WI, via Junction City, WI. CNW intends to consummate the trackage rights transaction simultaneously with the consummation of WCL's purchase of CNW's 97.03-mile line between South Itasca, WI, and Cameron, WI (Cameron Line) in a related proceeding, Finance Docket No. 31880, *Wisconsin Central Ltd.—Purchase—Chicago and North Western Transportation Company Line Between South Itasca and Cameron, WI.*[1]

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Stuart F. Gassner, Chicago and North Western Transportation Company, 165 North Canal Street, Chicago, IL 60606.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: May 31, 1991.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-13388 Filed 6-5-91; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31881]

Wisconsin Central Ltd.—Trackage Rights Exemption—Over Duluth, Missabe and Iron Range Railway Co.

Duluth, Missabe and Iron Range Railway Company (DMIR) has agreed to grant to Wisconsin Central Ltd. (WCL): (1) Trackage rights between milepost 23.0 at South Itasca, WI, and milepost 17.79 near Saunders, WI, and over an additional .16 of a mile of connecting track, a total distance of 5.37 miles; and (2) overhead trackage rights between milepost 23.0 at South Itasca and milepost 19.43 at Ambridge, WI, a distance of 3.57 miles.[1] Although subject to separate agreements and involving different distances, the proposed trackage rights are over the same line of DMIR and, in fact, overlap. WCL intends to consummate the trackage rights transaction simultaneously with consummation of its purchase of a 97.03-mile line between South Itasca and Cameron, WI, in a related proceeding, Finance Docket No. 31880, *Wisconsin Central Ltd.—Purchase—Chicago and North Western Transportation Company Line Between South Itasca and Cameron, WI.*[2]

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: William C. Sippel, Oppenheimer Wolff & Donnelly, Two Illinois Center, 233 North Michigan Avenue, Chicago, IL 60601.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: May 31, 1991.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-13389 Filed 6-5-91; 8:45 am]

BILLING CODE 7035-01-M

[1] This proceeding also is related to: (1) Docket No. AB–303 (Sub-No. 8X), *Wisconsin Central Ltd.—Abandonment Exemption—In Barron County, WI*; and (2) Finance Docket No. 31881, *Wisconsin Central Ltd.—Trackage Rights Exemption—Over Duluth, Missabe and Iron Range Railway Company.*

The trackage rights agreement between WCL and CNW also contains the retained CNW rights on the Cameron Line. However, review of the retention of operating rights previously authorized to a carrier is not required. *See* Finance Docket No. 30911, *et al., Chicago, Missouri & Western Railway Company—Exemption Acquisition and Operation—Illinois Central Gulf Railroad Company* (not printed), served December 5, 1986.

[1] These overhead trackage rights will extend existing WCL overhead trackage rights between milepost 19.43 at Ambridge and milepost 13.0 near Pokegema Yard. The Commission exempted WCL's acquisition of the original overhead trackage rights in Finance Docket No. 31285, *Wisconsin Central Ltd.—Exemption—Trackage Rights—Duluth, Missabe and Iron Range Railway Company*, 55 Fed. Reg. 16,202 (1988).

[2] This proceeding also is related to: (1) Docket No. AB–303 (Sub-No. 8X), *Wisconsin Central Ltd.—Abandonment Exemption—In Barron County, WI*; and (2) Finance Docket No. 31882, *Chicago and North Western Transportation Company—Trackage Rights Exemption—Over Wisconsin Central Ltd.*

[Docket No. AB–83 (Sub-No. 11X)]

Maine Central Railroad Co. and Springfield Terminal Railway Co.—Abandonment and Discontinuance Exemption—In Carroll and Coos Counties, NH

Maine Central Railroad Company (MEC) and Springfield Terminal Railway Company (ST) have filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments and Discontinuances* for MEC to abandon and ST to discontinue service over MEC's 23-mile line of railroad between milepost 67, at Bartlett, and milepost 90, at Carroll, in Carroll and Coos Counties, NH.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 6, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

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banking statements under 49 CFR 1152.29 must be filed by June 17, 1991.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by June 26, 1991, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: John R. Nadolny, Iron Horse Park, North Billerica, MA 01862.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by June 11, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: May 29, 1991.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–13132 Filed 6–5–91; 8:45 am]

BILLING CODE 7035–01–M

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Memoranda of Understandings, Fair Employment Practices, Agency Agreements; Office of Special Counsel for Immigration Related Unfair Employment Practices

AGENCY: Office of Special Counsel for Immigration Related Unfair Employment Practices, DOJ.

ACTION: Notice.

SUMMARY: Notice is hereby given of the bilateral agreements the Office of Special Counsel for Immigration Related Unfair Employment Practices (the "Special Counsel") has entered into with state and local fair employment practices agencies in order to minimize duplication of effort in enforcement of employment discrimination laws, to ensure that matters within the jurisidction of an agency are communicated to that agency without delay, and to make it easier for aggrieved individuals to file charges of discrimination.

FOR FURTHER INFORMATION CONTACT: Daniel Echavarren, Acting Deputy Special Counsel, Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, P.O. Box 65490, Washington, DC 20035–5490; (800) 255–7688 (toll free) or (202) 653–8121 (voice) or (202) 296–0168 (local TDD number for the hearing impaired) or (800) 237–2515 (toll free TDD number for the hearing impaired).

SUPPLEMENTARY INFORMATION: Notice was published at 54 FR 32499 (August 8, 1989) of an agreement between the Special Counsel and the Equal Employment Opportunity Commission. The purpose of that agreement was to promote efficiency in the administration and enforcement of the Civil Rights Act of 1964 and the antidiscrimination provisions of the Immigration Reform and Control Act of 1986. The agreement also helps prevent any loss of rights arising from the operation of a filing deadline against an individual or entity who has mistakenly filed a charge with the wrong agency. That agreement remains in effect, but, in addition to that agreement, the Special Counsel has entered into similar agreements with state and local fair employment practices to attain the same goals and to make it easier for aggrieved individuals to file charges with local entities alleging violations of the anti-discrimination provision of the Immigration Reform and Control Act of 1986. The Special Counsel will continue to pursue similar agreements with additional fair employment practices agencies. The agreements with the state and local fair employment practices agencies uniformally provide procedures designed to minimize duplication of effort in enforcement of the applicable employment discrimination laws and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay. They are published here to put the general public on notice of their existence.

Andrew M. Strojny,

Acting Special Counsel Office of Special Counsel for Immigration Related Unfair Employment Practices.

Agreement Between Municipality of Anchorage Equal Rights Commission and United States Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices

The Municipality of Anchorage, Equal Rights Commission is charged with the enforcement of the provisions of the Anchorage Municipal Code title 5 that prohibit discrimination in employment on the basis of race, color, sex, religion, national origin, marital status, age, or physical handicap. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay.

The Anchorage Equal Rights Commission and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Dated: October 20, 1989.

Paul Connerty,

Executive Director.

Dated: October 27, 1989.

Andrew M. Strojny,

Acting Special Counsel.

Agreement Between State of California Department of Fair Employment and Housing and United States Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices

The California Department of Fair Employment and Housing is charged with the enforcement of the provisions of the California Fair Employment and Housing Act, which prohibits discrimination in employment on the basis of race, religion, age (40 or over), sex, ancestry, national origin, color, physical handicap, medical condition (cancer), or marital status. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to facilitate proper referral of charging parties to agencies which have appropriate jurisdiction.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will, to the extent practical, advise the charging party that an opportunity exists to file a complaint with the other agency.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort. It is understood that neither agency will divulge information under this Agreement in violation of applicable laws.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Dated: May 15, 1989.

Talmadge R. Jones,

Director, Department of Fair Employment and Housing, State of California.

Dated: June 1, 1989.

Andrew M. Strojny,

Deputy Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice.

Agreement Between New Haven Commission on Equal Opportunities and United States Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices

The New Haven Commission on Equal Opportunities is charged with the enforcement of the provisions of the city of New Haven municipal ordinance that prohibit discrimination in employment on the basis of race, color, religious creed, age, sex, marital status, national origin, ancestry or physical disability. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay.

The New Haven Commission on Equal Opportunities and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Dated: March 28, 1989.

Rev. Maurice H. Sykes,

Executive Director, New Haven Commission On Equal Opportunities.

Dated: April 3, 1989.

Lawrence J. Siskind,

Special Counsel for Immigration Related Unfair Employment Practices.

Agreement

This agreement is made and entered into this 17th day of May, 1989, by and between the Pinellas County Office of Human rights and The Office of Special Counsel for Immigration Related Unfair Employment Practices of the United States Department of Justice, hereinafter referred to as "the Office of Special Counsel."

Purpose

The Pinellas County Human Rights Office is charged with the enforcement of the provisions of the Pinellas County Human Rights Ordinance, which prohibits discrimination in employment on the basis of race, color, religion, national origin, sex, age, marital status or handicap. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay.

Appointment as Agents

The Pinellas County Human Rights Office and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort.

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Limitation

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Duration

This Agreement shall be in effect for a period of twelve (12) months from the date of execution and shall be automatically renewed for consecutive twelve-month periods unless one of the parties provides thirty (30) days' prior notice in writing of its intention to cancel.

Notices

All notices or other communications required or permitted in accordance with this Agreement shall be in writing and shall be deemed to have been duly given if mailed first class, postage prepaid, on the date posted or, if personally delivered, when delivered. In either case, such notices shall be addressed as follows or to such other addresses as may be subsequently given in writing:

Pinellas County Office of Human Rights, Office of Human Rights, 400 So. Ft. Harrison Avenue, 3rd Floor, Clearwater, FL 34616.

Office of Special Counsel, For Immigration Related Unfair Employment Practices, P.O. Box 65490, Washington, DC 20035–5490.

Dated: May 17, 1989.

Leon W. Russell,

Director of the Pinellas County, Office of Human Rights.

Dated: June 1, 1989.

Andrew M. Strojny,

Deputy Special Counsel.

Agreement Between Broward County Florida and United States Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices

The Broward County Human Relations Division is charged with the enforcement of the provisions of Florida State Statute 83–380 that prohibit discrimination in employment on the basis of race, color, religion, national origin, sex or age. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay.

The Broward County Human Relations Division and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Dated: September 5, 1989.

Gloria J. Battle,

Director.

Dated: September 14, 1989.

Andrew M. Strojny,

Acting Special Counsel.

Agreement Between Lee County, Florida Department of Equal Opportunity and United States Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices

The Lee County Department of Equal Opportunity is charged with the enforcement of the provisions of the Lee County Ordinance No. 86–28, as amended, that prohibit discrimination in employment on the basis of race, color, religion, national origin, sex, age, marital status, place of birth, handicap or ancestry. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay.

The Lee County Department of Equal Opportunity and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Dated: October 16, 1989.

Lovie Wells, Jr.,

Director.

Dated: October 23, 1989.

Andrew M. Strojny,

Acting Special Counsel.

Agreement Between State of Georgia Office of Fair Employment Practices and United States Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices

The Georgia Office of Fair Employment Practices is charged with the enforcement of the provisions of the State of Georgia Fair Employment Practices Act of 1978, as amended, that prohibit discrimination in public employment in the state on the basis of race, age, religion, color, national origin, sex or handicap. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay.

The Georgia Office of Fair Employment Practices and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Dated: August 14, 1989.

Wayne G. Early,

Administrator.

Dated: August 18, 1989.

Andrew M. Strojny,

Acting Special Counsel.

Agreement Between Bloomington Human Rights Commission and United States Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices

The Bloomington Human Rights Commission is charged with the enforcement of the provisions of the Bloomington Human Rights Ordinance that prohibit discrimination in employment on the basis of race, religion, color, national origin, ancestry, sex or handicap. The Office of Special Counsel for Immigraton Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to the agency without delay.

The Bloomington Human Rights Commission and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Dated: July 14, 1989.

Barbara E. McKinney,

Director, Human Rights Commission.

Dated: July 21, 1989.

Andrew M. Strojny,

Acting Special Counsel.

Agreement Between State of Kansas Commission on Civil Rights and United States Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices

The Kansas Commission on Civil Rights is charged with the enforcement of the provisions of the Kansas Act Against Discrimination in Employment Act that prohibit discrimination on the basis of race, color, religion, national origin, sex, physical handicap, ancestry or age. The Office of Special Counsel for Immigraton Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to the agency without delay.

The Kansas Commission on Civil Rights and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Dated: July 24, 1989.

Joanne E. Hurst,

Executive Director, Kansas Commission on Civil Rights.

Dated: July 27, 1989.

Andrew M. Strojny,

Acting Special Counsel.

Agreement Between the Louisville and Jefferson County Human Relations Commission and the Office of Special Counsel for Immigration Related Unfair Employment Practices

The Louisville and Jefferson County Human Relations Commission is charged with enforcement of the City of Louisville, Kentucky's Ordinance Number 116, as amended, which prohibits discrimination in employment on the basis of handicap, sex, race, color, religion, ancestry, national origin, or place of birth. The Louisville and Jefferson County Human Relations Commission is also charged with enforcement of Jefferson County Kentucky's Resolution to Implement the State Statute Relative to Equal Employment Opportunities as Amended by Resolution Number 15, Series 1978, which prohibits discrimination in employment on the basis of handicap, sex, race, color, ancestry, national origin or age.

The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay.

The Louisville and Jefferson County Human Relations Commission and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge that falls within the jurisdiction of the

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other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request. Both agencies agree to act as a designated agent for each other for the purpose of accepting discrimination charges from aggrieved individuals and their representatives.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

The Louisville and Jefferson County Human Relations Commission.

Dated: April 21, 1989.

By: Gwendolyn M. Young,

Executive Director.

The Office of Special Counsel for Immigration Related Unfair Employment Practices.

Dated: April 25, 1989.

By: Lawrence J. Siskind,

Special Counsel.

Agreement Between Prince Georges County Government and United States Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices

The Prince Georges County Government is charged with the enforcement of the provisions of the county code that prohibit discrimination in employment on the basis of race, color, religion, national origin, sex or age. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay.

The Prince Georges County Government and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Dated: June 18, 1990.

John Davey,

Chief Administrative Officer, Prince Georges County Government.

Dated: June 28, 1990.

Andrew M. Strojny,

Acting Special Counsel, Office of Special Counsel for Immigration Related Unfair Employment Practices.

Agreement Between Michigan Department of Civil Rights and The Office of Special Counsel for Immigration Related Unfair Employment Practices

The Michigan Department of Civil Rights is charged with the enforcement of the provisions of the Elliott-Larsen Civil Rights Act of 1976 which prohibits discrimination in employment on the basis of race, religion, color, national origin, age, sex, height, weight and marital status. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 which prohibits discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure the matters within the jurisdiction of an agency are communicated to that agency without delay.

The Michigan Department of Civil Rights and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are met, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request by each agency.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations and share their information to the greatest extent practicable so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute. Any provision of this Agreement may be modified upon written consent of the parties. This Agreement may be terminated by either party upon thirty (30) days written notice to the other party.

Dated: April 3, 1989.

Lawrence J. Siskind,

Special Counsel.

Dated: March 28, 1989.

John Roy Castillo,

Director.

Agreement Between Human Relations Department City of Kansas City, Missouri and United States Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices

The Human Relations Department of the City of Kansas City, Missouri is charged with the enforcement of the provisions of the City's Civil Rights Ordinance 53581 that prohibit discrimination in employment on the basis of race, religion, color, national origin, ancestry, sex, physical or mental handicap, and age. The Office of Special Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay.

The Human Relations Department of the City of Kansas City, Missouri and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the

agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Dated: June 26, 1989.

Alvin L. Brooks,

Director, Human Relations Department, City of Kansas City, Missouri.

Dated: July 5, 1989.

Andrew M. Strojny,

Acting Special Counsel.

Agreement Between State of Montana Human Rights Commission and United States Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices

The Montana Human Rights Commission is charged with the enforcement of the provisions of the Montana Human Rights Act that prohibit discrimination in employment on the basis of race, creed, religion, marital status, color, sex, physical or mental handicap, age or national origin. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay.

The Montana Human Rights Commission and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

This agreement will remain in effect until September 1, 1990, by which time the parties to this agreement will have decided whether to continue the agreement on an indefinite basis beyond that date.

Dated: September 8, 1989.

John B. Kuhr,

Chair, Montana Human Rights Commission.

Dated: September 26, 1989.

Andrew M. Strojny,

Acting Special Counsel.

Agreement Between Nebraska Equal Opportunity Commision and The Office of Special Counsel for Immigration Related Unfair Employment Practices

The Nebraska Equal Opportunity Commission is charged with the enforcement of the provisions of the Nebraska Fair Employment Practice Act that prohibit discrimination in employment on the basis of national origin, ancestry, sex, physical or mental handicap or marital status. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiciton of an agency are communicated to that agency without delay.

The Nebraska Equal Opportunity Commission and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Dated: April 26, 1989.

Kathryn L. Kahla,

Dated: May 1, 1989.

Lawrence J. Siskind,

Special Counsel.

Agreement Between Commission on Human Rights Lincoln, Nebraska and United States Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices

The City of Lincoln, Nebraska Commission on Human Rights is charged with the enforcement of the provisions of Title 11 of the Lincoln Municipal Code that prohibit discrimination in employment on the basis of race, color, religion, age, national origin, ancestry, physical or mental handicap, sex and pregnancy, or marital status. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay.

The City of Lincoln, Nebraska Commission on Human Rights and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest

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extent practical and share information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Dated: February 14, 1991.

Gerald E. Hendersen,

Equal Opportunity Officer, Commission on Human Rights.

Dated: February 21, 1991.

Andrew M. Strojny,

Acting Special Counsel.

Agreement Between Human Rights Division New Mexico Department of Labor and The Office of Special Counsel for Immigration Related Unfair Employment Practices

The Human Rights Division of the New Mexico Department of Labor is charged with the enforcement of the provisions of the State of New Mexico Human Rights Act that prohibit discrimination in employment on the basis of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap or medical condition. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay.

The Human Rights Division of the New Mexico Department of Labor and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge that falls within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Human Rights Division, New Mexico Department of Labor.

Dated: October 10, 1989.

Medardo Sanchez,

Director.

The Office of Special Counsel for Immigration Related Unfair Employment Practices.

Dated: October 17, 1989.

Andrew M. Strojny,

Acting Special Counsel.

Agreement Between New Hanover County, North Carolina Human Relations Commission and United States Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices

The New Hanover Human Relations Commission is charged with the enforcement of the provisions of the New Hanover Fair Employment Ordinance that prohibits discrimination in employment on the basis of race, color, religion, national origin, sex or age and handicap. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay.

The New Hanover Human Relations Commission and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Dated: August 15, 1989.

William Jessup,

Executive Director, New Hanover Human Relations Commission.

Dated: August 18, 1989.

Andrew M. Strojny,

Acting Special Counsel.

Agreement Between North Carolina Human Relations Council and United States Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices

The North Carolina Human Relations Council is charged with the enforcement of the provisions of the North Carolina Equal Employment Practices Act that prohibit discrimination in employment on the basis of race, color, religion, national origin, sex or age. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay.

The North Carolina Human Relations Council and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Dated: June 18, 1990.

Jim Stowe,

Executive Director, North Carolina Human Relations Council.

Dated: June 28, 1990.

Andrew M. Strojny,

Acting Special Counsel, Office of Special Counsel for Immigration Related Unfair Employment Practices.

Agreement Between The Ohio Civil Rights Commission and United States Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices

The Ohio Civil Rights Commission is charged with the enforcement of the Ohio Revised Code chapter 4112, which prohibits discrimination in employment on the basis of race, color, religion, sex, national origin, handicap, age or ancestry. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of each agency are communicated to each agency without undue delay.

The Ohio Civil Rights Commission and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that each agency's respective filing deadlines are satisfied, each agency will accurately record the date of filing of charges with it and will notify the other agency of that date when referring a charge to such other agency.

When either agency receives a charge containing allegations that fall or which either agency reasonable believes fall within the jurisdication of the other agency, the agency receiving the charge will forward an original, sworn copy of such charge (if the same is filed in the first instance) to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information (except as may be prohibited by law) so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Dated: October 6, 1989.

Darlene Evans-McCoy,

Director.

Dated: October 19, 1989.

Andrew M. Strojny,

Acting Special Counsel.

Agreement Between The City of Pittsburgh Commission on Human Relations and United States Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices

The Pittsburgh Commission on Human Relations is charged with the enforcement of Chapters 651 through 659 of the Pittsburgh City Code that prohibit, inter alia, discrimination in employment on the basis of race, color, religion, ancestry, national origin, place of birth, sex, age, handicap, disability or use of guide dogs. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay.

The Pittsburgh Commission on Human Relations and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Dated: October 23, 1989.

John Gabriel,

Director, Pittsburgh Commission on Human Relations.

Dated: November 1, 1989.

Andrew M. Strojny,

Acting Special Counsel.

Agreement Between The South Carolina Human Affairs Commission and United States Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices

The South Carolina Human Affairs Commission is charged with the enforcement of the provisions of the State of South Carolina Human Affairs law that prohibit discrimination in employment on the basis of race, age, religion, color, national origin, sex, physical or mental handicap. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay.

The Human Affairs Commission of the State of South Carolina and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. The South Carolina Human Affairs Commission will obtain permission from the person making the charge before referring it to the Special Counsel.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share non-confidential information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

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Dated: April 6, 1989.
James E. Clyburn,
Commissioner.
Dated: April 10, 1989.
Lawrence J. Siskind,
Special Counsel.

Agreement Between Sioux Falls Human Relations Commission and United States Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices

The Sioux Falls Human Relations Commission is charged with the enforcement of the provisions of Chapter 13 of the Revised Ordinances of the City of Sioux Falls that prohibit discrimination in employment on the basis of race, color, religion, national origin, sex or disability. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay.

The Sioux Falls Human Relations Commission and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Dated: August 14, 1989.
Thomas F. Burke,
Executive Director.
Dated: August 18, 1989.
Andrew M. Strojny,
Acting Special Counsel.

Agreement Between Industrial Commission of Utah Anti-Discrimination Division and United States Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices

The Anti-Discrimination Division of the Industrial Commission of Utah is charged with the enforcement of the provisions of the Utah Anti-Discrimination Act that prohibit discrimination in employment on the basis of race, color, sex, religion, ancestry, national origin, age, or handicap. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of any agency are communicated to that agency without delay.

The Anti-Discrimination Division of the Industrial Commission of Utah and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Dated: March 19, 1990.
Stephen M. Hadley,
Chairman.
Dated: March 19, 1990.
Thomas R. Carlson,
Commissioner.
Dated: March 19, 1990.
Dixie L. Minson,
Commissioner.
Dated: April 2, 1990.
Andrew M. Strojny,
Acting Special Counsel.

Agreement Between The Personnel Commission State of Wisconsin and The Office of Special Counsel for Immigration Related Unfair Employment Practices

The Personnel Commission of the State of Wisconsin is charged with the enforcement of the provisions of Wisconsin's Fair Employment Act for those complaints of discrimination alleging discrimination by the State of Wisconsin as an employer. The Fair Employment Act prohibits discrimination based on age, race, creed, color, handicap, marital status, sex, national origin, ancestry, arrest record, conviction record, membership in the national guard, state defense force or any other reserve component of the military forces of the United States or the State of Wisconsin or use of honesty testing devices. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay.

The Personnel Commission of the State of Wisconsin and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges, to the extent allowed by law. To ensure that filing deadlines are satisfied, each agency will accurately record the date of receipt of charges and notify the other agency of the date of receipt when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Dated: March 19, 1990.
Laurie R. McCallum,
Chairperson, Personnel Commission.
Dated: April 25, 1989.
Lawrence J. Siskind,
Special Counsel.

Agreement Between State of Wyoming Fair Employment Practices Commission and United States Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices

The Wyoming Fair Employment Practices Commission is charged with the enforcement of the provisions of the Wyoming Fair Employment Practices Act that prohibit discrimination in employment on the basis of race, color, religion, national origin, ancestry, sex, age, or handicap. The Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, is charged with the enforcement of the provisions of the Immigration Reform and Control Act of 1986 that prohibit discrimination in employment on the basis of citizenship status or national origin. The purpose of this Agreement is to minimize duplication of effort and to ensure that matters within the jurisdiction of an agency are communicated to that agency without delay.

The Wyoming Fair Employment Practices Commission and the Office of Special Counsel hereby appoint each other as their respective agents for the sole purpose of satisfying the time limits for filing of charges. To ensure that filing deadlines are satisfied, each agency will accurately record the date of filing of charges and notify the other agency of that date when referring a charge.

When either agency receives a charge containing allegations that fall within the jurisdiction of the other agency, the agency receiving the charge will forward a copy of it to the other agency as soon as possible. Copies of all relevant documents will be forwarded upon request.

If both agencies are investigating a charge arising from the same fact situation, the agencies will coordinate their investigations to the greatest extent practical and share information so as to minimize duplication of effort.

Nothing in this Agreement diminishes either agency's authority to investigate and prosecute charges that fall within the coverage of its statute.

Dated: August 2, 1989.
Charles A. Rando,
Wyoming Fair Employment Practices Commission.
Dated: August 11, 1989.
Andrew M. Strojny,
Acting Special Counsel.
[FR Doc. 91-13173 Filed 6-5-91; 8:45 am]
BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 29, 1991, a proposed Consent Decree as to Defendant South Essex Sewerage District ("Consent Decree") in *United States* v. *South Essex Sewerage District, et al.*, Civil Action No. 83-2814-Y, was lodged with the United States District Court for the District of Massachusetts. The proposed Consent Decree concerns South Essex Sewerage District's failure to comply with its National Pollutant Discharge Elimination System permit in violation of the Clean Water Act.

Under the terms of the Consent Decree, the South Essex Sewerage District will design and construct secondary treatment and residuals management facilities and achieve compliance with the limits in its National Pollutant Discharge Elimination System permit.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *South Essex Sewerage District, et al.*, D.J. Ref. 90-5-1-1-2049A.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of Massachusetts, 1107 J.W. McCormack P.O. & Courthouse, Boston, MA 02109 and at the region I Office of the Environmental Protection Agency, One Congress Street, Boston, MA 02203. The proposed Consent Decree may also be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20044 (202) 347-7829. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $10.75 (25 cents per page reproduction cost), made payable to Consent Decree Library.

Richard B. Stewart,
Assistant Attorney General, Division.
[FR Doc. 91-13361 Filed 6-5-91; 8:45 am]
BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Clean Air Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *W.E. Blain & Sons, Inc.*, Civil Action No. 91-G-1079 W was lodged with the United States District Court for the Northern District of Alabama on May 10, 1991. This agreement resolves a judicial enforcement action brought by the United States against the defendant which alleged violations of the Clean Air Act arising from violations of New Source Performance Standards under 40 CFR part 60, subpart I.

This proposed consent decree provides for payment of $20,000 in civil penalties in settlement of the action.

The Department of Justice will receive for a period of (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *W.E. Blain & Sons, Inc.*, D.O.J. Ref. 90-5-2-1-1432.

This Consent Decree may be examined at the offices of the United States Attorney, Northern District of Alabama, 200 Federal Building, 1800 Fifth Avenue, North Birmingham, Alabama 35203, at the Office of Regional Counsel, EPA, 345 Courtland St. NE., Atlanta, Georgia 30365, and at the Offices of the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, room 1535, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. The proposed consent decree may also be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004, 202-347-7829. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please

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enclose a check in the amount of $1.75 (25 cents per page reproduction costs) payable to Consent Decree Library.

George Van Cleve,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-13343 Filed 6-5-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging a Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 29, 1991, a proposed Second Modification of Amended Consent Decree in *United States* v. *USX Corp.*, C.A. No. 79-709 (W.D. Pa.), DJ No. 90-5-2-3-1034B, was lodged with the United States District Court for the Western District of Pennsylvania. The United States' Complaint was filed in 1979 under section 113 of the Clean Air Act, to enjoin violative emissions of air pollution at USX's various "Mon Valley" steel plants. A Consent Decree was entered in 1979 and modified on four occasions, most recently in 1985. On September 27, 1988, an Amended Consent Decree was entered. The Amended Consent Decree was first modified on October 9, 1990.

Pursuant to the agreement set forth in the proposed Second Modification of Amended Consent Decree, USX has installed "igniters" at its twelve operational coke oven batteries at the Clairton Works facility. The purpose of the igniters is to flare coke oven gas, which would otherwise be emitted into the atmosphere in an uncombusted form, in the event of a "venting" incident at one or more of the batteries. Venting is a term of art used to describe the emegency release of raw coke oven gas to the atmosphere caused by increased gas pressure within a coke battery.

USX is permitted under the proposed Second Modification to credit against a "Road Dust Fund" the costs it has incurred in purchasing and installing the igniters. Under the Amended Consent Decree, USX has been drawing against the Fund to cover the costs of its road dust control programs at the Mon Valley plants. Although the cost of the igniters (approximately $5,000,000) is greater than the amount of money in the Fund, and the Fund will be exhausted when the cost of the igniters is applied against it, USX has agreed to continue its road dust control program through December 31, 1999.

The Department of Justice will receive for a period of thirty days from the date of this publication comments relating to the proposed Second Modification to Amended Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *USX Corporation*, DOJ Ref. No. 90-5-2-3-1034B.

The proposed Second Modification of Consent Decree may be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004, (202) 347-2072. A copy of the proposed Second Modification may be obtained in person or by mail from the Environmental Enforcement Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $2.50 (25 cents per page reproduction costs) payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environmental and Natural Resources Division.

[FR Doc. 91-13360 Filed 6-5-91; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

United States v. Brown University et al.; Competitive Impact Statements and Proposed Consent Judgment

[Civil Action No. 91-CV-3724]

United States v. Brown University in Providence in the State of Rhode Island and Providence Plantations; The Trustees of Columbia Unviersity in the City of New York; Cornell University; The Trustees of Dartmouth College; President and Fellows of Harvard College Massachusetts; Massachusetts Institute of Technology; The Trustees of Princeton University; The Trustees of the University of Pennsylvania; and Yale University.

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Eastern District of Pennsylvania in *United States* v. *Brown University, et al.*, Civil No. 91-CV-3274.

The Complaint alleges that beginning at least as early as 1980 and continuing to the date of the Complaint, the defendants, the eight Ivy League universities and the Massachusetts Institute of Technology, conspired to restrict the amount of financial aid awarded their undergraduate students. As a result of the conspiracy, students receiving financial aid and their families have been deprived of the benefit of free and open price competition, causing some of these students and their families to pay more for an undergraduate education than they would have otherwise.

The proposed Final Judgment prohibits the consenting defendants from continuing their conspiracy. It is intended to ensure that defendants independently decide financial aid policies and independently calculate financial aid awards to individual students. The proposed Final Judgement also requires defendants to establish a comprehensive antitrust compliance program.

Public comment on the proposed Final Judgment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to Robert E. Bloch, Chief, Professions and Intellectual Property Section, U.S. Department of Justice, Antitrust Division, 555 4th Street, NW., room 9903, Judiciary Center Building, Washington, DC., 20001 (telephone: 202/307-0467).

Joseph H. Widmar,

Director of Operations Antitrust Division.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties to this Stipulation consent that a Final Judgment in the form attached may be filed and entered by the Court, upon any party's or the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before entry of the proposed Final Judgment by serving notice on the defendants and by filing that notice with the Court;

2. If plaintiff withdraws its consent or the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatsoever and its making shall be without prejudice to any party in this or any other proceeding;

3. If plaintiff subsequently enters into a stipulated final judgment with any defendant not a party to this Stipulation, the defendant parties to this stipulated Final Judgment may move the Court to modify the terms of this Final Judgment so that it is no less favorable to the defendants than the terms of the subsequent final judgment. The plaintiff will acquiesce to the motion.

Dated: May 22, 1991.

For the Plaintiff:

James F. Rill,
Assistant Attorney General.
Joseph H. Widmar,
Robert E. Bloch,
Attorneys, U.S. Department of Justice.
Michael M. Baylson,
United States Attorney, Eastern District of Pennsylvania.
D. Bruce Pearson,
Jon B. Jacobs,
Jessica N. Cohen,
Patricia A. Brink,
Attorneys, U.S. Department of Justice, Antitrust Division, 555 4th Street, NW., Rm 9840, Washington, DC 20001, 202/307-1028.

For the Defendants:

Joel Davidow,
Counsel for Brown University.
Thomas B. Leary,
Counsel for Cornell University.
Daniel Mayers,
Counsel for President And Fellows of Harvard College, Massachusetts.
Roger G. Carr,
Counsel for the Trustees of Princeton University.
Arthur Makadon,
Counsel for The Trustees of The University of Pennsylvania.
Stanley D. Robinson,
Counsel for The Trustees of Columbia University.
Bruce D. Sukler,
Counsel for The Trustees of Dartmouth College.
Thane D. Scott,
Counsel for Massachusetts Institute of Technology.
Roger Fendrich,
Counsel for Yale University.

CERTIFICATE OF SERVICE

I, Jessica N. Cohen, hereby certify that a copy of the Stipulation was served on May 22, 1991 by first class mail, postage prepaid, on the following:

Joel Davidow, Esquire, Dickstein, Shapiro & Morin, 2101 L Street, NW., Washington, DC 20037, Counsel for Brown University
Stanley D. Robinson, Esquire, Kaye, Scholer, Fierman, Hays & Handler, 425 Park Avenue, New York, NY 10022, Counsel for the Trustees of Columbia University
Thomas B. Leary, Esquire, Hogan & Hartson, 555 Thirteenth Street, NW., 8 West 312, Washington, DC 20004, Counsel for Cornell University
Bruce D. Sokler, Esquire, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., 1825 Eye Street, NW., Washington, DC 20006, Counsel for the Trustees of Dartmouth College
Daniel Mayers, Esquire, Wilmer, Cutler, Pickering, 2445 M Street, NW., Washington, DC 20037-1420, Counsel for President and Fellows of Harvard College, Massachusetts
Thane D. Scott, Esquire, Palmer & Dodge, One Beacon Street, Boston, Mass. 02108, Counsel for Massachusetts Institute of Technology
Ronald G. Carr, Esquire, Morrison & Foerster, 2000 Pennsylvania Avenue, NW., Suite 5500, Washington, DC 20008-4812, Counsel for the Trustees of Princeton University
Roger Fendrich, Esquire, Arnold & Porter, 1200 New Hampshire Ave., NW., Washington, DC 20036, Counsel for Yale University
Arthur Makadon, Esquire, Ballard, Spahr, Andrews & Ingersoll, 30 South 17th Street; 20th Floor, Philadelphia, Pa. 19103, Counsel for the Trustees of the University of Pennsylvania

Jessica N. Cohen

Final Judgment

Plaintiff, United States of America, filed its Complaint on May 22, 1991. Plaintiff and consenting defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not be evidence or admission by any party with respect to any issue of fact or law. Therefore, before any testimony is taken, and without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby,

Ordered, Adjudged and Decreed

I. Jurisdiction

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting to this Final Judgment. The Complaint states a claim upon which relief may be granted against each defendant under section 1 of the Sherman Act, 15 U.S.C. 1.

II. Definitions

As used in this Final Judgment:

(A) "Student Fees" means the tuition, room, board, and mandatory fees, or any of these individually, a college or university charges.

(B) "Family Contribution" means the amount the student and the student's family pay from their income and assets towards the Student Fees.

(C) "Parental Contribution" means the portion of the Family Contribution the student's parent or parents contribute from their income and assets.

(D) "Financial Aid" means a reduction of the total Student Fees for a particular student. It consists of grants (gift aid) and self-help (loans and the student's income from term time employment offered by, or through, the college or university).

(E) "Merit Aid" means Financial Aid that is not based on economic need.

(F) "Needs Analysis Formula" means any formula for calculating or ascertaining a student's need or Family or Parental Contributions.

(G) "Summer Savings Requirement" means the amount the college or university requires the student to earn during the summer to contribute to his or her Student Fees for the following year.

III. Applicability

This Final Judgment shall apply to each defendant and to each of their officers, trustees, and other members of their governing boards, employees, agents, successors, and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV. Prohibited Conduct

Each defendant is enjoined and restrained from:

(A) Agreeing directly or indirectly with any other college or university on all or any part of Financial Aid, including the Grant or Self-help, awarded to any student, or on any student's Family or Parental Contribution;

(B) Agreeing directly or indirectly with any other college or university on how Family or Parental Contribution will be calculated;

(C) Agreeing directly or indirectly with any other college or university to apply a similar or common Needs Analysis Formula;

(D) Requesting from, communicating to, or exchanging with any college or university the application of a Needs Analysis Formula to, or how family or parental contribution will be calculated for, a specific Financial Aid applicant;

(E) Agreeing directly or indirectly with any other college or university whether or not to offer Merit Aid as either a matter of general application or to any particular student;

(F) Requesting from, communicating to, or exchanging with any other college or university its plans or projections regarding Summer Savings Requirements or Self-help for students receiving Financial Aid;

(G) Requesting from, communicating to, or exchanging with any other college or university, the Financial Aid awarded or proposed to be awarded any Financial Aid applicant except as required by federal law;

(H) Requesting from, communicating to, or exchanging with any other college or university any information concerning its plans or projections, including budget assumptions, regarding

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future Student Fees or general Faculty Salary levels; and

(I) Entering into, directly or indirectly, any contract, agreement, understanding, arrangement, plan, program, combination, or conspiracy with any other college or university or its officers, directors, agents, employees, trustees, or governing board members to fix, establish, raise, stabilize, or maintain Student Fees or Faculty Salaries.

V. Compliance Program

Each defendant is ordered to maintain an antitrust compliance program which shall include designating, within 30 days of the entry of this Final Judgment, an Antitrust Compliance Officer with responsibility for accomplishing the antitrust compliance program and with the purpose of achieving compliance with this Final Judgment. The Antitrust Compliance Officer shall, on a continuing basis, supervise the review of the current and proposed activities of his or her defendant institution to ensure that it complies with this Final Judgment. The Antitrust Compliance Officer shall be responsible for accomplishing the following activities:

(A) Distributing, within 60 days from the entry of this Final Judgment, a copy of this Final Judgment (1) to all trustees and governing board members; and (2) to all officers and non-clerical employees who have any responsibility for recommending or setting of fees, salaries, or financial aid in the offices of the President, Vice Presidents, Provost, Deans, Financial Aid, Admissions, Budget, Controller, Treasurer, and other similar offices;

(B) Distributing in a timely manner a copy of this Final Judgment to any officer, employee, or trustee who succeeds to a position described in section V(A);

(C) Briefing annually those persons designated in section V(A) on the meaning and requirements of this Final Judgment and the antitrust laws and advising them that each defendant's legal advisers are available to confer with them regarding compliance with the Final Jugment and the antitrust laws;

(D) Obtaining from each officer, employee, or trustee designated in section V(A) an annual written certification that he or she: (1) Has read, understands, and agrees to abide by the terms of this Final Judgment; (2) has been advised and understands that non-compliance with this Final Judgment may result in his or her conviction for criminal contempt of court; and (3) is not aware of any past or future violation of this decree that he or she has not reported to the Antitrust Compliance Officer; and

(E) Maintaining a record of recipients to whom the Final Judgment has been distributed and from whom the certification in V(D) has been obtained.

VI. Certification

(A) Within 75 days after the entry of this Final Judgment, each defendant shall certify to the plaintiff whether it has designated an Antitrust Compliance Officer and has distributed the Final Judgment in accordance with section V above.

(B) For 10 years after the entry of this Final Judgment, on or before its anniversary date, the Antitrust Compliance Officer at each defendant school shall certify annually to the Court and the plaintiff whether that defendant has complied with the provisions of section V.

(C) At any time, if a defendant's Antitrust Compliance Officer learns of any past or future violation of section IV of this Final Judgment, that defendant shall, within 45 days after such knowledge is obtained, take appropriate action to terminate or modify the activity so as to comply with this Final Judgment.

(D) If any person designated in section V(A) learns of any past or future violation of this decree, he or she shall report it to the Antitrust Compliance Officer promptly.

VII. Sanctions

(A) If, after the entry of this Final Judgment, any defendant violates or continues to violate section IV, the Court may, after notice and hearing, but without any showing of willfulness or intent, impose a civil fine upon that defendant in an amount reasonable in light of all surrounding circumstances. A fine may be levied upon a defendant for each separate violation of section IV.

(B) Nothing in this Final Judgment shall bar the United States from seeking, or the Court from imposing, against any defendant or person any other relief available under any other applicable provision of law for violation of this Final Judgment, in addition to or in lieu of the civil penalties provided for in section VII(A) above.

VIII. Plaintiff Access

(A) To determine or secure compliance with this Final Judgment and for no other purpose, duly authorized representatives of the plaintiff shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the relevant defendant, be permitted:

(1) Access during that defendant's office hours to inspect and copy all records and documents in its possession or control relating to any matters contained in this Final Judgment; and

(2) To interview that defendant's officers, employees, trustees, or agents, who may have counsel present, regarding such matters. The interviews shall be subject to the defendant's reasonable convenience and without restraint or interference from any defendant.

(B) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, a defendant shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be reasonably requested.

(C) No information or documents obtained by the means provided in this seciton VIII shall be divulged by the plaintiff to any person other than a duly authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

IX. Limiting Conditions

(A) Nothing in this Final Judgment shall prevent defendants that are members of a common athletic league from:

(1) Agreeing to grant financial aid to recruited athletes or students who participate in athletics on the sole basis of economic need with no differentiation in amount or in kind based on athletic ability or participation, provided that each school shall apply its own standard of economic need;

(2) Agreeing to permit independent auditors access to Financial Aid information to monitor adherence to this agreement so long as the monitoring process does not disclose financial aid information, needs analysis or methodology to other league members; or (3) interpreting this agreement and enforcing it so long as such interpretation and enforcement do not disclose financial aid information, needs analysis or methodology to other league members.

(B) Nothing in this Final Judgment shall prohibit any defendant from advocating or discussing, in accordance with the doctrine established in *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961), and its progeny, legislation, regulatory actions, or governmental policies or actions.

(C) Nothing in this Final Judgment shall prevent any defendant from: (1) Disclosing policies or information to the public; or (2) communicating to others policies or information once they have been made public. However, no individual designated in section V(A) shall communicate to any individual similarly situated at another defendant institution any plans or projections, including budget assumptions, regarding Student Fees or general Faculty Salary levels prior to their approval by that defendant's Governing Board.

(D) Nothing in this Final Judgment shall prohibit any defendant from unilaterally adopting or implementing a Financial Aid program based, in whole or in part, on the economic need of applicants.

(E) Nothing in this Final Judgment shall prohibit or regulate conduct that federal legislation enacted subsequent to the entry of the Final Judgment authorizes or exempts from the antitrust laws.

(F) Nothing in this Final Judgment shall prevent the defendants from each unilaterally utilizing or appointing an independent agency, whether or not utilized by other defendants, to collect and forward information from Financial Aid applicants concerning their financial resources. The agency may only forward the financial aid information requested by that particular defendant.

(G) Nothing in this Final Judgment shall prohibit defendants or their representatives from continuing their consultations with the College Scholarship Service concerning the processing and presentation of its data in the same manner and degree as currently exists.

(H) Nothing in this Final Judgment shall prohibit an individual designated in section V(A) from serving as and performing the normal functions of a trustee or governing board member of another college or university that is not a defendant to this action. However, the individual may not disclose any non-public information including student fees, faculty salaries, or financial aid to any other college or university.

(I) Nothing in this Final Judgment shall prohibit any defendant from disclosing information as part of the accreditation process. However, any individual participating in the accreditation process may not disclose any non-public information including student fees, faculty salaries, or financial aid to any college or university.

(J) Nothing in this Final Judgment shall prohibit any defendant from providing financial aid information or agreeing with respect to financial aid for an individual student in situations where such defendant is jointly providing education or financial aid for that student with another college or university.

X. Further Elements of Decree

(A) This Final Judgment shall expire 10 years from the date of entry.

(B) Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

(C) Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge.

Certificate of Service

I, Jessica N. Cohen, hereby certify that a copy of the proposed Final Judgment was served on May 22, 1991 by first class mail, postage prepaid, on the following:

Joel Davidow, Esquire, Dickstein, Shapiro & Morin, 2101 L Street, NW., Washington, DC 20037, Counsel for Brown University

Thomas B. Leary, Esquire, Hogan & Hartson, 555 Thirteenth Street, NW., 8 West 312, Washington, DC 20004, Counsel for Cornell University

Daniel Mayers, Esquire, Wilmer, Cutler, Pickering, 2445 M Street, NW., Washington, DC 20037–1420, Counsel for President and Fellows of Harvard College, Massachusetts

Ronald G. Carr, Esquire, Morrison & Foerster, 2000 Pennsylvania Avenue, NW., Suite 5500, Washington, DC 20008–4812, Counsel for the Trustees of Princeton University

Arthur Makadon, Esquire, Ballard, Spahr, Andrews & Ingersoll, 30 South 17th Street; 20th Floor, Philadelphia, PA 19103, Counsel for the Trustees of the University of Pennsylvania

Stanley D. Robinson, Esquire, Kaye, Scholer, Fierman, Hays & Handler, 425 Park Avenue, New York, New York, 10022, Counsel for the Trustees of Columbia University

Bruce D. Sokler, Esquire, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., 1825 Eye Street, NW., Washington, DC 20006, Counsel for the Trustees of Dartmouth College

Thane D. Scott, Esquire, Palmer & Dodge, One Beacon Street, Boston, Mass. 02108, Counsel for Massachusetts Institute of Technology

Roger Fendrich, Esquire, Arnold & Porter, 1200 New Hampshire Ave., NW., Washington, DC 20036, Counsel for Yale University

Jessica N. Cohen

Competitive Impact Statement

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the Untied States submits this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On May 22, 1991, the United States filed a civil antitrust complaint alleging that defendants and co-conspirators conspired unreasonably to restrain price competition among themselves in violation of section 1 of the Sherman Act, 15 U.S.C. 1.

The Complaint alleges that beginning at least as early as 1980 and continuing to the date of the Complaint, defendants and co-conspirators conspired to restrain price competition among themselves in the sale of undergraduate education to students receiving financial aid. This conspiracy has been effectuated through the "Overlap" group, which consists of financial aid officers from the defendants' and co-conspirators' colleges and universities. The Overlap group schools have made several agreements restricting the amount of financial aid they award undergraduate students. The conspiracy has had the effect of depriving students receiving financial aid and their families of the benefits of free and open price competition. In addition, the conspiracy has caused some students receiving financial aid and their families to pay more for college than they would have otherwise.

The relief sought in the Complaint is to prevent defendants from continuing or renewing the alleged conspiracy, or from engaging in any other conspiracy or adopting any practice having a similar purpose or effect for a period of 10 years. The Complaint further asks that defendants be required to institute a compliance program to ensure that defendants do not continue or renew the alleged conspiracy or engage in any other conspiracy or practice having a similar purpose or effect.

The defendants will be required to file annual reports with the Court and the Government certifying that they have complied with the terms of section V of the Final Judgment.

Entry of the proposed Final Judgment will terminate the action against all consenting defendants, except that the Court will retain jurisdiction over the matter for further proceedings which

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may be required to interpret, enforce or modify the Judgment, or to punish violations of any of its provisions.

II. Description of the Practices Involved in the Alleged Violation

At trial, the Government would have made the following contentions:

1. The defendants, the eight Ivy League colleges and universities and MIT, compete with each other in enrolling highly-selective undergraduate student bodies. The defendants also compete with each other in providing and selling an undergraduate education.

2. The defendants sell an undergraduate education to students receiving financial aid at a price less than full tuition, room and board. Financial aid recipients receive, in effect, a discount reducing their cost of attendance. This reduced cost is made up to two components, "family contribution" and "self-help." The family contribution is the cash payment that a college determines a student's family will pay from its assets and income. Self-help is the non-grant portion of financial aid and consists of loans and the student's income during the school year from campus employment.

3. All defendants belong to a group of financial aid administrators known as the "Overlap" group. The Overlap group schools hold a series of meetings each year and have made several agreements restricting the financial aid they award undergraduate students. These agreements include:

(a) An agreement to award all financial aid solely on the basis of family income and assets, which prohibits the Overlap group schools from offering financial aid based on "merit," such as academic achievement, talent or diversity;

(b) An agreement to use a common formula to determine the family contributions for financial aid applicants;

(c) An agreement, at an annual spring Overlap meeting, to compare the family contributions for financial aid applicants admitted to more than one Overlap school, and eliminate significant differences so that the family contributions will be comparable; and

(d) An agreement to exchange anticipated self-help levels and, at the annual spring meeting, often to match self-help awards for students admitted by more than one Overlap member.

4. The express purpose and effect of these Overlap agreements is to ensure that families of students receiving financial aid will pay approximately the same amount regardless of the Overlap institution the student chooses to attend.

5. As a result of these agreements, students receiving financial aid and their families have been deprived of the benefit of free and open price competition in the sale of an undergraduate education. Students who would have otherwise received merit aid have not, some students who would have qualified for financial aid have received none, and some students receiving financial aid have not received as much as they would have otherwise.

III. Explanation of the Proposed Final Judgment

The United States and the consenting defendants have stipulated that the Court may enter the proposed Final Judgment after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h). The proposed Final Judgment provides that its entry does not constitute any evidence against or admission by any party with respect to any issue of fact or law.

Under the provisions of section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(e), the proposed Final Judgment may not be entered unless the court finds that entry is in the public interest. Section X of the proposed Final Judgment sets forth such a finding.

The proposed Final Judgment is intended to ensure that the defendants independently decide financial aid policies and independently calculate financial aid awards to individual students. It does not, however, prevent defendants from unilaterally adopting or implementing any financial aid policies, including policies based in whole or in part on the economic need of financial aid applicants. It also does not prohibit defendants from disclosing policies or information to the public or, in certain instances, from communicating publicly-available policies or information. Neither does the proposed Final Judgment prevent defendants that are members of a common athletic league from agreeing with each other to grant financial aid to students participating in athletics solely on the basis of economic need, provided that each school applies its own standard of economic need.

A. Prohibitions and Obligations

The proposed Final Judgment would enjoin the defendants from agreeing with any other college or university on all or any part of financial aid, including the grant or self-help, awarded to any student, or on any student's family contribution. Defendants would also be prohibited from agreeing with any other college or university regarding how family contribution will be calculated. Similarly, defendants would be enjoined from agreeing with any other college or university to apply a similar or common formula to determine the family contributions for financial aid applicants, and from communicating with any college or university concerning how the family contribution will be calculated for a specific financial aid applicant.

The proposed Final Judgment would further enjoin defendants from agreeing with any other college or university whether or not to offer financial aid based on "merit," either as a general policy or to any particular student. Defendants would also be prohibited from communicating with any other college or university about plans or projections regarding "summer savings requirements" (the money students are expected to earn from summer employment to contribute to college expenses) or "self-help" requirements. All communications between defendants and any other college or university regarding the financial aid awarded or proposed to be awarded any financial aid applicant would also be enjoined.

Certain communications regarding other budgetary information would also be prohibited. Specifically, defendants would be prohibited from communicating with any other college or university about plans or projections, including budget assumptions, regarding future student fees (such as tuition, room and board) or faculty salaries. Defendants would also be prevented from entering into any contract, agreement or understanding with any other college or university concerning these matters. Defendants exchanged budgetary information from at least 1980 to 1989.

In addition to these prohibitions, defendants would be obligated to implement an antitrust compliance program. This program would require each defendant to designate an Antitrust Compliance Officer within 30 days of entry of the Final Judgment. The Antitrust Compliance Officer would be responsible for distributing copies of the Final Judgment to all trustees and governing board members and to all non-clerical employees in the offices of the President, Vice Presidents, Provost, Deans, Financial Aid, Admissions, Budget, Controller, and Treasurer who have any responsibility for recommending or setting fees, salaries or financial aid. These persons would be required annually to certify that they understand and agree to abide by the terms of the Final Judgment.

All persons to whom the Final Judgment is distributed would be obligated to report any violations of the Judgment to the Antitrust Compliance Officer promptly. The defendants must, within 45 days after the Antitrust Compliance Officer learns of any such violations, take appropriate action to terminate or modify the activity so as to comply with the Final Judgment.

B. Scope of the Proposed Final Judgment

The proposed Final Judgment would apply to each defendant and to each of their officers, trustees, and other members of their governing boards, employees, agents, successors, and assigns, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

The proposed Final Judgment would remain in effect for 10 years.

C. Effect of the Proposed Final Judgment on Competition

The relief in the proposed Final Judgment is designed to ensure that the defendants' financial aid decisions, both with respect to general policies and the amount of financial aid awarded individual students, are made independently. The prohibitions against exchanges of and communications about financial aid data and other budgetary information are designed to prevent restraints on price competition among the defendants. The proposed Final Judgment is also designed to ensure that consumers of higher education reap the benefits of free and open price competition.

The Department of Justice believes that this proposed Final Judgment contains adequate provisions to prevent further violations of the type upon which the Complaint is based and to remedy the effects of the alleged conspiracy.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of such actions. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the Judgment has no *prima facie* effect in any subsequent lawsuits that may be brought against defendants in this matter.

V. Procedures Available for Modification of the Proposed Judgment

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments to Robert E. Bloch, Chief, Professions and Intellectual Property Section, U.S. Department of Justice, Antitrust Division, 555 Fourth Street, NW., room 9903, Judiciary Center Building, Washington, DC 20001, within the 60-day period provided by the Act. These comments, and the Department's responses, will be filed with the Court and published in the Federal Register. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to entry. The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation or enforcement of the Final Judgment.

VI. Alternative to the Proposed Final Judgment

The alternative to the proposed Final Judgment would be a full trial of the case against all of the defendants. In the view of the Department of Justice, such a trial would involve substantial cost to the United States and is not warranted because the proposed Final Judgment provides all the relief that the United States sought in its Complaint.

VII. Determinative Materials and Documents

No materials and documents of the type described in section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b), were considered in formulating the proposed Final Judgment.

Dated: May 22, 1991.

Respectfully submitted,

James F. Rill,

Assistant Attorney General.

Joseph H. Widmar,

Robert E. Bloch,

Attorneys, U.S. Department of Justice.

Michael M. Baylson,

United States Attorney, Eastern District of Pennsylvania.

D. Bruce Pearson,

Jon B. Jacobs,

Jessica N. Cohen,

Patricia A. Brink,

Attorneys, U.S. Department of Justice, Antitrust Division, 555 4th Street NW., room 9840, Washington, DC 20001, 202/307-1028.

Certificate of Service

I, Jessica N. Cohen, hereby certify that a copy of the Competitive Impact Statement was served on May 22, 1991 by first class mail, postage prepaid, on the following:

Joel Davidow, Esquire, Dickstein, Shapiro & Morin, 2101 L Street, NW., Washington, DC 20037, Counsel for Brown University

Thomas B. Leary, Esquire, Hogan & Hartson, 555 Thirteenth Street, NW., 8 West 312, Washington, DC 20004, Counsel for Cornell University

Daniel Mayers, Esquire, Wilmer, Cutler, Pickering, 2445 M Street, NW., Washington, DC 20037-1420, Counsel for President and Fellows of Harvard College, Massachusetts

Ronald G. Carr, Esquire, Morrison & Foerster, 2000 Pennsylvania Avenue, NW, Suite 5500, Washington, DC 20006-4812, Counsel for the Trustees of Princeton University

Arthur Makadon, Esquire, Ballard, Spahr, Andrews & Ingersoll, 30 South 17th Street, 20th Floor, Philadelphia, Pa. 19103, Counsel for the Trustees of the University of Pennsylvania

Stanley D. Robinson, Esquire, Kaye, Scholer, Fierman, Hays & Handler, 425 Park Avenue, New York, New York 10022, Counsel for the Trustees of Columbia University

Bruce D. Sokler, Esquire, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., 1825 Eye Street, NW., Washington, DC 20006, Counsel for the Trustees of Dartmouth College

Thane D. Scott, Esquire, Palmer & Dodge, One Beacon Street, Boston, Mass. 02108, Counsel for Massachusetts Institute of Technology

Roger Fendrich, Esquire, Arnold & Porter, 1200 New Hampshire Ave., NW., Washington, DC 20036, Counsel for Yale University

Jessica N. Cohen

[FR Doc. 91-13287 Filed 6-5-91; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—Bell Communications Research, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") on May 3, 1991, filed a written notification on behalf of Bellcore and Sun Microsystems, Inc. ("Sun") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objective of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to

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actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039.

Sun is a corporation with a place of business at 2250 Garcia Avenue, M/S MTV 12-01, Mountain View, California 94043.

On April 12, 1991, Bellcore and Sun entered into an agreement to engage in cooperative research collaboration on broadband communications utilizing asynchronous transfer mode (ATM) transport mechanisms to better understand the applications of this technology for exchange and exchange access services, including prototype fabrication for experimental purposes to demonstrate such technology.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 91-13285 Filed 6-5-91; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—Glycols Joint Venture

Notice is hereby given that, on May 16, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Amrep Inc. filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the Glycols Joint Venture ("Joint Venture") and (2) the nature and objectives of the Joint Venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(d) of the Act, the identities of the parties to the Joint Venture and its general areas of planned activity are given below.

The parties to the Joint Venture are: Amrep Inc.; Cello Corporation/Grow Group; Chemical Specialties Manufacturers Association; Claire Manufacturing; S.C. Johnson Wax; L&F Products (National Laboratories); NCH Corporation; Sentry Chemical Company; Speer Products; and Waterbury Companies.

The objective of the Joint Venture is to sponsor and conduct toxicological research on the chemicals known as propylene glycol, dipropylene glycol, and triethylyene glycol and to submit the results of this research to the U.S. Environmental Protection Agency ("EPA") in response to the Reregistration Notice-List C issued by the EPA in October 1989.

Membership in the Joint Venture remains open, and the parties intend to file additional written notification disclosing any changes in membership.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 91-13286 Filed 6-5-91; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 89-24]

Lewis K. Curtwright, D.O.; Denial of Application for Registration

On March 17, 1989, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Lewis K. Curtwright, D.O., (Respondent) of 606 S. Tampa Avenue, #5, Orlando, Florida 32805 proposing to deny his application, executed on November 7, 1988, for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's registration would be inconsistent with the public interest.

By letter dated April 14, 1989, Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held before Judge Bittner in Tampa, Florida on November 28, 1989. On September 14, 1990, the administrative law judge issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. On October 25, 1990, Respondent submitted exceptions, to Judge Bittner's opinion and recommended ruling. On October 30, 1990, the administrative law judge transmitted the record of these proceedings, including the Respondent's exceptions to the Administrator. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67 hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

Based upon the opinion of the administrative law judge, it appears that Respondent had a history of conflict with the DEA. At the time of the application here in question, Respondent had moved his practice of osteopathic medicine from Milford, Ohio to Florida. While practicing in Ohio, Respondent was assigned DEA registration number AC2861018, which was surrendered in September 1984, due to circumstances discussed below.

In September 1983, Respondent was advised by the State Medical Board of Ohio that it was considering disciplining him due to his excessive prescribing practices. Respondent requested a hearing, during which the hearing officer found, based upon convincing evidence:

> An examination of [Respondent's] prescribing practices reveals a pattern of inappropriate use of certain medications, over-prescribing of addictive drugs, and prescribing of habit-forming substances for excessive periods of time. In addition, [Respondent's] choice of medication may sometimes be dictated by the demands of his patients rather than by complete reliance upon his own expertise.

On August 15, 1984, the Medical Board issued an order effective September 15, 1984, suspending Respondent's medical license for eighteen months, staying all but thirty days of the suspension. Respondent was required to surrender his DEA registration for six months, but continued to prescribe controlled subtances without possession of his DEA Certificate of Registration.

On March 19, 1986, the Medical Board issued an order lifting the stay and imposing the remaining seventeen months of Respondent's suspension, effective May 1, 1986. Respondent ultimately appealed to the Court of Appeals of the Twelfth Appellate District of Ohio which, in reversing the Court of Common Pleas and the Medical Board, found the the Medical Board did not specifically prohibit Respondent from issuing controlled substance prescriptions, and in fact, implied that such issuance would be lawful by requiring Respondent to keep a log of controlled substance prescriptions during the suspension period. During the appeals process, and following expiration of registration number AC2861018, Respondent was issued a new DEA registration number BC0306399, with an expiration date of August 31, 1986, at his address in Ohio.

On October 16, 1986, Respondent executed a renewal application for DEA registration BC0306399, printed with his Ohio address, although at that time Respondent had moved to Florida. Respondent tgestified that he was unaware during this period that he was unauthorized to handle controlled substances and was unaware that he must possess a separate DEA registration for each state in which he practiced. On December 4, 1986, an Order to Show Cause was issued proposing to revoke registration

BC0306399, issued to Respondent in Ohio. Respondent requested a hearing, which was scheduled before Administrative Law Judge Francis Young for December 3, 1987. On August 7, 1987, while the hearing was pending, Respondent executed a new application for DEA registration in Florida, noting the actions by the Medical Board and the appellate court in Ohio.

At the December 3, 1987, hearing, neither Respondent nor anyone representing him appeared. The Government produced evidence that Respondent's counsel had advised him of the date, time and place of the hearing, and the hearing proceeded with the Government's introduction of evidence. After reviewing correspondence from Respondent stating that he understood the gist of the prehearing ruling setting the hearing, Judge Young issued an order on February 14, 1988, terminating the proceedings before him finding that Respondent had waived his opportunity for a hearing and that the case should be submitted to the Administrator for a final determination. On March 19, 1988, Respondent wrote to Judge Young, stating that he had never known of the hearing date, that had he known he would have appeared, and that he was unaware that a hearing had been held until March 1988.

On July 15, 1988, the Administrator issued a final order revoking Respondent's registration BC0306399, finding that:

> Respondent improperly handled controlled substances by treating patients with controlled substances when their symptoms did not support such treatment and by treating patients with controlled substances for excessive periods of time and in excessive quantities. In addition, Respondent issued several prescriptions for controlled substances when he did not possess a valid DEA Certificate of Registration. These violations demonstrate that Respondent does not handle controlled substances with the care and restraint required of registrants, and also that he had demonstrated a disregard for the laws and regulations under which he is registered.

Respondent stated that he did not learn until August or September 1988, that his DEA registration had been revoked.

On November 7, 1988, Respondent executed the application for DEA registration which is the subject of the present proceeding. As a result of the application, DEA's Tampa Resident Office initiated an investigation of Orlando area pharmacies to determine whether or not Respondent had written controlled substance prescriptions without a DEA registration. The investigation revealed a total of ten controlled substance prescriptions written between October 1987 and August 1988. Some of the prescriptions listed the DEA registration number which Drug Enforcement Administration had been issued in Ohio after his suspension was reversed, and some listed the DEA number of another physician, both of which are clear violations of Federal laws and regulations.

Respondent testified on his behalf that he never knowingly prescribed controlled substance without a DEA registration. As to the instances which occurred in Ohio and resulted in the revocation of DEA registration BC0306399, Respondent testified that he was never aware that any of his patients were addicted, that he no longer considered Ritalin a proper medication for social dysfunction, and that he no longer treated patients for obesity. Respondent also submitted the affidavit of his attorney which stated that counsel had spoken with a representative of DEA's Office of Chief Counsel and had been assured that Respondent could continue to prescribe controlled substances until final action was taken on any pending applications. To offset this allegation, the Government introduced the affidavit of the named DEA representative, which affidavit stated that the representative had no memory of the alleged telephone conversation and that he would never have stated that it was permissible for Respondent to prescribe controlled substances in Florida while using an Ohio DEA registration number. Further evidence indicated that both the DEA Certificate of Registration itself and the Physician's Manual (revised July 1985), with which Respondent acknowledged familiarity, make it impermissible to transfer a DEA registration from one state to another for purposes of prescribing or dispensing controlled substances.

The administrative law judge concluded that Respondent's registration would be inconsistent with the public interest, finding that the reasons supporting the 1988 revocation still existed. Judge Bittner noted that Respondent prescribed controlled substances while in Florida and without a DEA registration, and that during the hearing Respondent did not demonstrate that he had greatly improved his knowledege of controlled substance handling. Finally, Judge Bittner concluded that Respondent is unable or unwilling at the present time to accept the responsibilities that accompany registration with DEA. Respondent's arguments concerning his reliance upon his attorneys and his failure to be aware that he was not registered with DEA did not sway the administrative law judge and do not convince the Administrator that Respondent is in any way ready to understand and abide by the regualtions governing the handling of controlled substances. Due to the lack of convincing evidence that Respondent's registration is consistent with the public interest, the administrative law judge recommended that Respondent's application for registration be denied.

The Administrator adopts the opinion and recommended ruling, findings of fact, conclusions of law and decision of the administrative law judge in its entirety. Respondent's application must be denied. The Administrator, in reaching this conclusion, considered Respondent's exceptions to Judge Bittner's opinion. However, nothing in Respondent's exceptions persuaded the Administrator that Respondent should be registered.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that any pending applications for registration under the Controlled Substances Act submitted by Lewis K. Curtwright, D.O., be, and they hereby are, denied.

This order is effective June 6, 1991.

Dated: May 29, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 91-13292 Filed 6-5-91; 8:45 am]

BILLING CODE 4410-09-M

Immigration and Naturalization Service

[INS No. 1400N-91; AG Order No. 1501-91]

Designation of Kuwait Under Temporary Protected Status Program; Correction

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice; correction.

SUMMARY: This notice corrects the public notice, published on March 27, 1991, beginning at 56 FR 12745, regarding the designation of Kuwait under the Temporary Protected Status Program. There was an inadvertent omission of the application fee for Temporary Protected Status for nationals of Kuwait. This notice also informs the public that the "Effective Date" caption for the document designating Kuwait under the Temporary Protected Status Program was corrected by the Office of the Federal Register on April 6, 1991, at 56

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FR 14290. In that document, the date "March 22, 1992" was corrected to read "March 27, 1991."

EFFECTIVE DATE: March 27, 1991.

FOR FURTHER INFORMATION CONTACT: Terrance O'Reilly, TPS Coordinator, Immigration and Naturalization Service, 425 I Street, NW., room 7122, Washington, DC 20536, Telephone: (202) 514–5309.

On page 12746, in the first column, a new paragraph (5) is added to read as follows:

"(5) A fee of fifty dollars ($50.00) for each application for Temporary Protected Status (Form I–104) filed by a national of Kuwait will be required at the time of filing with the Immigration and Naturalization Service."

Dated: May 29, 1991.

Dick Thornburgh,

Attorney General.

[FR Doc. 91–13357 Filed 6–5–91; 8:45 am]

BILLING CODE 4410–10–M

[INS No. 1400N–91; AG Order No. 1500–91]

Designation of Lebanon Under Temporary Protected Status Program; Correction

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice; correction.

SUMMARY: This notice corrects the public notice, published on March 27, 1991, beginning at 56 FR 12746, regarding the designation of Lebanon under the Temporary Protected Status Program. There was an inadvertent omission of the application fee for Temporary Protected Status for nationals of Lebanon. This notice also informs the public that the "Effective Date" caption for the document designating Lebanon under the Temporary Protected Status Program was corrected by the Office of the **Federal Register** on April 8, 1991, at 56 FR 14290. In that document, the date "March 22, 1992" was corrected to read "March 27, 1991."

EFFECTIVE DATE: March 27, 1991.

FOR FURTHER INFORMATION CONTACT: Terrance O'Reilly, TPS Coordinator, Immigration and Naturalization Service, 425 I Street, NW., room 7122, Washington, DC 20536, Telephone: (202) 514–5309.

On page 12746, in the second column, a new paragraph (5) is added to read as follows:

"(5) A fee of fifty dollars ($50.00) for each application for Temporary Protected Status (Form I–104) filed by a national of Lebanon will be required at the time of filing with the Immigration and Naturalization Service."

Dated: May 29, 1991.

Dick Thornburgh,

Attorney General.

[FR Doc. 91–13358 Filed 6–5–91; 8:45 am]

BILLING CODE 4410–10–M

[INS No. 1400N–91; AG Order No. 1499–91]

Designation of Liberia Under Temporary Protected Status Program; Correction

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice; correction.

SUMMARY: This notice corrects the public notice, published on March 27, 1991, beginning at 56 FR 12746, regarding the designation of Liberia under the Temporary Protected Status Program. There was an inadvertent omission of the application fee for Temporary Protected Status for nationals of Liberia.

EFFECTIVE DATE: March 27, 1991.

FOR FURTHER INFORMATION CONTACT: Terrance O'Reilly, TPS Coordinator, Immigration and Naturalization Service, 425 I Street, NW., room 7122, Washington, DC 20536, Telephone: (202) 514–5309.

On page 12746, in the first column, a new paragraph (5) is added to read as follows:

"(5) A fee of fifty dollars ($50.00) for each application for Temporary Protected Status (Form I–104) filed by a national of Liberia will be required at the time of filing with the Immigration and Naturalization Service."

Dated: May 29, 1991.

Dick Thornburgh,

Attorney General.

[FR Doc. 91–13359 Filed 6–5–91; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program; Extended Benefits; New Extended Benefit Period in the State of Puerto Rico

This notice announces the beginning of a new Extended Benefit Period in the State of Puerto Rico, effective on March 31, 1991, and remaining in effect for at least 13 weeks after that date.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. Under the Extended Benefit Program, individuals who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during an extended benefit period, to receive up to 13 weeks of extended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment Compensation Act is implemented by State unemployment compensation laws and by part 615 of title 20 of the Code of Federal Regulations (20 CFR part 615).

Each State unemployment compensation law provides that there is a State "on" indicator (triggering on an Extended Benefit period) for a week if the head of the State employment security agency determines that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment in the State equaled or exceeded the State trigger rate. The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator in the State. A benefit period will be in effect for a minimum of 13 weeks, and will end the third week after there is an "off" indicator.

Determination of an "on" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State for the 13-week period ending on March 16, 1991, equals or exceeds 5 percent and is 20 percent higher than the corresponding 13 week period in the prior two years, so that for that week there was an "on" indicator in the State.

Therefore, a new Extended Benefit Period commenced in the State with the week beginning on March 31, 1991. This period will continue for no less than 13 weeks, and until three weeks after a week in which there is an "off" indicator in the State.

Information for Claimants

The duration of extended benefits payable in the Extended Benefit Period, and the terms and conditions on which they are payable, are governed by the Act and the State unemployment compensation law. The State employment security agency will furnish a written notice of potential entitlement to extended benefits to each individual who has established a benefit year in the State that will expire after the new Extended Benefit Period begins. 20 CFR 615.13(c)(1). The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law to regular benefits during the Extended Benefit Period. 20 CFR 615.13(c)(2).

Persons who believe they may be entitled to extended benefits in the State named above, or who wish to inquire about their rights under the Extended Benefit Program, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, DC on May 29, 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 91–13374 Filed 6–5–91; 8:45 am]

BILLING CODE 4510–30–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 90–3A]

Cable Compulsory License: Specialty Station List

AGENCY: Copyright Office, Library of Congress

ACTION: Notice of filings, request for comments.

SUMMARY: In proceeding Docket No. RM 87–7D the Copyright Office established a revised list of broadcast television stations that qualify as specialty stations under the former distant signal carriage rules of the Federal Communications Commission (FCC) at 47 CFR 76.5(kk)(1981). A final specialty station list was published in 55 FR 40021 on October 1, 1990. Because several affidavits were submitted after the closing deadline date, the Copyright Office requested that broadcast stations not on the final list but who claim specialty station status, submit swore affidavits confirming their specialty station status under the FCC's former requirements. (See 55 CFR 40022). The Copyright Office now publishes a list of the stations that filed affidavits in response to its request for information at 55 FR 40022, and invites factual, specific comments from interested parties as to whether any station listed herein fails to qualify as a specialty station.

DATES: Comments should be received on or before July 8, 1991.

ADDRESSES: If delivered by mail, send comments to: Office of the General Counsel, U.S. Copyright Office, Library of Congress, Department 17, Washington, DC 20540. If delivered by hand, bring comments to: Office of the General Counsel, U.S. Copyright Office, James Madison Building, room 407 First and Independence Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Department 17, Washington, DC 20540, Telephone: (202) 707–8380.

SUPPLEMENTARY INFORMATION: On October 1, 1990, in 55 FR 40021, the Copyright Office published a final annotated list of specialty stations, following procedure established September 18, 1989 at 54 FR 38461. See also 54 FR 38466. Public proceeding Docket No. RM 87–7, which was initiated to assemble an updated specialty station list, yielded several late requests for addition to the list. As part of its efforts to update comprehensively the specialty station list for purposes of calculating royalties under the cable compulsory license at 17 U.S.C. 111, the Office opened a new public proceeding, Docket No. RM 90–3, and invited broadcast stations not qualifying for the final list published October 1, 1990, to submit affidavits should they claim specialty station status.

The Office hereby lists the stations submitted under Docket No. RM 90–3 *only*, and invites interested parties to present factual information should there be valid objection to identifying any station listed as a specialty station.

Proposed Specialty Station List

Call Letters and Cities of License

CIVA—Abitibi, Quebec
WNYB—Buffalo, New York
CHAU—Carlton, Quebec
KWHD—Castle Rock, Colorado
CIVV—Chicoutimi, Quebec
CJPM—Chicoutimi, Quebec
KTFH—Conroe, Texas
KVEA—Corona, California
KORO—Corpus Christi, Texas
CBXFT—Edmonton, Alberta
KINT—El Paso, Texas
WSCV—Ft. Lauderdale, Florida
KTMD—Galveston, Texas
W13BF—Hartford, Connecticut
CHOT—Hull, Quebec
CKRS—Jonquiere, Quebec
WNJU—Linden, New Jersey
CBGAT—Mantane, Quebec
CBAFT—Moncton, New Brunswick
KSMS—Monterey, California
CBFT—Montreal, Quebec
CRTM—Montreal, Quebec
CFJP—Montreal, Quebec
CRTU—Montreal, Quebec
CIVM—Montreal, Quebec
CKRN—Noranda-Rouyn, Quebec
CBOFT—Ottawa, Ontario
CBVT—Quebec City, Quebec
CFCM—Quebec City, Quebec
CBKFT—Regina, Saskatchewan
CJBR—Rimouski, Quebec
CFER—Rimouski, Quebec
CIVB—Rimouski, Quebec
CIMT—Riviere-du-Loup, Quebec
CKRT—Riviere-du-Loup, Quebec
CKRN—Rouyn, Quebec
CFEM—Rouyn-Noranda, Quebec
CFCM—Sainte-Foy, Quebec
WKAQ—San Juan, Puerto Rico
KSTS—San Jose, California
CBST—Sept-iles, Sept-iles, Quebec
CHLT—Sherbrooke, Quebec
CHOY—St. Jerome, Quebec
CBLFT—Toronto, Ontario
CICA—Toronto, Ontario
CHEM—Trois Rivieres, Quebec
CKTM—Trois Rivieres, Quebec
CBUFT—Vancouver, British Columbia
CBEFT—Windsor, Ontario
CBWFT—Winnipeg, Manitoba

Dated: May 30, 1991.

Ralph Oman,

Register of Copyrights.

[FR Doc. 91–13270 Filed 6–5–91; 8:45 am]

BILLING CODE 1410–08–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (91–50)]

NASA Advisory Council (NAC), Aerospace Medicine Advisory Committee (AMAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Medicine Advisory Committee.

DATES: June 17, 1991, 8:30 a.m. to 5 p.m.; June 18, 1991, 8:30 a.m. to 5 p.m.; and June 19, 1991, 8 a.m. to noon.

ADDRESSES: National Aeronautics and Space Administration, room 226, 600 Independence Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. J. Richard Keefe, Code SB, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–1530).

SUPPLEMENTARY INFORMATION: The Aerospace Medicine Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long-range

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planning of aerospace medicine research. The committee will meet to discuss OSSA status and Fiscal Year (FY) 1992 strategic planning, Life Sciences Division strategic planning, and status report on Spacelab Life Sciences-1, Office of Exploration, Space Station Freedom, Space Studies Board, and the Life Sciences Subcommittee. The Committee is chaired by Dr. Harry C. Holloway and is composed of 23 members. The meeting will be closed to the public from 10 a.m. to Noon on June 19, 1991, for a discussion of the qualifications of additional candidates for membership. Such a discussion would invade the privacy of the candidates and other individuals involved. Since this discussion will be concerned with matters listed in 5 U.S.C. 552(c)(6), it has been determined that the meeting will be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including Committee members). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Type of meeting: Open—Except for a closed session as noted in the agenda below.

Agenda

Monday, June 17
- 8:30 a.m.—Introductory Remarks.
- 9 a.m.—Review of Committee Action Items and Minutes, Subcommittee Reports.
- 10:15 a.m.—OSSA Status Report and FY 1992 Strategic Planning.
- 1 p.m.—Life Sciences Division Strategic Planning.
- 3:30 p.m.—ECOLab, Neurolab, and "The Decade of the Brain."
- 4 p.m.—Radiation Health Program Plan.
- 5 p.m.—Adjourn.

Tuesday, June 18
- 8:30 a.m.—Spacelab Life Sciences—1 Status Report.
- 10:15 a.m.—NASA Office of Exploration Planning Activities.
- 1 p.m.—Space Station Freedom Status Report.
- 3:15 p.m.—Space Studies Board Status and Activities.
- 4 p.m.—Life Sciences Advisory Subcommittee Status Report.
- 5 p.m.—Adjourn.

Wednesday, June 19
- 8 a.m.—Review of Action Items and Committee Assignments.
- 9 a.m.—Life Sciences Division Status and Update.
- 10 a.m.—Closed Session.
- Noon—Adjourn.

Dated: May 31, 1991.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91-13334 Filed 6-5-91; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Public Information Collection Requirement Submitted to OMB for Review

Date: May 28, 1991.

The National Credit Union Administration has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of submissions may be obtained by calling the NCUA Clearance Officer listed. Comments regarding information collections should be addressed to the OMB reviewer listed and to the NCUA Clearance Officer, NCUA, Administrative Office, room 7344, 1776 G Street, Washington, DC 20456.

National Credit Union Administration

OMB Number: 3133-0001.
Form Number: NCUA 5301.
Type of Review: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.
Title: Participating Credit Union (PCU) Sample.
Description: Credit union monthly survey provides financial data that serves as a basis for estimating consumer savings and credit, growth in assets, savings, investments and to monitor trends and developments at all U.S. credit unions. The information is used for supervisory program planning and management, and publication of industry statistics.
Respondents: Federally-insured credit unions.
Estimated Number of Respondents: 150.
Estimated Burden Hours per Reponse: .25 hours.
Frequency of Response: Monthly.
Estimated Total Reporting Burden: 450 hours.
Clearance Officer: Wilmer A. Theard, (202) 682-9700, National Credit Union Administration, room 7344, 1776 G Street, NW., Washington, DC 20456.
OMB Reviewer: Gary Waxman (202) 395-7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Becky Baker,

Secretary of the NCUA Board.

[Doc. 91-13350 Filed 6-5-91; 8:45 am]

BILLING CODE 7535-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts, Inter-Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Artists' Projects: Regional Initiative Section) to the National Council on the Arts will be held on June 21, 1991 from 9 a.m.-5 p.m. in room M-14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 4 p.m.-5 p.m. The topic will be policy discussion.

The remaining portion of this meeting from 9 a.m.-4 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, as amended, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: May 31, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-13383 Filed 6-5-91; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-331]

Iowa Electric Light and Power Co., Central Iowa Power Cooperative, and Corn Belt Power Cooperative; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-49, issued to the Iowa Electric Light and Power Company, et al. (the licensees), for operation of the Duane Arnold Energy Center (DAEC) located in Palo, Linn County, Iowa.

The amendment would revise the Technical Specification (TS) requirements for surveillance testing of main steam isolation valves (MSIVs).

The facility TSs presently require that the MSIVs be partial-stroke (slow closure) tested weekly and full-stroke tested (fast closure) quarterly. On May 19, 1991, the licensees observed evidence of stem galling on the "C" outboard MSIV and requested a Waiver of Compliance for relief from the weekly partial-stroke testing of the MSIVs by letter dated May 23, 1991. The staff's granting of the waiver on May 24, 1991 was based on the concern that the partial stroke testing could accelerate or exacerbate the observed damage to the "C" outboard MSIV, possibly rendering it inoperable, and the fact that the quarterly full-stroke exercising of the valves will continue to adequately demonstrate the valves' ability to perform their intended safety function. By expediting the amendment, compliance with the facility Technical Specifications would be resumed sooner, as the requirements for the weekly partial stroke testing of the MSIVs would be removed. This would decrease the probability of inadvertent scrams and transients by reducing the number of unnecessary challenges to the valves.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed change is judged to involve no significant hazards based on the following:

1. This proposed change deletes the requirement to exercise the MSIVs weekly. That weekly surveillance involves partial closure of each individual value to the 90% open position and reopening to the full open position.

The safety function of the MSIVs is to isolate the main steamlines in case of a steamline break or Control Rod Drop Accident in order to limit the loss of reactor coolant and/or the release of radioactive materials. The MSIVs perform a safety function which mitigates the consequences of accidents; however, an event could be initiated by the inadvertent closure of the MSIVs. Therefore, eliminating unnecessary operating of the MSIVs reduces the probability of occurrence of an inadvertent closure. Also, the surveillance which is being deleted does not test the safety function of the MSIVs. The safety function is tested during the quarterly full-stroke fast closure test. Since deleting the weekly exercise of the values is not considered to have a negative effect on the reliability of the MSIVs to perform their safety function, there is not increase in the consequences of any postulated accidents. Therefore, deleting the requirement for weekly exercise of the MSIVs does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The safety function of the MSIVs is to mitigate the consequences of accidents by isolating the main steamlines in order to limit the release of reactor coolant and/or radioactive materials. The MSIVs do not prevent the occurrence of any accident; however, an event could be initiated by the inadvertent closure of the MSIVs. This event (Group One Isolation) has been previously evaluated in chapter 15 of the Updated Final Safety Analysis Report for the Duane Arnold Energy Center. The weekly exercising of the MSIVs by partial closure does not test the safety function of the valves. The quarterly full-stroke fast closure test demonstrates the ability of the MSIVs to perform their safety function. Since the MSIV perform a mitigating safety function, and the quarterly test adequately demonstrates that the valves can perform that function, elimination of the weekly exercise will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The safety function of the MSIVs is not tested during the weekly exercise, the ability of the MSIVs to perform their safety function is tested quarterly. Therefore, deletion of the requirement to exercise the MSIVs weekly does not reduce the testing frequency of the safety function of the MSIVs. The weekly exercise of the MSIVs was originally specified in order to detect binding of the pilot valve, however the type of pilot valves that were susceptible to binding were replaced some time ago and there is no longer any need for frequent operation of the valves. The quarterly full closure test of the MSIVs adequately demonstrates that the MSIVs and their pilot valves are not binding and that the MSIVs will perform their safety function. Additionally, reducing the frequency of MSIV operation reduces the probability of inadvertent scrams and transients, and challenges to relief valves, providing an increase to the margin of safety.

The quarterly full-stroke fast closure test is considered to be sufficient. It is the only test required by the ASME Boiler and Pressure Vessel Code and the BWR Standard Technical Specification (STS). Also, other power-operated primary containment isolation valves are tested no more frequently than once per quarter.

Based upon the discussion above, the weekly exercise of the MSIVs does no test the safety function of the MSIVs and the quarterly full-stroke fast closure test fulfills the ASME and STS requirements. Therefore, eliminating the weekly exercise of the MSIVs does not significantly reduce any margin of safety.

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Accordingly, the Commission proposes to determine that this change does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within fifteen (15) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 8, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the Cedar Rapids Public Library, 500 First Street SE., Cedar Rapids, Iowa 52401. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of 30 days, the Commission will make a final determination on the issue of no significant hazards considerations. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves a no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1 (800) 325-6000 (in Missouri 1 (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John N. Hannon: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jack Newman and Kathleen H. Shea, Newman and Holtzinger, 1615 L Street NW., Washington, DC 20036, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 14, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room, Cedar Rapids Public Library, 500 First Street SE., Cedar Rapids, Iowa 52401.

Dated at Rockville, Maryland, this 31st day of May 1991.

For the Nuclear Regulatory Commission.

James R. Hall, Sr.,

Project Manager, Project Directorate III-3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-13360 Filed 6-5-91; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Meeting

AGENCY: Nuclear Waste Technical Review Board.

ACTION: Notice of Meeting.

Pursuant to the Nuclear Waste Technical Review Board's (the Board) authority under section 5051 of Public Law 100-203 of the Nuclear Waste Policy Amendments Act (NWPAA) of 1987, the Board's Panel on Structural Geology & Geoengineering will hold a meeting on July 15, 1991, at the Stouffer Concourse Hotel, 2399 Jefferson Davis Highway, Arlington, Virginia 22202; (703) 418-6800. The meeting is scheduled to run from 8:30 a.m. to 4:30 p.m. This panel meeting will precede a meeting of the full Board scheduled to be held at the same location on July 16-17, 1991.

The panel will hear presentations from representatives of the Department of Energy (DOE) and DOE contractors on the status of the management systems improvement strategy (MSIS) currently being implemented by the DOE Office of Civilian Radioactive Waste Management. The panel and meeting participants will discuss the strategy, which is to be structured around a systems engineering approach that separates the civilian radioactive waste management program into system and programmatic functions. The objective of the strategy is to develop improved system requirements and programmatic functions and processes.

The panel also will be briefed on the DOE's design review of the exploratory studies facility (ESF). The review of the ESF design program is being conducted by the DOE with the intent of resuming design activities upon completion of the MSIS in early August 1991.

Members of the public are welcome to attend as observers. Transcripts of the meeting will be available on a library-loan basis from Ms. Victoria Reich, Board librarian, beginning August 15, 1991.

The Nuclear Waste Technical Review Board was established in the NWPAA of 1987 to evaluate the technical and scientific validity of activities undertaken by the DOE's civilian radioactive waste management program. In the same law, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, for the possible development of a permanent underground repository for civilian high-level radioactive waste.

For further information, contact Paul Alford, Director of External Affairs, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; (703)235-4473.

Dated: May 31, 1991.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 91-13324 Filed 6-5-91; 8:45 am]

BILLING CODE 6820-AM

Meeting

ACTION: Notice of meeting.

Pursuant to the Nuclear Waste Technical Review Board's (the Board) authority under section 5051 of Public Law 100-203 of the Nuclear Waste Policy Amendments Act (NWPAA) of 1987, the Board will meet July 16-17, 1991, at the Stouffer Concourse Hotel, 2399 Jefferson Davis Highway, Arlington, Virginia 22202; (703) 418-6800. Sessions will run from 9 a.m. to 5 p.m. This full Board meeting follows a meeting of the Board's Panel on Structural Geology & Geoengineering scheduled to be held at the same location on July 15, 1991.

On July 16, Dr. John W. Bartlett, director of the Department of Energy's (DOE) Office of Civilian Radioactive Waste Management (OCRWM) will brief the Board on OCRWM research and budget priorities for the coming year. Following Dr. Bartlett's presentation, Mr. Carl Gertz, associate director for Geologic Disposal, OCRWM, will discuss the Yucca Mountain Site Characterization Project Office's current status and research/funding priorities. The Board also will be briefed by a representative of the General Accounting Office (GAO) on the GAO's evaluation of OCRWM activities and programs. Other presenters scheduled to appear that day are Mr. R.L. Robertson, assistant general manager, Systems Division, TRW Federal Systems Group; Dr. Todd La Porte, chair of the Task Force on Civilian Radioactive Waste Management, Secretary of Energy Advisory Board (SEAB); and Mr. Thomas Isaacs, acting director of Strategic Planning and International Programs, OCRWM. Mr. Robertson will provide the Board an overview of past, ongoing, and planned efforts related to the DOE's M & O contract. Dr. La Porte will brief the Board on future plans and activities of the SEAB task force. Mr. Isaacs will discuss high-level radioactive waste management activities in countries with which the DOE interacts. In particular, he will address how these countries view the importance of engineered versus natural barriers; what their perspectives are on thermal loading; and what progress has been made so far in selecting and characterizing potential repository sites. A question and answer period will follow each presentation.

On July 17, representatives of the Environmental Protection Agency (EPA) and the Nuclear Regulatory Commission (NRC) will brief the Board on the development and substance of EPA Standard 40 CFR part 191 and the NRC's conforming regulations (10 CFR part 60), respectively. The briefings will include the rationale underlying the development of the regulations and standard, their intent and content, and any plans for modifications. After these briefings, a representative of the NRC's Advisory Committee on Nuclear Waste will comment on the EPA and NRC presentations. This discussion will be followed by a presentation by DOE staff on the intent and content of the DOE's site-selection guidance regulation, 10 CFR part 960, and an update on the DOE's early site-suitability evaluation for Yucca Mountain.

Members of the public are welcome to attend as observers. Transcripts of the meeting will be available on a library-

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loan basis from Ms. Victoria Reich, Board librarian, beginning August 15, 1991.

The Nuclear Waste Technical Review Board was established in the NWPAA of 1987 to evaluate the technical and scientific validity of activities undertaken by the DOE's civilian radioactive waste management program. In the same law, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, for the possible development of a permanent underground repository for spent nuclear fuel and defense high-level radioactive waste.

For further information, contact Karyn Severson, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; (703) 235–4473.

Dated: May 31, 1991.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 91–13325 Filed 6–5–91; 8:45 am]

BILLING CODE 6820–AM–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

President's Council of Advisors on Science and Technology (PCAST)

The President's Council of Advisors on Science and Technology will meet on July 11–12, 1991. The meeting will begin at 9 a.m. in the Conference Room, Council on Environmental Quality, 722 Jackson Place, NW., Washington, DC.

The purpose of the Council is to advise the President on matters involving science and technology.

Proposed Agenda

1. Briefing of the Council on the current activities of the Office of Science and Technology Policy and of the private sector.
2. Briefing of the Council on current federal activities and policies in science and technology.
3. Discussion of progress of working group panels.

Portions of the July 11–12 sessions will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of materials that are formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552b(c)(1), (2), and (9)(B).

A portion of the discussion of panel composition will necessitate discussion of information of a personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552b(C)(6).

Because of the security requirements, persons wishing to attend the open portion of the meeting should contact Ms. Ann Barnett (202) 395–5101, prior to 3 p.m. on July 9, 1991. Ms. Barnett is available to provide specific information regarding time, place, and agenda.

Dated: May 20, 1991.

Ms. Damar W. Hawkins,

Executive Assistant, Office of Science and Technology Policy.

[FR Doc. 91–13372 Filed 6–5–91; 8:45 am]

BILLING CODE 3170–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–29251; International Series Release No. 278; File No. SR–Amex–91–11]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc. Relating to Index Warrants based on FT–SE Eurotrack 100 Index.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 7, 1991, the American Stock Exchange, Inc. ("Amex") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is proposing to approve for listing and trading under Section 106 of the Amex Company Guide index warrants based on the Financial Times-Stock Exchange ("FT–SE") Eurotrack 100, an index of 100 stocks representing eleven European countries, excluding the United Kingdom.

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

Under section 106 (Currency and Index Warrants) of the Amex Company Guide, the Exchange may approve for listing index warrants based on established foreign and domestic stock indices. The Amex is proposing to list index warrants based on the FT–SE Eurotrack 100 ("Index"), a capitalization-weighted index of 100 leading stocks representing eleven European countries (excluding the U.K.). All index stocks are traded through the facilities of the International Stock Exchange of the United Kingdom and the Republic of Ireland ("ISE"), via ISE's Stock Exchange Automated Quotation System (SEAQ) International.

The Index, which is designed and managed by ISE, is calculated and disseminated minute by minute, from 9:45 a.m. to 3:30 p.m. (London time), utilizing SEAQ International real time prices. The Index is widely disseminated via publications (e.g., Financial Times) and commercial information vendors.

The capitalization weighting for Index component stocks for each index country are as follows, as of April 12, 1991: Germany (26.18%); France (22.63%); Netherlands (12.60%); Switzerland (11.01%); Italy (10.41%); Spain (6.5%); Belgium (5.12%); Sweden (3.59%); Ireland (1.15%); Norway (0.45%); Denmark (0.30%).

Such warrant issues will conform to the listing guidelines under section 106, which provide that (1) the issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed size and earnings requirements in Section 101(a) of the Company Guide; (2) the term of the warrants shall be for a period ranging from one to five years from date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants, together with a minimum of 400 public holders, and an aggregate market value of $4,000,000.

Eurotrack 100 index warrants will be direct obligations of their issuer subject to cash-settlement during their term, and either exercisable throughout their life (i.e., American style) or exercisable only on their expiration date (i.e., European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the Eurotrack 100 has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the Eurotrack 100 has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

The Amex has adopted suitability standards applicable to recommendations to customers of index warrants and transactions in customer accounts. Rule 411, Commentary .02 applies the options suitability standard in rule 923 to recommendations regarding index warrants; and the Amex recommends that index warrants be sold only to options-approved accounts. Rule 421, Commentary .02 requires a Senior Registered Options Principal or a Registered Options Principal to approve and initial a discretionary order in index warrants on the day entered. In addition, the Amex, prior to the commencement of trading, will distribute a circular to its membership calling attention to specific risks associated with warrants on the Eurotrack 100.

In its approval order for index warrants (Release No. 34–26152, October 3, 1988), the Commission noted that, in connection with trading of index warrants based on a foreign index, there should be adequate surveillance sharing agreements with respect to the component stocks of the underlying index. The Amex has in place surveillance sharing agreements with certain principal markets where the component Index securities are traded.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Securities Exchange Act of 1934 ("Act") in general and furthers the objectives of section 6(b)(5) of the Act in particular in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number in the caption above and should be submitted by June 27, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 30, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–13293 Filed 6–5–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–29258; File No. SR–CBOE–91–19]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Limiting Exchange Liability Resulting From the Use by Members of Exchange Automated Systems

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 13, 1991, the Chicago Board Options Exchange ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to modify Exchange Rule 6.7 to provide for a limitation on the Exchange's liability for losses resulting from an Exchange member's transmission of custody of an unexecuted order to or through the Exchange's Order Routing System, Electronic Book or Retail Automatic Execution System, or to any other automated facility of the Exchange whereby the Exchange assumes responsibility for the transmission or execution of the order. Provided that the Exchange has acknowledged receipt of the order, the proposal permits Exchange liability for the negligent acts or omissions of its employees or for the failure of its systems or facilities, within the specified limitations. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at

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the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Exchange Rule 6.7 currently disclaims the CBOE's liability to its members for losses arising out of the use of facilities or systems of the Exchange. This rule was amended in 1978 to specifically disclaim any liability relating to the newly developed Order Support System. The 1978 amendment was intended to disclaim CBOE liability for losses resulting from the use of any Exchange system.

Despite this rule, which places the liability for any problems with the user of the systems, the Exchange has made payments to members and member firms to offset losses incurred as a result of Exchange systems' errors or outages. These payments were initially made to encourage member firms to use Exchange automated systems such as the Order Routing System ("ORS"), the Retail Automatic Execution System ("RAES"), and the Electronic Book ("EB") during their developmental states.

The proposal will modify rule 6.7 to support the Exchange's current practice of accepting liability under specific circumstances in the use of ORS, RAES, or EB. The proposal limits such payments as follows:

(a) $100,000 as to any claim or series of claims made by a single member on a single day;

(b) $250,000 as to claims by all members on any single trading day; and

(c) $500,000 as to all claims, in aggregate, by all members in any calendar month.

The Exchange believes that these limitations will allow the CBOE to continue to support its members and member firms at the liability levels that have been experienced since the introduction of the automated systems.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to foster cooperation and coordination with persons engaging in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose an inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 27, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

[1] 17 CFR 200.30-3(a)(12) (1990).

Dated: May 30, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-13405 Filed 6-5-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29240; File No. SR-NASD-91-21]

Self-Regulatory Organizations; Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to an Interim Extension of the OTC Bulletin Board Service Through November 30, 1991

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 3, 1991, the National Association of Securities Dealers, Inc. ("NSAD" or "Association") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as describe in Items I, II, and III below, which Items have been prepared by the NASD. The NASD also submitted two amendments, which are incorporated in this notice.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and to grant partial accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On June 1, 1990, the NASD initiated operation of the OTC Bulletin Board Service ("Bulletin Board" or "Service") in accord with the Commission's approval of File No. SR-NASD-88-19, as amended.[3] The Service provides a real-time quotation medium that NASD member firms can elect to use to enter, update, and retrieve quotation information (including unpriced indications of interest) for securities traded over-the-counter that are not included in the NASDAQ System nor listed on a registered national securities exchange (collectively referred to as "unlisted securities"). Essentially, the Bulletin Board is an electronic medium that supports NASD members' market making in unlisted securities through authorized NASDAQ Workstation units. Real-time access to information captured in the Service is restricted to

[1] 15 U.S.C. 78s(b)(1)

[2] See letters to Jonathan G. Katz, Secretary, SEC, from Robert E. Aber, Deputy General Counsel, NASD, dated May 7 and 13, 1991.

[3] See Release No. 34-27975 (May 1, 1990), 55 FR 19124 (May 8, 1990).

broker-dealers that are NASD members and that have NASDAQ Workstation units authorized for Level 2 or Level 3 NASDAQ service. The principal operational features of the Service were fully described in File No. SR-NASD-88-19, which is hereby incorporated by reference.[4] The Commission's approval of the Service is limited to a pilot term of one year, which expires on May 31, 1991.

The NASD hereby files this proposed rule change, pursuant to Section 19(b)(1) of the Act and Rule 19b-4 thereunder, to obtain authorization for an interim extension of the Service through November 30, 1991. The NASD has requested, pursuant to Section 19(b)(2) of the Act, that the Commission find good cause to grant accelerated approval for the interim extension of the Service's present operations and fee structure by May 31, 1991.[5]

The NASD also proposes to implement the following system enhancements to facilitate market making by NASD members during the interim extension: (1) Access to Bulletin Board functionality on page one of the NASDAQ Workstation service; (2) a query capability to allow retrieval of all market makers, quotations in an unlisted security in the form of ranked bids and offers (*i.e.*, bids arrayed from the highest to the lowest and offers from the lowest to the highest with the corresponding market maker identifiers); (3) modification of the bid/offer price fields to 6 digits on either side of a decimal; and (4) calculation and dissemination of an inside market for each unlisted security in which market makers have entered priced quotations (either one or two-sided).[6] In all other respects, the Bulletin Board will continue to operate in the manner contemplated by the original approval order, including maintenance of the present fee structure applicable to registered market makers.

During the interim extension, the NASD will also proceed to develop and submit another Rule 19b-4 filing that will address the following areas: (i) Permanent status for the Service and additional system enhancements; (ii) a permanent fee structure for NASD members utilizing the Service; (iii) facilities for dissemination of Bulletin Board information to market data vendors via broadcast feeds; (iv) the establishment of appropriate subscriber charges applicable to vendors' customers; and (v) the terms and conditions for continued inclusion of foreign securities/ADRs in the Service.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The principal purpose of this filing is to provide a brief transition period during which the NASD will continue the Service's operations and fee structure for an interim extension through November 30, 1991. The NASD also proposes to implement the technical enhancements described in section I; finalize the specifications for delivery of Bulletin Board quotation information to vendors via broadcast feeds; and establish an appropriate fee structrue to assure recovery of the costs of developing, operating, and maintaining the Service.

At the time the Service was launched, the NASD had entered into a working agreement with Commerce Clearing House, Inc./National Quotation Bureau, Inc. ("CCH/NQB").[7] Among other things, CCH/NQB produces the Pink Sheets, a printed quotation medium that is distributed nationwide and contains broker borker-dealers' quotations/indications of interest for thousands of unlisted securities. Under the working agreement, the NASD furnishes CCH/NQB, twice daily, a static transmission of data captured in the Service's data base. CCH/NQB incorporates the data from the first transmission into the next day's Pink Sheets. The second transmission (consistng of end-of-day information) is processed and supplied to subscribers of CCH/NQB's electronic delivery service the following morning. The principal undertakings embodied in the NASD-CCH/NQB working agreement will cease as of June 1, 1991, pursuant to the agreement's terms.

Based on operating the Service for nearly one year, the NASD has identified several enhancements that would make the Service more responsive to the operational needs and trading practices of member firms. Four of these enhancements (which were listed in the first section of this filing) could be implemented prior to November 30, 1991. However, the NASD will use its best efforts to achieve implementation by September 30, 1991. The most significant is the calculation and display of an inside market price for unlisted securities quoted in the Service. Assuming Commission approval of File No. SR-NASD-91-12, market makers will be precluded from entering indicative bids/offers (*i.e.*, non-firm bid/offer prices) into the Service for domestic securities.[8] Hence, it will be possible for the NASD to calculate and display an inside market to member firms based entirely upon firm, priced entries. The availability of such quotation information should expedite price discovery in individual securities and foster the execution of retail orders at the best available price.

During the proposed extension of the Service, foreign securities/ADRs will remain subject to the twice-daily, update limitation. Consequently, priced bids/offers in these securities will remain indicative. To the extent that market makers enter indicative bids/offers for unlisted foreign securities/ADRs, inside markets would be calculated and disseminated in virtually the same manner as they are for domestic issues quoted in the Service. However, the indicative character of these quotations will be clearly identified to differentiate them from inside quotations for domestic securities quoted in the Service.

In conjunction with the operation of the Service, the NASD has established a filing requirement and review procedures to verify member firms' compliance with Rule 15c2-11 under the Act.[9] During the proposed extension,

[4] See Securities Exchange Act Release No. 25949 (July 28, 1988), 53 FR 29096 (August 2, 1988).

[5] See letter to Jonathan G. Katz, Secretary, SEC, from Robert E. Aber, Deputy General Counsel, NASD, dated May 13, 1991.

[6] The NASD has informed Commission staff that it will file a proposed rule change in the future that will specify and seek approval of the specific method for calculation of an inside market.

[7] The working agreement between the NASD and CCH/NQB was detailed in Amendment No. 2 to File No. SR-NASD-88-19, which Amendment is hereby incorporated by reference. See Securities Exchange Act Release No. 28545 (February 14, 1989), 54 FR 7901 (February 23, 1989).

[8] See Securities Exchange Act Release No. 28946 (March 6, 1991), 56 FR 10932 (March 14, 1991). File No. SR-NASD-91-12 would not prohibit market makers in domestic securities from entering unpriced indications of interest or bid wanted/offer wanted indications.

[9] See section 4 of Schedule H to the NASD By-Laws.

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this review process will continue to be an integral component of the NASD's self-regulatory oversight of the Service. Additionally, the NASD expects to work closely with the Commission staff in developing enhancements to the Service mandated by passage of the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 ("Reform Act"). Implementation of the Reform Act entails Commission rulemaking in several areas, including the development of mechanisms for gathering and disseminating reliable quotation/transaction information for "penny stocks."

The NASD relies on sections 11A(a)(1), 15A(b) (6) and (11) of the Act as the statutory basis for the instant rule change proposal. These provisions also constituted the statutory basis for the Service's pilot operation.

Section 11A(a)(1) sets forth the Congressional findings and policy goals respecting the development of a National Market System. Specifically, the Congress found that new data processing and communications techniques should be applied to improve the efficiency of market operations, broaden the distribution of market information, foster competition among market participants and enhance opportunities for the best execution of customer orders. Section 15A(b)(6) requires, *inter alia*, that the NASD's rules promote just and equitable principles of trade, facilitate securities transactions, and protect public investors. Additionally, subsection (11) authorizes the NASD to adopt rules governing the form and content of quotations for securities traded over-the-counter for the purposes of producing fair and informative quotations, preventing misleading quotations, and promoting orderly procedures for collecting and disseminating quotations.

The NASD submits that extension of the Service through November 30, 1991, before May 31, 1991, and implementation of the system enhancements described above, are fully consistent with sections 11A(a)(1), 15A(b) (6) and (11) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that any burden will be placed on competition as a result of this filing.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause, pursuant to section 19(b)(2) of the Act, for approving the interim extension of the Service prior to the 30th day after its publication in the **Federal Register** to avoid interruption of the Service. The current authorization for the Service extends through May 31, 1991. Hence, it is imperative that the Commission approve that segment of the instant filing on or before that date. Otherwise, the NASD will be required to suspend operation of the Service pending Commission action on the proposed extension. The NASD believes that accelerated approval is appropriate to ensure continuity in the Service's operation pending a later determination on permanent status for the Service. Continued operation of the Service will ensure the availability of an electronic quotation medium to support member firms' market making in approximately 4,000 unlisted equity securities.

The Service's operation also expedites price discovery and facilitates the execution of customer orders at the best available price. The NASD submits that no public policy or regulatory objective would be served by an interruption, however brief, in the NASD's provision of the Service. Finally, a subsequent Rule 19b–4 filing dealing with permanent status and fees will provide ample opportunity for interested parties to comment on any policy issues posed by the Service's operation.

The Commission finds good cause for approving the interim extension prior to the 30th day after the date of publication of the notice in the **Federal Register**. Accelerated approval of the interim extension is appropriate to ensure continuity in the Service's operation as an electronic quotation medium that supports NASD's members market making in these securities and that facilities price discovery and the execution of customer orders at the best available price. As noted above, the proposed enhancements will be considered for final Commission action following the normal comment period.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and, if related to the interim extension, should be submitted by June 27, 1991.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the interim extension for the OTC Bulletin Board, be, and hereby is, approved for a six (6) month period, inclusive of November 30, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Dated: May 28, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–13406 Filed 6–5–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–29259; No. SR–NYSE–91–11]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc. Relating to Proposed Amendments of Rule 319 (Fidelity Bonds)

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 16, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend rule 319 (Fidelity Bonds) to maintain the current coverage requirements and basis for their computation while providing an alternate method of establishing the required basic minimum coverage. File No. SR–NYSE–83–13, which contained an earlier proposed revision of rule 319, has been withdrawn by the Exchange.[1]

[10] 17 CFR 200.30–3(a)(12).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The proposed rule change consists of amendments to Rule 319 (Fidelity Bonds).

Rule 319 requires member organizations and members not associated with member organizations that conduct a public business to obtain fidelity insurance coverage in a form and in amounts prescribed by the rule. In 1983, the Exchange proposed to significantly increase required coverage levels and change the basis for computing such levels from required net capital to securities and monies under possession and control. The 1983 proposal included a $50 million ceiling on required coverage. In 1986, an amendment to the proposal was filed which reduced the proposed required coverage levels to include a ceiling of $25 million.

The Securities Industry Association (SIA) has recommended a proposed amendment to rule 319 which, while maintaining the current coverage requirements and basis for their computation, provides an alternative method of establishing the required basic minimum coverage. Presently, required minimum coverage is formulated on the basis of a member's or firm's net capital requirement. The proposed amendment will allow a member or member organization to calculate coverage using a "monies and securities in possession and control" standard as an alternative to the current rule, provided this method would not result in basic coverage lower than the basic coverage required under the net capital-based method.

The SIA has informed the Exchange that it believes that the Department of Labor would consider an exemption to its fidelity bond requirements if NYSE requirements were based on assets under possession and control. This would provide significant relief to member organizations which manage Employee Retirement Income Security Act of 1974 ("ERISA") plan accounts and must now comply with fidelity bonding requirements of both NYSE Rule 319 and ERISA Rule 412.

While the current capital based method of computing requirements with a range of $200,000 to $5 million would remain, the alternative method of calculating basic coverage (*e.g.*, monies and securities in possession and control) includes a $25 million ceiling.

The Exchange believes that most members and member organizations will continue to use the existing requirements utilizing the net capital-based method of calculating coverage that prescribes a maximum requirement of $5 million.

The proposed rule change also contains amendments to update and clarify certain provisions, most of which had been included in the 1983 filing.

(b) Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is generally designed to protect investors and the public interest by ensuring that members and member organizations comply with certain prescribed minimum fidelity insurance standards.

The proposed amendment also is consistent with Section 6(c)(3)(A) of the Act which permits a national securities exchange to deny or condition the membership of a broker-dealer that does not meet such standards of financial responsibility as are prescribed by the rules of the Exchange.

In addition, the proposed revision is in keeping with SEC Rule 15c3–1 in that it protects a member organization's capital structure against unexpected loss.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) (institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–91–11 and should be submitted by June 27, 1991.

[1] See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Mary Revell, Branch Chief, Commission, dated April 15, 1991. File No. SR–NYSE–83–13 was noticed in Securities Exchange Act Release No. 19721 (May 2, 1983), 48 FR 20637 (May 9, 1983) and in Securities Exchange Act Release No. 22909 (February 14, 1986), 51 FR 6849 (February 26, 1986) (Amendment No. 1 to File No. SR–NYSE–83–13).

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For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 30, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-13407 Filed 6-5-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29248; File No. SR-PSE-91-10]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to the Disclosure of Member Financial Arrangements

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 7, 1991, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE is submitting to the Commission, pursuant to Rule 19b-4, a proposed rule change to require market makers, floor brokers, specialists or member organizations who enter into financial arrangements with any other member, to disclose to the Exchange the terms of such arrangements. The text of the proposed rule change is attached as appendix A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to provide for enhanced enforcement of Exchange rules by requiring all Exchange members to disclose to the Exchange their direct financial arrangements with other Exchange members. The parameters as stated in the rule limit the type of disclosure to three specific areas designed to solicit information necessary for the Exchange to monitor the various kinds of transactions that have an effect on trading activity, particularly on the Exchange's options and equity trading floors. Further, by broadening the scope of the proposed rule's applicability to the entire membership, and to hold all parties involved in an arrangement responsible for disclosure, the Exchange believes that the proposal will serve to increase the PSE's ability to monitor existing financial arrangements in order to prevent potential collusive trading activity.

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the PSE believes that the proposed rule change is consistent with section 6(b)(5) of the Act which provides, in part, that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, and enables the Exchange to more appropriately promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 27, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 29, 1991.

Jonathan G. Katz,

Secretary.

Appendix A—Rule 4.18—Disclosure of Financial Arrangements of Members

A market maker, floor broker, specialist or member organizaiton who enters into a financial arrangement with any other member, shall disclose to the Exchange the name of such member and the terms of the arrangement. For the purposes of this rule, a financial arrangement shall be defined as:

1. The direct financing of a member's dealings upon the Exchange;

2. Any direct equity investment or profit sharing arrangement;

3. Any consideration over the amount of $5,000.00 that constitutes a gift, loan, salary or bonus.

The disclosure of such financial arrangement shall be the responsibility of all parties involved.

Unless otherwise agreed, the Exchange member shall submit to the Exchange notification of the initiation or termination of such financial arrangements within ten (10) business days of the effective date of such arrangements. Failure to disclose financial arrangement terms to the Financial Compliance Department may result in disciplinary action by the Exchange.

The Exchange shall have the authority to restrict the trading activity of members with financial arrangements in instances that it deems appropriate, as determined on a case-by-case basis, pursuant to rule 6.40. Such restrictions may be subject to appeal, pursuant to rule 11.7.

[FR Doc. 91-13295 Filed 6-5-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29247; File No. SR-PHLX-91-21]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Responsibility for Missed Orders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 6, 1991, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX, pursuant to Rule 19b-4 under the Act, hereby proposes to adopt Option Floor Procedure Advice ("OFPA") D-1, which pertains to procedures for notification and responsibility for missed orders on the Exchange's equity and foreign currency options floors. A copy of the specific rule change is attached as Appendix A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to adopt OFPA D-1 that would govern procedures for notification and responsibility for missed orders on the Exchange's equity and foreign currency options floors. A missed order, as defined in part (c) of the Advice, is one that "becomes due an execution" but was not duly executed. For example, a trade-through of a book order results in a missed order. OFPA D-1 requires notification of missed orders to the specialist by 9:30 a.m. on the business day following the day the order was missed. If notification is given, the specialist is responsible for taking the steps enumerated in part (b) of the proposed Advice, including immediate execution. If timely notification is not made, the specialist will not be held responsible for the remedies in part (b) unless two floor officials determine that, in the interest of maintaining just and equitable principles of trade, it is necessary to hold the specialist responsible.

The PHLX believes the proposed rule change is consistent with section 6(b)(5) of the Act which provides, in part, that the rules of the Exchange be designed to protect the investing public, as well as remove impediments to and perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 27, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 29, 1991.

Jonathan G. Katz,

Secretary.

Appendix A—All New Text—D-1 Missed Orders

(a) When an order held on the book or in the crowd becomes due an execution but is erroneously missed being given the appropriate execution, proper notification that the order was "due" must be made to the responsible floor agent by 9:30 a.m. on the business day following the day the order first became due. Absent proper notification no claim will be qualified to require that the agent on the floor be held responsible for satisfying the missed order or for any associated monetary losses, except as deemed necessary by two floor officials in the interest of maintaining just and equitable principles of trade.

(b) Remedies for those missed orders discovered by the agent, or for which notification is made to the agent, by the 9:30 a.m. cut-off time shall be made available to the customer's representative by the responsible floor agent as follows:

(i) A missed order discovered during the trading day on the day it became "due" shall be given an execution immediately upon discovery at either the order's limit price or at the available price in the market, whichever is better, and shall be afforded such execution up to the amount of contracts which traded-through or for a minimum of ten contracts with respect to a quote-through.

(ii) A missed order discovered and made known to the responsible floor agent at any time between the previous session's close

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and 9:30 a.m. on the following business day shall be immediately filled at its limit price or on the previous closing quote, whichever is better, up to the amount of contracts which traded-through or for a minimum of ten contracts with respect to a quote-through.

(c) For the purposes of this rule, an order becomes due when execution guarantees are met in accordance with agreements made between the specialist and the customer's firm, or when a trade-through or quote-through at an inferior price to the order's limit occurs on the Exchange.

Fine Schedule

D–1

Fine not applicable.

[FR Doc. 91–13296 Filed 6–5–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–29257; File No. SR–PHLX–91–25]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Philadelphia Stock Exchange's "Off-Hours Trading" Sessions

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 15, 1991, the Philadelphia Stock Exchange, Inc. ("Phlx" for "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to extend its trading hours beyond the close of its 9:30 a.m. to 4 p.m. trading session to permit the execution of: (i) single-stock, single-sided closing-price orders; (ii) crosses of single-stock, closing-price buy and sell orders; and (iii) crosses of multiple-stock aggregate-price buy and sell orders. The proposed rule change consists of amendments to existing Phlx rules to accommodate the adoption of a new "800 series" of rules that apply solely to these sessions.[1]

[1] The exact text of the proposed rule change was attached to the rule filing as Exhibit B and is available at the Phlx and the Commission at the address noted in Item IV below.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Phlx proposed rule change replicates two rule changes submitted by the New York Stock Exchange, Inc. ("NYSE") and approved by the Commission regarding the NYSE Off-Hours Trading sessions.[2] In this regard, the Phlx's proposal is solely in competitive response to the NYSE's proposal. The Phlx continues to have serious concerns with the NYSE's proposal as it is currently structured, including the proposal's potential detrimental impact on the auction market when effectuated by a primary market center such as the NYSE. Nevertheless, since the Commission has found the NYSE proposal to be consistent with the Act, the Phlx intends to be a significant participant in this changed market structure arena.

The Phlx's proposed rule change in substantively identical in most material aspects to the NYSE's proposal. In this regard, the Phlx proposes to offer two Off-Hours Trading sessions—Crossing Session I and Crossing Session II—after the 4 p.m. closing of the Exchange's normal auction trading hours.

Crossing Session I: Closing-Price Orders [3]

Commencing a few minutes after 4 p.m. on each day that the market is open, Crossing Session I, a closing-price session, will enable entry of single-stock, single-sided orders ("closing-price single-sided orders") for execution at 5 p.m. against one another at the last price at which the stock traded during the 9:30 a.m. to 4 p.m. session on the NYSE.[4] Certain limit orders migrated from the 9:30 a.m. to 4 p.m. session will participate as well. In addition, Crossing Session I will allow entry after 4 p.m. of coupled single-stock closing-price buy and sell orders for execution at 5:00 p.m. at the closing price on the NYSE ("closing-price coupled orders").

After 4 p.m., a member or member organization may enter via the Philadelphia Stock Exchange Automated Communication and Execution System ("PACE") a closing-price single-sided order (round lots only) or closing-price coupled order (odd lots and partial round lots permitted) for any NYSE-listed issue (including rights, warrants, and American Depository Receipts) other than an NYSE issue that remained halted as of the close of the regular trading session.

Round-lot orders of sizes provided for in Phlx Rule 229 will be eligible. All closing-price orders will be held until 5 p.m. without any executions taking place.

Member organizations also may designate unconditioned round-lot and partial round-lot and limit orders entered during the 9:30 a.m.–4 p.m. session as "GTX" ("good 'til cancelled, executable through crossing session") to enable the orders to be executed against closing-price single-sided orders during Crossing Session I.[5] Upon receipt of the

[2] See Files No. SR–NYSE–90–52 and SR–NYSE–90–53 in which the NYSE proposed to extend its trading hours beyond the close of the 9:30 a.m. to 4 p.m. trading session and establish an "Off-Hours Trading" facility. The NYSE's Off-Hours Trading facility (Files No. SR–NYSE–90–52 and SR–NYSE–90–53) was approved by the Commission on May 20, 1991.

[3] In addition to filing with the Commission rules for its proposed Off-Hours Trading sessions, the Phlx has requested that the Commission grant exemptive and interpretive relief from a number of sections of the Act and the rules thereunder in connection with the proposal. Specifically, the Phlx seeks exemptive relief from Rule 11Aa3–1, which deals with trade reporting requirements, Rule 10a–1, the Commission's short sale rule, and Rule 10b–18, for transactions effected during Crossing Session I. In addition, the Phlx requests that the Commission undertake rulemaking procedures to adopt a new rule that would exempt transactions in Crossing Session I from transaction fees under section 31 of the Act. For a discussion of these issues, see letter from William W. Uchimoto, General Counsel, Phlx, to Brandon Becker and Larry Bergmann, Associate Directors, Division of Market Regulation, SEC, dated May 10, 1991.

[4] The availability of Exchange systems for entry of closing-price orders will be delayed until the systems can "shift gears" from the continuous auction to the Off-Hours Trading Session. The Exchange will use its existing systems to operate its Off-Hours Trading session. This use will not adversely affect their capacity or operation in respect of the 9:30 a.m. to 4 p.m. session.

[5] Specialists will have knowledge of any GTC orders on the specialists' limit order books that have been designated GTX and thus eligible to migrate to Crossing Session I. Specialists also will be present on the floor at 5 p.m. to effect any Crossing Session I related transaction.

closing trade's price in a security, the specialists' limit order books will be swept for GTX orders that are at or better than the closing price. The "migrated" GTX orders will retain their priority as among themselves, and will have priority over all closing-price single-sided orders.

A member or member organization may enter closing-price orders and cancel closing-price orders and GTX orders until their 5 p.m. execution. However, if, between 4 and 5 p.m., news or other events cause the Exchange to determine that the closing-price facility should not be available for a specific stock, the Exchange will disseminate a notice to that effect over the low speed "ticker" line, cancel all closing-price orders, and return the GTX orders to the book (maintaining their priority).

Closing-price single-sided orders and GTX orders will be matched on a first-in, first-out ("FIFO") basis (with GTX orders deemed "first-in"). At 5 p.m., a clearing execution will take place. Any closing-price single-sided orders not executed will be returned; they would have to be re-entered to participate in the next day's opening. Unexecuted GTX orders will be returned to the book, maintaining their priority; therefore, they will participate in the next day's opening, unless cancelled prior to the opening by the entering broker.

Closing-price coupled orders also will be independently executed at 5 p.m. Closing-price coupled orders will be entered without possibility of break-up and can only be executed in full.

The Phlx proposes to implement trade reporting for the closing-price session by reporting closing-price single-sided orders and closing-price coupled orders at 5 p.m. over the high speed facility of the Consolidated Tape Association ("CTA") Plan and the low speed line as two transactions per stock—one for closing-price single-sided orders (and GTX orders) and one for closing-price coupled orders. Each print will include the closing price and aggregate volume for each stock. The prints created from execution of coupled orders will be accompanied by an indicator that so identifies them.

Crossing Session II: Aggregate-Price Coupled Orders [6]

Crossing Session II, an aggregate-price session, will enable member organizations to cross stock portfolios at aggregate prices. The crosses may include stocks not listed on the Exchange, but only admitted to unlisted trading privileges ("UTP"), in order to permit, for example, executions of portfolios based on broad market indices that include stocks not listed on the Exchange. Member organizations can only enter coupled buy and sell orders that include at least 15 NYSE-listed stocks having a total market value of $1.0 million or more ("aggregate-priced coupled orders").

Aggregate-price coupled orders cannot be entered until after the close of the 9:30 a.m.–4 p.m. auction market session. Members and member organizations will transmit summary data regarding aggregate-price coupled orders to the Exchange via facsimile. The facsimiles will be immediately time-stamped and confirmed back to the entering brokers, thereby effecting continuous executions of these orders.

Neither pre-4 p.m. trading halts in one or more individual stocks nor the unavailability of Crossing Session I to one or more individual stocks due to post 4 p.m. news will affect the execution of aggregate-price coupled orders. However, a market-wide halt pursuant to rule 133 that is still in effect at 4 p.m. will apply to both sessions.

The Phlx proposes to report trades in Crossing Session II as a composite transaction value by aggregating the total number of shares and the total market value of the aggregate-price trades into one report.[7] After 5:15 p.m., the Phlx will disseminate one report that will provide the total volume for all the aggregate-price orders executed during the crossing session as an administrative message.[8]

This proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed

[6] The Phlx has requested that the Commission grant exemptive and interpretive relief from a number of sections of the Act and the rules thereunder in connection with transactions effected in Crossing Session II. Specifically, the Phlx seeks exemptive relief from the requirements of Rules 11Aa3–1 and 10a–1 for transactions effected during Crossing Session II. The Phlx further requests exemptive or other relief from rules 10b–6, 10b–7, 10b–8, and 10b–18 which relate to certain fraudulent and manipulative practices, and rules 15c1–5 and 15c1–6, which deal with disclosure requirements, for aggregate-price coupled orders effected during Crossing Session II. In addition, the Exchange seeks no-action relief from section 12(f) of the Act and requests UTP in all listed stocks for which the Phlx does not have trading privileges (either on a listed or UTP basis) to accommodate the trading of aggregate-price coupled orders in Crossing Session II. Finally, the Phlx requests that the Commission undertake rulemaking procedures to adopt proposed rule 12a–7 in a modified form to exempt certain portfolio transactions that would be effected during Crossing Session II from registration under Section 12(a) and a new rule that would exempt transactions in the Off-Hours Trading sessions from transaction fees under Section 31 of the Act. *See* letter from William W. Uchimoto, General Counsel, Phlx, to Brandon Becker and Larry Bergmann, Associate Directors, Division of Market Regulation, SEC, dated May 10, 1991.

[7] *See* letter from William W. Uchimoto, General Counsel, Phlx, to Brandon Becker and Larry Bergmann, Associate Directors, Division of Market Regulation, SEC, dated May 10, 1991.

[8] The Phlx proposes to report trades in Crossing Session II in essentially the same manner as the NYSE proposes to report trades in Crossing Session II of its Off-Hours Trading facility. See SR–NYSE–90–53.

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with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-91-25 and shoud be submitted by June 27, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 30, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-13408 Filed 6-5-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18174; 812-7653]

Renaissance Capital Partners II, Ltd.; Notice of Application

May 30, 1991.

AGENCY: Securities and Exchange Commission "SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Renaissance Capital Partners II, Ltd. (the "Partnership"), Renaissance Capital Group, Inc. (the "Managing General Partner"), and Ernest C. Hill and Don M. Patterson (the "Independent General Partners").

RELEVANT 1940 ACT SECTIONS: Exemption requested under Section 6(c) from the provisions of sections 2(a)(19) and 2(a)(3)(D) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order determining that: (1) the Independent General Partners are not "interested persons" of the Partnership or of the Managing General Partner within the meaning of section 2(a)(19) of the 1940 Act solely by reason of being general partners of the Partnership; (2) the Independent General Partners are not "interested persons" of the Partnership solely by virtue of their service as independent general partners of Renaissance Capital Partners, L.P. ("Renaissance I"); and (3) limited partners who own less than 5% of the Partnership units will not be "affiliated persons" of the Partnership or of other limited or general partners within the meaning of section 2(a)(3)(D) of the 1940 Act solely by reason of their being limited partners.

FILING DATE: The application was filed on December 17, 1990, and amended on March 18, 1991. A second amendment, the substance of which is set forth in this notice, will be filed during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 pm on June 24, 1991, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, Elroy G. Roelke, Esq., 8080 N. Central Expressway, Suite 210-LB 59, Dallas, Texas 75090.

FOR FURTHER INFORMATION CONTACT: Barbara Chretien-Dar, Staff Attorney, at (202) 272-3022, or Stephanie Monaco, Branch Chief, at (202) 272-3030 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available from the SEC's Public Reference Branch.

Applicants' Representations

1. The Partnership is a Texas limited partnership governed by an Agreement and Articles of Limited Partnership (the "Partnership Agreement"). The Partnership has a term of eight years which may be extended for up to three additional one-year periods by the Managing General Partner with the consent of at least one Independent General Partner. The Partnership will elect to be regulated as a business development company under section 54(a) of the 1940 Act and, therefore, will be subject to sections 55 through 65 and those sections of the 1940 Act made applicable by section 59 thereof. The investment objective of the Partnership is to provide current income and long-term capital appreciation by investing in private placement convertible debt of smaller emerging growth public companies.

2. The Partnership seeks to obtain initial capital of up to $50 million by offering to sell up to 50,000 units of Partnership interest at a price of $1,000 each in a public offering under the Securities Act of 1933. The minimum investment will be five units, except in the case of an Individual Retirement Account which may purchase only two units. Sales will be made pursuant to a dealer-manager agreement with RenCap Securities, Inc. ("RenCap"), a registered broker-dealer and a wholly-owned subsidiary of the Managing General Partner, who will receive a fee equalling 1.5% of the gross offering proceeds for its management and marketing services and as full reimbursement of all costs. RenCap, in turn, will enter into selling agreements with unaffiliated broker-dealers who will act as selling agents on a best efforts basis.

3. The general partners (the "General Partners") consist of the Managing General Partner and the Independent General Partners (defined as individuals who are not "interested persons" of the Partnership within the meaning of the 1940 Act). A majority of the General Partners will be Independent General Partners.

4. The Managing General Partner is registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"). In addition, the Partnership will enter into an Investment Advisory Agreement (the "Advisory Agreement") with the Managing General Partner. Under the Partnership Agreement and the Advisory Agreement, the Managing General Partner will be principally responsible, subject to the supervision of the Independent General Partners, for portfolio investment decisions. Further duties of the Managing General Partner include maintaining Partnership records and administering the Partnership's affairs, including preparation of tax and other reports to holders of Partnership units (the "Limited Partners").

5. The Independent General Partners will provide overall supervision of the Partnership and perform duties generally imposed on directors of business development companies under the 1940 Act. Specifically, the Independent General Partners will establish criteria for the investigation and analysis of new investments and will oversee the Managing General Partner's compliance with such standards. Proposed investments not meeting such standards will require prior approval of the Independent General Partners.

6. Under the Partnership Agreement, the Managing General Partner may be removed for cause by unanimous action of the Independent General Partners after having obtained the consent of a majority in interest of the Limited Partners. Similarly, an Independent General Partner may be removed for cause by the unanimous action of the remaining General Partners after having obtained the consent of a majority in interest of the Limited Partners. Further, any General Partner shall be removed upon failure to be re-elected by a majority in interest of Limited Partners at any meeting held to vote on their continuance as partners. The Managing General Partner shall be removed if the investment advisory contract is not specifically approved on an annual basis pursuant to section 15(a)(2) of the 1940 Act.

7. In the event of an Independent General Partner's removal, a successor Independent General Partner shall be designated by the remaining Independent General Partner. Should the remaining Independent General Partner fail to act within 60 days of such removal, the Managing General Partner shall designate a successor Independent General Partner. In the event of the Managing General Partner's removal, the Independent General Partners shall within 60 days designate a successor Managing General Partner or call a meeting of the Limited Partners for the purpose of electing a successor Managing General Partner or dissolving the Partnership. In all cases of a General Partner's removal or withdrawal, the designation of a successor is subject to the Limited Partners' right (if called by Limited Partners holding 10% in interest) to request an election to fill the vacancy.

8. The Managing General Partner may voluntarily withdraw at the end of any fiscal quarter, subject to the unanimous approval of the Independent General Partners and concurring consent of a majority in interest of Limited Partners. In addition, the Managing General Partner must provide 60 days prior notice to all partners and designate a substitute Managing General Partner. Such substitute Managing General Partner shall certify that (a) it will assume the duties of the Managing General Partner under the Partnership Agreement without receiving additional compensation; (b) it will maintain a net worth sufficient to preserve the Partnership's status under federal tax law; and (c) it will employ persons experienced in performing the functions of the Managing General Partner under the Partnership Agreement.

9. Under the Partnership Agreement, the Limited Partners have no authority to participate in the management of the Partnership, except for the right to vote on certain matters. Prior to the exercise by the Limited Partners of any of its voting rights, the Partnership will obtain an opinion of independent counsel that the existence or exercise of such voting rights will not adversely affect the limited liability of the Limited Partners under state law. The Partnership Agreement further obligates the General Partners to take all appropriate and necessary actions to protect the limited liability of the Limited Partners. The Independent General Partners will periodically, and at least annually, review the adequacy of its insurance coverage and the appropriateness of obtaining an errors and omissions policy.

10. Over multiple closings, the Managing General Partner will receive 2.5% of the gross offering proceeds for its management services and expenses incurred in connection with the Partnership's organization and offering. In addition, the Managing General Partner will receive an annual management fee of 2% of the assets under management plus an annual administrative fee of $12 per Limited Partner account. The Managing General Partner will also be entitled to receive a performance fee once distributions to the Limited Partners have reached at least a cumulative simple annual return of 8% on their net investment in the units. Consistent with section 205(b)(3) of the Advisers Act, the incentive fee will be limited to 20% of the realized capital gains for the fiscal year computed net of all realized capital losses and unrealized capital depreciation. In the event of removal of the Managing General Partner and subject to receipt of an exemptive order under the Advisers Act permitting the arrangement, all unrealized gains or losses will be deemed realized for the sole purpose of making a final allocation of profits and losses to the capital account of the Managing General Partner.

11. Generally, any directors' fees payable by a portfolio company for directors designated and provided by the Managing General Partner in conjunction with supplying managerial assistance to the portfolio company will be paid to the Partnership. However, the Managing General Partner may receive fees for its own account from a portfolio company for consulting services if such services are beyond the scope contemplated by or unrelated to the Partnership Agreement in connection with the Managing General Partner's obligation to acquire and monitor investments on behalf of the Partnership.[1] Receipt of all such consulting fees are subject to the approval of the Independent General Partners, and, applicants acknowledge that receipt of such fees may require a Commission exemptive order under the 1940 Act.

12. The Independent General Partners also serve in that capacity for Renaissance I and are not deemed to be "interested persons" as to Renaissance I by virtue of a prior exemptive order.[2] For their service to the Partnership, the Independent General Partners will each receive minimum compensation of $2,400 per quarter. If more than 10,000 units are subscribed, the Independent General Partners will receive an additional $.24 per unit for units exceeding 10,000, and another $.12 per units for all units subscribed over 25,000. If all units are subscribed, compensation to the Independent General Partners will equal $9,000 per quarter. The Independent General Partners will not receive any other fees.

Applicants' Legal Analysis

13. The Small Business Investment Incentive Act of 1980 added certain provisions to the 1940 Act recognizing that a business development company could be organized as a limited partnership. Section 56(a) of the 1940 Act requires that a majority of a business development company's directors or general partners not be "interested persons" of such company. Section 2(a)(19) of the 1940 Act defines an interested person to include an "affiliated person" of such investment company. Section 2(a)(3)(D) of the 1940 Act provides further that an affiliated person means any "officer, director, partner, co-partner, * * * of such other person." However, section 2(a)(19)(A)(aa) excepts from the definition of interested persons of an investment company those individuals who would be interested persons solely because they serve as directors. There is

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[1] Any Commission exemptive order issued on this application does not imply approval of or grant any exemptive relief that may be required under the 1940 Act to permit such consulting fees. For instance, the payment of such fees by a company controlled by the Partnership to an affiliated person of the Partnership may be unlawful under the provisions of section 57(a)(4) and rule 17d-1 which would prohibit the Partnership or a company controlled by it and any affiliate person of the Partnership to enter into a joint transaction. In a letter to the Division staff, applicants indicate that consulting services going beyond the Managing General Partner's responsibilities vis-a-vis the Partnership will be in the nature of providing financial or management experts to a troubled portfolio company or rendering significant investor relations services on behalf of the portfolio company, such as conducting investor seminars and meetings. Applicants contend that such services exceed the obligations of the Managing General Partner as set forth in the Partnership Agreement.

[2] *See* Investment Company Act Release No. 17487 (May 11, 1990).

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no equivalent exception for partners, and the Independent General Partners are, therefore, interested persons of the Partnership and interested persons of the Managing General Partner by virtue of being co-partners with the Managing General Partner. To resolve this problem, applicants request that the Independent General Partners be exempted from section 2(a)(19) of the 1940 Act to the extent that they would be deemed (1) "interested persons" of the Partnership and of the Managing General Partner solely because such Independent General Partners are general partners of the Partnership and co-partners with the Managing General Partner, and (2) "interested persons" of the Partnership solely by virtue of their service as independent general partners of Renaissance I. The Partnership has been structured so that the Independent General Partners are the functional equivalents of non-interested directors of an incorporated investment company.

14. Under section 2(a)(3) of the 1940 Act, each Limited Partner of the Partnership is an affiliated person of the Partnership and of each other Limited and General Partner because he or she is a partner of the Partnership, as well as a co-partner of each Limited and General Partner. Section 2(a)(3) also excepts from the definition of "affiliated person" shareholders with less than a 5% ownership interest of a company. Applicants thus request that Limited Partners owning less than 5% of the Partnership Units be exempt from section 2(a)(3)(D) to the extent that they otherwise would be deemed to be affiliated persons of the Partnership and of any Limited or General Partners solely by reason of their status as Limited Partners.

Applicants' Conditions

If the requested order is granted, the applicants agree to the following conditions:

1. The General partners, except the Managing General Partner, are natural persons ("Individual General Partners"). A majority of the Individual General Partners will not be interested persons of the Partnership.

2. The Individual General Partners will assume the responsibilities and obligations imposed by the 1940 Act and the regulations thereunder on directors or general partners of a business development company. The Independent General Partners will assume the responsibilities and obligations imposed by the 1940 Act and the regulations thereunder on directors and general partners who are not interested persons of a business development company.

3. The Partnership Agreement will provide that the Managing General Partner will not resign or withdraw unless a successor managing general partner has been appointed in accordance with the Partnership Agreement and the provisions of sections 15(a), 15(c), and 15(f) of the 1940 Act.

4. The Limited Partners will be afforded all of the voting rights required by the 1940 Act. The Partnership will obtain an opinion of counsel that the voting rights provided the Limited Partners do not subject the Limited Partners to liability as general partners under Texas law. If a Limited Partner transfers his Units in a manner which is effective under the Partnership Agreement, the General Partners will promptly take all necessary actions to ensure that such transferee or successor becomes a substitute Limited partner.

5. The Partnership will obtain an opinion of counsel that the distributions and allocations provided for in the Partnership Agreement are permissible under section 205(a) of the Advisers Act and under section 15(a) of the 1940 Act. Except to the extent that the Partnership Agreement allocates income, gain, and loss pro rata to all partners in proportion to their capital contributions, the Managing General Partner and all other investment advisers to the Partnership will not receive or be allocated any portion of capital gains or capital appreciation if, as a result, cumulative allocations or payments of capital gains or capital appreciation to such persons would exceed 20% of cumulative realized capital gains, net of realized capital losses and unrealized capital depreciation.

6. The Partnership will obtain an opinion of counsel that the current structure of the Partnership will entitle it to be taxed as a partnership for federal income tax purposes.

7. If, under the Partnership Agreement, the Partnership is or becomes authorized to make in-kind distributions of portfolio securities, no such in-kind distributions will be made until such time as the Partnership has obtained a no-action letter from the staff of the SEC or, alternatively, has obtained an order pursuant to section 206A of the Advisers Act permitting such distribution.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-13294 Filed 6-5-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Delegation of Authority No. 190; Public Notice 1406]

Assistant Secretary of State for Economic and Business Affairs; Delegation of Authority

The functions conferred upon the Secretary of State by section 258(d) of the Immigration and Nationality Act of 1951, as amended ("the Act"), 8 U.S.C. 1288, including those under 5 U.S.C. 553 for the implementation of the section 258(d) of the Act, are hereby delegated to the Assistant Secretary of State for Economic and Business Affairs.

Notwithstanding the above delegation, the Secretary of State, the Deputy Secretary of State, the Under Secretary of State for Political Affairs, or the Under Secretary of State for Economic Affairs may at any time exercise the aforementioned functions.

Dated: May 24, 1991.

James A. Baker, III,

Secretary of State.

[FR Doc. 91-13308 Filed 6-5-91; 8:45 am]

BILLING CODE 4710-10-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended May 24, 1991

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed by June 27, 1991.

Docket Number: 47548.
Date filed: May 20, 1991.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 489 (Amend Mileage Manual).
Proposed Effective Date: June 1, 1991.

Docket Number: 47550.
Date filed: May 22, 1991.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 490 Resolution 010K TC Special Passenger Amending Resolution between Japan and USSR.
Proposed Effective Date: June 12, 1991.

Docket Number: 47551.
Date filed: May 23, 1991.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 491—Resolution 010L TC3 Special Passenger Amending Resolution from Malaysia to Japan.
Proposed Effective Date: June 1, 1991.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91-13271 Filed 6-5-91; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended May 24, 1991

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application.

Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 45059.
Date filed: May 20, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 17, 1991.
Description: Motion of Continental Airlines, Inc. for Leave To Amend its Application to include a request that the Honolulu-Manila certificate authority sought be granted by adding "the Philippines" as a co-terminal point on Segment 6 of Continental's Route 171 certificate, which currently authorizes Continental to engage in foreign air transportation of persons, property and mail between U.S. points, Puerto Rico and the Virgin Islands, on the one hand, and co-terminal points in Korea, Taiwan, Palau Islands, Hong Kong, and Singapore, on the other hand.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91-13272 Filed 6-5-91; 8:45 am]

BILLING CODE 4910-62-M

Advisory Commission on Conferences in Ocean Shipping; Open Meeting

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of open meeting of the Advisory Commission on Conferences in Ocean Shipping.

SUMMARY: The Commission will be holding its second field hearing in San Francisco, CA on June 21, 1991; the hearing will be open to the public. In the morning, the Commission plans to focus on issues related to conference tariff and service contract practices and to conference relations with shippers and intermediaries. In the afternoon, the Commission plans to hear testimony on all issues relating to the Shipping Act of 1984 and conferences in the Ocean shipping industry.

DATES: Public hearing: Friday, June 21, 1991, 9 a.m. to 5:30 p.m. p.d.t. Deadline for requests to speak at the public hearing: Friday, June 14, 1991.

ADDRESSES: The address for the public hearing is Golden Gate Room, The Mark Hopkins Inter-Continental Hotel, Number One Nob Hill, San Francisco, CA.

FOR FURTHER INFORMATION CONTACT: Sandra L. Kusumoto, Senior Economist, or Robert I. Ross, Counsel, Advisory Commission on Conferences in Ocean Shipping, Department of Transportation, 400 Seventh Street, SW., room 5102, Washington, DC 20590; telephone (202) 366-9781; FAX (202) 366-7870.

SUPPLEMENTARY INFORMATION: The Commission was created by the Shipping Act of 1984 to conduct an independent and comprehensive study of conferences in ocean shipping, particularly whether the Nation would be best served by prohibiting conferences, or by closed or open conferences. The Commission is to provide its report, including recommendations, to the President and the Congress by April 10, 1992. The Commission began formal operations on April 10, 1991, at a day-long open meeting in Washington, DC, at which the Commission heard reports from Federal agencies on the impact of the 1984 Act and discussed issues to be studied by the Commission.

As part of its study, the Commission will be holding a series of public hearings around the United States. Its first hearing was held June 3, 1991 in New Orleans, LA. Other places selected for hearings are Charleston, SC (July 12, 1991); Portland, OR (August 9, 1991); and New York, NY (September 13, 1991). At each hearing, a part of the day will be dedicated to issues generally raised by the 1984 Act, and part of each hearing will focus on a specific predesignated issue.

The Commission will be holding its second field hearing on June 21, 1991 in San Francisco, CA at the The Mark Hopkins Inter-Continential Hotel (Golden Gate Room), Number One Nob Hill. Attendance is open to the public but limited to space available. The morning session will be devoted to testimony on issues related to conference tariff and service contract practices and to conferences' relations with shippers and intermediaries. (At a subsequent public hearing, the Commission will devote another session to this topic.) The afternoon session will be open to receive testimony on any aspect of the Shipping Act of 1984.

Interested members of the public are invited to address the Commission at the June 21, 1991 hearing. In order to be assured of an opportunity to do so, each person wishing to speak should contact Sandra Kusumoto or Robert Ross at the address set out above by June 14, 1991. Each such person is also requested to provide by June 14, 1991 a brief summary of the matters he/she expects to address at the Commission hearing. Should such person wish to submit a copy of his/her complete statement to be delivered at the Commission hearing, he/she may do so as well. Persons appearing before the Commission are encouraged to support all opinions with factual information and evidence. To the extent that time permits and that it does not disrupt the orderly process of the meeting and will not be unfair to any person, persons who do not make prior written requests to speak will be given opportunity to do so as part of the afternoon session.

Persons who wish to provide written comments for the Commission's consideration may do so at any time by forwarding them to the address set out above.

Issued in Washington, DC on May 31, 1991.

Florizelle B. Liser,

Executive Director.

[FR Doc. 91-13441 Filed 6-5-91; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[Summary Notice No. PE-91-22]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve

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the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 26, 1991.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9683.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on May 29, 1991.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 25307.
Petitioner: Precision Airlines dba Northwest Airlink.
Sections of the FAR Affected: 14 CFR 135.429(a) and 135.435.
Description of Relief Sought: To allow maintenance, preventive maintenance, and alterations to be performed on aircraft by the respective original equipment manufacturers until such time as U.S. repair station facilities are certified to carry out this activity, or until such time as the original equipment manufacturers obtain FAA Foreign Repair Station Certification.

Docket No.: 26471.
Petitioner: Classic Aviation, Inc.
Sections of the FAR Affected: 14 CFR 135.89(b)(3).
Description of Relief Sought: To allow petitioner to fly its Model 35A Learjet aircraft above flight level 350 without at least one pilot at the controls wearing, secured and sealed, an oxygen mask.

Docket No.: 26542.
Petitioner: Sky Shows, Inc.
Sections of the FAR Affected: 14 CFR 105.43(a).
Description of Relief Sought: To allow the operation of U.S.-registered civil aircraft in flights for intentional dual harness, dual parachute pack (tandem) jumping operations.

Docket No.: 26549.
Petitioner: Omniflight Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 43.3.
Description of Relief Sought: To allow appropriately trained personnel, not holding a mechanic certificate, to remove and install liquid oxygen converters used in aircraft operated by the petitioner in emergency medical services.

Docket No.: 23912.
Petitioner: Midwest Express Airlines, Inc.
Sections of the FAR Affected: 14 CFR 93.123(a).
Description of Relief Sought: To allow petitioner to operate two of the four special slots at Washington National Airport that were formerly operated by Braniff Airlines under Exemption No. 3927.

Dispositions of Petitions

Docket No.: 25103.
Petitioner: Air Wisconsin, Inc.
Sections of the FAR Affected: 14 CFR 121.371(a) and 121.378.
Description of Relief Sought/Disposition: To extend Exemption No. 4803A, which allows petitioner to employ certain foreign original equipment manufacturers (OEM's) to perform maintenance, preventive maintenance, and alterations outside the United States on its British Aerospace, Fokker, and Short Brothers, Ltd., aircraft.

Grant, May 23, 1991, Exemption No. 4803B

Docket No.: 25120.
Petitioner: Singapore Airlines Limited.
Sections of the FAR Affected: 14 CFR 21.197(c).
Description of Relief Sought/Disposition: To extend Exemption No. 4792, which allows petitioner a special flight permit with a continuing authorization for aircraft that may not meet applicable airworthiness requirements but are capable of safe flight for the purpose of flyng such aircraft to a base where maintenance or repairs are to be performed.

Grant, May 23, 1991, Exemption No. 4792B

[FR Doc. 91-13323 Filed 6-5-91; 8:45 am]
BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. 91-22; Notice]

Receipt of Petition for Determination that Nonconforming 1985 Mercedes-Benz 300SL Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice or receipt of petition for determination that nonconforming 1985 Mercedes-Benz 300SL passenger cars are eligible for importation.

SUMMARY: This notice announces receipt of a petition by the National Highway Traffic Safety Administration (NHTSA) for a determination that a 1985 Mercedes-Benz 300SL not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because it is substantially similar to a vehicle originally manufactured for importation and sale in the United States and certified by its manufacturer as complying with the safety standards, and is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is July 8, 1991.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, Nassif Building, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.].

FOR FURTHER INFORMATION CONTACT: Ted Bayer, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) (the Act), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined:

"(I) that the motor vehicle * * * is substantially similar to a motor vehicle originally manufactured for importation and sale into the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *."

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. After receipt of a petition, NHTSA publishes notice of its receipt in the Federal Register, and affords interested persons an opportunity to comment. Following close of the comment period, NHTSA reviews the petition and comments, and publishes its determination in the Federal Register.

G&K Automotive Conversion, Inc. of Anaheim, California (Registered Importer No. R-90-007) has petitioned for a determination regarding the eligibility for admission into the United State of 1985 Mercedes-Benz 300SL, Model ID 107.141 passenger cars. The vehicle which G&K believes is substantially similar is the 1985 Mercedes-Benz 380SL, Model ID 107.026, and it has submitted information indicating that Mercedes-Benz of North America offered the 1985 Mercedes-Benz 380SL for sale in the United States. This model was manufactured by Daiimler-Benz A.G. and was certified as conforming to all applicable Federal motor vehicle safety standards.

The petitioner notes that the agency, on its own initiative, has already made a determination of substantial similarity covering the 1985 300SL that Daimler-Benz A. G. did certify and offer for sale in the United States (55 FR 47418). It alleges that the 380SL and non-conforming 300SL car differ "mainly in engine size and minor options which go with it."

G&K submitted information with its petition intended to demonstrate that the vehicle was originally manufactured to conform to many Federal motor vehicle safety standards in the same manner as its companion U.S. model, or is capable of being readily modified to conform to them.

Specifically, it avers that the noncertified 300SL is identical to the certified 380SL with respect to compliance with Standards Nos. 102 Transmission Shift Lever Sequence * * *, 103 Defrosting and Defogging Systems, 104 Windshield Wiping and Washing Systems, 105 Hydraulic Brake Systems, 106 Brake Hoses, 107 Reflecting Surfaces, 109 New Pneumatic Tires, 113 Hood Latch Systems, 116 Brake Fluids, 124 Accelerator Control Systems, 201 Occupant Protection in Interior Impact, 202 Head Restraints, 203 Impact Protection for the Driver From the Steering Control System, 204 Steering Control Rearward Displacement, 205 Glazing Materials, 206 Door Locks and Door Retention Components, 207 Seating Systems, 210 Seat Belt Assembly Anchorages, 211 Wheel Nuts, Wheel Discs and Hubcaps, 212 Windshield Retention, 216 Roof Crush Resistance, 219 Windshield Zone Intrusion, and 302 Flammability of Interior Materials.

Petitioner also argues that the vehicle is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 Controls and Displays: (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp; (c) recalibration of the speedometer/odometer from kilometers to miles.

Standard No. 108 Lamps, Reflective Devices and Associated Equipment: (a) Install U.S.-model headlamp assemblies and front side markers; (b) install U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) install a high mounted stop lamp.

Standard No. 110 Tire Selection and Rims: Install a tire information placard.

Standard No. 111 Rearview Mirrors: "the passenger's outside rearview mirror is convex and must be replaced."

Standard No. 114 Theft Protection: The vehicle's key-locking system lacks a warning buzzer, and it is necesary to install a buzzer microswitch in the steering lock assembly, and the buzzer itself.

Standard No. 115 Vehicle Identification Number: Install a VIN label.

Standard No. 118 Power Window Systems: Rewire so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 Occupant Crash Protection: (a) Install a U.S. model seat belt in the driver's position, or install a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) install an ignition switch-actuated seat belt warning lamp and buzzer.

Standard No. 214 Side Door Strength: Install reinforcing beams.

Standard No. 301 Fuel System Integrity: To achieve fuel tank venting, install a rollover valve in the fuel tank vent line between the fuel and the evaporative emissions collection cannister.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extend possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Comment closing date: July 8, 1991.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(II) and (C)(iii); 49 CFR 593.8; delegation of authority at 49 CFR 1.50.

Issued on May 31, 1991.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 91-13313 Filed 6-5-91; 8:45 am]
BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: May 31, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: None.
Type of Review: New Collection.
Title: IRS Customer Satisfaction Survey.
Description: As part of IRS's on-going commitment to providing quality customer service, this survey will obtain information which will allow the IRS to determine how effective it is. The data, obtained from 1,000 households for each survey, will allow the IRS to determine customer expectations and perceptions of the service IRS provides.
Respondents: Individuals or households.
Estimated Number of Respondents: 2,000.
Estimated Burden Hours Per Response: 15 minutes.

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Frequency of Response: Semi-annually.
Estimated Total Reporting Burden: 500 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.
Dale A. Morgan,
Departmental Reports, Management Officer.
[FR Doc. 91–13339 Filed 6–5–91; 8:45 am]
BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Date: May 31, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0991.
Form Number: 8633.
Type of Review: Revision.
Title: Application to Participate in the Electronic Filing Program.
Description: Form 8633 will be used by tax preparers and electronic return collectors as an application to file individual income tax returns electronically by software firms, service bureaus, electronic transmitters, to develop auxiliary services.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 75,000.
Estimated Burden Hours Per Response: 30 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 37,500 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.
Dale A. Morgan,
Departmental Reports, Management Officer.
[FR Doc. 91–13340 Filed 6–5–91; 8:45 am]
BILLING CODE 4830–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Commission on the Future Structure of Veterans Health Care; Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that a meeting of the Commission on the Future Structure of Veterans Health Care will be held on June 13, 1991. The session will be held from 9 a.m. to 3 p.m. on June 13, 1991 at the Ramada Renaissance Hotel, Grand Ballroom, 999 9th Street, NW., Washington, DC 20001–9000. The Commission's purpose is to review the missions and programs of the VA's health care facilities to determine whether changes in services, programs, or missions at individual facilities are needed, with a focus on providing care to eligible veterans in 2010. The agenda for the meeting will include presentations to the Commission by various VA and non-VA officials as well as working sessions for the Commissioners to discuss, study, and analyze specific critical VA health care issues. The meeting will be open to the public up to the seating capacity of the room. Interested persons may file written statements with the Commission before or within 10 days after the close of the meeting.

Persons wanting to file written statements or wanting additional information regarding the meeting should contact Mr. Robert Moran, Commission on the Future Structure of Veterans Health Care, Techworld Plaza, 800 K Street, NW., P.O. Box 88, Washington, DC, 20001, telephone (202) 633–7079.

Dated: May 23, 1991.
By Direction of the Secretary:
Sylvia Chavez Long,
Committee Program Manager.
[FR Doc. 91–13256 Filed 6–5–91; 8:45 am]
BILLING CODE 8320–01–M

Privacy Act of 1974; Amendment of Systems of Records

AGENCY: Department of Veterans Affairs.

ACTION: Amendment of Systems of Records.

1. Notice is hereby given that the Department of Veterans Affairs (VA) is deleting a system of records entitled, "Patient and Employee Infectious Disease Records-VA" (22VA136) which is set forth on page 887 of the **Federal Register** publication, "Privacy Act Issuances, 1989 Compilation, Volume II." The records included information concerning infection sites and antibiotic sensitivities of patients and employees at the VA Medical Center at Palo Alto, California. The system of records 22VA136 is being deleted since the records were destroyed when there was no longer a need for the information.

2. Notice is hereby given that VA is deleting a system of records entitled, "Rejected Applicant for Medical Care Records-VA" (30VA136) which is set forth on page 894 of the **Federal Register** publication, "Privacy Act Issuances, 1989 Compilation, Volume II." This system of records included the applications and related materials of individuals who applied for treatment in a VA health care facility and who were not placed in a treatment program for such reasons as being legally ineligible, not in need of treatment, refusal by the individual to accept treatment or care, etc. A patient medical record is now created to store these documents and such records are covered by the system of records entitled "Patient Medical Records-VA" (24VA136). Therefore, the system of records 30VA136 is being deleted.

3. Notice is hereby given that VA is revising certain paragraphs in the system of records entitled "Veteran's Spouse or Dependent Civilian Health and Medical Care Records-VA" (54VA136) which is set forth on page 912 of the **Federal Register** publication, "Privacy Act Issuances, 1989 Compilation, Volume II."

The VA office that maintains the system of records, the CHAMPVA Center located in Denver, Colorado, has been relocated and the System Location and Notification Procedures paragraphs in the system notice are being amended to reflect that move. In addition to these changes, the Storage paragraph is being revised to add digitized image as a new record storage medium and the Retrievability paragraph is being revised to add the claims processing control number as an additional identifier which is used for record retrieval. The Safeguards paragraph has been updated to include electronic intrusion alarm systems as additional security measures and the Retention and Disposal paragraph has been amended to show when the records are destroyed.

4. Notice is hereby given that VA is deleting a system of records entitled, "Automated Medication Processing Records-VA" (56VA119) which is set forth on page 917 of the **Federal Register** publication, "Privacy Act Issuances, 1989 Compilation, Volume II." This system of records was established when a pharmacy computer system was being developed to service VA health care facilities. The computer system was discontinued, however, when the Decentralized Hospital Computer Program (DHCP) was installed at each VA medical center. DHCP is an automated integrated information system which provides comprehensive support for each medical center's specific clinical and administrative needs. The DHCP pharmacy application is included in the systems of records entitled "Patient Medical Records-VA" (24VA136) and "Decentralized Hospital Computer Program (DHCP) Medical Management Records-VA" (79VA162). Therefore, the system of records 56VA119 is being deleted.

5. Notice is hereby given that certain paragraphs which were omitted when the original system notices were published are being added to two systems of records. The paragraphs for System Manager, Notification Procedures, Records Access Procedures, Contesting Record Procedures, and Record Source Categories are being added to the system of records entitled, "Vietnam Veterans Readjustment Counseling Program-VA" (64VA116). The paragraph for Authority for Maintenance of the System has also been updated. The paragraph for System Manager is being added for the system of records entitled, "Community Placement Program-VA" (65VA122). These systems of records are set forth on page 925 of the **Federal Register** publication, "Privacy Act Issuances, 1989 Compilation, Volume II."

6. Notice is hereby given that VA is revising certain paragraphs in the system of records entitled, "Ionizing Radiation Registry-VA" (69VA114) which is set forth on page 929 of the **Federal Register** publication, "Privacy Act Issuances, 1989 Compilation, Volume II." The System Manager, Notification Procedures, and Record Access Procedures paragraphs are being revised to reflect a change in the designation of the office which is responsible for the maintenance of these records.

The Privacy Act of 1974, 5 U.S.C. 552a(e), requires agencies to inform the public of any changes to their system of records. These changes are administrative in nature, therefore, no public comment is required.

Approved: May 24, 1991.
Edward J. Derwinski,
Secretary of Veterans Affairs.

Notice of Amendments to Systems of Records

1. The system identified as 54VA136, "Veteran's Spouse or Dependent Civilian Health and Medical Care Records–VA" appearing on page 912 of the **Federal Register** publication, "Privacy Act Issuances, 1989 Compilation, Volume II" is amended by revising the entries for System Location, Storage, Retrievability, Safeguards, Retention and Disposal and Notification Procedure to read as follows:

54VA136

System name:

Veteran's Spouse or Dependent Civilian Health and Medical Care Records–VA.

System location:

Paper and computer records are maintained at the CHAMPVA (Civilian Health and Medical Program of the Department of Veterans Affairs) Center, 4500 Cherry Creek Drive South, Box 64, Denver, CO 80222.

* * * * *

Policies and Practices for storing, retrieving, accessing, retaining and disposing of records in the system:

Storage:

Records are stored in paper folders, magnetic discs, magnetic tape, and as digitized image.

Retrievability:

Paper records are retrieved by name or VA claims file number or social security number of the veteran sponsor. Computer and digitized image records are retrieved by name or social security number of the veteran sponsor, spouse, and/or dependent, VA claims file number of the veteran sponsor, or by claims processing control number.

Safeguards:

Records are stored in locked file cabinets or locked rooms. Generally, file areas are locked after normal duty hours and the premises are protected from outside access by Federal Protective Service or other security personnel as well as electronic intrusion alarm systems. Access to working spaces and record storage areas is restricted to VA employees on a "need-to-know" basis. Access to the computer room is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. ADP peripheral devices are generally placed in secure areas (areas that are locked or have limited access) or are otherwise protected. Information in the computer system may be accessed by authorized VA employees by a series of individually unique passwords/codes.

Retention and disposal:

Records are maintained during the period of time the spouse or dependent is eligible for CHAMPVA and destroyed 90 days after eligibility is terminated.

* * * * *

Notification procedure:

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the contents of such record, should submit a written request or apply in person to the Director, CHAMPVA Center, 4500 Cherry Creek Drive South, Box 64, Denver, Colorado 80222. Inquiries should include the veteran sponsor's full name and social security and VA claims file numbers and the spouse or dependent's name, social security number and return address.

* * * * *

2. The system identified as 64VA116, "Vietnam Veterans Readjustment Counseling Program–VA" appearing on page 925 of the **Federal Register** publication, "Privacy Act Issuances, 1989 Compilation, Volume II" is amended by revising the entry for Authority for Maintenance of the System and by adding the entries for System Manager and Address, Notification Procedures, Records Access Procedures, Contesting Record Procedures, and Record Source Categories to read as follows:

64VA116

System name:

Vietnam Veterans Readjustment Counseling Program–VA.

* * * * *

Authority for maintenance of the system:

Title 38, United States Code, Section 612A

* * * * *

System manager(s) and address:

Director, Readjustment Counseling Service (147), VA Central Office, Washington, DC 20420

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Notification procedure:

An individual who wishes to determine whether a record is being maintained by the Veterans Readjustment Program under his or her name or other personal identifier or wishes to determine the contents of such records should submit a written request or apply in person to: (1) The team leader of the Vet Center or the Readjustment counselor at the VA medical center with whom he or she had contact, or, (2) Director, Readjustment Counseling Service (147), VA Central Office, Washington, DC 20420.

Inquiries should include the individual's full name and social security number.

Record access procedures:

An individual (or duly authorized representative of such individual) who seeks access to or wishes to contest records maintained under his or her name or other personal identifier may write, call or visit the above named individuals.

Contesting record procedures:

(See Record Access Procedures above.)

Record source categories:

(1) Relevant forms to be filled out by Vet Center team members on first contact and each contact thereafter; counseling sessions with veterans and other eligible counselees. (2) Other VA and Federal agency systems.

3. The system identified as 65VA122, "Community Placement Program-VA" appearing on page 925 of the **Federal Register** publication, "Privacy Act Issuances, 1989 Compilation, Volume II" is amended by adding the paragraph for System Manager(s) and Address to read as follows:

65VA122

System name:

Community Placement Program-VA.

* * * * *

System manager(s) and address:

Director, Social Work Service (141A10), VA Central Office, Washington, DC 20420.

* * * * *

4. The system identified as 69VA114, "Ionizing Radiation Registry-VA" appearing on page 929 of the **Federal Register** publication, "Privacy Act Issuances, 1989 Compilation, Volume II" is amended by revising the entry for System Manager(s) and Address to read as follows:

69VA114

System name:

Ionizing Radiation Registry-VA.

* * * * *

System manager(s) and address:

Director, Environmental Agents Service (146A), VA Central Office, Washington, DC 20420.

* * * * *

[FR Doc 91-13255 Filed 6-5-91; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 109
Thursday, June 6, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

Meetings

TIME AND DATE: 10:00 a.m., Thursday, June 6, 1991.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 91-13484 Filed 6-4-91; 10:57 am]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

Meetings

TIME AND DATE: 11:30 a.m., Friday, June 14, 1991.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 91-13485 Filed 6-4-91; 10:57 am]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

Meeting

TIME AND DATE: 10:00 a.m., Tuesday, June 25, 1991.

PLACE: 2033 K St., N.W., Washington, D.C., Lower Lobby Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

—Application of the Chicago Board of Trade for contract designation in 10 Year Canadian Government Bond futures
—Proposed revision to Registration Requirements, Part 3

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 91-13486 Filed 6-4-91; 10:57 am]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

Meetings

TIME AND DATE: 11:00 a.m., Tuesday, June 25, 1991.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 91-13487 Filed 6-4-91; 10:58 am]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

Meetings

TIME AND DATE: 11:30 a.m., Tuesday, June 25, 1991.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 91-13488 Filed 6-4-91; 10:58 am]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

Meetings

TIME AND DATE: 11:00 a.m., Friday, June 7, 1991.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 91-13489 Filed 6-4-91; 10:58 am]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

MEETING

TIME AND DATE: 11:00 a.m., Friday, June 14, 1991.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 91-13490 Filed 6-4-91; 10:58 am]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

Meetings

TIME AND DATE: 11:00 a.m., Friday, June 21, 1991.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 91-13491 Filed 6-4-91; 10:58 am]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

Meetings

TIME AND DATE: 11:00 a.m., Friday, June 28, 1991.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 91-13492 Filed 6-4-91; 10:58 am]
BILLING CODE 6351-01-M

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DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given of the following meeting of the Board:

TIME AND DATE: 8:45 a.m. June 14, 1991.

PLACE: Public Hearing Room, Suite 700, 625 Indiana Avenue, N.W., Washington, DC. 20004.

STATUS: Closed. Exemption 9 relating to premature disclosure of information which is likely to frustrate the Board's implementation of competitive procurement. Exemption 2 relating to internal personnel rules and practices of the Board. Portions of the meeting may also be closable under Exemptions 6 regarding unwarranted invasions of personal privacy.

MATTERS TO BE CONSIDERED:

1. Deliberation regarding possible development of "request for proposals" for contractor technical assistance.
2. Deliberation regarding implementation of excepted appointment authority and conversion of existing technical personnel to excepted system.
3. Deliberation regarding recruitment of technical personnel.

FOR MORE INFORMATION CONTACT: Robert M. Andersen, General Counsel, (202) 208–6387.

Dated: June 3, 1991.

Robert M. Andersen,

General Counsel.

[FR Doc. 91–13466 Filed 6–3–91; 4:38 pm]

BILLING CODE 6820–KD–M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, June 11, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, June 13, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Future Meetings
Correction and Approval of Minutes
Analysis of Rulemaking Comments on Domestic Subsidiaries of Foreign Nationals
Advisory Opinion 1991–12:
B. Holly Schadler on behalf of the Schroeder Fund for the Future (continued from meeting of May 23, 1991).
Advisory Opinion 1991–16:
E.D. Feigenbaum
Advisory Opinion 1991–17:
Congressman Gary A. Franks
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 376–3155.

Delores Harris,

Administrative Assistant, Office of the Secretariat.

[FR Doc. 91–13580 Filed 6–4–91; 3:29 pm]

BILLING CODE 6715–01–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10:00 a.m., June 17, 1991.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the May 20, 1991, Board meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of KPMG Peat Marwick audit reports on EDP operations management at the National Finance Center and on U.S. Treasury investments in the Government Securities Investment Fund.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 523–5660.

Dated: June 3, 1991.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 91–13464 Filed 6–3–91; 4:28 pm]

BILLING CODE 6760–01–M

Corrections

Federal Register
Vol.56, No. 109
Thursday, June 6, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 91-061]

Imported Fire Ant Regulated Areas

Correction

In rule document 91-11513 appearing on page 22295, in the issue of Wednesday, May 15, 1991, in the third column, under PART 301, in the third line, "7 CFR 301.82-2a" should read "7 CFR 301.81-2a".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER91-351-000, et al.]

Montana Power Company, *et al.*; Electric Rate, Small Power Production and Interlocking Directorate Filings

Correction

In notice document 91-8732 beginning on page 15076, in the issue of Monday, April 15, 1991, make the following correction:

On page 15077, in the second column, under **11. Oklahoma Municipal Power**, in the first line, "[Docket No. ER91-23-000]" should read "[Docket No. EL91-23-000]".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N-0125]

Revisions of the Pectins Food Chemicals Codex, 3d Ed., Monograph; Opportunity for Public Comment

Correction

In notice document 91-11736 beginning on page 22872 in the issue of Friday, May 17, 1991, make the following correction:

On page 22873, in the second column, in the first line, "interested" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Illinois Permanent Regulatory Program; Permits, Performance Standards, and Civil Penalties

Correction

In rule document 91-10254 beginning on page 20535, in the issue of Monday, May, 6, 1991, make the following correction:

§ 913.15 [Corrected]

On page 20539, in the first column, in the first line, "paragraph (1)" should read "paragraph (l)".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[T.D. 8341]

RIN 1545-A086

Deposits of Employment Taxes

Correction

In rule document 91-7601 beginning on page 13400, in the issue of Tuesday, April 2, 1991, make the following correction:

§ 31.6302(c)-1 [Corrected]

On page 13402, in the 2nd column, in § 31.6302(c)-1(a)(1)(ii)(*b*), in the 16th line, after "to" insert "such".

BILLING CODE 1505-01-D

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Part II

Department of Health and Human Services

45 CFR Parts 98 and 99
Child Care and Development Block Grant; Interim Final Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Parts 98 and 99

RIN-0970-AA92

Child Care and Development Block Grant

AGENCY: Office of the Secretary, HHS.

ACTION: Interim final rule.

SUMMARY: This interim final rule implements section 5082 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, entitled the "Child Care and Development Block Grant Act of 1990" (the Act.) The purpose of this Block Grant is to increase the availability, affordability, and quality of child care. To accomplish this purpose, Federal funds will be available to States, Indian Tribes and Territories to provide grants, contracts, and certificates for child care services for low-income families with a parent who is working or attending a training or educational program. Funding is also provided to improve the availability and quality of child care and for early childhood development and before- and after-school services. To afford parents a broad range of child care choices and services, the Act provides parents specific options regarding the selection of child care providers. A full discussion of each of the provisions of the Act is included below.

DATES: Effective date: June 6, 1991. Interested persons and agencies are invited to submit written comments concerning this interim final rule on or before August 5, 1991.

ADDRESSES: Comments should be submitted in writing (facsimile comments will not be accepted) to the Assistant Secretary for Children and Families, Attention: Mark Ragan, Child Care Task Force, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447, or delivered to the Administration for Children and Families, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447, between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during the same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Mark Ragan, Administration for Children and Families, Child Care Task Force, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone (202) 401-9326.

SUPPLEMENTARY INFORMATION:

Background

It is fitting that the promulgation of this interim final rule is one of the first major actions of the newly-created Administration for Children and Families (ACF). This organization, which consolidates two of the Department's five operating divisions (the Family Support Administration and the Office of Human Development Services), as well as the Maternal and Child Health Block Grant, emphasizes the Department's commitment to the needs of America's children and families. This consolidation has established, for the first time, a single agency which is responsible for the many Federal children's and family programs which have been created over the years. The ACF will not only enhance the Department's ability to deliver services, but it will also facilitate integration of services for children and their families by providing States, communities, and Congress with a single point of contact for family and children's programs and policies.

The child care needs of low-income families are addressed by a number of programs administered by the ACF. In the past three years, the scope of ACF-administered child care programs has broadened to address the child care needs of increasingly larger segments of the population. ACF's programs reflect a growing awareness of the needs of, and commitment to, the family.

In the Omnibus Budget Reconciliation Act of 1990, Congress established two separate new child care programs: the Child Care and Development Block Grant program, and child care for low-income working families in need of such care and at risk of becoming eligible for AFDC (the At-Risk Child Care program).

The Child Care and Development Block Grant was worked out in the final days of the 101st Congress after two years of protracted debate within Congress and between Congress and the Administration. The bill was the result of a new compromise between the House, the Senate, and the Administration. The bills which individually passed the House (H.R. 3) and the Senate (S. 5) were not the basis for crafting the compromise, as the Congressional leadership and the Administration agreed to start anew in crafting this legislation.

As a result, there is relatively little legislative history that is instructive in drafting regulations that reflect the clear intent of the law. The Department has carefully examined the legislation, the conference report and the Congressional debate on final passage of the bill. We also have discussed the background and the developments that went into the drafting of the legislation with Congressional and Administration representatives in the effort to develop regulations that accurately reflect the program that was drafted with the bipartisan support of Congress and the President.

Throughout this preamble, we will refer to the Child Care and Development Block Grant as "the Block Grant." When we refer to "Indian Tribes" and "Tribal Grantees," we include Indian Tribes, Alaska Native organizations, and Tribal organizations, including Tribal consortia, unless otherwise specified. Similarly, when we refer to "State and local law," we include the appropriate level of Territorial and Tribal law. When we refer to "States" and "Grantees," we include States, Territories, and Indian Tribes, unless otherwise specified. We use the term "States" for ease of reference. Unless otherwise specified, all provisions of the regulations apply to Tribal and Territorial Grantees, as well as States. Additional definitions are included in § 98.2 of the regulations.

This rule includes all provisions relating to the Block Grant. The rule for the At-Risk Child Care program will be published separately.

Regulatory Procedures

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be performed for any "major rule." A major rule is one that:

—Has an annual effect on the national economy of $100 million or more;
—Results in a major increase in costs or prices for consumers, any industries, any government agencies, or any geographic region; or
—Has significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because this program will have an annual effect on the economy of $100 million or more, per discussion with the Office of Management and Budget (OMB), the regulation is considered a major rule. The analysis required by Executive Order 12291 will be included in the final rule.

Regulatory Flexibility Act

The Secretary certifies, under 5 U.S.C. section 605(b), enacted by Public Law 96-354, the Regulatory Flexibility Act, that this rule will not result in a

significant impact on a substantial number of small entities because the rule primarily affects State governments, which are not "small entities" within the meaning of that Act.

Child care providers such as child care centers, family child care providers, and other providers are considered "small entities" within the context of Executive Order 12291 and the Regulatory Flexibility Act. Because these regulations provide parents with great authority in their use of child care certificates and choice of providers and States with flexibility to prescribe standards for child care providers funded under the Act, they do not directly impact small entities, either favorably or adversely. Instead, impacts will depend on future State decisions.

For instance, section 658E(c)(2)(E) of the Act requires States to assure that all providers of child care services for which assistance is provided comply with all licensing or regulatory requirements applicable under State and local law. Section 658E(c)(2)(F) of the Act requires that States assure basic requirements are in place to protect the health and safety of children who receive services under the Block Grant. This rule allows Grantees great flexibility with regard to such requirements and, in fact, anticipates that in many circumstances no additional requirements need to be put in place because requirements (e.g. local fire and safety codes) are already in place. Although child care providers may be affected by the provisions of the Act, the effect is not due to the rules implementing the Act. Variables such as the nature and extent of current State licensing and regulatory requirements, the mix of providers that participate in child care services under the Block Grant, the extent of any new health and safety requirements imposed by a Grantee, and the types of care chosen by parents will influence the extent of the effects of the Act on providers.

In addition, the parental choice provisions discussed below provide substantial assurance that State decisions will not adversely effect whole classes of providers. For these reasons, we conclude that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

Certain sections of this rule contain information collection requirements which are subject to review and approval by OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). The titles, descriptions, and respondent descriptions for the required information collection are shown below with estimates of the annual reporting and recordkeeping burdens. Included in the estimates are the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Titles

(1) Block Grant Application.
(2) Block Grant Plan.
(3) Financial report.
(4) Annual report.

Descriptions

The Act establishes four recordkeeping and reporting requirements. First, an Application, including the Block Grant Plan, must be submitted as a prerequisite to receiving Federal funds to administer a Child Care and Development Block Grant. The Application must be submitted annually; however, the initial Plan for the States and Territories is valid for a three-year program period. Subsequent Plans are valid for a two-year period. All Plans for Tribal applicants are valid for a two-year period. The Application and Plan require Grantees to describe how they will implement the provisions contained in section 658E of the Act. Such information is necessary to determine whether an application should be approved and if the program will be properly administered.

Next, the Act establishes a new financial reporting requirement, but an existing Standard Form (Form 269 or 269A) which requests total expenditures, unliquidated obligations, and program income, if any, will be used to collect the information. This information is necessary to determine that the allowable statutory and regulatory timeframes for obligation and expenditure of funds are met.

Finally, section 658K of the Act mandates the collection of information to prepare an annual report to Congress. In designing the reporting form, we are considering comparability with reporting requirements for other child care programs administered by ACF.

Description of Respondents

States, Indian Tribes, and Territories.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section	Annual No. of respondents	Annual frequency	Average burden per response	Annual burden hours
45 CFR 98.13	255	1	30 hours	7,650
45 CFR 98.16	255	1.5	50 hours	6,375
45 CFR 98.64	255	1	1 hour	255
45 CFR 98.70 & 98.71	255	1	50 hours	12,750

[1] Subsequent Plans will be submitted biennially (45 CFR 98.16).
Total existing burden hours: 0.
Total proposed burden hours: 27,030.
Total difference: +27,030.

As required by section 3504(h) of the Paperwork Reduction Act of 1980, ACF has submitted a copy of this interim final rule to OMB for its review of these information review requirements. Other organizations and individuals desiring to submit comments regarding this burden estimate or any aspects of these information collection requirements, including suggestions for reducing the burdens, should direct them to the Child Care Task Force, Administration for Children and Families (address above) and to the Office of Information and Regulatory Affairs, OMB, room 3208, New Executive Office Building, Washington, DC 20503, attn: Laura Oliven, Desk Officer for ACF.

Federalism and Family Effects

Following is an assessment of this rule using the criteria and principles set forth in Executive Orders 12606 and 12612.

Analysis Required by Executive Order 12606 on the Family

The Block Grant program is expected to have an overall beneficial impact on the family. We believe that all

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provisions of the Act, and these regulations, support parents' rights to educate, nurture, and supervise their children.

The objective of this program is to increase the availability, affordability, and quality of child care services. Such activities will enable families to maintain or achieve self-sufficiency through employment and training, and to increase their earnings. For child care under the Block Grant, parents will be provided information about providers and will have access to their children. Federal funding of this program will permit parents to choose from a broad range of child care providers, including child care centers, family child care providers, sectarian organizations, relatives, friends and neighbors.

This rule emphasizes the importance of parental choice in decisions regarding the type and location of child care providers. This emphasis sends a message of parental responsibility and authority.

The Block Grant does not substitute governmental activity for any of the functions of the family. Services will be made available by means of Federal funding to non-Federal levels of government, i.e., States and localities. For these reasons, this rule meets both the letter and spirit of E.O. 12606 on the Family.

Analysis Required by Executive Order 12812 on Federalism

We have determined that this rule will not have a substantial economic impact on States, Tribes or Territories, nor will it have a substantial impact on the relationship between the Federal government and these entities. It will not have a substantial effect on the distribution of power and responsibilities among the various levels of government (e.g., State and local governments). For these reasons, an in-depth analysis of the effect of this rule relative to the principles of federalism is not required.

Nevertheless, an explanation of our regulatory approach is appropriate. Other block grant programs administered by the Department of Health and Human Services provide greater latitude to Grantees with regard to the interpretation of statutory provisions. In fact, most statutory provisions are not included in the regulations for these other programs. Grantees are responsible for interpreting statutory language; the Federal government intervenes only where the Grantee's interpretation of a statutory provision is "clearly erroneous."

We believe that there are a number of compelling reasons for the Department to adopt a different approach for the purpose of the Child Care and Development Block Grant. The first two reasons are based on the language of the Act.

First, Congress has required a substantial Federal role in monitoring the program, as evidenced by the provisions in section 658I(b) of the Act. The Secretary is required to monitor against the provisions of the Plan, as well as the Act. Substantial penalties, including suspension from further funding under the Block Grant, are specified. This led us to conclude that Plan provisions should be set forth in regulation, in order to assure that there would be a basis for Federal oversight.

Second, we believe that providing additional policy guidance through Federal regulations would be helpful in striking the balance between the competing principles of family and federalism embodied in the Act. See *Chevron, U.S.A., Inc.*, v. *Natural Resources Defense Council*, 467 U.S. 837, (1984) (deference is given to the administering agency charged with interpreting a statute when the statutory provisions are competing). Although the Act allows broad State discretion, such authority may not be exercised at the expense of parental choice. Based on prior experience, we were concerned that some jurisdictions might consider regulations which would effectively eliminate most or all in-home care, family day care, relative or sectarian care, contrary to the principle of parental choice contained in the Act.

Under the Block Grant program, some States with existing voucher programs might interpret the statutory requirements relating to the certificate program and parental choice in such a way as to limit a parent's ability to choose from a broad range of child care providers. For example, some States might seek to permit parents to choose only from those providers under contract with, or who are currently licensed by, the State. Congress intended to give parents the greatest flexibility in choosing among providers by requiring a certificate program that is available as an alternative to contracted care.

In addition, there is a basic historical difference between other block grant programs and the Child Care and Development Block Grant. The other block grant programs administered by the Department existed as programs before they were consolidated into block grants. There was, therefore, an historical basis for policy and operational processes. The Child Care and Development Block Grant, on the other hand, is a new program. We therefore believe that it is important and appropriate to clearly establish Federal policy with regard to the program at the outset.

Finally, because Grantees have such a limited amount of time available to develop their first round of plans, we felt it would be helpful to provide them with specific guidance and incorporate all statutory requirements in the regulations so that they would only have to refer to one document to determine Federal requirements.

We are sensitive to the need for flexibility in the design of programs and administrative processes. For this reason, in this rule we have attempted to balance the principles of federalism and the family in such a way as to provide Grantees with flexibility, yet protect the rights of parents. We allow most definitions and processes to be set by Grantees. We have focused on outcomes. Therefore, for example, we provide that in the certificate program the Grantee must permit a parent to send his or her child to a provider which he or she selects. This includes child care centers and family child care providers under contract with the Grantee, or neighbors, relatives, or sectarian organizations which accept certificates, so long as the provider meets the requirements of the Act. We do not, however, require any particular certificate form or process.

Similarly, with regard to health and safety and registration requirements, Grantees have substantial flexibility in providing for any necessary requirements. No minimum standards are established. However, as further explained in the preamble to § 98.30, we do caution that Grantees must not establish policies or processes which have the effect of limiting parental choice.

We do not believe that this overall approach restricts States in designing and implementing Block Grant programs. While States must meet all statutory requirements, which the Department intends to monitor, we fully expect substantial variation in Grantee programs. We do not specify that programs be statewide, nor do we provide definitions of all terms. We allow flexibility in setting sliding fee scales, in setting payment rates, and in establishing eligibility conditions.

The States will serve as laboratories for testing unique solutions to the needs of families targeted by this program. ACF hopes to serve as the focal point for knowledge regarding these solutions, and to expedite the transfer of such solutions around the country.

Justification for Promulgation of an Interim Final Rule

The Administrative Procedure Act provides that an agency can issue an interim final rule "when the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B). ACF finds that a Notice of Proposed Rulemaking (NPRM) would be impracticable in this instance due to the time constraints involved.

Congress allowed only ten months between the passage of the Act and the availability of the appropriation, and thus the start of the program. Much of that time is needed by each Grantee to develop its Plan, to hold a public hearing on it, and to submit it to ACF with sufficient lead time for approval. The remaining time was insufficient to determine Federal administration of the program, draft an NPRM, allow review of the NPRM by applicable Federal entities, publish the NPRM, allow for a comment period, consider comments, revise the NPRM and publish the final.

We feel it is necessary to have a regulation in place before each State finalizes the development of its Plan so that the Plan considered at the public hearing and approved by ACF will be complete. Section 658I of the Act requires that the Secretary shall monitor against the Plan. To effectively carry out this oversight responsibility, State Plans need to contain all the necessary detail against which the Secretary will monitor. Section 658E of the Act provides that the Secretary shall, by rule, establish the information needed in the States' Block Grant Applications, which include the Plan. We believe that the need to publish the rule, and thus establish the necessary Plan information before the initial Plan is submitted, is especially important as the initial Plan for the States and Territories is for a three year period. In addition, we believe there is a need for a rule before Plans are submitted in order to establish the funding formulas for the Territory and Tribal Grantees.

Comments may be made on this interim final regulation and will be accepted for sixty days after its publication. Those comments will be considered and a final rule published. If changes in the final rule necessitate changes in a Grantee's Plan, the Grantee will be given an opportunity to amend the Plan.

Introduction

In preparing this rule, we hoped to achieve the following purposes:

—To include in the regulation all information necessary to allow the reader to understand all statutory and regulatory requirements;
—To provide the basis for applicants (States, Territories, and Indian Tribes) to prepare Child Care and Development Block Grant Applications and Plans;
—To establish the foundation for Federal oversight and administration of the Block Grant;
—To assure that Grantees meet statutory objectives as they design and implement child care and related programs; and
—To provide broad flexibility to Grantees in designing and administering programs under the Block Grant, within the constraints of the Act.

By its very nature, a block grant provides great flexibility in program design. Although ACF does not expect uniformity in programs from State to State, we are concerned that the outcomes specified in the legislation (listed below) be achieved in all programs funded under the Block Grant. In this rule, we have attempted to achieve a balance between providing Grantees broad flexibility in program administration and ensuring that these outcomes are achieved. While we do not expect that all interested parties will agree with every provision of this regulation, in reviewing this package, readers should bear in mind the many compromises and competing policies embodied in the legislation.

Programs funded under the Child Care and Development Block Grant should seek to achieve a balance among the numerous outcomes specified in the legislation. These include:

—Maximizing parental choice through the use of both certificates and contracted child care services, to include a broad range of child care providers, including center-based care, family child care, and in-home care, including care provided by relatives and sectarian organizations;
—Providing quality child care that meets applicable State and local requirements, as specified in the Act;
—Coordinating planning and delivery of services at Federal, State and local levels;
—Providing flexibility of program design to assure that recipient needs are met;
—Ensuring that the preponderance of funds is used to provide child care services, and therefore minimizing non-service expenditures;
—Increasing the availability of child care services, including early childhood development and before- and after-school care;
—Assuring responsible program administration, through which statutory requirements are met and adequate information regarding the use of public funds is provided; and
—Maximizing the impact of the additional funding available under the Block Grant by assuring that funding supplements, not supplants, funding for existing services.

In addition, we believe that programs should, to the maximum extent possible, provide "seamless service" to the families and providers who will participate. This means that, to the extent permitted by applicable statute, a family should be able to retain the same provider regardless of the source of funding (e.g., under titles IV–A and XX of the Social Security Act, and under this Block Grant, etc.) and that providers should be able to provide services to children regardless of the basis for the family's eligibility for assistance or the source of payment.

Program Implementation

The Act does not contain language regarding the effective date of program implementation. However, since funding becomes available in September of 1991, we expect that most States, Territories, and Tribal applicants will request funding in FY 1991. As a consequence, we intend to observe the following time line in implementing the program at the Federal level.

As described below under § 98.16, ACF will soon issue a preprinted Plan which, upon approval by OMB, would be included with an Application for funding under the Block Grant. As required by section 658D(b)(1)(C) of the Act, the lead agency must hold at least one hearing in conjunction with the development of the Plan. The Application, including required Plan provisions and statutory assurances, must be submitted to ACF 45 days before the lead agency may begin receiving Federal funds. Applications will be approved within 45 days of submission, unless additional information is needed from the lead agency.

Funding for State expenditures for planning is available for the period from November 5, 1990, the date of enactment of the legislation, for Applications for FY 1991 funds. More information concerning funding is included below.

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Subpart A—Purposes and Definitions

Purposes (§ 98.1 of the Regulations)

This section of the regulations lists the purposes of the Block Grant and is based on the purposes given in the conference report, H.R. Rep. No. 964, 101 Cong., 2d Session 922, reprinted in 1990 U.S. Code Cong. & Admin. News 2374, 2627 (hereafter, the Conference Report). In addition, this section also lists the specific purposes of these regulations, as described in the introduction to this preamble.

Definitions (§ 98.2 of the Regulations)

To simplify understanding, we will use the following terms frequently in the discussion of the regulations:

—*The Act* refers to the Child Care and Development Block Grant Act of 1990, section 5082 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508;
—*ACF* means the Administration for Children and Families;
—*The Application* is the request from a potential Grantee for funding under the Block Grant. It includes the amount of funding requested and the projected budget for the program;
—*The Assistant Secretary* is the Assistant Secretary for Children and Families;
—*The Block Grant* will be used as shorthand for the Child Care and Development Block Grant;
—*Block Grant programs* will be used to generically describe all activities under the Block Grant, including child care services and quality and availability improvements pursuant to section 658E(c)(3)(B) of the Act, as well as quality and availability improvements, pursuant to sections 658E(c)(3)(C), 658G and 658H of the Act;
—*Child care services* means child care services pursuant to section 658E(c)(3)(B) of the Act;
—*The Department* means the Department of Health and Human Services;
—*Grantee* means the governmental or Tribal entity to which a grant is awarded and which is accountable for the use of the funds provided. The Grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document;
—*The Lead Agency* is the agency designated as responsible for administering the Block Grant for the State, Territory, Tribe, or Tribal organization;
—*The Plan* means the Plan for the implementation of programs under the Block Grant;
—*The regulation* refers to the actual regulatory text contained in parts 98 and 99;
—*The Secretary* is the Secretary of the Department of Health and Human Services;

We have included these definitions in the regulation at § 98.2.

Section 658P of the Act provides definitions for the following terms: caregiver, child care certificate, elementary school, eligible child, eligible child care provider, family child care provider, Indian Tribe, parent, secondary school, sliding fee scale, State, and Tribal organization. We have included these definitions in this section of the regulation.

We have distinguished types of assistance under the Act. The Act distinguishes between certificates, on the one hand, and grants, contracts, and loans on the other. Both types of aid are considered assistance provided under the Block Grant. However, the Act's terminology and structure reflect a distinction between certificates, which are deemed to be assistance to parents, and grants, contracts, and loans, which are treated as assistance to providers. Thus, for example, sections 658E(c)(2)(E) and (F) require Grantees to provide assurances concerning any applicable licensing and regulatory requirements and concerning health and safety requirements applicable to child care providers that provide services for which assistance is made available under the Act. This formulation was used to ensure that such requirements were triggered, not only by assistance to providers, i.e., grants and contracts, but also by assistance to parents, i.e., certificates. By contrast, the provisions of section 658N of the Act relating to nondiscrimination in employment and enrollment on the basis of religion apply for the most part to "[a] child care provider * * * that receives assistance under this subchapter." Thus, such requirements are only triggered by assistance to the provider in the form of grants, contracts, and loans.

The above distinction, which we have followed in the structure and terminology of the regulations, reflects the compromise embodied in the Act between licensing and regulatory requirements and health and safety requirements, on the one hand, and religious nondiscrimination and nonsectarian use requirements, on the other. Although the Act requires all providers to comply with the former, providers who accept only certificates need comply with the latter only when 80 percent or more of their operating budget is governmental, as discussed in §§ 98.46 and 98.47. This distinction follows the Act by providing parental choice of sectarian providers, and by protecting the religious autonomy of such providers.

To clarify the types of child care providers that may provide child care services, the regulations include definitions for center-based child care provider, group home child care provider, family child care provider, and in home provider. Consistent with the definition in the Act for "family child care provider," we used broad, generally accepted definitions for these terms. We also define categories of care (i.e., center-based, group home, family child care and in-home) and types of providers (e.g., nonprofit, for profit, sectarian and care by relatives). These definitions are also consistent with the definitions used in other ACF child care programs.

We distinguish between "caregiver," which is defined in the Act, and "provider." The Act defines "caregiver" as the individual actually providing child care services to a child, while we define "provider" as the entity providing child care services. An individual may be both the caregiver and the provider (i.e., in the case of a family child care provider or an in-home child care provider). Group home child care providers and center-based child care providers may employ a number of caregivers.

We have also included definitions for early childhood development programs and before- and after-school programs. For purposes of the Block Grant, these programs are defined as those which meet the regulatory requirements in § 98.51.

Our definitions for "Indian Tribe" and "Tribal organization" correct the citations given in the Act for the Indian Self-Determination and Education Assistance Act. The correct citation for "Indian Tribe" is section 4(e) of the Indian Self-Determination and Educational Assistance Act (25 U.S.C. 450b(e)). Also, the reference for "Tribal organization" is corrected as section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(l)). Additionally, we have added language to the definition of Tribal organization to explicitly include consortia as Tribal organizations. We feel that this is consistent with the intent of the definition found at 25 U.S.C. 450b(l).

The definitions also clarify that a "sectarian organization" or "sectarian child care provider" means religious organizations and providers generally, not merely those of a specific religious character or that are affiliated with a church or synagogue. The terms embrace any organization or provider that engages in religious conduct or activity or that seeks to maintain a religious identity in some or all of its functions. There is no requirement that a sectarian organization or provider be managed by clergy or have any particular degree of religious management, control, or content. As we understand it, the term "sectarian organization" as used in the statute was not based upon, or limited by, the concept of "pervasively sectarian" settings found in some judicial decisions.

Finally, we have added definitions of "program period," "obligation period," and "liquidation period" to help clarify responsibilities of Grantees regarding expenditure of funds and reporting.

Effect on State Law (§ 98.3 of the Regulations)

Section 658N(b) of the Act contains language relating to the effect of the Act on State law, as well as the effect of State law on expenditures under the Block Grant. We have included this language in § 98.3 of the regulations.

This section provides that nothing in the Act supersedes or modifies any provision of a State constitution or State law prohibiting the expenditure of public funds in or by sectarian institutions. We have included language which similarly restricts the effect of the regulations.

In some States, provisions of the State constitution or State law prohibit expenditure of public funds in or by sectarian institutions. Under the Block Grant, States are not required to provide matching funds, and the costs of State administration are an allowable expenditure. Thus, all activities under the Block Grant can be carried out using only Federal funds. Because no State funds are required to operate the Block Grant, under the Act provisions of a State constitution or State law that would preclude a State from participating in the Block Grant program (or from complying with its requirements) because State funds would be used in or by sectarian institutions do not apply.

Thus section 658N(b) of the Act makes clear that no provision of a State constitution or State law can be construed to define "public funds" to include Federal funds provided under the Block Grant. Thus, provisions of State constitutions or State laws that preclude expenditure of public funds in or by sectarian institutions do not apply to Block Grant funds, and may not be construed to prohibit the expenditure in or by sectarian institutions of any Federal funds provided under the Act. This provision requires States to segregate State and Federal funds, if necessary, to ensure that a State constitution or law does not prevent Federal Block Grant funds from being expended for the purposes provided in the Act, without limitation.

As with the other provisions of the regulations, unless otherwise specified, these provisions apply to Indian Tribes and Territories.

Subpart B—General Application Procedures

Lead Agency Responsibilities (§ 98.10 of the Regulations)

The regulations follow the statutory language at section 658D(b) of the Act in setting out specific responsibilities of the lead agency. First, they require that the chief executive officer of the State designate an appropriate State agency as the lead agency. Second, they require that the lead agency submit the Plan, hold at least one public hearing and coordinate Block Grant services with other child care and development programs.

In addition, the regulations elaborate on the statutory provisions in clarifying that: (1) In the case of programs to be operated by Tribal Grantees, the appropriate Tribal leader or applicant (rather than the chief executive officer of the State) would designate the lead agency; (2) the lead agency must submit the Application for funding required under § 98.13, as well as the Plan; and (3) the lead agency must coordinate with programs for the benefit of Indian children as well as other Federal, State or local programs.

The regulations also allow the lead agency to share administrative responsibilities with other State agencies. However, as provided in § 98.11, the lead agency must maintain overall responsibility for the program. If other State agencies share administration of the program (or individual program activities), they must operate within the parameters established by the lead agency. As specified in § 98.11, such parameters must include the policies, the types of activities or services to be provided, and all rules and regulations governing the administration of the program.

In addition, the lead agency has the flexibility to contract with local public or private agencies to implement the Block Grant program. As with the sharing of administrative responsibility with other State agencies, the lead agency must maintain overall administrative responsibility for the program pursuant to § 98.11. We believe the authority to share implementation will facilitate coordination with other child care and development programs, which may be locally implemented or community based, and enable Grantees to utilize the most effective and efficient administrative structures available.

Administration Under Contracts and Agreements (§ 98.11 of the Regulations)

Grantees are given broad administrative flexibility under the regulations at § 98.10(a). However, this flexibility could make it more difficult to maintain accountability for the expenditure of funds and for meeting the requirements of the program. It could also greatly complicate the ability of both the Grantee and ACF to meet their respective oversight responsibilities. To protect against these risks, we are setting certain minimal requirements for the sharing of administrative or implementation responsibilities by the lead agency. Thus, we require that when administration of the Block Grant programs is shared by other State agencies, or the implementation is shared with local public or private agencies, the process must be governed by written agreements or contracts which specify the roles and responsibilities of the respective agencies. We believe it would be impossible for the lead agency to satisfy the assurances in the Plan without such written agreements.

We require that the lead agency retain overall responsibility for the administration of the program and serve as the single point of contact in resolving program issues related to the Grantee's Block Grant program. Under these requirements, the lead agency must retain responsibility not only for conducting the activities specified in paragraphs (b), (c), (d) and (e) of § 98.10, but also for such functions as: (1) Determining the basic usage and priorities for the expenditure of Block Grant funds; (2) promulgating all rules and regulations which govern the administration of the Plan; (3) submitting all reports required by the Secretary; (4) ensuring that the program complies with the approved Plan and all Federal requirements; (5) overseeing the expenditure of funds by subgrantees and contractors; (6) monitoring programs and services; and (7) fulfilling the Grantee's responsibilities in any complaint, compliance, hearing, or appeal action under subpart J or part 99.

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Coordination and Consultation (§ 98.12 of the Regulation)

Pursuant to section 658D(b)(1)(D) of the Act, the lead agency must coordinate the provision of Block Grant services with other Federal, State and local child care and early childhood development programs. As required in § 98.14, the lead agency must also consult with appropriate representatives of units of general purpose local government in developing the Plan. Such consultations may include, but are not limited to, consideration of local child care needs and resources, the effectiveness of existing child care and early childhood development services, and the methods by which funds made available under this part can be used effectively to address local shortages.

We believe that coordination in planning and delivery of services is essential in order to prevent duplication, to assure that child care services are available to the maximum number of eligible families, and to provide a viable range of child care options for parents. In designing programs, administrators should also consider existing service delivery networks. Coordinating with existing child welfare services, early childhood development programs, educational systems, and others, will help ensure that the varying needs of children and families are met.

As indicated in the introduction, one goal of a coordinated service delivery system is to create a fabric of seamless service. Seamless service means providing eligible parents access to and payment for child care services and programs which bridge and supplement the parents' child care needs, even as eligibility changes over time; this is done without the necessity of changing the child care provider. In addition, such a coordinated service delivery system could create a complete day of service for an eligible child when programs do not last for the entire day (e.g., child care services before and after a Head Start class).

A fully coordinated service delivery system would include, to the extent possible, common payment rates, common definitions of sliding fee structures, common contracting methods, and common payment methods including parent certificates, with other child care services funded under title IV–A and other funding sources. Child care programs under title IV–A of the Social Security Act include Transitional Child Care, At-Risk Child Care and AFDC Child Care offered to working AFDC recipients and participants in JOBS or other approved education and training. Definitions, administrative procedures, and provider eligibility rules which are as consistent as possible should ease the administrative burden on the State, local and Tribal organizations. They should also enable smooth transitions for families as their situations change over time.

This section also addresses the coordination required between States and Tribal Grantees. Section 658O(c)(2)(A) of the Act requires that Tribal applicants coordinate to the maximum extent feasible with the lead agency in the State or States in which the applicant will carry out the Block Grant. We have added a complementary State requirement. We believe that this requirement is necessary to ensure State/Tribal coordination of services. We believe that such coordination is also necessitated by the statutory requirement at section 658O(c)(5) of the Act and § 98.80(d) which provides that Indian children have dual eligibility for State and Tribal programs. Specifically, we expect States and Tribes to share information regarding eligibility requirements relative to family income. These eligibility requirements apply to Indian children, as discussed in the preamble at § 98.80.

Finally, since Grantees are required to review their budgets and submit Applications annually, we expect the coordination specified in this section to be carried out on an ongoing, rather than a one-time, basis.

Application Content and Procedures (§ 98.13 of the Regulations)

In accordance with section 658E of the Act, we require those wishing to obtain Block Grant funds to submit an Application and a Plan. We require Grantees to submit Applications annually. We considered other alternatives, but decided to require annual Application submittals because: (1) Appropriations are annual; (2) ACF must provide allocations annually; and (3) effective December 1992, and annually thereafter, Grantees are required to make annual reports. Additionally, section 658K(b)(1) of the Act requires the Grantee, after the close of each program period covered by an Application, to audit its expenditures during such program period. We are requiring Grantees to conduct an annual audit (see § 98.65 for discussion of Audits) and, consequently, are requiring Grantees to submit Applications annually.

The Application will include the following:

(1) The program period, as defined in § 98.2(cc), for which the Application is made;

(2) The amount of funds requested for such period;

(3) An assurance that the Grantee will comply with the requirements of the Act and the regulations;

(4) Pursuant to 45 CFR part 93, Standard Form LLL (SFLLL) which assures that the funds will not be used for political lobbying purposes (Tribal applicants are not required to submit this form);

(5) Pursuant to 45 CFR 76.600, an assurance (including any required forms) that the Grantee provides a drug-free workplace;

(6) A budget of expenditures, which provides an estimate of the use and distribution of Block Grant funds during the period covered by the Application, including:

(i) A break-out of program activities under § 98.50 including a list of activities to improve the availability and quality of child care (which includes administrative costs the Grantee anticipates will be necessary to carry out the stated purposes of the program); and

(ii) A break-out of program activities under § 98.51 including administrtive costs which the Grantee anticipates will be necessary to carry out the stated purpose of the program; and

(iii) A detailed explanation and rationale for the budget of expenditures under § 98.50(d)(3) if not consistent with the requirements specified in § 98.50(d)(2);

(7) Pursuant to 45 CFR 76.500, certification that no principals have been debarred;

(8) The amount of Federal, State, and local public funds expended for the support of child care and related programs during a base period (for the initial Application), such expenditures for subsequent periods (in subsequent Applications), and, if applicable, information regarding the nature, extent, and basis for reductions in Federal expenditures for programs other than the Block Grant, pursuant to § 98.53;

(9) The Block Grant Plan, at times and in such manner as required in § 98.17; and

(10) Such other information as specified by the Secretary.

We do not believe that providing the Application information will be unduly burdensome. We believe that Grantees, in setting the goals and objectives of the program and in determining how to achieve them, must consider allocation of funds, as well as the program and administrative activities that will be undertaken. Moreover, pursuant to section 658K(a)(1) of the Act, Grantees must provide information on the use and distribution of funds at the end of the program period. The information we require will not only be used to monitor the program, but can also be used in reports to Congressional committees and to provide models for other Grantees. Because we know that budget data are preliminary, we are not requiring their inclusion in the Block Grant Plan; thus, the budget data will not be subject to the compliance process.

The requirements on lobbying, drug-free work place, and debarment of principals which we included are not cited in the Act, but are required under other Federal laws and regulations. We also required other information which we believe is essential in our administration of the program (e.g., the amount of funds requested, current expenditures for child care and related services). Finally, we added language requiring Grantees to comply with the regulations, as well as the Act.

The Block Grant Plan must accompany the initial Application. Thereafter, the Block Grant Plan need only accompany the Application if a new Plan is required, pursuant to § 98.17. Procedures for submitting Applications will be specified in future guidance.

Although we specify that Applications for FY 1991 funding must be received by July, 1991, there is no requirement that an Application for or approval of FY 1991 funding is necessary for subsequent funding. That is, a State, Territory or Tribe which does not apply for FY 1991 funding would nevertheless be potentially eligible for Block Grant funds in future fiscal years.

Plan Process (§ 98.14 of the Regulations)

In developing the Plan, section 658D(b) of the Act requires the lead agency to: (1) Coordinate the provision of services with Federal, State and local child care and early childhood development programs; (2) consult with appropriate representatives of local governments to consider local child care needs and resources, the effectiveness of existing child care and early childhood development services and the methods by which Block Grant funds can be used to effectively address local child care shortages; and (3) hold at least one hearing to provide an opportunity for the public to comment on the provision of child care services.

Although the Act does not expressly require States to coordinate with Tribal child care and early childhood development programs, we believe that Congress clearly intended for such coordination to occur in States with Tribal programs. We have, therefore, specifically required the lead agency in the State to coordinate its program with programs which provide services which benefit Indian children.

The purpose of the Block Grant is to increase the availability, affordability and quality of child care. To achieve that purpose, we believe it is imperative that the public be afforded the opportunity to comment on the provision of child care services. It is expected that the Grantee will submit the Plan, including descriptions of the intended uses of the Block Grant funds, for public comment. We have included the provision that the potential Grantee must provide adequate notice of the hearing to ensure the greatest attendance possible. Although the Act only requires the lead agency to hold one public hearing, the lead agency may, of course, hold additional public hearings. The opportunity for public comment must be offered before the Plan will be considered complete.

We believe that the coordination and consultation processes and the public hearing are vital to the design of a successful program. Consequently, these activities must be undertaken each time a Plan is to be submitted.

Assurances (§ 98.15 of the Regulations)

This section lists all of the Plan assurances required by the Act. We have added one additional assurance—that the Grantee must comply with the provisions of the approved Plan. We believe that this assurance is necessary because section 658I(b)(1) of the Act requires the Secretary to monitor Grantee compliance with its Plan.

Plan Provisions (§ 98.16 of the Regulations)

Section 98.16 lists the information we require in the Plan. Grantees are required to provide more information and greater detail than has generally been requested in block grant programs. Authority to do so is contained in section 658E(a) of the Act, which requires a Grantee to submit an Application, which includes the Plan, "at such time and in such manner, and containing such information as the Secretary shall by rule require."

It is clear from reading the Conference Report that Congress intends Grantees to provide explicit information as to the use and distribution of the Block Grant funds (H.R. Rep. 964 at 924, reprinted in 1990 U.S. Code Cong. & Admin. News at 2629). The Conference Report indicates that, to receive funds, an applicant must submit a Plan that includes: (1) Local consultation regarding development of the Plan; (2) coordination with existing programs; (3) use of funds for child care services, including early childhood education and before- and after-school care, and for activities related to quality and availability; (4) priority for very low income children and children with special needs; and (5) use of a sliding fee scale. The Report makes it clear that Congress expects Grantees to include in the Plan all the necessary information to enable the Secretary to assess the program and to determine if the stated purposes of the Block Grant will be achieved.

Consequently, we have required Grantees to include information necessary to assist the Secretary in assessing the program. Grantees are required to provide descriptive statements of those elements that we believe are: (1) Essential for program success; and (2) necessary to provide a basis for ACF to monitor the program, as required in section 658I(b)(1) of the Act. (Section 98.16 of the regulations contains a list of the items to be included in the Plan. Each of the items is discussed in detail in the appropriate preamble section).

We expect to provide a preprint which will elicit all of the information required in this section in a standardized format. Use of a standardized format will meet the following objectives: (1) Provide complete program information; (2) provide usable information needed to compile and compare program data; and (3) expedite timely review. In addition, the preprint will assist and guide Grantees and potential Grantees in submitting the Plan.

Period Covered by Plan (§ 98.17 of the Regulations)

Section 658E(b) of the Act specifies that the initial Block Grant Plans submitted by States shall cover a period of three years and all subsequent ones shall cover a period of two years. Section 658O(c)(4) provides that the grants or contracts for Block Grant programs under Tribal Plans shall be for periods not to exceed three years. As a specific period was not provided in the Act, we determined that Tribal Grantees must submit their Plans every two years, just as States are required to do after their initial submittals. Timeframes for submittal of new Plans will be provided in written instructions.

Approval and Disapproval of Plans and Plan Amendments (§ 98.18 of the Regulations)

The Act does not specify a Plan approval or disapproval process. However, it is clear that an approval process is needed, as section 658E(d) requires the Secretary to approve the

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Plan. The Act also does not mention Plan amendments. However, because Block Grant Plans will be in effect for a multi-year period, it is reasonable to assume that some facets of the Plan may change. Although Grantees have great flexibility in designing their programs, the Act requires Grantees to comply with the statutory provisions and the Plan and provides for the imposition of penalties and sanctions in certain circumstances. Because we will monitor against the Plan, it is necessary that the Grantee have an opportunity to amend the Plan, notify the Department about changes, and receive necessary approvals. The Grantee may include expected changes in an initial or subsequent Plan submittal. Where changes are not anticipated, the Grantee may submit amendments of an approved Plan when making substantial changes to its program.

We believe it would be unreasonable to require a Grantee to submit a Plan amendment for all of the changes that occur in the program. We are, therefore, requiring amendments only when a substantial change occurs, e.g., the Grantee adds a significant additional program activity, eliminates a significant program activity, or changes its basic plan for the allocation of funds.

We fashioned the appeals process for Plan and Plan amendment disapprovals after similar processes used in other ACF-administered programs.

Subpart C—Eligibility for Services

A Child's Eligibility for Child Care Services (§ 98.20 of the Regulations)

The statutory requirements for eligibility for basic child care services (i.e., those services described under § 98.50(b)) are found in section 658P(4) of the Act, under the definition for an "eligible child." These requirements limit eligibility to children: (1) Who are under 13 years of age; (2) who come from families with income below 75 percent of the State median income; and (3) who either reside with a parent or parents who are working or attending a job training or education program, or are receiving, or need to receive, protective services. Under § 98.20(a), we include these statutory requirements, with a reference to the definition of parent at § 98.2(aa). This definition, based on section 658P(9) of the Act, encompasses legal guardians or other individuals standing *in loco parentis*. Thus, the program will allow child care in certain limited cases where a child does not reside with his or her parents.

The Act does not provide a specific exception to the age limitation for special needs children. Although not creating a specific exception, Congress indicated its interest in giving special consideration to special needs children under the Block Grant by giving them priority for services under this section. The other child care programs administered by ACF do allow an exception to the age limit for cases where the child has a medically documented physical or mental handicap which prevents the child from caring for himself or herself and for children subject to court supervision. In these programs, the upper age limit for a special needs child is up to age 18 or 19, depending on the State's definition of "dependent child" under title IV-A of the Social Security Act. We believe it is consistent with Congressional intent to extend eligibility under the Block Grant for special needs children on a similar basis. Thus the regulation at § 98.20(a)(1)(ii) provides for an exception to the age-13 restriction, consistent with the exception provided in the other ACF programs. This exception will help Grantees create a system of seamless services.

We are not regulating Grantee determinations of State median income, definitions of family structure or income, definitions of "special needs child," "physical or mental incapacity," if applicable, "very low income," "residing with," "working," "attending," "job training," "educational programs," or "protective services." Thus, Grantees will be able to develop their own definitions of these terms.

Under § 98.20(b) we explicitly provide that Grantees or other administering agencies have the authority to set additional conditions of eligibility or priority rules, as long as these conditions do not undermine the other policies or requirements of the Act. Specifically such conditions or rules may not discriminate against children, limit parental choice or other parental rights.

As points of clarification: (1) Grantees may show preference toward children with handicaps, pursuant to § 98.44, but they may not discriminate against such children; (2) providers may show preference for certain children, pursuant to § 98.46; and (3) Tribal programs are specifically intended for the benefit of Indian children. The regulations do not preclude eligibility restrictions based on age, since we believe it would be reasonable for program administrators, as a matter of priority, to target the available services to particular age groups of children. Nor do they preclude more stringent income-eligibility rules. However, they specifically preclude basing eligibility or priority for services on a parent's preference for a particular category of care, type of provider, or choice of a child care certificate. Finally, such rules or conditions may not violate provisions of the regulations or Plan.

The regulations allow discretion by administering agencies in determining how best to target their services. This discretion could result in different eligibility rules in effect in different parts of the area served by the Grantee, as there is no "statewideness" requirement in the Act. However, any such rules must be consistent with the provisions of the Plan and the requirements of paragraph (a) of this section regarding Federal eligibility limitations, the anti-discrimination clauses in paragraph (b) of this section, and the priority rules at § 98.44. Grantees must specify any additional eligibility criteria or priority rules they establish pursuant to this paragraph in their Plan.

A Child's Eligibility for Early Childhood Development and Before- and After-School Care Services (§ 98.21 of the Regulations)

The regulations require that if a Grantee subsidizes, through grants or contracts pursuant to section 658H of the Act and § 98.51 of the regulations, early childhood development or before- and after-school care services for individual children, those children must meet the eligibility conditions in § 98.20(a). This means, for example, that if a Grantee uses Block Grant funds under § 98.51 to purchase after school services, or slots, from a provider, that a child receiving such services must be under age 13 and meet the other statutory eligibility conditions in § 98.20(a).

The regulations also provide that Grantees may set additional conditions of eligibility for individuals to receive early childhood development and before- and after-school care services funded under § 98.51. Such conditions of eligibility would be subject to limitations similar to those which apply to child care services under § 98.50 regarding discrimination and consistency with the Plan and the regulations; they would also have to be specified in the Plan. However, such additional conditions need not be the same as any additional conditions under § 98.50.

Subpart D—Program Operations (Child Care Services) Parental Rights and Responsibilities

Parental Choice (§ 98.30 of the Regulations)

Section 658E(c)(2)(A) of the Act requires States to provide assurances that parents are given the option of (1) enrolling their children with a provider who has a grant or contract for the provision of services, or (2) receiving a child care certificate for use with the provider of their choice. The Act also requires that, when a parent selects contracted care, the child will be enrolled with the provider selected by the parent to the maximum extent practicable.

Congress clearly intended for the Block Grant to give parents a variety of options in addressing family child care needs. Thus, the regulation specifies that parents electing to use certificates must be permitted to choose among a range of child care options, including: Center-based child care, group home child care, family child care, and in-home care (see definitions in § 98.2). Grantees, therefore, may not explicitly or in effect limit parents' access to any category of care or type of provider from Block Grant funding.

As discussed, Congress intended for the Block Grant to give parents the widest possible variety of child care options. On the other hand, Congress included several provisions in the Act which invoke federalism by allowing States flexibility. Thus, the Act embodies principles both of federalism and of parental choice. In such circumstances, it is the responsibility of the agency administering the statute to strike a reasonable balance between the competing statutory principles.

The regulations reflect our balancing of these competing principles. See *Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council*, 467 U.S. 837, (1984) (deference is given to the administering agency charged with interpreting a statute when the statutory provisions are competing). Thus, although Grantees enjoy great flexibility in program administration, the regulation requires that such discretion may not be exercised at the expense of parental choice. The balancing focuses on four aspects of Grantee administration—State and local regulatory requirements (§ 98.40), health and safety requirements (§ 98.41), payment rates (§ 98.43) and registration requirements (§ 98.45). In each of these areas, excessive and ill-designed requirements or procedures could prejudice parental choice.

In striking the balance between the competing principles in the Act, we kept in mind the value placed on parental choice. The Conference Report indicates that a variety of child care arrangements were intended by Congress, "including care by relatives, churches, synagogues, family providers, centers, schools, and employers." (H.R. Rep. 964 at 923, reprinted in 1990 U.S. Code Cong. & Admin. News at 2628).

In addition, the importance of providing parents the choice of a full range of child care options is expressed in specific provisions of the Act, such as the required availability of certificates, the requirement for parental access, the inclusion of consumer education, the specific inclusion of sectarian providers, and the registration of providers for payment, as well as in the Act's overall structure.

Finally, we considered the fact that a primary purpose of the Act is to increase the availability of child care. Any Grantee rules or requirements for the purpose of providing child care under the Block Grant which cause a reduction in the availability of care would be contrary to Congressional intent. Thus, the regulation reflects our balancing of the competing principles of federalism and parental choice.

Therefore, the regulation provides that Block Grant funds will not be available to a Grantee if State or local rules, procedures or other requirements promulgated for the purposes of the Block Grant significantly restrict parental choice. First, such requirements cannot expressly exclude or have the effect of excluding any category of care or type of provider, or any type of provider within a category of care. Second, such requirements must not have the effect of limiting parental access to or choice from among such categories of care or types of providers. Third, such requirements must not exclude a significant number of providers in any category of care or of any type.

This means that State or local rules, requirements, policies and procedures cannot either explicitly, or operationally, result in significant restrictions in the range of child care options. For example, a State requirement that family day care homes have automatic sprinkler systems would likely have the effect of excluding this category of care under the Block Grant, and if so, would be unacceptable under the regulation.

A rule which did not eliminate a type of provider, but which significantly restricted the ability of a type of provider to participate in the program would also be contrary to the regulation. For instance, a requirement that only a small percentage of potential providers of a certain type could meet, even though all were otherwise legally providing child care services, would be unacceptable.

While parents must be offered the choice of services provided with Block Grant funds, Grantees must provide parents with certificates only for services funded under § 98.50.

When a parent decides to enroll an eligible child with a provider that has a grant or contract for child care services with the Grantee, the parent's choice of provider must be honored to the maximum extent practicable. We expect that Grantees will have in place a mechanism for informing parents about providers who are receiving grants or contracts for services, as well as a means of assessing the availability of those child care slots. Further, we interpret parental choice to mean that a parent may choose to use child care certificates with a provider whose grant or contract slots are filled (if the provider has space otherwise available) or with any other provider a parent may choose.

Many parents will want to use child care providers who do not have a grant or contract with the Grantee. Child care certificates offer parents greater control and flexibility in the selection of a provider. Grantees must inform all parents who are offered Block Grant services that certificates are an option available to them. As previously discussed, Congress expected that child care certificates would enable parents to choose from a wide range of child care arrangements including care by relatives, churches, synagogues, family providers, centers, schools, and employers.

Child care certificates must be made available to any parents offered services under § 98.50. As previously discussed, the certificates must permit parents to choose from each of the categories of care and types of providers enumerated in § 98.2.

While certificates offer great flexibility in selecting a child care provider, the provider must meet the eligibility requirements described in subpart E. As long as the provider is, or may become, eligible to receive payment, a parent has full discretion in selecting and arranging for the purchase of child care services with a certificate. For example, a parent may choose to designate a neighbor or relative as the provider, even if that provider is not registered with the Grantee, so long as the provider registers before payment is

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made. Implementation of the Block Grant by the Grantee must not impede providers from meeting basic eligibility requirements; rather we expect Grantees to assist all providers in meeting these requirements.

To ensure broad parental choice, certificates for child care services must be issued directly to the parents. For the purpose of purchasing child care services, Grantees must implement certificate programs which allow certificates to be used as flexibly as cash between the parent and eligible providers. The actual form, or forms, of the certificate (e.g., check, coupon, debit card) will be determined by the Grantee. Additionally, child care certificates must carry a value commensurate with the value of the child care services purchased under a grant or contract. Although the regulations provide Grantees great flexibility in defining the form of certificates, and the process for providing them, it is essential that the certificate program provide parents with the maximum choice possible and give them the discretion to choose from a wide range of child care arrangements. Grantees are required in § 98.16(a)(11) to describe the form and operation of their certificate program in their Plan. In monitoring programs under the Block Grant, as required under section 658I(b)(1), ACF will particularly focus on whether a certificate program achieves these outcomes.

Parents may elect to use child care certificates with a sectarian child care provider. The payments associated with the certificates and such certificates may be expended for any sectarian purpose or activity including sectarian worship and instruction. Pursuant to section 658M(a) of the Act and the regulation at § 98.54(d), however, Block Grant funds received through grants or contracts may not be expended for such sectarian purposes or activities. Funds received via certificates are not considered grants or contracts with the Grantee, but are assistance to the parent, pursuant to the definition in section 658P(2) of the Act and § 98.2(j) of the regulation, and thus, as noted above, are not covered by this restriction. Therefore, the Act does not, and Grantees may not, preclude funds made available through the certificate mechanism from being used for sectarian purposes. Moreover, this restriction also does not apply to providers' activities that do not involve the use of funds received under the Block Grant.

While certificates must be provided directly to the parent, the Act does not address whether the payment associated with a child care certificate must also be provided directly to the parent, or whether the payment must be made in advance of the provision of services. We believe that Grantees have the flexibility to establish procedures which meet their individual needs, so long as these procedures ensure timely payment. For example, a State might provide a certificate to the parent, who gives it to the provider, who is then reimbursed by the Grantee. An alternative might be a two-party check that both the parent and provider would endorse before the provider could cash the check.

Grantees have until October 1, 1992, to begin operating a child care certificate program. In order to offer parents maximum flexibility with Block-Grant-funded assistance, Grantees are encouraged to develop a certificate program or an interim program as soon as possible. In developing child care certificate programs, Grantees should give full consideration to factors which both support maximum parental choice (e.g., procedures for prompt issuance of certificates, and speedy payment for services) and promote efficient service delivery (e.g., through appropriate use of automation). Certificate programs should also include measures to ensure the accuracy of payment (e.g., the correct amount, to the correct provider).

The regulations provide flexibility to establish payment procedures which meet Grantees' individual needs; however, they should include measures to prevent fraud and abuse, such as verification that care provided is actually received by the child for whom services are funded. Since a number of States currently operate certificate/voucher programs, we would be interested in their comments on successful verification and fraud prevention practices.

Pursuant to paragraph (e) of this section, a child care certificate program must ensure that parents may obtain certificates throughout the program year, or as long as Block Grant funds are available for child care services under § 98.50. We interpret the option described in section 658E(c)(2)(A), offering parents a choice in the method of financial assistance, to mean that certificates must be an actual option to parents at any time. As long as Block Grant funds are otherwise available for child care services, parents who choose certificates must receive them rather than being placed on a waiting list for certificates or discovering that certificate funds are exhausted. This means that in planning for the use of Block Grant funds, a Grantee should keep in mind that its Plan must provide for the continued availability of certificates as an alternative to contracted services.

Summary of Sections (§§ 98.31, 98.32, 98.33 of the Regulation)

The Act clearly reflects Congress' belief that wellinformed parents are in the best position to make decisions about their children's care. Parental choice, as described in § 98.30, affirms this reliance on parental judgment. The Act and the regulations also provide for parental access (§ 98.31), parental complaint procedures (§ 98.32) and consumer education (§ 98.33) which afford parents opportunities to gain information about child care services and child care providers in order to make sound decisions. Together, these three provisions serve to support and enhance parental choice.

Parental Access (§ 98.31 of the Regulation)

Section 658E(c)(2)(B) of the Act requires States to provide assurances that they have procedures which ensure parents unlimited access to both their children and the child care provider during normal working hours and whenever the children are in the care of such providers.

Congress viewed such unlimited parental access to children within the care setting as enhancing parental choice and involvement. Parents are concerned about health, safety, and the quality of care their children receive; unlimited parental access allows them to identify problems and safeguard their children. Moreover, parental access promotes continuity of care between home and the provider.

Information about the right to parental access should be included in States' consumer education programs (§ 98.33).

Parental Complaints (§ 98.32 of the Regulation)

Section 658E(c)(2)(C) of the Act requires each State to provide assurances that it maintains a record of substantiated parental complaints and that it makes information regarding such complaints available to the public on request.

Maintaining complaint records on providers and making this information available on request enhances parental involvement and parental choice. Grantees have the flexibility to set guidelines for the types of parental complaints handled by their system.

The Act specifies that States maintain a record of "substantiated" complaints. This implies a system for receiving complaints and making a determination of whether the complaints are substantiated or unsubstantiated. In establishing a complaint system or augmenting an existing one, Grantees should consider developing policies on treatment of anonymous complaints, maintaining records, recording rebuttals or updates by providers, and providing confidentiality for the complainant.

Grantees should agree on interagency roles and responsibilities to ensure that all reports concerning the immediate health and safety of children in care receive a quick response. Clear agency roles are also needed to ensure that adequate and accurate records are maintained.

Consumer Education (§ 98.33 of the Regulations)

Section 658E(c)(2)(D) of the Act requires States to provide assurances that consumer education information about child care services is available to parents and the general public. Such consumer education must provide information about applicable licensing and regulatory requirements, complaint procedures, and policies and practices concerning child care services within the State.

We chose to expressly include language on parental options in the regulation to ensure that parents are fully apprised of their options for receiving child care services under the Block Grant. This means that Grantees must provide consumers with information about the options of contracted care and child care certificates, as well as health and safety requirements, parents' right to unlimited access to their children while in the care of a child care provider, and the procedures for parental complaints.

Grantees are encouraged to provide information to parents on how to recognize indicators of child abuse and how to obtain help if they suspect maltreatment of their children. Information can be obtained from: The Clearinghouse on Child Abuse and Neglect Information, P.O. Box 1182, Washington, DC 20013, telephone (703) 821–2086.

Grantees are not limited by the requirements specified in the regulation and can provide other consumer information. For example, Grantees are encouraged to provide information to acquaint parents with all the options for child care services available within the State, how to avail themselves of these options, and advise them on how to identify quality child care.

Parental Rights and Responsibilities (§ 98.34 of the Regulations)

Section 658Q of the Act requires that nothing in the Act shall be construed or applied in any manner to infringe on or usurp the moral and legal rights and responsibilities of parents.

We believe that Congress intended for this section to reinforce parents' right to choose the type of child care services their children receive. It also highlights parents' responsibility to use available information (e.g., through consumer education) to make informed choices about child care services and to monitor the quality of the care received (e.g., visit the provider while their child is in care). Congress clearly believed that Grantees and other agencies are not in a position to substitute their judgment for that of parents, especially in matters relating to child care.

Subpart E—Program Operations (Child Care Services) State and Provider Requirements

Compliance with Applicable State and Local Regulatory Requirements (§ 98.40 of the Regulations)

Section 658E(c)(2)(E) of the Act uses the term registration in two different contexts. In paragraph (i), it requires an assurance that providers of child care services for which assistance is provided under the Block Grant meet all applicable State and local "licensing or regulatory requirements (including registration)." This language suggests that registration requirements are a subset of licensing and regulatory requirements. In paragraph (ii), on the other hand, the Act requires Grantees to assure that providers who are not required to be licensed or regulated by the State or local government for the purpose of providing child care be registered prior to any payment of Block Grant funds.

To avoid confusion about the meaning of registration in these regulations, we leave out the term "registration" when we refer to licensing and regulatory requirements, such as the regulation at paragraph (a)(1) of this section. Instead, in the definition section of the regulation at § 98.2(x), we define licensing and regulatory requirements to cover registration requirements which are established under State and local law. Thus, we distinguish between regulatory requirements established under State and local licensing laws and regulations and the registration requirements established pursuant to section 658E(c)(2)(E)(ii) of the Act. As used in these regulations, the term registration refers to the basic procedures, pursuant to § 98.45, which Grantees must establish to facilitate payment and to permit the provision of information to providers not licensed or regulated by the State or local government for the purpose of providing child care.

We believe that compliance with any applicable licensing or regulatory requirements pursuant to section 658E(c)(2)(E)(i) of the Act and registration requirements pursuant to section 658E(c)(2)(E)(ii) of the Act apply to child care services offered under §§ 98.50 and 98.51. Thus, the regulations require that child care providers of any type (e.g., center-based, group, family, before- and after-school, and early childhood development) must meet applicable State and local licensing or regulatory requirements or registration requirements in order to receive Block Grant funds. (See § 98.83 regarding licensing and regulatory requirements for Tribal programs.)

States and local governments establish the licensing or regulatory requirements which child care providers must meet. Section 658E(c)(2)(E) states that it shall not be construed to prohibit Grantees from imposing more stringent standards for providers receiving Block Grant funds.

As previously discussed in § 98.30, the establishment of such standards must be balanced with ensuring parental choice. We believe that both principles are appropriately accommodated by requiring that the effects of State licensing or regulatory requirements or other standards imposed on providers of services for which assistance is provided under the Block Grant are consistent with the safeguards for parental choice in § 98.30.

For example, State or local regulations or policies in areas such as credentialing, schooling or training, space, and staffing ratios cannot significantly limit a parent's choice from among categories of care or types of providers.

We expect that, when a parent selects a provider that does not meet applicable standards the provider will be given the opportunity to come into compliance. In fact, section 658G(2) of the Act makes funds available in the form of grants and loans to assist providers in meeting applicable State or local standards.

Grantees are required to describe any existing standards and applicable health and safety requirements annually, and to present the findings of the one-time review of any existing State licensing and regulatory requirements, pursuant to § 98.71 of the regulations. The Department will carefully review the effects of requirements and standards applicable only to providers receiving

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Block Grant funds, to ensure that they do not limit parental choice.

Health and Safety Requirements (§ 98.41 of the Regulations)

Section 658(E)(c)(2)(F) of the Act requires that each Grantee must provide assurances that there are in effect, under State or local law, requirements designed to protect the health and safety of children applicable to child care providers of services for which assistance is provided under the Block Grant. The Act specifically notes that it does not require the establishment of new or additional health and safety requirements if existing State or local requirements comply with the Act. Any necessary changes applicable to those who provide child care services under §§ 98.50 and 98.51 of the Block Grant must be consistent with the purposes of the Act. Paragraph (e) of this section provides that the health and safety requirements listed in paragraph (a) apply to all providers of child care services offered under both §§ 98.50 and 98.51, except for certain relatives as specified in paragraph (g). Grantees must assure that procedures are in place for: (1) The prevention and control of infectious diseases (including immunization); (2) building and physical premises safety; and (3) minimum health and safety training appropriate to the provider setting.

The provision at paragraph (g) of this section specifies that, for the purpose of health and safety requirements, grandparents, aunts, and uncles are not considered child care providers. Such relatives must be registered, pursuant to § 98.45, but, based on the statutory definition of "eligible child care provider" in section 658P(5) of the Act, there is no requirement that they be subject to health and safety requirements.

In safeguarding the health and safety of all children for whom the lead agencies administer child care programs, States may want to make use of existing health guidelines, building and fire codes, mechanisms to provide immunization and other such services currently in place in the State. We know that proper public health measures are essential in the prevention of disease. Therefore, if a Grantee desires information on health and safety as it relates to immunization or other health and safety practices, ACF will provide copies of, or references to, appropriate studies and other resources in this area.

On Indian reservations immunizations and other preventive services are provided through Indian Health Service (IHS) outreach efforts by public health nurses and community health representatives. IHS collaborates with States and the Centers for Disease Control (CDC) to ensure that Indian children receive immunizations. Grantees can enlist the assistance of IHS, where applicable, in efforts to prevent and control infectious diseases.

Congress has required that each Grantee assure in the Plan that minimum health and safety requirements apply to providers of child care services for which assistance is provided under the Block Grant. Congress has also expressly required that Grantees provide maximum parental choice. As discussed in § 98.30, the administering agency in such circumstances must strike a balance between such competing statutory principles. In paragraph (b) of this section, we have attempted to strike the balance that Congress intended by requiring that Grantees not set health and safety requirements which are inconsistent with the safeguards for parental choice in § 98.30.

Applying health and safety standards to child care occurring in a home setting, e.g., in-home or family child care could be particularly troublesome. We believe that it would be unreasonable for Grantees to apply health and safety standards to in-home and family child care that would operate to significantly limit the availability of child care services in these settings.

In meeting the appropriate training requirements of this section, Grantees should consider the provider setting. For example, minimum health and safety training appropriate to the provider setting could mean Grantee's furnishing information concerning fire and health codes. For certain provider settings—such as home care settings—supplying information regarding applicable public health and safety codes to all registered providers through routine informational mailings, videotapes, or other media could be sufficient to meet the statutory requirement.

Along similar lines, some States exempt churches from child care regulation. It would not be necessary to eliminate these exemptions. For example, current building and fire codes which govern the safe operation of the building itself and other measures which States have in place could be sufficient to meet the requirement.

ACF will monitor Grantee programs and review reports required under § 98.70 to be sure that a wide range of caregivers are providing child care services under the Block Grant. For the reasons discussed in § 98.30, if evidence suggests that access to certain categories of care or types of providers, as defined in § 98.2, is limited due to State or local licensing or health and safety requirements, the Department will take corrective action. We will monitor this area closely to assure the balance described above is achieved.

Pursuant to 658E(c)(2)(H) of the Act, this section of the regulations also requires Grantees to inform the Secretary, via the annual report, if they reduce the level of standards applicable to child care services provided in the State after November 5, 1990. The Grantee must include in the report its rationale for reducing existing standards.

The Act at section 658E(c)(2)(I) also requires that, not later than 18 months after submitting its initial Application (§ 98.13), each Grantee must complete a full review of the law applicable to, and the licensing requirements and regulatory requirements and policies of, each licensing agency that regulates child care services and programs in the State. Grantees are exempt from this requirement if they have reviewed such law, requirements and policies between November 5, 1987 and November 5, 1990.

Pursuant to section 658E(c)(2)(C) of the Act, this section of the regulations requires Grantees to assure that there are procedures in effect to ensure that Block Grant child care providers comply with all applicable health and safety requirements described in paragraph (a) of this section.

Section 98.16(a)(10) of the regulations requires Grantees to include a description of the minimum health and safety requirements in the Plan.

Sliding Fee Scales (§ 98.42 of the Regulations)

Pursuant to section 658E(c)(5) of the Act, the regulations require Grantees to establish and periodically revise, by rule, a sliding fee scale that provides for cost sharing by families that receive Block Grant services under §§ 98.50 and 98.51. We require States to base this sliding fee scale on income and the size of the family. We give Grantees explicit authority to waive contributions from families whose income is at or below the poverty level (H.R. Rep. 101-964 at 923, reprinted in 1990 U.S. Code Cong. & Admin. News at 2628). Alternatively, Grantees may require a minimum contribution from all participants.

In order to provide flexibility, we have chosen not to define "periodically," thus allowing each Grantee to determine the most appropriate intervals for reviewing and revising the sliding fee scale. Additionally, Grantees have the authority to consider factors other than income and family size (e.g., family composition, special needs children) in establishing sliding fee scales.

Although we require Grantees to apply a sliding fee scale to services provided under § 98.51, the fee scale need not be the same as the fee scale applied to services under § 98.50, pursuant to § 98.42(d). As discussed in §§ 98.21 and 98.51, we have determined that the statutory eligibility requirements of § 98.20 also apply to services provided under § 98.51. Requiring Grantees to apply a sliding fee scale to Block Grant services provided under § 98.51(b)(1) conforms to Congress' express intention that the Block Grant generally should provide financial assistance to low-income working families to help them find and afford quality child care services for their children. It is also consistent with requirements in the Act and regulations that Grantees give highest priority for services under § 98.51 to geographic areas with high concentrations of low-income children eligible under chapter I of the Elementary and Secondary Education Act, and then to other areas with concentrations of poverty and areas with very high or very low population densities.

Payment Rates (§ 98.43 of the Regulations)

Section 658E(c)(4)(A) of the Act requires that payment rates for Block Grant services are sufficient to ensure that eligible children have equal access to comparable child care services. That is, Block Grant payment rates must allow children receiving Block Grant services equal access to comparable child care services provided to children whose parents are not eligible to receive child care assistance subsidized with Federal or State funds.

The Act also requires that payment rates consider variations in the costs of providing child care between different categories, as defined in § 98.2(h), and to children of different age groups, as well as the additional costs of providing child care for children with special needs. Therefore, Grantees must differentiate between center-based, group home, family, and in-home child care providers. However, payment rates should not be based on the type of provider. For example, care provided by a sectarian child care provider or by a relative would be not considered a category for the purpose of determining rates, and those providers must be reimbursed at the same rate as other providers in the same category. Thus, a relative taking care of a child in the relative's own home would receive the family child care rate; a relative taking care of a child in the child's own home would receive the in-home rate.

Although the Act provides some direction with regard to payment rates, it does not define "equal access." Broadly interpreted, equal access to comparable child care services could mean that Grantees must assure that those receiving Block Grant services must have access to any child care services available in the area served by the Grantee, regardless of cost. Such an interpretation could present significant restrictions on a Grantee's ability to target resources. Alternatively, an argument can be made that "comparable" does not mean "identical," and, therefore, some difference is allowed.

We believe that Congress clearly intended that the Block Grant should: (1) Allow access to quality child care for a broad range of low-income families, rather than unlimited access to the most expensive care available to a few eligible families; and (2) allow parents discretion to choose from a wide range of child care arrangements, including care by relatives, churches, synagogues, neighbors, family providers, centers, schools, and employers.

We interpret equal access to comparable child care services to mean that Grantees must ensure that payment rates are sufficient to provide access to categories of care "comparable" to child care services available to children receiving unsubsidized care. That is, the payment rate(s) must be sufficient to provide for center-based, group home, family, and in-home child care.

We thus require that payment rates provide for a range of services to be available. At a minimum, and analogous to regulations at §§ 98.40, 98.41 and 98.45, we require Grantees to assure that their payment rates are consistent with the safeguards for parental choice in § 98.30. Within this constraint, Grantees have flexibility to limit payments for child care services.

In keeping with our philosophy of providing flexibility to Grantees, we do not require Grantees to set limits on payment rates for child care services, nor do we require a single methodology in determining their payment rates. Grantees may use any methodology, including the use of local market rates established pursuant to 45 CFR 255.4 for child care for AFDC families, that meet the requirements outlined above. In order to promote program consistency, we suggest that Grantees consider the methodology and payment rates set for other programs.

A description of the methodology for setting payment rates must be included in the Plan, pursuant to § 98.16(a)(12) of the regulations. Grantees must make the rates set through this methodology available for review upon request by ACF, pursuant to § 98.90.

The Act specifies that the assurance by the Grantee that the payment rates for child care under this program are sufficient to ensure that eligible children have equal access to child care services comparable to those provided to non-subsidized children does not create a private right of action. Thus, no suit may be brought by a private individual or group to enforce this section. A person who feels the Grantee is violating § 98.43(a) can file a complaint concerning the failure of the Grantee to comply with its Plan as described in § 98.93.

Priority for Child Care Services (§ 98.44 of the Regulations)

This section of the regulation implements section 658E(c)(3)(B)(i) of the Act, which requires States to give priority for services provided under § 98.50 to children of families with very low incomes and to children with special needs. It also requires Grantees to consider family size when determining low-income levels.

Under these regulations, Grantees have discretion in defining "very low income" and "special needs." Grantees must include a description of the plan for prioritization in the Block Grant Plan, pursuant to § 98.16(a)(7).

Registration (§ 98.45 of the Regulations)

Under section 658E(c)(2)(E)(ii) of the Act, Grantees must provide assurances that child care providers who are not required to be licensed or regulated under State or local law are required to register before receiving any payment under the Block Grant. They must design registration procedures to: Facilitate appropriate payment to providers; permit the Grantee to furnish information to providers; and allow providers to register after their selection by the parents of eligible children, but prior to payment.

Registration applies only to child care providers who are not otherwise required to be licensed or regulated under State or local laws. Generally, registration will pertain to providers not licensed or regulated under State or local law for the purpose of providing child care, such as a neighbor or a relative caring for an eligible child.

Many States currently have procedures called "registration." The regulation at § 98.45 speaks only to registration necessary under the Block Grant. As discussed in § 98.40, entitled

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"Compliance with Applicable State and Local Regulatory Requirements," we distinguish between registration required under State or local law and registration required for the purposes of the Block Grant.

Registration of providers under the Block Grant must be a simple process, such as giving the Grantee the provider's name and mailing address. Grantees may also require providers to supply additional information at the initial contact, such as birth date, or other identifying data. Grantees should collect only the information that is needed to facilitate appropriate payment to the provider, and permit the Grantee to furnish the provider with information on training, technical assistance, and any relevant information concerning health and safety requirements. We caution that registration should not be a burdensome process which discourages potential providers from offering child care services.

The point of payment, either after the initial contact or after completing registration as described at § 98.45(b), is determined by the Grantee. The payment must be timely so that providers are not discouraged from offering child care services. Although we are not regulating a timeframe between request for registration and payment, Grantees must ensure that it is a reasonable period. Section 98.16(a)(13) of the regulations requires Grantees to specify this timeframe in their Plan. If we find that timeframes are longer than providers could reasonably expect, we may regulate further in this area.

Some States have procedures in effect under which providers must meet certain requirements (e.g., a health department certification) before payment for child care is made. For example, a State might require that a provider pass a building inspection before payments are made under a State child care program. States should assure that their procedures allow a provider to meet such requirements within a reasonable timeframe so that providers are not discouraged from offering child care services. We will closely monitor such Grantee procedures, with a particular emphasis on timeliness. We also require a description of the process for meeting requirements and the timeframes in the State Plan, pursuant to § 98.16(a)(14). Grantees should note that Block Grant funds are available under § 98.51 to assist Grantees in monitoring provider compliance with requirements.

Grantees must assure that procedures are in place to ensure that registered providers comply with the health and safety requirements pursuant to § 98.41. In order to avoid delays in the provision of child care services, Grantees should allow registered providers to begin caring for an eligible child pending completion of compliance procedures.

The regulations give Grantees flexibility in establishing a registration process. As previously discussed in § 98.30, however, the registration process established by Grantees must be consistent with the safeguards for parental choice in § 98.30. This requirement is included in paragraph (d) of this section. Registration should facilitate, not impede, parental choice.

As specified at § 98.16(a)(13) of the regulations, a Grantee's Plan must include a description of the registration requirements and the timeframes.

Nondiscrimination in Enrollment on the Basis of Religion (§ 98.46 of the Regulations)

Section 658N of the Act contains a number of provisions related to nondiscrimination on the basis of religion. As described in more detail in the discussion of the definitions in § 98.2, these provisions distinguish between certificates, which generally do not trigger these requirements, as stated in §§ 98.46 and 98.47, and grants, contracts and loans, which do trigger the requirements. Under section 658N(a)(2) of the Act, child care providers, other than family child care providers, that receive assistance in the form of grants, contracts or loans under the Block Grant shall not discriminate in enrollment decisions against any child on the basis of religion. This does not prohibit such a provider from selecting a child for a child care slot who individually, or whose family, regularly participates in other activities of the organization that owns or operates the provider, as long as the slot is not funded directly, i.e., by grant or contract, through the Block Grant. Notwithstanding these provisions, section 658N(a)(4) of the Act specifies that, if assistance provided through grants, contracts, loans or certificates under the Block Grant, or other Federal or State funds, amounts to 80 percent or more of the provider's operating budget, that provider may not receive further Block Grant funds through grants, contracts, or certificates unless its grant, contract or admissions policy specifies that it will not discriminate, on the basis of religion, in admitting any child.

We interpret section 658N(a)(2) to generally prohibit religious discrimination in enrollment against children by providers receiving assistance under the Block Grant. We therefore note in the regulation that this provision refers to providers receiving assistance for child care services funded through grants, contracts, or loans under both §§ 98.50 and 98.51. We also note that family child care providers, as defined at § 98.2(r), are exempted from this provision, as are providers receiving only certificates under the Block Grant.

Under paragraph (b) of this section, for slots that are not directly funded under the Block Grant, a sectarian organization, as well as any other provider, can select children on the basis of a family's participation on a regular basis in other activities of the organization. For slots covered by a grant or contract, providers may not exercise such preference policies.

However, if the combined assistance from Federal and State programs, including the direct and indirect assistance from the Block Grant, amounts to 80 percent or more of the provider's operating budget, the exceptions mentioned above do not apply. We interpret assistance to include all Block Grant assistance, i.e., grants, contracts, loans, and certificates. The Grantee must not permit Block Grant funds to be paid to such a provider until either the provider's grant or contract, or its admission policy, includes language assuring that it does not discriminate on the basis of religion in admitting children.

Paragraph (c) of this section places responsibility for this requirement on the Grantee, since the Grantee or its designee is responsible for grants and contracts, as well as services provided through certificates.

Nondiscrimination in Employment on the Basis of Religion (§ 98.47 of the Regulations)

Section 658N of the Act also includes a number of provisions related to nondiscrimination in employment on the basis of religion. Section 658N(a)(1)(A) provides that, in general, the provisions of any other Federal law or regulation relating to discrimination in employment on the basis of religion apply. Section 658N(a)(1)(B) creates an exception to this by allowing a sectarian organization to require that employees adhere to the religious tenets and teachings of the organization and to require that employees adhere to rules forbidding the use of drugs or alcohol.

The Act further provides, in section 658N(a)(3), that, with the exception of sectarian organizations, child care providers receiving assistance in the form of grants, contracts and loans under the Block Grant shall not discriminate in employment on the basis of religion if the employee's primary responsibility is or will be working directly with children in the provision of

child care services, i.e., a caregiver as defined at § 98.2(g). As discussed with reference to §§ 98.2 and 98.46, such assistance comprises grants, contracts, and loans, not certificates. Further, a provider is not prohibited from hiring for any position, from qualified applicants for the position, an individual who is a member of, or who participates in, other activities of the organization that owns or operates the provider. The provisions of section 658N(a)(3) apply only to employees hired after the date of enactment of the Block Grant, November 5, 1990.

Finally, section 658N(a)(4) provides that notwithstanding any provision above, if 80 percent or more of the operating budget of the child care provider comes from grants, contracts, or certificates under the Block Grant or other Federal or State funds, the Secretary will not allow the provider further Block Grant assistance unless the grant or contract, or the employment policies of the provider, specifically provide that no person working for the provider will discriminate, on the basis of religion, in the hiring of caregivers.

Section 658N provides that non-sectarian child care providers shall not discriminate on the basis of religion in hiring caregivers. However, from among qualified applicants for any such positions, a child care provider is not prohibited from hiring an individual who is already participating in other activities of the organization which owns or operates the provider.

Sectarian organizations, and the child care providers which are owned or operated by them, are exempt from the general rule and may require all employees, including caregivers, to adhere to the religious tenets and teachings of the organization and may require employees to adhere to rules forbidding the use of drugs or alcohol.

By stating that a sectarian organization may require its employees to adhere to its religious tenets and teachings, section 658N(a)(1)(B) of the Act contemplates that religious organizations may require more than outward conformity with prescribed standards of conduct while an employee is at work. Section 658N(a)(1)(B) also permits religious organizations to require that employees adhere to rules forbidding the use of drugs or alcohol. Religious organizations may require that employees adhere both on and off the job to rules of the organization forbidding drug or alcohol use.

However, if 80 percent of the operating budget of a provider, including a provider operated by a sectarian organization, is derived from direct or indirect assistance under the Block Grant, i.e., grants, contracts, loans, and certificates, and from other Federal and State funds, there are two possible consequences. First, if the provider is operated by a sectarian organization, that provider loses the religious discrimination exception for caregivers. Second, for all providers, no further Block Grant funds are available to the provider, unless all grants or contracts under the Block Grant, or the employment policies of the provider, specifically provide that no person with responsibilities in operating the child care program, project, or activity, will discriminate, on the basis of religion, in employment of caregivers. As with the nondiscrimination in admissions policies, paragraph (c) of this section places responsibility for these requirements on the Grantee.

Subpart F—Use of Block Grant Funds

Child Care Services (§ 98.50 of the Regulations)

Under section 658E(c)(3)(A) of the Act, the Block Grant Plan must provide that Grantees allocate their Block Grant funds for specific purposes, according to percentages specified in subsequent paragraphs of the Act. The Plan requirements are included at § 98.16 (a)(7)(iii) and (a)(8)(iii). The allocation requirements are discussed in this section and § 98.51.

Pursuant to section 658E(c)(3)(B) of the Act, Grantees must use funds that are not required to be reserved under § 98.51 for: (1) Child care services provided to eligible children on a sliding fee scale basis, as a contracted service or through a certificate program; and (2) activities designed to improve the availability and quality of care. Because Grantees must reserve 25 percent for the purposes specified in § 98.51, by inference, Grantees must use the remaining 75 percent of their Block Grant funds on services and activities authorized under this section.

Pursuant to section 658E(c)(3)(B)(i) of the Act, the services authorized under this section must be provided to children who are eligible under the conditions specified in § 98.20(a), and they must be provided on the basis of a sliding fee scale. Further, the services must be provided through the funding methods under § 98.30 (i.e., by enrolling with a provider who is under a grant or contract or through a certificate). Priority must be given to children of families with very low income (taking into consideration family size) and to children with special needs pursuant to § 98.44. Requirements for a sliding fee scale are covered under § 98.42, and priority rules are discussed in more detail under the preamble for § 98.20.

The Act does not directly define what constitutes activities to improve the availability and quality of services for the purpose of this 75 percent set-aside. However, for the purpose of the 25 percent set-aside (which is discussed in the following section) the Act lists five activities for improving the quality of care (i.e., resource and referral, assistance in meeting standards, monitoring of compliance with licensing and regulatory requirements, training, and staff compensation).

We have not attempted to define allowable activities for improving availability and quality of care under this section. Grantees therefore have broad flexibility to define what would be allowable.

Grantees are not required to fund any particular activities. In fact, section 658F(a)(2) of the Act indicates that Grantees have authority to impose additional limitations or conditions on contracts or grants, as opposed to certificates. As discussed in § 98.30, any such additional limitations on the receipt of grants and contracts by providers must not significantly limit parental choice from among a wide range of providers.

Grantees may not use Block Grant funds to subsidize the rates for child care provided under title IV–A of the Social Security Act. Under the IV–A programs, the statute provides that Federal matching funds would be available up to the local market rate. Using Block Grant funds to contravene the funding limits in the IV–A programs would violate Federal appropriations law, including the axiom that an agency cannot do indirectly what it is not permitted to do directly.

In the Conference Report, Congress indicated its intent that a "preponderance" of the 75 percent funds "be spent on child care services and a minimum amount on other authorized activities" (H.R. Rep. 101–964 at 923, reprinted in 1990 U.S. Code Cong. & Admin. News at 2628). Based on this language, in paragraph (d) of this section, we have included a requirement that Grantees spend a preponderance of funds on services and a minimum amount on the other activities authorized in this section. We have also specified that, to meet this requirement, Grantees must spend at least 90 percent of the funds for services, with no more than 10 percent of the funds under this section available for other authorized activities.

However, because administrative expenses may be higher during the start-

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up phase of the program, with appropriate justification and upon specific request in the Grantee's yearly application, we permit an exception to this requirement during the first two years of a Grantee's operation of the program. During these two years, Grantees must spend at least 85 percent of the funds for services and may spend up to 15 percent of the funds under this section for other authorized activities.

While the "preponderance" language alone in the Conference Report would not seem to require that Grantees spend the substantial majority of these funds on services, in using the words "minimum amount" the managers clearly indicate that they want the least possible amount spent on other authorized activities. We categorize other authorized activities as activities to improve availability and quality, which for the purposes of this regulation shall include administrative costs.

Since the Act does not specifically authorize administrative costs, we believe this limit for such expenditures is reasonable. In addition, we believe that this limit is reasonable for activities targeted to improve the availability and quality of care under the 75 percent set-aside. First, Congress called the section governing the 75 percent set-aside "child care services;" the use of this title indicates that Congress, in fact, considered the purpose of this section to be services, not other activities. Secondly, Congress provided elsewhere for expenditures on improvements in availability and quality. Finally, it is essential that Grantees spend a substantial amount on services under this section in order to ensure that parents have sufficient opportunity to exercise parental choice.

There is an exception to this limit on non-service expenditures for Tribal Grantees. As discussed in § 98.82, the allotment formula for Tribal Grantees is very different from that for the States and Territories. It includes a base amount, plus an additional amount per child. The purpose of the base amount is to ensure that Tribal Grantees have enough funding to operate a viable program. Therefore, the base amount is exempt from the limitation in paragraph (d) of this section. The limitation applies only to any additional amounts above the base amount. In planning Block Grant programs, Tribal Grantees must satisfy Congressional intent and spend the minimum necessary amount on other authorized non-services activities.

In § 98.16(a)(7)(i), we require a Grantee to describe in its Plan the activities and services that will be provided pursuant to this section. In addition, we require the Grantee, as part of its Application for Block Grant funds, pursuant to § 98.13(a)(6), to annually submit a proposed budget for expenditures over the program period, including a breakout of the estimated costs for administration and services under this section.

Activities to Improve the Quality of Child Care and to Increase the Availability of Early Childhood Development and Before- and After-School Care Services (§ 98.51 of the Regulations)

This section of the regulation addresses the requirements at sections 658E(c)(3)(C), 658G, and 658H of the Act regarding how 25 percent of the total Block Grant funding must be spent. At least 18.75 percent of the total Block Grant amount (i.e., 75 percent of the 25 percent) must be spent for early childhood development and/or before- and after-school services (in the interest of brevity, these will be referred to as section 658H services). At least 5 percent of the Block Grant funding (i.e., 20 percent of the 25 percent) must be spent on improvements in the quality of child care services. The Act does not address the use of the remaining 1.25 percent. Thus, the regulations provide that this remaining amount may be used at the discretion of the Grantee for any of the purposes covered in this section.

Section 658G of the Act lists five possible activities for improving the quality of child care. We incorporated this list in paragraph (b)(2) of this section (i.e., resource and referral, assistance in meeting standards, monitoring of compliance with licensing and regulatory requirements, training and staff compensation).

The Act and the regulations are both clear that Grantees may fund section 658H services only through grants and contracts. Furthermore, Grantees are not required to use these funds on the direct provision of services. Rather, they may use funds for any activities to "establish or expand and conduct" such programs. Thus, Grantees may provide funds to institutions and other organizations for items such as minor remodeling and equipment, as well as for additional slots; they could also issue grants to help an organization set up a program of home-based, early childhood development services.

The Act uses a geographic-area basis in establishing priority for grants for section 658H services, rather than the individual basis for service priority under § 98.50 (the geographic priorities are found in paragraph (c)(2) of this section). Under the Act, Grantees must give the highest priority to geographic areas that are eligible to receive grants under section 1006 of the Elementary and Secondary Education Act. Thus, organizations that provide services to children in local school districts which have high concentrations of low-income children eligible for chapter I basic grants receive first priority for section 658H services. As provided in section 1006, districts are considered to have high concentrations if they have 6,500 such children, or such children make up at least 15 percent of all children in the district.

A child must meet the eligibility requirements specified under § 98.20(a) in order to receive section 658H services. However, as explained in § 98.21(b), we allow Grantees to establish additional eligibility and priority rules. Such rules may be similar to, or different than, the eligibility criteria established for child care services pursuant to § 98.20(b).

Grantees may also set additional limitations or conditions on the receipt of grants or contracts by providers, pursuant to section 658F(a)(2) of the Act. However, for the reasons discussed in § 98.30, such additional limitations on the receipt of grants and contracts by providers must not significantly limit parental choice from among a wide range of providers.

Similar to our policies on the funding of registered providers, Grantees may fund programs which do not currently meet applicable State or local regulatory requirements, but are expected to meet such requirements; they are not limited to funding of currently licensed or regulated providers. It would be impossible for Grantees to establish new programs if they were limited to funding currently licensed or regulated providers.

With the exception of grants or loans to assist providers in meeting requirements (section 658G(2) of the Act), the Act and regulations do not specify the form in which funds related to quality improvements are to be provided. Thus, Grantees may use grants, contracts, or other forms of assistance which they deem appropriate. Loan programs which Grantees establish to assist providers in meeting applicable requirements are discussed in greater detail in the preamble and the regulations at § 98.60 (g) and (h).

We have not provided Federal definitions of early childhood development programs, before- and after-school programs, or academic programs, but have allowed Grantees to define them. However, pursuant to § 98.54, funds must not be used for

tuition and related expenses of academic programs.

In § 98.16(a)(8)(i), we require the Grantee to describe in its Plan the activities and services that will be provided pursuant to this section. In addition, we require the Grantee, as part of its Application for Block Grant funds, pursuant to § 98.13(a)(6)(i), to annually submit a proposed budget for expenditures over the program period, including a breakout of the costs for administration and activities under this section.

Administrative Activities (§ 98.52 of the Regulations)

The Act does not address the use of Block Grant funds for administering the program. However, since administrative costs are necessary expenses of operating the program, we will permit the limited use of Block Grant funds to cover such costs. We are concerned, however, that using more than the "minimum amount" identified in the Conference Report for administrative costs will limit a Grantee's ability to achieve the purposes of the program (i.e., to increase the availability, affordability, and quality of child care services). Under § 98.50(d), we establish the requirements on expenditures for that section only. In this section, we address specific allowable administrative costs as provided under the capped "services" amount and under the section 658H programs.

We considered providing an exclusive list of administrative activities for which Block Grant funds could be used. However, we decided to allow Grantees flexibility in defining such costs.

However, to ensure that most of the Block Grant funds are spent on the purposes of the program, the regulations require Grantees to submit a dollar estimate for each funding year of the amount of funds they plan to spend on administrative activities. This estimate will be submitted with the annual Application, as provided in § 98.13(a)(6). It will enable us, the Grantee, and the public to monitor the amount of such expenditures. As noted in the preamble to § 98.13, as this amount is an estimate, it is not subject to the compliance process.

The estimate must represent the aggregate of costs associated with administrative activities, examples of which are included in the regulations. The Application must also include a list of administrative activities that the Grantee plans to conduct with Block Grant funds. The list of activities in the regulation is not exclusive; Grantees may add other activities of a similar nature.

Administrative costs of agencies involved in administration and implementation of the program, at both the State and local level, must be included in the estimate. Because it may be difficult for Grantees to estimate administrative costs at all levels, we suggest that Grantees set percentage limits for the administrative costs of administering the program at the local or subgrantee level. Total expenses must be limited as specified in § 98.50(d).

In the annual report to the Secretary, as provided in § 98.71(a), Grantees will inform us of the actual amount of funds spent on administrative activities by administering agencies at the State and local level.

Supplementation (§ 98.53 of the Regulations)

Section 658E(c)(2)(J) of the Act requires an assurance that funds under the Block Grant will be used to supplement, not supplant, the amount of Federal, State, and local funds otherwise expended for the support of child care services and related programs. This means that Block Grant funds must provide additional, or enhanced, services. Block Grant funds may not be used to replace existing expenditures.

In order for ACF to determine that this requirement is met, the regulation requires the lead agency to establish a dollar value for child care services and related programs for an initial base period and subsequent periods. Expenditures during a subsequent period will be compared with expenditures during the base period to determine whether supplantation has occurred. The expenditure amounts reported in the Application pursuant to § 98.13 should include non-Block Grant Federal, State and local funding for services and related programs which will be in whole or in part provided through the Block Grant. The requirement is limited to public funds.

We define the base period as a period of twelve consecutive months which includes the month one year prior to the first month for which the Application is made. For example, for a Grantee with a fiscal year that runs from October through September, with an Application for September of 1991, the base period could be the fiscal year that started in October of 1989, and ended in September of 1990. We established the base period above so that the first subsequent period would include a period during which Block Grant funds are available. We provide flexibility in setting the base period by allowing the period to be any twelve-month period which includes the appropriate month described above. This allows for Grantee fiscal years which do not coincide with the Federal fiscal year.

A Grantee need not use its fiscal year for the purpose of this requirement, but we do require that a period of twelve consecutive months be used. The base period need not coincide with the period for which Block Grant funds are provided, since the Block Grant funds become available during September of 1991, a start date which is not likely to coincide with other funding sources.

We expect that determining the required level of expenditure will be difficult. However, we would also expect that such information would be necessary as part of the process of determining the need for services and related activities in designing a Block Grant program. Given Congress' strong interest in expanding services and not displacing existing Federal, State, and local funding for services, these expenditures will be closely monitored and reviewed as a basis for continued Block Grant funding.

In determining the level of expenditures during the base period and subsequent periods, the lead agency must consider Federal, State, and local programs, as appropriate. Differing fiscal or program years may add to the level of difficulty in establishing the amount of expenditures. To facilitate administration of this provision, a Grantee may use different base periods for establishing an aggregate level of expenditures. Section 98.53(b)(1) of the regulation provides the flexibility to use different base periods on a program-by-program basis (e.g., for a specific early childhood development program), on a level-of-government basis (e.g., Federal, State and local), or on some other basis that provides for fiscal accountability. However, even if different base periods are used, each must include the month referred to in paragraph (b)(1) of this section. If a Grantee chooses other than the aggregate method, base period expenditures for each category of expenditure (e.g., State child care program) will be totalled and compared with similar expenditures for the subsequent period.

The level (or levels) of expenditures must be included in each yearly Block Grant Application, pursuant to § 98.13(a)(8). In determining whether a Grantee has met the supplementation requirement, we will compare the level of expenditures for the base period with the total amount of expenditures during subsequent periods.

Reductions in expenditures for some services or programs included in the level of expenditure computation will

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not necessarily mean that this requirement is not met. The statutory language at section 658E(c)(2)(J) uses the term "amount of * * * funds" in describing this limitation. We interpret this to mean that it is the aggregate level of expenditures which is of concern, rather than individual expenditures within the aggregate. This approach provides flexibility in program design, maintains the integrity of the provision, and meets the purpose of providing funding for new and enhanced child care and development services. However, evidence of inappropriate intentional cost shifting of existing programs to Block Grant funds will result in reevaluation of continued eligibility for Block Grant funds.

Reductions in Federal expenditures resulting from actions outside the discretion of the Grantee will be considered in determining whether a Grantee has met this requirement. In such cases, information regarding the nature, extent and basis for the reductions should be included in the Grantee's Application.

Restrictions on the Use of Funds (§ 98.54 of the Regulations)

This section of the regulations includes specific restrictions on the use of Block Grant funds, as contained in the Act. We have also added a general restriction which provides that costs which violate a Grantee's own laws and procedures must not be charged to the program.

Construction

Section 658F(b) of the Act prohibits the use of Block Grant funds for the purchase or improvement of land, or for the purchase, construction, or permanent improvement (other than minor remodeling) of any building or facility. We interpret this prohibition to apply to all activities of the program, both administrative and program.

Funds may be expended for only minor remodeling costs. We permit Grantees to define "minor remodeling," but encourage them to set specific dollar limits.

Section 658F(b)(2) of the Act provides that sectarian agencies and organizations are also prohibited from the use of Block Grant funds for the purchase or improvement of land, or for the purchase, construction or permanent improvement (other than minor remodeling) of any building or facility; in addition, such organization may receive funds for renovation and repair involving minor remodeling only where necessary to bring a facility into compliance with the health and safety requirements established pursuant to section 658E(c)(2)(F) of the Act.

We note that these restrictions regarding construction costs apply to all Block Grant funds including funds under section 658G(2) of the Act, which permits Grantees to use Block Grant funds to assist providers in meeting applicable State and local child care standards, which may include health and safety requirements.

Paragraph (b)(1) of this section provides that costs of minor remodeling may include, but are not limited to, costs related to bringing a facility into compliance with child care standards, including applicable health and safety requirements.

Tuition

Section 658M(b) of the Act establishes restrictions on the use of Block Grant funds for tuition for services provided to students in grades 1 through 12. The regulation at § 98.54(c) implements these restrictions.

Sectarian Purposes and Activities

The regulation at § 98.54(d) implements section 658M(a) of the Act. It provides that Block Grant funds shall not be used under any grant or contract for any sectarian purpose or activity, including sectarian worship and instruction. This prohibition covers all child care services provided under grant or contract, including child care services under § 98.50, as well as early childhood development and before- and after-school care services. This prohibition also covers other activities funded through grant or contract under §§ 98.50 and 98.51. However, where services are provided through child care certificates, as defined in the regulation at § 98.2(j), sectarian activities may be conducted, and costs related to such services are eligible for funding under the Block Grant program. This prohibition does not apply to certificates and providers may carry out any sectarian activities without restricting their eligibility for certificates under the Block Grant program.

Other Restriction

In addition, Block Grant funds may not be used as the non-Federal share for other Federal grant programs that require matching funds unless such grant programs are specifically authorized to allow Federal funds to be used in this way.

Cost Allocation (§ 98.55 of the Regulations)

To assure that Block Grant funds are used only for the purposes of this program, and that Block Grant funds supplement, not supplant, other funds, we are requiring that Grantees prepare and keep on file State departmental level cost allocation plans or indirect cost proposals as appropriate. Subgrantees that do not already have a negotiated indirect rate with the Federal government should prepare and keep on file cost allocation plans or indirect cost proposals as appropriate.

For the purposes of the Block Grant program, cost allocation plans or indirect cost proposals of Grantees and subgrantees do not require approval by the Department. They are, however, subject to review by auditors and Federal reviewers.

Subpart G—Financial Management

Availability of Funds (§ 98.60 of the Regulations)

Grant Awards

Section 658J(a) of the Act provides that the Secretary will award Block Grant funds subject to the availability of appropriations. The regulations in this section provide that awards will be made in accordance with the apportionment by OMB. Funds apportioned by OMB will only be awarded to Grantees who have approved Applications and Plans as described in §§ 98.13 and 98.16. If possible, grants will be issued to Grantees in advance. However, the Secretary reserves the right to issue grants by way of reimbursement, as provided in the Act, and the Department's Grants Administration Manual. The Block Grant program does not require matching funds from Grantees.

Under the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1991 (Pub. L. 101–517), FY 1991 funds are not available until September 7, 1991. Because funds do not become available until the last month of FY 1991, all Grantees will receive their entire FY 1991 allotment in one grant award which will be issued before September 30, 1991, the end of FY 1991. We will conttnue this practice when availability of the appropriations occurs in the fourth quarter of the fiscal year.

Obligation Period/Liquidation Period/ Program Period

Under Public Law 102–27, Congress revised the provision of the Act at section 658J(c) governing the period of time over which Grantees could expend funds. Under the original language, State and Territorial Grantees had to expend their allotment in the fiscal year in

which they received it or in the succeeding fiscal year. Under the amendment, State and Territorial Grantees must only obligate their funds during this period. The Act, as amended, is silent about the period of time Grantees would have to expend their unliquidated obligations. Under the regulations we allow one additional year for the liquidation of obligations. The one-year liquidation period should give Grantees sufficient flexibility in administering the program and sufficient opportunity to process payments to contractors for services and activities. The one-year liquidation period is comparable to, or longer than, the liquidation period provided under other programs administered by ACF. It also is compatible with the schedule the Act establishes for submitting annual reports on Block Grant expenditures, as discussed in subpart H.

Consistent with our decision to treat Tribal Grantees in a similar manner to State and Territorial Grantees, Tribal Grantees are subject to the same obligation and program (i.e., expenditure) periods. Furthermore, the extended program period is consistent with the statutory language at 658O(c)(4) that allows grants or contracts to Tribes to be for periods not to exceed three years.

In summary, the program period would be the period in which a fiscal year's grant must be expended, i.e., the obligation period and the following one-year liquidation period. Unliquidated obligations as of the last day of the obligation period must be expended in the following one-year liquidation period.

If Block Grant funds are available at the beginning of the fiscal year, Grantees have that entire fiscal year and the succeeding fiscal year in which to obligate their grant. In the succeeding fiscal year, Grantees would receive additional funds which, likewise, could be obligated during that fiscal year and the succeeding fiscal year.

If funds do not become available until late in the fiscal year, the program period is less than two years. For example, in FY 1991, Grantees will receive grant awards after September 7, 1991 and thus have approximately 3 weeks in FY 1991 plus 52 weeks in FY 1992 during which to obligate their funds.

Obligations

We define obligation to include subgrants or contracts which will require the payment of funds from the Grantee to a third party (e.g., subgrantee or contractor). For this purpose, the following are not considered third party subgrantees or contractors: (1) A local office of the Lead Agency; (2) another entity at the same level of government; or (3) a local office of another entity at the same level of government. For example, if a State Grantee transferred a portion of its funds to the State Department of Education, we would not consider those funds to be obligated. The State Department of Education would have to obligate the funds for Block Grant administration, services, or activities in order for the funds to be considered obligated. This is based on the definition of Grantee which includes the entire legal entity even if a particular component of the entity is designated in the grant award document.

The requirement that Grantees obligate their funds by the end of the succeeding fiscal year applies only to the Grantee. The requirement does not extend to the Grantee's subgrantees or contractors unless State or local laws or procedures require obligation in the same fiscal year.

Grant funds that remain unobligated by the Grantee by the end of the obligation period will revert to the Federal government. Obligated grant funds that remain unexpended by the Grantee after the last day of the program period will revert to the Federal government.

Advance Funding

To ensure that Block Grant funds are expended in accordance with sound cash management principles, paragraph (e) of this section requires Grantees to adhere to the procedures established in 31 CFR part 205. These regulations establish principles to ensure that the timing and amount of cash advances are as close as is administratively feasible to the actual disbursement of program funds. Departmental regulations and procedures provide various remedies for Grantees, subgrantees, and contractors that fail to adhere to Federal cash management principles. These remedies include paying the Grantee on a reimbursement basis.

Pre-Award Costs

Block Grant funds are available for obligation by the Grantee only after the grant award is issued. No pre-award costs, i.e., costs incurred by a Grantee during a fiscal year before that fiscal year's grant award is issued, are allowed unless the costs are incurred for planning activities related to the submission of an initial Block Grant Application or Plan. In addition, for States applying for FY 1991 funds, such planning activities must occur after November 5, 1990, if Block Grant funds are to be used. For example, FY 1991 funds awarded in September of 1991 may be used for costs associated with the planning and development of the Block Grant Application or Plan incurred after November 5, 1990, but prior to the issuance of the award.

As the Federal government may only obligate funds after they become available, pursuant to the Anti-Deficiency Act, 31 U.S.C. 1341, Federal obligation of funds for pre-award planning costs is subject to the actual availability of the appropriation.

Block Grant funds may not be used for other pre-award costs, such as for child care services, incurred prior to the issuance of the grant award. This provision will ensure that Grantees will use the Block Grant funds only to supplement current activities as required by section 658E(c)(2)(J) of the Act (see § 98.53 for discussion of the supplementation requirement).

Funds Returned to the Grantee or Subgrantee and Program Income

Examples of funds returned to the Grantee or subgrantee include loan repayments, contracts terminated through default or for convenience, and unused subgrantee grants returned to the Grantee. Program income includes contributions made by families, under the sliding fee scale, directly to the Grantee or subgrantee where the Grantee or subgrantee has made a full payment to the provider and any other program income the Grantee or subgrantee collects while carrying out its Plan. For purposes of §§ 98.46 and 98.47, family contributions will not be deemed to be assistance provided under the Block Grant or any other Federal or State program.

If a subgrantee or contractor returns all or part of the funds to a Grantee, or a contractor returns all or part of the funds to a subgrantee, during the program period for which the funds were allotted, the Grantee or subgrantee may use those funds, but only for activities specified in the Grantee's Plan. If a subgrantee or contractor returns funds to the Grantee, or a contractor returns funds to a subgrantee, after the end of the program period for which those funds were allotted, the Grantee or subgrantee may use those funds for activities specified in the Grantee's Plan, if State or local laws or procedures governing the use of such funds allow their use. If there are no State or local laws or procedures, Federal law will apply, and thus the funds shall be returned to the Federal government.

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Loan Repayment

Funds used for loans to child care providers, pursuant to § 98.51(b)(2)(ii) may be repaid in cash or in services provided in-kind. The services provided in-kind must be of equivalent value to the amount of the loan and based on fair market value. All loans must be repaid in full.

Allotments for States (§ 98.61 of the Regulations)

Section 658O(b)(1) through (4) of the Act establishes the formula for determining the size of the allotment for State Grantees. For the purpose of this section and § 98.63, the term "States" means the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico. The amount of funds available to States is equal to the full appropriation less the amounts for which Territorial and Tribal Grantees apply.

While 3.5 percent of the funds is being set aside for Territorial and Tribal Grantees, the full 3.5 percent may not be distributed to these Grantees if all Territories and eligible Tribes do not apply for funds. This means whatever funds Territories and Tribes do not apply for will be added to the 96.5 percent of the appropriation reserved for States.

If a Territorial or Tribal Application is not approved, the allotment for such Territory or Tribe may be available for distribution to States. Distribution of these funds to States will occur if the Application(s) are denied early enough to permit ACF to obligate the funds on a timely basis, and if the amounts involved are sufficient enough to make such distribution administratively practical. Such funds will be distributed according to the State allotment formula defined in this section. Allotments for States that are not applied for or whose Applications are denied will be distributed in a similar manner.

State Allotment Formula

The formula we are using to allot Block Grant funds to States is specified in section 658O(b) (1) through (4) of the Act. There are three factors: A Young Child factor, a School Lunch factor, and an Allotment Proportion factor.

A State's Young Child factor (YCF) is the ratio of the number of children under the age of five in the State to the number of such children in all States.

A State's School Lunch factor (SLF) is the ratio of the number of children in the State who are receiving free or reduced price school lunches under the National School Lunch Act to the number of such children in all States.

As required by the Act, we will use the most recent population data from the Bureau of the Census in computing State Young Child factors and the most recent data from the U.S. Department of Agriculture to compute State School Lunch factors.

For FY 1991 allotments, we are planning to use 1989 Census population estimates for the 50 States and the District of Columbia to determine the number of children under the age of five in each State. No such estimates exist for Puerto Rico, so we are using the most recent available data, the 1980 Census data. We will use 1990 Census data when it becomes available for use in the State allotment calculation. For the School Lunch factor, we are using school lunch participation figures for FY 1990.

The third factor in the formula is the Allotment Proportion factor (APF). The Act refers to this factor as the Allotment Percentage. A State's APF is determined by dividing the three-year average per capita income of all individuals in all the States by the three-year average per capita income of all individuals in the State. The APF cannot be less than 0.8 or greater than 1.2. If it is less than 0.8 when calculated, the State's APF is adjusted upward to equal 0.8. If it is more than 1.2 when calculated, it is adjusted downward to equal 1.2. The APF will be determined every two years, and will be applied in establishing the allotment for the fiscal year for which it is determined and for the following fiscal year. As required by section 658O(b)(4)(C)(iii) of the Act, we will use the best data available from the U.S. Department of Commerce. For FY 1991 allotments, we are using per capita income data for FYs 1987, 1988, and 1989.

While the U.S. per capita personal income figure usually includes the District of Columbia, it does not typically include Puerto Rico. Since Puerto Rico is considered a State for purposes of this section, we have added Puerto Rico to the per capita personal income figure for the U.S., and the allotments are calculated using this figure.

Mathematical Equation for Determining State Allotments

A State's allotment is the sum of the following two products:

$$1.\quad \frac{YCF_s \times APF_s}{\Sigma(YCF_s \times APF_s)} \times \frac{\text{total amount available for States}}{2}$$

where YCF_s is equal to the State's Young Child factor and APF_s is equal to the State's Allotment Proportion factor); and

$$2.\quad \frac{SLF_s \times APF_s}{\Sigma(SLF_s \times APF_s)} \times \frac{\text{total amount available for States}}{2}$$

(where SLF_s is equal to the State's School Lunch factor and APF_s is equal to the State's Allotment Proportion factor).

Each State's share of the total allotment will change from year to year based on changes in the available data.

Explanation of State Allotment Formula

A State's allotment is determined in a two-step process. First, part of a State's allotment is determined by:

(1) Multiplying the individual State's Young Child factor (YCF) by the State's Allotment Proportion factor (APF);

(2) Dividing the product in #1 by the sum of the products of all States' YCF's multiplied by their respective APF's; and

(3) Multiplying the quotient in #2 by one-half of the total amount of Block Grant funds available for distribution to States. This is the Young Child factor Allotment.

The second part of a State's allotment is determined by:

(1) Multiplying the individual State's School Lunch factor (SLF) by the State's Allotment Proportion factor (APF);

(2) Dividing the product in #1 by the sum of the products of all States' SLF's multiplied by their respective APF's; and

(3) Multiplying the quotient in #2 by one-half of the total amount of Block Grant funds available for distribution to States. This is the School Lunch factor Allotment.

A State's allotment is the sum of its Young Child factor Allotment and its School Lunch factor Allotment.

We have not included a description of the State Allotment formula in the regulation because it is clearly delineated in the Act.

Allotments for Territories and Tribes (§ 98.62 of the Regulations)

Territories

Section 6580(a)(1) of the Act provides that not more than one-half of one percent of the Block Grant funds may be reserved by the Secretary for the U.S. Territories of Guam, American Samoa, the Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands (Palau). The Commonwealth of Puerto Rico is treated as a State for purposes of the Block Grant allotment, pursuant to § 98.61(a) and 6580(f) of the Act.

The Secretary exercises his administrative discretion and reserves, for FY 1991 funds, the full one-half of one (0.5) percent of funds for the Territories as Congress authorized up to one-half of one percent, and there is no reason for a lesser amount in FY 1991.

Territorial Allotment Formula

The Act does not specify an allotment formula for Territories. The formula we are using to allot Block Grant funds to Territories is similar to the formula specified for States in the Act. However, in place of the three-factor State formula discussed in the preamble to § 98.61, (i.e., a Young Child factor, a School Lunch factor, and an Allotment Proportion factor), the Territorial allotment formula has just two factors—a Young Child factor and an Allotment Proportion factor.

A Territory's Young Child Factor (YCF) is the ratio of the number of children under the age of five in the Territory to the number of such children in all Territories. We chose not to include a school lunch factor in the Territorial formula because some of the Territories no longer participate in the National School Lunch program and others are phasing out their programs.

For FY 1991 allotments, we are using 1980 Census data to determine the number of children under the age of five in each Territory, as it is the best available data. As 1990 Census data becomes available, it will be used to determine Territorial allotments in subsequent years.

The second part of the Territorial formula is the Allotment Proportion factor (APF). A Territory's APF is determined by dividing the three-year average per capita income of all individuals in all the Territories by the three-year average per capita income of all individuals in the Territory. The APF cannot be less than 0.8 or greater than 1.2. If it is less than 0.8 when calculated, the Territory's APF is adjusted upward to equal 0.8. If it is more than 1.2 when calculated, it is adjusted downward to equal 1.2. This adjustment parallels the process applied to State Allotment Proportion factors. The regulations at (a)(1)(ii) (A) and (B) of this section provide that the APF will be determined every two years, and will be applied in establishing the allotment for the fiscal year for which it is determined and for the following fiscal year.

For FY 1991 Territorial allotments, we are using per capita income data for FYs 1987, 1988, and 1989 from the Bureau of Economic Analysis in the Department of Commerce. The per capita income for all individuals in all Territories reflects only the five Territories listed in paragraph (a) of this section. Puerto Rico's per capita income was excluded since Puerto Rico is considered a State for allotment purposes.

In FYs 1987, 1988, and 1989, per capita income data did not exist separately for Palau, the only component of the Trust Territory of the Pacific Islands since 1988. Instead, the data reflected the combined per capita income of Palau, the Federated States of Micronesia and the Republic of the Marshall Islands. Micronesia and the Marshall Islands are the two components that, along with Palau, comprised the Trust Territory of the Pacific Islands prior to 1988.

We do not believe that using the data that includes Micronesia and the Marshall Islands affects Territorial allotments. When these data are used in the calculation, the APF for the Trust Territory of the Pacific Islands is over 5 percent. Since limits on the APF specify that it must be between 0.8 and 1.2, the Trust Territory's APF is adjusted downward to 1.2.

We believe that even if data on per capita income for Palau alone were available, the APF for the Trust Territory of the Pacific Islands would still have to be adjusted downward and thus would be the same. For example, if the APF were higher than 5 percent, it would still be limited to 1.2. On the other hand, it is unlikely that the APF would be lower than 1.2 given the economic conditions of the Trust Territory in general compared to other Territories.

In future years, should per capita income data representing Palau as the only remaining component of the Trust Territory of the Pacific Islands be available, we will use it in the Territorial allotment calculation.

Mathematical Equation for Determining Territorial Allotments

The formula used in calculating a Territory's allotment is as follows:

$$\frac{YCF_t \times APF_t}{\Sigma\,(YCF_t \times APF_t)} \times \text{amount reserved for Territories at paragraph (a) of this section}$$

(where YCF_t is equal to the Territory's Young Child factor and APF_t is equal to the Territory's Allotment Proportion factor).

Explanation of Territorial Allotment Formula

A Territory's allotment is determined by:

(1) Multiplying the individual Territory's Young Child factor (YCF) by the Territory's Allotment Proportion factor (APF);

(2) Dividing the product in #1 by the sum of the products of all Territories' YCF's multiplied by their respective APF's; and

(3) Multiplying the quotient in #2 by the amount of funds reserved for the Territories.

The resulting product in #3 is the Territory's allotment.

Tribes

Section 658O(a)(2) of the Act provides that not more than three percent may be reserved by the Secretary for Indian Tribes and Tribal organizations. Only Tribes and Tribal organizations that are recognized in section 4(e) and section 4(l), respectively, of the Indian Self-Determination and Education Assistance Act are eligible for Block Grant funds. (See § 98.80 (b) and (c) for a complete discussion of Tribes and Tribal organizations which are eligible for Block Grant funds.) The Secretary exercises his administrative discretion and reserves the full three percent of FY 1991 funds for Tribes, as Congress authorized up to three percent and there is no reason for a lesser amount in FY 1991.

The regulation provides that Tribes must have 50 or more children under age 13 (or such similar age as determined by the Secretary from the best available data) in order to receive funding under the Block Grant. See § 98.80(b) for a full discussion of this requirement. Tribes with fewer than 50 children under age 13 may apply for funds as members of a consortium. Consortia must have 50 or more children under age 13 in order to receive funding. Individual Tribes with 50 or more children under 13 may apply individually or as part of a consortium.

In FY 1991, we are defining the number of Indian children for the purposes of Tribal eligibility for funding and for calculating FY 1991 Tribal grant awards, as the number under the age of 16. We are including the number of children under the age of 16 because the best available data does not include a breakdown of the population under age 16. Use of the under-16 data for allotment purposes does not extend the age of eligibility for an Indian child. Indian children must be under the age of 13 to be eligible for child care services under the Block Grant, unless the Tribe or Tribal organization provides for child care services for eligible older children in their Plan (e.g., special needs children).

Our data sources for FY 1991 allotments are: (1) The 1989 Indian Service Population and Labor Force

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Estimates Report produced by the Bureau of Indian Affairs (BIA); and (2) 1990 census data provided by the State of Alaska. The 1989 BIA Labor Force Estimates Report represents the best data available on Tribes, with the exception of data for Alaska Native villages. We are using 1990 Census data for Tribal Grantees located in Alaska because the BIA Labor Force Estimates Report contains data for Alaska by five BIA regions only, not for each Alaska Native village individually. In order to treat each Tribal Grantee equitably, we will adjust the 1990 census data to be comparable to the 1989 BIA data.

We will continue to use the best data available in future years. This means we might adjust the age of the children we include in future years down to a minimum age of 13 if lower age categories are available in the data used. To the extent possible, we will use data for all Tribal Grantees from the same source so all Tribes are treated similarly.

Tribal Allotment Formula

Each individually-eligible Tribe is allotted a base amount of funds as determined by the Secretary plus an additional amount of funds per child living on or near the Tribal Grantee's reservation or other appropriate areas served by the Tribal Grantee.

This formula is similar to one under consideration by BIA for their Prevention of the Breakup and Reunification of Indian Families program. The formula is based on information provided by BIA as a result of input they received from 12 workgroups—one from each of the 12 national BIA Regions/Areas in the country. These workgroups, which were made up of Tribal leaders from small and large Tribes, recommended the concept used in the formula, a minimum base amount with additional per capita funding. The underlying goal was to give Tribal Grantees sufficient funds to enable them to operate viable programs. For this reason, as discussed in § 98.50, the base amount is not subject to the limitation on non-service expenditures in paragraph (d) of that section.

Each year, we will issue estimates for the upcoming fiscal year and will indicate in that guidance what the next year's base and per child amounts will be. In FY 1991, a Tribe's allotment is equal to a base amount of $20,000 plus approximately $35 per child under the age of 18. As stated above, use of the under-18 data for allotment purposes does not extend the age of eligibility for an Indian child. Indian children must be under the age of 13 to be eligible for child care services under the Block Grant, unless the Tribal Grantee provides for child care services for eligible older children in their Plan (e.g., special needs children).

For FY 1991 we have set the base amount at $20,000, because we believe this amount provides sufficient resources for a Tribal Grantee to operate a viable program, including the costs of administering the program and providing program services.

After a base amount is set aside for each eligible Tribe, the remainder of the funds is divided by the total number of Indian children to determine the per capita amount to be granted. In FY 1991, the per capita amount for each Indian child under the age of 18 is approximately $35. As the Block Grant appropriation and/or the number of Indian children changes, the per capita amount may likewise change. We do, however, expect for the base amount to remain at $20,000.

Tribes that are not individually eligible to apply (i.e., they do not have enough children), may apply as part of a consortium and will receive a portion of the base amount that is equivalent to the ratio of the number of children in the Tribe to 50, plus the additional per capita amount of funds per child in the Tribe living on or near the reservation or other appropriate area served by the Tribal Grantee.

For example, a Tribe with 49 children joins a consortium. The Tribe's contribution to the consortium grant would equal 49/50ths of $20,000, or $19,600 plus 49 x $35, or $1,715. The total amount, $21,315, plus the amount for each other Tribe in the consortium, would be included in the grant to the consortium.

We considered using a simple per capita formula to allot Block Grant funds to Tribal Grantees, but did not think the amount of such funds provided under this formula was sufficient to enable smaller Tribal Grantees to operate a satisfactory program. We also considered a formula that was similar to the State and Territorial formulas which would have compared economic conditions, as measured by per capita income, among Tribal Grantees. However, after examining per capita income data for Tribes, we did not believe there was sufficient variation to justify comparing Tribe to Tribe in the way we compare State to State and Territory to Territory. This option was also rejected because of a lack of acceptable data.

We considered a third option, which would have linked Tribal Grantees more closely with the economic conditions (using per capita income) of the State in which a Tribal Grantee was located. We rejected this option because we felt geography was not a compelling reason to tie Tribal Grantees to States. In addition, we do not believe the economic conditions of the State in which a Tribal Grantee is located necessarily reflect the economic conditions of the Tribe.

Allotments to Tribal Consortia

The allotment for a Tribal consortium is equal to the sum of the individual allotments of the Tribes in the consortium.

Data Sources

In determining the number of children in the Territory or Tribe, we will use the most current comparable data available.

Remaining Funds to States

As discussed in the preamble to § 98.61, funds for which Territories and Tribes do not apply will be added to the funds reserved for State Grantees and will be allotted to State Grantees according to § 98.61(b). Funds for which a Territory or Tribe apply, but are not awarded because their Applications are not approved, may be distributed to State Grantees if the Applications are denied early enough to permit ACF to obligate the funds on a timely basis, and if the amounts involved are sufficient enough to make such distribution administratively practical. Such funds will be distributed to State Grantees according to the State allotment formula at § 98.61(b).

Reallotment (§ 98.63 of the Regulations)

Under section 658O(e)(1) of the Act, any portion of a State's allotment that is not required to carry out its Plan in the period for which the allotment is made available shall be reallotted, in proportion to the original allotments, to the other States. For purposes of this section and § 98.61, the term "State" includes only the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico, pursuant to section 658O(f) of the Act.

The Act requires the Secretary to determine the portion of a State's allotment which is not required to carry out the State's Plan. We will make such determination based upon reports submitted by the States, pursuant to paragraph (a)(1) of this section. Each State must submit a report to the Secretary indicating either the amount of funds from the previous year's grant it will be unable to obligate during the remainder of the obligation period, or that all funds will be obligated prior to the end of the obligation period. These reallotment reports may be in the form of a letter. These reports must be submitted by April 1 of each year. The April 1st deadline was chosen to allow the Secretary the necessary time to reallot the funds and to allow States the necessary time to obligate such funds before the end of the obligation period.

Funds that States indicate are available for reallotment will be reallotted according to the State allotment formula, pursuant to § 98.61(b), if the total amount available for reallotment is $25,000 or more. If the total amount is less than $25,000, these funds will not be reallotted and will revert to the Federal government. We decided not to reallot funds if the total amount available for reallotment is less than $25,000 because the amount of reallotment per State would be so small that it would do little to enhance a State's program. Moreover, it is administratively impractical for the Department to issue such awards. In addition, the Secretary will not award any reallotted funds to a State if the grant award is less than $560, as it is administratively impractical to do so.

If a State does not submit a reallotment report by the deadline for report submittal, we will determine that the Grantee does not have any funds available for purposes of the reallotment. If the report is postmarked after April 1, the amount of funds reported to be available for reallotment will not be reallotted, but will revert to the Federal government. As previously discussed, late reports do not allow the Secretary the necessary time to reallot the funds nor the States the necessary time to obligate such funds before the end of the program period. By May 1, we anticipate the Secretary will reallot funds made available for reallotment.

The Secretary reserves the right to determine whether a State needs reallotted funds to carry out its Plan. The Secretary may either determine a State needs no reallotted funds and is ineligible (i.e., left out of the formula used for the calculation of reallotment amounts) for reallotted funds, or determine a State eligible for reallotted funds, but withhold the portion of such funds that the Secretary determines are not necessary for the State to carry out its Plan. Funds that are reallotted to a State, but are determined by the Secretary to be unnecessary for the State to carry out its Plan, will be distributed to the other States that are eligible for reallotted funds.

Reallotted funds must meet the same programmatic and financial requirements as funds initially allotted to States; they must be obligated by the last day of the obligation period (see § 98.60 for discussion on obligating funds) and any unliquidated obligations expended by the last day of the program period.

Financial Reporting (§ 98.64 of the Regulations)

Section 658J(c) of the Act, as amended by Public Law 102-27, provides that Block Grant funds must be obligated by the end of the fiscal year following the fiscal year in which they are awarded. Our regulations allow an additional year for liquidation of these obligations. In order to ensure that Block Grant funds are obligated and expended within the allowable timeframes, we are requiring Grantees to submit annual financial reports. All expenditures and obligations included on these reports must be supported by information that is adequate to establish that such expenditures and obligations have been made in accordance with statutory and regulatory requirements as well as the Grantee's Plan. Such information should not be submitted with the Grantee's financial reports. Instead, the information should be retained by the Grantee and, upon request, be made available to ACF.

We believe that the financial reports are necessary both for the Department and the Grantee to permit the verification of the financial status of Block Grant funds. They will also enhance the Department's ability to ensure the fiscal accountability of these funds. As Grantees must already have a financial management system for accounting and audit purposes, we do not believe that the requirement for these financial reports will be a significant burden on Grantees.

Section 658O(c)(2)(C) of the Act provides that Tribal Grantees will submit such reports as the Secretary requires. We are requiring the same financial reports of Tribal Grantees as we are of other Grantees.

Within 90 days after the end of each fiscal year, the Grantees shall submit a financial report to the Secretary on expenditures and unliquidated obligations. Within 90 days after the end of the program period, Grantees shall submit a final financial report to the Secretary showing final expenditures and the final balance of unliquidated obligations, if any. Expenditures and obligations reported must reflect the status of grant funds for the fiscal year for which funds were awarded.

Unless Grantees or subgrantees receive program income, Grantees have the option of reporting their expenditures on either the long or short forms of the standard OMB Financial Status Report, i.e., Standard Form 269 or 269A. If Grantees or subgrantees receive program income, they must submit Standard Form 269.

Under paragraph (b) of this section, the Secretary may require these reports less frequently. For example, we will not require a financial report within 90 days of the end of FY 1991 for expenditures of the FY 1991 grant since such a report would cover less than two months of expenditures. Rather, for the FY 1991 grants, financial reports must be submitted within 90 days of the end of FY 1992, the end of the obligation period, and FY 1993, the end of the liquidation period. Changes in the schedule of reporting will be conveyed by the Department in future guidance.

An example of program income is provided in paragraph (c) of this section. The regulations at paragraph (d) provide methods for reporting funds returned to the Grantee or subgrantee.

Audits (§ 98.65 of the Regulations)

Section 658K(b)(1) of the Act provides that State and Territorial Grantees must have an audit conducted after the close of the program period which shall cover expenditures during the program period. The Act does not specify Tribal audit requirements, but provides in section 6580(c)(2)(C) that the Secretary may require Tribal Grantees to conduct audits of their programs. Consistent with our approach to other requirements, we require Tribal Grantees to conduct audits on the same basis as States and Territories.

Section 658K(b)(2) of the Act provides that Grantee audits shall be conducted by an entity that is independent of any agency administering activities that receive Block Grant funds and in accordance with generally accepted auditing principles. In order to meet this requirement, Grantees must conduct audits in accordance with the provisions of OMB Circular A-128, as required in paragraph (a) of this section. For purposes of the A-128 audit requirement, the Block Grant is defined as a major Federal Assistance program for all Grantees.

Grantees are also required to ensure that subgrantees meet the appropriate audit requirements. The appropriate audits for subgrantees that are local governments are the audit requirements of OMB Circular A-128. The appropriate audit requirements for non-profit institutions and institutions of higher education are those of OMB Circular A-133.

Funds awarded under procurement contracts, such as to a child care center for the provision of child care services, are not subject to these requirements.

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They are, however, subject to the terms and conditions of the contract.

Sections 658K(b) (3) and (4) of the Act provide that a copy of the audit report must be submitted to the legislature of the State or Territory and to the HHS Regional Inspector General for Audit Services responsible for the HHS region in which the Grantee is located not later than 30 days after its completion. Any amounts determined through an audit not to have been expended in accordance with the statutory and regulatory provisions of the program, or with the Plan, and which are subsequently disallowed by the Department, shall be repaid to the Federal government or the Secretary will offset such amounts against any other Block Grant funds to which the Grantee is or may be entitled.

We require that Tribal Grantees also adhere to these provisions. They should submit a copy of the audit report to their Tribal council(s), to the HHS Regional Inspector General for Audit Services responsible for the HHS region in which the Grantee is located, and to the head of the cognizant agency, if different than HHS.

Grantees must provide Federal agencies access to appropriate books, documents, papers, and records. These records must adequately identify the application of Block Grant funds.

Grantees should be aware that additional Federal audits and reviews may be conducted. However, these audits or reviews will build upon work performed under prior audits, if such audits meet applicable standards. See subpart J for additional information on monitoring and compliance reviews.

If a Grantee fails to submit an audit report within the timeframe specified in paragraph (c) of this section, the Secretary may determine the Grantee has failed to comply with the regulations. The Secretary will notify the Grantee of such determination, and the non-compliance procedures described in § 98.91 will be followed.

Disallowance Procedures (§ 98.66 of the Regulations)

The Agency may take a disallowance action against a Grantee as the result of an audit or a financial or compliance review which finds that the Grantee has improperly spent Block Grant funds. The Agency will notify the Grantee of its decision to disallow expenditures in writing.

If the Grantee agrees with the decision that the funds were not expended in accordance with the Act, these regulations, or its Plan, the Grantee shall repay any amounts improperly expended.

If the Grantee disagrees with a disallowance decision, the Grantee may appeal the decision. However, the Grantee may not appeal the determination of award amounts or the disposition of unexpended balances.

The Grantee may request a reconsideration of a decision to disallow by appealing to the Assistant Secretary. The appeal letter must be postmarked no later than 30 days after the receipt of the disallowance notice, and must be accompanied by the notice and the Grantee's reasons for believing that the disallowance was incorrect.

The Grantee may also appeal a disallowance decision directly to the Departmental Appeals Board instead of to the Assistant Secretary. The contents of the appeal and other instructions are provided in 45 CFR part 16.

If the Grantee has appealed a decision to the Assistant Secretary, and the decision is not in the Grantee's favor, the decision of the Assistant Secretary may then be appealed to the Departmental Appeals Board.

A final decision to disallow will be followed by the Grantee's repayment of the disallowed funds. If the Grantee refuses to repay the funds, the amount of the disallowance will be withheld from future grants.

ACF will charge interest on disallowed expenditures of the Block Grant program in accordance with 45 CFR part 30. Interest will begin to accrue from the date of notification of disallowance to the Grantee.

Fiscal Requirements for Contracts and Agreements (§ 98.67 of the Regulations)

This section of the regulations provides that: (1) Block Grant funds are subject to the same laws and procedures as expenditures of the Grantee's own funds; and (2) fiscal and accounting procedures must be adequate for reporting purposes and to establish the propriety of grant expenditures.

The Act does not directly discuss general contracting authority or limitations, but we believe these regulatory provisions are consistent with the intent of the Act. First, we specify that contracts involving expenditures of grant funds must be made in accordance with the laws and procedures which govern the use of the Grantee's own funds. Thus, contracts entered into by the lead agency or other State agencies administering the program would be subject to State procurement rules and procedures; contracts entered into by local agencies who serve as subgrantees would be subject to applicable local rules and procedures. We also require that fiscal and accounting procedures be adequate for reporting purposes and to establish of the propriety of grant expenditures. These two provisions are standard requirements for block grant programs.

Subpart H—Program Reporting Requirements

Annual Report Requirement (§ 98.70 of the Regulations)

Section 658K(a) of the Act requires each State receiving Block Grant funds to submit an annual report to the Secretary. The first report must be submitted by December 31, 1992.

While the Act does not designate the reporting period, we have chosen to have the reporting period coincide with the program period, which is defined at § 98.2(cc) as the period during which the designated fiscal year's Block Grant funds must be expended. The first program period—for FY 1991 funds—does not end until September 30, 1993. The report for that period will be due December 31, 1993. Therefore, the report due on December 31, 1992 will be an interim report (covering the expenditures through the end of FY 1992 for activities undertaken with FY 1991 dollars (i.e., from November 5, 1990 through September 30, 1992)). Subsequent reports (i.e., reports in 1994 and thereafter) will cover Block Grant activities during the program period for each successive fiscal year's funding.

Although Grantees may expend funds from two or three different fiscal year allotments in the course of a year, annual reports will cover expenditures from a single year's allotment. This policy is similar to the policy for financial reports discussed in § 98.64 and is necessary to ensure that the requirements of the Act regarding the use of funds are met.

Section 6580(c)(2)(C) of the Act specifies that Tribes will report on programs and activities under the Block Grant. Based on this provision and because Tribes are subject to requirements for a Plan and necessary assurances, we also require Tribal Grantees to submit an annual report. As with other provisions, the Territories are considered States for this purpose.

Content of Report (§ 98.71 of the Regulations)

Consistent with the requirements of section 658K of the Act, we require States to submit specific information in their annual report to the Secretary. Furthermore, as discussed in § 98.70, we are requiring the same information from Territories, Tribes, and Tribal organizations.

A Grantee's report to the Secretary must include: Uses for which Block Grant funds were expended during the program period for those funds and the amount expended for such uses; the extent to which affordability and availability of child care increased; results of the review of licensing and regulatory requirements and policies pursuant to 98.41(d); an explanation of any reduction in standards pursuant to 98.41(c); a description of standards in the area served by the Grantee; and a description of any Grantee actions to improve quality. For the purpose of this report, the term "standards" refers to the State and local licensing and regulatory requirements described in §§ 98.40(a) and 98.2(x). Since other information may be needed in order for the Secretary to fulfill his responsibilities under sections 658I and 658L of the Act, paragraph (g) of this section allows the Secretary to establish additional reporting requirements.

To the extent data is reasonably available to the Grantee from any source, the Grantee must also report: The number of children assisted with Block Grant funds; the number of children assisted under other Federal child care and pre-school programs; the type and number of child care programs, child care providers, caregivers, and support personnel in the area served by the Grantee; salaries and other compensation for full-time and part-time child care staff; and activities to encourage public and private partnerships. Available data sources, in addition to the Grantee's records, may include reporting from child care programs authorized under titles IV–A and XX of the Social Security Act, Head Start, and Department of Education child care services. Grantees are also encouraged to use data available from studies conducted within their jurisdictions using established methodologies, even if the studies were not funded by the Grantee.

For reporting consistency, we are requiring Grantees to specify the uses for which Block Grant funds were expended and the amount expended for such uses in relation to the budget submitted each year with their Application for Block Grant funds. Thus, Grantees will submit with their Applications a budget for the use of Block Grant funds; after the program period ends, Grantees will report amounts expended, using the same categories as in the Application. If the amounts expended are not consistent with the guidelines at § 98.50(d), the Grantee must provide an explanation and rationale.

More information will be sent to Grantees concerning specific reporting requirements. We are considering the issuance of more detailed instructions in the future, including data definitions and reporting format. Before such instructions are issued, however, we would solicit comments and secure necessary OMB approval. Among other issues, we are considering the issue of compatibility with reporting requirements for the other child care programs administered by ACF.

Subpart I—Indian Tribes

General Procedures and Requirements (§ 98.80 of the Regulations)

Section 658O(c)(1) of the Act provides that the Secretary may make grants to or enter into contracts with Indian Tribes for the planning and execution of Block Grant programs. Section 658P(7) of the Act defines eligible Indian Tribes according to the definition provided in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)). The term Indian Tribe includes Alaska Native villages or regional or village corporations pursuant to the Alaska Native Claims Settlement Act (42 U.S.C. 1601–1641). Section 658P(14) of the Act defines eligible Tribal organizations according to the definition provided in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(l)). The regulation at § 98.2(oo) explicitly includes consortia, as noted in the discussion at § 98.2 of the preamble. In other words, eligible Tribal Grantees must be Federally-recognized Indian Tribes or must be groups of Federally-recognized Indian Tribes. Readers should note that the statutory citations above have been corrected from those given in the Act based on amendments in 1988 to the Indian Self-Determination and Education Assistance Act by section 103 of Public Law 100–472.

The regulations provide that Tribal Grantees are subject to all the regulations under parts 98 and 99, unless otherwise indicated in this subpart. We feel that this requirement is consistent with the Act, which makes no provision for waiving requirements for Tribal Grantees.

The regulations in this section also provide that an Indian Tribe or a consortium applying for or receiving Block Grant funds must have at least 50 children under age 13. The regulations also provide that an alternate, but similar, age limit may be used, based on the availability of data. For FY 1991 grants, we have used age 16 or under, because the best available data from the Bureau of Indian Affairs (BIA) categorizes Tribal population based upon a 0–16 rather than a 0–13 cohort. We feel that the 0–16 cohort is sufficiently comparable. For Alaska Natives, the best available data is 1990 Census data (BIA data does not include population information for all individual Alaskan Villages, Tribes, and Native organizations). This Census data will be adjusted to be comparable to the 1989 BIA data.

Our decision to require a minimum number is based on information provided by BIA as a result of input they received from 12 workgroups that were convened for the purpose of making changes to the BIA Prevention of the Breakup and Reunification of Indian Families program. The workgroups, made up of Tribal leaders from small and large Tribes, recommended a formula which would establish a minimum base amount with additional per capita funding as well as a Tribal minimum number of children.

In determining that a Tribal Grantee must have at least 50 children to individually operate a Block Grant program, we considered several factors. Section 658O(c)(3)(B) of the Act authorizes the Secretary to take into consideration whether the Tribal applicant has the ability (including skills, personnel, resources, community support, and other necessary components) to satisfactorily carry out the proposed program or activity. Clearly, a community must meet some minimum size in order to have all the necessary components to carry out a Block Grant program where a preponderance of funds must be spent on child care services, and we have determined that 50 is a reasonable minimum number which allows the vast majority of Indian Tribes to participate.

In addition, Congress has also required a threshold of 50 individuals in a target Indian group for a Tribe to be eligible for assistance. In section 612 of the Older Americans Act of 1965, as amended, 42 U.S.C. 3057c, Congress decided that to be eligible for grants for supportive and nutrition services for older Indians, the Tribal organization of an Indian Tribe must "represent at least 50 individuals who are 60 years of age or older."

Section 658O(c)(3)(B) of the Act requires that, in determining whether to approve an Application from a Tribe, the Secretary must consider its ability to satisfactorily carry out its proposed programs. This requirement is included in paragraph (b)(2) of this section. A Tribal applicant must include information to demonstrate its

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capability to carry out a program, pursuant to § 98.13(c).

Additionally, we have provided that Tribes may enter into consortium arrangements in order to operate a Block Grant program. We believe that this provision will allow Tribes to take advantage of economies of scale and other benefits associated with larger programs. Moreover, it will allow those Tribes with fewer than 50 children under age 13 to participate in the program.

Paragraph (c)(4) of this section requires that consortia demonstrate sufficient managerial, technical, and administrative ability to properly administer government funds, manage a Block Grant program, and comply with the provisions of the Act and the regulations. Eligible consortia must obtain and submit a resolution from each participating Tribe authorizing the consortium to receive Block Grant funds on its behalf. These requirements are included in the regulation in paragraph (c) of this section. An Application from a consortium must include information to demonstrate management ability and the appropriate resolutions, pursuant to § 98.13(c).

We also require that all participating consortium members be geographically proximate to one another, although we have provided an exception for those consortia with preexisting arrangements. By requiring proximity, we have attempted to ensure that consortia form to best serve the needs of Tribal members. We specifically permit consortia to operate in more than one State.

Pursuant to section 658O(c)(5) of the Act, the awarding of a grant to a Tribal Grantee shall not affect the eligibility of any Indian child to receive Block Grant services provided by a State Grantee. For non-Tribal Block Grant programs, Indian children are subject to the same eligibility requirements, detailed in §§ 98.20 and 98.21, as all other children. We have decided to give Tribal Grantees the option to require that Indian children must be from a family whose income does not exceed either: (1) 75 percent of the median income for a family of the same size residing in the area served by the Tribal Grantee; or, alternatively, (2) 75 percent of the appropriate State median income. The option chosen by the Tribe must be shown in the Plan.

We determined that Tribal Grantees should have this option in order to permit the flexibility to coordinate with State programs, and to prevent Tribal children from being disadvantaged.

We also considered waiving this requirement entirely for Indian children, but we realized that such a waiver entailed the possibility of making a child eligible for a Tribal program when that same child would be ineligible for the State program. Aside from creating confusion, this could also: (1) Deprive a more needy child of Block Grant services; and (2) create a perverse incentive among Tribal Grantees to serve first those children who would not otherwise be eligible for State programs.

Ultimately, we decided to give Tribal Grantees the option described above. We feel that this option provides Tribal Grantees with additional latitude to concentrate Block Grant services. We also believe that this option is consistent with the statutory provision for dual eligibility.

For purposes of determining whether a Tribe has 50 or more children, we will include children who live on or near reservations, with the exception of Tribes in Alaska, California and Oklahoma.

Application and Plan (§ 98.81 of the Regulations)

Indian Tribes are required to submit an Application and a Plan in accordance with requirements at §§ 98.13 and 98.16. Additionally, section 658O(c)(2) of the Act requires that Indian Tribes submit an Application which provides that: (1) The applicant will coordinate, to the maximum extent feasible, with the lead agency(ies) in the State(s) in which the applicant will carry out the Block Grant program; and (2) Tribal Block Grant programs and activities will be carried out on the Indian reservation (except for programs located in Alaska, California, or Oklahoma) and for the benefit of Indian children.

As discussed in § 98.20, the requirement that Tribal Grantees operate their programs on the Indian reservation for the benefit of Indian children establishes the authority of the Tribal Grantee to serve only Indian children.

We require Tribal Grantees to submit their initial Plan for a period of two years. Section 658O(c)(4) of the Act permits the Secretary to authorize Tribal grants for periods of up to three years; section 658E(b)(1) requires that the initial Plan from States be for a period of three years. We determined, however, that because most Tribal programs will be relatively small, requiring Plans every two years will not be overly burdensome. In addition, ACF will be able to review Tribal Plans on a more timely basis since, after 1991, they will not generally be processed at the same time as Plans from States. As specified in § 98.13, all Grantees, including Tribal Grantees, must apply annually for Block Grant funds.

Coordination (§ 98.82 of the Regulations)

Section 658O(c)(2)(A) of the Act requires Tribal applicants to coordinate, to the maximum extent feasible, with the lead agency in the State or States in which the applicant will carry out the Block Grant program. This requirement is covered in paragraph (a) of this section.

We require Tribal applicants to comply with the provision at section 658D(b)(1)(D) of the Act (and § 98.12 of the regulations), regarding coordination with other Federal, State and local child care and development programs. We included language requiring coordination with other Tribal programs, as well. We also require States to coordinate with Tribes at § 98.12(c).

Since Tribes are required to submit Applications annually, we expect the coordination specified in this section to be carried out on an ongoing, rather than one-time, basis.

Requirements for Tribal Programs (§ 98.83 of the Regulations)

As stated in the preamble at § 98.80, Tribal Grantees are subject to all the regulatory requirements of parts 98 and 99, unless otherwise indicated. This section of the regulation includes requirements for Tribal programs.

Tribal Grantees, like States, must designate a lead agency to administer the Block Grant program. As with States, we feel that it is important to have a single point of contact for Tribal Block Grant programs.

Section 658O(c)(2)(B) of the Act requires that, except for Grantees located in Alaska, California, or Oklahoma, Block Grant programs must be carried out on the Indian reservation for the benefit of Indian children.

We anticipate that, in the case of consortia, licensing and regulatory requirements will vary from Tribe to Tribe. This is not unlike situations in States, where licensing and regulatory requirements vary from county to county and city to city. In cases where licensing and regulatory requirements do vary among consortium members, we considered requiring the consortium to accept and apply a single set of licensing and regulatory requirements within the consortium. We decided, however, to simply require the consortium to specify in written agreements variations in the Application of licensing and regulatory requirements. For example, a consortium having Tribal members with different licensing and regulatory requirements must have in place written agreements between the consortium and each member specifying the licensing and regulatory requirements that apply for each consortium member.

Tribal Grantees that are consortia, like State Grantees, must ensure that providers meet the applicable licensing, regulatory, and health and safety requirements of each jurisdiction within which the consortium operates a Block Grant program. This means that child care provided through the Block Grant program must meet applicable State or Tribal standards. In the absence of Tribal standards, State standards will apply unless Tribes are excepted under State law. If Tribes are excepted from State health and safety requirements for the purposes of providing child care, Tribal Grantees must develop requirements pursuant to § 98.41.

Similarly, if there are variations in the implementation of the requirements of the Act or these regulations, the variations must be specified in the written agreements.

Subpart J—Monitoring, Non-compliance and Complaints

Monitoring (§ 98.90 of the Regulations)

Section 658I(b)(1) of the Act requires the Secretary to monitor programs funded under the Block Grant for compliance with the provisions of the Block Grant Plan, as well as the provisions of the Act. We have added language at paragraph (a)(2) of this section which makes it clear that Grantees are also required to comply with the requirements of these regulations. In addition, we have included language at § 98.90(b) which provides for monitoring entities providing services under contract or agreement with the Grantee. This was done to ensure that all services follow the provisions of the Plan and the Act, regardless of how the services are provided. ACF will provide additional information regarding the nature and extent of monitoring activities in the future.

If a review or investigation uncovers evidence that a Grantee has failed to substantially comply with the Plan or with one or more of the provisions of the Act or implementing regulations, ACF will notify the Grantee. The Grantee will be given 60 days to provide additional information before a formal determination of failure to comply is made.

We have also included language in paragraph (c) of this section which requires that Grantees make available appropriate books, documents, papers, manuals, instructions, and records, upon reasonable request, when the Department is monitoring a Grantee program.

Information which leads ACF to believe that there may be a failure to comply may come from monitoring activities, from the annual reports required under § 98.70, from complaints received and processed under § 98.93, or from any other source.

Non-Compliance (§ 98.91 of the Regulations)

After providing the notice described in § 98.90(b), ACF will determine whether the evidence supports a finding that there has been a failure to substantially comply with the Block Grant Plan, the Act or implementing regulations. ACF will provide to the Grantee a written decision regarding non-compliance within 60 days of the preliminary notification described in § 98.90(b), or within 60 days of the receipt of additional comments from the Grantee, whichever is later.

The final notice of non-compliance will include any penalties and/or sanctions which will be imposed, pursuant to § 98.92. The Grantee will be given the opportunity for a hearing under part 99. Issues at the hearing will include the finding of non-compliance, as well as the penalties and/or sanctions to be applied.

Penalties and Sanctions (§ 98.92 of the Regulations)

Section 658I(b)(2) of the Act provides specific penalties and sanctions to be applied if it is determined that the Grantee has failed to comply substantially with any provision of the Block Grant Plan, the Act or implementing regulations. These penalties are included in the regulation at paragraphs (a) and (c) of this section.

The penalty may be the cessation of all payments under the Block Grant, or, in the case of non-compliance in the operation of a specific program or activity, no further payments to the Grantee will be made with respect to that program or activity. For example, if it was determined that a Grantee had not implemented a certificate program by October 1, 1992, as required in section 658E(c)(A)(iii) of the Act, all funding under 658E(c)(3)(B) might be terminated. Penalties will continue until the Department is satisfied that there is no longer any such failure to comply or that non-compliance will be promptly corrected.

In addition to imposing the penalties described above, the Act provides that the Secretary may impose other appropriate sanctions, including recoupment of funds improperly expended for purposes prohibited or not authorized by the Act. The Secretary may also disqualify the Grantee from receipt of any further funding under the Block Grant.

The Department may informally contact the Grantee for more information regarding potential non-compliance in an effort to resolve the issue without invoking the formal process. In addition, the issue may be resolved at any point in the process through the introduction of new information that resolves the question, or through the Grantee's agreement to come into compliance with the Plan and/or the Act. Penalties and/or sanctions may nevertheless be applied, even if the issue is resolved informally. This provision is included in paragraph (e) of this section.

Complaints (§ 98.93 of the Regulations)

Section 658I(b)(3) of the Act requires the Secretary to establish rules for processing complaints concerning any failure to comply with the Act or the Plan. We provide such procedures in this section of the regulations.

This section applies to complaints that a Grantee has failed to comply with the terms of the Act, implementing regulations, or the Plan. We add that the Secretary is not required to consider a complaint unless it is submitted as required by this section. Paragraph (b) of this section includes the address of the Assistant Secretary and requires that the complainant identify the basis for the complaint and provide all relevant information known to the person submitting it.

ACF will furnish a copy of any complaint to the affected Grantee. Any comments received from the Grantee within 60 days (or a longer period if agreed to by the Grantee and the Department) will be considered in responding to the complainant.

ACF will provide a written response to complaints within 180 days after receipt. If the issue is not resolved with the Grantee, the complaint will be pursued through the process described in § 98.90.

Part 99—Procedure for Hearings for the Child Care and Development Block Grant

We are adding a new part to the Code of Federal Regulations (CFR) which provides an administrative hearings process required for processing appeals of Block Grant Plan disapprovals, pursuant to § 98.18, and the compliance process, pursuant to subpart J. There are presently regulations in the CFR that

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address the hearing process for similar programs. However, we found that the unique characteristics of the Block Grant disapproval and compliance processes justified inclusion of a separate hearings regulation. In addition, one objective of this regulation was to create a stand-alone document which would, to the extent possible, contain all Federal rules necessary for administering the Block Grant program.

Rather than amend existing regulations relating to other hearing processes, we felt that the best approach was to include a process specific to the Block Grant. The process is not substantially different from similar provisions for other programs. In fact, we used the regulation at 45 CFR part 213 as the model for part 99.

The regulation is self-explanatory. It contains information related to the conduct of hearings for the Block Grant. When an applicant or Grantee wishes to appeal an adverse decision regarding a Block Grant Plan or Plan amendment, the hearings process in part 99 will be followed. Similarly, should the Department determine that a Grantee has failed to comply with a provision of the Act, part 98 of the regulation, or its Plan, the hearings process in part 99 will be followed in processing the appeal.

Subpart A of the regulations provides the scope of the rules and specifies the rules regarding the record of the proceedings and the filing and service of papers; subpart B provides the rules governing the issuance of notices, the scheduling of the hearing, the issues to be included and who can participate in the hearing; subpart C specifies who presides at the hearing, the duties and responsibilities of the presiding officer, the rights of all the parties, and the rules governing the evidence to be presented; and subpart D specifies the posthearing procedures and decisions.

ADDITIONAL INFORMATION

Coordination in Planning and Service Delivery

The Block Grant is but one of many programs designed to help low-income families meet their child care needs. This section of the preamble provides general information on a number of programs which Grantees may consider as they plan for implementation of Block Grant programs, and in developing programs which provide "seamless services" to recipients and providers. In order to make maximum use of the existing and increased resources of the programs described below, as well as other programs at the Federal, State, and local level, Grantees should consider coordination in their planning and service delivery with these programs.

ACF-Administered Child Care Programs

Other Federal programs specifically support child care services. In fact, ACF administers programs which constitute a continuum of child care services for families in various stages of need, by supporting families' efforts to remain or become self-sufficient. In addition to the Block Grant, ACF administers the following programs which specifically provide child care necessary for parents to work or participate in job training and education programs:

—At-Risk Child Care—(funds (approximately $380 million in FY 1992) will provide child care assistance to families who are not receiving AFDC, need child care in order to work, and would be at risk of becoming eligible for AFDC if they did not receive child care assistance.

—Transitional Child Care—(an open-ended appropriation with $83 million requested for FY 1992) to provide up to 12 months of transitional child care for recipients who leave AFDC due to increased income from employment.

—Child Care for AFDC Recipients—(an open-ended appropriation with $350 million requested for FY 1992) will support current AFDC recipients' efforts to participate in JOBS or education and other training activities to help them become self-sufficient and leave welfare.

—AFDC Child Care Disregards—(approximately $10 million in FY 1992) support AFDC recipients' efforts to work by providing offsets against income from work for a portion of recipients' child care costs.

—Child Care Improvement Grants—($13 million requested in FY 1992) will help States to improve their child care licensing and registration requirements and to provide for the training of child care providers.

The Block Grant provides Grantees a great deal of flexibility in program design, in definitions, and in targeting. Grantees will be able to use many of the definitions and eligibility rules from other programs to achieve consistency among those programs.

In addition to the above programs which are specifically targeted at providing child care, ACF administers a number of other programs which may provide child care, at the option of the State, or which provide services related to child care. The most extensive of these is the Head Start program.

Head Start

Head Start provides comprehensive services to enhance the development of low-income preschool children. Since its inception in 1965, Head Start has provided educational, medical, dental, nutrition, mental health, and social services to over 12 million children and their families.

Currently, about half of all Head Start parents work full- or part-time. Head Start and the Block Grant can develop mutually beneficial arrangements to provide extended-day child care for that subpopulation of Head Start children who need such care due to their parents' work or training schedules, or to provide Block Grant recipients with a Head Start experience.

Agencies administering the Block Grant that wish to pursue agreements with Head Start should contact the ACF Regional Office in their area.

The following ACF programs may also be of interest to Grantees in coordinating child care services:

—Social Services Block Grant—In FY 1990, forty-five States reported they provided child care services under the Social Services Block Grant (title XX of the Social Security Act).

—Child Welfare Services—Title IV–B of the Social Security Act allows States the option to provide child care and to assist child care centers in meeting State and local licensing requirements. Expenditures for child care services necessary solely for employment and training are limited to the funding available in FY 1979.

—Dependent Care Planning and Development—Grants are made to States to pay 75 percent of the planning and development costs for establishing information and referral systems and school-age child care. Grants may not be used for operating costs, nor for direct payment of services.

—Child Development Associate Scholarship Program—States and areas receiving grants under the Social Security Block Grant are eligible to apply for funds to use as scholarships to income-eligible candidates for the CDA credential.

Child Support Enforcement

Child Support Enforcement (CSE) is an important component of ACF's efforts to foster the financial stability of families. The CSE program was developed to ensure that, whenever possible, children are supported by their parents.

State CSE agencies provide services to both AFDC and non-AFDC families.

The services offered include: locating the non-custodial parent; establishing paternity; establishing a child support order; enforcing the order; and collecting the support that is due. Grantees are encouraged to collaborate with their State CSE agency on methods for providing child support information and referral services to their clients.

Other Federal programs also provide benefits which relate to child care. In particular, the Earned Income Tax Credit (EITC) and Child Care Food Program may be of interest to Grantees in coordinating services.

Earned Income Tax Credit

Three new and expanded provisions of the EITC will provide enhanced refundable tax credits to low-income, working families. This refundable credit can equal up to 36 percent of the earned income of eligible families.

EITC is targeted to families with 1992 adjusted gross incomes less than $22,000 (roughly twice the poverty level for a family of three). The new EITC provisions:

(1) Increase the basic EITC and adjust it for family size;

(2) Provide a new supplemental child or "wee tot" credit; and

(3) Add another credit for health insurance.

Tax credits reduce families' Federal income tax liabilities. Because EITC is refundable and low-income families have little, if any, income tax liability, EITC results in a payment to them. In any case, EITC affords maximum parental choice by providing parents with more income to use as they see fit to care for their children.

Child Care Food Program

The Department of Agriculture provides Federal funds to initiate, maintain, and expand non-profit food service for children in nonresidential institutions which provide child care. The Child Care Food Program enables child care institutions to integrate a nutritious food service with organized care services.

Child Abuse and Neglect

The most recent incidence study estimates that more than 1 million children nationwide experienced demonstrable harm as a result of maltreatment in 1986. Child care providers are generally required to report suspected child abuse or neglect. For providers to meet this responsibility, many will need training to understand the conditions under which abuse and neglect occur, know how to recognize the pertinent indicators, and know how to help when they suspect abuse or neglect. One source of information is a publication of the National Center on Child Abuse and Neglect, Child Abuse and Neglect: A Shared Community Concern. For this publication, a bibliography of materials related to child maltreatment (publication number 07–91175, $3.00), or a free catalogue of other available publications, Grantees may contact: The Clearinghouse on Child Abuse and Neglect Information, P.O. Box 1182, Washington, DC 20013, telephone (703) 821–2086.

Health Care

States might consider developing contacts with local Block Grant administrators and local health officials. Local health officials can offer providers practical information on health matters such as preventing the spread of communicable diseases, first aid, and immunization schedules.

With the recent resurgence of measles, childhood immunization is receiving renewed attention. Low immunization coverage, particularly among minority groups, appears to be a primary cause. Through linkages with local health agencies, Grantees can seek ways to improve the immunization coverage among young children. For example, local administrators could establish a process for providers to refer parents to local health officials in order to meet the immunization requirements established by the State.

Technical Assistance

ACF plans to provide technical assistance to Grantees, as required by section 658I(a)(3) of the Act. We will serve as a clearinghouse to disseminate information to Grantees. For example, as we note in the preamble to § 98.41, ACF will make available copies of or references to appropriate studies regarding health and safety standards, including information related to immunization. We will also make available information developed by States under their Child Care Improvement Grants. Such information will include management improvements for licensing and monitoring and provider training packages related to licensure such as health and safety and fire safety.

ACF also plans to provide information regarding effective program implementation. Although the regulations do not address all implementation issues, we hope to elicit comments and recommendations regarding any such issues. One example is managing the various child care funding streams, which is administratively demanding both for the administrators and providers.

We believe that identifying such issues, and sharing workable solutions based on State experience with the operations of child care programs, will form one basis for technical assistance to be provided by ACF. We are therefore interested in the types of and content of such implementation issues, as well as suggested solutions. If further regulation is suggested, bear in mind statutory constraints. We would also like to receive suggestions regarding the nature of any other technical assistance which ACF might provide.

Automation

We encourage Grantees to consider their long-range approach to automation as they develop systems to support the delivery of child care services under the Block Grant. We urge systems development efforts which focus on the effective delivery of child care services and capture data for reporting, rather than developing a system which centers solely on reporting.

Automated systems will be needed to support some requirements under the Block Grant. For example, ensuring parental choice could entail providing a mechanism for apprising parents of their choices, providing a certificate program which may be used as flexibly as cash, managing the availability of certificates throughout the program period, providing a simple and timely registration process, and ensuring speedy payment of providers. In addition, Grantees will need to manage and track the use of the Block Grant funds, pursuant to §§ 98.50 and 98.51. Accounting and reporting functions will be needed as well.

One of the challenges facing Grantees in their approach to automation is coordination with other child care programs. Managing the various funding streams in a way which affords individual families "seamless service" will be critical to both service delivery and systems development. As discussed above, ACF was consolidated in part to facilitate this very outcome. As Grantees consider automation of child care services, we encourage coordinated systems development.

Although limited Block Grant funds could be used for systems, we believe that Congress intended the Block Grant funds to be used primarily for child care services. As other systems are being developed for the management and delivery of child care services, such as systems related to child care programs under title IV–A of the Social Security Act, Grantees should look for ways to share technologies and minimize systems development costs.

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(Catalog of Federal Domestic Assistance Programs: 93.839, Child Care and Development Block Grant.)

List of Subjects

45 CFR Part 98

Child Care, Grant program—social programs, Parental Choice, Reporting and recordkeeping requirements.

45 CFR Part 99

Administrative practice and procedure, Child care, Grant program—social programs.

Dated: May 24, 1991.

Jo Anne B. Barnhart,

Assistant Secretary for Children and Families.

Approved: May 30, 1991.

Louis W. Sullivan,

Secretary, Department of Health and Human Services.

Accordingly, title 45, subtitle A, Code of Federal Regulations is amended as set forth below:

1. A new part 98 is added to read as follows:

PART 98—CHILD CARE AND DEVELOPMENT BLOCK GRANT

Subpart A—Purposes and Definitions

Sec.
98.1 Purposes.
98.2 Definitions.
98.3 Effect on State law.

Subpart B—General Application Procedures

98.10 Lead agency responsibilities.
98.11 Administration under contracts and agreements.
98.12 Coordination and consultation.
98.13 Application content and procedures.
98.14 Plan process.
98.15 Assurances.
98.16 Plan provisions.
98.17 Period covered by Plan.
98.18 Approval and disapproval of Plans and Plan amendments.

Subpart C—Eligibility for Services

98.20 A child's eligibility for child care services.
98.21 A child's eligibility for early childhood development and before- and after-school care services.

Subpart D—Program Operations (Child Care Services) Parental Rights and Responsibilities

98.30 Parental choice.
98.31 Parental access.
98.32 Parental complaints.
98.33 Consumer education.
98.34 Parental rights and responsibilities.

Subpart E—Program Operations (Child Care Services) State and Provider Requirements

98.40 Compliance with applicable State and local regulatory requirements.
98.41 Health and safety requirements.
98.42 Sliding fee scales.
98.43 Payment rates.
98.44 Priority for child care services.
98.45 Registration.
98.46 Nondiscrimination in enrollment on the basis of religion.
98.47 Nondiscrimination in employment on the basis of religion.

Subpart F—Use of Block Grant Funds

98.50 Child care services.
98.51 Activities to improve the quality of child care and to increase the availability of early childhood development programs and before- and after-school care services.
98.52 Administrative activities.
98.53 Supplementation.
98.54 Restrictions on the use of funds.
98.55 Cost allocation.

Subpart G—Financial Management

98.60 Availability of funds.
98.61 Allotments for States.
98.62 Allotments for Territories and Tribes.
98.63 Reallotment.
98.64 Financial reporting.
98.65 Audits.
98.66 Disallowance procedures.
98.67 Fiscal requirements for contracts and agreements.

Subpart H—Program Reporting Requirements

98.70 Annual report requirement.
98.71 Content of report.

Subpart I—Indian Tribes

98.80 General procedures and requirements.
98.81 Application and Plan.
98.82 Coordination.
98.83 Requirements for Tribal programs.

Subpart J—Monitoring, Non-Compliance and Complaints

98.90 Monitoring.
98.91 Non-compliance.
98.92 Penalties and sanctions.
98.93 Complaints.

Authority: 42 U.S.C. 9858.

Subpart A—Purposes and Definitions

§ 98.1 Purposes.

(a) The purpose of the Child Care and Development Block Grant is to increase the availability, affordability, and quality of child care services. The program offers Federal funding to States, Territories, Indian Tribes, and Tribal organizations in order to:

(1) Provide low-income families with the financial resources to find and afford quality child care for their children;

(2) Enhance the quality and increase the supply of child care for all families, including those who receive no direct assistance under the Block Grant;

(3) Provide parents with a broad range of options in addressing their child care needs;

(4) Strengthen the role of the family;

(5) Improve the quality of, and coordination among, child care programs and early childhood development programs; and

(6) Increase the availability of early childhood development and before- and after-school care services.

(b) The purpose of these regulations is to provide the basis for administration of the Child Care and Development Block Grant. These regulations provide that Grantees:

(1) Maximize parental choice through the use of certificates and through grants and contracts;

(2) Include in their programs a broad range of child care providers, including center-based, family child care, and in-home care, care provided by relatives and sectarian child care providers;

(3) Provide quality child care that meets applicable State and local requirements;

(4) Coordinate planning and delivery of services at all levels;

(5) Design flexible programs which provide for the changing needs of recipient families;

(6) Administer the Block Grant responsibly to ensure that statutory requirements are met and that adequate information regarding the use of public funds is provided;

(7) Maximize the impact of the additional funding available under the Block Grant by ensuring that Federal funds are used to supplement, not supplant, existing services, and ensuring that administrative costs are minimized; and

(8) Design programs which provide "seamless service" to families and providers, to the extent statutorily possible.

§ 98.2 Definitions.

For the purpose of this part, and 45 CFR part 99:

(a) *The Act* refers to the Child Care and Development Block Grant Act of 1990, section 5082 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508;

(b) *ACF* means the Administration for Children and Families;

(c) *The Application* is the request from a potential Grantee for funding under the Block Grant, and includes such information as the amount of funding requested and the projected budget for the program, pursuant to § 98.13;

(d) *Assistant Secretary* means the Assistant Secretary for Children and Families, Department of Health and Human Services, unless the context specifies otherwise;

(e) *Before- and after-school services* means services which meet the requirements of § 98.51(e);

(f) *The Block Grant* means the Child Care and Development Block Grant; *Block Grant programs* will be used to generically describe all activities under the Block Grant, including child care services and quality and availability improvements pursuant to section 658E(c)(3)(B) of the Act, as well as quality and availability improvements, pursuant to sections 658E(c)(3)(C), 658G and 658H of the Act;

(g) *Caregiver* means an individual who provides child care services directly to an eligible child on a person-to-person basis;

(h) *Categories of care* means center-based child care, group home child care, family child care and in-home care;

(i) *Center-based child care provider* means a provider licensed or otherwise authorized to provide child care services for fewer than 24 hours per day per child in a nonresidential setting;

(j) *Child care certificate* means a certificate (that may be a check or other disbursement) that is issued by a Grantee directly to a parent who may use such certificate only as payment for child care services, pursuant to § 98.30. Nothing in this part shall preclude the use of such certificate for sectarian child care services if freely chosen by the parent. For the purposes of this part, a child care certificate is assistance to the parent, not assitance to the provider;

(k) *Child care provider that receives assistance* means a child care provider that receives Federal funds under the Block Grant pursuant to grants, contracts or loans, but does not include a child care provider to whom Federal funds under the Block Grant are directed only through the operation of a certificate program;

(l) *Child care services* means child care services pursuant to § 98.50;

(m) *The Department* means the Department of Health and Human Services;

(n) *Early childhood development program* means a program that meets the requirements of § 98.51(d);

(o) *Elementary school* means a day or residential school that provides elementary education, as determined under State law;

(p) *Eligible child* means an individual who meets the requirements of § 98.20;

(q) *Eligible child care provider* means:

(1) A center-based child care provider, a group home child care provider, a family child care provider, an in-home child care provider, or other provider of child care services for compensation that—

(i) Is licensed, regulated, or registered under applicable State or local law as described in § 98.40 or, if exempt from such requirements, is registered before receipt of payment as described in § 98.45; and

(ii) Satisfies State and local requirements, including those referred to in § 98.41 applicable to the child care services it provides; or

(2) A child care provider who is 18 years of age or older who provides child care services only to eligible children who are, by marriage, blood relationship, or court decree, the grandchild, niece, or nephew of such provider, if such provider is registered before receipt of payment and complies with any State requirements that govern child care provided by the relative involved.

(r) *Family child care provider* means one individual who provides child care services for fewer than 24 hours per day per child, as the sole caregiver, and in a private residence other than the child's residence;

(s) *Grantee* means the government, Tribe, or Tribal organization to which a grant is awarded and which is accountable for the use of the funds provided. The Grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document;

(t) *Group home child care provider* means two or more individuals who provide child care services for fewer than 24 hours per day per child, and in a private residence other than the child's own home;

(u) *Indian Tribe* means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(v) *In-home child care provider* means an individual who provides child care services in the child's own home;

(w) *Lead agency* means the agency designated under §§ 98.10 and 98.16(a)(1);

(x) *Licensing or regulatory requirements* means requirements necessary for a provider to legally provide child care services in a State or locality, including registration requirements established under State, local or Tribal law other than those required pursuant to § 98.45;

(y) *Liquidation period* means the one-year period following the obligation period;

(z) *Obligation period* means the time period during which a fiscal year's grant must be obligated;

(aa) *Parent* means a parent by blood, marriage or adoption and also means a legal guardian, or other person standing in loco parentis;

(bb) *The Plan* means the Plan for the implementation of programs under the Block Grant;

(cc) *Program period* means the time period during which a fiscal year's grant must be expended;

(dd) *Programs* will be used generically to describe all activities under the Block Grant, including Child Care Services pursuant to section 658E(c)(3)(B) of the Act as well as quality and availability improvements, pursuant to section 658E(c)(3)(C) of the Act;

(ee) *Provider* means the entity providing child care services;

(ff) *The regulation* refers to the actual regulatory text contained in 45 CFR parts 98 and 99;

(gg) *Secondary school* means a day or residential school which provides secondary education, as determined under State law;

(hh) *Secretary* means the Secretary of the Department of Health and Human Services unless the context specifies otherwise;

(ii) *Sectarian organization or sectarian child care provider* means religious organizations or providers generally, not merely those of a specific religious character or that are affiliated with a church or synagogue. The terms embrace any organization or provider that engages in religious conduct or activity or that seeks to maintain a religious identity in some or all of its functions. There is no requirement that a sectarian organization or provider be managed by clergy or have any particular degree of religious management, control, or content;

(jj) *Sectarian purposes and activities* means any religious purpose or activity, including but not limited to religious worship or instruction;

(kk) *Services for which assistance is provided* means all child care services funded under the Block Grant, either as assistance directly to child care providers through grants, contracts, or loans, or indirectly as assistance to parents through child care certificates;

(ll) *Sliding fee scale* means a system of cost sharing by a family based on income and size of the family, in accordance with § 98.42;

(mm) *State* means any of the States, the District of Columbia, the

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Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands (Palau), and includes Tribes unless otherwise specified;

(nn) *Tribe and Tribal Grantee* refer to Indian Tribes and Tribal organizations as defined at paragraphs (u) and (oo) of this section;

(oo) *Tribal organization* means the recognized governing body of any Indian tribe; any legally established organization of Indians, including a consortium, which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organizations and which includes the maximum participation of Indians in all phases of its activities: Provided, that in any case where a contract is let or grant is made to an organization to perform services benefiting more than one Indian Tribe, the approval of each such Indian Tribe shall be a prerequisite to the letting or making of such contract or grant; and

(pp) *Types of providers* means the different classes of providers under each category of care. For the purposes of the Block Grant, types of providers include non-profit providers, for-profit providers, sectarian providers and relatives who provide care.

§ 98.3 Effect on State law.

(a) Nothing in the Act or this part shall be construed to supersede or modify any provision of a State constitution or State law that prohibits the expenditure of public funds in or by sectarian organizations, except that no provision of a State constitution or State law shall be construed to prohibit the expenditure in or by sectarian institutions of any Federal funds provided under this part.

(b) If a State law or constitution would prevent Federal Block Grant funds from being expended for the purposes provided in the Act, without limitation, then States must segregate State and Federal funds.

Subpart B—General Application Procedures

§ 98.10 Lead agency responsibilities.

The lead agency, as designated by the chief executive officer of the State (or by the appropriate Tribal leader or applicant), shall:

(a) Administer the Block Grant program, directly or through other State agencies, in accordance with § 98.11;

(b) Submit an Application for funding under this part, pursuant to § 98.13;

(c) Consult with appropriate representatives of local government in developing a Plan to be submitted to the Secretary pursuant to § 98.14(b);

(d) Hold at least one public hearing in accordance with § 98.14(c); and

(e) Coordinate Block Grant services with other Federal, State and local child care and early childhood development programs, including such programs for the benefit of Indian children, pursuant to § 98.12.

§ 98.11 Administration under contracts and agreements.

(a) The lead agency has broad authority to share responsibilities for the administration of the program with other State agencies. In addition, the lead agency can share implementation of the program with other public or private local agencies. However,

(1) The lead agency must retain overall responsibility for the administration of the program, as defined in paragraph (b) of this section;

(2) The lead agency shall serve as the single point of contact for issues involving the administration of the Grantee's Block Grant program; and

(3) The sharing of administrative and implementation responsibilities must be governed by written agreements which specify the mutual roles and responsibilities of the lead agency and the other agencies in meeting the requirements of this part.

(b) In retaining overall responsibility for the administration of the program, the lead agency must:

(1) Determine the basic usage and priorities for the expenditure of Block Grant funds;

(2) Promulgate all rules and regulations governing the administration of the Plan which are in effect on a statewide basis;

(3) Submit all reports required by the Secretary;

(4) Ensure that the program complies with the approved Plan and all Federal requirements;

(5) Oversee the expenditure of funds by subgrantees and contractors;

(6) Monitor programs and services; and

(7) Fulfill the responsibilities of the Grantee in any complaint, compliance, hearing or appeal action under subpart J of this part or 45 CFR part 99.

§ 98.12 Coordination and consultation.

The lead agency must:

(a) Coordinate the provision of services for which assistance is provided under this part with other Federal, State, and local child care and early childhood development programs, and before- and after-school programs as provided under § 98.10(e).

(b) Consult, in accordance with § 98.14(b), with representatives of general purpose local government during the development of the Plan; and

(c) Coordinate, to the maximum extent feasible, with any Indian Tribes in the State submitting Applications in accordance with subpart I of this part.

§ 98.13 Application content and procedures.

(a) An Application for Block Grant funds must be made by the chief executive officer of a State. The Application must contain:

(1) The program period, as defined in § 98.2(cc) for which the Application is made;

(2) The amount of funds requested for such period;

(3) An assurance that the Grantee will comply with the requirements of the Act and this part;

(4) Pursuant to 45 CFR part 93, a lobbying certification which assures that the funds will not be used for purposes of political influence, and, if necessary, a Standard Form LLL (SF–LLL) which discloses lobbying payments (Tribal applicants are not required to submit either the certification or form);

(5) Pursuant to 45 CFR 76.600, an assurance that the Grantee provides a drug-free workplace (if such a certification for all HHS grants has not already been submitted);

(6) A budget of expenditures, which provides an estimate of the use and distribution of Block Grant funds during the period covered by the Application, including:

(i) A break-out of program activities under § 98.50 including a list of activities to improve the availability and quality of child care (which includes administrative costs the Grantee anticipates will be necessary to carry out the stated purposes of the program); and

(ii) A break-out of program activities under § 98.51 including administrative costs which the Grantee anticipates will be necessary to carry out the stated purpose of the program; and

(iii) A detailed explanation and rationale for the budget expenditures, pursuant to § 98.50(d)(3), if not consistent with the requirements specified in § 98.50(d)(2);

(7) Pursuant to 45 CFR 76.500, certification that no principals have been debarred;

(8)(i) For the initial Application, the amount of Federal, State, and local public funds expended for the support of child care and related programs during the base period, pursuant to § 98.53(b);

(ii) For subsequent Applications, the amount of such funds expended during the applicable subsequent period; and,

(iii) If applicable, information regarding the nature, extent and basis for reduction in Federal expenditures for programs other than the Block Grant, for the subsequent period;

(9) The Block Grant Plan, at times and in such manner as required in § 98.17; and

(10) Such other information as specified by the Secretary.

(b) Applications must be submitted annually at such time and in such manner as prescribed by the Secretary.

(c) In its initial Application, an Indian Tribe must provide a description of current service delivery skills, personnel, resources, community support, and other necessary components that will enable it to satisfactorily carry out the proposed Plan. Initial Applications submitted by consortia must also contain the additional information required under § 98.80(c)(1) and (c)(4).

§ 98.14 Plan process.

In the development of each Plan, as required pursuant to § 98.17, the lead agency shall:

(a) Coordinate the provision of Block Grant services with other Federal, State, and local child care and early childhood development programs, including such programs for the benefit of Indian children;

(b) Consult with appropriate representatives of local governments to consider local child care needs and resources, the effectiveness of existing child care and early childhood development services, and the methods by which Block Grant funds can be used to effectively address local child care shortages; and

(c) Hold at least one hearing, with adequate notice, to provide to the public an opportunity to comment on the provision of child care services under the Plan.

§ 98.15 Assurances.

The Block Grant Plan must include assurances that:

(a) Upon approval, the Grantee will have in effect a program which complies with the provisions of the Plan;

(b) The parent(s) of each eligible child within the State who receives or is offered child care services for which financial assistance is provided under § 98.50 is given the option either:

(1) To enroll such child with a child care provider that has a grant or contract for the provision of the service; or

(2) To receive a child care certificate as defined in § 98.2(j);

(c) In cases in which the parent(s), pursuant to § 98.30, elects to enroll their child with a provider that has a grant or contract with the lead agency, the child will be enrolled with the eligible provider selected by the parent to the maximum extent practicable;

(d) In accordance with § 98.30, the child care certificate offered to parents shall be of a value commensurate with the subsidy value of child care services provided under a grant or contract;

(e) The Grantee, in accordance with § 98.31, has procedures in place to ensure that providers of child care services, for which assistance is provided under the Block Grant, afford parents unlimited access to their children and to the providers caring for their children, during the normal hours of operations or whenever such children are in the care of such providers;

(f) The Grantee, as required by § 98.32, maintains a record of substantiated parental complaints and makes information regarding such complaints available to the public, on request;

(g) Consumer education information will be made available to parents and the general public within the State (or other areas served by the Grantee) concerning licensing and regulatory requirements, complaint procedures, and policies and practices relative to child care services within the State (or other areas served by the Grantee), as required by § 98.33;

(h) In accordance with § 98.40, all providers of child care services for which assistance is provided under the Block Grant will comply with all licensing and regulatory requirements, applicable under State or local law;

(i) Providers of child care services for which assistance is provided under the Block Grant that are not licensed or regulated for the purpose of providing child care under State or local law are required to be registered with the Grantee prior to payment being made and that such providers shall be permitted to register with the Grantee after selection by the parents of eligible children and before such payment is made, as required by § 98.45;

(j) There are in effect within the State (or other areas served by the Grantee), under State or local law, requirements designed to protect the health and safety of children that are applicable to child care providers that provide services for which assistance is made available under the Block Grant, pursuant to § 98.41;

(k) In accordance with § 98.41, procedures are in effect to ensure that child care providers of services for which assistance is provided under the Block Grant comply with all applicable State or local health and safety requirements;

(l) If the State reduces the level of standards applicable to child care services provided in the State (or other areas served by the Grantee) after November 5, 1990, the Grantee shall inform the Secretary of the rationale for such reduction in the annual report of the Grantee;

(m) The Grantee will, not later than 18 months after submission of the first Application, complete a full review of the law applicable to, and the licensing and regulatory requirements and policies of, each licensing agency that regulates child care services and programs in the State (or other areas served by the Grantee) unless the Grantee has reviewed such law, requirements, and policies in the three-year period ending on November 5, 1990;

(n) Pursuant to § 98.53, funds received through the Block Grant will be used only to supplement, not to supplant, the amount of Federal, State, and local funds otherwise expended for the support of child care services and related programs within the State (or other areas served by the Grantee); and

(o) Payment rates for the provision of child care services, in accordance with § 98.43, will be sufficient to ensure equal access for eligible children to comparable child care services in the State that are provided to children whose parents are not eligible to receive assistance under this program or under any other Federal or State programs.

§ 98.16 Plan provisions.

(a) A Block Grant Plan must contain the following:

(1) Specification of the lead agency whose duties and responsibilities are delineated in § 98.10;

(2) The assurances listed under § 98.15;

(3) A description of how the Block Grant program will be administered and implemented, if the lead agency does not directly administer and implement the program;

(4) A description of the coordination and consultation processes involved in the development of the Plan, pursuant to § 98.14 (a) and (b);

(5) A description of the public hearing process, pursuant to § 98.14(c);

(6) Definitions of the following terms for purposes of determining eligibility, pursuant to §§ 98.20(a) and 98.44:

(i) Special needs child;

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(ii) Physical or mental incapacity (if applicable);
(iii) Attending (a job training or educational program);
(iv) Job training and educational program;
(v) Residing with;
(vi) Working;
(vii) Protective services; and
(viii) Very low income;
(7) For child care services and activities to improve the availability and quality of child care, pursuant to § 98.50:
(i) A description of such services and activities;
(ii) A list of political subdivisions in which such services and activities are offered, if such services and activities are not available statewide;
(iii) Provision for the reservation of 75 percent of these funds for such purposes, together with a plan for the allocation of, and prioritization of, such funds for such services and activities;
(iv) Any additional eligibility criteria or priority rules (with appropriate definitions) established pursuant to § 98.20(b); and
(v) Any eligibility criteria or priority rules for the receipt of grants and contracts by providers;
(8) For activities to improve the quality of child care and to increase the availability of early childhood development and before- and after-school care services:
(i) A description of such activities, pursuant to § 98.51;
(ii) A list of political subdivisions in which such activities are offered, if such activities are not available statewide;
(iii) Provision for the reservation of 25 percent of these funds for such purposes, together with a plan for allocation of, and prioritization of, such funds for such services and activities; and
(iv) Any additional eligibility criteria or priority rules for children receiving such services established pursuant to § 98.21(b), with appropriate definitions;
(v) A description of any eligibility criteria or priority rules for the receipt of grants and contracts by providers, in addition to those in § 98.51(c)(2);
(9) A description of the sliding fee scale(s) (including any factors other than income and family size used in establishing the fee scale(s)) that provide(s) for cost sharing by the families that receive child care services for which assistance is provided under the Block Grant, pursuant to § 98.42 for child care services under §§ 98.50 and 98.51 if applicable;
(10) A description of the minimum health and safety requirements, applicable to all providers of child care services for which assistance is provided under the Block Grant, in effect pursuant to § 98.41;
(11) A description of current and proposed child care certificate payment system(s), including the form or forms of the child care certificate, pursuant to § 98.30(c);
(12) A description of the methodology used to establish rates for reimbursement of child care services pursuant to § 98.43;
(13) A description of the registration process, including the timeframes within which payment will be made, pursuant to § 98.45;
(14) If the Grantee does not permit the expenditure of State funds for child care services unless certain requirements are met (e.g., a certification process), a description of the applicable process and timeframes;
(15) A description of activities that are planned to encourage public-private partnerships which promote business involvement in meeting child care needs, pursuant to § 98.71(b)(4);
(16) A description of the methodology used to establish the level of effort, if the Grantee chooses to use other than an aggregate basis, pursuant to § 98.53(b)(1); and
(17) For Tribal Plans, the basis for determining family eligibility pursuant to § 98.80(f).
(b) The Plan must address anticipated changes in services, activities, or other provisions that are expected over the life of the Plan.

§ 98.17 Period covered by Plan.

(a) For States and Territories, the initial Plan must cover a period of three years, and all subsequent Plans must cover a period of two years.
(b) For Indian Tribes, the initial Plan and any subsequent Plans must cover a period of two years.
(c) The lead agency must submit a new Plan prior to the expiration of the time period specified in paragraphs (a) and (b) of this section, at such time as required by the Secretary in written instructions.

§ 98.18 Approval and disapproval of Plans and Plan amendments.

(a) *Plan approval.* The Assistant Secretary will approve a Plan that satisfies the requirements of the Act and this part. Plans will be approved not later than the 90th day following the date on which the Plan submittal is received, unless a written agreement to extend that period has been secured.
(b) *Plan amendments.* Approved Plans must be amended whenever a substantial change in the program occurs. A Plan amendment must be submitted within 60 days of the effective date of the change. Plan amendments will be approved not later than the 90th day following the date on which the amendment is received, unless a written agreement to extend that period has been secured.
(c) *Appeal of disapproval of a Plan or Plan amendment.* (1) An applicant or Grantee dissatisfied with a determination of the Assistant Secretary pursuant to paragraphs (a) or (b) of this section with respect to any Plan or amendment may, within 60 days after the date of receipt of notification of such determination, file a petition with the Assistant Secretary asking for reconsideration of the issue of whether such Plan or amendment conforms to the requirements for approval under the Act and pertinent Federal regulations.
(2) Within 30 days after receipt of such petition, the Assistant Secretary shall notify the applicant or Grantee of the time and place at which the hearing for the purpose of reconsidering such issue will be held.
(3) Such hearing shall be held not less than 30 days nor more than 90 days after the notification is furnished to the applicant or Grantee, unless the Assistant Secretary and the applicant or Grantee agree in writing on another time.
(4) Action pursuant to an initial determination by the Assistant Secretary described in paragraphs (a) and (b) of this section that a Plan or amendment is not approvable shall not be stayed pending the reconsideration, but in the event that the Assistant Secretary subsequently determines that the original decision was incorrect, the Assistant Secretary shall certify restitution forthwith in a lump sum of any funds incorrectly withheld or otherwise denied. The hearing procedures are described in part 99.

Subpart C—Eligibility for Services

§ 98.20 A child's eligibility for child care services.

(a) In order to be eligible for services under § 98.50, a child must:
(1)(i) Be under 13 years of age; or
(ii) Be under age 18 (or 19, if the State so provides in its definition of dependent child in its plan under title IV–A of the Social Security Act) and be physically or mentally incapable of caring for himself or herself, or under court supervision;
(2) Reside with a family whose income does not exceed 75 percent of the State's median income for a family of the same size; and
(3)(i) Reside with a parent or parents (as defined in § 98.2(aa)) who are working or attending a job training or educational program; or
(ii) Receive, or need to receive, protective services and reside with a parent or parents (as defined in § 98.2(aa)) other than the parent(s) described in (a)(3)(i) of this section.
(b) Pursuant to § 98.16(a)(7)(iv), a Grantee or other administering agency may establish eligibility conditions or priority rules in addition to those specified in this section and § 98.44 so long as they do not:
(1) Discriminate against children on the basis of race, national origin, ethnic background, sex, religious affiliation, or handicap;
(2) Limit parental rights provided under subpart D; or
(3) Violate the provisions of this section, § 98.44, or the Plan. In particular, such conditions or priority rules may not be based on a parent's preference for a category of care or type of provider. In addition, such additional conditions or rules may not be based on a parent's choice of a child care certificate.

§ 98.21 A child's eligibility for early childhood development and before- and after-school care services.

(a) If a Grantee subsidizes, through grants or contracts under § 98.51, early childhood development services or before- and after-school care services for an individual child, the child must meet the eligibility conditions under § 98.20(a).
(b) Grantees may set additional conditions of eligibility or priority rules for children or families receiving such services funded under § 98.51, so long as such conditions do not violate the provisions of § 98.51(c)(2), or the Plan, and do not discriminate against children on the basis of race, national origin, ethnic background, sex, religious affiliation, or handicap.

Subpart D—Program Operations (Child Care Services) Parental Rights and Responsibilities

§ 98.30 Parental choice.

(a) The parent or parents of an eligible child who receives or is offered child care services under § 98.50 must be offered a choice:
(1) To enroll the child with an eligible child care provider that has a grant or contract for the provision of such services; or
(2) To receive a child care certificate as defined in § 98.2(i).
(3) Such choice must be available anytime that child care services under § 98.50 are provided.
(b) When a parent elects to enroll the child with a provider that has a grant or contract for the provision of child care services, the child will be enrolled with the provider selected by the parent to the maximum extent practicable.
(c) In cases in which a parent elects to use a child care certificate, such certificate:
(1) Will be issued directly to the parent;
(2) Must be of a value commensurate with the subsidy value of the child care services provided under paragraph (a)(1) of this section;
(3) May be used for child care services provided by a sectarian organization or agency, including those that engage in religious activities, if those services are chosen by the parent;
(4) May be expended by providers for any sectarian purpose or activity, including sectarian worship or instruction; and
(5) Shall not be considered a grant or contract to a provider but shall be considered assistance to the parent.
(d) Child care certificate programs under paragraph (a)(2) of this section must be in operation by October 1, 1992.
(e) Child care certificates must be made available to any parents offered services under § 98.50.
(f) For services provided under § 98.50, certificates under paragraph (a)(2) of this section must permit parents to choose from a variety of child care categories, including:
(1) Center-based child care;
(2) Group home child care;
(3) Family child care; and
(4) In-home child care;

and under each of the above categories, care by a sectarian provider may not be limited or excluded.
(g) With respect to State and local regulatory requirements under § 98.40, health and safety requirements under § 98.41, payment rates under § 98.43, and registration requirements under § 98.45, Block Grant funds will not be available to a Grantee if State or local rules, procedures or other requirements promulgated for purposes of the Block Grant significantly restrict parental choice by:
(1) Expressly or effectively excluding:
(i) Any category of care or type of provider, as defined in § 98.2;
(ii) Any type of provider within a category of care; or
(2) Having the effect of limiting parental access to or choice from among such categories of care or types of providers, as defined in § 98.2; or
(3) Excluding a significant number of providers in any category of care or of any type as defined in § 98.2.

§ 98.31 Parental access.

Grantees must have in effect procedures to ensure that providers of child care services for which assistance is provided afford parents unlimited access to their children, and to the providers caring for their children, during normal hours of provider operation and whenever the children are in the care of the provider.

§ 98.32 Parental complaints.

Grantees must:
(a) Maintain a record of substantiated parental complaints; and
(b) Make information regarding such parental complaints available to the public on request.

§ 98.33 Consumer education.

Grantees must make available to parents and the general public consumer education information about all parental options and other policies and practices which relate to child care services, including any applicable licensing and regulatory requirements and complaint procedures.

§ 98.34 Parental rights and responsibilities.

Nothing under this part shall be construed or applied in any manner to infringe on or usurp the moral and legal rights and responsibilities of parents or legal guardians.

Subpart E—Program Operations (Child Care Services) State and Provider Requirements

§ 98.40 Compliance with applicable State and local regulatory requirements.

(a) Grantees must provide assurances that:
(1) Within the area served by the Grantee, all providers of child care services for which assistance is provided under this part comply with any licensing or regulatory requirements, as defined in § 98.2(x), applicable under State, local, and Tribal law; and
(2) Providers that are not required to be licensed or regulated under State, local, or Tribal law are required to be registered, as described in § 98.45(a), with the Grantee prior to any payment being made under the Block Grant.
(b)(1) This section does not prohibit a State from imposing more stringent standards and licensing or regulatory requirements on child care providers of services for which assistance is provided under the Block Grant than the standards or requirements imposed on other child care providers.

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(2) Any such additional requirements must be consistent with the safeguards for parental choice in § 98.30(g).

§ 98.41 Health and safety requirements.

(a) Although the Act specifically states it does not require the establishment of any new or additional requirements if existing requirements comply with the requirements of the statute, each Grantee must provide assurances that there are in effect, within the State (or other area served by the Grantee), under State, local or Tribal law, requirements designed to protect the health and safety of children that are applicable to child care providers of services for which assistance is provided under this part. Such requirements shall include:

(1) The prevention and control of infectious diseases (including immunization);

(2) Building and physical premises safety (e.g. compliance with local building and fire codes); and

(3) Minimum health and safety training appropriate to the provider setting (e.g. routinely supplying health and safety information).

(b) Grantees may not set health and safety standards and requirements under paragraph (a) of this section, that are inconsistent with the parental choice safeguards in § 98.30(g).

(c) If the Grantee reduces the level of standards applicable to any child care services provided in the State after November 5, 1990, the Grantee must inform the Secretary of the rationale for such reduction in its annual report, pursuant to § 98.71(e).

(d) Not later than eighteen months after submission of its initial Application in accordance with § 98.13, each Grantee must complete a full review of the law applicable to, and the licensing requirements and regulatory requirements and policies of, each licensing agency that regulates child care services and programs in the area served by the Grantee, unless the Grantee has reviewed such law, requirements and policies between November 5, 1987, and November 5, 1990. The findings of this review are to be included in either the first or second annual report pursuant to § 98.71(d).

(e) The requirements in paragraph (a) of this section apply to all providers of child care services for which assistance is provided under this part, within the area served by the Grantee, except the relatives specified in paragraph (g) of this section.

(f) Each Grantee shall assure that procedures are in effect to ensure that child care providers of services for which assistance is provided under this part, within the area served by the Grantee, comply with all applicable State or local health and safety requirements described in paragraph (a) of this section.

(g) For the purposes of this section, the term child care providers does not include grandparents, aunts, or uncles, pursuant to § 98.2(q)(2).

§ 98.42 Sliding fee scales.

(a) Grantees shall establish, and periodically revise, by rule, sliding fee scale(s) that provides for cost sharing by families that receive Block Grant child care services under §§ 98.50 and 98.51.

(b) Sliding fee scale(s) shall be based on income and the size of the family, and may be based on other factors as appropriate.

(c) Grantees may waive contributions from families whose incomes are at or below the poverty level for a family of the same size.

(d) The Grantee may apply different sliding fee scales to services under §§ 98.50 and 98.51.

§ 98.43 Payment rates.

(a) The Grantee must assure that the payment rates for the provision of child care under this part are sufficient to ensure equal access, in the area served by the Grantee, for eligible children to comparable child care services provided to children whose parents are not eligible to receive Block Grant assistance or child care assistance under any other Federal, State, or Tribal programs.

(b) In establishing payment rates, Grantees must take into account:

(1) Variations in the cost of providing child care:

(i) Between different categories (i.e., center-based, group home, family, in-home); and

(ii) To children of different age groups; and

(2) The additional costs of providing child care for children with special needs.

(c) Payment rates under paragraph (a) of this section must be consistent with the safeguards for parental choice in § 98.30(g).

(d) Nothing in this section shall be construed to create a private right of action.

(e) Payment rates established pursuant to this section must be available upon request to the Secretary.

§ 98.44 Priority for child care services.

Grantees must give priority for services provided under § 98.50(a)(1) to:

(a) Children of families with very low family income (considering family size); and

(b) Children with special needs.

§ 98.45 Registration.

(a) Grantees must assure that providers of child care services for which assistance is provided under the Block Grant who are not licensed or regulated under State or local law for the purpose of providing child care are registered with the Grantee prior to receiving payment under the Block Grant.

(b) Grantee registration procedures:

(1) Should facilitate appropriate and prompt payment to providers described in paragraph (a) of this section;

(2) Should permit the Grantee to furnish information to such providers, including information on the availability of health and safety training, technical assistance, and any relevant information pertaining to applicable regulatory requirements; and

(3) Must allow providers to register with the Grantee after selection by the parent(s) of eligible children and before the payment described in paragraph (a) of this section is made.

(c) Registration under the Block Grant must be a simple, timely process through which the Grantee authorizes the provider to receive payment for child care services.

(d) Both the registration requirements and the registration process under paragraph (a) of this section must be consistent with the safeguards for parental choice in § 98.30(g).

§ 98.46 Nondiscrimination in enrollment on the basis of religion.

(a) Child care providers (other than family child care providers, as defined in § 98.2(r)) that receive assistance through grants and contracts under the Block Grant shall not discriminate in admissions against any child on the basis of religion.

(b) Paragraph (a) of this section does not prohibit a child care provider from selecting children for child care slots that are not funded directly (i.e. through grants or contracts to providers) with assistance provided under the Block Grant because such children or their family members participate on a regular basis in other activities of the organization that owns or operates such provider.

(c) Notwithstanding paragraph (b) of this section, if 80 percent or more of the operating budget of a child care provider comes from Federal or State funds, including direct or indirect assistance under the Block Grant, the Grantee must assure that before any further Block Grant assistance is given to the provider,

(1) The grant or contract relating to the assistance, or

(2) The admission policies of the provider specifically provide that no person with responsibilities in the operation of the child care program, project, or activity will discriminate, on the basis of religion, in the admission of any child.

§ 98.47 Nondiscrimination in employment on the basis of religion.

(a) In general, except as provided in paragraph (b) of this section, nothing in this part modifies or affects the provision of any other applicable Federal law and regulations relating to discrimination in employment on the basis of religion.

(1) Child care providers that receive assistance through grants or contracts under the Block Grant shall not discriminate, on the basis of religion, in the employment of caregivers as defined in § 98.2(g).

(2) If two or more prospective employees are qualified for any position with a child care provider, this section shall not prohibit the provider from employing a prospective employee who is already participating on a regular basis in other activities of the organization that owns or operates the provider.

(3) Paragraphs (a) (1) and (2) of this section shall not apply to employees of child care providers if such employees were employed with the provider on November 5, 1990.

(b) Notwithstanding paragraph (a) of this section, a sectarian organization may require that employees adhere to the religious tenets and teachings of such organization and to rules forbidding the use of drugs or alcohol.

(c) Notwithstanding paragraph (b) of this section, if 80 percent or more of the operating budget of a child care provider comes from Federal and State funds, including direct and indirect assistance under the Block Grant, the Grantee must assure that, before any further Block Grant assistance is given to the provider,

(1) The grant or contract relating to the assistance, or

(2) The employment policies of the provider specifically provide that no person with responsibilities in the operation of the child care program will discriminate, on the basis of religion, in the employment of any individual as caregiver.

Subpart F—Use of Block Grant Funds

§ 98.50 Child care services.

(a) After reserving 25 percent of the amount provided under the Block Grant for each fiscal year for the activities specified in § 98.51, the remaining funds shall be expended for:

(1) Child care services which are provided in accordance with the provisions of paragraph (b) of this section; and

(2) Activities to improve the availability and quality of child care, as described under paragraph (c) of this section, and all other non-service expenditures.

(b) Child care services must be provided:

(1) To eligible children, as described in § 98.20;

(2) Using a sliding fee scale, as described in § 98.42;

(3) Using funding methods provided for in § 98.30; and

(4) Based on the priorities in § 98.44.

(c)(1) Activities designed to improve the availability and quality of child care include, but are not limited to, the activities specified in § 98.51(b)(2). For the purposes of this part, administrative costs must be included as availability and quality costs under § 98.50(a)(2).

(2) Pursuant to § 98.16(a)(7)(i), the Plan must specify the activities which the Grantee will fund under this paragraph.

(d)(1) States must spend a preponderance of the remaining funds under paragraph (a) of this section for services which they provide pursuant to paragraph (a)(1) of this section. They should spend a minimum amount on activities authorized under paragraph (a)(2) of this section.

(2) Except as provided in paragraph (d)(3) of this section, to meet the requirements of paragraph (d)(1) of this section:

(i) At least 90 percent of the funds reserved for assistance under this section must be expended for services pursuant to paragraph (a)(1) of this section, and

(ii) Not more than 10 percent of the funds may be expended for other authorized activities as described in paragraph (a)(2) of this section, including all administrative activities.

(3) For the first two years of a Grantee's operation of the program, at least 85 percent must be expended for services pursuant to paragraph (a)(1) of this section and up to 15 percent of the funds may be expended for the other authorized activities described in paragraph (a)(2) of this section, upon submission of an additional detailed justification pursuant to § 98.13(a)(6)(iii).

(e) The base amount, pursuant to § 98.62(b)(1)(i), of a Tribal Grantee's grant is exempt from the limitation in paragraph (d)(2) of this section.

§ 98.51 Activities to improve the quality of child care and to increase the availability of early childhood development programs and before- and after-school care services.

(a) The Grantee shall reserve 25 percent of the amount provided under the Block Grant for each fiscal year for the activities specified in this section.

(b) Each Grantee receiving funds to operate a program under this part shall use not less than:

(1) 18.75 percent of the total amount of a fiscal year's Block Grant funds to establish or expand and conduct, through the provision of grants or contracts:

(i) Early childhood development programs, operated in accordance with the provisions of paragraph (d) of this section;

(ii) Before- and after-school child care programs, operated in accordance with the provisions of paragraph (e) of this section; or

(iii) Both; and

(2) Five percent of the total amount of a fiscal year's Block Grant funds on one or more of the following activities to improve the quality of care:

(i) Operating directly or providing financial assistance to organizations (including private non-profit organizations, public organizations, and units of general purpose local government) for the development, establishment, expansion, operation, and coordination of resource and referral programs specifically related to child care;

(ii) Making grants or providing loans to child care providers to assist such providers in meeting applicable State, local, and Tribal child care standards, including applicable health and safety requirements, pursuant to §§ 98.40 and 98.41;

(iii) Improving the monitoring of compliance with, and enforcement of, applicable State, local, and Tribal requirements pursuant to §§ 98.40 and 98.41;

(iv) Providing training and technical assistance in areas appropriate to the provision of child care services, such as training in health and safety, nutrition, first aid, the recognition of communicable diseases, child abuse detection and prevention, and care of children with special needs; and

(v) Improving salaries and other compensation (such as fringe benefits) for full- and part-time staff who provide child care services for which assistance is provided under this part.

An additional one and one-quarter percent of the total funds received under the Block Grant may be used at the discretion of the Grantee for any of the

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purposes allowed in paragraph (b)(1) or (b)(2) of this section.

(c) For programs described in paragraph (b)(1) of this section, Grantees must:

(1) Provide funding through grants and contracts; and

(2)(i) Give highest priority to geographic areas within the area served by the Grantee that are eligible to receive grants under Section 1006 of the Elementary and Secondary Education Act of 1965; and

(ii) Then give priority to any other areas with concentrations of poverty, and any areas with very high or very low population densities.

(d) Early childhood development programs funded under this section:

(1) Must consist of services that are intended to provide an environment that enhances the educational, social, cultural, emotional, and recreational development of children; and

(2) Are not intended to serve as a substitute for compulsory academic programs.

(e) Before- and after-school programs funded under this section:

(1) Must be provided Monday through Friday, including school holidays and vacation periods other than legal public holidays, to children attending early childhood development programs, kindergarten, or elementary or secondary school classes during such times of the day and on such days that e regular instructional services are not in session; and

(2) Are not intended to extend or replace the regular academic program.

(f) Administrative costs associated with activities funded under paragraphs (a), (b)(1), and (b)(2) of this section are considered amounts expended for program activities in determining whether Grantees have met the requirements of those respective paragraphs.

(g) Pursuant to § 98.16(a)(8)(i), the Plan must specify the activities which the Grantee will fund under this section.

§ 98.52 Administrative activities.

(a) Block Grant funds may be used for administrative activities, as limited by § 98.50(d).

(b) As part of its annual Application, as provided in § 98.13(b), a Grantee must provide an estimate of total funds that will be used for administrative activities by both the Grantee and subgrantees during the program period. A list of all administrative activities on which the estimate is based must also be provided with the estimate. These activities may include, but are not limited, to:

(1) Salaries and related costs of the staff of the lead agency or other agencies engaged in the administration and implementation of the program pursuant to § 98.11. Program administration and implementation includes the following types of activities:

(i) Determining eligibility for child care services;

(ii) Planning, developing, and designing the Block Grant program;

(iii) Establishing and operating a certificate program;

(iv) Providing local officials and citizens with information about the program, including the conduct of public hearings;

(v) Preparing the Grantee's Application and Plan;

(vi) Developing systems, including automated information management systems;

(vii) Developing agreements with administering agencies in order to carry out program activities;

(viii) Monitoring program activities for compliance with program requirements;

(ix) Preparing reports and other documents related to the program for submission to the Secretary;

(x) Maintaining substantiated complaint files in accordance with the requirements of § 98.32;

(xi) Coordinating the provision of Block Grant services with other Federal, State, and local child care, early childhood development programs, and before- and after-school care programs;

(xii) Coordinating the resolution of audit and monitoring findings;

(xiii) Evaluating program results; and

(xiv) Managing or supervising persons with responsibilities described in paragraphs (b)(1)(i) through (xiii) of this section;

(2) Travel costs incurred for official business in carrying out the program;

(3) Administrative services, including such services as accounting services, performed by Grantees or subgrantees or under agreements with third parties;

(4) Audit services as required at § 98.65;

(5) Other costs for goods and services required for the administration of the program, including rental or purchase of equipment, utilities, and office supplies; and

(6) Indirect costs as determined by an indirect cost agreement.

(c) Expenditures on any administrative activities related to the services under § 98.50 are subject to the requirements under paragraph (d) of that section, and together with expenditures for quality and availability, must not exceed the limitation under § 98.50(d)(2).

§ 98.53 Supplementation.

(a) Grantees must provide assurances that funds received under the Block Grant will be used only to supplement, not supplant, the amount of Federal, State, and local funds otherwise expended for the support of child care services and related programs.

(b) The Grantee must determine the total amount of Federal, State, and local funds expended for such services during an initial base period (as defined in paragraph (b)(1) of this section) and during subsequent periods for child care services and related programs. The Grantee must assure that the amount of funding for such services from these other sources is maintained at least at the level of effort established for the base period.

(1) The base period will be a twelve-month period (e.g., the State fiscal year), which includes the month one year prior to the first month for which the Application is made. Subsequent periods are each twelve-month period following the preceding period. Grantees may establish:

(i) An aggregate base period level of effort, or;

(ii) Base periods and associated levels of effort on:

(A) A program-by-program basis;

(B) A level of government basis (e.g., Federal, State and local); or

(C) An alternative basis that provides for fiscal accountability.

(2) Should a Grantee choose to establish the base-period level of effort on a basis other than an aggregate basis, that basis will be reflected in the Plan, pursuant to § 98.16(a)(16).

(3) For purposes of this section, child care services and related programs are those services and programs which are included by the Grantee for funding under its Block Grant Plan.

(4) Amounts established for the base period will be included in the initial Application, amounts expended for subsequent periods will be included in subsequent annual Applications, pursuant to § 98.13.

(5) Reductions in Federal funding for programs included in the base period computation will be taken into consideration in determining whether a Grantee has met this requirement. Information regarding the nature, extent, and basis for the reduction must be included in the Grantee's Application, pursuant to § 98.13(a)(8)(iii).

§ 98.54 Restrictions on the use of funds.

(a) *General.* (1) Block Grant funds may not be expended for any activity not authorized in these regulations, or which does not meet the additional restrictions and limitations in paragraphs (b) through (d) of this section.

(2) Funds must be expended in accordance with applicable State and local laws, except as superseded by § 98.3.

(b) *Construction.* (1) For State and local agencies and non-sectarian agencies or organizations, no funds shall be expended for the purchase or improvement of land, or for the purchase, construction, or permanent improvement of any building or facility. However, funds may be expended for minor remodeling, and for upgrading child care facilities to assure that providers meet State and local child care standards, including applicable health and safety requirements.

(2) For sectarian agencies or organizations, the prohibitions in paragraph (b)(1) of this section apply; however, funds may be expended for minor remodeling but only if necessary to bring the facility into compliance with the health and safety requirements established pursuant to § 98.41.

(c) *Tuition.* Funds may not be expended for students enrolled in grades 1 through 12 for:

(1) Any service provided to such students during the regular school day;

(2) Any service for which such students receive academic credit toward graduation; or

(3) Any instructional services which supplant or duplicate the academic program of any public or private school.

(d) *Sectarian Purposes and Activities.* Funds provided under grants or contracts to providers may not be expended for any sectarian purpose or activity, including sectarian worship or instruction. Pursuant to § 98.2(j), assistance provided to parents through certificates is not a grant or contract. Funds provided through child care certificates may be expended for all such sectarian purposes and activities.

§ 98.55 Cost allocation.

(a) Grantees and subgrantees must prepare and keep on file State departmental level cost allocation plans or indirect cost proposals, as appropriate.

(b) Subgrantees that do not already have a negotiated indirect rate with the Federal government should prepare and keep on file cost allocation plans or indirect cost proposals, as appropriate.

(c) Approval of the cost allocation plans or indirect cost proposals, for the purposes of the Block Grant program, is not required, but these plans and proposals are subject to review.

Subpart G—Financial Management

§ 98.60 Availability of funds.

(a) The Secretary will award Block Grant funds to States that have an approved Application and Plan, in accordance with the apportionment of funds from the Office of Management and Budget, and subject to the availability of appropriations.

(b) The Block Grant program does not require State or local match.

(c) The Secretary may make payments in installments, and in advance or by way of reimbursement, with necessary adjustments due to overpayments or underpayments.

(d) Grantees must obligate their allotment in the fiscal year in which funds are awarded or in the succeeding fiscal year. Unliquidated obligations as of the last day of the succeeding fiscal year must be expended within one year. Determination of whether funds have been obligated and expended will be based on State and local law. If there is no State or local law, Federal law (45 CFR 92.3, Obligations and Outlays (i.e., expenditures)) will apply.

(e) Cash advances to Grantees or by the Grantee to subgrantees or contractors shall be limited to the minimum amounts needed and shall be timed to be in accord with the actual, immediate cash requirements of the Grantee, subgrantee, or contractor in carrying out the purpose of the program in accordance with 31 CFR part 205.

(f)(1) Block Grant funds are available for obligation by the Grantee only after the grant award is issued unless:

(i) The costs are incurred for planning activities related to the submission of an initial Block Grant Application and Plan and

(ii) The planning activities occur after November 5, 1990.

(2) Federal obligation of funds for planning costs, pursuant to paragraph (f)(1) of this section, is subject to the actual availability of the appropriation.

(g) Funds that are returned to Grantees and subgrantees (e.g., loan repayments, unused subgrantee funds) as well as program income (e.g., contributions made by families directly to the Grantee or subgrantee for the cost of care where the Grantee or subgrantee has made a full payment to the provider) shall:

(1) If received by the Grantee or subgrantee during the program period, as defined in § 98.2(cc), for which the funds were allotted, be used for activities specified in the Grantee's approved Plan; or

(2) If received by the Grantee or subgrantee after the program period for which the funds were allotted:

(i) Be used for activities specified in the Grantee's approved Plan if State or local laws or procedures governing the use of the Grantee or subgrantee's own funds permit their re-use; or

(ii) Absent any State or local laws or procedures governing the use of such funds, be returned to the Federal government.

(h) Repayment of loans made by Grantees and subgrantees, pursuant to § 98.51(b)(2)(ii), may be made in cash or in services provided in-kind. Payment provided in-kind must be based on fair market value. All loans must be fully repaid.

§ 98.61 Allotments for States.

(a) An amount equal to the funds appropriated for the Block Grant, less amounts reserved for the Territories and Tribes, pursuant to § 98.62(a) and (b), shall be allotted to States. For purposes of this section and § 98.63, the term "State" means the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(b) Funds will be allotted to States based upon the formula specified in section 6580(b) of the Act.

§ 98.62 Allotments for Territories and Tribes.

(a) An amount up to one-half of one percent of the amount appropriated for the Block Grant shall be reserved for the U.S. Territories of Guam, American Samoa, the Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands (Palau).

(1) Funds shall be allotted to Territories based upon the following factors:

(i) A Young Child factor—the ratio of the number of children in the Territory under five years of age to the number of such children in all Territories; and

(ii) An Allotment Proportion factor—determined by dividing per capita income of all individuals in all the Territories by the per capita income of all individuals in the Territory.

(A) Per capita income shall be:

(*1*) Equal to the average of the annual per capita incomes for the most recent period of three consecutive years for which satisfactory data are available at the time such determination is made; and

(*2*) Determined every two years.

(B) Per capita income determined, pursuant to paragraph (a)(1)(ii)(A) of this section, will be applied in establishing the allotment for the fiscal year for which it is determined and for the following fiscal year.

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(C) If the Allotment Proportion factor determined at paragraph (a)(1)(ii) of this section:

(*1*) Exceeds 1.2, then the Allotment Proportion factor of the Territory shall be considered to be 1.2; or

(*2*) Is less than 0.8, then the Allotment Proportion factor of the Territory shall be considered to be 0.8.

(*3*) The formula used in calculating a Territory's allotment is as follows:

$$\text{(i)}\quad \frac{YCF_t \times ADF_t}{\Sigma\,(YCF_t \times APF_t} \times \text{amount reserved for Territories at paragraph (a) of this section.}$$

(ii) For purposes of the formula specified at paragraph (a)(2)(i) of this section, the term, "YCF_t" means the Territory's Young Child factor as defined at paragraph (a)(1)(i) of this section.

(iii) For purposes of the formula specified at paragraph (a)(2)(i) of this section, the term, "APF_t" means the Territory's Allotment Proportion factor as defined at (a)(1)(ii) of this section.

(b) An amount up to three percent of the amount appropriated for the Block Grant shall be reserved for Indian Tribes and Tribal organizations.

(1) Except as specified in paragraph (a)(2) of this section, grants to individual Tribal Grantees will be equal to the sum of:

(i) A base amount as set by the Secretary; and

(ii) An additional amount per Indian child under age 13 (or such similar age as determined by the Secretary from the best available data), which is determined by dividing the amount of funds available, less amounts set aside for eligible Tribes, pursuant to paragraph (b)(1)(i) of this section, by the number of all Indian children living on or near Tribal reservations or other appropriate area served by the Tribal Grantee, pursuant to § 98.80(e).

(2) Grants to Tribes with fewer than 50 Indian children which apply as part of a consortium, pursuant to § 98.80(b)(1), would be equal to the sum of:

(i) A portion of the base amount, pursuant to paragraph (b)(1)(i) of this section, that bears the same ratio as the number of Indian children in the Tribe living on or near the reservation, or other appropriate area served by the Tribal Grantee, pursuant to § 98.80(e), does to 50; and

(ii) An additional amount per Indian child, pursuant to paragraph (b)(1)(ii) of this section.

(3) Tribal consortia will receive grants that are equal to the sum of the individual grants of their members.

(c) At the Secretary's discretion, funds not allotted under this section will be distributed to other Grantees, or returned to the Federal government.

§ 98.63 Reallotment.

(a) Any portion of a State's allotment that is not required to carry out its Plan, in the period for which the allotment is made available, shall be reallotted to other State Grantees in proportion to the original allotments. For purposes of this section and § 98.61, the term "State" means the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico. Reallotment does not apply to Territorial or Tribal allotments, and Territorial and Tribal Grantees may not receive reallotted State funds.

(1) Each year, the State shall report to the Secretary either the dollar amount from the previous year's grant which it will be unable to obligate by the end of the obligation period or that all funds will be obligated during such time. Such report must be postmarked by April 1st.

(2) Based upon the reallotment reports submitted by States, the Secretary will reallot Block Grant funds.

(i) If the total amount available for reallotment is $25,000 or more, funds will be reallotted to States according to the State allotment formula for the applicable fiscal year's funds, pursuant to § 98.61(b).

(ii) If the amount available for reallotment is less than $25,000, the Secretary will not reallot any funds, and such funds will revert to the Federal government.

(iii) If an individual reallotment award to a State is less than $500, the Secretary will not issue the award, and such funds will revert to the Federal government.

(3) If a State does not submit a reallotment report by the deadline for report submittal, the Secretary will either:

(i) Determine that State does not have any funds available for reallotment; or

(ii) In the case of a report received after April 1st, any funds reported to be available for reallotment shall revert to the Federal government.

(b) The Secretary may withhold the amount of any reallotment to a State if the Secretary determines that such funds are not needed to carry out its Plan. Such funds will be distributed to the other States that are eligible for reallotted funds.

(c) States receiving reallotted funds must obligate and expend these funds in accordance with § 98.60. The reallotment of funds does not extend the obligation period or the program period for expenditure of such funds.

§ 98.64 Financial reporting.

(a) Beginning 90 days after the end of fiscal year 1992, and within 90 days after the end of each succeeding fiscal year, Grantees must submit to the Secretary a financial report for each fiscal year's grant.

(1) Except as provided in paragraph (a)(2) of this section, the report must include:

(i) The total amount of funds expended from the grant during the fiscal year; and

(ii) The total unliquidated obligations for the program period.

(2) After the end of a program period, the report must include final expenditures and the final balance of unliquidated obligations, if any.

(b) The Secretary reserves the right to require financial reports less frequently than specified in paragraph (a) of this section.

(c) If the Grantees or subgrantees earn program income, e.g., contributions made by families directly to the Grantee or subgrantee for the cost of care where the Grantee or subgrantee has made a full payment to the provider, pursuant to § 98.42(a), this income must be reported.

(d) Funds returned to Grantees or subgrantees, pursuant to § 98.60(g)(2), shall be reported as follows:

(1) If the funds are returned before the close of the period covered by the financial report, they should be included as a net adjustment to total expenditures in the report; or

(2) If the funds are returned after submission of the final financial report, they should be reported on a revised report for the same period and be included as a net adjustment to total expenditures.

§ 98.65 Audits.

(a) Each Grantee must have an audit conducted after the close of each program period in accordance with OMB Circular A–128.

(b) Grantees are responsible for ensuring that subgrantees are audited in accordance with appropriate audit requirements.

(c) Not later than 30 days after the completion of the audit, Grantees must submit a copy of their audit report to the legislature of the State or, if applicable, to the Tribal council(s). Grantees must also submit a copy of their audit report to the HHS Regional Inspector General for Audit Services responsible for the HHS region in which the Grantee is located, as well as their cognizant agency, if applicable.

(d) Any amounts determined through an audit not to have been expended in accordance with these statutory or regulatory provisions, or with the Plan, and which are subsequently disallowed by the Department shall be repaid to the Federal government, or the Secretary will offset such amounts against any other Block Grant funds to which the Grantee is or may be entitled.

(e) Grantees must provide access to appropriate books, documents, papers and records to allow the Secretary to verify that Block Grant funds have been expended in accordance with the statutory and regulatory requirements of the program, and with the Plan.

§ 98.66 Disallowance procedures.

(a) If the Agency, as the result of an audit or a financial or compliance review, finds that expenditures by a Grantee should be disallowed, the Agency will notify the Grantee of this decision in writing.

(b)(1) If the Grantee agrees with the finding that amounts were not expended in accordance with the Act, these regulations, or the Plan, the Grantee shall fulfill the provisions of the disallowance notice and repay any amounts improperly expended; or

(2) The Grantee may appeal the finding by informing the Assistant Secretary:

(i) Of the Grantee's intent to contest the decision and request reconsideration; or

(ii) By following the procedure in paragraph (c) of this section.

(c) A Grantee may appeal the disallowance decision to the Departmental Appeals Board in accordance with 45 CFR part 16.

(d) The Grantee may appeal a disallowance of costs that the Agency has determined to be unallowable under an award. This provision does not apply to the determination of award amounts or disposition of unobligated balances.

(e) The Grantee's request for reconsideration in paragraph (b)(2)(i) of this section must be postmarked no later than 30 days after the receipt of the disallowance notice. A Grantee may request an extension within the 30-day timeframe. The request for reconsideration, pursuant to paragraph (b)(2)(i) of this section, need not follow any prescribed form, but it shall contain:

(1) The amount of the disallowance;

(2) The Grantee's reasons for believing that the disallowance was improper; and

(3) A copy of the disallowance decision issued pursuant to paragraph (a) of this section.

(f)(1) Upon receipt of a request for reconsideration, pursuant to paragraph (b)(2)(i) of this section, the Assistant Secretary or the Assistant Secretary's designee will inform the Grantee that the request is under review.

(2) The Assistant Secretary or the designee will review any material submitted by the Grantee, and any other material necessary.

(3) If the reconsideration is adverse to the Grantee's position, the response will include notification of the Grantee's right to appeal to the Departmental Appeals Board, pursuant to paragraph (c) of this section.

(g) If a Grantee refuses to repay amounts after a final decision has been made, the amounts may be offset against future payments to the Grantee.

(h) The appeals process in this section is not applicable if the disallowance is the result of a compliance review, the findings of which have been appealed by the Grantee, pursuant to § 98.91(b).

(i) Disallowances under the Block Grant program are subject to interest regulations at 45 CFR part 30. Interest will begin to accrue from the date of notification.

§ 98.67 Fiscal requirements for contracts and agreements.

(a) Unless otherwise specified in this part, contracts which entail the expenditure of Block Grant funds shall comply with the laws and procedures generally applicable to expenditures by the contracting agency of its own funds.

(b) Fiscal control and accounting procedures must be sufficient to permit:

(1) Preparation of reports required under § 98.64 and under subpart H; and

(2) The tracing of funds to a level of expenditure adequate to establish that such funds have not been used in violation of the provisions of this part.

Subpart H—Program Reporting Requirements

§ 98.70 Annual report requirement.

(a) Grantees that receive assistance under the Block Grant shall prepare and submit to the Secretary an annual report. The report will be submitted by December 31 and will cover the most recent program period which ended on September 30 of that year.

(b) The first such report shall be an interim report, covering expenditures through September 30, 1992, and shall be submitted no later than December 31, 1992.

(c) Annual reports to the Secretary shall include the information listed in § 98.71.

§ 98.71 Content of report.

At a minimum, a Grantee's report to the Secretary, as required in § 98.70, shall:

(a)(1) Specify the uses for which the Grantee expended funds under §§ 98.50 through 98.52 and the amount of funds expended for such uses (with reference to the uses specified in the Grantee's Application, pursuant to § 98.13(a)(6)); and

(2) For the first two years of the Grantee's operation of the program, if expenditure amounts reported are not in compliance with the requirements at § 98.50(d)(2), provide an explanation and rationale for any expenditures allowable under § 98.50(d)(3).

(b) To the extent data are reasonably available, contain available data on the manner in which the child care needs of families in the area served by the Grantee are being fulfilled, including information concerning:

(1) The number of children being assisted with funds provided under the Block Grant, and under other Federal child care and pre-school programs;

(2) The type and number of child care programs, child care providers, caregivers, and support personnel located in the area served by the Grantee;

(3) Salaries and other compensation paid to full- and part-time staff who provide child care services; and

(4) Activities to encourage public-private partnerships that promote business involvement in meeting child care needs;

(c) Describe the extent to which the affordability and availability of child care services has increased;

(d) If applicable, describe, in either the first or second annual report, the findings of the Grantee's review of its licensing and regulatory requirements and policies, pursuant to § 98.41(d), including a description of actions taken by the Grantee in response to such reviews;

(e) Contain, if applicable, an explanation of any Grantee action which reduces the level of child care standards, as required in § 98.41(c);

(f) Describe the standards and health and safety requirements applicable to child care providers in the State or other area served by the Grantee, including a description of Grantee efforts to improve the quality of child care; and

(g) Any additional information that the Secretary shall require.

Subpart I—Indian Tribes

§ 98.80 General procedures and requirements.

An Indian Tribe or Tribal organization (as defined at §§ 98.2(u) and 98.2(oo)) may be awarded grants to plan and carry out programs for the purpose of increasing the availability, affordability, and quality of child care and childhood

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development programs subject to the following conditions:

(a) An Indian Tribe applying for or receiving Block Grant funds shall be subject to all the requirements under this part, unless otherwise indicated in this subpart.

(b) An Indian Tribe applying for or receiving Block Grant funds must:

(1) Have at least 50 children under the age of 13 (or such similar age, as determined by the Secretary from the best available data) in order to be eligible to operate a Block Grant program. This does not preclude an Indian Tribe with fewer than 50 children age 13 years or younger from participating in a consortium which receives Block Grant funds; and

(2) Demonstrate that it has the ability (including skills, personnel, resources, community support, and other necessary components) to satisfactorily carry out the program.

(c) A consortium representing more than one Indian Tribe may be eligible to receive Block Grant funds on behalf of a particular Tribe if:

(1) The consortium obtains and submits a resolution from each participating Tribe authorizing the consortium to receive Block Grant funds on behalf of each Tribe or Tribal organization in the consortium; and

(2) The consortium consists of Tribes which each meet the eligibility requirements for the Block Grant program as defined in this part, or which would otherwise meet the eligibility requirements if the Tribe or Tribal organization had at least 50 children age 13 or younger; and

(3) All the participating consortium members are in geographic proximity to one another (including operation in a multi-State area) or have an existing consortium arrangement; and

(4) The consortium demonstrates that it has the managerial, technical and administrative staff with the ability to properly administer government funds, manage a Block Grant program and comply with the provisions of the Act and of this part.

(d) The awarding of a grant under this section shall not affect the eligibility of any Indian child to receive Block Grant services provided by the State or States in which the Indian Tribe is located.

(e) For purposes of the Block Grant, the determination of the number of children in the Tribe, pursuant to paragraph (b)(1) of this section, will include Indian children living on or near reservations, with the exception of Tribes in Alaska, California and Oklahoma.

(f) In determining eligibility for services pursuant to § 98.50(a)(1), a Tribal program may use either:

(1) 75 percent of the State median income for a family of the same size; or

(2) 75 percent of the median income for a family of the same size residing in the area served by the Tribal Grantee.

§ 98.81 Application and Plan.

(a) In order to receive Block Grant funds, Indian Tribes (as defined at § 98.2) must submit an Application (as defined at § 98.13) which provides that:

(1) The applicant will coordinate, to the maximum extent feasible, with the lead agency(ies) in the State(s) in which the applicant will carry out Block Grant programs or activities; and

(2) In the case of an applicant located in a State other than Alaska, California, or Oklahoma, Block Grant programs and activities will be carried out on an Indian reservation for the benefit of Indian children.

(b) The initial Application under paragraph (a) of this section must include a Plan which meets the provisions of this part, and shall be for a two-year period, pursuant to § 98.17(b).

§ 98.82 Coordination.

Tribal applicants will coordinate:

(a) To the maximum extent feasible, with the lead agency in the State or States in which the applicant will carry out the Block Grant program; and

(b) With other Federal, State, local, and Tribal child care and childhood development programs.

§ 98.83 Requirements for Tribal programs.

(a) The Grantee must designate an agency, department, or unit to act as the lead agency to administer the Block Grant program.

(b) With the exception of Alaska, California, and Oklahoma, programs and activities must be carried out on an Indian reservation for the benefit of Indian children.

(c) In the case of a Tribal Grantee which is a consortium, variations in Block Grant programs or requirements and in child care licensing, regulatory and health and safety requirements must be specified in written agreements between the consortium and the Tribe.

Subpart J—Monitoring, Non-compliance and Complaints

§ 98.90 Monitoring.

(a) The Secretary will monitor programs funded under the Block Grant for compliance with:

(1) The Act;

(2) The provisions of this part; and

(3) The provisions and requirements set forth in the Block Grant Plan approved under § 98.18;

(b) If a review or investigation reveals evidence that the Grantee, or an entity providing services under contract or agreement with the Grantee, has failed to substantially comply with the Plan or with one or more provisions of the Act or implementing regulations, the Secretary will issue a preliminary notice to the Grantee of the possible non-compliance. Any comments received from the Grantee within 60 days (or such longer period as may be agreed upon between the Grantee and Department) shall be considered by the Department.

(c) Pursuant to an investigation conducted under paragraph (a) of this section, a Grantee shall make appropriate books, documents, papers, manuals, instructions, and records available to the Secretary, or any duly authorized representatives, for examination or copying on or off the premises of the appropriate entity, including subgrantees and contractors, upon reasonable request.

§ 98.91 Non-compliance.

(a) If after reasonable notice to a Grantee, pursuant to §§ 98.90 or 98.93, a final determination is made that:

(1) There has been a failure by the Grantee, or by an entity providing services under contract or agreement with the Grantee, to comply substantially with any provision or requirement set forth in the Plan approved under § 98.16; or

(2) If in the operation of any program for which funding is provided under the Block Grant, there is a failure by the Grantee, or by an entity providing services under contract or agreement with the Grantee, to comply substantially with any provision of the Act or this part, the Secretary will provide to the Grantee a written notice of a finding of non-compliance. This notice will be issued within 60 days of the preliminary notification in § 98.90(b), or within 60 days of the receipt of additional comments from the Grantee, whichever is later, and will provide the opportunity for a hearing, pursuant to part 99.

(b) The notice in paragraph (a) of this section will include all relevant findings, as well as any penalties or sanctions to be applied, pursuant to § 98.92.

(c) Issues subject to review at the hearing include the finding of non-compliance, as well as any penalties or sanctions to be imposed pursuant to § 98.92.

§ 98.92 Penalties and sanctions.

(a) Upon a final determination that the Grantee has failed to substantially comply with the Act, the implementing regulations, or the Plan, one of the following penalties will be applied:

(1) No further payments under the Block Grant will be made to such Grantee; or,

(2) In the case of noncompliance in the operation of a program or activity, no further payments to the Grantee will be made with respect to such program or activity.

(b) The penalty provided under paragraph (a) of this section will continue until the Secretary is satisfied that there is no longer any such failure to comply or that the noncompliance will be promptly corrected.

(c) In addition to imposing the penalties described in paragraph (a) of this section, the Secretary may impose other appropriate sanctions, including recoupment of money improperly expended for purposes prohibited or not authorized by the Act or the implementing regulations, and disqualification of the Grantee from the receipt of further funding under the Block Grant.

(d) If a Grantee is subject to additional sanctions as provided under paragraph (c) of this section, specific identification of any additional sanctions being imposed will be provided in the notice provided pursuant to § 98.91.

(e) Nothing in this section, or in §§ 98.90 or 98.91 will preclude the Grantee and the Department from informally resolving a possible compliance issue without following all of the steps described in §§ 98.90, 98.91 and 98.92. Penalties and/or sanctions, as described in paragraphs (a) and (c) of this section, may nevertheless be applied, even though the issue is resolved informally.

§ 98.93 Complaints.

(a) This section applies to any complaint (other than a complaint alleging violation of the nondiscrimination provisions) that a Grantee has failed to use its allotment in accordance with the terms of the Act, the implementing regulations, or the Plan. The Secretary is not required to consider a complaint unless it is submitted as required by this section. Complaints with respect to discrimination should be referred to the Office of Civil Rights of the Department.

(b) Complaints with respect to the Block Grant must be submitted in writing to the Assistant Secretary for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447. The complaint must identify the provision of the Plan, the Act, or this part that was allegedly violated; must specify the basis for alleging the violation(s); and must include all relevant information known to the person submitting it.

(c) The Department shall promptly furnish a copy of any complaint to the affected Grantee. Any comments received from the Grantee within 60 days (or such longer period as may be agreed upon between the Grantee and Department) shall be considered by the Department in responding to the complaint. The Department will conduct an investigation of complaints, where appropriate.

(d) The Department will provide a written response to complaints within 180 days after receipt. If a final resolution cannot be provided at that time, the response will state the reasons why additional time is necessary.

(e) Complaints which are not satisfactorily resolved through communication with the Grantee will be pursued through the process described in § 98.90.

2. A new part 99 is added to read as follows:

PART 99—PROCEDURE FOR HEARINGS FOR THE CHILD CARE AND DEVELOPMENT BLOCK GRANT

Subpart A—General

Sec.

99.1 Scope of rules.
99.2 Presiding officer.
99.3 Records to be public.
99.4 Suspension of rules.
99.5 Filing and service of papers.

Subpart B—Preliminary Matters—Notice and Parties

99.11 Notice of hearing or opportunity for hearing.
99.12 Time of hearing.
99.13 Place.
99.14 Issues at hearing.
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Subpart C—Hearing Procedures

99.21 Authority of presiding officer.
99.22 Rights of parties.
99.23 Discovery.
99.24 Evidentiary purpose.
99.25 Evidence.
99.26 Unsponsored written material.
99.27 Official transcript.
99.28 Record for decision.

Subpart D—Posthearing Procedures, Decisions

99.31 Posthearing briefs.
99.32 Decisions following hearing.
99.33 Effective date of Assistant Secretary's decision.

Authority: 42 U.S.C. 9858.

Subpart A—General

§ 99.1 Scope of rules.

(a) The rules of procedure in this section govern the practice for hearings afforded by the Department to Grantees pursuant to §§ 98.18(c) or 98.91, and the practice relating to the decisions of such hearings.

(b) Nothing in this part is intended to preclude or limit negotiations between the Department and the Grantee, whether before, during, or after the hearing, to resolve the issues which are, or otherwise would be, considered at the hearing. Such negotiations and resolution of issues are not part of the hearing and are not governed by the rules in this part, except as expressly provided herein.

§ 99.2 Presiding officer.

(a)(1) The presiding officer at a hearing shall be the Assistant Secretary or the Assistant Secretary's designee.

(2) The designation of the presiding officer shall be in writing. A copy of the designation shall be served on all parties.

(b) The presiding officer, for all hearings, shall be bound by all applicable laws and regulations.

§ 99.3 Records to be public.

All pleadings, correspondence, exhibits, transcripts of testimony, exceptions, briefs, decisions, and other documents filed in the docket in any proceeding may be inspected and copied in the office of the Assistant Secretary. Inquiries may be made at the Administration for Children and Families, 370 L'Enfant Promenade SW., Washington, DC 20447.

§ 99.4 Suspension of rules.

With notice to all parties, the Assistant Secretary for Children and Families or the presiding officer, with respect to pending matters, may modify or waive any rule in this part upon determination that no party will be unduly prejudiced and the ends of justice will thereby be served.

§ 99.5 Filing and service of papers.

(a) An original and two copies of all papers in the proceedings shall be filed with the presiding officer. For exhibits and transcripts of testimony, only the originals need be filed.

(b) All papers in the proceedings shall be served on all parties by personal delivery or by certified mail. Service on the party's designated attorney will be deemed service on the party.

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Subpart B—Preliminary Matters—Notice and Parties

§ 99.11 Notice of hearing or opportunity for hearing.

Proceedings commence when the Assistant Secretary mails a notice of hearing or opportunity for hearing to the Grantee. The notice shall state the time and place for the hearing, and the issues which will be considered. A copy of the notice shall be published in the **Federal Register**.

§ 99.12 Time of hearing.

The hearing shall be scheduled not less than 30 days nor more than 90 days after the date of the notice of the hearing furnished to the applicant or Grantee, unless otherwise agreed to, in writing, by the parties.

§ 99.13 Place.

The hearing shall be held in the city in which the regional office of the Department responsible for oversight of the Grantee is located or in such other place as the Assistant Secretary determines, considering both the circumstances of the case and the convenience and necessity of the parties or their representatives.

§ 99.14 Issues at hearing.

(a) The Assistant Secretary may, prior to a hearing under § 98.91 of this part, notify the Grantee in writing of additional issues which will be considered at the hearing. Such notice shall be published in the **Federal Register**. If such notice is received by the Grantee less than 20 days before the date of the hearing, a postponement of the hearing shall be granted at the request of the Grantee or any other party. The hearing shall be held on a date 20 days after such notice was received, or on such later date as agreed to by the Assistant Secretary.

(b) If, as a result of negotiations between the Department and the Grantee, the submittal of a Plan amendment, a change in the Grantee program, or other action by the Grantee, any issue is resolved in whole or in part, but new or modified issues are presented, as specified by the Assistant Secretary, the hearing shall proceed on such new or modified issues.

(c)(1) If, at any time, the Assistant Secretary finds that the Grantee has come into compliance with Federal statutes and regulations on any issue, in whole or in part, the Assistant Secretary shall remove such issue from the proceedings, in whole or in part, as may be appropriate. If all issues are removed, the Assistant Secretary shall terminate the hearing.

(2) Prior to the removal of any issue from the hearing, in whole or in part, the Assistant Secretary shall provide all parties other than the Department and the Grantee (see § 99.15(b)) with written notice of the intention, and the reasons for it. Such notice shall include a copy of the proposed Block Grant Plan provision on which the Grantee and Assistant Secretary have settled. The parties shall have 15 days from the receipt of such notice to file their views or any information on the merits of the proposed Plan provision and the merits of the Assistant Secretary's reasons for removing the issue from the hearing.

(d) The issues considered at the hearing shall be limited to those issues of which the Grantee is notified, as provided in paragraph (a) of this section, and new or modified issues described in paragraph (b) of this section; they shall not include issues or parts of issues removed from the proceedings pursuant to paragraph (c) of this section.

§ 99.15 Request to participate in hearing.

(a) The Department and the Grantee are parties to the hearing without making a specific request to participate.

(b)(1) Other individuals or groups may be recognized as parties, if the issues to be considered at the hearing have directly caused them injury and their interest is immediately within the zone of interests to be protected by the governing Federal statute and regulations.

(2) Any individual or group wishing to participate as a party shall file a petition with the presiding officer within 15 days after notice of the hearing has been published in the **Federal Register** and shall serve a copy on each party of record at that time, in accordance with § 99.5(b) of this section. Such petition shall concisely state:

(i) Petitioner's interest in the proceeding;

(ii) Who will appear for petitioner;

(iii) The issues on which petitioner wishes to participate; and

(iv) Whether petitioner intends to present witnesses.

(3) Any party may, within 5 days of receipt of such petition, file comments on it.

(4) The presiding officer shall promptly determine whether each petitioner has the requisite interest in the proceedings and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interests, at the presiding officer's discretion, the presiding officer may request that all such petitioners designate a single representative or may recognize one or more of such petitioners to represent all such petitioners. The presiding officer shall give each petitioner written notice of the decision on the petition, and if the petition is denied, the presiding officer shall briefly state the grounds for denial. If the petition is denied, the presiding officer may recognize the petitioner as an amicus curiae.

(c)(1) Any interested person or organization wishing to participate as an amicus curiae shall file a petition with the presiding officer before the commencement of the hearing. Such petition shall concisely state:

(i) The petitioner's interest in the hearing;

(ii) Who will represent the petitioner; and

(iii) The issues on which petitioner intends to present argument.

An amicus curiae is not a party but may participate as provided in this paragraph.

(2) The presiding officer may grant the petition upon finding that the petitioner has a legitimate interest in the proceedings, that such participation will not unduly delay the outcome, and it may contribute materially to the proper disposition of the issues.

(3) An amicus curiae may present a brief oral statement at the hearing, at the point in the proceedings specified by the presiding officer. The amicus curiae may submit a written statement of position to the presiding officer prior to the beginning of a hearing and shall serve a copy on each party. The amicus curiae may also submit a brief or written statement at such time as the parties submit briefs and shall serve a copy on each party.

Subpart C—Hearings Procedures

§ 99.21 Authority of presiding officer.

(a) The presiding officer shall have the duty to conduct a fair hearing, to avoid delay, maintain order, and make a record of the proceedings. The presiding officer shall have all powers necessary to accomplish these ends, including, but not limited to, the power to:

(1) Change the date, time, and place of the hearing, upon due notice to the parties. This includes the power to continue the hearing in whole or in part;

(2) Hold conferences to settle or simplify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(3) Regulate participation of parties and amici curiae and require parties and amici curiae to state their position with respect to the various issues in the proceeding;

(4) Administer oaths and affirmations;

(5) Rule on all pending motions and other procedural items including issuance of protective orders or other relief to a party against whom discovery is sought;

(6) Regulate the course of the hearing and conduct of counsel therein;

(7) Examine witnesses;

(8) Receive, rule on, exclude or limit evidence or discovery;

(9) Fix the time for filing motions, petitions, briefs, or other items in matters pending;

(10) If the presiding officer is the Assistant Secretary, make a final decision;

(11) If the presiding officer is not the Assistant Secretary, certify the entire record including the recommended findings and proposed decision to the Assistant Secretary; and

(12) Take any action authorized by the rules in this part or in conformance with the provisions of 5 U.S.C. 551 through 559.

(b) The presiding officer does not have authority to compel by subpoena the production of witnesses, papers, or other evidence.

§ 99.22 Rights of parties.

All parties may:

(a) Appear by counsel or other authorized representative, in all hearing proceedings;

(b) Participate in any prehearing conference held by the presiding officer;

(c) Agree to stipulations as to facts which will be made a part of the record;

(d) Make opening statements at the hearing;

(e) Present relevant evidence on the issues at the hearing;

(f) Present witnesses who then must be available for cross-examination by all other parties;

(g) Present oral arguments at the hearing; and

(h) Submit written briefs, proposed findings of fact, and proposed conclusions of law, after the hearing.

§ 99.23 Discovery.

The Department and any party named in the notice issued pursuant to § 99.11 shall have the right to conduct discovery (including depositions) against opposing parties. Rules 26–37 of the Federal Rules of Civil Procedure shall apply to such proceedings; there will be no fixed rule on priority of discovery. Upon written motion, the presiding officer shall promptly rule upon any objection to such discovery action initiated pursuant to this section. The presiding officer shall also have the power to grant a protective order or relief to any party against whom discovery is sought and to restrict or control discovery so as to prevent undue delay in the conduct of the hearing. Upon the failure of any party to make discovery, the presiding officer may, at the presiding officer's discretion, issue any order and impose any sanction (other than contempt orders) authorized by rule 37 of the Federal Rules of Civil Procedure.

§ 99.24 Evidentiary purpose.

The purpose of the hearing is to receive factual evidence and expert opinion testimony related to the issues in the proceeding. Argument will not be received in evidence; rather it should be presented in statements, memoranda, or briefs, as determined by the presiding officer. Brief opening statements, which shall be limited to statement of the party's position and what the party intends to prove, may be made at hearings.

§ 99.25 Evidence.

(a) *Testimony.* Testimony shall be given orally under oath or affirmation by witnesses at the hearing. Witnesses shall be available at the hearing for cross-examination by all parties.

(b) *Stipulations and exhibits.* Two or more parties may agree to stipulations of fact. Such stipulations, or any exhibit proposed by any party, shall be exchanged at the prehearing conference or otherwise prior to the hearing if the presiding officer so requires.

(c) *Rules of evidence.* Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the presiding officer. A witness may be cross-examined on any matter material to the proceeding without regard to the scope of direct examination. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties, and opportunity shall be given to refute facts and arguments advanced on either side of the issues.

§ 99.26 Unsponsored written material.

Letters expressing views or urging action and other unsponsored written material regarding matters at issue in a hearing will be placed in the correspondence section of the docket of the proceeding. These data are not deemed part of the evidence or record in the hearing.

§ 99.27 Official transcript.

The Department will designate the official reporter for all hearings. The official transcripts of testimony taken, together with any stipulations, exhibits, briefs, or memoranda of law filed therewith shall be filed with the Department. Transcripts of testimony in hearings may be obtained from the official reporter by the parties and the public at rates not to exceed the maximum rates fixed by the contract between the Department and the reporter. Upon notice to all parties, the presiding officer may authorize corrections to the transcript which involve matters of substance.

§ 99.28 Record for decision.

The transcript of testimony, exhibits, and all papers and requests filed in the proceedings, except the correspondence section of the docket, including rulings and any recommended or initial decision, shall constitute the exclusive record for decision.

Subpart D—Posthearing Procedures, Decisions

§ 99.31 Posthearing briefs.

The presiding officer shall fix the time for filing posthearing briefs, which may contain proposed findings of fact and conclusions of law. The presiding officer shall also fix the time for reply briefs, if permitted.

§ 99.32 Decisions following hearing.

(a) If the Assistant Secretary is the presiding officer, the Assistant Secretary shall issue the decision within 60 days after the time for submission of posthearing briefs has expired.

(b)(1) If the presiding officer is not the Assistant Secretary, the presiding officer shall certify the entire record, including the recommended findings and proposed decision, to the Assistant Secretary within 60 days after the time for submission of posthearing briefs has expired. The Assistant Secretary shall serve a copy of the recommended findings and proposed decision upon all parties, and amici, if any.

(2) Any party may, within 20 days of receipt of the recommended findings and proposed decision, file exceptions and a supporting brief or statement with the Assistant Secretary.

(3) The Assistant Secretary shall thereupon review the recommended decision and, within 45 days after the receipt of the exceptions to the recommended findings and proposed decision, issue the decision.

(c) The decision of the Assistant Secretary under this section shall be the

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final decision of the Secretary and shall constitute "final agency action" within the meaning of 5 U.S.C. 704. The Assistant Secretary's decision shall be promptly served on all parties, and amici, if any.

§ 99.33 Effective date of Assistant Secretary's decision.

If, in the case of a hearing pursuant to § 98.18(b), the Assistant Secretary concludes that a Plan amendment does not comply with the Federal statutes and regulations, the decision that further payments will not be made to the Grantee, or payments will be limited to categories under other parts of the Block Grant Plan not affected, shall specify the effective date for the withholding of Federal funds.

[FR Doc. 91-13198 Filed 6-5-91; 8:45 am]
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Thursday
June 6, 1991

Part III

Federal Communications Commission

47 CFR Part 73
Broadcast Services; Financial Interest and Syndication Rules; Final Rule

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-162, FCC 91-114]

Broadcast Services; Financial Interest and Syndication Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, through this decision, substantially relaxes but does not totally repeal the financial interest and syndication rules. The financial interest and syndication rules, adopted in 1970, prohibit broadcast networks either acquiring financial interests in the domestic or foreign syndication of television programs produced by others for broadcast exhibition or retaining an ongoing interest in the domestic syndication of programs they produce for themselves. They also generally prohibit networks from directly engaging in the syndication of any program within the United States or, as to programs produced by others, even abroad. The rules were revised to reflect developments in the marketplace since 1970. Specifically, the record shows that the three major networks have lost a proportion of the total television audience; a flourishing cable industry has emerged to challenge the networks' dominance; and the fundamental objectives the Commission sought to advance when it promulgated the financial interest and syndication rules—to foster a robust syndication industry and to prevent network extraction of rights from non-network producers—have been achieved. The purpose of this action is to focus on those points in the video marketplace where diversity is most at risk and apply the revised rules primarily at these points, while striving to relax the financial interest and syndication rules at other points where diversity is not so much at risk. The overall effect of the modifications is intended to enhance the ability of existing and emerging networks to compete effectively in, but not unfairly dominate, the changed and changing video marketplace. Review of these modified rules shall be initiated at a date certain four years after their effective date. If in the Commission's judgment, market conditions at the time of that review are sufficient, these rules may be repealed.

EFFECTIVE DATES: The rules will go into effect on July 8, 1991, except for the paperwork requirements contained in §§ 73.661 and 73.3526 (which are subject to approval by the Office of Management and Budget, and which will go into effect no later than 60 days after publication; FCC will publish notice of the effective date in the **Federal Register**).

FOR FURTHER INFORMATION CONTACT: Judith Herman, Mass Media Bureau, (202)-632-6302.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction. Public recordkeeping burden for section 73.3526(a)(11) is estimated to average 1 hour per recordkeeper, and public reporting burden for section 73.661 (the reports will be kept in accordance with section 73.3526(a)(11)) is estimated to vary from 1 hour to 2 hours per response with an average of 1 hour and 7 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of Managing Director, Paperwork Reduction Project, Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

[MM Docket No. 90-162]

Evaluation of the Syndication and Financial Interest Rules; Report and Order

By the Commission: Chairman Sikes dissenting and issuing a separate statement; Commissioner Quello dissenting to the overall result, concurring in part and issuing a separate statement; Commissioners Marshall, Barrett, and Duggan issuing separate statements.

Adopted: April 9, 1991; Released: May 29, 1991.

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I. Introduction

1. This Report and Order reflects the Commission's thorough consideration of its programming diversity mandate in the video marketplace of the 1990s. The Commission has studied, in particular, the continued efficacy of restraints on television network acquisition and syndication of programming in an age when new programming outlets seem to abound and yet the broadcast networks uniquely remain, both for viewers and producers, the outlets of choice.

2. Accordingly, by this Report and Order, (or this "Order") the Commission amends its financial interest and syndication rules.[1] Among other things, the new rules will: (1) Delete restrictions on network ownership and syndication of network programming as to all dayparts and all programs other than prime time entertainment programming; (2) allow networks to retain all rights in all "in-house" productions; (3) permit networks to fill up to, but not more than, 40 percent of their prime time entertainment schedule with "in-house" productions; (4) allow networks to acquire all rights, including financial interests, domestic syndication rights and foreign syndication rights, in outside productions, subject to certain safeguards; (5) allow networks to engage in foreign syndication without limitation; and (6) allow limited network participation in first-run syndication. The Report and Order also adopts a new definition of "network" and imposes certain reporting requirements.

II. Background

3. The financial interest and syndication rules, adopted in 1970, impose constraints upon the financing, development and broadcast syndication of television programs by television networks.[2] Specifically, the current rules

[1] 47 CFR 73.658(j).

[2] The current financial interest and syndication rules (also referred to as "current rules" or the "rules") define "network" to be "any person, entity, or corporation which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated television licensees in 10 or more states." 47 CFR 73.658(j)(4). At present, the broadcast companies meeting this definition are CBS Inc. (CBS), National Broadcasting Company, Inc. (NBC), Capital Cities/ABC, Inc., (ABC) and Fox Broadcasting Corporation (Fox). In May 1990, however, Fox was granted a waiver which has temporarily exempted it from the current rules pending completion of this proceeding. Fox Broadcasting Company, 5 FCC Rcd 3211 (1990). This waiver was subsequently extended until the effective date of the rule changes adopted in the Report and Order. Order, FCC 91-149, released May 7, 1991. Accordingly, as used in this Order, the term "network" (or "networks") will generally refer to the three traditional networks, ABC, CBS, and NBC.

prohibit television networks from acquiring any financial interests in the subsequent broadcast of outside produced programs (*i.e.*, programs not solely produced by the network) other than the right to exhibit such programs on the network. The current rules also prohibit networks from actively engaging in the domestic syndication business, or from having any ongoing interest in the syndication of programs for non-network broadcast distribution. Networks are allowed, however, to syndicate outside the United States programs that they have solely produced or that have been produced by foreign entities.

4. The Commission originally adopted these rules to promote diversity of programming sources and distributors by curbing the excessive power of the three major broadcast networks in the financing, development and syndication of television programming. In so doing, the Commission noted the inherent structural advantages of the networks:

> The networks obviously have a tremendous and, we believe, insurmountable advantage in providing programs for their affiliates. Not only is there the natural tendency of an affiliate to do more business with its dominant supplier, but the program distribution process is much simpler via a network. * * *[3]

5. Furthermore, the Commission found that the rules would promote a "freer, more diversified television production and distribution process" and a "[d]iversity of programs and development of diverse and antagonistic sources of program service" by preventing potential anticompetitive abuses by the television networks.[4] Specifically, the rules were intended to serve the following public interest goals: (1) Increase diversity and competition in program supply for the public's network television viewing; and (2) create a diverse and competitive syndication marketplace for the benefit of local stations and their viewers.[5] In this way, the Commission determined, "we may more nearly achieve the goal described by Judge Learned Hand in 1942, and echoed by Justice White in 1969, of a television broadcast structure which is served 'by the widest practicable variety' of choice of programs available for broadcasting." [6]

[3] Amendment of part 73 of the Commission's Rules, 23 FCC 2d 382, 386 (1970) (*1970 Order*), *aff'd sub nom. Mt. Mansfield Television, Inc.* v. *FCC*, 442 F.2d 470 (2d Cir. 1971).

[4] *Id.* at 387, 400.

[5] *Id.* at 394-5.

[6] *Id.* at 400 (citations omitted).

6. The United States Court of Appeals for the Second Circuit has held that the financial interest rule was a reasonable exercise of the Commission's discretion and that the syndication rule "is supported by the evidence and is 'reasonably ancillary to the effective performance of the Commission's various responsibilities for the regulation of television broadcasting.' " [7]

7. Changes in the industry over the last twenty years have raised the question of whether modification of our financial interest and syndication rules is warranted or whether the rules are still needed to promote broadcast program diversity. Accordingly, on March 14, 1990, in response to a petition by Fox Broadcasting Corporation (Fox),[8] the Commission initiated this proceeding by issuing a Notice of Proposed Rulemaking [9] seeking comment on five basic proposals to modify the financial interest and syndication rules: (1) Retain the existing rules intact; (2) eliminate the financial interest rule but retain the syndication rule intact; (3) eliminate the financial interest rule and modify the syndication rule as proposed in the Tentative Decision in BC Docket 82-345;[10] (4) eliminate the financial interest rule and modify the syndication rule to permit networks to syndicate a certain number or percentage of programs or to participate in a share of the profits of programs syndicated by others; and (5) retain the existing rules but add an exception for emerging networks by revising the definition of "network" set forth in 47 CFR 73.658(j)(4). Commenters were also urged to submit alternative proposals for potentially relaxing the current rules. In response, parties offered a number of such proposals, including in-house production and separated negotiations proposals, variations of which we have adopted herein.

8. On October 22, 1990, the Commission adopted a Further Notice of Proposed Rulemaking [11] soliciting comments on several specific proposals developed in response to the first notice of proposed rulemaking. These proposals encompassed a number of modifications to the financial interest and syndication rules, including adopting certain safeguards (such as producer-initiated or separated negotiations) and narrowing the prohibition against network participation in foreign and domestic syndication. The Commission also asked commenters to address questions regarding "percentage of schedule caps" and the definition of "in-house" productions. In addition, in an effort better to assess the merits of the proposals, the Commission held an *en banc* hearing on December 14, 1990 to receive oral testimony from interested parties.

9. By Commission Order of March 15, 1991,[12] further comment was requested on two comprehensive alternative rule change proposals. Among other things, the Commission sought comment on in-house and option term limits, as well as proposed changes to the definition of a "network" and accompanying transitional rules.[13]

10. After reviewing the totality of the record, the Commission finds that there is a strong public interest in maintaining diverse sources of network programming as well as diverse sources of off-network programming to local independent broadcast stations. The Commission also finds that there is a strong public interest in maintaining diverse, competitive sources of first-run programming to local independent and affiliate broadcast stations. We have balanced these public interests against the public interest in providing existing and emerging broadcast networks the opportunity and flexibility to compete in and thus generate additional revenue from the domestic and international video marketplace. Therefore, by this Order, we adopt rules which will enhance the ability of existing and

[7] *Mt. Mansfield Television Inc.* v. *FCC*, 442 F.2d at 486, 487, *citing United States* v. *Southwestern Cable Co.*, 392 U.S. 157, 178 (1968).

[8] Fox filed a "Petition for Resumption of Rulemaking and Request for Temporary Relief" on January 29, 1990 asking that the Commission modify the financial interest and syndication rules.

[9] 5 FCC Rcd 1815 (1990).

[10] Prior to the commencement of the present proceeding, the rule had been under review in Docket 82-345. This review commenced with the Notice of Inquiry in Docket 21049, 52 FCC 2d 546 (1977) and Further Notice of Inquiry in Docket 21049, 69 FCC 2d 1524 (1977). In 1980, a staff report based on that docket and independent investigation was released. Final Report of Network Inquiry Special Staff (October 1980). Following up on this staff work, the Commission issued a Notice of Proposed Rule Making in Docket 82-345, 47 FR 32,959 (1982), and in 1983, the Commission issued a Tentative Decision and Request for Further Comments in Docket 82-345, 94 FCC 2d 1019 (1983) (Tentative Decision). Seven years later, that long-suspended docket was terminated, Order in Docket 82-345, and the current proceeding was commenced.

[11] 5 FCC Rcd 6463 (1990).

[12] 56 FR 11720 (March 20, 1991).

[13] On April 8, 1991, the Coalition to Preserve the Financial Interest and Syndication Rule (Coalition) requested a waiver of the *ex parte* rules (47 CFR 1.1203) and consideration of a request for an additional comment period. Although the Commission waived the *ex parte* rules and considered the Coalition's request, it declined to reopen the comment period in light of the unusually full opportunity already provided for comment.

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emerging networks to compete effectively in, but not unfairly dominate, today's video marketplace.

III. Summary

11. In our review of the voluminous record before us, the Commission has been confronted by alternative views of the television programming world so starkly and fundamentally at odds with each other that they virtually defy reconciliation. As set forth below, the Commission has analyzed the various views advanced by the commenters and formed an understanding of the programming world based on the realities of the marketplace and the interests of those who compete in it. As a result of that analysis, and our own experience and expertise, we have modified and significantly relaxed the financial interest and syndication rules, while retaining certain narrow safeguards. Because we recognize that the television marketplace is in flux, we are requiring another review of the rules commencing four years after the effective date of this Order.

12. In the course of the Commission's deliberations, there has been little disagreement that the video marketplace has changed since the rules were first adopted in 1970. The three major networks have lost a proportion of the total television audience; a flourishing cable industry has emerged; and the fundamental objectives the Commission sought to advance when it promulgated the rules—to foster a robust syndication industry and to prevent network extraction of rights from non-network producers—largely have been achieved.

13. Sharp disagreement has emerged, however, about whether these changes warrant retention, modification or repeal of the rules. The debate has turned on several key questions, among them:

—Have changes in the video marketplace since the rules were put into effect been so sweeping and decisive as to render unnecessary Commission regulations aimed at promoting diversity of program sources?

—Should the Commission continue to be concerned about the danger that television networks, with their unique access to a truly national audience, might misuse their power in the programming marketplace? That they might be able, for example, to condition access to their program schedules not on quality and audience appeal, but on the extraction of valuable rights and interests from program producers?

—Have changes in the video marketplace over the past two decades created genuine alternatives for television program producers—new outlets, beyond the networks, in which "syndication value" can be created? Or do the networks remain essentially the only place where such value can be created?

14. An "unimpeded marketplace" and "unimpeded competition," it must be pointed out, are not the chief or only concerns of this Commission.[14] The Commission's historic interest in diversity—in a wide range of voices and a wide variety of cultural influences—is very much at stake in this proceeding. Again and again in recent years the Commission has given priority to that diversity interest in ways that have led to accusations that efficiency or competition were impeded. The Commission's rules limiting the number of broadcast stations that can be held by one owner,[15] for example, are designed to encourage a diversity of voices, though these rules, arguably, may prevent owners from achieving economies of scope and scale. The Commission's minority preference policies—recently affirmed by the Supreme Court [16]—are another example where the Commission can, and sometimes will, consider diversity a value to be nurtured and defended.

15. Now, based on the extensive record before it and its own determination of the overall public interest, the Commission comes to a significant judgment: That it should substantially modify the financial interest and syndication rules. The record, in our judgment, does not provide an adequate case for total repeal. Instead, it supports granting considerable relief to the networks, with structural and behavioral safeguards to prevent or mitigate potential abuses affecting independent producers, program distributors, and local broadcasters who are parties to this proceeding—the very parties responsible for the diversity we seek to preserve.

16. Thus, this decision represents a measured and calculated response which deregulates the financial interest and syndication rules in substantial respects while retaining certain limited safeguards. Our decision also creates a mechanism for carefully monitoring the program marketplace so as to form the basis for any future modification of the rules.

17. In particular, by this Report and Order, we take the following actions to enhance the ability of existing and emerging networks to compete effectively in today's video marketplace, but not dominate it unfairly.

—The financial interest and syndication rules will no longer be applied to non-entertainment programming (e.g., news and sports) in prime time, nor to any network programming outside of prime time. These rules, as modified, will continue to govern production, acquisition and syndication of network prime time entertainment programs and network participation in first-run syndication.

—A network may acquire financial interests, domestic syndication rights and foreign syndication rights in any outside productions aired on its prime time entertainment schedule, provided that (1) such rights are purchased pursuant to separate negotiations initiated no less than 30 days after execution of the network license fee agreement (and, where applicable, a pilot production agreement); and (2) the network certifies that access to its schedule was not conditioned on the acquisition of such rights.

—A network may produce up to 40 percent of its prime time entertainment schedule "in-house" (*i.e.*, "solely produced" or "co-produced" by the network, as defined herein), and it may retain financial interests and active syndication rights, both domestic and foreign, in those productions. Co-production arrangements between the network and a domestic producer may be initiated only by the outside producer, who shall be provided a 30-day cooling-off period before the arrangement becomes binding.

—Networks may not favor their affiliates nor unduly delay the syndication of those "in-house" productions they actively distribute in the domestic marketplace.

—A network may produce in-house an unlimited amount of prime time entertainment programming for airing or distribution on other broadcast networks or other broadcast outlets, and it may retain financial interests and foreign and domestic syndication rights in such programs. However, these programs may be syndicated domestically only through an independent syndicator subject to safeguards.

—Networks shall be allowed to engage in foreign distribution of programming free of any distribution safeguards.

—A network may produce first-run programming and retain financial interests and foreign syndication rights in such programming "solely produced" in-house, but may domestically distribute such programming only through an independent syndicator subject to safeguards. A network may not acquire any financial interests or syndication rights from outside producers of domestic first-run syndication programming.

—For purposes of these rules, a network will be defined as any entity providing more than 15 hours per week of prime time programming on a regular basis to interconnected affiliates that reach, in aggregate, at least 75 percent of television households nationwide.

—A new network's program ownership rights obtained prior to becoming a "network" shall be "grandfathered." A new network and its affiliates will have a transition period of 36 months to bring pre-existing contracts into compliance with the prime time access rule. A new network otherwise shall be required to comply immediately with the new rules.

—A network must maintain semi-annual reports in its owned and operated stations' public files. These reports must include network certification of its compliance with the instant rules and other specific information regarding prime time entertainment programs which it has produced or aired or in which it holds financial interests or syndication rights.

—These rules shall be reviewed by the Commission four years from their effective date.

18. In sum, we have carefully tailored and calibrated these residual remaining financial interest and syndication rules to protect and promote the public interest in diversity and competition in the current video marketplace. While other options we considered may have been simpler or more expedient—simple retention or simple repeal of the rules, for example, or even repeal of the rules as to a portion of the network prime time schedule—our considered judgment is that none of these alternatives is fully supported by the complex and discordant record compiled in this proceeding. We strongly believe, moreover, that prudent, balanced and incremental action in this proceeding will better serve the public interest and pose less danger to the Commission's traditional diversity and competition concerns than convulsive regulatory change in the television marketplace. It is in the interest of granting more flexibility to the networks while preserving programming diversity and competition, therefore, that we are substantially relaxing our rules subject to the structural and behavioral safeguards described below.

IV. Limitation of Rules to Prime Time Entertainment Programming

19. As an initial matter, we note that the financial interest and syndication rules adopted in 1970 apply to all programming on the network. In our March 15, 1991 Order Requesting Further Comment in this proceeding, we sought comment on applying any rules that might be retained only to prime time programs.[17]

20. As discussed throughout this Order, the Commission adopted the financial interest and syndication rules in order to promote diversity in television programming and to prevent the networks from engaging in anticompetitive activities with respect to programs for which a potentially significant syndication market exists. The record reveals that such programming today primarily includes network prime time entertainment and first-run syndicated programming. In fact, those commenters who expressed opposition to eliminating our rules were most concerned about the effect on diversity and competition in these categories of programs.[18]

21. Accordingly, we will apply the new rules adopted in this Order only to prime time network entertainment programming and first-run syndicated programming.[19] All other portions of the network schedule, *i.e.*, nonentertainment programming in prime time (such as news and sports) and all network programming outside of prime time, will be freed from any residual financial interest and syndication rules. For purposes of our new rules, a "prime time program" shall be one that has network exhibition during the hours of 7 p.m. to 11 p.m. eastern time and pacific time, or 6 p.m. to 10 p.m. central time and mountain time.

V. Financial Interest Rule

22. The financial interest rule was promulgated at a time when the three traditional networks collectively possessed virtual total control over the purchase of prime time entertainment television programming. Noting that "the facts which propel us to action are relatively simple and, we believe, quite compelling," the Commission in 1970 described a market in which sale to the networks was the only viable option for a producer desiring a television outlet for a program.[20] Finding that the absence of alternative programming outlets to the networks was an "unhealthy situation," the Commission concluded that "the public interest requires limitation on network control and increase in the development of truly independent sources of prime time programming." [21]

23. The Commission accordingly imposed the financial interest rule "to lessen the bargaining leverage provided by network control of program exhibition," and "to remove the possibility that acquisition of financial interests becomes a prerequisite to acceptance of a program for network exhibition." [22] Thus, the Commission sought to prevent the networks from using their dominant position in the market to "extract" financial rights in programs produced by others as a condition of airing the program. It also sought to eliminate what it found was a potential conflict of interest in which networks could make their programming decisions so as to favor programs in which they hold financial interests.[23]

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[14] *CF. National Broadcasting Company* v. *U.S.*, 319 U.S. 190, 223–24 (1942). The Department of Justice, one of the government agencies charged with enforcing federal antitrust laws, also has recognized that the Commission's public interest mandate is broader than simply protecting the video marketplace from potential anticompetitive abuses by the networks. *See* para. 47 and note 59, *infra*.

[15] 47 CFR 73.3555.

[16] *Metro Broadcasting* v. *FCC*, 110 S. Ct. 2997 (1990).

[17] Order Requesting Further Comment (released March 15, 1991) at Proposal I, p.1, Proposal II, p.2. We also proposed limiting the application of residual rules to prime time entertainment series programs in our 1983 Tentative Decision, 94 FCC 2d at 1023.

[18] *See, e.g.*, Coalition Comments of June 14, 1990 at 29; Coalition Further Comments of November 21, 1990 at 3; INTV Comments of June 14, 1990 at 43; Program Producers and Distributors Committee (PPDC) Comments of November 21, 1990 at 5.

[19] As discussed in section VIII below, we find that the unique character of first-run syndication requires retention of certain limits on network participation in that marketplace. The residual rules will thus continue to apply to first-run syndicated programming aired in all dayparts.

[20] *1970 Order*, 23 FCC 2d at 385.

[21] *Id.* at 394.

[22] *Id.* at 397.

[23] Specifically, the Commission reasoned that, because producers facing network extraction and conditioning of access would lose needed revenues, such network abuses could force outside producers out of the marketplace and discourage investment in independent programming. The health and vitality of the independent production community—and a diversified network schedule—would be jeopardized accordingly. *Id.* at 398.

The *1970 Order* also imposed the syndication rule, discussed below, which prevents the networks from actively syndicating television programming in domestic and foreign markets. This rule is discussed in detail in section VII, *infra*. Finally, the 1970 Order adopted the "prime time access rule," not at issue here, which opened access to network prime time for independent program suppliers by limiting the amount of "network controlled" programming that could be aired between 7 p.m. and 11 p.m. The prime time access rule is set forth in § 73.658(k) of our rules. 47 CFR 73.658(k).

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24. As discussed below, the record in this proceeding reveals a video marketplace substantially different from the one the Commission reviewed in 1970. This record demonstrates that the networks no longer enjoy the near total dominance that characterized their competitive position 20 years ago. Indeed, because the record indicates that the public would benefit if the networks had increased opportunities in the acquisition of program rights, we have decided to relax significantly the current financial interest restrictions.

25. At the same time, however, the record does not support the assertion that the role and power of the networks has so diminished that the Commission need no longer fear the adverse consequences that would ensue from their unbridled ability to obtain financial interests in outside productions. Indeed, we find that the concerns that spurred the Commission to adopt the financial interest rule—in particular, the networks' ability to extract rights from and condition the access of program producers to network schedules—continue to exist today despite the changes in the video marketplace since 1970. We further conclude that such extraction and conditioning, if allowed to occur, would disserve the viewing public by reducing the opportunity for diverse sources of prime time entertainment programming to develop and thrive. Accordingly, while we will now permit the networks to obtain financial interests in network programming, we will require them to do so pursuant to prudent safeguards aimed at preventing extraction and conditioning of access to network prime time schedules.

Comments

26. Commenting production interests, including the Coalition to Preserve the Financial Interest and Syndication Rule (Coalition),[24] the Program Producers and Distributors Committee (PPDC) and the Writers Guild of America, West, believe that the rules still are needed to prevent the networks from dominating the program supply market. They state that the rules were intended to counteract market power that the networks derive from the Commission's allocation scheme, to foster greater diversity of program sources, and to encourage risk-taking by independent producers.

27. These parties assert that, while the video marketplace has changed since 1970, none of the changes has significantly diminished the power of the networks, particularly in prime time. They claim that the networks possess monopsony power because they remain the only buyers of a steady stream of high cost, quality prime time entertainment programming that reaches virtually all homes. Thus, these commenters contend, if a network were permitted to acquire financial interests, purchase of a program for network exhibition could be conditioned on the network's also obtaining a financial interest as well as further interests, such as domestic and foreign syndication rights.

28. The Department of Commerce/National Telecommunications and Information Administration (DOC) argues that the market for video programming has changed greatly in the 20 years since the rules were adopted. It states that the three traditional broadcast networks face a much greater degree of competition for viewers and for programming than they did when the rules were adopted. Accordingly, in DOC's view, the restrictions imposed on the networks are overbroad and unnecessarily restrictive in today's marketplace. However, DOC also maintains that the record is not conclusive on the question of whether the networks—which "continue to play a critical, uniquely important role in the delivery of television programming to the American public" [25]—are without any continuing market leverage over independent producers or independent television stations. In light of the networks' unique continuing role, as well as the difficulty of subsequently correcting any damage that might occur through premature elimination of the rules, DOC proposes that relaxation of the rule be linked to certain safeguards. In particular, DOC proposes that elimination of the financial interest rule be made subject to (1) a requirement that network negotiations to acquire such interests be conducted subsequent to both agreement on network exhibition rights and the network's scheduling of the program; and (2) a general prohibition against network discrimination against programming in which it holds no financial interests.

29. On the other hand, the networks, the Department of Justice (DOJ) and the staff of the Federal Trade Commission (FTC) argue that the anticompetitive concerns that led to the adoption of the rules in 1970 no longer exist. They assert that the networks do not possess monopsony power with respect to the purchase of television programming because they must compete with each other, the Fox network and other video distributors, in particular the cable industry. The networks further note the growth of video outlets since the rules were adopted has altered their competitive position. These commenters also assert that the rules prevent networks from taking advantage of the economies of scope and scale that can be achieved through vertical integration.

30. The FTC and the networks also assert that the rules prevent the networks from engaging in risk-sharing arrangements commonly used to finance television productions. In particular, the networks state that the rules have reduced the incentives for them to invest in riskier ventures that are likely to produce more attractive and competitive programming. They claim that an increase in such programming would benefit the public and create a stronger, more competitive free over-the-air television system.

31. The Coalition responds that the rules do not unduly restrict the networks' ability to integrate vertically in other areas. It notes that the networks can enter virtually all aspects of the entertainment business and, in fact, have engaged in a wide variety of areas including station ownership, cable networks, home video distribution, theatrical motion pictures, records and print media. They also contend that elimination of the rules would result in a less competitive and diverse marketplace, with the networks controlling the entire program production and distribution process from development through domestic and foreign syndication. In addition, these commenters respond to the networks' argument that the rules prevent efficient risk sharing by observing that the independent producers who allegedly would benefit from a change in the rules vehemently object to the networks' position, convinced that network "help" would turn into network extraction of rights.

Discussion

32. Our longstanding concern with program diversity remains as central today as it was in 1970 when the Commission established the financial interest rule.[26] In this proceeding, our evaluation of the record, and our own experience and expertise, lead us to conclude that diversity can best be achieved in the increasingly competitive television market of the 1990's through substantial, but not complete, relaxation of the financial interest rule. Therefore, we have decided to eliminate the current restriction on network acquisition of financial interests in prime time entertainment programming (*i.e.*, program series, made-for-television movies, mini-series and entertainment specials) acquired from outside producers.[27] To attain financial interests in prime time entertainment programming, however, the networks will be permitted to negotiate for such rights only 30 days or more after they have concluded a license fee agreement with the outside producer. This significant deregulatory step will increase opportunities for network financing of programming and thus further the public interest in program diversity. In addition, the 30-day safeguard will help ensure that network dominance over the acquisition of prime time entertainment programming does not reduce diversity by allowing networks to extract financial interests from outside producers.

33. As noted above, the Commission adopted the financial interest rule to promote a more "diversified" television production process by preventing networks from extracting ownership rights from unwilling producers and conditioning access to the network schedule on the acquisition of such rights.[28] Although the financial interest rule has succeeded in precluding these potential network abuses, we are sympathetic to network arguments that the current rule disserves the public interest in diversity by limiting the funding of new, outside programming.[29] Lifting the restriction will allow program producers to seek financing of their production "deficits" [30] from the network carrying their programs—and should thereby introduce new competition into the bidding for financial interests among the production studios, independent syndicators and other financiers of program production.[31] Lifting the restriction could also increase overall investment in prime time entertainment programs, or at least increase a network's willingness to invest time in particularly risky programming.

34. Of course, one potentially undesirable way that a network could reduce the riskiness of outside production would be to operate its network schedule so as to favor those programs in which the networks holds financial interests. Indeed, it was partly out of concern for this conflict of interest that the Commission originally adopted the financial interest rule.

35. We do not proceed to modify our financial interest rule without some trepidation that a network would indeed consider its equity interest in choosing between two otherwise equally attractive programs. On balance, however, we are willing to bear this risk for fear of the consequences of continuing to deny networks any opportunity to acquire a financial interest in outside productions. Moreover, as explained below, we have expressly premised network acquisition of ownership rights in outside productions on network certification that such rights have not been obtained as a condition of network licensing or airing of the program.[32]

36. We believe that relaxation of the financial interest rule is also supported by the fact that the networks now face much stronger competition for viewers and programming than when the financial interest rule was adopted:

—The number of independent television stations has increased form 65 in 1970 to some 340 in 1990, 130 of which obtain a significant portion of their programming from an emerging broadcast network (the Fox Broadcasting Company).[33]

—Programming services originating on cable have grown substantially, with over 90 national programming services available today.[34]

—Almost 60 percent of all American television households now subscribe to cable services.[35]

—The networks' aggregate share of the nationwide prime time viewing audience has declined from roughly 90 percent in 1970 to around 62 percent today.[36]

Lifting the current financial interest restriction would have the benefit of enabling the networks to share in the off-network syndication revenues of prime time entertainment programming—and thereby generating a significant second revenue stream that would enhance their ability to compete in the changing video marketplace of the 1990's.

37. We are well aware, however, that the significant public interest benefits of relaxing the rule largely would be lost if relaxation enabled networks to extract financial interests from program producers for less than a compensatory price or to condition access to their schedules on acquisition of such rights. Although the networks face increasing competition from alternative video outlets and thus may not possess monopsony power in an antitrust sense, their continued, unique position in the distribution of American television programming requires certain regulatory safeguards to help ensure the continued diversity of the programming viewed by most Americans. Indeed, the Commission's mandate does not permit us to presume that programming diversity will flourish so long as the networks do not monopolize the prime time programming market. As the Commission has long recognized and the Supreme Court has long affirmed, our mandate is not merely to police antitrust violations; rather, it requires us to promote the public interest by ensuring a diversity of programming choices for the American viewer.[37]

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[24] The members of the Coalition include over 200 production companies, studios, program distributors, independent television stations, industry associations, labor and consumer organizations and public interest groups.

[25] DOC Further Comments of November 21, 1990 at 3.

[26] *See, e.g., Associated Press* v. *U.S.*, 326 U.S. 1 (1945); *Metro Broadcasting* v. *FCC*, 110 S. Ct. 2997 (1990).

[27] As discussed in section VI, *infra*, we also have decided to allow networks to hold financial interests in a more broadly defined class of "in-house" productions.

[28] *See* discussion at paras. 22–23, *supra*.

[29] *See* Joint Network Comments on June 14, 1990, Volume II at 89–90 and 94–96.

[30] The Coalition asserts that increased production deficits have resulted from the growing difference between network license fees and production costs, and that the producers' main opportunity to recoup these deficits and to generate any profits on their programs is through domestic and foreign syndication. Coalition Comments of June 14, 1990 at 20–23.

[31] We would expect elimination of the financial interest rule not to increase significantly the number of financially independent producers, as the networks suggest, as much as it would substitute (at least in part) the networks for studios or independent syndicators as financiers of outside productions. *Compare* Joint Network Comments on June 14, 1990, Volume II at 71 and 82–86 *with* Coalition Comments of August 1, 1990 at 60–62.

[32] There are several critical junctures at which a network could exercise its ability to extract such rights as a condition to access: ordering of the pilot and initial episodes; scheduling of the initial network run; ordering of additional episodes; and renewal (of the series in question or another of the same producer's productions). Coalition Further Comments of November 21, 1990 at 12; Coalition Further Reply Comments of December 21, 1990 at 11; Coalition Supplemental Further Comments of March 25, 1991 at 18. Whether rights that are obtained at such times are purchased at prevailing market rates will be carefully examined by the Commission in its future reexamination of our residual rules.

[33] The Association of Independent Television Stations, Inc. (INTV) Comments of June 14, 1990, exhibit 1 at 3; FBC Television Affiliates Association (Fox Affiliates) Comments on June 14, 1990 at exhibit A

[34] Joint Network Comments of June 14, 1990, Vol. II at 77.

[35] *Id.* at 75.

[36] NBC Comments of June 14, 1990 at 9. The combined network audience share for the 1990–1991 television season was 62%. Washington Post, April 17, 1991, at C8, citing A.C. Nielsen audience data for the 1990–1991 television season.

[37] *National Broadcasting Company* v. *U.S.*, 319 U.S. 190, 223 (1942). This broad mandate has been

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38. A number of factors lead us to the conclusion that the networks still hold a unique position in the video marketplace of the 1990's. First, the networks continue to benefit from historical structural advantages—*e.g.*, owned and operated stations on the most desirable frequencies in the largest television markets and a longstanding affiliate distribution system—which give them by far the greatest hold over the nationwide television audience and those who seek to reach it. Network television is the only programming service available to virtually all (98 percent) American television households.[38] Indeed, the extent to which the networks' power as the leading procurers of entertainment television programming has withstood substantial marketplace evolution reflects, in no small part, the unique role the networks continue to play in the delivery of television programming to the American public.

39. This unequaled service is particularly crucial to the 40 percent of U.S. households who do not receive cable and who thus rely exclusively on free, over-the-air television for prime time entertainment programming. The American viewing public—particularly the tens of millions who have access only to free, over-the-air broadcasting—would be ill-served by a reduction in the supply of high-cost, network quality television entertainment programming.[39] The importance of network television to American viewers is clearly revealed in ratings data. Individually, each of the networks still retains a share of the prime time viewing audience greater than that of all cable networks combined and of all independent television stations combined.[40] Even in cable households, the networks collectively still garner over 60 percent of all prime time viewing.[41]

40. Because of the unparalleled role they continue to play in delivering television programming to the American public, it is not surprising that the networks remain the preferred buyers for producers seeking outlets for prime time entertainment programming that offer an opportunity to build a large following that will enhance syndication value. While cable networks have begun to expand their acquisition of original entertainment programming, the entertainment programming expenditures of each television network alone remain at least double those of *all* cable networks [42]—and also greater than those of *all* first-run syndicators.[43] Moreover, since the networks continue to receive the vast majority of national television advertising revenues (roughly 80 percent) [44] and to command advertising rates substantially higher than those of other competitors,[45] they also are able to pay license fees for prime time entertainment series which generally are considerably higher than those offered by alternative buyers. Indeed, the license fee a cable network pays for such series is typically 30 percent less than the license fee offered by a television network.[46]

41. Significantly, the networks also remain virtually the sole purchasers of prime time entertainment series capable of successful syndication. With few exceptions, typical original cable entertainment series or first-run programs are either topical or game shows that do not fare well in subsequent domestic or foreign syndication.[47] Indeed, even the most highly-viewed cable or first-run entertainment programs [48] do not reach as large an audience as even a moderately successful television network entertainment program.[49] As a result, to date, these programs have been unable to generate the type of viewer following needed to succeed in the syndication market.[50]

42. This record evidence persuades us that, although there is some limited degree of substitutability between television network programming and the programming typically acquired by cable networks or first-run syndicators, producers are validly concerned that, even in today's increasingly competitive video marketplace, there exist few true alternative buyers to the television networks for high quality, prime time entertainment programming. This concern appears only to be exacerbated by standard practices in the television industry, the specialized nature of the network program acquisition process, and the systemically unequal bargaining power of networks vis-a-vis outside producers of new programs.

43. The Coalition asserts, for example, that program acquisition practices are often almost identical among the networks, and that the networks frequently offer common terms and conditions to program producers negotiating programming rights. According to the Coalition, the networks refuse "to negotiate option terms, option dates, the one-year freeze on development, rerun reimbursement terms, spin-off protection, exclusivity, post-term rights, or union escalators." [51] This evidence is consistent with prior conclusions by the Department of Justice that there is a commonality of industry practice among the networks.[52]

44. We have not attempted in this proceeding to determine whether these standardized practices are the result of collusion or conscious parallelism that might implicate the antitrust laws. We are concerned, however, that common practices among the networks may jeopardize a producer's ability to find real alternatives when he or she is dissatisfied with a network's program licensing offer.

45. Compounding this problem is the fact that the network program acquisition process is so specialized that, by the time negotiations over program rights begin, the producer generally already has created a customized product for one particular network. Thus, much of the flexibility that a producer theoretically possesses to "shop" one network against another erodes as the producer proceeds from the "pitch stage" to the commissioning of a treatment or script and then a pilot and network order. Further, this customization and concomitant loss of fungibility occurs even where a producer is not legally bound to a network through the industry practice of a script freeze.[53] As various program producer interests have observed, the acquisition process typically involves considerable discussions between the producer and the network even before pilot production begins. In fact, from the moment the network expresses interest in a concept presented by a producer, the producer begins to develop a customized product designed to suit the individual needs of the specific network. As a result, by the time negotiations over acquisition of program rights begin, it may be difficult, as a practical matter, for a producer unhappy with the network's demands to leave the table and attempt to sell his or her program elsewhere.[54]

46. Competitive forces in the network programming marketplace are further hampered by the superior bargaining power often held by the network at the point that program rights initially are negotiated, whether or not the bargaining disparity is rooted in monopsony power. As the producer interests have observed, such power is clearly wielded over new, untried producers who have not yet created a successful network program.[55] Moreover, because it is virtually impossible to tell at the outset whether a proposed program will be one of a season's small handful of hits, even established producers can find themselves at a distinct disadvantage in initial licensing negotiations with a network. Although the networks assert that they, too, can hold inferior bargaining power, their anecdotes generally involve the industry's most successful producers and programs. More importantly, virtually all of the network's examples involve license renegotiations for programs that already are established hits.[56]

47. The record evidence in this proceeding thus establishes that, although the networks' power in the acquisition of entertainment television programs has eroded, it has not diminished to the point that outside program producers would be immune from network extraction of ownership interests as a condition of carriage for less than fair market value. We note that some commenters, including the networks and DOJ, assert that the Commission need no longer be concerned about possible network extraction because the networks individually do not hold "market power." [57] This analysis, however, is based primarily on antitrust principles and does not take into consideration the very real practical difficulties that a producer developing a program for one network faces when attempting to sell his program to another video distributor.[58] Moreover, although DOJ states that it could assume jurisdiction over the networks with regard to future competitive abuses, it also recognizes that the Commission has a broader public interest mandate under the Communications Act to account for diversity in programs and program sources.[59]

48. We are therefore adopting narrowly tailored safeguards to promote program diversity and prevent, in the words of DOC, "any residual exploitation of network market power." As DOC notes, such safeguards will serve the public interest given the networks' "critical, uniquely important role in the delivery of television programming to the American public" and "the difficulty in mitigating, *after the fact*, any harm to the independent production and distribution marketplaces that might result from premature abandonment of the Rules." [60]

49. Specifically, we wil permit a network to acquire a financial interest in any outside production aired on its network, provided that such rights are purchased pursuant to a separate negotiation initiated no less than 30 days after execution of the initial network license fee agreement (and, where applicable, a pilot production agreement). In addition, whenever a network enters into an agreement for the acquisition of any such rights in an outside production, it shall certify in the public files of its owned and operated stations: (1) That it has complied with the foregoing requirements; and (2) that its licensing or airing of the program was not conditioned on its acquisition of such rights.[61]

50. We conclude that a phased negotiation requirement is the most effective means of protecting producers against network extraction and related abuses short of continuing the ban on network acquisition of financial interests.[62] A network that has not committed to license a program could, as explained above, condition its commitment on a producer's agreement to relinquish financial interests or distribution rights in the program for

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recognized by DOJ, one of the government agencies responsible for enforcing the antitrust laws. *See* para. 47 and note 59, *infra*.

[38] DOC Reply Comments of August 1, 1990 at 16.

[39] As explained below, we find that our relaxed financial interest and syndication rules will help promote the continued vitality of the national free, over-the-air broadcast system.

[40] Coalition Comments of June 14, 1990 at exhibit C.

[41] *Id.*

[42] Lawrence W. Summers, The Economic Consequences of the Financial Interest and Syndication Rules Governing the Television Networks, Table 1, submitted with Joint Network Reply Comments of August 1, 1990.

[43] CBS Comments on June 14, 1990 at Fig. 2.

[44] DOC Reply Comments of August 1, 1990 at 16 n.40.

[45] Coalition Comments of June 14, 1990 at 58.

[46] "Cable-TV Networks Strive to Stand Out From the Crowd with Original Programs," The Wall Street Journal, December 17, 1990 at B-1.

[47] Coalition Comments of June 14, 1990 at 62–65.

[48] Entertainment programming, by definition, does not include news or sports; rather, it encompasses entertainment series, made-for-television movies, mini-series and entertainment specials.

[49] DOC Reply Comments of August 1, 1990 at 16.

[50] No cable programming service yet reaches even 60 percent of all U.S. television households, and even the most optimistic projections of cable reach over the next five to ten years do not exceed 65 to 70 percent. *Id.* at 9.

[51] Coalition Reply Comments of August 1, 1990 at 32.

[52] For a description of the Department's findings, see Coalition Comments of June 14, 1990 at 5–8 and 66–67; Coalition Reply Comments of August 1, 1990 at 87–92. Between 1978 and 1980, ABC, CBS and NBC each entered into consent decrees with the Department after they were charged with violating the Sherman Act. These consent decrees incorporated the terms of the Commission's financial interest and syndication rules and placed additional restrictions, including a four year limit on option terms, on network behavior. *See United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127 (C.D.Cal. 1978); *United States* v. *CBS Inc.*, 45 FR 34,463 (1980); *United States* v. *American Broadcasting Cos.*, 45 FR 58,441 (1980). The rules we adopt today are predicated on the continued existence of these remaining consent decree provisions.

[53] While the networks defend the propriety of the "script freeze" and submit that they do not enforce their exclusivity rights aggressively, the record provides little evidence to support their allegation that a typical script prepared for one network is genuinely marketable to another. *See* ABC Reply Comments of August 1, 1990 at 43–44; CBS Reply Comments of August 1, 1990 at 15; NBC Reply Comments of August 1, 1990 at 44.

[54] The networks assert that is it not unusual for pilots and programs to be pitched to one network and sold to another. *See, e.g.*, Joint Network Comments of June 14, 1990, Volume II at 45 n.84. We note, however, that the record contains only a handful of examples of such threatened or actual switching, and that the networks' claim is challenged directly by the production community. *See* Coalition Reply Comments of August 1, 1990 at 85–86 ("the practical reality for producers interested in getting a program on network prime time is that they have one, and only one, potential buyer—the network that first agrees to participate in their program's development"). The Coalition also presents evidence that, although at least 128 programs switched networks during the 1950's and 1960's, only eight programs have made such moves since 1970. *Id.* at 94 n.225.

[55] *See, e.g.*, Coalition Comments of June 14, 1990 at 16, 34–41. We note that the Coalition includes more than 200 individual writers, producers, actors, directors and other creative talent. *See also* Comments of Thomas Carter and Comments of Marian Rees submitted at the December 14, 1990 *En Banc* Hearing.

[56] *See, e.g.*, CBS Comments of June 14, 1990 at 22–24 (describing renegotiation with Diane English, executive producer of "Murphy Brown"); NBC Further Reply Comments of December 21, 1990 at 17–20 (describing renegotiations over "The A Team," "Hunter," "Golden Girls," "Cosby," and "Dallas").

[57] DOJ also analyzes the rules with respect to economic efficiency models. DOJ finds it illogical to establish policies that limit economic efficiencies, particularly the efficiencies of vertical integration. DOJ Further Comments of December 21, 1990 at 3. However, DOJ views the issue as an antitrust concern only, an approach which ignores the Commission's responsibility to account for its public interest in diversity.

[58] Furthermore, the Coalition argues that antitrust remedies would be insufficient to protect the producers' interests given the excessive costs and protracted delays of antitrust litigation, and it would be unrealistic to expect producers to sue the very entities that control their ability to reach a nationwide audience. Coalition Comments of November 21, 1990 at 5.

[59] *See* DOJ Further Comments of December 21, 1990 at 4, 5. Indeed, in the event the rules are not fully repealed, DOJ encourages the Commission to balance its strong interest in competition against the benefits of other policy objectives, such as diversity. *Id.*

[60] DOC Further Comments of November 21, 1990 at 3 (emphasis added).

[61] In order to prevent "cross-extraction," we will also prohibit a network from conditioning program access to its network on the granting of financial interests with respect to programs aired elsewhere (on other networks or in first-run).

[62] Significantly, DOC believes that a separate negotiations requirement is the most effective means of protecting against network extraction. DOC Reply Comments of August 1, 1990 at 31–32. To the extent the Commission decides to change its current rules, the Coalition also strongly supports such a requirement. Coalition Supplemental Further Comments of March 25, 1991 at 16–21.

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less than a compensatory price. By separating the negotiation over the license fee from the negotiation over program rights, we limit the networks' ability to tie a producer's grant of such rights to access to the network schedule. Thus, the network will be able to obtain financial interests and/or syndication rights, but not without clearly providing additional compensation (over and above the basic license fee) to the producer for such rights.

51. We further find that a 30-day delay between the two negotiations reasonably balances the public interest in protecting producers from extraction against the countervailing interest in introducing new competition from the networks for production financing. The 30-day period is long enough to ensure a *bona fide* separation in negotiations and to enable producers to seek alternative bids for the program rights if they so desire. At the same time, the delay is brief enough that the mere passage of time will not foreclose the networks from the competition for such rights.[63]

52. We note that, as an alternative to a 30-day phased negotiation, the networks suggest that we adopt a "cooling-off" period (e.g., 30 days) for financial interest and/or syndication agreements that are negotiated in conjunction with license rights.[64] This approach, the networks assert, would permit producers to test the network's offer in the market for a comparable period of time. We are concerned, however, that this "safeguard" potentially would be too susceptible to manipulation and thus could be abused. Under this proposal, for example, the network would be able to offer the producer simultaneously a package deal in which the license fee has been artificially reduced in order to make an offer for program distribution rights that is artificially increased. The producer would then be unable to "match" the rights offer within the 30-day cooling-off period and would inevitably be forced to sell his interests to the network—leaving the producer with less compensation than actual competitive bidding will provide. We accordingly conclude that the 30-day phased negotiations process best accommodates our goal of allowing networks to acquire financial interests while guarding against the loss of diversity that would result from network extraction and conditioning of access.

VI. In-House Productions

53. The Commission has received considerable comment in this proceeding on whether it should adopt revised rules for programs produced by a network itself (commonly referred to as "in-house" productions).[65] Under provisions of Department of Justice consent decrees that expired on November 14, 1990, the three traditional networks were precluded from broadcasting more than five hours per week of prime time entertainment programming "solely produced" in-house.[66] FCC rules currently do not limit the amount of solely produced network programming that a network can air during prime time. Commission regulations do, however, restrict the financial interests and distribution rights that a network may hold in programs it has solely produced. Specifically, the rules preclude networks from syndicating domestically their own productions or even from retaining any right to share the revenues or profits therefrom. By contrast, a network may syndicate in foreign markets those programs, but only those programs, which it has solely produced.[67]

54. As explained below, we have concluded that the networks should now be permitted to retain all financial interests and syndication rights in a more broadly defined class of "in-house produced" programming. This approach is one means of giving the networks a greater opportunity to control their production costs and reap the rewards from substantial investments in programming. In addition, we have decided to permit the networks to syndicate actively their in-house productions both outside and, subject to certain safeguards, within the United States.[68] However, in order to ensure that the networks are not able to undermine the diversity interests that are at the heart of this proceeding, we also are adopting a 40 percent cap on the amount of in-house programming a network may carry on its prime time entertainment schedule.

55. *Definition.* As a preliminary matter, we note that our rules do not mention "in-house" productions, but rather regulate programs of which a network is the "sole producer." Moreover, neither our rules nor our decisions define when a program should properly be deemed a network "sole" or "in-house" production. We find that, for purposes of our revised rules, it would be more appropriate to use the term "in-house", rather than "sole", production. "In-house production" apparently is a term of art in the program production industry; "sole production" is not.[69] Moreover, given its use in the industry, the term "in-house" would seem to encompass a broader array of production arrangements than we might find embraced within the term "sole production."[70]

56. We find that the public interest would be well served if networks were afforded considerable flexibility in making arrangements to produce programs for themselves, while at the same time were limited in their ability to deny outside producers access to the network prime time schedule. Accordingly, we are adopting a definition of "in-house" that is broad enough to cover not only sole productions, but also co-productions between a network and an outside entity. In particular, we will define "in-house productions" as those network programs which are: (1) Solely produced by the network; (2) co-produced by the network with foreign production entities;[71] or (3) co-produced by the network with outside domestic

[63] DOC proposed a delayed secondary negotiations until after scheduling of a program in order to strike a balance between increasing the business opportunities of the networks and safeguarding the independence of producers in dealing with their valuable interests. See DOC Comments of August 3, 1990 at 4; DOC Reply Comments of November 21, 1990 at 5.

[64] See, *e.g.*, April 2, 1991 *ex parte* filing by NBC on behalf of networks (30 day period); ABC Comments of March 25, 1991 at 8; CBS Comments of March 25, 1991 at 16–17. (14 day period)

[65] In the Further Notice of Proposed Rule Making, the Commission requested comment on a variety of ways to cap the percentage of scheduled programs in which a network could hold financial interests or syndication rights, including imposing separate limits on in-house productions. Parties were also asked to consider how the term "in-house" should be defined. In addition, Proposal I set forth in the Commission's March 15, 1991 Order Requesting Further Comment sought comment on a proposed schedule cap for in-house productions. Under this proposal, a network could undertake program production without limit (for its own network, another network or first-run), as long as the network did not fill more than 40 percent of its prime time entertainment program schedule with its own "in-house" productions.

[66] *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127 (D.C. Cal. 1978); *United States* v. *CBS, Inc.*, 45 FR 34,463 (1980); *United States* v. *American Broadcasting Cos.*, 45 FR 58,441 (1980). The decrees contained no descriptive definition of "solely produced." As explained below, neither have prior Commission rules.

[67] 47 CFR 73.658(j)(i). *See also* note 101 *infra*.

[68] See *infra* at paras. 108–112.

[69] See ABC Comments of March 25, 1991 at 9–11; CBS Comments of March 25, 1991 at 15; NBC Comments of March 25, 1991 at 5–7 and 27–29; and NBC *Ex Parte* Filing Re In-House Definition of April 2, 1991 at 3.

[70] *Id.*

[71] By "foreign production entities", we mean those production entities registered to do business and located outside of the United States or its territories.

production entities[72] that initiate such arrangements.[73]

57. The comments addressing the definition of "in-house" suggest that we should consider several key elements in assessing when a program has been either solely or co-produced by a network. First, commenters encourage us to examine who owns the program and thus controls its commercial exploitation.[74] A simple way of analyzing this issue, of course, is to examine who owns the copyright to the program—the network or an outside entity. Second, several commenters recommend that, because who controls a program is often influenced by who pays for its production, we should also examine the extent to which the network bears the financial risks of producing the program.[75] Third, the commenters are nearly unanimous that we should assess whether the network retains full business control over the production process—*i.e.*, whether it has the authority to incur and limit costs and to direct how the production will proceed.[76]

58. We believe that each of these criteria is useful in analyzing who actually "produces" a given program. Making a program for network television is obviously a complex enterprise that involves numerous creative, technical and financial experts and the outlay and coordination of considerable resources. Given the extensive involvement of so many persons, we believe the best way of deciding who is the "producer" for purposes of our new in-house rules is to examine who in fact controls the production process, who pays for that process and who owns the resulting program.

59. Accordingly, a program will be deemed to have been "solely produced" by a network if the network solely owns the copyright in the program, retains full business and production control,[77] and maintains full financial responsibility for the program. A program will be deemed a "co-production" if the network and an outside entity share the copyright, business and production control, and financial responsibility for the program.

60. *Rights in In-House Productions.* As described above, the Commission's existing rules do not permit the networks to syndicate domestically the programs they solely produce, nor are they allowed to retain any right to share the revenues or profits therefrom. As discussed in other sections of this Order, we have decided to permit networks to acquire financial interests, as well as domestic and foreign syndication rights, in outside-produced programs, subject to certain safeguards designed to protect producers against network extraction and conditioning of access. Such extraction and conditioning concerns do not arise, however, with respect to programs solely produced by a network, since it already owns all rights in the program and therefore has nothing to "extract." Accordingly, we will now allow networks to retain financial interests and syndication rights in their sole productions.[78]

61. In addition, we conclude that a network should also be permitted to retain financial interests and syndication rights in domestic and foreign co-productions meeting our "in-house" definition.[79] For the reasons described above, however, we remain concerned that a network could potentially extract such program rights from a domestic non-network co-producer, and even insist on the co-producer entering into such a co-production arrangement, as a condition of carriage on the network. We believe that this potential abuse can be effectively addressed by adopting two narrowly focused safeguards.

62. Specifically, we will require that domestic co-production arrangements be initiated by the outside entity and not by the network.[80] This initiation requirement will ensure that the co-production arrangement is in fact desired by the producer rather than imposed by the network. In addition, we will require that domestic co-production agreements be subject to a 30-day cooling-off period, during which the outside producer can decide to nullify or commit to the network co-production arrangement. Such a cooling-off period will give an outside producer who may have been coerced into signing a co-production arrangement (or into conveying his or her program rights to the network) the option of negating the arrangement within 30 days of signing the co-production agreement.[81]

63. We also recognize that, because our new syndication rules will allow networks actively to syndicate in-house programs both at home and abroad,[82] it is possible that a network could seek to coerce a producer into such arrangements so as to be able to syndicate programs it otherwise could not. The 30-day cooling-off period for domestic co-productions will help protect outside producers seeking to enter co-production agreements from such network coercion. In order to ensure that coercion does not also arise when an outside producer participates in a network sole production, we will prohibit networks from conditioning access to the network schedule on an outside producer willingness either to bring the program completely in-house as a sole production or to enter into a network co-production arrangement.[83]

[72] By "outside domestic production entities", we mean those production entities registered to do business and located within the United States or its territories that are not owned or controlled, in full or in part, by the network with which they seek to co-produce. See § 73.662(c).

[73] The requirement that the domestic company initiate the co-production arrangement is discussed in more detail at para. 62, *infra*.

[74] *See* ABC Comments of March 25, 1991 at 10; CBS Comments of March 25, 1991 at 12; Coalition Further Comments of November 21, 1990 at 9.

[75] ABC Comments of March 25, 1991 at 10; NBC Comments of March 25, 1991 at 6–7.

[76] CBS Comments of March 25, 1991 at 12; NBC Comments of March 25, 1991 at 6.

[77] We note that requiring a network to retain full business and production control, rather than full creative control, will allow networks to enter into production service contracts with outside producers who routinely maintain a degree of creative control over their projects—even when those programs are properly considered in-house productions. We believe that requiring a network to retain complete creative control thus would reduce the diversity of creative influences on network programming.

[78] Networks and producers alike also have urged the Commission to allow networks to sell the back-end rights of their in-house productions to outside producers. CBS notes that it has disposed of the domestic syndication rights to its in-house programs by reselling them to the independent "service contract" producers of particular programs. CBS Comments of March 25, 1991 at 11. We agree that such arrangements are publicly beneficial in that they provide for a sharing of costs between networks and producers without the danger that the "sale" to the producer is in reality an "extracted" acquisition of rights by the network in an outside production.

[79] The networks' ability to syndicate actively the in-house programs in which they retain domestic syndication rights is discussed in detail in Section VII, *infra*. In brief, a network will be permitted to syndicate directly all in-house programs (whether solely produced, or co-produced with a domestic or foreign entity) that air on its own network. By contrast, in-house productions that air on another network, or that are distributed as first-run programming, must be syndicated through an independent syndicator.

[80] The producer's initiation of such a negotiation shall be documented in writing by the producer prior to the commencement of the negotiation.

[81] Because a producer-initiation requirement may not be as practical for network participation in the growing transnational business of foreign co-productions, we will permit network entry into such arrangements free of our domestic co-production safeguards. See also note 101, *infra*.

[82] See Sections VII (A) and (B), *infra*.

[83] To ensure that the networks are complying with our in-house safeguards, we will also require each network to certify on a semi-annual basis that it has complied with the producer-initiation and 30-day cooling-off period requirements for domestic co-productions, and that it has not conditioned access to its schedule on an outside entity's willingness to bring the program in-house as a sole or co-production. These certifications must be maintained in the public files of the network's owned and operated stations. See section X, *infra*.

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64. *Schedule Cap.* Numerous comments have been submitted in this proceeding on whether the Commission should restrict the amount of in-house programming that a network can carry on its prime time schedule. INTV and the Independent Stations (representing The Chris-Craft United Television Station Group, Gaylord Broadcasting Company, Tribune Broadcasting Company, Channel 50 TV Corp., and MCA Broadcasting Inc.), for example, recommend that a cap of 25 percent be placed on the amount of weekly prime time entertainment programming that a network may produce, either in-house or jointly with independent producers, as a safeguard against the substantial damage to competition that could be caused by unrestricted network entry into the domestic syndication marketplace. Similarly, the Coalition contends that an in-house production limit of 25 percent is essential to promote program diversity by ensuring the continued existence of a competitive, independent program supply market. It argues that unchecked freedom to produce (or to threaten to produce) all programs in-house would give the networks total leverage over producers in program negotiations. The Coalition also claims that an in-house limit is needed to assure that the networks do not become the source of syndication rights to most off-network programs and to prevent the networks from influencing the syndication market by steering the bulk of off-network programming to certain syndicators.

65. By contrast, the networks oppose any caps on in-house production, arguing that such caps would create a new area of regulation that was deemed unnecessary when the rules were adopted. They note that the consent decree limits on in-house production, which were entered into voluntarily and not based on adverse judicial factual findings, have now expired and that no government agency supports action to reinstate them. The networks further assert that there is no evidence to support new FCC regulations in this area, and that the Commission may not constitutionally impose restraints on the First Amendment rights of the networks to broadcast their own speech.

66. We find that the imposition of an in-house schedule "cap" would serve three distinct public interest goals. First, as discussed in detail in section VI below, we believe that an effective way of allowing the networks some entry into the domestic syndication marketplace would be to permit the networks to syndicate actively their in-house productions. We also believe, however, that we must guard against the possibility that the networks might engage in widespread abuse in the domestic syndication marketplace by airing and later syndicating an unlimited amount of in-house programming. By placing a cap on the amount of in-house programming that a network can carry on its prime time schedule, therefore, we seek to curb potential network syndication abuses while at the same time assessing the actual impact of limited network involvement in that marketplace.

67. In addition, as discussed above, we remain concerned about the networks' ability to coerce outside producers to produce programs in house. As the Coalition and other commenters have recognized, a schedule cap on in-house productions would serve as a check on widespread network circumvention of our outside production safeguards by limiting the amount of programming with respect to which networks could engage in coercive practices.

68. Finally, in our view, an unlimited ability to produce the entire network schedule in-house would allow networks to circumvent or, in any event, undermine the very diversity of viewpoints that the First Amendment and our residual rules on network acquisition of financial interests in outside productions are meant to promote. In this regard, we are unpersuaded by the argument that a network has only a "theoretical" capability to "solely produce" all of its programming and thus that limits on such productions are unnecessary.[84] Indeed, to countenance even that theoretical possibility would amount to an abandonment of one of our chief public interest reponsibilities—promotion of diverse sources of programming.[85]

69. We are thus requiring that the networks fill no more than 40 percent of their prime time entertainment program schedules with their in-house productions. We recognize that various program producer and independent television interests have suggested that any in-house cap be set much lower, at 25 percent of the prime time schedule.[86] By contrast, the networks have indicated that an in-house schedule cap initially set at 40 percent (and phased up to 50 percent over the next four years) of the prime time entertainment schedule would not unduly curtail their business opportunities.[87] DOJ states that there is a remote possibility that the total repeal of the rules could have an adverse impact on the supply of syndiated programming to local stations.[88] The FTC, in turn, asserts that any schedule cap should be set at least at 40 percent, given the variables involved in acquiring syndicable entertainment programming.[89]

70. On balance, we believe that a 40 percent in-house cap best accommodates the competing concerns of the commenters in this proceeding. Proponents of a 25 percent cap claim that, because only a small percentage of network programs actually make it into syndication, a low cap is needed to ensure that the networks do not become the syndicators for all the programs on their schedules that ultimately are syndicated.[90] However, as other commenters have noted, this analysis assumes, that the networks will be able not only to predict accurately which programs will make it into syndication but also to produce all such programs in-house. In view of these uncertainties, we believe that a higher cap can safely be imposed. We therefore have decided to set the in-house cap at 40 percent of the prime time entertainment schedule.[91]

[84] For a discussion of the networks' recent in-house production activities, see para. 112, *infra*.

[85] *See Associated Press* v. *U.S.*, 326 U.S. 1 (1945); *Metro Broadcasting* v. *FCC*, 110 S.Ct. 2997 (1990).

[86] Independent Stations Further Comments of March 25, 1991 at 9; INTV Further Comments of November 21, 1990 at 26; Coalition Further Comments of March 25, 1991 at 23.

[87] See Network *Ex Parte* Filing of April 2, 1991. See also Fox *Ex Parte* Letter, March 21, 1990 (supporting 50 percent schedule cap).

[88] See DOJ Comments of October 5, 1990 at 23, 43–44; DOJ Comments of December 21, 1990 at 13, 15. DOJ, however, did not analyze schedule caps from the perspective of local stations; its arguments were addressed more to the impact on program producers. Since protecting program producers from potential network abuses is not our only reason for the schedule cap, we are not constrained by DOJ's analysis in this regard.

[89] FTC Further Comments of December 21, 1990 at 15 n.38. Again, to the extent these comments were addressed more from the perspective of the impact upon program producers rather than local stations, we view this analysis as one of several factors informing our decision.

[90] Although the Coalition also recommends the adoption of a subcap of 25 percent for non-episodic entertainment programming (*e.g.*, made-for-television movies, mini-series and specials), Coalition Comments of March 25, 1991 at 24, we believe that the 40 percent schedule cap on in-house productions adopted herein adequately addresses our concerns for programming diversity.

[91] Compliance with the 40 percent schedule cap will be measured during a television programming year, which will commence on the first day of September and end on the last day of August the subsequent year. In addition, a network will be required to maintain semi-annual reports listing, for the preceding 180-day period, all in-house productions that have aired on its (or any other network's) prime time entertainment schedule. See para. 171, *infra*.

We conclude that such a cap will be effective in both (1) granting the networks considerable flexibility in arranging their schedules and actively syndicating programming, and (2) promoting program diversity and competition by ensuring that the networks are not able to dominate either the network or the syndicated programming marketplaces.[92]

71. Finally, we note that several commenters have argued that a schedule cap on in-house productions violates the networks' freedom of speech. Even to the extent that a schedule cap may implicate First Amendment concerns,[93] we believe that adoption of a 40 percent in-house cap passes constitutional muster.[94] As discussed in more detail below, a primary purpose of the cap is to limit active network involvement in domestic syndication in order to prevent possible anticompetitive abuses in the syndication marketplace. Such abuses, if they occurred, would threaten the viability of other competitors in the syndication market, particularly non-network syndicators and independent television stations. As the Supreme Court has stated in a similar situation,

> [i]t would be strange indeed, however, if the grave concern for freedom of the press which prompted adoption of the First Amendment should be read as a command that the government was without power to protect that freedom * * *. That Amendment rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public * * *. Surely a command that the government itself shall not impede the free flow of ideas does not afford non-governmental combinations a refuge if they impose restraints upon that constitutionally guaranteed freedom.[95]

While the instant case may not involve a Sherman Act violation, we nevertheless believe that the overall purpose of our public interest analysis is consistent, in this sense, with that of the antitrust laws, *i.e.*, to promote diversity and competition by preventing potential anticompetitive conduct.[96]

72. In addition, the in-house cap will affirmatively promote diversity of viewpoints on network television—a goal that the courts have expressly held is consistent with the First Amendment.[97] Networks with an unlimited ability to produce their entire network schedules in-house would be able to keep all programming from independent sources off their networks. Such a result would allow the networks potentially to circumvent or, in any event, undermine the very diversity of viewpoints that the First Amendment and the residual rules adopted in this proceeding are designed to promote.[98] In sum, the schedule cap adopted in this Order is consistent with the First Amendment.[99]

VII. Off-Network Syndication

73. Under the current syndication rules, television networks are prohibited from syndicating programs for non-network broadcast [100] distribution within or outside the United States. The rule applies to both off-network and first-run syndicated programming. A limited exception permits networks to engage in the foreign syndication of (and to hold foreign syndication rights in) programs of which they are the "sole producer." [101] The networks may not, however, syndicate their sole productions within the United States, nor retain any right to share in the revenues or profits therefrom.

74. In this proceeding, we sought comment on whether we should modify or retain these restrictions on network involvement in domestic and foreign syndication. For the reasons discussed below, we conclude that modification of these rules is appropriate to permit existing and emerging networks additional flexibility to compete in today's video marketplace.

75. At the same time, the record indicates that, despite an increase in viewer alternatives during the past 20 years, the networks retain the potential to influence adversely the diversity and competitiveness of the syndication marketplace. The networks' ability to extract ownership interests from outside producers as a condition of network carriage applies as much to syndication rights as to financial interests. We already have found that such injurious practices remain genuine concerns in today's program acquisition market, notwithstanding the significant changes in the video marketplace since 1970. The dangers of extraction simply remain too great to give the networks the potential to extract both financial interests and distribution rights for their entire schedule. Fair compensation for distribution rights is critical to the viability of independent producers. Accordingly, we will subject network acquisition of domestic and foreign syndication rights in outside produced programs to the same narrowly focused safeguards we adopted for network acquisition of financial interests.

76. In addition, we find that network entry into domestic syndication could potentially harm local television stations and the public they serve. Local broadcasting is a vital service to the American public, and the independent television sector is critical to the vitality of that service. As a result, we conclude that the domestic syndication marketplace should continue to receive some measure of regulatory oversight

[92] See *Coalition Further Supplemental Comments of March 25, 1991, app. 10 at 5 (wherein it states that public interest considerations are consistent with the antitrust laws.)*

[93] See *Mt. Mansfield Television, Inc.* v. *FCC*, 442 F.2d 470 (2d Cir. 1971).

[94] See, e.g., *Associated Press* v. *Labor Board*, 301 U.S. 103, 132–33 (1936).

[95] In considering the arguments that we would chill network First Amendment rights by imposing a schedule cap on in-house productions, we have been guided by the following factors: First, this schedule cap is not a cap on program production; networks continue to be free to produce as much in-house programming as they desire. Second, the potential harm to local television stations is one of our primary concerns in maintaining limited structural restrictions on network domestic syndication activities and in adopting a schedule cap on in-house productions. Local broadcasting is a vital service to the American public, and there is a substantial governmental interest in retaining rules which promote a diverse program supply that ensures strong local broadcast stations. Third, preservation of structural incentives provides the most effective means for ensuring diverse and competitive sources of program supply and distribution. And finally, the government may adopt carefully calibrated restrictions to address potential anticompetitive behavior without violating the constitutional rights of those being regulated. See also § 73.3555(c) of the rules (newspaper/broadcast crossownership). *FCC* v. *National Citizens Committee for Broadcasting*, 435 U.S. 912 (1978).

[96] In 1981, the Commission clarified that the rules apply only to network acquisition of broadcast financial interests and do not preclude networks from holding non-broadcast interests in television programming, such as merchandising or movie or cable distribution rights. Memorandum Opinion and Order, 87 FCC 2d 30 (1981).

[97] See *United States* vs. *Storer Broadcasting Company*, 351 U.S. 192 (1956). (The Commission has authority to engage in reasonable line-drawing.)

[98] See Coalition Supplemental Further Comments of March 25, 1991, app. 10 at 1–3.

[99] It should be recognized, from the outset, that our cap does not limit the amount of in-house productions in which a network may engage. Rather, it only limits the networks' ability to fill their own prime time entertainment schedules with such programs to a degree that would foreclose meaningful program source diversity.

[100] *Associated Press* v. *United States*, 326 U.S. 1, 20 (1945). Moreover, as a United States Court expressly ruled in its approval of the NBC consent decree, in-house production limits do not implicate (let alone violate) the First Amendment:

> [I]t may be observed that the judgment restricts NBC's participation in a commercial venture and in no way attempts to dictate the content of programs which may be exhibited on the NBC network. It is clear that the First Amendment does not shield NBC or any other network from the proscriptions of the Sherman Act.

United States v. *NBC*, 449 F. Supp. 1127, 1139–40 (C.D. Cal. 1978).

[101] The Commission has also stated that the syndication restrictions do not apply to the acquisition of foreign-produced programs for foreign distribution. *See* 1972 Implementation Order, 35 FCC 2d 411, 420 n.11 (1972) and 1970 Stay Order, 26 FCC 2d 28, 31 n.3 (1970).

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until market circumstances dictate otherwise. However, we believe that the record warrants lifting the current prohibition on network involvement in foreign syndication activities altogether.

77. Accordingly, as described below, we have decided: (1) To permit network entry into the business of domestic syndication on a limited basis (*i.e.*, by allowing a network to syndicate actively "in-house"programs aired on its network); (2) to test the efficacy of affiliate favoritism and warehousing safeguards to protect against potential network abuses in syndicating such in-house programs; (3) to allow networks to acquire domestic syndication rights in all other off-network programming, subject to the requirement that any such programming be distributed through an independent syndicator; and (4) to permit networks to syndicate actively in foreign markets without limitation. This balanced approach, we believe, will afford the networks new opportunities in the domestic and international marketplace while also helping to ensure a diverse and competitive supply of programming to local television stations. In addition, by allowing the networks only partial entry into active domestic syndication, the Commission will be able to obtain an ongoing record of the actual impact of network involvement in that domestic marketplace without unnecessarily jeopardizing its vitality.

A. Domestic Syndication

78. As described in the 1970 Order, the Commission adopted the current syndication restrictions out of the same concerns that prompted it to forbid television networks from acquiring financial interests in networks programming. By prohibiting the networks from purchasing the right to syndicate programming actively, the Commission sought to prevent the networks both from extracting distribution rights from independent producers and from subsequently favoring, for network exhibition, the programs in which they held such rights.[102] With respect to syndication rights, as well as to financial interests, the Commission was concerned that possible coercive practices would harm program diversity by limiting the access of outside producers to the national audience available only through the networks.

79. The Commission in 1970 articulated yet another reason for keeping networks out of the syndication business. Specifically, the Commission feared that the networks would be able to affect competition adversely in the syndication marketplace by favoring their affiliates in syndication sales. Such favoritism would work to the detriment of both independent stations competing for syndicated product and other syndicators who did not enjoy a network-affiliate relationship. The Commission thus concluded that a prohibition on active network involvement in syndication would "eliminate the potential for competitive restraint" by the networks.[103]

80. When revisiting the syndication rule in 1983, the Commission noted that there was a third rationale for restricting the networks' participation in the syndication business. A number of producer and independent station interests asserted at that time that if the networks were permitted to syndicate programming actively, they would have an incentive to withhold (*i.e.*, "warehouse") off-network programming from the market in an effort to restrict supply and thereby drive up prices for syndicated product. Such warehousing could not only inflate network profits from syndication and thus lower the network license fees for network programming paid to program producers; it also could harm independent television stations by making it more difficult for them to purchase programming they deem essential.

Comments

81. For the most part, commenters addressing the syndication rule in this proceeding debate the long-standing issues of (1) whether the networks have the ability to extract domestic syndication rights from program producers; (2) whether the networks could and would warehouse programming in the syndication market; and (3) whether the networks could and would harm competition in syndication through affiliate favoritism. The parties have also submitted considerable comment on a new economic theory which asserts that the networks could "monopolize" the syndication market by acquiring purely passive financial interests.

82. Program producers, syndicators, independent stations and some network affiliates assert that the syndication rule has been highly successful in promoting a healthy and diverse syndication market. These parties state that the rule has helped spawn the tremendous growth of independent stations that has occurred in the past twenty years and the contemporaneous growth of the first-run syndicated programming market. For example, the Coalition claims that, as a result of the rule, the number of distributors of syndicated television programming has increased from 92 to 148 in the last eight years alone.

83. Producer and independent station interests also claim that any change in the ban on domestic syndication would create a risk that the networks would dominate the program syndication marketplace, thus undoing much of the good that has been accomplished by the syndication rule. Independent stations contend that they would be competitively disadvantaged if forced to compete with network affiliates for programming syndicated by the networks. In particular, they claim that in the absence of the syndication rule, the networks, separately or in collusion, would have the incentive and the ability to engage in tactics such as selective warehousing, favoritism towards their owned and operated stations (O&Os), advance notification to affiliates and discriminatory pricing, any and all of which could threaten the viability of the independent stations, whose existence and health were a major concern of the Commission in promulgating the original rule.

84. Similarly, the producer interests argue that the networks would be able to transfer their power over network programming into the market for off-network programming. The producers claim that, if permitted to act as program syndicators, the networks would have the incentive and the ability to warehouse syndicated product, thereby restricting supply and artificially increasing prices. These commenters further state that the networks would be able to tie access to their prime time schedules to the acquisition of domestic syndication rights from program producers, thereby further leveraging themselves into the syndication market. In addition, the producers echo the independent stations' concerns that the networks would use their close and influential relationships with affiliates to harm independent stations and other syndicators who do not share a similarly beneficial contractual arrangement.

85. The producer interests also present a new economic analysis which asserts that the networks could restrict the supply of off-network programming to independent stations simply by acquiring even passive financial interests. According to this theory, a network that obtained a financial interest in an outside-produced program could later refuse to contribute its proportionate share of investments designed to enhance the syndication value of the program. Because the producer would then be forced to bear a disproportionate share of the investments needed to prepare the program for syndication, the network's refusal to cooperate would serve to impose a "tax" on producer investments. Such a tax in turn would discourage producers from making the necessary investments in syndicated programming, a result that allegedly would lead to a reduced supply of syndicated product, decreased network license fees, and increased syndicated programming prices to independent stations.

86. For their part, the networks, joined by FTC and DOJ, dispute that they would have the ability to affect competition adversely in the syndication marketplace. They claim that before the rules, when the networks had a stronger position in the video marketplace, they did not possess a dominant share of the syndication market. Thus, they argue, they could not individually or collectively acquire the market power needed to dominate domestic syndication in today's more competitive marketplace. The networks, DOJ and FTC further argue that the warehousing theory is speculative and question whether the networks could collude successfully to withhold syndicated product, given the array of competing programs, including off-Fox and off-cable product. In addition, these parties dispute the assumptions that underlie both the investment restriction and affiliate favoritism theories, and assert that both models assume the networks would act against their own economic interests.

87. The networks also claim that syndication rule is not responsible for the beneficial marketplace changes described by the producers and independent stations. They state that, rather than being fueled by the syndication restrictions, the growth in independent stations is properly attributed to an overall increase in demand for advertising and the enhancement afforded to UHF independent stations by cable carriage. Furthermore, the networks assert that the off-network syndication industry has become more, not less, concentrated as a result of the rule.

88. By contrast, most of the networks' own affiliates addressing the syndication rule favor a continued ban on domestic syndication.[104] These commenters believe that network participation in domestic syndication would constitute a conflict of interest and claim that a network acting as a syndicator could indeed use affiliation rights and compensation to pressure their local affiliates to purchase the network's syndicated product. Thus, the affiliates maintain that the networks, if permitted to participate in domestic syndication, would gain added leverage which could influence program decisions on the local affiliate station level.

89. DOC, a supporter of relaxing the rules, agrees that there is at least a theoretical conflict between the networks' role as exhibitors and their role as program suppliers. As a result of this potential conflict, DOC believes that network syndicators could indeed favor their O&Os and affiliates when selling syndicated product. In addition, DOC states that there is some possibility that totally eliminating the domestic syndication restriction could prompt the networks to take actions that would result in independent stations' being unable to acquire programming on a fair and timely basis.

Discussion

90. As noted above, the Commission originally adopted the domestic syndication restrictions to prevent the networks from engeging in two different types of anticompetitive abuses. First, the Commission decided to prohibit the networks from acquiring domestic distribution rights in order to preclude the networks from extracting those rights from independent producers and conditioning access to their schedules on the acquisition of such rights.[105] Second, the Commission decided to prevent the networks from actively syndicating off-network programming in order to prevent anticompetitive behavior in the domestic syndication marketplace that could harm both independent syndicators and local independent television stations.[106]

91. As previously discussed, we believe that the public interest would best be served if the networks were permitted, subject to safeguards, to acquire financial interests and syndication rights from outside producers. Allowing the networks to bid for such rights would help promote network program diversity by opening up new sources of financing for independent producers, and by giving networks the opportunity to generate additional revenues in an increasingly competitive video marketplace. Although we remain concerned that the networks retain the ability to extract distribution rights from outside producers in exchange for access to their schedules, we have determined that these abuses may be prevented through adoption of narrowly focused safeguards.

92. Accordingly, as stated earlier, we will permit networks to acquire domestic syndication rights from outside producers, provided that the network offer for the distribution rights is made in a separate negotiation initiated no less than 30 days after the date the network license fee (and, where applicable, pilot production) agreement was executed. As with financial interests, we will also require a network purchasing domestic syndication rights from an outside producer to certify in the public files of its O&Os that it has complied with this phased negotiations requirement and that its licensing of the program was not conditioned on its acquisition of the distribution rights.[107]

93. These safeguards, however, do not address the second category of concerns that prompted the Commission to prevent the networks from actively engaging in domestic syndication. We turn now, therefore, to the issue of whether the networks could adversely affect competition in the syndication marketplace if they were permitted to syndicate actively the programs in which they acquire syndication rights.

94. At the outset, we would note that the current prohibition on network domestic syndication has contributed substantially to the very goals the Commission had in mind in 1970: Growth and success of independent television and first-run syndication as competitive sources of program diversity, and the creation of a competitive syndication market. In contrast to 1970, there are now more than 100 separate competing distributors of syndicated programming offering almost 250 first-run and almost 170 off-network programs to local stations.[108] Because the syndication industry provides such a diverse, competitive source of program supply to local stations, network manipulation of this industry would not be in the public interest.

95. Yet, for the reasons described below, we find that the networks as

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[102] *1970 Order*, 23 FCC 2d at 397–98.

[103] *1970 Reconsideration Order*, 25 FCC 2d at 331.

[104] An exception is the CBS Television Network Affiliates Association, which supports elimination of the syndication rule.

[105] 1970 Order, 23 FCC 2d at 398.

[106] *Id.*

[107] See para. 49, *supra*. To prevent "cross-extraction" of rights, we shall also prohibit networks from conditioning program access to their own networks on the granting of syndication rights with respect to programs aired elsewhere (on other networks or in first-run).

[108] PPDC Comments of June 14, 1990 at exhibit C.

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domestic syndicators could exploit their market structure to engage in anticompetitive abuses during the routine course of business, with or without collusion among them. Networks allowed into domestic syndication could, for example, adversely affect competition in the syndication marketplace by encouraging warehousing of off-network programming from the market. Network syndicators could also use affiliation rights and compensation to pressure their local affiliates to purchase the networks' less attractive syndicated product, extending the networks' already substantial influence on program decisions at the local affiliate station level.[109] And a network could find it in its economic interest to favor its affiliates in the syndication of its more attractive programming.[110] Networks employing such strategies could ultimately exert a significant influence over syndicated programming sold to individual local independent and affiliate broadcast stations and, regardless of their ability to monopolize the market, could significantly threaten the program diversity we are mandated to preserve.[111]

96. *Affiliate Favoritism.* The Commission remains concerned, as it was when it adopted the syndication rules, that a network engaged in domestic syndication would have the economic incentive to discriminate in favor of its own affiliates or O&Os over other stations (particularly independent stations) in each market. Because the networks strive to maximize revenues by maximizing audiences for (and thus boasting the strength of) their network, O&Os and affiliates, they would naturally possess the marginal incentive to funnel their most attractive syndicated programming to these stations.[112]

97. Along with these incentives to favor affiliates, the networks also possess the ability to engage in such anticompetitive practices, given their affiliate relationships, market penetration, and program acquisition expenditures.[113] For example, a network-syndicator could engage in tactics such as favoring the bids of its own affiliates, providing advance notification to affiliates, block booking, instituting affiliate program tie-ins, and discriminatory pricing.[114] These practices could occur during the routine course of business, with or without collusion by the other networks.

98. Thus, even if a network chose not to engage in widespread favoritism, it has both the incentive and the ability to favor its affiliates in particular markets in order to gain not only an immediate revenue benefit, but also a long-term competitive edge in those markets. As INTV and its economists have shown, new, high-quality off-network programs are critical to the counterprogramming strategies of local independent stations.[115] Should their access to even a few such programs be denied as a result of a network-syndicator's affiliate favoritism, the financial health of independent stations (many of which already operate at the margin) could be seriously threatened.[116]

99. We note that the networks and other commenters have analyzed the affiliate favoritism issue in terms of whether the networks, through collusion, could obtain sufficient market power over off-network programming to restrain substantially competition in the national syndication market. This approach thus invokes a traditional antitrust analysis to assess whether the networks are capable of monopolizing the syndication marketplace.[117] We do not believe, however, that our regulatory response should turn simply on whether the networks could engage in sufficient affiliate favoritism tactics to monopolize the entire off-network programming market. To the contrary, the Commission has an affirmative mandate to promote diversity at both the national and local levels, not merely to prevent antitrust abuses.

100. The relevant issue for our inquiry, therefore, is whether a network could use affiliate favoritism strategies to the detriment of competing local stations, especially independent stations, in particular local television markets. The record evidence on this question persuades us that such a scenario remains a real possibility, even in today's more active syndication marketplace. Indeed, INTV and others argue convincingly that a network could cause substantial damage to independent stations by steering even a limited number of its most attractive programs to its own stations and affiliates, thereby depriving local stations of the very programs on which they rely to anchor their schedules.[118]

101. *Warehousing.* The record also indicates that networks would have the economic incentive and the ability as syndicators to delay strategically (by temporarily "warehousing") the off-network domestic syndication of programs they control.[119] Such warehousing would harm independent stations, in particular, by making it more difficult, if not impossible, for them to purchase the popular off-network programming essential to their competitive viability.

102. The networks and other parties have submitted economic studies asserting that the networks either have no incentive or lack the market power to attempt to monopolize the syndication market through a warehousing strategy.[120] In particular, these commenters question whether off-network programming is a separate antitrust submarket and whether the networks could gain control of that market through collusive activities. However, the antitrust analysis is not completely controlling in this docket. We emphasize again that the Commission's role is to preserve and promote competition and program diversity, not simply to prevent grossly anticompetitive behavior that might violate the antitrust laws.[121] Viewed from this perspective, we remain concerned that a network could selectively withhold programming from syndication in individual television markets, to the serious detriment of other network affiliates and, in particular, local independent stations.[122]

103. INTV, for example, notes that a network has strong incentives to enhance the competitive position of each local affiliate. INTV then posits a situation in which, if the affiliate has a sufficient inventory of attractive syndicated programming on hand, the network may be able to bolster the affiliate's position by withholding a popular program in the affiliate's market for some period of time in order to prevent the program from being sold to a competitor such as an independent station. This strategy may be a particularly cost-effective approach for the network that is seeking to prop up a sagging affiliate, to entice a new affiliate into the market, or to undermine competition from a strong independent.[123]

104. INTV also raises the possibility of another type of warehousing—delaying syndication of a program until completion of the network run. The record indicates that a network could decide to delay the syndication of a program where the additional advertising revenues from an extended network-exclusive run could be expected to exceed the additional revenues from prompt syndication.[124] Such delayed syndication could clearly harm independent stations competing for popular syndicated product, thus undermining the diversity that the Commission has traditionally sought to promote.

105. We note that the network's incentives in either of these scenarios are not based on the network's power in the overall syndication marketplace, but rather derive from the network's structural relationships with its affiliates in local television markets. Because diversity and competition in that local marketplace could be adversely affected should a network engage in even selective withholding, we conclude that, even as we consider relaxing our former rules, we must continue to protect local broadcasters against potential network warehousing.[125]

106. *Syndication of In-House Productions.* Although we remain concerned that a network could engage, at a minimum, in selective affiliate favoritism and warehousing strategies, we also believe that the public interest will be furthered if the networks are allowed some entry into the syndication marketplace. Allowing the networks to syndicate actively some portion of the programs carried on their prime time schedules will grant them added flexibility to generate revenue and compete more effectively in the video marketplace, and will grant them relief from the economic harm they assert as a consequence of the present total prohibition on syndication activities. The networks have filed comments asserting that, in order to remain competitive, they need additional sources of revenue from their ongoing operations.[126] Permitting the networks limited entry into domestic syndication should provide a substantial amount of relief in this regard. Allowing limited network involvement will also enable many potential emerging networks to take advantage of certain economies of scale, using a broader base of syndication revenues to fund the substantial costs of operating a national program distribution system.

107. In light of our interest in encouraging greater network participation in domestic syndication while also protecting competition and diversity in that marketplace, we have decided to adopt a measured regulatory response that will (1) grant the networks limited entry into domestic syndication, subject to safeguards, and (2) enable us to assess the actual impact of that entry, and the effectiveness of the safeguards, when we revisit our revised rule in four years. The record contains as many conflicting assertions about the adequacy of various regulatory safeguards as it does about the networks' ability to engage in anticompetitive abuses in the first instance.[127] We have therefore decided to implement rules that will permit us to test the efficicy of certain safeguards while at the same time ensuring that the networks are not able to engage in widespread abuses through unrestricted entry into domestic syndication.

108. Under our revised rules, networks will be able to participate in the domestic syndication marketplace by actively syndicating the in-house productions that air on their own networks. In granting the networks this relief, we note that two of our most important concerns, extraction and conditioning program access, are not relevant for *bona fide* in-house programming. In addition, because we have limited the amount of in-house programming that a network can include on its prime time schedule, we will also be limiting the potential abuse that could stem from network participation in the domestic syndication marketplace. Indeed, the FTC's analysis of the 40 percent benchmark as a relevant threshold was one of the factors informing our selection of a percentage schedule cap on in-house productions.[128] By restricting the networks' active syndication activities to in-house programming and simultaneously capping the amount of such programming that can be included in the network schedule, we will be able to grant the networks entry into domestic syndication while at the same time ensuring that they do not monopolize that marketplace.

109. In addition, since we have found that affiliate favoritism and warehousing pose genuine threats to the public interest, we believe that some behavioral safeguards on networks' in-house syndication activities are necessary to preserve and promote competitive sources of program diversity. We remain concerned, however, that these safeguards may provide insufficient protection against anticompetitive behavior by the networks as syndicators. For example, barter syndication arrangements, station group sales, and affiliate compensation would provide ready means of obscuring network acceptance of lower bids from their affiliates—abuses that would be

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[109] See Comments of ABC Television Affiliates Association, June 14, 1990 at 14–17.

[110] Each of these potential anticompetitive abuses is described in more detail in paras. 96–98 and 101–104, *infra*.

[111] We need not resolve the antitrust debate between DOJ and INTV concerning the extent to which syndicated programming constitutes a relevant submarket. See DOJ Comments of December 21, 1990 at 15; INTV Comments of June 14, 1990 at 12–13. We have a substantial interest in promoting the diversity of program supply because of the critical role off-network programming plays in the viability of independent local television stations.

[112] Contrary to the suggestion that a network's economic interest would lead it to favor whichever station bid highest in a given market, a network would rationally factor into that economic equation the marginal potential ratings effect on its affiliated station's network programming of carrying—or, alternatively, competing with another station carrying—the syndicated program at issue. INTV Comments of June 14, 1990 at 41.

[113] See paras. 38–41, *supra*.

[114] For a description of these tactics and their adverse effects, particularly on independent television stations, see INTV Comments of June 14, 1990 at 39–42.

[115] As INTV indicates, to be "viable competitors to network affiliates," "independent stations must retain the rights to attractive off-network programs." "It is critically important for the Independent to acquire competitive programming" in the "early fringe" and "prime-time access" dayparts, which can "constitute up to one-half of an Independent's total revenue." INTV Comments of June 14, 1990 at 12, 13 and 19, citing Frazier, Gross & Kadlec, Inc., Independent Thinking, An Overview of the Independent Television Industry (January 1988).

[116] *Id.* at 36, Exhibit 4.

[117] *See* Joint Network Comments on June 14, 1990 at 108.

[118] INTV Comments of June 14, 1990 at 39; DOC Comments of August 1, 1990 at 39–40; Independent Stations Comments of June 14, 1990 at 16.

[119] INTV Comments of June 14, 1990 at 38. At our *en banc* hearing of December 14, 1990, the President of CBS indicated that programming "shouldn't be warehoused after it's off the air." With respect to programming still receiving network exhibition, however, he stated "* * * if we have "Murphy Brown" on the air, why should we be competing with episodes of "Murphy Brown" on other channels that are buying it at a much lower cost than we're paying for it?" Transcript of December 14, 1990 *En Banc* Hearing at 66.

[120] See Economic analysis appended to Joint Network Comments of June 14, 1990 and Joint Network Reply Comments of August 1, 1990.

[121] See para. 37, *supra*.

[122] See also note 111, *supra*.

[123] INTV Comments of June 14, 1990 at 37–38.

[124] *Id.* at 38; see also note 119, *supra*.

[125] We do not, in this regard, rely on the specific analysis set forth in the so-called "investment deterrence" model. See study prepared by Dr. Warren-Boulton submitted by the Coalition on June 14, 1990. That analysis has been questioned in many respects by other parties to this proceeding and relies on assumptions that are difficult to verify. For example, it necessarily assumes that there are significant investments that can be made in programming which increase its "syndicability" without at the same time increasing its attractiveness as network programming. It is not necessary to rely on this filing or find that networks have the ability to act as monopolists, however, to conclude that networks have the ability and incentive to manipulate the program acquisition and syndication marketplace in ways (discussed herein) that disserve diversity and the public interest.

[126] Joint Networks Comments of June 14, 1990, Volume I, at 116–117.

[127] INTV, for example, asserts that anticompetitive conduct by the networks would be so difficult to detect that there are simply no regulatory safeguards that could effectively prevent network abuses, short of keeping the networks out of domestic syndication entirely. INTV Further Comments of November 21, 1990 at 32.

[128] See discussion of FTC analysis at para. 66, *supra*.

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particularly difficult to detect and prevent.[129] We thus intend to monitor closely the efficacy of our safeguards to minimize the risk that direct network participation in domestic syndication will jeopardize the supply of off-network syndicated programming critical to the competitive viability of independent television stations.

110. We have thus decided to prohibit networks from engaging in affiliate favoritism when syndicating their in-house programming. Specifically, networks will be required to make their syndicated off-network programming available to non-affiliates on terms and conditions no less favorable than those offered to affiliated or O&O stations. Affiliate favoritism shall be rebuttably presumed if a program in which a network owns active syndication rights is syndicated to network O&Os or affiliates in more than 30 percent of the markets where the program has been sold.[130] Even in the absence of such statistical evidence, complainants of course will be allowed to present direct evidence to show affiliate favoritism in particular markets or discrimination against particular stations. Over the next four years, we will monitor the efficacy of this safeguard to assess whether it is easily circumvented. We do not intend for the 30 percent threshold merely to become a new industry norm for syndication self-dealing by networks.

111. In addition, we will impose an anti-warehousing safeguard in order to prevent networks from unduly delaying syndication of programs they control. Under this safeguard, a network must release a program into the syndication market after four years or within six months following the end of the network run, whichever is sooner.[131] While a four year/six month rule may not perfectly fit every situation, we believe that it balances the networks' right to control the use of their programs for a certain period of time, while also ensuring that they cannot strategically manipulate the syndication of such programs without limit. In order to monitor network compliance with the affiliate favoritism and warehousing safeguards and to evaluate better their effectiveness, we will require the networks to maintain semi-annual reports in their O&Os' public files listing all in-house productions and the domestic syndication history of those productions.[132]

112. Finally, we remain concerned that a network's domestic syndication of in-house produced programs which air on another network could allow it to control a share of the new off-network programs syndicated to local stations far in excess of our 40 percent schedule cap.[133] Since November 14, 1990, the networks have been allowed to produce and schedule in-house programs without restriction. Although the networks still have been prohibited from domestic syndication to date, we note with interest the increased activity undertaken by network in-house production entities since that time. A March 25, 1991 Daily Variety article reported that for the Fall 1991 season, ABC productions has introduced 4 pilots and will co-venture another. NBC Productions has produced 3 pilots and has a share of a fourth. CBS Entertainment Productions is producing one pilot and has a share in two others.

The potential for such trends to proliferate without limit through total repeal would seriously threaten to undermine diversity. For this reason, and because the Commission desires more time to assess the impact of network involvement in the domestic syndication market and the efficacy of our safeguards, we will limit network domestic syndication to the in-house programs that air on its own network schedule.

113. *Acquisition of Domestic Syndication Rights.* In addition to being able to syndicate actively their in-house productions in this country, networks will be able, as noted above, to acquire domestic syndication rights in programs produced by outside entities (subject, of course, to our phased negotiation and certification requirements) and to retain such rights in programs produced in-house for other networks. However, in order to ensure that the networks are not able to engage in widespread anticompetitive abuses in the syndication marketplace, we will continue to prohibit the networks from actually distributing these categories of programming.

114. Accordingly, where a network has acquired domestic syndication rights in programs produced in-house for another network or in programs produced by outside producers, the programs must be distributed domestically through an independent syndicator in which the network holds no interest. The independent syndicator shall also be completely insulated from the network with respect to any programming distributed for the network—*i.e.*, there shall be no contractual arrangements or understandings between the network and the distributor regarding the subsequent sale or scheduling of the syndicated program that would have the direct or indirect effect of affiliate favoritism. The Commission may also consider complaints if a party can show a pattern of affiliate favoritism undermining the credibility of the "independence" of such a syndicator.[134] The distributor will also be subject to the same anti-warehousing safeguards described above for the networks as syndicators.[135]

115. In conclusion, we have determined that complete repeal of our prohibition on network acquisition and distribution of syndication rights would threaten independent television stations and network affiliates with network manipulation of the syndication market. Our modification of the rules, by contrast, will permit a network (1) to syndicate certain programming where extraction dangers are less likely to be present and the efficacy of narrowly tailored safeguards may be monitored, and (2) to share in the profits from the transfer of syndication rights in all their other prime time entertainment programming to an independent syndicator. We will first analyze the effectiveness of the anti-warehousing and affiliate favoritism safeguards before considering further repeal of syndication restrictions on the remainder of the networks' prime time entertainment schedule.

B. Foreign Syndication

116. Under the current rule, television networks are prohibited from engaging in, or holding financial interests in, the foreign syndication of television programs exhibited on their network, other than those of which they are the "sole producer." When adopting this restriction in 1970, the Commission stated its concern that the networks had sufficient market power over program producers to force them to sell their foreign syndication rights for less than fair market value in exchange for network access. The Commission also feared that the networks may be able to favor those programs in which they held foreign syndication rights at the expense of programs in which they did not hold such rights.[136]

Comments

117. The producer, distributor and independent station interests commenting in this proceeding support continuation of the foreign syndication prohibition. Independent stations, for example, assert that substantial indirect risks would result from network participation in foreign syndication, including giving the networks an incentive to over-extend the network run of a program series in order to maximize foreign syndication revenues. Similarly, these parties argue that the networks might be inclined to air programs that have the greatest potential for foreign syndication (*e.g.*, one-hour action programs) rather than those that have the greatest domestic syndication value (*e.g.*, half-hour comedies). In this fashion, the independent stations assert, the network conflict of interest resulting from foreign syndication activities could affect the networks' program schedules and the supply of valuable network programs to the domestic syndication market. The Coalition and PPDC likewise oppose network foreign syndication, arguing that (1) the networks will abuse program suppliers and extract foreign syndication rights for less than their full value as the price for network access; (2) the networks will be able to strike deals to gain a competitive edge over non-network distributors in a manner that disserves the public; and (3) keeping the networks out of foreign syndication is critical to the survival of independent producers.

118. The networks, DOC and the Economic Policy Institute (EPI), in turn, favor repeal of the foreign syndication restriction. The networks state that they do not have the market power needed to extract foreign syndication rights from program producers. In addition, the networks and their supporters contend that network entry into foreign syndication would be pro-competitive and state that the rules unwisely prevent the established networks, all of which are U.S. companies, from fully participating in the international marketplace.

119. CBS further claims that its foreign syndication arm currently is forced to operate on a very limited scale and at a higher unit cost than its competitors. According to CBS, the current restrictions also undermine the efficiency of potential co-production ventures with foreign partners that could significantly reduce its programming costs. By undermining the efficiency of foreign co-productions, CBS argues, the rules further erode the ability of U.S. broadcast networks to compete with other program suppliers, such as cable networks, in domestic as well as foreign markets.

120. Similarly, NBC states that limits on the networks' foreign syndication activities do not help or protect independent producers because eliminating three potential bidders for foreign syndication rights constricts the number of buyers available to small production companies. The result, according to NBC, has been a consolidation of market position by the eight MPAA studios that collectively account for over 80 percent of revenues derived from foreign syndication of television programs.

121. DOC supports removal of the foreign syndication prohibition, stating that its Globalization Study indicates that there are opportunities abroad for U.S.-produced programming and growing pressure on media firms to exploit those overseas markets to defray production costs.[137] A study by Robert B. Cohen, submitted by EPI and originally submitted to DOC for its Globalization Study, examines the impact of policies recently adopted by the European Community (EC). EPI believes that the networks are in the best position to respond to the opportunities created by Europe's increasing demand for television programs and improved distribution of such programs. The Cohen study also concludes that the ability of the U.S. to compete in global markets is ill-served by the rules because they prevent some competitors from being fully active and, in effect, favor some domestic (or even foreign) competitors (studios) over others (networks).

122. In addition, EPI estimates that the foreign syndication restriction results in a loss of $600 million to $1.8 billion annually in U.S. exports to Europe. As a result of the rule, the networks are unable to enter into certain business or ownership arrangements with firms that are themselves involved in program syndication or that have continuing financial interests in programs. Networks also are precluded from entering the growing European market by the normal means being used by other competitors, such as joint ventures, export agreements and acquisitions, that respond to the EC Directive concerning European content of programming. Thus, EPI claims, three of the potentially strongest competitors from the U.S. are precluded from competing to supply the growing demand for programming in what will be the largest market after 1992.

123. Witnesses at the Commission's *en banc* hearing presented similar arguments concerning the loss of possible exports. For example, former U.S. Trade Representative William Brock noted that, although the U.S. is trying to obtain changes to the EC's broadcast directive, that directive, as it is implemented, will present a Catch-22 situation for the U.S. networks. The directive will limit the demand for programs produced by non-Europeans but increase the demand for programs co-produced with Europeans. Thus, Senator Brock pointed out, while there will be less demand in Europe for network-produced programs that existing rules permit them to sell abroad, those same rules prevent the networks from participating in co-productions that Europeans want to buy. Finally, Senator Brock argued that our rules prevent the networks from realizing the competitive efficiencies of worldwide distribution that are available both to other U.S. participants in the worldwide marketplace and, of course, to all the non-U.S. participants.

124. The FTC argues that from an antitrust perspective, foreign syndication rights differ from domestic syndication rights because domestic independent television stations cannot be harmed by the exercise of foreign rights. With regard to both types of rights, the FTC finds no compelling reason to limit or prohibit network acquisition of such rights and suggests that conventional antitrust enforcement be used instead of specific regulatory limits.[138] Similarly, DOJ states its belief that repeal of the rules is unlikely to result in anticompetitive conduct by the networks, and suggests leaving the issue of network use of alleged market power to the antitrust laws which DOJ is willing and able to administer.[139]

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[129] Although the networks argue that the Commission can rely on other profit participants, such as the program producers, to police against affiliate favoritism, we believe that such discrimination will be difficult for such parties to detect in many cases. See note 127, *supra*.

[130] See, *e.g.*, Independent Stations Comments of March 25, 1991 at 15.

[131] We note that a four year/six month rule was strongly supported by the Fox Affiliates and INTV. FBC Television Affiliates Further Comments of November 21, 1990 at 20; INTV Further Comments of November 21, 1990 at 19.

[132] See Section X, *infra*.

[133] See Reply Comments of INTV, August 1, 1990 at 25.

[134] This independent syndicator requirement, proposed by INTV, is designed to ensure that outside programming, in-house programming aired on other networks, and first-run programming is distributed through a *bona fide* independent syndicator. See INTV Further Comments of November 21, 1990 at 17.

[135] See para. 111, *supra*.

[136] *1970 Order* at 300–399. See also discussion of network extraction concerns in section V, *supra*.

[137] See Comprehensive Study on the Globalization of Mass Media Firms, Notice of Inquiry, 55 Fed Reg 5972 (Feb. 16, 1990).

[138] FTC Further Comments of November 21, 1990 at 3, 13.

[139] DOJ Further Comments of November 21, 1990 at 16.

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125. We conclude that the public interest would best be served if the existing restrictions on active network syndication in foreign markets were repealed. Accordingly, we have decided to permit the networks to syndicate internationally all of their in-house productions, whether aired on their own or another network, or in first-run syndication. In addition, the networks will be allowed to syndicate internationally all outside productions aired on their own or another network.[140]

126. These modifications will provide the networks with much of the relief they seek, including a far greater ability to compete in the international program marketplace. Networks will now be able to take advantage of newly created opportunities abroad for U.S.-produced and co-produced programming, particularly given Europe's increasing demand for and improved distribution of such programming. Indeed, given an overseas program export market of approximately $2 billion, program content quotas of at least 50 percent European origin in the EEC,[141] and the proliferation of competitive production resources around the world, we see no reason to preclude the networks from this market. We note that, even under present rules, the existing networks have sought investments or co-production relationships with companies in Europe.

127. Allowing the networks to syndicate actively their in-house co-productions with foreign entities will be one particularly beneficial result of our action. The networks have argued persuasively that they face competitive obstacles in the burgeoning European program production marketplace because they are not permitted to syndicate, either domestically or abroad, programs produced in joint ventures with foreign entities.[142] By liberalizing our "in-house" definition and rules to allow networks to engage in active domestic and foreign syndication of foreign co-productions, we directly respond to the networks' call for regulatory relief that would make them viable and attractive partners in the blossoming European production marketplace.

128. We further find that allowing virtually unlimited entry into foreign syndication will be pro-competitive, enhancing competition in the foreign syndication market as well as U.S. competitiveness overseas. The networks' international syndication and related activities could benefit the domestic economy by increasing jobs and income. The U.S. viewing public could also benefit to the extent that networks invest the additional revenues they receive from foreign syndication activities into more diverse and creative programming.

129. Despite these benefits, however, we believe that it is important to retain certain restrictions on the networks' acquisition of foreign syndication rights in prime time entertainment programming from outside producers. Although direct network participation in the business of foreign distribution does not raise warehousing or affiliate favoritism concerns, network acquisition of foreign distribution rights from independent producers presents the same extraction concerns raised by network acquisition of financial interest and domestic syndication rights.[143] The record reveals that foreign syndication revenues provide critical financing for many outside producers, particularly since they are often received early in the program distribution process.[144] Indeed, many independent producers have argued in this proceeding that they could not remain solvent without the immediate income stream from foreign distribution rights which makes it possible for them to finance current productions.[145]

130. Given these concerns, we conclude that network acquisition of foreign syndication rights from outside producers should be subject to the same limited and narrowly tailored extraction safeguards we have adopted for financial interests and domestic syndication rights. Networks seeking to purchase foreign distribution rights will thus be subject to the 30-day phased negotiation and certification requirements discussed in section V, *supra*. These safeguards should help ensure a continued diversity of program sources. However, the Commission shall monitor the effects of the relaxation of the foreign syndication rules on programming diversity in the U.S. television marketplace and will re-examine in particular the efficacy of our safeguards in ensuring the continuation of that diversity.

VIII. First-Run Syndication

131. In the preceding section, we determined that our public interest goals of supporting diversity and competition in the local television marketplace will best be served if the networks are permitted only limited entry, subject to safeguards, into the domestic syndication marketplace for off-network programming. In so doing, we stressed that local broadcasting is a vital service to the American public and that our regulatory aim should be to promote affirmatively competition in that marketplace.

132. Our existing syndication rule completely precludes domestic syndication of first-run programming by a network. For the reasons discussed below, we conclude that this prohibition should be continued in view of the record evidence that the participation of networks as syndicators in the domestic and international markets for first-run syndicated programming would unnecessarily jeopardize competition and diversity in the television marketplace. That evidence establishes that first-run syndicated programming is the only nationally distributed broadcast television programming that competes directly with network and off-network syndicated programming and thus plays a critical role in providing a diversity of program services to the American broadcast audience. It is also clear that local broadcast stations use first-run programs in various dayparts to provide viewers with attractive, nationally distributed alternatives to network or off-network programming. Given the unique importance of first-run programming to local television stations and the potential competitive threat that would be posed by network entry into the first-run programming marketplace, we find that the networks should continue to be prohibited from actively syndicating any first-run programming or from holding financial interests and syndication rights in first-run syndicated programming produced by outside entities.

Comments

133. Numerous parties address whether the Commission's concerns about network involvement in the domestic syndication marketplace should extend to first-run syndicated

[140] Based on our previously discussed extraction concerns, however, we shall also bar "cross-extraction." Thus, networks will be prohibited from conditioning program access to their own networks on the granting of ownership rights with respect to programs aired elsewhere (on other networks or in first-run).

[141] The United Kingdom, for example, has proposed a 75 percent content quota, and France presently has a 60 percent content quota. Economic Policy Institute Reply Comments of July 27, 1990 at 18; Statement of Jack Valenti, MPAA, at December 14, 1990 *En Banc* Hearing.

[142] See Joint Network Comments, Volume II, June 14, 1990 at 133–137.

[143] See discussion of network extraction in section V, *supra*.

[144] See Statement of Ethan J. Podell, Orbis Communications, and Statement of Leonard Hill, Allied Communications, Inc., at December 14, 1990 *En Banc* Hearing.

[145] Coalition Reply Comments of December 21, 1990 at 21.

programming as well as off-network programming. First, program producers, syndicators, independent stations and some network affiliates agree that the syndication rule has been highly successful in promoting a healthy and diverse syndication market. These parties state that the rule has helped spawn the tremendous growth of independent stations—and the contemporaneous growth of the first-run syndicated programming market—that has occurred in the past twenty years. For example, they attribute to this rule, at least in part, the growth in the number of distributors of syndicated television programming from 92 to 148 in the last eight years.

134. Producers and independent stations assert that the healthy competition that now exists in the first-run syndication marketplace would be seriously threatened by network entry into that marketplace. These parties fear that, if the networks were permitted to syndicate first-run programming, they would be able to exert undue power over such programming by taking improper advantage of their existing relationships with their affiliates.[146] The Coalition states that network participation in first-run syndication would enable them to become both owner and buyer of the programming through their O&O stations. In these circumstances, the Coalition claims, the networks not only could dictate license terms but also could drive out other production entitles by requiring network association as a condition for shows carried on the O&Os. INTV is especially concerned that networks have the same incentives to favor affiliates with first-run programs as they do for off-network programs. Thus, INTV seeks additional insulation for first-run syndication to guarantee the passivity of any financial interests in first-run syndicated product, suggesting periodic reports even when syndication rights are sold to other syndicators.

135. Alternatively, the FTC contends that networks should be permitted to acquire financial interests in and to syndicate actively first-run programming, provided that affiliates are prohibited from scheduling any such programs from their network during the prime time access hour. The FTC and Fox agree that consumers would benefit by stimulating competition in the first-run marketplace through network entry, and Fox further claims that relaxing the current prohibition would create greater diversity and choice. The FTC contends that the record evidence does not indicate that the networks, individually or collectively, could restrict the supply of first-run programs nor pose a direct threat to downstream purchasers of first-run programming. The FTC also believes that the entry of networks into first-run programming would not threaten competition in the upstream production of such programming, and it asserts that any possible harm to certain competitors by network entry does not imply the action is anticompetitive.

136. The networks argue that the first-run restriction ensures the continued domination over television production, financing, and syndication by a few Hollywood studios. They also claim there is no rational basis to permit syndication of in-house productions for a network's own schedule, while excluding productions for other networks, first-run programs, or products for the network's schedule produced by others. The networks also believe that they also should be permitted to syndicate first-run programming to the same extent that Fox currently does. CBS claims that rather than preventing the networks from engaging in first-run syndication at all, the Commission could prescribe the same affiliate favoritism and warehousing "safeguards" as proposed for a network's syndication of its own in-house programming.

Discussion

137. Based on comments from independent syndicators, independent television stations, and group owners of affiliate stations, as well as our own experience and expertise, we have decided to continue certain prohibitions on network involvement in the syndication of first-run programming. As described below, this decision is based on the following reasons: (1) Local broadcast stations need an unimpeded supply of first-run programming to compete with network and off-network programming in various non-prime time schedule parts; (2) allowing the networks into first-run syndication could enable them to exploit their owned and affiliated stations to handicap the launch of new first-run programs by independent syndicators; such market control would be detrimental to the maintenance of a diverse, competitive marketplace; (3) allowing the networks into first-run syndication could undermine the Commission's objective in establishing the prime time access rule (*i.e.*, network affiliates are to provide up to one hour per day of non-network programming in the prime time period); and (4) by virtue of their market structure, network involvement in first-run syndication would diminish the amount of independent first-run programs aired on local television stations.

138. We have thus decided that continued structural safeguards on first-run syndication are necessary until the Commission obtains a more current record of network syndication practices, and has assessed their impact on the diversity of program distribution. In doing so, we emphasize that we are primarily concerned with the potential harm to local television stations, particularly independent or non-network stations, and ultimately the American viewer, that could result from unbridling the remaining network influence in the video marketplace.

139. First-run syndication is a unique marketplace in which clearance by stations in major markets is critical. Unlike off-network programming, there is no pre-existing demand for any particular first-run program; such demand generally must be built on a station-by-station, market-by-market basis. In this environment, clearance by the higher-rated broadcast stations in the major markets is vital, particularly in the top three markets, and most of those stations are owned by the existing broadcast networks.[147]

140. The Commission finds that allowing the networks into the first-run syndication business would enable them to exploit their owned and affiliated stations so as to either extract rights in or handicap the launch of new programs by independent first-run syndicators. Lacking the advantage of a built-in distribution network, an independent syndicator must sell his wares station-by-station—particularly in the top markets in which the network O&Os or affiliates are the leading outlets. A network, by contrast, possesses the incentive and ability to sell, *en bloc*, to its affiliates and owned stations—an advantage that clearly can be used in anticompetitive ways. If they succumbed to the temptation to do so, networks could harm local broadcast

[146] In its comments, PPDC expresses particular concern about networks' ties with their owned and operated stations. PPDC claims that the O&Os account for a large percentage of the nation's television households (16%) and that first-run programs, in order to be successful, must be carried in at least most of these top markets. As a result, PPDC maintains, local stations in smaller markets are more inclined to purchase programming already cleared in the larger markets. According to PPDC, these facts should heighten the Commission's concerns about affiliate favoritism in first-run syndicated programming.

[147] *See* PPDC Comments of June 14, 1990 at 15–16; Westinghouse Broadcasting Company, Inc. Comments of November 21, 1990 at 4–8; INTV Comments of June 14, 1990 at 30–35; King World Productions, Inc. Comments of November 21, 1990 at 6–7.

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stations that require an unimpeded supply of first-run programming to compete with network and off-network programming in various non-prime time schedule parts. Given their inherent structural advantages, the networks have the potential to exercise market control in the supply of first-run programming to an extent that would be detrimental to the maintenance of a diverse, competitive marketplace. The potential anticompetitive consequences of permitting networks to engage in, or extract rights in, first-run syndication are thus so significant that they warrant retention of rules precluding such activities.[148]

141. In addition, allowing the networks to become first-run syndicators and to supply such programming during the prime time access period could undermine the Commission's objectives in establishing the prime time access rule (PTAR). The networks could gain an important advantage over independent first-run syndicators by packaging first-run programs specifically to their owned and affiliated stations in such a way as to avoid the PTAR prohibition against "networking" in excess of three hours of prime time programming daily. We believe that the resulting dramatic reduction in the sources and variety of access period programs would be contrary to the public interest.[149]

142. We also conclude that the rules have largely achieved the basic purpose of the financial interest and syndication rules, as well as that of PTAR, to encourage "the competitive development of alternative sources of television programs."[150] More original programming now exists from more non-network sources than at any time prior to adoption of the rules. Allowing the networks to syndicate first-run programming, then, would by necessity diminish the amount of non-network, nationally produced programming aired on broadcast television, a major source of competition and diversity.

143. We conclude, therefore, that behavioral safeguards to prevent affiliate favoritism and warehousing are inadequate and ill-suited to stem the potential for abuse in the important first-run syndication marketplace. To the contrary, structural restrictions concerning first-run syndication remain necessary until the Commission obtains an empirical record of future network practices in the syndication market and the impact on diversity of program supply and distribution. Given the overall objective of fostering first-run programming as a diverse and competitive alternative to programming that is distributed or has been distributed through the network system, limiting network ownership of rights in such first-run programs is a necessary corollary. The safeguards developed with respect to network acquisition of rights in programming aired on the networks are appropriate in a context in which the networks are necessarily already involved in program selection, control and financing. In the first-run area, application of similar provisions allowing network acquisition of rights and interests would dilute the objective of providing greater programming choice, particularly to affiliated stations, competitive with and outside the network ownership and distribution process. Accordingly, the networks will continue to be precluded from actively syndicating such first-run programming, domestically or internationally. We also will continue to prohibit networks from acquiring financial interests or syndication rights in first-run programming produced by outside entities.[151]

144. At the same time, we find that, in view of the increasingly competitive marketplace of the 1990s, we should provide the networks some flexibility to enter the first-run production market. We therefore will now permit a network to produce entertainment programming for first-run syndication and to retain a financial interest as well as foreign syndication rights in such programming "solely produced" in-house.[152] However, due to previously discussed concerns regarding the unique nature of the first-run syndication market, we will require that such programming be syndicated domestically through an independent syndicator pursuant to the distribution safeguards described above in paragraph 114. We also clarify that network-produced first-run programming shall be considered network programming for purposes of the prime time access rule.

IX. Network Definition and Transition Rules

A. Network Definition

145. The existing rules define a network as "any person, entity or corporation which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated television licensees in 10 or more states * * *."[153] In this proceeding, we sought comment on whether we should retain or modify this definition to reflect more accurately current marketplace realities. As described below, we have decided that a television network will now be defined as any entity providing more than 15 hours per week of prime time programming on a regular basis to interconnected affiliates that reach, in aggregate, at least 75 percent of television households nationwide.

146. In developing this new network definition, we have attempted to balance our interest in encouraging emerging broadcast networks with our interests in maintaining a diversity of network program supply, independent sources of program distribution for independent and affiliated local stations, and the continued competitiveness of existing broadcast networks. Thus, while seeking to promote emerging networks, we remain concerned that the national networks can both extract ownership rights from program producers and manipulate the syndication market to the detriment of diversity in the sources and distribution of prime time entertainment programming.

147. We find that new networks will provide an increase in the amount and the diversity of prime time entertainment programming that will ultimately benefit the public. Such networks can also breathe new life into failing independent television stations, thus preserving outlet diversity.[154] This increased competition should also lessen the need for future regulation of broadcast networks. Of course, after an emerging network has achieved a significant degree of size and market power comparable to existing networks, it should be subject to our network restrictions to prevent potential abuse. Such restraints should apply until the market provides sufficient alternative outlets for the purchase and distribution of all types of commercial programming.

[148] *Id.*

[149] See King World Productions, Inc. Comments of November 21, 1990 at 10–11 and December 21, 1990 at 3; INTV Comments of June 14, 1990 at 43–45; Independent Stations Comments of November 21, 1990 at 14–17; Westinghouse Broadcasting Company Comments of November 21, 1990 at 6–7; PPDC Comments of November 21, 1990 at 8–10.

[150] 1970 Order, 23 FCC 2d at 397.

[151] See also note 101, *supra*. See also Comments of INTV, August 1, 1990 at 30; King World, November 21, 1990 at 10; Westinghouse, November 21, 1990 at 4; and PPDC, November 21, 1990 at 5.

[152] Based on our extraction concerns that are not amenable to separated or producer-initiated negotiation safeguards in the unique first-run context, a network will not be permitted to hold financial interests and syndication rights in first-run programming co-produced by the network with outside entites.

[153] 47 CFR 73.658(j)(4).

[154] FBC Television Affiliates Association Reply Comments of August 1, 1990 at 12.

Comments

148. The major networks and their affiliates support repeal of the financial interest and syndication rules, thereby eliminating any need to modify the definition of networks subject to the rules. However, if the rules are retained, these parties believe that the network definition should be unchanged. In particular, the networks and affiliates oppose any new or further exemption from the rules for Fox or any other network/affiliate organization that is in direct competition with "older" networks and their affiliates. Some parties contend that there is no basis for any distinction between Fox and the older networks. They point out that Fox is actively engaged in the production and acquisition of entertainment programming and its affiliates now number 129, with access to 90% of television households. Moreover, Fox achieves double-digit market shares, has several programs that consistently defeat the competition in ratings, and pays license fees comparable to that of other networks. These commenters contend that Fox can no longer be characterized as an emerging network; rather, it is a well-established fourth national network.

149. Non-Fox affiliated independent TV stations also support the current network definition. They state that the 15 hour threshold has worked effectively by subjecting major networks to the rules without encompassing the numerous entities that are clearly not the kind of networks the Commission intended to regulate. They further point out that the Commission's waiver procedures are always available as a safety valve to preclude application of the rules to a network where circumstances indicate no potential for any of the abuses that the rules were designed to prevent.

150. Media Access Project and Office of Communication of the United Church of Christ (MAP/UCC) supported retaining the current 15-hour threshold, but excluding three categories of programming exempted from our PTAR rules. They also advocated dropping the "number of states covered" and "affiliates supplied" criteria and adding an audience share measurement, noting that this is the most appropriate test of an emerging network's market power.[155]

151. Other parties are not satisfied with the current definition of a network and/or its application to the Fox network. The Fox network and its affiliates claim that Fox does not possess anything approaching the market power that the dominant three networks have. Fox states that existing network definition is inadequate to measure market power. Fox claims that as a result of the sweeping changes in the video marketplace over the last 20 years, the 15–25–10 benchmark that triggers the rules has become an anachronism which indiscriminately pulls in network "small fry and leviathans alike." Fox suggests that a market power analysis should be applied across the entire video program supply spectrum and that similarly situated entities should be subject to comparable regulations, including the financial interest and syndication rules, regardless of the technological or contractual means employed to deliver programming to consumers. In Fox's view, only those firms with market power are capable of the types of abuse the rules were designed to prevent. Accordingly, Fox maintains that only those firms should be subject to restrictions.

152. Pappas Telecasting Co. (Pappas) would extend the network definition to include other distributors of video programming. It proposes that the definition of entities subject to these rules include not only the three major networks but also entities that (1) distribute video entertainment and informal programming to consumers indiscriminately on a "mass media" basis, over a wide geographic area, (2) reach a significant number of people, and (3) hold a certain minimum share (to be defined) of the available audience. According to Pappas, such "network entities" would include program syndicators such as Paramount Pictures; multiple system cable operators such as Tele-Communications, Inc.; cable programming services such as Turner Broadcasting System; and emerging technology ventures such as direct broadcast satellite "Sky Cable" service or home satellite dishes which capture the requisite minimum share of audience.

Discussion

153. Based on the record compiled in this proceeding, we find that the current network definition is no longer appropriate for the purpose of these rules.[156] The existing definition admittedly provides a clear and objective guideline for when a person or entity becomes a network. However, the definition is inadequately tailored to the Commission's desire to avoid inhibiting the emergence of newly competitive networks and diverse programming choices.

154. Indeed, in 1988, we stated that the existing definition was no longer adequate to distinguish traditional national networks from other program distributors.[157] We continue to believe that the present standard fails to measure the potential strengths and current roles of video broadcasters within the national marketplace as affected by technological advances. For example, the domestic satellite service easily permits any programmer to reach all the states in the continental U.S. easily, thus rendering state criteria an inaccurate measure of a network's standing within the market.

155. We also believe that the present definition is excessively restrictive since the 25 stations component is now such a small fraction of available affiliates and could be reached easily by regional broadcasters with no intention of developing national audiences. Consequently, a new definition must balance the interests of enhancing competition with the equally important objective of treating all competitors equally in order to create a "level playing field" within the industry.

156. We find that a definition focusing upon prime time hours of programming and national broadcasting reach will be more consistent with the Commission's traditional concern for preserving diversity of programming.[158] Once an emerging network achieves a significant degree of relative size or power in the marketplace through prime time programming and national audience reach, its potential for abuse should be constrained through appropriate regulatory safeguards. In particular, we conclude that a network shall be defined as any entity providing more than 15 hours per week of prime time programming on a regular basis [159] to interconnected affiliates that reach, in aggregate, at least 75 percent of television households nationwide. As a result, we believe that the new network

[155] Comments of MAP/UCC of November 21, 1990 at 7–9.

[156] See Fox Broadcasting Company Comment, June 14, 1990 at 11–13; FBC Television Affiliates Association Comment, June 14, 1990 at 25–30; Pappas Telecasting Companies Comment, June 14, 1990 at 5–6.

[157] See Further Notice of Proposed Rule Making, BC Docket No. 78–309, 3 FCC Rcd 2746 (1988).

[158] The existing Prime Time Access Rule is an additional constraint focusing on network participation in prime time programming. See 47 CFR 73.658(k).

[159] We will define "regular basis" to mean exceeding the specified number of hours per week on an average basis during the preceding six months of operation.

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and transitional rules will allow emerging program services more flexibility to increase audience reach or penetration.

157. As the majority of commenters have advocated, the new definition emphasizes the hours of prime time programming because the concern in this proceeding has been the ownership of rights in such programs at a national level. We are particularly concerned that the overly restrictive nature of the prior definition may have caused some emerging networks to curtail legitimate business plans in anticipation of coming within the rules' strictures. The Commission recognizes that networks sustain a high quality of programming by generating advertising revenues from numerous hours of programming viewed by substantial audiences. Therefore, the new definition will allow entities to gain a meaningful but still just partial presence in the most profitable broadcasting period. We have found that the 15-hour threshold serves as an adequate standard. In our judgment, as noted above, allowing up to 15 hours permits an emerging network to begin to establish an everyday presence, albeit limited, by scheduling an average of up to two prime time hours per night before becoming subject to the rules. However, as an entity starts to provide more of a full prime time programming service, it would have a growing potential to affect significantly the off-network and first-run syndication marketplace.[160]

158. Furthermore, the Commission has never intended to subject regional broadcasters to the Rules, a result that could conceivably occur under the existing standard due to the increased number of stations in many markets. Our extraction and syndication market manipulation concerns primarily implicate networks attempting to achieve national audiences. Thus, we believe that the new 75 percent reach limit will distinguish substantially national networks from regional broadcasters.[161] The Commission recognizes that emerging networks must eventually encounter the same regulatory treatment as established networks. Accordingly, upon developing a substantial national reach, these entities should be considered "networks" and be subject to these rules.[162]

B. Transition Rules

159. An important goal in this proceeding is to encourage the development of emerging networks. Indeed, promoting establishment of a fourth or even fifth national network has been a consistent interest of the FCC for many years.[163] We find that new networks will provide an increase in the amount and diversity of prime time entertainment programming that will ultimately benefit the public and lessen the need for future regulation of broadcast networks. Among the most likely candidates to develop an emerging network are companies that control both production or syndication entities and broadcast stations in some of the larger television markets. In order to promote an orderly transition to compliance with our revised requirements, we proposed to "grandfather" program ownership rights obtained by emerging networks prior to reaching the network definition threshold and to allow a maximum of 36 months to bring prior contracts into full compliance with PTAR.

Comments

160. DOJ claims that any remaining rules should apply to rights acquired after an entity meets the new definition.[164] Although Fox affiliates express preference for complete repeal of the rules, they favor a three-year transition if restrictions are applied to network syndication activity. They also request that the Commission include a "remaining term of contract" provision for PTAR compliance to parallel the financial interest and syndication rules transition and to protect property rights of affiliates. Fox affiliates warn that premature application of PTAR would cause costly alteration of scheduling, force stations into the market to find high-quality substitutes on short notice, reduce future bidders for off-network programming, and create disincentives for non-Fox independents to affiliate with new networks.

161. In addition, MAP/UCC argues that the Commission failed to foresee that the success of its rules would create additional networks that might emerge into "major" network status. Specifically, they fear that premature application of these rules might interfere with evolving distribution arrangements and could cause severe dislocation to an emerging network and its new affiliates, formerly independent stations that have long been the beneficiaries of these rules. Therefore, MAP/UCC urges that we allow for a gradual application of the rules to Fox and other emerging networks over the course of two to three years.[165]

162. NBC objects that the transition period would allow Fox to escape regulations and exploit its vast program library in syndication, thereby undermining the Commission's stated concerns about warehousing and affiliate favoritism, and ignoring the fact that networks were forced to divest syndication interests in 1970. Similarly, network affiliates express concern that Fox affiliates may unfairly obtain relief from PTAR limitations upon network programming during the access period despite becoming formidable competitors in local markets. NBC also warns that the 36 months allowed for full compliance with the rules would likely become an indefinite waiver if the rules also include a provision for review after four years.

Discussion

163. We recognize that compliance with our revised rules may cause some hardships to emerging networks upon meeting our definitional threshold. Nonetheless, we feel it is important that all broadcast networks operate under the same set of rules. Fox and other potential emerging networks will be aware of the benchmarks for network status. Any entity reaching these criteria can be expected to have a significant ability to engage in extraction or manipulation of the syndication market.

164. Of course, we are concerned that an immediate cessation of former financial interest and syndication activities may be perceived as too high a price for becoming a network.[166] We recognize that new networks may have entered into programming and syndication contracts which not only affect programming on their own network, but may involve contractual relations with other networks. Therefore, we have determined that the most desirable course is to require that a "new" network immediately come into compliance with respect to pipeline or future programs which the network was not already producing or distributing on the date it reached the definition threshold. Any program ownership rights, including financial interests and syndication rights, obtained by a new network prior to meeting our network definition shall be "grandfathered." A new network and its affiliates also shall be allowed a maximum of 36 months to bring pre-existing contractual arrangements into full compliance with the prime time access rule. New networks are otherwise required to comply immediately with these rules, in particular as to any program ownership rights obtained subsequent to becoming a "network."

165. Thus, under the new transition and grandfathering scheme, a new network will not be required to cease producing or distributing programs that were already on its own network or a competing network. The new networks, however, will be on notice that any future program acquisitions will have to be made in compliance with our new financial interest and syndication rules.

166. We find that these restrictions are necessary to treat all networks equally and to accomplish our policy objectives. In this regard, the transitional rules will reduce some of the hardships and costs to emerging networks, but will not give such networks an advantage in perpetuity. We believe that our goal of increasing the number of competitive networks and our recognition that established networks may have an advantage in terms of outlets and market power adequately balance any competitive concerns during this transitional period.

167. Consistent with our rules for network programming, we further find that there should be a reasonable period of time allowed for transition from non-network to network status with respect to first-run syndication programming. To provide an orderly transition, we determine that first-run programming should be grandfathered in order to allow new networks to continue with existing contractual arrangements with local broadcast stations.

168. In light of our concern for preservation of the prime time access rule and its policy objectives, however, we find that first-run syndicated programming carried during the access period will be grandfathered only for the life of the programs or three years, whichever occurs first. We find that permitting new networks unlimited syndication rights during the access period would undermine PTAR by allowing the new network to program in excess of the allowable prime time hours for network and off-network programming. We believe, however, that a maximum period of three years is an appropriate length of time for the network and its affiliated stations in the top 50 markets to come into compliance with PTAR without damaging the policy goals behind this rule. This transition should permit the Commission to ensure compliance with our PTAR goals and not cause major disruptions in the first-run market.

169. We further find that network affiliated stations in the top 50 markets will be permitted to burn-off programming contracts for programs scheduled during the access period. These affiliates will, however, be limited to either the length of the existing contract or three years, whichever occurs first. We find that the above-stated reasons for permitting a transition for an emerging network apply equally to their affiliates. We believe that these stations, the parties with whom they have legitimately contracted, and the public are better served by an orderly transition rather than an immediate requirement preventing broadcasts of these programs during the prime time access period. Furthermore, affiliates of other networks should not experience any newly created detriment since the new network's affiliates would have aired the programming during the prime time access period prior to reaching "network" status.

X. Reporting Requirements

170. Because existing rules generally prohibit network acquisition of program rights and network participation in syndication activities, the networks currently are not required to submit information to the Commission about any involvement in such business ventures. However, in view of our proposals in this proceeding to relax the financial interest and syndication restrictions in large measure, we sought comment on whether we should impose reporting requirements on networks to help monitor any new network activities in previously prohibited areas. For the reasons discussed below, we conclude that the networks should be subject to limited reporting requirements.

Comments

171. Parties generally expressed support for some form of reporting requirements, except King World, which stated that such requirements would be useless because the only enforcement would be after-the-fact. The Fox Affiliates generally endorse reporting requirements as a desirable corollary safeguard, and the FTC believes that the information collected could be useful to resolve the underlying policy debate in our future review of the rules. NBC prefers an annual rather than semi-annual reporting requirement, which it argues would be sufficient for monitoring compliance and assessing problems without requiring unnecessary paperwork and record-keeping. NBC also prefers filing any information with the Commission instead of maintaining records at its O&Os, noting that it is the public and the Commission, rather than its individual O&O station viewers, that require access to the information. NBC also requests that any requirement to file contracts be done under a grant of confidentiality unless the Commission concludes in a specific case that there are significant public interest considerations for making the contractual provisions public.

172. INTV suggests additional details to be included in reporting requirements, including specifically requiring each network to compile, file, and regularly update a complete report on their involvement in program production, acquisition of financial interests and syndication rights, and participation in the syndication or distribution of programming, including the "syndication trail" of any program in which the network owns an interest. Finally, MAP suggests that the networks be required to make reports contemporaneously with their actions, that the networks not be permitted to reconstruct such reports, and that the reports be submitted to the Commission and the Commission be required to subject them to staff review.

Discussion

173. In order to monitor the networks' behavior under our new rules, we are imposing certain reporting requirements. We will require each network to maintain a semi-annual report in its owned and operated stations' public files. In these reports, a network must first certify its compliance with the Commission's rules. In particular, a network must certify in each instance that the acquisition of any rights in an outside production or a producer-initiated in-house production were not obtained as a condition of network licensing or airing of the program.[167] Second, each report must list, for the preceding 180-day period: (1) All in-house productions that have aired on any network's prime time entertainment schedule; (2) the domestic syndication

[160] See INTV Comments of March 25, 1991 at 3; Fox Comments of March 25, 1991 at 3; FBC Affiliates Comments of March 25, 1991 at 16.

[161] The Commission received inadequate information in the record to develop a network definition based, at least in part, on the potentially more complex criterion of audience share. See generally FBC Television Affiliates Further Comments of March 25, 1991 at 14. Thus, while intrigued by such an approach, we have not included an audience share standard in our definition.

[162] See Appendix B (attached) at Section 73.662(i). See also Christian Broadcasting Network, 87 FCC 2d 1078 (1981) and Home Shopping Inc., 4 FCC Rcd 2422 (1989).

[163] See *e.g.*, Network Inquiry Special Staff, New Television Networks: Entry, Jurisdiction, Ownership and Regulation (October 1980, Volume I at 27). Competition and Responsibility in Network Television Broadcasting, 25 FCC 2d at 393 (1970).

[164] DOJ Comments of March 25, 1991 at 8.

[165] Comments of MAP/UCC of November 21, 1990 at 7, 10–11.

[166] See Fox Broadcasting Company Comments of March 25, 1991 at 3.

[167] Such certification shall be executed by the network official entering into the agreement with the producer on a form provided by the Commission.

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record of its in-house programs that have aired on any network prime time entertainment schedule; and (3) all prime time entertainment programs in which the network holds a financial interest or syndication rights. The networks will also be required, upon Commission request, to make available for review a copy of any program contracts. These reports shall be placed in the public file before the first regular business day of September and March of each year.

174. We conclude that these reporting requirements will deter possible anticompetitive behavior by the networks and will assist the Commission and interested parties in confirming network compliance with our modified financial interest and syndication rules. In addition, the information submitted in the networks' semi-annual reports will enable the Commission to monitor the efficacy of its various safeguards and to oversee the networks' conduct in the program acquisition and syndication markets. This information will also form the basis for our future review of the rules.

XI. Review of Residual Rules

Comments

175. The Coalition, INTV, Westinghouse, and King World generally favor review of the rules after four years. INTV would mandate review in five, rather than four, years because it believes that the off-network programs that would be subject to the new rules are unlikely to be syndicated until the fall of 1995 at the earliest, and therefore four years is insufficiently long for this purpose, although it does recognize that the effects of the rules on other than the availability of syndicated programming to independent stations might be assessed after fewer than five years. DOJ finds a four-year review period "attractive" because reassessment of the rules will be necessary due to the rapid and significant changes in the marketplace.

176. ABC urges that the rules be declared experimental and that based upon present trends their demise in four years is anticipated. Similarly, NBC urges a decision now to eliminate the rules in four years or, at a minimum, a commitment to complete a review in four years with a presumption that the rules would be repealed, arguing that any abuses will be apparent and that restricting the networks into the indefinite future unnecessarily risks "grave consequences."

Discussion

177. After careful consideration of the voluminous record in this proceeding, including the testimony of the interested parties at the Commission's *en banc* hearing and the market data and analysis compiled by the parties and the Commission's own staff, we find that the significant deregulation of network ownership and syndication of prime time entertainment programs detailed in this Order best serves the public interest. Specifically, this set of residual rules will enable the networks to become profit participants in the ancillary rights to their entire program schedule and to syndicate actively, both at home and abroad, all programming other than prime time entertainment as well as a broadly defined class of prime time in-house productions. At the same time, the public interest in a diversity of programming sources and outlets will be protected through narrowly targeted safeguards.

178. Although some parties to this proceeding have argued that any remaining financial interest and syndication rules should be subject to a "sunset" provision, or phased out within a set number of years if certain conditions are met, the Commission believes that such a result would be undesirable for a number of reasons. Most importantly, because the record does not currently support total repeal of the rules, adopting sunset mechanisms or presumptions would attempt to forecast events that are inherently unpredictable.[188] Further, given the public interest values at stake, including the very viability of independent producers and independent stations, the intricate workings of the program acquisition and syndication markets under these new rules need to be fully reviewed and analyzed by the Commission at a future point, not arbitrarily dictated now.

179. We fully recognize that these are industries in transition. In particular, the significant marketplace changes of the past decade may continue, further increasing the number of programming outlets and the competition to networks in their acquisition of prime time entertainment programming. Therefore, we are scheduling a review of these modified financial interest and syndication rules commencing four years after the effective date of this Order.[189] If, in the Commission's judgment, market conditions at the time of that review are sufficient, these rules may be repealed.

XII. Effective Date and Procedural Matters

180. The rules the Commission adopts today shall take effect 30 days after publication of this Order in the **Federal Register**, and shall be enforced prospectively from that date. Thus, the rules with respect to network acquisition of rights (financial interests and domestic and/or foreign syndication rights) in outside productions and in-house domestic co-productions shall apply only to new series or other new prime time entertainment programs originally licensed by the network on or after the effective date.

181. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. Need for and purpose of this action

182. The Commission relaxes the financial interest and syndication rules to reflect changes in the video marketplace. That marketplace has changed, for example, in the following ways: (1) The three major networks have lost a proportion of the total television audience; (2) A flourishing cable industry has emerged; and (3) The fundamental objectives the Commission sought to advance when it promulgated the rules—to foster a robust syndication industry and to prevent network extraction of rights from non-network producers—have largely been achieved. Although the record in this proceeding does not, in our judgment, support total repeal of the rules, it does support significant deregulatory relief for the networks, subject to structural and behavioral safeguards against potential harm to the outside program producers, the program distributors, and the local broadcasters who are so critical to the diversity the Commission seeks to promote and preserve.

183. The Commission has thoroughly considered the issues and the impact its decision will have on the multitude of parties in the domestic and global video marketplace. We have chosen to adopt policies whose purpose is to focus on those points in the video marketplace where diversity is most at risk and to apply the rules primarily at these points, while striving to relax the rules at other points where diversity is not so much at risk. The overall effect is deregulatory, designed to enhance the ability of existing and emerging networks to compete effectively in, but not unfairly dominate, the changed and changing video marketplace.

[188] See Comments of MAP/UCC of November 21, 1990 at 4–6 (arguing that sunsetting the rules lacks factual and legal support).

[189] DOC also suggested that the Commission revisit any revised rules within three to five years of their adoption for similar reasons. DOC Reply Comments of August 1, 1990 at 41.

II. Summary of issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis

184. No issues or concerns were raised specifically in response to the Initial Regulatory Flexibility Analysis. Several commenters favored permitting the three national networks to acquire financial interest in and engage in domestic and foreign syndication of programming. Some parties, however, expressed concern that repeal of the financial interest rules would enable networks to condition access to the network schedule on the extraction of syndication rights from independent producers for less than fair market value. Some parties also expressed concern that, if they controlled syndication rights, the networks might withhold, or warehouse, some programming from the syndication market or offer such programming to independent stations under less favorable terms than those offered to network affiliates, all to the detriment of independent television stations.

III. Significant alternatives considered and rejected

185. The Commission considered retaining the current rules or retaining them but with an exception for emerging networks, but found that retention would entail forfeiture of some of the beneficial objectives sought in the rule making, and would represent unnecessary government intrusion into the workings of the marketplace. Additionally, the Commission considered repealing both the financial interest and syndication rules either with or without a transition period, but the record in the proceeding does not provide an adequate case for total repeal of the rules. Given the public interest values at stake, including the very lifelines of the independent producers and the independent stations, the intricate workings of the program acquisition and syndication markets under these new rules need to be fully evaluated by the Commission at a future point, not arbitrarily dictated now. Therefore, a review of the modified rules will be commenced at a date certain four years after their effective date. If, in the Commission's judgment, market conditions at the time of that review are sufficient to warrant repeal, these rules may be repealed.

186. The rules adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose some new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget as prescribed by the Act. (Pub. L. 96–511, 47 U.S.C. 3507).

187. The Secretary shall cause a copy of this Report and Order to be sent to the Chief Counsel for Advocacy of the Small Business Administration.

188. Accordingly, It Is Ordered that under the authority contained in sections 4(i), 301, 303 (b), (f), (g), (i), and (j), 307(d), 308(b), 309(a), 310, 312, 313, and 314 of the Communications Act of 1934, as amended, Part 73 of the Commission's rules and regulations Is Amended as set forth below. The rules will go into effect 30 days after publication of this Report and Order in the **Federal Register** except for the paperwork requirements contained in §§ 73.661 and 73.3528 (which are subject to approval by the Office of Management and Budget, and which will go into effect no later than 60 days after publication).

189. It Is Further Ordered that this proceeding Is Terminated.

List of Subjects in 47 CFR part 73

Television broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Appendix A—List of Commenters—Commenters Responding to the Notice of Proposed Rule Making

Initial Comments

1. ABC Television Affiliates Association.
2. Action for Children's Television.
3. Association of Independent Television Stations, Inc.
4. Capital Cities/ABC, Inc.
5. Joint comments of Capital Cities/ABC, Inc., CBS Inc. and National Broadcasting Company, Inc.
6. CBS Inc.
7. Joint comments of Chris-Craft/United Television Station Group, Gaylord Broadcasting Company, Tribune Broadcasting Company, Channel 50 TV Corp., and MCA Broadcasting Inc.
8. Coalition to Preserve the Financial Interest and Syndication Rule.
9. FBC Television Affiliates Association.
10. Fox Broadcasting Company.
11. ICF Consulting Associates (On behalf of The Coalition to Preserve the Financial Interest and Syndication Rule).
12. KCAL–TV.
13. Malrite Communications Group, Inc.
14. Media Access Project and the Office of Communication of the United Church of Christ.
15. National Broadcasting Company, Inc.
16. National Economic Research Associates, Inc.
17. NATPE International.
18. NBC Television Affiliates.
19. Pappas Telecasting Companies.
20. Program Producers and Distributors Committee.
21. United States Department of Justice.
22. Westinghouse Broadcasting Company, Inc.

Reply Comments

1. ABC Television Affiliates Association.
2. Association of Independent Television Stations, Inc.
3. Caucus for Producers, Writers & Directors.
4. Capital Cities/ABC, Inc.
5. Joint Economic Appendix of Capital Cities/ABC, Inc., CBS Inc. and National Broadcasting Company, Inc.
6. CBS Inc.
7. CBS Television Network Affiliates Association.
8. Joint comments of Chris-Craft/United Television Station Group, Gaylord Broadcasting, Tribune Broadcasting Company, Channel 50 TV Corp. and MCA Broadcasting Inc.
9. Coalition to Preserve the Financial Interest and Syndication Rule.
10. Economic Policy Institute.
11. FBC Television Affiliates Association.
12. Federal Trade Commission, Staff of the Bureau of Economics (late-filed).
13. Fox Broadcasting Company.
14. Hearst Corporation.
15. ICF Consulting Associates.
16. KCAL–TV.
17. The Media Institute.
18. Modal Logic Corp.
19. National Broadcasting Company, Inc. (Further Comments filed July 24, 1990).
20. National Broadcasting Company, Inc.
21. National Economic Research Associates, Inc.
22. National Telecommunications and Information Administration.
23. NATPE International.
24. NBC Television Affiliates.
25. Orbis Communications Inc.
26. Program Producers and Distributors Committee.
27. Television Operators Caucus Inc., Board of Directors.

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28. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (late-filed).
29. United States Department of Justice (late-filed).
30. Writers Guild of America, West, Inc. (late-filed).

Commenters Responding to the Further Notice of Proposed Rule Making

Initial Comments

1. Action For Children's Television, *Et Al.* (Geller/Lampert).
2. Association of Independent Television Stations, Inc. (INTV).
3. Capital Cities/ABC Inc.
4. CBS Affiliates.
5. CBS, Inc.
6. Coalition to Preserve the Financial Interest and Syndication Rule.
7. FBC Television Affiliates Association.
8. Fox Broadcasting Company.
9. Independent Stations (The Chris Craft/United Television Station Group, Gaylord Broadcasting Company, Tribune Broadcasting Company, and Channel 50 TV Corp.).
10. King World Productions, Inc.
11. Media Access Project and Office of Communication of the United Church of Christ.
12. NATPE International.
13. National Broadcasting Company, Inc.
14. National Economic Research Associates, Inc.
15. National Telecommunications and Information Administration (NTIA).
16. Pappas Telecasting Companies.
17. Program Producers and Distributors Committee.
18. Walt Disney Company.
19. Westinghouse Broadcasting Company, Inc.

Reply Comments

1. ABC Television Affiliates Association.
2. Association of Independent Television Stations, Inc. (INTV).
3. Capital Cities/ABC Inc.
4. CBS, Inc.
5. Coalition to Preserve the Financial Interest and Syndication Rule.
6. Fox Broadcasting Company.
7. FBC Television Affiliates Association.
8. Federal Trade Commission—Staff of the Bureau of Economics.
9. HSN Communications, Inc.
10. Independent Stations (The Chris Craft/United Television Station Group, Gaylord Broadcasting Company, Tribune Broadcasting Company, and Channel 50 TV Corp.).
11. King World Productions, Inc.
12. Media Access Project and Office of Communication of the United Church of Christ.
13. National Broadcasting Company, Inc.
14. Program Producers and Distributors Committee.
15. Station Representative Association, Inc.
16. U.S.Department of Justice.

Parties Participating in the En Banc Hearing

Daniel Burke (ABC).
Robert Daly (Time-Warner).
Barry Diller (FBC).
Richard Frank (Walt Disney).
Laurence Tisch (CBS).
Robert Wright (NBC).
William Brock (on behalf of CBS).
Jack Valenti (MPAA).
Clyde Prestowitz (on behalf of NBC).
Leonard Hill (Leonard Hill Productions).
John Agoglia (NBC).
Stephen Cannel (Stephen J. Cannel Productions).
Robert Iger (ABC).
Jerry Leider (Caucus of Writers, Producers & Directors).
Barry Meyer (Warner Brothers).
Jeff Sagansky (CBS).
Ralph Baruch (Program Producers and Distributors Committee).
Al DeVaney (INTV).
Michael Fisher (FBC Television Affiliates.
Mel Harris (Paramount TV).
Leroy Paul (American Family Broadcast Group).
Ethan Podell (Orbis Productions).
Stephen Weiswasser (ABC).
Thomas Carter (Justice Productions).
Brandon Stoddard (ABC).
Harry Pappas (Pappas Telecasting Companies).
Marian Rees (Marian Rees Associates).
Andrew Schwartzman (Media Access Project).
Henry Geller (Action for Children's Television).
William Kerr (on behalf of INTV).
Harry Shooshan (on behalf of FBC).
Lawrence Summers (on behalf of ABC, CBS and NBC).
Frederick Warren-Boulton (on behalf of the Coalition to Preserve FISR).

Commenters Responding to the Order Requesting Further Comment

1. ABC Television Affiliates Association.
2. Capital Cities/ABC, Inc.
3. CBS Television Network Affiliates Association.
4. CBS Inc.
5. Citizens for a Sound Economy Foundation.
6. Coalition to Preserve the Financial Interest and Syndication Rule.
7. United States Department of Justice.
8. Federal Trade Commission Staff of the Bureau of Economics.
9. FBC Television Affiliates Association.
10. Fox Broadcasting Company.
11. Heritage Foundation.
12. HSN Communications, Inc.
13. Association of Independent Television Stations, Inc.
14. Joint Comments of Chris-Craft/United Television Station Group, Tribune.
15. King World Productions, Inc.
16. Malrite Communications Group, Inc.
17. Media Access Project, Office of Communication of the United Church of Christ, Foundation for Independent Video and Filmmakers, Arizona Consumers Council, Association of Community Organizations for Reform Now (Acorn) and Congress Watch.
18. NBC Television Affiliates.
19. National Broadcasting Company, Inc.
20. Program Producers and Distributors Committee.
21. Westinghouse Broadcating Company, Inc.
22. McKinnon Broadcasting Company.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. section 154, 303.

2. Section 73.658 is amended by removing and reserving paragraph (j) and adding a new Note 3 and 4 to paragraph (k) as follows:

§ 73.658 Affiliation agreements and network program practices; territorial exclusivity in non-network program arrangements.

* * * * *

(k) * * *

Note 3: Programming distributed by an entity prior to becoming a network, and subsequently produced episodes of a series first exhibited by that entity prior to becoming a network, are not network programming for purposes of this paragraph or sections 73.659–73.662 of these rules.

Note 4: For thirty-six (36) months after an entity becomes a network, stations owned by or affiliated with that network are exempt from compliance with the requirements of this paragraph with respect to programming already under contract at the time the entity became a network.

* * * * *

3. A new section 73.659 is added to read as follows:

§ 73.659 Television network financial interests and syndication rights in programs.

(a) No television network may hold or acquire continuing financial interests or syndication rights in any prime time entertainment program or series exhibited on its network unless such interests or rights are held or acquired under one of the following circumstances:

(1) The program or series is solely produced by the network;

(2) The program or series is a co-production between the network and a foreign production entity;

(3) The program or series is a co-production between the network and a domestic production entity where such co-production arrangement:

(i) Was initiated, in writing, by the outside production entity and

(ii) Does not become binding on the outside production entity until thirty (30) days after it is executed;

(4) The interests or rights in a program or series are acquired from an outside producer through negotiations commencing no earlier than thirty (30) days subsequent to the execution of any network license fee agreement for that program or series.

(b) No television network may hold or acquire continuing financial interests or syndication rights in any first-run non-network program or series distributed in the United States unless the network has solely produced that program or series.

(c) No more than forty (40) percent of a television network's total prime time entertainment programming schedule during a programming year shall consist of programming in which the network holds or acquires continuing financial interests or syndication rights pursuant to paragraphs (a)(1), (a)(2), or (a)(3) of this section.

4. A new § 73.660 is added to read as follows:

§ 73.660 Television network participation in program syndication.

(a) No television network may syndicate any prime time entertainment program to television stations within the United States:

(1) The syndication rights to which have been acquired pursuant to the provisions of § 73.659(a)(4); or

(2) That has not previously been aired on its network. Such programs shall be syndicated domestically through an independent syndicator.

(b) No television network may syndicate prime time entertainment programs to any station with which it is affiliated on terms or conditions that are more favorable than those offered to other nonaffiliated stations. Favoritism shall be rebuttably presumed if productions in which a network has an interest are syndicated to network owned or affiliated stations in more than thirty (30) percent of the markets where the program has been sold.

(c) Where a television network has syndication rights in prime time entertainment programming, such programming shall be made available for non-network broadcast exhibition within the United States no later than the earlier of:

(1) The end of the fourth year after network exhibition of such a series has commenced, or the subsequent anniversary of that date as to all programs in that series aired after the fourth year, or

(2) One hundred eighty (180) days after network exhibition of such a series or program is completed.

5. A new § 73.661 is added to read as follows:

§ 73.661 Network television program ownership and syndication reports.

(a) A television network shall maintain reports identifying prime time television entertainment programming exhibited on any television network in which the network holds or acquires financial interests or syndication rights. Any agreements containing such rights shall be made available to the Commission upon its request.

(b) Each television network shall maintain reports identifying all programs that the network has syndicated, and shall list therein all stations within the United States to which syndicated program sales have been made by the network. Any agreements entered into in connection with such syndication sales shall be made available to the Commission upon its request.

(c) Each television network shall, with respect to each program or series in which rights have been obtained pursuant to § 73.659(a), certify in writing on the specified form that no financial interests or syndication rights were obtained as a condition of network licensing or airing of the programs, and verify compliance with the provisions of § 73.659.

(d) The records maintained pursuant to paragraphs (a), (b), and (c) of this section shall be placed in the public file of each station owned by the network before the first regular business day of September and March of each year. These records shall be maintained in the public file for a period of five years and made available to the Commission upon its request.

6. A new section 73.662 is added to read as follows:

§ 73.662 Definitions for television network financial interest, syndication, and prime time access rules.

For purposes of § 73.658(k), 73.659, 73.660, and 73.661:

(a) A "continuing financial interest" is a right to receive revenue from the non-network broadcast or syndicated use of a television program by a network.

(b) A "co-production" is a program in which copyright ownership, financial responsibility, and business and production control are shared.

(c) A "domestic production entity" is a production entity registered to do business in the United States that is not owned or controlled, in full or in part, by the television network with which it seeks to co-produce.

(d) "Entertainment programs" include series, made-for-television movies, mini-series, and entertainment specials, and do not include sports, public affairs, or news programs.

(e) A "foreign production entity" is a production entity that is registered to do business and is located outside of the United States.

(f) An "independent syndicator" is one not owned or controlled, in full or in part, by a television network.

(g) A "prime time" program is one that has network exhibition during the hours of 7–11 p.m. eastern and pacific time or 6–10 p.m. central and mountain time.

(h) A program "solely produced by a network" is a program in which the network is the sole copyright owner, has full financial responsibility, and full business and production control.

(i) A "television network" is any person, entity, or corporation providing on a regular basis more than fifteen (15) hours of prime time programming per week (exclusive of live coverage of bona fide news events of national importance) to interconnected affiliates that reach, in aggregate, at least seventy-five (75) percent of television households nationwide; and/or any person, entity, or corporation controlling, controlled by, or under common control with such person, entity, or corporation. Not included within this definition is any television network formed for the purpose of producing, distributing, or syndicating program material for educational, noncommercial, or public broadcasting exhibition, or for non-English language exhibition, or that predominately distributes programming involving the direct sale of products or services.

Note: "National audience reach" for purposes of this definition is the total number

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of United States television households in the Arbitron Area of Dominant Influence (ADI) markets in which the stations or regular television station affiliates of the network are located, divided by the total national television households as measured by the most current ADI data publicly available at the start of each television season. "Regular basis" means providing, on average for the prior six months, more than the specified number of hours of programming per week.

(j) A "television programming year" commences on the first day of September and ends on the last day of August the subsequent year.

7. Section 73.3526 is amended by adding a new paragraph (a)(11) to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

(a) * * *

(a)(11) Every television broadcast station owned or controlled by a television network shall maintain the records required by § 73.661 of this chapter. These records shall be maintained in the file for a period of five years.

* * * * *

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APPENDIX

Note: This appendix will not appear in the Code of Federal Regulations.

TELEVISION NETWORK FINANCIAL INTEREST AND SYNDICATION RULE COMPLIANCE

CERTIFICATION FORM

The acquisition of financial interest and syndication rights by television networks are subject to rules and regulations of the Federal Communications Commission.

This will certify: (1) that I am familiar with the provisions of these rules; and (2) that, in acquiring rights in

_____,
(insert name of program)

_____ has complied with the
(insert name of network)

requirements of these rules to the best of my knowledge and belief; and (3) that no financial interest or syndication rights were obtained as a condition of network licensing or airing of this program.

Signature of Network Official
Printed Name and Title
Date

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE OR IMPRISONMENT (18 U.S.C. CODE SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)) AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

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Dissenting Statement of Chairman Alfred C. Sikes—In the Matter of Evaluation of the Syndication and Financial Interest Rules

When the Commission revised its prime time access rules sixteen years ago Commissioner Glen Robinson dissented, observing that "The Commission's continued struggle with 'network dominance' has been an adventure fully worthy of Don Quixote * * * as often as not it has missed the giants and jousted with windmills." [1]

A generation later the Commission again sallies forth to do battle with the issue of network dominance, this time in the context of adopting a restrictive new set of financial interest and syndication rules. I write in dissent today because the majority sees giants where there are none, and tilts with windmills instead.

Purpose of the Rules

The Commission adopted the financial interest and syndication rules in 1970 to prevent television networks from extending their power in the program buying market into the program production market and thereby excluding independent producers from the latter market. The Commission's concern was that the networks were hindering competition in the program production market by exploiting their affiliate relationships, refusing to deal with independent producers unless they gave up financial interests and syndication rights in their programs to the networks, and favoring programs in which the networks held financial interests.[2]

The Commission found that increased network control over program production and an ensuing reduction in independently-supplied programs were contrary to the public interest in competition and program diversity.[3] The rules were intended to reduce the networks' bargaining leverage. This, it was hoped, would increase the number of independent producers in the network television program market, improve their bargaining positions with the networks and thereby enlarge the sources of network programs, and eliminate the ability of networks to bootstrap their affiliate relationships into an advantage in the syndication market.[4]

Almost as soon as they were adopted the rules came under fire.[5] One study of both the rules and the market conditions that prompted their adoption showed that there was no evidence of undue network power in the purchase of programs.[6] Another showed that the networks paid market value for the purchase of syndication rights, and made programming decisions without regard to whether they held a financial interest or not.[7] Yet another showed that because the program production market is easy to enter and has many actual and potential players, program production would respond to demand even without the rules.[8]

These studies led the Commission to conclude in 1977 that the rules needed a thorough reappraisal. In the course of that reappraisal the Commission established a special investigative staff of non-partisan legal, economic, and other experts called the Network Inquiry Special Staff. The Network Inquiry Special Staff worked for two years and prepared a comprehensive two-volume report that constitutes the most authoritative examination of the development and supply of network programs ever undertaken. In the course of this work the Special Staff conducted detailed studies of network behavior toward affiliates, advertisers and program supplies and examined the factors influencing the profitability of television stations.[9] It also specially examined the issue of "network dominance," interviewing numerous participants in the process and examining the contract files for a large number of network programs.[10]

Based on this information, which was released for public comment, the Report agreed with previous research, concluding that the rules were based on incorrect perceptions of the nature of the economic markets involved, were ineffective in accomplishing their stated goals, and should be eliminated. On the sensitive issue of the networks' exploitation of their market power to extract financial interests and syndication rights from program producers, the Network Inquiry Staff Report found that:

Such allegations should not be of concern to the Commission, for they raise only the question whether program suppliers have been sufficiently compensated for their work. The networks, even if exercising complete monopsony power, cannot pay less for a program than the value the suppliers' resources have in their best alternative use. Once it is understood that networks, no matter how powerful, cannot purchase programs at rates that are unprofitable for suppliers, contentions that contract terms harm suppliers can be seen for what they are—allegations that suppliers are not paid as much as they would prefer. Most importantly, the public interest—the interest of viewers in receiving numerous, diverse, quality programs from which to choose—is not implicated by such contentions.[11]

Based upon this Report the Commission instituted new rule making proceedings in 1982 to evaluate the Report's conclusions. After compiling a voluminous record of public comment, the Commission in 1983 found that

* * * The earlier criticisms of the rules, in terms of their impact on network/supplier relationships, were essentially correct * * * [W]e have found no credible evidence that the rules have fostered the development of first-run syndicated programming or have increased the diversity or competitiveness of the program supply market * * *. Finally, we do not believe that the Commission has a proper role to play in allocating revenues or profits between the networks and those who supply programming for network use * * *. As long as program supply markets remain competitive, and it is undisputed that they were competitive before the rules were adopted and remain competitive today, the possibility of rules of this type lifting profit levels among the program suppliers and packagers above the normal competitive level is remote.[12]

Thus, in adopting a comprehensive new set of financial interest and syndication rules that are in certain critical aspects even more restrictive than the old rules, the majority is steering into the teeth of a two-decade old gale that blows strongly the other way. However, even if the majority were to totally ignore these prior studies and the Commission's own prior findings, the record in this proceeding, standing alone and fairly evaluated, clearly undermines both the need for and efficacy of such rules. Despite the clarity of this record the majority, like Quixote, cannot believe that the giants it seeks to quell are illusory, and even the windmills it battles with are not what the majority thinks they are.

Promoting Diversity by Restricting Competition

The first question the majority must answer is a formidable one: How in theory to justify the severe restraints the new rules impose on three networks' [13] abilities to compete in the production, financing, and syndication of prime time programming? The majority resolves this issue by cloaking these competition-restricting rules in our "programming diversity mandate."

This approach is a fundamental misunderstanding of, and a radical departure from, the regulatory principles followed by this Commission for over twenty years. Time and again over the last decade, the Commission has furthered the aim of increased diversity in broadcast programming by allowing free competition in the broadcast marketplace.[14] Time and again the Commission has found that diversity in a competitive mass media environment is furthered by removing regulatory restraints, not by erecting new ones.[15] One need look no further back than last year when the Commission unanimously endorsed competition, not regulation, as the best way to achieve the pro-diversity aims of the Cable Act. We officially reported this finding to the Congress, stating unequivocally that, "this Commission steadfastly believes that robust competition will more efficiently provide * * * a greater diversity and choice than any web of rules and regulations designed to mimic competition or otherwise compensate for its absence." [16] As the Department of Justice observes in the record of this proceeding, "It is difficult to conceive why competitive markets will not deliver the same level of diversity that proponents of the [rules] seek to achieve through [their] retention * * * we find nothing in the record demonstrating that competitive markets will not perform this function." [17]

Nor is the Commission's longstanding effort to foster diversity by fostering competition aberrational. The furtherance of competition is an integral part of the Communications Act. The Supreme Court has held that, in adopting the Act, "Congress moved under the spur of a widespread fear that in the absence of governmental control the public interest might be subordinated to monopolistic domination in the broadcasting field." [18] The Court has also found that the Communications Act intends that the field of broadcasting be of free competition." [19] In fact, the appellate court upheld the 1970 fin/syn rules based on the proposition that, in furthering competition by enabling more sources to place shows on the networks' schedules, the rules would further diversity.[20]

The majority's evident impression is that our lack of primary jurisdiction to enforce the antitrust laws permits us to give scant weight to the effects of our rulings on competition. But that is not so. "This Commission, although not charged with the duty of enforcing [the Sherman Act] should administer its regulatory powers with respect to broadcasting in light of the purposes which the Sherman Act was designed to achieve." [21]

It is important to reemphasize that this approach in no way denigrates the notion that program diversity is an appropriate and impelling focus of Commission regulatory policy. It simply points out that in pursuing diversity by restricting competition, the majority forgets that competition and diversity are complementary regulatory goals, and stands the purpose of the Act, as well as its own recent precedent, on its head.

Deregulating by Regulating

Notwithstanding this abrupt departure from the longstanding pro-competitive policies of the Commission, the majority attempts to wrap its competition-restricting new rules in the flag of deregulation. Whatever else can—or cannot—be said for these rules, they are not deregulatory. It is not deregulatory to impose limits on the networks' in-house production of prime time programming, especially where neither the old fin/syn rules nor the Justice Department consent decrees do so. It is not deregulatory to sit the Commission down at the negotiating table when the networks buy rights to prime time programming, and to prescribe how the negotiations may and may not be initiated and conducted. It is not deregulatory to concoct a bargaining process that virtually assures that the networks cannot get the rights that they are ostensibly permitted to bargain for. And it is not deregulatory to bar the networks from syndicating either off-network programming licensed from outside producers or first-run programming, particularly when foreign-owned, multinational Hollywood studio corporations are free to do so.

Compared to these severe restrictions on the networks' business activities, the supposed liberalizations these rules extend are minimal at best and illusory at worst. Once again, this constitutes a stunning about-face from the efforts of past Commissions, under both Republican and Democrat leadership, to remove outdated rules and to avoid imposing further unnecessary regulations.

Network Dominance

In the Tentative Decision the Commission limned the balancing of interests pertinent in reevaluating these rules: "* * * [R]egulations adopted or continued [should] not impose undue costs or unreasonably interfere with the efficient conduct of business, and, at the same time, that private restraints on competition not interfere with the competitive spur that keeps business efficient and costs reasonable. In general, this suggests that the Commission should not intervene in the market except where there is evidence of a market failure and a regulatory solution * * *, does not impose greater costs that the evil it is intended to remedy." [22]

The extensive record in this proceeding fails to demonstrate a market failure warranting the imposition of the singularly intrusive scheme of rules that the majority has adopted.

Reduced to its essentials, what is at issue in this proceeding is the question of whether the networks have the ability to exert undue leverage over program producers in return for access to the prime time schedule in such a way that program diversity suffers as a result. The point at which the networks would exercise this leverage, if at all, would be when they negotiate the terms of their purchase of prime time programming. Therefore the critical question that must be resolved is whether the networks exercise the degree of market power in buying prime time programming that would be necessary to exert undue leverage.

The video marketplace of 1991 bears not even a superficial resemblance to the video marketplace that existed in 1970 when the rules were originally adopted. Even today's majority concedes this point. The number of television stations has grown by more than 500 since 1970, and television advertising revenues have increased from $3.6 billion to $26.9 billion. In 1970 there were only 65 independent stations; now there are 329. This expansion in the number of independent stations has provided a nucleus for a fourth television network, the Fox Network. Cable television, a negligible presence in 1970, has since become the means whereby the majority of American households view television. Cable now serves 59 percent of the national television audience, and is available to about 90 percent of it. As a result, the average American viewer can now access 30 channels of television, as opposed to 7 in 1970. Not surprisingly, yearly cable subscriber revenues have grown from $300 million in 1970 to $16.2 billion today, and cable advertising revenues total $2.5 billion per year. It is estimated that cable revenues from local advertising and pay-per-view services will grow from 15 to 50 percent each year. The number of national cable program services has grown from zero in 1970 to 90 today. Today there are 3 million home satellite dish users and over 70 percent of American homes have VCR's; neither dishes nor VCRs were in use in 1970.[23]

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[1] Second Report and Order in Docket No. 19622, dissenting statement of Commissioner Glen O. Robinson, 50 FCC 2d 829, 889 (1975).

[2] Report and Order in Docket No. 12782, 23 FCC 2d 385, 387–97 (1970).

[3] Id. at 394–5.

[4] *Id.* at 316–332.

[5] See Tentative Decision and Request for Further Comments in BC Docket No. 82–345, 94 FCC 2d 1019, 1092–93 (1983) (hereinafter, 1983 Tentative Decision).

[6] Crandall, R.W., "FCC Regulation, Monopsony, and Network Television Program Costs," 3 Bell Journal of Economics, 483–508 (1972).

[7] Crandall, R.W., "The Economic Effect of Television Network Program 'Ownership,'" 14 Journal of Law and Economics 385–432 (1971).

[8] B.M. Owen, J.H. Beebe, and W.G. Manning, Jr., Television Economics [D.C. Heath and Company, Lexington, Mass. 1974), 28–81. See also Schwartz, "FCC Regulation of the Network Television Program Procurement Process: An Attempt to Regulate the Laws of Economics," 73 Northwestern U.S.L.R. 227 (1978); Noll, Peck and McGowan, Economic Aspects of Television Regulation (Brookings Institution, Washington, DC, 1973).

[9] Network Inquiry Special Staff Final Report: New Television Networks: Entry, Jurisdiction, Ownership and Regulation, October 1980, Vol. 1, p.3 (hereinafter, Network Inquiry Staff Report).

[10] Joint Comments of Capital Cities/ABC, Inc., CBS Inc. and National Broadcasting Company, Inc. at 35–38, (hereinafter Joint Network Comments).

[11] Network Inquiry Staff Report, Vol. II, p. 793.

[12] *Id.* at 1095. The 1983 Tentative Decision was never finally adopted by the Commission. Nevertheless, it and the Network Inquiry Staff Report, as well as the earlier studies of the rules, are all referenced and discussed extensively in the record of this proceeding. See, *e.g.*, Joint Network Comments at 35–61; Robert W. Crandall, "The Economic Case Against the FCC's Television Network Financial Interest and Syndication Rules," prepared for submission with Joint Network Comments; and Lawrence W. Summers, "The Economic Consequences of the Financial Interest and Syndication Rules Governing the Television Networks," prepared for submission on behalf of NBC with Joint Network Comments.

[13] Throughout this statement reference to "networks" means, unless otherwise indicated, ABC, CBS, and NBC, since these are the only three networks to which the Commission has decided its

Continued

rules should apply. Although ABC, CBS, and NBC will bear the immediate brunt of these rules, the Fox Network and any other new national broadcast networks that might develop will be constrained to broadcast fewer than 15 hours per week of prime-time programming to avoid the rules' effects.

[14] Subscription Television Service, 80 FCC 2d 341 (1982); Direct Broadcast Satellite Service, 90 FCC 2d 676 (1982); Low Power Television Service, 51 RR 2d 476 (1982); FM "Drop-Ins", 94 FCC 2d 152 (1983); Multichannel Multipoint Distribution Service, 54 RR2d 107 (1983).

[15] Radio Deregulation, 84 FCC 2d 968 (1979); TV Deregulation, 98 FCC 2d 1076 (1984); Fairness Doctrine Report, 102 FCC 2d 143 (1985).

[16] Report in MM Docket No. 89–600, 5 FCC Rcd 4962, 4966 (1990).

[17] Department of Justice Further Comments at 4.

[18] *FCC* v. *Pottsville Broadcasting Co.*, 309 U.S. 134, 137 (1940).

[19] *FCC* v. *Sanders Bros. Radio Station*, 309 U.S. 470 (1940).

[20] *Mt. Mansfield Television, Inc.* v. *FCC*, 442 F. 2d 470, 480–486 (2d Cir. 1971).

[21] *NBC* v. *U.S.*, 319 U.S. 239 (1943).

[22] 1983 Tentative Decision at 1055.

[23] See, *e.g.*, Joint Network Comments at 73–108; NBC Television Affiliates, Comments at 6; ABC Television Affiliates, Comments at 7; National Economic Research Associates Study, submitted on behalf of Fox Broadcasting, at 10 (hereinafter, Fox/NERA); Action for Children' Television *et al.*, Comments at 2; NBC Supplemental Comments at 5–6, and see Variety, May 13, 1991 at 45.

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Notwithstanding these transformational changes in the video market, the majority finds them insufficient to address its concerns over the networks' ability to unfairly bargain for programming. Why? because of the networks' supposedly "unique" hold over the nationwide television audience and thus those who seek to reach it.

The majority marshals a seemingly impressive array of factoids to buttress this proposition. There is, for example, the fact that the networks alone reach virtually all US households. There is also the fact that the networks' share of prime time viewing exceeds all cable viewing and all independent station viewing. Then, of course, there is the fact that the networks still garner about 80 percent of all national advertising revenues, and their rates are higher than those received by cable and independent stations. And finally, there is the fact that each network continues to spend twice what all the cable networks combined spend on entertainment programming. Put these facts together and, in the majority's eyes anyway, they spell undue power in purchasing programming.

I would not, for one moment, expend inordinate effort to dispute any of those facts.[24] Even if each were true, they would still be the totally irrelevant to the issue of undue network power in program purchasing.

There is no mystery to correctly analyzing whether the networks possess undue power in buying prime time programming. A number of the commenters have done it and have come to the conclusion that the idea that the networks can exercise anything approaching undue market power is totally wrong.[25]

In determining whether a network possesses undue market power in purchasing programs, three conditions must be met. The first is that a network must be able to affect the market price of programming by altering the amount of programming it alone purchases. In other words, a network would have to be able to unilaterally reduce market demand for a program to such an extent that the market price would be reduced. Obviously, the smaller the share of total demand accounted for by one network, the less likely it is that the demand for, and price of, a given program would fall, because the smaller the network's share the more likely it becomes that other competitors will come forward to buy.

The second condition that must be met for the networks to exercise undue power in program purchasing is that it must cost more to produce each program as the number of programs produced increases. If, however, program supply can be expanded over a constant unit cost to cover all demand, purchase decisions will not affect the price, and if its purchase decisions do not affect price, a network cannot exercise undue power in buying programs.

Clearly related to the first condition, the third and final condition that must be satisfied is that a network would have to either foreclose, or be effectively insulated from, additional competition. If competitors can thwart a network's market power by increasing the demand for programming, the network cannot possibly exercise undue power in purchasing it.

All of these conditions must be met to show the existence of undue power in program purchasing. If even one is not, a network cannot exercise undue power in buying programming, and the majority's fears on that score evaporate.

Given the stringency of this test, it should come as no surprise that this degree of buying power exists only rarely in the real world, the classic examples being the turn-of-the-century "company town" and professional baseball prior to the striking down of the "reserve" clause.[26]

Do these conditions exist in the networks' purchase of television programming? The record in this proceeding shows beyond any reasonable doubt that they do not.

First of all, there is no conceivable way in today's television marketplace that one network acting alone could so affect the market demand for programming that the price paid would also be affected. The myriad of other potential program buyers constrain each network's buying power. The first source of constraints each network faces comes from the other networks. Although the majority tends to lump the three networks together into one monolithic entity, the record in this proceeding leaves no doubt that the networks compete furiously with one another for audiences and advertising revenues, and that programming is the linchpin of that competition.[27]

Specific evidence of this competition among the networks for programming abounds in the record. For example, "The Cosby Show" was originally pitched to ABC, then sold to NBC; "Wiseguy" was developed at NBC, then sold to CBS; "The Bionic Woman" and "Taxi" both switched from ABC to NBC; and "The Hogan Family" switched from NBC to CBS.[28]

The ferocity of this inter-network competition for programming also shows in the many forms of specialized arrangements the networks enter into just to keep desired talent "on line." Increasingly it has become the practice to enter into license agreements even before a single script for a show is written. ABC reports that it acquired 30 to 40 percent of the pilots it considered in the spring of 1990 pursuant to the prescript licensing process, and of seven shows CBS ordered as mid-season replacements last year, four involved such an arrangement. In addition to these "prescript" license agreements, the networks have increasingly entered into "blind" series commitments, in which the network pays a penalty if it fails to order a set number of series from a program producer. This arrangement, like the "prescript" license deal, is made before any script, much less a pilot program, is seen by the network. Of fifteen new prime time series ordered by CBS from outside producers for the current program season, four were prescript license agreements, four were blind commitments, and two were developed by another network. In addition, some shows like "The Wonder Years" and "The Carol Burnett Show" are offered on a "free ball" basis, whereby a show is offered simultaneously to three different networks.[29]

The competition for programming is also evident at renewal time, and here again the record is full of examples. To renew "Murder She Wrote", CBS had to agree to fewer appearances by its star, Angela Lansbury, as well as to commitments to "blind" buy further projects produced by her company and by Universal Television.[30] The producers of "Cheers" recently demanded $120 million from NBC to renew the show to prevent it from being offered to other competitors. And even short of renewal, the copyright holder of "Murphy Brown" successfully renegotiated the program's license fee after only one year on the network as the price of retaining its producers.[31]

The competition for good programming is also evident in the prices commanded by program talent. The producer of "Family Ties," who stands to be paid between $70 and $100 million, observed of the amounts of money being paid to lure program talent that, "It's kind of shocking. It's a frightening thing." The producer of "Hill Street Blues" and "L.A. Law" has made a long-term commitment to ABC which will give him $50 million in cash up front—and if he produces a successful show, "hundreds of millions more." [32] With these dizzying amounts of money being bestowed on program production talent, Mel Blumenthal of MTM may perhaps be forgiven for indulging in the understatement of the century when he observed eight years ago that "There is tremendous and intense competition for our programming." [33]

Nor is it only the producers of hit series who benefit from this competition. The record shows that a producer whose only previous credits were two failed series recently announced the signing of a $12 million program development deal. The creator of the failed "Amazing Teddy Z" is being paid $1 million a year. Small wonder that Forbes magazine has observed that "The networks and studios * * * seem to have decided that the only way to develop the programs that will keep viewers from defecting to cable, home video, or * * * Fox * * * is to throw money at nearly every writer or producer with even the hint of a successful record." [34]

The existence of this competition is in no way undercut, as the majority alleges, by network "common practices" in negotiating program rights that "raise concerns about a producer's ability to find real alternatives to one network when he is dissatisfied with that network's program licensing terms." First of all, even assuming it exists, mere parallelism, without additional evidence of collusion, tells nothing. In a perfectly-functioning market all prices are the same, and certainly no one would suggest that situation would bespeak collusion. Nor does the record in this case. To select one of the majority's examples by way of illustration, the one-year "freeze" on scripts developed by independent producers, such a freeze may well be a legitimate means of protecting one's investment in helping to develop a script, rather than the anticompetitive action the majority implies it could be. Indeed, the studios themselves apparently impose a two-and-a-half to four-year freeze on television development material prepared by independent producers. The "Basic Agreement" required by the Writers' Guild of America grants studios commissioning movie scripts the exclusive right to develop the script for up to five years.[35] Moreover, the record shows that, in any event, the networks do not "uniformly" freeze program materials acquired from outside sources. A script freeze is imposed in only one of the numerous deal-making procedures used by the networks to acquire programming. It is not used in the prescript, blind commitment, or "free ball" variations on the "typical" deal-making process, variations that are being used with increasing frequency.

Moreover, even when a script freeze clause is included in a program contract, the networks appear to enforce that clause in different ways. Thus, NBC states that not one of the more than one hundred scripts it commissioned in 1989 was frozen pursuant to a script freeze clause.[36] CBS states that, in recent years, it has released about one-third of commissioned scripts within three months of delivery and three-quarters of the scripts within six months.[37] ABC states generally that a freeze applies only to the handful of scripts which it decides to pay for and go forward with each season.[38] This evidence also shows that, in any event, scripts are rarely frozen for the full one-year period.

But the majority's feint at alleging network collusion need not be further refuted in the face of the sheer weight of record evidence that points the other way. And the intensity of this competition between the networks is not surprising given the importance of popular prime time programming to a network's bottom line. Over the course of a full season, a single prime time ratings point can be worth $100 million in advertising revenues. With the stakes that high, it is not surprising that the networks must have a ready supply of quality programming to insert into their schedules. Moreover, ratings are volatile, changing week to week and even day to day. The networks not only need new shows at the beginning of each season, but also backup shows to use as mid-season replacements. Against this competitive backdrop, one-third of a network's prime time programming may need to be replaced.[39]

In addition to competing among themselves, the networks compete against a large number of rivals in the market for video programming and their relative share of total demand has shrunk drastically. In 1970 the networks collectively accounted for 74 percent of all program purchases; by 1989 they accounted collectively for only 21 percent.[40]

Thus, the simple fact is that today the majority of video program purchases is accounted for by sources other than the networks, including syndicators, cable networks and the Fox Network. Cable television in particular, with its 90 national program services, continues to increase its expenditures on programming. This increase in available channels for programming has forever diluted whatever ability the networks may ever have had to leverage programming prices.[41]

The hallmarks of this dilution are plain to see. In May 1990 the networks' prime time audience share was 57 percent, compared to over 90 percent when the rules were adopted in 1970. And with its 57 share in May 1990, NBC was the highest-rated network, notwithstanding the fact that the May 1990 "sweeps" was its lowest May sweeps ever—even lower than when it was in last place ten years ago. Nor is it expected that this trend can, or will, be reversed. Cable executives quoted in the record predict that the networks' market share will sink below 50 percent in the next decade.[42]

So much for the proposition that a network could singlehandedly affect the price paid for programming through its purchasing decisions. Technically, it is not even necessary to discuss the remaining two tests for undue market power because all three tests must be satisfied to show it exists. However, the remaining two tests should be examined, if only to show how badly the networks fail them as well.

The second condition that must be satisfied to find that a network has undue market power in buying programs is that the cost of producing each program must increase as the number of programs produced increases. This situation patently does not exist in the

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[24] The "fact" of the networks' supposed 80 percent share of national advertising revenues does warrant some discussion, however, because it is wildly incorrect. To support its assertion that the three networks control the "vast majority of national advertising revenues (roughly 80 percent)," the majority cites the Department of Commerce's August 1, 1990 Reply Comments, implying the data used are official government statistics. In fact, the NTIA (for the Department of Commerce) Reply Comments attribute the statistic to the Media Access Project's June 14, 1990 Comments. The Media Access Project, in turn, derived the 80 percent either from a misunderstanding or miscalculation of data presented in a June 19, 1989 article in Broadcasting magazine that was an incomplete report of a study produced by Veronis, Suhler & Associates based upon 1988 data. A Veronis Suhler analysis, however, indicates that the three network share of national television advertising in 1988 was 50.5 percent, dropping to 48.5 percent in 1989 (Veronis, Suhler & Associates, Fourth Annual Communications Industry Forecast, July 1990). The Department of Commerce's official statistics for 1988 agree with Veronis Suhler, indicating that the three networks had only a 50.5 percent share of national television advertising in 1988 (U.S. Department of Commerce, Bureau of Census, Statistical Abstracts of the United States, 1990, at Table No. 934). The network share further fell to less than 47 percent in 1990 according to McCann-Erickson ("Inside Report", December 1990), which also is the source for the Census Bureau's data.

[25] This test of undue power in program purchasing, although not even referenced, much less discussed, in the majority's opinion, is commented on extensively in the record. *See, e.g.*, Fox/NERA at 3–9; Summers, "Economic Consequences of the FISR Governing the Television Networks", at NBC, 7–11; United States Department of Justice Comments at 20–29; see also Further Comments of the United States Department of Justice at 3; Comment of the Staff of the Bureau of Economics of the Federal Trade Commission at 18; Further Comment of the Staff of the Bureau of Economics of the Federal Trade Commission at 2. Indeed, this same analysis was followed by both the Network Inquiry Special Staff in its 1980 Report, *id.* at Vol. II, p. 193, and the Commission in its 1983 Tentative Decision, 94 FCC 2d at 1063.

The majority apparently attempts to sidestep the need to refute this analysis by stating that it is "based primarily on antitrust principles and does not take into consideration the very real practical difficulties that a producer developing a program for one network faces when attempting to sell his program to another video distributor." Saying that the Department of Justice's analysis is based on antitrust principles hardly discredits it, as the majority seems to be suggesting. If the networks fail the test for monopsony power they cannot—absent massive marketplace irrationality on the part of all the affected parties—exercise the leverage in buying programs that these rules seek to limit. And if program producers are facing "very real practical difficulties" in selling a program to a different buyer than the one it was originally "pitched" to, the record evidence, discussed below, shows that even if this problem is "very real" it is hardly limiting the prices paid for programming talent or the migration of program purchasing away from the networks. See ABC Further Reply Comments at 7–8.

[26] CBS, Inc. Comments at 7–18.

[27] The entrance by the networks into consent decrees with the Department of Justice does not mean the networks did not, and do not, compete vigorously with each other for programming and revenues, and the Department of Justice never contended that such collusion, express or tacit, ever existed. *U.S.* v. *CBS, Inc.*, 459 F. Supp. 832, 836 (C.D. Cal. 1978), cited in the record at, *inter alia*, NBC Supplemental Comments at 14.

[28] See ABC Reply Comments at 41; CBS Reply Comments at 15.

[29] CBS Reply Comments at 4–8, 14.

[30] CBS Comments at 1,2.

[31] Jeffrey Sagansky, President, CBS Entertainment Division, 1990 *En Banc* hearing transcript, 125.

[32] CBS Comments at 21–22.

[33] Mel Blumenthal, 1983 *En Banc* hearing transcript, 125.

[34] *Forbes* magazine, November 12, 1990, cited in the record, NBC Further Comments at 12.

[35] NBC Reply Comments at 43; ABC Reply Comments at 40 n. 116.

[36] NBC Reply Comments at 44.

[37] CBS Reply Comments at 15.

[38] ABC Reply Comments at 45–46.

[39] Comments of CBS, Inc. at 7–18. The networks just concluded the closest ratings race in fifteen years, with four-tenth of a ratings point separating the first and last-place networks and only two-tenths of a ratings point separating the first and second-place winners. "NBC Wins by a Feather in Prime Time," *Broadcasting*, April 22, p. 39.

[40] *Id.* at 12; NBC Supplemental Comments at 13. At the same time Columbia, Time-Warner, Universal and Paramount account for almost 36 percent of all programming purchased, and first-run syndication alone accounts for 9 percent. CBS Comments at 12.

[41] The National Economic Research Associates estimates that, in a ten-station market, the networks broadcast an average of 296.5 hours per week out of a total 1400 broadcast hours a week and over 2100 cablecast hours a week. Fox/NERA at 8. NBC estimates that in 1989 the networks and their affiliates accounted for an average of only 36 percent of all TV viewing 6 a.m.—1 a.m., and 29 percent of viewing over the entire day. NBC Supplemental Comments at 8. In light of this unmistakable ascendancy of competing outlets it is easy to appreciate the enthusiasm of Gary Lieberthal, the Chairman of Columbia Pictures TV, in declaring that, "When I got into the business, there were five channels to watch. Now there are ninety. It's going to be software." LA Times, October 14, 1990, cited in NBC Further Comments at 11.

[42] NBC Supplemental Comments at 10.

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program production industry. The Network Inquiry Staff Report showed definitively that the program supply industry is competitive and responsive to small changes in price.[43] The costs of program production only increase when the elements that go into producing a program are in short supply. None of the elements used in the production of video programming—actors, directors, writers, scripts, production equipment, etc.—are.[44] Because talent is equally usable for series, feature films, live performances, special programs, cable programs, first-run syndication, mini-series or made-for-TV movies, for a network to have undue power over the price of prime time series its purchases would have to represent a large share of the entire creative market. The statistics show that simply is not the case.[45]

Furthermore, the record is replete with evidence demonstrating that production talent is ready, willing and able to migrate away from the networks. As early as 1983, the cable networks began to bid, albeit unsuccessfully, against the networks for series like "Taxi" and "Hill Street Blues", and HBO and Showtime even then were purchasing series at per-episode prices comparable to the networks.[46] The migration of talent between broadcast network television and its non-broadcast competitors has accelerated markedly since then. Focusing on just one network, for example, in the last five years 46 percent of all the lead actors on CBS' 1989–1990 prime time series have crossed over to cable. The directors of CBS prime time entertainment series have demonstrated similar mobility: the director of "Designing Women" has worked on cable's "It's Gary Shandling's Show," the director of "Sydney" also worked as executive director for USA's "Sorry Wrong Number," and the director of CBS' "Snoops" is directing "Zorro" for The Family Channel. This underlines the credibility of the programming chief of cable's USA Network, who says, "I'm anxious that producers of note can come to us and realize that our level of funding is the same as the networks' and our dollars are spent the same way." Similarly, 70 percent of the actors and 45 percent of the producers and directors in CBS' 1989–90 prime time entertainment series have worked in the theatrical films within the last 5 years, and 40 percent have credits in first-run syndication.[47]

This point is an important one. Even if a network had undue power in buying programming, it could not compel a seller to offer a program below cost, because the seller would simply shop that program somewhere else, or not supply it at all. The most a network with undue power would be able to do is restrict the number or quality of programs purchased, thus driving down the price. If the price doesn't fall, however, when the number of programs purchased declines, this suggests that undue power was not exercised.[48]

Which leads to the question: Are the prices the networks pay for programming declining? The record leaves no doubt whatsoever on this score. The acute competition for production talent has caused the price of programming to soar, not decline. Only a few of the numerous examples on the record will suffice to prove this point. Between 1984 and 1990, the fees for top executive producers have increased from $35 thousand to $75 thousand per 30-minute prime time episode. The three co-creators and executive producers of "Cheers" make $35 million apiece. The producer of "Family Ties" will make more than $70 million, perhaps as much as $100 million, and, as noted previously, the producer of "Hill Street Blues" and "LA Law" has made a long-term commitment with ABC which gave him $50 million in cash even without his having produced a single hit show. The creator of "Taxi" and "The Simpsons" is guaranteed $65 million for his next three series. The creator of "The Wonder Years" will get $15 million over a three year period. "Roseanne" 's principal writer gets $10 million over five years. The creators of "Married * * * with Children" have signed a three year, $32 million deal. CBS has an outstanding three-series commitment to producer Norman Lear, under which the network will pay a seven-figure penalty for any of the projects the network elects not to take. And on, and on, and on.[49]

Another indication of the lack of undue power is the network's inability to control the difference between their programming costs and their advertising revenues so that the latter increase faster than the former. Since 1984 a steadily-widening gap has grown between non-sports entertainment programming costs, which have risen by 16 percent, and total revenues, which have fallen by 12 percent.

The last criterion for the existence of undue power is that there be barriers to entry for those wishing to compete with the networks. As recently as last July the majority recognized the relevance of this criterion to assessing market power when, in the Cable Report, it found that large, vertically-integrated MSO's lacked undue market power because they lacked "the unilateral ability to prevent the launch of new programming services." So do the networks. The emergence of the Fox Network as well as the plethora of cable networks has shown that such barriers to entry simply do not exist, and their competition for programming is sharp. The Fox Network's competition for the Lorimar-produced "Dallas," "Falcon Crest" and "Knots Landing" effectively forced CBS to renew all three shows as a package deal when it had hoped to renew only two.[50] And cable networks already outbid the networks for theatrical movies, buy more made-for-TV movies at higher prices than the networks, and are buying an increasing number of entertainment series.[51] Cable services televised more than 90 made-for-cable movies in 1990, nearly as many as the 104 original films that aired on the networks during the 1989–1990 season. Original movies on TNT are typically budgeted between $3 and $4 million, and HBO budgets between $5 and $8 million for an original movie. A recent HBO movie, "The Josephine Baker Story", broke the record budget for made-for-TV movies, costing $9 million. The networks only budget an average $2.5 million for a typical network made-for-television movies.[52] New cable services like In Court, American Trial Network, and The Cowboy Channel augur the continuation of this trend. Indeed, one independent producer recently enthused that

> Huge cable conglomerates, no longer satisfied with fifth-cycle movies and off-network fare, are already entering the television marketplace as important buyers of first-run product, including series * * * Whether we sell [our] services to a great number of companies, to a mix of conglomerate and independent companies, directly to cable or to first-run syndication, the demand for product will exist and those of us with creative ability will supply it.[53]

The idea that there are technical barriers that prevent the expansion of video distribution capabilities is simply insupportable.

To repeat, no one of the three conditions necessary for the networks to exercise undue leverage in the purchase of network programming can be shown to exist on the basis of the record in this proceeding. Nevertheless, it would be unfair to leave this subject without some discussion of the specific points raised by the majority in

[43] Network Inquiry Special Staff Report, Vol. II at 726.

[44] Fox/NERA at 9.

[45] NBC Supplemental Comments at 22.

[46] Fox/NERA at 10.

[47] CBS Comments at 11–12.

[48] Crandall, Robert W., "The Economic Case Against the FCC's TV Network Financial Interest and Syndication Rules", at 9.

[49] *Id.* at 21; NBC Further Comments at 12; CBS Reply Comments at 4–8.

[50] *Id.* at 11.

[51] Contrary to the majority's observation that typical original cable-entertainment series are either topical or game shows, the record discloses that as of last June there were fifteen cable exclusive entertainment series and two more that are now in syndication to broadcast stations. These run the gamut from comedies like "It's Gary Shandling's Show" and "First and Ten" to "Vietnam War Story." Overall during the 1990–1991 television season about the same number of original entertainment series were telecast by non-network sources as by the networks, and this trend will continue. The Family Channel alone recently doubled its series budget to $100 million with seven new series. NBC Reply Comments at 9; Joint Network Comments, Vol. I at 81, 86. See also the statement of Gerry Hogan, President of TNT and TBS. "Made-for-cable pic deals adapt to product glut," *Variety*, June 13, 1990: "We also steer clear of topical themes * * * Instead, we're gravitating toward historical themes, biographical pictures, storylines with exotic settings."

[52] Electronic Media, November 12, 1990, Wall Street Journal, B1, December 17, 1990.

[53] Alan Horn, The Caucus Quarterly, April 1990, at 9–10, cited in the record in NBC Supplemental Comments, 16. This echoes the view of Nick Nicholas, Chairman and CEO of Time-Warner, who recently stated that "The largest potential growth, if you're a television producer, is in cable. Warner Bros. and Lorimar will be producing more and more for cable." Electronic Media, June 4, 1990, cited in the record by NBC, Further Comments at 11.

support of their belief that such power does indeed exist by virtue of the networks' being supposedly "unique outlets of choice." With regard to the argument that undue power may be supposed from the fact that the networks reach 98 percent of all television households and retain a preponderance of the prime time viewing audience, the above analysis makes clear that audience delivery power and nationwide coverage are not, and cannot be, the critical measures of program purchasing power. Cable television services bid for talent on the basis of subscriber revenues as well as advertising revenue.[54] As noted previously, cable revenues from subscribers and advertising amounted to $16.7 billion dollars in 1989, and are expected to grow rapidly.[55] Contrast this with the networks' situation. Not only has their collective audience share declined to below 60 percent, their dominance of the advertising market has also declined sharply. In 1970 the networks received 48 percent of all television advertising dollars; today they receive about 35 percent. In 1989 alone, the networks' share of advertising revenues, adjusted for inflation, declined over 5 percent.[56] Moreover, because the networks' competitors—basic cable, pay cable, pay-per-view, and videocassettes—are able to obtain greater revenue per viewer than the networks, the networks have lost, and will continue to lose, an even greater share of the total revenue potential from the video marketplace.[57] Thus, in comparing the networks to cable in terms of audience reach, audience share and advertising revenues, the Commission sets up a classic "apples to oranges" comparison readily evident on reading the record.

Nor is it pertinent that the entertainment program expenditures of each network exceeds those of all cable networks or all first-run syndicators. This could only be a badge of undue power if program producers had nowhere else to go to sell their product. But they do—in fact, they have so many options that, as noted previously, in 1989 the networks accounted for only about 21 percent of all the expenditures on entertainment programs.

Finally, if neither sound economic analysis nor the facts appearing on the record will support the majority's theories on network dominance, neither will the law. The three networks have a collective audience share of appoximately 60 percent, which means that the share of each network hovers around 20 percent. The courts have clearly held that an entity's holding of even one-third of the relevant market is, as a matter of law, insufficient to support a claim of monopolization of the market.[58] Nor can the market shares of the individual networks be aggregated for the purposes of determining market power absent evidence of collusion.[59] There is no evidence whatsoever of collusion on this record—indeed, the evidence of record points clearly and unmistakably in precisely the opposite direction. Thus, even if audience share were somehow an appropriate measure of undue power in the program buying market—which it is not—the networks' audience shares demonstrably negate the existence of such power.

So in sum, the majority is right about its facts; it is simply wrong about their relevance to the issue of network dominance in the program buying process. Unique as the networks may be in some ways, this uniqueness is not synonymous with dominance in the purchase of television programming.

Diversity Through Regulation

The majority premises its adoption of these new rules on the proposition that they will bring about diversity. Unfortunately, however, the record shows that the rules' restriction on the networks' ability to finance program production has had the effect of reducing, and not promoting, diversity in a wide range of voices. To sample a few of these statistics: In 1970, eight firms, primarily the major Hollywood studios, accounted for less than 50 percent of prime time entertainment series offerings; by the 1989 program season, they accounted for over 70 percent.[60] The number of prime time program suppliers has decreased substantially from 55 in the 1969–70 season to 33 in the 1988–89 season. Four firms, primarily the major studios, accounted for 46 percent of the prime time entertainment series in 1988–89, up from 35 percent in 1969–70. Eight firms, primarily major studios, accounted for 65 percent of the prime time entertainment series in 1988–1989, compared to 49 percent in 1969–70.[61]

Nor have the rules achieved the intended effect of swelling the ranks of the independent producers. In 1970, 22 of the 25 suppliers of non-in-house produced programming to CBS were independent. Of this total, six have merged with major studios or syndicators and fourteen are inactive; only two remain both independent and active. I would presume that this is the very sort of assimilation the majority seeks to prevent the networks from perpetrating by imposing limits on in-house production. Why does the majority not pause for thought when the major Hollywood studios are the ones doing the assimilating?[62]

The reason for this reduction in the ranks of the independent producers is not hard to see. In the face of deficit financing and with the networks barred as a funding source, independent producers have had only one realistic industry alternative to turn to for financing—the major Hollywood studios. Moreover, this phenomenon has had a multiplier effect—as the major studios have gained market share they have also inexorably bid up the price of creative talent to the point that the ability of the remaining independent producers to compete for it has correspondingly shrunken. As NBC programming executive John Agoglia observed, "As stars get more expensive and directors get more expensive and as producers get more expensive, you have to be able to pay the up-front costs of bringing those kinds of individuals into your production entity. And that becomes very difficult for an independent producer. That is what makes it increasingly necessary for an independent producer to have some kind of financial backing * * * [T]he price of the studio financial backing [] is to come into the studio system."[63]

In surveying the effect of the rules in 1983, the Commission stated that, "to the extent the rules, by excluding efficient sources of financing from the market, create barriers to market entry or create pressures for smaller producers to join with larger firms, the rules are operating in a manner contrary to their stated purpose and serve no valid public purpose."[64] That is precisely what the record

[54] See, *e.g.*, ABC Further Comments at 5, n.9.

[55] It is, moreover, inapposite to conclude that the small audience shares attained by cable programming restrain cable's program purchasing abilities, because cable programming is designed for multiple repeat showings and it is this cumulative audience that is sold to advertisers. Thus, for example, cable networks may schedule as many as 18 repeat showings of single program. Even with these repeat showings cable network audiences have risen dramatically over the last decade, from 5.3 percent in 1980 to 26.6 percent in 1989.

[56] NBC Supplemental Comments at 10–12.

[57] Crandall, "The Economic Case Against the FCC's TV Financial Interest and Syndication Rules," at 24.

[58] *Levitch* v. *Columbia Broadcasting System*, 495 F. Supp. 649, 665, 668 (S.D.N.Y. 1989) *aff'd* 697 F.2d 495 (2d Cir. 1983), cited in the record, NBC Supplemental Comments at 25–6.

[59] *H.L. Hayden Co.* v. *Siemens Medical Systems, Inc.*, 879 F.2d 1005, 1018 (2d Cir. 1989), cited in the record, *id.* at 27.

[60] Joint Network Comments, Appendix E; NBC Supplemental Comments, at 16.

[61] Joint Network Comments, *id.* NBC submits that it received prime time programming from three independent producers in 1980, down from 9 in 1979; CBS states that it purchased programming from only 9 independent producers in 1981–82, down from 22 independent producers in 1970. According to CBS, MPAA members supplied 20 percent of CBS' prime entertainment programming in 1969–70, but supplied 58 percent of CBS's programming in 1988–89. *See also* Fox/NERA at 9.

[62] The program producers attempted to show on the record that the number of prime time program suppliers has actually increased since 1970. The disparity between their statistics and the networks' appears to be due to different methods for counting independent producers. The Joint Networks counted as the producer of an outside project only the leading producer that was their primary contact regarding the project. The Coalition, on the other hand, appears to have counted any independent producer that may have participated in a project, even if the independent played a subsidiary role to a major studio that controlled financing of the production. Independent producers supervised by major studios that hold financial control over the project can hardly be deemed to be "independent." In fact, the majority would seem to recognize this in setting out as an essential element of a network "in-house" production that the network retain total control of financing. The same logic must surely render projects totally financed by the Hollywood studios "in-house" Hollywood studio productions.

[63] Letter from John J. Agoglia to Paul Junger-Witt and Tony Thomas, January 11, 1991, copies of which were sent to each Commissioner. It should also be noted that the mere fact that network television programming is produced at a deficit is not an indication of undue network power in buying it. Production deficits are common in the supply of programs to cable networks, movies, distributors, series to networks, and also in other businesses involving creative work that has potential value in multiple uses. ABC Further Comments at 8.

[64] 1983 Tentative Decision at 1094.

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shows them to be doing, yet the majority fails to draw the unavoidable conclusion.

Active Syndication

Although liberalizing the rules in some limited respects, the majority continues to bar the networks from engaging in the syndication of prime time network shows not produced in-house, and first-run syndicated programming.[66]

The majority believes these restrictions are necessary because program suppliers and distributors require structural protection to help insure a diverse and competitive supply of programming to local television stations. In this regard, the majority states that the current prohibition on domestic syndication has contributed substantially to the growth and success of independent television and first-run syndication, as well as a competitive syndication market. Thus, allowing a substantial degree of network involvement in the off-network and first-run syndication markets could result in a less diverse, more concentrated syndicated market.

By the Commission's own admission when it adopted the rules in 1970, the preclusion of network participation in syndication was a solution in search of a problem. The Commission admitted that its restrictions were entirely prophylactic.[68] Indeed, available statistics indicate that the networks took domestic and foreign syndication rights in only about 28 percent of the prime time entertainment series programming between 1958 and 1968, and accounted for less than one quarter of all syndication sales.[67] From this perspective it is difficult to understand why structural safeguards are necessary to protect anyone, given the changes in the video programming market that have since occurred.

If the majority believes they are warranted because it believes the current rules have helped to bring about the growth in independent television stations, first-run syndication and a competitive syndication market, it stands virtually alone in that belief. As the record points out, marked expansion in the number of independent television stations did not really begin until 1979, nine years after the rules' adoption, and closely tracked the penetration of cable service. It is thus much more likely that the expansion of cable television service, which eliminated the UHF/VHF station disparity, was responsible for the growth of independent stations, not the fin/syn rules. And it was the growth in the number of independent stations that in turn helped spur the growth in first-run syndicated programming. In other words, whatever other kind of medicine may have contributed to curing the previously-ailing UHF independent television sector, the rules can most charitably be described as having, at most, an unusually-delayed time-release action.[69]

As to the rules' having brought about the development of a competitive syndication market, they appear to be having precisely the opposite effect. And, not surprisingly, the major Hollywood studios have emerged as the big winners. While the tremendous growth in first-run syndicated product might have been expected to produce less concentration in the syndication industry, concentration in that industry has remained constant, while the major Hollywood studios' market shares have doubled. Last year the eight largest studios controlled 63 percent of the $3.4 billion syndication market, and last year the largest syndicators accounted for 77 percent of domestic syndication revenues, up from 64 percent the previous year.[69] To the casual observer, this looks awfully like a market that could benefit from some added competition.

If the majority now holds that the rules have in fact contributed to diversity, it parts company with the findings of the Network Inquiry Special Staff as well as the conclusions of the Commission in 1983. After its extensive study and analysis of the relationship between the networks and program suppliers, the Special Staff stated flatly that, "The financial interest and syndication rules can only be characterized as misguided at best * * *. Competition in the syndication market has not been fostered by the rules, for that market was competitively structured prior to their imposition." [70] After analyzing the results of extensive public comment on the Staff *Report*, the Commission in 1983 adopted its finding, declaring that, "* * * we have found no credible evidence that the rules have fostered the development of first-run syndicated programming or have increased the diversity or competitiveness of the program supply market." [71]

Against these findings that the rules have not increased either diversity or competition in the syndication market, the majority must offer more than a simple declaration to the contrary. It must proffer a sound and reasoned basis for its diametrically-opposite conclusion. Against the voluminous pages and years of study of the program supply market that led to the Commission's prior conclusion, it will not suffice for these purposes to simply conclude that the rules spurred the growth in the number of independent stations and first-run syndicated product just because the latter occurred while the rules were in effect. Under this theory, the rules could equally well be given credit for Secretariat's breaking the track record at the Belmont because that also occurred while the rules were in effect. And under this theory, perhaps the best argument in favor of perpetuating these restrictions is that one day they may cure the common cold.

It is mighty difficult to argue that injecting three more competitors into a market that is becoming increasingly concentrated will somehow reduce competition. But the Commission recognized in 1983 that two possible types of network behavior—warehousing and affiliate favoritism—could have adverse effects on both independent stations and network affiliates. The majority today finds the prospect of such behavior daunting enough to keep the networks largely out of the syndication business. Here again, however, the majority's decision fails to square up with the facts on the record and the majority has offered no reasoned analysis for its divergence therefrom.

The gist of the warehousing argument is that the networks could restrain competition in the market for network reruns by collectively acquiring syndication rights in program in order to withhold some less popular programming from syndication. According to this theory, the networks' efforts to withhold programming would be profitable because, by restricting the quantity of available programming, they would drive up the price of the more popular programming they chose to sell.

This warehousing scenario is implausible for a number of reasons. First of all, the theory falls to pieces if off-network reruns are not a product distinguishable from first-run syndicated programming. The facts on the record belie the argument that they are. Today the national audience for first-run syndicated shows has grown to represent 70 percent of the total audience for syndicated product. In a typical recent week, 14 of the 15 highest-rated syndicated shows were first-run and these reached more than 96 percent of the nation's television households.[72] Not surprisingly given these statistics, by 1989 independent stations in the top 50 markets relied on programming other than off-network reruns over half the time during their early fringe and prime time access period dayparts.[73] Even during the early fringe daypart when off-network reruns still comprise the majority of independent stations' schedules, the ratings garnered by reruns and syndicated programming are virtually identical. During February 1990, all off-network reruns on independent stations in the top 50 markets averaged a 4.4 rating, while first-run syndicated and other shows each averaged 4.2 ratings. And, focusing just on the off-network reruns, while the handful of "hits" averaged a 6.3 rating the bulk of more off-network reruns came in with an average 4.1 rating.[74] Among shows broadcast by independent stations averaging a 3 or better rating in 1990, 30 were first run and only 6 were off-network reruns. Of all the shows garnering a 2 or better rating, 68 were first-run and 55 were off-network reruns. Indeed, in its own comments the Association of Independent Stations says that independent stations are "using more first-run product and becoming increasingly selective about [off-network reruns]."[75]

With regard to the viewing patterns of off-network reruns and first-run syndicated product on network affiliates, a 1983 Commission analysis of programming shown on all stations, independents as well as affiliates, showed that in February 1982 the 102 most popular syndicated programs shown, regardless of time period, included 45 off-network shows and 57 others. Of the 16 of these that got a 5 or higher rating, only four were off-network reruns.[76] [77]

Proponents of the warehousing scenario generally do not allege that the handful of hits would be withheld from the market. They assert that marginal off-network programs would be withheld in order to drive up the price they receive from the hits. This would clearly be a futile endeavor because, as the foregoing facts indicate, first-run syndicated programming is clearly comparable in ratings to the bulk of off-network programming.

Thus, the record points unmistakably toward off-network reruns and first-run syndicated programming not being distinct products, in which case warehousing concerns disappear. But even if this were not the case, the strategic behavior in which the networks would have to engage to make warehousing work would be impossible for even the most enthusiastic gamers of the market.

The Department of Justice, which the majority would hopefully concede has preeminent expertise in these antitrust-related issues, states flatly that the likelihood of warehousing is remote given the number of variables the networks would have to control to make the strategy work.

First of all, the networks would start off in this exercise owning no syndication rights whatsoever, since they have been kept out of syndication since 1970. This being the case they would have to build or acquire syndication rights. Since it takes four or more years of episodes to make a program syndicable, they would not be able to even enter the market for several years at best. Next—and this is the real trick—they will have to acquire the rights to syndicate all the shows that they develop. But it would be prohibitively expensive for them to do that, and impossible to decide in advance which would be the programs needed to make the warehousing strategy a success and instead buy only those. For example, the amount of programming required to be warehoused to achieve profit-maximization would differ from market to market: broadcast markets with many independent stations will demand more programs than will those with few stations, and thus fewer programs would be warehoused in the larger markets than in the smaller ones. Also, viewer preferences vary from market to market, thus requiring that the set of programs warehoused would have to vary from market to market. On top of this comes the complication of having to make side-payments to the network with the fewest hits. The network with the fewest hits will make the least from warehousing its marginal programming. Therefore, to keep this network a happy member of the cartel, the other two networks would have to make it "whole" by side-payments, leading the Department of Justice to observe that "the coordination required to organize and sustain a collusive agreement among the networks would appear to be quite difficult—not to mention illegal under the antitrust laws." [79]

Moreover, in the final analysis it seems counterintuitive to suppose that network affiliates would be willing accomplices in this supposed network strategy. Why would an affiliate outbid an independent station only to warehouse the program? Affiliates' available time for programming is more limited because of the time they devote to the broadcast of network programming and because of the prime time access rule. For them to buy programming and then not broadcast it, particularly under these circumstances, would be both irrational and highly visible. For all these reasons, the Department of Justice concludes that it would be difficult for the networks to warehouse programming successfully and keep it secret. In a more emphatic vein, Action for Childrens' Television *et al.* state flatly that . any such attempt would "shine like a mackerel in the moonlight."[80]

Thus, the prospect of warehousing, judging by the record, it is so remote that keeping the networks out of the syndication business on this score is completely arbitrary. Nor will the specter of affiliate favoritism supply the missing rationale. Quite telling in this regard is the record evidence showing that the networks did not favor their affiliates when they did syndicate their own reruns. Prior to the rule, by dollar volume only 11 percent of all of CBS' domestic syndication sales were to CBS affiliates, and only 22 percent of its program contracts were written with CBS affiliates. Similarly, NBC affiliates constituted under 20 percent of all purchasers of syndicated product from NBC.[81]

Moreover, in theory any entity that syndicates programming, and which also has contractual relationships with particular stations, would have the same incentive to favor its stations in the sale of syndicated programming at the expense of other competitors in the market. The fact that there is virtually no record evidence to suggest that syndicators with these types of relationships in fact abuse the arrangements through anticompetitive favoritism suggests that its perpetration makes no economic sense in today's marketplace. It is not difficult to reason why this would be so. The direct benefits a network would realize from obtaining the highest price in any given market for a syndicated program would far outweigh any derivative benefit the network might receive by bolstering any affiliate's competitive position in the market by selling a popular program to it at a lower price. And how would the affiliate compensate the network for the benefits of its favoritism?

Finally, the syndication restrictions effectively allow foreign-owned conglomerates to participate in the profits generated by American network programming but restrict the ability of U.S. companies to do the same. I simply cannot support regulations that divert profits from our domestic television industry off-shore while disadvantaging American companies.

Other than the fact that no one would be hurt, and competition would be advanced, are there other public policy reasons for allowing the networks to participate in syndication? As the Department of Justice notes, syndication rights prior to broadcast of a program are speculative; in many if not most cases the syndication rights turn out to be worth little or nothing. Indeed, to the extent they do have value, the highest value for syndication rights may be to a television network, because the network-affiliate system gives the networks not only the incentive, but also the best ability, to promote programs in a way that maximizes their syndication value as well as their broadcast value. Restricting the networks from actively syndicating product may lead them to make insufficient investments in program promotion, which could lower a program's value in syndication.[82] As the Commission

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[66] One area of apparent liberalization comes in foreign syndication. Under the new rules the networks will be allowed to actively syndicate in foreign markets not only in-house productions but also outside productions for which they can acquire such rights in the course of the new, Commission-mandated negotiation process. The rationale for this more liberal approach to foreign syndication rests in substantial part on factors like the proliferation of competitive production resources and the benefit American viewers could gain from the networks' investment of the revenues from this syndication activity into creative programming. Even if one overlooks the facts that the same benefits would accrue from network participation in same domestic syndication activities—which the new rules restrict more severely than foreign syndication—the two-step negotiation process under which foreign syndication rights must be gotten will effectively preclude the networks from getting them. See discussion *infra*.

[67] The Commission acknowledged that there was "no evidence" that the networks had been "taking advantage in syndication distribution of their existing relationship with their affiliates," saying that the rules were intended instead to "eliminate the potential for competitive restraint." Memorandum Opinion and Order in Docket No. 12782, 25 FCC 2d 318 (1970).

[68] Crandall, "The Economic Effect of Television-Network Program 'Ownership'," *supra* at 396–98.

[69] The Commission itself has previously recognized that cable has helped UHF stations. Report and Order in Docket 20988, 79 FCC 2d 663 (1980). And see Joint Network Comments at 88–91; Crandall, "The Economic Case Against the FCC's Financial Interest and Syndication Rules" at 20; 1989 INTV Census; National Cable Television Association, "Cable Television Developments," May 1990.

[69] Joint Network Comments at 92–94.

[70] Network Inquiry Staff Report, Volume I, 51, Volume II, 732–738.

[71] 1983 Tentative Decision at 1094.

[72] Reply Comments of NBC at 6–7; Crandall, "The Economic Case Against the FCC's TV Network Financial Interest and Syndication Rules," at 17; Summers, "The Economic Consequences of the Financial Interest and Syndication Rules Governing the Television Networks," at 14.

[73] CBS Reply Comments at 39–40.

[74] Further Comments of INTV, Vol. II, Exhibit 2, at 6.

[75] Association of Independent Television Station Comments at 19. Paul Kagan and Associates, in the Television Program Investor of March 31, 1990, stated that, "[Independent stations] are looking to procure more first-run product, in order to differentiate themselves from other program sources. They are content to pick the best off-network programs and let the rest go to cable." *Id.* at p. 3, cited in the record in CBS Reply Comments, at 39.

[76]–[77] 1983 Tentative Decision at 56, n. 65.

[79] Department of Justice Reply Comments at 21.

[80] Department of Justice Comments at 32–33; and Action for Childrens' Television *et al.*, Comments at 14.

[81] ABC Further Comments at 39. Between 1967 and 1970, 66 percent of all CBS' sales, in dollar volume, went to independent stations, and data available for the sale of ABC's and NBC's most popular shows in 1970 shows that their respective affiliates accounted for only 11 and 13 percent of the sales of these programs, respectively. Independent stations accounted for 67 and 80 percent. Letter from Martin D. Frank, Vice President, CBC to Honorable James H. Quello, March 6, 1991.

[82] Department of Justice at 14, 16–17. See also Letter of Jeffrey Sagansky, to Honorable Ervin S. Duggan, at 5.

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noted in 1983, if "less investment in programming occurs as a result of the networks' exclusion from the syndication market, or if networks choose less risky programming than they would if they could obtain syndication rights, then the quality and diversity of network programming and the networks' competitive position relative to the other media will be harmed."[85] That result is squarely at odds with the Commission's intent to advance diversity and preserve the structure of over-the-air broadcasting of which the networks are the foundation.[86]

The In-House Production Limits

The majority rests its adoption of a limit on in-house production to 40 percent of the network prime time schedule on the need to promote a diverse supply of network programming and to limit the amount of initial network involvement in the domestic syndication market. As the preceding discussions demonstrate, no competition or diversity concerns warrant restricting the networks' participation in domestic program syndication. Beyond this, the record is totally lacking in any empirical evidence whatsoever suggesting that there is any practice by the networks so harmful to either diversity or competition that it requires redress by the severe measure of limiting the networks' ability to produce their own programming. As the Department of Justice notes, the in-house production limits contained in the Department's consent decrees with the networks were intended to be temporary limitations on the networks' activities, and there has been no showing on the record that these limitations should be extended by Commission regulation.

Regulations imposing limitations on how much any firm can produce internally are one of the most extreme forms of Governmental intervention in private enterprise. Unless they are fully justified by the most extraordinarily compelling competitive considerations, they are by their very nature anticompetitive. Thus, in the Department of Justice's view, such restrictions should not be imposed without "strong theoretical and evidentiary support for the conclusion that anticompetitive effects are quite likely in their absence."[87]

Both theoretical and evidentiary support for restricting the networks' in-house production are completely lacking in the record of this proceeding. In analyzing the theoretical premises for such limitations, the Network Inquiry Special Staff concluded that, since a network would not engage in-house production unless it were the most efficient way of doing business, there is no reason to suppose that a network would select an in-house program over a program produced by an independent supplier unless it appeared that the network could produce a program it valued equally at a lower cost, or a program of higher value at an equal cost. And after examining all the possible diversity and competition-based reasons for adopting in-house limits the Report categorically rejected them all, stating that such limitations "would restrain competition in the program supply business by eliminating potential suppliers, cause the production of the same programs at higher cost or forestall their development entirely * * * all without any obvious benefit to viewers."[88] Evidence from existing network production activities does not suggest that there are significant quality or cost advantages to networks accruing from internal production activities.[89] Furthermore, the networks are currently under no restrictions on in-house productions and, if they have any anticompetitive incentive to foreclose independent program suppliers, one would expect that incentive to have manifest itself before now. In point of fact, however, all the evidence on the record of this proceeding points to the fact that the networks will continue to acquire the vast majority of network entertainment programming from outside suppliers.[90]

Nor will the lack of limits on in-house production give the networks power to drive the price of programming below cost. Because the networks fail the three-part test for undue power to affect the price or supply of programs, if they tried to affect the price or supply of programs by increasing in-house production, the only reward they would reap is higher costs. And in practical effect, the operation of this rule could force a network at or near the cap to remove a popular in-house program merely because it wants to put on a promising new in-house show. I am at a loss to explain how the public interest would be benefitted by forcing networks to make this kind of Hobsons' choice. Moreover, by placing an incentive on the networks to bring independent producers in-house so as to gain the ability to domestically syndicate the in-house shows, the in-house provision could prevent those producers from providing shows to other entities, particularly new networks, thus producing a result at odds with the majority's intent to further diversity and competition.

Finally, there is the unavoidable fact that limits on in-house production restrict the networks' ability to use their facilities to speak. Even if the limits are regarded as "incidental," that is, unrelated to the protection or suppression of a particular set of ideas, the majority would have to demonstrate that they are narrowly tailored to serve an important governmental interest in the least restrictive manner possible.[91] The preceding analysis makes plain that they do not, and therefore they do not pass this constitutional test. In sum, the majority's in-house production limit is an extreme form on governmental intrusion into business that is not justified on analytical, evidentiary, or constitutional grounds.

The Two-Step Negotiation Process

Another example of gross governmental intrusion into the workings of business is the new rule the majority adopts that dictates the procedures whereby networks and program producers may negotiate for financial interests. This rule mandates a 30 day waiting period between the time the parties enter into agreement on a program's license fee and, where applicable, pilot production, and the time they may begin to negotiate over network acquisition of financial interests in the program.

On its face, this rule constitutes the type of regulatory micromanagement this Commission has been at pains to avoid over the last two decades. Nor can justification for this sudden burst of federal intermeddling be found in the record. If the record is clear on any point, it is clear on this one: That this "two-step" negotiation process makes no sense in theory and, contrary to the majority's statement, in practice cannot achieve the goal of enabling the networks to become profit participants in the back-end rights of non-in-house produced programming.

The premise of these two-step negotiating process is the majority's concern over "extraction." Of all the windmills subject to the majority's collective lance, none is charged more furiously than extraction. So potent is this term that, although they find it necessary to erect a regulatory superstructure to guard against it, the majority finds it unnecessary to define it. They know it when they see it, and it is bad. Used by the majority to describe network acquisition of ownership rights in the off-network distribution of programming "from unwilling producers," or "for less than fair market value," these alarming elaborations collapse upon examination.

The sale of program exhibition rights is a voluntary transaction, undertaken in the expectation of making a profit. While program producers (and all sorts of other business people) sometimes guess wrong, none of them agrees to create a series unless the expected revenues from the sale of

[85] 1983 Tentative Decision at 1089.

[86] These perverse results of keeping the networks from freely competing in the syndication business illustrate well the truth of the Network Inquiry Special Staff's observation that networks, affiliates and program suppliers are co-venturers, none of which can succeed without the other and each of which has a stake in maximizing the profits that can be realized by the network system. Thus, "when the Commission responds to assertions of network abuse by framing the issue as how best to rectify damage inflicted by networks on affiliates or program suppliers, it will usually be responding only to controversy over the distribution of profits, the point at which the interests of those groups diverge. The public interest—the interest of viewers in competition among television firms, diversity in program choice and local, individual control over broadcast services—may be completely unaffected by the manner in which these disputes are resolved." Network Inquiry Staff Report, Vol. I, at 21.

[87] Department of Justice Comments at 12.

[88] Network Inquiry Special Staff Study Report, Vol. 1 at 391, Vol. II at 768–773, cited at Joint Network Comments at 46.

[89] In fact, the appeal of independent talent is shown by the fact that, over the last six seasons, ABC in-house productions have enjoyed less success in terms of scripts, pilots, and series ordered than independent productions. ABC Further Comments at 19; CBS Further Comments at 8.

[90] *Id.* See also Department of Justice Further Comments at 25–26.

[91] *U.S.* v. *O'Brien*, 391 U.S. 367,m 377 (1968). However, where, as here, the restriction is intended to curtail expression either directly or indirectly by favoring certain classes of speakers over others, the burden of proving the necessity for the regulation is significantly heavier. *See Quincy Cable TV, Inc.* v. *FCC*, 768 F.2d 1434, 1451 (1985).

various rights are enough to cover their full costs of production. So much for unwilling producers.

Fair market value sounds like just what every seller ought to receive, but in the case of differentiated services like television programs, with uncertain future revenue streams, how is it to be determined? Because each television series is different, the interaction between network and program supplier is more akin to bilateral monopoly than to monopsony: In plain terms, both sides have a certain degree of bargaining power. In this context, the "market price" is indeterminate even theoretically. At best, one can set upper and lower bounds. The lower bound is simply the minimum that the producer is "willing" to accept; *i.e.*, enough to cover all relevant expected costs of production. The upper bound is related to the additional revenue that the network would earn exhibiting the program. Where the price falls within this range depends on the bargaining power of the negotiators. The networks' bargaining power stems from their ability to provide national exposure to the program. The producers' bargaining power stems from the creativity of their ideas, their ability to pit three or four networks against each other in a bidding war, and even from their option to put projects that do not receive sufficiently high bids on the shelf and turn their talents to other projects for other outlets—cable, theatrical, etc.

Notwithstanding the fallacy of the majority's fixation on extraction, the 1980 Special Staff Report, the 1983 Tentative Decision, and the Department of Justice, among others, point to the conceptual reason why, even if extraction could occur, an approach like this would be completely ineffective in preventing it. Simply put, whether or not the networks really do have market power in buying programming, if they cannot negotiate for financial interests when they negotiate the license fee for a prime time show, they will merely lower the license fee. In the face of real market power, this would present a program producer with an unsolvable take-it-or-leave-it problem, because there would be nowhere else to go to sell the program. As discussed previously, the facts completely discredit the notion that the networks have this kind of market power given the cornucopia of outlets for programming that exists today. But the point is, even if they did, no waiting period, be it 30 days or 30 years, would cure it. Or, as the Network Special Staff put it, "Because regulation of one or a few contract terms does not alter the number or identity of network firms, or the structure of the market within which they operate, such regulation leaves unaffected the very bargaining power that initially gave rise to the concern. That bargaining power, in turn, will usually enable the target firms to frustrate the regulation's compensatory purpose by altering other terms of the agreement to regain their advantage."[92]

Even if this fundamental problem did not exist, the two-step process is completely incapable of achieving the majority's stated aims of giving the networks the chance to share in the syndication profits from prime time reruns and increasing the networks' incentive to invest in risky programming.

The three networks, the Department of Justice, and Action for Childrens' Television *et al.* are of one voice in showing that the two-step process represents a total misunderstanding of the way the program purchasing business is conducted. The variety of approaches used in the real world by the networks and producers to structure program deals has been discussed previously. Networks buy series "blind" without a particular program in mind, but rather trying to find a way to use particular talents. In such transactions, every element of the deal is in play, and all facets of the deal are interdependent. It is simply not possible, in such circumstances, to reach agreement on any one facet of the deal without knowing how the financing will be covered. In such deals financing discussions must take place when the license fee is being negotiated, or this type of deal becomes impossible.[93] The separate negotiation process will also not work on coproductions or multi-project deals. This is particularly unfortunate given the ascendancy of such forms of deal making and, in particular, their popularity with the production community itself.[94]

Perhaps most significantly, the two-step process will not give the networks any increased ability to obtain financial interests because most of the prime time series in the networks' schedules are now financed by studio "umbrella," or similar deals. Under these umbrella deals the studios provide financing and production facilities to the program's creative team in return for sale of their ownership and distribution rights to the program product, not only to the first program produced with the financing studio's facilities, but also to upcoming projects for a set period of time. Thus, in the real world the producers of many networks series most often sell their ownership and distribution rights to the major studios long before they ever sit down with a network to talk about a license fee.[95]

Even where "unbrella" arrangements do not exist, a producer typically "resells" its syndication rights considerably before any order is placed for the series. Therefore, financing is almost always arranged by the time the network orders the pilot and commits to license fees. Where there is no pilot, financing is arranged before the series license fee is set. A network will not order a series pilot without an assurance that funding is for both the pilot and the series is in place. The record is completely unambiguous on the point.[96]

Moreover, given this compelling need for earlier financing there is absolutely no reason to assume that these economic realities will somehow magically change to fit the majority's two-step scheme. The present system has evolved precisely because of the need to accommodate the current rules, which preclude the networks from providing up-front financing for independently-produced programs. This is turn has driven independent producers into the arms of other entities not similarly limited—the major Hollywood studios. By delaying the networks' ability to negotiate for financial interests until long after the point where the necessary arrangements will already have been made, the separate negotiation process will accomplish nothing. Based on this fact, one can assume the market will adopt quite effortlessly to the new regime, because absolutely nothing will change. Despite the majority's claims that it will enable the networks to acquire financial interests in non-in-house produced programs, this two-step negotiation is the functional equivalent of giving a motorist with a flat tire a dead battery.

Yet another fundamental flaw in this new negotiation scheme is that it will "protect" the large multinational Hollywood studio corporations in exactly the same way as first-time program producers. In mandating this result, the Commission either must seriously believe that the networks can "extract" concessions unwillingly from these Hollywood megacorporations, or else it must believe that most programming still comes to the networks directly from independent producers, who hold the entire bundle of rights to it.

Even if I believed, which I do not, that the interests of diversity must be satisfied by diverse sources of sitcoms; even if I believe, which I do not, that the competition each network confronts from the other broadcast networks and non-broadcast buyers of programming is insufficient to assure that they cannot deal abusively with program producers; and even if I believe, which I do not, that the two-step negotiating practice will deter that abuse, why would I believe that the same extraction concerns would attach to MGM or Universal as to a new, truly independent producer? I will admit to worrying about many things as a public policy maker, but in all candor worrying about whether CBS is extracting rights from Sony or whether Time-Warner is being mugged by ABC is not something that keeps me awake at nights. The majority totally fails to suggest, much less discuss, why it protects the largest multinational corporation in the same way it protects the new untried entrant, or why the public interest somehow demands that it should.

Nor are the networks acquiring very much programming at all directly from independent producers. Most prime time programming today comes directly from the major studios and distributors. In fact, in the past four years nearly 90 percent of all pilots and series acquired by CBS from outside sources came from such companies, and over 80 percent of all three networks' prime time schedules is

[92] Network Inquiry Staff Report, Vol. I at 23, and see 1983 Tentative Decision at; Department of Justice Comments at 26–27; Action for Children's Television, Further Comments at 2.

[93] NBC Further Comments, at 26–27.

[94] *Id.* at 23.

[95] ABC Further Comments at 11–17; CBS Further Comments at 14–15.

[96] ABC Further Comments, *id.*; CBS Further Comments at 17; NBC Further Comments, Affidavit of John Agoglia, President, NBC Enterprises, at 4–7.

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supplied by the major Hollywood studios and distributors.[96]

If the old rules did not achieve the goal of source diversity in network program production, neither have they produced significant creativity in television programming. One need not be an FCC Commissioner or a TV critic to understand that spin-offs, retreads, and theatrical movie rip-offs tend to typify the networks' prime time schedules. It is small wonder that, with true originality at a premium, audiences are deserting network television for cable television in growing, and seemingly irreversible, numbers.

My point is this: True diversity has flourished on cable networks, and on the upstart Fox Network, without the suffocating embrace of the fin/syn rules. Does this mean that the repeal of the rules would transform the television networks in like manner? Arguably not, given the current need for the networks to depend on mass audiences for their revenues. But would their repeal at least inject a modicum of novelty by providing new revenue sources for networks, and giving them an added incentive to bankroll unusual and untested ideas they might otherwise pass up in favor of a surer bet? I believe it would. Above all, given the absence of any credible problem to be avoided by the imposition of these new rules, I believe it would be worth a try.

As a final point it should be noted that the fluidity and highly unstructured character of negotiations in the program supply market will unavoidably entrap the Commission into further regulatory intrusions by the need to clarify and reinterpret whether compliance with its new rules has been demonstrated in different negotiating fact patterns. Given the way deals are made in the real world, trying to straightjacket them into a format that will allow a simple "yes" or "no" answer to the question of whether the rules were complied with is hopelessly fanciful. In this respect the rules prove possibly the most pernicious truism about regulatory micromanagement, and that is that it is seldom sufficient unto itself: instead, it tends to beget seemingly endless generations of yet more regulatory micromanagement.

All of this points out how naive government agencies seem, and how unproductively they act, when they presume to regulate the intricacies of commercial dealings between businesses. And in regulating the buying and selling of prime time television programs, the majority's efforts starkly highlight the cogency of the Network Special Staff's findings that:

> * * * [I]t is sometimes charged that agreed-upon contractual terms are "unfair" or onerous to program suppliers. Such claims are, in truth, simply assertions that program suppliers should be paid more rather than less for their product. Because no public interest goal is advanced by giving program suppliers more money for doing the same work, the Commission should be indifferent to such claims. Program suppliers will of course continue to be deeply and earnestly interested in increasing their income at the networks' expense. We do not mean to assert that such an interest is illegitimate, but only that it is a private interest not shared by viewers.[97]

The Network Definition

Having fastened its regulatory clamps on the three older networks, the majority confronts a real dilemma when it comes to dealing with the new Fox Network. Its audience reach, at 90 percent, is indistinguishable for all practical purposes from that of the networks. Like the networks, it has a large number of local affiliates, which it could presumably favor in selling its off-network and first-run syndicated programming. And, even worse (at least, in the majority's logic), unlike the older networks, Fox is vertically integrated into one of the large multinational Hollywood studio/distributors which is heavily engaged in program syndication.

When presented with the question of what to do with an entity that looks more like a network having undue power than the three networks do, what does the majority do? It exempts it. How? By defining a "network" in terms of a number of hours of prime time programming the Fox Network has said it will not distribute for a couple of years at least. Why? That question is a lot more difficult to answer. The first problem is, of course, the fact that the magic number 15 is completely arbitrarily chosen. Even assuming that the majority wanted only to cut Fox a break in establishing the magic number, why 15 hours instead of 16? or 17? or any number short of the average number of hours per week of prime time programmed by the networks? Setting the number at 15 pins Fox to a particular ceiling that (by amazing coincidence) happens to be precisely the number of prime time hours Fox now plans to fill with Fox network programming anyway for the foreseeable future. But, if the majority's real aim is, as they claim, to promote program diversity, why not give Fox some breathing room to expand its prime time programming should subsequent conditions warrant a change in its plans? Under the current scheme, if Fox happens to exceed its current expectations and wants to broadcast more than 15 hours of prime time entertainment programming, it has to either restructure its overall business, which it has said it cannot do, or come to this Commission for another waiver. And frankly, I cannot imagine placing this Commission in the posture of having to again rule on whether the addition of more specific entertainment programs to a network's prime time schedule would, or would not, serve the public interest.

Nor is the treatment of Fox the only aberration under the new definition. Many of the most popular national cable services are co-owned by the owners of the largest national cable companies. These entities, too, combine the program acquisition, network distribution, and syndication businesses that are the crux of the majority's concern over network "extraction" and market leverage. In the Cable Report, the Commission found enough concern over the anti-competitive effects of this vertical integration to warrant limited program access under specified circumstances by competitors to such entities in individual markets. Yet, despite these cable networks' palpable display of the same characteristics that cause the majority heartburn in broadcast networks, it appears that cable networks are not intended to be included in the definition should they reach the 75 percent penetration level, and, no reason is given as to why they should not be.

The definition has another, even more perverse effect: The 15-hour limit gives the older networks an incentive to drop enough prime time programming to dip below the magic number and thereby escape the onerous entrapment of these new rules. If network prime time entertainment programming is indeed, as the majority claims, the sine qua non of diversity, why adopt a rule that encourages its disappearance from network schedules? The result would be less network programming to affiliates, and therefore less network compensation paid to affiliates. The affiliates, in turn, would have to fill up the new vacancies in their schedules by producing shows themselves or else by buying syndicated shows. Either of these proposition will be costly to the affiliates.

What will the ultimate effect on the affiliates, and on the existing network system, be? No one can tell, but one thing is sure: The majority's decision trifles dangerously with the existing structure of broadcast television for no reasonable cause.

Let me be clear: In writing this I do not mean to suggest that the Fox Network and the cable networks should be fully subject to the new rules and thus be forced to change their operations to comply with them. Quite the contrary. Fox is bringing to reality the long-sought fourth network, and thereby providing a new lease on life to the predominantly UHF stations that make up its affiliates, and the cable networks are providing a wealth of diverse programming highly valued by consumers. That is diversity, and I would not impede it. I would simply argue that the truncation that the new rules now cast in stone for Fox not only fails to further the majority's stated goals but is totally unnecessary. Neither Fox nor the older networks, despite their audience reach, individually or even collectively can corner the market for prime time programming to the ultimate derogation of the availability of diverse programming. Thus, as Fox itself agrees, neither the Fox Network nor the older networks should be subject to fin/syn rules.

The Four-Year Review

With regard to the majority's decision to review the rules in four years, the courts have held that we must adapt our rules to the nation's needs in a volatile, changing economy. Thus, while it is gratifying that the majority recognizes the need for review, they could hardly do anything else; but what is mystifying is their certainty that four years after the effective date of the order is the precise time it should be done. This certitude is all the more perplexing in light of the majority's deprecation of all sunset or phase-out of the rules in this proceeding because such measures "attempt to forecast events that are inherently unpredictable" and would constitute an "arbitrary dictat[ion]" of the appropriate time for review.

Perhaps it is not inconsistent to say that a phase-out and eventual sunset of the rules would be arbitrary because of the unpredictability of future events whereas establishing a deadline for review in four years is not. Perhaps it is not inconsistent to say that even assuming the establishment of a specific time-lapse of years for review isn't arbitrary, the number 4 is intuitively right. So let us not focus on those propositions. Let us focus instead on the majority's statement that a further increase in the number of program outlets and competition to the networks "may" continue, and if it does, repeal of the rules "may" be warranted.

The record in this proceeding demonstrates beyond any reasonable argument that a multiplicity of competitive programming outlets already exists. The record demonstrates that they already do buy substantial amounts of programming in competition to the networks, thus constraining the networks' ability to control the market in buying programming. The record demonstrates that independent stations are relying predominantly on first-run syndicated product as opposed to network reruns to anchor their schedules. And the record demonstrates that the independent producers who are the immediate ostensible beneficiaries of these restrictions have dwindled steadily under their embrace, to the point that the vast majority of the prime time entertainment programming supplied to the networks is owned or controlled by the eight largest Hollywood studios.

This, I submit, is enough change to warrant virtual repeal of the rules right now? And if it is not, what higher test could the majority possibly impose? And what else does it anticipate will happen, in precisely four years, to make the case for repeal more cogent? Above all, in tying repeal to a further increase in the number of program outlets and competition, the majority seems to be turning its back on its own finding that network audience reach and revenues are the basis of network dominance regardless of the existence or number of competing channels of programming.

The New Rules on Appeal

While the Commission is generally accorded considerable discretion in setting policy in the highly specialized and complex area of telecommunications, this discretion is not open-ended. Notice and comment rule making procedures require the Commission to respond to all significant points in the record, because otherwise the opportunity to comment is rendered meaningless.[98] In determining whether a particular issue is significant for purposes of such response the courts have held that the "arbitrary and capricious" standard of review applies.[99] Under this standard, comments which, if true, raise relevant points and which, if adopted, would require a change in the agency's rule, cast doubt on the reasonableness of the agency's conclusions and must therefore be considered.[99] In short, the Commission can exercise its considerable discretion in policy making only after fairly considering all the relevant and potentially outcome-changing points raised in the comments. It is free to disagree with these arguments, if it can give a reasoned explanation why it does, but it is not free to either ignore them or dismiss them without a reasoned explanation for why it is doing so. In the absence of evidence that the agency has made a reasoned decision based on "reasonable extrapolations from some reliable evidence," the court may not step in to save the rules on appeal by providing the reasoned basis for acting that the agency itself has not.[100]

The majority decision is not reasoned decision-making; it looks at the record in this proceeding with blinders on. The majority ignores the analysis and factual evidence submitted to show that the explosion in video distribution outlets—which the majority does not dispute—eliminates the existence of the supposed harm the rules are intended to address, and instead relies on factors that have no relevance in and of themselves to show the existence of that harm. Having found the harm, it devises solutions that would not work in any event to address it. And it uncritically lumps together in its protective embrace huge multinational corporations as well as the smallest untried entrepreneurs without any suggestion of how the public interest is necessarily advanced by what it is doing.

In voicing these criticisms, I do not for one moment doubt the sincerity of the majority in believing that the rules it adopts will further the cause of diversity. Nor do I discount the value of diversity as a legitimate public policy goal. But sincerity and the legitimacy of diversity as a goal are not enough to take the majority where the record simply will not go.

Because these rules cannot be rationally predicated on remedying an identified harm, they will fail judicial review.[101] And they will fail because the majority has ignored a fundamental duty to rid itself of rules which, because of changes in the market, now produce antithetical results.[102] If nothing else, the majority's decision is likely to produce a milestone case on what constitutes arbitrary and capricious decisionmaking. It is a milestone I assuredly regret.

Conclusion

In the final analysis I should perhaps not fault the majority excessively for its quixotic urge to imagine giants and tilt at windmills, because I too have a quixotic notion. My quixotic notion is that someday the reams and reams of study and analysis that have produced the heretofore overwhelming consensus that the fin/syn rules should be largely repealed will be carefully and dispassionately studied, and the appropriate action will be taken. Perhaps it will be this Commission on reconsideration; more likely it will be after court review. This action will, in my view, truly advance diversity and truly benefit the entire system of over-the-air broadcasting without harming the supply of programming upon which the system depends.

But even as I indulge this vision, I am realistic enough to know that the present, and not the future, must be the focus in assessing these new rules. In this cold light of reality, no other conclusion is possible than that these rules embody bad law, bad economics, and bad policy, and I dissent.

Separate Statement of Commissioner James H. Quello, Dissenting to the Overall Result, and Concurring in Part—In the Matter of Evaluation of the Syndication and Financial Interest Rules, MM Docket No. 90-162

The majority plan in some ways relaxes the financial interest and syndication ("finsyn") rules that for 21 years have restricted the networks, but it would be a mistake to characterize the new rules as deregulatory. Calling the majority plan "deregulation" is like telling an inmate at the end of his jail term that he may leave his cell—so long as he does not venture beyond the prison walls. But in the case of finsyn, the networks have done their time; they deserve to be set free.

I concur in part with the Report and Order because it will provide the networks some measure of flexibility to respond to the challenges of the new media environment. Consequently, I agree that the rules should be eliminated entirely for the non-prime time part of the schedule, that networks should be permitted to own and syndicate in-house productions (including foreign and domestic co-productions), that networks should be able to engage in foreign syndication, and that networks should be permitted to bargain for financial interest and syndication rights in all the programs they air.

On the other hand, the majority plan of the Report and Order retains significant limitations on network participation in the programming market, and imposes complex and, in some cases, redundant "safeguards." Although the Report and Order is being promoted by some as a significant deregulatory step, today's decision will impose onerous new burdens on the networks that had never been part of the FCC's rules and that go far beyond the antitrust consent decrees affecting the three established networks.

So in this proceeding the FCC giveth and the FCC taketh away. This is acting in a bit too mysterious a way for me to accept completely, particularly given the record before us. Consequently, I dissent to the overall result and concur in part.

The Record Supports Virtual Repeal of the Rules

Like a Hollywood production, the majority plan requires the willing suspension of

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[96] CBS Further Comments at 13; NBC Further Comments at 25.

[97] Network Special Staff Report, Vol. I, 506.

[98] *American Civil Liberties Union* v. *FCC*, 523 F.2d 1554, 1561 (D.C. Cir. 1987)

[99] *Id.*, citing *Home Box Office, Inc.* v. *FCC*, 567 F.2d 9, 35–36 (1977).

[100] *American Mining Congress* v. *EPA*, 907 F.2d 1179, 1187 (D.C. Cir. 1990), citing *Natural Resources Defense Council* v. *EPA*, 902 F.2d 962, 966 (DC Cir. 1990).

[101] *HBO* v. *FCC*, *supra* at 40–42.

[102] *NAACP* v. *FCC*, 610 F.2d 973, 980 (D.C. Cir. 1979).

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disbelief, for the new and continuing limitations on network activity simply are not supported by the record. Far from re-regulations the facts presented to this agency overwhelmingly support substantial, if not total repeal of the rules. The Report and Order clearly should be subjected to some kind of reality test.

Of course, it is possible for reasonable people to read the record differently. Certainly there is no shortage of assertions in the myriad pleadings that can be cited to support the new rules. There is little to suggest, however, that the record citations advocating limits on network participation would withstand critical analysis. Here is where a reality test would have helped. As the Department of Justice noted, in a marvel of understatement, "[t]he willingness of producers to spend large amounts of money to keep the rules suggests that significant wealth transfers may be involved" in explaining the studios' position.[1] There is no doubt that all of the parties, including the networks, faithfully advocated positions that serve their own economic interests. To the extent this is true, it is possible for people read the same record yet reach different conclusions. But there is one fact, not fully appreciated by the majority, that makes this record different. It is this: virtually every credible party without a direct financial interest who filed comments in this proceeding supported substantial repeal of the finsyn rules:

—Both the Department of Justice and the Bureau of Economics of the Federal Trade Commission argue that the rules should be repealed. The National Telecommunications and Information Administration also supported substantial modifications with some safeguards.[2]

—Henry Geller, the Commission's General Counsel when the rules were adopted, filed comments and appeared at the en banc hearing in support of repeal. He represented various parties, including Action for Children's Television, Black Citizens for a Fair Media and Dr. Everett Parker, widely considered to be the founder of the citizens' movement in FCC matters.[3]

—Various unions, including communications unions, several AFL–CIO affiliates, and the National Education Association support total repeal of the rules.[4] In addition to matters of international competitiveness, these commenters voiced the very real concern that their members will be deprived of the benefits of free over-the-air television if the networks' decline is not counterbalanced by the relaxation of regulations.[5]

—The Media Institute, an independent Washington media think tank advocated total repeal of the rules, as did the Heritage Foundation and Citizens for a Sound Economy Foundation.[6]

Outside commentators, similarly lacking any economic incentive, largely reached the same conclusion. As columnists Rowland Evans and Robert Novak noted, "the preponderance of objective opinion would let [the networks] share in the rerun business."[7] For example, the New York Times, the Washington Post, the Wall Street Journal, Business Week, Newsday and the Detroit News all have editorialized in favor of eliminating the finsyn rules.[8] Many syndicated columnists have reached the same conclusion.[9]

Once you get beyond the rhetoric in this proceeding, all the parties must admit one undeniable truth: We do not live in the same media environment as existed in 1970. This key fact changes everything.

The Commission originally adopted the finsyn rules because the three networks were the dominant distributors of original programming to the American public and, consequently, the dominant purchasers of that programming.[10] Neither is the case today. The networks face increasingly successful competition from other conventional broadcasters as well as from a growing array of alternative video technologies. As a result, the networks' significance in the program acquisition market is declining.

Consider the following:

—In 1970, there were 600 network affiliates and 82 independent television stations; by 1989, affiliates numbered 656 and independents (including Fox stations) totalled 339.[11]

—In 1970, there were three national television networks; by 1990, a fourth network was becoming established and industry rumors suggested more might emerge.

—In 1970, the three networks enjoyed more than a 90 percent audience share; by 1990, prime time viewing of the three networks was 57 percent and headed downward.[12]

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[1] *Comments of the United States Department of Justice*, filed June 14, 1990 at 27.

[2] Although NTIA supported the so-called "two-step" negotiation process, a form of which was adopted by the majority, it did not advocate new restrictions on networks, such as limits on in-house production.

[3] *See Further Comments of Action for Children's Television, et al.*, November 19, 1990; Testimony of Henry Geller, FCC *En Banc* Hearing, December 14, 1990.

[4] Many of these parties previously supported the rules. In fact, the National Education Association wrote to the Commission to clarify that it was not supporting retention of the rules, as other commenters had claimed. *Compare* Letter from Kenneth F. Melley, NEA, to Chairman Alfred Sikes, March 9, 1990 with *Comments of the Coalition to Preserve the Financial Interest and Syndication Rule*, filed March 5, 1990, Attachment A. *See also* Letter from Barbara J. Easterling, Communications Workers of America, to Frances Seghers, MPAA, November 15, 1990 (expressly withdrawing from the Coalition to Preserve the Financial Interest and Syndication Rule).

[5] Those entities advocating repeal of the rules included: the International Brotherhood of Electrical Workers, the Amalgamated Clothing and Textile Workers Union, the National Council of Senior Citizens, the National Education Association, the United Food and Commercial Workers International Union, the American Federation of Television and Radio Artists, the Communications Workers of America, the International Ladies' Garment Workers Union, Service Employees International Union, the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry, the United Brotherhood of Carpenters and Joiners of America, the International Longshoremen's and Warehousemen's Union, the Coalition of Labor Union Women, the Oil, Chemical & Atomic Workers International Union, the American Federation of Grain Millers, the Aluminum, Brick and Glass Workers International Union, the Glass, Moulders, Pottery, Plastics & Allied Workers International Union, and the Air Line Pilots Association.

[6] *See* The Media Institute, Prime Time for Repeal (1990) (filed as comments); *Comments of the Heritage Foundation*, March 23, 1991; *Comments of the Citizens for a Sound Economy Foundation*, March 25, 1991.

[7] Evans & Novak, *The Battle Over Television Reruns*, Washington Post, March 18, 1991 at A11. Press accounts of the issues surrounding broadcast television provide a useful gauge by which to evaluate the comments. Most news stories simply report on the state of the industry, without taking a position on the issue of finsyn (although some do). In any event, most of the articles cited in this statement were filed by commenters and are part of the record. Where articles were not filed by the parties, we may take official notice of the facts reported.

[8] *See The Stale Rules That Stifle TV*, New York Times, November 30, 1990; *Macho King vs. Andre the Giant*, Wall Street Journal, December 14, 1990; *The F.C.C. Goes Hollywood*, New York Times, March 12, 1991 at A22; *Television's Pot of Gold*, Washington Post, March 18, 1991 at A18; *Is the FCC Obsolete?* Detroit News, February 19, 1991; *Deregulation in Focus*, Newsday, April 11, 1991; *The F.C.C. Cages the Networks*, New York Times, April 11, 1991 at A24; *The Newest TV Rerun Game*, Washington Post, April 11, 1991 at A22; *Free the Networks From FCC Shackles*, Business Week, April 8, 1991 at 100.

[9] *See, e.g.*, Samuelson, *The Networks vs. Hollywood*, Washington Post, December 12, 1990; Prestowitz, *U.S. Rules, Not Japanese Money, Lost MCA*, Wall Street Journal, December 3, 1990; Shales, *FCC Syndication Rule Relic of a Bygone Era*, The Houston Post, December 30, 1990 at E–2; Stern, *How U.S. Squeezes the Networks*, Chicago Tribune, February 19, 1991 at 14; Evans & Novak, *The Battle Over Television Reruns*, Washington Post, March 18, 1991, p. A11; Pessell, *Syndication Trek: Journey Continues*, New York Times, December 5, 1990 at D2; Schrage, *The Lost Opportunity of Fin/Syn Reform*, Los Angeles Times, April 14, 1991 at D1.

[10] *Competition and Responsibility in Network Broadcasting, Docket No. 12782*, 23 F.C.D.2d 382 (1970) ("*1970 Report & Order*"), *recon. denied*, 25 F.C.C.2d 318 (1970) ("*1970 Reconsideration Order*"), *aff'd sub nom. Mt. Mansfield Television, Inc. v. FCC* 442 F.2d 470 (2d Cir. 1971).

[11] *See* Crandall, *The Economic Case Against the FCC's Television Network Financial Interest and Syndication Rules* (Submitted with Joint Network Comments, June 14, 1990) at 18.

[12] *See Reply Comments of the National Telecommunications and Information Administration*, filed August 3, 1990 at 8–11; *Reply Comments of NBC*, filed December 20, 1990 at 7–8. Average network prime time share is expected to be below 55 percent in 1991. For affiliates in the top ten markets, the share already is at 45 percent. *Id.* Independent analyses suggest that affiliates will drop a share point each year and will reach a 46 total day share by 1996, Paul Kagan Associates, *TV Program Investor*, December 22, 1989. *See also Where the Viewers Are*, Electronic Media, March 25, 1991 at 10 ("The only provider of programming that has shown clear, substantial viewing gains is basic cable. . . . There is no way a single broadcast network can match the breadth and diversity of so many different programming outlets, and the result gets clearer after every sweeps month.")

—The networks' share of national television advertising revenue decreased from more than 60 percent in the late 1970s to less than 50 percent in 1989.

During this same period, the network share of total broadcast and cable advertising revenue decreased from 48 percent to 32 percent.[13]

—In 1970, the average television viewer received 6.8 video channels, by 1989, the average viewer received 30.5 channels.[14]

—In 1970, off-network syndicated programming captured over 64 percent of the audience for syndicated programming; by 1990, the off-network audience declined to about 30 percent, while first run programming became increasingly popular.[15]

—In 1970, 2,490 cable television systems had 4.5 million subscribers; by 1990 10,823 cable systems had about 54 million basic subscribers.

—In 1970, pay cable channels (such as HBO) did not exist; by 1990, such channels had approximately 27 million subscribers.

—In 1970, cable "networks" were virtually nonexistent; by 1990, there were about 90 basic cable networks and 17 pay movie channels.[16]

—In 1970, VCRs did not exist as a consumer product; by 1990, they were installed in 66 million households. This represents about 72 percent of all television households.

Given these vast changes, it should surprise no one that the program acquisition market today is far different than it was in 1970. In the current syndication marketplace, 14 of the top 15 syndicated shows are first-run and not off-network; off network fare accounts for only 30 percent of viewing of all syndicated programs.[17] Nor is over-the-air television the only outlet for original programming. For the 1990–01 television season, for example, about as many original entertainment series were shown on alternative outlets as appeared on the three networks.[18] The President and co-CEO of Time Warner has said that "Warner Bros. and Lorimar will be producing more and more for cable * * *. We hope we're not producing less and less for the commercial broadcast networks. *But a good show will always get on somewhere.*"[19] Original programming is increasingly considered to be the "signature" by which cable channels are identified. Cable networks last year spent almost $700 million on original programming, and by 1995, analysts predict that half of all programming expenditures on cable—over $1 billion—will be for original shows.[20] One basic cable channel, Lifetime, has fifteen new series in development, and plans to offer two nights of original prime time programming by early 1992.[21] Similarly, The Family Channel last year doubled its budget for series programming to $100 million.[22]

Because of the growing number of choices, program producers are becoming increasingly flexible about which "conduit" to use to reach an audience. Series have moved both to first run and to cable after leaving networks, while some cable series are also available to the television syndication market.[23] As many made-for-television movies (known in the industry as MOWs) are produced for cable and other sources as for the networks. For the 1990–91 season, it was anticipated that cable networks would air 106 MOWs compared to between 103 and 106 (including mini-series) on the three networks.[24] Understandably, then, the three networks' share of overall program purchasing plummeted from about 74 percent in 1970 to 21 percent in 1989.[25] In addition to original entertainment programming, it also cannot be ignored that cable networks spent almost $2 billion to acquire sports rights in 1989–90.[26]

Given the extent to which the video marketplace has changed already, and without considering the magnitude of change anticipated in years to come, I find it difficult to believe that the majority is not more disposed toward total elimination of the finsyn rules. Indeed, the same three Commissioners that today constitute the majority insisted that the Commission conclude in last year's Report to Congress on Cable Television that "[t]he video marketplace continues to be a highly dynamic sector in the midst of transition."[27] As a result of "existing and potential multichannel competitors," the Report concluded that "we are unwilling to endorse or recommend any drastic or long-term re-regulation." The Report took a broad perspective, noting that "robust competition will more efficiently provide both a better safeguard * * * and a greater diversity of choice that any web of rules and regulations designed to mimic competition or otherwise compensate for its absence."[28]

Needless to say, it is difficult to reconcile the regulatory philosophy of the Cable Report with that embodied in today's Report and Order. There, the Commission found in the face of de facto monopoly cable franchises that regulation is inappropriate because "the degree of market power cannot be quantified precisely," but in the current proceeding the majority imposes a complex scheme of regulation, including some new controls out of some vague notions regarding network market power.[29] Last July, we found that

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[13] *Comment of the Staff of the Bureau of Economics of the Federal Trade Commission*, September 5, 1990 at 18.

[14] The Media Institute, Prime Time for Repeal 51 (1990).

[15] *Comments of the Staff of the Bureau of Economics of the Federal Trade Commission*, September 5, 1990, Appendix, Table A2.

[16] *Joint Network Comments*, June 14, 1990, Vol. 1, pp. 77–78.

[17] Broadcasting, July 23, 1990 at 60. *See Reply Comments of NBC, Inc.*, August 1, 1990 at 6–7; Crandall, *The Economic Case Against the FCC's Television Network Financial Interest and Syndication Rules* (submitted with Joint Network Comments, June 14, 1990) at 17.

[18] In 1990–91, there were 26 original entertainment series distributed as first-run programs, 29 series on cable and 15 series on the Fox network. *Reply Comments of NBC*, December 20, 1990 at 9. *NBC Reply Comments*, August 1, 1990, Appendix A.

[19] Electronic Media, June 4, 1990 at 20 (interview with Nicholas J. Nicholas, Jr.) (emphasis added) quoted in *Further Reply Comments of Capital Cities/ABC, Inc.*, December 21, 1990 at 7 n.13.

[20] Goldman, *Cable-TV Networks Strive to Stand Out From the Crowd With Original Programs*, Wall Street Journal, December 17, 1990 at B1. *See also* Fabrikant, *Channels Seek Identity In Made-for-Cable Films*, New York Times, April 1, 1991 at D8 (In 1991, five cable networks have budgeted approximately $600 million for original programming.).

[21] Walley, *Lifetime Plans Original Prime-Time Block*, Electronic Media, March 25, 1991 at 3.

[22] *Joint Network Comments* (Vol. I, June 14, 1990) at 61, 66. The Family Channel had seven new series in development.

[23] *21 Jump Street*, previously shown on the Fox Network, was moved to first run syndication following its network run. *The Days and Nights of Molly Dodd*, previously an NBC series, had a post-network three year run on Lifetime. *1st and Ten* and *Dream On*, two HBO original series, also are produced for syndication. *Star Trek: The Next Generation* is a first run series that is essentially a sequel to the NBC program *Star Trek*. *See generally, NBC Reply Comments* December 20, 1990 at 8–10; Broadcasting, December 17, 1990; Goldman, *Cable-TV Networks Strive to Stand Out From the Crowd With Original Programs*, Wall Street Journal, December 17, 1990 at B1, 5. In many respects, the choices are interchangable. ABC's cancellation of the series *Twin Peaks* prompted discussions about continuing the program in first run syndication or as a basic cable series. *Worldvision Floats First-Run 'Peaks,'* Broadcasting, April 8, 1991 at 47. Additionally, programming executives are exploring the possibility of cooperatively producing programming for simultaneous network and cable distribution. *Cost May Make Bedfellows of Broadcasting, Cable*, Broadcasting, April 29, 1991 at 27.

[24] *Ex parte* letter from Jeff Sagansky to Commissioner Ervin S. Duggan, March 4, 1991. Budgets for MOWs on cable channels (such as HBO, TNT and Showtime) are often twice that of similar network productions, and, in the aggregate, cable networks spend about the same amount—$322 million—as broadcast networks. *Id.* Goldman, *Cable-TV Networks Strive to Stand Out From the Crowd With Original Programs*, Wall Street Journal, December 17, 1990 at B6. The number of MOWs purchased by cable networks doubled during the past three years. Fabrikant, *Channels Seek Identity In Made-for-Cable Films*, New York Times, April 1, 1991 at D8. Video marketplace has changed already, and without considering the magnitude of change anticipated in years to come, I find it difficult to believe that the majority is not more disposed toward total elimination of the finsyn rules. Indeed, the same three Commissioners that today constitute the majority insisted that the Commission conclude in last year's Report to Congress on Cable Television that "[t]he video marketplace continues to be a highly dynamic sector in the midst of transition." As a result of "existing and potential multichannel competitors," the Report concluded that "we are unwilling to endorse or recommend any drastic or long-term re-regulation." The Report took a broad perspective, noting that "robust competition will more efficiently provide both a better safeguard * * * and a greater diversity of choice that any web of rules and regulations designed to mimic competition or otherwise compensate for its absence."

[25] Broadcasting, July 23, 1990 at 60. *See Reply Comments of NBC, Inc.*, August 1, 1990 at 6–7; Crandall, *The Economic Case Against the FCC's Television Network Financial Interest and Syndication Rules* (submitted with Joint Network Comments, June 14, 1990) at 17.

[26] Broadcasting, July 23, 1990 at 60. *See Reply Comments of NBC, Inc.*, August 1, 1990 at 6–7; Crandall, *The Economic Case Against the FCC's Television Network Financial Interest and Syndication Rules* (submitted with Joint Network Comments, June 14, 1990) at 17.

[27] *Competition, Rate Deregulation and the Commission's Policies Relating to the Provision of Cable Television Service*, 5 FCC Rcd. 4962, ¶ 13 (1990).

[28] *Id.* at ¶¶ 6, 9.

[29] The Commission's conclusions in this regard are particularly underwhelming in light of the fact that the government agencies responsible for enforcement of the antitrust laws have concluded that the networks lack market power. *See Comments of the United States Department of Justice*, June 14, 1990 at 20–22; *Comment of the Staff of the Bureau of Economics of the Federal Trade Commission*, September 5, 1990 at 18; *Further Comments of the United States Department of Justice*, December 21, 1990 at 3; *Additional Comment of the Staff of the Bureau of Economics of the Federal Trade Commission*, March 25, 1991 at 2.

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"horizontal concentration and vertical integration produces significant benefits for cable subscribers" because they help provide the financial support for programming,[80] but today, the majority concludes that potential vertical integration by networks is an anticompetitive mechanism that must be limited.

It is particularly striking that the majority urged regulatory restraint in the cable proceeding because of the promise of *potential* competition, yet resists greater deregulation of the networks in the face of real and potentially overwhelming competition. Moreover, the competition the networks face today is particularly unfair since the government's thumb is placed squarely on the Hollywood side of the scale. The majority would keep it there.

The rules' proponents rationalize their regulatory approach by describing the networks as gatekeepers to the mass audience. The ability to control access to the nationwide audience gives the networks unique power, the argument goes, so that government intervention is justified. But "[t]he idea that network power now has to be curbed by the FCC is absurd. It's already been curbed to smithereens."[81]

The majority's analysis of network dominance fails to see the handwriting on the wall, much less read it. The growth of alternatives makes it less than clear that the future of any mass medium is guaranteed. An increasing number of observers have suggested that the networks, at least in their current form, may not survive the decade.[82] Washington Post television critic Tom Shales recently reported:

> If the '80s saw the decline of the networks, the '90s may well see the fall. It is a common assumption in broadcasting now that at least one of the three broadcasting networks will not live to see the end of the century. The question is whether that network will succumb to pressures from outside or just wither and die on its own.[83]

But Shales also has noted, "If the network are doomed to fade away according to the natural laws of the economic jungle that is one thing. But there is nothing natural about the Fin-Syn rule. It's a relic of another era, an idea whose time has gone."[84]

The "mass audience" is no longer what it once was. As declining network revenues attest, advertisers are becoming less inclined to spend large sums of money to reach a generalized audience. Rather, they are interested in targeting a selected group of viewers—hopefully those most disposed toward buying the product. They increasingly do so by purchasing "bundled media" campaigns, which utilize a variety of media (e.g., magazines, specialized television channels and books) to aggregate a selected group of consumers.[85] This fact helps explain why the cable television advertising market has remained strong at the same time the networks experienced sharp declines.[86] And, although you would not know it by their comments in this proceeding, it is a point that has been lost on the studios. In 1990 some major studios reduced their expenditures for network advertising and increased their spending on cable channels.[87] It is a potent indicator of where the studios believe they will find the viewers.[88] Now *there* is a reality test for you.

The upshot of this is that free over-the-air television is threatened unless sources of revenue other than advertising can be tapped. The theme of many of the comments in this proceeding and of a startling number of press accounts is that 1990 was the networks' worst year ever.[89] This fact is not an aberration. It cannot be explained away by the recession, the cost of Persian Gulf War coverage or by the prices some networks paid for sports packages. The networks' decline is more accurately understood as part of a fundamental change in the environment in which they operate.[90] As audiences for the national networks continue to decline, so will their revenues; as cable channels with dual revenue streams pay large sums for the rights to sports events, networks will be forced to pay higher prices to compete; and as news events occur in an increasingly complex world, networks will need the financial wherewithal to provide comprehensive news coverage on par with that available on cable television.

Unlike the theoretical and intangible loss of programming diversity feared by the studios should the networks be freed from regulatory restraints, the loss to diversity from the networks' decline is both real and direct. CBS lost more than $200 million in 1990 and recently announced a first quarter 1991 operating loss of $54.6 million. This prompted the network to layoff 400 employees, including up to 140 in the news division. It is anticipated that the network will shut down domestic news bureaus in Dallas and Atlanta, as well as foreign bureaus in Johannesburg, Rome and Beijing.[91] Even as the top-rated network, NBC's profits have slipped by a reported two-thirds, and it, too has experienced layoffs.[92] NBC has announced the closure of some domestic news bureaus and there has been speculation that the network might eliminate its news division.[93] Similarly, the economics of network broadcasting has forced Capital Cities/ABC to make cuts reported to be in hundreds of millions of dollars.[94] ABC is closing three domestic news bureaus, may reduce staff in others, and has delayed the introduction of a five-hour overnight newscast that was scheduled to begin last January.[95] In addition to network cuts, CBS announced a reduction in affiliate compensation of 20 percent for 1991, and NBC has announced a 10 percent cut.[96]

This is not to say that the Commission is obligated to ensure the financial health of the networks. By the same token, the public interest does not require that we create or maintain a regulatory subsidy for Hollywood producers.[97] But to ignore the fact that our regulations make the over-the-air broadcast industry less competitive at a time when it is facing its greatest threat is to be blind to our mandate to make available "a rapid, efficient, Nation-wide, and world-wide * * * communication service."[98]

Needless to say, as network news cutbacks demonstrate, reducing the profitability of networks has had the effect of hampering their ability to serve the public through diverse programming. The same is true of entertainment fare. For example, the networks have essentially withdrawn from programming during the morning daytime period "because the return on investment is no longer there."[99] Generally, the networks' flexibility in programming choices has been constrained by the economic outlook.[100] One consequence of this is a greater reliance by the networks on the less expensive "reality-based" programming.[101] In the roster of shows currently under development, all three networks have announced plans for "a larger dose of reality programming than usual."[102] This is not to suggest that reality-based programming is contrary to the public interest. Some may indeed be fine programs. But it is not a healthy thing for our national networks to base prime time programming decisions on their ability to get a few shows on the cheap. Such a climate hardly contributes to diversity. Nor does it help local affiliates that depend on a strong network schedule to maintain their ability to serve their communities.[103]

It is interesting to note that over the seemingly endless course of this proceeding, as the commenters have come to realize that some modification in the rules is inevitable, all have acknowledged that change is necessary to help the networks.[104] But they propose varying levels of network involvement, all—of course—in the name of the public interest. Perhaps it is too cynical to suggest that where the commenters draw the line on network entry depends on their line of business. But whatever may be the origin of the parties' concern, my question is this: Can any commenters demonstrate that their fears or speculations about how the networks might behave if allowed to compete fully match what already is happening to network television? Can the majority do so? The answer to this question is critical because the future of free over-the-air television is at stake.

The Public Interest Does Not Support Meddling in the Contracting Process

The Report and Order adopts a complex set of rules designed to protect suppliers of network entertainment programming and buyers in the off-network and first run syndication market. With respect to program suppliers, the majority has fashioned complicated anti-"extraction" safeguards. The intent is to prevent the networks from taking financial interests or syndication rights without compensating the producers.

Contrary to the majority's inclinations, the record simply will not support such an overbearing governmental presence in the contracting process. There is little evidence to suggest that extraction was a major problem twenty one years ago. If anything, once you get beyond the anecdotes, the evidence goes the other way.[105] The recollections of former network executives who now work for studios cannot be considered the best evidence, even if their prior experience is thought to be relevant today.[106] The fact that the Justice Department charged in the mid-70s that extraction took place is not probative, since those charges were never tested in court.[107] In any event, the Justice Department's position *today* is that the networks lack the market power to extract financial interests and syndication rights.[108] The extraction argument simply is not credible in today's competitive market. The networks compete aggressively for hit shows. If one demands too much from a producer, that person may go to another buyer.[109]

If this record contains evidence of extraction, it is in the studios' practices when a hit series is up for renewal. In perhaps the most publicized examples, demands were placed on NBC that it pay bonuses of $100 million and $120 million to renew *The Bill Cosby Show* and *Cheers*.[110] Studios do not

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[80] *Competition, Rate Deregulation and the Commission's Policies Relating to the Provision of Cable Television Service*, 5 FCC Rcd. at ¶¶ 82–84.

[81] Shales, *The FCC and the Threat to Free TV*, Washington Post, April 8, 1991 at C2.

[82] Some advertising executives have suggested that perhaps within five years the networks' "days as a mass medium will be over." Levine, *The Last Gasp of Mass Media?* Forbes, September 17, 1990 at 9. *See also* Zoglin, Goodbye to the Mass Audience, Time, November 19, 1990 ("The era of the mass TV audience may be ending * * * "); Carter, *Little Improvement in Sight As Networks End Bad Year*, New York Times, December 24, 1990 ("a senior network executive, who insisted on remaining anonymous [stated,] 'We're presiding over networks as they head out of business.' "); Werts, *Look Who's Watching*, Newsday, December 23, 1990 ("the networks are dying, and single-interest cable channels are premiering monthly"); Mahoney, *Network Woes Are Barter's Gain*, Electronic Media, March 25, 1991 at 16 (According to Tim Duncan, executive director of the Advertiser Syndicated Television Association, the networks' ability "to deliver 90 percent of the nation at the flip of a switch * * * isn't the case in many networks dayparts anymore. That doesn't exist outside of prime time and shortly will not exist in prime time.").

[83] Shales, *The Endangered NBC Peacock*, Washington Post, March 28, 1991 at B2.

[84] Shales, *FCC Syndication Rule Relic of a Bygone Era*, THE HOUSTON POST, December 20, 1990 at E–2.

[85] Levine, *The Last Gasp of Mass Media?* FORBES, September 17, 1990 at 8–10. *See also Group W To Offer 'One Stop Shop' To Advertisers*, BROADCASTING, September 24, 1990 at 72; King, *Gannett Will Take Another Shot at Selling Cross-Media Packages*, WALL STREET JOURNAL, September 28, 1990 at B6; *More Viewers, Fewer Ads*, NEW YORK TIMES, April 7, 1991 at 27 ("People scan television the way aborigines scan the horizon. They flip channels and never really watch anything. The advertisers know this and are backing away. They want more targeted media.").

[86] For example, the USA Network (which is jointly owned by Paramount Communications, Inc. and MCA, Inc.) enjoyed a 1990 increase in ad revenues of 33 percent. Over all, basic cable advertising billings rose more than 20 percent. *See* Goldman, *Cable TV's Ratings and Ad Revenue Grow*, WALL STREET JOURNAL, November 8, 1990. *See also* Dempsey, *Basic Cablers Soar in Brisk Ad Climate*, VARIETY, May 13, 1991 at 47; Walley, *Cable Bounds as Networks Stumble*, ADVERTISING AGE, January 28, 1991; Greenstein, *Cable Programers Expect Bullish Year*, ELECTRONIC MEDIA, January 14, 1991; Gerard, *Industry Outlook Viewed as Gloomy*, NEW YORK TIMES, December 11, 1990; Dempsey, *Growth of Basic Cable's Steady*, VARIETY, September 17, 1990; Fowles, *The Upheavals in the Media*, NEW YORK TIMES, January 6, 1991.

[87] Whatever the studios tell this Commission in their role as entertainment producers, it must be remembered that they also are consumers of advertising time to promote their theatrical releases. During the past year, Columbia Pictures reduced its network advertising budget by 8 percent, while increasing spending in syndication by 195 percent and on cable network by 31 percent. MCA cut its network budget by 10 percent while boosting syndication spending by 69 percent and cable advertising by nearly 11 percent. Paramount increased cable expenditures by 30 percent and syndication purchases by more than 18 percent, while network media buys rose by only 10.7 percent. Twentieth Century Fox increased its purchases of cable ads by almost 100 percent. *See Movie Advertising: Enough to Go Around?* BROADCASTING, April 1, 1991 at 31.

[88] *See Where the Viewers Are*, ELECTRONIC MEDIA, March 25, 1991 at 10 ("The only provider of programming that has shown clear, substantial viewing is basic cable.")

[89] *See Comments of CBS, Inc.*, June 14, 1990 at 31–36; *Reply Comments of NBC, Inc.*, August 1, 1990 at 8–14; *See, e.g.*, Lippman, *CBS Cutbacks Expected to Include 400 Layoffs*, LOS ANGELES TIMES, March 30, 1991 at D3; Carter, *Little Improvement in Sight As Networks End Bad Year*, NEW YORK TIMES, December 24, 1990; Tyrer, *No Quick End Foreseen to Network Economic Woes*, ELECTRONIC MEDIA, January 14, 1991 at 20; Mermigas, *Analyst Predicts Record Loss for CBS*, ELECTRONIC MEDIA, January 28, 1991; *Profits Fall at Capital Cities/ABC*, NEW YORK TIMES, February 8, 1991; Shales, *The Endangered NBC Peacock*, WASHINGTON POST, March 29, 1991 at B1; *NBC Reports Revenue Decline and Earnings Drop for 1990*, BROADCASTING, January 28, 1991.

[90] Shales, CBS Posts Huge Loss, Eliminates 400 Jobs, WASHINGTON POST, April 6, 1991 at D4 ("With increased competition from cable, pay TV and VCRs, network ratings and profits began declining in the '80s, and all three continue to undergo radical downsizing as they face sobering new economic realties.").

[91] *Id.* at D1; Carmody, *The TV Column*, WASHINGTON POST, April 4, 1991 at D6; Lippman, *CBS Cutbacks Expected to Include 400 Layoffs*, LOS ANGELES TIMES, March 30, 1991 at D3; Hall, *CBS May Close 4 Bureaus to Curb News-Gathering Costs*, LOS ANGELES TIMES, April 3, 1991 at F2.

[92] Shales, *The Endangered NBC Peacock*, WASHINGTON POST, March 29, 1991 at B2.

[93] Gay, *Will Network News Ever Be The Same?*, NEWDAY, January 30, 1991.

[94] Mermigas, *Cost-Cutting Won't Save Networks*, ELECTRONIC MEDIA, November 26, 1990.

[95] *Capital Cities/ABC Third-Quarter Net Declined 11%, Reflecting Slump in Ads*, WALL STREET JOURNAL, October 24, 1990.

[96] Tyrer, *No Quick End Foreseen Network Economic Woes*, ELECTRONIC MEDIA, January 14, 1991 at 28.

[97] *See National Association of Independent Television Producers & Distributorys v. FCC*, 516 F.2d 526, 534 (2d Cir. 1975) ["W]hile a purpose of PTAR[ ] was to encourage independent production for access time, it was not to improve the position of the producers against the networks. Nor was there any intention to make the networks poorer. What is prohibited is that these be the goals.").

[98] 47 U.S.C. 151.

[99] *Syndication's Growing Clout*, BROADCASTING, March 25, 1991 at 92. *See also* Johnson, *'CBS This Morning' May Go Off Into the Sunset*, USA TODAY, April 30, 1991 at D3.

[100] Carter, *In TV Ratings Battle, NBC Finds Constraints*, NEW YORK TIMES, January 8, 1991.

[101] *Goodbye to the Mass Audience*, TIME, November 19, 1990 ("To avert such a disaster, the networks are looking for ways to reduce programming costs. Reality shows like NBC's *Unsolved Mysteries* and CBS's *Top Cops* are becoming more common, partly because they are cheaper to produce."); Carter, *TV's Mid-Season: Modest Ambitions*, NEW YORK TIMES, January 16, 1991 ("Cost considerations also account for the prevalence of programs appearing in prime time solely because they are cheap.").

[102] Tyrer, *Networks Boost Pilot List by 25%*, ELECTRONIC MEDIA, March 25, 1991 at 1; *Networks Unveil Pilot List for Fall Season*, ELECTRONIC MEDIA, March 25, 1991 at 108 (CBS announced four reality-based shows under development, while ABC and NBC each listed six.).

[103] The reduction of affiliate compensation also hurts local broadcasters, many of whom depend on network payments as a major source of income. This is particularly true in smaller markets. *See* Tyrer, *No Quick End Foreseen to Network Economic Woes*, ELECTRONIC MEDIA, January 14, 1991 at 28.

[104] *See, e.g., INTV Comments in Response to Order Requesting Further Comment*, March 25, 1991 at 1; *Further Comments of Westinghouse Broadcasting Company, Inc.*, March 25, 1991 at 1–2; *Supplemental Further Comments of the Coalition to Preserve the Financial Interest and Syndication Rule*, March 25, 1991 at 2–3; *Program Producers and Distributors Committee Response to Order Requesting Further Comment*, March 25, 1991 at 3.

[105] The Network Inquiry Special Staff found that "like any other property right [syndication rights or interests] were available for a fee and the networks obtained them by paying compensation to the suppliers." NEW TELEVISION NETWORKS: ENTRY, JURISDICTION, OWNERSHIP AND REGULATION (Vol. 2, 1980) at 729; Second Interim Report by the Office of Network Study, Part I, *reprinted in* H. REP. NO. 281, 88th Cong., 1st Sess. 65 (1963); Second Interim Report by the Office of Network Study, Part II, 211 (1965). *See* Crandall, *The Economic Case Against the FCC's Television Network Financial Interest and Syndication Rules* (submitted with Joint Network Comments, June 14, 1990) at 8–12; *Ex Parte Letter from Capital Cities/ABC, Inc. to Donna R. Searcy*, April 1, 1991; Crandall, *FCC Regulation, Monopsony, and Network Television Program Costs*, 3 BELL J. ECON. & MANAGEMENT SCIENCE 483 (1972).

[106] FCC *En Banc* Hearing, December 14, 1990 (Testimony Robert Daly and Barry Meyer). If anything, the emphatic statements by studio executives that they used to take rights from producers without compensating them should do little to calm the nerves of independent producers, who currently must turn to the studios for financing.

[107] The allegations of extraction were made in an identification of evidence in *United States v. CBS, Inc.*, Civ. No. 74–3599–RJK (C.D. Cal.) However, the Commission has found that "Justice Department pre-trial pleadings . . . lack any probity since these allegations have never been established in a court." *Amendment of § 73.3555 of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations*, 100 F.C.C.2d 74, 85 (1985).

[108] *Justice Department Comments*, June 14, 1990 at 20–24; *Further Comments of the Department of Justice*, December 21, 1990 at 7.

[109] The record contains numerous examples of this phenomenon. *E.g.*, Testimony of Thomas Carter, Jeff Sagansky and John Agoglia, FCC *En Banc* Hearing, December 14, 1990; *Further Reply Comments of Capital Cities/ABC, Inc.*, December 21, 1990 at 7–8.

[110] NBC reportedly settled on a per-episode price of $3 million for *Cosby*. Variety, April 4, 1990 at 50; HOLLYWOOD REPORTER, March 30, 1990 at 1, 86. The demand of $120 million to renew *Cheers*

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always wait for renewal. When a show becomes a hit, networks are often asked to increase the license fee before the end of the option period.[61] Studios also will use the leverage they command by virtue of having a hit program to obtain network concessions involving less popular shows or to obtain future commitments. According to one studio executive quoted in VARIETY, "[t]he combined clout of Lorimar and its sister company Warner * * * lets the studios bulldoze iffy product onto the air." [62] As a network programmer told the Commission last December:

At some point, I think someone should take my blood pressure after I leave Mr. Daly's office, knowing that through the Warner-Lorimar connection, he controls nine of our prime time shows. Nine. That's what I call market power or leverage or intimidation or coercion.[63]

Each of the networks has provided examples of this. To renew *Murder, She Wrote*, CBS had to accept a 60 percent increase in the license fee, agreed to purchase 39 episodes of yet-to-be-developed shows from Universal Television, and agreed to buy an undeveloped series and two MOWs from a company owned by Angela Lansbury (the star of *Murder, She Wrote*).[64] CBS also claims that renewals of *Dallas, Falcon Crest* and *Knots Landing* were tied together by Lorimar. Consequently, the network was effectively blocked from cancelling *Falcon Crest* or from renewing the other two series for a single year.[65] NBC reported that to obtain a two year renewal from Disney for *The Golden Girls*, it had to guarantee a favorable time slot for the show, purchase three blind series, and renew another show, *Empty Nest*, at an higher license fee.[66] NBC agreed to buy two blind series from Paramount in exchange for the renewal of *Family Ties*, and one blind series from Warner to obtain the renewal of *Night Court*.[67]

The majority dismisses this evidence as pertaining only to "the industry's most successful producers and programs" and to "license renegotiations." Report & Order ¶ 46. To this, all I can say is, "What's your point?" The majority apparently agrees that the major studios can exercise their clout at the expense of the networks, and ultimately, independent producers. To the extent major studios can prolong the life of programs that otherwise have run their course or to obtain commitments for new shows, it drives independent producers out of prime time. Industry sources point out that "the shrinking shelf space for independents is partly because of the majors' use of their growing concentration of power to secure as much of that space as possible" and partly because the studios "have been bidding up the price of key talent, the writer-producers, making it harder for new competitors to break in." [68] Consequently, only 14 percent of the 1990 prime time schedule on ABC, NBC, CBS and Fox came from truely independent producers—those who did not rely on a major studio, network or large diversified media company for financing.[69] As the president of Columbia Pictures Television has predicted, "Within the next five years or so, the bulk of the programming will be provided by four or five major studios." [70]

If I ignore this evidence and accept the majority's assumption that the networks have the power to extract valuable rights for nothing, I doubt the safeguards in the Report and Order will have much effect. As the Department of Justice concluded, "[i]f networks have the power to 'take' these financial interests from producers as a price for putting their programs on the air, it is reasonable to expect that producers would 'offer' these rights to the networks when they begin negotiations with the networks." [71] Thus, if producers must initiate co-productions for in-house arrangements, they will do so. If networks may acquire backend rights only in the second stage of a negotiation, studios that fear network programming decisions will make sure that there are some rights left to give up.

As is more likely, Commission intervention will disrupt the contracting process, probably to the detriment of the networks. "Regulation of the contracting process is difficult under any circumstances, but it is particularly difficult when the subject products are highly individualistic and suppliers have differing resources and needs." [72] In the case of program acquisition, there is ample information in the record that a two-step negotiation process will effectively preclude the networks from bidding for backend rights.[73] By the time the network and the producer have reached a licensing agreement, whatever rights there are to be sold probably already have been.[74] Moreover, the Department of Justice noted that regulating the bargaining process is likely to be "extremely difficult and costly to administer." [75]

In light of these considerations, I must question why the Commission would ever get involved in assessing the relative bargaining power of Hollywood versus the networks. We simply have no statutory mandate to serve as a referee between these two powerful interests. The only conceivable jurisdictional rationale is that by intervening in the contracting process, the Commission will somehow stimulate the production of more "creative" or "diverse" programming for the viewing public. But I simply am at a loss to understand how we, as policymakers, are to assess such intangibles in this context. One thing is clear, however. The current record does not support governmental intervention in this area.

The Creativity Debate

One of the studios' primary arguments in support of the rules' retention is the notion that network ownership must be avoided in order to foster creativity in program production. The majority swallowed this argument hook, line and sinker, as the Report and Order's repeated and uncritical references to "diversity" attest. Yet I have never been entirely clear on what this means. I asked one executive from an independent production company, who had been urging me to preserve creativity and quality in television, exactly how network involvement would have changed his company's most successful show—*The A Team*. He was stuck for an answer. Yet even if he had been able to describe the particular ways in which barring a network financial interest improved *The A Team*, I am not at all certain I would want my public interest calculus in this proceeding to turn on that answer.

This is not a trivial point; it goes to the heart of the *Report and Order*. The majority treats the notion of "diversity" as a religious icon—invoking it countless times without once seeking to define it or giving an example. Although I can agree, as a general proposition, that diverse and creative programming is in the public interest, that does not relieve the Commission of the burden of explaining the nature of the diversity it is seeking to promote in *this* proceeding or of describing the ways in which the regulations will attain their purported objective.[76] Courts have made clear that the Commission may not base rules on a " 'fanciful threat,' unsubstantiated by the record or by two decades of experience." *Century Communications Corp.* v. *FCC*, 835, F.2d 292, 295 (D.C. Cir. 1987), *cert. denied*, 486 U.S. 1032 (1988), quoting *Quincy Cable TV, Inc.* v. *FCC*, 768 F.2d 1434, 1457 (D.C. Cir. 1985), *cert. denied*, 476 U.S. 1169 (1986).

Despite the need for specific record support, neither the parties nor the majority has been able to explain to me why program quality or diversity might be threatened by elimination of the financial interest and syndication rules. Is television that much improved, after two decades of limitations on the networks? Critic Tom Shales recently pointed out:

In the 1973–74 season, for instance, this was the CBS Saturday night lineup: "All in the Family," "M*A*S*H," "The Mary Tyler Moore Show," "The Bob Newhart Show" and "The Carol Burnett Show." Incredible! Networks today are lucky to have that many good shows in their entire week's offerings.[77]

It is particularly revealing that most of the programs on this list were developed before the rules went into effect. Are we really better off today?

The confusion surrounding the "creativity debate" most likely stems from the fact that the parties have shifted this meaning of the issue since the rules were adopted in 1970. When it promulgated the Report and Order, the Commission was concerned about the evolution of the programming market toward licensing arrangements and away from single company sponsorship. The reviewing court described this shift away from sole sponsorship as "the single most essential fact" that demonstrated network control. *Mt. Mansfield Television, Inc.* v. *FCC*, 442 F.2d 470, 482 (2d Cir. 1971). It pointed out that the networks "directly controlled" programming either by in-house production or by " 'spot' advertising" in which the program is supported by "many sponsors" as opposed to "one or two advertisers." [78]

There is one significant problem with this reasoning: I am not at all certain that the "good old days" of single sponsorship were the high point of creative freedom for producers. During what is commonly referred to as the Golden Age of Television, "anthology writers and directors found sponsors and their agencies increasingly intent on interfering with script matters, dictating changes, vetoing plot details." [79] According to television historian Erik Barnouw, sponsors exerted "a choke-hold on anthology drama" that drove the most talented writers and directors out of the television business and into theatrical films and other endeavors.[80]

Quite often, sponsors would intervene in the creative process simply to avoid controversy, but there were other motivations as well. In one early television series, *Man Against Crime*, the writers received mimeographed instructions from the sponsor—Camel cigarettes. The writers were told, for example, that characters should smoke cigarettes gracefully, not "puff[ ] nervously" and that a cigarette should not be given to a character to "calm his nerves" since that might suggest a narcotic effect.[81] The instructions were quire extensive: "Do not have the heavy or any disreputable person smoking a cigarette. Do not associate the smoking of cigarettes with undesirable scenes or situations plot-wise." [82] The writers were also given advice on plot elements:

It has been found that we retain audience interest best when our story is concerned with murder. Therefore, although other crimes may be introduced, somebody must be murdered, preferably early, and with the threat of more violence to come.[83]

But the writers were not permitted to introduce just any "other crime." Arson was to be avoided because it could remind the audience of fires caused by cigarettes.[84]

When it adopted the finsyn rules, the Commission apparently did not appreciate these effects of single sponsorship. Instead, it saw spot advertising as a consolidation of network control and predicted that with the new rules, "the trend toward multi-sponsored programs can be reversed." *Mt. Mansfield Television, Inc.* v. *FCC*, 442 F.2d at 482–83. This prediction was wrong in that spot advertising continues to be the industry norm. It also was incorrect with respect to small independent producers, who typically depend on major studios for production facilities and financing. In exchange for this support, independent producers often give up the copyright to the program being produced, as well as other aspects of creative control.[85]

The bottom line is, if you are an independent producer, *somebody* is always going to acquire a degree of creative control over the production. The question is whether it is better from a public interest perspective to encourage such control by advertisers, major studios or networks. As noted above, I have my doubts about the level of creative freedom that existed under the single sponsorship regime before the rules were adopted. And currently there are some indications that the degree of creative freedom may be diminished as major studios increasingly come under foreign control.

Within a few hours of the announcement that MCA was being acquired, the president of Matsushita told the press that "Japan bashing" films should "not emerge" from Universal or anywhere else.[86] The statement caused such uneasiness in Hollywood "about having an occupying army in our cultural front yard, Variety blared a Japanese headline, translated 'Buyer Beware.' " [87] As one outside observer noted, "It will be one more step in the process where some movies don't get made." [88] Indeed, there are reports

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represented more than half of NBC's 1990 profits. Carmody, *The TV Column*, WASHINGTON POST, February 11, 1991 at C8. This year, NBC paid $50 million to renew *Cosby*; $40 million to renew *The Golden Girls*; and $70 million for another two seasons of *A Different World*. *'Cosby,' 'World' Renewed*, ELECTRONIC MEDIA, May 6, 1991 at 1.

[61] *See, e.g., Comments of CBS, Inc.*, June 14, 1990 at 22–24; Affidavit of Jeffrey Sagansky at 6–7 (describing increase demanded for series *Murphy Brown*).

[62] VARIETY, June 27, 1990 at 49. *See also* Koch, *Television's Independents: Working on a Slippery Slope*, NEW YORK TIMES, September 30, 1990 at F10 ("The most powerful form of pressure available to the studios is a threat to move a hit show to another network or to take future projects elsewhere.").

[63] Testimony of Robert Iger, FCC *En Banc* Hearing, December 14, 1990. *See also* Testimony of John Agoglia ("I can think of six shows right now on the schedule of the three networks that were forced to be renewed despite low ratings and the audience rejection.").

[64] *Comments of CBS, Inc.*, June 14, 1990 at 27; Affidavit of Jeffrey Sagansky at 8.

[65] *Id.* (Affidavit of Jeffrey Sagansky) (*Dallas* and *Knots Landing* were each given two year renewals).

[66] *Reply Comments of NBC, Inc.*, August 1, 1990 at 25.

[67] *Id.*

[68] Koch, *Television's Independents: Working on a Slippery Slope*, NEW YORK TIMES, September 30, 1990 at F10.

[69] *Id.* This figure was down from 37 percent in 1986.

[70] *Id.*

[71] *Further Comments of the Department of Justice*, December 21, 1990 at 8–9.

[72] *Id* at 9.

[73] *Id.* at 10. *See Comments of Capital Cities/ABC, Inc.*, November 21, 1990 at 8–16, 22; *Further Comments of CBS, Inc.*, November 21, 1990 at 13–16 (and appendix C, Affidavit of William B. Klein); *Comments of NBC, Inc.*, November 21, 1990 at 24–28.

[74] *Further Comments of CBS, Inc.*, November 21, 1990 at 16–17 ("Thus, *over 94 percent* of CBS's outside-supplied pilots and series from 1987 to the present were licensed from producers who (1) had their own in-house syndication organizations or (2) were parties to 'pre-sale' financing deals with a major studio or other large distributor. CBS knows of only four instances (less than three percent of all outside-supplied pilots and series) during the entire 1987–1990 period in which the license fees *might* have been negotiated, and the series ordered, prior to the packager having acquired full financing through the sale of backend rights.") (citations omitted, emphasis in original).

[75] *Further Comments of the Department of Justice*, December 21, 1990 at 11. As the Department pointed out:

The same type of detailed regulatory oversight would also be required if the Commission were to implement a regulation requiring that all negotiations over network acquisition of financial interests and/or syndication rights be initiated by the program producer. The Commission would be forced to decide, in the context of a complex negotiating process, which party "really" initiated the subject.

[76] Although the majority comes closest to at least defining its policy goal when it characterizes diversity as "a wide range of voices and a wide variety of cultural influences." Report and Order ¶ 14, it makes no attempt to show how its purported goal will be met. Why, for example, will viewers gain a different cultural perspective from having Paramount own 25 percent of an independent producer's program than from having ABC own a similar percentage?

[77] Shales, *The Mary Memory Tour*, WASHINGTON POST, February 18, 1991 at C1.

[78] 442 F.2d at 482. The network consent decrees are based on the same premise. *See, e.g., United States* v. *NBC*, 41 FR 51992, 52016–19 (1976) (Competitive Impact Statement). The focus on sponsorship in the 1970 proceeding has led to some confusion in the record before us. Some parties to the current proceeding assert that the networks acquired backend rights in 97 percent of the time before the rules were adopted. *E.g., Supplemental Further Comments of the Coalition to Preserve the Financial Interest and Syndication Rule*, March 25, 1991 at 7. This figure, however, relates to programs produced in house or supported by spot advertising. With respect to financial interests, the networks held profit participations in approximately 60 percent of their shows in the years proceeding the rules. Generally the networks would own an approximate 25 percent interest in a given show. With respect to distribution rights, the networks obtained foreign or domestic distribution rights in between 25 and 30 percent of the programs on their schedules. *See generally* Arthur D. Little, Inc., TELEVISION PROGRAM PRODUCTION, PROCUREMENT, DISTRIBUTION AND SCHEDULING (1969).

[79] E. Barnouw, TUBE OF PLENTY 165 (1977).

[80] *Id.* at 165–66.

[81] *Id.* at 132.

[82] *Id.*

[83] *Id.*

[84] *Id.*

[85] *See Reply Comments of the Writers Guild of America, West*, August 10, 1990 at 28–31; *Further Reply Comments of Capital Cities/ABC, Inc.*, December 21, 1990 at 14; Further Comments of CBS, Inc. November 21, 1990 (Appendix C, Affidavit of William B. Klein) ("the studio/syndicator typically acquires *all* ownership and distribution rights to a program . . . including the right to license the program to the networks"). *See also* remark of Marcy Carsey, quoted in J. Gerard, *Producers Carsey and Werner: What Have They Done For Us Lately?*, NEW YORK TIMES MAGAZINE, November 25, 1990 at 80 ("When you share your financial risk with a studio, you give away part of your creative control, too.").

[86] Cieply and Citron, *Universal's 'Diamond' in the Rough*, LOS ANGELES TIMES CALENDAR, February 5, 1991 at F1.

[87] Dutka and Easton, *Japan is Hollywood's Brave New World*, LOS ANGELES TIMES CALENDAR, December 23, 1990 at 3.

[88] *Id.*

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that screenwriters for an upcoming Universal film about an American baseball player in Japan are taking "unusual pains" to avoid offending Asian sensibilities.[89]

This is not to suggest that foreign ownership of major studios will decimate the creative freedom of producers. There is not sufficient information in the record to resolve this issue one way or the other. But it raises a question about whether network ownership of some backend rights is necessarily worse by comparison. Certainly no one in this proceeding has asserted that the networks might impose any kind of uniform cultural outlook.

As a matter of fact, the evidence before us tends to suggest that network involvement does not restrict the creativity of producers. Contemplating a significant change in the finsyn rules, producer Steven Bochco was quoted as saying, "All it's going to change is who participates in the financial pie, and you'll see the same people doing the same stuff they always have."[90] Producer Barney Rosenzweig made the point another way: "Most producers have been so abused by the studios that I can't see how having the networks count the money will be any worse * * *. [T]heir accounting methods can't be any less honest than the major studios."[91]

These points were confirmed, if a bit indirectly, during the Commission's *en banc* hearing last December. Thomas Carter, producer of the ABC series *Equal Justice*, urged the Commission to retain the finsyn rules to ensure that independent producers would not be stifled. He noted that the series was given the "green light" only because he threatened to take the project to another network—a statement that was more revealing than he realized. In any event, Mr. Carter concluded:

> If ABC had owned my project we would not have been able to take that position and my show might never have made it to the screen.

Putting all the decision-making in the hands of monolithic committees and like-minded monopolies will kill diversity, stifle innovation, and stagnate quality. This must not be allowed to happen. You must ensure the survival of competition in programming or our TV sets will surely become windows to the "vast wasteland" that Newton Minow wrote of some twenty years ago.[92]

The ironic counterpoint to this impassioned statement is that ABC *does* own the copyright to *Equal Justice*, having acquired ownership from Orion Pictures[93]. Apparently the heavy hand of network domination is not so ominous if the producer is unaware of its grasp. As Mr. Carter noted in response to a question, "anything that was entered into with those companies, which I am not aware of, had no effect on the position that I have as a producer."[94]

Realistically, the networks must maximize the creative freedom of the producers of its product. They have a powerful financial incentive to obtain the best programming possible since each prime time rating point equates to $100 million in advertising revenue over the course of a season.[95] The three networks bid aggressively against one another, as well as against the studios, to obtain the services of top-line producers with proven track records. To obtain an edge, the networks often must make series commitments without ever having seen a pilot or a script.[96] As competition for viewers has increased, the networks have offered increasing amounts of creative freedom, often to attract successful producers in other media, such as theatrical film.[97] Top film directors, such as Steven Spielberg, David Lynch, Tim Burton, John Sayles, David Mamet, Richard Donner, Tony Richardson and Robert Zemeckis have been persuaded to work with television, at least in part because of the creative freedom they are allowed. As Lee Rich, co-founder of Lorimar noted, "The TV people promise them freedom, and nobody says a word to them about a script. They just let them do their thing. People like David Lynch and John Sayles love that."[98]

Regardless of the position one takes in this debate over creativity, it does not seem as though the majority plan will maximize the number of options for independent producers. By allowing the networks to acquire active syndication capability only for in-house programming, the Report and Order creates an economic incentive for the networks to choose that alternative. This is not to suggest that networks will coerce producers into making in-house deals or that such deals are "bad" for producers. It is simply that the new rules will distort the market and encourage the networks to channel investments in backend rights toward in-house arrangements (up to the permitted limit). Yet this is precisely what some independent producers said they wanted to avoid.[99] They do not want to become network employees. But by requiring that the network own 100 percent of the copyright for "solely produced" programs, producers will be reduced to just that—work for hire employees.

It is true that the in-house definition has been expended to include coproductions (when initiated by the producer, subject to a 30-day cooling off period). To an extent this may resolve producers' concerns about becoming network employees. But this leaves me with another question: Why is the Commission limiting this alternative to less than half the prime time entertainment schedule? To the extent the safeguards can prevent even the theoretical possibility of extraction of rights, why should the Commission intervene in the types of contractual arrangements that networks and producers may enter? If, as I suspect, the two-step negotiation process will impede the networks' ability to invest in programming in the remaining 60 percent of the schedule, then the rules will simply keep most of prime time as a preserve for the major studios. The regulatory structure is itself creative, but I do not think it will do much for the programming.

Diversity of Programming Sources

Another indicator of programming diversity—one that is not so elusive as the concept of creativity—is the number of producers who provide programs to the networks. Proponents of the finsyn rules claim that the rules have served their purpose because the number of producers has increased since 1970. The Coalition to Preserve the Financial Interest and Syndication Rule asserted that independent sources of programming multiplied after the rules were adopted, and that there were more than 100 suppliers of prime time programming for the 1987–88 broadcast season.[100]

The networks, however, tell a far different story. They provided evidence that the number of prime time progam suppliers dropped by 40 percent, from 55 entities in the 1969–70 season to 33 in the 1988–89 season. Eight firms (primarily MPAA studios) supplied 65 percent of prime time entertainment series in 1988–89, compared to 49 percent in 1969–70.[101] By the fall of 1990, the major studios' share of prime time programming had reached 72 percent.[102]

[89] Cieply and Citron, *Universal's 'Diamond' in the Rough*, LOS ANGELES TIMES CALENDAR, February 5, 1991 at F1.

[90] Tyrer, *No Quick End Foreseen to Network Economic Woes*, ELECTRONIC MEDIA, January 14, 1991 at 20.

[91] Kissinger, *FCC Fuels Indie Fears as Finsyn Nears Finale*, VARIETY, March 4, 1991.

[92] Statement of Thomas Carter, FCC *En Banc* Hearing, December 14, 1990.

[93] *Further Reply Comments of Capital Cities/ABC, Inc.*, December 21, 1990 at 13. Apparently, the original holder of the copyright to *Equal Justice* was Orion Pictures, the studio that provided financing for the series. When the studio experienced financial difficulties with the show, it sold the ownership rights to ABC, making it an "in-house" production.

[94] Statement of Thomas Carter, FCC *En Banc* Hearing, December 14, 1990.

[95] *Comments of CBS, Inc.*, June 14, 1990 (appendix A, Affidavit of Jeffrey F. Saganasky).

[96] *Id.*

[97] *Id.* at 19–22; *Further Reply Comments of Capital Cities/ABC, Inc.*, December 21, 1990 at 8 n.18; Testimony of Brandon Stoddard and Jeffrey Saganasky, FCC *En Banc* Hearing, December 14, 1990. The proliferation of viewing options and decline of network audience share "has forced the networks to be more receptive to new talent and seek new approaches to programming." Rohter, *Top Film Makers Finding Freedom in TV*, NEW YORK TIMES, September 20, 1990 at C13.

[98] Rohter, *Top Film Makers Finding Freedom in TV*, NEW YORK TIMES, September 20, 1990 at C13.

[99] *See* Testimony of Steven J. Cannell, FCC *En Banc* Hearing, December 14, 1990 (I think that the fact that we have, right now, spirited disagreements about programming [is] based on the fact that they do not own my contract, that I do not work for them, I do not have to park in the garage where they say. . . . And I am really concerned about the idea of too many people working in the network production company."). *See also Further Reply Comments of Capital Cities/ABC*, December 21, 1990 at 11 n.24; Testimony of Thomas Carter, FCC *En Banc* Hearing, December 14, 1990.

[100] *Comments of the Coalition to Preserve the Financial Interest and Syndication Rule*, June 14, 1990 (appendix M).

[101] *Joint Network Comments*, June 14, 1990 (Crandall Volume, appendix E).

[102] *Reply Comments of NBC, Inc.*, August 1, 1990 at 21; *Comments of CBS, Inc.*, June 14, 1990 at 29; *Joint Network Comments*, June 14, 1990 at 128.

Quite naturally, the studios dispute these figures, and argue that the number of independent producers "actually selling" programs to the networks increased by 200 percent since 1970, from 61 to 123. However, a review of copyright records revealed that generally the major studio—and not the affiliated "independent" producer—had ownership of the program as well as contractual responsibility for dealing with the networks.[103] By this measure, the major studios control the overriding majority of prime time programming.[104]

Given the trend toward increasing concentration of network program suppliers, it is clear that the finsyn rules did not increase diversity. Consequently, there is no justification for the Commission to preserve a regulatory subsidy for Hollywood on the theory that the rules will do so.

The Commission Should Not Limit Network Syndication Activities

The second major category of safeguards adopted by the majority relates to the syndication market. If networks are free to distribute directly off-network and first run syndicated programs, according to the majority, they will favor their affiliates and otherwise dominate the market for programming. In order to curb potential abuse, the Report and Order prohibits networks from distributing (1) in-house productions aired on another network; (2) programming licensed from outside producers; and (3) first run programming. In addition, the Report of Order prohibits affiliate favoritism and establishes a rebuttable presumption that such favoritism has occurred if a network sells a program to its affiliates in more than 30 percent of the markets in which the show is cleared. The new rules further impose elaborate semi-annual reporting requirements on the networks' program acquisition and syndication activities.

I have long been concerned with issues involving the syndication market, particularly as they relate to independent television stations. For that reason, I advocated safeguards to protect against the theoretical possibility of affiliate favoritism by the networks. I use the term "theoretical" advisedly, since the Commission lacked evidence of affiliate favoritism even in 1970, when "off-network programs constitute[d] a principal staple of the nonnetwork program market."[105] But certain parties argued strongly and sincerely that they feared network favoritism, and I thought it best to adopt protective regulations during the transition to a post-rule environment. The Report and Order, however, goes far beyond any legitimate concern about favoritism. By imposing reporting conditions and anti-favoritism rules and passive syndication requirements, the majority creates layers of redundant and burdensome regulations that most likely will prevent networks from getting into the business.

I can think of no public policy justification for anti-favoritism requirements and a rule that domestic syndication (of most non-in-house programming) be handled by a separate entity. To the extent distribution actually is insulated from the network, what is the point of prohibiting favoritism? And why would the Commission presume anticompetitive activities if 30 percent or more of the network's affiliates end up buying a program in which the network owns an interest if the network lacks distribution power? It simply makes no sense and will involve the Commission in endless amounts of record-keeping and dispute resolution.

Finally, other than a possible desire to keep networks out of syndication altogether, I can discern no rational pattern to the majority's cut on which programs can be syndicated directly and which cannot. Under the Report and Order, a network may syndicate directly (1) in-house programming presented on the network in prime time (subject to the 40 percent limit); (2) all non-entertainment programming; and (3) all non-prime time programming. Everything else must be syndicated through a third party. I should point out that the passivity requirement is no small penalty—it deprives the network of a substantial percentage of the syndication revenues.[106] Also, to the extent the restrictions prohibit a network from building up inventory, it could prevent the formation of the "critical mass" needed to create a syndication business. Additionally, the definition of "in-house" programming for purposes of engaging in first run syndication is far more restrictive than the definition of in-house network programming.[107]

While the Report and Order purports to promote competition in syndication, it serves only to limit the number of competitors in an increasingly concentrated market. It should be kept in mind that television program syndicators primarily are vertically-integrated companies that are involved in various aspects of the communications business. Of the top ten first run syndication companies, five are MPAA studios and three others include the Tribune Company, Multimedia and King World.[108] These entities do not need government protection. Moreover, the market share of these firms has been increasing. For example, the MPAA-syndicators' share of the off-network syndication market has grown from 31.5 percent in 1971 to 58.5 percent in 1989.[109] Despite this expansion of concentration, the majority would prevent active syndication for most of its programs any entity that has 15 hours of prime time programming that is distributed to 75 percent of U.S. television households. Yet, syndicators such as Paramount distribute 20 hours per week and Disney's Buena Vista company distributes 17.5 hours per week.[110] Moreover, their method of distribution is functionally equivalent of that used by entities the majority would define as "networks."[111] Given these facts, I do not understand how singling out the networks for unfavorable treatment serves to make the market less concentrated.[112]

Indeed, the behavior of current syndicators suggests to me that the market would benefit from having a larger number of competitors. For example, Paramount Domestic Television, which distributes the *Arsenio Hall Show*, imposes a substantial liquidated damages penalty for any station that fails to broadcast the program at the time specified in the contract. Buena Vista Television has contract provisions that prohibit a broadcast

[103] *Network Reply Comments*, August 1, 1990 (Joint Economic Appendix, Appendix C); *Reply Comments of NBC, Inc.*, August 1, 1990 at 21–23. The Coalition apparently was counting any person that had a production credit on a network program. Actual ownership and control appears to be a more realistic measure.

[104] Independent producers do not seem to have flourished under the rules. NBC submitted that it received prime time programming from 3 indpendent producers in 1980, down from 9 in 1979; CBS noted that it purchased programming from 22 independent producers in 1970, but only 9 in the 1981–82 season. Of the 22 independent suppliers in 1970, CBS reported that six merged with or were acquired by a major studio and 14 became "inactive." At most, only two of the 22 independent producers are still both independent and active. Of the 9 independent producers providing programming to CBS in 1981–82, four were acquired by major studios and one was acquired by a foreign interest. *Comments of CBS, Inc.*, June 14, 1990 at 29–30.

[105] *1970 Report & Order*, 23 F.C.C. 2d at 388. As the Commission noted in the *1970 Reconsideration Order*, "this rule will remove the *possibility* of the networks taking advantage in syndication distribution of their existing relationships with their affiliates. As stated earlier, *there is no evidence that the latter has been the case*. But the rule will eliminate the *potential* for competitive restraint in these areas." 25 F.C.C. 2d at 331 (emphasis added). Of course, there has been no opportunity to test the favoritism hypothesis in the 21 years since the rules were adopted.

[106] As a general rule, a domestic syndicator keeps about 30–35% of the gross U.S. syndication revenues, plus all distribution expenses, from the product it controls." *Further Comments of CBS, Inc.*, November 21, 1990 (appendix C, Affidavit of William B. Klein).

[107] The majority would permit network first run involvement only for programs that are "solely produced" by a network. Foreign and domestic co-productions would not be permitted.

[108] *Comments of NBC, Inc.*, November 21, 1990 at 44; Crandall, *The Economic Case Against the FCC's Television Network Financial Interest and Syndication Rules* (submitted with Joint Network Comments, June 14, 1990) at appendix A.

[109] *Comments of NBC, Inc.*, November 21, 1990 at 42.

[110] *See Comments of Fox Broadcasting Co.*, March 25, 1991 at 11–12.

[111] *Further Comments of Pappas Telecasting Companies*, November 21, 1990 at 9–10 ("[V]irtually all programming is distributed to stations via satellite. The national networks provide direct, continuous, and simultaneous satellite delivery 'feeds' to their owned and affiliated stations of programming to be exhibited that day by the time specified by the networks. Syndicated programming is distributed via satellite on a so-called 'day-and-date' basis, *i.e.*, the simultaneous distribution of the same program episode to all broadcast stations that have acquired rights to exhibit the program, for exhibition during a specified day and day-part that is acceptable to the syndicator.").

[112] Nor does the fact that networks generally own stations in major markets necessarily set them apart. Tribune Broadcasting Company, for example, owns television stations in New York, Chicago, Los Angeles, Denver, New Orleans and Atlanta and has an active syndication arm. Group W, which also syndicates programming, owns stations in Boston, Philadelphia, San Francisco, Pittsburgh and Baltimore. TELEVISION & CABLE FACTBOOK (Stations Volume, 1990) at A–1378, 1384.

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station from exhibiting non-Disney animated children's programs adjacent to Disney-produced shows, and which prevent head to head competition between Disney shows on different TV stations in the same market.[113] Any of these provisions would be illegal if a network attempted to impose them on its affiliates.[114]

Finally, when taken as a whole, the limitations of the Report and Order do not limit syndication activities in any consistent way. If a network developed another *Oprah Winfrey Show*, for example, there would be absolutely no limit on a network's ability to run the program as part of its daytime schedule and then syndicate it. On the other hand, if the network developed the show at its owned and operated stations and wanted to introduce it in first run syndication, the rules bar direct syndication. By the same token, an in-house program that is aired on a network may be syndicated directly, while an in-house program aired on a competitive network may not be.[115] What possible rationale can support these distinctions, other than protecting established syndicators from competition?

The Commission Should Not Limit In-House Production

As previously noted, the record in this proceeding does not support retention of the current rules, much less impose significant new regulations. Yet the Report and Order limits in-house productions to 40 percent of a network's prime time entertainment schedule.[116] But other than the studios' understandable desire to limit competition, absolutely nothing in the comments filed suggests any danger to the public interest by allowing the networks to make their own programs.[117] As the Justice Department pointed out, the in-house limitation "is not directed to any potential abuse by the networks."[118]

In fact, this has been one of the few areas where the networks already have had some latitude. The Commission's rules never limited in-house production. And the now-expired consent decree limits were not predicated on any continuing concern regarding network behavior in this area.[119] As the Department of Justice emphasized in this proceeding, the consent decree limits "were intended to be temporary limitations on the activities of the networks, and there has been no showing in this proceeding that these limits should be extended by Commission regulation."[120]

The networks' ability to engage in limited amounts of in-house production under the former consent decree limits proved neither to affect the choices of programs run in prime time or the renewal of series to enhance future syndication value. Before the in-house limits expired in 1990, none of the three networks produced the four hours per week permitted by the decrees. Indeed, network programming executives routinely reject in-house series proposals because of the need to develop a strong schedule. As NBC's President and CEO said in a 1988 speech before the Hollywood Radio and Television Society, "We went outside for every new series we needed, because in the judgment of Brandon [Tartikoff] and his people, the shows we licensed had more potential than the shows we produced * * *. Putting on weaker programs simply because we happen to produce them would be the way to bankruptcy."[121] With respect to renewal of in-house programming, NBC's President pointed out that since the 1950s, when NBC Productions was created, "only three prime time series that it has produced have reached syndication: *Bonanza*, *Little House on the Prairie* and *Punky Brewster*, two of which had horses in them."[122] There is simply no evidence in this record to suggest that any of the networks favor in-house productions over programs created by outside producers.[123]

I can imagine no public interest justification for imposing limits on network production of in-house programming. Neither can the Justice Department, as it made clear on the record:

> Regulations imposing limitations on how much any firm can produce internally are extreme, and, unless fully justified by competitive considerations, are inherently anticompetitive. They should not be imposed without strong theoretical and evidentiary support for the conclusion that anticompetitive effects are quite likely in their absence. As our previous comments have shown, that support is wholly lacking. The changes in the television marketplace since the FISR were imposed, notably the explosive growth of cable television and the emergence of a fourth broadcast network, point strongly in the direction of removing existing regulations, not imposing new ones.

Further Comments of the United States Department of Justice, December 21, 1990 at 12.

The New Network Definition Will Not Encourage Competition

By retaining an hours-based network definition, the majority undermines the Commission's longstanding goal of encouraging network competition. To be sure, the Commission chose such a standard when it adopted the finsyn rules in 1970. But as noted in the reconsideration order:

> Encouragement of the development of additional networks to supplement or compete with existing networks is a desirable objective and has long been the policy of the Commission. Hence we have redefined the term "network" * * * to apply only to major national television networks. This will remove any doubt that our actions are intended to encourage the competitive development of additional networks as well as other alternate program sources.[124]

At that time, the reasons for imposing a 15-hour standard "were not discussed" in the rulemaking "and are unclear as a result."[125] What was clear, however, was that the rules were "written only with the goal of changing the behavior of those already identified as engaged in the practice to be corrected." In other words, because of the "desire to encourage the development of additional networks," the "scope of the . . . rules [was] limited to the existing national networks."[126]

I think it is fair to say that then, as now, the 15-hour standard was plucked out of the air. There is no reasoning that ties the number of hours programmed to the types of network practices that led to the adoption of the rules. In 1970 such arbitrary decisionmaking could be excused. The emergence of additional national networks was not viewed as imminent. But the Commission's experience in the intervening years has demonstrated that the hours-based definition "may well function, in practice, to curtail the very activities the rule was intended to encourage."[127] Consequently, the Commission has been forced to waive the definition when it threatened to snuff out fledgling networks.[128] By now, we should know better.

Nevertheless, the majority sets a standard of 15 prime time hours for the network definition, a rule that will serve as a *de facto* limit on those entities striving to develop new competition. Fox has indicated that sound business judgment will force it to "dive under" whatever hours-based limit the Commission sets, and I cannot blame it. Thus, an hours based definition not only ill-serves the public interest, it is easily evaded. As one observer pointed out, the Commission's new network definition "means the Fox network * * * could air 14 hours and 59 minutes a week of prime time programming, plus unlimited amounts of daytime and Saturday-morning fare, and still remain merrily regulation free."[129] There are other ways to avoid the definition, as well. For example, an emerging entity could transmit 14-plus hours of "network" prime time programming and distribute the balance of its programs as first run syndication. I am certain that the creative minds at the networks and studios can fashion many ways around an hours-based definition.

To the extent the Commission intends to impose some residual or transitional finsyn rules, it is incumbent upon us to develop a new network definition. This was true under either the majority or minority approaches. I had hoped that we could devise some definition that measured market power or at least market presence. Unfortunately, there was insufficient interest in creating such a measure. I only hope that it does not take the loss of a fledgling network to teach the Commission a lesson.

The New Rules Violate the First Amendment

When the majority acts to foster greater business opportunities for Hollywood producers at the expense of the networks, it runs headlong into the bedrock principle that "restrict[ing] the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment." *Buckley* v. *Valeo*, 424 U.S. 1, 48–49 (1976). The Report and Order assumes that the speech of studios or of independent producers is more worthy of protection than that of the networks even though "speech does not lose its protection because of the corporate identity of the speaker." *Pacific Gas & Electric Co.* v. *Public Utilities Commission of California*, 475 U.S. 1, 16 (1986). *See First National Bank of Boston* v. *Bellotti*, 435 U.S. 765, 777 (1978). But the First Amendment cannot be reconciled with the majority's premise that the government may set aside a portion of the facilities of a corporate speaker in order to propagate a range of views deemed to be socially desirable. *See, e.g., Pacific Gas & Electric Co.*, 475 U.S. at 20; *Consolidated Edison Co.* v. *Public Service Comm'n of New York*, 447 U.S. 530, 544 (1980).

Perhaps we should be reminded periodically that the President appointed us to be FCC Commissioners, not philosopher kings. The Commission has no overriding mandate to improve American culture through enforced "diversity" of media voices, nor would the Constitution permit such a mission. Contrary to the assertions of pro-Hollywood commenters in this proceeding, the First Amendment does not empower the government affirmatively to compel diverse speech. The source of this confusion appears to be some language in *Associated Press* v. *United States*, in which the Supreme Court stated:

> [The First] Amendment rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public, that a free press is a condition of a free society. Surely a command that the government itself shall not impede the free flow of ideas does not afford non-governmental combinations a refuge if they impose restraints upon that constitutionally guaranteed freedom. . . . Freedom of the press from governmental interference under the First Amendment does not sanction repression of that freedom by private interests."[130]

Although this little bit of dictum has become quite well known through repetition, it stands only for the unremarkable proposition that the First Amendment does not immunize the press from Sherman Act prosecutions. It does not support the majority's assumption that the First Amendment empowers bureaucrats to pick winners and losers in the marketplace to serve some hazy notions of diversity. Yet the Report and Order uncritically accepts *Associated Press* as its primary source of constitutional support, referring to the facts in that case as "a similar situation" as that presented here. Report and Order ¶71.

It should be remembered, however, that *Associated Press*, had to do with the threatened monopolization of news wire services. Here, however, the only threat to dissemination of news to the public comes from the continuing regulation of the networks. Nothing in *Associated Press* suggests that it would support restrictions on networks' editorial discretion in order to promote diverse and antagonistic sitcoms, as the majority suggests. If anything, in its decisions since *Associated Press*, the Court has made clear that the government lacks such a mandate.

For example, in *United States* v. *Paramount Pictures, Inc.*, 334 U.S. 131 (1948), the government brought Sherman Act charges against major Hollywood studios, including Paramount, Warner Brothers Pictures, Twentieth Century-Fox Film Corp., Columbia Pictures Corp., Universal Corp. and United Artists Corp. The government charged that the studios had conspired to restrain trade in the interstate exhibition of motion pictures by price fixing, pooling agreements, formula deals, block booking and discrimination against small independent exhibitors. The government further suggested that the studios' practices gave it a First Amendment claim, independent of the antitrust allegations. But the Court rejected such a reading of the First Amendment. Like the majority's focus on the prime time entertainment market in this proceeding, the *Paramount Pictures* Court noted that the government's case pinpointed the narrow category of first run theatres, "the cream of the exhibition business." It found that the case "has important aspects under the Sherman Act," but "it bears only remotely, if at all, on any question of freedom of the press." 334 U.S. at 167. That is, the government had no First Amendment mandate to promote diversity, but had to content itself with enforcing the antitrust laws.[131]

If there is anything that is clear from this proceeding, it is that it does not involve any antitrust issues.[132] There has been no Sherman Act claim. This record contains no evidence that the networks have perpetrated an antitrust violation and the majority makes no such finding.[133] Even if it did, the Commission is not empowered to enforce the antitrust laws. *FCC* v. *National Citizens Committee for Broadcasting*, 436 U.S. 775, 795 (1978); *NBC* v. *United States*, 319 U.S. 190, 223–24 (1943). Finally, to whatever extent antitrust remedies and their constitutionality are relevant, the networks have already paid their debt to society. The in-house limits at issue have expired; the agency responsible for enforcement has informed this Commission that the restrictions "were intended to be temporary limitations on the activities of the networks, and there has been no showing in this proceeding that these

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[113] *Id.* at 4–8.

[114] *See* 47 CFR 73.658 (1990).

[115] For example, Fox produces *LA Law* for NBC. If Fox were to become a network or the three established networks began producing programs for one another, the new rules would prevent programs in this category to be syndicated directly by their network producers. As Fox noted in its comments, "[t]here is absolutely no economic or policy basis for a prohibition on [producing for other networks] which, in effect, *reduces* the number of studios producing programs for the networks." *Comments of Fox Broadcasting Co.*, March 23, 1991 at 10 n.13 (emphasis in original).

[116] It is unclear how this production cap will operate in practice. Each network's prime time schedule is composed of a mix of entertainment, sports and news programming. The amount of in-house production permissible under the rules presumably will shift as a network alters the make-up of its schedule, which could occur weekly. Moreover, it is uncertain how the Commission will classify certain reality-based programs, such as *Top Cops* or *America's Most Wanted*, that may be considered either news or entertainment.

[117] *See Further Reply Comments of the Coalition to Preserve the Financial Interest and Syndication Rule*, December 21, 1990 at 8. As these comments make clear, an in-house limit is not based on any actual abuse by the networks, but on "the *threat* of unlimited in-house production." *Id.* (emphasis in original).

[118] *Further Comments of the United States Department of Justice*, (filed March 25, 1991) at 3.

[119] Under the consent decrees, the networks were permitted to produce unlimited amounts of in-house programming after November 1990.

[120] *Further Comments of the United States Department of Justice*, December 21, 1990 at 12.

[121] *Wright Goes Back to the Programing Drawing Board*, Broadcasting, April 16, 1988. *See Comments of NBC, Inc.*, November 21, 1990 at 35.

[122] BROADCASTING, April 16, 1988.

[123] *See* Kissinger, *No (In) House Party for Homegrown Shows*, VARIETY, May 13, 1991 at 47, 50 (ABC pulled the *My Life and Times* from its schedule after only two shows. NBC moved *Shannon's Deal* to five different nights, put the program on extended hiatus and finally cancelled it. NBC cancelled other in-house shows, such as *Family for Joe*, *Hardball*, *Mancuso F.B.I.*, *Generations*, *The Guys Next Door* and *Gravesdale High*. CBS cancelled *Bagdad Cafe*, but has retained those in-house shows that have fared well in the ratings, such as *Evening Shade* and *Rescue 911*.). *See* Carmody, *The TV Column*, Washington Post, May 21, 1991 at C8.

[124] *1970 Reconsideration Order*, 25 F.C.C.2d at 333.

[125] *Christian Broadcasting Network, Inc.*, 67 F.C.C.2d 1076, 1077 (1983).

[126] Network Inquiry Special Staff, NEW TELEVISION NETWORKS: ENTRY, JURISDICTION, OWNERSHIP AND REGULATION (Vol. 1, 1980) at 458, 462. As I make clear elsewhere, I believe the time has come to phase out the finsyn rules, so the reasons for the original definition are, for my purposes, academic.

[127] *Christian Broadcasting Network, Inc.*, 67 F.C.C.2d at 1078.

[128] *Fox Broadcasting Company*, 5 FCC Rcd. 3211 (1990); *Home Shopping Network, Inc.* 4 FCC Rcd. 2422 (1989); *Christian Broadcasting Network, Inc.*, 67 F.C.C.2d at 1078.

[129] Shales *The FCC and the Threat to Free TV*, WASHINGTON POST, April 6, 1991 at C2.

[130] 326 U.S. 1, 20 (1945).

[131] The Supreme Court also has made clear that the Commission has no affirmative First Amendment power to dictate licensees' entertainment programming in order to protect the diversity of program formats. *FCC* v. *WNCN Listeners Guild*, 450 U.S. 582, 604 (1981). Referring to *Red Lion*, the Court noted that "we did not imply that the First Amendment grants individual listeners the right to have the Commission review the abandonment of their favorite entertainment programs." *Id.*

[132] Consequently, prior cases involving the network consent decrees cannot be read as approving an in-house production limitation imposed as part of a rulemaking. The district court in *United States* v. *NBC* merely upheld the textbook-law proposition that "the First Amendment does not shield NBC nor any other television network from the proscriptions of the Sherman Act." 449 F. Supp. 1127, 1140 (C.D. Cal. 1978). There is no Sherman Act claim here.

[133] Indeed, apparently realizing that it could not make a case on antitrust ground, the majority goes to some lengths to acknowledge that the networks "may not possess monopsony power in an antitrust sense" and "the instant case may not involve a Sherman Act violation." Report and Order ¶¶37,71. *See also* ¶ 67 ("diversity in programs and program sources" is based on a "broader public interest mandate than mere "antitrust principles").

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limits should be extended by Commission regulation." *Further Comments of the United States Department of Justice*, December 21, 1990 at 12.

Thus, there is not "antitrust/diversity" justification for the restrictions in the Report and Order. And traditional justifications for broadcast regulation are equally unavailing.

To be sure, broadcasters historically have received more limited First Amendment protection than traditional speakers. *See, e.g., Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367 (1969). But this fact does not give the Commission carte blanche to intervene in the marketplace in an open-ended and speculative quest to enhance diversity.[134] Although the Supreme Court has observed that "[e]ach method [of communication] tends to present its own peculiar problems.," it has stressed that "the basic principles of freedom of speech and the press, like the First Amendment's command, do not vary. Those principles, as they have frequently been enunciated by this Court, make freedom of expression the rule." *Joseph Burstyn, Inc., v. Wilson, U.S. 495, 503 (1952).*

A broadcaster's public trustee obligations notwithstanding, freedom of expression is the rule for Commission licensees since "the 'public interest' standard necessarily invites reference to First Amendment principles." *CBS, Inc.* v. *Democratic National Committee*, 412 U.S. 94, 122 (1973); *Syracuse Peace Council* v. *FCC*, 867 F.2d 654, 659 (D.C. Cir. 1989), *cert. denied*, 110 S. Ct. 717 (1990). Broadcasters, after all, "are engaged in a vital and independent form of communicative activity." *FCC* v. *League of Women Voters of California*, 468 U.S. 364, 378 (1984). "As a result, the First Amendment must inform and give shape to the manner in which Congress exercises its regulatory power in this area." *Id.* Although the scarcity rationale for broadcast regulation has resulted in "some adjustment in First Amendment analysis," *id.* at 377, decisions of the Supreme Court and of lower courts consistently make clear that any limitations on broadcasters' rights "ha[ve] been construed narrowly." *Community Service Broadcasting of Mid-America, Inc.* v. *FCC*, 593 F.2d 1102, 1111 n.21 (D.C. Cir. 1978) (*en banc*). [135] Consequently, any restrictions on the selection of programs by the networks must be "narrowly tailored to further a substantial governmental interest." *News America Publishing, Inc.* v. *FCC*, 844 F.2d 800, 812 (D.C. Cir. 1988); *FCC* v. *League of Women Voter of California*, 468 U.S. at 380. Under this standard, "the Government [has] the burden of justifying any practice which restricts free decisionmaking" affecting "the content *or selection* of programs to be broadcast." *Community Service Broadcasting of Mid-America, Inc.* v. *FCC*, *593 F.2d at 1110 (emphasis added).* [136]

Under the narrow constitutional leeway accorded the government in matters affecting broadcasting, courts never determined that the finsyn rules are consistent with the First Amendment.[137] Even if the finsyn rules had received constitutional scrutiny when they were adopted, it must be remembered that such review would have been relevant to the media environment of 1970. But the constitutionality of broadcast regulation is not an immutable fact; it is based on "the present state of commercially acceptable technology as of 1969." *News America Publishing, Inc.*, 844 F.2d at 811, quoting *Red Lion*, 395 U.S. at 389–90. *Meredith Corp.* v. *FCC*, 809 F.2d 863, 867 (D.C. Cir. 1987). The Supreme Court has reminded us that "because the broadcast industry is dynamic in terms of technological change[,] solutions adequate a decade ago are not necessarily so now, and those acceptable today may well be outmoded 10 years hence." *CBS, Inc.* v. *Democratic National Committee*, 412 U.S. at 102. Thus, the constitutionality of any reaffirmation of the finsyn rules depends on whether the underlying premise of the scarcity rationale is still valid,[138] and

[134] The Supreme Court's decision in *Metro Broadcasting* v. *FCC*, 110 S. Ct. 2997 (1990) is not to the contrary. In that case, the Court upheld the Commission's minority preference policies in which the racial identity of an applicant is one of a number of non-decisive factors to be considered in awarding broadcast licenses. *Id.* at 3026 & n.50. It also upheld the Commission's distress sale policies, which have been applied to "a tiny fraction—less than four-tenths of one percent—of all broadcast sales since 1979." *Id.* at 3027. Even with such an extremely limited (and expressly structural) intrusion, a sharply divided Court upheld the Commission only because the "policies bear the imprimatur of longstanding congressional support and direction and are substantially related to the achievement of the important governmental objective of broadcast diversity." *Id.* at 3027–28. But the Court's majority emphasized that preferential policies are limited in extent and duration "subject to reassessment and reevaluation by the Congress prior to any extension or reenactment" based on annual reports from the Commission, and that "there will be no need for further minority preferences once sufficient diversity has been achieved." *Id.* at 3024–25. Where the Court acknowledged that "the growth of traditional broadcast facilities," and "the development of new electronic information technologies" had rendered certain other diversity-enhancing policies unnecessary, the Commission has made no such finding with respect to minority ownership. *Id.* at 3022n.41.

The limited holding of *Metro Broadcasting* is strikingly inapplicable to the finsyn rules, which will directly limit the programming choices of whole segments of the broadcasting industry. Moreover, unlike the minority preference policies, the new finsyn rules are not a product of longstanding congressional policy and are not subject to annual review. Now can there be a finding that the changes in the broadcast and video marketplace have not undermined the rules' rationale. With respect to regulations, like finsyn, that affect programming, the Court in *Metro Broadcasting* made clear that any FCC policy that "denied a broadcaster the ability to 'carry a particular program or to publish its own views,'" would raise "'serious First Amendment issues.'" *Id.* at 3019n.36 quoting *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367, 396(1969). The Court also stressed that it "would not 'hesitate to invoke the Constitution should we determine that the Commission has not fulfilled its task with appropriate sensitivity' to equal protection principles." *Metro Broadcasting, Inc.*, 110 S. Ct. at 3011 quoting *CBS, Inc.*, v. *Democratic National Committee*, 412 U.S. 94, 103 (1973).

[135] *Compare, e.g., Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367 (1969) (Broadcasters may be required to provide balanced presentations of controversial issues), with *CBS, Inc.* v. *Democratic National Committee*, 412 U.S. 94, 122 (1973) (broadcasters may not be compelled to provide a generalized right of access to discuss controversial issues); *CBS, Inc.* v. *FCC*, 453 U.S. 367 (1981) (First Amendment permits a "limited right of 'reasonable' access that pertains only to legally qualified federal candidates [that] may be invoked by them only for the purpose of advancing their candidacies") with *Johnson* v. *FCC*, 829 F.2d 157 (D.C. Cir. 1987) (candidates do not have a right of access to televised debates); *FCC* v. *National Citizens' Committee for Broadcasting*, 436 U.S. 775 (1978) (First Amendment allows newspaper-broadcast cross-ownership restriction) with *News America Publishing, Inc.* v. *FCC*, 844 F.2d 800 (D.C. Cir. 1988) (discriminatory application of newspaper-broadcast cross-ownership restriction is unconstitutional). *See also FCC* v. *Pacifica Foundation*, 438 U.S. 726, 750 (1978) ("It is appropriate, in conclusion, to emphasize the narrowness of our holding."); *Bolger* v. *Youngs Drug Products, Corp.*, 463 U.S. 60, 74 (1983); *Quincy Cable TV, Inc.* v. *FCC*, 768 F.2d at 1453 ("Even for Broadcasters, regulations that transfer control over programming content to others have met with approval only grudgingly and then only in highly specialized circumstances and without reference to the *O'Brien* balancing formulation.")

[136] The government's burden is particularly daunting where, as here, the restrictions on network speech are content-based. See *FCC* v. *League of Women Voters of California*, 468 U.S. at 383–84 (ban on editorials by noncommercial licensees invalidated); *Community Service Broadcasting of Mid-America, Inc.* v. *FCC*, 593 F.2d at 1111–12 (statute requiring that programs related to issues of public importance be recorded "on its face is *not* content neutral."). Content-based restrictions "must be strictly scrutinized," 593 F.2d at 1110 n.17, and a rule "that denies one group of persons the right to address a selected audience * * * is plainly such a regulation." *FCC* v. *League of Women Voters of California*, 468 U.S. at 384 quoting *Consolidated Edison Co.* v. *Public Service Comm'n*, 447 U.S. at 546 (Stevens, J., concurring). The majority's rules impose a direct limit on the networks' ability to produce prime time entertainment programming. As the Commission acknowledged when it adopted the finsyn rules, "control [of] the production" of syndicated programming equates to control of "the form and content." 1970 Report and Order,23 F.C.C. 2d at 389.

[137] The financial interest and syndication rules have never before been subjected to First Amendment scrutiny. Previous decisions focused only on the constitutionality of the Prime Time Access Rule, which has a far less extensive effect on network speech. *See Mt. Mansfield Television, Inc.* v. *FCC*, 442 F.2d 470 (2d Cir. 1971); *National Association of Independent Television Producers & Distributors* v. *FCC*, *516 F.2d 526 (2d Cir. 1975). Yet even if the finsyn rules had been upheld pursuant to the First Amendment, it would be of little help to the majority's plan. The new rules impose restrictions on in-house production and create economic penalties for taking financial interests that had never been contemplated under the former regulations.*

[138] Fortunately, we do not need to resolve this issue in this proceeding. It is important to note, however, that the Commission has concluded that "there is no longer a scarcity in the number of broadcast outlets." *Syracuse Peace Council*, 2 FCC Rcd. 5043, ¶ 75 (1987), *off'd on narrower grounds sub nom. Syracuse Peace Council*, v. *FCC*, 867 F.2d 654 (D.C. Cir. 1989), *cert. denied*, 110 S. Ct. 717 (1990). *See also* Statement of then-General Counsel Diane Killory, Open Meeting, August 4, 1987 ("We agree that it is time to revisit and revise [the First Amendment standard for broadcasting]; and [we] urge[] the Supreme Court to do so."). Moreover, both the courts and commentators have questioned the continuing validity of the scarcity rationale for the constitutionality of regulating broadcast content. *E.g., FCC* v. *League of Women Voters of California.*

Continued

whether the networks dominate the television programming market to the extent that there is a governmental interest sufficient to overcome their First Amendment rights.[139]

If the current record makes one thing clear, it is that the constitutional balance has shifted over the past two decades. In 1971, the United States Court of Appeals for the Second Circuit described the Prime Time Access Rule as "a very real restraint" on licensees' choice of programming, but concluded that the restriction could be justified by the goal of enhancing diversity.[140] The court struck this balance, however, on the assumption that "only three organizations control access to the crucial prime time evening television schedule" and that the networks "determine in large measure what the American people may see and hear." *Mt. Mansfield Television, Inc.*, 442 F.2d at 474, 477. The court specifically premised its holding on the assumption that there were no realistic alternatives to network programming. It noted, for example, that "[i]ndependent stations are not adequate by themselves, in light of the fact that only fourteen of these [top 50] markets have one or more independent VHF stations." *Id.* at 483. The court also focused on contemporary business practices, such as "the increase in 'spot' advertising by many sponsors and the concomitant decrease in programs sponsored entirely by one or two advertisers." *Id.* at 482. It saw this trend as consolidating "network control of the creative process" and noted that the Commission predicted—incorrectly, as we now know—that "the trend toward multi-sponsored programs can be reversed." *Id.* 482–83. Of course, cable television networks, VCRs and other new technologies are not mentioned in the decision because they did not exist in 1971.

In short, all of the key assumptions about the programming market that were central to the 1970 Report and Order, and that are essential to sustaining it constitutionality, have changed completely. If the Commission in 1991 set out to adopt finsyn rules for the first time, I find it inconceivable that anyone would consider doing so. Yet the Commission is constitutionally obligated to justify retaining any portion of the finsyn rules, and, in doing so, account for changing technology.[141] This, the majority has not done. Indeed, it cannot do so given the record in this proceeding and the reality of the current television marketplace.

The Report & Order in this proceeding is a striking demonstration of the majority's inability to justify the continuing finsyn rules. Other than repeated references to the 1970 decision and its rationale, the Report & Order contains no evidence to suggest current or future network practices will materially affect viewer choices. The best the majority can do is to repeat that program producers are not "immune from network extraction of ownership interests," that there is a "theoretical possibility" a network could produce all of its programming in-house, that network syndicators "could exploit" their market structure, and that affiliate favoritism is "a real possibility." Report and Order ¶¶ 47, 66, 95, 100. In other words, the Report and Order's operative standard for imposing governmental restrictions is, "it could happen." But the constitution requires more than this. As courts have made clear, "the mere abstract assertion of a substantial governmental interest, standing alone, is insufficient to justify the subordination of First Amendment freedoms." *Quincy Cable TV, Inc.*, 768 F.2d at 1454. The Commission "must do something more than merely posit the existence of the disease sought to be cured." *Id.* at 1455.[142]

Despite the absence of record support, the majority has gone beyond merely keeping some significant finsyn limits. The new rules impose intrusive new burdens on the networks. The 40 percent in-house production limit directly restricts the networks' ability to engage in speech over their own facilities. Moreover, because it is content based, the rule creates a perverse incentive for networks to run more entertainment programming in prime time and less news and public affairs programming. With respect to the prime time schedule, the majority plan gives networks the greatest ability to profit from programming produced in-house.[143] But by capping this category at 40 percent of the prime time *entertainment* series, it creates a powerful inducement for networks to expand the size of the universe. Unfortunately for each hour of the prime time schedule that is devoted to non-entertainment programming, the networks' ability to engage in direct syndication of entertainment shows is reduced by 24 minutes. To the extent the networks already are basing some programming decisions on the cost of prime time programming, I am afraid that the Report and Order will simply encourage networks to avoid news and public affairs programming. There simply is no justification for the Commission to struture the programming market in ways that affect the content of network schedules.

Nor is there support for imposing significant penalties on the networks' ability to get involved in significant area of programming. To the extent a network wants to engage in the first run syndication market or in program production for another network (both of which would increase the number of program suppliers) it may do so only if it forfeits a third or more of its potential syndication revenues.[144] Penalizing broadcasters for engaging in speech is inconsistent with the First Amendment. A rule that imposes "some financial burden" on licensees clearly is a "First Amendment restraint." *Community Service Broadcasting of Mid-America, Inc.* v. *FCC*, 593 F.2d at 1114 & n.26. In this case, it is no answer to argue that networks may gain access, if for a price, to markets that previously were denied to them. The government bears the burden of justifying any restraints on speech, and "the First Amendment does not permit us to tolerate even minimal burdens on protected rights where no legitimate government interest is truly being served." *Id.* at 1122.

Taken as a whole, the majority plan simply lacks the precision necessary to pass constitutional muster. The First Amendment will tolerate neither over- nor underinclusive regulations. *FCC* v. *League of Women Voters of California*, 468 U.S. at 392. Yet the Report and Order safeguards are excessively broad. In particular, the requirement that networks be limited to passive syndication rights is unnecessary where there are anti-favoritism rules. Overinclusiveness also infects the network definition. The Report and Order applies restrictive finsyn rules to any entity that meets its arbitrary trip-wire, regardless of the absence of market power or past abuses. The syndication rules are underinclusive to the extent not-network group owners and syndicators may exert market power and coerce licensees' programming choices. Some of the provisions of the Report and Order are both over- and underinclusive. For example, the 40 percent cap on in-house production is overinclusive

[139] *Mid-America, Inc.* v. *FCC*, 593 F.2d at 1111–12 (statute requiring that programs related to issues of public importance be recorded "on its face is *not* content neutral."). Content-based restrictions "must be strictly scrutinized," 593 F.2d at 1110 n.17, and a rule "that denies one group of persons the right to address a selected audience * * * is plainly such a regulation." *FCC* v. *League of Women Voters of California*, 468 U.S. at 384 quoting *Consolidated Edison Co.* v. *Public Service Comm'n*, 447 U.S. at 546 (Stevens, J., concurring). The majority's rules impose a direct limit on the networks' ability to produce prime time entertainment programming. As the Commission acknowledged when it adopted the finsyn rules, "control [of] the production" of syndicated programming equates to control of "the form and content." 1970 Report and Order,23 F.C.C. 2d at 389.

[140] *Mt. Mansfield Television, Inc.*, 442 F.2d at 477–78. As noted previously, the court did not address the First Amendment status of the finsyn rules. But the decision reveals the constitutional assumptions that would have been part of any such analysis.

[141] Some have suggested that the present rules enjoy a presumption of validity. With respect to their First Amendment impact, however, such a presumption is invalid. *Community Service Broadcasting of Mid-America, Inc.* v. *FCC*, 593 F.2d at 1110.

[142] The majority notes that the record contains "alternative views of the television programming world so starkly and fundamentally at odds with each other that they virtually defy reconciliation" but asserts that our own "understanding of the programming world" plus "our own experience and expertise" have led to formulation of the new rules. Report and Order ¶ 11. See also ¶ 32. With all due respect to the three junior Commissioners, "especially where First Amendment rights are at stake, the Commission must do more than ask [courts] to defer to its 'more or less intuitive model' and 'collective instinct' to sustain its assertion that a rule is both necessary and important." *Quincy Cable TV, Inc.*, 768 F.2d at 1458 (citation omitted). *See also Schneider*, v. *State*, 308 U.S. 147 161 (1939) ("Mere . . . preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions.").

[143] In-house programs need not be distributed through a third-party syndicator, thus giving the networks a greater profit margin.

[144] *Further Comments of CBS, Inc.*, November 21, 1990 (appendix C. Affidavit of William B. Klein).

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because there is no evidence of network abuse in this area. However, to the extent the majority's theories regarding network market power are credible, allowing the networks to produce 40 percent of the prime time entertainment market is underinclusive. In this regard, it is not sufficient to say that the rules address one problem at a time. "[C]ourts reject the facile one-bit-at-a-time explanation for rules affecting important First Amendment values." *News America Publishing, Inc.* v. *FCC*, 844 F.2d at 815.

Finally, the Report and Order will not withstand constitutional scrutiny unless the majority can demonstrate that the problems addressed by the rules are real and the solutions effective. The Supreme Court has made clear that the government lacks the authority to "deny * * * broadcasters the right to [engage in speech] on the basis of speculative fears." *FCC* v. *League of Women Voters of California*, 468 U.S. at 399. Yet in this case, the networks are hobbled because they *might* abuse their in-house production capability and because of the potential for affiliate favoritism. The First Amendment requires more from this agency than nebulous and unsubstantiated references to "diversity." Moreover, there is nothing to suggest that the new rules will result in more diversity or creativity. In fact, there are powerful reasons to believe the majority plan will lead to further concentration and a reduction of programming choices. Given such a possibility, courts will not tolerate even minimal burdens on speech.[1*]

Conclusion

The record before us is plain. The media marketplace of 1991 bears so little resemblance to the one that existed in 1970 that the perpetuation of financial interest and syndication rules is almost inconceivable. Although for transitional purposes, I would have voted to phase out the rules and impose appropriate safeguards, I cannot support the indefinite continuation of restrictions. To the extent today's Report and Order is deregulatory, I can concur. But I dissent from the overall result, because it imposes a burdensome and unnecessary scheme of regulation that could threaten the future of free television.

Statement of Commissioner Sherrie P. Marshall—Re: The Financial Interest and Syndication Rules

I am a deregulator. The Commission's action today is deregulatory. What it is not, is a blind response to the siren call of total deregulation. What it is, is a major departure from the regulatory schemes of the last twenty years. This is calibrated deregulation—a balance deregulatory approach designed to ensure that the American people continue to enjoy the great ,enoply of diverse and creative programming that is the hallmark of American television.

Some will argue that we should have answered the siren's call. And frankly, that would have been the easiest course to take. On the surface it looks and sounds good. But when you study the prime time television marketplace as I and my colleagues have, you learn that there is much more at stake than what meets the eye.

Let me name some of the forgotten factors in the fin-syn debate. Diversity. Local independent broadcasting. Independent program producers. The next Norman Lear or Marcy Carsey or Quincy Jones. And, above all, the American viewing public.

I can't tell you how many articles I've read over these past months beginning with the clause, "changes in the financial interest and syndication rules will make little visible difference to the American public." Rubbish! Total repeal of the fin-syn rules (Rules) may not be of immediate consequence to American audiences. But they would see its effects. The diverse and antagonistic sources of programming that are a touchstone of our national identity would be gone. And the American people would know it; they might not know why; but they would know. And we would have betrayed our trust, our statutory mandate, by responding to the luring call of total deregulation.

Today, I am pleased to say that the FCC has rejected that call. We have gone past the surface images and conducted a careful review of the complex and multi-layered prime time television marketplace. And out of our protracted review has emerged a plan that will allow the networks singificant reentry into the program production and foreign and domestic distribution businesses, while, at the same time, maintaining several safeguards that, hopefully, will ensure continued diversity in both the sources and outlets of American television programming.

In analyzing the voluminous record before us I have reached two fundamental conclusions. First, the decline of the broadcast networks' once unchallenged supremecy over the television landscape warrants substantial relaxation of our rules. Network television is the only programming service available to virtually all American television households, and provides a unique informational and entertainment service central to our identity as a Nation. Regulatory constraints should not be allowed to undermine the networks' continued viability.

Second, the Commission's statutory mandate requires us to promote the public interest in diverse and antagonistic sources of programming. Our Nation was founded on the principles of free speech and an open marketplace for the free flow of new and diverse ideas. To allow anyone to control access to both the ideas and their distribution is to breech that fundamental concept.

The Commission's decision today represents an enormous deregulatory action that provides the major networks a wide variety of liberties and freedoms they have not enjoyed for the past two decades. As such, it is clearly designed to nurture the continued health and viability of those networks, and the emerging fourth network as well. At the same time, today's decision provides minimal safeguards designed to ensure that our goals of diversity and competition continue to be achieved—both within the independent television production community and the independent broadcasting industry.

To those who would say this is merely that old-time regulation, I say this plan is as deregulatory as reality permits. We have heeded the lessons of airline and savings and loan deregulations, and have maintained accountability for the networks while still expanding competition in the video production and distribution marketplaces.

To those who would say this is a direct contradiction of the Commission's deregulatory cable policies, I say cable doesn't have a government subsidy through the prior grant and continuing free use of valuable public spectrum. Moreover, the one area of cable television over which this Commission has expressed concern is the potential for anticompetitive program access conduct by conglomerate cable operators and programmers.

To those who would say our plan involves complex behavioral safeguards that intrude on private negotiations and business practices, I say the prophylactic non-rules of phased in repeal may be neater, but they would undermine the very diversity we are sworn to promote.

Others will say that today's rule changes ignore marketplace realities—that the networks lack significant market power by any recognized standard of antitrust law, yet we're still regulating them. As a deregulator I am inclined to trust market forces, but it is not a cure to inadequate competition to strengthen the hand of the dominant player. Further, as the Commission has long recognized and the Supreme Court has long affirmed, the FCC's mandate is not merely to police antitrust violations.[1] Rather, the Commission's mandate requires it to promote the public interest by ensuring a diversity of programming choices for the American viewer. That's why we're the FCC, not FTC.

Others may criticize today's rule changes as overly broad. That they protect those who need no protection—the major studios and established major producers. But as gatekeepers to the national audience, the networks have the power to extract by conditioning access from all producers, large and small.

And the counterargument that cable networks are a viable alternative just doesn't wash: Individually, each of the networks still retains a share of the prime time viewing audience greater that that of all cable networks combined. And while cable networks have begun to expand their acquisition of original entertainment programming, the entertainment programming expenditures of each network alone remains at least double those of all cable networks combined.

The same is true of the claims that today's rule changes preclude vertical integration of U.S. companies while cartelizing the U.S. market to the benefit of foreign-owned studios and other foreign competitors. That dog just won't hunt, or, as one wit put it, "the yellow peril is a red herring."

Today's rule changes allow every bit as much vertical integration and efficiency as we have found our public interest in diversity to permit. Remember, the United States leads the world in television programming

[1*] *Community Service Broadcasting of Mid-America, Inc.* v. *FCC*, 809 F.2d at 1123.

[1] *National Broadcasting Company* v. *U.S.*, 319 U.S. 190, 223 (1942).

production and sales—with the financial interest and syndication rules unchanged. Under the new rules, U.S. networks will be allowed to participate in foreign distribution without limit, as well as participate in domestic distribution with only minimal safeguards.

Yet, I do not endorse today's substantial deregulation without some trepidation. In fact, I have real reservations about the experimental nature of particular aspects of this plan. For example, the separated negotiation requirement contained in these rules may be a toothless watchdog, and the protections it offers may be insufficient to preserve the very diversity the Commission is pledged to promote.

Recent experience and documented history prior to and after adoption of the Rules demonstrate that without some safeguard the networks will extract financial interest and syndication rights at less than market value as a condition of access to the network schedule. That access does not occur at the time of licensing, or even thirty days thereafter. It occurs at the time of ordering and scheduling of the program in question.

By insisting that the networks certify than any acquisition of rights was not acquired as a condition of network airing, ordering or renewal, we have mitigated, but not fail-safed, the risk that such rights will be extracted as a condition of access to the network schedule. But it may be like having the fox certify that the chickens are safe inside the chicken coop. Think about it. Who's going to challenge the network's certification? The producer who succumbed to the extraction in the first place? The producer who, at this time has no buyers, other than the major broadcast networks, for his wares?

I would have preferred either the "two-step" approach recommended to us by NTIA, or even imposition of a "producer initiated" requirement on the secondary negotiation. The NTIA proposal had the advantage of being tied to industry accepted timetables, but the disadvantage that foreign syndication rights might not be available. And a producer initiated requirements might at least assure the veracity of the subsequent network certification required under the Commission's approved plan.

Either alternative would have been far less experimental than the ones we adopt today, but some "extraction-proofing" is better than none at all. And any change is accompanied by some uncertainty and risk—but with the deversity of American television viewing at stake, I believe we should approach that change only incrementally.

The health and vigor of the U.S. television programming industry is, as we've learned from this proceeding, far more than a mere dollar issue. This industry's creative work product has showcased American values around the globe. Values like democracy, free speech, and free enterprise. These are the concepts that can excite the minds of viewers throughout the world, and provide a sense of the political and social options that are simply unknown in many of the information-starved countries now reached by American television programming.

I hope that the Commission's work today in deregulating, to a great degree, the networks, while attempting to ensure the health and diversity of the creative community that supplies our dreams, will serve the broadest interest of the American viewing public.

The rules we approve today give the networks far reaching new liberties, while maintaining minimal safeguards to protect the diversity of programming that the American television public and the world at large has come to expect.

I trust and pray that diversity will continue under our new regime.

Statement of Commissioner Andrew C. Barrett—Re: In the Matter of Evaluation of the Syndication and Financial Interest Rules, MM Docket No. 90-162

In this Financial Interest and Syndication ("Fin-Syn") proceeding, the Commission issued a Notice of Proposed Rulemaking on March 14, 1990; allowed the parties to negotiate until June 1990; after failed negotiations, received comments to our March 14, 1990 notice; issued a Further Notice of Proposed Rulemaking on October 22, 1990; received comments to that Further Notice; held an En Banc meeting in December 1990; received comments subsequent to that En Banc; received numerous *ex parte* contacts from interested parties; and held several rounds of meetings with interested parties or their representatives. The item was removed from the March agenda and the Commission issued an Order Requesting Further Comment to two proposals on March 15, 1991. The Commission received another round of comments on the two proposals in that second notice, and held another round of meetings in response to those proposals. As of today, this proceeding probably has received as much, if not more, notice and opportunity for comment as any other major proceeding in Commission history.

There has been much turbulance surrounding this docket. The parties to this proceeding all have deep-rooted economic interests in the outcome of our decision. Their self-interests have prevented them from negotiating and presenting an industry solution to the issues raised by the existing rules. Throughout this time, I have listened to their arguments and reviewed their positions in the record. While doing so, I developed public interest policy objectives which guided me in my review of specific proposals to modify the Fin-Syn rules. These objectives are: (1) Promote a diversity of program sources and broadcast outlets; (2) Encourage emerging networks; (3) Account for the global competitiveness of U.S. media companies, both broadcast and nonbroadcast; and (4) Adopt rules that are clear and enforceable. After reviewing the record, I identified specific areas that needed to be addressed in order to satisfy these policy objectives. First, I believe the Commission should continue to support a policy framework that promotes competitive and diverse program choices for local television stations. Second, in light of the changes to the video marketplace since 1970, I felt the Commission's Fin-Syn rules needed to give existing broadcast networks more flexibility to compete in today's domestic and international video markets. Third, to promote long-term structural diversity, I found that our Fin-Syn rules needed to provide more flexibility for the development of emerging network. Finally, the Commission needed to establish clear criteria for enforcing its rule modifications and reviewing the efficacy of such rules within a reasonable period of time.

Our decision today is supported by the record, which includes the most recent round of comments and *ex parte* filings submitted prior to this April agenda meeting. In my mind, our decision represents an interim step for providing existing and emerging networks with more competitive flexibility while retaining narrowly focused restrictions that address my diversity concerns in this proceeding. I believe the Commission continues to have a substantial interest in upholding its diversity concerns in the media area. The record in this proceeding identifies the public interest benefits spawned by a diversity of program production sources and local television outlets. I wish to continue to balance those concerns against the economic realities of a changing video market. This Order approximates the balance necessary to address my policy goals. It grants more economic flexibility to existing and emerging networks without completely sacrificing the diversity concerns which I hold in high regard. In the long term, I believe that diversity in the media will be achieved in the marketplace through more competitive program outlets of all types—networks, independent stations, public television stations, cable, satellite, and wireless cable. Until the record reflects that the video market offers a greater number of competitive program outlets, with comparable audience reach, I will continue to support narrowly tailored restrictions that promote diversity in the local television market.

Separate Statement of Commissioner Ervin S. Duggan—In re: Evaluation of the Syndication and Financial Interest Rules

After reviewing the record in this proceeding, I am convinced that a substantial lifting of the Financial Interest and Syndication Rules would serve the public interest. Under the rules that we now adopt, the major broadcast networks are permitted to become profit participants in the subsidiary rights of their entire program schedule. They can syndicate 100 percent of their schedule internationally. They can acquire domestic syndication rights in their entire schedule. They can syndicate domestically all of their in-house programming, which we define generously. All this amounts to broad, even sweeping, relief for the networks from the former rules. It propels the networks toward the ends they sought so avidly in this proceeding: greater leeway to participate in the lucrative domestic syndication market and greater freedom to compete in the international program marketplace. The networks, moreover, can anticipate further lifting of these rules within a few years, if the Commission determines that diversity has not suffered by this deregulation.

The wide latitude that we now grant to the networks makes it all the more essential, in my judgment, to keep some restrictions on the networks' ability to manipulate the program

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production and syndication markets. I fear that the safeguards we adopt today may prove too weak to protect fully the smaller independent producers, the independent television stations, and the smaller independent syndicators—the very parties who have provided much of the innovative spirit and programming diversity that have well-served the viewing public in the past. Fortunately, the reporting requirements that we are enacting should help us monitor network conduct and the effectiveness of our safeguards in these areas, and may even deter anticompetitive behavior.

Although our revised network definition is readily understandable and will give emerging networks the flexibility they need to grow, I find it to be overly simple. Throughout this proceeding, I have been concerned that some actual index of market position—perhaps a combination of factors including audience share—might better suit the purpose of applying our Financial Interest and Syndication Rules than just program hours or audience reach. A more complex definition could also prevent evasive manipulation of our rules. Unfortunately, there is insufficient evidence of the record to adopt an audience share approach at this time. If this issue is ever revisited, I hope that the record on this point can be expanded.

Despite these concerns, I see no benefit for the public or for the affected parties in withholding my vote in the hope of a perfect outcome. No such perfect outcome has emerged, after all—even after long years of negotiations by the parties and a long-simmering political controversy about the rules. The rules we have adopted remain far closer to my views on this subject than the solutions offered by my dissenting colleagues. Other options may have the allure of simplicity—simple repeal, for example, or splitting the network schedule in some fashion. I cannot support sudden repeal, however—because I believe that balanced, incremental deregulation will pose less danger to programming diversity and better protect our traditional public interest concerns. I also reject any arbitrary splitting of the network schedule, because I believe that carefully tailored safeguards are the more prudent course: Far more likely to prevent network coercion while we assess the effects of this deregulation.

Accordingly, I support the decision of the majority.

[FR Doc. 91-13180 Filed 6-5-91; 8:45 am]
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Part IV

Department of the Interior

Bureau of Indian Affairs

Transfer of Federally Owned Excessed Property to Southern Ute Tribe; Notice

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Transfer of Federally Owned Excessed Property to Southern Ute Tribe

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

SUMMARY: On June 15, 1990, pursuant to the Federal Property and Administrative Services Act of 1949, as amended by Public Law 93–599 of January 2, 1975 (88 Stat. 1954), the Director, Office of Real Estate Sales, Fort Worth Regional Office, General Services Administration, notified the Superintendent, Southern Ute Agency, that 394.95 acres of formerly administered Bureau of Reclamation (BOR) land was transferred without reimbursement to the Southern Ute Tribe. On December 7, 1990, the Albuquerque Area Director accepted the conveyance by signing BOR Property Voucher 4000–91–0009.

The subject property, which consists of 16 separate parcels totaling approximately 394.95 acres of unimproved land located at the Navajo Reservoir, Archuleta County, Colorado, has been transferred in trust to the United States for the benefit of the Southern Ute Tribe. The property is described as follows:

New Mexico Principal

Archuleta County, Colorado

Township 32 North, Ranges 4 and 5 West located at the Navajo Reservoir, within the Southern Ute Reservation, Parcels 106, 107, 109, 109–A, 110, 114, 114–B, 115, 120, 125, 127, 132, 132–A, 133, 144, and 144–A.

These above numbered parcels containing approximately 394.95 acres are to be treated as and receive the same benefits and protection as other trust lands held for the benefit and use of the Southern Ute Tribe. Appropriate notation will be made in the land records of the Bureau of Indian Affairs.

FOR FURTHER INFORMATION CONTACT: Larry Morrin, Chief, Division of Real Estate Services, room 4522, 1849 C Street, Main Interior Building, Washington, DC 20240, telephone (202) 208–7737. Copies of all documentation associated with this notice may be obtained from Mr. Morrin.

SUPPLEMENTARY INFORMATION: Individual legal descriptions for each of the above 16 parcels will be maintained in room 4527, 1849 C Street, SW., Main Interior Building, Washington, DC 20240 and the Albuquerque Land Titles and Records Office, P.O. Box 26567, Albuquerque, New Mexico 87125–6567.

Dated: May 16, 1991.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 91–13280 Filed 6–5–91; 8:45 am]

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federal register

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Part V

Department of the Interior

Bureau of Indian Affairs

Maidu Nation; Receipt of Petition for Federal Acknowledgement of Existence as an Indian Tribe; Notice

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DEPARTMENT OF THE INTERIOR

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

June 29, 1990.

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Maidu Nation, c/o Ms. Clara J. LeCompte, P.O. Box 204, Susanville, California 96130, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs on May 30, 1990, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.8(d)(formerly 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the Bureau of Indian Affairs' files. Such submission will be provided to the petitioner upon receipt by the Bureau. The petitioner will be provided an opportunity to respond to such submission prior to a final determination regarding the petitioner's status.

The petition may be examined by appointment in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Mail Stop 4627–MIB, 1849 C Street NW., Washington, DC 20240, Phone: (202) 208–3592.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 91–13345 Filed 6–5–91; 8:45 am]

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Part VI

Department of the Interior

Office of the Secretary

Coastal Barrier Improvement Act; availability of Maps; Notice

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DEPARTMENT OF THE INTERIOR

Office of the Secretary

Coastal Barrier Improvement Act; Availability of Maps

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of Availability of maps.

SUMMARY: The Coastal Barrier Improvement Act of 1990 (CBIA), which was signed into law on November 16, 1990, amends the Coastal Barrier Resources Act (CBRA) in several ways. Among other amendments, it substantially expands the Coastal Barrier Resources System established by the CBRA, and amends the National Flood Insurance Act to prohibit the issuance of new Federal flood insurance after November 16, 1991, within otherwise protected areas identified on maps referred to in the CBIA. The purpose of this Notice is to give notice of the filing, distribution, and availability of the maps entitled "Coastal Barrier Resources System" dated October 24, 1990, as required by the CBIA.

FOR FURTHER INFORMATION CONTACT: Mr. Frank McGilvrey, U.S. Fish and Wildlife Service, Division of Habitat Conservation, 400 Arlington Square, Department of the Interior, Washington DC 20240, (703) 358–2201.

SUPPLEMENTARY INFORMATION: The Coastal Barrier Improvement Act of 1990 (CBIA) amended the Coastal Barrier Resources Act (CBRA) in several significant ways. In section 4 of the CBIA, Congress approved a revised set of Coastal Barrier Resources System (System) maps, the effect of which was to expand the areas included within the System. The System now includes units in Puerto Rico, the U.S. Virgin Islands, Great Lakes States, New Jersey, Maryland and the Florida Keys, as well as many new areas in States that already contained units within the System. The maps of the Coastal Barrier Resources System have been filed with the Committee on Merchant Marine and Fisheries, the Committee on Banking, Finance and Urban Affairs of the House of Representatives, and the Committee on Environment and Public Works of the Senate.

Copies of these same maps have been distributed to the Chief Executive Officer (or representative) of (a) each State and county (or equivalent jurisdiction) in which a System unit is located, (b) each State coastal zone management agency in those States which have a coastal zone management plan approved and in which a System unit is located, and (c) each appropriate Federal agency. Copies are also available for inspection through the U.S. Fish and Wildlife Service of the Department of the Interior and appropriate Regional Offices and Field Offices (see addresses in appendix A). Interested organizations and individuals may purchase System maps from the U.S. Geological Survey (see appendix B).

The CBIA assigns four major responsibilities to the Department of the Interior. First, it continues to require the U.S. Fish and Wildlife Service (Service) to manage the maps adopted by the Congress that depict the System. Second, the CBIA exended the prohibition against new Federal expenditures or financial assistance to all new units added to the System, subject to several exceptions available to Federal agencies only after consultation with the Secretary. Third, section 6 of the CBIA requires the Department to undertake a one year study of areas on the Pacific Coast, south of the 49th parallel, that may be appropriate for inclusion in the system. Following this study, any additions to the System will be a Legislative, not an Executive Branch, responsibility. Fourth, section 8 of the CBIA requires the Department to chair a task force of representives from 11 Federal agencies that will conduct a 2-year study of the impacts of Federal activities on all coastal barriers, developed and undeveloped, and report to Congress with recommendations.

This document concerns implementation of only the first of the Department responsibilities—the administration of the Coastal Barrier Resources System maps. The Service will manage the maps provided by Congress; consider minor and technical modifications within 2 years; and consider additions of otherwise protected areas to the System within 2 years, at the specific request of those who own or control such property.

Coastal Barrier Resources System Maps

In section 4 of the Coastal Barrier Improvement Act, Congress approved a series of maps entitled "Coastal Barrier Resources System," dated October 24, 1990. These maps identify and depict those coastal barriers located on the Atlantic and Gulf coasts and the Great Lakes that are subject to the limitations outlined in the CBIA. These maps also depict those undeveloped coastal barriers on the Atlantic and Gulf coasts that are identified as "otherwise protected" areas held for conservation purposes under Federal, State, or local law, or held by an organization within the scope of section 170(h)(3) of the Internal Revenue Code of 1954 primarily for conservation purposes. Section 9 of the Act amends section 1321 of the National Flood Insurance Act of 1968, as amended, to state that structures built within these otherwise protected areas after November 16, 1991, will not be eligible for Federal flood insurance unless the structures "are used in a manner consistent with the purpose for which the area is protected." These maps are now in the official custody of the U.S. Fish and Wildlife Service. These final maps completely amend and supersede maps of the System dated September 30, 1982 and April 18, 1983.

Sections 3 and 4 of the Act define the Department's responsibilities regarding the System maps. These responsibilities include: Technical revision of maps (subsection 4(a)(1)); distributing copies of the maps (subsection 4(a)(2)); State and local government recommendations for minor and technical modifications to the maps (subsection 4(b)); considering additions to the System at the request of State and local governments or qualified organizations (subsection 4(c)); and at least once every 5 years review the System maps and make such minor and technical modifications to the boundaries of System units as may be necessary to correct for results of natural forces (subsection 3(c)).

(1) Using the original maps submitted to the Department by the Congress, the Department has reproduced these maps for distribution. The boundaries of the Coastal Barrier Resources System on these copies are identical with original boundaries of the set of maps adopted by Congress pursuant to the Coastal Barrier Improvement Act, except for limited technical revisions as provided for in subsection 4(a)(1). "Otherwise protected" areas are depicted with a dot-line boundary and the unit symbol is followed with a "P." The original maps adopted by the Congress are on file within the Department of the Interior, U.S. Fish and Wildlife Service, and may be inspected there. Appendix B has a listing of each unit map by State, county (or other local jurisdiction), name and number.

(2) Pursuant to subsection 4(a)(2) of the CBIA, the Department of the Interior is required to distribute the maps to the States; to each County or equivalent jurisdiction; to State coastal zone management agencies; and to each appropriate Federal agency. Copies of the original maps are being distributed.

(3) As provided in subsection 4(e) of the CBIA, these modifications must be completed within two years from the date of enactment. The Secretary's authority to modify boundaries lapses thereafter, except with regard to changes in the size or location of System units as a result of natural forces (subsection 3(c)). This modification process must be closely coordinated with local governments and States containing System units, with coastal zone management agencies and with the Congress within that period.

With map distribution completed, the initial responsibility to consider minor and technical boundary modifications rests with appropriate localities and States and their State coastal zone management agencies. Each appropriate jurisdiction is provided one year from the date of enactment to submit proposals for such minor and technical boundary modifications to the Secretary. The Secretary has requested by letter that each State with a coastal zone management agency and each local jurisdiction in a State with a coastal zone management agency, provide the Service with its proposals by November 16, 1991. In its consultations with the States, the Service will assure that all local submissions are available to the States.

The Service will then submit proposed modifications to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Environment and Public Works of the Senate, to the chief executive officer of each State and county or equivalent jurisdiction in which a System unit is located in those States with an approved coastal zone management plan. There will be a thirty (30) day review period. Following the close of that final opportunity for comment, a final decision will be made by the Department. If the Secretary makes any decisions contrary to recommendations of States or local jurisdictions, an explanation for that decision will be provided. Therefore, the maps will be adjusted accordingly and republished as necessary no later than November 16, 1992.

(4) Subsection 4(c) of the CBIA provides for the addition of "otherwise protected" areas to the System. Local governments, States, and qualified organizations with jurisdiction over undeveloped coastal barriers have 18 months in which to notify the Secretary of their intention to add such areas to the System.

The process that the Department of the Interior will follow is governed by the CBIA. The Service will provide maps of areas deemed to be qualified for inclusion in the System under this subsection to the appropriate localities, States and organizations. On the Atlantic and Gulf coasts, those will be areas depicted as "otherwise protected" on the maps of the System. In the Great Lakes States, draft maps of areas deemed suitable for inclusion will be distributed to the States and localities for consideration. The appropriate authorities may elect to add qualified areas to the System by notifying the Secretary of such election. After the close of the election period on May 15, 1992, the Secretary will publish a notice in the Federal Register of all new units added to the System. The new units listed in the Federal Register will be included in the System on the date of the Federal Register Notice.

Dated: May 31, 1991.

Richard M. Smith,

Acting Director, Fish and Wildlife Service.

Appendix A

Location of Maps Available for Review

U.S. Fish and Wildlife Service	States of
Regional Offices	
Regional Director, Region 2, U.S. Fish & Wildlife Service, 500 Gold Ave. SW., Albuquerque, New Mexico 87103, (505) 766–2321.	Texas.
Regional Director, Region 3, U.S. Fish & Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111, (612) 725–3610.	Ohio, Michigan, Wisconsin, Minnesota.
Regional Director, Region 4, U.S. Fish & Wildlife Service, Richard B. Russell Federal Building, 75 Spring St., SW., suite 1276, Atlanta, Georgia 30303, (404) 331–6343.	North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Puerto Rico, Virgin Islands.
Regional Director, Region 5, U.S. Fish & Wildlife Service, One Gateway Center, suite 700, Newton Corner, Massachusetts 02158, (617) 965–5217.	Maine, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia.
Field Offices	
Field Supervisor, U.S. Fish & Wildlife Service, 17629 El Camino Real, suite 211, Houston, Texas 77058, (713) 750–1700.	Texas—Jefferson, Chambers, Galveston, Brazoria, Matagorda Counties.
Field Supervisor, U.S. Fish & Wildlife Service, Corpus Christi State University, room 118, Old Science Hall, Campus Box 338, 6300 Ocean Dr., Corpus Christi, Texas 78412, (512) 888–3346.	Texas—Calhoun, Aransas, Nueces, Kleberg, Kennedy, Willacy, Cameron.
Field Supervisor, U.S. Fish & Wildlife Service, 6950-H Americana Parkway, Reynoldsburg, Ohio 43068, (614) 469–6923.	Ohio.
Field Supervisor, U.S. Fish & Wildlife Service, 301 Manly Miles Building, 1405 S. Harrison Rd., East Lansing, MI 48823, (517) 337–6650.	Michigan.
Field Supervisor, U.S. Fish & Wildlife Service, 1015 Challenger Ct., Green Bay, Wisconsin 54311, (414) 433–3803.	Wisconsin.
Field Supervisor, U.S. Fish & Wildlife Service, 4101 East 80th St., suite 50, Twin Cities, Minnesota 55425–1600, (612) 725–3548.	Minnesota.
Field Supervisor, U.S. Fish & Wildlife Service, P.O. Box 33726, Raleigh, North Carolina 27636–3726, (919) 755–4520.	North Carolina.
Field Supervisor, U.S. Fish & Wildlife Service, P.O. Box 12559, Charleston, South Carolina 29412, (803) 724–4704.	South Carolina.
Field Supervisor, U.S. Fish & Wildlife Service, 501 Gloucester St., room 334, Brunswick, Georgia, 31520, (912) 265–9336.	Georgia.
Field Supervisor, U.S. Fish & Wildlife Service, 3100 University Blvd. South, suite 120, Jacksonville, Florida, 32216–2737, (904) 791–2580.	Florida—Nassau, Duval, St. Johns, Flagler, Volusia, Brevard, Dixie, Levy, Pasco Counties.
Field Supervisor, U.S. Fish & Wildlife Service, 1612 June Ave., Panama City, Florida 32405, (904) 769–0555.	Florida—Wakulla, Franklin, Gulf, Bay, Walton, Okaloosa, Santa Rosa, Escambia.
Field Supervisor, U.S. Fish & Wildlife Service, P.O. Box 2676, Vero Beach, Florida 32961–2676, (305) 562–3909.	Florida—Pinellas, Hillsborough, Manatee, Sarasota, Charlotte, Lee, Collier, Monroe, Dade, Broward, Palm Beach, Martin, St. Lucie, Indian River.
Field Supervisor, U.S. Fish & Wildlife Service, P.O. Box 1190, Highway 98, Daphne East Plaza, Daphne, Alabama 36526, (205) 690–2181.	Alabama, Mississippi.
Field Supervisor, U.S. Fish & Wildlife Service, 825 Kaliste Saloom, Brandywine II, suite 102, Lafayette, Louisiana 70502, (318) 234–7476.	Louisiana.
Field Supervisor, U.S. Fish & Wildlife Service, P.O. Box 491, Boqueron, Puerto Rico 00622, (809) 851–7297.	Puerto Rico, Virgin Islands.

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U.S. Fish and Wildlife Service	States of
Field Supervisor, U.S. Fish & Wildlife Service, Ralph Pill Marketplace, 4th Floor, 22 Bridge St., Jct. I-93, Concord, New Hampshire 03301-4901, (603) 225-1411.	Maine, Massachusetts, Connecticut, Rhode Island.
Field Supervisor, U.S. Fish & Wildlife Service, 100 Grange Place, room 202, Cortland, New York 13045, (607) 753-9334.	New York.
Field Supervisor, U.S. Fish & Wildlife Service, 927 N. Main St., Building D-1, Pleasantville, New Jersey 08232, (609) 646-0620.	New Jersey.
Field Supervisor, U.S. Fish & Wildlife Service, 1825-B Virginia St., Annapolis, Maryland 21401, (301) 269-5448.	Delaware, Maryland.
Assistant Field Supervisor, U.S. Fish & Wildlife Service, P.O. Box 480, Mid-County Center, U.S. Route 17, White Marsh, Virginia 23183, (804) 693-6694.	Virginia.

Appendix B—Order Form

Coastal Barrier Resources System Maps

This form will enable you to obtain copies of some or all of the 613 Coastal Barrier Resources System (CBRS) maps adopted by Congress pursuant to the Coastal Barrier Improvement Act of 1990 (Pub. L. 101-591). Each paper print, which measures 24 inches by 28 inches, will cost $4.00 to cover reproduction, shipping, and handling costs.

Please indicate the number of maps of each unit you want to order on the appropriate space from the following list of maps. If you mark the State or County space, the number of maps indicated for the entire State or county will be mailed to the address provided.

Map number(s)	Unit name(s)
___STATE OF MAINE (22 Maps)	
___Washington County (10 maps)	
___A01	Lubec Barriers.
___A01A	Baileys Mistake.
___ME-02	Birch Point.
___ME-03P & ME-04.	Grassy Point & Seal Cove.
___A03	Jasper.
___A03B, ME-06 & ME-07P.	Starboard, Bare Cove and Roque Bluffs.
___A03C & ME-08	Poppelstone Beach/ Roque Island & Flake Point.
___ME-01	Carrying Place Cove.
___ME-09P	Petit Manan/Bois Bubert.
___ME-10 and ME-10P.	Over Point.
___Hancock County (2 maps)	
___ME-11	Pond Island.
___ME-12	Thrumcap.
___Waldo County (1 map)	
___A05A	Seven Hundred Acre Island.
___Knox County (1 map)	
___ME-14	Nash Point.
___Sagahadoc County (2 maps)	
___ME-15P	Little River.
___ME-16, ME-16P, ME-17, & A05B.	Hunnewell Beach, Small Point Beach & Head Beach.
___Cumberland County (3 maps)	
___ME-18	Stover Point.
___A05C	Jenks Landing/Waldo Point.
___ME-19, ME-19P, A06, & A07.	Crescent Beach, Cape Elizabeth, and Scarborough Beach.
___York County (3 maps)	
___A08 and ME-2-20P.	Crescent Surf and Ogunquit Beach.
___ME-23	Phillips Cove.
___A09	Seapoint.
___STATE OF MASSACHUSETTS (44 maps)	
___Town of Salisbury (1 map)	
___MA-01P and MA-02P.	Salisbury Beach and Plum Island MA-02P in Newbury).
___Town of Ipswich (1 map)	
___MA-02P, C00 and MA-03.	Plum Island, Clark Pond and Castle Neck (MA-02P in Rowley, MA-03 also in Essex).
___Town of Gloucester (2 maps)	
___MA-03, C01 and C01B.	Castle Neck, Wingersheek and Brace Cove.
___C01A	Good Harbor Beach/ Milk Island (Milk Island segment in Rockport).
___Towns of Manchester and Beverly (1 map)	
___MA-04	West Beach.
___Town of Swampscott (1 map)	
___MA-06	Phillips Beach.
___Town of Quincy (1 map)	
___MA-08P, MA-09P and MA-10P.	Snake Island, Wollaston Beach and Merrymount Park (MA-08P in Winthrop).
___Town of Boston (1 map)	
___MA-11 and C01C.	Peddocks/Rainsford Islands and West Head Beach (MA-11 also in Quincy).
___Town of Scituate (1 map)	
___MA-12 and C02	Cohasset Harbor and North Scituate (MA-12 also in Cohasset).
___Town of Marshfield (1 map)	
___C03 and C03A	Rivermoor and Rexhame (C03 also in Scituate).
___Town of Plymouth (2 maps)	
___MA-13 and C04	Duxbury Beach and Plymouth Bay (MA-13 also in Marshfield and Duxbury).
___C06	Center Hill Complex.
___Town of Sandwich (1 map)	
___MA-14P and C08.	Town Neck and Scorton.
___Town of Barnstable (3 maps)	
___C09 and C09P	Sandy Neck (C09 also in Sandwich and Yarmouth).
___C14, C15, and C15P.	Squaw Island and Centerville (C14 in Hyannis).
___C16 and C17	Dead Neck and Popponesset Spit (C17 also in Mashpee).
___Town of Dennis (1 map)	
___C09, MA-15P, MA-16 and C10.	Sandy Neck, Chapin Beach, Nobecusset and Freemens Pond (C09 in Yarmouth, C10 also in Brewster).
___Town of Eastham (1 map)	
___C11, C11A, C11AP and MA-20P.	Namskaket Spits, Boar Meadow and Nauset Beach/Monomoy (C11 and part of MA-20P in Brewster).
___Town of Truro (2 maps)	
___MA-17P, MA-17AP, MA-18 and MA-18P.	Griffin/Great Islands Complex, Lieutenant Island, Pamet Harbor and Ballston Beach (MA-17P and MA-17AP in Wellfleet).
___MA-19P	Provincetown.
___Town of Provincetown (1 map)	
___MA-19P	Provincetown.
___Town of Chatham (3 maps)	
___MA-20P	Nauset Beach/ Monomoy (on 2 maps).
___C12	Chatham Roads.
___Town of Hyannis (1 map)	
___MA-23P, C13 and C13P.	Davis Beach and Lewis Bay (C13 also in Yarmouth, MA-23P in Yarmouth and Dennis).
___Town of Mashpee (1 map)	
___C18, C18P and C18A.	Waquoit Bay and Falmouth Ponds (C18A and part of C18 in Falmouth).

Map number(s)	Unit name(s)
___Town of Falmouth (1 map)	
___C19 and MA-34	Black Beach and Naushon Island Complex (MA-34 in Gosnold).
___Town of Gosnold (2 maps)	
___MA-34	Naushon Island Complex.
___C31 and MA-35P.	Elizabeth Islands and Penikese Island.
___Town of Nantucket (3 maps)	
___C20 and C21	Coatue and Seseachacha.
___C22 and C26	Cisco Beach and Esther Island Complex.
___C24 and C25	Tuckernuck Island and Muskeget Island.
___Town of Edgartown (1 map)	
___MA-26, MA-27P, C26, C27, MA-28P and C28.	Harthaven, Edgartown Beach, Eel Pond Beach, Cape Poge, Norton Point and South Beach (MA-26 and part of MA-27P in Oak Bluffs, C28 also in West Tisbury and Chilmark).
___Town of Chilmark (1 map)	
___C29, C29P and MA-29P.	Squibnocket Complex and Nomans Island (C29 also in Gay Head).
___Town of Tisbury (1 map)	
___C29A and C29B	James Pond and Mink Meadows (C29A in West Tisbury).
___Town of Bourne (1 map)	
___MA-30, MA-31, MA-32 & MA-33.	Herring Brook, Squeteague Harbor, Bassets Island and Phinneys Harbor (MA-30 and part of MA-31 in Falmouth).
___Town of Marion	
___C19A and MA-36.	Buzzards Bay Complex and Planting Island (C19A also in Wareham).
___Town of Fairhaven (2 maps)	
___C19A and C31A	Buzzards Bay Complex and West Sconticut Neck (C19A in Mattapoisett).
___C31B	Harbor View.
___Town of Dartmouth (1 map)	
___MA-36, C32, MA-37P & C33.	Round Hill, Mishaum Point, Lloyd Park and Little Beach.
___Town of Westport	
___C33, C34, C34P and D01.	Little Beach, Horseneck Beach and Little Compton Ponds (C33 is Dartmouth).
___Town of Sussex (1 map)	
___C34A	Cedar Cove.
___STATE OF RHODE ISLAND (14 maps)	
___Town of Little Compton (2 maps)	
___D01 and D01P	Little Compton Ponds and Tunipus Pond.
___RI-01, D02, RI-02, RI-02P.	Brown Point, Fogland Marsh, & Sapowet Point (part of D02 & all of RI-02 in Tiverton).
___Town of Portsmouth (2 maps)	
___RI-02A and RI-03P.	McCurry Point and Sandy Point.
___D02B	Prudence Island Complex.
___Towns of Middletown and Newport (3 maps)	
___RI-04P, RI-06P, RI-06, RI-07.	Sachuest Point, Easton Beach, Almy Pond, and Hazards Beach.
___Town of Barrington (1 map)	
___D02B, D02BP, and RI-06P.	Prudence Island Complex and Rumstick Point.
___Towns of Warwick and East Greenwich (1 map)	
___D02B	Prudence Island Complex.
___Town of North Kingstown (1 map)	
___D02C	West Narragansett Bay Complex.
___Towns of Jamestown and Narragansett (1 map)	
___RI-06, RI-06P, RI-09, RI-10 & RI-10P.	Fox Hill Marsh, Bonnet Shores, and Narragansett Beach.
___Town of Narragansett (1 map)	
___RI-11, RI-11P, RI-12P.	Seaweed Beach and East Matunick Beach.
___Town of South Kingstown (1 map)	
___D03, D03P, and D04.	Card Ponds and Green Hill Beach.
___Town of Charleston (1 map)	
___D05, D05P and D06.	East Beach and Quonochontaug Beach.
___Town of Westerly (1 map)	
___RI-13P, D06, D07, D08, & D08P.	Misquamicut Beach, Quonochontaug Beach, Maschaug Ponds, and Napatree.
___Town of New Shoreham (1 map)	
___D09 and D09P	Block Island.
___STATE OF CONNECTICUT (12 maps)	
___Town of Stonington (2 maps)	
___D06 and D06P	Napatree.
___E01, E01A, and CT-01.	Wilcox Beach, Ram Island, and Mason Island.
___Towns of Groton and Waterford (1 map)	
___CT-02P and E02	Bluff Point and Goshen Cove.
___Towns of Waterford and East Lyme (1 map)	
___E03, E03A, and CT-03.	Jordan Cove, Mastic Bay, and Old Black Point.
___Towns of Old Lyme and Old Saybrook (1 map)	
___CT-04, CT-05, CT-06, CT-07, and E03B.	Hatchett Point, Little Pond, Mile Creek, Griswold Point, and Lynde Point.
___Town of Old Saybrook (1 map)	
___CT-08 and E04	Cold Spring Brook and Menunketesuck Island.
___Towns of Clinton and Madison (1 map)	
___CT-09, E05, E05P, CT-10P, and CT-11.	Harbor View, Hammonasset Point, Hammonasset Beach and Seaview Beach.
___Town of Branford (1 map)	
___CT-12 and CT-13.	Lindsey Cove and Kelsey Island.
___Towns of East Haven and West Haven (1 map)	
___CT-14P and CT-15P.	Nathan Hale Park and Morse Park.
___Town of Milford (1 map)	
___E07 and E07P	Milford Point.
___Town of Bridgeport (1 map)	
___CT-16P and E08A.	Long Beach and Fayerweather Island.
___Town of Norwalk (1 map)	
___E09 and E09P	Norwalk Islands.
___STATE OF NEW YORK (49 maps)	
___Nassau County (4 maps)	
NY-03 and NY-04P	Sands Point and Prospect Point.
NY-05P, NY-06, NY-06P, and NY-07P	Dosons Pond, The Creek Beach, and Centre Island.
NY-59P	Fire Island (2 of 6 maps).
___Suffolk County (30 maps)	
___NY-09P and NY-10P.	Lloyd Beach and Lloyd Point.
___NY-11, NY-11P, NY-12P, NY-13P, and F02	Lloyd Harbor, Centerport Harbor, Hobart Beach, and Eatons Neck.
___NY-14P	Crab Meadow.
___NY-15P and NY-16P	Sunken Meadow and Stony Brook Harbor.
___F04	Crane Neck.
___F05 and NY-17P	Old Field Beach and Cedar Beach.
___NY-18P and NY-19P.	Wading River and Baiting Hollow.
___NY-20P and NY-21P	Luce Landing and Mattituck Inlet.
___NY-22P	Goldsmith Inlet.
___NY-23P	Truman Beach.
___NY-24 and NY-25P	Plum Island and Orient Beach.
___NY-26, NY-27, NY-28, NY-29P, NY-30, NY-31, and NY-31P.	Pipes Cove, Cerating Point, Beathold Bay, Cedar Beach Point, Hog Neck Bay, and Little Creek.
___NY-32 and NY-33	Downs Creek and Robins Island.
___NY-34P, NY-35P, NY-36, NY-37, and NY-38	East Creek, Indian Island, Flanders Bay, Red Creek Pond, & Squire Pond.

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Map number(s)	Unit name(s)
NY–39, NY–40, and NY–40P	Cow Neck and North Sea Harbor.
NY–41, NY–41P, NY–42, NY–43, NY–43P, NY–44, NY–45P, NY–46, NY–47, F06, NY–48, NY–49, and NY–50	Clam Island, Mill Creek, Short Beach, Gleason Point, Shell Beach, Crab Creek, Hay Beach Point, Shelter Island Barriers, Mashomack Point, Smith Cove, and Fresh Pond.
NY–51P, F08A, F08AP, and NY–52	Northwest Harbor, Sammys Beach, and Hog Creek.
F06B, F08BP, and F09	Acabonack Harbor, and Gardiners Island Barriers.
F01	Fisher Island Barriers.
F10 and F10P	Napeague.
NY–53P, NY–54P, & NY–55P	Big Reed Creek, Oyster Pond, and Montauk Point.
NY–56, NY–56P and NY–57	Amagansett and Georgica/Wainscott Ponds.
NY–58 and F11	Sagaponack Pond and Mecox.
F12, F13, and F13P	Southampton Beach and Tiana Beach.
NY–59P	Fire Island (6 maps).
Queens County (2 maps)	
NY–60P	Jamaica Bay (on 2 maps).
Jefferson County (3 maps).	
NY–61, NY–62, NY–63, NY–64, and NY–65	Wilson Bay, Grenadier Island, Fox Island, The Isthmus, and Point Peninsula.
NY–66 and NY–67	Hounsfield, and Dutch John Bay.
NY–68 and NY–69	Sherwin Bay and Association Island.
Oswego County (5 maps)	
NY–72	North Pond.
NY–73 and NY–74	Deer Creek Marsh and Grindstone Creek.
NY–75	Butterfly Swamp.
NY–76	Walker.
NY–77	Snake Swamp.
Cayuga County (1 map)	
NY–78 and NY–79	Juniper Pond and Blind Sodus Bay (FY–79 in Wayne County).
Wayne County (2 maps)	
NY–82	Port Bay.
NY–84	Maxwell Bay.
Monroe County (1 map)	
NY–86	Bogus Point.
Erie County (1 map)	
NY–87	Big Sister Creek.
STATE OF NEW JERSEY (16 maps)	
Middlesex County (1 map)	
NJ–02, NJ–03P, and NJ–04	Seidler Beach, Cliffwood Beach and Conastunk Point (NJ–03P and NJ–04 in Monmouth County).
(Monmouth County (2 maps)	
NJ–01P	Sandy Hook.
NJ–04A	Navesink/Shrewsbury Complex.
Ocean County (4 maps)	
NJ–04B and NJ–04BP.	Metedeconk Neck.
NJ–05P	Island Beach (on 2 maps).
NJ–06 and NJ–06P.	Cedar Bonnet Island.
Atlantic County (4 maps)	
NJ–07P	Brigantine (on 4 maps).
Cape May County (5 maps)	
NJ–08P	Corson Inlet.
NJ–09 and NJ–09P.	Stone Harbor.
NJ–10P and NJ–11P.	Cape May and Higbee Beach.
NJ–12, NJ–12P and NJ–13.	Del Haven and Kimbles Beach.
NJ–14 and NJ–14P.	Moores Beach (also in Cumberland County).
STATE OF DELAWARE (7 maps)	
Kent County (2 maps)	
DE–01 and DE–01P.	Little Creek.
H00 and H00P	Broadkill Beach.
Sussex County (5 maps)	
H00 and H00P	Broadkill Beach.
DE–02P	Plum Beach Island.
DE–03P and DE–06.	Cape Henlopen and Silver Lake.
DE–07P and H01	Delaware Seashore and North Bethany Beach.
DE–08P	Fenwick Island.
STATE OF MARYLAND (25 maps)	
Worcester County (3 maps)	
MD–01P	Assateague Island (on 3 maps).
Somerset County (8 maps)	
MD–02 and MD–03.	Fair Island and Sound Shore.
MD–04P	Cedar/Janes Island.
MD–04P, MD–06, MD–07P and MD–08P.	Cedar/Janes Island, Joes Cove, Scott Point and Hazard Island.
MD–09P	St. Pierre Point.
MD–11 and MD–12.	Little Deal Island and Deal Island.
MD–14, MD–14P, MD–15 and MD–16.	Franks Island, Long Point, and Stump Point (MD–16 in Wicomico County).
MD–17P	Martin.
MD–18P	Marsh Island.
Dorchester County (3 maps)	
MD–19 and MD–20.	Holland Island and Jenny Island.
MD–21P	Barren Island.
MD–22 and MD–24.	Hooper Point and Covey Creek.
Talbot County (2 maps)	
MD–25, MD–26 and MD–27.	Castle Haven Point, Boone Creek and Benoni Point (MD–25 in Dorchester County).
MD–28, MD–29 and MD–30.	Lowes Point, Rich Neck and Kent Point (MD–30 in Queen Annes County).
Queen Annes County (1 map)	
MD–32 and MD–33.	Stevensville and Wesley Church.
Kent County (1 map)	
MD–34P and MD–35.	Eastern Neck Island and Wilson Pond.
Calvert County (1 map)	
MD–37P and MD–38.	Flag Ponds and Cove Point Marsh.
St. Marys County (6 maps)	
MD–39, MD–40 and MD–41.	Drum Point, Lewis Creek and Green Holly Pond (MD–39 in Calvert County).
MD–44	St. Clarence Creek.
MD–45, MD–46, MD–47 and MD–48P.	Deep Point, Point Lookin, Tanner Creek and Point Lookout.
MD–49 and MD–50.	Bisco Creek and Chicken Cock Creek.
MD–51, MD–52, MD–53 and MD–54.	Piney Point Creek, McKay Cove, Blake Creek and Belvedere Creek.
MD–55P and MD–56.	St. Clements Island and St. Catherine Island.
STATE OF VIRGINIA (39 maps)	
Accomack County (13 maps)	
VA–01P	Assateague Island (on 2 maps).
VA–02P & VA–03P.	Assawoman Island & Metomkin Island.
VA–03P	Metomkin Island.
K03	Cedar Island.
VA–16 & VA–17	Scarborough Neck & Craddock Neck.
VA–16, VA–19 & VA–20P.	Hacks Neck, Parkers/ Finneys Islands, & Parkers Marsh.
VA–21 and VA–22.	Beach Island and Russell Island.
VA–23	Simpson Bend.
VA–24	Drum Bay.
VA–25	Fox Islands.
VA–26	Cheeseman Island.
VA–27 and VA–28.	Watts Island and Tangier Island.
Northampton County (10 maps)	
VA–04P	Parramore/Hogg/Cobb Islands (on 2 maps) (also in Accomack County).
K04 and VA–04P	Little Cobb Island and Parramore/Hogg/ Cobb Islands.
VA–05P	Wreck Island.
VA–05P and VA–06P.	Wreck Island and Smith Island.
VA–06P, K05 and K05P.	Smith Island and Fishermans Island.
VA–09 and VA–10.	Elliotts Creek and Old Plantation Creek.
VA–11	Wescoat Point.
VA–12, VA–13, and VA–14.	Great Neck, Westerhouse Creek, and Shooting Point.
Westmoreland County (3 maps)	
VA–29	Elbow Point.
VA–30, VA–31, and VA–32.	White Point, Cabin Point, and Glebe Point.
VA–33	Sandy Point.

Map number(s)	Unit name(s)
Northumberland County (5 maps)	
VA–34	Judith Sound.
VA–35, VA–36, and VA–37.	Cod Creek, Presley Creek, and Cordreys Beach.
VA–38 and VA–39P.	Marshalls Beach and Ginny Beach.
VA–40, VA–41, VA–42, VA–43, VA–44 & VA–45.	Gaskin Pond, Owens Pond, Chesapeake Beach, Fleet Point, Bussel Point and Harveys Creek.
VA–46, VA–47, VA–48 and VA–49.	Ingram Cove, Bluff Point Neck, Barnes Creek and North Point (VA–49 in Lancaster County).
Lancaster/ Middlesex Counties (1 map)	
VA–50, VA–51, VA–52, VA–53, and VA–54.	Windmill Point, Deep Hole Point, Sturgeon Creek, Jackson Creek, & Stove Point (VA–52, VA–53 & VA–54 in Middlesex County).
Mathews County (2 maps)	
VA–55	Rigby Island/Bethel Beach.
VA–55 and VA–56.	Rigby Island/Bethel Beach and New Point Comfort.
Gloucester County (1 map)	
VA–57 and VA–58.	Ware Neck and Severn River.
Poquoson City (1 map)	
VA–59P and VA–60P.	Plum Island and Long Creek (VA–60P in Hampton City).
Virginia Beach City (3 maps)	
VA–61P	Cape Henry.
VA–62P	Back Bay (on 2 maps).
STATE OF NORTH CAROLINA (31 maps)	
Currituck County (3 maps)	
L01	Currituck Banks.
L01 and L01P	Currituck Banks.
NC–01P	Pine Island Bay.
Dare County (1 map)	
NC–02	Nags Head Woods.
Dare and Hyde Counties (14 maps)	
NC–03P	Cape Hatteras (on 14 maps).
L03	Hatteras Island (on 2 of the 14 maps).
Carteret County (3 maps)	
NC–03P and L03AP.	Cape Hatteras and Shackleford Banks.
L03AP and NC–04P.	Shackleford Banks and Fort Macon.
NC–05P	Roosevelt Natural Area.
Onslow County (4 maps)	
NC–06P	Hammocks Beach.
L05	Onslow Beach Complex (on 2 maps).
L06	Topsail.
Pender County (1 map)	
L07	Lea Island Complex.
New Hanover County (2 maps)	
L08 and L09	Wrightsville Beach and Masonboro Island.
L09	Masonboro Island.
Brunswick County (3 maps)	
NC–07P	Cape Fear (on 2 maps).
M01	Waites Island Complex (also in South Carolina).
STATE OF SOUTH CAROLINA (25 maps)	
Horry County (2 maps)	
M01	Waites Island Complex (also in North Carolina).
SC–01	Long Pond.
Georgetown County (7 maps)	
SC–03	Huntington Beach.
M02	Litchfield Beach.
M03	Pawleys Inlet.
M04 and SC–04	Debidue Beach and North/South Islands.
SC–04	North/South Islands.
SC–05P	Santee (on 2 maps) (also in Charleston Co.).
Charleston County (10 maps)	
SC–05P and SC–06P.	Santee and Cape Romain (on 2 maps).
SC–06P	Cape Romain (on 2 maps).
SC–07P	Capers Island.
M05	Dewees Island.
M06	Morris Island Complex.
M07 and M07P	Bird Key Complex.
M08	Captain Sams Inlet.
M09 and M09P	Edisto Complex.
Colleton County (1 map)	
M10	Otter Island.
Beaufort County (4 maps)	
M11	Harbor Island.
SC–09P	Hunting Island.
M12	St. Phillips Island (on 2 maps).
M13 and SC–10P.	Daufuski Island and Turtle Island (SC–10P in Jasper County).
STATE OF GEORGIA (16 maps)	
Chatham County (6 maps)	
N01	Little Tybee Island (on 2 maps).
N01A and N01AP.	Wassaw Island.
GA–02P	Ossabaw Island (on 2 maps).
GA–02P and GA–03P.	Ossabaw Island and St. Catherine Island (GA–02P in Bryan County).
Liberty County (1 map)	
GA–03P and GA–04P.	St. Catherine Island and Blackbeard/Sapello Islands (GA–04P in McIntosh County).
McIntosh County (5 maps)	
GA–04P	Blackbeard/Sapello Islands (on 3 maps).
GA–04P and GA–05P.	Blackbeard/Sapello Islands and Altamaha/Wolf Islands.
GA–05P	Altamaha/Wolf Islands.
Glynn County (3 maps)	
N03	Little St. Simons Island.
N04	Sea Island.
GA–06P	Jekyll Island.
Camden County (3 maps)	
N05, N06 and N06P.	Little Cumberland Island and Cumberland Island.
N06 and N06P	Cumberland Island (on 2 maps).
STATE OF FLORIDA–EAST COAST (53 maps)	
Nassau County (1 map)	
FL–01P	Fort Clinch.
Duval County (1 map)	
P02 and P02P	Talbot Islands Complex (also in Nassau County).
St. Johns County (5 maps)	
FL–03P	Guana River (on 3 maps).
P04A, P05, and P05P.	Usinas Beach and Conch Island.
FL–05P	Butler Beach.
Flagler County (1 map)	
P05A, P05AP, and FL–06P.	Matanzas River and Washington Oaks (P05A also in St. Johns County).
Volusia County (2 maps)	
P07 and P07P	Ormond-By-the-Sea (Also in Flagler County).
P08	Ponce Inlet.
Brevard County (7 maps)	
FL–07P	Canaveral (on 6 maps) (Also in Volusia County).
FL–13P and P09A.	Spessard Holland Park and Coconut Point.
Indian River County (1 map)	
P10 and P10P	Vero Beach (P10P also in Brevard County).
St. Lucie County (4 maps)	
P10A	Blue Hole (also in Indian River County).
FL–14P	Pepper Beach.
P11	Hutchinson Island (on 2 maps).
Martin County (2 maps)	
P11A and P11AP	Frank B. McGilvrey and Joes Point.
P12 and P12P	Hobe Sound.
Palm Beach County (2 maps)	
FL–15, FL–16P and FL–17P.	Blowing Rocks, Jupiter Beach, and Carlin (FL–15 in Martin County).
FL–18P	MacArthur Beach.
Broward County (2 maps)	
FL–19P	Birch Park.
FL–20P and P14A.	Lloyd Beach and North Beach.
Dade County (6 maps)	
FL–21P	Haulover Beach.

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Map number(s)	Unit name(s)
FL-22P, FL-23P, & FL-34P.	Virginia Beach/Crandon Park, Cape Florida, & Biscayne Bay.
FL-34 & FL-34P	Biscayne Bay.
FL-34P	Biscayne Bay (on 3 maps).
Monroe County (18 maps)	
FL-34P, and FL-35.	Biscayne Bay, and North Key Largo.
FL-34P, & FL-35, FL-35P.	Biscayne Bay, and North Key Largo.
FL-35	North Key Largo.
FL-35, FL-35P, FL-36P, and FL-37.	North Key Largo, El Radabob Key, and Rodriguez Key.
FL-39 and FL-40.	Tavernier Key and Snake Creek.
FL-41P	Lignumvitae/Shell Keys.
FL-42P	Long Key.
FL-43 and FL-44.	Channel Key and Toms Harbor Keys.
FL-45	Deer/Long Point Keys.
FL-46	Boot Key.
FL-47P, FL-48P, & FL-50.	Key Deer/White Heron, Bahia Honda Key, and No Name Key.
FL-51	Newfound Harbor Keys.
FL-47P and FL-52.	Key Deer/White Heron and Little Knockemdown/Torch Keys Complex.
FL-53	Budd Keys.
FL-47P, FL-54, and FL-55.	Key Deer/White Heron, Sugarloaf Sound and Saddlebunch Keys.
FL-47P, FL-55, and FL-57.	Key Deer/White Heron, Saddlebunch Keys, and Cow Key.
FL-47P, FL-58P, & FL-60P.	Key Deer/White Heron, Fort Taylor and Key West NWR.
FL-61P	Tortugas.
STATE OF FLORIDA—WEST COAST (56 maps)	
Collier County (5 maps)	
P15 and FL-63P	Cape Romano and Tigertail.
P16	Keewaydin Island (on two maps).
FL-64P	Clam Pass.
FL-65P	Wiggins Pass.
Lee County (7 maps)	
P17 and P17P	Lovers Key Complex.
P17A and FL-67	Bodwitch Point and Bunch Beach.
P18 and P18P	Sanibel Island Complex (P18P on 2 maps).
P19 and P19P	North Captiva Island.
P20 and P20P	Cayo Costa.
FL-70P	Gasparilla Island.
Charlotte County (1 map)	
P21 and P21P	Bocilla Island.
Sarasota County (4 maps)	
P21A and P21AP	Manasota Key.
FL-71P	Venice Inlet.
P22	Casey Key.
FL-72P	Lido Key.
Manatee County (3 maps)	
P23 and P23P	Longboat Key.
FL-73P, FL-78 and FL-82.	De Sota, Rattlesnake Key and Bishop Harbor.
FL-80P	Passage Key.
Hillsborough County (2 maps)	
FL-81 and FL-81P.	Egmont Key.
FL-83	Cockroach Bay.
Pinellas County (4 maps)	
P24 and P24P	The Reefs.
FL-85P	Sand Key.
P24A and FL-86P.	Mandalay Point and Caladesi/Honeymoon Islands.
FL-87P	Anclote Key (also in Pasco County).
Levy County (2 maps)	
P25 and P25P	Cedar Keys (on 2 maps).
Dixie County (1 map)	
P26	Pepperfish Keys.
Franklin County (7 maps)	
P27A	Ochlockonee Complex (also in Wakulla County).
FL-89	Peninsula Point.
P28	Dog Island.
FL-90P	St. George Island.
FL-90 and FL-90P.	St. George Island.
FL-90P and FL-91P.	St. George Island and St. Vincent Island.
FL-91P	St. Vincent Island.
Gulf County (3 maps)	
FL-92	Indian Peninsula.
P30 and P30P	Cape San Blas (on 2 maps).
Bay County (4 maps)	
P31 and P31P	St. Andrew Complex (on 3 maps).
FL-93P	Phillips Inlet.
Walton County (4 maps)	
FL-94	Deer Lake Complex.
FL-95P and FL-96.	Grayton Beach and Draper Lake.
P31A	Four Mile Village.
P32	Moreno Point (also in Okaloosa County).
Escambia County (5 maps)	
FL-97	Navarre Beach.
FL-98P	Santa Rosa Island.
FL-98P & FL-98	Santa Rosa Island.
FL-103P	Perdido Key (on 2 maps).
Santa Rosa County (3 maps)	
FL-99	Tom King.
FL-100	Town Point.
FL-101 and FL-102.	Gascon Point and Basin Bayou.
STATE OF ALABAMA (9 maps)	
Baldwin County (5 maps)	
AL-01P and AL-02P.	Perdido Key and Gulf Park.
AL-02P	Gulf Park.
Q01P, AL-03, and AL-04P.	Mobile Point, Skank Bayou, and Cypress Point.
Q01 and Q01P	Mobile Point (on 2 maps).
Mobile County (4 maps)	
Q01P, Q01A, and AL-05P.	Mobile Point, Pelican Island, and Alligator Lake (Q01P in Baldwin County).
Q02 and Q02P	Dauphin Island.
Q02	Dauphin Island (on 2 maps).
STATE OF MISSISSIPPI (10 maps)	
Jackson County (7 maps)	
MS-01P	Gulf Islands (on 5 maps) (also in Harrison Co.).
R01	Round Island.
R01A	Belle Fontaine Point.
Harrison County (2 maps)	
MS-02 and R02	Marsh Point (in Jackson Co.) and Deer Island.
R03	Cat Island.
Hancock County (1 map)	
MS-04	Heron Bay Point.
STATE OF LOUISIANA (52 maps)	
St. Bernard Parish (9 maps)	
LA-01	Isle au Pitre.
LA-02	Grand Island.
LA-03P	Chandeleur Islands (on 7 maps) (also in Plaquemines Parish).
Plaquemines Parish (4 maps)	
S01	Bastian Bay Complex (on 2 maps).
S01 and S01A	Bastian Bay Complex and Bay Joe Wise Complex.
S01A	Bay Joe Wise Complex.
Jefferson Parish (1 map)	
S02 and LA-04P	Grand Terre Islands and Grand Isle (S02 also in Plaquemines Parish).
Lafourche Parish (4 maps)	
S03	Caminada (on 3 maps).
S04	Timbalier Bay.
Terrebonne Parish (10 maps)	
S05	Timbalier Islands (on 3 maps) (also in Lafourche Parish).
S06	Isles Dernieres (on 3 maps).
S07	Point au Fer (on 4 maps).
Iberia Parish (7 maps)	
LA-05P	Marsh Island/Rainey (on 7 maps) (also in Vermilion Parish).
Vermilion Parish (4 maps)	
LA-05P, S08 and LA-07.	Marsh Island/Rainey, Cheniere au Tigre, and Freshwater Bayou.
LA-07	Freshwater Bayou (on 2 maps).
Cameron Parish (12 maps)	
LA-06P	Rockefeller (on 2 maps) (also in Vermilion Parish).
LA-06P and S10	Rockefeller and Mermentau River.
S10	Mermentau River.
LA-09	Cameron (on 2 maps).
LA-10	Calcasieu Pass (on 2 maps).
S11	Sabine (on 4 maps).
STATE OF TEXAS (55 maps)	
Jefferson County (4 maps)	
T01P	Sea Rim.
T01 and T01P	Sea Rim.
TX-02P	McFaddin (on 2 maps).
Galveston County (6 maps)	
T02A and TX-02P.	High Island & Mc Faddin (T02A also in Jefferson and Chambers Counties).
T02A	High Island.
T03A	Bolivar Peninsula.
T03A & T03AP	Bolivar Peninsula.
TX-04 and TX-04P.	Swan Lake.
TX-05P	Galveston Island.
Brazoria County (4 maps)	
T04 and T04P	Follets Island (on 2 maps).
T05 and T05P	Brazos River Complex.
T05, T05P, & T06P.	Brazos River Complex & Sargent Beach (T06P in Matagorda County).
Matagorda County (on 10 maps)	
T06 and T06P	Sargent Beach.
T07 and T07P	Matagorda Peninsula (on 7 maps).
TX-09	Coon Island Bay.
TX-10	Shell Beach.
Calhoun County (on 12 maps)	
TX-06P	Matagorda Island (on 4 maps).
TX-06P, T06 and T08P.	Matagorda Island, and San Jose Island Complex (on 3 maps).
T08 and T08P	San Jose Island Complex (on 5 maps) (also in Aransas County).
Nueces County (on 3 maps)	
TX-15P	Mustang Island.
TX-17 and TX-17P.	Shamrock Island.
TX-16P, T10 & T10P.	Four Mile Hill and North Padre Island (T10 and T10P in Kleberg County).
Kleberg County (on 8 maps)	
T10P	North Padre Island (on 7 maps) (also in Kennedy County).
TX-19 and TX-21.	Starvation Point and Kleberg Point.
Cameron County (on 8 maps)	
T11 and T11P	South Padre Island (on 6 maps) (also in Willacy County).
T11 and TX-22P	Andy Bowie.
T12 and T12P	Boca Chica.

Map number(s)	Unit name(s)
COMMONWEALTH OF PUERTO RICO (32 maps)	
Municipio de Rio Grande (1 map)	
PR-02, PR-03, and PR-04P.	Ensenada Comezon, Rio Mameyes, and Punta la Bandera (PR-04P in de Luquillo).
Municipio de Luquillo (1 map)	
PR-05, PR-06, PR-07, PR-08P, PR-08AP.	Luquillo Spit, Juan Martin Spit, Laguna Aguas Prietas, Cabo San Juan, and La Cordillera (PR-07 and PR-08P in de Fajardo).
Municipio de Fajardo (2 maps)	
PR-06A and PR-08AP.	La Cordillera.
PR-09P and PR-10.	Rio Fajardo and Punta Barrancas.
Isla Culebra (1 map)	
PR-12P, PR-13P, PR-14P, PR-15P, and PR-16P.	Playa Flamenco, Playa Brava, Playa Larga, Isla Culebrita, and Puerto del Manglar.
Isla de Vieques (1 map)	
PR-17P	Ensenada Sombe.
Municipio de Naguabo (1 map)	
PR-18P	Cayo Algodones.
Municipio de Yabucoa (1 map)	
PR-39	Puerto Yabucoa.
Municipio de Maunabo (1 map)	
PR-40 and PR-41.	Punta Tuna and Rio Maunabo.
Municipio de Patillas (1 map)	
PR-42, PR-43, & PR-43P.	Punta Viento and Punta Guilarte.
Municipio de Guayama (1 map)	
PR-44, PR-45, & PR-45P.	Las Mareas and Bahia de Jobos (PR-45P also in Salinas).
Municipio de Salinas (2 maps)	
PR-45P and PR-46.	Bahia de Jobos and Cayos de Barca/Ratones Complex.
PR-47, PR-48P, & PR-49P.	Arenal, Arrecife Media Luna, and Punta Aguila (PR-49P in Santa Isabel).
Municipio de Juana Diaz (1 map)	
PR-50, PR-50P, PR-51.	Chardon, Cayo Berberia, Rio and PR-52 Descalabrado, and Punta Pastillo (PR-50 in Santa Isabel).
Municipio de Ponce (2 maps)	
PR-53, PR-54, PR-55, and PR-56.	Bajio de Mares, Jacaguas, Isla del Frio, and Punta Cabullones (PR-53 in Juana Diaz).
PR-57, PR-57P, & PR-58P.	Punta Cucharas and Bahia de Tallaboa (PR-58P in Penuelas).
Municipio de Guanica (1 map)	
PR-59, PR-60P & PR-61.	Punta Ballena, Punta Jacinto, and Ensenada las Pardas.
Municipio de Lajas (2 maps)	
PR-62P, PR-63P, & PR-64P.	Punta Mangillio, Cayo don Luis, and Bahia Montalva.
PR-65P	Islas Cueva/Guayacan.
Municipio de Cabo Rojo (2 maps)	
PR-65P, PR-66 and PR-66P.	Islas Cueva/Guayacan and Cabo Rojo.
PR-67P, PR-66, PR-66, and PR-70.	Bahia de Boqueron, Boca Prieta, Punta Carenero, and Belvidere.
Municipio de Hormigueros (1 map)	
PR-72	Rio Guenajibo.
Municipio de Aguadilla (1 map)	
PR-75 and PR-75P.	Espinar.
Municipio de Isabela (2 maps)	
PR-76 and PR-77.	Punta Aguijereada and Bajura (PR-76 in Aguadilla).
PR-78	Coto.
Municipios de Camuy and Hatillo (1 map)	
PR-79 and PR-80.	Penon Brusi and Punta Maracayo.
Municipio de Arecibo (1 map)	
PR-81	Puerto de Arecibo.
Municipio de Manati (2 maps)	
PR-82P	Punta Manati.
PR-83 and PR-84	Tortuguero and Punta Garza (PR-84 in Vega Baja).
Municipio de Toa Baja (1 map)	
PR-86P	Punta Salinas.
Municipio de Loiza (2 maps)	
PR-87P	Punta Vacia Talega.
PR-87	Punta Vacia Talega.
TERRITORY OF THE VIRGIN ISLANDS (7 maps)	
St. Croix (3 maps)	
VI-01, VI-02, VI-03, VI-08 and VI-09.	Rust Up Twist, Salt River Bay, Altona Lagoon, Canegarden Bay & Krause Lagoon.
VI-04, VI-04P, VI-05, VI-06 and VI-07.	Southgate Pond, Coakley Bay, Robin Bay and Great Pond.
VI-10, VI-11, and VI-11P.	Long Point and Westend Saltpond.
St. John (2 maps)	
VI-12P, VI-13P, VI-14P, VI-22P, VI-23P, VI-24P, and VI-25.	Cinnamon Bay, Maho Bay, Francis Bay, Greater Lameshur Bay, Europa Bay, Reef Bay, and Fish Bay.
VI-15P, VI-16, VI-17, VI-18, VI-19P, VI-20P, and VI-21P.	Leinster Bay, Newfound Bay, Pond Bay, Lagoon Point, Ram Head, Kiddel Bay and Grootpan Bay.

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Map number(s)	Unit name(s)
St. Thomas (2 maps)	
VI–26, VI–27, VI–28, and VI–29.	Sprat Point, Limestone Bay, Perseverance Bay and Magens Bay.
VI–30, VI–31, VI–32, VI–33, VI–34, and VI–35P.	Mandal Bay, Smith Bay, Vessup Bay, Great Bay, Jersey Bay and Beck Island.
STATE OF OHIO (4 maps)	
Ottawa County (3 maps)	
OH–1	Toussaint River.
OH–53, OH–04 and OH–04A.	Middle Bass Island, North Bass Island, and Fox Marsh.
OH–05	Bay Point.
Lake County (1 map)	
OH–06	Mentor.
STATE OF MICHIGAN (37 maps)	
Monroe County (2 maps)	
MI–02	Toledo Beach.
MI–03	Enrico Fermi.
Wayne County (1 map)	
MI–04	Sturgeon Bar.
Huron County (2 maps)	
MI–05	Huron City.
MI–06 and MI–07	Alaska Bay and Pointe aux Barques.
Arenac County (1 map)	
MI–08	Charity Island.
Alpena County (2 maps)	
MI–13	Squaw Bay.
MI–14	Whitefish Bay.
Emmet County (1 map)	
MI–17	Swan Lake.
Benzie County (1 map)	
MI–20	Lower Herring Lake.
Manistee County (1 map)	
MI–21	Arcadia Lake.
Muskegon County (1 map)	
MI–22	Sadony Bayou.
Menominee County (1 map)	
MI–24	Deadmans Point.
Delta County (1 map)	
MI–25	Squaw Point.
Schoolcraft County (1 map)	
MI–28 and MI–29	Goodreaus Harbor and Seul Choix.
Mackinac County (11 maps)	
MI–31	Fox Point.
MI–32	McNeil Creek.
MI–33, MI–34 and MI–35.	Millecoquins Point, East Mile Creek and Mattix Creek.
MI–36 and MI–37	Borgstrom Creek and Davenport Creek.
MI–38 and MI–39	Hudson and Epoufette.
MI–40	Green Island.
MI–41	Big St. Martin Island.
MI–42	Base Cove Lake.
MI–43	Whitefish Point.
MI–44	Albany Island.
Chippewa County (4 maps)	
MI–45	St. Vital Bay.
MI–46	Eapanore Lake.
MI–49, MI–51 and MI–52.	Shelldrake, Marsh Lake and Superior.
MI–53	Vermillion.
Luce County (1 map)	
MI–55	Little Two Hearted River.
Alger County (1 map)	
MI–59	Laughing Whitefish River.
Marquette County (3 maps)	
MI–62	Saux Head.
MI–63 and MI–64	Iron River and Squaw Beach.
MI–65	Salmon Trout Bay.
Baraga County (1 map)	
MI–66	Lightfoot Bay.
Keweenaw County (2 maps)	
MI–71	Jacobs Creek.
MI–74	Gratiot River.
STATE OF WISCONSIN (5 maps)	
Manitowoc County (1 map)	
WI–01	Two Creeks.
Brown County (1 map)	
WI–02	Point au Sable.
Marinette County (1 map)	
WI–03 and WI–04.	Peshtigo Point and Dyers Slough.
Bayfield County (2 maps)	
WI–05	Bark Bay.
WI–06 and WI–07.	Herbster and Flag River.
STATE OF MINNESOTA (1 map)	
St. Louis County (1 map)	
MN–01	Minnesota Point.

A complete set of the Coastal Barrier Resource System is 613 maps. Copies of the CBRS maps are available from the U.S. Geological Survey. Reproduction, shipping, and handling costs are $4.00 for each copy. Requests for copies must be prepaid by check (no cash or stamps) and directed to: U.S. Geological Survey, Distribution Branch, Open File Services Section, Box 25425, Denver, Colorado 80225.

Make checks payable to: The Department of the Interior, United States Geological Survey.

Please indicate where the maps should be sent:

Name

Street Address

City

State

Zip Code –

Organization

Please include a telephone number where you can be reached weekdays between 8 a.m. and 4 p.m. Eastern Standard Time.

Telephone: Area Code (_____) Number

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Thursday
June 6, 1991

Part VII

Department of Labor

Employment and Training Administration

Research, Evaluation, and Pilot Demonstration Projects Program; Indian Tribes for Fiscal Year 1991; Notice

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DEPARTMENT OF LABOR

Employment and Training Administration

Research, Evaluation, and Pilot Demonstration Projects Program: Availability of Funds and Request for Applications From Indian Tribes for Fiscal Year 1991

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and of solicitation for grant applications.

SUMMARY: The Employment and Training Administration (ETA) announces the availability of funds and the solicitation of grant applications from Indian Tribes for Fiscal Year (FY) 1991 under the Stewart B. McKinney Homeless Assistance Act (McKinney Act). The solicitation will complete the FY 1991 initiative as part of ETA's Job Training for the Homeless Demonstration Program (JTHDP). ETA earlier solicited grant applications from 46 organizations which received JTHDP grants in FY 1989 or FY 1990. No organization which qualifies as an Indian Tribe applied in this competition. Section 762 of the McKinney Act, requires that not less than 1.5 percent of the funds provided for this program shall be allocated to Indian Tribes. Consequently, ETA has reserved $170,074 to be awarded under this solicitation.

Pursuant to section 735(c) of the McKinney Act, ETA may not make grants in any State in any fiscal year in an aggregate in excess of 15 percent of the amount appropriated in that FY for the JTHDP. Grants to Indian Tribes count toward this per-State aggregate limitation. Since the earlier FY 1991 competition resulted in grant awards to organizations from the State of California equal to 15 percent of the total amount available, Indian Tribes from the State of California are not eligible for this competition.

INSTRUCTIONS FOR COMPLETING APPLICATIONS: To obtain an application package, contact John Mitchka, Division of Acquisition and Assistance (202) 523–7092. One (1) original and two (2) copies of applications must be submitted to the Grant Officer no later than July 22, 1991. Applications may be mailed to: U.S. Department of Labor, Employment and Training Administration, Office of Grants and Contract Management, Division of Acquisition and Assistance, room C–4305, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: John Mitchka, telephone (202) 523–7092.

Hand-delivered applications are acceptable during normal working hours of 8:15 a.m. to 4:45 p.m. Monday through Friday, except legal holidays, on or prior to the established closing date at the above address.

An application will be considered to be received on time if sent on or before the closing date as evidenced by a legible U.S. Postal Service postmark or a legible dated receipt from a commercial carrier. Private metered postmarks will not be considered acceptable as proof of timely mailing. Applications submitted by any means other than through the U.S. Postal Service or commercial carrier shall be considered as acceptable only if physically received before close of business on or before the deadline date.

Note: Applicants should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, applicants should check with their local post office.

ADDRESSES: It is preferred that applications be mailed. Mail or hand-deliver applications to: U.S. Department of Labor, Employment and Training Administration, Office of Grants and Contract Management, Division of Acquisition and Assistance, room C–4305, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: John Mitchka, Reference: SGA/DAA. To obtain an application package, contact John Mitchka, Division of Acquisition and Assistance, telephone (202) 523–7092.

FOR FURTHER INFORMATION CONTACT: John Mitchka, Division of Acquisition and Assistance, telephone (202) 523–7092.

SUPPLEMENTARY INFORMATION: This program announcement consists of six parts. Part I describes the background of the initiative. Part II discusses the program for which The Department of Labor (DOL) solicits applications. Part III describes the grant application review process. Part IV provides guidance on how to prepare and submit an application. Part V describes reporting requirements and part VI lists Federal fiscal requirements.

Part I—Background

A. ETA's FY 91 Homeless Job Training Initiative

The Employment and Training Administration (ETA) announced, on November 29, 1990, its 1991 Homeless Job Training Initiative as part of the McKinney Act's Job Training for the Homeless Demonstration Program (JTHDP). The purpose of that grant solicitation was to marshall public and private resources to increase employment, improve job retention and attain permanent housing for homeless persons in 20 to 30 sites nationwide.

The intent of this Initiative is to provide comprehensive services to program participants which will achieve positive and longer-lasting outcomes. Specifically, ETA wishes to strengthen housing and employment linkages, because experience under the program to date indicates that both stable employment and housing assistance are required for participants to become more economically self-sufficient.

The solicitation limited grant applications to those 46 organizations which received JTHDP grants 1989 and 1990. Of the 44 grantees who submitted applications under this competition, none qualified as an Indian Tribe. In the two previous competitions at least one Indian Tribe applied for and was awarded a grant.

Under section 762 of the McKinney Act: "Not less than 1.5 percent of the funds provided * * * shall be allocated to Indian Tribes * * *." Because of this requirement, the Employment and Training Administration has set-aside $170,074 for this Solicitation for Grant Applications (SGA). Therefore, applications are limited to eligible Indian Tribes.

The following is the definition of Indian Tribes as set forth in section 762 of the McKinney Act.

"For purposes of this section, the term 'Indian Tribe' means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act), that is recognized by the Federal Government as eligible for special programs and services provided to Indians because of their status as Indians."

B. Legislative Background

The Stewart B. McKinney Homeless Assistance Act, codified at 42 U.S.C. 11441 *et seq.*, is the first comprehensive Federal law to address the complex problem of homelessness in America. It became law on July 22, 1987 (Pub. L. 100–77) and was amended November 7, 1988 (Pub. L. 100–628) and November 29, 1990 (Pub. L. 101–645).

The McKinney Act was the result of Congress responding to its findings that the Nation faces a crisis due to lack of shelter for a growing number of individuals and families. Congress further found that the problem is expected to become worse because "the causes of homelessness are many and complex, and homeless individuals have diverse needs; (and) there is no single,

simple solution to the problem because of the * * * different causes of homelessness, and the different needs of homeless individuals." McKinney Act, section 102(a)(3) and (4), 42 U.S.C. 11301(a)(3) and (4).

As part of the McKinney Act's comprehensive approach to addressing the problems of the homeless, section 731 of the McKinney Act (42 U.S.C. 11441) authorizes the Secretary of Labor to award grants for new job training demonstration projects for homeless individuals. The grants are administered by ETA. The overall program is called the Job Training for the Homeless Demonstration Program (JTHDP). It is intended to develop knowledge for future policy decisions on job training for the homeless. It authorizes funds for grants on a competitive basis to projects throughout the country that represent promising employment and training approaches for the homeless. Authorized activities for JTHDP grantees include remedial education, job search, job training, basic skills instruction, supportive services, outreach and coordination with related community programs.

Part II—Program Description

A. Program Purpose and Goals

The 1991 Initiative will be comprehensive in scope of training, support, job development, placement and post-placement, and housing services. To apply for this grant, applicants must commit to linking with employers and housing resources in the area. Grantees will be expected to provide evidence of their ability to obtain:

- Jobs for those completing training, and
- Housing accommodations on a transitional (time-limited) basis, and permanent basis (with no explicit time limit).

The focus of the demonstration program continues to be on knowledge building to inform national policy, program content, and system development. ETA is interested in demonstrating innovative and replicable approaches to obtaining jobs and housing for homeless individuals.

B. Target Population

The target population is adult homeless persons.

The term "homeless" or "homeless individual" includes persons who lack a fixed, regular, and adequate nighttime residence. It also includes persons whose primary nighttime residence is either a supervised public or private shelter designed to provide temporary living accommodations; an institution that provides a temporary residence for individuals intended to be institutionalized; or a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

C. Core Activities Provided By The Project Which Can Be Supported By ETA Resources (including non-Federal share)

The project must provide or arrange for the following services:

- Outreach, Intake and Enrollment;
- Case Management and Counseling;
- Assessment and Employability Development Planning;
- Necessary Alcohol and Other Drug Abuse Assessment and Counseling with Referral as Appropriate to Outpatient and/or Inpatient Treatment;
- Other Supportive Services (e.g., Child Care, Transportation, Mental Health Assessment/Counseling/Referral to Treatment, Other Health Care Services, Motivation and Life Skills);
- Job Training Services;

—Remedial Education and Basic Skills/Literacy Instruction,
—Job Search Assistance and Job Preparatory Training, including Resume Writing and Interviewing Skills,
—Job Counseling,
—Vocational and Occupational Skills Training,
—Work Experience, and
—On-the-Job Training.

Note: The applicant need not provide all of these specific job training services, but should insure that the appropriate mix of services is available to address the needs of the homeless population proposed to be served.

- Job Development and Placement Services (e.g., Supported Employment and Sheltered Employment as applicable);
- Post-placement Followup and Support Services e.g., training after placement, self-help support groups, mentoring; and
- Housing Services.

—Provision of emergency housing assistance prior to placement in transitional housing.
—Assessment of housing needs of participants; identification of appropriate housing sources.
—Client referrals to appropriate housing alternatives.
—Development of strategies to address gaps in the supply of housing for participants. If other housing programs and opportunities are not sufficiently available, projects may pay security deposits and a portion of rent (not to exceed 25% for employed participants without prior approval of the Grant Officer) for transitional and permanent housing for up to six months.

D. Other Activities Project May Provide

Services may be provided which are set forth at section 204 of the Job Training Partnership Act. See appendix A.

E. Required Activities To Be Provided By Non-ETA Resources (but which can be supported by non-Federal share and other Federal funds)

ETA funds may not be used to finance capital-related housing costs (e.g., acquisition, construction, renovation and rehabilitation). However, the non-Federal share of funds and other Federal funds can be used for these purposes. Federal, State or local government, or private-sector housing opportunities should be utilized to provide the required transitional and permanent housing for participants.

Although other Federal funds cannot be used for matching, the project is encouraged to collaborate with other Federally-funded programs serving the homeless. Applicants are specifically advised that the Department of Housing and Urban Development (HUD) offers a number of housing-assistance options that can assist homeless persons who are undergoing job training—or have found jobs and are stabilizing or have stabilized their employment. Section 8 certificates and vouchers, low rent public housing, and FHA foreclosed properties are some of these options.

The Department of Labor has signed a Memorandum of Understanding with HUD to undertake cooperative initiatives to link job training and housing. One of the goals of this memorandum was to encourage better coordination of jobs and housing accommodations for homeless persons.

HUD has assisted applicants for the 1991 Initiative in the following manner:

- HUD headquarters sent a letter advising all Public Housing Agencies (PHAs) of the Department's interest in this joint effort, and encouraged PHAs to cooperate and participate with applicants.
- HUD issued a field memo to appropriate Field Offices of this effort, and urged their support, including promoting the effort among their grantees, project sponsors, and relevant localities within their jurisdiction; and named a specific homeless coordinator.
- Relevant HUD Field Offices will provide technical assistance in application procedures for these and

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other HUD programs, as well as contacts for existing projects that could possibly be linked to this effort.

• HUD, to the extent possible, will encourage current grantees under its Supportive Housing Demonstration Program to give special consideration for residence in its transitional or permanent housing to participants in projects supported by the 1991 Initiative.

F. Evaluation Component

Grantee will be required to evaluate their project to determine how linkages with other Federal, State and local private and public resources have worked in accessing jobs and housing for the homeless in their areas. Grantee will be asked to identify service strategies that have been effective in increasing job retention and upgraded housing. Grantee will also be asked to assess the timing and integration of housing, employment and supportive services with training activities. It is expected that the grantee will identify appropriate program achievements that measure how well its program is addressing the long-term employability needs of its program participants and collect the necessary data to measure program accomplishments.

On-site evaluation visits and additional data collection may be requested of the grantee as required in the national evaluation. The grantee shall maintain systematic client intake information and client tracking records to assist in case management efforts, monitoring and evaluation.

Part III—Application Review Process

A. Eligible Applicants

Applications may be submitted only by entities that qualify as an Indian Tribe as defined at section 762 of the McKinney Act (42 U.S.C. 11472). (See also Part I—Background, above.)

B. Panel Review Criteria

Reviewers will score the applications, basing their scoring decisions on the following criteria.

1. Need for the Project: 5 points

The application shall document the extent of need for the project, as demonstrated by: (1) The number or concentration of homeless individuals in the proposed project area; (2) the rate of poverty in the project area as determined by the Census data; (3) the lack of available low cost or affordable housing within the project area, as measured by such indicators as high average local rents or low vacancy rates; (4) the availability of job opportunities for the population proposed to be served.

2. Quality of Overall Strategy to Increase Employment and Retention: 25 points

The application must include a description of the proposed approach to providing supportive services, job training, job development, job placement and post-placement followup services. It must show an understanding of available local human service and job training resources that can be tapped, plans for coordination among local health services, mental health, alcohol and other drug abuse counseling/treatment, vocational education and basic education agencies, JOBS, JTPA, HHS and HUD self-sufficiency and other Federal programs. It must also describe the planned approach to obtaining job commitments from employers and attracting job training providers.

Strategies that will be employed to assist the homeless complete training and retain employment are particularly critical. The discussion should also focus on what combination of employment and training services will be employed and why this sequence and mix of services are considered important to meeting project expected outcomes. To the extent that it is appropriate to the discussion, applicants may provide a client flow chart, which depicts the planned sequence of services to be provided to clients and the role of each participating organization.

3. Quality of Overall Housing Strategy: 25 points

The application must include a description of the proposed housing services (housing identification, referral, rental assistance and counseling) and plans for securing transitional and permanent housing units to meet the needs of the grantee's homeless clients and their families. Strategies that assist homeless individuals: (1) Retain their transitional housing through stable employment combined with financial counseling, home management, and maintenance; and (2) move toward permanent housing are particularly critical.

The application should describe how the applicant will obtain emergency shelter, transitional units, housing certificates, subsidized housing, and rental assistance. The discussion should also focus on how housing will contribute to training completion and employment retention. Plans for coordination with HUD and other Federal programs serving the homeless, as well as commitments from local public, civic, church and other community-based suppliers of temporary and permanent housing should be clearly and completely documented.

4. Demonstrated Capacity (Track Record) in Providing Required Program Activities: 20 points

The applicant must describe to what extent previous project activities have supported the goals of this initiative and what programmatic changes would be necessary to strengthen efforts to increase job placement, improve retention and attain permanent housing for program participants.

Applicants should also provide any historical data on the following:

• Number of clients receiving training/services and breakouts by type of training services received;

• Job placement rate of participants and retention rates of those employed;

• Other positive outcomes for participants (e.g. educational outcomes attained, or placements in sheltered or supported work); and

• Number of participants and other family members placed in upgraded housing, including details about specific housing changes (e.g., shelter to transitional housing, transitional to permanent housing).

Collaborative efforts with other agencies or organizations in providing services must be clearly identified and names, titles, and telephone numbers of contact persons from outside organizations must be included. To emphasize the importance of obtaining employment and housing for participants, applicants are asked to submit letters of participation—and to the extent possible commitments—from employers and housing suppliers.

5. Evaluation Approach and Planned Outcomes: 15 points

The proposed project is intended to result in a measurable increase in employment, retention and upgraded housing for homeless individuals in the grantee's area. The application should also include a discussion of the "plausibility" of the proposed project—the key assumptions underlying the project and evidence to support why the project is likely to accomplish its expected outcomes.

The discussion must include a clear description of the project performance goals and accomplishments and what measures and planned evaluation approach will be used to assess how well the program has met its objectives.

6. Cost and Budget Documentation: 10 points

Available resources should be adequate to the services proposed in the application. The total cost of the project, however, must be reasonable in view of anticipated results. Applicants should document their expected costs and justify why they consider these costs to be reasonable. Applications whose proposed costs are more advantageous to the Government in light of the applicant's expected outcomes will be considered more favorably under this criterion.

A description by category (personnel, travel, etc.) of the total funds required and of the sources of outside support that will be used to meet the matching or resource leveraging requirements must be included. The funds (total Federal share and non-Federal share) must be specified. Projects proposing a higher non-Federal share will be considered more favorably under this criterion.

Applicants are advised that discussions may be necessary in order to clarify any inconsistencies in their applications. The final decision on the award will be based on what is most advantageous to the Federal Government as determined by the Grant Officer. Recommendations by reviewers are only advisory to the Grant Officer.

The Grant Officer reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicants' performance record.

Part IV—Criteria for Screening

All applications that meet the deadline will be screened for responsiveness (completeness and conformity to the requirements of this solicitation). Responsive applications will then be reviewed and evaluated competitively against the evaluation criteria specified in Panel Review Criteria described in the previous section.

1. Screening Requirements

In order for an application to be in conformance it must include the following:

(a) SF 424, Application for Federal Assistance.

(b) SF 424A, Budget Information-Non Construction—with appropriate back-up material.

(c) SF 424B, Assurances—Non-Construction Programs.

(d) Applicants are required to assure that they will pay the non-Federal share of the activities from non-Federal sources. The non-Federal share may be in cash or in kind, fairly evaluated, including plant, equipment and resources. The non-Federal share specified in the application shall not be less than ten percent and not be more than 50 percent of total estimated costs.

(e) Project Narrative: ETA recommends that the narrative portion of the application be limited to thirty (30) doublespaced pages, typewritten on one side of the paper only. Charts and exhibits are not counted against this page limit. It is strongly recommended that you follow this format for the narrative:

1. Need for the Project.

2. Quality of Strategy to Increase Employment and Retention.

3. Quality of Overall Housing Strategy.

4. Demonstrated Capacity in Providing Required Program Activities.

5. Evaluation Approach and Planned Outcomes.

6. Cost and Budget Documentation.

(f) Certification Regarding a Drug-Free Workplace. Applicants must include a signed (original signature) Certification Regarding a Drug-Free Workplace with the application. Part B should indicate those areas where the applicant currently plans to perform work done in connection with the grant, if awarded.

(g) Certification Regarding Lobbying. Applicants must include a signed (original signature) Certification Regarding Lobbying with the application.

(h) Certification Regarding Debarment, Suspension, and Responsibility Matters—Primary Covered Transactions. Applicants must include a signed (original signature) Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions with the application.

Copies of all required forms and certifications will be provided in the application package. To obtain an application package, contact John Mitchka, Division of Acquisition and Assistance (202) 523-7092. The application may also contain letters that show collaboration or substantive commitment to the project by organizations other than the applicant organization. Such letters are not part of the narrative and, therefore, are not counted against the thirty-page limit for the narrative. Letters received after the closing date will not be considered in the evaluation process.

Part V—Reporting Requirements

The grantee shall furnish the reports and documents listed below:

A. Financial Reports

The grantee shall report program outlays (expenditures and program income) on an accrual basis [29 CFR 97.41(b)(2)]. The grantee shall submit an original and two (2) copies of these reports to the Grant Officer.

(1) A Quarterly Financial Status Report (Standard Form (SF) 269) until such time as all funds have been expended or the period of availability has expired. Quarterly reports are due 30 days after the end of the quarter.

(2) The Final Financial Status Report is due 90 days after all the funds have been expended or the period of availability has expired, in accordance with 29 CFR 97.41(b)(3).

B. Program Reports

(1) Quarterly Progress Reports

An original and two (2) copies shall be submitted to the Grant Officer 30 days after the end of the quarter. The progress report shall include data on required and project specific performance measures. Reports shall also include, in brief narrative form, such information as:

(a) A description of progress in meeting planned activities, program outcomes and service levels during the reporting period;

(b) Identification and discussion of any problems which limited the grantee's ability to meet projected planned activities; and

(c) Proposed plan(s) of action to resolve these problems.

(2) Preliminary Evaluation Report (Draft Final).

This report shall summarize, in a format to be prescribed at a later date, project activities, evaluation findings, implications, conclusions, and recommendations resulting from the project work to date. An original and two (2) copies shall be submitted to the Grant Officer 30 days before the expiration date of the grant.

(3) Final Evaluation Report.

This report shall update information and reflect ETA comments in the draft final report. It should include a short executive summary. An original and two (2) copies shall be submitted to the Grant Officer 30 days after the expiration date of the grant. Five percent of the Federal share of the grant is considered payment for the final evaluation report. Therefore, ETA will reimburse grantees in an amount not to exceed 95% of the grant amount until an acceptable draft final report is received.

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Part VI—Federal Fiscal Requirements

Section 735 of the McKinney Act (42 U.S.C. 11445) designates this program as one that is cost sharing, limiting the Federal share of the cost of activities. ETA will make grant awards for at least 50 percent and no more than 90 percent of the total cost of activities budgeted in the application. Applications that propose to match at a higher rate will be administratively adjusted to the 50% level, and will be rated on that basis. Applicants are encouraged to provide the highest feasible non-Federal share of the cost of the project. High cost-sharing demonstrates applicant commitment to continue the activities and cost efficiency given the limited available Federal resources.

Signed at Washington DC, on May 10, 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

Appendix A Section 204 of the Job Training Partnership Act (29 U.S.C. 1604)

Sec. 204. Services which may be made available to youth and adults with funds provided under this title may include, but need not be limited to—

(1) Job search assistance,
(2) Job counseling,
(3) Remedial education and basic skills training,
(4) Institutional skill training,
(5) On-the-job training,
(6) Programs of advanced career training which provide a formal combination of on-the-job and institutional training and internship assignments which prepare individuals for career employment,
(7) Training programs operated by the private sector, including those operated by labor organizations or by consortia of private sector employers utilizing private sector facilities, equipment, and personnel to train workers in occupations for which demand exceeds supply,
(8) Outreach to make individuals aware of, and encourage the use of employment and training services,
(9) Specialized surveys not available through other labor market information sources,
(10) Programs to develop work habits and other services to individuals to help them obtain and retain employment,
(11) Supportive services necessary to enable individuals to participate in the program and to assist them in retaining employment for not to exceed 6 months following completion of training,
(12) Upgrading and retraining,
(13) Education-to-work transition activities,
(14) Literacy training and bilingual training,
(15) Work experience,
(16) Vocational exploration,
(17) Attainment of certificates of high school equivalency,
(18) Job development,
(19) Employment generating activities to increase job opportunities for eligible individuals in the area,
(20) Pre-apprenticeship programs,
(21) Disseminating information on program activities to employers,
(22) Use of advanced learning technology for education, job preparation, and skills training,
(23) Development of job openings,
(24) On-site industry-specific training programs supportive of industrial and economic development,
(25) Followup services with participants placed in unsubsidized employment,
(26) Coordinated programs with other Federal employment-related activities,
(27) Needs-based payments necessary to participation in accordance with a locally developed formula or procedure, and
(28) Customized training conducted with a commitment by an employer or group of employers to employ an individual upon successful completion of that training.

[FR Doc. 91-13375 Filed 6-5-01; 8:45 am]
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Part VIII

Department of the Interior

Indian Affairs Bureau Reorganization, Joint Tribal/BIA/DOI Advisory Task Force, Meeting; Notice

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DEPARTMENT OF THE INTERIOR

Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization, Public Meeting

May 31, 1991.

AGENCY: Department of the Interior.

ACTION: Notice.

SUMMARY: Pursuant to Public Law 101–512, the Office of the Assistant Secretary—Indian Affairs is announcing the forthcoming Seattle, Washington, meeting of the Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Reorganization Task Force.

DATES, TIMES AND PLACE: July 23, 24 and 25, 1991; 9 a.m. to 5:30 p.m. daily; Best Western Executive Inn, Downtown, 200 Taylor Avenue, North, Seattle, Washington. The meetings of the Task Force are open to the public.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting of the Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization may be obtained by contacting Ms. Veronica Murdock, Designated Federal Officer, at (202) 208–4173.

AGENDA: The Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization will review and discuss the tribal leader consultation sessions held on the Report of the Task Force on the Status of Activities as of April 30, 1991. The Task Force will also review and discuss any other input received on the Report on the Status of activities. It will discuss future meetings and plans for activities of the Task Force. Summary minutes of the meeting will be made available upon request from the contact person.

Dated: May 30, 1991.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 91–13371 Filed 6–5–91; 8:45 am]

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Part IX

Department of Education

Training Personnel for the Education of Individuals with Disabilities; Notice

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DEPARTMENT OF EDUCATION

[CFDA No. 84.029L]

Training Personnel for the Education of Individuals with Disabilities

Notice inviting applications for new awards for fiscal year 1991.

Purpose of Program: The Training Personnel for the Education of Individuals with Disabilities Program assists projects designed to increase the quantity and improve the quality of personnel available to serve infants, toddlers, children, and youth with disabilities, by providing awards to support the preservice training of personnel for careers in special education, related services, supervision and administration, research, and early intervention, and to support special projects designed to develop and demonstrate new approaches for preservice and inservice training.

The Senate report accompanying the 1991 appropriations act states that $1 million is included in the appropriation for training of interpreters for the deaf. Implementation of this activity requires the publication of this new priority.

Under 34 CFR 75.105(c)(3) the Secretary will give an absolute preference to applications that meet the following priority. The Secretary will fund under this competition only applications that meet this absolute priority.

The Secretary will award 12 to 15 grants to support the preservice training of educational interpreters for children with hearing impairments, including deafness. The Department and the Congress have recognized that one of the most severe problems faced by schools in providing services for these children is obtaining qualified personnel to interpret. The problem is at least two-fold: (1) The availability of interpreters in general is quite limited in relation to the needs of children with hearing impairments; and (2) even those interpreters who are available are often untrained or inadequately trained to meet the specific demands of interpreting and working in an instructional setting. The problem is exacerbated by the increasing integration of children with hearing impairments into regular education settings. Integration requires more interpreters than the previous practice of placing children with hearing impairments into segregated classes or schools because of the increased interpreter to student ratio required.

In response to this need the Training Personnel for the Education of Individuals with Disabilities Program will support projects to increase the supply of educational interpreters. Support will be limited to projects that demonstrate recruitment strategies, specifically adapted curricula, and incentives designed to increase the probability of program graduates' functioning productively as interpreters in instructional settings. These funds must be concentrated on student support, rather than on basic institutional support.

Eligible Applicants: Institutions of higher education and other appropriate non-profit agencies are eligible to apply for awards under this program.

Deadline for Transmittal of Applications: July 8, 1991.

Deadline for Intergovernmental Review: September 8, 1991.

Applications Available: June 10, 1991.

Available Funds: $1,000,000.

NOTE: The estimates of funding levels and awards in this notice do not bind the Department of Education to a specific level of funding or number of grants, unless the amount is otherwise specified by statute or regulation.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) 34 CFR parts 74, 75, 77, 79, 81, 82, 85, and 86; (b) the regulations for Individuals with Disabilities Education Act—Training Personnel for the Education of the Handicapped—Careers in Special Education and Related Services (CFDA 84.029), 34 CFR part 318.

It is the policy of the Department of Education not to solicit applications before the publication of final priorities. However, in this case it is essential to solicit applications on the basis of the notice of proposed priorities as published in the **Federal Register** on April 30, 1991 (56 FR 19896), because the Department's authority to obligate these funds will expire on September 30, 1991.

The public comment period for the notice of proposed priority ended on May 31, 1991. Eight parties responded to the notice, all of whom were strongly supportive of the priority. The commenters also made several suggestions for limiting the priority to specific types of training activities or models. After carefully considering these comments, the Secretary believes that the priority should be kept as flexible as possible to accommodate a variety of proposed training projects. Therefore, no changes are expected in the final priority, and applicants are advised to submit their applications based on the priority as proposed. However, if changes are made in the final priority, applicants will be provided the opportunity to amend or resubmit their applications.

For Applications or Information Contact: Angele Thomas, Division of Personnel Preparation, Office of Special Education Programs, 400 Maryland Avenue, SW (Switzer Building, room 3518–M.S. 2651), Washington, DC 20202. Telephone: Angele Thomas (202) 732–1100. TDD: (202) 732–1100.

Authority: 20 U.S.C. 1431.

Dated: May 31, 1991.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 91–13278 Filed 6–5–91; 8:45 am]

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LIST OF PUBLIC LAWS

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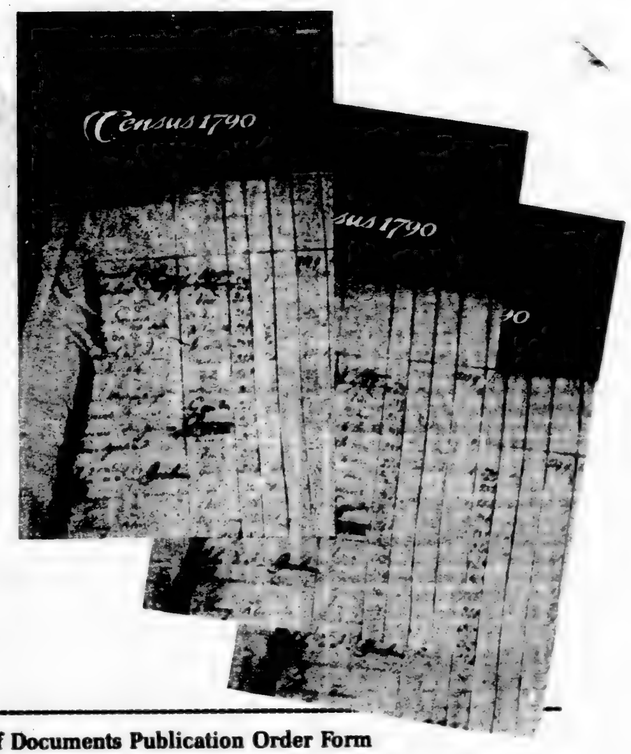

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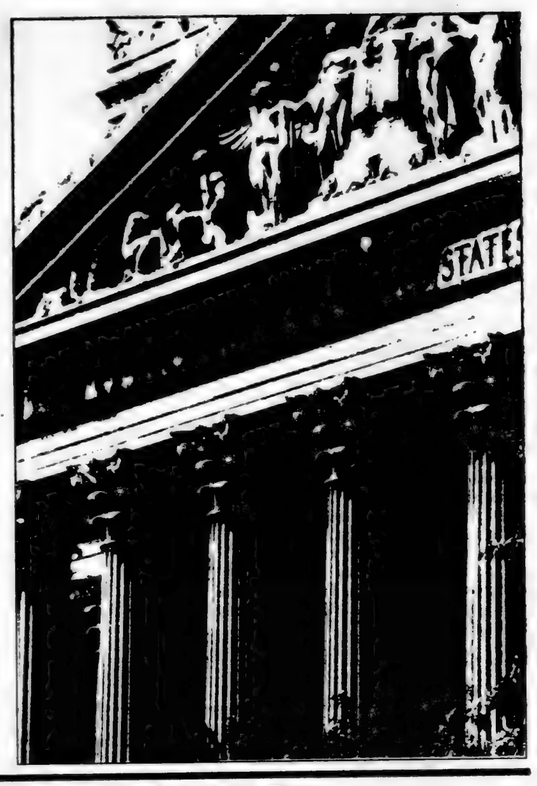

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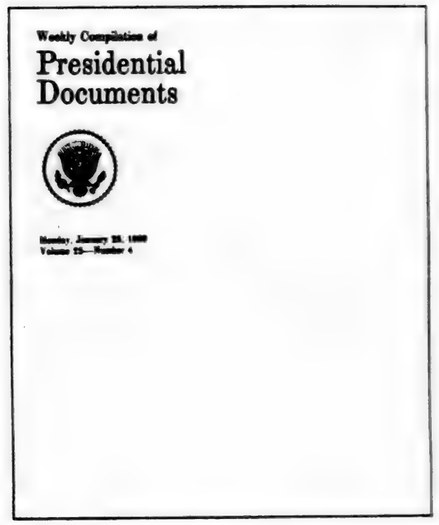

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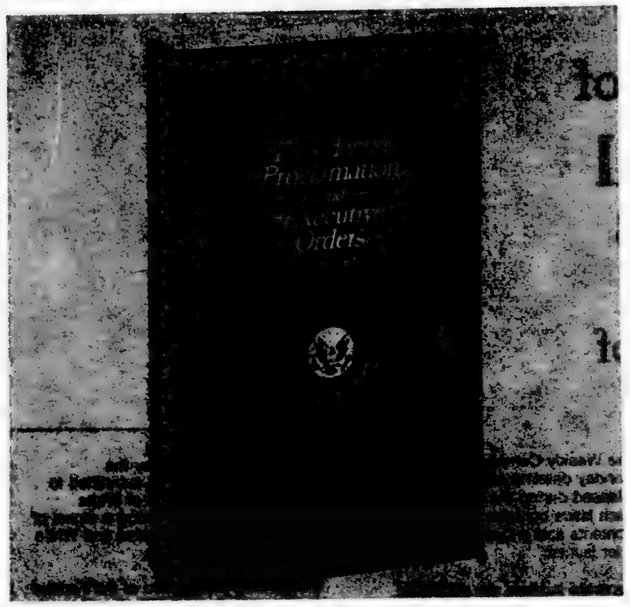

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1494

Export Bonus Programs

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Commodity Credit Corporation (CCC) is issuing this interim rule which establishes in the form of regulations the criteria considered in evaluating and approving proposals for country and commodity initiatives under the Export Enhancement Program (EEP) and the Dairy Export Incentive Program (DEIP). The criteria for the EEP and the DEIP are found in subparts A and C, respectively, of 7 CFR part 1494. This interim rule also establishes program operation regulations for the DEIP in subpart D. Program operations regulations for the EEP have already been codified at subpart B.

DATES: Interim rule effective June 7, 1991; comments must be submitted on or before August 6, 1991.

ADDRESSES: Comments must be submitted in writing to Philip Mackie, Assistant Administrator, Commodity and Marketing Programs, USDA, FAS, room 5089–S, 1400 Independence Avenue SW., Washington, DC 20250–1000, telephone (202) 447–4761. All comments received will be available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: For further information regarding the criteria for the EEP or the DEIP, contact Philip Mackie, Assistant Administrator, Commodity and Marketing Programs, USDA, FAS, room 5089–S, 1400 Independence Avenue SW., Washington, DC 20250–1000, telephone (202) 447–4761. For further information regarding the regulations for the operation of the DEIP, contact L.T. McElvain, Director, CCC Operations Division, USDA, FAS, room 4503–S, 1400 Independence Avenue SW., Washington, DC 20250–1000, telephone (202) 447–6211.

SUPPLEMENTARY INFORMATION:

Regulatory Requirements

This interim rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation N. 1512–1 and has been designated as "nonmajor." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

This interim rule has been submitted to the Office of Management and Budget (OMB) for review. It is expected that OMB will assign it a control number for the purposes of the Paperwork Reduction Act. Public reporting burden for collections of information required under the operations of the Dairy Export Incentive Program (Part 1494, subpart D) is estimated to average 26 minutes per response, including time for reviewing instructions, searching existing sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Background

Section 403(a)(1) of the Agricultural Trade Act of 1978, as amended by section 1531 of the Food, Agriculture, Conservation, and Trade Act of 1990 (hereinafter referred to as the 1990 Act), which became law on November 28, 1990, requires the Secretary of Agriculture to "specify by regulation the criteria used to evaluate and approve proposals" for each commercial export program. This would include the EEP and the DEIP, and the criteria for these programs have been set forth in subparts A and C, respectively, of part 1494. The EEP and the DEIP are administered by the Foreign Agricultural Service (FAS), on behalf of CCC.

In the **Federal Register** of June 3, 1991, CCC published a final rule establishing the program operations regulations for the EEP in subpart B of part 1494. The program criteria deal with an aspect of the EEP other than the establishment and operation of specific EEP Agreements, which is the subject of subpart B. Therefore, it was determined that the EEP criteria would be codified in a separate subpart of part 1494, and subpart A was reserved for that purpose at the time that the final rule for subpart B was published in the **Federal Register**. The criteria set forth in subpart A for evaluating and approving proposals for country and commodity initiatives under the EEP are based upon EEP criteria which were published in a Notice in the **Federal Register** on November 27, 1989 (54 FR 48785). This interim rule supersedes that Notice.

The criteria considered in evaluating and approving proposals for country and commodity initiatives under the DEIP are the same as those used for the EEP. Therefore, § 1494.1101, in subpart C of this interim rule, provides that the criteria set forth in § 1494.20 for the EEP will also apply to the DEIP.

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This interim rules establishes, as subpart D of part 1494, the program operations regulations for the DEIP. Like the EEP, the DEIP has previously been administered through the issuance of "Announcements" and "Invitations for Offers" (Invitations). It has been determined that the DEIP should be operated in a manner consistent with the published regulations for the EEP. Therefore, § 1494.1200 provides that, except as otherwise stated in subpart D, the program operations regulations set forth in subpart B for the EEP will also apply to the DEIP.

Three provisions relating specifically to the DEIP are found in §§ 1494.1201, 1494.1202, and 1494.1203. A definition of "eligible commodity" for the purposes of the DEIP is found in § 1494.1201 and supersedes the definition in § 1494.201(p). Section 1494.1202 is required by section 153 of the Food Security Act of 1985, as amended, which provides that regulations issued by the Secretary of Agriculture shall ensure that, if CCC certificates furnished to an exporter as a bonus under the DEIP are exchanged for dairy products, the exporter must sell for export such dairy products or an equal quantity of other dairy products. This provision will only apply if CCC makes dairy products available to be exchanged for CCC certificates. They are not available for exchange at the present time. Section 1494.1203 deals with the Paperwork Reduction Act with respect to the DEIP.

FAS will continue to maintain the system of issuing Invitations for targeted countries under the DEIP. Any terms and conditions relating to particular Invitations issued under the DEIP will be specifically provided for in such Invitations.

This is being issued as an interim rule because Section 404 of the Agricultural Trade Act of 1978, as amended by section 1531 of the 1990 Act, requires that "[n]ot later than 180 days after the date of this Act [November 28, 1990], the Secretary shall issue regulations implementing the provisions of this Act." 7 U.S.C. 5664. The EEP and the DEIP are programs currently being operated by CCC and this interim rule is generally consistent with current policies and operational procedures for the programs.

List of Subjects in 7 CFR Part 1494

Administrative practices and procedures, Agricultural commodities, Exports, Reporting and recordkeeping requirements.

Accordingly, 7 CFR chapter XIV, part 1494 is amended as follows:

PART 1494—[AMENDED]

1. The authority citation for 7 CFR part 1494 is removed and the authority citation for subpart B is added to read as follows:

Authority. 15 U.S.C. 714c; 7 U.S.C. 5602, 5651, 5661, 5662, 5676.

2. A new subpart A, consisting of §§ 1494.10 and 1494.20, a new subpart C, consisting of §§ 1494.1100 and 1494.1101, and a new subpart D, consisting of §§ 1494.1200 through 1494.1203, is added to read as follows:

Subpart A—Export Enhancement Program Criteria

Sec.
1494.10 General statement.
1494.20 Criteria.
* * * * *

Subpart C—Dairy Export Incentive Program Criteria

Sec.
1494.1100 General statement.
1494.1101 Criteria.

Subpart D—Dairy Export Incentive Program Operations

Sec.
1494.1200 Program operations.
1494.1201 Definition of eligible commodity.
1494.1202 Exchange of CCC certificates for dairy products.
1494.1203 Paperwork reduction act.

Subpart A—Export Enhancement Program Criteria

Authority: 7 U.S.C. 5663.

§ 1494.10 General statement.

This subpart sets forth the criteria to be considered in evaluating and approving proposals for initiatives to facilitate export sales under the Commodity Credit Corporation's (CCC) Export Enhancement Program (EEP). These criteria are interrelated and will be considered together in order to select eligible commodities and eligible countries for EEP initiatives which will best meet the program's objectives. The objectives of the program are to discourage unfair trade practices by other countries, to increase U.S. agricultural commodity exports, and to encourage other countries exporting agricultural commodities to undertake serious negotiations on agricultural trade problems. Under the EEP, bonuses are made available by CCC to enable exporters to meet prevailing world prices for targeted commodities in targeted destinations. In the operation of the EEP, CCC will make reasonable efforts to avoid the displacement of commercial export sales of U.S. dairy products and to ensure that sales facilitated by the DEIP are in addition to, and not in place of, any export sales of dairy products that the exporter would have otherwise made in the absence of the program.

§ 1494.20 Criteria.

The criteria considered by CCC in reviewing proposals for initiatives will include, but not be limited to, the following:

(a) The expected contribution of proposed initiatives in furthering trade policy negotiations and, in particular, in furthering the U.S. trade policy negotiating strategy of countering competitors' subsidies and other unfair trade practices by displacing such countries' subsidized exports in targeted countries;

(b) The contribution which initiatives will make toward realizing U.S. agricultural export goals and, in particular, in developing, expanding, or maintaining markets for U.S. agricultural commodities;

(c) The effect that sales facilitated by initiatives would have on non-subsidizing exporters of agricultural products; and

(d) The subsidy requirements of proposed initiatives compared to the expected benefits.

Subpart C—Dairy Export Incentive Program Criteria

Authority: 7 U.S.C. 5663.

§ 1494.1100 General statement.

This subpart sets forth the criteria to be considered in evaluating and approving proposals for initiatives to facilitate export sales under the Commodity Credit Corporation's (CCC) Dairy Export Incentive Program (DEIP). These criteria are interrelated and will be considered together in order to select eligible commodities and eligible countries for DEIP initiatives which will best meet the program's objectives. The objectives of the program are to increase U.S. agricultural commodity exports and to encourage other countries exporting agricultural commodities to undertake serious negotiations on agricultural trade problems. Under the DEIP, bonuses are made available by CCC to enable exporters to meet prevailing world prices for targeted dairy products in targeted destinations. In the operation of the DEIP, CCC will make reasonable efforts to avoid the displacement of commercial export sales of U.S. dairy products and to ensure that sales facilitated by the DEIP are in addition to, and not in place of, any export sales of dairy products that the exporter would have otherwise made in the absence of the program.

§ 1494.1101 Criteria.

The criteria considered in evaluating and approving proposals for the DEIP are those set forth in § 1494.20 of this part.

Subpart D—Dairy Export Incentive Program Operations

Authority: 15 U.S.C. 713a–14.

§ 1494.1200 Program operations.

Except as otherwise provided in this subpart, the program operations provisions of subpart B of this part, relating to the Export Enhancement Program, will also apply to the Dairy Export Incentive Program (DEIP). Any terms or conditions relating to a particular Invitation for Offers (Invitation) under the DEIP will be specifically provided for in such Invitation.

§ 1494.1201 Definition of eligible commodity.

For the purpose of the DEIP, the eligible commodity is defined as the U.S. agricultural commodity, which is a dairy product, specified as eligible for export under the applicable Invitation, which is of the kind, type, and/or grade of commodity specified in the applicable Invitation.

§ 1494.1202 Exchange of CCC certificates for dairy products.

If the exporter is paid a bonus under the DEIP in the form of CCC certificates, and if CCC permits such certificates to be exchanged for dairy products, then the exporter must sell for export such dairy products or an equal quantity of other dairy products.

§ 1494.1203 Paperwork Reduction Act.

The information collection requirements contained in this subpart have been submitted to the Office of Management and Budget (OMB) and will be assigned an OMB control number.

Signed this 3d day of June, 1991 at Washington, DC.

F. Paul Dickerson,

General Sales Manager and Vice President, Commodity Credit Corporation.

[FR Doc. 91-13373 Filed 6-6-91; 8:45 am]

BILLING CODE 3410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-ANE-11; Amdt. 39-7020; AD 91-12-09]

Airworthiness Directives; General Electric Company (GE) CF6-6 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to General Electric CF6-6 series turbofan engines, which requires eddy current inspections and provides criteria for removal service of certain stage 1 fan disks which may have metallurgical defects. This AD is prompted by the probability of the existence of a metallurgical defect in the disk bore which can adversely affect the service life of the disk. This condition, if not corrected, could result in an uncontained engine failure and damage to the aircraft.

DATES: Effective June 27, 1991.

Comments must be received no later than June 27, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 27, 1991.

ADDRESSES: Send comments in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-ANE-11, 12 New England Executive Park, Burlington, Massachusetts 01803-5299, or deliver in duplicate to Room 311 at the above address.

Comments may be inspected at the above location between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The applicable service information may be obtained from General Electric Company, Technical Publications Department, 1 Neumann Way, Cincinnati, Ohio 45215. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, Room 311, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Robert E. Guyotte, Engine Certification Office, ANE-140, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803-5299; (617) 273-7094.

SUPPLEMENTARY INFORMATION: On November 24, 1989, the FAA issued AD 89-20-01 R1, Amendment 39-6411 (54 FR 51015, December 12, 1989), to establish ultrasonic inspection requirements for certain stage 1 fan disks installed on GE CF6-6 series turbofan engines. That action was prompted by an uncontained engine failure resulting from the presence of a metallurgical defect in the disk bore of a stage 1 fan disk.

Since issuance of AD 89-20-01 R1, the FAA has determined that a crack associated with a metallurgical defect located in the stage 1 fan disk bore forward corner may not be detectable by the ultrasonic inspection. Further analysis indicates that this type of crack could propagate to failure prior to the fan disk reaching its life limit. This condition, if not corrected, could result in an uncontained engine failure and damage to the aircraft.

The FAA has reviewed and approved the technical content of GE Service Bulletin (SB) CF6-6 72-947, Revision 4, dated February 8, 1991, which describes new procedures for eddy current inspection of the stage 1 fan disk.

Since this situation is likely to exist or develop on other engines of this same type design, this AD requires repetitive eddy current fan disk bore inspections and provides criteria for the removal from service of affected disks in accordance with the service bulletin previously described.

Since a situation exists which could result in an uncontained engine failure, there is a need to minimize the exposure of revenue service aircraft to this unsafe condition. In addition, based on the above and the need to inspect and remove from service contain stage 1 disks that have metallurgical defects, as soon as practicable, a situation exists that requires the immediate adoption of this regulation. Therefore, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule, which involves an emergency and, thus, was not preceded by notice and public procedure, interested persons are invited to submit such written data, views, or arguments as they may desire regarding this AD. Communications should identify the docket number and be submitted to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-ANE-11, 12 New England Executive Park, Burlington, Massachusetts 01803-5299. All communications received by the deadline date indicated above will be considered by the Administrator, and

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the AD may be changed in light of the comments received.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Excecutive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, and Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

91-12-09 General Electric Company: Amendment 39-7020. Docket No. 91-ANE-11.

Applicability: General Electric Company (GE) CF6-6b series turbofan engines installed on, but not limited to, McDonnell Douglas DC10-10 aircraft.

Compliance: Required as indicated, unless previously accomplished.

To prevent an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) Eddy current inspect in accordance with GE CF6-6 Service Bulletin (SB) 72-947, Revision 4, dated February 8, 1991, the bore forward corner of stage 1 fan disks identified by serial number (S/N) in Tables 2, 3, and 3 Addendum of GE CF6-6 SB 72-947, Revision 4, dated February 8, 1991, as follows:

(1) For disks which have not received an eddy current inspection in accordance with the Accomplishment Instructions of GE CF6-6 SB 72-947, Revision 4, dated February 8, 1991, in accordance with the following schedule:

(i) Within the next 100 cycles in service (CIS) after the effective date of this AD for those disks which on the effective date of this AD have accumulated 1,250 CIS or greater since accomplishing the immersion ultransonic inspection of AD 89-20-01 R1, Amendement 39-6411 (54 FR 51015, December 12, 1989).

(ii) Within the next 100 CIS after the effective date of this AD or prior to accumulating 1,250 CIS since accomplishing the immersion ultrasonic inspection of AD 89-20-01 R1, whichever comes later for those disks which on the effective date of this AD have accumulated less than 1,250 CIS since the immersion ultrasonic inspection.

(2) For those disks which on the effective date of this AD have received an eddy current inspection in accordance with the Accomplishment Instructions of GE CF6-6 SB 72-947, Revision 4, dated February 8, 1991, in accordance with the following schedule:

(i) Within the next 100 CIS after the effective date of this AD for those disks which on the effective date of this AD have accumulated 1,500 CIS or greater since accomplishing the immersion ultrasonic inspection of AD 89-20-01 R1.

(ii) Within the next 100 CIS after the effective date of this AD or prior to accumulating 1,500 CIS since accomplishing the immersion ultrasonic inspection of AD 89-20-01 R1, whichever comes later, for those disks which on this AD have accumulated less than 1,500 CIS since accomplishing the immersion ultrasonic inspection.

(b) Thereafter, eddy current inspect the bore forward corner of stage 1 fan disks which meet the acceptance criteria of paragraph 2.B.(2)(c) of the Accomplishment instructions of GE CF6-6 SB 72-947, Revision 4, dated February 8, 1991, at intervals not to exceed 500 CIS since last eddy current inspection.

(c) Remove from service prior to further flight and replace with a serviceable part, disks inspected in accordance with paragraphs (a) and (b) of this AD, which do not meet the acceptance criteria of paragraph 2.B(2)(c) of the Accomplishment Instructions of GE CF6-6 SB 72-947, Revision 4, dated February 8, 1991.

(d) Remove from service all stage 1 fan disks identified by S/N in Tables 2, 3, and 3 Addendum of GE CF6-6 SB 72-947, Revision 4, dated February 8, 1991, at the next shop visit but no later than 2,500 CIS since immersion ultrasonic inspection or June 30, 1992, whichever occurs first.

(e) For the purpose of this AD, "Shop visit" is defined as the induction of the engine into the shop for any reason.

(f) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(g) Upon submission of substantiating data by an owner or operator through an FAA (maintenance, avionics, or operations) Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance schedules specified in this AD may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803-5299.

The inspections shall be done in accordance with the following General Electric service document:

Document No.	Page No.	Issue	Date
CF6-6 SB 72-947, Total Pages: 13.	1 thru 13	Rev. 4	Feb. 8, 1991

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies can be obtained from General Electric Company, Technical Publications Department, 1 Neumann Way, Cincinnati, Ohio 45215. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts 01803-5299 or at the office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39-7020, AD 91-12-09) becomes effective on June 27, 1991.

Issued in Burlington, Massachusetts, on May 21, 1991.

Jack A. Sain,

Manager, Engine and Propeller Directorate Aircraft Certification Service.

[FR Doc. 91-13495 Filed 6-6-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 75

[Airspace Docket No. 90-ASW-49]

Establishment of Jet Route J-244; NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes new Jet Route J-244 between Las Vegas, NM, and Zuni, NM. This new route provides a direct and shorter route between these areas as well as an additional means to travel to Phoenix, AZ. This action aids flight planning and improves the flow of traffic in the area.

EFFECTIVE DATE: 0901 u.t.c., July 25, 1991.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On January 25, 1991, the FAA proposed to amend part 75 of the Federal Aviation Regulations (14 CFR part 75) to establish a new Jet Route J-242 between Las Vegas, NM, and Zuni, NM (56 FR 2882). However, the Southwest Regional Office has requested that J-242 be changed to J-244 due to similar sounding route numbers in that area. It is possible that pilots could misunderstand air traffic control instructions. Therefore, J-242 is now renamed J-244. This jet route permits a direct charted route between these areas where aircraft are usually radar vectored. The new J-244 aids in sequencing traffic landing in Phoenix, AZ. This action aids flight planning and saves fuel.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes and the renaming of J-242 to J-244, this amendment is the same as that proposed in the notice. Section 75.100 of part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations establishes a new Jet Route J-244 between Las Vegas, NM, and Zuni, NM. This jet route permits a direct charted route between these areas where aircraft are usually radar vectored. The new J-244 aids in sequencing traffic landing in Phoenix, AZ.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR part 75) is amended, as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-244 [New]

From Las Vegas, NM; Zuni, NM; INT Zuni 242° and Salt River, AZ, 051° radials; Salt River.

Issued in Washington, DC on May 30, 1991.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 91-13514 Filed 6-6-91; 8:45 am]

BILLING CODE 4910-13-M

RAILROAD RETIREMENT BOARD

20 CFR Part 323

RIN 3220-AA84

Nongovernmental Plans for Unemployment or Sickness Insurance

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby amends chapter II of title 20 of the Code of Federal Regulations by adding a new part 323. Part 323 defines, for purposes of the Railroad Unemployment Insurance Act, what is meant by the phrase "nongovernmental plan for unemployment or sickness insurance," the standards by which the Board will determine whether a proposed plan qualifies as a nongovernmental plan, and the procedure by which an employer may obtain a determination by the Board as to whether such a plan so qualifies.

EFFECTIVE DATE: June 7, 1991.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, Bureau of Law, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4513, (FTS) 386-4513.

SUPPLEMENTARY INFORMATION: The Railroad Unemployment Insurance Act (RUIA) provides for the payment of benefits to qualified railroad employees for their days of unemployment or days of sickness, as defined in section 1(k) of the RUIA. Under section 1(k), no day can be a day of unemployment or a day of sickness for any employee if "remuneration" is payable to or accrues to the employee for such day. Section 1(j) of the RUIA and part 322 of the Board's regulations define the term "remuneration" as meaning all pay for services for hire, including pay for time lost, and all other earned income payable or accruing with respect to any day. However, section 1(j) excludes from the definition of "remuneration" any money payments received by an employee pursuant to any nongovernmental plan for unemployment insurance, maternity insurance, or sickness insurance.

With the elimination of maternity benefits as a separate category of benefits under the RUIA by section 201 of Public Law 90-257 (82 Stat. 16, 23), the reference to maternity insurance in section 1(j) is obsolete. Consequently, part 323 confines itself to defining nongovernmental plans for unemployment or sickness insurance, their content, and the standards for Board approval of such plans.

The Board considers it necessary to publish a regulation on the subject of nongovernmental plans for unemployment or sickness insurance because of the growing number of such plans in recent years. At the same time, many railroad employees have been affected by railroad mergers, consolidations or abandonments, and many of them are entitled to receive payment of dismissal allowances pursuant to an order of the Interstate Commerce Commission or to a wage guarantee plan or agreement. A dismissal allowance or similar wage guarantee is a form of "remuneration" that prevents the payment of benefits under the RUIA or causes such benefits

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to be recoverable by the Board. See § 322.7 of the Board's regulations and section 2(f) of the RUIA (45 U.S.C. 352(f)). This rule makes it clear that such payments are not made pursuant to a nongovernmental plan merely because the plan provides an offset for benefits received under the RUIA.

In addition, because benefit payments under nongovernmental plans are not "compensation" under section 1(i) of the RUIA, such benefit payments are not subject to payment of contributions under part 345 of this chapter. Nor are such payments subject to taxes under the Railroad Retirement Tax Act. See Rev. Rul. 90–72, 1990–21 IRB 19, May 21, 1990. Accordingly, the Board considers it necessary and desirable to clearly distinguish employer payments under nongovernmental plans from other employer payments to employees due to unemployment and sickness and to create a formal procedure by which an employer may obtain from the Board a ruling as to whether payments it may have to make to an employee under such plans would, or would not, be regarded as "remuneration" within the meaning of section 1(j) of the Act.

On January 16, 1991, the Board published this rule as a proposed rule (56 FR 1587), inviting comments on or before March 18, 1991. No comments were received.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no regulatory analysis is required. There are no information collections contemplated by part 323.

List of Subjects in 20 CFR Part 323

Railroad employees, Railroad employers, Railroad unemployment benefits.

For the reasons set out in the preamble, title 20, chapter II of the Code of Federal Regulations is amended by adding a new part 323 to read as follows:

PART 323—NONGOVERNMENTAL PLANS FOR UNEMPLOYMENT OR SICKNESS INSURANCE

Sec.

323.1 Introduction.
323.2 Definition of nongovernmental plan for unemployment or sickness insurance.
323.3 Standards for Board approval of a nongovernmental plan.
323.4 Guidelines for content of a nongovernmental plan.
323.5 Submitting proposed plan for Board approval.
323.6 Treatment of benefit payments under a nongovernmental plan for purposes of contributions.
323.7 Effective date.

Authority: 45 U.S.C. 362(1).

§ 323.1 Introduction.

(a) This part defines the phrase "nongovernmental plan for unemployment or sickness insurance" and sets forth the procedure by which an employer may obtain a determination by the Railroad Retirement Board as to whether a particular plan that such employer maintains for its employees qualifies as a nongovernmental plan. In general, any payment by an employer to an employee for services rendered as an employee will be considered to be "remuneration" within the meaning of section 1(j) of the Railroad Unemployment Insurance Act and part 322 of this chapter. This includes employer payments that relate to an employee's loss of earnings during a period of time when the employee is unemployed or sick, including sickness resulting from injury. The exception is when an employer pays an employee a benefit pursuant to the provisions of a nongovernmental plan for unemployment or sickness insurance established by an employer for the benefit of its employees. Benefit payments under such plans are not remuneration and do not affect an employee's eligibility for unemployment or sickness benefits under the Railroad Unemployment Insurance Act.

(b) This part does not have any general applicability to private insurance contracts under which an insurance company, pursuant to a policy of insurance maintained by or for an employee, pays medical or hospital expenses or other cash benefits to or in behalf of an employee. Nor does this part apply to any private plan for relief of unemployment established by a party other than an employer such as, for example, a plan established by a labor union under which it undertakes to pay benefits to striking members of the union out of a strike insurance fund. Insurance policy benefits and strike unemployment benefits, although paid under plans that are nongovernmental in nature, are not considered remuneration for services under the general definition of "remuneration". See part 322 of this chapter.

§ 323.2 Definition of nongovernmental plan for unemployment or sickness insurance.

A nongovernmental plan for unemployment or sickness insurance is a benefit plan, program or policy that is in the nature of insurance and is designed and established by an employer for the purpose of supplementing the benefits that an employee of such employer may receive under the Railroad Unemployment Insurance Act during a period of unemployment or sickness. A nongovernmental plan may be established by labor-management agreement or by unilateral employer action. Payments under such plans are referred to as supplemental unemployment benefits (SUB pay) or supplemental sickness benefits, rather than as wages, salary or pay for time lost, because their inherent nature is to supplement benefit payments under the Railroad Unemployment Insurance Act rather than to replace or duplicate such payments.

§ 323.3 Standards for Board approval of a nongovernmental plan.

An unemployment or sickness benefit plan qualifies as a nongovernmental plan if it conforms to the following standards:

(a) The plan is in writing and has been published or otherwise communicated to covered employees prior to the inception of the plan;

(b) Benefits under the plan are payable only to employees who are involuntarily laid off or separated from the service of the employer or who are absent from work on account of illness or injury;

(c) Payment of benefits under the plan is conditioned upon a covered employee's meeting the eligibility conditions governing payment of benefits under the Railroad Unemployment Insurance Act. However, a plan will not be disqualified merely because it:

(1) Provides benefits during any waiting period required under the Railroad Unemployment Insurance Act, or

(2) Provides benefits after an employee has exhausted rights to benefits under the Railroad Unemployment Insurance Act, or

(3) Provides benefits during a period when the employee is not a "qualified employee", within the meaning of part 302 of this chapter;

(d) Payment of benefits under the plan is coordinated with benefit payments to which the employee may be entitled under the Railroad Unemployment Insurance Act. In general, plan benefit payments will be considered coordinated with Railroad Unemployment Insurance Act benefit payments when computation of the plan benefits takes Railroad Unemployment Insurance Act benefit entitlement into consideration in such a way as to make it clear that the plan is supplementing Railroad Unemployment Insurance Act benefit payments for days of unemployment or days of sickness. For example, a plan that provides for payment of a specified daily benefit amount is considered coordinated with Railroad Unemployment Insurance Act benefit payments if the plan provides that the daily benefit amount otherwise payable to the employee is reduced by the amount of benefits that the employee received or could receive under the Railroad Unemployment Insurance Act for the same day if the employee had met all the eligibility criteria for such benefit. Similarly, there is acceptable coordination if the plan simply provides for payment of an amount as an "add-on" benefit to the amount of Railroad Unemployment Insurance Act benefits paid or payable. On the other hand, a plan that allows payment so as to compensate an employee for railroad or non-railroad earnings that are lower in amount than what the employee would get under the plan if he or she were not employed is not considered coordinated with benefit payments under the Railroad Unemployment Insurance Act because an employer payment made under such circumstances supplements earnings rather than benefit payments under the Railroad Unemployment Insurance Act. No Railroad Unemployment Insurance Act benefits are payable to an employee who is earning remuneration from railroad or non-railroad employment. Employer payments that make up for low earnings are pay for time lost and therefore are "compensation" and "remuneration";

(e) The plan confers upon covered employees an enforceable right to the benefits under the plan. The plan may not commit to management discretion any decision as to whether such employee will actually be paid the benefits to which he is entitled under the plan or the amount to be paid;

(f) The plan may not provide benefits to a covered employee in an amount that, when added to his or her Railroad Unemployment Insurance Act benefits, is greater than the wages of salary that would have been paid if the employee were employed; and

(g) The plan incorporates the features set forth in § 323.4 of this part and has been approved by the Board's Director of Unemployment and Sickness Insurance as a nongovernmental plan for unemployment or sickness insurance.

§ 323.4 Guidelines for content of a nongovernmental plan.

At a minimum, a nongovernmental plan for unemployment or sickness insurance should contain the following features:

(a) The title of the plan (e.g., Supplemental Unemployment Benefit Plan or Supplemental Sickness Benefit Plan);

(b) A statement of purpose, such as the following:

There is hereby established a nongovernmental plan for (unemployment insurance) (sickness insurance) (specify which one) within the meaning of section 1(j) of the Railroad Unemployment Insurance Act. The purpose of this plan is to supplement the benefits that an eligible employee may receive under that Act and not to replace or duplicate such benefits. Payments under this plan are designed as one of the benefits of employment with (name of employer) and are not intended as pay for time lost or any other form of remuneration for services rendered as an employee;

(c) A statement as to which class or craft of employees, or other specified group of employees, is covered by the plan;

(d) The criteria governing a particular covered employee's eligibility for supplemental benefits under the plan;

(e) The dollar amount of supplemental benefits payable on a periodic basis to an eligible employee, the duration of supplemental benefits, how such benefits will be computed, and the conditions under which an employee will be disqualified or benefit payments reduced or terminated; and

(f) The identity of the plan administrator and the procedure by which a covered employee may claim supplemental benefits under the plan, including forms to be filed (if any), how to file, the time limit for filing, and how an employee may appeal from a denial of supplemental benefits.

§ 323.5 Submitting proposed plan for Board approval.

An employer shall submit each proposed plan, or a proposed revision to an existing plan, to the Director of Unemployment and Sickness Insurance, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611. The Director shall determine whether the plan or revision conforms to this part. Approval shall be effective as of the effective date of the plan. If not approved, the Director will advise the employer in which particular respects the proposed plan or revision does not conform to this part.

§ 323.6 Treatment of benefit payments under a nongovernmental plan for purposes of contributions.

Benefit payments under nongovernmental plans approved by the Board under this part are not "compensation" as defined in section 1(i) of the Railroad Unemployment Insurance Act, and therefore they are not subject to contribution under part 345 of this chapter.

§ 323.7 Effective date.

(a) This part shall not apply to a plan approved by the Director of Unemployment and Sickness Insurance prior to the effective date of this part. However, it shall apply to any proposed revision to such plan.

(b) Any plan in effect on the effective date of this part that has not been approved by the Director of Unemployment and Sickness Insurance shall be considered a proposed plan for purposes of § 323.5.

Dated: May 30, 1991.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 91–13456 Filed 6–6–91; 8:45 am]

BILLING CODE 7905–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09–91–02]

Special Local Regulations: Bay City Fireworks Display, Saginaw River, Bay City, MI

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special local regulations are being adopted for the Bay City Fireworks Display on the 6th of July 1991.

EFFECTIVE DATE: These regulations become effective from 9 p.m. until 12 midnight (EDST) on the 6th of July 1991.

FOR FURTHER INFORMATION CONTACT: Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, Search and Rescue Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199–2060 (216) 522–4420.

SUPPLEMENTARY INFORMATION: On 15 March 1991, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (56 FR 11134). Interested persons were requested to submit comments and no comments were received.

Drafting Information: The drafters of this rulemaking are Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, project officer, Search and Rescue Branch and M. Eric Reeves, Lieutenant Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

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Discussion of Regulations: The Bay City Fireworks Display will be conducted at the south end of the Veterans Memorial Park with the fireworks being fired over the Saginaw River on the 4th , 5th and 6th of July 1991. This event has been held in the past without special local regulations, but due to the growth of this event and the unusually large number of spectator craft in the area on the last evening of the fireworks display, which could pose hazards to navigation in the area, the Coast Guard is establishing special local regulations for the 6th of July 1991. Any vessel desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Officer in Charge, U.S. Coast Guard Station, Saginaw River, MI.).

Economic Assessment and Certification: These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism: This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Regulations: In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 would be amended to add a temporary section 100.35–T0902 to read as follows:

§ 100.35–T0902 Bay City Fireworks Display, Saginaw River, Bay City, MI.

(a) *Regulated Area:* That portion of the Saginaw River from the Veterans Memorial Bridge to 1000 yards south of the same bridge.

(b) *Special Local Regulations:*

(1) The above area will be closed to vessel navigation and anchorage, except when expressly authorized by the Coast Guard Patrol Commander, from 9 p.m. until 12 midnight (EDST) on the 6th of July 1991.

(2) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Any vessel desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer.

(3) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Dated: May 23, 1991.

G.A. Penington,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 91–13568 Filed 6–6–91; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD 09–91–08]

Special Local Regulations: Friendship Festival Air Show, Niagara River and Buffalo Harbor, Buffalo, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special Local Regulations are being adopted for the Friendship Festival Air Show. This event will be held over the Niagara River and Buffalo Harbor on the 29th and 30th of June 1991. The regulations are needed to provide a clear area below the flight path for the air show, and for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective from 1 p.m. (EDST) until 5 p.m. (EDST), each day, on the 29th and 30th of June 1991.

FOR FURTHER INFORMATION CONTACT: Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, Search and Rescue Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199–2060, (216) 552–4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received until 1 May 1991, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, project officer, Search and Rescue Branch and M. Eric Reeves, Lieutenant Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Friendship Festival Air Show will be conducted over the Niagara River and Buffalo Harbor on the 29th and 30th of June 1991. This event will have approximately 15, domestic and foreign, private and military aircraft performing low flying aircraft demonstrations and high performance aircraft aerobatics, which could pose hazards to navigation in the area. Any vessel desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Commander, U.S. Coast Guard Group Buffalo, NY).

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. Any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Temporary Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary § 100.35–T0908 to read as follows:

§ 100.35–T0908 Friendship Festival Air Show, Niagara River and Buffalo Harbor, Buffalo, NY.

(a) *Regulated Area:* That portion of the Niagara River and Buffalo Harbor from the east shore, at the Peace Bridge, westward along the south side of the bridge to the International Border; southward along the International Border to the Abandoned Light House, then southeast to the West Breakwater Light (LLNR 2620), thence in a northeasterly direction connecting the following points: the Old Breakwater North End Light (LLNR 2655), to the North Breakwater South End Light (LLNR 2660), to the Black Rock Canal Lighted Buoy No. 1 (LLNR 2725), to the Black Rock Canal Lighted Buoy No. 3 (LLNR 2735), to the Black Rock Canal Light No. 4 (LLNR 2740); then northward along the shore to the Peace Bridge.

(b) *Special Local Regulations:*

(1) The above area will be closed to vessel navigation and anchorage, except when expressly authorized by the Coast Guard Patrol Commander, from 1 p.m. (EDST) until 5 p.m. (EDST), each day, on the 29th and 30th of June 1991.

(2) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Any vessel, not authorized to participate in the event, desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Transiting vessels will be operated at bare steerageway, and will exercise a high degree of caution in the area.

(3) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Dated: May 23, 1991.

G.A. Penington,

Commander, Ninth Coast Guard District.

[FR Doc. 91–13569 Filed 6–6–91; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGC–09–91–11]

Special Local Regulations: Milwaukee Summerfest, Milwaukee Harbor, Lake Michigan, Milwaukee, WI

AGENCY: Coast Guard, DOT.

ACTION: Temporary Rule.

SUMMARY: Special Local Regulations are being adopted for the Milwaukee Summerfest. This festival will involve several events within the lagoon directly adjacent to the Summerfest grounds in Milwaukee Harbor from the 25th of June 1991 until the 21st of July 1991. The regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective at 11:30 a.m. (CDST) until 12 midnight (CDST), each day, from the 25th of June 1991 until the 21st of July 1991.

FOR FURTHER INFORMATION CONTACT: Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, Search and Rescue Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199–2060, (216) 522–4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received until 26 April 1991, and there was not sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, project officer, Search and Rescue Branch and M. Eric Reeves, Lieutenant Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Milwaukee Summerfest will be conducting several events within the man-made lagoon directly adjacent to the Summerfest grounds in Milwaukee Harbor from 25 June 1991 until 21 July 1991. This festival will have daily activities, that will include approximately 50 combined waterski boats, jet skis, wind surfers, and a hole in one golf course green located on a 180 foot anchored barge, which could pose hazards to navigation in the area. Are vessel desiring to enter the regulated area may do so only with prior approval of the Patrol Commander (Officer in Charge, U.S. Coast Guard Station Milwaukee, WI).

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. Any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Temporary Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 AND 33 CFR 100.35.

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2. Part 100 would be amended to add a temporary § 100.35–T0911 to read as follows:

§ 100.35–T0911 Milwaukee Summerfest, Lake Michigan, Milwaukee Harbor, Milwaukee, WI.

(a) *Regulated Area:* That portion of Lake Michigan, Milwaukee Harbor, and area defined as the uncharted lagoon or basin, north of the mouth of the Milwaukee River and directly adjacent to the Summerfest grounds, enclosed by shore on the west and a "comma" shaped man-made rock wall on the east. The construction of the lagoon is such that a small "basin" has been created with one entrance located at the northwest end, thus, there is no "thru traffic". Four special buoys will be set by the sponsor to delineate the entrance to the basin (lagoon).

(b) *Special Local Regulations:* (1) The above area will be closed to vessel navigation and anchorage, except when expressly authorized by the Coast Guard Patrol Commander, from 11:30 a.m. (CDST) until 12 midnight (CDST), each day, from the 25th of June 1991 until the 21st of July 1991.

(2) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Any vessel, not authorized to participate in the event, desiring to enter the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. When granted approval by the Coast Guard Patrol Commander, vessels entering the regulated area will be operated at bare steerageway, and will exercise a high degree of caution in the area.

(3) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may establish vessel size and speed limitations, and operating conditions.

(5) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(6) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Dated: May 23, 1991.

G.A. Pennington,

Commander, Ninth Coast Guard District.

[FR Doc. 91-13570 Filed 6-6-91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD 09-91-07]

Special Local Regulations: Muskegon Lake Offshore Run, Muskegon Lake, Muskegon, MI

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special Local Regulations are being adopted for the Muskegon Lake Offshore Run to be held on Muskegon Lake, Muskegon, MI, on the 29th and 30th of June 1991. The regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective at 7 a.m. (EDST) and terminate at 6 p.m. (EDST), each day, on the 29th and 30th of June 1991.

FOR FURTHER INFORMATION CONTACT: Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, Search and Rescue Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199–2060, (216) 522–4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received until 15 April 1991, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this rulemaking are Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, project officer, Search and Rescue Branch and M. Eric Reeves, Lieutenant Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Muskegon Lake Offshore Run will be conducted on Muskegon Lake, Muskegon, MI, on the 29th and 30th of June 1991. This event will have approximately forty, 21 to 40 foot, APBA registered offshore powerboats that will draw an unusually large number of spectator craft in the area, which could pose hazards to navigation in the area. In order to provide for the safety of life and property, the Coast Guard will restrict commercial vessel traffic, 20 meters or more in length (65.6 ft.) from the Muskegon Lake in its entirety. Commercial vessels of 20 meters or more in length (65.6 ft.) desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Commanding Officer, U.S. Coast Guard Station, Grand Haven, MI).

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Temporary Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 would be amended to add a temporary § 100.35–T0907 to read as follows:

§ 100.35–T0907 Muskegon Lake Offshore Run, Muskegon Lake, Muskegon, MI.

(a) *Regulated Area:* Muskegon Lake in its entirety.

(b) *Special Local Regulations:* (1) The above area will be closed to navigation and anchorage by commercial vessels of 20 meters or more in length (65.6 ft.), from 7 a.m. (EDST) until 6 p.m. (EDST), each day, on the 29th and 30th of June 1991, except when expressly authorized by the Coast Guard Patrol Commander.

(2) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Commercial vessels of 20 meters or more in length (65.6 ft.) desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Transiting vessels will be operated at bare steerageway, and will exercise a high degree of caution in the area.

(3) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may establish vessel size and speed limitations, and operating conditions.

(5) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(6) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Dated: May 23, 1991.

G.A. Penington,

Commander, Ninth Coast Guard District.

[FR Doc. 91-13571 Filed 6-6-91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD1 91-052]

Special Local Regulations: Riverfest 91, Mohawk River, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special local regulations are being adopted for Riverfest 91, a regatta which includes two boat parades, a canoe race, Bud Light Ski Team demonstration, and launch events including a boat show, music, craft vendors, art show, and others, to be held on the Mohawk River in Schenectady County, NY. This event will be held from 10 a.m. to 11 p.m. on June 22, 1991. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: This temporary regulation is effective from 10 a.m. to 11 p.m. on June 22, 1991.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Eric G. Westerberg, Chief Boating Safety Affairs Branch, (617) 223–8310.

SUPPLEMENTARY INFORMATION: In accordance with 5 USC 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold the event was not received until April, 1991, and there was not sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of these regulations are LTJG E.G. Westerberg, project officer, First Coast Guard District Boating Safety Affairs Branch, and LT R.E. Korroch, project attorney, First Coast Guard District Legal Division.

Discussion of Regulations

Riverfest 91 is a regatta which will be held adjacent to the town of Schenectady, NY on the Mohawk River. The regulated area will be the Mohawk River in the area bounded from buoy 56 to buoy 104. No vessel other than participants or those vessels authorized by either the sponsor or the Coast Guard Patrol Commander shall enter the regulated area. The regulated area will be patrolled by the Coast Guard, Coast Guard Auxiliary, sponsor provided patrols and state and local law enforcement officials.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 USC 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–T1052 is added to read as follows:

§ 100.35–T1052 Riverfest 91, Schenectady, New York.

(a) Regulated Area. The race area is that portion of the Mohawk River, adjacent to Schenectady, New York, bounded from buoy 56 to buoy 104.

(b) Special Local Regulations. (1) The following requirements will be placed on vessels operating within the regulated area during the effective period of regulation:

(i) Vessels, including tows, greater than 20 meters in length shall not transit the regulated area at any time during the effective period, unless authorized by the Coast Guard Patrol Commander.

(ii) Vessels less than 20 meters in length may transit the regulated area if escorted by official regatta patrol vessels specified in paragraph (d) below.

(iii) Unless otherwise directed by the Coast Guard Patrol Commander, transiting vessels shall: remain clear of the race course area as marked by the sponsor provided buoys, not interfere with races, and remain outside the designated regulated area.

(iv) Official patrol vessels include Coast Guard and Coast Guard Auxiliary vessels and other vessels so designated by the regatta sponsor or Coast Guard patrol personnel.

(v) No person or vessel may enter or remain in the regulated area during the effective period unless participating in the event, or authorized to be there by the sponsor or Coast Guard patrol personnel.

(2) All persons or vessels not registered with the sponsor as participants or not part of the regatta patrol are considered spectators. Spectator vessels should be at anchor within the designated spectator area.

(3) The sponsor shall be responsible for proper marking of the course within the regulated area and adequately marking the boundaries of the spectator area. All turn and spectator area buoys shall be established in a position agreeable to the Coast Guard Patrol Commander not later than one hour prior to the start of each event. All buoys marking the course and spectator area must be removed not later than one hour after completion of each day's event.

(4) The sponsor shall be required to provide no less than (6) six vessels for spectator control and to secure the race area. If insufficient sponsor provided vessels arrive to control the event, the Coast Guard Patrol Commander may

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terminate the event. These vessels shall be on scene no later than one hour prior to the start of the event.

(5) The Patrol Commander reserves the right to cancel the race in its entirety or to suspend the race for safety violations at any time including during the race.

(6) In the event of an emergency or as directed by the Coast Guard Patrol Commander, the sponsor shall dismantle the race course to allow the passage of any U.S. Government vessel or any other designated emergency vessel. At the discretion of the Patrol Commander, any violation of the provisions contained within this regulation shall be sufficient grounds to terminate this event.

(7) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(8) For any violation of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any persons in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel, if he or she is actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a Licensed Officer.

(c) Effective Dates. These regulations are effective between the hours of 10 a.m. and 8 p.m. local time on 22 June 1991.

Dated: May 29, 1991.

R.I. Rybacki,

Rear Admiral, U.S. Coast Guard,

Commander, First Coast Guard District.

[FR Doc. 91-13572 Filed 6-6-91; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 09-91-09]

Special Local Regulations: Ultra Can-Am Challenge Kilo Speed Trials, Buffalo Outer Harbor, Lake Erie, Buffalo, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special Local Regulations are being adopted for the Ultra Can-Am Challenge Kilo Speed Trials. This event will be held on the Buffalo Outer Harbor on the 28th of June 1991 from 9 a.m. (EDST) until 2 p.m. (EDST). The regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective from 9 a.m. (EDST) until 2 p.m. (EDST) on the 28th of June 1991.

FOR FURTHER INFORMATION CONTACT: Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, Search and Rescue Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199-2060, (218) 522-4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received until 1 May 1991, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, project officer, Search and Rescue Branch and M. Eric Reeves, Lieutenant Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Ultra Can-Am Challenge Kilo Speed Trials will be conducted on the Buffalo Outer Harbor, Lake Erie, Buffalo, NY, on the 28th of June 1991. This event will have an extimated 30, 24 to 45 foot, offshore racing boats, which could pose hazards to navigation in the area. Any vessel desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Officer in Charge, U.S. Coast Guard Station Buffalo, NY).

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectators into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary section 100.35-T0909 to read as follows:

§ 100.35-T0909 Ultra Can-Am Challenge Kilo Speed Trials, Buffalo Outer Harbor, Lake Erie, Buffalo, NY.

(a) *Regulated Area:* That portion of the Buffalo Outer Harbor between the main line of the shore and the Outer Harbor Breakwall, from 100 yards northward of the Seaway Piers to one-half mile southward of the entrance to the Port of Buffalo Small Boat Harbor. Recreational vessels located at marinas in the above regulated area will be allowed to transit the area when the actual speed runs are not taking place, but only with the prior approval of the Coast Guard Patrol Commander.

(b) *Special Local Regulations:* (1) The above area will be closed to vessel navigation and anchorage, except when expressly authorized by the Coast Guard Partol Commander, from 9 a.m. (EDST) until 2 p.m. (EDST) on the 28th of June 1991.

(2) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Any vessel, not authorized to participate in the event, desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Transiting vessels will be operated at bare steerageway, and will exercise a high degree of caution in the area.

(3) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may establish vessel size and spreed limitations, and operating conditions.

(5) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(6) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Dated: May 23, 1991.

G.A. Penington,

Rear Admiral, U.S. Coast Guard,

Commander, Ninth Coast Guard District.

[FR Doc. 91-13573 Filed 6-6-91; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 09-91-10]

Special Local Regulations: Ultra Can-Am Challenge 72 Mile Divisional Offshore Race, Buffalo Outer Harbor, Lake Erie, Buffalo, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special Local Regulations are being adopted for the Ultra Can-Am Challenge 72 Mile Divisional Offshore Race. This event will be held on the Buffalo Outer Harbor and Lake Erie on the 29th of June 1991 from 11 a.m. (EDST) until 1 p.m. (EDST). If the weather on the 29th of June 1991 is inclement, the race will be held on the 30th of June 1991. The regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective from 11 a.m. (EDST) until 1 p.m. (EDST) on the 29th of June 1991.

FOR FURTHER INFORMATION CONTACT: Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, Search and Rescue Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199-2060, (216) 522-4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received until 1 May 1991, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, project officer, Search and Rescue Branch and M. Eric Reeves, Lieutenant Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Ultra Can-Am Challenge 72 Mile Divisional Offshore Race will be conducted on the Buffalo Outer Harbor and Lake Erie, Buffalo, NY, on the 29th of June 1991. This event will have an estimated 50, 24 to 45 foot, offshore race boats, which could pose hazards to navigation in the area. Any vessel desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Officer in Charge, U.S. Coast Guard Station Buffalo, NY).

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectators into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100 [AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary section 100.35-T0910 to read as follows:

§ 100.35-T0910 Ultra Can-Am Challenge 72 Mile Divisional Offshore Race, Buffalo Outer Harbor, Lake Erie, Buffalo, NY.

(a) *Regulated Area:* That portion of Lake Erie, Outer Buffalo Harbor and Buffalo River entrance enclosed by a line running from the South Buffalo Dike Disposal Light Number 2 (LLNR 2840), westward to a position 42 degrees 49 minutes 11 seconds North, 078 degrees 56 minutes 05 seconds West, then northward to a position 42 degrees 53 minutes 30 seconds North, 078 degrees 54 minutes 11 seconds West, thence eastward to the breakwall, then southward along the breakwall crossing the Black Rock Canal and Buffalo River entrances, then southward along the shore to the South Buffalo Dike Disposal Light Number 2 (LLNR 2840).

(b) *Special Local Regulations:*

(1) The above area will be closed to vessel navigation and anchorage, except when expressly authorized by the Coast Guard Patrol Commander, from 11 a.m. (EDST) until 1 p.m. (EDST) on the 29th of June 1991.

(2) If the weather on the 29th of June 1991 is inclement, the race and the regulated area will be postponed until 11 a.m. (EDST) on the 30th of June 1991. If postponed, notice will be given the 29th of June 1991 over the U.S. Coast Guard Radio Net.

(3) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 [156.8 MHZ) by the call sign "Coast Guard

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Patrol Commander". Any vessel, not authorized to participate in the event, desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Transiting vessels will be operated at bare steerageway, and will exercise a high degree of caution in the area.

(4) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(5) The Patrol Commander may establish vessel size and speed limitations, and operating conditions.

(6) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(7) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Dated: May 23, 1991.

G.A. Penington,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 91-13574 Filed 6-6-91; 8:45 am]

BILLING CODE 4910-14-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1222

[RIN 3095-AA45]

Creation and Maintenance of Records; Removal of Nonrecord Materials

AGENCY: National Archives and Records Administration.

ACTION: Final rule.

SUMMARY: NARA is revising its regulation on removal of nonrecord materials from agency custody to address comments received on the regulation. This revision clarifies conditions under which departing Government officials may remove such materials. This regulation affects Federal agencies.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Mary Ann Palmos or Nancy Allard at 202-501-5110 (FTS 241-5110).

SUPPLEMENTARY INFORMATION: On July 2, 1990, NARA published a final rule revising 36 CFR part 1222, Creation and Maintenance of Records; Adequate and Proper Documentation (55 FR 27422). Comments were invited on a new § 1222.42, Removal of nonrecord materials, because that section had not been included in the notice of proposed rulemaking on the revision of 36 CFR part 1222. Comments were received from five Federal agencies. All comments have been carefully considered in the development of this final rule.

Several comments concerned the applicability of this section to personal papers because NARA used the phrase "personal copies of agency records" as an example of nonrecord materials. We have revised the example of nonrecord materials to read "extra copies of agency records kept only for convenience of reference" to clarify that the section does not apply to personal papers. Personal papers are defined in 36 CFR 1222.36(a); they include diaries, journals, personal correspondence, or other personal notes that are not prepared or used for, or circulated or communicated in the course of, transacting Government business. Nonrecord materials covered by § 1222.42 are Government-owned documentary materials such as extra copies of agency records maintained at an individual's desk for convenience of reference and extra copies of printed agency reports, pamphlets, and handbooks.

Most of the comments addressed the issue of protection of security classified information in nonrecord material. We have revised the section based on language suggested by the Information Security Oversight Office to clarify that classified information in nonrecord material removed from a Government agency must be protected under conditions equivalent to those required of the agency and that the originating agency or its successor in function, not the individual who removed the material, retains control over access to the classified information.

In response to another comment, we have clarified the requirement to protect nonrecord material that contains sensitive unclassified information, such as information contained in a Privacy Act system of records or information that the agency would withhold from public release under a Freedom of Information Act exemption.

One commenter expressed concern that allowing agency heads to approve their own removal of nonrecord materials was a conflict of interest in need of an appropriate check and balance. We do not believe that the regulation can specify an approval procedure that would eliminate the problem. We encourage agency records officials to alert their agency head to the requirements in this regulation for proper protection and control of security-classified and sensitive information in nonrecord materials.

As suggested by this commenter, we have changed the wording of the first sentence of the section to emphasize that nonrecord materials cannot be removed from an agency without approval of either the agency head or the agency records official.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

List of Subjects in 36 CFR Part 1222

Archives and records.

For the reasons set forth in the preamble, chapter XII of title 36 of the Code of Federal Regulations is amended as follows:

PART 1222—CREATION AND MAINTENANCE OF RECORDS; ADEQUATE AND PROPER DOCUMENTATION

1. The authority statement for part 1222 continues to read as follows:

Authority: 44 U.S.C. 2904, 3101, and 3102.

2. Section 1222.42 is revised to read as follows:

§ 1222.42 Removal of nonrecord materials.

(a) Nonrecord materials, including extra copies of agency records kept only for convenience of reference, may be removed from Government agencies only with the approval of the head of the agency or the individual authorized to act for the agency on matters pertaining to agency records.

(b) Agencies shall ensure that when nonrecord material containing classified information is removed from the executive branch, it is protected under conditions equivalent to those required of executive branch agencies. The originating agency or its successor in function retains control over access to such classified information, even after it is properly removed from the agency.

(c) Agencies shall ensure the appropriate protection of nonrecord material containing information which is restricted from release under the Privacy Act or other statutes, when such restricted nonrecord material is removed from Government agencies.

Dated: May 6, 1991.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 91-13478 Filed 6-6-91; 8:45 am]

BILLING CODE 7515-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 7514]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies two communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective date listed within this rule because of failure to enforce their floodplain management regulations in accordance with NFIP requirements. If FEMA receives documentation that the communities have taken action to bring their floodplain management program into compliance with NFIP requirements prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATE: The third date ("Susp.") listed in the third column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR part 59, et. seq.). Accordingly, the City of Grand Tower, Illinois and the Town of Smithers, West Virginia will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in these communities. However, the communities may submit documentation that they have corrected the deficiencies in their floodplain management programs and remedied all violations to the maximum extent possible that have been identified, prior to the actual suspension date. If this documentation is submitted and approved by FEMA, the communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if these communities were suspended on the suspension date, contact the appropriate FEMA Regional Office of the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map. The date of this flood map is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public comment procedure under 5. U.S.C. 553(b) are impracticable and unnecessary because the communities listed in this final rule have been adequately notified.

The communities have received a 90-day probationary letter, a 30-day show cause letter in March 1991, and a 30-day suspension notice in May 1991. These notifications were addressed to the chief executive officer of each community, indicating that their community will be suspended unless the required corrective actions and remedial measures are taken prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to enforce adequate floodplain management, thus placing itself in noncompliance with the Federal standards required for community participation. In each entry, a complete chronology of the effective date appears for the listed community.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and location	Community No.	Effective date authorization/cancellation of sale of Flood Insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region III				
West Virginia: Smithers, town of, Fayette County	540033	June 12, 1975, Emerg.; Apr. 15, 1982, Reg.; June 17, 1991, Susp.	Apr. 15, 1982	June 17, 1991.

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State and location	Community No.	Effective date authorization/cancellation of sale of Flood Insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region V				
Illinois: Grand Tower, city of, Jackson County	170300	Apr. 30, 1974, Emerg.; May 16, 1983, Reg.; June 17, 1991, Susp.	May 16, 1983	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Issued: May 28, 1991.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91-13506 Filed 6-6-91; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-575; RM-7236]

Radio Broadcasting Services; Clarksburg, WV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of the Harrison Corporation, substitutes Channel 221A for Channel 224A at Clarksburg, West Virginia, and modifies its license for Station WVHF-FM to specify operation on the alternate Class A channel. See 55FR 49924, December 3, 1990. Channel 221A can be allotted to Clarksburg in compliance with the Commission's minimum distance separation requirements without a site restriction at the petitioner's specified site. The coordinates for Channel 221A at Clarksburg are North Latitude 39-15-48 and West Longitude 80-23-40. Since Clarksburg is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 19, 1991.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-575, adopted May 22, 1991, and released June 3, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by removing Channel 224A and adding Channel 221A, at Clarksburg.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-13432 Filed 6-6-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-447; RM-7351]

Radio Broadcasting Services; Bowling Green, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 244C3 for Channel 244A at Bowling Green, Kentucky, and modifies the license for Station WCBZ(FM) to specify operation on the higher class channel, at the request of Bowling Green Broadcasters, Inc. See 55 FR 42861, November 24, 1990. Channel 244C3 can be allotted to Bowling Green in compliance with the Commission's minimum distance separation requirements with a site restriction of 17.3 kilometers (10.7 miles) west of the community as requested by petitioner. The coordinates are North Latitude 36-56-00 and West Longitude 86-38-12. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 19, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-447, adopted May 22, 1991, and released June 3, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by removing Channel 244A and adding Channel 244C3 at Bowling Green.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-13428 Filed 6-6-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-321; RM-7303]

Radio Broadcasting Services; Paragould and Lake City, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 285A from Paragould to Lake City, Arkansas, and modifies the license of North Arkansas Radio Co., Inc., for Station KDXY(FM) to specify operation on Channel 285C3, as requested, pursuant to the provisions of § 1.420(i) of the Commission's Rules. The allotment of Channel 285C3 to Lake City will provide the community with its first local aural transmission service without depriving Paragould of local aural transmission service. See 55 FR 28241, July 10, 1990. Coordinates used for Channel 285C3 at Lake City are 35-51-30 and 90-34-30. With this action, the proceeding is terminated.

EFFECTIVE DATE: July 19, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-321, adopted May 22, 1991, and released June 3, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. § 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 285A at Paragould and adding Channel 285C3, Lake City.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-13431 Filed 6-6-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-517; RM-6979]

Radio Broadcasting Services; Ogelsby, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of David B. Knoll, allots Channel 271A to Ogelsby, Illinois, as that community's first local FM service. See FR 48775, November 27, 1989. Channel 271A can be allotted to Ogelsby in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates are North Latitude 41-17-43 and West Longitude 89-03-34. With this action, this proceeding is terminated.

EFFECTIVE DATES: July 19, 1991; the window period for filing applications will open on July 22, 1991, and close on August 21, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-517, adopted May 22, 1991, and released June 3, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Illinois by adding Ogelsby, Channel 271A.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-13429 Filed 6-6-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-570; RM-7061, RM-7110]

Radio Broadcasting Services; Lafayette, TN, and Campbellsville, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Ivan Davis, allots Channel 281A to Lafayette, Tennessee. See 54 FR 52423, December 21, 1989. Channel 281A can be allotted to Lafayette, Tennessee, in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for the allotment of Channel 281A to Lafayette, Tennessee, are North Latitude 36-31-24 and West Longitude 86-01-36. A proposal to substitute Channel 281C3 for Channel 281A at Campbellsville, Kentucky, and modify the authorization of Station WCKQ(FM) accordingly is dismissed. With this action, this proceeding is terminated.

EFFECTIVE DATES: July 19, 1991. The window period for filing applications will open on July 22, 1991, and close on August 21, 1991.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-570, adopted May 15, 1991, and released June 3, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by adding Channel 281A, Lafayette.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-13430 Filed 6-6-91; 8:45 am]

BILLING CODE 6712-01-M

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DEPARTMENT OF JUSTICE

48 CFR Parts 2801, 2803, 2804, 2805, 2806, 2815, 2819 and 2870

[Justice Acquisition Circular 91-1]

Amendments to the Justice Acquisition Regulations (JAR) Regarding: Selection, Appointment and Termination of Contracting Officers; Forecasts of Contract Opportunities for Small Businesses; Acquisition of Leasehold Interests in Real Property; and, Other Administrative Admendments

AGENCY: Office of the Procurement Executive, Justice Management Division, Justice.

ACTION: Final rule.

SUMMARY: Justice Acquisition Circular (JAC) 91-1 amends the JAR, 48 CFR, chapter 28, by: Amending § 2801.603, to add additional training hours required for authority to enter into lease agreements and to add training subject areas; amending the bureau certification in subsection 2804.903-70 pertaining to information returns under section 6050M of the Tax Reform Act of 1986; adding a new subpart 2806.3, Other Than Full And Open Competition, and new subsections 2806.302-7, Public interest, and 2806.302-70, Determination and findings, to establish agency procedures which implement determination and findings requirements under the public interest exception; changing the location of the Competition Advocate in § 2806.501; changing the office to which requests for audit assistance are made in subsection 2815.805-570; adding a new subpart 2819.70, Forecasts of Expected Contract Opportunities with Small Businesses; adding a new part 2870, Acquisition of Leasehold Interests in Real Property; and, by making administrative amendments.

EFFECTIVE DATE: June 7, 1991.

FOR FURTHER INFORMATION CONTACT: W.L. Vann, Procurement Executive, Justice Management Division (202) 514-6868.

SUPPLEMENTARY INFORMATION: The determination is hereby made that this amendment must be issued as a final rule. This amendment was not published for public comment because it does not have an effect beyond the internal operating procedures of the agency. The Director, Office of Management and Budget, by memorandum dated December 14, 1984, exempted agency procurement regulations from review under Executive Order 12291 except for selected areas. The exception applies to this rule. The Department of Justice certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601-612).

List of Subjects in 48 CFR Part 2801, 2803, 2804, 2805, 2806, 2815, 2819, and 2870.

Government procurement.

Harry H. Flickinger,

Assistant Attorney General for Administration.

For the reasons set out in the preamble, title 48 chapter 28 of the Code of Federal Regulations is amended as follows:

PART 2801—DEPARTMENT OF JUSTICE ACQUISITION REGULATIONS SYSTEM

1. The authority citation for parts 2801, 2803, 2804, 2805, 2806, 2815, and 2819 continues to read as follows:

Authority: 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

2. Section 2801.603, is amended by revising the title of paragraph (c) to read as follows, and to remove the reference "2801.601(f)" which appears in paragraphs (c)(2)(ii), (c)(3)(ii) and (c)(4)(ii) and insert "2801.603(f)."

§ 2801.603 Selection, appointment and termination.

* * * * *

(c) *Delegation of contracting authority requirements.*

* * * * *

3. Section 2801.603 is further amended by redesignating existing paragraphs (d), (e), (f), (g) and (h) as (e), (f), (g), (h) and (i) and adding new paragraph (d) to read as follows:

* * * * *

(d) Delegation of leasing authority requirements. To be determined eligible for a delegation of authority as a DOJ contracting officer with the authority to enter into acquisitions of leasehold interests in real property the candidate must, in addition to the training requirements for contracting officers cited in § 2801.603, meet the following minimum standards:

(1) Level I Purchasing Agent—Signatory authority to enter into lease agreements not exceeding the small purchase threshold as set forth in FAR part 13.

(i) One year of procurement experience as a contract specialist, contract administrator or purchasing agent that demonstrated the ability to perform at this level I.

(ii) Completion of 160 hours of training from the subject areas listed in § 2801.603(f)(3).

(2) Level II Contracting Officer—Signatory authority to enter into lease agreements not exceeding $100,000.

(i) Two years combination of procurement experience as a contract specialist, contract administrator or purchasing agent that demonstrated the ability to perform as a contracting officer at Level II.

(ii) Completion of 160 hours of training from the subject areas listed in § 2801.603(f)(3).

(3) Level III Contracting Officer—Signature authority to enter into lease agreements not exceeding $500,000.

(i) Three years combination of procurement experience as a contract specialist or contract administrator, including six months as a contracting officer equivalent to Level II responsibilities, that demonstrated the ability to perform as a contracting officer at Level III.

(ii) Completion of 160 hours from the subject areas listed in § 2801.603(f)(3).

(4) Level IV Contracting Officer—Signature authority to enter into lease agreements exceeding $500,000.

(i) Four years combination of procurement experience as a contracting officer or contract administrator including one year of experience as a contracting officer equivalent to Level III responsibilities that demonstrated the ability to perform at Level IV.

(ii) Completion of 160 hours from the subject areas listed in § 2801.603(f)(3)

* * * * *

4. Section 2801.603 further is amended in newly redesignated paragraph (f) by adding a new paragraph (f)(3) to read as follows:

* * * * *

(f) * * *

(3) It is understood that the following are meant to be general subject areas, which pertain to the authority to enter into acquisitions of leasehold interests in real property, not course titles. The bureau, in determining the acceptability of a particular course, will make a determination based on what is generally understood in the leasing field to be lease or lease related training. Training may be accomplished in-house or obtained from outside sources.

(i) Federal Real Property Leasing or Basic Lease Contracting (recommended 40 hours)

(ii) Real Estate Law or Federal Real Property Lease Law (recommended 40 hrs)

(iii) Pricing of Lease Proposal (Recommended 40 hrs)

(iv) Real Estate Appraisal Capitalization Theory and Techniques, Part A (AIREA or equivalent course recommended 40 hrs)

* * * * *

PART 2803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

5. The Table of Contents for part 2803 is amended by adding the titles for subparts § 2803.4 above § 2803.408 and 2803.5 above § 2803.502, to read as follows:

Table of Contents

* * * * *

Subpart 2803.4—Contingent Fees

* * * * *

Subpart 2803.5—Other Improper Business Practices

* * * *

6. The table of part 2803 is amended by adding the titles for subparts 2803.4 above § 2803.408 and 2803.5 above § 2803.502, to read as follows:

* * * * *

Subpart 2803.4—Contingent fees

* * * * *

Subpart 2803.5—Other Improper Business Practices

* * * * *

PART 2804—ADMINISTRATIVE MATTERS

7. Section 2804.903—70, paragraph (c) is amended in the first sentence of the Certification by deleting the acronym "FPDC" and inserting the words "Procurement Executive."

PART 2805—PUBLICIZING CONTRACT ACTIONS

8. Section 2805.503-70, paragraph (d) is amended in the first sentence to remove the words "Standard Form 1143 Advertising Order" and substitute the words "Optional Form 347, Order for Supplies or Services, or an approved agency form."

PART 2806—COMPETITION REQUIREMENTS

9. A new subpart 2806.3 is added to read as follows:

Table of Contents

Subpart 2806.3—Other Than Full and Open Competition

Sec.

2806.302 Circumstances permitting other than full and open competition.

2806.302-7 Public interest.

2806.302-70 Determination and findings.

Subpart 2806.3—Other Than Full and Open Competition

2806.302 Circumstances permitting other than full and open competition.

2806.302-7 Public interest.

§ 2806.302-70 Determination and findings.

(a) Procedure. The determination and findings (D&F) required by FAR 6.302-7(c)(1) shall be prepared in the format provided in paragraph (b) below. The original and two copies of the D&F and documentation supporting the use of this exception to the requirement for full and open competition shall be submitted to the Office of the Procurement Executive for concurrence and coordination up to the Attorney General for signature.

(b) Format. The following format shall be used for the D&F:

Department of Justice, Washington, DC 20530.

Determination and Findings.

Authority To Use Other Than Full and Open Competition

Upon the basis of the following findings and determination, which I hereby make pursuant to the authority of 41 U.S.C. 253(c)(7) as implemented by FAR 6.302-7, it is in the public interest to provide for other than full and open competition in the contract action described below.

Findings

1. The (1) proposes to enter into a contract for the acquisition of (2).

2. Use of the authority cited above is necessary and in the public interest for the following reasons: (3).

Determination

For the reasons described above, it is necessary and in the public interest to use procedures other than competitive procedures in the proposed acquisition.

Date _____

Notes:

(1) Name of contracting activity.

(2) Brief description of supplies or services.

(3) Explain the need for use of the authority.

10. Section 2806.501, paragraph (a) is amended by removing the words "Deputy Assistant Attorney General, Office of Personnel and Administration," and substituting the words "Procurement Executive, Justice Management Division."

PART 2815—CONTRACTING BY NEGOTIATION

11. Section 2815.805-570, Field pricing support is revised to read as follows:

§ 2815.805-570 Field pricing support.

Field pricing support is available to the Department components through the Office of Inspector General. All requests for audit assistance shall be directed to the Assistant Inspector General for Audits, Suite 701, 4 Skyline Place, 5113 Leesburg Pike, Falls Church, VA 22041.

PART 2819—SMALL AND DISADVANTAGED BUSINESS CONCERNS

12. A new subpart 2819.70 is added to read as follows:

Table of Contents

Subpart 2819.70—Forecasts of Expected Contract Opportunities

Sec.

2819.701 General.

2819.702 Procedures.

Subpart 2819.70—Forecasts of Expected Contract Opportunities

§ 2819.701 General.

Section 501 of Public Law 100-656 the Business Opportunity Development Reform Act of 1988 requires executive agencies having contract actions in excess of $50 million in Fiscal Year 1988 or later to prepare an annual forecast of expected contract opportunities, or classes of contract opportunities that small business concerns, including those owned and controlled by socially and economically disadvantaged individuals, are capable of performing.

§ 2819.702 Procedures.

The content and format of bureau annual forecasts of contract opportunities, as well as the updates to their contracting forecasts shall be as specified by the Director, OSDBU. Updates should be prepared and submitted at the same time the bureaus prepare their semiannual reviews of their advance procurement plans, in April and October.

13. A new subchapter I, Special Agency Regulations consisting of part 2870 is added as follows:

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SUBCHAPTER I—SPECIAL AGENCY REGULATIONS

PART 2870—ACQUISITION OF LEASEHOLD INTERESTS IN REAL PROPERTY

Sec.
2870.000 Scope of part.

Subpart 2870.1—Definitions

2870.101 Definitions

Subpart 2870.2—Agency Acquisition Regulations for Leases of Real Property

2870.201 Authority to lease.
2870.202 Review by the Office of the Procurement Executive.
2870.203 Competition.
2870.204 Procedures for executing a lease.

Authority: 28 U.S.C. 510; 40 U.S.C. 486(C); 28 CFR 0.75(j); and, 28 CFR 0.76(j).

§ 2870.000 Scope of part.

This part prescribes policies and procedures relating to the acquisition of real property whether the space is already in existence or must be constructed. It does not apply to the acquisition of leasehold interests in real property by the power of eminent domain or by donation. The use of GSA clauses is not mandatory for leases of 180 days or less but must include all statutorily required clauses.

Subpart 2870.1—Definitions

§ 2870.101 Definitions.

Throughout this regulation the following words and terms are used as defined in this subpart unless the context in which they appear clearly requires a different meaning.

(a) "Acquisition" means the acquiring, by lease with appropriated funds, of an interest in improved real property for use by the Federal Government whether the space is already in existence or must be constructed.

Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, market survey, solicitation, award of lease, lease performance, lease administration, and those technical and management functions directly related to the process of fulfilling agency space needs by contract.

(b) "Contract" means lease.

(c) "Contractor" means lessor.

(d) "Landlord" or "lessor" means any individual, firm, partnership, trust, association, State or local government, or other legal entity that leases real property to the Government.

(e) "Lease" or "leasehold interest in real property" means a conveyance to the Government of the right of exclusive possession of real property for a definite period of time by a landlord. It may include services provided by the landlord such as heating, ventilation, air conditioning, utilities, custodial services, and other related services furnished by the landlord.

Subpart 2870.2—Agency Acquisition Regulations for Leases of Real Property

§ 2870.201 Authority to lease.

The authority for Federal agencies to enter leases is found in 41 CFR 101-18.104. Contracting officers exercising leases on behalf of the Department or of a bureau must assure that all necessary delegations have been obtained from the General Services Administration (GSA) and are within the authority of the Justice Property Management Regulations (JPMR), subpart 128-1.60.

§ 2870.202 Review by the Office of the Procurement Executive.

Leases are subject to the same review requirements as other types of acquisitions, in accordance with the JAR 2801.602-70. These leases which exceed the minimum dollar thresholds for contract review must be submitted to the Office of the Procurement Executive for review and approval prior to the signing of the lease agreement on behalf of the Government.

§ 2870.203 Competition.

The competition requirements of FAR part 6 apply to the acquisition of leasehold interests in real property. The acquisition of space through other than full and open competition must be held to the smallest number practicable and be justified in writing and approved in accordance with FAR 6.303 and 6.304.

§ 2870.204 Procedures for executing a lease.

(a) Pursuant to the requirements of the delegations issued by GSA, all lease acquisitions shall be performed in accordance with the guidance provided in the General Services Acquisition Regulation (GSAR) 48 CFR chapter 5, part 570, Acquisition of Leasehold Interests in Real Property, except for deviations approved by the Procurement Executive.

(b) The following FAR clauses are to be used in lease agreements as applicable. Special leasing clauses are found in GSA forms 3516, Solicitation Provisions, 3517, General Clauses and 3518 Representations and Certifications, which are located in subpart 553.370 of the GSAR.

1. Solicitation provisions.

(i)	52.203-8	Requirement for Certification of Procurement Integrity
(ii)	52.204-13	Taxpayer Identification
(iii)	52.215-10	Late Submission, Modifications and Withdrawals of Offers
(iv)	52.215-12	Restrictions on Disclosure and Use of Data
(v)	52.215-13	Preparation of Offers
(vi)	52.215-14	Explanation to Prospective Offerors
(vii)	52.222-24	Preaward On-site Equal Opportunity Compliance Review
(viii)	52.233-2	Service of Protest (Required clause)

2. Lease Clauses

(i)	52.202-1	Definitions (Required Clause)
(ii)	52.203-1	Officials Not to Benefit
(iii)	52.203-3	Gratuities
(iv)	52.203-5	Covenant Against Contingent Fees (Required Clause)
(v)	52.203-7	Anti-Kickback Procedures (Required clause)
(vi)	52.203-9	Requirement for Certification of Procurement Integrity—Modification
(vii)	52.209-6	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended or Proposed for Debarment
(viii)	52.212-6	Time Extensions
(ix)	52.215-1	Examination of Records by Comptroller General (Negotiated over $10,000)
(x)	52.215-22	Price Reduction for Defective Cost or Pricing Data
(xi)	52.215-24	Subcontractor Cost or Pricing Data
(xii)	52.219-8	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (Applicable to leases which exceed $10,000)

(xiii)	52.219-9	Small Business and Small Disadvantaged Business Subcontracting Plan (Applicable to leases which exceed $500,000)
(xiv)	52.219-13	Utilization of Women-Owned Small Business (Applicable to leases which exceed $25,000)
(xv)	52.219-16	Liquidated Damages—Small Business Subcontracting Plan
(xvi)	52.222-26	Equal Opportunity (Applicable to leases which exceed $10,000)
(xvii)	52.223-35	Affirmative Action for Special Disabled and Vietnam Era Veterans (applicable to leases which exceed $10,000)
(xviii)	52.222-36	Affirmative Action for Handicapped Workers (Applicable to leases which exceed $2,500)
(xix)	52.222-37	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (Applicable to leases which exceed $10,000)
(xx)	52.223-2	Clean Air and Water (Applicable to leases which exceed $100,000)
(xxi)	52.223-6	Drug-Free Workplace
(xxii)	52.232-23	Assignment of claims
(xxiii)	52.232-25	Prompt Payment
(xxiv)	52.233-1	Disputes
(xxv)	52.249-2	Termination for Convenience of the Government (Fixed Price)
(xxvi)	52.249-5	Termination (Cost Reimbursement)
(xxvii)	52.249-8	Default (Fixed Price Supply and Services)
(xxviii)	52.249-10	Default (Fixed Price Construction)

3. Representations and Certifications

(i)	52.203-2	Certification of Independent Price Determination
(ii)	52.203-4	Contingent Fee Representation and Agreement
(iii)	52.209-5	Certification Regarding Debarment, Suspension, Proposed Debarment and Other Responsibility Matters (Applies to leases exceeding 25,000)
(iv)	52.219-2	Small Disadvantaged Business Concern Representation (Applies to leases exceeding $25,000)
(v)	52.219-3	Women Owned Small Business Representation (Applies to leases exceeding $25,000)
(vi)	52.219-1	Small Business Concern Representation
(vii)	52.222-21	Certification of Nonsegregated Facilities (Applies to leases exceeding $10,000)
(viii)	52.222-22	Previous Contracts and Compliance Reports (Applies to leases exceeding $10,000)
(ix)	52.222-25	Affirmative Action Compliance (Applies to leases exceeding $10,000)
(x)	52.223-1	Clean Air and Water Certification (Applicable to leases expected to exceed $100,000)
(xi)	52.223-5	Certification Regarding a Drug-Free Workplace

[FR Doc. 91-13344 Filed 6-6-91; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket 89-24; Notice 4]

RIN 2127-AC77

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice responds to comments to a supplemental notice of proposed rulemaking published in November 1990. That notice proposed amending Standard No. 108 to adopt a definition similar to the SAE definition of "optical combination". In response to comments received on the supplementary notice, NHTSA is not adopting the definition, but is amending Standard No. 108 simply to reference the SAE definition where appropriate.

DATES: The effective date of the amendment is July 8, 1991. The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of July 8, 1991.

FOR FURTHER INFORMATION CONTACT: Kevin Cavey, Office of Rulemaking, NHTSA (202-366-5271).

SUPPLEMENTARY INFORMATION: On November 8, 1990, the agency issued a supplemental notice proposing to amend Federal Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment*, to adopt a definition of the term "optical combination" similar to that of the Society of Automotive Engineers (SAE) (55 FR 46961). The supplemental notice contained a discussion of the agency's prior proposal that led to both a minor amendment and the supplemental notice. The reader is referred to the supplemental notice for further background information on this subject.

Motor Vehicle Safety Standard No. 108 allows two or more lamps, reflective devices, or items of associated equipment to be combined, if the requirements for each are met, provided that certain lamps specified in sections S5.1.1.26 and S5.4 are not "optically combined." The term is also contained in two SAE standards incorporated by reference.

Specifically, S5.4 provides that "no clearance lamp may be optically combined with any taillamp, and no high mounted stop lamp shall be combined with any other lamp or reflective device."

With respect to use of the term elsewhere in the Standard No. 108, paragraph 4.2 of SAE Standard J586c *Stop Lamps*, August 1970, and paragraph 4.4 of SAE Standard J588e *Turn Signal Lamps*, September 1970, both state "When a stop signal is optically combined with the turn signal, the circuit shall be such that stop signal cannot be turned on in the turn signal which is flashing". Finally, the second sentence of section S5.1.1.26 of Standard No. 108, states that "A stop lamp that is not optically combined with a turn signal lamp shall remain activated when the turn signal is flashing."

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The agency has never adopted a definition of "optically combined," but over the years it has attempted to clarify the term by issuing a variety of interpretations. This led to some confusion, and on December 5, 1989, the agency proposed amendments with the intent of substituting clarifying phrases for the term "optical combination" (54 FR 50254).

Virtually all persons who commented on that notice recommended that NHTSA adopt the definition of "optically combined" as set forth in SAE Information Report J387 NOV 87 *Terminology—Motor Vehicle Lighting*. Under the SAE definition,

"A lamp shall be deemed to be 'optically combined' if both of the following conditions are met:

A. It has two or more separate light sources, or a single light source that operates in different ways (e.g., a two filament bulb).

B. Its optically functional lens area is wholly or partially common to two or more lamp functions."

NHTSA reviewed these comments and found them persuasive. Accordingly, in November 1990, it issued a supplemental notice proposing an amendment of S3 to add a definition quite similar to that of SAE. Although the notice gave the impression that the SAE definition used as a reference was that of the October 1988 Information Report, the text was based, in fact, upon the text of the November 1987 standard. Under NHTSA's proposed definition:

" 'Optically combined' means a combination within a lamp of two or more separate light sources, or a single light source that operates in different ways, such as a dual-filament bulb, where its optically functional lens area is wholly or partially common to two or more lamp functions."

Six commenters responded to the new proposal: General Motors Corporation, Truck Safety Equipment Institute (TSEI), Freightliner Corporation, Grote Manufacturing Company, Ford Motor Company, and Chrysler Corporation. All commenters believed that a definition was desirable. In general, commenters believed that the proposed definition was still confusing and misleading. TSEI, for example, noted that the SAE language "Two or more separate light sources or a single light source that operates in different ways" differs from similar language proposed by NHTSA: "a combination within a lamp of two or more separate light sources or a single light source that operates in different ways." TSEI wondered whether "combination" referred to the two or more light sources which becomes mutually exclusive when used with the word "separate" or to the light source(s) and the optically functional common lens area. Grote asked whether a lamp presently in use composed of a single light source with a single filament used as combination stop and turn signal lamps would be allowable under the proposed NHTSA definition. Commenters continued to recommend adoption of the SAE definition, noting the discrepancy between the preamble references to the 1988 version and the similarity of the proposed text to the 1987 version, and expressing a preference for the greater inclusiveness of the earlier one.

Upon review of these comments, NHTSA concluded that the meaning of the 1987 SAE definition was evidently clearer to regulated parties than the similar definition proposed in November 1990, and that it should be adopted. However, the phraseology used by the SAE did not prove adaptable to the structure of Standard No. 108's definition section, S3. Therefore, rather than adopting the SAE definition as its own, NHTSA is amending S5.1.1.26 and S5.4 to add the phrase "as defined in SAE Information Report J387 *Terminology—Motor Vehicle Lighting* Nov 87" after the phase "Optical combination" in each of these sections. A new section is also added to clarify that the SAE definition of "optical combination" that applies to the two 1970 SAE standards incorporated by reference is the 1987 version.

Effective Date

Because the final rule clarifies existing prohibitions, and imposes no additional burden upon any regulated party, it is hereby found for good cause shown that an effective date earlier that 180 days after issuance of the rule is in the public interest. Accordingly, the amendment is effective July 8, 1991.

Rulemaking Analyses

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has considered the impacts of this rulemaking action and has determined that the action is neither major within the meaning of Executive Order 12291 "Federal Regulation," nor significant under Department of Transportation regulatory policies and procedures. The primary effect of the final rule is to clarify existing requirements. In adopting this amendment, NHTSA has concluded that the savings in costs to manufacturers will be minimal, as it knows of no existing lamp designs that are affected. Therefore, the agency has not prepared a full regulatory evaluation.

National Environmental Policy Act

NHTSA has analyzed this rule for purposes of the National Environmental Policy Act. The rule will not have a significant effect upon the environment because its effect is to clarify existing requirements.

Regulatory Flexibility Act

The agency has also considered the effects of this rule in relation to the Regulatory Flexibility Act. I certify that this rule will not have a significant economic effect upon a substantial number of small entities. Lamp and vehicle manufacturers are generally not small businesses within the meaning of the Regulatory Flexibility Act. Furthermore, small organizations and governmental jurisdictions will not be significantly affected as the price of new vehicles will not be impacted. Accordingly, no Regulatory Flexibility Analysis has been prepared.

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 "Federalism," and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Incorporation by reference.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR part 571.108 Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment* is amended as follows:

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. The second sentence of S5.1.1.26 is revised to read:

S5.1.1.26. * * * A stop lamp that is not optically combined, as defined by SAE Information Report J387 *Terminology—Motor Vehicle Lighting* NOV 87, with a turn signal lamp shall remain activated when the turn signal lamp is flashing.

* * * * *

3. S5.4 is revised to read as follows:

S5.4. Two or more lamps, reflective devices, or items of associated equipment may be combined if the requirements for each lamp, reflective device, and item of associated equipment are met, except that no clearance lamp may be combined optically, as defined by SAE Information Report J387 *Terminology—Motor Vehicle Lighting* NOV 87, with any taillamp, and no high-mounted stop lamp shall be combined with any other lamp or reflective device.

* * * * *

4. Section S6.1 is amended by adding the following sentence at the end thereof:

S6.1. * * * The definition of "optically combined" in SAE Information Report J387 *Terminology—Motor Vehicle Lighting* NOV 87, applies to that term as used in J586c and J588e.

* * * * *

Issued on: May 31, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91-13546 Filed 6-6-91; 8:45 am]

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VOL 56 ISS 110 JE 7 1991 UMI

Proposed Rules

Federal Register
Vol. 56, No. 110
Friday, June 7, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 935

[No. FHFB 91-184]

Community Support Requirements for Members of the Federal Home Loan Bank System

AGENCY: Federal Housing Finance Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Housing Finance Board ("Finance Board") is requesting public comment on proposed regulations to implement section 710(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Public Law No. 101-73, 103 Stat. 183, 418-419. This section requires the Finance Board to adopt regulations establishing standards of community investment or service for members of the Federal Home Loan Bank System ("FHL Bank System") to maintain continued access to long-term advances. FIRREA provides that the Finance Board adopt these regulations by August 8, 1991. The Finance Board requests public comment on the full range of policy issues and other considerations involved in establishing community support standards and regulations.

DATES: Comments must be received on or before July 22, 1991. No extension of the comment period will be possible, because the Finance Board seeks to meet a statutory deadline for promulgation of the final rule.

ADDRESSES: Comments should be sent to: Federal Housing Finance Board, Executive Secretary, 1777 F Street, NW., Washington, DC 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Sylvia C. Martinez, Director, Housing Finance Directorate, or Stephen D. Johnson, Attorney Advisor (202) 408-2847, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. *General*

FIRREA established the Finance Board as an independent agency in the executive branch of the federal government. It is the succesor agency to the Federal Home Loan Bank Board with respect to oversight of the FHL Bank System. In supervising the 12 Federal Home Loan Banks ("FHL Banks"), the Finance Board is directed to ensure that they carry out their housing finance mission, remain adequatley capitalized and able to raise funds in capital markets, and are operated in a safe and sound manner.

The FHL Banks are central banks for the provision of residential credit and provide their members with a wide range of services, including short- and long-term loans (called "advances"), check clearing, safekeeping of securities, demand and time accounts, technical assistance (particularly in community-oriented lending), economic analysis, and access to federal funds markets.

The FHL Banks are located in Boston, New York, Pittsburg, Atlanta, Cincinnati, Indianapolis, Chicago, Des Moines, Dallas, Topeka, San Francisco, and Seattle. All savings institutions which are insured by the Savings Association Insurance Fund ("SAIF") of the Federal Deposit Insurance Corporation ("FDIC") are members of the FHL Bank System, as well as many savings banks insured by the FDIC's Bank Insurance Fund ("BIF"). FIERRA opened membership in the FHL Bank System to commercial banks and credit unions that make long-term home mortgage loans, subject to qualifications of financial soundness and home financing policies.

B. Community Support Requirements in FIRREA.

Section 710(c) of FIRREA added a new section 10(g) to the Federal Home Loan Bank Act of 1932, 12 USCA 1430(g), as follows:

(g) Community Support Requirements.

(1) In General.—Before the end of the 2-year period beginning on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Board shall adopt regulations establishing standards of community investment or service for members of Banks to maintain continued access to long-term advances.

(2) Factors To Be Included.—The regulations promulgated pursuant to paragraph (1) shall take into account factors such as a member's performance under the Community Reinvestment Act of 1977 and the member's record of lending to first-time homebuyers.

C. FIRREA Changes to the Community Reinvestment Act and the Home Mortgage Disclosure Act

FIRREA contains two other important and related sections concerning community investment and the requirement that federally regulated depository institutions serve the credit needs of their communities.

1. *CRA.* Section 1212(b) of FIRREA amended the Community Reinvestment Act of 1977, 12 USC 2901 ("CRA"), by adding a new Section 807 requiring that, upon completion of each CRA compliance examination, the examining federal depository regulatory agency prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods. The written evaluations must have a public and a confidential section. The public section of the evaluation must discuss the agency's examination findings and conclusions, and must assign one of four CRA ratings to the institution. The FIRREA Conference Report confirms that the intent of the section was to promote enforcement of CRA by allowing the public to know what regulatory agencies are telling depository institutions and the community investment records of particular depository institutions. See H.R. Conf. Rep. No. 101-222, 101st Cong., 1st Sess., at 460-461 (1989). The Conference Report also places special emphasis on the insured depository institution's record of serving the housing credit needs of low- and moderate-income persons, small business credit needs, small farm credit needs, and rural economic development. *Id.* at 461. These changes to CRA became effective with examinations commencing on or after July 1, 1990, pursuant to uniform guidelines promulgated by the financial regulatory agencies. These guidelines, titled "Uniform Interagency Community Reinvestment Act Final Guidelines For Disclosures of Written Evaluations and Revised Assessment Rating System,"

were published in the **Federal Register** on May 1, 1990 (55 FR 18163).

2. *HMDA.* Section 1211 of FIRREA made several changes to the Home Mortgage Disclosure Act of 1975, 12 USC 2803 ("HMDA"), that relate to the issue of community support and fair lending practices. These changes require the collection of mortgage application data grouped by census tract, income level, race, and gender. The Conference Report explained that the primary purpose of HMDA reporting is to assist regulatory agencies in identifying possible discriminatory lending patterns that warrant closer scrutiny. Conf. Rep. at 459.

D. Advance Notice of Proposed Rulemaking

The Finance Board considers the development of community support regulations one of its most significant responsibilities. Therefore, the Finance Board has sought and continues to request the broadest possible public comment on all aspects of these regulations.

The Finance Board published an Advance Notice of Proposed Rulemaking on January 4, 1991 (56 FR 387-389—"Advance Notice"). In the Advance Notice, the Finance Board solicited the expertise and insight of all interested parties, including community groups, FHL Banks, lenders, public interest groups, present and prospective FHL Bank System members, trade associations, state and local government agencies, other financial service providers, and private citizens. The questions posed and the issues raised in the Advance Notice were intended to elicit comments on issues of importance, but the listing was not intended to be exclusive or to preclude consideration of other issues considered relevant or important by others.

E. Comments Received in Response to the Advance Notice

The Finance Board received 66 comment letters in response to the Advance Notice. Comments were submitted by 27 thrift and banking institutions (mostly members of the FHL Bank System), 10 FHL Banks, 9 community interest organizations and groups, 9 state and local agencies, 6 financial trade associations, and 3 private individuals and companies. All but a few of the letters commented on at least three of the issues identified in the Advance Notice. Even letters that were short statements of opposition to any new regulations presented reasons for opposition and sometimes raised additional issues, such as problems facing rural financial institutions and the difficulty faced by institutions concentrating on meeting new or higher capital standards. Several comment letters expressed the intention of providing more detailed comments at the proposed rulemaking stage.

The comment letters are discussed below with the issues presented in the same order as they were in the Advance Notice.

1. *Community investment.* The Advance Notice requested comments on the best definition of "community investment" as used in FIRREA. The principal question posed was whether the Finance Board should consider CRA ratings to be the measure of community investment or should more broadly interpret the concept.

Fifty-four comment letters addressed this issue. Most FHL Banks and at least 20 other industry commenters from thrifts, banks, and financial trade associations stated that CRA was a sufficient measure of community investment and that using any other measure would create an additional burdensome layer of regulation. Many of these comments pointed out that the CRA assessment factors are very broad, applicable to a wide range of institutions, and used by all federal financial regulatory agencies. The letters urged the Finance Board to make use of the existing CRA examination program and not place additional paperwork burdens on members.

Other financial institutions and several state agencies took the position that the concept of "community investment" should be more broadly interpreted than CRA, *i.e.*, that other civic activities, such as charitable works, should be given significance that they do not receive in the CRA examination process. Others suggested that members should be provided with lists of examples of "good" community investment activities, including participation in state and local housing finance programs.

Other commenters, including most community groups, were less sanguine about the use of existing CRA procedures. Lack of enforcement in the past, limited scope, failure to include significant public participation, and the preponderance of high CRA ratings were all mentioned as reasons to regard the ratings with skepticism. Comments by community groups stated that the requirement for the Finance Board to develop community support requirements was broader than CRA and first-time homebuyer programs, as evidenced by the language of the provision.

2. *Service.* The Advance Notice sought comments on how to best define "service." The vast majority of the comments were divided between those suggesting that CRA was a sufficient measure since it includes community service and those suggesting that the definition should be as broad as possible. These suggestions made with regard to "service" closely parallel those made concerning the definition of community investment.

The comment letters that supported the exclusive use of CRA as the measure of community investment or service generally opposed the idea that the Finance Board or the FHL Banks review the assets held by a member or propound any listing of "approved" or "recommended" assets. One thrift institution suggested that the best measure of community service could be a member's use of existing FHL Bank programs for community investment and affordable housing.

One comment letter from a community group urged limiting the measure to lending activity and avoiding the inclusion of "anything that could be considered charity." Actual loan production data was suggested as the best measure by two comment letters from community groups. Several comment letters from community groups did recommend a review of members' portfolios of local loans and investments.

3. *Possible conflict with other provisions of FIRREA.* The Advance Notice noted that section 303 of FIRREA expanded the Qualified Thrift Lender ("QTL") test and that section 301 of FIRREA required new capital rules for thrifts. Comments were requested as to the impact of these and other regulatory changes on the ability of members to make community investment loans.

Of the approximately 28 comment letters that addressed this issue, one-half stated that the new rules, particularly the QTL test and increased capital requirements, were adversely affecting members' ability to make community loans. Other comment letters from a broad range of sources cited problems with (1) loans-to-one-borrower rules limiting the ability of members to lend for large multifamily projects, (2) capital rules adverse to multifamily rental projects, and (3) general shortages of capital for community support or any other purpose. Several letters, however, noted that the new QTL test provides specific favorable treatment for loans on residences affordable by low-income families, loans in areas designated as in need of additional financial services, and loans for churches, schools, nursing homes, and hospitals.

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4. *Effect on discretionary members.* In the Advance Notice, the Finance Board sought advice on structuring the regulations so that they maximize the attractiveness of the FHL Bank System while providing a meaningful standard of community investment and service. The Finance Board noted that section 704 of FIRREA expanded eligibility for membership in the FHL Bank System to commercial banks and credit unions, which have recently and substantially expanded their commitment to the provision of residential mortgage credit. The standards for community investment and service would apply only to those banks and credit unions that elected to become FHL Bank System members.

More than 40 comment letters addressed the effect that the community support regulations might have on both mandatory and voluntary members. Most of these letters suggested that the existing advantages of FHL Bank System membership in assisting members in meeting community credit needs would certainly outweigh any adverse effect of the new community support regulations, provided that the regulations are pro-active in helping members improve and expand community activities rather than punitive and burdensome. Several letters discussed the use of positive incentives to offset any negative perceptions of the new regulations, as discussed in the next section.

Comment letters from community groups expressed the view that the Finance Board should limit its consideration to increasing community investment and allow Congress to correct any inequities. A number of industry comment letters argued that expanding membership is critical, but did state that all financial institutions should have the same requirements for community support. One commenter expanded this "level playing field" concept to include government sponsored enterprises, particularly the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

5. *Providing incentives for community-oriented lending.* The Finance Board requested comments on positive concepts and provisions that would provide incentives for FHL Bank System members to meet the credit needs of their communities. The majority of the comment letters stated that FHL Bank membership already offers a number of incentives, such as subsidized advances (Affordable Housing Program), discounted advances (Community Investment Program and other FHL Bank funds), and technical assistance programs in community investment. Most letters supported the expansion and increased promotion of these existing programs. A handful of comments, apparently less familiar with the FHL Bank System, suggested establishing such incentives.

Additional incentives were discussed in approximately 20 comments. These were 2 general suggestions of tax relief and tax credits for community activities. One comment letter suggested that FHL Bank membership, in and of itself, should be awarded CRA "points."

A number of comment letters proposed special discounts on advances to members with outstanding records of community support. Several letters suggested that the discounts apply only to existing Affordable Housing, Community Investment, and special FHL Bank housing and development programs, but a number suggested that the discounts apply to all advances taken by the member with an outstanding record in the community. Most letters suggested the use of a CRA rating as the most practical measure for determining eligibility for special discounts. Monetary awards were also suggested by several commenters.

6. *Community Reinvestment Act issues.* The CRA issues raised in the Advance Notice and in the comment letters are largely discussed above in the discussion on community investment definitions and other subsections. With regard to institutions without CRA ratings, FHL Bank and other industry commenters suggested that members without CRA ratings be required to file an annual or periodic statement documenting community support. Several community group comment letters suggested requiring such reports from all members, because of the inadequacy of CRA as a true measure of community support.

7. *Home Mortgage Disclosure Act issues.* The Advance Notice sought comments on the consideration that should be given to HMDA data. Four comment letters opposed any use of HMDA data. More than 20 comments generally supported the use of HMDA data, with several community group comments adding that HMDA data is the best measure of an institution's community support performance. Fourteen letters noted that HMDA data is reviewed during the CRA examination and suggested that such use was sufficient.

8. *First-time homebuyers.* More than 40 comments addressed this issue. Three possible definitions of "first-time homebuyer" were suggested: the tax code definition, the state mortgage revenue bond consideration, and the National Affordable Housing Act definition.

Views regarding measurement in this category were divided. A number of thrift institutions suggested using a broad review of both marketing efforts and lending performed. Community groups, on the other hand, favored limiting consideration to actual loans to first-time homebuyers in low-income and minority neighborhoods, with little credit given for loans to such upwardly mobile groups as recent college graduates.

F. Analysis of Proposed Rulemaking

In developing the regulatory structure for this proposed rule-making, the Finance Board has been guided, in varying degrees, by the plain language of the statute, the record of Congressional intent, the comments received in response to the Advance Notice, and the realities of the present state of the thrift industry and the FHL Bank System.

Although the specific record of Congressional intent in Section 710 of FIRREA is limited, the record on related issues provides guidance as to the intent of Congress with respect to the role of the FHL Bank System and the thrift industry. FIRREA reaffirms the mission of the thrift industry as providing residential housing finance with management and financial policies that are consistent with safe, sound, and economic housing finance. The creation of the Affordable Housing Program and the Community Investment Program to expand FHL Bank community-oriented lending activities, place an emphasis on housing finance affordable for a broader range of income levels and on community development lending. In amending the CRA and HMDA, Congress also stressed the requirement that all financial institutions meet the credit needs of their entire communities, including low- and moderate-income neighborhoods, minority individuals and neighborhoods, and rural areas.

1. *Proposed regulatory structure.* The implementation of community support standards will rely heavily on the FHL Banks, where credit decisions are made and interaction with members is routine. The Finance Board directly regulates only the FHL Banks. Other federal financial regulatory agencies have the statutory authority to examine and supervise individual member institutions, but the Finance Board does not have equivalent direct authority over individual member institutions.

Recognizing that economic conditions, housing finance needs, and internal operations vary from FHL Bank to FHL Bank, the proposed regulations would leave discretion with the FHL Banks in the implementation of the community support requirements. However, the requirements to establish and oversee minimum standards of community support will be uniform throughout the FHL Bank System and enforced by the Finance Board. The Finance Board anticipates, and will encourage, variety and innovation by the FHL Banks in the development and implementation of the pro-active aspects of the proposal, such as monetary incentives and technical assistance for members.

2. *Role of the CRA.* Section 710 of FIRREA expressly requires that the CRA performance of a member be one of the factors considered in evaluating the member's record of community support. Thus, the community support regulations may not rely entirely on CRA performance, but must consider other factors, including a member's record of lending to first-time homebuyers, as directed by the statute.

Congress seems to have intended that the Finance Board build upon the CRA in crafting the community support regulations. As pointed out repeatedly in the comment letters, in the complete CRA examination and rating process most elements relevant to community support, including HMDA data, are examined and considered by the financial regulatory agencies for each institution. Therefore, for the Finance Board to prescribe some form of second examination and rating procedure would be highly duplicative and wasteful of resources.

However, the Finance Board is mindful that the enforcement of the CRA prior to FIRREA was inconsistent. Pre-FIRREA CRA ratings may not always have been reliable indicators of how well an institution was meeting the credit needs of its community and, in any event, the ratings were not disclosed to the public. Therefore, the Finance Board plans to place principal reliance on post-FIRREA CRA ratings that are descriptive and available to the public.

Many members will not have a post-FIRREA CRA rating, because the ratings only apply to examinations commencing on or after July 1, 1990. In addition, some members of the FHL Bank System, *e.g.*, credit unions, are not subject to the CRA. Therefore, the proposed regulations require each member to submit to its FHL Bank an annual statement of community support. For members with a post-FIRREA CRA rating, this annual submission will only require the member to forward to its FHL Bank a copy (or a summary) of its current CRA statement (required to be kept in a public file by the CRA) and a copy of the public portion of its latest CRA rating. Members are encouraged but not required to submit any additional information for the FHL Bank to consider. For members not subject to the CRA or without a post-FIRREA CRA rating, the annual community support statement proposed herein will require an annual filing equivalent to a CRA statement. Members that are subject to the CRA but that have not been examined after July 1, 1990 will submit their current CRA statement (or a summary) and other evidence of their CRA activities.

The proposed regulations permit the FHL Banks and the Finance Board to review and re-evaluate CRA ratings to ensure that the rating is an accurate measure of the member's community support activities and programs. This provision is necessary because the CRA ratings do not change between examinations and occasionally do not accurately describe an institution's current level of community support.

3. *Incentives.* Many comment letters supported the concept of providing additional incentives to members to promote increased performance in community support and investment. Therefore, the proposed regulations would require each FHL Bank to develop incentives, monetary and other, appropriate to their membership and operations. The Finance Board intent is to further institutionalize community support in the business plans and operations of members.

4. *Technical assistance to members.* In keeping with the overall intent of Congress in FIRREA and broad support in the comment letters, the proposed regulations contain a number of requirements for the FHL Banks and the Finance Board to support the community-oriented lending efforts of FHL Bank System members. The assistance will come primarily from the FHL Banks so that it can be appropriately focused on district and local needs. Technical assistance may include such activities as community lending and affordable housing newsletters, conferences and speaking engagements, "network" development and referrals, member CRA program support, and publications. FHL Bank officials and the Community Investment Officers will assist members in outreach programs to non-profit housing developers, minority neighborhoods, and other institutions engaged in community development and affordable housing activities. FHL Banks will provide members with examples and models of community support, practical suggestions for expanding work with non-profit developers and community groups, and outreach opportunities in low- and moderate-income neighborhoods with particular emphasis on minority and non-English speaking communities.

G. Request for Comments

The Finance Board requests comments from the public, the FHL Banks, their Advisory Councils, community or public interest groups, members of the FHL Bank System, other financial regulatory and housing agencies, and all other interested parties. All comments received before the deadline will be reviewed and considered. However, the Finance Board urges all interested parties to submit their comments early in the comment period. No extension of the deadline will be possible, because the Finance Board is expediting action on these regulations in order to meet the deadline imposed by FIRREA.

H. Regulatory Flexibility Act

Pursuant to section 3 of the Regulatory Flexibility Act, 5 USC 630, the Finance Board is providing the following regulatory flexibility analysis.

1. *Need for an objective of the rules.* As explained in the **SUPPLEMENTARY INFORMATION**, these Finance Board regulations are mandatory under FIRREA.

2. *Issues raised by commenters and agency assessment and response.* These issues are discussed in the **SUPPLEMENTARY INFORMATION.**

3. *Significant alternatives minimizing small-entity impact and response.* There are no alternatives that would be less burdensome in meeting the objectives discussed in the **SUPPLEMENTARY INFORMATION.**

List of Subjects in 12 CFR Part 936

Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

Accordingly, the Finance Board hereby amends chapter IX, Title 12, *Code of Federal Regulations*, by adding a new part 936, to read as follows:

PART 936—COMMUNITY SUPPORT REQUIREMENTS

Sec.
936.1 Definitions.
936.2 Statement of policy.
936.3 Bank community investment assistance to members.
936.4 Finance Board support of Bank activities.

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Sec.
936.5 Bank review of member community activities.
936.6 Community support standards.
936.7 Incentive programs.
936.8 Restrictions on access to long-term advances.
936.9 Finance Board review and reporting.

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*; sec. 10, 47 Stat. 731, as amended (12 U.S.C. 1430); sec. 21B, as added by sec. 511, 103 Stat. 394 (12 U.S.C. 1441b).

§ 936.1 Definitions.

(a) *Area* means a metropolitan statistical area, a county, or a non-metropolitan area, as established by the U.S. Office of Management and Budget.

(b) *Affordable Housing Program* means the program required by Section 10(j) of the Federal Home Loan Bank Act and defined in 12 CFR part 960.

(c) *Bank(s)* means a Federal Home Loan Bank established under the authority of the Federal Home Loan Bank Act.

(d) *Finance Board* means the Federal Housing Finance Board or an official duly authorized to act on its behalf.

(e) *Community Investment Program* means the program(s) established by the Banks pursuant to section 10(i) of the Federal Home Loan Bank Act.

(f) *Community-Oriented Lending* means providing loans:

(1) To finance home purchases by families whose income does not exceed 115 percent of the median income for the area;

(2) To finance purchase and rehabilitation of housing for occupancy by families whose income does not exceed 115 percent of median income for the area;

(3) To finance commercial and economic development activities that benefit low- and moderate-income neighborhoods; and

(4) To finance projects that further a combination of the purposes described in paragraphs (f)(1) through (3) of this section.

(g) *Community Reinvestment Act Examination Rating or CRA Rating* means a rating assigned utilizing the four-tiered descriptive rating system as provided by the Uniform Interagency Community Reinvestment Act Final guidelines For Disclosure of Written Evaluations and Revised Assessment Rating System, approved on April 25, 1990, and effective July 1, 1990, as they may be amended from time to time. Copies of the Final Guidelines may be obtained from Federal Housing Finance Board, Housing Finance Directorate, 1777 F Street, NW., Washington, DC 20006.

(h) *First-Time Homebuyer* means an individual and his or her spouse who have not owned a home during the 3-year period prior to purchase of a home, except that:

(1) Any individual who is a displaced homemaker may not be excluded from consideration as a first-time homebuyer on the basis that the individual, while a homemaker, owned a home with his or her spouse or resided in a home owned by the spouse; and

(2) Any individual who is a single parent may not be excluded from consideration as a first-time homebuyer on the basis that the individual, while married, owned a home with his or her spouse or resided in a home owned by the spouse.

See Pub. L. No. 101-625, Nov. 28, 1990 (12 U.S.C. 1715).

(i) *Long-Term Advance* means, for purposes of this part, an advance for a term in excess of one year, or the extension of a shorter term advace that results in the total term of the advance being in excess of one year.

(j) *Low-Income* means families and households whose income does not exceed 80 percent of the median income for the area.

(k) *Median Income* means the median family income for an area as determined and published by the U.S. Department of Housing and Urban Development. The data is available from HUD USER, P.O Box 6091, Rockville, MD 20850.

(l) *Member* means an institution admitted to membership in a Federal Home Loan Bank.

(m) *Moderate-Income* means families and households whose income does not exceed 115 percent of the median income for the area.

(n) *Rural* means any open country, or any place, town, village, or city which is not part of or associated with an urban area and which: has a population not in excess of 2,500 inhabitants, or has a population in excess of 2,500 but not in excess of 10,000 if it is rural in character, or has a population in excess of 20,000 and is not contained within a standard metropolitan statistical area, and has a serious lack of mortgage credit for low- and moderate-income families, as determined by the Secretary of Agriculture and the Secretary of Housing and Urban Development. Any area classified as rural as a result of data received from or after the 1990 decennial census shall continue to be so classified until the receipt of data from the decennial census in the year 2000, if such area has a population in excess of 20,000 but not in excess of 25,000, is rural in character, and has a serious lack of mortgage credit for low- and moderate-income families. See 12 CFR 960.1(e).

(o) *Very Low-Income* means families and households whose income does not exceed 50 percent of the median income for the area.

§ 936.2 Statement of policy.

In this part, it is the purpose and policy of the Banks to:

(a) Provide funds to members for residential housing finance;

(b) Assure that member management and home financing policies are consistent with sound and economical home financing;

(c) Assist members in meeting the credit needs of the entire community where they do business, including low- and moderate-income neighborhoods, minority neighborhoods, and rural communities, consistent with safe and sound operation;

(d) Operate special financial and credit programs, such as the Affordable Housing and Community Investment Programs, to enhance the ability of members to provide community-oriented lending and affordable housing finance;

(e) Encourage members to address critical community investment and affordable housing needs in all areas, urban and rural;

(f) Treat community investment and affordable housing activities with equal priority as is given other credit activities of the Banks;

(g) Work in partnership with community groups, public interest organizations, individual citizens, and others in delivering financial services to all communities; and

(h) Advance high standards of community investment and service for members of Banks to maintain continued access to long-term advances.

§ 936.3 Bank community investment assistance to members.

(a) Each Bank shall provide timely notice to all members of offerings and activities of the Bank's Affordable Housing Program, Community Investment Program, and equivalent Bank programs to help members meet community investment and affordable housing finance needs.

(b) Not less than quarterly, the Bank's Community Investment Officers shall provide to all members a summary of community-oriented lending and affordable housing finance projects being undertaken by members within the Bank District. Information concerning activities of others may also be included. The purposes of the summary are to provide members with specific practical examples of innovative community-oriented lending and affordable housing finance, to facilitate the exchange of expertise and experience in meeting community credit needs, and to promote an expanded awareness of business opportunities inherent in community revitalization, development, and growth.

(c) Community Investment Officers and other appropriate Bank officials shall establish and maintain technical assistance programs to support community-oriented lending by members, promotional activities, and outreach programs to:

(1) Promote the use or expanded use of long-term advances, both special and regular, for community-oriented lending and affordable housing finance;

(2) Identify opportunities for members to expand financial and credit services in neighborhoods and communities that are underserved, particularly low- and moderate-income areas, minority neighborhoods, and rural communities;

(3) Increase community awareness of the resources of the Federal Home Loan Bank System; and

(4) Provide technical assistance to individual members.

(d) Community Investment Officers shall work in partnership with their Bank's Advisory Council in developing and implementing initiatives to increase the use of long-term advances for community-oriented lending and affordable housing finance.

§ 936.4 Finance Board support for Bank activities.

(a) The Finance Board shall provide the Banks with access to CRA examination reports of members that are received from financial regulatory agencies and other information required to carry out Bank responsibilities under this part.

(b) The Finance Board shall facilitate the prompt dissemination of data and information to and among the Banks.

(c) The Finance Board shall provide technical assistance, training, and promotional assistance to the Banks.

(d) The Finance Board will work with financial regulatory agencies to facilitate national, state, and local efforts to promote and monitor community-oriented lending, community reinvestment, affordable housing finance, and financial services for all communities.

§ 936.5 Bank review of member community activities.

(a) On an annual basis on a date set by the Bank, each Bank shall request and each member shall submit to the Bank, a statement of community support. This statement shall include a copy or summary of the member's most recent CRA statement, a copy of its most recent CRA rating, and any additional evidence of community support activities and record that the member chooses to submit, such as a description of special credit products for, and loan origination to, minority and first-time homebuyers. Members without a CRA rating, as defined in § 936.1(g) of this part, shall be required to submit to the Bank an annual statement of community support explaining the ways in which the member meets the objectives of the Community Reinvestment Act and otherwise helps meet the credit needs of its community, members, or customers.

(b) The Bank shall provide notice of receipt of members' community support statements to its Advisory Council and nonprofit and public interest organizations in the District. The notice shall include the member's most recent CRA rating. The entire community support statement need only be made available to the public upon request. Notice of availability to the public and a description of the request procedure shall be provided in the public notice.

(c) The Banks shall develop procedures that, at a minimum, enable the Banks to:

(1) Review the member's annual statement of community support to assess the member's performance in accordance with the measurement criteria of § 936.6 of this part;

(2) Determine whether a member continues to be eligible for access to long-term advances;

(3) Review a member's eligibility for special discounts and incentives available from the Bank;

(4) Refer a member for technical assistance by the Bank's Community Investment Officer or other appropriate Bank officials and departments;

(5) Review additional evidence of community support activities, or lack thereof, from the member or the public;

(6) Establish an open and fair review process to evaluate a member in accordance with § 936.6 of this part;

(7) Refer complaints concerning a member's community support activities to the appropriate regulatory agencies;

(8) Notify complainants of the disposition of their complaints; and

(9) Forward the results of the Bank's review of the member's community support performance to the Finance Board.

(d) Bank procedures should be developed in consulation with the Bank's Advisory Council established and maintained pursuant to § 936.14 of this chapter.

(e) A description of Bank procedures, a summary of activity in the preceding year, and projections for the coming year, shall be included in the community investment activities section in the Bank's annual budget plan submitted for Finance Board approval. For calendar year 1991, interim plans shall be submitted for Finance Board approval within 60 days of the effective date of this Part.

§ 936.6 Community support standards.

(a) Annual statements of community support shall be reviewed by the Bank to determine:

(1) That the member's credit policies and lending practices are consistent with the intent and purpose of CRA;

(2) That the member serves the convenience and needs of each of the communities in which it does business or, in the case of institutions not subject to CRA, the convenience and needs of its markets, customers, and members;

(3) That the member has a satisfactory record of lending to first-time homebuyers;

(4) That the member helps meet the credit needs of its entire community, market, customers, and members, including low- and moderate-income neighborhoods and individuals, minority neighborhoods and individuals, and urban and rural communities.

(b) The Bank may review the CRA rating of a member, using the same review standards as it uses for reviewing annual statements of community support, to determine if the rating continues to be an accurate assessment of the member's community support activities for purpose of this part. Such reviews may be undertaken in cooperation with the member's regulator. Bank determinations shall be supported by reasonable evidence and be subject to Finance Board review and approval.

§ 936.7 Incentive programs.

(a) Within the limits of safe and sound financial operation, each Bank shall adopt, subject to Finance Board review and approval, an incentive program for community support by members. The community support incentive program shall include discounts and/or preferred terms on long-term advances, except Affordable Housing Program advances, for members with outstanding records of community support. The Bank may in its discretion include such other incentives as it may adopt, subject to Finance Board review and approval.

(b) In designing and modifying the community support incentive programs, the Bank shall consult with its Advisory Council.

(c) A Bank's community support incentive program shall be in addition to

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and in further support of its Affordable Housing Program, Community Investment Program, and other special lending programs.

§ 936.8 Restrictions on access to long-term advances.

(a) No restrictions shall be placed on access to long-term advances by members with CRA ratings of "Outstanding" or "Satisfactory" or by members who have filed an annual statement of community support acceptable to the Bank, except as provided by § 936.8(e) of this part.

(b) Members with a CRA rating of "Needs to improve" or "Substantial noncompliance" shall be required within 30 days of notice received to submit to the Bank a community support action plan stating specific efforts that the member will undertake in the succeeding year to improve its community support activities to meet the requirements of this part. The plan shall include specific goals that the member has chosen to measure its performance under the plan.

(c) Members with a CRA rating of "Needs to improve" that fail to show demonstrable progress in community support activities after six months of experience with a plan shall only be allowed access to long-term advances for Community Investment Program and community-oriented lending purposes specifically approved by the Bank until the Bank recommends pursuant to § 936.8(i) of this part to the Finance Board that the member has made demonstrable progress in meeting the goals of its community support action plan.

(d) Members with a CRA rating of "Substantial noncompliance" shall only be allowed access to long-term advances for Community Investment Program and community-oriented lending purposes specifically approved by the Bank until the Bank recommends to the Finance Board, pursuant to § 936.8(i) of this part, that the member has made demonstrable progress in meeting the goals of its community support action plan.

(e) Members without a CRA rating that have not filed an annual statement of community support acceptable to the Bank and those CRA-rated members whose community support statements are found by the Bank to be unacceptable, shall be treated in the same manner as a member with a CRA rating of "Needs to improve" for purposes of this part.

(f) All members shall, at all times, be eligible to compete for the Affordable Housing Program as provided by part 960 of this chapter.

(g) Plans submitted by a member to a Bank shall include, at a minimum, the following elements:

(1) A statement of new and expanded community support activities that the member intends to undertake in the succeeding year;

(2) An explanation of how the plan meets the credit needs of the member's community or, in the case of credit unions, members;

(3) A statement of goals to be achieved at the end of the first six months of the plan and by the end of the first year of the plan; and

(4) A description of how the goals included in the action plan will be quantified and measured by the member, the Bank, its Advisory Council, the Finance Board, and the targeted communities.

(h) The Bank receiving the community support action plan from the member shall:

(1) Review the plan for completeness and appropriateness with regard to the member's community, or, in the case of credit unions, members;

(2) Establish, on at least a quarterly basis, a schedule of consultations with the member to review progress being made under the plan and the results achieved under the plan;

(3) Assist the member in establishing goals to be achieved for the member to have unrestricted access to long-term advances; and

(4) Forward a copy of the completed community support action plan and the Bank's recommendations to the Housing Finance Directorate of the Finance Board for review. The Finance Board shall approve or disapprove the Bank's recommendation within ten working days following receipt.

(i) The decision to permit a member subject to an action plan unlimited access to long-term advances shall be upon recommendation of the Bank based on a review of the member's record of community support, including loan products and originations, subject to Finance Board review and approval. Members, individuals and organizations in the member's community or, in the case of credit unions, customers, may be contacted by the Bank or the Finance Board for additional information concerning the member's community support activities.

(j) Restrictions in this § 936.8 may be waived by the Bank for reasons of financial safety and soundness upon a request by the member's financial regulator or other documented request by the member.

§ 936.9 Finance Board review and reporting.

(a) The Finance Board shall conduct an ongoing review of Bank programs to support community-oriented lending, affordable housing finance, and community investment activities by members.

(b) Bank community support programs and results shall be subject to examination by the Finance Board pursuant to 12 U.S.C. 1440.

(c) The Banks shall submit such program plans, operational assessments, and reports as the Finance Board may require from time to time or on a regular schedule.

(d) Pursuant to 12 U.S.C. 1430(j)(12) and 12 CFR 960.14, the Finance Board provides an annual report to Congress presenting the evaluations of the Advisory Councils to the Banks concerning the affordable housing activity of the Banks during the preceding year. Beginning with reports filed in 1992 and continuing each year thereafter, each Advisory Council will be encouraged to include an analysis of its Bank's community support activities in its report to the Finance Board. Beginning in 1992 and continuing each year thereafter, the annual Finance Board report to Congress shall include an analysis of Bank and Finance Board activity pursuant to the community support requirements of this part.

By the Federal Housing Finance Board.

J. Stephen Britt,

Executive Director.

[FR Doc. 91-13560 Filed 6-6-91; 8:45 am]

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OVERSIGHT BOARD

12 CFR Part 1507

Minority and Women Contracting Outreach Program

AGENCY: Oversight Board.

ACTION: Proposed rule

SUMMARY: This rule is proposed to establish in regulatory form an outreach program to ensure inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, in contracts entered into by the Oversight Board. Its purpose is to implement section 1216(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"). This action should ensure the participation of firms owned or controlled by minorities and women in Oversight Board contracting.

DATES: Comments must be received on or before July 8, 1991.

ADDRESSES: Comments may be mailed to Natalie Krivan, Oversight Board, 1777 F Street, NW., Washington, DC 20232.

FOR FURTHER INFORMATION CONTACT: Lawrence Hayes, Deputy General Counsel, telephone (202) 786-9681.

SUPPLEMENTARY INFORMATION:

Background

The Oversight Board was established as a corporate instrumentality of the United States by section 21A(a) of the Federal Home Loan Bank Act, 12 U.S.C. 1441a(a), added by section 501(a) of FIRREA. The Oversight Board's principal duty is to oversee the Resolution Trust Corporation ("RTC"), which was established under FIRREA principally to manage and resolve cases involving failing and failed thrift institutions. The Oversight Board develops and establishes overall strategies, policies, and goals for the RTC's activities, but does not exercise prior review, approval, or disapproval of the RTC's determinations and actions in case-specific matters involving individual case resolutions, asset liquidations, or the RTC's day-to-day operations.

Section 1216(c) of FIRREA requires the Oversight Board and other listed agencies, including the RTC, to "prescribe regulations to establish and oversee a minority outreach program within each such agency to ensure inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, including financial institutions, investment banking firms, underwriters, accountants, and providers of legal services, in all contracts entered into by the agency with such persons or entities, public and private, in order to manage the institutions and their assets for which the agency is responsible or to perform such other functions authorized under any law applicable to such agency."

The Oversight Board has established a minority and women outreach program for the Board's own contracting and has authorized its publication in regulatory form for public comment.

Scope

The proposed rule sets forth the Oversight Board's outreach program, which includes the following elements: Identification of minority and women owned firms capable of providing goods and services to the Oversight Board; certification of identified firms; promotion of the program; guidelines for the solicitation and award of contracts that promote the participation of minority and women owned firms in Oversight Board contracting; and oversight and monitoring of the program.

The Oversight Board's outreach program applies only to the contracting activities of the Board and does not apply to the contracting activities of the RTC, which is required by section 1216(c) of FIRREA to establish and oversee its own separate minority and women outreach contracting program.

The Oversight Board's contracting is for the acquisition of goods and services for its housekeeping functions, such as contracts for the purchase of office supplies and the maintenance of office equipment. Oversight Board contracts are normally small in cost, typically less than $25,000, and the total cost of all Oversight Board contracts from the enactment of FIRREA through May 31, 1991, has been less than $2.1 million, excluding expenditures for travel, space, utilities, and reimbursement of other agencies.

Executive Order 12291 and the Regulatory Flexibility Act

This proposed rule concerns agency management. It is not a regulation or rule for the purposes of Executive Order No. 12291. Although the Oversight Board is soliciting public comments, the Board is not required by section 553 of title 5, United States Code, or any other law to publish a general notice of proposed rulemaking for this rule, and the Oversight Board is not required to prepare a regulatory flexibility analysis pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

List of Subjects in 12 CFR Part 1507

Government contracts, Minority businesses, Women.

For the reasons set forth in the preamble, it is proposed to amend chapter XV of title 12 of the Code of Federal Regulations by adding new part 1507 to subchapter A to read as follows:

PART 1507—MINORITY AND WOMEN CONTRACTING OUTREACH PROGRAM

Sec.

1507.1 Purpose and scope.
1507.2 Definitions.
1507.3 Organizational responsibilities and staffing.
1507.4 Program components.
1507.5 Promotion.
1507.6 Solicitation and contract award guidelines.
1507.9 Oversight and monitoring.

Authority: 12 U.S.C. 1441a(a)(13); Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, sec. 1216(c), 103 Stat. 183, 529 (12 U.S.C. 1833e).

§ 1507.1 Purpose and scope.

(a) Pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law No. 101-73, sec. 1216(c), 103 Stat. 183, 529 (12 U.S.C. 1833e), this part establishes a minority outreach program to ensure inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, in all contracts entered into by the Oversight Board.

(b) The outreach program established by this part applies only to the contracting activities of the Oversight Board. The Oversight Board and the Resolution Trust Corporation are separate and distinct entities with different legal characteristics, contracting needs, and programs to perform their respective missions. Accordingly, this program does not cover the Resolution Trust Corporation, which has a separate outreach program.

§ 1507.2 Definitions.

For the purposes of this part:

(a) A *Minority/women owned business* or *M/WOB* or *M/WOB firm* means a firm that is at least fifty-one percent (51%) owned and controlled by one or more minority groups members and/or women. In the case of a publicly owned company, a minority/women owned group must own and control at least fifty-one percent (51%) of the firm's voting stock. Additionally, the management and daily business operations of the firm must be controlled by one or more minority group members and/or women if the firm is to be considered an eligible participant.

(b) *Minority* means any Black American, Native American, Hispanic American, or Asian American.

§ 1507.3 Organizational responsibilities and staffing.

The President of the Oversight Board shall appoint an Outreach Director, who shall be a full time officer or employee of the Oversight Board performing other duties for the Oversight Board (including a contracting officer), to establish and implement the program.

§ 1507.4 Program components.

(a) *Identification.* The first component of the program involves identifying M/WOB companies capable of providing goods and services to the Oversight Board. Because of the relatively small size of Oversight Board contracting activity, this "outreach" will be area-wide in scope, covering the Washington, DC area. Accomplishment of this segment of the program will involve the

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following activities by Oversight Board staff:

(1) Obtaining lists and directories of M/WOB firms maintained by other governmental agencies and instrumentalities;

(2) Participating in conventions, seminars, and professional meetings comprising or attended by M/WOB firms to explain Oversight Board contracting opportunities and obtain names of potential M/WOB contractors; and

(3) Publicizing that the Oversight Board wants to obtain names of potential M/WOB firms for contracting in newspapers, trade journals, and other communications media specifically directed to M/WOB firms.

(b) *Solicitation.* Once prospective contractors have been identified, they will be included in all Oversight Board education and information efforts concerning contracting opportunities and the operation of the Oversight Board's contracting database. The database will be used by Oversight Board staff to identify firms to be solicited for Oversight Board procurements.

(c) *Certification.* Immediately following the identification of minority and women owned businesses, such firms must certify their status as eligible participants in the outreach program. To preserve the integrity and foster the objectives of the program, the Oversight Board must satisfy itself that the ownership and control requirements for participation in the outreach program are fulfilled by M/WOB firms. Accomplishment of this segment of the program will involve the following:

(1) Developing certification procedures, including procedures for certifying M/WOB firms which have previously certified their status to other government agencies under criteria equivalent to the criteria under this program;

(2) Sending certification documentation to M/WOB firms for submission to the Oversight Board; and

(3) Reviewing certification documents to assure that participants are qualified for participation in the outreach program.

§ 1507.5 Promotion.

(a) This part of the outreach program will include:

(1) Ongoing promotion of the outreach program within the minority/women owned business community; and

(2) Ongoing promotion of the outreach program to firms interested in contracting with the Oversight Board which are not M/WOB firms ("non-M/WOB firms") to make such firms aware of the Oversight Board outreach program requirements.

(b) Ongoing promotional of this program within the M/WOB community is necessary to assure awareness of the outreach program by all eligible participants, including newly formed M/WOB firms, in order to maximize participation in the program. Promotion of this program among M/WOB firms will be achieved by:

(1) Developing a promotional campaign to inform the M/WOB community of the Oversight Board's contracting needs and the Oversight Board's commitment to involving M/WOB firms in Oversight Board contracting;

(2) Regularly participating in conferences attended by M/WOB firms to promote Oversight Board contracting opportunities;

(3) Cooperating with local agencies devoted to the promotion of minority and women owned businesses to promote Oversight Board contracting opportunities;

(4) Assisting eligible M/WOB firms in understanding and complying with Oversight Board contracting requirements;

(5) Assisting eligible M/WOB firms in understanding the with Oversight Board's contracting needs; and

(6) Assuring that all Oversight Board staff are knowledgeable about and promote this program.

(c) Promotion of the Oversight Board outreach program to non-M/WOB firms interested in contracting with the Oversight Board is necessary to make such firms aware that under the outreach program the Oversight Board will ensure inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, an entities owned by minorities and women, in all Oversight Board contracts, including contracts with non-M/WOB firms. Under this aspect of the program, the Oversight Board will inform firms that Oversight Board contract provisions will require the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, during contract performance. This aspect of the outreach program will be achieved by:

(1) Developing a promotional campaign to inform non-M/WOB firms interested in contracting with the Oversight Board of the Oversight Board's policies and procedures to ensure inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, in all Oversight Board contracts;

(2) Assisting non-M/WOB firms in understanding and complying with Oversight Board contracting requirements respecting inclusion of minorities and women, and entities owned by minorities and women, to the maximum extent possible; and

(3) Assuring that all Oversight Board staff are knowledgeable about this aspect of the program.

§ 1507.8 Solicitation and contract award guidelines.

Oversight Board contracting should be carried out so that Oversight Board contracts are awarded to M/WOB firms, and non-M/WOB firms which provide opportunities, to the maximum extent possible, for minorities and women, and entities owned by minorities and women, in Oversight Board contracts. Accomplishment of this objective will involve formulating guidelines directed to this objective which include:

(a) Considering the capabilities of M/WOB firms in formulating acquisition strategies, including, but not limited to, determining delivery schedules and the time for submission of offers or bids to facilitate offers from M/WOB firms;

(b) Including M/WOB firms interested in participating in the program, and which are certified as eligible to participate, in the Board's contracting database, which will identify eligible firms in each service category;

(c) Soliciting as many bids or quotes from eligible M/WOB firms in the area-wide database for each acquisition as is feasible under the circumstances; the contracting officer should solicit offers from non-M/WOB firms as well, but in any acquisition for which the contracting officer does not solicit bids from eligible M/WOB firms, the contracting officer must document the reasons therefore;

(d) Placing notices of upcoming Oversight Board acquisitions in newspapers and communications media direct to M/WOB firms, where feasible, in instances where solicitations are publicly advertised;

(e) Developing necessary contract provisions to ensure inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, in the performance of all Oversight Board contracts;

(f) Devoting necessary staff time and resources to an internal education program to raise the awareness of Oversight Board staff about the outreach program and the Oversight Board's commitment to maximizing the full participation of M/WOB firms, and non-M/WOB firms which provide opportunities, to the maximum extent possible, for the inclusion of minorities and women, and entities owned by minorities and women, in Oversight Board contracting; and

(g) Developing any additional procedures necessary to effectuate the goals of the outreach program.

§ 1507.9 Oversight and monitoring.

The Oversight Board recognizes that the success of this program involves commitment and leadership by senior management. The Oversight Board pledges the continuing involvement of Oversight Board staff, at all levels, to make this program a success. In order to achieve the program's objectives, all contracting staff will report the results of the program to the Outreach Director, including the number of M/WOB firms participating in the contracting process, the number of contracts awarded to M/WOB firms, and data concerning the inclusion of minorities and women, and entities owned by minorities and women, in M/WOB and non-M/WOB contracts. The Outreach Director, in turn, will regularly report to the President and the General Counsel of the Oversight Board regarding implementation of the program. The President and General Counsel of the Oversight Board, in turn, shall report to the members of the Oversight Board, annually or more frequently, regarding the implementation of the program.

Peter Monroe,

President.

[FR Doc. 91-13486 Filed 6-6-91; 8:45 am]

BILLING CODE 2222-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91-AGL-5]

Proposed Transition Area Establishment; Harbor Springs, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish the Harbor Springs, MI, transition area. A VOR-A Standard Instrument Approach Procedure (SIAP) has been developed to serve Harbor Springs Airport. The SIAP is predicted on the Pellston VORTAC. This proposed action would lower the base of controlled airspace from 1200 to 700 feet above the surface in the vicinity of the airport. The intended effect is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace. If approved, concurrent with the SIAP publication, the operating status of the airport will change from visual flight rules (VFR) to instrument flight rules (IFR).

DATES: Comments must be received on or before July 12, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL-7, Attn: Rules Docket No. 91-AGL-5, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Angeline Perri, Air Traffic Division, System Management Branch, Airspace Section, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7571.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91-AGL-5". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel 2300 East Devon Avenue, Des Plaines, Illinois both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area airspace near Harbor Springs, MI. The transition area is being established to accommodate a new VOR-A SIAP to Harbor Springs Airport, Harbor Springs, MI. This action would lower the base of controlled airspace from 1200 to 700 feet above the surface in the vicinity of Harbor Springs Airport. If approved, the operating status of the airport would change from VFR to IFR concurrent with the SIAP publication.

The development of the procedure requires that the FAA establish the designated airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA had determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule"

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under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that the rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Harbor Springs, MI [New]

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Harbor Springs Airport (lat. 45°25'20" N., long. 84°54'34" W.); excluding that airspace within the Pellston, MI, control zone and transition area.

Issued in Des Plaines, Illinois on May 28, 1991.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 91-13512 Filed 6-6-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 90-ANM-10]

Proposed Establishment of Temporary Restricted Area R-3203D Boise, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish temporary Restricted Area R-3203D Boise, ID, for the period August 3-17, 1991. The Idaho National Guard has requested the establishment of this temporary area to provide essential ground maneuvering space needed to meet increased annual training requirements. This temporary area would be established adjacent to an existing Restricted Area R-3203A Boise, ID.

DATES: Comments must be received on or before July 8, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANM-500 Docket No. 90-ANM-10, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98055-4056.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Rob Bellamy, Military Operations Program Office (ATM-420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9328.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic and energy aspects of the proposal. Send comments on environmental and land use aspects to: Deputy Chief of Staff Engineering, P.O. Box 45, Boise, ID 83707-4515. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-ANM-10." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 73 of the Federal Aviation Regulations (14 CFR part 73) to establish temporary Restricted Area R-3203D Boise, ID, adjacent to the existing Restricted Area R-3203A, in order to provide additional ground maneuvering space needed by the Idaho Army National Guard in conducting its annual training program. The proposed restricted area would be in effect only for the period August 3-17, 1991. Expansion in the number of gun batteries assigned to Field Artillery units, along with requirements that each assigned battery accomplish several moves per day to different surface firing points has created the need to temporarily expand the available restricted airspace to provide for more effective training. All artillery firing will be directed into the existing Artillery Impact Area located approximately in the center of Restricted Area R-3203A. The temporary restricted area is needed to provide protected airspace to contain the projectiles during flight between the surface firing point and entry into the existing Restricted Area R-3203A. The proposed temporary area would be used for Idaho National Guard Field Artillery firing and would be released to the Federal Aviation Administration for public use during periods it is not required for military training. Section 73.32 of part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The temporary restricted area proposed in this action would be in effect only from August 3 to August 17, 1991. The temporary restricted area, if established, would prohibit the flight of nonparticipating aircraft through the area, but would not direct nonparticipating aircraft to operate in any set or established route outside the restricted area. The National Guard Bureau and the Idaho National Guard (Guard) completed a Final Environmental Impact Statement on the Orchard Training Area Facilities and examined the environmental effects associated with the type of activity taking place within the restricted area. The Guard determined that none of the impacts of the actions occurring within the restricted area would significantly affect the environment. Finding that the proposed firing points in the proposed temporary restricted area would be farther from nesting areas, that the projectiles would be fired into existing artillery impact areas, and that noise impacts would be no greater than that currently caused by the existing firing points in the restricted area, the Guard determined that all of the possible environmental impacts of the proposed temporary restricted area were addressed in the Final Environmental Impact Statement. For more information concerning the Guard's finding, see the Airspace Docket.

Regulations of the Council of Environmental Quality provide for initiation of environmental review of agency actions at the earliest possible time in the agency decision-making process. Therefore, the FAA requests comments on the potential environmental effects, if any, of this proposed rule. These comments will be considered by the FAA in completing its environmental review of the proposal. This environmental review will be completed prior to the FAA rendering a final decision on the proposed rule.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 73 of the Federal Aviation Regulations (14 CFR part 73) as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.32 [Amended]

2. § 73.32 is amended as follows:

R-3203D Boise, ID [New]

Boundaries. Beginning at lat. 43°14'00" N., long. 116°16'30" W.; to lat. 43°17'51" N., long. 116°16'25" W.; to lat. 43°19'02" N., long. 116°14'45" W.; to lat. 43°19'02" N., long. 116°06'36" W.; to lat. 43°15'39" N., long. 116°00'38" W.; to lat. 43°15'00" N., long. 116°01'00" W.; to lat. 43°17'00" N., long. 116°05'00" W.; to lat. 43°17'00" N., long. 116°12'00" W.; to the point of beginning.

Altitudes. Surface to 10,000 feet MSL.

Times of use. As scheduled by NOTAM 24 hours in advance for the period August 3-17, 1991, only. Restricted area void after 2359 hours local time on August 17, 1991.

Controlling agency. FAA, Salt Lake City ARTCC.

Using agency. Army National Guard, Orchard, ID.

Issued in Washington, DC, on May 30, 1991.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 91-13511 Filed 6-6-91; 8:45 am]

BILLING CODE 4910-13-M

Coast Guard

33 CFR Part 100

CGD7 91-52

Regatta: Tampa Powerboat Challenge, Tampa Bay, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering adopting special local regulations for the Tampa Powerboat Challenge. This event will be held on Saturday, October 12 and Sunday, October 13, 1991 between 10 a.m. EDT and 7 p.m. EDT. The proposal is necessary to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: Comments must be received on or before July 8, 1991.

FOR FURTHER INFORMATION CONTACT: LT G.R. Johnson, Coast Guard Group St Petersburg, FL at (813) 824-7533

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD7 91-52) and the specific section of the proposal to which their comments apply, and give reasons for each comment. The regulations may be changed in light of comment received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this regulation are LT G.R. Johnson, project officer for Group St. Petersburg and LT G.G. Tanos, project attorney, Seventh Coast Guard District.

Discussion of Proposed Regulations

There will be approximately 40 power boats, ranging from 13 to 16 feet in length, engaged in tunnel boat racing around a one mile rectangular course. Seddon Channel will be closed to all marine traffic not participating in the race from the southern end of Harbour Island to the Platt Street Bridge. Traffic will be permitted to transit under the Platt Street Bridge in a southbound direction for transit around Davis Island. These proposed regulations are needed to provide for the safety of life during the Tampa Powerboat Challenge.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 CFR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the Seddon Channel area is primarily residential there will be no substantial interference with commercial traffic. Since the impact of this proposal is expected to be

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minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 100 of title 33, Code of Federal Regulations, as follows:

PART 100 [AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.35–TO752 is added to read as follows:

§ 100.35–TO752 Tampa Powerboat Challenge, Tampa Bay, Florida.

(a) *Regulated Area:* Seddon Channel is closed to all marine traffic not involved in the race from the southern end of Harbour Island to the Platt Street Bridge during the Tampa Powerboat Challenge. Traffic will be permitted to transit under the Platt Street Bridge in a southbound direction for transit around Davis Island.

(b) *Effective Dates:* This regulation becomes effective on: Saturday, October 12, 1991, at 9:30 a.m. EDT and terminates at 7:30 p.m. EDT; Sunday, October 13, 1991, at 9:30 a.m. EDT and terminates at 7:30 p.m. EDT.

(c) After termination of the Tampa Powerboat Challenge for each day, all vessels may resume normal operations.

Dated: May 24, 1991.

N.T. Saunders,

Captain, U.S. Coast Guard, Commander, Seventh Coast Guard District Acting.

[FR Doc. 91-13578 Filed 6-6-91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR PART 117

[CGD8-91-11]

Drawbridge Operation Regulations; Falgout Canal, LA

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is considering a change to the regulation governing the operation of the swing span bridge on LA 315, across Falgout Canal, mile 3.1, near Theriot, Terrebonne Parish, Louisiana, by permitting the draw to remain closed to navigation from 7 a.m. to 8 a.m. and from 3 p.m. to 4 p.m. on weekdays only, except holidays, and only during the months when local schools are in session. The primary purpose of this regulation is to provide school bus traffic undelayed passage during the school year. Presently, the draw opens on signal at all times.

This action will accommodate the needs of local school bus traffic and should still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before July 22, 1991.

ADDRESSES: Comments should be mailed to Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130-3396. The Comments and other materials referenced in this notice will be available for inspection and copying in room 1115 at this address. Normal office hours are between 8 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, at the address given above, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation may be changed in the light of comments received.

Drafting Information

The drafters of this regulation are Mr. John Wachter, project officer, and LT J.A. Wilson, project attorney.

Discussion of Proposed Regulation

Vertical clearance of the bridge in the closed to navigation position is 4.4 feet above high tide and 7.4 feet above low tide. Navigation through the bridge consists of tugs with tows, commercial fishing vessels and recreational craft. Data submitted by LDOTD show that from 7 a.m. to 8 a.m. and from 3 p.m. to 4 p.m., Monday through Friday, about 1.17 vessels pass the bridge per hour. During this same period, twelve school buses and approximately 200 vehicles cross the bridge. The few vessels that pass the bridge during the proposed regulated period should be able to plan their arrival at the bridge to avoid the scheduled closings with little or no inconvenience or added expense to them. This new regulation would become effective on August 15 and remain in effect through June 5. During summer months the regulation will not be in effect. This regulation will be of great benefit to the school bus operators, school children, motorists, and pedestrians in the community that use the bridge, and have no significant impact on navigation.

Federalism,

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under department of Transportation regulatory policies and procedures (44 FR 11034: February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that during the proposed regulated period there will be very little inconvenience to vessels using the waterway. In addition, mariners requiring the bridge openings are repeat users of the waterway and scheduling their arrivals to avoid the proposed regulated periods should involve little or no additional expense to them. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.s.g.5 of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking document.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.444 is added to read as follows:

§ 117.444 Falgout Canal.

The draw of the LA 315 bridge across Falgout Canal, mile 3.1, shall open on signal; except that from 15 August to 5 June, the draw need not be opened from 7 a.m. to 8 a.m. and from 3 p.m. to 4 p.m., Monday through Friday except holidays. The draw shall open on signal at any time for an emergency aboard a vessel.

Dated: May 24, 1991.

J.M. Loy,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 91-13575 Filed 6-6-91; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3962-5]

40 CFR Part 52

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule (IL 11-1-5124).

SUMMARY: USEPA is proposing to approve a request by Illinois to revise its State Implementation Plan (SIP) for ozone. This revision will reduce emissions of volatile organic compounds (VOC) from gasoline by requiring the reduction of its Reid Vapor Pressure (RVP) from June 1 to September 15, 1991. The intended effect of this action is to make reasonable further progress towards attainment of the ozone National Ambient Air Quality Standard (NAAQS) as expeditiously as practicable, as required under the Clean Air Act.

DATES: Comments must be received by July 8, 1991.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Randolph O. Cano at (312) 886-6036, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Regulation Development Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706.

Comments on this proposed rule should be addressed to: Jay Bortzer, Chief, Regulation Development Section, Regulation Development Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano or Cheryl Newton at (312) 886-6036 or 886-6081.

SUPPLEMENTARY INFORMATION: On February 15, 1991, the Illinois Environmental Protection Agency (IEPA) submitted a revision to its SIP to USEPA that revises Subpart Y: Gasoline Distribution, title 35 of the Illinois Administrative Code (IAC). Subpart Y, § 215.585, entitled "Gasoline Volatility Standards," prohibits persons from selling, supplying, or transporting from a bulk plant or terminal for use in Illinois, gasoline having an RVP greater than 9.0 pounds per square inch (psi), from June 1 through September 15, 1991.[1]

Background

On April 27, 1989, the Illinois Pollution Control Board (Board) accepted for hearing a proposed rule submitted by the Chicago Lung Association which limits the RVP of gasoline sold in Illinois during the applicable control period to 9.0 psi beginning in 1990. During the course of its rulemaking action, the Board split the gasoline volatility rule docket into two separate proposals, Docket (A) and Docket (B). In Docket (A) (R88-30(A)), the Board proposed a 9.5 psi volatility limitation statewide between July 1 and August 31 of each summer, beginning in 1990, and determined that an economic impact study need not be conducted. In Docket (B) (R88-30(B)), which proceeded on a separate track, the Board considered a 9.0 psi volatility limitation statewide; however, an economic impact study was required. On February 15, 1990, the Board adopted R88-30(A) as an amendment (§ 215.585) to Subpart Y: Gasoline Distribution, title 35 of the IAC through emergency rulemaking procedures. This regulation prohibited persons from selling, supplying, or transporting for use in Illinois gasoline from a bulk plant or terminal having an RVP greater than 9.5 pounds per square inch from July 1 through August 31, beginning in 1990. Illinois adopted revisions to the rule which were necessary for federal approval on March 22, 1990.[2] Illinois submitted these rules on April 6, 1990, and May 4, 1990, respectively.[3] On July 18, 1990, (55 FR 29200) USEPA approved Board's rule, as revised, for the period in which it was in effect.

As a result of the provisions of the emergency rulemaking, the State of Illinois was in a position whereby gasoline volatility in the summer of 1991 was left unregulated with the exception of the Federal Phase I standard of 10.5 psi. Phase II of the Federal fuel volatility standard will require 9.0 psi gasoline throughout the State of Illinois beginning in 1992. Therefore, on July 19, 1990, the Board initiated proposal R88-30(B) requiring a summertime gasoline volatility of 9.0 psi beginning in 1991. On January 10, 1991, following public hearings and comment periods, the Board adopted R88-30(B) and it is this regulation upon which USEPA is proposing action today.

Federal Preemption

On March 22, 1989, USEPA published a notice (54 FR 11868) taking final action on Phase I of the national regulation of RVP, to take effect beginning in 1989.

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[1] It should be noted that although the control period in the State's rule is from June 1 through September 15, 1991, under the preemption provisions of section 211(c)(4)(C) the State's rule will not be effective until its approval by USEPA.

[2] The revisions addressed two deficiencies noted by USEPA and corrected language in two other subsections where the February 15, 1990 rule, as published, inadvertently contained language from the first notice, rather than the final adopted rule.

[3] Pursuant to section 27(c) of the (Illinois) Environmental Protection Act and section 5.02 of the Illinois Administrative Procedure Act, the Board adopted R88-30(A) as temporary emergency rule for 150 days without utilizing the usual rulemaking procedural steps. In this case, the 150 days encompassed the regulatory control period of July and August of 1990 and allowed time for further consideration of volatility regulations for implementation in 1991. An economic impact study was completed on R88-30(B) and it is this rule, applicable for 1991, that is being acted upon today.

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The maximum allowable summertime RVP in Illinois under Phase I of the Federal regulation is 10.5 psi. (During July and August, the maximum allowable RVP in Illinois south of 40 degrees latitude is 9.5 psi.) Phase II of the Federal regulation was published on June 11, 1990, (55 FR 23657). Under Phase II of the Federal regulation, the maximum allowable summertime RVP in Illinois beginning in 1992 is 9.0 psi.

The USEPA regulation would normally preempt the State provision under section 211(c)(4) of the Clean Air Act (Act). However, section 211(c)(4)(C) of the Act provides for approval of State control of fuel or fuel additives if the control is part of the SIP and it is necessary to achieve the primary or secondary NAAQS for which the plan is in effect.

Criteria for Approval

Section 211(c)(4)(A) of the Act, in describing Federal preemption authority, states:

> Except as otherwise provided in subparagraph (B) or (C), no State (or political subdivision thereof) may prescribe or attempt to enforce, for the purposes of motor vehicle emission control, any control or prohibition respecting use of a fuel or fuel additive in a motor vehicle or motor vehicle engine—(i) if the Administrator has found that no control or prohibition under paragraph (1) is necessary and has published his findings in the Federal Register, or (ii) if the Administrator has prescribed under paragraph (1) a control or prohibition applicable to such fuel or fuel additive, unless (the) State prohibition or control is identical to the prohibition or control prescribed by the administrator.

Thus, in light of the Federal volatility rules, State control would normally be preempted. However, USEPA may still approve certain State provisions for limits on RVP of fuel where a finding under section 211(c)(4) is made which would authorize USEPA approval and, thus, eliminate the preemption problem. As set forth below, section 211(c)(4)(C) authorizes USEPA to approve into the SIP a State-adopted fuel control measure that would otherwise be preempted by USEPA national action if USEPA finds that the State control "is necessary to achieve" the standard that the SIP implements.

Section 211(c)(4)(C) of the Act, in setting forth the circumstances under which an exception to Federal preemption of State regulation may occur, states:

> A State may prescribe and enforce, for purposes of motor vehicle emission control, a control or prohibition respecting the use of a fuel or fuel additive in a motor vehicle or motor vehicle engine if an applicable implementation plan for such State under Section 110 so provides. The Administrator may approve such provision in an implementation plan, or promulgate an implementation plan containing such a provision, only if he finds that the State control is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements.

In the August 1, 1988, Federal Register (53 FR 30220) discussion of USEPA's approval of a State oxygenated fuels program in the Maricopa County, Arizona, SIP, USEPA interpreted this language as requiring the Agency to find that a fuel control requirement was essential to achieve timely attainment of the primary standard for carbon monoxide. USEPA said further that a fuel control measure may be "necessary" for timely attainment (1) if no other measures that would bring about timely attainment exist, or (2) if such other measures do exist and are technically possible to implement, but are unreasonable or impracticable.[4] Otherwise, no fuel control would ever be "necessary," since for any area there is at least one measure—namely, required shutdowns and prohibitions on driving—that would result in timely attainment of the NAAQS. It is doubtful that Congress would have intended to bar USEPA from approving State fuel controls into a SIP based on the availability of such drastic alternatives.[5]

USEPA has since taken action on numerous State RVP control measures based on its findings in the Maricopa County, Arizona, rulemaking, including Massachusetts (May 4, 1989, 54 FR 19173), Rhode Island and Connecticut (June 2, 1989, 54 FR 23650), New Jersey (June 16, 1989, 54 FR 25572), New York (June 21, 1989, 54 FR 26090), and, as mentioned previously, Illinois (July 18, 1990, 55 FR 29200). The Illinois regulation being addressed today serves to strengthen and extend the previous rule.

Evaluation of How the Illinois Revision Satisfies the "Necessary" Criterion

As a result of a suit filed by the State of Wisconsin under Section 304 of the Act (See 55 FR 20808), on January 18, 1989, USEPA was ordered to develop a Federal Implementation Plan (FIP) for the northeastern Illinois and northwestern Indiana portions of the Chicago-Gary-Lake County (IL), IL-IN-WI Consolidated Metropolitan Statistical Area. During negotiations that eventually resulted in a settlement agreement, USEPA proceeded to initiate work on a FIP on a schedule to meet the Court's original deadline. On July 11, 1989, USEPA published a Federal Register notice (54 FR 29093) containing a 1988 emissions inventory for the Chicago area and an Empirical Kinetic Modeling Approach (EKMA) modeling analysis of the area which predicted the level of emission reductions needed to achieve the ozone NAAQS. The EKMA modeling analysis indicates a VOC emission reduction target of 71 percent of the 1988 base year inventory.[6]

According to the State's submittal which utilized USEPA's MOBILE4 emission factor model for motor vehicle emissions, the 1988 statewide VOC emissions from gasoline related point, area, and mobile sources were approximately 2,012 tons per summer day (TPD). In 1988, when USEPA's Phase I rule went into effect, VOC emissions dropped to 1,549, TPD. In 1990, under the State's emergency rule, emissions fell to 1,279 TPD. In 1991, without the Docket B proposal, USEPA Phase I RVP limits would be in effect and the emissions are estimated to be 1,432 TPD. If the Docket B proposal is enacted, however, reducing the volatility of gasoline from 10.5 to 9.0 from June 1 to September 15, 1991, VOC emissions would be approximately 1,129 TPD, a reduction of over 300 TPD, or 15 percent of the 1988 statewide VOC gasoline-related emissions inventory. For the Chicago area, gasoline-related emissions under the Board's rule would drop from 850 TPD to 630 TPD. This reduction estimate amounts to approximately 8.7 percent of the total 1988 VOC inventory in the Chicago area as determined during the preparation of the FIP.

The VOC strategies identified by USEPA during development of the ozone FIP for the Chicago CMSA as having the greatest potential for significant future VOC reductions are:

Measure	Tons reduced (TPD)[7]	Percent of 1988 Chicago area inventory
Reducing RVP from 10.5 to 9.0	222.7	8.7
Generic rule for non-CTG sources	131.5	5.2

[4] Although the 9th Circuit Court of Appeals vacated this SIP approval on other grounds, the Court did not comment adversely on USEPA's findings related to Federal preemption. (See *Delaney* v. *USEPA*, 9th Cir. No. 89-7000, Slip Op., March 1, 1991.)

[5] The 1990 amendments to the Clean Air Act specifically incorporate these concepts into amended section 211(c)(4)(C).

[6] As part of the settlement agreement, a more sophisticated air quality modeling study is being conducted in the Chicago area over a four year period. However, USEPA is rulemaking on a State's volatility regulation using the best information currently available.

Measure	Tons reduced (TPD)[7]	Percent of 1988 Chicago area inventory
Motor vehicle and mobile equipment non-assembly coating operations	47.1	1.8
Automobile refueling (Stage II)	37.7	1.5
Architectural surface coatings	38.9	1.5
Volatile Organic Liquid Storage	33.3	1.3
Surface coating of miscellaneous metal parts and products	29.8	1.2
Surface coating of paper, fabric and film	22.5	0.9
Graphic Arts	15.4	0.6
Solvent metal cleaning	8.2	0.3
Petroleum refinery wastewater treatment	3.2	0.1
Total	590.8	23.1

[7] Reductions reflect the cumulative benefit of each measure in the near term (i.e., reductions achieved by the year 1995 relative to the 1988 base year levels.) The emission reductions are based on 100 percent rule effectiveness. Actual effectiveness for certain rules may vary between 80 and 100 percent, and the potential emission reductions would be lessened accordingly.

No other possible categories of available controls individually appear to yield reductions of more than one percent of the 1988 VOC inventory. Further, the cumulative total of: (1) The other control strategies, if found practicable, (2) the above controls, if all controls were 100 percent effective, and (3) existing control programs (i.e., USEPA's Federal Motor Vehicle Control Program, Phase I National RVP control, and the recently promulgated National Emission Standard for Hazardous Air Pollutants for benzene (54 FR 38044)) yield approximately a 47 percent reduction. This leaves at least a 24 percent shortfall from the reduction target of 71 percent noted above.

The State regulation to reduce RVP to 9.0 psi from the current Federal limit of 10.5 psi from June 1 to September 15, 1991 would obtain reductions of approximately 300 TPD Statewide and 220 TPD in the Chicago area. Therefore, even with USEPA's Phase II RVP regulation requiring control to 9.0 psi beginning in 1992, the State regulation will still have a significant impact. It will provide approximately an additional 15.0 percent reduction in gasoline-related VOC emissions Statewide during 1991 beyond the current Federal reduction, based on the 1988 emissions inventory.

Thus, Illinois' RVP program meets the appropriate test of being "necessary" to achieve attainment of the ozone NAAQS. The fact that the State RVP regulation might not by itself fill the remaining shortfall, and hence, by itself achieve the standard, does not mean the rule would not be "necessary" to achieve the standard within the meaning of section 211(c)(4)(C).

USEPA believes that if Congress had intended USEPA to approve a State fuel-content rule only if it were necessary and sufficient to achieve the standard, then it would have used that language in section 211(c)(4)(C). USEPA believes that the "necessary to achieve" standard must be interpreted to apply to measures which are needed to reduce ambient levels (thus bringing the area closer to achieving the NAAQS) when no other reasonable measures are available to achieve this reduction. A contrary application of "necessary to achieve" in this situation would mean that measures which result in significantly improved air quality are nonetheless unacceptable (even though no other reasonable measures are available) just because they are insufficient to actually result in attainment.[8]

Necessity of State-wide Regulation

Illinois' submittal demonstrated that the State must apply the RVP rule on a state-wide basis for several reasons. Two urban areas of the State are now classified as nonattainment. Because the nonattainment areas are located geographically in different portions of the State, Illinois logistically had to make the rule apply on a state-wide basis in order to maximize the use of 9.0 RVP gasoline and insure compliance in the nonattainment area without producing supply and distribution problems throughout the State.

While the benefits associated with controlling VOC emissions in nonattainment areas are apparent, reducing these emissions in attainment areas are also beneficial. Ozone is a regional concern because VOC emissions originating in one area may be transported through the atmosphere and adversely affect air quality in another area. This phenomenon may cause VOC emissions in attainment areas to increase ozone levels in nonattainment areas—such as the Chicago area or the Metro-East area of the State near St. Louis, Missouri.

Thus, reducing VOC emissions in attainment areas may help reduce ozone levels in nonattainment areas. USEPA's evaluation of this SIP is presented in the Technical Support Document (TSD) that is available for public inspection at the Regional Office listed in the ADDRESS section of this document.

[8] The 1990 Amendments to the Clean Air Act specifically state that USEPA can approve a SIP revision under section 211(c)(4)(C) even in the absence of an attainment demonstration.

Enforceability

In its comments to the Board, the State has committed to perform RVP inspection at all the refineries, gasoline terminals and bulk storage facilities in the State and 15 percent (about 500) of the service stations in the Chicago and Metro-East St. Louis nonattainment counties. Depending upon how much of the analytical laboratory work is contracted out, the State estimates the cost of the enforcement program to be between $450,000 and $600,000. USEPA finds these commitments to be acceptable.

Proposed Rulemaking Action

USEPA is proposing to approve this revision to the Illinois SIP for ozone to control gasoline volatility. USEPA is also proposing to make a finding that this SIP revision meets the requirements of section 211(c)(4)(C) of the Act for an exception to Federal preemption.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 152

Air Pollution Control, Environmental Protection Agency, Hydrocarbons, Intergovernmental relations, Ozone.

Authority: 42 U.S.C. 7401–7642.

Identification of Action: Proposed Rule incorporating a seasonal Gasoline Volatility Restriction on the Illinois SIP IL 11–1–5124.

Dated: April 19, 1991.

Ralph Bauer,

Deputy Regional Adm.

[FR Doc. 91-13526 Filed 6-6-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Docket No. 91-24]

Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Korea Trade

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission, in response to apparent unfavorable conditions in the foreign oceanborne trade between the United

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States and Korea, proposes the imposition of fees on Korean-flag vessels calling at United States ports. Korean law and regulations preclude U.S. carriers operating in the U.S./Korea trade from engaging in trucking activities and directly contracting for rail services in Korea. The effect of the rule will be to adjust or meet unfavorable conditions created by those laws and regulations by imposing countervailing burdens on the Korean-flag carriers.

DATES: Comments due on or before August 2, 1991.

ADDRESSES: Send comments to:

Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT:

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION:

Background

Section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b) ("section 19"), authorizes and directs the Federal Maritime Commission ("Commission" or "FMC") to—

> make rules and regulations affecting shipping in the foreign trade not in conflict with law in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade, whether in any particular trade or upon any particular route or in commerce generally, including intermodal movements, terminal operations, cargo solicitations, forwarding and agency services, non-vessel-operating common carrier operations, and other activities and services integral to transportation systems, and which arise out of or result from foreign laws, rules, or regulations or from competitive methods or practices employed by owners, operators, agents, or masters of vessels of a foreign country * * *.[1]

The rules and regulations the Commission is authorized to make include limitation of sailings, suspension of carriers' tariffs or rights to use conference tariffs, suspension of carriers' rights to operate under FMC-filed terminal and other agreements, fees of up to $1,000,000 per voyage, or any other action deemed necessary and appropriate to adjust or meet the unfavorable condition. 46 U.S.C. app. 876(9).[2]

The Commission has been closely monitoring the commercial and inter-governmental negotiations over the concerns of U.S.-flag carriers in the oceanborne trade ("Trade") between the United States and the Republic of Korea ("ROK" and "Korea"), including U.S.-ROK discussions held in June 1990 and January 1991. The Commission has also inquired directly of U.S. and Korean carriers in the Trade, via the reporting mechanisms of section 10002(d) of the Foreign Shipping Practices Act of 1988, 46 U.S.C. app. 1710a ("FSPA"), and section 15 of the Shipping Act of 1984, 46 U.S.C. app. 1714 ("1984 Act") as to ROK restrictions on U.S. carrier operations in the Trade. Section 15 Orders were issued regarding Korean restrictions on April 14, 1987; notices requesting supplemental information were issued on March 28, 1988, and August 23, 1988; and information demand orders pursuant to the FSPA and the 1984 Act were issued on November 29, 1990 ("November 1990 Orders").[3]

Discussion

The Commission has concluded, on the basis of information reported and comments received,[4] that despite the commercial and governmental efforts expended, assurances made, and time elapsed, it appears that restrictive practices continue to impede the Trade such that Commission action can no longer be postponed. The Commission has determined that rules to meet these conditions are therefore appropriate. Specifically, the Commission finds that by operation of Korean laws and regulations, U.S. carriers appear to be precluded from operating trucking activities in Korea and from directly contracting for rail services in Korea as part of intermodal movements in the Trade. To this end, the Commission is proposing herein ("Proposed Rule") that certain Korean-flag carriers pay a fee of $100,000 per voyage, upon delivering cargo to or receiving cargo at U.S. ports.

[1] The references to intermodal services and other transportation system activities and services were added by Public Law 101–595, section 108 of the Federal Maritime Commission's Authorization Act of 1990, November 16, 1990 ("1990 section 19 Amendments"). The effect of these amendments was to codify the Commission's prior interpretations of section 18. H.R. Rep. No. 101–430, 101st Cong., 2nd Sess. 8 (1990); S. Rep. No. 101–430, 101st Cong., 2nd Sess. 7 (1990).

[2] Paragraph 9 was also added by the 1990 section 19 Amendments.

[3] The November 1990 Orders were issued to Hanjin Shipping Company, Ltd. ("Hanjin"), Hyundai Merchant Marine Co., Ltd. ("Hyundai"), American President Lines, Ltd. ("APL"), and Sea-Land Service, Inc. ("Sea-Land").

[4] The Commission received reports from Hanjin, Hyundai, APL and Sea-Land, as well as comments from the Council of European and Japanese National Shipowners' Associations ("CENSA") and An-Mar International. The latter were in response to a Commission Notice published in the Federal Register on December 5, 1990.

Trucking

The information available to the Commission indicates that trucking rights of U.S. carriers continue to be impeded by the ROK through its Ministry of Transport ("MOT") and Ministry of Finance ("MOF"). It is the Commission's understanding that an MOT license to engage in trucking operations in Korea is not obtainable because of MOF guidelines, which list freight trucking among business categories in which foreign investment is prohibited.

The Korean-carrier responses to the November 1990 Orders confirm not only the existence of this restriction but also the fact that the MOT is empowered but has as yet failed to take action to resolve the matter. Hanjin explained that "trucking operations by U.S.-flag carriers have been restricted in Korean on grounds that the Korean trucking industry is in a weak condition." Hanjin Report at 2.[5] Hanjin asserted there has been "gradual progress toward the opening of trucking operations in Korea," and that the ROK "intends to permit foreign carriers, including U.S. carriers, to participate in shuttle trucking between on-dock terminal and off-dock CY or rail ramp in the Port of Pusan * * *." Hanjin Report at 2. Hyundai stated that the MOT "has taken this matter under consideration" and that the ROK "has been trying to solve this problem" since the June 1990 maritime consultations. Hyundai Report at 4. Hyundai describes MOT's recent decision "in principle" to issue licenses to U.S. carriers for shuttle services as "the initial stage of MOT's measures in connection with its effort to resolve this matter." Hyundai Report at 5.[6]

Thus, it is uncontroverted that U.S. carriers in Korea are intentionally precluded by operation of Korean law and regulations from engaging in trucking operations—activities in which Korean carriers can and do engage in the United States. ROK actions to resolve this matter appear at this point to be limited to vague indications of future progress (the Agreed Minutes refer at 2 to the ROK's 'intention to open trucking in Korea on a gradual basis")

[5] This is consistent with the Agreed Minutes of the June 25 and 26, 1990, U.S.-ROK maritime consultations, which state: "The Korean side explained that in view of the weak and uncompetitive domestic trucking business, it is very difficult to allow foreign competition in the immediate future."

[6] A related issue raised by CENSA concerns the alleged Korean prohibition on imports of foreign made chassis, forcing steamship companies to purchase Korean chassis which are already in short supply. CENSA Comment at 2.

and assurances that shuttle services will be permitted within 1991. The latter concession, even if it materializes, would not appear to address the main concern, which is the right of U.S. carriers "to pick up and deliver containers at the premises of Korean shippers and consignees" as part of their intermodal operation in the Trade. Sea-Land Report at 2.

The Commission concludes that these circumstances suggest the existence of unfavorable conditions in the Trade generally and on intermodal movements in particular, within the meaning of section 19. The Commission recognizes that there may be justifiable, minor impositions or inconveniences imposed on foreign business operations in any given country due to legitimate national or local concerns and customs. The effect of the ROK restrictions of U.S. carrier trucking activities, however, is a total ban on an integral aspect of intermodal transportation which the Commission cannot dismiss as a mere way of "doing business."

Rail Access

The U.S. carriers advised that they continue to be precluded from contracting directly with the Korean National Railroads Administration ("KNRA"). Only rail forwarders are permitted direct contracting authority with the KNRA. There are conflicting reports as to whether this restriction applies to Korean as well as U.S. carriers. Hanjin and Hyundai, in their responses to the November 1990 Orders, asserted that the restrictions apply to all shipping companies, including Korean. Hanjin Report at 3; Hyundai Report at 5. Other reports indicated that Korean carriers are eligible to contract directly with the Korean railroads. Sea-land Report at 5; APL Report at 3–4; CENSA Comment at 2.[7]

In any event, it is uncontroverted that U.S. carriers are forced by operation of Korean law to engage the services of Korean middlemen to gain access to rail transportation. There is no apparent comparable restriction of Korean carriers operating in the United States. Sea-Land estimates that its inability to contract directly with KNRA costs it approximately $220,000 annually. Sea-Land Report at 5. It is further understood that as a result of the Janaury 1991 U.S.-Korea consultations, the KNRA has agreed to permit foreign carriers to directly contract for rail services.[8] Both Hanjin and Hyundai in their responses to the November 1990 Orders indicated that easing of restrictions in rail access will be tied to the trucking issue.[9]

The Commission's optimism over this most recent concession is tempered somewhat by its recollection of the Agreed Minutes of the May 1987 U.S.-Korea shipping discussions. Those Minutes contain Korean assurances that U.S. carriers would be permitted "at the earliest possible date in 1988" to operate branch offices in Korea which would control services then provided by Korean agents—services which specifically included "direct negotiation with railroads." Thus, while the Commission would like to rely on these most recent commitments by the ROK, we are dissuaded from doing so in light of the as yet unrealized previous assurances.

Other Issues

While the rule proposed herein is premised on the existence of ROK laws and practices restricting trucking and rail activities, the Commission continues to be concerned about other Korean impediments to commerce in the Trade. U.S. carriers are precluded from owning and operating container terminals at the Port of Pusan. Prior commercial negotiations covering phased development at Pusan had led U.S. carriers to believe that future terminal ownership there was a possibility. Sea-Land Report at 7. The Korean carriers have since indicated that the ROK has determined to keep Pusan a "public sector" operation and that private terminal ownership—for both U.S. and Korean carriers—will be pursued in plans for the Port of Kwangyang.

This turn of events was confirmed in the January 1991 discussions and in Korea Maritime and Port Administration ("KMPA") Administrator Kong Hyuk, Ahn's December 1990 letter to FMC Chairman Christopher L. Koch. Mr. Ahn indicated that the Kwangyang project has been given renewed priority by the ROK.[10] U.S. carriers, however, have deemed Kwangyang inadequate to their needs because of insufficient rail and highway facilities and the long-term nature of the project. APL Report at 4; Sea-land Report at 7. U.S. carriers are also barred from owning terminal equipment in Korea, a matter which the KMPA indicates will be resolved when the terminal ownership and trucking issues are resolved.

Despite its decision not to impose sanctions at this time with respect to these issues, the Commission remains concerned with the lack of action on these matters. The Commission is hopeful that progress will result from easing of rail and trucking restrictions, as well as from further efforts by the ROK to address its port congestion problems. To this end, the Commission will continue to monitor developments pertaining to container terminal and terminal equipment operation and ownership.

The Commission also wishes to acknowledge the progress that has been achieved in other areas. Discriminatory port charges have apparently been eliminated.[11] Branch offices for U.S. carriers have been established, with resulting savings for one U.S. carrier reported at $3 million annually in sales agency commissions. Sea-Land Report at 3. However, the range of branch office activities continues to be curtailed by ROK law, particularly with respect to rail and trucking.

In proposing remedies, the Commission is desirous that a resolution of the rail and trucking issues will be achieved in short order so that the need for sanctions will be obviated. The Commission wishes to emphasize, however, that it is wary of changes in Korean law or policy which on their face appear corrective but which have no practical effect because of other ROK laws, policies, rules or regulations. The Commission is seeking to achieve the elimination of restrictive practices in the Trade, not to encourage empty administrative or legislative actions which are negated by other overriding factors. For example, a determination

[7] It may be that Korean carrier contacts with the KNRA are facilitated because of carrier affiliations with the authorized forwarders. The Commission would particularly invite comment on this issue in comments to the Proposed Rule.

[8] This would appear to support the contention that current ROK restrictions on rail contracting are tied, directly or indirectly, to nationality.

[9] Hanjin stated that direct rail contracts will be permitted of "foreign carriers who are licensed to operate trucks in Korea." Hanjin Report at 3. Hyundai reported that the ROK "is now developing plans to enable American carriers to negotiate and contract directly with KNRA," and that "this will be coordinated with further liberalization in the trucking area." Hyundai Report at 6, emphasis in original.

[10] Mr. Ahn's letter states that "adverse public opinion," a shortage of berth capacity, and the likelihood of Korean, U.S., and other carriers seeking terminal ownership, all "force us to conclude that Pusan Port must be run by public sector to optimize its efficiency. However, in the case of Kwangyang terminal, which is to take some of the increasing container freight traffic currently concentrated at Pusan Port, the possibilities for private investment and privately-leased terminal operations are under scrutiny."

[11] Mr. Sung-Soo Kim, Maritime Attache for the Embassy of the Republic of Korea, advised FMC Chairman Koch by fax message on April 3, 1991, that port service charge discounts extended to Korean carriers were eliminated as of April 1, 1991. Furthermore, equal treatment with regard to pilotage fee and pilot boat charge will be applied, effective on April 8, 1991.

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that foreign-flag status will no longer bar a carrier from direct rail contracting authority will not be deemed to resolve the rail issue, if trucking authority remains a criterion for rail contracting authority and if foreign companies remain unable to engage in trucking operations. Similarly, the Commission will not consider the trucking and rail restrictions to have been lifted if the purported resolutions are tied to future action on other issues, such as container terminal ownership, so that actual liberalization remains illusionary.

After giving consideration to all available countervailing sanctions, including limitations of sailings and suspension of carrier tariffs or terminal or other agreements to which the carriers are party, the Commission has determined to propose a primary remedy of a $100,000 per voyage fee. However, the Commission specifically solicits comment on the feasibility of additional or alternative potential sanctions. In the event that the presently prescribed fees are not paid, the Proposed Rule does provide for the suspension of tariffs and denial of clearance from or access to U.S. ports.

In order to provide proper notice and a fair opportunity to respond to the proposed action, the Commission is giving all interested parties until August 2, 1991, to file comments concerning the proposed sanctions and any recent developments affecting conditions in the Trade. This should provide adequate time for the reporting of any concrete progress resulting from U.S.-ROK maritime consultations currently scheduled for the week of July 8, 1991. Factual submissions relating to conditions in the Trade, where relevant, should include evidence or statistics showing commercial loss and to the extent possible be supported by sworn documents and affidavits.

The responses to the Commission's November 1990 Order and comments filed by Hanjin, Hyundai, APL and Sea-Land, and the responses to the simultaneous **Federal Register** notice filed by CENSA and An-Mar International, are made part of the record herein.

List of Subjects in 46 CFR Part 586

Cargo vessels; Exports; Foreign relations; Imports; Maritime carriers; Penalties; Rates and fares; Tariffs.

Therefore, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b), as amended, Reorganization Plan No. 7 of 1961, 75 Stat. 840, and 46 CFR part 585, it is proposed to amend part 586 of title 46 of the Code of Federal Regulations as follows:

PART 586—[AMENDED]

1. The authority citation for part 586 is revised to read as follows:

Authority: 46 C.F.R. app. 876(1)(b); 46 U.S.C. app. 876 (5) through (12); 46 U.S.C. app. 1710a; 46 CFR Part 585; Reorganization Plan No. 7 of 1961, 26 FR 7315 (August 12, 1961).

2. A new section is added to read as follows:

§ 586.5 Conditions unfavorable to shipping in the United States/Korea trade ("Trade")

(a) Conditions Unfavorable to Shipping in the Trade. (1) The Federal Maritime Commission ("Commission") has determined that the Government of the Republic of Korea ("ROK" or "Korea") has created conditions unfavorable to shipping in the foreign trade of the United States by enacting, implementing and enforcing laws and regulations which unreasonably preclude U.S.-flag carriers from engaging in trucking operations in Korea and from directly contracting for rail service in Korea incidental to intermodal commerce in the Trade.

(2) Under Korean law, entities desiring to engage in trucking operations in Korea must obtain a license, but said license is not issued to foreign companies because foreign investment in freight trucking is prohibited. After considerable commercial and inter-governmental negotiation, ROK movement on this issue has been limited to a recent announcement that foreign carrier participation in shuttle trucking between terminal and container yard or rail ramp will soon be permitted. There has been no ROK concession as to the essential need of U.S. carriers to engage in trucking operations to and from inland origin and destination points. Korean carriers face no similar restrictions in their intermodal operations in the United States. In addition, this lack of trucking authority has been cited by the ROK as justification for barring U.S. carriers the right to contract directly with railroads for rail access and to own terminal operating equipment.

(3) ROK law also prevents U.S. carriers from contracting directly with the Korean National Railroads Administration. U.S. carriers are forced to contract with railroads through the intermediary services of licensed forwarders, at considerable expense to the U.S. carriers. Recent Korean assurances that these restrictions will be lifted have not as yet been carried out. No such restrictions on Korean carriers exist in their operations in the United States.

(b) Korean-flag carriers—assessment of fees. (1) Generally, voyage means an inbound or outbound movement between a foreign country and the United States by a vessel engaged in the United States trade. Each inbound or outbound movement constitutes a separate voyage. For purposes of this section, the transportation of cargo by water aboard a vessel or vessels, inbound or outbound between ports in Korea and ports in the United States, including transshipment points, under one or more bills of lading issued by or on behalf of the Korean-flag carriers named in paragraph (b)(2) of this section, whether on board vessels owned or operated by the named carriers or in space chartered by the named carriers or in space chartered by the name carriers on vessels owned or operated by others, or carried for the account of the named carriers pursuant to agreements on file with the Federal Maritime Commission, under any of the tariffs enumberated in paragraph (b)(4) of this section, shall be deemed to constitute a voyage.

(2) For each voyage completed after the effective date of this section, the following carriers shall pay to the Federal Maritime Commission a fee in the amount of $100,000: Hanjin Shipping Co., Ltd. and Hyundai Merchant Marine Co., Ltd. The fee for each voyage shall be paid by certified or cashiers check made payable to the Federal Maritime Commission within 7 calendar days of the completion of the voyage for which it is assessed.

(3) Each Korean-flag carrier named in paragraph (b)(2) of this section shall file with the Secretary of the Federal Maritime Commission a report setting forth the date of each voyage completed, amount of cargo carried, and amount of fees assessed pursuant to paragraph (b)(2) of this section during the preceding calendar quarter. Each such support report shall include a certification that all applicable fees assessed pursuant to paragraph (b)(2) of this section have been paid, and shall be executed by the Chief Executive Officer under oath. Such reports shall be filed within 15 days of the end of each calendar quarter.

(4) If any Korean-flag carrier shall fail to pay any fee assessed by paragraph (b)(2) of this section within the prescribed time for payment, or fail to file any quarterly report required by paragraph (b)(3) of this section within the prescribed period for filing, the tariffs identified below, as applicable to such carrier, shall be suspended effective 30 calendar days after the expiration of the calendar quarter in which such fees or report were due:

(i) Hanjin Shipping Company, Ltd.

FMC No. 13—Canada/U.S.A. Freight Tariff No. 13, Applicable Between Ports in Canada and U.S. Pacific Coast Ports.
FMC No. 15—Freight Tariff FMC No. 15, Applicable Between Ports in Japan and Ports and Points in the United States.
FMC No. 16—Local and Intermodal Freight Tariff FMC No. 16, Applicable Between Ports/Points in the Far East and Ports and Points in the United States.
FMC No 17—Equipment Interchange Tariff Naming Terms and Conditions Governing Use of Carrier Equipment.
FMC No. 18—Westbound Local and Intermodal Freight Tariff FMC No. 18, Applicable Between Ports and Points in the United States and Ports and Points in the Far East.

(ii) Hyundai Merchant Marine Co., Ltd.

FMC No. 1—Freight Tariff FMC No. 1, Applicable Between Ports in the Far East and United States, Hawaii and Puerto Rico.
FMC No. 2—Freight Tariff FMC No. 2, Applicable Between Ports in Australia and South Pacific Islands and Pacific Coast Ports of the United States, Canada and Hawaii.
FMC No. 12—Southbound Intermodal Freight Tariff No. 12, Applicable Between U.S. Atlantic and Gulf Rail Terminals and Australia, New Zealand and South Pacific Islands.
FMC No. 14—Service Contract Tariff No. 14, Naming Essential Terms and Services as Provided in Service Contracts on File with the Federal Maritime Commission.
FMC No. 18—Eastbound Local/OCP and Intermodal Rules Tariff No. 18, Applicable Between Ports and Points in Korea, Taiwan, Hong Kong, Thailand, Singapore, Malaysia, Philippines and Indonesia and Ports and Points in the United States.
FMC No. 19—Eastbound Local/OCP/and Intermodal Freight Tariff No. 19, Applicable Between Ports and Points in Korea and Ports and Points in the United States.
FMC No. 20—Easbound Local/OCP/ and Intermodal Freight Tariff No. 20, Applicable Between Ports and Points in Taiwan, Hong Kong and Ports and Points in the United States.
FMC No. 21—Eastbound Local/OCP/and Intermodal Freight Tariff No. 21, Applicable Between Ports and Points in Thailand, Singapore, Malaysia, Philippines and Indonesia and Ports and Points in the United States.
FMC No. 22—Eastbound Rules Tariff FMC No. 22, Applicable Between Ports and Points in Japan and Port and Points in the United States.
FMC No. 23—Eastbound Tariff FMC No. 23, Applicable Between Ports and Points in Japan and Ports and Points in the United States.
FMC No. 30—Ocean and Intermodal Freight Tariff No. 30, Applicable Between Ports and Points in the United States and Ports and Points in the Far East.

(iii) Any other tariff which may be filed by or on behalf of the carriers listed in paragaph (b) of this section.

(iv) In the event of suspension of tariffs pursuant to this paragraph, any affected conference or rate agreement tariffs shall be amended to reflect said suspensions. Operations by any carrier under suspended, cancelled or rejected tariffs shall subject said carrier to all applicable remedies and penalties provided by law.

(c) Source of fees. Any fees assessed by paragraph (b)(2) of this section against Korean-flag carriers operating pursuant to any agreement filed with the Federal Maritime Commission providing for revenue pooling, joint service, space-chartering or other joint operations shall be paid by such Korean-flag carriers without affecting the revenue shares or amount of revenue earned by other carriers operating pursuant to such agreements.

(d) Refusal of Clearance by the Collector of Customs. If a named Korean-flag carrier shall fail to pay any fee assessed by paragraph (b)(2) of this section, or fail to file any quarterly report required by paragraph (b)(3) of this section within the prescribed period for filing, the Secretary of the Commission shall request the Chief, Carrier Rulings Branch of the U.S. Customs Service to direct the collectors of customs at the affected U.S. port or ports, to refuse the clearance required by section 4197 of the Revised Statutes (46 U.S.C. app. 91) to any vessel owned or operated by such Korean-flag carrier.

(e) Denial of Entry to or Detention at United States Ports by the Secretary of Transportation. If a named Korean-flag carrier shall fail to pay any fee assessed by paragraph (b)(2) of this section, or fail to file any quarterly report required by paragraph (b)(3) of this section within the prescribed period for filing, the Secretary of the Commission shall request the Secretary, U.S. Department of Transportation, to direct the Coast Guard to:

(1) deny entry for purpose of oceanborne trade, of a vessel of a country that is named in paragraph (a) of this section, to any port or place in the United States or the navigable waters of the United States; or

(2) detain that vessel at the port or place in the United States from which it is about to depart for another port or place in the United States.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-13475 Filed 6-6-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-140; FCC 91-156]

Radio Broadcast Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This proceeding was initiated to review and modify, if necessary, the Commission's multiple ownership and other structural rules governing radio broadcasting in order to strengthen radio broadcasting service, particularly AM Service. The Commission adopts a notice of proposed rulemaking (notice) inviting comment on several proposals to modify the Commission's national and local radio ownership rules and the Commission's current policy regarding various types of joint ventures among radio stations. Specifically, the notice proposes to modify the current national ownership rule generally prohibiting common ownership of more than 12 AM and 12 FM stations. The notice also seeks comment on the impact any rule change may have on minority ownership. In addition, the notice proposes to modify the contour overlap rule, which prohibits ownership of more than one AM and one FM station in the same area (commonly known as the "duopoly" rule). The notice also proposes to adopt a policy encouraging joint ventures, with appropriate safeguards. Finally, the notice seeks comment on the nature and extent of time brokerage agreements, and questions whether such arrangements should be limited.

DATES: Comments are due by August 5, 1991, and reply comments are due by September 5, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jane Hinckley, Mass Media Bureau, Policy and Rules Division (202) 632-7792.

SUPPLEMENTARY INFORMATION:

1. This is a synopsis of the Commission's notice of proposed rule making in MM Docket No. 91-140, FCC 91-156, adopted May 9, 1991, and released May 30, 1991.

2. The complete text of this notice is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor.

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Downtown Copy Center, 1114 21st St., NW., Washington, DC ((202) 452-1422).

Synopsis of Notice of Proposed Rulemaking

3. The Commission's goal in initiating this proceeding is to explore changes in the structural and ownership regulations governing radio broadcasting with a view toward ensuring that the aural services can continue to compete in the communications marketplace and provide service to the public. The Commission notes that numerous outlets of communication in addition to broadcast radio are now available, providing consumers with a variety of choices. The Commission points out, however, that in some cases service to the public is diminished as radio stations fall silent, in part, it appears, because they have been constrained by regulation from adapting to quickly changing market realities. The Commission notes that these changes have particularly affected AM radio, and is concerned that outdated or inappropriate regulation not contribute to the decline of radio stations. The notice therefore proposes several options for modifying the Commission's rules and policies regarding ownership of commonly owned radio stations and regarding joint ventures among stations that are not commonly owned. The Commission reasons that a greater degree of flexibility may strengthen competitors in local radio markets because it would increase opportunities for group owners to achieve economies of scale. The Commission also notes that some of the modifications proposed could especially strengthen currently smaller and/or underachieving stations.

4. With respect to all of the proposed rule changes, the notice seeks comment on any potential effect on minority ownership, and on how any or all of the options presented could be modified to encourage it. The notice also requests comment regarding a petition jointly filed by four minority organizations to increase the national minority ownership limitation from 14 to 20 stations per service.

5. The current national ownership limitation prohibits ownership of more than 12 AM and 12 FM stations nationwide (unless two of the stations are minority-controlled, in which case a group owner may own up to 14 statioins). The notice presents several options for modifying the national ownership rule. One numerically based option would be to raise or eliminate the limits for AM stations while retaining the current 12-station limitation for FM. Another alternative is to eliminate the restriction on the specific number of AM stations that could be owned, but retain an absolute cap on the total number of stations (e.g., overall limit of 30 stations, of which no more than 12 may be FM). A third numercially based option is to exclude from consideration the numerical limit any AM station achieving a low rating in its local market, for example less than one percent.

6. Audience reach based options include adopting a rule that incorporates a national audience reach limitation or a local market share limitation. Such an approach would permit a single entity to own more than the numerial limit of stations if the combined audience reach of these stations does not exceed a specific percentage of the national radio audience, or if the stations' cumulative local audience shares, weighted by population, do not exceed a certain percentage of the national radio audience. The notice also proposes that the rule permit parties observing the numercial limit to exceed any national reach limitation established, and vice versa. A market rank based option, similar to the current radio-television cross-ownership rule, would exclude any AM station in a top market from the national ownership restriction if there are at least 30 other separately-owned broadcast licensees in the subject market.

7. The Commission also proposes to relax the contour overlap rule, which prohibits common ownership of AM stations whose 5 mV/m contours overlap, or FM stations whose 3.16 mV/m contours overlap. The notice proposes to permit a single owner to control any number of AM stations in the same area if the local market shares of those stations total a given percentage (e.g., 10%). Other options raised in the notice include imposing a numerical cap in addition to the audience share limitation, or adopting a higher percentage limitation for small markets. In addition, the notice proposes to permit simulcasting for a transitional period after acquisition of a new station to permit the new owner to promote its new dial position and redirect established listening patterns.

8. The notice also requests comment on whether any of the proposals presented should be extended to the FM service. The Commission noted that while AM radio has faced greater competitive hurdles due to its technical limitations, AM and FM radio in many respects constitute a single aural service that faces increasing competition from other outlets of communication. In addition, the Commission opined, the advent of digital audio broadcasting could lessen the distinction between AM and FM radio.

9. In addition, the notice examines joint ventures and asks whether the Commission should adopt a policy encouraging broadcasters to participate in joint ventures. While joint venture arrangements permit separately owned stations to function cooperatively in terms of advertising sales, technical facilities and formats, each is required to maintain an independent editorial voice. The Commission believes that this practice strengthens the service received by the public while continuing to maximize, to the extent feasible, the number of voices in the market. To preserve competition and diversity, however, the Commission proposes safeguards that include (1) a provision that assures compliance with the antitrust laws; (2) a provision that such cooperative arrangements involve only a limited number of stations and be restricted to larger, more diverse markets; (3) a requirement that each licensee involved retain editorial control; and (4) mechanisms for termination of the arrangement by individual participants. The Commission also asks whether the Commission's present complaint and compliance procedures are adequate to assure that the licensees do not violate the Communications Act or Commission rules or policies, or whether those procedures should be augmented with, for example, reporting requirements.

10. Finally, the Commission seeks comment regarding the nature and extent of joint programming, or "time brokerage" arrangements between broadcasters in the same market. The Commission asks whether same-service agreements should be treated differently from cross-service agreements, whether there should be a limit on the number of stations involved and whether 24-hour time brokerage should be permitted. The Commission also seeks comment on the impact these arrangements may have at renewal time, and questions whether such arrangements circumvent its ownership restrictions.

Ex Parte Rules—Non-Restricted Proceeding

11. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission Rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

Comment Information

12. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before August 5, 1991, and reply comments on or before September 5, 1991. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, replay comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

Initial Regulatory Flexibility Analysis

13. Reason for the Action: This proceeding was initiated to review and update the Commission's national and local radio ownership rules.

14. Objective of This Action: The actons proposed in this notice are intended to relax some of the national and local ownership restrictions on radio broadcasters to enable them to adjust to the changing communications marketplace, and to better respond to the needs of the public.

15. Legal Basis: Authority for the actions proposed in this notice may be found in sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154 and 303.

16. Reporting, Recordkeeping, and Other Compliance Requirements Inherent in the Proposed Rule: None.

17. Federal Rules Which Overlap, Duplicate, or Conflict With the Proposed Rule: None.

18. Description, Potential Impact and Number of Small Entities Involved: Approximately 10,000 existing radio broadcasters of all sizes may be affected by the proposals contained in this decision.

19. Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent With the Stated Objectives: The proposals contained in this notice are meant to simplify and ease the regulatory burden currently placed on commercial radio broadcasters.

20. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the notice, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of this notice of proposed rule-making, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981)).

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-13563 Filed 6-6-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-176; RM-7053]

Radio Broadcasting Services; Columbia, CA

AGENCY: Federal Communication Commission.

ACTION: Proposed Rule; dismissal of.

SUMMARY: This document denies a petition filed by Eric R. Hilding, seeking the allotment of FM Channel 255A to Columbia, California, for failure to establish Columbia's status as a community for allotment purposes. With this action, the proceeding is terminated.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-176, adopted May 22, 1991, and released June 3, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, N.W. Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-13434 Filed 6-6-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-149, RM-7716]

Radio Broadcasting Services; Needles, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Calnevar Broadcasting, Inc., licensee of Station KWAZ(FM), Channel 250C2, Needles, California, seeking the substitution of Channel 250C1 for Channel 250C2 and modification of its license accordingly to specify operation on the higher powered channel. Petitioner's modification proposal complies with the provisions of § 1.420(g) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of Channel 250C1 at Needles or require the petitioner to demonstrate the availability of an additional equivalent class channel. Coordinates for this proposal are 35-02-06 and 114-22-09. Mexican concurrence will be requested for this allotment.

DATES: Comments must be filed on or before July 26, 1991, and reply comments on or before August 12, 1991.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Calnevar Broadcasting, Inc., Attn.: Jack Mathison, President, 8448 East Del Norte Court, Scottsdale, AZ 85258.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-149 adopted May 22, 1991, and released June 3, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also

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be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st St., NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–13435 Filed 6–6–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 91–148, RM–7711]

Radio Broadcasting Services; Edisto Beach, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Toni T. Rinehart seeking the allotment of Channel 229A to Edisto Beach, South Caroline, as the community's first local FM service. Channel 229A can be allotted to Edisto Beach in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 32–29–00 and 80–19–30.

DATES: Comments must be filed on or before July 26, 1991, and reply comments on or before August 21, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Toni T. Rinehart, 2557–E Mountain Lodge Circle, Birmingham, Alabama 35216 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–148, adopted May 22, 1991, and released June 3, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–13433 Filed 6–6–91; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 245

[FRA Docket No. RSUF–1, Notice No. 2]

RIN 2130–AA62

Railroad User Fees; Change in Schedule for Public Hearing

AGENCY: Federal Railroad Administration (FRA); DOT.

ACTION: Change in schedule for public hearing.

SUMMARY: On May 7, 1991, FRA published in the Federal Register a notice of proposed rulemaking (NPRM) concerning the railroad user fee program mandated by section 10501 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. No. 101–508, 104 Stat. 1388–399). In the NPRM, FRA announced that a public hearing would be held on the proposed rule in Washington, DC on June 12, 1991 at 10 a.m. in the Nassif Building (DOT Headquarters), 400 Seventh Street, SW., room 2230. FRA has found it necessary to change the scheduled time of the hearing from 10 a.m. to 1 p.m. The date and location of the hearing remain unchanged.

FOR FURTHER INFORMATION CONTACT: Gail L. Payne, Senior Program Analyst, Industry Operations and Safety Analysis Division, Office of Policy (RRP–12), FRA, Washington, DC 20590 (telephone: 202–366–4930); or William R. Fashouer, Attorney-Advisor, Office of Chief Counsel (RCC–10), FRA, Washington, DC 20590 (Telephone: 202–366–0616).

SUPPLEMENTARY INFORMATION: FRA has determined that it is necessary to change the starting time of the public hearing on the railroad user fee NPRM on June 12, 1991 from 10 a.m. to 1 p.m. The Subcommittee on Transportation and Hazardous Materials of the House Energy and Commerce Committee has scheduled a railroad safety reauthorization hearing for the morning of June 12. Since some witnesses may wish to testify at or attend both hearings, FRA has determined that delaying the user fee hearing until 1 p.m. serves all interested parties. Accordingly, the public hearing on the user fee NPRM will be held in Washington, DC on June 12, 1991 at 1 p.m. in the Nassif Building (DOT Headquarters), 400 Seventh Street, SW., room 2230. Persons desiring to make oral statements at the hearing are reminded that they should notify the Docket Clerk by telephone at (202) 366–2257 or by writing to the Docket Clerk (RCC–30), Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC, on June 4, 1991.

Perry A. Rivkind,

Acting Federal Railroad Administrator.

[FR Doc. 91–13583 Filed 6–6–91; 8:45 am]

BILLING CODE 4910–06–M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 91–26; Notice 1]

RIN 2127–AD66

Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration [NHTSA], DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Standard No. 209 currently specifies that emergency locking retractors (ELR) (retractors that use a locking mechanism that is activated by vehicle acceleration, webbing movement, or other automatic action during an emergency) shall be tested by performing 50,000 cycles of the retractor (a cycle is an extension and a retraction of safety belt webbing from its retractor) with at least 10,000 lockups (activation of the webbing locking mechanism of a retractor) during those cycles. Standard No. 209 also specifies that automatic locking retractors (ALR) (a retractor that uses a positive self-locking mechanism) shall be tested by performing 10,000 cycles of the retractor. However, the standard does not specify the rate at which to run the cycles, nor does it specify when the ELR lockups should occur. Absent any guidance in the standard, testing by manufacturers and the agency could be based on different cycling rates and lockup schedules. These test procedure differences may produce different test results.

To avoid such problems, this notice proposes a cycling test rate of between five and ten cycles per minute for ELR's and ALR's and that the required ELR lockup testing be performed every fifth cycle.

DATES: Comments on this proposal must be received by NHTSA no later than July 22, 1991. If adopted in a final rule, these amendments would take effect 180 days after publication of the final rule in the Federal Register.

ADDRESSES: Comments should refer to Docket No. [91–26]; Notice 1, and be submitted to: Docket Section, room 5109, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. The docket section is open from 9:30 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Clarke B. Harper, Crashworthiness Division, NRM–12, room 5320, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202–366–2264).

SUPPLEMENTARY INFORMATION:

Background

Standard No. 209, Seat Belt Assemblies [49 CFR 571.209], sets forth a series of tests for the webbing and hardware used in a seat belt assembly for motor vehicles, along with some additional tests of the seat belt assembly as a whole. These tests individually evaluate each of the aspects that NHTSA believes is necessary to ensure that the belt system will provide adequate occupant protection in a crash.

As part of the performance testing, the retractor is corrosion tested and then the safety belt webbing is cycled to complete extension and retraction for 2,500 cycles. After a temperature test, the retractor is then cycled for another 2,500 cycles. Finally, after a dust resistance test, the performance cycling test is run for 5,000 cycles for an ALR and 45,000 cycles for an ELR. The 45,000 cycles of the ELR are run from a 50 percent to a 100 percent extension. Additionally, during the total 50,000 cycles on an ELR, 10,000 of the cycles have included a locking up of the retractor.

Currently, however, the standard does not list a specific cycling rate for these tests, nor does it provide any schedule for the lockups. The absence of specifications could result in different cycling rates and lockup schedules being chosen by manufacturers and the agency for testing. To avoid any potential differences in test results, NHTSA is proposing a specific cycling rate and lockup schedule for Standard No. 209 testing.

The agency has tentatively determined that the test cycling speed selected should be reasonably similar to the speed that occurs in actual use. The actual speed at which belt webbing is extended from the retractor during normal use appears to be equivalent to a test rate of approximately ten cycles per minute. However, since some webbing sensitive retractors may not be able to cycle at this speed, the agency is proposing a range of from five to ten cycles per minute.

This proposed cycling rate corresponds to the results of an agency survey to determine the cycling rates that are currently used by test laboratories for FMVSS No. 209 tests. It was the consensus of the labs that the tests should be run as fast as possible within the performance range of the retractor. U.S. Testing Company, Inc. cycles the retractors at ten cycles per minute, with a lockup every fifth cycle. Dayton T. Brown, Inc. runs the cycles at four to ten cycles per minute; when doing lockup testing, the rate is from 26 to 35 cycles per minute. Irvine Industries runs the test at three to seven cycles per minute, while Allied Chemical test at six to ten cycles per minute. TRW tests at twenty cycles per minute except for webbing sensitive retractors which are run from ten to twelve cycles per minute.

Additionally, the agency is proposing to modify the standard to specify when the required 10,000 lockups should occur during the testing of ELR's. The agency has tentatively concluded that the lockups should be evenly distributed over the entire 50,000 cycle test. Therefore, this notice proposes that the required retractor lockup testing for emergency locking retractors be performed every fifth cycle.

NHTSA invites the public to comment on this proposal. Commenters are specifically asked to provide information on the effects of higher cycling rates on retractor performance and on the effects of the proposal on test repeatability and consistency. Commenters should expressly identify any assumptions made in preparing the comments and bolster their assertions and conclusions with whatever factual support is available.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The agency has analyzed the economic and other effects of this proposal and determined that they are neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The agency has determined that the economic effects of the proposed amendments are so minimal that a full regulatory evaluation is not requried. There may be some increased costs for compliance testing. The agency has determined that redesign of existing retractors in order to comply with the proposed test speed is unlikely. Commenters are specifically asked to provide information about the cost impacts of the proposed regulation on compliance testing.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this proposed action on small entities. Based upon this evaluation, I certify that the proposed amendments would not have a significant economic impact on a substantial number of small entities. As stated above, the proposed action is unlikely to require the redesign of existing retractors and therefore should not result in any increase the equipment or vehicle costs. Accordingly, no regulatory flexibilty analysis has been prepared.

Executive Order 12612 (Federalism)

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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National Environmental Policy Act

The agency has also analyzed this rule for the purpose of the National Environmental Policy Act, and determined that it would not have any significant impact on the quality of the human environment. Procedures for Filing Comments.

Interested persons are invited to submit comments on the proposal. It is requested, but not required, that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.209 [Amended]

2. In § 571.209, S5.2(k) of Standard No. 209 would be revised to read as follows:

§ 571.209 Standard No. 209; Seat belt assemblies.

* * * * *

S5.2 Hardward

* * * * *

(k) Performance of retractor. After completion of the corrosion-resistance test described in paragraph (a) of this section, the webbing shall be fully extended and allowed to dry for at least 24 hours under standard laboratory conditions specified in S5.1(a). The retractor shall be examined for ferrous and nonferrous corrosion which may be transferred, either directly or by means of the webbing, to a person or his clothing during use of a seat belt assembly incorporating the retractor, and for ferrous corrosion on significant surfaces if the retractor is part of the attachment hardware. The webbing shall be withdrawn manually and allowed to retract for 25 cycles. The retractor shall be mounted in an apparatus capable of extending the webbing fully, applying a force of 20 pounds or 9 kilograms at full extension, and allowing the webbing to retract freely and completely. The webbing shall be withdrawn from the retractor and allowed to retract repeatedly in this apparatus at a rate between 5 and 10 cycles per minute, until 2,500 cycles are completed. The retractor and webbing shall then be subjected to the temperature resistance test prescribed in paragraph (b) of this section. The retractor shall be subjected to 2,500 additional cycles of webbing withdrawal and retraction at a rate between 5 and 10 cycles per minute. Then, the retractor and webbing shall be subjected to dust in a chamber similar to one illustrated in Figure 8 containing about 2 pounds or 0.9 kilogram of coarse grade dust conforming to the specification given in Society of Automotive Engineering Recommended Practice J726, "Air Cleaner Test Code" Sept. 1979. The dust shall be agitated every 20 minutes for 5 seconds by compressed air, free of oil and moisture, at a gage pressure of 80±8 pounds per square inch or 5.6±0.6 kilograms per square centimeter entering through an orifice 0.060±0.004 inch or 1.5±0.1 millimeters in diameter. The webbing shall be extended to the top of the chamber and kept extended at all times except that the webbing shall be subjected to 10 cycles of complete retraction and extension within 1 to 2 minutes after each agitation of the dust. At the end of 5 hours, the assembly shall be removed from the chamber. The webbing shall be fully withdrawn from the retractor manually and allowed to retract completely for 25 cycles. An automatic-locking retractor or a nonlocking retractor attached to pelvic restraint shall be subjected to 5,000 additional cycles of webbing withdrawal and retraction at a rate between 5 and 10 cycles per minute. An emergency-locking retractor or a nonlocking retractor attached to upper torso restraint shall be subjected to 45,000 additional cycles of webbing withdrawal and retraction between 50 and 100 percent extension at a rate between 5 and 10 cycles per minute. The locking mechanism of an emergency locking retractor shall be actuated 10,000 times with 50 to 100 percent extension of webbing every fifth cycle during the 50,000 cycles. At the end of the test, compliance of the retractors with applicable requirements in S4.3 (h), (i), and (j) shall be determined. Three retractors shall be tested for performance.

* * * * *

Issued on June 3, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-13460 Filed 6-6-91; 8:45 am]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1011, 1160, 1181, 1186

[Ex Parte No. 55 (Sub-No. 84)] [1]

RIN 3120-AB68

Safety Fitness Policy

AGENCY: Interstate Commerce Commission.

[1] Embraces Ex Parte No. MC-111 (Sub-No. 1), Transfer Rules, and Ex Parte No. MC-178, Purchase, Merger, and Control of Motor Passenger and Water Carriers, interim policy and notice of proposed policy, 56 FR 42859 (October 22, 1990) (Finance Reopening).

ACTION: Notice of proposed rulemaking.

SUMMARY: In a notice of proposed policy revision published concurrently in the "Proposed Rules" section of this Federal Register issue, the Commission has announced significant revisions to its safety policy as applied in both the licensing and finance dockets. The proposed policy revisions have been precipitated by and are designed to conform with recent statutory changes in the safety fitness area, implemented by the Motor Carrier Safety Act of 1990 (Pub. L. 101-500). The proposal also reinforces refinements and improvements in the U.S. Department of Transportation (DOT) safety oversight mechanism designed to implement the recent legislation.

In order to ensure consistent and effective implementation of the proposed policy, we also propose corresponding amendments to the Commission's regulations governing delegation of authority, licensing procedures, authority transfer proceedings, and motor carrier finance exemptions at 49 CFR parts 1011, 1160, 1181, and 1186, respectively. Consistent with the proposed policy revisions, the recommended amendments ensure that barriers to acquisition of authority through either the licensing or finance docket are limited to those carriers that hold an "Unsatisfactory" safety rating from the DOT. The proposed regulatory revisions are set forth below.

DATES: Comments are due June 26, 1991.

ADDRESSES: Send comments (an original and 10 copies), referring to Ex Parte No. 55 (Sub-No. 84), to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Suzanne Higgins O'Malley (202) 275-7292, or Richard B. Felder (202) 275-7691 (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423, telephone (202) 275-7428. (Assistance for the hearing impaired is available through TDD service (202) 275-1721.).

Environmental and Energy Considerations

We preliminarily conclude that the proposed action will not significantly affect the quality of the human environment or the conservation of energy resources. We specifically encourage comments on these issues, however.

Initial Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 603, the Commission is required to examine specifically the impact of a proposed action on small businesses and small organizations. We preliminarily conclude that this proposal will have a significant positive impact on such entities.

The licensing and finance policy revisions and corresponding rule changes recommended here are expected to result in an improved Federal safety oversight program, rendering the Commission's approach to safety more consistent with and responsive to recent legislative directives and DOT implementing measures. This integrated safety oversight effort should inure directly to the benefit of applicants for operating authority by streamlining the pre-licensing review process and by ensuring that grants of authority will not be subject to term conditions or service restrictions that no longer serve as inducements to operational safety. Small entities, in particular, that must commit a greater proportion of their resources to licensing and other regulatory compliance matters will benefit from those features of the proposed policy that expedite pre-licensing review. Finally, the proposed policy should ensure that unrated new entrants will be able to initiate service without any term limitations.

In developing the proposed policy, we have considered various alternative approaches to improve the Commission's safety docket management. We are persuaded that the changes to our safety policy proposed here will remedy any inconsistencies with recent statutory safety enforcement measures and with DOT's safety evaluation programs and standards.

We, therefore, conclude that the proposed policy revisions and the corresponding amendments to the Commission's regulations set forth below will have a significant positive impact upon a substantial number of small motor carrier entrants, as well as upon applicants generally. This proposal will not impose additional reporting, recordkeeping, or compliance requirements upon small entities. Nor will the rules proposed here duplicate, overlap, or conflict with any existing Federal rule. In fact, in the case of unrated applicants or applicants with "Conditional" safety ratings, the paperwork burden should be reduced as a result of this policy change.

Because the overall safety policy unification goals of this proposal speak directly to the potential impact on small businesses, we particularly invite the comments of interested parties on this matter.

List of Subjects

49 CFR Part 1011

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

49 CFR Part 1160

Administrative practice and procedure, Brokers, Buses, Freight forwarders, Maritime carriers, Motor carriers.

49 CFR Part 1181

Administrative practice and procedure, Brokers, Freight forwarders, Maritime carriers, Motor carriers.

49 CFR Part 1186

Administrative practice and procedure, Freight forwarders, Motor carriers.

Decided: May 15, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald. Commissioner Phillips commented with a separate expression. Commissioner Simmons dissented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, parts 1011, 1160, 1181 and 1186 of the Code of Federal Regulations are proposed to be amended as follows:

PART 1011—COMMISSION ORGANIZATION; DELEGATIONS OF AUTHORITY

1. The authority citation for part 1011 would continue to read as follows:

Authority: 49 U.S.C. 10301, 10302, 10304, 10305, 10321; 31 U.S.C. 9701; 5 U.S.C. 553.

2. Section 1011.6 is proposed to be amended by revising paragraphs (h)(1) and (h)(2) to read as follows:

§ 1011.6 Employee Boards.

* * * * *

(h) * * *

(1) Pre-publication matters in operating rights applications of motor carriers, water carriers, household goods freight forwarders, and property brokers.

(2) Motor passenger carrier and water carrier finance applications under 49 U.S.C. 11343-11344, and small carrier

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transfer applications under 49 U.S.C. 10926.

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PART 1160—RULES GOVERNING APPLICATIONS FOR OPERATING AUTHORITY

3. The authority citation for part 1160 would continue to read as follows:

Authority: 49 U.S.C. 10101, 10305, 10321, 10921, 10922, 10923, 10924, 10928, and 11102; 5 U.S.C. 553 and 559; 16 U.S.C. 1456.

4. Section 1160.5 is proposed to be amended by revising paragraphs (a)(3) and (a)(4) to read as follows:

§ 1160.5 Commission review of the application.

(a) * * *

(3) All motor carrier applications will be reviewed for consistency with the Commission's operational safety fitness policy as set forth in Ex Parte No. 55 (Sub-No. 84), Safety Fitness Policy, _____ I.C.C. 2d (1991). Applicants with "Unsatisfactory" safety ratings from DOT will have their applications rejected by letter notice and their filing fees returned upon request as explained in the rejection correspondence.

(4) An employee board of the Commission appointed under § 1011.6(h) of this chapter will review completed applications that conform with the Commission's safety fitness policy. The employee board determines whether there is adequate evidence to warrant publication of the authority applicant seeks in the ICC Register as a preliminary grant. If there is not, the application will be rejected in a letter notice to applicant, without prejudice to refiling once deficiencies have been corrected. Applicants that refile their applications within 1 year may refer to the docket number and fee stamp number assigned to the prior filing and no additional filing fee will be required. An applicant may appeal rejections as provided under § 1160.6.

* * * * *

PART 1181—TRANSFERS OF OPERATING RIGHTS UNDER 49 U.S.C. 10926

5. The authority citation for part 1181 would continue to read as follows:

Authority: 5 U.S.C. 553, and 49 U.S.C. 10321 and 10926.

6. Section 1181.4(c) is proposed to be revised to read as follows:

§ 1181.4 Commission action and criteria for approval.

* * * * *

(c) If the transferor or transferee has an "Unsatisfactory" safety rating from DOT, the transfer may either be conditioned on improvement in that rating or denied. If an application is conditioned or denied, the Commission will set forth the basis for its action in a decision or letter notice. If parties with "Unsatisfactory" safety ratings consummate a transaction pursuant to the 10-day rule at § 1181.2 of this part prior to the notification of Commission action, they do so at their own risk and subject to any conditions we subsequently may impose. Transactions that have been consummated but are later denied by the Commission are null and void and must be rescinded. Similarly, if applications contain false or misleading information, they are void *ab initio*.

PART 1186—EXEMPTION OF CERTAIN TRANSACTIONS UNDER 49 U.S.C. 11343

7. The authority citation for part 1186 would continue to read as follows:

Authority: 49 U.S.C. 11321, 11343(e); 5 U.S.C. 553; and 21 U.S.C. 853a.

8. Section 1186.9 is proposed to be revised to read as follows:

§ 1186.9 Safety fitness.

The Commission will consider the DOT safety rating of the parties in transactions where operating authority is purchased or merged. All parties to the transaction must certify their current safety ratings in their notice of exemption. If either party has an "Unsatisfactory" safety fitness rating from DOT, the exemption may be either conditioned on improvement in that rating or disapproved. If parties with "Unsatisfactory" safety ratings consummate a transaction 60 days after publication of the notice of exemption but prior to notification of Commission action, they do so at their own risk and subject to any conditions we subsequently may impose. If a notice of exemption contains false or misleading information, the exemption is void *ab initio*.

[FR Doc. 91-13390 Filed 6-6-91; 8:45 am]
BILLING CODE 7035-01-M

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49 CFR Parts 1011, 1160, 1181, 1186

[Ex Parte No. 55 (Sub-No. 84)] [1]

Safety Fitness Policy

AGENCY: Interstate Commerce Commission.

ACTION: Proposed policy revision.

SUMMARY: The Commission is proposing to revise its policy governing the safety fitness of motor carrier licensing and finance applicants. Essentially, the proposed policy revision would restrict only carriers holding "Unsatisfactory" safety ratings from the U.S. Department of Transportation (DOT) from receiving grants of operating authority in the Commission's licensing and finance dockets. Unrated carriers and those holding "Conditional" safety fitness ratings would no longer be precluded from receiving passenger or hazardous materials authority and would no longer have their authorities restricted to 1-year terms.

Corresponding amendments to the regulations at 49 CFR parts 1011, 1160, 1181, and 1186 are proposed to reflect this policy change. These revisions are summarized in a concurrently published notice of proposed rulemaking that appears in the "Proposed Rules" section of this **Federal Register** issue.

This proposed revision to the Commission's licensing and finance policy has been precipitated by and is designed to comport with recent statutory changes in the safety fitness area, implemented by the Motor Carrier Safety Act of 1990 (Pub. L. 101-500). The revisions also reinforce refinements in the DOT safety oversight program designed to implement recent legislation. The Commission anticipates that the responsive adjustments in the safety policy recommended here would meet the expectations of Congress, conform with the regulatory agenda established with our sister agency, and enhance our safety oversight role to induce safe, yet competitively sound, operating conditions in the motor carrier industry.

DATES: Comments are due June 26, 1991.

ADDRESSES: Send comments (an original and 10 copies), referring to EX Parte No. 55 (Sub-No. 84), to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Suzanne Higgins O'Malley (202) 275-7292, or Richard B. Felder (202) 275-7691. (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: To ensure that existing operating authorities allow for service consistent with that authorized under the policy proposed here, we further propose to initiate a program to remove all 1-year term limitations previously imposed on authorities granted to unrated or "Conditional"-rated applicants. Pending our implementation of a final policy statement in this proceeding and our development of procedures for re-issuance of unrestricted authorities under this proposed program, we will order as an interim measure that all such authorities will continue in effect (i.e., that expiration of term limitations will be suspended). Our final decision in this proceeding will announce specific procedures for reissuing existing authorities without the restrictions imposed under the current safety policy.

Finally, under the revised policy, we propose to place a two-part safety compliance condition in all authorities providing that:

1. This authority will remain in effect only as long as the carrier is not issued a safety rating of "unsatisfactory" from DOT.

2. Willful and persistent noncompliance with applicable safety regulations could result in a proceeding requiring the holder of this certificate or permit to show cause why this authority should not be suspended or revoked.

These proposed adjustments to the safety policy extend to safety oversight issues in the Commission's finance docket and, consequently, fully embrace issues raised in our prior notice of proposed policy in Financing Reopening, supra. Accordingly, that proposed policy statement is embraced by this proceeding and the Finance Reopening docket is proposed to be discontinued concurrently with final disposition of this matter.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423, telephone (202) 275-7428. [Assistance for the hearing impaired is available through TDD service (202) 275-1221).

Environmental and Energy Considerations

We preliminarily conclude that the proposed action will not significantly affect the quality of the human environment or the conservation of energy resources. We specifically encourage comments on these issues, however.

Initial Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 603, the Commission is required to examine specifically the impact of a proposed action on small businesses and small organizations. We preliminarily conclude that this proposal will have a significant positive impact on such entities.

The licensing and finance policy revisions and corresponding rule changes recommended here are expected to result in an improved Federal safety oversight program, rendering the Commission's approach to safety more consistent with and responsive to recent legislative directives and DOT implementing measures. This integrated safety oversight effort should inure directly to the benefit of applicants for operating authority by streamlining the pre-licensing review process and by ensuring that grants of authority will not be subject to term conditions or service restrictions that no longer serve as inducements to operational safety. Small entities, in particular, that must commit a greater proportion of their resources to licensing and other regulatory compliance matters will benefit from those features of the proposed policy that expedite pre-licensing review. Finally, the proposed policy should ensure that unrated new entrants will be able to initiate service without any term limitations.

In developing the proposed policy, we have considered various alternative approaches to improve the Commission's management of its safety docket. We are persuaded that the changes to our safety policy proposed here will remedy any inconsistencies with recent statutory safety enforcement measures and with DOT's safety evaluation program and standards.

We believe that the proposed policy revisions and corresponding amendments to Commission regulations will have a significant positive impact upon a substantial number of small motor carrier entrants, as well as upon applicants generally. This proposal will not impose additional reporting, recordkeeping, or compliance requirements upon small entities. In fact, in the case of unrated applicants or applicants with "Conditional" safety ratings, the paperwork burden should be reduced as a result of this policy change.

Because the overall safety policy unification goals of this proposal speak directly to the potential impact on small businesses, we particularly invite the comments of interested parties on this matter.

Decided: May 15, 1991.

By the Commission, Chairman Phillbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald. Commissioner Phillips commented with a separate expression. Commissioner Simmons dissented with a separate expression.

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 91-13391 Filed 6-6-91; 8:45 am]
BILLING CODE 7035-01-M

[1] Embraces Ex Parte No. MC-111 (Sub-No. 1), Transfer Rules, and Ex Parte No. MC-179, Purchase, Merger, and Control of Motor Passenger and Water Carriers, interim policy and notice of proposed policy, 55 FR 42659 (October 22, 1990) (Finance Reopening).

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB56

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Plant Sidalcea nelsoniana (Nelson's Checker-mallow)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to determine the plant *Sidalcea nelsoniana* Piper (Nelson's Checker-mallow) to be a threatened species under the authority contained in the Endangered Species Act of 1973, as amended (Act). *Sidalcea nelsoniana* is known from restricted areas of the Willamette Valley and adjacent Coast Range of Oregon. Mowing, plowing, recreational use, and roadside spraying threaten the remaining populations of this plant in the Willamette Valley. In the Coast Range, plans for the construction of a reservoir threaten the largest population of this species. If the reservoir is constructed, all plants at the site would be inundated. A determination that *Sidalcea nelsoniana* is a threatened species would implement the protection provided by the Act. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by August 6, 1991. Public hearing requests must be received by July 22, 1991.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Portland Field Station, U.S. Fish and Wildlife Service, 2600 SE. 98th Ave., suite 100, Portland, Oregon 97266. (Fax: 503/231-6195 or FTS 429-6195). Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Robert L. Parenti, Botanist, Boise Field Station, U.S. Fish and Wildlife

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Service, 4696 Overland Road, room 576, Boise, Idaho 83705 (208/334–1816).

SUPPLEMENTARY INFORMATION:

Background

Sidalcea nelsoniana si endemic to the Willamette Valley and adjacent Coast Range of Oregon. Hitchcock's monograph suggests that *S. nelsoniana* was very occasional in the Willamette Valley, Oregon, from Linn and Benton Counties north to near Portland and westward to eastern Tillamook County, but mainly occurred in Marion County, on more or less gravelly, well drained soils (Hitchcock 1957).

Sidalcea nelsoniana, in the Mallow family (Malvaceae), is a perennial herb with pinkish-lavender to pinkish-purple flowers borne in clusters at the end of 1 to 2½ feet tall stems. Inflorescence of plants from the Willamette Valley are usually somewhat spikelike, usually elongate and somewhat open (Hitchcock 1957). Inflorescence of plants from the Coast Range are shorter and not as open (Chambers, botanist and professor emeritus, Oregon State University, pers. comm.). *Sidalcea nelsoniana* is a gynodioecious species, which means that plants have either perfect flowers (male and female) or pistillate flowers (female). The plant can reproduce vegetatively by rhizomes and produces seed that drop next to the parent plant. Flowering occurs from mid-June to early August, with fruit dehiscence by September. *Sidalcea nelsoniana* was first described by Charles Piper in 1919 based on material collected by J.C. Nelson at Salem, Oregon.

Sidalcea nelsoniana may have historically occurred at six population centers with one in the Coast Range and five in the Valley. The plant has been extirpated from one Valley population center and reduced to relic remnant populations in the four remaining Valley centers, because of agricultural land conversion. Since 1985, *S. nelsoniana* has been extirpated from three localities within the Willamette Valley at two population centers (City of McMinnville Water and Light Department (McMinnville Water and Light) 1989 and 1990).

Today, within the Valley, *Sidalcea nelsoniana* most frequently occurs in *Fraxinus* (ash) swales and meadows with wet depressions, or along streams. *Sidalcea nelsoniana* grows in wetlands within remnant prairie grasslands (Mishaga et al 1985). Several sites occur along roadsides at stream crossings where exotics such as blackberry (*Rubus* spp.) and Queen Anne's lace (*Dacus Carrota*) also occur. *Sidalcea nelsoniana* seems to need open areas with little or no shade to grow and may not tolerate encroachment of woody species. Prior to European colonization of the Willamette Valley, naturally occurring fires and fires set by Indians maintained suitable *S. nelsoniana* habitat. Current fire control and prevention practices allow succession of introduced and native species which may gradually replace habitat for *S. nelsoniana* (Mishaga et al. 1985). No natural prairie remains in the Willamette Valley without the obvious effects of livestock grazing, fire suppression, and agricultural activities (Moir and Mika 1972).

Two localities are at least partially under Federal management. Those are Finley National Wildlife Refuge in the Valley, which is managed by the Service, and portions of Walker Flat in the Coast Range which is under the jurisdiction of the Bureau of Land Management. McMinnville Water and Light has recently acquired part of the Walker Flat site and plans to construct a reservoir that would inundate this entire population, the largest and most vigorous population of *Sidalcea nelsoniana*. Eight sites occur partially or entirely on State owned land; the remainder occur on county, city or private land.

Over half of the Valley locales have fewer than 100 plants and appear to be remnants of once more extensive populations. Many of the plants at these locales appear to be in poor condition, having been adversely affected by weevils, encroachment of woody species, and road management (i.e. spraying and mowing). Currently, 13 out of 44 locales (11 in the Valley and 2 in the Coast Range) have 25 or fewer plants; one site, Philomath North, has only one plant (McMinnville Water and Light 1990).

Within the Coast Range population center, logging has adversely affected this species at the Nelson's Golden Valley locale (McMinnville Water and Light 1989). Another Coast Range site, Devils Lake Fork, has been used by motorcyclists, causing a fair amount of disturbance.

Federal involvement with *Sidalcea nelsoniana* began with section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of its acceptance of this report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act and of its intent thereby to review the status of the plant taxa named therein. In this and subsequent notices, *S. nelsoniana* was treated as under petition for listing as endangered. The Service published a proposed rule in the June 16, 1976, **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to section 4 of the Act. This list, which included *S. nelsoniana*, was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. In 1976, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) of the withdrawal of that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired.

Sidalcea nelsoniana was included as a Category 1 candidate in the December 15, 1980, notice of review for plants (45 FR 82537), indicating that sufficient information was available to the Service to support a proposal to list the species at that time. This status was changed to Category 2 in the November 28, 1983, supplement (48 FR 53659) and remained as such in the September 27, 1985, notice of review (50 FR 39527). A Category 2 candidate is a species for which listing may be appropriate but additional biological information is needed to support a listing proposal. In the February 21, 1990 notice of review (55 FR 6184) this status was changed to Category 1. This proposed rule is based on data provided to the Service concerning the status of *Sidalcea nelsoniana* and subsequent comments and recommendations from knowledgeable individuals.

Section 4(b)(3)(B) of the Endangered Species Act, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Sidalcea nelsoniana* because of the acceptance of the 1975 Smithsonian Report as a petition. In October of 1983, 1984, 1985, 1986, 1987, 1988, 1989, and 1990, the Service found that the petition to list *S. nelsoniana* was warranted but precluded by listing actions of higher priority and that additional data on

vulnerability and threats were still being gathered. Publication of this proposal constitutes the final finding for the petitioned action.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their applications to *Sidalcea nelsoniana* Piper (Nelson's checker-mallow) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Five population centers of *Sidalcea nelsoniana* remain in the Willamette Valley and adjacent Coast Range of Oregon, made up of approximately 44 total sites. Four population centers occur in the Valley and one in the Coast Range. Two sites in two population centers have plants located on Federal lands. Eight sites in four population centers occur on State land. All other plants are growing on county, city, or private lands, which for the most part, are unprotected from development and habitat conversion. Mowing, conversion of habitat to agricultural lands, logging, recreational activities, and water impoundment further threaten portions of all remaining population centers of *S. nelsoniana*.

Since 1985, habitat loss (resulting in plant destruction or extirpation) has occurred at six Valley sites: Lewisburg, Philomath North, Mount Jefferson Farm, Dallas South, Starker Park, and the Salem Municipal Airport.

Mowing adversely impacts the plants if it takes place before the plants set seed. Mowing activities have adversely affected 11 sites in all 4 population centers in the Valley: Panther Creek, Salem Municipal Airport, Walnut Park, Fletcher Road, Dallas South, McTimmonds Valley, State Highway 22, Monmouth, Decker Road, Starker Park, and State Highway 99W (McMinnville Water and Light 1989).

Continued logging at the Nelson's Golden Valley site in the Coast Range may affect the hydrological regime at the site as well as directly destroy plants. McMinnville Water and Light plans to construct a reservoir that would inundate the Walker Flat population in the Coast Range, the largest and most vigorous population of *Sidalcea nelsoniana*. Walker Flat is the only federally owned site in the Coast Range. Recreational motorcyclists use the area at the Devils Lake Fork site in the Coast Range and have disturbed the site.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Although the species may not currently be vulnerable to any of these threats, publicity associated with listing could render *Sidalcea nelsoniana* significantly vulnerable to collection and vandalism, especially at the Walker Flat site. Several sites in the Willamette Valley are readily accessible by road and could also be threatened by vandalism or collection.

C. Disease or Predation

A species of weevil within the family Curculionidae utilizes *Sidalcea nelsoniana* plants at several sites. The adult female insect bores a hole through the seed coat and deposits her eggs inside. When the larvae hatch, they feed on the developing seed (Mishaga et al. 1985). Damage to the seed reduces the reproductive potential of the species.

D. The Inadequacy of Existing Regulatory Mechanisms

Under the Oregon Endangered Species Act (ORS 564.100—564.135) and pursuant regulations (OAR 603, Divison 73), the Oregon Department of Agriculture has listed Endangered Species Act as threatened (OAR 603–73–070). This statute prohibits the "take" of State-listed plants on state owned or state leased lands only. *Sidalcea nelsoniana* occurs on many county, city, or privately-owned sites where the plant is not protected from actions the landowner may take which would adversely affect the species.

Because *Sidalcea nelsoniana* occurs in both isolated wetlands and wetlands adjacent to waterways, regulatory mechanisms under the Clean Water Act apply to this species. Under section 404 of the Clean Water Act, the U.S. Army Corps of Engineers (Corps) regulated the discharge of fill into the waters of the United States, including wetlands. To be in compliance with the Clean Water Act, potential applicants are required to notify the Corps prior to undertaking any activity (grading, discharge of soil or other fill material, etc.) that would result in the fill of wetlands under the Corps' jurisdiction. Nationwide Permit Number 26 (see 33 CFR 330.5) has been issued to regulate the fill of wetlands that are relatively small, not more than 10 acres. Where fill would occur in a wetland of one to ten acres in size, the Corps circulates for comment a predischarge notification to the Service and other interested parties prior to determining whether or not the proposed fill activity qualifies under Nationwide Permit 26. Individual permits are required for the discharge of fill into wetlands that are greater than 10 acres in size. The review process for the issuance of individual permits is more extensive, and conditions may be included that require the avoidance or mitigation of environmental impacts. The Corps has discretionary authority and can require an applicant to seek an individual permit if the Corps believes that the resources are sufficiently important, regardless of the wetland's size. In practice, the Corps rarely requires an individual permit when a project would qualify for a Nationwide permit, unless a threatened or endangered species occurs on the site. If a federally listed threatened or endangered species may be affected by a proposed project, the Corps must insure that it does not authorize, fund, or carry out any action that is likely to jeopardize the species' continued existence (see discussion below under "Available Conservation Measures").

E. Other Natural or Manmade Factors Affecting its Continued Existence

Encroachment of woody species is eliminating *Sidalcea nelsoniana* habitat throughout the Willamette Valley. In the past, occasional fires created openings facilitating the growth of the plant. Fires still regularly occur at the sites that currently have vigorous *S. nelsoniana* populations. Management efforts to control invading *Fraxinus*, which competes with *S. nelsoniana* at Finley National Wildlife Refuge, have benefited *S. nelsoniana*. Management efforts include cutting, spraying, and burning encroaching vegetation. *Sidalcea nelsoniana* appears vigorous at Refuge locations where management efforts have been employed, compared to those plants in another location, the *Fraxinus* forest surrounding Muddy Creek. Since 1985, *S. nelsoniana* has also increased in vigor at the university turkey farm site, one of the largest populations in the valley, in areas where *Fraxinus* has been controlled for several years (McMinnville Water and Light 1989).

Many populations occur along roadsides. Routine maintenance of the road shoulders may adversely affect the plant through grading or application of herbicides.

The Oregon State University turkey farm is regularly trampled by turkeys.

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Continuous heavy trampling may limit seedling establishment.

An additional concern for the species is the small number of plants (<25) in many of the locales. Within smaller populations the sex ratios—number of plants with perfect flowers to number of pistillate flowered plants—may be the controlling factor in seed production. Thus small isolated *Sidalcea nelsoniana* populations are more vulnerable to extirpation due to demographics. Any further reduction of the breeding population (gene pool) may have adverse effects on the reproductive capacity and survival of this taxon.

The Service has carefully assessed the best scientific information available concerning the past abundance and subsequent decline of this taxon, as well as the threats faced by its remnant populations. Based on this evaluation, the preferred course of action is to list *Sidalcea nelsoniana* as threatened. Agricultural land conversion, invasion of competitive plant species, adverse roadside management activities, and parasitism by a species of weevil have reduced this plant to remnant populations. In addition, a potential reservoir project, if constructed, would inundate the largest population of this species. While still occurring in five population centers consisting of approximately 44 sites, vulnerability to the above threats indicate that *S. nelsoniana* is likely to become endangered in the foreseeable future throughout all or a significant portion of its range, and therefore fits the Act's definition of a "threatened" species. For the reasons discussed below, the Service is not proposing to designate critical habitat for this species at this time.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is listed as endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under Factor B above in the "Summary of Factors Affecting the Species," *Sidalcea nelsoniana* is vulnerable to taking and vandalism. Landowners can be alerted to the presence of the plant without the publication of critical habitat descriptions and maps. The publication of such descriptions and maps would potentially increase the risk of vandalism and taking and increase enforcement problems. Protection of the species' habitat will be addressed through the recovery process and through section 7 consultation. Therefore, it would not now be prudent to determine critical habitat for *Sidalcea nelsoniana*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions would be initiated by the Service following listing. The protection required by Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or destroy or adversely modify proposed critical habitat. When a species is listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Bureau of Land Management would be required to consult with the Service, if this plant is listed, over any permitting action. A permitting action would be subject to review by the Service under section 7 of the Act. The U.S. Army Corps of Engineers would become involved with this plant through its permitting authority as described under section 404 of the Clean Water Act. By regulation, nationwide permits may not be issued where a federally listed endangered or threatened species would be affected by the proposed project without first completing formal consultation pursuant to section 7 of the Act.

The Act and implementing regulations found at 50 CFR 17.71 and 17.72 for threatened plant species set forth a series of general prohibitions and exceptions that apply to all threatened plants. With respect to *Sidalcea nelsoniana*, the trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 and 17.71, would generally apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale in interstate or foreign commerce; or to engage in certain activities involving "taking" of the species. Certain exceptions would apply to agents of the Service and State conservation agencies. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened plant species under certain circumstances. No trade in this species is known. It is anticipated that few trade permits involving *Sidalcea nelsoniana* would ever be sought or issued since the species is not common in cultivation or in the wild.

Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203–3507 (703/358–2093 or FTS 921–2093; FAX 703/358–2281).

If *Sidalcea nelsoniana* is listed under the Act, the Service would also determine whether it should be placed upon the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, which is implemented through section 8a(e) of the Act. It would also be determined whether the species should be considered for other appropriate international agreements.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Sidalcea nelsoniana;*

(2) The location of any additional populations of *Sidalcea nelsoniana* and the reasons why any habitat of this species should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Sidalcea nelsoniana.*

The final decision on this proposal will take into consideration any comments and any additional information received by the Service. Such communications may lead to the adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Portland Field Station, U.S. Fish and Wildlife Service, 2600 SE. 98th Ave, suite 100, Portland, Oregon 97266 (FAX: 503/231–6195 or FTS 429–6195).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined pursuant to the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

City of McMinnville, Water and Light Department. 1990. Studies of *Sidalcea nelsoniana*, 1990. Prepared by CH2M Hill for City of McMinnville Water and Light Department.

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Hitchcock, C.L. 1957. A study of the perennial species of *Sidalcea*. Univ. Wash. Publ. Biol. 16:1–79.

Mishaga, R.J., J.B. Blad, R.R. Halse, N.J. Sawtelle and L.R. Scofield. 1985. Distribution and condition of *Sidalcea nelsoniana* Piper. A report to the Fish and Wildlife Service for Status Determination. Produced jointly by the Bureau of Land Management and McMinnville Water and Light Department, McMinnville, OR. paging various.

Moir, W., and P. Mika. 1972. Prairie vegetation of the Williamette Valley, Benton County, Oregon. Unpublished report on file at U.S. Department of Agriculture For. Serv. Forestry Sciences Laboratory, Corvallis, OR. 29 pp. and appendix.

Piper, C.V. 1919. New Pacific Coast plants. Proc. Biol. Soc. Wash. 32:41.

Author

The primary author of this proposed rule is Dr. Robert Parenti, U.S. Fish and Wildlife Service, 4696 Overland Road, Boise, Idaho 83705 (208/334–1816).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Malvaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	
Malvaceae—Mallow family						
*	*	*	*	*	*	
Sidalcea nelsoniana	Nelson's Checker-mallow	U.S.A. (OR)	T		NA	NA
*	*	*	*	*	*	

Dated: May 7, 1991.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 91–13519 Filed 6–6–91; 8:45 am]

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Notices

Federal Register
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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Lake of the Sky Interpretive or Information Facility; Lake Tahoe Basin Management Unit; Placer County, CA

Intent to Prepare a Supplement to the Lake of the Sky Interpretive Center Draft Environment Impact Statement

The Department of Agriculture, Forest Service, will prepare a supplement to the draft environmental impact statement (DSEIS) for its proposal to construct either an interpretive or information facility on the site commonly known as the "Sixty-four Acre Tract." This site is located adjacent to the northwest corner of Lake Tahoe in Tahoe City, California. The facility would be constructed in cooperation with the State of California, Department of Parks and Recreation.

Construction of either an interpretive or information facility on the Sixty-four Acre site would implement direction in the Lake Tahoe Basin Management Unit's Land and Resource Management Plan. The Record of Decision for the Lake Tahoe Basin Land and Resource Management Plan Final Environmental Impact Statement was signed by the Pacific Southwest Regional Forester on December 2, 1988.

This DSEIS is being prepared because the Forest Supervisor determined there is new information relevant to environmental concerns about the proposed action (40 CFR part 1502.9(c)(1)(ii)). The original notice of intent to prepare the draft environmental impact statement (DEIS) was published in the May 2, 1989, **Federal Register** (Vol. 54, No. 83). The notice of availability for the Lake of the Sky Interpretive Center DEIS was published in the **Federal Register** on March 16, 1990. The comment period closed on April 30, 1990.

Since 1987, considerable scoping, public workshops, and analyses were completed in response to this proposal. Specific public meetings were held in March, 1990, which were designed to explain and receive comments on the DEIS. Both the DEIS and the public meetings precipitated a large number of comments from the public, Federal, State and local agencies. The DSEIS will document this public involvement, and address the issues raised by both the public and the agencies.

Due to the extensive scoping and public participation that has already occurred, the Forest Supervisor determined there is no need for additional scoping prior to the release of this DSEIS. Regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA), specifically 40 CFR 1502.9(c)(4), allow agencies to exclude scoping when preparing supplements to environmental impact statements. The Forest Supervisor has, however, decided to accept written comments and suggestions concerning the re-analysis and proposed DSEIS.

The public will be informed of the availability of the DSEIS by a notice of availability in the **Federal Register**, notification through the California State Clearinghouse, and news releases issued to the media. Those individuals who commented on the DEIS will be contacted to determined if they would like a copy of the DSEIS.

The results of the scoping and the comments received on the DEIS indicate that there are significant issues to be analyzed in depth and documented in the DSEIS. These are: Social and economic effects on the nearby parcels of land; effects of additional traffic (including noise, air quality, and traffic flow) created by the proposal on the existing highways; the size and purpose; i.e., interpretation or information, of the proposed facility; availability and impacts of parking; effects of construction and use of the proposed pier; and public safety and sanitation.

The DSEIS will document variations of the original alternatives presented in the DEIS. The four alternatives that were formulated and discussed in detail in the DEIS were: (1) The "Lakeshore Site," located on the east side of State Highway 89 near the shoreline of Lake Tahoe; (2) the "Riverside Site," located on the west side of State Highway 89 near the Truckee River; and (3) the Regional/Urban Design Assistance Team (R/UDAT) recommendation. The R/UDAT was retained by the North Tahoe Community to study and make planning recommendations for the area. The fourth alternative was not to develop the facility at all, which is referred to as the "No Action Alternative".

The Forest Service expects that the DSEIS will be filed with Council on Environmental Quality and made available to the public and other commenting entities in November, 1991 Following public comment, a final environmental impact statement (FEIS) will be prepared. The Forest Service expects the FEIS will be issued in June 1992.

Comments are invited from the public, and from State and local agencies which are authorized to develop and enforce environmental standards. In addition, Federal agencies having jurisdiction by law or special expertise with respect to any environmental effects for which comments have not been specifically requested are also invited to respond.

The Forest Service believes it is important to provide reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements, which also applies to this DSEIS, must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft environmental impact statement stage, but that are not raised until after completion of the final environmental impact statement, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period on the DSEIS so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement. Comments on the DSEIS should be specific and should address the adequacy of the statement or the merits of the alternatives discussed (40 CFR 1503.3).

FOR FURTHER INFORMATION CONTACT: Written comments and suggestions concerning the re-analysis and the proposed DSEIS should be sent to the responsible official, Robert E. Harris, Forest Supervisor, Lake Tahoe Basin Management Unit, 870 Emerald Bay Road, Suite 1, South Lake Tahoe, California, 96150, by July 8, 1991.

Questions concerning the proposed action and the proposed DSEIS should be directed to Robert A. McDowell, Recreation Staff Officer, or Jackie L. Faike, Interpretive Program Services Manager (916) 573–2600.

Dated: May 24, 1991.

Robert E. Harris,

Forest Supervisor.

[FR Doc. 91–13448 Filed 6–6–91; 8:45 am]

BILLING CODE 3410–11–M

Rocky Mountain Region; Exemption of Horse Creek Fire Recovery Project From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notice; exemption of certain fire recovery projects from administrative appeals.

SUMMARY: Pursuant to 36 CFR 217.4(a)(11), the Regional Forester for the Rocky Mountain Region has determined there is good cause to exempt from administrative appeal salvage sales related to the Horse Creek Fire on the Black Hills National Forest.

EFFECTIVE DATE: June 3, 1991.

FOR FURTHER INFORMATION CONTACT: John P. Halligan, Rocky Mountain Region, USDA Forest Service, 11177 West 8th Avenue, P.O. Box 25127, Lakewood, CO 80255 (303) 236–9430, or Darrel Kenops, Forest Supervisor, Black Hills National Forest, RR 2, Box 200, Custer, SD 57730 (605) 673–2251.

SUPPLEMENTARY INFORMATION: The Forest Service has an obligation to rehabilitate National Forest System lands and resources damaged by wildfires. With full consideration given to environmental values, specific management objectives for resource recovery and rehabilitation are to:

1. Allow regeneration of burned-over areas to ensure watershed and soil quality and to provide for future timber needs;
2. Salvage burned timber and;
3. Remove trees highly susceptible to bark beetle attack.

Environmental analysis of proposed action related to the rehabilitation are currently underway. Pursuant to 40 CFR 1501.7, scoping is now in progress. Scoping is being conducted by the Pactola District Ranger to determine the issues to be addressed in the environmental analysis.

The Pactola Ranger District is expected to complete the environmental analysis and documentation in June 1991. Decisions are expected at that time. The environmental documents will be available for public review at the Supervisor's Office located at Highway 385 North, Custer, SD 57730 and at the Pactola Ranger District Office, 803 Soo San Drive, Rapid City, SD 57702.

Background

In April 1991, the Horse Creek Fire burned approximately 1,500 acres on the Black Hills National Forest. Within that area, about 300 acres were subject to high intensity burns which caused severe damage to vegetation, soil and water resources, and to visual quality. Much of the burned area is adjacent to, or visible from, a Federal highway. This area receives heavy visitation by tourists and the local public.

The area within which rehabilitation activities would occur is located in Pennington County, approximately twelve miles southwest of Rapid City, South Dakota, and is within the P6 Diversity Unit. The area, which according to the Forest Plan is to be managed primarily for wildlife winter range in nonforested areas, has been intensively managed for many years. The fire has changed the area considerably.

Planned Actions

The Pactola Ranger District interdisciplinary team surveyed the burned area and concluded that a substantial loss of timber values would occur if the timber was not removed soon. The risk of insect and disease infestations in both the short and long term are possible and were noted by the team. Because of the extensive damage to the timber resources here, there is a need to commence salvage harvesting as quickly as possible. The total estimated volume of dead and dying timber to be offered for sale is approximately 300 to 400 thousand board feet (MBF) on approximately 100 acres of National Forest System land. No road construction would be needed to accomplish the salvage.

If salvage operations are not completed before the end of Summer 1991, insects will attach both the damaged and the healthy trees in the area. Salvage harvest of useable wood fiber, following guidelines set forth in the goals, policies, and direction found in the Forest Plan will prevent an insect infestation while at the same time providing funds and opportunities to accomplish additional Plan objectives. Avoiding an insect infestation will serve to facilitate the long-term goals provided for in the Forest Plan.

A detailed inventory of the timber has not been completed to date: however, all of the trees to be salvaged are ponderosa pine with an average diameter of 10 inches. Volume losses currently are less than 10 percent. Volume loss due to rot, insects, and drying weather will accelerate beginning in July 1991, and by September 1991, it is expected that salvage would no longer be practical. Without salvage there would be no money available from timber sale collections to move the area toward the desired future condition specified in the Forest Plan.

Also, standing dead timber is currently located within falling distance of several existing roads. These roads are used by the public for recreation and access to private land. A delay in removing this timber will create a hazardous situation.

Therefore, rehabilitation salvage sales which are designed to reduce the potential for immediate catastrophic insect infestation, to reduce hazardous situations, and to offer salvage timber for sale must be undertaken as quickly as possible. Therefore, I am exempting the sales from appeal under provisions of 36 CFR part 217 if, through environmental analysis, it is found these actions are feasible.

The salvage sale to which this exemption applies will be identified in any documentation as part of the Horse Creek Fire Recovery Project.

Dated: May 30, 1991.

Tom L. Thompson,

Acting Regional Forester.

[FR Doc. 91–13447 Filed 6–6–91; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–301–602]

Certain Fresh Cut Flowers from Colombia; Preliminary Results and Termination in Part of Antidumping Duty Administrative Review; Intent to Revoke in Part the Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

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ACTION: Notice of preliminary results and termination in part of antidumping duty administrative review; intent to revoke in part the antidumping duty order.

SUMMARY: In response to requests by the petitioner and 93 respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on certain fresh cut flowers from Colombia. The review covers 186 producers and/or exporters of this merchandise to the United States and the period March 1, 1989 through February 28, 1990. The review indicates the existence of dumping margins for certain firms during the review period. Reviews of two producers and/or exporters are being terminated following withdrawal of requests for their review. Provided that prior to the final results of this review, the Floramerica group is able to demonstrate that it has not sold at less than fair value for a period of at least three consecutive years and that it is not likely to sell the subject merchandise at less than fair value in the future, the Department intends to revoke the antidumping duty order with respect to the Floramerica group upon publication of these final results. We invite interested parties to comment on these preliminary results and intent to revoke.

EFFECTIVE DATE: June 7, 1991.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 28, 1990, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (55 FR 11417) of the antidumping duty order on certain fresh cut flowers from Colombia for the period March 1, 1989 through February 28, 1990. In March of 1990, the petitioner and 93 respondents requested an administrative review covering the period March 1, 1989 through February 28, 1990. We initiated the review on May 9, 1990 (55 FR 19287). A timely request for revocation from the antidumping duty order, accompanied by the required certification, was submitted by the Floramerica group of companies. Requests for review of two producers and/or exporters, that were not also requested by the petitioner, were timely withdrawn. The Department has now conducted the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of certain fresh cut flowers from Colombia (standard carnations, miniature (spray) carnations, standard chrysanthemums and pompon chrysanthemums). These products are currently classifiable under item numbers 0603.10.30.00, 0603.10.70.10, 0603.10.70.20, and 0603.10.70.30 of the *Harmonized Tariff Schedule* (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers those 186 Colombian producers and/or exporters requested to be reviewed and who shipped subject merchandise to the United States during the period March 1, 1989 through February 28, 1990. We are terminating the reviews of Floricola La Ramada and Florval because these companies withdrew their requests for review on a timely basis and the petitioner did not request reviews of them.

For those seven producers and/or exporters that did not respond to the Department's questionnaire, El Timbul, Flores Aguila, Flores Al Faya, Flores De Nemocon, Flores La Cabanuela, Flores Mountgar, and Invernavas, we used best information available (BIA) for asssessment of antidumping duties and cash deposit purposes. BIA is the highest margin for a responding firm during the reviewed period, or 66.04 percent.

The Department intends to revoke the antidumping duty order with respect to the Floramerica group of companies if, at the time the Department publishes its final results of this review, the group has demonstrated three consecutive years of sales at not less than fair value and that it is not likely to sell subject merchandise at less than fair value in the future. The other companies who have submitted revocation requests, Exportaciones Bochica/Floral, Flores Colombianas, and companies within the Agrodex group, did not submit their requests in a timely manner as provided in § 353.25(b) of the Department's regulations. More importantly, the Agrodex companies and Exportaciones Bochica/Floral have failed to meet the eligibility requirement of having sold the subject merchandise at not less than fair value for three consecutive years. Flores Colombianas submitted their revocation request nine months after initiation of the review which was too late to include the company in verification plans.

United States Price

Pursuant to section 777A of the Tariff Act, we determined that it was appropriate to average U.S. prices on a monthly basis in order to use actual price information which is often available only on a monthly basis, to take account of the large volume of sales, and to accommodate the pricing practices associated with a perishable product.

In calculating United States Price (USP), the Department used purchase price (PP) when sales were made to unrelated purchasers in the United States prior to the date of importation, and exporter's sales price (ESP) when sales were made to unrelated purchasers in the United States after the date of importation, both pursuant to section 772 of the Tariff Act.

We calculated purchase price based on the packed price to the first unrelated purchaser in the United States. The terms of purchase price sales were f.o.b. Bogota and c.i.f. Miami. We made deductions, where appropriate, for foreign inland freight, air freight, brokerage and handling, U.S. customs duties, and return credits.

Exporter's sales price, for sales made on consignment, was calculated based on the packed price to the first unrelated customer in the United States. We made adjustments, where appropriate, for foreign inland freight, brokerage and handling, air freight, box charges, credit expenses, returned merchandise credits, royalties, U.S. duty, and either commissions paid to unrelated U.S. consignees or indirect U.S. selling expenses of related consignees.

Foreign Market Value

Section 733(a)(1)(A) of the Tariff Act requires the Department to compare sales in the United States with viable home market sales of such or similar merchandise sold in the home market in the ordinary course of trade. Although thirteen companies acknowledged a viable home market for sales of particular flower types, nine admitted to having made these sales at prices below the cost of production and failed to report them. Only four companies, Florandia Herrera Camacho, Floralex, Flores Condor de Colombia, and Pompones, actually reported their viable home market sales. However, consistent with the final results of administrative review for the March 1, 1988 through February 28, 1989 period (Final Results of Antidumping Duty Review; Certain Fresh Cut Flowers from Colombia (55 FR 20491; May 17, 1990), hereafter Final Results), we have concluded that sales of export quality flowers in Colombia are not in the ordinary course of trade for domestic consumption and have, therefore, rejected these sales as the basis for foreign market value.

The cut flower industry in Colombia is primarily an export industry. Domestic sales of most companies consist exclusively of culls (non-export quality) or defective flowers, which are not such or similar merchandise to the export quality flowers under review. As evidence of the fact that the ordinary course of trade in Colombia is sales of culls or defective merchandise, we note that in this review 173 of the 186 companies do not report domestic sales of such or similar merchandise sufficient to meet the viability standard described in the Final Results. Because we have determined that sales of such or similar merchandise in the home market are not in the ordinary course of trade, we have rejected the home market sales of export quality flowers reported by Florandia Herrera Camacho, Floralex, Flores Condor de Colombia, and Pompones as a basis for foreign market value.

Since we have rejected home market sales as the basis of foreign market value for the reasons stated above, pursuant to section 773(a) of the Tariff Act, we must compute foreign market value either by use of third country prices or by use of constructed value. The Department is rejecting third country sales as an appropriate basis for foreign market value in favor of constructed value because third country prices have been determined to be an inappropriate basis for comparison, for the reasons set forth in the Final Results.

Accordingly, in calculating foreign market value, the Department used constructed value as defined in section 773(e) of the Tariff Act for all companies. The constructed value represents the average per-flower cost for each type of flower, based on the costs incurred to produce that type of flower over the review period.

The Department used the materials, fabrication, and general expenses reported by respondents. The per-unit average constructed value has based on the quantity of export quality flowers actually sold by the grower/exporter in all markets. The non-export quality flowers (culls) which are produced in conjunction with export quality flowers are considered by-products. Therefore, revenue from the sales of culls was used as an offset against the cost of producing the export quality flowers.

Actual general expenses were used in all, but two, cases because they exceeded the statutory minimum of 10 percent of the cost of materials and fabrication. For Flores Cigarral/Flores Tairona and for Plantas Ornamentales, we used the statutory minimum of 10 percent of the cost of materials and fabrication since their actual general expenses were less than this amount. When imputed credit was included in constructed value, the actual interest expense was reduced to prevent double counting.

When respondents indicated that the actual profit for merchandise of the same general class or kind could not be calculated or was less than eight percent of the sum of the cost of production and general expenses, the Department used the eight percent statutory minimum for profit. For Pompones/Las Amalias, because the company's profit was greater than the statutory minimum, we used the company's actual profit experience. We added U.S. packing to constructed value. Adjustments to constructed value were made for credit and indirect selling expenses.

Adjustments to the respondents' data were made when certain costs necessary for the production of the flowers under review were not included or were not quantified or valued appropriately. Such adjustments included the elimination of exchange rate gains as an offset to respondents' financing expenses, the inclusion of U.S. distress sale in the total volume of flowers sold (as well as in the U.S. sales tables for the calculation of U.S. price), the elimination of U.S. distress sales value as an offset to the costs of cultivation, and an adjustment necessary to reflect actual sales quantity of export quality flowers during the review period.

The Department verified the responses submitted by the Agrodex group of companies, Exportaciones Bochica/Floral, Flores del Cauca, and the Floramerica group of companies. At verification, Flores del Cauca was unable to substantitate their submitted constructed value information. Accordingly, in these preliminary results, the Department used best information for the company's constructed value. As best information available, the Department used the highest constructed value from a responding firm for the two flower types produced by the company. The consolidated constructed value of the Agrodex group was adjusted to reflect current cost information. Exportaciones Bochica/Floral's financing expense was changed to reflect the company specific experience. For the Floramerica group of companies, indirect selling expenses were increased to include all such expenses incurred by its related Panamanian sales subsidiary.

Preliminary Results of the Review

As a result of our comparison of United States price with foreign market value, we preliminarily determine the margins to be:

Producer/exporter	Margin (percent)
Agricola Bojaca	2.59
Agricola De La Fontana	4.96
Agricola De Los Alisos	3.17
Agricola El Cactus	1.80
Agricola El Redil	0.26
Agricola Guacatay	0.42
Agricola La Corsaria Ltd	4.05
Agricola Las Cuadras	1.49
Agricola Los Arboles	4.12
Agricola Malqui	1.33
Agricola Papagayo	4.75
Agro Koralia Ltda	12.74
Agrodex Group	2.17
Agricola El Retiro	
Agricola Los Gaques	
Agrodex	
Degaflores	
Flores Camino Real	
Flores Colon	
Flores De La Comuna	
Flores De La Maria	
Flores De Las Mercedes	
Flores De Los Amigos	
Flores De Los Arrayanes	
Flores De Pueblo Viejo	
Flores Del Gallinero	
Flores Del Potrero	
Flores Dos Hectareas	
Flores El Lobo	
Flores El Puente	
Flores El Trentino	
Flores El Zorro	
Flores Juananbu	
Flores La Conejera	
Flores Tibati	
Florlinda	
Inverflores	
Inverpalmas	
Inversiones Santa Rosa	
Agroindustria Del Riofino	0.29
Agromonte	2.37
Agropecuaria Cuernavaca	2.64
Arawac	0
Becerra Castellanos	7.83
Cienfuegos	4.79
Clavecol Group	0.41
Claveles Colombianos	
Fantasia Flowers	
Splendid Flowers	
Sun Flowers	
Claveles De Los Alpes	0.72
Colflores	1.88
Crop S.A.	2.84
Cultivos El Lago	5.00
Cultivos Medellin	3.98
Cultivos Miramonte	0.14
Cultivos Tahami	2.23
Dafior	14.21
Del Tropico Ltda	2.96
Deanticola Colombiana	2.96
El Timbul	66.04
Exportaciones Bochica/Floral Ltda	0
Flora Bellisima	2.99
Floralex	1.15
Floramerica Group	0.29
Cultivos del Caribe	
Floramerica	
Flores Las Palmas	
Jardines de Colombia	
Florandia Herrera Camacho	0.15
Flores Aguila	66.04
Flores Alborada	0.69
Flores Al Faye	66.04

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Producer/exporter	Margin (percent)
Flores Altamira	1.97
Flores Arco Iris	5.01
Flores Aurora Ltda	0
Flores Cajibio	2.85
Flores Cigarral	6.12
Flores Colombianas Group	0.22
Agrosuba	
Flores Colombianas	
Jardines de los Andes	
Productos El Cartucho	
Flores Condor De Colombia	0
Flores De Exportacion S.A	1.97
Flores De Funza	0.63
Flores De Hacaritama	0.69
Flores De Hunza	6.12
Flores De La Montana	3.79
Flores De La Pradera	0
Flores De La Sabana	6.87
Flores De La Vega	4.69
Flores De Nemocon	66.04
Flores De Serrezuela	1.43
Flores De Suba	11.09
Flores De Suesca	5.62
Flores Del Bosque	0.63
Flores Del Campo	3.63
Flores Del Cauca	26.19
Flores Del Lago	4.11
Flores Del Rio	0
Flores Del Tambo	3.15
Flores Depina	9.73
Flores El Arenal (Florenal)	0.29
Flores El Rosal	3.66
Flores Estrella	0.39
Flores Generales	2.63
Flores Gicro	2.87
Flores Guaicata	36.47
Flores Hana Ichi De Colombia	15.06
Flores Juncalito	14.22
Flores La Cabanuela	66.04
Flores La Conchita	4.79
Flores La Fragancia	10.72
Flores La Union	2.84
Flores Las Caicas	1.17
Flores Mocari	15.06
Flores Monserrate	8.95
Flores Mountgar	66.04
Flores Petaluma	29.65
Flores Segaro Ltda	0
Flores Santa Fe	2.86
Flores Santa Rosa	4.25
Flores Tarona	6.12
Flores Tiba	7.13
Flores Tocarinda	0.77
Flores Tokay Hisa	15.06
Flores Tomine	2.61
Flores Tropicales	1.09
Flores Unimaco	4.90
Florexpo	15.80
Floricola La Gaitana	12.64
Groex	5.97
Grupo Andes	0.88
Agricola Arenales	
Cultivos Buenavavista	
Flores De Los Andes	
Flores Horizonte	
Inversiones Penas Blancas	
Grupo Soegro	5.13
Agricola El Morbino	
Flores Aguaclara	
Flores Del Monte	
Flores La Estancia	
Jaramillo Y Daza	
Happy Candy	1.09
Horticultura De La Sabana	1.07
Industrial Agricola	0.02
Ingro	4.02
Innovacion Andina	1.07
Inpar	5.32
Invernavas Ltda	66.04
Inversiones Calypso	4.97
Inversiones Cubivan	2.28
Inversiones La Serena	2.12
Inversiones Miraflores	3.39
Inversiones Oro Verde	3.39
Inversiones Santa Rita	3.06
Inversiones Targa	4.80
Iturrama	9.51
Jardines Bacata	0.42
Jardines Carolina	3.81
Jardines De Choconta	66.04
Jardines De Chia	0.58
Jardines Del Muna	8.18
Jardines Fredonia	0
Jardines Natalia	2.71
Las Amalias/Pomponos	0.18
Linda Colombiana	0.54
Los Geranios	2.61
Mg Consultores	1.68
Monteverde	6.06
Plantaciones Delta	2.96
Plantas Ornamentales	1.88
Rosas Colombianas	1.09
Rosas Sabinilla	2.12
Rosas Y Flores	1.66
Santa Helena	3.43
Santana Group	0.65
Hacienda Curubital	
Inversiones Istra	
Santana Flowers	
Shasta Flowers	4.49
Sunset Farms	2.64
Tag Ltda (Technica Agricola Ganadera Tag Ltda)	3.83
Toto Flowers	3.26
Tucharry	0.75
Unifior	5.94
Universal Flowers	1.17
Velez De Monchaux (Flores Susuque)	2.36
Villa Diana	6.72

Parties to the proceeding may request disclosure within 5 days and interested parties may request a hearing not later than 10 days after publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than 7 days after the time limit for filing case briefs. Any hearing, if requested, will be held 7 days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.38(e). Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 353.38(c), are due. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

Upon completion of the final results in this review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

As provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins will be required for reviewed firms. For companies with zero or *de minimis* margins (*i.e.*, less than 0.5 percent), no cash deposit will be required. For shipments from known producers and/or exporters not covered by this review, the cash deposit will continue to be at the latest rate applicable to the firm. For all other producers and/or exporters of this merchandise, the cash deposit rate shall be 2.43 percent, the weighted-average margin for all reviewed firms in this review. Because this review covers an unusually large number of companies (186 respondents), the potential for a single outlier company with enormously disparate results is significantly increased. Accordingly, for purposes of this review, we are using a weighted-average margin for all reviewed firms, instead of the highest non-BIA margin, to determine the rate for all other companies not reviewed. This approach is consistent with the Department's Final Results. These deposit requirements will be effective for all shipments of Columbian fresh cut flowers entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22 and 353.25.

Dated: May 31, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-13553 Filed 6-6-91; 8:45 am]

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[A-583-803]

Final Results of Antidumping Duty Administrative Review; Light-Walled Welded Rectangular Carbon Steel Tubing from Taiwan

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: In response to a request by petitioners, the Department of Commerce is conducting an administrative review of the antidumping duty order on light-walled welded rectangular carbon steel tubing ("LWRT") from Taiwan. The review covers shipments of this merchandise to the United States from one exporter during the period from November 21, 1988 through February 28, 1990. As a result of this review, the Department has determined that the weighted-average margin for the company under review is *de minimis*.

We gave interested parties an opportunity to comment on the preliminary results of the review. We received comments from both petitioners and respondent.

EFFECTIVE DATE: June 7, 1991.

FOR FURTHER INFORMATION CONTACT: James Rice or Alain Letort, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-3793 or telefax (202) 377-1388.

SUPPLEMENTARY INFORMATION:

Background

On February 11, 1991, the Department of Commerce ("the Department") published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on LWRT from Taiwan (56 FR 8741). We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Act").

Scope of the Review

Imports covered by this review are shipments of light-walled welded carbon steel pipes and tubes of rectangular (including square) cross-section having a wall thickness of less than 0.156 inch. Until January 1, 1989, this merchandise was classifiable under item number 610.4928 of the *Tariff Schedules of the United States, Annotated* ("TSUSA"). Since that date, these products have been classifiable under item number 7306.60.5000 of the *Harmonized Tariff Schedule* ("HTS"). As with the TSUSA number, the HTS number is provided for convenience and customs purposes. The written product description remains dispositive.

The review covers one manufacturer/exporter of certain light-walled rectangular carbon steel pipes and tubes during the period November 21, 1988 through February 28, 1990. To determine whether sales in the United States of LWRT from Taiwan were made at less than fair value, we compared the United States price with the foreign market value.

United States price

In accordance with section 772(b) of the Act (19 U.S.C. 1677a), we based United States price on purchase price, because the merchandise was sold to unrelated purchasers in the United States prior to its importation. We calculated purchase price based on c. & f., c.i.f., or f.o.b., packed prices to U.S. customers.

We made deductions from purchase price, where appropriate, for foreign inland freight, ocean freight, ocean insurance, brokerage and handling charges, export taxes, and bank charges. We made an addition to purchase price for duty drawback.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act (19 U.S.C. 1677b), we calculated foreign market value ("FMV") based on delivered or ex-factory packed prices to unrelated purchasers in Taiwan. We made deductions to foreign market value, as appropriate for foreign inland freight, brokerage and handling charges, and bank charges, and adjusted FMV for differences between Taiwanese packing costs and U.S. packing costs. We also adjusted FMV to account for commissions in the U.S. market. We limited this adjustment to the amount of indirect selling expenses incurred in the home market, in accordance with § 353.56(b) of our regulations, because commissions were paid in the U.S. market but not in the home market.

The Department selected the most similar product for fair value comparisons where there was no identical product in the home market with which to compare a product sold in the U.S. market. Ornatube did not claim any adjustments for differences in the physical characteristics of the merchandise being compared.

Interested Party Comments

Comment 1

Petitioners argue that the Department should not grant a circumstance-of-sale adjustment for the rebate Ornatube receives from China Steel for the steel coil it consumes to produce LWRT. Respondent contends that such an adjustment is warranted because the rebate is contingent upon exportation of the LWRT and because the rebate has the same economic effect as duty drawback, for which the Department makes an adjustment.

DOC Position

As we gave notice in the preliminary results of this review, the Department has now reexamined its policy and has decided not to allow a circumstances-of-sale adjustment for this type of rebate.

The China Steel rebate, although paid on export, is a delayed price adjustment on raw materials used in the production of the exported tube. As such, it results in a difference in production costs between exported and domestically consumed tube.

Section 773(a)(4)(B) of the Act authorizes the Department to adjust for "differences in circumstances of sales", which include such things as differences in commissions, credit terms, guarantees, warranties, technical assistance, and servicing. (See 19 CFR 353.56) Since the type of adjustment at issue here relates to differences in production costs, as opposed to differences in sales, it is not an allowable adjustment under the circumstance of sale provision.

We note that while the regulations do provide for adjustments to production cost differences in two instances—where quantity discounts reflect savings in production of different quantities (19 CFR 353.55(b)(2)), and where differences in physical characteristics are due to production cost differences (19 CFR 353.57(b)—neither of these provisions is applicable here.

The rebate is merely the result of the raw material supplier's decision to price differently for steel used in domestic and international sales of his customer. Such a practice has sometimes been referred to as "input dumping." While current U.S. law does not allow a direct remedy for input dumping when the input is sold to unrelated parties, it would be perverse to allow input dumping to excuse price differences between domestic and export sales of merchandise incorporating the differently priced inputs. In view of the fact that the proposed adjustment can not be deemed a sales-related expense and the policy implications of excusing downstream dumping with input dumping, we have decided not to adjust for the rebate as a circumstance of sale.

Furthermore, the Department disagrees with respondent's statement that because the rebate program has the same economic effect as a duty drawback, the Department should treat it as such. Under § 353.41(d)(1)(ii) of the Department's regulations, U.S. price may be increased by "the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by

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reason of exportation of the merchandise". This language is in conformity with paragraph (i) of the Annex to the "Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreements on Tariffs and Trade," which defines duty drawbacks very specifically as "the [non-excessive] remission (* * *) of import charges (* * *) on imported goods that are physically incorporated in the exported product." The China Steel rebate is clearly not a "remission of import charges;" in fact, it is essentially dissimilar to duty drawback because the amount of rebate is related to the differences in the price of the raw material produced in Taiwan as compared to the prevailing world market price. No import duties are involved in this case because the raw material subject to the rebate is produced domestically.

Comment 2

Petitioners request that the Department adopt their proposed model matching program. Petitioners argue that their program has the ability to match products more closely; therefore, it is improper and an abuse of discretion for the Department to fail to employ it in this review. Respondent counters that petitioners' suggested model matching program would increase the likelihood of clerical error, require an inordinate number of passes through the data to find model matches, and would not improve the current results. Therefore, respondent requests that the Department continue to use the existing program.

DOC Position

We agree with respondent. The present model matching program is essentially the same program the Department adopted in the original investigation of this product. In the Department's view, this program matches the U.S. products to the specific types of material sold in the home market that possess the same or most similar characteristics. The Department believes no substantial gains in the accuracy of the margin calculations would be achieved by adopting petitioners' suggestion.

Comment 3

Petitioners argue that because the preliminary determination in the original investigation was published on November 21, 1988 (53 FR 46900), the period of review should be November 21, 1988 through February 28, 1990. Respondent counters that the period of review should begin on November 14, 1988, the date the preliminary notice was signed by the Assistant Secretary for Import Administration.

DOC Position

We agree with petitioner, and determine that the correct period of review is November 21, 1988 through February 28, 1990.

Results of the Review

As a result of our comparison of United States price to foreign market value, we determine that the weighted-average dumping margin for Ornatube is 0.1975 percent, which is *de minimis*.

The Customs Service, therefore, shall not require a cash deposit for entries of the subject merchandise by Ornatube during the review period. For any shipments of this merchandise produced or exported by the remaining known producers and/or exporters not covered in this review, the cash deposit will continue to be at the rate published in the antidumping duty order for these firms. For any future entries of this merchandise from a new producer and/or exporter not covered in the original investigation or this administrative review, whose first shipment occurred after February 28, 1990, and which is unrelated to the reviewed firm or any previously investigated firm, the Customs Service will not require a cash deposit.

These deposit requirements are effective for all shipments of LWRT from Taiwan which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of the final results of this administrative review. This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act [19 U.S.C. 1675(a)(1)] and § 353.22 of the Commerce Department's regulations (19 CFR 353.22).

Dated: May 31, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-13554 Filed 6-6-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-559-802]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts thereof from Singapore Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On March 7, 1991, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from Singapore. We have now completed that review and determine the total bounty or grant to be 9.11 percent *ad valorem* for Sundstrand Pacific (Pte.) Ltd. (Sundstrand) and zero for all other companies during the period September 6, 1988 through December 31, 1988, and 9.11 percent *ad valorem* for Sundstrand and 2.97 percent *ad valorem* for all other companies during the period January 1, 1989 through December 31, 1989.

EFFECTIVE DATE: June 7, 1991.

FOR FURTHER INFORMATION CONTACT: William Marsteller or Michael Rollin, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 1989, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 9681) the preliminary results of its administrative review of the countervailing duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from Singapore (54 FR 19125; May 3, 1989). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of Singaporean antifriction bearings (other than tapered roller bearings) and parts thereof. Such merchandise is described in detail in appendix A to this notice. The Tariff Schedules of the United States Annotated and the Harmonized Tariff Schedule item numbers listed in appendix A are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the periods September 6, 1988 through December 31, 1988, and January 1, 1989 through December 31, 1989, and twelve programs: (1) Production for Export under part VI of the Economic Expansion Incentives Act (EEIA); (2) Monetary Authority of Singapore (MAS) Rediscount Facility; (3) Expansion of

Established Enterprises under part IV of the EEIA; (4) International Trade Incentives under part VII of the EEIA; (5) Foreign Loans for Productive Equipment under part VIII of the EEIA; (6) Warehousing and Servicing Incentives under part XI of the EEIA; (7) Double Deduction of Export Promotion Expenses—sections 14B and 14C of the Income Tax Act (ITA); (8) Double Deduction for Research and Development—section 14E of the ITA; (9) Write-offs of Payments for "Know-How", Patents and Manufacturing Licenses—section 19B of the ITA; (10) Capital Assistance Scheme; (11) Productive Development Assistance Scheme; and (12) Initiatives in New Technology Program.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received written comments from the respondents: The Government of Singapore, NMB Singapore Ltd. (NMB), Pelmec Industries (Pte.) Ltd. (Pelmec), and Minebea Co. Ltd. Singapore Branch (MSB).

Comment 1: The respondents claim that, in calculating the benefit for calendar year 1989, the Department used an estimate of the MSB mark-up on exports of the subject merchandise to the United States when actual, verified figures were available. Respondents maintain that the Department should use these actual, verified figures.

Department's Position: We agree and have adjusted our calculations accordingly. As a result of this adjustment, the total bounty or grant for NMB, Pelmec, and MSB is 2.97 percent *ad valorem* for the period January 1, 1989 through December 31, 1989.

Comment 2: The respondents claim that in calculating NMB's 1989 benefit from part VI of the EEIA, the Department should include as exports the value of certain NMB sales to an unrelated domestic party that were later exported by MSB. The respondents maintain that a letter from the Economic Development Board (EDB), provided to the Department during verification, proved that these unrelated domestic transactions are considered exports by the EDB for purposes of determining benefits under part VI of the EEIA. Since all corporate income tax returns are audited by the Government of Singapore, the respondents further claim that the audit process confirms that these unrelated domestic transactions are export sales for purposes of part VI of the EEIA.

Department's Position: We disagree. The respondents did not provided the Department with adequate information to specifically determine which components, such as the subject transactions, comprise total exports used in the 1988 tax deduction claim. Without such information, the Department is in no position to determine whether additional types of "exports" were considered. In addition, the letter referred to by the respondents indicated only that the EDB "may" consider these unrelated domestic sales to be exports. Finally, Department officials requested from the Government of Singapore, but did not receive, confirmation that these sales are considered exports for purposes of determining benefits under part VI of the EEIA.

Comment 3: The respondents contend that the "best information available" (BIA) rate selected for Sundstrand is too high. The respondents believe the combined benefit of 2.97 percent for NMB, Pelmec, and MSB should be used as the BIA rate for Sundstrand. Alternatively, the respondents recommend using the BIA rate of 4.95 percent selected for Sundstrand in the countervailing duty investigation as the BIA rate for this review.

Department's Position: We disagree. In our calculation of the benefit for NMB, Pelmec, and MSB, the Department first calculated individual company rates for each respondent. The individual company rate calculated for NMB was 9.03 percent, and the individual company rates calculated for Pelmec and MSB were zero. Following this calculation, the Department made adjustments for any markups and then combined the individual rates for these companies because they are related parties. See Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Singapore (54 FR 19125; May 3, 1989).

Because Sundstrand did not respond to our questionnaire or participate in this administrative review, the Department had no information to determine the exact benefits received by Sundstrand under the countervailable programs subject to review. Therefore, in accordance with well-established Department practice, we drew a reasonable adverse inference and assumed that Sundstrand received the highest company benefit determined for each program in this administrative review or, if the program was not used during this review period, the rate found for that program in the investigation. See, e.g., Bricks From Mexico; Final Results of Countervailing Duty Administrative Review (51 FR 43419; December 2, 1986) (discussion of administrative practice found in Bricks From Mexico; Preliminary Results of Countervailing Duty Administrative Review (51 FR 25077; July 10, 1986)). This results in a BIA rate for Sundstrand of 9.11 percent *ad valorem*.

If the Department had selected a BIA rate of 2.97 percent—a rate which is the same as the benefit for the three companies that fully complied with the Department's information requests in this review, and a rate which is lower than the BIA rate of 4.95 percent selected for Sundstrand in the countervailing duty investigation—the Department clearly would have rewarded Sundstrand for its failure to supply the Department with needed information in this administrative review. Such a result would have encouraged Sundstrand to ignore information requests by the Department in future administrative reviews and, thereby, would have conflicted with a fundamental purpose of the BIA rule. See *Rhone Poulenc, Inc.* v. *United States*, 899 F.2d 1185 (Fed. Cir. 1990); *Florex* v. *United States*, 705 F. Supp. 582 (CIT 1989).

If the Department had selected the 4.95 percent BIA rate chosen for Sundstrand during the investigation as BIA in this review, the Department similarly would have encouraged further noncompliance by Sundstrand in subsequent reviews; that rate obviously was not high enough to induce Sundstrand to respond to the Department's requests for information during this administrative review. Thus, to induce Sundstrand to provide the Department with sales and program information during subsequent reviews and to enable the Department to calculate benefits "as accurately as possible," *Rhone Poulenc*, 899 F.2d at 1191, we reasonably selected a rate—9.11 percent—which was higher than the initial BIA rate of 4.95 percent and was strictly in accordance with well-established Department practice. See, e.g., *Bricks From Mexico*, supra.

Comment 4: The respondents contend that, if the Department calculates a BIA rate for Sundstrand based on NMB's benefit, the Department should include in its calculations both the MSB mark-up on NMB exports and the domestic sales which the respondents claim the EDB considers exports. The respondents further contend that the 0.08 percent rate for MAS rediscounting should not be applied to Sundstrand since NMB did not use this program.

Department's Position: We disagree. As explained in our Position to Comment 3, our selection of BIA in this review was strictly in accordance with

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our administrative practice of selecting the highest company benefit calculated for each countervailable program during an administrative review or investigation.

Comment 5: The respondents maintain that the cash deposit rate for NMB, Pelmec, and MSB should be set at zero because NMB was the sole beneficiary of the sole program which conferred benefits during the review period, and because NMB's final benefits from this program were claimed in 1989. The respondents maintain that the Department should, at a minimum, adjust the deposit rate to reflect a verified reduction in the corporate tax rate from 33 percent in 1989 to 32 percent in 1990, and to 31 percent in 1991.

Department's Position: We disagree. To warrant a cash deposit rate of zero, respondents must demonstrate that there were no countervailable benefits conferred by the Government of Singapore during the review period or that there was a program-wide change. According to section 355.50 of the Proposed Countervailing Duty Rules (54 FR 23365; May 31, 1988), a program-wide change is not limited to an individual firm, and the change must be measurable. NMB's non-use of a program in a subsequent review period does not constitute a program-wide change within the meaning of our proposed regulations and can only be addressed in an administrative review covering that period.

Regarding the reduction in the corporate tax rate, there are a number of factors other than the corporate tax rate which affect the benefit calculation [i.e., total sales, total exports, adjusted profits, and investment allowances). Since changes in these factors can offset one another, a one percent reduction in the tax rate does not warrant a reduction in the cash deposit rate.

Final Results of Review

After considering the comments received, we determine the total bounty or grant to be 9.11 percent *ad valorem* for Sundstrand and zero for all other companies during the period September 6, 1988 through December 31, 1988, and 9.11 percent *ad valorem* for Sundstrand and 2.97 percent *ad valorem* for all other companies during the period January 1, 1989 through December 31, 1989.

Section 707 of the Tariff Act provides that the difference between the amount of a cash deposit, or the amount of any bond or security, required as security for an estimated countervailing duty and the duty determined under a countervailing duty order shall be disregarded to the extent that the estimated duty deposited is lower than the duty determined under the order for entries made before the publication date of the countervailing duty order (*i.e.*, May 3, 1989). Section 707 further provides, however, that the difference between the amount of the cash deposit required as a security for an estimated countervailing duty and the duty determined under a countervailing duty order shall be collected to the extent that the estimated duty deposited is lower than the duty determined under the order for entries made on or after the publication date of the order. The rate in our preliminary determination in the countervailing duty investigation (53 FR 34329; September 6, 1988) was 4.95 percent *ad valorem* for Sundstrand and 2.01 percent *ad valorem* for all other companies.

Furthermore, pursuant to section 705(a)(1) of the Tariff Act, the final determination in the countervailing duty investigation was extended to coincide with the final antidumping determination on the same products from Singapore. Because, pursuant to article 5, paragraph 3, of the Agreement on Interpretation and Application of articles VI, XVI, and XXIII of the General Agreements on Tariffs and Trade (the Subsidies Code), we cannot suspend liquidation for more than 120 days in the absence of a countervailing duty order, we terminated the suspension of liquidation of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after January 4, 1989. We reinstated the suspension of liquidation and required the collection of cash deposits of estimated countervailing duties for the subject merchandise entered, or withdrawn from warehouse, for consumption on or after May 3, 1989, the date of publication of the countervailing duty order.

Therefore, the Department will instruct the Customs Service to assess countervailing duties of 4.95 percent of the f.o.b. invoice price on all shipments from Sundstrand of this merchandise and to liquidate, without regard to countervailing duties, all shipments of the subject merchandise from all other companies entered, or withdrawn from warehouse, for consumption, on or after September 6, 1988 and on or before January 3, 1989. Entries or withdrawals made on or after January 4, 1989 and on or before May 2, 1989 are not subject to countervailing duties. Further, the Department will instruct the Customs Service to assess countervailing duties of 9.11 percent of the f.o.b. invoice prices on all shipments from Sundstrand of the subject merchandise and 2.97 percent of the f.o.b. invoice price on all shipments of the subject merchandise from all other companies entered, or withdrawn from warehouse, for consumption on or after May 3, 1989 and exported on or before December 31, 1989.

The full value of the countervailing duties to be assessed is attributable to the receipt of export subsidies. Therefore, consistent with section 772(d)(1)(D) of the Tariff Act, this amount will be used to adjust the assessment rate for applicable entries of merchandise covered by the antidumping order on ball bearings and parts thereof from Singapore.

The Department will also instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 9.11 percent of the f.o.b. invoice price on all shipments from Sundstrand of the subject merchandise and 2.97 percent of the f.o.b. invoice price on shipments of the subject merchandise from all other companies entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: May 31, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

Appendix A

Scope of The Review

The products covered by this review, antifriction bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof, constitute the following separate "classes or kinds" of merchandise as outlined below.

(1) **Ball Bearings, Mounted or Unmounted, and Parts Thereof:** These products include all antifriction bearings which employ balls as the rolling element. During 1988, imports of these products were classifiable under the following categories: Antifriction balls (Tariff Schedules of the United States Annotated (TSUSA) items 680.3025 and 680.3030); ball bearings with integral shafts (TSUSA item 680.3300); ball bearings (including radial ball bearings) and parts thereof (TSUSA items 680.3704, 680.3708, 680.3712, 680.3717, 680.3718, 680.3722, 680.3727, and 680.3728); ball bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); ball bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other bearings (except tapered roller bearings) and parts thereof (TSUSA 680.3960). Wheel hub units which employ balls as the rolling element entering under TSUSA item 692.3295 are subject to the review; all other products entering under this TSUSA item are not subject to the review. Finished but unground or semiground balls are not included in the scope of this review.

Imports of these products are currently classified under the following Harmonized Tariff Schedule (HTS) item numbers: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(2) **Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof:** These products include all antifriction bearings which employ spherical rollers as the rolling element. During 1988, imports of these products were classifiable under the following categories: Antifriction rollers (TSUSA item 680.3040); spherical roller bearings and parts thereof (TSUSA items 680.3952 and 680.3956); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0450); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ spherical rollers as the rolling element entering under TSUSA item 692.3295 are subject to the review; all other products entering under this TSUSA item are not subject to the review.

Imports of these products are currently classifiable under the following HTS item numbers: 8482.30.00, 8482.80.00, 8482.91.00, 8482.99.50, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(3) **Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof:** These products include all antifriction bearings which employ cylindrical rollers as the rolling element. During 1988, imports of these products were classifiable under the following categories: Antifriction rollers (TSUSA item 680.3040); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ cylindrical rollers as the rolling element entering under TSUSA item 692.3295 are subject to the review; all other products entering under this TSUSA item are not subject to the review. Finished but unground or semiground balls are not included in the scope of this review.

Imports of these products are currently classified under the following Harmonized Tariff Schedule (HTS) item numbers: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(2) **Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof:** These products include all antifriction bearings which employ spherical rollers as the rolling element. During 1988, imports of these products were classifiable under the following categories: Antifriction rollers (TSUSA item 680.3040); spherical roller bearings and parts thereof (TSUSA items 680.3952 and 680.3956); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0450); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ spherical rollers as the rolling element entering under TSUSA item 692.3295 are subject to the review; all other products entering under this TSUSA item are not subject to the review.

Imports of these products are currently classifiable under the following HTS item numbers: 8482.30.00, 8482.80.00, 8482.91.00, 8482.99.50, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(3) **Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof:** These products include all antifriction bearings which employ cylindrical rollers as the rolling element. During 1988, imports of these products were classifiable under the following categories: Antifriction rollers (TSUSA item 680.3040); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ needle rollers as the rolling element entering under TSUSA item 692.3295 are subject to the review; all other products entering under this TSUSA item are not subject to the review.

Imports of these products are currently classifiable under the following HTS item numbers: 8482.40.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.[illegible]70, 8708.50.50, 8708.60.50, 8708.99.50.

(5) **Spherical Plain Bearings, Mounted or Unmounted, and Parts Thereof:** These products include all spherical plain bearings which do not employ rolling elements and include spherical plain rod ends. Spherical plain bearings entering under TSUSA items 681.3900 and 692.3295 are subject to the review; all other products entering under these TSUSA items are not subject to the review.

Imports of these products are currently classifiable under the following HTS item numbers: 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8485.90.00, 8708.99.50.

This review covers all of the subject bearings and parts thereof outlined above with certain limitations. With regard to finished parts (inner race, outer race, cage, rollers, balls, seals, shields, etc.), all such parts are included in the scope of this review. For unfinished parts (inner race, outer race, rollers, balls, etc.), such parts are included if (1) they have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by this review are those where the part will be subject to heat treatment after importation.

[C-357-004]

Carbon Steel Wire Rod from Argentina; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce has conducted an administrative review of the agreement suspending the countervailing duty investigation on carbon steel wire rod from Argentina. The review covers the period January 1, 1989 through December 31, 1989 and three programs. We preliminarily determine that the Government of Argentina and the exporter of carbon steel wire rod have complied with the terms of the suspension agreement. We invite interested parties to comment on these results.

EFFECTIVE DATE: June 7, 1991.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Barbara Williams, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-3793.

SUPPLEMENTARY INFORMATION:

Background

On August 31, 1990, the Department of Commerce ("the Department") published a notice of "Intent to Terminate the Suspended Investigation" (55 FR 35704) of the revised agreement suspending the countervailing duty investigation on carbon steel wire rod from Argentina (51 FR 44048; December 11, 1986). On September 13, 1990, the petitioners, Atlantic Steel Co., Bethlehem Steel Corp., Georgetown Steel Corp., North Star Steel Texas, Inc., and Raritan River Steel Company, objected to termination. On September 28, 1990, the petitioners requested an administrative review of the suspension agreement. We initiated the review on October 28, 1991, covering the period January 1, 1989 through December 31, 1989 (55 FR 43153). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Tariff Act").

Scope of Review

Imports covered by this review are shipments of carbon steel wire rod from Argentina. During the period of review, such merchandise was classifiable under items 7213.20.00, 7213.31.30, 7213.39.00, 7213.41.30, 7213.50.00, and 7313.49.00 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Acindar Industria Argentina de Aceros, S.A. ("Acindar"), is the only known exporter of Argentina carbon steel wire rod to the United States. The review covers the period January 1, 1989 through December 31, 1989 and three programs: (1) The Reembolso; (2) Pre-Export Financing; and (3) Post-Export Financing.

Analysis of Programs

(1) Reembolso

The reembolso is a rebate of indirect taxes on the production of exported goods, the amount of which may reflect total or partial repayment of those taxes. Under the terms of the suspension agreement, the Argentine government agreed not to provide any reembolso overrebates on exports of carbon steel

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wire rod to the United States. In the suspension agreement, the Department determined that the portion of the reembolso that constituted an allowable rebate of indirect taxes was 7.6 percent of the f.o.b. invoice price for carbon steel wire rod. During that period, rebate rates were calculated by the Argentine government for each product or industry sector. On October 16, 1986, Decree 1555/86 modified the reembolso program by grouping industries into three categories and setting new rebate levels for each category. Decree 1555 set the levels at 10 percent for Level I, 12.5 percent for Level II, and 15 percent for Level III. Based on this decree, carbon steel wire rod is included in Level I and, therefore, was eligible to receive a rebate of 10 percent in the review period.

In its questionnaire response, Acindar provided a study of indirect tax incidence on inputs that are physically incorporated into the exported product. While eligible for a 10.0 percent rebate, during verification we examined the tax incidence study and found that Acindar did not exceed the 7.6 percent of allowable tax incidence stated in the suspension agreement.

Therefore, we preliminarily determine that no overrebate of indirect taxes occurred and that this program did not provide any countervailable benefit to the carbon steel wire rod exporter during the review period. Accordingly, we preliminarily determine that the Government of Argentina and the exporter of carbon steel wire rod have complied with the terms of the agreement.

(2) Pre-Export Financing

Prior to this review period, Circular RF-153 authorized pre-export financing for short-term loans to the exporters of the subject merchandise. The funds were provided by the Central Bank of Argentina and distributed through commercial banks.

On June 3, 1988, the Central Bank of Argentina issued Communique A-1205, which combined past financing programs—pre-export financing, financing, and post-export financing. Under Communique A-1205 pre-export financing loans are for 150 days and the funds are distributed in the same manner as under RF-153. In its questionnaire response, the Argentine government stated that Communique A-1205 excluded from the pre-export financing program exports of wire rod to the United States by excluding tariff item number 73.10.01.00. On January 1, 1990, the financing system under Communique A-1205 was partially suspended, and on March 8, 1991, Communique A-1807 totally suspended pre-export financing.

During verification, we found that exports of wire rod during the review period were registered under the Argentine tariff item number 73.15.10.00.00. Central Bank of Argentina officials stated that Communique A-1205 was intended to disqualify all carbon steel wire rod exports destined for the United States from eligibility for the pre-export financing program and that tariff item number 73.15.10.00.00 was inadvertently left off of the Communique. In addition, we examined a letter from the Secretary of Trade to the President of the Central Bank, which was written when the suspension agreement was published, requesting that all carbon steel wire rod exports to the United States be excluded from export financing programs.

During verification, we examined Acindar's accounting records that found that the Government of Argentina did not provide and Acindar did not receive pre-export financing for exports of wire rod to the United States during the review period. Therefore, we preliminarily determine that the Government of Argentina and the exporter of carbon steel wire rod have complied with the terms of the agreement.

(3) Post-Export Financing

Communique A-228 authorized post-export financing for short-term loans to exporters of the subject merchandise. The funds were provided by the Central Bank of Argentina and distributed through commercial banks.

On June 3, 1988, the Central Bank of Argentina issued Communique A-1205, which combined past financing programs—pre-export financing, financing, and post-export financing. Under Communique A-1205, post-export financing loans are for 180 days and the funds are distributed in the same manner as under A-228. In its questionnaire response, the Argentine government stated that Communique A-1205 excluded from the post-export financing program exports of wire rod to the United States by excluding tariff item numbers 73.10.01.00 and 73.15.07.00. On January 1, 1990, the financing system under Communique A-1205 was partially suspended, and on March 8, 1991, Communique A-1807 totally suspended post-export financing.

As explained in the pre-export financing section, during verification we found that exports of wire rod during the review period were registered under the Argentine tariff item number 73.15.10.00.00. When we requested information on why tariff item number 73.15.07.00 was included in Communique A-1205 for post-export financing, the Argentine government explained that the Central Bank's Communique for this tariff item number was an administrative error and the correct tariff item number should be 73.15.10.00.00. Central Bank officials stated, again, that the intent of Communique A-1205 was to exclude from financing program eligibility all carbon steel wire rod exports destined for the United States.

During verification, we examined Acindar's accounting records and found that the Government of Argentina did not provide and Acindar did not receive post-export financing for exports of wire rod to the United States during the review period. Therefore, we preliminarily determine that the Government of Argentina and the exporter of carbon steel wire rod have complied with the terms of the agreement.

Other Programs

Although not covered by the suspension agreement, we examined the following programs and preliminarily determined that Acindar did not use them or did not receive a benefit during the review period:

Exemption from Stamp Taxes;
Incentives for Southern Ports;
Incentives for Northern Ports;
Low-Cost Financing for Trading Companies;
Tax Deduction Under Decree 173/85;
Regional Tax Incentives;
Industrial Parks;
Capital Tax Exemption;
Grants for Increased Exports Under the Program Especial de Exportaciones ("PEEX"); and
Foreign Exchange Insurance (Debt Restructuring).

Preliminary Results of Review

As a result of our review, we preliminarily determine that the Government of Argentina and Acindar, the only exporter of wire rod to the United States during the period January 1, 1989 through December 31, 1989, complied with the terms of the suspension agreement.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 14 days after the date of publication or the first workday thereafter. Rebuttal briefs and rebuttals to written comments, limited to issues in those comments, must be filed not later than 37 days after the date of publication. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: May 31, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-13556 Filed 6-6-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-508-605]

Industrial Phosphoric Acid from Israel Preliminary Results of Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce has conducted two administrative reviews of the countervailing duty order on industrial phosphoric acid from Israel. We preliminarily determine the net subsidy to be 19.46 percent *ad valorem* for Haifa Chemicals, Ltd. and 9.18 percent *ad valorem* for all other firms during the period January 1, 1988 through December 31, 1988. We preliminarily determine the net subsidy to be 11.26 percent *ad valorem* for all firms during the period January 1, 1989 through December 31, 1989. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: June 7, 1991.

FOR FURTHER INFORMATION CONTACT: Cameron Cardozo, Britt Doughtie, or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 1989 and August 8, 1990, the Department of Commece (the Department) published in the **Federal Register** notices of "Opportunity to Request Administrative Review" (54 FR 32364 and 55 FR 32279) of the countervailing duty order on industrial phosphoric acid from Israel. On August 24, 1989, the petitioners, FMC Corporation and the Monsanto Company, requested that we conduct an administrative review of the order for the period January 1, 1988 through December 31, 1988. On August 29, 1990, the same petitioners requested that we conduct an administrative review of the order for the period January 1, 1989 through December 31, 1989. We initiated the reviews on September 20, 1989 (54 FR 38712) and September 24, 1990 (55 FR 39032), respectively. The Department has now conducted these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). The final results of the last administrative reivew of this order were published in the **Federal Register** on January 24, 1991 (56 FR 2751).

Scope of Review

Imports covered by these reviews are shipments of Israeli industrial phosphoric acid. During the 1988 review period, this merchandise was classifiable under item number 416.30 of the Tariff Schedules of the United States (TSUS). During the 1989 review period, this merchandise was classifiable under item number 2809.20.00 of the Harmonized Tariff Schedule (HTS). The TSUS and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The reviews cover the periods January 1, 1988 through December 31, 1988, and January 1, 1989 through December 31, 1989, and ten programs. Negev Phosphates, Ltd. (NPL) and Haifa Chemicals, Ltd. (Haifa) are the only known exporters of the subject merchandise from Israel to the United States during the review periods.

Analysis of Programs

(1) Encouragement of Capital Investments Law (ECIL) Grants

The ECIL grants program was established to attract capital to Israel. In order to be eligible to receive various benefits under the ECIL, including investment grants, drawback grants, capital grants, accelerated depreciation, and reduced tax rates, the applicant must obtain approved enterprise status.

Approved enterprise status is obtained after review of information submitted to the Israeli Ministry of Industry and Trade, Investment Center Division. The amount of the grant benefits received by approved enterprises depends on the geographic location of the eligible enterprise. For purposes of the ECIL program, Israel is divided into three zones—Development Zone A, Development Zone B, and the Central Zone—each with a different funding level.

Since 1978, only investment projects outside the Central Zone have been eligible to receive grants. The Central Zone comprises the geographic center of Israel, including its largest and most developed population centers. Because the grants are limited to enterprises located in specific regions, we determine that they constitute subsidies within the meaning of the Tariff Act.

NPL is located in Development Zone A, and received ECIL investment, drawback, and capital grants in disbursements over a period of years for several projects. All but three of the funded projects were located at its Oron and Zin plants and were unrelated to IPA production. We did not include ECIL grants to these locations in our calculations. There were three projects related to IPA production, two of which applied directly to NPL's IPA production facility and one of which applied to the phosphate rock processing plant in Arad, which produces an input for IPA. Grants for these projects made from 1980 through 1989 resulted in benefits during the periods under review. To determine the amount of the Arad grants applicable to IPA production, the Department first calculated the subsidy to the Arad facility per unit of output of rock (by volume) and multiplied this amount by the number of metric tons of rock needed to produce one metric ton of IPA. We then multiplied the subsidy on one ton of IPA by the total quantity of IPA sales to get a total subsidy, which we divided by the total value of all sales of IPA. The Department used only the grant value related to IPA production in the calculation of the benefit.

To calculate the benefit, we allocated these grants over ten years (the average useful life of assets in the chemical manufacturing industry, as determined under the U.S. Internal Revenue Service Asset Depreciation Range System). To allocate benefits over time, we typically use as our discount rate the cost of the firm's long-term fixed-rate debt for the year in which the terms of the grant were approved. However, because NPL had no significant fixed-rate long-term debt, we used the rate for long-term industrial development loans, adjusted for inflation, as the discount rate for grants received in the years 1980-1987. Because these rates were unavailable for 1988-1989, we used the rate for government indexed five-year bonds in Israel, adjusted for inflation, from the Bank of Israel's Annual Reports for 1988 and 1989, as the discount rate for grants received in 1988 and 1989. We used a declining balance formula to determine

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the benefit stream for the relevant grants.

We allocated the benefits attributable to each review period over the value of NPL's total IPA sales during each review period. On this basis, we preliminarily determine the benefit from this program to be 2.44 percent *ad valorem* during the 1988 review period, and 2.80 percent *ad valorem* during the 1989 review period.

(2) Long-term Industrial Development Loans

Prior to July 1985, approved enterprises were eligible to receive long-term industrial development loans funded by the Government of Israel. During our investigation, we verified that these loans, like the ECIL grants, were project-specific. They were disbursed through the Industrial Development Bank of Israel (IDBI) and other industrial development banks which no longer exist.

The long-term industrial development loans were provided to a diverse number of industries, including agricultural, chemical, mining, machine, and others. However, the interest rates on loans vary depending on the Development Zone location of the borrower. The interest rates on loans to borrowers in Development Zone A are lowest, while those on loans to borrowers in the Central Zone are highest. Therefore, loans to companies in Zones A and B are at preferential terms relative to loans received by companies in the heavily populated and developed Central Zone. Because preferential terms are limited to companies located in certain regions, we determine that these loans are countervailable.

NPL had loans outstanding under this program during the review periods for projects at two of its plants, one of which is unrelated to IPA production and one of which is the phosphate rock processing facility in Arad which produces an input for IPA. The loans provided for the rock processing facility carry the Zone A interest rates because of NPL's location. Therefore, we determine that NPL received countervailable benefits under this program because the interest rates charged NPL are less than those which would apply in the Central Zone.

The loans under this program have variable interest rates linked to changes in the dollar-shekel exchange rate. Therefore, we cannot calculate the present value of the interest savings, nor is there a single discount rate for allocating the benefits over time, as under our normal long-term loan methodology. Accordingly, we have compared the interest that would have been paid on a variable-rate benchmark loan (i.e., a loan available to firms in the Central Zone) to the interest paid on the preferential loan during the review period. We multiplied the subsidy by the percentage of phosphate rock production used to make IPA, then divided this amount over the total value of all sales of IPA. On this basis, we preliminary determine the benefit from this program to be 0.01 percent *ad valorem* during the 1988 review period, and 0.01 percent *ad valorem* during the 1989 review period.

(3) Exchange Rate Risk Insurance Scheme

The Exchange Rate Risk Insurance Scheme (EIS), operated by the Israel Foreign Trade Risk Insurance Corporation Ltd. (IFTRIC), is aimed at insuring exporters against losses which result when the rate of inflation exceeds the rate of devaluation and the new Israeli Shekel (NIS) value of an exporter's foreign currency receivable does not rise enough to cover increases in local costs.

The EIS scheme is optional and open to any exporter willing to pay a premium to IFTRIC. Compensation is based on a comparison of the change in the rate of devaluation of the NIS against a basket of foreign currencies with the change in the consumer price index. If the rate of inflation is greater than the rate of devaluation, the exporter is compensated by an amount equal to the difference between these two rates multiplied by the value-added of the exports. If the rate of devaluation is higher than the change in the domestic price index, however, the exporter must compnsate IFTRIC. The premium is calculated for all participants as a percentage of the value-added sales value of exports. IFTRIC changes this percentage rate periodically, but at any given time it is the same for all exporters.

In determining whether an export insurance program provides a countervailable benefit, we examine whether the premiums and other changes are adequate to cover the programs's long-term operating costs and losses. In our Final Results of Countervailing Duty Administrative Review; Oil Country Tubular Goods from Israel (55 FR 46703; November 6, 1990) and Final Affirmative Countervailing Duty Determination; Certain Fresh Cut Flowers from Isreal (52 FR 3316; February 3, 1987), we found that this program conferred a countervailable benefit on manufacturers, producers, or exporters in Israel of oil country tubular goods and flowers. In both those cases, we reviewed EIS data which showed that EIS operated at a loss from 1981 through 1987. We believe that seven years, in this case, is a sufficiently long period to establish that the premiums and other changes are manifestly inadequate to cover the long term operating costs and losses of the program. Therefore, despite periodic increases in the premium rate, we determine that this program confers an export subsidy on exports of IPA from Israel.

In calculating the benefit, we have taken into account the special features of this program. Under a typical insurance scheme, the users pay premiums and then receive a payment if the event being insured against occurs. Under the Exchange Rate Risk Insurance Scheme, on the other hand, the user receives a payment if the inflation rate exceeds the depreciation rate or makes an additional payment if the depreciation rate exceeds the inflation rate. Since the program has been in place, payments received by users have exceeded the payment they have made to the scheme. Thus, users of the scheme have virtually no risk of incurring additional payment costs, and the "premiums" serve only as a fee to obtain payment from the scheme. Therefore, we have calculated the benefit by allocating the amount of compensation NPL received from IFTRIC expressly for IPA exported to the United States, after deducting premiums paid, over the value of the company's exports of IPA to the United States during the review periods. On this basis, we preliminarily determine the benefit from this program to be 6.73 percent *ad valorem* during the 1988 review period, and 8.45 percent *ad valorem* during the 1989 review period.

(4) Other Programs

We also examined the following programs and preliminarily determine that exporters of industrial phosphoric acid did not use them during the 1988 and 1989 review periods:

(A) Reduced tax rates under ECIL;
(B) BCIL section 24 loans;
(C) Preferential accelerated depreciation under ECIL;
(D) Labor training grants;
(E) Encouragement of Industrial Research and Development Grants;
(F) Dividends and Interest Tax Benefits under section 46 of the ECIL; and
(G) Property tax exemptions on buildings and equipment.

(5) Best Information Available

Haifa Chemicals, Ltd., which exported the subject merchandise to the United States during the 1988 review period, did not respond to the Department's questionnaire. Therefore, as best information available, we have selected the highest rate determined for Haifa in this proceeding, the 19.46 percent *ad valorem* rate found in the Department's Final Affirmative Countervailing Duty Determination: Industrial Phosphoric Acid from Israel (52 FR 25447; July 7, 1987).

Preliminary Results of Review

As a result of our review, we preliminarily determine the net subsidy to be 19.46 percent *ad valorem* for Haifa Chemicals, Ltd., and 9.18 percent *ad valorem* for all other companies during the period January 1, 1988 through December 31, 1988. We preliminarily determine the net subsidy to be 11.26 percent *ad valorem* for all companies during the period January 1, 1989 through December 31, 1989.

The Department intends to instruct the Customs Service to assess countervailing duties of 19.46 percent of the f.o.b. invoice price on shipments from Haifa Chemicals, Ltd., and 9.18 percent of the f.o.b. invoice price on shipments from all other firms exported on or after January 1, 1988 and on or before December 31, 1988, and 11.26 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after January 1, 1989 and on or before December 31, 1989.

Further, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 11.26 percent of the f.o.b. invoice price on all shipments of the subject merchandise from Israel entered, or withdrawn from warehouse, for consumption on or after the date of publication aof the final results of these administrative reviews.

Parties to the proceeding may request disclosure of the calculations methodology and interested parties may request a hearing not later than 10 days after date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 355.38(c), are due.

The Department will publish the final results of these administrative reviews including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

These administrative reviews and notice ere in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: May 31, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-13557 Filed 6-6-91; 8:45 am]
BILLING CODE 3510-05-M

Minority Business Development Agency

Business Development Center Applications: Columbia, SC

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with the provisions of Executive Order 11625, the Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $194,118 for the project performance of 10/1/91 to 09/30/92. The MBDC will operate in the Columbia, South Carolina, Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $165,000 in Federal funds and a minimum of $29,118 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes, and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority business owners that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority owned businesses.

Applications will be judged initially by the regional staff on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations (50 points); the resources available to the firm in providing management and technical assistance (10 points); the firm's proposed approach to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). It is advisable that applicants have an existing office in the geographic region for which they are applying.

An applicant must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive.

The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purposes of the MBDC program. The application will then be forwarded to the Department for final processing and approval if appropriate. The Director will consider past performance of the applicant oh previous Federal Awards.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Applicants who have an outstanding account receivable with the Federal Government may not be considerd for funding until these debts have been paid or arrangements satisfactory to the Federal Government are made to pay the debt.

Applicants are subject to Governmentalwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

Awards under this program shall be subject to all Federal Departmental regulations, policies, and procedures applicable to Federal assistance awards.

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A false statement on an application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

Section 319 of Public Law 101–121 generally prohibits recipients of appropriated funds from lobbying the Executive or Legislative Branches of Federal Government in connection with a specific contract, grant, or loan. A "Certification for Contracts, Grants, Loan, and Cooperative Agreements" and the SF–LLL, "Disclosure of Lobbying Activities" (if applicable), is required. Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs", is not applicable to this program.

CLOSING DATE: The closing date for applications is July 12, 1991. Applications must be postmarked on or before July 12, 1991.

ADDRESSES: Proposals will be reviewed by the Dallas Regional Office. The mailing address for submission is: Dallas Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 1100 Commerce Street, room 7B23, Dallas, Texas 75242, 214/767–8001.

To order a Request For Application (RFA) and to receive additional information contact: Carlton L. Eccles, Regional Director of the Atlanta Regional Office on (404) 730–3300 or U.S. Department of Commerce, Minority Business Development Agency, 401 W. Peachtree Street, room 1930, Atlanta, Georgia 30308–3516.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits, and applicable regulations can be obtained at the above address.

11.800 Minority Business Development

(Catalog of Federal Domestic Assistance)

Note: A pre-application conference, to assist all interested applicants, will be held at the U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree St., NW., room 1930, Atlanta, Georgia, June 26, 1991, at 9 a.m.

Dated: June 3, 1991.

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

[FR Doc. 91–13549 Filed 6–6–91; 8:45 am]

BILLING CODE 3510–21–M

National Technical Information Service

Advisory Board; Open Meeting

AGENCY: National Technical Information Service, Commerce.

SUMMARY: The Advisory Board was established by statute (Public Law 100–519) on October 24, 1988, and received its charter on September 15, 1989. Its function is to advise the Secretary of Commerce and the Director of the National Technical Information Service on the general policies and operations of the National Technical Information Service (NTIS), including policies in connection with fees and charges for its services.

TIME AND PLACE: June 20, 1991 from 9 a.m. to 5:30 p.m. and June 21, 1991 from 9 a.m. to 2:30 p.m. The meeting will take place at NTIS, 5285 Port Royal Road, room 2029, Springfield, Virginia 22161.

Agenda

Time	*Item*
	Thursday, June 20
9–9:30	1. Opening. 1.1 Welcome by the Director of NTIS. 1.2 Chairman's Introduction to the Meeting. 1.3 Adoption of the Agenda.
9:30–12	2. Strategic Issues. 2.1 Trends in NTIS Products and Services. 2.2 Resource Requirements. 2.3 Mission and Scope of NTIS.
1:30–5:30	3. Role of NTIS among Government Information Agencies. 3.1 Dialog with Representatives of Federal Agencies. 3.2 Public Participation. 3.3 Summary of the Day's Findings.
	Friday, June 21
9–12	4. Strategic Issues. 4.1 Development of a Customer-Responsive Document Service. 4.2 Pricing Policies and Sources of Investment and Working Capital.
1:30–2:30	5. Closing. 5.1 Public Participation. 5.2 Chairman's Summary. 5.3 Planning for Future Meetings. 5.4 Adjournment.

PUBLIC PARTICIPATION: The meeting will be open to public participation. Approximately thirty minutes each day will be set aside for oral comments or questions as indicated in the agenda. Approximately twenty seats will be available for the public including five seats reserved for the media. Seats will be available on a first-come first-served basis. Any member of the public may submit written comments concerning the committee's affairs at any time before and after the meeting. Copies of the minutes of the meeting will be available within thirty days from the address given below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Freeman, Information Technology Manager, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. Telephone: (703) 487–4778. Fax: (703) 487–5009.

Dated: May 31, 1991.

Joseph F. Caponio,

Director, National Technical Information Service.

[FR Doc. 91–13449 Filed 6–6–91; 8:45 am]

BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

June 4, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535–9480. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated September 25 and October 3, 1985, as amended, between the Governments of the United States and Indonesia establishes limits for the period beginning on July 1, 1991 and extending through June 30, 1992.

A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State (202) 647–3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 4, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated September 25 and October 3, 1985, as amended, between the Governments of the United States and Indonesia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 1, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Indonesia and exported during the twelve-month period beginning on July 1, 1991 and extending through June 30, 1992, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
219	6,062,443 square meters.
313	11,000,242 square meters.
314	38,410,090 square meters.
315	17,898,371 square meters.
317/617/326	17,069,181 square meters of which not more than 2,490,792 square meters shall be in Category 326.
331	567,408 dozen pairs.
334/335	141,852 dozen.
338/339	766,001 dozen.
340	524,852 dozen.
341	567,408 dozen.
347/348	992,963 dozen.
351/651	293,874 dozen.
369–S [1]	579,096 kilograms.
445/446	53,076 dozen.
604–A [2]	450,405 kilograms.
613/614/615	15,169,195 square meters.
625/626/627/628/629	17,921,420 square meters.
635	106,389 dozen.
638/639	978,778 dozen.
640	519,156 dozen.
641	1,438,398 dozen.
645/646	496,482 dozen.
647	620,304 dozen.
648	1,436,550 dozen.
Group II	
200, 201, 218, 220, 222–227, 229, 237, 239, 300, 301, 330, 332, 333, 336/636, 342/642, 345, 349, 350, 352–354, 359, 360–363, 369–D [3], 369–O [4], 400–444, 447–469, 600, 603, 604–O [5], 606, 607, 611, 618, 619/620, 621, 622, 624, 630, 631–634, 643, 644, 649, 650, 652–654, 659, 665, 666, 669, 670, 831–836, 838, 839, 840, 842–847, 850–852, 858 and 859, as a group.	78,670,596 square meters equivalent.
Sublevels within Group II	
237	280,358 dozen.
336/636	373,230 dozen.
342/642	214,117 dozen.
345	274,336 dozen.
350	77,617 dozen.
369–D	515,963 kilograms.
611	4,000,279 square meters.
619/620	5,056,200 square meters.
631	980,576 dozen pairs.
634	50,735 dozen.
847	259,878 dozen.
Subgroup of Group II 400–444 and 447–469, as a group.	2,662,698 square meters equivalent.

[1] Category 369–S: only HTS number 6307.10.2005.

[2] Category 604–A: only HTS number 5509.32.0000.

[3] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[4] Category 369–O: all HTS numbers except 6302.60.0010, 6302.91.0005, 6302.91.0045 (Category 369–D); and 6307.10.2005 (Category 369–S).

[5] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

Imports charged to these category limits for the period July 1, 1990 through June 30, 1991 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and Indonesia.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–13550 Filed 6–6–91; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

June 4, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 11, 1991.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535–9480. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 315 is being increased by application of swing, reducing the limit for Category 604–A to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 25860, published on June 25, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist

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only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 4, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on June 19, 1990, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on July 1, 1990 and extends through June 30, 1991.

Effective on June 11, 1991, you are directed to amend further the directive dated June 19, 1990 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Indonesia:

Category	Adjusted twelve-month limit [1]
315	17,051,485 square meters.
604-A [2]	157,951 kilograms.

[1] The limits have not been adjusted to account for any imports exported after June 30, 1990.
[2] Category 604-A: only HTS number 5509.32.0000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-13551 Filed 6-6-91; 8:45 am]

BILLING CODE 3510-DR-F

Participation in the Special Access and Special Regime Programs

June 4, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Republishing a previous notice.

FOR FURTHER INFORMATION: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On December 6, 1989 a notice was published in the **Federal Register** (54 FR 50425) announcing amendments to the requirements for participating in the Special Access and Special Regime Programs.

Unfortunately, a number of firms have expressed confusion to Customs over the required documentation during their compliance review and subsequently are in jeopardy of being prohibited from participation in the Special Access and Special Regime Programs.

In an effort to clear up any questions concerning what documentation is needed to present to Customs officials at the time of the compliance review, CITA is republishing the December 6, 1989 notice below.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

Amendment to the Requirements for Participating in the Special Access and Special Regime Programs

November 30, 1989.

AGENCY: Committee for the Implementation of Textile Agreements

ACTION: Amendment of requirements and procedures for participation in the Special Access Program for Caribbean Basin Countries and the Mexico Special Regime Program.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Brian F. Fennessy, Commodity Industry Specialist, the Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-3400.

SUPPLEMENTARY INFORMATION: This notice identifies new implementation and enforcement procedures for the Special Access Program under the CBI and the Mexico Special Regime Program.

Background

On February 20, 1986, the President announced a special program to guarantee access to the U.S. market for Caribbean-produced textile products assembled from fabric formed and cut in the United States. Since the 1986 announcement, Caribbean countries have entered into bilateral agreements with the United States under which guaranteed levels of access are permitted for their exports of qualifying assembled textile products. These guaranteed access levels are separate from the quota or designated consultation levels applicable to textile products not assembled solely from U.S. formed and cut fabric.

Pursuant to authority delegated by Executive Order No. 11651 of March 3, 1972, as amended, and in accordance with the President's Announcement of February 20, 1986, the Committee for the Implementation of Textile Agreements (CITA), announced the Special Access Program, published on June 11, 1986 (51 FR 21208) and (July 10, 1987 (52 FR 26057)), the requirements for participation in the Special Access Program. Under the Special Access Program, the United States has established Guaranteed Access Levels, or GALS, assuring access to the U.S. market for textile products which fulfill the requirements of the Special Access Program.

A June 11, 1986 **Federal Register** notice announced that firms participating in the program must complete a Special Access Program CBI Export Declaration, Form ITA-370P (available from the U.S. Government Printing Office), for each qualifying shipment (See 52 FR 18414 (May 15, 1987)). That notice also explained the three-part form ITA-370P and the procedures for presenting the form to the U.S. Customs Service.

On February 13, 1988, the Government of the United States and the Government of Mexico entered into a textile agreement, effective January 1, 1988. Under the terms of that agreement, a Special Regime was established under which a number of categories were placed under quotas which distinguish between Mexican products produced from foreign fabric and Mexican products assembled from U.S. formed and cut fabric. In essence, each category has a sublimit for products that are not assembled from U.S. formed and cut fabrics.

On May 3, 1988 and August 25, 1988, notices were published in the **Federal Register** (53 FR 15723 and 53 FR 32421), announcing requirements for firms participating in the Special Regime Program. The notices explained that merchandise qualifying for entry under the Special Regime Program must be accomppanied by a form ITA-370P.

Effective January 1, 1990 new implementation and enforcement procedures will be in place for the Special Access and Special Regime Programs.

New Implementation Procedures

Revised ITA-370P Form

As announced in the **Federal Register** on November 9, 1989, effective January 1, 1990 all goods exported under these programs must be accompanied by the new revised ITA-370P form. The form is available from the U.S. Government Printing Office.

The principal revisions to the form are:

—A pre-inscribed certification number
—The inclusion of the importer of record number on the Shipper's Declaration and the Importer's Declaration (the importer of record number in the Shipper's and Importer's sections must match)
—A reference stating "Also identify foreign findings, trimmings, & elastic strips of less than one inch in width. (Such foreign findings, trimmings & elastic strips may not exceed 25 percent of the cost of the components of the assembled article.)". This specific reference to trim and findings is not intended as a change in practice or policy but as a reminder that the records pertaining to foreign components must be retained by the importer.
— The elimination in the Shipper's Declaration of specific references to weight, yarn size, thread count, pattern, and color.

Entry Procedure

The new entry procedure is designed to ease the administrative burden on importers by establishing a streamlined system similar to a checking account. An account consists of the importer's ID number, textile category, and country of exportation. On exportation from the United States the quantity as reported on the 370P will be credited to the importer's account. Upon importation the amount imported will be debited against the importer's account, if there is a credit balance the shipment may be released.

Automated Commercial System (ACS)

The inventory system for the Special Access Program and Special Regime will be incorporated into the ACS, thus eliminating the use of personal computers for record keeping and clearing procedures. The requirement of exporting and importing for the Special Regime at ports within the same districts of San Diego, Nogales, El Paso and Laredo will be eliminated.

Reconciliation

The U.S. Customs Service (Customs) will maintain the balance for each account. Should an importer's records differ from those of Customs, the importer should provide Customs with a complete accounting of all exportations and importations. Customs will verify the importer's records against its own. Until the discrepancy is resolved, Customs will implement the Program using its figures.

Enforcement Procedures

In order to determine if the cut components were of U.S. origin and the imported apparel was made from U.S. formed fabric, Customs will conduct a series of Post Entry Compliance Reviews. These reviews will be conducted by Customs beginning April 1, 1990 for entries made in the first quarter of 1990 and shall continue for each successive quarter.

Record keeping for Compliance Reviews

The importer must provide Customs officials conducting the review with documented proof that all goods entered under the Programs were made from U.S. cut and formed fabric. Customs officials will request documents for goods in one textile category, from one country, entered in the prior calendar quarter. Documents should be organized and filed to facilitate a request for this information. It is recommended that the documents be kept in a single location to expedite the review. The following documents are required to be made available for the Compliance Reviews conducted by Customs.

Records—by calendar quarter, by country, by category:

•Entry documents made during the quarter
•Documents covering the involved entries:
—ITA-370P
—Cutting ticket including name and location of facility
—Mill invoice (the name of the mill where the fabric was formed, if the fabric was purchased from a third party the importer is responsible for obtaining the mill invoice. Also required is a signed statement from a principal at the mill that the fabric is of U.S. origin. This can be stated directly on the invoice or in a separate document that relates to each specific shipment of fabric).
— Transportation documents (mill to cutting facility; cutting facility to border/assembler).
— Export documentation

Penalties

19 U.S.C. 1592 authorizes the imposition of civil penalties against any person who by fraud, gross negligence, or negligence enters or attempts to enter goods into the United States by means of a false document, statement, or act.

Companies must maintain full and complete records and provide access to them upon request, and penalties may be imposed if companies are found to have misrepresented significant information such as the origin, quantity, or nature of the component parts or the country of assembly. Importers found to be violating the terms of the Program or intent of the Program may be prohibited from further participation in the Program.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-13552 Filed 6-6-91; 8:45 am]

BILLING CODE 3510-DR-F

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities, military resale commodity and services to be furnished by nonprofit agencies employing the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 8, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities, military resale commodity and services listed below from nonprofit agencies employing the blind or other severely handicapped.

It is proposed to add the following commodities, military resale commodity and services to the Procurement List:

Commodities

Strap, Webbing

5340-00-784-0118

Bandage, Elastic

6510-00-935-5823 (Remaining 30 percent of Government Requirement)

Water Bay, Nylon Duck

8465-00-02D-9160

Military Resale Item No. and Name

701—Bag, Canvas

Services

Commissary Shelf Stocking, Custodial and Warehousing, Partick Air Force Base, Florida

Grounds Maintenance, Naval Air Station, Airfields, Corpus Christi, Texas

Janitorial/Custodial, Federal Building, 130 East Main Street, Carthage, Tennessee

Janitorial/Custodial, Federal Building, 118 East Locust Street, Lafayette, Tennessee

Janitorial/Custodial, Building 50004, Post Exchange, Fort Hood, Texas

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 91-13540 Filed 6-6-91; 8:45 am]

BILLING CODE 6820-33-M

Procurement List; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing the blind or other severely handicapped.

EFFECTIVE DATE: July 8, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

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SUPPLEMENTARY INFORMATION: On March 1, 22 and April 19 and 26, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (56 FR 8750, 12193, 16075 and 19352) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodities and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Frame, Picture

7105–00–052–8684

7105–00–052–8690

Paper, Tabulating Machine

7530–00–138–9919

Services

Commissary Warehousing, Kirtland Air Force Base, New Mexico

Food Service Attendant, Altus Air Force Base, Oklahoma

Grounds Maintenance, FAA Airway Facilities Sector, Field Office/Tower, Daytona Beach, Florida

Janitorial/Custodial, Federal Building, 650 S. Missouri, East St. Louis, Illinois

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 91–13539 Filed 6–6–91; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35.)

Title, Applicable Form, and Applicable OMB Control Number

Application for the Review of Discharge or Dismissal from the Armed Forces of the United States, DD Form 293, OMB Number 0704–0004.

Type of Request: Reinstatement.

Average Burden Hours/Minutes per Response: .5 hours.

Responses per Respondent: 1.

Number of Respondents: 13,500.

Annual Burden Hours: 6,750.

Annual Responses: 13,500.

Needs and Uses: The DD Form 293 is used by former members of the military services to request a change in the type of discharge or the reason for their separation from the Armed Forces of the United States.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22204–4302.

Dated: June 3, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–13442 Filed 6–6–91; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number

Lock Performance Monitoring System (PMS) Waterway Traffic Report; ENG Forms 3102C and 3102D; OMB Control Number 0710-0008.

Type of Request: Revision.

Average Burden Hours/Minutes per Response: .0416 minutes.

Responses per Respondent: 1.

Number of Respondents: 3,000.

Annual Burden Hours: 31,350.

Annual Responses: 753,600.

Needs and Uses: Title 33, CFR, part 207, (26 Stat 766) requires that statistics be gathered from users of navigable waters. Statistics gathered relate to vessels, passengers, freight and tonnage. The data are used to conduct systems-wide planning and management of navigable waterways.

Affected Public: Businesses or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: June 3, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–13443 Filed 6–6–91; 8:45 am]

BILLING CODE 3810–01–M

Department of the Navy

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Space and Electronic Combat Standing Task Force will meet 26 June 1991 from 9 a.m. to 5 p.m., at 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to continue discussions on the space and electronic warfare implementation strategy, receive a report on baseline systems status, and review related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact:

Judith A. Holden, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, room 601, Alexandria, Virginia 22302-0268, phone (703) 756-1205.

Dated: 3 June 1991.

Wayne T. Baucino

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 91-13439; Filed 6-6-91; 8:45 am]

BILLING CODE 3810-AE-F

DELAWARE RIVER BASIN COMMISSION

Proposed Amendment to Comprehensive Plan and Water Code of the Delaware River Basin; Proposed Rule and Public Hearing

AGENCY: Delaware River Basin Commission.

ACTION: Proposed rule and public hearing.

SUMMARY: Notice is hereby given that the Delaware River Basin Commission will hold a public hearing to receive comments on a proposed amendment to its Comprehensive Plan and Water Code in relation to retail water pricing to encourage conservation. The hearing will be part of the Commission's regular business meeting which is open to the public.

DATES: The public hearing is scheduled for Wednesday, August 14, 1991 beginning at 1:30 p.m. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing. The hearing record will remain open for submission of written comments received by September 9, 1991.

ADDRESSES: The hearing will be held in the Struble Room of the Chester County Library, 400 Exton Square Parkway, Exton, Pennsylvania. Written comments should be submitted to Susan M. Weisman, Commission Secretary, Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Secretary, Delaware River Basin Commission: Telephone (609) 883–9500.

SUPPLEMENTARY INFORMATION:

Background and Rationale

The Delaware River Basin Commission, through its policies, rules and regulations, has undertaken a long-range program to reduce water use throughout the Basin. Continuing this effort, the Commission, through its Water Conservation Advisory Committee, has concluded that water conservation pricing offers significant potential for reducing both average and peak water use and has sought the advice of numerous experts in the field of water rates and pricing structures, including representatives of the four Basin state public utility commissions. Based on these deliberations, the Committee has recommended that the Commission consider proposed policy and regulations dealing with retail water pricing to encourage conservation.

The subject of the hearing will be as follows:

Amendment to the Comprehensive Plan and Water Code of the Delaware River Basin Relating to Retail Water Pricing to Encourage Conservation.

Article 2 of the Water Code of the Delaware River Basin includes Commission policy relating to conservation, development and utilization of Basin water resources. It is proposed to:

Amend the Comprehensive Plan and Article 2 of the Water Code of the Delaware River Basin, which is referenced in 18 CFR part 410, by the addition of a new section 2.1.7 to read as follows:

2.1.7 Retail Water Pricing to Encourage Conservation

A. Policy.—It shall be the policy of the Delaware River Basin Commission to promote and support retail water pricing that encourage conservation.

B. Definitions

1. A water conserving pricing structure is an important demand management tool that provides incentives to consumers to reduce average or peak water use, or both. Conservation pricing reflects the fact that water is a precious resource that should be used in an economically efficient manner. Such pricing includes:

a. Rates designed to recover the full cost of providing service, including a reasonable rate of return on investment; and

b. Billing based on metered usage.

Such pricing is also characterized by one or more of the following components:

c. Rates in which the unit price of water per class of customer (residential, industrial, etc.) is constant within each class regardless of the quantity of water used (uniform rates) or increases as the quantity of water used increases (increasing block rates);

d. Seasonal rates or excess-use surcharges to reduce peak water demands during summer months; or

e. Rates based on the long-run marginal cost or the cost of adding the next unit of water supply to the system.

2. A nonconserving pricing structure is one that provides no incentives or disincentives to consumers to reduce water use. Such pricing may be characterized by one or more of the following components:

a. Rates in which the unit price of water within any one class of customer decreases as the quantity of water used increases (decreasing block rates);

b. Rates that involve charging customers a set fee per unit of time regardless of the quantity of water used (flat rates);

c. Pricing that does not reflect the full cost of providing service; or

d. Pricing in which the typical bill is determined mainly by a minimum charge and metered usage has little impact on the total bill.

C. Criteria

1. All purveyors are encouraged to evaluate alternative pricing structures with the objective of adopting a water conserving pricing structure.

2. A purveyor seeking approval under section 3.8 of the Compact for a new or an expanded water withdrawal and whose total proposed withdrawal would equal or exceed an average of one million gallons of water per day shall, as a condition of Commission docket approval, either: a. document that it has adopted a water conserving pricing structure; b. adopt a water conserving pricing structure within one year of docket approval or in accordance with a schedule established by the appropriate state public utility commission; or c. investigate the feasibility of implementing a water conserving pricing structure and submit a report of its findings to the Executive Director within one year of docket approval. The Executive Director shall review the pricing structure or feasibility study and

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submit a report of findings to the purveyor.

3. The Executive Director shall annually review the definitions and criteria set forth herein to determine their adequacy in promoting and supporting water pricing that encourages water conservation.

Delaware River Basin Compact, 75 Stat. 688.

Dated: May 31, 1991.

Susan M. Weisman,

Secretary.

[FR Doc. 91-13451 Filed 6-6-91; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Office of Administrative Law Judges; Intent To Compromise a Claim, Pennsylvania Department of Education

AGENCY: Department of Education.

ACTION: Notice of intent to compromise a claim.

SUMMARY: The Department intends to compromise a claim against the Pennsylvania Department of Education now pending before the Office of Administrative Law Judges (OALJ), Docket No. 90-81-R (20 U.S.C. 1234(j)).

DATES: Interested persons may comment on the proposed action by submitting written data, views, or arguments on or before July 22, 1991.

ADDRESSES: All comments concerning this notice should be addressed to Mr. Jeffrey B. Rosen, Office of the General Counsel, Department of Education, 400 Maryland Avenue, SW., (Room 4099, FOB-6), Washington, DC 20202-2242.

FOR FURTHER INFORMATION CONTACT: Additional information may be obtained by writing to Mr. Jeffrey B. Rosen.

SUPPLEMENTARY INFORMATION: Pursuant to Office of Management and Budget (OMB) Circular A-128, Ernst & Whinney conducted an audit on behalf of the State Auditor General of the State of Pennsylvania for the period July 1, 1985 through June 30, 1986. On August 18, 1989, the Office of the Inspector General (OIG) of the U.S. Department of Education (ED) issued an audit report (ACN: 03-83228) based on this audit. Among the results included in the audit report were the findings that the PDE did not have time distribution and attendance records to support payroll charges for some of its employees.

On September 30, 1990, the Assistant Secretaries for Special Education and Rehabilitative Services (OSERS) and for Vocational and Adult Education (OVAE) issued a program determination letter (PDL) in which they disallowed a total of $247,712 in Federal funds received by the PDE in fiscal year (FY) 1986 under both part B of the Education of the Handicapped Act (EHA-B), 20 U.S.C. 1411-1420, and the Carl D. Perkins Act (Perkins Act), 20 U.S.C. 2301 *et seq.* A total of $246,563 of EHA-B funds was disallowed, based upon the finding that the State did not maintain time distribution records for seven PDE employees charged 100 percent and one PDE employee charged 50 percent to the EHA-B program. In addition, $1,149 of Perkins Act funds were disallowed, based upon the finding that six PDE employees worked on non-vocational education activities although their salaries were paid 100 percent from the Perkins Act grant.

On October 30, 1990, the PDE filed a timely application for review with the Office of Administrative Law Judges. The appeal pertained only to the EHA-B finding. The PDE has agreed to repay the entire $1,149 claim under the Perkins Act.

Subsequent to the filing of its appeal, the PDE submitted additional documentation to OSERS in order to rebut the EHA-B finding. On April 25, 1991, the Assistant Secretary for OSERS determined that two of the employees previously referenced, whose salaries totalled $73,921, actually worked 100 percent of their time on the EHA-B and related programs and thus there was no need to keep time distribution records. The Assistant Secretary also determined that $41,958 of the claim was barred from recovery by the statute of limitations in section 452(k) of the General Education Provisions Act (GEPA), 20 U.S.C. 1234(k). These were expenditures incurred by the PDE for the period July 1, 1985 through October 1, 1985, which was more than five years before October 2, 1990—the date the PDE received the PDL. Based upon the foregoing, the Assistant Secretary agreed that the claim should be reduced to $130,684.

No question exists that the remaining five PDE employees who were charged 100 percent to the EHA-B program and the one employee charged 50% to the EHA-B program did at least some work in the EHA-B program within the PDE. The Federal interest involved in this case is that of ensuring that the amount of time spent by each employee is proportionate to the salary costs charged to the program. (34 CFR part 74, appendix C, part II, section B, paragraph 10.b.) The evidence indicates that three of these employees spent 40 percent or more of their time on the EHA-B program. Also, the PDE has taken the necessary corrective action to prevent this violation from recurring. Based upon the foregoing, the PDE has agreed to return $71,359.

Given these factors, the percentage of the claim to be repaid, and the risk and cost of litigating the claim through the appeal process, the Department has determined that it would not be practical or in the public interest to continue this proceeding. Therefore, the Department proposes to compromise the full amount of the $130,684 claim for $71,359.

The public is invited to comment on the Department's intent to compromise this claim. Additional information may be obtained by writing to Mr. Jeffrey B. Rosen at the address given at the beginning of this notice.

(20 U.S.C. 1234a(j) (1990).)

Dated: June 3, 1991.

Neal Peden,

Acting Deputy Under Secretary for Management.

[FR Doc. 91-13467 Filed 6-6-91; 8:45 am]

BILLING CODE 4000-01-M

Indian Education National Advisory Council; Meeting

AGENCY: National Advisory Council on Indian Education.

ACTION: Notice of closed meeting.

SUMMARY: This notice sets forth the schedule and proosed agenda of a forthcoming meeting of the Executive/Search Committee of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE AND TIME: June 17, 1991, 9 a.m. until 2 p.m.

ADDRESSES: U.S. Department of Education, 400 Maryland Avenue SW., room 3000, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: John Cheek, Office Manager, National Advisory Council on Indian Education, 330 C Street SW., room 4072, Switzer Building, Washington, DC 20202-7556. Telephone: 202/732-1353.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 5342 of the Indian Education Act of 1988 (25 U.S.C. 2642). The Council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under the Indian Education Act of 1988 (part C, title V, Pub. L. 100-297) and to advise Congress and the Secretary of Education with regard to federal education programs in which Indian children or adults participate or from which they can benefit. The Council is authorized to appoint, without regard to the provisions of title 5 United States Code governing appointments in the competitive service, or otherwise obtain the services of such professional, technical, and clerical personnel as may be necessary to enable it to carry out its functions as prescribed by law. The Council is currently undergoing a search process to appoint a permanent Executive Director as chief staff member of the Council.

On June 17, 1991 the Executive/Search Committee will meet in closed session beginning at 9 a.m. until the conclusion of business at approximately 2 p.m. to review resumes and applications for the position of Executive Director of the Council. The agenda will consist of a review of the search process, review of the applications of candidates and their qualifications for the position, and preparation of questions and guidelines to be used in the interviews of the candidates. The Committee's recommendations regarding the candidates, and questions and guidelines to be used in the interviews shall be submitted to the full Council for review and approval.

The closed meeting of the Executive/Search Committee will involve discussions which relate solely to the internal personnel rules and practices of the Council and will disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of section 552b(c) of the Government in the Sunshine Act (Pub. L. 94-409; 5 U.S.C. 552b(c)).

The public is being given less than 15 days ntoice due to difficulties in scheduling this meeting.

A summary of the activities of the closed meeting and related matters which are informative to the public consistent with the policy of title 5 U.S.C. 552b will be available to the public within 14 days of the meeting.

Dated: May 24, 1991. Signed at Washington, DC.

John T. MacDonald,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 91-13522 Filed 6-4-91; 1:24 pm]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center Financial Assistance Award (Grant)

AGENCY: Morgantown Energy Technology Center (METC), U.S. Department of Energy (DOE).

ACTION: Notice of acceptance of an unsolicited financial assistance application for Grant award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.7(b)(2)(i)(B) and (D), the DOE, Morgantown Energy Technology Center, gives notice of its plans to award a 24-month cost-shared Grant to the University of Kentucky, Lexington, Kentucky, in the amount of $24,000.

FOR FURTHER INFORMATION CONTACT: Crystal A. Sharp, I07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507-0880, Telephone: (304) 291-4386, Procurement Request No. 21-91MC28203.000.

SUPPLEMENTARY INFORMATION: The University of Kentucky will cost share 17 percent of the effort or $4,000. The pending award is based on an unsolicited application for assistance with the publication of proceedings from the Eastern Oil Shale Symposia held each year in Lexington, KY. The University of Kentucky annually hosts the Eastern Oil Shale Symposium in Lexington, Kentucky, to provide a forum for individuals conducting research in eastern oil shale to meet, to present, and discuss the results of their work. DOE's support of this activity will enable the University to publish and circulate the symposium results to the general public.

Louie L. Calaway,

Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 91-13547 Filed 6-6-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

Docket Nos. ER91-350-000, et al.]

Southern California Edison Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. **Southern California Edison Company**

[Docket No. ER91-350-000]

May 30, 1991.

Take notice that on May 20, 1991, Southern California Edison Company (Edison) tendered for filing additional explanatory materials in support of its Edison-PG&E Lebec Area Standby Agreement. The original filing was made on march 29, 1991.

The Agreement establishes the terms and conditions whereby Edison will provide PG&E emergency standby electrical service for its use in serving Lebec area customers.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: June 13, 1991 in accordance with Standard Paragraph E at the end of this notice.

2. **Northeast Empire Limited Partnership**

[Docket No. ER91-440-000]

May 30, 1991.

Take notice that on May 14, 1991, Northeast Empire Limited Partnership tendered for filing an initial rate schedule, a petition for acceptance of initial rate schedule and request for waivers for a qualifying facility to be located in Livermore Falls, Maine.

Comment date: June 13, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. **Municipal Electric Utilities Association v. Long Island Lighting Company**

[Docket No. El91-34-000]

May 30, 1991.

Take notice that on May 21, 1991, the Municipal Electric Utilities Association tendered for filing a complaint against Long Lighting Company (LILCO) alleging that LILCO has breached its contractual obligations, as set forth in LILCO Rate Schedule FERC No. 32 under which LILCO provides firm transmission service to the Power Authority of the State of New York.

Comment date: July 1, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. **Northeast Empire Limited Partnership**

[Docket Nos. EL91-33-000, EC91-14-000, and ES91-30-000]

May 30, 1991.

Take notice that on May 17, 1991, Northeast Empire Limited Partnership #1 and Northeast Empire Limited Partnership #2 (collectively referred to as "Partnerships") tendered for filing a petition for Declaratory order under sections 203 and 204 of the Federal Power Act requesting the Commission issue an order to do the following:

(1) Authorize the sale and leaseback financing, in separate transactions, of two qualifying small power production

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facilities (described in the May 17, 1991 petition;

(2) Disclaim Commission jurisdiction over General Electric Capital Corporation or any affiliate of General Electric Capital Corporation;

(3) Grant blanket prior approval of issuances of securities and assumptions of liability by the Partnerships;

(4) Confirm the applicability of the initial rate schedule for the facility located in Livermore Falls pending before the Commission in Docket No. ER91-440-000 to sales by Partnership #1 to Central Maine Power Company of electric generated by such facility after the propose sale and leaseback transactions are consummated; and

(5) Certify that the change in ownership of the Facilities effected by the proposed sale and leaseback transactions will not result in loss of qualifying facility status for the Facilities.

Comment date: June 17, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Citizens Utilities Company

[Docket No. ES91-32-000]

May 31, 1991.

Take notice that on May 24, 1991, Citizens Utilities Company (Applicant") filed an application with the Federal Energy Regulatory Commission pursuant to § 204 of the Federal Power Act for authorization to issue not more 2.2 million share of its common stock pursuant to the provisions of Applicant's Management Equity Incentive Plan.

Comment date: June 21, 1991, in accordance with Standard Paragraph E end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13458 Filed 6-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-2108-000, et al.]

United Gas Pipe Line Company, et al.; Natural Gas Certificate Filings

May 31, 1991.

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Company

[Docket No. CP91-2108-000]

Take notice that on May 24, 1991, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP91-2108-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a 2-inch delivery tap and related facilities, located in Tangipahoa Parish, Louisiana, to transport natural gas for Southern Industrial Gas Corporation (SIGCO), under United's blanket certificate issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United states that the proposed delivery tap and related facilities would enable United to transport up to 1430 Mcf of natural gas per day for SIGCO to serve T.L. James and Company under United's ITS rate schedule.

United states further that it would construct and operate the proposed delivery tap and related facilities in compliance with 18 CFR part 157, subpart F, and that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers.

Comment date: July 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. Transcontinental Gas Pipe Line Corporation

[Docket No. CP91-2030-001]

Take notice that on May 28, 1991, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP91-2030-001 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform interruptible transportation service for Citizens Gas Supply Corporation (Citizens) under the authorization issued in Docket No. CP88-328-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco proposes to provide interruptible transportation service for Citizens pursuant to a transportation agreement dated August 17, 1987 and as amended on September 7, 1990 (System Contract No. 01514). Transco states that it would receive the gas at various existing receipt points in onshore and offshore Texas, onshore and offshore Louisiana, Mississippi and Pennsylvania. Transco indicates that it would deliver the gas to existing delivery points in New York and offshore Texas. Transco alleges that the total volume of gas to be transported on a peak day is 250,000 dt; on an average day is 60,000 dt; and on an annual basis is 21,900,000 dt. Transco contends that it commenced 120-day transportation service for Citizens on January 1, 1991, as reported in Docket No. ST91-8570-000.

Transco states that no new facilities would be required to implement the proposed transportation service. Transco further states it would charge Citizens the maximum rate or rates set forth in Sheet No. 19 of Transco's FERC Gas tariff, Second Revised Volume No. 1. In addition to such rate or rates, Citizens shall pay Transco any other applicable charge resulting from the subject transportation, including but not limited to, the currently effective Gas Research Institute charge. It is agreed that Transco, at its sole discretion, may charge Citizens a discounted transportation rate or rates for such periods of time as Transco elects. The parties agree that Transco's transportation rate or rates may be amended or superseded by an appropriate filing the FERC or any successor regulatory authority with or without notice to Citizens by Transco; provided however, that nothing in the gas transportation agreement shall prejudice the right of Citizens to protest any such changes before the FERC or any successor regulatory authority.

COMMENT DATE: July 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

3. Northern Natural Gas Company, Williston Basin Interstate Pipeline Company, Northern Natural Gas Company

[Docket Nos. CP91-2120-000 [1], CP91-2124-000, CP91-2125-000]

Take notice that the above referenced companies (Applicants) filed in the above referenced dockets, prior notice requests pursuant to sections 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

COMMENT DATE: July 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notices requests are not consolidated.

Docket number related [1] dockets	Applicant (date filed)	Shipper name	Peak day [2]	Points of [3] avg. annual	Start up date		Rate schedule
					Receipt	Delivery rate	
CP91-2120-000 (5-29-91)	Northern Natural Gas Co., 1400 Smith St., P.O. Box 1188, Houston, TX 77251-1188.	Brooklyn Interstate Natural Gas Corp.	88,457 86,343 32,286,805	OTX, TX, OLA, LA, OMS.	TX	05-01-91 IT-1	ST91-8732-000, CP86-435-000.
CP91-2124-000 (5-29-91)	Williston Basin Interstate Pipeline Co., Suite 200, 304 East Rosser Ave., Bismarck, ND 58501.	Hiland Partners	5,000 5,000 1,825,000	WY, MT, ND, SD.	WY, MT, SD, ND.	05-03-91 IT-1	ST91-8691-000, CP89-1118-000.
CP91-2125-000 (5-29-91)	Northern Natural Gas Co., 1400 Smith St., P.O. Box 1188, Houston, TX 77251-1188.	Citizens Gas Supply Corp.	22,000 16,500 8,030,000	TX, KS, OK, MN, NM.	IA	04-11-91 IT-1	ST91-8623-000, CP86-435-000.

[1] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.
[2] Quantities are shown in MMBtu for Northern and dt for Williston Basin.
[3] Offshore Louisiana, offshore Texas and offshore Mississippi are shown as OLA, OTX and OMS, respectively.

4. Columbia Gas Transmission Corporation

[Docket No. CP91-2106-000]

Take notice that on May 23, 1991, Columbia Gas Transmission Corporation (Columbia Gas), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP91-2106-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the interruptible transportation service it provides for UGI Corporation (UGI) effective June 1, 1991, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia Gas states that by order issued November 17, 1983, as amended on April 6, 1984, in Docket No. CP77-363-006 Columbia Gas was authorized to transport up, on an interruptible basis, up to 5,000 Mcf of natural gas per day (Mcfd) which is received by National Fuel Gas Supply Corporation for the account of UGI in Forest and Warren Counties, Pennsylvania. Columbia Gas States that the volumes are then delivered to Columbia Gas for ultimate delivery to UGI. It is further stated that by letter dated December 12, 1990, UGI notified Columbia Gas that it has agreed to sell its gathering system in Forest and Warren Counties and no longer requires the transportation service that Columbia Gas has been providing.

COMMENT DATE: June 21, 1991, in accordance with Standard Paragraph F at the end of this notice.

5. Tennessee Gas Pipeline Company

[Docket No. CP91-2107-000]

Take notice that on May 24, 1991, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP91-2107-000 a request pursuant to § 157.205, 157.211 and 284.223 of Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Pittsburgh Corning Corporation (Pittsburgh Corning), and end-user, under its blanket certificate issued in Docket No. CP87-115-000, pursuant to section 7 of the Natural Gas Act and for additional authorization, prior to commencement of the transportation service, to operate sales tap facilities constructed under its blanket certificate issued in Docket No. CP82-413-000, pursuant to section 7 of the Natural Gas Act, to effectuate the delivery of the natural gas, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee states that the sales tap facilities were constructed to provide service to Pittsburgh Corning as reported in Docket No. ST90-4696 on September 10, 1990. Tennessee explains that it proposes to transport natural gas for Pittsburgh Corning from receipt points located in Pennsylvania and Mississippi, and to deliver the gas to Pittsburgh Corning in McKean County, Pennsylvania. The transportation service would be provided to Pittsburgh Corning under Tennessee's Rate Schedule IT. Pittsburgh Corning has informed Tennessee that peak and average day deliveries are both expected to be 4,775 Dth and, based thereon, annual deliveries are expected to be 1,742,875 Dth.

Comment date: July 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

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6. Columbia Gulf Transmission Company

[Docket Nos. CP91-2104-000, CP91-2105-000]

Take notice that on May 23, 1991, Columbia Gulf Transmission Company, P.O. Box 683, Houston, Texas 77001, filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-239-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[2]

A summary of each transportation service which includes the shippers identity, the peak day, average day and annual volumes, the receipt point(s), the delivery point(s), the applicable rate schedule, and the docket number and service commencement date of the 120-day automatic authorization under § 284.223 of the Commission's Regulations is provided in the attached appendix.

Comment date: July 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] Avg., annual	Points of— Receipt	Points of— Delivery	Start up date, rate schedule	Related [3] Dockets
CP91-2104-000 (5-23-91)	Columbia Gulf Transmission Co.	NGC Transportation, Inc.	30,000 10,000 10,950,000	Offshore LA	LA	4-12-91, ITS-2	CP86-239-000, ST91-8461-000.
CP91-2105-000 (5-23-91)	Columbia Gulf Transmission Co.	Elf Exploration, Inc.	20,000 10,000 7,300,000	Offshore LA	LA	4-12-91, ITS-2	CP86-239-000, ST91-8462-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[3] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

7. Transwestern Pipeline Company

[Docket Nos. CP91-2121-000,[2] CP91-2122-000, CP91-2123-000]

Take notice that on May 28, 1991, Transwestern Ptpeline Company (Transwestern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284. 223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under Transwestern's blanket certificate issued in Docket No. CP88-133-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Transwestern and is included in the attached appendix.

Transwestern also states that it would provide the service for each shipper under an executed transportation agreement, and that Transwestern would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: July 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No.	Shipper name	Peak day,[1] avg., annual	Points of— Receipt	Points of— Delivery	Start up date, rate schedule	Related [3] dockets
CP91-2121-000	Hadson Gas Systems, Inc.	50,000 37,500 18,250,000	AZ, NM, OK, TX	NM, TX	4-1-91, ITS-1	ST91-8295-000
CP91-2122-000	TranAm Energy, Inc	50,000 37,500 18,250,000	AZ, NM, OK, TX	NM, TX, OK	5-8-91, ITS-1	ST91-8730-000
CP91-2123-000	NGC Transportation Inc	50,000 37,500 18,250,000	AZ, NM, OK, TX	NM, TX, OK	5-16-91, ITS-1	ST91-8731-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[3] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

8. Questar Pipeline Company

[Docket No. CP91-2087-000]

Take notice that on May 16, 1991, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111, filed an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Questar to construct and operate a 10,350 horsepower compressor station, to be known as the Piceance Creek Compressor Station, and related facilities adjacent to Questar's Main Line (M.L.) No. 68 in Rio Blanco County, Colorado, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

Questar indicates that the proposed facilities are designed to improve the flexibility and increase the capacity of Questar's transmission system to receive, compress and deliver natural gas destined for a variety of interstate pipeline companies, including TransColorado Gas Transmission Company (TransColorado), Northwest Pipeline Corporation, Colorado Interstate Gas Company, Wyoming Interstate Company, Ltd. and Kern River Gas Transmission Company. Questar states that the receipt of the requested authority will allow it to: (1) Consolidate compression service required by Questar, TransColorado and, potentially, other pipeline companies, (2) alleviate many of the transportation system capacity constraints that presently prevent producers in the Piceance Basin of western Colorado from marketing their gas supplies, (3) broaden the marketing opportunities for producers and pipeline companies alike that are connected to Questar's pipeline system, (4) improve the quality of existing open-access and certified sales and transportation services, and (5) expand its open-access transportation program, through the receipt of increased natural gas volumes from and delivery of those volumes to an expanded number of interconnections with interstate and intrastate pipeline companies.

Questar states that the Piceance Creek Compressor Station will comprise (1) three turbine compressors, 3,450 hp (site rated) each, (2) a non-jurisdictional carbon dioxide (CO_2) removal plant, (3) two taps to facilitate the delivery of unprocessed gas to and the receipt of processed gas from the CO_2 treatment plant, (4) gas coolers, (5) a slug catcher, (6) a condensate storage tank and (7) a standby generator. Questar states that it also intends to uprate the maximum allowable operating pressure of a 27.3-mile segment of M.L. No. 68 from 860 pounds per square inch gauge (psig) to 1257 psig. In addition, Questar states that approximately 1,000 feet of 20-inch pipe will be installed to connect the compressor station with Questar's M.L. No. 68 and an estimated 500 feet of 20-inch pipeline will be constructed to connect the station with TransColorado's proposed Big Hole Meter Station. Questar states that the Piceance Creek Compressor Station will be capable of compressing up to 162.9 MDth of gas per day. The total estimated cost of the proposed compressor facility, interconnecting pipe and related facilities, excluding the CO_2 plant, is $14,624,420.

Comment date: June 21, 1991, in accordance with Standard Paragraph F at the end of the notice.

9. Colorado Interstate Gas Company

[Docket No. CP91-2119-000]

Take notice that on May 28, 1991, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed a request with the Commission in Docket No. CP91-2119-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to change a delivery point for service to Western Gas Supply Company (Western), an existing CIG customer, under CIG's blanket certificate issued in Docket No. CP83-21-000, all as more fully set forth in the request which is open to public inspection.

CIG proposes to alter the Roundup Delivery Point in Morgan County, Colorado, by switching its natural gas deliveries to Western from the inlet side of the metering facilities to the outlet side. CIG states that the proposed changes to the Roundup Delivery Point would not affect its Service Agreement, as certificated in Docket No. CP90-495-000 (52 FERC 62,117). CIG also states that it would pay Western $35,533 to acquire the Roundup Delivery Point, which was originally certificated in Docket No. CP81-280-000 (19 FERC ¶ 61,283). CIG's tariff does not prohibit this delivery point change.

Comment date: July 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,
Secretary.

[FR Doc. 91-13459 Filed 6-6-91; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-33006; FRL 3929-4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for expedited review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM 223Y), 401 M St., SW., Washington, DC 20460, (202) 382-2740.

SUPPLEMENTARY INFORMATION: EPA has submitted the following abstracted ICR to OMB for expedited review and comment.

Title: Letter to Certain Pesticide Registrants Requesting Alternate, Non-

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Craven Data for Existing Tolerances or Registrations which are Based on Craven Data (EPA ICR No:1586.01). This is a new collection.

Abstract: Under the Federal Insecticide Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., the Agency is required to review existing and pending pesticide registrations to determine that their use will not cause unreasonable adverse effects. For this purpose, FIFRA grants the Agency extensive authority under section 3(c) to require applicants and registrants to provide scientific data to demonstrate the safety of any registered product or application for registration.

Recently, the Environmental Protection Agency (EPA) has received allegations concerning the reliability of certain residue and environmental fate studies conducted by Craven Laboratories Inc. of Austin, Texas. To follow up on information already gathered and also to continue its examination of this problem, EPA now needs additional information as requested in this ICR. EPA is requesting this information because some existing tolerances and registrations are based on data generated from Craven Laboratories and alternate non-Craven data are needed to determine if those tolerances and registrations can continue. EPA wants to have available for the public accurate information regarding supportive, alternate, non-Craven data. Information subject to the ICR is essential for public understanding of the potential impact of the problem.

This review request has been expedited because serious public harm may result if normal procedures are followed for this ICR. The delay which would be occasioned by following normal procedures would force a concomitant delay in the Agency's identification of suspect data. Because the allegations include the possibility that residue values were allegedly falsified in the reported data, it is possible that Agency decisions based on such data may reflect inaccurate and understated risk. The unnecessary continuance or grant of a registration or tolerance based on a flawed assessment of risk could cause serious public harm.

Burden Statement: The burden for this collection of information is estimated to average 24 hours per response for reporting. This estimate includes the time needed to review instructions, gather the data needed, and review the collection of information.

Respondents: Pesticide Registrants.

Estimated No. of Respondents: 14.

Estimated No. of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondent: 3,600 hours.

Frequency of Collection: Once.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to: Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM 223Y) 401 M St., SW., Washington, DC 20460, and Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20530.

Request Letter to Registrant:

Re: Craven Laboratory generated data; Request for alternate sources of non-Craven data.

Dear:

The Environmental Protection Agency (EPA) has received allegations concerning the reliability of certain residue and environmental fate studies conducted by Craven Laboratories Inc. of Austin, Texas. EPA considers these allegations serious and believes that reasonable steps must be taken to protect the credibility of registrations and tolerances while this issue is being resolved. As part of this process EPA is requesting that you voluntarily supply EPA with alternate sources of non-Craven data.

EPA is requesting this information for two purposes. First, some existing tolerances or registrations are based in part on data generated at Craven Laboratories. Since the validity of data generated at Craven Laboratories is now in question, decisions need to be made as to whether existing registrations and tolerances can continue until replacement data can be generated. These decisions will be made by reevaluating each pesticide/crop combination for which data generated at Craven Laboratories were submitted. This reevaluation will consist of determining whether alternate, non-Craven data are available to support the continued use of the pesticide. Examples of alternate sources of data are FDA/USDA monitoring data, data submitted to CODEX in support of maximum residue limits, data on related crops, and data on crops grown outside the United States. This list is not all inclusive and other types of data may be considered if they are from reliable, non-Craven sources that are adequate to support a regulatory decision. Second, should the Agency initiate regulatory action, EPA wants to have available for the public accurate information regarding alternate data sources for crop tolerances and registrations that are based on Craven data. Thus your timely response is critical.

EPA requests that you submit alternate data from non-Craven sources to EPA by July 15, 1991. Three (3) copies of the data should be submitted by mail to the following address:

Document Processing Desk (CRAVEN/ALTERNATE DATA)
Program Management Support Division (H7504C)
Office of Pesticide Programs
U.S. Environmental Protection Agency
401 M Street, SW
Washington, DC 20460

or by courier to:

Document Processing Desk (CRAVEN/ALTERNATE DATA)
Office of Pesticide Programs
U.S. Environmental Protection Agency
Crystal Mall 2, Room 266A
1921 Jefferson Davis Highway
Arlington, VA 22202

Your immediate attention to this request is appreciated.

Sincerely,
Linda Fisher,
Assistant Administrator For Pesticides and Toxic Substances.

The Agency is requesting that OMB approve this ICR no later than June 18, 1991.

Dated: June 5, 1991.

Paul Lapsley,
Director, Regulatory Management Division.

[FR Doc. 91-13689 Filed 6-6-91; 8:45 am]
BILLING CODE 6560-50-F

[FRL-3962-2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 8, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: NESHAP for Benzene Equipment Leaks (Subpart J)—Information Requirements (ICR #1153.04; OMB #2060-0068). This is a revision of a currently approved collection.

Abstract: Owners or operators of process units operating in benzene service (those containing or contacting fluids consisting by weight of at least 10 percent benzene) must submit an application for approval of construction or modification, and notice of anticipated and actual startup. They must monitor for fugitive benzene emissions, and must keep records of this monitoring and of any leaks detected from valves, pumps, and compressor, as well as the steps taken to make repairs. This includes a weekly visual inspection and reporting of leaks from pumps to detect outer seal failure from those pumps containing dual mechanical seals. Owners or operators must submit semiannual reports of any emissions, leaks or repairs. EPA uses this information to determine the compliance status of sources.

Burden Statement: The public burden for this collection of information is estimated to average 30.2 hours per response for reporting, and 57.3 hours annually for recordkeeping. The estimated reporting burden includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

Respondents: Owners or operators of process units operating in benzene service (those containing or contacting fluids consisting by weight of at least 10 percent benzene).

Estimated no. of Respondents: 200.

Estimated no. of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 23,539 hours.

Frequency of Collection: For initial compliance and semiannually.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to: Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460.
and
Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: May 31, 1991.

Paul Lapsley,
Director, Regulatory Management Division.

[FR Doc. 91-13527 Filed 6-6-91; 8:45 am]
BILLING CODE 6560-50-M

Agency Information Collection Activities Under OMB Review

[FRL-3961-5]

AGENCY: Enviromental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice annunces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before July 8, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Requirements for the use of 1080 Collars for Livestock Protection (EPA ICR No. 1249.03; OMB # 2070-0074). This is an extension of the expiration date of a currently approved collection.

Abstract: Sodium monoflouroacetate (Compound 1080), a previously banned pesticide, was re-approved for use in a new delivery mechanism, the toxic collar. The EPA requires certified applicators, States, and registrants to monitor the use and effectiveness of the collar. The respondents are required to submit to the EPA an annual report containing the monitoring data. In addition, certified applicators must report to the States or the EPA all incidents of accidental poisoning of humans and domestic animals, as well as non-target species, and they must keep records of any hazards caused by the collar. The Agency uses these data to monitor the use of the collar, and to ensure the safety of livestock.

Burden Statement: The burden for this collection of information is estimated to average 74.7 hours per response for reporting, and 2.9 hours per recordkeeper annually. This estimate includes the time needed to review instructions, gather the data needed, and review the collection of information.

Respondents: Toxic collar applicators.

Estimated No. of Respondents: 175 certified applicators, 5 States, and 6 registrants.

Estimated No. of Responses per Respondent: 1

Estimated Total Annual Burden on Respondents: 14,439 hours.

Frequency of Collection: Annually and on occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to: Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M. Street, SW., Washington, DC 20460.
and
Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: May 24, 1991.

Paul Lapsley,
Director, Regulatory Management Division.

[FR Doc. 91-13466 Filed 6-6-91; 8:45 am]
BILLING CODE 6560-50-M

[FRL-3962-3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before July 8, 1991.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Health and Safety Data Reporting; Submission of Lists and Copies of Health and Safety Studies (EPA ICR No. 0575.05; OMB #2070-0004). This is an extension of the expiration date of a currently approved collection.

Abstract: Under this collection, chemical manufacturers and processors must submit health and safety studies pertaining to specified chemicals, accompanied by a list of those studies and the studies in progress. EPA will use the studies to assess the need for testing the chemicals under section 4(a) of TSCA or to weigh their effects on human health and the environment.

Burden Statement: The public burden for this collection of information is estimated to average 16.8 hours per response. This estimate includes the time needed to review instructions, search data sources, gather the data needed, and review the collection of information.

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Respondents: Manufacturers and Processors of Chemical Substances.
Estimated No. of Respondents: 741.
Estimated No. of Responses per Respondent: 1.
Estimated Total Annual Burden on Respondents: 12,478 hours.
Frequency of Collection: On occasion.
Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:
Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.
and
Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: May 31, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91–13530 Filed 6–6–91; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3961–8]

Proposed Settlement; Benzene NESHAP Litigation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act ("Act"), notice is hereby given of a proposed settlement concerning litigation instituted against the Environmental Protection Agency ("EPA") challenging regulations issued pursuant to section 112 of the Clean Air Act for benzene emissions from certain source categories (the "Benzene regulations"). EPA published the Benzene regulations on September 14, 1989 (54 FR 38044).

For a period of thirty [30] days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. EPA or the Department of Justice may withhold or withdraw consent to the proposed settlement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Copies of the settlement are available from Patricia A. Embrey, Air and Radiation Division (LE–132A), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–7625. Written comments should be sent to Patricia A. Embrey at the above address and must be submitted on or before July 8, 1991.

Dated: May 7, 1991.

E. Donald Elliott,

Assistant Administrator and General Counsel.

[FR Doc. 91–13471 Filed 6–6–91; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3961–2]

Transfer of Data to Contractors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intended transfer of confidential business information to contractors.

SUMMARY: The Environmental Protection Agency (EPA) intends to transfer confidential business information (CBI) collected from the pesticide chemicals industry to EPA contractors and subcontractors. Transfer of the information will allow the contractors and subcontractors to assist EPA in developing effluent limitations guidelines and standards under the Clean Water Act (CWA) for the pesticide formulating, packaging, or repackaging industry. Information will also be transferred to allow the contractor to assist EPA in performing industry studies of the pesticide manufacturing industry under the Resource Conservation and Recovery Act (RCRA). The information being transferred was collected or will be collected under the authority of section 308 of the Clean Water Act. Interested persons may submit comments on this intended transfer of information to the address noted below.

DATES: Comments on the transfer of data are due June 17, 1991.

ADDRESSES: Comments may be sent to Dr. Thomas E. Fielding, Engineering and Analysis Division (WH–552), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas E. Fielding, Industrial Technology Division (WH–552), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–7156.

SUPPLEMENTARY INFORMATION: EPA has previously transferred to its contractor, Radian Corporation of Herndon, Virginia (and subcontractors) information, including confidential business information (CBI), concerning the pesticides industry collected under the authority of the Clean Water Act section 308.

The information transferred included: Questionnaire data collected for the manufacturers segment of the pesticide chemicals industry in 1988, sampling data collected in 1988, 1989, and 1990, from pesticide manufacturing facilities, and questionnaire data collected for the formulator/packager segment of the pesticide chemicals industry in 1990. EPA determined that this transfer was necessary to enable the contractor and subcontractors to perform their work under EPA Contract No. 68–C8–0008 and the subcontracts by assisting EPA in developing effluent limitations guidelines and standards for the pesticide chemicals industry. Notice to this effect was provided to the affected companies.

Today, EPA is giving notice that it has entered into an additional contract, No. 68–C0–0081, with Radian Corporation of Herndon, Virginia and Radian has entered into additional contracts with its subcontractors (Science Applications International Corporation (SAIC); Westat Inc.; ViGYAN, Inc.; and Versar, Inc., John M. Wise Associates and Dr. Robert G. Haines), to develop effluent limitations guidelines and standards for the pesticide formulating/packaging industry. The reason for this second contract with Radian is to secure additional contractor support for the pesticide formulating/packaging rulemaking effort. Radian Corporation will provide technical support such as reviewing and analyzing questionnaire data, recommending facilities for sampling, conducting plant visits and sampling visits, evaluating data on existing wastewater treatment at formulating/packaging plants and estimating costs for the installation of treatment and the effectiveness of the treatment on reducing pollutant loadings. Radian's subcontractor SAIC will provide support on the review of questionnaires, sampling and other engineering support functions.

Westat will provide support on the development of computer data bases and statistical analysis. Versar will provide support in sampling and evaluating the toxicity and environmental impacts associated with discharges from pesticide formulating/packaging wastewater. ViGYAN will provide statistical support and the consultants Dr. Robert Haines and John M. Wise Associates will offer their knowledge of the pesticide formulating/packaging processes, water reuse and recycle practices and the pesticide product registration process. In accordance with 40 CFR part 2, subpart B, the previously collected information described above, as well as information

to be collected in the future to support development of the pesticides effluent guidelines and standards, (including CBI data) will be transferred to Radian Corporation of Herndon, Virginia (if not already transferred for use by Radian under the previous contract) and its subcontractors and consultants as listed above. Each of the contractors, subcontractors and consultants is given access only to the data that they need to perform their given assignments under their contracts. EPA has determined that this transfer is necessary to enable the contractor, subcontractors and consultants to perform their work under EPA Contract No. 68–C0–0081 and the subcontracts.

EPA is also giving notice that it has entered into a contract No. 68–WO–0027, with Science Applications International Corporation (SAIC) of McLean, Virginia to perform an industry study of the pesticide manufacturing industry under the Resource Conservation and Recovery Act (RCRA). SAIC will assist the EPA in the review and compilation of current and recent pesticide production activities. This data will serve as the basis for determining whether or not the wastes generated by the pesticide manufacturing industry warrant listing as hazardous under RCRA.

EPA will transfer to its contractor SAIC, McLean, Virginia information including confidential business informat[illegible] (CBI) concerning the pesticide industry collected under the authority of the Clean Water Act section 308. The information transferred will include: Questionnaire data collected for the manufacturers segment of the pesticide chemicals industry in 1988, sampling data collected in 1988, 1989, and 1990 from pesticide manufacturing facilities, and questionnaire data collected for the formulator/packager segment of the pesticide chemical industry in 1990. SAIC will provide EPA with technical support by performing an industry study of the pesticide manufacturing industry. This will include reviewing and analyzing questionnaires, recommending facilities for sampling, and conducting plant visits and sampling visits. By transferring this information, EPA hopes to minimize the burden on the pesticide manufacturing industry by preventing duplicative requests for information.

In accordance with 40 CFR part 2, subpart B, the previously collected information described above, (including CBI data) will be transferred to Science Applications International Corporation. SAIC will be given access only to the data that they will need to perform their given assignments under their contract. EPA has determined that this transfer is necessary to enable the contractor to perform their work under EPA Contract No. 68–WO–0027.

Anyone wishing to comment on the above matters must submit comments to the address given above by June 17, 1991.

Dated: May 24, 1991.

LaJuana S. Wilcher,

Assistant Administrator for Water.

Martha Prothro,

Deputy Assistant Administrator for Water.

[FR Doc. 91–13472 Filed 6–6–91; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3962–4]

National Air Pollution Control Techniques Advisory Committee; Request for Suggestions for List of Candidates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of preparation of list of candidates.

SUMMARY: The EPA is preparing a list of candidates from which nominees will be selected for the National Air Pollution Control Techniques Advisory Committee (NAPCTAC). The EPA invites all interested persons to suggest qualified individuals whose names may be added to this list of candidates. The NAPCTAC was established to advise the Agency on the latest available technology and economic feasibility of alternative methods to prevent and control air pollution. This advice is used both in establishing national emission standards and preparing support documentation. It also advises on information documents regarding air pollution control techniques and testing and monitoring methodology for stationary source categories and air pollutants subject to the provisions of sections 111 and 112 of the Clean Air Act, as amended.

DATES: Submit suggestions for the list of candidates no later than July 8, 1991.

ADDRESSES: Submit suggestions for the list of candidates to: Bruce C. Jordan, Acting Director, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC. 27711.

FOR FURTHER INFORMATION CONTACT: Bruce C. Jordan, Acting Director, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC. 27711 (919) 541–5572.

SUPPLEMENTARY INFORMATION: The Charter for the NAPCTAC which describes the authority, organization, and functions of the Committee is available upon request. Individuals whose names are offered should have education or experience in the scientific, engineering, or economic aspects associated with the source of air pollution and the control of emissions from such sources. Past members have come from universities, State and local governments, research institutions, public interest organizations, and industry.

Any interested person or organization may submit the names of qualified persons. Suggestions for the list of candidates should be identified by name, occupation, position, address, and telephone number; a resume of the individual's background, experience, and qualifications relevant to NAPCTAC membership should be included.

Persons selected for membership on the NAPCTAC will receive per diem compensation for travel and nominal daily compensation while attending meetings.

Suggestions for the list of candidates should be submitted no later than July 8, 1991. The Agency will not formally acknowledge or respond to suggestions.

Dated: May 31, 1991.

Michael Shapiro,

Deputy Asst. Adm. for Air and Radiation.

[FR Doc. 91–1352 Filed 6–6–91; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3963–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 20, 1991 through May 24, 1991 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in **Federal Register** dated April 05,1991 (56 FR 14096).

Draft EISs

ERP No. D–AFS–J65175–MT Rating LO, Price Wise Timber Sale,

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Implementation, Beaverhead National Forest, Wise River Ranger District, Beaverhead County, MT.

Summary:

EPA has no objection to the preferred alternative.

ERP No. D-CDB-C80011-NY Rating LO, Rochester City School District's Carthage School #8 Replacement Project, Construction and Operation CDB Grant, City of Rochester, Monroe County, NY.

Summary:

EPA believes that the proposed project will not result in any significant adverse environmental impacts.

ERP No. D-FRC-G03017-00 Rating LO, Oklahoma-Arkansas Natural Gas Pipeline Project, Construction, Operation and Transportation, section 10 and 404 Permits, NPDES Permit, Several Counties in MS, OK and AR.

Summary:

EPA has no objection to the proposed action that provided the mitigation measures, best management practices, and federally-approved operation and maintenance procedures and fully incorporated.

ERP No. D-UAF-K11046-CA Rating EC1, March Air Force Base Realignment, Implementation, 445th Air Force Reserve Military Airlift Wing, Riverside County, CA.

Summary:

EPA expressed environmental concerns because the proposed realignment action may have adverse impacts without a firm commitment to adopt mitigation to protect public health and the environment. EPA urged hazardous waste minimization, recycling solid wastes, and reduction of emissions from mobile and stationary sources of air pollution. EPA requested a discussion of any potential conflicts in schedules concerning accelerated realignment construction and hazardous waste cleanup activities at March Air Base.

ERP No. DR-COE-E32066-00 Rating LO, Savannah Harbor Comprehensive Study and Harbor Deepening, Updated and New Information, Implementation, Chatham County, GA and Jasper County, SC.

Summary:

EPA has no objections to the proposed deepening of Savannah Harbor.

Final EISs

ERP No. F-AFS-F61016-IN, Hoosier National Forest Land and Resource Management Plan Amendment, Implementation, Several Counties, IN.

Summary:

EPA believes that the selected alternative will provide more ecological benefits than the current forest plan provides. EPA requests that mitigation for erosion, sedimentation and bottomland hardwoods be implemented and that reintroduction of extinct species be pursued.

ERP No. F-AFS-F65018-WI, Sunken Camp Area—Management Area 351, Management Plan, Implementation, Chequamegon National Forest, Washburn Ranger District, Bayfield County, WI.

Summary:

EPA supports the alternative selected by the Forest Service in the Record of Decision, but is concerned that management constraints in the 1986 Land Management Plan preclude optimization of biological diversity and ecological processes in the Forest.

ERP No. F-AFS-G65051-NM, Ward Timber Sale, Implementation, Gila National Forest, Luna Ranger District, Catron County, NM.

Summary:

EPA has no objection to the selection of the "no action" alternative.

Dated: June 4, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-13559 Filed 6-6-91; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3963-1]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed May 27, 1991 Through May 31, 1991 Pursuant to 40 CFR 1506.9

EIS No. 910176, Draft EIS, SFW, CA, Stone Lakes National Wildlife Refuge Management Plan, Land Acquisition and Easement, Possible COE Section 10 and 404 Permits, Central Valley, Sacramento County, CA, Due: August 01, 1991, Contact: Peter Jerome (916) 978-4420.

EIS No. 910177, Draft EIS, BLM, NM, Albuquerque District Resource Management Plan (RMP) Amendment, Oil and Gas Leasing and Development, Farmington, Rio Puerco and Taos Resource Areas, Implementation, Several Counties, NM, Due: September 07, 1991, Contact: Robert Dale (505) 761-8712.

EIS No. 910178, Draft EIS, UMT, MD, Baltimore-Washington International Airport Extension, Central Light Rail Line (CLRL), Funding, Anne Arundel, Baltimore and Howard Counties, MD, Due: July 26, 1991, Contact: John Garrity (215) 597-6179.

EIS No. 910179, Draft EIS, EPA, CA, International Wastewater Treatment Plant and Outfall Facilities, Construction, Operation and Maintenance, Construction Grant, CA and MX, Due: July 22, 1991, Contact: Brad Tarr (619) 542-1611.

EIS No. 910180, Draft EIS, AFS, WY, Medicine Wheel National Historic Landmark Protection Project, Implementation, Bighorn National Forest, Medicine Wheel Ranger District, Big Horn County, WY, Due: August 31, 1991, Contact: Lloyd Todd (307) 672-0751.

EIS No. 910181, Final EIS, COE, KS, Cross Creek Flood Protection Plan, section 205 Small Flood Control Project, Implementation, City of Rossville, Shawnee County, KS, Due: July 08, 1991, Contact: Martin R. Schueltpelz (816) 426-5063.

EIS No. 910182, Draft EIS, COE, KY, Lower Cumberland and Tennessee Rivers Navigation Improvements, Kentucky Lock Addition, Implementation, Nashville District, Marshall and Livingston Counties, KY, Due: July 22, 1991, Contact: Richard Tippit (615) 736-2020.

EIS No. 910183, Final EIS, AFS, ID, Beartrack Open Pit Heap Leach Gold Mine Project, Construction and Operation, NPDES Permit and section 404 Permit, Salmon National Forest, Lemhi County, ID, Due: July 22, 1991, Contact: Tom Buchta (208) 756-2215.

EIS No. 910184, Draft EIS, AFS, CA, Rock Creek-Cresta Reservoirs Dredging Project, Dredging and Disposal of Sediments, Section 404 Permit, Plumas National Forest, Plumas County, CA, Due: July 22, 1991, Contact: Court Bennett (916) 283-2050.

Dated: June 4, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-13558 Filed 6-6-91; 8:45 am]

BILLING CODE 6560-50-M

[FRI-3961-6]

Realiotment of Funds Under Municipal Wastewater Treatment Works Construction Grants Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of distribution of funds for reallotment under Municipal Wastewater Treatment Works Construction Grants Program (40 CFR part 35, subpart I).

SUMMARY: This notice announces the distribution of unobligated fiscal year (FY) 1989 funds subject to reallotment after September 30, 1990, under the Clean Water Act, 33 U.S.C. 1285 et seq. and explains the reallotment and distribution procedures.

The construction grants program operates under authority of the Clean Water Act (the Act) Public Law 92-500, as amended. Section 205(d) of the Act requires that funds allotted to a State which have not been obligated by the end of the second year of availability "* * * shall be immediately reallotted by the Administrator * * *," section 104(q)(4) of the Act requires that "Notwithstanding section 205(d) * * * the Administrator shall make available $1,000,000 or such unobligated amount, whichever is less, to support a national clearinghouse * * *" to disseminate information on innovative and alternative wastewater treatment processes for communities.

DATES: June 7, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard Fitch, Program Management Branch, Municipal Support Division, Office of Wastewater Enforcement and Compliance, (202) 382-5858.

SUPPLEMENTARY INFORMATION: Section 104(q)(4) requires the Administrator to make available to the National Small Flows Clearinghouse, notwithstanding the reallotment provisions of section 205(d), from unobligated funds reserved for innovative and alternative projects under section 205(i), an amount equal to those unobligated funds or $1,000,000, whichever is less. At the close of the availability period for the FY 1989 allotment (September 30, 1990), six territories had not obligated their available funds. The total amount of $762,735 is comprised of American Samoa ($33,512); Guam ($24,248); Trust Territory ($3,402); Puerto Rico ($60,857); Virgin Islands ($2,431); and the Northern Mariana Islands ($638,285).

Unavailability of Funds for Reallotment to States

The balance of the unobligated funds remaining after the period of availability and subject to reallotment under section 205(d) and that is, covered by the requirements of section 104(q)(4), is $762,735 leaving less than $1,000,000 available to fund the National Small Flows Clearinghouse. This is the first year in which funds will only be available for distribution to the National Small Flows Clearinghouse and no funds are available for reallotment to the States. As discussed below, only a portion of the unobligated funds remaining after the period of availability are subject to reallotment. Due to the following exception the total amount to be reallotted to the Small Flows Clearinghouse is $124,450.

Northern Mariana Islands

Section 3(b)(2) of Public Law 95-348 provides that any funds made available to the Northern Mariana Islands (NMI) by the Congress after March 24, 1976 "* * * are hereby authorized to remain available until expended." Accordingly, construction grants funds allotted to the Northern Mariana Islands which remain unobligated at the close of the period of availability prescribed by section 205(d) of the Act are not subject to reallotment. Thus, funds allotted to the Northern Mariana Islands are not subject to the reallotment provisions of section 205(d).

Dated: May 28, 1991.

William K. Reilly,

Administrator.

Summary of Notice of Funds Availability

- Section 205(d) of the Act requires that funds allotted to a State which are not obligated by the end of the second year of availability "* * * shall be immediately reallotted by the Administrator * * *" Section 104(q)(4) of the Act requires that "Notwithstanding section 205(d) * * * the Administrator shall make available $1,000,000 or such unobligated amount, whichever is less, to support a national clearinghouse * * *".
- This year, the amount of unobligated funds is less than $1,000,000; and the entire amount is to be distributed to the National Small Flows Clearinghouse.
- Funds from five territories totalling $124,450 which were set aside for construction of innovative and alternative wastewater treatment facilities will be available.

[FR Doc. 91-13469 Filed 6-6-91; 8:45 am]

BILLING CODE 6560-50-M

Open Meeting of the Policy Dialogue Committee on Mining Wastes

[FRL-3961-7]

AGENCY: U.S. Environmental Protection Agency.

ACTION: Open meeting of Federal Advisory Committee on Mining Wastes.

SUMMARY: As required by section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), we are giving notice of the second meeting of the Policy Dialogue Committee. The committee was formed to provide a forum to refine and further develop issues related to managing mining waste and to facilitate the exchange of ideas and information among the interested parties. We have determined that this is in the public interest and will assist EPA in performing its duties prescribed in the Resource Conservation and Recovery Act.

Copies of the Committee Charter are filed with the appropriate committees of Congress and the Library of Congress.

DATES: The Committee will meet on the following dates:

June 17, 1991 from 1 p.m.—5 p.m. continuing on
June 18, 1991 from 9 a.m.—3 p.m.
July 25, 1991 from 9 a.m.—3 p.m. continuing on
July 26, 1991 from 8 a.m.—12 p.m.

LOCATIONS: The June 17-18 meeting will be held at the Embassy Suites Hotel, 1881 Curtis Street, Denver, Co. The July 25-26 meeting will be held at the Sir Francis Drake Hotel, Union Square, 450 Powell Street, San Francisco, CA. Committee meetings are open to the public without need for advance registration.

The committee's facilitator has notified interested parties of the meeting dates. The purpose of the meeting is to continue discussion of issues related to the development of EPA's mining program.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the substantive matters of the Committee should call Stephen Hoffman, Office of Solid Waste, at (703) 308-8413. Summaries of previous meetings will be made available upon written request to Patricia Whiting, Office of Solid Waste, Environmental Protection Agency, 401 M Street, SW., (OS-323W), Washington, DC 20460. Persons needing further information on Committee procedural matters should call Deborah Dalton, Regulatory Negotiation Project, at (202) 382-5495.

SUPPLEMENTARY INFORMATION

Background

The Policy Dialogue Committee was created to provide a forum to refine and further develop issues raised during the strawman development and comment process, and to facilitate the exchange of new ideas and information among the interested parties. It is hoped that consensus may be possible on some

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issues but, at a minimum, we would like to ensure that issues are thoroughly defined and that differing positions, as well as the reasons for those differences, are identified. The output of the Policy Dialogue Committee will be made available to various EPA decision-makers in the mining waste program development process.

The first meeting of the Committee was held in Washington, DC on May 15 and May 16, 1991.

Participants

Seven representativs from each of the interested parties (States, the mining industry, and public interest groups) serve as representatives on the Committee. Representatives from EPA and other Federal agencies also serve as members of the Committee. The following is a listing of representatives for the interested parties: States—Mr. Ken Alkema, Director, Division of Environmental Health, Utah Department of Health; Mr. Fred Banta, Director, Mine Land Reclamation Division, Colorado Department of Natural Resources; Mr. Tom Fronapfel, Bureau Chief, Bureau of Mining Regulation and Reclamation, Nevada Department of Conservation and Natural Resources; Mr. Charles Gardner, State Geologist, Director of Land Resources, North Carolina Department of Health, Environment and Natural Resources; Ms. Charlene Herbst, Chief Land Disposal Branch, California Water Resources Control Board; Mr. Jim Joy, Chief, Air Quality Control, South Carolina Department of Health and Environmental Control; Mr. Steve Priner, Director, Division of Environmental Regulation, South dakota Department of Water and Natural Resources.

Mining Industry—Mr. Steven Barringer, Esq., Holland & Hart; Mr. David Crouch, Corporate Manager, Environmental Affairs, Homestake Mining Company; Mr. Norman Greenwald, Norman Greenwald Associates; Mr. Thomas Janeck, Vice President, Environmental Affairs, Zinc Corporation of America; Dr. Krishna Parameswaren, Senior Analyst, Government Relations, ASARCO Incorporated; Mr. William Schimming, Manager, Environmental Affairs, Texas Gulf, Inc.; Mr. Ivan Urnovitz, Manager, Government Relations, Northwest Mining Association.

Public Interest Groups—Mr. Thomas Galloway, Esq., Friends of the Earth; Mr. Philip Hocker, Mineral Policy Center; Mr. David Lennett, Esq., National Audubon Society; Dr. Glenn Miller, Sierra Club; Mr. James Jensen, Montana Environmental Information Center; Mr. Wm. Paul Robinson, Southwest Research & Information Center; and Tony Mazzochi, Oil, Chemical and Atomic Workers International Union.

Federal Agency Representatives—Mr. David S. Brown, Associate Director, Information and Analysis, Bureau of Mines; Lynn Sprague, Director of Minerals and Geology Staff, U.S. Forest Service; Matthew A. Straus, Deputy Director, Waste Management Division, Office of Solid Waste, U.S. Environmental Protection Agency; Russell H. Wyer, Director, Waste Management Division, Office of Solid Waste, U.S. Environmental Protection Agency; Robert E. Walline, Mining Waste National Expert, Region 8, U.S. Environmental Protection Agency.

Dated: May 28, 1991.

Paul Lapsley,

Director, Regulation Management Division.

[FR Doc. 91-13470 Filed 6-6-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL 3963-5]

Expert Panel on the Role of Science at EPA; Open Meeting

Under Public Law 92-463, notice is hereby given that the Expert Panel on the Role of Science at EPA will hold a public meeting on June 24, 1991, in the LaSalle Room of the Loew's L'Enfant Plaza Hotel, 480 L'Enfant Plaza SW., Washington, DC. The meeting will begin at 8:30 a.m. and will end at 10:30 a.m.

This is the initial meeting of the Expert Panel. The purpose of the meeting will be to identify issues which the Panel will consider during its review of science at EPA.

This meeting will be open to the public. Any member of the public wishing to attend the meeting, present an oral statement, or submit a written statement should contact Ms. Gail Robarge, U.S. Environmental Protection Agency, Office of Research and Development (H-8105), 401 M St., SW., Washington, DC 20460 (202) 382-7891. For further information concerning the Panel or its activities, please contact Ms. Wendy Cleland-Hamnett, Designated Federal Official to the Panel, Office of the Administrator (A-101), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460 (202) 382-4724. Seating is limited due to the size of the room and will be on a first come basis.

Dated: June 4, 1991.

Wendy Cleland-Hamnett,

Special Assistant to the Administrator.

[FR Doc. 91-13694 Filed 6-6-91; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59299; FRL 3929-5]

Toxic and Hazardous Substances; Test Market Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substance Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of 2 applications for exemption, provides a summary, and requests comments on the appropriateness of granting these exemptions.

DATES:

Written comments by:

T 91-19, 91-20, June 20, 1991.

ADDRESSES: Written comments, identified by the document control number "(OPTS-59299)" and the specific TME number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., rm. L-100, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer of the TME received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

T 91-19

Close of Review Period. July 5, 1991.

Manufacturer. Mycogen Corporation.

Chemical. (G) *Pseudomonas fluorescens* engineered to contain a gene for production of delta endotoxin from *bacillus thuringiensis* variety *kurstaki*, (MYX-7275).

Use/Production. (S) The TME substances are agricultural pesticide intermediates. The engineered microorganisms produce the delta endotoxin during growth in a fermenter under controlled conditions, and are killed and fixed. Encapsulation of the *b.t.* delta endotoxin within the killed, fixed *p. fluorescens* cell provides protection from the elements, end extends the residual activity of the toxin to 5-7 days. Prod. range: 45 batches max.

T 91-20

Close of Review Period. July 5, 1991.

Manufacturer. Mycogen Corporation.

Chemical. (G) *Pseudomonas fluorescens* engineered to contain a gene for production of delta endotoxin from *bacillus thuringiensis* variety *san diego*, (MYX-1806).

Use/Production. (S) The TME substances are agricultural pesticide intermediates. The engineered microorganisms produce the delta endotoxin during growth in a fermenter under controlled conditions, and are killed and fixed. Encapsulation of the *b.t.* delta endotoxin within the killed, fixed *p. fluorescens* cell provides protection from the elements, end extends the residual activity of the toxin to 5-7 days. Prod. range: 18 batches max.

Dated: June 4, 1991.

Douglas W. Sellers,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91-13520 Filed 6-6-91 8:45 am]

BILLING CODE 6560-50-F

[OW-FRL-3962-6]

Assessment and Control of Bioconcentratable Contaminants in Surface Waters: Draft Guidance

AGENCY: Environmental Protection Agency.

ACTION: Notice of extension of public comment period.

SUMMARY: This notice announces an extension of the public comment period on the draft guidance document entitled "Assessment and Control of Bioconcentratable Contaminants in Surface Waters." The draft guidance document was made available on March 29, 1991 (56 FR 13150).

DATES: All comments must be received by EPA on or before July 26, 1991.

ADDRESSES: Interested persons should submit written comments to William J. Morrow, Office of Wastewater Enforcement and Compliance, EN-336, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: William J. Morrow at (202) 475-9531.

SUPPLEMENTARY INFORMATION: On March 29, 1991, EPA made available a draft guidance document entitled "Assessment and Control of Bioconcentratable Contaminants in Surface Waters." The purpose of this draft guidance document is to provide guidance to State and Federal regulators on assessing and, where necessary, controlling the release of pollutants which, due to their chemical properties, accumulate in the tissues of aquatic organisms. The Environmental Protection Agency solicits comments from the public on all aspects of this draft guidance document. The March 29 notice sets a period of 60 days for the receipt of public comments. Since publication of that notice, EPA has received several requests to lengthen the comment period. In response to these requests, EPA has decided to extend the comment period to July 26, 1991.

Dated: May 28, 1991.

Michael B. Cook,

Director, Office of Wastewater Enforcement and Compliance.

[FR Doc. 91-13533 Filed 6-6-91; 8:45 am]

BILLING CODE 6560-50-M

[FRC-3961-9]

Availability and Review of New Financial Assistance Program; NPDES Related State Program Support—State Grants

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of availability and review.

SUMMARY: The Environmental Protection Agency (EPA) announces the availability of $16,500,000, under section 104(b)(3) of the Clean Water Act, to support new requirements related to National Pollutant Discharge Elimination System (NPDES) program implementation. Funding will be available for unique investigations, special one time studies, pilots and demonstrations so as to implement NPDES related activities. These activities include: (1) The development of NPDES permits and other administrative activities (including enforcement) for combined sewer overflow (CSO) and storm water discharges, and (2) the implementation of municipal water pollution prevention pilot programs. Eligible applicants include: State water pollution control agencies; interstate water pollution control agencies; and other public agencies. Grant funds must lead to implementation with tangible results; they can not be used to support ongoing State water quality programs. Our schedule is to review and approve all project proposals by July 15, 1991.

FOR FURTHER INFORMATION CONTACT: Applicants should request appropriate grant application forms from their Regional Grants Administration Office. For programmatic or technical information, applicants should work closely with their Regional water program contacts. Applicants should work with the Regions to develop informal grant proposals for Headquarters review and concurrence before completing formal grant applications. For further assistance and to apply for funds, applicants should contact the following EPA Regional staff:

EPA Region I (Maine, Vermont, Connecticut, New Hampshire, Massachusetts and Rhode Island): William Nuzzo, Water Management Division, John F. Kennedy Federal Building, room 2203, Boston, MA, 02203 (617) 565-3480;

EPA Region II (New York, New Jersey, Puerto Rico, Virgin Islands): Patrick Harvey, Water Management Division, Jacob K. Javitz Federal Building, 26 Federal Plaza, New York, NY, 10278, (212) 264-8958;

EPA Region III (Pennsylvania, Delaware, Maryland, Virginia, West Virginia, District of Columbia): Ken Cox, Water Management Division, 841 Chestnut Building, Philadelphia, PA, 19107, (215) 597-8211;

EPA Region IV (North Carolina, South Carolina, Tennessee, Kentucky, Georgia, Alabama, Mississippi and Florida): James Patrick, Water Management Division, 345 Courtland Street, NE., Atlanta, GA, 30365, (404) 347-3012;

EPA Region V (Illinois, Wisconsin, Michigan, Ohio, Indiana): Barry DeGraff, Water Management Division, 230 South Dearborn Street, Chicago, IL, 60640, (312) 353-0147;

EPA Region VI (Texas, Arkansas, New Mexico, Oklahoma, Louisiana): Jack Ferguson, Water Management Division, First Insterstate Bank Tower at Fountain Place, 1445 Ross Avenue, 12th floor suite 1200, Dallas, TX, 75202-2733, (214) 655-7170;

EPA Region VII (Missouri, Kansas, Nebraska, Iowa): Larry Ferguson, Water Management Division, 726 Minnesota Avenue, Kansas City, KS, 66101, (913) 551-7447;

EPA Region VIII (Colorado, North Dakota, South Dakota, Utah, Wyoming,

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Montana): Janet LaCombe, Water Management Division, 999 18th Street, Denver, CO, 80202, (303) 293–1654;

EPA Region IX (California, Arizona, Hawaii, Nevada, Trust Territories): William Pierce, Water Management Division, 75 Hawthorne Street, San Francisco, CA, 94015, (415) 744–1878;

EPA Region X (Washington, Oregon, Alaska, Idaho): Harold Geren, Water Management Division, 1200 Sixth Avenue, Seattle, WA, 98101, (206) 442–1256.

For information at EPA Headquarters, Office of Water: Rita Smith, Office of Wastewater Enforcement and Compliance (EN–335), U.S. EPA, 401 M. Street, SW., Washington, DC, 20460, (202) 475–8488.

SUPPLEMENTARY INFORMATION: EPA will award $16,500,000 in grants, under authority of the Clean Water Act (CWA) section 104(b)(3), to State and interstate water pollution control agencies and other public agencies which commit to undertake specific, targeted activities to strengthen NPDES related program implementation. Assistance will be targeted to agencies for special studies, demonstrations, unique one time investigations or pilot programs that will enable the NPDES program to effectively implement CSO and storm water control programs. Eligible activities must be relatively short time frames (one or two years) and produce concrete results.

First priority for the use of grants will focus on the establishment of schedules and requirements for controlling CSOs. Second priority will involve implementing storm water discharge control strategies. Eligible activities include: Addressing unique requirements (permits and/or enforcement orders) relating to CSO controls; controlling CSO and storm water discharges in targeted watersheds; demonstrating successful implementation of State CSO strategies; developing model general permits for storm water and CSOs; evaluating toxicity data and toxicity testing for storm water discharges; and demonstrating municipal wastewater pollution prevention pilot programs. All grants will require specific outputs which will be negotiated at time of grant award; for example, monitoring and planning work must lead to implementation, such as permit issuance.

This program is eligible for intergovernmental review under Executive Order 12732 and is subject to the review requirements of section 204 of the Demonstration Cities and Metropolitan Development Act. States choosing to review applications in this program must notify the following office within thirty days of this publication: Grants Administration Division (PM–216F, U.S. Environmental Protection Agency, 401 M. Street, SW., Washington DC, 20460, ATTN: Corinne Allison).

Applicants must contact their State's Single Point of Contact (SPOC) for intergovernmental review as early as possible to find out if the program is subject to the State's official E.O. 12732 review process and what material must be submitted to the SPOC for review. In addition, applications for projects within a metropolitan area must be sent to the areawide/ Regional/local planning agency designated to perform metropolitan or regional planning for the area for their review. SPOCs and other reviewers should send their comments on an application to the appropriate EPA Regional Grants Management Office, no later than sixty days after receipt of the appliciation and other required material for review.

States are encouraged to work closely with their Regional water programs to develop project proposals that will effectively address the critical goals of this new grant program.

Dated: June 3, 1991.

Michael B. Cook,

Director, Office of Wastewater Enforcement and Compliance.

[FR Doc. 91–13531 Filed 6–6–91; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[GEN Docket No. 91–59; DA 91–622]

Wyoming Region Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The FCC is accepting Wyoming's (Region 46's) plan for public safety. By accepting this plan, the FCC enables the licensing of 821–824/866–869 MHz spectrum for public safety to begin.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, Washington, DC 20554, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

1. On October 26, 1990, Region 46 (Wyoming) submitted its public safety plan to the Commission for review. The plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in its region. On March 1, 1991, Wyoming filed revisions to the plan, based on conversations with the Commission's staff.

2. The Wyoming plan was placed on Public Notice for comments on March 12, 1991, 56 FR 11555 (3–19–91). The Commission received no comments in this proceeding.

3. We have reviewed the plan submitted for Wyoming and find that it conforms with the National Public Safety Plan. The plan includes all the necessary elements specified in the Report and Order in Gen. Docket No. 87–112, 3 FCC Rcd 905 (1987) 53 FR 1022, January 15, 1988, and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in Wyoming.

4. Accordingly, *it is ordered that* the Public Safety Radio Plan for Wyoming *is accepted.* Furthermore, licensing of the 821–824/866–869 MHz band in Wyoming may commence immediately.

Federal Communications Commission.

Beverly G. Baker,

Deputy Chief, Private Radio Bureau.

[FR Doc. 91–13436 Filed 6–6–91; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–909–DR]

Major Disaster and Related Determinations, AK

AGENCY: Federal Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alaska (FEMA–909–DR), dated May 30, 1991, and related determinations.

DATES: May 30, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: Notice is hereby given that, in a letter dated May 30, 1991, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288, as amended by Pub. L. 100–707), as follows:

I have determined that the damage in certain areas of the State of Alaska, resulting from heavy snow, flooding, and ice jams beginning on April 30, 1991, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Alaska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Joan F. Hodgins of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alaska to have been affected adversely by this declared major disaster: Fairbanks-North Star Borough, and the communities of Aniak, Anvik, Grayling, Holy Cross, McGrath, and Red Devil for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 91–13501 Filed 6–6–91; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–907–DR]

Major Disaster and Related Determinations, AR

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Arkansas (FEMA–907–DR), dated May 30, 1991, and related determinations.

DATES: May 30, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: Notice is hereby given that, in a letter dated May 30, 1991, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288, as amended by Pub. L. 100–707), as follows:

I have determined that the damage in certain areas of the State of Arkansas, resulting from severe storms and flooding beginning on April 12, 1991, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Arkansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Leland R. Wilson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Arkansas to have been affected adversely by this declared major disaster: The counties of Ashley, Bradley, Chicot, Cleveland, Columbia, Dallas, Desha, Izard, Lee, Little River, Nevada, Ouachita, Polk, Stone, and Union for Public Assistance.

The incident period for this disaster shall be established in the FEMA-State Agreement as April 12, 1991, through and including May 11, 1991.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 91–13502 Filed 6–6–91; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–904–DR]

Amendment to Notice of a Major Disaster Declaration; Louisiana

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA–904–DR), dated May 3, 1991, and related determinations.

DATES: May 31, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: Notice is hereby given that the incident period for this disaster is closed effective May 31, 1991.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91–13498 Filed 6–6–91; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–904–DR]

Amendment to Notice of a Major Disaster Declaration; Louisiana

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA–904–DR), dated May 3, 1991, and related determinations.

DATED: May 28, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of Louisiana, dated May 3, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declarstion of May 3, 1991.

The parishes of St. James and St. Tammany for Individual Assistance.

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(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Acting Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-13499 Filed 6-6-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-904-DR]

Amendment to Notice of a Major Disaster Declaration; Louisiana

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA-904-DR), dated May 3, 1991, and related determinations.

DATED: May 31, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Louisiana, dated May 3, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 3, 1991:

The parishes of Livingston and St. Charles for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-13500 Filed 6-6-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-906-DR]

Mississippi; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Mississippi (FEMA-906-DR), dated May 17, 1991, and related determinations.

DATES: May 31, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that the incident period for this disaster is closed effective May 31, 1991.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-13503 Filed 6-6-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-908-DR]

Nebraska; Major Diaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Nebraska (FEMA-908-DR), dated May 28, 1991, and related determinations.

DATES: May 28, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that, in a letter dated May 28, 1991, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Public Law 93-288, as amended by Public Law 100-707), as follows:

I have determined that the damage in certain areas of the State of Nebraska, resulting from severe storms and flooding beginning on May 10, 1991, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Nebraska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint S. Richard Mellinger of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Nebraska to have been affected adversely by this declared major disaster:

The counties of Dawes and Sioux for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 91-13504 Filed 6-6-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-906-DR]

Amendment to Notice of a Major Disaster Declaration; MS

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Mississippi (FEMA-906-DR), dated May 17, 1991, and related determinations.

DATES: May 30, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Mississippi, dated May 17, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 17, 1991: Madison and Yazoo Counties for Individual Assistance.

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

[FR Doc. 91-13518 Filed 6-6-91; 8:45 am]

BILLING CODE 6718-02-M

Privacy Act of 1974; Proposed New Routine Use of Existing Systems of Records

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of Proposed new routine use to existing system of records.

SUMMARY: Pursuant to the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, the Federal Emergency Management Agency gives notice of a proposed new routine use to be added to an existing system of records entitled FEMA/FIA-2, National Flood Insurance Application and Related Documents Files.

EFFECTIVE DATE: The proposed routine use shall become effective, without further notice, on 30 days from the date of this notice in the **Federal Register** (July 8, 1991), unless comments necessitate otherwise.

ADDRESS: Address comments to the Federal Emergency Management Agency, Attn: Docket Clerk, Office of General Counsel, Room 840, 500 C Street, SW., Washington, DC 20472. Comments received will be available for public inspection at the above address from 9 a.m. to 4 p.m., Monday through Friday (except for legal holidays).

FOR FURTHER INFORMATION CONTACT: Sandra B. Jackson, FOIA/Privacy Specialist, at (202) 646-3480.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) last published its notice of systems of records on January 5, 1987 (52 FR 324); February 3, 1987 (52 FR 3344); March 5, 1987 (52 FR 6875); and September 7, 1990 (55 FR 37182).

The system identified as FEMA/FIA-2, National Flood Insurance Application and Related Documents Files was previously published on November 26, 1982, 47 FR 53492; amended on October 25, 1983, 48 FR 49376; February 17, 1984, 49 FR 6168; May 13, 1985, 50 FR 20007; January 5, 1987, 52 FR 324; July 28, 1988, 53 FR 28437; and August 9, 1988, 53 FR 29947. A new routine use is proposed to permit release of policy numbers of National Flood Insurance Program (NFIP) policyholders to lending institutions, mortgage servicing companies and others servicing mortgage loan portfolios, whether on behalf of lenders or their mortgage servicing companies, for the purpose of securing flood insurance protection for those properties that are a part of a lending institution's mortgage portfolio in aid of assuring lender compliance with the flood insurance purchase requirements of the Flood Disaster Protection Act of 1973. Under the 1973 Act, it is required that a federally related lending institution obtain flood insurance in an amount equal to the loan when making, extending or renewing a mortgage loan in connection with improved real property located in a special flood hazard area of a community participating in the NFIP.

Release of flood insurance policy numbers will provide a mechanism whereby lending institutions, mortgage servicing companies, and others servicing mortgage loan portfolios, can bring their portfolios into compliance with the flood insurance purchase requirements of the 1973 Act. This is so because, by the lender comparing flood insurance policy numbers of its mortgagors with the NFIP record of policies in force, the lender can learn whether any of its flood insurance policies are no longer in effect. As to those policies which have lapsed, the lender can require the mortgagors to maintain flood insurance in effect provided the insurance was initially purchased pursuant to the 1973 Act.

Similarly, and for the same purpose, we are amending the routine use whereby data is released to private companies engaged in the marketing of flood insurance policies.

This will also result in a greater number of NFIP standard flood insurance policies being written, and, ultimately, will benefit all NFIP policyholders inasmuch as a greater number of policies-in-force will result in a greater spread of the risk. Thus, the overall cost of the insurance will hold steady, or even possibly be lowered depending upon the magnitude of the insurance reserves.

For the convenience of the reader, the entire text of the system of records affected by this notice is being printed in its entirety.

Dated: May 29, 1991.

Kathryn L. Newman,

Deputy General Counsel, Office of General Counsel, Federal Emergency Management Agency.

FEMA/FIA-2

SYSTEM NAME:

National Flood Insurance Application and Related Documents Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Various offices of a servicing agent under contract to the Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472. Copies of some of the files are also provided to the FEMA Regional offices when additional information is requested from their respective offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for individual flood insurance and individuals insured.

CATEGORIES OF RECORDS IN THE SYSTEM:

Flood insurance, policy issuances and administration records and claims adjustment records, including HUD Form 1650 and FEMA Form 81-64, Applications for Participation in the National Flood Insurance Program; FEMA Form 81-16, Flood Insurance Application; FEMA Form 81-18, Flood Insurance General Change Endorsements; FEMA Form 81-23, Request for Policy Processing and Renewal Information; FEMA Form 81-17, Flood Insurance Cancellation/Nullification Request Form; policy questionnaires; FEMA Form 81-67, Flood Insurance Preferred Risk Policy Application; FEMA Form 81-31, National Flood Insurance Program Elevation Certificate; FEMA Form 81-65, National Flood Insurance Program Floodproofing Certificate; FEMA Form 81-25, V Zone Risk Factor Rating Form; FEMA Form 81-40, National Flood Insurance Program Worksheet—Contents; FEMA Form 81-41, National Flood Insurance Program Worksheet—Building; FEMA Form 41a, National Flood Insurance Program Worksheet—Building (Continuation); FEMA Form 81-42, National Flood Insurance Proof of Loss; FEMA Form 81-43, National Flood Insurance Program Notice of Loss; FEMA Form 81-44, Statement as to full cost of repair or replacement under the replacement cost coverage, subject to the terms and conditions of the Standard Flood Insurance Policy; FEMA Form 81-45, Adjuster's Short Form Report; FEMA Form 81-57, National Flood Insurance Program Preliminary Report; FEMA Form 81-58, National Flood Insurance Program Final Report; FEMA Form 81-59, National Flood Insurance Program Narrative Report; and FEMA Form 81-63, National Flood Insurance Program Cause of Loss/Subrogation Report. This system may also contain information regarding the name of the bank/lender, date of mortgage, address of bank/lender and if available, information on every loan placed on the property during the current owner's tenure. This system contains the taxpayer's identification number (which may be the social security number).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, 42 U.S.C. 4001, et seq.; 5 U.S.C. 301.

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Reorganization Plan No. 3 of 1978, and E.O. 12127.

PURPOSE(S):

For the purpose of carrying out the National Flood Insurance Program and verifying nonduplication of benefits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To property loss reporting bureaus, State insurance departments, and insurance companies investigating fraud or potential fraud in connection with claims, subject to the approval of the Office of Inspector General, FEMA; to insurance agents, brokers, adjusters, and lending institutions for carrying out the purposes of the National Flood Insurance Program; to the Small Business Administration, the American Red Cross, the Farmers Home Administration, State and local government individual and family grant and assistance agencies, including but not limited to the State of Ohio Disaster Services Agency and the Johnstown, Pennsylvania Redevelopment Authority for determining eligibility for benefits and for verification of nonduplication of benefits following a flooding event or disaster; to Write-Your-Own companies as authorized in 44 CFR 62.23 to avoid duplication of benefits following a flooding event or disaster and for carrying out the purposes of the National Flood Insurance Program; to State and local government individual and family grant agencies so as to permit such agencies to assess the degree of financial burdens toward residents such as States and local government might reasonably expect to assume in the event of a flooding disaster, and to further the flood insurance marketing activities of the National Flood Insurance Program; to State and local government individual and family grant and assistance agencies which furnish to the Federal Insurance Administration the names and addresses of policyholders for purposes consistent with the relocation projects of the Federal Insurance Administration and acquisition projects under the National Flood Insurance Program carried out pursuant to section 1362 of the National Flood Insurance Act of 1968, as amended, and to State and local government agencies who provide the names and addresses of policyholders and a brief general description of their plan for acquiring and relocating their flood prone properties for review by the Federal Insurance Administrator to ensure that their State and/or local government agency is engaged in flood plain management improved real property acquisitions and relocation projects consistent with the National Flood Insurance Program; and, upon the approval by the Federal Insurance Administrator, that the use is in furtherance of the flood plain management and hazard mitigation goals of the Agency; to State and local government agencies and municipalities to review National Flood Insurance Program policy and claim files to assist them in hazard mitigation and flood plain management activities and in monitoring compliance with the flood plain management measures duly adopted by the community; to State governments, federal agencies, and federal financial instrumentalities responsible for the supervision, approval, regulation or insuring of banks, savings and loan associations or similar institutions, all for carrying out the purpose of the National Flood Insurance Program; the property address, flood zone identifier, date of policy issue, and value of policy, solely for the purpose of geocoding the flood insurance policy addresses, may be released to private companies engaged in or planning to engage in activities to market or assist lenders and mortgage servicing companies in aid of their efforts aimed at complying with the requirement of the Flood Disaster Protection Act of 1973 and in marketing the sale of flood insurance policies under the National Flood Insurance Program; and, the policy numbers of NFIP policy-holders may be released to lending institutions, mortgage servicing companies and others servicing mortgage loan portfolios for the purpose of securing flood insurance protection for those properties that are a part of a lending institution's mortgage portfolio in aid of assuring lender compliance with the flood insurance purchase requirements of the Flood Disaster Protection Act of 1973.

Routine uses may include Nos. 1, 5, 6, and 8 of Appendix A.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN SYSTEM:

STORAGE:

Magnetic Tape/disc/drum and paper files.

RETRIEVABILITY:

By name of the policyholders and policy number.

SAFEGUARDS:

Personnel screening, hardware and software computer security measures; paper records are maintained in locked containers and/or room. All records are maintained in areas that are secured by building guards during non-business hours. Records are retained in areas accessible only to authorized personnel who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

Policy records are kept as long as insurance is desired and premiums paid, and for an appropriate time thereafter and claim records are kept for 6 years and 3 months after final action, unless litigation exists. Disposition of records shall be in accordance with FEMA Records Schedule N1-311-86-1, 2A12 and 2A13.

SYSTEM MANAGER(S) AND ADDRESS:

Federal Insurance Administrator, Federal Emergency Management Agency, Washington, DC 20472.

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system of records contains information about themselves should contact the system manager identified above. Written requests should be clearly marked "Privacy Act Request" on the envelope and letter. Requests should include full name of the individual, some type of appropriate personal identification, and current address. For personal visits, the individuals should be able to provide some acceptable identification, that is, driver's license, employing organization's identification card, or other identification card.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above. The letter should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

FEMA Privacy Act Regulations are promulgated in 44 CFR part 6.

RECORD SOURCE CATEGORIES:

Individuals who apply for flood insurance under the National Flood Insurance Program and individuals who are insured under the program.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix A

Introduction to Routine Uses: Certain routine uses have been identified as being applicable to many of the FEMA systems of record notices. The specific routine uses applicable to an individual system of record notice will be listed under the "Routine Use" section of the notice itself and will correspond to the numbering of the routine uses published below. These uses are published only once in the interest of simplicity, economy and to avoid redundancy, rather than repeating them in every individual system notice.

1. *Routine Use—Law Enforcement: A record from any FEMA system of records, which indicates either by itself or in combination with other information within FEMA's possession,* a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, may be *disclosed,* as a routine use, to the appropriate agency whether Federal, State, *territorial,* local or foreign, or foreign *agency or professional organization,* charged with the responsibility of enforcing, or implementing, or investigating, or prosecuting such violation or charged with implementing the statute, rule, regulation or order issued pursuant thereto.

2. *Routine Use—Disclosure When Requesting Information:* A record from a FEMA system of records may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, regulatory, licensing or other enforcement information or other pertinent information, such as current licenses, if necessary, to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

3. *Routine Use—Disclosure of Requested Information:* A record from a FEMA system of records may be disclosed to a Federal agency, in response to a written request in connection with the hiring or retention of an employee, the issuance of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. *Routine Use—Grievance, Complaint, Appeal:* A record from a FEMA system of records may be disclosed to an authorized appeal or grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator, or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee. A record from this system of records may be disclosed to the Office of Personnel Management in accordance with that agency's responsibility for evaluation of Federal personnel management.

To the extent that official personnel records in the custody of FEMA are covered within systems of records published by the Office of Personnel Management as governmentwide records, those records will be considered as a part of that governmentwide system. Other official personnel records covered by notices published by FEMA and considered to be separate systems of records may be transferred to the Office of Personnel Management in accordance with official personnel programs and activities as a routine use.

5. *Routine Use—Congressional Inquiries:* A record from a FEMA system of records may be disclosed as a routine use to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the request of the individual about whom the record is maintained.

6. *Routine Use—Private Relief Legislation:* The inforamtion contained in a FEMA system of records may be disclosed as a routine use to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A-19 at any stage of the legislative coordination and clearance process as set forth in that circular.

7. *Routine Use—Disclosure to the Office of Personnel Management:* A record from a FEMA system of records may be disclosed to the Office of Personnel Management concerning information on pay and leave benefits, retirement deductions, and any other information concerning personnel actions.

8. *Routine Use—Disclosure to National Archives and Records Administration:* A record from a FEMA system of records may be disclosed as a routine use to the National Archives and Records Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

9. *Routine Use—Grand Jury:* A record from any system of records may be disclosed, as a routine use, to a grand jury agent pursuant to a Federal or State grand jury subpoena or to a prosecution request that such record be released for the purpose of its introduction to a grand jury.

[FR Doc. 91-13497 Filed 6-6-91; 8:45 am]

BILLING CODE 6718-01

FEDERAL MARITIME COMMISSION

[Docket No. 91-23]

Tropical Shipping & Construction Co., Ltd. v. Network 807; Filing of Complaint and Assignment

Notice is given that a complaint filed by Tropical Shipping & Construction Co., Ltd. ("Complainant") against Network 807 ("Respondent") was served May 31, 1991. Complainant alleges that Respondent engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. 1709(a)(1), by not paying freight and other charges on shipments from Puerto Plata, Dominican Republic to Miami, Florida.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by June 1, 1992, and the final decision of the Commission shall be issued by September 29, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 91-13474 Filed 6-6-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Banca Commerciale Italiana S.P.A.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

CORRECTION

This notice corrects a previous **Federal Register** notice (FR Doc. 91-12867) published at page 24818 of the issue for Friday, May 31, 1991.

Under the Federal Reserve Bank of New York, the entry for Banca Commerciale Italiana S.P.A. is amended to read as follows:

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Banca Commerciale Italiana S.P.A., Milan, Italy; to engage *de novo* through its subsidiary, BCI Capital Corporation, New York, New York, in dealing in bank-eligible securities pursuant to § 225.25(b)(16) of the Board's Regulation Y.

Comments on this application must be received by June 19, 1991.

Board of Governors of the Federal Reserve System, June 3, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-13476 Filed 6-6-91; 8:45 am]

BILLING CODE 6210-01-F

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F.N.B. Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than June 28, 1991.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. F.N.B. Corporation, Hermitage, Pennsylvania; to acquire Regency Consumer Discount Company, Inc., Scranton, Pennsylvania, and thereby engage in making and acquiring consumer finance loans pursuant to § 225.25(b)(1); and in the sale of credit life, accident, and health insurance pursuant to § 225.25(b)(8) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Robert R. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Evergreen Bancshares, Inc., Tallahassee, Florida; to establish Evergreen Federal Interim Savings Bank, Tallahassee, Florida (Interim Bank), to acquire certain assets and assume certain liabilities of the Tallahassee, Florida branch office of Anchor Savings Bank, FSB, Hewlett, New York, pursuant to section 4(c)(8) of the Bank Holding Company Act and the Oakar Amendment of FIRREA, and to facilitate the merger of Interim Bank with and into Evergreen's subsidiary bank, Guaranty National Bank of Tallahassee, Tallahassee, Florida.

2. First State Corporation, Albany, Georgia; to acquire Randolph Federal Savings & Loan Association, Cuthbert, Georgia (Randolph Federal), pursuant to section 4(c)(8) of the Bank Holding Company Act. Applicant also proposes to merger Randolph Federal with and into its bank subsidiary, First State Bank & Trust Company, Albany, Georgia, pursuant to the Oakar Amendment of FIRREA.

Board of Governors of the Federal Reserve System, June 3, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-13477 Filed 6-6-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of the General Counsel; Statement of Organization, Functions and Delegations of Authority

Part A, chapter AG (Office of the General Counsel, Office of the Secretary) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (38 FR 17033, June 28, 1973, as amended most recently in pertinent part at 55 FR 17500, April 25, 1990), and part H, chapter HN (National Institutes of Health, Public Health Service) (40 FR 22859, May 27, 1975, as amended most recently in pertinent part at 55 FR 35366, August 29, 1990), are amended to:

(1) Delete the Department Patent Officer (AG.35) and transfer patent administration and prosecution responsibilities from this Officer to the Office of Technology Transfer (HNA432), Office of Intramural Affairs (HNA43), Office of Intramural Research (HNA4), Office of the Director (HNA), National Institutes of Health (HN), Public Health Service (H). Patent administration and prosecution activities will be consolidated with patent licensing functions within a single NIH organizational entity in order to improve program and resource management; and

(2) Retain patent legal services of the Department Patent Officer (AG.35) in the Public Health Division (AG.22.6), Office of the General Counsel, Office of the Secretary, and update the functional statement for the Public Health Division to reflect its responsibilities more accurately.

Office of the Secretary

Under Chapter AG, Office of the General Counsel, Sections AG.35 (Department Patent Officer) and AG.22.6 (Public Health Division), delete the titles and statements in their entirety and substitute the following:

Public Health Division (AG.22.6). The Public Health Division shall provide legal services, including patent legal services, for programs administered by the Public Health Service (except the Food and Drug Administration), e.g., the Office of the Assistant Secretary for Health, and the agencies and offices of the Public Health Service (other than FDA), including the Office of Technology Transfer and the Patent Policy Board.

Public Health Service

Under Chapter HN, National Institutes of Health, Section HNA, Office of the Director, Office of Intramural Affairs (HNA43), add the following title and statement:

Office of Technology Transfer (HNA432). (1) Develops policy and procedures for NIH, ADAMHA, and CDC to follow for the implementation of Cooperative Research and Development Agreements (CRADAs), patent licenses, and other technology transfers; (2) implements Patent Policy Board decisions and policies; (3) drafts, negotiates, and periodically revises model forms and agreements; (4) provides advice to ICDs on problem licenses and agreements; (5) develops policy statements on various technology transfer issues such as conflicts of interest; (6) tracks the OTT budget and prepares an annual status report to the NIH Office of the Director; (7) provides coordination and management of goals, functions, and operations of the Technology Management Branch, Technology Licensing Branch, and the Technology Transfer Coordination Branch; (8) coordinates and provides planning and liaison support for international CRADAs and technology transfers; (9) creates and implements special programs relating to technology transfer by State and local governments and universities; (10) drafts and presents Congressional testimony, and drafts technology transfer-related responses to other Congressional inquiries; (11) provides operational management activities; (12) assists the Office of the General Counsel (OGC) in evaluating patent-related litigation matters; (13) in consultation with OGC and the involved agency component, as appropriate, negotiates settlements on contested matters with licensees or other parties involved with NIH, ADAMHA, and CDC in technology transfer or utilization matters; (14) represents the NIH, ADAMHA, and CDC in technology transfer or utilization matters; (15) represents the above agencies at a variety of professional conferences and other public fora; (16) investigates special issues; (17) evalutes the need for and develops new programs in technology management and technology transfer for the above agencies; (18) develops licensing strategies for NIH/ADAMHA/CDC intramural and CRADA inventions; (19) negotiates licenses and other technology transfers; (20) works with scientist inventors, contract attorneys and others in preparing patent applications and prosecuting these applications at the Patent Office level; (21) handles infringements in consultation with the OGC at the Patent Office level; and (22) makes recommendations to the OGC for referral of matters to the Department of Justice.

Dated: May 21, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91-13483 Filed 6-6-91; 8:45 am]

BILLING CODE 4150-04-M

Agency for Health Care Policy and Research; Establishment

Pursuant to the Federal Advisory Committee Act, Public Law 92-463 (5 U.S.C. appendix 2), the Administrator, Agency for Health Care Policy and Research (AHCPR), announces the establishment of the following review committee.

Designation: Employer-Based Health Insurance Advisory Committee.

Purpose: The purpose of the Committee is to advise and make recommendations to the Secretary, HHS, and the Administrator, AHCPR, with regard to the awarding of a proposed contract designed to provide AHCPR with a comprehensive policy-oriented report that describes the current status and problems of employer-based health insurance and evaluates options for improving, reforming or replacing this system.

Function: The Committee shall review and make recommendations to the Administrator on the scientific and technical merit of proposals received in response to the Request for Proposal entitled Employer-Based Health Insurance.

Structure: The Committee shall consist of up to three members, including the Chair, who will serve for the duration of the Committee. No member may be an officer or employee of the Federal Government. Members and Chair shall be selected by the Administrator, AHCPR, from individuals with appropriate expertise and experience in health services research, including but not limited to the areas of health economics, utilization and costs of health insurance, research evaluation and dissemination, and assessment of the impact of the dissemination of research.

Notwithstanding section 14(a) of the Federal Advisory Committee Act, the Committee shall continue in existence until otherwise provided by law or upon a determination by the Administrator, AHCPR, or his delegate, that the purpose of the Committee has been accomplished.

Dated: May 31, 1991.

J. Jarrett Clinton,

Administrator, Agency for Health Care Policy and Research.

[FR Doc. 91-13564 Filed 6-6-91; 8:45 am]

BILLING CODE 4160-90-M

Administration for Children and Families

Forms Submitted to the Office of Management and Budget for Clearance

The Administration for Children and Families will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). This collection package is being submitted for expedited review in compliance with 5 CFR 1320.18.

(For a copy of a package, call the FSA, Report Clearance Officer 202-401-5604)

Plans for the Child Care and Development Block Grant, Form A P-118—NEW—The information contained in the Block grant plan is to determine whether the plan can be approved for Block Grant funding, as required in section 658E(d) of the Budget Reconciliation Act; and to determine if the lead agency is operating in accordance with its plan where issues of compliance arise. *Respondents:* States or local governments; *Number of Respondents:* 255; *Frequency of Response:* Biennially (after initial submittal); *Average Burden per Response:* 50 hours; *Estimated Annual Burden:* 12,750 hours.

OMB Desk Clearance Officer: Laura Oliven.

Consideration will be given to comments and suggestions received within 10 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the appropriate OMB Desk Officers designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, room 3201, 725 17th Street, NW., Washington, DC 20503.

Dated: May 31, 1991.

Naomi B. Marr,

Associate Administrator, Office of Management and Information Systems.

Draft Plan For The Child Care & Development Block Grant

(Grantee) _____

for the period _____

through _____

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Citations	
658E(a) 98.16(a)(1)	Section 1 Assurances: As a condition of receipt of Federal funds under the Child Care and Development Block Grant Act of 1990, the (name of lead agency) As designated, by the Chief Executive Officer of the State (or by the appropriate Tribal Leader or Applicant), to represent the Grantee as the lead agency, herewith submits a plan for the implementation of the Child Care and Development program and hereby agrees to administer the program in accordance with the Child Care and Development Block Grant Act of 1990, and all other applicable Federal laws and regulations and provisions of the plan printed herein. The official text of said laws and regulations govern, and the lead agency acknowledges its responsibility to adhere to them regardless of the fact that, for purposes of simplicity and clarity, the specific provisions printed herein are sometimes paraphrases of or excerpts and incomplete quotations from the full text. The lead agency assures that:
658D(b) 98.15(a)	(1) Upon approval, the Grantee will have in effect a program which complies with the provisions of the Plan;
658E(c)(2)(A) 98.15(b) 98.30(a)	(2) The parent(s) of each eligible child, within the Grantee's service area, who receives or is offered child care services for which financial assistance is provided is given the option either: (a) To enroll such child with a child care provider that has a grant or contract for the provision of the service; or (b) To receive a child care certificate;
658E(c)(2)(A) 98.15(c) 98.30(b)	(3) In cases in which the parent(s) elects to enroll the child with a provider that has a grant or contract with the lead agency, the child will be enrolled with the eligible provider selected by the parent to the maximum extent practicable;
658E(c)(2)(A) 98.15(d) 98.30(c)(2)	(4) The child care certificate offered to parents shall be of a value commensurate with the subsidy value of child care services provided under a grant or contract;
658E(c)(2)(B) 98.15(e) 98.31	(5) The Grantee has procedures in place to ensure that child care providers, funded under the Block Grant, afford parents unlimited access to their children and to the providers caring for their children, during the normal hours of operations or whenever such children are in the care of such providers;
658E(c)(2)(C) 98.15(f) 98.32	(6) The Grantee maintains a record of substantiated parental complaints and makes information regarding such complaints available to the public on request;
658E(c)(2)(D) 98.15(g) 98.33	(7) Consumer education information will be made available to parents and the general public concerning licensing and regulatory requirements, complaint procedures, and policies and practices relative to child care services within the areas served by the Grantee;
658E(c)(2)(E) 98.15(h) 98.40(a)	(8) All providers of child care services for which assistance is provided under the Block Grant comply with all licensing and regulatory requirements applicable under State or local law;
658E(c)(2)(E) 98.15(i) 98.40(a)(2) 98.45(a)	(9) Providers that are not required to be licensed or regulated, under State or local law, are required to be registered with the Grantee prior to payment being made, and that such providers shall be permitted to register with the Grantee after being selected by the parents of eligible children and before such payment is made;
658E(c)(2)(F) 98.15(j) 98.41(a)	(10) There are in effect in the Grantee's service area, under State or local law, requirements designed to protect the health and safety of children that are applicable to child care providers that provide services for which assistance is made available under the Block Grant;
658E(c)(2)(G) 98.15(k) 98.41(f)	(11) Procedures are in effect to ensure that child care providers, that provide services for which assistance is provided under the Block Grant, comply with all applicable State or local health and safety requirements;
658E(c)(2)(H) 98.15(l) 98.41(c) 98.71(e)	(12) If there is a reduction in the level of the Grantee's standards applicable to providing child care services after November 5, 1990, the Grantee shall inform the Secretary of the rationale for such reduction in the annual report;
658E(c)(2)(I) 98.15(m) 98.41(d)	(13) Not later than 18 months after submission of the first Application, the Grantee will complete a full review of the law applicable to, and the licensing and regulatory requirements and policies of, each licensing agency that regulates child care services and programs in the Grantee's service area, unless the Grantee has reviewed such law, requirements, and policies in the three year period ending on November 5, 1990;
658E(c)(2)(J) 98.15(n) 98.53(a)	(14) Funds received under the Block Grant will be used only to supplement, not to supplant, the amount of Federal, State, and local funds otherwise expended for the support of child care services and related programs within the Grantee's service area;
658E(c)(4)(A) 98.15(o) 98.43(a)	(15) Payment rates under the Block Grant for the provision of child care services will be sufficient to ensure equal access for eligible children to comparable child care services in the State that are provided to children whose parents are not eligible to receive assistance under this program or under any other Federal or State programs. Section 2 Lead Agency Responsibilities: *Section 2.1 Administration:*
658D(b)(1)(A) 98.10(a) 98.16(a)(3)	The lead agency will directly administer and implement all programs funded under the Block Grant. ( ) Yes ( ) No

Citations	
658D(b)(1)(A) 98.10(a) 98.11 98.16(a)(3)	If no, a description follows showing the operational aspects of how the lead agency will administer and implement the Block Grant program through other agencies: (1) to provide child care services and reimburse providers; (2) to implement activities to improve the quality of child care; (3) to increase the availability of early childhood development programs; and (4) to increase the availability of before- and after-school care services: *Section 2.2 Consultation:*
658D(b)(2) 98.12(b) 98.14(b) 98.16(a)(4)	A description follows of consultations the lead agency held, in developing the Plan, with appropriate representatives of local governments to consider: local child care needs and resources, the effectiveness of existing child care and early childhood development services, and the methods by which the Block Grant funds can be used to effectively address local child care shortages: *Section 2.3 Coordination of Services:*
658D(b)(1)(D) 98.10(e) 98.12(a) 98.12(c) 98.14(a) 98.16(a)(4)	A description follows of how the lead agency is coordinating the delivery of child care services to be funded under the Block Grant, with other Federal, State, and local child care, early childhood development, and before- and after-school care programs, and with any Indian Tribes and Tribal organizations in the State submitting Block Grant Applications: Section 2.4 Public Hearing Process:
658D(b)(1)(C) 98.10(d) 98.14(c) 98.16(a)(5)	A description of the public hearing process, held to provide the public an opportunity to comment on the provision of child care services under the Plan, follows: Section 2.5 Public-Private Partnerships:
658D(b)(1)(C) 98.16(a)(15) 98.71(b)(4)	A description follows of the activities that are planned to encourage public-private partnerships which promote business involvement in meeting child care needs: Section 3 Child Care Services (75% of Block Grant Funds): Section 3.1 Description of Services and Process to Receive Such Services:
658E(c)(3)(B) 98.16(a)(7)(i) 98.50(a)(1)	The following describes the child care services and the process involved for a family to receive such services funded under the Block Grant: Section 3.2 Description of Activities to Improve the Availability and Quality of Child Care:
658(c)(3)(B) 98.16(a)(7)(i) 98.50(a)(2) 98.50(c)	The following describes the activities to improve the availability and quality of child care (in addition to such activities listed in Section 4), to be funded under the Block Grant: Section 3.3 Localities:
658E(a) 98.16(a)(7)(ii)	These child care services and improvement activities are available throughout the Grantee's service area: ( ) Yes ( ) No If no, the following is a list of the localities (political subdivisions) in which these services and activities are offered: Section 3.4 Basis for Allocating Funds for Such Services and Activities:
658E(c)(3)(B) 98.16(a)(7)(iii) 98.50(a)	The following describes the basis for the allocation and distribution of funding under the Block Grant to each of the localities where the services and improvement activities are offered: Section 3.5 Eligibility Criteria and Priority Rules for Children:
658E(c)(3)(B) 98.16(a)(7) 98.44 98.50(b)	(1) A description follows of how children of families with very low income (considering family size), and children with special needs, will be given priority:
658E(c)(3)(B) 98.16(a)(7)(iv) 98.44 98.20(b)	(2) The following describes any additional eligibility criteria and/or priority rules established by the Grantee and applicable throughout the Grantee's service area for such services and activities: Section 3.6 Criteria for Awarding Grants and Contracts:
658E(c)(3)(B) 98.16(a)(7)(v)	The following describes any eligibility criteria or priority rules for the receipt of grants and contracts by providers: Section 3.7 Eligibility Terminology:
658E(a) 98.16(a)(6) 98.16(a)(7)(iv)	For purposes of determining eligibility for such child care services, we have defined the following terms as: (1) Special needs child— (2) Physical or mental incapacity (if applicable)— (3) Attending (a job training or educational program)— (4) Job training and educational program— (5) Residing with— (6) Working— (7) Protective services— (8) Very low income— (9) Additional terminology related to conditions of eligibility imposed by the Grantee pursuant to § 3.4— Section 3.8 Tribal Eligibility Criteria:
658O(c) 658P(4)(b) 98.16(a)(17) 98.80(f)	In determining eligibility for services pursuant to 98.50(a)(1), the Tribal Grantee will use: ( ) 75 percent of the State median income for a family of the same size; or ( ) 75 percent of the median income for a family of the same size residing in the area served by the Tribal Grantee. Section 4 Activities to Improve the Quality of Child Care and to Increase the Availability of Early Childhood Development Programs and Before- and After-School Care Services (25% of Block Grant Funds): Section 4.1 Description of Activities:

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658E(c)(3)(C) 98.16(a)(8)(i) 98.51(b)	The following is a listing and description of planned activities, to be funded using 25 percent of Block Grant funds reserved for such activities, (1) to improve the quality of child care (through resource and referral programs; grants or loans to assist in meeting State and local standards; monitoring of compliance with licensing and regulatory requirements; training and technical assistance; and/or compensation for child care services); and (2) to establish or expand and conduct, through the provision of grants or contracts, early childhood development and/or before- and after-school care programs: Section 4.2 Localities:
658E(a) 98.16(a)(8)(ii) 98.51	These activities are available throughout the Grantee's service area. ( ) Yes ( ) No If no, the following is a list of the localities (political subdivisions) in which the activities are offered:
658H(c) 98.16(a)(8)(v) 98.51(c)	Section 4.3 Criteria for Awarding Grants and Contracts: A description follows of the eligibility criteria or priority rules for the receipt of grants and contracts by providers:
658E(a)(3)(C) 98.16(a)(8)(iii) 98.51(c)(2)	Section 4.4 Allocation of Funds for Such Activities: (1) The following describes how grants or contracts are to be awarded to assure that the highest priority is given to geographic areas with concentrations of poverty, and to areas with very high or very low population density:
658E(a)(3)(C) 98.36(a)(8)(iii) 98.51(c)(2)	(2) For purposes of awarding grants and contracts for such activities, we have defined prioritization terms as follows: (a) geographic areas with concentrations of poverty— (b) areas with very high population density— (c) areas with very low population density—
658E(a)(3)(C) 98.16(a)(8)(iii) 98.51(a)	(3) There are additional priorities and/or bases for allocation and distribution of funds for such activities, which are different from the criteria described in Section 4.3. ( ) No ( ) Yes If yes, the following describes the additional priorities and/or bases for allocation and distribution of funds for such activities:
658E(a) 98.16(a)(8)(iv) 98.21(b)	Section 4.5 Eligibility Criteria and Priority Rules for Children: A description follows of any additional eligibility criteria and any priority rules established by the Grantee for children receiving such services, and includes appropriate definitions of terminology used:
658E(c)(5) 658E(c)(3)(B)(i) 98.16(a)(9) 98.42(a) 98.42(b)	Section 5 Program Operations: Section 5.1 Sliding Fee Scale for Child Care Services: (1) To provide for cost sharing by the families that receive child care services provided under the Block Grant, factors, other than income and family size, are used to determine the amounts families must pay, based on the sliding fee scale(s). ( ) No ( ) Yes If yes, a description of these factors follows:
658E(a) 98.16(a)(9) 98.42(c)	(2) Families whose incomes are at or below the poverty level, for families of the same size, are required to pay a fee for child care services. ( ) Yes ( ) No
658E(c)(5) 658E(c)(3)(B)(i) 98.16(a)(9) 98.42(c)	(3) A copy of the Grantee's sliding fee scale for child care services is provided as Attachment _____ Section 5.2 Sliding Fee Scale for Early Childhood Development Programs and Before- and After-School Care Services:
658E(a) 98.16(a)(9) 98.42(d)	(1) The same sliding fee scale(s) is also applicable to families who receive services under early childhood development programs and before- and after-school care services. ( ) No ( ) Yes
658E(c)(5) 658E(c)(3)(B)(i) 98.16(a)(9) 98.42(a)	(2) If no, the following is a description of the factors used in establishing the fee scale(s) for families who receive services under early childhood development programs and before- and after-school care services: (3) If different, a copy of the Grantee's sliding fee scale(s) for early childhood development programs and for before- and after-school care services is provided as Attachment _____
658E(c)(2)(F) 98.16(a)(10) 98.41(a)	Section 5.3 Health and Safety Requirements: (1) The following lists the minimum health and safety requirements established by the Grantee, and applicable throughout the Grantee's service area, for child care services provided under the Block Grant, including any differing requirements for different provider settings (i.e. center-based, group home, family, and in-home child care), for: (a) Prevention and control of infectious diseases (including immunization)— (b) Building and physical premises— (c) Health and safety training—
658E(c)(2)(G) 98.16(a)(10) 98.41(f)	(2) The following describes how the Grantee will ensure that child care providers, within the area served by the Grantee and receiving assistance under the Block Grant, comply with all applicable State or local health and safety requirements: Section 5.4—Provider Registration Process:

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658E(c)(2)(E) 98.16(a)(13) 98.45	The following lists the registration requirements and describes the registration process (including the timeframes from the date of providers' requests for registration to the date payments will begin to be sent out), for child care providers, not subject to licensing or regulatory requirements under State or local law, to receive assistance under the Block Grant: Section 5.5—Certificate Payment System:
658E(c)(2)(A) 98.16(a)(11) 98.30	The following describes the Grantee's overall child care certificate payment process which meets the statutory requirements, including, at a minimum: (1) The effective date of the system; (2) What form (or forms) the child care certificate takes; (3) An explanation of how parents will be permitted to choose from a variety of child care settings (i.e., center-based, group home, family, and in-home child care) under this system; (4) An explanation of how the Grantee will ensure that parents may obtain child care certificates throughout the program year, or as long as Block Grant funds are otherwise available for child care services; and (5) The process and timeframes for issuing certificates and processing payments to providers: Section 5.6—Payment Rates for Provision of Child Care:
658E(c)(4) 98.16(a)(12) 98.43(a) 98.43(b) 98.43(e)	The following is a description of the methodology used to establish payment rates for reimbursement of child care services, including: (1) How variations in the costs of providing child care in different settings, to children of different age groups, and to special needs children were taken into account in establishing the rates; and (2) How equal access has been ensured for eligible children to comparable child care services provided to children whose parents are not eligible to receive child care assistance under other governmental programs: Section 5.7—Requirements for Expenditure of Grantee's Funds:
658E(c)(2)(J) 98.16(a)(14)	There are certain requirements which a provider must meet in order for the Grantee's funds to be used to pay the provider for child care services. ( ) No ( ) Yes If yes, the following is a description of, and the timeframes involved, for the entire process: Section 5.8 Non-supplantation of Funds:
658E(c)(2)(J) 98.16(a)(16) 98.53(b)	The base level of effort was established using an aggregate basis. ( ) Yes ( ) No If no, the following is a description of the methodology used to establish the base level of effort: Section 6 Anticipated Changes:
658E(a) 98.16(b)	The following describes any currently anticipated changes in child care services, activities, or other provisions that are expected to change over the period covered by the Plan:

TN# _____
Supersedes TN# _____
Approval Date _____
Effective Date _____

[FR Doc. 91-13481 Filed 6-6-91; 8:45 am]
BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 91N-0164]

Hattiesburg Plasma Center, Inc.; Revocation of U.S. License No. 667

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the establishment license (U.S. License No. 667) and product license issued to Hattiesburg Plasma Center, Inc. (HPC), for the manufacture of Source Plasma. HPC has permanently ceased operations and, by letter dated November 28, 1990, requested that its establishment and product licenses be revoked.

DATES: The revocation of the establishment and product licenses became effective on January 29, 1991.

FOR FURTHER INFORMATION CONTACT: Ann Reed Gaines, Center for Biologics Evaluation and Research (HFB-132), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-295-8188.

SUPPLEMENTARY INFORMATION: FDA has revoked the establishment license (U.S. license No. 667) and the product license issued to HPC for the manufacture of Source Plasma. HPC is located at 2906 Hardy St., Hattiesburg, MS 39401.

FDA suspended HPC's licenses by letter dated November 19, 1990, pursuant to 21 CFR 601.6(a), because existing deviations from the biologics regulations and the establishment license standards constituted a danger to health. The suspensions were based on the results of an FDA inspection of HPC and on the results of an FDA investigation of HPC.

The inspection was conducted from November 5 through 13, 1990. During the inspection, the following deviations were found: (1) Failure to perform donor hematocrit and serum protein determinations, even though results for such determinations were entered in the donor record files; (2) inaccurate determination of serum protein results using a refractometer not in proper working condition due to a cracked and scratched prism; (3) acceptance of a donor with unacceptable serum protein electrophoresis results on 2 occasions; (4) failure to provide donors with acquired immunodeficiency syndrome (AIDS) educational material; (5) failure to prevent overbleeding of donors, having allowed 9 donors to donate more frequently than is permitted within a 7-day period of time; (6) failure to maintain records of adverse donor reactions; (7) failure to maintain adequate records to ensure that duplicate records were not created on donors; and (8) failure to maintain adequate records to ensure positive donor identification, in that photographs were lacking for at least 18 donors.

The investigation, conducted concurrently with the inspection, included interviews with former and current employees and former donors. These interviews indicated that significant deficiencies routinely occurred in the operation of HPC, particularly with respect to the determination of donor suitability. The investigation revealed that: (1) The manager instructed employees not to perform hematocrit and serum protein

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determinations on repeat donors but to enter results for such determinations in the donor record files; (2) the manager instructed employees to keep inaccurate records of whole blood weights to conceal overbleeding of donors; and (3) hematocrit results had not been obtained for three repeat donors who were hospitalized for anemia within a few days of donation.

The results of the inspection and the investigation were further determined to constitute grounds for license revocations, as provided in 21 CFR 601.5(b)(4), in that the continued safety, purity, and potency of the Source Plasma, as well as the assurance of a continuous and healthy donor population, were compromised. Accordingly, in the letter dated November 19, 1990, in which FDA suspended the licenses, FDA further advised HPC that proceedings for license revocations would be initiated, under 21 CFR 601.6(b)(1), unless HPC: (1) Requested, subject to evaluation and approval by FDA, that the revocations be held in abeyance pending resolution of the suspensions, as provided in 21 CFR 601.6(b)(2); and (2) detailed the corrective actions taken to remedy all deviations noted in the November 1990 inspection report.

In a letter dated November 28, 1990, HPC reported that they had discontinued the manufacture of Source Plasma and that all operations had ceased. In that same letter, HPC surrendered the licenses and requested that the licenses be revoked. By letter dated January 29, 1991, and issued under 21 CFR 601.5(a), FDA revoked the licenses.

FDA has placed copies of letters relevant to the license revocations on file with the Dockets Management Branch (address below). These letters, which are filed under the docket number found in brackets in the heading of this notice, include: (1) The letter from FDA dated November 19, 1990, suspending the licenses and initiating proceedings for license revocations; (2) the letter from HPC dated November 28, 1990, requesting revocation of the licenses; (3) and the letter from FDA dated January 29, 1991, revoking the licenses. These documents are available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Accordingly, under 21 CFR 12.38(a)(1) and under section 351 of the Public Health Service Act (42 U.S.C. 262) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated under 21 CFR 5.68, the establishment (U.S. License No. 667) and the product licenses issued to HPC for the manufacture of Source Plasma were revoked, effective January 29, 1991.

This notice is issued and published under 21 CFR 601.8 and the redelegation at 21 CFR 5.67.

Dated: May 28, 1991.

Gerald V. Quinnan, Jr.,

Acting Director, Center for Biologics Evaluation and Research.

[FR Doc. 91–13426 Filed 6–6–91; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 91M–0167]

Pharmacia Deltec, Inc.; Premarket Approval of the PORT-A-CATH® Epidural Implantable Access System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Pharmacia Deltec, Inc., St. Paul, MN, for premarket approval, under the Medical Device Amendments of 1976, of the PORT-A-CATH® Epidural Implantable Access System for long-term, repeated access to the epidural space for the delivery of preservative-free morphine sulfate to relieve intractable pain in cancer patients. After reviewing the recommendation of the General Hospital and Personal Use Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of April 22, 1991, of the approval of the application.

DATES: Petitions for administrative review by July 8, 1991.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Amalie Mattan, Center for Devices and Radiological Health (HFZ–420), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1225.

SUPPLEMENTARY INFORMATION: On July 19, 1990, Pharmacia Deltec Inc., 1285 Grey Fox Rd., St. Paul, MN 55112, submitted to CDRH an application for premarket approval of PORT-A-CATH® Epidural Implantable Access System. This device is indicated for long-term, repeated access to the epidural space for the delivery of preservative-free morphine sulfate to relieve intractable pain in cancer patients.

On November 30, 1990, the General Hospital and Personal Use Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On April 22, 1991, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Amalie Mattan (HFZ–420), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before July 8, 1991, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sections 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 30, 1991.

Elizabeth D. Jacobson,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 91–13427 Filed 6–6–91; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Availability of Funds for Nursing Education Loan Repayment Agreements for Service in Certain Health Facilities

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that approximately $1,300,000 will be available in fiscal year (FY) 1991 for awards under section 836(h) of the Public Health Service Act (PHS Act) to repay 85 percent of the nursing education loans of registered nurses who agree to serve for 3 years or repay 60 percent of the loans of registered nurses who agree to serve for 2 years in certain health facilities in the United States with a critical shortage of nurses.

The HRSA, through this notice, invites registered nurses to apply for these Nursing Education Loan Repayment Agreements (NELRA). With the funds available, the HRSA estimates that approximately 130 3-year loan repayment awards may be made to registered nurses under this program.

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. This program of service-obligated repayments of nursing education loans is related to the priority areas of improving access to primary care services for medically underserved populations in both rural and urban areas. Potential applicants may obtain a copy of Healthy People 2000 (Full report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary report; Stock no. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone 202–783–3238).

DATES: To receive consideration for funding, individuals must submit their applications by July 15, 1991. Applications shall be considered as meeting the deadline if they are either:

(1) Received by the program on or before the deadline date; or

(2) Sent on or before the deadline and received in time for submission to the reviewing program official. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications will not be considered for funding and will be returned to the applicant.

ADDRESSES: Application materials with a list of counties (parishes) with the greatest shortage of nurses may be obtained from, and completed applications sent to, NELRA, c/o Norris S. Lewis, M.D., Director, Division of Health Services Scholarships, Bureau of Health Care Delivery and Assistance, HRSA, room 7–18, 5600 Fishers Lane, Rockville, MD 20857; or from outside Maryland call the 24-hour toll-free phone: 1–800–638–0824, requesting the NELRA application packet and leaving your name and address. (From inside Maryland, call 1–301–443–1650 during office hours.) The application form has been approved under Office of Management and Budget (OMB) Number 0915–0140.

FOR FURTHER INFORMATION CONTACT: For general program information and technical assistance, please contact Mr. Clarke Gordon or the NELRA staff at the above address or by telephone at 301–443–1650 (Office hours: 8:30 a.m. to 5 p.m., Eastern Time).

SUPPLEMENTARY INFORMATION: Section 836(h) of the PHS Act provides that the Secretary will repay a portion of an individual's educational loans incurred for nursing education costs if that individual enters into an agreement with the Secretary to serve as a registered nurse for 2 or 3 years in a variety of eligible health facilities or in a health facility determined by the Secretary to have a critical shortage of nurses. For an individual who is selected to participate in this program and serve in an approved facility as determined by the Secretary, repayment shall occur on the following schedule:

(1) Upon completion of the first year of agreed upon service, the Secretary will pay 30 percent of the principal of, and interest on, each loan which was unpaid as of the beginning date of service;

(2) Upon completion of the second year of agreed upon service, the Secretary will pay another 30 percent of the principal of, and interest on, each loan which was unpaid as of the beginning date of service;

(3) Upon completion of a third year of agreed upon service, the Secretary will pay another 25 percent of the principal of, and interest on, each loan which was unpaid as of the beginning date of service. *Provided,* that

(4) No more than 85 percent of the principal of any loan which was unpaid as of the beginning date of service will be paid under this program.

Notwithstanding the requirement of completion of practice each year, the Secretary will, on or before the due date, pay any loan or loan installment which may fall due within the period of service for which the borrower may receive payments under this program, if the borrower is providing service as agreed to and will continue to do so for the period required.

Prior to entering an agreement for repayment of loans, other than Nursing Student Loans authorized under section 836 of the PHS Act, the Secretary will require that satisfactory evidence be provided of the existence and reasonable level of the educational loans (as stated in school student budget estimates).

These loan repayment amounts are unrelated to any salary paid to the nursing education loan repayment recipient by the health facility by which he or she has been employed.

The Secretary will make available with the application package a list of the geographic areas determined to have a critical shortage of registered nurses.

Eligibility Criteria

To be eligible to participate in this program, an individual must:

(1) Have received a baccalaureate or associate degree in nursing, a diploma in nursing, or a graduate degree in nursing prior to initiation of service;

(2) Have outstanding educational loans for nursing education costs;

(3) Agree to serve full-time for not less than 2 years in the following eligible health facilities: an Indian Health Service health center; a Native Hawaiian health center; a public hospital (operated by a State, county, or local government); a community or migrant health center; a nursing facility as defined in section 1905 or 1919(a) of the Social Security Act; a rural health clinic; or in a health facility determined

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by the Secretary to have a critical shortage of nurses; and

(4) Plan to begin employment as a registered nurse no later than September 30, 1991.

Funding Preferences

In entering into agreements, as required under section 836(h) of the PHS Act, the Secretary will give priority to applicants:

(1) With the greatest financial need; and

(2) Who agree to serve in health facilities described in paragraph (3) above that are located in geographic areas with a shortage of, and need for, registered nurses, as determined by the Secretary.

After applying the priorities listed above, the Secretary will give preference to applicants (1) who seek repayment of loans from loan funds established under subpart II of part B of title VIII of the PHS Act ("Nursing Student Loan Program") or made by educational or financial institutions; (2) who agree to serve for 3 years; and (3) whose employment will result in a net increase in the number of nurses at the employing facility.

Breach of Agreement:

Participants in this program who fail to fulfill an agreement with the Secretary under this statute shall be liable to reimburse the Secretary for any payments made during the service period pursuant to such agreement.

Other Award Information:

This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, since payments to individuals are not covered.

The OMB *Catalog of Federal Domestic Assistance* number for this program is 93.906.

Dated: April 29, 1991.

Robert G. Harmon,

Administrator.

[FR Doc. 91-13565 Filed 6-6-91; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, May 17, 1991.

(Call PHS Reports Clearance Officer on 202-245-2100 for copies of package)

1. Evaluation of Physician Adherence to Tuberculosis Prevention and Treatment Recommendations—New—CDC will conduct a mail survey of a sample of private, primary health care providers concerning their screening, treatment, and management practices for patients with tuberculosis infection or tuberculosis. The data will assist in explaining why some physicians fail to comply with current TB recommendations that are essential to assuring necessary prevention and control practices. Respondents: Individual or households; Number of Respondents: 2520; Number of Responses per Respondent: 1; Average Burden per Response: .30 hours; Estimated Annual Burden: 756 hours.

2. IHS Survey of CHR Training Needs and Employment Characteristics—New—As required by Sec. 107 of the Indian Health Care Improvement Act Amendments (Pub.L. 100713), information will be collected concerning training received by Community Health Representatives (CHRs) during the past two years. Courses include: Basic CHR, diabetes, maternal and child health, mental health, environmental health, cancer, hypertension, AIDS, other communicable diseases, alcoholism/substance abuse, injury control, health promotion, dental, gerontology, community development and communication skills. Respondents: State or local governments. Number of Respondents: 1,400; Number of Responses per Respondent: 1; Average Burden per Response: 0.25 hours; Estimated Annual Burden: 350 hours.

3. Research and Research Training Grant Application and Related Forms: PHS 398, 2271, 2590, 3734, HHS 568—New—The PHS 398 and 2590 are used to apply for new, renewal, noncompeting continuation and supplemental support for research. The PHS 2271 is used to activate trainees receiving funds under an NRSA training grant. The PHS 3734 is used when a research project is transferring from one institution to another. The HHS 568 is used to report inventions developed in the course of work thus supported. State or local governments; businesses or other for-profit; Federal agencies or employees; non-profit institutions; small businesses or organizations.

	No. of respondents	No. of hours per response	No. of responses per respondent
Application for Public Health Service Grants (PHS 398)	56,097	37.75	1
Continuation of a Public Health Service Grant (PHS 2590)	26,054	20	1
Statement of Appointment PHS 2271)	16,607	.25	1
Relinquishing Rights to a Research Grant (PHS 3734)	756	.50	1
Final Invention Statement (HHS 568)	6,706	.09	1

Estimated Annual Burden.....2,644,777 hours

4. Prescription Drug Marketing Act of 1987; Guidelines for State Licensing of Wholesale Drug Distributors—Final Rule—0910-0251—The regulation sets forth guidelines for State Licensing of Wholesale Distributors that would prescribe minimum requirements for the storage and handling of prescription drugs and for the establishment and maintenance of records of distributions of such drugs. Respondents: Businesses or other for-profit; Federal agencies or employees, small businesses or organizations.

	No. of respondents	No. of hours per response	No. of responses per respondent
21 CFR 205.5 (a)—Reporting	5,300	.25	1
21 CFR 205.50 (f) and (h)—Recordkeeping	5,300	.33	1

Estimated Annual Burden.....3,092

5. Dissemination of Clinical Trials Results: Physicians' Survey—New—Data will be collected on a representative sample of internists, cardiologists, and general family practitioners to evaluate the effectiveness of the dissemination of clinical trial results in the cardiovascular field and the impact of the trial findings in their practice. Respondents: Individuals or households, small businesses.

	No. of respondents	No. of hours per response	No. of responses per respondent
Survey I	4,027	.19	1
Survey II	4,259	.185	1

Estimated Annual Burden.....1,552 Hours

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: May 3, 1991.

Sandra K. Mahkorn,

Deputy Assistant Secretary for Public Health Policy.

[FR Doc. 91-13438 Filed 6-6-91; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-1917; FR-2934-N-29]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: June 7, 1991.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for application by representatives of the homeless for a period of 60 days from the date of this notice. Representatives of the homeless interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule govering this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be made available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this notice. Representatives of the homeless interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this notice. Included in the request for review should be the property address (including zip code), the date of publication in the Federal Register, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Dept. of Agriculture: Marshe Pruitt, Realty Officer, USDA, South Bldg. rm. 1566, 14th and Independence Ave. SW., Washington, DC 20250; (202) 447-3338. Dept. of Energy: Tom Knox, Realty Specialist, AD223.1, 1000 Independence Ave. SW., Washington, DC 20585; (202) 586-1191. Dept. of Interior: Lola D. Knight, Property Management Specialist, Dept. of Interior, 1849 C St. NW., Mailstop 5512-MIB, Washington, DC 20240; (202) 208-4080. U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332-2300; (202) 325-0474. Dept. of Transportation: Angelo Picillo, Deputy Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW., room 10317, Washington, DC 20590; (202) 366-5601. Dept. of Veterans Affairs: Linda Tribby, Management Analyst, Dept. of Veterans Affairs, room 717, 810 Vermont Ave. NW., Washington, DC 20420; (202) 233-5026. (These are not toll-free numbers.)

Dated: May 31, 1991.

Russell K. Paul,

Deputy Assistant Secretary for Grant Programs.

SUITABLE/AVAILABLE PROPERTIES

Alabama

Suitable Land (by Agency)

VA

VA Medical Center
VAMC
Tuskegee, AL Co: Macon 36083-
Federal Register Notice Date: 06/07/91
Property Number: 979010053
Status: Underutilized
Base Closure: No
Comment: 40 acres; buffer to VA Medical Center; potential utilities; undeveloped.

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California

Suitable Buildings (by Agency)

VA

Bldg. 116
VA Medical Center
Wilshire and Sawtelle Blvds.
Los Angeles, CA. Co: Los Angeles 90073–
Federal Register Notice Date: 06/07/91
Property Number: 979110009
Status: Underutilized
Base Closure: No
Comment: 80309 sq. ft., 3 story brick frame, seismic reinforcement defics., underutil. port. of bldg. used intermitly., needs rehab, poss. asbestos on pipes/floor tiles, site access lim.

Bldg. 283
VA Medical Center
Wilshire and Sawtelle Blvds.
Los Angeles, CA. Co: Los Angeles 90073–
Federal Register Notice Date: 06/07/91
Property Number: 979110010
Status: Unutilized
Base Closure: No
Comment: 1600 sq.ft., 1 story wood frame w/ stucco exterior, needs rehab, poss. asbestos on pipes/floor tiles, site access limitations, no operating utilities.

Suitable Land (by Agency)

DOT

Remote Transmitter
Section 35
Red Bluff, CA. Co: Tehema 96080–
Federal Register Notice Date: 06/07/91
Property Number: 879010010
Status: Unutilized
Base Closure: No
Comment: 4 acres; paved road, current use—storage.

Colorado

Suitable Land (by Agency)

VA

VA Medical Center
Fort Lyon, CO. Co: Bent 81038–
Location: 6 miles east of Las Animas, Co. and then 1 mile south on Colorado highway 183.
Federal Register Notice Date: 06/07/91
Property Number: 979010021
Status: Underutilized
Base Closure: No
Comment: 163.5 acres; most recent use—potable water well and static area; no utilities; secured area with alternative access.

Idaho

Suitable Buildings (by Agency)

Energy

Storage and Training Facility
INEL DOE–ID
Idaho Falls, ID. Co: Bonneville
Federal Register Notice Date: 06/07/91
Property Number: 419040001
Status: Excess
Base Closure: No
Comment: 2072 sq. ft.; 1 story wood frame; needs major rehab; off-site use only.

Louisiana

Suitable Land (by Agency)

VA

Land—8.27 acres
VA Medical Center
2501 Shreveport Highway
Alexandria, LA Co: Rapides 71301–
Federal Register Notice Date: 06/07/91
Property Number: 979010009
Status: Unutilized
Base Closure: No
Comment: 8.27 acres; heavily wooded with natural drainage ravine across property; most recent use—recreation/buffer area.

Maryland

Suitable Land (by Agency)

VA

VA Medical Center
9500 North Point Road
Fort Howard, MD Co: Baltimore 21052
Federal Register Notice Date: 06/07/91
Property Number: 979010020
Status: Underutilized
Base Closure: No
Comment: Approximately 10 acres; wetland and periodically floods; most recent use—dump site for leaves.

Maine

Suitable Buildings (by Agency)

Agriculture

White Mountain National Forest
Stoneham, ME
Location: From Bethel, ME: 20 mi. SW on State Hwy 35—10 mi. west on Hwy 5 to Virginia Lake Access Rd.—4 mi. north to property
Federal Register Notice Date: 06/07/91
Property Number: 159040001
Status: Unutilized
Base Closure: No
Comment: 2256 sq. ft.; 2 story wood frame; needs major rehab; structurally unsound.

Minnesota

Suitable Land (by Agency)

VA

Land around Bldg. 240–249.253
VA Medical Center
Fort Snelling
St. Paul, MN Co: Hennepin 55111–
Federal Register Notice Date: 06/07/91
Property Number: 979010007
Status: Unutilized
Base Closure: No
Comment: 3.76 acres; potential utilities.

New Mexico

Suitable Buildings (by Agency)

Interior

Old Helium Plant
Gallup, NM Co: McKinley 87301–
Location: ¼ mile north of Gallup, adjacent to Old US Highway 666.
Federal Register Notice Date: 06/07/91
Property Number: 619010002
Status: Excess
Base Closure: No
Comment: 7653 sq. ft.; 1 story office and warehouse space; possible asbestos; on 4.65 acres; secured area with alternate access.

Texas

Suitable Land (by Agency)

VA

Land
Olin E. Teague Veterans Center
1901 South 1st Street
Temple, TX Co: Bell 76504–
Federal Register Notice Date: 06/07/91
Property Number: 979010079
Status: Underutilized
Base Closure: No
Comment: 13 acres; portion formerly landfill; portion near flammable materials; railroad crosses property; potential utilities.

VA. Medical Center
4800 Memorial Drive
Waco, TX Co: McLennan 76711–
Federal Register Notice Date: 06/07/91
Property Number: 979010061
Status: Underutilized
Base Closure: No
Comment: 2.3 acres; leased to Owens-Illinois Glass Plant; expiration date 10/31/90; most recent use—parking lot.

Washington

Suitable Buildings (by Agency)

Interior

Thompson Main Residence
Lake Crescent Ranger Station
HC 62, Box 10
Port Angeles, WA 98362–
Federal Register Notice Date: 06/07/91
Property Number: 619030001
Status: Unutilized
Base Closure: No
Comment: 2 story residence; no utilities; needs rehab; off-site use only.

Thompson Older Residence
Lake Crescent Ranger Station
HC 62, Box 10
Port Angeles, WA 98362–
Federal Register Notice Date: 06/07/91
Property Number: 619030002
Status: Unutilized
Base Closure: No
Comment: 888 sq. ft.; 1 story residence; no utilities; needs rehab; off-site use only.

Thompson Garage
Lake Crescent Ranger Station
HC 62, Box 10
Port Angeles, WA 98362–
Federal Register Notice Date: 06/07/91
Property Number: 619030003
Status: Unutilized
Base Closure: No
Comment: 240 sq. ft.; 1 story garage; no utilities; needs rehab; off-site use only.

Thompson Shop
Lake Crescent Ranger Station
HC 62, Box 10
Port Angeles, WA 98362–
Federal Register Notice Date: 06/07/91
Property Number: 619030009
Status: Unutilized
Base Closure: No
Comment: 300 sq. ft.; 1 story shop; no utilities, needs rehab; off site use only.

Thompson Powerhouse
Lake Crescent Ranger Station

HC 62, Box 10
Port Angeles, WA 98362–
Federal Register Notice Date: 06/07/91
Property Number: 619030010
Status: Unutilized
Base Closure: No
Comment: 160 sq. ft.; 1 story powerhouse; no utilities; needs rehab; off-site use only.

Spracklen Utility Shed
Quinault Ranger Station
Route 2, Box 76
Amanda Park, WA 98526–
Federal Register Notice Date: 06/07/91
Property Number: 619030012
Status: **Unutilized**
Base Closure: No
Comment: 150 sq. ft.; frame utility shed; limited utilities; off-site use only.

Dahinden Storage Building
Quinault Ranger Station
Route 2, Box 76
Amanda Park, WA 98526–
Federal Register Notice Date: 06/07/91
Property Number: 619030013
Status: Unutilized
Base Closure: No
Comment: 240 sq. ft.; frame storage building; no utilities; needs rehab; off-site use only.

Bldg. 1185
Lake Crescent Ranger Station HC 62, Box 10
Carter Storage Building
Port Angeles, WA 98362–
Federal Register Notice Date: 06/07/91
Property Number: 619030016
Status: Unutilized
Base Closure: No
Comment: 92 sq. ft.; 1 story storage building; no utilities; off-site use only.

Haas Barn
c/o Quinault Ranger Station
Route 2, Box 76
Amanda Park, WA Co: Grays Harbor 98526–
Federal Register Notice Date: 06/07/91
Property Number: 619040001
Status: Excess
Base Closure: No
Comment: 1408 sq. ft.; 1 story wood frame barn; potential utilities; poor condition; off-site use only.

Haas Shed
c/o Quinault Ranger Station
Route 2, Box 76
Amanda Park, WA Co: Grays Harbor 98526–
Federal Register Notice Date: 06/07/91
Property Number: 619040002
Status: Excess
Base Closure: No
Comment: 480 sq. ft.; wood frame shed; poor condition; off-site use only.

Haas Shed
c/o Quinault Ranger Station
Route 2, Box 76
Amanda Park, WA Co: Grays Harbor 98526–
Federal Register Notice Date: 06/07/91
Property Number: 619040003
Status: Excess
Base Closure: No
Comment: 64 sq. ft.; wood frame shed; poor condition; off-site use only.

Haas Residence
c/o Quinault Ranger Station
Route 2, Box 76
Amanda Park, WA Co: Grays Harbor 98526–
Federal Register Notice Date: 06/07/91
Property Number: 619040006
Status: Excess
Base Closure: No
Comment: 624 sq. ft.; 1 story wood frame residence; potential utilities; poor condition; off-site use only.

Bldg. 1323
Jensen Barn
c/o Quinault Ranger Station, Route 2, Box 76
Amanda Park, WA Co: Grays Harbor 98526–
Federal Register Notice Date: 06/07/91
Property Number: 619040007
Status: Excess
Base Closure: No
Comment: 4,200 sq. ft.; wood frame barn; most recent use—storage; no utilities; off-site use only.

Wisconsin

Suitable Land (by Agency)

VA

VA Medical Center
County Highway E
Tomah, WI Co: Monroe 54660–
Federal Register Notice Date: 06/07/91
Property Number: 979010054
Status: Underutilized
Base Closure: No
Comment: 12.4 acres; serves as buffer between center and private property; no utilities.

Suitable Buildings (by Agency)

Bldg. 2
VA Medical Center
County Highway E
Tomah, WI Co: Monroe 54660–
Federal Register Notice Date: 06/07/91
Property Number: 979010055
Status: Underutilized
Base Closure: No
Comment: 18,000 sq. ft.; 3 story masonry; needs rehab.; possible asbestos; potential utilities.

Bldg. 8
VA Medical Center
County Highway E
Tomah, WI Co: Monroe 54660–
Federal Register Notice Date: 06/07/91
Property Number: 979010056
Status: Underutilized
Base Closure: No
Comment: 2,200 sq. ft.; 2 story wood frame; possible asbestos; potential utilities; structural deficiencies; needs rehab.

Wyoming

Suitable Land (by Agency)

Energy

Wind Site A
Medicine Bow, WY Co: Carbon 82329–
Location: 3 miles south and 2 miles west of Medicine Bow
Federal Register Notice Date: 06/07/91
Property Number: 419030010
Status: Excess
Base Closure: No
Comment: 46.75 acres; limitation—easement restrictions.

Suitable Buildings (by Agency)

Interior

Administration Bldg.
Fontenelle Camp
Fontenelle, WY Co: Lincoln
Location: Approximately 24 miles southeast of Labarge, off State Road 372 and on County Road 316.
Federal Register Notice Date: 06/07/91
Property Number: 619030017
Status: Excess
Base Closure: No
Comment: 4464 sq. ft.; 2 story brick structure with a 2880 sq. ft. wood frame addition; needs rehab; possible asbestos; offsite use only.

Residential House
Fontenelle Camp
Fontenelle, WY Co: Lincoln
Location: Approximately 24 miles southeast of Labarage, off State Road 372 and on County Road 316.
Federal Register Notice Date: 06/07/91
Property Number: 619030018
Status: Excess
Base Closure: No
Comment: 1200 sq. ft.; 1 story with basement; needs rehab; possible asbestos; off-site use only.

VA

Bldg. 30
Medical Center
N.W. of town at the end of Fort Road
Sheridan, WY Co: Sheridan 82801–
Federal Register Notice Date: 06/07/91
Property Number: 979110002
Status: Unutilized
Base Closure: No
Comment: 1336 sq. ft.; 1 story concrete frame earth covered; potential utilities; most recent use—root cellar.

SUITABLE/TO BE EXCESS PROPERTIES

Alaska

Suitable Land (by Agency)

DOT

Wrangell Narrows Reservation
Wrangell, AK Co: Wrangell
Location: Approximately 6 miles south of Petersburgh, Alaska along Mitkof highway.
Federal Register Notice Date: 06/07/91
Property Number: 879010006
Status: Excess
Base Closure: No
Comment: 42.15 acres.

Louisiana

Suitable Land (by Agency)

DOT

Land
USCG Station Calcasieu
Calcasieu, LA Co: Cameron Parish 71433–
Federal Register Notice Date: 06/07/91
Property Number: 879120093
Status: Unutilized
Base Closure: No
Comment: 2.7 acres, potential utilities, possible flooding.

Suitable Buildings (by Agency)

Dwellings #1, #2
USCG Station Calcasieu
Calcasieu, LA Co: Cameron Parish 71433–
Federal Register Notice Date: 06/07/91
Property Numbers: 879120091–879120092
Status: Unutilized
Base Closure: No

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Comment: 2716 sq. ft. each, need rehab, potential utilities, most recent use—residence, possible flooding
Equipment Building
USCG Station Calcasieu
Calcasieu, LA Co: Cameron Parish 71433–
Federal Register Notice Date: 06/07/91
Property Number: 879120094
Status: Unutilized
Base Closure: No
Comment: 1380 sq. ft., potential utilities, most recent use—equipment storage, possible flooding.

North Carolina

Suitable Buildings (by Agency)

DOT

Dwellings 1, 2, 3
USCG Coinjock Housing
Coinjock, NC Co: Currituck 27923–
Federal Register Notice Date: 06/07/91
Property Numbers: 879120083–879120085
Status: Unutilized
Base Closure: No
Comment: one story wood residences, periodic flooding in garage and utility room occurs in heavy rainfall.

Suitable Land (by Agency)

USCG Station—Land
Oregon Inlet Coast Guard Station
Rodanthe, NC Co: Dare 27968–
Federal Register Notice Date: 06/07/91
Property Number: 879120087
Status: Unutilized
Base Closure: No
Comment: 10 acres, potential utilities.

Suitable Buildings (by Agency)

USCG Station—Building
Oregon Inlet Coast Guard Station
Rodanthe, NC Co: Dare 27968–
Federal Register Notice Date: 06/07/91
Property Number: 879120086
Status: Unutilized
Base Closure: No
Comment: 1207 sq. ft., two story wood frame, most recent use—office, storage, shops, communications, dining, etc.
USCG Station—Building
Oregon Inlet Coast Guard Station
Rodanthe, NC Co: Dare 27968–
Federal Register Notice Date: 06/07/91
Property Number: 879120088
Status: Unutilized
Base Closure: No
Comment: 1521 sq. ft., two story lightweight steel frame, most recent use—office, shops, communications, storage, berthing, dining, etc.
USCG Station—Garage
Oregon Inlet Coast Guard Station
Rodanthe, NC Co: Dare 27968–
Federal Register Notice Date: 06/07/91
Property Number: 879120089

Status: Unutilized
Base Closure: No
Comment: 1920 sq. ft., one story steel frame, most recent use—garage/storage.
USCG Station—Building
Oregon Inlet Coast Guard Station
Rodanthe, NC Co: Dare 27968–
Federal Register Notice Date: 06/07/91
Property Number: 879120090
Status: Unutilized
Base Closure: No
Comment: 320 sq. ft., one story wood frame, most recent use—storage

Oregon

Suitable Land (by Agency)

DOT

Port Orford Radio Station
Port Orford, OR Co: Curry 97465–
Federal Register Notice Date: 06/07/91
Property Number: 879010007
Status: Excess
Base Closure: No
Comment: 5.17 acres, radio station.

Puerto Rico

Suitable Buildings (by Agency)

DOT

Mona Island
Punta Este, PR Co: Mona Island
Federal Register Notice Date: 06/07/91
Property Number: 879010004
Status: Excess
Base Closure: No
Comment: Light house on 2.09 acres.

Virginia

Suitable Buildings (by Agency)

DOT

Housing
Rt. 637—Gwynnville Road
Gwynn Island, VA Co: Mathews 23066–
Federal Register Notice Date: 06/07/91
Property Number: 879120082
Status: Unutilized
Base Closure: No
Comment: 929 sq. ft., one story residence.

SUITABLE/UNAVAILABLE PROPERTIES

Arizona

Suitable Land (by Agency)

Energy

Liberty Substation
Buckeye, AZ Co: Maricopa 85326–
Location: 3 miles south of Interstate 10 on Tuthill Road
Federal Register Notice Date: 06/07/91
Property Number: 419030001
Status: Underutilized
Base Closure: No
Comment: 15 acres; buffer area for substation.

California

Suitable Land (by Agency)

VA

Land
VA. Medical Center
Wilshire and Sawtelle Boulevards
Los Angeles, CA Co: Los Angeles 90073–
Federal Register Notice Date: 06/07/91
Property Number: 979010077
Status: Underutilized
Base Closure: No
Comment: Approximately 30 acres of 80 acre tract; 7 acre portion contaminated; portions may be environmentally protected.

Florida

Suitable Land (by Agency)

DOT

Parcel A & B
U.S. Coast Guard Light Station
Lots 1, 8 & 11, Section 31
Jupiter Inlet, FL Co: Palm Beach 33420–
Location: Township 40 south, range 43 east.
Federal Register Notice Date: 06/07/91
Property Number: 879010009
Status: Unutilized
Base Closure: No
Comment: 56.61 acres; area is uncleared, vegetation growth is heavy; no utilities.

Iowa

Suitable Land (by Agency)

Energy

Sioux City Substation
Hinton, IA Co: Plymouth 51024–
Location: 1 mile south of Hinton Iowa on Highway 75.
Federal Register Notice Date: 06/07/91
Property Number: 419030003
Status: Underutilized
Base Closure: No
Comment: 34 acres; limitation—easement restrictions; most recent use—transmission line corridor and buffer area.

Illinois

Suitable Land (by Agency)

VA

VA. Medical Center
3001 Green Bay Road
North Chicago, IL Co: Lake 60064–
Federal Register Notice Date: 06/07/91
Property Number: 979010082
Status: Underutilized
Base Closure: No
Comment: 2.5 acres; currently being used as a construction staging area for the next 6–8 years; potential utilities.

Maryland

Suitable Buildings (by Agency)

VA

Bldg. 8A
DVA Medical Center
Perry Point
Perry Point, MD Co: Cecil 21902–
Federal Register Notice Date: 06/07/91
Property Number: 979010047
Status: Underutilized
Base Closure: No
Comment: 17000 sq. ft.; 1 story masonry; needs a roof; no utilities; most recent use—storage.
Bldg. 9H
DVA Medical Center
Perry Point
Perry Point, MD Co: Cecil 21902–
Federal Register Notice Date: 06/07/91
Property Number: 979010048
Status: Underutilized
Base Closure: No
Comment: 19000 sq. ft.; 3 story reinforced concrete; basement floods; most recent use—nursing home.

Michigan

Suitable Land (by Agency)

VA

VA Medical Center
5500 Armstrong Road
Battle Creek, MI Co: Calhoun 49016–
Federal Register Notice Date: 06/07/91
Property Number: 979010015
Status: Underutilized
Base Closure: No
Comment: 20 acres; used as exercise trails and storage areas; potential utilities.

Minnesota

Suitable Land (by Agency)

VA

Bldg. 43 Land Site
VA Medical Center
54th Street & 48th Avenue South
Minneapolis, MN Co: Hennepin 55417–
Federal Register Notice Date: 06/07/91
Property Number: 979010005
Status: Underutilized
Base Closure: No
Comment: 8.9 acres; most recent use—parking; potential utilities.
Bldg. 227–229 Land
VA Medical Center
Fort Snelling
St Paul, MN Co: Hennepin 55111–
Federal Register Notice Date: 06/07/91
Property Number: 979010006
Status: Underutilized
Base Closure: No
Comment: 2.0 acres., potential utilities; buildings occupied: residence/garage.
VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis, MN Co: Hennepin 55417–
Location: Land (Site of Building 15, 16, 21, 48, 64, T10)
Federal Register Notice Date: 06/07/91
Property Number: 979010024
Status: Underutilized
Base Closure: No
Comment: 12.1 acres; most recent use—parking; potential utilities.
Land—12 acres
VAMC
Near 5629 Minnehaha Avenue
Minneapolis, MN Co: Hennepin 55417–
Federal Register Notice Date: 06/07/91
Property Number: 979010031
Status: Unutilized
Base Closure: No
Comment: 12 acres; possible asbestos; leased to Department of Natural Resources as a park walking trail.

Suitable Buildings (by Agency)

Bldg. 15
VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis, MN Co: Hennepin 55417–
Federal Register Notice Date: 06/07/91
Property Number: 979010025
Status: Underutilized
Base Closure: No
Comment: 15100 sq. ft.; 2 story concrete/brick frame; asbestos present in pipe insulation; most recent use—laundry.
Bldg. 16
VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis, MN Co: Hennepin 55417–
Federal Register Notice Date: 06/07/91
Property Number: 979010026
Status: Underutilized
Base Closure: No
Comment: 8000 sq. ft.; 3 story concrete/brick; asbestos present on pipe insulation; most recent use—boiler plant.
Bldg. 21
VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis, MN Co: Hennepin 55417–
Federal Register Notice Date: 06/07/91
Property Number: 979010027
Status: Underutilized
Base Closure: No
Comment: 3200 sq. ft.; 1 story prefab/quonset; most recent use—garage for motor vehicles.
Bldg. 48
VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis, MN Co: Hennepin 55417–
Federal Register Notice Date: 06/07/91
Property Number: 979010028
Status: Underutilized
Base Closure: No
Comment: 2000 sq. ft.; 1 story concrete/block; most recent use—incinerator/storage.
Bldg. 64
VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis, MN Co: Hennepin 55417–
Federal Register Notice Date: 06/07/91
Property Number: 979010029
Status: Unutilized
Base Closure: No
Comment: 380 sq. ft.; 1 story prefab; potential utilities.
Bldg. T–10
VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis, MN Co: Hennepin 55417–
Federal Register Notice Date: 06/07/91
Property Number: 979010030
Status: Unutilized
Base Closure: No
Comment: 1800 sq. ft.; 1 story prefab/quonset; potential utilities; most recent use—storage.
Bldg. 43
VA Medical Center
Minneapolis, MN Co: Hennepin 55441–7
Location: 54th Street and 48th Avenue S.
Federal Register Notice Date: 06/07/91
Property Number: 979010032
Status: Underutilized
Base Closure: No
Comment: 26000 sq. ft.; 8 story brick/steel frame; asbestos present on pipe insulation; most recent use—office/storage.
Bldg. 227
Va Medical Center
Fort Snelling
St. Paul, MN Co: Hennepin 55111–
Federal Register Notice Date: 06/07/91
Property Number: 979010033
Status: Unutilized
Base Closure: No
Comment: 850 sq. ft.; 2 story wood frame and brick residence; utilities disconnected.
Bldgs. 240–242, 244–248, 253
VA Medical Center
Fort Snelling
St. Paul, MN Co: Hennepin 55111–
Federal Register Notice Date: 06/07/91
Property Numbers: 979010036–979010044
Status: Unutilized
Base Closure: No
Comment: 800 sq. ft. each; 2 story wood frame; potential utilities; asbestos present on pipe insulation.
Bldg. 243
VA Medical Center
Fort Snelling
St. Paul, MN Co: Hennepin 55111–
Federal Register Notice Date: 06/07/91
Property Number: 979010045
Status: Unutilized
Base Closure: No
Comment: 600 sq. ft.; 1 story wood frame; no utilities; most recent use—garage.
Bldg. 249
VA Medical Center
Fort Snelling
St. Paul, MN Co: Hennepin 55111–
Federal Register Notice Date: 06/07/91
Property Number: 979010046
Status: Unutilized
Base Closure: No
Comment: 200 sq. ft.; 1 story wood frame; no utilities; most recent use—garage.

Montana

Suitable Land (by Agency)

Energy

Miles City Substation
Miles City, MT Co: Custer 59301–
Location: 1 mile east of Miles City
Federal Register Notice Date: 06/07/91
Property Number: 419030004
Status: Underutilized
Base Closure: No
Comment: 59 acres; limitation—easement restrictions subject to grazing lease; most recent use—buffer area for substation.
Custer Substation
Custer, MT Co: Yellowstone 59024–
Location: 2 miles east of the town of Custer—east of Highway 47
Federal Register Notice Date: 06/07/91
Property Number: 419030006
Status: Underutilized
Base Closure: No
Comment: 16 acres; buffer area for substation.

North Dakota

Suitable Land (by Agency)

Energy

Fargo Substation
Fargo, ND Co: Cass 58102–
Federal Register Notice Date: 06/07/91
Property Number: 419030005
Status: Underutilized
Base Closure: No
Comment: 25 acres; most recent use—transmission line corridor and buffer.

Nebraska

Suitable Land (by Agency)

Energy

Grand Island Substation
Phillips, NE Co: Merrick 68865–
Location: 5 miles east of Grand Island and 4 miles west of Phillips.
Federal Register Notice Date: 06/07/91

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Property Number: 419030002
Status: Underutilized
Base Closure: No
Comment: 11 acres; buffer area for substation; right-of-way for transmission lines for Nebraska Public Power District.

New York

Suitable Buildings (by Agency)

VA

Bldg. 5
V.A. Medical Center
Redfield Parkway
Batavia, NY Co: Genesee 14020–
Federal Register Notice Date: 06/07/91
Property Number: 979030001
Status: Underutilized
Base Closure: No
Comment: Portion of 16800 sq. ft.; 3 story; brick and masonry bldg.; needs minor repairs.

Suitable Land (by Agency)

VA Medical Center
Fort Hill Avenue
Canandaigua, NY Co: Ontario 14424–
Federal Register Notice Date: 06/07/91
Property Number: 979010017
Status: Underutilized
Base Closure: No
Comment: 27.5 acres; used for school ballfield and parking; existing utilities easements; portion leased.

Pennsylvania

Suitable Land (by Agency)

VA

Land No. 645
VA. Medical Center
Highland Drive
Pittsburgh, PA, Co: Allegheny 15206–
Location: Between Campania and Wiltsie Streets.
Federal Register Notice Date: 06/07/91
Property Number: 979010080
Status: Unutilized
Base Closure: NO
Comment: 52.42 acres; heavily wooded; property includes dump area and numerous site storm drain outfalls.

VA Medical Center
New Castle Road
Butler, PA, Co: Butler 16001–
Federal Register Notice Date: 06/07/91
Property Number: 979010016
Status: Underutilized
Base Closure: NO
Comment: Approximately 9.29 acres; used for patient recreation; potential utilities.

Puerto Rico

Suitable Buildings (by Agency)

DOT

USCG Officer/Charge Quarters
Cape San Juan Light
Fajardo, PR, Co: Fajardo
Federal Register Notice Date: 06/07/91
Property Number: 879110001
Status: Excess
Base Closure: NO
Comment: 1197 sq. ft., one story concrete block on floating slab; off-site use only; environmentally protected

Texas

Suitable Buildings (by Agency)

DOT

Brownsville Urban System (Grantee)
700 South Iowa Avenue
Brownsville, TX, Co: Cameron 78520–
Federal Register Notice Date: 06/07/91
Property Number: 879010003
Status: Unutilized
Base Closure: NO
Comment: 3500 sq. ft., 1 story concrete block, (2nd floor of Admin. Bldg.) on 10750 sq. ft. land, contains underground diesel fuel tanks.

Washington

Suitable Land (by Agency)

ENERGY

Raver Substation (See County), WA, Co: King
Location: Approximately 16 miles east of Kent
Federal Register Notice Date: 06/07/91
Property Number: 419030012
Status: Unutilized
Base Closure: NO
Comment: 10+ acres; potential utilities; heavily treed

West Virginia

Suitable Land (by Agency)

VA

VA Medical Center
1540 Spring Valley Drive
Huntington, WV, Co: Wayne 25704–
Federal Register Notice Date: 06/07/91
Property Number: 979010022
Status: Unutilized
Base Closure: NO
Comment: 72 acres; very rough terrain and wooded; potential utilities

Wyoming

Suitable Buildings (by Agency)

VA

Bldg. 13
Medical Center
N.W. of town at the end of Fort Road
Sheridan, WY, Co: Sheridan 82801–
Federal Register Notice Date: 06/07/91
Property Number: 979110001
Status: Unutilized
Base Closure: NO
Comment: 3613 sq. ft.; 3 story wood frame masonry veneered; potential utilities; possible asbestos; needs rehab

Bldg. 79
Medical Center
N.W. of town at the end of Fort Road
Sheridan, WY, Co: Sheridan 82801–
Federal Register Notice Date: 06/07/91
Property Number: 979110003
Status: Unutilized
Base Closure: NO
Comment: 45 sq. ft.; 1 story brick and tile frame; limited utilities; most recent use—reservoir house; use for storage purposes

Unsuitable Properties

Alaska

Unsuitable Buildings (by Agency)

Navy

LORAN Station, Map Grid 08L11
Naval Air Station
Adak, AK, Co: Adak 99791–
Federal Register Notice Date: 06/07/91
Property Number: 779120006
Status: Unutilized
Base Closure: No
Reason: Secured Area

DOT

Old Upper Govt Housing—Bldgs. #1–#70
Coast Guard Support Center Kodiak, POB14
Kodiak, AK, Co: Kodiak 99819–5000
Federal Register Notice Date: 06/07/91
Property Numbers: 879120012–879120081
Status: Unutilized
Base Closure: No
Reason: Secured Area

Alabama

Unsuitable Buildings (by Agency)

DOT

Dwellings A, B
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores, AL, Co: Baldwin 36542–
Federal Register Notice Date: 06/07/91
Property Numbers: 879120001–879120002
Status: Excess
Base Closure: No
Reason: Floodway

Oil House
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores, AL, Co: Baldwin 36542–
Federal Register Notice Date: 06/07/91
Property Number: 879120003
Status: Excess
Base Closure: No
Reason: Floodway

Garage
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores, AL, Co: Baldwin 36542–
Federal Register Notice Date: 06/07/91
Property Number: 879120004
Status: Excess
Base Closure: No
Reason: Floodway

Shop Building
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores, AL, Co: Baldwin 36542–
Federal Register Notice Date: 06/07/91
Property Number: 879120005
Status: Excess
Base Closure: No
Reason: Floodway

California

Unsuitable Land (by Agency)

VA

DVA Medical Center
4951 Arroyo Road
Livermore, CA, Co: Alameda 94550–
Federal Register Notice Date: 06/07/91
Property Number: 979010023
Status: Unutilized
Base Closure: No
Reason: Other
Comment: 750,000 gal water reservoir.

Energy

Elverta Substation
736 W. Elverta Road

Elverta, CA, Co: Sacramento 95626–
Federal Register Notice Date: 06/07/91
Property Number: 419030008
Status: Underutilized
Base Closure: No
Reason: Secured Area

Colorado

Unsuitable Buildings (by Agency)

DOT

Alemeda Facility
350 S. Santa Fe Drive
Denver, CO, Co: Denver
Federal Register Notice Date: 06/07/91
Property Number: 879010014
Status: Unutilized
Base Closure: No
Reason: Other environmental
Comment: contamination

Unsuitable Land (by Agency)

Energy

Curecanti Substation
Cimarron, CO, Co: Montrose 81220–
Location: 2 miles east of Cimarron on Highway 50
Federal Register Notice Date: 06/07/91
Property Number: 419030009
Status: Excess
Base Closure: No
Reason: Floodway

Florida

Unsuitable Buildings (by Agency)

DOT

USCG Station Cortez
4350 124th St., Circle W
Cortez, FL, Co: Manatee 33506–
Federal Register Notice Date: 06/07/91
Property Number: 879120008
Status: Underutilized
Base Closure: No
Reason: Secured Area, Floodway

Illinois

Unsuitable Buildings (by Agency)

DOT

Vortac Facility
FAA
Joliet, IL, Co: DuPage 60436–
Location: From Joliet Airport west on Hwy. 52—6 miles north of Township Gravel Road—2.5 miles to site entrance
Federal Register Notice Date: 06/07/91
Property Number: 879120011
Status: Underutilized
Base Closure: No
Reason: Secured Area

Louisiana

Unsuitable Land (by Agency)

VA

Land—3.4 acres
VA Medical Center
2501 Shreveport Highway
Alexandria, LA, Co: Rapides 71301–
Federal Register Notice Date: 06/07/91
Property Number: 979010010
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material

Michigan

Unsuitable Land (by Agency)

DOT

Middle Marker Facility
Yipsilanti, MI, Co: Washtenaw 48198–
Location: 549 ft. north of intersection of Coolidge and Bradley Ave. on East side of street
Federal Register Notice Date: 06/07/91
Property Number: 879120006
Status: Unutilized
Base Closure: No
Reason: Within airport runway clear zone

Minnesota

Unsuitable Land (by Agency)

VA

VAMC
VA Medical Center
4801 8th Street No.
St. Cloud, MN, Co: Sterns 56303–
Federal Register Notice Date: 06/07/91
Property Number: 979010049
Status: Underutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material

Montana

Unsuitable Land (by Agency)

Energy

Dawson County Substation
Glendive, MT, Co: Dawson 59330–
Location: 3 miles east of Glendive, MT on highway 20
Federal Register Notice Date: 06/07/91
Property Number: 419030011
Status: Underutilized
Base Closure: No
Reason: Secured Area

Anaconda Substation
(See County), MT, Co: Deer Lodge
Location: 4 miles southeast of Anaconda
Federal Register Notice Date: 06/07/91
Property Number: 419030013
Status: Unutilized
Base Closure: No
Reason: Other environmental
Comment: Contamination

North Carolina

Unsuitable Buildings (by Agency)

VA

Bldg. 9
VA Medical Center
1100 Tunnel Road
Asheville, NC, Co: Buncombe 28805–
Federal Register Notice Date: 06/07/91
Property Number: 979010008
Status: Underutilized
Base Closure: No
Reason: Other
Comment: Friable asbestos.

North Dakota

Unsuitable Land (by Agency)

VA

VAM & ROC—Land, 2 parcels—6.1 & 8.9 acres
2101 Elm Street, N.
Fargo, ND, Co: Cass 58102–
Federal Register Notice Date: 06/07/91
Property Numbers: 979010018–979010019
Status: Underutilized
Base Closure: No
Reason: Floodway

New Jersey

Unsuitable Buildings (by Agency)

DOT

Bldg. 120
USCG Training Center Cape May
North side of Munro Ave.
Cape May, NJ, Co: Cape May 08204–
Location: Opposite GSK Bldg. 204
Federal Register Notice Date: 06/07/91
Property Number: 879120007
Status: Unutilized
Base Closure: No
Reason: Secured Area

New Mexico

Unsuitable Buildings (by Agency)

Interior

Farmington Office and Yard
900 La Plata Highway
Farmington, NM, Co: San Juan 87499–
Federal Register Notice Date: 06/07/91
Property Number: 619010001
Status: Unutilized
Base Closure: No
Reason: Within airport runway clear zone

New York

Unsuitable Buildings (by Agency)

DOT

Bldg. S–253
Governors Island
Governors Island, NY, Co: New York 10004–
Location: The first building directly south of the base library
Federal Register Notice Date: 06/07/91
Property Number: 879120095
Status: Unutilized
Base Closure: No
Reason: Secured Area, Other
Comment: Not accessible by road

Unsuitable Land (by Agency)

VA

Tracts 1, 2, 3, 4
VA Medical Center
Bath, NY, Co: Steuben 14810–
Location: Exit 38 off New York State Route 17
Federal Register Notice Date: 06/07/91
Property Numbers: 979010011–979010014
Status: Unutilized
Base Closure: No
Reason: Secured Area

Oregon

Unsuitable Buildings (by Agency)

Interior

Eugene District Office Site
751 South Danebo
Eugene, OR, Co: Lane 97402–
Federal Register Notice Date: 06/07/91
Property Number: 619010003
Status: Underutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material

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Pennsylvania

Unsuitable Buildings (by Agency)

DOT

Harrisburg Arpt Surv Radar 4
FAA
Lower Allen Township, PA, Co: Cumberland 17070–
Location: Take left at the end of Beacon Hill Road in New Cumberland
Federal Register Notice Date: 06/07/91
Property Number: 879120009
Status: Underutilized
Base Closure: No
Reason: Secured Area

Texas

Unsuitable Buildings (by Agency)

VA

Bldgs. 24, 25, 26
Olin E. Teague Veterans Center
1901 South 1st Street
Temple, TX, Co: Bell 76504–
Federal Register Notice Date: 06/07/91
Property Numbers: 979010050–979010052
Status: Unutilized
Base Closure: No
Reason: Other
Comment: Friable asbestos

Washington

Unsuitable Buildings (by Agency)

Interior

Dahinden Chicken Coop
Quinault Ranger Station
Route 2, Box 76
Amanda Park, WA 98526–
Federal Register Notice Date: 06/07/91
Property Number: 619030014
Status: Unutilized
Base Closure: No
Reason: Other
Comment: Chicken Coop

Dahinden Outhouse
Quinault Ranger Station
Route 2, Box 76
Amanda Park, WA 98526–
Federal Register Notice Date: 06/07/91
Property Number: 619030015
Status: Unutilized
Base Closure: No
Reason: Other
Comment: Detached latrine

Haas Chicken Coop
c/o Quinault Ranger Station
Route 2, Box 76
Amanda Park, WA, Co: Grays Harbor 98526–
Federal Register Notice Date: 06/07/91
Property Number: 619040004
Status: Excess
Base Closure: No
Reason: Other
Comment: Chicken Coop

Haas Lean-to
c/o Quinault Ranger Station
Route 2, Box 76
Amanda Park, WA, Co: Grays Harbor 98526–
Federal Register Notice Date: 06/07/91
Property Number: 619040005
Status: Excess
Base Closure: No
Reason: Other
Comment: Lean-to

Unsuitable Land (by Agency)

Energy

Snoqualmie Substation
(See County), WA, Co: King
Location: 12 miles southwest of North Bend
Federal Register Notice Date: 06/07/91
Property Number: 419030007
Status: Unutilized
Base Closure: No
Reason: Secured Area

DOT

Land
Puffin Island Light House Res.
San Juan, WA, Co: San Juan
Federal Register Notice Date: 06/07/91
Property Number: 879010013
Status: Excess
Base Closure: No
Reason: Other
Comment: Island

Wisconsin

Unsuitable Buildings (by Agency)

Agriculture

Building
Laona Ranger District
Nicolet National Forest
Laona, WI 54541–
Federal Register Notice Date: 06/07/91
Property Number: 159040002
Status: Unutilized
Base Closure: No
Reason: Within 2000 ft. of flammable or explosive material

DOT

Vortac Facility
FAA
Wausau, WI, Co: Marathon 54401–
Location: From intersection of St. Hwy. 29 and County Trunk X proceed south on X 4⅛ miles to site entrance
Federal Register Notice Date: 06/07/91
Property Number: 879120010
Status: Underutilized
Base Closure: No
Reason: Secured Area

Wyoming

Unsuitable Buildings (by Agency)

VA

Bldg. 95
Medical Center
N.W. of town at the end of Fort Road
Sheridan, WY, Co: Sheridan 82801–
Federal Register Notice Date: 06/07/91
Property Number: 979110004
Status: Unutilized
Base Closure: No
Reason: Other
Comment: Sewage digester for disposal plant

Bldg. 98
Medical Center
N.W. of town at end of Fort Road
Sheridan, WY, Co: Sheridan 82801–
Federal Register Notice Date: 06/07/91
Property Number: 979110005
Status: Unutilized
Base Closure: No
Reason: Other
Comment: Pump house for sewage disposal plant

Structure 99
Medical Center
N.W. of town at the end of Fort Road
Sheridan, WY, Co: Sheridan 82801–
Federal Register Notice Date: 06/07/91
Property Number: 979110006
Status: Unutilized
Base Closure: No
Reason: Other
Comment: Mechanical screen for sewage disposal plant

Structure 100
Medical Center
N.W. of town at the end of Fort Road
Sheridan, WY, Co: Sheridan 82801–
Federal Register Notice Date: 06/07/91
Property Number: 979110007
Status: Unutilized
Base Closure: No
Reason: Other
Comment: Dosing tank for sewage disposal plant

Structure 101
Medical Center
N.W. of town at the end of Fort Road
Sheridan, WY, Co: Sheridan 82801–
Federal Register Notice Date: 06/07/91
Property Number: 979110008
Status: Unutilized
Base Closure: No
Reason: Other
Comment: Chlorination chamber for sewage disposal plant

[FR Doc. 91–13273 Filed 6–6–91; 8:45 am]
BILLING CODE 4310–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for Permit

The following applicant have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT 757950

Applicant: Popcorn Park Zoo, Forked River, NJ

The applicant requests a permit to import one male captive-born jaguar (*Panthera onca*) from the Canadian Society for the Prevention of Cruelty to Animals, Montreal, Canada for enhancement of propagation through educational display.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45–4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: June 3, 1991.

Maggie Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 91–13440 Filed 6–6–91; 8:45 am]
BILLING CODE 4310–55–M

Bureau of Land Management

[AK–966–4230–15]

Alaska; Notice for Publication; AA–6709–A, AA–6709–C; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Ounalashka Corporation for 157.412 acres. The lands involved are in the vicinity of Unalaska, Alaska, within Tps. 72 S., Rs. 117 and 118 W., and T. 73 S., R. 118 W., Seward Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in The Anchorage Times and the Aleutian Eagle. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until July 8, 1991 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Mary Jane Piggott,

Chief, Branch of Southwest Adjudication.

[FR Doc. 91–13479 Filed 6–6–91; 8:45 am]
BILLING CODE 4310–JA–M

[G–010–4111–02/G1–0116]

Albuquerque District, NM; District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Albuquerque District Advisory Council Meeting.

SUMMARY: The BLM Albuquerque District Advisory Council will meet on June 28 and 29, 1991 in Taos, New Mexico. The June 28th meeting will begin at 10 a.m. in the meeting room at the Quality Inn in Taos. The Quality Inn is located approximately 2 miles south of the Plaza on Paseo del Pueblo Sur.

The agenda on Friday June 28 will include updates on current Albuquerque District issues including the Resource Management Plan Amendment process, Sikes Act wildlife habitat improvement projects, and the status of the proposed Rio Grande del Norte National Conservation Area. On Saturday June 29, the Council will tour the proposed Conservation Area.

The meeting and tour is open to the public. Individuals wishing to address the Council are urged to contact Alan Hoffmeister, Public Affairs Specialist, at (505) 761–4513, Bureau of Land Management, 435 Montano NE, Albuquerque, New Mexico 87107.

Dated: May 30, 1991.

Robert T. Dale,

District Manager.

[FR Doc. 91–13452 Filed 6–6–91; 8:45 am]
BILLING CODE 4310–FB–M

[CA–060–01–4410–04–ADVB]

California Desert District Advisory Council; Meeting

SUMMARY: Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will meet in formal session Friday, July 19, 1991, from 10 a.m. to 5 p.m., and Saturday, July 20, 1991, from 8 a.m. to 12 noon, in the Convention "C" meeting room in the Holiday Inn at 15494 Palmdale Road in Victorville, California.

Agenda items for the meetings will include:

—Subcommittee report on the Canyon Lake Public Land Parcel.
—Back Country Byway proposals and recommendations for Fiscal Year 1991.
—Updates on proposed Desert District issues, which include: Fort Irwin Expansion; Fort Irwin-Twentynine Palms Tank Trail; Hazardous Material disposal sites; and landfill sites.
—A report from the California Deserts District's Futuring committee.
—Briefings on Long Term Visitor Area Management and the Mule Mountain LTVA designation; Eastern Sierra Land Tenure Project; cultural diversity in recreational use of Public Lands; and air quality issues.
—A review and update on the current status of BLM's Wilderness package.

All Desert District Advisory Council meetings are open to the public. Time for public comment may be made available by the Council Chairman during the presentation of various agenda items, and is scheduled at the end of the meeting for topics not on the agenda.

FOR FURTHER INFORMATION AND MEETING CONFIRMATION: Contact the Bureau of Land Management, California Desert District, Public Affairs Office, 6221 Box Springs Boulevard, Riverside California 92507–0714; (714) 653–6950.

Dated: May 31, 1991.

Gerald E. Hillier,

District Manager.

[FR Doc. 91–13453 Filed 6–6–91; 8:45 am]
BILLING CODE 4310–40–M

[CO–070–01–4212–13; C–50854]

Realty Action—Exchange; Colorado

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Correction of, and amendment to, notice of realty action—exchange.

SUMMARY: This notice corrects errors in the description of the lands described in the notice of realty action published on Monday, March 11, 1991, in Vol. 56, No. 47, page 10281, and amends the notice to include additional lands.

Corrections

Lands described as being in T. 8 N., R. 90 W., should read as being in T. 9 N., R. 90 W., and lands described as being in T. 8 N., R. 94 W., Secs. 28, 29, 30, 31, and 32 should read as being in T. 9 N., R. 94 W., Secs. 28, 29, 30, 31, and 32.

Additional Lands

The notice is amended to include the following-described lands:

Sixth Principal Meridian, Colorado

T. 8 N., R. 90 W.,
Section 6: Lots 16 through 23
T. 9 N., R. 91 W.,
Sections 13, 15, and 17
T. 9 N., R. 95 W.,
Sections 28, 29, 30, 31, 32, and 33
T. 9 N., R. 96 W.,

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Sections 8, 9, 16, 17, 20, 29, 30, 31, and 32
T. 8 N., R. 97 W.,
Sections 1, 2, 11, and 12

The publication of this notice in the **Federal Register** will segregate the lands described above to the same extent as described in the original notice.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the lands proposed for exchange is available for review in the Little Snake Resource Area Office, 1280 Industrial Avenue, Craig, Colorado 81625 and the Glenwood Springs Resource Area Office at 50629 Highway 6 and 24, P.O. Box 1009, Glenwood Springs, Colorado 81602.

For a period of 30 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Craig District, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625.

Dated: May 30, 1991.

William Pulford,

District Manager, Craig District.

[FR Doc. 91-13454 Filed 6-6-91; 8:45 am]

BILLING CODE 4310-JB-M

[ID-942-01-4730-12]

Idaho: Filing of Plats of Survey

The supplemental plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., May 30, 1991.

The supplemental plat prepared to correct the parenthetical distance of the east ½ of the west ½ mile on the south boundary of section 31, which charges the distance of 21.21 chains to 20.21 chains, T. 5 S., R. 18 E., Boise Meridian, Idaho, was accepted May 28, 1991.

This plat was prepared to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: May 30, 1991.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 91-13455 Filed 6-6-91; 8:45 am]

BILLING CODE 4310-66-M

[NM-940-4214-10; NMNM 86060]

Proposed Withdrawal and Opportunity for Public Meeting; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 40 acres of public land in Otero County, to relocate and establish the Berrendo Camp Administrative Site. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by September 5, 1991.

ADDRESSES: Comments and meeting requests should be sent to the New Mexico State Director, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504-1449.

FOR FURTHER INFORMATION CONTACT: Clarence F. Hougland, Bureau of Land Management, New Mexico State Office, 505-988-6071.

SUPPLEMENTARY INFORMATION: On May 31, 1991, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

New Mexico Principal Meridian

T. 23 S., R. 15 E.,
Sec. 9, NW¼NW¼.

The area described contains 50 acres in Otero County.

The purpose of the proposed withdrawal is to relocate and establish the Berrendo Camp Administrative Site.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or cancelled, or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are licenses, permits, cooperative agreements, or nonsurface-disturbing discretionary land use authorizations of a temporary nature, but only with the approval of an authorized officer of the Bureau of Land Management during the segregative period.

Dated: May 31, 1991.

Larry L. Woodard,

State Director.

[FR Doc. 91-13465 Filed 6-6-91; 8:45 am]

BILLING CODE 4310-FB-M

Bureau of Reclamation

[INT-FES-91-13]

Shasta Outflow Temperature Control, California

AGENCY: Bureau of Reclamation (Interior).

ACTION: Notice of availability of planning report/final environmental statement (PR/FES).

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended, the Department of the Interior, Bureau of Reclamation (Reclamation) has prepared a planning report/final environmental impact statement (PR/FES) on the Shesta Outflow Temperature Control Project. The PR/FES describes and presents the environmental effects of three alternatives, including no action, for utilizing the available cold water resources of Shasta Lake to improve water temperatures in the upper Sacramento River for the benefit of chinook salmon, particularly the State endangered/federally threatened winter run.

ADDRESSES: Copies of the PR/FES may be requested at the following addresses:

- Regional Director, (Attention: MP-750), Bureau of Reclamation, Mid-Pacific Regional Office, 2800 Cottage Way, Sacramento CA 95825-1898, telephone: (916) 978-5130.

Copies of the PR/FES are available for inspection at the address above and at the following locations:

- **Bureau of Reclamation**, Technical Liaison Division, 1849 C Street, NW., room 7456, Washington DC 20240, telephone: (202) 208-4662.
- Bureau of Reclamation, Denver Office Library, Building 67, room 167, Denver Federal Center, Denver CO 80225, telephone: (303) 236-6963.

Libraries: California State University, 2000 Jed Smith Dr., Sacramento, California; Sacramento County Library, 536 Downtown Plaza, Sacramento, California; Shasta County Public Library, 1855 Shasta, Redding, California; Tehama County Public Library, 645 Madison, Red Bluff, California; University of California, Water Resources Center, Berkely Archives Collection, Berkeley, California.

FOR FURTHER INFORMATION CONTACT: Colette Diede (Project Manager, Bureau of Reclamation, Mid-Pacific Region), (916) 978-4956; Douglas Kliensmith (Project Environmental Specialist, Bureau of Reclamation, Mid-Pacific Region), (916) 978-5121; or Dr. Wayne Deason (Manager, Environmental Services Staff, Bureau of Reclamation, Denver Federal Center), (303) 236-9336.

SUPPLEMENTARY INFORMATION: The PR/FES analyzes two action alternatives which would provide a permanent solution to the temperature problem in the upper Sacramento River. The recommended plan proposes construction of a conventional multilevel intake device that allows selective withdrawal of water. This device would allow releases to be made through the powerplant, thereby accessing the coldest water in Shasta Lake, and at the same time providing for temperature, water quality, and water-supply needs. Construction of the device would allow for withdrawals from various reservoir depths, either singly or in combination, to control the temperature, turbidity, and/or dissolved oxygen content of the releases. The other action alternative is a bypass of the Shasta Powerplant. This alternative would be an operational scheme designed to use the cold water resource in Shasta Lake without any structural changes, but which would be less effective in controlling temperature of releases and would result in a significant loss of electrical power production.

The PR/FES also presents the comments received during the 90-day public review of the draft statement and provides Reclamation's responses.

Dated: May 16, 1991.

D.W. Webber,

Assistant Commissioner, Engineering and Research.

[FR Doc. 91-13548 Filed 6-6-91; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office is:

Louisiana-Pacific Corporation, 111 SW Fifth Ave., Portland, OR 97204

2. Wholly owned subsidiaries which will participate in the operations, and State(s) of incorporation are:

a. Kirby Forest Industries, Inc. (Delaware), Route 1, Box 104, Bon Wier, TX 75928
b. Rounds & Porter Company (Delaware), 9233 Denton Dr., Dallas, TX 75235
c. Rounds & Porter Company (Delaware), P.O. Box 1455, Dodge City, KS 67801
d. Rounds & Porter Company (Delaware), P.O. Box 1395, Salina, KS 67402
e. Rounds & Porter Company (Delaware), P.O. Box 470465, Tulsa, OK 74147

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-13535 Filed 6-6-91; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31887]

Chicago Southshore & South Bend Railroad Co.—Trackage Rights Exemption—Illinois Central Railroad

Illinois Central Railroad (IC) has agreed to grant Chicago Southshore & South Bend Railroad Company (CSS&SB) the right to use its existing overhead trackage rights—between milepost (AO) 39.0, at South Joliet, IL, and Kensington Station in Chicago, IL, near milepost 14—to interchange with The Belt Railway of Chicago at 95th Street in Chicago (approximately milepost 11.6±).[1] The trackage rights were to become effective on May 31, 1991.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Suzanne M. Te Beau, Weiner, McCaffrey, Brodsky, Kaplan & Levin, P.C., suite 800, 1350 New York Avenue, NW., Washington, DC 20005-4797.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: June 3, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland Jr.,

Secretary.

[FR Doc. 91-13536 Filed 6-6-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or

[1] The referenced existing trackage rights were granted under a notice of exemption in Finance Docket No. 31236, *Chicago South Shore and South Bend Railroad—Trackage Rights—Illinois Central Gulf Railroad Company* (not printed), served and published March 10, 1988 (53 FR 7812). CSS&SB is the successor to Chicago South Shore and South Bend Railroad Co. See Finance Docket No. 31575, *Chicago Southshore & South Bend Railroad Co.—Acquisition and Operation Exemption—Chicago South Shore and South Bend Railroad Co.* (not printed), served and published (55 FR 924) January 10, 1990.

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threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 17, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 17, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 28th day of May 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
AT&T Communications (wkrs)	Buffalo, NY	05/28/91	05/21/91	25,856	Communications Services.
B&S Testers Inc. (wkrs)	Gillette, WY	05/28/91	05/17/91	25,857	Oil Service.
Bestform Foundation (wkrs)	Johnstown, PA	05/28/91	05/11/91	25,858	Sleepwear.
Bogert Oil Co. (wkrs)	Oklahoma City, OK	05/28/91	05/20/91	25,859	Oil and Gas.
Carlon/Thyroco (wkrs)	Telford, PA	05/28/91	05/16/91	25,860	Dimmer Switches and Fan Controls.
Comptab Technologies	Chicago, IL	05/28/91	05/17/91	25,861	Central Office Equip.
Dana Corp.—Parish Div. (USWA)	Reading, PA	05/28/91	05/15/91	25,862	Vehicle Frames.
Darawool Inc. (wkrs)	Queens Village, NY	05/28/91	05/18/91	25,863	Steel Wool.
Electronic Services Inc. (wkrs)	Portland, OR	05/28/91	05/14/91	25,864	Telephone Devices.
Ensearch Exploration, Inc. (wkrs)	Midland, TX	05/28/91	05/15/91	25,865	Oil and Gas.
Fayscott Co. (wkrs)	Dexter, ME	05/28/91	05/14/91	25,866	Gear Hobbers and Surface Grinders.
Fiatallis North America, Inc. (company)	Irving, TX	05/28/91	05/15/91	25,867	Construction Machinery.
Fiatallis North America, Inc. (company)	Carol Stream, IL	05/28/91	05/15/91	25,868	Construction Machinery.
Fiatallis North America, Inc. (company)	Portsmouth, VA	05/28/91	05/15/91	25,869	Construction Machinery.
Fiatallis North America, Inc. (company)	W. Sacramento, CA	05/28/91	05/15/91	25,870	Construction Machinery.
Fiatallis North America, Inc. (company)	Stone Mountain, GA	05/28/91	05/15/91	25,871	Construction Machinery.
Fiatallis North America, Inc. (company)	Springfield, IL	05/28/91	05/15/91	25,872	Construction Machinery.
Fiatallis North America, Inc. (company)	Cranbury, NJ	05/28/91	05/15/91	25,873	Construction Machinery.
Herman Geist Apparel Corp. (ILGWU)	Norwood, MA	05/28/91	05/17/91	25,874	Apparel.
IMC Magnetics Corp. (Florida Div.) (wkrs)	Miami Lakes, FL	05/28/91	05/13/91	25,875	Power Supplies.
Jerell, Inc.—San Antonio Mfg. (wkrs)	San Antonio, TX	05/28/91	05/17/91	25,876	Clothing.
JMS Inc. (wkrs)	Parachute, CO	05/28/91	05/15/91	25,877	Kerogen—Oil and Oil Products.
Keptel, Inc. (wkrs)	Tinton Falls, NJ	05/28/91	05/17/91	25,878	Telephone Network Devices.
Keystone Fireworks Mfg. Co., Inc. (wkrs)	Dunbar, PA	05/28/91	05/20/91	25,879	Fireworks.
Mallon Resources Corp. (wkrs)	Denver, CO	05/28/91	05/03/91	25,880	Gold and Silver.
North American Royalties, Inc. (wkrs)	Lafayette, LA	05/28/91	05/16/91	25,881	Oil and Gas.
Procter and Gamble Mfg. Co. (wkrs)	Avenel, NJ	05/28/91	05/15/91	25,882	Oils and Beauty Care Products.
Procter and Gamble Mfg. Co. (wkrs)	Staten Island, NY	05/28/91	05/15/91	25,883	Soap and Juice Products.
Richwoods Mining Co., (wkrs)	Richwoods, MO	05/28/91	05/15/91	25,884	Tiff, Barite and Barium Sulphate.
Seneca Wire & Mfg. Co., (UAW)	Fostonia, OH	05/28/91	05/13/91	25,885	Steel Wire.
Textronix Inc.—ACC, (wkrs)	Beaverton, OR	05/28/91	05/12/91	25,886	Chemical Components.
United Technologies Auto (ACTWU)	Herrin, IL	05/28/91	05/16/91	25,887	Auto Package Trays.
Vancouver Extrusion Co., Inc. (wkrs)	Vancouver, WA	05/28/91	05/08/91	25,888	Aluminum Frames and Component Parts.

[FR Doc. 91-13515 Filed 6-6-91; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut:
CT91-1 (Feb. 22, 1991) ..... p. 63, p. 65.
District of Columbia:
DC91-1 (Feb. 22, 1991) ..... p. 79, pp. 80, 83-84.
Florida:
FL91-36 (Feb. 22, 1991) ..... p. 185, p. 186.
Tennessee:
TN91-4 (Feb. 22, 1991) ..... p. 1199, pp. 1200-1201.
Virginia:
VA91-52 (Feb. 22, 1991) ..... p. 1363.
West Virginia:
WV91-2 (Feb. 22, 1991) ..... p. 1421, p. 1425.
WV91-3 (Feb. 22, 1991) ..... p. 1445, p. 1448.

Volume II

Illinois:
IL91-11 (Feb. 22, 1991) ..... p. 163, pp. 164-165.
IL91-12 (Feb. 22, 1991) ..... p. 171, pp. 172-174.
IL91-13 (Feb. 22, 1991) ..... p. 183, pp. 184-186.
IL91-14 (Feb. 22, 1991) ..... p. 195, pp. 196-198.
IL91-15 (Feb. 22, 1991) ..... p. 205, pp. 206-208.
Indiana:
IN91-3 (Feb. 22, 1991) ..... p. 279, pp. 280, 282.
Kansas:
KS91-8 (Feb. 22, 1991) ..... p. 373, p. 376.
KS91-10 (Feb. 22, 1991) ..... p. 387, p. 388.
KS91-11 (Feb. 22, 1991) ..... p. 389, p. 399.
Oklahoma:
OK91-16 (Feb. 22, 1991) ..... p. 999, pp. 1000-1001.

Volume III

Alaska:
AK91-1 (Feb. 22, 1991) ..... p. 1, pp. 2-3.
Nevada:
NV91-1 (Feb. 22, 1991) ..... p. 299, p. 301.
NV91-5 (Feb. 22, 1991) ..... p. 345, p. 346.
Utah:
UT91-3 (Feb. 22, 1991) ..... p. 409, p. 410.
UT91-8 (Feb. 22, 1991) ..... p. 429, p. 430.
UT91-9 (Feb. 22, 1991) ..... p. 433, p. 434.
UT91-11 (Feb. 22, 1991) ..... p. 437, p. 438.
UT91-12 (Feb. 22, 1991) ..... p. 439, p. 440.
Washington:
WA91-8 (Feb. 22, 1991) ..... p. 507, p. 508.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC., this 31st day of May 1991.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 91-13299 Filed 6-6-91; 8:45 am]

BILLING CODE 4510-27-M

Pension and Welfare Benefits Administration

[Application No. D-8600, et al.]

Proposed Exemptions; Gemco Ware, Inc. Amended and Restated Pension Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits

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Administration, U.S. Department of Labor, room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Gemco Ware, Inc. Amended and Restated Pension Plan (the Plan) Located in Freeport, New York

[Application No. D-8600]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the Plan of mortgage loan participation interests (the Participations) to Walter Schlessel (Schlessel), a party in interest with respect to the Plan; provided that the sale price is no less than the greater of (1) the principal amount of the Participations plus accrued interest to the date of sale, or (2) the fair market value of the Participations as of the date of the sale.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan with 27 participants and assets of approximately $420,000 as of June 30, 1990. The Plan's sponsor is Gemco Ware, Inc. (the Employer), a closely-held New York corporation engaged in the manufacture and marketing of kitchenware products in Freeport, New York. Until May 31, 1990 Schlessel and his spouse were the sole shareholders of the Employer and Schlessel was the Plan's trustee. On May 31, 1990, pursuant to a stock purchase agreement (the Agreement), Schlessel and his spouse sold all shares of the Employer to GW Products, Inc. (GWP), a New York corporation which is 90 percent owned by Triumph Capital, L.P. (Triumph), a New York limited partnership. Since May 31, 1990, the trustees of the Plan (the Trustees) have been Michael Nugent, a general partner of Triumph, and Herbert Lustig, an employee of GWP. Schlessel has continued as an officer and director of the Employer and he and his spouse each own five percent of the shares of GWP. As an element of the sale of the Employer to GWP, the Agreement provides that, subject to approval of the Department, GWP shall cause the Plan to sell the Participations to Schlessel. The Trustees are requesting an exemption to permit the Plan's sale of the Participations to Schlessel pursuant to the Agreement under the terms and conditions described herein.

2. The Participations consist of investments of Plan assets by Schlessel in mortgage participations sold by Eagle SA Funding Company (Eagle), a New York general partnership engaged in the sale of participations in mortgage loans.[1] On November 20, 1986, the Plan purchased from Eagle for $130,000 an undivided interest in a $180,000 mortgage loan made by Eagle to Samanthe Farms (the SF Participation). On December 1, 1986 the Plan purchased from Eagle for $70,000 an undivided interest in a $379,500 mortgage loan from Eagle to Lot B 37 Sarles Street, Inc. (the Lot B Participation). Each of the Participations provided for interest at the rate of sixteen percent per annum and each was guaranteed as to principal and interest payments by the two partners of Eagle. The terms of each Participation required monthly payments of interest and a final lump sum payment of principal upon maturity. The Trustees represent that the borrowers who mortgaged the underlying real properties with respect to the Participations were unrelated to the Plan.

The Plan began receiving monthly interest payments of $1,733.00 in accordance with the SF Participation on December 20, 1986 and monthly payments in that amount were received through May 20, 1989, at which time payments ceased. No interest payments with respect to the SF Participation have been received by the Plan since May 20, 1989 and no principal payments with respect to the SF Participation were received by the Plan. The Plan began receiving monthly interest payments of $933.33 in accordance with the Lot B Participation on January 1, 1987 and monthly payments in that amount were received through May 1, 1989, at which time the payments ceased. No interest payments with respect to the Lot B Participation have been received by the Plan since May 1, 1989 and no principal payments with respect to the Lot B Participation were received by the Plan. The Trustees represent that interest payments received by the Plan with respect to the Participations were paid by Eagle and that the Plan received no payments from and had no direct contact with the mortgagors of the mortgages underlying the Participations.

3. By a letter dated May 18, 1989, Eagle notified Schlessel as Plan trustee that the mortgagors of the mortgages underlying the Participations had defaulted on their interest payments to Eagle and that Eagle's interest payments to the Plan pursuant to the Participations were being suspended due to Eagle's cash flow problems. On June 10, 1990 the Plan received notice that Eagle filed a voluntary bankruptcy petition in the U.S. District Court for the Southern District of New York on May 10, 1990. The Agreement executed May 31, 1990, under which Schlessel sold all shares of the Employer to GWP, reflected the Trustees' determination that Schlessel should restore to the Plan losses caused by investments in the Participations by purchsing the Participations from the Plan.

4. The Agreement requires Schlessel to pay the Plans cash for the Participations in their face amounts, which is $130,000 for the SF Participation and $70,000 for the Lot B Participation, plus all interest accrued but unpaid under such Participations as of the date of the sale to Schlessel. The Trustees represent that these sale terms were negotiated at arm's length between Schlessel and the principals of Triumph, which they represent to have been unrelated at the time of the execution of the Agreement. The Trustees represent that an escrow agreement (the Escrow) was executed on November 16, 1990 between Schlessel and the Trustees, pursuant to which Schlessel deposited into an escrow account the face amount of the Participations plus accrued, unpaid interest calculated as of November 16, 1990 and the Trustees deposited all indicia of the Plan's ownership of the Participations. If the requested exemption is granted, the Plan will receive the cash in the Escrow plus cash representing additional accrued, unpaid interest through the date of the consummation of the proposed transaction.

5. The Trustees represent that the proposed sale of the Participations to Schlessel upon the terms provided in the Agreement is in the best interests of the Plan because the Participations do not have values in excess of their face amounts. With respect to the Lot B Participation, the Trustees state that the real property securing the mortgage underlying the Lot B Participation has been foreclosed upon by other parties with claims superior to Eagle's and that as a result the Plan's lien on the underlying real property, associated with the Lot B Participation, has been extinguished. With respect to the SF Participation, the Trustees state that efforts by Eagle's creditors to liquidate the underlying real property have been unsuccessful and that proceeds of any such sale must first satisfy more senior indebtedness of approximately $900,000 and then be shared by the Plan with six othe creditors who claims similar to the Plan's Lot B Participation. Furthermore, the Trustees represent that the Plan no longer has an exclusive claim on the proceeds of any foreclosure action with respect to the Participations because the Plan's interests in the Participations were assigned to the bankruptcy in cooperation with and for the benefit of all other creditors of Eagle (the Creditors) in Eagle's bankruptcy proceeding. The Trustees represent that they assigned the Plan's interests under the Participations to the bankruptcy estate in concert with the Creditors, who hold conflicting interests issued by Eagle in the same underlying real properties, because the nature and priorities of the various claims are unclear and inadequately documented and because counsel to the Creditors advised that legal action would commence against any Eagle investors who did not join in assigning interests for the benefit of all Creditors.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The Plan will recover its principal investment in the Participations plus the accrued, unpaid interest required by the Participations' terms through the date of the transfer; (2) The Plan will receive cash for the Participations, which the Trustees have determined to have no value in excess of their face amounts; and (3) The Plan will avoid further illiquidity and loss of income resulting from the investments in the Participations, which constitute about one-half of the Plan's assets.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202)523-8881. (This is not a toll-free number.)

Merrill Lynch, Pierce, Fenner & Smith Incorporated

[Application No. D-8603]

Proposed Exemption

Based on the facts and representations set forth in the above referenced application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

I. Transactions

(a) The restrictions of sections 406(a)(1) (A) through (D) and 406(b) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (F) of the Code shall not apply to the following transactions in connection with purchases and sales of securities issued by a Merrill Lynch Mutual Fund, if the conditions set forth in sections II and III are met.

(1) The effecting by a Distributor of a purchase or sale on behalf of a plan of securities issued by a Merrill Lynch Mutual Fund.

(2) The receipt of a sales commission by a Distributor in connection with the purchase or sale by a plan of securities issued by a Merrill Lynch Mutual Fund.

II. General Conditions

(a) The transaction is affected by the Distributor in the ordinary course of its business as an investment company principal underwriter.

(b) The transaction is on terms at least as favorable to the plan as an arm's-length transaction with an unrelated party would be.

(c) The combined total of all fees, commissions and other consideration received by a Distributor for the provision of services to the plan and in connection with the purchase or sale of securities issued by a Merrill Lynch Mutual Fund is not in excess of "reasonable compensation" within the contemplation of sections 408(b)(2) and 408(c)(2) of the Act and sections 4975(d)(2) and 4975(d)(10) of the Code. If such total is in excess of "reasonable compensation," the "amount involved" for purposes of the civil penalties of section 502(i) of the Act and the excise taxes imposed by section 4975 (a) and (b) of the Code is the amount of compensation in excess of "reasonable compensation."

III. Specific Conditions

(a) The Distributor is not (1) a trustee of the plan (other than by reason of serving as a nondiscretionary trustee who does not render investment advice with respect to any assets of the plan or a trustee of the GIC Trust); (2) a plan administrator (within the meaning of section 3(16)(A) of the Act and section 414(g) of the Code); or (3) a fiduciary who is expressly authorized in writing to manage, acquire or dispose on a discretionary basis of those assets of the plan that are or could be invested in securities issued by a Merrill Lynch Mutual Fund or in units of the GIC Trust; or (4) an employer any of whose employees are covered by the plan.

(b) Prior to the execution of a transaction, the Distributor provides to an independent plan fiduciary with respect to the plan:

(1) A written document separate from the fund prospectus which lists, for each investment, the types of information required to be disclosed under paragraph (2) of this subsection, and describes where such information can be located; and

(2) The following information in writing and in a form calculated to be understood by a plan fiduciary who has no special expertise in investment matters:

(A) The nature of the Distributor's relationship to the Merrill Lynch Mutual Fund and the limitation, if any, that such relationship plances upon its ability to recommend investment company securities.

(B) The sales commission, expressed as a percentage of the dollar amount of

[1] The Department expresses no opinion as to whether the investments of Plan assets in the Participations were in violation of section 404(a) of the Act. Section 404(a)(1) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interests of the plan's participants and beneficiaries and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan.

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the plan's gross payment and of the amount actually invested, that will be received by the Distributor in connection with the purchase or sale of the recommended securities issued by the investment company;

(C) A detailed description of any other charges, fees, discounts, penalties, or adjustments which may be imposed in connection with the purchase, holding, exchange, termination or sale of such securities.

(D) A description of the investment objectives and policies of the Fund or Funds whose securities are being purchased or sold, and the principal risk factors associated with investment in such Fund or Funds;

(E) A description of the management of the Fund or Funds, including the board of directors and the investment adviser and their affiliations (if any) with Merrill Lynch, and any other person or persons who provide significant administrative or business affairs management services;

(F) A statement of expenses of the Fund or Funds;

(G) A description of the procedure or procedures for redeeming securities of the Fund or Funds;

(H) A description of any material pending legal proceedings involving the Fund or Funds.

(3) Following receipt of the information required to be disclosed in paragraphs (b) (1) and (2) of this section, and prior to the execution of the transaction, the Independent Fiduciary approves the transaction on behalf of the Plan. Such fiduciary may be an employer of employees covered by the plan, but may not be a principal underwriter involved in the transaction. Such fiduciary may not receive, directly or indirectly (e.g., through an affiliate), any compensation or other consideration for his or her own personal account from any party dealing with the plan in connection with the transaction.

(c)(1) With respect to additional purchases of securities issued by Merrill Lynch Mutual Funds, the written disclosure required under paragraphs (b) (1) and (2) of this section need not be repeated, unless—

(A) More than one year is passed since such disclosure was made with respect to the same kind of security, or

(B) The security being purchased or sold or the commission with respect thereto is materially different from that for which the approval described in subparagraph (b)(3) of this section was obtained.

(d)(1) The Distributor shall retain or cause to be retained for a period of six years from the date of any transaction covered by this exemption the following:

(A) The information disclosed with respect to such transaction pursuant to paragraphs (b) and (c) of this section; and

(B) Any additional information or documents provided to the Independent Fiduciary described in paragraph (b) of this section with respect to such transaction.

(2) A prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the Distributor, such records are lost or destroyed prior to the end of such six-year period.

(3) Notwithstanding anything to the contrary in sections 504 (a)(2) and (b) of the Act, such records are unconditionally available for examination during normal business hours by duly authorized employees or representatives of the Department of Labor, the Internal Revenue Service, plan participants and beneficiaries, any employer of plan participants and beneficiaries, and any employee organization any of whose members are covered by the plan.

IV. Definitions

For purposes of this exemption:

(a) The term "Merrill Lynch Mutual Fund" means any investment company registered under the Investment Company Act of 1940 for which Merrill Lynch Asset Management, Inc. or Fund Asset Management, Inc. serves as investment adviser, and for which a Distributor serves as principal underwriter (as that term is defined in section 2(a)(29) of the Investment Company Act of 1940, 15 U.S.C. 80a-2(a)(29)).

(b) The term "Distributor" means Merrill Lynch Funds Distributor, Inc., and Merrill Lynch, Pierce, Fenner & Smith Incorporated or any affiliate.

(c) The term "affiliate" means:

(1) Any direct or indirect wholly-owned subsidiary of Merrill Lynch & Co., Inc.;

(2) Any person directly or indirectly controlling, controlled by, or under common control with Merrill Lynch, Pierce, Fenner & Smith Incorporated or Merrill Lynch Funds Distributor, Inc.;

(3) Any officer, director, employee (including, in the case of a principal underwriter, any registered representative thereof, whether or not such person is a common law employee of such principal underwriter), or relative of any such person, or any partner in such person; or

(d) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) The term "GIC Trust" means the Merrill Lynch GIC Managed Trust, a qualified group trust within the meaning of Revenue Ruling 81–100, of which Merrill Lynch Trust Company (or its successor) serves as trustee.

(f) The term "Independent Fiduciary" means a fiduciary with respect to a plan, which fiduciary has no relationship to or interest in a Distributor that might affect the exercise of such fiduciary's best judgment as a fiduciary.

(g) The term "nondiscretionary trustee" of a plan means a trustee whose powers and duties with respect to any assets of the plan are limited to (1) the provision of nondiscretionary trust services to the plan, and (2) duties imposed on the trustee by any provision or provisions of the Act or the Code. The term "nondiscretionary trust services" means custodial services and services ancillary to custodial services, none of which services are discretionary.

(h) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

EFFECTIVE DATE: If granted, this exemption will be effective June 7, 1991.

Summary of Facts and Representations

1. Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPF&S"), is a wholly-owned subsidiary of Merrill Lynch & Co., Inc. (referred to herein, along with other subsidiaries of Merrill Lynch & Co., Inc., collectively as "Merrill Lynch Affiliates"). MLPF&S is one of the world's largest securities firms. Incorporated in 1953, MLPF&S is currently a registered broker-dealer under the Securities Exchange Act of 1934 and a member of the various securities and futures exchanges. In the course of its activities, MLPF&S is subject to regulation by the Securities and Exchange Commission, the National Association of Securities Dealers, Inc., the National Futures Association, and various other federal and state agencies. MLPF&S is also registered as an investment adviser with the Securities and Exchange Commission, as well as with certain states that require such registration.

MLPF&S provides a variety of services to employee pension benefit plans including the execution of securities transactions, custodial services for plan securities and recordkeeping services. In certain instances, MLPF&S may also invest plan funds in accordance with

standing instructions (either plan-level instructions or participant-level instructions, depending on the type of plan). These services and other Merrill Lynch Affiliate services and financial products provided to employee benefit plans are marketed principally through MLPF&S brokers (who are referred to as "Financial Consultants"). MLPF&S and the Financial Consultants may receive commissions or other compensation based on the services or investment products sold through their efforts.

2. Merrill Lynch Funds Distributor, Inc. (MLFD), a wholly-owned subsidiary of Merrill Lynch Asset Management, Inc. (MLAM) (which is in turn an indirect wholly-owned subsidiary of Merrill Lynch & Co., Inc.), generally acts as the principal underwriter (as defined in section 2(a)(29) of the Investment Company Act of 1940) for Merrill Lynch Mutual Funds (described below).[2] MLFD is a registered broker-dealer under the Securities Exchange Act of 1934, and is subject to the regulatory requirements of the Investment Company Act of 1940.

MLFD offers shares of Merrill Lynch Mutual Funds on a continuous basis under distribution agreements with each Fund. MLFD markets and sells these shares through MLPF&S, with which it has entered into a selling securities dealer agreement.

3. Merrill Lynch Trust Company (MLTC) is a wholly-owned subsidiary of Merrill Lynch & Co., Inc., which was incorporated in 1987. It is a New Jersey state-chartered qualified bank and limited purpose trust company, subject to regulation and periodic examination by the New Jersey Department of Banking and supervisory control of the New Jersey Commissioner of Banking. MLTC provides nondiscretionary trust services to plans, and serves as trustee of the GIC Trust. As trustee of the GIC Trust, MLTC does not have any discretionary authority, responsibility, or control with respect to assets of a participating plan that could be used to purchase Merrill Lynch Mutual Fund shares or units in the GIC Trust.

4. The Merrill Lynch Mutual Funds which are the subject of this proposed exemption are open-end investment companies registered under the Investment Company Act of 1940 for which MLAM or Fund Asset Management, Inc., a wholly-owned subsidiary of MLAM, served as the investment adviser. There are over 70 Merrill Lynch Mutual Funds holding approximately $94 billion in assets. The funds offer different levels of risk and a range of choices of investment objectives, such as capital preservation, current income, or long-term or short-term growth. Plan fiduciaries may invest plan assets in such funds, and sponsors of participant-directed account plans may select appropriate Merrill Lynch Mutual Funds as investment options for their plan participants. Shares of Merrill Lynch Mutual Funds are redeemable upon receipt by MLPF&S or a Fund's transfer agent upon proper notice of redemption. Proceeds from such redemption are generally received either into the investor's MLPF&S securities account within 5 business days after the date of the transaction, or by check within two weeks.

MLFD and MLPF&S are compensated for their distribution and sales expenses through one of two methods depending on the type of shares sold. The Mutual Funds generally offer two classes of shares, Class A and Class B. Class A shares are sold subject to a front-end sales load, or sales commission, that is paid at the time of sale to the broker-dealer (MLPF&S or MLFD) responsible for the sale. Shares acquired upon automatic reinvestment of dividends or capital gains distributions from Class A shares are not subject to the sales load, and the sales load may be waived or reduced under certain conditions described in the Mutual Fund prospectuses.

Class B shares are not subject to an initial front-end load, but rather to a contingent deferred sales charge upon disposition of the shares and to ongoing distribution fees. The deferred sales charge declines as the number of years between the purchase and sale of the shares increases, and generally expires after 6 years, depending on the particular fund. The ongoing distribution fees are charged against the fund's net asset value represented by the Class B shares, in accordance with a distribution plan adopted by the fund pursuant to the requirements of Rule 12b–1 of the Investment Company Act of 1940.

In selling Merrill Lynch Mutual Fund shares to plans, Merrill Lynch Affiliates have, when appropriate, relied upon the relief afforded by Prohibited Transaction Exemption 84–24 (PTE 84–24, 49 FR 13208, April 3, 1984).

5. The Merrill Lynch Affiliates have developed the Merrill Lynch GIC Managed Trust (GIC Trust or Trust). The Trust is a qualified group trust maintained under Revenue Ruling 81–100 by Merrill Lynch Trust Company (MLTC), a Merrill Lynch Affiliate.

The assets of the Trust are invested in GICs, bank investments contracts, and other investments with similar characteristics, as well as money market instruments. the Trust's assets are not and will not be invested in contracts issued by, or in funds advised or managed by, Merrill Lynch Affiliates. As of December 31, 1990, the Trust contained approximately $145 million in assets. For the first six months of 1990, the Trust assets earned a net annual effective yield of 8.5 percent.

The Trust is maintained as a bank collective trust fund. MLTC, as trustee, is required under applicable banking law to have discretion as to the investment of trust assets. Thus, MLTC has the responsibility for the maintenance, investment, reinvestment, and administration of the GIC Trust. The assets of the GIC Trust consist of investments that MLTC, it its sole discretion, determines to be suitable and appropriate for the Trust.

Under the Declaration of Trust, MLTC may retain investment advisers, who may be affiliates of MLTC. MLTC has retained MLAM as its investment adviser. MLAM's investment advisory role is limited to assisting MLTC in formulating a list of approved investments for the GIC Trust and in making investment recommendations based on its monitoring of the guaranteed investments market and the specific investments held by the Trust. MLAM has no discretion in the decision of how the GIC Trust assets are invested. MLAM's compensation for providing investment advice is paid by MLTC from its fee.

Units in the Trust are marketed and sold through MLPF&S, primarily through its Financial Consultants and business financial services department.[3] There are no direct sales charges to unit holders. Sales and marketing expenses and sales commissions are paid out of MLTC's fee.

6. PTE 84–24 provides relief from the prohibitions of sections 406(a)(1)(A) through (D) and 406(b) of the Act, and from the taxes imposed by section 4975 of the Code for certain classes of transactions involving plan purchases, of insurance or annuity contracts and of securities issued by registered investment companies, and the receipt of sale commissions in connection therewith. However, no relief is available under PTE 84–24 if the investment company principal underwriter or its affilitate is a plan trustee other than a discretionary trustee who does not render investment

[2] In certain limited cases, MLPF&S acts as the principal underwriter for certain of these funds.

[3] The Department notes that this exemption provides no relief for any prohibited transaction that may occur as a result of a plan's purchase or sale of units in the GIC Trust. See section 408(b)(8) of the Act.

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advice with respect to any plan assets. MLTC is a trustee other than a nondiscretionary trustee with respect to plans that purchase interests in the GIC Trust. Consequently, the relief provided by PTE 84–24 is unavailable to those Merrill Lynch Affiliates which sell Merrill Lynch Mutual Fund shares to plans that have invested in the GIC Trust.

7. The applicant requests relief to permit a Distributor to effect a purchase or sale of securities issued by a Merrill Lynch Mutual Fund on behalf of a plan and to receive a sales commission in connection with such purchase or sale. The applicant represents that it will, in general, comply with the conditions in PTE 84–24. The applicant also represents that the trustee of the GIC Trust does not have any discretionary authority, responsibility or control with respect to assets of a participating plan that could be used to purchase Merrill Lynch Mutual Fund Shares. Finally, the applicant has suggested additional conditions for the protection of the participants and beneficiaries of the plan, including the provision of more detailed disclosure.

8. In summary, the applicant represents that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act because: (a) The decision to invest in a Merrill Lynch Mutual Fund will be made by an independent plan fiduciary; (b) the independent plan fiduciary will receive prior to making an investment decision, detailed disclosures regarding fees, investment objectives and other relevant information; (c) all the transactions will be conducted on an arm's-length basis; and (d) the combined total of all fees, commissions, and other consideration received by a Merrill Lynch affiliate in connection with purchase and sale transactions involving Merrill Lynch Mutual Fund shares will not be in excess of reasonable compensation within the meaning of sections 408(b)(2) and 408(c)(2) of the Act.

FOR FURTHER INFORMATION CONTACT: Ms. Lyssa E. Hall of the Department at (202) 523–8971. (This is not a toll-free number.)

Electro-Matic Products, Inc. Profit Sharing Plan (the Plan) Located in Farmington Hill, Michigan

[Application No. D–8684]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the Plan of certain vacant land (the Land) to Electro-Matic Products Inc. (the Employer), the sponsor of the Plan; provided that the Plan receives the greater of $260,000 or the fair market value at the time of the sale.

Summary of Facts and Representations

1. The Plan, established on January 1, 1974, is a profit sharing plan with five participants, which as of September 30, 1990 had $1,756,710.10 in total assets. The applicant represents that the Plan provides for individual accounts. The Employer, which is in the business of distributing automotive equipment, was incorporated in the State of Michigan on June 1, 1969. The trustees of the Plan are Raymond J. Persia, Tom C. Moore and Robert Waldie, who collectively own 100% of the common stock of the Employer. The Plan was terminated on December 10, 1989 by the action of the Board of Directors of the Employer. The applicant represents that a form 5310 (Application for Determination upon Termination) was filed with the Internal Revenue Service (IRS) on June 8, 1990. IRS has issued a favorable determination on the termination by letter dated August 27, 1990.

2. The Plan acquired the Land on March 6, 1979 for investment purposes from John and Eileen Cole, independent parties with respect to the Plan and the Employer. The acquisition was for $218,000 in cash. The Land, located in Bear Creek Township in northwest upper Michigan, is a 4.7 acre parcel of vacant land. An appraisal of the Land was prepared on November 7, 1990, by Lloyd G. Kirby, MAI and Michael L. Navarre, RM (The Appraisers), independent and qualified Appraisers with Michigan Appraisal Company, Inc. The Appraisers relied primarily on the sales comparison appraisal method and determined that as of November 7, 1990, the fair market value of the Land was $260,000.[4] The applicant represents that the Land is not adjacent to any other property owned by parties in interest. Furthermore, the Land has never been used by or leased to any parties in interest.

[4] The Department is providing no opinion herein as to whether the Plan's acquisition or holding of the Land violated any provision of part 4 of title I of the Act.

3. The applicant represents that the Plan will experience economic hardship if the transaction is denied because the Plan will be prevented from liquidating the assets that are currently invested in the Land. The applicant also represents that the Plan has unsuccessfully attempted to sell the Land since its initial acquisition in 1979. The Plan has retained the services of four different realtors in its attempts to sell the Land. As such, the denial of the proposed transaction would delay and possibly reduce the amount of cash distributions to the Plan participants. Furthermore, the proposed sale will be for cash and the Plan will incur no expenses with respect to the transaction. Therefore, the applicant represents that the proposed sale is administratively feasible, protective and in the best interest of the Plan.

4. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The proposed sale will be a one-time cash transaction;

(b) The price paid to the Plan will be the greater of $260,000 or the fair market value as determined at the time of the sale by an independent, qualified appraiser;

(c) The Plan will pay no expenses associated with the transaction; and

(d) The sale will enable the Plan to liquidate its assets and, upon termination, to make cash distributions to the Plan participants.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate

for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 4th day of June, 1991.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 91–13513 Filed 6–6–91; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL SCIENCE FOUNDATION

Permit Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On April 29, 1991, the National Science Foundation published a notice in the Federal Register of permit applications received. A permit was issued to Richard R. Veit on June 3, 1991: The applicant's request to take birds was approved in part. Approval was granted to take the following specimens:

Species	Number
Cape Pigeon	10
Snow Petrel	10
Blue Petrel	10
Antarctic Fulmar	10
Dove Prion	10
Fairy Prion	2
Kerguelen Petrel	5
Common Diving-Petrel	20

Special Conditions:

- All specimens should be collected at sea.
- No specimens should be taken while ashore.
- Species of seabird prohibited from collection:
  - Wandering and grey-headed albatrosses.
  - Grey-black storm petrels.
  - Emperor penguins.
  - Yellow-bill Pintails.
  - Pipits.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 91–13473 Filed 6–6–91; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–261]

Carolina Power & Light Co., H.B. Robinson Steam Electric Plant, Unit No. 2, Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Carolina Power & Light Company (the licensee) for an amendment to Facility Operating License No. DPR–23, issued to the licensee for operation of the H.B. Robinson Steam Electric Plant, Unit No. 2, located in Darlington County, South Carolina. Notice of Consideration of Issuance of this amendment was published in the Federal Register on March 20, 1991 (56 FR 11774).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to change the one-point calibration check of the excore nuclear power range detectors from a monthly interval to an interval of at least once per effective full power month. The NRC staff has concluded that the licensee's request cannot be granted.

By July 8, 1991, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene. A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to R.E. Jones, General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated January 7, 1991, as supplemented April 15, 1991, and (2) the Commission's letter to notify the licensee of the Commission's denial dated

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC, 20555, attention: Document Control Desk.

Dated at Rockville, Maryland, this 30th day of May 1991.

For the Nuclear Regulatory Commission

Anthony J. Mendiola,

Acting Director, Project Directorate II–1, Division of Reactor Projects II/I, Office of Nuclear Reactor Regulation.

[FR Doc. 91–13537 Filed 6–6–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–461]

Illinois Power Co., et al., Clinton Power Station, Unit No. 1 Denial of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied in part a request by the licensees for amendment to Facility Operating License No. NPF–62, issued to the Illinois Power Company and Soyland Power Cooperative (the licensees), for operation of the Clinton Power Station (CPS), Unit No. 1 (the facility) located in DeWitt County, Illinois.

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During the performance of a routine functional test of Main Steam Isolation Valve (MSIV) dual solenoid valves, the Main Control room failed to receive positive indication of full closure of inboard MSIV 1B21–F022D. The valve was verified to have been closed through the use of other control room indications. The problem was traced to a malfunctioning limit switch which provides the "open" position signal for indication in the Main Control room. During the licensees' evaluation of the event and TS-required action statement, it appeared that a change to CPS TS 3.3.7.5 would be required to prevent an unnecessary plant shutdown not only for this event but also in the event of a similar occurrence in the future.

The amendment, as proposed by the licensees, would consist of changes to the Technical Specifications (appendix A to Facility Operating License No. NPF–62.

Technical Specification (TS) 3/4.3.7.5, "Accident Monitoring Instrumentation," describes Limiting Conditions for Operation (LCO) for inoperable primary containment isolation valve (PCIV) position indication(s). The licensees proposed to modify the TS Action statements (82 a. and 82 b.) by providing a footnote following the words, "restore the inoperable channel(s) to OPERABLE status within 30 days," for Action 82a. and "restore the inoperable channel(s) to OPERABLE status within 7 days," for Action 82b. The licensees' submittal included the following proposed footnote:

> If the location(s) of failure is inaccessible during plant operation, operation may continue provided that a planned alternate method for determining the post-accident isolation status of the associated containment penetration(s) is implemented. The provisions of Technical Specification 3.0.4 are applicable if this alternative is utilized.

The licensees' application for an amendment to operating license NPF–62 was dated May 15, 1991, and supplemented by a letter dated May 22, 1991.

The portion of the amendment application which proposed the use of the TS for any PCIV is interpreted by the staff as being potentially generic in nature and thus not appropriate to issue on an emergency basis; therefore, the staff has denied this aspect of the licensee's request. The staff determined that the proposed amendment was acceptable as applied to the current MSIV failure and the licensees' proposed alternate method for determining containment penetration status alone.

The licensees were notified of the Commission's denial of this request by letter dated May 30, 1991. All other changes requested by the licensees' application have been approved by Amendment No. 58. Notice of issuance of Amendment No. 58 will be published in the Commission's regular biweekly **Federal Register** notice.

By July 8, 1991, the licensees may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC, 20555 and to Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606, attorney for the licensees.

For further details with respect to this action, see (1) the application for amendment dated May 15, 1991; (2) its supplement dated May 22, 1991; and (3) the Commission's Safety Evaluation issued with Amendment No. 58 to NPF–62 dated May 30, 1991 which are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC, and at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727. A copy of item (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC, 20555, attention: Division of Reactor Projects—III/IV/V.

Dated at Rockville, Maryland, this 30th day of May 1991.

John N. Hannon,

Director, Project Directorate III–3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91–13578 Filed 6–6–91; 8:45 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

Commission Visit

June 4, 1991.

Commission Chairman George W. Haley, Commissioner W.H. "Trey" LeBlanc, III and other members of the Commission advisory staff will visit Scan-Code, East Hartford, Connecticut on Tuesday afternoon June 18, 1991, and ADVO-System, Windsor, Connecticut on Wednesday morning June 19, 1991. The purpose of the visits is to learn of mailer practices to take advantage of new rate discounts.

A report of these visits will be on file with the Commission Docket Room. For further information contact Gerald Cerasale at 202–789–6871.

Charles L. Clapp,

Secretary.

[FR Doc. 91–13493 Filed 6–6–91; 8:45 am]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–29260; International Series Release No. 279; File No. SR–Amex–91–10]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc. Relating to Index Warrants Based on the FT–SE Eurotrack 200 Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 17, 1991, the American Stock Exchange, Inc. ("Amex") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is proposing to approve for listing and trading under section 106 of the Amex Company Guide index warrants based on the Financial Times-Stock Exchange ("FT–SE") Eurotrack 200, an index of 200 stocks representing twelve European countries.

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Under section 106 (Currency and Index Warrants) of the Amex Company Guide, the Exchange may approve for listing index warrants based on established foreign and domestic stock indices. The Amex is proposing to list index warrants based on the FT–SE Eurotrack 200 ("Index"), a capitalization-weighted index of 200 leading stocks representing twelve European countries. All stocks in the Index are traded through the facilities of the International Stock Exchange of the United Kingdom and the Republic of Ireland ("ISE") via the Stock Exchange Automated Quotation System ("SEAQ") (companies in the U.K. and the Republic of Ireland) or SEAQ International (non-U.K. or Republic of Ireland companies).

From 9:45 a.m. to 3:30 p.m. (London Time) the Index, which is designed and managed by ISE, is calculated and disseminated minute by minute utilizing SEAQ and SEAQ International real time prices. The Index is widely disseminated via publications (e.g., Financial Times) and commercial information vendors.

The capitalization weighting for Index component stocks for each Index country are as follows, as of April 2, 1991: U.K. (42.56%); Germany (15.04%); France (13%); Netherlands (7.24%); Switzerland (6.33%); Italy (5.98%); Spain (3.77%); Belgium (2.94%); Sweden (2.06%); Ireland (0.66%); Norway (0.26%); Denmark (0.17%).

Such warrant issues will conform to the listing guidelines under section 106, which provide that (1) the issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed size and earnings requirements in section 101(a) of the Company Guide; (2) the term of the warrants shall be for a period ranging from one to five years from date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants, together with a minimum of 400 public holders, and an aggregate market value of $4,000,000.

Eurotrack 200 index warrants will be direct obligations of their issuer subject to cash-settlement during their term, and either exercisable throughout their life (i.e., American style) or exercisable only on their expiration date (i.e., European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the Eurotrack 200 has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the Eurotrack 200 has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

The Amex has adopted suitability standards applicable to recommendations to customers of index warrants and transactions in customer accounts. Rule 411, Commentary .02 applies the options suitability standard in rule 923 to recommendations regarding index warrants; and the Amex recommends that index warrants be sold only to options-approved accounts. Rule 421, Commentary .02 requires a Senior Registered Options Principal or a Registered Options Principal to approve and initial a discretionary order in index warrants on the day entered. In addition, the Amex, prior to the commencement of trading, will distribute a circular to its membership calling attention to specific risks associated with warrants on the Eurotrack 200.

In its approval order for index warrants (Release No. 34–26152, October 3, 1988), the Commission noted that, in connection with trading of index warrants based on a foreign index, there should be adequate surveillance sharing agreements with respect to the component stocks of the underlying index. The Amex has in place surveillance sharing agreements with certain principal markets where the component Index securities are traded.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Securities Exchange Act of 1934 ("Act") in general and furthers the objectives of section 6(b)(5) of the Act in particular in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements, with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number in the caption above and should be submitted by June 28, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 31, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–13507 Filed 6–6–91; 8:45 am]

BILLING CODE 8010–01–M

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[Release No. 34-29283; File No. SR-PHLX-91-10]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Proper Utilization of the Exchange's Security System

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 9, 1991, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX, pursuant to rule 19b-4 of the Act, proposes to amend regulation 7—Proper Utilization of the Security System, enacted as a regulation of order and decorum under PHLX rule 60. Specifically, the proposed amendment will clarify that any Exchange member or participant, or employee thereof, will be required to pass through the Exchange's security system upon entering and exiting the Exchange's trading facilities. Previously, regulation 7 prohibited Exchange members and participants, and employees thereof, from circumventing the Exchange's security system.

A copy of proposed PHLX regulation 7(a) is attached as exhibit A.

II. Self-Regulatory Organization's Statements Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to codify an existing interpretation of regulation 7(a), regarding attempts to circumvent the Exchange's security system. Enacted under PHLX rule 60 as a regulation of order and decorum, regulation 7(a) seeks to fortify Exchange security and penalize transgressors. The PHLX believes that the goal of maintaining safety and security on the Exchange floor is a predominant purpose of rule 60. In this regard, the rule change proposes to add "entry and exist" in the text of this regulation in place of "circumvent". The PHLX believes that because this was the original intent of the provision, the language should be formally amended for both clarity and notice to the floor. Regulations of order and decorum seek to not only punish violations thereof, but to encourage that very order and decorum by deterring violations; clarity and completeness in the language of the provisions serves this purpose. The PHLX notes that regulations 7 (b) and (c) remain unchanged under this proposal.

This proposed rule change is consistent with the Act, and, in particular, section 6(b)(5) in that it is designed to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of rule 19b-4 because it is a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing Exchange rule. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR-PHLX-91-10 and should be submitted by June 28, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 31, 1991.

Jonathan G. Katz,

Secretary.

Exhibit A

New text italicized, deleted text bracketed.

Regulation 7—Proper Utilization of the Security System

(a) Attempt to Circumvent the Security System of the Exchange

Any member/participant or employee of a member/participant firm who wishes to enter or exit the Exchange trading facilities must do so through the areas where the Exchange Security Systems are located.

[It is strictly prohibited for any member/participant or employee of a member/participant firm to attempt to circumvent the Security System of the Exchange.]

1st Occurrence—$250
2nd Occurrence—$500
3rd and Thereafter—Sanctions are discretionary with the Business Conduct Committee

(b) No change.
(c) No change.

[FR Doc. 91-13508 Filed 6-6-91; 8:45 am]
BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

June 3, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted privileges in the following securities:

Telephonos de Mexico, S.A.
American Depositary, No Par Value (File No. 7-6885).
Terex Corporation
Common Stock, $0.01 Par Value (File No. 7-6886).

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 24, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-13446 Filed 6-6-91; 8:45 am]
BILLING CODE 8010-01-M

Issuer Delisting; Application To Withdraw From Listing and Registration (Farah Incorporated, Common Stock, $4 Par Value) File No. 1-5400

June 3, 1991.

Farah Incorporated ("Company") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and rule 12d2-2(d) promulgated thereunder to withdraw its Common Stock from listing and registration on the Pacific Stock Exchange, Inc. ("PSE")

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

Farah Incorporated already is listed on the New York Stock Exchange ("NYSE"). The Company's Board of Directors feels that by being listed on both the NYSE and PSE the relatively low volume of Farah stock activity is being diluted. In addition, the Company will experience a cost reduction by remaining listed only on the NYSE.

Any interested person may, on or before June 24, 1991 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the NYSE and/or PSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matters.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-13445 Filed 6-6-91; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 35-25324]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

May 31, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 24, 1991 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Georgia Power Company

(70-7843)

Georgia Power Company ("Georgia Power"), 333 Piedmont Avenue, NE., Atlanta, Georgia 30308, an electric public-utility subsidiary company of The Southern Company, a registered holding company, has filed a declaration under section 12(d) of the Act and rule 44 thereunder.

Georgia Power has ownership interests as a tenant in common in Plant Robert W. Scherer ("Plant Scherer"), consisting of four 810 MW nominally rated coal fired generating units in Monroe County, Georgia. Georgia Power's interests in Plant Scherer are: (1) 8.4% in Plant Scherer Units Nos. 1 and 2; (2) 75% in Plant Scherer Unit No. 3; and (3) 100% in Plant Scherer Unit No. 4. Georgia Power also owns interests in certain common facilities relating to Plant Scherer, including: (a) A 47.95% undivided ownership interest in facilities used in common by one or both of Plant Scherer Unit No. 1 or Plant Scherer Unit No. 2 and one or both of Plant Scherer Unit No. 3 or Plant Scherer Unit No. 4 (the "Plant Scherer Common Facilities"); (b) a 87.5% undivided ownership interest in facilities used in common by Plant Scherer Unit No. 3 and Plant Scherer Unit No. 4 ("Additional Unit Common Facilities") and (c) a 47.95% undivided ownership interest in the coal stockpile serving Plant Scherer ("Plant Scherer Coal Stockpile").

Georgia Power proposes to sell, pursuant to a proposed Plant Robert W. Scherer Unit Number Four Amended and Restated Purchase and Ownership Participation Agreement and a proposed Plant Robert W. Scherer Unit Number Four Substation Purchase Agreement, to Florida Power & Light Company ("FPL"), a public-utility subsidiary company of FPL Group, Inc., an exempt holding company, and to Jacksonville Electric Authority ("JEA"), an independent agency of Jacksonville, Florida, all of Georgia Power's percentage undivided ownership interests in Plant Scherer Unit No. 4, the Plant Scherer Common Facilities, the Additional Unit Common

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Facilities and the Plant Scherer Coal Stockpile, for a total purchase price of approximately $810 million. The sales to FPL and JEA will be made in stages through June 1, 1995.

There will be four separate sales to FPL ("FPL Closings"). At the first FPL Closing, scheduled to occur not later than June 30, 1991, Georgia Power proposes to sell FPL a 17.73% undivided ownership interest in Plant Scherer Unit No. 4 and the corresponding percentage undivided ownership interests in the Plant Scherer Common Facilities, the Additional Unit Common Facilities and the Plant Scherer Coal Stockpile (collectively, "Additional Property") for a purchase price of $147,900,000. At the second FPL Closing, scheduled to occur on or about June 1, 1993, Georgia Power proposes to sell FPL a 31.44% undivided ownership interest in Plant Scherer Unit No. 4 and the corresponding percentage undivided ownership interests in the Additional Property for a purchase price of $252,434,000. At the third FPL Closing, scheduled to occur on or about June 1, 1994, Georgia Power proposes to sell FPL a 16.55% undivided ownership interest in Plant Scherer Unit No. 4 and the corresponding percentage undivided ownership interests in the Additional Property for a purchase price of $131,740,000. At the fourth FPL Closing, scheduled to occur on or about June 1, 1995, Georgia Power proposes to sell FPL a 10.84% undivided ownership interest in Plant Scherer Unit No. 4 and the corresponding percentage undivided ownership interests in the Additional Property for a purchase price of $83,430,000.

There will be two separate sales to JEA ("JEA Closings"). At the first JEA Closing, scheduled to occur not later than June 30, 1991, Georgia Power will sell JEA a 17.73% undivided ownership interest in Plant Scherer Unit No. 4 and the corresponding percentage undivided ownership interests in the Additional Property for a purchase price of $147,900,000. At the second JEA Closing, scheduled to occur on or about June 1, 1995, Georgia Power will sell JEA a 5.91% undivided ownership interest in Plant Scherer Unit No. 4 and the corresponding percentage undivided ownership interests in the Additional Property for a purchase price of $46,350,000.

In the event Georgia Power and FPL do not consummate the transactions contemplated at the first FPL Closing, JEA shall have an option to withdraw from the transaction or acquire all or a portion of the percentage undivided ownership interests to be acquired by FPL at such closing. If Georgia Power and JEA do not consummate the transactions contemplated at the first JEA Closing or at the second JEA Closing, FPL shall have the option to purchase the percentage undivided ownership interests to be acquired by JEA at such closings at the same purchase price as set forth in the Ownership Agreement for JEA.

The purchase price, subject to adjustments, for each sale represents: (1) The adjusted book basis of the assets being conveyed plus (2) an amount to compensate Georgia Power for federal and state income taxes payable due to permanent differences in book and tax basis (such as the equity component of the allowance for funds used during construction and differences in the investment tax credit basis) with respect to the sale by Georgia Power of such percentage undivided ownership interest plus (3) a contribution towards prior costs incurred by Georgia Power but not recovered.

Georgia Power will obtain a release of such undivided ownership interests in Plant Scherer Unit No. 4 and the Additional Property to be sold to FPL and JEA from the lien of Georgia Power's First Mortgage Bond Indenture. Georgia Power will use the proceeds of the sale for general corporate purposes (which may include payment of short-term debt). Georgia Power is also considering calling bonds at par under the terms of its indenture.

Entergy Corporation et al.

(70-7851)

Entergy Corporation ("Entergy"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, and its wholly-owned subsidiary company, Electec, Inc. ("Electec"), 639 Loyola Avenue, New Orleans, Louisiana 70113, have filed an application-declaration under sections 6(a), 7, 9(a) and 10 of the Act.

Entergy and Electec propose to collaborate with First Pacific Networks, Inc. ("FPN"), a non-affiliate Delaware corporation, to develop utility applications for FPN's patented communications system ("PX System"), including a Customer-Controlled Load Management/Automated Feedback System ("CCLM/AFS"). The CCLM/AFS would include remote meter reading and interactive customer communications.

Electec proposes to issue and sell, and Entergy proposes to acquire, through December 31, 1994, up to 15,500 shares of Electec common stock, no par value ("Electec Common"), in one or more series, for an aggregate cash consideration of up to $15.5 million ("Initial Offering"). Electec proposes to use the proceeds for the Initial Offering to (a) acquire an interest in FPN, pay Electec's share of CCLM/AFS development costs, and acquire licensing rights to CCLM/AFS, and (b) pay to Entergy Services, Inc., or other associate companies or trade creditors, not in excess of $1.5 million for services performed for Electec in the development or implementation of its marketing business.

Electec also proposes to issue and sell, and Entergy proposes to acquire, in one or more series, through December 31, 1994, up to an additional 2,000 shares of Electec Common for an aggregate consideration of up to $2 million ("Subsequent Offering"). Electec proposes to use the proceeds from the Subsequent Offering to make additional equity investments in FPN when desired to maintain its equity position, to provide additional funds for any reasonable increase in the estimated costs required to complete the development of CCLM/AFS, to permit Electec to co-fund desirable enhancements, and to fund Electec's initial marketing efforts.

Electec further proposes to acquire, prior to December 31, 1991, up to 6.5 million newly issued shares of common stock of FPN, $.001 per value ("FPN Common"), representing approximately 9.95% of the ten issued and outstanding common stock of FPN, for the aggregate amount of $3.5 million. Electec also proposes to acquire, through December 31, 1994, additional shares of FPN Common in order to maintain its ownership interest in FPN at a level of at least 9.85% but less than 10%. Such additional shares generally would be purchased at the lower of fair market value or the price negotiated with the other acquirors (except that purchases in response to the exercise of certain options and warrants would be at fair market value).

Electec proposes to acquire from FPN a license for the exclusive, except for FPN, right to market and sublease to electric, gas and water utilities the right to manufacture, use, sell, lease or otherwise provide to customers or end users the CCLM/AFS application of the PX System, and other utility applications of the PX System that may be developed, for a fee of up to $8.5 million. Under certain specified conditions, Electec may terminate the arrangements with FPN and require it to refund the $8.5 million fee or Electec may proceed with development of CCLM/AFS with a third party. Electec will be granted a security interest in FPN's technology and related patents and copyrights.

Electec proposes to acquire an option to acquire FPN's 12% subordinated secured notes ("Notes") for the outstanding principal amount thereof, plus accrued interest, from secured lenders ("Holders"), at no additional costs to Electec, if FPN is in default of its obligations thereunder. The Notes are secured by a security agreement, dated as of August 2, 1990, granting, for the benefit of the Holders, a security interest and first lien upon the assets of FPN, including the FPN's accounts receivable, inventory, equipment and intellectual property.

Electec has agreed to sponsor and participate in field trials for CCLM/AFS in the Entergy system's service area and bear all of the associated costs. The field trials would involve one or more of Electec's associate companies, which would be reimbursed by Electec for their costs incurred in these efforts. Electec will also pay 50% of the product development costs. The total cost to develop and field test CCLM/AFS is currently estimated to be approximately $3 million, with Electec's share estimated to be approximately $2 million. Electec will have the option to jointly fund enhancements to CCLM/AFS, with the same rights as those with respect to CCLM/AFS.

FPN and Electec intend to market the CCLM/AFS system under joint control to utilities for use in connection with their demand side load management programs. Electec and FPN would each bear their own costs associated with this marketing effort. FPN would be the principal marketer and negotiator of third party licenses with respect to CCLM/AFS, as between itself and Electec. Electec's marketing activities would be conducted from within the Entergy system service territory, with no additional personnel being hired exclusively for these efforts. Electec's marketing costs are currently estimated not to exceed approximately $250,000 on an annual basis, plus legal fees and expenses related to the implementation of particular agreements. The licensing arrangements between Electec and FPN provide that the right to manufacture, use, sell, lease or otherwise provide CCLM/AFS to customers or end users would be made available through Electec to the Entergy system for use within its service territory without payment of licensing fees by other Entergy system companies or additional costs to Electec.

Electec would be entitled to retain 100% of the revenues from the licensing of any two licensees of CCLM/AFS and 50% of the revenues from the licensing of all other licensees. In addition, Electec would receive 5% of the gross revenues derived from all the sales or leases by FPN of CCLM/AFS units (except for sales by FPN to the Entergy system which would be made at preferential prices). FPN will also share with Electec 50% of the net profits from maintenance by FPN of CCLM/AFS for licensees (other than Entergy system licensees).

Southwestern Electric Power Company

(70-7856)

Southwestern Electric Power Company ("Swepco") 428 Travis Street, Shreveport, Louisiana 71101, an electric public-utility subsidiary company of Central and South West Corporation, a registered holding company, has filed a declaration under sections 6(a) and 7 of the Act and rule 50(a)(5) thereunder.

Swepco proposes to incur obligations in connection with the proposed issuance of Pollution Control Revenue Refunding Bonds, 1991 Series B ("1991 Series B Bonds"), through June 30, 1992, by Titus County Fresh Water Supply District No. 1 ("District"), up to an aggregate principal amount of $12.29 million. The purpose of the issuance of the 1991 Series B Bonds is to redeem $12.29 million of the District's outstanding Pollution Control Revenue Bonds, 1974 Series A ("1974 Series A Bonds").

The 1991 Series B Bonds will bear interest payable semi-annually and will mature on November 1, 2004. Swepco anticipates that the 1991 Series B Bonds will be sold by the District pursuant to an agreement ("Bond Purchase Agreement") in a placement in which First Chicago Capital Markets, Inc. will act as placement agent. Swepco will be a party to the Bond Purchase Agreement, which will contain various warranties, representations and indemnities by Swepco.

Southwestern Electric Power Company

(70-7857)

Southwestern Electric Company ("Swepco"), 428 Travis Street, Shreveport, Louisiana 71156, an electric public-utility subsidiary company of Central and South West Corporation, a registered holding company, has filed a declaration under sections 6(a) and 7 of the Act and rule 50(a)(5) thereunder.

Swepco proposes to incur obligations in connection with the issuance, in 1992, of Pollution Control Revenue Refunding Bonds, Series 1992 ("Series 1992 Bonds") by the Parish of DeSoto, Louisiana, a Parish within the Commonwealth of Louisiana ("District"), up to an agregate principal amount of $53.5 million. The proceeds from the issuance of the Series 1992 Bonds will be used to redeem the Series 1983 Bonds on or about January 1, 1993 at the redemption price of 103%. Any funds in addition to the proceeds of the premium on redemption of the Series 1983 Bonds and the costs of issuance of the Series 1992 Bonds, will be provided by Swepco from internally generated funds and short-term borrowings.

The Series 1992 Bonds will bear interest payable semi-annually and will mature on December 1, 2018, and will be subject to certain mandatory and optional redemption provisions and sinking fund provisions.

The District and Swepco will enter into a bond purchase agreement ("Bond Purchase Agreement") with one or more purchasers by July 15, 1991, or as soon thereafter as is practicable. The purchasers would be obligated pursuant to the Bond Purchase Agreement on or about November 24, 1992 to purchase $53.5 million aggregate principal amount of the Series 1992 Bonds.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-13510 Filed 6-6-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18176; 812-7721]

Scottish Widows International Fund, et al.; Application

May 31, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Scottish Widows International Fund (the "Fund") and Advest, Inc. (the "Distributor").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) which would grant an exemption from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the 1940 Act and rule 22c-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order under section 6(c) of the 1940 Act to permit the Fund to assess a contingent deferred sales load ("CDSL") on certain redemptions of shares.

FILING DATE: The Application was filed on May 10, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's

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Secretary and serving applicants with a copy of the request, personnally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 27, 1991, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants: Scottish Widows International Fund, 60 State Street, Boston, MA 02109; Advest, Inc., 280 Trumbull Street, Hartford, CT 06103.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney (202) 272–2190, or Jeremy N. Rubenstein, Branch Chief (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Fund is a registered open-end management investment company organized as a Massachusetts business trust. The Fund offers its single series of shares through the Distributor, which acts as the Fund's principal underwriter. The Fund requests that any relief granted apply to any future series of the Fund as well as to the existing series.

2. The Fund currently offers its shares for sale at net asset value plus a traditional front-end sales charge which decreases as the quantity of shares purchased by any person increases.

3. The Fund proposes to eliminate the sales charge on all purchases of $2,000,000 or more, and to pay the Distributor a CDSL from the proceeds of certain redemptions of shares initially sold without a sales charge. The CDSL would be imposed only in the event of a redemption transaction within twelve months following the share purchase. The CDSL will be equal to 1% of the lesser of the net asset value of the shares redeemed, or the original cost of the investment being redeemed. No CDSL will be imposed when the investor redeems amounts derived from increases in the value of the account above the original cost of the investment being redeemed due to increases in the net asset value per share of the Fund; shares acquired through reinvestment of dividend income and capital gains distributions; or an investment that the investor has held for more than 12 months.

4. In determining whether a contingent deferred sales load is payable, applicants propose to assume that shares, or amounts representing shares, that are not subject to any deferred sales load are redeemed first, and other shares are then redeemed in the order purchased, except as may otherwise be consistent with applicants' undertaking to comply with proposed rule 6c–10 under the 1940 Act in the form proposed or as it may eventually be adopted.

5. If additional series are created in the future and the Fund permits exchanges between series, it is contemplated that no CDSL will be imposed on exchanges of shares of any series for shares of other series. If, however, the shares acquired in an exchange are redeemed (other than in connection with another exchange) within twelve months following the original investment, a CDSL will be assessed at the rate of 1% of the lesser of the net asset value of the shares redeemed or the original cost of the shares initially purchased and then exchanged. With respect to all exchanges of shares that are subject to a CDSL, applicants will comply with rule 11a–3 under the 1940 Act to the extent applicable.

6. Applicants intend to waive the CDSL on redemptions in connection with (a) distributions from retirement plans qualified under Internal Revenue Code ("Code") section 401(a) when such redemptions are necessary to make distributions to plan participants; (b) distributions from a custodial account under Code section 403(b)(7) or an individual retirement account (an "IRA") due to death, disability or attainment of age 59½; (c) a tax-free return of an excess contribution to an IRA; (d) distributions by other employee benefit plans to pay benefits; and (e) distributions from a retirement plan qualified under Code section 401(a) due to death.

7. Applicants intend to provide a credit for any CDSL paid in connection with a redemption of shares followed by a reinvestment effected within 35 days after the redemption.[1]

Applicants' Legal Analysis

1. Applicants assert that the imposition of the CDSL would not cause shares of the Fund to fall outside the definition of "redeemable security" in section 2(a)(32) of the Act. Section 2(a)(32) defines redeemable security to be a security that, upon presentation to the issuer or to a person designated by the issuer, entitles the shareholder to receive approximately his proportionate share of the issuer's current net assets. Applicants assert that the imposition of the CDSL will not restrict a shareholder of the Fund from receiving a proportionate share of the current net assets of the Fund, but will merely defer the deduction of a sales charge and make it contingent upon an event which may never occur. However, to avoid uncertainty in this regard, applicants request an exemption from the operation of section 2(a)(32) of the Act to the extent necessary to permit the imposition of the proposed CDSL.

2. Applicants assert that the charge is consistent with the intent of the definition of "sales load" in section 2(a)(35). Section 2(a)(35) defines sales load to be the amount properly chargeable to sales or promotional expenses that are paid at the time the securities are purchased. In this case, applicants will pay the CDSL to the Distributor to reimburse it for expenses related to the sale of shares; therefore, applicants submit that this arrangement is within the section 2(a)(35) definition of sales load, but for the timing of the imposition of the charge. Applicants contend that the deferral of the sales charge, and its contingency upon the occurrence of an event which may not occur, does not change the basic nature of this charge, which is in every other respect a sales charge.

3. Applicants assert that the implementation of the proposed CDSL would not violate section 22(c) of the Act or rule 22c–1 thereunder. Section 22(c) of the Act and rule 22c–1 thereunder require that the price of a redeemable security issued by an open-end management company for purposes of sale, redemption, and repurchase be based on the company's current net asset value. Applicants contend that the redemption price of the shares of the Fund is based on current net asset value. The CDSL charge is then deducted from this redemption price. However, to avoid any question as to the potential applicability of section 22(c) and rule 22c–1, applicants request an exemption from rule 22c–1 to the extent necessary to permit applicants to impose the proposed CDSL.

4. Applicants request an exemption from the provisions of section 22(d) of the Act to permit the waiver of the CDSL as described in this notice. Section 22(d) requires a registered investment company, principal underwriter, or dealer in redeemable securities to sell these securities only at a current public offering price described in the company's prospectus. Subject to certain conditions, rule 22d–1 provides an exemption from section 22(d) allowing investment companies to charge different loads to different classes of investors. Rule 22d–1, however, applies to sales loads at the time of purchase only. Applicants contend that the policies underlying rule 22d–1 are equally applicable to waivers of a deferred sales load.

Applicants' Condition

If the request to issue the order is granted, applicants expressly consent to the following condition:

The applicants will comply with the provisions of proposed rule 6c–10 under the 1940 Act (including any modifications that are proposed prior to the adoption of such rule) until such rule is adopted, and after such adoption will comply with such rule in the form in which it is in effect from time to time.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–15309 Filed 6–6–91; 8:45 am]

BILLING CODE 8010–01–M

[1] By letter dated May 29, 1991, applicants' Counsel represented that they were authorized on behalf of applicants to state that any credit given to an investor for reinvestment in the Fund will be paid by the Distributor, not by the Fund.

SMALL BUSINESS ADMINISTRATION

[(Declaration of Disaster Loan Area #2505)]

Mississippi (With a Contiguous County in Arkansas); Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on May 17, 1991, I find that the Counties of Carroll, Coahoma, Grenada, Holmes, Humphreys, Leflore, Panola, Quitman, Sharkey, Sunflower, Tallahatchie, Tate, Warren, Washington, and Yalobusha in the State of Mississippi constitute a disaster area as a result of damages caused by severe storms, tornadoes, and flooding beginning on April 26, 1991. Applications for loans for physical damage may be filed until the close of business on July 15, 1991, and for loans for economic injury until the close of business on February 18, 1992, at the addressed listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, suite 300, Atlanta, Georgia, 30308, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous counties of Attala, Bolivar, Calhoun, Claiborne, DeSoto, Hinds, Issaquena, Lafayette, Madison, Marshall, Montgomery, Tunica, Webster, and Yazoo in the State of Mississippi and Phillips County in the State of Arkansas may be filed until the specified date at the above location.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as primary or contiguous counties in another declaration for the same occurrence.

The interest rates are:

	Percent
For physical damage:	
Homeowners with Credit Available Elsewhere	8.000
Homeowners without Credit Available Elsewhere	4.000
Business with Credit Available Elsewhere	8.000
Business and Non-Profit Organizations without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	9.125
For Economic Injury:	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 250506 and for economic injury the numbers are 731500 for the State of Mississippi and 731400 for the State of Arkansas.

(Catalog of Federal Domestic Program Nos. 59002 and 59008.)

Dated: May 23, 1991.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91–13541 Filed 6–6–91; 8:45 am]

BILLING CODE 8025–01–M

Region IV National Advisory Council Members; Public Meeting

The U.S. Small Business Administration National Advisory Council, located in the geographical area of Atlanta, will hold a public meeting at 9:30 a.m. on Monday, June 24, 1991, at the Atlanta Regional Office, 1375 Peachtree Street, NE., 5th Floor, Atlanta, Georgia, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Roger Gribble, Acting Regional Administrator, U.S. Small Business Administration, 1375 Peachtree Street, NE., suite 502, Atlanta, Georgia 30367–8102, telephone (404) 347–4999.

Dated: May 31, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91–13542 Filed 6–6–91; 8:45 am]

BILLING CODE 8025–01–M

Region V Advisory Council Meeting; Change in Date of Scheduled Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Albuquerque, has changed the date for its public meeting from Wednesday, June 12, 1991, to Tuesday, July 9, 1991, at 9 a.m., at the SBA Office, 625 Silver SW., suite 320, Albuquerque, New Mexico, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Tom W. Dowell, District Director, U.S. Small Business Administration, 625 Silver SW., suite 320, Albuquerque, New Mexico 87102, telephone (505) 766–1686 or FTS 474–1886.

Dated: May 31, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91–13543 Filed 6–6–91; 8:45 am]

BILLING CODE 8025–01–M

Region VI Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region V Advisory Council, located in the geographical area of Cleveland, will hold a public meeting at 9:30 a.m. on Friday, June 28, 1991, at the University of Akron, in its new building devoted to the teaching of business, Akron, Ohio, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Norma M. Nelson, District Director, U.S. Small Business Administration, 1240 East Ninth Street, room 317, Cleveland, Ohio 44199–2095, telephone (216) 522–4180.

Dated: May 31, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91–13544 Filed 6–6–91; 8:45 am]

BILLING CODE 8025–01–M

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Region III Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Richmond, will hold a public meeting from 9 a.m. to 2 p.m. on Thursday, June 27, 1991, at the Holiday Inn Crossroads, 2000 Staples Mill Road, Richmond, Virginia, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Dratin Hill, Jr., District Director, U.S. Small Business Administration, P.O. Box 10126, Federal Building, Richmond, Virginia 23240, telephone (804) 771–2741.

Dated: May 31, 1991.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 91–13545 Filed 6–6–91; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 1410]

Shipping Coordinating Committee; Maritime Safety Committee and Associated Bodies; Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 11 a.m. on June 26, 1991, in room 2415, at U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593. This meeting will be held immediately following the meeting of the Subcommittee on Prevention of Marine Pollution scheduled for 9:30 a.m. on that day and announced in the **Federal Register** on May 31, 1991. The purpose of the meeting is to report on the status of the International Convention on Salvage, 1989, which was signed by the United States in March 1990, and the International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990, signed by the United States in November 1990. As the Administration transmits these Conventions to the Senate seeking its advice and consent to ratification, it is interested in addressing any questions that the public may have concerning either of them.

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: CDR W. St. J Chubb, or LCDR R. G. Pond, U.S. Coast Guard (G–MEP–3), room 2100, 2100 Second Street SW., Washington, DC 20593 or by calling: (202) 267–0419.

Dated: June 3, 1991.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 91–13437 Filed 6–6–91; 8:45 am]

BILLING CODE 4710–7–M

SUSQUEHANNA RIVER BASIN COMMISSION

Inclusion of Wildcat Creek Flood Protection Project in the Comprehensive Plan

AGENCY: Susquehanna River Basin Commission (SRBC).

ACTION: Notice of public hearing on proposed inclusion of Wildcat Creek Flood Protection Project in the Comprehensive Plan.

DATES: The public hearing will be held on July 29, 1991 at 1:30 p.m.

ADDRESSES: The hearing will be held in the third floor conference room of the Commission's Headquarters Building at 1721 N. Front St., Harrisburg, PA 17102–2391. Written comments should be submitted to Richard A. Cairo, Secretary to the Commission, at the above address.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo or John D. Graham, SRBC, at (717) 238–0423; also Gary Barone or Andy Malene, Pa. Dept. of Environmental Resources, at (717) 783–7928.

SUPPLEMENTARY INFORMATION: The Susquehanna River Basin Commission will hold a public hearing to receive comments from citizens, government agencies and others on the proposed addition of a Pa. Dept. of Environmental Resources local flood protection project to its Comprehensive Plan for Management and Development of the Water Resources of the Susquehanna River Basin. The project is located on Wildcat and Tinklepaugh Creeks, and the Lackawanna River, at the Borough of Blakely, Lackawanna County, Pennsylvania.

The Susquehanna River Basin Commission Compact, Public Law 91–575, 84 Stat. 1509 et seq., requires the Commission to maintain a comprehensive plan for the immediate and long-range use, management and development of the water and related resources of the basin. Section 12.2(2) of the Compact requires that all projects of a signatory state affecting the water resources of the basin be included in that plan. Initially adopted in December 1973, the Plan provides a basinwide strategy to guide the Commission and others in the management, use, and conservation of the basin's resources. The Plan is also used to evaluate proposed water resource developments that the commission must, by law, approve.

The Borough of Blakely Project will include the construction of rectangular reinforced concrete channels on Wildcat and Tinklepaugh Creeks. These concrete channels will vary in width from 13 to 35 feet and have a total length of approximately 9,000 feet. Three debris basins and 580 feet of rock-lined trapezoidal channel are also proposed as part of the project. In addition, precast box culverts will be installed at various places along the project and three pedestrian foot bridges and five private vehicular crossings will be constructed.

The project will provide 100-year flood protection against high stages on both wildcat and Tinklepaugh Creeks within the Borough of Blakely. Estimated cost of the project is 5.3 milion dollars.

The Commission has agreed to consider this project for adoption into the Comprehensive Plan. Adoption into the Comprehensive Plan will affirm the project compliance with the goals and objectives of the Comprehensive Plan, thus clearing the way for implementation by the Commonwealth of Pennsylvania.

The hearing will be informal in nature. Interested parties are invited to attend the hearing and to participate by making oral or written statements presenting their data, views, and comments on the proposed Comprehensive Plan additions. Those wishing to personally appear to present their views are urged to notify the Commission in advance that they desire to do so. However, any person who wishes to be heard will be given the opportunity to be heard whether or not they have given such notice. After the hearing, the Commission will evaluate whether to adopt the project into the Comprehensive Plan.

A more detailed description of the project is available upon request to Richard A. Cairo, Secretary, Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, Pennsylvania, 17102–1291, (717) 238–0423. Additional information on the project can also be obtained from Gary Barone or Andy Malene, Pa. Dept. of Environmental Resources, P.O. Box 1467, Harrisburg, PA 17120, (717) 783–7928.

Authority: Susquehanna River Basin Compact, 84 Stat 1509 et seq.

Dated: May 31, 1991.

Robert J. Bielo,

Executive Director.

[FR Doc. 91–13457 Filed 6–6–91; 8:45 am]

BILLING CODE 7040–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Action With Regard to Duties Increased in the Japan Semiconductor Case

SUMMARY: Pursuant to authority delegated by the President in Proclamation No. 5631 of April 17, 1987, the United States Trade Representative hereby suspends all remaining increased duties on imports of high performance portable and desktop computers, and electropneumatic hammers from Japan because of Japan's progress in implementing its obligations under the U.S.-Japan Arrangement concerning Trade in Semiconductor Products dated September 2, 1986 (the "1986 Arrangement"), and because the market access objectives are expected to be fully realized within the framework of a new arrangement scheduled to enter into force on August 1, 1991.

EFFECTIVE DATE: This action becomes effective upon the date of the entry into force of the 1991 Arrangement Between the Government of Japan and the Government of the United States of America Concerning Trade in Semiconductor Products. The Office of the U.S. Trade Representative will publish a notice in the **Federal Register** in advance of the date of entry into force.

FOR FURTHER INFORMATION CONTACT: Timothy Richards or Sarah Hall, (202) 395–6160 (for technical and policy information); Timothy Reif, (202) 395–6800 (for legal issues).

SUPPLEMENTARY INFORMATION: On April 17, 1987, the President determined, under section 301 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2411, that the Government of Japan had not implemented or enforced major provisions of the Arrangement and that this was inconsistent with the provisions of, or otherwise denied benefits to the United States under, the Arrangement; and was unjustifiable and unreasonable, and constituted a burden or restriction on U.S. commerce (52 FR 13419).

In response, the President proclaimed increases in customs duties to a level of 100 percent ad valorem on certain products of Japan and, accordingly, by Proclamation No. 5631 raised duties on specified products of Japan (52 FR 13412).

On June 15, 1987, the USTR determined to suspend the increased customs duties on 20-inch televisions from Japan, based upon Japan's improved compliance with some obligations under the Arrangement (52 FR 22893). On this basis the USTR determined that suspension of the increased duties on 20-inch color televisions from Japan was in the interest of the United States.

Further, on November 9, 1987, (52 FR 43146) the USTR determined that it was in the interest of the United States to suspend the increased duties imposed by Proclamation No. 5631 on certain power hand tools, 18- and 19-inch color televisions, and low performance 16-bit desktop computers from Japan as a result of price increases eliminating the unfairly low pricing. Consequently, the USTR suspended the increased duties imposed by Proclamation No. 5631 on certain power hand tools, 18- and 19-inch color televisions, and low performance 16-bit desktop computers the product of Japan.

As a result of Japan's progress in implementing its market access obligations under the 1986 Arrangement, and because the market access objectives are expected to be fully realized within the framework of the 1991 Arrangement, I have determined that it is in the interest of the United States to suspend the increased duties on the remainder of the products of Japan subject to increased duties under Proclamation 5631. Consequently, I hereby suspend the increased duties imposed by Proclamation 5631 on certain products covered by tariff items 9903.41.15, 9903.41.20 and 9903.41.30. The Harmonized Tariff Schedule of the United States is modified to reflect the suspension of the increased duties for articles provided for in those tariff items, as set forth in the Annex hereto.

This determination shall be published in the **Federal Register**.

S. Linn Williams,

Acting United States Trade Representative.

Annex

Articles from Japan:

9903.41.15—Automatic data processing machines, of the type of which constituent units are integrated in the same housing, whether finished or unfinished, which incorporate a microprocessor-based calculating mechanism, are capable of handling data words of at least 16-bits off the microprocessor, and are designed for use with a non-cathode ray tube (non-CRT) display unit, whether or not capable of use without an external power source (provided for in subheading 8471.20).

Automatic data processing machines, of the type of which the constituent units are separately housed, whether finished or unfinished, which incorporate a microprocessor-based calculating mechanism, are capable of handling data words of at least 16-bits off the microprocessor, designed for use while affixed to or placed on a table, desk, or similar place:

9903.41.20—Having a microprocessor-based calculating mechanism capable of directly handling memory of over 8 megabits (provided for in subheading 8471.91).

Rotary drills, not battery powered, with a chuck capacity of ½ inch or more; electropneumatic rotary and percussion hammers; and grinders, sanders, and polishers, (except angle grinders, sanders and polishers, belt sanders, and orbital and straight-line sanders), the foregoing which are electromechanical tools for working in the hand with self-contained electric motor:

9903.41.30—Electropneumatic rotary and percussion hammers (provided for in subheading 8508.80).

[FR Doc. 91–13579 Filed 6–6–91; 8:45 am]

BILLING CODE 3190–01–M

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Sunshine Act Meetings

Federal Register
Vol. 56, No. 110
Friday, June 7, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Joint Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:17 p.m. on Tuesday, June 4, 1991, the Federal Deposit Insurance Corporation's Board of Directors met jointly with the Board of Directors of the Resolution Trust Corporation in open session to consider a statement of policy regarding the payment of state and local property taxes.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), Vice Chairman Andrew C. Hove, Jr., and Chairman L. William Seidman, that Corporation business required its consideration of the matter on less than seven days' notice to the public and that no notice earlier than May 30, 1991, was practicable.

The meeting was held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: June 5, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91-13681 Filed 6-5-91; 12:06 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, June 4, 1991, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the probable failure of certain insured banks.

Applications of Woodford County Bank, El Paso, Illinois, an insured state nonmember bank, for consent to acquire certain assets and assume the liability to pay deposits of the El Paso Branch of Citizens Savings Bank, F.S.B., Normal, Illinois, a Federally chartered thrift institution; and for consent to convert deposits from the Savings Association Fund to the Bank Insurance Fund as contemplated by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

Administrative enforcement proceedings.

Proposed contract for legal Division Management Information System.

Reports of the Office of Inspector General:

Audit Report re:
Beverly Hills Federal Savings Bank, Laguna Hills, California, Assistance Agreement, Case Number C-393c (Memo dated May 6, 1991)

Audit Report re:
Chisolm Federal Savings & Loan Association, Kingfisher, Oklahoma, Assistance Agreement, Case Number SWP-010c (Memo dated April 29, 1991)

Audit Report re:
First Heights, F.S.A., Houston, Texas and Heights of Texas, F.S.B., Houston, Texas, Assistance Agreement, Case Number SWP-013/014c (Memo dated May 16, 1991)

Audit Report re:
Sunbelt Savings, F.S.B., Irving, Texas, Assistance Agreement, Case Number SWP-005c (Memo dated May 3, 1991)

Audit Report re:
The Permanent Savings Bank, Niagara Falls, New York (4248) (Memo dated May 13, 1991)

Audit Report re:
Inventory Closing Procedures, Addison Consolidated Office (Memo dated May 14, 1991)

Audit Report re:
Inventory Closing Procedures, Orlando Consolidated Office (Memo dated May 13, 1991)

Audit Report re:
Procurement and Control of Property Managers, Orlando Consolidated Office (Memo dated May 17, 1991)

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Vice Chairman Andrew C. Hove, Jr., Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), and Chairman L. William Seidman that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: June 5, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91-13682 Filed 6-5-91; 12:06 pm]

BILLING CODE 6714-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, June 12, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed establishment of an all-electronic Automated Clearing House (ACH) service. (Proposed earlier for public comment; Docket No. R-0716.)
2. Proposed 1992 Federal Reserve Bank budget objective.
3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: June 5, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-13669 Filed 6-5-91; 11:18 am]

BILLING CODE 6210-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:00 a.m., Wednesday, June 12, 1991, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 5, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-13670 Filed 6-5-91; 11:18 am]

BILLING CODE 6210-01-M

U.S. INTERNATIONAL TRADE COMMISSION:

[USITC SE-91-17]

TIME AND DATE: Tuesday, June 11, 1991 at 10:30 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints.
5. Inv. 731-TA-581 (Preliminary) (Hand-held aspherical indirect ophthalmoscopy lenses from Japan)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Dated: May 29, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-13665 Filed 6-5-91; 11:18 am]

BILLING CODE 7020-02-M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Change in Subject of Meeting

The National Credit Union Administration Board determined that its business requires that the previously announced closed meeting (**Federal Register**, June 5, 1991) scheduled for 9:30 a.m. on Tuesday, June 11, 1991, include the following additional item, which is closed to public observation:

Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

The Board voted unanimously to add this item to the closed agenda.

The previously announced items are:

1. Approval of Minutes of Previous Closed Meetings.
2. Administrative Actions under Section 201 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
3. NCUA Delegations of Authority. Closed pursuant to exemption (2).
4. Midsession Budget Review. Closed pursuant to exemptions (2) and (9)(B).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 91-13631 Filed 6-5-91; 8:52 am]

BILLING CODE 7535-01-M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Board of Directors' Meeting

ACTION: The Pennsylvania Avenue Development Corporation announces the date of their forthcoming meeting of the Board of Directors.

DATE: The meeting will be held Wednesday, June 19, 1991, at 10:00 a.m.

ADDRESS: The meeting will be held at the Pennsylvania Avenue Development Corporation, Suite 1220N, 1331 Pennsylvania Ave., NW, Washington, DC.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with 36 Code of Federal Regulations part 901, and is open to the public.

Dated: June 3, 1991.

M.J. Brodie,

Executive Director.

[FR Doc. 91-13746 Filed 6-5-91; 3:23 pm]

BILLING CODE 7630-01-M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

At its meeting on June 3, 1991, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for July 1, 1991, in Washington, DC The members will consider the Postal Rate Commission's May 24, 1991, Opinion and Further Recommended Decision in Docket No. R90-1.

The meeting is expected to be attended by the following persons: Governors Alvarado, Daniels, del Junco, Griesemer, Hall, Mackie, Nevin, Pace and Setrakian; Postmaster General Frank, Deputy Postmaster General Coughlin, Secretary to the Board Harris, and General Counsel Hughes.

The Board determined that pursuant to section 552b(c)(3) of title 5, United States Code, and section 7.3(c) of title 39, Code of Federal Regulations, the discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)], because it is likely to disclose information in connection with proceedings under Chapter 36 of title 39, United States Code (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of title 39, United States Code.

The Board determined further that pursuant to section 552b(c)(10) of title 5 United States Code, and section 7.3(j) of title 39, Code of Federal Regulations, this discussion is exempt because it is likely to specifically concern participation of the Postal Service in a civil action or proceeding involving a determination on the record after an opportunity for a hearing. The Board further determined that the public interest does not require that the Board's discussion of the matter be open to the public.

In accordance with section 552b(f)(1) of title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(3) and (10) of title 5, United States Code; section 410(c)(4) of title 39, United States Code; and section 7.3 (c) and (j) of title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

David F. Harris,

Secretary.

[FR Doc. 91-13735 Filed 6-5-91; 2:57 pm]

BILLING CODE 7710-12-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:32 p.m. on Tuesday, June 4, 1991, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to (1) the resolution of failed thrift institutions, (2)

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contracting activities, and (3) the issuance of securities backed by mortgages.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, Vice Chairman Andrew C. Hove, Jr., and Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters could be considered in a closed meeting by authority of subsections (4), (8), (9)(A)(ii), (9)(B) and (10), of the "Government in the Sunshine Act" (5 U.S.C. 552b).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550—17th Street, N.W., Washington, D.C.

Dated: June 5, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.

Executive Secretary.

[FR Doc. 91-13733 Filed 6-6-91; 8:45 am]

BILLING CODE 6714-01-M

federal register

Friday
June 7, 1991

Part II

Environmental Protection Agency

40 CFR Parts 141 and 142

Maximum Contaminant Level Goals and National Primary Drinking Water Regulations for Lead and Copper; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[FRL-3823-5]

RIN 2040-AB51

Drinking Water Regulations

Maximum Contaminant Level Goals and National Primary Drinking Water Regulations for Lead and Copper

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: In this notice, EPA is promulgating maximum contaminant level goals (MCLGs) and national primary drinking water regulations (NPDWRs) for controlling lead and copper in drinking water. EPA is promulgating an MCLG of zero for lead and an MCLG of 1.3 mg/L for copper. EPA is promulgating an NPDWR for lead and copper consisting of a treatment technique requirement that includes corrosion control treatment, source water treatment, lead service line replacement, and public education.

EFFECTIVE DATE: The provisions of 40 CFR 141.86, 141.87, 141.88, 141.89, 141.90, 141.91, 142.14, 142.15, 142.16, and 142.17 will be effective on June 6, 1991. The remainder of the rule shall become effective Nov. 6, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 6, 1991.

ADDRESSES: The rulemaking record, including public comments on the rule, the comment/response document, applicable **Federal Register** notices, other major supporting documents, and a copy of the index to the public docket for this rulemaking, are available for review at EPA's Drinking Water Docket: 401 M Street, SW.; Washington, DC 20460. For access to docket materials call (202) 382–3027 between 9 am and 3:30 pm Eastern Standard Time. Major supporting documents cited in the reference section of this notice are also available for inspection at the Drinking Water Supply Branches in EPA's Regional Offices, listed below.

I. JFK Federal Building., Room 2203, Boston, MA 02203
Phone: (617) 565–3602, Jerome Healey
II. 26 Federal Plaza, Room 824, New York, NY 10278
Phone: (212) 264–1800, Walter Andrews
III. 841 Chestnut Street, Philadelphia, PA 10107
Phone: (215) 597–8227, Jeff Hass
IV. 345 Courtland Street, Atlanta, GA 30365
Phone: (404) 347–2913, Allen Atley
V. 230 S. Dearborn Street, Chicago, IL 60604
Phone:(312) 353–2152, Edward Watters
VI. 1445 Ross Avenue, Dallas, TX 75202
Phone: (214) 255–7155, Tom Love
VII. 726 Minnesota Avenue, Kansas City, KS 66101
Phone: (913) 551–7032, Ralph Langemeier
VIII. One Denver Place, 999 18th Street, Suite 300, Denver, CO 80202
Phone: (303) 293–1408, Chet Pauls
IX. 1235 Mission Street, San Francisco, CA 94103
Phone: (415) 744–1817, Steve Pardieck
X. 1200 Sixth Avenue, Seattle, WA 98101
Phone: (206) 442–4092, Janis Hastings

FOR FURTHER INFORMATION CONTACT: Jeff Cohen, Office of Drinking Water (WH–550), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–5456, or one of the EPA Regional Office contacts listed above. For further information, call the U.S. EPA Safe Drinking Water Hotline between 8:30 am and 5 pm Eastern Time, Monday through Friday excluding Federal holidays, by telephoning toll-free 1–800–426–4791 nationwide.

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Glossary of Terms

The following definitions are presented to assist the reader in understanding common words or phrases used in the preamble and rule.

Action Level: Concentration of lead or copper in water that determines, in some cases, whether a water system must install corrosion control treatment, monitor source water, replace lead service lines, and undertake a public education program.

Blood Lead Level or PbB Level: The concentration of lead in whole blood. Blood lead is the most common index of lead exposure. Health risks associated with lead have been indexed to blood lead levels, measured in micrograms of lead per deciliter of blood (μg/dL).

Corrosion: Dissolution or eroding of pipe or other plumbing material by water or other physical and chemical parameters.

Distributed Water: Water leaving the water treatment facility and/or entering the distribution system.

Ends of the Distribution System: Those points in the water supply distribution system with low or no flow.

First Draw Sample: A 1-liter sample of tap water that has been standing in the plumbing pipes at least 6 hours and is collected without flushing the tap.

Fully Flushed Sample: Water collected from a tap that has been allowed to flow freely for several minutes.

Galvanic Corrosion: Corrosion of one metal accelerated by the presence of another metal with a different electrochemical potential (e.g., corrosion of lead solder is accelerated by the presence of copper pipe).

Gooseneck or Pigtail: A short section of pipe used to connect the service line to the water main or the service line to the water meter. See Figure 1.

Large Water System (for purposes of this rule only): A water system that serves more than 50,000 persons.

Medium-Size Water System (for purposes of this rule only): A water system that serves greater than 3,300 and less than or equal to 50,000 persons.

Lead Service Line: A service line made of lead which connects the water main to the building inlet and any lead pigtail, gooseneck or other fitting which is connected to such lead line. (See Figure 1.)

Optimal Corrosion Control Treatment (for the purposes of this rule only): Corrosion control treatment that minimizes the lead and copper concentrations at users' taps while ensuring that the treatment does not cause the water system to violate any national primary drinking water regulation.

Service Line Sample: One-liter sample of water that has been standing for at least 6 hours in a service line. This sample may be collected by one of three methods: (1) direct sampling of the service line, (2) tap sample collected based on a temperature change in the water, or (3) tap sample collection after flushing a volume of water equal to that contained in the pipes connecting the tap to the service line.

Single Family Structure (for the purpose of this rule only): A building constructed as a single-family residence that is currently used as either a residence or a place of business.

Small Water System (for purposes of this rule only): A water system that serves 3,300 persons or fewer.

Abbreviations

BAT: Best Available Technology
CASAC: Clean Air Science Advisory Committee
MCL: Maximum Contaminant Level
MCLG: Maximum Contaminant Level Goal
MDL: Method Detection Limit
MGD: Million Gallons per Day
mg/L: Milligram per Liter
μg/L: Microgram per Liter
μg/dL: Microgram per Deciliter
NHANES II: Second National Health and Nutrition Survey
NIRS: National Inorganics and Radionuclide Survey
NOMS: National Organics Monitoring Survey
NPDWR: National Primary Drinking Water Regulation
NSDWR: National Secondary Drinking Water Regulation
NTNCWS: Non-Transient, Non-Community Water System
PbB: Blood Lead Level
PbW: Water Lead Level
PQL: Practical Quantitation Level
PWS: Public Water System
SDWA: Safe Drinking Water Act
TTHM: Total Trihalomethanes
VOC: Volatile Organic Chemical

I. Statutory Requirements

The Safe Drinking Water Act (42 U.S.C. 300f et seq.) (SDWA or the Act) requires EPA to establish maximum contaminant level goals (MCLGs) and national primary drinking water regulations (NPDWRs) for contaminants that, in the judgment of the Administrator, may have any adverse effect on the health of persons and that are known or anticipated to occur in public water systems. Section 1412(b)(3)(A). MCLGs and MCLs are to be proposed and promulgated simultaneously. Section 1412(b)(1).

MCLGs are Non-Enforceable Health Goals

MCLGs do not constitute regulatory requirements which impose any obligations on public water systems. Rather, MCLGs are health goals which are based solely upon considerations of protecting the public from adverse health effects of drinking water contamination. The MCLGs reflect the aspirational health goals of the SDWA which the enforceable requirements of NPDWRs (discussed below) seek to attain to the extent feasible. Section 1412(b)(4) directs that MCLGs be set at a level at which, in the Administrator's judgment, "no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety." Section 1412(b)(4). The House Report on the bill that eventually became the SDWA of 1974 provides congressional guidance on developing MCLGs:

> [T]he recommended maximum contaminant level [renamed maximum contaminant level goal in the 1986 amendments to the SDWA] must be set to prevent the occurrence of any known or anticipated adverse effect. It must include an adequate margin of safety, unless there is no safe threshold for a contaminant. In such a case, the recommended maximum contaminant level should be set at the zero level.
>
> (H.R. Rep. No. 93–1185, Pg. 20, 1974)

NPDWRs Set the Enforceable Standards.

NPDWRs include either MCLs or treatment technique requirements as well as compliance monitoring requirements. Section 1401(1). The MCL for a contaminant must be set as close to the MCLG as is "feasible." Section 1412(b)(4). Feasible means "feasible with the use of the best technology,

treatment techniques and other means which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions are available (taking costs into consideration)." Section 1412(b)(5). A treatment technique must "prevent known or anticipated adverse effects on the health of persons to the extent feasible." Section 1412(b)(7)(A). A treatment technique requirement can be set only if the Administrator makes a finding that "it is not economically or technologically feasible to ascertain the level of the contaminant." Section 1412(b)(7)(A).

Secondary MCLs.

EPA sets national secondary drinking water regulations (NSDWRs) to control water color, odor, appearance, and other characteristics affecting consumer acceptance of water. The secondary regulations are not federally enforceable, but are considered guidelines for the States. Section 1401(2).

Amendments to the SDWA.

The 1986 amendments to the SDWA established a list of 83 contaminants for which EPA is to develop MCLGs and NPDWRs. Lead and copper are among these contaminants, and this final rule fulfills the statutory requirement.

II. Background

A. Regulatory Background

The current MCL for lead is 0.050 milligrams per liter (mg/L) (see 40 CFR 141.11[b]). EPA promulgated this MCL as an interim drinking water regulation in 1975. For copper, there is currently a NSDWR of 1 mg/L. On November 13, 1985, EPA proposed MCLGs for lead and copper (50 FR 46936). Because the 1986 amendments to the SDWA require that MCLGs and NPDWRs be proposed and promulgated simultaneously, EPA was required to repropose MCLGs for contaminants for which MCLGs were originally proposed in the November 1985 notice, including lead and copper. On August 18, 1988, EPA proposed to set the MCLG for lead at zero and the MCLG for copper at 1.3 mg/L (53 FR 31516). In addition, EPA proposed a lead MCL for source water of 0.005 mg/L and a copper MCL of 1.3 mg/L that would have been measured at each entry point to the distribution system of the public water system (PWS's). The 1988 notice also proposed a treatment technique that would have required a PWS to install optimal corrosion control to minimize the occurrence of lead and copper corrosion by-products and to develop and deliver a public education program that would inform citizens about the risk of exposure to lead and copper in drinking water and thereby allow them to take the necessary steps to reduce their exposure to lead.

Corrosion control would have been triggered if: (1) The average lead levels in targeted tap samples from a system exceeded 0.010 mg/L lead; (2) the copper levels were greater than 1.3 mg/L in more than 5 percent of targeted tap samples; (3) or if pH was less than 8.0 in more than 5 percent of targeted tap samples. The proposed public education requirements would have been triggered if the lead levels exceeded an average of 0.010 mg/L or if more than 5 percent of the targeted tap samples were greater than 0.020 mg/L.

In addition to directing EPA to revise the NPDWR for lead, the SDWA includes other provisions that affect lead contamination of drinking water. Section 1417 of the 1986 SDWA amendments banned the use of lead solder or flux (i.e., solder or flux containing more than 0.2 percent lead) and lead-bearing pipes and fittings (i.e., pipes and fittings containing more than 8 percent lead). The lead ban became effective on June 19, 1986. States have been required to implement and enforce the lead ban as of June 19, 1988. EPA has a program to withhold 5 percent of Federal grants a State receives for drinking water implementation if a State fails to enforce the ban.

The SDWA also imposed special public notification requirements regarding lead in drinking water. Section 1417(a)(2). Public water systems were required to identify and provide notice to persons who may be affected by lead contamination in their drinking water when such contamination results from the use of lead in the construction materials of the system and/or corrosivity of the water supply sufficient to cause lead leaching from plumbing systems. This provision requires notification even if the system is in compliance with the current MCL for lead. EPA published final regulations to implement this requirement of the SDWA on October 28, 1987 (52 FR 41534). Under these regulations, systems were required to provide a one-time notice to consumers by June 19, 1988.

B. Overview of Problem

1. Lead

Lead occurs in drinking water from two sources: (1) Lead in raw water supplies, i.e., source water or distributed water, and (2) corrosion of plumbing materials in the water distribution system (corrosion by-products). Most lead contamination is from corrosion by-products.

a. *Occurrence in Source Water and Distributed Water.* In a national drinking water survey of nearly 1000 randomly chosen groundwater supplies completed in 1987 (the National Inorganics and Radionuclides Survey or NIRS), about 5 percent of the drinking water samples collected from fully flushed taps exceeded 0.005 mg/L of lead (EPA, 1988a). Because lead as a corrosion by-product may enter fully flushed tap samples and be attributed erroneously to source water, EPA resampled the supplies in NIRS that showed positive results for lead. EPA found very few samples above 0.005 mg/L when the sampling point was moved to the entry point to the distribution system. Based on these data, EPA now estimates that approximately 600 groundwater systems may have water leaving the treatment plant with lead levels greater than 0.005 mg/L (EPA, 1991a; EPA, 1990b). The National Organic Monitoring Survey (EPA, 1980) provided data on the quality of fully flushed water from surface water supplies. Based on these data, EPA estimates that about 215 surface suppliers may have water leaving the treatment plant with lead levels greater than 0.005 mg/L (EPA, 1991a). These two sources together indicate that less than 1 percent of the public water systems in the United States have water entering the distribution system with lead levels greater than 0.005 mg/L. These systems serve a population that represents less than 3 percent of the 226 million people in the United States that receive their drinking water from public water systems (EPA, 1991a).

b. *Occurrence as a Corrosion By-Product.* Lead in drinking water results primarily from corrosion of materials located throughout the distribution system containing lead and copper and from lead and copper plumbing materials used to plumb public- and privately-owned structures connected to the distribution system. The amount of lead in drinking water attributable to corrosion by-products depends on a number of factors, including the amount and age of lead and copper bearing materials susceptible to corrosion, how long the water is in contact with the lead containing surfaces, and how corrosive the water in the system is toward these materials.

As illustrated in Figure 1, the potential sources of lead found in a drinking water distribution system (including plumbing in buildings) can include:

- Water service mains (rarely).
- Lead goosenecks or pigtails.

- Lead service lines and interior household pipes.
- Lead solders and fluxes used to connect copper pipes.
- Alloys containing lead, including some faucets made of brass or bronze.

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Public Water System (PWS) and Homeowner Plumbing

(Figure 1)

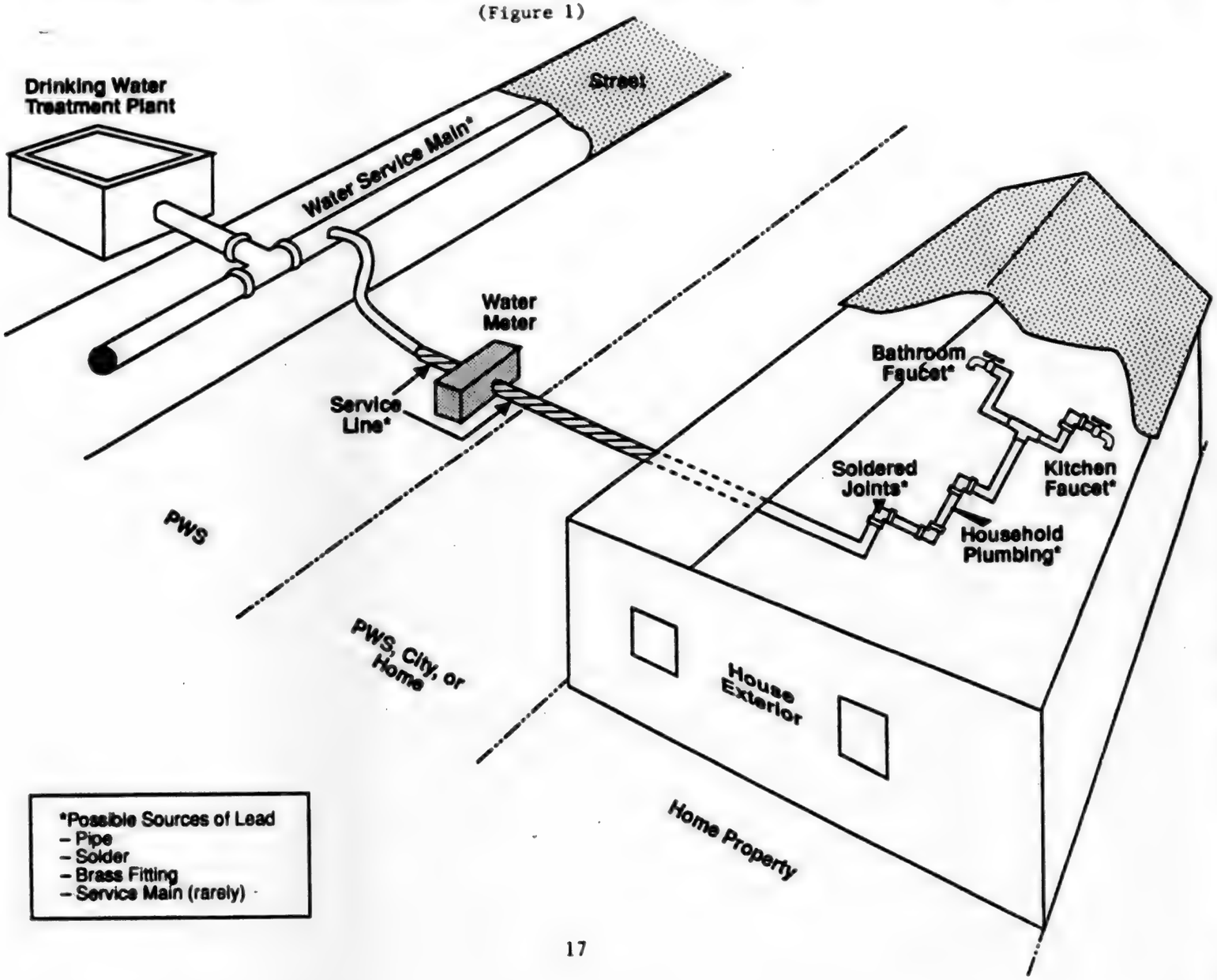

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Most public water systems serve at least some buildings with lead solder and/or lead service lines. Lead solder and fluxes containing up to 50 percent lead were widely used to connect copper pipes throughout the United States until the 1986 Amendments to the SDWA banned the use of lead solder and flux. EPA estimated in the proposed rule that there are approximately 4.4 million lead service lines in the United States and that about 25 percent of all public water systems have at least some lead service connections. Since the proposal, EPA has revised these estimates based on a survey by the American Water Works Association and now estimates that there are about 10 million lead service lines/connections in the United States and that about 20 percent of all public water systems have some lead service lines/connections within their distribution system (EPA, 1991a).

Significant amounts of lead can be dissolved from lead service lines and interior lead pipes indefinitely (Schock 1989, 1990). Lead solder can also contribute significant amounts of lead to water for several years after installation (Oliphant, 1982, 1983) and will continue to contribute to lead levels at the tap after the solder has aged if exposed to corrosive water. In addition, brass and bronze in faucets and fixtures commonly contain lead and may be a major source of lead in drinking water that stands in the faucets or fixtures (Samuels and Meranger, 1984; Schock and Neff, 1988; Gardels and Sorg, 1989). EPA is considering taking a separate action under the Toxic Substance Control Act (TSCA) to further restrict the introduction of any new sources of lead into drinking water supplies.

The amount of lead in drinking water depends heavily on the corrosivity of the water. All water is corrosive to metal plumbing materials to some degree, even water termed noncorrosive or water treated to make it less corrosive. The corrosivity of water to lead is influenced by water quality parameters such as pH, total alkalinity, dissolved inorganic carbonate, calcium, and hardness (Schock, 1980, 1989, 1990; Sheiham and Jackson, 1981; Schock and Gardels, 1983; Gregory and Jackson, 1984; AWWA–RF, 1985, 1990). It cannot be assumed, however, that there are simple associations between each of these parameters and lead levels in drinking water. For example, increasing the hardness of the water will in many cases decrease lead levels; however, there are several studies that could not correlate increased water hardness with lower lead levels (Elzenga and Graveland, 1981; Haring, 1984). Galvanic corrosion of lead into water also occurs with lead-soldered copper pipes, due to differences in the electrochemical potential of the two metals (Oliphant, 1983; AWWA–RF, 1985, 1990). Grounding of household electrical systems to plumbing may also exacerbate galvanic corrosion (Guerrera, 1980; AWWSC, 1989). Other factors that may affect water corrosivity include water temperature (seasonal variations in lead levels are common) and levels of free chlorine, total dissolved solids, and dissolved oxygen (AWWA–RF, 1985, 1990).

Factors that affect lead levels in water in addition to the corrosivity of water include (Kuch and Wagner, 1983; AWWA–RF, 1985; Schock 1990):

- The number and age of lead-soldered joints in the building and the quality of workmanship of the joints (new solder releases higher amounts of lead and joints that have been poorly soldered may expose more lead on interior surfaces and increase the likelihood that it will leach into the water)
- The contact time between the water and the lead (longer contact time results in higher lead levels; this is why first drawn water samples typically have higher lead levels than samples with shorter standing times or flushed water)
- The length and diameter of the lead service line (for example, longer lines generally result in higher lead levels in water at the tap since the water is in contact with more lead; also smaller diameter pipes have a greater ratio of pipe surface to water volume and, thus, greater contact between the lead and water that can result in higher lead levels)

When the rule was proposed in 1988, EPA had limited quantitative data to determine the national distribution of lead levels in drinking water at the tap. The best information available at the time of proposal was a study by Patterson (EPA, 1981) that collected random daytime grab samples flushed for 30 seconds. Flushing for 30 seconds or collecting random daytime grab samples will tend to result in lower lead levels compared with first draw samples because of the shorter standing time in the pipes. The Patterson data are useful because of the large number of samples (782 samples) taken and because the samples were widely distributed geographically across the country (58 cities in 47 States were sampled). The average lead level was 0.013 mg/L, with 90 percent of the values below 0.033 mg/L (EPA, 1991a).

Since the proposal, EPA has received additional data from several sources: (1) information provided by the American Water Works Service Company (AWWSC) on lead samples collected from 94 water utilities, (2) information submitted from 40 individual water systems during the public comment period, and (3) data collected from 9 water systems by EPA's Office of Drinking Water Technical Support Division (TSD). A detailed presentation and analysis of these data appears in the Treatment and Occurrence Support Document (EPA, 1991b) and in a paper entitled "Influence of Plumbing, Lead Service Lines, and Water Treatment Levels at the Tap" (EPA, 1990e). Public comment on the three major data sets and EPA's analysis of these data were requested in an October 19, 1990, Federal Register notice (55 FR 42409). EPA did not receive any specific comments on the analysis. Summary results of EPA's analyses are presented in Table 7. Unfortunately, even with this new data, the quantitative data available is insufficient to determine the national distribution of lead levels in drinking water at the tap.

2. Copper

a. *Occurrence in Source Water and Distributed Water.* Copper levels above the MCLG (1.3 mg/L) are rarely found in raw drinking water supplies or in distributed water. In the NIRS study (EPA, 1988a), 85 percent of all fully flushed tap samples had copper levels below 0.060 mg/L, and 98 percent of samples had copper levels below 0.40 mg/L. Less than 1 percent of the samples had copper levels abo e 1.0 mg/L. The maximum value found was 2.37 mg/L. EPA estimates that only 66 water systems have copper levels in source water greater than the MCLG (EPA, 1991a).

b. *Occurrence as a Corrosion By-Product.* The primary source of copper in drinking water is corrosion of copper pipes, which are widely used throughout the United States for interior plumbing of residences and other buildings. In some cases, copper is a component of additives to drinking water used by systems to control the growth of algae.

As with lead, all water is corrosive toward copper to some degree. Corrosivity toward copper depends primarily on the pH of the water, with very low pHs associated with the highest levels of copper corrosion by-products (AWWA–RF, 1985; Schock, 1985). Many of the other factors that affect the corrosivity of water toward lead can also be expected to affect the corrosion of copper.

Patterson (EPA, 1981) measured copper levels in the 30-second partially flushed samples taken at random times during the day. Three percent of the samples had copper levels exceeding 1 mg/L and 19 percent exceeded 0.2 mg/L. The national average was 0.221 mg/L (median = 0.04 mg/L). In the 1969 Community Water Supply Survey (CWSS), samples were taken from 678 groundwater supplies, 109 surface water supplies, and 182 supplies of unknown or mixed origin (a total of 969 systems). For the groundwater supplies, the maximum copper level found was 0.47 mg/L and the mean of the positive measurements (i.e., those exceeding the detection limit of 0.010 mg/L) was 0.075 mg/L. For the surface water supplies, the maximum copper value found was 0.304 mg/L and the mean of the positive measurements was 0.066 mg/L. Copper data were also collected in the AWWSC survey and the results indicate that 15 of 93 systems had one or more samples greater than 1.3 mg/L, with only 19 of 1942 total samples collected greater than 1.3 mg/L. The AWWSC data also indicate that elevated copper levels are generally associated with elevated lead levels (AWWSC, 1989).

III. MCLGs for Lead and Copper

The SDWA requires EPA to set MCLGs at concentration levels at which no known or anticipated adverse effects would occur, allowing for an adequate margin of safety. Section 1412(b)(4). Establishment of a specific MCLG usually depends on the evidence of carcinogenicity from drinking water exposure or the Agency's reference dose (RfD), which is calculated for each contaminant.

The RfD is an estimate, with an uncertainty spanning perhaps an order of magnitude, of a daily exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious health effects during a lifetime. For chemicals suspected as carcinogens, the Agency has adopted a carcinogenic classification scheme that considers the weight of evidence of carcinogenicity in humans, using bioassays in animals and human epidemiological studies as well as information that provides indirect evidence (i.e., mutagenicity and other short-term test results). Carcinogens are classified as either Group A, B1, B2, C, D, or E and are based on the following:

- Group A—Human carcinogen based on sufficient evidence from epidemiological studies.
- Group B1—Probable human carcinogen based on at least limited evidence of carcinogenicity to humans.
- Group B2—Probable human carcinogen based on a combination of sufficient evidence in animals and inadequate data in humans.
- Group C—Possible human carcinogen based on limited evidence in animals, in the absence of human data.
- Group D—Not classifiable based on lack of data or inadequate evidence of carcinogenicity from animal data.
- Group E—No evidence of carcinogenicity for humans.

The MCLG for a drinking water contaminant is generally established in one of three ways depending on its classification as a Category I, II, or III chemical (see Table 1). The starting point in EPA's analysis is the Agency's cancer classification scheme described above. Each chemical is analyzed for evidence of carcinogenicity via ingestion. In most cases, the Agency places Group A, B1, and B2 contaminants into Category I, Group C into Category II, and Groups D and E into Category III. However, where there is additional information on cancer risks from drinking water ingestion, such as pharmacokinetics and exposure, additional scrutiny is applied which may result in placing the contaminant into a different category. EPA's policy is to set MCLGs for Category I chemicals at zero. The MCLG for Category II contaminants is calculated by using the RfD to account for noncancer effects, with an added margin of safety to account for cancer effects, or is based on a cancer risk range of 10^{-5} to 10^{-6} when noncancer data are inadequate for deriving an RfD. Category III contaminants are calculated using the RfD approach. For a more complete discussion of the methodology for deriving MCLGs, see the January 30, 1991, Federal Register notice (56 FR 3526).

TABLE 1.—EPA'S THREE-CATEGORY APPROACH FOR ESTABLISHING MCLGS

Category	Evidence of carcinogenicity via ingestion	MCLG setting approach
I	Strong evidence considering weight of evidence, pharmacokinetics, and exposure.	Zero.
II	Limited evidence considering weight of evidence, pharmacokinetics, and exposure.	RfD approach with added safety margin or 10^{-5} to 10^{-6} cancer risk range.

TABLE 1.—EPA'S THREE-CATEGORY APPROACH FOR ESTABLISHING MCLGS—Continued

Category	Evidence of carcinogenicity via ingestion	MCLG setting approach
III	Inadequate or no animal evidence.	RfD approach.

A. MCLG for Lead

EPA proposed to set the MCLG for lead at zero, based on the following considerations: (1) The occurrence of a variety of low level health effects for which it is currently difficult to identify clear threshold exposure levels below which there are no risks of adverse health effects; (2) the Agency's policy goal that drinking water should contribute minimal lead to total lead exposures because a substantial portion of the sensitive population already exceeds acceptable blood lead levels; and (3) the classification of lead as a Group B2 (probable human) carcinogen.

Several commenters supported the MCLG of zero for lead and agreed with EPA's rationale. Others, however, opposed the MCLG of zero for lead and raised three main issues to support their argument: (1) The concern over blood lead levels at or below 10–15 μg/dl is not supported by the health effects data; (2) an MCLG of zero is not necessary to protect public health, because the relative contribution of lead in drinking water to blood lead levels is minimal; and (3) the carcinogenicity determination for lead is based on unproven and marginal scientific facts and should be reviewed by the U.S. EPA Science Advisory Board.

EPA continues to believe that an MCLG of zero for lead is appropriate (Category I contaminant) for the same reasons cited in the proposal (i.e., no clear threshold for some non-carcinogenic health effects, need to minimize lead in drinking water because a substantial portion of the sensitive population already exceeds acceptable blood lead levels, lead is a B2 carcinogen). Each of the major issues raised by commenters is addressed below.

1. Blood Lead Level of Concern

The concentration of lead in whole blood has been the most widely used index of total lead exposure. As discussed in the 1988 preamble, lead exposure across a broad range of blood lead (PbB) levels has been associated with a spectrum of pathophysiological

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effects, including interference with heme synthesis necessary for formation of red blood cells, anemia, kidney damage, impaired reproductive function, interference with vitamin D metabolism, impaired cognitive performance (as measured by IQ tests, performance in school, and other means), delayed neurological and physical development, and elevations in blood pressure (EPA, 1986a). An extensive review of lead toxicity is contained in EPA's 1986 Air Quality Criteria Document and Addendum (EPA, 1986a) and its 1990 Supplement to the Addendum (EPA, 1990a).

Several commenters stated that the concern over blood lead levels at or below 10–15 μg/dL was unsubstantiated. Other commenters argued that the health effects data indicated the appropriate range was 6–10 μg/dL or lower. Still other commenters argued that the MCLG for lead could be above zero because the typical water lead contribution to total lead exposure is about 20 percent, the average population blood lead levels are expected to be only 4–6 μg/dL in 1991 when this rule would take effect, and EPA's level of concern for individuals is 10–15 μg/dL. These commenters argued that water lead levels could be from 0.020 mg/L to as high as 0.050 mg/L and still maintain blood lead levels below the 10–15 μg/dL level of concern.

As stated in the proposal, EPA believes that it is difficult to clearly identify what PbB level is an appropriate criterion or "threshold" below which there are no adverse health effects. Based on the information in the 1986 Air Quality Criteria Document (1986a), and the 1990 Supplement (EPA, 1990a), some of the key findings concerning the relationship between PbB and health effects are:

- Inhibited activity of enzymes involved in red blood cell metabolism, ALA–D and Py–5–N has been associated with PbB levels of 10–15 μg/dL and possibly lower.
- Elevated erythrocyte protoporphyrin (EP) levels, an indication of lead related interference with heme synthesis, have been associated with PbB levels of 12–23 μg/dL depending on iron status.
- Interference with vitamin D hormone synthesis has been detected in children with PbB levels as low as 12 μg/dL.
- Altered electrical brain wave activity has been identified at PbB levels down to 15 μg/dL and possibly lower.
- Deficits in IQ and other measures of cognitive function, such as attention span, have been associated with PbB levels of 15 μg/dL and possibly lower in socially disadvantaged children.
- Slowed peripheral nerve conduction has been detected in children with PbB levels of 20–30 μg/dL.
- Deficits in mental indices have been found in infants with maternal or umbilical cord PbB levels as low as 6–7 μg/dL.
- Low birth weights and decreased gestational age, factors that may influence early neurological development, have been associated with infants having maternal PbB above 12–14 μg/dL and possibly as low as 7 μg/dL.
- Early childhood growth reductions have been associated with PbB levels from 5–35 μg/dL in one study and with PbB levels greater than 40 μg/dL in another.
- Small increases in blood pressure have been related to adults with PbB levels down to 7 μg/dL.

The lack of an apparent exposure threshold for several lead effects is supported by the fact that many of the biochemical changes that appear to underlie lead toxicity (e.g., alterations in enzyme activity, membrane receptors, calcium homeostasis) have been observed at the lowest experimental dosages administered, often with no discernible threshold (EPA, 1986a). There is uncertainty regarding the point at which subtle molecular changes individually or collectively become significant enough that they should be regarded as constituting "adverse" effects. However, such effects clearly become more pronounced (and likely), and broaden to cause more severe disruptions of the normal functioning of many organ systems, as PbB levels increase. This continuum of effects, from biochemical responses, cellular dysfunction, and morphological change, to organ system alterations, clinical symptoms, and toxicity, makes it difficult to clearly identify what PbB level, if any, constitutes an appropriate "threshold", below which there are no significant risks of adverse effects.

The 1986 Air Criteria Document concluded that for children: (1) The collective impact of the effects at PbB levels above 15 μg/dL represents a clear pattern of adverse effects worthy of avoidance; (2) at levels of 10–15 μg/dL, there appears to be a convergence of evidence of lead-induced interference with a diverse set of physiological functions and processes, particularly evident in several independent studies showing impaired neurobehavioral function and development; and (3) the available data do not indicate a clear threshold at 10–15 μg/dL, but rather suggest a continuum of health risks approaching the lowest levels measured. The health effects of lead below this range are less well substantiated.

In reviewing the information presented in the 1986 Air Quality Criteria Document and Addendum, EPA's Clean Air Science Advisory Committee (CASAC) concluded that various effects starting at PbB levels around 10–15 μg/dL or even lower in young children "may be argued as becoming biomedically adverse" (EPA, 1986b).

Additional studies published since the proposal support EPA's earlier conclusions. These studies are reviewed in the 1990 Supplement (EPA, 1990a) to the Addendum of the 1986 Criteria Document, which concluded that "a PbB concentration of 10 15 μg/dL, and possibly lower, remains the level of concern for impaired neurobehavioral development in infants and children." After reviewing the Supplement, as well as the staff position paper of EPA's Office of Air Quality Planning and Standards (EPA, 1989d) on the National Ambient Air Quality Standards for Lead, CASAC concluded that PbB levels above 10 μg/dL clearly warrant avoidance, especially for development of adverse health effects in sensitive populations. The Committee concluded "that EPA should seek to establish an air standard which minimizes the number of children with PbB levels above a target value of 10 μg/dL. In reaching this conclusion, the Committee recognizes that there is no discernible threshold for several lead effects and that biological changes can occur at lower levels" (EPA, 1990f).

Assessment of the more recent health effects data and additional review by EPA's science advisors support EPA's earlier conclusion that blood lead levels of 10–15 μg/dL constitute an appropriate range of concern for health effects that warrant avoidance. In addition, the new data and other reviews (e.g., Davis, 1990) support the conclusion in the proposal that the occurrence of a variety of low level effects makes it difficult to identify a clear threshold blood lead level below which there are no risks of adverse health effects. Moreover, many of these effects at low exposure levels have no obvious symptoms. Lead accumulates in the body and although the resulting health effects are subtle, they can be persistent and cause significant effects on educational attainment and other long-term performance (Needleman et al., 1990).

Many commenters suggested that the MCLG should be based on the water lead levels associated with blood lead levels of 10–15 μg/dL and did not understand why an MCLG of zero was

necessary to meet this goal. EPA has adopted the blood lead level of concern of 10 μg/dL as a benchmark to assist the Agency in evaluating progress in reducing lead exposures. However, EPA does not consider this level to be a threshold below which there are no risks of adverse effects. In establishing MCLGs, the Agency seeks to ascertain the level at which there are no known or anticipated adverse effects on the health of persons and which includes an adequate margin of safety. Section 1412(b)(4). Given the growing body of scientific evidence that risks of adverse effects are present at increasingly lower levels of exposure, and the uncertainty that any blood lead level is free from risk of incurring adverse effects among the sensitive populations, EPA concludes that it would be difficult to identify an adequate margin of safety, and an associated water lead concentration, that would adequately achieve the health goal contained in § 1412(b)(4) of the SDWA.

Based on the available data, EPA believes there are no clearly discernible thresholds for some of the non-carcinogenic adverse health effects associated with lead (EPA, 1990a). Because of the possibility that adverse health effects may occur at blood lead levels below 10 μg/dL, the Agency believes that an MCLG of zero for lead in drinking water complies with the intent of the SDWA.

In addition, comments that average blood lead levels could be maintained below levels of concern with a higher MCLG ignore the distinction between individual blood lead concentrations at the level of concern (i.e., PbB ≥ 10 μg/dl) and population average levels expected when this rule takes effect. There is a wide range of lead levels not only in water but also in house dusts, soils, diets, etc. In addition, there is tremendous variability, especially among children, in behavior patterns (including consumption), physiological sensitivity, and nutritional states. Because of these factors, there is a wide distribution of blood lead levels in the population.

Analysis in the Air Quality Criteria Document (EPA, 1986a) of blood lead distributions measured in the Second National Health and Nutrition Survey (NHANES II), the most recently completed nationwide survey of U.S. blood lead levels, indicates that among a population of U.S. children with an average blood lead level of 5 μg/dl, for example, approximately 2.5 percent would have blood lead levels above 10 μg/dl. It is estimated that several million children have blood lead levels above 10 μg/dL, mainly from lead paint or from old contaminated soils in urban areas (ATSDR, 1988).

Because many children now have blood lead levels above the level of concern, EPA's policy goal continues to be that drinking water should contribute minimal additional lead to existing body burdens of lead. This policy is consistent with the statutory mandate to set MCLGs at a level that provides an "adequate margin of safety," which, as discussed in the legislative history of the SDWA, must consider exposure to contaminants from sources other than drinking water and adverse effects that may be experienced by sensitive sub-populations. For this additional reason, setting a health-based goal of zero for lead in drinking water is consistent with the statutory standard.

2. Contribution of Water Lead to Blood Lead Levels

Several commenters believed that EPA could establish an MCLG above zero and still protect public health because the contribution to blood lead levels from drinking water is minimal. These commenters raised two points: (1) the correlation between blood lead and water lead is questionable; and (2) drinking water comprises only a small proportion of total human lead intake.

a. *Blood Lead to Water Lead Relationship.* At the time of proposal, EPA used a correlation coefficient of 0.20 μg/dL lead in blood per μg/L lead in water, derived from duplicate diet studies by Ryu et al. (1983) and Lacey et al. (1985) (EPA, 1988b). Ryu et al. studied infants in Iowa fed a controlled diet of canned formula or cow's milk. Drinking water was not the source of lead, and use of these data assumes that lead absorption from water is equal to that from formula or diet. The Lacey et al. study collected data in Glasgow on infants' blood lead levels, and lead in a duplicate diet sample, in first-draw, random daytime tap water and in typical water use samples (from tea kettles). Several commenters stated that EPA had not established a clear correlation between water lead and blood lead. Other commenters claimed that the studies used to correlate water lead and blood lead had been improperly evaluated by EPA. One of these commenters stated that EPA had underestimated the blood lead response in the Ryu study because the study did not allow infant blood leads to reach a steady state. This commenter suggested that if the nonequilibrium conditions that existed in the Ryu et al. study are considered, a correlation coefficient of 0.48 μg/dL lead in blood per μg/L lead in water is derived. Another commenter stated that the Ryu study was not a water study but a dietary study involving no drinking water lead impact.

Several studies have examined the contribution that lead levels in drinking water makes to blood lead in children and adults (e.g., Thomas et al., 1979; Worth et al., 1981; Moore, 1977; Moore et al., 1979; Sherlock and Quinn, 1986; Lacey et al., 1985; Raab et al., 1987; Laxen et al., 1987; Maes et al., 1991). These studies have correlated blood lead levels with water lead levels in first-draw water, in random or partially flushed water samples, or in composite samples from first, partially, or fully flushed water. Based on these studies, it is difficult to identify the single measure of water lead that best predicts blood lead (EPA, 1986a).

In response to comments, EPA has reanalyzed the Ryu and Lacey studies, along with a study by Laxen et al. (1987) on school children in Edinburgh in which tap water was sampled after a 5-minute flush and a 30-minute stagnation time. These analyses, summarized in Marcus (1989a; 1989b; 1990b; 1990c), found a nonlinear relationship between children's blood lead and water lead levels and best fit a piece-wise dose-response function with different water lead:blood lead coefficients at different water lead concentrations. This is consistent with the non-linear kinetics of lead transfer from the red blood cell and an apparent saturable transfer mechanism in the gut (EPA, 1986a).

EPA agrees that it is better to rely on studies where drinking water was the source of lead and believes the Lacey study, rather than the Ryu study, is the best study for indicating blood lead responses among infants to lead in drinking water. The Lacey study measured drinking water exposures of children from zero to 6 months of age. Regression analyses of the Lacey study found a slope of 0.26 μg/dL blood per μg/L water at water lead levels below 0.015 mg/L and 0.04 μg/dL blood per μg/L water at water lead levels above 0.015 mg/L. While EPA believes the Lacey study, because of its reliance on exposure through drinking water, is the best available study for estimating water lead:blood lead relationships for infants, the Agency notes that the Ryu study yielded results similar to the Lacey study (0.24 μg/dL blood lead per g/L water lead assuming a water lead intake of 1 liter per day).

For older children, EPA is relying on a recent study by (Maes et al., 1991) of Hawaiians exposed to lead in drinking water across a wide range of levels. Again, a piece-wise linear relationship was found to provide the best fit to the

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data with a slope of 0.12 μg/dL blood per μg/L water at water lead levels below 0.015 mg/L and 0.06 μg/dL blood per μg/L water at water lead levels above 0.015 mg/L. Because this study controlled for many different variables, including house dust and food, EPA concludes that it provides the most reliable estimate of blood lead:water lead relationships for children.

For adults, the 1986 Criteria Document identified Pocock et al. (1983) as the most useful study; regression analyses yielded a slope of 0.06 μg/dL blood per μg/L water lead.

In conclusion, EPA disagrees with commenters suggesting that the Agency has not established a clear correlation between blood lead and water lead levels and that additional research is needed to substantiate this relationship. EPA recognizes that differences exist in the correlation coefficients derived from the available studies on water lead/blood lead relationships. These differences can be attributed to such factors as differences in study populations, analytical methods, and potential confounders (e.g., other lead sources, including diet, dust, and air). EPA believes, nonetheless, that the studies reviewed and analyzed in the Air Quality Criteria Document (1986a) and the additional analyses cited above have established a quantitatively consistent relationship between blood lead and lead in drinking water for infants, children, and adults.

While the degree to which lead causes increases in blood lead levels is important for evaluating the degree of health effects associated with various water lead levels, this issue is not directly relevant to the Agency's bases for establishing an MCLG of zero. The first basis (lack of clear threshold for adverse effects) is based upon extensive studies of various health endpoints, and does not depend specifically on any water lead-blood lead relationship. The second basis for the zero MCLG is based on the empirically observed fact that a large number of children have blood leads above the level of concern. Even if there is a disagreement regarding the degree of change in blood lead levels that would be caused by water lead levels, it would always be the case that consumption of lead in water would contribute to some increase in blood lead levels, thereby causing an increased risk of adverse effects for the sensitive sub-population of children with blood lead levels already above 10 μg/dL. The third basis for the MCLG (carcinogenic effects), like the first basis, depends upon the non-threshold nature of lead's health effects, and not upon any particular correlation between water lead and blood lead levels.

b. *Contribution of Drinking Water to Total Lead Intake.* EPA also disagrees with the assertion that drinking water comprises a small proportion of lead intake. EPA estimated in the proposal that the typical drinking water contribution to total lead exposure for an average 2-year-old child is about 20 percent (EPA, 1988c). The proportion of exposure due to lead, however, will vary with different levels of lead in the water and with variations in other lead exposures. For children with high levels of lead exposure from lead paint, contaminated soils and dusts near roadways or lead smelters, or other point sources of airborne lead, drinking water contributes a much lower, although still relevant, proportion of total exposure. For residents of houses and buildings with relatively new lead solder or lead service lines, drinking water can be the primary source of exposure, especially if the water is corrosive. As such, the total drinking water contribution to overall lead levels may range from as little as 5 percent to more than 50 percent of children's total lead exposure. Infants dependent on formula may receive more than 85 percent of their lead from drinking water. As exposures decline to sources of lead other than drinking water, such as gasoline and soldered food cans, drinking water will account for a larger proportion of total intake. The estimate of the relative contribution of drinking water to blood lead levels is not used in any risk assessments for the final rule. As discussed previously, blood lead impacts from different water lead scenarios have been estimated through application of empirical relationships between water lead and blood lead.

3. Carcinogenicity of Lead

As discussed above, the Agency has adopted a carcinogenic classification scheme for chemicals that considers the weight of evidence of carcinogenicity in humans, using bioassays in animals and human epidemiological studies, as well as information that provides indirect evidence (i.e., mutagenicity and other short-term test results). Carcinogens are classified as either Group A, B1, B2, C, D, or E. For known or probably human carcinogens (categories A, B1, or B2), EPA's established policy is to set MCLGs for such contaminants at zero.

EPA determined in the proposal that lead was a Group B2 (probable) human carcinogen. Several commenters disagreed, believing that the data were not adequate to make such a determination. They asked EPA's Science Advisory Board (SAB) to review the data.

In March and April 1989, an ad hoc SAB committee reviewed the data and basis for EPA's classification of lead as a B2 carcinogen. The findings of the committee, consisting of members of the SAB Executive Committee, the SAB Environmental Health Committee, and the Clean Air Scientific Advisory Committee, were presented in a final report submitted to the EPA Administrator on November 21, 1989 (EPA, 1989b). The final report noted that there was limited understanding of the mechanisms of lead-induced tumorigenesis and that limitations in the available data made it inappropriate to develop a potency factor to perform a quantitative risk assessment for lead at this time. The committee, however, agreed with EPA's conclusion that it had been sufficiently established that lead is a probable human carcinogen, appropriately classified as a B2 carcinogen according to EPA's cancer assessment guidelines. Based on the SAB recommendation, a potency factor for lead has not been developed by EPA. If a potency factor for lead is developed, it will be reviewed by the SAB.

When establishing MCLGs, the Agency usually classifies B2 carcinogens as a Category I contaminant unless there is compelling evidence (e.g., exposure, pharmacokinetics) to place the contaminant into a different category. EPA believes the evidence warrants classifying lead as a Category I contaminant. This determination is based on data from over 20 separate ingestion studies that showed an elevated incidence of kidney tumors in rats and mice (EPA, 1988m; EPA, 1989g). In studies where animals were exposed via drinking water, positive results were reported in one experiment with rats exposed to lead acetate (Koller et al., 1985) but not another (Kanisawa and Schroeder, 1969). Possible induction of lymphocytic leukemia occurred in mice dosed with as little as 0.1 g of lead via drinking water (Blakley, 1987). As noted in EPA's evaluation of the data and reiterated in SAB's 1989 report, there is uncertainty regarding lead's mechanism of action on inducing tumors, but these uncertainties do not provide a basis to alter the weight of evidence for human carcinogenicity. It is known that a significant proportion of ingested lead is absorbed; in adults, the absorption of ingested lead has been estimated to range from 10 to 15 percent, with rates as high as 21–63 percent under fasting conditions, which may be more representative of between-meal absorption (EPA, 1986a; EPA, 1989g). Experimental studies in children measured an average absorption rate of approximately 50 percent for ingested lead. Based on this information, EPA believes that lead should be classified as a category I contaminant and that the MCLG should be zero.

4. Multinational Business Services Petition

EPA has received a petition from Multinational Business Services Incorporated (MBS), to reconsider the Agency's policy of establishing MCLGs of zero for carcinogens and to establish instead MCLGs for carcinogenic contaminants at calculated negligible risk levels. EPA discussed this petition in the preamble to the proposed rule because the Agency proposed a zero MCLG for lead (53 FR 31516). However, MBS specifically requested EPA to consider its petition in the context of MCLG's being established in EPA's "Phase II" rulemaking. The Agency completed that rulemaking and fully addressed MBS's request in that proceeding (56 FR 3526). Since the MBS did not submit its request as part of comments on the proposed lead and copper rule, the Agency is therefore not addressing MBS's request in the context of this rulemaking.

B. MCLG for Copper

EPA proposed an MCLG of 1.3 mg/L for copper in the November 1985 and 1988 notices. No new data that would change the conclusions presented in the two notices have become available. EPA is, therefore, finalizing an MCLG of 1.3 mg/L for copper. This MCLG of 1.3 mg/L is based on a Lowest Observed Adverse Health Effect Level (LOAEL) of 5.3 mg/day from human clinical case studies in which 5.3 mg was the lowest acute oral dose at which gastrointestinal effects were seen (Chuttani et al., 1965). An uncertainty factor of two was applied, and standard daily consumption of 2 liters of water per day by an adult was assumed. Ten-day and longer exposure values were not derived because the data were inadequate (EPA, 1987c).

Several commenters on both the 1985 and 1988 notices believed that an MCLG for copper was unnecessary. The reasons included: (1) Inadequate adverse health effects data, (2) limited occurrence of copper in drinking water, and (3) the fact that copper is present in drinking water because of corrosion of copper pipes; thus, treatment at the water supply plant would not solve the problem of elevated copper concentrations.

EPA disagrees that there are inadequate health effects data for regulating copper. The data indicate that copper, which is beneficial at lower levels, is a health risk at levels above 1.3 mg/L in water. Acute exposure to copper has resulted in gastrointestinal effects, such as nausea and diarrhea, as discussed in the 1985 proposal. EPA agrees that copper is not commonly found above the proposed MCLG, but high levels of copper have occasionally been detected in drinking water supplies across the country, and high levels of copper can dissolve from pipes in areas with corrosive water. Thus, EPA believes an MCLG and NPDWR are justified to protect against adverse health effects. In addition, Congress listed copper as 1 of 83 drinking water contaminants mandated for regulation in the 1986 amendments to the SDWA. Since EPA did not substitute another contaminant in place of copper (as authorized by section 1412(b)(2) of the SDWA), it remains on the list of 83 contaminants for which EPA must promulgate an MCLG and NPDWR.

IV. National Primary Drinking Water Regulations for Lead and Copper

In developing a regulatory approach for controlling lead and copper in drinking water, EPA confronted several problems. As described in the previous section, lead and copper differ from other drinking water contaminants because they generally do not occur in significant amounts in source water, but rather occur as the result of the corrosive action of the water in contact with plumbing materials containing lead and copper. Thus, the traditional regulatory approach, based on removing drinking water contaminants at the treatment plant prior to distribution, will have a marginal effect on lead and copper levels at the consumer's tap (except for the relatively few systems with contaminated source water). Second, much of the lead and copper-bearing plumbing material is privately owned and outside the public water system's control. Third, lead and copper contamination from corrosion of plumbing systems within individual residences and other buildings introduces a large degree of variability in lead and copper levels in water samples taken at customers' taps. These problems make it difficult for EPA to set uniform concentrations for lead and copper that can be met at taps throughout a public water system.

The Agency proposed a two-part approach to address the two sources of lead and copper in drinking water: source water contamination and corrosion by-products. EPA proposed an MCL for lead in distributed water of 0.005 mg/L and an MCL for copper in distributed water of 1.3 mg/L with compliance measured at the entry point to the distribution system. The Agency also proposed a treatment technique requirement to control lead and copper entering water as corrosion by-products. The proposed treatment technique consisted of optimal corrosion control treatment to minimize corrosion, and public education. It was triggered by three "no-action" levels (NALs), as measured in first-draw tap samples from high risk homes (targeted samples): an average lead concentration in targeted samples of less than or equal to 0.010 mg/L, a copper concentration of 1.3 mg/L or less in at least 95 percent of the targeted samples, and pH greater than or equal to 8.0 in at least 95 percent of the targeted samples. If all three levels were met, "no-action" would be needed and the PWS would be deemed in compliance with the treatment technique. If any of these three levels were not met by a system, the system would have been required to install or improve its corrosion control treatment. In addition, if a PWS exceeded the average lead level of 0.010 mg/L or a fourth "no-action" lead level of 0.020 mg/L in at least 95 percent of the targeted samples collected, the system would have been required to conduct a public education program to help consumers reduce their exposures to lead in drinking water.

Systems serving more than 3,300 people that did not meet one or more of the NALs would have been required to develop and submit a treatment plan to the State. The treatment plan was to contain the specific steps that the water system would take to ensure that either the NALs were met or that optimal corrosion control treatment and/or public education were implemented. The State would have been required to review the system's plan and approve it if it would minimize corrosivity of the water. The proposal would have required States to specify the required treatment for systems serving fewer than 3,300 people in which any of the NALs were exceeded. If, after treatment was installed, any system continued to exceed one of the NALs, the system would have been required to demonstrate to the State that its treatment was optimal. In addition, the State would have been required to specify the water quality parameters under which a system would be required to continue to operate.

Water systems (of all sizes) exceeding one or both of the NALs for lead (either the average or the maximum) would have been required under the proposal to conduct a public education program to reduce exposure to lead as a part of

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the treatment plan. The proposed public education program differed both from the general public notification requirements under section 1414 and the special lead public notification requirements under section 1417 of the Safe Drinking Water Act. The public education program was conceived as an ongoing requirement for as long as the PWS exceeded one or both of the action levels. Water systems would have been required to design their public education programs to meet three performance standards: program content, program delivery, and program evaluation.

As an alternative to the proposed two-part approach, the Agency solicited comment in the preamble to the proposal on the option of not promulgating an MCL for source water, but instead including source water treatment as a component of the treatment technique requirements. Under this option, systems exceeding the no-action level at the tap could take whatever measures (corrosion control, source water treatment or a combination of both) that would reduce levels at the tap to below the no action levels.

A. Comments on Proposed Two-Part Approach

A few commenters agreed with EPA's proposed two-part approach, but the majority disagreed, stating that the SDWA [1401 (1)(C)] requires EPA to set either an MCL or a treatment technique for the same contaminant, but not both. Other commenters disagreed with the two-part approach, arguing that it would cause numerous difficulties with implementation and enforcement of the rule.

Numerous commenters supported establishing MCLs only, with differences of opinion on the appropriate location for compliance monitoring. The majority of commenters supporting an MCL argued that the point of compliance should be either at the entry point to the distribution system or at the end of the water system's control (e.g., water meter, outside tap). These commenters reasoned that EPA has no authority to set an enforceable MCL at household taps since most lead and/or copper contamination detected at these taps is from sources beyond the control of public water system (e.g., household plumbing). They argued that section 1401(4) of the SDWA defines "public water system" as the "collection, treatment, storage, and distribution facilities under the control of the operator." Commenters interpreted this statutory language to mean that the PWS is responsible for the lead and copper content in water that is delivered through the distribution mains—up to the property line or the water meter—but is not responsible for residential plumbing materials that exist beyond the water system's jurisdiction.

Several commenters supported establishing an MCL at the tap, with some favoring a fully flushed sample and others a first-draw sample. Commenters supporting a fully flushed sample collected at the tap (which would be used to represent water delivered to the home) used the same arguments as those commenters who supported an MCL outside the home: The levels of lead in first-draw tap samples reflect contamination beyond the control of the water system. Commenters arguing for first-draw tap samples stated that the SDWA (1412)(b)(7)(A) requires EPA to set MCLs for lead and copper if "it is economically and technologically feasible to ascertain the level of a contaminant". They argued that it is both economically and technologically feasible to ascertain the level of lead and copper at the tap; thus, MCLs are required to be set. Another commenter argued that while EPA was required by statute to set an MCL at the tap, EPA could address the problem of material corrosion outside the water systems control by incorporating a provision to allow the water system to demonstrate that the MCL exceedance was caused by conditions beyond its control.

Numerous commenters supported the establishment of a treatment technique, stating that the primary source of lead is from home plumbing materials, which are beyond the water system's direct control. These commenters argued that water systems can only control the water quality parameters that affect the corrosivity of the water and should not be held responsible for lead and copper levels at individual taps. They contended that it is infeasible to measure MCLs accurately at taps because corrosion control technology does not guarantee specific or predictable tap water lead levels, as is evident by monitoring programs that have shown significant variability in tap lead levels within a system and even within a tap over time after installation of treatment.

B. Rationale for Treatment Technique Approach

1. Response to Comments on Treatment Technique and MCL

EPA disagrees with commenters' assertions that the Agency would be legally precluded from adopting the dual MCL/treatment technique approach proposed by the Agency. At the same time, EPA agrees with commenters who argued that setting an MCL for levels in source water in addition to the treatment technique requirements for corrosion by-products would result in unnecessary confusion among the public and the regulated community. To minimize such confusion, the Agency has chosen to promulgate a final rule consisting solely of a treatment technique that seeks to remedy all sources of lead and copper contamination caused by both corrosion and contaminated source water. EPA believes that this will be the most effective approach to control lead and copper in drinking water, that this approach will be simpler for the public and regulated community to understand, and that the approach is consistent with the statutory scheme of the SDWA.

As discussed further in Section F below, EPA believes that compared to the proposed approach, the inclusion of source water treatment as a component of the treatment technique better allows systems to choose the most effective means of reducing lead and copper levels at the tap. The proposed rule would have required all systems to conduct source water monitoring, even though EPA estimates that only 1 percent of all systems have lead levels in source water exceeding 0.005 mg/L, and less than 1 percent of systems have copper levels in source water exceeding 1.3 mg/L. The final rule reduces this burden by requiring source water monitoring only where levels measured at the tap exceed the lead or copper action levels and thereby indicate potential source water contamination. Including source water treatment as a component of the treatment technique allows systems the flexibility, in appropriate cases, to select the combination of corrosion control and/or source water treatment that will most effectively reduce lead and/or copper levels at the tap.

Commenters on the proposal pointed out that some source water treatments can actually increase water corrosivity and, therefore, aggravate the problem of lead and copper as corrosion by-products. The final rule, by including both as components of the treatment technique, allows systems to take into account the interrelated nature of source water and corrosion control treatment in implementing the treatment, or combination of treatment, that will minimize lead and copper levels at consumers' taps.

EPA also disagrees with commenters who argued that EPA should only establish MCLs for lead and copper for the water as it leaves the control of the public water system. This approach

would not adequately protect the public from lead and copper introduced by the interaction of corrosive water delivered by the public water system with lead and copper-bearing materials in homeowners' plumbing. While plumbing owned by users of the public water system is physically outside the system's control, the quality of the water delivered to the user (including its corrosivity) can be controlled by the system. Commenters who argued that public water systems have no responsibility for lead and copper levels at the tap ignored the fact that public water systems can affect, at least to some degree, water tap lead and copper levels through adjustment of the corrosivity of water delivered by the system. Similarly, EPA disagrees with commenters who recommended that EPA establish an MCL at the tap based upon a fully flushed sample, since such sampling would not adequately reflect the interaction between water delivered by the system and users' plumbing.

EPA also disagrees with commenters who argued that EPA's adoption of a treatment technique was contrary to the SDWA, which, they argued, mandates the establishment of MCLs for lead and copper. As these commenters noted, the statutory standard for determining whether to establish a treatment technique or MCL for a contaminant is whether it is "economically or technologically feasible to ascertain the level of the contaminant." Sections 1401(1)(C) and 1412(b)(7)(A). EPA disagrees, however, with the assertion by some commenters that the mere availability of analytical methods to monitor for lead and copper in drinking water conclusively resolves this issue and that the Act consequently permits EPA only to establish MCLs for these contaminants. As discussed in the preamble to the proposed rule, regulation of corrosion by-products in drinking water poses unique problems not associated with other contaminants regulated by EPA. These problems include variability of contaminant levels even after treatment and the elevation of levels at the tap even after a system has done everything within its control to remedy the sources of contamination. Because of the unique circumstances posed by these contaminants, EPA concludes that Congress has not spoken specifically to the question of how corrosion by-products should be regulated under the statute. Therefore, EPA believes that it is appropriate to weigh all the technical, legal, and policy issues posed by regulating these contaminants in selecting the regulatory alternative that best achieves Congress's goal of protecting the public from drinking water contamination.

The predominant difficulty in establishing numerical drinking water standards for lead and copper is the variability in the levels of these contaminants at the tap after treatment of the water with BAT (which includes source water treatment, public education, lead service line replacement, and/or corrosion control). As discussed in the preamble to the proposal, this variability is due to many factors, including the amount of lead in the resident's plumbing or in the PWS's distribution system (although under the final rule, some lead service lines controlled by the PWS may be required to be removed over a period of years), temperature, age of plumbing components, chemical and physical characteristics of distributed water, and the length of time water is in contact with those materials. Moreover, the source waters of systems can vary in the degree of their corrosiveness and the extent to which that corrosivity can be reduced through pH, alkalinity adjustment, or other methods. Finally, data indicate that the variability in tap levels can persist even in cases where water quality conditions are kept relatively constant. Thus, the difficulty in establishing numerical standards for lead and copper at the tap results from both the many factors affecting water corrosivity as well as the complexity inherent in developing effective corrosion control treatment for the wide variety of conditions encountered among different systems. For this reason, EPA concluded in the preamble to the proposal that establishment of a treatment technique under the Act was appropriate because it is "technologically infeasible to ascertain whether the lead or copper level at a tap at a single point in time represents effective application of the best available treatment technology." (53 FR 31527).

Some commenters disputed the relevance of this conclusion to the issue of whether, under sections 1401 and 1412 of the SDWA, it is "feasible to ascertain the level of the contaminant." They contended that the plain language of the statute requires only that the contaminant, not the efficacy of treatment, be ascertainable in order that establishment of an MCL be mandated. While the commenters' literal interpretation of the statute is plausible, EPA believes that this constricted reading, if mechanically applied to the unique circumstances posed by corrosion by-products, would yield illogical results that could not have been intended by Congress and that ultimately would fail to achieve the public health goals of the statute.

Read in the context of the statute as whole, the finding that it is "feasible to ascertain the level of the contaminant" is only the first step in establishing an MCL. In determining the actual MCL level, Congress directed EPA to set the MCL "as close as feasible" to the MCLG. Section 1412(b)(5). The legislative history indicates that the level should be achievable by large metropolitan water systems treating relatively clean source water. (see H.R. Rep. No. 93–1185 at 18 [1974] and reaffirmed when the Act was amended in 1986; see 132 Cong. Rec. S6287 [May 21, 1986] [statement of Sen. Durenberger]). Thus, to set an MCL, EPA must determine that it is feasible to measure for the contaminant in drinking water and must select the level that is as close to the MCLG as "feasible." EPA has carefully reviewed all the available data to determine what level would be "feasible" for large systems to meet. Because of the sources of variability described above, however, EPA concludes that there is no precise level at the tap that may generally be considered "feasible" based upon application of BAT in all water systems across the country. In fact, the level that is as close as feasible to the MCLG will vary from system to system depending upon the amount of lead located in the system, the corrosiveness of its water, and the degree to which the water is amenable to corrosion control treatment.

EPA analyzed data from several water systems to evaluate the variability in tap water lead and copper levels over time both within a system (Boston, MA, Bennington, VT, and Seattle, WA) and within a home (Chicago, IL, Newport News, VA, and New Bedford, MA). The data for Boston, Bennington, and Seattle were collected before and after installation of corrosion control treatment and were divided into subgroups that represent samples collected before (group 1) and after (groups 2, 3, 4, etc.) installation of corrosion control treatment. The samples collected after installation of corrosion control treatment were divided into smaller categories to assist in evaluating the effects of treatment on lead levels over time as stabilization of corrosion control treatment may take several months or even years. These systems were analyzed for the variability of lead and copper levels within the system over time.

To assess the variability of repeat samples at individual homes, EPA

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evaluated three cities (Chicago, Newport News, and New Bedford) in which no treatment modifications were made during the sampling period that would have altered the aggressiveness of the water. The AWWSC data, discussed earlier, are not analyzed here because they represent single samples from homes and, thus, do not indicate the variability within a house or within systems over time.

As already noted, the wide variability in tap water lead levels is influenced by many factors, such as standing time of the water in the plumbing, age and type of plumbing, volume of the water sample, and the corrosivity of source water (Schock, 1988, 1990). Several of these effects were minimized for the six systems analyzed because each system collected the same type of sample (first-draw with standing time of at least 6 hours) from homes with similar characteristics (either homes with lead service lines or homes with no lead service lines).

EPA has conducted several analyses of the available data in order to characterize the extent of the variability found in lead tap levels after application of corrosion control treatment. One approach utilizes the relationship between the 90th percentile tap level and the median (i.e., 50th percentile) tap level. As illustration, if 100 samples were taken, the 90th percentile level is the concentration in the 10th highest sample, the 50th percentile level is the concentration in the 50th highest sample. The purpose of this analysis was to evaluate the magnitude of the difference between these two points in the distribution of values. A high degree of variability would be reflected in a large difference in the 90th and 50th percentiles. Sufficiently large variability would indicate the inability of treatment to obtain any consistent level of efficacy as reflected in tap samples. The results in Table 2 analyze the variability of tap samples taken in three systems, Boston, Bennington, and Seattle, before and after installation of corrosion control treatment. The ratio of the 90th to the 50th percentile lead values after treatment was quite large, ranging from 2.4 to 5.1. Most notably, application of treatment did not decrease the extent of the variability. The degree of variability actually increased in Boston and Bennington, and remained very large in Seattle.

The results in Table 3 indicate that tap water lead levels in selected Chicago homes varied considerably when collected over a 1 month period. The results for Newport News, New Bedford, Boston, and Bennington also indicate highly variable lead levels in the same house from month to month. Results presented in Tables 2 and 3 are discussed in detail in "Variability of Household Water Lead Levels in American Cities" (Marcus, 1990a). This report was made available to the public through a **Federal Register** notice published on October 19, 1990 (55 FR 42409). EPA received no comments on the report. The results in Table 4 indicate the high degree of variability in tap water copper levels in Boston and Bennington after installation of corrosion control treatment. Results presented in Table 4 are discussed in detail in "Variability of Household Copper Levels in Two American Cities" (Marcus, 1991).

TABLE 2.—WITHIN SYSTEM LEAD VARIABILITY IN FIRST DRAW TAP SAMPLES

City/treatment	Lead levels (mg/L)		
	Number of samples	90th percentile	Q90/Q50 ratio
Boston: [1]			
—No treatment	49	0.110	2.4
—Inhibitor	59	0.139	2.7
—No treatment	26	0.161	2.2
—pH adjustment	61	0.108	3.1
—pH adjustment	49	0.048	2.7
—pH adjustment	50	0.047	2.6
Bennington: [2]			
—No treatment	40	0.148	1.9
—pH adjustment	39	0.082	2.4
—pH adjustment	40	0.066	3.1
—pH adjustment	40	0.026	2.9
Seattle (Cedar River): [3]			
—No treatment	46	0.035	5.1
—No treatment	43	0.023	5.3
—pH adjustment	55	0.006	3.2
—pH adjustment	31	0.009	4.0
—pH adjustment	8	0.003	2.3
Seattle (Toft River): [4]			
—No treatment	42	0.036	4.6
—No treatment	46	0.016	4.8
—pH adjustment	52	0.006	3.4
—pH adjustment	5	0.006	3.3
—pH adjustment	17	0.004	2.4

[1] Boston samples collected between 2/76–5/76; 7/76–12/76; 3/77–4/77;6/77–11/77; 7/78–1/79; and 8/80–8/81.
[2] Bennington samples collected between 4/77–7/77; 8/77–12/77; 8/78–6/79; and 1/80–11/80.
[3] Seattle (Cedar River) samples collected during 1979; 1981; 1983; 1985; and 1987.
[4] Seattle (Toft River) samples collected during 1979; 1981; 1983; 1985; and 1986.

TABLE 3.—WITHIN HOUSE VARIABILITY IN LEAD LEVELS IN FIRST DRAW TAP SAMPLES (MG/L)

City/house	Sample 1	Sample 2	Sample 3	Sample 4	Sample 5
Chicago: [1]					
House 6	0.024	0.012	0.028	0.030	0.013
House 7	0.010	0.009	0.008	0.032	
House 9	0.030	0.017	0.015	<0.003	0.008
House 10	0.008	0.025	0.028	0.027	0.015

TABLE 3.—WITHIN HOUSE VARIABILITY IN LEAD LEVELS IN FIRST DRAW TAP SAMPLES (MG/L)—Continued

City/house	Sample 1	Sample 2	Sample 3	Sample 4	Sample 5
Newport News: [2]					
House 2	0.001	0.004	0.016	0.012	0.008
House 15	0.011	0.004	0.004	0.005	0.022
House 20	0.005	0.005	0.010	0.004	0.020
House 24	0.006	0.004	0.013	0.005	0.024
New Bedford: [3]					
House 1	0.070	0.038	0.018	0.032	0.032
House 3	0.190	0.100	0.046	0.026	
House 10	0.050	0.044	0.024	0.020	
Boston: [4]					
House 2	0.052	0.051	0.032	0.019	0.027
House 6	0.064	0.008	0.013	0.038	0.027
House 10	0.010	0.040	0.052	0.009	0.023
House 13	0.022	0.075	0.014		0.021
Bennington: [5]					
House 2	0.020	0.007	0.005	0.005	0.005
House 5	0.046	0.018	0.005	0.005	0.009
House 6	0.088	0.018	0.013	0.020	0.028
House 10	0.066	0.025	0.012	0.027	0.025

[1] Chicago samples collected from January 7 to February 5, 1986.
[2] Newport News samples collected once a month from January to May 1989.
[3] New Bedford samples collected from January 1978 to July 1978.
[4] Boston samples collected between February 1980 through August 1981 (about three years after treatment installed).
[5] Bennington samples collected from March 1979 to November 1980 (about 2 years after treatment installed).

TABLE 4.—WITHIN SYSTEM/HOUSE VARIABILITY IN COPPER LEVELS IN FIRST DRAW TAP SAMPLES

City/treatment	Copper levels (mg/L)		
	Number of samples	90th percentile	Q90/Q50 ratio
Boston: [1]			
—No treatment	51	0.71	1.4
—Inhibitor	60	0.75	1.4
—No treatment	26	1.13	1.6
—pH adjustment	57	0.35	2.2
—pH adjustment	43	0.18	2.3
—pH adjustment	53	0.12	2.2
Bennington: [2]			
—No treatment	40	0.90	2.4
—pH adjustment	38	0.29	2.2
—pH adjustment	38	0.36	2.7
—pH adjustment	40	0.10	2.6

[1] Boston samples collected between 2/76–5/76; 7/76–12/76; 3/77–4/77; 6/77–11/77; 7/78–1/79; and 8/80–8/81.
[2] Bennington samples collected between 4/77–7/77; 8/77–12/77; 8/78–6/79; and 1/80–11/80.

House	Within house variability				
	Sample 1	Sample 2	Sample 3	Sample 4	Sample 5
Boston: [1]					
House 2	0.100	0.100	0.100	0.060	0.050
House 6	0.290	0.608	0.070	0.150	0.090
House 10	0.100	0.140	0.120	0.030	0.090
House 13	0.100	0.100	0.020		0.040
Bennington: [2]					
House 2	0.430	0.020	0.040	0.030	0.100
House 5	0.410	0.090	0.020	0.020	0.040
House 6	0.870	0.140	0.060	0.020	0.010
House 10	0.860	0.140	0.110	0.120	0.110

[1] Boston samples collected between February 1980 through August 1981 (about three years after treatment installed).
[2] Bennington samples collected from March 1979 to November 1980 (about 2 years after treatment installed).

Several commenters felt that because a significant portion of the variability is caused by homeowner plumbing, variability in lead level samples could be eliminated or minimized, especially for systems with no lead service lines, by establishing an MCL measured at either the entry point to the distribution system, at the end of a system's control, or at the tap with a fully flushed sample. EPA agrees that this would be one method for minimizing the variability in water samples. However, as discussed earlier, this approach would only identify a small portion of the problem because in most cases lead and copper in drinking water is the result of corrosion of lead and copper bearing materials in household plumbing. EPA agrees that water systems should not be held directly responsible for plumbing

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materials within private homes. The Agency believes, however, that water systems can control the main contributor to dissolution of lead and copper plumbing materials—corrosivity of the water. Since there is no single, reliable index for measuring water corrosivity toward lead and copper across the country, the degree to which a system has minimized corrosivity for lead and copper can be assessed adequately only through measuring lead and copper levels at the tap over time, and by correlating those levels and the levels for several water quality parameters (e.g., calcium, pH, alkalinity). Thus, basing an MCL only on samples taken at the source, at the meter, or even with fully flushed samples at the tap would not fully account for consumers' exposure to lead and copper levels in drinking water or provide a means to fully evaluate whether a system is properly implementing optimal corrosion control.

Regulation of lead and copper is also complicated by the fact that a major contributor to contaminant levels at consumers' taps is corrosion of materials not owned or controlled by the public water system. As discussed in the preamble to the proposed rule, section 1401(4) of the SDWA defines public water system to include "(A) any collection, treatment, storage, and distribution facilities under control of" the system, and "(B) any collection or pretreatment facilities not under such control * * *." EPA stated that the listing of distribution facilities in subparagraph (A) of this section, as opposed to paragraph (B), indicated that Congress intended to exclude from the responsibility of PWSs distribution facilities, such as customer's plumbing, which are not under control of the system. EPA concluded that this definition precluded the Agency from promulgating a drinking water regulation that holds a PWS liable for conditions that are beyond its control. Most commenters concurred with this conclusion. Several commenters argued that the definition of public water system contained in the Act was not intended by Congress to limit EPA's regulatory authority over public water systems, but merely to identify the systems that would be subject to regulation under the statute.

The commenter's assertion that the definition of public water system was only intended by Congress to designate who is a PWS (as opposed to what portion of a PWS is subject to EPA's regulatory authority) is not consistent with the plain language of section 1401(4). The first sentence of this section defines public water system as a system for the provision to the public of piped water for human consumption which has at least 15 service connections or regularly serves at least 25 people; the second sentence then lists those components of the public water system which are "included" in the statutory definition of a public water system. The latter provision on its face attempts to distinguish between those facilities associated with a public water system which are subject to the statute and those which are not. If the commenter's argument were correct and this section only was designed to designate which entities are subject to regulation, then Congress would have had no reason to include the second sentence of section 1401(4). Because the commenter's interpretation would effectively read this sentence out of the statute, the Agency does not believe that commenter has reasonably interpreted the statutory language.

Based upon a review of the public comments and further consideration of the statutory language, EPA reaffirms the conclusion presented in the proposal that the definition of public water system in the Act limits systems' responsibility to portions of the distribution system under control of the system. This interpretation is consistent with the plain language of the statute and with the reasonable approach of requiring systems to address only those problems over which they exercise sufficient control for remedial action.

EPA considered whether, notwithstanding the difficulties in setting achievable numerical standards for lead and copper, Congress would have intended to require EPA to establish MCLs for these contaminants. On the one hand, the language contained in sections 1401(1)(C) and 1412(b)(7)(A) appears to indicate that MCLs must be set where monitoring for a contaminant is feasible. On the other hand, section 1412(b)(5) and the legislative history indicate that Congress assumed that where the level of the contaminant could be ascertained, EPA would be capable of establishing MCLs at "feasible" levels that could be met by large systems after application of best available technology taking cost into consideration. Congress does not appear to have anticipated the problem encountered with corrosion by-products, where, despite the availability of analytical methods to ascertain the level of the contaminants, establishment of any one "feasible" level as the sole determinant of systems' compliance is not technically justifiable.

EPA believes that, under these circumstances, the consequences of setting MCLs for lead and copper at the tap would run counter to the purposes and structure of the Act. As discussed in the preamble to the proposal, if a stringent MCL were set that would reflect the public health goals of the statute, the Agency believes that large numbers of water systems would be out of compliance and vulnerable to enforcement actions and citizen suits. The Agency discussed in the preamble to the proposal the possibility of providing relief for these systems from legal liability for exceedances of the MCLs by authorizing variances under section 1415 of the SDWA. EPA pointed out in the proposal, however, that the potential availability of variances would not adequately address this problem because (1) variances were intended by Congress to be temporary and some systems will never be able to come into compliance where the violation is due to lead in homeowners' plumbing; (2) an MCL is not "feasible" under the statute if a significant proportion of systems cannot meet it, and (3) variances are not available under section 1415 for systems that pose an "unreasonable risk to health." Moreover, EPA believes that Congress did not intend for large numbers of systems to be operating pursuant to variances under Section 1415, which would impose a substantial administrative burden on State primacy agencies (and EPA where States have not assumed primacy) to evaluate and grant variances (after notice and opportunity for public hearing provided under section 1415) and to supervise compliance with the variances. Therefore, for the reasons noted above, EPA continues to believe that the potential availability of variances does not adequately address the legal, technical, and administrative problems associated with setting relatively low MCLs for lead and copper that many systems could not meet.

EPA does not believe that establishing stringent MCLs that most systems might not be able to meet would be consistent with the statutory requirement that an MCL be "feasible." While the legislative history indicates that Congress intended that MCLs be set based upon the better performing systems (i.e., large systems applying BAT to "relatively clean source water"), there is no indication that Congress envisioned establishment of MCLs that would result in widespread noncompliance among water systems because of contamination caused by conditions beyond their control.

EPA also does not believe that it would be appropriate to adopt the

suggestion of one commenter that EPA adopt an MCL along with a provision that would allow systems to nonetheless be deemed in compliance if they could demonstrate that an exceedance was beyond their control. First, such an MCL would not in fact be "feasible" to meet, and therefore EPA believes such a standard would not be in line with the statutory requirement applicable to MCLs. Moreover, EPA would anticipate that most water systems exceeding the MCL would likely seek to make such a demonstration. This would impose a substantial administrative burden on States, while large numbers of systems would be out of compliance with the MCL pending State determinations on the requests. Having large numbers of systems out of compliance with the SDWA due potentially to problems outside their control would cause substantial confusion among the public and the water supply industry. Thus, EPA rejects the commenter's approach on both legal and policy grounds.

Alternatively, EPA could set MCLs high enough so that most systems could meet them after they had installed treatment. Such MCLs would not be based upon reliable engineering judgement regarding the levels achievable with BAT (because the levels achieved are so variable), but would instead be based on the principle that sufficiently high MCLs could be met by most systems, taking into account the variability in tap levels found among systems after treatment. EPA believes that such a course of action would be contrary to the purpose of the SDWA to reduce consumer exposure to drinking water contaminants. Under this option, many systems with relatively high contaminant levels (although still below the MCLs) would not have to install any treatment to be in compliance. This situation could lead to unnecessarily high exposures of significant segments of the population and would be inconsistent with the underlying objective of the statute to reduce exposure to the maximum extent feasible.

Taking into account all of the considerations discussed above, EPA concludes that setting MCLs for lead and copper is not feasible within the meaning of the SDWA and would, moreover, not achieve the basic purposes of the statute. The Agency believes that the treatment technique approach contained in the final rule will achieve the public health goals of the SDWA without the problems associated with establishing MCLs. As discussed more fully below, the components of the treatment technique (corrosion control, source water treatment, lead service line replacement, and public education) will be triggered, in large part, if more than 10 percent of targeted tap lead and copper samples in water samples are above 0.015 mg/L for lead and 1.3 mg/L for copper (except that large systems may be required to install optimal corrosion control even if initial tap levels meet the action levels). The action level that will trigger corrosion control for small and medium size systems is more stringent than the corrosion control action level of 0.010 mg/L average, contained in the proposed rule (90th percentile lead level of 0.015 mg/L corresponds to approximately 0.005 mg/L as an average). This relatively stringent action level (which, as discussed in Section E(2)(a) below, is associated with substantial public health protection), is expected to trigger treatment among large numbers of systems nationwide, thereby substantially reducing public exposure to lead in drinking water. All small and medium-size systems that exceed either action level are required to make a detailed demonstration to the State that they have "optimized" corrosion control treatment; that is, they have minimized the lead and copper concentrations at users' taps. The final rule requires all large systems to make this demonstration. All other steps that systems can feasibly take (replacing lead service lines they control and reducing source water contamination so as to minimize lead and copper levels at the tap, as well as public education) are also required where systems exceed the action levels at the tap. While the treatment technique will require systems to take these steps to reduce consumers' exposure to lead and copper to the lowest levels feasible, it does so without the problems associated with establishing MCLs discussed above.

2. Amendment to Definition of MCL

In 1988, EPA proposed to amend the definition of MCL to delete the existing definition and substitute instead the statutory definition of MCL. Existing § 141.2 defines MCL as:

> the maximum permissible level of a contaminant in water which is delivered to the free flowing outlet of the ultimate user of a public water system, except in the case of turbidity where the maximum permissible level is measured at the point of entry to the distribution system. Contaminants added to the water under circumstances controlled by the user, except those resulting from corrosion of piping and plumbing caused by water quality, are excluded from this definition.

In evaluating whether to change this definition, the Agency discussed several factors. First, EPA noted that many NPDWRs appeared inconsistent with this definition because they require compliance monitoring to take place in the distribution system, and not at the tap. Second, to the extent the existing definition appeared to hold public water systems responsible for levels at the tap due to conditions in distribution facilities beyond their control, EPA stated that the existing definition was arguably inconsistent with the statutory definition of public water system which, as discussed above, does not include distribution facilities which are outside the system's control. Finally, EPA noted that the definition of MCL in the statute as "the maximum permissible level of a contaminant in water which is delivered to any user of a public water system," (Section 1401(3)) could be interpreted either as applying to the water at the tap or where water passed from the system to the user, but that the legislative history evinced Congressional intent that MCLs apply at the tap.

EPA received public comments both supporting and opposing the proposed change in the regulatory definition of MCL. Commenters supporting the change argued that Congress did not intend for public water systems to be responsible for conditions at the tap over which they did not have control, while commenters opposing the change argued that, in order to be protective of public health, MCLs must apply to the water actually consumed by the public.

EPA has decided to finalize the proposed change to the definition of MCL. Based upon the language and the legislative history of the statute, EPA believes that both the commenters supporting and opposing this approach are, in part, correct. For the reasons discussed below, EPA believes that Congress intended MCLs to apply to water at the tap, but that EPA has discretion to require monitoring at other locations as long as such monitoring is representative of levels at the tap. However, EPA concludes that Congress did not authorize the Agency to hold public water systems liable for tap levels to the extent they are due to conditions in the distribution system which are outside the system's control.

As noted above, the statutory definition of MCL can be interpreted either to favor the view that Congress intended to have MCLs apply at the tap, or the view that they apply at the point where water is delivered from the system to the user. The House Report on the bill that eventually become the SDWA of 1974 states that "[s]ince drinking water regulations are intended to be met at the consumer's tap, the

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committee anticipates that monitoring would include tap sampling." (H.R.Rep. No. 93-1185, p. 13, 1974). Thus, while the statutory language is ambiguous, the legislative history indicates clearly that MCLs were intended to be met at the tap. However, the Committee stated only that it "anticipates that monitoring would include tap sampling." (emphasis added). EPA does not construe this language as evincing Congressional intent to mandate monitoring at the tap, as long as other monitoring locations (e.g., in the distribution system) would be representative of contaminant levels at the tap. This is the case with most contaminants, which enter drinking water at the source only and therefore do not increase as they pass through the distribution system and homeowners' plumbing. EPA has established monitoring requirements for inorganic and organic contaminants that require monitoring in the distribution system because this is easier and provides just as accurate an assessment of tap levels as tap sampling itself. See 40 CFR 141.23 and 141.24. EPA therefore construes the definition of MCL in the statute as authorizing, but not requiring, tap sampling, as long as the monitoring established by EPA provides an adequate representation of consumer exposure at the tap.

EPA believes, however, that the definition of MCL in the statute must also be reconciled with the statutory definition of public water system which, as EPA has discussed, precludes the Agency from holding public water systems responsible for contaminant levels at the tap which enter drinking water due to conditions in the distribution system which are beyond the system's control. The existing definition of MCL recognizes this fact by excluding "contaminants added to the water under circumstances controlled by the user." § 141.2. However, to the extent the current definition may be construed as implying that the level of corrosion by-products at the tap is entirely within the ability of public water systems to control, EPA believes that it is necessary to clarify the Agency's position and delete the current language in the current regulation. As discussed at length in this preamble, data indicate that adjustments by the water system to water quality can reduce the corrosivity of water to lead and copper-bearing materials. However, because all water is corrosive to some degree, corrosion of lead and copper materials outside the system's control (i.e., located in the home) cannot be completely eliminated. Thus, the data show that, even in instances where lead materials are not present in the system's distribution facilities and the system has applied corrosion control treatment, tap levels continue to exhibit varying levels of corrosion by-products. In light of the Agency's current judgment that corrosion by-products at the tap can only be controlled in part by public water systems, EPA is therefore deleting the current language in § 141.2 relating to corrosion byproducts. While this change clarifies the Agency's technical judgment regarding systems' responsibility for the levels of corrosion by-products at the tap, this amendment has no actual effect on requirements applicable to public water systems with regard to corrosion by-products, because the Agency has established a treatment technique in lieu of MCLs for lead and copper.

In sum, the Agency is changing the existing definition of MCL so that the regulatory definition tracks exactly the statutory definition. In making this change, the Agency has not altered any requirements applicable to public water systems. Systems will continue to conduct monitoring for compliance with MCLs in accordance with the specific requirements of each NPDWR. This change merely clears up any apparent discrepancies between the existing definition of MCL and the monitoring protocols under a number of NPDWRs. In establishing future MCLs, EPA will exercise the discretion discussed above which the Agency has under the SDWA to require monitoring for compliance with MCLs at any location which will reflect contaminant levels at the tap, except where contamination at the tap reflects conditions outside the control of the public water system as defined in section 1401 of the Act. In such cases, EPA will determine the appropriate approach on a case-by-case basis.

C. Summary of Final Regulatory Approach

The goal of this rule is to provide maximum human health protection by reducing the lead and copper levels at consumers' taps to as close to the MCLG as is feasible. To accomplish this goal, EPA is requiring water systems to: (1) Install or improve corrosion control to minimize lead and copper levels at the tap while ensuring that the treatment does not cause the water system to violate any national primary drinking water regulation (i.e., optimal corrosion control); (2) install treatment, if necessary, to reduce the lead and copper levels in source water entering the distribution system; (3) replace lead service lines that contribute more than 0.015 mg/L to lead in drinking water if corrosion control and/or source water treatment does not bring lead levels below the lead action level, and (4) conduct public education if lead levels are above the action level. Systems that can demonstrate that lead and copper levels are already minimized would not be required to install additional treatment. Unless otherwise stated, each of the provisions in this rule applies to community and non-transient, non-community systems (hereafter referred to as either public water systems, water systems, or systems). The requirements of this rule do not apply to transient, non-community water systems because lead and copper in drinking water are not considered acute contaminants and, therefore, the transient populations affected by these systems would not be at risk from short term exposure (see 52 FR 25690 for a complete discussion on not including transient systems). In making any determinations under this rule, EPA expects that states would provide for public participation in accordance with applicable provisions of state law.

1. Final Action Levels

The "no-action level" concept was introduced in the proposal as a method to limit the number of public water systems that would need to make a detailed demonstration that they have optimal corrosion control treatment. Many commenters thought the term "no-action levels" should be changed to "action levels" as this more accurately portrays the response required of the water systems. The final rule, therefore, use the term "action levels" (ALs) in place of "no-action levels."

The final lead action level is exceeded if the level of lead in more than 10 percent of the targeted tap samples is greater than 0.015 mg/L (90th percentile). The copper action level is exceeded if the level of copper in more than 10 percent of targeted tap samples is greater than 1.3 mg/L (90th percentile). The 90th percentile can be calculated by first arranging the results of all lead and copper samples taken during a monitoring period in ascending order from the sample with the lowest contaminant level to the sample with the highest contaminant level. Each sample should be assigned a number, ascending by single digits from number 1 for the sample with the lowest contaminant level. The number assigned to the sample with the highest contaminant level should be equal to the total number of samples taken. The total number of samples taken during each monitoring period should then be multiplied by 0.9 to arrive at the sample number that represents the 90th

percentile, as indicated in Table 5. Systems required to collect only five samples per monitoring period should average the fourth and fifth samples to arrive at a 90th percentile value.

TABLE 5.—90TH Percentiles for Different Sample Sizes

Number of samples required per monitoring period	Sample indicating 90th percentile value
100	90th highest sample.
60	54th highest sample.
40	36th highest sample.
30	27th highest sample.
20	18th highest sample.
10	9th highest sample.
5	Average of 4th and 5th sample.

Systems required to collect 100 samples per monitoring period, for example, would exceed the lead action level if the level in the 90th sample exceeded 0.015 mg/L. Systems that take more than the minimum number of required samples would determine the 90th percentile value using the following equation:

(Number of samples) × (0.9) = sample corresponding to the 90th percentile

For a system that collects 120 samples, the 90th percentile lead value would be the 108th highest sample (120 × 0.9).

The Agency has decided to adopt the 90th percentile value instead of an average or median value because this method does not require assumptions concerning values less than the lead practical quantitation level (PQL) of 0.005 mg/L. The available data generally indicate that lead in drinking water is log-normally distributed (Schock et al. 1988; Marcus, 1990a, 1990b), resulting in the majority of lead values for a typical system being below the PQL. The assumption regarding values below the PQL (i.e., equal to the PQL, one-half the PQL, or zero) could have a significant impact on whether the system's average value is above or below the action level. Adopting an action level defined as the 90th percentile does not require any assumptions concerning values below the PQL because only values at and above 0.015 mg/L are needed to judge whether the action level is exceeded. In addition, the Agency is concerned about the high lead levels that may be present in some systems and believes an action level using the 90th percentile value is more sensitive to these outliers than an average or median value. Using the 90th percentile is consistent with recommendations by EPA's Science Advisory Board (SAB) (EPA, 1988d), which reviewed the monitoring protocol for the proposed lead and copper rule on October 14, 1988. SAB recommended that EPA consider using percentiles rather than an average value since assumptions regarding the underlying distribution of water lead levels (e.g., normally distributed versus log-normally), or assumptions about values below the maximum detection limit (MDL) or the PQL, would not be required.

a. *Action Level For Lead in School Drinking Water.* In January 1989, EPA published a manual, "Lead in School's Drinking Water", to assist school officials in identifying whether a school had a problem with lead in drinking water, the steps to reduce or eliminate this problem, and information on training personnel in sampling and remedial programs. As a part of this program, EPA recommended that schools collect 250 ml first-draw samples from water fountains and outlets and that the water fountains and/or outlets be taken out of service if the lead level exceeded 0.020 mg/L. The sampling was designed to pinpoint specific fountains and outlets that required remediation (e.g., water cooler replacement).

As discussed above, the final rule establishes a lead action level of 0.015 mg/L at the 90th percentile. The action level in the final rule is based on 1 liter first-draw samples collected from numerous targeted sampling sites throughout a distribution system and is designed to identify system-wide problems and not problems in single outlets. This is quite different from the sampling conducted in schools where EPA is concerned with locating individual outlets that require remediation. The school sampling protocol maximizes the likelihood that the highest concentrations of lead are found because the first 250 ml are analyzed for lead after overnight stagnation (usually much longer than the 6 hour minimum specified for this regulation). Consequently, the two lead action levels differ because of the different problems they seek to detect and the different monitoring protocols used in the two situations.

EPA continues to recommend that schools take action at individual outlets with lead levels greater than 0.020 mg/L. EPA will make an effort to ensure that schools, laboratories, States, and consumers understand the distinction between the action level under this rule and that applicable to public schools. EPA will assess its 1989 guidance regarding the school action level to determine whether revisions are warranted.

2. Corrosion Control Requirements (Sections 141.81 and 141.82)

Since most of the lead and copper found in drinking water is caused by corrosion of materials containing lead and copper in the distribution system and in the plumbing systems of privately owned buildings, the Agency believes that the most important element of the final treatment technique is corrosion control treatment. The proposed rule would have required water systems to install "optimal" corrosion control treatment. The idea of "optimizing" corrosion control treatment, as discussed in the August 1988 proposal, created concern among water systems. They feared that EPA intended to force water systems to reduce the corrosivity of their water toward lead and copper without regard for either the other types of material found in the distribution system (e.g., iron, galvanized steel) or other treatment processes undertaken by water systems (e.g., disinfection, filtration) or other secondary effects (e.g., phosphate problems, zinc in wastewater treatment sludge).

EPA agrees that water systems should design corrosion control in the context of other treatment processes and should consider other materials within the distribution system. Designing treatment processes without considering these factors could cause unintended secondary effects (AWWA-RF, 1990; Schock, 1990). Because of these concerns, the Agency has changed its definition of optimal corrosion control to the corrosion control treatment that minimizes lead and copper levels at users' taps, while ensuring that the treatment does not cause the water system to violate any national primary drinking water regulation. Further, in identifying optimal corrosion control treatment, both the water system and the State are required to consider the constraints that would limit or prohibit the use of alternative corrosion control treatments, and any other potentially adverse effects on other water quality treatment processes. Thus, the final rule allows systems the flexibility to account for other aspects of water quality that can be affected by corrosion control treatment. This will help ensure that public health gains associated with reduced lead exposure are not offset by increased risk of adverse effects due to other contaminants.

Water systems are required to perform various steps to meet the final corrosion control treatment requirements. The specific requirements

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and time allotted for achieving each of the steps have been differentiated for large, medium, and small size systems. Dates for each requirement are included in Table 6. Compliance with the corrosion control portion of the treatment technique is determined by whether a system has successfully demonstrated that it optimized corrosion control and has completed the steps outlined below by the dates specified in this table. The corrosion control treatment requirements are contained in two sections of the final rule: §§ 141.81 and 141.82. Section 141.81 contains the timetables for systems to complete corrosion control treatment requirements; the details of each step listed in § 141.81 are described in § 141.82.

TABLE 6.—TIMING FOR CORROSION CONTROL TREATMENT REQUIREMENTS

[System Size (persons served)]

Treatment requirements	>50,000*	3,301 to 50,000	<3,300
Begin initial tap sampling	1/1/92	7/1/92	7/1/93.
System recommends CCT to State	7/1/94	6 months after > AL	6 months after > AL.
Results of CC studies to State	7/1/94	If State requires, 18 months after	If State requires, 18 months after.
State approves/designates treatment	1/1/95	Either 18 months after > AL or 6 months after CC studies completed.	Either 24 months after > AL or 6 months after CC studies completed.
Complete installation of CCT	1/1/97	24 months after State designates treatment	24 months after State designates treatment.
Results of followup monitoring	1/1/98	12 months after CCT installed	12 months after CCT installed.
State review of results and designate WQPs	7/1/98	6 months after follow-up monitoring completed	6 months after follow-up monitoring completed.
Additional monitoring	7/1/99	12 months if > AL after follow-up monitoring	12 months if > AL after follow-up monitoring.

AL—Action Level; CCT—Corrosion Control Treatment; CC—Corrosion Control; WQPs—Water Quality Parameters.
* Dates are included for large systems because they are all required to complete these treatment steps, whereas the timing for smaller systems depends on when the action level is exceeded.

Public water systems are not required to complete the actions described below if they can demonstrate that they have already optimized corrosion control. Water systems can demonstrate that they have optimized corrosion control by satisfying one of the following criteria:

(1) For small and medium-size systems only, if they meet the lead and copper action levels for two consecutive 6 month monitoring periods.

(2) For any size system, demonstrating to the satisfaction of the State that the system has conducted activities equivalent to the corrosion control requirements needed to demonstrate that the system has installed optimal treatment.

(3) For any size system, demonstrating that the difference between the 90th percentile tap water lead level and the highest source water lead concentration is less than the lead PQL (0.005 mg/1) for two consecutive 6 month monitoring periods.

Systems attempting to demonstrate that they have already evaluated the effectiveness of corrosion control and installed optimized corrosion control treatment are required to provide the following information to the State in support of this determination (Section 141.81(b)(2)).

• A report explaining the test methodologies used (i.e., pipe rig/loops, metal coupon tests, pilot-scale studies, or documented analogous treatments with other systems of similar size, water chemistry, and configuration) to evaluate the various corrosion control treatment options, the results of all tests conducted, and the rationale for the system's selection of the optimal corrosion control. The system should have evaluated the effectiveness of minimizing lead and copper levels through adjusting alkalinity and pH, calcium hardness, and/or the addition of phosphate or silicate-based corrosion inhibitors or a combination of the treatments. Systems that have not conducted evaluative tests for all these corrosion control treatments must document why they were unable to evaluate these treatments.

• The results of all test samples collected for lead and copper and for each of the water quality parameters in § 141.87(c) in studies used to evaluate the various corrosion control treatment options.

• A report explaining how the treatment has been installed and how it is being properly maintained and operated to insure minimal lead and copper concentrations at consumers' taps. To satisfy this provision, a system must show that the appropriate chemical dosages indicated by the evaluative studies are being added and that the associated values for the water quality parameters of concern, whether this be pH, alkalinity, calcium and/or orthophosphate or silica residuals, are being maintained throughout the distribution system. To successfully demonstrate that the appropriate water quality parameters are being maintained within an acceptable range of values to minimize lead and copper levels at the tap, the system must collect tap samples in the field before and after installing treatment.

• The results of tap water samples for lead and copper taken at least once every 6 months for 1 year after corrosion control has been installed. The purpose of collecting these samples is to determine whether corrosion control has been effective in reducing lead and copper levels. The samples must be collected at targeted sampling sites as defined in § 141.86(a) and be 1-liter in volume and have stood in the pipes for a minimum of 6 hours.

Systems may also show that they have optimized corrosion control by demonstrating that the difference between the 90th percentile lead and highest source water samples is below the PQL for lead (0.005 mg/L) for two consecutive 6-month monitoring periods. For example, a large system would be deemed to have optimized corrosion control if its 90th percentile tap water lead level is 0.017 mg/L and the highest source water sample is 0.013 mg/L (difference 0.004 mg/L). EPA has included this provision because in these cases, very small amounts of lead will have been contributed by corrosion of distribution system materials, (as discussed in Section V(A)(3), the PQL is the lowest concentration that can be reliably achieved by well-operated laboratories within specified limits of precision and accuracy during routine laboratory operating conditions). Past practice with corrosion control treatment has generally demonstrated the ability to make gross reductions in lead levels, but the Agency doubts whether systems could produce quantifiable improvements in lead levels when corrosion is introducing such small amounts of contamination. In the example noted above, however, the primary source of contamination is source water, and source water treatment would be necessary to minimize levels at the tap. Thus, lead levels should be adequately reduced at the tap without requiring the system to install corrosion control treatment in an instance where EPA doubts that such treatment could further reduce lead levels.

a. *Water Systems Serving Greater Than 50,000 People (Large Systems).* All public water systems serving more than 50,000 people (large systems) are required to complete all of the actions described below, unless they are deemed to have already optimized corrosion control as discussed in Section IV(C)(2) above.

i. Conduct Initial Tap Sampling (§ 141.81(d)(1)). All large systems are required to collect lead and copper samples for two consecutive 6-month periods, in accordance with the requirements contained in § 141.86(c) of the rule, and submit the results to the State. During the same two 6-month monitoring periods, large systems are also required to sample for pH, alkalinity, calcium, temperature, and conductivity, and phosphate and silica if phosphate or silicate-based inhibitors are used, in accordance with the requirements in § 141.87(b). Initial tap sampling must begin by January 1, 1992, and be completed by January 1, 1993.

ii. Conduct Studies/Recommend Treatment to State (§ 141.81(d)(2)). All large water systems are required to evaluate the effectiveness of each of the following treatments and, if appropriate, combinations of the treatments to identify optimal corrosion control for their system. The results must be submitted for review to the State by July 1, 1994.

(1) Alkalinity and pH adjustment.

(2) Calcium hardness adjustment.

(3) Addition of phosphate- or silica-based inhibitor at a concentration sufficient to maintain an effective residual concentration in test samples.

After analyzing the data generated during each evaluation, the water system shall recommend to the State the treatment option that constitutes optimal corrosion control treatment for that system and shall provide a rationale for its selection.

iii. State Designation of Optimal Corrosion Control (§ 141.81(d)(3)). By January 1, 1995, the State is required to review the different treatments evaluated by the system and either approve the treatment identified by the system as optimal or designate an alternative treatment.

iv. Installation of Optimal Corrosion Control (§ 141.81(d)(4)). By January 1, 1997, large water systems must install and properly operate the State-designated corrosion control treatment.

v. Follow-up Monitoring (§ 141.81(d)(5)). By January 1, 1998, large water systems must conduct follow-up tap sampling for lead and copper and the applicable water quality parameters at the same locations used for initial sampling during two consecutive 6-month monitoring periods.

vi. State Designation of Optimal Water Quality Parameters (§ 141.81(d)(6)). States are given until July 1, 1998 to review the system's installation and operation of corrosion control treatment, and after reviewing the results of tap water and water quality monitoring, the State is required to designate optimal water quality parameters, including:

(1) A minimum value or a range of values for pH measured at each entry point to the distribution system.

(2) A minimum pH value, measured in all tap samples, equal to or greater than 7.0, unless the State determines that meeting such a level is not technologically feasible or is not necessary for the system to optimize corrosion control.

(3) If a corrosion inhibitor is used, a minimum concentration or a range of concentrations for the inhibitor, measured at each entry point to the distribution system and in all tap samples, that the State determines is necessary to form a passivating film on the interior walls of the pipes of the distribution system.

(4) If alkalinity is adjusted as part of optimal corrosion control treatment, a minimum concentration or a range of concentrations for alkalinity, measured at each entry point to the distribution system and in all tap samples.

(5) If calcium carbonate stabilization is used as part of corrosion control, a minimum concentration or a range of concentrations for calcium, measured in all tap samples.

The values for the applicable water quality control parameters listed above shall be those that the State determines reflect optimal corrosion control treatment for the system. The State may designate values for additional water quality control parameters that the State determines to reflect optimal corrosion control for the system. The State shall notify the system in writing of these determinations and explain the basis for its decisions.

vii. Continued Operation and Monitoring (§ 141.81(d)(7)). All systems are required to maintain the water quality parameter values designated by the State in all samples collected under § 141.87(d).

viii. Modification of State Treatment Decisions (§ 141.82(g)). Upon its own initiative or in response to a request by a water system or other interested party, a State may modify its determination of the optimal corrosion control treatment. A request for modification by a system or other interested party is required to be in writing, explain why the modification is appropriate, and provide supporting documentation. The State may modify its determination where it concludes that such change is necessary to ensure that the system continues to optimize corrosion control treatment. A revised determination should be made in writing, set forth the new treatment requirements, explain the basis for the State's decision, and provide an implementation schedule for completing the treatment modifications.

ix. Treatment Decisions by EPA in Lieu of the State (§ 142.19). The final rule allows the EPA Regional Administrator to review treatment determinations made by a State and issue Federal treatment determinations if he or she finds that: (1) A State has failed to issue a treatment determination by the applicable deadlines contained in § 141.81, (2) a State has abused its discretion in a substantial number of cases or in cases affecting a substantial population, or (3) the technical aspects of a State's determination would be indefensible in an expected Federal enforcement action taken against a system.

b. *Water Systems Serving 50,000 or Fewer People (Medium and Small Systems).* All water systems serving 50,000 or fewer people (medium systems—3,301 to 50,000; small systems—3,300 or less) are required to conduct tap sampling and, if they exceed the lead or copper action level, complete the remaining steps outlined below.

i. Initial Tap Sampling (§ 141.81(e)(1)). All medium and small water systems are required to monitor for lead and copper at targeted sampling sites until the system exceeds the action levels or becomes eligible for reduced monitoring. Medium-sized and small systems can demonstrate that they have optimized corrosion control and no further action is required, by meeting the requirements in § 141.81(b) and discussed in Section C(2), above. Medium-size systems are required to begin initial tap monitoring by July 1, 1992. Small systems are required to begin initial tap monitoring by July 1, 1993.

All medium-size and small systems that exceed the lead or copper action levels are also required to sample for the following parameters during the same 6-

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month monitoring period in which the action level(s) was exceeded: pH, alkalinity, calcium, temperature, and conductivity, and phosphate and silica if orthophosphate- or silicate-based inhibitors are used, every 6 months in accordance with the requirements in § 141.87 of the rule.

ii. System Recommendation on Optimal Treatment (§ 141.82(a)). Based upon the results of tap sampling, medium and small water systems exceeding the lead or copper action level have 6 months from the date they are above the action levels to recommend to the State installation of one or more of the corrosion control treatments listed in § 141.82(c) that they believe constitute optimal corrosion control for that system:

(1) Alkalinity and pH adjustment.

(2) Calcium hardness adjustment.

(3) Addition of phosphate- or silica-based inhibitor at a concentration sufficient to maintain an effective residual concentration in test samples.

iii. State Decision To Require Corrosion Control Studies or Corrosion Control Treatment (§ 141.81(e)(2)). Within 12 months after a system exceeds the lead or copper action level, the State may require the system to perform corrosion control studies. If the State does not require the system to perform such studies, the State is required to specify optimal corrosion control treatment within 18 months for medium-sized systems and 24 months for small systems from the date the system exceeds the action level(s). States are required to analyze all of the water system's monitoring results and approve the corrosion control option recommended by the system or designate an alternative optimal corrosion control treatment for the system.

iv. Conduct Corrosion Control Studies (§ 141.81(e)(3)). All medium-sized and small water systems required to conduct corrosion control studies have 18 months in which to complete the studies and submit the results to the State for review. Systems required to conduct corrosion control studies are required to follow the same procedures discussed above in Section (a)(ii) with regard to large systems. All medium-sized and small systems required to conduct corrosion control studies must submit their evaluations to the State along with a recommendation on the corrosion control treatment each system will install system-wide.

v. State Designation of Optimal Corrosion Control After Corrosion Control Studies (§ 141.81(e)(4)). If a medium-sized or small system conducts corrosion control studies, the State has 6 months to review the different treatments evaluated by the system and either approve the treatment identified by the system as optimal or specify an alternative treatment.

vi. Installation of Optimal Corrosion Control (§ 141.81(e)(5)). Medium and small water systems must install and properly operate the State-designated corrosion control treatment within 24 months of the State determination.

vii. Follow-up Monitoring (§ 141.81(e)(6)). Water systems must conduct follow-up tap sampling at the same locations used for initial sampling during two consecutive 6-month monitoring periods within 36 months after the State designates optimal corrosion control.

viii. State Designation of Optimal Water Quality Parameters (§ 141.81(e)(7)). States are given 6 months to review the system's installation of corrosion control treatment to determine whether the system has installed the optimal corrosion control treatment designated by the State and to designate values or ranges of values for applicable water quality parameters. The requirements for States are the same as stated for large systems in section (a)(vi), above.

ix. Continued Operation and Monitoring (§ 141.81(e)(8)). All systems are required to maintain the water quality parameter values designated by the State in all samples collected under § 141.87(d).

x. Modification of State Treatment Decisions (§ 141.82(g)). The requirements are the same as for large systems discussed above.

xi. Treatment Decisions by EPA in Lieu of the State (§ 142.19). The requirements are the same as for large systems discussed above.

3. Source Water Treatment Requirements (§ 141.83)

Water systems that exceed the lead or copper action levels are required to perform one or more of the following 6 actions to satisfy the source water treatment requirements:

(1) Monitor for source water lead and copper in accordance with the requirements in § 141.88 of the rule (all systems that exceed the lead or copper action levels) and recommend source water treatment to the State within 6 months after exceeding the lead or copper action level (§ 141.83(b)(1)).

(2) States are required to review the results of all source water samples and determine whether source water treatment is necessary to minimize lead or copper levels in water delivered to users' taps (§ 141.83(b)(2)).

(3) Systems are required to install the State-approved/designated source water treatment (§ 141.83(b)(3)).

(4) Systems are required to conduct follow-up tap water and source water monitoring (§ 141.88).

(5) States are required to review all the source water samples and designate the maximum permissible lead and copper concentrations for finished water entering the distribution system (§ 141.83(b)(4)).

(6) Systems required to maintain the State-designated maximum permissible lead and copper concentrations in source water (§ 141.83(b)(5)).

4. Public Education Requirements (§ 141.85)

All public water systems that exceed the lead action level are required to deliver a public education program as long as the action level is exceeded.

5. Lead Service Line Replacement Requirements (§ 141.84)

All public water systems that exceed the lead action level at the tap after installation or improvement of corrosion control and/or source water treatment are required to replace the lead service lines they control unless the lines are contributing less than 0.015 mg/L to drinking water.

D. Determination of Best Available Technology

The SDWA directs EPA to establish an MCL as close as "feasible" to the MCLG for a contaminant, or a treatment technique that will prevent adverse effects to the extent "feasible." Section 1412(b) (4) and (7). Feasibility for purposes of establishing an MCL or treatment technique means "feasible with the use of the best technology, treatment techniques, and other means, which the Administrator finds, after examination for efficacy under field conditions, and not solely under laboratory conditions, and are available (taking costs into consideration)." Section 1412(b)(5). Thus the Agency is required to demonstrate that the treatment requirement(s) is/are "feasible."

In selecting "best available technology" (BAT), EPA evaluates the ability of the technology to reduce the level of the contaminant, and the technological and economic feasibility of the technologies being considered. In assessing technological feasibility, EPA considers whether a technology has been shown to be effective through demonstrated full-scale use by public water systems, is compatible with other water treatment processes, and is

generally available throughout the United States.

When considering affordability of NPDWRs, EPA assesses whether the technology is reasonably affordable by regional and large metropolitan water systems (EPA is using a system size of 50,000 to 75,000 persons as a size cutoff to define large or regionalized water systems). This standard was established when the SDWA was enacted in 1974 ([see H.R. Rep. No. 93–1185 at 18 [1974] and reaffirmed when the Act was amended in 1986 (see 132 Cong. Rec. S6287 [May 21, 1986] [statement of Sen. Durenberger]]. EPA also gives additional consideration to the total national costs to comply with the regulation.

Each of the four treatment technologies (corrosion control, source water reduction, public education, and lead service line replacement) identified as a part of the treatment technique are evaluated below in terms of their technological and economic feasibility and their ability to effectively reduce contaminant levels.

E. Corrosion Control Treatment

1. Available Treatments

The proposal presented three general corrosion control treatments available to public water systems to minimize lead and copper corrosion by-products at the tap: pH adjustment, pH adjustment in conjunction with alkalinity adjustment, and addition of corrosion inhibitors. Commenters raised three general issues with these corrosion control treatments: (1) The effectiveness of the different corrosion control treatments to reduce lead and/or copper levels; (2) the potential adverse secondary effects from corrosion control treatment; and (3) the need for assistance in developing corrosion control strategies.

a. *Cost and Effectiveness of Corrosion Control Treatment.* Many commenters stated that pH and alkalinity adjustment and addition of inhibitors are effective for reducing lead and copper levels at the tap, the treatments are generally available, and the costs are reasonable. Other commenters asserted that EPA had presented limited or unconvincing evidence that the corrosion control treatments cited are effective for reducing tap water lead and copper levels to the proposed action levels (average of 0.010 mg/L for lead and 1.3 mg/L for copper in 95 percent of samples). Several commenters stated that corrosion control may be effective for reducing the corrosion of lead pipes, but there is little evidence that corrosion control is effective in reducing dissolution of lead from solder, fixtures, or faucets.

It is important to recognize that unlike control technologies to treat source water contamination, control of corrosion byproducts does not involve removal of contaminants directly. Rather, corrosion control involves a variety of practices to prevent the contaminants from entering drinking water. The Agency acknowledges that precisely quantifying the effectiveness of corrosion control treatment under different water quality and distribution system configurations is difficult. The complexities involved in determining the appropriate treatment require that treatment decisions take into account the unique properties of the water used by a particular system and the physical configuration and material composition of the distribution system through which the water flows to consumers. These problems are discussed in more detail in section (b) below. Nevertheless, the Agency believes the data presented below demonstrate that proper application of pH adjustment in conjunction with alkalinity adjustment, calcium hardness adjustment, and the addition of corrosion inhibitors is effective for reducing lead and copper levels at the tap and that the cost (see Section X) to large metropolitan water systems to install and maintain the technologies is reasonable.

The Agency disagrees that there is little evidence that corrosion control is effective in reducing the dissolution of lead from lead solder. Data collected in the field and laboratory (Lyon and Lenihan, 1977; Oliphant, 1983; EPA, 1988e; AWWA–RF, 1990) and laboratory (Schock and Wagner, 1985; AWWA–RF, 1990) indicate that increasing Ph can substantially reduce lead dissolution from lead solder. Brass faucets and fixtures have recently been identified as a potentially significant source of lead in drinking water (Schock and Wagner, 1985; Schock and Neff, 1988; Gardels and Sorg, 1989; AWWSC, 1989), and consequently, little research has been conducted on effective treatment methods for minimizing the rate of dissolution from these faucets. Data from a limited number of locations indicate that while new brass faucets can contribute substantial amounts of lead to first-draw water for the first few weeks or months after installation, the rate of lead dissolution will rapidly decline to a low level and ultimately stabilize (PMI, 1990). Until additional data can be collected that provide a clearer indication of the rate of dissolution from brass faucets under a variety of water conditions, the extent to which faucets contribute to total tap water lead levels will remain difficult to quantify. EPA has sought to ensure that lead problems due to faucets are detected and addressed by requiring systems to minimize lead levels in first-flush water. In addition, EPA will shortly publish an Advanced Notice of Proposed Rulemaking for a TSCA Section 8 action to restrict the future use of fixtures with lead.

In addition, EPA has been working with the National Sanitation Foundation (NSF) to establish performance standards for newly manufactured brass faucets and fixtures. Only those faucets that are tested to show minimal leaching of lead will be certified by NSF. Some manufacturers are beginning to investigate lead-free metal alloy faucets, but it appears that it will be several years before these faucets are in widespread use. Until then, EPA believes that compliance with this final rule, as well as with NSF standards, will minimize lead exposure from brass faucets. The NSF standard will be part of a voluntary certification program for manufacturers of plumbing products and is expected to be adopted by most, if not all, States.

The preamble to the proposed rule presented information from several public water systems that collected lead tap samples before and after either raising pH, or raising pH in conjunction with adjusting alkalinity. Several commenters stated that the data presented did not demonstrate that the corrosion control treatments were effective because the majority of the data (Boston and Bennington) were from systems with lead service lines and that the systems had very high lead levels, which are not representative of the lead levels found throughout the country. They stated that the effectiveness of corrosion control in systems with lead levels in the range usually found—0.015 mg/L to 0.030 mg/L—was not proven. In addition, they criticized the use of the Seattle data because the samples were not collected in the same manner as required by the proposed rule.

EPA acknowledges that the Boston and Bennington data presented in the proposal came from homes with lead service lines and that the lead levels in many of the homes had very high lead levels before installation of corrosion control treatment. The data from Boston and Bennington, however, cannot be discounted simply because the systems have lead service lines. EPA estimates that about 20 percent of all public water systems, and about 30 to 35 percent of the systems that will initially exceed the lead action level, have some lead

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service lines (EPA, 1991a). Thus, a large number of systems affected by this rule contain lead service lines. Data from other systems with lead service lines such as Fall River, New Bedford, and Chatham, Massachusetts, also had very high lead levels (EPA,1991b).

As has been widely documented, the corrosion control interventions in Boston and Bennington were effective (Karalekas et al., 1976, 1978, 1983; EPA, 1988f, 1991b; AWWA–RF, 1990). The 90th percentile lead levels in Boston were reduced from 0.110 mg/L (average of 0.058 mg/L) before pH and alkalinity adjustment, to 0.047 mg/L (average of 0.030 mg/L) 3 years after installation of treatment (Marcus, 1990a). Bennington reduced its 90th percentile lead levels from 0.148 mg/L (average of 0.105 mg/L) to 0.026 mg/L (average of 0.014 mg/L) 3 years after treatment (Marcus, 1990a). In Fall River, MA, the 90th percentile lead level was reduced from 0.250 mg/L (average 0.091 mg/L) before pH adjustment to 0.176 mg/L (average 0.034 mg/L) after treatment (Marcus, 1990a).

EPA also recognizes that the samples in Seattle were not collected exactly as the sampling protocol in the final rule. The final rule requires a 1000 ml first-draw sample, and Seattle used the first 250 ml for microbacterial analyses and the next 1000 ml for lead analysis. Nevertheless, the data are useful for determining the relative effectiveness of corrosion control treatment. Reductions in lead levels of about 60 percent after installation of treatment were obtained: for the Cedar River supply the 90th percentile lead level was reduced from 0.025 mg/L (average 0.010 mg/L) before treatment to 0.009 mg/L (average 0.004 mg/L) after treatment; the Tolt River supply showed reductions in the 90th percentile lead values from 0.025 mg/L (average 0.010 mg/L) to 0.011 mg/L (average 0.004 mg/L) (EPA, 1991b).

Several water systems have conducted sampling before and after application of inhibitors following initial sampling of 94 water districts in early 1988. The American Water Works Service Company (AWWSC) began an investigation into the effect of zinc orthophosphate on three districts (230, 340, and 130). Nine sites were sampled before and after treatment in District 230, four sites in District 340, and five sites in District 130. Average lead levels in first-draw tap samples in District 230 were reduced from 0.040 to 0.005 mg/L (88 percent reduction), District 340 showed reductions from 0.053 to 0.005 mg/L (87 percent reduction), and average first-draw lead levels in District 130 were reduced from 0.090 to 0.012 mg/L (91 percent reduction) (AWWSC, 1989). In Fairbanks, Alaska, morning first-draw tap samples were collected from 15 sites before, and 1 month after, treatment with sodium polyphosphate. Average lead levels were reduced from 0.077 to 0.035 mg/L (56 percent reduction) (AWWA–RF, 1990). These data and the data in Table 7 indicate that the addition of corrosion inhibitors can be effective for reducing lead levels in drinking water.

TABLE 7.—RELATIVE EFFECTIVENESS OF CORROSION CONTROL TREATMENTS

Corrosion control treatment	No. of systems	Percent of systems with 90th percentile levels below (mg/L)				
		0.005	0.010	0.015	0.020	0.030
Systems without Pb service lines: [1]						
No treatment	6	15	25	37	50	75
pH <8	11	21	34	49	67	87
pH >8	9	36	73	88	94	98
Inhibitors	13	34	65	80	88	95
Systems with Pb service lines [2]						
pH >8	5	16	20	24	28	38
Inhibitors	6	17	22	28	34	48

[1] First-draw samples from the following studies:
—26 systems from the American Water Works Service Company survey
—8 systems for the Technical Support Division (TSD/ODW) survey
—3 systems from public comments on the 1988 proposal.
[2] Data from service line samples from 11 systems, collected prior to proposal.

Several commenters were concerned that the singular reference to zinc orthophosphate in the proposed definition of corrosion inhibitors could be construed as an endorsement of this inhibitor at the expense of excluding many other effective inhibitors (e.g., polyphosphate, orthophosphate, blends of ortho- and polyphosphates, silicates, or sodium and zinc hexametaphosphate). Although the 1988 proposal identified zinc orthophosphate as the most effective inhibitor based on the available data, the Agency did not intend to imply that zinc orthophosphate was the only inhibitor a water system could use. The Agency has, therefore, deleted the reference to zinc orthophosphate for the rule's definition of corrosion inhibitor. To the extent that other inhibitors are able to reduce lead levels, they need to be considered.

Many commenters suggested that silicate-based inhibitors should be allowed, stating that they are effective in reducing lead and copper levels. Little research has been done with silicate-based inhibitors, and EPA is not aware of a water system that has used these inhibitors system-wide to reduce lead and copper levels (AWWA–RF, 1990). Some success was obtained, however, at a relatively high SiO_2 in pipe loop experiments by EPA (Schock, 1989). Water systems are permitted to test the effectiveness of silicate-based inhibitors during their corrosion control studies. Likewise, States are free to approve/designate silicate-based inhibitors if it can be determined that they are the most effective inhibitor for reducing the dissolution of lead and copper bearing materials.

EPA also analyzed data received during the public comment period and data received prior to the 1988 proposal to compare the effectiveness of available corrosion control treatments in reducing lead levels. These data confirm EPA's conclusion at proposal that implementation of corrosion control treatment can effectively reduce lead levels at the tap. The three primary sources for these analyses were the American Water Works Service Company Lead Survey, the EPA Office of Drinking Water's Technical Support Division Lead Survey (TSD), and the pre-proposal and public comment data base. EPA analyzed the three data sets in a paper "Influence of Plumbing, Lead Service Lines, and Water Treatment

Levels at the Tap" (EPA,1990e). This paper was made available for public review and comment through a Federal Register notice, published on October 19, 1990 (55 FR 42468). No comments were received on the analyses during the public comment period. The data and analyses are also discussed in the Occurrence and Treatment Support Document (EPA,1991b). A brief summary of the analyses is presented below along with the results in Table 7.

The majority of the systems in these data bases did not collect samples before and after installation of treatment. In an attempt to utilize this information, EPA screened the data that were collected using, as close as possible, the compliance monitoring criteria for the final rule: 1-liter first-flush samples (stagnation time of at least 6 hours) from homes with copper plumbing older than 5 years (to account for the effects of the 1986 ban on lead solder). Only systems with nine or more targeted samples were included in the analyses to increase the confidence in the estimates. Data from homes and systems with lead service lines were assessed separately from those without lead service lines. After applying these criteria to the data, 39 systems without lead service lines and 11 systems with lead service lines remained. Data from dozens of other utilities did not meet the criteria because collection methods consistent with the final rule were not used. For example, some systems did not collect 1-liter samples or collected samples after a standing time of only 2 hours.

The data from the 39 systems without lead service lines were divided into one of four "treatment" strata: (1) use of corrosion inhibitors, (2) pH adjusted to at least 8.0 at the treatment plant, (3) pH adjusted to between 7.0 and 8.0 at the plant, and (4) no treatment but pH was above 7 at the plant. The results given in Table 7 represent comparative estimates of treatment performance rather than precise predictions of systems' ability to meet the action level of 0.015 mg/L. The actual "pass/fail" rates among the entire water supply industry are expected to be different for a number of reasons, among which are the following:

- A relatively small number of systems are represented and are limited to mostly medium (and a few large) size systems, concentrated in the mid-Atlantic and Ohio River Valley.
- Data represent single samples. Other information indicates considerable temporal variability at the same tap. In addition, the majority of data were collected between January and March (AWWSC, 1989). Lead levels are generally lower in cold months; consequently, projected performance based on these data would tend to be overestimated.
- The range of important water quality parameters (e.g., alkalinity, hardness) of the raw water in these systems is relatively narrow. For example, most systems with pH $\geq$ 6.0 had total alkalinities in raw water between 20 and 50 mg/L as $CaCO_3$ (alkalinities can range from less than 10 mg/L to over 500 mg/L). Because the data are not representative of the range of water quality characteristics present throughout the United States, it is difficult to extrapolate, especially to large systems where the variability in pH can be significantly greater than in smaller systems.
- Only data from homes with plumbing older than 5 years at the time samples were taken were analyzed. The "greater than 5 years of age" stratification was used because selecting homes that would match the final targeting criteria exactly (homes with plumbing 5–10 years old) would have limited the analyses to less than 10 systems, which would have been insufficient to generate meaningful results. EPA chose to limit the analysis to houses with plumbing older than 5 years (as opposed to analyzing data from houses with plumbing of any age) to standardize the group of houses analyzed. Moreover, the age range reflects the fact that homes sampled under the final rule will likely have lead solder older than 5 years because of the effects of the 1986 SDWA lead solder ban. Lead levels in homes fitting the targeting criteria in the final rule (homes built after 1982, i.e., plumbing between 5–10 years of age) would be expected to be higher than in homes aggregated in the "older than 5 year" category since this latter category could have included much older homes with dissipated lead solder. This is another factor that tends to make performance projections based on these data optimistic.
- None of these systems were specifically trying to minimize lead or copper levels, although they were trying to reduce corrosion to some degree. This would tend to underestimate system performance projections based on these data.

Despite the data limitations, EPA believes the results in Table 7 represent trends indicative of the efficacy of the different treatments. Among systems with non-lead service lines, the data indicate that systems using corrosion inhibitors and maintaining a pH above 8.0 (at plant) would have a much higher likelihood of meeting the lead action level of 0.015 mg/L compared to systems in the other treatment strata. These data support conclusions discussed earlier that increasing pH and/or alkalinity, or adding a corrosion inhibitor, can effectively reduce lead levels in tap water.

The costs of pH adjustment, alkalinity adjustment, and corrosion inhibitor addition are summarized in Table 8. EPA believes the costs of these methods are reasonable and the methods are generally available for use by water systems. Costs may vary from those shown depending on local circumstances, but based on available information, the costs are representative of typical systems using these corrosion control treatments.

The corrosion control cost estimates were derived using the same assumptions and models as used for the proposed rule (adjusted for the new flow rates) with capital costs amortized over 20 years at a 10 percent interest rate and updated to reflect December 1988 engineering fees, contractor overhead and profit, and power, fuel, labor, and chemical costs. EPA also revised assumptions regarding flow rates to calculate all inorganic technology costs (EPA, 1987d) that result in increased cost estimates for corrosion control. A more detailed discussion on the procedures used in developing the cost estimates for these treatments can be found in the August 1988 proposal and in Lead and Copper in Drinking Water as a Result of Corrosion: Evaluation of Occurrence, Cost, and Technology (EPA, 1991b).

Several commenters submitted information on treatment costs for their systems. Unfortunately, the majority of systems did not present sufficient detail on critical elements, such as system design, flow rate, or chemical dosages, to enable EPA to compare the commenter's costing methodology with EPA's, or for EPA to modify its cost models as suggested by some commenters. The treatment costs from the few systems that did supply sufficient information generally supported EPA's estimates.

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TABLE 8.—CORROSION CONTROL TREATMENT COSTS [1]

	Population served			
	<100	3,301–10,000	50,001–75,000	>1 million
Capital Costs ($ millions)				
pH adjustment:				
lime	3	152	518	978
caustic soda	3	44	93	731
calcite beds [2]	13			
Alkalinity adjustment:				
soda ash	3	56	119	1185
sodium bicarbonate	3	54	110	965
Corrosion inhibitor (e.g., zinc orthophosphate)	5	80	119	312
Total Production Costs (cents/1000 gallons or $/household/year) [3]				
pH adjustment:				
lime	86	12	3	1
caustic soda	86	6	3	3
calcite beds	114			
Alkalinity adjustment:				
soda ash	81	8	4	3
sodium bicarbonate	86	9	5	5
Corrosion inhibitor (e.g., zinc orthophosphate)	95	6	1	1

[1] Reference: EPA, 1991b.
[2] Systems serving greater than 500 people do not typically use calcite beds for adjusting pH.
[3] The cost per household per year can be calculated by multiplying production costs by 100. This assumes water consumption of 100,000 gallons per household per year.

Several commenters objected to using tap samples for measuring the effectiveness of corrosion control. These commenters were concerned that it would be difficult to ascertain whether a reduction in lead levels, measured at the tap after installing corrosion control, is a result of treatment or simply due to the aging of solder. They argued that water systems should be allowed alternative methods, such as the use of pilot plant studies or pipe loops to show the effectiveness of corrosion control.

EPA agrees that water systems should use pipe loops, metal coupon, partial system tests, or other evaluative schemes to assist in determining the most effective corrosion control treatment. The Agency encourages water systems investigating different corrosion control treatments to first conduct research in the laboratory, whenever possible, before implementing system-wide corrosion control, and it anticipates that the majority of systems serving greater than 50,000 people will follow such procedures. Although pipe loop and pilot plant studies can assist in planning a treatment strategy and predicting trends, they cannot be expected to predict the precise lead and copper levels at the tap for numerous reasons including: (1) The aging effects of pipe scales, (2) the nature of preexisting pipe deposits not governed by lead or copper chemistry alone, (3) differences in surface chemistry between new and used pipes or faucets, and (4) disturbances of deposits when pipe from the field is pulled and used in the laboratory tests. Thus, relying solely on laboratory studies to predict the effectiveness of corrosion control treatment would not indicate the levels of lead or copper at taps. Because of these problems and because EPA's goal is to reduce exposure to lead or copper in drinking water, it is essential to collect tap samples to determine if lead and copper levels at the tap decrease or increase after application of full-scale treatment and not to rely solely on laboratory studies to determine the effectiveness of treatment. Tap sampling after installation of corrosion control treatment is also necessary to evaluate whether lead service line replacement or additional public education is required.

In terms of commenters concerned with the ability to differentiate between the effects of treatment and the aging of lead solder, the Agency believes that this should not be a problem because the final rule does not require systems to sample at homes with lead solder less than 5 years old, but only requires that lead solder have been installed after 1982. This is 4 years before the enactment of the lead ban in section 1417 of the SDWA and 6 years before the ban was to have been enforced by States. EPA believes that this criterion for monitoring will help assure that sites with the most recently installed lead solder (before the material was banned) are sampled and the potentially higher lead levels associated with these sites are found. However, because these sites will be greater than 5 years old, the effects on lead levels will be more readily associated with treatment as opposed to the aging effects of solder.

The data presented above show that increasing pH, and/or increasing pH in conjunction with alkalinity, or adding corrosion inhibitors can greatly reduce the levels of lead in tap water. These treatments have been used for many years by water systems to reduce corrosion in water distribution systems and the costs of these treatments are reasonable for large water systems (less than $6 per household per year). EPA, therefore, concludes that this treatment technology is feasible within the meaning of 1412(b)(5) of the SDWA. The data also indicate that the precise treatment efficacy of the different treatments will vary considerably between systems and even within systems, thereby reinforcing EPA's conclusion, discussed in Section IV(B), above, that it is not feasible to establish a single number as reflecting application of the best available treatment.

b. *Secondary Effects of Corrosion Control.* Numerous commenters stressed that corrosion control treatment must be designed and implemented to optimize overall water quality, not just to reduce lead and copper corrosion by-products. They contended that pH adjustment may result in a net decrease in public health protection due to increased levels of trihalomethanes and other disinfection by-products, increased precipitation of iron and manganese, and increased corrosion of galvanized piping in some water systems. Other commenters stated that an increase in pH could reduce the effectiveness of corrosion inhibitors. In addition, some commenters stated that phosphate-based inhibitors may promote bacterial and algal growth in reservoirs and other parts of the water supply system and may have potential impacts on wastewater sludge disposal, especially the accumulation of zinc in wastewater sludge resulting from the use of zinc orthophosphate. Finally, a number of commenters were concerned about the secondary effects associated with adding sodium salts to the water supply to increase alkalinity. They contend that although the amount of sodium would be small, it could have substantial adverse impacts on people who are hypertensive or at high risk of heart attack, heart failure, stroke, and kidney damage.

EPA recognizes that adverse secondary effects on the quality of water and the potential for reduced public health protection can occur in the process of installing corrosion control treatment for lead or copper (AWWA–RF, 1990; Schock, 1990). For example, the adjustment of pH or alkalinity or the addition of phosphates can affect coagulation (a process by which materials suspended in water are concentrated for easy removal). Adverse impacts on coagulation can increase turbidity and impair effective removal of organic matter during sedimentation and filtration, which can interfere with disinfection and increase trihalomethane formation in the distribution system (AWWA–RF, 1985, 1990). Trihalomethanes are formed by the reaction of free chlorine and certain organic precursors (i.e., humic or fulvic acids). To minimize TTHM formation, systems using surface water sources should assure maximum TTHM precursor removal by optimizing the clarification process prior to increasing the pH. Systems using groundwater sources with high concentrations of TTHM precursors may need to install treatment to enhance removal of such precursors (e.g., membrane filtration) or use alternative disinfectants to free chlorine (e.g., chlorine dioxide or ozone followed by chloramines) in order to achieve adequate disinfection, minimize TTHM formation, and control corrosion at the same time.

Adjustment of pH may also alter the effectiveness of disinfectants. For instance, if systems use chlorine for disinfection, elevation of pH should be delayed, to the extent possible, until just prior to when the water enters the distribution system. This will maximize the contact time during which disinfection with chlorine is most efficient (since chlorination is most effective at low pHs), while also optimizing corrosion control in the distribution system.

EPA believes that increased precipitation of iron and manganese may be a problem for some systems, especially those that had precipitation problems before installing corrosion control treatment. Even though there are no NPDWRs for iron and manganese, systems and States should be aware that adjusting pH or increasing hardness, for example, may exacerbate iron and manganese problems and should factor in these problems, if possible, when determining the most appropriate treatment for the system. The Agency does not believe the corrosion of galvanized pipe will be a problem. Available data indicate, in fact, that the corrosion rate from galvanized pipe either decreases as pH is increased from 7.0 to 8.0 or that there is little change in the corrosion rate (Trussels and Wagner, 1985).

EPA agrees that phosphate-based inhibitors may be a problem in certain situations and recommends that water systems use other methods of corrosion control in these situations. The 1990 AWWA–RF Lead Control Strategies lists factors to consider before using phosphate-based inhibitors. For example, systems that have a problem with eutrophication of receiving waters, such as reservoirs, may need to consider whether adding additional phosphate into the system will exacerbate the problem and trigger other associated problems with turbidity, taste, and odor. In addition, the presence of phosphates may be undesirable for selected industrial users and to aquatic ecosystems.

EPA is also aware of potential problems with the use of zinc orthophosphate, such as wastewater treatment effluent guidelines for zinc, or problems with the reuse of wastewater sludge. Restrictions on wastewater treatment discharges and associated costs of removal, even though not the direct responsibility of the public water system, are important considerations. Water systems should be aware of limits on effluent standards and work with local wastewater treatment authorities to protect against any unintended problems that could be avoided with other corrosion control treatment methods, such as using silicate-based inhibitors or adjusting pH or alkalinity. EPA is also aware of limitations caused by precipitation of zinc that could result in turbid water or filter clogging, especially in hot water systems (AWWA–RF, 1990; Schock, 1990). Again, systems should be aware of these problems and attempt to minimize precipitation of zinc whenever possible.

EPA does not believe that the addition of sodium salts at the concentrations required for corrosion control or source water reduction poses a health risk to individuals on a limited sodium diet. The National Inorganics and Radionuclides Survey (EPA, 1988a) indicated that sodium concentrations in drinking water supplies range from 1 mg/L to 1540 mg/L, with a median of 16.6 mg/L and an average of 57 mg/L. The vast majority of sodium intake, however, comes from sources other than drinking water. The typical American diet contains several thousand milligrams per day of sodium.

EPA estimates that typical sodium concentrations average 10 mg/L when either sodium hydroxide or sodium carbonate are used by water systems (EPA, 1990g). This amount of sodium is very small compared to the intake from other dietary sources and, therefore, does not present a public health concern. EPA recommends a sodium limit of 20 mg/L in drinking water (45 FR 57332) because at higher levels it is difficult to maintain a severely restricted sodium diet. Water systems with sodium levels above 20 mg/L are required to inform local health authorities (40 CFR 141.41) so that physicians can advise their patients accordingly. A more detailed discussion of the relationship between sodium in drinking water and elevated blood pressure is included in the **Federal Register** notice that removed sodium from the list of 83 contaminants included in the 1986 amendments to the SDWA (53 FR 1892).

Because of the many problems discussed above, EPA concurs with commenters that corrosion control treatment must be designed and implemented in the context of the other drinking water regulations (e.g., surface water treatment, disinfection by-products) and, when possible, other water treatment processes (wastewater treatment). The regulation takes these problems into account by defining "optimal corrosion control" as the treatment that minimizes the corrosivity of water without causing violations of other NPDWRs. The definition will allow States to take into account the secondary effects of corrosion control treatment that might adversely affect the ability of systems to comply with other MCLs or treatment techniques. Moveover, it is because of these potential site-specific problems that the determination of optimal corrosion control must necessarily be made on a case-by-case basis. The regulation, therefore, provides systems and States with flexibility to take these factors into account in determining and implementing the best treatment approach for each system.

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c. *Technical Assistance with Corrosion Control Treatment.* Numerous commenters stated that they do not have the expertise to design and maintain an effective corrosion control program and requested assistance from EPA. EPA understands these concerns, especially for small systems, and is developing a guidance manual to assist water systems in evaluating alternative approaches for corrosion control treatment and in addressing secondary impacts on water quality. When completed, the manual will be available at all EPA Regional Offices and through the National Technical Information Service. In addition, EPA will be working with the Association of Metropolitan Water Agencies, the American Water Works Association, and the National Rural Water Association to assist water systems, especially small water systems, with information, training, seminars, and other guidance on available corrosion control treatments. Finally, the 1990 American Water Works Association Research Foundation has recently published Lead Control Strategies (AWWA-RF, 1990), a manual that should be consulted for strategies for designing an effective corrosion control program and dealing with the secondary impacts of treatment.

2. Rationale for Final Corrosion Control Treatment Approach and Summary of Changes from Proposal

In the proposed rule, the Agency would have required systems serving more than 3,300 persons that exceeded the lead or copper action levels to submit for State approval a treatment plan that would have included schedules for conducting appropriate corrosion control studies and implementing full-scale corrosion control treatment. Systems serving 3,300 or fewer persons exceeding the action level would have been required to implement a treatment plan specified by the State. Like the proposal, the final rule includes system-by-system determination of the appropriate treatment contingent on State review. However, the following changes have been made to assure timely implementation of treatment, provide greater flexibility for States in determining the appropriate course of action for medium and small systems, and assure the greatest feasible public health protection:

(1) The pH action level has been deleted, but systems optimizing corrosion control are required to maintain minimum pH values as a component of optimal corrosion control treatment.

(2) The lead and copper action levels that will trigger corrosion control treatment have been modified.

(3) An alkalinity action level has not been included, but systems adjusting their alkalinity are required to maintain minimum concentrations of alkalinity specified by the State.

(4) Systems using calcium carbonate stabilization as a part of corrosion control are required to maintain a minimum calcium concentration in all tap samples.

(5) Systems using a corrosion inhibitor are required to maintain a residual concentration sufficient to form a passivating film on the interior walls of the pipes in the distribution system.

(6) A schedule for evaluation and implementation of treatment is included in the regulation instead of being established by the States in each treatment plan.

(7) All small and medium-size systems that exceed either action level, in addition to all large water systems required to evaluate alternative corrosion control treatments, must submit a recommendation to the State regarding optimal corrosion control treatment.

(8) Flexibility has been granted to States in determining whether medium-size and small systems perform detailed corrosion control studies.

(9) More detailed guidelines are included to assist States in designating optimal corrosion control.

(10) Authority for EPA to review State corrosion control determinations has been added.

The reasons for each of these changes are discussed below.

a. *Action Levels.* As discussed earlier, action levels were introduced in the proposal as a method to limit the number of public water systems that would need to complete a detailed demonstration that they have installed corrosion control treatment to minimize lead and/or copper levels at taps. Many commenters supported the concept of action levels, but several disagreed on how they should be used in determining compliance. One commenter argued that the action levels function as an MCL and that EPA does not have the authority to establish MCLs, or in this case action levels, at consumer taps. Other commenters supported action levels if they were used as screens or as triggers to evaluate whether corrosion control is needed, but not used to determine compliance with the rule.

EPA disagrees with commenters who argued that the action levels function as MCLs. Under the SDWA, if a water system exceeds an MCL, it is in violation of the NPDWR (unless it has obtained a variance or exemption under section 1415 or 1416), and the system must provide public notification under section 1413. Water systems that exceed the action levels, however, are not in violation of the treatment technique. Rather, exceedance of the action level(s) is merely a trigger for medium and small systems to implement optimal corrosion control (unless they can demonstrate to the State that they have already optimized corrosion control) and systems of all sizes to implement source water monitoring and possible treatment, public education, and possible lead service line replacement. Since the compliance status of a water system depends upon whether it performs the treatment steps established in the rule, and not upon whether it meets the action levels, the action levels are not equivalent to MCLs.

i. *pH Action Level.* The proposed rule would have required water systems to collect pH samples along with lead and copper samples and to install optimal corrosion control treatment if the pH in more than 5 percent of their samples collected at the tap were below 8.0. EPA also solicited comment in the preamble to the proposal on the alternative of deleting the pH action level and using pH of 8.0 as a guidance level. Under this alternative, only systems above the lead or copper action levels would have been required to monitor for pH and would have been required to examine the effect of increasing pH above 8.0 as part of the optimization demonstration.

EPA received comments both for and against retaining the pH requirement. A few commenters supported the pH action level because it would require more systems to install treatment and thus provide greater public health protection. Several commenters supported the use of a pH action level, but argued that a more reasonable minimum pH value would be 6.0, 6.5, or 7.0. Many commenters who disagreed with the pH requirement contended that PWSs should not be required to adjust their pH unless there is a demonstrated lead or copper problem within the system.

Some commenters stated that raising the pH to above 8.0 could have adverse effects on the quality of drinking water, such as causing greater difficulty in meeting the turbidity MCL, reducing the effectiveness of chlorine as a disinfectant, increasing disinfection by-products such as trihalomethanes, and increasing scaling that could damage distribution systems and residential plumbing. In addition, commenters were concerned because corrosion inhibitors work best at pH below 8.0, and in some cases at pH closer to 7.0.

Other commenters contended that pH below 8.0 can be an indicator of corrosive water, but there is little evidence to support a direct relationship between pH levels and high lead and copper levels. These commenters noted that other factors, such as alkalinity, hardness, temperature, chlorine content, and additional site-specific conditions, must also be considered.

EPA agrees that many systems maintaining a pH below 8.0 will not have a lead problem, especially if the lead solder ban has been enforced, there are no lead service lines in the distribution system, or the system is using corrosion inhibitors. EPA also agrees with commenters that adjustment of pH to greater than 8.0 may, in some cases, result in adverse secondary effects on drinking water quality that could potentially affect public health and that corrosion inhibitors work better when pH is below 8.0. For these reasons, EPA has decided to delete pH as an action level that would, in and of itself, trigger detailed demonstrations of optimal corrosion control treatment regardless of levels at the tap.

EPA noted in the preamble to the proposal that the alternative of deleting pH as an action level and requiring treatment only where the average lead action level was exceeded would likely result in fewer systems' performing treatment than would have been required under the proposed rule, and could potentially result in less public health protection (53 FR 31547). The impact of modifying the use of pH is not substantial under the final regulation as compared with the proposed rule because (1) all large systems are required to optimize treatment regardless of pH levels, and (2) the lead action level of 0.015 mg/L (90th percentile) applicable to small and medium systems contained in the final rule is more stringent than the proposed average of 0.010 mg/L. In addition, as discussed further in section 2(a)(ii), below, the Agency believes that it is appropriate to base treatment requirements for small and medium systems on the actual lead and copper levels. As long as these levels are met by systems of these sizes, the Agency believes that public health is being protected and that the triggering of more detailed demonstrations of optimal corrosion control is not warranted.

EPA continues to believe that pH is an important facet of corrosion control treatment and disagrees with commenters who contend that there is limited evidence linking increased pH with a reduction in lead levels. The corrosivity of acidic water toward lead plumbing materials is well documented (EPA, 1982a; Hoyt et al., 1979; O'Brien et al., 1976; Lyon and Lenihan, 1977; Gregory and Jackson, 1984; AWWA-RF, 1985, 1990). Experience in the field, pilot plants, as well as laboratory tests, indicate that raising pH is an effective method to reduce water corrosivity and lead and copper levels at taps and is often the least costly and most easily implemented method of reducing the corrosivity of water. Data from Boston, Bennington, and Fall River clearly demonstrate that raising pH can significantly reduce lead levels at the tap. The AWWSC survey showed lower average first-draw lead levels at sites with higher pH: 0.019 mg/L for sites with pH below 7.0; 0.013 mg/L at sites with pH between 7.0 and 7.5; 0.012 mg/L at sites with pH between 7.5 and 8.0; and 0.005 mg/L at sites with pH greater than 8.0 (AWWSC, 1989). Finally, the analysis in Table 7 indicates that systems with pH greater than 8.0 at the plant have substantially lower 90th percentile lead levels (0.016 mg/L) than those with pH below 8.0 (0.032 mg/L). These data indicate that increasing pH can reduce tap lead levels, which is consistent with predictions of numerous laboratory investigations.

EPA agrees that other water quality parameters besides pH must be considered when attempting to design a program to control corrosivity (AWWA-RF, 1990; Schock, 1990) and is, therefore, requiring sampling, where appropriate, for alkalinity, calcium, conductivity, water temperature, and inhibitor residuals (phosphate, silica). Sampling for these additional water quality parameters will assist water systems and States when deciding on the best corrosion control strategy and when evaluating the efficacy of corrosion control treatment on overall water quality.

Rather than having pH alone be a factor in determining whether a system must make a detailed optimization demonstration, pH adjustment is required as part of the optimization process for those systems required to install treatment. Specifically, the final rule (§ 141.82(f)) requires that optimal corrosion control approved or designated by the State include pH adjustment to at least 7.0 in all tap samples and that the State establish a minimum value or a range of values for pH measured at each entry point to the distribution system.

EPA selected a level of 7.0 instead of 8.0 because this constitutes only a minimum requirement. EPA anticipates that States will require many systems to adjust their pH to levels higher than 7.0 to optimize treatment and that systems conducting corrosion control studies will find that raising pH above 7.0 will be needed to minimize lead and copper levels at the tap. However, for some small and medium-size systems, the adjustment of pH to greater than 7.0 may alone be sufficient to reduce lead and copper to below the action levels. Requiring pH adjustment to at least 7.0 will ensure that all systems operate at the minimal pH level associated with reduced lead or copper levels at the tap. Adjusting pH to at least 7.0 is a basic step to ensure neutral conditions at a minimum. Such an adjustment generally precedes proper corrosion inhibitor application or other water quality treatment strategies.

Maintaining a pH value above 7.0 at taps will require many water systems to raise the pH at the treatment plant above 7.0. The exact pH level required at the plant will depend on several factors including, but not limited to, configuration of the distribution system, buffering capacity of the water, and temperature. To maintain a pH of 7.0 throughout the distribution system, water systems may be required to adjust the alkalinity of their distributed water to ensure the water is well-buffered and, thus, more resistant to pH change as it travels to the outer reaches of the distribution system.

In recognition of commenters' concerns regarding potential problems associated with pH adjustment, the final rule waives the requirement for pH adjustment to above 7.0 in tap samples if the State determines that this step is not technologically feasible or it is not necessary to optimize corrosion control. EPA included this provision in the final rule because of concerns raised by commenters that raising pH above even 7.0 may, in some cases, be counterproductive to optimizing corrosion control. This may be true for some systems using corrosion inhibitors depending on the overall water chemistry, even though EPA believes that inhibitors for controlling lead and copper require a pH of at least 7.0 and usually somewhat higher (AWWA-RF, 1990). Another potential situation where raising pH above 7.0 may cause problems is when a system has very hard water ($CaCO_3$ > 125 mg/L and total dissolved solids > 200 mg/L). In this situation, raising pH above 7.0 may cause problems with excess calcium carbonate precipitation, which can clog pipes and decrease the effectiveness of disinfection. Finally, pH adjustment may reduce the disinfection efficiency of free chlorine or increase TTHM formation. In these cases, systems will need to

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evaluate whether raising pH to 7.0 would cause them to exceed the TTHM standards or reduce their disinfection efficiency. In most cases, however, adjusting pH above 7.0 should not cause the problems described above and waivers will not be necessary.

In addition to maintaining a pH of 7.0 in tap samples, systems that install corrosion control treatment will be required to maintain pH above a minimum value, or within a range of values designated by the State at each entry point to the distribution systems. This requirement is to ensure that systems maintain appropriate pH control in source water and within the distribution system (as identified in corrosion control studies or designated by the State) and that needed adjustments to treatment are routinely monitored.

ii. Lead Action Level. [A]. Action Level of 0.015 mg/L in No More Than 10 Percent of Top Samples for Small and Medium-Sized Systems. EPA proposed two lead action levels: an average lead concentration in targeted tap samples of 0.010 mg/L that would trigger installation or improvement of corrosion control and public education, and an action level of 0.020 mg/L (in more than 5 percent of the targeted samples) that would trigger public education. EPA also solicited comments on alternative lead action levels of 0.020 mg/L and 0.030 mg/L which, if exceeded in 5 percent or more of tap samples, would have triggered treatment. Some commenters agreed with the proposed action levels, but the majority of commenters disagreed for two reasons: (1) two lead action levels were confusing and should be replaced by one number, and (2) EPA had not provided sufficient documentation to justify the action levels from either a technical or a health-based perspective. Several commenters contended that the action levels should be generally achievable by water systems and suggested numbers ranging from an average of 0.015 mg/L, to 0.030 mg/L in at least 95 percent of samples, to a maximum value of 0.050 mg/L.

EPA agrees that two lead action levels are potentially confusing and, therefore, has adopted only one: 0.015 mg/L in no more than 10 percent of tap samples. The lead action level will trigger corrosion control for systems serving fewer than 50,000 people (unless they can demonstrate to the State that they have already optimized corrosion control), as well as source water monitoring and possible treatment, public education, and lead service line replacement requirements for all systems. Systems serving greater than 50,000 people are required to optimize corrosion control regardless of tap lead levels.

In selecting the action level for medium and small systems, EPA has taken into consideration the technical feasibility of achieving this level. In addition, EPA wanted to ensure that more detailed optimization demonstration efforts would be made and appropriate treatment undertaken where necessary to ensure adequate public health protection.

With regard to technical feasibility, EPA evaluated the available data on the ability of corrosion control to reduce lead levels at the tap. In the preamble to the proposed rule, EPA stated that available data indicated that the proposed action level of 0.010 mg/L (average) was achieved by systems with pH greater than 8.0 and total alkalinity greater than 30 mg/L. EPA has obtained additional data, put out for public comment in an October 19, 1990, Federal Register notice (55 FR 42409) and discussed below, which the Agency believes supports revising the action level to 0.015 mg/L in no more than 10 percent of first-draw tap samples.

EPA believes that comments that the Agency had not sufficiently demonstrated the achievability of the proposed action level misconstrue the nature of the action level as it functions in the treatment technique. These commenters took the position that EPA is under a legal duty to demonstrate that the action level is "feasible," in the same manner the Agency would be required to demonstrate the feasibility of an MCL for a contaminant. As discussed above, however, an action level does not determine the compliance status of a system as does an MCL, but merely serves as a surrogate for a detailed optimization demonstration. Failure to meet the level only indicates whether further action must be taken by the system to demonstrate that it has optimized corrosion control. If a system, fails to meet the action level (either initially or after installation of treatment), it is not in violation of the rule, as long as corrosion control has been optimized. Therefore, EPA does not believe that the statutory standard that Congress established for MCLs applies to the Agency's selection of an action level. In addition, as discussed in detail in section IV(B), above, EPA has established a treatment technique because it is not feasible to select any precise contaminant level as reflecting optimal corrosion control treatment. Thus, EPA's selection of the lead and copper action levels is not based upon a precise statistical analysis of the effectiveness of treatment as reflected in the available treatment data. Rather, it reflects EPA's assessment of a level that is generally representative of effective corrosion control treatment and that is, therefore, useful as a tool for simplifying the implementation of the treatment technique.

Data collected from 39 medium size systems are summarized in Table 7. These data and EPA's analyses were made available for public comment in an October 19, 1990 Federal Register notice (55 FR 42409). Table 7 summarizes the percentage of the systems in the database that would have been able to meet various action levels ranging from 0.005 to 0.030 mg/L in 90 percent of tap samples. While these data are of limited use as a basis for making broad-based estimates of treatment efficacy (discussed above), the data are useful as general indicators of the range of levels systems have achieved with various treatment measures in place. Of those systems without lead service lines that had a pH greater than 8.0, the percentage of systems that would have met action levels between 0.005 and 0.030 mg/L in 90 percent of samples ranged from 36 percent to 98 percent. Systems with lead service lines had substantially higher tap water levels and substantially lower pass rates.

Eighty percent of the systems with pH > 8.0 would have met an action level of 0.015 mg/L. The values for systems using corrosion inhibitors were similar (they ranged from 34 percent to 95 percent; 80 percent would have met a level of 0.015 mg/L). The data show that fewer systems achieved these levels where pH was less than 8.0 (percentages ranged from 21 percent to 67 percent, with 49 percent meeting an action level of 0.015 mg/L). Systems with lead service lines had substantially higher levels at the tap (only 24 percent and 28 percent of systems met action level of 0.015 mg/L with the use of pH/alkalinity adjustment and corrosion inhibitors, respectively).

Based on these data, 90th percentile levels in the range of 0.010 mg/L to 0.020 mg/L appear reasonably representative of the lead levels that can be achieved by systems after installation of corrosion control treatment. These levels were achievable by the majority of systems in this data base with treatment in place. Within the 0.010 mg/L to 0.020 mg/L range, EPA believes that a 90th percentile level of 0.015 mg/L provides the best measure of effective treatment. A large majority of the systems with treatment in place (88 percent with pH adjustment and 80 percent with corrosion inhibitors) are able to achieve 0.015 mg/L. Moreover, approximately one-half of the systems that adjusted their pH but remained below 8.0 (49 percent) were also able to achieve this level. The levels achieved by this subgroup of systems may reflect the performance of those systems for which corrosion control treatment effectiveness is constrained by high alkalinity/low pH conditions, or where the use of corrosion inhibitors is not possible because of water quality constraints.

Systems with optimal treatment were also able to achieve a level of 0.010 mg/L at the 90th percentile (73 percent with pH/alkalinity adjustment and 64 percent with use of corrosion inhibitors), but the number of systems were fewer than those able to achieve a level of 0.015 mg/L. In addition, significantly less than one-half of the systems (34 percent) were able to achieve a 90th percentile lead level of 0.010 mg/L where pH was adjusted to below 8.0. Therefore, a level of 0.010 mg/L may be lower than can generally be achieved by systems where treatment is constrained by high alkalinity/low pH conditions.

While a 90th percentile lead level of 0.020 mg/L was achieved by a large majority of systems operating under a wide variety of conditions, EPA did not believe it was necessary to select this higher level given that an action level of 0.015 mg/L is supported by the available data and would trigger detailed optimization steps and thereby potentially contribute to greater public health protection than a level of 0.020 mg/L.

EPA recognizes the difficulty associated with extrapolating generalized estimates of treatment performance based upon the data cited above, which are collected from relatively few, like-sized systems operating under relatively favorable natural water quality conditions. EPA has data from two large cities (Seattle and Boston) that have measured tap water lead levels before and after corrosion control efforts. These data showed vastly contrasting results (Seattle achieved 0.011 mg/L at the 90th percentile but this level could have been higher if first draw liter samples were analyzed for lead; Boston achieved only 0.047 mg/L at the 90th percentile). Neither was attempting to minimize lead levels to the final lead action levels, so it is possible that additional treatment would reduce lead levels further. Thus, the actual percentage of systems able to meet the action levels after treatment may be lower or higher than the estimates based upon the data summarized in Table 7. Nonetheless, given the information on corrosion control treatment performance at this time, the Agency believes the data provide the best basis for establishing the action level that will trigger treatment for medium and small systems.

EPA also believes that an action level of 0.015 mg/L is appropriate because it will trigger treatment when appropriate to protect public health. EPA's goal is to minimize lead exposures among sensitive populations. Young children are the most susceptible to lead toxicity, and, on a body weight basis, absorb more lead from drinking water than other age groups. As discussed in Section III, one benchmark the Agency is using to measure progress toward the goal of reducing lead exposure among sensitive populations is the number of children with blood lead (PbB) levels above 10 μg/dL from all sources. Among young children not exposed to excessive paint lead hazards from deteriorating older homes, or from highly contaminated soils, EPA estimates that about 3.5 percent have blood lead levels above 10 μg/dL due to lead exposure from air, food, soil, dust, and water. The Agency estimates that efforts by water systems to meet a lead action level of 0.015 mg/L at the 90th percentile will reduce exposures among millions of people nationwide, and specifically reduce the percent of children not exposed to excessive paint lead hazards, or highly contaminated soils, with PbB levels above 10 μg/dL by half, from 3.5 percent to approximately 1.6 percent. This was estimated by assuming that the distribution of blood lead levels is log-normally distributed with a geometric standard deviation of 1.42 (EPA, 1986a) and that the average blood lead level in children not exposed to excessive lead paint or highly contaminated soils will be 4.5 μg/dL to 4.7 μg/dL after the rule is fully implemented (EPA, 1991a). The procedure for deriving these estimates is briefly explained in section X (benefits analysis) of the preamble. A more detailed discussion can be found in the Regulatory Impact Analysis completed for the rule (EPA, 1991a). More extensive efforts to reduce lead levels in drinking water, possible especially among some larger systems, could reduce lead exposures further. The Agency concludes that given these projected exposure reductions, an action level of 0.015 mg/L at the 90th percentile will provide substantial health protection for young children.

It must be recognized that in requiring water systems to minimize lead levels in drinking water to the maximum extent feasible, the problem of excessive exposures among many children will not be solved. Hundreds of thousands, possibly millions, of children will continue to have high level exposures to lead in paint, house dusts, and soils that require continued coordinated efforts by Federal, State, and local governments, as well as medical and public health professionals and parents.

The final action level of 0.015 mg/L in the 90th percentile of tap samples is significantly more stringent than the proposed average level of 0.010 mg/L. EPA estimates that this action level will require about 40,000 systems to install corrosion control treatment as compared to 26,000 systems if the final rule had adopted the proposed average of 0.010 mg/L, and 43,000 systems if the final rule included both the lead and pH action levels proposed by EPA (EPA, 19881, 1991a). The final level is comparable to the level of 0.020 mg/L measured in the 95th percentile. EPA has chosen to express the final action level as a 90th percentile value (as opposed to 95th) to simplify the rule's implementation. It would have been complicated for systems to interpolate the results of monitoring to determine the 95th percentile (e.g., 95th percentile of 30 samples would have been the 28.5 highest sample), whereas the 90th percentile is easily calculated. As discussed further in the relevant sections below, the action level of 0.015 mg/L also operates as a trigger for all systems for source water monitoring and possible treatment (unless they can demonstrate to the State that they have already optimized corrosion control), lead service line replacement, and public education.

[B]. Treatment Requirements for Large Water Systems. Under the proposed rule, the action levels would have been applicable to all systems and would have triggered corrosion control treatment for any system that exceeded such levels. EPA proposed the action levels as a means of limiting the number of systems required to demonstrate that they had optimized corrosion control. After reviewing the public comments on the proposal, EPA published a notice in the Federal Register on October 19, 1990, (55 FR 42409) soliciting further public comment on an option that would have continued the action level approach for all systems serving fewer than 50,000 persons but would have required all systems serving greater than 50,000 persons to make a detailed demonstration of optimal corrosion control without regard to whether the system exceeded the action levels.

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Because of the potential for substantially increased health benefits, several commenters on the October notice supported the option of requiring all large systems to evaluate whether they can further reduce their lead levels even if they are below the action levels. Other commenters, however, opposed the option. First, they argued that the requirement would constitute differential protection because individuals in small or medium-sized systems would not be afforded the same level of health protection. Second, they argued that requiring all large systems to install treatment would create a number of technical problems and impose a significant financial burden, especially for those systems that either have multiple groundwater sources, blend waters from multiple sources, or provide water to multiple distribution systems. Finally, several commenters maintained that the costs of installing treatment for large systems would outweigh the benefits.

About 800 water systems nationwide serve more than 50,000 people or approximately 56 percent of the U.S. population. As discussed in section III, there is no apparent threshold for several health effects associated with lead, and the Agency's goal is to reduce childhood lead exposure as much as possible. Even small reductions in lead exposures are beneficial, as reflected in the RIA results summarized in section X. While not all large water systems will be able to reduce lead levels if they already meet the action levels, EPA believes it is feasible for these systems to evaluate whether such reductions are possible.

The final rule adopts the option discussed in the October 19, 1990, **Federal Register** notice (55 FR 42409) and requires all large systems serving greater than 50,000 persons, to demonstrate to the satisfaction of the State that they have optimized corrosion control treatment. EPA recognizes that in many cases, requiring these systems to attempt to reduce lead levels even when 90 percent of tap samples are below 0.015 mg/L (90th percentile) is pushing the limits of corrosion control treatment technology. However, of all public water systems, the systems in this size category possess the greatest technological capabilities and access to technical support and other resources that would enable them to perform the sophisticated treatment manipulations that might further reduce lead levels.

EPA believes that it is appropriate to retain a lead action level of 0.015 mg/L for small and medium systems since this level, as discussed above, is reasonably representative of optimal corrosion control treatment and these less sophisticated systems would probably not be capable of further reductions in lead levels. Moreover, the function of an action level as a surrogate for optimal corrosion control to make implementation of the rule administratively workable, is most compelling with regard to small and medium systems because they comprise approximately 99 percent of the community and non-transient, non-community water systems nationwide (78,000 of 79,000). Requiring all of these systems to make detailed corrosion control demonstrations without regard to tap levels would impose an unworkable administrative burden upon States without necessarily increasing public health protection over what would be achieved with the use of the action levels. This burden would be exacerbated by the fact that smaller systems generally will require the most extensive input from States in evaluating, selecting, and overseeing implementation of optimal corrosion control treatment. In fact, abolishing the action level might actually reduce public health protection because the States would be diverted from focusing their limited resources on those systems with higher tap levels, which are most in need of implementing effective treatment.

Large systems, by contrast, comprise a very small portion of the community and non-transient, non-community systems nationwide. Therefore, the administrative burden associated with States' reviewing optimal corrosion control demonstrations for these systems is substantially smaller than would be associated with determining treatment for smaller systems. Moreover, the burden on States for reviewing optimal treatment for large systems is further reduced since these more sophisticated systems generally require less technical support than would smaller systems. For these reasons, as well as the large number of persons served by these systems that might benefit from further lead reductions, EPA believes that it is appropriate to require all large systems to demonstrate to the State that they have optimized corrosion control regardless of their lead levels.

Commenters are incorrect that EPA has established differential treatment requirements based on system size. The approach EPA has taken is simply to establish a presumption, supported by available data, that small and medium systems will have optimized corrosion control treatment if they meet the action levels. For the relatively few large systems, EPA is not establishing a different treatment standard, but is merely requiring these systems to make a more detailed technical showing, based upon their greater technical sophistication and operational expertise, that they have in fact optimized corrosion control treatment. Thus, all size systems are uniformly required to optimize corrosion control treatment. The only difference between large systems and the smaller systems is that large systems are required to make this demonstration based upon a detailed technical study of the circumstances of its system, whereas EPA is allowing medium and small systems to make the demonstration by showing that its tap levels meet the level which the best available data indicated is generally reflective of optimal corrosion control in some systems.

iii. Copper Action Level. The copper action level in the proposal was 1.3 mg/L in no more than 5 percent of samples collected from targeted homes. Several commenters stated that these levels were reasonable and achievable by water systems. Other commenters disagreed with the action level because they did not believe it was needed to protect public health and suggested that copper remain a secondary drinking water standard. Still other commenters suggested that the copper action level be calculated in the same manner as the lead action level (e.g., average, same percentile).

As discussed in section III(B) of the preamble, EPA believes copper is a health concern above 1.3 mg/L. The Agency agrees with commenters that copper and lead action levels should be expressed in the same statistical form to avoid confusion. Therefore, EPA is finalizing the copper action level as proposed at 1.3 mg/L in no more than 10 percent of samples (rather than in 5 percent of the samples as contained in the proposal). This action level will trigger corrosion control for small and medium-size systems. In addition, exceedance of this level triggers source water monitoring and possible treatment.

iv. Alkalinity Action Level. EPA requested comments on the option of including an alkalinity action level in the preamble to the 1988 proposed rule. Under the proposed option, systems would have been required to install corrosion control treatment if the total alkalinity level in 5 percent or more of samples was below 30 mg/L. Systems would have been required to reduce the corrosivity of their water until it was above 30 mg/L or to demonstrate to the

State that they had minimized corrosivity. Many commenters stated that there is a lack of evidence linking alkalinity levels to lead or copper levels at the tap. Many of these commenters suggested that alkalinity be considered in the evaluation of the appropriate corrosion control treatment to install, but that alkalinity not be used as an action level.

EPA agrees that there are insufficient data to directly link high alkalinity levels alone with lower lead and copper levels. The Agency believes, however, that the alkalinity of the water is important to consider when designing a corrosion control treatment program. The final rule, therefore, does not establish a specific alkalinity action level but instead requires water systems to measure for alkalinity before and after installation of treatment (if alkalinity is adjusted). In addition, the rule requires the State to establish a minimum value or range of values for alkalinity measured at each entry point to the distribution system and in all tap samples. Systems would be required to meet these minimum values to be in compliance with the corrosion control portion of the treatment technique. In addition, systems that adjust their hardness as part of corrosion control treatment are required to maintain a minimum or range of concentrations for calcium in all tap samples.

v. Inhibitor Residual Concentration. The proposed rule did not establish any specific requirements for systems to maintain a minimum inhibitor residual concentration, but the proposal did discuss the use of corrosion inhibitors as an alternative to pH and alkalinity adjustment. Inhibitors work by forming a protective film on the surface of a pipe that provides a barrier between the water and the pipe. The 1984 document "Corrosion Manual for Internal Corrosion of Water Distribution Systems" (EPA, 1984) identifies three basic requirements for effective formation and maintenance of a protective film by a corrosion inhibitor. First, it is important to build up a protective coating on the pipes as fast as possible. This may require that the inhibitor dosage start at two to three times the normal inhibitor concentration. Second, the inhibitor should be fed at a constant concentration. Any interruption in the feed could cause the protective film to be re-dissolved. Third, flow rates must be sufficient to continuously transport the inhibitor to all parts of the distribution system.

Because of these basic requirements, EPA decided that it was important for systems using corrosion inhibitors to maintain a minimum residual concentration for the inhibitor that the State determines is necessary to form a passivating film on the interior walls of the pipes in the distribution system. The minimum concentration is important to monitor because of concern, discussed above, with the re-dissolving of the protective film if a sufficient dosage is not maintained and to ensure that the film needed to protect the pipes from the water is being formed throughout the system.

b. *Modification of Treatment Plan Approach.* The proposed rule would have required systems serving 3,300 or more people that failed to meet the lead (0.010 mg/L average) or copper (1.3 mg/L in 95th percentile) action level to develop and submit a treatment plan to the State within 1 year after the end of the initial monitoring period. The treatment plan was to contain the specific steps that a water system would take to ensure that either the action levels were met or optimal corrosion control treatment and/or public education were implemented. These systems would have been required to include in their treatment plan the following steps: (1) Design and implementation of pipe loop, laboratory, pilot scale and/or field studies, (2) analysis of the data generated in these studies to estimate optimal operating conditions to minimize lead and copper corrosion, (3) installation of the treatment in the entire water supply system, (4) monitoring to evaluate the effectiveness of the treatment, (5) additional adjustment of the treatment if action levels continue to be exceeded, and (6) submission to the State of all data collected and an analysis demonstrating that the corrosion control treatment being applied was optimal (i.e., that lead levels were minimized) if after installation and adjustment of treatment any of the action levels continues to be exceeded. Systems would have been required to complete installation of any treatment required by the plan within 3 years after approval of the plan. For systems serving fewer than 3,300 people, States would have been required to specify the required treatment if any of the action levels was exceeded.

Commenters objected to the treatment plan requirements for two general reasons: (1) States should not be required to develop treatment plans for small systems because State engineering staffs would be developing plans and then reviewing, approving, and monitoring the effectiveness of their own treatment plans; and (2) there would be insufficient time or resources to develop and/or implement the corrosion control treatment plans. Other commenters supported EPA's contention that small systems do not have the expertise or resources to develop their own plans and that the States should be given the flexibility to develop treatments that are practical for small systems.

EPA agrees with commenters that States should not have to develop treatment plans for water systems serving fewer than 3,300 people without the benefit of initial recommendations from the systems regarding corrosion control treatment. EPA believes that requiring States to develop treatment plans for small systems could delay implementation of the final rule because of the large volume of treatment plans required and the substantial commitment of time and resources needed to develop the plans. EPA believes the responsibility for initially developing a treatment plan should be placed on the water system because of its familiarity with the system. The Agency believes the appropriate State role is in approving the plan. The final rule, therefore, requires all systems to recommend the corrosion control treatment, if any, that they believe will minimize lead and copper levels at the tap. States may approve the treatment proposed by the water system or require the system to install an alternative treatment that the State, based on data submitted by the system, determines to be optimal treatment.

EPA understands commenters' concerns that many small systems may not have the expertise to develop their own treatment plans. The Agency accordingly plans to develop guidance and conduct workshops across the country to help small systems develop corrosion control treatment strategies that are affordable and will effectively minimize lead and copper levels at the tap. EPA continues to believe that the States' role in approving a system's recommended treatment remains necessary because optimal corrosion control treatment is system-specific and must take into account the unique circumstances of each system. The expertise States develop in reviewing the treatment recommendations of large systems will be useful as they oversee implementation of corrosion control treatment among smaller systems and require necessary modifications to assure that treatment remains optimal.

EPA is sensitive to commenters' concerns that development and implementation of treatment plans can be time-consuming and could potentially

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delay implementation of the rule. For this reason, the Agency has made modifications to the final rule that should expedite implementation. Systems serving greater than 50,000 persons are required to conduct corrosion control studies prior to the State taking any action. Moreover, instead of requiring upfront State approval of treatment plans, the final rule sets out timetables for systems and States to perform the various steps involved in evaluating treatment alternatives, selecting the best treatment option, and implementing and evaluating treatment. These schedules are discussed in detail below. EPA believes that breaking out the various steps in the process will enhance prompt implementation of the regulation, since it will not be necessary for systems to await up-front approval of a treatment plan before any action is taken. In addition, the schedules contained in the rule stagger the various steps that States and systems will take, thus reducing the potential for a backlog of unapproved plans.

c. *Schedule for Completing Corrosion Control Steps.* In the proposed rule, the schedule for conducting corrosion control studies and for installing treatment full-scale would have been determined in the context of the treatment plan approved or specified by the State on a system-by-system basis. Comments on the proposal raised concerns about the potential for inequities among systems that might be subject to different schedules depending upon the particular State that was approving or (in the case of small systems) specifying the treatment plan. Based on concerns expressed by commenters, the final rule specifies schedules that must be met by systems and States when implementing the treatment technique requirement. Other than ensuring prompt implementation of treatment and greater assurance of expeditious public health protection, this approach has additional advantages over the proposed approach: (1) it will eliminate potential inequities among systems that might receive different implementation schedules solely because they operate in different States; and (2) milestones provide better oversight by both the States and EPA, enhance enforceability, and will result in the installation of more effective treatment. EPA requested comments in an October 19, 1990, **Federal Register** notice (55 FR 42409) for completing these steps.

Several commenters stated that the time frames in the 1990 notice for completing the different steps were reasonable. Others believed the time frames were far too short and should be extended by another. 2–5 years. Still others believed the compliance schedules were too long and should be shortened considerably. One commenter stated the compliance schedules were in direct violation of the statutory requirement that all NPDWRs shall be effective within 18 months after promulgation and that if EPA intends on establishing extended compliance schedules, it must be accomplished pursuant to a variance or an exemption, or through the process of negotiating Consent Agreements in enforcement cases.

EPA disagrees that the implementation schedule should be extended another 2–5 years. Extending the schedules would expose children to potentially high lead levels in drinking water unnecessarily. EPA also disagrees that the schedules established are too long. The Agency believes the schedules established in the final rule are reasonable considering the complex nature of the treatments for reducing lead in drinking water. Finally, EPA disagrees that the schedules proposed in the October notice contravene the statutory requirements that the final rule must take effect 18 months after the date of its promulgation.

Section 1412(b)(10) states, "National primary drinking water regulations promulgated under this section (and amendments thereto) shall take effect eighteen months after the date of their promulgation." This rule complies with the mandate in this section by making the treatment sections effective eighteen months from the rule's promulgation date. As discussed below, EPA established the treatment schedules in the final rule to reflect the time periods during which it is feasible for systems to take the many complex treatment steps necessary in the evaluation and installation of corrosion control treatment, as well as the feasible schedule for systems to replace lead service lines. EPA does not believe it is reasonable to read section 1412(b)(10) as precluding EPA from establishing schedules for the implementation of a treatment technique where the Agency determines that such schedules are necessary for the treatment to be "feasible" within the meaning of section 1412(b)(5). Corrosion control is by its nature a lengthy and involved process of evaluating, installing, reevaluating, and adjusting the effectiveness of treatment. Based upon the experience of systems that have attempted corrosion control treatment, it would simply not be possible for systems to complete these technically complex steps within eighteen months after promulgation. Moreover, because of the number of lead service connections which can be present in a system, and the cost associated with their removal, EPA does not believe that it would be feasible to require replacement in merely eighteen months from promulgation.

Commenter's constricted reading of section 1412(b)(10) could lead to two anomalous results, which EPA believes could not have been intended by Congress. First, while the commenter's position is presumably based upon the belief that EPA should require the treatment steps to be completed more quickly so as to better protect public health, limiting EPA to adopting treatment requirements that can feasibly be implemented in eighteen months could lead to the anomalous result of precluding the Agency from establishing any treatment technique requirements which would require greater than eighteen months to implement. EPA does not believe that this was Congress's intent. Rather, EPA believes that it is required by the statute to adopt a treatment technique that protects public health to the extent "feasible," and that the Agency is therefore authorized to adopt a NPDWR that includes a series of treatment steps extending beyond eighteen months after promulgation where the Agency determines that such steps will reduce exposure to contaminants and that the treatment steps are feasible within the meaning of the statute. Otherwise, the contaminant problems which are most widespread and complex and which therefore require the greatest time to address would be beyond the Agency's ability to rectify, and this result would be directly at odds with the goals of the SDWA. The alternative implication of the commenter's position is that section 1412(b)(10) was intended by Congress to override the requirement in section 1412(b)(7) that a treatment technique be "feasible" and thereby authorize EPA to require PWSs to implement all treatment steps without regard to feasibility within eighteen months. Such a result would directly contradict the requirement in section 1412(b)(7).

EPA believes the more straightforward reading of section 1412(b)(10) is that Congress intended that EPA should not make MCLs and treatment techniques effective until eighteen months after promulgation in order to provide public water systems sufficient time to take the necessary steps to comply with the rule. This provision effectively constrains the Agency's authority under the

Administrative Procedure Act, 5 U.S.C. 553(d) to make rules effective 30 days after their publication in the **Federal Register**. On its face, the only requirement in section 1412(b)(10) is that the NPDWR become effective eighteen months after promulgation. The rule fulfills this requirement. See § 141.80(a)(1) of the rule.

The schedule specified in the final rule for completing each corrosion control step is summarized in Table 6. The time to complete corrosion control treatment steps varies according to system size (e.g., large, medium, or small). While the actual steps that systems must follow differ in some respects, they can be summarized as follows: (1) The system recommends corrosion control treatment, or conducts corrosion control studies and then submits recommended treatment to the State; (2) the State approves/designates optimal treatment; (3) the system installs treatment and collects follow-up tap samples; and (4) the State reviews results and designates optimal water quality parameters.

i. Time Allowed for Systems to Recommend Treatment to State. Small and medium-sized water systems are given 6 months from the date they exceed the lead and/or copper action levels to recommend to the State what they believe constitutes optimal corrosion control treatment. EPA believes systems will need this time to analyze the monitoring data generated during initial monitoring, document why they have chosen the treatment, and submit the results to the State.

ii. Time Allowed to Conduct Corrosion Control Studies. Systems required to perform corrosion control studies (i.e., large systems, and medium and small systems if required by the State) have 18 months from the date they complete monitoring (large systems) or are instructed by the State to conduct such studies (medium and small systems) to submit the results with recommended treatment options to the State. The Agency believes this provides a reasonable period of time for systems to complete these studies. In addition, since large systems are required to conduct these studies regardless of their lead or copper levels (unless they have already optimized corrosion control), they should begin planning the studies immediately. Such action will provide an additional 20 months before the studies are required to begin.

iii. Time for State Approval/ Designation of Treatment. All systems are required to submit the monitoring results from lead and copper tap sampling, for the water quality parameters, and for source water monitoring to the State to assist the State in either approving the treatment suggested by the system or in designating another treatment. States are given different schedules to review and approve the treatment depending on the system size: 6 months for large systems, 18 months after a medium-sized system exceeds one of the action level(s) (or 6 months after corrosion control studies completed), and 24 months after a small system exceeds the action level(s) (or 6 months after corrosion control studies completed). EPA has staggered the schedules for systems of different sizes to account for three factors: (1) The number of systems in each size category (the smaller size categories have more systems, thereby requiring more time for States to specify treatment); (2) the relative technical sophistication of the systems (more time may be required for States to approve or specify treatment for smaller, less sophisticated systems); and (3) the desirability of having States gain experience with larger systems before reviewing treatment for medium and small systems.

For large systems, States are given 6 months to review the data submitted by the systems and either approve the treatment recommended by the system or designate an alternative treatment. EPA believes that a 6-month period is necessary to encourage prompt State action in approving or designating treatment alternatives for large systems. EPA believes this period should be sufficient for State review because the large systems will have already conducted detailed corrosion control studies and have recommended the best treatment option based upon the studies. Moreover, there are only about 800 large systems in the country that potentially will be required to complete such corrosion control studies.

States are given 18 months from the date the system is above the action level to approve/designate treatment for medium-sized systems. This time is more than specified for large systems because there are more medium-size systems (6,800), which often have less technical expertise to make thorough demonstrations or recommendations and to install and maintain corrosion control treatment. For small systems, the rule allows States 24 months after exceedance of an action level to approve/designate treatment. EPA believes this period is appropriate to allow time for States to acquire experience from evaluating the corrosion control treatment alternatives submitted by large and medium-sized systems. Further, there are considerably more small systems (70,000), and the level of technical involvement States will have to provide smaller, less technically capable systems will tend to be much greater.

iv. Time to Install Treatment and Complete Follow-up Monitoring. For all size systems, the rule provides that treatment must be installed within 24 months after the State approves/ designates treatment. EPA believes this amount of time is needed to install corrosion control treatment because the effort involves locating funding, obtaining the necessary permits, designing the treatment to integrate into existing treatment processes, purchasing the necessary equipment, construct treatment facilities if needed, and training operators. EPA also believes that this period is necessary to allow sufficient time for treatment to be installed, adjusted as necessary, and for effects on lead and copper levels at the tap to be adequately reflected as demonstrated in cities where the lead levels gradually decreased over 1–2 years after corrosion control treatment was installed (i.e., Boston and Bennington; see section IV(E)(1)).

Systems are required to complete follow-up tap sampling for lead and copper, as well as all other appropriate water quality parameters, after installation of optimal corrosion control treatment during a complete calendar year (two 6-month monitoring periods). Sampling is needed over a complete year to determine the extent to which seasonal variations alter the effectiveness of the treatment and to ensure that treatment has stabilized.

v. Time for State Review of Results and Designation of Optimal Water Quality Parameters. After installation of treatment by a water system, a State has 6 months to review the tap sampling results and specify the optimal water quality parameters under which the system must continue to operate. EPA believes this period is appropriate because States will be familiar with the system and its treatment approach and substantial experience will have been gained by the system during the treatment process.

EPA notes that while the rule establishes uniform periods for States to review the treatment results and specify the optimal water quality conditions, this does not mean that States will be performing their revisions for all systems simultaneously. States will review treatment for medium-size and small systems on a staggered schedule since the treatment requirements start when a system exceeds one of the action levels, and on a fixed date.

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d. *Corrosion Control Studies.* The proposed rule would have required systems serving more than 3,300 persons to include in their treatment plan proposed studies (pipe-loop, laboratory, pilot scale and/or field studies) to evaluate the effectiveness of treatment alternatives for reducing lead levels in first-draw samples. The final rule requires large water systems to conduct comparative corrosion control studies and small and medium-sized systems to conduct these studies if required by the State.

EPA has deleted the mandatory requirement that all systems serving more than 3,300 people perform treatment studies. The Agency agrees with concerns raised by commenters that many medium-size systems may not have the technical capabilities to successfully complete such studies. Studies will still be required to be performed by the approximately 800 large systems (the most sophisticated); States can consider on a case-by-case basis whether to require medium and small systems to perform such studies. Without well-trained personnel capable of designing and overseeing proper conduct of the studies, such evaluations may not yield reliable determinations of corrosion control treatment efficacy.

Improperly conducted tests or inappropriate installation and maintenance of corrosion control can result in transient increases in lead levels or increased risks associated with disinfection and disinfection by-products, as well as other adverse water quality conditions. Skilled personnel are required to continually monitor and analyze the results of the research. Some medium and small systems may have limited access to the resources and the specialized professional engineering support needed to conduct these studies. In contrast, systems serving greater than 50,000 people are generally associated with a city or county with an established administrative structure that enables water systems to more easily raise funds for needed personnel and equipment to study and install corrosion control treatment. The technical difficulty associated with conducting detailed corrosion control studies is reflected in their high costs, which can range from $50,000 to $200,000 for laboratory or field studies. EPA believes that large systems have the ability to reliably conduct the necessary studies to minimize lead and copper levels without causing reductions in overall water quality, as is evident by corrosion control studies now underway in Philadelphia, New York, and Los Angeles.

Because improperly conducted studies may not yield meaningful results or could inadvertently contribute to installation of inappropriate treatment, EPA has left it to State discretion whether to require medium-sized and small systems to conduct such studies. States are in the best position to evaluate the technical capabilities of individual systems and determine whether these studies are feasible. EPA anticipates that few small systems will be required to conduct corrosion control studies, but has decided to include this provision for small systems in case future technical innovations make it possible for small systems to simply and inexpensively conduct reliable studies.

The purpose of the studies is to identify the water quality parameters that will produce optimal corrosion control. All large water systems are required to evaluate the effectiveness of each of the following treatments and, if appropriate, combinations of the treatments to identify optimal corrosion control:

(1) Alkalinity and pH adjustment.

(2) Calcium hardness adjustment.

(3) Addition of phosphate- or silica-based inhibitor at a concentration sufficient to maintain an effective residual concentration in test samples.

After analyzing the data generated during each evaluation, the water system shall recommend to the State, with an accompanying rationale, the treatment option that they believe would constitute optimal corrosion control treatment for that system.

Systems must do the following when conducting corrosion control studies to identify optimal corrosion control treatment:

- The system shall collect lead, copper, pH, alkalinity, calcium, temperature, and conductivity samples in the test systems and, depending on the water treatment being applied, phosphate (if a phosphate-based inhibitor is used) or silica (if a silica-based inhibitor is used). To reduce the potential variability in the levels of these constituents, the system should attempt to establish fixed sampling points and fixed volumes for each constituent and to use the same analytical procedures (i.e, instrument, preservation) for each constituent. In addition, the system should collect a sufficient number of samples from the test systems before and after installation of the treatment to enable statistical comparisons between the treatments.
- The water system should identify any chemical or physical constraints that limit or prohibit the use of a particular corrosion control treatment. These constraints should be documented with data that demonstrate that the treatment has adversely affected other water treatment processes when used by another system with comparable water quality characteristics, and/or with data demonstrating that the water system has previously attempted to evaluate the treatment and has found it to be ineffective or has adverse effects on other water quality treatment processes.
- The system shall evaluate the effect of the chemicals used for corrosion control treatment on other water quality treatment processes (i.e., disinfection, trihalomethane formation, potential corrosion of other materials).

The tests comparing the various corrosion control treatment options may consist of: Pipe rig/loop tests, metal coupon tests, or partial-system tests, or evaluation based on documented analogous treatments with other systems of similar size, water chemistry, and configuration. The final rule does not allow a water system to evaluate effectiveness of different corrosion control treatments by installing treatment full-scale because of concern that experimentation within the distribution system could disturb protective coatings on pipe surfaces or otherwise adversely affect water quality.

The 1990 AWWA–RF document (AWWA–RF, 1990) suggests that regardless of what type of test system is chosen for the corrosion control studies, four criteria should be met to provide the greatest likelihood of successfully extrapolating the results of the test data to the field:

- Metal specimens exposed to the water must be representative of the metal piping or material in the actual water system.
- Water quality in the test system must be the same as in the distribution system.
- Flow velocity and residence times should be representative of those found in the full-scale system.
- The duration of the test must allow for development of the pipe films or scales that control corrosion.

The most common methods for assessing pipe loop data include weight loss analysis for corrosion rate measurements, metals uptake evaluations, measurement of corrosion by-products concentrations from pipe loops designed to simulate household plumbing, and examination of pipe scales or films (AWWA–RF, 1990). A more detailed discussion of the methods for evaluating corrosion control alternatives for lead and copper will be included in EPA's Corrosion Control Guidance Manual.

e. *State Approval/Designation of Corrosion Control Treatment.* Under the final rule, States will review optimal corrosion control treatment in a two-stage process. They will initially determine the treatment or combination of treatments (i.e., pH/alkalinity adjustment, calcium hardness adjustment, and/or addition of corrosion inhibitors) based upon corrosion control studies and other relevant information that constitutes the most appropriate treatment for that system. The level of generality in this initial State determination reflects the fact that systems will in most cases be taking their first steps at adjusting water quality conditions to reduce corrosivity.

The State's initial determination may simply be approval of the system's recommendation for optimal corrosion control. However, if the State determines that an alternative treatment is more appropriate for reducing lead and copper levels, the State shall designate this treatment.

The State shall notify water systems of its decision on optimal corrosion control treatment in writing and explain the basis for this determination. The water systems shall provide any additional information by the date specified by the State.

f. *Installation of Treatment.* As discussed above, all systems are given 24 months to install the corrosion control treatment approved/designated by the State. EPA expects that most water systems will need to fine-tune the treatment to account for normal differences between laboratory pipe loop studies or pilot plant designs and full-scale operations. The installed treatment must also be adjusted for seasonal variations in water quality which can affect water corrosivity. Lead levels are expected to fall gradually as a protective film builds up on the inside of pipes. Systems are encouraged to conduct sampling during this period of stabilization to evaluate whether lead levels are decreasing.

To demonstrate the effectiveness of corrosion control treatment, follow-up monitoring is required at the same sites used for initial monitoring of lead and copper and the appropriate water quality parameters. Similar sites that meet the targeting criteria for lead and copper could be substituted if the original sites become inaccessible.

g. *State Designation of Optimal Water Quality Parameters.* Within 6 months of receipt of the follow-up monitoring data, States are required to determine whether the system has installed optimal corrosion control treatment approved previously by the State and based upon a review of all information regarding a particular system, will specify the values for the water quality parameters under which the system is required to operate. At this point, the State will be making a determination different from its previous action in approving or designating optimal treatment. Initially, States determine the general type of treatment (or combination of treatments), such as pH adjustment or use of corrosion inhibitors, that the data indicate will result in lead and copper reductions at the tap. After the system has installed treatment and collected additional monitoring information, States will have significantly more information on the effects of water quality adjustment on lead and copper levels at the tap. EPA believes that it will be appropriate at this time for States to specify in greater detail the values for water quality parameters that would, based upon the available information, constitute optimal corrosion control for a system. EPA anticipates that States will designate a range of values for many of the water quality parameters instead of designating one minimum value for each. A range for each value is appropriate given the inherent variability in water quality over time and the fact that control of lead corrosion may be optimal within minimum and maximum values of pH, alkalinity, and other interactive parameters. Once the State specifies values of water quality parameters under which a system must continue to operate, these parameter values become the enforceable requirements of the NPDWR. Failure to comply with these State-specified values will constitute a violation of this NPDWR.

The specific requirements required of States have been outlined in section IV(C)(2) of the preamble, and the rationale for each of the requirements has been discussed in section IV(E)(2). A more detailed discussion of each of these requirements will be included in the Corrosion Control Guidance Manual.

h. *Modification of Optimal Water Quality Parameters.* Under the final rule, a State may, on its own initiative or in response to a request from a system or other interested party, modify its determination of the optimal corrosion control parameters under which a system is required to operate. Such modification may become appropriate when a system either changes its water source or uses a new source, other treatments are installed to meet other NPDWRs such as the disinfection by-product rule, or because adjustments to ongoing corrosion control are required to ensure optimal effectiveness.

3. Responsibility for Corrosion Control Treatment

The proposed rule would have required water systems to adjust corrosion control treatment to account for any blending of water from different sources. In addition, because retailers may add or blend sources of water provided by wholesalers, the preamble to the proposal stated that ultimate responsibility for the degree of corrosivity of the water would rest on retailers instead of the wholesalers. Several commenters did not believe EPA should require water systems to adjust corrosion control treatment but instead should allow States to take blending of source water into consideration when approving treatment programs. Several commenters agreed with holding retailers responsible for the corrosivity of the water because they have the option of not purchasing corrosive water from wholesalers. Others disagreed, stating that retailers should not be held responsible for the quality of water obtained from wholesalers because often retailers do not own any treatment equipment, or property where treatment could be performed.

Section 1411 of the SDWA provides an exemption for public water systems from NPDWRs if the system: (1) Consists only of distribution and storage facilities (and does not have any collection and treatment facilities), (2) obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply, (3) does not sell water to any person, and (4) is not a carrier which conveys passengers in interstate commerce.

The public comments have indicated that the particular logistical problems faced by wholesalers and retailers in designing and implementing effective corrosion control treatment are very fact-specific. Therefore, EPA does not believe that it would be appropriate to establish on a national basis that retailers must in every case be ultimately responsible for effective corrosion control treatment. In most cases, it appears that it will be necessary for wholesalers and retailers to coordinate their efforts in order to optimize corrosion control. Moreover, EPA does not believe that it would be appropriate in this case to exempt categorically an entire class of systems (either wholesalers or retailers) which qualify as public water systems under the SDWA and therefore are subject to this NPDWR. However, under the final rule, States have substantial flexibility

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in determining what constitutes optimal corrosion control treatment taking into account the particular circumstances of individual systems. Where necessary, States should therefore approve treatment alternatives that allocate responsibility among retailers and wholesalers according to the steps that each entity performs. Thus, where a system is required to complete the corrosion steps of the final rule (i.e., small or medium-size systems exceeding the action level and all large systems), EPA would anticipate that both the retailer and the wholesaler would submit a treatment recommendation to the State under § 141.82 (a) or (c). EPA encourages retailers and wholesalers to coordinate their technical inquiry so as to ensure that all facets of treatment are addressed in their recommendations. The State can then approve or designate alternative treatment that allocates responsibility among the systems that will result in delivery of minimally corrosive water to the consumer. The Agency believes that it is reasonably clear how other responsibilities besides corrosion control under the final rule should be allocated: tap monitoring and lead service line replacement and public education would be performed by the retailer; source water monitoring and treatment would be performed by the wholesaler.

F. Source Water Treatment Requirements

The proposed rule would have required water systems to meet a lead MCL of 0.005 mg/L and a copper MCL of 1.3 mg/L at entry points to the distribution system. EPA determined that these levels were achievable with application of the following centralized treatment technologies: coagulation/filtration, ion exchange, lime softening, and/or reverse osmosis.

Several commenters questioned the need for an MCL for lead in source water when the major source of lead is from corrosion by-products and argued for establishing a treatment technique only. Other commenters stated that the performance data do not indicate that the proposed treatments would achieve the proposed lead MCL of 0.005 mg/L. They thought the lead MCL was too low and was not needed to protect public health, and they suggested alternatives ranging from 0.010 mg/L to the current MCL of 0.050 mg/L. They contended that several of the treatments have demonstrated effectiveness only in laboratory studies and not under field conditions, which they contended is required by the SDWA. Other commenters argued that several of the treatments (reverse osmosis, ion exchange) will increase water corrosivity, while others stated that several of the treatments are cost-effective only for large systems.

1. Source Water MCL

As discussed earlier, the final rule does not include an MCL for source water, but instead requires water systems exceeding the lead and/or copper action level to collect source water samples and submit these results to the States. Systems are required to recommend whether they will install coagulation plus filtration, ion exchange, lime softening, and/or reverse osmosis, or not install any source water treatment. EPA is adopting this approach based on commenters' concerns that setting both an MCL for levels in source water and treatment technique requirements for corrosion by-products would result in unnecessary confusion without achieving any greater degree of health protection (see discussion in section IV(B)).

2. Technological and Economic Feasibility of BATs

The Agency does not believe that the SDWA requires field testing as a prerequisite to establishing BAT for a contaminant. While the treatments proposed as BAT for source water are not currently in full-scale use to treat specifically lead and copper, they are demonstrated technologies currently in use to treat a variety of drinking water contaminants including inorganics. The 1986 amendments to the SDWA changed the criteria for evaluating feasibility from "best technologies generally available" to the "best available technology" and added the requirement that BAT must be tested for efficacy under field conditions, not just under laboratory conditions. The legislative history explains that Congress removed the term "generally" to assure that MCLs "reflect the full extent of current technology capability." (S. Rep. No. 56, 99th Cong., 1st Sess. at 6 (1985)). Read together with the legislative history, EPA has concluded that the statutory term "best available technology" is a broader standard than "best technologies generally available" and that this standard allows EPA to select a technology that is not necessarily in widespread full-scale use for removing a specific contaminant. As long as it has been tested beyond the laboratory under full-scale conditions for other contaminants, and performance of the technology for lead and copper may reasonably be projected based upon other available treatment data (i.e., laboratory or pilot scale), EPA believes the technology can be established as BAT. The flaw in commenters' interpretation of section 1412(b)(5) is that many of the 83 contaminants for which Congress required EPA to establish NPDWRs by June 19, 1989, had never before been regulated by EPA or treated by public water systems. Thus, for many of the contaminants that Congress required EPA to regulate, the data that commenters assert is a prerequisite to selecting a technology as BAT does not yet exist.

Commenters' arguments suggest that Congress required EPA to regulate many new contaminants within 3 years of the 1986 amendments but effectively precluded EPA from selecting any technologies as BAT as the basis for the regulations. Therefore, EPA believes it is appropriate to rely on pilot plants and laboratory studies to project the removal efficiencies for lead and copper that would be achieved by technologies that have been in full-scale use by public water systems for other similar contaminants. A detailed discussion of the efficiencies of each of the treatments can be found in the 1988 proposal and in the "Technology and Costs for the Removal of Lead and Copper from Potable Water Supplies" (EPA, 1991e).

a. *Effect of BATs on Corrosivity.* EPA recognizes that in some cases reverse osmosis and ion exchange may increase water corrosivity, but does not believe this warrants rejecting them as BATs for source water. Rather, EPA has taken into account the site-specific considerations that may affect which of the BATs is best for a particular system by providing discretion for systems to recommend, and States to determine the technology best suited for a particular system.

States will consider the recommendation made by a system regarding what source water treatment, if any, the system believes will be most effective at reducing contaminant levels. States and systems should consider whether the source water treatment being considered will increase water corrosivity and the impact this may have upon the system's ability to comply with the corrosion control requirements of the rule. Systems should plan their treatment approach carefully to ensure that gains made through reduction of contaminants in source water are not offset by increases in corrosion by-products. EPA believes considerations on whether to install source water treatment are best weighed on a case-by-case basis by each system and State as they develop the best overall treatment approach to reduce lead and copper tap levels to the maximum extent feasible.

b. *Costs of Treatments.* Several commenters stated that only large systems could afford to install source water treatments. While the costs of installing these treatments may be high for some small systems, the SDWA contemplated these situations and established a procedure to allow States to exempt public water systems from treatment technique requirements due to compelling factors (see SDWA section 1416(a) and section VII of the preamble).

The capital and production costs of removing lead and copper from source water and the associated waste disposal costs are summarized in Table 9. It is important to note that the costs for source water treatment are premised on the assumption that a system will be required to construct a new treatment unit. In many cases, especially for large systems, this may not be necessary because they may already have the source water treatment technology in place. The assumptions and procedures for calculating the treatment costs have been slightly modified from the proposal. In September 1989, EPA revised flow assumptions in calculating all inorganic technology costs (EPA, 1987d) to more accurately reflect current industry conditions. The net effect of these changes is to increase the cost to remove lead and copper per gallon of water delivered. The revised costs for selected size systems are summarized in Table 9.

Otherwise, in estimating costs, EPA has used the same assumptions as the proposal. A more detailed discussion of the efficiencies of the treatments and the procedures used in developing the cost estimates for these treatments can be found in the August 1988 proposal, and in the "Technologies and Costs of the Removal of Lead and Copper From Potable Water Supplies" (EPA, 1991e) and in "Technologies and Costs for the Treatment and Disposal of Waste By-products From Water Treatments for Removal of Inorganic and Radioactive Contaminants" (EPA, 1986c).

In evaluating the costs of BAT, EPA has followed the guidance in the legislative history, and considered the costs to regional and large metropolitan water systems (50,000–75,000 people and greater). The Agency has concluded that these treatments are affordable for such systems (household costs are less than $180 per year). The cost estimates in Table 9 include the least cost waste disposal alternative. EPA believes systems will generally choose the least cost alternative, but the Agency recognizes that there may be situations where this may not be possible. EPA therefore also estimated the treatment costs that would be incurred by large systems (50,000–75,000) using the full range of waste disposal alternatives, including the high cost technologies. Incurring such waste disposal costs would increase annual household costs as follows: for coagulation/filtration from $50 to $70; for lime softening from $93 to $120; for reverse osmosis from $160 to $320; and for ion exchange from $54 to $70. Even with these higher costs, EPA concludes that the source water treatment technologies designated in the final rule are affordable.

TABLE 9.—SOURCE WATER TREATMENT COSTS: LEAST COST WASTE DISPOSAL ALTERNATIVE [1]

Population served	Contaminant/technology			
	<100	3,301–10,000	50,001–75,000	>1,000,000
Capital costs (millions of dollars)				
Ion Exchange	0.18	1.0	7	130
Reverse osmosis:				
—Lead	0.12	3.2	23	450
—Copper	0.12	2.7	19	400
Lime softening	0.30	3.6	12	140
Coagulation/filtration	0.28	2.5	10	140
Production costs (cents/1,000 gallons or $/household/year) [2]				
Ion Exchange	1500	100	54	38
Reverse osmosis:				
—Lead	1200	290	180	140
—Copper	1100	240	150	120
Lime softening	2800	260	93	60
Coagulation/filtration:				
—Lead	2400	160	50	24
—Copper	2500	170	52	26

[1] Treatment Costs: EPA, 1991e. Waste Disposal Costs: EPA, 1986c. Least cost waste disposal alternatives assumed to be drying lagoon and land disposal for lime softening, direct discharge to sanitary sewer for coagulation/filtration, discharge to POTW for ion exchange, and direct discharge for reverse osmosis.
[2] Household costs per year calculated by multiplying production costs by 100. This assumes water consumption of 100,000 gallons per household per year.

3. Final Requirements

a. *Monitoring for Source Water/Treatment Recommendations.* All water systems exceeding the lead or copper action levels after initial tap monitoring are required to collect source water samples in accordance with the requirements in § 141.88 of the rule and submit the results to the State.

Within 6 months of exceeding the lead or copper action level, systems are required to recommend to the State in writing the specific source water treatment, if any, they propose to install and operate (e.g., reverse osmosis, ion exchange, coagulation plus filtration, or lime softening). Systems may recommend that no treatment be installed if it can demonstrate that source water treatment is not necessary to minimize lead and copper levels at users' taps. EPA believes 6 months is sufficient for systems to determine what, if any, source water treatment is needed because the treatment options are well defined and additional sampling or studies are not required.

b. *State Determination of Source Water Treatment.* Within 6 months after submission of the monitoring results, the State should evaluate the results of all source water samples submitted by the water system and the treatment recommendation from the system to determine whether source water treatment is necessary to minimize lead or copper levels in water delivered to users' taps. If the State determines that treatment is needed, the State shall either require installation and operation of the source water treatment recommended by the system (if any) or require the installation and operation of another source water treatment from among the following: ion exchange, reverse osmosis, lime softening, or

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coagulation/filtration. Upon request, the water systems shall provide the State with additional information to aid in its review by the date specified by the State in its request. The State shall notify the system in writing of its determination and set forth the basis for its decision.

There may be some cases, however, where a State finds that source water treatment will not result in minimizing lead and copper levels at the tap, such as where source water treatment could actually increase tap levels as a result of increasing water corrosivity. In these cases, EPA would expect the State to first determine whether alternative source water treatment could effectively reduce levels without causing additional corrosion problems. In the rare case where no appropriate source water treatment could be applied, the State could determine that installation of source water treatment was not necessary, and the system would seek reductions through application of corrosion control treatment without source water treatment.

c. *Installation of Treatment.* Water systems that are required to install and operate source water treatment are given 24 months to complete installation of the treatment. EPA believes this will give systems enough time to find the capital, if needed, and complete installation. Water systems are then required to collect follow-up source water samples and tap samples for lead and copper within 12 months of completing the installation of source water treatment.

d. *State Review of Treatment.* All water systems are required to submit their follow-up source water samples to the State for review. The State is required to complete its review of the source water samples and determine whether the system has installed and is operating the source water treatment designated by the State. After reviewing all available information, the State must establish maximum permissible lead and/or copper levels in source water that water systems are required to maintain. States are given 6 months to complete the process and must notify the system in writing and explain the basis for its decision.

e. *Continued Operation and Maintenance.* Water systems are required to maintain the lead and copper levels below the maximum permissible concentrations designated by the State at each sampling point. A water system would be in violation of the treatment technique if the level of lead or copper at any sampling point is greater than the maximum permissible concentration designated by the State.

In conclusion, the Agency believes that ion exchange, reverse osmosis, lime softening, and coagulation/filtration fulfill the requirements of the SDWA as BAT for the removal of lead and copper in source water. These treatment technologies are readily available and have high efficiencies for lead and copper removal from source water, their costs for large public water systems are reasonable, and they are compatible with other water treatment processes in different regions of the United States.

G. Public Education Requirements

The proposed rule would have required water systems that exceeded one or both of the action levels for lead (either the average or the maximum) to conduct a public education program to help people reduce their exposures to lead in drinking water. Water systems would have been required to design public education programs to meet three performance standards: program content, program delivery, and program evaluation. Many commenters supported public education but had suggestions for improvements. Others disagreed with the public education requirements for two general reasons: (1) Public education is not a legitimate treatment technique because it is not effective in reducing lead levels; and (2) responsibility for developing, implementing, and evaluating public education programs should be the responsibility of the States or Federal Government, not water systems.

1. Authority To Require Public Education

Several commenters opposed the public education requirements, stating that public education is not authorized under the SDWA as a legitimate treatment technique because it does not reduce the level of lead and/or copper in drinking water.

EPA believes it has the authority to establish public education as a means to reduce the public's exposure to drinking water contaminants. Section 1412(b)(7)(A) of the SDWA states that "* * * the Administrator shall identify those treatment techniques which, in the Administrator's judgement, would prevent known or anticipated adverse effects on the health of persons to the extent feasible." The public education program included in the final rule can prevent adverse health effects by supplying people with information on ways to reduce the amount of lead in the water consumed. Moreover, section 1412(b)(5) expansively defines "feasible" as "feasible with the use of the best technology, treatment technique and other means which the Administrator finds * * * are available." This statutory language gives the Administrator broad discretion to select any technology, technique, or other means the Agency finds would prevent adverse effects of drinking water contaminants. Given this language, EPA does not believe the statute can reasonably be interpreted so as to preclude EPA from establishing public education as a component of a treatment technique under the Act. A large portion of the lead problem in drinking water will be rectified by water systems in minimizing the corrosivity of their water, controlling source water contamination, and removing problem lead service lines under their control. EPA does not intend the public education program to be a substitute for these actions. However, there are situations where elevated lead levels will persist at consumers' taps during or even after these efforts. In these cases, it will be important for consumers to take actions in their homes (such as flushing tap water or replacing fixtures) to reduce their exposures to lead. The public education requirements are envisioned as a supplemental program either while the PWS is working to reduce lead levels through corrosion control, source water treatment, or lead service line replacement, or after such actions fail to meet the lead action level.

2. Effectiveness of Public Education

Many commenters contended that the proposed public education requirements would not be effective in reducing exposure to excess levels of lead in drinking water. Other commenters were concerned that the public education requirements duplicated the special one-time public notification requirements, which many commenters found ineffective.

To evaluate the effectiveness of public education in reducing consumers' exposure to lead in drinking water, EPA in cooperation with the Raleigh, North Carolina, Department of Public Utilities, conducted a pilot city-wide media campaign in the winter of 1989 (EPA, 1990h). The pilot program used a variety of communication tools, including printed materials, media coverage, and presentations and speeches, to provide members of the community with information on the health effects of lead, possible household sources of lead contamination, and actions that individuals can take to reduce their exposure to lead in drinking water.

Two evaluation studies were conducted to measure the program's success. Study 1 was designed to evaluate the success of the overall public media information campaign. A pre-test of consumers' attitudes, knowledge, and behavior with respect to lead in drinking water was taken before the public education project began, and a post-test was conducted after completion of the project. Study 2 was designed to evaluate the success of additional educational efforts in targeted Raleigh neighborhoods and to compare the effectiveness of treatments on different socioeconomic groups. Study 2 compared groups in both suburban and urban areas (treated group) receiving the information versus people receiving no information (control group).

Evaluation of the public media campaign indicates that the project successfully provided relevant information to the community and increased reported behaviors that reduce exposure to lead in drinking water. In addition, the Department of Public Utilities reported receiving a large number of requests for tap water lead tests during the period covered by the pilot program. These results indicate that a public education program that both describes the dangers of lead in drinking water and details practical methods of reducing lead ingestion can successfully change behavior that can reduce exposure to lead in drinking water.

In general, the results of both studies suggest that the more frequently an individual is provided with information on lead in drinking water, the more likely he or she will take some action to reduce his or her exposure. Mass media coverage (especially newspaper and television) appeared to be the most efficient and effective method of providing information to the general public, although the evaluation of the media campaign suggests that urban populations may benefit more from radio-based, rather than print-based media. The studies suggest that public community meetings may require more resources than are warranted by the number of people who generally attend such gatherings. The studies also suggest that mail distribution is as effective as door-to-door distribution. The Raleigh pilot project also demonstrated that significant resources are necessary to conduct a public education program because a successful media campaign will require a sustained effort over a long period of time. Overall, it appears that regardless of the specific communication methods used, repeating the message is the best way to ensure that people act to reduce their exposure to lead in drinking water.

EPA does not believe the public education program is redundant with the special lead public notification requirements. The public education program will be an ongoing requirement for as long as the lead action level is exceeded. This is different from the special lead notification requirement, which was a one-time notice. The public education program requires considerably more interaction between the PWS and its customers to educate them about lead in drinking water.

In conclusion, EPA believes public education is an effective method for reducing exposure to lead in drinking water by raising consumers' awareness of the problem and, consequently, modifying behavior that reduces their exposures. The Raleigh project and other programs, such as the State and EPA radon programs and efforts to educate residents near Superfund sites, have shown that well-designed and effectively implemented programs can change the knowledge and/or behavior of audiences and thereby reduce individual exposures. EPA estimates that the annual household costs in systems that are affected will range from $0.08 to $2.24 ($0.37 for systems serving 50,000 to 75,000 people) (EPA, 1991a). EPA believes these costs are reasonable.

3. Responsibility for Development and Evaluation of Program

Several commenters contended that water systems should not be responsible for developing a public education program and do not have the qualified personnel to develop or evaluate such a program. They believed public education should be a joint effort by many parties, with the responsibility for developing a public education program left with Federal or State government, which has trained personnel and resources.

EPA agrees with these comments. To ensure that consistent and accurate information is disseminated to the public across the country, EPA believes that the most effective use of resources is for EPA to work with States and local governments to develop a national public education program, and for the water systems to work with the States, local health departments, and other interested groups to implement such a program.

To help ensure that public education will result in positive behavioral adjustment to reduce lead exposures and the potential cost of such a program to water systems, EPA has developed camera-ready print materials and model public service announcements for radio and newspaper for water systems to use (see § 141.85 (a) and (b)).

EPA also agrees with commenters that the majority of water systems do not have the expertise to conduct an effective evaluation of their public education program. Evaluating the success of a public education program is difficult and requires behavioral and statistical analyses that go beyond normal water system expertise. EPA believes that the resources that would have been spent on evaluating a public education program can be better used for implementing the program. Thus, the final rule does not require water systems to evaluate the effectiveness of the public education program. EPA envisions conducting evaluations of public education programs over time in different areas of the country to assist in revising the public education program if needed.

4. Content of Public Education Program

Many commenters supported using public education as a means to reduce exposure to lead and copper, but suggested various ways to improve the requirements. The content of the public education materials required to be delivered by public water systems are contained in § 141.85 (a) and (b) of the final rule.

a. *Flushing Water.* One area of special interest was whether to advocate flushing of taps as a method of reducing lead levels in water consumed by the public. The majority of commenters were proponents of instructing customers on tap flushing, but others stated that flushing should not be included in the public education program because it contradicts good water conservation practices. These commenters suggested using bottled water while lead is being removed from the distribution system.

EPA shares the concerns of commenters regarding the possible wasting of water when flushing taps but does not believe that these concerns justify requiring the use of bottled water. EPA estimates that about 40,000 public water systems throughout the country may initially exceed the lead action level (see section X). Supplying the 130 million people served by these systems with bottled water during the various stages of treatment would be an exorbitant and unnecessary expense. The public education materials developed by EPA continue to recommend flushing of first-draw water when needed, but are careful to explain the need to utilize the first-flush water for nonconsumptive purposes, such as cleaning, washing dishes, watering

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plants, etc. and to keep a bottle of flushed water in the refrigerator.

b. *Supplemental Testing Program.* The proposal would have required water systems to offer a program to sample, or arrange to have sampled by a certified laboratory, the water of any customer who requests such a test. Several commenters supported this requirement, with a few stating that the water test should be free.

EPA continues to believe that such a program is an excellent method to increase the effectiveness of the public education program and, therefore, is requiring water systems to offer all customers the opportunity to have their household water tested for lead or to arrange for testing by a certified laboratory. In this way, customers gain access to reliable water sampling services and are not subject to repeated trial-and-error in finding reasonably priced, qualified sampling services. The system is not required to pay for collecting or analyzing the sample, nor is the system itself required to collect and analyze the samples. EPA has developed a list of certified laboratories to test for lead in each State. This list is available at the EPA Regional Offices and State Health Departments responsible for implementing and enforcing this rule.

EPA disagrees with commenters who believe the testing must be supplied free by water systems. This would entail a substantial cost to water systems, and EPA believes it is better that water systems direct their resources toward minimizing lead and copper levels if a problem has been found in a system, rather than spending money on additional testing. Some systems do provide this service without cost, however, and EPA encourages others to consider it.

5. Delivery of Public Education Program

The proposal would have required a water system to deliver the public education program to the entire population and to target the program to high-risk segments of the population four times per year for as long as the system exceeded the action level. Several commenters stated that a targeted public education program would be more effective than using bill stuffers to inform all customers about lead in drinking water. Others agreed that public education is important, but suggested that the program be repeated either annually or biannually instead of quarterly. Still others complained that the requirements were vague and confusing and requested clarification.

The proposed rule listed several means by which water systems could deliver the public informational materials, including public service announcements on television, radio, and in newspapers, public meetings, notices in water bills, and local telephone hotlines. With the exception of public meetings and hotlines, the final rule retains the program delivery components discussed in the proposal. EPA has not included public meetings in the final delivery requirements given the findings of the Raleigh study, discussed above, that this forum was not the most effective means for disseminating information to the public. Systems are encouraged to hold such meetings if they are felt to be effective in a particular community. While EPA continues to encourage communities to establish local telephone hotlines, this has not been included as a mandatory requirement in the final rule. Given the resources and expertise associated with running such a hotline, such a measure would not be appropriate for all systems.

With regard to the other delivery components, the final rule details more specifically than the proposal the measures which systems must take to deliver public education and the frequency of program delivery. This information will provide clearer guidance to public water systems on what constitutes an acceptable and effective program and will ensure that the public receives uniform and adequate information nationwide.

The proposed rule would have required systems to deliver public education materials at least once per quarter. Many commenters contended that such a frequency would be too burdensome and recommended annual or biannual delivery. In response to these concerns, the frequency of program delivery for each component of the public education program has been reduced to every 6 months or once every year, as discussed further below. The Agency also believes that reducing the frequency of program delivery and concentrating the efforts toward the most effective media could help prevent the public from "tuning out" a message repeated too often. EPA does not believe that this reduced frequency will impair the effectiveness of the program. Rather, because the final rule requires public water systems to deliver public education materials through a variety of means, EPA believes that the overall effectiveness of the program will be enhanced. This approach is consistent with the results of the Raleigh study, which indicated that repetitive exposure to the information through a variety of media was important to program effectiveness.

The final public education program requires water systems to begin delivering the public education program within 60 days of failing to meet the lead action level based on tap samples collected during a single monitoring period. This should provide adequate time for systems to act, because the systems will not have to develop their own materials but can use those prepared by EPA. Water systems are required to deliver the information specified below within 60 days of exceeding the lead action level. (1) Information notices must be inserted in each customer's water utility bill containing the language specified by EPA in section 141.85(a) of the rule, along with the following warning on the water bill itself in large print:

SOME HOMES IN YOUR COMMUNITY HAVE ELEVATED LEAD LEVELS IN DRINKING WATER. LEAD CAN POSE A SIGNIFICANT RISK TO YOUR HEALTH. PLEASE READ THE ENCLOSED NOTICE FOR FURTHER INFORMATION.

This language must be included in all customers' water utility bills at least once every 12 months subsequent to the initial distribution and for as long as the lead action level is exceeded.

(2) The information contained in § 141.85(a) must be sent to the editorial departments of the major daily and weekly newspapers circulated throughout the community and must be sent every 12 months subsequent to the initial distribution, for as long as the lead action level is exceeded.

(3) Pamphlets and/or brochures that contain the information in section 141.85(a) (2) and (4) must be delivered to facilities where children and pregnant women frequently visit (e.g., public schools and/or local school boards; city or county health departments; Women, Infants, and Children programs and/or Head Start programs; public and private hospitals and/or clinics; pediatricians; family planning clinics; and local welfare agencies). The water system is required to deliver the brochures and pamphlets to these locations every 12 months subsequent to the initial distribution for as long as the lead action level is exceeded.

(4) A public service announcement containing the information in § 141.85(b) must be submitted to at least five of the local radio and TV stations with the largest audiences that broadcast to the community served by the water system. The water system is required to submit the public service announcement every 6 months subsequent to the initial distribution for as long as the lead action level is exceeded.

The initial communication is needed to inform the general public of steps they may take to reduce their exposures. Repeating the information every 6 or 12 months is needed to remind homeowners that they should still be aware of potential problems. EPA agrees with commenters that young children and pregnant women should be targeted and, therefore, is requiring water systems to deliver information to locations frequently visited by these sensitive populations as outlined above. Guidance to assist water systems in implementing a successful public education program can be found in "A Primer: Developing a Community-Based Public Education Program on Lead in Drinking Water" (EPA, 1990i). Copies will be available from EPA Regional Offices and State Health Departments.

In communities where a significant proportion of the population speaks a language other than English, public education materials prepared for distribution through print or electronic media must be communicated in the appropriate language. To further facilitate the dissemination of public information concerning lead and copper in drinking water, the PWS should enlist the support of local elected public officials, the professional staff in local departments of public health and environmental protection, and members of both the business and academic communities.

6. Non-Transient, Non-Community Water Systems

The proposed rule would have required NTNCWS to publicly post informational posters on lead in drinking water in a public place, hold at least one public meeting annually to educate water consumers about lead in drinking water to answer any questions on the subject, and distribute brief informational pamphlets at least quarterly.

Several commenters argued that NTNCWS deliver water to different customers than community water systems and that the public education requirements were excessive. They recommended substantial reductions in these requirements. EPA agrees with commenters that NTNCWS deliver water to people whose exposure patterns are different than community water systems and has accordingly modified the public education program to better serve that constituency's needs.

The final rule requires NTNCWS to deliver the information contained in § 141.85(a) (1), (2), and (4) of the final rule within 60 days of exceeding the lead action level. The information is required to be delivered as follows:

(1) Posters hung in a public place or common area in each of the buildings served by the system.

(2) Pamphlets and/or brochures distributed to each person served by the NTNCWS.

NTNCWS are required to deliver the materials at least once during each calendar year in which the system exceeds the lead action level for as long as the lead action level is exceeded.

H. Lead Service Line Replacement

While the proposed rule did not contain provisions that would have required the replacement of lead service lines, the preamble to the proposal discussed in some detail, and solicited comment on, a lead service line replacement program that the Agency was considering adopting. The program adopted in the final rule resembles in large part the program discussed in the preamble to the proposal. The Agency did not formally propose lead service line replacement because of difficulties with quantifying on a national basis the contributions of lead service lines to lead levels at the tap, because of difficulties in estimating changes in lead levels after corrosion control treatment and lead service line replacement, and because of the potential risks associated with partial pipe replacement.

While there continues to be limited quantitative information regarding contributions from lead service lines to levels at the tap, EPA believes that a lead service line replacement program, as structured in the final regulation, will be an effective means for reducing excessive lead exposures. As discussed further below, the final rule requires systems to institute a replacement program if, after installing optimal corrosion control treatment (and when applicable, source water treatment), the system continues to exceed the lead action level. Replacement of individual lines in the system may be waived where the lead concentration in the service line sample is below 0.015 mg/L. EPA believes that the current lack of extensive data should not delay implementation of the lead service line replacement program. This is because information necessary to determine levels at the tap attributable to lead service lines will be collected on a case-by-case basis, and replacement of service lines will occur where lines are shown to contribute to elevated levels at the tap.

1. Comments on Lead Service Line Program

Numerous commenters supported a removal program proposing different ideas on how it should be implemented. Some commenters suggested requiring the removal of only those service lines that contribute lead above a specific level, such as 0.020 mg/L. Other commenters supported the removal of lead lines if the removal program was extended over 20–30 years, while others advocated removal as lead services are encountered during routine replacement of water lines.

Numerous commenters opposed requiring lead service lines replacement based on one or more of the following beliefs: (1) EPA does not have the authority to require replacement of lead service lines that are not under the water system's ownership or control; (2) the costs derived from lead service line replacement would outweigh the benefits, especially considering that water systems can only replace the portion of the line that they own/control and that may vary from system to system; (3) other methods, such as corrosion control, public education, or enforcing the lead ban, would be more effective for reducing an individual's exposure to lead from drinking water compared to partial lead line replacement; and (4) implementation would be a burden because records do not exist to locate lead lines and because monitoring lead lines will be difficult.

2. Authority to Replace Service Lines

EPA acknowledges that ownership and/or control of lead service lines is often split between the public water system and the property owner. Depending on State law or regulations, or local ordinances, some public water systems control and/or own connections up to the property line, others control and/or own the service line and other connections up to the building (especially if the water meter is located inside the building), and still others control and/or own the service connections only up to the curb.

A recent survey conducted by the American Water Works Association (AWWA, 1989, 1990) indicates that there are approximately 10 million lead service connections currently in use in the United States and that about 20 percent of all public water systems have some lead service connections. The actual number of lead service lines as a percentage of total service connections varies from system to system. EPA estimates, based on the AWWA survey,

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that the average length of a lead service line is 42 feet. About 70 percent of systems indicated that they own part of the service connection, 20 percent reported they owned no part, 9 percent reported ownership over only the gooseneck/pigtail, and 1 percent reported ownership over the entire service connection. According to the survey, ownership is determined in the majority of systems by ordinance (72 percent), with about 10 percent determined by informal agreements, 6 percent by contract, and 6 percent by either building codes or building codes and ordinance (EPA, 1990c).

A study discussed in the preamble to the proposal evaluated the extent of authority over service connections in publicly owned water systems in Boston, Chicago, Dallas, Denver, the District of Columbia, Los Angeles, New York, Pittsburgh, San Diego, and San Francisco, and other investor-owned utilities in various States. In the majority of cases evaluated, the water system was found to retain access to virtually all property serviced by the system and to reserve the right to perform work on privately owned service lines (usually at the expense of the property owner). To varying degrees, most of the systems also require property owners to meet certain specifications relating to service line location, size, and material composition. For investor-owned utilities, access to privately owned service connections is often restricted by municipal ordinance.

The study concluded that to the extent public water systems prescribe standards for construction, repair, and maintenance of service lines and reserve the right of entry onto private property to perform necessary work, it could be argued that the entire service line is under the system's control.

As discussed in the preamble to the proposal, requiring lead service line replacement involves determining the obligation of the public water system where jurisdiction over the service line is split between the water system and the user. Because the SDWA defines "public water system" as including "distribution facilities under the control of the operator" (SDWA section 1401(4)), the Agency concluded that it had the authority to hold public water systems responsible only for conditions under their "control." As noted above and discussed in the preamble to the proposal, where ownership is split between the utility and the user, utilities sometimes retain authority to prescribe the standards for construction, repair, and maintenance of service lines, and a right of entry to perform work deemed necessary (usually billing the user for the work on its portion of the line). Based upon this authority of public water systems, the preamble to the proposal discussed the option of establishing a rebuttable presumption that the entire lead service line was owned or controlled by the water system and, therefore, could be replaced by the system. This presumption could have been rebutted by the public water systems' citing appropriate legal authority (such as local ordinances, State statutes, or contractual provisions) limiting its control or ownership.

As noted elsewhere in today's notice, EPA believes its authority to impose regulatory requirements on public water systems extends only to those distribution facilities under the control of the system. Therefore, under the final rule, systems replacing lead service lines are required to replace the portions of lines that are under their control. Control is defined in § 141.84(e) of the final rule as being indicated by one of the following forms of authority: authority to set standards for construction, repair, or maintenance of the line, authority of the system to replace, repair, or maintain the service line, or ownership of the line. The final rule includes essentially the same substantive criteria for determining control as was discussed at proposal, including the "rebuttable presumption" procedure. The rebuttable presumption assumes that the water system controls and, therefore, can replace the lead components up to the wall of the building served (building inlet). As in the proposal, this presumption could be rebutted by the water systems by citing local ordinances or State statutes, or in the case of private systems, the contract between the systems and their customers, that limit the extent of control of the water system.

EPA decided to include a definition of "control" in the final rule to explain clearly the extent of public water systems' responsibilities under the lead service line replacement program. The statutory term, "control," is not defined in the SDWA, and the legislative history does not contain any guidance as to what Congress intended by the use of this term. EPA believes that, in the context of lead service line replacement, it is reasonable to interpret "control" to include those authorities listed in § 141.84(e) of the final regulation. Water systems generally retain authority to specify standards for construction, maintenance, and composition of service lines to be able to safeguard the integrity of the distribution system and, thereby to ensure the delivery of safe water to the consumer. Where a lead service line is demonstrated to be contributing to elevated lead levels at the tap, such a condition is similarly threatening the quality of the water consumed by the public. The Agency believes, moreover, that it is reasonable to interpret "control" as being present in cases where a system has authority to replace or repair or maintain the line since lead service line replacement under the final rule is a form of "repair" or "maintenance" which is necessary to prevent further exposures to elevated levels of lead. Thus, EPA believes that requiring public water systems to replace problem lead service lines that the systems "control" (as the term is defined in the rule) is consistent with the underlying purpose of the SDWA to protect public health as well as with practices of the water supply industry designed to maintain the integrity of water distribution systems.

Systems that do not replace the entire service line are required to submit to the State within the first year of their replacement schedule a letter demonstrating that their control is limited (see section VI(C)(1) of the preamble), so that States can review whether the system's interpretation correctly interprets relevant legal authority (see § 141.90(e)(4)). EPA believes that allowing States to review a system's basis for contending that its control is limited is important to ensure that systems apply correctly the regulatory definition of control to the specific facts of their system. In order not to delay prompt implementation of service line replacement and not to burden the States unduly, the final rule does not require States to affirmatively approve the system's interpretation of its legal authority prior to commencement of replacement. However, the State may determine that a system has incorrectly interpreted the extent of its "control" over lead service lines as the term is defined in the final rule. In these cases, the State is required to make its determination in writing and explain the basis for its decision. The system is then required to replace the portion of the lead line under the system's control as determined by the State.

Where a system's control does not extend to the entire service line, the rule requires systems to offer to replace the portion of the line controlled by the homeowner. The rule, however, does not explicitly address how the costs of replacing the homeowner's portion of the service line should be allocated. In the study discussed above, most cities charged the customer for work on

privately owned piping. Systems may choose to incur the costs of replacing the entire line and spread the costs across the ratepayers, if the system believes that this would be appropriate. The incremental cost of replacing the privately controlled portion of the service line should not be substantial, however, since the largest component of the cost is the expense of mobilizing the equipment and labor to the replacement site, a cost that would be incurred by the system anyway. Because this provision of the rule does not impose any additional costs upon the system, and systems are required to replace only portions of lines they control, the Agency believes that the requirement for systems to offer assistance with replacement of privately controlled service lines is an efficient and effective means of maximizing the public health benefits achieved by the rule.

EPA has also adopted a second rebuttable presumption, discussed in the preamble to the proposal, that lead service lines must be replaced unless they contribute less than a specified amount of lead, although, as discussed below, the level requiring replacement has changed.

3. Cost and Effectiveness of Lead Service Line Replacement

EPA believes that corrosion control will remain the primary method for the majority of water systems to reduce lead levels. Although corrosion control has been shown to be effective in minimizing the corrosion of lead service lines by "insulating" the interior surface of the lines, the chemical reactions responsible for formation of these protective deposits are reversible (over days-months) if the passivation layers on the lines are not maintained. The buildup of these protective films can vary from one house to another depending on plumbing age, physical disturbances such as ground freezing or nearby road repair, and the length and diameter of the pipe.

a. *Contributions of Service Lines to Lead Levels at the Tap.* While corrosion control can be an effective treatment for preventing or slowing the dissolution of lead from lead service, in many cases it will not be sufficient to reduce lead levels below the action levels. Data from Boston, MA, Bennington, VT, and Fall River, MA, cities that contain relatively large numbers of lead service lines, illustrate that high levels that would not be protective of public health persisted despite significant reductions in lead levels achieved with corrosion control treatment. Results summarized in Table 7 also indicate that systems with lead service lines have substantially higher lead levels than those without. These results further suggest that many systems with lead service lines may not be able to reduce lead at the tap to levels below the action level using corrosion control alone. In addition, Table 10 indicates that lead levels in homes with lead service lines compared to homes without lead service lines, in the same system, had higher lead levels. EPA believes that the information presented in Tables 7 and 10 suggests that lead service lines can contribute significant amounts of lead at consumers' taps.

TABLE 10.—AVERAGE LEAD LEVELS (MG/L) BY TYPE OF SERVICE LINE (EPA, 1990d)

City	Pipe type	Number of samples	First draw	Fully flushed
Bridgeport	Lead	10	12	7
	Non-Lead	12	7	5
Champaign	Lead	6	18	16
	Non-Lead	16	3	4
Chicago	Lead	512 (FD)	13	9
		466 (FF)		
	Non-Lead	110	5	4
Fairfield	Lead	19	15	7
	Non-Lead	19	7	5
Louisville	Lead	51 (FD)	11	11
		49 (FF)		
	Non-Lead	10 (FD)	10	2
		18 (FF)		
New Haven	Lead	5	215	34
	Non-Lead	14	10	34
Newport News	Lead	41	10	
	Non-Lead	448	11	
Phila/Suburb	Lead	290	12	
	Non-Lead	22	6	

FD—First-draw, FF—fully flushed

b. *Partial Lead Service Line Replacement.* As discussed above, only that portion of the lead service line controlled by the PWS is required to be replaced by the system. Many commenters did not believe that replacing only that portion of the lead service line under their control would be an effective method for reducing lead levels at the tap and that replacing only part of the service line could actually increase the lead levels at the tap because of the disruption of the protective coating on the inside of the pipe.

In practice, EPA believes that many systems required to replace lead lines will receive consent to remove any privately controlled portions since it is in homeowners' interest to remedy completely this source of lead in their drinking water. In those cases where the water system cannot obtain permission to remove the entire line, EPA still believes there are benefits to partial replacement.

Partial removal of a lead service line will reduce the likelihood of exposure to lead from drinking water because there will be a smaller volume of water in contact with the lead service line. For example, a lead service line 40 feet in length and 3/4 inch in diameter will contain about 4 liters of water, and a service line 20 feet in length and 3/4 inch diameter will contain about 2 liters of water. If the lead concentrations in the service line are the same (i.e., 0.020 mg/L), consumers are more likely to consume water with elevated lead levels from longer lines because a larger volume of water will have elevated lead levels. Data collected by Pocock (1980) from over 2,000 homes in the United Kingdom support the view that the likelihood of elevated lead levels varies in relation to the length of the lead service line. The study found that within pH ranges reflecting relatively low corrosive water, tap water lead levels were significantly related not only to the presence of lead piping, but to the length of the piping as well. These findings are also consistent with Kuch and Wagner's (1983) mass transfer modeling, which predicted the dependence of lead levels on the length and diameter of a lead pipe (i.e., higher lead with longer lead pipe).

EPA shares the concern of commenters that partial replacement could increase lead levels, but believes that increased levels, if they occur, will be temporary and will decrease over time. One study cited in the proposal (Britton and Richards, 1980) showed a temporary rise in lead levels at the tap. One week after service line replacement the lead levels were as low as 0.1 mg/L and as high as 4.25 mg/L. Of the 10 samples collected, only one measured (4.25 mg/L) was above 0.1 mg/L; two were above 0.05 mg/L; and the remaining seven were below 0.05 mg/L. Two months after replacement, lead levels further declined to concentrations ranging from 0.05 mg/L to 0.2 mg/L. Four months after replacement, lead levels declined even further; 9 of the 10 samples were below 0.05 mg/L, and the 10th was below 0.09 mg/L. The Agency believes that the temporary rise in lead levels indicates not only the presence of lead materials in the distribution system (i.e., service lines, probably lead pipe), but also poor corrosion control. As noted by the authors, pH adjustment had only recently been implemented in the area and any passivation films on the interior walls of the pipe were probably thin. By the time replacement would be required under the final rule, corrosion control will have been fully implemented and should therefore

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reduce the potential for temporary increases in lead levels. This provides another justification for requiring lead service line replacement only after corrosion control treatment has been optimized.

Data collected since the proposal from Newport News as reported in the American Water Works Association report "Lead Service Line Replacement: Benefit-to Cost Analysis" (AWWA, 1990), indicate that replacement of service lines can result in temporary increases in lead levels. However, these increases lasted only 1–2 weeks and followed replacement of lines that initially had low levels (indicating an effective passivation film). Replacement of lead service lines with lead levels above 0.015 mg/L generally resulted in decreased levels immediately after removal, followed by substantial decreases after 2 weeks.

Newport News Waterworks began a program in 1987 to replace existing lead service lines in their system. Samples were collected at the meter, before and immediately after the service line was replaced, and 2 weeks after the replacement. The results in Table 11 indicate that of the nine locations sampled, four sites had initial lead levels above 0.015 mg/L, one site had lead levels between 0.010 to 0.015 mg/L, and four sites had lead levels below 0.005 mg/L. Immediately after removal of the lead lines, the lead levels in three of the four locations with initial lead levels above 0.015 mg/L declined, and all four locations showed substantial reductions when sampled 2 weeks after replacement.

TABLE 11.—LEAD LEVELS IN HOMES BEFORE AND AFTER REPLACEMENT OF LEAD SERVICE LINES IN NEWPORT NEWS, VA (AWWA, 1990)

Location	Lead levels (ppb)		
	Before replacement	Immediately after replacement	1–2 weeks after replacement
7	4	88	1
10	4	16	2
11	1050	6	4
14	2	106	2
16	4	10	4
18	37	44	<1
19	2350	45	6
21	76	66	13
25	13	27	6

EPA conducted a study on the effects of partial lead service line replacement on seven homes in Oakwood, Ohio (EPA, 1991c). First-draw samples and service line samples were taken before and after replacement. First-draw and service line samples were taken (two to four samples collected at each home) during a 1 week period before the service lines were replaced, and follow-up samples were collected over a 2 week period (one to three samples were collected at each home), after service line replacement. Only that portion of the lead service line owned by the water utility, main to curb, was replaced, even though four homes had lead service materials from the main to the house. The water system offered to replace the section of the service line owned by the homeowner, curb to house, but all four homeowners declined the offer. The results presented in Table 12 indicate that the lead levels in service line samples before and after replacement were very similar, and were below 0.015 mg/L, with one exception. Even though the results indicate very little change in lead levels before and after service line replacement and some increases in some cases, these data are not directly relevant to the replacement requirements in the final rule since levels at these lines were already below the replacement level in the final rule of 0.015 mg/L and would not be required to be removed under the final rule. These data do appear to indicate, however, that requiring replacement of lines where tap levels are already low (i.e., below 0.015 mg/1) might not result in improvements in lead levels.

TABLE 12.—LEAD LEVELS IN HOMES BEFORE AND AFTER REPLACEMENT OF LEAD SERVICE LINES IN OAKWOOD, OH (EPA, 1991c)

Location	Lead levels (ppb)	
	Before replacement	1–2 Weeks after replacement
4	9	6
5	6	3
6	10	4
7	5	22
8	9	11
11	10	7
12	6	8

To ensure that increased exposures do not occur because of partial line replacement, systems are required to notify affected residents that the system is replacing the lead line and that the potential exists for increased lead levels during an interim period after removal. Systems are also required to collect a lead service line sample from the consumer's tap within 14 days after replacing the line to determine whether any increase has occurred. The purpose of collecting the follow-up sample is to inform residents of precautions that may be needed temporarily such as flushing water at taps to avoid potential increases in lead levels.

In conclusion, while partial replacement could in some cases result in transitory increases in lead levels at the tap, EPA believes that such increases will be minimized due to the fact that effective corrosion control should be in place by that time, and because homeowners will be informed of necessary precautions. Finally, even if temporary increases do occur, EPA believes that such concerns are outweighed by the importance of having lead levels reduced over the long term. Except at extremely high exposure levels not found in drinking water (exceptions may occur where there is stagnant water in a lead-lined water cooler), lead is primarily of concern because of its capacity to accumulate in the body and result in chronic health effects, rather than acute toxicity. Thus, EPA believes that it is most important that longterm exposures to elevated levels due to lead service lines are avoided, even if this can mean short-term exposures in some cases to higher levels immediately after partial replacement.

c. *Current Replacement Programs and Cost.* EPA estimates that about 8,300 of the 15,000 water systems with lead service lines will be required to replace some lead service lines after corrosion control has been installed. Costs are estimated to range from about $900 to $1800 dollars per line depending on the local circumstances and the replacement method (EPA, 1991a). Most of these expenses will be fixed costs associated with mobilizing utility work crews and preparing the site to replace the line. Consequently, the costs of replacing lead service lines of different lengths will be comparable. The annual increase in household water bills for large metropolitan water systems (over 50,000) is estimated to range from $2 to $9 (EPA, 1991a). EPA believes that these costs are reasonable.

Costs for lead service line replacement could be substantially lower in the future than those estimated above with more widespread use of low cost pipe replacement technology currently available. This new technology can pull old pipes out without excavating entire streets. The only constraint on the use of this technology is that it cannot be used in clay soils or "river rock." EPA estimates that such conditions exist in less than 25% of the U.S. Assuming that such technology will be used for replacement of 75% of the problem lead service lines, annual household costs estimated for large systems would be reduced to as low as <$1 to $4 (EPA, 1991d).

Several cities currently have programs to accelerate the replacement of lead service lines. Since the early 1980s San Francisco, California, has replaced about 10,000 lines, representing 95 percent of the lead service lines at a cost of approximately $1200–1400/line. The service line from the water main to the water meter is replaced with polybutylene, copper, or ductile iron, depending on line diameter. In 1984, Akron, Ohio, began replacing each year about 1,000 lead and galvanized steel service lines from the water main to the curb. In all of these cases, the service line replacement was funded by operating revenues paid by the customers. Washington, D.C., has replaced an estimated 500 service lines with a program in which the city will replace its portion of the lead service lines provided that the building owner pays for replacement of his or her portion (AWWA–RF, 1990).

EPA believes corrosion control will reduce the leaching of lead from lead service lines in many cases, but high lead levels will persist in some cases and service lines will need to be replaced. EPA believes that available information suggests that the replacement of lead service lines is effective in reducing lead levels at the tap and that the costs are reasonable for large metropolitan water systems. The technology to replace lead service lines is available, and many cities across the country have been implementing lead service line replacement programs. The Agency will, during the next 3 years, use the data from these systems to assess fully the effectiveness (i.e., in terms of lead levels at the tap or other potential effects) of the lead service line replacement requirements in this regulation, and consistent with this review, make changes, if appropriate, to the service line replacement requirements described below.

4. Final Replacement Program

The lead service line program discussed in the preamble to the proposal would have required systems to replace all lead service lines that contribute measurable lead levels (i.e., 0.003 mg/L) after corrosion control was implemented where the levels of lead in 5 percent of service line samples collected at the tap exceeded 0.020 mg/L. All lead services would have been required to be replaced within 15 years from the date the replacement program was triggered.

The lead service line replacement program in the final rule is premised on five principles: (1) Corrosion control can reduce lead levels from lead service lines in some instances, but high lead levels may persist after treatment; (2) water systems should only be responsible for removing that portion of the lead lines they control; (3) a system is triggered into a lead service line replacement program if the system exceeds the lead action level after installing corrosion control and/or source water treatment; (4) a system is not required to replace individual lead service lines if the service line sample is 0.015 mg/L or less; and (5) water systems must each year replace 7 percent of their total number of lead service lines in place at the beginning of the program (i.e., complete replacement over 15 years). The first two principles have been discussed in the previous section. The final three requirements and the rationale for the remaining components are discussed below.

a. *Criteria for Triggering Replacement Program.* All public water systems that exceed the lead action level in tap water samples after installation or improvement of corrosion control or source treatment (whichever treatment is installed later), or during any subsequent monitoring period, are required to initiate a lead service line replacement program. Obviously, no such program would be required in communities where no lead service lines have been used.

The Agency decided to use the lead action level to trigger lead service line replacement for consistency with other components of the treatment technique (i.e., corrosion control for small and medium systems, source water treatment, and public education). Given the technical complexity of this regulation, and the large number of water systems possessing varying degrees of technical expertise subject to these regulatory requirements, the Agency believes it is extremely important that the requirements be easily implemented by the industry and understood by the public. Use of a single action level for all the regulatory requirements helps achieve this objective. Moreover, for reasons explained elsewhere in this preamble, the Agency believes that use of 0.015 mg/L as a trigger for action will ensure substantial public health protection.

After a water system is triggered into the lead service line replacement program, it is required to take three steps: (1) Complete a materials evaluation, if this has not already been done, to identify all homes or buildings served by lead service lines, (2) establish a replacement schedule for replacing lead service lines, and (3) replace all lead service lines controlled by the system except for those that do not contribute more than 0.015 mg/L. Water systems with lead service lines may simply choose to remove them without conducting any monitoring. This could reduce the monitoring costs for systems, especially if a system believes that lead levels from the service lines are likely to exceed 0.015 mg/L.

b. *Materials Evaluation.* One year after a water system is triggered into the replacement program, it is required to submit to the State a revised materials evaluation identifying the total number of lead service lines in its distribution system. EPA believes that 1 year is more than an adequate period of time since water systems should have obtained this type of information either when they were required to determine whether their distribution system contained lead or copper pipes (§ 141.42(d)), or when they established their sampling pool for tap monitoring under this rule (see § 141.86(a)). EPA understands that some cities may have very poor records of lead service line location and may not be able to initially identify each line. However, systems are not required by the final rule to provide this information until 8–10 years from today (i.e., after installation of corrosion control and/or source water). Given this extended period, EPA anticipates that even those systems with poor records initially should be able to locate their lead service lines and that systems with monitoring results indicating that lead service lines may be a problem should plan this work accordingly.

c. *Replacement Schedule.* The lead service line replacement program discussed in the preamble to the proposed rule would have required replacement of all lead service lines on a schedule to be determined in each system's treatment plan, but in no case more than 15 years. Some commenters argued that the maximum period was too short and that lines should only be replaced in accordance with system's routine maintenance activities. EPA does not believe it would be appropriate to allow systems to replace lines as part of normal maintenance since this could take as long as 50 years before all the problem lead lines are replaced in some systems. EPA believes that it is necessary to accelerate the rate at which systems would otherwise replace lead service lines in order to ensure that public health will be adequately protected.

EPA received other comments arguing that the maximum replacement schedule discussed in the proposal was either too short or too long. Commenters suggested

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alternative schedules ranging from 10 years to 30 years. While these commenters disagreed with a maximum 15-year replacement schedule, they did not articulate why it would be feasible for systems to replace lines in a shorter period of time, or why it would only be feasible for systems to replace lines on a longer schedule. Indeed, it is difficult to determine a uniform, national replacement schedule applicable to all public water systems because the circumstances faced by systems can vary substantially, depending upon the number of lead lines in a system and system size. EPA estimates that lead service lines can comprise between 10 and 50% of the total service lines in systems which have them. In some systems, this percentage may be even higher. Large systems with few lines would be capable of replacing the lines on the fastest schedule, whereas a system comprised of a high percentage of lead lines would take the longest period of time to complete replacement. A city like Chicago, which required use of lead service lines until 1986, would require the longest period of time to feasibly replace all of its lead lines.

EPA considered alternative ways of taking into account both system size and the number of lead service lines in establishing a replacement schedule. One such alternative would have required systems to replace the number of lead service lines each year which corresponds to a fixed percentage of the total number of lines (lead and non-lead) in the system. For example, if 10% of the total number of lines were required to be replaced each year, a system with a total of 10,000 lines and 5,000 lead lines would be required to replace 1,000 lines per year (10% of 10,000), leading to replacement of all lines within 5 years. A system of the same size with all lead lines would be given a longer period of time (10 years) to complete replacement under the above scenario. While such an approach would take into account the various factors affecting the feasibility of replacement schedules for individual systems, it can yield inappropriate results in the case of the larger systems, which may be required to complete replacement on an inordinantly fast schedule which would not be feasible (e.g., a city containing a total of 200,000 lines and 50,000 lead lines would be required to replace all the lead lines within only 2 and 1/2 years).

After considering the public comments and the difficulties associated with establishing a uniform replacement requirement for all systems, EPA has decided to retain the approach discussed in the proposal of establishing a maximum replacement schedule of 15 years for all systems. Under the proposed rule, the exact schedule for each system would have been established by the State in each treatment plan for the system. The final rule does not provide for the establishment of treatment plans, as discussed above; the rule simply requires States, and EPA in states without primacy, to place systems on a replacement schedule shorter than 15 years where this is feasible. States will be in the best position to assess the factual circumstances of each individual system to determine the schedule which the system can feasibly meet. In no case, however, can a system take more than the maximum 15-year schedule contained in the final rule.

Water systems required to conduct a lead service line replacement program are therefore required to replace each year at least 7 percent of the total number of lead service lines with lead concentrations above 0.015 mg/L. For example, a system that has a total of 10,000 lead service lines would be required, at a minimum, to replace 700 lead service lines per year (unless the systems could demonstrate that specific lines had concentrations less than 0.015 mg/L, as discussed below). Addressing and, if necessary, replacing all lead lines would, therefore, take 15 years unless the State specified a shorter schedule.

d. *Replacement of Individual Service Lines.* In the preamble to the proposed rule, the Agency considered a lead service line replacement program that would have contained a rebuttable presumption that all lead service lines contribute measurable amounts of lead to the tap and, therefore, should be replaced. That presumption could have been rebutted if the system conducted monitoring that compared a lead service line sample with a fully flushed sample and found that the service line contributed to no measurable increase in lead levels at the tap. The Agency continues to believe that a rebuttable presumption that all lines should be removed is appropriate, but has changed the lead level at which systems will be allowed to avoid replacing specific service lines.

The proposal would have required the replacement of a service line if it contributed lead levels of 0.003 mg/L or more. Several commenters stated that this was unreasonable and that a higher trigger level should be established. EPA agrees that a higher trigger level is appropriate and has selected 0.015 mg/L for an individual line for three reasons: (1) It is consistent with the lead action level that triggers the system into lead service line replacement, as well as other components of the treatment technique; (2) use of a low trigger level may not reliably indicate whether the source of the lead contamination is the service line versus other components of the distribution system; (3) some data indicates that partial replacement of lines where the levels are already below 0.015 mg/L may not consistently reduce those levels; and (4) replacing lines where the level is above 0.015 mg/L provides substantial public health protection.

The first reason for requiring replacement of only those lines contributing above 0.015 mg/L is administrative simplicity. The lead service line replacement program, as well as public education, source water monitoring, and corrosion control for small and medium-sized systems, are triggered by exceedance of the action level of 0.015 mg/L at the 90th percentile. The Agency believes that using the same number as a trigger for removing lead service lines will be less confusing to the public and the regulated community and will enhance expeditious compliance with the rule, thereby improving the rule's effectiveness in protecting public health.

The second reason for using 0.015 mg/L as a trigger for lead service line replacement is recognition of the difficulties in ascertaining whether the service line is actually a significant source of lead contamination. Determining the concentration of lead in drinking water attributable to service lines on a case-by-case basis is complicated by differences in interior plumbing configurations and varying lengths of lead service lines. EPA believes that a trigger level as low as 0.003 mg/L (which is lower than the PQL for lead), and even somewhat higher values, would not provide a reliable indication that the service line (as opposed to other components of the distribution system, such as interior plumbing or brass faucets) was contributing lead to tap levels. The Agency believes it is appropriate to have a reasonable degree of certainty that the service line is, in fact, contributing to elevated levels of lead at the tap (after corrosion control and source water treatment have addressed all other sources of contamination within the PWS's control) before requiring systems to incur the costs of replacing the line. The higher the amount of lead detected in a service line sample, the greater certainty that the line is the source of the lead problem. Also, as noted above, EPA conducted a study on lead levels before and after partial pipe replacement which showed inconsistent results when the initial levels were below 0.015 mg/L. In sum, given the uncertainties associated with determining whether low levels of lead in service line samples are attributable to service line contamination and whether replacement can further reduce already low tap levels, the benefits in terms of ease of implementation associated with a consistent action level, as well as the substantial public health protection provided by an action level of 0.015 mg/L (see discussion in section IV(E)(2)(a), above), the Agency has selected 0.015 mg/L to trigger replacement of individual lead service lines.

Thus, under the final rule, the rebuttable presumption in favor of replacing lead service lines would operate as follows. As discussed above, a system is required to replace annually the number of lead service lines equal to seven percent of the total number of such lines identified in the system's materials evaluation. The system may seek to rebut the presumption requiring replacement of this number of lines by taking a service line sample at each site scheduled for replacement. If the concentration in the service line sample is less than or equal to 0.015 mg/L, then the system is not required to replace that individual line. However, the system may count that service line towards the seven percent replacement requirement which it is required to meet that year. Thus, in effect, the rule requires systems either to replace and/or rebut the presumption for replacement (by demonstrating that levels are below 0.015 mg/L) for a total of seven percent of its lead service lines each year.

e. *Discontinuing Replacement Program.* Under the final rule, water systems can discontinue the lead service line program if they can demonstrate that the lead levels in first-draw water at the tap are below the lead action level for two consecutive 6 month monitoring periods. It is conceivable that systems, through improvement of corrosion control or source water treatment, or because they obtain an alternative source of water that is naturally less corrosive, can achieve the action level even though they had previously exceeded it. The Agency decided to require systems to meet the action level during the monitoring periods conducted over the course of an entire year in order to ensure that the lower levels genuinely reflect a lowering of lead levels and not normal variability in lead levels at the tap. If a system subsequently exceeds the action level again during any single monitoring period, then it would have to recommence the replacement program.

f. *Annual Letter Certification Process.* For each year of the lead service line replacement program, each water system must submit a letter certifying that they have completed replacement, or monitored lead levels to rebut the replacement presumption, for at least seven percent of their service lines. The annual letter must include information on the number and location of each lead service line scheduled to be replaced during the most recent year, the service lines that were replaced, and the lines where service line samples were collected. The information must include the lead concentrations and the date and methods used to collect the samples. EPA believes that this information is necessary to ensure that the system is properly conducting the lead service line program.

V. MONITORING

A. Analytical Methods

1. Analytical Methods for Lead and Copper

The 1988 notice proposed the graphite furnace atomic absorption technique (GFAA) for conducting compliance monitoring for lead and either the GFAA, direct aspiration atomic absorption technique (DAAA), or the inductively coupled plasma (ICP) technique for conducting compliance monitoring for copper. Neither the DAAA nor the ICP technique were proposed for lead because the method detection limits for these two techniques were too high. All of these analytical methods were considered technically and economically feasible. On October 19, 1990, EPA published a Federal Register notice (55 FR 42409) soliciting comment on several new methods for lead and copper along with updates on the methods in the proposal. The new methods for lead and copper included a new inductively coupled plasma mass spectrometry (ICPMS) technique and the graphite furnace platform atomic absorption technique (GFPAA). In addition, the notice proposed analytical methods for calcium, conductivity, alkalinity, orthophosphate, silica, and water temperature and updated methods for pH, which are discussed in section 6, below.

Several commenters supported EPA's decision not to approve the DAAA or the ICP technique for lead in the proposal. Other commenters expressed concern that very few laboratories, other than State laboratories, currently had the analytical equipment or capability to test for lead at the MDL or PQL and that the costs for these lead analyses would be excessive. EPA received no substantive comments on the new methods proposed in the October 19, 1990, Federal Register notice (55 FR 42409).

EPA is concerned that the increase in the number of samples requiring analyses may require certification of more laboratories. Based on EPA's most recent Water Supply Performance Evaluation Studies (WS #22 and 23) EPA estimates that there are about 400 laboratories nationwide that currently have the capability to analyze for lead using the GFAA technique within #30 of the Practical Quantitation Level (PQL). However, a large majority of these systems are not EPA- or State-certified laboratories and some may need to obtain certification before completing analysis for lead. Because of this concern, the final rule is phasing in the monitoring requirements by system size to ease the burden on analytical laboratories and to allow some States the opportunity either to expand their current laboratory capacity or initiate a program to certify independent laboratories to analyze for lead (see section C(1)(c) below for a discussion of phased-in monitoring).

The cost for analyzing lead and copper is estimated at about $15 per metal per sample, with collection costs of $20. The proposal estimated the cost of analyzing lead and copper samples at about $6 to $30 per metal per sample. EPA changed its cost estimates based on public comments, although contacts with several school districts and laboratories across the country indicate that lead samples can be analyzed for as low as $5. EPA concludes that the analytic methods listed in table 13 are both technically and economically feasible for routine use in compliance monitoring for lead and copper. These methods are therefore designated as the prescribed analytical methods for conducting monitoring under the final rule.

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TABLE 13.—ANALYTICAL METHODS

Contaminant	Methodology [9]	Reference (Method Number) EPA [1]	ASTM [2]	SM [3]	USGS [4]
Lead	Atomic absorption; furnace technique	239.2	D3559–85D	3113	
	Inductively-coupled plasma; mass spectrometry	[6] 200.8			
	Atomic absorption; platform furnace technique	[7] 200.9			
Copper	Atomic absorption; furnace technique	220.2	D1688–90C	3113	
	Atomic absorption; direct aspiration	220.1	D1688–90A	3111–B	
	Inductively-coupled plasma	[5] 200.7		3120	
	Inductively-coupled plasma; mass spectrometry	[6] 200.8			
	Atomic absorption; platform furnace	[7] 200.9			
pH	Electrometric	150.1	D1293–84B	4500–H	
		150.2			
Conductivity	Conductance	120.1	D1125–82B	2510	
Calcium	EDTA titrimetric	215.2	D511–88A	3500–Ca–D	
	Atomic absorption; direct aspiration	215.1	D511–88B	3111–B	
	Inductively-coupled plasma	[5] 200.7		3120	
Alkalinity	Titrimetric	310.1	D1067–88B	2320	
	Electrometric titration				I–1030–85
Orthophosphate, unfiltered, no digestion or hydrolysis.	Colorimetric, automated, ascorbic acid	365.1		4500–P–F	
	Colorimetric, ascorbic acid, two reagent	365.3			
	Colorimetric, ascorbic acid, single reagent	365.2	D515–88A	4500–P–E	
	Colorimetric, phosphomolybdate; automated-segmented flow; automated discrete				I–1601–85 I–2601–85 I–2598–85
Silica, filtered	Ion Chromatography	[8] 300.0	D4327–88	4100	
	Colorimetric, molybdate blue; automated-segmented flow				I–1700–85 I–2700–85
	Colorimetric	370.1	D859–88		
	Molybdosilicate			4500–Si–D	
	Heteropoly blue			4500–Si–E	
	Automated method for molybdate-reactive silica			4500–Si–F	
	Inductively-coupled plasma	[5] 200.7		3120	
Temperature	Thermometric			2550	

[1] "Methods of Chemical Analysis of Water and Wastes," EPA Environmental Monitoring and Support Laboratory, Cincinnati, OH (EPA–600/4–79–020), Revised March 1983. Available from ORD Publications, CERI, EPA, Cincinnati, OH 45268.

[2] Annual Book of ASTM Standards, Vol. 11.01, American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

[3] "Standard Methods for the Examination of Water and Wastewater," 17th edition, American Public Health Association, American Water Works Association, Water Pollution Control Federation, 1989.

[4] "Methods for the Determination of Inorganic Substances in Water and Fluvial Sediments," 3rd edition, U.S. Department of Interior, U.S. Geological Survey, 1989.

[5] "Determination of Metals and Trace Elements in Water and Wastes by Inductively-Coupled Plasma Atomic Emission Spectrometry," Revision 3.2, August 1990, U.S. EPA, EMSL Cincinnati, OH 45268.

[6] "Determination of Trace Elements in Water and Wastes by Inductively-Coupled Plasma-Mass Spectrometry," Method 200.8, August 1990, Revision 4.3, U.S. EPA EMSL, Cincinnati, OH 45268.

[7] "Determination of Trace Elements by Stabilized Temperature Graphite Furnace Atomic Absorption Spectrometry," Method 200.9, August 1990, U.S. EPA EMSL, Cincinnati, OH 45268.

[8] "Determination of Inorganic Ions in Water by Ion Chromatography," Method 300.0, December 1989, U.S. EPA EMSL, Cincinnati, OH 45268.

[9] For analyzing lead and copper, the technique applicable to total metals must be used and the samples must not be filtered.

2. Method Detection Limits for Lead and Copper

The 1988 proposal and the October 19, 1990, **Federal Register** notice (55 FR 42409) estimated Method Detection Limits (MDL) for lead and copper. Generally, the MDL is defined as the minimum concentration of a substance that can be measured and reported with 99-percent confidence that the true value is greater than zero. The MDL approach involves the determination of method detection limits using a procedure defined in Appendix B to 40 CFR Part 136.

The MDLs for the approved methods in the proposal were estimated to be 0.001 mg/L for GFAA (lead and copper), 0.020 mg/L for DAAA (copper only), and 0.002 mg/L for ICP (copper only). The MDLs for the new methods proposed in the 1990 notice were estimated to be 0.001 mg/L for GFPAA (lead and copper) and 0.001 mg/L for ICPMS (lead and copper).

There were no comments on the method detection limit for copper discussed at proposal. Some commenters supported the MDL for lead stating that it is technically feasible to measure lead in drinking water down to a level at or below 0.001 mg/L using the GFAA technique. Other commenters, however, indicated that the MDL of 0.001 mg/L was derived in a single laboratory and should be developed using laboratories representative of those actually performing lead analyses on a routine basis.

EPA believes commenters are confused on the purpose of the MDLs. Unlike Practical Quantitation Levels (PQLs), the MDLs established by EPA are not designed to be met by routine laboratory analysis and are not necessarily reproducible over time in a given laboratory. The MDL is a result of measurements made by an experienced laboratory under controlled research-type conditions. In contrast, the PQL represents a level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions.

In general, MDLs are used for two purposes: (1) When estimating PQLs if data from interlaboratory studies, such as performance evaluation studies are not available and (2) when States allow compositing of samples. The 1988 proposal used the MDL for lead to establish the PQL and allowed compositing of five source water samples only if the laboratory completing the analyses was able to measure down to the lead and copper MDLs. As discussed in more detail

below, the PQL estimated at proposal of 0.005 mg/L, using the "5 times the MDL" method, was confirmed by performance evaluation studies published in an October 19, 1990, **Federal Register** notice (55 FR 42409). The final rule continues to require systems that are compositing five samples to have the samples analyzed in laboratories that are able to measure levels down to the MDLs.

Another commenter stated that it was impossible to provide meaningful comment on the MDL for lead because EPA had failed to provide an adequate description of how the MDL was derived. This same commenter argued that EPA did not consider other studies indicating that the MDL for lead should be 0.003 mg/L. In addition, several commenters stated that the MDL for lead was derived using a different acid cleaning procedure and digestion procedure than required by the analytical method proposed for approval (Method 239.2–GFAA).

Contrary to commenters' claim, EPA did use Method 239.2 (GFAA) correctly in the MDL study. The samples were digested as required by this method, and the acid cleaning procedures were consistent with the requirements of Method 239.2. Note 5 of Method 239.2 states "since glassware contamination is a severe problem in lead analysis, all glassware should be cleaned immediately prior to use, and once cleaned, should not be open to the atmosphere except when necessary." The glassware was soaked for 2 hours before being used in the MDL study. This does not represent a modification of the method; this is merely a recommendation and clarification for laboratories where low-level contamination could be a problem.

EPA believes that an adequate description of how the MDL was derived in the proposal was available in the docket material supporting the proposal (EPA, 1988i). However, to ensure that all interested parties had an opportunity to adequately comment on the derivation of the MDL, notice of the availability of the memorandum describing the analysis was published in an October 19, 1990, **Federal Register** notice (55 FR 42409). EPA received no substantive comments on this memorandum in the October 1990 notice.

EPA disagrees with the commenter who stated that an MDL of 0.003 mg/L is more appropriate. The studies cited by the commenter were designed to provide information on the accuracy and precision of the GFAA and were not intended for calculating an MDL for lead. Both studies used spiked lead concentrations not within the range needed to calculate an MDL using the procedure listed in 40 CFR part 136, appendix B. The MDL for lead in the proposal was calculated using this procedure and was derived using samples containing 0.002 mg/L and 0.004 mg/L and analyzed using Method 239.2 (GFAA). Using the procedures in 40 CFR part 136, appendix B resulted in a calculated MDL in the range of 0.0007 mg/L to 0.0008 mg/L. Since the MDL was determined by a single laboratory, the MDL for using Method 239.2 (GFAA) was conservatively rounded to 0.001 mg/L (EPA, 1988i).

After reviewing all comments and evaluating the available data, EPA continues to believe that the detection limits listed in Table 14 are appropriate.

TABLE 14.—DETECTION LIMITS FOR LEAD AND COPPER

Contaminant and analytic method	Detection limit (mg/L)
Copper	
Atomic absorption; furnace	0.001
Atomic absorption; direct aspiration	0.020
Atomic absorption; platform furnace	0.001
Inductively coupled plasma	0.001
Inductively coupled plasma; mass spectrometry	0.001
Lead	
Atomic absorption; furnace	0.001
Atomic absorption; platform furnace	0.001
Inductively coupled plasma; mass spectrometry	0.001

3. Practical Quantitation Levels for Lead and Copper

The 1988 proposal estimated PQLs for lead and copper of 0.005 mg/L for lead and 0.050 mg/L for copper. The PQL is the lowest concentration that can be reliably achieved by well-operated laboratories (EPA and State laboratories) within specified limits of precision and accuracy during routine laboratory operating conditions. The PQL may be determined through either interlaboratory performance evaluation studies (PE studies) or it may be estimated if adequate data are not available from interlaboratory studies. If data from PE studies are available, the PQLs are set at a concentration where at least three-quarters of the EPA and State laboratories involved in the PE studies are able to measure within a specified acceptance range of the true value. In cases where PE studies are unavailable or inadequate, EPA believes that a PQL set at "5 to 10 times" the MDL achieved by good laboratories is generally a fair expectation for routine operation of most qualified State and commercial laboratories. The use of "5 times the MDL" instead of "10 times the MDL" to set the PQL may be appropriate when other considerations suggest that the PQL should be lower (see EPA, 1987a and 50 FR 46902, November 13, 1985, for a detailed discussion of MDLs and PQLs). EPA estimated the copper PQL at proposal at 0.050 mg/L, based on performance evaluation data. The proposed PQL of 0.005 mg/L for lead was estimated by multiplying the MDL by 5 (EPA 1988j).

There were no major comments on the PQL for copper. Several commenters opposed the PQL for lead, stating that multiplying the MDL by 5 to estimate the PQL is both unsubstantiated and arbitrary. Other commenters opposed the lead PQL because they claim that the majority of laboratories, especially commercial laboratories, cannot reliably achieve 0.005 mg/L within the specified acceptance limits (± 30 percent) and that EPA should consider the capabilities of commercial laboratories when deriving the PQLs and not rely solely on EPA and State laboratories. Another commenter stated that EPA had not provided adequate information to comment properly on how the PQL was derived and that EPA had not considered performance data from three studies (MS 31, WP #12–17, and EPRI RP1851) that indicate the appropriate PQL is approximately 11 to 30 times the MDL (0.011 mg/L to 0.030 mg/L; MDL assumed to be 0.003 mg/L).

The PQL in the proposal was estimated using the "5 to 10 times the MDL" criterion because the lowest lead value tested in the available PE studies at the time of the proposal was 0.0117 mg/L. Since the proposal, two Water Supply PE studies (WS #22 and 23) have confirmed the proposed lead PQL of 0.005 mg/L. The analysis of these studies was included in a paper "Use of Water Supply Performance Evaluation Data to Calculate Laboratory Certification Criteria and Practical Quantitation Limits for Inorganic Contaminants" (EPA,1990j) that was included in an October 19, 1990 **Federal Register** notice (55 FR 42409). The two PE studies evaluated the ability of EPA and State laboratories and non-EPA and State laboratories to analyze low-level lead samples (0.00528 mg/L and 0.0088 mg/L) using the GFAA. The results of these studies are summarized in Table 15.

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TABLE 15.—PERFORMANCE OF LABORATORIES USING GRAPHITE FURNACE ATOMIC ABSORPTION FOR LEAD (WS #22 AND 23)

True value (mg/L)	Number of laboratories	Percentage of labs within ± 30 percent of the true value using graphite furnace AA
EPA/State Laboratories		
0.00528	46	85
0.00880	33	94
Non-EPA/State Laboratories		
0.00528	457	74
0.00880	363	86

The Agency believes that the results of these new PE studies confirm the appropriateness of the proposed PQL of 0.005 mg/L; more than 80 percent of the approved EPA and State laboratories were within ±30 percent of 0.00528 mg/L using GFAA. In addition, almost 75 percent of the nonapproved EPA and State laboratories came within ±30 percent of 0.00528 mg/L. Based on this information, EPA does not agree with commenters' claims that laboratories will not be able to reliably achieve the PQL of 0.005 mg/L within the specified acceptance limits (±30 percent).

EPA also disagrees that the PQLs should be based on data from all laboratories rather than just EPA or State laboratories. EPA and State laboratory data have been used to calculate the PQL because they represent a stable group of laboratories. The use of data from EPA and State laboratories possible bias by results from laboratories that are not yet certified for drinking water (see 52 FR 25699–700, 53 FR 31550–51, and 54 FR 22100–01 for more complete discussion on using EPA and State laboratories).

In addition, EPA does not believe that the studies cited by the commenter claiming the PQL should be between 0.011 to 0.030 mg/L are adequate to establish PQLs. The values calculated from the data in MS #31 and WP #12–17 required extrapolation of the regression equations since the lowest concentrations evaluated in these data sources were 0.0109 mg/L and 0.0433 mg/L, respectively. The EPRI Study (RP 1851) had different problems. First, the only value below 0.010 mg/L was a blank value. The incorporation of the results at this concentration (0.0 mg/L) significantly biased the regression equations. Also, the EPRI study for lead by GFAA involved only 26 laboratories. The participants were generally utility companies which may, or may not, meet EPA's drinking water certification criteria. Finally, three of these laboratories dropped out during Round 2 and did not submit data on the analysis of lead samples in reagent grade water. For these reasons, the PQLs calculated by the commenter cannot be viewed with any degree of reliability since they involved either extrapolation of regression equations or the use of data that biased the regression equations.

EPA also disagrees with commenters who stated that using the "5 to 10 times the MDL" criterion to estimate the PQL for drinking water contaminants is arbitrary and unsubstantiated. EPA continues to believe that for some contaminants it is valid to set the PQLs at "5 to 10 times" the MDL. In fact, a PQL for lead 5 times the MDL is supported by the data discussed above.

After careful review of all comments and in light of the additional PE studies that confirm the PQL discussed for lead at proposal, EPA continues to estimate the PQLs at 0.005 mg/L for lead and 0.050 mg/L for copper.

4. pH Methods

The 1988 rule proposed approval of the electrometric method for measuring the pH of drinking water in field samples. pH meters would have been required to provide accurate results within ±0.1 pH units, and the pH analyses were to be conducted by certified samplers. The preamble to the proposal stated that the pH meter must provide accurate and reproducible results within ±1 pH unit. This was a typographical error and should have read ±0.1 pH unit. The proposed rule, however, correctly indicated ±0.1 pH units as the acceptance limits to be achieved by this method. See proposed § 141.86(a) (4) (i) (C).

Several commenters agreed that the electrometric method for measuring pH is the most precise and accurate method for measuring pH but indicated that it requires careful calibration of the equipment, which may be beyond the capabilities of many technicians responsible for field analysis. These commenters suggested that colorimetric methods be allowed, arguing that it is sufficient for potable water analysis, because the interference of sample color and turbidity are normally not present. Other commenters expressed concern with requiring field measurements of pH samples because of the difficulty in obtaining accurate pH readings, especially with low alkalinity waters. They suggested that pH analysis should only be conducted at approved laboratories and not in the field.

EPA agrees that accurate field measurements of pH can be difficult for many of these reasons, but believes that the pH measurements should be as accurate as possible since compliance status for some systems depends upon precise measurements of pH levels at the tap (i.e., where the State has specified a pH range as representative of optimal corrosion control under § 141.82(f) of the final rule and the requirement that all systems have raised their pH above 7.0 in all tap samples after installation of treatment). Calibration of the pH meter, even though difficult, should be a basic element in any operator certification program or program for field technicians. The use of colorimetric methods, as suggested by several commenters, is suitable for rough estimation, but because of potential problems with interferences due to color, turbidity, salinity, colloidal matter, various oxidants and reductants, it may not be accurate. Contrary to commenters' statements, it cannot be assumed that sample color and turbidity will not interfere with potable water analysis. Many systems continue to have intermittent problems with "red water" due to corrosion of iron pipes or presence of iron in raw water and have difficulties meeting the current turbidity limits. The major cost to a system for pH measurements is associated with purchasing the pH meter, which can range from $100 to $1,000.

EPA believes pH measurements should be made in the field because of the potential for chemical changes to the sample if it is either cooled or warmed. If pH samples are not analyzed soon after collection, especially in warmer temperatures, there may be carbonate or bicarbonate precipitation that would tend to increase the pH. Temperature differences of more than 5 to 10° C cause significant pH changes (AWWA–RF, 1990). It is possible to correct for temperature changes experienced between the field and laboratory, but it is not possible to compensate for any associated chemical changes. Because of the importance of accurate and reliable methods, the Agency continues to believe that the electrometric method is the best method for measuring pH and that the colorimetric methods, although simpler and less expensive, would not provide accurate results. Therefore, the final rule requires pH samples to be measured by the electrometric method in the field.

The final rule also requires large systems and those small- and medium-sized systems that fail the action level to measure for pH at each entry point to the distribution system. EPA is recommending, but not requiring, that systems use EPA Method 150.2 (pH, Continuous Monitoring [Electrometric]) for measuring samples at the entry points. This method offers the advantage of a continuous measure of pH, which could dramatically reduce the time and resources needed to measure for pH.

5. Total Alkalinity Methods

The titrimetric method to measure total alkalinity was not in the 1988 proposal, but EPA requested comment on the methods in the preamble and requested comment on these methods and the electrometric titration method in an October 19, 1990, **Federal Register** notice (55 FR 42409). There were no comments on the use of this method in the 1988 proposal nor on the methods in the October 1990 notice. Therefore, the methods for total alkalinity described in Table 13 is finalized.

6. Methods For Other Water Quality Parameters

Several methods for measuring calcium, conductivity, orthophosphate, silica, and water temperature were proposed in an October 19, 1990, **Federal Register** notice (55 FR 42409). A list of the methods are included in Table 13. There were no substantive comments on the methods proposed in the October 1990 notice, and therefore, EPA is requiring systems to use the methods listed in Table 13 to complete analyses for conductivity, calcium, orthophosphate, silica, and temperature.

B. Laboratory Approval

The 1988 proposal requested comment on acceptance limits for laboratory approval for lead and copper. In order to be approved for lead and copper analysis, laboratories would have been required to be within ±30 percent at ≥0.005 mg/L for lead and ±10 percent at ≥0.05 mg/L for copper. EPA did not receive any comments opposing the proposed laboratory certification requirements for copper and, therefore, is finalizing these requirements, as listed in Table 16.

Several commenters expressed a concern that the acceptance limits for lead were very narrow. EPA believes that the results from the two PE studies described previously indicate that the majority of laboratories participating in the PE studies are able to reliably achieve the ±30 percent acceptance limits for lead. Therefore, EPA is finalizing the acceptance limits of ±30 percent for lead.

The proposed rule would have required pH samplers to be certified. Several commenters did not believe that this was necessary because the calibration and use of a pH meter is relatively simple and certification efforts should be handled by the State as a part of existing program training. EPA agrees with these commenters and, therefore, is not requiring pH samplers to be certified.

TABLE 16.—LABORATORY CERTIFICATION CRITERIA FOR LEAD AND COPPER

Contaminant	Acceptance limits
Copper	±10 percent at ≥0.050 mg/L
Lead	±30 percent at >0.005 mg/L

The final rule does not require laboratories to be certified to test for pH and water temperature because they are measured in the field. Laboratories are also not required to be certified to test for calcium, orthophosphate, silica, alkalinity, or conductivity because these parameters are generally used to assist water systems and States in determining the best corrosion control treatment to install.

C. Tap Water Monitoring

The final rule requires water systems to (1) monitor for lead and copper in household tap water; (2) monitor for lead and copper at each entry point to the distribution system to determine the potential for source water contamination if tap lead or copper levels are above either action level; and (3) monitor lead service lines to determine whether they need to be removed. In some cases, monitoring for water quality parameters such as pH, calcium, and alkalinity at taps within the distribution system (e.g., coliform sites) and at the entry point(s) to the distribution system are required to help determine compliance with the treatment technique requirements and to assist in evaluating the effectiveness of corrosion treatment. The tap monitoring protocol for lead and copper is designed to identify the contributions of different sources of lead and copper to drinking water: source water, lead service lines, lead and copper interior piping, lead solder, and fixtures and faucets. As discussed below, the monitoring requirements for community and non-transient, non-community water systems vary slightly to reflect the circumstances and capabilities of these systems.

EPA notes that 40 CFR 141.29 allows a State to modify the monitoring requirements imposed by specific regulations when a public water system supplies water to one or more other public water systems if the interconnection of the systems justifies treating them as a single system for monitoring purposes. EPA does not believe that modification by States of the monitoring requirements of this rule, as provided in # 141.29, would be appropriate because the primary source of high lead or copper levels at the tap is materials within the distribution system itself. Treating multiple water suppliers as one system would not distinguish between the different systems that may have different amounts of lead or copper materials in the distribution system and thus require different treatment strategies to reduce these levels. This contrasts with other contaminants where the contaminant level is uniform throughout the distribution system. EPA does not envision situations where multiple water systems should be considered as one system for purposes of § 141.29 and, therefore strongly discourages States from allowing this modification to the monitoring requirements.

One commenter argued that the proposed monitoring requirements would fail to meet the statutory standard of "assur[ing] a supply of drinking water which dependably complies with" maximum contaminant levels [SDWA section 1401(1)(D)] and that the Agency would violate the SDWA by taking into account the cost and ease of implementation of the monitoring requirements. EPA believes that this commenter inaccurately characterizes the monitoring protocol adopted in this rule and incorrectly construes the Agency's authority to establish monitoring requirements under the Safe Drinking Water Act.

The monitoring provisions of the final rule impose comprehensive and substantial new requirements on public water systems, both in terms of the extent and frequency of monitoring and the rigorous protocol that must be followed in selecting sample sites and collecting samples. In establishing these requirements, EPA sought to ensure that they were reasonable and implementable but were also rigorous enough to identify water systems with significant lead and copper problems. While the monitoring requirements in this rule are, in general, significantly more comprehensive than requirements established for other drinking water contaminants, EPA believes this approach is justified by the unique nature in which corrosion by-products enter drinking water and the significance of lead and copper as contaminants of public health concern.

EPA's approach is fully consistent with the letter and intent of the SDWA. While the language in section 1401(1)(D) relied upon by the commenter refers to

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monitoring in conjunction with establishment of an MCL and not a treatment technique, the rule nonetheless contains "criteria and procedures to assure a supply of drinking water which dependably complies with" the requirements of this NPDWR. As discussed elsewhere in this preamble, the rule helps assure that systems are performing "optimal corrosion control" in part by requiring systems to conduct comprehensive tap sampling at homes specifically targeted for their potential to contain elevated levels of lead and copper. Moreover, the rule contains other procedures to ensure that excessive lead and/or copper levels would be detected in monitoring by requiring, for example, sampling of the first liter of water from the tap after water has been standing for at least 6 hours, conditions under which higher than average contaminant levels are likely to occur. Targeting monitoring to worst-case conditions will help systems and States evaluate the reductions in contaminant levels achieved through treatment and determine when "optimal" treatment is being maintained to the degree most protective of public health. EPA believes that given the difficulties associated with accurately characterizing lead and copper levels at the tap, the final monitoring protocol will "assure a supply of drinking water which dependably complies with" the treatment components of this rule.

The commenter is also incorrect in arguing that the statute and legislative history of the SDWA do not support the notion that monitoring requirements are to be determined taking into account their cost. Section 1445 of the SDWA authorizes the Agency to require public water systems to "conduct such monitoring * * * as the Administrator may reasonably require by regulation." In discussing the Administrator's authority under this provision, Congress stated that "[s]uch requirements must, of course, be reasonable." H.Rep. No. 93, 93rd Cong., 2d Sess., reprinted in A Legislative History of the Safe Drinking Water Act, Senate Committee on Environment and Public Works, No. 97–9, 97th Cong., 2d Sess., at 573. EPA believes that it would be unreasonable to impose monitoring requirements on public water systems without consideration of their cost or other practical considerations limiting the systems' ability to implement them effectively. In addition to being contrary to the language and legislative history of section 1445 of the statute, the commenter's approach would be inconsistent with section 1412, which provides that EPA shall establish "feasible" national primary drinking water regulations, taking into account the costs of such requirements. See section 1412(b)(5). Since monitoring requirements are part of national primary drinking water regulations (see Section 1401(1)(D)), it would be incorrect to argue that Congress required consideration of cost in establishing certain components of NPDWRs, yet intended to preclude consideration of cost with regard to other components.

EPA also wishes to clarify, as requested by this commenter, that the Agency is promulgating the monitoring and analytical methods requirements contained in §§ 141.86 through 141.89 of this rule (as well as the reporting and recordkeeping requirements in sections 141.90 through 141.91) pursuant to both sections 1445 and 1412 of the SDWA. Although Section 1412(b) provides that NPDWRs (as described in Section 1401) shall take effect 18 months after their promulgation, under Section 1445, there is no such limitation for monitoring, reporting, and recordkeeping compliance. To allow these requirements to be effective 30 days after promulgation of this rule, EPA is promulgating these provisions of the rule under section 1445. Effective 18 months after promulgation, these requirements will also be deemed effective under section 1412.

1. Sample Site Location

The proposed rule would have required water systems to collect samples from high-risk residences most likely to have lead problems. High-risk residences were defined to include those residences that were at the ends of the distribution system and either (1) had lead service connections and/or lead interior plumbing or (2) had lead solder that was less than 5 years old.

The proposal would have required water systems to conduct a materials evaluation to identify an adequate number of these high-risk residences. The materials evaluation would have included review of records to identify materials installed in the water distribution system and individual homes, existing water quality information, and design plans of the distribution systems. EPA has adopted essentially the same approach for selecting sampling sites as contained in the proposed rule.

a. *Sampling at High-Risk Houses.* Numerous commenters disagreed with the proposed requirement to monitor at high-risk residences. They argued that these locations would not represent system-wide lead problems and that system-wide treatment would be required based on one or two samples exceeding the action levels. Commenters suggested that samples should be collected at representative sites throughout the distribution system as determined by the State. Other commenters suggested that EPA should target high-risk populations instead of high-risk sites.

EPA acknowledges that the requirement to monitor at high-risk locations is different from the monitoring requirements specified in most other NPDWRs. Nevertheless, EPA believes that the requirement to collect samples from locations that are most likely to have high concentrations of lead and copper in drinking water is reasonable and necessary given the nature of the problem of corrosion by-products. Other contaminants regulated under the SDWA usually do not require monitoring at high-risk locations or at residential taps, since the occurrence of the contaminant will usually not change as it travels through the distribution system. In contrast, lead and copper levels in drinking water are not distributed uniformly. If random samples throughout the distribution systems were allowed to be collected, or if samples were collected from outdoor taps (e.g., fire hydrants) or at the end of a system's control (e.g., water meter), areas with serious lead and copper problems in household drinking water could be missed. EPA believes that these high-risk locations should be accounted for in a monitoring plan to better ensure that high levels of lead are detected and that the system institutes treatment that provides uniform and adequate levels of public health protection throughout the distribution system. EPA emphasizes, moreover, that the purpose of monitoring at taps before and after corrosion control treatment is to identify the need for additional treatment and to ensure that adequate treatment is installed. Targeting monitoring towards high-risk locations means that the detected levels will likely be higher than if sampling were randomly distributed. This does not mean, however, that systems are "disadvantaged" by detection of these higher levels because compliance with the rule is not based on whether a system achieves any particular tap levels of lead and copper. Rather, the requirement of the rule in terms of corrosion control treatment is that systems "optimize" such treatment. Targeting monitoring to locations likely to have higher lead and copper levels will help systems and States determine when levels have been reduced to an optimal extent.

Numerous commenters expressed concern with a system being required to install expensive treatment based on one or two samples, from unrepresentative sites, exceeding the action level. They believed it was unfair to require the majority of customers to pay to correct problems that were not system-wide but instead concentrated in a relatively small part of the distribution system. They were also concerned that installing treatment based on samples from high-risk sites could cause other unintended problems in other sections of the distribution system.

As discussed in section IV(E), the action levels in the final rule are based on the 90th percentile lead or copper level. Basing the action level on the 90th percentile allows systems to have several sample values above the action level and still not trigger system-wide treatment (systems over 100,000 people can have 10 samples above the action level, while systems serving less than 500 people can have 1 sample above the action level without triggering action). More importantly, EPA believes any lead and copper problems found in the sites selected for sampling represent a wider problem within the system. This is especially true in light of several changes to the proposed site selection procedures, described below, which increase the number of eligible sites for sampling. EPA acknowledges that the number of high-risk sites within different systems will vary, but in many systems, they can comprise a substantial proportion of the sites, especially for systems with lead service lines. EPA estimates that about 20 percent of all public systems have some lead service lines and that lead service lines comprise between 15 percent to 80 percent of all service lines in these systems (EPA, 1991a).

There will be situations where the system is not able to locate sufficient number of high-risk homes. For example, EPA estimates that about 16 percent of public water systems are mobile home parks (EPA, 1991a), which, in many cases, use plastic pipes and will not have used either lead solder or lead service lines. Another case may be in systems where there has been no new construction or renovations within the past 5 to 10 years and no lead service lines were used. In these situations, the system is required to collect samples from public buildings or from homes with lead solder installed prior to 1983, or in the case of mobile homes, from any site within the distribution system (Section (d) contains a complete discussion on alternative sampling sites).

Finally, EPA believes that customers who do not benefit directly from reduced exposure to lead and copper will still realize indirect benefits from decreased health costs within the community and direct material benefits from corrosion control treatment (see section X for discussion on benefits).

Other commenters suggested that the sampling program should be targeted towards high-risk populations (i.e., infants, pregnant women) and not high-risk sites. EPA agrees that high-risk populations should be protected but believes targeting high-risk sites is a more effective approach for reducing exposure to these high-risk populations. EPA has no reason to believe that people at greatest risk are not distributed equally among high-risk sites. By selecting high-risk sites, EPA is ensuring that action is taken if there is a lead or copper problem within the system. Targeting populations would not guarantee that a lead or copper problem within the system is identified and corrective action is taken. Also, high-risk populations are continually changing (pregnant women give birth, infants grow up), making it necessary to continually change the sampling group. This would be impractical and would increase the difficulties with the implementation of the final rule.

For the reasons discussed above, EPA believes that the use of high-risk sites is reasonable and will generally reflect problems not only in the small subset of sites used to determine if treatment is necessary but also will reflect wider problems in the distribution system.

b. *Targeting Criteria.* High-risk locations for the final rule include (1) those locations that contain copper pipes with lead solder installed after, 1982 or lead pipes and/or (2) locations with lead service lines. The changes from the proposal and the reasons are discussed in the subsequent sections.

i. End-of-Distribution System. Many commenters disagreed with the requirement in the proposal that samples had to be collected from sites at the end of the distribution system. They stated that requiring sampling at these locations could exclude problem areas, such as older inner cities, which have lead service lines but would not qualify as sample sites because they are not located at the end of the distribution system. Other commenters contended that only under certain conditions and in certain systems will there be any differences in water quality at the end of the distribution system and that requiring monitoring at these points complicates sample collection with no obvious benefits.

At the time of proposal, EPA did not have any field data demonstrating that sites at the ends of the distribution had higher lead levels than other sites. However, the Agency decided to propose this requirement because of concern that it may be difficult to maintain elevated pH levels at the farthest reaches of the distribution system, and, in the absence of sufficiently high doses of corrosion inhibitors, it may be difficult to maintain an adequate coating on the interior surface of service lines and pipes throughout the distribution system. Consequently, it was thought that sites at the ends of the distribution system may be more likely to receive water that is more corrosive.

The Agency still does not have any specific data indicating that sites at the ends of the distribution system will necessarily have higher lead levels than other sites. In fact, data from Seattle, Washington, demonstrates that lead levels at the ends of the distribution system can actually be lower than in other areas of the distribution system (EPA, 199 lb). EPA believes that for the majority of systems with well buffered water, the requirement to collect samples at the ends of the distribution system simply complicates locating sampling sites and could result in water systems overlooking sites that should be targeted (e.g., inner city dwellings and buildings). Also, several commenters on the proposal stated that for systems with asbestos-cement or cement-mortar lined pipes, pH might rise toward the ends of the distribution systems. Given these uncertainties, EPA believes it is a better use of limited public water systems resources to concentrate their efforts on identifying sites that contain leaded materials (including lead service lines in older, urban areas) rather than locating sites at the ends of the distribution system. Therefore, EPA has decided to eliminate the requirement to collect samples at the ends of the distribution system and is allowing water systems to select sites throughout the distribution system that meet the targeting criteria described above.

ii. Lead Solder/Lead Pipes. Several commenters disagreed with the requirement in the proposal to collect samples from homes with lead solder less than 5 years old. They argued that when the rule becomes effective, there would be very few, if any, homes with legally installed lead solder because of the 1986 lead ban; any lead solder less than 5 years old would have been installed illegally and water systems should not be the de facto enforcer of the lead ban. Other commenters were

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concerned that they would need to continually substitute new sample sites when the age of the initial sample sites passed 5 years or when homeowners change their plumbing in an attempt to rectify a lead or copper problem.

EPA agrees that very few sites will have lead solder less than 5 years old when the rule becomes effective because of the lead solder ban of 1986, because EPA is planning to reinforce that ban with a Federal ban on solder under section 6 of the Toxic Substance Control Act (TSCA), and because systems are not required to begin monitoring until 1992 (large systems begin January 1992, medium systems begin July 1992, and small systems begin July 1993). The final rule takes this into account by requiring systems to collect samples from locations that contain copper pipes with lead solder installed after 1982. EPA believes that this will give the majority of water systems a large enough pool of sites from which to collect samples yet still target sampling to those locations which had lead solder installed in the period just preceding enactment of the lead solder ban. For example, if a State's lead ban became effective in January 1988, the water, system could include homes with lead solder installed between January 1983 and January 1988. If the lead ban was effective in the State prior to 1983, the water system could collect samples from homes with lead solder installed as close as possible to the effective date. Of the 54 States and Territories, two had a lead ban in effect prior to 1986, 11 prior to 1987, 23 prior to 1988, 47 prior to 1989, and 53 by 1990 (EPA, 1990k). Thus, for the majority of States (43), water systems will be able to select sampling sites built between January 1983 and January 1988, which EPA believes will provide an adequate number of high-risk homes.

EPA does not believe it would be appropriate to require systems to target sampling exclusively to those sites where lead solder has been installed illegally after the lead ban was enacted. Requiring the collection of samples from sites with illegally installed lead solder would require the water system to inspect every site built after the effective date of the lead ban to determine if the site had lead solder. This would be impractical and could significantly delay the implementation of the final rule. In contrast, the majority of homes constructed between 1983 and the effective date of the lead ban in the State will more than likely have used lead solder. EPA encourages water systems to inspect sites constructed after the effective date of the lead ban in the State if they suspect that these homes have illegally installed lead solder, but is not now requiring PWS to include these types of sites in their sample pool.

Finally, requiring sytems to collect samples from locations with lead solder installed after 1982 will eliminate the problem of constantly substituting homes with lead solder less than 5 years old. In terms of homeowners replacing their plumbing to rectify problems, EPA encourages homeowners to rectify problems if present, but believes that the majority of homeowners will opt to flush their water to protect themselves instead of replacing their plumbing while they wait for centralized treatment to take effect. EPA requires systems to identify more sample sites than needed to complete their initial sampling poll in case the system cannot gain access to enough homes or because homes may drop out of the sample pool.

The proposed rule would have required water systems with lead service connections to collect 50 percent of the system's samples from sites served by lead service connections and 50 percent from sites with interior lead plumbing or lead solder. If a system had no lead service connections, then 100 percent of the samples were required to be collected from sites with interior lead plumbing or lead solder. Many commenters were confused about this requirement and requested clarification. Other commenters argued that the percent of lead service connections sampled should be proportional to the number of lead service connections within the system.

To comply with this component of the monitoring requirements, water systems should first determine if they have lead service lines. If a system does not contain lead service lines, it should collect 100 percent of its samples from sites with either lead solder or lead interior pipes. EPA estimates that about 75 percent of all public water systems will fall into this category. If a system contains lead service lines, it is required to collect 50 percent of its samples from sites with lead service lines and 50 percent of its samples from sites with lead solder or interior lead pipes. Water systems unable to locate enough sites with lead solder or lead interior pipes to comprise 50 percent of their sample pool are required to complete their sample pool with sites served by lead service lines. Likewise, water systems unable to locate enough sites served by lead service lines to make up 50 percent of their sample pool are required to complete their pool with sites that contain lead solder or lead interior pipes. For example, if a system is required to sample at 100 sites but can only locate 20 sites that have lead solder or interior lead pipes, they should collect the remaining 80 samples from sites served by lead service lines. Water systems are required to exhaust possible sample sites from these categories before they select Tier 2 sites (discussed below).

EPA considered requiring water systems to collect samples at sites served by lead service lines in relative proportion to the total number of lead service lines within the system, but does not believe this is necessary or practical. Where lead service lines are present, EPA estimates that the percent of these lines as a percentage of the total number of service lines range from almost 90 percent for the very small systems to about 15 percent for larger systems (EPA, 1991a). This indicates that systems containing lead service lines will have a sufficient number of these sites to complete their sampling pool. Determining the percentage of lead service lines would require systems that have not completed a materials evaluation of their entire system to complete a survey prior to collecting the samples. This could take at least 1 year and could consequently postpone implementation of the final rule. As will be discussed, water systems are only required to identify a sufficient number of sites to perform the required tap sampling and do not have to conduct a complete materials evaluation of the entire system.

c. *Materials Evaluation/Phased-In Monitoring.* The proposed rule would have required water systems to complete their materials evaluation and to begin monitoring at different times depending on system size. Systems serving more than 3,300 people would have been required to complete their materials evaluation and begin monitoring 3 months after publication of the final rule; those serving from 500 to 3,300 people were to begin 15 months after publication, and those serving less than 500 people were required to begin 27 months after publication. Also, systems would have been required to identify a sampling pool that included 50 percent more sites than the number required for monitoring each monitoring period.

Several commenters supported phasing-in monitoring, especially for small systems. Others believed that it is unrealistic for systems serving more than 3,300 people to obtain an adequate pool of high-risk sites in the time allotted because the records to identify these sites are missing or inadequate.

Other commenters stated that a materials evaluation, regardless of the time allowed, was impossible because the records to identify high-risk locations do not exist.

EPA understands commenters concern with the potential inadequacy of records needed to identify high-risk locations and the need for additional time to locate these sites. EPA has maintained the phased-in monitoring by system size but has changed the system size categories to be consistent with the corrosion control treatment requirements and has increased the time allowed for systems to complete the materials evaluation. The time allowed for large systems to complete the materials evaluation has been changed from 3 months to 8 months, for medium systems from 3 months to 14 months, and for small systems from 15 months (systems serving between 500 to 3,300 people) or from 27 months (systems serving fewer than 500 people) to 26 months. The only group of systems that will have a shorter time frame to complete their materials evaluation and begin monitoring are those systems serving less than 500 people (26 months instead of 27 months in the proposal). The time was shortened for these systems to be consistent with the size divisions adopted for corrosion control. The Agency believed adopting different system size categories for monitoring and treatment would be confusing and cause problems in implementation. EPA does not believe this minor change will cause problems for these systems in locating the required number of sites.

The Agency believes that the additional time for locating monitoring sites provided by the final rule should be adequate. It should be clarified that the materials evaluation is not required for the entire system but only to identify a sufficient number of sites to perform the required tap sampling. For example, the largest size systems (those serving more than 100,000 persons) are only required to identify a sufficient number of sites so that they can sample at 100 locations. Smaller size systems are required to sample at fewer sites (see Table 16). While systems will likely need to identify more sites than these in order to assure that the number of available sites (taking into account any difficulties in entering sites) is sufficient, the total number of sites to be located is still relatively small. Given the relatively few sites that need to be located, EPA believes that the time periods for systems to obtain this information are reasonable. Moreover, community water systems have been required to obtain this information under 40 CFR 141.42(d) since 1980. Larger systems are given less time to identify the required number of sites, because larger systems have more staff to help identify sampling sites. In addition, larger systems have generally been more involved in the rulemaking process and are therefore more prepared to implement the regulations in a shorter time period. Some larger systems have, in fact, completed much of this preliminary work and are moving ahead in advance of the final rule.

The Agency also recognizes that some systems have not maintained adequate records of lead service lines or lead solder. In these cases, systems can use other simple methods for gathering information. Systems can begin to look at the material composition of service lines during the course of their normal activities such as reading of water meters or other maintenance or repair work. Sometimes, neighborhoods with houses built at the same time will have similar materials used in service lines. If the system discovers that a lead line in one neighborhood, it may be worthwhile to check on the composition of service lines in nearby houses. Another method for identifying potential sites when no records exist is to ask for volunteers in the community whose homes were built after 1982 or who believe they may have a lead service line. The water system can then arrange a time to visit these sites to determine whether they have lead solder or lead service lines. To assist these systems further, EPA is developing a guidance manual that provides information for identifying high-risk sites. The manual will describe where systems can obtain the needed information to assist in identifying high-risk sites, methods for locating these sites, and procedures for establishing a reliable and accurate recordkeeping system to catalog the sites.

EPA also decided to phase-in monitoring because of concerns expressed by commenters with the lack of certified laboratories for analyzing inorganic samples (lead) in some areas of the country. For example, several States (i.e., Mississippi, Indiana, Texas, Louisiana, Arkansas, South Carolina, and Oklahoma) have only one State-certified laboratory to complete all drinking water analysis of inorganic samples (ASDWA, 1991). It is estimated that in EPA Region VI alone (Texas, Arkansas, Louisiana, New Mexico, Oklahoma), the number of samples required over the 3 year implementation period to complete initial monitoring will increase from 4,000 inorganic samples to almost 300,000 inorganic samples. Nationally, it is estimated that about 400,000 lead and copper samples are required to be collected by community water systems the first year after publication of the rule, 1 milllion samples the second year, and 570,000 samples the third year (EPA, 1991a). Because of this enormous increase in the number of samples required to be collected, it is necessary that States be given time to determine whether to increase their laboratory capacity or develop a laboratory certification program, both of which will take time. In addition, the final rule requires water systems to collect samples for other water quality parameters, such as alkalinity, calcium, and orthophosphate, which will cause further pressure on these laboratories.

d. *Sampling Tiers.* The proposd rule would have required systems to collect samples from one of three tiers of sampling sites depending on the ability of the water system to locate the required number of sites in each tier. The first tier required all samples to be collected at single family residences located at the ends of the distribution systems with either lead solder less than 5 years old or with lead interior pipes or lead service lines. Water systems that could not locate enough sampling sites meeting these targeting criteria were allowed to include sites located elsewhere within the distribution system (not only from locations at the ends of distribution system) that had lead solder less than 5 years old or sites that had lead interior pipes or were served by lead service lines (Tier 2). If the system could still not locate enough sampling sites using these criteria, they were required to add to the sampling group residences at the ends of the distribution system irrespective of the age of the lead solder (Tier 3). Finally, the proposed rule requested comment on allowing systems to include non-residential locations in their sample pool as a last resort. These non-residential locations would have been required to have plumbing with a configuration and daily water use patterns similar to those found in single-family residences.

i. *Tier 1 Samping Sites.* Several commenters disagreed with the requirement to monitor only at private homes and argued that water systems should be allowed to collect samples at non-residential locations, such as libraries, fire stations, or public buildings. They were concerned with collecting samples from private residences early in the morning and argued that including non-residential sites would make sample collection easier without eliminating the requirement to collect first-draw samples.

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EPA has maintained the three-tiered approach for collecting samples but has changed the requirements for each tier. The first tier in the proposal required all samples to be collected at single family residences located at the ends of the distribution systems with either lead solder less than 5 years old or with lead interior pipes or lead service lines. As discussed previously, the requirement to collect samples from sites at the ends of the distribution system has been eliminated, and systems are required to collect samples from sites with lead solder installed after 1982. EPA is also changing the requirement that only sites being used as single-family residences be included in the sampling pool. EPA agrees that certain non-residential locations can be included in the Tier 1 sampling pool at the discretion of the water system, as long as the non-residential locations have been constructed as single-family residences, and the water system can ensure that the standing time of water at the non-residential location is at least 6 hours. Locations such as libraries, for example, should be excluded if they were not constructed as single-family residences.

EPA believes that allowing these alternative non-residential sites to be included in the sampling pool will ease sample collection while retaining the approach of targeting high-risk locations. Ensuring a standing time of at least 6 hours will be easier in these non-residential sites since the majority of non-residential locations will be closed during the night-time hours. Water utility personnel can meet individuals in these non-residential locations upon their arrival at work.

ii. *Tier 2 Sampling Sites.* Other commenters complained that they could not locate enough high-risk locations because of no new construction or no history of lead service lines in the system. EPA believes that the majority of water systems will be able to locate enough sites meeting the Tier 1 targeting criteria, especially since certain non-residential locations will be allowed in the sampling pool. Water systems asserting that they cannot locate enough sites to meet the Tier I targeting criteria are required to report this finding to the State as follows:

(1) The system must document via the materials evaluation that lead service lines, or interior lead piping was never used in the system or have all been replaced, or enough sites with these characteristics cannot be located.

(2) The system must demonstrate that lead solder was never used in construction of residences and other buildings in the system or that the system cannot locate enough homes with lead solder installed after 1982.

Water systems are then required to add to the sampling pool, as equally distributed as possible, buildings, including multiple-family residences, that contain either (1) lead interior pipes or have had lead solder installed after 1982 and/or (2) are served by a lead service line.

The Tier 2 requirements in the final rule are different than those in the proposal. The proposal would have required water systems to add residences within the distribution system not located at the ends of the distribution system. This does not apply to the final rule, as discussed previously. Instead of requiring systems to select these sites, EPA decided to require systems to select sites from buildings, including multi-family residences that comply with the targeting criteria for Tier 1 locations. When sampling at these sites, water systems should refer to the document "Suggested Sampling Procedures to Determine Lead in Drinking Water in Buildings Other Than Single Family Homes" (EPA, 1988k). Such buildings were selected for Tier 2 sampling because they can represent high-risk sites. They are not included in Tier 1 sampling (except for those communities where more than 20 percent of buildings were multiple-family dwellings) because of the wide variation in the plumbing configurations of multiple-family dwellings and other buildings. Systems might find it convenient to conduct such sampling at public buildings where they can gain easy access.

iii. *Tier 3 Sampling Sites.* The proposal would have allowed systems that could not locate enough Tier 2 sampling sites to add residences at the ends of the distribution systems irrespective of the age of the lead solder. There were no major comments on this provision. Since the final rule does not require water systems to collect samples at the ends of the distribution system, it requires water systems that still cannot locate enough sample sites in Tiers 1 and 2 to select single-family residences with lead solder installed prior, to January 1983.

e. *State Review of Monitoring Results.* The proposal did not require State approval of monitoring plans, but States would have had the authority to disapprove any monitoring plan that did not meet the targeting requirements. A number of commenters suggested that this requirement should be changed and that States should be required to review and approve sampling sites to ensure that they are selected properly. EPA does not agree that States should be required to approve monitoring plans prior to initiating sampling. Requiring States to review each plan would entail an inspection of each site to determine that the water supplier has chosen the correct sites. EPA does not think this is an effective use of limited resources and would detract from other important tasks that the State needs to complete, such as review of the corrosion control efforts of the water suppliers. Such up-front review could also result in delays in monitoring and implementation of the treatment technique. Water systems are, however, required to submit a letter to the State certifying that all samples are collected at targeted sites or document why they cannot collect samples from targeted sites. After review of the monitoring data, States may require systems to conduct additional monitoring if they find the systems have not conducted sampling correctly. Samples collected at sites not meeting the targeting criteria may not be used in calculating the 90th percentile lead and copper levels.

2. Sample Collection

The 1988 proposal would have required systems to collect either a 1-liter morning first-draw (MFD) sample and/or a 1-liter service line (SC) sample. An MFD sample was defined as a sample collected at a consumer's tap that had been standing in the interior plumbing for 8 to 18 hours and was collected without prior flushing. The SC sample was defined as a water sample that had been standing for 8 to 18 hours in a lead service line and collected in any one of the following ways: (1) Direct sampling of the service line, (2) tap sampling based on a temperature change in the water or, (3) a tap sample after flushing a volume of water equal to that contained in the pipes leading from the tap to the service line. In a residence with both lead solder less than 5 years old and a lead service line, both types of samples could have been collected and counted as two sites. The samples were required to be collected by the water system.

To ensure that a system could collect an adequate number of samples from high-risk locations, the proposal would have required that the system's sampling pool contain a number of eligible sample sites at least 50 percent greater than the number of samples that must be collected during each monitoring period. For example, if a system was required to collect 100 samples during each monitoring period, they would have needed 150 eligible sampling sites in the sampling pool.

Systems were allowed to include apartments and other multiple family dwellings where these comprised more than 20 percent of the housing served by the community.

Many commenters disagreed with first-draw tap sampling stating that (1) they should not be held responsible for the elevated lead and copper levels found in first-draw tap samples because such levels are caused by conditions beyond their control (e.g., homeowner plumbing), (2) water systems have no authority to enter homes to collect tap samples and face the potential liabilities of utility personnel entering homes, (3) customers would not cooperate with first-draw tap sampling, and water systems could not verify whether the samples were first-draw, (4) first-draw water is not representative of the water consumed by individuals, and (5) collection of service connection samples is not reliable.

a. *Responsibility for Lead Levels at the Tap.* EPA agrees with commenters, as stated previously, that the Agency cannot promulgate a rule that holds water systems responsible for conditions in those portions of the distribution system that are outside of the systems control (e.g., homeowner plumbing). However, as discussed earlier, if water systems do not collect first-draw tap samples for lead and copper, they would have no indication of the lead and copper levels to which their users are being exposed and thus could not rectify that portion of the problem that is under their control (corrosivity of the water, lead service lines). For the majority of contaminants, monitoring at consumer's taps is not critical since the level of the contaminants leaving the water treatment plant will not change as it travels through the distribution system. In fact, for some contaminants, the level at the tap may even be lower than at the entry point to the distribution system because of dilution or volatilization of contaminants from water. Also, as discussed previously, simply because the rule requires tap sampling does not mean that public water systems are being held responsible for conditions beyond their control. Tap sampling is necessary to ensure that public water systems are optimizing corrosion control, which is within their control.

b. *Authority and Liability for Entering Homes To Collect Tap Samples.* Many commenters stated that they had no authority to enter homes to collect tap samples. EPA agrees that water systems do not have the authority to enter homes without the homeowner's consent. Many commenters erroneously assumed that the proposal gave water systems the authority to enter homes unannounced. The rule in no way gives the water system the authority to enter a private residence without obtaining homeowner permission.

Numerous commenters expressed concern with the potential liability of utility personnel entering homes to collect samples. As discussed below, water systems can use homeowners to collect samples, eliminating the need for utility personnel to enter homes. Even if utility personnel do enter homes to collect samples, however, EPA believes the concern with utility personnel liability is unfounded. As discussed above, utility personnel are only allowed in a private residence to collect samples with the consent of the homeowner. After gaining entry into a home, EPA has no reason to presume that utility personnel will act inappropriately. It has been customary for decades for gas and water utility personnel to enter homes with homeowner permission.

c. *Cooperation With First-Draw Tap Sampling.* A major concern expressed by commenters was that customers would not cooperate in collecting first-draw tap samples because of homeowners' apprehension in allowing water utility personnel to enter their homes early in the morning to collect samples. To avoid this problem, several commenters suggested that homeowners be allowed to collect the first-draw tap samples. These commenters contended that participants could be trained in the proper collection methodology and that the reliability of the lead and copper samples would not be jeopardized. In addition, they suggested that there would not be a significant reduction in accuracy if the samples were acidified after collection by utility personnel. Other commenters, however, did not believe customers should be allowed to collect samples because the water system could not verify if the samples were collected properly (e.g., minimum standing time, collection point) and because of potential problems with customers handling the nitric acid needed to stabilize the samples.

i. *Collection of Samples.* EPA agrees with those commenters who believe that water systems should be given the option to allow customers to assist in collecting lead and copper samples as this will help ensure that sampling will occur at targeted, high-risk locations. EPA believes customers can be easily instructed on how to properly collect samples, as is evident by the numerous sample collection programs that have successfully used customers. For example, the data from Boston, Bennington, and the AWWSC survey discussed earlier were from samples collected by customers; after collecting the sample in accordance with the procedure provided by the water supplier, the customer placed the sample outside for collection by water utility personnel. This reduces the potential inconvenience of entering homes. In addition, as discussed later, first-draw samples do not necessarily have to be collected in the morning but can be collected in the afternoon upon returning from work. The customer can arrange with the water utility personnel to meet them at their home at a prearranged time to collect the sample. Finally, EPA understands commenters concerned with ensuring that customers have properly collected samples but anticipates that customers willing to participate will collect the samples correctly, if given proper instruction, because they want to know their tap water lead and copper levels. If a system is concerned about this, then they can collect the samples themselves.

EPA also agrees with commenters that acidifying samples after collection by water utility personnel does not significantly reduce the accuracy of the samples. EPA has recently completed work that corroborates an earlier study by Miller (1985). The samples in the EPA study were collected in previously unused, high-density polyethylene containers with polyethylene or polypropylene caps and held up to 14 days. The samples were then acidified with reagent grade nitric acid (0.5 mL acid per 100 mL samples), mixed, and held an additional 28 hours and then analyzed. The results indicate that the lead samples may be held up to 14 days prior to acidification with no loss of lead recovery (EPA, 1990l). If a water system chooses to allow homeowners to collect lead and copper samples, the system must certify that it has supplied the customer with detailed instructions on the required collection procedure.

Also, in cases where a system chooses to have customers perform sampling, the rule provides that the results shall be accepted by the systems as valid and may not be challenged in any subsequent administrative or civil enforcement proceeding or citizen suit on the grounds that errors were committed by the customer during sampling. EPA believes that this provision will assure finality to sampling results and will prevent systems from questioning results in an enforcement proceeding even though the systems had chosen to have customers conduct the sampling. This provision does not

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constrain the discretion or authority of systems since they can choose to conduct the sampling themselves if they are concerned about the accuracy of customer sampling.

ii. *Standing Time.* Numerous commenters were critical of the 6 to 18 hour standing time requirement proposed by EPA and suggested eliminating the standing time requirement. They indicated that the 6 to 18 hour standing time would be impossible to verify because of leaking faucets, home ice makers, sprinkler systems, or the unintended use of water during the evening, and the only way to ensure an 6 to 18 hour standing time would be to shut off service to the customer. Others were concerned with the costs of overtime pay for utility personnel as they would be required to be at customers' homes early in the morning to collect the standing samples.

The Agency agrees that the 6 to 18 hour standing time requirement may have made it more difficult for some systems to collect samples and, thus, is reducing the minimum required standing time to 6 hours. The change of the minimum standing time to 6 hours is based on data received that indicates a negligible difference in lead levels at the tap between standing times of 6 versus 6 hours (AWWSC, 1989). The Agency, does not believe that eliminating the standing time requirement would be prudent because the standing time of the water in plumbing pipes is one of the most important determinants of lead and copper levels found at the tap and because a significant portion of drinking water consumption is standing water. Controlling the standing time of the water in the pipes is also important for reducing the variability in tap samples. Lead levels show a rapid increase within the first few hours of standing in the pipes and then a slower increase until the equilibrium solubility is approached (Kuch and Wagner, 1983; Schock and Wagner, 1985). Thus, controlling the standing time of the water in pipes for all sites will further decrease variability in lead and copper levels.

Several commenters were also concerned about difficulties in verifying if the samples had been standing in the pipes for 6 to 18 hours. EPA understands commenters concerns, but based on information from numerous water systems that have successfully collected first-draw tap samples from residences during the last 10 years, EPA believes that most systems can find a sufficient number of volunteers who are willing to participate and who, if properly instructed, will conform to the standing time requirement of 6 hours. The Agency anticipates that individuals willing to participate will welcome information about the quality of drinking water in their individual homes. Reduction in the standing time requirement will also help alleviate potential problems with customers conforming to the sampling requirements. EPA believes that systems will not need to shut off the customers' service to ensure a standing time of 6 hours.

Systems concerned about the overtime costs of collecting samples should consider allowing homeowners to collect samples and for utility personnel to pick up the samples outside the homes during their normal working hours. Systems using nonresidential locations can have their water utility personnel meet individuals at these locations upon their arrival at work to collect the samples. In both cases, utility personnel could collect the samples during their normal working hours and avoid the costs of overtime pay.

d. *First-Draw Samples.* The proposal would have required water systems to collect 1-liter morning first-draw and, if required, lead service line samples from the cold water kitchen tap of each residence monitored in the sampling group during each monitoring period. Several commenters suggested deleting the word morning from the definition, because it places an unnecessary restriction on the time of day that the sample can be collected. EPA agrees with these commenters and has changed the definition to first-draw sample. This allows flexibility to obtain samples either in the morning or in the evening.

Many commenters argued that EPA should not use first-draw water because it is not representative of the water consumed by individuals. EPA considered a variety, of approaches for the tap sampling protocol, including first-draw and partially flushed samples. While EPA recognizes that the levels of lead and copper in first-draw water may not be representative of the levels in all water consumed by people, the Agency decided to adopt this sampling protocol for several reasons.

First, as discussed above, EPA believes that the best measure to adequately assess the degree to which a system has minimized corrosivity for lead and copper is through measurement of firstdraw lead and copper levels at the tap over time and the correlation between these levels and the values for associated water quality parameters (e.g., calcium, pH, alkalinity). Lead and copper levels in first-draw samples are likely to be higher than in partially or fully flushed tap samples. EPA believes it is critical, however, to collect first-draw samples to better ensure that high lead and copper levels are detected if they occur and that the system institutes treatment that provides uniform and adequate levels of public health protection to all people within the system.

Second, even though there are no precise estimates of how much first-draw water is consumed by individuals, there is the potential for consumption of first draw water both in the morning and in the evenings upon returning from work or school. Moreover, the absorption of lead in drinking water is highest when taken on an empty stomach (James et al., 1985), which could very likely be the case for individuals consuming first-draw water in the morning or upon returning from work. This is of special concern for young children who absorb a much higher percentage of lead than adults and who drink more water as a body-weight basis, especially infants dependant on formula. Also, studies have documented a high correlation between first-draw water lead levels and blood lead, indicating that first draw sampling is a reasonable surrogate for peoples exposure to corrosion by-products in drinking water. Because of this, EPA believes it is prudent to assess the likelihood of this exposure when determining if action by water systems is needed. Finally, most of the data obtained by EPA with which to select appropriate action levels and estimate treatment performance is based upon first-draw sampling, making use of this sampling protocol under the rule appropriate.

The proposed rule solicited comment on whether 1 liter or 500 ml was the appropriate sample volume. In addition, the proposal requested comment on an alternative approach of collecting a 1 liter sample and then transferring the sample to a 500 ml bottle for shipment and analysis. Many commenters supported the 1 liter volume requirement, stating that it provides a better characterization of the home plumbing system, including the faucet, and because the health effects data are based on a 1 liter daily consumption by a child. Others supported reducing the sample size to 500 ml to alleviate problems both in the distribution and pickup of samples. Others supported the alternative of collecting a 1 liter tap sample but shipping a 500 ml or 125 ml sample for analysis to decrease the shipping and laboratory storage costs. Others, suggested collecting a 125 ml sample to obtain data on lead leaching

of faucets, followed immediately by a 1-liter sample.

EPA decided to retain the 1 liter sample volume because compared to a 125 or 500 ml sample, a 1 liter sample volume provides a better representation of typical drinking water consumption for an individual and a more accurate portrayal of an individuals exposure to lead and copper in drinking water. Also, a 1 liter sample represents the lead and copper contribution from not only the faucet but also from the interior plumbing of the home. This is important when evaluating the effectiveness of corrosion control because a smaller water volume would only be representative of a small portion of the household plumbing and would not indicate if corrosion control treatment was more generally effective. EPA decided not to require a 125 ml sample followed by a 1 liter sample because of concern with the added burden of collecting another sample without any demonstrated benefits. EPA decided not to allow the alternative of collecting a 1 liter sample and transferring it to a 500 ml bottle for shipment and analysis because of continued concern with lead adhering to containers and because of potential problems with errors when transferring the sample to a smaller bottle.

e. *Lead Service Line Samples.* Several commenters questioned the reliability of collecting samples from lead service connection, particularly goosenecks and pigtails, from the tap using either the temperature change method or flushing a volume of water equal to that contained in pipes leading from the tap to the service connection and collecting the next 1 liter sample. They stated that the temperature change technique is a crude method with only limited application (i.e., the method is unreliable during warmer seasons and in warmer climates; unheated or cold basements with exposed plumbing would also introduce error). Others stated that it would be impossible to accurately estimate the volume of water needed to be flushed to collect a service connection sample, especially in situations where there are only pigtails or goosenecks. Finally, other commenters stated that even though direct sampling of the connection would be more accurate, it is not feasible because it could involve digging in the street, which would be costly, or in the case of tapping, could introduce fresh lead into the connection.

EPA agrees that there may be problems in collecting service connection samples and has decided to eliminate the requirement that systems initially collect service connection samples along with first-draw samples. EPA believes that this will make sample collection easier and will allow homeowners to more easily participate in sample collection while still ensuring that systems with lead or copper problems are identified. The rule retains the requirement that homes with lead service lines be included in the targeted monitoring. Samples from these homes would have to be first flush. Data from numerous systems with lead service lines indicate that the first-draw samples are as high or higher than service line samples in the majority of systems with lead service lines (EPA, 1991b; Marcus, 1990a). For example, in Louisville, Kentucky, the 90th percentile lead level in first-draw samples was 0.013 mg/L while the 90th percentile lead level in service line samples was 0.012 mg/L. In Bennington, Vermont, the 90th percentile lead level in first-draw samples three years after installation of corrosion control treatment was 0.026 mg/L while the 90th percentile lead level in service line samples was 0.021 mg/L. In Boston, Massachusetts, the 90th percentille lead level in first-draw samples 3 years after installation of corrosion control treatment was 0.047 mg/L, while the 90th percentile lead level in service line samples was 0.038 mg/L.

Data also show that first draw samples at taps served by lead service lines are higher than those that are not served by lead service lines (see Table 10 and EPA, 1991b). Thus, it appears that contributions from lead service lines are reflected in first-draw samples. Because of this, and because first-draw sampling is logistiicallly more practical, EPA is requiring that the action level for lead service line replacement be triggered based on first-draw samples. First-draw samples will provide an indication of whether lead levels are above a level of concern and whether lead service line replacement is warranted.

EPA continues to believe, however, that systems required to conduct a lead service line replacement program should collect service line samples to determine whether replacement of individual lines is required. EPA believes it is critical to accurately characterize the lead levels in individual service lines to avoid replacing lines unnecessarily and to avoid allowing lines that are above 0.015 mg/L to remain in the ground. For this reason, it is important that utilities carefully consider the most appropriate sampling approach for characterizing the lead levels in service lines. With the exception of multifamily structures, the final rule allows service line samples to be collected using any one of the methods described in the following paragraphs.

EPA acknowledges that there may be problems with collecting samples using the temperature change method, especially in situations described by commenters previously or when only goosenecks or pigtails are present. EPA continues to allow the temperature change method to be used for collecting service line samples, but systems and States should be aware of the limitations of this method (to be discussed in more detail in the corrosion control guidance manual) and act accordingly. The temperature change method is only allowed in single-family structures since EPA believes that this method can provide a fairly reliable representation of the lead service line contribution to drinking water in such structures with limited plumbing connections. In multifamily dwellings or other buildings, however, the temperature change of water is not always easy to detect and cannot be used as a reliable method to isolate lead service lines.

The Agency believes that the best method for collecting service line samples in most cases is to directly sample the service line. However, direct sampling may not be possible where there is no direct access to the line; in these situations, the other two collection methods are recommended. In addition, installation of a tap directly into the service line could disturb the pipe conditions and induce additional corrosion activity due to galvanic reactions.

EPA agrees with commenters that sampling of lead goosenecks and pigtails, where no lead service line is present, is particularly problematic. Such connections are generally two feet in length and only hold approximately 200 ml of water (in contrast to lead service lines, which average 40 feet in length and can hold much larger volumes of water). Because such a small volume of water is held in these connections, it would be difficult for tap sampling to pinpoint the contribution of lead, if any, which goosenecks and pigtails make to levels at the tap. Tapping directly into a gooseneck or pigtaill is not advisable because it could dislodge lead materials and, unlike lead service lines, there is generally not an accessible tap into the connection. In addition to the problems associated with monitoring lead contributions from goosenecks and pigtails, the Agency has not identified any data to indicate that such connections, independent of actual

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lead service lines, contribute measurably to lead levels at the tap. All data discussed in previous sections regarding elevated lead levels in homes and in systems with lead service lines were from sites with actual lead lines rather than lead gooseneck or pigtails alone.

Because of these concerns, the final rule does not require monitoring or replacement of lead goosenecks and pigtails that are not used in conjunction with a lead service line. EPA does not believe that such locations would in fact reflect "high risk" sites where EPA anticipates elevated levels might be present and where monitoring should therefore take place. EPA has concluded that it would not be appropriate to require systems to replace lead goosenecks and pigtails which are not connected to, or are not used in conjunction with a lead service line because available information does not document that they contribute measurably to tap lead levels. However, where such connections are associated with a lead service line which is required to be replaced under the rule, systems will also be required to replace the gooseneck or pigtail connected to the line. EPA is concerned that failure to replace the gooseneck and pigtail in these instances would result in dislodged lead where the line is severed from the gooseneck or pigtail. Such an additional step also involves minimal additional cost to the system, since it is already replacing the service line itself.

f. *Use of Multifamily Residences.* The proposal would have allowed water systems to include apartments and other multifamily housing where such housing constitutes more than 20 percent of the housing served by the community and if these locations conformed to the targeting criteria. Several commenters supported this provision stating that including these locations may make sampling easier in locations where there are very few single-family residences.

EPA continues to believe that this provision is appropriate in areas where a large percentage (more than 20 percent) of the structures served by the system consist of multi-family housing. It is important to ascertain the exposure and effects of corrosion control on these populations where they constitute a sizable portion of the community and not simply concentrate the efforts on single-family residences.

3. Frequency and Number of Samples

The frequency and number of samples required in the proposal varied on the basis of system size. States would have been allowed to reduce the monitoring frequency and the number of samples collected during each monitoring period for systems serving more than 3,300 people that met the action levels for 4 quarters or had not departed from the operating parameters specified by the State after implementation of a State-approved treatment plan. Systems serving fewer than 3,300 people would not have been eligible for reduced monitoring. The proposal also would have phased in monitoring over several years, depending on system size. A discussion of the phased-in monitoring requirements is included in section C(1)(c), above.

After reviewing all public comments and available data, EPA has changed the dates for beginning initial monitoring, the sampling frequencies, and the number of samples collected during each monitoring period (Tables 17 and 18). The specific changes from the proposal and the rationale for the changes are explained below.

TABLE 17.—STARTING DATES FOR MONITORING

System size	Monitoring to begin no later than
>50,000	January 1, 1992.
3,301–50,000	July 1, 1992.
<3,300	July 1, 1993.

TABLE 18.—NUMBER OF SAMPLES AND FREQUENCY OF SAMPLING FOR LEAD AND COPPER [1]

Population	Initial/followup monitoring (Minimum # samples/6 months)	Reduced monitoring [2] (Minimum # samples/year or 3 years)
>100,000	100	50
10,001 to 100,000	60	30
3,301 to 10,000	40	20
501 to 3,300	20	10
101 to 500	10	5
<100	5	5

[1] Systems are not required to conduct sampling (unless required by the State) during State review of treatment, corrosion control evaluations, or installation of corrosion control or source water treatment.

[2] Systems are allowed to reduce the number of samples collected and the frequency of collecting the samples to once a year if they meet the lead and copper action levels for two consecutive 6 month monitoring periods (small- and medium-sized systems only) or if they can demonstrate that they have optimized corrosion control and are maintaining the water quality parameters established by the State under § 141.82(f) (all systems). Systems are allowed to reduce the frequency of sampling to once every 3 years if they meet the lead and copper action levels for three consecutive, 1 year monitoring periods (small- and medium-sized systems only) or if they can demonstrate that they have optimized corrosion control and are maintaining the water quality parameters established by the State under § 141.82(f) for three consecutive, 1 year monitoring periods (all systems).

a. *Frequency of Initial Tap Sampling (§ 141.86(c)).* The proposed rule would have required systems serving more than 3,300 people to collect samples from targeted sites once every 3 months (quarterly) until the system met all action levels for at least 1 year or until the system completed implementation of a State-approved treatment plan. Systems serving between 500 and 3,000 people would have been required to collect samples from each targeted site for 1 year during July, August, or September and then repeat the sampling every 2 years. Systems serving less than 500 people would have been required to collect samples from each targeted site for 1 year during July, August, or September and then repeat the sampling every 5 years.

Several commenters agreed with the proposed requirements for frequency of sampling while others stated that the sampling frequency should be changed. They suggested sampling frequencies ranging from one sample per month, to coincide with bacteria tests, to once every 5 years. Several other commenters noted that cooperation by consumers will decrease with repeated sampling. One water system stated that, based on their experience, they can get 90 percent customer cooperation for home sampling on a one-time basis, but the participation rate drops to 50 percent if they must take repeat samples, and well below 20 percent if sampling continues. Other commenters stated that the reduced frequency of sampling for small systems puts a lesser premium on the health of residences and users of these systems, relative to the larger systems.

EPA is concerned that customer participation might drop the more frequently they are asked to repeat sampling. Therefore, the final rule requires all water systems to collect initial samples from targeted sites once every 6 months (twice a year), rather than the proposed quarterly frequencies for systems serving more than 3,300 people. EPA does not believe that requiring less frequent sampling for systems serving more than 3,300 people compromises the monitoring program because the number of samples required to be collected remains the same. The difference from the proposal is that the number of sample sites has been doubled. Doubling the number of sample sites will increase the representativeness of the sampling program while ensuring that any seasonal differences in lead and copper levels are captured by the twice a year sampling. EPA also agrees that for systems serving fewer than 3,300 people, more frequent monitoring than proposed will provide a better indication of the lead and copper problem. Therefore, the final rule increases monitoring frequencies for these size systems from annually to twice per year. Increasing the frequency of sampling for systems serving less than 3,300 people will better ensure that these systems accurately measure the lead or copper levels in their drinking water.

b. *Monitoring During and After Completion of Corrosion Control Treatment Requirements.* Several commenters argued that systems should not be required to conduct monitoring during the period in which they are installing corrosion control treatment. EPA agrees with these comments (for the reasons discussed below) and, therefore, does not require systems to collect samples once they begin performing the corrosion control treatment requirements of the rule (i.e., recommend treatment to State, State review, installation of treatment). Systems completing the corrosion control treatment requirements are allowed to cease monitoring until after the system has installed the optimal corrosion control treatment specified by the State. EPA does not believe that it would be appropriate to require systems to perform monitoring during the initial stages of researching and installing corrosion control treatment. The initial stage in corrosion control treatment for large systems and those medium-sized systems designated by the State is the completion of corrosion control studies (see § 141.82(c)). Since these studies will generally occur in the laboratory or on a pilot-plant scale, tap monitoring would not aid the system or the State in deciding the optimal treatment for that system. For those systems not required to perform corrosion control studies, the State will approve or designate treatment for the system based upon other available information, including the initial tap monitoring results and a system's proposed treatment (see § 141.82(d)). EPA believes that the monitoring data yielded by initial tap monitoring required by the rule should provide the State adequate information to approve or designate optimal corrosion control treatment in most cases. Any State that needs additional monitoring data to decide upon optimal corrosion control treatment can require the system to provide it (see § 141.86(g)).

Additionally, the Agency does not believe that it would be appropriate to require all systems to continue conducting monitoring while the system is in the process of installing the corrosion control treatment specified by the State. Experience has shown that it generally takes several months after treatment has been installed and adjusted for the lead and copper levels to stabilize. Therefore, after corrosion control treatment is installed, systems are required to conduct monitoring during two 6 month monitoring periods. In any case, some systems may find it advantageous, and States may require systems, to collect additional tap samples during the course of installing treatment in order to gauge the effectiveness of treatment.

Based upon the results of the follow-up monitoring conducted by systems, States will be reviewing the data and specifying the range of water quality parameter values that constitute optimal corrosion control treatment (see § 141.82(f)). The rule does not require systems to continue monitoring while States are making this determination, unless required to do so by the State, since States are in the best position to determine whether additional monitoring information would be useful.

After the State designates optimal corrosion control treatment, systems are required to continue monitoring on a biannual basis (i.e., during each 6 month monitoring period beginning on the date on which the State specifies optimal water quality parameters). Systems are required to continue this monitoring until they are eligible for reduced monitoring frequency under § 141.86(d)(4).

c. *Number of Samples.* The proposal would have required water systems to collect the following number of samples: 50 per quarter (200 per year) for systems serving more than 100,000 people; 30 per quarter (120 per year) for systems serving between 10,001 and 100,000 people; 20 per quarter (80 per year) for systems serving between 3,301 to 10,000 people; 10 per year repeated every 2 years for systems serving between 501 to 3,300; and 10 per year repeated every 5 years for systems serving less than 500 people.

Many commenters stated that they would not be able to locate enough sample sites because of difficulties in gaining access to targeted high-risk homes and because consumers would either not participate or their participation would dramatically drop if asked for repeated samples. EPA believes that water systems will be able to locate a sufficient number of tap sampling sites, especially since the final rule, as discussed previously, provides greater flexibility than the proposal in the sites that are allowed to be included in the sample pool.

Some commenters suggested that a much smaller number of samples would indicate if a problem existed and that the large number of samples will require an excessive amount of time to schedule and collect and be too costly for small systems. Other commenters, however, believed that the number of sampling sites required was inadequate to accurately detect a lead problem, especially for small systems, and suggested that the number of samples required for all systems should be at least 30 samples per sampling period to ensure that the monitoring accurately reflects tap lead levels. One commenter argued that EPA needed to require more samples to ensure that the results would, based on statistical confidence limits, reliably predict whether the levels found in sampling accurately reflected the tap levels throughout the system.

Table 18, presented previously, lists the number and frequency of samples that are required. EPA understands commenters' concerns with the number of samples but believes there is a sound basis for requiring the specified numbers. There is a high degree of variability in lead levels between and within systems as well as between individual taps. As a result, a sufficient number of samples is required in order to be confident that the measured lead levels are accurately assessed. This contrasts with other contaminants where variability is relatively small, and large numbers of samples are not required.

EPA believes that the number of samples required in the final rule sufficiently accounts for the variability in lead and copper levels, and reflects system-wide contaminant level distributions. Where contaminant levels are highly variable, as with lead and copper, it is impossible to design a selective monitoring protocol that will reflect with complete confidence the levels throughout the entire system. By its very nature, requiring sampling at fewer than all households means that there may be some high levels that are not reflected by those houses sampled. Similarly, the greater the number of samples, the greater the degree to which variability among all households will be reflected. However, requiring sampling at every household is not feasible, and increasing the number of samples has costs in terms of identification of sampling sites as well as sampling and testing. The costs of monitoring for lead and copper are relatively high, compared to other drinking water contaminants (EPA is estimating that the typical sample collection costs for a lead and copper sample is $20 per sample), because the majority of

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samples for lead and copper must be collected in the field. Further, some water systems may not be able to take advantage of economies of scale by pooling samples when conducting analysis, because lead and copper samples must be first-draw and as such the number of samples collected each day will be small. This limits the number of samples that can be analyzed together, thus limiting the water system's ability to decrease costs. Another concern is the limits of available analytical capacity among certified laboratories.

The requirements of the final rule seek to strike a balance between the competing needs of ensuring the representativeness of sampling results and the ensuring that the sampling requirements are reasonable and implementable by public water systems. EPA has analyzed whether the number of samples required in the final rule is sufficient and is satisfied that sufficient monitoring will be conducted to reflect, with a reasonable level of confidence, the levels throughout the system (EPA 1991g). Moreover, EPA has sought to increase the degree to which the sampling will "catch" high levels in the system by requiring sampling at high-risk sites. The number of samples required by the final rule will, in EPAs judgement, sufficiently account for variability at taps while at the same time being reasonable for systems to implement.

After considering all these factors, EPA believes that the sampling scheme developed for the final rule requires sufficient sampling to take into account the variability in lead tap levels and the cost of sampling. The total number of samples per year that systems serving more 3,300 people must collect is the same as the proposal. However, the number of sites each system must sample has doubled because, as explained above, the sampling frequency has been reduced from quarterly to once every 6 months (e.g., 200 samples are required per year (from 100 sites) for systems serving more 100,000 people).

EPA agrees that the number of samples required for small systems in the proposal would have been inadequate to accurately characterize a lead or copper problem if it existed and has increased the number of samples for systems serving between 501 and 3,300 people from 10 per year to 40 per year (20 samples during each 6 month monitoring period). In addition, the "less than 500" system size category in the proposal has been broken into two system sizes: those serving between 100 and 501 people and those serving less than 100 people. The number of samples required for systems serving from 101 to 500 people has been increased from 10 samples per year to 20 samples per year (10 samples during each 6 month monitoring period). The number of samples required for systems serving less than 100 people has remained at 10 per year (5 per 6 month monitoring period). EPA understands commenter's concerns with the potentially high costs of sampling for small systems but believes the increased number of samples is necessary to ensure that lead and copper levels are reasonably well represented. Given the relatively high degree of variability in lead levels, collection of too few samples can result in false conclusions regarding the need for treatment. Increased sampling helps increase the likelihood that the true need for treatment is accurately characterized. For most systems, collecting more samples will be far less expensive than undertaking corrosion control and/or source water treatment, which they could otherwise be required to install based on an inappropriately small sample size.

Finally, several commenters requested clarification of the procedure for collecting samples when the system has multiple treatment plants. Commenters were concerned that they would be required to collect the required number of samples for each treatment plant, which they believed would be very expensive and time consuming. The final rule requires a system to collect the specified number of samples (see Table 18) from the entire system and not from each individual treatment plant. The system should, however, collect samples from locations that are representative of the distribution system.

d. *Reduced Monitoring* (§ 141.86(d)(4)). The proposal would have allowed States the discretion to reduce the monitoring frequency for systems serving more than 3,300 people to a minimum of one sample set per year taken during July, August, or September. Systems serving more than 100,000 people would have been required to collect 50 samples during this 3 month period, systems serving between 10,001 to 100,000 people would have been required to collect 30 samples: and systems serving between 3,301 and 10,000 would have been required to collect 20 samples. Reduced monitoring would not have been allowed for systems serving fewer than 3,300 people.

Many commenters believed that the number and frequency of samples should be reduced or totally discontinued if the action levels for lead and copper are met. Other commenters believed that States should be given the flexibility to determine when to reduce monitoring for systems. Still others believed systems serving fewer than 3,300 people should be allowed to reduce the number and frequency of sampling. Several other commenters asked for clarification of the requirement to collect reduced samples during July, August, or September.

EPA agrees that water systems should be allowed to reduce the number of samples and frequency of sampling if certain conditions are met, but under no circumstances should a system be allowed to entirely discontinue sampling. The Agency believes that continued monitoring is required to ensure that low levels of lead and copper are maintained after installation of treatment. If levels of these contaminants increase, the water system as well as the consumer should be aware of this increase and take appropriate actions to remedy the problem.

Regarding the timing of reduced sampling, the proposal would have required that sampling occur during July, August, or September. This proposed requirement was based on studies that showed an increase in lead solubility at increased temperatures (Moore, 1973; Britton and Richards, 1981). The field data at the time of proposal were equivocal regarding whether lead levels were higher in the summer months compared to the winter. For example, the average tap lead levels in New Bedford, Massachusetts, were higher during January and March compared to July and August: 0.067 mg/L during January and March 1978, 0.034 mg/L during April and May 1978, and 0.035 mg/L during July and August 1978. In contrast, data from Chicago indicate that little change was seen in the average tap lead levels between the summer and winter months: 0.012 mg/L from October to December 1985, 0.009 from January to March 1986, 0.011 mg/L from April to June 1986, and 0.014 mg/L during July 1986. Data received since the proposal from Newport News, Virginia, indicate the average lead levels were slightly higher during July, August, and September than other periods: 0.016 mg/L from July to September 1988, 0.006 mg/L from October to December 1988, 0.007 mg/L from January to March 1989, 0.010 mg/L from April to June 1989, and 0.012 from July to September 1989 (Marcus, 1990a). Although the field data regarding the effects of temperature on tap lead levels are inconclusive, several studies indicate a potential increase in the solubility of lead at increased temperatures. Therefore, the Agency has decided to retain the requirement that tap samples collected during reduced monitoring must be collected during the summer months. To help ensure that adequate time is available to collect samples during this period, EPA has decided to add June as an acceptable month for reduced monitoring. Requiring sample collection during this set time period should control some of the seasonal variability in lead and copper levels at the tap, which will allow more reliable comparisons of data from different years.

The final rule allows systems to reduce monitoring under two circumstances. First, small- and medium-size systems may reduce the frequency of monitoring if they meet the lead and copper action levels during each of two consecutive 6-month monitoring periods (see § 141.86(d)(4)(i)). EPA has modified this provision from the proposal, which would have required systems that met the action levels to request that the State reduce the required monitoring frequency. EPA received comments by the States generally arguing that the proposed rule would place too great a strain on limited State resources. Since small- and medium-sized systems meeting the action levels during a year of monitoring are believed to have optimized treatment and thereby are providing effective public health protection, the Agency believes that requiring State approval prior to reducing monitoring frequency would not be a constructive use of limited State resources.

The second instance in which systems may reduce monitoring frequency is where the system can demonstrate that it has maintained the range of water quality parameters reflecting optimal corrosion control treatment designated by the State during each of two 6 month monitoring periods (see § 141.86(d)(4)(ii)). Any system, including large systems, may reduce monitoring under this provision contingent upon State approval. EPA believes that State approval in this instance is appropriate because a system would be eligible for reduced monitoring even if it exceeds the lead or copper action level. EPA believes the State should review the request in order to ensure that the system has installed optimal treatment and that public health is being adequately protected.

Finally, § 141.86(d)(4)(iii) of the rule allows systems to further reduce the frequency of monitoring from annually to once every 3 years if the system meets the criteria discussed above during 3 consecutive years of annual monitoring. This further reduction would be allowed under the same conditions discussed above (i.e., small- or medium-sized systems that meet the action level, or any size system that maintains the optimal water quality parameters and obtains approval from the State). The Agency believes that systems that meet the action levels and/or the optimal range of water quality parameters over an extended period of time should be allowed the opportunity to further reduce monitoring frequency in order to avoid incurring unnecessary monitoring costs.

e. *Two-Stage Sampling Plan.* EPA requested comment on an alternative sampling plan based on a double sampling scheme developed by Dodge and Romig (1959). The plan used a two-tiered approach and would have required systems to first obtain a small number of samples and then, based on the outcome of the initial sampling, the systems would have been either relieved of further sampling for that monitoring period or required to obtain additional samples during that monitoring period to determine whether the system needed to take further action.

Several commenters supported the two-tiered approach, stating that it would reduce the number of samples required to be collected, while others argued that States should be given the discretion to determine whether to use the two-tiered approach or the proposed monitoring scheme. Other commenters opposed the two-tiered approach on the grounds that the number of required samples would increase for most small systems and that the small reduction in the number of samples for large systems would not be worth the complications, which would cause implementation and enforcement problems for primacy agencies and significantly increase the burden on limited State resources.

EPA agrees with the concerns expressed by commenters opposed to the two-tiered sampling scheme and, therefore, the Agency has decided not to adopt this approach in the final rule. While the two-tiered monitoring scheme may have reduced the number of samples required for some systems, the Agency does not believe it would be wise to adopt an approach that many systems and States would find too complicated to implement and enforce.

4. Monitoring for Water Quality Parameters

The proposal would have required water systems to collect the same number of pH samples at the same location and time as lead and copper samples, and would have required pH samples to be analyzed in the field by certified pH samplers. The proposal requested comment on allowing systems serving fewer than 3,300 people to collect pH samples and send them to a certified laboratory for analysis instead of performing the analysis in the field. The proposal also requested comments on the requirement that water systems meet a specific alkalinity value in their water. In addition, in an October 19, 1990, Federal Register notice (55 FR 42409) the Agency solicited comment on requiring water systems to measure several other water quality parameters to assist in the determination of corrosion control treatment, including calcium, conductivity, orthophosphate, and silica.

Many commenters on the 1988 proposal supported the collection of pH samples, but were concerned with the requirement that pH samples be collected at each sample site as this would preclude homeowners from assisting in the collection of lead and copper samples because of the requirement for certified pH samplers. As discussed earlier, the proposed pH action level has been eliminated along with the requirement for certified pH samplers. Systems are still required to collect pH samples (but not at sites targeted for lead and copper monitoring), as discussed below, and are required to measure pH in the field immediately upon collection of the sample for the reasons stated in section V(A)(4), above.

Several commenters on the 1988 proposal did not support an alkalinity action level but did state that alkalinity was important to consider when evaluating what corrosion control treatment to install. EPA has not included an alkalinity action level in the final rule for the reasons discussed in section IV(E)(2) of the preamble. EPA agrees with commenters that it is important to measure alkalinity to assist in determining what corrosion control treatment to install and, therefore, has included alkalinity monitoring during initial monitoring and, if a water system adjusts alkalinity as part of treatment, during subsequent monitoring.

Many commenters on the August 1988 proposal and the October 1990 notice of data availability argued that many factors influence water corrosivity and suggested that parameters, such as alkalinity and calcium, are important to consider when designing a corrosion control program. Other commenters on the October 1990 notice opposed the

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requirement to collect the additional water quality parameters because this would increase sampling costs without a well-defined purpose. They suggested that the decision whether to require additional sampling should be at the discretion of the State.

EPA recognizes that many factors influence water corrosivity and because of this has decided to require all large water systems, and small and medium-sized water systems above the lead and/or copper action level, to measure for several water quality parameters, in addition to lead and copper, at each entry point to the distribution system and at taps.

EPA understands that requiring sampling of these additional parameters will increase the costs of sampling but believes this cost is small given the amount of information it will provide to water systems and States when evaluating the most appropriate corrosion control treatment to install. EPA has attempted to reduce the costs of monitoring for these parameters by not requiring small and medium-sized systems to collect any water quality parameters unless they are above the action levels. Also, water systems are required to sample for all the water quality parameters listed in § 141.87(b) only during initial monitoring. After initial monitoring, systems are only required to collect those samples that are relevant to their specific treatment.

EPA agrees that States should be given some discretion in deciding what water quality parameters are to be sampled. However, EPA believes certain parameters, such as pH, alkalinity (if adjusted as part of corrosion control), inhibitor residuals (if inhibitors are used), and calcium (if calcium carbonate stabilization is used), are critical to measure in evaluating the performance of systems and for determining compliance with the treatment requirements of the final rule.

EPA believes there are several reasons for requiring systems to measure these water quality parameters as discussed in the following paragraphs:

(1) The values for the water quality parameters will assist water systems and States in determining the most appropriate corrosion control treatment for a system. For those systems conducting corrosion control studies, the information will provide valuable insight into the corrosion control treatments to be evaluated by the system. Also, as with any study evaluating the effectiveness of alternative interventions, it is important to establish baseline values with which to compare the various alternatives. The final rule requires systems conducting corrosion control studies to evaluate the effectiveness of the existing treatment program along with several different alternative treatments. The establishment of the baseline values will assist in this process.

For those small and medium-sized water systems that exceed the lead or copper action level but are not required to conduct corrosion control studies, the measurement of these values is critical for determining what corrosion control treatment they will install. Without this information, water systems, and eventually States evaluating whether the treatment is appropriate, would have no idea of the existing water quality conditions within the system and what treatment limitations may exist.

(2) The water quality parameters are also needed to determine compliance with the final rule. After installation of optimal corrosion control treatment, States are required to designate, and systems are required to maintain, at each entry point to the distribution system: (a) a minimum value or a range of values for pH, (b) a minimum concentration or a range of concentrations for alkalinity (if alkalinity is adjusted as part of optimal corrosion control treatment), and (c) a minimum concentration or a range of concentrations for orthophosphate or silica (if a phosphate-based or silica-based inhibitor is used, respectively).

In addition, after installation of optimal corrosion control treatment, States are required to designate, and systems are required to maintain at taps: (a) A pH of 7 or greater in all tap samples collected, (b) a minimum concentration or a range of concentrations for alkalinity (if alkalinity is adjusted as part of corrosion control), (c) a minimum concentration or a range of concentrations for orthophosphate or silica that the State determines is necessary to form a passivating film on the interior walls of the pipe (if a phosphate-based or silica-based corrosion inhibitor is used), and (d) a minimum concentration or range of concentrations of calcium measured in the field (if calcium carbonate stabilization is used as part of corrosion control).

a. *Initial Monitoring for Water Quality Parameters.* All large water systems, and those small and medium-sized systems that exceed the lead or copper action level, are required to measure for pH, alkalinity, conductivity, temperature, and calcium at each entry point to the distribution system and at taps. These systems are also required to measure for orthophosphate if an inhibitor containing a phosphate compound is used and silica when an inhibitor containing a silicate compound is used. Systems are required to collect two samples from each entry point to the distribution system once every 6 months. The sample points should be representative of each source after treatment. Systems are required to collect two samples every 6 months from taps that are representative of the water quality throughout the distribution system taking into account the number of persons served, the different sources of water, and the different treatment methods employed by the system. Systems should attempt to collect the two samples as far apart in time as possible to capture any seasonal changes that may occur. The tap samples are not required to be collected from sites targeted for lead and copper sampling or from first-draw water. Water systems are encouraged to collect these samples from the same sites used for coliform sampling. These sites offer the advantage of being located throughout the distribution system and do not require water systems to find additional sites for collecting pH samples. Water systems are also encouraged to collect tap samples and entry point samples at the same approximate time within the monitoring period so that correlations can be drawn that are not distorted by seasonal effects.

EPA is requiring that pH and temperature be analyzed in the field at the time of sampling (see discussion in section V(A)(4)). The other measurements can be analyzed in the laboratory. The number of samples required for the water quality parameters are fewer than for lead and copper, given that these parameters do not vary within a distribution system to the same extent as lead and copper and therefore fewer samples are required to accurately characterize their distribution in a system (EPA, 1991b). The number of water quality parameter samples required to be collected in the field are shown in Table 19. For example, systems serving more than 100,000 people are required to locate 25 sites and collect two samples per site every 6 months.

TABLE 19.—NUMBER OF SITES AND SAMPLING FREQUENCY FOR WATER QUALITY PARAMETERS COLLECTED AT TAPS [1]

Population	Initial and followup monitoring (Minimum # sites/ Minimum # samples every 6 months)	Reduced monitoring (Minimum # sites/ Minimum # samples every year or every 3 years)
>100,000	25/50	10/20
10,001 to 100,000	10/20	7/14
3,301 to 10,000	3/6	3/6
501 to 3,300	2/4	2/4
101 to 500	1/2	1/2
≤100	1/2	1/2

[1] Water systems are required to collect different water quality parameters depending on whether it is initial or follow-up/reduced monitoring. For initial monitoring, systems are required to measure pH, alkalinity, conductivity, water temperature, calcium, orthophosphate when an inhibitor containing a phosphate compound is used, and silica when an inhibitor containing a silicate compound is used. For followup/reduced monitoring, systems are required to measure for pH and alkalinity, calcium if calcium carbonate stabilization is used as part of corrosion control, orthophosphate when an inhibitor containing a phosphate compound is used, and silica when an inhibitor containing a silicate compound is used.

EPA believes it is important that systems measure the water quality parameters from each entry point to the distribution system and at the tap as close together in time as feasible to ensure that factors, such as changes in temperature or flow rates, do not interfere with the results. The purpose of sampling at both locations is for a system and the State to have an indication of water quality changes as water travels throughout the system. If the difference in the values between the plant and the field is small, it is a good indication that the levels for the parameters are being maintained throughout the system. On the other hand, if there is a large difference in the values or if they are volatile over time, this could indicate that the system may need to adjust its treatment to stabilize water quality or maintain higher values for parameters at the treatment plant. For example, if the pH in the water entering the distribution system is 7.8 but the average pH value in the field is only 6.8, this may require a system to raise its pH or adjust the alkalinity or calcium to provide more buffered water to reduce the fluctuations in the pH levels. Also, if a phosphate-based inhibitor is being used and there is little or no detectable phosphate residual in field measurements, this may indicate that the dosage rate for the inhibitor may need to be increased or a supplemental treatment station may need to be located in those areas that have low residuals.

b. *After Installation of Corrosion Control Treatment.* All large systems and those medium and small systems continuing to exceed the action level after installation of corrosion control treatment must collect follow-up water quality samples within 36 months from the date the State designates the optimal corrosion control treatment to install. Systems installing the State-designated treatment are required to collect the following water quality parameters at taps twice every 6 months: pH and alkalinity, calcium if calcium carbonate stabilization is used as part of corrosion control, orthophosphate when an inhibitor containing a phosphate compound is used, and silica when an inhibitor containing a silicate compound is used. The number of samples and sampling frequency required to be collected are the same as for initial monitoring (see Table 19). EPA believes that these samples, in conjunction with the lead and copper samples, are necessary to determine the effectiveness of corrosion control treatment and to determine whether additional adjustments in treatment are necessary or feasible. States can require systems to measure for additional water quality parameters, such as conductivity, but the Agency believes the decision to measure these additional parameters is better made by the State on a case-by-case basis.

All systems are required to conduct biweekly measurements at each entry point to the distribution system for the following: (1) pH, (2) alkalinity concentration and a reading of the dosage rate of the chemical used to adjust alkalinity when alkalinity is adjusted, and (3) a reading of the dosage rate of the corrosion inhibitor if used, and the concentration of orthophosphate or silica (whichever is applicable). EPA believes requiring biweekly measurements is important to evaluate the fluctuations of these parameters and to assist in establishing the minimum values or range of values at each entry point that systems are required to maintain to be in compliance with the treatment technique (§ 141.82(f)). To reduce the burden of collecting daily measurements, EPA recommends that systems install a continuous pH monitoring device and dosage meters for alkalinity and inhibitors. The devices can be mounted to provide easy access and produce accurate and reliable results for an extended period of time.

c. *After State Specifies Optimal Water Quality Parameters.* All large systems, and those small and medium-sized systems still above the lead and/or copper action levels after follow-up monitoring are required to continue monitoring for lead and copper and for the same water quality parameters at the same locations and frequencies as for follow-up monitoring. EPA believes it is important for systems to continue monitoring at the same frequencies for one more year after the State designates the optimal water quality parameters (except where a small or medium-size system meets the action levels) to ensure the system is maintaining the values determined to be optimal for that system.

d. *Reduced Monitoring.* As noted above, small or medium-sized system below the lead or copper action levels are not required to monitor for other water quality parameters as long as the action levels are met and may begin reduced monitoring for lead and copper after meeting the action levels for 1 year. All other systems must continue to monitor for the same water quality parameters at each entry point to the distribution system and at taps at the same frequencies, as discussed in Section (a), previously, and in § 141.87(e) of the final rule. Water systems that maintain the range of values in the field for the water quality parameters reflecting optimal corrosion control during each of two consecutive 6-month monitoring periods after the State specifies optimal corrosion control can reduce the frequency of field sampling as specified in Table 19. Water systems can further reduce the frequency of field monitoring for the optimal water quality parameters to once every 3 years if they maintain the range of values designated by the State during 3 consecutive years of monitoring.

5. Monitoring for Lead and Copper in Source Water

The proposed rule would have required water systems to sample source water as it enters the distribution system after treatment to determine compliance with the MCLs for lead and copper. As discussed earlier, the final rule does not specify MCLs for lead and copper at the entry points to the distribution system but is still requiring water systems exceeding the lead or copper action levels measured at the tap to monitor at entry points to the distribution system. The purpose of sampling at the entry point is to assist systems in designing an overall treatment plan for reducing lead and copper levels at the tap and to assist the State in determining whether source water treatment is necessary to minimize lead and copper levels at the tap. The final rule adopts the same approach as the proposal in terms of sample location and number of samples. Changes have been made to sampling frequency requirements in order to integrate sampling timing with the

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treatment technique approach contained in the final rule and to make the final monitoring requirements as consistent as possible with existing protocols for other inorganic contaminants.

The proposal would have required groundwater systems to monitor annually at each entry point to the distribution system and surface water systems to monitor quarterly at each entry point to the distribution system. To reduce the number of samples required to be collected, States would have had the discretion to identify representative wells for sampling (if there is no treatment or blending) for systems with multiple wells drawing from the same aquifer. In addition, systems would have been allowed to composite samples from up to five sources. Finally, the proposal would have allowed States the discretion to allow one additional sample to be collected within 2 weeks from the date the MCLs were exceeded.

Several commenters suggested that the monitoring frequencies were excessive and that EPA should adopt the same sampling frequencies as for other inorganics (i.e., once every 3 years for groundwater systems and annually for surface water systems). EPA agrees and has adopted these sampling frequencies, as discussed below, for those systems that are above the lead or copper action levels at the tap but are not required to install source water treatment or for those systems that have installed treatment and meet the State-specified permissible levels.

Commenters generally supported the idea of reducing the number of samples required by allowing States to identify representative wells for sampling (if there is no treatment or blending) for systems with multiple wells drawing from the same aquifer. EPA has eliminated this provision in the final rule to be consistent with the monitoring requirements for the other inorganic contaminants (§ 141.23(a)(3)). The provisions in this section allow systems that blend water from different sources to reduce the number of samples by sampling at an entry point to the distribution systems after the different sources are combined.

Commenters also supported the idea of allowing composite samples from a maximum of five sampling points. The final rule gives States the discretion to reduce the number of samples that must be analyzed by allowing compositing in the laboratory of up to five samples. However, States and systems should be aware that if the lead or copper level in the composite sample indicates that one or more of the samples is greater than or equal to the MDL for lead or copper, then each of the entry points represented in the composite sample must be resampled individually for whichever contaminant exceeded the MDL. For compositing to be allowed, the laboratory must be able to measure levels down to 0.001 mg/L for lead and 0.050 mg/L for copper.

Numerous commenters stated that EPA should allow additional samples if the initial sample is above the MCL. These commenters stated that it is unreasonable to find an entire water system in non-compliance based on one sample and that the potential for laboratory error is increased because the MCL was proposed at the PQL. Even though EPA is not promulgating MCLs for lead or copper, systems are still required to collect source water samples, and therefore the Agency believes that where results of sampling indicate an exceedance of maximum permissible source water levels established under § 141.83(b)(4), the State should be allowed to require that one additional source water sample be collected as soon as possible after the initial sample was taken (but not to exceed 2 weeks) at the same sampling point. If a State-required confirmation sample is taken for lead or copper, then the results of the initial and confirmation sample shall be averaged. In addition, States have the discretion to delete results of obvious sampling errors.

a. *Final Requirements.* The requirements regarding sample location, collection methods and the number of samples are the same as those applicable to other inorganic source water contaminants (see § 141.88(a) of the final rule, incorporating by reference the general inorganic sampling requirements of § 141.23). Systems required to collect source water samples should collect the samples at every entry point to the distribution system that is representative of each well after treatment. The system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant. Systems that draw water from more than one source and combine the sources before distribution must sample at an entry point to the distribution system during periods of normal operating conditions (i.e., when water is representative of all sources being used).

By making the source water monitoring consistent with existing requirements for other inorganics, the Agency has sought to minimize any confusion and keep the sampling protocols for all of the inorganic contaminants regulated by EPA as simple as possible. This approach is consistent with suggestions by commenters.

With regard to sampling frequency, the monitoring provisions in the final rule require source water monitoring under the following circumstances: (1) Initial monitoring after the system exceeds the lead or copper action level at the tap (§ 141.86(b)), (2) follow-up monitoring after the system installs source water treatment (if such treatment is required by the State) (§ 141.88(c), (3) routine monitoring after the State specifies maximum permissible source water levels (§ 141.88(d)) or if a system is above the lead or copper action level at the tap but is not required to install source water treatment, and (4) reduced monitoring frequency for systems complying with the State-specified maximum levels (§ 141.88(e)). The Agency has structured monitoring in this way to provide the system and the State with the monitoring data necessary to make the treatment determinations called for during each step in the source water treatment requirements of the final rule. The Agency believes that requiring monitoring at the specified intervals (instead of the continuous monitoring contained in the proposed rule) will provide sufficient information on source water levels to assure that drinking water systems comply with the source water treatment requirements without imposing unnecessary monitoring requirements on systems. States retain the discretion to require any additional monitoring where it deems it necessary to designate or evaluate the system's source water treatment.

i. Initial Monitoring. Initial monitoring of source water is triggered if the system exceeds the lead or copper action level in tap samples. Systems that are below the action levels are not required to conduct source water sampling. Systems above the action levels are required to collect one sample from every entry point to the distribution system and make a recommendation to the State within 6 months after the action level was exceeded. Based upon the levels of lead and/or copper found during this monitoring, the State will make the determination under § 141.83 of the rule whether installation of source water treatment is required. The Agency believes that requiring collection of additional data is not warranted since source water lead and copper levels, unlike levels at the tap due to corrosion in the distribution system, are likely to be consistent over time. In cases where the State believes that more information would be useful, it may require the system to perform additional monitoring.

ii. Follow-up Monitoring. If the State requires a system to install source water treatment, the rule requires the system to conduct two additional rounds of monitoring after installation of treatment is completed. The Agency does not believe that it is necessary to require monitoring during the period when treatment is being installed, since the effectiveness of treatment can only be gauged after installation is completed. However, systems may wish to conduct additional monitoring if they find this would be helpful in their design and installation of treatment.

iii. Routine Monitoring. Systems that are above the lead or copper action level at the tap but are not required by the State to install source water treatment, or systems where the State has specified maximum permissible source water levels, must continue source water monitoring (as long as the action level is exceeded) in accordance with § 141.88(d)(1). This provision requires systems using only groundwater sources to conduct sampling once during a 3-year "compliance period" (i.e., the compliance period which is in effect when the State specifies maximum permissible levels or makes the determination not to require source water treatment), and requires systems using surface water (or a combination of surface and groundwater) to conduct sampling annually. This monitoring is identical to that specified by the Agency for other inorganic contaminants in the "Phase II" rulemaking promulgated on January 30, 1991, (56 FR 3526). That regulation adopted a standardized monitoring framework to synchronize monitoring schedules for all systems within a 9-year compliance cycle (the first of which begins on January 1, 1993, and ends on December 31, 2001), which consists of three, 3-year compliance periods. Including the ongoing lead and copper source water monitoring frequency within the framework established for other inorganics is consistent with many commenters' recommendation that monitoring for lead and copper be consistent with existing monitoring protocols. A system that is subject to the general inorganic monitoring frequency requirements is not required to conduct source water monitoring if it meets the lead and copper action levels at the tap during the entire source water sampling period applicable to the system (i.e., during an entire compliance period for a system using only groundwater sources, and during an entire year for all other systems). If the system exceeds the lead and copper action levels measured at the tap in some future sampling period, it is required to begin monitoring for source water again.

iv. Reduced Monitoring As with other inorganics, if appropriately low levels have been maintained over an extended period of time, the Agency believes that systems should be allowed to reduce monitoring frequency accordingly. Systems become eligible for reduced source water monitoring frequency if they maintain levels below the maximum permissible concentrations specified by the State during three consecutive compliance periods (for groundwater systems) or 3 consecutive years (for surface water systems). Systems may reduce monitoring frequency to no less than once during each 9-year compliance cycle. A water system using a new source of water is not eligible for reduced monitoring until the levels are maintained below the maximum concentrations specified by the State during three consecutive monitoring periods (i.e., 3 years for groundwater systems and three compliance periods for other systems).

6. Monitoring Requirements for Non-Transient, Non-community Water Systems

a. *Source Water.* The proposed rule would have required non-transient, noncommunity water systems (NTNCWS) to monitor source water once every 5 years to determine compliance with the MCLs for lead and copper. NTNCWS were not eligible for reduced monitoring. Several commenters agreed with the requirements in the proposal for source water monitoring, while others stated that the requirements should follow the same requirements as for community water systems. EPA agrees with these latter comments and is requiring NTNCWS to follow the same sampling requirements as those for community water systems (§ 141.88). EPA believes this change is needed to provide individuals in NTNCWS the same level of assurance as those individuals in community systems that the lead and copper levels in their source water are accurately assessed. Also, the inorganic monitoring requirements for both community and NTNCWS are identical in the "Phase II" rulemaking promulgated on January 30, 1991 (56 FR 3526). The Agency believes it is important to be as consistent as possible with the monitoring requirements for other inorganic contaminants to reduce confusion and ease implementation of the final rule. This includes the requirements for initial, followup, routine, and reduced monitoring.

b. *Corrosion By-Products.* To demonstrate compliance with the proposed treatment technique requirement, NTNCWS would have been required to monitor lead, copper, and pH at one tap annually during the months of July, August, or September in each building served by the NTNCWS. The monitored tap would have been required to be the tap most frequently used for water consumption, such as a kitchen tap. Under the proposal, NTNCWS would not have been eligible for reduced monitoring.

Many commenters stated that the monitoring requirements for NTNCWS should be the same as for a community water system. EPA agrees with these commenters. EPA believes it is important that NTNCWS accurately characterize the extent of lead or copper problems in their system and believes the sampling protocol for community systems will ensure that this is accomplished. Also, as stated above for source water, the Agency believes it is important that the final rule minimize potential confusion without compromising public health protection. Making the monitoring requirements the same for NTNCWS and community water systems simplifies the rule while insuring that the lead and copper levels are accurately characterized. The only difference between community water systems and NTNCWS is with regard to the targeting criteria for high risk sites. The criterion for NTNCWSs has two tiers instead of three because the majority of these systems are composed of buildings and not private residences.

NTNCWS are required to begin initial monitoring in accordance with Table 17 in the preamble and § 141.86(c) in the rule. The number of samples required and the frequency of sampling for NTNCS are included in Table 18 in the preamble and § 141.86(c) in the rule. Systems should, if possible, sample at no more than one tap in each building. This will prevent oversampling at a small number of buildings that may have much lower lead or copper levels compared to other buildings in the NTNCWS.

VI. Public Notification and System Reporting and Recordkeeping Requirements

A. Introduction

Under the SDWA, public water systems are required to provide public notification for lead and/or copper under two situations. The first was a special one-time notification

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requirement under section 1417(a)(2) of the SDWA. Public water systems were required to identify and provide notice to persons who may be affected by lead contamination in their drinking water, when such contamination resulted from either the use of lead in the construction materials of the system and/or corrosivity of the water supply sufficient to cause lead leaching from plumbing systems. This provision required notification even if the system was in compliance with the current MCL for lead. EPA published final regulations to implement this requirement of the SDWA on October 28, 1987 (52 FR 41534). Under those regulations, systems were required to begin providing notice to consumers by June 19, 1988.

The second type of public notification informs customers of violations of NPDWRs. On October 28, 1987, (52 FR 41534) EPA promulgated regulations to revise the public notification requirements (40 CFR 14.32). These regulations specify general notification requirements, including frequency, manner, and content of notices, and require the inclusion of EPA-specified health effects information in each public notice. The new public notification requirements divide violations into two categories (Tier 1 and Tier 2) based on the seriousness of the violations, with each tier having different public notification requirements. Tier #1 violations include violations of an MCL, a treatment technique requirement, or a variance or exemption schedule. Tier I violations contain mandatory health effects language specifying concisely, in nontechnical terms, the adverse health effects that may occur as a result of the violation. States and water utilities are free to add additional information to each notice, as deemed appropriate for specific situations. Community water systems with Tier I violations must notify the public by newspaper, mail, or hand delivery. Tier 2 violations include violating a monitoring requirement, failing to comply with a testing procedure prescribed by a NPDWR, and operating under a variance or exemption. Community water systems with Tier 2 violations are required to give newspaper notice repeated quarterly by mail or hand delivery, with additional notice required at State discretion. Non-transient, non-community systems may either notify in the same manner as CWSs or post a notice continuously.

B. Comments on Proposed Public Notification Requirements and EPA's Response

The 1988 proposal classified all violations of the lead or copper MCL or the treatment technique requirements as Tier I violations. For Tier I violations, EPA proposed specific language that water systems would be required to deliver. Many commenters objected, stating that they have already complied with the proposed public notification requirements by providing the special one-time public notification requirements pursuant to the 1986 Amendments to the Safe Drinking Water Act and that they received little or no response to the public notice. Other commenters stated they should only be required to perform the public notification for violations of the MCL or treatment technique and not the action levels. Other commenters disagreed with the content of the lead notice stating that it is overly complex and would alarm, confuse, or otherwise elicit an adverse public reaction or would undermine PWS's credibility.

EPA believes these commenters confused the special one-time lead notification program with the mandatory public notification program for Tier 1 or Tier 2 violations. The 1988 proposal was addressing only the notification requirements for Tier 1 and Tier 2 violations. The special one-time notification requirements specified under section 1417(a)(2) of the SDWA have already been completed by most systems. Reporting Tier 1 and Tier 2 violations is required for all contaminants, not just lead and copper.

Many commenters were also confused regarding what would have constituted a violation of the proposed rule. The proposal would have required Tier I public notification only if the MCL or treatment technique were violated. It would not have required notification if the action levels were exceeded.

Accordingly, the final rule requires only Tier 1 notification for violations of the treatment technique requirements and not the action levels. The failure of a system to meet any of the requirements of sections § 141.81 through § 141.85, including the failure to comply with deadlines in those sections or with any requirements established by the State under those sections, is a Tier 1 violation and would require public notification in accordance with 40 CFR 141.32.

(1) Recommend the corrosion control treatment to be installed (§ 141.82(a)).

(2) Complete corrosion control studies (all large systems and small and medium-sized systems if required by the State) (§ 141.82(c)).

(3) Install State-designated corrosion control treatment (§ 141.82(e)).

(4) Maintain the State-designated water quality control parameters after installation of corrosion control treatment (§ 141.82(f)).

(5) Recommend the source water treatment to be installed (§ 141.83(b)(1)).

(6) Install source water treatment, if required, (§ 141.83(b)(3)).

(7) Maintain the maximum permissible levels in source water (§ 141.83(b)(5)).

(8) Deliver a public education program, if required (§ 141.85).

(9) Implement a lead service line replacement program, if required (§ 141.84).

Failure to comply with the testing procedures and monitoring requirements in § 141.86, § 141.87, § 141.88, and § 141.89, are classified as Tier 2 violations. Violations of the reporting requirements (§§ 141.90 and 141.91) do not require public notification (52 FR 41534, October 28, 1987). All of the requirements of § 141.32 (the general public notification requirements, including the manner and frequency of notification) apply to violations of this final rule. The mandatory language to be included in the public notices for violations of the requirements of the lead and copper rule is specified in § 141.32.

Finally, many commenters were concerned that the content of the lead notice would alarm people and was overly complex. EPA agrees that the lead notification should not unduly alarm people, but believes that people should be aware of the potential health effects from lead. The Agency believes the language in the lead notice accurately portrays the health effects from lead, but has changed the lead notice from the proposal slightly by simplifying the language, deleting the reference to the MCL and adding information on the requirement to remove lead service lines.

C. System Reporting and Recordkeeping Requirements

The proposed rule would have required public water systems to maintain and report to the State the following information: (1) Results of all monitoring within 10 days from the end of each calendar quarter or year, whichever was applicable; (2) identification and location of sampling sites and the rationale for choosing the site; (3) progress in completing the treatment plan; (4) progress in completing the public education program; and (5) any other records, reports, or information as the Administrator deems necessary.

There were no substantial comments on the system reporting or recordkeeping requirements; therefore, the substance of the reporting and recordkeeping requirements have not changed significantly. They have been modified in accord with the changes that have been made to the treatment section of the final rule, and are presented in greater detail to minimize confusion on the precise requirements. EPA has attempted to limit the required reporting to States to only information necessary in determining whether water systems are complying with the final rule.

1. System Reporting Requirements

The reporting requirements for all public water systems are specified in § 141.90 of the final rule. These reports are designed to document compliance with the treatment and monitoring requirements in § 141.81–141.89.

a. *Tap Monitoring.* The proposed rule would have required water systems serving more than 500 persons to report to the State the results of all required monitoring within 10 days of the end of each calendar quarter the system is in operation. Systems serving 500 or fewer persons would have been required to report the results of monitoring to the State within 10 days of the end of each calendar year. The proposal would have also required all systems to certify that the information submitted was accurate.

The final rule continues to require systems to report all the monitoring results within 10 days following the end of each applicable monitoring period, whether this is every 6 months, every year, or every 3 years. Systems are also required to calculate and report the 90th percentile lead and copper levels. The procedure for calculating the 90th percentile is included in section 141.80(c) of the rule. Reporting the 90th percentile levels will relieve the States from the burden of calculating these values from the large volume of monitoring data that will be reported and will consequently provide the States with the information regarding whether a system exceeds the action levels. In addition, the final rule requires systems to certify that each tap sample is 1 liter in volume and, to the best of their knowledge, has stood motionless in the service line or in the interior plumbing of a site for at least 6 hours. If residents collected samples, the water system must certify that they have informed those residents of the required sample collection procedures.

The Agency included these certification requirements to help ensure use of the proper sampling protocol contained in section 141.86 of the final rule. Where a system allows customers to perform tap sampling, the system obviously cannot certify as to the actual circumstances of the customer sampling. However, the Agency believes it is important to ensure that the systems inform customers of the proper sampling methods. Therefore, the rule requires systems to certify that they have provided this information to all customers performing such sampling. As discussed previously (Section V(C)(2)), systems choosing to allow customers to perform sampling cannot challenge the sampling results based upon alleged errors by the customer in taking the samples. This provision will encourage systems to ensure the customer sampling is performed accurately and provide finality to sampling results in cases where the system has chosen to allow customers to perform the sampling.

The proposed rule would have required systems to report the identification and location of sampling sites, the first time the site is sampled, and the rationale for choosing the site. The final rule (§ 141.90(a)(1)(i)) adopts the same approach and requires all water systems to submit, along with the sampling results, the locations of each sampling site and the required criteria under which the site was selected. Any time the system samples a new location that has not been sampled previously, the system must designate the new site and explain why the sampling site has changed (e.g., inability to gain access to a previously sampled site).

The proposed rule would have also required water systems that could not identify a sufficient number of residences with the specified targeting criteria to submit a report documenting that lead pipe was never used or had been replaced and/or demonstrating that the community had effectively implemented and enforced for a minimum of 5 years a ban on lead solder or that no lead solder was ever used in the construction of residences. The final rule contains essentially the same provisions as the proposed rule in this respect.

Section 141.90(a)(2)–(4) requires community and non-transient, non-community water systems that have to select sampling sites for their targeted sampling pool from Tier 2 or Tier 3 sampling sites, to justify their selection. Valid reasons can include those which were contained in the proposed rule (e.g., that lead pipe was never used in the system and/or the lead solder ban has been effectively enforced for a minimum of 5 years, or that lead solder was never used). The final rule does not explicitly enumerate these bases because the Agency determined it was nearly impossible to identify every possible reason why a system could not collect a sufficient number of samples from Tier 1 or 2 sites.

Because systems are now required to measure certain water quality parameters, the final rule requires them to report the results of all tap samples for pH, alkalinity, and, where applicable, calcium, orthophosphate or silica, temperature, and conductivity within the first 10 days following the end of each applicable monitoring period. Systems are also required to report the results from all water quality samples collected at the entry points to the distribution system.

b. *Corrosion Control Treatment.* The proposed rule would have required systems to report their progress in completing the steps in the State-approved treatment plan. The corrosion control treatment requirements in the final rule are structured differently than the proposal, as explained earlier, and the final reporting requirements reflect the final treatment requirements. There are four major corrosion control reporting requirements for systems.

First, systems attempting to demonstrate that they have already optimized corrosion control and are therefore not required to complete the corrosion control steps in the rule must submit the information contained in § 141.81(b) (2) or (3), systems required to optimize corrosion control treatment must submit their recommendation regarding the treatment that they propose to install. Third, systems required to conduct corrosion control studies must submit the information required under § 141.82(c) (the required information is discussed in section IV(E)(2)(d) of the preamble). Fourth, systems are required to submit a letter certifying that the system has installed the State-designated corrosion control treatment.

c. *Source Water Monitoring for Lead and Copper.* The proposal would have required systems to report all source water monitoring results within 10 days after sampling was completed. The final rule adopts the same requirement. In addition, systems must report to the State if a source water sampling point has changed and the reasons for the change.

d. *Source Water Treatment for Lead and Copper.* The proposed rule did not have any reporting requirements for source water treatment. Because the final rule does not include MCLs for source water, it is necessary to include some reporting requirements to ensure that source water treatment, if required, is installed and maintained properly. There are two source water treatment reporting requirements for systems.

First, all water systems exceeding the lead or copper action level are required

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to recommend in writing the source water treatment, if any, they will install and operate. Second, systems required to install source water treatment are required to submit to the State a letter certifying that the system has properly installed and is operating the State-designated source water treatment.

e. *Lead Service Line Replacement.* The proposed rule did not contain any specific reporting requirements for lead service line replacement, but the preamble generally discussed the requirements of such a program. The final rule expands on these reporting requirements. A system is required to report the following information within 12 months after it exceeds the lead action level and every 12 months thereafter for Items 3 and 4 below:

(1) Demonstration in writing that it has identified the initial number of lead service lines in its distribution system at the time the replacement program begins.

(2) A schedule for replacing annually at least 7 percent of the initial number of lead service lines in its distribution system.

(3) Demonstration that it has replaced at least 7 percent of the initial number of lead service lines during the previous year in its distribution system.

(4) Demonstration that the individual lines not replaced have lead levels in the line of less than or equal to 0.015 mg/L.

The annual letter submitted to the State shall contain the following information:

(1) The number of lead service lines scheduled to be replaced during the previous year of the system's replacement schedule.

(2) The number and location of each lead service line replaced during the previous year.

(3) If measured, the water lead concentration measured and location for each lead service line sampled.

(4) The collection methods used to collect each sample.

(5) The date on which each lead service line sample was collected.

Systems that are not replacing the entire lead service line are required to describe to the State in writing the specific legal authority under which the water system claims that the lead service lines or portions of the lead service lines are beyond its control. This must be submitted to the State within 3 months after it exceeds the lead action level.

f. *Public Education.* The proposed rule would have required systems operating under an approved public education program to detail the system's progress in completing the public education requirements (content, delivery, evaluation). The report was to include data indicating that as a result of the public education program, the user's knowledge about lead in drinking water enabled them to alter voluntarily their water use patterns to reduce consumption of lead-contaminated water. This information was to be collected during the evaluation stage of public education. Since the final rule does not require systems to either develop the content or evaluate the public education program, as discussed in section IV(G), the requirements to detail systems' progress in regard to the content and the evaluation of the public education program are not relevant.

The final rule does require water systems to submit a letter to the State by December 31st of each year demonstrating that the system has delivered the public education materials that meet the content and delivery requirements, as long as the system exceeds the lead action level. This list should include a list of all the newspapers, radio stations, television stations, and facilities and organizations to which the system delivered public education materials during the previous year.

2. Recordkeeping Reqirements for Systems

The proposed rule required systems to maintain records of all information submitted to the State. The final rule also requires systems to retain for 12 years all sampling data and analyses, reports, surveys, letters, evaluations, schedules, State determinations, and any other information required by the rule.

VII. Variances and Exemptions

Under the Safe Drinking Water Act, States with primacy have authority to grant variances and exemptions from treatment technique requirements.

A. Variances and Exemptions From MCLs

Since the final rule does not establish an MCL for lead or copper, the rule and preamble do not address variances and exemptions from MCLs.

B. Variances From the Treatment Technique

Variances from treatment techniques may be granted to water systems that demonstrate to the State that treatment is not necessary to protect public health because of the nature of the raw water sources available to the system. Section 1415(a)(1)(B). In addition, the Administrator of EPA may grant variances from a treatment technique upon a showing that an alternative treatment technique is as effective at reducing contaminant levels as the one promulgated by EPA. Section 1415(c)(3). The proposed rule would have allowed water systems to obtain a variance from the treatment technique requirements from the States under section 1415(a)(1)(B) if they could demonstrate that no plumbing materials containing lead had been used in the construction of any homes in the community or in any distribution facilities. Examples of these circumstances include new residential developments exclusively using plastic plumbing. EPA asked for comments on other conditions under which variances from the treatment technique might be appropriate.

Commenters generally agreed that systems should be given variances from the treatment technique if they could demonstrate that their system is lead-free. After further consideration, EPA continues to believe that because of the design of the final rule, the need for variances will be rare, and the only case where a variance from a treatment technique may be appropriate is when a system can demonstrate it is "lead-free." The Agency anticipates that few systems, however, would be able to make this demonstration, because even systems with plastic plumbing still use brass faucets, which can leach significant amounts of lead (Schock and Wagner, 1985; Schock and Neff, 1988; Gardels and Sorg, 1989; AWWSC, 1989). As discussed earlier, EPA is working to further restrict use of lead solder and to limit the amount of lead leached from fixtures and faucets, and prevent the introduction of new lead into the system. As these restrictions become effective, it may enable more systems to qualify for variances based on the lead-free demonstration. Some systems, such as newly created water systems, trailer parks or other small developments, as well as new facilities that treat their own water (e.g., factories, schools, hotels, recreation complexes) could be deemed by the State to be "lead-free." In any case, States continue to have the discretion under the SDWA to grant variances from the treatment technique.

Commenters suggested additional situations that they contended would warrant variances, including small systems subject to financial hardship, and variances from additional monitoring or treatment requirements if the action levels are met.

EPA believes many commenters were confused regarding the statutory standard for variances from treatment techniques as compared to exemptions from treatment techniques. The SDWA does not allow variances for financial hardship, but instead provides water systems with the opportunity to apply for an exemption based on economic factors.

EPA disagrees that water systems should be allowed to receive a variance from monitoring if they meet the action levels. Systems are allowed to reduce the number of samples and frequency of sampling if they meet the action levels or can demonstrate that they have installed optimal corrosion control, but EPA does not believe it would be appropriate to allow systems to completely discontinue sampling. Because of seasonal effects or changes in other water treatment processes, corrosion control often requires adjustment to maintain stable performance. Variability in conditions could also cause a system that meets the action levels during one round of monitoring to subsequently exceed them. Continued monitoring is necessary to help systems maintain optimal corrosion control and to ensure that if a system subsequently exceeds the action level, corrective action is taken.

C. Exemptions From the Treatment Technique

Under section 1416(a), a State or EPA may grant an exemption extending deadlines for compliance with a treatment technique if it finds that (1) due to compelling factors (which may include economic factors), the water system is unable to comply with the requirement; (2) the exemption will not result in an unreasonable risk to human health; and (3) no reasonable alternative source of drinking water is available to the new system. A system granted an exemption may receive up to 3 years to install the required treatment technique if the system makes certain showings. Sections 1416(b)(2) (A) and (B). Systems with fewer than 500 service connections may obtain renewable 2 year extensions under certain conditions. Section 1416(b)(2)(C). As with variances, exemptions must include a compliance schedule and requirements for implementing necessary interim control measures.

In determining whether to grant an exemption, EPA expects the State to determine whether the facility could be consolidated with another system or whether an alternative source could be developed. Another compelling factor is the affordability of the required treatments. It is possible that very small systems may not be able to consolidate or find a low-cost treatment. EPA anticipates that States may wish to consider granting an exemption when the requisite treatment is not affordable.

Under section 1416(c)(3), States may not grant an exemption from the treatment technique if it will result in an unreasonable risk to health (URTH). The States determine the URTH level. EPA published a **Federal Register** notice on October 2, 1990, (55 FR 41205) requesting comment on "Guidance in Developing Health Criteria for Determining Unreasonable Risks to Health" (EPA, 1990n).

D. Point-of-Use (POU) and Point-of-Entry (POE) Devices and Bottled Water

The proposed rule would have given States discretion to allow the use of POU devices or bottled water to avoid an unreasonable risk to health, as a condition of receiving a variance or exemption from an MCL or treatment technique. Public water systems that used bottled water or POU devices as a condition of obtaining a variance or exemption would have been required to meet the requirements similar to those set out in § 142.62(g) and § 142.62(h), respectively. Several commenters supported the concept of allowing POU devices or bottled water as a means to avoid an unreasonable risk to health, but believed the requirements were so restrictive as to preclude the use of these methods.

Since the final rule does not contain an MCL, the use of POU/POE devices and bottled water as a condition for receiving a variance or exemption from an MCL is no longer relevant. With regard to the treatment technique contained in the final rule, EPA continues to believe that centralized corrosion control and/or source water treatment should be the primary means of reducing lead or copper levels, since these treatments most effectively reduce contaminant levels throughout the water system. EPA continues to believe, however, that States should have the discretion to require the use of POU/POE devices or bottled water, in appropriate circumstances, as a means of preventing an unreasonable risk to health through the granting of an exemption from the treatment technique.

The proposed rule would not have allowed the use of POE devices as a method to achieve compliance with the proposed rule because it was thought that (a) they do not prevent lead or copper from entering the water after it leaves the device; and (b) several of the treatment devices (reverse osmosis or ion exchange) can make water more corrosive, potentially resulting in higher lead levels at the tap.

EPA received a comment that asserted that POE devices should be allowed in certain circumstances such as where contamination enters drinking water before the device (i.e., through source water or lead materials within the public water system's distribution system). EPA agrees and have changed the final rule to allow the use of POE devices as a condition for granting an exemption from the requirements for lead and copper in source water (§ 141.83) and lead service line replacement (§ 141.84). However, POE devices are not allowed in granting an exemption from the requirements in § 141.81 and § 141.82 because POE devices do not prevent lead or copper from entering the water as a result of corrosion of plumbing inside the building (i.e., after the device, which is installed at the entry point of the building). EPA remains concerned, however, that such devices could increase corrosion of materials inside buildings and has therefore included an additional provision in the rule that requires States to be assured that use of the device will not cause increased corrosion in buildings and thereby increase tap levels.

EPA does not believe that it would be appropriate for States to grant exemptions from the public education component of the treatment technique, since it is extremely important that the public get this information so that they can take appropriate measures to reduce their exposure if the system exceeds the action level. Moreover, EPA cannot envision why a system would be unable to comply with these requirements, the cost of which are small, and as a result be eligible for an exemption under the statutory standard in § 1416(a).

The use of bottled water may be especially relevant for very small systems (i.e., systems with less than 500 connections), where extensions may be granted for one or more 2-year periods and where bottled water or POU/POE devices protecting all users might be practicable. Public water systems that use bottled water or POU devices as a condition of obtaining an exemption are required to meet the requirements set out in § 142.62(f) and § 141.62(g). Public water systems that use POE devices as a condition for obtaining an exemption from the requirements in § 141.83 or § 141.84 are required to meet the requirements set out in § 141.62(h). EPA does not agree with some commenters who argued that the conditions for using bottled water and POU/POE devices are overly restrictive. The requirements in § 142.62(f) and § 141.62(g) are intended to ensure that use of these alternatives will continue to protect public health and to provide water of equivalent quality to that would be provided by a

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traditional well-operated central treatment facility.

VIII. State Implementation (40 CFR Part 142)

Section 1413 of the Safe Drinking Water Act establishes requirements that a State must meet to have primary enforcement responsibility for public water systems ("primacy"). These include (1) adopting drinking water regulations no less stringent than the NPDWRs in effect under sections 1412(a) and 1412(b) of the Act; (2) adopting and implementing adequate procedures for enforcement; (3) keeping records and making reports available with respect to its activities as EPA may require by regulation; (4) issuing variances and exemptions (if allowed at all by the State) under conditions no less stringent than allowed by sections 1415 and 1416; and (5) adopting and being capable of implementing an adequate plan for the provision of safe drinking water under emergency situations.

40 CFR part 142 sets out the specific program implementation requirements for States to obtain primacy for the public water supply supervision (PWSS) program, as authorized under Section 1413 of the SDWA. Fifty-four out of 57 jurisdictions have applied for and received primary enforcement responsibility for this program. On December 20, 1989, EPA promulgated revisions to 40 CFR part 142 (54 FR 52126). The revisions established procedures and deadlines for: State submission of program changes; EPA review and approval or disapproval of State program changes; and the actions to be taken if States with primacy do not adopt new requirements pursuant to the schedule identified in the rule. The revision also changed the frequency of some State reporting requirements from annually to quarterly.

In addition to adopting the basic primacy requirements, States may be required to adopt special primacy provisions pertaining to a specific regulation. These regulation-specific provisions may be necessary where implementation of the NPDWR involves activities beyond those in the generic rule. States are required to include these regulation-specific provisions in an application for approval of their program revisions. The revisions to the State primacy requirements discussed in the December 20, 1989, notice apply to the final lead and copper rule, along with the special primacy requirements outlined below.

A. State Recordkeeping Requirements (§ 142.14)

The proposal would have required States to retain records of the following:

(1) Analytical results of tests, measurements and analyses to determine compliance, set forth in a form facilitating comparison with applicable operating parameters for source water treatment and corrosion control.

(2) Any State approvals, including approvals of treatment plans and the reasons for the treatment plans.

(3) Systems that have reduced their monitoring frequency for compliance with the MCLs and/or action levels.

(4) Systems required to increase the frequency of their monitoring and the new frequency of that monitoring.

(5) Determinations that systems have minimized the corrosivity of their water and the evidence supporting this determination, and the final approved operating parameters.

(6) Evaluations of public education programs and of any determination that a system is required to modify its public education program.

The majority of commenters recommended that the recordkeeping requirements be substantially reduced or eliminated. EPA disagrees. The Agency believes that the recordkeeping requirements in the proposal are essential for an effective State program and to facilitate effective Federal overview of State programs. The records document the progress of systems in complying with the rule and document the State determinations that are crucial for the effective implementation of the final rule. The recordkeeping requirements have been changed slightly to conform to the changes to the proposed part 141 requirements. Specifically, the final rule requires States to retain records of the most recent decision, determination, or designation that they have issued for the following:

(1) Records of the currently applicable or most recent State decisions, including all supporting information and an explanation of the technical basis for each decision, made under the following provisions of 40 CFR part 141, subpart I for the control of lead and copper.

Section 141.82(b)—Decisions to require water systems to conduct corrosion control treatment studies.
—Section 141.82(d)—Designation of optimal corrosion control treatment.
—Section 141.82(f)— Designation of optimal water quality parameters.
—Section 141.82(h)—Decisions to modify a public water system's optimal corrosion control treatment or water quality parameters.
—Section 141.83(b)(2)—Determinations of source water treatment;
—Section 141.83(b)(4)—Designations of maximum permissible lead and copper concentrations in source water.
—Section 141.84(e)—Determinations that a system does not control the entire lead service line.
—Section 141.84(f)—Determinations establishing a shorter lead service line replacement schedule than required by § 141.84.

(2) Records of reports and any other information submitted by water systems under § 141.90.

(3) Records of State activities and the results verifying compliance with State determinations issued under §§ 141.82(f), 141.82(h), 141.83(b)(2), and 141.83(b)(4) and compliance with lead service line replacement schedules under § 141.84.

(4) Records of each system's currently applicable or most recently designated monitoring requirements. States are required to maintain the records in §§ 142.14(d)(8)(i) through 142.14(d)(8)(viii) until a new decision, determination, or designation has been issued.

EPA believes that it is important to retain records of the most recent monitoring results, because monitoring results are essential to Federal overview functions, such as onsite program management audits and data management verification efforts. The requirements that States provide documentation on the technical basis for each determination is essential to assist EPA compliance tracking systems and in coordinating technical assistance to States.

States are required to keep all records and reports and any other information submitted by public water systems pursuant to § 141.90 along with records of State activities to verify compliance with the water quality parameters issued under §§ 141.82(f), 141.82(h), 141.83(b)(2), and 141.83(b)(4) and compliance with lead service line replacement schedules under § 141.84. These records are also essential to Federal overview and verification of State program compliance status reports. Finally, the rule deletes the requirement to maintain records of State evaluations of public education programs, because a record of program violations, including violations of public education requirements, is the only aspect of public education needed by EPA in its overview role and that is addressed in the generic violations reporting requirements.

B. State Reporting Requirements (§ 142.15)

The proposal would have added to basic State reporting requirements under the primacy rule (54 FR 52126) special requirements to provide quarterly lists of systems that:

(1) Were allowed to reduce their monitoring frequency.

(2) Were required to increase their monitoring frequency.

(3) Have demonstrated to the State that an insufficient number of residences were available for tap sampling.

(4) Exceeded one or more action level(s) and the level(s) exceeded.

(5) Received State approval for a corrosion control treatment plan, or have received a treatment plan from the State.

(6) Successfully demonstrated that they have minimized the corrosivity of their water and the new operating parameters with which the system must comply.

(7) Results of any evaluations of public education programs.

The majority of commenters claimed that the number of reports to be sent to EPA was excessive and should be either reduced or eliminated. One commenter suggested that the list of reports should be reduced to systems exceeding an action level and systems that have minimized corrosivity of their water.

EPA's role in State program oversight is to assure that States are generally managing their primacy responsibilities effectively. The overview process entails periodic reporting by States of basic program information and annual onsite management audits of State performance. The general primacy reporting provisions apply to all NPDWRs and include requirements to report violations of NPDWRs, enforcement actions against those violations, the issuance of variances and exemptions and a periodic summary of their status, and changes to the State inventory of public water systems. The program management audits include reviewing a sample of State case files and interviews with program managers and operations personnel at all levels. Information is obtained during these annual audits, which might otherwise need to be reported.

After reviewing its information needs and in response to public comments, EPA has determined that, except for several reporting requirements discussed below, the basic reporting requirements of the primacy rule (54 FR 52126) and program management audits summarized previously are generally sufficient for purposes of routine program oversight. Accordingly, the Agency has deleted the first, second, and third reporting requirements described above, but has retained the remainder of the requirements from the proposal, though slightly modified, along with additional reporting requirements to conform to the changes in the Section 141 requirements from the proposal. The first reporting requirement is not necessary because the final rule establishes the minimum monitoring frequencies for systems conducting reduced monitoring. The second reporting requirement is not needed because the only situation that would have required increased monitoring under the proposed rule was when systems violated an MCL. Since the MCLs have been eliminated in the final rule, the need for this requirement is no longer necessary. The third reporting requirement is not needed because this information can be obtained during annual onsite audits of State programs. Finally, EPA has dropped the requirement for the State to report the results of evaluations of public education programs because the final rule does not include a requirement for systems to evaluate the effectiveness of such a program, for the reasons discussed in Section IV(G)(3).

States are required to report quarterly, through the Federal Reporting Data System (FRDS), the name and PWS identification number of each public water system:

(1) That exceeds the lead and copper action levels and the date upon which the exceedance occurred.

(2) That is required to complete the corrosion control evaluations specified in § 141.82(c) and the date the State received the results of the evaluations from each system.

(3) For which the State has designated optimal corrosion control treatment, the date of the determination, and each system that has completed installation of treatment.

(4) For which the State has designated optimal water quality parameters as required in § 141.82(f) and the date of the determination.

(5) For which the State has required to install source water treatment under § 141.83(b)(2), the date of the determination, and each system that has completed installation of treatment.

(6) For which the State has specified maximum permissible source water levels under § 141.83(b)(4).

(7) That is required to begin replacing their lead service lines as specified in § 141.84 and the systems that reported compliance with their replacement schedule under § 141.90(e)(2).

Because the success of this rule depends largely on the States' timely review and approval of corrosion control and/or source water treatment and operating parameters for systems, it is important for EPA to know when the State is having problems meeting the time frames for issuing those decisions. The purpose of these seven special reports is to provide timely tracking of corrosion control implementation by identifying, at each step of the treatment implementation process, which systems have met the implementation deadlines. Without these special reports, EPA would be unable to routinely track the rule's implementation.

C. Special State Primacy Requirements (§ 142.16)

The proposed rule would have required State program revision applications to contain the text of the State statute or regulation describing the procedures and criteria each State would use to:

(1) Determine the increased monitoring frequency with which a system must monitor, including the frequency after a system has exceeded the lead or copper MCL, and to include a procedure for notifying the system of the new monitoring requirements.

(2) Specify the elements that must be included in a materials evaluation to identify monitoring locations and specify how a system can demonstrate to the State that sufficient residences with the required characteristics for monitoring are not available.

(3) Evaluate treatment plans submitted by systems serving more than 3,300 persons to develop treatment plans for small systems (serving fewer than 3,300 persons), to approve treatment plans, and to evaluate treatment and public education performed by systems under the treatment plans.

(4) Determine that corrosivity has been minimized if the system is still not meeting the action levels after installing or improving treatment and a method of informing the system of its new approved operating parameters.

(5) Evaluate data submitted by a system on the effectiveness of its public education program and to determine whether the system must modify subsequent public education efforts.

(6) Provide PWSs serving 3,300 or fewer persons with treatment plans.

Section 142.19(c)(1) of the proposed rule was incorrect. The Section should have read "* * * determining increased monitoring frequency (in accordance with § 141.86(c)(6) of this chapter)

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* * *" instead of "* * * determining increased monitoring frequency (in accordance with § 141.86(c)(4) and/or § 141.86(d)(4) of this chapter)." Section 141.86(c)(4) of the proposal pertained to reduced monitoring frequency if no violation of the MCL had occurred within the last 2 years, whereas § 141.86(c)(6) dealt with systems performing increased monitoring if they were in violation of the MCL. EPA's intention was to require States to have procedures or criteria for determining the increased monitoring frequency required of systems violating the MCLs because they were given flexibility to establish these frequencies. The Agency did not believe it was necessary to require States to have criteria or procedures for determining reduced monitoring as EPA established the monitoring frequencies that States, at a minimum, must follow. In addition, § 141.86(d)(4) of the proposed rule addressed reduced monitoring from the treatment technique portion of the rule. Again, the Agency did not believe it was necessary that the criteria or procedures for reducing monitoring were necessary because the rule established the minimum frequencies that systems must monitor for reduced monitoring.

Several commenters objected to requiring States to include specific procedures and criteria in statutes or rules. They proposed that States incorporate the procedures and criteria in guidance, which could still be approved by EPA. Other commenters stated that the special primacy requirements, in combination with the proposed primacy rule (now final), would be overly burdensome and impractical.

EPA agrees with commenters that it would impose unnecessary administrative burdens on States to require that criteria and procedures submitted with the primacy application be in the form of State statutes and/or regulations. The purpose of the special primacy requirements in § 142.16 of the final rule is to ensure that States implement the treatment technique requirements consistent with the requirements of the rule. EPA can exercise this oversight function equally effectively if the State's criteria and procedures are in the form of guidance as opposed to regulatory or statutory provisions. The Agency plans to review State submissions to ensure that they properly follow the requirements of the regulation. If a State subsequently fails to implement its program in accordance with the criteria and procedures upon which the Agency approved primacy to implement the lead and copper rule, then the Agency can take appropriate action under its primacy regulations. Requiring States to adopt criteria and procedures by statute and regulation, therefore, would not advance the effectiveness of EPA oversight, while it would impose substantial additional burden upon States to obtain approval of authority to administer the lead and copper rule. Finally, for States that have not obtained primacy (Wyoming, Indiana), the Agency plans to make case-by-case treatment determinations based upon the regulatory provisions of part 141 as well as guidance documents discussed in section (IV)(E). Since the Agency will not be adopting criteria and procedures for implementing this rule in the form of regulations, the Agency does not believe that it is necessary or appropriate to require States to do so.

EPA has modified the special primacy requirements based on public comments and to conform to the changes in Part 141 from the proposed rule. The rule eliminates the proposed requirements for States to specify the procedures and criteria to determine the frequency with which a system must monitor after a system has exceeded the MCL, because the final rule does not include an MCL. EPA has also deleted the requirement for States to describe the elements of a materials evaluation and the method by which systems must demonstrate an insufficient number of residences with the required characteristics for monitoring, because the rule provides sufficient specification for water systems on the criteria to be followed in locating appropriate monitoring sites and the procedures for demonstrating why they are unable to locate a sufficient number of Tier 1 targeted sites. Finally, because the final rule does not include a requirement for systems to evaluate the effectiveness of their public education program, EPA has dropped the requirement that States provide procedures and criteria for evaluating data submitted by systems on the effectiveness of public education and determining if the system must modify subsequent public education efforts.

EPA believes that some special primacy requirements are needed to ensure the effectiveness of State programs. These requirements are especially important for lead and copper, since States are given discretion to make system-specific determinations regarding corrosion control and source water treatment. Therefore, the other requirements in the proposal have been retained, though slightly modified, to conform to the changes that have been made to Part 141 requirements in the proposal.

An application for approval of a State's program revisions must include a description of how the State will accomplish the following program requirements:

(1) Sections 141.82(d), 141.82(f), and 141.82(h)—Designating optimal corrosion control treatments, optimal water quality parameters, and modifications.

(2) Sections 141.83(b)(2) and 141.83(b)(4)—Designating source water treatments, maximum permissible source water concentrations of lead and copper, and modifications.

(3) Section 141.90(e)—Verifying compliance with lead service line replacement schedules and the water systems' demonstrations of limited control over lead service lines.

These procedures and criteria are methods of program implementation, which apply directly to the State, and are not enforceable provisions of the NPDWR. They represent conditions of State primacy, upon approval by EPA.

D. EPA Review of State Determinations (§ 142.19)

An October 19, 1990, **Federal Register** notice (55 FR 42409) requested comment on a procedure that would have given EPA the authority to review State determinations of what constitutes optimal corrosion control and source water treatment under limited circumstances. EPA Regional Administrators would have been authorized to rescind State treatment determinations and issue new or revised determinations with which the system must comply where (1) a State had failed to specify treatment requirements by deadlines specified in the regulation, (2) the Regional Administrator determined that a State had seriously abused its discretion in a substantial number of cases or in cases affecting a substantial population, or (3) EPA concluded that the technical aspects of a State's determination would be indefensible in an expected Federal enforcement action taken against a system. In each case, the Regional Administrator would have been required to provide an opportunity for the State, the affected system(s), and the public to review and comment upon EPA's proposed decision. EPA would have exercised this authority only where a State could not demonstrate that its determination(s) is(are) reasonable, based upon the provisions of the approved State program.

Commenters raised several objections to this proposal including the following (1) the provision would encourage EPA Regional Offices to become involved in activities that are part of State primacy, (2) State resources would be diverted from program implementation to respond to EPA rescission notices, (3) the provision would put a burden of proof on States to defend their decisions against a subjective standard of reasonableness, (4) water systems that had already installed treatment could be required to adjust or install a different treatment that could be expensive and time consuming, (5) there would be conflict in implementation and enforcement between State determinations and EPA-revised determinations, and (6) EPA determinations to overturn State decisions should occur immediately following issuance of the State determination.

1. Current Regulatory Provisions Relating to EPA Review of State Decisions

Under the SDWA, States may grant variances to National Primary Drinking Water Regulations if water systems can meet certain conditions described in section 1415(1). To assure that States exercise the discretion within the limits of section 1415(a)(1)(F), EPA is authorized to revoke State issued variances and to reissue new variances, based on a finding that the State has abused its discretion in a substantial number of instances. EPA also conducts annual program management audits of each State program and may recommend adjustments to a State's program operations based on the results of that audit.

The Surface Water Treatment Rule (54 FR 27486) provides States with discretion in deciding which systems are required to install filtration treatment and establishing compliance schedules for these systems. To assure that States apply the decision criteria as described by the rule, § 142.80 establishes a process in which EPA can review State decisions and § 142.81 establishes a procedure for EPA to revoke State decisions and issue modified decisions, based on a finding that the State has abused its discretion. The "Phase II" rule (56 FR 3526) provides States with discretion based on a vulnerability assessment to grant waivers allowing water systems to reduce monitoring under the Standardized Monitoring Framework. To assure that States apply the waiver decision criteria as required by the regulation and as described in their federally approved primacy revision application, § 142.16(f) establishes a procedure for EPA to rescind State monitoring waiver determinations and require the affected systems to return to the uniform monitoring requirements.

The purpose of these procedures is also to provide EPA the option of taking corrective action, short of primacy withdrawal, where EPA believes the State program has abused the discretionary powers provided by EPA in specific regulations.

2. Response to Comments on October 19, 1990, Federal Register Notice

EPA understands commenters' concern with the Agency becoming unnecessarily involved with State decisions but believes EPA will rarely use this review procedure and that the availability of the procedure will not encourage Regional Offices to constantly question State decisions. EPA does not foresee reviewing State determinations unless the State decisions are unreasonable or if the State fails to make a credible demonstration that the decision was correct. States will be required to show that their designated application of the treatment technique is reasonable for the circumstances of the system to which it has been issued on the basis of the data and recommendations submitted by the system. So long as a State can make this demonstration, EPA will not exercise discretionary authority to review it. Although State resources will be diverted from other activities when a rescission notice is issued, EPA believes that the State resource diversion should rarely occur and in the appropriate cases, would be necessary to assure proper implementation of this rule.

EPA does not envision requiring systems to spend large amounts of resources to modify the State-approved/designated treatment or install entirely new treatment. The review provisions are mainly for when a State has failed to specify treatment requirements by the deadlines in the final rule or when State determinations on the appropriate treatment clearly fail to implement regulatory requirements. As noted above, if a State's application of the treatment technique is reasonable, EPA does not envision attempting to improve it. Review of State decisions will most likely occur when a backlog of determinations occur (i.e., a significant number of determinations have not been made within the regulatory time frames). Any Federal treatment decision will be made taking into account the existing treatment practices of a system.

EPA recognizes that different treatment decisions issued by States and Regional Administrators could confuse an individual water system as to which requirements must be met. Because of this potential ambiguity, the final order issued by the Regional Administrator will supersede any inconsistent requirements established by the State with regard to the NPDWRs for lead and copper. In other words, the decision by the Regional Administrator on either the appropriate corrosion control or source water treatment will constitute the requirements of the NPDWRs for lead and/or copper until such time as the Regional Administrator issues a new order. The State primacy agency will still be responsible for all aspects of program implementation and enforcement, including the Regional Administrator's designated application of a treatment technique.

Several commenters suggested limiting the period of review and rescission to avoid wasted investments and confusion on the part of affected water systems. EPA agrees partially. The Agency believes it is impractical to limit the time required for initial review of the State determinations, because EPA will generally review State treatment decisions during the annual review procedure. Further, program guidance will instruct the Regional Administrators to encourage State administrators to consult with them regularly on problem corrosion control issues to resolve issues before they progress into formal EPA reviews. EPA does agree, however, that once the review process begins, a time limit within which EPA is required to act is warranted. The final rule requires the Regional Administrator to issue a final review order to rescind a State decision within 120 days after issuance of the proposed rescission order. This time period may be extended only for good cause.

Finally, the Regional Administrator and the State will have time to consult on a proposed rescission before EPA's final decision is issued. EPA guidance will instruct the Regional Administrators to initiate action only in those cases where the State determination(s) is(are) unwarranted and incorrect and to resolve the issues through negotiation if possible. Since the Regional Administrators will make every effort to reach an accord with State agencies, EPA believes that there will be few instances in which a Regional Administrator actually overturns a State decision.

3. Requirements for EPA Review of State Decisions on Corrosion Control and Source Water Treatment

Because the final rule provides States with discretion in designating the appropriate corrosion control and source water treatment, EPA wants to assure that State determinations fall

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within the guidelines of the treatment technique. Consequently, the final requirements for EPA review of State decisions are basically unchanged from the October 19, 1990, proposal. Section 142.19 establishes a process for EPA to review and, if necessary, issue Federal corrosion control and source water treatment determinations, based on one of the three findings in Section 141.19(a).

a. *Proposed Review of State Determinations (§ 142.19(c)).* If the Regional Administrator finds that review of a State determination is warranted, he/she should issue a proposed review order containing the material cited in § 142.19(c)(1), provide notice of the proposal to the affected parties by publishing a copy of the proposed order in a newspaper of general circulation in the affected communities (§ 142.19(c)(2)(ii)), and mailing the proposed order to the affected water system(s) (142.19(c)(2)(i)). The Regional Administrator should also make available for public inspection all information submitted by the State to EPA and all other information or data used by EPA in developing the proposed order (§ 142.19(3)). EPA believes that this procedure is needed to ensure that all interested parties are given an opportunity to review all the pertinent information and to provide comments.

b. *Final Review Order (§ 142.19(d)).* Based upon a review of all information obtained on the proposed review order, including public comments, the Regional Administrator is required to issue a final review order within 120 days after issuance of the proposed order. EPA believes that 120 days are needed to provide for meaningful State and public input and to adequately evaluate all the public comments and develop a final order. In some circumstances, it may be necessary to extend this time period. Thus, the rule provides that it can be extended for good cause.

The final order should contain a complete record of all the information supporting the determination, including all public comments and responses to those comments and any new points raised or new material supplied during the public comment period. The notice of the final order must be sent to the affected system(s), the State, and all parties who commented on the proposed order. As stated above, the final order from the Regional Administrator supersedes any inconsistent requirements established by the State with regard to the NPDWRs for lead and copper and cannot be less stringent than those imposed by the State.

IX. Review by the Science Advisory and National Drinking Water Advisory Council

As required by Section 1412 (d) and (e) of the SDWA, EPA consulted with the National Drinking Water Advisory Council (NDWAC) and requested comments from EPA's Science Advisory Board (SAB) in the course of developing these MCLGs and NPDWRs. The NDWAC met several times during development of the final rule and endorsed the general approach adopted by EPA. SAB met on June 2 and 3, 1988, in Cincinnati, Ohio, to review the proposed rule. The SAB's comments have been considered and incorporated into the final rule together with the public comments received during the comment period. In addition, the SAB reviewed the data on the carcinogenicity of lead and submitted a report to the EPA Administrator on November 21, 1989 (EPA, 1989b). The report agreed with the Agency determination that lead was a Group B2 (probable) human carcinogen.

X. Impact of This Regulation

A. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and therefore subject to the requirement of performing a Regulatory Impact Analysis (RIA). This action is a major regulatory action, because it will have a major financial impact on the regulated community (i.e., more than $100 million per year). Therefore, EPA completed an RIA that is available for review as part of the record for this rulemaking (EPA, 1991a). This regulation has been reviewed by the Office of Management and Budget, as required by Executive Order 12291.

1. Costs.

The proposal included estimated costs associated with treatment of source water and corrosion by-products, monitoring, public education, and State implementation. Numerous commenters argued that EPA's cost estimates were inaccurate and that EPA greatly underestimated the potential financial burden on water systems and their customers. Numerous water systems commented that they will not be able to raise the needed revenue to comply with the proposed regulations because of high unemployment in the area and/or a high proportion of elderly and/or poor people on fixed incomes. They stated that they will either be forced out of business or have to raise water rates beyond the means of their customers. Other commenters claimed that the proposed regulation was not cost effective, stating that the rule would have a significant impact on water systems in terms of personnel and financial resources and would result in a minimal improvement in water quality and health.

In response to comments on the proposed rule, EPA made several changes in its analytical methodology which resulted in increased compliance cost estimates. These changes are highlighted below in the discussion of the individual components of the rule; a complete discussion on the changes is included in the RIA completed for the final rule (EPA, 1991a). Table 20 summarizes the estimated costs of the final rule. EPA understands commenters' concern with the potential financial burdens, especially for small systems and those with customers on fixed incomes, but believes the costs associated with the rule are reasonable. The Agency has reduced the costs of this regulation from the proposal by including the following provisions in the final rule.

1. Systems are only required to monitor source water if they are above the lead or copper action levels. Also, the source water monitoring has been coordinated, whenever possible, with monitoring for other inorganic contaminants.

2. Source water treatment is only necessary for those systems above the action levels at the tap and if treatment is deemed necessary by the State to reduce lead and/or copper below the action levels.

3. The initial tap monitoring frequency has been reduced from four times a year to twice a year.

4. pH and alkalinity action levels are not included in the final rule.

5. Systems are not required to develop their own public education materials or evaluate public education program as would have been required in the proposed rule.

6. The criteria for selecting sampling sites are more flexible than the proposal (i.e., homeowners can collect samples; sampling is allowed at nonresidential sites; minimum standing time has been reduced to 6 hours; and the requirement to collect samples from the ends of the distribution system has been eliminated).

7. Implementation of monitoring and treatment will be phased in over several years.

Table 20.—Summary Cost of Impacts of Final Lead and Copper Treatment Requirements (EPA, 1991a)

	National Costs ($M)			Average Annual Cost per family ($/year) by System Size (people served)			
	No of systems affected	Total capital	Total annual	25–100	1K–3.3K	50K–75K	<1M
Source water [1]	880	450	90	1,250	118	19	11
Corrosion control	40,000	990	220	217	16	3	<1
Lead line [2] replacement	8,300	1,500-6,250	80-370	16-46	3-6	1-3	4-9
Public education [3]	40,000		30	2	<1	<1	<1
State implementation		50 (initial)	40				
Monitoring [4]							
—Source water	40,000		<1	<1	<1	<1	<1
—Corrosion control	79,000		27	9	<1	<1	<1
—Lead line replacement	8,300		12	10	<1	<1	<1

Costs have been rounded to the nearest significant figure.
[1] Costs assume all systems with lead levels greater than 0.005 mg/L and/or copper levels greater than 1.3 mg/L in source water will be required to complete source water treatment. (see RIA for complete discussion)
[2] Range in costs reflect uncertainty in the number of lines that will be removed and costs for replacing an individual line (see RIA and EPA, 1991d) for detailed discussion).
[3] Household public education costs have been rounded to the nearest dollar.
[4] Monitoring costs have been rounded to the nearest dollar.

a. *Source Water Treatment Costs.* The proposal estimated that about 950 systems would have been required to treat their source water to reduce lead and copper levels below the proposed MCLs of 0.005 mg/L for lead and 1.3 mg/L for copper. The capital cost of treatment was estimated at $350 million with an annualized cost of $80 million (EPA, 1988l). These cost estimates were based on an analysis of the NIRS data (EPA, 1988a). Commenters did not provide any substantive comments on revising these cost estimates.

Based on a reanalysis of the NIRS data (EPA, 1990b, 1991a) in conjunction with the NOMS Survey (EPA, 1980), EPA now estimates that approximately 200 to 900 systems will be required to treat their source water at a national capital cost of between $96 to $447 million, total annualized national cost of between $17 and $84 million, and average annual household costs ranging from less than $10 to over $1,200, depending on system size. The reanalysis of the NIRS data was included in an October 19, 1990, Federal Register notice (55 FR 42400). EPA received no comments on the reanalysis.

The range of costs for source water treatment reflects the structure of the final rule, which allows States the discretion to determine if source water treatment is necessary. The upper bound costs and number of systems affected assume that States require all systems to install source water treatment if their lead levels are above 0.005 mg/L or copper levels are above 1.3 mg/L in source water. The lower bound costs and number of systems affected assumes that States require all systems to install source water treatment if their lead levels in source water are above 0.015 mg/L or copper levels are above 1.3 mg/L.

b. *Corrosion Control Treatment Costs.* The proposed rule estimated that about 53,000 systems would be expected to incur costs associated with corrosion control treatment (this included systems required to install treatment because they exceeded the lead, copper, or pH action level). The total capital cost for corrosion control treatment was estimated to be $630 million and the annualized cost was estimated at about $210 million (EPA, 1988l). Several commenters submitted information on treatment costs for their systems. Unfortunately, the majority of these systems did not provide sufficient detail on critical elements, such as system design, flow rate, or chemical dosages, which would enable EPA to compare the commenters' asserted costs with EPA's or to modify the Agency's cost models. The treatment costs from the few systems that did supply sufficient information generally supported EPA's estimates of treatment costs. Several commenters stated that the original cost projections were underestimated because they did not include costs for maintenance and repair of clogged lines and increased pumping costs due to excessive scale formation due to excessive calcium carbonate precipitation associated with the proposed requirement for pH 8. Other commenters believed that the costs were underestimated because the costs of other treatments that would be needed as a result of changes in water chemistry, such as removal of TTHM precursors and iron and manganese removal, were not included.

The proposed rule did not require systems to raise their pH above 8 if they could demonstrate that it would cause precipitation problems. This demonstration, however, would have required water systems to spend significant resources to demonstrate why raising the pH would cause precipitation problems even though the system may not have had a lead or copper problem. For this reason and for others discussed in section IV(2)(a) of the preamble, EPA has eliminated the pH action level. The Agency believes that eliminating the pH action level will reduce the likelihood of increased clogging of lines and scaling because systems are only required to raise their pH if they have a documented lead or copper problem. Also, the final rule requires systems and States to consider the effects of implementing corrosion control treatment on other water quality treatment processes when determining the most appropriate treatment strategy. EPA believes that the majority of systems and States are aware that excessive calcium carbonate precipitation can not only cause clogged pipes and scaling but can also increase turbidity and may reduce disinfection efficiency. Consequently, systems and States should consider this when evaluating what constitutes optimal corrosion control treatment. The costs of TTHM precursor removal and removal of iron and manganese were not included, because systems concerned with increased TTHM precursor formation, or precipitation of iron or manganese caused by increasing their pH, could avoid this problem by using corrosion inhibitors instead, which generally work at lower pH levels.

The proposed rule estimated that corrosion control studies would cost $50,000. EPA increased the costs of corrosion control studies based on data from several water systems currently conducting such studies. Costs to conduct corrosion control studies are assumed to be $200,000 for systems

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serving more than 1 million people, $100,000 for systems serving between 50,000 to 1 million people, and $50,000 for systems serving less than 50,000 people. In addition, EPA has used data received prior to the proposal along with data received during the public comment period from the American Water Works Service Company, 40 individual water systems, and data collected from nine systems by EPA's Office of Drinking Water Technical Support Division to revise its estimates of the number of systems required to conduct corrosion control. These data were discussed previously in section IV(E)(2) of the preamble to this rule, and included in the Treatment and Occurrence Support Document (EPA, 1991b). EPA now estimates that about 40,000 water systems would incur costs for corrosion control treatment at an estimated national capital cost of about $990 million, a national annualized cost of about $220 million per year, and annual household costs ranging from less than $1 to $217, depending on system size. These costs include the costs of corrosion control studies and the costs for installing corrosion control for solder and lead pipes.

c. *Monitoring Costs.* The proposal estimated that all 79,000 community and non-transient, non-community systems would incur monitoring costs. EPA estimated a national annualized cost for monitoring of about $12 million per year (EPA, 1988l). Several commenters stated that the costs of collecting first-draw samples and analyses of the samples would be more expensive than EPA assumed. Other commenters stated that EPA had not considered the costs of the materials survey and the costs for planning the monitoring and training staff.

EPA agrees that the cost estimates were underestimated and has revised its monitoring cost estimates. The proposed rule estimated that the cost for collection would be about $5.50 per sample and $8 to complete each analysis. Based on commenter's estimates, EPA has revised the costs to $20 for collection of each sample and $15 for the analysis of each sample for lead and $15 per sample for copper. (These estimates are likely overestimates, especially for large systems. Informal communications with schools indicate that collection and laboratory analysis of water samples for lead costs between $5 and $10 per sample). EPA has also added the costs of monitoring the other water quality parameters required to be analyzed for the final rule (e.g., pH, calcium, alkalinity) along with the monitoring costs associated with the lead service line replacement program, since these were not required in the proposal. Finally, EPA has added the costs for the materials evaluation, planning monitoring activities, and training staffs on the proper procedures for sample collection. Including these costs increases the annual monitoring costs to about $39 million ($0.5 for source water; $20 million for tap monitoring; $12 million for monitoring for lead service lines; and $7 million to train staff and conduct a materials evaluation). The range of annual household costs varies depending on system size from $0.01 to $0.37 for source water monitoring, from $0.01 to $8.60 for tap monitoring, and from $0.01 to $9.81 for lead service line monitoring.

d. *Public Education Costs.* The proposed rule estimated that about 39,000 systems would have been required to conduct a public education program at an annualized cost of about $12 million (EPA, 1988l). Thirteen commenters provided their own cost estimates of conducting a public education program; the estimates ranged from $0.01 to $1.12 per person. The majority of these costs were estimated using information from the 1987 special lead public notification requirements and therefore are not appropriate for estimating costs for the final rule because public notifications were one-time costs and the public notification program was not as focused or demanding as the public education requirements in the final rule.

The national annualized costs of the public education program are now estimated to be $30 million with the per household costs per year ranging from $0.08 to $2.24. As noted above, EPA estimates that about 40,000 systems will initially fail the lead action level and be required to conduct a public education program. After installation of corrosion control, EPA estimates that about 12,000 systems (8,000 with lead service lines) will remain above the lead action level and be required to continue the public education program. As discussed earlier, the final rule does not require water systems to develop nor evaluate the public education program, thus the costs for public education only include costs associated with the distribution of the public education materials. However, even though the requirements for public education have been reduced from the proposal, the estimated costs have increased. The proposal estimated that the public education program would continue for 10 years while the final rule assumes public education will continue for 25 years for those systems required to conduct lead service line replacement and those that continue to exceed the lead or copper action levels. Also, the proposed rule assumed that systems would only be required to mail inserts in water bills, while the final rule assumes that systems would be required to mail inserts in water bills, provide public service announcements, and distribute brochures to locations identified as being high-risk. EPA believes these estimates better reflect the costs of a public education program.

e. *Lead Service Line Replacement Costs.* The proposed rule requested information on the cost of lead service line replacement and received comments from 17 water systems. The range of cost estimates from these commenters for replacing lead service lines ranged from $400 to more than $4,800 per line. On January 11, 1989, the American Water Works Association submitted a report and data to EPA from a nationwide survey on the occurrence of lead service lines and connections in water systems throughout the United States (AWWA, 1989).

Based on the AWWA survey, EPA estimates that about 8,300 systems will be required to replace some lead service lines (EPA, 1991a). The projected national capital cost of the lead service line replacement program is estimated to range from $1.5 to $6.2 billion, the national annualized costs range from about $80 to $370 million per year, and the annual household costs range from less than $1 to $46, depending on system size. The range of costs reflects uncertainty regarding the number of lead service lines that will ultimately be removed and the amount of lead that leaches from lead pipes, as well as the unit cost for replacing a lead service line. Lower bound cost estimates assume relatively widespread use of newly developed pipe replacement technology which can lower costs of replacing an individual pipe by as much as 75 percent. Depending on the assumptions regarding lead contributions from individual lines and the costs of replacing individual lines, the estimated monetized health benefits were either smaller or larger than estimated costs. A detailed discussion of the assumptions used to derive these costs can be found in the RIA supporting the final rule and EPA, 1991d.

The AWWA submitted a report "Lead Service Line Replacement: Benefit-to-Cost Analysis" (AWWA, 1990) as a public comment on an October 19, 1990, **Federal Register** notice (55 FR 42409). In its report, AWWA estimated that the present value costs of a 15-year mandatory lead service line replacement program would be $4.4 billion and the expected present value benefits would be $104 million. They concluded:

> * * * that there should NOT be an overall mandate from EPA or Congress to remove lead service lines. Rather, what is warranted is a systematic approach utilizing more cost effect (sic) approaches first (such as corrosion control). As a last resort, where the service line actually contributes to an elevated lead level, the lead service line should be replaced.

EPA agrees that a lead service line replacement program should not be initiated before corrosion control and/or source water treatment has/have been installed. In addition, EPA agrees that only those lead service lines contributing to elevated lead levels (above 0.015 mg/L) should be replaced (see section IV(H) in the preamble for a complete discussion of lead service line replacement program).

f. *State Implementation Costs.* The proposed rule estimated that State implementation costs would increase by about $16 million as a result of the proposed rule. To derive the final cost estimates, EPA used information supplied by nine States during the public comment period, along with a 1988 survey of State primacy program resource needs, which was jointly conducted by the Association of State Drinking Water Administrators and EPA (EPA, 1989c). The latter survey consisted of sending a detailed 18-page questionnaire and a 38-page supplement to each State and territory in August 1988 to obtain an estimate of the staff and funding resources needed both to implement current drinking water programs and to meet the new requirements of the 1986 amendments to the SDWA. States were asked to estimate both resources needed on a temporary basis during the initial phase of implementation and resource needs on a permanent basis. Total State resource needs across the Nation were extrapolated from the States responding to the survey. The results from this survey were made available for public comment in an October 19, 1990, **Federal Register** notice (55 FR 42409). EPA received no substantive comments on the survey and therefore used the survey to predict the final State implementation costs of $47 million (initial costs) and $38 million (annual on-going costs) (EPA, 1991a).

2. Benefits

The SDWA does not direct EPA to consider benefits in establishing NPDWRs. EPA has established the requirements of the rule based upon the criteria contained in § 1412 of the statute. EPA is directed by Executive Order 12291 to estimate both the benefits and costs of the rules that it promulgates. Accordingly, the Agency has estimated the benefits associated with this regulation.

In 1988, EPA estimated that corrosion control and source water treatment associated with the proposed regulation would reduce lead exposures for millions of people. The effects of the proposed rule were measured in terms of changes in blood lead levels among young children between the ages of 6 months and 5 years. According to these estimates, between 284,000 and 704,000 children would have had their blood lead levels reduced to below 10 μg/dL; between 88,000 and 176,000 would have had their blood lead levels reduced to below 15 μg/dL; and between 3,500 and 5,300 would have had their blood lead levels reduced to below 25 μg/dL (Marcus and Holtzman, 1988). In addition, the Agency estimated that the material benefits of the regulation may be as high as $500 million per year.

Several commenters claimed that EPA overestimated the health benefits. They maintained that there were significant problems with the model that EPA used to predict the magnitude of blood lead improvement, including the following: (1) The blood lead coefficient of 0.20 μg/dL per μg/L of drinking water was based on infants aged zero to 6 months, yet EPA used this coefficient for children aged 6 months to 5 years, (2) use of worst-case lead occurrence data that are not representative of people's exposure, and (3) use of a questionable adjustment factor of 1.7 to convert national water data from partially-flushed daytime samples to first-draw samples. In response to public comments, EPA has made several changes in the methodology for estimating benefits and has monetized the health benefits for corrosion control, source water reduction, and lead service line replacement. The assumptions used in the benefits analysis are summarized below and are discussed in greater detail in the RIA supporting this rule.

a. *Health Benefits From Corrosion Control/Source Water Reduction.* EPA has made the following changes based on commenters' concerns: (1) Separate blood lead coefficients for infants up to 6 months of age, and for children aged 6 months to 7 years instead of using the same coefficients for all children, (2) data from partially-flushed taps to predict consumer exposure and the resulting benefits of the final rule are used instead of first-draw water, and (3) the adjustment factor to convert partially-flushed water to first-draw samples has been eliminated.

The methodology to predict health benefits has been improved substantially from the proposal by using the methodologies developed for other EPA regulatory reviews on lead (i.e., the lead-in gasoline phasedown (EPA, 1985), revisions to the lead NAAQS under the Clean Air Act (EPA, 1987b), and the regulation under the Clean Water Act for disposal of sewage sludge (EPA, 1989f). The model estimates the benefits of changing the nationwide blood lead distribution after installation, where necessary, of corrosion control and source water treatment.

Estimating benefits of the final rule requires assumptions about the pre- and post-water lead distributions. Pre-regulatory water lead exposures in the proposed rule were calculated using a survey conducted by Patterson (EPA, 1991). Several commenters criticized EPA for using this survey in the proposal to represent the nationwide water lead distribution because they claimed the data are not representative of population exposure. They stated that the survey was flawed because the sample homes had extremely hard water and that EPA had admitted that the data portray higher levels of lead than are found from other data sources. EPA decided to continue to use the Patterson data because the samples collected (partially flushed) are reasonably representative of average water consumption. The fact that the survey collected data from sites with hard water would, if anything, tend to produce lower lead levels. Most of the available literature indicates that harder water tends to produce lower lead levels (AWWA-RF, 1990).

The post-regulatory distribution of water lead levels was calculated by assuming that about 80 percent of water systems serving less than 50,000 people would be able to reduce their lead levels to 0.015 mg/L at the 90th percentile. This assumption was based on the data presented in Table 7 of the preamble, which indicates that about 80 percent of water systems with pH over 8.0, or that used corrosion inhibitors, were able to meet the lead action level. For those systems serving less than 50,000 people who are unable to achieve a 90th percentile water lead below 0.015 mg/L, it was assumed that their lead-reducing efforts would result on average, in a reduction of 0.010 mg/L of lead. This was based on experience in Seattle, Washington where the 90th percentile lead level started at approximately 0.025 mg/L, and after installation of corrosion control, dropped to about 0.010 mg/L to 0.015 mg/L. Two scenarios were developed for systems serving more

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than 50,000 people because of the uncertainty in the number of large systems that meet the action level that would install treatment and the reduction in lead levels for those systems that did install treatment. Scenario I assumed that all large systems would be able to reduce their 90th percentile lead levels to 0.005 mg/L. Scenario II assumed that 50 percent of large systems would be able to reduce their 90th percentile lead levels to 0.015 mg/L, 25 percent to 0.10 mg/L, and 25 percent to 0.005 mg/L.

Changes in blood lead levels between the pre- and post-regulatory drinking water lead levels were calculated using water lead-blood lead relationships developed by EPA (EPA, 1986a) and updated by Marcus (1989a, 1989b, 1990b, 1990c) and Maes et al. (1991). Section III(A)(2) of the preamble discusses these studies.

The model first calculates blood lead levels among children and adult populations in the United States associated with the pre- and post-regulatory level of lead exposure from drinking water, along with exposures from other sources, such as air, food, soil, and dust. The results do not explicitly reflect children living in deteriorating old houses exposed to lead paint hazards and children with excessive exposure to soils highly contaminated by lead (e.g., from 50 years of deposition from automotive emissions). These children were not included in the analysis because a change in the lead NPDWR would not by itself eliminate their overwhelming risks from non-drinking lead sources. Nonetheless, these children would receive a marginal benefit from the reductions achieved by this rule.

Exposure to nondrinking water sources of lead was estimated by (1) adjusting mean blood lead levels in children and adults measured in the 1976–1980 NHANES II survey downward to account for the gasoline lead phasedown and the reduction of lead in the diet, and (2) subtracting the estimated contribution to blood lead levels from drinking water. EPA estimates that the geometric mean or average "baseline" blood lead levels attributable to sources other than drinking water is about 4.0 μg/dL for children and adults. Blood lead levels vary widely among individuals due to differences in exposure levels, behavioral patterns, physiological sensitivity, and nutrition. Capturing all of this variability is impossible in blood lead modeling; therefore, the Agency has established an approach that uses empirical, or measured, descriptions of blood lead variability and applies it to average blood leads estimated under different regulatory scenarios. The variability of log-normal distributions can be represented by the geometric standard deviation (GSD). Nationwide population surveys (e.g., NHANES II) of blood lead distributions provide the best possible GSDs, which are estimated as 1.39 for adults and 1.42 for children (EPA, 1986a).

The second step in calculating benefits is to estimate the effects that the blood lead changes will have on different health endpoints that can be valued in monetary terms. The endpoints modeled for this analysis include benefits associated with changes in adult men's blood pressure (medication costs) and associated changes in risks of more serious cardiovascular outcomes: heart attack, stroke, and death. Low-level lead exposure is associated with various health effects in women and the fetus, which were not quantified. These effects include reduced gestational age and birthweight and slight increases in blood pressure. While reduced lead levels in drinking water will benefit women and their newborns, benefits were not estimated in this analysis because of (1) existing uncertainties in the dose-response relationship between blood lead and blood pressure in women, and (2) uncertainties in physiological transfer rates (i.e., biokinetics) of lead during pregnancy. The endpoints modeled for children include benefits associated with avoidance of elevation in children's erythrocyte protoporphyrin (screening costs and medical treatment) and deficits in IQ (costs associated with remedial education/lost earnings). It is important to note that the health endpoints valued in the benefits analyses do not include other serious effects associated with low-level lead exposures in children. Quantitative analysis of these effects was not conducted because of either incomplete biokinetic models to estimate exposures (e.g., early developmental delays associated with prenatal exposures) or because of a lack of monetized functions (e.g., deficits in auditory function and attention span, alterations in vitamin D metabolism).

EPA estimates that the annual health benefits of corrosion control and source water using Scenario I are approximately $4.3 billion. The annual health benefits for Scenario II are approximately $2.8 billion. EPA estimates that less than 1 percent of water systems will need to control source water lead levels. The benefits attributable to source water treatment comprise a very small portion of the total estimates (see RIA for complete discussion).

Several assumptions regarding water lead exposure may tend to overestimate health benefits in this analysis: (1) starting baseline exposures do not account for the 1986 lead solder ban, which, despite current uncertainties regarding the extent of its implementation, will eventually and substantially reduce exposures independent of this rule; (2) standing, first-flush samples taken in "high-risk" houses (e.g., relatively new lead solder, lead service lines) will be required in this rule to determine compliance (this analysis assumes that PbW levels measured in high-risk homes will be found in all homes; and (3) it was assumed that 80 percent of small and medium systems can meet the lead action level, which, as discussed in section IV(E)(2) is probably optimistic given that these were well-managed, medium-sized systems with relatively non-corrosive or easily controlled source waters.

In contrast, health benefits may be underestimated in this analysis because several health effects associated with lead exposure were not quantified because of the lack of quantitative dose-response functions (i.e., reduced growth and impaired hearing for children, maternal lead effects on fetal and infant development). Also, benefits to children exposed to lead paint hazards and highly contaminated soils are not included in the main analysis.

Of the adult benefits, roughly 40 percent are attributable to reduced risk of death from heart disease associated with lead-induced blood pressure elevations. There is general agreement that the available data support a small but positive association between PbB levels and increases in blood pressure in adults. As discussed in the 1990 update to the Addendum to the 1986 Air Quality Criteria Document for lead (EPA, 1990a), * * * with regard to the effects of lead on blood pressure, the new information emerging since the preparation of the 1986 Addendum, overall, substantiates further the main conclusions stated in that Addendum. Sufficient evidence exists from both the four large-scale general population studies discussed above (NHANES II, BRHS, and the two Welsh studies) and numerous smaller-scale studies to conclude that a small but positive association exists between blood lead levels and increases in blood pressure.

Recent EPA regulatory analyses on lead have extended the blood lead/blood pressure relationship to quantify

consequent risks for these cardiovascular outcomes. The 1990 update to the Addendum (EPA, 1990a) concludes that:

> * * * the implications of lead-induced blood pressure increases with regard to potential increased risk for other, more serious cardiovascular outcomes still remain to be more clearly delineated * * * essentially any increase in blood pressure carries with it likely increased risk (albeit however small) for stroke, heart attack, and/or associated mortality * * * projections of potential lead effects on such outcomes * * * are not unreasonable in view of the very large public health impacts; however, much caution must be exercised in accepting the validity of any specific quantitative estimates derived from such projections in view of the uncertainties associated with selection of the specific coefficients used for (1) blood lead blood-pressure relationships and (2) relationships between blood pressure increases and more serious cardiovascular outcomes.

b. *Health Benefits From Lead Service Line Replacement.* The proposed rule did not estimate the benefits of lead service line replacement. Many commenters, however, stated that the health benefits of lead service line replacement would be minimal because water systems can only replace that portion of the line under their control, which in most cases will be less than the full line. They contend that the limited data indicate that partial lead service line replacement may actually increase the lead levels at the tap and that it is highly unlikely that people actually drink the water standing in the line.

Because of the uncertainty in the available data, EPA estimated the benefits of lead service line replacement under a range of possible scenarios. Assumptions were made that 1) lead levels in water from a lead service line ("partially-flushed") would range between 20 and 40 ppb (after corrosion control), 2) lead levels in water from the main ("fully-flushed") passing through the lead service line would average approximately 10 ppb, and 3) people drink between 125 to 333 ml of partially-flushed and/or fully-flushed water per day. Reductions in exposures and monetized health benefits that would be expected to occur in those systems replacing lead service lines are estimated using the same methodology used to calculate benefits attributable to corrosion control. The results indicate that the national annualized benefits range from $70 to $171 million. The range in estimates reflects the use of combinations of the different assumptions described above. If children with high paint lead exposures were included in the analysis of houses whose lead service lines are replaced, the national annualized benefits increase to $80 to $240 million (EPA, 1991d).

c. *Material Benefits.* The proposed rule cited several studies indicating that the material benefits of corrosion control alone would exceed the costs of implementing corrosion control treatment by more than two times. EPA continues to believe that both systems and customers will derive direct material benefit from corrosion control treatment. The systems will benefit from extended pipe life in the distribution systems, reduced leakage, and decreased pumping costs due to reduced tuberculation. Customers will also benefit from the extended pipe life in their portion of the service line, extended life of water-using appliances, decreased sewage treatment costs due to reduced metals in influent and sludge, reduced damage from leakage, reduced interim repairs, and reduced staining of clothing and fixtures.

The American Water Works Association Research Foundation recently evaluated the economic benefits of extended life of distribution and premise piping associated with general corrosion control (AWWA–RF, 1989). One case study evaluated by AWWA–RF (Vancouver, B.C.) indicated that under "reasonably conservative assumptions," net economic benefits derived from corrosion control would exceed costs by a factor of 4 to 13. Another study conducted in Seattle, Washington, found a benefit:cost ratio of about 5:1, based on several conservative assumptions. The majority of benefits in both studies were estimated to accrue to customers in terms of extended life of premise piping. Another case study in Northern Illinois evaluated by AWWA–RF indicated no expected material benefits of corrosion control because of existing noncorrosive water and a preponderance of cement line distribution pipes and copper or galvanized service/plumbing pipes.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) requires EPA to consider the effect of regulations on small entities. If there is a significant effect on a substantial number of small systems, the Agency must seek to minimize the effects. The Agency found in the preamble to the proposed rule that the rule would not have a significant effect on a substantial number of small entities. Several commenters disagreed with this characterization, stating that the proposed rule would severely impact small systems.

EPA has re-evaluated the impacts to small systems consistent with the requirements of the Regulatory Flexibility Act, 5 U.S.C. 602 *et seq.*, and finds that today's action will not significantly affect a substantial number of small entities. Using the Small Business Administration's definition, a small water utility is one that serves fewer than 50,000 people. There are about 200,000 community and non-community water systems serving fewer than 50,000 people. This total includes approximately 120,000 systems that are classified as transient, non-community systems which include for example, restaurants, gas stations, etc. and which are not subject to the monitoring and treatment requirements of this regulation. In the preamble to the 1988 proposal, EPA incorrectly cited the total number of small water utilities as 78,000. Rather, this number represented the total community and non-transient, non-community water systems serving fewer than 50,000 people that are subject to the requirements of the final rule. This subset of systems affected by the rule was correctly analyzed in the RIA and identified in the RFA. Approximately 40,000 small community and non-community, non-transient water systems are likely to have contamination levels greater than the action levels and thus are required to treat their water. While this represents a substantial fraction of the total number of small systems (greater than 20 percent), the impacts of the regulation on them will not be significant.

Under the RFA, annual costs of compliance are to be compared to the existing cost of production. EPA has generally considered an increase in production cost of five percent or more as a significant impact. The approximate cost of producing water by all systems serving fewer than 50,000 people is $9.6 billion per year, and the maximum annualized cost of the final rule will be about $410 million, including monitoring. This amounts to 4.27 percent of water production costs for small systems. Therefore, although the rule will affect a substantial number of small systems, the average effect on small systems, as defined by the Small Business Administration, is not significant.

Nevertheless, EPA recognizes that, due to their inability to benefit from economies of scale, the cost impact of regulations tends to increase as the size of a system decreases. To prevent these regulations from placing an onerous burden on smaller systems, EPA has included numerous provisions that would reduce their costs and enhance their ability to comply. Among these provisions are the following:

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1. The monitoring requirements of the rule are phased in over an extra 6 to 18 months for small systems.

2. Fewer samples are required for smaller systems than for large systems.

3. Systems serving less than 50,000 people are not required to conduct corrosion control studies except where specified by the State.

4. Systems under 50,000 are required to make detailed demonstrations of optimal corrosion treatment only if they exceed the action levels.

The Agency encourages States to provide technical assistance to small systems that need to install or improve corrosion control. The assistance could include tailoring the treatments they designate for small systems to the circumstances of individual public water systems. EPA will also assist systems through pollution prevention programs and the Agency's overall effort to reduce lead levels. Further, under the SDWA, exemptions are available for systems if they cannot afford to install best available technology to meet the requirements of the treatment technique requirement, provided there is no unreasonable risk to health. These exemptions may be extended for one or more two-year periods for systems with less than 500 connections.

C. Paperwork Reduction Act

The information collection requirements in this rule will be submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection requirements are not effective until OMB approves them and a technical amendment to that effect is published in the **Federal Register**.

The public reporting burden on public water systems for this collection of information is estimated to average 3.9 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This represents an increase from the 1–1.4 hours per response estimated in the preamble to the 1988 proposal. The increase is attributable to changes to the monitoring, reporting, and recordkeeping requirements.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223Y, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

X. References

The following references are referred to in this notice and are included in the public docket together with other correspondence and information. The public docket is available as described at the beginning of this notice. All public comments received on the proposal are included in the public docket.

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Dated: May 6, 1991.

F. Henry Habicht,

Acting Administrator.

List of Subjects in 40 CFR Parts 141 and 142

Administrative practice and procedure, chemicals, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements and water supply.

For the reasons set forth in the preamble, title 40 of the Code of Federal Regulations is amended as follows:

PART 141— NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300–4, 300g–5 300g–6, 300j–4, and 300j–9.

2. Section 141.2 is amended by adding the following new definitions in alphabetical order and removing the existing definition of "maximum contaminant level" to read as follows:

* * * * *

§ 141.2 Definitions.

* * * * *

Action level, is the concentration of lead or copper in water specified in § 141.80(c) which determines, in some cases, the treatment requirements contained in subpart I of this part that a water system is required to complete.

* * * * *

Corrosion inhibitor, means a substance capable of reducing the corrosivity of water toward metal plumbing materials, especially lead and copper, by forming a protective film on the interior surface of those materials.

* * * * *

Effective corrosion inhibitor residual, for the purpose of subpart I of this part only, means a concentration sufficient to form a passivating film on the interior walls of a pipe.

* * * * *

First draw sample, means a one-liter sample of tap water, collected in accordance with § 141.86(b)(2), that has been standing in plumbing pipes at least 6 hours and is collected without flushing the tap.

* * * * *

Large water system, for the purpose of subpart I of this part only, means a water system that serves more than 50,000 persons.

* * * * *

Lead service line, means a service line made of lead which connects the water main to the building inlet and any

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lead pigtail, gooseneck or other fitting which is connected to such lead line.

* * * * *

Maximum contaminant level, means the maximum permissable level of a contaminant in water which is delivered to any user of a public water system.

* * * * *

Medium-size water system, for the purpose of subpart I of this part only, means a water system that serves greater than 3,300 and less than or equal to 50,000 persons.

* * * * *

Optimal corrosion control treatment, for the purpose of subpart I of this part only, means the corrosion control treatment that minimizes the lead and copper concentrations at users' taps while insuring that the treatment does not cause the water system to violate any national primary drinking water regulations.

* * * * *

Service line sample, means a one-liter sample of water collected in accordance with § 141.86(b)(3), that has been standing for at least 6 hours in a service line.

* * * * *

Single family structure, for the purpose of subpart I of this part only, means a building constructed as a single-family residence that is currently used as either a residence or a place of business.

* * * * *

Small water system, for the purpose of subpart I of this part only, means a water system that serves 3,300 persons or fewer.

* * * * *

3. In § 141.11, the introductory text of paragraph (b) is revised to read as follows:

§ 141.11 Maximum contaminant levels for inorganic chemicals.

* * * * *

(b) The following maximum contaminant levels for cadmium, chromium, mercury, nitrate, and selenium shall remain effective until July 30, 1992. The following maximum contaminant level for lead shall remain effective until November 9, 1992.

* * * * *

4. Section 141.32 is amended by adding paragraphs (e) (13) and (14) to read as follows:

* * * * *

§ 141.32 Public notification.

* * * * *

(e) * * *

(13) *Lead.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that lead is a health concern at certain exposure levels. Materials that contain lead have frequently been used in the construction of water supply distribution systems, and plumbing systems in private homes and other buildings. The most commonly found materials include service lines, pipes, brass and bronze fixtures, and solders and fluxes. Lead in these materials can contaminate drinking water as a result of the corrosion that takes place when water comes into contact with those materials. Lead can cause a variety of adverse health effects in humans. At relatively low levels of exposure, these effects may include interference with red blood cell chemistry, delays in normal physical and mental development in babies and young children, slight deficits in the attention span, hearing, and learning abilities of children, and slight increases in the blood pressure of some adults. EPA's national primary drinking water regulation requires all public water systems to optimize corrosion control to minimize lead contamination resulting from the corrosion of plumbing materials. Public water systems serving 50,000 people or fewer that have lead concentrations below 15 parts per billion (ppb) in more than 90% of tap water samples (the EPA "action level") have optimized their corrosion control treatment. Any water system that exceeds the action level must also monitor their source water to determine whether treatment to remove lead in source water is needed. Any water system that continues to exceed the action level after installation of corrosion control and/or source water treatment must eventually replace all lead service lines contributing in excess of 15 (ppb) of lead to drinking water. Any water system that exceeds the action level must also undertake a public education program to inform consumers of ways they can reduce their exposure to potentially high levels of lead in drinking water.

(14) *Copper.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that copper is a health concern at certain exposure levels. Copper, a reddish-brown metal, is often used to plumb residential and commercial structures that are connected to water distribution systems. Copper contaminating drinking water as a result of the corrosion of copper pipes that remain in contact with water for a prolonged period of time. Copper is an essential nutrient, but at high doses it has been shown to cause stomach and intestinal distress, liver and kidney damage, and anemia. Persons with Wilson's disease may be at a higher risk of health effects due to copper than the general public. EPA's national primary drinking water regulation requires all public water systems to install optimal corrosion control to minimize copper contamination resulting from the corrosion of plumbing materials. Public water systems serving 50,000 people or fewer that have copper concentrations below 1.3 parts per million (ppm) in more than 90% of tap water samples (the EPA "action level") are not required to install or improve their treatment. Any water system that exceeds the action level must also monitor their source water to determine whether treatment to remove copper in source water is needed.

* * * * *

5. The table in § 141.51(b) is amended by removing the paragraph designations, placing the contaminants in alphabetical order, and adding the following entries for copper and lead in alphabetical order:

§ 141.51 Maximum contaminant level goals for inorganic contaminants.

* * * * *

(b) * * *

Contaminant and MCLG in mg/L

* * * * *

Copper	1.3
Lead	zero

* * * * *

6. A new subpart I is added to read as follows:

Subpart I—Control of Lead and Copper

Sec.

141.80 General requirements.
141.81 Applicability of corrosion control treatment steps to small, medium-size and large water systems.
141.82 Description of corrosion control treatment requirements.
141.83 Source water treatment requirements.
141.84 Lead service line replacement requirements.
141.85 Public education and supplemental monitoring requirements.
141.86 Monitoring requirements for lead and copper in tap water.
141.87 Monitoring requirements for water quality parameters.
141.88 Monitoring requirements for lead and copper in source water.
141.89 Analytical methods.
141.90 Reporting requirements.
141.91 Recordkeeping requirements.

Subpart I—Control of Lead and Copper

§ 141.80 General requirements.

(a) *Applicability and effective dates.* (1) The requirements of this subpart I constitute the national primary drinking water regulations for lead and copper. Unless otherwise indicated, each of the provisions of this subpart applies to community water systems and non-transient, non-community water systems (hereinafter referred to as "water systems" or "systems").

(2) The requirements set forth in §§ 141.86–141.91 shall take effect. The requirements in §§ 141.81–141.85 shall take effect November 9, 1992.

(b) *Scope.* These regulations establish a treatment technique that includes requirements for corrosion control treatment, source water treatment, lead service line replacement, and public education. These requirements are triggered, in some cases, by lead and copper action levels measured in samples collected at consumers' taps.

(c) *Lead and copper action levels.* (1) The lead action level is exceeded if the concentration of lead in more than 10 percent of tap water samples collected during any monitoring period conducted in accordance with § 141.86 is greater than 0.015 mg/L (i.e., if the "90th percentile" lead level is greater than 0.015 mg/L).

(2) The copper action level is exceeded if the concentration of copper in more than 10 percent of tap water samples collected during any monitoring period conducted in accordance with § 141.86 is greater than 1.3 mg/L (i.e., if the "90th percentile" copper level is greater than 1.3 mg/L).

(3) The 90th percentile lead and copper levels shall be computed as follows:

(i) The results of all lead or copper samples taken during a monitoring period shall be placed in ascending order from the sample with the lowest concentration to the sample with the highest concentration. Each sampling result shall be assigned a number, ascending by single integers beginning with the number 1 for the sample with the lowest contaminant level. The number assigned to the sample with the highest contaminant level shall be equal to the total number of samples taken.

(ii) The number of samples taken during the monitoring period shall be multiplied by 0.9.

(iii) The contaminant concentration in the numbered sample yielded by the calculation in paragraph (c)(3)(ii) is the 90th percentile contaminant level.

(iv) For water systems serving fewer than 100 people that collect 5 samples per monitoring period, the 90th percentile is computed by taking the average of the highest and second highest concentrations.

(d) *Corrosion control treatment requirements.* (1) All water systems shall install and operate optimal corrosion control treatment as defined in § 141.2.

(2) Any water system that complies with the applicable corrosion control treatment requirements specified by the State under §§ 141.81 and 141.82 shall be deemed in compliance with the treatment requirement contained in paragraph (d)(1) of this section.

(e) *Source water treatment requirements.* Any system exceeding the lead or copper action level shall implement all applicable source water treatment requirements specified by the State under § 141.83.

(f) *Lead service line replacement requirements.* Any system exceeding the lead action level after implementation of applicable corrosion control and source water treatment requirements shall complete the lead service line replacement requirements contained in § 141.84.

(g) *Public education requirements.* Any system exceeding the lead action level shall implement the public education requirements contained in § 141.85.

(h) *Monitoring and analytical requirements.* Tap water monitoring for lead and copper, monitoring for water quality parameters, source water monitoring for lead and copper, and analyses of the monitoring results under this subpart shall be completed in compliance with §§ 141.86, 141.87, 141.88, and 141.89.

(i) *Reporting requirements.* Systems shall report to the State any information required by the treatment provisions of this subpart and § 141.90.

(j) *Recordkeeping requirements.* Systems shall maintain records in accordance with § 141.91.

(k) *Violation of national primary drinking water regulations.* Failure to comply with the applicable requirements of §§ 141.80–141.91, including requirements established by the State pursuant to these provisions, shall constitute a violation of the national primary drinking water regulations for lead and/or copper.

§ 141.81 Applicability of corrosion control treatment steps to small, medium-size and large water systems.

(a) Systems shall complete the applicable corrosion control treatment requirements described in § 141.82 by the deadlines established in this section.

(1) A large system (serving >50,000 persons) shall complete the corrosion control treatment steps specified in paragraph (d) of this section, unless it is deemed to have optimized corrosion control under paragraph (b)(2) or (b)(3) of this section.

(2) A small system (serving <3300 persons) and a medium-size system (serving >3,300 and <50,000 persons) shall complete the corrosion control treatment steps specified in paragraph (e) of this section, unless it is deemed to have optimized corrosion control under paragraph (b)(1), (b)(2), or (b)(3) of this section.

(b) A system is deemed to have optimized corrosion control and is not required to complete the applicable corrosion control treatment steps identified in this section if the system satisfies one of the following criteria:

(1) A small or medium-size water system is deemed to have optimized corrosion control if the system meets the lead and copper action levels during each of two consecutive six-month monitoring periods conducted in accordance with § 141.86.

(2) Any water system may be deemed by the State to have optimized corrosion control treatment if the system demonstrates to the satisfaction of the State that it has conducted activities equivalent to the corrosion control steps applicable to such system under this section. If the State makes this determination, it shall provide the system with written notice explaining the basis for its decision and shall specify the water quality control parameters representing optimal corrosion control in accordance with § 141.82(f). A system shall provide the State with the following information in order to support a determination under this paragraph:

(i) The results of all test samples collected for each of the water quality parameters in § 141.82(c)(3).

(ii) A report explaining the test methods used by the water system to evaluate the corrosion control treatments listed in § 141.82(c)(1), the results of all tests conducted, and the basis for the system's selection of optimal corrosion control treatment;

(iii) A report explaining how corrosion control has been installed and how it is being maintained to insure minimal lead and copper concentrations at consumers' taps; and

(iv) The results of tap water samples collected in accordance with § 141.86 at least once every six months for one year after corrosion control has been installed.

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(3) Any water system is deemed to have optimized corrosion control if it submits results of tap water monitoring conducted in accordance with § 141.86 and source water monitoring conducted in accordance with § 141.88 that demonstrates for two consecutive six-month monitoring periods that the difference between the 90th percentile tap water lead level computed under § 141.80(c)(3), and the highest source water lead concentration, is less than the Practical Quantitation Level for lead specified in § 141.89(a)(1)(ii).

(c) Any small or medium-size water system that is required to complete the corrosion control steps due to its exceedance of the lead or copper action level may cease completing the treatment steps whenever the system meets both action levels during each of two consecutive monitoring periods conducted pursuant to § 141.86 and submits the results to the State. If any such water system thereafter exceeds the lead or copper action level during any monitoring period, the system (or the State, as the case may be) shall recommence completion of the applicable treatment steps, beginning with the first treatment step which was not previously completed in its entirety. The State may require a system to repeat treatment steps previously completed by the system where the State determines that this is necessary to implement properly the treatment requirements of this section. The State shall notify the system in writing of such a determination and explain the basis for its decision.

(d) *Treatment steps and deadlines for large systems.* Except as provided in paragraph (b) (2) and (3) of this section, large systems shall complete the following corrosion control treatment steps (described in the referenced portions of §§ 141.82, 141.86, and 141.87) by the indicated dates.

(1) *Step 1:* The system shall conduct initial monitoring (§ 141.86(d)(1) and § 141.87(b)) during two consecutive six-month monitoring periods by January 1, 1993.

(2) *Step 2:* The system shall complete corrosion control studies (§ 141.82(c)) by July 1, 1994.

(3) *Step 3:* The State shall designate optimal corrosion control treatment (§ 141.82(d)) by January 1, 1995.

(4) *Step 4:* The system shall install optimal corrosion control treatment (§ 141.82(e)) by January 1, 1997.

(5) *Step 5:* The system shall complete follow-up sampling (§ 141.86(d)(2) and § 141.87(c)) by January 1, 1998.

(6) *Step 6:* The State shall review installation of treatment and designate optimal water quality control parameters (§ 141.82(f)) by July 1, 1998.

(7) *Step 7:* The system shall operate in compliance with the State-specified optimal water quality control parameters (§ 141.82(g)) and continue to conduct tap sampling (§ 141.86(d)(3) and § 141.87(d)).

(e) *Treatment Steps and deadlines for small and medium-size systems.* Except as provided in paragraph (b) of this section, small and medium-size systems shall complete the following corrosion control treatment steps (described in the referenced portions of §§ 141.82, 141.86 and 141.87) by the indicated time periods.

(1) *Step 1:* The system shall conduct initial tap sampling (§ 141.86(d)(1) and § 141.87(b)) until the system either exceeds the lead or copper action level or becomes eligible for reduced monitoring under § 141.86(d)(4). A system exceeding the lead or copper action level shall recommend optimal corrosion control treatment (§ 141.82(a)) within six months after it exceeds one of the action levels.

(2) *Step 2:* Within 12 months after a system exceeds the lead or copper action level, the State may require the system to perform corrosion control studies (§ 141.82(b)). If the State does not require the system to perform such studies, the State shall specify optimal corrosion control treatment (§ 141.82(d)) within the following timeframes:

(i) for medium-size systems, within 18 months after such system exceeds the lead or copper action level,

(ii) for small systems, within 24 months after such system exceeds the lead or copper action level.

(3) *Step 3:* If the State requires a system to perform corrosion control studies under step 2, the system shall complete the studies (§ 141.82(c)) within 18 months after the State requires that such studies be conducted.

(4) *Step 4:* If the system has performed corrosion control studies under step 2, the State shall designate optimal corrosion control treatment (§ 141.82(d)) within 6 months after completion of step 3.

(5) *Step 5:* The system shall install optimal corrosion control treatment (§ 141.82(e)) within 24 months after the State designates such treatment.

(6) *Step 6:* The system shall complete follow-up sampling (§ 141.86(d)(2) and § 141.87(c)) within 36 months after the State designates optimal corrosion control treatment.

(7) *Step 7:* The State shall review the system's installation of treatment and designate optimal water quality control parameters (§ 141.82(f)) within 6 months after completion of step 6.

(8) *Step 8:* The system shall operate in compliance with the State-designated optimal water quality control parameters (§ 141.82(g)) and continue to conduct tap sampling (§ 141.86(d)(3) and § 141.87(d)).

§ 141.82 Description of corrosion control treatment requirements.

Each system shall complete the corrosion control treatment requirements described below which are applicable to such system under § 141.81.

(a) *System recommendation regarding corrosion control treatment.* Based upon the results of lead and copper tap monitoring and water quality parameter monitoring, small and medium-size water systems exceeding the lead or copper action level shall recommend installation of one or more of the corrosion control treatments listed in paragraph (c)(1) of this section which the system believes constitutes optimal corrosion control for that system. The State may require the system to conduct additional water quality parameter monitoring in accordance with § 141.87(b) to assist the State in reviewing the system's recommendation.

(b) *State decision to require studies of corrosion control treatment (applicable to small and medium-size systems).* The State may require any small or medium-size system that exceeds the lead or copper action level to perform corrosion control studies under paragraph (c) of this section to identify optimal corrosion control treatment for the system.

(c) *Performance of corrosion control studies.* (1) Any public water system performing corrosion control studies shall evaluate the effectiveness of each of the following treatments, and, if appropriate, combinations of the following treatments to identify the optimal corrosion control treatment for that system:

(i) Alkalinity and pH adjustment;

(ii) Calcium hardness adjustment; and

(iii) The addition of a phosphate or silicate based corrosion inhibitor at a concentration sufficient to maintain an effective residual concentration in all test tap samples.

(2) The water system shall evaluate each of the corrosion control treatments using either pipe rig/loop tests, metal coupon tests, partial-system tests, or analyses based on documented analogous treatments with other systems of similar size, water chemistry and distribution system configuration.

(3) The water system shall measure the following water quality parameters in any tests conducted under this paragraph before and after evaluating

the corrosion control treatments listed above:

(i) Lead;

(ii) Copper;

(iii) pH;

(iv) Alkalinity;

(v) Calcium;

(vi) Conductivity;

(vii) Orthophosphate (when an inhibitor containing a phosphate compound is used);

(viii) Silicate (when an inhibitor containing a silicate compound is used);

(ix) Water temperature.

(4) The water system shall identify all chemical or physical constraints that limit or prohibit the use of a particular corrosion control treatment and document such constraints with at least one of the following:

(i) Data and documentation showing that a particular corrosion control treatment has adversely affected other water treatment processes when used by another water system with comparable water quality characteristics; and/or

(ii) Data and documentation demonstrating that the water system has previously attempted to evaluate a particular corrosion control treatment and has found that the treatment is ineffective or adversely affects other water quality treatment processes.

(5) The water system shall evaluate the effect of the chemicals used for corrosion control treatment on other water quality treatment processes.

(6) On the basis of an analysis of the data generated during each evaluation, the water system shall recommend to the State in writing the treatment option that the corrosion control studies indicate constitutes optimal corrosion control treatment for that system. The water system shall provide a rationale for its recommendation along with all supporting documentation specified in paragraphs (c)(1) through (5) of this section.

(d) *State designation of optimal corrosion control treatment.* (1) Based upon consideration of available information including, where applicable, studies performed under paragraph (c) of this section and a system's recommended treatment alternative, the State shall either approve the corrosion control treatment option recommended by the system, or designate alternative corrosion control treatment(s) from among those listed in paragraph (c)(1) of this section. When designating optimal treatment the State shall consider the effects that additional corrosion control treatment will have on water quality parameters and on other water quality treatment processes.

(2) The State shall notify the system of its decision on optimal corrosion control treatment in writing and explain the basis for this determination. If the State requests additional information to aid its review, the water system shall provide the information.

(e) *Installation of optimal corrosion control.* Each system shall properly install and operate throughout its distribution system the optimal corrosion control treatment designated by the State under paragraph (d) of this section.

(f) *State review of treatment and specification of optimal water quality control parameters.* The State shall evaluate the results of all lead and copper tap samples and water quality parameter samples submitted by the water system and determine whether the system has properly installed and operated the optimal corrosion control treatment designated by the State in paragraph (d) of this section. Upon reviewing the results of tap water and water quality parameter monitoring by the system, both before and after the system installs optimal corrosion control treatment, the State shall designate:

(1) A minimum value or a range of values for pH measured at each entry point to the distribution system;

(2) A minimum pH value, measured in all tap samples. Such value shall be equal to or greater than 7.0, unless the State determines that meeting a pH level of 7.0 is not technologically feasible or is not necessary for the system to optimize corrosion control;

(3) If a corrosion inhibitor is used, a minimum concentration or a range of concentrations for the inhibitor, measured at each entry point to the distribution system and in all tap samples, that the State determines is necessary to form a passivating film on the interior walls of the pipes of the distribution system;

(4) If alkalinity is adjusted as part of optimal corrosion control treatment, a minimum concentration or a range of concentrations for alkalinity, measured at each entry point to the distribution system and in all tap samples;

(5) If calcium carbonate stabilization is used as part of corrosion control, a minimum concentration or a range of concentrations for calcium, measured in all tap samples.

The values for the applicable water quality control parameters listed above shall be those that the State determines to reflect optimal corrosion control treatment for the system. The State may designate values for additional water quality control parameters determined by the State to reflect optimal corrosion control for the system. The State shall notify the system in writing of these determinations and explain the basis for its decisions.

(g) *Continued Operation and Monitoring.* All systems shall maintain water quality parameter values at or above minimum values or within ranges designated by the State under paragraph (f) of this section in each sample collected under § 141.87(d). If the water quality parameter value of any sample is below the minimum value or outside the range designated by the State, then the system is out of compliance with this paragraph. As specified in § 141.87(d), the system may take a confirmation sample for any water quality parameter value no later than 3 days after the first sample. If a confirmation sample is taken, the result must be averaged with the first sampling result and the average must be used for any compliance determinations under this paragraph. States have discretion to delete results of obvious sampling errors from this calculation.

(h) *Modification of State treatment decisions.* Upon its own initiative or in response to a request by a water system or other interested party, a State may modify its determination of the optimal corrosion control treatment under paragraph (d) of this section or optimal water quality control parameters under paragraph (f) of this section. A request for modification by a system or other interested party shall be in writing, explain why the modification is appropriate, and provide supporting documentation. The State may modify its determination where it concludes that such change is necessary to ensure that the system continues to optimize corrosion control treatment. A revised determination shall be made in writing, set forth the new treatment requirements, explain the basis for the State's decision, and provide an implementation schedule for completing the treatment modifications.

(i) *Treatment decisions by EPA in lieu of the State.* Pursuant to the procedures in § 142.19, the EPA Regional Administrator may review treatment determinations made by a State under paragraphs (d), (f), or (h) of this section and issue federal treatment determinations consistent with the requirements of those paragraphs where the Regional Administrator finds that:

(1) a State has failed to issue a treatment determination by the applicable deadlines contained in § 141.81,

(2) a State has abused its discretion in a substantial number of cases or in

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cases affecting a substantial population, or

(3) the technical aspects of a State's determination would be indefensible in an expected Federal enforcement action taken against a system.

§ 141.83 Source water treatment requirements.

Systems shall complete the applicable source water monitoring and treatment requirements (described in the referenced portions of paragraph (b) of this section, and in §§ 141.86, and 141.88) by the following deadlines.

(a) *Deadlines for Completing Source Water Treatment Steps—(1) Step 1:* A system exceeding the lead or copper action level shall complete lead and copper source water monitoring (§ 141.86(b)) and make a treatment recommendation to the State (§ 141.83(b)(1)) within 6 months after exceeding the lead or copper action level.

(2) *Step 2:* The State shall make a determination regarding source water treatment (§ 141.83(b)(2)) within 6 months after submission of monitoring results under step 1.

(3) *Step 3:* If the State requires installation of source water treatment, the system shall install the treatment (§ 141.83(b)(3)) within 24 months after completion of step 2.

(4) *Step 4:* The system shall complete follow-up tap water monitoring (§ 141.86(d)(2) and source water monitoring (§ 141.88(c)) within 36 months after completion of step 2.

(5) *Step 5:* The State shall review the system's installation and operation of source water treatment and specify maximum permissible source water levels (§ 141.83(b)(4)) within 6 months after completion of step 4.

(6) *Step 6:* The system shall operate in compliance with the State-specified maximum permissible lead and copper source water levels (§ 141.83(b)(4)) and continue source water monitoring (§ 141.88(d)).

(b) *Description of Source Water Treatment Requirements—(1) System treatment recommendation.* Any system which exceeds the lead or copper action level shall recommend in writing to the State the installation and operation of one of the source water treatments listed in paragraph (b)(2) of this section. A system may recommend that no treatment be installed based upon a demonstration that source water treatment is not necessary to minimize lead and copper levels at users' taps.

(2) *State determination regarding source water treatment.* The State shall complete an evaluation of the results of all source water samples submitted by the water system to determine whether source water treatment is necessary to minimize lead or copper levels in water delivered to users' taps. If the State determines that treatment is needed, the State shall either require installation and operation of the source water treatment recommended by the system (if any) or require the installation and operation of another source water treatment from among the following: ion exchange, reverse osmosis, lime softening or coagulation/filtration. If the State requests additional information to aid in its review, the water system shall provide the information by the date specified by the State in its request. The State shall notify the system in writing of its determination and set forth the basis for its decision.

(3) *Installation of source water treatment.* Each system shall properly install and operate the source water treatment designated by the State under paragraph (b)(2) of this section.

(4) *State review of source water treatment and specification of maximum permissible source water levels.* The State shall review the source water samples taken by the water system both before and after the system installs source water treatment, and determine whether the system has properly installed and operated the source water treatment designated by the State. Based upon its review, the State shall designate the maximum permissible lead and copper concentrations for finished water entering the distribution system. Such levels shall reflect the contaminant removal capability of the treatment properly operated and maintained. The State shall notify the system in writing and explain the basis for its decision.

(5) *Continued operation and maintenance.* Each water system shall maintain lead and copper levels below the maximum permissible concentrations designated by the State at each sampling point monitored in accordance with § 141.86. The system is out of compliance with this paragraph if the level of lead or copper at any sampling point is greater than the maximum permissible concentration designated by the State.

(6) *Modification of State treatment decisions.* Upon its own initiative or in response to a request by a water system or other interested party, a State may modify its determination of the source water treatment under paragraph (b)(2) of this section, or maximum permissible lead and copper concentrations for finished water entering the distribution system under paragraph (b)(4) of this section. A request for modification by a system or other interested party shall be in writing, explain why the modification is appropriate, and provide supporting documentation. The State may modify its determination where it concludes that such change is necessary to ensure that the system continues to minimize lead and copper concentrations in source water. A revised determination shall be made in writing, set forth the new treatment requirements, explain the basis for the State's decision, and provide an implementation schedule for completing the treatment modifications.

(7) *Treatment decisions by EPA in lieu of the State.* Pursuant to the procedures in § 142.19, the EPA Regional Administrator may review treatment determinations made by a State under paragraphs (b) (2), (4), or (6) of this section and issue Federal treatment determinations consistent with the requirements of those paragraphs where the Administrator finds that:

(i) A State has failed to issue a treatment determination by the applicable deadlines contained in Section 141.83(a),

(ii) A state has abused its discretion in a substantial number of cases or in cases affecting a substantial population, or

(iii) The technical aspects of a State's determination would be indefensible in an expected Federal enforcement action taken against a system.

§ 141.84 Lead service line replacement requirements.

(a) Systems that fail to meet the lead action level in tap samples taken pursuant to § 141.86(d)(2), after installing corrosion control and/or source water treatment (whichever sampling occurs later), shall replace lead service lines in accordance with the requirements of this section. If a system is in violation of § 141.81or § 141.83 for failure to install source water or corrosion control treatment, the State may require the system to commence lead service line replacement under this section after the date by which the system was required to conduct monitoring under § 141.86(d)(2) has passed.

(b) A system shall replace annually at least 7 percent of the initial number of lead service lines in its distribution system. The initial number of lead service lines is the number of lead lines in place at the time the replacement program begins. The system shall identify the initial number of lead service lines in its distribution system based upon a materials evaluation, including the evaluation required under § 141.86(a). The first year of lead service line replacement shall begin on the date the action level was exceeded in tap

sampling referenced in paragraph (a) of this section.

(c) A system is not required to replace an individual lead service line if the lead concentration in all service line samples from that line, taken pursuant to § 141.86(b)(3), is less than or equal to 0.015 mg/L.

(d) A water system shall replace the entire service line (up to the building inlet) unless it demonstrates to the satisfaction of the State under paragraph (e) of this section that it controls less than the entire service line. In such cases, the system shall replace the portion of the line which the State determines is under the system's control. The system shall notify the user served by the line that the system will replace the portion of the service line under its control and shall offer to replace the building owner's portion of the line, but is not required to bear the cost of replacing the building owner's portion of the line. For buildings where only a portion of the lead service line is replaced, the water system shall inform the resident(s) that the system will collect a first flush tap water sample after partial replacement of the service line is completed if the resident(s) so desire. In cases where the resident(s) accept the offer, the system shall collect the sample and report the results to the resident(s) within 14 days following partial lead service line replacement.

(e) A water system is presumed to control the entire lead service line (up to the building inlet) unless the system demonstrates to the satisfaction of the State, in a letter submitted under § 141.90(e)(4), that it does not have any of the following forms of control over the entire line (as defined by state statutes, municipal ordinances, public service contracts or other applicable legal authority): authority to set standards for construction, repair, or maintenance of the line, authority to replace, repair, or maintain the service line, or ownership of the service line. The State shall review the information supplied by the system and determine whether the system controls less than the entire service line and, in such cases, shall determine the extent of the system's control. The State's determination shall be in writing and explain the basis for its decision.

(f) The State shall require a system to replace lead service lines on a shorter schedule than that required by this section, taking into account the number of lead service lines in the system, where such a shorter replacement schedule is feasible. The State shall make this determination in writing and notify the system of its finding within 6 months after the system is triggered into lead service line replacement based on monitoring referenced in paragraph (a) of this section.

(g) Any system may cease replacing lead service lines whenever lead service line samples collected pursuant to § 141.86(d)(3) meet the lead action level during each of two consecutive monitoring periods and the system submits the results to the State. If the lead service line samples in any such water system thereafter exceeds the lead action level, the system shall recommence replacing lead service lines, pursuant to paragraph (b) in this section.

(h) To demonstrate compliance with paragraphs (a) through (d) of this section, a system shall report to the State the information specified in § 141.90(e).

§ 141.85 Public education and supplemental monitoring requirements.

A water system that exceeds the lead action level based on tap water samples collected in accordance with § 141.86 shall deliver the public education materials contained in paragraphs (a) and (b) of this section in accordance with the requirements in paragraph (c) of this section.

(a) Content of written materials. A water system shall include the following text in all of the printed materials it distributes through its lead public education program. Any additional information presented by a system shall be consistent with the information below and be in plain English that can be understood by laypersons.

(1) *Introduction.* The United States Environmental Protection Agency (EPA) and [insert name of water supplier] are concerned about lead in your drinking water. Although most homes have very low levels of lead in their drinking water, some homes in the community have lead levels above the EPA action level of 15 parts per billion (ppb), or 0.015 milligrams of lead per liter of water (mg/L). Under Federal law we are required to have a program in place to minimize lead in your drinking water by [insert date when corrosion control will be completed for your system]. This program includes corrosion control treatment, source water treatment, and public education. We are also required to replace each lead service line that we control if the line contributes lead concentrations of 15 ppb or more after we have completed the comprehensive treatment program. If you have any questions about how we are carrying out the requirements of the lead regulation please give us a call at [insert water system's phone number]. This brochure explains the simple steps you can take to protect you and your family by reducing your exposure to lead in drinking water.

(2) *Health effects of lead.* Lead is a common metal found throughout the environment in lead-based paint, air, soil, household dust, food, certain types of pottery porcelain and pewter, and water. Lead can pose a significant risk to your health if too much of it enters your body. Lead builds up in the body over many years and can cause damage to the brain, red blood cells and kidneys. The greatest risk is to young children and pregnant women. Amounts of lead that won't hurt adults can slow down normal mental and physical development of growing bodies. In addition, a child at play often comes into contact with sources of lead contamination—like dirt and dust—that rarely affect an adult. It is important to wash children's hands and toys often, and to try to make sure they only put food in their mouths.

(3) *Lead in Drinking Water.* (i) Lead in drinking water, although rarely the sole cause of lead poisoning, can significantly increase a person's total lead exposure, particularly the exposure of infants who drink baby formulas and concentrated juices that are mixed with water. The EPA estimates that drinking water can make up 20 percent or more of a person's total exposure to lead.

(ii) Lead is unusual among drinking water contaminants in that it seldom occurs naturally in water supplies like rivers and lakes. Lead enters drinking water primarily as a result of the corrosion, or wearing away, of materials containing lead in the water distribution system and household plumbing. These materials include lead-based solder used to join copper pipe, brass and chrome plated brass faucets, and in some cases, pipes made of lead that connect your house to the water main (service lines). In 1986, Congress banned the use of lead solder containing greater than 0.2% lead, and restricted the lead content of faucets, pipes and other plumbing materials to 8.0%.

(iii) When water stands in lead pipes or plumbing systems containing lead for several hours or more, the lead may dissolve into your drinking water. This means the first water drawn from the tap in the morning, or later in the afternoon after returning from work or school, can contain fairly high levels of lead.

(4) *Steps You Can Take in the Home To Reduce Exposure To Lead in Drinking Water.* (i) Despite our best efforts mentioned earlier to control water corrosivity and remove lead from the water supply, lead

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levels in some homes or buildings can be high. To find out whether you need to take action in your own home, have your drinking water tested to determine if it contains excessive concentrations of lead. Testing the water is essential because you cannot see, taste, or smell lead in drinking water. Some local laboratories that can provide this service are listed at the end of this booklet. For more information on having your water tested, please call [insert phone number of water system].

(ii) If a water test indicates that the drinking water drawn from a tap in your home contains lead above 15 ppb, then you should take the following precautions:

(A) Let the water run from the tap before using it for drinking or cooking any time the water in a faucet has gone unused for more than six hours. The longer water resides in your home's plumbing the more lead it may contain. Flushing the tap means running the cold water faucet until the water gets noticeably colder, usually about 15–30 seconds. If your house has a lead service line to the water main, you may have to flush the water for a longer time, perhaps one minute, before drinking. Although toilet flushing or showering flushes water through a portion of your home's plumbing system, you still need to flush the water in each faucet before using it for drinking or cooking. Flushing tap water is a simple and inexpensive measure you can take to protect your family's health. It usually uses less than one or two gallons of water and costs less than [insert a cost estimate based on flushing two times a day for 30 days] per month. To conserve water, fill a couple of bottles for drinking water after flushing the tap, and whenever possible use the first flush water to wash the dishes or water the plants. If you live in a high-rise building, letting the water flow before using it may not work to lessen your risk from lead. The plumbing systems have more, and sometimes larger pipes than smaller buildings. Ask your landlord for help in locating the source of the lead and for advice on reducing the lead level.

(B) Try not to cook with, or drink water from the hot water tap. Hot water can dissolve more lead more quickly than cold water. If you need hot water, draw water from the cold tap and heat it on the stove.

(C) Remove loose lead solder and debris from the plumbing materials installed in newly constructed homes, or homes in which the plumbing has recently been replaced, by removing the faucet strainers from all taps and running the water from 3 to 5 minutes. Thereafter, periodically remove the strainers and flush out any debris that has accumulated over time.

(D) If your copper pipes are joined with lead solder that has been installed illegally since it was banned in 1986, notify the plumber who did the work and request that he or she replace the lead solder with lead-free solder. Lead solder looks dull gray, and when scratched with a key looks shiny. In addition, notify your State [insert name of department responsible for enforcing the Safe Drinking Water Act in your State] about the violation.

(E) Determine whether or not the service line that connects your home or apartment to the water main is made of lead. The best way to determine if your service line is made of lead is by either hiring a licensed plumber to inspect the line or by contacting the plumbing contractor who installed the line. You can identify the plumbing contractor by checking the city's record of building permits which should be maintained in the files of the [insert name of department that issues building permits]. A licensed plumber can at the same time check to see if your homes's plumbing contains lead solder, lead pipes, or pipe fittings that contain lead. The public water system that delivers water to your home should also maintain records of the materials located in the distribution system. If the service line that connects your dwelling to the water main contributes more than 15 ppb to drinking water, after our comprehensive treatment program is in place, we are required to replace the line. If the line is only partially controlled by the [insert name of the city, county, or water system that controls the line], we are required to provide you with information on how to replace your portion of the service line, and offer to replace that portion of the line at your expense and take a follow-up tap water sample within 14 days of the replacement. Acceptable replacement alternatives include copper, steel, iron, and plastic pipes.

(F) Have an electrician check your wiring. If grounding wires from the electrical system are attached to your pipes, corrosion may be greater. Check with a licensed electrician or your local electrical code to determine if your wiring can be grounded elsewhere. DO NOT attempt to change the wiring yourself because improper grounding can cause electrical shock and fire hazards.

(iii) The steps described above will reduce the lead concentrations in your drinking water. However, if a water test indicates that the drinking water coming from your tap contains lead concentrations in excess of 15 ppb after flushing, or after we have completed our actions to minimize lead levels, then you may want to take the following additional measures:

(A) Purchase or lease a home treatment device. Home treatment devices are limited in that each unit treats only the water that flows from the faucet to which it is connected, and all of the devices require periodic maintenance and replacement. Devices such as reverse osmosis systems or distillers can effectively remove lead from your drinking water. Some activated carbon filters *may* reduce lead levels at the tap, however all lead reduction claims should be investigated. Be sure to check the actual performance of a specific home treatment device before and after installing the unit.

(B) Purchase bottled water for drinking and cooking.

(iv) You can consult a variety of sources for additional information. Your family doctor or pediatrician can perform a blood test for lead and provide you with information about the health effects of lead. State and local government agencies that can be contacted include:

(A) [insert the name of city or county department of public utilities] at [insert phone number] can provide you with information about your community's water supply, and a list of local laboratories that have been certified by EPA for testing water quality;

(B) [insert the name of city of county department that issues building permits] at [insert phone number] can provide you with information about building permit records that should contain the names of plumbing contractors that plumbed your home; and

(C) [insert the name of the State Department of Public Health] at [insert phone number] or the [insert the name of the city or county health department] at [insert phone number] can provide you with information about the health effects of lead and how you can have your child's blood tested.

(v) The following is a list of some State approved laboratories in your area that you can call to have your water tested for lead. [Insert names and phone numbers of at least two laboratories].

(b) *Content of broadcast materials.* A water system shall include the following information in all public service announcements submitted under its lead public education program to television and radio stations for broadcasting:

(1) Why should everyone want to know the facts about lead and drinking water? Because unhealthy amounts of lead can enter drinking water through the plumbing in your home. That's why I urge you to do what I did. I had my water tested for [insert free or $ per sample]. You can contact the [insert the name of the city or water system] for information on testing and on simple ways to reduce your exposure to lead in drinking water.

(2) To have your water tested for lead, or to get more information about this public health concern, please call [insert the phone number of the city or water system].

(c) *Delivery of a public education program.* (1) In communities where a significant proportion of the population speaks a language other than English, public education materials shall be communicated in the appropriate language(s).

(2) A community water system that fails to meet the lead action level on the basis of tap water samples collected in accordance with § 141.86 shall, within 60 days:

(i) insert notices in each customer's water utility bill containing the information in paragraph (a) of this section, along with the following alert on the water bill itself in large print: "SOME HOMES IN THIS COMMUNITY HAVE ELEVATED LEAD LEVELS IN THEIR DRINKING WATER. LEAD CAN POSE A SIGNIFICANT RISK TO YOUR HEALTH. PLEASE READ THE ENCLOSED NOTICE FOR FURTHER INFORMATION."

(ii) submit the information in paragraph (a) of this section to the editorial departments of the major daily and weekly newspapers circulated throughout the community.

(iii) deliver pamphlets and/or brochures that contain the public education materials in paragraphs (a) (2) and (4) of this section to facilities and organizations, including the following:

(A) public schools and/or local school boards;

(B) city or county health department;

(C) Women, Infants, and Children and/or Head Start Program(s) whenever available;

(D) public and private hospitals and/or clinics;

(E) pediatricians;

(F) family planning clinics; and

(G) local welfare agencies.

(iv) submit the public service announcement in paragraph (b) of this section to at least five of the radio and television stations with the largest audiences that broadcast to the community served by the water system.

(3) A community water system shall repeat the tasks contained in paragraphs (c)(2) (i), (ii) and (iii) of this section every 12 months, and the tasks contained in paragraphs (c)(2)(iv) of this section every 6 months for as long as the system exceeds the lead action level.

(4) Within 60 days after it exceeds the lead action level, a non-transient non-community water system shall deliver the public education materials contained in paragraphs (a) (1), (2), and (4) of this section as follows:

(i) post informational posters on lead in drinking water in a public place or common area in each of the buildings served by the system; and

(ii) distribute informational pamphlets and/or brochures on lead in drinking water to each person served by the non-transient non-community water system.

(5) A non-transient non-community water system shall repeat the tasks contained in paragraph (c)(4) of this section at least once during each calendar year in which the system exceeds the lead action level.

(6) A water system may discontinue delivery of public education materials if the system has met the lead action level during the most recent six-month monitoring period conducted pursuant to § 141.86. Such a system shall recommence public education in accordance with this section if it subsequently exceeds the lead action level during any monitoring period.

(d) Supplemental monitoring and notification of results.

A water system that fails to meet the lead action level on the basis of tap samples collected in accordance with § 141.86 shall offer to sample the tap water of any customer who requests it. The system is not required to pay for collecting or analyzing the sample, nor is the system required to collect and analyze the sample itself.

§ 141.86 Monitoring requirements for lead and copper in tap water.

(a) *Sample site location.* (1) By the applicable date for commencement of monitoring under paragraph (d)(1) of this section, each water system shall complete a materials evaluation of its distribution system in order to identify a pool of targeted sampling sites that meets the requirements of this section, and which is sufficiently large to ensure that the water system can collect the number of lead and copper tap samples required in paragraph (c) of this section. All sites from which first draw samples are collected shall be selected from this pool of targeted sampling sites. Sampling sites may not include faucets that have point-of-use or point-of-entry treatment devices designed to remove inorganic contaminants.

(2) A water system shall use the information on lead, copper, and galvanized steel that it is required to collect under § 141.42(d) of this part [special monitoring for corrosivity characteristics] when conducting a materials evaluation. When an evaluation of the information collected pursuant to § 141.42(d) is insufficient to locate the requisite number of lead and copper sampling sites that meet the targeting criteria in paragraph (a) of this section, the water system shall review the sources of information listed below in order to identify a sufficient number of sampling sites. In addition, the system shall seek to collect such information where possible in the course of its normal operations (e.g., checking service line materials when reading water meters or performing maintenance activities):

(i) all plumbing codes, permits, and records in the files of the building department(s) which indicate the plumbing materials that are installed within publicly and privately owned structures connected to the distribution system;

(ii) all inspections and records of the distribution system that indicate the material composition of the service connections that connect a structure to the distribution system; and

(iii) all existing water quality information, which includes the results of all prior analyses of the system or individual structures connected to the system, indicating locations that may be particularly susceptible to high lead or copper concentrations.

(3) The sampling sites selected for a community water system's sampling pool ("tier 1 sampling sites") shall consist of single family structures that:

(i) contain copper pipes with lead solder installed after 1982 or contain lead pipes; and/or

(ii) are served by a lead service line.

When multiple-family residences comprise at least 20 percent of the structures served by a water system, the system may include these types of structures in its sampling pool.

(4) Any community water system with insufficient tier 1 sampling sites shall complete its sampling pool with "tier 2 sampling sites", consisting of buildings, including multiple-family residences that:

(i) contain copper pipes with lead solder installed after 1982 or contain lead pipes; and/or

(ii) are served by a lead service line.

(5) Any community water system with insufficient tier 1 and tier 2 sampling sites shall complete its sampling pool with "tier 3 sampling sites", consisting of single family structures that contain copper pipes with lead solder installed before 1983.

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(6) The sampling sites selected for a non-transient noncommunity water system ("tier 1 sampling sites") shall consist of buildings that:

(i) contain copper pipes with lead solder installed after 1982 or contain lead pipes; and/or

(ii) are served by a lead service line.

(7) A non-transient non-community water system with insufficient tier 1 sites that meet the targeting criteria in paragraph (a)(6) of this section shall complete its sampling pool with sampling sites that contain copper pipes with lead solder installed before 1983.

(8) Any water system whose sampling pool does not consist exclusively of tier 1 sites shall demonstrate in a letter submitted to the State under § 141.90(a)(2) why a review of the information listed in paragraph (a)(2) of this section was inadequate to locate a sufficient number of tier 1 sites. Any community water system which includes tier 3 sampling sites in its sampling pool shall demonstrate in such a letter why it was unable to locate a sufficient number of tier 1 and tier 2 sampling sites.

(9) Any water system whose distribution system contains lead service lines shall draw 50 percent of the samples it collects during each monitoring period from sites that contain lead pipes, or copper pipes with lead solder, and 50 percent of those samples from sites served by a lead service line. A water system that cannot identify a sufficient number of sampling sites served by a lead service line shall demonstrate in a letter submitted to the State under § 141.90(a)(4) why the system was unable to locate a sufficient number of such sites. Such a water system shall collect lead service line samples from all of the sites identified as being served by such lines.

(b) *Sample collection methods.* (1) All tap samples for lead and copper collected in accordance with this subpart, with the exception of lead service line samples collected under § 141.84(c), shall be first draw samples.

(2) Each first-draw tap sample for lead and copper shall be one liter in volume and have stood motionless in the plumbing system of each sampling site for at least six hours. First draw samples from residential housing shall be collected from the cold-water kitchen tap or bathroom sink tap. First-draw samples from a non-residential building shall be collected at an interior tap from which water is typically drawn for consumption. First draw samples may be collected by the system or the system may allow residents to collect first draw samples after instructing the residents of the sampling procedures specified in this paragraph. If a system allows residents to perform sampling, the system may not challenge, based on alleged errors in sample collection, the accuracy of sampling results.

(3) Each service line sample shall be one liter in volume and have stood motionless in the lead service line for at least six hours. Lead service line samples shall be collected in one of the following three ways:

(i) at the tap after flushing the volume of water between the tap and the lead service line. The volume of water shall be calculated based on the interior diameter and length of the pipe between the tap and the lead service line;

(ii) tapping directly into the lead service line; or

(iii) if the sampling site is a building constructed as a single-family residence, allowing the water to run until there is a significant change in temperature which would be indicative of water that has been standing in the lead service line.

(4) A water system shall collect each first draw tap sample from the same sampling site from which it collected a previous sample. If, for any reason, the water system cannot gain entry to a sampling site in order to collect a follow-up tap sample, the system may collect the follow-up tap sample from another sampling site in its sampling pool as long as the new site meets the same targeting criteria, and is within reasonable proximity of the original site.

(c) *Number of samples.* Water systems shall collect at least one sample during each monitoring period specified in paragraph (d) of this section from the number of sites listed in the first column below ("standard monitoring"). A system conducting reduced monitoring under paragraph (d)(4) of this section may collect one sample from the number of sites specified in the second column below during each monitoring period specified in paragraph (d)(4) of this section.

System size (No. people served)	No. of sites (standard monitoring)	No. of sites (reduced monitoring)
>100,000	100	50
10,001–100,000	60	30
3,301 to 10,000	40	20
501 to 3,300	20	10
101 to 500	10	5
<100	5	5

(d) *Timing of monitoring*—(1) *Initial tap sampling.*

The first six-month monitoring period for small, medium-size and large systems shall begin on the following dates:

System size (No. people served)	First six-month monitoring period begins on
>50,000	January 1, 1992.
3,301 to 50,000	July 1, 1992.
<3,300	July 1, 1993.

(i) All large systems shall monitor during two consecutive six-month periods.

(ii) All small and medium-size systems shall monitor during each six-month monitoring period until:

(A) the system exceeds the lead or copper action level and is therefore required to implement the corrosion control treatment requirements under § 141.81, in which case the system shall continue monitoring in accordance with paragraph (d)(2) of this section, or

(B) the system meets the lead or copper action levels during two consecutive six-month monitoring periods, in which case the system may reduce monitoring in accordance with paragraph (d)(4) of this section.

(2) *Monitoring after installation of corrosion control and source water treatment.* (i) Any large system which installs optimal corrosion control treatment pursuant to § 141.81(d)(4) shall monitor during two consecutive six-month monitoring periods by the date specified in § 141.81(d)(5).

(ii) Any small or medium-size system which installs optimal corrosion control treatment pursuant to § 141.81(e)(5) shall monitor during two consecutive six-month monitoring periods by the date specified in § 141.81(e)(6).

(iii) Any system which installs source water treatment pursuant to § 141.83(a)(3) shall monitor during two consecutive six-month monitoring periods by the date specified in § 141.83(a)(4).

(3) *Monitoring after State specifies water quality parameter values for optimal corrosion control.* After the State specifies the values for water quality control parameters under § 141.82(f), the system shall monitor during each subsequent six-month monitoring period, with the first monitoring period to begin on the date the State specifies the optimal values under § 141.82(f).

(4) *Reduced monitoring.* (i) A small or medium-size water system that meets the lead and copper action levels during each of two consecutive six-month monitoring periods may reduce the number of samples in accordance with paragraph (c) of this section, and reduce the frequency of sampling to once per year.

(ii) Any water system that maintains the range of values for the water quality control parameters reflecting optimal corrosion control treatment specified by the State under § 141.82(f) during each of two consecutive six-month monitoring periods may request that the State allow the system to reduce the frequency of monitoring to once per year and to reduce the number of lead and copper samples in accordance with paragraph (c) of this section. The State shall review the information submitted by the water system and shall make its decision in writing, setting forth the basis for its determination. The State shall review, and where appropriate, revise its determination when the system submits new monitoring or treatment data, or when other data relevant to the number and frequency of tap sampling becomes available.

(iii) A small or medium-size water system that meets the lead and copper action levels during three consecutive years of monitoring may reduce the frequency of monitoring for lead and copper from annually to once every three years. Any water system that maintains the range of values for the water quality control parameters reflecting optimal corrosion control treatment specified by the State under § 141.82(f) during three consecutive years of monitoring may request that the State allow the system to reduce the frequency of monitoring from annually to once every three years. The State shall review the information submitted by the water system and shall make its decision in writing, setting forth the basis for its determination. The State shall review, and where appropriate, revise its determination when the system submits new monitoring or treatment data, or when other data relevant to the number and frequency of tap sampling becomes available.

(iv) A water system that reduces the number and frequency of sampling shall collect these samples from sites included in the pool of targeted sampling sites identified in paragraph (a) of this section. Systems sampling annually or less frequently shall conduct the lead and copper tap sampling during the months of June, July, August or September.

(v) A small or medium-size water system subject to reduced monitoring that exceeds the lead or copper action level shall resume sampling in accordance with paragraph (d)(3) of this section and collect the number of samples specified for standard monitoring under paragraph (c) of this section. Any water system subject to reduced monitoring frequency that fails to operate within the range of values for the water quality control parameters specified by the State under § 141.82(f) shall resume tap water sampling in accordance with paragraph (d)(3) of this section and collect the number of samples specified for standard monitoring under paragraph (c) of this section.

(e) *Additional monitoring by systems.* The results of any monitoring conducted in addition to the minimum requirements of this section shall be considered by the system and the State in making any determinations (i.e., calculating the 90th percentile lead or copper level) under this subpart.

§ 141.87 Monitoring requirements for water quality parameters.

All large water systems and all small and medium-size systems that exceed the lead or copper action level shall monitor water quality parameters in addition to lead and copper in accordance with this section. The requirements of this section are summarized in the table at the end of this section.

(a) *General Requirements*—(1) *Sample collection methods.* (i) Tap samples shall be representative of water quality throughout the distribution system taking into account the number of persons served, the different sources of water, the different treatment methods employed by the system, and seasonal variability. Tap sampling under this section is not required to be conducted at taps targeted for lead and copper sampling under § 141.86(a). [Note: Systems may find it convenient to conduct tap sampling for water quality parameters at sites used for coliform sampling under 40 CFR § 141.21.]

(ii) Samples collected at the entry point(s) to the distribution system shall be from locations representative of each source after treatment. If a system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions (i.e., when water is representative of all sources being used).

(2) *Number of samples.* (i) Systems shall collect two tap samples for applicable water quality parameters during each monitoring period specified under paragraphs (b) through (e) of this section from the following number of sites.

System size (No. people served)	No. of sites for water quality parameters
>100,000	25
10,0001–100,000	10
3,301 to 10,000	3
501 to 3,300	2
101 to 500	1
<100	1

(ii) Systems shall collect two samples for each applicable water quality parameter at each entry point to the distribution system during each monitoring period specified in paragraph (b) of this section. During each monitoring period specified in paragraphs (c)–(e) of this section, systems shall collect one sample for each applicable water quality parameter at each entry point to the distribution system.

(b) *Initial Sampling.* All large water systems shall measure the applicable water quality parameters as specified below at taps and at each entry point to the distribution system during each six-month monitoring period specified in § 141.86(d)(1). All small and medium-size systems shall measure the applicable water quality parameters at the locations specified below during each six-month monitoring period specified in § 141.86(d)(1) during which the system exceeds the lead or copper action level.

(1) At taps:

(i) pH;

(ii) Alkalinity;

(iii) Orthophosphate, when an inhibitor containing a phosphate compound is used;

(iv) Silica, when an inhibitor containing a silicate compound is used;

(v) calcium;

(vi) conductivity; and

(vii) water temperature.

(2) At each entry point to the distribution system: all of the applicable parameters listed in paragraph (b)(1) of this section.

(c) *Monitoring after installation of corrosion control.* Any large system which installs optimal corrosion control treatment pursuant to § 141.81(d)(4) shall measure the water quality parameters at the locations and frequencies specified below during each six-month monitoring period specified in § 141.86(d)(2)(i). Any small or medium-size system which installs optimal corrosion control treatment shall conduct such monitoring during each six-month monitoring period specified in § 141.86(d)(2)(ii) in which the system exceeds the lead or copper action level.

(1) At taps, two samples for:

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(i) pH;
(ii) Alkalinity;
(iii) Orthophosphate, when an inhibitor containing a phosphate compound is used;
(iv) Silica, when an inhibitor containing a silicate compound is used;
(v) Calcium, when calcium carbonate stabilization is used as part of corrosion control.

(2) At each entry point to the distribution system, one sample every two weeks (bi-weekly) for:
(i) pH;
(ii) When alkalinity is adjusted as part of optimal corrosion control, a reading of the dosage rate of the chemical used to adjust alkalinity, and the alkalinity concentration; and
(iii) When a corrosion inhibitor is used as part of optimal corrosion control, a reading of the dosage rate of the inhibitor used, and the concentration of orthophosphate or silica (whichever is applicable).

(d) *Monitoring after State specifies water quality parameter values for optimal corrosion control.* After the State specifies the values for applicable water quality control parameters reflecting optimal corrosion control treatment under § 141.82(f), all large systems shall measure the applicable water quality parameters in accordance with paragraph (c) of this section during each monitoring period specified in § 141.86(d)(3). Any small or medium-size system shall conduct such monitoring during each monitoring period specified in § 141.86(d)(3) in which the system exceeds the lead or copper action level. The system may take a confirmation sample for any water quality parameter value no later than 3 days after the first sample. If a confirmation sample is taken, the result must be averaged with the first sampling result and the average must be used for any compliance determinations under § 141.82(g). States have discretion to delete results of obvious sampling errors from this calculation.

(e) *Reduced monitoring.* (1) Any water system that maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment during each of two consecutive six-month monitoring periods under paragraph (d) of this section shall continue monitoring at the entry point(s) to the distribution system as specified in paragraph (c)(2) of this section. Such system may collect two tap samples for applicable water quality parameters from the following reduced number of sites during each six-month monitoring period.

System size (No. of people served)	Reduced No. of sites for water quality parameters
>100,000	10
10,001 to 100,000	7
3,301 to 10,000	3
501 to 3,300	2
101 to 500	1
≤100	1

(2) Any water system that maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the State under § 141.82(f) during three consecutive years of monitoring may reduce the frequency with which it collects the number of tap samples for applicable water quality parameters specified in this paragraph (e)(1) of this section from every six months to annually.

(3) A water system that conducts sampling annually shall collect these samples evenly throughout the year so as to reflect seasonal variability.

(4) Any water system subject to reduced monitoring frequency that fails to operate within the range of values for the water quality parameters specified by the State under § 141.82(f) shall resume tap water sampling in accordance with the number and frequency requirements in paragraph (c) of this section.

(f) *Additional monitoring by systems.* The results of any monitoring conducted in addition to the minimum requirements of this section shall be considered by the system and the State in making any determinations (i.e., determining concentrations of water quality parameters) under this section or § 141.82.

SUMMARY OF MONITORING REQUIREMENTS FOR WATER QUALITY PARAMETERS [1]

Monitoring Period	Parameters [2]	Location	Frequency
Initial Monitoring	pH, alkalinity, orthophosphate or silica [3], calcium, conductivity, temperature.	Taps and at entry point(s) to distribution system.	Every 6 months
After Installation of Corrosion Control	pH, alkalinity, orthophosphate or silica [3], calcium [4]	Taps	Every 6 months
	pH, alkalinity dosage rate and concentration (if alkalinity adjusted as part of corrosion control), inhibitor dosage rate and inhibitor residual [5].	Entry point(s) to distribution system.	Biweekly
After State Specifies Parameter Values For Optimal Corrosion Control.	pH, alkalinity, orthophosphate or silica [3], calcium [4]	Taps	Every 6 months
	pH, alkalinity dosage rate and concentration (if alkalinity adjusted as part of corrosion control), inhibitor dosage rate and inhibitor residual [5].	Entry point(s) to distribution system.	Biweekly
Reduced Monitoring	pH, alkalinity, orthophosphate or silica [3], calcium [4]	Taps	Every 6 months at a reduced number of sites

SUMMARY OF MONITORING REQUIREMENTS FOR WATER QUALITY PARAMETERS [1]—Continued

Monitoring Period	Parameters [2]	Location	Frequency
	pH, alkalinity dosage rate and concentration (if alkalinity adjusted as part of corrosion control), inhibitor dosage rate and inhibitor residual [5].	Entry point(s) to distribution system.	Biweekly

[1] Table is for illustrative purposes; consult the text of this section for precise regulatory requirements.
[2] Small and medium-size systems have to monitor for water quality parameters only during monitoring periods in which the system exceeds the lead or copper action level.
[3] Orthophosphate must be measured only when an inhibitor containing a phosphate compound is used. Silica must be measured only when an inhibitor containing silicate compound is used.
[4] Calcium must be measured only when calcium carbonate stabilization is used as part of corrosion control.
[5] Inhibitor dosage rates and inhibitor residual concentrations (orthophosphate or silica) must be measured only when an inhibitor is used.

§ 141.88 Monitoring requirements for lead and copper in source water.

(a) *Sample location, collection methods, and number of samples.* (1) A water system that fails to meet the lead or copper action level on the basis of tap samples collected in accordance with § 141.86 shall collect lead and copper source water samples in accordance with the requirements regarding sample location, number of samples, and collection methods specified in § 141.23(a)(1)–(4) (inorganic chemical sampling). (Note: The timing of sampling for lead and copper shall be in accordance with paragraphs (b) and (c) of this section, and not dates specified in § 141.23(a)(1) and (2)).

(2) Where the results of sampling indicate an exceedance of maximum permissible source water levels established under § 141.83(b)(4), the State may require that one additional sample be collected as soon as possible after the initial sample was taken (but not to exceed two weeks) at the same sampling point. If a State-required confirmation sample is taken for lead or copper, then the results of the initial and confirmation sample shall be averaged in determining compliance with the State-specified maximum permissible levels. Any sample value below the detection limit shall be considered to be zero. Any value above the detection limit but below the PQL shall either be considered as the measured value or be considered one-half the PQL.

(b) *Monitoring frequency after system exceeds tap water action level.* Any system which exceeds the lead or copper action level at the tap shall collect one source water sample from each entry point to the distribution system within six months after the exceedance.

(c) *Monitoring frequency after installation of source water treatment.* Any system which installs source water treatment pursuant to § 141.83(a)(2) shall collect an additional source water sample from each entry point to the distribution system during two consecutive six-month monitoring periods by the deadline specified in § 141.83(a)(4).

(d) *Monitoring frequency after State specifies maximum permissible source water levels or determines that source water treatment is not needed.* (1) A system shall monitor at the frequency specified below in cases where the State specifies maximum permissible source water levels under § 141.83(b)(4) or determines that the system is not required to install source water treatment under § 141.83(b)(2).

(i) A water system using only groundwater shall collect samples once during the three-year compliance period (as that term is defined in § 141.2) in effect when the applicable State determination under paragraph (d)(1) of this section is made. Such systems shall collect samples once during each subsequent compliance period.

(ii) A water system using surface water (or a combination of surface and groundwater) shall collect samples once during each year, the first annual monitoring period to begin on the date on which the applicable State determination is made under paragraph (d)(1) of this section.

(2) A system is not required to conduct source water sampling for lead and/or copper if the system meets the action level for the specific contaminant in tap water samples during the entire source water sampling period applicable to the system under paragraph (d)(1) (i) or (ii) of this section.

(e) *Reduced monitoring frequency.* (1) A water system using only groundwater which demonstrates that finished drinking water entering the distribution system has been maintained below the maximum permissible lead and/or copper concentrations specified by the State in § 141.83(b)(4) during at least three consecutive compliance periods under paragraph (d)(1) of this section may reduce the monitoring frequency for lead and/or copper to once during each nine-year compliance cycle (as that term is defined in § 141.2).

(2) A water system using surface water (or a combination of surface and ground waters) which demonstrates that finished drinking water entering the distribution system has been maintained below the maximum permissible lead and copper concentrations specified by the State in § 141.83(b)(4) for at least three consecutive years may reduce the monitoring frequency in paragraph (d)(1) of this section to once during each nine-year compliance cycle (as that term is defined in § 141.23).

(3) A water system that uses a new source of water is not eligible for reduced monitoring for lead and/or copper until concentrations in samples collected from the new source during three consecutive monitoring periods are below the maximum permissible lead and copper concentrations specified by the State in § 141.83(a)(5).

§ 141.89 Analytical methods.

(a) Analyses for lead, copper, pH, conductivity, calcium, alkalinity, orthophosphate, silica, and temperature shall be conducted using the following methods:

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ANALYTICAL METHODS

Contaminant	Methodology[9]	Reference (Method Number) EPA[1]	ASTM[2]	SM[3]	USGS[4]
Lead	Atomic absorption; furnace technique	239.2	D3559-85D	3113	
	Inductively-coupled plasma; mass spectrometry	200.8[6]			
	Atomic absorption; platform furnace technique	200.9[7]			
Copper	Atomic absorption; furnace technique	220.2	D1688-90C	3113	
	Atomic absorption; direct aspiration	220.1	D1688-90A	3111-B	
	Inductively-coupled plasma	200.7[5]		3120	
	Inductively-coupled plasma; mass spectrometry	200.8[6]			
	Atomic absorption; platform furnace	200.9[7]			
pH	Electrometric	150.1	D1293-84B	4500-H[+]	
		150.2			
Conductivity	Conductance	120.1	D1125-82B	2510	
Calcium	EDTA titrimetric	215.2	D511-88A	3500-Ca-D	
	Atomic absorption; direct aspiration	215.1	D511-88B	3111-B	
	Inductively-coupled plasma	200.7[5]		3120	
Alkalinity	Titrimetric	310.1	D1067-88B	2320	
	Electrometric titration				I-1030-85
Orthophosphate, unfiltered, no digestion or hydrolysis. Colorimetric, automated, ascorbic acid.	365.1		4500-P-F		
	Colorimetric, ascorbic acid, two reagent	365.3		4500-P-F	
	Colorimetric, ascorbic acid, two reagent	365.2	D515-88A		
	Colorimetric, phosphomolybdate; automated-segmented flow; automated discrete				I-1601-85 I-2601-85 I-2598-85
	Ion chromatography	300.0[8]	D4327-88	4110	
Silica	Colorimetric, molybdate blue; automated-segmented flow				I-1700-85 I-2700-85
	Colorimetric	370.1	D859-88		
	Molybdosilicate			4500-Si-D	
	Heteropoly blue			4500-Si-E	
	Automated method for molybdate-reactive silica			4500-Si-F	
	Inductively-coupled plasma	200.7[5]		3120	
Temperature	Thermometric			2550	

[1] The procedures 239.2, 220.2, 220.1, 150.1, 150.2, 120.1, 215.2, 215.1, 310.1, 365.1, 365.3, 365.2, and 370.1 are incorporated by reference and shall be done in accordance with "Methods for Chemical Analysis of Water and Wastes," EPA Environmental Monitoring and Support Laboratory, Cincinnati, OH (EPA-600/4-79-020), Revised March 1983, pp. 239.2-1 through 239.2-2 and metals-1 through metals-19, 220.2-1 through 220.2-2 and metals-1 through metals-19, 220.1-1 through 220.1-2 and metals-1 through metals-19, 150.1-1 through 150.1-3, 150.2-1 through 150.2-3, 120.1-1 through 120.1-3, 215.2-1 through 215.2-3, 215.1-1 through 215.1-2, 310.1-1 through 310.1-3, 365.1-1 through 365.1-9, 365.3-1 through 365.3-4, 365.2-1 through 365.2-6, and 370.1-1 through 370.1-5, respectively. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from ORD Publications, CERI, EPA, Cincinnati, OH 45268. Copies may be inspected at the United States Environmental Protection Agency, 401 M Street, SW., Room EB-15, Washington, D.C. 20460 or at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C.

[2] The procedures D3559-85D, D1688-90C, D1688-90A, D1293-84B, D1125-82B, D511-88, D1067-88B, D515-88A, D4327-88, and D859-88 are incorporated by reference and shall be done in accordance with Annual Book of ASTM Standards, Vol. 11.01, American Society for Testing and Materials, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. Copies may be inspected at the United States Environmental Protection Agency, 401 M Street, SW., Room EB-15, Washington, D.C. 20460 or at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C.

[3] The procedures 3113, 3111-B, 3120, 4500-H+, 2510, 3500-Ca-D, 3120, 2320, 4500-P-F, 4500-P-E, 4110, 4500-Si-D, 4500-Si-E, 4500-Si-F, and 2550 are incorporated by reference and shall be done in accordance with "Standard Methods for the Examination of Water and Wastewater," 17th Edition, American Public Health Association, American Water Works Association, Water Pollution Control Federation, 1989, pp. 3-32 through 3-43, 3-20 through 3-23, 3-53 through 3-63, 4-94 through 4-102, 2-57 through 2-61, 3-85 through 3-87, 2-35 through 2-39, 4-178 through 4-181, 4-117 through 4-178, 4-2 through 4-6, 4-194 through 4-197, 4-188 through 4-189, 4-189 through 4-191, and 2-50 through 2-51, respectively. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the American Water Works Association, Customer Service, 6666 West Quincy Avenue, Denver, CO 80235, Phone (303) 794-7711. Copies may be inspected at the United States Environmental Protection Agency, 401 M Street, SW., Room EB-15, Washington, D.C. 20460 or at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C.

[4] The procedures I-2601-85, I-1030-85, I-1601-85, I-2598-85, I-1700-85, and I-2700-85 are incorporated by reference and shall be done in accordance with "Methods for Determination of Inorganic Substances in Water and Fluvial Sediments," 3rd edition, U.S. Department of Interior, U.S. Geological Survey, 1989, pp. 55-56, 381-382, 383-385, 387-388, 415-416, and 417-419, respectively. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be purchased from the Books and Open-File Reports Section, U.S. Geological Survey, Federal Center, Box 25425, Denver, CO 80225. Copies may be inspected at the United States Environmental Protection Agency, 401 M Street, SW., Room EB-15, Washington, D.C. 20460 or at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C.

[5] "Determination of Metals and Trace Elements in Water and Wastes by Inductively-Coupled Plasma Atomic Emission Spectrometry," Revision 3.2, August 1990, U.S. EPA, EMSL. This document is available from U.S. EPA, EMSL, Cincinnati, OH 45268.

[6] "Determination of Trace Elements in Water and Wastes by Inductively-Coupled Plasma-Mass Spectrometry," Method 200.8, August 1990, Revision 4.3, U.S. EPA EMSL. This document is available from U.S. EPA, EMSL, Cincinnati, OH 45268.

[7] "Determination of Trace Elements by Stabilized Temperature Graphite Furnace Atomic Absorption, Spectrometry," Method 200.9, August 1990, U.S. EPA EMSL. This document is available from U.S. EPA, EMSL, Cincinnati, OH 45268.

[8] "Determination of Inorganic Ions in Water by Ion Chromatography," Method 300.0, December 1989, U.S. EPA EMSL. This document is available from U.S. EPA, EMSL, Cincinnati, OH 45268.

[9] For analyzing Lead and copper, the techniques applicable to total metals must be used and samples cannot be filtered.

(1) Analyses under this section shall only be conducted by laboratories that have been certified by EPA or the State. To obtain certification to conduct analyses for lead and copper, laboratories must:

(i) Analyze performance evaluation samples which include lead and copper provided by EPA Environmental Monitoring and Support Laboratory or equivalent samples provided by the State; and

(ii) Achieve quantitative acceptance limits as follows:

(A) Lead: ±30 percent of the actual amount in the Performance Evaluation sample when the actual amount is greater than or equal to 0.005 mg/L, and

(B) Copper: ±10 percent of the actual amount in the Performance Evaluation sample when the actual amount is greater than or equal to 0.050 mg/L;

(iii) Achieve method detection limits according to the procedures in appendix B of part 136 of this title as follows:

(A) Lead: 0.001 mg/L (only if source water compositing is done under § 141.23(a)(4)); and

(B) Copper: 0.001 mg/L or 0.020 mg/L when atomic absorption direct aspiration is used (only if source water compositing is done under § 141.23(a)(4)).

(iv) Be currently certified by EPA or the State to perform analyses to the specifications described in paragraph (a)(2) of this section.

(2) States have the authority to allow the use of previously collected monitoring data for purposes of monitoring, if the data were collected and analyzed in accordance with the requirements of this subpart.

(3) All lead levels measured between the PQL and the MDL must be either reported as measured or they can be reported as one-half the PQL (0.0025 mg/L). All levels below the lead MDL must be reported as zero.

(4) All copper levels measured between the PQL and the MDL must be either reported as measured or they can be reported as one-half the PQL (0.015 mg/L). All levels below the copper MDL must be reported as zero.

§ 141.90 Reporting requirements.

All water systems shall report all of the following information to the State in accordance with this section.

(a) *Reporting requirements for tap water monitoring for lead and copper and for water quality parameter monitoring.* (1) A water system shall report the information specified below for all tap water samples within the first 10 days following the end of each applicable monitoring period specified in § 141.86 and § 141.87 and § 141.88 (i.e., every six-months, annually, or every 3 years).

(i) the results of all tap samples for lead and copper including the location of each site and the criteria under § 141.86(a) (3), (4), (5), (6), and/or (7) under which the site was selected for the system's sampling pool;

(ii) a certification that each first draw sample collected by the water system is one-liter in volume and, to the best of their knowledge, has stood motionless in the service line, or in the interior plumbing of a sampling site, for at least six hours;

(iii) where residents collected samples, a certification that each tap sample collected by the residents was taken after the water system informed them of proper sampling procedures specified in § 141.86(b)(2);

(iv) the 90th percentile lead and copper concentrations measured from among all lead and copper tap water samples collected during each monitoring period (calculated in accordance with § 141.80(c)(3));

(v) with the exception of initial tap sampling conducted pursuant to § 141.86(d)(1), the system shall designate any site which was not sampled during previous monitoring periods, and include an explanation of why sampling sites have changed;

(vi) the results of all tap samples for pH, and where applicable, alkalinity, calcium, conductivity, temperature, and orthophosphate or silica collected under § 141.87(b)–(e);

(vii) the results of all samples collected at the entry point(s) to the distribution system for applicable water quality parameters under § 141.87(b)–(e).

(2) By the applicable date in § 141.86(d)(1) for commencement of monitoring, each community water system which does not complete its targeted sampling pool with tier 1 sampling sites meeting the criteria in § 141.86(a)(3) shall send a letter to the State justifying its selection of tier 2 and/or tier 3 sampling sites under § 141.86 (a)(4) and/or (a)(5).

(3) By the applicable date in § 141.86(d)(1) for commencement of monitoring, each non-transient, non-community water system which does not complete its sampling pool with tier 1 sampling sites meeting the criteria in § 141.86(a)(6) shall send a letter to the State justifying its selection of sampling sites under § 141.86(a)(7).

(4) By the applicable date in § 141.86(d)(1) for commencement of monitoring, each water system with lead service lines that is not able to locate the number of sites served by such lines required under § 141.86(a)(9) shall send a letter to the State demonstrating why it was unable to locate a sufficient number of such sites based upon the information listed in § 141.86(a)(2).

(5) Each water system that requests that the State reduce the number and frequency of sampling shall provide the information required under § 141.86(d)(4).

(b) *Source water monitoring reporting requirements.* (1) A water system shall report the sampling results for all source water samples collected in accordance with § 141.88 within the first 10 days following the end of each source water monitoring period (i.e., annually, per compliance period, per compliance cycle) specified in § 141.88.

(2) With the exception of the first round of source water sampling conducted pursuant to § 141.88(b), the system shall specify any site which was not sampled during previous monitoring periods, and include an explanation of why the sampling point has changed.

(c) *Corrosion control treatment reporting requirements.* By the applicable dates under § 141.81, systems shall report the following information:

(1) For systems demonstrating that they have already optimized corrosion control, information required in § 141.82(b) (2) or (3).

(2) for systems required to optimize corrosion control, their recommendation regarding optimal corrosion control treatment under § 141.82(a).

(3) for systems required to evaluate the effectiveness of corrosion control treatments under §141.82(c), the information required by that paragraph.

(4) for systems required to install optimal corrosion control designated by the State under § 141.82(d), a letter certifying that the system has completed installing that treatment.

(d) *Source water treatment reporting requirements.* By the applicable dates in § 141.83, systems shall provide the following information to the State:

(1) if required under § 141.83(b)(1), their recommendation regarding source water treatment;

(2) for systems required to install source water treatment under § 141.83(b)(2), a letter certifying that the system has completed installing the treatment designated by the State within 24 months after the State designated the treatment.

(e) *Lead service line replacement reporting requirements.* Systems shall report the following information to the State to demonstrate compliance with the requirements of § 141.84:

(1) Within 12 months after a system exceeds the lead action level in sampling referred to in § 141.84(a), the system shall demonstrate in writing to the State that it has conducted a material evaluation, including the evaluation in § 141.86(a), to identify the initial number of lead service lines in its distribution system, and shall provide the State with the system's schedule for replacing annually at least 7 percent of the initial number of lead service lines in its distribution system.

(2) Within 12 months after a system exceeds the lead action level in sampling referred to in § 141.84(a), and every 12 months thereafter, the system shall demonstrate to the State in writing that the system has either:

(i) replaced in the previous 12 months at least 7 percent of the initial lead

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service lines (or a greater number of lines specified by the State under § 141.84(f)) in its distribution system, or

(ii) conducted sampling which demonstrates that the lead concentration in all service lines samples from an individual line(s), taken pursuant to § 141.86(b)(3), is less than or equal to 0.015 mg/L. In such cases, the total number of lines replaced and/or which meet the criteria in § 141.84(b) shall equal at least 7 percent of the initial number of lead lines identified under paragraph (a) of this section (or the percentage specified by the State under § 141.84(f)).

(3) The annual letter submitted to the State under paragraph (e)(2) of this section shall contain the following information:

(i) The number of lead service lines scheduled to be replaced during the previous year of the system's replacement schedule;

(ii) the number and location of each lead service line replaced during the previous year of the system's replacement schedule;

(iii) if measured, the water lead concentration and location of each lead service line sampled, the sampling method, and the date of sampling.

(4) As soon as practicable, but in no case later than three months after a system exceeds the lead action level in sampling referred to in § 141.84(a), any system seeking to rebut the presumption that it has control over the entire lead service line pursuant to § 141.84(d) shall submit a letter to the State describing the legal authority (e.g., state statutes, municipal ordinances, public service contracts or other applicable legal authority) which limits the system's control over the service lines and the extent of the system's control.

(f) *Public education program reporting requirements.* By December 31st of each year, any water system that is subject to the public education requirements in § 141.85 shall submit a letter to the State demonstrating that the system has delivered the public education materials that meet the content requirements in § 141.85(a) and (b) and the delivery requirements in § 141.85(c). This information shall include a list of all the newspapers, radio stations, television stations, facilities and organizations to which the system delivered public education materials during the previous year. The water system shall submit the letter required by this paragraph annually for as long as it exceeds the lead action level.

(g) *Reporting of additional monitoring data.* Any system which collects sampling data in addition to that required by this subpart shall report the results to the State by the end of the applicable monitoring period under §§ 141.86, 141.87 and § 141.88 during which the samples are collected.

§ 141.91 Recordkeeping requirements.

Any system subject to the requirements of this subpart shall retain on its premises original records of all sampling data and analyses, reports, surveys, letters, evaluations, schedules, State determinations, and any other information required by § 141.81 through § 141.88. Each water system shall retain the records required by this section for no fewer than 12 years.

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

1. The authority for part 142 continues to read as follows: 42 U.S.C. 300g, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-4, and 300j-9.

2. Section 142.14 is amended by adding paragraphs (d)(8) through (11) to read as follows:

§ 142.14 Records kept by States.

* * * * *

(d) * * *

(8) Records of the currently applicable or most recent State determinations, including all supporting information and an explanation of the technical basis for each decision, made under the following provisions of 40 CFR, part 141, subpart I for the control of lead and copper:

(i) Section 141.82(b)—decisions to require a water system to conduct corrosion control treatment studies;

(ii) Section 141.82(d)—designations of optimal corrosion control treatment;

(iii) Section 141.82(f)—designations of optimal water quality parameters;

(iv) Section 141.82(h)—decisions to modify a public water system's optimal corrosion control treatment or water quality parameters;

(v) Section 141.83(b)(2)—determinations of source water treatment; and

(vi) Section 141.83(b)(4)—designations of maximum permissible lead and copper concentrations in source water.

(vii) Section 141.84(e)—determinations that a system does not control entire lead service lines.

(viii) Section 141.84(f)—determinations establishing a shorter lead service line replacement schedule than required by § 141.84.

(9) Records of reports and any other information submitted by PWSs under § 141.90;

(10) Records of state activities, and the results thereof, to verify compliance with State determinations issued under §§ 141.82(f), 141.82(h), 141.83(b)(2), and 141.83(b)(4) and compliance with lead service line replacement schedules under § 141.84.

(11) Records of each system's currently applicable or most recently designated monitoring requirements. If, for the records identified in §§ 142.14(d)(8)(i) through 142.14(d)(8)(viii) above, no change is made to State decision during a 12 year retention period, the State shall maintain the record until a new decision, determination or designation has been issued.

* * * * *

3. Section 142.15 is amended by adding new paragraph (c)(4) to read as follows:

§ 142.15 Reports by States.

* * * * *

(c) * * *

(4) States shall report to EPA by May 15, August 15, November 15 and February 15 of each year the following information related to each system's compliance with the treatment techniques for lead and copper under 40 CFR Part 141, Subpart I during the preceding calendar quarter. Specifically, States shall report the name and PWS identification number of:

(i) each public water system which exceeded the lead and copper action levels and the date upon which the exceedance occurred;

(ii) each public water system required to complete the corrosion control evaluation specified in § 141.82(c) and the date the State received the results of the evaluations from each system;

(iii) each public water system for which the State has designated optimal corrosion control treatment under § 141.82(d), the date of the determination, and each system that completed installation of treatment as certified under § 141.90(c)(3);

(iv) each public water system for which the State has designated optimal water quality parameters under § 141.82(f) and the date of the determination;

(v) each public water system which the State has required to install source water treatment under § 141.83(b)(2), the date of the determination, and each system that completed installation of treatment as certified under § 141.90(d)(2);

(vi) each public water system for which the State has specified maximum permissible source water levels under § 141.83(b)(4); and

(vii) each public water system required to begin replacing lead service lines as specified in § 141.84, each public water system for which the State has established a replacement schedule under § 141.84(f), and each system reporting compliance with its replacement schedule under § 141.90(e)(2).

* * * * *

4. Section 142.16 is amended by adding paragraph (d) to read as follows:

§ 142.16 Special primacy requirements.

* * * * *

(d) Requirements for States to adopt 40 CFR Part 141, Subpart I Lead and Copper. An application for approval of a State program revision which adopts the requirements specified in 40 CFR Part 141 Subpart I must contain (in addition to the general primacy requirements enumerated elsewhere in this part, including the requirement that state regulations be at least as stringent as the federal requirements) a description of how the State will accomplish the following program requirements:

(1) §§ 141.82(d), 141.82(f) and 141.82(h)—Designating optimal corrosion control treatment methods, optimal water quality parameters and modifications thereto.

(2) §§ 141.83(b)(2) and 141.83(b)(4)—Designating source water treatment methods, maximum permissible source water levels for lead and copper and modifications thereto.

(3) Section 141.90(e)—Verifying compliance with lead service line replacement schedules and of PWS demonstrations of limited control over lead service lines.

* * * * *

5. § 142.19 is added to read as follows:

§ 142.19 EPA review of State implementation of national primary drinking water regulations for lead and copper.

(a) Pursuant to the procedures in this section, the Regional Administrator may review state determinations establishing corrosion control or source water treatment requirements for lead or copper and may issue an order establishing federal treatment requirements for a public water system pursuant to § 141.82 (d) and (f) and § 141.83(b) (2) and (4) where the Regional Administrator finds that:

(1) a State has failed to issue a treatment determination by the applicable deadline;

(2) a State has abused its discretion in making corrosion control or source water treatment determinations in a substantial number of cases or in cases affecting a substantial population, or

(3) the technical aspects of State's determination would be indefensible in an expected federal enforcement action taken against a system.

(b) If the Regional Administrator determines that review of state determination(s) under this section may be appropriate, he shall request the State to forward to EPA the state determination and all information that was considered by the State in making its determination, including public comments, if any, within 60 days of the Regional Adminstrator's request.

(c) Proposed review of state determinations:

(1) Where the Regional Administrator finds that review of a state determination under paragraph (a) of this section is appropriate, he shall issue a proposed review order which shall:

(i) Identify the public water system(s) affected, the State determination being reviewed and the provisions of state and/or federal law at issue;

(ii) Identify the determination that the State failed to carry out by the applicable deadline, or identify the particular provisions of the State determination which, in the Regional Administrator's judgment, fail to carry out properly applicable treatment requirements, and explain the basis for the Regional Administrator's conclusion;

(iii) Identify the treatment requirements which the Regional Administrator proposes to apply to the affected system(s), and explain the basis for the proposed requirements;

(iv) Request public comment on the proposed order and the supporting record.

(2) The Regional Administrator shall provide notice of the proposed review order by:

(i) Mailing the proposed order to the affected public water system(s), the state agency whose order is being reviewed, and any other parties of interest known to the Regional Administrator; and

(ii) Publishing a copy of the proposed order in a newspaper of general circulation in the affected communities.

(3) The Regional Administrator shall make available for public inspection during the comment period the record supporting the proposed order, which shall include all of the information submitted by the State to EPA under paragraph (b) of this section, all other studies, monitoring data and other information considered by the Agency in developing the proposed order.

(d) Final review order

(1) Based upon review of all information obtained regarding the proposed review order, including public comments, the Regional Administrator shall issue a final review order within 120 days after issuance of the proposed order which affirms, modifies, or withdraws the proposed order. The Regional Administrator may extend the time period for issuing the final order for good cause. If the final order modifies or withdraws the proposed order, the final order shall explain the reasons supporting the change.

(2) The record of the final order shall consist of the record supporting the proposed order, all public comments, all other information considered by the Regional Administrator in issuing the final order and a document responding to all significant public comments submitted on the proposed order. If new points are raised or new material supplied during the public comment period, the Regional Administrator may support the responses on those matters by adding new materials to the record. The record shall be complete when the final order is issued.

(3) Notice of the final order shall be provided by mailing the final order to the affected system(s), the State, and all parties who commented on the proposed order.

(4) Upon issuance of the final order, its terms constitute requirements of the national primary drinking water regulation for lead and/or copper until such time as the Regional Administrator issues a new order (which may include recision of the previous order) pursuant to the procedures in this section. Such requirements shall supersede any inconsistent treatment requirements established by the State pursuant to the national primary drinking water regulations for lead and copper.

(5) The Regional Administrator may not issue a final order to impose conditions less stringent than those imposed by the State.

(e) The Regional Administrator may not delegate authority to sign the final order under this section.

(f) Final action of the Regional Administrator under paragraph (d) of this section shall constitute action of the Administrator for purposes of 42 U.S.C. § 300j-7(a)(2).

6. In section 142.62, the title of the section and paragraphs (f) and (g) are revised to read as follows, and paragraph (h)(7) is added to read as follows:

§ 142.62 Variances and exemptions from the maximum contaminant levels for organic and inorganic chemicals and exemptions from the treatment technique for lead and copper.

* * * * *

(f) The State may require a public water system to use bottled water, point-of-use devices, point-of-entry devices or other means as a condition of granting a variance or an exemption

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from the requirements of § 141.61 (a) and (c) and § 141.62, to avoid an unreasonable risk to health. The State may require a public water system to use bottled water and point-of-use devices or other means, *but not point-of-entry devices*, as a condition for granting an exemption from corrosion control treatment requirements for lead and copper in §§ 141.81 and 141.82 to avoid an unreasonable risk to health. The State may require a public water system to use point-of-entry devices as a condition for granting an exemption from the source water and lead service line replacement requirements for lead and copper under §§ 141.83 or 141.84 to avoid an unreasonable risk to health.

(g) Public water systems that use bottled water as a condition for receiving a variance or an exemption from the requirements of § 141.61 (a) and (c) and § 141.62, or an exemption from the requirements of §§ 141.81–141.84 must meet the requirements specified in either paragraph (g)(1) or (g)(2) and paragraph (g)(3) of this section:

(1) The Administrator or primacy State must require and approve a monitoring program for bottled water. The public water system must develop and put in place a monitoring program that provides reasonable assurances that the bottled water meets all MCLs. The public water system must monitor a representative sample of the bottled water for all contaminants regulated under § 141.61 (a) and (c) and § 141.62 during the first three-month period that it supplies the bottled water to the public, and annually thereafter. Results of the monitoring program shall be provided to the State annually.

(2) The public water system must receive a certification from the bottled water company that the bottled water supplied has been taken from an "approved source" as defined in 21 CFR 129.3(a); the bottled water company has conducted monitoring in accordance with 21 CFR 129.80(g) (1) through (3); and the bottled water does not exceed any MCLs or quality limits as set out in 21 CFR 102.35, 110, and 129. The public water system shall provide the certification to the State the first quarter after it supplies bottled water and annually thereafter. At the State's option a public water system may satisfy the requirements of this subsection if an approved monitoring program is already in place in another State.

(3) The public water system is fully responsible for the provision of sufficient quantities of bottled water to every person supplied by the public water system via door-to-door bottled water delivery.

(h) * * *

(7) In requiring the use of a point-of-entry device as a condition for granting an exemption from the treatment requirements for lead and copper under § 141.83 or § 141.84, the State must be assured that use of the device will not cause increased corrosion of lead and copper bearing materials located between the device and the tap that could increase contaminant levels at the tap.

* * * * *

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Part III

Department of Education

Demonstration Centers for the Training of Dislocated Workers Program; Notice Inviting Applications for New Awards for Fiscal Year 1992; Notice

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.193]

Demonstration Centers for the Training of Dislocated Workers Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1992

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: To provide financial assistance to establish one or more demonstration centers to retrain dislocated workers. The center or centers may provide for the recruitment of unemployed workers, vocational evaluation, assessment and counseling services, vocational and technical training, support services, and job placement assistance. The design and operation of each center must provide for the utilization of appropriate existing Federal, State, and local programs.

The Secretary wishes to highlight for potential applicants America 2000: The President's Education Strategy to move the Nation toward the national education goals establishing educational excellence for all Americans. The Demonstration Centers for the Training of Dislocated Workers Program is one means of transforming America into a Nation of Students and strengthening the Nation's education effort for yesterday's students who are today's workers. The President believes that learning is a life-long challenge. Approximately 85 percent of America's workers for the year 2000 are already in the workforce. Improving schools for today's and tomorrow's students is not sufficient to ensure a competitive America in the year 2000. The President has called on Americans to move from A Nation at Risk to A Nation of Students by continuing to enhance the knowledge and skills of all Americans.

Eligible Applicants: Any private nonprofit organization that is eligible to receive funds under the Job Training Partnership Act.

Deadline for Transmittal of Applications: August 2, 1991.

Deadline for Intergovernmental Review: October 2, 1991.

Available Funds: $500,000.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations), part 75 (Direct Grant Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 81 (General Education Provisions Act—Enforcement), part 82 (New Restrictions on Lobbying), part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)), and part 86 (Drug-Free Schools and Campuses); and (b) The regulations for this program in 34 CFR 411.

Invitational Priority: The Secretary invites applications from eligible applicants associated with community colleges having existing dislocated worker retraining programs in which there is significant State, local, or private sector involvement, commitment, and support, and having the capacity to disseminate information to other dislocated worker retraining centers across the country. However, under 34 CFR 75.105(c)(1), an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses. The Secretary assigns the fifteen points, reserved in 34 CFR 411.30(b), as follows: 5 points to selection criterion (b)—Plan of Operation—in 34 CFR 411.31(b) for a total of 20 points for that criterion; and 5 points to selection criterion (c)—Quality of Training—in 34 CFR 411.31(c) for a total of 10 points for that criterion; 5 points to selection criterion (f)—Evaluation Plan—in 34 CFR 411.31(f) for a total of 10 points for that criterion.

(a) *Need.* (15 points)

(1) The Secretary reviews each application for information that shows the need for the proposed demonstration center.

(2) The Secretary looks for information that shows—(i) Specific evidence of the need for the proposed demonstration center, including evidence of a high concentration of dislocated workers in the area to be served;

(ii) How the need will be met; and

(iii) Ongoing and planned activities in the community pertaining to the proposed demonstration center, where appropriate.

(b) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(c) *Quality of training.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the training to be provided.

(2) The Secretary looks for information that shows—(i) The training is appropriate for the trainees in light of the labor market; and

(ii) Trainees will receive appropriate counseling.

(d) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraph (d)(2)(i) and (ii) will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(e) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-Reference: See 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(g) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(h) *Private sector involvement.* (5 points)

(1) The Secretary reviews each application for information that shows the involvement of the private sector.

(2) The Secretary looks for information that shows—(i) The private sector involvement in the planning of the project; and

(ii) The private sector involvement in the operation of the project.

(i) *Employment opportunities.* (5 points)

The Secretary looks for information on and documentation of the extent to which trainees will be employed in jobs related to their training upon completion of their training.

(j) *Dissemination.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant has an effective and efficient plan for disseminating information about the project, including the results of the project and any spcialized materials developed by the project.

(2) The Secretary looks for information that shows—(i) The design of the dissemination plan and procedures for evaluating the effectivenss of the dissemination plan;

(ii) A description of the types of materials the applicant plans to make available and the methods for making the materials available;

(iii) Provisions for demonstrating the methods and techniques used by the project;

(iv) Provisions for assisting others to adopt and successfully implement the project or methods and techniques developed by the project; and

(v) Provisions for publicizing the findings of the project at the local, State, or national level. (Approved under OMB Control No. 1830-0013)

Intergovernmental Review of Federal Programs: This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive Order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on September 17, 1990, pages 38210–38211.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, Executive Order 12372—CFDA# 84.193, U.S. Department of Education, room 4161, 400 Maryland Avenue, SW., Washington, DC 20202-0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.193), Washington, DC 20202-4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.193), room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708-9494.

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(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application notice is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4-88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED form 80-0013) and instructions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80-0014, 9/90) and instructions.

Note: ED Form 80-0014 is intended for the use of grantees and should not be transmitted to the Department.

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL-A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

For Further Information Contact: Paul R. Geib Jr., Special Programs Branch, Division of National Programs, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW. (room 4521, Mary E. Switzer Building), Washington, DC 20202-7327. Telephone (202) 732-2364. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 Area Code, telephone 708-9300) between 8 a.m. and 7 p.m. Eastern time.

Program Authority: 20 U.S.C. 2441(b).

Dated: May 30, 1991.

Betsy Brand,

Assistant Secretary, Office of Vocational and Adult Education.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION: Application ☐ Construction ☒ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address (give city, county, state, and zip code):

Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State H. Independent School Dist.
B. County I. State Controlled Institution of Higher Learning
C. Municipal J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify): _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify): _____

9. NAME OF FEDERAL AGENCY: U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 1 9 3

TITLE: Demonstration Centers for Training of Dislocated Workers

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:	
a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV. 4-88)
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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1. Demo. Center Dist. Wkers.	84.193	$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8. Demonstration Center - Dislocated Workers	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

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Part II—Budget Information

This form is designed so that application can be made for funds from the Demonstration Centers for the Training of Dislocated Workers Program (CFDA No. 84.193). Sections A, B, and C should include budget estimates for the entire project period.

Note: Sections D and E need not be completed to apply for this program.

All applications should contain a breakdown by the object class categories shown in section B. Lines 6a through 6j.

Section A. Budget Summary

Line 1, Columns (a) through (g)—Enter on Line 1 the catalog program title in Column (a) and the catalog program number in Column (b). Leave Columns (c) and (d) blank. Enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the entire project period.

Note: Lines 2, 3, 4, and 5 of Section A need not be completed to apply for this program.

Section B. Budget Categories

Lines 6a through 6j—Fill in the total requirements for Federal funds by object class categories for the entire project period in Column (1).

Line 6a—Personnel: Show salaries and wages to be paid to personnel employed in the project. Fees and expenses for consultants must be included in Line 6f.

Line 6b—Fringe Benefits: Include contributions for Social Security, employee insurance, pension plans, etc. Leave blank if fringe benefits to personnel are treated as part of the indirect cost rate.

Line 6c—Travel: Indicate the amount requested for travel of employees.

Line 6d—Equipment: Applicants who are institutions of higher education, hospitals, or nonprofit organizations must indicate the cost of nonexpendable personal property which has a useful life of more than one year and an acquisition cost of $300 or more per unit. Applicants who are State or local governments must indicate the cost of nonexpendable personal property which has a useful life of more than one year and an acquisition cost of $5000 or more per unit.

Line 6e—Supplies: Include the cost of consumable supplies to be used in this project. These should be items which cost less than $300 per unit with a useful life of less than one year if an applicant is an institution of higher education, a hospital, or a nonprofit organization, or items which cost less than $5000 per unit with a useful life of less than one year if an applicant is a State or local government.

Line 6f—Contractual: Show the amount to be used for: (a) Procurement contracts (except those which belong on other lines such as supplies and equipment listed above); and (b) payments for consultants and secondary recipient organizations such as affiliates, cooperating institutions, delegate agencies, etc.

Line 6g—Construction: Construction expenses generally are not allowed.

Line 6h—Other: Indicate all direct costs not clearly covered by lines 6a through 6g.

Line 6i—Total Direct charges: Show total of Lines 6a through 6h.

Line 6j—Show the amount of indirect cost to be charged to the project.

Note: The indirect cost rate for training projects cannot exceed eight percent of total direct charge.

Line 6k—Enter the total of the amounts on Lines 6i and 6j.

Line 7—Program Income: Unless program income, as defined and explained in Subpart F—Grant-Related Income of 34 CFR 74 or 34 CFR 80.25 is anticipated, leave this line blank.

Section F. Other Budget Information

Prepare a detailed Budget Narrative that explains, justifies, and/or clarifies the budget figures shown in sections A. B. and C.

Section C. Non-Federal Resources

Line 8—Enter any amounts of non-Federal resources that will be used on the grant. If any in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the catalog program title.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter the totals of Columns (b), (c), and (d).

Note: The amount shown on line 8 column (e), should be the same as the figure shown on section A. Line 1, Column (f).

Note: Lines 9, 10, 11, 12 of section C need not be completed to apply for this program.

Instructions for Part III—Application Narrative

Before preparing the Application Narrative, an applicant should read carefully the description of the program, the information regarding the invitational priority, and the selection criteria the Secretary uses to evaluate applications.

34 CFR 75.112 of the Education Department General Administrative Regulations (EDGAR) requires the following:

(a) An application must propose a project period for the project.

(b) An application must describe when, in each budget period of the project, the applicant plans to meet each objective of the project.

34 CFR 75.117 of the Education Department General Administrative Regulations (EDGAR) requires the following:

An applicant that proposes a multi-year project shall include in its application:

(a) Information that shows why a multi-year project is needed;

(b) A budget for the first budget period of the project; and

(c) An estimate of the Federal funds needed for each budget period of the project after the first budget period.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a summary of the proposed project;

2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package; and

3. Include any other pertinent information that might assist the Secretary in reviewing the application.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 30 double-spaced, typed, 8½" × 11" pages (on one side only), although the Secretary will consider applications of greater length. Be sure that each page of the application is numbered consecutively.

Supporting documentation (e.g., letters of support, footnotes, resumes, etc.) may be submitted as applicants are advised that:

(1) Under 34 CFR 75.217 of the Education Department General Administrative Regulations (EDGAR), the Department considers only information contained in the application in ranking applications for funding consideration. Letters of support sent separately from the formal application package are not considered in the review by the technical review panels.

(2) In reviewing applications, the technical review panel evaluates each application solely on the basis of the established selection criteria. Letters of support contained in the application will strengthen the application only insofar

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as they contain commitments which pertain to established selection criteria.

Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project, 1830–0013, Washington, DC 20503.

(Information collection approved under OMB control number 1830–0013. Expiration date: 10/31/92.)

BILLING CODE 4000-01-M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this propos , that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

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DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: Congressional District, *if known*:	Congressional District, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI)*:	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI)*:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:	13. Type of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply)*: ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____

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INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503

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DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page ____ of ____

[FR Doc. 91-13506 Filed 6-6-91; 8:45 am]
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federal register

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June 7, 1991

Part IV

Department of Defense

Department of the Air Force

Scientific Advisory Board; Notice of Meeting

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DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board of the Ad Hoc Committee Study of Off-Board Sensors—Summer Study 1991 will meet on 24–27 June 1991 from 8 a.m. to 5 p.m. at the Pentagon, Washington, DC.

The purpose of this meeting is to receive presentations of Air Force projects and programs relevant to the concept using off-board sensors data to support air combat operations. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91–13683 Filed 6–6–91; 10:37 am]

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Part V

The President

Executive Order 12764—Federal Salary Council

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Presidential Documents

Title 3—

The President

Executive Order 12764 of June 5, 1991

Federal Salary Council

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 5304(e) of title 5, United States Code, as amended, and in order to establish, in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), an advisory committee on locality-based comparability payments for General Schedule employees, it is hereby ordered as follows:

Section 1. *Establishment.* There is established a Federal Salary Council (the "Council"). The Council shall be composed of nine members appointed by the President in accordance with section 5304(e)(1) of title 5, United States Code. The President shall designate one of the members to serve as Chairman of the Council and shall designate another member to serve as Vice Chairman of the Council. The Vice Chairman shall act as Chairman in the absence of the Chairman.

Sec. 2. *Function.* The Council shall meet with the President's Pay Agent, as designated under section 2(a) of Executive Order No. 12748 of February 1, 1991, to provide views and recommendations regarding:

(a) the establishment or modification of pay localities;

(b) the coverage of annual surveys conducted by the Bureau of Labor Statistics under subsection 5304(d)(1)(A) of title 5, United States Code (including, but not limited to, the occupations, establishment sizes, and industries to be surveyed, and how pay localities are to be surveyed);

(c) the process of comparing the rates of pay payable under the General Schedule with rates of pay for the same levels of work performed by non-Federal workers; and

(d) the level of comparability payments that should be paid in order to eliminate or reduce pay disparities in accordance with the requirements of section 5304 of title 5, United States Code.

Sec. 3. *Administration.* (a) Members of the Council shall receive no pay by reason of their service on the Council.

(b) To the extent permitted by law and subject to the availability of appropriations, the Office of Personnel Management (the "Office") shall provide such facilities and administrative support to the Council as the Director of the Office determines appropriate.

(c) Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, which are applicable to the Council, shall be performed by the Director of the Office, in accordance with the guidelines and procedures established by the Administrator of General Services.

THE WHITE HOUSE,
June 5, 1991.

[FR Doc. 91-13800
Filed 6-6-91; 11:47 am]
Billing code 3195-01-M

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Public Laws

102d Congress, 1st Session, 1991

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 102d Congress, 1st Session, 1991.

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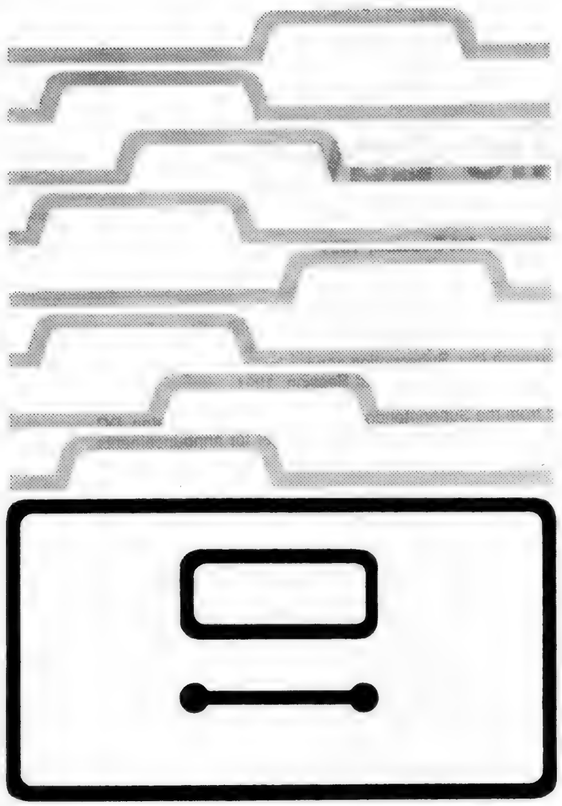

Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1989
SUPPLEMENT: Revised January 1, 1991

The GUIDE and the SUPPLEMENT should be used together. This useful reference tool, compiled from agency regulations, is designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The GUIDE is formatted and numbered to parallel the CODE OF FEDERAL REGULATIONS (CFR) for uniformity of citation and easy reference to the source document.

Compiled by the Office of the Federal Register, National Archives and Records Administration.

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New Publication
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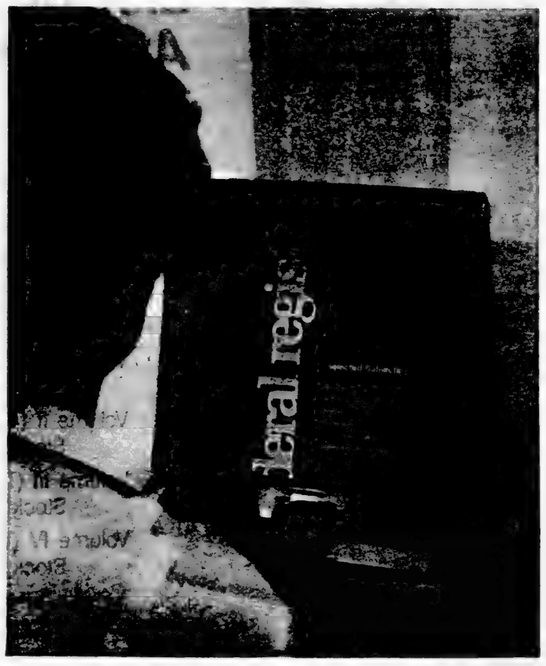

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1230

[No. LS-91-001]

Pork Promotion and Research

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act of 1985 and the order issued thereunder, this final rule increases the amount of the assessment per pound due on imported pork and pork products to reflect an increase in the 1990 seven market average price for domestic barrows and gilts and to bring the equivalent market value of the live animals from which such imported pork and pork products were derived in line with the market values of domestic porcine animals.

EFFECTIVE DATE: July 10, 1991.

ADDRESSES: Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Division; Agricultural Marketing Service; USDA, room, 2624–S; P.O. Box 96456; Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, (202) 382–1115.

SUPPLEMENTARY INFORMATION: This action was reviewed in accordance with Executive Order No. 12291 and Departmental Regulation 1512–1 and is hereby classified as a nonmajor rule because it does not meet the criteria contained therein for a major rule.

This action also was reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.). The effect of the Order upon small entities was discussed in the September 5, 1986, issue of the **Federal Register** (51 FR 31898), and it was determined that the Order would not have a significant effect upon a substantial number of small entities. Many importers may be classified as small entities. This final rule increases the amount of assessments on imported pork and pork products subject to assessment by four- to five-hundredths of a cent per pound, or as expressed in cents per kilogram, nine- to eleven-hundredths of a cent per kilogram. Adjusting the rate of assessments on imported pork and pork products will result in an estimated increase in assessments of $350,000 over a 12-month period. Accordingly, the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities.

The Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research and consumer information program. The program is funded by an assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and an equivalent amount of assessment on imported porcine animals, pork and pork products. The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as corrected, at 51 FR 36383 and amended at 53 FR 1909 and 53 FR 30243) and assessments began on November 1, 1986.

The Order requires importers of porcine animals to pay the U.S. Customs Service (USCS), upon importation, the assessment of 0.25 percent of the animal's declared value and importers of pork and pork products to pay to the USCS, upon importation, the assessment of 0.25 percent of the market value of the live porcine animals from which such pork and pork products were produced. This final rule increases the assessments of all of the imported pork and pork products subject to assessment that appears in 7 CFR 1230.110 (October 22, 1990; 55 FR 42554). This increase is consistent with the increase in the annual average price of domestic barrows and gilts at the seven markets for calendar year 1990 as reported by the USDA, AMS, Livestock and Grain Market News Branch (LGMN). This increase in assessments will make the equivalent market value of the live porcine animal from which the imported pork and pork products were derived reflect the recent increase in the market value of domestic porcine animals, thereby promoting comparability between importer and domestic assessments. This final rule does not change the current assessment rate of 0.25 percent of the market value.

The methodology for determining the per-pound amounts for imported pork and pork products was described in the supplementary information accompanying the Order and published in the September 5, 1986, **Federal Register** at 51 FR 31901. The weight of imported pork and pork products is converted to a carcass weight equivalent by utilizing conversion factors which are published in the USDA Statistical Bulletin No. 616 "Conversation Factors and Weights and Measures." These conversion factors take into account the removal of bone, weight lost in cooking or other processing, and the nonpork components of pork products. Secondly, the carcass weight equivalent is converted to a live animal equivalent weight by dividing the carcass weight equivalent by 70 percent, which is the average dressing percentage of porcine animals in the United States. Thirdly, the equivalent value of the live porcine animal is determined by multiplying the live animal equivalent weight by an annual average seven market price for barrows and gilts as reported by the USDA, AMS, LGMN Branch. This average price is published on a yearly basis during the month of January in the LGMN Branch's publication "Livestock, Meat, and Wool Weekly Summary and Statistics." Finally, the equivalent value is multiplied by the applicable assessment rate of 0.25 percent due on imported pork and pork products. The end result is expressed in an amount per pound for each type of pork or pork product. To determine the amount per kilogram for pork and pork products subject to assessment under the Act and Order, the cent-per-pound assessments are multiplied by a metric conversion factor 2.2046 and carried to the sixth decimal.

The formula in the preamble for the Order at 51 FR 31901 contemplated that

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it would be necessary to recalculate the equivalent live animal value of imported pork and pork products to reflect changes in the annual average price of domestic barrows and gilts to maintain equity of assessments between domestic porcine animals and imported pork and pork products.

In 1990, the average annual seven market price increased to $54.55, an increase of about 23 percent of the 1989 per hundred weight price of $43.77 which results in an increase in assessment for all the Harmonized Tariff Systems (HTS) numbers listed in the table in section 1230.110 of an amount equal to four- to five-hundredths of a cent per pound, or as expressed in cents per kilogram, nine- to eleven-hundredths of a cent per kilogram. Based on Department of Commerce, Bureau of Census, data on the volume of imported pork and pork products available for the period January 1, 1990, through October 31, 1990, the increases in the assessment amounts would result in an estimated $350,000 increase in assessments over a 12-month period.

On March 19, 1991, AMS published in the **Federal Register** (56 FR 11519) a proposed rule which would increase the per pound assessment on imported pork and pork products consistent with increases in 1990 average prices of domestic barrows and gilts to provide comparability between importer and domestic assessments. The proposal was published with a request for comments by April 18, 1991. No comments were received. Accordingly, this final rule establishes the per pound and per kilogram assessments on imported pork and pork products as proposed.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, 7 CFR part 1230 is amended as set forth below:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

2. Amend subpart B—Rules and Regulations by revising § 1230.110 to read as follows:

§ 1230.110 Assessments on imported pork and pork products.

(a) The following HTS categories of imported live porcine animals are subject to assessment at the rate specified.

Live porcine animals	Assessment
0103.10.00004	0.25 percent Customs Entered Value
0103.91.00006	0.25 percent Customs Entered Value
0103.92.00005	0.25 percent Customs Entered Value

(b) The following HTS categories of imported pork and pork products are subject to assessment at the rates specified.

Pork and pork products	Assessment	
	cents/lb	cents/kg
0203.11.00002	.20	.440920
0203.12.10107	.20	.440920
0203.12.10205	.20	.440920
0203.12.90100	.20	.440920
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0210.11.00209	.20	.440920
0210.12.00208	.20	.440920
0210.12.00404	.20	.440920
0210.19.00103	.23	.507058
0210.19.00906	.23	.507058
1601.00.20105	.27	.597009
1601.00.20908	.27	.597009
1602.41.20203	.29	.639334
1602.41.20409	.29	.639334
1602.41.90002	.20	.440920
1602.42.20202	.29	.639334
1602.42.20408	.29	.639334
1602.42.40002	.20	.440920
1602.49.20009	.27	.597009
1602.49.40005	.23	.507058

Done at Washington, DC, on June 4, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91–13703 Filed 6–7–91; 8:45 am]

BILLING CODE 3410–02–M

Rural Telephone Bank

7 CFR Part 1610

Rural Electrification Administration

7 CFR Parts 1735, 1737, 1744

RIN 0572–AA51

Rural Telephone Bank and Telephone Program Loan Policies, Procedures and Requirements

AGENCY: Rural Electrification Administration and Rural Telephone Bank, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Act of 1936 (RE Act) has been amended by the Rural Economic Development Act of 1990 (RED Act), title XXIII of the Farm Bill, Public Law 101–624. In order to make changes in the regulations of the Rural Electrification Administration (REA) and the Rural Telephone Bank (RTB) that are required as a consequence of these amendments, REA hereby amends parts 1610, 1735, 1737, and 1744 in title 7 of the Code of Federal Regulations.

In addition to the changes related to the RED Act, REA adds two additional defined terms, "access line" and "subscriber", to the definitions of parts 1735 and 1737. This action will conform REA usage of these terms to industry practice thereby simplifying reporting requirements.

All Rural Telephone Bank borrowers will be affected by the proposed amendment of part 1610 by spreading out the required purchase of class B stock.

All Telephone Program borrowers will be affected by the amendment of parts 1735, 1737, 1744 in that the obtaining of loans will be simplified.

EFFECTIVE DATE: June 10, 1991.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Chief, Telephone Loans and Management Staff, Rural Electrification Administration, room 2250 South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 382–8530.

SUPPLEMENTARY INFORMATION: This final rule is issued in conformance with Executive Order 12291. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this rule has been determined to be "non major."

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this final rule will not represent a major Federal action significantly affecting the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq. (1976)) and therefore does not require an environmental impact statement or an environmental assessment.

This program is listed in the Catalog of Federal Domestic Assistance under no. 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. For the reasons set forth in the final rule (50 FR 47034), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

This final rule contains no information or recordkeeping requirements which would require approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 et seq.). The existing reporting and recordkeeping requirements have been approved by the Office of Management and Budget (OMB), under control number 0572–0079.

These revisions require the redesignation of several sections and the following distribution table is included:

Old part or section	New part or section
1735.17(b)	Removed
1735.17(c)	1735.17(b)
1735.17(d)	1735.17(c)
1735.42	Removed
1737.20	Removed
1737.22(b)(5)	1737.22(b)(10)
1737.41(b)(1)	1737.41(b)(2)(i)
1737.41(b)(2)	1737.41(b)(2)(ii)
1737.41(b)(3)	1737.41(b)(2)(iii)
1737.70(d)	1737.70(g)
1737.70(e)	1737.70(h)
1737.70(f)	1737.70(i)
1737.70(g)	1737.70(j)
1737.90(a)(4)	Removed
1737.90(a)(5)	1737.90(a)(4)
1737.90(a)(6)	1737.90(a)(5)
1737.90(a)(7)	1737.90(a)(6)
1737.90(a)(8)	Removed

Background

On March 19, 1991, REA published a Proposed Rule in the **Federal Register** (56 FR 11522) to amend 7 CFR parts 1610, 1735, 1737, and 1744, chapter XVII in title 7 of the Code of Federal Regulations. Subtitle F of the Rural Economic Development Act of 1990, title XXIII of the Farm Bill, Public Law 101–624, contains a number of provisions that amend the Rural Electrification Act of 1936 and require changes in the regulations of REA and RTB. The following is a list of revisions resulting from the RED Act:

(1) Section 1610.9, Temporary Waiver of Prepayment Premium, has expired and is replaced with a new section involving the pro rata purchase of Class B stock as set forth by section 2364 of the RED Act. In addition, §§ 1610.5 and 1610.6 are revised to eliminate ambiguities and potential conflicts with § 1610.10, Determination of interest rate on Bank loans.

(2) Sections 1735.2 and 1737.2, Definitions, are revised to incorporate the expanded definition of "telephone service" set out in section 2354 of the RED Act.

(3) Section 1735.10, General, is revised to include the provisions of section 2353 of the RED Act with regards to the level of general funds of a borrower.

(4) Section 1735.17, Facilities Financed, has been changed in accordance with the facilities financed provision of section 2357 of the RED Act.

(5) Section 1735.22, Loan Security, is revised to implement the TIER provision in section 2355 and section 2361 of the RED Act. A borrower will not be required to increase its TIER as a condition for receiving a loan. For a loan made under section 305 of the RE Act, borrowers will be required to have a TIER of at least 1.0. A borrower's TIER will be calculated on an after-tax basis for obtaining a loan and for maintenance purposes.

(6) Section 1735.32, Guaranteed Loans, is revised to indicate that guarantees will only be considered when specifically requested by a borrower as provided for in section 2362 of the RED Act. In addition, language has been added to clearly indicate that borrowers may request that loans guaranteed under this section be made by the Federal Financing Bank.

(7) Section 1735.43, Payment on Loans, is revised to allow borrowers to select loan maturities up to a maximum of 35 years as provided in section 2360 of the RED Act. Under existing regulations the loan maturity period approximated the anticipated economic life of the facilities financed, as recommended in OMB Circular A–129. This provision of the RED Act creates a breach in the Government's loan security because if the loan maturity period is longer than the anticipated economic life of the facilities financed (depreciation period) and the capital recovered through depreciation is not used to replace plant, then the loan could be undercollateralized and the borrower's rate base eroded, thereby jeopardizing the borrower's ability to repay the loan. Therefore, additional provisions have been added to ensure adequate collateralization over the life of the loan and provide assurance of the borrower's ability to repay the loan.

Similar loan maturity requirements for RTB loans were provided in section 2366 of the RED Act. Because the RTB has adopted the regulations of the REA Telephone Program (see 7 CFR 1610.8), the changes made in section 1735.43 will apply to both REA and RTB loans.

(8) Section 1735.47, Rescissions of Loans, is revised to agree with the rescission of loan provisions in section 2357 of the RED Act.

(9) Section 1735.51, Required Findings, is revised to agree with the loan amortization period provisions as provided in sections 2360 and 2366 of the RED Act.

(10) Subpart C of part 1737, The Loan Application, is revised to clarify what constitutes an application package and the procedure for submitting an application.

(11) As a result of the above changes to subpart C of 1737, changes have also been made to subpart E to allow in some cases requests for interim financing without having a "completed application" on file.

(12) Section 1737.70, Description of Feasibility, is revised to agree with the provisions of sections 2355, 2357, and 2361 of the RED Act. These revisions affect the manner in which loan feasibility is determined. In particular, the RED Act requires the following considerations: (a) The use of existing or impending local service rates, (b) the interest rate charged for section 305 loans will vary from 2 to 5 percent, depending on the forecasted TIER, and (c) the use of appropriate depreciation expenses. In addition, the method in which debt service payments are calculated for feasibility purposes has been added to this section. Language was also added to this section in order to ensure REA's ability to project expenses which are representative of the normal operations of the borrower, and to inform borrowers of their options if REA determines that a loan application is not feasible.

(13) Section 1744.66, The Financial Requirement Statement, is revised to include the pro rata purchase of class B stock provision of section 2364 of the RED Act.

Section 1744.68, Order and Method of Advances of Telephone Loan Funds, is presently in agreement with the order of advance provision of section 2357 of the RED Act, consequently no changes are

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required. Also, the provision of section 2356 regarding investments made by REA borrowers in rural development projects will be addressed by REA in a future regulation.

As a result of the above changes, several terms have been be added to the regulations that require definition. The term "forecast period" is added to the definition section of parts 1735 and 1737. The terms "composite economic life", "depreciation", "economic life", and "funded reserve" are added to the definition section of part 1735. Due to the expansion of feasibility discussions in part 1737 to include TIER calculations, the definition of "TIER" previously found only in § 1735.2 is added to § 1737.2. The definition of TIER has been revised in both sections to be calculated on an after-tax basis only.

In addition to the changes related to the RED Act, REA has added two additional defined terms, "access line" and "subscriber", to the definition sections of parts 1735 and 1737 for the following reasons.

Consistency and accuracy in "subscriber" data are important to REA in calculating density (as required by section 408(b)(2) of the RE Act), conducting engineering studies, determining loan feasibility and preparing statistical reports.

While REA has traditionally used the term "subscriber" in these applications, REA has never formally defined this term. In years past this was of little concern as the industry generally understood the term. As technology evolved, expanding the range of telecommunication services offered, the term "subscriber" became nebulous in meaning and the term "access line" came into general use. Today, "subscriber;; is a concept used primarily by REA. Many telephone companies maintain data only on access lines and not subscribers. This causes considerable confusion to a number of borrowers and their consulting engineers as to what to report to REA when asked for "subscriber" data.

The terms "subscriber" and "access line" are used somewhat interchangeably in the industry. "Access line" is the preferred term with "subscriber" falling into disuse because of the need to relate to the service provided. "Access line" is defined narrowly in technical terms that are understood industry wide, while "subscriber" is not.

We therefore have added definitions for the terms "subscriber" and "access line" to § 1735.2, Definitions. "Subscriber" for REA purposes will mean the same as access line. "Access line" will mean "a transmission path between user terminal equipment and a switching center that is used for local exchange service." For multiparty service, the number of access lines equals the number of lines/paths terminating on the mainframe of the switching center. This definition is based on the definition used by the National Exchange Carriers Association and the definition proposed by the National Telecommunications and Information Administration.

Density in terms of "subscribes" per mile as used in the RE Act is intended to be a relative measure of the cost of building a telephone system, i.e. a system with one subscriber per mile costs more to construct per "subscriber" than a system having four subscribers per mile. Defining "subscriber" as equal to an "access line" does not change the relativity of this measure. An analysis of the data reported to us by borrowers in 1988 indicates that a number of borrowers are already reporting "access lines" for "subscribers". Since "subscriber" is presently undefined, there is uncertainty as to what the remaining borrowers are reporting as "subscribers". The definition would eliminate this ambiguity and lend accuracy and consistency to the reported figures.

From both the engineering and financial forecasting viewpoints, "access line" is the preferred measure since it is the unit that determines plant capacities and requirements and the unit used for pricing services.

The incorporation of the definition of "access line" into REA regulations will (1) ease borrower reporting requirements by clearly defining a required data element in terms of an accepted industry standard; (2) improve the accuracy and consistency of data reported to REA; and (3) improve the accuracy of studies and statistics derived from the reported data.

Also, part 1737 is further amended as follows: Pursuant to OMB Circular A–129, REA will require borrowers to report any Federal debt delinquency and the reason for the delinquency prior to the approval of an REA loan, see §§ 1737.22(b)(9) and 1737.41(b)(2)(iv). Borrowers must also certify that they have been informed of the collection options the Federal government may use to collect delinquent debt, see § 1737.22(a)(19). Notification shall also be given that REA may obtain commercially available credit reports on borrowers, see § 1737.70(k).

Comments

In the Proposed Rule published in the Federal Register on March 19, 1991 (56 FR 11522), the Rural Electrification Administration invited interested parties to file comments on or before April 18, 1991. Comments were received from four trade associations, four borrower associations, two members of Congress, and forty-two individual borrowers. In addition, four other interested parties filed comments past the deadline. However, their concerns have been addressed since the issues raised were similar to those received prior to the deadline. The comments and recommendations are summarized as follows:

Section 1610 RTB Loan Policies

Comment summary. Respondents stated that REA failed to address the issue of "penalty-free prepayment" of RTB loans. It was requested that REA include language in its regulations to make it clear that REA will not require a prepayment premium from RTB borrowers retiring debt prior to maturity. It was also noted that REA was relying on its "Note" which provides for the prepayment premium.

Response. The RTB prepayment premium was not addressed in changes required by the RED Act. In general, RTB's prepayment premium policy has been determined by the RTB Board of Directors. In fact, the original prepayment policy was established by the RTB Board of Directors on February 10, 1972, and later revised on May 3, 1984. The Omnibus Budget Reconciliation Act of 1987 did permit temporary waivers of RTB prepayment premiums from December 22, 1987, through September 30, 1988. Information regarding temporary waivers of prepayment premiums was addressed in § 1610.9; however, since the time period has expired, this language has been removed.

Section 1610.5 Concurrent REA and Bank loans

Section 1610.6 Exclusive Bank financing for current loan needs

Comment summary. Respondents objected to the language "and with prudent operations," stating that there is no definition or standard in the proposed rule establishing "prudent operation." It was requested that this language be deleted from the final rule.

Response. REA has deleted language in this final rule referencing "prudent operations."

Sections 1735.2 and 1737.2 Definitions

Comment summary. One respondent indicated that REA should not revise the definition of subscriber.

Response. REA defined subscriber as an access line because of the numerous requests by borrowers who are having difficulty maintaining data on subscribers for REA while all other industry organizations are requiring data in the form of access lines. A review of REA borrowers has indicated that equating subscribers to access lines would impact only a small number of the almost 1000 REA borrowers.

Comment summary. Due to wide use of the term "depreciation," it was requested that REA include this term in the definition section of the rule (for the public's benefit).

Response. Although this term is widely used in the telephone industry and REA believes that all parties concerned are already familiar with the definition, REA has complied with this request and defined the term "depreciation" in § 1735.2. This definition is based upon the definition provided in the Federal Communications Commission's (FCC's) Uniform System of Accounts. In addition, REA has replaced the term "useful life" with the term "economic life" to eliminate any confusion when using these terms.

Comment summary. Respondents stated that there was no basis for the use of a "before-tax" TIER. TIER should be calculated only on an "after-tax" basis. All other references to "before-tax" TIER should be eliminated from the final rule.

Response. REA has eliminated any references to "before-tax" TIER will be calculated on an "after-tax" basis.

Section 1735.17(b)(4) Facilities financed

Comment summary. Respondents stated that REA must loan for all RE Act purposes. Objections were made to excluding from financing those facilities that would be fully depreciated within the Forecast period (usually 5 years); and that REA has no authority to exclude such facilities.

Response. § 1735.17(b)(4) regarding facilities which are fully depreciated within the Forecast period has been deleted from the final rule.

Section 1735.22(f) Loan Security.

Comment summary. Respondents requested that the TIER maintenance provisions be removed from the final rule, stating that they place an undue burden on the borrower because there are a number of factors that could cause the borrower's TIER to fall below the maintenance level stated in the borrower's mortgage. Several respondents stated that imposing a TIER maintenance provision could require a borrower to increase its ratio of net income or margins (i.e., through local service revenues), which is contrary to the RED Act. Further, the respondents stated that setting a TIER maintenance level at the projected feasibility TIER (but greater than 1.5) would be unreasonable because of the factors affecting the borrower during the Forecast period in which the system is being constructed and because projected revenues from new subscribers have not yet been achieved. (Other arguments included the possible overestimating of revenues and underestimating of expenses which would give a distorted high TIER.) Objections were also made to the 1.5 TIER requirement on guaranteed loans.

Response. This requirement does not impose a need for the borrower to raise local service rates or to increase TIER. It merely requires the borrowers to maintain the TIER predicted by the projections given to REA by the borrower and on which REA relied on making the loan. The minimum TIER requirement provides some assurance of adequate loan security without placing an additional burden on the borrower. In 1989, ninety-five percent of REA's reporting borrowers has a TIER greater than 1.5. In general, borrowers with a TIER of less than 1.5 have similar financial characteristics to those borrowers with TIERs greater than 1.5 (such as profit or expenses per subscriber and density). These borrowers should not experience any significant difficulty in meeting the minimum TIER requirements. In addition, a minimum TIER of 1.5 is typically required by other lenders that loan to REA borrowers, such as the Rural Telephone Finance Cooperative.

The language has been revised to clearly indicate the borrower's responsibilities and to give assurance that borrowers will not be subject to extraneous requirements. In particular, § 1735.22(f)(1) now contains language indicating that any borrower eligible for an REA loan will be required to maintain a TIER of at least 1.0 during the Forecast period. After the Forecast period, borrowers will be required to maintain a TIER at least equal to the forecasted TIER. This includes existing RTB borrowers (that were previously required to maintain a TIER of 1.5) that are eligible for and receive an REA loan.

In general, TIER calculated on an after-tax basis is more difficult to achieve than TIER calculated on a before-tax basis. Because of the easing of TIER restrictions during the Forecast period for all borrowers and because RTB borrowers receiving an REA loan will not be required to maintain a TIER of 1.5 (if previously required), these amendments reduce the TIER maintenance requirements imposed on borrowers by existing regulations.

Section 1735.22(g) Loan Security.

Comment summary. It was requested that this section be more clearly written to clarify that REA will not require borrowers to increase TIER as a requirement for receiving a loan (using language from the RE Act was suggested). It was further requested that the second sentence in this section which reads "Additional financial, investment, and managerial controls appear in the loan contract and mortgage required by REA" be deleted, stating that REA cannot deny a loan, advance, etc., based on policy that has not been published in the Federal Register.

Response. Since TIER is defined in the beginning of part 1735 and the first sentence clearly states that the borrower is not required to raise TIER as a condition to receiving a loan, no further elaboration is deemed necessary. The second sentence in this section was not affected by changes required by the RED Act. The generic loan documents will be published in the near future.

Section 1735.30(b) Insured loans.

Comment summary. Some respondents were concerned that REA had eliminated "hardship" loans established under section 305(b) of the RE Act.

Response. Proposed language was deleted from this section (as well as in § 1737.70(d)) to clearly differentiate between "hardship" loans made under section 305(b) of the RE Act and "variable interest rate" loans made under section 305(d) of the RE Act, as amended by the RED Act.

Section 1735.32(a) Guaranteed loans.

Comment summary. Respondents stated that there is no provision in the RE Act or regulations that provide for making concurrent RTB-guaranteed loans. The respondents requested that if REA allows for such loans, it should be only at the request of the borrower. Objections were also made to language limiting loan guarantees to what REA considers "major" telephone loans and setting a minimum loan amount of $7 million.

Response. Section 306 of the RE Act does not preclude the Administrator from approving concurrent RTB-guaranteed loans. In the last sentence of § 1735.32(a), REA did not intend to delineate between major and minor telephone loans. Reference to loan amounts of $7 million has been eliminated. Also, § 1735.32(a) clearly

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states that loan guarantees made under this section will be considered for only those borrowers specifically requesting a guarantee.

Section 1735.42 Extension of advances.

Comment summary. Respondents requested further explanation of why this section was deleted, stating that it was done so without explanation.

Response. This section was replaced by § 1735.43(b). As a result of this revision, borrowers are now permitted to draw down loan funds over the life of the loan and without the need to execute new loan documents. The provision regarding the limitation of two advances per year (after 5 years from the date of the note) has been removed.

Section 1735.43 Payments on loans.

Comment summary. Respondents objected to the options provided by REA in order to allow for loan maturity periods of up to 35 years. General objections include:

(1) REA has adequate security instruments in place and does not need further loan security measures imposed by the funded reserve option or the net plant to long-term debt ratio option (historical "no default" argument noted). It was also noted that these options would be burdensome to the borrower, force them to choose shorter amortization periods, and divert the borrowers use of general funds.

(2) Long-term financing is necessary and commonplace in the telecommunications industry. The respondents requested that REA allow borrowers to elect a loan maturity period of up to 35 years without further burden or conditions.

Response. If the loan maturity exceeds the composite economic life of the facilities to be financed, and REA-financed plant is retired and replaced by new plant before the REA loan is repaid, earnings from this new plant will be channelled back to repay the debt on the retired plant plus repay any new debt incurred for the replacement facilities. REA not only relies on the value of the facilities financed for collateral but also depends on the revenues produced by these facilities to repay its loans. When the loan period is longer than the depreciation period, and the capital recovered through depreciation is not used to replace plant, serious problems could result such as undercollateralization and rate base erosion.

Section 201 of the RE Act states that loans "shall not be made unless the Administrator finds and certifies that in his judgement the security therefor is reasonably adequate and such loan will be repaid within the time agreed * * *" (similar language is also contained in section 408 of the RE Act). The RED Act permits borrowers to select a loan amortization period up to a maximum of 35 years. REA has clearly stated that borrowers shall, at the time the loan application is submitted, select a loan maturity up to a maximum of thirty-five years. In order to comply with sections 201 and 408 of the RE Act, REA has provided two options for the borrower to choose if the loan maturity is extended past the composite economic life of the facilities financed by the loan (see § 1735.43(a)(1) and § 1735.43(a)(2)). These options are intended to allow the borrower the flexibility of extending loan maturity while allowing the government to maintain adequate security for its loans.

Respondents also stated that borrowers who were not able to maintain a net plant to secured-debt ratio of 1.2 would be excluded from receiving long-term financing, noting that forty-four percent of the borrowers reporting in 1989 had a net plant to long-term debt ratio of less than 1.2. In fact, further analysis by REA shows that twenty-three percent of REA's borrowers had a net plant to long-term debt ratio of less than 1.0 for the same period. REA believes that this situation could signify potential loan security problems and indicates a possible undercollateralization problem. However, these borrowers would not be excluded from long-term financing. Borrowers in this category could elect the funded reserve option provided by REA if they wish to extend loan maturity past the composite economic life of the facilities financed, plus 3 years.

Respondents were also concerned about actions taken by REA if a borrower, under the ratio option, has a net plant to secured debt ratio that falls below 1.2. Where possible, REA will assist the borrower in correcting this situation. (This issue will be addressed in more detail in the proposed revision to 7 CFR part 1744, to be published for public comment in the near future.) Further, language has been added to this section to state that borrowers choosing the ratio option must achieve this ratio beginning 1 year after the date of the first advance of loan funds.

It is common practice for lenders to set the amortization period of loans for capital assets equal to the expected economic life of the facilities financed. REA is establishing neither a unique or burdensome requirement. Moreover, when the term for REA loans was originally established at 35 years, the expected economic life of typical telephone facilities closely approximated this period. Revising this section simply acknowledges the technological changes in the telephone industry that have resulted in shorter economic lives for many types of equipment.

Comment summary. One respondent stated that the definition of "funded reserve" is deficient because it does not include cash.

Response. In an effort to clarify the meaning of "funded reserve," REA has elaborated on the definition to include cash and other securities as approved by REA. REA's primary concern was that the funded reserve should consist of marketable securities that are liquid and earn interest.

Section 1735.47 Rescissions of loans.

Comment summary. Respondents requested that the provisions listed in this section which condition a borrower's voluntary rescission of loan funds be removed. Other respondents requested that language be added to state that "REA may only initiate a rescission * * *".

Response. This section establishes the specific conditions under which borrowers can request a rescission of loan funds (§ 1735.47 (a) and (b)). These conditions have not been changed from existing regulations. These conditions were established to insure that the main objectives of the RE Act (i.e., provide service to the widest practical number of rural subscribers) will be carried out by the recipients of REA telephone loans. As for REA's ability to rescind loan funds, the language used in § 1735.47(b) has been restated to more concisely reflect the requirements provided for in the RED Act.

Section 1735.51 Required findings.

Comment summary. One respondent requested the language "in excess of operating expenditures (including maintenance and replacement)" be removed because the TIER calculation assures that there will be adequate revenues to repay the loan.

Response. The TIER calculation will only measure the borrower's ability to meet normal operating and interest expenses. This calculation does not consider plant replacement or extraordinary occurrences.

Section 1737.21 The completed loan application.

Comment summary. In reference to returning an incomplete application to a borrower after 90 working days, it was requested that REA include language in this section to make it clear that the application is being returned without prejudice and that the borrower may resubmit the completed application.

Response. REA has added language to indicate that any application returned is done so without prejudice and that the borrower may resubmit the completed application.

Section 1737.22 Supplementary information.

Comment summary. With regards to what actions the government is authorized to take if a borrower becomes delinquent, respondents requested a further explanation of what constitutes a "delinquent debt or account," stating that such an explanation should be included in the definition section.

Response. This section has been revised to clarify the meaning of "delinquency" according to OMB Circular A–129. Information concerning delinquent debt or accounts and other pertinent financial details is contained in the borrower's mortgage and loan contract, and will be addressed in more detail in the proposed revision to 7 CFR part 1744 (to be published for comment in the near future).

Comment summary. One respondent wanted to limit the concept of approved depreciation rates to those of state regulatory bodies.

Response. It is possible that other regulatory bodies, such as the FCC, could in some instances have authority in approving depreciation rates. Consequently, the language regarding the approval of depreciation rates has remained unchanged.

Section 1737.70(d) Description of feasibility.

Comment summary. Respondents objected to the "one-way variable" interest rate provision and stated that there was no provision allowing for a downward adjustment in the interest rate if the borrower's financial condition further deteriorates. Several respondents commented that a "variable" interest rate could make long-term financial planning difficult as well as complicate regulatory matters. It was also stated that REA was placing an undue burden on its own staff and its borrowers with regards to the annual studies used to monitor the borrower's financial condition and make adjustments in the interest rate if necessary. The respondents requested the deletion of this provision.

Response. Through the provisions of section 305(d) of the RE Act, as amended, REA is making available loans bearing interest at less than 5 percent, but not less than 2 percent, to borrowers who are unable to qualify for financing from REA under the requirements of § 1735.22(f) at the standard loan interest rate of 5 percent. REA's intent is to provide borrowers with the financing necessary to provide modern telephone service to the widest practical number of rural subscribers. REA does not believe that the "variable" interest rate will impose any significant financial planning problems for borrowers. The maximum interest rate that a loan could be adjusted to is 5 percent; and the borrower is made aware of this before any loan funds have been advanced (i.e. through this regulation and the loan documents). Interest rate adjustments will only be made if it is determined by the Administrator that the borrower has the ability to meet its debt service obligations. In addition, variable interest rates are not uncommon to the REA lending programs. Since 1988, REA has been processing adjustable interest rate RTB loans with no adverse impact on RTB borrowers (FFB loans may also have variable interest rates).

REA believes that the additional time involved in the financial analysis of these borrowers is necessary in order to provide assistance to the borrower for establishing a sound financial position. Language has been added to this section to allow downward adjustments in the interest rate to a minimum equal to the borrower's original feasibility interest rate. Downward and upward adjustments in the interest rate will be rounded down to the nearest one-half or whole percent. Language has also been added to this section to clearly indicate that the variable interest rate provisions apply to only those loans made under this section at an interest rate of less than 5 percent.

Proposed language was also deleted from this section to clearly differentiate between "hardship" loans made under section 305(b) of the RE Act and "variable interest rate" loans made under section 305(d) of the RE Act, as amended by the RED Act.

Section 1737.70(e) Description of feasibility.

Comment summary. Respondents requested the use of the word "or" instead of "and" when applying depreciation rates to be used in determining feasibility.

Response. The choice of the word "and" is technically correct and is used in the same context in the RED Act (that is, in instances where some of the items to be financed have commission-approved depreciation rates and some do not, a combination of commission-approved and REA-median rates will be used).

Section 1737.70(h) Description of feasibility.

Comment summary. One respondent stated that the language in this section (which states—if operating experience is not adequate, etc., REA will base estimates on state and regional standards) should be removed, stating that it "seeks to confer agency discretion."

Response. These types of estimates are necessary for REA to use, particularly if the loan applicant is a newly created organization with no previous operating history, has never received an REA loan, or is replacing older telecommunications equipment with state-of-the-art facilities. These estimates are critical because the borrowers may have limited or no operating experience, or are replacing current facilities new to the borrower's system. For example, a borrower's maintenance expense could be inaccurate if a borrower is replacing aerial copper with buried facilities or is replacing analog switching with digital.

Section 1737.70(l) Description of feasibility.

Comment summary. With regards to returning an application to a borrower if it is determined that the loan is not feasible, the respondents stated that there was no justification for REA imposing a 90 working day deadline for the borrower to make adjustments, etc., and return the application to REA before it is canceled.

Response. This deadline is not onerous and is necessary to ensure efficient management of REA's manpower resources while maintaining timely review and approval of REA's loan applications. The 90-day time period should be more than ample.

Section 1737.80(a) Description of characteristics letter.

Comment summary. Objections were made with regards to REA requiring concurrence from the borrower to the terms stated in the letter when REA is not committed to approve the loan. It was suggested that the borrower's response to the letter should state that it has noted the terms and will seek to complete the agreement with REA. It was also suggested that a "borrower should be able to provide additional data to REA before signing the loan documents and perhaps gain better terms." One respondent proposed replacing the characteristics letter with a loan commitment letter that is binding

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by the REA if accepted by the borrower. It was further requested that the term "other prerequisites" be defined.

Response: The language in § 1737.80(a) is structured to provide flexibility to the borrower regarding modifications to and/or agreement with any aspect of the characteristics letter. Borrowers have the opportunity to change the loan amortization period and to suggest other changes to any of the conditions or terms proposed by REA. Since REA believes the language as stated is appropriate, it will remain unchanged.

Section 1744.66 The financial requirement statement (FRS).

Although no comments were received concerning the need for borrowers to report any Federal debt delinquency prior to the approval of an advance of loan funds, REA has determined that this requirement in unnecessary and has deleted this language from the final rule.

Effective Date

Pursuant to U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this final rule for 30 days after publication in the **Federal Register**, and for making the revision effective upon publication in the **Federal Register**. The amendments to the RE Act made by the Farm Bill gave REA until May 27, 1991 (180 days from November 28, 1990) to promulgate these regulations. REA has put forth every effort to publish, as soon as possible, regulations encompassing the complicated issues raised by these amendments.

REA has been unable to continue its telephone loan program pending the implementation of these regulations. Unless this final rule is made effective immediately, REA may be unable to process and approve loan applications in sufficient numbers and amounts to meet loan levels mandated by Congress for the REA telephone loan program in fiscal year 1991. These circumstances would prevent REA from meeting Congressional goals. An additional delay of 30 days would cause great difficulty to many REA borrowers that might not receive loans this year. Funding delays would also result in delays in service and higher construction costs. Delaying the implementation of this final rule would create uncertainty about the requirements borrowers must satisfy to obtain REA financing and further inhibit REA's ability to assist borrowers seeking REA loans.

Although the revision takes effect upon publication, REA will review and consider all comments received by July 10, 1991.

List of Subjects

7 CFR Part 1610

Loan programs—communications, Rural areas, Telephone.

7 CFR Parts 1735 and 1737

Reporting and recordkeeping requirements, Rural areas, Loan programs—communications, Telephone.

7CFR Part 1744

Accounting, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone. Therefore, REA amends 7 CFR chapters XVI and XVII as follows:

Chapter XVI—[Amended]

PART 1610—[AMENDED]

1. The authority citation for 7 CFR part 1610 is revised to read as follows:

Authority: 7 U.S.C. 941 et seq.

2. Section 1610.5 is revised to read as follows:

§ 1610.5 Concurrent REA and Bank loans.

The Bank will consider making a loan concurrently with REA when REA has requested the applicant, pursuant to section 307 of the Act, to obtain a loan for part of its credit needs from a credit source other than REA, and the Governor finds that the applicant could, consistent with achieving the objectives of the Act, produce a TIER of 1.5, as determined by the feasibility study prepared in connection with these loans, on all its outstanding and proposed loans, including a loan from REA at its standard interest rate of 5 percent for enough of its current loan needs to qualify the applicant for a loan from the Bank in accordance with § 1610.11 for the balance of such current loan needs, as determined by the Governor. The interest rate on the Bank loan shall be determined as provided in § 1610.10.

3. Section 1610.6 is revised to read as follows:

§ 1610.6 Exclusive Bank financing for current loan needs.

The Bank will consider making a loan for the applicant's total current needs as determined by the Governor when the Governor finds that the applicant could, consistent with achieving the objectives of the Act, produce a TIER of 1.5, as determined by the feasibility study prepared in connection with this loan, on all its outstanding and proposed loans, including an annual interest rate on the loan for the current needs as provided for in § 1610.11. The actual interest rate on the loan shall be determined as provided in § 1610.10.

4. Section 1610.9 is revised to read as follows:

§ 1610.9 Class B stock.

Borrowers receiving loans from the Bank shall be required to invest in class B stock at 5 percent of the total amount of loan funds advanced. Borrowers may purchase class B stock by:

(1) Paying an amount (using their own general funds) equal to 5 percent of the amount, exclusive of the amount for class B stock, of each loan advance, at the time of such advance; or

(2) Requesting that funds for the purchase of class B stock be included in the loan. If funds for class B stock are included in a loan, the funds for class B stock shall be advanced in an amount equal to 5 percent of the amount, exclusive of the amount for class B stock, of each loan fund advance, at the time of such advance.

Chapter XVII—[Amended]

PART 1735—[AMENDED]

5. The authority citation for part 1735 continues to read as follows:

Authority: 7 U.S.C. 901 et seq., 7 U.S.C. 1921 et seq.

6. In subpart A, § 1735.2, the paragraph designations at the beginning of the definitions are removed, the definitions for "Times Interest Earned Ratio" and "Telephone Service" are revised; and the remaining following definitions are added alphabetically to read as follows:

§ 1735.2 Definitions.

* * * * *

Access line means a transmission path between user terminal equipment and a switching center that is used for local exchange service. For multiparty service, the number of access lines equals the number of lines/paths terminating on the mainframe of the switching center.

* * * * *

Composite economic life as applied to facilities financed by loan funds means the weighted (by dollar amount of each class of facility in the loan) average economic life of all classes of facilities in the loan.

* * * * *

Depreciation means the loss not restored by current maintenance, incurred in connection with the consumption or prospective retirement of telecommunications plant in the course of service from causes which are known to be in current operation, against which the company is not protected by insurance, and the effect of which can be forecast to a reasonable approach to accuracy.

Economic life as applied to facilities financed by loan funds, means the number of years resulting from dividing 100 percent by the depreciation rate (expressed as a percent) approved by the regulatory body with jurisdiction over the telephone service provided by the borrower for the class of facility involved or, if no approved rate exists, by the median depreciation rate expressed as a percent as published by REA in its Statistical Report, Rural Telephone Borrowers for all REA and RTB borrowers for that class of facility.

* * * * *

Forecast period means the time period beginning on the date (base date) of the borrower's balance sheet used in preparing the feasibility study and ending on a date equal to the base date plus the number of years estimated in the feasibility study for completion of the project. Feasibility projections are usually for 5 years, see § 1737.70(a) of this chapter. For example, the forecast period for a loan based on a December 31, 1990 balance sheet and having a 5-year estimated project completion time is the period from December 31, 1990 to December 31, 1995.

Funded reserve means a separate asset account, approved by REA, consisting of any or all of the following:

(1) Federal government securities purchased in the name of the borrower;

(2) Other securities issued by an institution whose senior unsecured debt obligations are rated in any of the top three categories by a nationally recognized rating organization; or

(3) Cash.

* * * * *

Subscriber means the same as access line.

* * * * *

Telephone service means any communication service for the transmission or reception of voice, data, sounds, signals, pictures, writing, or signs of all kinds by wire, fiber, radio, light, or other visual or electromagnetic means and includes all telephone lines, facilities and systems to render such service. It does not mean:

(1) Message telegram service;

(2) Community antenna television system services or facilities other than those intended exclusively for educational purposes; or

(3) Radio broadcasting services or facilities within the meaning of section 3(o) of the Communications Act of 1934, as amended.

Times Interest Earned Ratio (TIER) means the ratio of a borrower's net income (after taxes) plus interest expense, all divided by interest expense. For the purpose of this calculation, all amounts will be annual figures and interest expense will include only interest on debt with a maturity greater than one year.

7–8. In subpart B, § 1735.10 is amended by revising the first two sentences and adding a new sentence after the second sentence to read as follows:

§ 1735.10 General.

The Rural Electrification Administration (REA) makes loans for the purpose of financing the improvement, expansion, construction, acquisition, and operation of telephone lines, facilities, or systems to furnish and improve telephone service in rural areas. Loans made or guaranteed by the Administrator of REA will be made in conformance with the Rural Electrification Act of 1936 (RE Act), as amended (7 U.S.C. 901 et seq.), and 7 CFR chapter XVII. REA will not deny or reduce a loan or an advance of loan funds based on a borrower's level of general funds. * * *

9. In § 1735.17, paragraph (b) is removed and paragraphs (c) and (d) are redesignated as paragraphs (b) and (c) respectively; in addition, newly designated paragraph (b)(1) is revised to read as follows:

§ 1735.17 Facilities financed.

* * * * *

(b) * * *

(1) Station apparatus, except for that owned by the borrower, and any associated inside wiring.

* * * * *

10. In § 1735.22, paragraphs (f) and (g) are revised to read as follows:

§ 1735.22 Loan security.

* * * * *

(f) To obtain a loan after November 29, 1990, a borrower shall meet the following Times Interest Earned Ratio (TIER) requirements.

(1) For a 100 percent insured loan, that is, a loan made solely under section 305 of the RE Act, a borrower must have a TIER of at least 1.0 on all of its outstanding and proposed loans from REA and all other lenders as determined by the feasibility study prepared in connection with the loan. The mortgage will contain a provision requiring the borrower to maintain a TIER of at least 1.0 during the Forecast period. At the end of the Forecast period, the borrower will be required to maintain at a minimum a TIER at least equal to the projected TIER determined by the feasibility study prepared in connection with the loan, but not greater than 1.5.

(2) For a loan guaranteed by REA or made concurrently by REA and the Rural Telephone Bank (RTB) (and for a 100 percent RTB loan), a borrower must have a TIER of at least 1.5 on all of its outstanding and proposed loans from REA and all other lenders as determined by the feasibility study prepared in connection with the loan. The mortgage will contain a provision requiring the borrower to maintain at a minimum a TIER equal to the borrowers prior loan TIER maintenance level, if any, stated in its mortgage but not less than 1.0. At the end of the Forecast period, the borrower will be required to maintain at a minimum a TIER of 1.5.

(g) A borrower will not be required to raise its TIER as a condition for receiving a loan. Additional financial, investment, and managerial controls appear in the loan contract and mortgage required by REA.

11. In § 1735.30, paragraph (a)(2) is revised to read as follows:

§ 1735.30 Insured loans.

(a) * * *

(2) Cannot, in accordance with generally accepted management and accounting principals and without increasing rates to its subscribers, provide service consistent with objectives of the RE Act.

* * * * *

12. In § 1735.32, paragraph (a) and the first sentence of paragraph (d) are revised to read as follows:

§ 1735.32 Guaranteed loans.

(a) *General.* Loan guarantees under this section will be considered for only those borrowers specifically requesting a guarantee. Borrowers may also specify that the loan to be guaranteed shall be made by the Federal Financing Bank (FFB). REA provides loan guarantees pursuant to section 306 of the RE Act to enable borrowers to secure telephone loans from non-REA sources. Guaranteed loans may be made concurrently with insured loans or RTB loans. REA will consider guaranteeing a loan if the borrower meets all requirements set forth in regulations applicable to a loan made by REA. No fees or charges are assessed for any guarantee of a loan provided by REA. In view of the Government's guarantee, REA generally obtains a first lien on all assets of the borrower; see 7 CFR 1735.46.

* * * * *

(d) *Rederal Register notice.* After REA has reviewed an application and

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determined that it shall consider guaranteeing a loan for the proposed project and if the borrower has not specified that the loan be made from the FFB, REA shall publish a notice in the Federal Register." * * *

* * * * *

§ 1735.42 [Reserved]

13. Section 1735.42 is removed and reserved.

14. Section 1735.43 is revised to read as follows:

§ 1735.43 Payments on loans.

(a) Borrowers shall, at the time a loan application is submitted, select a loan maturity up to a maximum of 35 years. If the maturity selected exceeds the composite economic life of the facilities to be financed by the loan by a period of more than three years, release of funds included in the loan shall be conditioned upon the borrower electing to either:

(1) Establish and maintain, pursuant to a plan approved by REA, a funded reserve in such an amount that the balance of the reserve plus the value of the facilities less depreciation shall at all times be at least equal to the remaining principal payments on the loan; or

(2) Maintain a net plant to secured debt ratio of at least 1.2. Secured debt shall mean the total of long term debt and current maturities of long term debt (whether owed to REA, RTB, or some other creditor) and capital leases.

The loan documents prepared by REA for the loan will contain the appropriate condition as selected by the borrower. If the funded reserve option is selected, funding of the reserve must begin within one year of approval of release of funds and must continue regularly over the composite economic life of the facilities financed. If net plant to secured debt ratio option is selected, this ratio must be achieved one year following the first advance of loan funds and must be shown in REA's analysis of the borrower's operating report.

(b) Principal and interest will be repaid in accordance with the terms of the notes. Generally, interest is payable each month as it accrues. Principal payments on each note generally are scheduled to begin 2 years after the date of the note. After this deferral period, interest and principal payments on all funds advanced during this 2-year period are scheduled in equal monthly installments. Principal payments on funds advanced 2 years or more after the date of the note will begin with the first billing after the advance. The interest and principal payments on each of these advances will be scheduled in equal monthly installments. This CFR part supersedes those portions of REA Bulletin 320-12, "Loan Payments and Statements" with which it is in conflict.

15. Section 1735.47 is revised to read as follows:

§ 1735.47 Rescissions of loans.

(a) Rescission of a loan may be requested by a borrower at any time. To rescind a loan, the borrower must demonstrate to REA that:

(1) The purposes of the loan being rescinded have been completed;

(2) Sufficient funds are available from sources other than REA, RTB or FFB to complete the purposes of the loan being rescinded; or

(3) The purposes of the loan are no longer required to extend or improve telephone service in rural areas.

(b) Borrowers submitting loan applications containing purposes previously covered by a loan that has been rescinded shall include in the application an explanation, satisfactory to REA, of the change of conditions since the rescission that re-establishes the need for those purposes.

(c) REA shall not initiate the rescission of a loan unless all of the purposes for which telephone loans have been made to the borrower under the Act have been accomplished with funds provided under the Act.

16. In § 1735.51, paragraph (a)(1) is revised to read as follows:

§ 1735.51 Required findings.

(a) * * *

(1) Self-liquidation of the loan within the loan amortization period; this requires that there be sufficient revenues from the borrower's system, in excess of operating expenditures (including maintenance and replacement), to repay the loan with interest.

* * * * *

PART 1737—[AMENDED]

17. The authority citation for part 1737 continues to read as follows:

Authority: 7 U.S.C. 901 et seq., 7 U.S.C. 1921 et seq.

18. In subpart A, § 1737.2 the paragraph designations are removed; the definition "Telephone Service" is revised; and the following remaining definitions are added alphabetically to read as follows:

§ 1737.2 Definitions.

* * * * *

Access line means a transmission path between user terminal equipment and a switching center that is used for local exchange service. For multiparty service, the number of access lines equals the number of lines/paths terminating on the mainframe of the switching center.

* * * * *

Forecast period means the time period beginning on the date (base date) of the borrower's balance sheet used in preparing the feasibility study and ending on a date equal to the base date plus the number of years estimated in the feasibility study for the completion of the project. Feasibility projections are usually for 5 years, see § 1737.70(a). For example, the forecast period for a loan based on a December 31, 1990 balance sheet and having a 5-year estimated project completion time is the period from December 31, 1990 to December 31, 1995.

* * * * *

Subscriber means the same as access line.

* * * * *

Telephone service means any communication service for the transmission or reception of voice, data, sounds, signals, pictures, writing, or signs of all kinds by wire, fiber, radio, light, or other visual or electromagnetic means and includes all telephone lines, facilities and systems to render such service. It does not mean:

(1) Message telegram service;

(2) Community antenna television system services or facilities other than those intended exclusively for educational purposes; or

(3) Radio broadcasting services or facilities within the meaning of section 3(o) of the Communications Act of 1934, as amended.

Times Interest Earned Ratio (TIER) means the ratio of a borrower's net income (after taxes) plus interest expense, all divided by interest expense. For the purpose of this calculation, all amounts will be annual figures and interest expense will include only interest on debt with a maturity greater than one year.

§ 1737.20 [Reserved]

19-20. Section 1737.20 is removed and reserved.

21. In § 1737.21, a sentence is added at the end of paragraph (b), and paragraph (c) is added to read as follows:

§ 1737.21 The completed loan application.

* * * * *

(b) * * * Borrowers are to submit all information in paragraph (a) of this section to their REA field representatives, who will review and then forward the packages to REA headquarters.

(c) REA will make a determination of completeness of the application package and will notify the borrower of this determination within 10 working days of receipt of the information at REA headquarters. If the application package is not complete, REA will notify the borrower of what information is needed in order to complete the application package. If the information required to complete the application package is not received by REA within 90 working days from the date the borrower was notified of the information needed, REA may return the application package to the borrower. Returned applications are without prejudice and borrowers may resubmit the completed application.

* * * * *

22. In § 1737.22, the introductory text is revised, new paragraphs (a)(17), (a)(18), and (a)(19) are added, paragraph (b)(5) is redesignated as paragraph (b)(10), and new paragraphs (b)(5) through (b)(9) are added to read as follows:

§ 1737.22 Supplementary information.

REA requires additional information in support of the loan application form. The information listed in paragraphs (a), (b), and (c) of this section must be submitted as part of the loan application as specified in 7 CFR 1737.21.

(a) * * *

(17) A sketch or map showing the existing and proposed service areas.

(18) Executed assurance that the borrower will comply with the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, as amended (see 49 CFR 24.4).

(19) A certification (which is included on REA Form 490, "Application for Telephone Loan or Guarantee") that the borrower has been informed of the collection options listed below that the Federal government may use to collect delinquent debt. REA and other government agencies are authorized to take any or all of the following actions in the event that a borrower's loan payments become delinquent or the borrower defaults (OMB Circular A-129 defines "delinquency" for direct or guaranteed loans as debt more than 31 days past due on a scheduled payment):

(i) Report the borrower's delinquent account to a credit bureau.

(ii) Assess additional interest and penalty charges for the period of time that payment is not made.

(iii) Assess charges to cover additional administrative costs incurred by the Government to service the borrower's account.

(iv) Offset amounts owed to the borrower under other Federal programs.

(v) Refer the borrower's debt to the Internal Revenue Service for offset against any amount owed to the borrower as an income tax refund.

(vi) Refer the borrower's account to a private collection agency to collect the amount due.

(vii) Refer the borrower's account to the Department of Justice for litigation in the courts.

All of the actions in paragraph (a)(19) of this section can and will be used to recover any debts owed when it is determined to be in the interest of the Government to do so. The notification and the required form of certification in paragraph (a)(19) of this section are included on REA Form 490, Application for Telephone Loan or Guarantee.

(b) * * *

(5) A "Certification Regarding Lobbying" for loans, or a "Statement for Loan Guarantees and Loan Insurance" for loan guarantees, and when required, an executed Standard Form LLL, "Disclosure of Lobbying Activities," (see section 319, Public Law 101-121 (31 U.S.C. 1352)).

(6) Executed copy of Form AD-1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions" (see appendix A to 7 CFR part 3017).

(7) Borrower's determination of loan maturity, including information noted in § 1735.43(a) of this chapter as required.

(8) Approved depreciation rates for items under regulatory authority jurisdiction.

(9) A statement that the borrower is or is not delinquent on any Federal debt, such as income tax obligations or a loan or loan guarantee from another Federal agency. If delinquent, the reasons for the delinquency must be explained and REA will take such explanation into consideration in deciding whether to approve the loan. REA Form 490, "Application for Telephone Loan or Guarantee," contains a section for providing the required statement and any appropriate explanation.

* * * * * * *

23. In § 1737.41, the parenthetical phrase at the end of paragraph (a) is transferred to the end of the section and paragraph (b) is revised to read as follows:

§ 1737.41 Procedure for obtaining approval.

* * * * * * *

(b) REA will not approve interim financing until it has reviewed and found acceptable:

(1) All of the information required under § 1737.21 or with REA approval.

(2) The following documents:

(i) The loan application (REA Form 490) clearly marked "in support of interim financing request."

(ii) The Loan Design (LD), or the portion thereof that covers the proposed construction if the completed LD is not available. See 7 CFR 1737.32.

(iii) Evidence that the borrower has satisfied the requirements of 7 CFR part 1794 applying to the proposed interim construction.

(iv) A statement that the borrower is or is not delinquent on any Federal debt, such as income tax obligations or a loan guarantee from another Federal agency. If delinquent, the reasons for the delinquency must be explained and REA will take such explanation into consideration in deciding whether to approve the interim financing, see 7 CFR 1737.22(b)(9).

(v) A "Certification Regarding Lobbying" for loans, or a "Statement for Loan Guarantees and Loan Insurance" for loan guarantees, and when required, an executed Standard Form LLL, "Disclosure of Lobbying Activities," (see section 319, Pub. L. 101-121 (31 U.S.C. 1352)).

(vi) Executed copy of Form AD-1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions" (see appendix A to 7 CFR part 3017).

(vii) Any other supporting data required by the Administrator.

* * * * * * *

24. In § 1737.70, paragraphs (d) through (g) are redesignated as paragraphs (g) through (j); paragraph (a), the last sentence of paragraph (b), newly designated paragraph (g), and the first sentence of newly designated paragraph (h) are all revised; and new paragraphs (d), (e), (f), (k) and (l) are added to read as follows:

§ 1737.70 Description of feasibility study.

(a) In connection with each loan REA shall prepare a feasibility study that includes sections on consolidated loan estimates, operating statistics, projected telecommunications, plant, projected retirement computations, and projected revenue and expense estimates (including detailed estimates of depreciation and amortization expense, scheduled debt service payments, toll and access charge revenues, and local service revenues). Normally, projections will be for a 5-year period and used to determine the ability of the borrower to repay its loans in accordance with the terms thereof. REA will not require borrowers to raise local service rates. Local service revenue projections will be based on the borrower's existing

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local service rates or regulatory body approved rates not yet in effect but to be implemented within the Forecast period. In the latter case, if a borrower is not required to obtain regulatory body approval for the implementation of such rates, REA will require a resolution of the board of directors indicating when those rates will be in effect.

(b) * * * REA shall consider the factors discussed in paragraphs (c) through (j) of this section in determining feasibility.

* * * * * * *

(d) REA may make a loan at an interest rate lower than 5 percent but not less than 2 percent. For borrowers that qualify for a loan made at an interest rate of less than 5 percent but not less than 2 percent, a feasibility study will be prepared using the highest interest rate at which the borrower would be capable of producing a TIER of 1.0. If a loan is approved, the interest rate for the loan will be fixed, at the rate used in determining feasibility, from the date the loan is approved until the end of the Forecast period. At the end of the Forecast period, the interest rate for the loan may be annually adjusted by the Administrator upward to a rate not greater than 5 percent, or downward to a rate not less than the rate determined in the feasibility study on which the loan was based, based on the borrower's ability to pay debt service and maintain a minimum TIER of 1.0. Downward and upward adjustments will be rounded down to the nearest one-half or whole percent. To make this adjustment, projections set forth in the loan feasibility study will be revised annually (beginning within four months after the end of the Forecast period) to reflect updated revenue and expense factors based on the borrower's current operating condition. Any such adjustment will be effective on July 1 of the year in which the adjustment was determined. If the Administrator determines that the borrower is capable of meeting the minimum TIER requirements of § 1735.22(f) at a loan interest rate of 5 percent on a loan or loans made under this section, then the loan interest rate shall be fixed, for the remainder of the loan repayment period, at the standard interest rate of 5 percent. In instances where a borrower has more than one loan made under this section with interest rates less than 5 percent adjustments to the interest rates will begin with the oldest applicable loan.

(e) Depreciation expense will be determined using depreciation rates appropriate to the normal operation of the borrower, based on:

(1) The borrowers regulatory body approved depreciation rates; and

(2) Where such rates as described in paragraph (e)(1) of this section do not exist for items which the borrower is seeking financing, the most recent median depreciation rates published by REA for all borrowers. REA will publish such depreciation rates annually in REA's "Statistical Report, Rural Telephone Borrowers."

(f) Projected scheduled debt service payments will generally be based on all of the borrower's outstanding and proposed loans from REA and all other lenders as of the end of the feasibility Forecast period (i.e. for a 5-year Forecast period, the amount of debt outstanding in year 5).

(g) The financial and statistical data are derived from REA Form 479, "Financial and Statistical Data for Telephone Borrowers," or for initial loans, the data may be obtained from the borrower's financial statements and other reports, and from other information supplied with the completed loan applications (see 7 CFR 1737.21 and 1737.22).

(h) When, in REA's opinion, the borrower's operating experience is not adequate or the borrower's current operations are not representative, the estimates in the feasibility study normally will be developed from state and regional standards based on the experience of REA borrowers. * * * * * * * *

(k) REA may obtain and review commercially available credit reports on applicants for a loan or loan guarantee to verify income, assets, and credit history, and to determine whether there are any outstanding delinquent Federal or other debts. Such reports will also be reviewed for parties that are or propose to be joint owners of a project with a borrower.

(l) If it is determined that loan feasibility cannot be proven as described in this section, the loan application will be returned to the borrower with an explanation. A borrower whose application has been returned will have 90 working days, from the date the application was returned, to revise and resubmit its application. If a revised application is not received by REA within the 90-day period described above, the application will be canceled and a new application will need to be submitted if the borrower wishes further consideration.

25. In § 1737.80, paragraph (a) is revised to read as follows:

§ 1737.80 Description of characteristics letter.

(a) After all of the studies and exhibits for the proposed loan have been prepared, but before the loan is recommended, REA shall inform the borrower, in writing, of the characteristics of the proposed loan. The purpose of the characteristics letter is to inform the borrower and obtain its concurrence, before further consideration by REA of the loan approval and the preparation of legal documents relating to the loan, in such matters as the amount of the proposed loan, its purposes, rate of interest, loan security requirements, and other prerequisites to the advance of loan funds. The letter, whether or not concurred in by the borrower, does not commit REA to approve the loan on these or any other terms.

* * * * *

§ 1737.90 [Amended]

26. In § 1737.90, paragraphs (a)(4) and (a)(8) are removed and paragraphs (a)(5) through (a)(7) are redesignated as paragraphs (a)(4) through (a)(6) respectively.

PART 1744–[AMENDED]

27. The authority citation for part 1744 continues to read as follows:

Authority: 7. U.S.C. 901 et seq., 7 U.S.C. 1921 et seq.

28. In § 1744.66, paragraph (b)(4)(iv) is revised to read as follows:

§ 1744.66 The financial requirement statement (FRS).

* * * * * * *

(b) * * *

(4) * * *

(iv) *Bank stock.* Based on the requirements for purchase of class B Rural Telephone Bank stock established in the loan. Funds for class B stock will be advanced in an amount equal to 5 percent of the amount, exclusive of the amount for class B stock, of each loan advance, at the time of such advance.

* * * * * * *

Dated: May 15, 1991.

Gary C. Byrne,

Administrator, Rural Electrification Administration Governor, Rural Telephone Bank.

[FR Doc. 91-13516 Filed 6-7-91; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-227-AD; Amdt. 39-7033; AD 91-13-02]

Airworthiness Directives; Airbus Industrie Model A310-200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A310-200 series airplanes, which requires repetitive visual inspections to detect cracks in the cabin floor structure between Frame 40 and Frame 46, and replacement of the affected part or modification of the corresponding area, if necessary. This amendment also provides for terminating action for the repetitive inspections. This amendment is prompted by full-scale fatigue testing by the manufacturer, which identified cracks in the attachment angles on longitudinal beams and shear plates in the area of Frame 45 and Frame 46, and rivet head failures at the floor cross beams attached to the longitudinal beams in the area of Frame 43 and Frame 44. This condition, if not corrected, could result in reduced structural integrity of the cabin floor structure.

EFFECTIVE DATE: July 15, 1991.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Airbus Industrie Model A310-200 series airplanes, which requires repetitive visual inspections to detect cracks in the cabin floor structure between Frame 40 and Frame 46, and replacement of the affected part or modification of the corresponding area, if necessary; and eventual reinforcement of the cabin floor structure in this area; was published in the **Federal Register** on December 20, 1990 (55 FR 52176).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supported the rule but noted that the applicability statement of the AD should apply to Model A310-200 series airplanes, serial numbers 162 through 357, inclusive, since the first manufacturer's serial number was 162. The FAA concurs. The applicability statement has been changed accordingly.

Two commenters objected to mandating the modification addressed in Airbus Industrie Service Bulletin A310-53-2013 and suggested that the proposed requirement to install the modification be deleted. The commenters stated that the inspections specified in Service Bulletins A310-53-2054 and A310-53-2056 are adequate to ensure the continued structural airworthiness of the airplanes. Furthermore, the commenters stated that cracking had occurred only during fatigue testing and has not occurred on in-service airplanes.

The commenters further noted that the affected beam brackets and clips in Frames 40 and 46 are secondary structure, not primary airworthiness structure. One of these commenters, Airbus Industrie, stated that, in view of the ease of inspecting this area, any damage that might occur would be easily detected. The FAA concurs. Upon further review of the proposed inspection criteria and intervals, the FAA has determined that the structural integrity of the airplane can be assured with the continued inspection of the cabin floor structure because:

(1) The inspections are easily performed, (2) the area is easily accessible, and (3) the required inspections will likely detect damage in a timely manner, before failure could occur. The final rule continues to provide for the optional modification of the cabin floor structure between Frame 40 and Frame 46; once this is accomplished, the required repetitive inspections may be terminated.

Paragraph D. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternative methods of compliance.

The economic analysis paragraph, below, has been revised to reflect only the cost for the repetitive inspections. Since the proposed mandatory modification requirement has been deleted from the final rule, related parts costs have also been deleted from the economic analysis.

The economic analysis paragraph has also been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes noted above. These changes will neither significantly increase the economic burden on affected operators nor increase the scope of the final rule.

It is estimated that 7 airplanes of U.S. registry will be affected by this AD, that it will take approximately 100 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $38,500.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

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PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-13-02. Airbus Industrie: Amendment 39-7033. Docket No. 90-NM-227-AD.

Applicability: Model A310-200 series airplanes, serial numbers 162 through 378, inclusive; on which Modification 4942 has not been incorporated (reference Airbus Industrie Service Bulletin A310-53-2013, Revision 1, dated April 17, 1986); certificated in any category.

Compliance: Required as indicated, unless previously accomplished. To prevent reduced structural integrity of the fuselage, accomplish the following:

A. Prior to the accumulation of 12,000 landings, or within 6 months after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 3,000 landings, perform a visual inspection of the cabin floor structure between Frame 40 and Frame 46, in accordance with Airbus Industrie Service Bulletin A310-53-2056, dated April 18, 1990.

B. If cracks are found, prior to further flight, replace the affected part or modify the corresponding area in accordance with Airbus Industrie Service Bulletin A310-53-2013, Revision 1, dated April 17, 1986. The modified area no longer needs to be inspected in accordance with paragraph A. of this AD. Unmodified areas must be inspected at intervals not to exceed 3,000 landings.

C. Modification of the cabin floor structure between Frame 40 and Frame 46, in accordance with Airbus Industrie Service Bulletin A310-53-2013, Revision 1, dated April 17, 1986, constitutes terminating action for the repetitive visual inspections required by paragraphs A. and B. of this AD.

D. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment (39-7033, AD 91-13-02) becomes effective July 15, 1991.

Issued in Renton, Washington, on May 30, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-13646 Filed 6-7-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-217-AD; Amdt. 39-7032; AD 91-13-01]

Airworthiness Directives; Airbus Industrie Model A310-200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A310-200 series airplanes, which requires repetitive visual inspections to detect cracks in a certain frame reinforcement angle runout; and repair, if necessary. This amendment also provides for terminating action for the repetitive inspections. This amendment is prompted by full scale fatigue testing by the manufacturer which revealed cracks in Frame 46 between Stringer 21 and Stringer 22. This condition, if not corrected, could result in reduced structural integrity of the fuselage.

EFFECTIVE DATE: July 15, 1991.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Airbus Industrie Model A310-200 series airplanes, which requires repetitive visual inspections to detect cracks in a certain frame reinforcement angle runout; repair, if necessary; and reinforcement of the angle runout; was published in the **Federal Register** on December 20, 1990 (55 FR 52177).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter noted that the applicability statement of the AD should apply to Model A310-200 series airplanes with serial numbers 162 through 357, inclusive, since the first manufacturer's serial number was 162. The FAA concurs. The applicability statement has been changed accordingly.

Two commenters objected to mandating the modification addressed in Airbus Industrie Service Bulletin A310-53-2019, and suggested that the proposed requirement to install the modification be deleted. The commenters stated that the inspections specified in Service Bulletin A310-53-2054 are adequate to ensure the continued structural airworthiness of the airplanes. Furthermore, the commenters stated that cracking had occurred only during fatigue testing and has not occurred on in-service airplanes. The commenters further noted that milling required to accomplish the modification has a very high risk factor; and that there would be a high probability that the reinforcement angle runout would be damaged and would require extensive repair or replacement. One of these commenters, Airbus Industrie, stated that, in view of the ease of inspecting this area, any damage that might occur would be easily detected. The FAA concurs. Upon further review of the proposed inspection criteria and interval, the FAA has determined that the structural integrity of the airplane can be assured with the continued inspection of the frame reinforcement angle runout because (1) the inspections are easily performed, (2) the area is easily accessible, and (3) the required inspections will likely detect damage in a timely manner, before failure could occur. Therefore, the final rule has been revised to delete the modification requirement. The final rule continues to provide for the optional modification of the reinforcement angle runout by tapering the angle and reducing the thickness; once this is accomplished, the required repetitive inspections may be terminated.

The economic analysis paragraph below has been revised to reflect only the cost for the repetitive inspections. Since the proposed mandatory modification requirement has been deleted from the final rule, related parts cost have also been deleted from the economic analysis.

The economic analysis paragraph has also been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

Paragraph C. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternative methods compliance.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes noted above. These changes will neither significantly increase the economic burden on affected operators nor increase the scope of the final rule.

It is estimated that 7 airplanes of U.S. registry will be affected by this AD, that it will take approximately 22 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $8,470.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-13-01. Airbus Industrie: Amendment 39-7032. Docket No. 90-NM-217-AD.

Applicability: Model A310-200 series airplanes, Serial Numbers 162 through 357, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent reduced structural integrity of the fuselage, accomplish the following:

A. Prior to the accumulation of 12,000 landings, or within 2,000 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 3,000 landings, perform a visual inspection of Frame 46 at the level of the frame reinforcement angle runout between Stringer 21 and Stringer 22 (left and right), in accordance with Airbus Industrie Service Bulletin A310-53-2054, Revision 2, dated May 22, 1990. If cracks are found, prior to further flight, repair in accordance with the service bulletin.

B. Modification of the reinforcement angle runout by tapering the angle and reducing the thickness, in accordance with Airbus Industrie Service Bulletin A310-53-2019, Revision 2, dated May 22, 1990, constitutes terminating action for the repetitive inspections required by paragraph A. of this AD.

C. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue S.W., Renton, Washington.

This amendment (39-7032, AD 91-13-01) becomes effective July 15, 1991.

Issued in Renton, Washington, on May 30, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-13647 Filed 6-7-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-286-AD; Amdt. 39-7036; AD 91-13-05]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes Equipped With Lucas Starter Motors Part Numbers C5114-04, C5114-05, C5114-07, and C5114-08

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model ATP series airplanes, which requires repetitive detailed visual inspections for damaged or loose securing nuts and locking tab washers used to secure the engine starter motor section to the starter motor clutch housing, and repair, if necessary; and eventual modification of the starter motors. This amendment is prompted by a report of the separation of the motor section from the clutch housing due to loose or damaged securing nuts and locking tab washers. This condition, if not corrected, could result in loss of engine oil and damage to the engine.

EFFECTIVE DATE: July 15, 1991.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113, telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain British Aerospace Model ATP series airplanes, which requires repetitive detailed visual inspections for damaged or loose securing nuts and

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locking tab washers used to secure the engine starter motor section to the starter motor clutch housing, and repair, if necessary, was published in the Federal Register on February 11, 1991 (56 FR 5370).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comments received.

The commenter supported the rule. The commenter also requested that, since the Model ATP series airplane is young in its service life, the FAA must ensure that each of the items pertinent to this model that are found to be defective or to fail at a "greater than projected rate" are placed in an appropriate repetitive maintenance program or that terminating action is provided. The FAA responds to this request by stating that its highest priority is the continued operational safety of aircraft. The FAA constantly monitors all available information on the continued airworthiness of the products under its purview; when it identifies an unsafe condition and confirms that the condition may exist in other products of the same type design in service, it promulgates AD rulemaking to require that corrective action essential to ensure safety is undertaken. Such corrective action may take the form of repetitive inspections or special procedures, and may involve a terminating modification or repair. Further, it is FAA's policy that long term continued operational safety will be better assured by actual modification of the airframe to remove the source of the problem, rather than by repetitive inspections or special procedures. The requirements of this AD action are in consonance with that policy.

Paragraph C. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternative methods of compliance.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator, nor increase the scope of the AD.

It is estimated that 5 airplanes of U.S. registry will be affected by this AD, that it will take approximately two manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. The required parts will be provided by the manufacturer to operators at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $550.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) [Revised Pub. L. 97-449, January 12, 1983]; and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-13-05. British Aerospace: Amendment 39-7036. Docket No. 90-NM-286-AD.

Applicability: Model ATP series airplanes; equipped with Lucas starter motors, Part Numbers C5114-04, C5114-05, C5114-07, and C5114-08; certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent loss of engine oil and damage to the engine, accomplish the following:

A. Within 20 days after the effective date of this AD, and thereafter at intervals not to exceed 250 hours time-in-service, perform a detailed visual inspection of the securing nuts and locking tab washers used to secure the motor section to the clutch housing, in accordance with British Aerospace Service Bulletin ATP-60-3, dated September 10, 1990. If any parts are damaged or loose, prior to further flight, repair in accordance with the service bulletin.

Note: The British Aerospace Service Bulletin references Lucas Service Bulletins C5114-60-6 and C5114-60-8 for additional information.

B. Within 150 days after the effective date of this AD, replace existing studs 60220165, tab washers SP42C, and nuts A26CP, with new bolts NI37210-14 and washers AS12943, and lock new bolts with tie wire, in accordance with British Aerospace Service Bulletin ATP-60-4, dated November 23, 1990. This modification constitutes terminating action for the repetitive inspections required by paragraph A. of this AD.

Note: The British Aerospace Service Bulletin references Lucas Service Bulletin C5114-60-A6 for additional information.

C. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment (39-7036, AD 91-13-05) becomes effective July 15, 1991.

Issued in Renton, Washington, on May 31, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-13649 Filed 6-7-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-12-AD; Amdt. 39-7030; AD 91-12-18]

Airworthiness Directives; British Aerospace Model BAe 146-100A, -200A, and -300A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes, which requires repetitive visual inspections to detect chafing under the wing-to-fuselage rear fairings, and repair, if necessary. This amendment is prompted by reports of chafing of the fuselage skin and reinforcing plates under the wing-to-fuselage rear fairings. This condition, if not corrected, could result in reduced structural integrity of the fuselage.

EFFECTIVE DATE: July 15, 1991.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes, which requires repetitive visual inspections to detect chafing under the wing-to-fuselage rear fairings, was published in the Federal Register on February 25, 1991 (56 FR 7619).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

Paragraph D. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternative methods of compliance.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator, nor significantly increase the scope of the AD.

It is estimated that 74 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $8,140.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-12-18. British Aerospace: Amendment 39-7030. Docket No. 91-NM-12-AD.

Applicability: Model BAe 146-100A, -200A, and -300A series airplanes, which are post-modification HCM00301 A or B and pre-modification HCM01037A, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent reduced structural integrity of the fuselage, accomplish the following:

A. Prior to the accumulation of 1,000 landings, or within 30 days after the effective date of this AD, whichever occurs later, perform a visual inspection of the fuselage skin between Frames 25 and 33 (100A series), Frames 25 and 33B (200A and 300A series) in the area of the fairing panel rubbing strips, including the reinforcing plates at Frames 26 and 29, in accordance with the Accomplishment Instructions of British Aerospace Service Bulletin 53-67, Revision 1, dated February 16, 1990.

1. Chafing damage found up to a maximum depth of 0.010 inch and no more than 6 inches in length, must be repaired prior to further flight, in accordance with paragraph 2.A.(2)(a) of the service bulletin.

2. Chafing damage found in excess of 0.010 inch in depth and more than 6 inches in length, must be repaired prior to further flight, in accordance with Structural Repair Manual (SRM) 53-00-12, or in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

B. Repeat the inspection required paragraph A. of this AD at the following intervals:

1. For airplanes without rubbing strip installed: At intervals not to exceed 3,000 landings.

2. For airplanes with rubbing strips installed: At intervals not to exceed 9,000 landings.

C. Accomplishment of Modification No. HCM01037A, the installation of a new silicone rubber seal with a metal insert, in accordance with British Aerospace Service Bulletin 53-67-01037A, dated October 17, 1989, constitutes terminating action for the repetitive inspections required by paragraph B. of this AD.

D. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to

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operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment (39-7030, AD 91-12-16) becomes effective July 15, 1991.

Issued in Renton, Washington, on May 28, 1991.

Jim Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-13852 Filed 6-7-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-27-AD; Amdt. 39-7038; AD 91-13-07]

Airworthiness Directives; British Aerospace Model BAe 146-100A, -200A, and -300A Series Airplanes, Pre-Modifications HCM0115A and HCM00967A

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146-100A, -200A, and -300 series airplanes, which requires modification of the parking brake selector assembly by installation of a special washer. This amendment is prompted by reports of failure of the hook end of the spring on the parking brake quadrant due to fatigue. This can result in the inadvertent engagement of the parking brake, and the resultant inability of the flight crew to release the parking brake. This condition, if not corrected, could result in reduced controllability of the airplane during takeoff or landing.

EFFECTIVE DATE: July 15, 1991.

ADDRESSES: The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2138. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes, which requires modification of the parking brake selector assembly by installation of a special washer, was published in the **Federal Register** on March 14, 1991 (56 FR 10841).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration was given to the single comment received.

The commenter supported the rule.

Paragraph B. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternative methods of compliance.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as was cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator, nor increase the scope of the AD.

It is estimated that 74 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. The estimated cost for required parts is $100 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $31,820.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-13-07. British Aerospace: Amendment 39-7038. Docket No. 91-NM-27-AD.

Applicability: Model BAe 146-100A, -200A, and -300A series airplanes, pre-modifications HCM01159A and HCM00967A, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent inadvertent application of the parking brake, and subsequent reduced controllability of the airplane during takeoff or landing, accomplish the following:

A. Within 90 days after the effective date of this AD, install a new washer in the parking brake selector assembly, in accordance with British Aerospace Service Bulletin 32-104-01159A, dated October 1, 1990 (Modification No. HCM01159A).

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer

may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This Amendment (39-7038, AD 91-13-07) becomes effective July 15, 1991.

Issued in Renton, Washington, on May 31, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-13650 Filed 6-7-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 90-NM-280-AD; Amdt. 39-7029; AD 91-12-17]

Airworthiness Directives; McDonnell Douglas Model DC-9-15F, -32F, -33F, -34F, and C-9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-9 series airplanes, which requires inspection and replacement of the cargo door latch spool fitting attach bolts. This amendment is prompted by a report of broken latch spool fitting attach bolts found on a Model DC-9 series freighter airplane. This condition, if not corrected, could result in inadvertent opening of the main cargo door in flight, and subsequently lead to loss of pressurization and reduced controllability of the airplane.

EFFECTIVE DATE: July 15, 1991.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager, Technical Publications, C1-HDR (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Lee, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-122L, FAA, Northwest Mountain Region, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5325.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain McDonnell Douglas Model DC-9 series airplanes, which requires magnetic particle inspections of the cargo door latch spool fitting attach bolts and replacement of non-Inconel bolts with Inconel bolts, was published in the **Federal Register** on January 28, 1991 (56 FR 3058).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter suggested that the magnetic particle inspection interval specified in the proposed rule be extended from four months to twelve months. Such an extension would provide operators with the option of replacing H-11 bolts with Inconel bolts on a more cost effective basis in conjunction with normally scheduled maintenance. The FAA does not totally agree. The FAA notes that it is only the initial inspection that is required within 4 months; repetitive inspections are required at 12-month intervals thereafter. In developing an appropriate initial compliance time for this AD action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the practical aspect of incorporating the required inspections into affected operators' maintenance schedules in a timely manner. In light of these factors, the FAA considers an initial compliance time of 4 months to be warranted.

Another commenter requested that the wording in paragraph C. of the proposed rule be changed to reflect the service bulletin "Phase" identification differences between the original issue of Alert Service Bulletin A52-174 and Revision 1, dated December 4, 1990, in order to provide operators with a ready means of showing AD compliance regardless of which issue of the service bulletin is utilized. The FAA agrees. Since issuance of the NPRM, the FAA has reviewed and approved Revision 1 of the Alert Service Bulletin. This revision adds Phase 3 which provides for an inspection/replacement to be accomplished 12 months after the magnetic particle inspection of Phase 2. The final rule has been revised to include Revision 1 as an alternative source of appropriate service information.

Paragraph E. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternative means of compliance.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 95 McDonnell Douglas Model DC-9 series airplanes of the affected design in the worldwide fleet. It is estimated that 63 airplanes of U.S. registry will be affected by this AD, that it will take approximately 47 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. The cost of parts required to accomplish the terminating action is estimated to be $1,716 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $356,983.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

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Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-12-17. McDonnell Douglas: Amendment 39-7029. Docket No. 90-NM-280-AD.

Applicability: All McDonnell Douglas Model DC-9-15F, -32F, -33F, -34F, and C-9 (military) series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent inadvertent opening of the forward upper cargo door in flight, a condition which could result in loss of pressurization and reduced controllability of the aircraft, accomplish the following:

A. Within four months after the effective date of this AD, and thereafter at intervals not to exceed one year, perform magnetic particle inspections on the cargo door latch spool fitting attach bolts or replace the non-Inconel cargo door latch spool fitting attach bolts with new bolts, in accordance with the Accomplishment Instructions for Phase 2 of McDonnell Douglas DC-9 Alert Service Bulletin A52-174, dated August 7, 1990, or Revision 1, dated December 14, 1990.

1. If a bolt does not pass the magnetic particle inspection, prior to further flight, replace it with a new bolt and seal in accordance with the service bulletin.

2. If a bolt passes the magnetic particle inspection, prior to further flight, reinstall the bolt and seal in accordance with the service bulletin.

B. The inspections required by paragraph A. of this AD are not required for Inconel bolts, part numbers RA21026-7-28, 77711-7-28, and 3D0031-7-28.

C. Within two years after the effective date of this AD, replace all non-Inconel cargo door latch spool fitting attach bolts with Inconel bolts, part numbers RA21026-7-28, 77711-7-28, or 3D0031-7-28, in accordance with the Accomplishment Instructions of Phase 3 of McDonnell Douglas DC-9 Alert Service Bulletin A52-174, dated August 7, 1990; or Phase 4 of McDonnell Douglas DC-9 Alert Service Bulletin A52-174, Revision 1, dated December 14, 1990. Installation of Inconel bolts constitutes terminating action for the requirements of paragraph A. of this AD.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes unpressurized to a base for the accomplishment of the requirements of this AD.

E. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager, Technical Publications, C1-HCW (54-60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment becomes effective July 15, 1991.

Issued in Renton, Washington, on May 28, 1991.

Jim Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-13648 Filed 6-7-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-290-AD; Amdt. 39-7015; AD 91-12-04]

Airworthiness Directives; General Dynamics Models 240, T-29, and C-131A (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to General Dynamics Models 240, T-29, and C-131A (Military) series airplanes, which requires an inspection for missing or worn elevator hinge pins, and replacement, if necessary. This amendment is prompted by reports of binding and worn elevator hinge pins, and the determination that an elevator hinge pin was missing from an aircraft which was involved in an accident. This condition, if not corrected, could result in reduced controllability of the airplane.

DATES: Effective July 25, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 25, 1991.

ADDRESSES: The applicable service information may be obtained from General Dynamics, Convair Division, P.O. Box 85377, San Diego, California 92138. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Edwards, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-120L, FAA, Northwest Mountain Region, 3229 East Spring Street, Long Beach, California 90806; telephone (213) 988-5237.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to General Dynamics Models 240, T-29 and C-131A (Military) series airplanes which requires inspection for missing or worn elevator hinge pins, and replacement or rework, if necessary, was published in the **Federal Register** on February 11, 1991 (56 FR 5372).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

Paragraph E. of the final rule has been revised to specify the current procedures for submitting requests for approval of alternative methods of compliance.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as cited in the preamble to the Notice) to $56 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 100 General Dynamics Models 240, T-29, and C-131A (Military) series airplanes in the worldwide fleet. It is estimated that 50 airplanes of U.S. registry would be affected by this AD, that it would take approximately 100 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $275,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-12-04. General Dynamics (Convair): Amendment 39-7015. Docket No. 90-NM-290-AD.

Applicability: Model 240, T-29, and C-131A (Military) series airplanes, including all airplanes converted to turbopropeller power, certificated in any category.

Compliance: Required as indicated, unless previously accomplished. To prevent loss of the elevator hinge pins, accomplish the following:

A. Within 50 hours time-in-service or 60 days after the effective date of this AD, whichever occurs first, remove the elevator and conduct a visual inspection of the elevator hinge pins and bearings, in accordance with Part I of the Accomplishment Instructions of General Dynamics, Convair Division Service Bulletin 600 (240D) 55-4, dated September 21, 1990 (hereinafter referred to as "SB 55-4").

Note: Inspections previously accomplished in accordance with the Accomplishment Instructions of Alert Service Bulletin 600 (240D) 55-A4, dated March 1, 1990, are considered to comply with the requirements of this AD.

B. Any hinge pins, bushings, or tapered bushings found which do not conform to the dimensional limitations specified in Part I of SB 55-4, must be replaced prior to further flight.

C. Any cracked bearing plate assemblies or nut assemblies, and any loose, chattering, dry, or seized bearings, P/N AN201KP10A, must be replaced prior to further flight.

D. When the elevator is reinstalled, determine if proper mating of the tapered bushing and pin surfaces exists, in accordance with Part I of SB 55-4. If proper mating does not exist, the pin must be reworked prior to further flight, in accordance with Part II of SB 55-4.

E. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then sent it to the Manager, Los Angeles ACO.

The inspection and repair requirements shall be done in accordance with General Dynamics, Convair Division Service Bulletin 600 (240D) 55-4, dated September 21, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from General Dynamics, Convair Division, P.O. Box 85377, San Diego, California 92138, Attention: Chief, Aircraft Logistical Support, Mail Zone 92-2920. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39-7015, AD 91-12-04) becomes effective July 25, 1991.

Issued in Renton, Washington, on May 20, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-13644 Filed 6-7-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-289-AD; Amt. 39-7016; AD 91-12-05]

Airworthiness Directives; General Dynamics Models 340, 440, and C-131 B, C, D, E, and F (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to General Dynamics Models 340, 440, and C-131 (Military) series airplanes, which requires an inspection for missing or worn elevator hinge pins, and replacement, if necessary. This amendment is prompted by reports of binding and worn elevator hinge pins, and the determination that an elevator hinge pin was missing from an aircraft which was involved in an accident. This condition, if not corrected, could result in reduced controllability of the airplane.

DATES: Effective July 25, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 25, 1991.

ADDRESSES: The applicable service information may be obtained from General Dynamics, Convair Division, P.O. Box 85377, San Diego, California 92138. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Edwards, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-120L, FAA, Northwest Mountain Region, 3229 East Spring Street, Long Beach, California 90806; telephone (213) 988-5237.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to General Dynamics Models 340, 440, and C-131 (Military) series airplanes which requires inspection for missing or worn elevator hinge pins, and replacement or rework, if necessary, was published in the **Federal Register** on February 11, 1991 (56 FR 5374).

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Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

Paragraph E. of the final rule has been revised to specify the current procedures for submitting requests for approval of alternative methods of compliance.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 350 General Dynamics Models 340, 440, and C–131 (Military) series airplanes in the worldwide fleet. It is estimated that 200 airplanes of U.S. registry would be affected by this AD, that it would take approximately 100 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,100,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91–12–05. General Dynamics (Convair): Amendment 39–7016. Docket No. 90–NM–289–AD.

Applicability: Model 340, 440, and C131, B, C, D, E, and F (Military) series airplanes, including all airplanes converted to turbopropeller power, certificated in any category.

Compliance: Required as indicated, unless previously accomplished. To prevent loss of the elevator hinge pins, accomplish the following:

A. Within 50 hours time-in-service or 60 days after the effective date of this AD, whichever occurs first, remove the elevator and conduct a visual inspection of the elevator hinge pins and bearings, in accordance with Part I of the Accomplishment Instructions of General Dynamics, Convair Division Service Bulletin 640 (340D) 55–5, dated September 21, 1990 (hereinafter referred to as "SB 55–5").

Note: Inspections previously accomplished in accordance with the Accomplishment Instructions of Alert Service Bulletin 640 (340D) 55–A5, dated March 1, 1990, are considered to comply with the requirements of this AD.

B. Any hinge pins, bushings, or tapered bushings found which do not conform to the dimensional limitations specified in Part I of SB 55–5, must be replaced prior to further flight.

C. Any cracked bearing plate assemblies or nut assemblies, and any loose, chattering, dry, or seized bearings, P/N AN201KP10A, must be replaced prior to further flight.

D. When the elevator is reinstalled, determine if proper mating of the tapered bushing and pin surfaces exists, in accordance with Part I of SB 55–5. If proper mating does not exist, the pin must be reworked prior to further flight, in accordance with Part II of SB 55–5.

E. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

The inspection and repair requirements shall be done in accordance with General Dynamics, Convair Division Service Bulletin 640 (340D) 55–5, dated September 21, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Dynamics, Convair Division, P.O. Box 85377, San Diego, California 92138, Attention: Chief, Aircraft Logistical Support, Mail Zone 92–2920. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39–7016, AD 91–12–05) becomes effective July 25, 1991.

Issued in Renton, Washington, on May 20, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–13643 Filed 6–7–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–94–AD; Amdt. 39–7031; AD 91–08–51]

Airworthiness Directives; Honeywell Flight Management System (FMS) One Million Word (1M or 700K) Data Bases (9104 Cycle or Earlier), as Installed in, but Not Limited to, McDonnell Douglas Model MD–11 Airplanes, and Boeing Model 747–400, 757, and 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting Airworthiness Directive (AD) T91–08–51, which was previously made effective as to all known U.S. owners and operators of McDonnell Douglas Model MD–11 airplanes, and Boeing Model 747–400, 757, and 767 series airplanes, by individual telegrams. This AD requires a revision to the FAA-approved Airplane Flight Manual (AFM) and installation of a placard to prohibit Nondirectional Beacon (NDB) approaches. This action is prompted by a report of an erroneous course display that occurred when a NDB approach was activated from the Honeywell FMS data base. This condition, if not corrected, could result in an airplane deviating from the published approach to the runway, which could lead to premature ground contact before reaching the runway.

EFFECTIVE DATE: June 24, 1991, as to all persons except those persons to whom it was made immediately effective by telegraphic AD T91–08–51, issued on April 5, 1991, which contained this amendment.

FOR FURTHER INFORMATION CONTACT: (for McDonnell Douglas airplanes) Ms. Natalie Phan-Tran, Aerospace Engineer, ANM–133L, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California, telephone (213) 988–5343; or (for Boeing airplanes) Mr. Steve Paasch, Aerospace Engineer, ANM–130S, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington, telephone (206) 227–2794.

SUPPLEMENTARY INFORMATION: On April 5, 1991, the FAA issued telegraphic AD T91–08–51, applicable to Honeywell Flight Management System (FMS) one million word (1M or 700K) data bases (9104 cycle or earlier) as installed in, but not limited to McDonnell Douglas Model MD–11 airplanes, and Boeing 747–400, 757, and 767 series airplanes. That AD requires a revision to the FAA-approved Airplane Flight Manual (AFM) and installation of a placard to prohibit the use of Nondirectional Beacon (NDB) approaches for landing.

That action was prompted by a report of an erroneous course display on the navigation display map on a Boeing Model 747–400 series airplane when a NDB approach was activated from the Honeywell FMS one million word data base. This condition is attributed to an anomaly in the FMS software. This condition, if not corrected, could result in an airplane deviating from the published approach to the runway, which could lead to premature ground contact before reaching the runway.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on April 5, 1991, to all known U.S. owners and operators of McDonnell Douglas Model MD–11 airplanes, and Boeing Model 747–400, 757, and 767 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective as to all persons.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Subsequent to the issuance of telegraphic AD T91–08–51, the FAA received inquiries from several affected operators as to whether installation of the placard required by paragraph (b) of the rule would continue to be required if one million word data bases 9105 cycle and subsequent are installed on the airplane. In clarification of this point, the FAA notes that, as delineated in the applicability portion of the AD, the placard requirement is only applicable to airplanes with data base 9104 cycle or earlier installed. Therefore, the placard may be removed upon the installation of data bases 9105 cycle and subsequent. Honeywell has advised the FAA that it has removed the selection of the NDB approach from the data base for the 9105 cycle. As a matter of information, Honeywell has indicated that future versions of the FMS data base also will not include the selections of the NDB approach until a modification of the FMS system is developed that will correct the initially identified associated unsafe condition.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91–08–51. Honeywell: Amendment 39–7031; Docket No. 91–NM–94–AD.

Applicability: Honeywell Flight Management System (FMS) one million word (1M or 700K) data bases (9104 cycle or earlier), as installed in, but not limited to, McDonnell Douglas Model MD–11 airplanes, and Boeing Model 747–400, 757, and 767 series airplanes, certificated in any category.

Compliance: Required within 72 hours after the effective date of this AD, unless previously accomplished.

To prevent improper navigation guidance during landing, accomplish the following:

(a) Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD into the AFM.

"Do not use NDB approaches in the FMS nav data base. Nondirectional Beacons may be used as waypoints to build a manual NDB approach."

(b) Install a placard, visible to both pilots, adjacent to the Control Display Unit, stating:

"Do not use NDB approaches in the FMS nav data base."

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate (for McDonnell Douglas airplanes); or the Manager, Seattle ACO, FAA, Transport Airplane Directorate (for Boeing airplanes).

Note: The request should be forwarded through an FAA Principal Avionics Inspector, who may concur or comment and then send it to the Manger, Los Angeles ACO or Seattle ACO, as appropriate.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

This amendment (39–7031, AD 91–08–51) becomes effective June 24, 1991, as to all persons, except those persons to whom it was made immediately effective by

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telegraphic AD T91-06-51, issued on April 5, 1991, which contained this amendment.

Issued in Renton, Washington, on May 30, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-13651 Filed 6-7-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-ASW-04; Amdt. 39-7012; AD 91-12-01]

Airworthiness Directives; Sikorsky Model S-61 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that supersedes a priority letter AD applicable to Sikorsky Model S-61 series helicopters. The new AD incorporates an alternative method of compliance providing for the teardown and inspection of the sleeve and spindle assembly. This condition, if not corrected, could result in failure of the main rotor spindle, and subsequently, the loss of the helicopter.

DATES: *Effective Date:* July 8, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 8, 1991.

ADDRESSES: The applicable service bulletin may be obtained from: Sikorsky Aircraft, 6900 Main Street, Stratford, Connecticut 06601-1380, Attention: Commercial Customer Support, or may be examined in the Rules Docket, Office of the Assistant Chief Council, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Bldg. 3B, room 158, Fort Worth, Texas 76193.

FOR FURTHER INFORMATION CONTACT: Mr. Donald F. Thompson, Boston Aircraft Certification Office, ANE-152, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7113.

SUPPLEMENTARY INFORMATION: Priority Letter AD 91-04-01, issued on February 6, 1991, currently requires a one-time visual inspection for the condition of sealing compound between the spacer and the spindle of the sleeve and spindle assembly on Sikorsky S-61 series helicopters. If the sealing compound is found missing or has voids, gaps or pores between the spacer and the spindle assembly, the AD requires initial and repetitive ultrasonic inspections for cracks and flaws in the spindle and, if cracks or flaws are found, removal and replacement of the sleeve and spindle assembly prior to further flight.

After issuing Priority Letter AD 91-04-01, the FAA determined that an alternate method of compliance with the AD that is listed in Part 3 of the Sikorsky Alert Service Bulletin is acceptable. Therefore, the FAA is superseding AD 91-04-01, incorporating the requirements of AD 91-04-01, and providing a new paragraph (h) that contains an alternate method of compliance with paragraphs (a) through (g) on Sikorsky S-61 series helicopters.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure thereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, and Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new (AD):

AD 91-12-01 Sikorsky Aircraft: Amendment 39-7012. Docket No. 91-ASW-04. Supersedes AD 91-04-01.

Applicability: All Model S-61 series helicopters, certificated in any category, on main rotor head assemblies equipped with sleeve and spindle assemblies, P/N S6110-23350-041, that were manufactured or overhauled prior to February 6, 1991.

Compliance: Required as indicated, unless already accomplished.

To prevent the failure of a main rotor blade spindle, which could cause loss of the main rotor blade and subsequent loss of the helicopter, accomplish the following:

(a) Within the next 10 hours' time in service after receipt of this AD, visually inspect all sleeve and spindle assemblies for evidence of proper application of sealing compound between the spacer, P/N S6112-23055-101, and the spindle assembly, P/N S6112-23027-041, on main rotor head assemblies equipped with sleeve and spindle assemblies, P/N S6110-23350-041, that have 6 months or 500 hours' or more time in service on the effective date of this AD since new or the last overhaul. Visually inspect in accordance with paragraph (c) of this AD.

(b) For main rotor head assemblies equipped with sleeve and spindle assemblies, P/N S6110-23350-041, that do not have 6 months or 500 hours' time in service since new or overhaul, visually inspect the spindle assemblies for evidence of proper application of sealing compound between the spacer, P/N S6112-23055-101, and the spindle assembly, S6112-23027-041, on main rotor head assemblies equipped with sleeve and spindle assemblies, P/N S6110-23350-041, in accordance with paragraph (c) of this AD. Conduct this inspection within 10 hours' time in service after reaching 6 months or 500 hours' time in service since new or overhaul, whichever comes first.

Note: Two configurations of spacers exist. One has two puller slots spaced 180 degrees apart. The second has no puller slots. The spacers, P/N S6112-23055-101, affected by this AD have slots.

(c) Utilizing an inspection mirror and flashlight, visually inspect all 5 rotor head sleeve and spindle assemblies for evidence of proper sealing compound application in the spacer slot area.

(d) If the sealing compound is not present in the spacer slot, or if the sealant has voids, gaps, or pores, before further flight, inspect each suspect spindle, P/N S6112-23027-041, for crack or flaws in accordance with Sikorsky Aircraft Alert Service Bulletin (ASB) No. 61B10-48, dated January 18, 1991, using the ultrasonic inspection method.

(e) If a crack or flaw indication is found in the spindle (from the inspections of paragraph (d)), replace the sleeve and spindle assembly prior to further flight with an airworthy component using standard maintenance instructions.

(f) If no indication of cracks or flaws are found from the inspections of paragraph (d), return the sleeve and spindle assembly to service using ASB No. 61B10-48 and standard maintenance instructions and, thereafter, conduct repetitive ultrasonic inspections in accordance with paragraph (d) at intervals not to exceed 50 hours' time in service.

(g) For slotted sleeve and spindle assemblies that have the sealing compound intact in the slot area (i.e., that did not require ultrasonic inspection in accordance with paragraph (d) of this AD), conduct a one-time ultrasonic inspection of the spindle in accordance with ASB No. 61B10-48 within the next 200 hours' time in service after the initial visual inspection required in either paragraph (a) or (b) of this AD.

(h) An alternate method of compliance with the inspections and rework of paragraph (a) through (g) can be accomplished by tearing down the sleeve and spindle assembly as specified in Part 3 of ASB No. 61B10-48 and inspecting the spindle radius area for corrosion. If corrosion is found in the spindle radius area, replace the spindle assembly with an airworthy component. If no corrosion is found, reassemble and reseal the sleeve and spindle in accordance with part 3 and reinstall on the rotor head in accordance with the maintenance manual. Sleeve and spindle assemblies that have been torn down, inspected, and resealed in accordance with Part 3 of ASB 61B10-48, are no longer required to comply with paragraphs (a), (b), (c), (d), (e), (f), or (g) above.

(i) Record compliance with paragraphs (e), (f), (g) or (h) by part number, serial number and blade location in the aircraft logbook/maintenance records.

(j) An alternate method of compliance or adjustment of the compliance times which provides an equivalent level of safety, may be used if approved by the Manager, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, MA 01803.

(k) In accordance with FAR 21.197 and 21.199, the helicopter may be flown to a base where the ultrasonic inspections required by this AD may be accomplished.

The ultrasonic inspections and sleeve and spindle disassembly and the inspection for corrosion shall be done in accordance with pages 1 through 33 of Sikorsky Aircraft Alert Service Bulletin No. 61B10-48, dated January 18, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Sikorsky Aircraft, 6900 Main Street, Stratford, Connecticut 06601-1380, Attn: Commercial Customer Support. Copies may be inspected at the Rules Docket, Office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Building 3B, room 158, Fort Worth, Texas 76193, or at the Office of the Federal Register, 1100 L Street, Room 8401, Washington, DC.

Amendment 39-7012 supersedes Priority Letter AD 91-04-01, issued February 6, 1991.

Amendment 39-7012 becomes effective July 8, 1991.

Issued in Fort Worth, Texas, on May 16, 1991.

Larry M. Kelly,

Acting manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 91-13645 Filed 6-7-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 14

Advisory Committees; Establishment and Termination; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the advisory committee regulations to correct errors that were inadvertently introduced into § 14.100 (21 CFR 14.100) on December 13, 1990 (55 FR 51281). This document amends the regulations to indicate the complete functions of the Medical Devices Advisory Committee.

EFFECTIVE DATE: June 10, 1991.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 13, 1990 (55 FR 51281), FDA published a document announcing the establishment of the Commissioner of Food and Drugs of the Medical Devices Advisory Committee (the Committee). In § 14.100(d)(1)(i) the first word "Data" should have read "Date", and in paragraph (d)(1)(ii) which provides for the functions of the Committee, the words "the safety and effectiveness of" were inadvertently omitted following the phrase "reviews and evaluates data on." This document corrects those errors.

List of Subjects in 21 CFR Part 14

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 14 is amended as follows:

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

1. The authority citation for 21 CFR part 14 continues to read as follows:

Authority: Secs. 201-903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321-393); 21 U.S.C. 41-50, 141-149, 467f, 679, 821, 1034; secs. 2, 351, 354-360F, 361 of the Public Health Service Act (42 U.S.C. 201, 262, 263b-263n, 264); secs. 2-12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451-1461); 5 U.S.C. App. 2; 28 U.S.C. 2112.

2. Section 14.100 is amended by revising paragraphs (d)(1)(i) and (d)(1)(ii) to read as follows:

§ 14.100 Listing of standing advisory committees.

* * * * *

(d) * * *

(1) * * *

(i) *Date established:* October 27, 1990.

(ii) *Function:* Reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

* * * * *

Dated: June 3, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-13639 Filed 6-7-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 286i and 295

[DMAINST 5400.7]

Defense Mapping Agency (DMA) Freedom of Information Act Program

AGENCY: Defense Mapping Agency, DOD.

ACTION: Final rule.

SUMMARY: The Department of Defense issues its regulation on the Freedom of Information Act Program. This document implements DoD 5400.7-R and updates the Defense Mapping Agency's current policies.

EFFECTIVE DATE: July 10, 1991.

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FOR FURTHER INFORMATION CONTACT:
Mr. David L. Black, Director, Public Affairs, Defense Mapping Agency, (703) 285–9138.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Parts 286i and 295

Freedom of Information.

Accordingly, 32 CFR, chapter I, subchapter P, under the authority of 5 U.S.C. 552 is amended as follows:

PART 295—[REMOVED]

1. Part 295 is removed.

2. A new part 286i is added as follows:

PART 286i—DEFENSE MAPPING AGENCY (DMA) FREEDOM OF INFORMATION ACT PROGRAM

Sec.

286i.1 Purpose.
286i.2 Applicability.
286i.3 Scope.
286i.4 Definitions.
286i.5 Policy.
286i.6 Responsibilities.
286i.7 Procedures.
286i.8 Information requirements.
Appendix A to Part 286i—Sample Letter Complying with Request.
Appendix B to Part 286i—Sample Letter Notifying Requester of Extension of Time.
Appendix C to Part 286i—Sample Letter Denying Request or Partial Denial for Access to or for Obtaining Copy of Records.
Appendix D to Part 286i—Sample Letter Notifying Requester of Misdirected Request.

Authority: 5 U.S.C. 552.

§ 286i.1 Purpose.

(a) To prescribe Defense Mapping Agency (DMA) policy and procedures for handling requests under the Freedom of Information Act (FOIA).

(b) To implement 5 U.S.C. 552, and 32 CFR part 285.

§ 286i.2 Applicability.

The provisions of this part apply to all elements of DMA.

§ 286i.3 Scope.

This part does not apply to requests from members of Congress, who are governed by DoD Directive 5400.4 [1] or from the General Accounting Office, which is governed by DoD Directive 7650.1.[2]

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161

[2] See footnote 1 to § 286i.3

§ 286i.4 Definitions.

(a) *FOIA record.* (1) The products of data compilation, such as all books, papers, maps, and photographs, machine readable materials or other documentary materials, regardless of physical form or characteristics, made or received by DMA in connection with the transaction of public business and in DMA's possession and control at the time of the FOIA request, are considered agency records. For items not considered an agency record, see paragraph 1–402 of DoD 5400.7–R.[3]

(2) Normally, computer software, including source code, object code, and listings of source and object codes, regardless of medium are not agency records. (See paragraph 1–402 of DoD 5400.7–R for a complete definition of an agency record.)

(3) If unaltered publications and processed documents, such as regulations, manuals, maps, charts and related geophysical materials, are available to the public through an established distribution system with or without charge, the provisions of 5 U.S.C. 552(a)(3) normally do not apply, and they need not be processed under the FOIA. Normally, documents disclosed to the public by publication in the **Federal Register** also require no processing under the FOIA. In such cases, the requester should be directed to the appropriate source to obtain the record.

(b) *FOIA request.* A FOIA request is a written request for DMA records, made by any person, including a member of the public (U.S. or foreign citizen), an organization, or a business, but not including a Federal agency or a fugitive from law, that either explicitly or implicitly invokes the FOIA, DoD Directive 5400.7,[4] DoD 5400.7–R, or this part.

(c) *Pertinent records.* For the purpose of this part, records shall be considered pertinent if they concern either an individual who is, or foreseeably may become, involved in litigation involving the United States or a matter which is, or foreseeably may become, the subject of litigation involving the United States.

§ 286i.5 Policy.

(a) *Creating a record.* A record must exist and be in the possession and control of DMA at the time of a request to be charged for providing the existing record. (See paragraph 1–506 of DoD 5400.7–R.)

(b) *Public requests.* It is DMA policy to make available to the public the maximum amount of information concerning its operations and activities. Exemptions to this policy are stated in 5 U.S.C. 552 and DoD 5400.7–R. However, exempt records may be released to the public when their disclosure would not be inconsistent with the Privacy Act, DMA Instruction 5400.11,[5] or any other statutory requirements, and when no legitimate government purpose would be served by withholding them. DoD 5400.7–R provides additional policy guidance regarding the release of DMA records.

(c) *News media requests.* Requests from news media for records that would not be withheld under FOIA shall be released promptly in order to provide timely information to the public and eliminate the need to invoke the provisions of FOIA.

(d) *Contract requests.* Guidance for the release of information received from a non-U.S. Government source is contained in paragraph 5–207 of DoD 5400.7–R.

(e) *Classified records.* If classified records are requested, see additional guidance outlined in Chapter VII, DMA Manual 5200.1.[6]

(f) *FOUO records.* (1) Information that has not been given a security classification pursuant to the criteria of an Executive order, but which may be withheld from the public for one or more of the reasons cited in FOIA Exemptions 2 through 9 shall be considered as being for official use only. No other material shall be considered or marked FOR OFFICIAL USE ONLY (FOUO), and FOUO is not authorized as an anemic form of classification to protect national security interests.

(2) The prior application of FOUO markings is not a conclusive basis for withholding a record that is requested under FOIA. When such a record is requested, the information in it shall be evaluated to determine whether under current circumstances, FOIA exemptions apply in withholding the record or portions of it. If any exemption(s) apply, the record may be released when it is determined that no governmental interest will be jeopardized by its release.

(g) *Historical papers.* Records such as notes, working papers, and drafts retained as historical evidence of DoD component actions enjoy no special status apart from the exemptions under the FOIA.

(h) *Fees.* Chapter VI, DoD 5400.7–R, should be consulted before fees are

[3] See footnote 1 to § 286i.3

[4] See footnote 1 to § 286i.3

[5] Copies may be obtained by written request to the Defense Mapping Agency, Attn: AO (Stop A–2) 8613 Lee Highway, Fairfax, VA 22031–2138

[6] See footnote 5 to § 286i.5(b)

assessed. Fee application is discussed in paragraph 6–101, fee restrictions in paragraph 6–102, fee waivers in paragraph 6–103 and fee assessment in paragraph 6–104.

§ 286i.6 Responsibilities.

(a) The Director, Public Affairs (DMA(PA)), is designated Freedom of Information Officer (FOIO) and is responsible for administering the FOIA program within DMA. The DMA(PA) is also denial authority for "no record" FOIAs. HQ DMA(PA) will:

(1) Receive, log, and determine administrative action required on all FOIA requests received at HQ DMA. If a record is held by DMA, the FOIO will forward a copy of the FOIA request to the custodian of the record for comments regarding releasability of the requested record. Following receipt of the custodian's comments and a copy of the requested documents, FOIO will review the comments, make a preliminary releasability determination, and prepare the initial response with coordination by HQ DMA(GC). If it is apparent to the custodian that the material will be released, two copies of the requested record will be forwarded to HQ DMA(PA) (one for release and one for record keeping).

(2) Prepare DD Form 2564, "Annual Report—Freedom of Information Act," and forward it to the Office of the Assistant Secretary of Defense (Public Affairs) (OASD(PA)), as directed.

(b) The Chief of Staff, the Deputy General Counsel and the DMA Freedom of Information of Information Act Officer (DMA(PA)) are delegated authority to initially deny release of DMA records. This denial authority is also delegated to Component Directors and Associate General Counsels (AGC) as follows:

(1) AGC AC for the DMA Aerospace Center (DMAAC).

(2) AGC HTC for the DMA Hydrographic/Topographic Center (DMAHTC), DMA Combat Support Center (DMACSC), and the Defense Mapping School (DMS).

(3) AGC SC—for the DMA Reston Center (DMARC), DMA Systems Center (DMASC), and DMA Technical Services Center (DMATSC).

(4) AGC(KL) (DMA Contract Law Office) for contract related issues.

This authority may not be redelegated. A copy of all Component denial letters will be forwarded to HQ DMA(GC).

(c) General Counsel:

(1) HQ DMA(GC) is responsible for all appeals to FOIA actions and will provide HQ DMA(PA) with a copy of the initial appeal letter and DMA's response to it. The DMA Deputy Director (DD) and HQ DMA(GC) are delegated authority to make final determinations on appeals in accordance with the provisions of section 3, chapter V of DoD 5400.7–R.

(2) Coordination with Department of Justice:

(i) HQ DMA(GC) will notify the appropriate United States Attorney prior to the release of any FOIA request for records which are pertinent to pending litigation against the United States.

(ii) The office holding records sought under the FOIA shall notify the FOIO whether such records are pertinent to pending or potential litigation involving the United States. The records holder may request the assistance of Counsel in making a determination. The record holder shall advise the FOIO, in writing, whether any of the requested records have been determined to be pertinent to such litigation. Prior to release of such records, HQ DMA(PA) shall notify HQ DMA(GC) of the request. Component FOIOs shall notify the appropriate Associate General Counsel who will notify the United States Attorney, and shall coordinate the release of such records with HQ DMA(GC) and the Department of Justice.

(d) The DMA Director of Human Resources Management (HR) will establish and implement appropriate procedures for responding to any corrective actions recommended by the Office of Personnel Management in cases involving arbitrary or capricious withholding of records by DMA officials pursuant to section 4, chapter V, DoD 5400.7–R. HQ DMA(HR) and HQ DMA(PA) shall implement training and information requirements as outlined in chapter VII, DoD 5400.7–R.

(e) Component PAs will serve as FOIO at the Component level. Components without PAs will appoint a FOIO. Component FOIOs will:

(1) Receive, log, and determine administrative action required for all FOIA requests received at the Component, except those concerning DMA contracts. (See 286i.6(e)(2)). If a record is held by the Component, the FOIO will forward a copy of the FOIA request to the custodian of the record for comments regarding releasability of the requested record. Following receipt of the custodian's comments and a copy of the requested documents, the FOIO will review the comments, make a preliminary releasability determination, and prepare the initial response for coordination by the appropriate Associate General Counsel as identified in § 286i.6(b). If it is apparent to the records custodian that the material will be released two copies of the requested record will be forwarded to HQ DMA(PA) (one for release and one for record keeping).

(2) Refer all FOIA requests concerning DMA contracts not held at the Component level to DMAHTC(PA), which has the responsibility for processing such requests and for interfacing with the DMA Directorate for Acquisition, Installations and Logistics HQ DMA(AQ) and the DMA Contract Law Office (KL) located at DMAHTC.

(3) Submit DD Form 22564, "Annual Report—Freedom of Information Act" to HQ DMA(PA) by January 15 each year. (See chapter VII of DoD 5400.7–R for guidance.)

(f) All DMA organizations will:

(1) Upon receipt of correspondence which either explicitly or implicitly invokes the FOIA immediately forward such correspondence to HQ DMA(PA) or the Component FOIO.

(2) The record holder will, upon receipt of a FOIA action, immediately review the requested records to determine the releasability or denial under the nine FOIA exemptions contained in 5 U.S.C. 552, as amended. Written comments regarding the releasability of records must be provided to the FOIO forwarding the action within the timeframes specified. Consultation with the FOIO, HQ DMA(GC), and Component AGCs as appropriate, is recommended.

§ 286i.7 Procedures.

(a) *Mandatory expeditious handling.*—(1) *Record released.* The initial determination of whether to release a record upon request will normally be made and a decision reported to the requester within 10 working days. The record requested will be forwarded promptly, usually with the initial response, provided the requester has met the criteria for release. A sample letter is shown at appendix A to this part 286i.

(2) *Interim response.* If the requested record cannot be made available within 10 working days, an interim response will be forwarded. Any delay beyond the initial 10 working days may not exceed 10 additional working days and will be authorized only for the reasons described in section 2, chapter V, DoD 5400.7–R. A sample letter is shown at appendix B to this part 286i.

(3) *No record.* When providing a "no record" response in answer to a request, the requester must be advised that such a response may be considered to be adverse, and if so interpreted, may be

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appealed using normal appeal procedures (see § 286i.7(a)(4)). An additional records search shall be conducted based on the receipt of an appeal to a "no record" response as part of the appellate process.

(4) *Record denied.* If a request for a record is denied, in whole or in part, the requester will be given a written explanation for such a determination by an official designated in § 286i.6. The requester will also be advised of his/her right to appeal the denial to the HQ DMA(GC) within 60 calendar days from the date of the denial letter. The letter will also include the name and address of the official responsible for the denial. A sample letter is at appendix C to this part 286i. All denials must have benefit of a legal review prior to signature.

(5) *Request appealed.* Final determination on appeals will normally be made within 20 working days of receipt by the Deputy Director or General Counsel. If, due to unusual circumstances, additional time is needed to decide the appeal, the final determination may be delayed for the number of working days, not to exceed 10, which were not used as additional time for responding to the initial request. Final denials to provide a requested record will be made in writing by the Deputy Director or General Counsel in accordance with the appeal procedures prescribed in section 3, chapter V, DoD 5400.7–R.

(6) *Request referred.* If the record requested was originated by another agency or Component, it will be referred promptly to the originating agency or Component for disposition. The period allowed for responding to a request misdirected by the requester will not begin until it is received by the referral. A sample letter is shown at appendix D to this part 286i.

(b) *Facilities for inspection and copying records.* (1) The handling of all requests from the public to inspect and copy records will be in strict accordance with the procedures prescribed in DoD 5400.7–R. Subject to exemptions contained in 5 U.S.C. 552, as amended, DMA will ensure easy access by the public for inspection and copying of records described in 5 U.S.C. 552, unless such records have been published and copies offered for sale. This inspection and copying will take place in appropriate rooms designated by HQ DMA(PA) and Components.

(2) HQ DMA and Components will make available current indexes which identify material described in paragraph (a)(2) of 5 U.S.C. 552, as amended.

(3) Use of DMA inspection and copying facilities by the public will be made by appointment only. Appointments will normally be requested by letter to FOIA officers or those acting in that capacity.

§ 286i.8 Information requirements.

Reporting requirements prescribed by this part have been assigned Report Control Symbol DD–PA(A)1365. (See chapter VII, DoD 5400.7–R.)

Appendix A to Part 286i—Sample Letter Complying With Request

Dear _____:

This is in response to your letter of _____ in which you requested _____ under the Freedom of Information Act, 5 U.S.C. 552, as amended.

After careful review and consideration of your request, we have determined that the record(s) you seek is(are) releasable and is(are) enclosed. Search and duplication costs have been waived. (See Chapter VI, DoD 5400–7–R for guidance on fee assessment.)

Sincerely,

(Signed)

(Signature block of authorized official)

Enclosure.

As stated.

Appendix B to Part 286i—Sample Letter Notifying Requester of Extension of Time

Dear _____:

This is in response to your letter of _____ in which you requested _____ under the Freedom of Information Act, 5 U.S.C. 552, as amended.

In order to process your request for _____ under FOIA, an extension of time will be necessary because of (use one of the following explanations):

a. The need to search for, collect, and properly examine a voluminous amount of separate and distinct records covered by your request;

b. The need to search for and collect the requested records from geographically separated elements within the Defense Mapping Agency;

c. The need for consultation, which will be conducted with all practicable speed, with another agency or geographically separated element of the Defense Mapping Agency having a substantial interest in the determination of your request;

d. Other.

A determination regarding your request will be made by (date) _____.

Sincerely,

(Signed)

(Signature block of authorized official)

Note: Specify a date that will not result in an extension of time more than the authorized 10 working days.

Appendix C to Part 286i—Sample Letter Denying Request or Partial Denial for Access to or for Obtaining Copy of Records

Dear _____:

This is in response to your letter of _____ in which you requested _____ under the Freedom of Information Act, 5 U.S.C. 552, as amended.

After careful review and consideration of your request, we have determined that (the) (a portion of) document(s) you seek is (are) exempt from disclosure under FOIA. It is not releasable because it contains information that a (copy or paraphrase the applicable exemption set forth in DoD 5400.7–R.

The decision to withhold release of this (these) record(s) may be appealed in writing to the General Counsel, Defense Mapping Agency, within 60 calendar days from the date of this letter. You should include in your appeal any reasons for reconsideration you wish to present. A copy of this letter should be enclosed with your appeal, and forwarded to the Defense Mapping Agency, ATTN: GC (A–7), 8613 Lee Highway, Fairfax, VA 22031–2137.

Note: If this is a partial denial, add the paragraph below if copies of releasable records are to be sent to the requester.

Copies of the releasable portion of the requested record(s) (are enclosed) (will be sent promptly under separate cover).

Sincerely,

(Signed)

(Signature block of authorized denial authority)

Note: Any deletions made in the records should be justified on the grounds of the exemptions provided in DoD 5400.7–R. This format should be varied to fit the situation.

Appendix D to Part 286i—Sample Letter Notifying Requester of Misdirected Request

Dear _____:

This is in response to your letter of _____ in which you requested _____ under the Freedom of Information Act, 5 U.S.C., section 552, as amended.

Your letter was misdirected to this Agency. We have forwarded same to (activity or agency to which the request was referred). You may expect to hear from them shortly.

For future reference, any other requests for similar records should be addressed to (name and address of agency).

Sincerely,

(Signed)

(Signature block of authorized authority)

Dated: June 3, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–13444 Filed 6–7–91; 8:45 am]

BILLING CODE 3810–01–M

FEDERAL COMMUNICATION COMMISSIONS

47 CFR Part 2

[General Docket No. 89–349; FCC 91–145]

Importation of Radio Frequency Devices

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, through this action, amends its rules to facilitate conversion from a paper-based filing of required import declarations to an electronic filing process requested by the U.S. Customs Service and further amends the import rules to update certain provisions to be more applicable to the types of radio frequency devices available as a result of advances in technology. The updated rules and the change to electronic filing will reduce the number of declarations required to be filed by importers by an estimated 40% and will facilitate the filing process providing an overall reduction in the administrative burden placed on filers. These changes will also enhance the ability of the FCC to enforce the rules pertaining to importation of radio frequency devices. Enforcement personnel will be able to review filings by specific companies, filings by device type, filings by FCC ID number and numerous combinations of these and other data fields. Once electronic filing is implemented and the increased ability and activity of FCC enforcement efforts is known, compliance with the importation rules is expected to increase and the number of imported non-compliant RF devices is expected to decrease.

EFFECTIVE DATE: July 15, 1991.

FOR FURTHER INFORMATION CONTACT: Dan S. Emrick, Telephone: (202) 632–6345.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in General Docket Number 89–349, adopted May 1, 1991 and released June 4, 1991. The full text of this Commission action is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this action may also be purchased from the Commission's copy contractor, Downtown Copy Center at (202) 452–1422, 1919 M Street, NW., room 246, Washington, DC 20554.

The rules pertaining to the importation of radio frequency devices were established in December of 1975 in cooperation with Customs. The rules are intended to keep imported devices which do not comply with FCC technical requirements from being distributed within the United States, thereby reducing the potential for harmful interference being caused to authorized radio communications users.

On July 25, 1989, the Commission adopted a notice of proposed rule making in General Docket 89–349, FCC 89–244, 54 FR 32830 (August 10, 1989), that proposed changes to part 2 of the Commission's rules. The intent of the proposed rule modifications was to update the rules, eliminate burdensome and duplicative government information filing requirements, facilitate the collection of required information through an electronic filing system administered by the U.S. Customs Service (Customs) and to more closely match the Commission's rules with the separate requirements of the Telecommunications Trade Act of 1988, Public Law 100–418, 102 Stat. 1216 (1988), 19 U.S.C. 3101 et seq.

Commission experience in administering these rules over the last fifteen years has pointed out areas in which the rules could be relaxed or clarified. Changes were also needed to facilitate the reporting requirement placed on Customs under the Telecommunications Trade Act of 1988. Finally, Customs informally requested Commission assistance in the implementation of the Customs paperless importation system. In return Customs agreed to gather FCC specified information and to make the information available to the Commission. These rule changes facilitate the conversion to the electronic filing of FCC Form 740 information.

The new rules are structured to accommodate both the existing paper system and the future electronic filing system. To facilitate the conversion to electronic filing, the new rules permit electronic filing at any and all points of entry where the Customs electronic system is or may become available.

This rule change recognizes the industry use of the term "subassembly" and specifically deletes components and subassemblies of radio frequency devices from the import rules. When the original rules were adopted devices were being imported that, for all intents and purposes, were operational and capable of causing interference as imported. Only minor, primarily cosmetic, final touches were required before marketing these "subassemblies." With advances in technology, especially in microprocessor and digital design, the electronics industry now uses the term subassembly to describe integral portions of devices that, until they are integrated with other such devices, cannot be operated. Completed devices, not subassemblies, are capable of being energized and becoming sources of radio frequency energy. Completed devices, whether manufactured with U.S. or non-U.S. produced components and subassemblies, are subject to the radiated and conducted emissions limits in part 15 of the Commission's rules and are subject to certain marketing constraints contained in subpart I of part 2 of the rules. The FCC will continue to rely on a marketing enforcement program to detect and curtail the assembly (manufacture), sale and use of non-compliant devices, whether manufactured from U.S. produced or from non-U.S. produced (imported) subassemblies. Deletion of the filing requirement for subassemblies will reduce the burden of both government and industry by an estimated 40% without increasing the potential for radio frequency interference. Importers do not have to file Form 740 or Form 740 information for importation of components and subassemblies of radio frequency devices so long as the devices do not constitute essentially completed devices, i.e., devices that are capable of operation without additional assembly or manufacture. Form 740 information must be submitted for computer circuit boards that are actually peripheral devices as defined in § 15.3(r) of the rules and for all devices that, by themselves, are subject to FCC marketing rules.

The number of devices exempted from the Form 740 filing requirements has been expanded. The expansion recognizes that devices that are acceptable for marketing and use in the United States should not have to undergo additional scrutiny if they are shipped out of the country and brought back into the country without modification. The modified rules also allow entry of devices for export, provided they are never marketed for use in the U.S.A.

As a practical matter, import brokers, not importers or ultimate consignees, prepare and submit most of the required declarations. A rule change has been adopted to recognize this common industry practice by specifically allowing brokers to submit the required information.

To reduce the filing requirements and thereby facilitate the entry process while still encouraging compliance with the import rules, the modified rules require that importers, brokers or ultimate consignees, maintain records of how they determine an imported radio frequency device to be in compliance with Commission technical standards for a one-year period following the date of entry. The new rule requires importers, consignees or brokers to retain documentation of their compliance procedures for each device for at least one year from date of entry in order to respond to Commission requests to review those procedures for

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any specific entry. Upon request for documentation, the Commission will allow 30 days for reply.

After Customs' electronic filing system is implemented, importers will file the required FCC declarations electronically with Customs. Importers filing electronically with Customs will not be required to file paper Form 740 documents with the FCC. If an importer is unable to participate in the electronic filing system, declarations may be filed with the Commission on the FCC Form 740. Much of the Form 740 information is already required for Customs purposes. Additional information to be submitted electronically will specifically include the import condition, FCC identifier (if appropriate), a count of the number of devices imported and a commercial product description. All of these items are required on the existing Form 740. The revised rule requires three elements in the product description; trade name, model/type name or number, and additional descriptive information to help identify the device.

The newly adopted rules prohibit importation of radio frequency devices while a grant of equipment authorization is pending. Commenters opposing this change asserted that requiring companies to wait for a grant from the Commission before bringing a new product into the country would create an unfair competitive disadvantage against them. They argued that they would no longer be able to "pre-position" production runs of devices at distributor or retail levels while waiting for an FCC grant. Previous rules allowed import pending FCC grant of authorization. In practice such devices actually reached distribution and retail outlets, and were sold, prior to grant. This occurred because the devices were released from Customs bond once duties were paid, regardless of equipment authorization status. The high volume of imports in general prevents Customs from maintaining RF devices under bond pending FCC grant of equipment authorization. Under these circumstances, devices that do not comply with FCC equipment standards too easily entered into the marketplace once they are imported. Experience with enforcing marketing rules has shown that many companies consider the potential for economic gain by selling non-compliant devices to far outweigh the risk of monetary forfeiture or other enforcement action once the devices gain entry, especially when faced with the cost and inconvenience of modifying the products or returning them to the point of origin. Requiring grant of the necessary of equipment authorization prior to entry will prevent this unacceptable practice.

The proposed rules delete all FCC requirements for import bonds. FCC experience over the last fifteen years has shown that import bonds on radio frequency devices have not been used except by Customs for Customs purposes. This action does away with an unnecessary requirement in the rules.

The new rules continue to allow certain devices to be imported in limited quantities for test, evaluation or demonstration purposes. The purpose of the rule is to allow importation of a sufficient number of units so that a new device or a new model of a device may be evaluated for FCC compliance (through testing) or for marketability (i.e. trade show displays or marketing studies). The adopted rule sets the upper limit of "limited quantities" to be ten devices unless prior written approval is received from the FCC.

Under the modified rules up to three unintentional radiators (ex. computers and computer peripherals) may be imported for the importer's or consignee's personal use. The previous rule specifically allowed only receivers. This change updates the rules to be more consistent with current technology. Personal use continues to mean that the devices imported under this rule will not be offered for sale or otherwise marketed in the United States.

The existing practice of making all Form 740 information available to the public will continue as we migrate to Customs' electronic filing system. An importer who desires information withheld from public inspection can apply for protection under § 0.459 of the Commission's rules.

A recommendation from one commenter was establishment of a blanket filing process for imports. The Commission decided that such a blanket filing approach is not appropriate. Ultimately electronic filing will eliminate the need for all but a few Form 740 documents. Most import data will than be submitted to Customs electronically. A blanket approval would require that both FCC and Customs maintain blanket lists submitted by each company or importer. This would potentially require maintenance of hundreds of lists. To be effective the lists would have to be updated continuously—a task neither Customs nor the FCC is staffed or funded to do. In addition, for electronic filing to be useful, the products described on the numerous blanket lists would have to be entered into the FCC imports database. The benefits of such an undertaking can be realized in the proposed electronic filing system at much less cost in the terms of staffing, funding and time delays. A blanket Form 740 for all items on an entry accompanied by a list of devices in the entry poses the same cross-referencing burden and is not readily adaptable for key entry into the electronic filing system. In view of the benefits of electronic filing and the extra burden of the blanket approach presented, such a blanket approach was not adopted.

A commenter's proposal for "self-certification" is essentially what is done in filing Form 740 information. The importer, consignee or broker issues a declaration identifying the category of the covered devices on the entry. Follow-up action by the Commission will provide quality control and review. The commenter also recommended the creation of a Certified Importer's License. The benefits suggested by the creation of such a license will be recognized once electronic filing becomes a reality. Neither the "self-certification" proposal nor the creation of an Importer's License provide improvement over the electronic filing goal of the modified rules adopted.

Part of the effect of these rule modifications will be to reduce the filing burden on the import industry at large, to require some potentially new record keeping by importers and to significantly reduce the time and effort required for importers to make the required filings. The estimated 40% reduction in filings due to the elimination of filing requirements for components and subassemblies will benefit almost all parties involved. The requirement to maintain documentation of methods of determining FCC compliance of imported devices may impose an additional burden. There were no comments filed challenging this requirement or indicating that it would impose a substantial burden. Electronic filing is expected to reduce workload and increase productivity, with respect to Form 740 information processing. This improvement will be primarily to the benefits of automation and to the fact that much of the FCC required data is already collected by Customs for Customs purposes. The change to electronic filing will remove the need for importers to file duplicative information with two government agencies. Overall, both industry and government will experience a reduction in workload and an improvement in efficiency.

List of Subjects in 47 CFR Part 2

Imports, reporting and recordkeeping.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

Part 2 of title 47 of the CFR is amended as follows:

1. The authority citation for part 2 is revised to read as follows:

Authority: Sec. 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 154(i), 302, 303, 303(r), and 307, unless otherwise noted.

2. Section 2.1201 is amended by revising paragraph (b), removing the note following paragraph (b), and removing paragraph (c) to read as follows:

§ 2.1201 Purpose.

* * * * *

(b) The rules in this section set out the conditions under which radio frequency devices as defined in § 2.801 that are capable of causing harmful interference to radio communications may be imported into the U.S.A.

3. Section 2.1202 is revised in its entirety to read as follows:

§ 2.1202 Exclusions.

The provisions of this section do not apply to the importation of:

(a) Cameras, musical greeting cards, quartz watches and clocks, modules of quartz watches and clocks, hand-held calculators and electronic games, and other similar unintentional radiators which utilize low level battery power and which do not contain provisions for operation while connected to AC power lines.

(b) Unintentional radiators which are exempted from technical standards and other requirements as specified in § 15.103 of this chapter.

(c) Radio frequency devices manufactured and assembled in the U.S.A. that meet applicable FCC technical standards and which have not been modified or received further assembly.

(d) Radio frequency devices previously properly imported that have been exported for repair and re-imported for use.

(e) Subassemblies, parts, or components of radio frequency devices unless they constitute an essentially completed device which requires only the addition of cabinets, knobs, speakers, or similar minor attachments before marketing or use. Form 740 information will be required to be submitted for computer circuit boards that are actually peripheral devices as defined in § 15.3(r) of this chapter and all devices that, by themselves, are subject to FCC marketing rules.

4. Section 2.1203 is revised in its entirety to read as follows:

§ 2.1203 General requirement for entry into the U.S.A.

(a) No radio frequency device may be imported into the Customs territory of the United States unless the importer or ultimate consignee, or their designated customs broker, declares that the device meets one of the conditions for entry set out in this section.

(b) A separate declaration shall be used for each line item in the entry or entry summary containing an RF device, or for each different radio frequency device within a line item when the elements of the declaration are not identical.

(c) Failure to properly declare the importation category for an entry of radio frequency devices may result in refused entry, refused withdrawal for consumption, required redelivery to the Customs port, and other administrative, civil and criminal remedies provided by law.

(d) Whoever makes a declaration pursuant to § 1.1203(a) must provide, upon request made within one year of the date of entry, documentation on how an imported radio frequency device was determined to be in compliance with Commission requirements.

5. Section 2.1204 is added to read as follows:

§ 2.1204 Import conditions.

(a) Radio frequency devices may be imported only if one or more of these conditions are met:

(1) The radio frequency device has been issued an equipment authorization by the FCC.

(2) The radio frequency device is not required to have an equipment authorization and the device complies with FCC technical administrative regulations.

(3) The radio frequency device is being imported in limited quantities for testing and evaluation to determine compliance with the FCC rules and regulations or suitability for marketing. The device will not be offered for sale or marketed. The phrase *limited quantities* means ten or fewer units. Prior to importation of more than ten units, written approval must be obtained from the Chief, Enforcement Division, Field Operations Bureau, FCC.

(4) The radio frequency device is being imported in limited quantities for demonstration at industry trade shows and the device will not be offered for sale or marketed.

(5) The radio frequency device is being imported solely for export. The device will not be marketed or offered for sale for use in the U.S.

(6) The radio frequency device is being imported for use exclusively by the U.S. Government.

(7) Three or fewer radio receivers, computers, or other unintentional radiators as defined in part 15 of this chapter, are being imported for the individual's personal use and are not intended for sale.

(8) The radio frequency device is being imported for repair and will not be offered for sale or marketed.

(b) The ultimate consignee must be able to document compliance with the selected import condition and the basis for determining the import condition applied.

6. Section 2.1205 is revised in its entirety to read as follows:

§ 2.1205 Filing of required declaration.

Note: The U.S. Customs Service is implementing a paperless entry system. Until the Customs electronic system is operational, submit the required declaration following the guidelines in paragraph (a) of this section. When the Customs system is implemented, follow the guidelines in paragraph (b) of this section.

(a) For points of entry where electronic filing with Customs has not been implemented, use FCC Form 740 to provide the needed information and declarations.

(1) Mail the original of FCC Form 740 to: FCC, Washington, DC 20554, Attention: Imports, on or before the date the Customs entry papers are filed.

(2) Attach a copy of FCC Form 740 to the Customs entry papers.

(b)(1) For points of entry where electronic filing with Customs is available, submit the following information to Customs when filing the entry documentation and the entry summary documentation electronically. Follow procedures established by Customs for electronic filing.

(i) The terms under which the device is being imported, as indicated by citing the import condition number specified in § 2.1204(a).

(ii) The FCC identifier as specified in § 2.925, if the device has been granted an equipment authorization;

(iii) The quantity of devices being imported, regardless of what unit is specified in the Harmonized Tariff Schedule of the United States; and

(iv) A commercial product description which is to include the trade name, a model/type number (or model/type name) and other descriptive information about the device being imported.

(2) For importers unable to participate in the electronic filing process with

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Customs for good cause, declarations are to be made in accordance with paragraph (a) of this section.

7. Section 2.1207 is revised in its entirety to read as follows:

§ 2.1207 Examination of imported equipment.

In order to determine compliance with its regulations, Commission representatives may examine or test any radio frequency device that is imported. If such radio frequency device has already entered the U.S., the ultimate consignee or subsequent owners of that device must, upon request, made within one year of the date of entry, make that device available for examination or testing by the Commission.

§§ 2.1209, 2.1211, 2.1213, 2.1215 and 2.1219 [Removed].

8. Sections 2.1209, 2.1211, 2.1213, 2.1215 and 2.1219 are removed.

[FR Doc. 91-13712 Filed 6-7-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

RIN 1018-AA71

Refuge-Specific Hunting Regulations; Correction

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Final rule; correction.

SUMMARY: The U.S. Fish and Wildlife Service corrects an error in the amendatory language of the **Federal Register** publication of October 26, 1990 (55 FR 43133) regarding refuge-specific hunting regulations, in order to correctly designate paragraphs under 50 CFR § 32.12.

EFFECTIVE DATE: June 10, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy Marx, Division of Refuges, 703-358-2043.

SUPPLEMENTARY INFORMATION: In **Federal Register** document 90-25256 in the issue of Friday, October 26, 1990, at 55 FR 43135, third column, in the amendatory language for number 2 § 32.12, "redesignating paragraph (y)(1) as (y)(2), adding new paragraph (y)(1)"; this is corrected to read "redesignating paragraph (y)(1) and (y)(2) as paragraphs (y)(2) and (y)(3) respectively and adding new paragraph (y)(1)."

Dated: May 28, 1991.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 91-13587 Filed 6-7-91; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 90119-1021]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the secondary allowance of Pacific halibut for the domestic annual processing (DAP) rock sole fishery in the Bering Sea and Aleutian Islands management area (BSAI) has been caught. Therefore, the Secretary of Commerce (Secretary) is closing the entire BSAI to vessels engaging in directed fishing for rock sole. This action is necessary to prevent the secondary allowance of halibut for the rock sole fishery from being exceeded before the end of the fishing year. The intent of this action is to implement regulatory measures controlling the bycatch of prohibited species in the trawl fisheries for groundfish.

EFFECTIVE DATES: 12 noon, Alaska local time (A.l.t.), June 6, 1991, through midnight, December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMP) governs the groundfish fishery in the exclusive economic zone within the BSAI under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations appearing at 50 CFR 611.93 and parts 620 and 675.

The final rule for Amendment 16 to the FMP (56 FR 2700, January 24, 1991) established prohibited species catch (PSC) limits for Pacific halibut throughout the BSAI area. Under § 675.21(a)(5), the secondary PSC limit of Pacific halibut while conducting any U.S. trawl fishery for groundfish in the BSAI during any fishing year is 5,333 metric tons (mt). Further, § 675.21(b)(1) provides that the PSC limit of Pacific halibut be further apportioned into bycatch allowances, one of which is assigned to the DAP rock sole fishery under § 675.21(b)(4). The final notice of initial specifications of BSAI groundfish for 1991 (56 FR 6290, February 15, 1991) established the 1991 secondary Pacific halibut allowance for the DAP rock sole fishery at 1,100 mt.

Under § 675.21(c)(1)(iv), if the Regional Director determines that U.S. fishing vessels using trawl gear will catch the secondary PSC allowance or seasonal apportionment of the PSC allowance of Pacific halibut in the BSAI area while participating in the DAP rock sole fishery as defined in § 675.21(b)(4)(ii), the Secretary will publish a notice in the **Federal Register** closing the entire BSAI area to vessels engaging in that directed fishery for the remainder of the fishing year or for the remainder of the fishing season.

The Regional Director has determined that the secondary PSC allowance of Pacific halibut for the rock sole fishery will be reached by June 6, 1991. The Secretary is closing the entire BSAI area to vessels engaging in the DAP rock sole directed fishery for the remainder of the fishing year, from 12 noon, A.l.t., June 6, 1991, through midnight, December 31, 1991. In accordance with § 675.20(h) (1) and (8), the amount of rock sole retained at any time during a trip must be less than 20 percent of the aggregate catch of the other fish retained at the same time during the same trip, calculated in round weight equivalents.

Classification

This action is taken under §§ 675.20 and 675.21 and complies with Executive Order 12291.

List of Subjects in 50 CFR 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 5, 1991.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-13734 Filed 6-5-91; 4:14 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 111
Monday, June 10, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-96-AD]

Airworthiness Directives; Airbus Industrie Model A300 B2-1C, B2K-3C, and B2-203 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to all Airbus Industrie Model A300 B2 series airplanes, which currently requires a one-time visual and ultrasonic inspection to detect cracks in the wing front spar webs, and repair, if necessary. This action would require a visual inspection and repetitive ultrasonic inspections to detect cracks in the front face of the front spar of both wings between ribs 10 and 11, and repair, if necessary. This proposal is prompted by a report of a crack found on an in-service airplane in the wing front spar web between ribs 10 and 11. This condition, if not corrected, could result in reduced structural integrity of the wing front spar.

DATES: Comments must be received no later than July 31, 1991.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-96-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-96-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On July 16, 1987, the FAA issued AD 87-15-09, Amendment 39-5685 (52 FR 28135, July 28, 1987), to require a one-time visual inspection and an ultrasonic inspection to detect cracks in the wing front spar webs on Airbus Model A300 B2 series airplanes, and repair, if necessary. That action was prompted by a report of a crack found on the right-hand wing front spar. This condition, if not corrected, could result in a failure of the front wing spar.

Since issuance of that AD, there has been a report of a crack found on an in-service Model B2 series airplane in the wing front spar web between ribs 10 and 11. The appearance of such cracking indicates that more frequent repetitive inspections in an expanded area are required to detect cracks in this area. This condition, if not corrected, could result in reduced structural integrity of the wing front spar.

Airbus Industrie has issued Service Bulletin A300-57-151, Revision 1, dated October 5, 1990, which describes procedures for a visual inspection to detect cracks in the front face of the front spar of both wings between ribs 10 and 11, and repetitive ultrasonic inspections to detect cracks in the bottom boom attachment holes in the front spar of both wings, and repair, if necessary. The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, has classified this service bulletin as mandatory, and has issued French Airworthiness Directive 87-065-079(B)R2 addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would supersede AD 87-15-09 with a new airworthiness directive that would require a visual inspection to detect cracks in the front face of the front spar of both wings between ribs 10 and 11; repetitive ultrasonic inspections to detect cracks in the bottom boom attachment holes in the front spar of both wings; and repair, if necessary; in accordance with the service bulletin previously described.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

It is estimated that 13 airplanes of U.S. registry would be affected by this AD, that it would take approximately 27 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $19,305.

The regulations proposed herein would not have substantial direct effects of the States, on the relationship between the national government and

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the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-5685 (52 FR 28135, July 29, 1987), AD 87-15-09, with the following new airworthiness directive:

Airbus Industrie: Docket No. 91-NM-90-AD. Supersedes AD 87-15-09.

Applicability: All Model A300 B2-1C, B2K-3C, and B2-203 series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent reduced structural integrity of the wing front spar, accomplish the following:

(a) Prior to the accumulation of 8,000 landings since new, or prior to the accumulation of 1,500 landings since the last inspection in accordance with AD87-15-09, Amendment 39-5685 [ref: Airbus Industrie All Operators Telex (AOT) 57/87/01, issue 2, dated April 22, 1987], or within 100 landings after the effective date of this AD, whichever occurs later, perform a visual inspection to detect cracks in the front face of the front spar (left and right wing) between ribs 10 and 11, in accordance with the Accomplishment Instructions of Airbus Industrie Service Bulletin A300-57-151, Revision 1, dated October 5, 1990.

(1) If cracks are found, prior to further flight, repair in accordance with the service bulletin.

(2) Following repair, repeat the visual inspections at an interval approved by the Manager, Standardization Branch, ANM-113, Transport Airplane Directorate.

(b) Prior to the accumulation of 8,000 landings since new, or prior to the accumulation of 1,500 landings since the last inspection in accordance with AD 87-15-09, Amendment 39-5685 [ref: Airbus Industrie AOT 57/87/01, issue 2, dated April 22, 1987], or within 100 landings after the effective date of this AD, whichever occurs latest, perform an ultrasonic inspection to detect cracks in the bottom boom attachment holes of the front spar (left and right wing), in accordance with the Accomplishment Instructions of Airbus Industrie Service Bulletin A300-57-151, Revision 1, dated October 5, 1990.

(1) If no cracks are found, repeat the ultrasonic inspection at intervals not to exceed 1,500 landings.

(2) If cracks are found, prior to further flight, remove bolts from affected holes and perform an eddy current inspection to determine length and direction of crack(s), and repair in accordance with the service bulletin.

(3) Following repair, repeat the ultrasonic inspections at an interval approved by the Manager, Standardization Branch, ANM-113, Transport Airplane Directorate.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on May 31, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-13655 Filed 6-7-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-105-AD]

Airworthiness Directives; Boeing Model 707/720, 727-100C, and 727-200F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to Boeing Model 707/720 series airplanes with a main cargo door, Model 727-100C, and Model 727-200F series airplanes, which would require the use of certain special operating procedures for the main cargo door, and the inspection, necessary repair, and eventual replacement of the main cargo door latch cams, latch cam bellcranks, and pressure relief door hinge fittings. This proposal is prompted by reports of worn latch cams and worn pressure relief door hinge fittings, and a report of a main cargo door that opened in flight. This condition, if not corrected, could result in an improperly latched and locked cargo door; an erroneous door locked indication; the opening of the door during flight; and subsequent rapid decompression of the airplane.

DATES: Comments must be received no later than July 31, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-105-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Pliny C. Brestel, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S; telephone (206) 227-2783. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed , stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-105-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

Several operators of Boeing Model 707/720 airplanes with a main cargo door, Model 727-100C (cargo), and Model 727-200F (freighter) airplanes have reported wear of the main cargo door latch cams and pressure relief door hinge fittings. Excessively worn hinge fittings or worn latch cams will not restrain the pressure relief doors from closing when the latches are not in the fully latched closed position. This condition would result in false visual indications that the cargo door is secure, i.e., the pressure relief doors are closed and all warning lights are extinguished. Pressurization of the airplane with an insecure cargo door could result in the opening of the cargo door in flight and rapid decompression of the airplane.

In one instance, a main cargo door opened in flight, which resulted in a rapid decompression of the airplane. Investigation has revealed that worn latch cams and pressure relief door hinge fittings could have been caused by an incorrect operation sequence of the hydraulic system, which resulted from wear of hydraulic components, or by the hydraulic system being improperly adjusted. This condition, if not corrected, could result in an erroneous indication of an improperly latched and locked main cargo door, the door opening in flight, and subsequent rapid decompression of the airplane.

The FAA has reviewed and approved Boeing Service Bulletin 3477, dated July 26, 1990, for Model 707/720 series airplanes; and Boeing Service Bulletin 727-52-0142, dated July 26, 1990, for Model 727 series airplanes; which describe procedures for inspection and replacement of pressure relief door hinge fittings, latch cam bellcranks, and latch cams of the main cargo door. The service bulletins also specify testing of the operation, control, and warning system of the cargo door.

Since this condition is likely to exist or develop on other airplanes of these same type designs, an AD is proposed which would require the use of certain special operating procedures for the main cargo door; inspection of the main cargo door latch cams and pressure relief door hinge fittings, and repair, if necessary; eventual replacement with modified latch cams, latch cam bellcranks, and hinge fittings; and testing of the door operation, control, and warning system. The procedures for inspection, repair, replacement, and testing would be required to be accomplished in accordance with the service bulletins previously described.

The special operating procedures required by this proposal would not significantly increase the burden on operators since the Airplane Flight Manual currently requires that the latches must be visually checked prior to each flight to ensure that they are locked. Once the inspection and repair, if necessary, has been completed [in accordance with proposed paragraph (b)] the special operating procedures are no longer necessary and may be terminated.

There are approximately 280 Model 707/720 series airplanes, and approximately 169 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 48 Model 707/720 airplanes and 144 Model 727 airplanes of U.S. registry would be affected by this AD. It would take approximately 1 manhour to accomplish the inspection and 34 manhours per airplane to accomplish the required terminating actions, and the average labor cost would be $55 per manhour. Required parts are estimated at $12,264 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,724,288.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket No. 91-NM-105-AD

Applicability: Model 707/720 series airplanes with a main cargo door, listed in Boeing Service Bulletin 3477, dated July 26, 1990; and Models 727-100C and 727-200F series airplanes, listed in Boeing Service Bulletin 727-52-0142, dated July 26, 1990; certificated in any category.

Compliance: Required as indicated, unless: (1) Previously accomplished or (2) the main cargo door has been deactivated in accordance with Boeing Service Bulletin 3311, dated May 26, 1978, for Model 707/720 series airplanes, or Boeing Service Bulletin 727-29-0053, dated July 8, 1977, for Model 727 series airplanes.

To prevent inadvertent opening of the main cargo door, accomplish the following:

(a) Within the next 30 days after the effective date of this AD, change the operating procedures for the main cargo door to include the following requirements, and thereafter comply with those revised procedures until the inspection required by paragraph (b) of this AD has been accomplished: Prior to takeoff following each operation of the door, conduct a visual verification, through the external viewports, to ensure proper engagement of the latching cams to ensure that the door is fully latched

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closed. This information must be relayed to and acknowledged by the flight crew.

(1) The procedures required by this paragraph must be accomplished by a qualified and trained mechanic or flight officer, and the training program must be approved by the FAA Principal Maintenance Inspector (PMI).

(2) Documentation of compliance with these procedures is required and the method of documentation must be approved by the FAA PMI.

(b) Within the next 18 months after the effective date of this AD, perform a visual inspection for wear of the mating surfaces of the pressure relief door hinge fittings and latch cams of the main cargo door, in accordance with Section III, Part I, of Boeing Service Bulletin 3477, dated July 26, 1990 (for Model 707/720 series airplanes), or Boeing Service Bulletin 727-52-0142, dated July 26, 1990 (for Model 727 series airplanes).

(1) If wear exceeds the limits specified in the applicable service bulletin: Prior to further flight, replace worn parts, as follows. Do not intermix original configuration parts with modified parts in the same door.

(i) Replace worn parts with modified parts in accordance with Section III, Part II, of the applicable service bulletin; or

(ii) Replace worn parts with airworthy parts of the original configuration in accordance with FAA-approved procedures.

(2) The inspection and replacement of parts, if necessary, in accordance with this paragraph constitutes terminating action for the special operating procedures required by paragraph (a) of this AD.

(c) Within 36 months after the effective date of this AD, accomplish the following in accordance with Section III, Part II, of Boeing Service Bulletin 3477, dated July 26, 1990 (for Model 707/720 series airplanes), or Boeing Service Bulletin 727-52-0142, dated July 26, 1990 (for Model 727 series airplanes):

(1) Replace the latch cams,

(2) Replace the latch cam bellcranks,

(3) Replace the pressure relief door hinge fittings, and

(4) Perform the operation, control, and door warning system tests.

(d) For airplanes on which the main cargo door has been deactivated:

(1) Prior to reactivating the main cargo door, accomplish the inspection required by paragraph (b) of this AD.

(2) Within the next 18 months after reactivation, or within 36 months after the effective date of this AD, whichever is later, accomplish the requirements of paragraph (c) of this AD.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on May 31, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-13654 Filed 6-7-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-110-AD]

Airworthiness Directives; British Aerospace Model BAC 1-11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all British Aerospace Model BAC 1-11 200 and 400 series airplanes, which would require repetitive visual inspections to detect cracks in the skin of the fuselage pressure floor panel and supporting cleats, and repair, if necessary; and eventual installation of modified cleats. This proposal is prompted by recent reports of cracks discovered in the skin of the fuselage pressure floor panel and the supporting cleats. This condition, if not corrected, could result in loss of cabin pressurization.

DATES: Comments must be received no later than July 31, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-110-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue S.W., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and the submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-110-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on all British Aerospace Model BAC 1-11 200 and 400 series airplanes. There have been recent reports of cracks discovered in the skin of the fuselage pressure floor panel and the supporting cleats. The initial failure occurred in the cleats, subsequently resulting in skin cracks. This condition, if not corrected, could result in loss of cabin pressurization.

British Aerospace has issued Alert Service Bulletin 53-A-PM5990, Issue 1, dated January 7, 1991, which describes procedures for repetitive visual inspections to detect cracks in the skin of the fuselage pressure floor panel and supporting cleats, and repair, if necessary; and eventual installation of modified cleats. The United Kingdom CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive visual inspections to detect cracks in the skin of the fuselage pressure floor panel and supporting cleats, and repair, if necessary; and eventual installation of modified cleats; in accordance with the service bulletin previously described.

It is estimated that 70 airplanes of U.S. registry would be affected by this AD, that it would take approximately 21 manhours per airplane to accomplish the required actions, and that the average labor cost would be $55 per manhour. The estimated cost for required parts is $500 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $115,850.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the State, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket No. 91-NM-110-AD.

Applicability: All Model BAC 1-11 200 and 400 series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent loss of cabin pressurization, accomplish the following:

(a) For airplanes operated to a maximum of 7.5 pounds per square inch (psi) cabin pressure differential: Prior to the accumulation of 24,000 landings, or within 3,000 landings after the effective date of this AD, whichever occurs later; and thereafter at intervals not to exceed 3,200 landings; perform a visual inspection of the skin and cleats at the front and rear extremities of the twelve stiffeners to detect cracks, in accordance with British Aerospace Alert Service Bulletin 53-A-PM5990, Issue 1, dated January 7, 1991.

(b) For airplanes modified for operation to a maximum of 8.2 psi cabin pressure differential: Prior to the accumulation of 16,000 landings, or within 2,000 landings after the effective date of this AD, whichever occurs later; and thereafter at intervals not to exceed 2,400 landings; perform a visual inspection of the skin and cleats at the front and rear extremities of the twelve stiffeners to detect cracks, in accordance with the British Aerospace Alert Service Bulletin 53-A-PM5990, Issue 1, dated January 7, 1991.

(c) If skin cracks are found, prior to further flight, repair in accordance with a procedure approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. If cleat cracks are found, prior to further flight, replace cracked cleats by installing a new part having post-Modification PM5629 Part (a) configuration.

(d) For all airplanes: Prior to the accumulation of 85,000 landings, install Modification PM5629 Part (a) in accordance with British Aerospace Alert Service Bulletin 53-A-PM5990, Issue 1, dated January 7, 1991.

(e) Installation of Modification PM5629 Part (a), in accordance with British Aerospace Alert Services Bulletin 53-A-PM5990, Issue 1, dated January 7, 1991, constitutes terminating action for the repetitive inspections required by paragraphs (a) and (b) of this AD.

(f) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletin, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on May 31, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-13653 Filed 6-7-91; 8:45 am]

BILLING CODE 4710-13-M

14 CFR Part 71

[Airspace Docket No. 91-ANM-1]

Proposed Establishment of Transition Area; Anaconda, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a 700-foot transition area at Anaconda, Montana to provide controlled airspace for aircraft executing a new instrument approach procedure to the Anaconda, Montana Airport, utilizing the Whitehall and Coppertown VOR's as navigational aids. The intent of this proposal is to accurately define controlled airspace for pilot reference. The airspace would be depicted on aeronautical charts enabling pilots to determine when instrument flight rules may be required.

DATES: Comments must be received on or before August 1, 1991.

ADDRESSES: Send comments on the proposal to: Manager, System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 91-ANM-1, 1601 Lind Avenue SW., Renton, Washington 98055-4056, Telephone: (206) 227-2537.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: James Riley, ANM-537, Federal Aviation

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Administration, Docket No. 91-ANM-1, 1601 Lind Avenue SW., Renton, Washington 98055-4056, Telephone: (206) 227-2537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above.

Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91-ANM-1." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Federal Aviation Administration, System Management Branch, ANM-530, 1601 Lind Avenue, SW. Renton, Washington 98055-4056.

Communications must identify the notice number of this NRPM. Persons interested in being placed on mailing list for future NRPM's should also request a copy of Advisory Circular No. 11-2 which best describes the application procedure.

The Proposal

The FAA proposes an amendment to section 71.181 of part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a 700-foot transition area at Anaconda, Montana to provide controlled airspace for aircraft executing a new instrument approach procedure to Anaconda Airport, Montana. The new instrument approach procedure would utilize the Whitehall and Coppertown VHF omnidirectional range (VOR) navigational aids. The proposal would establish the Anaconda Transition Area adjacent to the Butte, Montana, Transition Area.

Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Anaconda, Montana, 700 Foot Transition Area (new). Starting at lat. 46°20'30"—long. 112°48'30" to lat. 46°10'30"—long. 113°07'00" to lat. 45°57'05"—long. 112°47'40" to lat. 45°51'20"—long. 112°27'30" to lat. 46°03'20"—long. 112°20'00" to lat. 46°05'00"—long. 112°25'45" to lat. 46°18'30"—long. 112°30'30" to lat. 46°17'10"—long. 112°41'40".

Thence to point of beginning, excluding that portion within the Butte, Montana 700 foot Transition Area.

Issued in Seattle, Washington, on May 15, 1991.

Temple H. Johnson, Jr.,
Manager, Air Traffic Division.

[FR Doc. 91-13657 Filed 6-7-91; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 91-ASO-1]

Proposed Designation of VOR Federal Airways; FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate Federal Airways V-509 and V-511 located in southern Florida. These new airways would improve the north/south flow of traffic. These airways would be designated in areas where aircraft are normally given radar vectors to shorten their departure/arrival time in the Miami, FL, area. This action would save fuel and expedite traffic in that area.

DATES: Comments must be received on or before July 25, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO-500, Docket No. 91-ASO-1, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91-ASO-1. The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to designate VOR Federal Airways V-509 and V-511 in southern Florida. These new airways would improve the north/south flow of air traffic. These airways would be designated in areas where air traffic is radar-vectored to shorten their routes and eliminate en route delays in the Miami, FL, area. This action would save fuel, expedite traffic, and reduce controller workload. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-509 [New]

From St. Petersburg, FL; to INT St. Petersburg 111°T(110°M) and Lakeland, FL 141°T(140°M) radials.

V-511 [New]

From Lakeland, FL; INT Lakeland 141°T(140°M) and Biscayne Bay, FL, 329°T(333°M) radials; to Biscayne Bay.

Issued in Washington, DC, on May 30, 1991.

Harold W. Becker,
Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 91-13656 Filed 6-7-91; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 75

[Airspace Docket No. 91-AEA-5]

Proposed Alteration of Jet Route J-162

AGENCY: Federal Aviation Administraion (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Jet Route J-162 between the States of Ohio and West Virginia. This proposal would modify J-162 by realigning the route between the Bellaire, OH, and the Morgantown, WV, very high frequency omnidirectional radio range and tactical air navigational aid (VORTAC). This action is necessary to simplify routing and make better use of the airspace in that area.

DATES: Comments must be received on or before July 25, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AEA-500, Docket No. 91-AEA-5, Federal Aviation Administration, JFK International Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION: .

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should

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identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91-AEA-6." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 75 of the Federal Aviation Regulations (14 CFR part 75) to alter the description of Jet Route J-162. This action would realign J-162 between the Bellaire, OH, and the Morgantown, WV, VORTAC's and eliminate a dog-leg segment of the route structure. Fuel conservation measures would be enhanced for aircraft navigating along the proposed route by eliminating the dog-leg segment of that route. Modifying this route would simplify routing and make better use of the airspace in that area. Section 75.100 of part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 75 of the Federal Aviation Regulations (14 CFR part 75) as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-162 [Revised]

From DRYER, OH, via Bellaire, OH; Morgantown, WV; to Martinsburg, WV.

Issued in Washington, DC., on June 3, 1991.

Jerry W. Ball

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 91-13658 Filed 6-7-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 905, 965

[Docket No. R-91-1535; FR-2984-P-01]

RIN 2577-AA92

Termination of Consolidated Supply Program

AGENCY: .Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: HUD is proposing to terminate the Consolidated Supply Program (CSP), currently set out at 24 CFR part 965, subpart G, and 24 CFR 905.175(f). Under the CSP, HUD furnishes technical assistance to public housing agencies and Indian housing authorities in purchasing certain supplies, material, equipment, and services necessary for the development, operation and maintenance of low-income housing. The purpose of the rule is to terminate a program that HUD has found, after thorough analysis, to be structurally flawed and not cost effective.

DATES: Comment due date: August 9, 1991.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying from 7:30 a.m. to 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address. As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708-4337. (This is not a toll free number.) Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk (202) 708-2084. (This is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Janice D. Rattley, Director, Office of Construction, Rehabilitation and Maintenance, room 4136, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-1800. Hearing- or speech-impaired individuals may call the TDD number for the Office of Public and Indian Housing, (202) 708-0850. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background of the CSP

HUD's regulations at 24 CFR part 965, subpart G, and 24 CFR 905.175(f), govern the operation of the Consolidated Supply Program (CSP). (The CSP regulations also are referenced in HUD's Acquisition Regulation at 48 CFR 2401.601-70 and 2402.101.) The CSP was

established to assist public housing agencies (PHAs), and Indian housing authorities (IHAs) (PHAs and IHAs are collectively referred to as PHAs), to assure the low income character of public housing, as required under sections 6(a) and 9(a) of the United States Housing Act of 1937, by providing technical assistance in the procurement process.

Under the CSP, HUD enters into competitive open-end contracts with suppliers of products (supplies, material, equipment and services) commonly used by PHAs in the development, operation and maintenance of low-income housing. HUD prepares the technical specifications, and undertakes the solicitation, procurement and contracting functions. Contracts are awarded to all responsive and responsible bidders whose prices are at or below the average of the bids received (not just the low bidder). The CSP contracts generally are of 15 month duration, and are indefinite quantity contracts with no guarantee to the CSP suppliers of any specific, or minimum volume of business under the contracts.

The final stage in this CSP contractor solicitation process is the publication of a catalog which lists all CSP product items, including the product specifications, corresponding prices and other contract terms of each product; and the name, address and telephone number and assigned contract number of each CSP contractor. The CSP allows PHAs to contract directly with CSP contractors, but for only the items listed in the catalog. The CSP requires CSP contractors to honor their prices for the term of their contracts, and to adhere to the specifications listed in the catalog. Any deviation from these specifications makes the purchase a non-CSP procurement, and, consequently any Federal, State or local requirements governing competitive purchases apply. Participation in the CSP is voluntary on the part of PHAs, and is not a public housing program requirement.

The objective of the CSP is to provide PHAs with the price benefits of competition, while reducing the administrative costs that would otherwise be incurred by each PHA in preparing individual contract specifications, and in soliciting for bids. The CSP operates on the premises that: (1) CSP contractors offer their best prices to the program—that is prices that are equal to or better than prices available to PHAs through open competition; and (2) CSP installed item specifications, including authorized options, add-ons, and deletions, are sufficient to satisfy the job needs of PHAs. The Department has found, through an audit of the CSP, that these operating premises were inaccurate.

Problems with the CSP

The HUD Office of the Inspector General (IG) conducted audits of the CSP in 1981 and 1984. Those audits questioned the cost effectiveness of the program and recommended better internal controls for operating the program. Recently, the IG conducted a multi-region audit of the program, and continued to raise a number of serious problems with the program. The latest audit was performed between October 1988 and February 1990, and generally covered 1986 and 1989 CSP activities. The audit included CSP activities in the Atlanta, Boston, Philadelphia and San Francisco regions. The objectives of the IG's audit were to determine: the cost effectiveness of the program; the extent of PHA participation; and adherence to program requirements by participating PHAs and contractors.

With reference to cost-effectiveness, the IG's audit showed that, although the CSP is successful in reducing some of the administrative costs of procurement, participating PHAs do not realize the significant savings in product costs anticipated, and intended, by the program. The audit found that PHAs audited were paying prices averaging 18 percent higher than prices secured through the normal competitive process. (IHAs were excluded from the IG's audit.)

The audit attributed the CSP higher prices to the indefiniteness and generality of CSP product offerings and contract terms, features which constitute the basic framework of the program. Because of CSP is designed to serve a maximum number of PHAs for a variety of contracting jobs, CSP contractors are subject to contracts which involve extended terms, unknown quantities, and generalized specifications. The audit showed that the generality and uncertainty of these terms produced higher product pricing. For example, because a CSP contract is an indefinite quantity contract, a CSP contractor's price must be high enough to cover expenses, even if limited quantities are ordered. In contrast, a competitive bid solicitation can reflect a price discount for defined volume purchases. Additionally, because a CSP contract generally is for a period of 15 months or longer, a CSP contractor must factor in anticipated price increases. A competitive bid, however, would reflect current product costs.

The audit also found that the generalized installed item specifications, presented in a CSP catalog, were often inadequate to address all the work variables of a specific PHA job. This inadequacy caused PHAs and contractors to deviate from specifications, such as adding work to CSP contracts. These deviations are in violation of the program requirements, and, often, in violation of Federal, State and local procurement policies.

With reference to PHA participation, the audit reported that the use of the CSP by PHAs was small ($102 million for the 1986/1989 period) compared to overall PHA procurement of more than $3 billion.

With reference to adherence to program requirements, the audit provided evidence of frequent abuse of the program by PHAs and contractors. Out of the PHAs reviewed, contract irregularities were found in 97% of them. Additionally, 152 CSP violations were found during the audit. Examples of abuse included contractors misrepresenting their authority by selling items outside of their CSP contracts, while representing them as CSP items; using expired or false CSP contractor numbers; and selling unauthorized "add-ons" as a way of significantly expanding the scope of the contract. Other CSP irregularities identified by the audit included the practice among contractors of: (1) Installing inferior products, in lieu of products that were contracted (a practice referred to as "bait & switch"); and (2) selling unauthorized "add-ons"—items which are added to the contract improperly to supplement the original work item which was advertised for bid.

Reassessment of the CSP

On August 10, 1990, the Assistant Secretary of Public and Indian Housing, in response to the IG's audit, invited interested CSP participants to a meeting to discuss the audit findings and the issue of continuation of the program. Participants at the meeting included representatives from the National Association of Housing and Redevelopment Officials (NAHRO); the Public Housing Authority Directors' Association (PHADA); various CSP contracting participants, auditors, and others generally interested in the program. At the meeting, each participant presented candid views on the problems and benefits of the CSP.

Following that meeting, HUD took an additional step in its evaluation of the CSP, and engaged an outside consultant, one familiar with all aspects of procurement, to review the CSP and to make recommendations to HUD. The consultant previously served as

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Chairman of the Public Contract Law Section of the American Bar Association; Vice Chairman of the Procurement Roundtable; General Counsel at NASA; and General Counsel at the General Accounting Office (GAO). The consultant completed the review and made recommendations to HUD on September 7, 1990.

Findings of Material Weakness and Intention to Terminate the CSP

As a result of the consultant's recommendations, the discussions with interest groups, and the review of many letters from the public, HUD was able to make an objective assessment of the program.

From that assessment, HUD concluded that there are four identifiable benefits to the program: standardization of specifications; standardization of products; saving of time in procurement; and the possibility of significant participation by minority contractors. (With respect to minority participation, the CSP offers the opportunity of greater involvement by minority and women's businesses enterprises due, in addition to other possible factors, to the fact that contracts awarded by HUD are not based upon the lowest bid, but rather any bid which is at or below the average.) However, outweighing the program's benefits are the program's problems (as identified by the audit and HUD's overall reassessment of the CSP)—structural and inherent flaws so serious that the corrective measures required to make the CSP cost effective, for both PHAs and HUD, would far exceed available resources, and outweigh any potential program benefits. These problems include widespread abuse of program requirements by PHAs and CSP contractors, as evidenced by unauthorized add-ons, overcharges, and false advertising. Accordingly, given these problems and their relationship to the inherent structure of the program, HUD proposes, through this rule, to terminate the CSP.

Intention to Continue with CSP for Current Participants

During the rule making process, HUD will continue to extend existing CSP contracts so that participating PHAs may continue to use the program. Generally, HUD expects the average length of contract extensions to be six to nine months. However, no new solicitations will be issued during this period of rule making.

Intention to Continue with Procurement Technical Assistance

Although HUD proposes to terminate the CSP, HUD also proposes to continue to offer to PHAs certain procurement technical assistance. Specifically, HUD intends to make available to PHAs guide specifications for many of the products which currently can be obtained under the CSP. On a voluntary basis, PHAs could use these specifications to develop bid documents for individual solicitations. These specifications will continue to be updated by HUD through continued communications with the industry, governmental agencies and contractors. This effort on the part of HUD would allow PHAs to use the HUD expertise to standardize products which currently are performing soundly under the conditions associated with public housing.

PHAs, even small PHAs, already procure from non-CSP sources. Consequently, PHAs already possess technical procurement capability, and will not have to establish an entirely new procurement system to purchase products currently offered under the CSP. The time required for these purchases should not be more than the time involved for other procurement. Moreover, PHA procurement under the CSP is a small part of these agencies overall procurement activities. In addition, HUD intends to establish a task force to explore ways to maximize minority participation in PHA procurement. HUD's procurement assistance to PHAs is being increased by making procurement training and sample procurement policies available. Finally, HUD will seek the passage of legislation to make the General Services Administration (GSA) schedule available to PHAs, in an effort to provide an additional source from which to procure products.

Other Matters

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certified that this rule does not have a significant economic impact on a substantial number of small entities. This rule merely reduces HUD's involvement in PHA and IHA purchasing of certain supplies commonly used in the development, operation and maintenance of public housing.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

This rule was listed in the Department's Semiannual Agenda of Regulations published on April 22, 1991 (56 FR 17407) under Executive Order 12291 and the Regulatory Flexibility Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule do not have Federalism implications and, thus, are not subject to review under the Order. No programmatic or policy changes would result from this rule's promulgation which would affect existing relationships between the Federal Government and State and local governments.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have a potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant changes in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Lists of Subjects

24 CFR Part 905

Grant programs—Indians, Low and moderate income housing, Aged, Grant programs—housing and community development, Handicapped, Indians, Loan programs—housing and community development, Loan programs—Indians, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 965

Energy conservation, Government procurement, Grant programs—housing and community development, Lead poisoning, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements, Utilities.

Accordingly, 24 CFR part 905, and 24 CFR part 965, subpart G, are proposed to be amended as follows:

PART 905—INDIAN HOUSING PROGRAMS

1. The authority citation for part 905 would continue to read as follows:

Authority: Secs. 201, 202, 203, 205, United States Housing Act of 1937 (42 U.S.C. 1437aa, 1437bb, 1437cc, 1437ee); sec. 7(b), Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 905.175 [Amended]

2. Paragraph (f) of § 905.175 is proposed to be removed.

PART 965—PHA—OWNED OR LEASED PROJECTS—MAINTENANCE AND OPERATION

Subpart G—Consolidated Supply Program

3. The authority citation for part 965 would continue to read as follows:

Authority: Secs. 2, 3, 6, and 9, United States Housing Act of 1937 (42 U.S.C. 1437, 1437a, 1437d, and 1437g); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Subpart H is also issued under Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846).

§§ 965.601–965.605 (Subpart G)—[Removed and Reserved]

4. Subpart G, consisting of §§ 965.601 through 965.605, is proposed to be removed and reserved.

Dated: April 18, 1991.

Joseph G. Schiff,
Assistant Secretary for Public and Indian Housing.

[FR Doc. 91–13633 Filed 6–7–91; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 156

[IA–7–88]

RIN 1545–AL47

Excise Tax Relating to Gain or Other Income Realized By Any Person on Receipt of Greenmail

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document provides proposed regulations relating to the manner and method of reporting and paying the nondeductible 50 percent excise tax imposed with respect to the receipt of greenmail. This excise tax was added to the Internal Revenue Code of 1986 by the Revenue Act of 1987, as amended by the Technical and Miscellaneous Revenue Act of 1988. The proposed regulations provide recipients of greenmail with the guidance necessary to comply with the reporting requirements for this new excise tax.

DATES: Written comments and requests for a public hearing must be received by August 9, 1991.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (IA–7–88), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Warren Joseph, 202–566–4430 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on these collections of information should be sent to the Office of Management and Budget, Attention: Desk Officer for Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer, T:FP, Washington, DC 20224.

The collections of information in this proposed regulation are in §§ 156.6001–1, 156.6011–1, and 156.6081–1, and 156.6161–1. This information is required by the Internal Revenue Service to verify that the excise tax imposed under section 5881 of the Code is properly reported on Form 8725 and timely paid and will be used for that purpose. The likely respondents/recordkeepers are individuals and businesses.

The estimated average annual burden per respondent/recordkeeper for filing Form 8725 is 6 hours and 55 minutes. The estimated average annual burden per respondent/recordkeeper for §§ 156.6081–1 and 156.6161–1 is .5 hours.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require greater or less time, depending on their particular circumstances. These estimates represent an estimation of the actual time for recordkeeping, learning about the law, and preparing and sending Form 8725 to Internal Revenue Service. The estimated total annual reporting and/or recordkeeping burden: 83 hours. The estimated average annual burden per respondent/recordkeeper is 6 hours and 55 minutes. Estimated number of respondents and/or recordkeepers: 12. Estimated annual frequency of responses (for reporting requirements only): As necessary.

The burden for §§ 156.6081–1 and 156.6161–1 is as follows: *Estimated total annual reporting and/or recordkeeping burden:* 2 hours. *The estimated annual burden per respondent/recordkeeper is .5 hours. Estimated number of respondents and/or recordkeepers:* 4. *Estimated annual frequency of responses (for reporting requirements only):* As necessary.

Background

This document proposes a new part 156, Excise Tax on Greenmail, to title 26 of the Code of Federal Regulations. The proposed regulations under part 156 would provide guidance for the proper manner and method of reporting and paying the 50 percent excise tax imposed on a person with respect to the receipt of greenmail. The proposed regulations reflect the addition to the Internal Revenue Code of chapter 54 and section 5881 by section 10228 of the Revenue Act of 1987 (Pub. L. 100–203, 101 Stat. 1330), as amended by section 2004(o) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647, 102 Stat. 3608).

Explanation of Provisions

Section 5881 of the Code imposes a nondeductible excise tax on any person who receives greenmail. The tax is equal to 50 percent of the gain or other income realized by the recipient on the receipt

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of greenmail, whether or not the gain or other income is recognized. Under the proposed regulations, greenmail is considered to be received when gain or other income is realized, as determined according to the taxpayer's method of accounting, without regard to any provision of the Code providing for deferral of recognition. Thus, for example, the nonrecognition rules in section 354 (exchange of stock and securities in certain reorganizations), section 453 (installment method), and section 1036 (stock for stock of same corporation) would not apply to defer imposition of the excise tax. In general, greenmail is defined as any consideration paid by a corporation (or any person acting in concert with the corporation) to directly or indirectly acquire its stock if the shareholder held the stock for less than two years before entering into the agreement to transfer the stock, the shareholder (or any person acting in concert with the shareholder or any person related to the shareholder or related to a person acting in concert with the shareholder) has made or threatened to make a public tender offer for stock in the corporation during the two year period ending on the date of the acquisition, and the acquisition is pursuant to an offer that was not made on the same terms to all shareholders.

Before March 31, 1988, the effective date of section 2004(o) of the Technical and Miscellaneous Revenue Act of 1988, the term "greenmail" in section 5881 did not include consideration transferred by any person acting in concert with the corporation. However, the Internal Revenue Service will scrutinize transactions before March 31, 1988, to assure that the payment of consideration by any person acting in concert with a corporation to acquire the stock of the corporation was not, in substance, a payment of consideration by the corporation itself to acquire its stock indirectly.

The proposed regulations prescribe the manner and method of paying the excise tax imposed under section 5881 of the Code. If a taxpayer is liable for the tax imposed by the section, the excise tax must be reported on Form 8725. Generally, the proposed regulations require that the excise tax return be filed and the tax paid on or before the later of 90 days after these regulations become final or the ninetieth day following the day of receipt of any portion of greenmail by the taxpayer. For example, even if recognition of a portion of the gain is deferred for income tax purposes, the proposed regulations provide that the greenmail excise tax is due on the total amount of the gain or other income 90 days after any portion of the greenmail is received. The proposed regulations provide for an extension of the time for payment of any amount shown on a return or determined as a deficiency.

The proposed regulations do not address the method of determining the proper amount of the exise tax imposed by section 5881 of the Code. Issues related to the determination of the amount of the excise tax may be addressed by future regulations.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805 (f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these proposed regulations is Warren Joseph of the Office of the Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 156

Excise taxes, Greenmail.

Proposed Amendments to the Regulations

The proposed amendments to title 26 of the Code of Federal Regulations are as follows:

Paragraph 1. A new part 156 is added to read as follows:

PART 156—EXCISE TAX ON GREENMAIL

Subpart A—Tax on Greenmail

Sec.

156.5881–1 Imposition of excise tax on greenmail.

Subpart B—Procedure and Administration

156.6001–1 Notice or regulations requiring records, statements, and special returns.
156.6011–1 General requirement of return, statement, or list.
156.6061–1 Signing of returns and other documents.
156.6065–1 Verification of returns.
156.6071–1 Time for filing returns relating to greenmail.
156.6081–1 Extension of time for filing the return.
156.6091–1 Place for filing chapter 54 (greenmail) tax returns.
156.6091–2 Exceptional cases.
156.6151–1 Time and place for paying of tax shown on returns.
156.6161–1 Extension of time for paying tax or deficiency.
156.6165–1 Bonds where time to pay tax or deficiency has been extended.

Authority: Sections 6001, 6011, 6061, 6071, 6091, 6161, and 7805 of the Internal Revenue Code of 1986 (26 U.S.C. 6001, 6011, 6061, 6071, 6091, 6161, and 7805), unless otherwise noted.

Subpart A—Tax on Greenmail

§ 156.5881–1 Imposition of excise tax on greenmail.

(a) *In general.* Section 5881 of the Code imposes a tax equal to 50 percent of the gain or other income realized by any person on the receipt of greenmail, whether or not the gain or other income is recognized.

(b) *Transactions occurring on or after March 31, 1988.* For transactions occurring on or after March 31, 1988, greenmail is defined as any consideration transferred by a corporation (or any person acting in concert with the corporation) to directly or indirectly acquire stock of the corporation from any shareholder if:

(1) The transferring shareholder has held the stock (as determined under section 1223) for less than two years before entering into the agreement to transfer the stock,

(2) The shareholder, any person acting in concert with the shareholder, or any person related to the shareholder or to a person acting in concert with the shareholder made or threatened to make a public tender offer for stock of the corporation at some time during the two-year period ending on the date of the acquisition of the stock by the corporation, and

(3) The acquisition is pursuant to an offer that was not made on the same terms to all shareholders.

(c) *Transactions occurring before March 31, 1988.* For transactions occurring before March 31, 1988, greenmail has the same meaning as in paragraph (b) of this section, except that it does not include any consideration transferred by any person acting in concert with the corporation described in that paragraph.

(d) *Effective date.* Generally, section 5881 of the Code applies to consideration received after December 22, 1987, in taxable years ending after that date. However, section 5881 does not apply to any acquisition of stock pursuant to a written binding contract in effect on December 15, 1987, and at all times thereafter before the acquisition.

Subpart B—Procedure and Administration

(a) *In general.* Any person subject to tax under chapter 54 (Greenmail) of the Code shall keep such complete and detailed records as are sufficient to enable the district director to determine accurately the amount of liability under chapter 54.

(b) *Notice by district director requiring returns, statements, or the keeping of records.* The district director may require any person, by notice served upon him, to make such returns, render such statements, or keep such specific records as will enable the district director to determine whether or not the person is liable for tax under chapter 54 of the Code.

(c) *Retention of records.* The records required by this section shall be kept at all times available for inspection by authorized internal revenue officers or employees, and shall be retained so long as the contents thereof may become material in the administration of any internal revenue law.

§ 156.6011–1 General requirement of return, statement, or list.

Every person liable for tax under section 5881 of the Code shall file a return with respect to the tax on the form prescribed by the Internal Revenue Service. Each such person shall include therein the information required by the form and the instructions issued with respect thereto.

§ 156.6061–1 Signing of returns and other documents.

Any return, statement, or other document required to be made with respect to a tax imposed by chapter 54 (Greenmail) of the Code or the regulations thereunder shall be signed by the person required to file the return, statement, or other document, or by the persons required or duly authorized to sign in accordance with the regulations, forms, or instructions prescribed with respect to such return, statement, or document. An individual's signature on such a return, statement, or other document shall be prima facie evidence that the individual is authorized to sign the return, statement, or other document.

§ 156.6065–1 Verification of returns.

If a return, statement, or other document made under the provisions of chapter 54 (Greenmail) or of subtitle F of the Code, or the regulations thereunder with respect to any tax imposed by chapter 54, or the form and instructions issued with respect to such return, statement, or other document, requires that it shall contain or be verified by a written declaration that it is made under the penalties of perjury, it must be so verified by the person or persons required to sign such return, statement, or other document. In addition, any other statement or document submitted under any provision of chapter 54 or of subtitle F of the Code, or the regulations thereunder with respect to any tax imposed by chapter 54 may be required to contain or be verified by a written declaration that is made under the penalties of perjury.

§ 156.6071–1 Time for filing returns relating to greenmail.

(a) *In general.* Returns required by § 156.6011–1 (relating to liability for tax on greenmail under section 5881) shall be filed on or before the ninetieth day following receipt of any portion of the greenmail. Greenmail is considered to be received when gain or other income is realized, as determined according to the taxpayer's method of accounting, without regard to any provision of the Code providing for deferral of recognition.

(b) *Returns relating to greenmail received before the date these regulations become final.* Returns required by § 156.6011–1 that relate to greenmail received before (the date these regulations become final) shall be filed on or before (the 90th day after the date these regulations become final).

§ 156.6081–1 Extension of time for filing the return.

(a) *Authority to grant extension.* District directors and directors of service centers are authorized to grant a reasonable extension of time for filing any return, statement, or other document that relates to any tax imposed by chapter 54 (Greenmail) of the Code and that is required under the provisions of chapter 54 or the regulations thereunder. However, except in the case of taxpayers who are abroad, such an extension of time shall not be granted for more than 6 months. An extension of time for filing a return shall not extend the time for the payment of the tax or any part thereof unless specified to the contrary in the grant of extension.

(b) *Application for extension.* The application for an extension of time for filing the return shall be addressed to the district director or the director of the service center with whom the return is to be filed and must contain a full recital of the causes for the delay. It should be made before the expiration of the time within which the return otherwise must be filed, and failure to do so may indicate negligence and constitute sufficient cause for denial. It should, where possible, be made sufficiently early to permit consideration of the matter and reply before what otherwise would be the due date of the return.

(c) *Filing of return.* If an extension of time for filing the return is granted, a return shall be filed before the expiration of the period of extension.

§ 156.6091–1 Place for filing chapter 54 (Greenmail) tax returns.

Except as provided in § 156.6091–2 (relating to exceptional cases):

(a) *Individuals, estates, and trusts.* In general, tax returns under chapter 54 of the Code of individuals, estates, and trusts shall be filed with the district director for the internal revenue district in which is located the legal residence or the principal place of business of the person required to make the return.

(b) *Corporations.* In general, tax returns under chapter 54 of the Code of corporations shall be filed with the district director for the internal revenue district in which is located the principal place of business or the principal office or agency of the corporation.

(c) *Partnerships.* In general, tax returns under chapter 54 of the Code of partnerships shall be filed with the district director for the internal revenue district in which is located the principal place of business or the principal office or agency of the partnership.

(d) *Returns of taxpayers outside the United States.* The return of a person (other than a partnership or a corporation) outside the United States having no legal residence or principal place of business or agency in any internal revenue district, or the return of a partnership or a corporation having no principal place of business or principal office or agency in any internal revenue district, shall be filed with the Assistant Commissioner (International), Internal Revenue Service, 950 L'Enfant Plaza South, SW., Washington, DC 20224, unless the principal place of business or the legal residence of such person, or the principal place of business or principal office or agency of the partnership or corporation, is located in the Virgin Islands or Puerto Rico, in which case the return shall be filed with the Assistant Commissioner (International), Internal

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Revenue Service, Hato Rey, Puerto Rico 00918.

(e) *Returns filed with service centers or by hand carrying.* Notwithstanding paragraph (a), (b), (c), or (d) of this section, unless a return is filed by hand carrying, whenever instructions applicable to tax returns under chapter 54 of the Code provide that the returns be filed with a service center, the returns must be so filed in accordance with the instructions. Returns that are filed by hand carrying shall be filed with the district director (or with any person assigned the administrative supervision of an area, zone, or local office constituting a permanent post of duty within an internal revenue district of such director) in accordance with paragraph (a), (b), (c), or (d) of this section.

§ 156.6091-2 Exceptional cases.

Notwithstanding the provisions of § 156.6091-1, the Commissioner may permit the filing of any tax return under chapter 54 (Greenmail) of the Code with any internal revenue district.

§ 156.6151-1 Time and place for paying of tax shown on returns.

The tax under chapter 54 (Greenmail) of the Code shown on any return shall, without notice of assessment and demand, be paid to the internal revenue officer with whom the return is filed at the time and place for filing such return (determined without regard to any extension of time for filing the return). For provisions relating to the time and place for filing such return, see §§ 156.6071-1 and 156.0091-1. For provisions relating to the extension of time for paying the tax, see § 156.6161-1.

§ 156.6161-1 Extension of time for paying tax or deficiency.

(a) *In general*—(1) *Tax shown or required to be shown on return.* A reasonable extension of the time for payment of the amount of any tax imposed by chapter 54 (Greenmail) of the Code and shown or required to be shown on any return may be granted by the appropriate district director at the request of the taxpayer. The period of such extension shall not exceed 6 months from the date fixed for payment of such tax.

(2) *Deficiency.* The time for payment of any amount determined as a deficiency in respect of tax imposed by chapter 54 of the Code may, at the request of the taxpayer, be extended by the internal revenue officer to whom the tax is required to be paid. The extension may be for a period not to exceed 18 months from the date fixed for payment of the deficiency, as shown on the notice and demand. In exceptional cases, a further extension for a period not in excess of 12 months may be granted. No extension of time for payment of a deficiency shall be granted if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

(3) *Extension of time for filing distinguished.* The granting of an extension of time for filing a return does not operate to extend the time for the payment of the tax or any part thereof unless so specified in the extension.

(b) *Certain rules relating to extensions of time for paying income tax to apply.* The provisions of § 1.6161-1 (b), (c), and (d) of this chapter (relating to a requirement for undue hardship, to the application for extension, and to payment pursuant to an extension) shall apply to extensions of time for payment of the tax imposed by chapter 54 of the Code.

§ 156.6165-1 Bonds where time to pay tax or deficiency has been extended.

If an extension of time for payment is granted under section 6161 of the Code, the district director or the director of the service center may, if he deems it necessary, require a bond for the payment of the amount in respect to which the extension is granted in accordance with the terms of the extension. However, the bond shall not exceed double the amount with respect to which the extension is granted. For provisions relating to form of bonds, see the regulations under section 7101 of the Code contained in part 301 of title 26 (Regulations on Procedure and Administration).

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue Service.

[FR Doc. 91-13578 Filed 6-7-91; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 156

[DoD Directive 5200.2]

Department of Defense Personnel Security Program

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Proposed rule.

SUMMARY: This part proposes to revise 32 CFR part 156. DoD has revised and updated its policies regarding standards for the conduct of personnel security investigations, adjudication criteria for access to classified information and minimum due process procedures when an unfavorable personnel security determination is proposed. These changes are the first to the Directive since 1979 and are an attempt to make the source document for the DoD personnel security program consistent with more recent policy development.

DATES: Comments should be received on or before July 10, 1991.

ADDRESSES: Forward written comments to: Office of the Deputy Under Secretary of Defense (Security Policy) (ODUSD (SP)), Counterintelligence and Investigative Programs (CI & IP), Room 3C267, Pentagon, Washington, DC 20301-2200.

FOR FURTHER INFORMATION CONTACT: Mr. Peter R. Nelson, Deputy Director for Personnel Security, room 3C267, Pentagon, Washington, DC 20301-2200, (703) 697-3039/3969 or (AV) 227-3039/3669.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 156

Government employees; security measures.

Accordingly, 32 CFR part 156 is proposed to be revised as follows:

PART 156—DEPARTMENT OF DEFENSE PERSONNEL SECURITY PROGRAM

Sec.

156.1 Purpose.
156.2 Applicability and scope.
156.3 Policy.
156.4 Responsibilities.

Authority: 50 U.S.C. 781.

§ 156.1 Purpose.

This part, under the authority of 50 U.S.C. 781, establishes the Department of Defense (DoD) Personnel Security Program (PSP), and authorizes the issuance of DoD 5200.2-R [1] "DoD Personnel Security Program Regulation."

§ 156.2 Applicability and scope.

(a) The provisions of this part apply to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman, Joint Chiefs of Staff, the Joint Staff, the Unified and Specified Commands, the Defense Agencies, and activities administratively supported by OSD (hereafter referred to as "DoD Components"). The provisions of this part apply to the National Security Agency only to the extent necessary to meet the requirements of Public Laws 86-36 and 88-290; Executive Order

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

10450, "Security Requirements for Government Employment," April 29, 1953, 18 FR 2489; Executive Order 10865, "Safeguarding Classified Information Within Industry," February 24, 1960, 25 FR 1583; Executive Order 12333, "United States Intelligence Activities," December 4, 1981, 46 FR 59941; Executive Order 12356, "National Security Information," April 2, 1982, 47 FR 14874; and DoD Directive 5210.45.[2]

(b) Its provisions apply to DoD military and civilian personnel, contractor personnel, and others who are affiliated with the Department of Defense. This part does not apply to Coast Guard personnel during peacetime.

§ 156.3 Policy.

(a) A personnel security clearance, assignment to sensitive duties, or access to classified information will be granted only to U.S. citizens. A non-U.S. citizen may be assigned to sensitive duties or granted a Limited Access Authorization to classified information only if a compelling reason exists which is in support of a Department of Defense mission.

(b) The personnel security standard which must be applied in determining a person's eligibility for access to classified information or assignment to sensitive duties is whether based on all available information, the person's allegiance, trustworthiness, reliability and judgment are such that entrusting the person with classified information or assigning the person to sensitive duties is clearly consistent with the interest of national security.

(c) The personnel security standard which must be applied in determining a person's suitability for appointment, enlistment, induction or retention in the Armed Forces is whether, based on all available information, there is no reasonable basis for doubting the person's allegiance to the Government of the United States.

(d) DoD 5200.2-R shall identify those positions and duties which require a personnel security investigation (PSI). A PSI is required for:

(1) Appointment to a sensitive civilian position.

(2) Entry into military service.

(3) The granting of a security clearance or approval for access to classified information; and

(4) Assignment to other duties which require a personnel security or trustworthiness determination.

(e) DoD 5200.2-R shall contain personnel security criteria and adjudicative guidance to assist in determining whether an individual meets the clearance and sensitive position standard referred to in the previous paragraphs.

(f) No unfavorable personnel security or trustworthiness determination shall be taken without affording due process procedures for all DoD affiliated personnel. DoD Directive 5220.6 [3] provides due process procedures for contractor personnel under the Defense Industrial Security Program (DISP).

§ 156.4 Responsibilities.

(a) The Deputy Under Secretary of Defense (Security Policy) (DUSD (SP)) shall be responsible for overall policy guidance and management of the DoD PSP and shall:

(1) Develop and implement plans, policies, and procedures for the DoD PSP.

(2) Issue and maintain DoD 5200.2-R consistent with provisions of DoD Directive 5025.1.[4]

(3) Conduct an active oversight program to ensure that the DoD PSP requirements are complied with.

(4) Submit recommendations to the Secretary of Defense to correct any deficiencies in the program that are inconsistent with the interests of national security or the due process afforded to individuals by the constitution, laws of the United States, Executive Orders, Directives, or Regulations implementing PSP or DISP.

(5) Ensure that research is conducted to assess and improve the effectiveness of the DoD PSP (DoD Directive 5210.79 [5]); and

(6) Ensure the Defense Investigative Service is operated pursuant to the provisions of DoD Directive 5105.42.[6]

(b) The General Counsel, DoD, shall ensure that:

(1) Establish guidance and provide oversight as to the legal sufficiency of procedures and standards implementing the PSP and DISP.

(2) The rights of the individuals involved are protected consistent with the interest of national security (DoD Directive 5145.3 [7]), and due process afforded to individuals by the constitution, laws of the United States, Executive Orders, Directives or Regulations implementing the PSP or DISP.

(c) The Heads of DoD Components shall:

(1) Designate a senior official within their immediate office who shall be responsible for implementing to DoD PSP.

(2) Ensure that the DoD PSP is properly administered pursuant to this part; and

(3) Ensure that informaton and recommendations are provided the DUSD (SP) concerning any aspect of the program.

Dated: June 4, 1991.

L.M. Bynum,

ALTERNATE OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-13673 Filed 6-7-91; 8:45 am]

BILLING CODE 3810-01-M

[2] See Footnote 1 to § 156.1.

[3] See footnote 1 to § 156.1.

[4] See footnote 1 to § 156.1.

[5] See footnote 1 to § 156.1.

[6] See Footnote 1 to § 156.1.

[7] See footnote 1 to § 156.1.

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32 CFR Part 199

[DoD 6010.8-R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Program for the Handicapped

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed Rule.

SUMMARY: This proposed rule simplifies access to, and administration of, the CHAMPUS Program for the Handicapped (PFTH). The PFTH benefit is limited to active duty Uniformed Service member dependents with moderate or severe mental retardation or a serious physical handicap. This proposal does not alter the PFTH benefit or PFTH eligibility requirements, but simply rewrites the applicable provisions to remove redundant material, provide more concise definition of key terms, and establish greater flexibility in the administration of the Program.

DATES: Comments must be submitted on, or before July 25, 1991.

ADDRESSES: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045-6900.

FOR FURTHER INFORMATION CONTACT: Joseph W. Baker, Office of Program Development, OCHAMPUS, telephone (303) 361-4019.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8-R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)" (32 CFR part 199). DoD 6010.8-R "Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," was revised in the **Federal Register** on July 1, 1986 (51 FR 24008).

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The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) consists of the Basic Program, a general medical-surgical benefit, and a Program for the Handicapped (PFTH). The PFTH is limited to spouses or children with moderate or severe mental retardation or serious physical handicap who have an active duty Uniformed Service Member sponsor, or who are determined to be an abused dependent of certain former Members. Unlike the Basic Program, the PFTH applies a fixed, pay-grade based cost-share amount (the Basic Program cost-share is a percentage of the allowed amount), has no annual deductible amount, includes certain non-medical habilitating services and equipment, and has a $1,000 per month benefit limit.

A distinctive aspect of the PFTH is the statutory requirement that ties PFTH benefits to the use of public facilities to the extent that such facilities are available and adequate. This eligibility requirement has resulted in CHAMPUS PFTH beneficiaries occasionally being unable to access either public programs or the PFTH. State managed programs, such as maternal and child health programs funded through title V of the Social Security Act, have been known to deny access because a state steadfastly considered the CHAMPUS PFTH to be first payer of benefits. The CHAMPUS PFTH then denied access because the requirement to use local resources was not met. Examination of these experiences identified several underlying causes, among them, state characterization of the CHAMPUS as a type of private insurance carrier, rather than the Federal entitlement program that it is; dual benefit standards for identical services or items which are allowable both in the Basic Program (which does not require the use of local resources) and the PFTH (which does); the monthly $1,000 benefit limit of the PFTH (compared to the Basic Program which has no absolute benefit dollar limit); and the population of handicapped individuals proximate to some large military installations. These population clusters result from Uniformed Service efforts to facilitate family access to specialized MTF care while supporting the Member's military career development requirements.

Difficulties in accessing needed handicapped related resources and the changes in the nature, scope, and distribution of resources for individuals with handicaps since the current PFTH Regulation was published in 1977, prompted a thorough review of the PFTH's administrative structure.

This review identified certain modifications which will improve PFTH quality, efficiency, convenience, and effectiveness. This proposal does not alter the PFTH benefit or PFTH eligibility requirements which are established by statute (the Military Medical Benefits Amendments of 1966; The National Defense Authorization Act for Fiscal Year 1967).

The proposed PFTH regulation reduces by two-thirds the volume of material in the current § 199.5 by eliminating wordiness, by removing operational details that are more appropriately addressed in administrative policy issuances, by eliminating redundant material, and by rewriting to concisely communicate PFTH eligibility, benefit, and administrative requirements.

We propose to reorganize § 199.5 into six, rather than the current twelve paragraphs as follows: (a) general requirements; (b) beneficiary eligibility requirements; (c) PFTH benefits; (d) PFTH exclusions; (e) adjudication requirements; and (f) sponsor/beneficiary and government cost-share liability.

Overview of substantive changes.

We propose to add definitions for "durable equipment," "habilitation," "not-for-profit entity," "public facility," "rehabilitation," "serious physical handicap," and "state."

We propose to authorize the Director, OCHAMPUS, to establish agreements when appropriate to secure improvements in the quality, efficiency, convenience, or cost effectiveness of the PFTH. This will provide greater flexibility for equitable coordination of benefits with public facilities.

We propose to explicitly accommodate latent handicapping conditions which cannot usually be definitively diagnosed in infancy, but for which early clinical intervention is considered appropriate.

We propose to modify the adjudication requirements for PFTH benefits during the period following a Service Member's permanent change of duty station to allow increased time for transitional benefits during the period of family resettlement.

We propose to allow certification, by a Military Treatment Facility (MTF) official, in lieu of a public official, of the case-specific nonavailability of public facility resources. PFTH beneficiaries reside, with few exceptions, within MTF catchment areas. This change will facilitate beneficiary access to needed services and items. The Office of CHAMPUS will provide guidance to MTFs to assist in the identification of these resources.

We propose to permit the cost of equipment to be apportioned in a manner that recognizes the occasional need for such items, the large expense of many of these items, and the frequent need for continuing handicapped related therapies during the period the equipment is being purchased. Currently, equipment cost may be prorated over a period of six months; the proposed formula will allow that period to be extended. This change will provide a benefit enhancement with negligible additional cost to the government. We estimate that less than one percent of PFTH beneficiaries will use this longer proration period, however, these users appear to have extraordinary handicapped related need.

We propose to allow the beneficiary the choice of using the PFTH or the Basic Program for services or items which are a benefit of both programs. Currently, PFTH eligibility results in loss of further use of the Basic Program for non-acute inpatient benefits and outpatient benefits which are directly related to the handicapping condition. We propose to restrict Basic Program benefits only for those specific services or items for which a PFTH benefit approval has been issued, and only during the period of PFTH approval. The PFTH statute prohibits the government from paying in any month an amount which exceeds the maximum allowable PFTH benefit; consequently, the Basic Program cannot cost-share any excess PFTH benefit expense once the monthly benefit limit is reached.

We propose to establish PFTH providers as a separate class of CHAMPUS providers due to the extra medical features of the PFTH.

We propose to establish that Medicaid (title XIX of the Social Security Act) is not to be considered a first use resource in PFTH adjudication. Medicaid is currently not considered to be "other insurance" by the Basic Program; this will treat Medicaid the same for purposes of Basic Program and PFTH benefit adjudication.

We propose to remove the detailed criteria and discussion of mental retardation in favor of the diagnostic criteria in the "Diagnostic and Statistical Manual of Mental Disorders" published by the American Psychiatric Association.

We propose to remove the examples of conditions that may cause serious physical handicaps as the material is now only informational, and such screening criteria can be more responsive to changing technology and standards of care when issued as administrative policy.

We propose to remove the details of the types of records required for PFTH adjudication as this level of detail is more flexibly addressed in administrative policy.

Executive Order 12291 requires that a regulatory analysis be prepared for major rules, which are defined to include any rule that has an annual effect on the economy of $100 million or more, or certain other specified effects. The Office of CHAMPUS has determined that this proposed regulation amendment is not a major rule under Executive Order 12291 because the PFTH annual government cost is less than $8 million.

The Regulatory Flexibility Act of 1980 requires that a federal agency prepare an analysis when the agency issues regulations which would have significant impact upon a substantial number of small entities. We certify that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act because the proposed changes simplify current administrative requirements.

Paperwork Reduction Act of 1980 requires all Departments to submit to the Office of Management and Budget (OMB) for review and approval any reporting or record keeping requirements in a proposed or final rule. This notice of proposed rule making adds no new paperwork requirements and is expected to have the effect of reducing some of the current paperwork burden.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health Insurance, and Military Personnel.

PART 199—[AMENDED]

Accordingly, 32 CFR part 199 is amended as follows:

1. The authority citation for part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, and 5 U.S.C. 301.

2. Section 199.2(b) is proposed to be amended by adding definitions "durable equipment," "habilitation," "not-for-profit entity," "public facility," "rehabilitation," serious physical handicap," and"state" in alphabetical order to read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Durable equipment. A device or apparatus which does not qualify as Durable Medical Equipment (as defined in this § 199.2) and which is essential to the efficient arrest or reduction of the handicapping effect of a Program for the Handicapped qualifying condition.

* * * * *

Habilitation. The provision of physical functioning capacity absent from birth due to congenital disability or developmental disorder.

* * * * *

Not-for-profit Entity. An organization or institution owned and operated by one or more nonprofit corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

* * * * *

Public facility. A public authority or entity legally constituted within a State (as defined in this § 199.2) to administer, control or perform a service function for public health, education or human services programs in a city, county, township, special district, or other political subdivision, or such combination of political subdivisions or special districts or counties as are recognized as an administrative agency for a State's public health, education or human services programs, or any other public institution or agency having administrative control and direction of a publicly funded health, education or human services program.

* * * * *

Rehabilitation. The restoration of physical functioning lost due to illness or injury.

* * * * *

Serious physical handicap. A medical condition of the body that is expected to result in premature death, or which has lasted, or with reasonable certainty is expected to last, for a minimum period of 12 months; and which is of such severity as to preclude the person with the disability from engaging substantially in basic productive activities of daily living expected of unimpaired persons of the same chronological age.

* * * * *

State. For purposes of this part 199, any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and each territory and possession of the United States.

* * * * *

3. Section 199.5 is proposed to be revised to read as follows:

§ 199.5 Program for the Handicapped (PFTH).

(a) *General.* The PFTH is a program of financial assistance for certain CHAMPUS beneficiaries who are moderately or severely mentally retarded, or seriously physically handicapped.

(1) *Purpose.* The primary goal of the PFTH is to assist in reducing handicapping effects so as to allow eligible beneficiaries to achieve their capacity to participate in the community environment.

(2) *Basic Program benefit substitution.* (i) A PFTH beneficiary (or sponsor or guardian acting on behalf of the beneficiary) may elect to use either the PFTH or the Basic Program, as authorized in § 199.4 of this part, for a specific service or item which is a benefit of both programs.

(ii) A PFTH benefit approval precludes CHAMPUS Basic Program cost-share of any PFTH nonallowed expense for those PFTH approved services or items for the same beneficiary during the period the PFTH approval is in effect.

(iii) The Basic Program shall not cost-share any amount remaining for PFTH approved services or items after the maximum PFTH benefit has been reached in a particular month.

(iv) A beneficiary (or sponsor or guardian acting on behalf of the beneficiary) shall not be allowed to change their election to use the PFTH for a specific service or item during the period that service or item is approved as a PFTH benefit for that beneficiary.

(3) *Application required.* (i) A beneficiary shall establish PFTH eligibility as a prerequisite to authorization of any PFTH benefits.

(ii) Once certified as PFTH eligible, subsequent review of the PFTH qualifying condition shall be made in accordance with the prognosis for a sufficient change in functional capacity such that the condition would not likely continue to be a PFTH qualifying condition, or every 36 months, which ever is earlier.

(4) *Advance benefit request required.* (i) Once certified as PFTH eligible, the PFTH beneficiary (or sponsor or guardian acting on behalf of the beneficiary) shall make a written request in advance of acquiring any service or item for which PFTH cost-share will be sought.

(ii) To establish whether a requested service or item is a PFTH benefit, the beneficiary (or sponsor or guardian acting on the behalf of the beneficiary) shall provide such information about how the requested benefit will

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contribute to arresting or reducing the handicapping effects of the PFTH qualifying condition as the Director, or designee, determines necessary.

(iii) No PFTH benefit exists unless and until a written benefit approval is issued by the Director, OCHAMPUS, or designee, which specifies, for a given beneficiary, the quantity and description of each service or item approved as a PFTH benefit, the price of each unit of service or item when a price less than the CHAMPUS allowable amount has been negotiated, the name and address of the approved PFTH provider or vendor, the beginning date and the ending date of the approved benefit period, and such other requirements or limitations or information as necessary for efficient adjudication of related claims.

(iv) A PFTH benefit for a specific service or item shall not be approved for a single period exceeding twelve consecutive months.

(5) *Agreements.* In order to secure improvements in the quality, efficiency, convenience, or cost of the PFTH, the Director, OCHAMPUS, or designee, is authorized to enter into agreement with a State, or with a commander of a United States Military Treatment Facility, or with an Agency or Department of the Federal government, or with a not-for-profit or for-profit entity, provided such an agreement does not conflict with any requirement specifically set forth in 10 U.S.C., chapter 55 or otherwise imposed by law.

(6) *Implementing instruction.* (i) The Director, OCHAMPUS, or designee, shall issue policies, instructions, procedures, guidelines, standards, and criteria necessary to assure the quality and efficiency of services and items furnished pursuant to a PFT benefit approval and to otherwise accomplish the intent of this § 199.5.

(ii) All provisions of this part, except the provisions of § 199.4, apply to the PFTH unless otherwise provided by this § 199.5.

(b) *Eligibility*—(1) *Spouse or child.* The PFTH benefit is limited to a CHAMPUS eligible child or spouse, but not a former spouse, of:

(i) An active duty member of one of the Uniformed Services as determined in accordance with the provisions of § 199.3 of this part, or

(ii) After November 13, 1986, a former member of a Uniformed Service, as determined in accordance with the abused dependent provisions of § 199.3 of this part, when the PFTH qualifying condition is the result of, or has been exacerbated by, an injury or illness resulting from the abuse.

(2) *Deceased sponsor.* (i) A PFTH beneficiary who is receiving PFTH benefits at the time of the death of their sponsoring active duty Uniformed Service member remains eligible for the PFTH through midnight of the PFTH beneficiary's twenty-first birthday when the sponsor died after January 1, 1967, and the sponsor was, at the time of death, eligible for receipt of hostile fire pay or died as a result of a disease or injury incurred while eligible for such pay.

(ii) When the criteria in paragraph (b)(2)(i) of this section do not apply to the deceased active duty Uniformed Service Member sponsor, the surviving PFTH beneficiary remains eligible for the PFTH through the last day of the calendar month following the month in which the sponsor's death occurred.

(3) *Loss of PFTH eligibility.* PFTH eligibility ceases as of 12:01 a.m. of the day following the day that:

(i) The sponsor ceases to be an active duty member for any reason other than death, or

(ii) Eligibility based upon the abused dependent provisions of § 199.3 of this part expires, or

(iii) The Director, OCHAMPUS, or designee, determines that a PFTH qualifying condition no longer exists.

(4) *Qualifying condition.* (i) A diagnosis of moderate or severe mental retardation made in accordance with the criteria of the current edition of the "Diagnostic and Statistical Manual of Mental Disorders" published by the American Psychiatric Association is a qualifying PFTH condition.

(ii) A serious physical handicap as defined in § 199.2 of this part is a qualifying PFTH condition.

(iii) For CHAMPUS beneficiaries under the age of three years with a diagnosed neuromuscular developmental condition or Down's syndrome, or other condition that can reasonably be expected to precede a diagnosis of moderate or severe mental retardation or be characterized as a serious physical handicap before the age of seven, the Director, OCHAMPUS, or designee, shall establish criteria for PFTH eligibility for those under the age of seven in lieu of the requirements of paragraph (b)(4) (i) or (ii) of this section.

(iv) The cumulative handicapping effect shall be used in the adjudication of PFTH eligibility when a PFTH applicant has two or more handicapping conditions involving separate body systems. If the Director, OCHAMPUS, or designee, does find a functionally severe combination of impairments, the cumulative handicapping effect of the impairments shall be considered throughout the PFTH eligibility determination process.

(c) *Benefit.* Items or services which the Director, OCHAMPUS, or designee, has determined to be intrinsic to the following benefit categories and capable of confirming, arresting, or reducing the severity of the handicapping effect of a PFTH qualifying condition, generally or in a specific case, and which are not otherwise excluded by this § 199.5, may be allowed as a PFTH benefit:

(1) *Diagnostic procedures* to establish a diagnosis or to measure the extent of functional impairment.

(2) *Treatment* through the use of such medical, habilitative, or rehabilitative methods, techniques, therapies and equipment which otherwise meet the requirements of this § 199.5.

(3) *Equipment* that complies with the definition in § 199.2 of this part for Durable Medical Equipment or Durable Equipment. A PFTH approval for purchase of equipment shall encompass such special fitting as necessary to accommodate a particular disability, as well as repairs and maintenance for the reasonable life of the equipment that is concurrent with the beneficiary's PFTH eligibility.

(4) *Training* when required to allow the use of artificial aids or to acquire skills which are expected to assist the beneficiary to achieve the capacity to participate in the community environment, and for parents and siblings of a PFTH beneficiary when required as an integral part of the management of the PFTH qualifying condition.

(5) *Special education instruction,* other than training, specifically designed to accommodate the unique handicapped related needs of an individual.

(6) *Institutional care* within a State when the severity of the PFTH qualifying condition requires protective custody or training in a residential environment. Continuation of cost-share of any institutional admission during the absence of the PFTH beneficiary is limited to the following circumstances during a fiscal year:

(i) For medically necessary acute hospitalization for medical or surgical treatment, cost share of an approved PFTH institutional care admission may be continued for a period not to exceed 15 calendar days.

(ii) For a family emergency, cost share of an approved PFTH institutional care admission may be continued for a period not to exceed 7 calendar days including travel time.

(iii) For a planned therapeutic absence, cost share of an approved PFTH institutional care admission may be continued for a period not to exceed 72 hours including travel time.

(iv) When residential status is for training, and not for protective custody, continuation of government cost-share for standard holidays during the school term may be approved only when school policy is to charge facility residents for such absences. Cost-share of an approved PFTH institutional care admission is limited to no more than 7 calendar days for each holiday, including travel time, except that one absence of up to 15 calendar days, including travel time, is allowable.

(7) *Transportation* when required to convey the beneficiary to and from a facility or institution in which the PFTH beneficiary is to receive services, items, or institutional care which are directly related to the qualifying PFTH condition and which are otherwise an allowable PFT or Basic Program benefit.

(i) The allowable amount for transportation is limited to the actual cost of the standard published fare plus any standard surcharge made to accommodate any person with similar handicapped related needs, or to the actual cost of specialized medical transportation when non-specialized transport cannot accommodate the beneficiary's handicapped related needs, or when specialized transport is more economical than non-specialized transport, or, when transport is by private vehicle, the allowable amount is limited to the Federal government employee mileage reimbursement rate in effect on the trip date.

(ii) Transportation for a medical attendant may be approved when medically necessary for the safe transport of the PFTH certified beneficiary.

(d) *PFTH Exclusions*—(1) Inpatient acute care. Inpatient medical or surgical treatment of an acute illness, or of an acute exacerbation of the handicapping condition, is excluded as a PFTH benefit.

(2) *Structural alterations.* Alterations to living space and permanent fixtures attached thereto, including alterations necessary to accommodate installation of PFTH or Basic Program cost-shared equipment, or to facilitate entrance or exit, are excluded.

(3) *Homemaker, sitter, or companion services.* Services predominately to provide assistance with daily living activities or to accomplish household chores or to provide companionship or to provide supervision or observation, or any combination of these functions, are excluded.

(4) *Dental care or orthodontic treatment* is excluded.

(5) *Transportation* originating in a State with a final destination outside of a State or originating outside of a State with a final destination within a State is excluded.

(6) *Transportation* of a type which is not usual for the distance traveled or which exceeds the requirements of the beneficiary's condition for safe transport or which generally constitutes a deluxe or luxurious type or which is marketed as above the standard class, such as a first class fare, or which provides deluxe services or features which increase the cost of the fare to the government relative to a fare without those features, is excluded.

(7) *Equipment.* Exclusions for durable medical equipment in § 199.4 of this part apply to all equipment allowable as a PFTH benefit.

(8) *No obligation to pay.* Services or supplies for which the beneficiary or sponsor has no legal obligation to pay, or for which no charge would be made if the beneficiary was not eligible for the CHAMPUS, are excluded.

(9) *Furnished by a public facility or by the Federal government.* Services and items paid for, or eligible for payment, directly or indirectly by a public facility, as defined in § 199.2 of this part, or by the Federal government are excluded, except when such services or items are specifically authorized through the CHAMPUS PFTH or through title XIX of the Social Security Act (Medicaid).

(10) *Study, grant, or research programs.* Services and supplies provided as a part of a scientific clinical study, grant, or research program are excluded.

(11) *Not in accordance with accepted standards, experimental or investigational.* Services and supplies not provided in accordance with accepted professional standards, or related to an essentially experimental or investigational procedure or treatment regimen are excluded.

(12) *Immediate family or household.* Services or supplies provided or prescribed by a member of the beneficiary's immediate family, or a person living in the beneficiary's or sponsor's household, are excluded.

(13) *Services or supplies* ordered by a court or other government agency that are not otherwise a legitimate PFTH benefit are excluded.

(14) *Excursions.* Additional or special charges for excursions, other than approved transportation, are excluded even though part of a program offered by an approved PFTH provider.

(15) *Institutional care outside of a State.* The PFTH institutional care benefit is limited to facilities located within a State as defined in § 199.2 of this part.

(e) *Benefit Authorization*—(1) *Public facility use.* A PFTH beneficiary residing within a State must demonstrate that public funds, except funds administered under title XIX of the Social Security Act (Medicaid) are not available or adequate to meet the handicap related need.

(2) *Public facility availability.* A public facility shall be considered available when the public facility usually and customarily provides the requested service or item to individuals with the same or similar handicapped related need as the otherwise equally qualified CHAMPUS beneficiary.

(3) *Public facility adequacy.* (i) An available public facility shall be considered adequate when the quality, quantity, and frequency of the service or item provided is sufficient, in whole or in part, to meet in a timely manner the PFTH beneficiary's specific handicapped related need, as determined by the Director, OCHAMPUS, or designee.

(ii) When public facility funding is depleted during a course of therapy which is otherwise allowable as a PFTH benefit, a PFTH beneficiary shall not be required to change the provider of therapy solely to use another public facility in lieu of the PFTH when such a change is determined by the Director, OCHAMPUS, or designee, to be therapeutically inappropriate. In such a circumstance, other public facilities for the therapy shall not be considered adequate for that PFTH beneficiary during a period not to exceed the end of the authorizing public facility's current funding year.

(4) *Public facility use certification.* Written certification, in accord with information requirements, formats, and procedures established by the Director, OCHAMPUS, or designee, that public facilities have been, or are being, used to the extent available or adequate for a requested PFTH benefit is required as a prerequisite for PFTH benefit authorization.

(i) When provided for under an agreement authorized by § 199.5(a)(5) of this part, a Military Treatment Facility (MTF) Commander, or designee, may make such certification for a beneficiary residing within a specified geographical area.

(ii) An administrator of a Public Facility, or designee, may make such certification for a beneficiary residing within the service area of that Public Facility.

(iii) Equipment repair or maintenance for beneficiary owned equipment shall

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be considered not available and shall not require verification of the nonavailability of such repair or maintenance from a public facility when the equipment is a type allowable as a PFTH or Basic Program benefit.

(iv) PFTH benefits, other than institutional care, may be approved for a period not to exceed 90 consecutive calendar days from the sponsor's official date to report to a new permanent duty station without evidence of the nonavailability of public facilities.

(v) Approved institutional care being received on or about the date of the sponsor's official date to report to a new permanent duty station may be extended for a period not to exceed 180 calendar days without evidence of public resource availability from either the previous or current geographic location of the sponsor.

(5) *Proration of equipment expense.* (i) The PFTH beneficiary (or sponsor or guardian acting on the beneficiary's behalf) may, only at the time of the request for PFTH approval of an item of equipment, direct that the reasonable cost of the item, if approved, be prorated.

(ii) Equipment expense proration permits the reasonable cost of an item of PFTH approved equipment to be apportioned so that no portion of the reasonable cost exceeds the PFTH monthly benefit limit and allows each apportioned amount to be separately authorized as a PFTH benefit during subsequent contiguous months.

(iii) The maximum number of contiguous months during which a prorated amount may be allowed for PFTH cost-share shall be the lesser number of months calculated by:

(A) Dividing the initial reasonable cost for the item of equipment by $1,000 and doubling the resulting quotient, or

(B) The useful life of the item, as determined by the Director, OCHAMPUS, or designee.

(iv) The PFTH cost-share is applicable in any month in which a prorated amount is allowed, unless the cost-share provisions for a sponsor with two or more PFTH certified beneficiaries apply.

(v) No prorated payment shall be made after the date of the death of a beneficiary or after a beneficiary's loss of PFTH eligibility for any other reason.

(6) *State contracts with private facilities.* Institutional care provided under contract to a State by a for-profit organization, for which the sponsor/beneficiary would incur a liability in the absence of CHAMPUS PFTH eligibility, may be approved only when the CHAMPUS PFTH payment is made directly to the State.

(7) *Reimbursement.* The basis for reimbursement for approved durable medical equipment, or durable equipment, is the same as the basis for durable medical equipment in § 199.4 of this part. Reimbursement for all other approved PFTH services or items shall be based upon the requirements of § 199.14 of this part.

(f) *Cost-share Liability*—(1) *No deductible.* PFTH benefits are not subject to a deductible amount.

(2) *Sponsor/beneficiary cost-share liability.* The total sponsor PFTH cost-share in a given month may not exceed the amount for the sponsor's pay grade as specified below regardless of the number of PFTH certified dependents of that same sponsor receiving PFTH benefits in a given month:

Member's pay grade	Monthly share
E–1 through E–5	$25
E–6	30
E–7 and O–1	35
E–8 and O–2	40
E–9, W–1, W–2, and O–3	45
W–3, W–4, and O–4	50
O–5	65
O–6	75
O–7	100
O–8	150
O–9	200
O–10	250

(3) *CHAMPUS cost-share liability: Member who sponsors one PFTH beneficiary.* The CHAMPUS share of the cost of any PFTH benefits provided in a given month to a PFTH beneficiary who is the sponsor's only PFTH certified dependent may not exceed $1,000 in a given month, after application of the allowable charge/cost methodology and beneficiary cost-share.

(4) *CHAMPUS cost-share liability: Member who sponsors two or more PFTH beneficiaries.* The CHAMPUS share of the cost of any PFTH benefits provided in a given month after October 1, 1966, to a PFTH beneficiary who is one of two or more PFTH certified dependents of the same sponsor shall be determined as follows:

(i) The $1,000 maximum monthly CHAMPUS PFTH benefit amount shall apply to the PFTH beneficiary incurring the least amount of allowable PFTH expense in a given month, after application of the allowable charge/cost methodology and beneficiary cost-share.

(ii) When more than one PFTH eligible has the least amount of allowable PFTH expense in a given month, the Director, OCHAMPUS, or designee, may designate the beneficiary limited to the $1,000 monthly benefit in a given month. A period of not more than 30 calendar days after the last day of a given month shall be allowed to accumulate claims to be used to determine the beneficiary with the least amount of allowed PFTH expense in a given month.

(iii) For all other PFTH beneficiary dependents of the same sponsor with approved PFTH benefits in a given month, the $1,000 maximum monthly benefit does not apply, and the CHAMPUS shall cost-share the entire amount for approved PFTH services or items received in that month, after application of the allowable charge/cost methodology.

* * * * *

4. Section 199.6 is proposed to be amended by removing and reserving paragraphs (a)(5) and (b)(4)(x)(B)(*2*) and by adding a new paragraph (g) to read as follows:

§ 199.6 Authorized providers.

* * * * *

(g) Program for the Handicapped providers—(1) *General.* Services, items and supplies approved for cost-share through the Program for the Handicapped (PFTH) must be provided by a CHAMPUS-approved PFTH provider.

(2) *Billing requirements.* Billing by an approved PFTH provider, including bills for a single price for all-inclusive care, must be fully itemized and sufficiently descriptive to permit CHAMPUS to determine whether services or items rendered are PFTH benefits.

(3) *PFTH provider categories.* Providers of services or items of a type allowable as a PFTH benefit must meet the requirements of one or more of the following categories of providers to be considered for status as a CHAMPUS-approved PFTH provider by the Director, OCHAMPUS, or designee:

(i) *PFTH institutional care provider.* A provider of residential institutional care or training which is otherwise a PFTH benefit shall be:

(A) A not-for-profit entity or a public facility, and

(B) Located within a State, and

(C) A Medicaid certified Intermediate Care Facility (ICF) or a Medicaid certified Intermediate Care Facility for the Mentally Retarded (ICF/MR) or be a CHAMPUS-approved Basic Program institutional provider.

(ii) *PFTH ambulatory service provider.* A provider of PFTH ambulatory services shall be a CHAMPUS-approved Basic Program institutional provider or individual professional provider, or

(A) Shall be an individual, corporation, or public entity that predominantly renders habilitative or rehabilitative services of a type uniquely allowable as a PFTH benefit and not otherwise allowable as a Basic Program benefit, and

(B) Shall provide services predominately to individuals with a diagnoses of mental retardation or physical disability, and

(C) Shall meet all applicable licensing or other regulatory requirements that are extant in the state, county, municipality, or other political jurisdiction in which the PFTH service is rendered.

(ii) *PFTH vendor.* CHAMPUS-approved PFTH vendor status is limited to the provision of the item, supply, equipment, orthotic, or device authorized. A provider of an approved PFTH item, supply, equipment, orthotic, or device shall be deemed to be a CHAMPUS-approved PFTH vendor when:

(A) The provider is specifically named in the PFTH benefit authorization, and

(B) The provider is not excluded, suspended, or terminated due to the provisions of § 199.9 of this part, and

(C) The provider supplies such information as the Director, OCHAMPUS, or designee, determines necessary to adjudicate a specific claim.

* * * * *

5. Section 199.7 is proposed to be amended by revising paragraph (f)(2) and removing and reserving (f)(3) to read as follows:

§ 199.7 Claims submission, review and payment.

* * * * *

(f) * * *

(2) *Advance payment prohibited.* No CHAMPUS payment shall be made for otherwise authorized services or items not yet rendered or delivered to the beneficiary.

(3) [Reserved]

6. Section 199.8 is proposed to be amended by revising paragraph (d)(4) to read as follows:

§ 199.8 Double coverage.

* * * * *

(d) * * *

(4) *Program for the Handicapped (PFTH).* A PFTH beneficiary (or sponsor or guardian acting on behalf of the beneficiary) does not have the option of waiving the full use of public facilities which are determined by the Director, OCHAMPUS, or designee, to be available and adequate to meet a handicapped related need for which a PFTH benefit was requested. Benefits provided through title XIX of the Social Security Act (Medicaid) are never considered to be available in the adjudication of PFTH benefits.

* * * * *

Dated: June 3, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–13688 Filed 6–7–91; 8:45 am]

BILLING CODE 3810–01–M

POSTAL SERVICE

39 CFR Part 111

Retention Period for Registered Mail

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposal would revise the Domestic Mail Manual to standardize the retention period for registered, insured, certified, and return receipt for merchandise mail.

DATES: Comments must be received on or before July 10, 1991.

ADDRESSES: Written comments should be mailed or delivered to the Director, Office of Classification and Rates Administration, U.S. Postal Service, room 8430, 475 L'Enfant Plaza West SW., Washington, DC 20260–5960. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Mickey Wood, (202) 268–5441.

SUPPLEMENTARY INFORMATION: Currently, § 159.323f(1), Domestic Mail Manual (DMM) requires registered mail to be held for customer pick-up for 10 days before return to sender, but allows a retention period of up to 60 days if requested by the mailer. DMM 159.323f(2) requires insured, certified, and return receipt for merchandise service mail to be held for a maximum of 15 days before return. The Postal Service receives an insignificant number of requests to hold undeliverable registered mail for more than 15 days. This proposal would limit the holding period for registered mail to 15 days, which would standardize the retention period for registered, certified, insured, and return receipt for merchandise mail that is undeliverable.

The proposed rule continues to provide, with editorial revisions to the current language, that the sender may specify that this mail be held for fewer than 15 days. Although exempt from the notice and comment provisions of the Administrative Procedure Act [5 U.S.C. 553(b),(c),] regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the following proposed revisions of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Postal service.

PART 111—[AMENDED]

1. The authority citation for part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001

PART 159—UNDELIVERABLE MAIL

2. Delete Domestic Mail Manual 159.323f(1). Renumber (2) and (3) as (1) and (2) respectively. Revise § 159.323f(1) to read as follows:

§ 159.323 Registered, certified, insured, COD mail, and return receipt for merchandise.

* * * * *

159.323f(1) Hold registered, insured, certified, and return receipt for merchandise mail a maximum of 15 days, unless the sender specifies that it be held for fewer days.

* * * * *

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Assistant General Council, Legislative Division.

[FR Doc. 91–13577 Filed 6–7–91; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

FRL–3963–3

Ocean Dumping: Proposed Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate a dredged material disposal site located in the Gulf of Mexico offshore of Port Isabel, Texas, for the one time disposal of construction material dredged from the enlargement of the Brazos Island Harbor Entrance Channel. This action is necessary to provide an acceptable ocean dumping site for the disposal of material from the Army Corps of Engineers, 42-Foot Project at Brazos Island Harbor. This proposed site designation is for an

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indefinite period of time but the site is subject to monitoring to insure that unacceptable adverse environmental impacts do not occur.

DATES: Comments must be received on or before 45 days from date of publication.

ADDRESSES: Send comments to: Norm Thomas, Chief, Federal Activities Branch (6E-F), U.S. EPA, 1445 Ross Avenue, Dallas, Texas 75202-2733.

Information supporting this proposed designation is available for public inspection at the following locations: EPA, Region 6, 1445 Ross Avenue, 9th Floor, Dallas, Texas, Corps of Engineers, Galveston District, 444 Barracuda Avenue, Galveston, Texas.

FOR FURTHER INFORMATION CONTACT: Norm Thomas 214/655-2260 or FTS/255-2260.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR chapter I, subchapter H, § 228.4) state that ocean dumping sites will be designated by publication in part 228. This site designation is being published as proposed rulemaking in accordance with § 228.4(e) of the regulations, which permits the designation of ocean disposal sites for dredged material. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the EPA Region 6 address given above.

B. EIS Development

Section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, ("NEPA") requires that Federal agencies prepare Environmental Impact Statements (EISs) on proposals for major Federal actions significantly affecting the quality of the human environment. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with its ocean dumping site designations (39 FR 16186, May 7, 1974).

EPA has prepared a Draft Environmental Impact Statement entitled "Environmental Impact Statement (EIS) for the Brazos Island Harbor 42-Foot Project Ocean Dredged Material Disposal Site Designation." On May 17, 1991, a notice of availability of the Draft EIS for public review and comment was published in the Federal Register. The public comment period on this Draft EIS closes on July 6, 1991. Limited copies of the Draft EIS are available from the EPA address given above.

The proposed action discussed in the EIS is designation of an ocean disposal site for dredged material. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal. The appropriateness of ocean disposal is determined on a case-by-case basis.

The EIS discusses the need for the action and examines ocean disposal sites and alternatives to the proposed action. Land based disposal alternatives were examined in a previously published EIS prepared by the Corps of Engineers (COE) and the analysis was updated in this Draft EIS. The nearest available land disposal area is 82 acres in size and is located 5 miles away from the seaward end of the project. The volume of this disposal site is needed for construction and future maintenance of the inland portions of the channel and is not available for the disposal of construction material from offshore areas. Also since the surrounding land areas are wetlands or shallow bay habitats, development and use of a suitably sized replacement area would likely result in a significant loss of quality wetlands or bay bottoms. A land-based alternative would offer no environmental benefit to ocean disposal.

Five ocean disposal alternatives—three nearshore sites (including the proposed site), a mid-shelf site and a deepwater site—were evaluated. Both the mid-shelf and deepwater sites were eliminated due to limited feasibility for monitoring, increased transportation costs and safety risk and the lack of any environmental benefits by utilizing sites that far offshore.

Ocean disposal sites were identified by determining a zone of siting feasibility (ZSF) and then screening out those sites which impacted biologically sentitive areas, beaches and recreational areas, the navigation channel, cultural or historical resources, etc.

Evaluation of the historically-used disposal site and the routine maintenance disposal site showed that both these nearshore sites were located within the navigational fairways and contained inappropriate grain-size regimes. Because of these reasons the historically-used and routine maintenance sites were not selected for disposal of the construction material. However, the routine maintenance material site, which was designated by EPA in September 1990, will receive routine maintenance material from the 42-Foot Project.

The preferred ocean disposal site for the construction (virgin) material is located in the 60-foot isobath and in the sandy silt regime. The preferred size of the virgin ocean dredged material disposal site (ODMDS) was determined, based on models of the ocean discharge of dredged material, to be 5,300 feet in a direction parallel to the channel (east/west) and 2,895 feet in a direction perpendicular to the channel (south/north.)

EPA is coordinating with the National Marine Fisheries Service in accordance with the requirements of section 7 of the Endangered Species Act. EPA is also coordinating, as a part of the NEPA/EIS process, with the State of Texas regarding any requirements under the Coastal Zone Management Act.

C. Proposed Site Designation

The preferred site for disposal of the construction material is located about four miles from the coast and occupies an area of 0.42 square nautical miles. Water depths within the area range from 60-67 feet. The coordinates of the rectangular-shaped site are as follows: 26° 04' 47" N, 97° 05' 07" W; 26° 05' 16" N, 97° 05' 04" W; 26° 05' 10" N, 97° 04' 06" W; 26° 04' 42" N, 97° 04' 09" W.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at an interim site cause unacceptable adverse impacts, the use of that site will be terminated as soon as suitable alternate disposal sites can be designated. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations; § 228.6 list eleven specific factors used in evaluating a disposal site to assure that the general criteria are met. The characteristics of the proposed site are reviewed below in terms of the eleven factors.

1. *Geographical position, depth of water, bottom topography and distance from coast.* [40 CFR 228.6(a)(1).]

Geographical position, water depth, and distance from the coast for the disposal site are given above. Bottom topography is flat with no unique features or relief.

2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of livig resources in adult or juvenile phases.* [40 CFR 228.6(a)(2).]

Living resources' breeding, spawning, nursery and passage areas in the project area were identified as excluded areas during the siting feasibility process and eliminated from consideration. To the west of the proposed site, there is a fish haven which is excluded, as are the jetties, including buffer zones of 630 feet. The jetties provide a migratory passage for white shrimp, brown shrimp, blue crab, drum, sheepshead and southern flounder. Also excluded are partially submerged shipwrecks which improve fishing.

3. *Location in relation to beaches and other amenity areas.* [40 CFR 228.6(a)(3).]

The site is approximately over 4 miles from any beach or other amenity area.

4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the wastes, if any.* [40 CFR 228.6(a)(4).]

Approximately 1,325,000 cubic yards of construction material will be discharged into the disposal site. Construction disposal is expected to last for a period for two years or less. This material will be transported by hopper dredges.

5. *Feasibility of surveillance and monitoring.* [40 CFR 228.6(a)(5).]

The proposed site is amenable to surveillance and monitoring. The proposed monitoring and surveillance program consists of (1) a method for recording the location of each discharge; (2) bathymetric surveys; and (3) grain-size analysis, sediment chemistry characterization and benthic infaunal analysis at selected stations.

6. *Dispersal, horizonal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.* [40 CFR 228.6(a)(6).]

Physical oceanographic parameters including dispersal, horizontal transport and vertical mixing characteristics were used: (1) To develop the necessary buffer zones for the siting feasibility analysis; and (2) to determine the minimum size of the proposed site. Predominant longshore currents, and thus predominant longshore transport, are to the north. Long-term mounding has not historically occurred. Therefore, steady longshore transport and occasional storms, including hurricanes, remove the disposal material from the site.

7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).* [40 CFR 228.6(a)(7).]

Chemical and bioassay testing of past maintenance material and material from the historically-used disposal site plus chemical analyses of water from the area concluded that there are no indications of water or sediment quality problems. Testing of past maintenance material indicates that it was acceptable for ocean disposal under 40 CFR Part 227. Based on current direction and modeling of the virgin material, the proposed site was situated to prevent discharged material from reentering the channel and to ensure that any mounding poses no obstruction to navigation.

8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean.* [40 CFR 228.6(a)(8).]

Impacts to shipping, mineral extraction, commercial and recreational fishing, and recreational areas have been evaluated for the Brazos Island Harbor 42-Foot Project site designation. The proposed site will not interfere with these or other legitimates uses of the ocean because the siting feasibility process was designed to reduce the possibility of a site which would interfere. Disposal operations in the past have not interfered with other uses.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.* [40 CFR 228.6(a)(9).]

Monitoring studies at other locations have shown only short-term water-column perturbations of turbidity, and perhaps increased chemical oxygen demand (COD), resulted from disposal operations. No short-term sediment quality perturbation has been directly related to disposal operations. In general, the water and sediment quality is good throughout the area and there have been no long-term adverse impacts on water and sediment quality from past disposal operations. No long-term impacts on the benthos at the historically-used site were apparent.

10. *Potentiality for the development or recruitment of nuisance species in the disposal site.* [40 CFR 228.6(a)(10).]

With a disturbance to any benthic community, initial recolonization will be by opportunistic species. However, these species are not nuisance species in the sense that they would interfere with other legitimate uses of the ocean or that they are human pathogens. The disposal of maintenance material in the past has not and the disposal of construction material in the future should not attract nor promote the development of recruitment of nuisance species.

11. *Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.* [40 CFR 228.6(a)(11).]

Areas and features of historical importance were evaluated during the siting feasibility process. The nearest site of historical importance is located near the jetties and is well within the buffer zone surrounding the jetties. Use of the site would not impact any known historical or cultural sites.

E. Proposed Action

Based on the Draft EIS, EPA concludes that the proposed site may appropriately be designated for use. The site is compatible with the five general criteria and eleven specific factors used for site evaluation. The designation of the Brazos Island Harbor 42-Foot Project site as an EPA approved ocean dumping site is being published as proposed rulemaking.

It should be emphasized that, if an ocean dumping site is designated, such a site designation does not constitute or imply EPA's approval of actual disposal of materials at sea. Before ocean dumping of dredged material at the site may occur, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. EPA has the authority to approve or to disapprove or to propose conditions upon dredged material permits for ocean dumping. While the Corps does not administratively issue itself a permit, the requirements that must be met before dredged material derived from Federal projects can be discharged into ocean waters are the same as where a permit would be required.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on all

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small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Proposed Rule does not contain any information collection requirements subject to the Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: May 29, 1991.

Robert E. Layton, Jr.,

Regional Administrator of Region 6.

In consideration of the foregoing, part 228 of subchapter H of chapter I of title 40 is amended as set forth below.

PART 228 [AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 229.12 is amended by adding paragraph (b)(91) to read as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

* * * * *

(b) * * *

(91) Brazos Island Harbor (42-Foot Project), Texas—Region 6

Location: 26°04'47" N, 97°05'07" W; 26°05'16" N, 97°05'04" W; 26°05'10" N, 97°04'06" W; 26°04'42" N, 97°04'09" W.

Size: 0.42 square nautical miles.

Depth: Ranges from 60–67 feet.

Primary Use: Dredged material.

Period of Use: Indefinite period of time.

Restriction: Disposal shall be limited to construction material dredged from the Brazos Island Harbor Entrance Channel, Texas.

[FR Doc. 91-13693 Filed 6-7-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part Chapter I

[CC Docket No. 91-115 FCC No. 91-118]

Proposal Establishing Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes new rules to establish the obligation of local exchange carriers (LECs) to provide to all interexchange carriers (IXCs) nondiscriminatory access to certain validation and billing information and services for both LEC and IXC joint use calling cards. The intent of the notice is to seek comment on requirements designed to ensure that all IXCs have nondiscriminatory access to validation and billing information for joint use cards.

DATES: Comments must be filed on or before June 24, 1991, and reply comments on or before July 15, 1991.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Roxanne McElvane, tel: 202–632–6917.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in CC Docket No. 91–115, FCC 91–118, adopted April 9, 1991, and released May 24, 1991. This document requests comments on the Commission's proposal to establish regulations for LECs, under title II of the Communications Act, to provide to all IXCs access to certain information and services for both LEC and IXC joint used calling cards. With respect to LEC joint use cards, *i.e.*, cards that bear account numbers supplied by an LEC, are used for the services of the LEC and a designated IXC, and are validated by access to data maintained by the LEC, the Commission proposes to require that LECs provide to IXCs access to validation data, screening data, and the billing name and address associated with such card accounts. In the case of IXC jont use cards, *i.e.*, cards that bear account numbers supplied by an IXC, are used for the services of the IXC and a designated LEC, and are validated by access to data maintained by the IXC, the Commission proposes to acquire the designated LEC to provide joint use arrangements to all IXCs on a nondiscriminatory basis.

In addition, the Commission seeks comment on the technology and network configurations underlying the provision of calling card services, as well as the extent to which the Line Information Data Base (LIDB) and the Card Issuer Identification (CIID) numbering plan may impact or provide solutions to the issues raised in the notice. The full text of this Commission proposal is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this proposal may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1114 21st Street, NW., Washington, DC 20036.

Paperwork Reduction Act

The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found not to impose new or modified information collection requirements on the public.

Regulatory Flexibility Act

As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in section IV. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Rulemaking, including the Inital Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq* (1981).

Ex Parte Rules—Non-Restricted Proceeding

This is a non-restricted notice and comment rulemaking proceeding. Written and/or oral *ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally, 47 CFR 1.1202, 1.1203, and 1.1206(a).

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-13713 Filed 6-7-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 209 and 242

Department of Defense Federal Acquisition Regulation Supplement; Contractor Accounting Controls

AGENCY: Department of Defense (DOD).

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Acquisition Regulations (DAR) Council is proposing changes to the Defense FAR Supplement to add a new subpart at 242.74 on policies and procedures for contractor internal accounting controls. Also, changes to 209.1 are proposed to add a general standard of responsibility for prospective contractors to have sufficient internal accounting controls to ensure the validity of all costs charged to the Government. These revisions clarify existing requirements applicable to defense contractor accounting systems.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before July 10, 1991, to be considered in the formulation of the final rule. Please cite DAR Case 91–004 in all correspondence related to this issue.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, ATTN: Ms. Barbara J. Young, Procurement Analyst, DAR Council, OUSD(A)DP(DARS), room 3D139, The Pentagon, Washington, DC 20301–3000.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara J. Young, Procurement Analyst, DAR Council, (703) 697–7266, FAX No. (703) 697–9845.

SUPPLEMENTARY INFORMATION:

A. Background

Revisions to the Defense FAR Supplement are proposed to add a new subpart at 242.74 on policies and procedures for contractor internal accounting controls. Revisions to 209.1 are also proposed to add a general standard of responsibility for prospective contractors to have sufficient internal accounting controls to ensure the validity of all costs charged to the Government. These revisions clarify existing requirements applicable to contractor accounting systems.

B. Regulatory Flexibility Act

An initial Regulatory Flexibility Analysis has not been performed because the proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* because it basically defines and emphasizes the requirement for contractor internal accounting controls which are already required as part of an acceptable accounting system. However, comments from small businesses concerning the affected DFARS Subparts will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR Case 91–610 in all correspondence.

C. Paperwork Reduction Act

The proposed rule does not impose any reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 209 and 242

Government procurement.

Nancy L. Ladd,

Director, Defense Acquisition Regulations Council.

Therefore, it is proposed that 48 CFR parts 209 and 242 be amended as follows:

1. The authority citation for 48 CFR parts 209 and 242 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

PART 209—CONTRACTOR QUALIFICATIONS

2. Section 209.104–1 is revised to read as follows:

209.104–1 General Standards

(e) (S–70) Have sufficient internal accounting controls to ensure the validity of all costs, both direct and indirect, charged to the government.

(S–71) Have the necessary safety programs applicable to materials to be produced or services to be performed by the prospective contractor and subcontractors.

3. Section 209.104–3 is amended by adding a new paragraph (b) to read as follows:

209.104–3 Application of Standards

(b) The accounting system including its accounting controls must be adequate if the prospective contractor is to receive progress payments or a cost or incentive type contract is contemplated.

* * * * *

4. Section 209.106–2, is amended by revising factor E in paragraph (S–70)(5), section III, Block 19, Major Factors, to read as follows:

209.106–2 Requests for preaward surveys

Section III, Block 19, Major Factors

* * * * *

Factor E—Accounting System—An assessment by the Defense Contract Audit Agency (DCAA) of the adequacy of the prospective contractor's accounting system and related accounting controls as defined in § 242.7401. Normally, an accounting system review will be requested when conditions such as progress payments, or a cost or incentive type contract is contemplated or when accounting system or internal accounting control deficiencies are thought to exist.

* * * * *

PART 242—CONTRACT ADMINISTRATION

5. A new subpart 242.74 is added to read as follows:

Subpart 242.74—Contractor Accounting Controls

Sec.

242.7400 Scope of subpart.
242.7401 Definition.
242.7402 Policy.
242.7403 Procedures.

Subpart 242.74—Contractor Accounting Controls

242.7400 Scope of subpart

This subpart provides policies and procedures applicable to contractor internal accounting controls.

242.7401 Definition

Accounting controls means those internal control procedures established by contractor management to ensure costs are properly charged within the accounting system.

242.7402 Policy

All contractors shall maintain an accounting system throughout contract performance which contains sufficient internal accounting controls to ensure the integrity of all costs, both direct and indirect, charged to the government.

242.7403 Procedures

(a) The Defense Contract Audit Agency (DCAA) will establish and manage programs for evaluating the adequacy of contractor internal accounting controls. The auditor shall advise the Administrative Contracting Officer (ACO) of significant findings of the evaluation.

(b) If significant accounting control deficiencies exist, the DCAA report to the ACO shall—

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(1) Provide an estimate of the potential cost impact; and

(2) Include findings on the acceptability of the contractor's corrective action plan.

(c) Upon receipt of a DCAA report identifying significant accounting control deficiencies, the ACO may suspend an appropriate percentage of progress payments or reimbursement costs proportionate to the estimated cost risk to the government, until the submission and acceptance of the contractor's corrective action plan. (See FAR 32.503–6(b)).

[FR Doc. 91–13711 Filed 6–7–91; 8:45 am]
BILLING CODE 3810–01–M

Notices

Federal Register
Vol. 56, No. 111
Monday, June 10, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 91–062]

Availability of Environmental Assessments and Findings of No Significant Impact Relative to Issuance of Permits to Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that two environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The assessments provide a basis for the conclusion that the field testing of these genetically engineered organisms will not present a risk of the introduction or dissemination of a plant pest and will not have a significant impact on the quality of the human environment. Based on these findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Clayton Givens, Program Assistant, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612. For copies of the environmental assessments and findings of no significant impact, write Mr. Clayton Givens at this same address. The documents should be requested under the permit numbers listed below.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing the permit applications, APHIS assessed the impact on the environment of releasing the organisms under the conditions described in the permit applications. APHIS concluded that the issuance of the permits listed below will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment.

The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of the following permits to allow the field testing of genetically engineered organisms:

Permit No.	Applicant	Date issued	Organism	Filed test location
90–347–04	North Carolina State University	04–09–92	Tobacco plants genetically engineered to express a delta-endo-toxin protein from *Bacillus thuringiensis* subsp. *kurstaki* strain HDI.	North Carolina.
90–347–01	Monsanto Agricultural Company	04–12–91	Cotton plants genetically engineered to express a delta-endo-toxin protein from *Bacillus thuringiensis* subsp. *kurstaki*.	Alabama, Arizona, Louisiana, Mississippi, and Texas.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 4th day of June 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–13704 Filed 6–7–91; 8:45 am]
BILLING CODE 3410–34–M

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COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the District of Columbia Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the District of Columbia Advisory Committee to the Commission will convene at 4 p.m. and adjourn at 6:30 p.m., Thursday, June 20, 1991, 1121 Vermont Avenue, NW., room 512, Washington, DC 20425. The purpose of the meeting is to review information on civil rights complaints in the Mt. Pleasant area and plan future activity.

Persons desiring additional information, or planning a presentation to the Committee, should contact John I. Binkley, Director, Eastern Regional Division at (202) 523-5264, TDD (202) 376-8117. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 4, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91-13630 Filed 6-7-91; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-549-502]

Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests by petitioners and a respondent, the Department of Commerce is conducting an administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Thailand. The review covers shipments of this merchandise to the United States by one exporter during the period from March 1, 1988, through February 28, 1989. As a result of this review, the Department has preliminarily determined that dumping margins exist with respect to this exporter.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 10, 1991.

FOR FURTHER INFORMATION CONTACT: Mark Brechtl or Alain Letort, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-3793 or telefax (202) 377-1388.

SUPPLEMENTARY INFORMATION:

Background

On March 11, 1986, the Department of Commerce ("the Department") published an antidumping duty order on certain circular welded carbon steel pipes and tubes from Thailand in the **Federal Register** (51 FR 8341). On February 28, 1989, we published in the **Federal Register** a notice of opportunity to request an administrative review of this order (54 FR 8372). On March 31, 1989, petitioners requested a review covering Saha Thai Steel Pipe Co., Ltd. ("Saha Thai") only. That same day, we also received requests for review from Thai Hong Steel Pipe Co., Ltd. ("Thai Hong") and Thai Union Steel Pipe Co., Ltd. ("Thai Union"). We initiated the review, covering the period beginning on March 1, 1988 and ending on February 28, 1989, on April 28, 1989 (54 FR 18320). Subsequent to the initiation of this review, on July 18, 1989, Thai Hong and Thai Union withdrew their requests for review. On August 31, 1989, we published a notice of "Partial Termination of Antidumping Duty Administrative Review" with respect to Thai Hong and Thai Union in the **Federal Register** (54 FR 36045). The Department is now conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act"). This review covers shipments made by Saha Thai.

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted from the Tariff Schedules of the United States, Annotated (TSUSA) to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption, on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of circular welded carbon steel pipes and tubes with an outside diameter of 0.375 inch or more but not exceeding 16 inches. These products are commonly referred to in the industry as "standard pipe" or "structural tubing." Until January 1, 1989, this merchandise was classifiable under item numbers 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925 of the TSUSA. This merchandise is currently classifiable under HTS item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, and 7306.30.5090. As with the TSUSA numbers, the HTS numbers are provided for convenience and customs purposes. The written product description remains dispositive.

United States Price

In accordance with section 772(b) of the Act, we based United States price on purchase price, because the merchandise was sold to unrelated purchasers in the United States prior to its importation. We calculated purchase price based on c. & f. packed prices to U.S. customers.

We made deductions from purchase price, where appropriate, for foreign inland freight, foreign inland insurance, ocean freight, brokerage and handling charges, and bank charges.

We made an addition to purchase price for duty drawback, *i.e.*, import duties which were rebated, or not collected, by reason of the exportation of the merchandise to the United States, in accordance with section 772(d)(1)(B) of the Act. We made another addition to purchase price, in accordance with section 772(d)(1)(C) of the Act, for a portion of certain indirect taxes which were later rebated by reason of the exportation of the subject merchandise to the United States. Consistent with our practice in past investigations (see, *e.g.*, Barbed Wire and Barbless Fencing Wire from Argentina; Final Determination of Sales at Less Than Fair Value (50 FR 38563—September 23, 1985)), we limited the addition to purchase price to 1.26 percent of the f.o.b. price of the exported product, which is the amount of allowable indirect taxes found to have been paid by respondents in the countervailing duty investigation of the subject merchandise (see Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand (50 FR 32751—August 15, 1985)). Finally, we made another addition to purchase price, in accordance with section 772(d)(1)(C) of the Act, for the amount of "business (sales) tax" that apparently would have been collected on sales to the United States had they been subject to that tax. Because the business tax is paid in Thailand on gross sales receipts, we applied the business tax rate in the home market to the gross sales price in the United States and increased purchase price by that amount.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on delivered or ex-factory packed prices to unrelated purchasers in Thailand. We made deductions to foreign market value, as appropriate, for inland freight, cash discounts, and business tax. In accordance with section 773(a)(4)(B) of the Act and § 353.56 of our regulations (19 CFR 353.56), we made an adjustment to foreign market value for differences in circumstances of sale with respect to credit expenses and business tax. Because the gross sale price of the merchandise in the home market includes the business tax discussed supra, we adjusted foreign market value to eliminate any differences between the business tax in both markets by substituting the business tax on sales in the United States for the business tax on sales in the home market. In order to adjust for differences in packing between the two markets, we deducted packing costs in Thailand from foreign market value and added U.S. packing costs. In accordance with section 773(a)(4)(C) of the Act and § 353.57 of our regulations (19 CFR 353.57), we made adjustments to foreign market value to account for differences in the physical characteristics of the merchandise where there was no identical product in the home market with which to compare a product in the United States.

The Department examined whether sales in the home market were made at prices below the cost of producing the merchandise. We analyzed production costs, which include all appropriate costs for materials, fabrication, and general expenses. We found that Saha Thai sold substantial quantities of the subject merchandise in the home market at prices below production costs, within the meaning of section 773(b) of the Act. After disregarding Saha Thai's below-cost sales, in accordance with section 773(b), we found that sufficient sales were made at or above production costs in the home market. Therefore, we used those sales to determine foreign market value.

Preliminary Results of the Review

As a result of our comparison of the United States price to foreign market value, we preliminarily determine that the following dumping margins exist:

Period of review	Margin (percent)
03/01/88-02/28/89:	
Saha Thai Steel Pipe Co., Ltd	2.50
All Other Manufacturers/Exporters	2.50

Pursuant to section 751 of the Act, the cash deposit requirement established in the antidumping duty order will remain in effect until publication of the final results of this administrative review, at which time the Department will issue appropriate appraisement and deposit instructions to the Customs Service based on the final results of this review. The cash deposit requirement is currently 15.69 percent for Saha Thai, 15.60 percent for Thai Steel Pipe Industry Co., Ltd. (not covered by this review), and 15.67 percent for all other manufacturers, producers, and exporters in Thailand of the subject merchandise.

Article VI:5 of the General Agreement on Tariffs and Trade provides that "(n)o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Accordingly, the level of export subsidies as determined in Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand (50 FR 32751—August 15, 1985), which is 1.79 percent *ad valorem*, will be subtracted from the cash deposit rate for deposit or bonding purposes.

Public Comment

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Interested parties may request a hearing within 10 days of the date of publication of this notice and submit written comments on these preliminary results within 30 days of the date of publication of this notice in the **Federal Register**. We will hold a hearing, if requested, as early as is convenient for the parties but no later than 44 days after the date of publication, or the first business day thereafter. Interested parties may submit pre-hearing briefs no later than 14 days before the date of the hearing or the first business day thereafter. Rebuttal briefs and rebuttal comments, limited to issues raised in the initial round of comments, may be filed no later than 7 days after submission of the initial round of comments or the first business day thereafter. The Department will publish the final results of this administrative review, including an analysis of all issues raised in any written comments or hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Commerce Department's regulations (19 CFR 353.22).

Dated: May 31, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-13706 Filed 6-7-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-806]

Antidumping Duty Order: Silicon Metal From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In its investigation, the U.S. Department of Commerce (the Department) determined that silicon metal from the People's Republic of China (PRC) was being sold in the United States at less than fair value. In a separate investigation, the U.S. International Trade Commission (ITC) determined that a U.S. industry is being materially injured by reason of imports of silicon metal from the PRC.

Based on the affirmative findings of the Department and the ITC, all unliquidated entries or warehouse withdrawals of silicon metal from the PRC, made on or after February 5, 1991, the date on which the Department published its preliminary determination in the **Federal Register** (56 FR 4596, February 5, 1991), will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: June 10, 1991.

FOR FURTHER INFORMATION CONTACT: James Terpstra or James Maeder, Office of Antidumping Investigations, Import Administration, International Trade

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Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; (202) 377–3965 or (202) 377–4929.

SCOPE OF INVESTIGATION: The merchandise covered by this investigation is silicon metal containing at least 96.00 but less than 99.99 percent of silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to this investigation. Given that this investigation is not limited to silicon metal used as an alloying agent or in the chemical industry, we have deleted the sentence regarding the uses for silicon metal from the scope of this investigation. The HTS numbers are provided for convenience and customs purposes. The written description remains dispositive.

SUPPLEMENTARY INFORMATION: In accordance with section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673(a)) (the Act), on April 16, 1991, the Department made its final determination that silicon metal from the PRC is being sold at less than fair value (56 FR 18570, April 23, 1991). On June 3, 1991, in accordance with section 735(d) of the Act, the ITC notified the Department that such imports materially injure a U.S. industry.

In its final determination, the Department also found that critical circumstances existed with respect to imports of silicon metal from the PRC. However, on June 3, 1991, the ITC notified the Department that critical circumstances do not exist with respect to any imports from the PRC. As a result of the ITC's negative critical circumstances determination, pursuant to section 735(c)(3) of the Act, the U.S. Customs Service will refund all cash deposits and release all bonds collected on silicon metal from the PRC entered, or withdrawn from warehouse, for consumption, on or after November 7, 1990, and before February 5, 1991.

Therefore, in accordance with section 736 and 751 of the Act, the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of silicon metal from the PRC. These antidumping duties will be assessed on all unliquidated entries of silicon metal from the PRC entered, or withdrawn from warehouse, for consumption on or after February 5, 1991, the date on which the Department published its preliminary determination notice in the Federal Register.

Suspension of Liquidation:

On or after the date of publication of this notice in the Federal Register, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise.

Producer/manufacturer/exporter	Deposit rate (percent)
All Exporters	139.49

This notice constitutes the antidumping duty order with respect to silicon metal from the PRC, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: June 4, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-13707 Filed 6-7-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-533-502]

Certain Welded Carbon Steel Standard Pipes and Tubes from India; Preliminary Results of Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative reviews.

SUMMARY: In response to requests from petitioners and certain exporters, the Department of Commerce ("the Department") is conducting two administrative reviews of the antidumping duty order on certain welded carbon steel standard pipes and tubes from India. The reviews cover two exporters and two consecutive periods, from May 1, 1987 through April 30, 1989. As a result of these reviews, the Department has preliminarily determined that dumping margins exist with respect to both exporters. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 10, 1991.

FOR FURTHER INFORMATION: Contact Alain Letort or Richard Weible, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone (202) 377–3793 or telefax (202) 377–1388.

SUPPLEMENTARY INFORMATION:

Background

On May 12, 1986, the Department of Commerce ("the Department") published in the Federal Register an antidumping duty order on certain welded carbon steel standard pipes and tubes from India (51 FR 17384). The Department published in the Federal Register notices of opportunity to request administrative reviews of this order on May 5, 1988, for the period May 1, 1987 through April 30, 1988 (53 FR 16178), and on May 3, 1989, for the period May 1, 1988 through April 30, 1989 (54 FR 18918). Subsequent to the publication of the notices of opportunity, the petitioners and certain respondents requested that we conduct administrative reviews for these two periods.

For the 1987–88 period, the petitioners requested that the review cover two firms, Tata Iron and Steel Co. Ltd. ("TISCO") and Jindal Pipes Ltd. ("Jindal"). We also received requests for a review from TISCO and from Bharat Steel Tubes Manufacturing Ltd. ("BST"). We published a notice of initiation on June 29, 1988 (53 FR 24470) covering three companies: TISCO, Jindal, and BST. On August 25, 1988, BST withdrew its request for a review. The Department is now conducting an administrative review covering TISCO's and Jindal's sales of the subject merchandise to the United States during the period May 1, 1987 through April 30, 1988, in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act").

For the 1988–89 period, the petitioners requested that the review cover TISCO only. We also received a request for a review from TISCO. We published a notice of initiation on June 21, 1989 (54 FR 26069). The Department is now conducting an administrative review covering TISCO's sales of the subject merchandise to the United States during the period May 1, 1988 through April 30, 1989, in accordance with section 751 of the Act.

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted from the Tariff Schedules of the United States, Annotated (TSUSA) to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption, on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of welded carbon steel pipes and tubes with an outside diameter of 0.375 inch or more but not over 16 inches. These products are commonly referred to in the industry as "standard pipe" and are produced to various ASTM specifications, most notably A-53, A-120, or A-135. Until January 1, 1989, such merchandise was classifiable under item numbers 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925 of the TSUSA. This merchandise is currently classifiable under HTS item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, and 7306.30.5090. As with the TSUSA numbers, the HTS numbers are provided for convenience and customs purposes. The written product description remains dispositive.

Verification

In accordance with section 776(b)(3) of the Act, we conducted a verification of the questionnaire responses submitted by TISCO at the company's headquarters in Calcutta and Jamshedpur, India, from December 12 through December 20, 1990. We used standard verification procedures, including on-site inspection of TISCO's operations, and examination of accounting records and other documents containing relevant information. We did not verify information submitted by Jindal since Jindal did not furnish us with a complete listing of its home-market sales and declined to answer our deficiency questionnaire.

During verification, we found that significant portions of TISCO's response either did not verify or were unverifiable. In particular, TISCO had significantly underreported its sales both in the U.S. and home markets. Therefore, where TISCO's information was non-existent or deficient, we supplemented the responses submitted by TISCO prior to the verification with information supplied by the petitioners, as best information otherwise available, in accordance with section 776(c) of the Act. We applied the dumping margins we calculated for TISCO to Jindal, as the best information otherwise available for that company.

United States Price

In accordance with section 772(b) of the Act, we based United States price on purchase price, because the merchandise was sold to unrelated purchasers in the United States prior to its importation. We calculated purchase price based on f.a.s. or f.o.b. packed prices to U.S. customers.

We added to purchase price certain import duties which were rebated, or not collected, by reason of the exportation of the merchandise to the United States, in accordance with section 772(d)(1)(B) of the Act.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on delivered packed prices of Indian Standard ("IS") pipe to unrelated purchasers in India at the same commercial level of trade as U.S. customers, *i.e.*, wholesalers and distributors. Although some of the standard pipe TISCO sold in India was identical to the merchandise it sold in the United States, which conforms to American Society for Testing Materials ("ASTM") specifications, we have preliminarily determined that TISCO's home-market sales of ASTM pipe were not "in the ordinary course of trade for home consumption" within the meaning of section 773(a)(1)(A) of the Act. We made this determination for several reasons: (1) We found during verification that, whereas IS pipe for sale in India receives only minimal packing and is stamped, the ASTM pipe sold in India was packed for export and unstamped, which we consider to be *prima facie* evidence that sales of ASTM standard pipe in India were actually overruns or returns on export sales; (2) the volume of ASTM pipe sold in India was very small compared to the quantity of IS pipe sold in the same market; (3) TISCO's sale prices of ASTM pipe in India were much lower than its sale prices of IS pipe, even though the cost of producing ASTM pipe is slightly higher than the cost of producing IS pipe; and (4) TISCO did not sell ASTM pipe in India before the antidumping duty order on standard pipe.

We deducted cash discounts from foreign market value, where appropriate. We adjusted foreign market value for differences in packing costs between the two markets. In accordance with section 773(a)(4)(B) of the Act and § 353.56 of our regulations (19 CFR 353.56), we adjusted foreign market value for differences in circumstances of sale with respect to advertising. In accordance with section 773(a)(4)(C) of the Act and § 353.57 of our regulations (19 CFR 353.57), we also adjusted foreign market value to account for differences in the physical characteristics of the merchandise where there was no product in the home market with the same coating and end-finish characteristics as the product sold in the United States.

TISCO has claimed an adjustment for differences in circumstances of sale to account for the rebates it received on steel inputs under the government of India's International Price Reimbursement Scheme ("IPRS"). Steel prices in India are controlled by the Joint Planning Committee ("JPC"), a parastatal organization comprising officials of the government of India ("GoI") and representatives of the major Indian steel producers. The JPC sets domestic steel prices at a level considerably higher than world market prices in order to protect high-cost Indian steel producers.

The JPC assesses all Indian steel fabricators a levy on their purchases of domestic steel. That levy is paid into the Engineering Goods Exports Assistance Fund ("EGEAF"). Indian exporters of finished steel products have the option of (1) importing their steel inputs from abroad at prevailing world market prices free of import duty, or (2) purchasing their steel from domestic sources at JPC-controlled prices. Because those Indian exporters of finished steel products who buy their raw steel inputs from domestic Indian sources are placed at a comparative disadvantage with their foreign competitors, the GoI set up the IPRS in order to compensate those exporters for the difference between domestic and world market prices for steel.

The IPRS is administered by the Engineering Export Promotion Council ("EEPC"), which periodically calculates and publishes international prices for steel based upon prices in the London and Tokyo metal markets. Upon certification to the EEPC that the domestically produced steel has been used in the fabrication of finished steel products for export, the EEPC uses monies from the EGEAF to rebate to the exporter the difference between the domestic steel price and the international steel price. The IPRS thus serves to neutralize the comparative disadvantage between expensive Indian steel and cheap imported steel.

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In Certain Iron-Metal Castings from India; Preliminary Results of Countervailing Duty Order Administrative Review (55 FR 12702—04/05/90), the Department found the IPRS to be a subsidy because it is a "government program that results in the provision of an input to exporters at a price lower than to producers of domestically sold products." In actual fact, the IPRS is a delayed price adjustment scheme on raw materials used in the manufacture of the finished product. As such, it results in a difference in production costs between exported and domestically consumed standard pipe.

Section 773(a)(4)(B) of the Act authorizes the Department to adjust for "differences in circumstances of sale," which include such things as differences in commissions, credit terms, guarantees, warranties, technical assistance, and servicing (see 19 CFR 353.56). Since the type of adjustment at issue here relates to differences in production costs, as opposed to differences in *sales*, it is not an allowable adjustment under the circumstances-of-sale provision.

We note that, while the regulations do provide for adjustments for production cost differences in two instances, where quantity discounts reflect savings in the production of different quantities (19 CFR 353.55(b)(2)) and where differences in the physical characteristics of the merchandise are due to differences in production costs (19 CFR 353.57(b)), neither of these provisions is applicable here.

IPRS rebates are merely the result of the government of India's decision to set different prices for steel destined for the domestic and export markets. Such a practice has sometimes been referred to as "input dumping." While current U.S. law does not allow a direct remedy for input dumping when the input is sold to unrelated parties, it would be perverse to allow input dumping to excuse price differences between domestic and export sales of merchandise incorporating the differently priced inputs. In view of the fact that the proposed adjustment cannot be deemed a sale-related expense and the policy implications of excusing downstream dumping with input dumping, we have decided not to make a circumstance-of-sale adjustment to foreign market value for rebates received under the IPRS.

Furthermore, the Department disagrees with respondent's claim that, because the IPRS has the same economic effect as duty drawback, the Department should treat it as such. Under section 353.41(d)(1)(ii) of the Department's regulations, U.S. price may be increased by "(t)he amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of exportation of the merchandise." This language is in conformity with paragraph (i) of the Annex to the "Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreements on Tariffs and Trade," which defines duty drawback very specifically as "the (non-excessive) remission * * * of import charges * * * on imported goods that are physically incorporated in the exported product." IPRS rebates are clearly not a "remission of import charges;" in fact, the scheme is essentially dissimilar to duty drawback because the amount of rebate is related to the difference in the price of the raw material produced in India as compared to the prevailing world market price. No import duties are involved in this case because the raw material subject to the rebate is produced domestically.

Preliminary Results of the Review

As a result of our comparison of the United States price to foreign market value, we preliminarily determine that the following dumping margins exist:

Period of review	Margin (percent)
05/01/87–04/30/88:	
Tata Iron & Steel Co., Ltd.	77.94
Jindal Pipes Ltd.	77.94
05/01/88–04/30/89:	
Tata Iron & Steel Co., Ltd.	86.71

Pursuant to section 751 of the Act, the cash deposit requirement established in the antidumping duty order will remain in effect until publication of the final results of these administrative reviews, at which time the Department will issue appropriate appraisement and deposit instructions to the Customs Service based on the final results of these reviews. The cash deposit requirement is currently 7.08 percent for TISCO, zero for Zenith Steel Pipes and Industries Ltd. and Gujarat Steel Tubes Ltd. (which were excluded from the order), and 7.08 percent for all other manufacturers, producers, and exporters in India of the subject merchandise.

Public Comment

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Interested parties may request a hearing within 10 days of the date of publication of this notice and submit written comments on these preliminary results within 30 days of the date of publication of this notice in the Federal Register. We will hold a hearing, if requested, as early as is convenient for the parties but no later than 44 days after the date of publication, or the first business day thereafter. Interested parties may submit pre-hearing briefs no later than 14 days before the date of the hearing or the first business day thereafter. Rebuttal briefs and rebuttal comments, limited to issues raised in the initial round of comments, may be filed no later than 7 days after submission of the initial round of comments or the first business day thereafter. The Department will publish the final results of this administrative review, including an analysis of all issues raised in any written comments or hearing.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Commerce Department's regulations (19 CFR § 353.22).

Dated: May 31, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-13709 Filed 6-7-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-517-501]

Carbon Steel Wire Rod From Saudi Arabia; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On December 3, 1990, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on carbon steel wire rod from Saudi Arabia. We have now completed that review and determine the total bounty or grant to be 0.43 percent *ad valorem* for the period January 1, 1987 through December 31, 1987. In accordance with 19 CFR 355.7, any rate less than 0.50 percent ad valorem is *de minimis*.

EFFECTIVE DATE: June 10, 1991.

FOR FURTHER INFORMATION CONTACT: Philip Pia or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On December 3, 1990, the Department of Commerce (the Department) published in the Federal Register (55 FR 49932) the preliminary results of its administrative review of the countervailing duty order on carbon steel wire rod from Saudi Arabia (February 3, 1988; 51 FR 4206). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of Saudi carbon steel wire rod. Carbon steel wire rod is a coiled, semi-finished, hot-rolled carbon steel product of approximately round solid cross section, not under 0.20 inch nor over 0.74 inch in diameter, tempered or not tempered, treated or not treated, not manufactured or partly manufactured, and valued over or under 4 cents per pound. During the review period, such merchandise was classifiable under item numbers 607.1400, 607.1710, 607.1720, 607.1730, 607.2200 and 607.2300 of the Tariff Schedules of the United States Annotated (TSUSA). Such merchandise is currently classifiable under item numbers 7213.20.00, 7213.31.30, 7213.31.60, 7213.39.00, 7213.41.30, 7213.41.60, 7213.49.00 and 7213.50.00 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1987 through December 31, 1987 and eight programs: (1) Public Investment Fund loan to HADEED, (2) SABIC's transfer of SULB shares to HADEED, (3) preferential provision of equipment to HADEED, (4) income tax holiday for joint venture projects in Saudi Arabia, (5) SABIC loan guarantees, (6) preferential provision of services by SABIC, (7) government procurement preferences, and (8) issuance of preferential government bonds.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the respondent (HADEED), and the petitioners.

Comment 1: The respondent argues that, contrary to the Department's preliminary results, Public Investment Fund (PIF) loans are not limited to a specific group of enterprises, and therefore, they are not countervailable. The PIF program was administered in an even-handed manner, and PIF loans went to virtually the entire universe of eligible recipients. The essence of specificity is selective treatment, as stated in the Department's proposed substantive regulations (see, Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366; May 31, 1989). These proposed regulations say expressly that selective treatment is a prerequisite for countervailability. Selective treatment, or specificity, is determined in two ways, *de jure* specificity, and *de facto* specificity. The factual record verified in this administrative review supports neither a finding of *de jure* specificity, nor a finding of *de facto* specificity, in regards to the PIF program.

PIF loans are not limited as a matter of law to a specific industrial sector; applications are considered purely on the basis of whether the projects for which loans are requested are commercially viable. The single eligibility criterion of the PIF program, which is that participants must be companies in which there is some government equity ownership, cannot in and of itself make this program specific. On this point the Court of International Trade has been explicit: "The mere fact that a program contains certain eligibility requirements for participation does not transform the program into one which has provided a countervailable benefit." (see, *PPG Indus., Inc.* v. *United States*, 662 F. Supp. 258 (C.I.T. 1987)).

In preliminarily determining that PIF loans have been limited *de facto* to a specific group of enterprises, the Department advanced the rationale that "(b)ecause only firms with some direct or indirect government equity participation are eligible for PIF financing, only a few enterprises have received PIF financing."

This rationale is both contrary to statute and not supported by the factual record of this review. The identity of the shareholders in the firms borrowing from the PIF is legally irrelevant to the specificity test. The language of 19 U.S.C. 1677(5)(ii) defines "domestic subsidies" to include governmental assistance to "a specific enterprise or industry, or group of enterprises or industries, whether publicly or privately owned." The mere fact of public ownership does not mean that all such companies constitute a "specific group of enterprises." The respondent asserts that government ownership and control of the companies that received PIF loans, of relevance only to the Department's anomalous rationale, is indirect and passive. The Saudi government has an equity interest in various companies that are, in turn, partial owners of companies receiving PIF loans. PIF loans have been made to 18 different companies representing a wide variety of industries and products. A total of 19 different multinational corporations are principal shareholders in the companies that have received PIF loans.

Conversely, the petitioners argue that the Department correctly determined that PIF loans are provided to a specific group of enterprises in Saudi Arabia, and that the PIF loan is countervailable to the extent that it is given on terms inconsistent with commercial considerations.

Only firms with government equity participation are eligible for PIF financing. This requirement has resulted in limiting PIF lending almost exclusively to projects undertaken by a few indirectly and directly government-owned companies. In fact, PIF loans are made to projects which are sponsored by, controlled by and basically owned by, either directly or indirectly, only three companies: Petromin, Saudia Airlines and the Saudi Basic Industries Corporation (SABIC). Furthermore, in its preliminary results, the Department stated that "firms receiving PIF financing represent less than one-half of all large-scale firms, and only a very small portion of all industrial enterprises, in the Kingdom." Clearly, the PIF program limits benefits to a specific "group of enterprises" in Saudi Arabia and is, therefore, countervailable on that basis.

Petitioners refute respondent's argument regarding the interpretation of the statutory language "whether publicly or privately owned" by stating that the intention was to separate the specificity analysis from the ownership issue. Congress included the phrase "whether publicly or privately owned" in the statute to ensure that the countervailing duty law had the widest possible scope.

Department's Position: We disagree with the respondent. At verification, we attempted to determine the size of the universe of large firms in Saudi Arabia of which those firms eligible for PIF financing were a subpart. We obtained a listing of licensed factories in production for the period 1983 through 1987. Because this listing may have excluded firms in existence from the period 1973 (the year PIF began lending) through 1982 and nonmanufacturing firms, we can draw no definite conclusions regarding the universe of large firms in Saudi Arabia. Nevertheless, considering Saudi firms with more than SR400 million in total investment capital as large firms, we found that from 1983 through 1987 there were, within Saudi

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Arabia, 25 firms large enough to qualify for PIF loans, if otherwise eligible to do so. However, because PIF by-laws exclude firms or projects without Saudi government equity from eligibility for PIF financing, only 14 of the 25 firms were eligible for PIF financing. Furthermore, although the PIF has provided loans to 18 firms from 1973 through the end of the review period, a total of six firms are majority shareholders, albeit indirect, of the 18 PIF loan recipients. Regardless of whether specific on a *de jure* basis, we find it *de facto* specific. Therefore, we determine that the PIF program is limited to a specific group of enterprises.

Comment 2: The respondent argues that it is artificial to analyze the specificity of PIF lending alone. The Saudi Industrial Development Fund (SIDF) and the PIF are complementary funds and should be examined by the Department as one program. Under the standards set forth in the Department's proposed regulations, specifically § 355.43(b)(6), the PIF and the SIDF loan programs are integrally linked and, therefore, should be considered together for purposes of a specificity analysis. According to the respondent, the proposed regulations set forth standards for determining when programs are integrally linked, and those standards are fulfilled in this case.

Saudi Arabia has chosen to make long-term loans available through two related funds, the PIF and the SIDF, which together provide long-term loans to any company that wants them. The programs are both administered as specialized credit institutions of the Saudi government, and they have similar requirements and similar purposes. The SIDF provides loans to small- and medium-sized private industries; the PIF lends to large-scale projects with government equity participation. The Department verified that virtually all of the companies that are ineligible for PIF, either because of size or lack of government equity participation, are eligible for long-term loans through the SIDF. The Government of Saudi Arabia is not selectively conferring benefits on companies eligible for PIF loans to the exclusion of all other companies. To the contrary, the PIF loan program is simply one part of a comprehensive government program to make low-cost loans available to virtually all companies in Saudi Arabia.

Petitioners claim that the respondent's argument, that the PIF and the SIDF loan programs are integrally linked and should be considered as one program for the purposes of determining specificity, is erroneous. The Department should not lump differentiated government programs together when analyzing specificity. SIDF loans are not an alternative source of financing to PIF loans. The average maturity of the loans is different, PIF loans require government equity participation, and the maximum amount one can borrow from the SIDF is SR400 million while PIF loans are limited only by the size of the project being funded, *i.e.*, there is no nominal limit.

Department's Position: We disagree with the respondent. Section 355.43(b)(6) of the Department's proposed regulations specifically states that "in determining whether programs are integrally linked, the Secretary will examine, among other factors, the administration of the programs, evidence of a government policy to treat industries equally, the purposes of the programs as stated in their enabling legislation, and the manner of funding the programs."

The Government of Saudi Arabia has established five distinct specialized credit institutions, two of which are the PIF and the SIDF. The Department has previously found that the five institutions are not linked to an overall government lending policy (see, Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Carbon Steel Wire Rod From Saudi Arabia, 51 FR 4206; February 3, 1986). The factors established in proposed § 355.43(b)(6) are necessarily general in nature. Any evaluation of these factors to determine whether the PIF and SIDF are integrally linked would include, among other methods, a comparison of each programs's by-laws, stated purposes, sources of funding, accounting systems, administrative personnel, and treatment and classification by third parties and other institutions. Although the respondent has argued that these programs complement each other, sufficient relevant information pertaining to the factors established in proposed § 355.43(b)(6) has not been demonstrated to exist. Of particular importance is whether PIF loans and SIDF loans are linked in any way to an overall government lending policy to provide loans on comparable terms to various groups serviced by these two institutions. Therefore, we have considered each government lending program separately.

Comment 3: Petitioners argue that the Department erroneously counted HADEED's interest payment or commission fee made in 1990 when determining the benefit from the PIF program for the 1987 review period. The Department's practice focuses on the cash flow effect of subsidies when measuring the countervailability of a benefit. The payment should be allocated to the year in which it affected HADEED's cash flow—1990. Proposed Rules § 355.48(a) states:

> Ordinarily, the Secretary will deem a countervailable benefit to be received at the time that there is a cash flow effect on the firm receiving the benefit. The cash flow and economic effect of a benefit normally occurs when a firm experiences a difference in cash flows, either in the payments it receives or the outlays it makes, as a result of its receipt of the benefit.

Thus, the Department should not retroactively allocate payments to nominally-related time periods. The 1990 PIF loan payment must be ignored for purposes of calculating the benefit for this administrative review.

The respondent argues that the Department adhered to the plain language of § 355.48 and properly deemed the cash flow effect of HADEED's late payment to occur in 1987. Section 355.48(b) expressly provides: "(f)or purposes of (355.48(a))" the Secretary will "deem the cash flow effect to occur * * * at the time a firm is due to make a payment on the loan." The Department necessarily and correctly applied this policy in determining a methodology to valuate the benefits and then allocate those benefits to the 1987 review period.

Department's Position: We disagree with the petitioner. As the respondent has correctly argued, § 355.48(b)(3) of the Department's Proposed Rules states that, in the case of a loan, the cash flow effect on the firm receiving the benefit occurs at the time a firm is due to make a payment on the loan. We use the due date to determine both the amount payable at the preferential rate and the amount that would be due at the benchmark rate. Otherwise, without reference to a due date, we would have no basis for determining when a preferential loan confers a countervailable benefit. Furthermore, since each administrative review deals with a finite time period, a delay in payment, whether deliberate or inadvertent, could result in distorting the results of that review.

In this case, HADEED was required by contract to make a payment on its PIF loan only if it recorded a profit in the fiscal period preceding August 1987. The PIF and HADEED disagreed on the appropriateness of a tax deduction claimed by HADEED that reduced HADEED's profitability to zero. The dispute was duly referred to the Saudi

General Auditing Bureau and resolved in 1990. We verified the nature and settlement of the dispute between the PIF and HADEED. We find no reason to conclude that the payment in question would not have been made when due in 1987, save for the dispute. Therefore, we have calculated the benefit from this payment during the 1987 review period.

Comment 4: Petitioners argue that the Department's discounting methodology used in allocating the 1990 PIF loan payment to 1987 is flawed in that it fails to include a penalty for late payment. It is common commercial practice to require such a penalty in the form of a higher interest rate or related fee for the period of late payment.

The respondent argues that, by discounting the value of the payment HADEED made in 1990, the Department has already imposed a penalty for late payment. This discounting reflected the Department's usual practice, which is designed to account for the time value of money. Inherent in the concept of "time value of money" is an assumption of interest. As a result, the Department has already imposed an adjustment that effectively penalizes HADEED for having made its 1987 commission payment late.

Department's Position: We agree with respondent. In order to determine the value in 1987 of the service charge on HADEED's PIF loan, we discounted the nominal amount of the service charge that HADEED paid by three percent per annum for the period between August 1987 and January 1990. We then compared the amount of the discounted service charge with the amount of service charge that would have been due in August 1987 based on our benchmark interest rate.

Comment 5: Petitioners argue that the Department erroneously included the SIDF interest rate as part of the commercial benchmark. The benchmark should have been calculated solely from HADEED's long-term commercial borrowings. SIDF loans are not consistent with loans made on commercial terms, which are usually freely available and at market-determined rates. Should the Department persist in using SIDF interest rates for its benchmark, it should recognize the SR400 million loan cap on SIDF loans. The appropriate benchmark should be calculated by restricting the SIDF portion to reflect the SR400 million limit.

The remaining portion of the benchmark should be comprised of the 1987 interest rate assessed HADEED by Saudi commercial banks.

Conversely, the respondent argues that the Department's use of an SIDF loan rate as the predominant element of the benchmark is consistent with Department precedent. The only loan reasonably comparable to a PIF loan and the closest alternative to a PIF loan would have been an SIDF loan. As previously stated, PIF and SIDF loans share a number of key characteristics, none of which are found in private bank loans. Furthermore, the Department adopted an SIDF-based composite in the original investigation, and its decision to do so was upheld by the Court of International Trade. (See, *Saudi Iron & Steel Co. (HADEED)* v. *United States, 675 F. Supp. 1362, (C.I.T. 1987)).*

Department's Position: We disagree with the petitioner. We constructed a composite benchmark consisting of the flat two percent rate of interest applied to SIDF loans through 1987 and HADEED's average commercial borrowing rate in 1987. In countries where government institutions are the predominant source of long-term lending, it has been the Department's practice to use interest rates on nonspecific direct government loans as benchmarks. Such benchmarks are the best measure of the benefit to the recipient of the subsidized loan because they reflect what the recipient would otherwise have paid for a comparable loan. Saudi commercial banks do very little long-term lending, primarily because there is no long-term source of capital available to the banks themselves and, given that the payment of interest is unenforceable in a Saudi court of Islamic law, they tend to restrict their lending to small amounts to a few borrowers. Thus, such lending cannot be considered an alternative to a PIF loan. As for the SR400 million cap on SIDF loans, we verified that the SIDF, in fact, often lent combined amounts greater than the cap to a single company. For these reasons, we believe that the interest rate of nonspecific SIDF loans is appropriate for use in our composite benchmark.

Comment 6: The respondent argues that the Department incorrectly determined that the income tax holiday is limited to a specific group of enterprises, and is therefore countervailable. The statutory standard that the Department must apply in determining whether Saudi Arabia's income tax holiday constitutes a countervailable subsidy is whether its benefits are limited to a "specific enterprise or industry, or group of enterprises or industries." (See, 19 U.S.C. 1677(5)(A)(ii) (1988)). The income tax holiday is not directed toward any specific sector, industry, or group of enterprises. Rather, it is open to any licensed foreign investment in which Saudis have a 25 percent or greater equity share. Furthermore, the size and diversity of the universe of companies that qualify for the tax holiday are themselves dramatic evidence that it is not restricted or targeted to specific industries or companies.

Petitioners argue that the Department correctly determined that the benefits from the income tax holiday are specifically provided and, therefore, constitute a countervailable benefit. The program's eligibility requirements are restrictive and the most dominant industry (petroleum) is excluded. The only critical issue for the Department is whether an advantage in international commerce has been bestowed on a discrete class of grantees. Such an advantage was conferred on HADEED by virtue of the income tax holiday in this review period.

Department's Position: We disagree with the respondent. We have little evidence of the size and diversity of the universe of companies that qualify for the tax holiday. The information in the record of this review, with respect to the size of the eligible universe, is limited to two publications of the Statistics Department of the Saudi Arabian Monetary Agency (SAMA). According to SAMA, companies with foreign capital comprised less than one-fourth of all companies operating in the Kingdom during the review period, of which those companies in nonpetroleum-related industries are a subgroup. Within this subgroup, the application of the remaining criterion, that foreign technical know-how and expertise must accompany the original investment, further limits benefits under this program. Therefore, we determine that it is specific and countervailable.

Final Results of Review

After reviewing all of the comments received, we determine the total bounty or grant to be 0.43 percent *ad valorem* for the period January 1, 1987 through December 31, 1987. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

Therefore, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise exported on or after January 1, 1987 and exported on or before December 31, 1987.

The Department will also instruct the Customs Service to waive cash deposits of estimated countervailing duties on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption, on or after the date of publication of these final results of

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administrative review. The waiving of cash deposits of estimated countervailing duties shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated May 31, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-13709 Filed 6-7-91; 8:45 am]

BILLING CODE 3510-DS-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Decision of Panel

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Decision of Panel in binational panel review of the final results of the antidumping duty administrative review made by the U.S. Department of Commerce, International Trade Administration, Import Administration, respecting Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada, (Secretariat File No. USA-90-1904-01).

SUMMARY: By a decision dated May 24, 1991, the Binational Panel affirmed in part and remanded in part the Department of Commerce's final determination concerning Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada published May 15, 1990 (FR 55 20175). A copy of the complete panel decision is available from the FTA Binational Secretariat.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The panel review in this matter was conducted in accordance with these Rules.

Background

On June 14, 1990 a Request for Panel Review of the final determination in the administrative review was filed by Northern Fortress Ltd., the Canadian manufacturer, with the United States Section of the Binational Secretariat pursuant to Article 1904 of the Canada-United States Free Trade Agreement. Blaw Knox Construction Equipment Corporation, the American manufacturer, also challenged Commerce's final determination.

Commerce responded to these challenges to its final determination by requesting a remand to enable it to correct errors in computation and to conduct verification of Federal Sales Tax (FST) payments and by requesting that its decision to use best information available (BIA) and its selection of the 30.61 percent margin as the BIA rate be affirmed.

Panel Decision

On the basis of the administrative record, the applicable law, the written/submissions of the parties, and the hearing held on March 14, 1991, at which all parties were heard, the Panel:

Remanded to Commerce for redetermination of the dumping margin on approximately 75 percent of Northern Fortress's sales: (1) To correct its comparison of contemporaneous and sufficient home-market sales; (2) to verify FST payments by Northern Fortress on its home-market sales; and (3) to verify, if requested by Blaw Knox upon remand, any information used to calculate third-country sales prices or constructed values to make its dumping margin calculations;

Remanded to Commerce for redetermination of the appropriate BIA rate to be used as a dumping margin for the remaining approximately 25 percent of the sales, based on the corrected and verified information on the record as revised upon remand;

Declined to reach the issue of whether Commerce erred in making a cost of sale adjustment for the FST, pending the verification upon remand of FST payments; and

Affirmed Commerce's determination in all other respects.

The Panel directed Commerce to submit a reasoned determination consistent with the opinion no later than 90 days from the date of issuance of the opinion (by August 22, 1991).

Dated: June 3, 1991.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 91-13710 Filed 6-7-91; 8:45 am]

BILLING CODE 3510-GT-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Consolidation of Export Visa and Exempt Certification Requirements for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

June 5, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs consolidating existing export visa and exempt certification requirements.

FOR FURTHER INFORMATION CONTACT: Kim-Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In an exchange of letters dated April 18, 1991 and May 1, 1991, the Coordination Council for North American Affairs (CCNAA) and the American Institute in Taiwan (AIT), agreed to consolidate the existing provisions of the export visa and certification system into a single document in an effort to clarify and facilitate implementation of the current requirements.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel

Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 37 FR 20745, published on October 3, 1972; and 38 FR 10132, published on April 24, 1973.

Interested persons are advised to take all necessary steps to ensure that textile products that are to be entered into the United States for consumption, or withdrawn from warehouse for consumption will meet the visa requirements set forth in the letter published below to the Commissioner of Customs.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 5, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Directives dated September 27, 1972 and April 19, 1973, as amended, established export visa and exempt certification requirements for certain textiles and textile products, produced or manufactured in Taiwan. The purpose of this directive is to consolidate the existing provisions into a single document to clarify and facilitate implementation of the current requirements. Merchandise exported from Taiwan shall continue to be subject to the September 27, 1972 and April 19, 1973 directives, as amended.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Textile Agreement, effected by exchange of notes dated August 21, 1990 and September 28, 1990; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit entry into the Customs territory of the United States (i.e., the 50 states, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in Categories 200-239, 300-369, 400-469, 600-670 and 800-899, including merged and part categories (see Annex I), produced or manufactured in Taiwan and exported from Taiwan for which the Coordination Council for North American Affairs (CCNAA) has not issued an appropriate export visa fully described below. Should additional categories, merged categories or part categories be added to the bilateral agreement, or become subject to import quotas, the entire category(s) or part category(s) shall be included in the coverage of this visa arrangement. Merchandise exported on or after the date the category(s) is added to the agreement or becomes subject to import quota shall require a visa specifying the new designation.

A visa must accompany each commercial shipment of the aforementioned textile products. A circular stamped marking in blue ink will appear on the front of the original commercial invoice. The original visa shall not be stamped on duplicate copies of the invoice (also known as Textile Export Visa). The original invoice with the original visa stamp will be required to enter the shipment into the United States. Duplicates of the invoice and/or visa may not be used for this purpose.

Each visa stamp shall include the following information:

1. The visa number. The visa number shall be in the standard nine digit letter format, beginning with one numerical digit for the last digit of the year of export, followed by the two character alpha country code specified by the International Organization for Standardization (ISO)(the code for Taiwan is "TW"), and a six digit numerical serial number identifying the shipment; e.g., 1TW123456.

2. The date of issuance. The date of issuance shall be the day, month and year on which the visa was issued.

3. The signature of the issuing official.

4. The correct category(s), merged category(s), part category(s), quantity(s) and unit(s) of quantity in the shipment as set forth in the U.S. Department of Commerce Correlation shall be reported in the spaces provided within the visa stamp (e.g., "Cat. 340-510 DOZ").

Quantities must be stated in whole numbers. Decimals or fractions will not be accepted. Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment (e.g., Categories 347/348 may be visaed as 347/348 or if the shipment consists solely of 347 merchandise, the shipment may be visaed as "Cat. 347," but not as "Cat. 348").

U.S. Customs shall not permit entry if the shipment does not have a visa, or if the visa number, date of issuance, signature, category, quantity or units of quantity are missing, incorrect or illegible, or have been crossed out or altered in any way. If the quantity indicated on the visa is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the visa is more than that of the shipment, entry shall be permitted and only the amount entered shall be charged to any applicable quota.

If the visa is not acceptable then a new visa must be obtained from the CCNAA or their authorized agents, or a visa waiver may be issued by the U.S. Department of Commerce at the request of the CCNAA or their authorized agents in Washington, DC, and presented to the U.S. Customs Service before any portion of the shipment will be released. The waiver, if used, only waives the requirement to present a visa with the shipment. It does not waive the quota requirement.

If the visaed invoice is deficient, the U.S. Customs Service will not return the original document after entry, but will provide a certified copy of that visaed invoice for use in obtaining a new correct original visaed invoice, or a visa waiver.

Certain merchandise which is exempt from quantitative levels of the bilateral agreement shall require a "Non-quota Exempt Certification" prior to exportation (see Annex II).

Merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued at U.S.$250 or less, do not require a visa or exempt certification for entry and shall not be charged to the agreement levels.

The actions taken concerning Taiwan with respect to imports of textiles and textile products in the aforementioned categories have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1). This letter will be published in the **Federal Register**.

Sincerely,
Philip J. Martello,
Acting Chairman, Committee for the Implementation of Textile Agreements.

Annex I

Part Categories

Descriptions below are for general reference only.

359-C	Coveralls & Overalls
359-H	Headwear
359-O	Other
369-L	Luggage
369-S	Shoptowels
369-O	Other
640-Y	Shirts with two or more colors in the warp and/or filling
640-O	Other Shirts
641-Y	Blouses with two or more colors in the warp and/or filling
641-O	Other Blouses
659-C	Coveralls & Overalls
659-H	Headwear
659-S	Swimwear
659-O	Other
669-P	Poly Bags
669-T	Tents and Tarpaulins
669-O	Other
670-H	Handbags
670-L	Luggage
670-O	Other

Merged Categories

225/317/326
300/301/607
613/4/5/7
619/20
625/6/7/8/9
333/4/5
338/9
347/8
350/650
352/652
359-C/659-C
359-H/659-H
369-L/670-L/870
445/6
447/8
633/4/5
633/4
638/9
645/6
647/8

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Annex II

Exempt Products Requiring Exempt Certification

1. Pincushions.
2. Embroideries (needle work), of man-made fibers with designs embroidered with wool thread.
3. Handmade carpets, i.e., in which the pile was inserted or knotted by hand.
4. Christmas or Easter ornaments having a non-textile core or a non-textile structural frame and man-made fiber textile covering.
5. Martial Arts uniforms, such as Kung Fu, Karate, and Judo uniforms.
6. Toy (novelty) animals, birds or insects with a plastic wire or other non-textile core that are covered or decorated with textile thread or fiber.
7. Traditional Chinese caps.
8. Traditional Chinese garments:
   Jackets—three-quarter length or shorter, of woven fabrics, usually with Chinese figures in the weave but may be plain/woven otherwise figured or printed. They have a low Mandarin collar, long sleeves and full frontal openings, with "frog" type closures (looped fastenings made of braid, cording, etc., used with a matching knot or toggle of the same material. Fur or imitation fur-lined jackets—which may or may not be reversible and are otherwise identical in appearance and construction with the jackets described above.
   Vests—sleeveless garments extending from the neck area to waist with or without pockets at the waist. They are otherwise identical in appearance and construction with the jackets described above.

[FR Doc. 91-13705 Filed 6-7-91; 8:45 am]
BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: DoD FAR Supplement, part 243, Contract Modifications; part 249, Termination of Contracts; and § 252.2, Text of Provisions and Clauses.

Type of Request: Emergency Submission-Approval date requested: June 18, 1991.

Average Burden Hours/Minutes per Response: 1 hour.

Responses per Respondent: 1.

Number of Respondents: 1.

Annual Burden Hours: 2.

Annual Responses: 1.

Needs and Uses: Section 4201 of the National Defense Authorization Act for Fiscal Year 1991 (Pub. L. 101-510, Division D, title XLII; Defense Economic Adjustment, Diversification, Conversion, and Stabilization Act of 1990) requires the Secretary of Defense to notify the Department of Labor if a modification or termination of a major defense contract or subcontract will have a substantial impact on employment. The Act defines what constitutes a major defense contract or subcontract and establishes criteria for determining if there is a substantial impact on employment. The statute reflects Congressional concern about the economic impact on communities, businesses, and employees affected by "(1) The annual budget of the President submitted to Congress and any longer-term guidance document of the Secretary of Defense; (2) the public announcement of the realignment or closure of a military installation or defense facility; or (3) the cancellation or curtailment of a major defense contract." (sec. 4101(a) of Pub. L. 101-510) In order to comply with the requirement to provide prompt notice to the Secretary of Labor, the Department of Defense needs to know if a proposed contract modification or termination will have a substantial impact on employment, as defined in the Act and implemented in the regulation. This information can only be provided by the contractor or subcontractor affected by the modification or termination.

Affected Public: Businesses or other for-profit; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Peter Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202-4302.

Dated: June 4, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-13674 Filed 6-7-91; 8:45 am]
BILLING CODE 3810-01-M

Office of the Secretary

Defense Science Board

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board will meet in closed session on August 11-23, 1991 at the Naval Ocean Systems Center, San Diego, California.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At that time the Board will examine the substance, interrelationships, and the US national security implications of three critical areas identified and tasked to the Board by the Secretary of Defense, Deputy Secretary of Defense, and Under Secretary of Defense for Acquisition. The subject areas are: Ballistic Missile Defense, Defense Technology Strategies, and Weapon Development and Production Technology. The period of study is anticipated to culminate in the formulation of specific recommendations to be submitted to the Secretary of Defense, via the Under Secretary of Defense for Acquisition, for his consideration in determining resource policies, short- and long-range plans, and in shaping appropriate implementing actions as they may affect the U.S. national defense posture.

In accordance with section 10(d) of the Federal Advisory Committee Act (Public Law 92-463, as amended (5 U.S.C. app. II, (1988)), it has been determined that this DSB meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: June 5, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-13671 Filed 6-7-91; 8:45 am]
BILLING CODE 3810-01-M

Defense Science Board Task Force on Ballistic Missile Defense

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Ballistic Missile Defense will meet in closed session on June 19-20 and July 23-24, 1991 at Riverside Research Inc., Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will consider the requirements for tactical and theater ballistic missile defenses; their interaction and interfaces with CONUS BMD; recommendations for development and deployment options; the necessary technological underpinning; ABM treaty implications and other related policy issues.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C. app. II, (1988)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: June 5, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-13672 Filed 6-7-91; 8:45 am]
BILLING CODE 3810-01-M

Defense Logistics Agency

Department of Defense Clothing and Textiles Board; Meeting

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice of cancellation of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Deputy Director for Acquisition Management, Defense Logistics Agency, announces cancellation of the sixth meeting of the Department of Defense Clothing and Textiles (DoD C&T) Board (56 FR 24178, May 29, 1991).

DATED: June 12, 1991.

ADDRESSES AND TIMES: Defense Logistics Agency, Cameron Station, room 3A280, Alexandria, Virginia, 1000-1600.

FOR FURTHER INFORMATION CONTACT: Ms. Maxine James; Quality Assurance Specialist, Product Quality Management Division, Defense Logistics Agency, Department of Defense, Cameron Station, Alexandria, VA, (703) 274-7141.

Capt M. J. Schildwachter, USN,

Executive Secretary, DoD C&T Board.

[FR Doc. 91-13838 Filed 6-7-91; 8:45 am]
BILLING CODE 3820-01-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Naval Research Advisory Committee Panel on Open Systems Architecture for Command, Control and Communications (C^3) will meet on June 13 and 14, 1991. The meeting will be held at the Center for Naval Analysis, 4401 Ford Avenue, Alexandria, Virginia. The meeting will commence at 8 a.m. and terminate at 4:30 p.m. on June 13; and commence at 8 a.m. and terminate at 4 p.m. on June 14, 1991. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide technical briefings to the panel members to enable them to assess the ability of current Navy C^3 systems' architecture to support anticipated requirements, evaluate the performance of the present system relative to the existing threat, provide recommendations for an overall architecture to meet future needs, and provide recommendations concerning use of current and future commercial data communication systems for both interim and continuing satisfaction of Department of the Navy needs. The agenda will include briefings and discussions related to current C^4 Acquisition Policy and Standards, C^4 Acquisition Guidelines and Security Requirements, C^4 Languages, Comparative C4/Multi-level Security (MLS) Ventures, ASW C3I C4 Requirements, C3 Systems Survivability, Interactive Display Systems, and Desert Shield/Storm Lessons Learned. These briefings and discussions will necessarily address current C3 Capabilities and limitations, emerging C^3 technologies and anticipated limitations, and respective susceptibility to penetration or denial. These briefings and discussions contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense an are in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

This notice is being published late because of administrative delays which constitute an exceptional circumstance, not allowing notice to be published in the **Federal Register** at least 15 days before the date of this meeting.

For further information concerning this meeting contact: Captain Gerald Mittendorff, USN, Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000, telephone number (703) 696-4870.

Dated: May 30, 1991

G.B. Roberts,

Lt Col, USMC, Federal Register Liaison Officer.

[FR Doc. 91-13739 Filed 6-7-91; 8:45 am]
BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of the Republic of Indonesia concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval for the sale of the 32 kilograms of uranium, enriched to 19.75 percent in the isotope uranium-235, for manufacture of fuel elements for the Bataan reactor in Indonesia.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner that fifteen days after the date of publication of this notice.

Issued in Washington, DC on June 4, 1991.

Richard H. Williamson,

Associate Deputy Assistant Secretary for International Affairs.

[FR Doc. 91-13723 Filed 6-7-91; 8:45 am]
BILLING CODE 6450-01-M

Energy and Environmental Research Corp.; Development of a Reburning Boiler Performance Model

AGENCY: U.S. Department of Energy.

ACTION: Acceptance of an unsolicited application for a grant award with Energy and Environmental Research Corporation.

SUMMARY: The Department of Energy (DOE), Pittsburgh Energy Technology Center announces that pursuant to 10 CFR 600.14 (D) and (E), it intends to award a Grant based on an unsolicited

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application submitted by Energy & Environmental Research Corporation for the "Development of a Reburning Boiler Performance Model."

SCOPE: The objective of this project is to develop a computational capability for analysis of coal-fired boilers utilizing gas reburn which:

- Can predict the impact of gas reburning on thermal conditions in the boiler radiant furnace and on overall boiler performance.
- Can estimate gas reburning NO_x reduction effectiveness base on specific reburning and furnace/boiler configurations.
- Can evaluate the impact of boiler process parameters (e.g., fuel switching and changes in boiler operating conditions) on boiler thermal performance.
- Is adaptable to most boiler designs (tanential and wall fired boilers), and a variety of fuels (solid, liquid, gaseous, and slurried).
- Can easily be used by technical personnel with reasonable boiler knowledge and computer skills.

EER is recognized for its comprehensive and expertise in gas reburning and boiler performance modelling, and has proposed to integrate its existing modelling capability into the development of the gas reburning performance model. In addition, EER is uniquely positioned to incorporate gas reburning NO_x reduction effectiveness data being obtained in EER's Clean Coal I and III Demonstration Programs. The proposed project will result in a state-of-the-art, non-proprietary reburning boiler performance model made available to the public.

In accordance with 10 CFR 600.14 (D) and (E), EER has been selected as the grant recipient. DOE support of this activity will benefit the public by providing the analytical capability to assess reburning as NO_x control strategy in coal-fired boilers. This activity is considered meritorious and is not eligible for financial assistance under a recent, current or planned solicitation. Moreover, DOE has determined that a competitive soliciation would be inappropriate.

The term of the grant is for a six-month period at an estimated value of $145,000. The DOE share of this estimate is $48,333, with the remainder to be provided by sources external to the U.S. Government.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921-165, Pittsburgh, PA 15236, Attn: Norey B. Laug, Telephone: AC (412) 892-4827.

Dated: May 28, 1991.

Carroll A. Lambton,

Acting Director, Acquisition and Assistance Division, Pittsburgh Energy Technology Center.

[FR Doc. 91-13725 Filed 6-7-91; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award Intent To Award Grant to Mobile Zone Designs

AGENCY: U.S. Department of Energy.

ACTION: Notice of unsolicited application financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(2) it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) to Mobile Zone Designs under Grant Number DE-FG01-91CE 15489. The proposed grant will provide funding in the estimated amount of $75,000 for the purpose of developing an improved spray paint booth engineering prototype. The Mobile Zone spray paint booth ventilation system is an energy and environmental improvement over existing methods for spray painting and other surface coating operations. Assuming reasonable market penetration, the technology could have a significant impact on energy conservation.

The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the application submitted by Mobile Zone Designs is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. The invention is a unique approach that utilizes a mobile cab to protect the painter from direct contact with air toxins and volatile organic compounds (VOC) emissions. The operator remains in the clean air zone at all times and is not required to wear any protective gear. NIST rates the commercial feasibility of the technology as promising. There is a well defined market for the invention as its primary competition will be 100 percent makeup air systems. The payback period for the invention could be as low as 2.4 years when used in a multishift operation. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy-Related Inventions Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

The anticipated term of the proposed grant is 18 months from the date of the award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, PR-322.2, 1000 Independence Ave., SW., Washington, DC 20585

Thomas S. Keefe,

Director, Operations Division "B", Office of Placement and Administration.

[FR Doc. 91-13726 Filed 6-7-91; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award; Intent To Award Grant to North Dakota State University

AGENCY: Department of Energy.

ACTION: Notice of unsolicited application financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(2), it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) to North Dakota State University, Mr. John Lukach, principal investigator, under Grant Number DE-FG01-91CE15474. The proposed grant will provide funding in the estimated amount of $85,378 to gather data on the ability of the Mikkelsen Sweep-Spike Combination Tillage Tool to reduce costs and energy by simultaneously performing multiple functions in one pass on three different crops.

The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the application submitted by Mr. Donald Anderson, Director of Station Research at the Langdon Research Center, is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. The invention pertains to saving energy and costs in farming by simultaneously performing tillage, cultivation, and spreading of fertilizer and herbicide in one field pass. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy-Related Inventions Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

The anticipated term of the proposed grant is 36 months from the date of the award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, PR-322.2, 1000 Independence Ave., SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Operations Division "B", Office of Placement and Administration.

[FR Doc. 91-13727 Filed 6-7-91; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award Intent To Award Grant to Superior I.D. Tube Cleaners, Inc.

AGENCY: U.S. Department of Energy.

ACTION: Notice of unsolicited application financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(2) it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) to Superior I.D. Tube Cleaners, Inc., Grant Number DE-FG01-91CE15508. The proposed grant will provide funding in the estimated amount of $79,870 to further demonstrate and test the patented power plant, on-line condenser tube cleaning system and determine its effectiveness against biofouling agents.

The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the application submitted by Superior I. D. Tube Cleaners, Inc., is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. The invention is a patented design for power plant condenser tube cleaning. The NIST evaluation report cites the fact that "the energy relation between fouled heat exchanger tubes versus clean tubes is well established." Steam condenser performance has a major impact on power plant efficiency and economics. Condenser tube fouling and corrosion both affect the performance of steam condensers by way of efficiency. The use of this cleaning device will save energy by way of operation of the plant at improved efficiency and increased plant availability. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy-Related Inventions Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

The anticipated term of the proposed grant is 18 months from the date of the award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, PR-322.2, 1000 Independence Ave., SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Operations Division "B" Office of Placement and Administration.

[FR Doc. 91-13728 Filed 6-7-91; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award Intent To Award Grant to Utilitip, Inc.

AGENCY: U.S. Department of Energy.

ACTION: Notice of unsolicited application financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(2) it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) to Utilitip, Inc., under Grant Number DE-FG01-91CE15464. The proposed grant will provide funding in the estimated amount of $87,000 for the purpose of developing the Utilitip chain saw tip stabilizer. The Utilitip provides both a safety and an efficiency enhancement to chain saw users. Assuming reasonable market penetration, the technology could have a significant impact on energy conservation.

The Department of Energy has determined in accordance with 10 CFR 600.14(f) that the application submitted by Utilitip, Inc., is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique idea that could not be eligible for financial assistance under a recent, current or planned solicitation. The invention, "Utilitip", or spike attachment acts as a pivot for the tip of the chain saw; and it makes wood harvesting safer and easier, reduces wear of the energy-intensive attachments such as guidebars and saw chain, and decreases gasoline and oil used to power and lubricate chain saws. The National Institute of Standards and Technology (NIST) estimates that when the device is used on a conventional chain saw, it will result in 20-percent energy savings. NIST also estimates that the device could result in indirect energy savings of 22.8 million barrel of oil equivalent (BOE), due to fuel substitution to wood. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy-Related Inventions Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation. The anticipated term of the proposed grant is 18 months from the date of the award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, ATTN: Rose Mason, PR-322.2, 1000 Independence Ave., SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Operations Division "B", Office of Placement and Administration.

[FR Doc. 91-13729 Filed 6-7-91; 8:45]

BILLING CODE 6450-01-M

Office of Energy Research

Special Research Grant Program Notice 91-13: Carbon Dioxide Capture, Utilization and Disposal Research Needs Assessment

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Energy Research (OER) of the Department of Energy (DOE) announces its interest in receiving applications for a Special Research Grant (SRG) that seek support for conducting a research needs assessment in the area of carbon dioxide capture, utilization and disposal as it relates to existing and future fossil energy electric power plants.

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Applicants must include a description of the planned methodology that will be used in assessing long-term (up to 20 years) research directions, opportunities, priorities, and degrees of difficulty in accomplishing identified research opportunities.

Applicants must enlist the aid of experts from academia and industry to identify, describe, and assess on a worldwide basis, the most promising new (i.e., beyond state-of-the-art) developments, applications, and opportunities in low-cost technologies for capturing, utilizing and permanently disposing of carbon dioxide emissions from large fossil energy electric power plants. Research directions and opportunities identified under the assessment should be those that have the highest potential for prevention of carbon dioxide release, efficiency of energy use, low cost, and environmental compatibility.

The purpose of this activity is to identify and disseminate, for world-wide use, priority research needs for capturing, disposing and utilizing of carbon dioxide from fossil energy electric power plants.

DATES: To permit timely consideration for an award in Fiscal Year 1992, formal applications submitted in response to this notice should be received by July 17, 1991.

ADDRESSES: Formal applications sent by U.S. Mail should be addressed to: U.S. Department of Energy, Office of Energy Research, Division of Acquisition and Assistance Management, ER–64, Washington, DC 20585, ATTN: Program Notice 91–13. The following address must be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when handcarried by the applicant: U.S. Department of Energy, Office of Energy Research, Division of Acquisition and Assistance Management, ER–64/GTN, 19901 Germantown Road, Germantown, MD 20874.

FOR FURTHER TECHNICAL INFORMATION: Contact Dr. Derek Winstanley, Office of Program Analysis, Office of Energy Research, ER–32, U.S. Department of Energy, Washington, DC 20585, (301) 353–3069.

SUPPLEMENTARY INFORMATION: Many scientists believe that increases in greenhouse gases in the atmosphere may cause climate changes to occur. In order to help prevent climate change, society may wish to reduce the emissions of greenhouse gases to the atmosphere, including carbon dioxide. The utility sector accounts for about 30 percent of U.S. carbon dioxide emissions from fossil fuels.

Several technological approaches may reduce the emissions of carbon dioxide. These approaches include improving the efficiency of fossil fuel conversion systems, changing combustion processes, and removal and sequestering of carbon dioxide from power plant waste gas streams. The latter two approaches are the focus of the current invitation for grant applications.

The principal investigator of the research needs assessment must be an individual who is competent and accomplished in appropriate scientific and technical areas and in conducting research needs assessments. Competence and accomplishments shall be described in the application and include industrial and academic experience; research publications; contributions while serving as an expert; consultant services; honors and awards; and education, including advanced degrees and other academic qualifications. The principal investigator also shall be an individual with demonstrated ability to conduct research needs assessments and manage individual experts and groups of experts in the timely and successful identification, analysis, distillation and documentation of scientific and technical information. These demonstrated abilities shall be documented in the application.

The applicant, in order to address adequately and competently the full scope of this endeavor and at sufficient technical depths in all major topical areas, must enlist the aid of other scientific/technical experts. The application shall provide tentative identification of all proposed experts and their present affiliation. All experts, both foreign and domestic, are to be individuals who are competent and accomplished in a scientific or technical discipline directly related to the research assessment. Technical competence and accomplishments of each expert shall be described in the application and should include the individual's experience, research publications, consultant services, contributions while serving as an expert with other groups, honors and awards, professional experience, and education including advanced degrees and other academic qualifications. The expected contribution of each expert to the assessment's objectives should be identified. The overall technical expertise of the group of experts, when combined with the technical expertise of the principal investigator, should be shown to be adequate to cover the various scientific and technical disciplines involved in the research needs assessment.

These experts will assist the principal investigator in accomplishment of the assessment's objectives, especially in writing major sections of the required final report. They are also expected to conduct technical discussions with other experts, specialists, researchers, and research program managers in the scientific and technical areas; conduct site visits to laboratories and other facilities where research and development directly related to the subject area is conducted and managed; and review and evaluate recent and relevant research including scientific and technical literature.

The initial composition of a group of experts, other consultants, and any subsequent changes must be approved by the Program Manager and Contracting Officer.

Applications also should include the following: A schedule of the assessment's major activities including the tentative content of meetings of various teams of the experts; a description of anticipated site visits to publicly and privately funded facilities; a description of all conferences to be attended as a part of assessment activities; the methodology for determining research directions, opportunities, and priorities; and a description of the methodology for obtaining a peer review of the assessment results.

Applicants are expected to supply the personnel, facilities, and materials necessary to accomplish the objectives of the assessment as described in this notice.

APPLICATION AND AWARD INFORMATION: Information about submission of applications, eligibility, limitations, evaluation, and selection processes, and other policies and procedures may be found in the Application and Guide for the Special Research Grant Program. The application kit and guide, and copies of 10 CFR Part 605 are available from the Office of Energy Research, Office of Program Analysis, ER–32, Washington, DC 20585. Instructions for preparation of an application are included in the application kit. Telephone requests may be made by calling (301) 353–3122 or FTS 233–3122. The Catalog of Federal Domestic Assistance number for this program is 81.049.

Subject to the availability of appropriated FY 1992 funds, one grant award at approximately $300,000 is planned for the first quarter of FY 1992.

Issued in Washington, DC on May 22, 1991.

D.D. Mayhew,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 91–13731 Filed 6–7–91; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 91–15–NG]

Portland General Electric Co.; Order Granting Blanket Authorization To Import Canadian Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to import Canadian natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Portland General Electric Company blanket authorization to import up to 40 Bcf of Canadian natural gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, U.S. Department of Energy, 1000 Independent Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 3, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–13730 Filed 6–7–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

Duke Power Co., Notice of Availability of Environmental Assessment

[Project No. 2503–021 South Carolina]

June 3, 1991

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application for amendment of Exhibits R and K for the Keowee-Toxaway Project to allow Duke Power Company (licensee) to incorporate 49 acres of additional property into the project boundary and to lease this 49-acre parcel, along with other lands previously approved for recreation development, to the South Carolina Department of Parks, Recreation, and Tourism in order to construct a public park. The facility will be located in Oconee County, South Carolina, on the Lake Jocassee development.

The staff of OHL's Division of Project Compliance and Administration has prepared an Environmental Assessment (EA) for the proposed action. In the EA, the staff concludes that approval of the amendment would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, room 3308, of the Commission's offices at 941 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 91–13614 Filed 6–7–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP72–110–052]

Algonquin Gas Transmission Co. Filing of Report of Refund

June 3, 1991.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on January 7, 1991 tendered for filing a Report of Refund to flow through to Algonquin's customers a refund received from Texas Eastern Transmission Corporation ("Texas Eastern").

Algonquin states that on December 28, 1990, it received from Texas Eastern a refund in the amount of $37,158.06.

Algonquin states that the $37,158.06 refund received from Texas Eastern is a flow through of Algonquin's portion of a refund made to Texas Eastern pursuant to the provisions of the Federal Energy Regulatory Commission's ("Commission") "Order Approving Settlement", issued December 31, 1986, approving the Stipulation and Agreement filed on October 23, 1986 in Docket Nos. CI64–20, *et al.*

Algonquin states that since this amount was refunded to Algonquin in relation to the underdeliveries Algonquin experienced from Texas Eastern, such refund is being returned on the basis of the calculated differences between each individual customer's curtailment that would have occurred had Texas Eastern received the Gulf Oil Corporation ("Gulf") underdeliveries.

Algonquin further states that such refund method is the same as that approved by the Commission's Orders dated March 6, 1986, October 3, 1983, April 9, 1984, October 10, 1984, April 19, 1985, November 13, 1985, April 9, 1986, October 7, 1986, February 5, 1987, May 15, 1987, October 20, 1987, March 17, 1988, October 11, 1988, August 7, 1989, August 9, 1989, September 1, 1989 and March 27, 1990 relating to Algonquin's Refund Reports filed June 23, 1982, July 12, 1982, February 5, 1983, August 3, 1983, February 3, 1984, August 1, 1984, January 29, 1985, July 30, 1985, January 28, 1986, July 29, 1986, August 28, 1986, February 10, 1987, May 15, 1987, July 28, 1987, January 27, 1988, July 5, 1988, December 30, 1988, July 5, 1989 and January 2, 1990 flowing through similar Gulf refunds from Texas Eastern.

Algonquin notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–13605 Filed 6–7–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–65–002]

Arkla Energy Resources, a division of Arkla, Inc.; Filing to Place Motion Rates into Effect

June 4, 1991.

Take notice that on May 31, 1991, Arkla Energy Resources ("AER") a division of Arkla, Inc., filed to move into effect, pursuant to § 154.67 of the Commission's regulations, certain rates and the revised primary and alternate tariff sheets listed below to Second Revised Volume No. 1 and First Revised Volume No. 1–A of its FERC Gas Tariff. AER requests that the Commission accept the primary tariff sheets for filing and permit them to become effective July 1, 1991.

Second Revised Volume No. 1

Third Revised Sheet No. 11
Third Revised Sheet No. 16

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First Revised Volume No. 1-A
Second Revised Sheet No. 5

Second Revised Volume No. 1
Alternate Third Revised Sheet No. 11
Alternate Third Revised Sheet No. 16

First Revised Volume No. 1-A
Alternate Second Revised Sheet No. 5

AER states that both sets of tariff sheets are filed pursuant to the Commission's January 31, 1991 order in Docket No. RP91-65-000. In the primary tariff sheets, AER has included the costs associated with the 450 MMcf per day of Line AC capacity that AER included in its December 31, 1990 filing in this proceeding.[1] The alternate tariff sheets reflect AER's compliance with ordering paragraph (C) of the January 31 order that the Line AC costs be eliminated from rate base.

AER states that a copy of its motion and the accompanying tariff sheets have been served on all jurisdictional customers and interested state commissions, and on all parties on the Commission's official service list in Docket No. RP91-65-000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13617 Filed 6-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-6-22-001]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 3, 1991.

Take notice that CNG Transmission Corporation ("CNG"), on May 29, 1991, pursuant to Section 4 of the Natural Gas Act, the Stipulation and Agreement approved by the Commission on October 6, 1989, in Docket Nos. RP88-217-000, *et al.*, Section 12.9 of the General Terms and Conditions of CNG's FERC Gas Tariff, and Order Nos. 528 and 528-A, filed the following revised tariff sheets to First Revised Volume No. 1 of CNG's FERC Gas Tariff.

Substitute Second Revised Sheet No. 45
Substitute Third Revised Sheet No. 45

The proposed effective date for Second Revised Sheet No. 45 is May 21, 1991. The proposed effective date for Substitute Third Revised Sheet No. 45 is June 20, 1991.

The purpose of this filing is to correct the tariff sheets originally filed May 20, 1991, in Docket No. TM91-6-22-000. Accordingly, CNG also withdraws "Second Revised Sheet No. 45" and "Third Revised Sheet No. 45" filed on May 20, 1991.

CNG states that copies of this filing was mailed CNG's jurisdictional customers and interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13611 Filed 6-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-161-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 3, 1991.

Take notice that on May 31, 1991, Columbia Gas Transmission Corporation (Columbia) tendered for filing proposed changes to its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2. The proposed tariff sheets, identified in appendices A and B attached to the filing bear an issue date of May 31, 1991, and proposed effective dates of July 1, 1991, although Columbia states that it will not move the appendix B tariff sheets into effect prior to April 1, 1992, consistent with the terms of the Global Settlement in Docket No. RP86-168-000, *et al.* The instant filing (a) implements a general rate increase in order to permit recovery of increased costs since the last section 4 general rate proceeding, (b) implements other changes in the cost of service, throughput and demand billing determinants through the end of the test period, (c) proposes certain changes to Columbia's FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2, and (d) proposes certain changes in cost classification, cost allocation, and rate design to be effective April 1, 1992, including a market-based interruptible transportation service (ITS) rate during the winter.

Columbia states that the appendix A tariff sheets submitted with the filing to be effective July 1, 1991, reflect the following primary elements:

(1) Revised non-gas sales, transportation and storage service rates based upon a cost of service for the twelve months ended February 28, 1991, adjusted for known and measurable changes anticipated to occur on or before November 30, 1991,

(2) The cost classification, cost allocation and rate design methodology established in the Global Settlement, and the cost functionalization utilized in Docket No. RP86-168, in accordance with article I, section E of the Global Settlement;

(3) A WS "break-even adjustment" as required by article VI, section 1 of the Global Settlement;

(4) A representative level of revenue attributable to discounted transportation;

(5) Revisions to section 2 of the General Terms and Conditions of the Tariff to provide for electronic measurement of gas;

(6) Revisions of section 3 of the General Terms and Conditions of the Tariff to clarify application of the quality standards for the gas stream;

(7) The addition of section 24 to the General Terms and Conditions, a revision to section 10 of the General Terms and Conditions, and revisions to other provisions of the Tariff to provide for scheduling of gas by customers except small general service (SGS) customers;

(8) A revision to the OS Rate Schedule to provide for withdrawal of 90% of a customer's Winter Contract Quantity by the end of each Winter Period in order to provide operational integrity for Columbia's storage reservoirs;

(9) A revision to the OPT Rate Schedule to clarify the delivery point interruptibility of the service vis-a-vis other firm services; and

(10) Submission of proposed X-Rate Schedule 134 in order to collect a compression charge for service provided to North Carolina Natural Gas Corporation in accordance with the agreement between the parties.

Columbia further states that the appendix B tariff sheets submitted with the filing, which will not be moved into effect until April 1, 1992, reflect the following primary elements:

(1) Classification of the fixed costs, excluding return on equity and related taxes, associated with gathering, products extraction and other gas supply costs to demand;

(2) Allocation of all storage costs to sales and generally available transportation services;

(3) Seasonal ITS rates, with a summer season rate based on a 150% load factor of the FTS rate and a winter season rate based on a 100% load factor of the FTS rate;

(4) A market-based pricing proposal under the ITS Rate Schedule by which interruptible capacity is allocated each month to the shippers bidding the highest price, up to a cap based on a 50% load factor of the FTS rate; and

(5) An adjustment to the standby service rate to include the Columbia Gulf commodity 858 costs which are billed to Columbia on a fixed basis, as more fully discussed in the Statement P testimony.

Columbia states that its proposed rates result in approximately $48.6 million of additional revenue annually compared to the underlying rates in Docket No. RP90-108 which became effective January 1, 1991, subject to refund.

Columbia states that copies of the filing were served upon Columbia's wholesale customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filings are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13602 Filed 6-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-160-000]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

June 3, 1991.

Take notice that on May 31, 1991, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing revised changes in its FERC Gas Tariff, First Revised Volume No.1 with a proposed effective date of July 1, 1991.

Columbia Gulf states that the purpose of the filing is to provide for the level of rates and charges required to recover its costs. When compared to the underlying rates in Second Revised Docket No. RP90-107, which will become effective June 1, 1991, subject to refund, the proposed change in rates shows an annual revenue increase of approximately $8.1 million.

Columbia Gulf states that the proposed rates reflect the cost functionalization, cost classification, cost allocation and rate design methodology established in the Global Settlement in Docket No. RP86-167, in accordance with article I, section E of the Global Settlement, and a projected level of transportation volumes and revenues.

Columbia Gulf also states that the tariff sheets reflect the following primary changes:

1. Revised non-gas transportation rates based upon a cost of service for the twelve months ended February 28, 1991, adjusted for known and measurable changes anticipated to occur on or before November 30, 1991.

2. Revisions of sections 1 and 2 of the "General Terms and Conditions" of Columbia Gulf's FERC Gas Tariff, First Revised Volume No. 1 relating to the measurement of gas by electronic measurement.

3. Revisions to section 3 of the "General Terms and Conditions" of Columbia Gulf's FERC Gas Tariff, First Revised Volume No. 1 relating to Columbia Gulf's ability to refuse to accept gas which contains substances harmful to its pipeline system or operations.

4. Interruptible transportation service (ITS) rates, to be effective April 1, 1992, based on a 100% load factor of the firm transportation service (FTS) rates.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia Gulf's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13603 Filed 6-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-21-001 and TM91-8-21-001]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 3, 1991.

Take notice that Columbia Gas Transmission Corporation (Columbia) on May 30, 1991, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1:

Effective May 1, 1991
Substitute Tenth Revised Sheet No. 26
Substitute Tenth Revised Sheet No. 26A
Substitute Tenth Revised Sheet No. 26B

Effective June 1, 1991
Substitute Eleventh Revised Sheet No. 26
Substitute Eleventh Revised Sheet No. 26A
Substitute Eleventh Revised Sheet No. 26B

Columbia states that the foregoing tariff sheets are being filed in compliance with the Commission's order issued April 30, 1991 in Docket Nos. TA91-1-21-000 and TM91-8-21-000. Such order directed Columbia to: (1) File revised tariff sheets to correct math errors and to reflect the removal of the Tennessee demand charges from its PGA surcharge rate: (2) file revised tariff sheets to reflect the recomputation of both the commodity and demand portions of its Account 191 Surcharge; (3) explain why certain of its actual gas purchases for the year 1990 appeared to exceed the maximum lawful price; and (4) correct certain errors in the electronic version of the filing.

The aforementioned changes resulted in an increase of $.003 per Dth applicable to the Demand Surcharge rate and a decrease of .14¢ per Dth applicable to the Commodity Surcharge rate.

Columbia is also including in the instant filing, tariff sheets to be effective June 1, 1991. Subsequent to Columbia filing its Annual PGA, Columbia made a compliance filing on May 24, 1991 in Docket No. RAP90-108 to be effective June 1, 1991. This rate level reflects the Columbia Gulf costs per Columbia's

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approved settlement in Docket No. RP89–250. Therefore, Columbia's rate level effective June 1, 1991 is being revised solely to reflect the revised PGA rates effective May 1, 1991.

Columbia Gas states that copies of the filing was served upon the parties to the proceeding, Columbia's wholesale customers and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–13606 Filed 6–7–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ91–4–2–000]

East Tennessee Natural Gas Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

June 4, 1991.

Take notice that on May 31, 1991, East Tennessee Natural Gas Company (East Tennessee) submitted for filing ten copies each of Seventh Revised Sheet Nos. 4 and 5 to First Revised Volume No. 1 of its FERC Gas Tariff to be effective July 1, 1991.

East Tennessee states that the purpose of the revisions to Seventh Revised Sheet Nos. 4 and 5 is to reflect a Purchased Gas Adjustment (PGA) to East Tennessee's Rates for the quarterly period of July 1991–September 1991 pursuant to section 21 of the General Terms and Conditions of East Tennessee's Tariff.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commissiion and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–13618 Filed 6–7–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–162–000]

El Paso Natural Gas Co.; Tariff Filing

June 4, 1991.

Take notice that on May 31, 1991, pursuant to part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act and in accordance with sections 21 and 22, Take-or-Pay Buyout and Buydown Cost Recovery, of El Paso Natural Gas Company's ("El Paso") Second Revised Volume No. 1 and First Revised Volume No. 1–A FERC Gas Tariffs, respectively, El Paso tendered for filing and acceptance certain tariff sheets that reflect a revision to the Monthly Direct Charge and Throughput Surcharge based on additional buyout and buydown costs not included in any of El Paso's previous filings to recover certain buyout and buydown costs, amounts in litigation that have been settled as permitted to be recovered pursuant to El Paso's tariff, and adjustments to previous filings made by El Paso to recover certain buyout and buydown costs.

The adjustments proposed by the filing are for adjustments to El Paso's Monthly Direct Charge and Throughput Surcharge (increase from $.2648 per dth to $.2765 per dth.)

Pursuant to section 21.6 of El Paso's Volume No. 1 Tariff, El Paso is required to file with the Commission certain information supporting the buyout and/or buydown amounts paid. Accordingly, El Paso states that it submitted concurrently, under separate cover letter, the schedules reflecting such information for which El Paso has requested confidential treatment.

El Paso respectfully requested that the Commission accept the tendered tariff sheets to become effective July 1, 1991.

El Paso states that copies of the filings were served upon all interstate pipeline system sales and transportation customers of El Paso and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–13619 Filed 6–7–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–158–000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

June 3, 1991.

Take notice that on May 31, 1991, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, the following tariff sheets:

Second Revised Volume No. 1

Eighteenth Revised Sheet No. 8
Sixth Revised Sheet No. 8A
Fifth Revised Sheet No. 8B

Original Volume No. 3

Fifth Revised Sheet No. 1039

FGT states that section 25 contains tariff language that establishes a mechanism to permit recovery of transitional costs via a volumetric surcharge. The instant filing reflects transitional costs included in the TCR Account by FGT since September 30, 1990. FGT's first transitional cost recovering filing was made in Docket No. RP91–38–000 filed on November 30, 1990. FGT is now filing its second cost recovery filing to reflect a TCR surcharge for the 6 months commencing July 1, 1991.

FGT further states that the instant filing reflects FGT's continued efforts to reform its gas supply portfolio in recognition of the transition occurring on the FGT system in which all customers of FGT benefit through the restructuring

of services agreed to in the October 17, 1989 settlement in Docket No. RP89–50, *et al.* The buy-outs from the applicable contracts with three of its producer-suppliers required FGT to incur approximately $12 million in transitional costs, while at the same time reducing FGT's potential take-or-pay liability and future costs by a substantial amount. Through the various settlements, FGT was able to reduce purchase obligations through the remaining life of the underlying contracts, and maintain its WACOG at a competitive level to prevent further erosion in its market and hence avoid the incurrence of additional take-or-pay liability.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–13606 Filed 6–7–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–164–000]

Granite State Gas Transmission, Inc.; Changes in Rates

June 4, 1991.

Take notice that on May 31, 1991, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581–5039, filed the revised tariff sheets, listed below, in its FERC Gas Tariff, Second Revised Volume No. 1 and First Revised Volume 2 containing changes in rates for effectiveness on July 1, 1991:

Second Revised Volume No. 1

Seventh Revised Sheet No. 21
First Revised Sheet No. 36
First Revised Sheet No. 123
First Revised Sheet No. 222

First Revised Volume No. 2

First Revised Sheet No. 28

According to Granite State, the foregoing revised tariff sheets propose changes in the Base Tariff Rates for wholesale sales of natural gas to its two jurisdictional customers, Bay State Gas Company and Northern Utilities, Inc. (Northern Utilities) and a change in the rate for a transportation service for Northern Utilities. Granite State further states that the proposed rate changes are based on a cost of service for the twelve months of actual experience ended March 31, 1991, adjusted for changes that are known and measurable with reasonable accuracy and which will become effective within nine months thereafter.

Granite State further states that its existing Base Tariff Rates were established, effective November 27, 1990, in a restatement filing in Docket No. RP91–12–000. According to Granite State, the cost of service underlying the restatement filing revealed that it was substantially under-collecting the filing revealed that it was substantially under-collecting the non-gas costs allocated to its sales rates and the rate for the transportation service provided for Northern Utilities. It is stated that the test period cost of service in this filing includes costs for recent additions to gas plant during the base period, projected additions to plant during the test period, adjusted operating and maintenance expenses, depreciation and ad valorem taxes. It is also stated that the cost of service includes the annual amortization of Granite State's investment to convert a leased crude oil pipeline to natural gas service, approved by the Commission in *Granite State Gas Transmission, Inc.*, 40 FERC ¶ 61,165 (1987). According to Granite State, the adjusted test period cost of service reflects its current costs for its debt and equity capital and related income taxes and an overall rate of return of 13.32 percent is claimed on the adjusted test period rate base which includes an implicit return of 15.75 percent on the equity component of the capital investment.

Granite State states that copies of its filing were served upon its customers and the regulatory commissions of the states of Maine, New Hampshire and Massachusetts and the Public Advocate of the State of Maine.

Any person desiring to be heard or to make any protest with reference to said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedures 18 CFR 385.211 and 214. All such motions or protests should be filed on or before June 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–13620 Filed 6–7–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–163–000]

Louisiana-Nevada Transit Co.; Proposed Changes to FERC Gas Tariff

June 4, 1991

Take notice that on May 31, 1991, Louisiana-Nevada Transit Company ("LNT") tendered for filing proposed changes to the rates applicable to Rate Schedules FTS–1 and ITS–1 of its FERC Gas Tariff, First Revised Volume No. 1. The proposed increase in rates under the foregoing rate schedules of $.0169 per Mcf will result in an increase in jurisdictional rates of $81,832, based on actual costs for the period ending December 31, 1991. The proposed changes are filed pursuant to the requirement of the settlement approved in Docket No. RP88–116 that required LNT to refile its rates by June 1, 1991. The proposed changes are to be effective June 1, 1991.

LNT's filing also reflects the cancellation pursuant to Part 154 of the Commission's regulations of Rate Schedule G–1, which includes sales service to Arkansas Louisiana Gas Company ("Arkla") and cancellation of Volume II of LNT's FERC Gas Tariff, which includes Rate Schedule X–2 pertaining to service to United Gas Pipe Line company ("United"). LNT states that the contracts underlying such service have expired and sales pursuant thereto have not been made in several years. LNT concurrently has filed for application for abandonment respecting the foregoing pursuant to section 7(b) of the Natural Gas Act.

LNT further states that copies of its filing have been served upon each of its jurisdictional customers and the Public Service Commissions in the states of Arkansas and Louisiana.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of

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Practice and Procedure. All such motions or protests should be filed on or before June 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13621 Filed 6-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-3-5-000]

Midwestern Gas Transmission; Proposed Changes in FERC Gas Tariff

June 4, 1991.

Take notice that on May 31, 1991, Midwestern Gas Transmission Company (Midwestern), tendered for filing Twenty-sixth Revised Sheet No. 5 and Twenty-first Revised Sheet No. 6 to First Revised Volume No. 1 of its FERC Gas Tariff, to be effective July 1, 1991.

Midwestern states that the purpose of the filing is to reflect a Quarterly PGA rate adjustment to its sales rates for the period of July 1 through September 30, 1991.

Midwestern states that the tariff filing has been mailed to all customers and affected state regulatory commissions shown on the service list.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13622 Filed 6-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-158-000]

Northern Border Pipeline Co.; Proposed Changes in FERC Gas Tariff

June 3, 1991.

Take notice that on May 29, 1991, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border's F.E.R.C. Gas Tariff, Original Volume No. 1, the following revised tariff sheets:

Eleventh Revised Sheet No. 157
Tenth Revised Sheet No. 158
Second Revised Sheet No. 406
First Revised Sheet No. 427

Northern Border has requested that these revised tariff sheets be effective July 1, 1991.

Northern Border states that the purpose of these tariff sheets is to revise the Maximum Rate and Minimum Revenue credit under Rate Schedule IT-1 as called for by Northern Border's tariff every six months and to reflect the change of address for Northern Border to 1111 South 103rd Street, Omaha, Nebraska 68124-1000.

Northern Border states that Eleventh Revised Sheet No. 157 and Tenth Revised Sheet No. 158 reflect the revised Maximum Rate and Minimum Revenue Credit effective July 1, 1991 through December 31, 1991 in accordance with Northern Border's tariff provisions under Rate Schedule IT-1. Northern Border proposes to decrease the Maximum Rate from 4.778 cents per 100 Dekatherm-Miles to 4.246 cents per 100 Dekatherm-Miles and increase the Minimum revenue credit from 2.821 cents per 100 Dekatherm-Miles to 2.937 cents per 100 Dekatherm Miles. These revisions do not produce any change in Northern Border's total revenue requirement due to its cost of service form of tariff.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 10, 1991. Protests will be considered but not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13609 Filed 6-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-6-59-000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 4, 1991.

Take notice that Northern Natural Gas Company, (Northern), on May 31, 1991, tendered for filing changes in its F.E.R.C. Gas Tariff, Third Revised Volume No. 1 (Volume No. 1 Tariff) and Original Volume No. 2 (Volume No. 2 Tariff).

Northern is filing the revised tariff sheets to adjust its Base Average Gas Purchase Cost in accordance with the Quarterly PGA filing requirements codified by the Commission's Order Nos. 483 and 483-A. The instant filing reflects a Base Average Gas Purchase Cost of $1.4643 per MMBtu to be effective July 1, 1991, through September 30, 1991. Northern further intends to use its flexible PGA, as necessary, to reflect actual market conditions throughout this time period.

Also the instant filing establishes, when necessary, new Demand rates in compliance with the above referenced PGA rulemaking. Such required Northern to adjust its PGA demand rate components on a quarterly versus annual basis. This filing will establish a new Demand rate component of $4.778 per MMBtu. This rate will be effective July 1, 1991 through September 30, 1991.

Northern states that copies of the filing were served upon Northern's jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13623 Filed 6-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-4-37-000]

Northwest Pipeline Corp.; Proposed Change in Sales Rates Pursuant to Purchased Gas Cost Adjustment

June 3, 1991

Take notice that on May 28, 1991, Northwest Pipeline Corporation (Northwest) submitted for filing a proposed change in rates applicable to service rendered under rate schedules affected by and subject to Article 16, Purchased Gas Cost Adjustment Provision (PGA), of its FERC Gas Tariff, Second Revised Volume No. 1. Northwest states that such change in rates is for the purpose of reflecting changes in Northwest's estimated cost of purchased gas for the three months ending September 30, 1991.

Northwest states that the current PGA adjustment for which notice is given herein, aggregates to an increase of 1.48¢ per MMBtu in the commodity rate for all rate schedules affected by and subject to the PGA. Northwest notes that the proposed change in Northwest's commodity rates for the third quarter of 1991 would increase sales revenues by approximately $58,652. Northwest further states that the instant filing also provides for an increase in the demand components of Northwest's gas sales rates to reflect changes to the estimates of Canadian demand rates and to reflect a revised Canadian exchange rate factor.

Northwest hereby tenders the following tariff sheets to be effective July 1, 1991:

Second Revised Volume No. 1

Eleventh Revised Sheet No. 10
Eleventh Revised Sheet No. 11

Northwest states that a copy of this filing is being served upon each person designated in the official service list compiled by the Secretary in Docket No. TA91-1-37 and upon all jurisdictional sales customers and affected state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 835 North Capitol Street NE., Washington DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13612 Filed 6-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-165-000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

June 4, 1991.

Take notice that on May 31, 1991 Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77251-1642, tendered for filing revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1, with a proposed effective date of July 1, 1991:

Third Revised Sheet No. 32-AB
Third Revised Sheet No. 32-AH.1
First Revised Sheet No. 32-AN.1
Second Revised Sheet No. 32-BE
Second Revised Sheet No. 32-BL
First Revised Sheet No. 32-BR.1
Sixth Revised Sheet No. 34
Third Revised Sheet No. 36
Fourth Revised Sheet No. 43-13
Fourth Revised Sheet No. 43-14.1

Panhandle states that the revised tariff sheets reflect a revision to the payment provisions in Panhandle's Rate Schedules PT-Firm, PT-Interruptible, and the General Terms and Conditions of its FERC Gas Tariff, Original Volume No. 1.

Panhandle notes that the proposed changes provide for Panhandle's transportation and sales customers to make payments by electronic funds transfer to a designated bank account established by Panhandle for billed amounts equal to or greater than $100,000. For billed amounts less than $100,000, the proposed changes give Panhandle's customers the option to pay either by check or electronic funds transfer.

Panhandle states that a copy of this letter and enclosures were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before June 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13624 Filed 6-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PR91-20-000]

Prairie Producing Co., Complainant and Louisiana Intrastate Gas, Corp., Respondent; Notice of Petition for Declaratory Order and Complaint

June 4, 1991

Take notice that on May 24, 1991, as corrected on May 28, 1991, Prairie Producing Company (Prairie), 1 Sugar Creek Place, 14141 Southwest Freeway, Sugar Land, TX 77478, filed in Docket No. PR91-20-000, pursuant to rules 207 and 206 of the Commission's Rules of Practice and Procedure (18 CFR 385.207 and 206) a petition for declaratory order and a complaint against Louisiana Intrastate Gas Corporation (LIG). Prairie requests a declaration by the Commission that the interlocutory judgement (Judgement) entered May 15, 1991 by the United States District Court for the Western District of Louisiana cannot be enforced, when final, because the local court lack jurisdiction to authorize LIG's circumvention of the Commission's exclusive jurisdiction under section 311 of the Natural Gas Policy Act of 1978 (NGPA), all as more fully set forth in the petition for declaratory order and complaint which is on file with the Commission and open to public inspection.

Prairie states that it is a natural gas company within the meaning of section 2(6) of the Natural Gas Act (NGA) and is engaged in the production and sale of natural gas in the southwestern United States. Prairie is a wholly owned subsidiary of Union Oil Company of California. LIG is an intrastate pipeline within the meaning of section 2(16) of the NGPA and operates within the State of Louisiana. Prairie states that LIG has provided intrastate transportation and NGPA section 311 transportation to Prairie on LIG's Eloi Pipeline. The rate charged for section 311 transportation

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provided to Prairie on the Eloi Pipeline was set in the Commission's orders in Docket Nos. ST89-1708-000, *et al.* and is currently pending review in *Louisiana Intrastate Gas Corp.* v. *FERC*, Nos. 89-1479 & 90-1050 (consolidated) & 90-1476 (pending consolidation), U.S. Court of Appeals, DC Circuit. This section 311 transportation is the subject of the Judgement arising out of LIG's breach of contract suit against Prairie entitled *Louisiana Intrastate Gas Corp.* v. *Prairie Producing Co.*, No. 90-0260 (E.D. La filed January 22, 1990). Prairie states that, if entered as an enforceable judgement at the conclusion of the local litigation, the Judgement would grant to LIG: (1) A retroactive rate increase for NGPA section 311 transportation service for Prairie via the Eloi Pipeline; and (2) an award of specific performance authorizing LIG to terminate Prairie's section 311 service in an unduly discriminatory and preferential manner.

Prairie requests that the Commission act expeditiously to grant its petition by issuing an order declaring that:

(1) The Commission did not compel LIG to execute or perform the section 311 agreement;

(2) The filed rate doctrine precludes the United States District Court for the Western District of Louisiana from making enforceable its Judgement awarding monetary damages to LIG for performing section 311 service via the Eloi Pipeline;

(3) LIG cannot enforce and collect the award of monetary damages contained in the local court's Judgement, without violating section 311 of the NGPA and the Commission's Eloi Pipeline orders thereunder;

(4) The award of specific performance in the local court's Judgement is preempted by the Commission's exclusive jurisdiction and, therefore is unenforceable; and

(5) LIG cannot enforce the award of specific performance in the local court's Judgement without violating the Commission's open access regulations for section 311 transportation.

Prairie further requests that the Commission act expeditiously to grant Prairie's complaint by issuing an order requiring that:

(1) LIG refund to Prairie, with interest as prescribed by the Commission, all charges and collections by LIG for Eloi Pipeline section 311 service exceeding the fair and equitable rate set by the Commission;

(2) LIG resume any Eloi Pipeline service to Prairie terminated by LIG without the Commission's prior authorization; and

(3) LIG pay to Prairie monetary damages for any termination of Prairie's Eloi Pipeline section 311 service in an amount determined to be appropriate by the Commission after evidentiary hearing, and, in addition, reimburse Prairie all of its costs and expenses in bringing this petition.

Any person desiring to be heard or to make any protest with reference to said petition for declaratory order and complaint should on or before July 3, 1991, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing must file a motion to intervene in accordance with the Commission's Rules.

Prairie states a copy of the complaint has been served on LIG. LIG's answer to the complaint shall also be due on or before July 3, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13613 Filed 6-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-3-38-000]

Ringwood Gathering Co.; Proposed Changes in FERC Gas Tariff

June 4, 1991.

Take notice that on May 31, 1991, Ringwood Gathering Company (Ringwood), tendered for filing Sixth Revised Sheet No. 4C to its FERC Gas Tariff and FERC Form No. 542-PGA pursuant to 18 CFR 154.308. The proposed effective date is July 1, 1991.

Ringwood states that its Quarterly PGA filing reflects an estimated $1.6812 per Mcf cost of gas, a current adjustment of zero; a cumulative adjustment of $.1734 per Mcf; a credit surcharge adjustment of $.0012 per Mcf and a total sales rate of $1.9930 per Mcf.

Ringwood states that copies of the filing were served upon Ringwood's jurisdictional customers and interested state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13625 Filed 6-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ91-4-9-000, TM91-4-9-000]

Tennessee Gas Pipeline Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

June 4, 1991.

Take notice that on May 31, 1991 Tennessee Gas Pipeline Company (Tennessee) filed the following revised tariff sheets to its FERC Gas Tariff to be effective July 1, 1991:

Item A: Third Revised Volume No. 1
Fourth Revised Sheet No. 20
Fourth Revised Sheet No. 21
Fifth Revised Sheet No. 22
Item B: Second Revised Sheet Nos. 32 through 37
Item C: Second Substitute First Revised Sheet No. 253
Item D: *Original Volume No. 2*
Twenty-Fourth Revised Sheet No. 5
Twenty-Third Revised Sheet No. 6

Tennessee states that the current Purchased Gas Cost Rate Adjustments reflected on Sheet Nos. 20 through 22 consist of a $.0097 per dekatherm adjustment applicable to the gas component of Tennessee's sales rates and a $.24 per dekatherm adjustment applicable to the Demand D1 component.

Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers on its system and affected stated regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20425, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before June 11, 1991. Protests will be considered by the commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a petition to intervene; provided, however, that any person who had previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13628 Filed 6-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-167-000]

Tennessee Gas Pipeline Co.; Rate Change Pursuant to Tariff Adjustment Provisions

June 4, 1991.

Take notice that on May 31, 1991, Tennessee Gas Pipeline Company (Tennessee) filed with the Federal Energy Regulatory Commission the following tariff sheets to its FERC Tariff, Third Revised Volume No. 1 with the proposed effective date of July 1, 1991:

Substitute Fourth Revised Sheet No. 20
Substitute Fourth Revised Sheet No. 21
Third Revised Sheet No. 23
Second Revised Sheet No. 24
Third Revised Sheet No. 25
Third Revised Sheet No. 26
Third Revised Sheet Nos. 38-42
Second Substitute First Revised Original Sheet No. 279A

Tennessee states that the purpose of the filing is to adjust Tennessee's transition cost demand and commodity surcharges to reflect the recovery of an additional $3.2 million new transition costs and ($100 thousand in associated carrying costs), which have been allocated under an equitable sharing formula of 25% absorption-25% demand-50% volumetric resulting in revised demand and volumetric surcharges under Article XXX of its tariff. Tennessee notes that Sheet No. 279A has been revised to correct a typographical error.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or beofre June 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13627 Filed 6-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-61-003]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 3, 1991.

Take notice that on May 24, 1991, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff:

Substitute Fourteenth Revised Sheet No. 12
Substitute Eleventh Revised Sheet No. 12A
Substitute Fifth Revised Sheet No. 12B
Substitute Fifth Revised Sheet No. 12C
Substitute Second Revised Sheet No. 121.

Texas Gas states that the purpose of this filing is to comply with the Commission's Order issued May 1, 1991, approving the settlement in the above captioned docket. The instant filing is designed to place tariff sheets into effect pursuant to the Settlement reflecting a revised methodology for allocating the fixed monthly charge portion of Texas Gas's Take-or-Pay (TOP) Settlement payments pursuant to the Commission Order Nos. 528 and 528-A. Additionally, Texas Gas was authorized to modify § 26.4 of its FERC Gas Tariff, Original Volume No. 1, which provides for the reconciliation of the Commodity TOP Surcharge at the end of the third annual recovery period for up to one year due to any difference between projected and actual throughput design quantities.

Texas Gas reserves the right to make any changes required by the Commission on rehearing or an order of a court with appropriate jurisdiction directly or indirectly affecting this filing.

Texas Gas states that copies of the filing were served upon Texas Gas's jurisdictional customers, interested state commissions and all parties on the official service list for this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13604 Filed 6-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-192-005]

Texas Gas Transmission Corp.; Tariff Filing

June 3, 1991.

Take notice that on May 28, 1991, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 2-A:

First Revised Sheet No. 22
Second Revised Sheet No. 23
Original Sheet Nos. 23A through 23D
First Revised Sheet Nos. 47 through 49
Original Sheet Nos. 49A through 49B

These sheets are being filed out of time pursuant to a Letter Order issued March 7, 1991, by the Federal Energy Regulatory Commission (Commission). Specifically, the Letter Order directed Texas Gas to file in order to explain more precisely the methodology applicable to when it determines a transportation customer would pay for the cost of constructing facilities at receipt or delivery points. Sections 1.4 and 1.5 of Texas Gas's Rate Schedules IT and FT of its FERC Gas Tariff First Revised Volume No. 2-A have been modified in the instant filing to comply with the Letter Order.

Texas Gas states that copies of the filing were served upon Texas Gas's jurisdictional customers, interested state commissions and all parties on the official service list for this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this

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filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13607 Filed 6-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-9-29-000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

June 4, 1991.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on May 31, 1991, certain revised tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff included in appendix A attached to the filing. The proposed effective date of the revised tariff sheets is July 1, 1991.

Transco states that the purpose of the filing is to track rate changes attributable to storage service purchased from Penn-York Energy Corporation (Penn-York) under its Rate Schedule SS-1 the costs of which are included in the rates and charges payable under Transco's Rate Schedules LSS and SS-2. The tracking filing is being made pursuant to section 4 of Transco's Rate Schedules LSS and SS-2.

Transco states that included in the Transmittal Letter to the filing and appendics B and C attached to the filing is an explanation of the tracking rates change and details regarding the computation of the revised LSS and SS-2 rates.

Transco states that copies of the filing are being mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13628 Filed 6-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-6-11-000]

United Gas Pipe Line Co.; Filing of Revised Tariff Sheets

June 4, 1991.

Take Notice that on May 31, 1991, United Gas Pipe Line Company (United) tendered for filing the following revised tariff sheets with a proposed effective date of July 1, 1991.

Second Revised Volume No. 1

Fourteenth Revised Sheet No. 4
Fourteenth Revised Sheet No. 4A
Fourteenth Revised Sheet No. 4B
Twelfth Revised Sheet No. 4D
Fourteenth Revised Sheet No. 4I

The above referenced tariff sheets are being filed pursuant to § 154.308 of the Commission's regulations to reflect changes in United's purchased gas adjustment as provided in section 19 of United's FERC Gas Tariff, Second Revised Volume No. 1.

United states that it has filed tariff sheets to reflect a decrease of ($0.0658) per Mcf to $2.1154 per Mcf in gas commodity costs compared to the proposed gas commodity cost level filed March 1, 1991 in Docket No. TQ91-5-11-000.

United states that the revised tariff sheets and supporting data are being mailed to its jurisdictional sales customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in such accordance with §§ 385.214 and 385.211 of the Commission's regulations. All such petitions or protests should be filed on or before June 11, 1991.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13629 Filed 6-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA91-1-43-001 & TM91-5-43-001]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 3, 1991.

Take notice that Williams Natural Gas Company (WNG) on May 30, 1991, tendered its compliance filing in Docket Nos. TA91-1-43 and TM91-5-43, the annual purchased gas adjustment.

WNG states that on March 1, 1991, it filed its annual purchased gas adjustment. The instant filing is being made in compliance with Ordering Paragraphs (B) and (D) of Commission Order issued April 30, 1991 in the above referenced Dockets.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such protests should be filed on or before June 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13610 Filed 6-7-91; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3962-9]

Establishment and Open Meeting of the EPA Advisory Committee for Class II Underground Injection Control Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Establishment of FACA Committee.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), we are giving notice of the establishment of an Advisory Committee to make recommendations on the best options concerning substantive and administrative changes in the Class II Underground Injection Control (UIC) Program under part C of the Safe Drinking Water Act (SDWA), as amended. We have determined that the committee is necessary, is in the public interest, and will assist the Agency in performing its duties prescribed in the SDWA.

Copies of the Committee Charter will be filed with the appropriate committees of Congress and the Library of Congress.

The Committee's first meeting will be held on June 11 and 12, 1991. Notice of this meeting was previously published on May 21, 1991. The Committee meeting is open to the public without need for advance registration. The Committee's facilitator has notified interested parties of the meeting dates.

The purpose of the meeting is to begin to consider information on technical, economic, and human health issues involved in potential substantive and/or administrative changes in the operation of the UIC program. A discussion of the issues that this committee may address was published in the February 7, 1991 **Federal Register** at 56 FR 4957. A public meeting discussing these issues was held on April 17 and 18, 1991.

DATES: The Committee will meet on June 11 and 12, 1991. The June 11 meeting is from 10 a.m. to 5 p.m. The June 12 meeting is from 9 a.m. to 4 p.m.

ADDRESSES: The meeting will take place at the Quality Hotel Capitol Hill, 415 New Jersey Avenue NW., Washington, DC 20001. (202) 638-1616.

FOR FURTHER INFORMATION CONTACT: For information pertaining to the establishment of the negotiation committee and associated administrative matters, contact Chris Kirtz, Director, Regulatory Negotiation Project, Regulatory Management Division, US EPA (PM-223Y), 401 M Street, SW., Washington, DC 20460, telephone (202) 382-7565. For information pertaining to the UIC rule and associated issues, contact George Hoessel, Office of Drinking and Ground Water, US EPA (WH-550E), 401 M Street, SW., Washington, DC 20460, telephone (202) 382-5532.

Dated: June 4, 1991.

Paul Lapsley,

Director, Regulatory Management Division, Office of Regulatory Management and Evaluation.

[FR Doc. 91-13581 Filed 6-7-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3963-4]

Science Advisory Board Environmental Engineering Committee Open Meeting

June 27-28, 1991.

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Science Advisory Board's (SAB's) Environmental Engineering Committee (EEC), will conduct a planning, coordination and review meeting on Thursday, June 27, and Friday, June 28, 1991. The meeting will be held at the U.S. Environmental Protection Agency Headquarters, Waterside Mall Conference Center, room 1—North, 401 M Street, SW., Washington, DC 20460. The meeting will begin at 9 a.m. on Thursday, June 27th and 8:30 a.m. on Friday, June 28th and will adjourn no later than 4 p.m. on June 28th.

At this meeting, the EEC will plan and coordinate upcoming EEC review activities, discuss the status of reviews-in-progress and will discuss possible additional review topics for FY 1992 and beyond. Reviews-in-progress include the Leachability Subcommittee's current working draft on recommendations and rationale for analysis of contaminant release, a draft report resulting from the OSWER Modeling Subcommittee teleconference meeting of December 7, 1990, and a draft report resulting from the Pollution Prevention Subcommittee's (PPS) review of April 11 and 12, 1991 on the Agency's research strategic plan for pollution prevention. The EEC plans to conduct a consultation with the staff in the Corrective Act Branch of the Office of Solid Waste (OSW) on a proposed research plan dealing with quantitative data quality objectives for ground water monitoring. This consultation is a follow-up to a briefing made by the OSW staff to the EEC in February 1991 dealing with the topic of advances in ground water monitoring.

Other EEC topics which require planning and coordination will be discussed, but will not be reviewed at this time. It is also expected that topics requiring coordination with other SAB standing committees and ad-hoc subcommittees will be addressed as time permits.

The meeting is open to the public. Any member of the public wishing further information concerning the meeting or who wish to submit comments should contact Dr. K. Jack Kooyoomjian, Designated Federal Official, or Mrs. March Jolly, Staff Secretary, Science Advisory Board (A-101-F), U.S. Environmental Protection Agency, Washington, DC 20460, at (202) 382-2552 or by FAX at (202) 475-9693 by June 21, 1991. Seating will be on a first come basis.

Dated: May 28, 1991.

A. Robert Flaak,

Acting Director.

[FR Doc. 91-13692 Filed 6-7-91; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-66012; FRL 3886-4]

Receipt of Application to Operate a Commercial Polychlorinated Biphenyl (PCB) Storage Facility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Receipt of Applications.

SUMMARY: EPA has received approximately 100 applications from applicants requesting approval to operate a commercial PCB storage facility. These applications are being submitted and reviewed under the authority of section 6(e) of the Toxic Substances Control Act (TSCA). EPA is notifying interested persons of these applications and requesting comments on the qualifications of the applicants and their principals and key employees to engage in PCB commercial storage activities.

DATES: Comments must be received by July 10, 1991.

ADDRESSES: Three copies of written comments bearing the docket number OPTS-66012 should be addressed to: TSCA Public Docket Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, rm. G004, NE Mall, 401 M St., SW., Washington, DC 20460. Comments received in response to this notice will be made available for public inspection and copying in the TSCA Public Docket Office at the address noted above from 8 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202-554-1404), TDD: (202-554-0551).

SUPPLEMENTARY INFORMATION: Under 40 CFR 761.65(d), the EPA Regional Administrator for the region in which a proposed storage facility is located, or the Director, Exposure Evaluation Division (EED), if the commercial storage area is ancillary to a facility approved for disposal by the Director, EED, have the authority to approve or

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deny an application for the operation of a commercial PCB storage facility.

Commercial storers seeking to gain interim approval status were required to submit a completed application to EPA by August 4, 1990 (54 FR 52746, December 21, 1989). Applicants not meeting the August 4th deadline must wait until EPA grants a final approval to engage in the commercial storage of PCBs. Following submission of an application, the EPA regional office in which the PCB storage facility is located will review the application for completeness. EPA will notify the applicant if the application is not complete and will indicate what sections need to be included or revised. EPA will then review the completed applications and other information, such as applicant compliance histories and comments received in response to this Federal Register notice.

The regional office or EPA Headquarters will conduct a further review of the application and either grant final approval to qualified commercial storers, or deny final approval to unqualified commercial storers.

EPA will be examining the applicants' qualifications and past compliance histories. This examination will be based on information submitted by applicants, EPA's own database searches, and selected commercial database searches. In order to supplement this information, EPA is inviting public comment concerning the qualifications of applicants' principals and key employees to operate commercial storage facilities. A list of each applicant's principals and key employees is found at the end of this notice. For purposes of this notice, an applicants' "principals and key employees" includes "the owner or operator of the facility, including all general partners of a partnership, any limited partner of a partnership, any stockholder of a corporation, or any participant in any other type of business organization who owns or controls, directly or indirectly, more than 5 percent of such a partnership, corporation or other business organization and all officials with direct management responsibility for the facility" (54 FR 52736). For each of the listed applicants and their principals and key employees, EPA is requesting information on any State, Federal, or local environmental violation that the applicant or its principals or key employees have participated in within the last 5 years. Environmental violations may include PCB or other waste handling violations, including transport, storage for disposal, disposal, and processing violations. Violations may also include recurrent problems with storage of PCB wastes for more than 1 year, as reflected in operating records, and non-compliance with the Spill Cleanup Policy, as reflected in certification and cleanup records (40 CFR part 761, subpart G).

Questions concerning whether a certain facility has submitted an application and has interim status should be addressed to the PCB coordinator in the region where the facility is located. Information regarding the states that are included in each region and the PCB coordinator for that region are provided as part of the list of applicants who submitted commercial storage applications.

EPA is also requesting that the public submit any information concerning the applicants' or their principals' or key employees' technical qualifications and experience, including education and work experience, in handling PCB or other wastes.

The following is a list of the applicants for approval to operate PCB commercial storage facilities. In determining whether to approve the applications, EPA will take into consideration, along with other factors, the comments received in response to this notice.

The companies listed below do not necessarily have interim status. Check with the Regional PCB contact for that information.

Region I

Region I includes Maine, Vermont, New Hampshire, Massachusetts, Connecticut and Rhode Island. The contact is Tony Palermo, (617) 565-3279.

Clean Harbors of Braintree, Braintree, Massachusetts

Alan S. McKim, Chairman and Chief Executive Officer
Michael Hatch, Vice President of Hazardous Waste Operations
Stephen Pozner, Director, Corporate Health & Safety
Robert Spielvogel, Manager, Corporate Health & Safety
Stephen Dovell, Vice President & General Manager
Joseph McNally, Director of Analytical Operations
John Griffith, Compliance Manager
Ted Hayden, Operations Manager
Dana Shaw, PCB Area Supervisor

Clean Harbors of Natick, Natick, Massachusetts

Alan S. McKim, Chairman and Chief Executive Officer
Michael Hatch, Vice President of Hazardous Waste Operations
Stephen Pozner, Director, Corporate Health & Safety
Robert Spielvogel, Manager, Corporate Health & Safety
Stephen Ganley, Vice President & General Manager
Anthony Celluci, Manager, Field Operations
David Parry, Operations Manager

Connecticut Treatment Corporation, Bristol, Connecticut

Daniel W. Heintz, District Manager
Christopher E. Borowry, Regulatory Manager
W. David Cyr, Operations Manager
John Uriah, Laboratory Manager
Roland Babin, First Shift Supervisor
Glen Carlson, Second Shift Supervisor

East Coast Environmental Services Corp., New Haven, Connecticut

Leo J. Tancreti, President, Treasurer & General Manager
Leo P. Tancreti, Vice President, Secretary & Operations Manager

Evergreen Construction Company, Inc., Bellingham, Massachusetts

Thomas S. Clark, President
Thomas Clark, Jr., Supervisor
Matthew Clark, Technician
Vahe M. Marganian, Ph.D., Chemist

General Electric Company, Pittsfield, Massachusetts

The General Electric application is for a storage area ancillary to a permitted PCB incinerator.
Ronald F. Desgroseilliers, Manager, Environmental and Facilities Operations
Grant G. Bowman, Manager, Environmental Engineering
Eugene J. Komlosi, Manager, Plant Engineering
Thomas W. Armstrong, Manager, Environmental Operations
Jeffrey G. Ruebesam, Environmental Engineer

Jet Line Services, Inc., Dover, New Hampshire

Ira Hunt, Executive Vice President
Neal M. Drawas, C.E.P., Senior Vice President
Donald Corey, President
Paul R. Smith, Vice President and Director of Engineering
Paul Costain, Vice President of Field Operations
Richard Mansfield, New Hampshire District Manager
Robert Knowlton, Dover Facility Coordinator

Pollution Solutions of Vermont, Williston, Vermont

Pamela Noyes Linton, President and Treasurer

Donald Melander, Vice President of Operations
Patrick McGillicuddy, Lab Pack Supervisor
David Adams, Facility Supervisor

Three C Electric Company, Ashland, Massachusetts

Alexander Piccioli, President
Grant Adams, Vice President & General Manager
James G. Cialdea, P.E., Vice President & Director of Engineering
Stephen Curtis, Manager, Construction Services
William J. Tonks, Supervisor, Foreman
Leonard Freitag, Receiving/Loading Supervisor

Transformer Services, Inc., Concord, New Hampshire

Stephen W. Booth, President & Treasurer
David H. Booth, Vice President & Secretary
Gregory A. Booth, General Manager
Richard Cesarno, Manager of Facilities and Field Services
Andris Serzana, Supervisor PCB Facility

Region II

Region II includes New Jersey, New York, Puerto Rico, and the Virgin Islands. The contact is Dan Kraft, (201) 321-6669.

CWM Chemical Services, Model City, New York, (Chemical Waste Management, Inc. Subsidiary Facility)

Miguel A. Antonetti, Environmental Manager
John J. Stanulonis, General Manager

Chemical Management, Inc., Farmingdale, New York, (Wholly owned subsidiary of: Stout Environmental, Inc., Thorofare, New Jersey)

Chemical Management, Inc., officers:

Mark Alsentzer, President
Randy Royer, Vice President
Gary Ziegler, Vice President
Eugene Kerins, Secretary/Treasurer

Stout Environmental, Inc., officers

August Schultz, Chief Executive Officer
Mark Alsentzer, President
Randy Royer, Vice President
Gary Ziegler, Vice President
Eugene Kerins, Secretary/Treasurer

Stout Environmental, Inc., stockholders, (≧5 percent)

August Schultz, Chief Executive Officer
Mark Alsentzer, President
Gary Ziegler, Vice President
Richard Schultes
Edward Schultes
James Schultes
Eugene Kerins, Secretary/Treasurer

Chemical Management, Inc., operational personnel

John Dull, Plant Manager
Joe DeMauro, Operations Manager
Glen Trubatch, Lab Pack Manager
John Egan, Training/Safety Manager
Steven Plofker, Supervisor
Robert Fahey, Supervisor
Patrick Enocks, Supervisor

Envirogen, Inc., Lawrenceville, New Jersey

Facilities: Rutgers University, North Brunswick, New Jersey and Lawrenceville, New Jersey. (The current facility is located at Rutgers, while the new facility is in Lawrenceville.)

Ronald Unterman, Ph.D., Vice President, Research & Development
Burt D. Ensley, Ph.D., Research Manager
Janet E. Klass, Manager, Laboratory Services
Roger J. Colley, Director, President & Chief Executive Officer
Ronald H. Spair, Vice President, Finance
David N. Enegess, Vice President, Marketing & Commercial Development

General Electric Company, Schenectady, New York (Corporate Headquarters)

John F. Welch, Jr., Chairman of the Board/Chief Executive Officer
Lawrence A. Bossidy, Vice Chairman of the Board/Executive Officer
Edward J. Hood, Jr.

General Electric North Bergen Service Center, North Bergen, N.J.

Charles E. DiMaria, District Manager
Nicholas J. Barber, Jr., Manager Shop Operations
Parma N. Arya, Foreman
William J. Wheselsky, Manager Quality Programs

General Electric Tonawanda Service Center, Tonawanda, New York

G.P. Steele, Service Center Manager
George Hillock, Shop Operations Manager
Theodore A. Byster, PCB Facility Supervisor
Walter L. Lucas, PCB Foreman
Tony Hejmonowski, Health, Safety, & Environmental Coordinator

TCI, Inc., Hudson, New York

David Laskin, President and Owner
Bruce Vetro, Vice President, Plant Manager

Region III

Region III includes Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and Washington, DC. The contact is Ed Cohen, (215) 597-7668.

Chem Waste Management, Inc., Sealston, Virginia (See Illinois listing for Chemical Waste Management, Inc. corporate officers)

Gary Shirley, General Manager
Chris Seymour, Operations Manager
Perry Ortega, Health/Safety
John T. Baker, Senior Field Analyst
Charles Bias, Technical Coordinator
John P. Muskoff, Jr., Technical Coordinator

General Electric Philadelphia Service Center, Philadelphia, PA

Richard W. Conway, District Manager
Edwin J. MacDonald, Facility Manager
John S. Bartholomew, PCB Facility Manager
William C. Kraft, PCB Facility Foreman

GSX Services, Inc., Laurel, Maryland

William Hallam, Facility Manager
Brinton Hoover, Operations Manager
John Kehoe, Senior Routing Supervisor
Tom Pfaffman, Load Preparation Supervisor

MET Electrical Testing, Inc., Baltimore, Maryland

Mark Kessler, Manager, Field Service Department
Lance Leward, Project Manager
Ronald Cooper, Maintenance Tests
Bob Kern, Acceptance Tests
Russ Dennis, Load Test & Special Projects

Waste Conversion, Inc., Hatfield, Pennsylvania

Raymond L. Martin, Plant Manager
Karl P. Kriger, Operations Manager
Arthur E. Sieber, Operations Manager
Anthony H. Grosso, Training/Safety Manager
Michael F. Acker, Lab Pack Manager
George S. Smith, III, Supervisor
Paul W. Connell, Supervisor
Robert C. Muche, Supervisor
Matthew R. Smith, Supervisor
Patrick Moynihan, Supervisor
Michael Muschko, Supervisor

Waste Conversion, Inc., officers

Mark Alsentzer, President
Randy Royer, Vice President
Gary Ziegler, Vice President
Eugene Kerins, Secretary/Treasurer

Stout Environmental, Inc., officers

August Schultes, Chief Executive Officer (Facility owner)

Region IV

Region IV includes Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee. The contact is Alfreda Freeman, (404) 347-1033.

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Chemical Waste Management, Inc., Emelle, Alabama

John Hanley, General Manager
Russell Zora, Site Environment Manager
James Buckley, Technical Manager
John White, Site, Health & Safety Manager
Robert Talbott, Treatment Superintendent
Leonard Necaise, Disposal Superintendent
Ronald Harwell, PCB Manager
David Smith, Laboratory Manager

Ecoflow, Inc., Greensboro, North Carolina

Paul A. McAllister, President
Raymond Chestnut, Vice President, Operations
W. Glenn Bonds, Vice President, Marketing
Evan G. Highleg, III, Vice President, Finance and Administration
Steve Mason, Facility Manager
Scott J. Maris, Director of Regulatory Affairs

Florida Transformer, Inc., DeFuniak Springs, Florida

Wayne Bodie, Owner, President, Chief Executive Officer
Edward Cook, Shop Supervisor
Frank Hall, Supervisor, Regulator Repair

Hevi-Duty Electric, Goldsboro, North Carolina(Headquarters)

R.L. Cornella, President
J.E. Stehlik, Vice President, Manufacturing
N.R. Deweese, Vice President, Marketing
D.W. Skoch, Vice President, Marketing
R.C. Steed, Vice President, Engineering
M.J. Lewis, Director, Total Quality
R.L. Hanson, Director, Human Resources
J.J. Dougherty, Manager, Environmental Compliance

Hevi-Duty Electric, Pell City, Alabama

David Barnett, Plant Manager
Mary Byerley, Production Manager
Richard Lipham, Production Supervisor

Hevi-Duty Electric, Lakeland, Florida

Doug Hales, Plant Manager
Peter Smith, Superintendent
Jan Jedlicka, Office Administrator

Safety-Kleen Corp., New Castle, Kentucky

Clark Rose, Vice President, Technical Services
Uly Marini, Manager, Recycle Operation
Larry Fry, Facility Manager

Safety-Kleen Corp., Lexington, South Carolina

Clark Rose, Vice President, Technical Services
Uly Marini, Manager, Recycle Operation
Leonard Chapman, Facility Manager

Tennessee Valley Authority (TVA), Muscle Shoals, Alabama

William G. Ruffner, Manager, TVA Power Group's Environmental Affairs Organization
Gary V. Downer, Manager, Environmental Affairs' Hazardous Materials and Waste Services Department
T. Wayne Wallace, Facility Manager
Charles Crow, Warehouseman/Clerk

Trans-Cycle Industries, Inc., Pell City, Alabama

David Laskin, Owner, President
Gary Waldron, Vice President (Alabama Facility)

Unison Transformer Services, Inc., Tucker, Georgia

Robert J. Shearer, Regional Business Manager
C. Randy Lambert, Regional Service Manager
Roosevelt E. Glover, Distribution Specialist
Emily A. Bel, PCB Coordinator

Unison Transformer Services, Inc., Henderson, Kentucky

Wayne L. Jenkins, Plant Manager
Donald H. Smith, Senior Production Engineer
Robert O. Smith, Plant Chemist
J. Craig Frizzell, Environmental Engineer
Kenneth K. Gill, Production Supervisor
Freida N. Campbell, Administrative Supervisor

Unison Transformer Services, Inc., Greenville, South Carolina

William A. Eckerstrom, Distribution Manager
Ben F. Cline, Distribution Coordinator
Wanda S. Kimmons, Administrative Assistant

Region V

Region V includes Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin. The contact is Tony Martig, (312) 353–2291.

APTUS, Lakeville, Minnesota

Marvin Koleszar, President
Martin Bergstedt, General Manager

BioTrol, Inc., Chaska, Minnesota

M. Boyd Burton, Ph.D., President
A. Dale Pflug, Vice President, Marketing and Business Development
William Wall, Vice President, Operations
Dennis Chilcote, Vice President, Engineering
Morris Anderson, Vice President, Regulatory Affairs & Human Resources

CECOS International, Inc., Cincinnati, Ohio

Mike Crisenbery, District Manager
Rick Wagner, Operations Manager
Jack Snowden, Manager Waste Acceptance
Eric Anderson, Manager Environmental Affairs

Chemical Waste Management Inc., Illinois (Chemical Waste Management Inc., Headquarters, Oak Brook, Illinois)

Jerry E. Dempsey, President and Chief Executive Officer
Victor J. Barnhart, Vice President
Joan Z. Bernstein, Vice President and General Counsel
Dr. John Cirelio, Vice President - Eastern Region
Dr. Raul Deju, Vice President - Western Region
Samuel Garre, III, Vice President - Midwest Region
Earl E. Gjelde, Vice President
Don R. McCombs, Vice President - Environmental Management
David L. McEwan, Vice President - Sales and Marketing
Thomas E. Noel, Vice President - Southern Region
Bruce D. Tobeckson, Vice President - Finance
Dr. George Vander Velde, Vice President - Science and Technology
Thomas A. Witt, Secretary and Associate General Counsel

Chemical Waste Management Inc., Geneva Research Center, Geneva, Illinois (A wholly owned subsidiary of Chemical Waste Management, Inc.)

Peter Daley, Senior Director
Arlene Lyons, Environmental & Safety Manager

Chemical Waste Management Inc., Technical Center, Riverdale, IL (A wholly owned subsidiary of Chemical Waste Management, Inc.)

Peter Daley, Senior Director (Program Office)
Arlene Lyons, Environmental & Safety Manager (Program Office)

CWM Chemical Services, Inc., Chicago, Illinois (A wholly owned subsidiary of Chemical Waste Management Inc.)

Kurt Frey, General Manager
Douglas Fisher, Operations Manager
Stephen Enger, Technical Manager
Ladislao Garcia, Laboratory Manager
Eddy Lin, Manager, Health, Safety, & Environmental Compliance

Chemical Waste Management, Inc., CWM Technical Services, Groveport, Ohio (A Chemical Waste Management, Inc. facility)

Greg Kiser, General Manager
Joseph Farkas, Operations Manager
Mike McDannell, Sr. Project Manager
Tara Brehmer, Health & Safety Manager

Drug & Laboratory Disposal, Inc., Plainwell, Michigan

Ward Walter, Facility Manager
Kevin Berghuis, Hazardous Materials Manager

Patricia Walsworth, Hazardous Materials Manager

DYNEX Environmental, Inc., Farmington Hills, Michigan

Dennis Sewill, President (St. Paul Office)
Eugene Phillip, Vice President (St. Paul Office)
Brian Sjoberg, Secretary/Treasurer (St. Paul Office)
Thomas Tisher, Facility Manager

DYNEX Environmental, Inc., St. Paul, Minnesota

Dennis Sewill, President
Eugene Phillip, Vice President
Brian Sjoberg, Secretary/Treasurer
Greg St. Hilaire, Environmental Coordinator

ENSR Operations, Canton, Ohio (ENSR Operations is a division of ENSR Corporation which is a wholly owned subsidiary of NuKem Treatment Group.)

Robert Anderson, General Manager
Michael Mattes, Vice President, Operations
Robert Sebald, Director of Operations
William Ziegler, Vice President, Health Safety & Environmental Affairs, Nukem Treatment Group

Environmental Enterprises, Inc., Cincinnati, Ohio

George McCabe, Principal Stockholder
Dan McCabe, President
Gary Davis, Vice President
Warren Taylor, Quality Assurance Director

FIW, Inc., Pecatonica, Illinois

William Stilwell, Jr., President
David Sprinkle, Vice President
Mona Bartoletti, Vice President
Randal Olson, Facility Manager
Michael Hunter, Operations Manager
Robert Johnson, Safety, Health & Environmental Manager

Great Lakes Environmental Services, Inc., Warren, Michigan

Micheal Favor, General Manager
Mike Dolkowski, PCB Supervisor
Patrick Stock, President
Joseph Cafasso, General Manager, Project Management Services

Hevi-Duty Electric, Mt. Vernon, Illinois (Corporate Headquarters, Goldsboro, North Carolina)

W. Ray Grubb, Manufacturing Operations Manager
Douglas Hester, Environmental Supervisor
R.L. Cornella, President, (Headquarters)
J.E. Stehlik, Vice President, Manufacturing (Headquarters)
N.R. Deweese, Vice President, Marketing (Headquarters)
D.W Skoch, Vice President, Finance (Headquarters)
R.C. Steed, Vice President, Engineering (Headquarters)

Institute of Gas Technology, Chicago, Illinois

Dr. W. Kennedy Genger, Project Manager
Harlan Feldkirchner, Safety Officer
James Dunne, Assistant Vice President, Administration

Midwest Electrical Testing, Milwaukee, Wisconsin

Walter Powell, President
Michael Velvikis, Field Operations Manager

Minnesota Power, Duluth, Minnesota

Eldon Kilpatrick, Director, Environmental Services
Anthony Pekovitch, Environmental Permitting & Compliance Engineer
Daniel Croke, Waste Management Engineer
Gene T. Beatty, Facility Operations

Northern States Power Co., NSP Chestnut Service Center Minneapolis, Minnesota

Cynthia Axness, Administrator, Regional Compliance
Joseph Weinhold, Environmental Auditor
Joseph Muller, Regulatory Analyst
Peter Jones, Manager, Resource Recovery
Steve Miller, Manager, Material Management Services
Lyle Selmela, Supervisor, Material Management Services

PPM Transcore, Twinsburg, Ohio, (Administrative offices in Kansas City, Kansas)

William Carr, Manager
James Facci, Operations Engineer
Jeff Placek, Operations Engineer
Dr. Louis Centofanti, President (Administrative office)
Scott Burnett, Sr. Vice President (Administrative office)
James Simpson, Vice President of Operations (Administrative office)

Recovery Specialists, Inc., Ypsilanti, Michigan

Frederick Feitel, President
Glenn Lease, Manager

SUNPRO, Inc., SUNPRO Maple Storage, Canton, Ohio

M. James Kozak, President
Jack Lewis, Vice President
Roger Lorey, Operations Manager

S.D. Myers, Inc., Transformers Consultants, Tallmadge, Ohio

Dana S. Myers, President
Richard Heddleston, Treasurer
Robert Rasor, Plant Manager
Joseph Kelly, Manager, Safety & Environmental Affairs

UNISON Transformer Services, Inc., (also Ann Avenue Warehouse) Ashtabula, Ohio, (Administrative offices in Charlotte, NC)

Robert A. Ream, Director of Operations (Administrative office)
Donald Cipollo, Plant Manager
Michael Mantia, Plant Engineer

UNISON Transformer Services, Inc., Columbus, Ohio (Administrative offices in Charlotte, NC)

Robert A. Ream, Director of Operations (Administrative Office)
A.O. Malfatt, Regional Business Manager
M.J. Printy, Regional Service Manager

Region VI

Region VI includes Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. The contact is Donna Mullins, (214) 655–7244.

Chemical Waste Management, Inc., Lake Charles Facility, Carlyss, Louisiana (A Chemical Waste Management, Inc., Facility)

Clyde W. Kitto, General Manager
George V. Jones, Environmental Manager
David K. Wineman, Compliance Manager
Thomas A. Kurkiy, Technical Manager
Bernard P. Laverentz, Operations Manager
Gretchel L. Grout, Laboratory Manager
A. Furd Taylor, Health/Safety Manager

Chemical Waste Management, Inc., Port Arthur Facility, Port Arthur, Texas (A Chemical Waste Management, Inc. Facility)

Edward Aromi, General Manager
William Walls, Senior Environmental Manager
Bill Schofield, Technical Manager
Michael Gust, Operations Manager

ENSCO, Inc., El Dorado Facility, El Dorado, Arkansas

Harry T. LaCoste, Vice President/General Manager

General Electric Company, Corporate Headquarters, Schenectady, New York

John F. Welch, Jr., Chairman of the Board/Chief Executive Officer
Lawrence A. Bossidy, Vice Chairman of the Board/Executive Officer
Edward J. Hood, Jr.

General Electric Houston Service Center, Houston, Texas

Paul J. Desmarais, District Manager
J.C. Goodrich, Operations Manager
Sidney A. Stacy, PCB Facility Manager

Rollins Environmental Services (TX), Inc., Deer Park, Texas

Donald D. Dillard, President, RES(TX)
Robert S. Whitlock, Operations Manager

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Robert O. Ellisor, Jr., Asst. Operations Manager
Lynn B. Dewey, PCB Supervisor

Safety-Kleen Corporation, Corporate Headquarters, Elgin, Illinois

Joseph F. Knott, President

Safety-Kleen Corporation, Denton Recycle Center, Denton, Texas

Lynn Arneson, Regional Environmental Engineer
Clark Rose, Vice President, Technical Services
Uly Marini, Vice President, Recycle Operations
Dennis Glenn, Facility Manager
Richard Dunsheath, Operations Manager

Technical Environmental Systems, Inc., La Porte, Texas

Kenneth N. Bigham, Chief Executive Officer, Owner/Operator
Samuel Gibson, Vice President/Facility Manager
Tracy L. Hollister, Vice President, Marketing
C.W. Boring, Vice President, Customer Service
Mikel Barnwell, Chief Financial Officer
Daria Partovi, Technical Director
Calvin Lewis, Warehouse Manager

USPCI, Lone Mountain Facility, Waynoka, Oklahoma

Scott Nicholson, General Manager
Rex Kraft, Operation Manager
J. Dee Morris, Technical Manager
Brian Correa, Environmental Manager

Region VII

Region VII includes Iowa, Kansas, Missouri, and Nebraska. The contact is Bob Jackson, (913) 551–2835.

AmerEco Environmental Services, Kingsville, Missouri

Dennis Nix, President
J. Andrew Hoisington, Lab Manager
James Boyd, Accounting Manager
Helen Reser, Inventory Officer
Douglas Warren, Site Superintendent
Karen Kowalski, Inventory Reduction Consultant

Aptus, Coffeyville, Kansas

Marv J. Koleszar, President
Vic DeJong, Vice President & General Manager
Fran Ito, Operations Manager
Chris Logelin, Environmental Affairs Manager

Environmental International Electrical Services, Inc., Kansas City, Kansas

David T. Ryan, President
Mark Liggat, Plant Manager
Robert A. Ream, Unison Director of Operations

Solomon Electric Supply, Inc., Solomon, Kansas

Eugene Hemmer, Owner
Robert C. Mong, President
Sharon Hemmer, Vice President
Matt Hemmer, Environmental Manager
Lonnie Creach, Operations Manager

Tipton Environmental Technologies, Inc., Tipton, Missouri

Rick Potrament, President/Manager
Kent Moon, Operations Supervisor
James Sidebottom, Health and Safety Officer

Trinity Chemical Company, Inc., Mound Valley, Kansas

Robert S. Forbes, Jr., President
Charles Eigsti, Vice President

Region VIII

Region VIII includes Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming. The contact is Tom Pauling, (303) 294–1158.

Chemical Waste Management, Inc., Oil and Solvent Process Company, Henderson, Colorado (A Chemical Waste Management, Inc. subsidiary facility)

William Shortreed, General Manager
Karan North, Environmental Manager, Health & Safety Manager, Technical Manager
Randy Chryst, Operations Manager
Troy Winkler, Production Supervisor
Randy Ayers, Production Shift Foreman
Kim Oldham, Production Shift Foreman
Wyly Cameron, Laboratory Manager

General Electric Denver Service Center, Denver, Colorado

Michael W. Kasten, Manager, Rocky Mountain District
T. Mark Leik, District PCB Specialist
David A. Godek, Transformer Foreman
Kenneth E. Kinnebrew, Manager of Shop Operations

Hazardous Electrical Line Power Equipment Removal (H.E.L.P.E.R.), Inc., Madison, South Dakota

Mike Yocum, Compliance Manager
Daniel J. Pardy, President
Nick Pardy
Leroy Kontz, Warehouse Manager
Steve Thrun, Manufacturing Manager
Deb Nold
Stephen P. Busch, Consultant to HELPER

T & R Service Company, Colman, South Dakota

James Allen Thompson, General Manager
C. Jeffery Miller, Regulatory Compliance Supervisor
Jeffrey D. Jung, Laboratory Supervisor
Charles B. Rosheim, PCB Storage Facility Supervisor
Randall G. Hoogendoorn, Shop Supervisor

UNISON Clearfield Warehouse, Clearfield, Utah

Robert A. Ream, Director of Operations for UNISON Transformer Services, Inc.
Robert A. Derks, Regional Business Manager
Robert J. Murawski, Regional Service Manager
Joseph P. Akridge, Distribution Coordinator
William D. Flenniken, Distribution Technician
Scott Warren Daley, Distribution Technician
Don David Wells, Distribution Technician
Archie W. Pruitt, Distribution Technician
Ralph T. Jenninga, Distribution Technician
William Bruce Kairawicz, Distribution Technician

Region IX

Region IX includes Arizona, California, Hawaii, Nevada, American Samoa, Guam, and Trust Territories. The contact is Greg Czajkowski, (415) 556–5366.

American Environmental Management, Rancho Cordova, California

Phillip Staats, Manager, Environmental Affairs

Chemical Waste Management, Phoenix, Arizona (A Chemical Waste Management, Inc. facility)

William J. Shortread, General Manager

General Electric Service Center, Anaheim, California

Milton Dinkel, District Manager
Roger Kossoff, Center Operations Manager
Larry Leafstone, PCB Facility Supervisor

Oil Process Company, Los Angeles, California dba/Oil, Inc. (Subsidiary of Rollins Environmental, Inc.)

Ronald M. Reed, Vice President and General Manager
Dennis E. Schultz, Technical Manager
Desmond I. Phillip, Plant Engineer/Process Manager
Chris J. Lilley, Drum Operations Manager

SD Myers, Inc., Kingman, Arizona

Stanley D. Myers, Owner
Dana S. Myers, President
Richard Heddleston, Treasurer
Stuart E. Scott, Plant Manager
Joseph J. Kelly, Manager, Safety and Environmental Affairs
David P. Myers, Laboratory Manager
Gerald Ernst, Production Manager

UNISON Transformer Services, Yerington, Nevada

Robert A. Ream, Director of Operations
Paul E. LeCave, Plant Manager
Kim Chandler, Office Manager

UNISON Transformer Services, Rancho Cordova, California

Robert A. Ream, Director of Operations
Robert A. Derks, Regional Business Manager
Robert J. Murawski, Regional Service Manager
Lynn B. Kaplan, Site Superintendent

Unitek Environmental Services, Inc., Ewa Beach, Honolulu, Hawaii

Warren Poslusny, President, UES
(J.R.) Randy Herold, Vice President, UES
Michael C. Lyles, Manager, Hazardous Waste Management Division
Gregory S. Perry, Environmental Specialist

Region X

Region 10 includes Alaska, Idaho, Oregon, and Washington. The contact is Bill Hedgebeth, (206) 442–7369.

Chemical Processors, Inc. (Georgetown), Seattle, Washington

W.E. Fisher, President
Michael P. Keller, Vice President, Operations
Ronald L. Atwood, Division Manager
David L. Aubry, Plant Manager
Gary D. Coil, Superintendent
William G. Ambacher, Supervisor
Dennis W. Toma, Supervisor
Glenn A. Dilman, Hazardous Waste Management Chemist
David A. Sabey (a principal who controls more than 5 percent of the company (Chemical Processors, Inc.))

Chemical Processors, Inc., Washougal, Washington

W.E. Fisher, President
Michael P. Keller, Vice President, Operations
Tom J. Rucker, Division Manager
Wes Bevens, Plant Manager
Bill Cochenour, Supervisor
(Superintendent position vacant)
David A. Sabey (a principal who controls more than 5 percent of the company (Chemical Processors, Inc.))

Chemical Processors, Inc., Kent, Washington

W.E. Fisher, President
Michael P. Keller, Vice President, Operations
Ronald L. Atwood, Division Manager, Operations
Richard W. Lee, Plant Manager
Tony A. Griese, Superintendent
Scott J. Rulifson, Supervisor
David A. Sabey (a principal who controls more than 5 percent of the company (Chemical Processors, Inc.))

Chemical Waste Management of the Northwest, Inc., Arlington, Oregon (A Chemical Waste Management, Inc. subsidiary facility; formerly Chem Security Systems, Inc.)(chemical waste landfill - applied for separate storage approval)

Richard Zweig, General Manager
Gerald Fisher, Technical Manager
Cheryl Steward, Lab Manager
Stephen Seed, Operations Manager
Nancy Proctor, Environmental Manager
Tamara Newcomer, Safety Engineer
Terrence T. Virnig, District Environmental Engineer

Eastern Electric Apparatus Repair, Inc., Seattle, Washington

Theodore W. Reed, Jr., President and CEO
Dan R. Coats, Executive Vice President
James N. Pepper, Seattle Service Center Manager
Larry N. Robinson, PCB Specialist, Group Leader
Robert P. Casey, PCB Specialist

Envirosafe Services of Idaho, Grandview, Idaho (chemical waste landfill - applied for amendment to disposal approval)

C. Edward Ashby, Jr., Chairman of the Board
David L. Hodge, President
Deborah Golden, Secretary and Assistant General Counsel
H. Beatty Chadwick, Assistant Secretary
Shirley J. Rist, Assistant Secretary
Anthony J. Pettinato, Jr., Treasurer
Roland DeSaulniers, Controller
John M. Wolf, Site Manager
Neil A. Brill, Regulatory Compliance Manager
Douglas W. Belt, Operations Manager
Weston William Whealy, Maintenance/Engineering Manager
Jeffrey T. Woodring, Safety/Training Supervisor
Kenneth D. Wall, Transportation Receiving Manager
Loren A. Wahl, Laboratory Manager

Northwest Enviroservices, Inc., Seattle, Washington

John S. Banchero, Jr., Owner/Operator
Warren Razore, Owner/Operator
Jerry Bartlett, Vice President/General Manager, Hazardous Waste Division
James M. Wilson, Vice President of Contract Administration
Earl Thomas Sommerfelt, Safety Director
Patrick J. Weaver, Process Engineer

Headquarters

These disposal facilites were originally permitted by the Director, Exposure Evaluation Division, Office of Toxic Substances. This list includes applications from disposal facilities that have an ancillary storage facility. The contact person is David Hannemann, (202) 382–3961.

Ensco, Inc., White Bluff, Tennessee, PCB Waste Storage Facility ("PCB WSF")

William P. (Billy) Clark, Facility Manager
Jim Langford, Vice President, Operations, ENSCO
Barry Barber, Maintenance Supervisor
Alan Tassil, Operations
L.D. Richardson, Personnel/Purchasing
Gina Curtis, Laboratory Manager
J. Sparks, First Shift Supervisor
E. Forrest, Second Shift Supervisor
K. Welch, Third Shift Supervisor

Galson Remediation Corporation (GRC), Syracuse, New York

Richard Tavelli, President
Timothy Geraets, Controller
Edwina Milicic, Laboratory Manager
Susan Bitner, Operations Assistant to the Lab Manager
Kimberly Merchant, Regulatory Compliance Officer
Robert Peterson, PE, Vice President & Technical Director
Russell Dionne, Field Operations Project Manager

General Electric Atlanta Service Center, Chamblee, Georgia

Gary C. Tyler, District Manager
Bonnie R. McClusky, Facility Supervisor
Thomas H. Davis, PCB Risk Control Supervisor
J.E. Rider, Manager Manufacturing
Ron Gilson, Facility Operator
Charles Fuller, Facility Operator
Thomas Flynn, Facility Operator

General Electric Chicago Service Center, Chicago, Illinois

Raymond F. Plachta, District Manager
John Engstrom, Transformer and PCB Operations Manager
Lisa M. DeWar, PCB Facility Supervisor

General Electric Cincinnati Service Center, Cincinnati, Ohio

John Margo, District Manager
Edward McGivern, Manager, Electrical Service
Jeffrey Pack, PCB Facility Supervisor
Bernan Quigley, PCB Facility Foreman

General Electric Cleveland Service Center, Cleveland, Ohio

Gary Sinatro, District Manager
Michael Wolfarth, Power Delivery District Manager
Paul Bander, PCB Facility Supervisor
Zenar Delk, Power Delivery Administrator

General Electric Apparatus and Repair Shop, Portland, Oregon

Steven Phelps, District Manager
Shirlee Porter, PCB Facility Supervisor

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PPM, Inc. of Georgia, Grayback Mountain, Utah, d/b/a USPCI for PPM Inc. of Grayback Mountain

Facilities: Atlanta, GA; Kansas City, MO; Philadephia, PA; Grayback Mountain, UT.
Cary D. Mans, Facility Manager
Louis Centofanti, Sr., Vice President, USPCI; President, PPM, Inc.
Scott Burnett, Sr., Vice President
James C. Simpson, Vice President, Operations
Mia L. Durrant, Record Keeper
Timothy L. Orton, Crew Chief/Analyst

PPM, Inc. of Georgia, Philadelphia, Pennsylvania d/b/a USPCI

Steve Handwerk, Facility Manager

PPM, Inc. of Georgia, Tucker, Georgia d/b/a USPCI

Wade Hollinger, Facility Manager

PPM, Inc. of Georgia, Kansas City, Missouri d/b/a USPCI

Daniel Halling, Facility Manager

Any questions or comments pertaining to this notice should be addressed to the appropriate regional contact listed above.

Dated: June 3, 1991.

Elizabeth F. Bryan,

Acting Director, Exposure Evaluation Division, Office of Toxic Substances.

[FR Doc. 91-13702 Filed 6-7-91; 8:45 am]
BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

June 4, 1991.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452-1422. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0164.
Title: Section 25.300 Developmental Operations (Formerly Section 25.390, Communications—Satellite Developmental Applications).
Action: Revision.
Respondents: Businesses or other for-profit (including small businesses).
Frequency of Response: On occasion.
Estimated Annual Burden: 40 responses; 24 hours average burden per response; 960 hours total annual burden.
Needs and Uses: Applicants seeking authority for developmental licenses must submit information pursuant to 47 CFR 25.300. Subpart E of part 25 of the Rules contains the technical and legal requirements for developmental operation. The information is used by the FCC, other licensees of the spectrum and the public to assure that part 25 developmental licensees are operating in accordance with their authorizations and the Commission's rules.

OMB Number: 3060-0343.
Title: Section 25.140, Qualifications of Domestic Satellite Space Station Licensees (Formerly § 25.391, Qualifications of Domestic Satellite Space Station Licensees).
Action: Revision.
Respondents: Businesses or other for-profit.
Frequency of Response: On occasion reporting.
Estimated Annual Burden: 25 responses; 1,000 hour average burden per response; 25,000 hours total annual burden.
Needs and Uses: The Communications Act, 47 U.S.C. 1, *et al.*, authorizes the FCC to require applicants to provide information concerning their legal, financial and technical qualifications to enable it to determine whether grant of a license will serve the public interest. To enable the FCC to determine whether a domestic satellite applicant is qualified to construct, launch and operate its proposed system, the FCC has traditionally required certain specified information to be included in applications. The data will be used to determine if domestic satellite applicants are qualified and have a justified need for additional satellites.

OMB Number: 3060-0383.
Title: Part 25—Satellite Communications.
Action: Reinstatement of a previously approved collection for which approval has expired.
Respondents: Businesses or other for-profit (including small businesses).
Frequency of Response: On occasion reporting.
Estimated Annual Burden: 2,749 responses; 1.81 hours average burden per response; 5,000 hours total annual burden.
Needs and Uses: Earth and space station applicants are required to submit information as specified in 47 CFR part 25 so that the Commission may determine whether their request should be granted. The rules and regulations contained in part 25 are needed for the processing of applications for earth and space station facilities. These Rules establish formal mechanisms for filing and processing earth and space station applications. The requirements are necessary to allow the Commission to carry out its statutory responsibilities in an effective manner, to determine the objectives of public interest, convenience and necessity are being met in accordance with 47 U.S.C. 309.

OMB Number: 3060-0395.
Title: Automated Reporting and Management Information System (ARMIS).
Form Number: FCC Report 43-05.
Action: Revision.
Respondents: Businesses or other for-profit.
Frequency of Response: Quarterly reporting.
Estimated Annual Burden: 1,645 responses; 224 hours average burden per response; 368,650 hours total annual burden.
Needs and Uses: Mandatory price cap local exchange carriers (LECs) and carriers electing price cap regulation are required to file quarterly service quality monitoring reports. These quarterly service reports were developed based on LEC proposals made in the course of the LEC price cap proceeding. Carriers are required to report on installation and repair intervals, trunk blockage, total switch downtime, and service quality complaints. These reports will be incorporated in the automated ARMIS data collection. No changes to the Code of Federal Regulations (CFR) to implement monitoring are proposed. The information will be used by the FCC and other interested parties to monitor the LEC performance under price cap regulation.

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 91-13714 Filed 6-7-91; 8:45 am]
BILLING CODE 6712-01-M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452-1422. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0427.
Title: Section 73.3523, Dismissal of applications in renewal proceedings.
Action: Extension.
Respondents: Businesses or other for-profit (including small businesses).
Frequency of Response: On occasion.
Estimated Annual Burden: 4 responses; 4.5 hours average buden per response; 18 hours total annual burden.
Needs and Uses: Section 73.3523 requires an applicant for a construction permit to obtain approval from the FCC to dismiss or withdraw its application when that application is mutually exclusive with a renewal application. This request for approval must contain a copy of any written agreement and an affidavit, stating that it has not received any consideration (pre-Initial Decision) or it has not received any consideration in excess of legitimate and prudent expenses (post-Initial Decision) for the dismissal/withdrawal of its application. In addition, within five days of the applicant's request for approval, each remaining competing applicant and the renewal applicant must submit an affidavit certifying that it has not paid any consideration (pre-Initial Decision), or that is has not paid consideration in excess of legitimate and prudent expenses (post-Initial Decision) for the dismissal/withdrawal of a competing application. The data is used to ensure that an application was filed under appropriate circumstances and not to extract payments prohibited by the Commission.

OMB Number: 3060-0446.
Title: Section 1.402, Establishment of Procedures to Provide a Preference to Applicants Proposing and Allocation for New Services (Gen. Docket No. 90-217).
Action: Revision.
Respondents: Businesses or other for-profit (including small businesses)
Frequency of Response: On occasion reporting.
Estimated Annual Burden: 12 responses; 325 hour average burden per response; 3,900 hours total annual burden.
Needs and Uses: Section 1.402 established procedures to provide a preference in the Commission's licensing process for parties requesting spectrum allocation rule changes associated with the development of new communications services. The preference applies to any applicant seeking an allocation in order to provide a new service. The information submitted for a pioneer's preference will be used by the FCC to determine whether initiation of a rule making proceeding is warranted and, if so, whether applicants are entitled to preferences. If the information is not collected, it would not be possible to award preferences.

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 91-13715 Filed 6-7-91; 8:45 am]
BILLING CODE 6712-01-M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

June 3, 1991.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452-1422. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: None.
Title: Application for Earth Station Authorization or Modification of Station.
Form Number: FCC Form 493.
Action: New collection.
Respondents: Businesses or other for-profit (including small businesses).
Frequency of Response: On occasion.
Estimated Annual Burden: 2,500 responses; 24 hours average buden per response; 60,000 hours total annual burden.
Needs and Uses: FCC Form 493 is a multipurpose application form used to request Commission authorization for new or modified radio station facilities under part 25. The form is used for a number of satellite services governed by part 25 covering several classes of stations. Part 25 services include Domestic Fixed-Satellite Service; International Fixed-Satellite Service; Radiodetermination-Satellite Service; and Mobile Satellite Service. FCC Form 493 is used also to apply for a license to construct and/or operate a transmit/receive earth station, a transmit-only earth station; to register a domestic receive-only earth station; to license an international receive only earth station; or to modify a granted license or registration. The form will be used by FCC staff to determine the applicant's eligibility to operate earth station facilities and to receive requested modifications to earth station facilities. The FCC would not be able to determine the applicant's eligibility for acquiring an authorization without this information.

OMB Number: 3060-0025.
Title: Application for Restricted Radiotelephone Operator Permit—Limited Use.
Form Number: FCC Form 755.
Action: Revision.
Respondents: Individuals or households.
Frequency of Response: On occasion reporting.
Estimated Annual Burden: 800 responses; 0.33 hour average burden per response; 264 hours total annual burden.
Needs and Uses: Applicants must possess certain qualifications in order to qualify for a radio operator license. The data will be used to identify the individuals to whom the license is issued and to confirm that the individual possesses the required qualifications for the license. The form has been revised to include fee processing data.

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 91-13716 Filed 6-7-91; 8:45 am]
BILLING CODE 6712-01-M

[Report No. 1848]

Petitions for Reconsideration and Clarification and Motion for Stay of Actions in Rule Making Proceedings

June 5, 1991.

Petitions for reconsideration have been filed in the Commission rule making proceedings listed in this Public Notice and published pursuant to 47

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CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor Downtown Copy Center (202) 452-1422. Opposition to these petitions must be filed by June 26, 1991. § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject. Amendment of part 90 of the Commission's Rules to Provide for Use of the 220-222 MHz Band by Private Land Mobile Radio Services. (PR 89-552, RM-6595)

Number of Petitions Received: 0

Subject. Policies and Rules Concerning Children's Television Programming. (MM Docket No. 90-570)

Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations. (MM Docket No. 83-670)

Number of Petitions Received: 8

Motion for Stay

Subject. Amendment of part 90 of the Commission's Rules to Provide for Use of the 220-222 MHz Band by Private Land Mobile Radio Services. (PR 89-552, RM-6595)

Number of Petitions Received: 1

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-13717 Filed 6-7-91; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1848]

Petitions for Reconsideration and Clarification and Motion for Stay of Actions in Rule Making Proceedings

June 5, 1991.

Petitions for reconsideration have been filed in the Commission rule making proceedings listed in this Public Notice and published pursuant to 47 CFR § 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor Downtown Copy Center (202) 452-1422. Oppositions to these petitions must be filed within 15 days of the date of public notice of the petitions in the Federal Register. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of part 90 of the Commission's Rules to Provide for Use of the 220-222 MHz Band by Private Land Mobile Radio Services. (PR 89-552, RM-6595)

Filed By: Ashton R. Hardy & Bradford D. Carey, Attorneys for Walker, Bordelon, Hamlin, Theriot and Hardy on 05-01-91.

Dr. Michael C. Trahos, D.O., NCE, CET on 05-15-91.

David B. Popkin on 05-20-91.

Fred F. Fielding, Philip V. Permut, David E. Hillard & Diane Zipursky, Attorneys for United Parcel Service of America, Inc. (UPS) on 05-30-91.

Eliot J. Greenwald & Michelle N. Plotkin, Attorneys for Cleartel Communications Mobile Limited Partnership & National RSA Company on 05-30-91.

Joan M. Griffin, Attorney for GTE Service Corporation on behalf of its affiliated domestic telephone, equipment, and service companies on 05-30-91.

Brent Weingardt, Attorney for Hector Jaun Figueroa on 05-30-91.

Brent Weingardt, Attorney for James H. Simpson on 05-30-91.

Brent Weingardt, Attorney for Stephen Evans on 05-30-91.

Subject: Policies and Rules Concerning Children's Television Programming. (MM Docket No. 90-570). Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations. (MM Docket No. 83-670).

Field By: Brian L. Wilcox, Ph.D., Director, Legislative Affairs and Policy Studies and Dale Kunkel, Indiana University, Of Counsel for American Psychological Association, American Academy of Pediatrics, National Parents-Teachers Association on 5-10-91.

Henry Geller, Counsel for Action for Children's Television (ACT) on 5/31/91.

Angela J. Campbell, Citizen Communications Center Project Institute for Public Representation, Georgetown University Law Center; Anne M. Boggan, Graduate Fellow; Patrick J. McGannon and Tony Osei, Law Students, Georgetown University Law Center, Of Counsel for National Association for Better Broadcasting, National Educational Association of the U.S., American Association of School Administrators & Washington Association for Television and Children on 5-29-91.

James J. Popham, Vice President & General Counsel for Association of Independent Television Stations, Inc. on 5-30-91.

Land Mobile Radio Services. (PR 89-552, RM-6595)

Filed By: Ashton R. Hardy & Bradford D. Carey, Attorneys for Walker, Bordelon, Hamlin, Theriot and Hardy on 05-01-91.

Dr. Michael C. Trahos, D.O., NCE, CET on 05-15-91.

David B. Popkin on 05-20-91.

Fred F. Fielding, Philip V. Permut, David E. Hillard & Diane Zipursky, Attorneys for United Parcel Service of America, Inc. (UPS) on 05-30-91.

Eliot J. Greenwald & Michelle N. Plotkin, Attorneys for Cleartel Communications Mobile Limited Partnership & National RSA Company on 05-30-91.

Joan M. Griffin, Attorney for GTE Service Corporation on behalf of its affiliated domestic telephone, equipment, and service companies on 05-30-91.

Brent Weingardt, Attorney for Hector Jaun Figueroa on 05-30-91.

Brent Weingardt, Attorney for James H. Simpson on 05-30-91.

Brent Weingardt, Attorney for Stephen Evans on 05-30-91.

Subject: Policies and Rules Concerning Children's Television Programming. (MM Docket No. 90-570). Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations. (MM Docket No. 83-670).

Field By: Brian L. Wilcox, Ph.D., Director, Legislative Affairs and Policy Studies and Dale Kunkel, Indiana University, Of Counsel for American Psychological Association, American Academy of Pediatrics, National Parents-Teachers Association on 5-10-91.

Henry Geller, Counsel for Action for Children's Television (ACT) on 5/31/91.

Angela J. Campbell, Citizen Communications Center Project Institute for Public Representation, Georgetown University Law Center; Anne M. Boggan, Graduate Fellow; Patrick J. McGannon and Tony Osei, Law Students, Georgetown University Law Center, Of Counsel for National Association for Better Broadcasting, National Educational Association of the U.S., American Association of School Administrators & Washington Association for Television and Children on 5-29-91.

James J. Popham, Vice President & General Counsel for Association of Independent Television Stations, Inc. on 5-30-91.

B. Jay Baraff & Mark J. Palchick, Attorneys for Community Antenna Television Association (CATA) on 05-30-91.

Henry L. Baumann, Executive Vice President & General Counsel; Valerie Schulte, Sr. Associate General Counsel and Doretha Ferrell, Legal Intern for National Association of Broadcasters (NAB) on 05-30-91.

Andrew Jay Schwartzman and Gigi B. Sohn, Counsel for Telecommunications Research and Action Center and the Maryland and Virginia Chapters of Washington Area Citizens' Coalition Interested in Viewers' Constitutional Rights on 5-30-91.

Motion for Stay

Subject: Amendment of part 90 of the Commission's Rules to Provide for Use of the 220-222 MHz Band by Private Land Mobile Radio Services. (PR 89-552, RM-6595).

Filed By: Ashton R. Hardy & Bradford D. Carey, Attorneys for Walker, Bordelon, Hamlin, Theriot and Hardy on 05-01-91.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-13788 Filed 6-7-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; United States Atlantic and Gulf/Ecuador Freight Association, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010390-022.

Title: United States Atlantic and Gulf/Ecuador Freight Association.

Parties: Crowley Caribbean Transport, Inc., Lykes Bros. Steamship, Inc., Naviera Del Pacifico C.A.

Synopsis: The proposed amendment would revise the Voting Procedures to include Jacksonville, Florida in ratemaking section 1, rather than section 2. The parties have requested a shortened review period.

Agreement No.: 202-010829-018.

Title: Eurocorde Discussion Agreement.

Parties: "Conference Parties". North Europe-USA Rate Agreement, USA-North Europe Rate Agreement, "Independent Carrier Parties". Evergreen Marine Corp. (Taiwan), Ltd., Mediterranean Shipping Co., Orient Overseas Container Line (UK) Ltd., Lykes Bros. Steamship Co., Inc., Polish Ocean Lines.

Synopsis: The proposed amendment would add language to the Agreement Authority permitting the Independent Carrier Parties to communicate with each other, as well as, with the Conference Parties and exchange information on matters within the scope of the Agreement.

Agreement No.: 212-011319-001.

Title: Neptuno/CSAV Service Agreement.

Parties: Compania Sud Americana de Vapores S.A., Naviera Neptuno, S.A.

Synopsis: The proposed amendment would modify the Agreement to provide for unlimited duration, subject to termination on 90-days notice by either party.

Dated: June 4, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-13586 Filed 6-7-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

June 3, 1991.

Background

Notice is hereby given of the final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829)

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503 (202-395-7340)

Final approval under OMB delegated authority of the extension, with revision, of the following reports:

1. Report title: Notice of Change in Bank Control.
Agency form number: FR 2081.
OMB Docket number: 7100-0134.
Frequency: On occasion.
Reporters: Persons proposing to acquire control of a bank holding company or state member bank.
Annual reporting hours: 7,725.
Estimated average hours per response: 51.5.
Number of respondents: 150.
Small businesses are not affected.
General description of report:

This information collection is required by law (12 U.S.C. 1817(j)). Parts may be given confidential treatment at the applicant's request (15 U.S.C. 552(b)(4)).

This notification is mandatory under the Change in Bank Control Act, which seeks to maintain public confidence in the banking system by preventing anti-competitive or otherwise adverse combinations of banks. The form requests information regarding the factors that must be considered by the Board under the statute, including a description of the proposal, and financial and employment data concerning the acquiring party. The proposed revisions eliminate filing requirements for acquisitions of incremental shareholdings between 10 and 25 percent of a bank holding company or state member bank. Other changes are proposed to clarify information requests and to provide for uniform responses.

2. Report title: Annual Report of Foreign Banking Organizations; Foreign Banking Organization Confidential Report of Operations.
Agency form number: FR Y-2068.
OMB Docket number: 7100-0125.
Frequency: Annual.
Reporters: Foreign banking organizations.
Annual reporting hours: 11,453.
Estimated average hours per response: 19.9.
Number of respondents: 575.
Small businesses are not affected.
General description of report:

This information collection is mandatory (12 U.S.C. 1844(c), 3106, and 3108(a)) and is given confidential treatment (5 U.S.C. 552(b)(8)).

These reports request financial and structural information on foreign banking organizations and their U.S. activities in order to assess their ability to serve as a source of strength to their U.S. operations and to determine compliance with the Banking Holding Company Act and International Banking Act. The reports are being proposed for extension with minor technical changes and instructional clarifications.

3. Report title: Criminal Referral Form.
Agency form number: FR 2230.
OMB Docket number: 7100-0212.
Frequency: On occasion.
Reporters: State member banks, bank holding companies and their nonbank subsidiaries, Edge Act and Agreement corporations, and U.S. branches and agencies of foreign banks.
Annual reporting hours: 2040.
Estimated average hours per response: 0.6 hours.
Number of respondents: 3400.
Small businesses are affected.
General description of report:

This information collection is voluntary (12 U.S.C. 248(a)(1), 625, and 1844(c)) and is given confidential treatment (5 U.S.C. 552(b)(7) and 552a(k)(2)).

This report has been jointly designed and used by the federal financial institutions supervisory agencies, the Department of Justice, and the F.B.I. It is also used by the U.S. Secret Service and the U.S. Department of Treasury. The purpose of the reporting form is to detect and track suspected criminal misconduct involving financial institutions and persons associated with them. The proposed revisions would create a uniform reporting form and instructions, thus allowing the creation of a common database for use by all agencies.

Final approval under OMB delegated authority of the extension, without revision, of the following reports:

1. Report title: Application to Issue Capital Notes.
Agency form number: FR 4015.
OMB Docket number: 7100-0140.
Frequency: On occasion.
Reporters: State member banks.
Annual reporting hours: 10.
Estimated average hours per response: 1.
Number of respondents: 10.
Small businesses are affected.
General description of report:

This information collection is mandatory (12 U.S.C. 461(a) and 12 CFR 204.2(a)(1)(vii)(c) and is not given confidential treatment.

This letter form application must be filed by state member banks seeking

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approval from the Federal Reserve to issue a capital note and to include it in its capital structure.

2. Report title: Statement of Purpose for an Extension of Credit Secured by Margin Stock.
Agency form number: FR U–1.
OMB Docket number: 7100–0115.
Frequency: Recordkeeping requirement, on occasion.
Reporters: Domestic commercial banks.
Annual reporting hours: 88,065.
Estimated average hours per response: .0031 hours.
Number of respondents: 13,400.
Small businesses are affected.
General description of report:

This information collection is mandatory (15 U.S.C. 78g, 78w) and is not given confidential treatment.

A purpose statement is required to be completed by a bank and its borrower whenever credit is secured directly or indirectly by any margin stock in an amount exceeding $100,000. The statement is not filed with the Federal Reserve, but is a recordkeeping form retained for a specified period by the lending bank. It is used to determine the purpose of the loan proceeds, to serve as an evidentiary tool to ascertain the intention of the parties involved, and to document the securities serving as collateral.

Board of Governors of the Federal Reserve System.
Dated: June 3, 1991.
William W. Wiles,
Secretary of the Board.
[FR Doc. 91–13661 Filed 6–7–91; 8:45 am]
BILLING CODE 6210–01–M

Manufacturers National Corporation; Proposal to Provide Financial Advisory Services; Engage in Private Placement Activities; and Act as a Broker or Agent in Financial Transactions

Manufacturers National Corporation, Detroit, Michigan ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (the "BHC Act"), and § 225.23 of the Board's Regulation Y (12 CFR 225.23), for permission to acquire 20 percent of the voting shares of W.Y. Campbell & Company, Detroit, Michigan ("Company"), and thereby engage in providing financial advisory services, private placement activities, and acting as an agent or broker in financial transactions. The activities will be conducted in the United States.

In particular, Applicant proposes to:

(1) Act as a financial adviser in connection with merger, acquisition, divestiture, financing, and similar transactions for nonaffiliated financial and nonfinancial institutions ("M&A Advisory Services");

(2) Perform valuations for nonaffiliated financial and nonfinancial institutions ("Valuation Services"), including:

(a) Valuations of companies (or one or more integral parts thereof) for purposes of merger, acquisition, divestiture, financing, and similar transactions;

(b) Tender and exchange offer valuations;

(c) Advice for management or bankruptcy courts on the viability and capital adequacy of financially troubled companies (and on the fairness of bankruptcy reorganizations);

(d) Valuation opinions on transactions in equity and debt securities;

(e) Valuation opinions on the fair market value of securities held in employee stock ownership trusts, pension or profit-sharing plans, charitable trusts, venture capital funds, and similar entities, or for estate tax purposes; and

(f) Valuation opinions on stock of publicly held and privately owned companies;

(3) Provide fairness opinions in connection with merger, acquisition, divestiture, and financing transactions for nonaffiliated financial and nonfinancial institutions ("Fairness Opinions");

(4) Provide financial feasibility studies, consisting of the evaluation of financial and other economic aspects of a proposed or pending project that should be considered by prospective investors in reaching investment decisions ("Feasibility Studies");

(5) Act as agent in the private placement of all types of securities, including providing related advisory services ("Private Placement Activities"); and

(6) Act as broker or agent in connection with merger, acquisition, divestiture, financing, and similar transactions for nonaffiliated financial and nonfinancial institutions ("M&A Agency Services").

The Board previously has approved applications by bank holding companies to provide M&A Advisory Services, Valuation Services, Fairness Opinions and Feasibility Studies, *Signet Banking Corporation*, 73 Federal Reserve Bulletin 59 (1987), and to engage in Private Placement Activities, *J.P. Morgan & Company Incorporated*, 76 Federal Reserve Bulletin 26 (1990). Applicant proposes to conduct these activities in substantial compliance with the Board's prior Orders. In connection with its Private Placement Activities, Applicant has indicated that it will not engage in the private placement of securities that are sponsored or advised by Applicant or any of its affiliates.

Applicant has proposed to act as a broker or agent in connection with financial transactions (M&A Agency Services), an activity that has not been approved previously by the Board. Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto."

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally so similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Association v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (1984).

Applicant maintains that acting as a broker or agent in connection with financial transactions are within the array of services provided by banks. Applicant would advise clients as to the structure of a proposal, participate in negotiations on behalf of a client, and assist the client in obtaining financing. Applicant has committed that it would act solely as agent for clients in providing such services. Applicant has also indicated that its services will be rendered solely to the management and the board of directors of a client and that Applicant will not deal directly with individual shareholders (except to the extent that an officer or management official is also a shareholder).

Applicant contends that the proposed activities are closely related to banking because banks are engaging in such activities. In addition, Applicant asserts that the experience banks have in negotiating loan and other financing transactions equips banks particularly well to provide such assistance.

In determining whether a particular activity is a proper incident to banking, the Board considers whether the performance of the activity by an affiliate of a holding company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.

Applicant states that its acquisition of Company will increase competition. Applicant contends that the proposed acquisition will result in greater convenience to, as well as the provision of more specialized and comprehensive corporate services to, its corporate customers.

With respect to possible adverse effects, Applicant has indicated that Company's M&A Agency Services encompass only the merger, sale, and acquisition of businesses. Company does not involve itself in the sale or acquisition of real estate or loan portfolios for a client, except as an incident to the sale of a business. Applicant commits that Company will not represent both parties in a transaction and that Company will not loan funds to a client. Applicant commits to abide by the requirements of sections 23A and 23B of the Federal Reserve Act in situations in which a banking affiliate of Applicant extends loans to a client.

In order to eliminate conflicts of interest that may arise from the provision of the M&A Agency Services, M&A Advisory Services, Valuation Services, and delivery of Fairness Opinions and Feasibility Studies, Applicant has made the following commitments:

1.Company will act solely as agent for clients in providing such services;

2. Such services will not encompass the performance of routine tasks or operations for a client on a daily or otherwise continuous basis;

3. Company will render advice on an explicit fee basis only, without regard to correspondent balances maintained by its client at any depository institution subsidiary of Applicant;

4. Company will withhold from each subsidiary or affiliates of Applicant any confidential information received from Company's clients, and each subsidiary or affiliate of Applicant will withhold from Company any confidential information obtained from its customers, except with the consent of the client or customer or as expressly required by applicable law or regulation; and

5. Company will disclose its affiliation with Applicant to each potential client.

In publishing the proposal for comment the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act.

Comments are requested on whether the proposed activities are "so closely related to banking or managing or controlling banks as to be a proper incident thereto," and whether the proposal as a whole can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."

Any request for a hearing on these questions must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors of the Federal Reserve Bank of Chicago.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than July 8, 1991.

Board of Governors of the Federal Reserve System, June 4, 1991.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 91–13659 Filed 6–7–91; 8:45 am]
BILLING CODE 6210–01–F

Midland States Bancorp, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices."

Any request for a hearing on this question must be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than July 1, 1991.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Midland States Bancorp, Inc., Effingham, Illinois; to acquire 100 percent of the voting shares of State Bank of Farina, Farina, Illinois.

Board of Governors of the Federal Reserve System, June 4, 1991.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 91–13660 Filed 6–7–91; 8:45 am]
BILLING CODE 6210–01–F

United Community Bancorp, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than July 1, 1991.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Midland States Bancorp, Inc., Effingham, Illinois; to acquire 100 percent of the voting shares of State Bank of Farina, Farina, Illinois.

Board of Governors of the Federal Reserve System, June 4, 1991.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 91–13660 Filed 6–7–91; 8:45 am]
BILLING CODE 6210–01–F

United Community Bancorp, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such

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as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 1, 1991.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. United Community Bancorp, Inc., Greenfield, Illinois; to acquire Roosevelt Interim Federal Savings Bank, Gillespie, Illinois, and thereby engage in operating a savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y. This activity will be conducted around Gillespie, Illinois.

Board of Governors of the Federal Reserve System, June 4, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-13661 Filed 6-7-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Statement of Organization, Functions, and Delegations of Authority

Part H, chapter HC (Centers for Disease Control) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 56 FR 5220, February 8, 1991) is amended to reflect the following changes: (1) Revision of the functional statements for the Epidemiology Program Office (HCB) and the Office of the Director (HCB1), and (2) revision of the list of officials in the Order of Succession.

Section HC–B, Organization and Functions, is hereby amended as follows:

1. Delete in its entirety the functional statement for the Epidemiology Program Office (HCB) and substitute the following: (1) Manages the Epidemic Intelligence Service (EIS) Program through the recruitment, training, and assignment of epidemiologists; (2) manages the Preventive Medicine Residency Program through the selection, training, and assignment of Preventive Medicine Residents; (3) plans, develops, and edits the Morbidity and Mortality Weekly Report (MMWR), related publications, and various special reports; (4) serves as the focal point for the development of innovative methods for the collection, analysis, and communication of public health surveillance information; (5) provides epidemiologic assistance and epidemic aid through the field assignment of epidemiologists (6) provides consultation on epidemiology and surveillance to other Centers/Institute/Offices (CIOs) of CDC, other Federal agencies, state and local health departments, international organizations, and other nations; (7) facilities assistance and epidemic aid by managing the Epi-Aid system and coordinating with other CIOs of CDC; (8) plans, conducts, and evaluates research activities in various aspects of disease and injury control for global programs; (9) promotes the development of international field epidemiologic training programs; (10) serves as focus for applied epidemiologic training for CDC staff, state and local public health workers, and others; (11) in carrying out the above functions, collaborates, as appropriate, with other CIOs of CDC.

2. Delete in its entirety the functional statement for the Office of the Director (HCB1) and substitute the following: (1) Manages, directs, and coordinates the activities of the Epidemiology Program Office (EPO); (2) provides leadership and guidance on policy, program planning, program management, and operations; (3) provides leadership for the implementation of an integrated program of epidemiology and surveillance at CDC and at state and local governments; (4) provides liaison with other governmental agencies, international organizations, the Council of State and Territorial Epidemiologists, and other outside groups; (5) provides administrative, management, and support services, and coordinates with the appropriate CDC staff offices on program and administrative matters; (6) plans EPO programs directed towards reporting achievement of the Year 2000 Objectives and the strengthening of the public health infrastructure and does other program planning and evaluation for EPO by coordinating with the Office of Program Planning and Evaluation, CDC, and other appropriate CDC staff offices on program and administrative matters; (7) ensures scientific and technical quality of EPO programs; (8) provides administrative, information, and computer support services for EPO; (9) facilitates epidemiologic assistance by managing the epidemiologic aid system and coordinating with other CIOs of CDC; (10) advises the CDC Director on policy matters concerning EPO activities and CDC-wide epidemiologic and surveillance activities.

Section HC–C, Order of Succession, is hereby amended as follows:

In the listing of officials, delete item (3) and renumber items (4) through (9) as (3) through (8) respectively.

Effective Date: June 3, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91-13686 Filed 6-7-91; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 91N-0211]

Drug Export; Blood Grouping Reagents: Anti-C (Anti-rh') (Monoclonal) BioClone for Slide, Tube, and Microplate Tests; Anti-E (Anti-rh") (Monoclonal) BioClone for Slide, Tube and Microplate Tests; Anti-e (Anti-hr") (Monoclonal) BioClone for Slide, Tube, and Microplate Tests

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ortho Diagnostic Systems, Inc., has filed an application requesting approval for the export of the biological products Blood Grouping Reagents Anti-C (Anti-rh') (Monoclonal) BioClone for Slide, Tube, and Microplate Tests; and Anti-E (Anti-rh") (Monoclonal) BioClone for Slide, Tube, and Microplate Tests; and Anti-e (Anti-hr") (Monoclonal) BioClone for Slide, Tube, and Microplate Tests to Belgium, Canada, Federal Republic of Germany, France, Italy, Japan, Portugal, Spain, and The United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, room 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Carl J. Chancey, Center for Biologics Evaluation and Research (HFB–124), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8191.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Ortho Diagnostic Systems, Inc., Route 202, Raritan, NJ 08869, has filed an application requesting approval for the export of the biological products Blood Grouping Reagents Anti-C (Anti-rh') (Monoclonal) BioClone for Slide, Tube, and Microplate Tests; Anti-E (Anti-rh") (Monoclonal) BioClone for Slide, Tube, and Microplate Tests; and Anti-e (Anti-hr") (Monoclonal) BioClone for Slide, Tube, and Microplate Tests to Belgium, Canada, Federal Republic of Germany, France, Italy, Japan, Portugal, Spain, and The United Kingdom. The Blood Grouping Reagents Anti-C (Anti-rh') (Monoclonal) BioClone for Slide, Tube, and Microplate Tests; and Anti-E (Anti-rh") (Monoclonal) BioClone for Slide, Tube, and Microplate Tests; and Anti-e (Anti-hr") (Monoclonal) BioClone for Slide, Tube, and Microplate Tests are qualitative tests for recognition of the C(rh') antigen E(rh") antigen and/or e(rh") antigen on Human Red Blood Cells. The application was received and filed in the Center for Biologics Evaluation and Research on May 10, 1991 which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by June 20, 1991, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: May 31, 1991.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 91-13720 Filed 6-7-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91N-0212]

Drug Export; Coulter™ HIV p24 Antibody Assay

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Coulter Immunology has filed an application requesting approval for the export of the biological product Coulter™ HIV p24 Antibody (Ab) Assay to Australia, Austria, Belgium, Canada, Denmark, The Federal Republic of Germany, Finland, France, Iceland, Ireland, Italy, Japan, Luxembourg, The Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and The United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Carl J. Chancey, Center for Biologics Evaluation and Research (HFB–124), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8191.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Coulter Immunology, 440 Coulter Way/West 20th St., Hialeah, FL 33010–2420, has filed an application requesting approval for the export of the biological product Coulter™ HIV p24 Ab Assay to Australia, Austria, Belgium, Canada, Denmark, The Federal Republic of Germany, Finland, France, Iceland, Ireland, Italy, Japan, Luxembourg, The Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and The United Kingdom. The Coulter™ HIV p24 Ab Assay is an Enzyme Immunoassay for the detection of p24 antibody (Ab) to the human immunodeficiency virus in human plasma or serum. The application was received and filed in the Center for Biologics Evaluation and Research on August 21, 1990, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by June 20, 1991, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: May 31, 1991.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 91-13721 Filed 6-7-91; 8:45 am]

BILLING CODE 4160-01-M

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Relocation of the Dockets Management Branch

AGENCY: The Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the relocation of the Dockets Management Branch (DMB). On June 14, 1991, the DMB will move to the first floor of the Park Bldg., located on Parklawn Dr., Rockville, MD. The move will permit more efficient utilization of work and document storage space.

FOR FURTHER INFORMATION CONTACT: Linda M. Quinones,

or

Jennie C. Butler, Dockets Management Branch (HFA–305), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–7542.

SUPPLEMENTARY INFORMATION: The DMB, which is part of the Office of Management and Operations, is responsible for many activities under 21 CFR 10.20. Major functions of the DMB include:

(1) Serving as the entry point for citizens petitions, comments, hearing requests, and other documents used in FDA rulemaking and administrative activities;

(2) Making these documents available for inspection by operating a public reading room;

(3) Providing copies of the official records maintained by the Dockets Management Branch in accordance with the Freedom of Information Act; and

(4) Providing advice and guidance regarding filing requirements pertaining to the documents handled by the DMB.

The new address for DBM will be rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. The mailing code, HFA–305, as well as the hours of operation of the public reading room will remain the same. The business hours of the public reading room will continue to be 9 a.m. to 4 p.m., Monday through Friday. Telephone numbers for the DMB will also remain the same. Currently, the telephone numbers for the office are: 301–443–7542, 301–443–1751, 301–443–1753, and 301–443–0977.

Dated: June 5, 1991.

Gary Dykstra,

Acting Associate Commissioner fo. Regulatory Affairs.

[FR Doc. 91–13640 Filed 6–5–91; 10:48 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

Statement of Organization, Functions and Delegations of Authority

Part F of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (**Federal Register**, Vol. 56, No. 57, pg. 12375, dated March 25, 1991) is amended to reflect a change within the Office of Coordinated Care Policy and Planning. The specific change will establish two subordinate divisions. The Division of Coordinated Care Policy and Evaluation will be responsible for national coordinated health care legislative and regulatory policy. The Division of Planning and Promotion for Coordinated Care will be responsible for the promotion functions for coordinated health care.

The specific amendments to Part F. are described below

• A new section FJ.20.A, Division of Coordinated Care Policy and Evaluation (FJA), is established to read as follows:

A. Division of Coordinated Care Policy and Evaluation (FJA)

• Develops and coordinates legislative proposals, regulatory specifications, and other policy documents to establish coordinated care national policies and to address the Agency objectives for the development, qualification, contracting, and ongoing compliance of health maintenance organizations (HMOs), competitive medical plans (CMPs), preferred provider organizations (PPOs), and other coordinated systems of health care.

• Analyzes the manner in which the Agency objectives and policies are tied into pending or existing coordinated health care legislation and regulations. Evaluates national trends and their possible effect on Agency-wide activities.

• Reviews and analyzes policies regarding Federal beneficiaries in Medicare, CHAMPUS, and the Federal Employees Health Benefits' programs for coordination with coordinated care programs.

• Reviews and analyzes coordinated internal and external health care research, demonstration, and evaluation study activities.

• Develops presentation material for use with congressional committees and with the Office of Management and Budget related to the program and appropriation legislation affecting the coordinated health care objectives of the Administration.

• Develops presentation material for use with congressional committees and with the Office of Management and Budget related to the program and appropriation legislation affecting the coordinated health care objectives of the Administration.

• A new section FJ.20.B, Division of Planning and Promotion for Coordinated Care (FJB), is established to read as follows:

B. Division of Planning and Promotion for Coordinated Care (FJB)

• Develops and implements activities to promote coordinated health care programs to HMOs, CMPs, PPOs, employers, insurance companies, coordinated health care associations/organizations, and other professional medical and private groups, including Federal beneficiary and consumer groups.

• Develops and coordinates coordinated health care education and promotional programs within the Agency/Department to encourage greater access of Federal Medicare beneficiaries to HMOs, CMPs, PPOs, and other coordinated health care organizations. Supports the Agency/Department's efforts to move toward a pluralistic health care delivery system.

• Develops and supports the maintenance of close working relationships with national organizations representing the coordinated health care industry to enhance technical assistance options and to promote appropriate coordinated health care performance measurement standards.

• Develops, coordinates, and supports strategic planning activities for the coordinated health care program in the Agency and any other specific coordinated health care planning initiatives as required by the Administrator of the Agency. Establishes and maintains a system to monitor the planning schedule to assure appropriate coordination and completion of coordinated care activities within the Agency as established by the Administrator.

• Supports the liaison activities for the Agency for coordinated health care programs with other Federal/State programs and agencies, health care professional organizations/associations, trade associations and consumer groups.

Dated: May 24, 1991.

Robert A. Streimer,

Associate Administrator for Management.

[FR Doc. 91–13675 Filed 6–7–91; 8:45 am]

BILLING CODE 4120–03–M

Health Resources and Services Administration

Availability of Funds for Nursing Education Loans for Service in Certain Health Facilities (Demonstration Program)

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of Availability of Funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that approximately $100,000 will be available in fiscal year (FY) 1991 for the second year of a demonstration program of educational loans, authorized by section 847 of the Public Health Service (PHS) Act. These loans will be made to assist individuals in their final year of nursing education in a school of nursing for the 1991–1992 academic year if they will enter into a contract with an eligible health facility to engage in full-time employment as a registered nurse for at least 1 year. The loans would be repaid for these nurses by their employers within 3 years under agreements provided in their employment contracts. Borrowers who fail to fulfill their employment contracts will assume responsibility for repaying the loans.

The HRSA, through this notice, invites nursing students who will enter their final year of nursing education in the 1991–2 academic year to apply for participation in this demonstration loan program. With these funds, HRSA estimates that approximately 10 loans can be made, averaging $10,000 each, covering the costs of full-time education and reasonable living expenses for the student's final (1991–1992) academic year. The authority to make loans under this program expires September 30, 1991.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. This program of service-obligated nursing education loans is related to the priority areas of improving access to primary care services for medically underserved populations in both rural and urban areas. Potential applicants may obtain a copy of Healthy People 2000 (Full report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone 202–783–3238).

DATES: To receive consideration for these loans, eligible individuals must submit their applications by September 1, 1991. Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date: or

(2) Sent on or before the deadline and received in time for submission to the reviewing program official. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications will not be considered for funding and will be returned to the applicant.

ADDRESSES: Application materials may be obtained from and completed applications sent to the section 847 Loan Program, c/o Norris S. Lewis, M.D., Director, Division of Health Services Scholarships, Bureau of Health Care Delivery and Assistance, HRSA, room 7–18, 5600 Fishers Lane, Rockville, MD 20857; or by calling 1–301–443–1650 during office hours.

FOR FURTHER INFORMATION CONTACT: For general program information and technical assistance, please contact M. Clarke Gordon at the above address or telephone 301–443–1650 during office hours.

SUPPLEMENTARY INFORMATION: Section 847 of the PHS Act authorizes the Secretary to conduct a demonstration program of educational loans to nursing students who obtain employment contracts with eligible health facilities which will agree to repay the loan.

The maximum loan amounts are those required to meet the student's costs of nursing school tuition, books, fees, necessary transportation, and reasonable living expenses, as determined by the borrowers' schools, based on school budgets for full-time students in the borrowers' final year of nursing education. Loans awarded under this program bear interest at 5 percent per year on the unpaid balance of the loan, accruing from the date the borrower is no longer enrolled in the nursing program. The employing health facility has 3 years to repay the loan.

Eligible Applicants

To be eligible to participate in this program, an individual must:

(1) Be enrolled (or accepted for enrollment) for the 1991–2 academic year in the final year of his/her nursing education in a school of nursing. (A "school of nursing" means a collegiate, associate degree, or diploma school of nursing in a State.)

(2) Contract with an eligible health care facility (defined below) for full-time employment as a nurse upon completion of the applicant's nursing education, with the provision that the employer will repay the loan if the applicant is selected for participation in this program.

(3) Submit an application by the announced deadline.

Funding Preferences

In making loans, the Secretary will give preference for funding to applicants who are disadvantaged and minority individuals underrepresented in the nursing profession. "Disadvantaged" in this program refers to the financial inability of the applicant to afford full-time attendance at a school of nursing, as certified by the student financial aid administrator of the applicant's nursing school. "Minority individuals underrepresented in the nursing profession" in this program refers to applicants who are identified by their school registrars as blacks (African Americans), Hispanics, Native Americans, Alaska Natives, or Native Hawaiians. Applicants who meet both preference factors will be granted loan funds before applicants who meet only one of the preference factors.

Eligible Health Facilities

The eligible health facilties with which applicants may contract for employment under this program must be:

(1) Nonprofit hospitals or long-term care facilities certified under title XVIII or XIX of the Social Security Act;

(2) Located in geographic areas that are underserved with respect to the services of registered nurses; (The program will use the most recent edition of Counties in the United States with a Shortage of Nurses, first published May 1990 by the Office of Shortage Designation, Bureau of Health Care Delivery and Assistance, HRSA. This list, based on available data, identifies the quartile (622) of counties (or parishes) in the United States with the greatest shortage of nurses.) And,

(3) Willing to include in employment contracts with nurse student borrowers under this program the following provisions: (a) That the facility will repay all of the principal and interest on the loan made under this program within 3 years; (b) that the payments made by the facility on behalf of the borrower will be in addition to the pay the borrower would otherwise receive for such service; and (c) that if the facility violates the contract, the facility will be liable to the United States for all of the principal and interest due on the loan.

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Other Award Information

Of the approximately $100,000 available to the program for the 1991 fiscal year, at least $35,000 must be reserved for loans to individuals who will be employed as nurses in a rural county listed in Counties in the United States with a Shortage of Nurses.

This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, since payments to individuals are not covered.

The OMB Catalog of Federal Domestic Assistance number for this demonstration program is 93.930

Dated: May 1, 1991.

John H. Kelso,

Acting Administrator.

[FR Doc. 91-13722 Filed 6-7-91; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Cancer Institute; Meeting of the Cancer Center Support Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Cancer Center Support Review Committee, National Cancer Institute, on August 1 and 2, 1991, Hyatt Regency Bethesda, 1 Bethesda Metro Center, Bethesda, MD 20814.

This meeting will be open to the public on August 1 from 8 a.m. to 8:30 a.m., to review administrative details and other cancer center review issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on August 1 from approximately 8:30 a.m. to adjournment on August 2 for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Carole Frank, the Committee Management Officer, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide a summary of the meeting and the roster of committee members, upon request.

Dr. David E. Maslow, Scientific Review Administrator, Cancer Center Support Review Committee, National Cancer Institute, Westwood Building, room 804, National Institutes of Health, Bethesda, Maryland 20892 (301/496-2330) will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.197, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: May 22, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-13598 Filed 6-7-91; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meeting of the Cancer Education Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Cancer Education Review Committee, National Cancer Institute, National Institutes of Health, July 10-12, 1991, Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

This meeting will be open to the public on July 10 from 8:30 a.m. to 9 a.m. to discuss and review administrative details and other cancer education issues. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on July 10 from 9 a.m. to recess and on July 11 and 12 from 8:30 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708), will provide summaries of the meeting and rosters of committee members upon request.

Dr. Mary Bell, Scientific Review Administrator, Cancer Education Review Committee, National Cancer Institute, Westwood Building, room 834, National Institutes of Health, Bethesda, Maryland 20892, (301/496-7978), will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: May 22, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-13599 Filed 6-7-91; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meeting of the Cancer Research Manpower Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Cancer Research Manpower Review Committee, National Cancer Institute, on June 27-28, 1991, The Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

This meeting will be open to the public on June 27, 1991, from 8:30 a.m. to 9 a.m., to review administrative details and other cancer research manpower review issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on June 27 from approximately 9 a.m. to adjournment on June 28 for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Carole Frank, the Committee Management Officer, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. John W. Abrell, Executive Secretary, Cancer Research Manpower Review Committee, National Cancer Institute, Westwood Building, room 832, National Institutes of Health, Bethesda, Maryland 20892 (301/496-6767) will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: May 22, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-13600 Filed 6-7-91; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Deafness and Other Communication Disorders; Meeting of the Communication Disorders Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Communication Disorders Review Committee on June 20-21, 1991. The Committee will meet at the Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852. Notice of the meeting room will be posted in the hotel lobby.

The Committee meeting will be open to the public on June 20 from 8 a.m. until 8:30 a.m., to discuss administrative details relating to Committee business. Attendance by the public will be limited to space available.

The meeting of the Committee will be closed to the public on June 20 from 8:30 a.m. until recess and on June 21 from 8 a.m. until adjournment at approximately 2 p.m. in accordance with provision set forth in sections 552b(c)(4) and 52b(c)(6), title 5 U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion, and evaluation of individual grant applications. These deliberations could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Committee meeting may be obtained from Dr. Marilyn Semmes, Scientific Review Administrator, National Institute on Deafness and Other Communication Disorders, room 400B, Executive Plaza South, Bethesda, Maryland 20892, 301-496-8683.

(Catalog of Federal Domestic Assistance Program No. 13.173 Biological Research Related to Deafness and Other Communicative Disorders.)

Dated: May 22, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-13601 Filed 6-7-91; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Office of the Assistant Secretary for Health; Statement of Organization, Functions and Delegations of Authority

Part H, Public Health Service (PHS), chapter HA (Office of the Assistant Secretary for Health) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (42 FR 61318, December 2, 1977, as amended most recently at 56 FR 6406, February 15, 1991), is amended to reflect a realignment of international and refugee health functions within the Office of the Assistant Secretary of Health under an Office of International and Refugee Health (HAL). This realignment will provide one central organization within OASH to be responsible for the establishment and implementation of interrelated policies, oversight and coordination of PHS efforts in the Department of Health and Human Services (DHHS) for international and refugee, entrant and alien health affairs.

Office of the Assistant Secretary for Health

Under part H, chapter HA, Office of the Assistant Secretary for Health, section HA-10, Organization, delete the list of organizations and substitute the following:

The Office of the Assistant Secretary for Health (HA) consists of the:

1. National AIDS Program Office (HAA).
2. Office of Communications (HAB).
3. President's Council on Physical Fitness and Sports (HAC).
4. Office of Health Legislation (HAJ).
5. Office of Equal Employment Opportunity (HAK).
6. Office of International and Refugee Health (HAL).
7. Office of Minority Health (HAM).
8. Office of the Surgeon General (HAN).
9. Office of Emergency Preparedness (HAP).
10. Office of Management (HAU).
11. National Vaccine Program Office (HA2).
12. Senior Advisor for Environmental Affairs (HA3).
13. Office of Scientific Integrity Review (HA4).
14. Office of Population Affairs (HA5).
15. PHS Executive Secretariat (HA6).
16. Office of Intergovernmental Affairs (HA7).
17. Office of Disease Prevention and Health Promotion (HA8).
18. Office of Health Planning and Evaluation (HA9).

Under section HA-20, Functions, following the statement for the News Division (HAB-3), delete the title and statement for the Office of International Health (HAE). Following the statement for the President's Council on Physical Fitness and Sports (HAC), delete the title and statement for the Office of Refugee Health (HAF), and add the following titles and statements:

Office of International and Refugee Health (HAL). The Office of International and Refugee Health (HAL) within the overall policy guidance of the DHHS Office of the Secretary and in consultation and cooperation with the Office of Intergovernmental Affairs, serves as the PHS and DHHS focal point for policy guidance, planning, evaluation and program coordination relating to international and refugee, entrant and alien health affairs.

Office of International Health (HAL3). Provides policy formulation, program direction, coordination and liaison of all PHS international health affairs. The Office: (1) Provides staff advice to the Secretary through the Deputy Assistant Secretary for International Health and the Assistant Secretary for Health on international health policies, plans, programs and activities; (2) prepares, directs and assesses the results of analyses and evaluation of selected international health policy issues and programs for PHS, DHHS, the Department of State, the Agency for International Development, and other Federal departments and agencies; (3) maintains liaison with and, as appropriate, represents the Department to international health institutions and organizations, the U.S. private sector, other department and agencies, and representatives of foreign governments on international health matters; (4) facilitates and provides oversight for technical cooperation in the health field with other departments and agencies, international organizations and requesting countries; (5) develops and coordinates interagency agreements with the Agency for International Development and other Federal agencies on international health matters; (6) recommends and promotes policies in multilateral health and health-related programs for implementation by international organizations, especially the World Health Organization (WHO), the Pan American Health Organization (PAHO), and the United Nations Children's Fund (UNICEF); (7) serves as the principal focal point in the Department for relationships with WHO, PAHO and UNICEF and arranges for the provision of technical consultation to these organizations; (8) analyzes policies, strategies, and budgets of international organizations as a basis for recommending U.S. policy towards and participation in the health-related programs of the organizations;

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(9) serves as the primary focal point in PHS for relationships with other departments and agencies, the private sector, and representatives of foreign governments on health cooperation under bilateral arrangements; (10) develops and, as appropriate, implements international activities in cooperation with PHS and other agencies and facilities their participation in those activities; (11) provides leadership and staff support in intragovernmental international health policy, planning and coordination processes; and (12) provides staff support on international health matters to the Assistant Secretary for Health and other PHS officials and Office of the Assistant Secretary for Health staff offices.

Office of Refugee Health (HAL4). Provides for policy formulation, program direction, coordination, and liaison of all PHS refugee, entrant and alien health matters. Specifically, the Office: (1) Serves as the focal point for the direction and coordination of PHS efforts in all refugee, entrant and alien health matters (including mass immigration and repatriation emergencies); (2) develops and implements policy and guidelines relating to refugee, entrant and alien health and mental health screening and care; (3) directs and coordinates health and mental health operations at Immigration and Naturalization Service Processing Centers and provides guidance to the PHS agencies in meeting their responsibilities in this regard; (4) develops and administers interagency agreements between PHS and other Federal components and between OASH and the PHS agencies concerning specific assignments of program responsibility, the allocation of resources and the establishment of program accountability; (5) represents the Deputy Assistant Secretary for International Health and serves as the PHS focal point for liaison with the Office of Refugee Resettlement, other components of the DHHS, the Department of Justice, the Department of State, other Federal components, the private sector, and international organizations on all matters pertaining to refugee, entrant and alien health and mental health; and (6) reviews and evaluates PHS refugee, entrant and alien health activities to identify unmet needs and improve overall operations.

Section HA–30. Delegations of Authority. All delegations and redelegations of authority to the Director, Office of Refugee Health, and the Director, Office of International Health, that were in effect prior to the effective date of this reorganization shall continue in effect in the Deputy Assistant Secretary for International Health, pending further redelegations.

Dated: June 3, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91–13687 Filed 6–7–91; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–920–01–4111–14; NDM 78719]

Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease NDM 78719, Bowman County, North Dakota, was timely filed and accompanied by the required rental accuring from the date of termination.

No valid lease has been issued effecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10 per acre and 16⅔% respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: May 22, 1991.

June A. Bailey,

Chief, Leasing Unit.

[FR Doc. 91–13588 Filed 6–7–91; 8:45 am]

BILLING CODE 4310–DN–M

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Black-capped Vireo for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft recovery plan for the black-capped vireo. This migratory songbird occurs on private and public lands in west-central Oklahoma, through central Texas, to northern Mexico. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before July 15, 1991 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may examine a copy by contacting one of the following U.S. Fish and Wildlife Service field offices:

U.S. Fish and Wildlife Service, 711 Stadium Drive East, suite 252, Arlington, Texas 76011, commercial #817/885–7830, FTS 334–7830;

U.S. Fish and Wildlife Service, c/o Corpus Christi State University, Campus Box 338, 6300 Ocean Drive, Corpus Christi, TX 78412, commercial #512/888–3346, FTS 520–3346;

U.S. Fish and Wildlife Service, 222 S. Houston, suite A, Tulsa, Oklahoma, commercial #918/581–7458, FTS 745–7458.

Written comments and materials regarding the plan should be addressed to Robert M. Short, U.S. Fish and Wildlife Service, 711 Stadium Drive East, suite 252, Arlington, Texas 76011. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the Arlington, Texas address.

FOR FURTHER INFORMATION CONTACT: Robert Short, Field Supervisor, at the Service's Arlington, Texas office (see address above).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

A draft recovery plan for the black-capped vireo (Vireo atricapillus) has been developed. The black-capped vireo was listed by the Service as an endangered species in 1987. The species is threatened by: (1) The brown-headed cowbird (*Molothrus ater*) which parasitizes vireo nests, and (2) habitat loss due to such factors as urbanization, range management, overbrowsing, and succession. The current breeding range extends from a few areas in west-central Oklahoma, through central Texas to northern Mexico (Coahuila). The draft recovery plan for this species is now available for technical and agency review.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 5, 1991.

Roger Abeyta,

Acting Regional Director.

[FR Doc. 91–13664 Filed 6–7–91; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF INTERIOR

Availability of a Draft Recovery Plan for Mimulus glabratus var. michiganensis (Michigan Monkey Flower) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for *Mimulus glabratus* var. *michiganensis* (Michigan monkey flower). This plant is known from only 12 occurrences in northern Michigan, where it is restricted to cold, alkaline springs and spring fed streams. Nine of the twelve occurrences are concentrated in the Mackinac Straits region. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before July 10, 1991 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft plan may examine a copy during normal business hours at the Services's Twin Cities Regional Office, Division of Endangered Species, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111, telephone 612/725–3276, FTS 725–3276, or at the East Lansing Field Office, 1405 Harrison Road, East Lansing, Michigan 48823, telephone 517/337–6650. Persons wishing to obtain a copy of the draft recovery plan should contact the Twin Cities Regional Office. Written comments and materials regarding the plan should be mailed to the Twin Cities office. All comments and materials received will be available for public inspection, by appointment, during normal business hours at that office for the duration of the comment period.

FOR FURTHER INFORMATION CONTACT: William F. Harrison, at the above Twin Cities Regional Office address (612/725–3276; FTS 725–3276).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during the recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

Mimulus glabratus var. *michiganensis* (Michigan monkey flower) was listed as an endangered species under the Act on June 21, 1990 (55 FR 25596). This species is currently extant at 12 sites in Benzie, Cheboygan, Emmet, Leelanau, and Mackinac Counties in northern Michigan. Seventy-five percent of the occurrences are concentrated in the Mackinac Straits region. The species is restricted to cold, alkaline springs and spring-fed streams. Biological limitations include an extremely low degree of fertility, strict habitat specificity, and a poor ability to disperse. Hydrological disruptions within or near the species' habitat, particularly those that modify or restrict water flow or result in the warming of the substrate, constitute the primary threat to this species' survivial.

The Michigan monkey flower is an aquatic to semi-aquatic perennial plant characterized by its mat forming, clonal growth habit. The stems may reach more than 40 cm in length, are lax and reclining at the base, and root freely at the lower leaf nodes, which produce numerous additional shoots. The opposite leaves are broadly ovate to rotund and may be coarsely sharp-toothed with petioles that are usually shorter than the blades. Bright yellow, snapdragon-like tubular flowers are produced from mid-June to mid-July. The recovery plan outlines strategies to protect and manage sites where the species occurs, continue to survey for new occurrences, conduct demographic, physiological, and breeding system studies to monitor and better understand population biology, and research on specific habitat requirements and genetic variability. The recovery objective is to secure long-term protection for the 12 extant occurrences.

Public Comments Solicited

The Service solicits written comments on this recovery plan. All comments received by the date specified above will be considered prior to approval of the plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: May 20, 1991.

Thomas J. Kerze,

Regional Director.

[FR Doc. 91–13642 Filed 6–7–91; 8:45 am]

BILLING CODE 4310–55–M

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INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-522 (Preliminary)]

Minivans From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-522 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of minivans, provided for in headings 8703 and 8704 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by July 15, 1991.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201, as amended by 56 FR 11918, Mar. 21, 1991), and part 207, subparts A and B (19 CFR part 207, as amended by 56 FR 11918, Mar. 21, 1991).

EFFECTIVE DATE: May 31, 1991.

FOR FURTHER INFORMATION CONTACT: Brian Walters (202-252-1198), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on May 31, 1991, by counsel on behalf of General Motors Corp., Detroit, MI, Ford Motor Co., Dearborn, MI, and Chrysler Motors Corp., Detroit, MI.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on June 21, 1991, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Brian Walters (202-252-1198) not later than June 19, 1991, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before June 26, 1991, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: June 5, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-13779 Filed 6-7-91; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Directed Service Order No. 1511]

Chicago Central & Pacific Railroad Co.—Directed Service—Cedar Valley Railroad Co.; Direct Service Order

AGENCY: Interstate Commerce Commission.

ACTION: Directed Service Order No. 1511.

SUMMARY: Directed Service Order No. 1511 authorizes the Chicago Central & Pacific Railroad Company (CCP), pursuant to 49 U.S.C. 11125 and without subsidy or other Federal compensation, to operate over lines of the Cedar Valley Railroad Company (CVR) for a period of sixty (60) days.

EFFECTIVE DATE: This order shall become effective at 12:01 a.m., June 5, 1991.

FOR FURTHER INFORMATION CONTACT: Bernard Gaillard (202) 275-7849 or Melvin F. Clemens, Jr. (202) 275-1559 [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Upon notification by shippers, railroad connections, and the Iowa Department of Transportation (IDOT) that the CVR had ceased operations over its lines without authority, and which was determined by the Commission to be the case, this order was entered pursuant to 49 U.S.C. 11125.

An on-site inspection of CVR by Commission staff indicated that a large number of cars loaded with perishable commodities were stranded on CVR as a result of its ceased operations. CCP offerd to relieve this situation and to provide essential service to shippers located on CVR as a "Directed Rail Carrier", uncompensated and without Federal subsidy under 49 U.S.C. 11125(b)(5).

The Commission herein certifies that the emergency exists which prompted entry of this order. This order will assure shippers of essential rail service at least for a period of sixty (60) days.

To purchase a copy of the decision, write to, call or pick up a copy in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington DC 20423. Telephone (202) 289-4357/4359.

Decided: June 4, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips and McDonald.

Sidney L. Strickland, Jr.

Secretary.

[FR Doc. 91-13685 Filed 6-7-91; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-301 (Sub-No. 6)]

Southrail Corp.—Abandonment—Between Whistler Station, AL and Waynesboro, MS; Findings

The Commission has found that the public convenience and necessity permit SouthRail Corporation to abandon its 75-mile line between milepost 4.7 near Whistler Station, AL, and milepost 79.7 near Waynesboro, MS, in Wayne and Greene Counties, MS, and Washington and Mobile Counties, AL.

A certificate will be issued authorizing abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable rail service to continue; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served on the applicant no later than 10 days from publication of this notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope: "Rail Section AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: June 3, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald. Commissioner McDonald, joined by Commissioner Simmons, dissented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-13684 Filed 6-7-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Targeted Training Grants

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of grant program.

SUMMARY: The Occupational Safety and Health Administration (OSHA) has a grant program, Targeted Training, which awards funds to nonprofit organizations to address unmet needs for safety and health training and education in the workplace. This notice announces Targeted Training grant availability for training construction workers in the hazards of lead, small businesses in the new lockout/tagout and electrical work practices standards, and health care workers about the hazards of blood-borne diseases. The notice describes the scope of the grant program and provides information on how to obtain a grant application. Applications should not be submitted without first obtaining the detailed grant application package mentioned later in the notice.

Authority for this program may be found in section 21(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670).

DATES: Applications must be received by July 26, 1991.

ADDRESSES: Grant applications must be submitted to the OSHA Regional Office for the state in which the applicant is located. A complete listing of Regional Offices can be found in the addendum at the end of the supplementary information section of this notice.

FOR FURTHER INFORMATION CONTACT: Ronald Mouw, Chief, or Helen Beall, Training Specialist, Division of Training and Educational Programs, Office of Training and Education, Occupational Safety and Health Administration, U.S. Department of Labor, 1555 Times Drive, Des Plaines, Illinois 60018, telephone (708) 297-4810.

SUPPLEMENTARY INFORMATION:

Background

Section 21(c) of the Occupational Safety and Health Act provides for the education and training of employers and workers in the recognition, avoidance, and prevention of unsafe or unhealthful working conditions. OSHA has used a variety of approaches over the years to fulfill its responsibilities under this section, one of which is the awarding of grants to nonprofit organizations to provide training and education to workers and employers.

The Targeted Training Program is OSHA's current grant program for training and education of workers and employers. Its goals include educating small businesses, training in new OSHA standards, and training in areas of special emphasis or recognized high hazard areas. Organizations awarded grants under this program will be expected to develop training and/or educational programs which address a target named by OSHA, reach out to workers and employers for whom the program is appropriate, and provide them with the training and/or educational program. Success is measured by the number of individuals participating in the program and evidence of their increased hazard recognition and abatement or compliance with standards.

Scope

The purpose of this notice is to announce the availability of funds for grants. Each grant awarded will be designed to provide training and education to small businesses in one of the following target areas.

1. Lead in construction. Among the building trades potentially exposed to lead are iron workers, demolition workers, painters, plumbers, heating/air-conditioning installers, electrical workers, carpenters, and workers involved in renovation, lead-based paint abatement, and remodeling. Grant programs are to reach out to such workers and provide education on the hazards of lead and measures to be taken by construction workers to avoid exposure to lead.

2. New lockout/tagout and electrical work practices standards. Standards on lockout-tagout and safe work practices involving electricity in general industry, principally in repair and maintenance of machinery, have recently been issued by OSHA. Grant programs are to reach out to small employers to provide them and their workers with information needed to comply with these two standards.

3. Blood-borne diseases in the health care industry. Workers in small health

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care facilities are not always informed of precautions to be taken to prevent contracting blood-borne diseases. Grants are to provide outreach and education programs designed to provide health care workers, particularly in smaller establishments such as nursing homes, funeral homes and occupational health units in industrial facilities, with information about the hazards of blood-borne diseases and techniques for protecting workers from accidential infection.

Among the activities which may be supported under these grants are: Developing educational materials, conducting training, and conducting other educational activities designed to reach and inform workers.

Eligible Applicants

Any nonprofit organization which is not an agency of a State or local government is eligible to apply. For purposes of eligibility for this grant program, agencies of State and local governments do not include State or local government supported institutions of higher education. State or local government supported institutions of higher education are eligible to apply.

Nonsupportable Activities

Statutory and regulatory limitation, as well as the objectives of the grant program, prevent reimbursement for certain activities under these grants. These limitations include the following.

1. Any activities inconsistent with the goals and objectives of the Occupational Safety and Health Act of 1970.
2. Activities involving workplace largely precluded from enforcement action under section 4(b)(1) of the Occupational Safety and Health Act.
3. Activities for the benefit of State, county or municipal employees.
4. Production, publication or reproduction of training and educational materials, including programs of instruction, which have not been approved by OSHA.
5. Lobbying.
6. Trainig and other educational activities that primarily address issues other than recognition, avoidance, and prevention of unsafe or unhealthful working conditions. Examples include activities concerning workers' compensation, first aid, and publication of materials prejudicial to labor or management.
7. Activities which provide assistance to workers in arbitration cases or other actions against employers, or which provide assistance to employers and/or workers in the prosecution of claims against Federal, State or local governments.
8. Activities which directly duplicate services offered by OSHA, a State under a State Plan, or consultation programs provided by State designated agencies under sections 7(c)(1) of the Act.
9. Activities directly or indirectly intended to generate membership in the grant recipient's organization.

Administrative Requirements

Grant recipients that develop curriculums and/or educational materials with grant funds will provide copies of the curriculums and/or educational materials to OSHA by the end of the grant period.

The grant program will be administered in compliance with 41 CFR part 29–70 and OMB Circulars A–110, A–133 and A–21 or A–122. All applicants will be required to certify to a drug-free workplace in accordance with 20 CFR part 98 and to comply with the New Restrictions on Lobbying published at 29 CFR part 93.

The program is subject to matching share requirements. Grant recipients will be expected to provide a minimum of 20% of the total grant budget. For example, if the Federal share of the grantis $80,000 (80% of the grant), then the matching share will be $20,000 (20% of the grant), for a total grant of $100,000. The matching share may exceed 20%.

Evaluation Process and Criteria

Applications for grants solicited in this notice will be evaluated on a competitive basis by the Assistant Secretary for Occupational Safety and Health with assistance and advice from OSHA staff. The following factors, which are not ranked in order of importance, will be considered in evaluating grant applications.

1. Program design

a. The plan to develop and implement a training and education program which addresses one of the following targets.

i. Lead in construction.

ii. New lockout/layout and electrical work practices standards.

iii. Blood-borne diseases in the health care industry.

b. The number of workers to be reached by the program.

c. The number of small businesses to be reached by the program.

d. The appropriateness of the planned activities for the target selected.

e. The plan for evaluating the program's effectiveness in achieving its objectives.

f. The feasibility and soundness of the proposed work plan in achieving the program objectives effectively.

2. Program Experience

a. Prior occupational safety and health experience of the organization.

b. Previous and current training or education programs conducted by the organization.

c. Technical and professional expertise of present or proposed project staff.

3. Administrative Capability

a. Managerial expertise of the applicant as evidenced by the variety and complexity of current and/or recent programs it has administered.

b. Financial management capability of the applicant as evidenced by a recent report from an independent audit firm or a recent report from another independent organization qualified to render judgment concerning the soundness of the applicant's financial practices.

c. Evidence of the applicant's nonprofit status, preferably from the IRS.

d. The completeness of the application, including forms, budget detail, narrative and workplan, and required attachments.

4. Budget

a. The reasonableness of the budget in relation to the proposed program activities.

b. The proposed non-Federal share is at least 20% of the total budget.

c. The compliance of the budget with applicable Federal cost principles and with OSHA requirements contained in the grant application instructions.

In addition to the proceeding factors, the Assistant Secretary will consider other factors such as the overall geographical distribution and coverage of populations at risk.

Availability of Funds

There is approximately $750,000 available for this program. It is anticipated that the average Federal award will be $100,000, and that there will be a minimum of two grants for each of the three targets. Grants will be awarded for a twelve-month period.

Application Procedures

Those organizations that meet the eligibility requirements described above and are interested in conducting project activities as described may request a grant application package from the OSHA Regional Administrator responsible for the state in which the organization is located. A list of the names, addresses, and geographic areas of responsibility of Regional Administrators is in the addendum to this notice.

All applications must be received no later than 4:30 p.m. local time, July 26, 1991.

Notification of Selection

Following review and evaluation, those organizations selected as potential grant recipients will be notified by a representative of the Assistant Secretary. An applicant whose proposal is not selected will also be notified in writing to that effect. Notice of selection as a potential grant recipient will not constitute approval of the grant application as submitted. Prior to the actual grant award, representatives of the potential grant recipient and OSHA will enter into negotiations concerning such items as program components, funding levels, and administrative systems. If negotiations do not result in an acceptable submittal, the Assistant Secretary reserves the right to terminate the negotiation and decline to fund the proposal.

Signed at Washington, DC, this fourth day of June, 1991.

Gerard F. Scannell,

Assistant Secretary of Labor.

Addendum

Region I

John B. Miles, Jr., Regional Administrator, U.S. Department of Labor-OSHA, 133 Portland Street, 1st Floor, Boston, Massachusetts 02114 (617) 565–7164—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.

Region II

James W. Stanley, Regional Administrator, U.S. Department of Labor-OSHA, 201 Varick Street, room 670, New York, New York 10014 (212) 337–2378—New Jersey, New York, Puerto Rico, Virgin Islands.

Region III

Linda R. Anku, Regional Administrator, U.S. Department of Labor-OSHA, Gateway Building, suite 2100, 3535 Market Street, Philadelphia, Pennsylvania 19104 (215) 596–1201—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia.

Region IV

R. Davis Layne, Regional Administrator, U.S. Department of Labor-OSHA, 1375 Peachtree Street, NE., suite 587, Atlanta, Georgia 30367 (404) 347–3573—Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.

Region V

Michael G. Connors, Regional Administrator, U.S. Department of Labor-OSHA, 230 South Dearborn Street, room 3244, Chicago, Illinois 60604 (312) 353–2220—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.

Region VI

Gilbert J. Saulter, Regional Administrator, U.S. Department of Labor-OSHA, 525 Griffin Square Building, room 602, Dallas, Texas 75202 (214) 767–4731—Arkansas, Louisiana, New Mexico, Oklahoma, Texas.

Region VII

John Phillips, Regional Administrator, U.S. Department of Labor-OSHA, 911 Walnut Street, room 406, Kansas City, Missouri 64106 (816) 426–5861—Iowa, Kanasas, Missouri, Nebraska.

Region VIII

Byron R. Chadwick, Regional Administrator, U.S. Department of Labor-OSHA, Federal Building, room 1576, 1961 Stout Street, Denver, Colorado 80294 (303) 844–3061—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.

Region IX

Frank L. Strasheim, Regional Administrator, U.S. Department of Labor-OSHA, 71 Stevenson Street, suite 415, San Francisco, California 94105 (415) 744–6670—American Samoa, Arizona, California, Guam, Hawaii, Nevada, Trust Territory of the Pacific Islands.

Region X

James W. Lake, Regional Administrator, U.S. Department of Labor-OSHA, 1111 Third Street, room 715, Seattle, Washington 98101 (206) 553–5930—Alaska, Idaho, Oregon, Washington.

To assist potential applicants, OSHA has assembled the following questions and answers.

Q. Can we get an extensions of the deadline?

A. No. Waivers for individual applications cannot be granted, regardless of the circumstances. A closing date may be changed only under extraordinary circumstances. Any change must be announced in the **Federal Register** and must apply to all applications.

Q. Will you help us prepare our application?

A. No. We will answer specific questions about application requirements and evaluation criteria and any other subjects which will help potential applicants understand the application package.

Q. How long should an application narrative be?

A. There is no specified length. Generally 10 to 15 pages is sufficient. However, the most important thing to remember when completing the narrative is to address all items requested in the application package and to provide enough description of proposed program activities so that reviewers have a thorough understanding of the proposal.

Q. How many copies of the application should I submit?

A. Submit one original and three copies. Please do not bind them.

Q. When will I find out if I am going to be funded?

A. You can expect to receive notification about two months after the application closing date.

Q. Can I obtain copies of the reviewers' comments?

A. Copies of reviewers' comments on their applications will be mailed to unsuccessful applicants upon written request.

Q. Can we budget for the lost time wages of employees participating in the educational program?

A. No. OSHA does not fund lost time wages in its grant programs.

Q. You request a copy of a recent audit but our organization has not had an audit. What do I submit?

A. Explain in the narrative when you expect an audit to be conducted. Submit a copy of your most recent IRS tax return for a nonprofit organization instead.

[FR Doc. 91–13663 Filed 6–7–91; 8:45 am]
BILLING CODE 4510–26–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Inter-Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Dance on Tour Section) to the National Council on the Arts will be held on June 25–26, 1991 from 9:30 a.m.—5 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on June 25 from 9:30 a.m.—10 a.m. and 3 p.m.—5 p.m. and June 26 from 2 p.m.—5 p.m. The topics will be opening remarks, guidelines review/policy discussion—state and regional components.

The remaining portions of this meeting on June 25 from 10 a.m.—3 p.m. and June 26 from 9:30 a.m.—2 p.m. are for the

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purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, as amended, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–13718 Filed 6–7–91; 8:45 am]

BILLING CODE 7537-01-M

Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Overview Section) to the National Council on the Arts will be held on June 24–25, 1991 from 9:30 a.m.–5:30 p.m. in room M–07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on June 24 from 9:30 a.m.–5:30 p.m. and June 25 from 9:30 a.m.–2 p.m. The topics will be an opening welcome and discussion of future directions for the Theater Program.

The remaining portion of this meeting on June 25 from 2 p.m.–5:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, as amended, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–13719 Filed 6–7–91; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Committee Management; Renewal

The Assistant Director for Engineering has determined that the renewal of the Advisory Committee for Design and Manufacturing Systems is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 U.S. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Advisory Committee for Design and Manufacturing Systems.

Authority for this Committee will expire on June 5, 1993 unless it is renewed.

Dated: June 3, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–13589 Filed 6–7–91; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Design and Manufacturing Systems; Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Design and Manufacturing Systems.

Date/Time: June 26–27, 1991—8:30 a.m. to 5 p.m.

Place: Rooms 1242 and 1243, National Science Foundation, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Agenda: Review and evaluate proposals submitted under the Research in Intelligent Materials Handling Systems Program Announcement.

Contact: Dr. Louis A. Martin-Vega, Program Director, Division of Design and Manufacturing Systems, National Science Foundation, room 1128, Washington, DC 20550 (202) 357–5167.

Dated: June 4, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–13590 Filed 6–7–91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–334]

Beaver Valley Power Station, Unit No. 1; Duquesne Light Co., Ohio Edison Co., Pennsylvania Power Co., Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption to Facility Operating License No. DPR–66, issued to Duquesne Light Company (the licensee), for operation of the Beaver Valley Power Station, Unit No. 1, (BVPS–1) located in Beaver County, Pennsylvania.

Environmental Assessment

Identification of Proposed Action: The exemption, proposed by letter dated January 11, 1990, and supplemented by letters dated March 23, 1990 and April 29, 1991, would provide partial relief from the requirements of 10 CFR part 50, appendix A, General Design Criterion 57 (GDC 57) with respect to the valve configuration in the recirculation spray system heat exchanger (RSSHx) river water radiation monitor sample lines.

The Need for the Proposed Action: The BVPS–1 RSSHx heat exchanger river water radiation monitor sample lines do not have containment isolation valves that are either automatic, remote-manual, or locked closed. Therefore, this configuration does not meet the requirements of GDC 57 relating to containment isolation provisions for lines that penetrate containment but that are part of a closed system inside containment. Additionally, the Updated Final Safety Analysis Report does not describe this deviation from GDC 57. The proposed exemption would provide partial relief from the requirements of GDC 57 for this system by permitting the use of manually-operated isolation valves in the subject sample lines. The sample lines are normally open and must remain open following an accident to detect rapidly any radiation releases through an RSSHx tube leak. Although a radioactivity release eventually could be detected by means other than the normally open radiation monitors in the sample lines, it would take much longer to identify and isolate the leaking RSSHx. Therefore, locked-closed valves or automatic valves in the sample lines are not desirable from the standpoint of minimizing releases of radioactivity.

Environmental Impacts of the Proposed Action: The Commission has evaluated the environmental impacts of the proposed exemption and has determined that the probability of accidents has not been increased by the proposed alternative testing, and that post-accident radiological releases would not be greater than previously determined. Further, the Commission has determined that the proposed exemption does not affect routine radiological plant effluents or occupational radiological exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action: Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternative with equal or greater environmental impact need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impact attributable to this facility, and would result in a larger expenditure of licensee resources to comply with the Commission's regulations.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in the Final Environmental Statement related to operation of the Beaver Valley Power Station, Unit 1, dated July 1973.

Agencies and Persons Consulted: The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of no Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the application for exemption dated January 11, 1990, and supplemented by letters dated March 23, 1990 and April 29, 1991, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Dated at Rockville, Maryland, this 3rd day of June 1991.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc 91–13691 Filed 6–7–91; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 32nd meeting on June 20, 1991, room P–110, 7920 Norfolk Avenue, Bethesda, MD, 8:30 a.m. until 5 p.m. The entire meeting will be open to the public. Notice of this meeting was published in the **Federal Register** on May 24, 1991 (56 FR 23945).

The purpose of the meeting will be to review and discuss the following topics:

A. Response to a Commission request concerning the Low-Level Waste form leachability and groundwater protection requirements in 10 CFR part 61.

B. Report by a Committee member on a recent visit to the West Valley Demonstration Project.

C. Results of the Joint Working Group on Expert Judgment and Human Intrusion meeting on June 18–19, 1991, and discussion of proposed ACNW report to NRC on use of expert judgment.

D. Report by a Committee member on discussions on the topic of coupled tectonic and hydrologic processes presented at the recent meeting of the American Geophysical Union.

E. Proposed response to the six questions for public comment issued with the Environmental Protection Agency's 40 CFR part 191, Environmental Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Waste, Working Draft 3, dated April 26, 1991.

F. Anticipated and proposed Committee activities, future meeting agenda, administrative, and organizational matters, as appropriate.

The members will also discuss matters and specific issues that were not completed during previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written

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statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. The office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the office of the ACRS as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the office of the ACRS, Mr. Raymond F. Fraley (telephone 301/492-4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director or call the recording (301/492-4600) for the current schedule if such rescheduling would result in major inconvenience.

Dated: June 4, 1991.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 91-13698 Filed 6-7-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-341]

Detroit Edison Co.; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Detroit Edison Company (the licensee) to withdraw its May 18, 1990, application for proposed amendment to Facility Operating License No. NPF-43 for Fermi-2, located in Monroe County, Michigan.

The proposed amendment would have revised the Technical Specifications to allow extension of Fermi-2 full power operation beyond normal end of cycle during the current operating cycle. The extension of the cycle will be achieved by reducing the final feedwater temperature and increasing the core flow.

The Commission has previously issued a notice of Consideration of Issuance of Amendment published in the **Federal Register** on November 28, 1990 (55 FR 49449). However, by letter dated March 28, 1991, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 18, 1990, and the licensee's letter dated March 28, 1991, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the Monroe County Library System, 3700 South Custer Road, Monroe County, Michigan 48161.

Dated at Rockville, Maryland this 28th day of May 1991.

For the Nuclear Regulatory Commission.

John F. Stang,

Project Manager, Project Directorate III-1, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91-13690 Filed 6-7-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-320-OLA-2; ASLBP No. 91-643-11-OLA]

General Public Utilities Nuclear Corporation (Possession Only License—Long Term Storage)

Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

General Public Utilities Nuclear Corporation, Three Mile Island Nuclear Station, Unit 2, Facility Operating License No. DPR-73

This Board is being established pursuant to a notice published by the Commission on April 25, 1991, in the **Federal Register** (56 FR 19128-29) entitled, "Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing." The proposed amendment would change the current TMI-2 operating license to a possession only license and modify the current Technical Specifications to allow for long-term storage of the facility. This storage period is termed Post-Defueling Monitored Storage or PDMS by the licensee.

The Board is comprised of the following Administrative Judges:

John H. Frye, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Frank F. Hooper, 4155 Clark Road, Ann Arbor, Michigan 48104.

Charles N. Kelber, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

All correspondence, documents and other materials shall be filed with the judges in accordance with 10 CFR 2.701.

Issued at Bethesda, Maryland, this 4th day of June 1991.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 91-13697 Filed 6-7-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-322-OLA-3; ASLBP No. 91-642-10-OLA-3]

Long Island Lighting Co.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

Long Island Lighting Co.

Shoreham Nuclear Power Station, Unit 1, Facility Operating License No. NPF-82, (License Transfer).

This Board is being established pursuant to a notice published by the Commission on March 20, 1991 in the **Federal Register** (56 FR 11768, 11781) entitled, "Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing." The proposed amendment would authorize the transfer of ownership of the Shoreham license, Facility Operating License NPF-82, from the Long Island Lighting Company (LILCO) (the licensee) to the **Long Island Power Authority** (LIPA) upon or after amendment of the license to a non-operating status.

The Board is comprised of the following administrative judges:

Morton B. Margulies, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

George A. Ferguson, 5307 A1 Jones Drive, Columbia Beach, MD 20764.

Jerry R. Kline, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

All correspondence, documents and other materials shall be filed with the judges in accordance with 10 CFR 2.701. Issued at Bethesda, Maryland, this 3rd day of June 1991.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 91-13695 Filed 6-7-91; 8:45 am]

BILLING CODE 7590-01-M

[Materials License No. 35-17178-01; EA 89-223; Docket No. 30-12319-CivP; ASLBP No. 90-618-03-CivP]

Tulsa Gamma Ray, Inc.; Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721 (1980), the Atomic Safety and Licensing Board for Tulsa Gamma Ray, Inc. (Materials License No. 35-17178-01, EA 89-223) Docket No. 30-12319-CivP, is hereby reconstituted by appointing Administrative Judge Charles Bechhoefer in place of Administrative Law Judge Morton B. Margulies, who is unable to serve because of a schedule conflict.

As reconstituted, the Board is comprised of the following Administrative Judges: Charles Bechhoefer, Chairman, A. Dixon Callihan, Jerry R. Kline.

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Board member is: Administrative Judge Charles Bechhoefer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Bethesda, Maryland, this 3rd day of June 1991.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 91-13696 Filed 6-7-91; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29269; File No. SR-BSE-91-4]

Self-Regulatory Organizations; Filing of Proposed Rule Change and Amendments No. 1 and 2 by the Boston Stock Exchange, Inc. Relating to Price Protection of Limit Orders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 13, 1991, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On May 24 and May 29, 1991, the BSE filed Amendments No. 1 and 2, respectively, which further explain the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to amend the Exchange's Rules of the Board of Governors to provide for the facilitation of customer "GTX" orders after the close of the 9:30 a.m. to 4 p.m. trading session.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The BSE proposes to accept all GTX orders [2] entered by its member firms prior to 4 p.m. during the normal trading day.[3] These orders will be designated "GTX" on the specialists' books so that they can differentiate between those orders that would be eligible for the New York Stock Exchange's ("NYSE") off-hours Crossing Session I and those that would not.[4]

BSE specialists will have two options in handling GTX orders. A specialist may immediately transmit a "mirror" order through the NYSE's DOT system for all or part of a GTX order. Alternatively, the specialist may decide to accept the full risk and execute the order for his/her own account if a report is due as a consequence of trading on the NYSE during Crossing Session I.

Under the proposal, the market will close at 4 p.m. as usual. However, the BEACON [5] system will remain open until business is concluded shortly after 5 p.m. BSE member firms' order-match systems used to route orders to BEACON will also remain open, as will the systems supplied by various member firms that provide access to the NYSE's DOT system for BSE specialists.

From 4 p.m. through until the NYSE executes its transactions in Crossing Session I, the BSE trading floor will be staffed, including each specialist firm. During that period, the BEACON system will accept and execute cancellations of GTX orders, but will not permit the entry of any GTX orders.

At 5 p.m., the NYSE will execute its Crossing Session I. Those specialists who are customers in the DOT system and who receive reports or executions based on GTX orders previously entered by them will, before they position stock for their own accounts, execute all GTX

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[1] The exact text of the proposal was attached to Amendment No. 2 of the rule filing as Exhibit 1 and is available at the BSE and the Commission at the address noted in Item IV below.

[2] The GTX order is an unconditioned "good 'til cancelled" ("GTC") order designated by the entering broker as executable at 5 p.m. at the primary market closing price.

[3] The BSE proposal also defines two new order types, but does not propose to use these new order types at the present time. The BSE proposal defines a one-sided single stock order ("OS") as a buy or sell order (round lots only) entered after 4 p.m. for execution in an after-hours trading session and a two-sided single stock order ("TS") as a coupled buy and sell order (round and partial round lots permitted) entered after 4 p.m. for execution in an after-hours trading session.

[4] *See* Files No. SR-NYSE-90-52 and 90-53 in which the NYSE proposes to extend its trading hours beyond the 9:30 a.m. to 4 p.m. trading session to establish two trading sessions: Crossing Session I and Crossing Session II. Crossing Session I would permit the execution of single-stock single-sided closing-price orders and crosses of single-stock closing-price buy and sell orders. Crossing Session II would allow the execution of crosses of multiple-stock aggregate-price buy and sell orders. The Commission approved the NYSE's Off-Hours Trading sessions (Files No. SR-NYSE-90-52 and SR-NYSE-90-53) on May 20, 1991.

[5] The BSE's Automated Communications and Order-Routing Network ("BEACON") is an automated communication, order-routing and execution system.

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orders on the books entitled to a report. If no trade occurs in a given stock, no orders will be executed in such stock and no reports will be rendered.

The specialists who have accepted risk, rather than enter GTX orders through the DOT system, will be required, pursuant to the BSE Execution Guarantee Rule,[6] to execute the GTX orders on the books at 5 p.m., or soon thereafter, to the extent of the volume that prints in the NYSE Crossing Session I, and assume the long or short positions overnight. The BSE will report those excutions to the consolidated tape as they occur and identify them by a special designator to be determined. The procedures the BSE proposes to follow will have virtually no impact upon the Exchange system.

Facilitating transactions effected at 5 p.m. will become part of the same day's record for purposes of all surveillance and compliance reports and will be subject to the same scrutiny that pertains to trading during the day.

In addition, the BSE requests limited exemptive relief from Rule 10a–1 of the Act ("short sale rule") to facilitate the potential execution of sell-short GTX orders which may become executable when the primary market closing price is reached.[7] The BSE believes that the GTX transactions that would occur at 5 p.m. would not be the type of transactions which Rule 10a–1 seeks to prohibit.

The proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[6] Section 33.01(c) of the BSE's Execution Guarantee Rule requires a specialist to fill all agency limit orders if the issue is trading on the primary market at the limit price, unless it can be demonstrated that such order would not have been executed if it had been transmitted to the primary market, or the broker and specialist agree to a specific volume-related or other criteria requiring a fill.

[7] See letter from Karen A. Aluise, Regulatory Review Specialist, BSE, to Larry Bergmann, Associate Director, Division of Market Regulation, SEC, dated May 29, 1991.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participatants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–91–4 and should be submitted by July 1, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 3, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–13678 Filed 6–7–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–29162; File No. SR–OCC–91–06]

Self-Regulatory Organizations; Options Clearing Corporation; Proposed Rule Change Relating to the Assessment of Applications for Clearing Membership and Business Expansion; Correction

In FR Document No. 91–11284 beginning on page 22031 for Monday, May 13, 1991, the release number for File No. SR–OCC–91–06 was incorrectly stated as 34–28162. The correct number is 34–29162.

Dated: June 4, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–13677 Filed 6–7–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–29258; File No. SR–CBOE–91–17]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Pilot Program Involving Debit Put Spreads in Broad-Based Indexes With European-Style Exercises

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 13, 1991, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to implement a one-year pilot program to assess the reasonableness of permitting debit put spreads in broadbased index options with European-style exercise ("debit put spreads") to be eligible to be maintained in cash accounts. Specifically, the CBOE proposes to add new margin rule 24.11A, which will provide:

Rule 24.11A—Debit Put Spread Cash Account Transactions

For the period beginning June 22, 1991 through June 20, 1992, debit put spread positions in broad-based index options classes with a European-style exercise traded on the Exchange (hereinafter

"debit put spreads") will be eligible to be maintained in a cash account as defined by Regulation T section 220.8, provided that the following procedures and criteria are met:

(*a*) The customer has received Exchange approval to maintain debit put spreads in a cash account carried by an Exchange member organization. A customer so approved is hereinafter referred to as a "spread exemption customer".

(*b*) The spread exemption customer has provided all information required on Exchange-approved forms and has kept such information current.

(*c*) The customer holds a net long position in each of the stocks of a portfolio which has been previously established or in securities readily convertible, and additionally in the case of convertible bonds economically convertible, into common stocks which would comprise a portfolio. The debit put spread position must be carried in an account with an Exchange member organization.

(*d*) The stock portfolio or its equivalent is composed of net long positions in stocks in at least four industry groups and contains at least twenty stocks, none of which accounts for more than fifteen percent of the value of the portfolio (hereinafter "qualified portfolio"). To remain qualified, a portfolio must at all times meet these standards notwithstanding trading activity in the stocks.

(*e*) A debit put spread in Exchange traded broad based index options with European-style exercises is defined as a long put position coupled with a short put position overlying the same broad based index and having an equivalent underlying aggregate index value, where the short put(s) expires with or before the long put(s), and the strike price of the long put(s) equals or exceeds the strike price of the short put(s). A debit put spread will be permitted in the cash account as long as it is continuously associated with a qualified portfolio of securities with a current market value at least equal to the underlying aggregate index value of the long side of the debit put spread.

(*f*) The qualified portfolio must be maintained with either an Exchange member organization, another broker-dealer, a bank, or securities depository.

(*g*) The spread exemption customer shall agree promptly to provide the Exchange any information requested concerning the dollar value and composition of the customer's stock portfolio, and the current debit put spread positions.

(*h*) The spread exemption customer shall agree to and any member organization carrying an account for the customer shall:

(*1*) Comply with all Exchange rules and regulations.

(*2*) Liquidate any debit put spreads prior to or contemporaneously with a decrease in the market value of the qualified portfolio, which debit put spreads would thereby be rendered excessive.

(*3*) Promptly notify the Exchange of any change in the qualified portfolio or the debit put spread position which causes the debit put spreads maintained in the cash account to be rendered excessive.

(*i*) If any member organization carryining a cash account for a spread exemption customer with a debit put spread position dealt in on the Exchange has a reason to believe that as a result of an opening options transaction the customer would violate this spread exemption, and such opening transaction occurs, then the member organization has violated Exchange Rule 24.11A.

(*j*) Violation of any of these provisions, absent reasonable justification or excuse, shall result in withdrawal of the spread exemption and may form the basis for subsequent denial of an application for a spread exemption hereunder.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the proposed pilot program, debit put spreads in broad-based index options with European-style exercises will be included as cash account transactions. Historically, short options transactions have been permitted to be effected and maintained in a cash account only where the short option is fully covered pursuant to § 220.8 of regulation T issued by the Board of Governors of the Federal Reserve ("FRB") under the Act.[1] Because a short option position is not considered to be "covered" by an offsetting long option, "uncovered" spread transactions must be effected in a margin account rather than a cash account.

Money managers have represented to the Exchange that an index covered write coupled with the purchase of an index debit put spread significantly increases the downside protection for the position. The protection is similar to an index covered write coupled with a long index put, which can be effected in the cash account. Adding the short index put substantially reduces the cost of the put protection, but adds no further risk, because there is no threat of early assignment. However, despite the fact that a debit put spread is fully paid for and has the same risk as a long put or a long call (*i.e.*, the debit paid for the position), the addition of the short put component relegates this position to the margin account.

The CBOE believes that permitting this type of put spread in a cash account will facilitate the use of a more effective portfolio protection strategies, especially for those customers who generally are prohibited from "margin" transactions, and therefore effect all of their securities activities in a cash account. Under the terms of the pilot, the Exchange also has agreed to submit a written report within nine months of the pilot's effectiveness.

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

[1] Section 220.8(a)(3)(ii) of Regulation T under the Act includes in permissible cash account transactions a creditor's issue, endorsement or guarantee of a put option for a customer if the creditor obtains cash in an amount equal to the exercise price of the option or holds in the account any of the following instruments with a current market value at least equal to the exercise price of the option and with one year or less to maturity: U.S. government securities, negotiable bank certificates of deposit, or bankers acceptances issued by a U.S. bank and payable in the U.S. A position comprised of offsetting options does not satisfy these criteria.

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(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness on the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 1, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 3, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-13592 Filed 6-7-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29282; File No. SR-MSTC-90-04; International Series Release No. 280]

Self-Regulatory Organizations; Midwest Securities Trust Co.; Order Approving a Proposed Rule Change Relating to the Designation of West Canada Depository Trust Company as a Correspondent Depository

On June 13, 1990, the Midwest Securities Trust Company ("MSTC") filed a proposed rule change (File No. SR-MSTC-90-04) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change would designate West Canada Depository Trust Company ("WCDTC") as a Correspondent Depository under MSTC's rules. MSTC supplemented its filing by submitting several related documents throughout the summer and fall of 1990, and withdrew portions of the filing in January, 1991 and May, 1991.[2] Notice of the filing appeared in the **Federal Register** on January 25, 1991.[3] The Commission received seven comment letters supporting the proposed rule change.[4] For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change would permit MSTC to designate as a Correspondent Depository under MSTC's rules the West Canada Depository Trust Company ("WCDTC"). Under MSTC's rules, a Correspondent Depository is a clearing corporation, custodian bank, nominee, or foreign clearing corporation at which MSTC maintains an account or securities on deposit or through which receipt and delivery of securities may be made as designated by MSTC.

WCDTC is the successor to the Vancouver Stock Exchange Services Corporation. WCDTC is a Canadian limited purpose trust company incorporated under the British Columbia Trust Companies Act and is subject to regulation by the British Columbia Superintendent of Financial Institutions. WCDTC is wholly owned by the Vancouver Stock Exchange, which was incorporated in 1907 and which is subject to the authority of the British Columbia Superintendent of Brokers.

A Correspondent Depository can serve several functions, one of which is that of a "Depository Satellite" under MSTC's rules. Pursuant to this filing, MSTC intends to use WCDTC only a Depository Satellite, which, under MSTC's rules, is a clearing corporation, custodian bank or nominee thereof, which receives from or releases to Participants securities and forwards or receives such securities to or from MSTC, a Correspondent Depository or a nominee thereof upon instructions from MSTC.[5] Pursuant to the agreement between MSTC and WCDTC, WCDTC will act as MSTC's non-exclusive agent and custodian in receiving securities deposited by MSTC participants or certain WCDTC-sponsored participants under the existing link [6] for crediting to their respective MSTC accounts.[7]

Each business day at 11 a.m. (Central time), information regarding each deposit received since 11:01 a.m. on the previous day will be telecopied to MSTC. MSTC will credit the participants' accounts at the time of this notification. WCDTC will safeguard the deposited securities and will hold them, with deposit tickets attached, segregated from other securities held by WCDTC, until forwarded to MSTC. Securities held overnight will be kept in WCDTC's vault.

If the deposited securities are U.S. securities, WCDTC will forward the securities directly to MSTC on the day their receipt was reported to MSTC. Securities will be shipped to MSTC via licensed air courier or other carrier agreed upon by the parties. If the deposited securities are Canadian securities, WCDTC will forward them to the Canadian transfer agent for re-registration in the MSTC nominee name, and arrange for delivery to MSTC via a licensed air courier or other carrier after the re-registration process. WCDTC will forward the securities to the Canadian transfer agents on the same day that their deposit was reported to MSTC. If Canadian securities are not re-registered in MSTC's nominee within 30 days of receipt, MSTC will reverse the credit for that deposit from the depositing participant's account.

Under the agreement, and in accordance with MSTC rules, WCDTC acknowledges that securities placed within its custody or control pursuant to the agreement will not be subject to any right, charge, security interest, lien or claim of any kind in favor of WCDTC or any person claiming through WCDTC, and that WCDTC will have no legal or equitable right, title or interest in or to such securities including, but not limited to, any right, title or interest in or to any principal or interest coupons, redemption proceeds, payments or payable amounts relating to any securities. In addition, the agreement contemplates that WCDTC will maintain adequate insurance coverage with respect to any securities which are in its custody pursuant to this agreement.

MSTC and WCDTC also have agreed that WCDTC will act as MSTC's agent for the transfer of Canadian securities.[8] Thus, any Canadian securities deposited into MSTC at any of its locations or Correspondent Depository locations may be forwarded to WCDTC for forwarding to the Canadian transfer agent to be registered in another name. WCDTC will arrange for the re-registered securities to be delievered to MSTC.

II. Comments

As noted above, the Commission received seven identical comment letters concerning this proposed rule change.[9] All of the commentators are users of the current link between MSTC and WCDTC, and support the proposed rule change. The commentators believe that the services which are the subject of this rule filing will add significantly to the efficiency and quality of the link. They believe that the proposed services will further reduce the delays, costs, and financial risk in the clearing and settlement of cross border trading.

III. Discussion

Safe and efficient processing of international transactions has become more important as the volume of international trading has grown. Despite any short-term slowdown in such trading, it is expected that the longer term outlook for international trading is very favorable, and that, with the anticipated increase in volume, there will be a greater demand and need for opportunities to clear and settle international transactions through safe, automated clearing systems.

For the reasons discussed below, the Commission believes that MSTC's proposed rule change is consistent with the Act, and in particular with section 17A of the Act. Section 17A(a)(1)(D) recognizes that the linking of clearance and settlement facilities will reduce unnecessary costs and increase the protection of investors and persons facilitating transactions by and acting on behalf of investors. Section 17A mandates that clearing agencies be registered with the Commission and that registration be conditioned upon the clearing agency having the capacity to facilitate the prompt and accurate clearance and settlement of securities transactions, and to safeguard securities and funds in its custody or control or for which it is responsible.

The Commission believes that MSTC's proposed arrangements with WCDTC whereby WCDTC is a Depository Satellite and MSTC's agent for interfacing with Canadian transfer agents is consistent with section 17A of the Act. By providing another facility (WCDTC) for deposit of securities into MSTC's accounts, MSTC will provide its participants with the ability to make earlier and more convenient deposits, and to receive earlier credit for the deposit in their MSTC accounts. By getting the securities credited earlier to the accounts, MSTC will provide earlier opportunity for participants to use those securities to settle transactions at MSTC. Such as arrangement therefore promotes prompt clearance and settlement.

With respect to acting as MSTC's agent for interfacing with Canadian transfer agents, WCDTC has more direct knowledge of and familiarity with Canadian transfer agents. WCDTC deals with Canadian transfer agents on a daily basis, and is familiar with the legal and customary practices of transfer agents in Canada. WCDTC has a Canadian address, and presumably obtains receipt of certificates faster than MSTC would obtain receipt through the international postal system. Earlier receipt of certificates means earlier certainty with respect to the value of deposited certificates. This is a benefit to MSTC because the earlier MSTC receives notice of defects in a certificate, the sooner it can reverse the credit to the depositing participant's account and the better it can limit the risk that the securities will have been transferred out of the account before the reversal of the credit can take place.

The proposed rule change includes safeguards to protect against risks inherent in the proposed services WCDTC will operate the Depository Satellite service under an ordinary negligence standard of care and the transfer agent interface service under a gross negligence standard of care. Under the MSTC/WCDTC agreement, WCDTC will maintain adequate insurance to protect against loss of certificates in transit pursuant to those services. WCDTC will not assert any lien against the securities it is holding for MSTC or any right to any payments, dividends, interest or other proceeds relating to the securities.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR-MSTC-90-04) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: May 31, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-13593 Filed 6-7-91; 8:45 am]

BILLING CODE 8010-01-M

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[1] 15 U.S.C. 78s(b)(1).

[2] Originally, MSTC proposed in its filing to designate as Correspondent Depositories two additional foreign clearing entities—the Canadian Depository for Securities, Inc. ("CDS") and La Societe Inter-professionnelle pour la Compensation des Valeurs Mobilieres ("SICOVAM"). By letter dated January 11, 1991, MSTC withdrew those portions of the proposed rule change that apply to CDS. (See letter from Jeffrey Lewis, Associate Counsel and Assistant Secretary, MSTC, to Sandra Sciola, Special Counsel, Commission.) By letter dated May 16, 1991, MSTC withdrew those portions of the filing that relate to SICOVAM. (See letter from Jeffrey Lewis, Associate Counsel and Assistant Secretary, MSTC, to Sandra Sciola, Special Counsel, Commission.)

[3] Securities Exchange Act Release No. 28787 (January 16, 1991), 56 FR 2971.

[4] See *infra* at note 9.

[5] Midwest Securities Trust Company Rules, article I, rule 1.

[6] Under the terms of an outstanding no-action letter, WCDTC is a participant of MSTC. WCDTC settles securities transactions and maintains securities positions on behalf of its participants through accounts maintained at MSTC. See letter from Jonathan Kallman, Assistant Director, Commission, to Michael Wise, Associate Counsel, MSTC, dated September 12, 1985.

[7] Although this linkage does not contemplate that MSTC will have an account at WCDTC, the custody aspects of these services may be affected by some state commercial laws, including requirements concerning foreign custody of securities that are subject to the control of a clearing corporation (and the lack of conformity among U.S. jurisdictions). (See, *e.g.*, U.C.C. § 8-320.) MSTC has undertaken to monitor non-U.S. issues involved in this link that are eligible at other clearing agencies, and to report to the Commission when MSTC discovered dually-eligible issues.

[8] MSTC will not permit WCDTC to maintain any liens or interests in fully-paid-for securities held for the benefit of MSTC or its participants in connection with the transfer agent interface services.

[9] Comment letters were received from Golden Capital Securities Ltd., Georgia Pacific Securities Corporation, C.M. Oliver & Company Limited, and McDermid St. Lawrence Limited, all of Vancouver, British Columbia; Torrey Pines Securities, Solana Beach, California; Rocky Mountain Securities & Investments, Inc., Denver, Colorado; and National Securities Corporation, Seattle, Washington. All of the comment letters were received at the Office of the Secretary between March 26, 1991 and April 30, 1991.

[10] 15 U.S.C. 78s(b)(2).

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[Release No. 34-29287; File No. SR-PHLX-91-14]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Floor Broker's Notice to the Trading Crowd

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 8, 1991, the Philadelphia Stock Exchange, Inc., ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to adopt Options Floor Procedure Advice ("OFPA") C-5, which will require an options floor broker who is also a registered options trader ("ROT") to notify the trading crowd at the time he seeks a market that he is acting in his capacity as a floor broker rather than as an ROT. Therefore, a ROT/Floor Broker will be presumed to be acting in the capacity of a ROT, absent a statement to the contrary.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PHLX proposes to amend its rules by adding OFPA C-5, entitled ROTs Acting as Floor Brokers, which will require an options floor broker who is also a ROT to notify the trading crowd at the time he seeks a market that he is acting in his capacity as a floor broker rather than as an ROT. Therefore, under the proposal, when an ROT bids or offers, it will be presumed that he is acting on behalf of his own account, unless otherwise specified. OFPA C-5 provides an exception to the notification requirement for a floor broker representing an order in an issue in which he represented himself previously that day as an agent, provided the floor broker has obtained the prior approval of a floor official. The PHLX believes that the notice requirement will assure that proper priority is accorded to an order pursuant to the Exchange's priority-parity rules.[1]

Violations of OFPA C-5 will carry a fine of $250.00 for the first occurrence; $500.00 for the second occurrence; and thereafter, a sanction discretionary with the Business Conduct Committee.

The PHLX states that the rule change is proposed by the Exchange, pursuant to section 6(b)(5) of the Act, in order to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

[1] The PHLX recently amended its priority-parity rules in File Nos. SR-PHLX-89-30 and SR-PHLX-90-39. See Securities Exchange Act Release Nos. 28934 (March 4, 1991), 56 FR 10005 (foreign currency option priority-parity rules); and 29065 (April 10, 1991), 56 FR 15394 (equity priority-parity rules).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 1, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 3, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-13594 Filed 6-7-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18179/File No. 812-7705]

Family Life Insurance Co., et al; Application

June 3, 1991

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Family Life Insurance Company ("FLIC"), Merrill Lynch Variable Annuity Account (the "FLIC Account"), Merrill Lynch Life Insurance Company ("MLLIN"), Merrill Lynch Life Variable Annuity Separate Account (the "MLLIC Account"), Tandem Insurance Group, Inc. ("Tandem"), Tandem Variable Annuity Separate Account (the "Tandem Account"), Royal Tandem Life Insurance Company ("Royal Tandem"), Royal Tandem Variable Annuity Separate Account (the "Royal Tandem Account") and Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPF&S").

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to section 17(b) of the 1940 Act granting an exemption from section 17(a), pursuant to section 17(d) and Rule 17d-1 thereunder, approving certain joint arrangements, and pursuant to section 11(a) approving the terms of certain offers of exchange.

SUMMARY OF APPLICATION: Applicants seek an order (1) permitting certain affiliated transactions in connection with certain assumption reinsurance transactions, (2) approving any joint arrangement associated with such reinsurance transactions, and (3) approving the terms of any offers of exchange involved in such reinsurance transactions.

FILING DATE: The application was filed on March 27, 1991 and amended on May 24, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m. on June 28, 1991. Request a hearing in writing, giving the nature of your interest, the reason for the request and the issues you contest. Serve the Applicants with the request personally or by mail, and also send a copy to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. FLIC and the FLIC Account, Park Place, Seattle, Washington 98101. MLLIC, the MLLIC Account, Tandem and the Tandem Account, 800 Scudders Mill Road, Plainsboro, New Jersey 08536. Royal Tandem and the Royal Tandem Account, 2 Penn Plaza, New York, New York 10021. MLPF&S, 250 Vesey Street, New York, New York 10281.

FOR FURTHER INFORMATION CONTACT: Michael V. Wible, Staff Attorney, at (202) 272-2026 or Nancy M. Rappa, Senior Attorney, at (202) 272-2622, Office of Insurance Products and Legal Compliance (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. FLIC is a stock life insurance company organized under the laws of the State of Washington. FLIC is a wholly owned subsidiary of Merrill Lynch Insurance Group, Inc. ("MLIG") and an indirect wholly owned subsidiary of Merrill Lynch & Co., Inc., a diversified financial services holding company. The FLIC Account is a separate account of FLIC established to fund certain individual variable annuity contracts (the "FLIC Contracts"). The FLIC Account is registered under the 1940 Act as a unit investment trust, and registration statements relating to the FLIC Contracts have been filed pursuant to the Securities Act of 1933 (the "1933 Act"). All assets of the FLIC Account are invested in shares of Merrill Lynch Variable Series Funds, Inc. (the "Funds"), a management investment company registered under the 1940 Act.

2. MLLIC is a stock life insurance company organized under the laws of the State of Washington. MLLIC is a wholly owned subsidiary of FLIC and an indirect wholly owned subsidiary of Merrill Lynch & Co., Inc. MLLIC is authorized to sell variable annuities in twenty-nine states and the District of Columbia.

3. The MLLIC Account is a separate account of MLLIC newly established for the purpose of funding certain variable annuity contracts to be issued by MLLIC. The MLLIC Account will be registered under the 1940 Act as a unit investment trust, and registration statements relating to variable annuity contracts participating in the MLLIC Account ("MLLIC Contracts") will be filed pursuant to the 1933 Act. Like the FLIC Account, all assets of the MLLIC Account will be invested in shares of the Funds.

4. Tandem is a stock life insurance company organized under the laws of the State of Illinois. Tandem also is a wholly owned subsidiary of MLIG and an indirect wholly owned subsidiary of Merrill Lynch & Co., Inc. Tandem is authorized to sell variable annuities in the District of Columbia and twenty-eight states.

5. The Tandem Account is a separate account of Tandem newly established for the purpose of funding certain variable annuity contracts to be issued by Tandem. The Tandem Account will be registered under the 1940 Act as a unit investment trust, and registration statements relating to variable annuity contracts participating in the Tandem Account ("Tandem Contracts") will be filed pursuant to the 1933 Act. Like the FLIC Account and the MLLIC Account, all assets of the Tandem Account will be invested in shares of the Funds.

6. Royal Tandem is a stock life insurance company organized under the laws of the State of New York. Royal Tandem also is a wholly owned subsidiary of MLIG and an indirect wholly owned subsidiary of Merrill Lynch & Co., Inc. Royal Tandem is authorized to sell variable annuities in the state of New York.

7. The Royal Tandem Account is a separate account of Royal Tandem newly established for the purpose of funding certain variable annuity contracts to be issued by Royal Tandem. The Royal Tandem Account will be registered under the 1940 Act as a unit investment trust, and registration statements relating to variable annuity contracts participating in the Royal Tandem Account ("Royal Tandem Contracts") will be filed pursuant to the 1933 Act. Like the FLIC Account, the MLLIC Account and the Tandem Account, all the assets of the Royal Tandem Account will be invested in shares of the Funds.

8. The MLLIC, Tandem and Royal Tandem Contracts will be virtually identical to the FLIC Contracts except that in lieu of mortality and expense risk charges of 1.3% annually for non-tax qualified contracts and 1.0% annually for tax qualified contracts, the MLLIC, Tandem and Royal Tandem Contracts will have a distribution charge of .05% annually and mortality and expense risk charges of 1.25% annually for non-tax qualified contracts and .95% annually for tax qualified contrcts. The MLLIC, Tandem and Royal Tandem Contracts covered by the initial registration statements will be variable annuity contracts to be issued in exchange for the FLIC Contracts as part of the assumptive reinsurance transaction described below.

9. MLPF&S, the principal underwriter of the FLIC Contracts, has agreed to act as principal underwriter of the MLLIC, Tandem and Royal Tandem Contracts. MLPF&S, a broker-dealer registered under the Securities Exchange Act of 1934, is a member of the National Association of Securities Dealers.

10. Effective December 28, 1990, FLIC and MLLIC entered into an indemnity reinsurance agreement (the "Indemnity Agreement") relating to certain policies issued by FLIC including the FLIC Contracts. Under the Indemnity Agreement, MLLIC agreed to assume from FLIC, and indemnify FLIC for, and FLIC agreed to cede to MLLIC on an indemnity reinsurance basis, all of FLIC's liability under such policies to the extent not reinsured under any other reinsurance agreements. Notwithstanding MLLIC's obligations to FLIC under the agreement, FLIC remains solely liable to all policyholders.

11. On March 21, 1991, MLIG entered into a stock purchase agreement with a newly formed affiliate of Financial

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Industries Corporation pursuant to which MLIG will transfer all of the outstanding stock of FLIC to such affiliate. Prior to the closing of the agreement, FLIC will transfer the MLIG all of the outstanding stock of MLLIC so that MLLIC will remain an indirect wholly owned subsidiary of Merrill Lynch & Co., Inc.

12. As required by provisions of the stock purchase agreement, FLIC, MLLIC, Tandem and Royal Tandem have entered into an assumption reinsurance agreement (the "Assumption Agreement") relating to all policies indemnity reinsured pursuant to the Indemnity Agreement. Under the Assumption Agreement, FLIC agrees to transfer all of its obligations and liabilities under such policies, including the FLIC Contracts, to MLLIC, Tandem or Royal Tandem on an assumptive reinsurance basis, and MLLIC, Tandem and Royal Tandem agree to assume all such obligations and liabilities transferred to them to the maximum extent permitted by law. MLLIC is expected to reinsure the FLIC Contracts to the extent practicable, with Tandem and Royal Tandem reinsuring the remainder.

13. It is anticipated that the transfer and assumption will take place in a series of transactions because MLLIC, Tandem and Royal Tandem combined do not have variable annuity authority in all jurisdictions in which FLIC has Contracts outstanding, and because all required state insurance authority clearances of the assumptive reinsurance of the policies may not have been obtained at the time of closing of the Assumption Agreement. Until such time as any policies that cannot be assumptive reinsured on the initial closing date of the Assumption Agreement can be assumptive reinsured, they will continue to be governed by the Indemnity Agreement. However, MLLIC will perform all functions necessary for the proper administration of the policies pursuant to an administrative services agreement between FLIC and MLLIC effective the same date as the closing of the stock purchase agreement.

14. The assumption reinsurance of the FLIC Contracts is subject to the Applicants having obtained from the SEC all necessary orders to permit the transactions, and having effective registration statements under the 1933 Act relating to the assumption reinsurance of the FLIC Contracts by MLLIC, Tandem and Royal Tandem. Upon satisfaction of all conditions to the closing of the Assumption Agreement as it relates to the FLIC Contracts, assets of the FLIC Account equal to the contract liabilities attributable to the variable portion of the those FLIC Contracts being assumptively reinsured will be transferred to MLLIC, Tandem or Royal Tandem as appropriate.

15. Upon the assumption reinsurance of a FLIC Contract, MLLIC, Tandem or Royal Tandem will issue an assumption certificate to each FLIC Contract owner. The assumption certificate will inform the FLIC Contract owner of the assumption by MLLIC, Tandem and Royal Tandem of all of FLIC's liabilities unde rthe FLIC Contract. In addition, the assumption certificate will inform the FLIC Contract owner of the reduction in the mortality risk charge assessed under the Contract by .05% annually and the provision for a distribution charge in the same amount. The Applicants represent that the change in asset charges will have no impact on the owner's FLIC Contract value.

16. After receipt of an assumption reinsurance certificate, a FLIC Contract owner will deal directly with MLLIC, Tandem or Royal Tandem, as appropriate, and any further premiums the owner wishes to apply to the FLIC Contract will be forwarded directly to MLLIC, Tandem or Royal Tandem for allocation tot he MLLIC, Tandem or Royal Tandem Account (the "Reinsuring Accounts").

17. Except for the change in the components of the charges assessed against the separate account, no change in any terms of the FLIC Contracts will be made by MLLIC, Tandem or Royal Tandem. Because shares of the Funds held by the FLIC Account will be transferred to the Reinsuring Accounts on the date a reinsurance transaction is effected, no interruption of investment performance is anticipated. No charge or expense will be incurred by the FLIC Account, the Reinsuring Accounts or the Funds in connection with the transfer of shares of the Funds. The assumption reinsurance of the FLIC Contracts will not change the number of accumulation or annuity units credited under the FLIC Contracts or the vlaue of such units. Accordingly, contract values under MLLIC, Tandem or Royal Tandem Contracts will be same as they would have been under the FLIC Contracts had the assumption reinsurance transaction not occurred. There will be no tax consequences to FLIC Contract owners as a result of the assumption reinsurance of their FLIC Contracts.

18. Applicants anticipate that some jurisdictions may require that owners of policies assumptively reinsured by MLLIC, Tandem or Royal Tandem be afforded the right to opt-out of the assumption reinsurance of their policies. If, under such an opt-out provision, timely objection from the owner were received, the assumption reinsurance of the FLIC Contract would be canceled and, if the assumption reinsurance transaction had already occurred, the assets equal to the contract liabilities attributable to the variable portion of that FLIC Contract would be transferred from the Reinsuring Accounts back to the FLIC Account. Thereafter, the owner would deal directly with FLIC as to all aspects of his or her FLIC Contract, although the FLIC Contract would remain indemnity reinsured by MLLIC and MLLIC would perform all administrative services with respect to the FLIC Contract.

19. The Applicants submit that the proposed transfers of shares of the Funds meet the standards imposed by Section 17(b) of the 1940 Act. Applicants assert that the terms of the transfers are reasonable and fair because the only consideration to be received by the FLIC Account and to be paid by the Reinsuring Accounts is the Reinsuring Accounts' assumption of the contract liabilities held in the FLIC Account with respect to the variable portion of the FLIC Contracts being assumptively reinsured. Applicants represent that the value of the shares of the Funds to be transferred will equal the amount of the liabilities assumed and will be computed in conformity with the applicable provisions of the 1940 Act and rules thereunder.

20. The terms of the transactions are consistent with the policies of each separate account because the policy of both the FLIC Account and the Reinsuring Accounts is to invest exclusively in shares of the Funds. Finally, the proposed transactions are consistent with the general purposes of the Act because the interests of FLIC Contract owners are not adversely affected by the reinsurance of the FLIC Contracts. The terms of the FLIC Contracts will remain unchanged except for the change in the components of the charges against separate account assets. FLIC Contract values are unaffected by the transactions. Applicants represent that the proposed reinsurance of the FLIC Contracts affords owners the opportunity to have their FLIC Contracts remain with a company that is part of the Merrill Lynch group and that is committed to the issuance of variable annuities and other variable products. Accordingly, Applicants request an exemption pursuant to section 17(a) of the 1940 Act to the extent necessary to permit the transfers of shares of the Funds from the FLIC Account to the Reinsuring Accounts in connection with the assumption reinsurance of the FLIC Contracts.

21. Applicants represent that the principal effect of the reinsurance transactions will be to substitute a new insurance company responsible for the performance of the FLIC Contract obligations. Although the participation of each registered investment company in the reinsurance arrangement is different from that of the other participants, such difference is attributable to the separate and distinct interests of each party to the transaction. Moreover, the fact that MLLIC, Tandem and Royal Tandem will allocate among them the FLIC Contracts to be reinsured will not be inconsistent with the policies and purposes of the Act, because the determination made in this regard will have no adverse effect on any of the Reinsuring Accounts or the contract owners that will participate therein. Applicants assert that because the Assumption Agreement is fair to FLIC Contract owners and will not affect the underlying investments on which the performance of their contracts depends, the requested relief pursuant to section 17(d) of the 1940 Act and rule 17d-1 thereunder should be granted.

22. The assumption reinsurance of the FLIC Contracts will involve the issuance of MLLIC, Tandem or Royal Tandem Contracts in exchange for FLIC Contracts. Certain states may require that FLIC Contract owners resident in that state be given the right to object to the exchange by opting-out of the reinsurance of their FLIC Contracts. Where such a right is provided by state law, an offer of exchange will exist to which the provisions of sections 11(a) and (c) will apply.

23. Applicants represent that any offers of exchange involved in the assumption reinsurance transactions would satisfy all of the conditions of rule 11a–2 under the 1940 Act and would be permitted by that rule if MLLIC, Tandem and Royal Tandem were affiliates of FLIC at the time the offers of exchange are made. Although MLLIC, Tandem and Royal Tandem were affiliates of FLIC at the time the Assumption Agreement was executed and therefore, at the time when MLLIC, Tandem and Royal Tandem became contractually obligated to assumptively reinsure the FLIC Contracts, they may not be so affiliated at the time any assumptive reinsurance of the FLIC Contracts takes effect. Accordingly, Applicants request an order pursuant to section 11(a) approving the terms of any offers of exchange involved in the assumption reinsurance of the FLIC Contracts.

24. Applicants assert that because no charges will be assessed in connection with the assumption reinsurance of the FLIC Contracts by MLLIC, Tandem and Royal Tandem, no element of the practices of "switching" and "reloading," the abuses at which section 11(a) was directed, will be present in the assumption reinsurance of the FLIC Contracts. No provisions of the FLIC Contracts will be changed upon their assumption, except for the change in the components of the charges assessed against separate account assets. However, the Applicants assert that the aggregate charges of the MLLIC, Tandem and Royal Tandem Contracts will be identical to those of the FLIC Contracts.

25. Contract owners will have the same opportunity as they currently have to invest in the same underlying Funds. The number and value of the accumulation and annuity units credited under MLLIC, Tandem and Royal Tandem Contract at the time a FLIC Contract is assumptively reinsured will be the same as they would have been if the assumption reinsurance transaction had not taken place.

26. If a FLIC Contract owner should elect to opt-out of the assumption reinsurance after the transaction has occurred, the number and value of the accumulation units and annuity units credited under his or her FLIC Contract upon its reissue will be the same as if the reinsurance had not taken place. Neither the reinsurance of the FLIC Contracts nor the election to opt-out of the reinsurance transaction will incur adverse tax consequences to contract owners.

27. Applicants state that the only material change resulting from the reinsurance of the FLIC Contracts is a change in the insurance company directly responsible to the FLIC Contract owners for the perrformance of FLIC Contract obligations.

Therefore, Applicants request an order pursuant to section 11(a) approving the terms of any offer of exchange involved in the assumption reinsurance of the FLIC Contracts.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 91–13078 Filed 6–7–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–18180; File No. 812–7711]

First SunAmerica Life Insurance Company, et al.; Application

June 3, 1991

AGENCY: Securities and Exchange Commission (the "Commission" or the "SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: First SunAmerica Life Insurance Company ("SunAmerica"), Variable Account One (the "Separate Account"), and Royal Alliance Associates, Inc. ("Royal Alliance").

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from sections 26(a) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of mortality and expense risk charges from the assets of the Separate Account under certain flexible payment deferred variable annuity contracts.

FILING DATE: The application was filed on April 15, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on June 28, 1991 and should be accompanied by proof of service on Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 505 Park Avenue, 8th Floor, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: L. Bryce Stovell, Attorney-Adviser, at (202) 504–2272, or Nancy M. Rappa, Senior Attorney, at (202) 272–2060, Office of Insurance Products and Legal Compliance (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

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Applicants' Representations

1. SunAmerica is a stock life insurance company organized under New York law. The Separate Account was established by SunAmerica to fund certain variable annuity contracts (the "Contracts"). Royal Alliance, a broker-dealer that is registered under the Securities Exchange Act of 1934, is the Separate Account's principal underwriter.

2. The Contracts, which will be made available to "qualified" and "non-qualified" retirement plans, will be funded through twelve divisions of the Separate Account. Each of these divisions, in turn, will invest in shares of one of twelve portfolios of the Separate Account's underlying investment medium, the Anchor Series Trust. The registration statement for the Contracts (File No. 33–39888), filed with the Commission on April 9, 1991 pursuant to the Securities Act of 1933, is incorporated by reference.

3. During the accumulation period of the Contracts, withdrawals that exceed a withdrawal without withdrawal charge amount may be subject to a sales charge, termed the "withdrawal charge". Withdrawal charges will vary in amount depending upon the Contract year in which the purchase payment being withdrawn was made. Withdrawals will be allocated to purchase payments on a first-in first-out basis so that all withdrawals are allocated to purchase payments to which the lowest withdrawal charge applies.

WITHDRAWAL CHARGE TABLE

Contribution year	Withdrawal charge (expressed as percentage of purchase payments)
First	5
Second	4
Third	3
Fourth	2
Fifth	1
Sixth and later	0

4. An "annuity charge" also may be imposed upon certain annuitizations. The amount of this annuity charge equals the withdrawal charge that would apply if the Contract was being surrendered.

5. For assuming the risks that the life expectancy of an annuitant will be greater than that assumed in the guaranteed annuity purchase rates, for providing the death benefit prior to the annuity date, and for waiving the withdrawal charge in the event of the death of the annuitant, SunAmerica deducts a mortality risk charge from the assets of the Separate Account at an annual rate of 0.90% of the daily net asset value of each division.

6. If the mortality risk charge is insufficient to cover the actual costs of assuming the mortality risk, SunAmerica will bear the loss; however, if the charge proves more than sufficient, the excess will be gain to SunAmerica. To the extent SunAmerica realizes any gain, those amounts may be used at its discretion, including offsetting losses experienced when the mortality risk charge is insufficient. The mortality risk charge may not be increased under the Contract.

7. During the accumulation period of the Contracts, owners may allocate and transfer amounts among the various divisions of the Separate Account and to SunAmerica's general account. However, if all or part of a Contract owner's interest in a Separate Account division is transferred to another division within thirty days of the issue date or a previous transfer, a transfer fee of $25 is imposed. The transfer fee is at cost with no margin included for profit.

8. An annual records maintenance charge of $30 also is charged against each Contract. This charge reimburses SunAmerica for expenses incurred in establishing and maintaining records relating to a Contract. The amount of this charge is guaranteed and cannot be increased by SunAmerica.

9. In addition, SunAmerica deducts an administrative expense charge from each division of the Separate Account which is equal on an annual basis to .15% of the daily net asset value of each division. This charge is designed to cover those administrative expenses which exceed the revenues from the records maintenance charge. SunAmerica believes that the administrative expense charge has been set at a level that will recover no more than the actual costs associated with administering the Contracts. In the event it exceeds the amount necessary to reimburse SunAmerica for its administrative expenses the charge will be appropriately reduced. In no event will this charge be increased.

10. SunAmerica bears the risk that the records maintenance charge and the administrative expense charge will be insufficient to cover the cost of administering the Contracts and the Separate Account. For assuming this expense risk, SunAmerica deducts an expense risk charge from the Separate Account at an annual rate of 0.35% of the daily net asset value of each division.

11. If the expense risk charge is insufficient to cover the actual cost of administering the Contracts and the Separate Account, SunAmerica will bear the loss; however, if the charge is more than sufficient the excess will be a gain to SunAmerica. To the extent SunAmerica realizes any gain, those amounts may be used at its discretion, including offsetting losses when the expense risk charge is insufficient. The expense risk charge may not be increased under the Contract.

12. Applicants represent that the mortality and expense risk charges are reasonable in amount as determined by industry practice with respect to comparable annuity products. Applicants base this representation on their analysis of publicly available information about similar industry practices, taking into consideration such factors as current charge levels and the existence of expense charge guarantees and guaranteed annuity rates. SunAmerica will undertake to maintain at its home office a memorandum, available to the Commission upon request, setting forth in detail the methodology used in determining that the level of risk charges is within the range of industry practice.

13. To the extent that the withdrawal charge is insufficient to cover all sales commissions and other promotional or distribution expenses, SunAmerica may use any of its corporate assets, including potential profit which may arise from the mortality and expense risk charge, to make up any difference. However, SunAmerica has concluded that there is a reasonable likelihood that the Separate Account's distribution financing arrangement will benefit the Separate Account and its investors. SunAmerica represents that it will maintain and make available to the Commission upon request a memorandum setting forth the basis of such conclusion.

14. SunAmerica further represents that the assets of the Separate Account will be invested only in management investment companies which undertake, in the event they should adopt a plan for financing distribution expenses pursuant to Rule 12b–1 under the 1940 Act, to have such plan formulated and approved by its board of directors, the majority of whom are not "interested persons" of the management investment company within the meaning of section 2(a)(19) of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–13679 Filed 6–7–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–18176; International Series Release No. 281; 812–7571]

The Tokio Marine and Fire Insurance Company, Limited; Notice of Application

June 3, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: The Tokio Marine and Fire Insurance Company, Limited.

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from all provisions of the 1940 Act.

SUMMARY OF APPLICATION: Applicant seeks an order granting exemption from all provisions of the 1940 Act in connection with any future offer and sale of its equity and debt securities in the United States.

FILING DATES: The application was filed on August 1, 1990, and an amendment to the application was filed on February 14, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 2, 1991, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Troland S. Link, Esq., Davis Polk & Wardwell, 1 Chase Manhattan Plaza, New York, New York 10005.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Japanese joint stock corporation, is engaged in the business of writing marine, fire and casualty, automobile and allied lines of insurance—generally referred to, in accordance with Japanese usage, as non-life insurance. Applicant is the largest non-life insurance company in Japan. Through its underwriting agents, subsidiaries and affiliates, Applicant sells insurance in 30 countries and territories and is licensed to sell insurance in all 50 States of the United States and the District of Columbia.

2. For the fiscal year ended March 31, 1989, Applicant reported total direct premiums written of ¥980,689,000,000 (approximately $7,277,947,000 at the rate of ¥132 to the dollar, the approximate rate of exchange in effect on March 31, 1989), of which 97.8% was generated by its Japanese operations and 2.2% by its overseas operations. Applicant's United States operations generated 1.6% of direct premiums written.

3. Shares of Applicant's common stock are listed on the Tokyo Stock Exchange and on the seven other stock exchanges in Japan. Since 1963, American Depositary Shares representing shares of Applicant's common stock have been trading in the over-the-counter market in the United States and, since 1986, in the NASDAQ National Market System. As of March 31, 1989 Applicant had 1,467,623,000 shares of common stock outstanding, of which approximately 2% was held by investors in the United States, directly or through American Depositary Shares.

4. Applicant is subject to regulation or approval by the Minister of Finance of Japan ("MOF") in most principal areas of its operations, including commencement and methods of doing business, premium rates, agency commissions and accounting and investment matters. The non-life insurance industry in Japan, which includes Applicant, is also regulated by the Insurance Business Law, the Law concerning Non-Life Insurance Rating Organizations and the Law concerning the Control of Insurance Soliciting, as well as by cabinet orders, ministerial ordinances and various rules and regulations promulgated by the MOF. Applicant is also a member of the Marine and Fire Insurance Association of Japan, the Fire and Marine Insurance Rating Association of Japan and the Automobile Insurance Rating Association of Japan, which organizations play an important role in the fixing of premium rates and the regulation of business practices.

5. In the United States, Applicant, operating through its United States Branch, writes general liability, workers' compensation, inland marine, ocean marine, automobile and other lines of insurance.[1] Insurance written by Applicant's United States Branch is sold through two wholly-owned New York subsidiaries, Tokio Marine Management, Inc. and Tokio Re Corporation, which act as agents for Applicant's United States Branch. Applicant's United States Branch and its subsidiaries are subject to regulation and supervision in all 50 States and the District of Columbia.

6. In order to increase share ownership by investors in the United States and to raise funds in the United States capital markets, Applicant wishes to offer and sell its debt and equity securities, including subscription rights, in the United States. Applicant seeks an exemption under section 6(c) of the 1940 Act from all provisions thereof with respect to any future issuance of its securities in the United States.

Applicant's Legal Analysis

1. Section 6(c) of the 1940 Act provides that the SEC, by order upon application, may conditionally or unconditionally exempt any person from the provisions of the 1940 Act. Since it is a foreign insurance company, Applicant is applying to the SEC because of uncertainty as to whether Applicant would be deemed to be an "investment company" for purposes of the 1940 Act.

2. Applicant notes that the SEC has proposed certain amendments to Rule 6c–9 as promulgated under the 1940 Act Investment Company Act Release No. 17682 (Aug. 17, 1990). Applicant represents that if the proposed amendents to Rule 6c–9 of the 1940 Act were effective as of the date of the applicant, it would satisfy the definition of "foreign insurance company" contained in paragraph (b)(4) of the proposed amendments to Rule 6c–9. Applicant is an insurance company organized under the laws of Japan that is (i) regulated as such by the MOF, (ii) engaged primarily and predominantly in (A) the writing of insurance agreemen s of the type specified in Section 3(a)(6) of the Securities Act of 1933, except for the

[1] Applicant's United States Branch is not a separately incorporated entity. However, funds sufficient to cover liabilities and statutory deposits, as required by law, are retained in trust for the exclusive benefit of the United States Branch, its policy holders and creditors.

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substitution of supervision by Japanese government insurance regulators for the regulators referred to in that section and (B) the reinsurance of risks on such agreements underwritten by insurance companies and (iii) not operated for the purpose of evading the provisions of the 1940 Act.

3. Pending the effectiveness of such amendments, approval of the application would be consistent with the requirements of section 6(c) that an exemption thereunder be necessary or appropriate in the public interest, be consistent with the protection of investors and be consistent with the purposes of the 1940 Act. An exemption is in the public interest because, in the absence thereof, the Applicant could be effectively precluded from the future sale of securities in the United States due to the uncertainty as to whether the Applicant should register as an investment company and also because of the substantial burdens and costs involved in registering as an investment company. As noted above, the Applicant is subject to significant Japanese regulation and supervision, as well as being subject to extensive State regulation and supervision of its operations in the United States, thereby affording protection to investors which is at least comparable to that provided by the 1940 Act. Finally, insurance companies such as the Applicant were not within the intended purview of the 1940 Act, so that approval of the application is consistent with the purposes of the 1940 Act.

Applicant's Condition

If the requested order is granted, the Applicant agrees to the following condition:

Applicant shall comply with the proposed amendments to Rule 6c-9 of the 1940 Act, as such amendments are currently proposed and as they may be reproposed, adopted or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-13560 Filed 6-7-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended May 31, 1991

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47558
Date filed: May 29, 1991
Parties: Members of the International Air Transport Association
Subject: TC3 Reso/C 0068 dated May 10, 1991
TC3 (except US Territories) Expedited Reso intended effective date: August 1, 1991. — R-1 to R-3
TC12 Reso/C 0698 dated May 1, 1991, Canada-Middle East Resos, intended effective date: October 1, 1991. — R-4 to R-5

Docket Number: 47559
Date filed: May 29, 1991
Parties: Members of the International Air Transport Association
Subject: TC3 Reso/C 0069 dated May 10, 1991
TC3 (to/from US Territories) Expedited Reso 553, intended effective date: August 1, 1991. — R-1
TC12 Reso/C 0695 dated May 1, 1991, North Atlantic Areawide (USA/US Territories) Reso 015aa & Reso 501 intended effective date: October 1, 1991. — R-2 to R-3
TC12 Reso/C 0699 dated May 1, 1991, North Atlantic (USA/US Territories-Middle East) Reso 001b & Reso 002 intended effective date: October 1, 1991. — R-4 to R-5
COMP Reso/C 0470 dated May 8, 1991, COMPOSITE Reso 004z intended effective date: August 1, 1991 TC123 Reso/C 0027 dated May 8, 1991. — R-6
TC1—South Asian Subcontinent via Atlantic (to USA/US Territories) Expedited Reso 002kk intended effective date: August 1, 1991. — R-7

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91-13584 Filed 6-7-91; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended May 31, 1991

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47556.
Date filed: May 28, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 25, 1991.
Description: Application of World Air Network Co., Ltd., pursuant to section 402 of the Act and subpart Q of the Regulations requests a foreign air carrier permit to engage in charter foreign air transportation of persons, property and mail between points in Japan and points in the United States.

Docket Number: 47561.
Date filed: May 30, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 27, 1991.
Description: Application of Consorcio Aviaxa, S.A. de C.V., pursuant to section 402 of the Act and subpart Q of the Act, applies for a foreign air carrier permit to engage in charter foreign air transportation of persons, property and mail between points in Mexico and points in the United States.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91-13585 Filed 6-7-91; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: June 4, 1991.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alchohol, Tobacco and Firearms

OMB Number: 1512-0472.

Form Number: ATF Form 5630.5, ATF Form 5630.7.
Type of Review: Revision.
Title: Special Tax Registration and Return.
Description: 26 U.S.C. chapters 51, 52 and 53 authorize the collection of an occupational tax from persons engaging in certain alcohol, tobacco or firearms businesses. ATF F 5630.5 and/or ATF F 5630.7 is used to both compute and report the tax, and as an application for registry as required by statute. Upon receipt of the tax, a special tax stamp is issued.
Respondents: Individuals or households, businesses or other for-profit, small businesses or organizations.
Estimated Number of Repsondents: 90,700.
Estimated Burden Hours Per Repsonse: 48 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 72,560 hours.
Clearance Officer: Robet Marsarsky (202) 566-7077, Bureau of Alchol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 91-13666 Filed 6-7-91; 8:45 am]

BILLING CODE 4810-31-M

Public Information Collection Requirements Submitted to OMB for Review

Date: June 4, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0097.
Form Number: None.
Type of Review: Extension.
Title: Customs Regulations Relating to Copyrights.
Description: Copyright owners who choose to record a copyright with Customs for import protection must establish validity of the copyright, pay an administration fee, and provide samples and other information to aid Customs officers in identifying pirated copies.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 600.
Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 600 hours.
Clearance Officer: Ralph Meyer (202) 566-9182, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 91-13667 Filed 6-7-91; 8:45 am]

BILLING CODE 4820-02-M

Bureau of Alcohol, Tobacco and Firearms

Granting of Relief, Federal Firearms Privileges

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF).

ACTION: Notice of granting of restoration of federal firearms privileges.

SUMMARY: The persons named in this notice have been granted restoration of their Federal firearms privileges by the Director, Bureau of Alcohol, Tobacco and Firearms.

As a result, these persons may lawfully acquire, transfer, receive, ship, and possess firearms if they are in compliance with applicable laws of the jurisdiction in which they live.

FOR FURTHER INFORMATION CONTACT: Special Agent in Charge Karl Stankovic, Firearms Enforcement Branch, Firearms Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, (202-566-7258).

SUPPLEMENTARY INFORMATION: In accordance with 18 U.S.C. 925(c), the persons named in this notice have been granted restoration of Federal firearms privileges with respect to the acquisition, transfer, receipt, shipment, or possession of firearms. These privileges were lost by reason of their convictions of crimes punishable by imprisonment for a term exceeding one year or because they otherwise fell within a category of persons prohibited by Federal law from acquiring, transferring, receiving, shipping or possessing firearms.

It has been established to the Director's satisfaction that the circumstances regarding the applicants' disabilities and each applicant's record and reputation are such that the applicants will not be likely to act in a manner dangerous to public safety, and that the granting of the restoration will not be contrary to the public interest.

The following persons have been granted restoration:

Abbott, Ralph Bertrend, W4437 Faro Springs Road, Hilbert, Wisconsin, convicted on July 13, 1984, in the Circuit Court of Winnebago County, Oshkosh, Wisconsin.

Alberts, Albert Alvin, 300 Kings Canyon, Yukon, Oklahoma, convicted on October 25, 1982, in the United States District Court, Western District of Oklahoma.

Balke, Jack Benny, N1376 County Trunk HH, Fremont, Wisconsin, convicted on June 6, 1983, in the Outagamie County Circuit Court, Appleton, Wisconsin.

Barbeau, Jay Allen, Post Office Box 2045, Jenkins Road, Bowling Green, Kentucky, convicted on September 7, 1972, in the United States District Court, Windsor, Vermont.

Bedell, David Nicholas, Rural Route 3, Box 51, Neillsville, Wisconsin, convicted on March 25, 1985, in the Clark County Circuit Court, Neillsville, Wisconsin.

Bellman, Charles Jarl, Rural Route 1, Box 89E, Waubay, South Dakota, convicted on January 16, 1984, in the United States District Court for the Judicial District of Sioux Falls, South Dakota.

Biffle, Michael Steve, 1001 West Woodlawn, Duncan, Oklahoma, convicted on October 17, 1977, in the Fifth Judicial District Court, Stephens County, Oklahoma.

Briggs, Charles Wesley Senior, 506 Vilas Street, Box 265, Onalaska, Wisconsin, convicted on June 1, 1979, in the Circuit Court of Vilas County, Eagle River, Wisconsin.

Brown, James Robert, 281 Hidden Hills Estate, Jacksonville, Alabama, convicted on April 30, 1980, in the United States District Court, State of Nevada.

Buchanan, Cecil Joseph, Rural Route 5, Box 5546, Farnklin Hill Estates, East Stroudsburg, Pennsylvania, convicted on April 14, 1964, in the Court of Quarter Sessions of Susquehanna County, Pennsylvania.

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Camp, Rowan Edward, Rural Route 1, Russell, Kansas, convicted on May 30, 1986, in the United States District Court, Topeka, Kansas.

Cherek, Alan Patrick, 1504 Tulip Lane, Wausau, Wisconsin, convicted on May 4, 1984, in the Marathon County Circuit Court, Branch II, Wausau, Wisconsin.

Company, The Boeing, Post Office Box 3707, M/S 13-08, Seattle, Washington, convicted on October 30, 1989, in the United States District Court, Eastern District of Virginia.

Dalton, Jennie Viola, Post Office Box 66, Boyds, Washington, convicted on August 7, 1987, in the Superior Court, Steven County, Washington.

Day, John Burke, 8733 Center Hill Road, Olive Branch, Mississippi, convicted on February 26, 1952, in the Criminal Court of Shelby County, Memphis, Tennessee.

Dobson, Raymond Scott, 2525 Highway 115, Colorado Springs, Colorado, convicted on November 27, 1974, in the Fourth Judicial District, El Paso County, Colorado Springs, Colorado.

Dowling, Charles A. Junior, Post Office Box 231, Addison, Maine, convicted on April 12, 1983, in the Superior Court, Machias, Maine.

Finch, Reginald Marion Junior, 1824 North Whitney Drive, Apartment 1, Appleton, Wisconsin, convicted on June 22, 1984, in the Mobile County Court, Mobile, Alabama.

Fontanari, Andy Lee, 578 Rio Hondo, Grand Junction, Colorado, convicted on March 31, 1986, in the Mesa County District Court, Grand Junction, Colorado.

Galonis, Peter Edward, 1821 Bundy Street, Scranton, Pennsylvania, convicted on November 10, 1982, in the United States District Court, Middle District of Pennsylvania, Scranton, Pennsylvania.

Gaudette, Todd Lee, RFD 3, Milton, Vermont, convicted on November 24, 1986, in the Vermont District Court, Chittenden Circuit, Vermont.

Gray, Charles Norman, 253 Hammond Street, Apartment 1, Bangor, Maine, convicted on February 13, 1974, in the Superior Court, Bangor, Maine.

Gullion, Terry Wayne, Post Office Box 311, Port Royal, Kentucky, convicted on October 25, 1982, in the United States District Court, Eastern Judicial District of Kentucky, Lexington, Kentucky.

Hailey, David Wayne, 1067 Everett Street, Scooba, Mississippi, convicted on March 15, 1983, in the United States District Court, Southern District of Mississippi.

Hansen, Mark Jerome, N6322 County G, Scandinavia, Wisconsin, convicted on August 31, 1981, in the Waupaca County Circuit Court, Branch II, Waupaca, Wisconsin.

Harrison, James Scott, 144 Frank Street, Whitaker, Pennsylvania, convicted on July 9, 1981, in the Court of Common Pleas, Allegheny County, Pittsburgh, Pennsylvania.

Hendrix, James Austin, 511 East 5th Street, Bay Minette, Alabama, convicted on May 20, 1983, in the United States District Court, Mobile, Alabama.

Herbert, Dennis Dale, U2158 1st Avenue, Spencer, Wisconsin, convicted on September 28, 1984, in the Clark County Circuit Court, Neillsville, Wisconsin.

Holmes, Scott Michael, 1611 East Broadway Street, Mount Pleasant, Michigan, convicted on March 8, 1985, in the Circuit Court for the County of Isabella, Michigan.

Hooper, Thomas James, 4843 Aylesworth, Grand Rapids, Michigan, convicted on March 20, 1986, in the United States District Court, Western Judicial District of Michigan.

Howard, George Henreid, 3615 F Pride Court, Aberdeen Proving Ground, Maryland, convicted on February 25, 1970, in the Circuit Court of Prince Georges County, Maryland.

Hudson, Vicki Marie, Route 1, Town and Country MHP, B-8, Pittsburgh, Kansas, convicted on December 3, 1987, in the District Court, Crawford County, Kansas.

Jackson, Terry Wayne, 406 Kentucky Avenue, Hanceville, Alabama, convicted on May 7, 1971, in the Cullman County Circuit Court, Alabama.

Jenkins, Patrick Eugene, 317 Summerwood Drive, Bristol, Tennessee, convicted on March 1969 in the Circuit Court, Sullivan County, Tennessee; September 21, 1970, Twenty-eighth Judicial Circuit Court of Virginia, City of Bristol, Virginia; and also on October 5, 1970, Circuit Court of Washington County, Virginia.

Kelsey, Daniel Frank, 8240 Glenbrook Avenue, Cottage Grove, Minnesota, convicted on December 15, 1983, in the United States District Court, Southern District of Florida.

Kraft, David Lawrence, 17 School Street, Ashville, Ohio, convicted on December 7, 1982, and December 27, 1982, in the United States District Court for the Southern District of Ohio, Columbus, Ohio.

Kuhns, Kenneth Richard, E 8022 Sprague Avenue, Spokane, Washington, convicted on February 20, 1970, and on October 28, 1980, in the Spokane County Superior Court, Spokane, Washington.

Lane, Clarence Arthur, 34602 State Road, 54 West, Zephyrhills, Florida, convicted on August 28, 1957; April 12, 1963; and also on April 17, 1969, in the United States District Court, Tampa, Florida.

Langille, Cyril Alfred, 314 Southeast 3rd Place, Dania, Florida, convicted on October 1, 1951, in the United States District Court, Southern Judicial District of Florida, Jacksonville, Florida.

Laursen, Peter Allen, N1549 Wafle Road, Mauston, Wisconsin, convicted on August 12, 1985, in the Circuit Court of LaCrosse County, Wisconsin.

Lee, William Miller, 808 Thomas Street, Brownsville, Tennessee, convicted on November 17, 1987, in the United States District Court, Western District of Tennessee.

Lee, James Dwight, 2664 Dunlap Avenue, Guntersville, Alabama, convicted on June 11, 1973, in the Circuit Court of Cullman County, Alabama.

Lowery, Billy Dale, 1209 Terry Circle, Albertville, Alabama, convicted on May 21, 1984, in the United States District Court, Middle District of Alabama.

Maahs, Roger Keith, 8052 County Trunk Highway U West, Beetown, Wisconsin, convicted on March 1, 1984, in the Grant County Circuit Court, Branch One, Lancaster, Wisconsin.

Mayfield, James Ralph, Route 3, Box 207, Canton, Mississippi, convicted on June 8, 1987, in the United States District Court, Southern District of Mississippi.

Mesler, Clifford Owens, Box 486, Low Street, Shinglehouse, Pennsylvania, convicted on November 28, 1984, in the United States District Court, Middle District of Pennsylvania.

Minnich, Rick L., 325 East Main Street, Apartment 3, Mechanicsburg, Pennsylvania, convicted on September 14, 1982, in the Court of Common Pleas, Cumberland County, Pennsylvania.

Morgan, Delmar Dale, 1539 Stratford Drive, Adrian, Michigan, convicted on February 26, 1980; September 3, 1981; and also on June 12, 1981, in the Lenawee County Circuit Court, Michigan.

Murphy, Thomas Clayton, Route 5, Box 637, Cleveland, Tennessee, convicted on August 1, 1975, in the Criminal Court, Bradley County, Tennessee.

Nixon, Hershel Paul, 4481 Highway Z, New Melle, Missouri, convicted in March 1981, in the United States District Court, Eastern District of Missouri, St. Louis, Missouri.

Olds, Jeffrey Scott, 529 West Jenkins Street, Winamac, Indiana, convicted on April 11, 1985, and on June 17, 1985, in the Courty Court of Pulaski County, Indiana.

Polito, Ronald Nickolaus, 5007 Northwest 26th Avenue, Fort Lauderdale, Florida, convicted on April 8, 1975, in the Circuit Court of Broward County, Florida.

Pruiett, James Mark, 409 Collinwood, South Fulton, Tennessee, convicted on August 8, 1979, in the Circuit Court, Union City, Obion County, Tennessee.

Prust, Gregory Raymond, Route 2, Box K17, Spencer, Wisconsin, convicted on December 8, 1986, in the Circuit Court of Wood County, Branch Three Court, Wisconsin Rapids, Wisconsin.

Rayfield, Franklin Delano, HCR Route 77, Box 186, Annapolis, Missouri, convicted on August 31, 1987, in the United States District Court, Eastern District of Missouri.

Reedy, Mark Gerard, 1606 North 72d Street, Apartment 8, Omaha, Nebraska, convicted on January 1, 1972, in the Douglas County District Court, Omaha, Nebraska.

Roberts, Lee Jack, Post Office Box 442, Panama City, Florida, convicted on January 27, 1987, in the Circuit Court, Fourteenth Judicial District, Bay County, Florida.

Robinson, Herbert Emerson, 18915 Pinehurst, Detroit, Michigan, convicted on March 19, 1957, and on July 31, 1957, in the Common Pleas Court, Dayton, Ohio.

Schaeffer, Walter Russell, 110 Weathervane Drive, Cherry Hill, New Jersey, convicted on September 18, 1986, in the United States District Court, Middle District of Pennsylvania, Scranton, Pennsylvania.

Smith, Michael Patrick, 411 West 4th Street, Marshfield, Wisconsin, convicted on November 26, 1973, in the Circuit Court, Clark County, Wisconsin.

Sowieja, Ronald Charles, 331 South Eaton, Apartment 11, Greenwood, Wisconsin, convicted on October 31, 1978, in the Clark County Circuit Court, Neillsville, Wisconsin.

Spangler, Charles Eugene, Route 3, Black River Falls, Wisconsin, convicted on December 9, 1963, in the Woods County Court, Wisconsin Rapids, Wisconsin; on June 14, 1965, in the Rock County Court, Beloit, Wisconsin; and also on November 11, 1985, in the Jackson County Court, Black River Falls, Wisconsin.

Sparrow, Jerry Glenn, 3181 Bardstown Road, Lawrenceburg, Kentucky, convicted on December 8, 1982, in the Anderson County Circuit Court, Kentucky.

Starr, Jimmie Lewis, Route 5, Box 61, Auburn, Alabama, convicted on July 15, 1986, in the United States District Court, Eastern Division, Middle District of Alabama.

Stein, Robert Joel, 2327 Tulane, Lawton, Oklahoma, convicted on October 31, 1984, in the United States District Court, Western Judicial District of Oklahoma, Oklahoma City, Oklahoma.

Stewart, Thomas Maxwell, 80 Lake Loraine Circle, Shalimar, Florida, convicted on January 26, 1987, in the Circuit Court of Walton County, Florida.

Stoddard, Melvin Merton, 1619 Doddridge Avenue, Cloquet, Minnesota, convicted on September 9, 1985, in the Sixth Judicial District Court, County of Carlton, Carlton, Minnesota.

Thayer, William Paul, 29 Saint Laurent Place, Dallas, Texas, convicted on May 8, 1985, in the United States District Court for the District of Columbia.

Thomas, Frederick George, 3403 Atlantic Avenue, Erie, Pennsylvania, convicted on January 12, 1981, in the Erie County Court of Common Pleas, Erie, Pennsylvania.

Thomas, Monroe Charles, 2634 Nassau Street, Sarasota, Florida, convicted on January 29, 1979, in the Twelfth Judicial Circuit Court, Sarasota County, Sarasota, Florida.

Tolver, Steve Allen, 307 North 6th Avenue, Hartford, Alabama, convicted on July 28, 1982, in the District Court of Geneva County, Alabama.

Triana, Eric Robert, 29 South Mill Street, Northeast, Pennsylvania, convicted on January 16, 1986, in the Pennsylvania Court of Common Pleas, Erie County, Pennsylvania.

Van Price, Emery Lloyd, 622 Forrest Street, Wausau, Wisconsin, convicted on December 29, 1980, in the Sheboygan County Circuit Court, Sheboygan, Wisconsin.

Waldrop, Lawrence Ralph, 2128 Little Coveway, Quinton, Alabama, convicted on December 13, 1963, and on June 28, 1976, in the Circuit Court of Jefferson County, Alabama.

Watkins, Milton Charles Junior, 74 Endicott Street, Second Floor, Johnson City, New York, convicted on May 14, 1975, in the Broome County Court, Binghamton, New York.

Compliance with Executive Order 12291

It has been determined that this notice is not a "major rule" within the meaning of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Signed: May 23, 1991.

Stephen E. Higgins,

Director.

[FR Doc. 91-13668 Filed 6-7-91; 8:45 am]

BILLING CODE 4810-31-M

Customs Service

[T.D. 91-53]

Extension of Analyses for Which Chem Coast, Inc., a Customs accredited Commercial Laboratory, has Been Accredited to Perform

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of additional analyses for which Chem Coast, Inc., a Customs accredited commercial laboratory, has been accredited to perform.

SUMMARY: Chem Coast, Inc. of La Porte, Texas, a Customs accredited commerical laboratory under § 151.13 of the Customs Regulations (19 CFR 151.13), has been given an extension of its commercial laboratory accreditation, effective at its La Porte, Texas laboratory facility, to include the following analyses: Reid Vapor Pressure; Saybolt Universal Viscosity; percent by weight sulfur of petroleum products; percent by weight lead in gasoline; sediment by extraction; percent composition by weight benzene, toluene xylene; and xylene isomer content of mixed xylenes.

SUPPLEMENTARY INFORMATION: Part 151 of the Customs Regulations provides for the acceptance at Customs Districts of laboratory test results of certain products from Customs accredited commercial laboratories. Chem Coast, Inc., which holds Customs accreditation for the performance of certain laboratory analyses, has applied to Customs to extend its accreditation to include the performance of additional analyses at its La Porte, Texas laboratory. Review of Chem Coast, Inc.'s qualifications shows that the extension is warranted and, accordingly, has been granted.

EFFECTIVE DATE: 5-30-91.

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FOR FURTHER INFORMATION CONTACT:
Ira S. Reese, Special Assistant for Commercial and Tariff Affairs, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Ave. NW., Washington, DC 20229 (202–566–2446).

Dated: May 31, 1991.

J.E. Harrell,

Acting Director, Office of Laboratories and Scientific Services.

[FR Doc. 91–13591 Filed 6–7–91; 8:45 am]

BILLING CODE 4820–02–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 111
Monday, June 10, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, June 12, 1991.

LOCATION: Room 556, Westwood Towers Building, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. *CFC Winners Circle Award* (10 minutes)

Chairman Jacqueline Jones-Smith will present the Combined Federal Campaign Winners Circle plaque.

2. *Infant Cushions NPR*

The staff will brief the commission on a Notice of Proposed Rulemaking (NPR) addressing the risk of injury and death presented by infant cushions.

3. *Automatic Residential Garage Door Operators*

The Commission will consider a final rule specifying requirements for automatic residential garage door operators as stated in Section 203 of the Consumer Product Safety Improvement Act of 1990.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, (301) 492–6800.

Dated: June 5, 1991.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 91–13829 Filed 6–6–91; 1:21 pm]

BILLING CODE 6355–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, June 13, 1991, see times below.

LOCATION: Room 556, Westwood Towers Building, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

10:00 a.m.

1. *Pride in Public Service Award* (10 minutes)

The Commission will present the Pride in Public Service Award to June's recipient.

2. *Ibuprofen—Child-Resistant Packaging*

The staff will brief the Commission on a proposed rule to require child-resistant packaging for over-the-counter drugs containing Ibuprofen.

3. *Voluntary Standards Quarterly Report*

The staff will brief the Commission on voluntary standards activities carried out during the second quarter of FY 1991.

2:00 p.m.

4. *International Affairs Quarterly Report*

The staff will brief the Commission on international affairs activities carried out during the second quarter of FY 1991.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, (301) 492–6800.

Dated: June 5, 1991.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 91–13830 Filed 6–6–91; 1:21 pm]

BILLING CODE 6355–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Friday, June 14, 1991, 10:00 a.m.

LOCATION: Room 556, Westwood Towers Building, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

Section 15 Interpretive Rule

The Commission will consider those portions of the draft Federal Register Notice proposing amendments to the Commission rules interpreting Section 15 of the Consumer Product Safety Act concerning whether Section 15 reporting requirements should apply to voluntary standards the Commission may have relied on prior to the enactment of the 1990 Consumer Product Safety Improvement Act.

For a Recorded Message Containing the Latest Agenda Information, Call (301) 492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, (301) 492–6800.

Dated: June 5, 1991.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 91–13831 Filed 6–6–91; 1:21 pm]

BILLING CODE 6355–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on June 13, 1991, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT:
Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited pace available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

B. New Business

1. St. Paul FCB—Expansion of Acquired Property Operations
2. Freedom of Information Act Regulations
3. Disclosure to Shareholders Regulations
4. FCA Board Travel and Honoraria Policy
5. FCS Building Association—Jackson FLB(R) Liquidation of Assets

Closed Session*

A. Unfinished Business

1. Government-Sponsored Enterprises-Agency Options

B. New Business

1. Enforcement Actions.

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Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(8), (9) and (10).

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 91-13883 Filed 6-6-91; 3:48 pm]

BILLING CODE 6705-01-M

FEDERAL COMMUNCIATIONS COMMISSION

FCC To Hold Open Commission Meeting, Thursday, June 13, 1991

June 6, 1991.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, June 13, 1991, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Item No, Bureau, and Subject

1—General Counsel Mass Media—Title: Proposed Codification of the Commission's Political Programming Policies. Summary: The Commission will consider a *Notice of Proposed Rule Making* regarding political broadcasting obligations arising under the Communication Act.

2—Mass Media—Title: In the Matter of Television Satellite Stations; Review of Policy and Rules (MM Docket No. 87-8). Summary: The Commision will consider adoption of a *Report and Order* on the television satellite policy and rules.

3—Mass Media—Title: Cable Television Technical and Operational Requirements (MM Docket No. 85-38). Summary: The Commission will consider whether to issue a *Notice of Proposed Rule Making* concerning technical standards for cable television systems.

4—Mass Media—Title: Reexamination of the Effective Competition Standard for the Regulation of Cable Television Basic Service Rates (MM Docket No. 90-4, MM Docket No. 84-1296). Summary: The Commission will consider whether to revise its effective competition standard for the regulation of basic cable television rates and the standards for rate regulation of such rates.

5—Common Carrier—Title: Petition for the Expedited Declaratory Ruling filed by the Operator Service Providers of America (OSPA). Summary: The Commission will consider OSPA's request that the Commission declare invalid a Tennessee statute insofar as it applies to interstate operator services.

6—Common Carrier—Title: Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture (CC Docket No. 89-79); Policy and Rules Concerning Rates for Dominant Carriers (CC Docket No. 87-313). Summary: The Commission will consider adoption of a *Report and Order and Order on Further Reconsideration and Supplemental Notice of Proposed Rule Making.*

7—Private Radio—Title: Spectrum Efficiency in the Private Land Mobile Bands in Use Prior to 1968. Summary: The Commission will consider adoption of a *Notice of Inquiry* concerning changes in technical rules and general policies regarding use of various private land mobile banda primarily below 470 MHz.

8—Chief Engineer—Title: An Inquiry Relating to Preparation for the International Telecommunications Union World Administrative Radio Conference for Dealing with Frequency Allocations in Certain Parts of the Spectrum (GEN Docket No. 89-554). Summary: The Commission will consider adoption of a *Report* in this proceeding.

9—Field Operations—Title: An Inquiry into Possible Technical Improvements in the Emergency Broadcast System. Summary: The Commission will consider whether to initiate an inquiry dealing with improvements to the Emergency Broadcast System.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632-5050.

Issued: June 6, 1991.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-13845 Filed 6-6-91; 2:25 pm]

BILLING CODE 6712-01-M

Corrections

Federal Register
Vol. 56, No. 111
Monday, June 10, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Forest Service

Transfer of Administrative Jurisdiction; Lake Isabella and Pine Flat Lake Projects, California

Correction

In notice document 91-11441 beginning on page 22393, in the issue of Wednesday, May 15, 1991, make the following correction:

On page 22394, in the third column, in **Exhibit B-1**, in Section 19, insert "," after "SE¼".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-015]

Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Reviews

Correction

In notice document 91-12775 beginning on page 24370, in the issue of Thursday, May 30, 1991 make the following corrections:

On page 24371, in the second column, in the third full paragraph, in the fifth line from the bottom "receivable" is misspelled. In the same column, in the same line, insert "balance, we used the average of Victor's monthly accounts receivable" after "receivable".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

48 CFR Parts 243, 249, and 252

Department of Defense Federal Acquisition Regulation Supplement; Contract Modifications and Termination of Contracts

Correction

In rule document 91-12459 beginning on page 24030, in the issue of Tuesday, May 28, 1991, make the following correction:

On page 24031, in the first column, the title for **Nancy L. Ladd** should read "*Colonel, USAF, Director, Defense Acquisition Regulations Council*".

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 89-552; FCC 91-74]

Private Land Mobile Radio Services; Use of the 220-222 MHz Frequency Band

Correction

In rule document 91-9397 beginning on page 19598, in the issue of Monday, April 29, 1991, make the following correction:

§ 90.73 [Corrected]

On page 19601, in the first column, the section heading following ammendatory instruction 15 should read as shown above.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 211

[Docket No. 90N-0376]

RIN 0905-AA73

Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding of Drugs; Proposed Amendment of Certain Requirements for Finished Pharmaceuticals; Reopening of Comment Period

Correction

In proposed rule document 91-9211 beginning on page 16048, in the issue of Friday, April 19, 1991, make the following corrections:

1On page 16049, in the first column, in the **SUMMARY**, in the second line "extending" should read "reopening".

2On the same page, in the same column, in **FOR FURTHER INFORMATION CONTACT**, in the second line "363" should read "362".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-AGL-23]

Alteration to Transition Area; Bellaire, MI

Correction

In rule document 91-5782 beginning on page 10362, in the issue of Tuesday, March 12, 1991, make the following correction:

On page 10363, in the first column, in the second full paragraph, in the seventh line, insert "to Antrim County Airport, the FAA determined that a reduction in the existing" after "procedure".

BILLING CODE 1505-01-D

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Part II

Federal Retirement Thrift Investment Board

5 CFR Part 1620

Nonappropriated Fund Employees; Interim Rule With Request for Comments

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FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1620

Nonappropriated Fund Employees

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Interim rule with request for comments.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing in part 1620 interim rules governing the Thrift Savings Plan (TSP) participation of persons who move to Nonappropriated Fund (NAF) instrumentalities of the Department of Defense (DOD) and U.S. Coast Guard (Coast Guard). The interim rules implement sections 10, 11, 13 and 14 of the Portability of Benefits for Nonappropriated Fund Employees Act of 1990, Public Law 101–508 (the Act), which added subsections 8347(p)(1) and 8461(n)(1) to title 5 of the United States Code to allow certain NAF employees to participate in the TSP.

DATES: These interim rules are effective June 10, 1991. Comments must be received on or before August 9, 1991.

ADDRESSES: Comments may be sent to: Michelle C. Malis, Federal Retirement Thrift Investment Board, 805 Fifteenth Street NW., Washington, DC. 20005.

FOR FURTHER INFORMATION CONTACT: Michelle C. Malis, (202) 523–5367.

SUPPLEMENTARY INFORMATION: The Act provides that certain employees who move from the DOD and Coast Guard to NAF instrumentalities are eligible to participate in the TSP by virtue of their election to be covered by the Civil Service Retirement System (CSRS) or the Federal Employees' Retirement System (FERS). Those employees who are eligible to make an election to be covered by CSRS or FERS must have 5 or more years of civilian service creditable under subchapters 83 or 84 of title 5 of the United States Code prior to the move, have moved without a break in service of more than 3 days from the DOD or Coast Guard to employment in an NAF instrumentality of the DOD or Coast Guard, respectively, and have not previously had an opportunity to make such an election pursuant to the provisions of the Act.

Section 1620.90 provides that the regulations in subpart G apply to any employee of an NAF instrumentality of the DOD or Coast Guard who elects to be covered by CSRS or FERS pursuant to the Act.

Section 1620.91 contains definitions of terms used in subpart G.

Section 1620.92 sets forth the procedures which the NAF instrumentality must follow for eligible employees who move to the NAF instrumentalities on or after November 5, 1990 (the date of enactment of the Act) and who elect to continue to be covered by FERS or CSRS. If an employee had made a TSP election which is still in effect at the time of the move, TSP contributions will continue uninterrupted. If an employee does not have a current TSP election in effect, he or she will be permitted to make an election to contribute to the TSP in the first TSP Open Season during which he or she is eligible to do so under 5 U.S.C. 8432. The NAF instrumentality must permit such employees to make future elections to contribute to the TSP from basic pay during appropriate Open Season periods. If an employee elects to continue to be covered by FERS, the NAF instrumentality must also make contributions to the TSP on behalf of such employees as set forth in 5 U.S.C. 8432(c). Contributions which have not been made on behalf of an employee who moved on or after November 5, 1990 but before the date of publication of these regulations and who elected continued FERS or CSRS coverage will be made up according to the error correction procedures contained in part 1605. Similarly, error correction procedures will apply for payment of TSP contributions where they are not made because an employee moves to an NAF instrumentality but does not make an immediate election with respect to CSRS or FERS coverage. Lost earnings will not be paid on these contributions unless the NAF instrumentality does not make the contributions within the time frames required by these regulations.

Section 1620.93 applies to employees who moved to an NAF instrumentality before November 5, 1990 but after December 31, 1986. This section is divided into two main parts, one addressing future TSP contributions and the other addressing retroactive TSP contributions. With respect to future contributions, this section provides that an employee who elects to be covered by CSRS or FERS may elect to make future contributions to the TSP within 30 days of the date of his or her election to be covered by FERS or CSRS, or within 30 days of the date of publication of these regulations, whichever is later. Deductions from an employee's pay will begin no later than the pay period following the election to contribute to the TSP. Agency Automatic (1%) Contributions are made only on behalf of employees who elect to be covered by FERS and those contributions are to begin no later than the pay period following that coverage election or the date these regulations are published, whichever is later. Agency Matching Contributions are made only on behalf of employees who elect to be covered by FERS and to contribute to the TSP. Such contributions are to begin at the same time as the employee's contributions begin.

The second part of this section addresses the procedures for retroactive or make-up contributions. Section 13 of the Act provides that the Executive Director of the Board shall take action to ensure that employees who moved between January 1, 1987 and the effective date of the Act, November 5, 1990, receive all the benefits of the Act as if the Act were in effect at the time of their move. This subsection provides a means for those individuals to receive the agency contributions which they would have received had they been eligible to participate in the TSP since the time of their move and to make contributions from future pay reflecting amounts which they would have been eligible to contribute. It is designed to avoid any gaps in TSP participation resulting from a move which took place between January 1, 1987 and November 5, 1990.

Agency Automatic (1%) Make-up Contributions will be made only on behalf of employees who elect to be covered by FERS. The NAF instrumentality must pay to the Thrift Savings Fund an amount which represents the Agency Automatic (1%) Contribution which the NAF instrumentality would have made for all pay periods during which the employee would otherwise have been eligible to receive the Agency Automatic (1%) Contribution beginning with the date of the employee's move to the NAF instrumentality and ending with the date that Agency Automatic (1%) Contributions begin following the employee's election to be covered by FERS.

Employees who elect to be covered by CSRS or FERS will have the opportunity to elect to make up contributions representing the amount of employee contributions for which the employee would otherwise have been eligible. The make-up contributions will be deducted from the employee's current pay according to a schedule established by the employee and the NAF instrumentality. Agency matching make-up contributions will be paid at the same time the employee contributions to which they relate are paid.

An employee will have 60 days from the date of his or her election to be covered by FERS or CSRS or from the date of the publication of these regulations, whichever is later, to make an election regarding make-up contributions. The employee may terminate that election at any time. If an employee separates from Federal service or covered NAF employment, the employee may accelerate the contribution by lump sum payment from the employee's final salary pay. If an employee dies, the retroactive contributions will terminate as of the final salary payment. Retroactive contributions will be reported for investment by the NAF instrumentality according to the employee's current TSP allocation election. If the employee is not making current TSP contributions, the employee may file an election form specifically for the investment of the retroactive contributions. This section also contains other administrative rules concerning make-up contributions.

Section 1620.94 provides that an employee who was employed by an NAF instrumentality and vested in the NAF retirement system who later becomes employed by a Federal government agency and elects to remain covered by the NAF retirement system is not eligible to contribute to the TSP.

Section 1620.95 sets forth the responsibility of the NAF instrumentalities to deduct employee contributions and to contribute employee and employer contributions to the Thrift Savings Fund each pay period in accordance with Board procedures.

Section 1620.96 provides that the NAF instrumentalities are responsible for deducting TSP loan payments and transmitting those payments to the TSP recordkeeper in accordance with Board procedures.

Section 1620.97 sets forth procedures regarding the transmission of information relating to employees who move to an NAF instrumentality.

Section 1620.98 provides that all NAF instrumentalities employing any individuals covered by these regulations must notify those employees of the application of these regulations as soon as possible after their date of publication.

Section 1620.99 explains that all NAF instrumentalities and individuals covered by these regulations are also governed by the regulations set forth in chapter VI of title 5, Code of Federal Regulations.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Waiver of Notice of Proposed Rulemaking and 30-Day Delay of Effective Date

Pursuant to 5 U.S.C. 553 (b)(B) and (d)(3), I find that in view of the requirements of Public Law 101–508 good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. Public Law 101–508 gave certain employees the immediate right to participate in the TSP by virtue of their election to be covered by CSRS or FERS while employed by an NAF instrumentality. These regulations are necessary to establish procedures for allowing such employees to participate.

List of Subjects in 5 CFR Part 1620

Employee benefit plans, Government employees, Retirement, Pensions.

Federal Retirement Thrift Investment Board

Francis X. Cavanaugh,

Executive Director.

For the reasons set out in the preamble, part 1620 of chapter VI of title 5 of the Code of Federal Regulations is amended as set forth below.

1. The authority citation for part 1620 is revised to read as follows:

Authority: 5 U.S.C. 8474; 5 U.S.C. 2101 note.

2. New subpart G is added to part 1620 to read as follows:

Subpart G—Nonappropriated Fund Employees

Sec.

1620.90 Scope.
1620.91 Definitions.
1620.92 Employees who move to an NAF instrumentality on or after November 5, 1990.
1620.93 Employees who moved to an NAF instrumentality prior to November 5, 1990 but after December 31, 1986.
1620.94 Employees who move from an NAF instrumentality to a Federal government agency.
1620.95 Payment of TSP contributions.
1620.96 Loan payments.
1620.97 Transmission of information.
1620.98 Notices.
1620.99 Other regulations.

Subpart G—Nonappropriated Fund Employees

§ 1620.90 Scope.

This subpart applies to any Nonappropriated Fund (NAF) instrumentality employee of the Department of Defense (DOD) or U.S. Coast Guard (Coast Guard) who elects to be covered by the Civil Service Retirement System (CSRS) or the Federal Employees' Retirement System (FERS) pursuant to sections 10 and 11 of the Portability of Benefits for Nonappropriated Fund Employees Act of 1990 (5 U.S.C. 8347(p), 8461(n)).

§ 1620.91 Definitions.

(a) As used in this subpart—*Covered by* means paying contributions to the Civil Service Retirement and Disability Fund under either CSRS or FERS.

(b) *Basic pay* means the pay from the NAF instrumentality used to compute the amount the individual is required to contribute to the Civil Service Retirement and Disability Fund as a condition for participating in CSRS or FERS, as the case may be.

(c) *Move* means moving from a position covered by CSRS or FERS at the DOD or Coast Guard to an NAF instrumentality of the DOD or Coast Guard, respectively, without a break in service of more than 3 days.

§ 1620.92 Employees who move to an NAF instrumentality on or after November 5, 1990.

(a) Any Thrift Savings Plan (TSP) elections:

(1) Made during an employee's previous employment by an employee who moves to an NAF instrumentality on or after November 5, 1990 and who elects to continue to be covered by CSRS or FERS; and

(2) Which are still in effect as of the date of the move, shall be implemented by the NAF instrumentality and shall begin with the date of the move.

(b) If an employee who moves to an NAF instrumentality on or after November 5, 1990 does not have a current election to contribute to the TSP, he or she shall be permitted to make such an election during the first TSP Open Season, as described in 5 CFR 1600.2, during which he or she is eligible to do so under 5 U.S.C. 8432.

(c) An employee who moves to an NAF instrumentality on or after November 5, 1990, and who elects to continue to be covered by FERS or CSRS, must be permitted to elect to make future contributions to the Thrift Savings Fund from his or her basic pay for which he or she is eligible under 5 U.S.C. 8432 or 5 U.S.C. 8351 during the appropriate Open Seasons.

(d) For an employee who moves to an NAF instrumentality on or after November 5, 1990 and elects to continue to be covered by FERS, the NAF instrumentality must also contribute each pay period to the Thrift Savings

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Fund in accordance with Board procedures on behalf of such employee, any amounts which the employee is eligible to receive under 5 U.S.C. 8432(c).

(e) In the case of an employee who moves to an NAF instrumentality on or after November 5, 1990 and who elects to continue to be covered by CSRS or FERS, any TSP contributions described in 5 U.S.C. 8432 or 8351 for which such employee is eligible and which are not made in accordance with this section because the employee moved before the date of publication of these regulations, or because the employee moves to the NAF instrumentality but does not make an immediate election to be covered by CSRS or FERS, shall be made up according to the error correction procedures contained in part 1605 of this chapter. No lost earnings will be paid on these contributions unless the NAF instrumentality does not make the contributions within the time frames required by these regulations.

§ 1620.93 Employees who moved to an NAF instrumentality prior to November 5, 1990 but after December 31, 1986.

(a) Future TSP contributions.

(1) Employee contributions. Employees who moved to an NAF instrumentality prior to November 5, 1990 but after December 31, 1986, and who elect to be covered by FERS or CSRS as of the date of such move, may elect to make any future contributions to the TSP in accordance with 5 U.S.C. 8432(a) or 8351(b)(2) within 30 days of the date of their election to be covered by FERS or CSRS, or within 30 days of the date these regulations are published, whichever is later. Such contributions shall begin being deducted from the employee's pay no later than the pay period following their election to contribute to the TSP. Any TSP election which may have been in effect at the time of the employee's move will not be effective for any future contributions.

(2) Agency Automatic (1%) Contributions. If an employee who moved to an NAF instrumentality prior to November 5, 1990 but after December 31, 1986, elects to be covered by FERS, the NAF instrumentality must also contribute each pay period to the Thrift Savings Fund on behalf of such employee any amounts which the employee is eligible to receive under 5 U.S.C. 8432(c)(1), beginning no later than the pay period following the employee's election to be covered by FERS, or the pay period following the date these regulations are published, whichever is later.

(3) Agency Matching Contributions. If an employee who moved to an NAF instrumentality prior to November 5, 1990 but after December 31, 1986, elects to be covered by FERS and also elects to make contributions to the TSP pursuant to paragraph (a)(1) of this section, the NAF instrumentality must also contribute each pay period to the Thrift Savings Fund on behalf of such employee any amounts which the employee is eligible to receive under 5 U.S.C. 8432(c)(2), beginning at the same time as the employee's contributions are made pursuant to paragraph (a)(1) of this section.

(b) Retroactive TSP contributions

(1) Without regard to any election to contribute to the TSP under paragraph (a)(1) of this section, the NAF instrumentality shall take the following actions with respect to an employee who moved to an NAF instrumentality prior to November 5, 1990 but after December 31, 1986, and who elects to be covered by CSRS or FERS as of the date of the move:

(i) Agency Automatic (1%) Make-up Contributions. The NAF instrumentality shall, within 30 days of the date of the employee's election to be covered by FERS, or the date these regulations are published, whichever is later, contribute to the Thrift Savings Fund an amount representing the Agency Automatic (1%) Contribution for all pay periods during which the employee would have been eligible to receive the Agency Automatic (1%) Contribution under 5 U.S.C. 8432 beginning with the date of the move and ending with the date that Agency Automatic (1%) Contributions begin under paragraph (a)(2) of this section. Lost earnings will not be paid on these contributions unless the contributions are not made by the NAF instrumentality within the time frames required by these regulations.

(ii) Employee Make-up Contributions.

(A) Within 60 days of the election to be covered by FERS or within 60 days of the date of publication of these regulations, whichever is later, an employee who moved to an NAF instrumentality prior to November 5, 1990 but after December 31, 1986, and who elects to be covered by FERS, may make an election regarding employee make-up contributions. The employee may elect to contribute all or a percentage of the amount of employee contributions which the employee would have been eligible to make under 5 U.S.C. 8432 between the date of the move and the date employee contributions begin under paragraph (a)(1) of this section or, if no such election is made under paragraph (a)(1) of this section, the date that Agency Automatic (1%) Contributions begin under paragraph (a)(2) of this section.

(B) Within 60 days of the election to be covered under CSRS or within 60 days of the date of publication of these regulations, whichever is later, an employee who moved to an NAF instrumentality prior to November 5, 1990 but after December 31, 1986, and who elects to be covered by CSRS, may make an election regarding make-up contributions. The employee may elect to contribute all or a percentage of the amount of employee contributions which the employee would have been eligible to make under 5 U.S.C. 8351 between the date of the move and the date employee contributions begin under paragraph (a)(1) of this section or, if no such election is made under paragraph (a)(1) of this section, the pay period following the date the election to be covered by CSRS is made.

(C) Deductions made from the employee's pay pursuant to an employee's election under paragraph (b)(1)(ii) (A) or (B) of this section, as appropriate, shall be made according to a schedule that meets the requirements of paragraphs (b) (2) and (3) of this section.

(iii) Agency Matching Make-up Contributions. The NAF instrumentality must pay to the Thrift Savings Fund any matching contributions attributable to employee contributions made under paragraph (b)(1)(ii)(A) of this section that the NAF instrumentality would have been required to make under 5 U.S.C. 8432(c), at the same time that such employee contributions are contributed to the Fund.

(2) The NAF instrumentality may set a ceiling on the number of pay periods over which the contributions referred to in paragraph (b)(1)(ii) of this section may be made; however, this ceiling may not be less than two times the number of pay periods in which the payments could have been made. The payment schedule must begin no later than the pay period following the date the employee elects such schedule and it may not contain more than four times the number of pay periods in which the payment could have been made.

(3) If the agreed-upon payment schedule cannot be met because the employee has insufficient net pay or because the employee has reached an annual ceiling for tax-deferred contributions under 26 U.S.C. 402(g) or 415, the payment schedule will be suspended until the employee is again able to make full payments through payroll deductions. Pay periods for which an employee is unable to make payments because of insufficient net pay or a ceiling on tax-deferred contributions, will not be counted against the maximum number of pay periods applicable to the schedule and the maximum number of applicable pay periods must be extended accordingly.

(4) If an employee chooses to contribute the make-up amount, he or she may subsequently terminate that decision at any time and that termination shall be irrevocable. If an employee separates from Federal or covered NAF employment, the employee may accelerate the contribution by lump sum payment from the final salary payment. If the employee dies, the retroactive contributions of the deceased employee will be terminated as of the final salary payment.

(5) The make-up payment amount is not subject to the maximum pay period contribution limitations; however, these amounts must be included when determining amounts subject to annual ceilings on contributions under 26 U.S.C. 402(g) or 415.

(6) In the event an employee does not have sufficient net pay to make all of the TSP deductions, the employee's regular TSP deduction shall take precedence over the employee's payment schedule contribution.

(7) Make-up contributions shall be reported for investment by the NAF instrumentality when contributed according to the employee's election form for current contributions (TSP–1). If the employee is not making current contributions, the retroactive contributions shall be invested according to an election form (TSP–1) filed specifically for that purpose.

§ 1620.94 Employees who move from an NAF instrumentality to a Federal government agency.

An employee employed by an NAF instrumentality who later is employed by a Federal government agency and elects to remain covered by the NAF retirement system is not eligible to participate in the TSP.

§ 1620.95 Payment of TSP contributions.

The NAF instrumentality shall deduct any employee contributions authorized under this section from the pay of the employee each pay period and shall remit such amounts to the Thrift Savings Fund in accordance with this subpart and Board procedures. The NAF instrumentality shall contribute any future employer contributions to the Thrift Savings Fund each pay period in accordance with this subpart and Board procedures. The NAF instrumentality shall contribute make-up contributions to the Thrift Savings Fund in accordance with this subpart and Board procedures.

§ 1620.96 Loan payments.

NAF instrumentalities shall deduct and transmit TSP loan payments for employees who elect to be covered by CSRS or FERS to the recordkeeper in accordance with part 1655 and Board procedures. Loan payments may not be deducted and transmitted for employees who were covered by CSRS or FERS and who move to an NAF instrumentality and elect to be covered by the NAF retirement system. Such employees will be considered to have separated from government service and must prepay their loans or a taxable distribution will be declared.

§ 1620.97 Transmission of information.

Any employee who moves to an NAF instrumentality shall be reported by the losing agency to the TSP recordkeeper as having moved to an NAF instrumentality of the DOD or Coast Guard rather than as having separated from government service. If the employee subsequently elects not to be covered by CSRS or FERS, the employee will be reported by the NAF instrumentality as having separated from government service as of the date of the move. The NAF instrumentality will then prepare and submit Form TSP–16, Validation of Retirement Information, to the TSP recordkeeper.

§ 1620.98 Notices.

All NAF instrumentalities employing any individuals covered by § 1620.90 of this part must notify affected employees of the application of these regulations as soon as possible after June 10, 1991.

§ 1620.99 Other regulations.

NAF instrumentalities and individuals covered by § 1620.90 of this part are governed by the regulations in chapter VI of title 5, Code of Federal Regulations, to the extent that those regulations are not inconsistent with this subpart.

[FR Doc. 91–13480 Filed 6–7–91; 8:45 am]
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Monday
June 10, 1991

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Section 312 Rehabilitation Loan Program Investor Properties With Loans of $200,000 or Above; Notice of Funding Availability

Federal Register / Vol. 56, No. 111 / Monday, June 10, 1991

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-3241; FR2983-N-01]

Section 312 Rehabilitation Loan Program Investor Properties With Loans of $200,000 or Above; Funding Availability

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year 1991 for Investor Property Loans of $200,000 or above.

DATES: Applications for Section 312 Rehabilitation Loans of $200,000 or more to investor-owners, including nonprofit corporations, will be accepted by HUD at the respective HUD Field Office at any time after the date of this notice. In no event, however, will such applications be accepted by HUD any later than c.o.b. August 1, 1991. Applications must be submitted through the designated Local Processing Agency which operates the Section 312 Program in the locality.

SUMMARY: This NOFA announces HUD's funding for the Section 312 Rehabilitation Loan Program for loans of $200,000 or above. Although the Section 312 program is a demand-type program and thereby not normally subject to rules of competition, the Department has made these loans subject to the requirements governing competitive programs under section 102 of the HUD Reform Act of 1989, as implemented by regulations at 24 CFR part 12. Thus, the Reform Act Rule governing the publication of funding availability, application procedures and selection criteria, and the requirements for disclosure by applicants of information on loan competitions, would cover all section 312 investor-owner loans of $200,000 and above. While other section 312 loans, including investor-owner loans in lesser amounts, are not covered, this NOFA addresses them to the extent relevant in the selection for funding of the covered loans.

This NOFA contains information concerning the following:

(a) The availability of funds and the funding system for all section 312 loans;

(b) Applicant eligibility and the application process, including how to apply and how funding decisions will be made for loans of $200,000 and above; and

(c) A checklist of steps and exhibits involved in the application process.

FOR FURTHER INFORMATION CONTACT: Richard R. Burk, Director, Rehabilitation Loans and Urban Homesteading Division, Department of Housing and Urban Development, room 7168, 451 7th Street, SW., Washington, DC 20410, Telephone (202) 708-1367 or for hearing- and speech-impaired persons, (202) 708-0564. (These telephone numbers are not toll-free).

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this notice have been approved under the Paperwork Reduction Act of 1980 by the Office of Management and Budget (OMB), and were assigned OMB Control Number 2506-0076, expiration date September 30, 1993.

I. Purpose and Substantive Description

This NOFA announces the availability of funds that may be used to make direct Federal loans of $200,000 or above to investor-owners, including nonprofit corporations, under the application procedures and the funding system. Although not subject to 24 CFR part 12 and this notice, loans of less than $200,000 for the rehabilitation of investor-owned properties or of owner-occupied single-family properties, will also be made using the funds assigned to HUD Regional Offices and Field Offices as described in this NOFA.

(a) Authority

Section 312(b) of the Housing Act of 1964, as amended, 42 U.S.C. 1452b, authorizes HUD to make loans for rehabilitation for single-family, multifamily residential, mixed-use and nonresidential properties in federally aided Community Development Block Grant, and Urban Homesteading areas identified by local governments. The section 312 program was designed to assist in eliminating and preventing the development and spread of slums and blight, to encourage localities and property owners to upgrade and preserve existing neighborhoods and to rehabilitate private properties. The program operates as a cooperative venture between the Federal government which furnishes the loan funds and local governments' Local Processing Agencies (LPAs) which process the loans subject to HUD requirements. Local Processing Agency (LPA) means the public agency designated by the locality to operate the section 312 Program under a program participation agreement with HUD. (See chapter 13 of the section 312 Handbook, HUD Handbook 7375.01, REV-2, CHG-2).

Pursuant to the HUD Appropriations Act for FY 1991 (Pub. L. 101-507, approved November 5, 1990), this NOFA announces the funding of the section 312 Loan Program for FY 1991 for loans of $200,000 or above. Although section 312 funds are available for all types of loans, only the application procedures for loans of $200,000 or above are addressed in this NOFA. However, the basic structure of the funding system for all section 312 loans will be described in this Notice to the extent relevant to the selection process for funding loans of $200,000 and above.

(b) Allocation Amounts

This NOFA announces the anticipated availability for all section 312 loans of $144,000,000 derived from repayments and recaptures of prior years' obligations. There is no Federal set-aside of these funds for any category of loans, whether for single family, multifamily, nonresidential or mixed-use property. The funds will be allocated to each Regional Office based upon a two-part formula, representing "need" (50%) and "performance" (50%). The "need" measurement is based on the pro rata share of Fiscal Year 1990 Community Development Block Grant (CDBG) allocations by Region. The "performance" measurement is based upon three criteria: (1) "Fund usage" as measured by the percent of assigned funds obligated by each Region in Fiscal Year 1990; (2) "Project completion" as measured by the percent of Fiscal Year 1990 loans completed on time; and (3) "Delinquency" as measured by the percent of Fiscal Years 1983-1990 loans which are delinquent. The Regional Offices must sub-allocate at least 90 percent of all funds to Field Offices in accordance with the same allocation system. The 10 percent retained will be sub-allocated by the Regional Offices to fund approvable applications on a Region-wide basis in the order prescribed under the procedures set forth in this NOFA for which insufficient funds are available at the Field Offices.

On April 18, 1991, an initial allocation of $50 million was distributed to the Regional Offices in accordance with the allocation system described above. Subsequent allocations will be made as the funds become available from additional repayments and recaptures. Applicants can inquire as to the availability of funds at the respective Field Offices.

For Fiscal Year 1991, there is no cap on the amount of funds available for any individual loan.

(c) Eligibility

Investor-owners, including those whose loan requests are $200,000 or more, qualify for loans at an interest rate set by the Treasury rate for loans of comparable terms (currently around 8 percent), except as stated later in this paragraph.

An investor-owner is:

1. An applicant who owns a one-to-four dwelling unit property, but does not occupy a dwelling unit in that property as a principal residence; or

2. An applicant who owns a multifamily residential (5 or more units), nonresidential, or mixed-use property, regardless of whether he or she occupies a dwelling unit in that property as a principal residence.

All corporations, partnerships and other legal entities are considered investor-owners.

One special class of investor-owner applicants is comprised of private, nonprofit corporations, which includes any private organization (including a State or locally chartered nonprofit organization) that is organized under State or local laws and has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual. If such a private, nonprofit corporation meets certain conditions set forth in notice CPD 91-05, the substance of which was earlier published in the **Federal Register** at 55 FR 31241, it qualifies for a loan at 3.25 percent interest rate. Otherwise, it pays the same interest rate as other investor-owners. Another special class of investor-owners is comprised of cooperatives in which at least 80 percent of the residents are at 80 percent of the median income or below. These loans qualify for an interest rate of 3 percent. (See the section 312 Rehabilitation Loan Program Handbook (HUD Handbook 7375.01 REV-2), section 2-3a(2)).

(d) The Section 312 Funding System for All Loans

For all loan applications, including those which are $200,000 or more, the applications must meet the HUD requirements to qualify for section 312 funds. The HUD requirements for the section 312 program are set forth in 24 CFR part 510, the loan application package, and other issuances, copies of which are available from the HUD Field Office and/or the Local Processing Agency (LPA). The investor-owner loan application package is comprised of the application for Investor Properties (HUD Form 6243) and the section 312 Rehabilitation Loan Program Handbook (HUD Handbook 7375.01 REV-2). For convenience, the above-cited regulation and loan application package applicable to the category of section 312 loan being applied for are collectively referred to herein as the "program requirements" in this NOFA.

Under the funding system, loans are made on a first-come, first-served basis, subject to the availability of funds. The system operates as follows:

1. All loan applications, HUD Form 6230 (for owner-occupied 1-4 unit properties) and HUD Form 6243 (for investor-owner properties) are received in the office of the respective Field Office CPD Director.

2. Each application is logged in by date received and assigned a number.

3. Each application is checked for completeness within three working days of submission. The standards for completeness for applications for Section 312 Rehabilitation Loans for Owner-Occupants of 1-4 Unit Properties are contained in the checklist set forth in section K of HUD Form 6230. The standards for completeness for applications for section 312 Rehabilitation Loans for Investor Properties, including those for $200,000 or above and for the set-aside of funds described in section 5, are contained in the checklist set forth in section K of HUD Form 6243.

If the application is incomplete, it is removed from the log table and returned to the LPA with instructions to complete it. A corrected application may be resubmitted, in which case it will be logged in by date the resubmission is received and will follow the procedures outlined in 1-3 above, as if it were a new application.

4. If an owner-occupant application (HUD-6230) is determined to be complete, it is reviewed by the Rehabilitation Management Specialist for compliance with the appropriate program requirements and, if in compliance, is approved for an obligation of funds. These loan applications are approved in the order logged in and ahead of any owner-investor loan applications logged in on the same date by the Field Office.

When received on the same day, loan applications for Owner-Occupants 1-4 Unit Properties (HUD Form 6230) from low income applicants have statutory priority for funding over all other loan applications for section 312 funds.

5. An investor-owner application (HUD-6243) may take a two-step funding path. Basic, preliminary information may be submitted to receive a set-aside of funds. (See section K of Form 6243 for details).

If a HUD-6243 application is determined to be complete and eligible for purposes of a cash management system set-aside, the Rehabilitation Management Specialist reserves the funds with the Cash Management Contractor and notifies the LPA and applicant that they have 60 days or until August 1, 1991 (whichever is first) to submit the remaining exhibits required for a complete application for loan approval. It will retain its place in line throughout its review even though these exhibits may be submitted later.

An investor-owner application does not have to be submitted for a cash management set-aside. It may be initially submitted as a complete application for loan approval.

When a HUD-6243 application is determined to be complete and eligible for loan approval, i.e., it meets all program requirements, it is approved for funding. Subject to paragraph 4, these loan applications are approved in the order logged in, except if two or more investor-owner applications are received on the same date by the Field Office, priority is given first to applications from nonprofit owners that qualify for the 3.25 percent interest rate and second to applications from cooperatives that qualify for the 3 percent interest rate. Within these two groups, priority is given in the order the applications provide the highest percentage of units affordable to low- and moderate-income families after rehabilitation.

Investor-owner loans below $200,000 are approved by the Field Office CPD Director. Investor-owner loans for $200,000 or above are approved by the Field Office CPD Director and forwarded for concurrence to the Director of the Office of Urban Rehabilitation in HUD Headquarters.

If the Director of Urban Rehabilitation finds the Field Office Director's approval acceptable, his concurrence is noted in section O of the application, HUD Form 6243. If unacceptable, the application is disapproved by the Director as noted by his nonconcurrence in section O and his reasons for disapproval shall be stated in section P of the application.

II. Application Process

Application packages are available from the respective HUD Field Office and/or LPA for the city or area. A list of HUD Offices and contact persons appears at the end of this notice.

Complete applications for loan approval for investor-owners (HUD 6243) for loans $200,000 or above must be received no later than c.o.b. August 1, 1991, at the respective HUD Field Office. The deadline for applications for all other loans is established by each HUD Field Office.

Applications can be submitted by the prospective borrower only with the

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assistance and the approval of the LPA, as described in the loan application package.

III. Checklist of Application Submission Requirements

A checklist of required application submission documents may be found in section K on page 7 of HUD Form 6243.

IV. Corrections to Deficient Applications

After the August 1, 1991, deadline, an applicant may only cure any technical deficiencies relating to an otherwise fundable application. An applicant will not be permitted to improve his or her proposal by filing statements that address substantive requirements after that date. An applicant will, however, be permitted to provide clarifying information to resolve any conflicting information contained in the loan package. The HUD Field Office will notify an applicant's LPA of the deficiency by telephone, followed by notification in writing. The applicant must submit corrections received by HUD within 14 calendar days of the date of the written notification.

V. Other Matters

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this Notice does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government. This Notice announces funding for an established rehabilitation program.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this notice does not have potential significant impact on family formation, maintenance, and general well-being.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2) (C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

All references relating to certifications, Executive Orders, and other directives are found in HUD Form 6243 and the instructions to the Form.

Authority: Section 312 of the Housing Act of 1964, 42 U.S.C. 1452b.

Dated: May 30, 1991.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 91-13632 Filed 6-7-91; 8:45 am]
BILLING CODE 4210-28-M

federal register

Monday
June 10, 1991

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Section 8 Assistance under the Loan Management Set-Aside (LMSA) Program; Notice of Funding Availability

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing— Federal Housing Commissioner

[Docket No. N-91-3247; FR-3045-N-01]

Section 8 Assistance Under the Loan Management Set-Aside (LMSA) Program; Notice of Fund Availability

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of Fund Availability for Fiscal Year 1991.

DATES: Application is due on or before July 10, 1991. To be acceptable, applications must conform to requirements set forth in this Notice and the Loan Management Set Aside program application requirements found in 24 CFR part 886. An application received after the aforementioned due date will only be considered under the "emergency" procedures described in this Notice and only to the extent that sufficient LMSA resources are available at the time of the application.

SUMMARY: This Notice of Fund Availability (NOFA) announces the availability of approximately $240 million in Section 8 funds for Loan Management Set-Aside (LMSA) assistance. In the body of this document is information concerning the following:

(a) The purpose of the NOFA and information regarding eligibility, available LMSA assistance, and selection criteria;

(b) Application processing, including how to apply and how selections will be made; and

(c) A checklist of steps and exhibits involved in the application process.

FOR FURTHER INFORMATION CONTACT: William Schick, Chief, Program Support Branch, Office of Multifamily Housing Management, Department of Housing and Urban Development, room 6164, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 708–2654. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Information Collection Requirements

The Office of Management and Budget has approved the Loan Management Set-Aside Program under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and has assigned it OMB control number 2502–0407.

I. Purpose and Substantive Description

(a) Authority

The Loan Management Set-Aside ("LMSA") program provides special allocations of Housing Assistance Payments ("HAP") under section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f. Title 24 of the Code of Federal Regulations, part 886, subpart A sets forth rules for administration of the LMSA program. Matters addressed in the LMSA regulation include: (1) Application contents (§ 886.105), (2) requirements for HUD approval of applications (§ 886.107), (3) owner responsibilities under the program (§ 886.119), and (4) rules governing Federal preferences in the selection of tenants (§ 886.132). The primary purpose of the LMSA program is to reduce claims on the Department's insurance fund by aiding those FHA-insured or Secretary-held projects with immediately or potentially serious financial difficulties. First priority is given to projects with presently serious financial problems which are likely to result in a claim on the insurance fund in the near future. To the extent that resources remain available, assistance also may be provided to projects with potentially serious financial problems which, on the basis of financial and/or management analysis, appear to have a high probability of producing a claim on the insurance fund within approximately the next five years.

(b) Allocation Amounts

This Notice of Funding Availability (NOFA) announces availability of at least $240.6 million from Fiscal Year 1991 Section 8 LMSA program funds for purposes of avoiding claims on the Department's insurance fund. Pursuant to this Notice, HUD is accepting applications for assistance under the LMSA program from owners of FHA-insured or Secretary-held multifamily projects with immediately or potentially serious financial difficulties. All LMSA assistance awarded from these Fiscal Year 1991 program funds will have a term of five years, with no contractual provision for renewal of the contract at the end of the five-year term. This NOFA does not govern non-competitive assistance awards under the Section 8 LMSA program pursuant to specific regulatory authority (e.g., LMSA assistance as a prepayment plan of action incentive under § 248.231(e) or such assistance under § 219.325(b)(4) to alleviate the effect of rent increases resulting from debt service on capital improvement loans).

(c) Eligibility

Projects eligible for LMSA assistance include: (1) Any existing subsidized or unsubsidized multifamily residential project subject to a mortgage insured under any section of the National Housing Act; (2) any such project subject to a mortgage that has been assigned to the Secretary; (3) any such project acquired by the Secretary and thereafter sold under a Secretary-held purchase money mortgage; and (4) a project for the elderly financed under section 202 of the Housing Act of 1959 (except projects receiving assistance under 24 CFR part 885). References to HUD-Held or Secretary-Held projects throughout this Notice include any project which meets one of the descriptions in (2)–(4) above.

(d) Selection Criteria/Ranking Factors

(1) Application Review

Each application for assistance under the LMSA program will be reviewed by the HUD Field Office having jurisdiction over the project in question. Within 10 days of receipt of each completed application, the HUD Field Office must notify the chief executive of the unit of general local government in which the proposed assistance is to be provided of the opportunity for comment on the application (see 24 CFR part 791). After providing the opportunity for local government review and comment, the HUD Field Office will decide whether the application meets regulatory approval requirements described in § 886.107. The Field Office's approval of the application must be based on the following determinations:

(i.) HUD's Fair Housing requirements are met;

(ii.) The HUD-approved unit rents are approvable within the limitations described in § 886.110, which are based on HUD's Fair Market Rents;

(iii.) The residential units meet the housing quality standards set forth in § 886.113, except for such variations as HUD may approve;

(iv.) A significant number of residents, or potential residents in the case of projects having a vacancy rate over 10 percent, are eligible for and in need of Section 8 assistance;

(v.) The proposed Section 8 assistance would not affect other HUD-related multifamily housing within the same neighborhood in a substantially adverse manner. Examples of such adverse effects are substantial move-outs from nearby HUD-related multifamily housing, or substantial diversion of prospective applicants from such projects to the subject project;

(vi.) The project has presently serious financial problems, which are likely to result in a claim on the insurance fund in the near future, or the project has potentially serious financial problems which, on the basis of financial and/or management analysis, appear to have a high probability of producing a claim on the insurance fund within approximately the next five years;

(vii.) The proposed Section 8 assistance for the project would solve an identifiable problem and provide a reasonable assurance of long-term project viability. A determination of long-term viability must be based on the following findings:

(A) The project is not subject to any serious problems that are non-economic in nature. Examples of such problems are poor location, structural deficiencies or disinterested ownership;

(B) The owner is in substantial compliance with the Regulatory Agreement. Owners are not diverting project funds for personal use. No dividends have been paid during any period of financial difficulty;

(C) The current management agreement has been approved by HUD, and the management agency is in substantial compliance with the HUD-approved management agreement. Financial records are adequately kept. Occupancy requirements are being met. Marketing and maintenance programs are being carried out in an adequate manner, based upon available financial resources;

(D) The project's problems are primarily the result of factors beyond the control of the present ownership and management;

(E) The major problems are traceable to an inadequate cash flow;

(F) The proposed Section 8 assistance would solve the cash flow problem by: (1) Making it possible to grant needed rent increases; and (2) Reducing turnover, vacancies and collection losses;

(G) The owner's plan for remedying any deferred maintenance, financial problems, or other problems is realistic and achievable; there is positive evidence that the owner will carry out the plan. Examples of such evidence are the owner's past performance in correcting problems and, in the case of profit-motivated owners, any cash contributions made to correct project problems.

(ix.) For projects with a history of financial default, financial difficulties or deferred maintenance, any plan for remedying defaulted or deferred obligations submitted pursuant to § 886.105(d) must be adequate in HUD's determination.

In its review of an application, the HUD Field Office will consider recent physical inspections, management reviews, and tenant complaints and comments. If there is no detailed HUD physical inspection report dated within one year of the date an application for LMSA assistance is received in the reviewing office and containing a description and estimated cost of required repairs, or there is no comprehensive management review report within the same period, the HUD Field Office may schedule a comprehensive inspection and/or management review in conjunction with its review of the application for LMSA assistance. Final approval of the LMSA application and execution of a subsidy contract in such case, will be contingent upon satisfactory modification of the owner's plan to include solutions for any additional problems discovered in the scheduled review(s).

After HUD Field Offices have determined which applications meet LMSA program requirements, the projects which are both eligible for, and in need of, additional LMSA assistance must be reported to HUD Headquarters for further consideration under the competitive selection procedures outlined in this Notice. Projects awarded subsidy from Fiscal Year 1991 LMSA program funds may be selected under "general" or "emergency" procedures as described below. If an application can be approved only on certain conditions, the HUD Field Office must notify the owner of the conditions and specify a time limit by which those conditions must be met. A project with a conditional approval may be reported to Headquarters by the HUD Field Office for further processing under procedures set forth below; however, execution of an LMSA contract for any units which may be allocated to the project in the Headquarters process, will be contingent upon the owner's compliance with the approval conditions. Where the HUD Field Office concludes that an application will not meet LMSA program requirements, processing of the application is completed upon the Field Office's notification to the applicant of the reasons for disapproval.

(2) General LMSA Funding

(i.) *Annual needs survey.* Fiscal Year 1991 general funding awards will be selected from projects approved by HUD Field Offices and reported to HUD Headquarters in response to the Fiscal Year 1991 annual needs survey. The Field Offices' needs survey responses will be due in HUD Headquarters after the due date announced in this Notice for program applications. HUD Field Office staff must determine and report to Headquarters the minimum number of LMSA units needed to cure each project's vacancy and cash flow problems, subject to a limit on total project-based Section 8 assistance for projects with unsubsidized mortgages of 40 percent of total units in the project. When the respective HUD Field Office determines that a project with an unsubsidized mortgage needs Section 8 assistance above the 40 percent level, or when the project was developed as a retirement service center, a recommendation by the Field Office will be subject to further review under the emergency procedures described below. In all such cases, the Field Office's justification for LMSA units must document that project management has an aggressive and workable plan in place for leasing the market rate units in the project. A project is considered unsubsidized for the purpose of LMSA funding selections if the HUD mortgage is unsubsidized. The definition of subsidized project for purposes of section 203 of the Housing and Community Development Amendments of 1978, which includes projects with over 50 percent of total units assisted under certain Section 8 subprograms, pertains to management and disposition of projects which have been acquired by HUD and is not applicable to projects eligible for LMSA assistance.

HUD Field Offices will include in their needs survey reports, data needed by HUD Headquarters to classify approved projects into four priority categories and to establish a funding score for each project.

(ii.) *Determination of Priority Category.* Fiscal Year 1991 LMSA funds will be allocated in the following order of priority:

(A) Insured projects with presently serious financial problems likely to result in a mortgage insurance claim in the near future;

(B) Insured projects with potentially serious financial problems which appear to have a high probability of producing a mortgage insurance claim within approximately the next five years;

(C) HUD-held and Section 202 projects with presently serious financial problems; and

(D) HUD-held and Section 202 projects with potentially serious financial problems.

For purposes of determining which projects will be classified in Category A for insured projects and Category C for HUD-held and Section 202 projects, HUD will consider a project to have "presently serious financial problems" if

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either of the following two financial ratios is less than or equal to zero:

Income/Expense Ratio, defined as follows: (Net Income or Loss Before Depreciation LESS Annual Debt Service and Reserve Payments) Times 100 Divided by: Total Annual Cost of Operating the Project

or,

Ratio of Surplus Cash (or Deficiency) to Monthly Mortgage Payment, defined as follows: Total Cash LESS Total Current Obligations Divided by: Total Monthly Mortgage Payment

A negative income/expense ratio occurs when there was a net loss during the period or when net income before depreciation was less than annual debt service plus reserve payments. The project did not generate sufficient cash flow from operations in the previous year to cover its cash requirements, suggesting cash flow difficulties which were possibly severe and, if left unresolved, are likely to result in financial problems in the current year. Comparison to the total cost of operating the project provides an indication of the seriousness of any negative cash throw-off, since the size of the problem generally varies directly with the absolute value of the ratio.

The second ratio approximates the project's Mortgage Payment Coverage Ratio and is negative when there is a cash deficiency, i.e., the surplus cash calculation is less than zero. A cash deficiency means that cash available to the project at the end of the period, including any subsidy vouchers due for the period, is less than the amount needed to cover current obligations. A cash deficiency points to a severe liquidity problem since the project cannot even meet its past obligations without some form of relief. Calculation of the ratio of surplus cash (deficiency) to the total mortgage payment provides an indication of the project's ability to make the next mortgage payment after past obligations are met, without depending upon the next month's rent collections.

The two ratios defined above will be calculated using financial data contained in the project's annual audited financial statement for calendar year 1990, except for projects with fiscal year end dates later than December 31, 1990 where the most recent annual audited financial statement for a fiscal year period ending in 1990 or later will be used.

A result of zero or less on either of the two ratios suggests that the project has a present financial problem. These ratios were selected because they provide a straightforward means of identifying projects with cash flow difficulties. Projects with both ratios in the positive range may be added to Category A for insured projects or Category C for HUD-held projects based on written justifications by HUD Field Offices documenting appropriate circumstances. For example, a substantial increase in vacancies in recent months may warrant elevating the project's priority category. The justifications will be reviewed by Headquarters staff in the Office of Multifamily Housing Management, who will resolve any issues with the respective HUD Regional and Field Offices and approve, or disapprove, the change in priority.

(iii.) *Determination of Ranking Within Priority Category.* The number of projects which can be funded from Fiscal Year 1991 resources will depend upon the units and budget authority designated in Field Office approvals. If LMSA program funds are available to fund some, but not all of the projects in a given priority category (after funding all projects in higher priority categories), any project selections from the given category will follow from a ranking of projects within that category using a funding score. A maximum score of 100 points (95 points for HUD-held projects) may be accumulated on the basis of the following project characteristics and maximum point potentials:

(A) Occupancy—25 points.
Calculation: No. of occupied units Divided by Total Units in the project. Lower values yield higher points.

(B) Owner advances or contributions since October 1, 1988—25 points.
Calculation: Total of owner advances or contributions during the period Divided by Total Units in the project. Larger values yield higher points.

(C) Tenants paying in excess of 40 percent of their income for rent—15 points. Calculation: No. of units occupied by tenants paying over 40 percent of their income for rent Divided by Total units in the project. Larger values yield higher points.

(D) Income/Expense Ratio—15 points. Calculation: As defined above. Smaller values yield higher points.

(E) Ratio of Surplus Cash (Deficiency) to Total Monthly Mortgage Payment—15 points. Calculation: As defined above. Smaller values yield higher points.

(F) For HUD-insured projects only, Mortgage balance per dollar of additional subsidy—5 points.
Calculation: Mortgage principal balance Divided by Proposed LMSA annual contract authority. Larger values yield higher points.

(iv.) *Funding for Selected Projects.* For all projects selected for funding in Fiscal Year 1991, the number of additional Section 8 units allocated will be the number of LMSA units recommended by the HUD Field Office, provided that HUD Headquarters confirms the Field Office's determination that the projects have met all program requirements. However, an allocation may not exceed the difference between total units in the project and the number of units already assisted under project-based tenant subsidy contracts (project-based Section 8 subprograms, Rent Supplement and Rental Assistance Payments). Also, if the Field Office's recommendation exceeds the sum of vacant units plus the number of tenants paying more than 40 percent of income for rent, the respective HUD Regional Office must review and approve the number of LMSA units recommended.

If approved, notification of a general funding award will be made through the HUD Field Office. If an application can be approved only on certain conditions, HUD will notify the owner of the conditions and specify a time limit by which those conditions must be met. Disapproved applicants will also be notified with a statement of the grounds for disapproval.

(3) Emergency LMSA Funding.

Up to five percent of the LMSA funds announced in this Notice may be made available for funding projects recommended to HUD Headquarters by the respective HUD Field Offices for emergency LMSA assistance. Projects which meet one of the three conditions listed below may be considered for emergency funding pursuant to this NOFA:

(i.) The project is submitted to HUD Headquarters separately from the Fiscal Year 1991 needs survey;

(ii.) The project was recommended on the Fiscal Year 1991 needs survey, but was not selected in the general funding process; or

(iii.) The project is encumbered by an unsubsidized HUD mortgage and the project either was developed as a retirement service center, or requires more units than permitted under the General LMSA Funding section of this NOFA to alleviate emergency conditions which will likely result in a mortgage assignment in the near future or which involve matters affecting the health and safety of tenants.

All application and Field Office review procedures pertaining to the LMSA program must be carried out for emergency recommendations. In addition, an emergency recommendation must have written concurrence from the Director of Housing in the appropriate HUD Regional Office. HUD Field Offices must demonstrate that provision of the proposed LMSA units is likely to avert a mortgage default or assignment in the near future, and the request to HUD Headquarters must explain why funds are needed on an emergency basis. Headquarters will not consider any emergency funding request which does not have written Regional Office concurrence.

After the deadline for HUD Field Offices' responses to the annual needs survey, only emergency requests will be accepted by HUD Headquarters for processing from Fiscal Year 1991 LMSA program funds. In all cases governed by these emergency procedures, consideration will only be given to the extent that sufficient LMSA resources are available to fund the proposed assistance. HUD Headquarters must review Field Office justifications and must find that provision of LMSA units is an appropriate response to the circumstances documented by HUD Field staff. If an emergency request is approved, notification of the subsidy award will be made through the HUD Field Office.

II. Application Process

(a) Completed applications must be submitted to the HUD Field Office having jurisdiction over the multifamily property for which assistance is requested.

(b) For consideration under the General LMSA Funding procedures set forth previously in this Notice, a completed LMSA application must be submitted within 30 days from the date of publication of this Notice, or the application deadline date specified in this Notice, whichever is later. If submitted on the application deadline date, the completed application package must be received by the official close of business in the HUD Field Office receiving the application. (Contact the respective HUD Field Office for the official close of business hour at that office.)

Applications received after the due date specified in this NOFA will be considered for LMSA assistance only if the Secretary determines that such assistance is needed immediately in response to emergency circumstances and only to the extent that sufficient Fiscal Year 1991 LMSA budget authority remains to satisfy the subsidy requirement.

(c) A complete application must be submitted in an envelope, package, or binding which includes all parts of the application in their entirety as they are described in the next section of this NOFA.

(d) An owner who applied for LMSA assistance in a prior year and did not receive the desired number of units may re-apply in order to receive reconsideration of the request in Fiscal Year 1991. The Fiscal Year 1991 LMSA application must contain current information and conform to all requirements outlined in this Notice.

III. Checklist of Application Submission Requirements

(a) LMSA applications must meet the requirements for eligible projects set forth in § 886.105 of the LMSA regulations, and must include:

(1) Information on gross income, family size and amount of rent paid to the project by families currently in residence;

(2) Information on vacancies and turnover;

(3) Estimate of effect of the availability of the requested section 8 LMSA assistance on marketability of units in the project;

(4) For projects having a history of financial default, financial difficulties or deferred maintenance, a plan and a schedule for remedying such defaulted or deferred obligations.

To be credible, the owner's plan and schedule for remedying defaulted or deferred obligations, including deferred maintenance, must clearly state each problem being addressed and for each stated problem, the plan must enumerate proposed actions for curing the problem. Proposed actions must be presented in trackable form, with the specific dates that each action would begin and end if the requested LMSA subsidy were awarded.

Further, the plan must include a statement of the sources and uses of all financial resources needed to complete the plan, including any cash contributions from the owner.

Since HUD's approval must be based in part on evidence that the plan will be carried out, the owner must incorporate in the proposed improvement plan a certification that the plan will be executed as presented and that sources of funds identified in the plan, other than the LMSA assistance applied for, will be available by the scheduled dates (any conditions must be stated, e.g. "subject to HUD approval of Flexible Subsidy"). The certification must include a statement that the owner has made every effort to secure funding from all possible funding sources and must be accompanied by supporting documentation of those efforts. Finally, the owner's certification must include a statement of the owner's agreement to modify the plan, prior to execution of an LMSA contract, for the purpose of including any changes which the HUD Field Office determines are necessary to address problems not identified or inadequately addressed in the plan, as indicated by recent HUD physical inspections, management reviews or records of tenant complaints and comments, or by HUD physical inspections and/or management reviews which may be scheduled in conjunction with review of the LMSA application.

(5) Total number of units by unit size (by bedroom count) for which section 8 assistance is requested; and

(6) Affirmative Fair Housing Marketing Plan on Form HUD-935.2.

In addition to the application submission requirements cited in the LMSA regulation, the following items must be included in the LMSA application package:

(7) All documentation required by HUD Notice 90-17, Combining Low-Income Housing Tax Credits (LIHTC) with HUD Programs, and/or the Notice of administrative guidelines to be applied to assistance programs of the Office of Housing published on April 9, 1991 (56 FR 14436).

(8) All disclosures, certifications and other reporting required by 24 CFR 12.32; or a certification with respect to other government assistance, as required by 24 CFR 12.52(d). Part 12 of title 24 of the Code of Federal Regulations was published on March 14, 1991 (56 FR 11042).

(9) Disclosures and verification requirements for Social Security and Employer Identification Numbers, as provided by 24 CFR part 750.

(10) Certification and disclosure according to HUD Notice H-90-27 entitled "OMB's Guidance on New Government-wide Restrictions on Lobbying" issued April 13, 1990.

(11) Form HUD-2530, Previous Participation Certificate(s) for all principals requiring clearance under those procedures.

(12) A written certification stating that the owner will comply with the provisions of the Fair Housing Act, title VI of the Civil Rights Act of 1964, Executive Orders 11063 and 11246, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, section 3 of the Housing and Urban Development Act of 1968, as well as with all regulations issued pursuant to these authorities.

(13) Certification that the applicant will comply with the governmentwide rule implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), as amended, codified at 49 CFR part 24. The HUD Handbook is 1378.

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Tenant Assistance, Relocation and Real Property Acquisition.

(b) Copies of HUD forms and notices cited in the list of application requirements may be obtained from the HUD Field Office having jurisdiction over the project to which the application applies.

IV. Corrections to Deficient Applications

(a) After the submission date for applications, no changes to application documents will be accepted, except for correction of technical deficiencies which do not alter the substance of the application materials. Examples include a missing certification, or missing signature. (Reasonable changes to the owner's corrective plan resulting from negotiations with the HUD Field Office during the application review period, are not governed by this section.)

(b) HUD will notify an applicant in writing, shortly after the application response deadline, of any technical deficiencies in the application. The applicant must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any such deficiency.

(c) The applicant must submit corrections to the same HUD Field Office at which the original application was filed, by the official close of business on the 14th calendar day following the date of the HUD letter notifying the applicant of the deficiency. The applicant must submit the corrected document(s) with a separate written summary of all changes from the original submission.

V. Other Matters

(a) HUD regulations in 24CFR part 50, implementing section 102(2) (C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities, and programs specified in 50.20. Since the activities set forth in this Notice are within the exclusion set forth in 50.20(d), no environmental assessment is required, and no environmental finding has been prepared.

(b) *Executive Order 12612, Federalism.* The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government.

(c) *Executive Order 12606, the Family.* The General Counsel, as the Designated Official under Executive Order 12606, *the Family*, has determined that this NOFA does not have potential significant impact on family, formation, maintenance, and general well-being.

Authority: Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f.

Dated: May 30, 1991.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 91-13634 Filed 6-7-91; 8:45 am]

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federal register

Monday
June 10 1991

Part V

Environmental Protection Agency

40 CFR Part 761

Disposal of Polychlorinated Biphenyls (PCBs); Advanced Notice of Proposed Rulemaking and Availability of Draft Guidance

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPTS-66009; FRL 3845-4]

Disposal of Polychlorinated Biphenyls

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: EPA is providing advance notice of proposed rulemaking (ANPRM) for the disposal of certain classes of PCBs and PCB Items and certain other areas of the PCB regulations under the Toxic Substances Control Act (TSCA). EPA is considering amending its TSCA PCB disposal regulations [40 CFR 761.60] to address (1) alternative disposal methods to those currently permitted which do not pose an unreasonable risk of injury to human health and the environment, (2) classes of PCBs and PCB Items not contemplated by the disposal regulations, and (3) regulatory requirements for existing classes of PCBs and PCB Items. EPA is soliciting written comments on these and other areas of the PCB regulations. This ANPRM also constitutes an "initiation of a proceeding" under TSCA section 6 in response to a petition filed under TSCA section 21 (Refs. 1 and 2) which EPA granted by letter dated June 8, 1990 (Ref. 3).

DATES: Written comments on the ANPRM or other issues raised by this notice must be submitted on or before August 9, 1991.

ADDRESSES: Three copies of comments identified with the document control number (OPTS-66009) must be submitted to: TSCA Public Docket Office (TS-793), Office of Toxic Substances, rm. NE G004, Environmental Protection Agency, 401 M St., SW., Washington DC 20460. A public record has been established and is available in the TSCA Public Docket Office at the above address from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, rm. E-543B, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551, FAX (202) 554-5603 (document requests only).

SUPPLEMENTARY INFORMATION: Elsewhere in this issue of the **Federal Register**, EPA is soliciting comments on a draft guidance document regarding disposal alternatives to chemical waste landfills for non-liquid PCBs.

I. Background

The TSCA PCB disposal regulations are set forth in 40 CFR 761.60. In general, the scope of the TSCA PCB disposal regulations is limited to PCBs and PCB Items with concentrations of 50 parts per million (ppm) and above [40 CFR 761.1(b)]. PCBs and PCB Items contaminated at levels less than 50 ppm may be regulated if the original PCB material was contaminated at levels of 50 ppm or above [40 CFR 761.1(b)]. The general regulation regarding the disposal of PCBs requires disposal in an incinerator that complies with 40 CFR 761.70 [40 CFR 761.60(a)(1)]. There are five exceptions to this general regulation for various categories of PCBs which are set forth in § 761.60(a)(2), (3), (4) and (5) and (e).

These exceptions provide additional methods of PCB disposal other than incineration for the categories of PCBs listed under each exception. These methods include chemical waste landfill, high efficiency boiler, a method approved by the Regional Administrator of the Region in which the material is located, and an approved alternative method of destruction equivalent to incineration. Each of these additional disposal methods is not necessarily available for all categories of PCB waste. The TSCA PCB disposal regulations prescribe the method of disposal that is available for each category of material. PCBs which do not fall into one of these five exceptions must be incinerated in accordance with the general regulation stated in 40 CFR 761.60(a)(1).

Certain classes of PCB Items are regulated for disposal under 40 CFR 761.60(b),(c), and (e). Currently, PCB Articles are regulated under 40 CFR 761.60(b). PCB Containers are regulated under 40 CFR 761.60(c). Procedures for obtaining approval for an alternate method of destroying PCBs and PCB Items are provided at 40 CFR 761.60(e). The regulatory requirement for a PCB Item may prescribe a particular method of disposal for the Item itself (such as incineration or disposal in a chemical waste landfill) or specify a means for rendering the Item unregulated for disposal (such as draining the Item of PCB liquids). To determine how particular classes of PCB Items are regulated for disposal, the appropriate regulatory provision at 40 CFR 761.60 should be consulted.

II. Advanced Notice of Proposed Rulemaking For PCB Disposal Regulations

Since the Agency first promulgated its PCB use and disposal regulations in 1978 and 1979, EPA's knowledge about the universe of PCB materials has increased greatly. The Agency has gained valuable knowledge and experience regarding the various sources and uses of PCB materials. Many other disposal alternatives to incineration have been identified since that time.

Over the past 12 years, EPA has had the opportunity to evaluate and draw conclusions about the effectiveness of the PCB regulations in preventing an unreasonable risk to human health and the environment from exposure to PCBs and their economic impact. At the present time, EPA is investigating whether new and innovative technologies (e.g., biodegradation, solvent extraction from soils and *in-situ* vitrification) are potential regulatory disposal options that effectively and safely manage PCBs. EPA is also considering re-examining the scope of PCBs and PCB Items subject to the disposal regulations. The objective of the anticipated rulemaking is to modify the current PCB regulations to allow for maximum flexibility in controlling PCBs or PCB Items based on their risk to human health and the environment while providing for the Regions to make site-specific decisions about PCB disposal options to the maximum extent possible.

The purpose of this Advanced Notice of Proposed Rulemaking (ANPRM) is to announce the Agency's intent to reconsider portions of its PCB regulations based upon information and experience acquired over the past 12 years in dealing with PCBs. EPA solicits written comments that will assist EPA in achieving this objective.

One type of information the Agency is soliciting for its proposed rulemaking relates to alternative disposal methods. The Agency welcomes comments on the effectiveness of various disposal alternatives in reducing the toxicity, volume or mobility of the PCBs; the range of environmental media applicable to each disposal alternative; the cost of each disposal alternative; and the potential for any environmental impact resulting from use of the disposal alternative (e.g., cross-media pollution, incidental environmental impact).

In addition to alternative disposal methods for PCBs, EPA wishes to solicit comments on disposal of classes of PCBs and PCB Items which EPA was unaware of when it promulgated the original disposal regulations. Comments should identify such PCBs and PCB Items and should provide EPA with either risk information or other clear information which establishes whether disposal of these items according to various methods poses a risk of injury to health or the environment.

EPA also wishes to receive comments on currently regulated PCBs and PCB Items for which there do not exist adequate regulatory disposal alternatives. Comments regarding currently regulated PCBs or PCB Items should address the specific inadequacy of the regulatory alternative (e.g., inadequate disposal facility capacity, undue financial burden, adverse environmental impact from current disposal alternatives). Examples of PCBs and PCB Items currently under consideration for more flexible regulation include large volume, non-liquid PCB wastes such as contaminated shredder waste; large volume PCB Items such as natural gas pipeline; mixed wastes such as PCB/radioactive wastes; and PCBs and PCB Items not originally contemplated by the disposal regulations such as household wastes (e.g., used paint), PCBs in HVAC gaskets and PCBs in gaskets and felt sound-dampening material in marine applications. Although some of these PCBs or PCB Items are concurrently regulated by other Federal, State or local law, EPA is seeking to address the problems presented by the TSCA regulations alone.

A. Large Volume, Non-Liquid PCB Wastes

EPA is requesting comment on additional disposal methods for large volume, non-liquid PCB wastes that do not present an unreasonable risk. Currently, these materials may be disposed of in an incinerator that complies with 40 CFR 761.70, in a chemical waste landfill that complies with 40 CFR 761.75, or pursuant to an approved alternate method of destruction equivalent to incineration, 40 CFR 761.60(e).

Since 1978, EPA has permitted the disposal of non-liquid PCB wastes in chemical waste landfills (43 FR 7153). In 1978, the Agency believed that this disposal method represented a practical alternative to incinerating these materials. EPA now believes that there are additional disposal methods that do not pose an unreasonable risk of injury to human health or the environment for some large volume, non-liquid PCB wastes. Examples of large volume, non-liquid PCB wastes include those from the shredding of automobiles, white goods and industrial scrap, as well as certain classes of soils, sludges and sediments.

Alternative disposal methods permitted by EPA include thermal destruction, physical separation, solidification/stabilization, biological and chemical dechlorination technologies. These methods are discussed at greater length in the draft guidance document, "Interim Guidance On Non-Liquid PCB Disposal Methods To Be Used As Alternatives To A 40 CFR 761.75 Chemical Waste Landfill (CWL)" (Ref. 4) which may be obtained by contacting the Environmental Assistance Division as reflected under the heading FOR FURTHER INFORMATION CONTACT.

B. Large Volume PCB Items

EPA is requesting comment on additional disposal methods for large volume PCB Items. Currently, if these materials are contaminated with PCBs at levels equal to or greater than 500 ppm, they may be disposed of in an incinerator that complies with 40 CFR 761.70, in a chemical waste landfill that complies with 40 CFR 761.75 (after draining and proper disposal of the drained liquid PCBs), or pursuant to an approved alternate method of destruction equivalent to incineration, 40 CFR 761.60(e).

Large volume PCB Items are those items whose comparatively large surface areas are contaminated with comparatively small quantities of PCBs. Examples of large volume PCB Items include natural gas pipelines, natural gas ventilation systems and air compressor systems. Large volume PCB Items present unique issues regarding their disposal. First, the location of PCBs in these Items is not always well known in contrast to smaller volume PCB Items such as transformers and capacitors. Identifying where or if mobile PCBs are located in large systems that contain PCBs (or once were in contact with PCBs during their use) at the time of their disposal is a prerequisite to utilizing a method of disposal which does not pose an unreasonable risk of injury to human health or the environment. Second, these Items are often contaminated with PCBs on their interior or exterior surfaces in non-liquid, rather than liquid, form. This can create difficulties in the sampling and measurement of the level of PCB contamination, i.e., in parts per million or milligrams per kilogram of material. This difficulty has been addressed by EPA in the development of its Spill Cleanup Policy by the use of surface level concentrations in the form of wipe samples and expressed in a surface measurement such as micrograms per 100 square centimeters. Third, under the current regulations, disposal of these items is required to be in a chemical waste landfill if the item is not decontaminated under an alternative disposal technology permit. Such disposal is not the best use of limited chemical waste landfill space given the degree of hazard that these large items present and the amount of the PCB Items that would have to be disposed.

EPA has interpreted its regulations to mean that smelting of PCB-contaminated electrical equipment is permissible because disposal of such equipment is unregulated by the PCB regulations. Similarly, disposal of PCB-contaminated articles such as PCB-contaminated pipeline is unregulated by the PCB regulations. Smelting is currently used to recover precious metal from the carcasses of PCB-contaminated electrical equipment from which all free flowing liquid has been drained. EPA has determined that "[T]o qualify as disposal, the practice [salvaging] must be one which would ... otherwise complete or terminate the useful life of PCBs or PCB Items. ... In sum, salvaging of less than 500 ppm drained [electrical] equipment is unregulated to the extent that: (1) Scrapping practices do not result in spills or uncontrolled discharges of PCBs, and (2) any PCB-contaminated components are not reintroduced into commerce."

EPA requests comment on whether it should regulate the disposal of these items, including data to support whether any such regulation is necessary to prevent an unreasonable risk of injury to health or the environment. Also, EPA requests recommendations on methods of decontaminating large volume PCB Items.

C. Radioactive Mixed Wastes

The Agency is also seeking information and comment regarding the regulation under TSCA of the continued use, storage and disposal of mixtures, items and wastes with both PCB and radioactive constituents. For the purposes of this notice, radioactive wastes include those regulated under the Atomic Energy Act (i.e., source, special nuclear and byproduct material) and Naturally-occurring and Accelerator-produced Radioactive Materials (NARM) subject to regulation under other statutes such as the Resource Conservation and Recovery Act (RCRA); Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); and the Clean Air Act (CAA) that may contain regulated PCBs. Information and/or comments should propose criteria fo

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authorization of continued use, storage and disposal of such materials which minimize risks to human health and the environment from PCBs and, with respect to the radioactive components, keep the risks As Low As Reasonably Achievable (ALARA). The Agency is interested in identifying and coordinating the use, storage, or disposal of such materials under TSCA with any other Federal statutory or regulatory requirements. However, since TSCA and the PCB regulations do not have statutory waivers, EPA is interested in receiving comments on whether the regulations should be amended to provide flexibility on a case-by-case basis to address specific use authorizations, specific storage requirements, issues unique to PCB/radioactive mixed waste management. For instance, the 1-year storage for disposal requirement for PCBs at 40 CFR 761.65(a) may have to be amended where no disposal technology for radioactive mixed wastes currently exists. (See Unit III.H.3. of this document for a further discussion of extending the 1-year storage for disposal requirement for radioactive mixed wastes.) Although EPA is not proposing in this rulemaking to address issues that arise because of regulations under statutes other than TSCA, EPA believes that there may be a number of issues that can be resolved by amending the PCB regulations.

D. Issues Not Originally Contemplated When the Rules Were Promulgated

EPA is considering a provision that would address household wastes and non-household wastes resulting from previously unknown uses of PCBs such as items that contain PCBs as an integral, but not an easily separable component of the item, as well as other situations not previously addressed.

As is consistent with the definition of "household waste" under Subtitle C of the Resource Conservation and Recovery Act (RCRA) regulations, EPA is considering excluding PCB household waste under TSCA. EPA may define household waste by the same criteria as is used under RCRA: (1) The waste must be generated by individuals on the premises of a household, and (2) the waste must be composed primarily of materials found in the wastes generated by consumers in their homes (49 FR 44978, November 13, 1984). PCBs found in used or partially used cans of household paint may fit into this category. EPA is requesting comments on other PCB wastes that may fit into this definition.

EPA, under current TSCA policy, requires that household wastes be separated (i.e., regulated PCB waste from unregulated wastes), and regulated waste be manifested and moved to a storage or a disposal facility within 10 days. Storage of the regulated PCB waste would have to be in a § 761.65(b) storage area and would be subject to the 1-year storage requirement.

In adopting a provision similar to the RCRA household waste exemption, EPA would distinguish commercial storage activities from collection programs established by municipalities for the removal and temporary storage of PCBs and other hazardous wastes found in household waste. This household waste exemption would essentially place these wastes in an unregulated status (i.e., household wastes regardless of PCB concentration would not be regulated for disposal). EPA solicits comments on the applicability of a household waste exemption under TSCA.

Additionally, EPA has recently discovered several widespread PCB applications which were not considered when the original regulations were developed. Significant levels of PCB contamination have been found in HVAC (heating, ventilation and air conditioning units) gaskets, as well as in gaskets and felt sound-dampening materials in marine applications (e.g., nuclear submarine reactor compartments and electrical cable). EPA solicits additional information on other locations where PCBs have been identified, in situations where the use of PCBs has not been authorized under the current regulations.

III. Other Regulatory Changes/Modifications

In today's notice, EPA is also soliciting comments on several aspects of the current PCB regulations which the Agency believes may require modification. Experience in implementing the PCB regulations has exposed several regulatory gaps which, if left unaddressed, would result in either ineffective or unnecessarily expensive health and environmental protection standards. The Agency will also take comments regarding other aspects of the PCB disposal regulations which may require modification or clarification. Comments should address the specific inadequacy of the regulatory provision(s). Issues on which comments are solicited include, but are not limited to, the following:

A. Marking

The requirements of the two marking sections (40 CFR 761.40(b) and (e)) which require marking of transport vehicles need to be combined. These two sections seem to require the same thing: the marking of transport vehicles when they are loaded with PCB material at 50 ppm or greater. In each case, one must mark a transport vehicle when it is loaded with PCB Containers that contain more than 45 kilograms (kg) of liquid PCBs in concentrations greater than 50 ppm.

This double coverage resulted from a change in definitions between 1977 and 1979. In the proposed regulation of May 24, 1977 (42 FR 26572), the regulatory language read: "Effective March 31, 1978 each transport vehicle loaded with PCB containers with more than 45 kg of PCB chemical substances or mixtures in the liquid phase ... shall be marked with mark ML." At that time, the definition of PCB Mixture meant PCBs greater than or equal to 500 ppm and the definition of PCB Chemical Substance meant a biphenyl molecule chlorinated to varying degrees. In the June 7, 1978 proposed regulation (43 FR 24804), EPA proposed to change the definition of PCB Mixture to greater than or equal to 50 ppm PCBs. This change was promulgated in the May 31, 1979 final regulation (44 FR 31514). In addition, in this final regulation, the terms "PCB Mixture" and "PCB Chemical Substance" were incorporated into the definition of "PCB" and "PCBs". The current regulation at 40 CFR 761.40(e) essentially updates 40 CFR 761.40(b) indicating that the 50 ppm PCB concentration trigger for the marking of transport vehicles begins October 1, 1979; prior to this date the trigger was 500 ppm.

EPA solicits comments on how best to remedy this duplication. Options include deleting either § 761.40(b) or (e) or deleting both sections and rewriting the requirement.

B. DOT Containers for Storage of PCB Waste

EPA regulations at 40 CFR 761.60(b)(2)(vi) and 761.65(c)(6) authorize the use of containers other than Department of Transportation (DOT) specification 5, 5B, or 17C for PCB shipment and storage, provided that "such containers are designed and constructed in a manner that will provide as much protection against leaking and exposure to the environment as the DOT specification containers, and be of the same relative strength and durability as the DOT specification containers."

The EPA regulations on PCB containers, as currently written, essentially require the use of the most durable DOT-approved containers (specification 5, 5B, and 17C) for PCB containment, shipment, and storage. The

design specifications and engineering criteria used in the manufacture of these drums (ability to withstand high internal pressures, survive drop tests from extended heights, etc.) are, in DOT's opinion, not really necessary, given the physical and chemical properties of PCBs. Finally, EPA is interested in receiving comments on whether the regulations should be amended to provide flexibility to the Regional Administrators in allowing the temporary storage of mixed radioactive/PCB wastes in other than DOT containers. EPA is aware of situations where mixed radioactive/PCB wastes need to be stored at the point of generation on a temporary basis to adequately characterize the waste prior to placement in DOT containers for shipment. DOT containers are inappropriate for storing wastes on a temporary basis since access to the materials once placed in the container is severely limited. Comments regarding the selection of alternate containers and/or applicable limitations are appropriate.

EPA solicits comments as to whether EPA should defer to DOT in all cases when the question of what type of packaging should be used to transport or store PCB waste. EPA could maintain the section but would revise it to simply state that when transporting or storing PCBs, one must comply with DOT's packaging requirements for materials classed as ORM-E materials in 49 CFR parts 171-180. Alternately, EPA may attempt to list all the drum types that DOT would allow for PCBs. Comments are also requested on how EPA should rewrite §§ 761.60(b)(2)(vi) and 761.65(c)(6) since DOT has finalized its rule published under DOT Docket No. HM-181 (December 21, 1990; 55 FR 52402), entitled "Performance-Oriented Packaging Standards; Changes to Classification, Hazard Communication, Packaging and Handling Requirements Based on UN Standards and Agency Initiative" (Ref. 9).

C. Policy Regarding the Definition of a PCB Transformer

EPA inspectors have encountered instances where they suspected the manufacturer's name plate and other identifying information had been removed from PCB Transformers to avoid the expense of properly disposing of the units. As a remedy for those situations where no identifying information exists to properly classify the transformer, EPA is considering amending the definition of a PCB Transformer at 40 CFR 761.3 to include the following language: "A transformer must be assumed to be a PCB Transformer if either of the following conditions exist:

(1) The transformer does not have a nameplate, has not been tested to determine PCB concentration, and there is no information available to indicate the type of dielectric fluid in it.

(2) The transformer is a mineral oil transformer, has not been tested, and reasons exist to believe that the transformer was filled with greater than 500 ppm PCB fluid."

This has been EPA's policy since 1979, and EPA seeks to strengthen this policy by including it within the regulatory text defining PCB Transformers (see the preamble to the "Ban Rule," 44 FR 31517, May 31, 1979).

In addition, there is still some confusion within the regulated community concerning the meaning of "PCB-Contaminated Electrical Equipment" as defined at 40 CFR 761.3. Part of the definition says that oil filled electrical equipment, other than those items that may be assumed to be less than 50 ppm PCBs, must be assumed to be PCB-Contaminated Electrical Equipment (i.e., between 50 and 499 ppm). Many have construed this to mean that a transformer with any fluid in it must be assumed to be PCB Contaminated. This is not the case. Unless there is reason to believe a transformer contains PCB (askarel) dielectric fluid or otherwise has 500 ppm PCB or greater (see 44 FR 31531), EPA allows a transformer to be classified as PCB-Contaminated (i.e., containing PCBs at concentrations between 50 and 499 ppm) only if the transformer contains mineral oil dielectric fluid.

In today's notice EPA solicits comments on the need to insert the word "mineral" before the words "oil filled electrical equipment" as referenced above to clarify this definition.

D. Drained PCB-Contaminated Transformers

The provisions in 40 CFR 761.60(b)(4) require that PCB-Contaminated electrical equipment (assumed to contain 50-499 ppm PCBs) be disposed of by draining all free flowing liquid from the electrical equipment and disposing of the liquid in accordance with § 761.60(a)(2) or (3). The disposal of the drained electrical equipment is not regulated. EPA has interpreted smelting of transformer carcasses for recycling to constitute disposal (Ref. 5).

Originally, EPA did not see any reason to regulate the disposal of the drained PCB-Contaminated electrical equipment due to the low potential exposure to humans and the environment and the valuable copper and steel that could be salvaged for recycling. However, EPA has received anecdotal information that the exposure risk to humans or the environment resulting from the disposal of this type of drained equipment may be significant and warrant additional control by the Agency. For example, EPA is aware of allegations concerning drained PCB-Contaminated Transformers that have been cut in half and illegally used a bar-b-que grills. Additionally, some salvaging operations allegedly place used automobile or truck tires around the cores of these transformers and ignite the tires so as to burn off any paper or cellulose in the core in order to reclaim the copper.

EPA is considering whether to restrict the disposal of these drained pieces of contaminated electrical equipment to ensure the equipment is not illegally reused and is soliciting comments on the types of controls/restrictions that should be put in place. Possible remedies to this problem are: requiring decontamination, stricter controls to ensure the unit was in fact drained of all free flowing liquid, and making the regulation explicitly state that salvaging of metals other than by smelting is not disposal of PCBs.

E. Temporary Storage of Greater Than 500 ppm PCB Liquid

The provisions of 40 CFR 761.65(c) permit the temporary storage of certain PCB Items in an area that does not meet the requirements of paragraph (b) of that section for up to 30 days from the date of their removal from service. Temporary storage is not allowed, under this section, for liquid PCBs greater than 500 ppm. The regulations under 40 CFR 761.20(c)(2) do, however, permit processing and distribution in commerce of PCBs and PCB Items greater than 50 ppm for purposes of disposal. EPA solicits comments on how it should regulate the following scenario: PCB Transformers (≥ 500 ppm PCBs) are slated for disposal; the liquid is drained into 55 gallon drums and the drums are to be transported to an approved storage or disposal facility. Does each drum have to be loaded onto the transport vehicle and transported each time it is filled, or should there be a reasonable amount of time allowed to temporarily hold or store these drums until the transport vehicle can be fully loaded? Should this temporary holding/storing be considered as being part of the processing for disposal of this waste or should the provisions for temporary storage be amended to include temporary storage of liquid PCBs at greater than 500 ppm?

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EPA is soliciting comments on whether to allow the temporary storage of liquid PCB waste greater than 500 ppm, or to consider an activity as described in the preceding scenario as processing for disposal.

F. Sale of Totally Enclosed PCBs or PCB Items Greater Than 50 ppm

Currently, totally enclosed PCBs or PCB Items with PCB concentrations of 50 ppm or greater sold before July 1, 1979 for purposes other than resale may be distributed in commerce by resale (40 CFR 761.20). EPA is requesting comment on establishing a requirement that records be maintained on the sale of totally enclosed PCB Transformers and large PCB Capacitors. Records would list such information as the date of sale, name and address of purchaser, and the serial number of the PCB Item. By requiring that records be kept on PCB Transformer and large PCB Capacitor sales, EPA is attempting to limit illegal disposal by those who explain the disappearance of this equipment by claiming a sale has occurred, when in fact an illegal disposal has taken place. EPA is considering imposing a 3-year retention period for records documenting PCB Transformer and large PCB Capacitor sales. EPA is interested in receiving comments on establishing a recordkeeping requirement and the length of time such records should be maintained.

G. Spill Cleanup Policy

To reflect changes made to the reportable quantity under the Comprehensive Environmental Resource, Compensation and Liability Act (CERCLA), the Agency is considering revisions to PCB regulations at 40 CFR 761.125(a)(1) to require the reporting of PCB spills of 1 pound or more to the National Response Center. On August 14, 1989, EPA changed the reportable quantity of PCBs under CERCLA to 1 pound of pure PCBs (54 FR 33426). The reportable quantity to the regional EPA office under 40 CFR 761.125(a)(1)(iii) will remain the same. In addition, the Agency is confirming that it was the intent of the Spill Cleanup Policy to provide guidance for the cleanup of recent spills. Some individuals have attempted to use the Spill Cleanup Policy to address all spills, regardless of the age of the spill or the medium (e.g., where the contamination occurred such as releases into soil, water or other liquids). EPA stresses the point that the Spill Cleanup Policy only addresses recent spills in certain areas, and from certain sources, and for which cleanup begins within the stated timeframe (40 CFR 761.120).

The Agency recognizes that other cleanup standards for PCBs and mixtures of PCBs with other constituents may exist at both the Federal and State levels. These included standards or requirements for determining remediation levels as listed in the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300), and the requirements listed in the regulation proposed to address corrective action at RCRA facilities (55 FR 30798, July 27, 1990).

In some situations the Spill Cleanup Policy has been used to address PCB spills which either did not rightfully fall under the policy, or should have also fallen under the more stringent cleanup standards of other regulations. However, the Policy was never intended to address all spills, and the public should be aware that some cleanups may be subject to more (or less) stringent cleanup levels under other Federal and State regulations than are in the TSCA Spill Cleanup Policy. Therefore, the Agency is requesting comments on coordination of PCB spill cleanups with the requirements of other Federal statutes.

H. PCB Storage Requirements

1. *Indefinite storage of PCB Articles designated for reuse.* EPA regulations specifically state at 40 CFR 761.65(a) that PCB Articles or PCB Containers may be stored for disposal for no longer than 1 year. However, there currently is no comparable regulation for the length of time a PCB Article may be stored for the purpose of reuse. EPA had never intended allowing PCB Articles to be stored for an indefinite period of time. Further, it has come to EPA's attention that PCB Transformers and PCB-Contaminated Transformers have been held "in storage" well beyond a time when it is reasonable to expect the equipment could be reused under the pretext that the equipment is being retained as "spares" for critical components of electrical systems. EPA intends to make clear that items may not be placed in storage for an indefinite period of time under the pretense that they are "in use." EPA considers this activity to constitute illegal disposal. Therefore, EPA is considering a requirement to label PCB Articles at the time they are placed into storage for reuse and to limit the storage for reuse to a certain period of time. EPA solicits comments on this issue and, in particular, whether limitations should be placed on the period of time allowed for storage for reuse of certain PCB Items, or whether a more flexible approach, such as a requirement that a "reuse or reclassification schedule" be developed on a case-specific basis and submitted to EPA for approval with a justification which provides the rationale for requesting an extension and details regarding anticipated dates for removal from storage.

2. *Clarification of the 1-year storage for disposal requirement.* EPA wants to clarify the requirement at § 761.65(a) which states that "a PCB Article or PCB Container must be disposed of within 1 year from the date the item is first placed into storage." The intent of the regulation is to ensure disposal 1 year from the date the PCB Article or PCB Container is removed from service for disposal. For example, a PCB Transformer is removed from service on May 1 due to a rupture which rendered the equipment useless. Efforts to place the equipment in storage are hampered by circumstances beyond the owner/operator's control, and the transformer is placed into storage for disposal 25 days later. In this scenario EPA would interpret May 1 as the beginning date of the 1-year disposal requirement, not May 26. This interpretation is supported in the proposed regulation dated May 24, 1977 on page 26569 in the discussion of the time allowed for storage prior to disposal. The preamble states, "Thereafter, any item must be disposed of within 1 year from the time it is designated for disposal."

EPA is considering amending the language at § 761.65(a) to make explicit when the "storage for disposal" clock starts for PCB Items and solicits comments on this issue.

3. *Situations which warrant an extension of the 1-year storage for disposal requirement.* EPA is aware of at least two situations which may warrant an extension of the 1-year storage for disposal requirement and solicits comments on these or other situations that may require similar consideration. EPA wishes comments on alternative options, procedures and/or restrictions that should be considered in addressing these issues.

One scenario includes long-term biological destruction processes. Biological PCB disposal may not destroy PCBs at rates comparable to existing chemical and thermal destruction processes. Although biological destruction is largely in the developmental stage, it appears that biological destruction may take more than 1 year to achieve acceptable residual post-treatment levels.

EPA solicits comments on the appropriateness of temporarily suspending the 1-year storage period, prior to the end of the 9th month of storage for disposal, for the treatment/destruction of regulated PCBs which have begun disposal in an approved or authorized long-term biological treatment/destruction process. EPA is considering extending the 1-year storage for disposal period for the entire time of a biological treatment if that particular biological treatment technology is expected to take more than 1 year to achieve acceptable post-treatment levels. The extension would provide a fair opportunity for success for the biological process, while maintaining a provision for timely completion of a more thoroughly demonstrated conventional disposal in the event the biological method was not completely successful. Extensions would be granted upon approval of the request, and would be limited to 1 year beyond the existing 1 year storage for disposal allowance. Further extensions might be requested if it could be demonstrated that the treatment was near completion.

Another scenario addresses the absence of adequate capacity for the disposal of radioactive mixed wastes. Currently, there is limited treatment and disposal capacity for such wastes. Even when additional treatment facilities come on-line, it will take several years to reduce the large volume of waste already in storage. EPA solicits comments on whether the regulations should be amended to allow for an extension of the 1-year limit when certain conditions are met. The conditions would include, but are not necessarily limited to:

(1) A justification of the need to store wastes beyond 1-year. Until adequate disposal facilities exist, the lack of treatment or disposal capacity would constitute an acceptable justification.

(2) A demonstration that relevant treatment or disposal requirements are being pursued.

(3) Periodic progress reports.

Although this proposal will not resolve all legal difficulties associated with disposing of this waste, it would alleviate the problem posed by the current PCB storage regulation. EPA solicits comments on whether an extension of the storage deadline should be applied under TSCA for PCB wastes with radioactive constituents as is currently available under RCRA for hazardous wastes when inadequate capacity exists.

I. Exclusion for Laboratories Which Provide PCB Analytical Samples for Multi-laboratory Quality Assurance Purposes

EPA has received a number of inquiries as to whether "round robin" analytical exercises or inter-laboratory studies require exemptions from the ban on distribution of PCBs. These kinds of activities are normally conducted as quality assurance measures to test or verify a laboratory's performance using a given chemical analysis methodology.

Due to the need for effective compliance and enforcement of the PCB regulations, EPA is considering exempting laboratories participating in multi-laboratory studies from the regulations relating to the distribution in commerce of PCB analytical standards and dilution of PCBs for purposes of analysis, if certain requirements are met by the laboratory. These requirements may include, but may not be restricted to, the following:

(1) A notification that the lab is engaged in developing analytical standards.

(2) A restriction on the size of the sample, annual production volumes, import/export activities, etc.

The Agency is soliciting comments on any other considerations that should be included in its review of analytical laboratory activities.

J. Class Exemption for EPA and National Institute for Standards and Testing to Process and/or Distribute PCB Standards and Standard Reference Materials in Commerce

There have been a number of inquiries as to whether it is necessary for EPA and the National Institute for Standards and Testing (NIST) to have an exemption from the ban on the processing and distribution in commerce of PCBs for distribution of standards and audit samples. The EPA laboratories and other U.S. Government agencies, primarily the National Institute for Standards and Testing, distribute these materials themselves or through their agents on a non-profit basis.

Although distribution in commerce, processing, and use of analytical standards in general requires an exemption or authorization by rulemaking, performing analyses on samples to determine PCB concentration for enforcement or compliance purposes by EPA or other Federal entities (and their current contractors acting as agents) is not restricted under TSCA. EPA's authority to conduct PCB analyses is an implied authority; EPA is responsible for implementation and enforcement of the PCB regulations, and it could not effectively implement or enforce the regulations without the authority to analyze and maintain samples for implementation or enforcement of the regulations. Thus, distribution in commerce, processing, or use of such samples by the EPA or other Federal government entities (and contractors acting as their agents) does not require an exemption or authorization. Other persons must obtain such an exemption or authorization. Because of the number of questions EPA has received about this issue, EPA intends to include this position explicitly in its regulations.

K. 500 Gallon Exemption Under the PCB Notification and Manifesting Rule

In the Federal Register of December 21, 1989 EPA promulgated the final Notification and Manifesting regulation (54 FR 52716). In that regulation EPA required that commercial storers of PCB waste seek approval to commercially store PCB waste. If, however, a facility stored no more than 500 gallons of PCB waste the owner or operator was not required to seek approval as a commercial storer.

In the Federal Register of June 27, 1990 (55 FR 26204), EPA issued a correction to the Notification and Manifesting regulation that, among other things, further clarified the scope of the exemption to mean the owner or operator of a facility which stores no more than 500 gallons of "liquid" PCB waste is not required to seek approval as a commercial storer. In response to an issue raised by a litigant regarding EPA's publication of the correction, EPA agrees there may be reasons for establishing a small quantity exemption for solids (Refs. 6 and 7).

EPA is soliciting comments on establishing a small quantity exemption for non-liquid PCB waste to complement the Notification and Manifesting regulation's small quantity exemption for liquids as found in § 761.3. EPA is soliciting comments on the scope of such an exemption, e.g., what is the appropriate volume cut-off, and whether the exemption should be made available for all, or only certain limited commercial storage scenarios for PCB waste, such as small-scale research and development activities that use or dispose of PCBs and "treatability" studies conducted using regulated PCB waste?

L. State Enhancement Activities

EPA is requesting comments on a proposal to allow Federal recognition of State-issued PCB storage and disposal permits, in an effort to limit concurrent Federal/State permitting for PCB storage and disposal.

Current disposal requirements at 40 CFR 761.60, 761.65 and 761.70 prescribe conditions for PCB storage and disposal, including Federal permit requirements. Since a number of states also have

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various permit requirements (Ref. 8), the regulated community often must procure both Federal and State permits prior to commencing storage or disposal activities. EPA is considering the enactment of provisions that would eliminate the need for concurrent Federal TSCA requirements for those aspects of the disposal program that can be acceptably addressed by states that regulate PCBs under expanded State hazardous waste or TSCA look-alike programs.

EPA would encourage states to list PCBs under their State RCRA program by making resources available through one of several grant programs, as appropriated by Congress. As additional states regulate PCB storage and disposal through expanded state hazardous waste or other programs, facilities in those states would be eligible to receive a Federal PCB permit by rule after petitioning EPA.

In the broader context, Federal implementation of all or portions of certain environmental programs (e.g., CERCLA site remediation, RCRA corrective action, National Pollution Discharge Elimination System (NPDES) permitting) are also under consideration for inclusion in the permit by rule provision. The Agency sees limited environmental return for resources expended on implementing more than one waste management program controlling the same material at the same site.

EPA is soliciting comments on the effect of this proposal on enforcement activities, national consistency, policy advantages/disadvantages and the specific aspects of the PCB storage and disposal program.

IV. Public Record

EPA has established a public docket for this notice (docket number OPTS-66009). The public docket contains the references listed below.

(1) Letter from Pepper, Hamilton & Scheetz to William K. Reilly, Administrator, EPA transmitting a section 21 petition regarding certain PCB disposal provisions.[OPTS Docket 210025] (February 2, 1990).

(2) Section 21 Petition from Pepper, Hamilton & Scheetz to the EPA with attachments [OPTS Docket 210025] (February 2, 1990).

(3) Letter from Linda J. Fisher, Assistant Administrator, Office of Pesticides and Toxic Substances, EPA to William J. Walsh; Pepper, Hamilton Scheetz and William H. Hyatt; Pitney, Hardin, Kipp & Szuch in response to the February 2, 1990 section 21 petition (June 8, 1990).

(4) USEPA, OPTS/OTS. "Interim Guidance On Non-Liquid PCB Disposal Methods To Be Used As Alternatives To A 40 CFR 761.75 Chemical Waste Landfill (CWL)." (July 3, 1990).

(5) Letter from John A. Moore, Assistant Administrator, Office of Pesticides and Toxic Substances, EPA to Toni K. Allen, Piper Marbury regarding an interpretation of the PCB regulations on the disposal of transformer carcasses (September 9, 1986).

(6) Petition for Review, filed by Chemical Waste Management, Inc. in the United States Court of Appeals for the District of Columbia Circuit (September 25, 1990).

(7) Letter from James C. Nelson, Acting Associate General Counsel, Pesticides and Toxic Substances Division, EPA to Mary Edgar, Piper Marbury regarding an exemption for the storage of small quantities of solids (March 1, 1991).

(8) USEPA, OPTS/OTS/EAD. "Summary of State PCB Management Programs." Report prepared under contract by Abt Associates, Inc. (February 19, 1991).

(9) USDOT. "Performance-Oriented Packaging Standards; Changes to Classification, Hazard Communication, Packaging and Handling Requirements Based on UN Standards and Agency Initiative." (55 FR 52402, December 21, 1990).

Lists of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls (PCBs), Reporting and recordkeeping requirements.

Dated: June 2, 1991.

Victor J. Kimm,

Acting Assistant Administrator, Office of Pesticide and Toxic Substances.

[FR Doc. 91-13699 Filed 6-7-91; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-66010; FRL 3883-6]

Disposal of Polychlorinated Biphenyls; Availability of Draft Guidance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of draft internal guidance for comment.

SUMMARY: EPA is announcing the availability of draft proposed guidance regarding alternative disposal methods which may be used for certain non-liquid polychlorinated biphenyls (PCBs) under site-specific conditions. The guidelines are for use by Regional Administrators. EPA intends to consolidate knowledge and experience on disposal alternatives for non-liquid PCBs that do not pose an unreasonable risk of injury to human health and the environment.

DATES: Written comments on the proposed guidelines should be submitted on or before August 9, 1991.

ADDRESSES: Three copies of comments identified with the document control number (OPTS-66010) must be submitted to: TSCA Public Docket Office (TS-793), Office of Toxic Substances, rm NE G004, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, rm. E-543B, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551, FAX (202) 554-5603 (document requests only).

SUPPLEMENTARY INFORMATION:

I. Background

The TSCA PCB Disposal rules are set forth in 40 CFR 761.60. In general, the scope of the TSCA PCB Disposal regulations is limited to PCBs and PCB Items with concentrations of 50 parts per million (ppm) and above [40 CFR 761.1(b)]. PCBs and PCB Items contaminated at levels less than 50 ppm may be regulated if the original PCB material was contaminated at levels of 50 ppm or above [40 CFR 761.1(b)]. The general rule regarding the disposal of PCBs requires disposal in an incinerator that complies with 40 CFR 761.70 [40 CFR 761.60(a)(1)]. There are five exceptions to this general rule for various categories of PCBs which are set forth in § 761.60(a)(2), (3), (4) and (5) and (e). These exceptions provide additional methods of PCB disposal other than incineration for the categories of PCBs listed under each exception. These methods include chemical waste landfill, high efficiency boiler, a method approved by the Regional Administrator of the Region in which the material is located, and an approved alternative method of destruction equivalent to incineration. Each of these additional disposal methods is not necessarily available for all categories of PCB waste. The TSCA PCB disposal rules prescribe the method of disposal that is available for each category of material. PCBs which do not fall into one of these five exceptions must be incinerated in accordance with the general rule stated in 40 CFR 761.60(a)(1).

Certain classes of PCB Items are regulated for disposal under 40 CFR 761.60(b),(c), and (e). Currently, PCB Articles are regulated under 40 CFR 761.60(b). PCB Containers are regulated under 40 CFR 761.60(c). Procedures for obtaining approval for an alternate method of destroying PCBs and PCB Items are provided at 40 CFR 761.60(e). The regulatory requirement for a PCB Item may prescribe a particular method of disposal for the Item itself (such as incineration or disposal in a chemical waste landfill) or specify a means for rendering the Item unregulated for disposal (such as draining the Item of PCB liquids). To determine how particular classes of PCB Items are regulated for disposal, the appropriate regulatory provision at 40 CFR 761.60 should be consulted.

II. Guidance on Disposal Alternatives to Chemical Waste Landfills for Non-liquid PCBs

One common disposal alternative to TSCA incineration for certain forms of non-liquid PCBs (e.g., soils, rags and other debris) is disposal in a TSCA chemical waste landfill (CWL). There are nine technical requirements for a CWL listed at 40 CFR 761.75(b). The requirements provide for the containment and isolation of PCBs, and assurance that containment and isolation will continue for the lifetime of the CWL. Briefly stated, these requirements include limits on surrounding and underlying soil permeability; synthetic liner integrity — composition, thickness, and underlying support; limits on hydrologic conditions and restrictions from siting near surface water; protection against floods and other high surface water conditions; construction restricted to areas of low topographic relief; monitoring systems: surface and ground — before, during and after landfilling; leachate collection; operating practices/procedures; and applicable supporting facilities.

These requirements may be waived by the Regional Administrator provided the waiver will not cause an unreasonable risk of injury to human health or the environment [40 CFR 761.75(c)(4)]. The owner or operator of a CWL may seek to employ an alternative method of non-liquid PCB disposal to displace the need for up to all nine CWL technical requirements to demonstrate that the CWL would not present an unreasonable risk of injury to health or the environment.

The Office of Toxic Substances (OTS) is preparing guidance to the Regional Administrators regarding the alternative disposal methods which may be used for non-liquid PCBs under site-specific conditions that do not present an unreasonable risk of injury to health or the environment. EPA is using this notice to announce the availability of a draft of this proposed guidance and to request written comments to assist in its completion. This guidance is for the use of EPA Regional Administrators in evaluating alternative methods of disposal. Copies of the proposed guidance, "Interim Guidance on Non-Liquid PCB Disposal Methods To Be Used As Alternatives to A 40 CFR 761.75 Chemical Waste Landfill (CWL)," may be obtained from EPA at the address listed under FOR FURTHER INFORMATION CONTACT in this document.

Dated: June 2, 1991.

Victor J. Kimm,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 91-13700 Filed 6-7-91; 8:45 am]

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Part VI

Environmental Protection Agency

Premanufacture Notices; Monthly Status Report for APRIL 1991

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ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53142; FRL 3926-4]

Premanufacture Notices; Monthly Status Report for APRIL 1991

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substance Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption request pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for APRIL 1991.

Nonconfidential portions of the PMNs and exemption request may be seen in the TSCA Public Docket Office NE-G004 at the address below between 8 a.m. and noon and 1 p.m., and 4 p.m., Monday through Friday, excluding legal holidays.

ADDRESSES: Written comments, identified with the document control number "(OPTS-53142)" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Rm L-100, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, rm EB-44, 401 M St., SW., Washington, DC 20460 (202) 382-3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during APRIL; (b) PMNs received previously and still under review at the end of APRIL; (c) PMNs for which the notice review period has ended during APRIL; (d) chemical substances for which EPA has received a notice of commencement to manufacture during APRIL; and (e) PMNs for which the review period has been suspended. Therefore, the APRIL 1991 PMN Status Report is being published.

Dated: June 4, 1991.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

Premanufacture Notice Monthly Status Report for APRIL 1991.

I. 107 Premanufacture notices and exemption requests received during the month:

PMN No.

P 91-0717	P 91-0743	P 91-0744	P 91-0745
P 91-0746	P 91-0747	P 91-0748	P 91-0749
P 91-0750	P 91-0751	P 91-0752	P 91-0753
P 91-0754	P 91-0755	P 91-0756	P 91-0757
P 91-0758	P 91-0759	P 91-0760	P 91-0761
P 91-0762	P 91-0763	P 91-0764	P 91-0765
P 91-0766	P 91-0767	P 91-0768	P 91-0769
P 91-0770	P 91-0771	P 91-0772	P 91-0773
P 91-0774	P 91-0775	P 91-0776	P 91-0777
P 91-0778	P 91-0780	P 91-0781	P 91-0782
P 91-0783	P 91-0784	P 91-0785	P 91-0786
P 91-0787	P 91-0788	P 91-0789	P 91-0790
P 91-0791	P 91-0792	P 91-0795	P 91-0796
P 91-0797	P 91-0798	P 91-0799	P 91-0800
P 91-0801	P 91-0802	P 91-0803	P 91-0804
P 91-0805	P 91-0806	P 91-0807	P 91-0808
P 91-0809	P 91-0810	P 91-0811	P 91-0812
P 91-0813	P 91-0814	P 91-0815	P 91-0816
P 91-0817	P 91-0818	P 91-0819	P 91-0820
P 91-0821	P 91-0822	P 91-0823	P 91-0824
P 91-0825	P 91-0826	P 91-0827	P 91-0825
P 91-0831	P 91-0832	P 91-0833	P 91-0834
P 91-0836	P 91-0837	P 91-0839	P 91-0840
P 91-0841	P 91-0842	Y 91-0127	Y 91-0128
Y 91-0129	Y 91-0130	Y 91-0131	Y 91-0132
Y 91-0133	Y 91-0134	Y 91-0135	Y 91-0136
Y 91-0137	Y 91-0138	Y 91-0139	

II. 296 Premanufacture notices received previously and still under review at the end of the month:

PMN No.

P 84-0000	P 84-1079	P 85-0433	P 85-0819
P 86-0501	P 86-1807	P 87-0105	P 87-0323
P 87-1553	P 87-1555	P 87-1872	P 87-1881
P 87-1882	P 88-0217	P 88-0319	P 88-0320
P 88-0408	P 88-0831	P 88-0918	P 88-1020
P 88-1021	P 88-1035	P 88-1460	P 88-1473
P 88-1682	P 88-1753	P 88-1761	P 88-1783
P 88-1807	P 88-1809	P 88-1811	P 88-1937
P 88-1938	P 88-1980	P 88-1982	P 88-1994
P 88-1995	P 88-1999	P 88-2000	P 88-2001
P 88-2100	P 88-2169	P 88-2196	P 88-2210
P 88-2212	P 88-2213	P 88-2228	P 88-2229
P 88-2230	P 88-2231	P 88-2238	P 88-2237
P 88-2484	P 88-2518	P 88-2529	P 88-2530
P 89-0089	P 89-0090	P 89-0091	P 89-0225
P 89-0254	P 89-0321	P 89-0385	P 89-0308
P 89-0387	P 89-0396	P 89-0538	P 89-0589
P 89-0721	P 89-0764	P 89-0769	P 89-0775
P 89-0778	P 89-0867	P 89-0957	P 89-0958
P 89-0959	P 89-0963	P 89-0977	P 89-0978
P 89-0979	P 89-0980	P 89-0998	P 89-1010
P 89-1038	P 89-1056	P 89-1062	P 89-1148
P 90-0002	P 90-0009	P 90-0158	P 90-0159
P 90-0211	P 90-0237	P 90-0248	P 90-0249
P 90-0260	P 90-0261	P 90-0262	P 90-0263
P 90-0347	P 90-0372	P 90-0384	P 90-0441
P 90-0456	P 90-0469	P 90-0550	P 90-0564
P 90-0581	P 90-0603	P 90-0608	P 90-0643
P 90-0707	P 90-1200	P 90-1311	P 90-1318
P 90-1319	P 90-1320	P 90-1321	P 90-1322
P 90-1358	P 90-1364	P 90-1384	P 90-1413
P 90-1422	P 90-1464	P 90-1472	P 90-1473
P 90-1511	P 90-1527	P 90-1528	P 90-1529
P 90-1530	P 90-1531	P 90-1541	P 90-1555
P 90-1556	P 90-1564	P 90-1592	P 90-1650
P 90-1687	P 90-1720	P 90-1721	P 90-1722
P 90-1723	P 90-1728	P 90-1730	P 90-1731
P 90-1732	P 90-1748	P 90-1797	P 90-1809
P 90-1818	P 90-1830	P 90-1840	P 90-1844
P 90-1845	P 90-1846	P 90-1893	P 90-1937
P 90-1973	P 90-1984	P 90-1985	P 90-2000
P 91-0004	P 91-0043	P 91-0051	P 91-0055
P 91-0065	P 91-0074	P 91-0087	P 91-0091
P 91-0100	P 91-0101	P 91-0102	P 91-0107
P 91-0108	P 91-0109	P 91-0110	P 91-0111
P 91-0112	P 91-0113	P 91-0118	P 91-0123
P 91-0124	P 91-0151	P 91-0173	P 91-0174
P 91-0175	P 91-0176	P 91-0177	P 91-0178
P 91-0179	P 91-0180	P 91-0181	P 91-0182
P 91-0183	P 91-0184	P 91-0186	P 91-0187
P 91-0188	P 91-0202	P 91-0222	P 91-0225
P 91-0228	P 91-0230	P 91-0231	P 91-0232
P 91-0233	P 91-0242	P 91-0243	P 91-0244
P 91-0245	P 91-0246	P 91-0247	P 91-0248
P 91-0252	P 91-0253	P 91-0272	P 91-0288
P 91-0328	P 91-0337	P 91-0358	P 91-0363
P 91-0389	P 91-0391	P 91-0403	P 91-0411
P 91-0442	P 91-0451	P 91-0464	P 91-0465
P 91-0466	P 91-0467	P 91-0468	P 91-0469
P 91-0470	P 91-0471	P 91-0472	P 91-0487
P 91-0490	P 91-0501	P 91-0503	P 91-0505
P 91-0506	P 91-0509	P 91-0514	P 91-0519
P 91-0520	P 91-0521	P 91-0525	P 91-0527
P 91-0530	P 91-0532	P 91-0533	P 91-0534
P 91-0541	P 91-0548	P 91-0566	P 91-0572
P 91-0579	P 91-0580	P 91-0581	P 91-0583
P 91-0594	P 91-0598	P 91-0600	P 91-0602
P 91-0606	P 91-0619	P 91-0627	P 91-0639
P 91-0641	P 91-0642	P 91-0643	P 91-0644
P 91-0654	P 91-0657	P 91-0659	P 91-0664
P 91-0665	P 91-0666	P 91-0667	P 91-0668
P 91-0688	P 91-0689	P 91-0691	P 91-0698
P 91-0700	P 91-0701	P 91-0710	P 91-0712
P 91-0716	P 91-0732	P 91-0737	P 91-0738

III. 135 Premanufacture notices and exemption request for which the notice review period has ended during the month. (Expiration of the notice review period does not signify that the chemical has been added to the inventory).

PMN No.

P 90-0558	P 90-0559	P 90-0560	P 90-1308
P 90-1718	P 91-0075	P 91-0288	P 91-0351
P 91-0352	P 91-0392	P 91-0393	P 91-0394
P 91-0395	P 91-0397	P 91-0398	P 91-0399
P 91-0400	P 91-0401	P 91-0402	P 91-0404
P 91-0405	P 91-0406	P 91-0407	P 91-0408
P 91-0409	P 91-0410	P 91-0412	P 91-0413
P 91-0414	P 91-0415	P 91-0416	P 91-0417
P 91-0418	P 91-0419	P 91-0420	P 91-0422
P 91-0423	P 91-0424	P 91-0425	P 91-0426
P 91-0427	P 91-0428	P 91-0429	P 91-0430
P 91-0431	P 91-0432	P 91-0433	P 91-0434
P 91-0435	P 91-0436	P 91-0437	P 91-0438
P 91-0439	P 91-0440	P 91-0441	P 91-0442
P 91-0443	P 91-0444	P 91-0445	P 91-0446
P 91-0447	P 91-0448	P 91-0449	P 91-0450
P 91-0452	P 91-0453	P 91-0454	P 91-0455
P 91-0456	P 91-0457	P 91-0458	P 91-0459
P 91-0460	P 91-0461	P 91-0462	P 91-0463
P 91-0473	P 91-0474	P 91-0475	P 91-0476
P 91-0477	P 91-0478	P 91-0479	P 91-0480
P 91-0481	P 91-0482	P 91-0483	P 91-0484
P 91-0485	P 91-0486	P 91-0487	P 91-0488

P 91-0489	P 91-0490	P 91-0491	P 91-0492	P 91-0510	P 91-0511	P 91-0512	P 91-0513
P 91-0493	P 91-0494	P 91-0495	P 91-0496	P 91-0515	P 91-0516	P 91-0517	P 91-0518
P 91-0497	P 91-0498	P 91-0499	P 91-0500	Y 91-0113	Y 91-0114	Y 91-0115	Y 91-0116
P 91-0502	P 91-0504	P 91-0506	P 91-0507	Y 91-0119	Y 91-0120	Y 91-0121	Y 91-0122

Y 91-0123	Y 91-0124	Y 91-0125	Y 91-0126
Y 91-0127	Y 91-0128	Y 91-0129	Y 91-0130
Y 91-0131	Y 91-0132	Y 91-0133	

IV. 155 Chemical substances for which EPA has received notices of commencement to manufacture

PMN No.	Identity/Generic Name	Date of Commencement
P 91-0144	G 4-(1-Pyrrolidinyl) 3-methyl benzenediazonium, 5-sulfoisophthalate	March 21, 1991.
P 83-1248	G Fatty alcohol	February 19, 1991.
P 85-0272	G Substituted aliphatic-terminated poly(dimethylsiloxane)	January 29, 1987.
P 85-1060	G Polyamide of c-18 fatty acid dimers with alkylene diamines and polyetherdiamine	January 25, 1991.
P 86-0025	Modified polyvinyl alcohol	August 20, 1986.
P 86-1822	G Aromatic diamine, thio-methylated	June 3, 1987.
P 88-1620	G Silane coupling agent	March 11, 1991.
P 88-1621	G Silane coupling agent	March 11, 1991.
P 88-1812	G Alkylene polyalkoxyethanol	February 13, 1991.
P 89-0485	G Thermoplastic polyurethane resin	March 14, 1991.
P 89-0830	G Acrylated alkyd	March 26, 1991.
P 89-0831	G Alkyd	March 25, 1991.
P 89-0855	G Polyamide copolymer	March 11, 1991.
P 90-0140	G Hydroxy functional acrylic resin	February 22, 1991.
P 90-0575	G Unsaturated polyester resin	April 1, 1991.
P 90-0526	G Polymer containing isooctyl acrylate	March 6, 1991.
P 90-0575	G Terpene acetal	April 2, 1991.
P 90-0704	G Polyfluoroalkyl polyester	August 5, 1990.
P 90-0705	G Polyhalogenated acrylate	August 5, 1990.
P 90-0937	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 11, 1990.
P 90-0938	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 11, 1990.
P 90-0939	G Acrylic copolymers and salts thereof: Styrene/acrylic copolymers and salts thereof	October 11, 1990.
P 90-0941	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 15, 1990.
P 90-0942	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 10, 1990.
P 90-0943	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 15, 1990.
P 90-0944	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 15, 1990.
P 90-0945	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	November 7, 1990.
P 90-0946	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 15, 1990.
P 90-0947	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 11, 1990.
P 90-0948	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 15, 1990.
P 90-0950	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 10, 1990.
P 90-0951	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 10, 1990.
P 90-0952	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 10, 1990.
P 90-0953	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 10, 1990.
P 90-0954	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 11, 1990.
P 90-0955	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 11, 1990.
P 90-0956	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 11, 1990.
P 90-0957	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 11, 1990.
P 90-0958	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 11, 1990.
P 90-0959	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 15, 1990.
P 90-0960	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 15, 1990.
P 90-0961	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 10, 1990.
P 90-0962	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 15, 1990.
P 90-0963	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 15, 1990.
P 90-0964	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	November 7, 1990.
P 90-0965	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 15, 1990.
P 90-0966	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 11, 1990.
P 90-0967	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 12, 1990.
P 90-0968	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 12, 1990.
P 90-0969	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 15, 1990.
P 90-0970	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 15, 1990.
P 90-0971	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 10, 1990.
P 90-0972	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 10, 1990.
P 90-0973	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 10, 1990.
P 90-0974	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 10, 1990.
P 90-0975	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 10, 1990.
P 90-0976	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 11, 1990.
P 90-0978	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 11, 1990.
P 90-0979	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 11, 1990.
P 90-0980	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 11, 1990.
P 90-0981	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 12, 1990.
P 90-0982	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 15, 1990.
P 90-0983	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 15, 1990.
P 90-0984	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 10, 1990.
P 90-0985	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 15, 1990.
P 90-0986	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 15, 1990.
P 90-0987	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	November 7, 1990.
P 90-0988	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 15, 1990.
P 90-0989	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	October 12, 1990.
P 90-0991	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof	

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IV. 155 Chemical substances for which EPA has received notices of commencement to manufacture—Continued

PMN No.	Identity/Generic Name	Date of Commencement
P 90-0992	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0993	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0994	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-0995	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-0996	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-0997	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-0998	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-0999	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-1000	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1001	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1002	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1003	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1004	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1005	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 12, 1990.
P 90-1006	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1007	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1009	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1010	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1011	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	November 7, 1990.
P 90-1012	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1013	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1014	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 12, 1990.
P 90-1015	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1016	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1017	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990.
P 90-1018	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-1019	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-1020	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-1021	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-1022	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 10, 1990.
P 90-1023	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1024	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1025	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1026	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 11, 1990.
P 90-1030	G Acrylic copolymers and salts thereof: styrene/acrylic copolymers and salts thereof.	October 15, 1990
P 90-1289	2-Nitro-4-methoxyphenyl-1-(2-naphthonyl-3-benzo-o-toluidide) azo.	January 25, 1991.
P 90-1356	G Mannich base polyamine.	April 18, 1991.
P 90-1393	Reaction products of biephenol/epichlorohydrin based epoxy resin, tetra bromobisphenol A, carboxyl-terminated butadiene/acrylonitrile copolymer, methacrylic acid..	January 7, 1991.
P 90-1545	G Alkylphenol formaldehyde copolymer.	March 11, 1991.
P 90-1576	Epoxy-amine adduct.	November 8, 1990.
P 90-1605	G Amino cyclohexyloxycarbonyl substituted aminoanthraquinone.	March 18, 1991.
P 90-1606	G Alkylphenoxy amino hydroxyl anthraquinone.	March 18, 1991.
P 90-1607	G Alkylcyanomethyloxy heterocyclicazo, benzoic acid ethoxycarbonylmethyl ester.	March 18, 1991.
P 90-1666	G Metal chloride/methacrylate/organic aluminium complex.	March 19, 1991.
P 90-1667	G Polyalkene.	March 19, 1991.
P 90-1672	G Substituted dioxazene.	February 20, 1991.
P 90-1673	G Hybrid polymer of unsaturated polyester and vinyl ester.	February 20, 1991.
P 90-1692	G Modified polyolefin.	March 11, 1991.
P 90-1772	G Diurea compound.	February 12, 1991.
P 90-1796	G Copper complex substituted naphthalene disulfonic acid, alkali salt.	April 2, 1991.
P 90-1839	G Dialkyldithiophosphoric acid, aliphate amine salt.	March 22, 1991.
P 90-1848	G Acryltrialkoxysilane.	February 21, 1991.
P 90-1873	4-Hepten-1-ol, (Z)-.	March 5, 1991.
P 90-1877	G Tridecadienenitrile.	February 19, 1991.
P 90-1913	G Modified polyacrylamide.	January 31, 1991.
P 91-0026	G Reaction product of formic acid, substituted anilines, sodium carbonate, aniline and sulfur.	March 5, 1991.
P 91-0035	G Starch; 2(bis(substutted methyl amino)ethyl) ether, sodium salt; 2-hydroxy-3-trimethylammoniopropyl ester; chloride.	March 1, 1991.
P 91-0050	G Epoxy terminated polymer of polyetheramine and bisphenol A.	March 15, 1991.
P 91-0052	G Polyolefin amino ester salt.	April 2, 1991.
P 91-0093	G Acrylic copolymer intermediate.	February 26, 1991.
P 91-0117	G Acrylate derivative polymer.	March 3, 1991.
P 91-0150	G Alkyl amine salt.	March 6, 1991.
P 91-0169	G Hydroxy functional acrylate methacrylate styrenated polymer.	March 19, 1991.
P 91-0185	3-Cyclopentene-1-acetonitrile, 2,2,3-trimethyl-.	March 6, 1991.
P 91-0195	G Polyurethane.	March 26, 1991.
P 91-0214	G Styrene-acrylate copolymer with epoxy ester.	March 15, 1991.
P 91-0215	G Epoxy ester.	March 7, 1991.
P 91-0220	G Tung oil-oticica oil-phenolic resin.	March 6, 1991.
P 91-0239	G 2-Alkylphenoxyl-1,4-diamino-3-phenoxy anthraquinone.	March 18, 1991.
P 91-0256	G 2-Propenoic acid C16–C44 esters, polymerized.	February 14, 1991.
P 91-0260	G Amine functional epoxy salt.	March 4, 1991.
P 91-0262	G Carboxy functional polyester salted by amine.	March 13, 1991.
P 91-0279	G Polyisocyanate polyaddition product B.	March 14, 1991.
P 91-0293	G Modified rosin, aluminium salt.	March 12, 1991.
P 91-0305	G Acrylic resin.	March 30, 1991.
P 91-0319	G Polyurethane suspension in polyol.	March 13, 1991.

IV. 155 Chemical substances for which EPA has received notices of commencement to manufacture—Continued

PMN No.	Identity/Generic Name	Date of Commencement
P 91-0324	G Nitro biphenyl, bis sulfo, amino, hydroxy napthalenyl azo dimethoxy, sodium salt.	March 31, 1991.
P 91-0325	G Sulfo naphthalene azo h-acid, monochlorotriazine, aminophenyl v.s.	March 31, 1991.
P 91-0347	Fatty acids, C5–C9, esters with pentaerythritol.	March 26, 1991.
P 91-0368	G Rosin phenolic modified short oil alkyd resin.	March 28, 1991.
P 91-0369	Polymer of dimer fatty acids, acetic acid, rosin, glycerine, ethylene diamine, and propylene carbonate.	April 8, 1991.
Y 87-0069	G Alkyd coplymer.	March 13, 1990.
Y 90-0037	G Unsaturated polyester resin.	March 27, 1991.
Y 90-0055	G Alkanedibasic acid, propanediol, n-alkanol polyester.	February 22, 1991.
Y 91-0081	G Aliphatic polyether urethane.	March 19, 1991.

V. 25 Premanufacture notices for which the period has been suspended.

PMN No.

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[FR Doc. 91-13701 Filed 6-7-91; 8:45 am]
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Part VII

The President

Presidential Determination No. 91-35—Drawdown of Department of Defense Articles and Services for International Disaster Assistance in Bangladesh

Presidential Determination No. 91-36—Determination Under Subsection 402(d)(1) of the Trade Act of 1974, as Amended—Continuation of Waiver Authority

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Title 3—

The President

Presidential Determination No. 91-35 of May 26, 1991

Drawdown of Department of Defense Articles and Services for International Disaster Assistance in Bangladesh

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by section 506(a)(2) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2318(a)(2)) (the "Act"), I hereby determine that it is in the national interest of the United States to draw down defense articles from the stocks of the Department of Defense and defense services of the Department of Defense, for the purpose of providing international disaster assistance in Bangladesh.

Therefore, I hereby authorize the furnishing of up to $20 million of defense articles from the stocks of the Department of Defense and defense services of the Department of Defense, for the purposes and under the authorities of Chapter 9 of Part I of the Act.

The Secretary of State is authorized and directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority, and to publish this memorandum in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, May 26, 1991.

[FR Doc. 91-13928
Filed 6-7-91; 11:42 am]
Billing code 3195-01-M

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Presidential Documents

Presidential Determination No. 91-36 of May 29, 1991

Determination Under Subsection 402(d)(1) of the Trade Act of 1974, as Amended—Continuation of Waiver Authority

Pursuant to the authority vested in me under the Trade Act of 1974, as amended, Public Law 93-618, 88 Stat. 1978 (hereinafter "the Act"), having determined, pursuant to subsection 402(d)(1) of the Act, 19 U.S.C. 2432(d)(1), that the further extension of the waiver authority granted by subsection 402(c) of the Act will substantially promote the objectives of section 402 of the Act, I further determine that the continuation of the waiver applicable to the People's Republic of China will substantially promote the objectives of section 402 of the Act.

You are authorized and directed to publish this determination in the **Federal Register.**

George Bush

THE WHITE HOUSE,
Washington, May 29, 1991.

[FR Doc. 91-13829
Filed 6-7-91; 11:43 am]
Billing code 3195-01-M

Editorial note: For the President's remarks of May 27 and May 28 on renewing the most-favored-nation trade status for China, see pp. 674-682 of issue 22 of the *Weekly Compilation of Presidential Documents*. For the President's letter of May 29 on trade with China, see page 687 of the same issue.

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1990. The CFR volume issued January 1, 1987, should be retained.

[3] No amendments to this volume were promulgated during the period Apr. 1, 1989 to Mar. 31, 1990. The CFR volume issued April 1, 1989, should be retained.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1991. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1990. The CFR volume issued July 1, 1989, should be retained.

[6] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[7] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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The Federal Register

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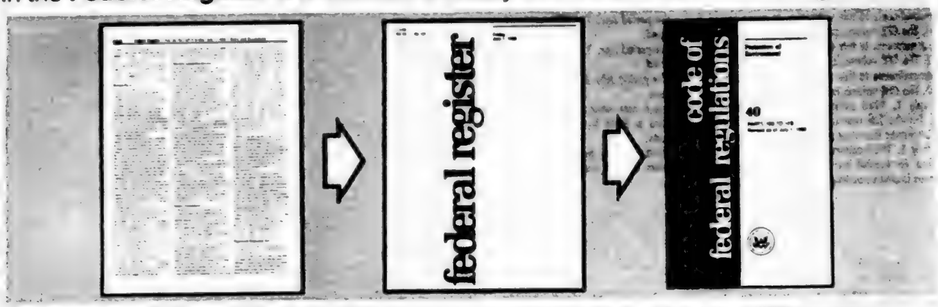

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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 46

[Docket Number FV-91-353]

Rules of Practice Under the Perishable Agricultural Commodities Act, 1930

Procedure in administering complaints alleging violations of the Perishable Agricultural Commodities Act (PACA) (7 U.S.C. 499a *et seq.*) and section 1309 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101-624) (the 1990 Act) relating to products produced in distinct geographic areas.

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule establishes and invites comments on the procedure for initiating complaints alleging violations of the PACA from the sale of perishable agricultural commodities improperly labeled or branded with a unique name or as having come from a distinct geographic area. The complaining party shall pay for the costs of the investigation. Agency officials will provide the complaining party an estimate of the costs of an investigation before a formal investigation commences.

Section 1309 of the Food, Agriculture, Conservation, and Trade Act of 1990 (1990 Act) makes it a violation of the PACA to use the unique name or geographical designation of a commodity to promote the sale of a similar commodity produced outside the distinct geographic area and provides that the complaining party shall bear the cost of investigating such violations. It is estimated that an average investigation will cost approximately $2,000.

DATES: This interim rule is effective June 11, 1991. Written comments on this rule must be received by July 11, 1991, to be considered prior to any finalization of this interim rule.

ADDRESSES: Written comments should be sent in duplicate to Floyd E. White, Misbranding Officer, PACA Branch, room 2095 So., Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Washington, DC 20090-6456. Comments should make reference to the date and page numbers of this issue of the **Federal Register**, and will be available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Floyd E. White, (202) 447-5073, Misbranding Officer, PACA Branch, room 2095 So., Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Washington, DC 20090-6456.

SUPPLEMENTARY INFORMATION:

Background

The interim rule has been determined to be a non-major rule under the criteria contained in Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small business entities and has determined that this interim rule will not have a significant economic impact on a substantial number of small business entities. This rule pertains only to commodities which have a unique name or come from a distinct geographic area and are promoted pursuant to a Federal marketing order under the Agricultural Marketing Service Act of 1937, as amended (7 U.S.C. 601 *et seq.*). This regulation would impact on only a limited number of firms that deal with these unique commodities and the regulation applies equally to both large and small firms. This rule will not alter the market share or competitive position of small businesses relative to large firms.

Section 1309(a) of the 1990 Act refers to any perishable agricultural commodity which is subject to a Federal marketing order, is traditionally identified as being produced in a distinct geographic area, State, or region, and whose unique identity based on its production in a distinct geographic area has been promoted with funds collected from producer contributions pursuant to such marketing order. It is a violation of paragraphs (4) and (5) of section 2 of the PACA for a person to use the unique name or geographic designation of such commodity to promote the sale of a similar commodity produced outside the distinct area, State, or region.

Section 1309(c) of the 1990 Act provides that a person bringing a complaint under this section shall reimburse the Secretary of Agriculture for any and all costs associated with the enforcement of that section. Section 1309(d) specifically prohibits the Secretary from increasing the fees collected under the PACA to offset costs associated with the operation of this section. This rule provides a mechanism whereby funds can be collected in advance of the formal investigation of a complaint to ensure that fees currently collected under the Act will not be used to pay the costs of the investigation.

The interim rule would require that any person complaining that a commission merchant, dealer, or broker, as those terms are defined in the PACA, has used a unique name or distinct geographic area to promote the sale of a perishable agricultural commodity produced outside that area, file a written complaint with the Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture. The complaint must set forth in detail all the essential particulars of the alleged violation and must be accompanied by a non-refundable $250.00 preliminary investigation fee. Upon receiving a written complaint accompanied by the fee, the Director will order a preliminary investigation of the complaint. If the preliminary investigation discloses no apparent violation, no further action will be taken and the complaining person will be so notified. If, however, as a result of the investigation, the Director finds reasonable cause for further investigation, he shall advise the complaining party of the estimate of the additional costs necessarily incurred by the further investigation, and the complaining person shall tender the requested fees and charges. The estimated fee shall be calculated on the basis of the hourly salary rates of a GS 5, Step 4, for clerical time and GS 13, Step 1, for professional time, plus benefits and other costs. At the

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conclusion of the investigation, the Director shall determine whether the evidence supports the filing of a formal administrative complaint alleging a violation of the Perishable Agricultural Commodities Act.

Waiver of Notice of Proposed Rulemaking

Pursuant to 5 U.S.C. 553(b)(3)(B), the Administrator finds that good cause exists for waiving the general notice of proposed rulemaking and for issuing this interim rule. The marketing season for some of the distinct commodities which section 1309 of the 1990 Act was intended to address has commenced. It is, therefore, imperative to have an enforcement mechanism in place as soon as possible. Therefore, pursuant to 5 U.S.C. 553(d)(3), the Administrator finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**.

List of Subjects in 7 CFR Part 46

Administrative practices and procedures, Agricultural commodities, Brokers, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 46 is amended as follows:

PART 46—[AMENDED]

1. The authority citation for part 46 continues to read as follows:

Authority: Sec. 15, 46 Stat. 537; 7 U.S.C. 499o.

2. Section 46.48 is added to read as follows:

§ 46.48 Procedure for investigating complaints involving commodities of a unique nature or coming from a distinct geographic area.

(a) *Scope:* This section provides for the payment of fees and the investigation of allegations of misrepresentation or misbranding in which the commodity which is misbranded or misrepresented is purported to be a commodity of a unique name or geographical designation which is defined as:

(1) A perishable agricultural commodity as that term is defined under the Perishable Agricultural Commodities Act, 1930;

(2) Subject to a federal marketing order under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*);

(3) Traditionally identified as being produced in a distinct geographic area, State, or region; and

(4) Of a unique identity, based on such distinct geographic area, which has been promoted with funds collected through producer contributions pursuant to such marketing order.

(b) *Filing complaints:* (1) Any person desiring to complain of a possible violation by any commission merchant, dealer, or broker as a result of misrepresentation or misbranding of any commodity subject to these regulations may file a complaint with the Secretary of Agriculture and request an investigation of the complaint by the Secretary.

(2) Complaints shall be made in writing setting forth all the essential details, including but not limited to:

(i) The name and address of each complaining person;

(ii) The name and address of each person against whom the complaint is made;

(iii) The commodity, approximate quantity of the commodity, and circumstances of alleged misrepresentation or misbranding;

(iv) The current location of the commodity;

(v) If shipped, the shipping and destination points of the commodity;

(vi) A statement of all other known material facts with respect to the complaint; and

(vii) Copies of any documents or evidence of any kind in the possession of the complainant regarding the alleged violation.

(3) The complaint shall be accompanied by a non-refundable $250.00 filing fee made payable to the Agricultural Marketing Service (see "(e) Collection of fees").

(4) The complaint, all supporting evidence, and fee should be mailed to: PACA Branch, room 2095 So., Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Washington, DC 20090–6456.

(c) *Handling complaints.* (1) Upon receiving a written complaint, supporting evidence, and the $250.00 preliminary investigation fee from a complaining person, the Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture shall order a preliminary investigation to determine if the complaint can be substantiated. If the initial investigation discloses no violation of the Act, no further action shall be taken and the complaining person shall be informed of the finding. The $250.00 filing fee shall be considered full payment for the preliminary investigation.

(2) If the Director finds reasonable cause for further investigation, the complaining person shall be duly notified of the findings. Prior to any further investigation, the Director shall advise the complaining person of the estimated fees and charges which the complaining person must pay. In calculating the estimated fees, the Director shall use the hourly salary rate of a GS–5, Step 4, for clerical time and GS–13, Step 1, for professional time, plus benefits and other related expenses including travel associated with the investigation.

(3) At the conclusion of the investigation, the Department will inform the complaining person of the results, provided, however, that any findings, the release of which may jeopardize an ongoing formal disciplinary proceeding initiated under the PACA, may be withheld pending completion of the disciplinary case.

(d) *Investigative authority.* Investigation of a complaint of this section shall be deemed to be an investigation under section 6(b) of the Perishable Agricultural Commodities Act (7 U.S.C. 499f(b)).

(e) *Collection of fees.* (1) any person bringing a complaint, alleging a violation of section 1309 of the Food, Agriculture, Conservation, and Trade Act of 1990 shall reimburse the Secretary of Agriculture for any and all costs associated with the enforcement of that section.

(2) A non-refundable $250.00 fee for the preliminary investigation shall accompany the written complaint.

(3) An estimate of fees and charges to conduct the further investigation calculated in accordance with paragraph (c)(2) of this section will be provided the complaining person.

(i) Payment of the fees and charges shall be collected in advance by the Secretary prior to continuation of investigation of a complaint.

(ii) Payment of fees and charges may be made by cash, check, or money order payable to the Agricultural Marketing Service.

(iii) In the event that the estimated fees and charges prove to be inadequate, the complaining person will be informed of the deficiency. Any complaining person that does not reimburse the Secretary full payment for fees and charges associated with a completed investigation shall be liable to be proceeded against in any court of competent jurisdiction in a suit by the United States to collect any monetary or other damages connected with the investigation.

(iv) The complaining person will be reimbursed by the Secretary for any overpayment of fees and charges, except for the $250.00 preliminary investigation fee which is non-refundable.

Dated: June 4, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91–13618 Filed 6–10–91; 8:45 am]

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Commodity Credit Corporation

7 CFR Part 1477

Disaster Payment Program for 1989 Crops

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Disaster Assistance Act of 1989 (the 1989 Act) provided assistance to eligible producers for losses of 1989 crop production due to damaging weather or related conditions in 1988 or 1989. The Food, Agriculture, Conservation, and Trade Act of 1990 (the 1990 Act) amended the 1989 Act to expand coverage of the 1989 Act to producers of nonprogram crops which were cropped more than once on the same farm in 1989 if such producers were located in counties declared to be a Presidential disaster area due to Hurricane Hugo. The Dire Emergency Supplemental Appropriations Act for Fiscal Year 1991, Public Law 102–27 (the 1991 Act), provides an appropriation of $1.4 million for such losses. Accordingly, this interim rule amends 7 CFR part 1477 to implement these statutory provisions.

EFFECTIVE DATES: This interim rule shall become effective on June 11, 1991. However, comments received on or before July 11, 1991 will be considered in development of the final rule.

ADDRESSES: Submit comments to: Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Charles M. Cox, Jr., Program Specialist, Cotton, Grain, and Rice Price Support Division (CGRD), Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC. Telephone: (202) 382–8757.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under USDA procedures established in accordance with provisions of Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified as "non major" since the program will not result in: (1) An annual effect on the economy of $100 million, or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or local geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of the law to publish a notice of interim rule making with respect to the subject matter of this rule.

An Environmental Evaluation with respect to the Disaster Payment Program was completed for the 1989 program. It has been determined that this action is not expected to have a significant impact on the quality of the human environment. In addition, it has been determined that this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, and land use and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The titles and numbers of Federal assistance program to which this rule applies are: Title—Cotton—10.502; Feed Grains—10.055; Wheat—10.058; Rice—10.065; as found in the Catalog of Federal Domestic Assistance.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Background

The 1900 Act amended the 1989 Act to provide for disaster payments, subject to congressional action providing for funds in advance by appropriation acts, for 1989 crops that are grown in a county declared to be a Presidential disaster area as a result of Hurricane Hugo. The 1991 Act subsequently enacted provided $1.4 million for such payments. In order to implement these provisions, this interim rule provides that producers who are eligible for such payments must produce nonprogram crops in those counties in South Carolina, North Carolina, Virginia, Puerto Rico, and the United States Virgin Islands declared by the President to be disaster areas as a result of Hurricane Hugo. Furthermore, such producers must have incurred a loss of at least 50 percent in order to receive such payment. All application for payments must be submitted by August 12, 1991. This interim rule also provides that the total payments for all producers is limited to $1.4 million.

List of Subjects in 7 CFR Part 1477

Agricultural commodities, Disaster assistance, Fraud, Grant programs—agriculture, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 1477 is amended as follows:

PART 1477—DISASTER PAYMENT PROGRAM FOR 1989 CROPS

1. The authority citation for 7 CFR part 1477 continues to read as follows:

Authority: 7 U.S.C. 1421 Note; 15 U.S.C. 714b and 714c.

2. Section 1477.1 is revised to read as follows:

§ 1477.1 General statement.

This part sets forth the regulations for the Disaster Payment Program as provided by the Disaster Assistance Act of 1989 as amended by the Food, Agriculture, Conservation and Trade Act of 1990. The purpose of the program is to make disaster payments to eligible producers on a farm who have suffered a loss of production of crops due to damaging weather or related condition in 1988 or 1989.

3. Section 1477.21 is added to read as follows:

§ 1477.21 Disaster Assistance for crops that were effected by Hurricane Hugo.

(a)(1) Notwithstanding any other provision of this part, the term "double-cropped" also includes the cropping of two crops of the same commodity by producers located in the following areas:

(i) South Carolina Counties: Berkeley, Calhoun, Charleston, Chester, Chesterfield, Clarendon, Colletion, Darlington, Dillon, Dorchester, Fairfield, Florence, Georgetown, Horry, Kershaw, Lancaster, Lee, Marion, Marlboro, Orangeburg, Sumter, Richland, Williamsburg, York;

(ii) North Carolina Counties: Alexander, Alleghany, Anson, Ashe, Avery, Brunswick, Burke, Cabarrus, Caldwell, Catawba, Cleveland, Davidson, Davie, Forsyth, Gaston, Guilford, Iredell, Lincoln, Mecklenburg, Montgomery, Richmond, Rowan, Stanly, Stokes, Surry, Union, Watuaga, Wilkes, Yadkin;

(iii) Virginia Counties: Carroll, Floyd, Grayson;

(iv) Puerto Rico: Adjuntas, Agua Buenas, Airbonita, Arecibo, Arroyo, Barceloneta, Barranquitas, Bayamon,

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Caguas, Camuy, Canovanas, Carolina, Catano, Cayey, Ceiba, Ciales, Cidra, Coamo, Comerio, Corozal, Culebra, Dorado, Fajardo, Florida, Guabo, Guayama, Guaynabo, Hatillo, Humacao, Jayuya, Juncos, Lares, Las Piedras, Loiza, Luquillo, Manati, Maunabo, Morovis, Naguabo, Naranjito, Orocovis, Patillas, Penuelas, Ponce, Rio Grande, Salinas, San Juan, San Loerenzo, Toa Alta, Toa Baja, Trujillo Alto, Utuado, Vega Alta, Vega Baja, Viegues, Villalba, Yabucoa; and

(v) U.S. Virgin Islands: St. Croix, St. John, St. Thomas.

(2) Producers of nonprogram crops considered double cropped as defined in this section located in areas specified in paragraph (a)(1) of this section who did not previously file for assistance under this part or whose original request was not accepted by CCC must file an application for disaster assistance for this program by August 12, 1991. County Agricultural Stabilization and Conservation committees and the Caribbean Agricultural Stabilization and Conservation Committee may allow up to 15 days after the final enrollment date for producers to submit records of production which are necessary to determine the producer's loss of production.

(b) The total amount of assistance made available under this section shall be $1,400,000. In the event the total of the approved losses determined in accordance with this section exceeds $1,400,000, CCC shall make such payments on a pro rata basis.

Signed at Washington, DC on June 5, 1991.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91-13819 Filed 6-10-91; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-03-AD; Amendment 39-7037; AD 91-13-06]

Airworthiness Directives; McDonnell Douglas Model DC-9 Series, Model DC-9-80 Series, C-9 (Military), and Model MD-88 Airplanes, Equipped With Westinghouse Bus Control Unit, Part Number 947F946-2

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC-9 and DC-9-80 series airplanes, Model MD-88 airplanes, and C-9 (Military) airplanes, which currently requires the affected airplanes to be operated with an interim electrical operating procedure and restricted operation of the automatic landing system. This amendment requires the installation of an improved Bus Control Unit. This amendment is prompted by reports of loss of generator electrical power and/or electrical power interruption during flight. This condition, if not corrected, could result in partial or total loss of generator electrical power.

EFFECTIVE DATE: July 15, 1991.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1-L5B (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Ms. Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM-133L, FAA Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5343.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by superseding AD 90-03-17, Amendment 39-6496 (55 FR 3047, January 30, 1990), applicable to McDonnell Douglas Model DC-9 and DC-9-80 series airplanes, Model MD-88 airplanes, and C-9 (Military) airplanes, to require the installation of an improved Westinghouse Bus Control Unit (BCU), Part Number 947F946-3, was published in the **Federal Register** on February 25, 1991 (56 FR 7622).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the proposal.

Paragraph C. of the final rule has been revised to specify the current procedures for submitting requests for approval of alternative means of compliance.

The economic analysis paragraph, below, has been revised to increase the specified hourly labor rate from $40 per manhour (as cited in the preamble to the Notice) to $55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 1,500 Model DC-9 series, Model DC-9-80 series, and Model MD-88 airplanes of the affected design in the worldwide fleet. It is estimated that 741 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. The cost of parts to accomplish the required modification will be paid by Westinghouse. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $81,510.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator,

the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-6496 and by adding the following new airworthiness directive.

91-13-06. McDonnell Douglas: Amendment 39-7037. Docket No. 91-NM-03-AD. Supersedes AD 90-03-17.

Applicability: Model DC-9 series, Model DC-9-80 series, C-9 (Military), and Model MD-88 airplanes, equipped with Westinghouse bus control unit (BCU) Part Number 947F946-2, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent the loss of generator electrical power, accomplish the following:

A. Within 30 days after February 15, 1990 (the effective date of AD 90-03-17, Amendment 39-6496), add the following to the LIMITATIONS section of the approved Airplane Flight Manual (AFM). This may be accomplished by inserting a copy of this AD into the AFM.

1. On takeoff with both engine generators and APU generator operating and APU bus switches selected to the ON position, the AC BUS X-TIE switch must be placed in the OPEN position. At or above 10,000 feet MSL with both engine generators operating, the APU may be shut down and the AC BUS X-TIE switch placed in the AUTO position.

Note: In the event of an in-flight failure of an engine generator that results in the APU generator powering an AC bus, de-activate all galley power and place the other APU BUS switch in the ON position.

2. On takeoff with the APU generator inoperative, or an engine generator inoperative, dispatch is permitted in accordance with the present MMEL conditions except that the AC BUS X-TIE switch must be in the OPEN position. Verify that all transformer rectifiers (TR's) are operating and place the DC BUS X-TIE switch in the CLOSE position. Takeoff minimums are restricted to ceiling 1,000 foot and visibility 3 miles. The Captain must make the takeoff with this instrument incandescent flood lights adjusted to a level which would adequately compensate for the subsequent potential loss of his instrument integral lights. At or above 10,000 feet MSL, place the DC BUS X-TIE switch in the OPEN position and the AC BUS X-TIE switch in the AUTO position.

Note: In the event of an in-flight failure of an engine generator following dispatching with the APU generator powering an AC bus, de-activate all galley power and place the other APU BUS switch in the ON position.

3. When operating with the AC BUS X-TIE switch in the AUTO position, if rapid cycling of the AC cross-tie relay occurs, manifested by a buzzing/chattering sound from the electrical power center and any combination of random circuit breaker trips, inappropriate aural warning messages, loss of some flight instruments, and/or flashing cockpit annunciators, place the AC BUS X-TIE switch to the OPEN position. If a generator trips off-line, it may be reset only once. If the engine generator fault cannot be cleared, the APU should be utilized, if available.

4. Prior to the approach with both engine generators operating, start the APU and place both APU BUS switches to the ON position. Place the AC BUS X-TIE switch to the OPEN position after APU electrical power becomes available.

5. Prior to the approach with only two generators operating, place the AC BUS X-TIE switch in the OPEN position. Landing minimums are restricted to Category I and the Captain must make the approach with his instrument incandescent flood lights adjusted to a level which would adequately compensate for the subsequent potential loss of his instrument integral lights.

6. In the event of an in-flight failure that results in an AC bus not powered, place the DC BUS X-TIE switch in the CLOSE position.

7. In the event of an in-flight failure that results in both AC BUSES being powered by only one generator, the landing minimums are restricted to ceiling 1,000 feet and 3 miles visibility. The Captain must make the approach and landing.

8. Autoland is permitted with two engine generators operating and APU generator operating with both APU BUS switches in the ON position and the AC BUS X-TIE switch in the OPEN position. Reconfirm APU generator availability after "AUT LND/AUT LND" is indicated on the Flight Mode Annunciator (FMA). An autoland approach must be discontinued following a failure of an engine generator.

B. Within 2 years after the effective date of this AD, replace the Westinghouse Bus Control Unit, Part Number 947F946-2 with the Westinghouse Bus Control Unit, Part Number 947F946-3, in accordance with McDonnell Douglas DC-9 Service Bulletin 24-119 dated January 24, 1990. The limitations on the electrical operating procedures and restricted operation of the automatic landing system required by paragraph A. of this AD may be removed from the AFM when the modified Westinghouse BCU is installed.

C. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

D. Special flight permits may be issued in accordance with FAA 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirement of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Business Unit Manager, Technical Publications, C1-HCW (54-60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment supersedes Amendment 39-6496, AD 90-03-17.

This amendment (39-7037, AD 91-13-06) becomes effective July 15, 1991.

Issued in Renton, Washington, on May 31, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-13790 Filed 6-10-91; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084-AA26

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Ranges of Comparability for Room Air Conditioners

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission announces that the present ranges of comparability for room air conditioners will remain in effect until new ranges are published.

Under the Appliance Labeling Rule, each required label on a covered appliance must show a range, or scale, indicating the range of energy costs or efficiencies for all models of a size or capacity comparable to the labeled model. The Commission publishes the ranges annually in the **Federal Register** if the upper or lower limits of the ranges change by 15% or more from the previously published ranges. If the Commission does not publish revised ranges, it must publish a notice that the prior ranges will be applicable until new ranges are published. The Commission is today announcing that the ranges published on September 22, 1989, for room air conditioners will remain in effect until new ranges are published.

EFFECTIVE DATE: June 11, 1991.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202-326-3035,

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Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On November 19, 1979, the Commission issued a final rule,[1] pursuant to section 324 of the Energy Policy and Conservation Act of 1975,[2] covering certain appliance categories, including room air conditioners. The rule requires that energy costs and related information be disclosed on labels and in retail sales catalogs for all room air conditioners presently manufactured. Certain point-of-sale promotional materials must disclose the availability of energy usage information. If a room air conditioner is advertised in a catalog from which it may be purchased by cash, charge account or credit terms, then the range of estimated annual energy costs for the product must be included on each page of the catalog that lists the product. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of test procedures developed by the Department of Energy, which are referenced in the rule.

Section 305.8(b) of the rule requires manufacturers to report the energy usage of their models annually by specified dates for each product type.[3] Because the costs for the various types of energy change yearly, and because manufacturers regularly add new models to their lines, improve existing models and drop others, the data base from which the ranges of comparability are calculated is constantly changing.

To keep the required information in line with these changes, the Commission is empowered, under § 305.10 of the rule, to publish new ranges (but not more often than annually) if an analysis of the new data indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission must publish a statement that the prior range or ranges remain in effect for the next year.

The annual reports for room air conditioners have been received and analyzed and it has been determined to retain the ranges that were published on September 22, 1989.[4] In consideration of the foregoing, the present ranges for room air conditioners will remain in effect until the Commission publishes new ranges for these products.

[1] 44 FR 66466, 16 CFR 305.
[2] Public Law 94-163, 89 Stat. 871 (Dec. 22, 1975).
[3] Reports for room air conditioners are due by May 1.
[4] 54 FR 38868.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

The authority citation for part 305 continues to read as follows:

Authority: Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94-163) (1975), as amended by the National Energy Conservation Policy Act, (Pub. L. 95-619) (1978), the National Appliance Energy Conservation Act, (Pub. L. 100-12) (1987), and the National Appliance Energy Conservation Amendments of 1988, (Pub. L. 100-357) (1988), 42 U.S.C. 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 91-13816 Filed 6-10-91; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09-91-12]

Special Local Regulations: Milwaukee Air and Water Show, Milwaukee Harbor, Milwaukee, WI

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special Local Regulations are being adopted for the Milwaukee Air and Water Show. This event will be held in the Milwaukee Harbor on the 21st, 22nd, and 23rd of June 1991 from 10 a.m. (c.d.s.t.) until 7 p.m. (c.d.s.t.), each day. The regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective from 10 a.m. (c.d.s.t.) until 7 p.m. (c.d.s.t.), each day, on the 21st, 22nd, and 23rd of June 1991.

FOR FURTHER INFORMATION CONTACT: Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, Search and Rescue Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199-2060, (216) 522-4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received until 21 May 1991, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, project officer, Search and Rescue Branch and M. Eric Reeves, Lieutenant Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Milwaukee Air and Water Show will be conducted in the Milwaukee Harbor on the 21st, 22nd, and 23rd of June 1991. This event will have an estimated 65, combined, unlimited hydroplanes and stock outboard tunnel hull boats racing in a two mile oval course in Milwaukee Harbor, which could pose hazards to navigation in the area. Any vessel desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Officer in Charge, U.S. Coast Guard Station Milwaukee, WI).

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Temporary Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

PART 100—[AMENDED]

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary § 100.35-T0912 to read as follows:

§ 100.35-T0912 Milwaukee Air and Water Show, Milwaukee Harbor, Milwaukee, WI.

(a) *Regulated area:* That portion of Lake Michigan-Milwaukee Harbor bounded by the shore and lines between the following points: starting from shore at position 43 degrees 02 minutes 04 seconds North, 087 degrees 53 minutes 43 seconds West, then east to the outer breakwall at position 43 degrees 02 minutes 04 seconds North, 087 degrees 52 minutes 58 seconds West, thence north along the outer breakwall to position 43 degrees 02 minutes 29 seconds North, 087 degrees 52 minutes 52 seconds West, then northwest to shore at position 43 degrees 02 minutes 41 seconds North, 087 degrees 53 minutes 07 seconds West.

(b) *Special Local Regulations:* (1) The above area will be closed to vessel navigation and anchorage, except when expressly authorized by the Coast Guard Patrol Commander, from 10 a.m. (c.d.s.t.) until 7 p.m. (c.d.s.t.), each day, on the 21st, 22nd, and 23rd of June 1991.

(2) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Any vessel, not authorized to participate in the event, desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Transiting vessels will be operated at bare steerageway, and will exercise a high degree of caution in the area.

(3) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels partrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(5) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(6) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Dated: May 31, 1991.

G.A. Penington,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 91-13806 Filed 6-10-91; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD5-91-013]

Drawbridge Operation Regulations—Atlantic Intracoastal Waterway, Albemarle & Chesapeake Canal, Chesapeake, VA

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule with request for comments.

SUMMARY: In order to evaluate changes requested by the motoring public to the drawbridge opening regulations for the Centerville Turnpike Bridge across the Atlantic Intracoastal Waterway, Albemarle & Chesapeake Canal, mile 15.2, in Chesapeake, Virginia, the Coast Guard is issuing a temporary deviation from the regulations for a 60-day period. The flow of vehicular traffic across the bridge and the impact on marine traffic through the bridge during this period will be evaluated to determine whether the current regulations should be amended. The current regulations require that the bridge open on dem. nd at any time. Changes to drawbridge regulations are intended to provide for regularly scheduled drawbridge openings to reduce motor vehicle traffic delays and congestion on the roads and highways linked by the drawbridge while still providing for the reasonable needs of navigation.

DATES: This Temporary Rule is effective from June 1, 1991, through July 31, 1991. Comments must be received on or before July 15, 1991.

ADDRESSES: Comments should be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. The comments received will be available for inspection and copying at room 507 at the above address between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398-6222.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reasons for any recommended changes to the temporary rule. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope. The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered, if final action is taken to change the rules. No public hearing will be held for this action.

Drafting Information

The drafters of these regulations are Linda L. Gilliam, project officer, and LT Monica Lombardi, project attorney.

Discussion of Temporary Regulations

These temporary regulations are being issued to evaluate a proposed change to the drawbridge opening regulations for the Centerville Turnpike Bridge across the Albemarle & Chesapeake Canal in Chesapeake, Virginia.

The impact of the proposed change to the regulations on highway and marine traffic during a 60-day period will be evaluated to determine if the changes will result in a substantial improvement in vehicular traffic flow without unreasonably restricting marine traffic.

The current drawbridge regulation for the Centerville Turnpike Bridge requires that it open on demand, 24-hours a day, year round. This temporary 60-day regulation will limit openings of the draw for recreational vessels only, by scheduling openings for such vessels on the hour and half-hour between 7 a.m. and 7 p.m., seven days a week. Commercial vessels will not be affected and may pass on signal at any time.

The Coast Guard believes these temporary regulations will not unduly restrict vessel passage through the bridge, as vessel operators and the marine industry can plan transits to conform with this temporary regulation. Since this temporary rule serves the immediate interests of highway traffic with no expected significant adverse impacts on marine traffic, I find good cause exists for publishing this

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temporary rule without publication of a notice of proposed rulemaking and for making it effective in less than 30 days.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the temporary regulation will not raise sufficient federalism implications to warrant preparation of a Federalism Assessment.

Regulatory Evaluation

This temporary regulation is considered to be non-major under Executive Order 12291 and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this temporary regulation on commercial navigation or on any industries that depend on waterborne transportation should be minimal based on the fact that the bridge will continue to open on demand for commercial traffic. Since the economic impact of this temporary regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This temporary regulation has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.(5) of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations

In consideration of the foregoing, part 117 of Title 33, Code of Federal Regulations, is temporarily amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); 33 CFR 117.43.

2. Section 117.997(e) is temporarily added to read as follows:

§ 117.997 Atlantic intrscoastal Waterway, Southern Branch of the Elizabeth River to the Albemarle and Chesapeake Canal.

* * * * *

(e) The draw of the Centerville Turnpike (SR 170) bridge across the Albemarle and Chesapeake Canal, mile 15.2, at Chesapeake, shall open on signal, except that, from 7:00 a.m. to 7:00 p.m., the draw need be opened only every half-hour, seven days a week, year-round for the passage of pleasure craft. Public vessels of the United States, commercial vessels, and vessels in an emergency condition which endangers life or property shall be passed at any time.

Dated: May 24, 1991.

H.B. Gehring,

Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District Acting.

[FR Doc. 91–13566 Filed 6–10–91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[Regulation 91–09]

Safety Zone Regulations: Louisville, KY

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Ohio River, miles 598.0 to 604.3. The zone is needed to protect all vessels and spectators from a safety hazard associated with a fireworks display sponsored by the Louisville Chamber of Commerce. Vessels will be allowed to transit the zone between miles 598.0 and 603.2 at a no wake speed. Entry into this zone between miles 603.2 and 604.3 is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective at 9:30 p.m. (EDST) on 04 July 1991. It terminates at 11 p.m. (EDST) on 04 July 1991 unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: CWO R. L. Johnson (502) 582–5194.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication due to the short notice of the incident. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to potential hazards to the vessels involved.

Drafting Information

The drafter of this regulation is CWO R. L. Johnson, project officer for the Captain of the Port.

Discussion of Regulation

The event requiring this regulation will begin on 04 July 1991 at 9:30 p.m. EDST and end on 04 July 1991 at 11 p.m. EDST. The fireworks display will take place at mile 603.9 on the Ohio River. The river closure and speed control are needed to protect river traffic, spectators and moored vessels.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new 165.T2025 is added to read as follows:

§ 165.T2025 Safety Zone: All waters of the Ohio River from Mile 598.0 to 604.3.

(a) *Location.* The following area is a safety zone: All waters of the Ohio River Mile 598.0 to 604.3.

(b) *Effective date.* This regulation becomes effective at 9:30 p.m. e.d.s.t. on 04 July 1991. It terminates at 11 p.m. e.d.s.t. on 04 July 1991, unless sooner terminated by the Captain of the Port.

(c) *Regulations.* (1) In accordance with the general regulations in 165.23 of this part, vessels transiting the zone between miles 598.0 and 603.2 will proceed at a no wake speed. Entry into this zone between miles 603.2 and 604.3 is prohibited unless authorized by the Captain of the Port.

(2) The Captain of the Port's representative may be contacted on VHF radio Channel 16 during the event.

Dated: 22 May 1991.

D.W. Cleaveland,

Captain of the Port, Louisville, Kentucky.

[FR Doc. 91–13807 Filed 6–10–91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[Regulation 91–08]

Safety Zone Regulations: Louisville, KY

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Ohio River, mile 738.8 to 739.8. The zone is needed to protect all vessels and spectators from a safety hazard associated with a fireworks display for the Lewisport, KY Heritage Festival. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective at 9 p.m. (CDST) on 15 June 1991. It terminates at 11 p.m. (CDST) on 15 June 1991 unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: CWO R. L. Johnson (502) 582–5194.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication due to the short notice of the incident. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to potential hazards to the vessels involved.

Drafting Information

The drafter of this regulation is CWO R. L. Johnson, project officer for the Captain of the Port.

Discussion of Regulation

The event requiring this regulation will begin on 15 June 1991 at 9 p.m. CDST and end on 15 June 1991 at 11 p.m. CDST. The fireworks display will take place at mile 739.3 on the Ohio River. The river closure is needed to protect river traffic and spectators.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

Lists of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new 165.T2024 is added to read as follows:

§ 165.T2024 Safety Zone: all waters of the Ohio River from Mile 738.8 to 739.8.

(a) *Location.* The following area is a safety zone: All waters of the Ohio River Mile 738.8 to 739.8.

(b) *Effective date.* This regulation becomes effective at 9 p.m. CDST on 15 June 1991. It terminates at 11 p.m. CDST on 15 June 1991, unless sooner terminated by the Captain of the Port.

(c) *Regulations.* (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

(2) The Captain of the Port's representative may be contacted on VHF radio Channel 16 during the event.

Dated: May 22, 1991.

D.W. Cleaveland,

Captain of the Port, Louisville, Kentucky.

[FR Doc. 91–13808 Filed 6–10–91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[Regulation 91–12]

Safety Zone Regulations; Louisville, KY

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Ohio River, mile 792.0 to 793.0. The zone is needed to protect all vessels and spectators from a safety hazard associated with a fireworks display sponsored by the Evansville Freedom Festival. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective at 8:30 p.m. (CDST) on 04 July, 1991. It terminates at 10:30 p.m. (CDST) on 04 July 1991 unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: CWO R. L. Johnson (502) 582–5194.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication due to the short notice of the incident. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to potential hazards to the vessels involved.

Drafting Information

The drafter of this regulation is CWO R. L. Johnson, project offier for the Captain of the Port.

Discussion of Regulation

The event requiring this regulation will begin on 04 July 1991 at 8:30 p.m. CDST and end on 04 July 1991 at 10:30 p.m. CDST. The fireworks display will take place at mile 792.5 on the Ohio River. The river closure is needed to protect river traffic and spectators.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new 165.T2028 is added as follows:

§ 165.T2028 Safety Zone: All waters of the Ohio River from Mile 792.0 to 793.0

(a) *Location.* The following area is a safety zone: All waters of the Ohio River Mile 792.0 to 793.0.

(b) *Effective date.* This regulation becomes effective at 8:30 p.m. CDST on 04 July 1991. It terminates at 10:30 p.m. CDST on 04 July 1991, unless sooner terminated by the Captain of the Port.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

(2) The Captain of the Port's representative may be contacted on VHF radio Channel 16 during the event.

Dated: 22 May 1991.

D.W. Cleaveland,

Captain of the Port, Louisville, Kentucky.

[FR Doc. 91–13809 Filed 6–10–91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[Regulation 91–11]

Safety Zone Regulations; Louisville, KY

AGENCY: Coast Guard, DOT.

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ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone for the Ohio River, mile 757.0 to 758.0. The zone is needed to protect all vessels and spectators from a safety hazard associated with a fireworks display sponsored by the Owensboro Summer Festival. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective at 9:00 p.m. (CDST) on 04 July, 1991. It terminates at 10:30 p.m. (CDST) on 04 July 1991 unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: CWO R. L. Johnson (502) 582-5194.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication due to the short notice of the incident. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to potential hazards to the vessels involved.

Drafting Information

The drafter of this regulation is CWO R. L. Johnson, project officer for the Captain of the Port.

Discussion of Regulation

The event requiring this regulation will begin on 04 July 1991 at 9:00 p.m. CDST and end on 04 July 1991 at 10:30 p.m. CDST. The fireworks display will take place at mile 757.5 on the Ohio River. The river closure is needed to protect river traffic and spectators.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. A new 165.T2027 is added as follows:

§ 165.T2027 Safety Zone: All waters of the Ohio River from Mile 757.0 to 758.0

(a) *Location.* The following area is a safety zone: All waters of the Ohio River Mile 757.0 to 758.0.

(b) *Effective date.* This regulation becomes effective at 9 p.m. CDST on 04 July 1991. It terminates at 10:30 p.m. CDST on 04 July 1991, unless sooner terminated by the Captain of the Port.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

(2) The Captain of the Port's representative may be contacted on VHF radio Channel 16 during the event.

Dated: 22 May 1991.

D.W. Cleaveland,

Captain of the Port, Louisville, Kentucky.

[FR Doc. 91-13810 Filed 6-10-91; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[Regulation 91-03]

Safety Zone Regulations; Lower Mississippi River Mile 733.0 to 738.0 and the Wolf River Chute Mile 0.0-1.0

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Lower Mississippi River from mile 733.0 to mile 738.0 and the Wolf River Chute mile 0.0 to 1.0. The safety zone is needed to protect commerical and recreational marine traffic from a safety hazard associated with an airshow occurring over the Mississippi River and the Wolf River Chute. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation is effective on the following times and dates: 2 p.m. to 4:30 p.m. on 14 June 1991, 2 p.m. to 5 p.m. on 15 June 1991; and 8 p.m. to 9:45 p.m. on 15 June 1991, 2 p.m. to 5 p.m. on 16 June 1991.

FOR FURTHER INFORMATION CONTACT: ENS. Randall Tucker, Coast Guard Marine Safety Office, Memphis, TN (901) 544-3941.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to potential hazards to the vessels involved.

DRAFTING INFORMATION: The drafter of this regulation is ENS Randall Tucker, project officer for the Captain of the Port.

DISCUSSION OF THE REGULATION: The event requiring this regulation will occur on 14 through 16 June 1991. This safety zone is established in conjunction with an airshow over the Lower Mississippi River and the Wolf River Chute, therefore, making it ncessary to ensure the safety of commerical and recreational craft in the area.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. A new § 165.T0215 is added to read as follows:

§ 165.T0215 Safety Zone: Lower Mississippi River From Mile 733.0 to Mile 738.0 and the Wolf River Chute Mile 0.0-1.0.

(a) *Location.* The following area is a safety zone: Lower Mississippi River from mile 733.0 to mile 738.0 and the Wolf River Chute mile 0.0-1.0.

(b) *Effective date.* This regulation is effective on the following times and dates: 2 p.m. to 4:30 p.m. on 14 June 1991, 2 p.m. to 5 p.m. on 15 June 1991; and 8 p.m. to 9:45 p.m. on 15 June 1991, 2 p.m. to 5 p.m. on 16 June 1991.

(c) *Regulation.* In accordance with the general regulations in § 165.23 of this part, no vessel may enter or remain in this zone during the times indicated unless authorized by the Captain of the Port, Memphis, TN.

Dated: 23 May 1991.

M.J. Deschoe,

Captain of the Port, Memphis, TN.

[FR Doc. 91-13811 Filed 6-10-91; 8:45 am]

BILLING CODE 4910-14-M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 519

[APD 2800.12A, CHGE 23]

General Services Administration Acquisition Regulation; SBA 8(a) Program

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), chapter 5, is amended to add section 519.201 to establish procedures for the Director of Small and Disadvantaged Business Utilization to recommend that procurements be set-aside under FAR 19.5 or 19.8; and to add subpart 519.8 to provide procedures for consideration by contracting officers of recommendations by the Director of Small and Disadvantaged Business Utilization or Small Business Technical Advisors that a procurement be set-aside for the 8(a) program.

EFFECTIVE DATE: June 13, 1991.

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad, Office of GSA Acquisition Policy, (202) 501-1224.

SUPPLEMENTARY INFORMATION:

A. Public Comments

This rule was not published in the **Federal Register** for public comments because it simply establishes internal operating procedures and has no impact on offerors or contractors.

B. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations for Executive Order 12291. The exemption applies to this proposed rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96-511) does not apply to this rule because it is not a "significant revision" as defined in FAR 1.501-1, i.e., it does not have a significant effect beyond the internal operating procedures of the agency.

D. Paperwork Reduction Act

This proposed rule does not contain any recordkeeping or information collection requirements that require the approval of OMB under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Part 519

Government procurement.

48 CFR part 519 is amended to read as follows:

PART 519—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 519.2—Policies

1. The authority citation for 48 CFR part 519 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. Section 519.201 is added to read as follows:

519.201 General policy.

The Director of Small and Disadvantaged Business Utilization (AU) may make recommendations to the contracting officer as to whether a particular acquisition should be awarded under FAR 19.5 as a set-aside (including those involving Labor Surplus Areas) or under FAR 19.8 as a section 8(a) award directly or though the SBTA.

3. Subpart 519.8 is added to read as follows:

Subpart 519.8—Contracting With the Small Business Administration (The 8(a) Program)

519.803 Selecting acquisitions for the 8(a) program.

519.803-70 Contracting Officer evaluation of recommendations for 8(a) set-aside(s).

If the Director of Small and Disadvantaged Business Utilization (AU) or the SBTA recommends that a procurement be set-aside for award under the 8(a) program and the contracting officer disagrees, the contracting officer shall discuss the matter with the official that made the recommendation before making a final decision. If the contracting officer decides not to award the contract under the 8(a) program as recommended, the reasons for the decision must be documented for the record as required by FAR 19.202 and a copy of the documentation must be forwarded to AU within 10 working days of the contracting officer's decision.

Dated: May 23, 1991.

Richard H. Hopf III,

Associate Administrator for Acquisition Policy.

[FR Doc. 91-13741 Filed 6-10-91; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. 25; Notice 65]

RIN 2127-AE02

Consumer Information Regulations; Uniform Tire Quality Grading Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This rule amends certain provisions of the Uniform Tire Quality Grading Standards (UTQGS), by rescinding the initial 30-day effective date concerning tire rotation in treadwear convoys and adopting a new effective date of September 1, 1993. Based on its further review, the agency has determined that the final rule provided insufficient leadtime to require tire rotation among vehicles in treadwear convoys. This notice also postpones the effective date for the provision regarding assigning treadwear grades in 20-point intervals until September 1, 1993. The agency believes that this additional leadtime will reduce the costs of this amendment. Finally, this rule responds to other issues raised in petitions for reconsideration by clarifying the amendment to the wheel alignment specification and denying a request to modify the simplified grading method.

DATES: The amendment in amendatory instruction 3 to § 575.104 (e)(1) and (e)(2)(i)-(viii) is effective June 11, 1991, through August 31, 1993.

The amendments in amendatory instruction 3A to § 575.104 (e)(1) and (e)(2)(i)-(viii) become effective on September 1, 1993. Tires manufactured before September 1, 1993 may comply with the post-September 1993 requirements for tire rotation among treadwear convoy vehicles.

The amendments to §§ 575.104(d)(2)(i) and 575.104(e)(2)(ix)(F) become effective on September 1, 1993.

Petitions for reconsideration. Any petitions for reconsideration of this rule must be received by NHTSA no later than July 11, 1991.

ADDRESSES: Any petition for reconsideration should refer to the docket and notice number set forth in the heading of this notice and be submitted to: Administrator, NHTSA,

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400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Nelson Gordy, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366–4797.

SUPPLEMENTARY INFORMATION:

Background Information

Under the Uniform Tire Quality Grading Standards (UTQGS), manufacturers or brand name owners of passenger car tires are required to provide consumers with information about their tires' relative performance in terms of treadwear, traction, and temperature resistance. (49 CFR 575.104). The primary purpose of the treadwear grades is to aid consumers in the selection of new tires by informing them of the relative amount of expected tread life for each tire offered for sale.

The treadwear grades are based on the test results of tires on vehicles traveling 6,400 miles over a predetermined outdoor course on public roads near San Angelo, Texas. In order to compare candidate tire performances measured at different times under different road conditions, there must be a correction of test results to account for the effects of the particular environmental conditions of each test. This correction is accomplished by including "course monitoring tires" (CMTs) in all treadwear test fleets. The treadwear of the CMT reflects changes in course severity due to factors such as road surface wear and environmental conditions. Differences between the wear rate of the CMT under the set of conditions experienced by test fleets versus a base wear rate (explained further later in this notice) for the CMT are used to adjust the measured treadwear of the candidate tires.

Until very recently, treadwear test convoys consisted of one rear-wheel-drive passenger car with four CMTs and up to three other rear-wheel-drive passenger cars with candidate tires of the same construction type. 49 CFR 575.104(e) (1)–(2). After each 800 miles of the test, each tire's tread depth was measured, the tires on each car were rotated to a different position on the same car, the order of the cars in the convoy was changed, and the wheel alignments were readjusted if necessary to bring them within the ranges of the vehicle manufacturer's specifications. At the end of the 16-circuit test, each tire's overall wear rate was calculated from the tread depths measured after each interval by using the regression line technique in appendix C of § 575.104. The tires were then assigned treadwear grades in 10-point intervals.

On January 19, 1989, NHTSA issued a notice of proposed rulemaking (NPRM), proposing four changes that the agency tentatively concluded would make treadwear grades more representative by reducing the variability or simplifying the calculations related to these grades. (54 FR 2167). Less variability in treadwear test results would provide consumers with more precise information about relative tread life of different tires.

These proposals were adopted in a final rule issued on November 15, 1990. (55 FR 47765). First, the new rule amended the requirements about the wheel alignment of test vehicles so that they are set more precisely, based on the vehicle manufacturer's specifications. Second, the rule amended the requirements about tire rotation so that all tires, both candidate tires and CMTs, in a treadwear convoy are to be driven on each wheel position on each vehicle the same distance. Third, the rule amended the requirements to permit a simplified method for treadwear grading so that tire tread depth measurements may be taken twice instead of nine times. Fourth, it amended the requirements to replace the previous practice of assigning grades in 10-point intervals to reflect the differences in treadwear with a new practice of assigning grades in 20-point intervals. The first three amendments became effective on December 17, 1990. The fourth amendment was set to take effect on November 15, 1991.

Petitions for Reconsideration

In response to the final rule, the agency received petitions for reconsideration from the Rubber Manufacturers Association (RMA), Standards Testing Laboratories (STL), Texas Test Fleet, Long and Associates, and Smithers Scientific Services. This notice responds to the petitions for reconsideration.

Wheel Alignment Specification

The previous UTQGS provisions required wheel alignment to be adjusted, as specified by the vehicle manufacturer. Thus, alignment factors could vary with the range specified by the manufacturer. To reduce variability, the final rule prescribed exact alignment settings rather than a range.

In their petitions for reconsideration, Smithers and RMA commented that because no alignment equipment can be perfectly accurate, all such equipment permit an allowable tolerance. Accordingly, they requested that the wheel alignment requirements be modified to account for this limitation by including the phrase "within the capability of the equipment used."

Upon reconsideration, the agency recognizes that vehicle alignment factors set to the mid-point of the manufacturer's specifications or to the manufacturer's recommended tolerance cannot be absolute, given the physical limitations of alignment machines. Despite these limitations, these settings can be made within the tolerances of the alignment machines. To accommodate this situation, the agency has decided to add the sentence—"In all cases, the setting is within the tolerance specified by the manufacturer of the alignment machine"—to the provisions that address wheel alignment (§ 575.104 (e)(2)(iv), (e)(2)(vii), and (e)(2)(viii) (C) and (D).

Tire Rotation Among Convoy Vehicles

The previous UTQGS provisions required that tires be rotated to each wheel position on a given passenger car in a treadwear test convoy. (575.104(e)). However, tires were not required to be rotated to other cars in a convoy.

In the November 15, 1990 final rule, the agency amended § 575.104(e) to require tires to be rotated among convoy vehicles so that each tire is at each wheel position in the test convoy for the same distance. The agency believed that this amendment would limit the effects of vehicle and driver variability. At the time, the agency believed that the amendment would be feasible and would not impose significant hardships, even for tires that were not 14 inches in diameter.

In their petitions for reconsideration, all the petitioners commented that the new rotation requirements would result in significant problems. Accordingly, the petitioners requested the agency to withdraw the new rotation requirements or delay the amendment's effectiveness until the agency can procure CMTs and make them available to UTQG testers. The petitioners stated that at present NHTSA did not have CMTs available in enough sizes and load carrying capacities to properly test all tire lines. In addition, Smithers, RMA, and STL argued that a delay was necessary to allow the agency time to establish base course wear rates for the new CMTs.

Upon reconsideration, the agency has determined that the December 17, 1990 effective date for the tire rotation requirements provided insufficient leadtime to require tire rotation among vehicles in treadwear convoys. In light of the arguments presented in the petitions, NHTSA has carefully reexamined the tire rotation amendment to determine an appropriate effective date. Based on this re-examination, the agency has decided to adopt an effective date of September 1, 1993. As the petitioners correctly noted, additional leadtime is necessary to avoid practicability problems which would arise from a short leadtime. Specifically, rotation of tires among all vehicles in a treadwear convoy requires the availability of CMTs of approximately the same size as the candidate tires. CMTs are specially manufactured tires whose wear rate is compared to the wear rate of the candidate tires to minimize variations in treadwear caused by factors other than the quality of the candidate tires. Along with the time needed to procure and produce CMTs, NHTSA normally makes two determinations about a new group of CMTs before making those CMTs available to manufacturers for use in testing. First, the agency ensures that the coefficient of variation (COV) for new CMTs does not exceed 5.0. Second, it determines the base course wear rate (BCWR) for new CMTs. The BCWR is necessary to allow persons testing candidate tires to adjust the wear rates of the candidate tires to reflect the severity of the environmental conditions encountered during the testing.

Contrary to the agency's determination in the final rule that the new rotation requirements could take effect soon after the rule was published, the agency now believes that such an implementation date is impracticable, given the additional time necessary to procure and test CMTs in sizes other than the currently available 14-inch CMTs. Accordingly, the agency is adopting a September 1, 1993 effective date for the tire rotation requirements. The agency notes that tires manufactured before September 1, 1993 may comply with the new requirements. To minimize the disruption of the treadwear grading, the agency is immediately reinstating the requirements for treadwear convoys that were in effect before the recent amendments. In the meantime, the agency will begin to procure new CMTs and establish their new base course wear rates. The agency further notes that it will take no enforcement action regarding the requirements about rotation among treadwear convoy vehicles in effect between December 17, 1990 and the issuance of this notice.

This notice's regulatory text sets forth the complete "treadwear grading procedures and conditions" in § 575.104(e) for both before and after September 1, 1993, except for the requirements in § 574.105(e)(2)(ix) which remain essentially unchanged. Given the complexity of these requirements, the agency believes that this approach will facilitate making the amendments understandable to the reader.

Simplification of the Grading Procedure

The previous UTQGS provisions required the evaluator to measure tread depth nine times, resulting in 4,320 measurements, during the test. In the final rule, the agency amended § 575.103(e) to permit the evaluator to measure tread depth either twice or nine times, thus resulting in the need for 960 rather than 4,320 measurements. The final rule explained that the simplified grading method will provide representative treadwear grades, while simplifying the test procedures, reducing costs, and reducing the complexity of the calculations.

In its petition for reconsideration, Smithers commented that the two-point method would result in increased variability and the issuance of an unneeded, additional report. It further stated that evaluators would still rely on the nine-point method and that no manufacturer would elect the two-point method unless it yielded a higher grade. Accordingly, Smithers requested that the nine-point method be mandatory.

After reviewing the treadwear grading procedures, the agency has decided to deny the petitioner's request to permit only the nine-point method. As explained in the final rule, because the grades determined by the simplified two-point method and the nine-point method are not significantly different, variability is not a problem. In addition, providing the optional two-point method permits a simplified test procedure, may reduce costs, and reduces the complexity of the calculations.

Increase Treadwear Grade Interval From 10 to 20 Points

The previous UTQGS provisions required that the projected mileage for treadwear grades be expressed in 10-point intervals. (575.104(d)(2)(i), see also § 575.104(e)(ix)(F)). In the November 15, 1990 final rule, the agency amended the provisions to require treadwear grades to be expressed in 20-point intervals. The agency believed that since most passenger car tires are of a radial design with significantly longer treadwear than bias and bias-ply tires, the 20-point interval is more relevant to consumer's buying decisions. The agency provided a one-year leadtime for this amendment, which was set to take effect on November 15, 1991.

In its petition for reconsideration, RMA requested that the amendment about the 20-point grade level interval be withdrawn. In the alternative, the petitioner requested that for tire lines existing on December 17, 1990 with treadwear grades in multiples of ten, the agency should allow them to retain their current grade until the tire line is phased out of production or the grade is changed. The petitioner stated that applying the 20-point grade amendment to molds of currently existing tire lines would provide no benefit to consumers but would cause considerable costs and problems to manufacturers.

Upon reconsideration, the agency has determined that a longer leadtime is necessary to reduce the costs associated with the amendment. Accordingly, the agency is postponing the effective date of November 15, 1991 and adopting a new effective date of September 1, 1993. Based on statements in the petition, the agency now believes that without the additional leadtime, the amendment might result in considerable costs and problems to tire manufacturers without providing corresponding benefits to consumers sufficient to justify the burdens. In particular, the agency is concerned that the new grading requirements would require the restamping of thousands of tire molds and related consumer publications within an unreasonably short timeframe, potentially resulting in substantial costs and unjustified losses of production. Additionally, the agency notes that a significant number of tire lines are routinely phased-out or regraded over the course of three years. These difficulties can be substantially reduced by allowing additional leadtime. Therefore, the agency has decided to postpone the implementation of this provision until September 1, 1993.

Effective Date

Section 103(c) of the Vehicle Safety Act requires that each order shall take effect no sooner than 180 days or later than one year from the date the order is issued unless "good cause" is shown that an earlier or later effective date is in the public interest. After reevaluating the amendments in light of the petitions for reconsideration, NHTSA believes that there is "good cause" to provide leadtime of less than 180 days for the modification of the wheel alignment requirements, since the amendment merely clarifies the provisions. For the same reason, there is "good cause" to make this provision effective within less than 30 days. The agency further believes that there is "good cause" to provide leadtime of more than one year for the other amendments. The additional leadtime to the rotation requirements should alleviate the

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practicability problems raised by the petitioners. The agency notes that tires manufactured before September 1, 1993 may comply with the new requirements. The additional leadtime to the provisions about 20-point intervals should significantly reduce the costs associated with that amendment.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has analyzed this rule and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The agency believes that a full regulatory evaluation is not required because the rule will have only minimal economic impacts. Adopting a later effective date for the treadwear convoy rotation requirements should not adversely affect any person, since the agency is only allowing sufficient time for the agency to procure and test the course monitoring tires. Adopting an effective date of September 1, 1993 for the grade interval requirement should not significantly affect any person, since the greater leadtime will minimize any cost impacts of this requirement. Therefore, a full regulatory evaluation has not been prepared.

Regulatory Flexibility Act

NHTSA has also considered the effects of this regulatory action under the Regulatory Flexibility Act. I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities. The parties affected by these changes are tire manufacturers and brand name owners. Few, if any, of the tire manufacturers are small entities. However, some of the brand name owners and UTQG test evaluators may qualify as small entities. Since the economic impacts of these amendments will be minimal, as described above, any impacts on brand name owners and tire manufacturers will not be significant. Small organizations and small governmental entities may be affected by these amendments, as purchasers of new tires. Again, however, any economic impacts on these small entities will not be substantial.

Executive Order 12612 (Federalism)

The rule has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that it does not have sufficient Federalism implications to warrant the preparation of Federalism Assessment.

National Environmental Policy Act

The agency has also reviewed the rule under the National Environmental Policy Act and determined that it will not have a significant effect on the human environment.

List of Subjects in 49 CFR Part 575

Consumer protection, Labeling, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 575—CONSUMER INFORMATION REGULATIONS

In consideration of the foregoing, 49 CFR 575.104, Uniform Tire Quality Grading Standards is amended as follows:

1. The authority citation for part 575 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1407, 1421, 1423; delegation of authority at 49 CFR 1.50.

§ 575.104 [Amended]

2. Section 575.104(d)(2)(1) is revised to read as follows:

* * * * *

(2) *Performance*—(i) *Treadwear.* Each tire shall be graded for treadwear performance with the word "TREADWEAR" followed by a number of two or three digits representing the tire's grade for treadwear, expressed as a percentage of the NHTSA nominal treadwear value, when tested in accordance with the conditions and procedures specified in paragraph (e) of this section. On and before August 31, 1993, treadwear grades shall be in multiples of 10. (e.g., 80, 150). On and after September 1, 1993, treadwear grades shall be in multiples of 20. (e.g., 80, 120, and 160).

* * * * *

3. Section 575.104 (e)(1) and (e)(2)(i) through (viii) are revised effective June 11, 1991, through August 31, 1993 to read as follows:

* * * * *

(e) *Treadwear grading conditions and procedures*—(1) *Conditions.* (i) Tire treadwear performance is evaluated on a specific roadway course approximately 400 miles in length, which is established by the NHTSA both for its own compliance testing and for that of regulated persons. The course is designed to produce treadwear rates that are generally representative of those encountered by tires of differing construction types. The course and driving procedures are described in Appendix A of this section.

(ii) Treadwear grades are evaluated by first measuring the performance of a candidate tire on the government test course, and then correcting the projected mileage obtained to account for environmental variations on the basis of the performance of the course monitoring tires of the same general construction type (bias, bias-belted, or radial) run in the same convoy. The three types of course monitoring tires are made available by the NHTSA at Goodfellow Air Force Base, San Angelo, Tex., for purchase by any persons conducting tests at the test course.

(iii) In convoy tests, each vehicle in the same convoy, except for the lead vehicle, is throughout the test within human eye range of the vehicle immediately ahead of it.

(iv) A test convoy consists of no more than four passenger cars, each having only rear-wheel drive.

(v) On each convoy vehicle, all tires are mounted on identical rims of design or measuring rim width specified for tires of that size in accordance with 49 CFR 571.109, S4.4.1 (a) or (b), or a rim having a width within −0 to +0.50 inches of the width listed.

(2) *Treadwear grading procedure.* (i) Equip a convoy as follows: Place four course monitoring tires on one vehicle. On each other vehicle, place four candidate tires with identical size designations. On each axle, place tires that are identical with respect to manufacturer and line.

(ii) Inflate each candidate and each course monitoring tire to the applicable pressure specified in Table 1 of this section.

(iii) Load each vehicle so that the load on each course monitoring and candidate tire is 85 percent of the test load specified in § 575.104(h).

(iv) Adjust wheel alignment to the midpoint of the vehicle manufacturer's specifications, unless adjustment to the midpoint is not recommended by the manufacturer; in that case, adjust the alignment to the manufacturer's recommended setting. In all cases, the setting is within the tolerance specified by the manufacturer of the alignment machine.

(v) Subject candidate and course monitoring tires to "break-in" by running the tires in the convoy for two circuits of the test roadway (800 miles). At the end of the first circuit, rotate each vehicle's tires by moving each front tire to the same side of the rear axle and each rear tire to the opposite side of the front axle. Visually inspect each tire for any indication of abnormal wear, tread separation, bulging of the sidewall, or any sign of tire failure. Void the grading

results from any tire with any of these anomalies, and replace the tire.

(vi) After break-in, allow the air pressure in the tires to fall to the applicable pressure specified in Table I of this section or for 2 hours, whichever occurs first. Measure, to the nearest 0.001 inch, the tread depth of each candidate and each course monitoring tire, avoiding treadwear indicators, at six equally spaced points in each groove. For each tire compute the average of the measurements. Do not measure those shoulder grooves which are not provided with treadwear indicators.

(vii) Adjust wheel alignment to the midpoint of the manufacturer's specifications, unless adjustment to the midpoint is not recommended by the manufacturer; in that case, adjust the alignment according to the manufacturer's recommended setting. In all cases, the setting is within the tolerance specified by the manufacturer of the alignment machine.

(viii) Drive the convoy on the test roadway for 6,400 miles. After each 800 miles:

(A) Following the procedure set out in paragraph (e)(2)(vi) of this section, allow the tires to cool and measure the average tread depth of each tire;

(B) Rotate each vehicle's tires by moving each front tire to the same side of the rear axle and each rear tire to the opposite side of the front axle.

(C) Rotate the vehicles in the convoy by moving the last vehicle to the lead position. Do not rotate driver position within the convoy.

(D) Adjust the wheel alignment to the midpoint of the vehicle manufacturer's specification, unless adjustment to the midpoint is not recommended by the manufacturer; in that case, adjust the alignment to the manufacturer's recommended setting. In all cases, the setting is within the tolerance specified by the manufacturer of the alignment machine.

(E) If determining the projected mileage by the 9-point method set forth in (e)(2)(ix)(A)(1), measure the average tread depth of each tire following the procedure set forth in paragraph (e)(2)(vi) of this section.

(F) At the end of the test, measure the tread depth of each tire pursuant to the procedure set forth in paragraph (e)(2)(vi) of this section.

3A. Section 575.104 (e)(1) and (e)(2) (i) through (viii) is revised effective on and after September 1, 1993 and may be used at the manufacturer's option before this date:

* * * * *

(e) *Treadwear grading conditions and procedures*—(1) *Conditions.*

(i) Tire treadwear performance is evaluated on a specific roadway course approximately 400 miles in length, which is established by the NHTSA both for its own compliance testing and for that of regulated persons. The course is designed to produce treadwear rates that are generally representative of those encountered by tires in public use. The course and driving procedures are described in Appendix A of this section.

(ii) Treadwear grades are evaluated by first measuring the performance of a candidate tire on the government test course, and then correcting the projected mileage obtained to account for environmental variations on the basis of the performance of the course monitoring tires run in the same convoy. The course monitoring tires are made available by the NHTSA at Goodfellow Air Force Base, San Angelo, Tex., for purchase by any persons conducting tests at the test course.

(iii) In convoy tests, each vehicle in the same convoy, except for the lead vehicle, is throughout the test within human eye range of the vehicle immediately ahead of it.

(iv) A test convoy consists of two or four passenger cars, each having only rear-wheel drive.

(v) On each convoy vehicle, all tires are mounted on identical rims of design or measuring rim width specified for tires of that size in accordance with 49 CFR 571.109, S4.4.1 (a) or (b), or a rim having a width within −0 to +0.50 inches of the width listed.

(2) *Treadwear grading procedure.* (i) Equip a convoy as follows: Place four course monitoring tires on one vehicle. Place four candidate tires with identical size designations on each other vehicle in the convoy. On each axle, place tires that are identical with respect to manufacturer and line.

(ii) Inflate each candidate and each course monitoring tire to the applicable pressure specified in Table 1 of this section.

(iii) Load each vehicle so that the load on each course monitoring and candidate tire is 85 percent of the test load specified in § 575.104(h).

(iv) Adjust wheel alignment to the midpoint of the vehicle manufacturer's specifications, unless adjustment to the midpoint is not recommended by the manufacturer; in that case, adjust the alignment to the manufacturer's recommended setting. In all cases, the setting is within the tolerance specified by the manufacturer of the alignment machine.

(v) Subject candidate and course monitoring tires to "break-in" by running the tires in the convoy for two circuits of the test roadway (800 miles). At the end of the first circuit, rotate each vehicle's tires by moving each front tire to the same side of the rear axle and each rear tire to the opposite side of the front axle. Visually inspect each tire for any indication of abnormal wear, tread separation, bulging of the sidewall, or any sign of tire failure. Void the grading results from any tire with any of these anomalies, and replace the tire.

(vi) After break-in, allow the air pressure in the tires to fall to the applicable pressure specified in Table I of this section or for 2 hours, whichever occurs first. Measure, to the nearest 0.001 inch, the tread depth of each candidate and each course monitoring tire, avoiding treadwear indicators, at six equally spaced points in each groove. For each tire compute the average of the measurements. Do not measure those shoulder grooves which are not provided with treadwear indicators.

(vii) Adjust wheel alignment to the midpoint of the manufacturer's specifications, unless adjustment to the midpoint is not recommended by the manufacturer; in that case, adjust the alignment according to the manufacturer's recommended setting. In all cases, the setting is within the tolerance specified by the manufacturer of the alignment machine.

(viii) Drive the convoy on the test roadway for 6,400 miles.

(A) After each 400 miles, rotate each vehicle's tires by moving each front tire to the same side of the rear axle and each rear tire to the opposite side of the front axle. Visually inspect each tire for treadwear anomalies.

(B) After each 800 miles, rotate the vehicles in the convoy by moving the last vehicle to the lead position. Do not rotate driver positions within the convoy. In four-car convoys, vehicle one shall become vehicle two, vehicle two shall become vehicle three, vehicle three shall become vehicle four, and vehicle four shall become vehicle one.

(C) After each 800 miles, if necessary, adjust wheel alignment to the midpoint of the vehicle manufacturer's specification, unless adjustment to the midpoint is not recommended by the manufacturer; in that case, adjust the alignment to the manufacturer's recommended setting. In all cases, the setting is within the tolerance specified by the manufacturer of the alignment machine.

(D) After each 800 miles, if determining the projected mileage by the 9-point method set forth in (e)(2)(ix)(A)(1), measure the average tread depth of each tire following the

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procedure set forth in paragraph (s)(2)(vi) of this section.

(3) After each 1,000 miles, move the complete set of four tires to the following vehicle. Move the tires on the last vehicle to the lead vehicle. In moving the tires, rotate them as set forth in (s)(2)(viii)(A) of this section.

(F) At the end of the test, measure the tread depth of each tire pursuant to the procedure set forth in paragraph (s)(2)(vi) of this section.

* * * * *

4. Section 575.104(s)(2)(ix)(F) is revised to read as follows:

* * * * *

(F) Compute the percentage (P) of the NHTSA nominal treadwear value for each candidate tire using the following formula:

$$P = \frac{\text{Projected mileage}}{30{,}000} \times 100$$

On and before August 31, 1993, round off the percentage to the nearest lower 10-point increment. On and after September 1, 1993, round off the percentage to the nearest lower 20-point increment.

* * * * *

Issued on: June 4, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91-13597 Filed 6-10-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 901245-1160]

RIN 0648-AC95

Northeast Multispecies Fishery; Correction

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; interim final rule and request for comments; corrections.

SUMMARY: NMFS corrects errors in the preamble to the final rule to implement Amendment 4 to the Fishery Management Plan for the Northeast Multispecies Fishery, published May 31, 1991 (56 FR 24724).

FOR FURTHER INFORMATION CONTACT: Jack Terrill (NMFS, Resource Policy Analyst), 508-281-9252.

SUPPLEMENTARY INFORMATION: In rule document 91-12894 beginning on page 24724 in the issue of Friday, May 31, 1991, make the following corrections:

1. On page 24726, in the first column, under the "harvest" heading, in the second line after "June 27, 1991," insert "except for § 651.7(b)(2) and § 651.20(b)(1), which are effective June 10, 1991."

2. On page 24728, in the second column, under "Classification", insert the following as the third paragraph: "Sections 651.7(b)(2) and 651.20(b)(1) establish a larger mesh size for the Southern New England Yellowtail Area, to protect juvenile flounder following the spawning closure from March through May. It is contrary to the public interest to delay the effective date of the mesh size change for 30 days under section 553(d) of the Administrative Procedure Act, since the final rule is being published just as this area has reopened. An immediate effective date is necessary to prevent discard and mortality of significant amounts of small fish necessary to rebuild the yellowtail flounder resource."

Dated: June 7, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 91-13595 Filed 6-7-91; 2:57 pm]

BILLING CODE 3510-22-M

50 CFR Part 661

[Docket No. 910626-1515]

RIN 0648-AC93

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to implement Amendment 10 (amendment) to the Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California Commencing in 1978 (FMP). This rule: (1) Revises the method of inseason reallocation of coho salmon south of Cape Falcon, Oregon, which will help assure completion of the recreational season and allow the commercial fishery an opportunity to harvest any available reallocation; and (2) modifies the criteria that guide ocean harvest allocation for the recreational fisheries north of Cape Falcon, including inseason and geographic deviations from the allocation schedule.

EFFECTIVE DATE: July 11, 1991.

ADDRESSES: Copies of the amendment, including the environmental assessment and the regulatory impact review, are available from the Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, Oregon 97201-5344.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Northwest Region, NMFS), 206-526-6140; Rodney R. McInnis (Southwest Region, NMFS), 213-514-6199; or Lawrence D. Six (Pacific Fishery Management Council), 503-221-6352.

SUPPLEMENTARY INFORMATION:

Background

As authorized by the Magnuson Fishery Conservation and Management Act (Magnuson Act), the FMP was prepared by the Pacific Fishery Management Council (Council) and approved by the Secretary of Commerce (Secretary) on March 3, 1978. Since then, the FMP has been amended nine times, with implementing regulations codified at 50 CFR part 661. From 1979 to 1983, the FMP was amended annually. In 1984, a framework amendment was implemented that provided the mechanism for making preseason and inseason adjustments in the regulations without annual amendments (49 FR 43679, October 31, 1984). Amendments to the framework FMP were also implemented in 1987, 1988, and 1989.

The major purposes of Amendment 10 are: (1) To modify the date, from August 1 to August 15, before which surplus coho salmon south of Cape Falcon, Oregon, may be reallocated from the recreational to the commercial fishery for the purpose of assuring completion of the recreational season while allowing the commercial fishery an opportunity to harvest any available surplus; (2) to modify the criteria that guide ocean harvest allocation between management subareas for the recreational fisheries north of Cape Falcon, including inseason and preseason deviations from the allocation schedule; and (3) to define overfishing based on the spawning escapement goals for the salmon stocks specified in the FMP. All of the above, except the definition of overfishing, necessitated a change in the framework procedure set forth in the appendix to 50 CFR part 661.

A notice of availability of Amendment 10 was published in the Federal Register on January 8, 1991 (56 FR 630). A 60-day public comment period for Amendment 10 ended on February 27, 1991. Proposed regulations to implement Amendment 10 were published in the Federal Register on February 19, 1991 (56 FR 6624). A 45-day public comment period for the implementing regulations ended on March 29, 1991. The preamble to the proposed rule discussed the rationale for the proposed amendments. The amendment was approved by the Director, Northwest Region, NMFS, on April 5, 1991. This final rule makes editorial changes only to the proposed regulations published on February 19, 1991 (56 FR 6618). Comments received during the public comment period are summarized and responded to below.

All of the six letters received addressed only the modification of criteria guiding the non-treaty catch allocation north of Cape Falcon, Oregon. Two respondents supported the amendment. Four respondents opposed this portion of the amendment, specifically the removal of the existing preseason authority to deviate from the preseason subarea allocations for the recreational fishery in order to protect weak salmon stocks and provide larger overall recreational harvest north of Cape Falcon.

Comment 1: In the event that weak stocks are impacted to a greater degree by the fishery north of Leadbetter Point, Washington, preseason flexibility would allow the overall recreational catch to be increased by shifting the majority of the fishery (i.e., quota) south of Leadbetter Point.

Response: The amendment establishes a baseline preseason geographic distribution of coho salmon north of Cape Falcon as 50 percent to the area north of Leadbetter Point, Washington, and 50 percent to the area south of Leadbetter Point. Recreational fishing representatives from north and south of Leadbetter Point could not reach consensus on criteria for preseason deviations from the baseline allocations. The Council's recommended alternative recognizes this lack of consensus by removing the existing preseason flexibility to deviate from the 50/50 allocations. Recreational fishermen from north of Leadbetter Point objected to preseason flexibility for fear that southward shifts of the recreational quota would adversely impact recreational fishing opportunities and the local communities north of Leadbetter Point. The Council will be considering alternatives for preseason flexibility for inclusion in the next amendment cycle.

Comment 2: Under the amendment, the Council no longer has the flexibility to manage for the protection of weak stocks.

Response: The Council has not lost the flexibility to manage for the protection of weak stocks. The change merely removes the ability to shift harvest to different subareas in order to increase the overall harvest. In the recreational fishery, there is some importance in having the fishery occur predictably in various areas rather than being moved out of one area in order to increase the overall catch.

Two respondents supported the recommended action and expressed a willingness to continue to work towards agreement on greater preseason flexibility to deviate from the baseline subarea allocations. They preferred that the Council address the issue of preseason flexibility in its next amendment to the FMP.

Classification

The Regional Director determined that the amendment is necessary for the conservation and management of the ocean salmon fishery and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared an environmental assessment for the amendment. Based on this assessment, the Assistant Administrator for Fisheries (Assistant Administrator) concluded that there will be no significant impact on the human environment as a result of this rule. The environmental assessment is part of the amendment and may be obtained from the Council (see ADDRESSES).

The Assistant Administrator has determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. This determination was based on analysis of the regulatory impact review (RIR) prepared for this rule. A copy of the RIR may be obtained from the Council (see ADDRESSES).

The General Counsel of the Department of Commerce certified to the Small Business Administration that the rule will not have a significant economic impact on a substantial number of small entities. As a result, a final regulatory flexibility analysis was not prepared.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of the States of Washington, Oregon, and California, and the San Francisco Bay Conservation and Development Commission. This determination was submitted to the responsible state agencies and the San Francisco Bay Commission for review under section 307 of the Coastal Zone Management Act. All agencies either agreed with this determination or failed to comment within the statutory time period for comment.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Dated: June 5, 1991.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 661 is amended to read as follows:

PART 661—OCEAN SALMON FISHERIES OFF THE COASTS OF WASHINGTON, OREGON, AND CALIFORNIA

1. The authority citation for 50 CFR part 661 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In the appendix, in section II.B., paragraph 2(a)(iii)(D) is revised and new paragraphs 2(a)(iii) (E) and (F) are added to read as follows:

Appendix

* * * * *

II. * * *

B. * * *

2. * * *

(a) * * *

(iii) * * *

(D) Any increase or decrease in the recreational or commercial allowable ocean harvest resulting from an inseason restructuring of a fishery or other inseason management action does not require reallocation of the overall non-treaty allowable ocean harvest north of Cape Falcon between the recreational and commercial fisheries.

(E) The commercial allowable ocean harvest of chinook and coho derived during the preseason allocation process may be varied by major subareas (i.e., north of Leadbetter Point and south of Leadbetter Point) if there is need to do so to decrease impacts on weak stocks. Deviations in each major subarea will generally not exceed 50 percent of the allowable ocean harvest of each species that would have been established without a geographic deviation in the distribution of the allowable ocean harvest. Deviation of more than 50 percent will be based on a conservation need to protect the weak stocks and will provide larger overall harvest for the entire fishery north of Cape Falcon than would have been possible without the deviation.

(F) The recreational allowable ocean harvest of chinook and coho derived during the preseason allocation process will be distributed among the three major recreational subareas as described in the

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coho and chinook distribution sections below. Additionally, based upon the recommendation of the recreational Salmon Advisory Subpanel representatives for the area north of Cape Falcon, the Council will include criteria in its preseason salmon management recommendations to guide any inseason transfer of coho among the recreational subareas to meet recreational season duration objectives. Inseason redistributions of subarea quotas within the recreational fishery or the distribution of allowable coho catch transfers from the commercial fishery among subareas may deviate from the preseason distribution. The Council may also establish additional subarea quotas within a major subarea to meet recreational season objectives based on agreement of representatives of the affected ports.

Coho Distribution—The preseason recreational allowable ocean harvest of coho north of Cape Falcon will be distributed to provide 50 percent to the area north of Leadbetter Point and 50 percent to the area south of Leadbetter Point. In years with no fishery in Washington State management area 4B, the distribution of coho north of Leadbetter Point will be divided to provide 74 percent to the subarea between Leadbetter Point and the Queets River (Westport) and 26 percent to the subarea north of the Queets River (Neah Bay/La Push). In years when there is an Area 4B fishery under state management, 25 percent of the numerical value of that fishery shall be added to the recreational allowable ocean harvest north of Leadbetter Point prior to applying the sharing percentages. That same value would then be subtracted from the Neah Bay/La Push share in order to maintain the same total distribution north of Leadbetter Point.

Chinook Distribution—Subarea distributions of chinook will be managed as guidelines based on calculations of the Salmon Technical Team with the primary objective of achieving all-species fisheries without imposing chinook restrictions (i.e., area closures or bag limit reductions).

Chinook in excess of all-species fisheries' needs may be utilized by directed chinook fisheries north of Cape Falcon or by negotiating a preseason species trade of chinook and coho between commercial and recreational allocations in accordance with paragraph 2(a)(iii)(A) of this section.

Inseason management actions may be taken by the Regional Director to assure meeting the primary objective of achieving all-species fisheries without imposing chinook restrictions in each of the recreational subareas north of Cape Falcon. Such actions might include but are not limited to: closure from 0 to 3, or 0 to 6, or 3 to 200, or 5 to 200 nautical miles from shore; closure from a point extending due west from Tatoosh Island for 5 miles, then south to a point due west of Umatilla Reef Buoy, then due east to shore; closure from North Head at the Columbia River mouth north to Leadbetter Point; change in species that may be landed; or other actions as prescribed in the annual management measures.

* * * * *

3. In the appendix, in section II.B., paragraph 2(b)(iii) is revised to read as follows:

II. * * *
B. * * *
2. * * *
(b) * * *

(iii) No later than August 15 each year, the Salmon Technical Team will estimate the number of coho salmon needed to complete the recreational seasons. Any coho salmon allocated to the recreational fishery that are not needed to complete the recreational seasons will be reallocated to the commercial fishery. Once reallocation has taken place, the remaining recreational quota will change to a harvest guideline. If the harvest guideline for the recreational fishery is projected to be reached on or before Labor Day, the Regional Director may allow the recreational fishery to continue through the Labor Day weekend only if there is no significant danger of impacting the allocation of another fishery or of failing to meet an escapement goal.

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[FR Doc. 91-13782 Filed 6-10-91; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 112
Tuesday, June 11, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1435

Sugar

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations at 7 CFR part 1435 with respect to the Sugar Price Support Program which is conducted by the Commodity Credit Corporation (CCC) in accordance with section 206 of the Agricultural Act of 1949, as amended (the 1949 Act). This rule is necessary in order to implement changes made by section 901 of the Food, Agriculture, Conservation, and Trade Act of 1990 (the 1990 Act) to authorize the Price Support Program for the 1991 through 1995 crops of sugar cane and sugar beets.

DATES: Comments must be received on or before July 11, 1991 in order to be assured of consideration.

ADDRESSES: Submit comments to Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013, telephone (202) 447-7641.

FOR FURTHER INFORMATION CONTACT: Dave Wolf, Program Specialist, Cotton, Grain, and Rice Price Support Division (CGRD), Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC, telephone (202) 447-4704.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under United States Department of Agriculture (USDA) procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512-1 and it has been determined to be "major" because these program provisions will result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. A regulatory impact analysis is available from the previously mentioned contact.

The title and number of the Federal assistance program, as found in the catalogue of Federal Domestic Assistance, to which this notice applies is Commodity Loans and Purchases—10.051.

It has been determined that the Regulatory Flexibility Act is not applicable because the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that the program will have no significant impact on the quality of the human environment.

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, and 48 FR 29115 (June 24, 1983).

Public reporting burden for the information collections contained in this regulation with respect to the sugar price support program is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The information collection has previously been cleared by OMB, and assigned number 0560-0087.

This proposed rule would amend 7 CFR part 1435 to set forth the regulations which are necessary to implement title IX of the 1990 Act which amends the 1949 Act to authorize the price support program for the 1991 through 1995 crops of sugar cane and sugar beets. With the exception of the changes made necessary by the 1990 Act, the proposed rule generally provides the same provisions for these crops as were applicable to the 1990 crops with technical changes to delete obsolete provisions and to make corrections.

Section 206 of the 1949 Act establishes the term of the price support loan for a crop of sugar as the end of the ninth month or the end of the fiscal year, whichever comes first. In addition, in areas in which sugar beets normally are harvested during the last 3 months of a fiscal year, initial loans must be available on sugar processed from sugar beets harvested during such period of time must be repaid by September 30. Because of the short loan period for the initial loan, supplemental loans must also be made available beginning on October 1 for such initial loans which are repaid by October 1. The supplemental loan will mature at the end of the ninth month less the amount of time that the initial loan was made.

Accordingly, this rule amends § 1435.6(d) to establish the loan date as the last day of the ninth month following the month in which the loan was disbursed, and adds paragraph (e) to the section to provide for supplemental loans.

In the past, CCC assumed a pro rata share of the loss if all or part of the sugar pledged as collateral for loan were destroyed by specified acts of nature through no fault of the processor. This rule amends § 1435.8(b)(5) to provide that CCC shall not assume any loss in quantity or quality of loan collateral.

Since sugar price support loans are nonrecourse loans, CCC requires that sugar pledged as collateral for a price support loan must be free and clear of any an all liens. Accordingly, this rule would amend §§ 1435.9(c) and 1435.12(d) to provide that processors shall obtain and file in the county office, lien waivers to protect the interests of CCC.

List of Subjects in 7 CFR Part 1435

Loan programs—agriculture, Price support programs, Reporting and recordkeeping requirements, Sugar.

Accordingly, 7 CFR Part 1435 is revised as follows:

PART 1435—SUGAR

Subpart—Price Support Loan Program for the 1991 and Subsequent Crops of Sugar Beets and Sugarcane

Sec.
1435.1 Applicability.
1435.2 Administration.

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Sec.

1435.3 Definitions.
1435.4 Method of support and loan rates.
1435.5 Eligibility requirements.
1435.6 Availability, disbursement, and maturity of loans.
1435.7 Quantity eligible for loan.
1435.8 Loan maintenance and liquidation.
1435.9 Delivery to CCC, quality, and storage facility requirements.
1435.10 Processor storage agreement.
1435.11 Fees, charges, interest, and bonding.
1435.12 Miscellaneous provisions.
1435.13 Applicable forms.

Subpart—Regulations Governing the Protection of Sugar Producers

1435.100 General statement.
1435.101 Definitions.
1435.102 Producer eligibility.
1435.103 Benefit payment to producers.
1435.104 Liens.
1435.105 Subrogation of claims.

Subpart—Price Support Loan Program for the 1991 and Subsequent Crops of Sugar Beets and Sugarcane

Authority: 7 U.S.C. 1421, 1423, 1446g; 15 U.S.C. 714b and 714c.

§ 1435.1 Applicability.

(a) The regulations in this subpart are applicable to the 1991 and subsequent crops of sugar beets and sugarcane. These regulations set forth the terms and conditions under which price support loans shall be entered into by the Commodity Credit Corporation ("CCC") with eligible processors. Additional terms and conditions are set forth in the loan application and note and security agreement which must be executed by a processor in order to receive such a loan.

(b) Price support loan rates which are used in administering the price support program for a crop of sugar beets or sugarcane are available in State and county Agricultural Stabilization and Conservation Service ("ASCS") offices ("State and county offices", respectively).

(c) Price support loans shall be available as provided in this part with regard to sugar beets and sugarcane produced in the United States.

§ 1435.2 Administration.

(a) The price support program which is applicable to a crop of sugar beets or sugarcane shall be administered under the general supervision of the Administrator, ASCS, and shall be carried out in the field by State and county Agricultural Stabilization and Conservation committees ("State and county committees", respectively).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, an action taken by such county committee which is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this part.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, or the Administrator, ASCS, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator, State and County Operations, ASCS, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not affect adversely the operation of the price support program.

(f) A representative of CCC may execute price support loans and related documents only under the terms and conditions determined and announced by CCC. Any such document which is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by CCC, shall be null and void.

§ 1435.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in parts 719 and 1413 of this title shall also be applicable.

Crop year means the period from July 1 through June 30, inclusive. In referring to the crop year for a particular crop, the crop year begins on July 1 of the year of that crop. For example, the crop year for the 1991 crop begins on July 1, 1991 and is referred to as the "1991 crop year". "1991 crop" means sugar processed from domestically-produced sugar beets or sugarcane during the 1991 crop year.

Eligible producer means the owner of a portion or all of the domestically produced sugar beets or sugarcane, including share rent landowners, at both the time of harvest and the time of delivery to the processor, except producers determined to be ineligible as a result of the regulations governing highly erodible land and wetland conservation found at 7 CFR part 12 or the regulations governing controlled substances violations at 7 CFR part 796.

Eligible storage means a storage facility meeting the requirements set forth in § 1435.9(d) of this subpart.

Normal juice means the undiluted juice extractable from sugarcane by a mill tandem when no maceration water is added during the milling process.

Normal juice purity means a percentage expressing the ratio of the quantity of sucrose to the quantity of dissolved solids in normal juice.

Normal juice sucrose means the percentage of sucrose in normal juice.

Processor means a person or legal entity that either commercially processes sugar beets into refined sugar or processes sugarcane into raw sugar, cane syrup, or edible molasses or is a cooperatively-owned refiner of raw cane sugar which markets refined cane sugar and raw cane sugar on behalf of its members and non-member patrons who are eligible producers.

Raw value of any quantity of sugar means its equivalent in terms of ordinary commercial raw sugar testing 96 degrees by the polariscope.

Secretary means the Secretary of Agriculture or an official who has been designated to act on behalf of the Secretary.

Sugar means refined beet sugar, refined cane sugar, raw cane sugar, sugarcane syrup, or edible molasses which:

(1) Is processed by a processor from domestically-produced sugar beets or sugarcane, and

(2) Meets the quality requirements set forth in § 1435.9(b) of this subpart.

Sugar beets of average quality and *Sugarcane of average quality* means sugar beets and sugarcane containing a percentage of sucrose as set forth in notices published in the **Federal Register** for the applicable crop year.

§ 1435.4 Method of support and loan rates.

(a) Price support to eligible producers of the 1991 through 1995 crops of sugar beets and sugarcane processed during the applicable crop year is available through nonrecourse loans to eligible processors.

(b) The basic (weighted average) loan rates for the 1991 through 1995 crops of domestically grown:

(1) Sugarcane shall be 18 cents per pound for raw cane sugar.

(2) Sugar beets shall be an amount determined and announced by CCC which:

(i) Bears the same relation to the support level for the crop of sugarcane as the weighted average of producer returns for sugar beets bears to the weighted average of producer returns for sugar cane, expressed on a cents per pound basis for refined beet sugar and raw cane sugar, for the most recent 5-year period for which data are available; plus

(ii) Covers sugar beet processor fixed marketing expenses.

(c) The 1991 through 1995 crop loan rates applicable to eligible sugar shall be adjusted to reflect the processing location of the sugar offered as collateral for a price support loan and are available from State offices.

§ 1435.5 Eligibility requirements.

(a)(1) The maximum quantity of sugar which is eligible to be pledged as collateral for price support loans by an eligible processor is that quantity of domestically-produced sugar which is equivalent to the quantity of sugar processed by the processor during the applicable crop year from sugar beets and sugarcane grown by eligible producers. Such sugar must be processed and owned by the eligible processor or jointly owned by the eligible processor and eligible producer, pledging the sugar as collateral for loan and must be in eligible storage.

(2) For purposes of this paragraph and § 1435.7 of this subpart, sugar that is processed after June 30 of a particular crop year, but before October 1 of the subsequent crop year, from sugar beets harvested during a continuous harvest which began during the particular crop year, shall be considered as having been processed during that particular crop year.

(b) Eligible processors are those processors who, as a condition of obtaining a CCC price support loan, agree to pay to all eligible producers who have delivered or will deliver to such processor for processing sugar beets or sugarcane not less than the minimum price support levels specified by CCC for the applicable crop year.

§ 1435.6 Availability, disbursement, and maturity of loans.

(a)(1) To obtain price support on eligible sugar, an eligible processor:

(i) Must file a request for a price support loan, as prescribed by CCC, with the State committee of the State where such processor is headquartered or a county committee designated by the State committee; and

(ii) Must execute a note and security agreement and storage agreement as prescribed by CCC.

(2) The request for price support:

(i) May be filed no earlier than October 1 and must be filed no later than June 30 of the applicable crop year, and

(ii) May include a quantity of sugar which the processor estimates will be processed after that crop year but will be considered as having been processed during that crop year in accordance with the provisions of § 1435.5(a) of this subpart.

(3) No loan proceeds may be disbursed for such sugar until it has actually been processed and is otherwise established as being eligible to be pledged as loan collateral.

(b) A processor may, within the loan availability period, repledge to CCC as collateral eligible sugar that has previously served as loan collateral for a price support loan that has been repaid.

(1) In making application for such loan, the processor shall:

(i) Specify that the loan collateral should be treated as a quantity of eligible sugar that has previously served as loan collateral for a price support loan which has been repaid.

(ii) Designate the original price support loan with respect to which the reoffered loan collateral was originally pledged.

(2) The maturity date of the subsequent loan shall be determined in accordance with paragraph (d) of this section.

(3) Loan collateral repledged that has been previously redeemed from CCC shall not be included in determining the total cumulative quantity of sugar on which loans have been obtained for purposes of § 1435.7 of this subpart.

(c) Disbursement will be made by means of checks drawn on the account of CCC.

(1) Disbursements shall be made without regard to the actual polarity of the sugar pledged as collateral for the price support loan but shall be made on the assumption that the polarity of such sugar is 96 degrees by the polariscope.

(2) Adjustments for polarity will be made at the time of the settlement of the loan.

(d) Unless CCC and the processor agree otherwise, loans will mature on the last day of the ninth month following the month in which the loan is disbursed, but in no event later than September 30 following disbursement of the loan.

(1) Loan maturity dates may be accelerated by CCC in accordance with § 1435.8(b)(3) of this subpart.

(2) CCC and the processor may agree upon an earlier or later maturity date but in no event later than September 30 following disbursement of the loan, if such maturity date will not impair the effectiveness of the price support program, as determined by CCC.

(e)(1) Notwithstanding any other provision of this part, in areas where CCC determines that sugar beets normally are harvested during July, August, and September a processor may:

(i) Obtain a loan with respect to sugar processed from such production, and

(ii) If such loan is repaid by September 30, request a supplemental nonrecourse loan.

(2) Such supplemental loan:

(i) May be requested by the processor on the first day of October following the month the initial loan made in accordance with paragraph (e)(1) of this section was repaid;

(ii) Shall be at the same loan rate as the loan made in accordance with paragraph (a) of this section; and

(iii) Shall mature on the last day of the ninth month following the month in which the supplemental loan was disbursed, minus the number of months the initial loan made in accordance with paragraph (a) of this section was in effect.

§ 1435.7 Quantity eligible for loan.

(a) Price support loans shall not be approved for more than the quantity of sugar which an eligible processor certifies is eligible and available to be pledged as collateral for a loan.

(b) Sugar pledged as collateral for a loan is not required to be stored identity-preserved.

(c) The total cumulative quantity of sugar that may be pledged as collateral for a price support loan may not exceed the maximum quantity of sugar eligible to be pledged as loan collateral as determined in § 1435.5(a) of this subpart.

(d) The total quantity of sugar which a processor may pledge as collateral for a loan at any single time may not exceed:

(1) The total eligible storage capacity less ineligible sugar in storage; or

(2) The quantity of eligible sugar processed during the applicable crop year, whichever is less.

§ 1435.8 Loan maintenance and liquidation.

(a) A processor shall maintain in eligible storage eligible sugar of sufficient quality and quantity to satisfy the processor's loan indebtedness to CCC.

(1) By executing a Marketing Authorization for Loan Collateral (Form CCC–681–1), the processor may request and obtain prior written approval of the loanmaking office to remove a specified quantity of the loan collateral for the purpose of delivering it to a buyer prior to repayment of the loan.

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(2) The loanmaking office shall not approve such a request unless the buyer of the sugar agrees to pay to CCC an amount necessary to satisfy the processor's loan indebtedness with respect to the sugar which has been purchased. Any such approval shall not:

(i) Constitute a release of CCC's security interest in the sugar, or

(ii) Relieve the processor of liability for the full amount of the loan indebtedness, including interest.

(b)(1) At the processor's option, a processor may, at any time prior to maturity of the loan, redeem all or any part of the loan collateral by paying to CCC the principal amount of the loan, plus interest, applicable to the quantity of sugar redeemed.

(2)(i) If a processor desires to forfeit all or any part of the loan collateral to CCC, the processor must notify in writing the appropriate loanmaking office of the processor's intent to forfeit the loan collateral and the amount of loan collateral which the processor intends to forfeit. Such notice must be delivered to the loanmaking office no later than 30 days prior to the maturity date of the loan. CCC shall not accept delivery of sugar in settlement of a price support loan in excess of the amount specified in the notice of intent to forfeit.

(ii) Notwithstanding the fact that the processor has given notice of intent to forfeit, the processor may, at any time prior to maturity of the loan, redeem the loan collateral in accordance with paragraph (b)(1) of this section.

(iii) If the processor does not redeem any amount of the loan collateral with respect to which a notice of intent to forfeit has been properly given, the unredeemed loan collateral will, without further action by CCC or the processor, be deemed to have been delivered to CCC in-store at the processor's storage facility on the day following the maturity date of the loan.

(A) Upon delivery, title and all rights and interest with respect to the sugar shall immediately vest in CCC.

(B) Delivery of eligible sugar in eligible storage will be accepted as payment in full of the principal amount of the loan, plus interest, applicable to the quantity of sugar delivered.

(3) CCC may at any time accelerate the date for repayment of the loan indebtedness, including interest. CCC will give the processor notice of such acceleration at least 15 days in advance of the accelerated loan maturity date. In the event of any such acceleration, the processor may elect to redeem or forfeit all or any part of the loan collateral in accordance with the provisions of paragraphs (b) (1) and (2) of this section. The required notice of intent to forfeit, as set forth in paragraph (b)(2)(i) of this section, may be given at any time prior to the accelerated maturity date.

(4) If the loan indebtedness, including interest, is not satisfied in accordance with the provisions of this section, CCC may, upon notice, with or without removing the collateral from storage, sell such collateral at either a public or private sale. CCC may become the purchaser. If the net proceeds are less than the amount due on the loan, the processor shall be liable to CCC for the difference.

(5) The processor shall at all times be responsible for maintaining the quality and quantity of the loan collateral.

(c) Storage costs through the loan maturity date shall be borne by the borrower.

(d) If CCC determines, by actual measurement or otherwise, that the actual quantity serving as collateral for a price support loan is less than the loan quantity, because of incorrect certification, unauthorized removal, or unauthorized disposition, CCC may call the loan. Such determination shall result in the processor being deemed ineligible for price support through at least the crop year after the crop year in which the incorrect certification, unauthorized removal, or unauthorized disposition was discovered.

§ 1435.9 Delivery to CCC, quality, and storage facility requirements.

(a) The quantity of sugar which a processor may deliver to CCC in settlement of the loan shall not exceed the quantity of sugar which is shown on the note and security agreement approved by CCC minus any quantity that was redeemed or released for removal in accordance with § 1435.8.

(b) In order to be eligible to be delivered to CCC, sugar must meet the following minimum quality requirements:

(1) Refined beet or cane sugar must be:

(i) Dry and free flowing;

(ii) Free of excessive sediment; and

(iii) Free of any objectionable color, flavor, odor, or other characteristic which would impair the merchantability of such sugar or which would impair or prevent the use of such sugar for normal commercial purposes.

(2) Raw cane sugar must be:

(i) Of reasonable grain size;

(ii) Free from excessive color or moisture; and

(iii) Free from any objectionable color, flavor, odor, or other characteristic which would impair the merchantability of such sugar or which would impair or prevent the use of such sugar for normal commercial purposes.

(3) Sugarcane syrup or edible molasses must be free from any objectionable color, flavor, odor, or other characteristic which would impair or prevent the use of such sugar for normal commercial purposes.

(4) Any type of sugar delivered to CCC must be free of any contamination by either natural or manmade substances and must not contain chemicals or other substances which are poisonous or harmful to humans or animals.

(c) All sugar which is delivered to CCC must be free and clear of any liens, mortgages, or other such encumbrances. The processor shall obtain lien waivers on a form prescribed by CCC from all producers who deliver sugar beets or sugar cane for processing to the processor.

(d) Sugar may only be delivered to CCC in eligible storage.

(1) Eligible storage is any storage facility which:

(i) Is owned or controlled by the processor;

(ii) Is suitable for the storage and loading out of the sugar being delivered to CCC by the processor;

(iii) Meets CCC Standards for Approval of Dry and Cold Storage Warehouses for Processed Agricultural Commodities, Extracted Honey, and Bulk Oils (7 CFR part 1423);

(iv) Is placed under a storage contract with CCC; and

(v) Consists of a storage structure which is determined by a representative of the county committee, or State committee if in a location not served by county committee, to afford safe storage of the sugar.

(2) If the sugar is delivered in or to an ineligible storage facility, the processor shall be responsible for all costs incurred in moving the sugar to an eligible storage facility.

(e) CCC shall, at any time, have the right to inspect the loan collateral and the storage facilities in which it is situated. The processor shall also furnish to CCC such production records as CCC considers necessary to verify compliance with the quantitative limitations set forth in §§ 1435.5 and 1435.7 of this subpart.

(f) Regardless of whether CCC inspected the sugar and storage facility prior to delivery, the processor shall be liable to CCC for any damages suffered by CCC if:

(1) The processor delivers ineligible sugar to CCC; or

(2) The processor delivers sugar to CCC which is stored in ineligible storage.

§ 1435.10 Processor storage agreement.

(a) By executing a note and security agreement, the processor agrees to store any loan collateral sugar that is forfeited to CCC on behalf of CCC under the terms and conditions specified in this subpart and any storage agreement entered into between CCC and the processor. Should the terms of the storage agreement and the terms of these regulations conflict, the terms set forth in the regulations shall be applicable.

(b) The processor shall at all times be responsible for maintaining the quality and condition of the CCC-owned sugar in storage. The processor shall also be liable to CCC for any damages suffered by CCC due to the failure of the processor to load out sugar meeting the eligibility criteria set forth in § 1435.9(b) of this subpart.

(c) After delivery of the sugar to CCC, the processor shall store sugar delivered to CCC in the eligible storage where delivered for as long as deemed necessary by CCC after delivery of the sugar to CCC. However, if a sugar beet processor requires the storage space for other sugar during the period, the processor is required by CCC to maintain the refined beet sugar delivered to CCC in settlement of the loan in the storage where delivered, CCC will accept bagged sugar from the then current crop in substitution for the delivered bulk sugar if the sugar loan rate for the area where the bagged sugar is stored is equal to or exceeds the loan rate for the delivered bulk sugar.

(d) The processor shall remove and physically deliver the forfeited loan collateral in accordance with written instructions from CCC. All load out expenses shall be for the account of the processor.

(e) CCC shall make monthly storage payments to the processor for the period of time the processor stores the forfeited sugar for CCC. The storage payment rate shall be as agreed upon by CCC and the processor.

§ 1435.11 Fees, charges, interest, and bonding.

(a) A processor shall pay to CCC a loan service fee in connection with the disbursement of each loan. The amount of the service fee shall be determined and announced by the Executive Vice President, CCC, or the Executive Vice President's designee.

(b) Interest which accrues with respect to a loan shall be determined in accordance with part 1405 of this chapter.

(c) Except as provided in paragraph (c)(2) of this section, a processor making application for a sugar loan in accordance with § 1435.6 of this subpart shall post a bond or other financial assurance acceptable to CCC, that is payable to CCC in the event that the processor does not pay the producers of sugar beets or sugarcane the maximum benefits under the sugar price support program. Posting of the bond or other financial assurance shall be required prior to disbursement of any loan proceeds.

(1) The bond or other financial assurance must provide protection for an amount equal to the applicable regional support level for sugar beets or sugarcane, as applicable, times 10 percent of the total annual quantity of sugar beets or sugarcane, respectively, delivered to the processor by producers for processing in the previous year or, in the event such quantity cannot be determined, the quantity estimated by CCC that will be delivered to the processor for that crop.

(2) CCC and a processor may agree upon an alternative method of obtaining adequate financial assurance if CCC determines that such alternative method will result in adequate protection for CCC and the producer.

§ 1435.12 Miscellaneous provisions.

(a) CCC will not require the processor to insure the sugar pledged as collateral. However, if the processor insures such sugar and an indemnity is paid thereon, such indemnity shall inure to the benefit of CCC to the extent of its interest after first satisfying the processor's equity in the sugar involved in the loss.

(b) The processor shall not reduce returns to the producer below those determined in accordance with the requirements of this subpart through any scheme or device whatsoever.

(c) The regulations issued by the Secretary governing setoffs and withholding set forth at parts 3 and 1403 of this title, shall be applicable to the program set forth in this subpart.

(d) If there are any liens or encumbrances on sugar pledged as collateral for a price support loan, waivers that fully protect the interest of CCC must be obtained by the processor even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the sugar after the loan is approved.

(e) A producer or processor may obtain reconsideration and review of determinations made under this subpart in accordance with the regulations at 7 CFR part 780.

(f)(1) CCC, the Office of the Inspector General, USDA, and the Comptroller General of the United States shall have the right to have access to the premises of the processor in order to inspect, examine, and make copies of the books, records, accounts, and other written data as are deemed necessary by the examining agency to verify compliance with the requirements of this subpart. Such books, records, accounts, and other written data shall be retained by the processor for not less than three years from the loan disbursement date.

(2) Any processor obtaining price support on eligible sugar must, upon the request of CCC, provide to CCC such information as CCC deems appropriate concerning freight and related shipping costs for the processor's most recent complete marketing year. By obtaining price support, processors are deemed to have agreed to provide such information when requested by CCC.

(g) Any false certification, including those made for the purpose of enabling a processor to obtain a price support loan to which it is not entitled, will subject the person making such certification to liability under applicable federal civil and criminal statutes.

(h) In order to avoid unreasonable administrative costs incurred in making small payments and handling small accounts, amounts of $9.99 or less which are due to a processor will be paid only upon the processor's request. Deficiencies of $9.99 or less, including interest, may be disregarded unless demand for payment is made by CCC.

(i) In case of death, incompetency, or disappearance of any processor who is entitled to the payment of any sum in settlement of a loan, payment shall, upon proper application to the State committee, be made to the persons who would be entitled to such processor's payment under the regulations contained in 7 CFR Part 707—Payments Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent.

§ 1435.13 Applicable forms.

The CCC forms for use in connection with this program will be available from the appropriate State committee or designated county committee. For any CCC form that refers to program participation by producers, the term "producer" shall mean "processor" when such form is used for participation in the sugar loan program.

Subpart—Regulations Governing the Protection of Sugar Producers

Authority: 5 U.S.C. 301; 7 U.S.C. 1421(e)(2); 15 U.S.C. 714b and 714c.

§ 1435.100 General statement.

If the bankruptcy or other insolvency of a processor has caused producers of

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sugar beets or sugarcane not to receive maximum benefits from the price support program for sugar beets or sugarcane within 30 days after the final settlement date provided for in the contract between such producers and processor, CCC, on demand of the producers and on such assurances as to nonpayment as CCC may require, shall pay such producers benefit payments.

§ 1435.101 Definitions.

The following definitions apply to terms used in this subpart:

ASCS means the Agricultural Stabilization and Conservation Service, United States Department of Agriculture.

Benefit payment(s) means an amount to be paid to eligible producers equal to the difference between the specified price support level for the applicable crop of sugar beets or sugarcane, after all applicable adjustments, and any benefits previously received by the producers with respect to such crop of sugar beets and sugarcane.

CCC means the Commodity Credit Corporation, United States Department of Agriculture.

§ 1435.102 Producer eligibility.

(a) A producer of sugar beets or sugarcane shall be considered to be eligible for benefit payments only:

(1) For that quantity of domestically-produced sugar beets or sugarcane sold under contract to a processor who was a participant in the price support program for sugarcane or sugar beets for the applicable crop;

(2) If the contract with the processor provided for a final settlement date after January 1, 1985;

(3) If the processor failed to make payment within 30 days after the final settlement date due to bankruptcy or other insolvency; and

(4) If the producer was an eligible producer for purposes of the price support program for the applicable crop of sugar beets or sugarcane.

(b) CCC may require as a condition of payment such documentation or other proof of the producer's eligibility, the processor's nonpayment, or other element of the benefit payment as CCC determines appropriate.

§ 1435.103 Benefit payment to producers.

(a) A producer must request a benefit payment from CCC at the producer's local county ASCS office, unless otherwise determined by CCC, in a manner and on a form prescribed by CCC.

(b) A producer must request a benefit payment no earlier than 30 days, and no later than 60 days, after the final settlement date provided for in the contract between the producer and the processor, unless otherwise approved by CCC.

(c) Benefit payments will be made by checks drawn on CCC, by credit to the producer's account, or by such other means as CCC determines appropriate.

§ 1435.104 Liens.

(a) In order to receive a benefit payment, a producer must certify to CCC whether there were any liens or encumbrances on the sugar beets or sugarcane that the producer sold to the applicable processor under the applicable contract as of the time of delivery of the sugar beets or sugarcane to the processor, or as of the time title to the sugar beets or sugarcane transferred from the producer to the processor if title transferred at a time other than at the time of delivery to the processor. If there were any such liens or encumbrances, the producer must provide CCC with a certified list of all such liens or encumbrances together with the names and addresses of the holders of such liens or encumbrances and the amount held by each such holder.

(b) CCC will make all benefit payments jointly to the producer and the holders of such liens or encumbrances unless the producer provides CCC with a waiver of all such liens or encumbrances by each such holder or a certified statement by such holder that the liens or encumbrances have been extinguished. CCC may prescribe the form for such waivers or statements.

§ 1435.105 Subrogation of claims.

(a) A producer must execute an agreement with CCC, acceptable to CCC, subrogating to CCC all claims of that producer against the processor and other persons responsible for nonpayment. The amount subrogated to CCC must be equal to the amount of the producer's claims, up to the amount of the benefit payment plus any applicable interest or other charges. Any recoveries up to the amount subrogated which are received by that producer from any source whatsoever for the processor's nonpayment must be immediately forwarded to CCC. The producer shall cooperate with CCC in CCC's efforts to collect on the claims subrogated to CCC.

(b) A producer shall maintain the books and records pertaining to the benefit payments and the applicable contracts with the processor for a period of at least 3 years following the producer's demand for payment under this subpart. Authorized officials of the United States Department of Agriculture shall have access to, and right to examine, any pertinent books, documents, papers, and records of the producer.

Signed this 3rd day of June, 1991 in Washington, DC.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91-13517 Filed 6-10-91; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[Docket No. PRM-73-9]

Nuclear Control Institute, et al., Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking submitted by Eldon V.C. Greenberg on behalf of the Nuclear Control Institute and the Committee to Bridge the Gap (PRM-73-9). The petitioners requested that the Commission revise its regulations to upgrade the design basis threat for radiological sabotage of nuclear power reactors. The petitioners believe that the design basis threat must be revised to include explosive-laden vehicles, such as truck and boat bombs, and to reflect the possibility of an attack by a larger number of attackers using more sophisticated weapons. The petition is denied based on a Commission determination that there has been no change in the domestic threat since the design basis threat was adopted that would justify a change in the design basis threat.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC's letter to the petitioner are available for public inspection or copying in the NRC Public Document Room, 2120 L Street NW., (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Carl B. Sawyer, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-0386.

SUPPLEMENTARY INFORMATION:

I. The Petition
II. Petitioners' Basis for Request
III. Requested Regulatory Action
IV. Public Comments on the Petition
V. NRC Staff Evaluation of the Petition
VI. Statement of Denial

I. The Petition

By letter dated January, 11, 1991, shortly before the commencement of Operation Desert Storm, Eldon V.C. Greenberg, on behalf of the Nuclear Control Institute and the Committee to Bridge the Gap, filed a petition for rulemaking with the NRC. The petition was docketed as PRM-73-9. The petitioners requested that the NRC revised its regulations in 10 CFR 73.1 to upgrade the design basis threat for radiological sabotage of nuclear power reactors. (Radiological sabotage refers to any deliberate act directed against nuclear material or a nuclear facility that could endanger the public health and safety by exposure to radiation.) The petitioners believe that the regulation must be revised to include explosive-laden vehicles, such as trucks and boats, and to reflect the possibility of attack by a large number of attackers using more sophisticated weapons.

The petitioners contend that the present design basis threat is not realistic in view of the claimed current trends in terrorism. The petitioners state that a successful terrorist attack could cause the release of radioactivity comparable to a severe nuclear accident, and result in significant health and safety consequences and property damage. The petitioners believe that the increased threats may be countered by measures which could be implemented for a modest cost but would protect against events with potentially catastrophic consequences.

The petition describes the Nuclear Control Institute as a non-profit corporation, that monitors nuclear programs in the United States and other countries, develops strategies to prevent and reverse the growth of nuclear armaments and explores strategies for reducing existing nuclear arsenals thereby helping to prevent nuclear proliferation and terrorism. The petition describes the Committee to Bridge the Gap as an organization concerned with nuclear safety and the threat of nuclear terrorism.

II. Petitioners' Basis for Request

The NRC has established regulations in 10 CFR part 73 governing the physical protection of plants and materials. These regulations include measures related to the protection of nuclear facilities against radiological sabotage. Section 73.1, among other things, establishes the design basis threat to be used to design safeguards systems to protect nuclear power reactors against acts of radiological sabotage.

The petitioners state that § 73.1, as interpreted by the Commission, does not require nuclear reactor licensees to protect against radiological sabotage attempts by a group or an individual using weapons of greater sophistication than hand-held automatic weapons or explosives, thereby excluding an attack by explosive-laden vehicles, or more than several external attackers, or attackers operating as more than one team and employing team maneuvering tactics.

The petitioners believe that terrorist incidents which have occurred since the design basis threat was adopted demonstate the ability and willingness of terrorists to mount sophisticated attacks capable of causing substantial physical destruction, particularly through the use of truck bombs. Because of the Persian Gulf crisis, the growth of State-sponsored terrorism, and changes in terrorists tactics, the petitioners believe that current regulatory standards do not provide a realistic or sufficient guarantee of public health and safety or common defense and security.

The petitioners state that the terrorist threat has become bloodier, more sophisticated and better armed, and frequently State-supported. As a result, the petitioners believe that the possibility of nuclear terrorism, resulting in a substantial number of casualties, is far more likely today than it was in 1979, when current regulations were promulgated.

The petitioners believe that it is essential to upgrade the design basis threat to protect against vehicle bomb attacks which they believe pose a grave threat to civilian nuclear power plants. The petitioners cite the devastating effects of the truck bomb attacks in Beirut in 1983. The petitioners state that studies have indicated the vulnerability of licensed power reactors to attack by explosive-laden vehicles and the potentally devastating consequences of such an attack.

The petitioners believe that it is essential to change the design basis threat to anticipate attacks by more sophisticated, larger, and better-armed groups. The petitioners state that there are two components to this threat: (1) A larger number of attackers with the capability to act in several coordinated teams; and (2) heavier firepower. The petitioners cite documented large group attacks on nuclear facilities in Latin America and Europe and the widespread availability of advanced weaponry as indications that the current design basis threat is no longer realistic.

III. Requested Regulatory Action

The petitioners requested that the design basis threat for radiological sabotage contained in 10 CFR 73.1(a)(1)(i) be amended to read as set forth below. Note that text to be added is set off by arrows and text to be removed is set off in brackets.

Section 73.1 Purpose and Scope

(a) * * *

"(1) *Radiological sabotage.* (i) A determined violent external assault, attack by stealth, or deceptive actions of several ►up to twenty◄ persons ►operating as two or more teams◄ with the following attributes, assistance, and equipment: (A) Well-trained (including military training and skills) and dedicated individuals, (B) inside assistance which may include a knowledgeable individual who attempts to participate in a passive role (e.g. provide information), as active role (e.g. facilitate entrance and exit, disable alarms and communications, participate in violent attack), or both, (C) suitable weapons [, up to and including hand-held automatic weapons, equipped with silencers and] having effective long range accuracy, (D) [hand-carried] equipment, including incapacitating agents and explosives for use as tools of entry or for otherwise destroying reactor, facility, transporter, or container integrity or features fo the safeguards system, ►in quantities transportable by vehicle◄, and"

* * * * *

The petitioners requested that the NRC take other actions necessary to ensure that the specific protective measures contained in 10 CFR part 73 are sufficient to respond to the increased design basis threat and provide the high assurance required under § 73.55(a) that the threat of sabotage will be effectively countered.

Because the petitioners believe that the suggested amendments are vitally important to reduce risks to the public health and safety and the common defense and security, the petitioners requested that the Commission make a determination on the petition within 30 days from the date of receipt and that it proceed immediately to promulgate a final rule, without issuing a proposed rule, that would adopt the requested amendments.

The Commission evaluated the petitioners' request for expedited action. The Commission determined that the petition should be processed in accordance with its standard procedures for processing a petition for rulemaking in § 2.802(e), but expedited by limiting

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the comment period to 30 days. That determination was contained in the "Notice of receipt of petition for rulemaking" that was published in the **Federal Register** on January 29, 1991 (56 FR 3229). Interested persons were invited to submit written comments or suggestions concerning the petition by February 28, 1991.

IV. Public Comments on the Petition

As of March 15, 1991, the NRC had docketed 35 letters of comment: 11 from individuals, 3 from public interest groups, and the remaining 21 from industry or industrial representative organizations. In addition the NRC received three letters from Congressmen. While the comments were carefully considered by the NRC, none contained significant new information which would warrant a change in the design basis threat. In the summary that follows, the views presented are those of the commenters.

A. Comments Opposing the Petition

Twenty-one commenters opposed the petition. The main reasons cited by these commenters in support of the current regulations were:

1. The NRC staff, in concert with the intelligence community and other Federal agencies, continually monitors world events for potential threats associated with commercial nuclear facilities. These agencies have unique access to information, including sensitive or classified information not normally available to the general public.

2. Nuclear power plant licensees are in close communication with local law enforcement agencies and the NRC to ensure that any security threat in local areas is promptly identified and communicated. The response to the current Middle East situation should have (and has) heightened awareness and sensitivity on the part of licensee personnel and Federal, State, and local law enforcement officers.

3. Nuclear power plant licensees have established detailed security measures, as required by the NRC in 10 CFR 73.55 (b) through (h), to counter the design basis threat. These measures include:

—Physical protection barriers and illuminated isolation zones;
—Surveillance and patrols of the perimeter fence;
—Intrusion detection aids and alarm devices;
—A tactical reaction force;
—Bullet-resistant barriers for critical areas;
—A well trained guard force capable of carrying out the provisions of an NRC-approved security plan;
—Access controls for personnel and vehicles, with searches and positive identification; and
—Capability to execute safeguards contingency plans for dealing with threats, including truck bomb threats.

In addition, nuclear power plant licensees also have established detailed security related personnel programs, which include:

—Background investigations with FBI criminal history checks;
—Psychological testing;
—Drug and alcohol fitness for duty determinations; and
—Special supervisory training for behavioral observation.

Also, through the NRC's regulatory effectiveness review program, individual power reactor sites are evaluated for security vulnerabilities and their ability to counter the design basis threat.

4. Nuclear power plant design is based on the defense in depth philosophy in providing adequate public protection. Massive containment structures, thick wall piping and equipment with redundant safety and shut-down systems are constructed to permit the facility to withstand the impact of earthquakes, hurricanes, tornados, floods, and airplane crashes. Detailed training and plant-specific simulators provide added assurance. Emergency planning and public notification systems add yet another layer of capability designed to protect the public health and safety. The approved plans are periodically evaluated during exercises.

5. The petitioners have not presented any new information related to the current situation; they have simply restated old opinions, none of which provides a basis for altering the design basis threat in this country.

6. Several of the commenters opposing the petition took issue with the petitioners' view that the protection measures proposed by the petitioners could be put into place at modest cost. One commenter, a power reactor licensee, estimated the cost at $1 million to $3 million per year at his facility.

B. Comments Supporting the Petition

Seventeen letters supported the petition. These letters are summarized as follows:

1. The most common concern stemmed from the Middle East situation that existed during the public comment period (the comment period lasted from January 29 until February 28, 1991). These commenters pointed out that Iraq had issued a "terrorist call to arms;" that the U.S. military had attacked Iraqi reactors, and thereby legitimized U.S. reactors as terrorist targets; that informed and respected Americans have warned of possible terrorist attack within the U.S.; and that terrorist action might reasonably include reprisals against U.S. reactors.

2. Another common theme was rejection of the NRC view that the design basis threat currently set forth in NRC regulations continues to be adequate. These commenters argue that events in the Middle East are a sufficient basis for escalating the design basis threat to the levels called for in the petition.

3. Several commenters believe that power reactors are vulnerable to radiological sabotage; specifically, barriers may be easily breached and vital systems may be sabotaged.

4. Some commenters put forth the following cost argument: The consequence (and hence the cost) of successful radiological sabotage of a reactor is high in the extreme while the cost of protection is relatively modest. It is therefore prudent for the NRC to require the measures recommended by the petitioners.

5. One commenters put forward the argument that barriers are already in place to protect reactors in Europe and Japan and the conclusion that only minor structural modifications would be needed to protect U.S. reactors against truck bombs.

6. One commenter suggested that the primary threat to security is deranged persons who might use trucks or suicidal air attack. The commenter concluded that upgrading reactor protection along the lines of the petition seems cost effective.

The above concerns raised by the commenters are addressed in the NRC staff evaluation of the petition (section V of this **Federal Register** notice).

V. NRC Staff Evaluation of the Petition

The NRC staff believes that a decision on the petition can be based on response to a single pivotal issue: Has the threat of radiological sabotage of domestic nuclear reactors changed to an extent that justifies a need to upgrade the current design basis threat? The petitioners believe that the threat to domestic nuclear reactors has intensified in two ways: (1) The possible use of large truck bombs or boat bombs to cause radiological sabotage, and (2) the possible use of a larger number of attackers armed with heavier weapons.

The nature of terrorism was the subject of detailed analysis before the NRC published its design basis threat (§ 73.1), and it continues to remain the focus of staff review. NRC efforts in creating the design basis threat and the actions taken by the NRC since the publication of § 73.1 to assure its continuing validity remain a key component in the NRC safeguards program.

Thousands of acts of terrorist violence worldwide, ranging from simple attacks on property to the sophisticated, deadly bombing of civil airlines, are examined and analyzed by the NRC. The NRC uses a wide variety of information, ranging from that reported directly from the scene of the incident to that included in a finished analysis provided by the intelligence community. Throughout this ongoing daily analysis, the staff focuses its effort on reviewing realistic, not hypothetical, adversary characteristics, including weaponry, group size, tactics, explosives, and targets. The NRC then compares what has occurred or is credible to the attributes enumerated in the design basis theat.

With respect to truck and boat bombs of the size estimated in NRC studies as being capable of causing significant damage to domestic power reactors, the NRC staff notes the following:

—There has been one such truck bomb in the U.S. (Math Lab, Wisconsin, 1970).
—There have been no others in the Western Hemisphere.
—There have been no others outside of an area of civil unrest.
—There have been none directed against a nuclear activity worldwide.
—There have been no boat bombs directed at any activity, nuclear or otherwise, worldwide.
—Contingency planning to protect against truck bombs has been completed for all domestic power reactors.

Based on the foregoing facts, on discussions with appropriate elements of the Executive Branch, and on NRC's independent assessment of the domestic threat environment, the NRC concludes that the likelihood of nuclear terrorism involving the use of large truck bombs against nuclear power reactors in the United States is extremely low, that a change in the design basis threat for radiological sabotage is unwarranted, and that contingency planning is sufficient.

The NRC reviewed issues related to the waterborne vehicle bomb in 1989 and concluded that no action was required at that time. The NRC has recently reviewed these issues again and concluded that there have been no significant changes. These conclusions are based, in part, on a review of worldwide terrorist events, where the threat of waterborne vehicle bomb attack against a power reactor was found to be much less likely than the threat of a land vehicle bomb, which itself was only a remote possibility. Accordingly, there is little basis for further considering the waterborne bomb threat at this time.

The petitioners also believe it is important to upgrade the design basis threat to anticipate attacks by more sophisticated, larger and better-armed groups; specifically (1) a larger number of attackers with the capability to act in several coordinated teams, and (2) heavier firepower.

The NRC is aware that, as described by the petitioners, larger terrorist groups with heavier firepower than contemplated in the current design basis threat have carried out operations in foreign countries. The NRC is also aware of one incident described by the petitioners involving three coordinated, near simultaneous acts of sabotage on unprotected power transmission lines serving, but some miles from, the Arizona Nuclear Power Project, Palo Verde Units 1, 2, and 3. The acts constituted no threat to the safe operation or safe shutdown of the reactors. No violence was involved against the reactors or reactor sites. The most recent of the above events is almost five years old at the time of this writing. They have been considered at length and evaluated by the NRC. The terrorist actions in foreign countries and the transmission line sabotage events are remote, both spatially and by the nature of the events, from constituting a direct peril to a domestic power reactor. The NRC continues to believe that, to date, there has been no significant change in weaponry, group size, state sponsorship, or targeting that warrants a modification of the design basis threat requirements for NRC licensed nuclear power reactors.

The following discussion presents a detailed NRC analysis and response to the significant excerpts from the petition.

1. *Excerpt.* * * * nuclear reactors need not protect against radiological sabotage attempts by (i) a group or individual using weapons of greater sophistication than hand-held automatic weapons or explosives, thus excluding attack by explosives-laden vehicles, or (ii) more than three (3) external attackers or attackers capable of operating as more than one term, *i.e.*, capable of employing "effective team maneuvering tactics. (p. 4) [1]

Response. It is important to remember that the current design basis threat for power reactors is a hypothetical threat statement. The statement is set forth in the regulations in positive rather than negative terms and is given in § 73.1(a)(1) as follows: "(1) *Radiological sabotage.* (i) A determined violent external assault, attack by stealth, or deceptive actions, of several persons with the following attributes, assistance and equipment: (A) Well-trained (including military training and skills) and dedicated individuals, (B) inside assistance which may include a knowledgeable individual who attempts to participate in a passive role (e.g., provide information), an active role (e.g., facilitate entrance and exit, disable alarms and communications, participate in violent attack), or both, (C) suitable weapons, up to and including hand-held automatic weapons, equipped with silencers and having effective long range accuracy, (D) hand-carried equipment, including incapacitating agents and explosives for use as tools of entry or for otherwise destroying reactor, facility, transporter, or container integrity or features of the safeguards system, and (ii) an internal threat of an insider, including an employee (in any position)."

When the design basis threat was developed, there was no credible threat targeting power reactor in this country. The NRC believes that this continues to be the case, notwithstanding the statements made in the petition and suggested by some commenters. In particular, although changes are occurring worldwide, the NRC has not detected, to date, any significant change to the threat environment, including weaponry, group size, state-sponsorship, or targeting, that warrants a modification of the design basis threat for NRC licensed nuclear facilities and materials. Although the adequacy of the design basis threat was questioned in the petition and by some commenters, the safeguards system developed from the current design basis threat is deemed adequate and appropriate by the Commission. This system includes a physical security organization, physical barriers, access controls, detection aids, communications, testing and maintenance provisions, armed responses and provisions for offsite law enforcement response. It is important to note that the effectiveness of this system is not limited to the design basis threat. In particular, in the face of a threat greater than the design basis threat the system would not collapse, but would continue to provide a level of protection that may well be adequate. In addition, power reactors are required to have contingency plans to address the truck bomb threat. Should the domestic threat environment change significantly, NRC intelligence specialists, in coordination with other government entities, would propose appropriate changes to the

[1] Petition page number containing the excerpt.

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design basis threat based upon the specifics of the threat environment.

2. *Excerpts.* This immediate threat [Iraq situation], with the growth of State-sponsored terrorism and changes in terrorist tactics, indicates that the current regulatory standards, which exclude the truck bomb threat and sophisticated, large group attacks supported by substantial firepower, are neither realistic nor a sufficient guarantor of the public health and safety and the common defense and security under the Act. (p. 5)

Since the adoption of the Commission's current standards for protection against radiological sabotage of nuclear reactors, the terrorist threat has changed in three important ways: it is bloodier; it is more sophisticated and better-armed; and it is oftern State-sponsored. Because the nature of the threat has changed, it is incumbent on the Commission to revise its regulations to meet the potentially more severe challenges of the 1990s. (p. 6)

Response. The nature of terrorism was the subject of detailed analysis preceding publication of the NRC design basis threat and remains the focus of continuing staff review. NRC efforts in creating the design basis threat requirements, and actions since their publication to assure their continuing validity, remain key components in the NRC safeguards program.

Thousands of acts of terrorist violence worldwide, ranging from simple attacks on property to the sophisticated and deadly bombing of civil airlines, are examined and analyzed. The NRC uses a wide variety of information that is either reported directly from the scene of the incident or included in a finished analysis provided by the intelligence community. Throughout this ongoing daily analysis, the NRC focuses its effort on reviewing realistic, not hypothetical, adversary characteristics—including weaponry, group size, tactics, explosives, and targets—and compares the events that have occurred or information that is credible to the attributes enumerated in the design basis threat statements.

On occasion, NRC effort focuses on a particular facet of terrorism or on information that suggests a trend may be developing. For example, the use of vehicle bombs in Lebanon, as discussed below, was closely examined. Similarly, the use of hang gliders, boats, the degree of sophistication exhibited, and state sponsorship have and continue to merit close examination.

The NRC's purpose is not to catalog every demonstrated or hypothetical terrorist attribute for subsequent inclusion in the design basis threat statements. NRC staff experience, analysis and judgment, as well as the views of other Federal agencies, are applied in the threat assessment process. In its continuing review, the NRC considers demonstrated attributes to determine whether or not they exceed current safeguards performance objectives. When an attribute does exceed those objectives, it then becomes the focus of additional and timely examination, including discussion with the intelligence community or special study regarding that specific attribute, to establish in a factual manner a comprehensive characterization, including the motivation, dedication, and method of operation of the adversary. Importantly, the NRC examines and includes the circumstances or context surrounding a specific terrorist incident in its deliberation.

For example, the conditions present in the civil strife of Beirut, Lebanon, that resulted in vehicle bomb attacks, are not easily replicated in the United States. Notwithstanding statements made in the petition and supported by some commenters, the NRC would argue against the likelihood of such vehicle bomb attacks domestically.

The likelihood that terrorists would attempt to perpetrate an act of nuclear terrorism is of concern to the NRC and the Federal government. Based on its own analytic activities and working closely with other agencies, the NRC monitors the threat environment for indications that the likelihood of nuclear terrorism is increasing. Any report of a threat against a domestic nuclear facility receives immediate review and threats against a nuclear facility overseas receive continued attention. On this particular point, the NRC agrees with a statement made by commenters who oppose the petition: That the NRC has access to relevant sensitive or classified information not normally available to the public. Each incident, whether against a nuclear facility or not, is closely examined in the context of the design basis threat to assess its impact. Because of the increased number of events occurring concurrently with the Middle East crisis, NRC has increased data available to base its determination of any significant change in the threat environment, with particular focus on any increased threat of nuclear terrorism. Decision-makers are being briefed, some on a daily schedule, regarding threats and terrorist incidents worldwide, and staff planning includes response options available to address evolving threats worldwide and domestically.

Although changes are occurring worldwide, the NRC has not detected, to date, any significant change to the threat environment, including weaponry, group size, state-sponsorship, or targeting, that warrants a modification of the design basis threat statements for NRC licensed nuclear power reactors. Nonetheless, the NRC continues, on a daily basis and with ongoing vigilance, to review information on threats and incidents to assure that the design basis threat statements remain adequate, prudent, and reasonable.

3. *Excerpts.* It is equally important to upgrade the design basis threat to anticipate attacks by more sophisticated, larger and better-armed groups. There are essentially two components to this upgrade: (1) a larger number of attackers, with the capability to act in several coordinated teams; and (2) heavier firepower. (p. 19)

In Latin America and Europe large group attacks on nuclear facilities have been documented, *viz.*, the March 25, 1973, attack by fifteen terrorists on the Atucha Atomic Power Station in Argentina. (p. 20)

* * * the ETA, a Basque separatist terrorist group in Spain, launched nearly 100 attacks against two nuclear plants under construction, using powerful remote-detonated bombs, plastic explosives, hand grenade launchers and anti-tank rockets. The attacks resulted in more than $7 million in damage. (p. 21)

Response. The NRC agrees that terrorist groups larger than and with heavier firepower than contemplated in the design basis threat have carried out operations in foreign nations. The operations were carried out in nations experiencing armed civil unrest, a situation not prevalent in the United States. The NRC has not identified, to date, any significant change or trend involving weaponry, group size, state-sponsorship or targeting that warrants a modification of the design basis threat statements for NRC licensed nuclear power reactors. If such a change were to occur, the NRC response would be scaled to the immediacy and scope of the treat.

4. *Excerpt.* The Commission's regulations exempt licensees from protecting against "the effects of attacks and destructive acts, including sabotage, directed against the facility by an enemy of the United States, whether a foreign government or other persons * * *" 10 CFR 50.13. However, Petitioners understand that the Commission does not consider this exclusion to extend to terrorist groups which operate independently, even though they may have strong links to and the support of foreign governments. (p. 6)

Response. The NRC agrees with this statement. The information on threats and incidents routinely reviewed by the NRC and considered in threat assessments as discussed in the foregoing responses, includes activities of terrorist groups which operate independently, but may have strong links to and the support of foreign governments.

5. *Excerpts.* The Commission also stated that the "defense in depth" concept of nuclear reactor design "makes[s] the releasing of radioactivity by acts of sabotage difficult" and that the consequences of sabotage would be less severe than the "successful detonation of an illicit nuclear explosive device." 42 FR at 10836, col. 3. As discussed *infra* in section C, these considerations do not appear valid today in the judgment of the Commission's own staff and outside experts. (p. 7)

The "unacceptable damage," noted by Sandia National Laboratories and potentially associated with a successful truck bomb attack, maximally means the meltdown of a nuclear reactor core, relasing massive amounts of radioactivity, comparable to what would occur in a severe accident. The Commission has estimated, in the case of one reactor, that a severe accident could result in up to 130,000 acute fatalities, 300,000 latent cancers, and 600,000 genetic effects, while necessitating offsite mitigation estimated to cost $35 billion. (p. 13).

Response. The NRC continues to believe that, in general, the consequences of sabotage would be less severe than the consequences from successful detonation of an illicit nuclear explosive device. An illicit nuclear explosive device would be portable and could be directed against a heavily populated area or be directed against a seat of government and detonated at a time selected for maximum explosive effect. All licensed power reactors are fixed. Moreover, as discussed below, the NRC does not believe that the consequences referred to in the petition would appropriately serve as a primary basis for formulation of a design basis threat.

The term "unacceptable damage", as used in reports of the Sandia study upon which the petitioner's truck bomb arguments are based, refers to the blast effects on a concrete wall panel and is in the section of the reports that discussed modeling of structural responses to far-field blast waves. It is not used in the reports in the sense of predicting an offsite release.

While one can conclude that using the stand-off distances developed in this report would ensure safety from a potential truck bomb treat, the report does not support the corollary conclusion, i.e., that a truck bomb, placed closer to the reactor, would necessarily result in a substantial radiological release. The massive structures, redundant safety systems and damage mitigation features of currently licensed reactors each provide a certain, although unquantified measure of protection against an uncontrollable release of radioactive material resulting from a truck bomb, irrespective of stand-off distance.

Acceptance of 130,000 acute fatalities,[3] which is the worst case presented in the document cited, implies acceptance of each of the following propositions as true:

(1) That a terrorist group favors nuclear reactor sabotage over other targets that exist in the U.S.;

(2) That they construct a very large truck bomb undetected;

(3) That indicators from terrorist activity worldwide do not trigger implementation of truck bomb contingency plans;

(4) That the truck bomb is successfully emplaced at a reactor and detonated;

(5) That blast distance and size are sufficient to cause significant damage;

(6) That the reactor has been operating at power for some time;

(7) That the reactor's redundant safe-shutdown systems are all disabled;

(8) That containment is massively breached;

(9) That large quantities of radionuclides are released to the atmosphere;

(10) That the wind and other meterological conditions are favorable to the worst case consequences;

(11) That there is a large city nearby in a downwind direction; and

(12) That the local population, even that part nearest the reactor, elects to remain in place for seven days with no mitigating measures.

The NRC considers the foregoing set of assumptions to be unlikely in the extreme and not an appropriate basis for safeguards rulemaking.

6. *Excerpts.* Indeed, NCI's Task Force members unanimously concluded "that a reactor accident brought about by terrorists, even one releasing significant amounts of radioactivity, is by no means implausible and is technically feasible." (p. 10)

Response. The NRC has accepted the notion that reactor sabotage, with radiological releases, is technically feasible for many years. Measures are employed at power reactors to protect against credible radiological sabotage scenarios. In the unlikely event of radiological sabotage, damage control and accident mitigation measures would likely limit the amount of radioactivity released.

7. *Excerpt.* There has already been at lease one unconfirmed threat of an Iraqi-sponsored attack on a U.S. nuclear facility. See Commission, Preliminary Notification of Threat or Unusual Occurrence—PNO–I–90–108 (Decemer 28, 1990) (noting asserted Iraqi bomb threat to the Vermont Yankee Nuclear Power Plant). (p. 10)

It should also be noted that the number of "safeguards events" has been increasing in the late 1980s, a disturbing trend indicating that the thought of sabotage is in currency, if not actually realized yet. See Commission, *Safeguards Summary Evan List* (NUREG–0525, Rev. 16) (December 31, 1989): Testimony of Daniel Hirsch in *Oversight Hearings* at 52 and Figures 5 and 6. Hirsch noted that as of 1988 "safeguards events," including bomb hoaxes, [had] increased five-fold since the last revision to the design basis threat regulations * * *. (p. 10)

Response. The referenced Preliminary Notification (PNO–I–90–180, December 26, 1990) concerned an anonymous phone call to the Governor-elect of Vermont stating that Iraqi troops were going to bomb Vermont Yankee Nuclear Power Plant. All of the appropriate law enforcement agencies were notified of the call, including the Federal Bureau of Investigation. On the basis of other information available at the time, the caller's information was deemed to be non-credible. Incidentally, there were a number of other sabotage and attack threats to licensees during the period of the recent Persian Gulf crisis. A listing of all such events for the period August 2, 1990, to February 21, 1991, is provided (see appendix). Although there were a substantial number reported, none were considered to be significant.

The NRC has reviewed the assertion that safeguards events, including bomb hoaxes, have increased "five-fold" since the "last revision to the design basis threat regulations." A number of factors substantially account for this increase. First, NRC reporting requirements, i.e., the types of events that are required to be reported by NRC licensees, have been expanded. As the nuclear industry has implemented "Fitness for Duty" programs, more drug and alcohol-related events have been reported, regardless of whether or not any additional risk to the safe operation of the facility was involved. Second, more firearms have been detected during required routine entry searches, although, typically, no malevolent intent towards facility was identified. Third, the number of operating reactors has increased during the past ten years, and thus, the number of safeguards-related events has increased during the same period.

The influence of event data reported in the Safeguards Summary Event List (NUREG–0525) on the design basis threat statements merits careful examination. Clearly, the number of

[3] This estimate was reported in Supplement to Draft Environmental Statement, San Onofre Nuclear Generating Station, Units 2 and 3 (NUREG–0490), dated January 1981. The corresponding estimate reported in the Final Environmental Statement, San Onofre Nuclear Generating Station, Units 2 and 3 (NUREG–490), dated April 1981 was 30,000.

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events alone reported in the list does not suggest a significant change has occurred in the threat environment. The NRC considers a variety of factors, the most important being demonstrated adversary characteristics, in determining the status of the design basis threat statement for radiological sabotage. The events identified in the list typically represent hoaxes, i.e., non-credible threats, or adversary characteristics that fall well within the bounds of the current design basis threat statement for radiological sabotage. Therefore, an increase in the number of reported events by itself does not warrant a change to the design basis threats.

8. *Excerpt.* While there has not been an identified international terrorist threat as yet against domestic licensed reactors, terrorists have been responsible for more than one-third of non-U.S. reactor incidents in the period 1970–1984. As was demonstrated by the arrest in 1986 of several individuals associated with the Syrian Socialist National Party while attempting to smuggle explosives into the United States, the existence of an undetected, international terrorist threat in the United States today is a possibility which cannot be discounted. (p. 11)

Response: The first sentence refers to examples of the kinds of events that are under continuing review by threat evaluators at NRC.

The NRC agrees with the comment in the second sentence: "[that the] international terrorist threat in the United States today is a possibility that cannot be discounted." The NRC differs from the petitioners only in the details and level of response. The NRC believes that vigilant evaluation of terrorist activities, supported by current protection levels and contingency planning for even stronger protection, constitutes an adequate response.

Incidentally, the explosive involved in the cited smuggling incident was contained in a hand-carried satchel and was of a small quantity.

9. *Excerpts.* The use of truck bombs has become a tactic of choice for terrorists. The tactic is a grave threat to civilian power plants * * *. (p. 10)

While this Petition focuses primarily on truck bombs, it is also essential to protect against boat bombs. Many nuclear power plants are located adjacent to water and are thus at risk from attack by boat. (p. 10)

Response. Truck bombs with explosive mass sufficient to pose a challenge to power reactors have been used in the Middle East. In the U.S. there has been only one known incident of a large truck bomb [Mat Lab, Wisconsin, (1970)]. There is no information that a group currently exists within the U.S. that has both the capability and motivation to carry out a truck (or boat) bomb detonation sufficiently near a power reactor which could cause significant damage. Although the likelihood of a truck bomb event is considered to be too low to warrant a change in the design basis threat for radiological sabotage, contingency plans were put in place as a prudent response. The likelihood of a boat bomb is considered to be much less than that of a truck bomb, which itself is only a remote possibility. Accordingly, a requirement for protection against boat bombs is considered unjustified.

10. *Excerpt.* * * * in Western Europe, nuclear power plants are protected against truck bombs by reinforced fences and walls. (p. 11)

Response. The NRC participates as a member of the interagency U.S. Physical Protection Review Team which conducts technical exhanges o policies, practices and procedures for physical protection of nuclear material and facilities with foreign governments that receive U.S. origin nuclear material. The information derived from exchanges is classified (foreign government restricted information). Accordingly, the NRC cannot discuss specific safeguards planning or programs used by foreign entities. However, there is general agreement between the U.S. and its nuclear trading partners regarding the level of physical protection that is prudent for operating power reactors. All parties commit to the physical protection criteria recommended by the International Atomic Energy Agency in its publication INFIRC/225 Rev. 2, and many, including the U.S., go beyond these minimum provisions.

11. *Excerpts.* Although the Commission has been aware of this threat [truck bomb] at least since 1983, nonetheless it has not responded sufficiently to date. (p. 11)

As early as 1984, the Commission staff recommended modification of the design basis threat to include the use of truck bombs by an adversary, noting, "The use of a vehicle bomb against a nuclear facility is a feasible form of attack." (p. 11)

The Commission's response to the recognized truck bomb threat has been woefully deficient. While a Commission 1984 survey of the Defense Department, the Secret Service, the State Department, and the Department of Energy found that "[a]ll four agencies believe that the "truck bomb" threat in the U.S. is sufficient to prompt action" and had "implemented measures to counter the threat," * * * the Commission only determined at that time to study the issue and delay action. (p. 15)

Some six years after identification of the threat, on April 28, 1989, the Commission finally responded by doing no more than issuing a "Generic Letter" (No. 89–07) which calls for licensees to develop "contingency plans" to deal with the truck bomb threat, based upon a contractor report. The Generic Letter does not require licensees to plan any permanent measures against vehicle bombs, even though it is far from clear whether licensees will have sufficient warning time of a particular terrorist action to implement effective contingency plans. (p. 16)

The truck bomb threat is not likely to disappear. Short-term expedients, such as those reflected in Generic Letter No. 89–07, simply do not adequately address this threat, either for the near or longer term. (p. 18)

Response. NRC's design basis threats serve three purposes. They are used to develop regulatory requirements, they provide a standard with which to measure changes in the real threat environment, and they provide a standard for evaluation of implemented systems. The 1983 bombings in the Middle East were clearly beyond the capabilities attributed to the design basis threats, and this recognition triggered NRC staff action.

A first step was to determine the effects of large scale explosive attacks on licensed facilities including power reactors. Before the results of the study were known, but with general awareness of the damage high explosives can cause to structures, the NRC safeguards staff concluded that, to be prudent, an immediate effort was warranted, including the development of protection requirements, defensive strategies, and guidance on vehicle barriers. This action was being taken while the U.S. intelligence agencies were gathering and assessing intelligence information on the origin and geographic extent of this new type of threat, as well as the kinds and quantities of explosives involved. Subsequently, based on information received from these intelligence agencies, it quickly became apparent that the threat of vehicle bomb attacks in the continental U.S. was not imminent, and NRC staff resources were redirected away from immediate regulatory actions to a broader based assessment of the entire issue. The truck bombings in the Middle East occurred in nations experiencing armed civil unrest, a situation not prevalent in the U.S. Subsequently, the truck bomb threat in the U.S. was evaluated in depth and alternatives for dealing with it were developed. None of the information developed was interpreted as indicative of a need for immediate action; also, permanent measures were considered but were deemed inappropriate. Power reactor licensees were required by Generic Letter 89–07 to develop contingency plans for providing protection against truck bombs under short notice, and to confirm in writing that they had included the threat of a vehicle bomb in their contingency

planning. The NRC staff verified that confirmations were received from licensees that these contingency plans had been developed. Temporary Instruction 2515/102 (TI 2515/102), "Land Vehicle Bomb Contingency Procedures Verification," was issued on November 29, 1989. The purpose of TI 2515/102 was to provide policy guidance for NRC regional staff to verify that power reactor licensees have performed the contingency planning required by Generic Letter 89–07. The objective of TI 2515/102 was to verify that the licensee's contingency planning considered short-term actions that could be taken to protect against attempted radiological sabotage involving a land vehicle bomb if such a threat were to materialize. Inspections were completed at all operating power reactor sites. For each power reactor site, NRC inspectors verified that the licensee's safeguards contingency procedures addressed the ability to respond to an NRC request to implement short-term contingency measures and the licensee has determined that any resources or equipment needed to implement short-range contingency measures would be available.

As noted in the petition, the NRC consulted with the Defense Department, the Secret Service, the State Department, and the Department of Energy. The NRC considered the extent of the protective measures they implemented in relation to the protective measures that were already in place at power reactors. The consultations were conducted as an informal information gathering by the NRC staff. It was realized at the time of the consultations that the agencies contacted did not, in most cases, have targets analogous to those protected under NRC regulation or with comparable consequences to a postulated truck bomb attack. Because of this, it was judged reasonable that Federal agency response to the truck bomb issue might be agency-specific. Nothing was found that called for immediate additional measures to protect against truck bombs at power reactors. The NRC threat evaluation staff remains vigilant in its continuing search for indications of a truck bomb threat. The NRC continues to believe that, since the likelihood of such events is considered to be so low, the actions taken constitute an appropriate response.

12. *Excerpts.* The Commission's failure to protect against truck bombs at power plants stands in contrast to its approach for protecting fuel facilities. Almost three years ago, the Commission determined it was appropriate to alter the design basis threat for theft 'to include use of land vehicles by potential adversaries attempting to commit a theft * * *. Such asymmetry is nonsensical: Logically the Commission cannot acknowledge "the possible use of land vehicles for breaching of perimeter barriers"—precisely the *modus operandi* of a potential truck-bomb attacker—without acknowledging the possibility of such an attack at licensed reactors. (p. 17)

The current standard is somewhat ambiguous because it does not specifically include a reference to vehicular support, *i.e.*, attackers arriving by means other than foot. Chairman Zech stated during the 1988 oversight hearings: "NRC's design basis threat includes any mode of transportation—any mode of transportation—to get to the site, or through the perimeter barrier. Our design basis threat assumes any mode that could get through the barrier—car, boat, truck or another method of transportation." * * * Plainly the design basis threat itself should explicitly recognize this prospect. (p. 19)

Response. The NRC distinguishes between (1) theft of high enriched uranium from a fuel facility and (2) radiological sabotage of a power reactor. As discussed under the response to Excerpt No. 5, the theft might support an illicit nuclear explosive device with the potential for higher consequences then those from radiological sabotage. An illicit nuclear explosive device would be portable and could be directed against a heavily populated area or be directed against a seat of government and detonated at a time selected for maximum explosive effect. An adversary contemplating theft would be prepared and equipped differently from how he or she would be if contemplating radiological sabotage. The combination of these factors and other considerations (described below) leads to a design basis threat for theft that differs from that for radiological sabotage.

Because it could be used in an illicit nuclear explosive device, significant quantities of special nuclear material (such as high enriched uranium) must be protected rigorously against theft. This material exists at certain facilities administered by the Department of Energy (DOE) and at certain facilities licensed by the NRC. The two agencies coordinate to carry out a policy of maintaining fully adequate and essentially equivalent safeguards systems. During 1988, this policy led the NRC to revise its design basis threat for theft of materials from high enriched fuel facilities to include land vehicles used for transporting personnel, and their hand-carried equipment.

A comparability review of the protection programs for power reactor facilities has not been conducted because DOE defense-related reactors are fundamentally different from commercial units in siting, function, design, size, nuclear fuel used, safety systems, and operations.

All power reactors operating in the U.S. use low enriched fuel. There is no high enriched uranium at these sites. Thus, vehicle denial barriers are not required to protect against theft at operating power reactor sites.

The NRC interpretation of the design basis threat for radiological sabotage of reactors does not preclude adversaries' use of vehicles, other than truck bombs, for transportation and for breaching protected area barriers. The interpretation also allows for boats (other than boat bombs) for transportation and for breaching the barriers. The protection system is designed independent of the type of surface vehicle. The vehicle, whatever its type, would be detected by intrusion alarms when it crosses the barrier. No delay time is credited for the barrier. In response to positions taken by the petitioner and supported by some commenters, one could modify the design basis threat to express this interpretation. The modification, however, would not affect the high level of protection already provided.

13. *Excerpt.* Such protections against truck bombs can be achieved at relatively low cost. The Commission estimated in 1986, for example, that a vehicle denial system for roadway access would cost only about $100,000–$200,000 per facility to install and $10,000–$20,000 annually to maintain, while a perimeter access denial system would only cost $500,000–$1,000,000 per facility to install and $25,000–$50,000 annually to maintain. * * * Indeed, the price of protection seems small and well worth it, considering the catastrophic consequences that could be associated with successful sabotage, including significant offsite radioactive releases and the crippling of a power plant. (p. 18)

Response. Among the issues considered by the NRC during its deliberations on the vehicle bomb were the provisions of the Commission's backfit rule. The rule states in 10 CFR 50.109(a)(3) that the Commission can require backfitting when it determines that there is a substantial increase in the overall protection of the public health and safety or the common defense and security to be derived from the backfit, and that the direct and indirect costs of implementation for that facility are justified in view of this increased protection. Contrary to the belief of the petitioner and supported by some commenters, the NRC concluded that the vehicle denial system referred to in this excerpt would not provide a substantial increase in the overall

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protection of the public health and safety. Cost was not a deciding factor.

Incidentally, the dollar values stated by the petitioner for perimeter access denial are not representative of the costs of providing standoff distances beyond the existing protected area, as could be required to assure protection against "explosives for use as tools of entry or for otherwise destroying reactor, facility, transporter, or container integrity or features of the safeguards system, in quantities transportable by vehicle." (Page 22, the Petition.) In some cases, significant additional expenditures would be necessary for (in certain cases) purchase of land, relocation of roads and parking lots, additional length of barrier structures, and means to monitor the integrity of the barrier. These factors could add substantially to the costs stated for the perimeter system.

VI. Statement of Denial

The Commission has considered the petition, the public comments, and the NRC staff evaluation set forth in this notice. The Commission concludes that there has been no change in the domestic threat since the design basis threat was adopted that would justify a change in the design basis threat. Accordingly, the petitioners' request to modify the design basis threat for radiological sabotage as set forth in 10 CFR 73.1 is hereby denied.

Dated at Rockville, Maryland, this 5th day of June 1991.

Samuel J. Chilk,

Secretary of the Commission.

Appendix—Listing of Sabotage and Attack Threats to NRC Licensees for the Period August 2, 1990—February 21, 1991

1. Date: 08/29/90
   Site: Maine Yankee, Maine Yankee Atomic Power Company, Lincoln County, ME
   Source: Licensee's Corporate Office
   Threat: At 3:40 p.m., an unsubstantiated bomb threat was received at the corporate office.
   Action: The Maine State Police, the Augusta Police, and the FBI were notified.
   Resolution: Licensee and the police determined the threat was noncredible. No further action due to the vagueness of the threat.
2. Date: 10/22/90
   Site: Georgia Nuclear Plants
   Source: Dekalb County Sheriff's Office through the FBI
   Threat: An anonymous female telephoned the Dekalb County Sheriff's Office at the Courthouse in Decatur, Georgia, and provided a partially unintelligible message regarding an alledged kidnapping that occurred at Stone Mountain, Georgia, on an unspecified date. The brief message was "covered" by the Sheriff's Department Radio traffic, making the name of the alleged victim undistinguishable. The caller stated that if the unknown victim was not returned to Stone Mountain, "they would ignite" a nuclear power plant in Georgia. The nuclear power plant to be targeted was not specified (NRC-licensed facilities in Georgia include Hatch 1 and 2 and Vogtle 1 and 2).
   Action: No action required.
   Resolution: The Sheriff's department believes the kidnapped individual may refer to someone incarcerated in the Stone Mountain Correctional Facility, a medium security state penitentiary located in Stone Mountain, Georgia. The FBI plans no further action.
3. Date: 12/25/90
   Site: Vermont Yankee, Vermont Yankee Nuclear Power Corporation, Windham County, VT
   Source: Governor-elect of Vermont
   Threat: At 5:40 p.m., the Governor-elect of Vermont received a telephone call from a male who stated that the Iraqi government was going to blow up the Vermont Yankee nuclear power plant.
   Action: The licensee was notified through the state and local police and, as a precautionary measure, increased security at the facility. Other nuclear plants in the Yankee system were also notified.
   Resolution: The licensee and police determined the threat was noncredible.
4. Date: 01/06/91
   Site: Trojan
   Source: Bonneville Power Authority (BPA)
   Threat: BPA received a letter from a woman who stated that "In the new world God would destroy dams, coal-fired plants, oil-fired plants, and nuclear power plants. PGE is the devil and will be destroyed by God within three months."
   Action: BPA notified the Portland General Electric Company load dispatcher who, in turn, notified the Trojan Plant Superintendent.
   Resolution: The licensee determined the threat was noncredible. The letter writer was known by the Oregon police to be mentally ill and no threat to society.
5. Date: 01/10/91
   Site: Transmission line
   Source: Consumers Power
   Threat: NCR Region III was notified by Consumers Power, that the Canadian Power Control had received a telephonic bomb threat to destroy the new transmission line from Detroit Edison (owner) to Ontario Hydroelectric. The bomb was set to go off in 16 hours.
   Action: The FBI was notified and Detroit Edison was contacted.
   Resolution: No bomb was found.
6. Date: 01/12/91
   Site: Hatch, Georgia Power Company, Appling County, GA
   Source: Georgia Power Company
   Threat: NRC Region II received a call from Georgia Power advising that at 12:20 a.m. on January 12, 1991, an individual drove up to Hatch's Gate 1 (owner-controlled area) in an 18-wheeler and asked to see a plant operator regarding a private business dealing. When told the operator would not be at work until January 15, 1991, the driver stated he would be back. After he got in the truck he stated, ". . . if I pulled the wires to disable the vehicle and loaded it with explosives, I could do something."
   Action: The local law enforcement agency and the FBI were notified.
   Resolution: On January 16, 1991, the driver was identified, and his name was given to the Sheriff's office. He was arrested on unrelated theft charges. No further action was planned by the licensee.
7. Date: 01/15/91
   Site: Palo Verde, Arizona Public Service Company, Maricopa County, AZ
   Source: Corporation Offices, Phoenix, AZ
   Threat: At 8:15 a.m., the switchboard operator at the Corporation Offices, Phoenix, Arizona, received a call from a male, believed to be 30–40 years old, who stated, "I'm going to blow the place sky high."
   Action: No action taken.
   Resolution: Licensee determined the threat was noncredible.
8. Date: 01/15/91
   Site: Brunswick, Carolina Power and Light Company, Brunswick County, NC
   Source: Brunswick Nuclear Power Visitors Center
   Threat: At 11:08 a.m., the Brunswick Nuclear Power Plant Visitors Center received a call from a male, believed to be Southern, who said in a raspy voice, "You had better evacuate the plant because we are going to blow up Sunny Pt. (military, non-nuclear facility located near Brunswick) today."
   Action: Brunswick and Sunny Pt. facilities were notified, as well as the FBI.
   Resolution: Licensee determined the threat was noncredible.
9. Date: 01/15/91
   Site: Wolf Creek, Kansas Gas and Electric Company, Coffey County, KS
   Source: Kansas Bureau of Investigation
   Threat: At 2:30 p.m., the licensee was notified by the Kansas Bureau of Investigation that they were called by a female with secondhand information that someone of Iraqi descent worked at Wolf Creek, and if his country is invaded, he will sabotage the plant.
   Action: The FBI was notified.
   Resolution: Security of vital equipment was heightened. Result of licensee investigation was negative.
10. Date: 01/16/91
    Site: Davis-Besse, Toledo Edison Company, Ottawa County, OH
    Source: Licensee
    Threat: At 9:45 a.m., the licensee reported that what appeared to be a bomb (three sticks of unknown material, no power source, and no timing device) had been found in a cabinet drawer in a maintenance building which is physically removed from any vital areas but within the protected area.
    Action: Site security responded and reported it appeared to be a hoax, but the response continued as a precautionary measure. Local law enforcement officials responded, and the FBI was notified.
    Resolution: At 11:14 a.m., the object was identified by the licensee as a "security training device" made by one of the security officers.
11. Date: 01/16/91
    Site: McGuire, Duke Power Company, Mecklenburg, County, NC
    Source: Duke Power
    Threat: Duke Power called RII to deny rumors circulating in North Carolina that McGuire was under attack by Iraqis.
    Action: FBI was notified.
    Resolution: Rumors were false.
12. Date: 01/17/91
    Site: Brunswick, Carolina Power and Light Company, Brunswick County, NC
    Source: Licensee
    Threat: At 1:20 a.m., the licensee received an anonymous telephone call from an individual on an outside line who said, "Want you people to know 600 hours, it will go off. Two C-4 planted and they will go off."
    Action: The FBI was notified. The licensee conducted a search with negative results.
    Resolution: The licensee determined the threat was noncredible.
13. Date: 01/22/91
    Site: Byron, Commonwealth Edison Company, Ogle County, IL
    Source: Commonwealth Edison Company
    Threat: The Rock River Division (Commonwealth Edison) received an anonymous telephone call which threatened a bomb explosion at Byron in seven minutes. Earlier in the morning, Rock River received another anonymous telephone call which threatened a bomb attack against a substation in Rockford, Illinois.
    Action: A search was conducted with negative results.
    Resolution: The licensee determined the threat was noncredible. The caller was identified as an unstable personality who had made seven or eight calls over several days to non-energy facilities. A warrant has been issued for his arrest.
14. Date: 01/23/91
    Site: Browns Ferry, Tennessee Valley Authority, Limestone County, AL
    Source: Tennessee Valley Authority
    Threat: At 11:45 a.m., the main TVA switchboard in Chattanooga, Tennessee, received a call from an unidentified male who stated, "A black Cadillac or a Nissan truck is on the way to Browns Ferry with a bomb."
    Action: The FBI was notified. The licensee maintained heightened awareness.
    Resolution: The licensee determined the threat was noncredible.
15. Date: 01/23/91
    Site: San Onofre, Southern California Edison Company, San Diego County, CA
    Source: California State Highway Patrol, Oceanside
    Threat: At 6:50 p.m., the California State Highway Patrol, Oceanside, received a call from an individual who stated, "There is a bomb at San Onofre."
    Action: The Sheriff's Office and San Onofre were notified. The licensee closed all but the south gate, searched vehicles at the south gate, and heightened security. The Sheriff's Department dispatched a patrol car with bomb-sniffing dogs to the site. The FBI was notified.
    Resolution: The FBI determined the threat was noncredible and notified the licensee.
16. Date: 01/23/91
    Site: Zion, Commonwealth Edison Company, Lake County, IL
    Source: Zion Police Department
    Threat: The Zion Police Department received a telephone call from an individual who stated, "There's a bomb planted at the local MacDonalds." A short time later, a second call stated, "I see you're not doing anything about the bomb at MacDonalds or the one at the Zion Nuclear Power Plant."
    Action: The FBI was notified.
    Resolution: The licensee and the police determined the threat was noncredible.
17. Date: 01/23/91
    Site: Turkey Point, Florida Power and Light Company, Dade County, FL
    Source: Dade County Metropolitan Police Department
    Threat: During the evening, Dade County Metropolitan Police Department received an anonymous call from an individual who stated he was with "Iraqi International," and an airplane would bomb Turkey Point at 8 p.m.
    Action: The call was traced to a pay telephone at a K-Mart, but no suspect was identified. The Dade Police notified the licensee. The FBI was notified.
    Resolution: The licensee and the police determined the threat was noncredible.
18. Date: 01/24/91
    Site: Consolidated Edison Corporate Office, New York
    Source: New York City Police Department
    Threat: At 1:50 p.m., the New York City Police Department advised that they received a call from an individual who stated that a bomb would go off in ten minutes on the 2nd floor of the Consolidated Edison Corporate Offices.
    Action: A search was conducted with negative results.
    Resolution: No mention was made of an NRC-licensed facility.
19. Date: 01/25/91
    Site: Turkey Point, Florida Power and Light Company, Dade County, FL
    Source: AT&T
    Threat: At 11:35 a.m., AT&T received a call from a male with a foreign accent, who said he needed nails and a hammer to bomb the Turkey Point plant.
    Action: AT&T traced the call to a local residence in Hollywood, Florida. The licensee contacted the local law enforcement agency and the FBI.
    Resolution: The local law enforcement agency investigation determined the call was made by an 18-year-old as a prank.
20. Date: 01/25/91
    Site: Oregon State University, Oregon
    Source: The University
    Threat: At 9 a.m., the University received a general bomb threat which stated, "Bombs will go off at several places, including Oregon State University."
    Action: The reactor was shut down. A search was conducted with negative results.
    Resolution: The University determined the threat was noncredible.
21. Date: 01/25/91
    Site: Davis-Besse, Toledo Edison Company, Ottawa County, OH
    Source: Licensee
    Threat: NRC Region III was notified that an individual walked into the Edison Plaza Shopping Center, Toledo, Ohio, and threatened to kill all Toledo Edison employees and destroy Toledo Edison equipment.
    Action: FBI notified.
    Resolution: The individual was known to the local police as he had made previous threats. The licensee filed a complaint, a warrant was issued, the man was arrested and jailed.
22. Date: 01/30/91
    Site: Limerick, Philadelphia Electric Company, Montgomery County, PA
    Source: Licensee
    Threat: At 3:46 p.m., the switchboard, in a nonprotected area, received a telephone call form an anonymous individual who said, "I put a bomb there that's going to blow up."
    Action: The local police were notifed. A search was conducted with negative results.
    Resolution: The caller was believed to be a boy, about 8–9 years old. The licensee and police determined the threat was noncredible.
23. Date: 01/31/91
    Site: Manhattan College, New York
    Source: Manhattan College
    Threat: At 12 noon, an anonymous bomb threat was received against a building at Manhattan College, Riverdale, New York, housing a nonpower reactor.
    Action: The local police department responded. A search was conducted with negative results.
    Resolution: The College and police determined the threat was noncredible.
24. Date: 02/04/91
    Site: Arkansas, Arkansas Power and Light Company, Pope County, AR
    Source: FBI Office, Little Rock, Arkansas
    Threat: The FBI Office, Little Rock, Arkansas, received an anonymous telephone call from an individual who stated that Arkansas Nuclear One was going to be hit.
    Action: The licensee was notified and increased security.
    Resolution: FBI determined the threat was noncredible.
25. Date: 02/06/91
    Site: San Onofre, Southern California Edison Company, San Diego County, CA
    Source: Licensee
    Threat: Sometime between 4 p.m. on February 5, 1991, and 7:30 a.m. on February 6, 1991, the licensee recorded a message on an answering machine which said, "The whole place is going to blow up today."
    Action: The FBI was notified. A copy of the tape was provided to the FBI.

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Resolution: The FBI determined the threat was noncredible.

28. Date: 02/14/91
Site: Cooper, Nebraska Public Power District, Nemaha County, NE
Source: Sheriff, Auburn, Nebraska
Threat: The local sheriff in Auburn, Nebraska received an anonymous bomb threat against the local hospital and against Cooper which said, "A bomb will go off in 29 minutes. . . ."
Action: A search was conducted with negative results.
Resolution: The licensee determined the threat was noncredible.

27. Date: 02/19/91
Site: U.S. Embassy, Ottawa, Canada
Source: FBI
Threat: The U.S. Ambassador received an anonymous threat letter that alluded to various illegal activities such as drug dealing and prostitution and contained threats against the U.S., including a threat of retaliatory kamikaze air crashes into U.S. nuclear power plants by explosive laden planes, if Iraq was invaded by U.S. forces.
Action: The Royal Canadian Mounted Police (RCMP) and the FBI were notified.
Resolution: The RCMP and the FBI determined through their investigation that the threat against nuclear facilities was noncredible.

28. Date: 02/21/91
Site: University of Utah, Utah
Source: Local Police Department
Threat: At 7:05 a.m., the local police department notified the University of a bomb threat against the Merrill Engineering Building. The threat was not directed against the Triga reactor which is located on the first floor.
Action: A search was conducted with negative results.
Resolution: The licensee and police determined the threat was noncredible.

[FR Doc. 91-13805 Filed 6-10-91; 8:45 am]
BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CCGD5-91-026]

Drawbridge Operation Regulations—Atlantic Intracoastal Waterway, Albemarle and Chesapeake Canal, Chesapeake, Virginia

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of members of the motoring public, the Coast Guard is considering changing the regulations that govern the operation of the Centerville Turnpike Bridge across the Atlantic Intracoastal Waterway, Albemarle and Chesapeake Canal, mile 15.2, in Chesapeake, Virginia, by limiting current bridge openings for recreational boats during daylight hours, seven-days a week, year-round. The proposed change to these regulations are, to the extent practical and feasible, intended to provide for regularly scheduled drawbridge openings to help reduce motor vehicle traffic delays and congestion on the roads and highways linked by this drawbridge.

DATES: Comments must be received on or before July 26, 1991.

ADDRESSES: Comments should be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. The comments and other materials referenced in this notice will be available for inspection and copying at the above address, room 507, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Comments may be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398-6222.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written comments or data. Persons submitting comments or data should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended changes to the proposal. The Commander, Fifth Coast Guard District, will evaluate all communications received and determine a final course of action on this proposal. The proposed regulations may be changed based on comments and data received. No public hearing is planned for this action.

Drafting Information

The drafters of this notice are Linda L. Gilliam, project officer, and LT Monica L. Lombardi, project attorney.

Discussion of Proposed Regulations

Members of the motoring public have requested that openings of the Centerville Turnpike Bridge across the Atlantic Intracoastal Waterway (AICW) in Chesapeake, Virginia, be limited to help reduce highway traffic congestion. The Coast Guard is proposing to restrict the passage of recreational vessels during daylight hours seven days a week, year-round, by opening the bridge on the hour and half-hour for such vessels. Commercial vessels will be passed at any time, and the bridge will continue to open on signal the remainder of the time.

Federal regulations currently require that the Centerville Turnpike Bridge be opened on demand, 24 hours a day, year-round. In 1980, a schedule for opening on the hour and half-hour was temporarily authorized in order to accommodate repair work being done at the time. This temporary schedule remained in place until January 1991, when it was discovered that the schedule had continued well beyond the repair period. Authority to continue the temporary schedule of openings on a permanent basis was never obtained through the normal rulemaking process. Recreational vessels account for the majority of bridge openings along the AICW. According to the drawlogs of the Centerville Turnpike Bridge, 125 recreational vessels transitted this portion of the AICW in May 1989. Had the bridge not been using the temporary schedule of hourly and half-hourly openings from 7 a.m. to 7 p.m., there may have been time periods when excessive bridge openings could have occurred. Continuing to operate the Centerville Turnpike Bridge on demand will most likely result in periods or days of excessive draw openings resulting in highway traffic congestion and unnecessary wear and tear on a structure that is considered old and outdated. The drawlogs for 1990 were not studied because a different repair schedule than that discussed above was in effect for most of that year. It appears the need to restrict drawbridge openings to recreational boats far exceeds the need to maintain the Centerville Turnpike Bridge under its present unrestricted schedule. The Coast Guard believes these proposed regulations will not unduly restrict vessel passage through the bridge, as half-hourly openings are not overly restrictive and vessel operators can plan transits around the proposed schedule.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule will not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Evaluation

These proposed regulations are considered non-major under Executive Order 12291 and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of the proposed regulation on commercial navigation or on any industries that depend on waterborne transportation should be minimal. This is based on the fact that the bridge will continue to open on signal for commercial traffic. Because the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g. of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33 Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation of part 117 continues to read as follows:

Authority: 33 U.S.C. 449; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.997(e) is added to read as follows:

117.997 Atlantic Intracoastal Waterway, Southern Branch of the Elizabeth River to the Albemarle and Chesapeake Canal.

* * * * *

(e) The draw of the Centerville Turnpike (SR 170) bridge across the Albemarle and Chesapeake Canal, mile 15.2, at Chesapeake, shall open on signal; except that, from 7 a.m. to 7 p.m., the draw need only be opened on the hour and half-hour, seven days a week year-round, for the passage of pleasure craft. Public vessels of the United States, commercial vessels, and vessels in an emergency condition which present danger to life or property shall be passed at any time.

Dated: May 24, 1991.

H.B. Gehring,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 91-13812 Filed 6-10-91; 8:45 am]
BILLING CODE 4910-14-M

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Notices

Federal Register
Vol. 56, No. 112
Tuesday, June 11, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 91-082]

Public Meeting; Eradication of Common Crupina in the State of Idaho

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: We are announcing that a public meeting will be held to dissuss the planning and implementation of a proposed program to eradicate common crupina in the State of Idaho.

PLACE, DATE AND TIME OF MEETING: The public meeting will be held at the Lewiston Community Center, 1424 Main Street, Lewiston, Idaho, on June 26, 1991, from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Thomas G. Flanigan, Oeprations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, room 643, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

SUPPLEMENTARY INFORMATION:

Background

Noxious weeds deprive landowners of economic opportunities, threaten the preservation of native plant communities, and affect the wildlife and fish that depend on these habitats.

Common crupina (*Crupina vulgaris Cass.*) a noxious weed, was discovered near Grangeville, Idaho, in 1968. Reproduced by seed, common crupina pioneers overgrazed south-slope rangelands and eventually forms pure stands. It has the ability to survive in harsh environments by genetic adaptation. Native plants are physically damaged by intensive grazing. Since noxious weeds are not preferred by livestock, they have a competitive advantage and often replace native plants.

Common crupina poses a threat to croplands, rangelands, and watersheds, native plant populations, export-marketed agricultrual commodities, and wildlife. In the Pacific Northwest, 63,500 acres—including 55,000 acres of rangelands in north central Idaho—are infested with common crupina. In 1988, the Animal and Plant Health Inspection Service (APHIS), in cooperation with the Idaho Department of Agriculture and the University of Idaho, completed a 10-year eradication and feasibility study and eradication trial. Based on the research and operational trial, APHIS and the Departments of Agriculture of the States of Idaho, Oregon, and Washington have concluded that eradication is technically feasible.

On April 4, 1991, we published in the **Federal Register** (56 FR 13793-13794, Docket No. 91-037) a notice advising the public that APHIS had prepared and was making available environmental documentation concerning the eradication of common crupina in Idaho, Oregon, and Washington. The documentation consisted of three separate environmental assessments and findings of no significant impact, as well as Agency records of decision. An analysis of the alternatives in the environmental assessments resulted in findings of no significant impact.

We are holding a public meeting to obtain public input concerning our proposed program to eradicate common crupina in the State of Idaho. The meeting will provide an opportunity for an exchange of information between APHIS representatives and interested members of the public. The comments we receive during the meeting will help us in planning and implementing a proposed program.

Public Meeting Procedures

An APHIS representative will preside at the meetings, where comments will be heard concerning any issue relevant to the proposed program to eradicate common crupina in the State of Idaho. Interested persons may appear and be heard in person, by attorney, or other representative. The meeting will begin at 10 a.m. and end at 5 p.m., local time; however, the meeting may end earlier if all persons desiring to speak have been heard.

Persons who wish to speak should register before the meeting. Pre-meeting registration will be conducted at the meeting location, begining at 9 a.m. on the meeting date. Registered persons will be heard in the order of registration. Unregistered persons who wish to speak will be afforded the opportunity after the registered persons have been heard. If the number of preregistered persons and other participants at the meeting warrants, the APHIS representative may limit the time for each presentation in order to allow everyone wishing to speak an opportunity to be heard.

Done in Washington, DC, this 6th day of June 1991.

James W. Glosser,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-13839 Filed 6-10-91; 8:45 am]
BILLING CODE 3410-34-M

Farmers Home Administration

Submission of Information Collection to OMB (Under Paperwork Reduction Act and 5 CFR Part 1320)

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice; correction.

SUMMARY: A solicitation for comments on information collection requirements was previously published in the **Federal Register** on May 31, 1991, Volume 56, Page 24778. A revision to subpart D of part 1945 of this chapter, which affected the collection requirement, was overlooked in the supporting statement of this publication. This action corrects the supporting statement.

ADDRESSES: Interested persons are invited to submit comments regarding this submission. Comments should refer to the proposal by name and should be sent to: Elizabeth Harker, USDA Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David R. Smith, Senior Loan Officer, Farmer Programs Loan Making Division, Farmers Home Administration, USDA, South Agriculture Building, Room 5430, 14th Street and Independence Avenue, SW., Washington, DC 20250. Telephone (202) 382-1645.

SUPPLEMENTARY INFORMATION: Under "Supporting Statement" in the Supplementary Information section, the fourth paragraph in item number 2 is corrected to read as follows:

The Agency solicits information about nonfarm income and practices, and nonfarm assets. The Agency uses this information to evaluate whether such sources are essential to the success of the farming operation. Applicants must offer all nonessential assets as collateral to conventional lenders in attempting to obtain credit from other sources. When an EM loan is made, the interest in such assets will be mortgaged to FmHA as additional collateral for the loan. Proceeds from any sale of such assets will be applied on the borrower's FmHA loan(s). Applicants must also agree to return to private lending sources if the Agency determines they are able to return to such creditors. The Agency, therefore, requires that acceptable financial and production recordkeeping practices be maintained to enable proper evaluation and to facilitate a return to private lenders.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507.

Dated: June 1, 1991.

La Verne Ausman,
Administrator, Farmers Home Administration.

[FR Doc. 91-13820 Filed 6-10-91; 8:45 am]
BILLING CODE 3410-07-M

Forest Service

California Department of Forestry Conservation Camp; Plumas National Forest; Yuba County, CA; Environmental Impact Statement Cancellation Notice

The California Department of Forestry and Fire Protection has withdrawn it's proposal to establish a minimum security conservation camp in Yuba County, California.

The notice of intent, published in the **Federal Register** on December 6, 1990, is hereby rescinded (55 FR 50338).

For further information contact: R.C. Bennett, Environmental Coordinator, Plumas National Forest, Box 11500, Quincy, CA 95971; telephone 916-283-2050.

Dated: May 28, 1991.

John Palmer,
Acting Forest Supervisor.

[FR Doc. 91-13792 Filed 6-10-91; 8:45 am]
BILLING CODE 3410-11-M

Lincoln National Forest, NM; Timber Supply and Demand Analysis

AGENCY: Forest Service, USDA.

ACTION: Public notice of analysis of Lincoln National Forest timber supply and demand.

SUMMARY: Several decisions will be made after evaluation of the current timber supply and demand situation. It is anticipated that the allowable sale quantity and timber sale objectives will be modified for the remaining years within the existing Forest Plan. These changes are due to meeting interim guidelines for managing the Mexican spotted owl and other management constraints. Visual quality management will also be evaluated in terms of changes resulting from timber sale areas.

DATES: Comments concerning the scope of the analysis will be accepted until August 1, 1991. A formal public involvement plan is being developed. Future news releases will further detail how and when to get involved in the analysis process.

ADDRESSES: Written comments and suggestions concerning the scope of the analysis must be sent to Lee Poague, Forest Supervisor, Lincoln National Forest, Federal Building, 11th and New York, Alamogordo, New Mexico 88310.

FOR FURTHER INFORMATION CONTACT: Questions about the analysis documentation, and public involvement process should be directed to Ron Hannan, Forest Planner, Lincoln National Forest, (505) 437-6030.

SUPPLEMENTARY INFORMATION: The range of alternatives will address a number of issues, including below-cost timber sales program, management of forest insects and disease, visual quality and recreation, impacts on local economies, wildlife and threatened and endangered species, old growth, and water/soil/air quality.

Lee Poague,
Forest Supervisor.

[FR Doc. 91-13794 Filed 6-10-91; 8:45 am]
BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Institute of Standards and Technology.
Title: Application for Malcolm Baldrige National Quality Award.
Form Number: OMB Number: 0693-0006.
Type of Request: Extension.
Burden: 100 respondents; 8,000 reporting hours. Average hours per response is 80 hours.
Needs and Uses: The information on the application is used to conduct an evaluation of businesses applying for the Award, with emphasis on quality achievement and quality improvement from applicants who are either: Manufacturing companies or subsidiaries, service companies of subsidiaries; or small businesses.
Affected Public: Businesses, industries, and small businesses.
Frequency: Annually.
Respondent's Obligation: Required to obtain a benefit.
OMB Desk Officer: Maya A. Bernstein, 395-3785.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the purposed information collection should be sent to Maya A. Bernstein, OMB Deck Officer, room 3235, New Executive Office Building, Washington, DC 20503.

Dated: June 5, 1991.

Edward Michals,
Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-13795 Filed 6-10-91; 8:45 am]
BILLING CODE 3510-CW-M

Foreign-Trade Zones Board

[Docket No. 31-91]

Foreign-Trade Zone 151—Findlay, OH, Application for Subzone, W.C. Wood Company, Inc., Appliance Manufacturing Plant Ottawa, OH

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Community Development Foundation, grantee of FTZ 151, Findlay, Ohio, requesting special-purpose subzone status for the freezer manufacturing plant of W.C. Wood, Inc. (Wood) (subsidiary of W.C. Wood Company Limited, Canada), located in Ottawa, Putnam County, Ohio. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 28, 1991.

The Wood plant (80 acres, 100 employees) is located at 9444 Wood Drive in Ottawa, Ohio, 60 miles south of Toledo. The facility is used to produce private label, brand-name upright freezers for the domestic market and

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export, replacing freezers formerly produced by affiliated plants in Canada. The only foreign-sourced components used in the manufacturing operation are compressors, which account for 12 percent of the finished freezers' value. The facility also serves as the firm's North American distribution center for other kitchen and home appliances, such as refrigerators and rangehoods, produced by the parent firm in Canada.

Zone procedures would exempt Wood from Customs duty payments on the foreign compressors and finished products that are re-exported. On its domestic sales, the company would be able to choose the duty rate that applies to finished upright freezers (2.9%). The rate on compressors is 3.4 percent. It would defer duty payments on finished appliances sourced abroad. The applicant indicates that zone savings will improve the plant's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; John F. Nelson, District Director, U.S. Customs Service, North Central Region, 55 Erieview Plaza, Cleveland, Ohio 44114; and, Major David P. Plank, District Engineer, U.S. Army Engineer District Buffalo, 1776 Niagara Street, Buffalo, New York 14207.

Comments concerning the proposed foreign-trade subzone are invited from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before July 26, 1991.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, 136 N. Summit Street, Toledo, OH 43604

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street and Constitution Avenue, NW., Washington, DC. 20230

Dated: June 4, 1991.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 91-13836 Filed 6-10-91; 8:45 am]
BILLING CODE 3510-DS-M

International Trade Administration

[A-588-005]

Final Results of Antidumping Duty Administrative Review; High Power Microwave Amplifiers and Components Thereof From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On April 5, 1991, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty finding on high power microwave amplifiers and components thereof from Japan (56 FR 2741). This review covers NEC Corporation (NEC), a manufacturer and/or exporter of the subject merchandise to the United States, for the period July 1, 1989, through June 30, 1990.

We gave interested parties an opportunity to comment on our preliminary results. We received no comments. Based on our analysis, the final results are the same as those presented in the preliminary results of the review, in which we determined that no margins exist.

EFFECTIVE DATE: June 11, 1991.

FOR FURTHER INFORMATION CONTACT: Vincent P. Kane or Carole A. Showers, Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2815 or 377-3217, respectively.

SUPPLEMENTARY INFORMATION:

Case History

The preliminary results of this review were published April 5, 1991 (56 FR 14071). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act").

Scope of Review

The product covered by this review is high power microwave amplifiers and components thereof. High power microwave amplifiers are radio-frequency power amplifier assemblies, and components thereof, specifically designed for uplink transmission in C, X, and Ku bands from fixed earth stations to communications satellites and having a power output of one kilowatt or more. High power microwave amplifiers may be imported in subassembly form, as complete amplifiers, or as a component of higher level assemblies (generally earth stations). This merchandise is currently classifiable under item 8525.10.80 of the Harmonized Tariff Schedules (HTS). The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.

Final Results of the Review

Interested parties were invited to comment on the preliminary results. We received no comments.

The final results are the same as those presented in our preliminary results of review. The Department has determined that no dumping margins exist, since no shipments were made during the review period, and since in the most recent period in which shipments were made, the 1983/84 period, we found no margins for NEC. Accordingly, the Department will instruct the Customs Service not to require a cash deposit of estimated antidumping duties for NEC. Further, no cash deposit will be required for all other exporters/producers of this merchandise.

These deposit requirements are effective for all shipments of Japanese high power microwave amplifiers and components thereof entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Act and § 353.22(c)(5) of the Department's regulations.

Dated: June 3, 1991.

Eric I. Garfinkel,
Assistant Secretary for Import Administration.

[FR Doc. 91-13837 Filed 6-10-91; 8:45 am]
BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

State Coastal Management Program and Estuarine Sanctuaries; Intent To Evaluate

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management.

ACTION: Notice of intent to evaluate.

SUMMARY: The National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management (OCRM), announces its intent to evaluate the performance of a state coastal management program (CMP) and a National Estuarine Research Reserve (NERR). The following lists the CMP and reserve to be evaluated and the dates of the site visit: Virgin Islands CMP, July 29—August 2, 1991; and the Wells (Maine) NERR, July 22–26, 1991.

Evaluation of coastal management programs will be conducted pursuant to section 312 of the Coastal Zone Management Act (CZMA) of 1972, as amended, which requires a continuing review of the performance of coastal states with respect to coastal management. The CZMA requires detailed findings regarding the extent to which a state has implemented and enforced the coastal management program approved by the Secretary of Commerce, addressed the coastal management needs identified in section 303(2)(A) through (K), and adhered to the terms of any grant, loan, or cooperative agreement funded under the CZMA. Evaluation of National Estuarine Research Services will be conducted pursuant to sections 312 and 315 of the CZMA, which require periodic review of a reserve's operation and management. The CZMA requires detailed findings regarding the extent to which a state has implemented the federally approved management plan for a NERR, and adhered to the terms of any grant, loan, or cooperative agreement funded under the CZMA. These reviews involve consideration of public comments, a site visit to the state, and consultations with interested Federal, state, and local agencies and with members of the public. A public meeting will be held as part of the site visit.

Notice is hereby given on the date, time, and location of a public meeting(s) for each of the site visits.

(1) The public meetings for the Virgin Islands evaluation will be Monday, July 29, 1991, at 7 p.m., St. Thomas, Legislative Conference Room, Charlotte Amalie; Wednesday, July 31, 1991, at 7 p.m., St. Croix, Legislative Conference Room, Christensted; and Thursday, August 1, 1991, at 7 p.m., St. Johns, Boulon Center, Cruz Bay.

(2) The public meeting for the Wells NERR (Maine) will be Tuesday, July 23, 1991, at 7 p.m., at the Wells NERR Visitor Center, Wells, Maine.

The respective states will issue notice of these meetings in local newspapers at least 45 days prior to the site visit. Copies of each state's most recent performance report, as well as OCRM's notification and supplemental request letter to the state, are available upon request from OCRM. Writen comments from all interested parties regarding each of these programs are encouraged at this time. Public comment will be accepted until seven days after the site visit. OCRM will place a subsequent notice in the **Federal Register** announcing the availability of the Final Findings based on the evalaution. FOR FURTHER INFORMATION OR TO DIRECT COMMENTS, CONTACT: Vickie Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue, NW., Washington, DC 20235 (202/673-5100).

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: June 4, 1991.

Virginia K. Tippie,
Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 91-13762 Filed 6-10-91; 8:45 am]
BILLING CODE 3510-08-M

Endangered and Threatened Wildlife and Plants; Identification of Candidate Species for Listing Under the Endangered Species Act

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of modification of list of candidate species.

SUMMARY: NMFS identifies marine species as candidates for possible addition to the List of Endangerd and Threatened Wildlife and Plants. NMFS is soliciting information concerning the status of these species and nominations of additional species that appear to warrant listing consideration. This notice is not a proposal for listing and the involved species do not receive substantive or procedural protection under the Endangered Species Act of 1973. NMFS does, however, encourage Federal agencies and other appropriate parties to take these species into account in project planning.

DATES: Comments may be submitted until further notice.

ADDRESSES: Comments should be sent to Dr. Nancy Foster, Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dean Wilkinson, Office of Protected Resources, NMFS, (301) 427-2322.

SUPPLEMENTARY INFORMATION: The Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531 *et seq.*) requires determinations of whether species of wildlife and plants are endangered or threatened based on the best available scientific and commercial data. "Species" include any species or subspecies of fish, wildlife or plant, and any distinct population segment of any vertebrate species that interbreeds when mature. NMFS and the U.S. Fish and Wildlife Service share responsibilities under the ESA. With some exceptions, NMFS is responsible for species that reside all or the major portion of their lifetime in marine waters. Candidate species are those species identified for listing consideration. NMFS will conduct a review of the status of each candidate species to determine if it warrants listing as endangered or threatened under the ESA.

NMFS requests comments and solicits information concerning the status of species in the accompanying table, especially in regard to past and present population status and distribution; threats affecting the species; and, if appropriate, identification of critical habitat. NMFS solicits nominatioins of additional species that appear to warrant listing consideration; information on taxonomic changes for any of the listed species; and more appropriate common names.

The previous list was published on August 31, 1988, at 53 FR 33516. Since then, the status of four species has been changed resulting in their removal from the list. The northern (Steller) sea lion was listed as threatened on November 26, 1990, at 55 FR 49204. The Indus River dolphin was listed as endangered on January 14, 1991, at 56 FR 1463. On May 2, 1990, the U.S. Fish and Wildlife Service proposed that the Gulf of Mexico sturgeon be listed as threatened (55 FR 18357). A status review under the Marine Mammal Protection Act (MMPA) had been completed for the northern fur seal prior to the publication of the previous list. Subsequently, the preparation of a draft conservation plan for the species in 1990 involved additional analysis. NMFS has determined that although the northern fur seal is depleted under the MMPA, its status does not warrant listing as either endangered or threatened.

With this notice, 27 species are added to the list of candidate species.

NMFS is currently reviewing additional species of coral that may be eligible for inclusion on the list of candidate species. To ensure that the list is complete, NMFS actively solicits biological information and recommendations on potential candidate species of coral.

NMFS intends to consider all data received in response to this notice, to make appropriate amendments to the

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accompanying table, and to indicate intentions with regard to future listing actions.

In the following table of candidate species, the common name appears as the first entry followed by the scientific name, the family name, and the area of distribution under consideration for listing.

Common name	Scientific name	Family	Area under consideration
Marine Mammals			
Amazon River Dolphin [3]	*Inia geoffrensis*	Iniidae	South America.
Bottlenose Dolphin [3]	*Tursiops truncatus*	Delphinidae	U.S. Mid-Atlantic Coastal Stock.
Harbor Porpoise [1] [3]	*Phocoena phocoena*	....do	Northwest Atlantic.
Beluga Whale [1]	*Delphinapterus leucas*	Monodontidae	AK (Cook Inlet population).
Ganges River Dolphin [3]	*Platanista gangetica*	Platanistidae	India, Bangladesh, Nepal, Bhutan.
La Plata Dolphin [3]	*Pontoporia blainvillei*	Pontoporiidae	Brazil, Uruguay, Argentina.
Northern Bottlenose Whale	*Hyperoodon ampullatus*	Ziphiidae	North Atlantic.
Japanese Sea Lion	*Zalophus californianus japonicus*	Otariidae	Japan, North and South Korea.
Juan Fernandez Fur Seal	*Arctocephalus philippi*	....do	Chile.
Kuril Seal	*Phoca vitulina stejnegeri*	Phocidae	USSR (Kuril Sea).
Saimaa Seal	*Phoca hispida saimensis*	....do	Finland.
Reptiles			
Flatback Turtle	*Chelonia depressa*	Cheloniidae	Australia.
Fishes			
Gulf Surgeonfish [2]	*Acanthurus randalli*	Acanthuridae	Northeastern Gulf of Mexico.
Atlantic Sturgeon	*Acipenser oxyrhynchus*	Acipenseridae	North America—Atlantic Coastal Waters.
Key Silverside [2]	*Menidia conchorum*	Atherinidae	Florida.
Coelacanth [2]	*Latimeria chalumnae*	Coelacanthidae	Indian Ocean.
Saltmarsh Topminnow [2]	*Fundulus jenkinsi*	Cyprinodontidae	Texas, Louisiana, Mississippi, Alabama, Florida.
River Goby [2]	*Awaous tajasica*	Gobiidae	Florida Population.
Steelcheek Goby [2]	*Gobionellus pseudobscurus*	....do	Do.
Tidewater Goby [2] [3]	*Eucyclogobius newberryi*	....do	California.
Delta Smelt [2]	*Hypomesus transpacificus*	Osmeridae	California.
Largetooth Sawfish	*Pristis perotteti*	Pristidae	North and South America—Tropical and Sub-tropical Waters.
Smalltooth Sawfish	*Pristis pectinata*	....do	Do.
Striped Croaker [2]	*Bairdiella sanctaeluciae*	Sciaenidae	Florida Population.
Monterey Mackerel [2]	*Scomberomorus concolor*	Scombridae	Gulf of California.
Blue Hamlet [2]	*Hypoplectrus gemma*	Serranidae	Florida Reef Tract.
Jewfish [2]	*Epinephelus itajara*	....do	Coral Reefs in the Caribbean and Western North Atlantic.
Nassau Grouper [2]	*Epinephelus striatus*	....do	Do.
Notchfin Schoolfasse [2]	*Parasphyrsenops incisus*	....do	Jamaica, Puerto Rico, St. Croix.
Opposum Pipefish [2]	*Microphis brachyurus lineatus*	Syngnathidae	Northern Gulf of Mexico.
Mollusks			
Giant Clam	*Tridacna gigas*	Tridacnidae	Indo-Pacific.
Southern Giant Clam	*Tridacna derasa*	....do	Do.
Coelenterates			
Starlet Sea Anemone	*Nematostella vectensis*	Edwardsiidae	U.K. and North America.
Corals			
Staghorn Coral [2]	*Acropora cervicornis*	Acroporidae	Western Atlantic.
Elkhorn Coral [2]	*A. palmata*	Acroporidae	Western Atlantic.
Flower Coral [2]	*Eusmilia fastigiata*	Faviidae	Western Atlantic.
Knobby Brain Coral [2]	*Diploria clivosa*	Faviidae	Western Atlantic.
Grooved Brain Coral [2]	*D. labyrinthiformis*	....do	Western Atlantic.
Pillar Coral [2]	*Dendrogyra cylindrus*	Meandrinidae	Western Atlantic.
Ivory Bush Coral [2]	*Oculina diffusa*	Oculinidae	Western Atlantic.
Ivory Tree Coral [2]	*O. valenciennesi*	....do	Western Atlantic.
Finger Coral [2]	*Porites furcata*	Poritidae	Western Atlantic.
Black corals [2]	*Antipathes spp.*	Order: Antipathara	Western Atlantic.
Plants			
Johnson's Seagrass [1] [2]	*Halophila johnsonii*	Hydrocharitaceae	Florida.

[2] Indicates new addition to candidate species list.
[1] Status review under Endangered Species Act in progress.
[3] Status review under Marine Mammal Protection Act in progress.
[3] Status review being conducted by U.S. Fish and Wildlife Service.

[FR Doc. 91-13781 Filed 6-10-91; 8:45 am]
BILLING CODE 3510-22-M

Dated: June 5, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

Amerada Hess Corp., et al.; Incidental Take of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of request for a letter of authorization.

SUMMARY: NMFS has received requests from Amerada Hess Corp. and BP Exploration Inc. for Letters of Authorization that would allow a take of marine mammals (by harassment) incidental to exploration activities in the Beaufort Sea during the 1991/92 drilling season. Also, BP Exploration Inc. is withdrawing an earlier request published in the **Federal Register** on May 14, 1991 (58 FR 22155).

DATES: Comments should be received no later than July 11, 1991.

ADDRESSES: Dr. Nancy Foster, Director, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910. A copy of the requests may be obtained by writing to this address or by telephoning the contacts listed below.

FOR FURTHER INFORMATION CONTACT: Margaret C. Lorenz, Office of Protected Resources, NMFS, (301) 427-2322 or Ron Morris, Western Alaska Field Office, (907) 271-5006.

SUPPLEMENTARY INFORMATION:

Background

Regulations governing the taking of marine mammals incidental to oil and exploration activities in Alaska were published July 18, 1990 (55 FR 29214). The regulations are based on section 101(a)(5) of the Marine Mammal Protection Act and NMFS' determination that the taking of six species of marine mammals (bowhead, gray and beluga whales and bearded, ringed and spotted seals) incidental to exploratory activity in the Beaufort and Chukchi Seas will have a negligible impact on the species or stocks and will not have an unmitigable adverse impact on the availability of the species or stock for subsistence uses. The regulations include permissible methods of taking, and require exploration companies to monitor the effects of their activities on marine mammals and to cooperate with the Alaska native communities to ensure that marine mammals are available for subsistence.

A Letter of Authorization must be requested annually by each group or individual conducting an exploratory activity where there is the likelihood of taking any of the six species of marine mammals identified in the regulations. NMFS grants the Letters based on a determination that the total level of taking by all applicants in any one year is consistent with the estimated level of activity used to make a finding of negligible impact and a finding of no unmitigable adverse impacts.

The regulations require the applicant to submit a request for a Letter of Authorization at least 90 days before the activity is scheduled to begin. NMFS must publish notices of each request in the **Federal Register** with an opportunity for public comment.

Requests for Letters of Authorization must include a plan of cooperation that identifies what measures have been and will be taken to minimize any adverse effects on the availability of marine mammals for subsistence uses. It must include a description of the activity including the methods to be used, the dates and duration of the activity, and the specific location. Also, it must include a site-specific plan to monitor the effects on marine mammals that are present during exploratory activities.

Summary of Request From Amerada Hess Corporation

On May 21, 1991, NMFS received a request from Amerada Hess Corp. for a Letter of Authorization that would allow non-lethal takes of marine mammals incidental to seismic exploration operations during the 1991 open-water season in the Beaufort Sea. Data will be collected by vessels towing acoustic energy source arrays and cables containing hydrophone receivers. Seismic exploration is expected to begin about August 1, 1991, in the central Beaufort Sea. The request includes a description of the specific operations Amerada Hess plans to conduct, the measures it will take to minimize any potential conflicts between those activities and subsistence hunting, and a plan to monitor the effects of the activities on marine mammals.

Summary of Request From BP Exploration, Inc.

On May 31, 1991, NMFS received a request from BP Exploration, Inc. for a Letter of Authorization that would allow non-lethal takes of marine mammals incidental to a shallow-hazard seismic exploration program in an area north of Camden Bay in the eastern Beaufort Sea during the open water period of 1991. BP has included a description of the specific activities it plans to conduct, the measures it will take to minimize any potential conflicts between those activities and subsistence hunting, and a plan to monitor the effects of the activities on marine mammals.

Also, BP is withdrawing its request for a Letter of Authorization submitted May 3, 1991, which concerned an exploratory coring program in the eastern Beaufort Sea during the 1991 open-water season.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 91-13780 Filed 6-10-91; 8:45 am]
BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Determination; Excess Defense Articles (Individual Equipment Items, First Aid Kits and Vehicles)

ACTION: Correction.

This document is published to make administrative corrections. The Department of Defense published a determination on "Excess Defense Articles (Individual Equipment Items, First Aid Kits and Vehicles" on June 3, 1991 (56 FR 25071).

1. In column 2, paragraph 2, change "527(c)" to "517(c)"

2. In column 2, paragraph 3, change "and will determine" to "and determines"

All other information remains unchanges.

Dated: June 5, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-13783 Filed 6-10-91; 8:45 am]
BILLING CODE 3810-01-M

Advisory Commission on Consolidation and Conversion of Defense Research and Development Laboratories; Meeting

AGENCY: Department of Defense (DoD) Advisory Commission on Consolidation and Conversion of Defense Research and Development Laboratories.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of Public Law 92-463, the "Federal Advisory Committee Act," notice is hereby given that the Federal Advisory Commission on Consolidation and Conversion of Defense Research and Development Laboratories will hold a meeting on June 12, 1991, in the Washington, DC area. The meeting will convene at 8 a.m. This session will be closed to the public.

The purpose of this meeting is to discuss technological factors involved in developing recommendations to the Secretary of Defense on consolidating,

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converting, or realigning various laboratories of the Department of Defense. The entire agenda for the meeting will consist of discussions of the key issues related to future military research and technology development. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive Order. Accordingly, the Director of Defense Research and Engineering has determined, in writing, that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552(c)(1) of Title 5, United States Code.

This Notice of the June, 1991 meeting of the Commission is being published late due to the need to accelerate the schedule to meet the reporting dates mandated in section 246 of the National Defense Authorization Act for 1991. Operational necessity constitutes an exceptional circumstance not allowing Notice to be published in the Federal Register at least 15 days before the date of this meeting.

For further information concerning this meeting, contact: Dr. Michael Heeb, Executive Secretary to the DoD Advisory Commission on Consolidation and Conversion of Defense Research and Development Laboratories, 5109 Leesburg Pike, Suite 317 Falls Church, VA 22041 Phone (703) 756–8069.

Dated: June 5, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–13784 Filed 6–10–91; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

Privacy Act of 1974; Amend Systems of Records

AGENCY: Department of the Air Force, DOD.

ACTION: Amend systems of records.

SUMMARY: The Department of the Air Force proposes to amend four existing systems of records and deleting one from its inventory of records systems notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

DATES: This action will be effective July 11, 1991, unless comments are received which result in a contrary determination.

ADDRESSES: Send any comments to Mrs. Anne Turner, SAF/AAIA, The Pentagon, Washington, DC 20330–1000. Telephone (202) 697–3491 or Autovon 227–3491.

SUPPLEMENTARY INFORMATION: The Department of the Air Force record systems notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a), have been published in the **Federal Register** as follows:

50 FR 22332 May 29, 1985 (DoD Compilation, changes follow)
50 FR 24672 Jun. 12, 1985
50 FR 25737 Jun. 21, 1985
50 FR 46477 Nov. 8, 1985
50 FR 50337 Dec. 10, 1985
51 FR 4531 Feb. 5, 1986
51 FR 7317 Mar. 5, 1986
51 FR 16735 May 6, 1986
51 FR 18927 May 23, 1986
51 FR 41382 Nov. 14, 1986
51 FR 44332 Dec. 9, 1986
52 FR 11845 Apr. 13, 1987
53 FR 24354 Jun. 28, 1988
53 FR 45800 Nov. 14, 1988
53 FR 50072 Dec. 13, 1988
53 FR 51301 Dec. 21, 1988
54 FR 10034 Mar. 9, 1989
54 FR 43450 Oct. 25, 1989
54 FR 47550 Nov. 15, 1989
55 FR 21770 May 29, 1990
55 FR 21900 May 30, 1990 (Air Force Address Directory)
55 FR 27868 Jul. 6, 1990
55 FR 28427 Jul. 11, 1990
55 FR 34310 Aug. 22, 1990
55 FR 38126 Sep. 17, 1990
55 FR 42625 Oct. 22, 1990
55 FR 42629 Oct. 22, 1990
55 FR 52072 Dec. 19, 1990
56 FR 1990 Jan. 18, 1991
56 FR 5804 Feb. 13, 1991
56 FR 12713 Mar. 27, 1991
56 FR 23054 May 20, 1991

The amendments are not within the purview of subsection (r) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) which requires the submission of an altered system report. The specific changes to the systems of records are set forth below followed by the systems of records notices published in their entirety, as amended.

Dated: June 5, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion

F053 AFA D

System name:

Registrar Records, (53 FR 24355, June 28, 1988).

Reason:

System is no longer needed. There are no plans to reinstate this system in the future.

Amendments

F011 AFA A

System name:

Class Committee Products, (50 FR 22340, May 29, 1985).

Changes:

* * * * *

Categories of records in the system:

Add "at the end of the semester." to the end of the paragraph.

* * * * *

Authority for maintenance of the system:

Delete entry and replace with "10 U.S.C. 9331, Establishment; superintendent; faculty."

Purpose(s):

Delete entry and replace with "Provides data on academically deficient cadets to Academic Review Committee who makes recommendations concerning cadets' future to the Academy Board."

* * * * *

F011 AFA A

SYSTEM NAME:

Class Committee Products.

SYSTEM LOCATION:

United States Air Force Academy (USAF Academy), CO 80840–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Academy cadets.

CATEGORIES OF RECORDS IN THE SYSTEM:

List of cadets academically deficient at progress reports; provides grades, military order of merit and other military and entrance data on cadets meeting committees; reports committee decisions and includes worksheets with coded recommendations to the Academy Board at the end of the semester.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 9331, Establishment; superintendent; faculty.

PURPOSE(S):

Provides data on academically deficient cadets to Academic Review Committee who makes recommendations concerning cadets' future to the Academy Board.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/cabinets, in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms, cabinets, and in computer storage devices protected by computer system software.

RETENTION AND DISPOSAL:

Destroyed one year after graduation or when purpose has been served, whichever is sooner. Destruction is by tearing into pieces, shredding, pulping, macerating, or burning. Computer records are destroyed by degaussing or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Dean of Faculty, United States Air Force Academy, CO 80840–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Dean of Faculty, United States Air Force Academy, CO 80840–5000.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Dean of Faculty, United States Air Force Academy, CO 80840–5000.

CONTESTING RECORD PROCEDURES:

The Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Records are compiled from cadet grading and rating cycles.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 AFA A

System name:

Cadet Personnel Management System, (50 FR 22384, May 29, 1985).

Changes:

* * * * *

Categories of records in the system:

Delete entry and replace with "Cadet Personnel Record (CPR) consisting of temporary and permanent forms and documents including the CPR–1 which contains Oath of Allegiance; Cadet Acceptance Record; Statement of Consent; separation referral; appointment orders; disciplinary/punishment order; Commandant's Disciplinary Boards; disenrollment correspondence for reentry cadets; Declaration of Religious Denomination; Record of Emergency Data; Statement of Personal History; Certificates of Completion/Training; Serviceman's Life Insurance Election; citation/orders for decorations/awards; Language Proficiency Test; Statement of Travel; Ethnic/Race Identification; Disclosure of Cadet/Cadet Candidate Information; Cadet Outgoing Clearance; Separation Referral Checklist; Data for Parachutist Rating; Certificate of Release or Discharge; Application for ID Card; Line of Duty Determination; Individual Jump Records; USAF Drug Abuse Training Certificate; Squadron Change Order; Active Duty Service Commitment Acknowledgment Letter; Faculty Board Elimination from Flying Status; Title 10 U.S.C. Letter, World Service Life Insurance Election; small arms marksmanship training, and the CPR–2 which contains the Cadet Performance Report; Basic Cadet Evaluation Report; Cadet Conduct Summary; Cadet Interview/Evaluation; Cadet Personal Information; Evaluation of Cadet; Cadet Rating Form; Academic Probation Notification; Cadet Personal Data Summary Sheet; Individual Military Rating Summary; Conduct/Aptitude Probation Letters; Commandant's Disciplinary Boards (copies); Academy Board/Academic Review Committee actions (copies); Minutes of Eligibility Committee actions; Military Review Committee/Athletic Review Committee action; Upperclass Performance Summary; Professional Military Training Summary; Liaison Officer Candidate Evaluation; Evidence and statements gathered by the Honor Committee and a summary of the Honor Board proceedings; Summer Training Evaluation and Completion Record; current summer assignments and training preferences. Board Case File consists of proceedings, inquiries, and investigations; Counseling Record; Motor vehicle information, such as amount of loan, monthly payments, current financial data, insurance coverage, and record of accidents/citations."

Authority for maintenance of the system:

Add "and Executive Order 9397." to the end of the entry.

Purpose(s):

Delete entry and replace with "Used to evaluate and document cadet activity at the USAF Academy.

Case files are used by Cadet Honor representatives to investigate possible violations of the Honor Code and as evidence at cadet Honor Hearings. The case summaries are used for statistical record keeping and training in each squadron of Honor Committee activities.

Used to maintain a record of summer training accomplishments and assign cadets to summer training program to insure each cadet meets this graduation requirement.

Case files are used in board (disenrollment) actions initiated against cadets; by USAF Academy Superintendent in making a decision to refer cadets to board of officers, and by the Office of the Secretary of the Air Force in making final decisions on disenrollment action.

Counseling record is used by counselors to maintain record of transactions during counselling sessions.

Used to record pertinent information about a cadet's motor vehicle and a summary of past driving record. Provides authorities with immediate information concerning a cadet's motor vehicle for counseling and determining the cadet's financial ability to incur and repay a debt."

* * * * *

Exemptions claimed for the system:

Delete entry and replace with "Portions of this system may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 806b. For additional information contact the system manager.

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F035 AFA A

SYSTEM NAME:

Cadet Personnel Management System.

SYSTEM LOCATION:

United States Air Force Academy (USAF Academy), CO 80840–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The Air Force Academy cadets.

CATEGORIES OF RECORDS IN THE SYSTEM:

Cadet Personnel Record (CPR) consisting of temporary and permanent forms and documents including the CPR–1 which contains Oath of Allegiance; Cadet Acceptance Record; Statement of Consent; separation referral; appointment orders; disciplinary/punishment order; Commandant's Disciplinary Boards; disenrollment correspondence for reentry cadets; Declaration of Religious Denomination; Record of Emergency Data; Statement of Personal History; Certificates of Completion/Training; Serviceman's Life Insurance Election; citation/orders for decorations/awards; Language Proficiency Test; Statement of Travel; Ethnic/Race Identification; Disclosure of Cadet/Cadet Candidate Information; Cadet Outgoing Clearance; Separation Referral Checklist; Data for Parachutist Rating; Certificate of Release or Discharge; Application for ID Card; Line of Duty Determination; Individual Jump Records; USAF Drug Abuse Training Certificate; Squadron Change Order; Active Duty Service Commitment Acknowledgment Letter; Faculty Board Elimination from Flying Status; Title 10 U.S.C. Letter, World Service Life Insurance Election; small arms marksmanship training, and the CPR–2 which contains the Cadet Performance Report; Basic Cadet Evaluation Report; Cadet Conduct Summary; Cadet Interview/Evaluation; Cadet Personal Information; Evaluation of Cadet; Cadet Rating Form; Academic Probation Notification; Cadet Personal Data Summary Sheet; Individual Military Rating Summary; Conduct/Aptitude Probation Letters; Commandant's Disciplinary Boards (copies); Academy Board/Academic Review Committee actions (copies); Minutes of Eligibility Committee actions; Military Review Committee/Athletic Review Committee action; Upperclass Performance Summary; Professional Military Training Summary; Liaison Officer Candidate Devaluation; Evidence and statements gathered by the Honor Committee and a summary of the Honor Board proceedings; Summer Training Evaluation and Completion Record; current summer assignments and training preferences. Board Case File consists of proceedings, inquiries, and investigations; Counseling Record; Motor vehicle information, such as amount of loan, monthly payments, current financial data, insurance coverage, and record of accidents/citations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 9331, Establishment; Superintendent; faculty;

10 U.S.C. 9349, Cadets: organization; service; instruction, and Executive Order 9397.

PURPOSE(S):

Used to evaluate and document cadet activity at the United States Air Force Academy.

Case files are used by Cadet Honor representatives to investigate possible violations of the Honor Code and as evidence at cadet Honor Hearings. The case summaries are used for statistical record keeping and training in each squadron of Honor Committee activities.

Used to maintain a record of summer training accomplishments and assign cadets to summer training program to insure each cadet meets this graduation requirement.

Case files are used in board (disenrollment) actions initiated against cadets; by USAF Academy Superintendent in making a decision to refer cadets to board of officers, and by the Office of the Secretary of the Air Force in making final decisions on disenrollment action.

Counseling record is used by counselors to maintain record of confidential transactions during counselling sessions. Used to record pertinent information about a cadet's motor vehicle and a summary of past driving record.

Provides authorities with immediate information concerning a cadet's motor vehicle for counseling and determining the cadet's financial ability to incur and repay a debt.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in paper files, in computers and on computer output products, cards and microform.

RETRIEVABILITY:

Retrieved by name and Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Permanent records are transferred to the Master Cadet Personnel Record which is retained permanently at the USAF Academy or placed in the officer's record. Any personal documents are returned to the individual. Temporary records are destroyed 90 days after graduation or disenrollment. Investigation files are destroyed after 1 year on first class cadets and after 6 months on second, third and fourth class cadets. Case files of Honor Hearings are destroyed after 5 years on guilty cases and after 1 year on not guilty and discretion cases. Summer training records are destroyed after 6 years on graduated cadets and after 4 years on disenrolled cadets. Case files on disenrolled cadets are transferred to the Master Cadet Personnel Record which is retained permanently at the USAF Academy. Case files on retained cadets are destroyed 3 months after cadet graduates. Counseling record is destroyed one year after graduation. Motor vehicle information is destroyed when superseded, no longer needed, or upon graduation, whichever is sooner. Records are destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Computer records are destroyed by degaussing or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant of Cadets, Deputy Chief of Staff/Personnel, and Dean of Faculty, United States Air Force Academy, CO 80840–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Commandant of Cadets, Deputy Chief of Staff/Personnel, and Dean of Faculty, United States Air Force Academy, CO 80840–5000.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Commandant of Cadets, Deputy Chief of Staff/Personnel, and Dean of Faculty, United States Air Force Academy, CO 80840–5000.

CONTESTING RECORD PROCEDURES:

The Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from the individual, counselors, educational institutions, academy authorities, cadets, automated system interfaces, source documents (such as reports), and from instructors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 806b. For additional information contact the system manager.

F035 AFA B

System name:

Master Cadet Personnel Record (Active/Historical), (50 FR 22385, May 29, 1985).

Changes:

* * * * *

Categories of records in the system:

Delete entry and replace with "(1) Active: Records used in the candidate selection process for the USAF Academy include high school records; admission test scores; candidate fitness test; medical qualification status; personnel data records; letter of recommendation and evaluation; personal data to include home address; telephone number; Social Security Number; population or ethnic group selections; height; weight; citizenship; statements of reasons for attending the Academy and preparatory school and college records, if applicable; service academy precandidate questionnaire; invitation to travel letter; transfer/validation credit information; Academy Board action; computer generated products containing academic grade information; parental addresses by state roster and verification of independent studies; computer listings of minority students by population or ethnic group; listings of international cadets; special order assigning cadets to the Cadet Wing; Cadet wing, squadron, and class alpha rosters, and matriculation rosters.

(2) Historical: Selected special orders (appointment, assignment, awards, separation, etc.); letters and records of resignation/separation actions, details of Honor violation (if applicable); selected letters to or from parents; Permanent Record Card; decisions of committees, boards, and investigations (if applicable); high school and college transcripts; College Entrance Examination Board test scores; personnel data records, and biographical data; computer generated products reflecting academic grade information; grade and quality point averages; course grade distributions; overall military and academic orders of merit; selected dependents on merit lists; military parents; cadets whose fathers are general officers; graduation data; majors awarded; types of degrees conferred, and documents pertaining to awards, academic and military honors."

Authority for maintenance of the system:

Add "and Executive Order 9397." to the end of the entry.

Purpose(s):

Delete entry and replace with "(1) Active: These records form the nucleus of the Master Cadet Personnel Record for candidates selected to attend the Academy. These records are used to record the academic, athletic and military training histories of cadets who attend the Academy. They provide a means of checking the performance of each cadet, recording all grades for completed courses, computing grade point averages, identifying deficiencies, and insuring all requirements for graduation are met. Grade information is used by cadets, Academy instructors, counselors, and advisors in selecting majors, determining academic requirements for specific majors, and scheduling courses. Computer listings are also used by faculty and staff members to readily identify cadets by squadron, class, and population or ethnic group. Academic Review Committees and the Academy Board use these records to evaluate cadet performance and to determine eligibility for continuance at the Academy.

(2) Historical: These records form a complete history of each cadet who attended the Academy. They record academic, athletic, and military performance of each cadet and to coordinate statistics relating to the cadet strength and attrition. Files are reviewed by organizations within the Department of Defense to determine qualifications for assignments; by Air Force Reserve Officer Training Corps (AFROTC), recruiting and medical services units to determine qualifications and eligibility for training programs and for military service, and by the Air Force Military Personnel Center (AFMPC) to confirm or recreate a military service record."

Routine uses of records maintained in the system, including categories of users and the purpose of such uses:

Delete entry and replace with "Files are disclosed to the Federal Bureau of Investigation for conducting background investigations for security clearances, and to the Veterans Administration for determining eligibility for benefits.

Academic and personnel information is released to nominating officials, and to the Western Athletic Conference (WAC) officials on cadets participating in WAC-sponsored intercollegiate athletics.

The "Blanket Routine Uses" published at the beginning of the Air Force's compilation of systems of records notices apply to this system."

* * * * *

Retention and disposal:

Delete entry and replace with "Temporary documents are destroyed 90 days after disenrollment or graduation. Permanent documents are microfilmed one year after graduation. The microfilm is retained permanently in the office of the Registrar. Paper copy is destroyed after 6 years. Records are destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Computer records are destroyed by degaussing or overwriting."

System manager(s) and address:

Delete entry and replace with "Registrar, United States Air Force Academy, CO 80840–5000."

* * * * *

F035 AFA B

SYSTEM NAME:

Master Cadet Personnel Record (Active/Historical).

SYSTEM LOCATION:

United States Air Force Academy (USAF Academy), CO 80840–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former USAF Academy cadets.

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CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Active: Records used in the candidate selection process for the USAF Academy include high school records; admission test scores; candidate fitness test; medical qualification status; personnel data records; letter of recommendation and evaluation; personal data to include home address; telephone number; Social Security Number; population or ethnic group selections; height; weight; citizenship; statements of reasons for attending the Academy and preparatory school and college records, if applicable; service academy precandidate questionnaire; invitation to travel letter; transfer/validation credit information; Academy Board action; computer generated products containing academic grade information; parental addresses by state roster and verification of independent studies; computer listings of minority students by population or ethnic group; listings of international cadets; special order assigning cadets to the Cadet Wing; Cadet wing, squadron, and class alpha rosters, and matriculation rosters.

(2) Historical: Selected special orders (appointment, assignment, awards, separation, etc.); letters and records of resignation/separation actions, details of Honor violation (if applicable); selected letters to or from parents; Permanent Record Card; decisions of committees, boards, and investigations (if applicable); high school and college transcripts; College Entrance Examination Board test scores; personnel data records, and biographical data; computer generated products reflecting academic grade information; grade and quality point averages; course grade distributions; overall military and academic orders of merit; selected dependents on merit lists; military parents; cadets whose fathers are general officers; graduation data; majors awarded; types of degrees conferred, and documents pertaining to awards, academic and military honors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 9331, Establishment; superintendent: faculty, and Executive Order 9397.

PURPOSE(S):

(1) Active: These records form the nucleus of the Master Cadet Personnel Record for candidates selected to attend the Academy. These records are used to record the academic, athletic and military training histories of cadets who attend the Academy. They provide a means of checking the performance of each cadet, recording all grades for completed courses, computing grade point averages, identifying deficiencies, and insuring all requirements for graduation are met. Grade information is used by cadets, Academy instructors, counselors, and advisors in selecting majors, determining academic requirements for specific majors, and scheduling courses. Computer listings are also used by faculty and staff members to readily identify cadets by squadron, class, and population or ethnic group. Academic Review Committees and the Academy Board use these records to evaluate cadet performance and to determine eligibility for continuance at the Academy.

(2) Historical: These records form a complete history of each cadet who attended the Academy. They record academic, athletic, and military performance of each cadet and to coordinate statistics relating to cadet strength and attrition. Files are reviewed by organizations within the Department of Defense to determine qualifications for assignments; by Air Force Reserve Officer Training Corps (AFROTC), recruiting and medical services units to determine qualifications and eligibility for training programs and for military service, and by the Air Force Military Personnel Center (AFMPC) to confirm or recreate a military service record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Files are disclosed to the Federal Bureau of Investigation for conducting background investigations for security clearances, and to the Veterans Administration for determining eligibility for benefits.

Academic and personnel information is released to nominating officials, and to the Western Athletic Conference (WAC) officials on cadets participating in WAC-sponsored intercollegiate athletics.

The "Blanket Routine Uses" published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, in computers, on computer output products, and on microfilm.

RETRIEVABILITY:

Retrieved by name and Social Security Number.

SAFEGUARDS:

Records are accessed by custodian of the record system, by person(s) responsible for servicing the record system in performance of their official duties, who are properly screened and cleared for need-to-know. Records are stored in locked file containers, cabinets, vaults or rooms, and in computerized data storage devices controlled by computer system software.

RETENTION AND DISPOSAL:

Temporary documents are destroyed 90 days after disenrollment or graduation. Permanent documents are microfilmed one year after graduation. The microfilm is retained permanently in the office of the Registrar. Paper copy is destroyed after 6 years. Records are destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Computer records are destroyed by degaussing or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Registrar, United States Air Force Academy, CO 80840–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Registrar, United States Air Force Academy, CO 80840–5000.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Registrar, United States Air Force Academy, CO 80840–5000.

CONTESTING RECORD PROCEDURES:

The Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from forms the individual fills out during the admissions process; other educational institutions; College Entrance Examination Board and American College Testing scores; Air Force medical examination; individual and personnel records; grades; tests; examinations given at the Academy; high school and college transcripts, and from actions taken by the Academy Board.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 806b. For additional information contact the system manager.

F035 AFA C

System name:

Prospective Instructor Files, (50 FR 46477, November 8, 1985).

Changes:

* * * *

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Add "and in computers and on computer output products." to the end of the sentence.

* * * * *

F035 AFA C

SYSTEM NAME:

Prospective Instructor Files

SYSTEM LOCATION:

United States Air Force Academy (USAF Academy), CO 80840–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel applying for instructor duty at the Air Force Academy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copy of Application for Instructor Duty; college transcripts; past Officer Effectiveness Reports; Officer Uniform Assignment Brief which may contain prior assignment information, aeronautical rating information, general personnel data including security clearance, date of birth, marital status, and promotion dates; correspondence between individual and department; evaluations on individual's suitability, and record of personal interview.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 9331, Establishment; superintendent; faculty.

PURPOSE(S):

Used to determine qualification, availability and location of potential instructors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Retained in office files until superseded, obsolete, or no longer needed for reference. Records are destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Computer records are destroyed by degaussing or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff/Personnel, United States Air Force Academy, CO 80840–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Deputy Chief of Staff/Personnel, United States Air Force Academy, CO 80840–5000.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Deputy Chief of Staff/Personnel, United States Air Force Academy, CO 80840–5000.

CONTESTING RECORD PROCEDURES:

The Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from the individual, previous employers, educational institutions and source documents such as reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 91–13785 Filed 6–10–91; 8:45 am]
BILLING CODE 3910–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 11, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, attention: Dan Chenok: Desk Officer, Department of Education, Office of Managment and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Managment and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection

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requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: June 5, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Elementary and Secondary Education

Type of Review: Revisions.

Title: Application for Assistance of State Educational Agencies under the Steward B. McKinney Homeless Assistance Act, Title VII.

Frequency: Annually.

Affected Public: State or local governments.

Reporting Burden:

Responses: 55.

Burden Hours: 1155.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: This form will be used by State Educational Agencies to apply for funding under the Steward B. McKinney Homeless assistance Act. The Department uses the information to make grant awards.

Office of Intergovernmental and Interagency Affairs

Type of Review: Reinstatement.

Title: Presidential Academic Fitness Awards (PAFA) School Participation Order Form.

Frequency: Annually.

Affected Public: Individuals or households; State or local governments; Non-profit institutions.

Reporting Burden:

Responses: 52,000.

Burden Hours: 17,333.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: Schools who participate in the Presidential Academic Fitness Awards Program submit this form to the Department. The Department uses this information to make awards.

[FR Doc. 91-13755 Filed 6-10-91; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Floodplain and Wetland Involvement Notification for Proposed Construction of the Main Injector at Fermi National Accelerator Laboratory, Batavia, IL

AGENCY: Department of Energy.

ACTION: Public notice of comment period on floodplain/wetland involvement.

SUMMARY: The Department of Energy (DOE) proposes to construct a 150 GeV (Giga electron Volt) proton synchrotron (Main Injector) at Fermi National Accelerator Laboratory, which is situated on Federally owned lands under the jurisdiction of the U.S. Department of Energy (DOE). All activities related to the proposed project will occur within a restricted area of approximately 135 acres on the Federally owned property.

In accordance with the DOE Regulations for Compliance with Floodplain/Wetlands Environmental Review Requirements (10 CFR part 1022), DOE will prepare a floodplain and wetland assessment to be incorporated in the appropriate National Environmental Policy Act document for the proposed action. DOE's decision concerning the floodplain/wetlands action would be documented in a statement of findings and incorporated into DOE's finding of no significant impact or environmental impact statement, as appropriate.

DATES: Any comments are due on or before June 26, 1991.

ADDRESS: Send written comments to Andrew E. Mravca, Area Manager, P.O. Box 2000, Batavia, Illinois 60510.

SUPPLEMENTARY INFORMATION: The proposed Main Injector would provide a national facility for advancing the frontiers of high-energy particle physics research. The Main Injector would be an oval-shaped below grade enclosure with a circumference of about 10,900 feet. The Main Injector construction would also include construction of a shielding berm around the below grade enclosure, cooling ponds around much of the shielding berm, a 345 kV overhead power line, several service buildings around the enclosure, and an industrial building for component fabrication and assembly of many of the Main Injector magnets. Construction would require the filling of portions of five wetland areas which are seasonally or intermittently flooded. Three wetlands are palustrine forested wetlands, one is a lower perennial riverine wetland and another is a palustrine emergent wetland. The five wetlands total 87.60 acres in size; 7.14 acres would be filled during construction, but only 5.70 acres of fill would be permanent. Main Injector construction would also fill a portion of the existing 100-year floodplain of Indian Creek, a tributary of the Fox River. The flow of Indian Creek and its tributaries would be temporarily diverted during construction to keep immediate construction areas dry. Normal water levels would be restored when construction work in the Indian Creek area is completed. Portions of Indian Creek flow would be diverted around the Main Injector during flood conditions. The flow would be diverted into and through two cooling ponds. In accordance with DOE's regulations for compliance with floodplain/wetlands environmental review requirements (10 CFR part 1022), DOE will prepare a floodplain/wetlands assessment. Consultations with the U.S. Army Corps of Engineers (COE) and the Illinois Department of Transportation/Division of Water Resources (IDOT/DWR) have been initiated, and required permit applications and mitigation plans have been submitted for approval by the appropriate agency.

A replacement wetland (totaling 8.55 acres) is proposed to be constructed adjacent to Indian Creek; therefore, the new wetland is proposed to be constructed in the same watershed as the wetlands that would be disturbed. The area proposed for the replacement wetland supports hydric soils and would be graded to match the grade of the adjacent wetland to insure sufficient hydrology is obtained for wetland establishment and success. Soil removed from the disturbed wetlands would be utilized to provide a seedbank for the created wetland area. Additionally, saplings of silver maple and other species, such as box elder and green oak that are characteristic of adjacent wetlands, would be planted. The proposed project also would include the creation of 29 acre-feet of floodwater storage capacity to compensate for construction of the Main Injector within the floodplain. DOE proposes to maintain the existing watershed characteristics within the project site and the surrounding areas. Detailed engineering specifications for the proposed replacement wetland would be provided to the COE prior to construction, and a 5-year monitoring program would document the wetland mitigation area according to appropriate performance criteria. Maps and further information are available from the address shown above.

James F. Decker,

Acting Director, Office of Energy Research.

[FR Doc. 91-13724 Filed 6-10-91; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award; Energy Child Development Center, Inc.

AGENCY: U.S. Department of Energy.

ACTION: Notice of a noncompetitive grant award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.7(b)(2)(i)(B) and (G), it is making a noncompetitive award to Energy Child Development Center, Inc. (ECDC), under Grant Number DE-FG01-91AD69085. The grant will provide funding up to the amount of $112,000 ($50,000 was obligated on May 22, 1991). The purpose of the grant is to provide start-up funds to the ECDC for operation of the Department of Energy Forrestal child care and development facility (the "facility") which will provide child care and development services for Federal employees.

The child care and development center project is necessary to support the Department's mission. This relationship to mission was defined by the Secretary in the "Determination to Establish Child Care Centers in Department of Energy Facilities in Forrestal and Germantown" dated April 4, 1989. The DOE support of this program should assist the Department in furthering certain statutorily recognized social goals such as equal employment opportunities. The ECDC, a non-profit corporation established and controlled by DOE employees, has been actively involved, since its inception in 1989, in Departmental efforts to establish a child care and development facility. ECDC members have participated in the design and equipment of the facility and in the development of a curriculum for all stages of child development. This organization is the only company chartered specifically to provide child care and development services at the facility and is therefore uniquely positioned to operate and manage the facility.

Based on the findings made above regarding the uniqueness of this corporate entity and the public interest served in the award of this grant, the restriction of 10 CFR 600.7(c)(2) regarding eligibility of an organization substantially owned or controlled by one or more current DOE employees has been waived.

The period of performance is from May 22, 1991 to May 21, 1992.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, Attn.: Rosemarie H. Marshall, 1000 Independence Avenue, SW., Washington, DC 20585.

Jeffrey Rubenstein,

Director, Operations Division "A," Office of Placement and Administration.

[FR Doc. 91-13840 Filed 6-10-91; 8:45 am]

BILLING CODE 6450-01-M

Advisory Committee on Nuclear Facility Safety; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Advisory Committee on Nuclear Facility Safety (ACNFS).

Date & Time: Thursday, June 27, 1991, 8 a.m. to 6 p.m.

Place: Department of Energy Headquarters, room 1E257, 1000 Independence Avenue, SW., Washington, DC 20585.

Contact: Wallace R. Kornack, Executive Director, ACNFS, AC-21, 1000 Independence Avenue, SW., Washington, DC 20585, 202/586-1770.

Purpose of the Committee: The Committee was established to provide the Secretary of Energy with advice and recommendations concerning the safety of the Department's production and utilization facilities, as defined in section 11 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014).

Tentative Agenda

Thursday June 27, 1991

8 a.m. Chairman John F. Ahearne Opens Meeting, Status Reports on Rocky Flats Plant, Review of Selected Technical Issues.
12 noon Lunch.
1 p.m. Meeting Resumes, Review of Selected Technical Issues, Subcommittee Reports, Committee Business.
5:30 p.m. Chairman Ahearne Opens Public Comment Session.
6 p.m. Meeting ends.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Wallace Kornack at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on June 6, 1991.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 91-13842 Filed 6-10-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. QF91-59-000, et al.]

Zond Sky River Development Corp. et al., Electric Rate, Small Power Production, and Interlocking Directorate Filings

June 3, 1991.

Take notice that the following filings have been made with the Commission:

1. Zond Sky River Development Corporation and ESI Sky River Limited

[Docket No. QF91-59-000]

On May 21, 1991, Zond Sky River Wind Development Corporation and ESI Sky River Limited tendered for filing an amendment to their filing in this docket.

The amendment provides additional information relating to resumption of processing due to implementation of Public Law 102-46.

Comment date: July 2, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Zond Victory Garden Phase IV Development Corporation and ESI VG Limited Partnership

[Docket No. QF91-87-000]

On May 21, 1991, Victory Garden Phase IV Development Corporation and ESI VG Limited Partnership tendered for filing an amendment to their filing in this docket.

The amendment provides additional information relating to resumption of processing due to implementation of Public Law 102-46.

Comment date: July 2, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in

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determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13763 Filed 6-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5867-021]

Alice Falls Hydro Partners, L.P.; Notice of Availability of Environmental Assessment

June 5, 1991.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application for amendment of license to change the powerhouse design and install two turbines at the Alice Falls Project on the AuSable River in Clinton and Essex Counties, New York. The staff of OHL's Division of Project Compliance and Administration has prepared an Environmental Assessment (EA) for the proposed action. In the EA, staff concludes that approval of the amendment of license would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, room 3308, of the Commission's Offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13774 Filed 6-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-2135-000, et al.]

United Gas Pipe Line Co., et al.; Natural Gas Certificate Filings

June 3, 1991.

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Co.

[Docket No. CP91-2135-000]

June 3, 1991.

Take notice that on May 30, 1991, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP91-2135-000 a prior notice request with the Commission pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) to construct and operate a sales tap and related facilities for deliveries of natural gas to Trade and Development Corporation (TDC) for service to Cobra Pipeline Company (Cobra) in Hinds County, Mississippi, under United's blanket certificate issued in Docket No. CP82-430-000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

Specifically, United proposes to construct and operate a 2-inch sales tap for the delivery of natural gas to TDC to serve Cobra under United's Rate Schedule ITS. United estimates that deliveries to TDC would be 400 Mcf on a peak day and 146,000 Mcf on an annual basis. United states that it has sufficient capacity to make the deliveries without detriment or disadvantage to its other existing customers. It is estimated that the cost of constructing the facilities would be $8,558, and it is stated that United would be reimbursed by Cobra for the installation costs. It is asserted that United and TDC have an executed transportation agreement and that once the proposed facilities are installed, United will file a request for transportation authorization pursuant to § 284.223 of the Commission's Regulations.

Comment date: July 18, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. Williston Basin Interstate Pipeline Co.

[Docket No. CP91-2132-000]

June 3, 1991.

Take notice that on May 30, 1991, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP91-2132-000, a request pursuant to §§ 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act, to abandon two sales taps and appurtenant facilities located in Yellowstone County, Montana, pursuant to its blanket certificate authorization issued in Docket No. CP82-487-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williston Basin states that the sales taps will be abandoned in place and such abandonment will not have a significant adverse impact on the environment. Williston Basin states that it has been advised by Montana-Dakota Utilities Company (Montana-Dakota) that service is no longer required through the taps because the end-use customers currently served from the taps will now receive service through extensions of Montana-Dakota's distribution gas lines.

Comment date: July 18, 1991, in accordance with Standard Paragraph G at the end of this notice.

3. Florida Gas Transmission Co.

[Docket No. CP91-2086-000]

June 4, 1991.

Take notice that on May 21, 1991, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP91-2086-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing FGT to increase the levels of firm service to certain sales customers, starting with the 1991 October season, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

FGT proposes to increase maximum daily contract quantities for the October season and maximum annual contract quantities to serve the following customers: the City of Clearwater (Clearwater), Florida Public Utilities Company (FPUC), Fort Pierce Utilities Authority (Ft. Pierce), Lake Apopka Natural Gas District (Lake Apopka), Okaloosa County Gas District (Okaloosa), St. Joe Natural Gas Company (St. Joe), West Florida Natural Gas Company (West Florida), the City of Tallahassee (Tallahassee), the City of Blountstown (Blountstown), the City of Crescent (Crescent), Sebring Gas System (Sebring), Aluminum Company of America (ACA), Kissimmee Utility Authority (Kissimmee), and City of Vero Beach (Vero Beach). The increases are proposed for service prior to completion of Phase II expansion and for service after Phase II expansion. FGT proposes the following increases for the above referenced customers:

	Phase I (Dth)		Phase II (Dth)	
	Daily	Annual	Daily	Annual
Rate Schedule G:				
Clearwater	1,006	31,248	2,566	79,546
FPUC	3,080	95,480	6,000	186,000
Ft. Pierce	763	23,653	1,942	60,202
Lake Apopka	1,381	42,811	3,516	108,996
Okaloosa	0	0	8,020	248,620
St. Joe	66	2,046	169	5,239
West Florida	1,254	38,874	0	0
Tallahassee	0	0	3,482	107,942
Rate Schedule SGS:				
Blountstown	39	1,209	99	3,069
Crescent	5	155	13	403
Sebring	83	2,573	211	6,541
Direct Firm Sales:				
ACA	1	31	3	93
Kissimmee	273	8,453	695	21,545
Vero Beach	1,065	33,015	2,710	84,010
Total	24,226	751,106	59,067	1,831,077

FGT asserts that the proposed increase in service to certain customers is due to the availability of incremental capacity on FGT's system in the season of October. As such PGT further asserts that it has sufficient supply and capacity and is capable of delivering the additional firm sales volumes. In addition to the above sales customers, FGT asserts that it will increase firm transportation services in the October season to five transportation customers in the following amounts: [1]

[1] Authorization to transport the increased levels of firm transportation services will be requested by FGT by separate prior notice filings in accordance with Sections 157.205 and 284.223 of the Commission's regulations.

	Phase I (Dth)		Phase II (Dth)	
	Daily	Annual	Daily	Annual
Rate Schedule FTS-1	15,208	471,448	29,641	918,871

FGT asserts that the above increases for firm sales and transportation services for the October season was made available in accordance with the Commission's regulations and Order Nos. 436 and 500, *et seq.* FGT further asserts that it has executed firm service agreements with all 19 customers.

Comment date: June 25, 1991, in accordance with Standard Paragraph F at the end of this notice.

4. Midwestern Gas Transmission Co. and Tennessee Gas Pipeline Co.

[Docket Nos. CP91-2130-000, and CP91-2131-000]

June 4, 1991.

Take notice that on May 30, 1991, Midwestern Gas Transmission Company, P.O. Box 2511, Houston, Texas 77252, and Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificate issued in Docket No. CP90-174-000 and Docket No. CP87-115-000, respectively, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

[2] These prior notice requests are not consolidated.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under Section 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: July 19, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Dth	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2130-000 (5-30-91)	Neste Oy (Producer)	50,000 50,000 18,250,000	TN, IL, IN, KY	IL, IN, KY	4-18-91, IT-1, Interruptible.	ST91-8676-000 5-1-91
CP91-2131-000 (5-30-91)	Libra Marketing Company (Marketer).	50,000 50,000 18,250,000	Various	Various	4-17-91, IT, Interruptible.	ST91-8718-000 4-29-91

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

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5. Great Lakes Gas Transmission Limited Partnership, et al.

[Docket Nos. CP91-2115-000, CP91-2117-000, and CP91-2118-000]

June 4, 1991.

Take notice that Great Lakes Gas Transmission Limited Partnership, Suite 1600, One Woodward Avenue, Detroit, Michigan 48226, and High Island Offshore System, 500 Renaissance Center, Detroit, Michigan 48243, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP89-2198-000 and by the Commission's Order No. 509 corresponding to the rates, terms and conditions filed in Docket No. RP89-82-000, respectively, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

[3] These prior notice requests are not consolidated.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: July 19, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Mcf	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2115-000 (5-24-91)	Utilicorp United, Inc., dba NMU (LDC).	1,266 1,266 270,924	MN	MI	10-18-90, FT, Firm	ST91-8576-000 4-1-91
CP91-2117-000 (5-24-91)	CMS Gas Marketing Company (Marketer).	145,000 145,000 52,925,000	OLA, OTX	OLA, OTX	1-1-91, IT, Interruptible.	ST91-8204-000 4-1-91
CP91-2118-000 (5-24-91)	CATEX Energy Inc. (Marketer).	1,450,000 1,450,000 529,250,000	OLA, OTX	OLA, OTX	4-1-91, IT, Interruptible.	ST91-8205-000 4-1-91

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

Northwest Pipeline Corp. and United Gas Pipe Line Co.

[Docket Nos. CP91-2133-000, CP91-2134-000, and CP91-2136-000]

June 4, 1991

Take notice that Applicant filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[4]

Information applicable to each transactions, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: July 19, 1991, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type shipper)	Peak day, avg., annual [1]	Points of		Start up date, rate schedule	Related dockets [2]
			Receipt	Delivery		
CP91-2133-000 (05-30-91)	Biomass One L.P. (End-user).	5,000 2,300 840,000	All Northwest P/L points.	All Northwest P/L points.	04-29-91,TI-1	ST91-8782-000
CP91-2134-000 (05-30-91)	Greeley Gas Company (LCD).	540 540 197,000	CO	CO	05-01-91, TF-1	ST91-8783-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] If an ST docket is shown, 120-day transportation service was reported in it.

Applicant: United Gas Pipe Line Company, P.O. Box 1478, Houston, TX 77251-1478

Blanket Certificate Issued in Docket No.: CP88-6-000

Docket No. (date filed)	Shipper name (type shipper)	Peak day, avg., annual [1]	Points of		Start up date, rate schedule	Related dockets [2]
			Receipt	Delivery		
CP91-2136-000 (05-30-91)	NERCO Oil & Gas, Inc. (Producer).	77,250 77,250 28,196,250	LA	LA	03-15-91, ITS	ST91-8525-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] If an ST docket is shown, 120-day transportation service was reported in it.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person of the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13765 Filed 6-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD91-07085T Oklahoma-3]

State of Oklahoma; Notice of Determination Designating Tight Formations

June 5, 1991.

Take notice that on May 28, 1991, the Oklahoma Corporation Commission for the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination to the Commission, pursuant to § 271.703(c)(3) of the Commission's regulations, that the Upper and Lower Cherokee (Red Fork) Formations, located in portions of Custer, Washita, Beckham, and Roger Mills Counties, Oklahoma, qualify as tight formations under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The notice of determination is a resubmittal of Oklahoma's June 30, 1982 tight formation recommendation under Docket No. RM79-76-125 (Oklahoma-3), which the Commission remanded to Oklahoma in Order No. 465, issued February 27, 1987.

The notice of determination covers the following areas: Township 11 North, Ranges 19 and 20 West in Washita County, Ranges 21 and 22 West in Beckham County, and Range 23 West in Beckham and Roger Mills Counties; Township 12 North, Ranges 19 and 20 West in Custer County, Ranges 21 and 22 West in Beckham and Roger Mills Counties, and Ranges 23 through 25 West in Roger Mills County; Township 13 North, Ranges 19 and 20 West in Custer County, and Ranges 21 through 26 West in Roger Mills County; Township 14 North, Ranges 19 and 20 West in Custer County, Ranges 21 through 26 West in Roger Mills County; and Township 15 North, Ranges 25 and 26 West in Roger Mills County, Oklahoma. The notice of determination also contains Oklahoma's findings supplementing Oklahoma's original recommendation and findings, that the referenced portions of the Upper and Lower Cherokee (Red Fork) Formations meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The notice of determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR, §§ 275.203 and 275.204, within 20 days after the date this notice is issued by the Commisison.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13709 Filed 6-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-3-1-000]

Alabama-Tennessee Natural Gas Co.; Notice of Proposed PGA Rate Adjustment

June 4, 1991.

Take notice that on May 31, 1991, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama, 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet:

Twenty Sixth Revised Sheet No. 4

The tariff sheet is proposed to become effective July 1, 1991. Alabama-Tennessee states that the purpose of this filing is to adjust its rates to conform to the rates of its suppliers.

Alabama-Tennessee has requested any necessary waivers of the Commission's Regulations in order to permit the tariff sheets to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional sales and

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transportation customers and affected State Regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with rule 211 or rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants party to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13767 Filed 6-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-1-31-000]

Arkla Energy Resources a Division of Arkla, Inc.; Notice of Tariff Filing

June 4, 1991.

Take notice that on May 31, 1991, Arkla Energy Resources ("AER"), a division of Arkla, Inc., filed primary and alternate revised tariff sheets to Second Revised Volume No. 1 and First Revised Volume No. 1-A of its FERC Gas Tariff, with a proposed effective date of July 1, 1991. AER states that these tariff sheets are filed in order to reflect the annual throughput determinants underlying its currently effective rates and revise its commodity charge accordingly. The revision is required under §§ 14.2(d) and 19.2(d) of the General Terms and Conditions of AER's FERC Gas Teriff, which the Commission accepted on January 10, 1991 in Docket No. RP91-49-000 (54 FERC 61,011).

AER states that both the primary and the alternate tariff sheets revise its commodity charge based on the annual throughput determinants underlying AER's motion rates filed on May 31, 1991 in AER's general section 4 rate proceeding in Docket No. RP91-65. AER has also filed workpapers supporting the recalculation of the charge.

AER states that the base rates underlying the primary tariff sheets include as gas plant in service those costs associated with AER's interest in the capacity of Line AC which were included in AER's December 31, 1990 filing in Docket No. RP91-65. The Line AC costs have been eliminated from gas plant in service in the alternate tariff sheets.[1] The Commission's decision as to which tariff sheets to accept in this proceeding will be governed by its decision regarding AER's motion rate filing in Docket No. RP91-65.

AER states that a copy of the accompanying tariff sheets has been served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13771 Filed 6-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-3-31-000]

Arkla Energy Resources; Notice of Filing of Revised Tariff Sheets Reflecting Quarterly PGA Adjustment

June 5, 1991.

Take notice that on June 3, 1991, Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing six copies of the following revised tariff sheets to become effective July 1, 1991:

Rate Schedule No. X-26

Original Volume No. 3
Thirteenth Revised Sheet No. 185.1

Rate Schedule No. G-2

Second Revised Volume No. 1
Fourth Revised Sheet No. 11

Rate Schedule No. CD

Second Revised Volume No. 1
Fourth Revised Sheet No. 16

In the alternative, AER submits six copies of the following alternate revised tariff sheets, applicable to Rate Schedule No. G-2 and Rate Schedule No. CD, to become effective July 1, 1991 if the revised sheets listed above are rejected by the Commission.

Rate Schedule No. G-2

Second Revised Volume No. 1
Alternate Fourth Revised Sheet No. 11

Rate Schedule No. CD

Second Revised Volume No. 1
Alternate Fourth Revised Sheet No. 16

The only difference between the revised and the alternate revised tariff sheets in this filing is that the non-gas rates included in the revised tariff sheets, except the tariff sheets pertaining to Rate Schedule X-26, include as gas plant in service those costs associated with AER's interest in the capacity of Line AC which were included in AER's December 31, 1990 filing in Docket No. RP91-65. The Line AC costs have been eliminated from gas plant in service in the alternate revised tariff sheets. The Commission's decision as to which set of tariff sheets to accept in this proceeding will be governed by its decision regarding AER's motion rate filing made today in Docket No. RP91-65.

These tariff sheets reflect AER's first quarterly PGA filing made subsequent to its annual PGA effective April 1, 1991 under the Commission's Order Nos. 483 and 483-A.

The proposed changes reflect an increase in AER's system cost of $111,006 and would increase its revenue from jurisdictional sales and service by $5,070 for the PGA period of July, August, and September 1991 as adjusted.

AER has changed to a unit of sales methodology in this PGA filing pursuant to the provisions of its PGA tariff and computation of the current adjustment has been made in accordance with the requirements of the Commission's regulations.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 12, 1991. Protests will be considered by the Commission in determining the appropriate acton to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13777 Filed 6-10-91; 8:45 am]

BILLING CODE 6717-01-M

[1] AER was issued a certificate of public convenience and necessity for Line AC under section 7(c) of the Natural Gas Act on January 17, 1991 (54 FERC 61,033). AER accepted its Line AC certificate by letter filed April 26, 1991.

[Docket No. TQ91-3-32-000]

Colorado Interstate Gas Co.; Notice of Filing

June 4, 1991.

Take notice that on May 31, 1991, Colorado Interstate Gas Company ("CIG") submitted for filing, as part of its Original Volume No. 1 FERC Gas Tariff, six copies of the following proposed tariff sheets:

Seventh Revised First Revised Sheet No. 7.1
Seventh Revised First Revised Sheet No. 7.2
Seventh Revised First Revised Sheet No. 8.1
Seventh Revised First Revised Sheet No. 8.2

CIG states that the instant purchased gas adjustment (PGA) filing is made pursuant to § 154.308 of the Commission's Regulations implementing Order 483, *et seq.* The tariff rates underlying Seventh Revised First Revised Sheet Nos. 7.1 through 8.2 reflect a 0.02 cent/Mcf decrease in the commodity rate for the G-1, P-1, SG-1, H-1, F-1 and PS-1 Rate Schedules, and no change in the demand rates. The proposed rates compare with those filed by CIG on March 1, 1991 in Docket No. TQ91-2-32-000, which rates were approved effective April 1, 1991 by Commission letter order issued March 21, 1991. CIG requests that these proposed tariff sheets be made effective on July 1, 1991.

CIG states that copies of this filing are being served on all jurisdictional customers and interested state commissions, and are otherwise available for public inspection at CIG's offices in Colorado Springs, Colorado.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. An person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13766 Filed 6-10-91; 8:45 am]

BILLING CODE 6716-01-M

[Docket No. TQ91-3-16-000]

National Fuel Gas Supply Corp.; Notice of Proposed Changes in FERC Gas Tariff

June 4, 1991.

Take notice that on May 31, 1991, National Fuel Gas Supply Corporation ("National") submits for filing Tenth Revised Sheet No. 5, as part of its FERC Gas Tariff, Second Revised Volume No. 1 to be effective July 1, 1991.

National states that the purpose of this filing is to reflect a quarterly Purchased Gas Adjustment ("PGA"). Tenth Revised Sheet No. 5 results in a 53.29 cents per dekatherm ("Dt") reduction in its commodity gas cost in comparison with National's compliance filing on March 20, 1991, in Docket No. TQ91-2-16-001. The revised RQ and CD sales commodity rate of 253.21 cents per Dt is based upon a current average cost of purchased gs of 223.37 cents per Dt (in unit of purchases), or 238.75 cents per Dt (in unit of sales).

National further states that copies of this filing were served on National's jurisdictional customers and on the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to intervene or protests should be filed on or before June 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13772 Filed 6-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-166-000]

Northwest Pipeline Corp.; Notice of Filing of Restatement of Base Tariff Rates

June 4, 1991.

Take notice that on May 31, 1991, Northwest Pipeline Corporation ("Northwest") tendered for filing a restatement of Base Tariff Rates on Twelfth Revised Tariff Sheet No. 10, Twelfth Revised Sheet No. 11, Second Revised Sheet No. 12, and Seventh Revised Sheet No. 13 of Second Revised Volume No. 1; Seventh Revised Sheet No. 201 of First Revised Volume No. 1-A; Fifteenth Revised Sheet No. 2, Seventh Revised Sheet No. 2.1, Twelfth Revised Sheet No. 2-A, Sixth Revised Sheet No. 2-A.1, Twenty-Third Revised Sheet No. 2-B and First Revised Sheet No. 2-C of Original Volume No. 2 of its FERC Gas Tariff to be effective July 1, 1991.

Northwest states that this filing reflects no changes in the level of the non-gas components of its jurisdictional rates, that sales rates have been updated for the cumulative changes in gas purchase costs, and that the filing is being made for the sole purpose of restating and justifying such rates, as required by the thirty-six month review procedures within the Commission's Regulations governing PGA provisions. Accordingly, for this purpose, the filing contains a supporting cost study pursuant to § 154.303(e) of the Commission's Regulations.

Northwest states its agreement that this filing will automatically be subject to refund as of July 1, 1991, as required by § 154.303(e)(i) of the Commission's Regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the

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Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13770 Filed 6-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-66-000]

Pacific Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

June 5, 1991.

Take notice that on May 31, 1991, Pacific Gas Transmission Company (PGT), tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Reversed Volume No. 1, Sixth Revised Sheet No. 4, with the effective of August 1, 1991.

PGT states that the filing incorporates PGT's latest projections of purchased gas commodity costs and sales quantities. PGT also states that also included in the filing is PGT's assessment of past performance and a surcharge calculation for the 8-month deferral period ending March 31, 1991.

PGT states that the filing has been served on PGT's jurisdictional sales customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 25, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13778 Filed 6-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-3-7-000]

Southern Natural Gas Co.; Notice of Proposed Changes to FERC Gas Tariff

June 4, 1991.

Take notice that on May 31, 1991, Southern Natural Gas Company (Southern) tendered for filing the following revised sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1:

One Hundred Third Revised Sheet No. 4A
Sixteenth Revised Sheet No. 4B
Twenty Second Revised Sheet No. 4J

The proposed tariff sheets and supporting information are being filed with proposed effective date of July 1, 1991. The aforesaid tariff sheets reflect a decrease of 25¢ per Mcf at 1,000 Btu in the commodity component of Southern's rates to conform to projected changes in its commodity cost of purchased gas. The current adjustment component of Southern's demand rates has been revised to reflect a decrease of 63.5¢ per Mcf for Zone 1, a decrease of 31.2¢ per Mcf for Zone 2, and an increase of 1.2¢ per Mcf for Zone 3. These revisions are the result of recent decreases in the demand rates charged to Southern by United Gas Pipe Line Company, as reflected in Southern's most recently approved interim PGA filing, Docket No. TF91-8-7-000, and allocation of Southern's purchased gas demand costs based upon the highest three-day system peak as reported in Southern's latest FERC Form 2, as required by section 17.3 of Southern's FERC gas tariff.

Southern states that copies of the filing have been served upon all of Southern's jurisdictional purchases and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's rules of practice and procedure (§§ 385.214, 385.211). All such petitions or protests should be filed on or before June 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make the protestant parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13768 Filed 6-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-29-000]

Transcontinental Gas Pipe Line Corp., Notice of Tariff Filing

June 5, 1991.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on May 31, 1991 certain revised tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff, which tariff sheets are listed in Appendix A attached to the filing. Such proposed sheets are to become effective August 1, 1991.

The proposed tariff sheets reflect a rate increase of 10.7¢ per dt related to the current gas cost portion of commodity rates (reflected in Schedule D1, Code O, hereof) under the CD, G, OG, PS, ACQ and S-2 Rate Schedules, compared to Transco's quarterly PGA filing which became effective May 1, 1991. The instant PGA filing reflects an average cost of gas of 179.94¢ per dt for the quarterly period August 1, 1991 through October 31, 1991.

Transco respectfully requests a waiver of the provisions of § 22.4 (including references thereto contained in § 22.7) of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1 and § 154.305(c) of the Commission's regulations in order to calculate the commodity Current Gas Cost Adjustment to its PGA affected rate schedules in the manner provided in the instant filing.

Transco further states that it has filed the necessary schedules in order to comply with Section 154.305 of the Commission's Regulations and FERC Form 542. Transco has also filed a 9-track magnetic tape containing such schedules.

Transco states that copies of the instant filing are being mailed to customers and interested State Commissions. In accordance with provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protect with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's rules and regulations. All such motions or protests should be filed on or before June 25, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available

for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13775 Filed 6-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-3-35-000]

West Texas Gas, Inc.; Notice of Filing

June 4, 1991.

Take notice that on May 31, 1991, West Texas Gas, Inc. ("WTG") filed Twenty-Fourth Revised Sheet No. 3a to its FERC Gas Tariff, Original Volume No. 1, proposed to be effective July 1, 1991. Twenty-Fourth Revised Sheet No. 3a and the accompanying explanatory schedules constitute WTG's quarterly PGA filing submitted in accordance with the Commission's purchased gas adjustments regulations.

WTG states that copies of the filing were served upon WTG's customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 214 (1990). All such motions or protests should be filed on or before June 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13765 Filed 6-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-52-000 and TA91-1-52-001]

Western Gas Interstate Co.; Notice of Proposed Changes in FERC Gas Tariff

June 5, 1991.

Take notice that Western Gas Interstate Company ("Western"), June 3, 1991, tendered for filing the following tariff sheet to its FERC Gas Tariff, Second Revised Volume No. 1:

Second Revised Sheet No. 10

The proposed effective date for the tariff sheet is August 1, 1991.

Western states that its filing proposes changes to it rates in accordance with the terms of the Purchased Gas Adjustment provisions of its FERC Gas Tariff, and authority to make refunds to its customers.

The proposed changes to rates provide for: (1) A decrease in cost under Western's Rate Schedule CD-N of $0.0193; and (2) an increase in cost under Western's Rate Schedule CD-S of $0.2489.

Western states that copies of the filing were served upon Western's transmission system customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 and 385.214 of the Commission's rules and regulations. All such motions or protests should be filed on or before June 25, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13776 Filed 6-10-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-3-49-000]

Williston Basin Interstate Pipeline Co.; Annual Take-or-Pay Reconciliation Filing

June 4, 1991.

Take notice that on May 31, 1991, Williston Basin Interstate Pipeline Company (Williston Basin), suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing its Annual Take-or-Pay Reconciliation Filing pursuant to sections 32 and 33 of the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1. More specifically, Williston Basin filed the following Primary tariff sheets:

First Revised Volume No. 1

First Revised Thirty-fourth Revised Sheet No. 10
Third Revised Sheet No. 122
First Revised Sheet No. 123I

Original Volume No. 1-A

First Revised Twenty-seventh Revised Sheet No. 11
First Revised Thirty-third Revised Sheet No. 12

Original Volume No. 1-B

First Revised Twenty-second Revised Sheet No. 10
First Revised Twenty-second Revised Sheet No. 11

Original Volume No. 2

First Revised Thirty-fifth Revised Sheet No. 10
First Revised Twenty-eighth Revised Sheet No. 11B

Williston Basin has requested that the Commission accept this filing to become effective effective July 1, 1991.

Williston Basin states that the revised tariff sheets are being filed to reflect recalculated fixed monthly surcharges and a revised throughout surcharge to be effective during the period July 1, 1991 through June 30, 1992 pursuant to the procedures contained in sections 32 and 33 of the General Terms and Conditions of Williston Basin's FERC Gas Tariff, First Revised Volume No. 1. This filing reflects a revised total throughout surcharge of 11.457 cents per dkt applicable to all sales and transportation volumes.

The instant filing also contains Alternate tariff sheets to be effective only if the Commission makes the Company's filing in Docket No. RP91-141-000 effective prior to July 1, 1991.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 11, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13773 Filed 6-10-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Pre-Freshman Enrichment Program (PREP)

AGENCY: Department of Energy.

ACTION: Program solicitation announcement.

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SUMMARY: The purpose of this notice is to announce the availability of the PREP solicitation, to identify the institutions which will be eligible for this grant program, and to inform potential applicants of the closing date and location for submission of applications for awards under this program.

SUPPLEMENTARY INFORMATION:

Background

The Department of Energy (DOE) is concerned about whether there are enough science, engineering and mathematics professionals to perform its research and development mission and is authorized in the Energy Reorganization Act of 1974 to "* * * assure an adequate supply of manpower for the accomplishment of energy research and development programs by sponsoring and assisting in education and training activities in postsecondary institutions, vocational schools and other institutions. * * *", 42 U.S.C. 5813 (11).

Specifically, DOE's concern is based on the consideration that the future supply of science and engineering manpower is threatened by two factors: Fewer students enrolling in science-based courses in high school and fewer students available to join the science, engineering and math pool due to declining birth rates. Students who have completed the ninth grade in high school often decide not to take another science-based course. Once the traditional math/science sequence is disrupted, it is too late for students to meet the minimum requirements for admission to college and university science and engineering programs.

The primary purpose of PREP is to alleviate manpower shortages in science, engineering and math careers by preparing and guiding students in the sixth through tenth grades in the selection of college-preparatory courses in science, mathematics and engineering.

In the past 16 years, 304 PREP projects have been funded. These projects have reached over 21,000 students, principally women and minorities who have been underrepresented in science, math and engineering. Pending Congressional action, DOE intends to commit about $2.65 million for the Pre-Freshman Enrichment Program for fiscal year 1992. DOE invites all qualified institutions (see following section) to write for a copy of its Pre-Freshman Enrichment Program solicitation, DOE/ER-0497, Notice of Program Announcement Number DE-PS05-92ER79030.

Eligibility and Limitations

The overall intent of the program is to increase the number of scientists, engineers and mathematicians who graduate from college, and who will continue to play critically important roles in the Nation's overall energy programs. Therefore, institutions which offer science, mathematics and/or engineering degree programs are deemed most qualified.

Accordingly, pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b)(1), applications will be accepted only from U.S. colleges and universities which grant science, mathematics and/or engineering degrees at the baccalaureate level. Non-profit organizations, scientific and professional societies, science museums and science centers, two-year colleges, for-profit industries, and Federal laboratories may participate in cooperative or joint PREP projects, providing the application is submitted by a four-year U.S. college or university.

Application Forms: Program solicitations are expected to be ready for mailing by August 1, 1991. Applications must be prepared and submitted in accordance with the instructions and forms included in the program solicitation. Copies of this solicitation may be obtained by writing to: Office of University and Science Education Programs, ER-80, Office of Energy Research, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; Telephone Number (202) 586-1634.

Closing Date for Submission of Applications: To be eligible, applications must be received by the Department of Energy by 4:30 p.m. October 30, 1991.

For Further Information Contact:

All communications or questions regarding this program solicitation should be directed to: PREP Contracting Officer; Procurement and Contracts Division; Oak Ridge Operations; Department of Energy; Oak Ridge, Tennessee 37831; Telephone Number: (615) 576-7564.

(Catalog of Federal Domestic Assistance No. 81.047, Pre-Freshman Enrichment Program)

Issued in Washington, DC on June 3, 1991.

James F. Decker,

Acting Director, Office of Energy Research.

[FR Doc. 91-13841 Filed 6-10-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

U.S./U.S.S.R. Fossil Energy Workshop Involving U.S. Department of Energy, U.S.S.R. and U.S. Industry Representatives

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Fossil Energy Workshop involving DOE, U.S.S.R. and U.S. industry representatives.

SUMMARY: The U.S./U.S.S.R. Fossil Energy Workshop originally scheduled to be held February 13–15, 1991, has been rescheduled for July 30, through August 2, 1991. This workshop will be held to explore the respective technologies and programs in oil, gas, coal and shale development. Specific areas of interest include environmentally acceptable coal utilization technologies and coal fueled power generation; development of oil and gas fields including hydrocarbon resources on the Continental Shelf; and enhanced oil recovery. Programs to be discussed will include the respective utilization of coal; the prospecting, exploration and development of oil and gas fields; and the retrofit and repowering of power facilities.

BACKGROUND: Previous fact-finding meetings and discussions in the Fossil Energy area have been held between DOE and the U.S.S.R. Bureau of Fuels and Energy Complex (BFEC) in response to specific requests from the BFEC to consider reestablishment of formal energy cooperation. As part of earlier discussions, the Soviets have also proposed approximately fifty (50) projects which they have provided for U.S. consideration. A copy of these proposals is available upon request to the contact person identified below.

The Fossil Energy workshop will afford U.S. Government and industry an opportunity to participate in technology discussions with the Soviet Energy Sector representatives. The opening session of the workshop will be held July 31 at the Morgantown Energy Technology Center, Morgantown, West Virginia. This session will include keynote addresses by Congressional, Soviet, DOE and U.S. industry representatives. The closing session will be held at the Vista International Hotel in Pittsburgh, Pennsylvania, on August 2, 1991. Oil/gas workshop sessions will be held on August 1 at the Morgantown Energy Technology Center, and coal/shale workshop sessions will be held at the Vista International Hotel in Pittsburgh, Pennsylvania on August 1 and 2.

The workshop sessions at Morgantown will focus on oil and gas technology areas. Specific areas of discussion will include: structure of U.S. supply and service industry; drilling completion and stimulation; enhanced oil recovery technologies; discovery and definition of resources; gas processing, transportation and distribution; shale oil recovery and use; refining of crude oil, and financial aspects of establishing resource development projects in the U.S. and in the U.S.S.R.

The workshop sessions at Pittsburgh will focus on oil shale utilization and on coal fueled power generation and coal fuels production technologies, such as: Magnetohydrodynamics (MHD); integrated gasification combined cycle (IGCC); coal combustor development; circulating fluidized-bed combustion, retrofits/repowering; flue gas cleanup; hot gas cleanup; heat engines; coal liquefaction (direct and indirect); mild gasification; and coal preparation.

If you received registration information on the workshop when it was originally announced in January, your name is still on the mailing list for this rescheduled event and you will automatically receive registration materials. If you have not previously received information and would like to do so, please contact the person identified below.

FOR FURTHER INFORMATION CONTACT: Nancy J. Houston, Technology Transfer Office, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507, (304) 291-4081, FTS 923-4081.

Robert H. Gentile,

Assistant Secretary, Fossil Energy.

[FR Doc. 91-13843 Filed 6-10-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3962-1]

California State Motor Vehicles Pollution Control Standards; Opportunity for Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of opportunity for public hearing and public comment period.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has approved amendments to its regulations to establish testing and certification procedures for dedicated methanol and fuel-flexible passenger cars, light-duty trucks and medium-duty vehicles, and heavy-duty vehicles and engines. By separate letter, CARB also notified EPA that it has approved other amendments to its regulations to establish certification and test procedures for new heavy-duty engines fueled with compressed natural gas (CNG) or liquified petroleum gas (LPG). California has requested that, pursuant to section 209(b) of the Clean Air Act (Act), 42 U.S.C. 7543(b), EPA grant waivers of Federal preemption for both sets of amendments. For administrative expediency, EPA has combined CARB's two separate requests into one Notice of Opportunity for Public Hearing and Public Comment Period. EPA has tentatively scheduled a public hearing to hear comments from the general public concerning CARB's requests. In addition, EPA is requesting that interested persons submit written comments. Both oral and written information will be included in the record of the Administrator's decisions and will be available for public inspection.

DATES: EPA has tentatively scheduled a public hearing for July 16, 1991, beginning at 9 a.m. Any person who wishes to testify on the record at the hearing must notify EPA by July 8, 1991. If EPA receives requests to testify on both the methanol and the CNG and LPG waivers, a hearing will be scheduled comprising both waiver requests. If EPA receives requests to testify on only one of the proposed waivers, a hearing will be held covering solely that waiver. If no one notifies EPA that they wish to testify, no hearing will be held.

The deadline for submitting written comments is August 15, 1991.

Within 10 days of the tentative hearing date of July 16, 1991, any person who plans to attend the hearing may call Bruce Fergusson of EPA's Manufacturers Operation Division at (202) 475-9423 to determine if a hearing will be held.

ADDRESSES: If a request is received, a public hearing will be held at: Resources Building Auditorium, 1416 Ninth Street, Sacramento, CA 95814. Parties wishing to testify at the hearing should provide written notice to: Charles N. Freed, Director, Manufacturers Operations Division (EN-340F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. In addition, written comments, in duplicate, should be sent to Mr. Freed at the same address. Copies of material relevant to the methanol waiver request (Docket No. A-90-29) and the CNG and LPG waiver request (Docket No. A-90-34) will be available for public inspection during the working hours of 8:30 a.m. to 12 p.m. and 1:30 p.m. to 3:30 p.m., Monday through Friday, at: U.S. Environmental Protection Agency, Air Docket (LE-131), room M1500, First Floor Waterside Mall, 401 M Street, SW., Washington, DC 20460, telephone (202) 382-7548.

FOR FURTHER INFORMATION CONTACT: Bruce Fergusson, Attorney/Advisor, Manufacturers Operations Division (EN-340F), U.S. Environmental Protection Agency, Washington, DC 20460, telephone (202) 475-9423.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion

Section 209(a) of the Act as amended, 42 U.S.C. 7543(a), provides in part:

No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part * * * [or] require certification, inspection, or any other approval relating to the control of emissions * * * as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

The state of California may be exempted from the prohibitions of section 209(a) of the Act. Section 209(b) of the Act provides in part that,

(t)he Administrator shall, after notice and opportunity for public hearing, waive application of this section to (California) * * * if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such waiver shall be granted if the Administrator finds that—(A) the determination of the State is arbitrary and capricious, (B) (California) does not need such * * * standards to meet compelling and extraordinary conditions, or (C) (its) standards and accompanying enforcement procedures are not consistent with section 202(a) of [the Act].

Once California has been granted a waiver for a set of standards and enforcement procedures for a class of vehicles, it may adopt other conditions precedent to initial retail sale, titling or registration of the subject class of vehicles without having to receive a further waiver of Federal preemption.

By letter dated August 20, 1990, CARB submitted to EPA a request for waiver of Federal preemption for amendments to its emission standards and test procedures. These amendments, which apply to passenger cars, light-duty trucks, medium-duty vehicles, and heavy-duty vehicles and engines:

(1) Amend the California exhaust and evaporative emission standards for gasoline and diesel vehicles and engines

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to make them applicable to all classes of dedicated-methanol vehicles and engines, and fuel-flexible vehicles (FFVs), except methanol urban bus heavy-duty engines, beginning with the 1993 model year;

(2) Amend the California exhaust and evaporative emission standards for gasoline and diesel engines to make them applicable to all methanol urban bus heavy-duty engines, beginning with the 1991 model year, except for fill-pipe specifications and formaldehyde standards, which begin with the 1993 model year;

(3) Establish organic material hydrocarbon equivalent standards (OMHCE) for all methanol vehicle classes in place of existing hydrocarbon emission standards;

(4) Incorporate the Federal test procedures published by the Environmental Protection Agency in the **Federal Register** (54 FR 14426 (4–11–89)) for methanol vehicles and engines with the following exceptions:

(a) Separate formaldehyde exhaust emission standards;

(b) Different mileage accumulation fuels and emission test fuels specifications; and

(c) Certification procedures for FFVs;

(5) Amend the California certification requirements for gasoline and diesel vehicles and engines to make them applicable to all classes of methanol vehicles and engines and FFVs;

(6) Establish label requirements equivalent to current California unleaded fuel vehicle label requirements for all classes of methanol vehicles and engines and FFVs;

(7) Establish design requirements for methanol vehicles and FFVs to resist fuel siphoning and poisoning, beginning with the 1993 model year; and

(8) Update and clarify affected regulations.

By separate letter dated September 7, 1990, CARB submitted to EPA a request for waiver of Federal preemption for certain amendments to its heavy-duty engine emission control program. These amendments:

(1) Amend the existing California heavy-duty Otto-cycle (gasoline) and Diesel-cycle emission standards and test procedures to make them applicable to heavy duty engines fueled by CNG and LPG (collectively "gaseous fuels") beginning with the 1990 model year;

(2) Establish an optional nonmethane hydrocarbon (NMHC) standard for heavy-duty engines in addition to the existing total hydrocarbon (HC) standard;

(3) Incorporate appropriate fuel specifications for both compressed natural gas and liquified petroleum gas. The specifications would apply to fuel used for both emission testing and durability service accumulation;

(4) Establish particulate averaging criteria for heavy-duty gaseous fuel engines;

(5) Establish appropriate exhaust emission sampling and calculation procedures for heavy-duty gaseous fuel vehicles;

(6) Amend the existing "California Motor Vehicle Emission Control Label Specifications" to make it applicable to gaseous fuel vehicles;

(7) Make other nonsubstantial amendments to the existing regulations in order to correct, clarify or make them consistent with applicable Federal regulations.

California has stated in its letters, dated August 20, 1990, and September 7, 1990, that it has determined that its amended standards are, in the aggregate, at least as protective of the public health and welfare as the applicable Federal standards. Further, California states that it continues to need separate standards to meet compelling and extraordinary conditions. Finally, California states that the amendments are not inconsistent with section 202(a) of the Act. Section 202(a) requires that the procedures provide sufficient lead time to permit the development and application of requisite technology, giving appropriate consideration to the cost of compliance within such period. In addition, the Agency has held that section 202(a) prohibit the procedures from imposing inconsistent certification requirements such that manufacturers would be unable to meet both the California and Federal requirements with the same test vehicle.

California's requests will be considered according to the requirements for a full waiver determination, which includes providing the opportunity for a public hearing. Any party wishing to present testimony at the hearing should address the following issues:

(1) Whether California's determination that the amended standards are at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious;

(2) Whether California needs separate standards to meet compelling and extraordinary conditions; and

(3) Whether California's standards and accompanying enforcement procedures are consistent with section 202(a) of the Act.

II. Procedures for Public Participation

Any person desiring to make an oral statement on the record should file ten (10) copies of their proposed testimony and other relevant material along with their request for a hearing with the Director of EPA's Manufacturers Operations Division at the Director's address listed above not later than July 8, 1991. In addition, that person should submit 25 copies, if feasible, of the planned statement to the presiding officer at the time of the hearing.

Because a public hearing is designed to give interested parties an opportunity to participate in this proceeding, there are no adverse parties as such. Statements by participants will not be subject to cross-examination by other participants without special approval by the presiding officer. The presiding officer is authorized to strike from the record statements which he or she deems irrelevant or repetitious and to impose reasonable limits on the duration of the statement of any witness.

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested persons may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense.

Regardless of whether a public hearing is held, EPA will keep the record open until August 15, 1991. The Administrator will then render his decision on CARB's requests based on the record of the public hearing, if one is held, relevant written submissions, and other information which he deems pertinent. All information will be available for public inspection at the EPA Air Docket.

Dated: June 3, 1991.

Michael Shapiro,

Deputy Assistant Adm.

[FR Doc. 91–13528 Filed 6–10–91; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–140150; FRL–3928–5]

Access to Confidential Business Information by Dynamac Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Dynamac Corporation (DYN), of Rockville, Maryland, for access to information which has been submitted to EPA under sections 4, 5, 6, 8, and 21 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than June 21, 1991.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, TSCA Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under contract number 68–D1–0014, contractor DYN, of 2275 Research Boulevard, Suite 500, Rockville, MD, will assist the Office of Toxic Substances (OTS) in providing technical assistance in the evaluation of potential hazards posed by new chemicals or genetically altered microorganisms.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–D1–0014, DYN will require access to CBI submitted to EPA under sections 4, 5, 6, 8, and 21 of TSCA to perform successfully the duties specified under the contract. DYN personnel will be given access to information submitted to EPA under sections 4, 5, 6, 8, and 21 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, 8, and 21 of TSCA that EPA may provide access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and DYN's Rockville, MD facility only.

DYN has been authorized access to TSCA CBI at its Rockville, MD facility under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. EPA has approved DYN's security plan and has performed the required inspection of its facility and has found the facility to be in compliance with the manual. Upon completing review of the CBI materials, DYN will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until September 30, 1994.

DYN personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: June 4, 1991.

George A. Bonina,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91–13833 Filed 6–10–91; 8:45 am]

BILLING CODE 6560–50–F

[OPTS–140149; FRL–3927–8]

Access to Confidential Business Information by Dynamac Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized Dynamac Corporation (DYN), of Rockville, Maryland, under subcontract to EPA's contractor Mathtech Incorporated (MAT) of Falls Church, Virginia, for access to information which has been submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than June 21, 1991.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, TSCA Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under contract number 68–D6–0087, contractor DYN, of 2275 Research Boulevard, Suite 500, Rockville, MD, will assist the Office of Toxic Substances (OTS) in preparing health and/or environmental hazard reviews for Premanufacture Notices. In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–D8–0087, DYN will require access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA to perform successfully the duties specified under their subcontract. DYN personnel will be given access to information submitted to EPA under sections 4, 5, 6, and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

DYN is working under subcontract to MAT. In a previous notice published in the **Federal Register** of October 26, 1988 (53 FR 43268), MAT was authorized for access to CBI submitted to EPA under sections 4, 5, 6, 8, and 12 of TSCA.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA that EPA may provide DYN access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at either EPA Headquarters or DYN's Rockville, MD facility.

DYN as been authorized access to TSCA CBI at its Rockville, MD facility under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. EPA has approved DYN's security plan and has performed the required inspection of its facility and has found the facility to be in compliance with the manual. Upon completing review of the CBI materials, DYN will return all transferred materials to EPA. Clearance for access to TSCA CBI under this contract may continue until September 30, 1991. DYN personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: June 4, 1991.

George A. Bonina,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91–13832 Filed 6–10–91; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

Board of Trustees of the Galveston Wharves, et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200248–002.

Title: Board of Trustees of the Galveston Wharves/Deppe Lines Terminal Agreement.

Parties: Board of Trustees of the Galveston Wharves, Deppe Lines (Deppe).

Synopsis: The Agreement provides for (1) an extended term of one year, ending June 3, 1992; and (2) an incentive payment of five cents (.05) per net ton of

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cargo which Deppe originates and moves through the East End Container Terminal regardless of whether the cargo is on a Deppe vessel.

Agreement No.: 224–200526.

Title: Shipside Service, Inc./Sea-Land Services, Inc. Parking Facility Interim Sublease Agreement.

Parties: Shipside Service, Inc. (Shipside), Sea-Land Service, Inc. (Sea-Land).

Synopsis: The Agreement provides for Sea-Land to have exclusive use of approximately 20 acres of Shipside's leased property at Port of Elizabeth, New Jersey for parking its containers and chassis from June 1, 1991 to June 30, 1991. Sea-Land shall pay to Shipside for this use at a rate of $1.00 per unit per diem; and guarantees to pay for a minimum of 1452 spaces per day whether used or not used at the per diem rate of $1.00 per day.

Agreement No.: 224–200527.

Title: Board of Trustees of the Galveston Wharves/Sun Line Cruises Terminal Agreement.

Parties: Board of Trustees of the Galveston Wharves (Galveston), Sun Line Cruises (SLC).

Synopsis: The Agreement, filed June 3, 1991, provides for SLC to pay dockage charges at the regular tariff rates in effect on May 1, 1991, and all other tariff services at the tariff rate then in effect. The term of the Agreement expires August 1, 1991.

Agreement No.: 224–200177–002.

Title: Port of Seattle/Matson Terminals, Inc. Terminal Agreement.

Parties: Port of Seattle (Port), Matson Terminals, Inc. (Lessee).

Synopsis: The Agreement provides for two acres of south yard to be returned to the Port and reflects the differences between 5.31 and 5.4846 acres resulting from the resurvey and updated lease. Lessee will continue use of the property on a month-to-month basis, pursuant to rates set forth in the February 26, 1990 letter lease.

Agreement No.: 224–200417–001.

Title: Georgia Ports Authority/Hoegh Lines Terminal Agreement.

Parties: Georgia Ports Authority, Hoegh Lines.

Synopsis: The Agreement, filed May 31, 1991, extends the term of the basic agreement for an additional year.

Dated: June 5, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–13737 Filed 6–10–91; 8:45 am]

BILLING CODE 6730–01–M

Port of Houston Authority; Provident Warehouse Co.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.602 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–200528.

Title: Port of Houston Authority/ Provident Warehouse; Company Terminal Agreement.

Parties: Port of Houston Authority (Port), Provident Warehouse Company (PWC).

Filing Party: Martha T. Williams, Staff Counsel, Port of Houston Authority, 1519 Capitol, P.O. Box 2562, Houston, TX 77252–2562.

Synopsis: The Agreement, filed June 3, 1991, provides for: (1) PWC's assignment to perform freight handling services at the Port's Wharves and Transit Shed Number M–2 and to assess rates and charges pursuant to the Port's Tariff No. 8; (2) PWC to guarantee an annual income of $1.25 per square feet of shedded space generated by wharfage charges; and (3) PWC to use the Public Wharves as a repair facility at a fee of $50.00 per 100 square feet per day. The term of the agreement expires December 31, 1992.

Dated: June 5, 1991.

By Order of the Federal Maritime Commission

Joseph C. Polking,

Secretary.

[FR Doc. 91–13736 Filed 6–10–91; 8:45 am]

BILLING CODE 6730–01–M

Fact Finding Investigation No. 16, Possible Malpractices in the Trans-Atlantic Trades; Order Extending Investigtion

By Order issued April 9, 1987 (52 FR 12064, April 14, 1987), The Federal Maritime Commission instituted this non-adjudicatory investigation into the practices of rebates, concessions, absorptions and allowances in excess of those set forth in applicable tariffs, and any other devices or means of obtaining, providing, or allowing other persons to obtain transportation of property at less, or different compensation than the rates and charges shown in applicable tariffs or service contracts, in the United States foreign commerce, between ports and points, in the Trans-Atlantic Trades. By Order issued June 10, 1988 (53 FR 22385, June 15, 1988), the term of this investigation was extended to April 14, 1989. By Order issued May 1, 1989 (54 FR 19436, May 5, 1989), the term of this investigation was extended to April 14, 1990. The term of this investigation was further extended to April 14, 1991 by Order issued April 5, 1990 (55 FR 13664, April 11, 1990). The Investigative Officer has now advised that in order to complete ongoing fact finding activities it is necessary to extend this investigation an additional year.

Therefore, *it is ordered,* That the Investigative Officer shall issue a final report of findings and recommendations to the Commission on or before April 14, 1992, such report to remain confidential unless and until the Commission rules otherwise.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–13738 Filed 6–10–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

PNC Financial Corp; Application to Act as Agent in the Private Placement of All Types of Securities and to Purchase and Sell All Types of Securities on the Order of Investors as a Riskless Principal

PNC Financial Corp, Pittsburgh, Pennsylvania ("Applicant"), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) ("BHC Act") and § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), to engage *de novo* through its wholly owned subsidiary, PNC Securities Corp, Pittsburgh, Pennsylvania ("Company"), in the following activities: the private placement, as agent, of all types of securities, including providing related advisory services; and buying and selling all types of securities on the order of investors as a "riskless principal". Company would conduct the proposed activities throughout the United States.

Applicant is currently authorized to engage through Company in underwriting and dealing in, to a limited extent, commercial paper, municipal revenue bonds, certain mortgage-related securities, and consumer-receivable-related securities. *PNC Financial Corp,* 73 Federal Reserve Bulletin 742 (1987), and 75 Federal Reserve Bulletin 396 (1989). Applicant is also authorized to engage through company in underwriting and dealing in U.S. government and agency and state and municipal securities that state member banks are authorized to underwrite and deal in under section 16 of the Glass-Steagall Act, and in providing investment advisory and brokerage services on a combined basis to institutional and retail customers. *Id.*

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto."

The Board has previously approved the proposed private placement and riskless principal activities, and Applicant has stated that it will conduct these activities using the same methods and procedures and subject to the prudential limitations established by the Board in its previous Orders. *See J.P. Morgan & Company Incorporated,* 76 Federal Reserve Bulletin 26 (1990); and *Bankers Trust New York Corporation,* 75 Federal Reserve Bulletin 829 (1989).

Applicant states that the proposed activities will benefit the public by promoting competition. Applicant also states that approval of this application will allow Company to provide added convenience to customers and promote gains in efficiency by allowing for the consolidation of all securities-related activities in one entity and reducing duplication of similar functions performed in both Company and its bank affiliates. Applicant believes that the proposed activities will not result in any unsound banking practices in light of the prudential limitations subject to which Applicant will conduct the activities. Applicant also believes that any potential adverse effects are adequately addressed by the disclosure and antifraud provisions of the federal and state securities laws, the NASD Rules of Fair Practice, state and federal fiduciary requirements, the anti-tying provisions of banking and antitrust laws, the Employee Retirement Income Security Act and sections 23A and 23B of the Federal Reserve Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than July 9, 1991. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Cleveland.

Board of Governors of the Federal Reserve System, June 5, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-13791 Filed 6-10-91; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Octane Posting and Certification

AGENCY: Federal Trade Commission.

ACTION: Grant of partial exemption from the Commission's Octane Rule.

SUMMARY: The Commission has responded to the petition of Dresser Industries, Inc., Wayne Division ("Dresser-Wayne"), a leading manufacturer of gasoline dispensers, on behalf of Sun Refining & Marketing Co. ("Sunoco"), Kocolene Oil Corp., Shell Oil Co., Crown Central Petroleum Corp. ("Crown Oil"), British Petroleum Co., Chevron Corp. and Amoco Corp. (collectively, "the companies"), requesting permission to post octane ratings by use of octane labels that differ from certain of the specifications contained in the Commission's Octane Posting and Certification Rule ("the Rule"). The Commission has granted the partial exemptions, which will pertain to specific models of the Vista product line of gasoline dispensers that the companies plan to purchase from Dresser-Wayne. Pursuant to Rule 1.26 of the Commission's Rules of Practice, the Commisison grants, for good cause, the requested relief without a notice and comment period because the Commission finds that such a procedure is unnecessary to protect the public interest in this case. The Commission previously has granted similar requests without notice and comment procedures.[1]

EFFECTIVE DATE: June 11, 1991.

FOR FURTHER INFORMATION CONTACT: Neil J. Blickman, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580, (202) 326–3038.

SUPPLEMENTARY INFORMATION: On March 30, 1979, the Commission published the Octane Posting and Certification Rule in the **Federal Register** (44 FR 19160). The Rule established procedures for determining, certifying and posting, by means of a label on the fuel dispenser, the octane rating of automotive gasoline intended for sale to consumers.

Section 306.9 of the Rule provides that retailers must post at least one octane rating label on each face of each gasoline dispenser. Retailers who sell two or more kinds of gasoline with different octane ratings from a single dispenser must post separate octane rating labels for each kind of gasoline on each face of the dispenser. Labels must be placed conspicuously on the dispenser so as to be in full view of consumers and as near as reasonably practical to the price per gallon of the gasoline.

Section 306.11 of the Rule details specifications for the labels. Labels must be 3 inches wide by 2½ inches long, and Helvetica type must be used for all text except the octane rating number, which must be in Franklin Gothic type. Type size for the text and numbers is specified, and the type and border must be process black on a process yellow background. The line "MINIMUM OCTANE RATING" must be in 12 point Helvetica bold, all capitals, with letter space set at 12½ points. The line "(R+M)/2 METHOD" must be in 10 point Helvetica bold, all capitals, with letter space set at 10½ points. The octane number must be in 96 point Franklin Gothic Condensed, with ⅛ inch spacing between the numbers. Section 306.11(d) of the Rule further states that no marks or information other than that called for by the Rule may appear on the label.

[1] See Octane Rule exemptions granted to Gilbarco, Inc. in 1986 (53 FR 28277); to Exxon in 1989 (54 FR 14072); and to Sunoco in 1979 (44 FR 33740) and in 1990 (55 FR 1871).

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Prior Exemption Proceedings

Summarized below are two prior exemption proceedings concerning Sunoco. The issues considered in those proceedings, in terms of label size, content and location, are similar to the issues raised in this proceeding.

1. The 1979 Sunoco Exemption Proceeding (44 FR 33740)

In 1979, Sunoco petitioned the Commission for permission to post octane ratings by use of an octane label that differs from the label specifications described in the Rule. On June 12, 1979, the Commission authorized Sunoco to use the following labeling system for its multi-blend dispensers: A label 1¾ inches wide by 1⅝ inches long on which the octane number would be displayed, and the words "Minimum Octane Rating/(R+M)/2 Method" would appear twice on the dispenser in boxes forming arrows that point in the direction of, and in close proximity to, the octane numbers.

2. The 1990 Sunoco Exemption Proceeding (55 FR 1871)

In 1989, Sunoco petitioned the Commission for permission to use an octane label 7/16 inches less wide and ⅛ inches longer than the one allowed pursuant to the 1979 proceeding. Sunoco also petitioned for permission to place the word "PRESS" on octane labels that it proposed to insert inside newly developed gasoline selection dispenser switches. Sunoco contended that its requested label modification would show consumers how to use the new type of octane selection switch and at the same time help consumers focus on the Rule-required octane disclosures. On January 19, 1990, the Commission authorized Sunoco to place the word "PRESS" on its octane labels. The Commission previously had granted a similar request from Gilbarco, Inc. in 1988 (53 FR 29277).

Dresser-Wayne's Current Proposals

Over the last two years, Dresser-Wayne has developed the "Vista" product line of gasoline dispensing equipment. The design includes proposed alternative octane labeling schemes that Dresser-Wayne contends will allow its customers to take advantage of the features of the Vista dispensers.

Dresser-Wayne's Vista dispensers employ a number of design changes, including the introduction of a single hose multigrade dispenser for some models, the use of a "unified" display and the use of "push to start" operation. The single hose dispenser allows the motorist to dispense more than one grade of gasoline from a single nozzle. Each of the fuels that can be dispensed are independent grades of gasoline kept in separate storage facilities. The design of the Vista products places all sales data into a single visual field called a "unified" display. The data within this visual field includes the unit price for each grade of gasoline, including both cash and credit prices for each product, buttons for selecting either the cash or credit price, the volume of gasoline sold and the dollar amount of the sale.

The visual field also includes the advertising panel that is commonly used to display the product names. Within this area, too, are the buttons used to select the product to be purchased and activate the Vista dispenser. By placing the octane lables within the buttons or on the advertising panel, depending upon which Vista models are used, the labels always are adjacent to the information on the "unified" display. Placement of the octane lables in close proximity to the dispenser controls makes using the Vista products easier, according to Dresser-Wayne.

To accomodate the features of Vista products, Dresser-Wayne petitions the Commission to permit the companies, potential customers for its Vista dispensers to use three different octane labels that differ from the Rule's label specifications. The three different proposed labeling schemes, each of which apply to specific Vista dispensers, are as follows:

1. Vista Dispenser Models 395D1, 395D3, 585D1, 585D3 and 580D3

To conform with the dimensions of the gasoline dispenser switch it has developed for the above models, Dresser-Wayne petitions the Commission to permit Sunoco, Kocolene and Crown Oil to use an octane label that is 1.875 inches wide by 1 inch long, instead of a label that is 3 inches wide by 2⅛ inches long as specified in the Rule. Dresser-Wayne requests permission for the companies to display the octane rating on the label in 78 point Helvetica Ultra compresed type, instead of in 96 point Franklin Gothic Condensed type, as specified in the Rule.

To show consumers how to use the octane selection switch, Dresser-Wayne requests permission for the companies to place the word "PRESS" on the label in 16 point, Univers 67 type. The Commission previously granted similar requests from Gilbarco, Inc. and Sunoco. Further, Dresser-Wayne requests permission for the companies to include on the octane label a flashing indicator lamp (in the form of either an arrow, a rectangle or a circle, depending on the dispenser model) that would confirm the grade of gasoline that has been selected by the consumer.

Finally, because of limited display space on the octane labels and dispensers, Dresser-Wayne requests permission for the companies to display the words "MINIMUM OCTANE RATING/(R+M)/2 METHOD" once on the dispensers immediately below the octane labels. The Commission previously granted a similar request from Sunoco to place such words on the dispenser in close proximity to the octane labels, instead of on the labels as required by the Rule. Dresser-Wayne proposes that the companies be allowed to display the words in 20 point, Univers 67 type, which means that the words will be displayed in letters twice as large as those required by the Rule. However, this proposed labeling scheme, as well as the others, fails to display these words in all capital letters, as required by the Rule. These schemes also misstate the "(R+M)/2" formula for determining the octane rating of gasoline by failing to enclose the "R" and "M" in parentheses.

Dresser-Wayne contends that the label modifications it requests on behalf of Sunoco, Kocolene and Crown Oil will clearly instruct retail gasoline customers on how to operate the Vista dispensers, and, at the same time, clearly disclose to consumers all Rule-required information. Accompanying Dresser-Wayne's petition were narrative descriptions and graphic illustrations describing and representing the "unified" display areas, selector buttons and octane labels proposed to be used.

With respect to the first proposed labeling scheme, the label will be smaller than the Rule-required label. In addition, the octane number on the proposed label will be approximately one-quarter smaller than it would be if the Rule's specifications were followed. However, Dresser-Wayne asserts that the proposed label does not impede a consumer on the pump island from identifying the appropriate octane number with its corresponding gasoline blend. Dresser-Wayne also contends that since the octane label is inserted into the button that selects the blend for dispensing, the gasoline, consumers will focus immediately on the octane label. Dresser-Wayne further asserts that the indicator lamp will flash on the label was developed to assist in the accurate selection of the desired grade of gasoline. Once a consumer has selected a grade of gasoline by pushing a switch, the indicator lamp on that switch, or label, will glow constantly and the indicator lamps on the other switches will be dark. Thus, a consumer will be able to determine easily whether he pushed the correct switch for the desired grade of gasoline.

Finally, with respect to this, and the other proposed labeling schemes, the Commission's graphics department has advised that setting the octane number in Helvetica Ultra Compressed instead of Franklin Gothic Condensed type, and setting the Rule-required words in Univers 67 instead of Helvetica Bold type are *de minimis* changes because the size and boldness of the typefaces are virtually identical.

2. Vista Dispenser Model 580D1

To conform with the dimensions of the gasoline dispenser switch it has developed for this model, Dresser-Wayne petitions the Commission to permit Shell Oil to use an octane label that is 3.3 inches wide by 1 inch long. The Vista 580D1 differs from the Vista 580D3, to which the labeling scheme described above applies, in that it is not capable of posting cash and credit prices for each product dispensed. Therefore, the proposed label for the model 580D1 is wider than the label, or switch, for the 580D3. The proposed label is also 3/10 inches wider than the label specified in the Rule.

With respect to the second proposed label, Dresser-Wayne contends that the proposed label does not impede a consumer on the pump island from identifying the appropriate octane number with its corresponding gasoline blend. Also, since the octane label is inserted into the button that selects the blend of gasoline to be dispensed, consumers will focus immediately on the octane label and the Rule-required disclosures.

The second labeling scheme also is identical to the first in terms of the display of the octane rating and the word "PRESS" on the label. It also includes an indicator lamp, and single display of the Rule-required words "MINIMUM OCTANE RATING/(R+M)/2 METHOD." Therefore, the prior discussion is applicable to these items.

3. Vista Dispenser Models 580D1, 580D3, 390D1U and 390D3U

To conform with the dimensions of the advertising panel on which the octane labels will be placed, Dresser-Wayne petitions the Commission to permit Shell Oil, Crown Oil, British Petroleum, Chevron and Amoco to use an octane label that is 1¾ inches wide by 1⅜ inches long. Dresser-Wayne requests permission for the companies to display the octane rating on the label in 89 point Helvetica Ultra Compressed type, instead of setting the octane number in 96 point Franklin Gothic Condensed type as specified in the Rule.

In addition, Dresser-Wayne requests permission for the companies to display the words "MINIMUM OCTANE RATING" and "(R+M)/2 METHOD" in boxes forming arrows that point in the direction of the octane numbers. Further, Dresser-Wayne requests permission for the companies to display the words "MINIMUM OCTANE RATING" in 20 point Univers 67 type and the formula "(R+M)/2 METHOD" in 10 point Univers 67 type.

The four Vista dispensers to which this labeling scheme applies were developed for companies who market their gasoline by using trade names for their products (*e.g.*, Regular, Plus, Extra). The octane selection switch for these dispensers has the product name inserted into the button, rather than the octane label. The size of the octane label is affected by the available space on the advertising panel under the gasoline selection button, rather than the physical dimensions of the button or switch. Dresser-Wayne proposes that the companies be allowed to place the octane labels on the advertising panel in order to comply with § 306.9(b)(1) of the Octane Rule, which requires the labels to be placed as near as reasonably practical to the price per gallon of the gasoline. In addition, Dresser-Wayne asserts that this third proposed labeling scheme is identical to the one approved by the Commission in 1979 for use by Sunoco.

The labeling scheme proposed by Dresser-Wayne for use by the companies, however, differs in two favorable aspects from the approach approved for use by Sunoco. First, Dresser-Wayne's label is 3/16 inches longer than the label approved for Sunoco; and second, the words "MINIMUM OCTANE RATING" will be displayed in letters twice as large as those required by the Rule. The Commission's graphics department advised that setting the octane number of the label in 89 point Helvetica Ultra Compressed type instead of 96 point Franklin Gothic Condensed type as specified in the Rule is a *de minimis* change because the typeface and boldness of the numbers are virtually identical.

When the Commission previously granted a limited exemption to Sunoco in January, 1990, it included in the **Federal Register** notice a statement that "the Commission will look with disfavor on any octane labeling plan that does not comply with the Rule's labeling requirements and for which an exemption has not been sought in advance of its use." The petitioner has complied substantially with the Commission's directive. It only has test-marketed the various Vista dispensers, and those dispensers have included Rule-required labels. Further, in designing the display areas, Dresser-Wayne has been cognizant of the need to ensure that octane information is clearly and conspicuously displayed, in accordance with the underlying spirit of the Rule. Thus, the Commission has determined that a good-faith effort has been made to obey the Commission's directive.

The Commission has decided that the three labeling schemes proposed by Dresser-Wayne for use by the companies provide clear, conspicuous and easily readable disclosures to consumers of all Rule-required octane information and comply with the intent of the regulation. The Commission also has decided that by granting the octane label variances requested, that decision does not adversely affect the public interest or result in any consumer injury. Further, with respect to the third labeling proposal, the Commission has determined that it is virtually identical to the one previously approved by the Commission for Sunoco.

Consequently, the Commission has decided to grant Dresser-Wayne's petition requesting permission for the companies to use the three proposed octane labeling schemes, provided that the companies on whose behalf Dresser-Wayne petitioned display the Rule-required words, "MINIMUM OCTANE RATING/(R+M)/2 METHOD," accurately and in all capital letters, and that in all other respects, the companies comply with the Octane Rule's label specifications.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 91-13817 Filed 6-10-91; 8:45 am]

BILLING CODE 6750-01-M

[File No. 912 3096]

Electronic Data Systems Corporation; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, and of the Fair Credit Reporting Act (FCRA), this consent agreement, accepted subject to

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final Commission approval, would require, among other things, the respondent to mail to applicants denied employment based on a consumer report from a consumer credit reporting agency since January 1, 1989, letters stating the reason for the denial, and the name and address of the consumer reporting agency that supplied the respondent with the report. In addition, the respondent would be required to comply with the consumer disclosure provisions of the FCRA for future job applicants and to maintain various documents demonstrating compliance with the FCRA for the next five years.

DATES: Comments must be received on or before August 12, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jean Noonan, FTC/S–4429, Washington, DC 20580. (202) 326–3224.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Electronic Data Systems Corporation, a corporation, and is now appearing that Electronic Data Systems Corporation, a corporation, hereinafter sometimes referred to as proposed respondent without acknowledging the violation of any law or rule or regulation, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed By and between Electronic Data Systems Corporation, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Electronic Data Systems Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business located at 7171 Forest Lane, Dallas, Texas 75230.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the proposed respondent, and the proceeding is in the public interest.

3. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

4. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered into pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 50 *et seq.*

5. This agreement shall not become part of the public record of the proceeding unless and until its accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that any law has been violated as alleged in the draft of complaint here attached.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modifed, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The compliant may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issue, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For the purpose of this Order, the terms "consumer," "consumer report," and "consumer reporting agency" shall be defined as provided in sections 603(c), 603(d), and 603(f), respectively, of the Fair Credit Reporting Act, 15 U.S.C. 1681, 1681a(c), 1681(d), and 1681a(f).

I.

It is ordered That respondent Electronic Data Systems Corporation, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with any application for employment, do forthwith cease and desist from:

1. Failing, whenever employment is denied either wholly or partly because of information contained in a consumer report from a consumer reporting agency, to disclose to the applicant for employment at the time such adverse action is communicated to the applicant (a) that the adverse action was based wholly or partly on information contained in such a report and (b) the name and address of the consumer reporting agency making the report. Respondent shall not be held liable for a violation of section 615 of the Fair Credit Reporting Act if it shows by a preponderance of the evidence that at the time of the alleged violation it maintained reasonable procedures to assure compliance with section 615(a) of the Fair Credit Reporting Act.

2. Failing, within ninety (90) days after the date of service of this Order, to mail two (2) copies of the letter attached hereto as appendix A, completed to provide the name and address of the consumer reporting agency supplying the report and to state the reasons for the denial of employment with respondent based wholly or partly on information contained in the report, to each applicant who was denied employment by Electronic Data Systems Corporation between January 1, 1989, and the date this Order is issued, based in whole or in part on information contained in a consumer report from a consumer reporting agency, such copies of the letter to be sent first class mail to the last known address of the applicant that is reflected in respondent's files, and accompanied by a copy of the Federal Trade Commission brochure attached hereto as appendix B, copies of which are to be provided by respondent. Copies of the letter attached as appendix A need not be sent to any applicant who is denied employment with respondent during the time period specified above if the applicant's application file clearly shows that respondent Electronic Data Systems Corporation has previously given the applicant notification that complies in all respects with the provisions of paragraph I.1 of this Order.

II.

It is further ordered That respondent, its successors, and assigns shall maintain for at least five (5) years and upon request shall make available to the Federal Trade Commission for inspection and copying, documents demonstrating compliance with the requirements of part I of this Order, such documents to include, but not be limited to, all employment evaluation criteria relating to consumer reports, instructions given to employees regarding compliance with the provisions of this Order, all notices provided to consumers pursuant to any provisions of this Order, and the complete application files for all applicants for whom consumer reports were obtained for whom offers of employment are not made or have been withheld, withdrawn, or rescinded based, in whole or in part, on information contained in a consumer report.

III.

It is further ordered That respondent shall deliver a copy of this Order at least once per year for a period of four (4) years from the date of this Order, to all persons responsible for the respondent's compliance with section 615(a) of the Fair Credit Reporting Act.

IV.

It is further ordered That respondent shall, for a period of four (4) years from the date of this Order, notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the corporate structure of respondent such as dissolution, assignment, or sale resulting in the emergency of a successor operation, the creation or dissolution of subsidiaries or divisions, or any other change in the corporation which may affect compliance obligations arising out of the Order.

V.

It is further ordered That respondent shall, within one hundred twenty (120) days of service of this Order, file with the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Appendix A

Dear Employment Applicant: Our records show that sometime within the last two years, Electronic Data Systems Corporation denied your application for employment. The federal Fair Credit Reporting Act gives persons who are denied employment the right to know if the denial was based, in whole or in part, on information supplied by a consumer reporting agency or credit bureau and, if so, the name and address of the credit bureau.

Our records show that when we denied your application, we may not have told you that our decision was based, at least in part, on information contained in your credit report and may not have given you the reasons for our decision. The credit bureau that furnished the report is:

[name of Consumer Reporting Agency]

[Street Address]

You should contact the credit bureau to learn what information is in your file. You may obtain this information without charge if you contact the credit bureau within 30 days. An extra copy of this notice is enclosed so that you may give it to the credit bureau when you request to review your file.

The information in your credit report led us, at least in part, to deny your application for the following reason(s):

—No credit file.
—Unable to verify references.
—Delinquent past or present obligations with others.
—Excessive obligations in relation to income.
—Garnishment, attachment, foreclosure, repossession, collection action, or judgment.
—Bankruptcy.
—Other: _____

A brochure explaining your rights under the federal credit laws are enclosed. If you want more information about your rights, write to the Federal Trade Commission, Division of Credit Practices, Washington, DC 20580.

Thank you.

Fair Credit Reporting

If you've ever applied for a charge account, a personal loan, insurance, or a job, someone is probably keeping a file on you. This file might contain information on how you pay your bills, or whether you've been sued, arrested, or have filed for bankruptcy.

The companies that gather and sell this information are called "Consumer Reporting Agencies," or "CRA's." The most common type of CRA is the credit bureau. The information sold by CRA's to creditors, employers, insurers, and other businesses is called a "consumer report." This generally contains information about where you work and live and about your bill-paying habits.

In 1970, Congress passed the Fair Credit Reporting Act to give consumers specific rights in dealing with CRA's. The Act protects you by requiring credit bureaus to furnish correct and complete information to businesses to use in evaluating your applications for credit, insurance, or a job.

The Federal Trade Commission enforces the Fair Credit Reporting Act. Here are answers to some questions about consumer reports and CRA's:

How do I locate the CRA that has my file?

If your application was denied because of information supplied by a CRA, that agency's name and address must be supplied to you by the company you applied to. Otherwise, you can find the CRA that has your file by calling those listed in the Yellow Pages under "credit" or "credit rating and reporting." Since more than one CRA may have a file about you, call each one listed until you locate all agencies maintaining your file.

Do I have the right to know what the report says?

Yes, if you request it. The CRA is required to tell you about every piece of information in the report and, in most cases, the sources of that information. Medical information is exempt from this rule, but you can have your physician try to obtain it for you. The CRA is *not* required to give you a copy of the report, although more and more are doing so. You also have the right to be told the name of anyone who received a report on you in the past six months. (If your

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inquiry concerns a job application, you can get the names of those who received a report during the past two years.)

Is this information free?

Yes, if your application was denied because of information furnished by the CRA, and if you request it within 30 days of receiving the denial notice. If you don't meet these requirements, the CRA may charge a reasonable fee.

What can I do if the information is inaccurate or incomplete?

Notify the CRA. They're required to reinvestigate the items in question. If the new investigation reveals an error, a corrected version will be sent, on your request, to anyone who received your report in the past six months. (Job applicants can have corrected reports sent to anyone who received a copy during the past two years.)

What can I do if the CRA won't modify the report?

The new investigation may not resolve your dispute with the CRA. If this happens, have the CRA include your version or a summary of your version of the disputed information in your file and in future reports. At your request, the CRA will also show your version to anyone who recently received a copy of the old report. There is no charge for this service if it's requested within 30 days after you receive notice of your application denial. After that, there may be a reasonable charge.

Do I have to go in person to get the information?

No, you may also request information over the phone. But before the CRA will provide any information, you must establish your identity by completing forms they will send you. If you do wish to visit in person, you'll need to make an appointment.

Are reports prepared on insurance and job applicants different?

If a report is prepared on you in response to an insurance or job application, it may be an *investigative* consumer report. These are much more detailed than regular consumer reports. They often involve interviews with acquaintances about your lifestyle, character, and reputation. Unlike regular consumer reports, you'll be notified in writing when a company orders an investigative report about you. This notice will also explain your right to ask for additional information about the report from the company you applied to. If your application is rejected, however, you may prefer to obtain a *complete* disclosure by contacting the CRA, as outlined in this brochure. Note that the CRA does not have to reveal the sources of the investigative information.

How long can CRA's report unfavorable information?

Generally seven years. Adverse information can't be reported after that, with certain exceptions:

- Bankruptcy information can be reported for 10 years;
- Information reported because of an application for a job with a salary of more than $20,000 has no time limitation;
- Information reported because of an application for more than $50,000 worth of credit or life insurance has no time limitation;
- Information concerning a lawsuit or judgment against you can be reported for seven years or until the statute of limitations runs out, whichever is longer.

Can anyone get a copy of the report?

No, it's only given to those with a legitimate business need.

Are there other laws I should know about?

Yes, if you applied for and were denied credit, the Equal Credit Opportunity Act required creditors to tell you the specific reasons for your denial. For example, the creditor must tell you whether the denial was because you have "no credit file" with a CRA or because the CRA says you have "delinquent obligations." This law also requires creditors to consider, upon request, additional information you might supply about your credit history.

You may wish to obtain the reason for denial from the creditor before you go the credit bureau.

Do women have special problems with credit applications?

Married and formerly married women may encounter some common credit-related problems. For more information, write the FTC for a free brochure on "Women and Credit Histories" at the address listed below.

Where should I report violations of the law?

Although the FTC can't act as your lawyer in private disputes, information about your experiences and concerns is vital to the enforcement of the Fair Credit Reporting Act. Please send questions or complaints to the FTC, Washington, DC 20580.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Electronic Data Systems Corporation, a corporation ("the respondent"). Under this agreement, the respondent will cease and desist from failing to disclose required information to applicants not accepted for employment, and will mail Commission informational brochures and letters that disclose required information to all applicable applicants who were not accepted for employment during a specified two year period.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns the denial of employment based on information obtained from consumer reporting agencies. The complaint accompanying the proposed consent order alleges that in connection with its employment practices, the respondent engaged in acts and practices in violation of section 615(a) of the Fair Credit Reporting Act and section 5(a)(1) of the Federal Trade Commission Act.

According to the complaint, the respondent has denied applications or rescinded offers for employment based in whole or in part on information supplied by a consumer reporting agency, but has failed to advise consumers that the information so supplied contributed to the adverse action taken on their applications and has failed to advise consumers of the name and address of the consumer reporting agency that supplied the information, in violation of section 615(a) of the Fair Credit Reporting Act.

Further, the complaint alleges that by its failure to comply with section 615(a) of the Fair Credit Reporting Act and pursuant to section 621(a) of the Fair Credit Reporting Act, respondent has engaged in unfair and deceptive acts or practices in or affecting commerce in violation of section 5(a)(1) of the Federal Trade Commission Act.

The consent order contains provisions designed to ensure that the respondent does not engage in similar allegedly illegal acts and practices in the future.

Specifically, part I of the order requires the respondent to cease and desist from failing to provide the required disclosures outlined in section 615(a) of the Fair Credit Reporting Act whenever employment is denied either wholly or partly because of information contained in a consumer report from a consumer reporting agency.

Further, part I of the order requires the respondent, within ninety (90) days after the date of service of the order, to mail Commission brochures and letters to each consumer denied employment between January 1, 1989, and the date the order becomes effective, based in whole or in part on information contained in a consumer report from a consumer reporting agency. Each letter to consumers against whom adverse action was taken based on a consumer report from a consumer reporting agency, must provide the name and address of the consumer reporting agency that supplied the report in question, as well as the reason for the adverse action.

Part II of the order requires the respondent, its successors, and assigns to maintain documents demonstrating compliance with the order for five (5) years and to make all such documents available to the Commission upon request.

Part III of the order requires the respondent to deliver a copy of the order at least once a year for four (4) years from the date of the order to all present and future employees responsible for respondent's compliance with section 615(a) of the Fair credit Reporting Act.

Part IV of the order requires the respondent to notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure that may affect its compliance with the order.

Part V of the order requires the respondent to file a written report with the Commission within one hundred twenty (120) days after service of the order detailing the manner and form in which it has complied with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 91-13813 Filed 6-7-91; 8:45 am]

BILLING CODE 6750-01-M

[File No. 902 3385]

Jerome Russell Cosmetics U.S.A., Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a California-based cosmetic company and its owner from representing that any product containing a Class I ozone-depleting substance will not damage the ozone layer, and from making unsubstantiated claims that any product containing an ozone-depleting substance offers environmental benefits.

DATES: Comments must be received on or before August 12, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael Dershowitz, FTC/S-4002, Washington, DC 20580. (202) 326-3158.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of Jerome Russell Cosmetics U.S.A., Inc. a corporation, and David Jerome Marcus, individually and as an officer of said corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Jerome Russell Cosmetics U.S.A., Inc. (hereinafter "Jerome Russell"), a corporation, and David Jerome Marcus, individually and as an officer of said corporation, hereinafer sometimes referred to as proposed respondents, and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed, By and between Jerome Russell, by its duly authorized office, and David Jerome Marcus, individually and as an officer and said corporation, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Jerome Russell is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business at 19515 Business Center Drive, Northridge, California 91324.

Proposed respondent David Jerome Marcus is an officer of said corporation. In that capacity, he formulates, directs and controls the acts and practices of said corporation as set forth in the draft of complaint here attached, and his business address is the same as that of said corporation.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondents waive:

(a) Any futher procedural steps.

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law.

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

(d) All claims under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute and admission by proposed respondents that the law has been violated as alleged in the draft of complaint as attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here

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attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the complaint and the order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For purposes of the Order, the following definitions shall apply:

Competent and reliable scientific evidence means such tests, analyses, research, studies, or other scientific evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in the profession to yield accurate and reliable results.

Class I ozone depleting substance means a substance that harms the environment by destroying ozone in the upper atmosphere and is listed as such in title 6 of the Clean Air Act Amendments of 1990, Public Law No. 101–549, and any other substance which may in the future be added to the list pursuant to title 6 of the Act. Class I subtances currently include chlorofluorocarbons, halons, carbon tetrachloride and 1,1,1–Trichloroethane.

Class II ozone depleting substance means a substance that harms the environment by destroying ozone in the upper atmosphere and is listed as such in title 6 of the Clean Air Act Amendments of 1990, Public Law No. 101–549, and any other substance which may in the future be added to the list pursuant to title 6 of the Act. Class II subtances currently include hydrochlorofluorocarbons.

I

It is ordered, That respondent Jerome Russell Cosmetics, U.S.A., Inc. (hereinafter "Jerome Russell"), a corporation, its successors and assigns, and its officers, and David Jerome Marcus, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, by words, depictions, or symbols that any product containing any Class I ozone depleting substance is "ozone safe," "ozone friendly," or through the use of any substantially similar term or expression, that any such product will not deplete, destroy, or otherwise adversely affect ozone in the upper atmosphere.

II

It is further ordered, That respondent Jerome Russell, a corporation, its successors and assigns, and its officers, and David Jerome Marcus, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, by words, depictions or symbols that any product containing any Class I ozone depleting substance or any Class II ozone depleting substance, or any other ozone depleting substance, offers any environmental benefits, including but not limited to any environmental benefit claims concerning the atmosphere, upper atmosphere, stratosphere or the ozone layer, unless at the time of making such representation, respondents possess and rely upon a reasonable basis, consisting of competent and reliable scientific evidence that substantiates such representation.

III

It is further ordered, That for three years from the date that the representations to which they pertain are last disseminated, respondents shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

1. All materials that respondents relied upon in disseminating any representation covered by this order.

2. All tests, reports, studies or surveys in respondents' possession or control or of which they have knowledge that contradict any representation of respondents covered by this order.

IV

It is further ordered, That respondents shall distribute a copy of this order to each of its operating divisions and to each of its officers, agents, representatives, or employees engaged in the preparation and placement of advertisements, promotional materials, product labels or other such sales materials covered by this order.

V

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations under this Order.

VI

It is further ordered, That the individual respondent named herein shall promptly notify the Commission in the event of the discontinuance of his present business or employment and of each affiliation with a new business or employment. In addition, for a period of five (5) years from the date of service of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment whose activities include the sale, distribution and/or manufacturing of cosmetic products or of his affiliation with a new business or employment in which his own duties and responsibilities involve the sale, distribution and/or manufacturing of cosmetic products. Such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

VII

It is further ordered, That respondents shall, within sixty (60) days after service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondents Jerome Russell Cosmetics, U.S.A., Inc., a California corporation, and David J. Marcus, individually and as an officer of the corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns the labeling and advertising of various Jerome Russell cosmetic products, including Jerome Russell Fluorescent Ultra Hair Glo, Jerome Russell Hair and Body Glitter Spray, Jerome Russell Hair Color and Jerome Russell Fluorescent Color and Glitter. The Commission's complaint charges that the respondents' labeling and advertising contain false representations that these products are "ozone safe" and/or "ozone friendly." The complaint further alleges that the respondents have falsely represented through such advertising and labeling that there are no ingredients in their products which will deplete the ozone layer, even though the products contain a significant ozone depleting chemical—1,1,1-Trichloroethane.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future.

The proposed order defines ozone depleting substances as either "Class I" or "Class II," incorporating the definitions established in the Clean Air Act Amendments of 1990. Class I substances currently listed under the Act are chlorofluorocarbons ("CFCs"), halons, carbon tetrachloride and 1, 1,1 - Trichloroethane. Class II substances currently listed under the Act are hydrochlorofluorocarbons ("HCFCs").

Part I of the proposed order requires the respondents to cease and desist from representing that products containing any Class I ozone depleting substance are ozone safe or ozone friendly, or through the use of similar terms or expressions, that any such product will not deplete, destroy, or otherwise adversely affect ozone in the upper atmosphere.

Part II of the proposed order requires respondents to cease and desist from representing that products containing a Class I, Class II or any other ozone depleting substance offer any environmental benefits, unless they possess a reasonable basis for such representations.

Under the Act, the Environmental Protection Agency has authority to add new chemicals to the Class I or Class II lists. Thus, the definitions of Class I and Class II ozone depleting substances specifically include substances that may be added to the lists. If additional substances are added to the Class I and Class II lists, parts I and II of the order become applicable for claims made for products containing those substances after they are added to the lists. In addition, part II applies as well to all unsubstantiated environmental benefit claims made for any product containing an ozone depleting substance, regardless of whether it formally has been listed by the Environmental Protection Agency.

The proposed order also requires respondents to maintain materials relied upon to substantiate claims covered by the order, to distribute copies of the order to certain company officials and employees, to notify the Commission of any changes in corporate structure that might affect compliance with the order, to notify the Commission of any changes in the business or employment of the named individual respondent, and to file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 91–13815 Filed 6–10–91; 8:45 am]

BILLING CODE 6750–01–M

[Docket No. 9224]

TK–7 Corporation, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a corporation, that manufactures and distributes fuel additive products, and its officer, Moshe Tal, from making any representations concerning the efficacy of any fuel or engine additives, unless they possess competent and reliable scientific evidence that substantiates the representation.

DATES: Complaint issued February 7, 1989. Order issued May 17, 1991.[1]

FOR FURTHER INFORMATION CONTACT: William Haynes, FTC/H–236, Washington, DC 20580. (202) 326–3107.

SUPPLEMENTARY INFORMATION: On Tuesday, March 5, 1991, there was published in the **Federal Register**, 56 FR 9224, [correction, 56 FR 12422,] a proposed consent agreement with analysis In the Matter of TK–7 Corporation, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 91–13814 Filed 6–10–91; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Open Forum on the Cancer Information Service

Notice is hereby given of an open forum on the Cancer Information Service (CIS). The forum is for the purpose of receiving public comment on the newly proposed geographic service regions for the CIS program.

The forum will be open to the public on June 21, 1991 from 9 a.m. to adjournment to solicit public comment on the appropriateness of the proposed geographic service regions. The forum will be held in Wilson Hall, located on the third floor of Building 1, on the National Institutes of Health campus in Bethesda, Maryland. To ensure sufficient space, reservations are required and may be made by calling the Conference Registrar at Prospect Associates on (301) 468–MEET.

Other questions concerning the forum may also be directed to the Conference Registrar at Prospect Associates on (301) 468–MEET.

Dated: June 4, 1991.

Bernadine Healy,

Director, National Institutes of Health.

[FR Doc. 91–13912 Filed 6–10–91; 8:45 am]

BILLING CODE 4140–01–M

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meeting in June

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Correction of meeting notice.

SUMMARY: Public notice was given in the **Federal Register** on May 3, 1991, Volume 56, No. 86, on page 20432 that:

The Biochemistry Research Subcommittee of the Drug Abuse Biomedical Research Review Committee, NIDA, would meet only June 12. The Committee will now meet June 12–14.

Dated: June 5, 1991.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 91–13760 Filed 6–10–91; 8:45 am]

BILLING CODE 4160–20–M

National Institutes of Health

Opportunity for a License: Construction Method for Difficult-To-Prepare Antigens Useful in the Production of Antibodies

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health desires to license a novel method useful in the production of antibodies against eukaryotic proteins normally difficult to prepare in large quantities. The desired antigen used to prepare these antibodies is made as a fusion product of *Pseudomonas* exotoxin and a specific epitope of another protein. These fusion proteins result from the cloning the DNA sequence of the desired protein region into a new expression vector which includes the gene for the inactivated endotoxin. Large amounts of these fusion proteins may be subsequently isolated easily and quickly in *E. coli* for use in antibody production. NIH is the assignee of the patient rights for this technology covered under U.S. Patent Application 07/635,889 and developed by Dr. Ira Pastan, Dr. Michael Gottesman, Dr. Edward Bruggeman, and Dr. Vijay Chaudhary of the National Cancer Institute.

ADDRESSES: License applications or inquiries should be directed to: Mr. Steven Ferguson, Technology Management Specialist, Office of Technology Transfer, National Institutes of Health, Building 31, Room B1C36, Bethesda, MD 20892 (telephone: (301) 496–0750).

Date: May 31, 1991.

Reid G. Adler,

Director, Office of Technology Transfer.

[FR Doc. 91–13756 Filed 6–10–91; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES 970–01–4120–14–241A; ALES 43165]

Alabama: Competitive Coal Lease Offering by Sealed Bid

Notice is hereby given that as a result of an application filed by The Pittsburg and Midway Coal Mining Company (A Chevron Company) in Tuscaloosa County, Alabama, coal resources will be offered for competitive leasing by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1947 (61 Stat. 913, 30 U.S.C. 351–359), as amended.

The application is described as follows:

Tuscaloosa County, Alabama

The Yellow Creek Tract

T. 17 S., R. 8 W., Huntsville Meridian,
Sec. 5, N2SW, NENW;
Sec. 6, S2NE, N2SE, SESE;
Sec. 7, NENE, W2NW;
Sec. 8, NENE, SWNE.

The above containing 520 acres, more or less.

T. 17 S., R. 9 W., Huntsville Meridian,
Sec. 2, NWSE, NWSW, W2NW;
Sec. 3, SWSE, SW;
Sec. 4, NENE, S2NE, S2SW;
Sec. 5, E2SE, NESW, W2SW, S2NW, NWNW;
Sec. 6, E2NE, E2SE;
Sec. 7, NENE, SESE, E2SW;
Sec. 8, SENE, NESE, S2SE, S2SW;
Sec. 9, NE, SE, SW;
Sec. 10, NE, NWSE, SW, NW;
Sec. 11, SESE, W2NW;
Sec. 12, SENE, E2SE, SWNW;
Sec. 13, NENE, W2NE, N2SW;
Sec. 14, E2NE, E2SE, NWSE, E2NW;
Sec. 15, W2NE, NWSE, NWSW, NW;
Sec. 17, NE, SE, NESW, NW;
Sec. 18, E2NE, NWNE, W2SW, E2NW;
Sec. 19, SENE, NWNE;
Sec. 20, NWNE, SWNW;
Sec. 22, E2SE, NENW;
Sec. 23, S2NE, NESE;
Sec. 24, E2SE, SWNW;
Sec. 25, NENE, NESE, E2SW;
Sec. 26, NWNW;
Sec. 27, E2NE;
Sec. 35, NE, S2SE;
Sec. 36, NE, SE, E2SW, NW.

The above containing 5,920 acres, more or less.

All of the above situated in Tuscaloosa County, Alabama, containing 6,440 acres, more or less, and limited to the Mary Lee-Blue Creek Seam.

This tract will be leased to the qualified bidder of the highest cash amount provided that the high bid for the tract equals or exceeds the fair market value (FMV) of the tract as determined by the authorized officer after the sale. The Department has established a minimum bid of $100 per acre for the tract. The minimum bid is not to be considered as representing the amount for which the tract may actually be leased, since FMV will be determined in a separate post sale analysis. If identical high sealed bids are received, the tying high bidders will be asked to submit follow-up sealed bids until a high bid is received. All tie breaking bids must be submitted within 15 minutes following the authorized officers' announcement at the sale that identical high bids have been received.

The sale will be held at 10 a.m. Friday, July 12, 1991 in the Eastern States Office Public Room. All bids must be submitted to the Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304. Each bid must be clearly identified by the tract name or the serial number on the outside of the sealed envelope containing the bid. The bids should be sent by certified mail, return receipt attached or be hand delivered on or before 5 p.m. Thursday, July 11, 1991. Any bids received after 5 p.m. will not be considered.

The coal resources being offered are to be mined underground. The quality of the coal within the proposed lease is as follows:

MARY LEE—BLUE CREEK SEAM

Proximate analysis (percent)	Dry basis
Moisture	2.5
Ash	11.5
Volatile	27.6
Fixed Carbon	58.4
BTU/lb	12,877
Sulfur	0.9

This seam contains an estimated 24,600,000 short tons of recoverable coal.

Any lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre and a royalty payable to the United States of 8% of the value of coal mined by underground methods which shall be determined in accordance with 43 CFR 3485.2.

Bidding instructions and bidder qualifications are included in the Detailed Statement of Lease Sale. Copies of the Statement and of the proposed coal lease are available at the Bureau of Land Management, Eastern States Office and the Jackson District Office. Case file documents are available for public inspection at the Eastern States Office.

FOR FURTHER INFORMATION CONTACT: Ms. Pearl F. Tillman at (703) 461–1468 or Mr. Ian J. Senio at (703) 461–1445 of the Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304.

Dated: June 6, 1991.

Robert J. Bainbridge,

Acting State Director.

[FR Doc. 91–13844 Filed 6–10–91; 8:45 am]

BILLING CODE 4310–GJ–M

[NM–060–4333–10–604]

Amendment for Acquisition of Land Along the Rio Bonito; NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the amendment for the acquisition of land in Lincoln County, New Mexico.

SUMMARY: The BLM announces that it has prepared an amendment to address the acquisition of land in Lincoln County, State of New Mexico.

ADDRESSES: Those people wanting a copy of the amendment may address their request to: Area Manager, Roswell Resource Area, BLM, P.O. Drawer 1857, Roswell, NM.

FOR FURTHER INFORMATION CONTACT: Saundra L. Allen, Area Manager at the address above, or telephone (505) 624–1790.

SUPPLEMENTARY INFORMATION: The amendment addresses the issue of acquiring land in Lincoln County, State of New Mexico. The Federal Land Policy and Management Act (FLPMA) of 1976 (Public Law 94–579) requires that all acquisitions be consistent with land use plans. Section 205b of FLPMA states: "Acquisition pursuant to this section shall be consistent with the mission of the Department involved and with applicable Departmental land use plans."

The area covered by this amendment is in Lincoln County along the Rio Bonito from the National Forest Boundary between sections 15 and 16 in T. 10 S., R. 13 E., NMPM, to its confluence with the Rio Ruidoso in Section 4, T. 11 S., R. 17E., NMPM. The land contains a diverse ecosystem of woodlands, wetlands, and cultivated areas. Potentially the lands can provide recreation, riparian areas, and wildlife habitat for upland game, big game and fisheries. The lands also contain the historical district which surrounds the townsite of Lincoln, New Mexico.

Acquistion of lands along the Rio Bonito offers the unique opportunity of developing a comprehensive resource management program which meets the Bureau's riparian goals, and enhances protection of the historical and cultural values of the Lincoln Historical District.

The Public protest period will extend through July 8, 1991. Any protest must be filed with the Director (760), Bureau of Land Management, Department of the Interior, 18th and C Streets, Washington, DC 20240. Any protest must be postmarked no later than close of business July 8, 1991.

Dated: May 31, 1991.

David L. Mari,

Associate District Manager.

[FR Doc. 91–13793 Filed 6–10–91; 8:45 am]

BILLING CODE 4310–FB–M

Fish and Wildlife Service

Availability of Draft Recovery Plan for the Utah Prairie Dog (Cynomys Parvidens) a Mammal From Southwestern Utah, for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of the draft recovery plan for the Utah Prairie Dog (*Cynomys parvidens*) from southwestern Utah. This species is known only from the State of Utah. The Service solicits review and comment from the public on this draft recovery plan.

DATES: Comments on the draft recovery plan must be received on or before July 26, 1991 to ensure they receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting Field Supervisor, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 2060 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104–5110, 801–524–4430 or (FTS) 588–4430. Written comments and materials regarding this recovery plan should be sent to the Field Supervisor at the Salt Lake City address given above. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: W. Robert Benton, Wildlife Biologist, (see ADDRESSES above) 801–524–4430 or (FTS) 588–4430.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's (Service) endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States.

Recovery plans describe actions considered necessary for conservation of the species, establish criteria for recovery levels for down listing or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et*

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seq.), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal Agencies also will take these comments into account in the course of implementing approved recovery plans.

The Utah prairie dog is limited to the southwestern quarter of Utah. The total species' population was estimated to be 95,000 animals prior to control programs in the 1920's. By the 1960's, the Utah prairie dog's distribution was greatly reduced due to disease (plague), poisoning, drought, and human-related habitat alteration resulting from cultivation and poor grazing practices. By 1972, it was estimated that there were 3,300 Utah prairie dogs in 37 separate colonies. The Utah prairie dog was listed as an endangered species on June 4, 1973 (38 FR 14678). It appears that the decreasing trend in numbers may have stabilized since 1972. Because of the improved status of the species and the overwhelming increases seen on private lands in the Cedar and Parowan Valleys, the Service determined that the Utah prairie dog was not currently in danger of extinction and reclassified the species to threatened on May 29, 1984. Major recovery activities include: (1) Determination of historical range and species distribution; (2) updating information on present populations and distributions, (3) determination of what factors influence the viability of prairie dog colonies; (4) selection of management and transplant sites; (5) conducting a prairie dog transplant program; (6) monitoring transplanted colonies; (7) ensuring protection of prairie dogs and their habitat on both existing and transplant sites on public and private lands; (8) managing prairie dog colonies by developing and implementing site-specific management plans for each colony or transplant site; and (9) conducting an information and education program.

Public Comments Solicited

The Service solicits written comments on the Utah Prairie Dog Recovery Plan described above. All comments received by the date specified above will be considered prior to approval of the Recovery Plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 5, 1991.

Galen L. Buterbaugh,

Regional Director.

[FR Doc. 91-13798 Filed 6-10-91; 8:45 am]

BILLING CODE 4310-55-M

U.S. Fish and Wildlife Service

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora; Eighth Regular Meeting; Twenty-third Meeting of the Standing Committee; Public meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Service publishes the time and place for the eighth regular meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and announces a public meeting to discuss the results of the twenty-third meeting of the CITES Standing Committee and agenda items for the upcoming meeting of the Conference of the Parties. Procedures to apply for observer status at the Conference of the Parties are explained.

DATES: The public meeting will be held on June 25, 1991, from 2–4 p.m. The Service will consider information and comments concerning items on the provisional agenda for the eighth meeting of the Conference of the Parties received by August 25, 1991 (except for items relating to listing of species in the appendices).

ADDRESSES: The public meeting will be held in Conference Room 200 of the Fish and Wildlife Service building, 4401 N. Fairfax Drive, Arlington, VA. Comments on the provisional agenda should be sent to the Director, U.S. Fish and Wildlife Service, c/o Office of Management Authority, 4401 N. Fairfax Drive, room 432, Arlington, VA 22203.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249, hereinafter referred to as CITES, is an international treaty designed to control international trade in certain animal and plant species which are or may become threatened with extinction, and are listed in appendices to the treaty. Currently, 110 countries, including the United States, are CITES Parties. CITES calls for biennial meetings of the Conference of the Parties which review its implementation, make provisions enabling the CITES Secretariat in Switzerland to carry out its functions, consider amending the list of species in appendices I and II, consider reports presented by the Secretariat, and make recommendations for the improved effectiveness of the Convention.

This is the second in a series of notices which, together with public meetings, provide the public with an opportunity to participate in the development of the United States negotiating positions for the eighth regular meeting of the Conference of the Parties to CITES. The first **Federal Register** notice was published on February 7, 1991 (56 FR 4965), which requested information from the public on animal or plant species that should be considered by the U.S. for possible amendments to appendix I or appendix II. The Service's regulations governing this public process are found in Title 50 of the Code of Federal Regulations §§ 23.31–23.39.

Notice of the Eighth Regular Meeting of the Conference of the Parties

The Service has received notice from the Secretariat of CITES in Switzerland of the convening of the eighth meeting of the Conference of the Parties (COP8) to be held in Kyoto, Japan from March 2–13, 1992.

Provisional Agenda for COP8

The Service participated in the 23rd meeting of the CITES Standing Committee, and by this notice calls for a public meeting to discuss the results of that meeting and the agenda items for COP8. While it has not yet received formal notice of the provisional agenda for COP8, the Service here produces a draft of that document that was approved by the Standing Committee. A brief description is provided of those agenda items that may not be self-evident to the public:

Convention on International Trade in Endangered Species of Wild Fauna and Flora

Eighth Meeting of the Conference of the Parties

Kyoto (Japan), 2 to 13 March 1991.

Agenda (provisional)

I. Opening ceremony by the Authorities of Japan
II. Welcoming addresses
III. Adoption of the Rules of Procedure
IV. Election of Chairman and Vice-Chairmen of the meeting and of Chairmen of Committees I and II

V. Adoption of the Agenda and Working Programme
VI. Establishment of the Credentials Committee and Committees I and II
VII. Report of the Credentials Committee
VIII. Admission of observers
IX. Matters related to the Standing Committee
1. Report by the Chairman.
2. Election of new members and alternate regional members: The Standing Committee is the governing body of CITES between meetings of the Conference of the Parties. It is composed of representatives of North America (Canada), South and Central America and the Caribbean (Peru), Asia (Nepal), Oceania (New Zealand), Africa (Malawi) and Europe (Sweden), along with Switzerland (the depositary country) and the host of the next CITES meeting (currently Japan) Since Canada is the current North American representative to the Standing Committee, the United States attended the most recent Standing Committee as an observer. The regional representatives of Africa, Asia, and South and Central America and the Caribbean will change after COP8.
X. Report of the Secretariat
XI. Financing and budgeting of the Secretariat and of meetings of the Conference of the Parties
1. Financial report for 1989–1990–1991.
2. Anticipated expenditure for 1992.
3. Budget for 1993–1995 and Medium Term Plan for 1993–1998.
4. External funding.
XII. Committee reports and recommendations
1. Animals Committee.
2. Plants Committee.
3. Identification Manual Committee.
4. Nomenclature Committee.
XIII. Interpretation and implementation of the Convention: It is expected that resolutions will be submitted by one or more Parties dealing with many of these agenda items. Resolutions can only be submitted by Parties, and must be submitted to the Secretariat by October 4, 1991.
1. Terms of reference for the administration of the Secretariat by UNEP: This deals with the clarification of the relationship between the CITES Secretariat and the United Nations Environment Programme (UNEP), in terms of the administration of the Secretariat, including financial, personnel, and policy matters.
2. Report on national reports under Article VIII, paragraph 7, of the Convention: Each Party is required by the Convention to submit an annual report containing a summary of the permits it has granted, and the types and numbers of specimens of species in the CITES Appendices that it has imported and exported. The U.S. CITES Annual reports for 1988 and 1989 are available from the Office of Management Authority (see "**ADDRESSES**", above).
3. Review of alleged infractions: The Secretariat prepares an Infractions Report for each meeting of the Conference of the Parties, which details instances that species listed in the appendices are being adversely affected by trade or the Convention is not being effectively implemented, or actions by Party nations that undermine the effectiveness of the Convention. The Service has already requested that the detrimental trade by Parties with reservations in species listed in appendix I be included in the Infractions Report; it has also requested that the Infractions Report highlight those cases of the most serious infractions, in order to focus the attention of the Parties.
4. Exports of leopard hunting trophies and skins: This refers to the importation of leopard skins, including hunting trophies, under a quota system approved by the Conference of the Parties.
5. Trade in specimens of species transferred to appendix II subject to annual export quotas: This refers to species of crocodilians listed in appendix I, which have populations that have been transferred to appendix II pursuant to annual export quotas, which are voted upon by the Conference of the Parties.
6. Trade in rhinoceros products.
7. Trade in birds: The trade in live wild-caught birds is an issue of great concern to both the United States and the CITES Parties, in that the trade in many species of birds listed in appendix II may be detrimental to their survival. The Parties will address issues relating to the trade in species identified by previous meetings of the conference of the Parties as subject to significant trade and for which insufficient information exists as to the effects of trade on their populations, as well as issues relating to trade in those species that are sensitive to or experience high mortalities in trade.
(a) Significantly traded species.
(b) Trade in species sensitive to high mortality rates.
8. Detrimental trade in sea turtles: This item was placed on the agenda at the request of the Service, and is intended to focus on trade in sea turtles species for which some Parties maintain reservations and continue to trade to the detriment of sea turtle populations. All sea turtles are listed in CITES appendix I; the species with the greatest continuing trade is the hawksbill sea turtle.
9. Trade in crocodilian products: This refers to work by the Animals Committee to institute a system of universal marking for all crocodilian skins in trade, as a response to serious problems of illegal trade in crocodilian skins, parts, and products.
10. Trade in plant specimens.
(a) Trade in flasked seedlings: This refers to artificially propagated flasked seedlings of appendix I orchids, which are treated as appendix II specimens.
(b) Nursery registration for artificially propagated appendix I species.
(c) Artificial propagation and trade in hybrids.
(d) Plant nomenclature.
11. Significant trade in appendix II species: This refers to the trade in those appendix II species identified as subject to significant trade, for which insufficient biological information exists to warrant trade at current levels. The CITES Parties have provided funds to the International Union for the Conservation of Nature and Natural Resources (IUCN) and the Conservation Monitoring Centre to assess priorities in studying these species. The Service has signed a Cooperative Agreement with IUCN to study some of these species, and is committed to providing additional funds for field studies in the near future.
(a) Animals.
(b) Plants.
12. Export of confiscated specimens: This refers to the export of illegally obtained specimens that have been confiscated by government authorities.
13. Marking of specimens.
14. Standardization of CITES permits and certificates: This refers to the development of harmonized permits.
15. Transit.
16. Transport of live specimens: This refers to an anticipated report by the Working Group on Transport of Live Specimens, which met in 1990

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and will meet again in July, 1991, to assess the implementation of requirements in the CITES treaty that live animals be prepared without injury, damage to health, or cruel treatment. One or more member nations of the Working Group may propose a resolution for the Conference of the Parties dealing with species subject to high mortality rates in transport.

17. Responsibilities of Scientific Authorities: This refers to an anticipated resolution that will outline the responsibilities of Scientific Authorities, and the process for the issuance of the findings of non-detriment by the Scientific Authority of a country of export, which are required by the CITES treaty. The last meeting of the Animals Committee agreed that such a resolution was necessary, and asked the United States to help develop it.
18. Format and criteria for proposals to register the first commercial captive-breeding operations for an appendix I animal species: This refers to an anticipated resolution that will revise Resolution Conf. 7.10, which allows for the registration of the first commercial captive-breeding operation for a given appendix I animal species, upon a two-thirds majority vote of the Parties. On the recommendation of the Animals Committee, a new resolution is anticipated that will allow each Party's Management Authority to determine which facilities are registered as captive-breeding an appendix I animal species for commercial purposes.
19. Guidelines for evaluating marine turtle ranching proposals.
20. Circus and other traveling exhibitions: This refers to the use of a proposed transit document for circuses and other traveling wildlife exhibitions, in lieu of any other permit or certificate.
21. Implementation of article XVI on appendix III.

XIV. Consideration of proposals for amendment of appendices I and II

1. Proposals submitted pursuant to Resolution on Ranching.
2. Ten Year Review proposals.
3. Proposals concerning export quotas.
4. Other proposals.

XV. Conclusion of the meeting

1. Determination of the time and venue of the next regular meeting of the Conference of the Parties.
2. Closing remarks.

Announcement of Public Meeting

To inform the public of the results of the twenty-third meeting of the Standing Committee and discuss the items in the provisional agenda for COP8, the Service announces that it will hold a public meeting on June 25, 1991, from 2–4 p.m. in Conference Room 200 of the Fish and Wildlife Service Building, 4401 N. Fairfax Dr., Arlington, VA.

Request for Information and Comments

The Service invites information and comments on the COP8 provisional agenda items, excluding item XIV, "Consideration of proposals for amendment of appendices I and II". A separate **Federal Register** notice was published on February 7, 1991 (56 FR 4965), which requested information from the public on animal or plant species that should be considered by the U.S. as possible amendments to the appendices. Item XIV will be the subject of two more separate **Federal Register** notices. Information and comments should be submitted to the Service no later than August 25, 1991.

Observers

Article XI, paragraph 7 of the Convention provides:

Any body or agency technically qualified in protection, conservation or management of wild fauna and flora, in the following categories, which has informed the Secretariat of its desire to be represented at meetings of the Conference by observers, shall be admitted unless at least one-third of the Parties present object:

(a) International agencies or bodies, either governmental or non-governmental, and national governmental agencies and bodies; and

(b) National nongovernmental agencies or bodies which have been approved for this purpose by the State in which they are located.

Once admitted, these observers shall have the right to participate but not to vote.

Persons wishing to be observers representing United States national non-governmental organizations must receive prior approval of the Fish and Wildlife Service. Requests for such approval should include evidence of technical qualification in protection, conservation or management of wild fauna and flora, on the part of both the organization and the individual representative. Such requests should be sent to the Office of Management Authority (see "ADDRESSES", above).

Other Meetings and Notices

The CITES Secretariat has notified the Parties that they must submit by October 4, 1991 any draft resolutions, other documents for consideration, proposals to register the first commercial captive-breeding operation for an appendix I animal species, and proposed amendments to the appendices. The Service plans to publish the following notice: Around the middle of July, 1991, the Service will announce which species it intends to propose to amend the CITES Appendices; around the middle of November, the Service will publish a list of resolutions and proposed amendments to the Appendices received by the CITES Secretariat, for consideration at COP8, along with proposed U.S. negotiating positions on these resolutions and proposals; around the end of February, the Service will publish a notice summarizing its negotiating positions for COP8. The Service plans to hold a public meeting in November, 1992 to receive public input on its proposed negotiating positions.

Author

This notice was prepared by Dr. Susan S. Lieberman, Office of Management Authority, U.S. Fish and Wildlife Service (703/358–2095).

Notice. Conference of the Parties to the Convention on International Trade Eighth regular meeting: Announcement of Public meeting.)

Dated: June 4, 1991.

James G. Leupold,

Director, Fish and Wildlife Service.

[FR Doc. 91–13761 Filed 6–10–91; 8:45 am]

BILLING CODE 4310–55–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31880]

Consolidated Rail Corp.; Trackage Rights Exemption, Indiana Harbor Belt Railroad Co.

Indiana Harbor Belt Railroad Company (IHB) has renewed local and overhead trackage rights originally granted to a predecessor of Consolidated Rail Corporation (Conrail). The trackage rights are over the rail line now owned by the Baltimore & Ohio Chicago Terminal Railroad Company (BOCT), between points of connection with IHB's own lines at Blue Island and McCook, in Cook County, IL.[1] Conrail

[1] The trackage rights were first granted by an agreement between IHB and Conrail's predecessor dated October 31, 1907, and were to expire October 4, 1988. However, the right to use the involved track was extended to October 30, 2008, by letter

Continued

intends to commence operations under the renewed trackage rights on or after June 5, 1991.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: John J. Paylor, Consolidated Rail Corporation, 1138 Six Penn Center Plaza, Philadelphia, PA 19103–2959.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc—Lease and Operate, 360 I.C.C. 653 (1980).

Dated: June 5, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–13834 Filed 6–10–91; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Abbeville, LA, et al.; Notice of Lodging of Consent Decree Pursuant To Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on March 13, 1991 a proposed consent decree in *United States* v. *City of Abbeville and State of Louisiana*, Civil Action No. 91–0546–L, was lodged with the United States District Court for the Western District of Louisiana. The proposed consent decree concerns a complaint filed by the United States that alleged violations of the Clean Water Act ("the Act"), 33 U.S.C. 1311, by the City of Abbeville, the publicly owned treatment works in Abbeville, Louisiana. The complaint alleged that the City of Abbeville violated certain terms and conditions of its National Pollutant Discharge Elimination System ("NPDES") permit, issued pursuant to Section 402 of the Act, 33 U.S.C. 1342, including the requirement to restrict effluent discharges for designated pollutants to the limits specified in the Permit and the requirement of the Permit to prohibit bypassing; and further alleged that the City of Abbeville failed to comply with certain Administrative Orders issued by the United States Environmental Protection Agency. The State of Louisiana was joined as a defendant pursuant to section 309(e) of the Clean Water Act, 33 U.S.C. 1319(e), and is liable to the extent that the laws of the State prevent the City of Abbeville from raising the revenues needed to comply with any judgment against the City. The complaint sought injunctive relief to require the City to comply with the Act and its NPDES permit and civil penalties for past violations. The consent decree provides that the City shall henceforth fully comply with the Act and the permit. The City is also required to pay a civil penalty of $25,000 in settlement of the government's civil penalty claims. The State acknowledges its liability under Section 309(e) of the Act.

The Department of Justice will receive for a period of thirty (30) days from the date of the publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Abbeville*, D.J. Ref. 90–5–1–1–3162.

The proposed consent decree may be examined at the office of the United States Attorney for the Western District of Louisiana, Rm. 3B12, Federal Building, Shreveport, Louisiana 71101, and at the Region VI Office of the United States Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. Copies of the consent decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue NW., Washington, DC 20004. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $3.75 (25 cents per page reproduction cost) payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91–13743 Filed 6–10–91; 8:45 am]

BILLING CODE 4410–01–M

Aluminum Co. of America, et al.; Notice of Lodging of Consent Decree

In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622(i), and the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on May 29, 1991, a proposed consent decree in *United States* v. *Aluminum Company of America, et al.*, Civil Action No. IP 91–591–C, was lodged with the United States District Court for the Southern District of Indiana. The United States filed this action pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, for the cleanup of the Northside Sanitary Landfill Superfund Site ("Site"), located in Zionsville, Indiana, and for the recovery of costs expended by the United States in connection with the Site.

The proposed consent decree is entered into between the United States (on behalf of the United States Environmental Protection Agency ("U.S. EPA"), United States Department of Interior, United States Navy, United States Army, and Federal Bureau of Prisons), the State of Indiana and approximately 180 defendants. Under the proposed decree, approximately thirty (30) settling defendants have agreed to perform a remedial action at the Site that is estimated to cost $25 million. The principal components of the remedy for the Site include: (1) Construction and maintenance of a cap over the landfill that meets the requirements of subtitle C of the Resource Conservation and Recovery Act, 42 U.S.C. 6901, *et seq.*; (2) construction of a gas venting system for the capped landfill; (3) construction and maintenance of a hydraulic isolation wall; (4) construction and operation of a combined leachate/groundwater collection system; (5) transport of the contaminated groundwater and leachate via pipeline to the Indianapolis Department of Public Works sewer system, and treatment thereof at the Indianapolis Publicly Owned Treatment Works; and (6) monitoring of groundwater, surface water, and leachate.

The proposed decree also requires settling parties to pay the oversight costs that U.S. EPA and the State of Indiana will incur in connection with the remedial action, up to $650,000. In addition, under the proposed decree, the settling parties will pay the Department of Interior $22,500 for natural resource damages.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice,

agreement between Conrail and IHB dated August 15, 1986. The right of IHB to grant the trackage rights was secured by agreements with BOCT's predecessor dated June 29, 1907, and October 31, 1907. While the original agreements predate Commission jurisdiction over such matters, the renewal is subject to Commission jurisdiction. See Great Northern Pac.—Merger—Great Northern, 336 I.C.C. 782,786 (1972). The renewed trackage rights will expire on October 30, 2008.

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P.O. Box 7611, Ben Franklin Station, Washington, DC 20044. All comments should refer to *United States* v. *Aluminum Company of America et al.*, DJ Ref. #90-11-3-48D.

The proposed consent decree may be examined at the following offices: (1)The United States Attorney's Office, 46 East Ohio Street, Indianapolis, Indiana; (2) the United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604; (3) the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave., NW., Box 1097, Washington, DC 20004. Copies of the proposed decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave., NW., Box 1097, Washington, DC.

Any request for a copy of the decree, not including Exhibits or Settling Defendant signature pages, should be accompanied by a check in the amount of $18.00 ($.25 per page) for copying costs. Any request for a copy of the decree including Exhibits should be accompanied by a check in the amount of $65.00 ($.25 per page) for copying costs. The check should be made payable to the "Consent Decree Library."

Barry M. Hartman,

Acting Assistant Attorney General, Environment & Natural Resources Division.

[FR Doc. 91-13744 Filed 6-10-91; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No. 48-91]

Privacy Act of 1974; New System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Department of Justice proposes to establish a new system of records to be maintained by the Immigration and Naturalization Service (INS).

The Priority Automated Commuter Entry System (PACES), JUSTICE/INS-017, is a new off-line personal computer system of records for which no public notice consistent with the provisions of 5 U.S.C. 552a(e)(4) and (11) has been published.

5 U.S.C. 552a(e)(4) and (11) provide that the public be given a 30 day period in which to comment on the new routine uses of a proposed system of records. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to conclude its review of the system. Therefore, please submit any comments by July 11, 1991. The public, OMB and the Congress are invited to submit any comments to Patricia E. Neely, Staff Assistant, Systems Policy Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 5031 CAB Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report on this system to OMB and the Congress.

The system description is printed below.

Dated: May 23, 1991.

Harry H. Flickinger,

Assistant Attorney General for Administration.

JUSTICE/INS-017

SYSTEM NAME:

Priority Automated Commuter Entry System (PACES).

SYSTEM LOCATION:

Land border ports of entry inspection facilities under the District Offices of the Immigration and Naturalization Service (INS) in the United States as detailed in JUSTICE/INS-999.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

United States citizens and lawful permanent residents who apply to use dedicated commuter lanes to enter the United States from Canada or Mexico.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system will contain application data such as full name, place and date of birth, sex, addresses, telephone numbers, country of citizenship, alien registration number (if applicable), driver's license number and issuing state or province, the make, model, color, year, license number and license issuing state or province of the applicant's vehicle, the name and address of the vehicle's registered owner if different from the applicant, and the amount of fee paid. The application will also include such information as the frequency of border crossings, and the most frequent reason for crossing the border, together with an indication from the individuals as to whether he or she has been convicted of any violations of law. In addition, the file may contain a brief notation indicating that (1) through an independent check of other law enforcement agency systems, INS determined that the applicant had been convicted of a specific violation(s) of law (a finding which could prompt denial of the application) or (2) through a random border inspection, INS identified a specific violation(s) of law which provided cause to remove the individual from the program. Finally, the file will contain letters to the applicants indicating the disposition of their applications.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1101, 1103, 1201, 1304, and 1356 (Pub. L. No 101-515)

PURPOSE OF THE SYSTEM:

Information in this system will be used to adjudicate applications to travel in commuter lanes which have been established at certain land border entry points into the United States. The lanes have been established to reduce border delays by allowing low-risk frequent border crossers, who have been pre-screened and pre-authorized, to travel across the border subject only to random border inspections.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Revelant information contained in this system of records may be disclosed to the following:

A. To Federal, State, and local government agencies, foreign governments, individuals, and organizations during the course of investigation in the processing of a matter or a proceeding within the purview of the immigration and nationality laws, to elicit information required by the INS to carry out its functions and statutory mandates.

B. Where there is an indication of a violation or potential violation of law (whether civil, criminal or regulatory in nature), to the appropriate agency (whether Federal, State, local or foreign), charged with the responsibility of investigating or prosecuting such violations or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

C. Where there is an indication of a violation or potential violation of the law of another nation (whether civil, criminal or regulatory in nature), to the appropriate foreign government agency charged with the responsibility of investigating or prosecuting such violations or with enforcing or implementing such laws, and to international organizations engaged in the collection and dissemination of intelligence concerning criminal activity.

D. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

E. To the General Services Administration and the National Archives and Records Administration in

records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are stored in manila folders and on hard disk and diskette.

RETRIEVABILITY:

These records are retrieved by name, address, and/or vehicle license number.

SAFEGUARDS:

INS offices are located in building under guard and access to the premises is by official identification. Personal computers are accessed by user identification and password levels to assure that accessibility is limited to persons having a need-to-know. Similarly, paper records are protected from unauthorized access in locked files.

RETENTION AND DISPOSAL:

INS proposes to maintain all records for three years after the dedicated commuter lane permit expires or for three years after the denial of an application or removal of an individual from the program. Litigation records would be maintained three years after resolution or court decision. At the end of the three years, automated records will be erased, and paper records will be destroyed by shredding. The INS proposal is pending approval by the Department of Justice and by the Archivist of the United States.

SYSTEM MANAGER AND ADDRESS:

Assistant Commissioner, Inspections, 425 I Street, NW, Washington, DC 20536.

NOTIFICATION PROCEDURES:

Address your inquiries to the Port Director (if known) or to the system manager identified above.

RECORDS ACCESS PROCEDURES:

Make all requests for access in writing to the Freedom of Information Act/Privacy Act (FOIA/PA) Officer at the nearest INS Office, or in the INS office maintaining the desired records (if known) by using the List of JUSTICE/INS-999, published in the **Federal Register**. Clearly mark the envelope and letter "Privacy Act Request." Provide the A-file number and/or the full name and date of birth, with a notarized signature of the individual who is the subject of the records, and a return address.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information in the record to the FOIA/PA Officer at one of the addresses identified above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelope and letter "Privacy Act Request." Provide the A-file number and/or the full name and date of birth, with a notarized signature of the individual who is subject of the records, and a return address.

RECORD SOURCE CATEGORIES:

The primary source of information is the application. Other law enforcement records systems may be used as sources.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 91-13745 Filed 6-10-91; 8:45 am]

BILLING CODE 4410-10-M

Drug Enforcement Administration

Eugene Tapia, M.D.; Denial of Application

On March 14, 1991, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Eugene Tapia, M.D. of 760 E. Bobwhite Court, Fresno, California 93720, proposing to deny the application, executed on October 12, 1989, for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Dr. Tapia's registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f).

The Order to Show Cause was sent to Dr. Tapia by registered mail. More than thirty days have passed since the Order to Show Cause was received by Dr. Tapia and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), Eugene Tapia, M.D. is deemed to have waived his opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that beginning in 1980, Dr. Tapia was involved in a large racketeering enterprise, Drug Industry Consultants, Inc. (DIC), formed for the purpose of generating cash through the sale of controlled substances and by defrauding the Illinois Department of Public Aid (IDPA) and Medicaid Program. DIC owned and controlled numerous pharmacies and sham medical clinics throughout the Chicago metropolitan area which served as fronts for the sale of controlled substances such as cough syrup and Doriden (glutethimide). When a codeine type cough syrup (e.g., Tussionex) and a sedative such as Doriden are ingested in combination, the effect on the user is a heightened euphoria. This combination is referred to in street terms as "loads" or "fours and doors."

Not only did physicians at the DIC clinics sign prescription forms for these abused controlled substances, they were also expected to sign orders for unnecessary blood and other tests. Patients who did not possess a legitimate Medicaid card were required to pay $5.00 in cash to clinic personnel in order to see the doctor and obtain the desired drugs. Patients were informed that they would have to submit to the unnecessary lab tests so that Medicaid could be billed. Minimal or no medical examinations were performed by the DIC physicians before providing the medically unnecessary prescriptions to the patients; however, the doctors were instructed to maintain patient records in a fashion such that it would appear that the individual receiving cough syrup and Doriden had a legitimate medical need for the substances.

After receiving the prescriptions, patients usually were dispensed only the Doriden and cough syrup (in exchange for $25.00-$30.00 cash) although the prescription listed numerous other drugs. The pharmacists and the pharmacy involved would then submit invoices to IDPA seeking reimbursement for the unnecessary and frequently non-dispensed items. Examination of these invoices submitted to IDPA reveals that numerous patients supposedly received anywhere from 8 to 57 prescription and nonprescription items per visit. DIC controlled pharmacies received over $10.1 million in reimbursement for their supposed dispensing of services and drugs, etc. Physicians employed by DIC received approximately $4.2 million in IDPA reimbursement.

On November 6, 1982, Dr. Tapia participated in distributing, via prescription, Tussionex and Doriden to an undercover state investigator. During this visit, Dr. Tapia and others dispensed numerous other medically unnecessary items to undercover agents which were reimbursable by IDPA. On January 21 and February 10, 1983, the IDPA and Comptroller's office mailed partial reimbursement for these unnecessary items. This served as the basis for Dr. Tapia's indictment by a grand jury in the United States District Court for the Northern District of Illinois for violation of 21 U.S.C. 841 (illegal

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distribution of controlled substances), 18 U.S.C. 1341 (mail fraud), and 18 U.S.C. 1962 (RICO). Dr. Tapia pled guilty to two counts of mail fraud under the terms of a plea agreement. On April 11, 1988, Dr. Tapia was sentenced to six months imprisonment, five years probation and was required to secure counseling. In the plea agreement, Dr. Tapia admitted his participation in the Medicaid and drug distribution fraud.

On May 23, 1985, the Illinois Department of Registration and Education summarily suspended both Dr. Tapia's license to practice medicine and his controlled substance registration. On June 12, 1985, Dr. Tapia's controlled substance license in Illinois was ordered revoked for a period of no less than five years. The grounds for the suspension were that Respondent's conduct constituted "unprofessional incompetence as manifested by poor standards of care * * *" as well as "* * * dishonorable, unethical (and) unprofessional conduct of a character likely to deceive, defraud or harm the public."

On June 10, 1988, the California Board of Medical Quality Assurance ordered the revocation of Dr. Tapia's physician's and surgeon's license. However, the Board stayed the execution of the order of revocation and placed Dr. Tapia on probation for five years. As part of his probation, he was suspended from the practice of medicine for six months; ordered to maintain a record of all controlled substances prescribed, dispensed, or administered; directed to perform community service; required to participate in an educational program; and required to pass an oral clinical examination in family practice and obstetrics. On February 6, 1987, Dr. Tapia passed his oral clinical examination and completed his six-month suspension from the practice of medicine.

On April 23, 1987, an Order to Show Cause was issued by DEA proposing to revoke Dr. Tapia's then current DEA Certificate of Registration AT3700134, alleging that his continued registration would be inconsistent with the public interest. Dr. Tapia filed a written statement detailing his position on the issues raised by the Order to Show Cause, but did not request a hearing. After reviewing the investigative file, as well as Dr. Tapia's written statement, the Administrator of the Drug Enforcement Administration revoked Dr. Tapia's DEA Certificate of Registration, effective September 14, 1987, in an order found at Volume 52, Federal Register, page 30458 (August 14, 1987). On October 12, 1989, Dr. Tapia submitted the application for registration which is the subject of this final order.

The Administrator may deny an application for a DEA Certificate of Registration if he determines that the registration of the applicant would be inconsistent with the public interest. Pursuant to 21 U.S.C. 823(f), the Administrator considers the following factors in determining the public interest: (1) The recommendation of the appropriate state licensing board or professional disciplinary authority; (2) the applicant's experience in dispensing or conducting research with respect to controlled substances; (3) the applicant's conviction record under Federal or state laws relating to the manufacture, distribution or dispensing of controlled substances; (4) compliance with applicable state, Federal or local laws relating to controlled substance; and (5) such other conduct which may threaten the public health and safety.

The Administrator may rely on any one or a combination of those enumerated factors. He may give such factors the weight he deems appropriate in determining whether an application should be denied. See, Fredal Pharmacy, 55 FR 53592 (1990); Henry J. Schwarz, Jr., M.D., Docket No. 88-42, 54 FR 16422 (1989); Neveille H. Williams, D.D.S., Docket No. 87-47, 53 FR 23465 (1988); David E. Trawick, D.D.S., Docket No. 86-69, 53 FR 5326 (1988).

Both the State of Illinois Department of Registration and Education and the California Board of Medical Quality Assurance found Dr. Tapia's admitted acts in the April 25, 1985, plea agreement to be "* * * unprofessional conduct * * *" in violation of Federal statutes which offenses were substantially related to the qualifications, functions, and duties of physician and surgeon." Dr. Tapia's registration to handle controlled substances in the State of Illinois was revoked for a period of no less than five years in 1985. Although Dr. Tapia is currently authorized to practice medicine in the State of California, his license to practice medicine is on probation.

Dr. Tapia's experience in dispensing controlled substances was negligent and irresponsible. This negligence and irresponsibility is amply demonstrated by Dr. Tapia's active involvement in a "medical practice" which caused the distribution of abused controlled substances without complete physical examinations and for no legitimate medical need. His past experience with controlled substances displays an aptitude for seeking monetary gain rather than providing legitimate medical services.

Dr. Tapia's lack of compliance with applicable laws relating to controlled substances also indicates that he should not be registered with DEA. Dr. Tapia has been convicted of mail fraud in connection with a scheme to illegally distribute controlled substances. Dr. Tapia has admitted his participation in the Medicaid and drug distribution fraud. His fraudulent practices were an abuse of his authority to prescribe controlled substances. Such conduct displayed a clear disregard for the law, wholly inconsistent with the public interest.

No evidence of explanation or mitigating circumstances has been offered by Dr. Tapia. Therefore, the Administrator concludes that Dr. Tapia's application for registration must be denied.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby orders that the application, executed on October 12, 1989, for registration under the Controlled Substances Act submitted by Eugene Tapia, M.D., be, and it hereby is, denied.

Dated: June 3, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement

[FR Doc. 91-13750 Filed 6-10-91; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of

the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable. How often the recordkeeping/reporting requirement is needed. Who will be required to or asked to report or keep records. Whether small businesses or organizations are affected. An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW, room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Mine Safety and Health Administration

Radiation Sampling and Exposure Records

1219-0003

Weekly; annually

Underground uranium mine operators and metal and nonmetal mine operators where radon daughter concentrations exceed 0.3 WL 35 respondents; 7.75 hours per response; 13,563 total burden hours

Requires operators of uranium mines and metal and nonmetal mines, where concentrations of radon daughters exceeds 0.3 WL, to calculate, record, and report to MSHA individual miner's exposures to concentrations of radon daughters. Records are maintained by the mine operator and are submitted to MSHA annually.

Bureau of Labor Statistics

Local Area Unemployment Statistics Reports 6, 8, 13-15

OMB No. *1220-0043;* LAUS 6, 8, 13-15

Form No.	Affected public	Respondents	Frequency	Average time per response
LAUS 6	State Governments	52	Monthly	30 Minutes
LAUS 8	State Governments	52	10 per yr	2.0 Hours.
LAUS 13	State Governments	52	3 per yr	1.0 Hour.
LAUS 14	State Governments	52	3 per yr	1.0 Hour
LAUS 15	State Governments	52	2 per yr	4.0 Hours.

2060 total hours.

These reports provide essential technical management information regarding the quality, accuracy, consistency, and conformance to BLS standards of the data and procedures used in LAUS estimation. Signed at Washington, DC this 6th day of June, 1991.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 91-13827 Filed 6-10-91; 8:45 am]

BILLING CODE 4510-43-M

Employment and Training Administration

[TA-W-25,487]

American Telephone & Telegraph Co., Inc., AT&T Shreveport Works, 9595 Mansfield Road, Shreveport, LA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance on April 25, 1991 applicable to all workers of AT&T Communications Products, Sourcing and Manufacturing, Shreveport, Louisiana. The Certification was published in the Federal Register on May 21, 1991 (56 FR 23302).

At the request of the State Agency the Department reviewed the subject certification. The company provided new information showing that the correct worker group producing coin operated telephones and parts is the AT&T Shreveport Works at 9595 Mansfield Road in Shreveport, Louisiana and that the heading of AT&T Communications Products, Sourcing and Manufacturing on the initial certification is a division to which the Shreveport Works belongs. The notice, therefore, is amended to properly reflect the correct worker group.

The amended notice applicable to TA-W-25,487 is hereby issued as follows:

All workers producing coin operated telephones and parts at the AT&T Shreveport Works, 9595 Mansfield Road, Shreveport, Louisiana who became totally or partially separated from employment on or after February 22, 1990 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 4th day of June 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-13828 Filed 6-10-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25, 248]

Detroit Strip Division, Cyclops Corp., Detroit, MI; Notice of Negative Determination on Reconsideration

On May 17, 1991, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the Detroit Strip Division, Cyclops Corporation, Detroit, Michigan. This notice was published in the Federal Register on May 24, 1991 (56 FR 23938).

The petitioner, a former company official, states that the Department's customer survey did not reflect the true import picture since U.S. aggregate imports of carbon cold rolled strip steel increased absolutely and relative to domestic shipments in the first nine months of 1990 compared to the same period in 1989. The petitioner claims that

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Detroit Strip's profitability was impacted by increased imports and lower selling prices.

An additional list of customers with declining purchases from Detroit Strip was submitted.

In applying the increased import criterion of the Group Eligibility Requirements of the Trade Act to worker separations at the subject plant, it must be shown that these increased imports "contributed importantly" to worker separations and declines in sales or production. Although the investigation showed that there were increased imports in 1990, these imports did not "contribute importantly" to worker separations at Detroit Strip.

On reconsideration, the Department conducted an additional customer survey from the list of customers submitted by the former company official. Respondents from this survey accounted for a substantial portion of Detroit Strip's sales decline in 1990 compared to 1989. The survey results show that the repsondents either did not import cold rolled strip or had declining purchases of cold rolled strip from foreign sources in 1990 compared to 1989. The reasons provided by the customers for their reduced purchases from Detroit Strip were not trade related.

Further, profitability and price are not criteria on which a worker group certification is based.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance to workers and former workers of the Detroit Strip Division of Cyclops Corporation in Detroit, Michigan.

Signed at Washington, DC, this 31st day of May, 1991.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-13823 Filed 6-10-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,557]

Mecon Manufacturing; Oxford, ME; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 18, 1991 in response to a worker petition which was filed on March 18, 1991 on behalf of workers at Mecon Manufacturing, Oxford, Maine.

A negative determination applicable to the petitioning group of workers was issued on December 14, 1990 (TA-W-24,914). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 4th day of June 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustments Assistance.

[FR Doc. 91-13824 Filed 6-10-91; 8:45 am]

BILLING CODE 4510-30-M

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of May 1991.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-25, 304; Tektronix, Inc., Personal Test Instrument Div., Beaverton, OR

TA-W-25, 594; Hercules, Inc., Hard Resin Dept., Burlington, NJ

TA-W-25, 636; Houston Ceramics, Houston, MS

TA-W-25, 624; H.O. Trerice Co., Oak Park, MI

TA-W-25, 635; Tric-Trac Ltd, New York, NY

TA-W-25, 651; Litchfield Precision Components, Litchfield, MN

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-25, 628; Jakel, Inc., Palestine, IL

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25, 752; Meisel-Peskin Co., Inc., Brooklyn, NY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-25, 657; Universal Furniture, Inc., Edison, NJ

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-25, 429; Midwest Aluminum Manufacturing Corp., Kalamazoo, MI

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25, 518; Work Wear Corp., (Formerly Mars White Knight & White Knight Health Care), Asheville, NC

U.S. imports of sanitary paper products was negligible in the relevant period.

TA-W-25, 757; Tootal American, Inc., Old Fort, NC

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-25, 623; General Cable Telecommunication, New Brunswick, NJ

The investigation revealed that criterion (1) has not been met. A significant number or proportion of the workers in the workers' firm are not totally or partially separated as required for certification.

Affirmative Determinations

TA-W-25, 637; Alcoa Fujihura, Ltd, Ripley, MS

A certification was issued covering all workers separated on or after March 22, 1990.

TA-W-25, 595; Hughes Optical Products, Inc., Des Plaines, IL

A certification was issued covering all workers separated on or after March 7, 1990.

TA-W-25, 649; Hamilton Beach/Proctor Silex, Inc., Southern Pines, NC

A certification was issued covering all workers separated on or after March 22, 1990.

TA-W-25, 613; Alliance Rubber Co., Alliance, OH

A certification was issued covering all workers separated on or after March 19, 1990.

TA-W-25, 677; Keystone Carbon Co., Headquarter Unit & Thermistor Unit, St. Marys, PA

A certification was issued covering all workers separated on or after April 1, 1990.

TA-W-25, 628; Macalloy Corp., Charleston, SC

A certification was issued covering all workers separated on or after March 21, 1990.

TA-W-25, 625; Hoyt-Worthen Tanning Corp, Haverhill, MA

A certification was issued covering all workers separated on or after March 21, 1990.

TA-W-25, 653; Prairietek Corp., Longmont, CO

A certification was issued covering all workers separated on or after March 25, 1990.

TA-W-25, 428; Max Kahn Curtain Corp. D/B/A Steven Robert Co., Evergreen, AL

A certification was issued covering all workers separated on or after January 31, 1990.

TA-W-25, 550; Globe Industries, Inc., Rossford, OH

A certification was issued covering all workers separated on or after March 1, 1991.

TA-W-25, 586; Air Baby, Inc., Blauvelt, NY

A certification was issued covering all workers separated on or after March 11, 1990 and before March 31, 1991.

TA-W-25, 630; New Jersey Tanning Co., Newark, NJ

A certification was issued covering all workers separated on or after March 11, 1990.

TA-W-25, 610; Waterville Knitting Mill, Waterville, NY

A certification was issued covering all workers separated on or after March 11, 1990.

TA-W-25, 526; Blueberry Woolens, Inc., Anson, ME

A certification was issued covering all workers separated on or after February 20, 1990.

TA-W-25, 547; G & M Knitting Mills, Ridgewood Queen, NY

A certification was issued covering all workers separated on or after March 7, 1990 and before January 31, 1991.

I hereby certify that the aforementioned determinations were issued during the month of May, 1991. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: June 3, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-13825 Filed 6-10-91; 8:45 am]

BILLING CODE 4510-30-M

Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Notice of Additions to the Annual List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATE: These additions to the annual list of labor surplus areas are effective June 1, 1991.

SUMMARY: The purpose of this notice is to announce additions to the annual list of labor surplus areas.

FOR FURTHER INFORMATION CONTACT: William J. McGarrity, Labor Economist, Employment and Training Administration, 200 Constitution Avenue, NW., Room N-4470, Attention: TEESS, Washington, DC 20210. Telephone: 202-535-0169.

SUPPLEMENTARY INFORMATION: Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas. Executive agencies should refer to Federal Acquisition Regulation Part 20 (48 CFR Part 20) in order to assess the impact of the labor surplus area program on particular procurement.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Acquisition Regulation Part 25 (48 CFR part 25) implements Executive Order 12260. Executive agencies should refer to Federal Acquisition Regulation part 25 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR part 654, subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor published the annual list of labor surplus areas on October 19, 1990, (55 FR 42509).

Subpart B of part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under subpart A. Thus, labor surplus areas under Executive order 12073 are also areas of substantial unemployment under Executive order 10582.

The areas described below have been classified by the Assistant Secretary of Labor as labor surplus areas pursuant to 20 CFR 654.5(b)(48 FR 15615 April 12, 1983) and are effective June 1, 1991.

The list of labor surplus areas is published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, D.C. on May 29, 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

Additions to the Annual List of Labor Surplus Areas

June 1, 1991

Labor Surplus areas	Civil jurisdictions included
Georgia:	
Coweta County	Coweta County.
LaGrange City	LaGrange City in Troup County.
Maine:	
Piscataquis County	Piscataquis County.
Massachusetts:	
Wareham Town	Wareham Town in Plymouth County.
New Bedford MSA (Metropolitan Statistical Area).	Bristol County (part): Acushnet Town, Dartmouth Town, Fairhaven Town, Freetown Town, New Bedford City. Plymouth County (part): Marion Town, Mattapoisett Town, Rochester Town.

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Labor Surplus areas	Civil jurisdictions included
Worcester MSA (Metropolitan Statistical Area).	Worcester County (part): Auburn Town, Barre Town, Boylston Town, Brookfield Town, Charlton Town, Clinton Town, Douglas Town, Dudley Town, East Brookfield Town, Grafton Town, Holden Town, Leicester Town, Millbury Town, Northborough Town, Northbridge Town, North Brookfield Town, Oxford Town, Paxton Town, Princeton Town, Rutland Town, Shrewsbury Town, Spencer Town, Sterling Town, Sutton Town, Uxbridge Town, Webster Town, Westborough Town, West Boylston Town, Worcester City.

[FR Doc. 91-13828 Filed 6-10-91; 8:45 am]
BILLING CODE 4510-30-M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Lambert Coal Co.

[Docket No. 91-43-C]

Lambert Coal Company, P.O. Box 304, Nora, Virginia 24272 has filed a petition to modify the application of 30 CFR 75.1701-1 to its No. 48 Mine (I.D. No. 44-06582) located in Dickenson County, Virginia. The petitioner states that the use of canopies on equipment will result in unsafe conditions to the miners.

2. U.S. Steel Mining Co., Inc.

[Docket No. M-91-44-C]

U.S. Steel Mining Company, Inc., 600 Grant Street, Pittsburgh, Pennsylvania 15230 has filed a petition to modify the application of 30 CFR 75.1105 to its Shawnee Mine (I.D. No. 46-05907) located in Wyoming County, West Virginia. The petitioner proposes to enclose electrical equipment in a monitored fireproof structure in lieu of ventilating the equipment to the return.

3. U.S. Steel Mining Co., Inc.

[Docket No. M-91-45-C]

U.S. Steel Mining Company, Inc., 600 Grant Street, Pittsburgh, Pennsylvania 15230 has filed a petition to modify the application of 30 CFR 75.1105 to its No. 50 Mine (I.D. No. 46-01816) located in Wyoming County, West Virginia. The petitioner proposes to enclose electrical equipment in a monitored fireproof structure in lieu of ventilating the pump to a return aircourse.

4. Canterbury Coal Co.

[Docket No. M-91-46-C]

Canterbury Coal Company, R.D. 1, Box 119, Avonmore, Pennsylvania 15618 has filed a petition to modify the application of 30 CFR 75.1100-3 to its DiAnne Mine (I.D. No. 36-05708) located in Armstrong County, Pennsylvania. The petitioner proposes to maintain a dry waterline, equipped with an automatic valve actuated by a signal from fire sensors, along the slope belt.

5. Leeco, Inc.

[Docket No. M-91-47-C]

Leeco, Inc., 100 Coal Drive, London, Kentucky 40741 has filed a petition to modify the application of 30 CFR 75.1710-1 to its No. 62 Mine (I.D. No. 15-16412) and its No. 63 Mine (I.D. No. 15-16413) located in Perry County, Kentucky. The petitioner states that the use of canopies on equipment will result in a diminution of safety to miners.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 11, 1991. Copies of the petitions are available for inspection at that address.

Dated: May 30, 1991.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 91-13822 Filed 6-10-91; 8:45 am]
BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Oregon State Standard: Approval

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Approval of the Oregon State standard, proximity to overhead high voltage lines and equipment.

SUMMARY: This notice approves the Oregon standard for Proximity to Overhead High Voltage Lines and Equipment submitted for OSHA approval on October 18, 1984. Oregon has adopted the standard as part of its general industry electrical standard to provide additional protective requirements for general industry regarding work activity in proximity to overhead high voltage lines and equipment. There are no requirements in OSHA's general industry electrical standards at 29 CFR part 1910 Subpart S which are equivalent to Oregon's additional requirements. Where a State standard adopted pursuant to an OSHA-approved State plan differs significantly from a comparable Federal standard or is a State-initiated standard, the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (the Act) requires that the State standard must be "at least as effective" in providing safe and healthful employment and places of employment. In addition, if the standard is applicable to a product distributed or used in interstate commerce, it must be required by compelling local conditions and not pose any undue burden on interstate commerce.

On July 21, 1987, OSHA published a **Federal Register** notice (52 FR 27417) requesting public comment on whether the Oregon standard meets both the "at least as effective" criterion and the product clause test of section 18(c)(2) of the Act. This notice invited interested persons to submit by August 20, 1987, written comments and views regarding the Oregon standard and whether it should be approved by the Assistant Secretary. OSHA received one comment in response to this notice.

EFFECTIVE DATE: June 11, 1991.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone (202) 523-8148.

SUPPLEMENTARY INFORMATION:

A. Background

The requirements for adoption and enforcement of safety and health standards by a State with a State plan approved under section 18(b) of the Act are set forth in section 18(c)(2) of the Act and in 29 CFR part 1902, 29 CFR 1952.7, and 29 CFR 1953.21, 1953.22 and 1953.23. OSHA regulations require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OSHA publication in the **Federal Register** (29 CFR 1953.23(a)); a 30-day response time is required for State adoption of a standard comparable to a Federal emergency temporary standard (29 CFR 1953.22(a)). Independent State standards also must be submitted for OSHA's review and approval. Newly adopted State standards or revisions to existing standards must be submitted for OSHA review and approval under procedures set forth in 29 CFR part 1953, but are enforceable by the State prior to Federal review and approval. Section 18(c)(2) of the Act provides that if State standards which are not identical to Federal standards are applicable to products which are distributed or used in interstate commerce, such standards must be required by compelling local conditions and must not unduly burden interstate commerce. (This latter requirement is commonly referred to as the "product clause.")

On December 28, 1972, notice was published in the **Federal Register** (37 FR 28628) of the approval of the Oregon State plan and the adoption of subpart D to part 1952 containing the decision. The Oregon plan provides for the adoption of State standards in the following manner.

The Oregon Occupational Safety and Health Division adopts standards in response to Federal standards adopted by OSHA, or drafts such standards as it considers necessary in accordance with State safety and health experience, or upon consideration of recommendations from national standards-setting organizations, the U.S. Departments of Labor and Health and Human Services, employers, employees, and employee representatives.

The Oregon plan provides for adoption of permanent rules after giving public notice in the Secretary of State's rulemaking bulletin, to provide opportunity for the public to comment or request a hearing, considering comments and information gathered at hearings when appropriate and filing with the Secretary of State as an adopted rule.

The State has submitted a State-initiated plan change by letter, with attachments, dated October 18, 1984, from William J. Brown, Director of Oregon Workers' Compensation Department, to James W. Lake, Regional Administrator, and incorporated as part of its plan the standard on Proximity to Overhead Voltage Lines and Equipment (OAR 437-67-004(3) and 437-67-430 through 445). The standard prohibits employers from requiring or permitting employees to work in proximity to high-voltage lines unless accidental contact is effectively guarded against. Procedures for protecting employees against contact are set forth in the standard.

It should be noted that these rules were formerly a part of the Oregon electrical code, but were not included when Oregon adopted a new general industry electrical code consisting of substantially identical rules in response to the Federal electrical standards at 29 CFR part 1910 subpart S which were promulgated in 1981.

Pursuant to State procedures, Oregon provided notice in the Secretary of State's Administrative Rules Bulletin on August 15, 1984 and mailed copies of this notice to those on the Department's list of interested parties on August 10, 1984. No written comments or requests for hearing were received. Oregon then adopted its proposed rules on September 24, 1984, effective October 1, 1984.

(Note: The standard is currently numbered OAR 437-02-321 through 324 in the new Division 2/S, Electrical, and is repeated for employer convenience at OAR 437-02-069 through 075 in the new Division 2/F, Powered Platforms, Manlifts, and Vehicle-Mounted Work Platforms.)

There are no requirements in OSHA's general industry electrical standards at 29 CFR part 1910 subpart S which are equivalent to Oregon's additional requirements. Although there is a parallel requirement at 29 CFR 1926.550(a)(15), this regulation applies only to construction and not to general industry. There are several general industry standards addressing minimum clearance distances in proximity to energized conductors for operating cranes, derricks, and vehicle mounted work platforms at 29 CFR 1910. 180(j)(1), 1910.181(j)(5), and 1910.67(b)(4), respectively, but these have a much more limited scope than Oregon's standard. Though the State adopted its standard primarily to provide protection for workers operating scaffolds, mobile lifts and scissor lifts, the scope of Oregon's standard is now identical to that of the Federal electrical standard and covers all electrical installations and utilization equipment.

B. Public Participation

On July 21, 1987, OSHA published a **Federal Register** notice (52 FR 27417) requesting public comment on whether the Oregon standard meets both the "at least as effective" criterion and the product clause test of section 18(c)(2) of the Act. This notice invited interested persons to submit by August 20, 1987, written comments and views regarding the Oregon standard on Proximity to Overhead High Voltage Lines and Equipment and whether it should be approved by the Assistant Secretary. In response to this notice, one comment was received from Mr. W. Scott Railton of Reed, Smith, Shaw and McClay, Washington, DC 20036-4192.

Mr. Railton commented that the standard is largely redundant because of the other 29 CFR part 1910 standards, and that the duplication could produce confusion among employers as to compliance obligations. However, as Mr. Railton noted, the Oregon standard has a broader scope, and also contains three additional requirements—a watchman, a warning sign, and notification to the operator of the high-voltage line—as well as some clarifications of the ten foot clearance requirement, such as when equipment is in transit on smooth surfaces.

Based on its own review, OSHA has found that though there is some duplication, any confusion among employers as to compliance obligations should be minimized by the fact that all employers working with electrical installations and utilization equipment must comply with this State-initiated standard on high voltage clearance distances, along with the rest of Oregon's electrical standards. The other references in 29 CFR 1910 (and Oregon's counterpart standards) to clearance distances cover only a few types of equipment and are basically a reminder of this general and more stringent requirement.

C. Decision

Having reviewed the State submission and public comments submitted in response to the July 21, 1987 **Federal Register** notice, OSHA has determined that:

(1) The State standard meets the "at least as effective" criterion of section 18(c)(2) of the Act because there are no comparable requirements in the Federal electrical standards, and because the other Federal general industry standards addressing this issue are much more limited in scope and lack Oregon's additional requirements.

(2) The record on this standard includes no persuasive evidence, developed by or submitted to OSHA, that the standard is not in compliance with the product clause test of section 18(c)(2) of the Act; therefore the standard is presumed to be in compliance with section 18(c)(2) of the Act.

OSHA therefore approves the Oregon standard on Proximity to Overhead High Voltage Lines and Equipment.

E. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 1111 Third Avenue, Suite 715, Seattle, Washington 98101-3212; Oregon Occupational Safety and Health Division, Department of

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Insurance and Finance, Labor and Industries Building, Salem, Oregon 97310; and the Office of State Programs, Occupational Safety and Health Administration, room N-3476, 200 Constitution Avenue, NW., Washington, DC 20210.

This decision is effective June 11, 1991.

Authority: Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902; Secretary of Labor's Order No. 1-90 (55 FR 9033).

Signed this 5th day of June, 1991.

Gerard F. Scannell,

Assistant Secretary.

[FR Doc. 91-13796 Filed 6-10-91; 8:45 am]

BILLING CODE 4510-28-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 91-51]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting cancellation.

Federal Register Citation of Previous Announcement:

56 FR 21507, Notice Number 91-38, May 9, 1991.

Previously Announced Times and Dates of Meeting:

June 11, 1991, 8 a.m. to 5 p.m.

Meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Mr. Sam Venneri, Office of Aeronautics, Exploration and Technology, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-2760).

Dated: June 6, 1991.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91-13626 Filed 6-10-91; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste Working Group Meeting; Meeting

The Advisory Committee on Nuclear Waste will hold a working group meeting on June 26 and 28, 1991, at the Center for Nuclear Waste Regulatory Analyses (CNWRA), Southwest Research Institute, San Antonio, TX.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, June 26, 1991—8:30 a.m. Until the Conclusion of Business

The Working Group will hear briefings by staff of the CNWRA on technical assistance activities being conducted in support of the NRC Division of High-Level Waste Management.

Friday, June 28, 1991—10 a.m. Until 11:30 a.m.

The Working Group may reconvene at 10 a.m. for closing comments.

Oral statements may be presented by members of the public with the concurrence of the Working Group Chairman; written statements will be accepted and made available to the Group. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Working Group, its consultants, and staff. Persons desiring to make oral statements should notify the ACNW staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Working Group, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Working Group will then hear presentations by and hold discussions with representatives of the Center for Nuclear Waste Regulatory Analyses.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the Designated Federal Official, Ms. Charlotte Abrams (telephone 301/492-8371) between 8 a.m. and 5 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: June 4, 1991.

R.K. Major,

Chief, Nuclear Waste Branch.

[FR Doc. 91-13804 Filed 6-10-91; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Joint Subcommittee on Plant Operations and Probabilistic Risk Assessment; Revised Notice

A portion of the ACRS joint Subcommittee meeting on Plant Operations and Probabilistic Risk Assessment scheduled to be held on Wednesday, June 5, 1991, room P-110, 7920 Norfolk Avenue, Bethesda, MD, will be closed to discuss foreign Proprietary Information (5 U.S.C. 552b(c)(4)). All other items pertaining to this meeting remain the same as published previously in the Federal Register on Thursday, May 23, 1991 (56 FR 23728).

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Paul Boehnert (telephone 301/492-8558) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: June 4, 1991.

Richard Savio,

ACRS, Assistant Executive Director for Nuclear Reactors and Nuclear Waste.

[FR Doc. 91-13803 Filed 6-10-91; 8:45 am]

BILLING CODE 7590-01-M

NUREG: Issuance, Availability

The Nuclear Regulatory Commission has issued NUREG-1435, Volume 2, Status of Safety Issues at Licensed Power Plants, Unresolved Safety Issues. The document covers the status of implementation and verification of Unresolved Safety Issues at licensed operating plants. It also provides an historical perspective of the growth of issues designated as USIs.

This NUREG has been prepared to provide a comprehensive description of the implementation and verification status of all the Unresolved Safety Issues at licensed operating plants and to make this information available to other interested parties, including the public.

Copies of the Report have been placed in the NRC's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. Copies of the Report may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 2013-7082. GPO deposit account holders may charge their order by calling 202/275-2060. Copies are also available from the National Technical Information Service, Springfield, Virginia 22161.

Dated at Rockville, Maryland, this 17th day of May, 1991.

For the Nuclear Regulatory Commission.

Frank P. Gillespie,

Director, Program Management, Policy Development and Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 91-13801 Filed 6-10-91; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Docket No. A91-5; Order No. 885]

Elsmere, Nebraska 69135 (Benj Fink, Petitioner); Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

(Issued June 5, 1991)

In the Matter of: Before Commissioners: George W. Haley, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; W.H. "Trey" LeBlanc III; Patti Birge Tyson

Docket Number: A91-5.

Name of Affected Post Office: Elsmere, Nebraska 69135.

Name(s) of Petitioner(s): Benj Fink.

Type of Determination: Closing.

Date of Filing of Appeal Papers: May 20, 1991.

Categories of Issues Apparently Raised:

1. Effect on the community (39 U.S.C. 404(b)(2)(A)).

2. Effect on postal services (39 U.S.C. 404(b)(2)(C)).

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule (39 U.S.C. 404(b)(5)), the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before June 10, 1991.

(B) The Secretary shall publish this notice and order and Procedural Schedule in the **Federal Register**.

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

May 28, 1991—Filing of Petition.

June 5, 1991—Notice and Order of Filing of Appeal.

June 14, 1991—Last day of filing of petitions to intervene (see 39 CFR 3001.111(b)).

June 24, 1991—Petitioners' Participant Statement or Initial Brief (see 39 CFR 3001.115 (a) and (b)).

July 15, 1991—Postal Service Answering Brief (see 39 CFR 3001.115(c)).

July 30, 1991—Petitioners' Reply Brief should Petitioners choose to file one (see CFR 3001.115(d)).

August 6, 1991—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings (see 39 CFR 3001.116)).

September 24, 1991—Expiration of 120-day decisional schedule (see 39 U.S.C. 404(b)(5)).

[FR Doc. 91-13732 Filed 6-10-91; 8:45 am]

BILLING CODE 7710-FW-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29264; File No. SR-DTC-91-09]

Self-Regulatory Organization; The Depository Trust Company; Notice of Proposed Rule Change Increasing the Adjustable Net Debit Cap for Participants in DTC's Same Day Funds Settlement System

June 3, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on April 18, 1991, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC's proposed rule change consists of a clarification of DTC's application of the formula for calculating the adjustable portion of the net debit cap ("adjustable net debit cap") for participants in DTC's Same-Day Fund Settlement ("SDFS") system.[2] The proposal would make it clear that when DTC calculates a participant's adjustable net debit cap, the multiplier in the adjustable net debit cap formula would be equal to 100 divided by twice the participant's effective rate of required contributions to the SDFS component of the participants fund ("SDFS Fund").[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under DTC's Rules, each SDFS participant is required to make a deposit to the SDFS Fund.[4] The SDFS Fund is primarily a ready initial source of cash or collateral available to DTC for a loan in the event of a participant failure to settle, a circumstance due typically to operational causes subsequently overcome. Additionally, securities collateralizing the defaulting participant's net debit are available if needed for securing a loan. The SDFS Fund also "self-insures" risks in the SDFS system, but only to the extent of participants' required, but not voluntary, contributions to the SDFS Fund.

The formula for determining a participant's required deposit to the SDFS Fund, which is calculated monthly, is five percent of the participant's average daily gross SDFS credits and debits during the prior month. Because of the $400 million cap on the SDFS Fund, established in September 1990,[5] the effective rate of SDFS participants' required deposits has decreased from the initial rate of five percent of their average daily gross settlement activity to 1.1 percent as of March 31, 1991.

In order to protect against settlement risk caused by a participant running up

[1] 15 U.S.C. 78s(b)(1).

[2] For a complete description of DTC's SDFS system, see Securities Exchange Act Release No. 24699 (July 9, 1987), 52 FR 26613.

[3] See *infra* note 5, and accompanying text.

[4] See DTC Rule 4, Section 1.

[5] See Securities Exchange Act Release No. 28015 (October 3, 1990), 55 FR 42990.

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an extraordinarily high net debit relative to its past net debits, DTC's liquid resources, or the credit judgment of the participant's settling bank or DTC, each SDFS participant's net debit is limited throughout the processing day by a net debit cap that is the lesser of:

(1) The adjustable net debit cap, which is a multiple of the participant's required and voluntary contributions to the SDFS Fund, and

(2) A fixed net debit cap, which is the least of:

a. 75% of DTC's liquid resources, including lines of credit with potential lenders, or

b. An amount, if any, determined by the participant's settling bank, or

c. An amount, if any, determined by DTC.

A participant can increase its adjustable net debit cap by making voluntary contributions to the SDFS Fund; the Participant cannot increase the fixed net debit cap.

The adjustable net debit cap protects against abnormal intraday net debit peaks that are out of line with a participant's prior months' average daily activity level, the basis for a participant's required deposit to the SDFS Fund. These abnormal peaks are typically associated with large dollar underwritings of new issues of CF. This cap is intended, however, to accommodate normal intraday net debit fluctuations in relation to a participant's prior months' average daily settlements. Under DTC's current procedures, an SDFS participant's adjustable net debit cap is an amount equal to fifteen times the participant's required and voluntary deposits to the SDFS fund.[6] The multiplier was changed from ten to fifteen in September 1990 in anticipation of the $400 million cap becoming applicable and the rate of required contributions to the SDFS Fund declining from the formula rate of five percent to an effective rate of approximately 3⅓ percent soon after inauguration of DTC's commercial paper ("CP") program.

With the effective rate declining further since that time, the adjustable net debit cap no longer bears a reasonable relationship to the dollar amount of a participant's SDFS activity. Further, this constraint has had a disproportionate effect on smaller SDFS participants. Because their required contributions to the SDFS Fund put their adjustable net debit caps above the fixed net debit cap, the net debits of large SDFS participants (those with daily average gross debits and credits over $1.6 billion) are limited by the $200 million fixed net debit cap. The net debits of the vast majority of participants, however, are limited by their adjustable caps.

When their net debits bump up against their adjustable net debit caps during the processing day, participants have to either: (1) wire Fed funds to DTC in order to lower their net debits; or (2) raise their adjustable net debit caps by making voluntary contributions to the SDFS Fund. DTC's proposal would facilitate the flow of transactions and reduce the fear of gridlock among all SDFS participants by decreasing the chances of any participant's delivery being blocked by the receiver-participant's adjustable net debit cap until it wires Fed funds to DTC or makes a voluntary contribution to the SDFS Fund. Moreover, DTC's proposal would remove a deterrent to smaller firms' participation in the SDFS system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

DTC's CP program was developed in close consultation with the CP Task Force established by the Public Securities Association Money Market Committee. The CP Task Force, which is composed of representatives of CP broker-dealers, New York Clearing House banks, banks headquartered outside New York, and CP issuers, has continued to meet regularly with DTC to help monitor implementation of the program. The CP Task Force has strongly urged DTC to make the subject revision.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to File Number SR–DTC–91–9 and should be submitted by June 28, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–13757 Filed 6–10–91; 8:45 am]

BILLING CODE 8010–01–M

[6] See Securities Exchange Act Release No. 28424 (September 11, 1990), 55 FR 38428

DEPARTMENT OF STATE

[Public Notice 1412]

Presidential Task Force on U.S. Government International Broadcasting, Announcement of Formation and Notice of Meetings

On April 29, 1991, the White House announced the formation of a Presidential Task Force on U.S. Government International Broadcasting. The authority for the Task Force is the public statement by the White House. In accordance with the provisions of the Federal Advisory Committee Act, the charter of the Task Force was deposited with the Administrator of the General Services Administration on May 23, 1991 and provided to appropriate committees of Congress on the same day.

The Task Force will make recommendations to the President on the following issues in the overall context of U.S. foreign policy and public diplomacy:

—The most appropriate organization and structure under which all United States Government international broadcasting assets and activities eventually would be consolidated, in steps and over time, under a single United States Government broadcasting entity; when and how such consolidation should take place.

—New technologies in light of the need for United States Government broadcasting to remain effective and competitive. This should include strategies for the best use of new technologies; and

—The relationship between United States government broadcasting activities and United States private sector broadcasting enterprises in the international arena.

The Task Force will complete its work within six months of the date of deposit of the Charter and then will be disbanded.

The Task Force announces that its first meeting will take place on June 13–14, 1991, 1555 Wilson Blvd., suite 604, Arlington, Virginia. The meeting will be in two segments each day, from 9 a.m. to noon and from 2 p.m. to 5 p.m. All segments of the meetings will be open to the public.

This, the first meeting of the Task Force, will occur less than fifteen days from the publication of this notice. This occurs because the duration of the Task Force is severely constrained and it is necessary to begin work as soon as possible to assure that recommendations are made to the President by the November 23, 1991 time set in the announcement of the formation of the Task Force.

Members of the general public may attend the meeting, except for executive sessions, and participate in discussions, subject to instructions from the Chairman. Admittance will be limited to the seating available. All those planning to attend should call 703–235–9000 prior to the appropriate meeting to assure that seating will be available.

Dated: June 5, 1991.

C. Edward Dillery,

Executive Director, Task Force on U.S. Government International Broadcasting.

[FR Doc. 91–13799 Filed 6–10–91; 8:45 am]

BILLING CODE 4710–10–M

[Public Notice 1408]

Study Group 11 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 11 (Television Broadcasting) of the U.S. Organization for the International Radio Consultative Committee (CCIR) will hold an open meeting June 21, 1991 at the Federal Communication Commission, 1919 M Street, NW., Washington, DC in room 856 commencing at 10 a.m.

Study Group 11 deals with matters relating primarily to the study of the international exchange of programs and the technical and operating aspects of the broadcasting and broadcasting-satellite services, including video frequency and recording equipment, as well as the overall performance of the means of delivering signals to the general public, when they are used for television, data and associated ancillary services.

The purpose of the meeting is prepare for U.S. participation at the meetings of the Study Group 11 Working Parties and Task Groups during the period of November 11–27, 1991 in Geneva.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Requests for further information should be directed to Mr. John W. Reiser, Federal Communication Commission, Washington, DC 20554, phone (202) 254–3394.

Dated: May 28, 1991.

Warren G. Richards,

Chairman, U.S. CCIR National Committee.

[FR Doc. 91–13747 Filed 6–10–91; 8:45 am]

BILLING CODE 4710–07–M

[Public notice 1407]

Study Group 5 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 5 of the U.S. Organization for the International Radio Consultative Committee (CCIR) and Study Group 5 of the Canadian National International Radio Consultative Committee will hold an open, consolidated meeting June 27, 1991, at the University of Western Ontario, Social Sciences Building, room 2305, London, Ontario. The meeting will convene at 5:15 p.m.

Study Group 5 deals with matters relating to the propagation of radio waves and related noise phenomena in non-ionized media at and above the surface of the earth for the purpose of improving radiocommunication systems. The purpose of the meeting is to review the new structure, working methods and meeting schedule of the CCIR.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Request for further information should be directed to Dr. John F. Cavanagh, Naval Surface Warfare Center, Dahlgren, Virginia 22448–5000, phone (703) 663–8737.

Dated: May 28, 1991.

Warren G. Richards,

Chairman, U.S. CCIR National Committee.

[FR Doc. 91–13748 Filed 6–10–91; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice 1409]

United States Organization for the International Telegraph and Telephone Consultative Committee (CCITT) Study Group A Meeting

Department of State announces that Study group A (Policy and Services) of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on Tuesday, June 25, 1991, in Conference Room 1105 and on Thursday August 1, 1991, in Conference Room 1105, both meetings to commence at 9:30 a.m. at the Department of State, 2201 C Street NW., Washington, DC 20520.

The agenda for the June meeting will include a debriefing and review of the results of the 46th ITU Administrative Council meeting, Geneva, of May 27–June 7, 1991; a debrief and review of the results of the CCITT Study Group I meeting held in Geneva, May 28–June 7, 1991; Preparatory activities for upcoming meetings of CCITT Study Group III, and the ad hoc group for CCITT Resolution No. 18; and the future schedule of work activities. A draft agenda for the August Study Group A meeting will be determined at the June meeting.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made five (5) days in advance of the meeting. Persons who plan to attend should so advise the Office of Earl S. Barbely, Department of

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State, (202) 647-2592, FAX (202) 647-7407. The above includes government and non-government attendees. Public visitors will be asked to provide their date of birth and Social Security number at the time they register their intention to attend and must carry a valid photo ID with them to the meeting in order to be admitted. All attendees must use the C Street entrance.

Dated: May 20, 1991.

Earl S. Barbely,

Director, Telecommunications and Information Standards, Chairman U.S. CCITT National Committee.

[FR Doc. 91-13749 Filed 6-10-91; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: June 5, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Office of Thrift Supervision

OMB Number: 1550-0019.
Form Number: Schedule 14A, B, C, D-1 and D-9; Form 3, 4, 8, 8A, 8K, 10, 10K, 10Q, 12b-25, 13D, 13G and 15.
Type of Review: Reinstatement.
Title: Annual Reporting Requirements and Disclosures Required by Securities Exchange Act of 1934.
Description: Provides operational data to stockholders and investors permitting an informed decision concerning possible purchase or sale of security savings and loan associations.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 350.
Estimated Burden Hours Per Response/Recordkeeping: 500 hours.
Frequency of Response: Annually.
Estimated Total Recordkeeping/Reporting Burden: 750,975 hours.
Clearance Officer: John Turner (202) 906-6840, Office of Thrift Supervision, 1700 G Street, NW., 3rd Floor, Washington, DC 20552.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 91-13797 Filed 6-10-91; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: June 5, 1991

The Department of Treasury has submitted the following public information collection requirement(s) to OMB to review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: 8827.
Type of Review: New Collection.
Title: Credit for Prior Year Minimum Tax—Corporations.
Description: Section 53(d), as revised, allows corporations a minimum tax credit based on the amount of alternative minimum tax incurred in tax years beginning after 1989, or a carryforward for use in a future year.
Respondents: Businesses or other-profit, Small businesses or organizations
Estimated Number of Respondents: 25,000.
Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 25,000 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Officer of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 91-13798 Filed 6-10-91; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF VETERANS AFFAIRS

Prosthetics Services Advisory Committee; Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92-463 that a meeting of the Prosthetics Services Advisory Committee will be held July 8-9, 1991, in the Omar N. Bradley Conference Room, room 1105, 801 I (Eye) Street, NW., Washington, DC.

The purpose of the Prosthetics Services Advisory Committee is to advise the Secretary of Veterans Affairs and the Chief Medical Director on major policy questions raised by VA's responsibility to provide state-of-the-art prosthetics and associated rehabilitation research, development, and evaluation of such technology.

The meeting will convene at 8:30 a.m. and adjourn at 4:30 p.m. on July 8, 1991, and will reconvene at 8:30 a.m. on July 9, 1991, and adjourn at 4 p.m. The meeting is open to the public up to the capacity of the room. For those wishing to attend, contact Warren Smith, Office of the Deputy Assistant Chief Medical Director for Rehabilitation and Prosthetics, phone (202) 535-7273, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, prior to July 2, 1991.

Dated: May 30, 1991.

By direction of the Secretary:

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 91-13835 Filed 6-10-91; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 112
Tuesday, June 11, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEPARTMENT OF ENERGY
FEDERAL ENERGY REGULATORY COMMISSION
Notice
June 5, 1991.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-49), U.S.C. 552B:

DATE AND TIME: June 12, 1991, 10:00 a.m.
PLACE: 825 North Capitol Street, NE., Room 9308, Washington, DC 20426.
STATUS: Open.
MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208-0400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 999th Meeting—June 12, 1991, Regular Meeting (10:00 a.m.)

CAH-1.
Project No. 6221-021, Weyerhaeuser Company
CAH-2.
Project No. 8165-011, Bluestone Energy Design, Inc.
CAH-3.
Omitted
CAH-4.
Omitted
CAH-5.
Omitted
CAH-6.
Project No. 2520-008, Great Northern Nekoosa Corporation
CAH-7.
Project No. 3374-003, Continental Hydro Corporation
CAH-8.
Omitted
CAH-9.
Project No. 588-000, Utah Power and Light Company
Project No. 4020-000, Utah Municipal Power Agency, *et al.*
Project No. 4040-000, Bountiful City, Utah
CAH-10.
Project Nos. 10226-000 and 002, WV Hydro, Inc.
Project Nos. 10035-000 and 004, Hynergix, Inc.
CAH-11.
Project No. 10463-000, Hydroelectric Development, Inc.

Consent Agenda—Electric

CAE-1.
Docket No. EL91-9-000, Transmission Agency of Northern California v. Pacific Gas and Electric Company
Docket Nos. ER91-346-000 and EL91-37-000, Pacific Gas and Electric
CAE-2.
Docket No. ER91-295-001, Western Systems Power Pool
CAE-3.
Docket No. ER86-75-011 (Phase II), Southern California Edison Company
CAE-4.
Docket No. ER91-95-001, Puget Sound Power & Light Company
CAE-5.
Docket No. QF85-253-004, North Powder Energy, Inc.
CAE-6.
Docket No. FA91-49-000, Southwestern Public Service Company
CAE-7.
Docket No. ER91-26-000, PacifiCorp Electric Operations and Arizona Public Service Company
CAE-8.
Omitted
CAE-9.
Docket No. EL90-31-001, Missouri Basin Municipal Power Agency v. Midwest Energy Company and Iowa Resources, Inc.
CAE-10.
Docket No. EL90-44-000, Catalyst Cristetal Corporation
CAE-11.
Docket Nos. ER89-493-006, 001, ER89-494-000 and 001, PacifiCorp
CAE-12.
Docket Nos. ER90-269-000, ER90-270-000, ER90-271-000, ER90-272-000, ER90-273-000, ER90-594-000, EL90-32-000, EL90-37-000 and EL90-41-000, Indiana Michigan Power Company

Consent Agenda—Oil and Gas

CAG-1.
Docket No. RP91-153-000, East Tennessee Natural Gas Company
CAG-2.
Docket No. RP91-156-000, Northern Natural Gas Company
CAG-3.
Docket Nos. RP91-37-001, 000, and RP91-151-000, Carnegie Natural Gas Company
CAG-4.
Docket Nos. RP90-120-008 and 007, Southern Natural Gas Company
CAG-5.
Docket No. RP91-154-000, Florida Gas Transmission Company
CAG-6.
Docket No. TQ92-6-33-000, El Paso Natural Gas Company
CAG-7.
Docket No. RP88-245-000, Paiute Pipeline Company
CAG-8.
Docket No. GT91-16-000, K N Energy, Inc.
CAG-9.
Docket No. RP91-25-005, El Paso Natural Gas Company
CAG-10.
Docket Nos. RP85-209-033, RP86-93-013, RP86-158-015, CP86-245-007, RP87-34-015, TC88-6-013, RP88-6-015, RP88-27-028, RP88-82-025, RP85-205-010, RP88-263-018, RP88-264-023, RP84-42-011, RP89-138-012, CP88-6-010, CP88-329-011, CP88-476-006, IN86-5-017, CP88-440-008 and CP87-524-013, United Gas Pipe Line Company
CAG-11.
Docket No. RP91-92-002, Colorado Interstate Gas Company
CAG-12.
Docket Nos. RP84-94-006, RP85-86-003, RP90-9-003 and CP90-140-002, Trailblazer Pipeline Company
CAG-13.
Docket No. RP88-251-014, Alabama-Tennessee Natural Gas Company
CAG-14.
Docket No. RP88-187-018, Columbia Gas Transmission Corporation
CAG-15.
Docket Nos. RP86-120-003, TM88-2-27-004, TA88-1-27-005, RP88-57-008 and RP88-110-003, North Penn Gas Company
Docket Nos. RP85-178-005, RP88-191-013, 017, 020, RP85-178-007 and 008, Tennessee Gas Pipeline Company
Docket Nos. RP88-68-018 and RP87-7-058, Transcontinental Gas Pipe Line Corporation
Docket No. RP88-217-012, CNG Transmission Corporation
CAG-16.
Docket Nos. RP89-183-007, 027, RP91-43-003 and TM91-3-43-003, Williams Natural Gas Company
CAG-17.
Docket Nos. RP91-119-001 and 008, Texas Eastern Transmission Corporation
CAG-18.
Docket Nos. RP91-40-000, 001, 002, 003, 004 and 005, Northern Natural Gas Company, Division of Enron Corp.
CAG-19.
Docket No. TM90-3-3-001, East Tennessee Natural Gas Company
CAG-20.
Docket No. TM91-7-39-001, Transcontinental Gas Pipe Line Corporation
CAG-21.
Omitted
CAG-22.
Omitted
CAG-23.

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Docket No. RM87-34-066, Natural Gas Pipelines After Partial Wellhead Decontrol
CAG-24.
Docket Nos. IS91-26-00, IS91-27-000 and IS90-34-000, ARCO Pipe Line Company
CAG-25.
Docket Nos. RP84-42-000, RP72-133-000, 003, TA80-1-11-000, 001, TA80-2-11-000, 001, TA81-1-11-000, 001, TA81-2-11-000, 004, TA82-1-11-000, 004, TA82-2-11-000, 007, TA83-1-11-000, 003, TA83-2-11-000, 003, TA84-1-11-000, 002 and TA84-2-11-000 (Phase I) United Gas Pipe Line Company
CAG-26.
Docket No. PR91-4-000, Hill Transportation Company, Inc.
CAG-27.
Omitted
CAG-28.
Docket No. CI87-476-007, TXG Gas Marketing Company
CAG-29.
Docket No. CP90-2230-002, Transcontinental Gas Pipe Line Corporation
CAG-30.
Docket No. CP90-454-001, Midwest Gas Storage, Inc.
CAG-31.
Docket No. CP89-2076-001, National Fuel Gas Supply Corporation
CAG-32.
Docket Nos. CP89-637-000, 001, 002, 004, 005, 006, ANR Pipeline Company
Docket No. CP88-178-002, Trunkline Gas Company
Docket Nos. CP90-1726-000 and 001, Great Lakes Gas Transmission Company
Docket Nos. CP89-638-000, 001, 002 and 003, CNG Transmission Corporation
Docket Nos. CP90-667-000, 001, 002 and 003, Transcontinental Gas Pipe Line Corporation
Docket Nos. CP90-668-000, 001 and 002, Texas Gas Transmission Corporation
CAG-33.
Docket Nos. CP90-1363-000 and 001, Natural Gas Pipeline Company of America
CAG-34.
Docket No. CP90-1261-001, El Paso Natural Gas Company
CAG-35.
Omitted
CAG-36.
Docket No. CP90-1317-001, Tennessee Gas Pipeline Company
CAG-37.
Omitted
CAG-38.
Docket No. CP87-75-008, Tennessee Gas Pipeline Company
CAG-39.
Docket No. CP88-557-001, Koch Hydrocarbon Company
CAG-40.
Docket No. CP90-140-003, Trailblazer Pipeline Company
CAG-41.
Docket Nos. CP89-1239-001 and CP90-46-001, Tennessee Gas Pipeline Company
CAG-42.
Docket Nos. CP91-1763-000, CP91-1764-000, CP91-1766-000, CP91-1767-000, CP91-1830-000, CP91-1831-000, CP91-1834-000, CP91-1835-000 and CP91-1837-000, National Fuel Gas Supply Corporation
CAG-43.
Docket No. CP91-2026-000, Arkla Energy Resources, a division of Arkla, Inc.
CAG-44.
Docket No. CP91-2033-000, National Fuel Gas Supply Corporation
CAG-45.
Docket No. CP91-2062-000, Williston Basin Interstate Pipeline Company
CAG-46.
Docket No. CP91-348-000, Transcontinental Gas Pipe Line Corporation
CAG-47.
Docket No. CP90-1297-000, Williams Natural Gas Company
CAG-48.
Docket No. CP91-1164-000, Northwest Pipeline Corporation
CAG-49.
Docket No. CP82-487-014 and 034, Williston Basin Interstate Pipeline Company
CAG-50.
Docket Nos. CP90-878-000 and 001, Columbia Gas Transmission Corporation
CAG-51.
Docket Nos. CP90-2286-000 and 001, ONEOK, Inc., OkTex Pipeline Company and ONEOK Services, Inc.
Docket No. CP90-2287-000, Lone Star Gas Company, ONEOK, Inc. and Arkla Energy Resources, a division of Arkla, Inc.
CAG-52.
Docket No. CP91-1129-000, Northwest Pipeline Corporation
CAG-53.
Docket Nos. CP91-650-000, CP91-659-000, CP87-115-000, CP91-550-000, CP91-560-000, CP91-983-000, CP90-1526-000 and CP91-1062-000, Tennessee Gas Pipeline Company
CAG-54.
Docket No. CP91-716-000, Tennessee Gas Pipeline Company
CAG-55.
Docket No. CP91-1070-000, Southern Natural Gas Company
CAG-56.
Omitted
CAG-57.
Docket No. CP91-967-000, Northern Border Pipeline Company
CAG-58.
Docket No. CP91-1294-000, Natural Gas Pipeline Company of America
CAG-59.
Docket Nos. CP89-1571-000 and 001, Niagara Mohawk Power Corporation
CAG-60.
Docket No. CP91-780-000, Northwest Pipeline Corporation
CAG-61.
Docket No. CP91-1516-000, Wintershall Pipeline Corporation and Hogan Pipeline Corporation
CAG-62.
Docket Nos. RP91-170-000, RP87-71-005 and RP88-182-005, Gas Research Institute
CAG-63.
Docket No. CP91-1252-001, Questar Pipeline Company
CAG-64.
Docket Nos. CP88-760-003 and 006, Transcontinental Gas Pipe Line Corporation

Hydro Agenda

H-1.
Project No. 1417-032, Central Nebraska Public Power and Irrigation District. Order on application to amend license.

Electric Agenda

E-1.
Docket No. QF88-39-003, Turners Falls Limited Partnership. Order on request for clarification.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR-1(A).
Omitted
PR-1(B).
Omitted
PR-2(A).
Docket No. RP87-15-019, Trunkline Gas Company. Order on initial decision.
PR-2(B).
Docket No. RP87-15-001, Trunkline Gas Company. Order on rehearing.
PR-2(C).
Docket No. RP87-15-027 (Phase I), Trunkline Gas Company. Order on remand.
PR-2(D).
Docket Nos. RP87-15-026 and 028, Trunkline Gas Company. Order on rehearing.
PR-3.
Docket Nos. RP87-7-071, CP88-391-004, RP88-167-002, CP89-728-000, 001, CP 89-790-000, 001, RP73-3-001, RP82-55-047, 048, RP85-148-010, CP72-255-002, CP89-759-006, CP90-2228-000, 001, CP90-2229-000, 001, CP90-2230-001, RP87-7-012, CP88-273-000, CP88-328-002, CP89-1916-002, RP90-8-000, RP90-51-000, CP90-499-000, CP84-148-007, CP84-336-005, G12530-000 and G-12059-000, Transcontinental Gas Pipe Line Corporation. Order on settlements and certificate applications
PF-1.
Reserved

III. Pipeline Certificate Matters

PC-1.
Reserved

Lois D. Cashell,
Secretary.
[FR Doc. 91-13800 Filed 6-6-91; 4:33 pm]
BILLING CODE 6717-01-M

FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 9:30 a.m. Tuesday, June 18, 1991.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, DC 20006.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: The Board will consider the following:

1. 1992 Budget Cycle Briefing
2. District Bank and Housing Finance Directorate Reports
3. District Bank Directors Issues
4. Membership Correspondent Services Study Update
5. Examinations Issues
6. Briefing on Office of Inspector General
7. Chair/Vice Chair June Meeting Update

The above matters are exempt under one or more of sections 552(c)(2), (8), (9)(A) and (9)(B) of title 5 of the United States Code. 5 U.S.C. 552b(c)(2), (8), (9)(A) and (9)(B).

CONTACT PERSON FOR MORE INFORMATION: Elaine Baker, Executive Secretary to the Board, (202) 408-2837.

J. Stephen Britt,
Executive Director.
[FR Doc. 91-14027 Filed 6-7-91; 4:05 pm]
BILLING CODE 6725-01-M

FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 9:00 a.m. Wednesday, June 19, 1991.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, DC 20006.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: The Board will consider the following:

1. Legislative/Strategic Plan Discussion
2. Financial Management Policy

The above matters are exempt under one or more of sections 552 (c)(2), (8), (9)(A) and (9)(B) of title 5 of the United States Code. 5 U.S.C. 552b(c)(2), (8), (9)(A) and (9)(B).

CONTACT PERSON FOR MORE INFORMATION: Elaine Baker, Executive Secretary to the Board, (202) 408-2837.

J. Stephen Britt,
Executive Director.
[FR Doc. 91-10428 Filed 6-11-91; 4:05 pm]
BILLING CODE 6725-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to "Federal Register" on June 5, 1991.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, June 12, 1991.

CHANGES IN THE MEETING: Deletion of the following open item(s) from the agenda:

Proposed 1992 Federal Reserve Bank budget objective.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: June 6, 1991.
William W. Wiles,
Secretary of the Board.
[FR Doc. 91-13910 Filed 6-7-91; 9:01 am]
BILLING CODE 6210-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, June 17, 1991.

PLACE: Marriner S. Eccles Federal Reserve Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System Employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of blank and bank holding company applications scheduled for the meeting.

Dated: June 7, 1991.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 91-14018 Filed 6-7-91; 4:04 pm]
BILLING CODE 6210-01-M

COMMITTEE ON EMPLOYEE BENEFITS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 2:00 p.m., Monday, June 17, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. The Committee's agenda will consist of matters relating to: (a) The general administrative policies and procedures of the Retirement Plan, Thrift Plan, Long-Term Disability Income Plan, and Insurance Plan for Employees of the Federal Reserve System; (b) general supervision of the operations of the Plans; (c) the maintenance of proper accounts and accounting procedures in respect to the Plans; (d) the preparation and submission of an annual report on the operations of each of such Plans; (e) the maintenance and staffing of the Office of the Federal Reserve Employee Benefits System; and (f) the arrangement for such legal, actuarial, accounting, administrative, and other services as the Committee deems necessary to carry out the provisions of the Plans.

Specific items include: Salary administration for the Office of Employee Benefits.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: June 7, 1991.
William W. Wiles,
Secretary of the Board.
[FR Doc. 91-14019 Filed 6-7-91; 4:04 pm]
BILLING CODE 6210-01-M

INTERSTATE COMMERCE COMMISSION

Commission Conference

TIME AND DATE: 10:00 a.m., Tuesday, June 18, 1991.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th and Constitution Avenue, NW., Washington, DC 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Finance Docket No. 30000 (Sub-No. 16), *St. Louis Southwestern Railway Company—Trackage Rights Over Missouri Pacific Railroad Company—Kansas City to St. Louis.*
Ex Parte No. 470 (Sub-No. 1), *In the Matter of William Sheridan.*
Ex Parte No. MC-178 (Sub-No. 5), *Petition for Investigatory Rulemaking: Insurance Surcharges.*
No. 40473, *Armored Car Delivery and Pickup of Interstate Shipments in Delaware—Petition for Declaratory Order.*
Ex Parte No. MC-96 (Sub-No. 7), *Property Broker Practices.*

CONTACT PERSON FOR MORE INFORMATION:

A. Dennis Watson, Office of External Affairs, Telephone: (202) 275-7252, TDD: (202) 275-1721.

Sidney L. Strickland, Jr.,
Secretary.
[FR Doc. 91-13951 Filed 6-7-91; 2:06 pm]
BILLING CODE 7035-01-M

NATIONAL LABOR RELATIONS BOARD

Notice of Meeting

TIME AND DATE: 9:30 a.m., Tuesday, June 4, 1991.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (internal personnel rules and practices), (c)(6) (personal information where disclosure would constitute a clearly

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unwarranted invasion of personal privacy).

MATTERS CONSIDERED: Discussion of personnel matter.

CONTACT PERSON FOR MORE INFORMATION:

John C. Truesdale, Executive Secretary, National Labor Relations Board, Washington, DC 20570, telephone: (202) 254–9430.

Dated, Washington, DC, June 7, 1991.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 91–13994 Filed 6–7–91; 2:53 pm]

BILLING CODE 7545-01-M

NATIONAL SCIENCE FOUNDATION

DATE AND TIME:

June 20, 1991

8:30 a.m. Open Session

June 21, 1991

8:00 a.m. Closed Session

PLACE: National Science Foundation, 1800 G Street, NW, Room 540, Washington, DC 20550.

STATUS:

Part of this meeting will be open to the public.

Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Thursday, June 20, 1991

Open Session (8:30 a.m.–5:15 p.m.)

(Includes lunch break from approximately 12:15 to 1:30 p.m.)

1. Overview of the Planning Process & Desired Outcome.
2. Infrastructure: the Health of Academia.
3. Education and Human Resources Development.
4. FCCSET Process & the Budget.
5. Special Focus on BBS Disciplines.
6. Competitiveness.

Friday, June 21, 1991

Closed Session (8:00 a.m.–12:00 p.m.)

7. FY 1993 Budget Considerations.

Thomas Ubois,

Executive Officer.

[FR Doc. 91–14001 Filed 6–7–91; 3:12 pm]

BILLING CODE 7555-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of June 10, 1991.

A closed meeting will be held on Tuesday, June 11, 1991, at 2:30 p.m. An open meeting will be held on Thursday, June 13, 1991, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, June 11, 1991, at 2:30 p.m., will be:

Institution of injunctive action.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Dismissal of injunctive action.

The subject matter of the open meeting scheduled for Thursday, June 13, 1991, at 10:00 a.m., will be:

1. Consideration of whether to release for public comment proposed amendments to Forms S–4 and F–4, and Regulation S–K under the Securities Act of 1933 and related rules that provide additional disclosure requirements for limited partnership roll-up transactions. These changes are intended to enhance the quality and readability of information provided to investors in connection with limited partnership roll-up transactions and would set a minimum solicitation period for roll-up transactions. Also, consideration of whether to issue a release setting forth interpretive views of existing disclosure requirements applicable to limited partnership roll-up transactions and initial public offerings of limited partnership units. For further information, please contact Meredith B. Cross or Michael L. Hermsen at (202) 272–2573.

2. Consideration of whether to release for public comment proposed amendments to the Commission's proxy rules under Section 14(a) of the Securities Exchange Act of 1934 that would facilitate securityholder communications, and reduce the costs of compliance with the proxy rules for all persons engaged in a proxy solicitation, by: (1) Exempting from all proxy rules but the antifraud provisions any solicitation by "disinterested persons", or persons who have no material economic interest in the solicitation and who do not seek authority to act as a proxy for securityholders; (2) limiting the types of proxy soliciting material required to be filed in preliminary form to the proxy statement and form of proxy; (3) eliminating the non-public treatment of preliminary proxy materials; and (4) require the registrant to deliver a list of record and beneficial holders to a requesting securityholder. For further information, please contact Cathy Dixon at (202) 272–3097.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Stephen Luparello at (202) 272–2100.

Dated: June 7, 1991.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–13945 Filed 6–7–91; 12:39 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 56, No. 112
Tuesday, June 11, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1421

Grain and Similarly Handled Commodities

Correction

In rule document 91-10314 beginning on page 20101 in the issue of Thursday, May 2, 1991, make the following corrections:

§ 1421.9 [Corrected]

1. On page 20109, in the second column, in the fifth line from the bottom of the page, "§ 1429.9" should read "§ 1421.9".

2. On page 20111, in the first column, in § 1421.9(g), in the sixth line, "§ 142.18" should read "§ 1421.18".

§ 1421.18 [Corrected]

3. On page 20116, in the second column, in § 1421.18(b)(15)(ii)(C), in the second line, "30" should read "20".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

Correction

In notice document 91-11960 beginning on page 23284 in the issue of Tuesday, May 21, 1991, make the following corrections:

1. On page 23284, in the second column, under *Export Markets*, in the second line "United" was misspelled.

2. On page 23285, in the 2d column, in the 15th line from the end, "licensees" was misspelled.

3. On the same page,in the 3rd column, in the 12th line from the end, "Revco"should read "Revcor".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP89-224-000, RP89-203-000, RP90-139-000, and RP91-89-000]

Southern Natural Gas Co.; Informal Settlement Conference

Correction

In notice document 91-12898 beginning on page 24389 in the issue of Thursday, May 30, 1991, in the third column, the docket numbers should have appeared as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF STATE

Bureau of Economic and Business Affairs

[Public Notice 1404]

22 CFR Part 89

Foreign Prohibitions on Longshore Work by U.S. Nationals

Correction

In rule document 91-12895 beginning on page 24336 in the issue of Thursday, May 30, 1991, make the following correction:

PART 89—[CORRECTED]

On page 24341, in the third column, the heading "PART 138—PROHIBITIONS ***" should read "PART 89—PROHIBITIONS ***".

BILLING CODE 1505-01-D

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federal register

Tuesday
June 11, 1991

Part II

Department of Education

34 CFR Part 325

State Systems for Transition Services for Youth With Disabilities; Proposed Rule

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DEPARTMENT OF EDUCATION

34 CFR Part 325

RIN 1820-AA80

State Systems for Transition Services for Youth With Disabilities

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to establish regulations for a new program authority enacted in the Education of the Handicapped Act Amendments of 1990. The proposed regulations would enable the Secretary to make one-time, 5-year grants, on a competitive basis, to State vocational rehabilitation agencies and State educational agencies that submit joint applications to develop, implement, and improve transition services for youth with disabilities from age 14 through the age they exit school. The regulations make provisions for a State educational agency, whose vocational rehabilitation agency does not choose to participate, to jointly apply with one other State agency that provides transition services; describe how grant funds must be used; describe which applications will be given preference; and provide selection criteria for making grant awards.

DATES: Comments must be received on or before July 11, 1991.

ADDRESSES: All comments concerning these proposed regulations should be addressed to William Halloran, Secondary and Transition Branch, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW., Switzer Building, room 4625, Washington, DC 20202-2734.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: William Halloran, telephone: (202) 732-1112 or V/TDD (202) 732-1177.

SUPPLEMENTARY INFORMATION: These proposed regulations implement the new program authority in section 628(e) of part C of the Individuals with Disabilities Education Act (IDEA), as amended by Public Law 101-476, and provide selection criteria for making grant awards. Except for the selection criteria, the proposed regulations set forth the statutory requirements for this program.

The Statute requires States that receive grants to:

- Increase the availability, access, and quality of transition assistance through the development and improvement of policies, procedures, systems, and other mechanisms for youth with disabilities and their families as those youth prepare for and enter adult life
- Improve the ability of professionals, parents, and advocates to work with those youth in ways that promote the understanding of and the capability to successfully make the transition from 'student' to 'adult'.
- Improve working relationships among education personnel, and both within LEAs and in postsecondary training programs, relevant State agencies, the private sector (especially employers), rehabilitation personnel, local and State employment agencies, local Private Industry Councils (PICS) authorized by the Job Training Partnership Act (JTPA), and families of students with disabilities and their advocates to identify and achieve consensus on the general nature and specific application of transition services to meet the needs of youth with disabilities.
- Create an incentive for accessing and using the expertise and resources of programs, projects, and activities related to transition funded through this section and with other sources.

Section 602(a)(19) of IDEA defines "transition services" as a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities must be based upon the individual student's needs, taking into account the student's preferences and interests, and must include instruction, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Because these proposed regulations would affect only States and State agencies, the regulations would not have an impact on small entities. States and State agencies are not defined as "small entities" in the Regulatory Flexibility Act.

Paperwork Reduction Act of 1980

Sections 325.10, 325.21, and 325.30 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review.

(44 U.S.C. 3504(h))

Information described at §§ 325.10, 325.21, and 325.30 is required to be provided by applicants seeking support to conduct activities authorized under section 626(e) of the Individuals with Disabilities Act. This information will be used to determine grant eligibility, acceptability of proposals, and awards. Respondents eligible to submit applications are public or nonprofit private agencies, institutions, or organizations. Respondent data burden is estimated to be the same as that required under other OSEP program regulations, and will be included in the data burden estimated for all OSEP programs using the OMB Form 1820-0028 (approved through June 30, 1992).

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 4625, Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects in 34 CFR Part 325

Grants program, State, State education agencies, Transition services, Vocational rehabilitation, Youth with disabilities.

(Catalog of Federal Domestic Assistance Number 84.158, Secondary Education and Transition Services for Youth with Disabilities.)

Dated: April 9, 1991.

Lamar Alexander,

Secretary of Education.

The Secretary propose to amend title 34 of the Code of Federal Regulations by adding a new part 325 to read as follows:

PART 325—STATE SYSTEMS FOR TRANSITION SERVICES FOR YOUTH WITH DISABILITIES PROGRAM

Subpart A—General

Sec.

325.1 What is the State Systems for Transition Services for Youth with Disabilities Program?
325.2 Who is eligible for a grant?
325.3 How must States use funds under this program?
325.4 What regulations apply?
325.5 What definitions apply?

Subpart B—How Does a State Apply for a Grant?

325.10 What must an application include?

Subpart C—How Does the Secretary Make a Grant?

325.20 How does the Secretary evaluate an application?
325.21 What selection criteria does the Secretary use?

Subpart D—What Conditions Must Be Met After a Grant?

325.30 What other conditions must be met by a grantee under this program?

Authority: 20 U.S.C. 1425(e), unless otherwise noted.

Subpart A—General

§ 325.1 What is the State Systems for Transition Services for Youth with Disabilities Program?

This program provides assistance to States to develop, implement, and improve systems to provide transition services for youth with disabilities from age 14 through the age they exit school.

(Authority: 20 U.S.C. 1425(e)(1))

§ 325.2 Who is eligible for a grant?

Under this program the Secretary may make a one-time, five-year grant—

(a) To a State vocational rehabilitation agency and State educational agency that submit a joint application; or

(b) If a vocational rehabilitation agency does not choose to participate, to a State agency that provides transition services to individuals who are leaving programs under the Act that submit a joint application.

(Authority: 20 U.S.C. 1425(e)(2))

§ 325.3 How must States use funds under this program?

Agencies that receive grants under this program shall use grant funds to—

(a) Increase the availability, access, and quality of transition assistance through the development and improvement of policies, procedures, systems, and other mechanisms for youth with disabilities and their families as those youth prepare for and enter adult life;

(b) Improve the ability of professionals, parents, and advocates to work with those youth in ways that promote the understanding of and the capability to successfully make the transition from student to adult;

(c) Improve working relationships among education personnel, both within LEAs and in postsecondary training programs, relevant State agencies, the private sector (especially employers), rehabilitation personnel, local and State employment agencies, local Private Industry Councils authorized by the Job Training Partnership Act, and families of students with disabilities and their advocates to identify and achieve consensus on the general nature and specific application of transition services to meet the needs of those youth; and

(d) Create an incentive for accessing and using the expertise and resources of programs, projects and activities related to transition funded under this program and with other sources.

(e) Create incentives for the implementation of lasting State-wide system changes in the transition of students with disabilities to postsecondary training, education, and employment.

(Authority: 20 U.S.C. 1425(e)(3))

§ 325.4 What regulations apply?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR—

(1) Part 75 (Direct Grant Programs);

(2) Part 77 (Definitions that Apply to Department Regulations);

(3) Part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(4) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(5) Part 81 (General Education Provisions Act—Enforcement);

(6) Part 82 (New Restrictions on Lobbying);

(7) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)); and

(8) Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 325.

(Authority: 20 U.S.C. 1425(e))

§ 325.5 What definitions apply?

(a) *Definition in the Act.* The following term used in this part is defined in section 602(a)(19) of the Individuals with Disabilities Education Act:

Transition services

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Application
EDGAR
Grant
Local educational agency (LEA)
Project
Secretary
State
State educational agency (SEA)

(c) *Other definitions.* The following definitions also apply to this part:

Act means the Individuals with Disabilities Education Act.

Youth with disabilities means individuals with disabilities from age 14 through the age they exit school.

(Authority: 20 U.S.C. 1425(e))

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Subpart B—How Does a State Apply for a Grant?

§ 325.10 What must an application include?

An application under this program must include the following:

(a) A description of how the State educational agency and State vocational rehabilitation agency or other State agency will use—

(1) The first year, if necessary, to plan how to implement transition services;

(2) The second through fourth years to develop and implement transition services; and

(3) The fifth year to evaluate transition services.

(b) A description of how the grant funds will be used during the planning period and phased out during the evaluation period to ensure the continuation of transition services.

(c) A description of the current availability, access, and quality of transition services for eligible youth and a description of how, over five years, the State will improve and expand the availability, access, and quality of transition services for youth with disabilities and their families as those youth prepare for and enter adult life.

(d) A description of how the State will improve and increase the ability of professionals, parents, advocates, and youth to promote the understanding of and the capability to successfully make the transition from student to adult.

(e) A description of how the State will improve and increase working relationships among education personnel, both within LEAs and in postsecondary training programs, relevant State agencies, the private sector (especially employers), rehabilitation personnel, local and State employment agencies, local Private Industry Councils authorized by the Job Training Partnership Act, students with disabilities, their families, and their advocates to identify and achieve consensus on the general nature and specific application of transition services to meet the needs of youth with disabilities.

(f) A description of how the State will use grant funds as an incentive for accessing and using the expertise and resources of programs, projects, and activities related to transition funded through this program and with other sources.

(g) A description of how the State will address, in whole or in a part, the needs of youth with disabilities from minority backgrounds.

(Authority: 20 U.S.C. 1410(b), 1424(e)(4)(A))

Subpart C—How Does the Secretary Make a Grant?

§ 325.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application submitted under this program on the basis of the criteria in § 325.21.

(b) The Secretary awards up to 100 points under these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1425(e))

§ 325.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate the quality of an application submitted under this part.

(a) *Extent of need, and expected impact* (20 points). The Secretary reviews each application to determine the justification for the proposed activities in the State based on the State need for and expected impact from the activities to develop, implement, and improve systems to provide transition services for youth with disabilities from age 14 through the age they exit school. The Secretary looks for information that provides—

(1) A description of the current availability, access, and quality of transition services for eligible youth and a description of how, over five years, the State will improve and expand the availability, access, and quality of transition services for youth with disabilities and their families as those youth prepare for and enter adult life;

(2) A description of how the State will improve and increase the ability of professionals, parents, advocates, and youth to promote the understanding of and the capability to successfully make the transition from student to adult;

(3) A description of how the State will improve and increase working relationships among education personnel, both within LEAs and in postsecondary training programs, relevant State agencies, the private sector (especially employers), rehabilitation personnel, local and State employment agencies, local Private Industry Councils authorized by the Job Training Partnership Act, students with disabilities, their families, and their advocates to identify and achieve consensus on the general nature and specific application of transition services to meet the needs of youth with disabilities;

(4) A description of how the State will use grant funds as an incentive for accessing and using the expertise and resources of programs, projects, and activities related to transition funded under this program and with other sources; and

(5) A description of how the State will address the unique needs of youth with disabilities from minority backgrounds.

(b) *Technical soundness* (25 points). The Secretary reviews each application to determine the technical soundness of the State plan and whether the applicant has the capacity to achieve lasting State-wide change, including a description of how the State will—

(1) Target resources to school settings, such as providing access to rehabilitation counselors for students with disabilities who are in school settings;

(2) Target a substantial amount of grant funds, received under this program, to program evaluation and documentation of, and dissemination of information about, transition services as well as to improve the capacity for case management;

(3) Provide incentives for interagency and private sector resource pooling and otherwise investing in transition services, especially in the form of cooperative agreements, particularly with Private Industry Councils authorized by the Job Training Partnership Act and local branches of State employment agencies;

(4) Provide for early, ongoing information and training for those involved with or who could be involved with transition services—professionals, parents, youth with disabilities, including self-advocacy training for those youth, and advocates for those youth as well as Private Industry Councils authorized by the Job Training Partnership Act and local branches of State employment agencies;

(5) Provide for the early and direct involvement of all relevant parties, including Private Industry Councils authorized by the Job Training Partnership Act and local branches of State employment agencies, in operating and planning improvements in transition services, and the early and direct involvement of all relevant parties in planning and implementing transition services for individual youth;

(6) Provide access to training for eligible youth that matches labor market needs in their communities;

(7) Integrate transition services with relevant opportunities in communities, including those sponsored by Private Industry Councils authorized by the Job Training Partnership Act and local employment agencies;

(8) Clearly define the services and service delivery system that will result from the project. The State must have analyzed in detail how these will differ from current services and current delivery system;

(9) Identify all relevant barriers to implementing the proposed State-wide changes and identify and propose appropriate strategies for eliminating those barriers;

(10) Use an evaluation plan for transition services that is outcome oriented that focuses on individual youth-focused benefits, and that is based on standard sources of information such as the individualized education plans required by the IDEA;

(11) Disseminate annually information about project activities and procedures and information from project evaluation activities, including information regarding effective strategies and obstacles to achieving project goals, to the organizations described at § 325.30 of this part, and to other interested organizations within the States; and

(12) Ensure that, if appropriate and no later than age 22, eligible youth who participate in transition services under this program would be served as appropriate in the State section 110 program, or the title VI, part C program, or the title VII, part A program authorized under the Rehabilitation Act of 1973, as amended.

(c) *Plan of operation* (20 points). The Secretary reviews each application for information that shows the quality of the plan of operation for the project, including—

(1) An effective plan of management delineating the roles of both participating agencies and ensures proper and efficient administration of the project;

(2) A clear description of how the objectives of the project relate to the purpose of the program;

(3) The way the joint applicants plan to use their resources and personnel to achieve each objective;

(4) A description of how all State and other agencies whose cooperation and participation are necessary for State-wide implementation are actively collaborating in project management;

(5) A description of how the joint applicants will provide for the direct participation of youth with disabilities and parents in the planning, development, and implementation of the project;

(6) A description of how the first year will be used to plan, if necessary, how to implement transition services, the second through fourth years to develop and implement transition services and the fifth year to evaluate State-wide services;

(7) Whether the budget is adequate to support the project and costs are reasonable in relation to the objectives of the project; and

(8) The extent to which grant funds will be used during the planning period and phased out during the evaluation period to ensure the continuation of transition services.

(d) *Quality of key personnel* (25 points, distributed as indicated).

(1) The Secretary reviews each application for information that shows the qualifications of key personnel the applicant plans to use on the project, including information that shows—

(i) The qualifications of the project director (8 points); and

(ii) The qualifications of each of the other key personnel to be used in the project, including experience and training in fields related to the objectives of the project (7 points).

(2) In determining the qualifications of each person referred to in paragraphs (d)(1) (i) and (ii) of this section the Secretary also considers—

(i) The time that each person will commit to the project;

(ii) Experience and training in conducting, documenting, and applying the types of activities to be conducted; and

(iii) Knowledge of the results and findings of relevant projects and potential for application of this information in addressing the need for transitional services to youth with disabilities.

(3) Recruitment of underrepresented populations (10 points). The Secretary reviews each application for information that shows effective efforts are being made to recruit members of underrepresented populations as project staff, including—

(i) Strategies to recruit employees who are members of underrepresented populations, including members of racial or ethnic minority groups and individuals with disabilities; and

(ii) Procedures to provide training and other necessary support to retain and advance qualified personnel from underrepresented populations.

(e) *Evaluation* (10 points). The Secretary reviews each application to determine the quality of the plan for evaluating the project, including—

(1) The adequacy of the applicant's plan to determine the effectiveness of the project in achieving measurable changes in State policy, programs, and services that improve systems providing transition services for youth with disabilities;

(2) The adequacy of the applicant's plan to determine the effectiveness and timeliness in completion of the managerial procedures and objectives of the project's plan of operation; and

(3) The procedures for recording, reviewing, analyzing, and interpreting for relevant audiences, data generated through conducting project activities.

(Authority: 20 U.S.C. 1425(e))

Subpart D—What Conditions Must Be Met After a Grant?

§ 325.30 What other conditions must be met by a grantee under this program?

(a) The Secretary, if appropriate, requires grantees to prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of those procedures, findings, and information.

(b) The Secretary requires delivery of those reports, as appropriate, to—

(1) The regional and Federal resource centers, the clearinghouses, and the technical assistance to parents programs assisted under parts C and D of the Act;

(2) The National Diffusion Network;

(3) The ERIC Clearinghouse on the Handicapped and Gifted;

(4) The Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health;

(5) Appropriate parent and professional organizations;

(6) Organizations representing individuals with disabilities; and

(7) Those other networks as the Secretary may determine to be appropriate.

(c) Each grantee shall participate in the evaluation conducted by the institution of higher education or nonprofit public or private organization supported to implement Section 626(f)(3)(A) of the Act.

(Authority: 20 U.S.C. 1410(g), 1425(f)(3))

[FR Doc. 91-13754 Filed 6-10-91; 8:45 am]
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federal register

Tuesday
June 11, 1991

Part III

Department of Education

Developmental Bilingual Education and Special Alternative Instructional Programs; Notices

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DEPARTMENT OF EDUCATION

Developmental Bilingual Education and Special Alternative Instructional Programs

AGENCY: Department of Education.

ACTION: Notice of final priority for fiscal year 1991.

SUMMARY: The Secretary of Education announces an absolute priority for a special competition in fiscal year (FY) 1991 under the Developmental Bilingual Education and Special Alternative Instructional programs administered by the Office of Bilingual Education and Minority Languages Affairs (OBEMLA).

EFFECTIVE DATES: This priority takes effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: James H. Lockhart, U.S. Department of Education, 400 Maryland Avenue, SW., room 5086, Switzer Building, Washington, DC 20202–6641. Telephone: (202) 732–5710. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: Awards under the Developmental Bilingual Education (DBE) and the Special Alternative Instructional (SAI) programs are made to local educational agencies (LEAs) to provide instructional services to limited English proficient (LEP) children. The DBE program provides structured English language instruction and instruction in a second language. It is designed to help LEP children achieve competence in English and also to help children whose native language is English achieve competence in a second language. The SAI program provides structured English language instruction and special instructional services to enable LEP children to achieve competence in English and to meet grade-promotion and graduation standards. The SAI program does not require instruction in the native language of the LEP children. Authority for these programs is found in section 7021 of the Bilingual Education Act (20 U.S.C. 3291).

The Secretary announces a special competition for demonstration middle school projects under the DBE and SAI programs in order to identify effective developmental bilingual approaches or special alternative instructional approaches that foster academic achievement and dropout prevention.

On February 28, 1991, the Secretary published a notice of proposed priority for this competition in the Federal Register (56 FR 8626).

Since publication of the notice of proposed priority, a change in eligible instructional approaches has been made on the basis of public comments received by the Department. The curricular areas that these approaches may emphasize have been expanded to include mathematics and science.

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the Federal Register.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, two parties submitted comments. An analysis of the comments and of the changes in the priority since publication of the notice of proposed priority follows. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Comments: Both commenters expressed concern that the proposed emphasis of the instructional approach on the arts and humanities did not include other content areas of the core curriculum, and specifically recommended the inclusion of mathematics and science. One commenter also suggested the extension of the priority to the Transitional Bilingual Education program and to other schools besides magnet schools.

Discussion: The Secretary does not wish the priority in this notice to appear to exclude from eligibility any school that emphasizes the core curriculum areas of mathematics, science, English, history, and geography, and has reworded the priority accordingly. The Secretary agrees that the core curriculum areas are of critical importance in helping schools attain the National Education Goals, including the goal of making American students first in the world in mathematics and science. It would not, however, be appropriate to apply this priority to the Transitional Bilingual Education program, because the program does not fall under the purview of this notice or competition. Finally, the Secretary believes it is important to retain the emphasis on magnet schools in this priority, because of the comprehensive nature of magnet schools, the fact that they usually have an emphasis on certain curriculum areas, and the fact that they are capable of attracting a number of students from diverse backgrounds.

Changes: The Secretary has reworded the priority to clarify that schools emphasizing the core curriculum areas of mathematics, science, English, history, and geography will qualify for this priority, so long as they meet the other requirements of the priority.

Priority

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

A proposed project must—

(1) Be restricted to one or more grade levels from grades six through nine in a district-wide magnet school;

(2) Involve an instructional approach that emphasizes one or more of the following curriculum areas: Mathematics, science, English, history, geography, and other areas of the arts and humanities; and

(3) Incorporate an evaluation plan designed to measure the project's effectiveness in increasing academic achievement and student retention.

The evaluation plan must meet the evaluation requirements that apply to all projects funded under the Basic Programs, as specified in the program regulations in 34 CFR 500.50 through 500.52.

The Secretary is particularly interested in applications that address one or more of the following additional elements: site-based management, community involvement, and collaboration with local institutions of higher education. However, under 34 CFR 75.105(c)(1) an application that addresses one or more of these additional elements does not receive additional consideration or additional points in the competiton. An application that does not address one or more of these additional elements will not be at any competitive disadvantage.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Applicable Program Regulations

34 CFR parts 500 and 501.

Program Authority: 20 U.S.C. 3291.

(Catalog of Federal Domestic Assistance Numbers: 84.003C Developmental Bilingual Education Program; and 84.003E Special Alternative Instructional Program)

Dated: May 24, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 91–13752 Filed 6–10–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.003C; 84.003E]

Developmental Bilingual Education Program and Special Alternative Instructional Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1991

Purpose of Program: Provides grants to establish, operate, or improve programs of instruction for limited English proficient (LEP) children.

Eligible Applicants: The following are eligible for new awards under these programs: Local educational agencies (LEAs) and institutions of higher education (IHEs), including junior or community colleges, that apply jointly with one or more LEAs.

Deadline for Transmittal of Applications: July 26, 1991.

Deadline for Intergovernmental Review: September 24, 1991.

Applications Available: June 11, 1991.

Available Funds: $760,000.

Estimated Range of Awards: $100,000–$300,000.

Estimated Average Size of Awards: $190,000.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for these programs in 34 CFR parts 500 and 501.

The priority in the notice of final priority for this competition, as published elsewhere in this issue of the Federal Register, also applies.

Selection Criteria: In evaluating applications for grants under these programs, the Secretary uses the selection criteria in 34 CFR 501.31.

In addition to the maxium of 100 points awarded under 34 CFR 501.31, the program regulations in 34 CFR 501.32(b) provide that the Secretary distributes 15 additional points among the factors listed in 34 CFR 501.32(a). For this competition the Secretary distributes the 15 additional points as follows:

(1) The need to assist LEP children who have been historically underserved by programs for limited English proficient persons (34 CFR 501.32(a)(1))—4 points.

(2) The relative need of the particular LEA(s) for the proposed program (34 CFR 501.32(a)(2))—4 points.

(3) The need to provide assistance in proportion to the distribution of LEP children throughout the Nation and within each of the States (34 CFR 501.32(a)(3))—3 points.

(4) The number and proportion of children from low-income families to be benefited by the program (34 CFR 501.32(a)(4))—4 points.

In addition to the 15 points distributed among the factors listed in 34 CFR 501.32(a), the regulations under the Special Alternative Instructional program in 34 CFR 501.33(b) provide that the Secretary may distribute 5 additional points among the factors listed in 34 CFR 501.33(a). For this competition the Secretary distributes the 5 additional points under the Special Alternative Instructional program as follows:

(1) The administrative impracticability of establishing a bilingual education program due to the presence of a small number of students of a particular native language (34 CFR 501.33(a)(1))—2 points.

(2) The unavailability of personnel qualified to provide bilingual instructional services (34 CFR 501.33(a)(2))—2 points.

(3) The presence of a small number of LEP students in the LEA's schools and the LEA's inability to obtain native language teachers because of isolation or regional location (34 CFR 501.33(a)(3))—1 point.

For Applications or Information Contact: James H. Lockhart, U.S. Department of Education, 400 Maryland Avenue, SW., room 5086, Switzer Building, Washington, DC 20202–6641. Telephone: (202) 732–5700. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 3291.

Dated: May 24, 1991.

Rita Esquivel,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 91–13753 Filed 6–10–91; 8:45 am]

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Part IV

Department of Health and Human Services

Administration for Children and Families

Availability of Financial Assistance to Expand Head Start Enrollment; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACYF–HS 13.600–91–2]

Availability of Financial Assistance to Expand Head Start Enrollment

AGENCY: Administration for Children, Youth and Families (ACYF), Administration for Children and Families (ACF), HHS.

ACTION: Announcement of financial assistance to expand Head Start enrollment.

SUMMARY: The Head Start Bureau of the Administration for Children, Youth and Families announces that competing applications will be accepted to establish new Head Start programs or to expand current programs in geographical areas, including Federal Indian Reservations, not currently served by Head Start, and to establish or expand programs serving children of migrant farmworkers.

DATES: The closing date for receipt of applications is July 26, 1991.

ADDRESSES: Address applications to: Head Start Expansion, Administration for Children and Families, Grants and Contracts Management Division, SW., Hubert H. Humphrey Building, room 341F.2, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT:

For applications under Category 1—The ACF Regional Office which is responsible for the Head Start programs in your state. Regional Office telephone numbers are listed in appendix A.

For applications under Category 2—Lee Fields, Chief, American Indian Programs Branch, Program operations division, Head Start Bureau; (202) 245–0437.

For applications under Category 3—Frank Fuentes, Chief, Migrant Programs Branch, Program Operations Division, Head Start Bureau; (202) 245–0455.

SUPPLEMENTARY INFORMATION:

Part I. General Information

A. Background

This announcement solicits applications from eligible applicants that wish to compete for Head Start grants to serve low-income preschool children in areas not currently served by Head Start.

In fiscal year 1991, the Administration on Children, Youth and Families (ACYF) will award a total of $159,447,000 to expand Head Start enrollment by up to an estimated 51,000 children. An analysis was conducted to determine a fair distribution of expansion funds among the geographical areas in each State, based on the numbers of eligible children in each geographical area and the amount of Federal Head Start funding already being provided. Most of the FY 1991 expansion funds will be used to increase enrollment in geographical areas currently served by Head Start. However, a proportionate share of funds is being reserved to establish new Head Start programs or expand current programs in currently unserved areas. This announcement reflects the latter category—to serve children in currently unserved areas.

Expansion applications under this announcement should be submitted under one of the following three categories:

Category 1. Children living in geographical areas that are not currently served by Head Start. A list of unserved areas is included in table A.

Eligible applicants are: (a) Head Start grantees from nearby geographical areas that wish to expand their programs into unserved geographical areas; and (b) Other local public or private non-profit organizations that wish to initiate a Head Start program in one or more unserved geographical areas.

Category 2. Children living on Federally recognized Indian reservations where a Head Start program does not currently operate.

Eligible applicants are Tribal governments, or agencies designated by the Tribal government, of unserved reservations that wish to initiate a Head Start program.

Category 3. Children of migrant farmworkers.

Eligible applicants are: (a) Head Start grantees currently funded by the Migrant Programs Branch that wish to serve additional children of migrant farmworkers in geographical areas they currently serve (a list of geographical areas where migrant Head Start programs currently operate is shown in table B); and (b) public or private non-profit agencies, including migrant Head Start grantees, that wish to initiate a program for migrant children in geographical areas that are not currently served by a migrant Head Start program. (Any geographical area not listed in table B is considered unserved.)

All current migrant Head Start grantees may apply under Category 3, regardless of the fact that these grantees may have already received some of the FY 1991 expansion funds allotted for the purpose of expanding migrant Head Start enrollment within their current service areas.

Eligible applicants may apply for more than one category, but must submit a separate application for each category.

B. Program Purpose

Head Start is a national program providing comprehensive developmental services primarily to low-income preschool children and their families. To help enrolled children achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services. In addition, Head Start programs are required to provide for the direct participation of parents of enrolled children in the development, conduct, and direction of local programs. Head Start currently serves approximately 541,000 children through a network of approximately 1,321 grantees.

While Head Start is targeted primarily towards children whose families have incomes at or below the poverty line or who are eligible for public assistance, regulations permit up to 10 percent of the Head Start children in local programs to be from families who do not meet these low-income criteria. The Head Start statute also requires that a minimum of 10 percent of enrollment opportunities in each State be made available to children with disabilities. Such children are expected to be enrolled in the full range of Head Start services and activities in a mainstream setting with their non-disabled peers, and to receive needed special education and related services.

Statutory and Regulatory Authority

The Head Start program is authorized by the Head Start Act, 42 U.S.C. 9831 *et seq.*

The relevant regulations are:

45 CFR Part 1301, Head Start grants administration.

45 CFR Part 1302, Policies and procedures for selection, initial funding, and refunding of Head Start grantees, and for selection of replacement grantees.

45 CFR Part 1303, Procedures for appeals for Head Start delegate agencies, and for opportunities to show cause and hearings for Head Start grantees.

45 CFR Part 1304, Program Performance Standards for operation of Head Start programs by grantees and delegate agencies.

45 CFR Part 1305, Eligibility requirements and limitations for enrollment in Head Start.

45 CFR Part 74, Administration of Grants, and 45 CFR Part 92, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

c. Available Funds

Category 1. A total of approximately $8,437,800 will be made available under Category 1 of this announcement for establishing new Head Start programs in currently unserved geographical areas. The available funds, by State, for this category are provided in table C. To assure that the program can operate cost-efficiently, applicants that are not current Head Start grantees will generally not be funded to initiate a new program in unserved geographical areas for less than 60 children, unless the applicant can justify why a smaller enrollment level is appropriate for the geographical areas proposed for expansion. Current Head Start grantees may be funded for as little as one class when they expand into an unserved geographical area if such an expansion would be cost efficient.

Category 2. For applicants applying to serve children on unserved Indian reservations under Category 2, up to $1,000,000 will be made available. Applicants will generally not be funded for less than 60 children, unless the applicant can justify why a smaller enrollment level is appropriate.

Category 3. For applicants applying to serve migrant children under Category 3, up to $3,000,000 will be made available. While no minimum enrollment level has been established for migrant Head Start projects, applicants should indicate a sufficient number of eligible children to ensure a viable program. Factors to be addressed related to program viability should include size of service area proposed, and sufficient population to justify program services in "off years" due to natural disasters, crop failure, or variations in the migrant stream.

D. Eligible Applicants

Eligible applicants are those described in section A above.

Part II. Specific Responsibilities

A. Application Requirements

In carrying out the proposed expansion of Head Start enrollment under this announcement, applicants should:

1. Demonstrate that there is a need for assistance based on the stated objectives of the program the applicant intends to operate.

2. Assure that services will be provided to those families and children who have the most serious need for Head Start services. All applicants must clearly document the number of unserved Head Start eligible children living in their proposed recruitment area.

Applicants applying to serve migrant children must clearly document the number of migrant families and children in their proposed service area and the period of time which these families are in the applicant's proposed service area; and, the application must also clearly document that the families to be served are mobile migrants.

3. Demonstrate that the proposed program is consistent with the needs of the intended participants and the community proposed to be served.

4. Indicate what geographical area or areas the applicant is proposing to serve. For Category 1 applicants, 20 of the 50 points in Criterion 1 (see part III) will be assigned based on the relative numbers of eligible children in the geographical area (or geographical areas) proposed for service as compared with other unserved geographical areas in the State. Scores will be assigned using the most recent data available from the Census Bureau on the population of Head Start eligible children in each geographical area.

Applicants may provide additional, verifiable demographic data if they wish to demonstrate that the number of eligible children in the geographical area of geographical areas proposed for service has increased at a significantly faster rate than it has in the rest of the State.

5. Explain why the proposed recruitment area has been chosen as opposed to other possible recruitment areas in the unserved geographical areas.

6. Assure that program enrollment opportunities are made available to children with disabilities, and that such children will be enrolled in the full range of Head Start services and activities in a mainstream setting and receive needed special education and related services.

7. Indicate the ages of the children proposed for expansion. Expansion funds are intended to allow more low-income children to participate in Head Start. Therefore, our priority for new enrollees will be to serve children in the year prior to their entry into kindergarten. However, grantees are not precluded from proposing and being funded to serve younger children.

8. Provide for the involvement of parents and other community members and organizations in the development and planning of the application.

9. Demonstrate that they have the ability and experience to administer a Head Start program.

10. Propose to implement the increase in enrollment in a timely and efficient manner. This includes assuring the availability of classroom space which meets required licensing standards, the ability to provide adequate transportation, and the ability to recruit eligible children and families.

11. Indicate what types of cooperative arrangements have been made with other public or private agencies which will assist the applicant in providing quality Head Start services.

12. Describe the mechanisms for hiring teachers who have received appropriate training or have experience in early childhood education and providing employment opportunities for residents from the service area.

13. Propose a reasonable staffing pattern and identify all proposed staff or staff positions, their proposed salary rates and the length of time they will be employed each year.

14. Demonstrate how the community will benefit from the services provided.

15. Describe how they will provide quality ongoing services at a reasonable cost. Provide two budgets, including a budget with start-up costs as well as a budget with ongoing operating costs.

16. Explain what other resources in the community will help support the proposed expansion in enrollment.

Additional Requirements for Migrant Programs

Applicants for migrant Head Start funds should provide their responses to the requirements listed above the following information: (a) The specific times and duration of the agricultural growing season, (b) the length of the work day for the migrant farmworkers, (c) the opening and closing hours for the proposed Head Start centers, (d) the distance of migrant residences to the centers, and (e) clear documentation that the families to be served are mobile farmworkers.

B. Recipient Share of the Project

Section 640(b) of the Head Start Act requires that at least 20 percent of the total cost of Head Start projects come from sources other than the Federal government. The non-federal share may be in cash or in-kind, fairly valued, including facilities, equipment, or volunteer services.

Part III. Criteria for Review and Evaluation of the Grant Application

In considering how applicants will carry out the responsibilities addressed under part II of this announcement, competing applications for financial assistance will be reviewed and evaluated against the following criteria.

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A. Objectives and Need for Assistance (50 points)

The extent to which the application pinpoints any relevant physical, economic, social, financial, institutional, or other problems requiring a grant; demonstrates the need for assistance; states the principal and subordinate objectives of the project and; provides supporting documentation or other testimonies from concerned interests in the community to be served other than the applicant.

Information provided in response to part II, section A, Numbers 1, 2, and 3 will be used to review and evaluate applicants on the above criterion.

B. Results or Benefits Expected (10 points)

The extent to which the application identifies the results and benefits to be derived and describes the anticipated contribution to policy, practice, theory and/or research.

Information provided in response to part II, section A, Number 14 wil be used to review and evaluate applicants on the above criterion.

C. Approach (25 points)

The extent to which the application outlines an acceptable plan of action pertaining to the scope of the project which details how the proposed work will be accomplished; lists each organization, consultant, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution and; demonstrates that the program would employ residents of the applicant's proposed service area.

Information provided in response to part II, section A, Numbers 6, 7, 8, 9, 10, 11, 12, and 13 of this announcement will be used to review and evaluate applicants on the above criterion.

D. Geographic Location (5 points)

The extent to which the application gives a precise location of the project and area to be served by the proposed project and describes the families to be served.

Information provided in response to part II, section A, Numbers 4 and 5 of this announcement will be used to review and evaluate applicants on the above criterion.

E. Budget Appropriateness and Reasonableness (10 points)

The extent to which the project's costs are reasonable in view of the activities to be carried out and the anticipated outcomes. The extent to which assurances are provided that the applicant can and will contribute the required non-Federal share of the total project cost.

Information provided in response to part II, section A, Numbers 15 and 16 of this announcement will be used to review and evaluate applicants on the above criterion.

Part IV. The Application Process

A. Availability of Forms

Eligible agencies interested in applying for funds must submit all of the required forms included at the end of this announcement in appendix C.

In order to be considered for a Head Start grant, an application must be submitted on Standard Form 424. Each application must be signed by an individual authorized to act for the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award and must contain certification regarding lobbying. Applications must be prepared in accordance with the guidance provided in this announcement and the instructions contained in the application kit.

B. Conference for Prospective Applicants

A conference for prospective applicants will be conducted by each ACF Regional Office between two weeks and four weeks after the publication date of this announcement.

Conferences will also be held in Washington, DC, for prospective applicants for programs to serve American Indians or migrant farmworker families. At these conferences, staff will answer questions about this announcement and about the Head Start program. It is not necessary to attend the conference to submit a grant application.

Information about the location and time of a conference may be obtained by calling:

For applications under Category 1—the appropriate Regional Office at the number shown in appendix A.

For applications under Category 2—Lee Fields, Chief, American Indian Programs Branch, Program Operations Division, Head Start Bureau; (202) 245–0437.

For applications under Category 3—Frank Fuentes, Chief, Migrant Programs Division, Program Operations Division, Head Start Bureau; (202) 245–0455.

C. Application Submission

One signed original and two copies of the grant application, including all attachments, are required. Completed applications must be sent to: Head Start Expansion, Administration for Children and Families, Grants and Contracts Management Division, room 341F.2, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. The program announcement number (ACYF–HS 13.600–91–2) must be clearly identified on the application. Applicants must also indicate in Box 11 on Standard Form 424 which of the three categories in Section A above for which they are applying. Applicants may apply to serve children in more than one category but must submit a separate application for each category. Applicants applying for more than one category in a single application will not be considered for funding in any category.

D. Application Consideration

Applicants will be reviewed against the evaluation criteria outlined in section III. The review will be conducted in Washington, DC. Reviewers will be persons knowledgeable about the Head Start program and early childhood education and development, including parents of Head Start children, Federal staff, and other experts, such as university staff or staff of child development projects.

The results of the competitive review will be taken into consideration by the Associate Commissioner, Head Start Bureau, who, in consultation with ACF Regional Officials, will recommend projects to be funded. The Commissioner of ACYF will make the final selection of the applicants to be funded. Applications may be funded in whole or in part depending on relative need, applicant ranking, and funds available.

The Commissioner may elect not to fund any applicants that have management, fiscal, or other problems and situations which make it unlikely that they would be able to provide effective Head Start services. For example, this might apply to a current Head Start grantee which had large, chronic balances of unobligated funds due to poor management, or one that has failed to serve the agreed upon numbers of children. Also, the Commissioner may decide not to fund projects which would require unreasonably large initial start-up costs for facilities or equipment. In addition, ACYF will assess the quality of current Head Start programs applying for expansion funding, using information from the Program Information Report, on-site reviews, cost studies, etc. and may elect not to provide expansion funding to programs experiencing

problems in providing quality services. The degree of community support will be considered when selecting among applicants for an unserved geographical area whose rankings are similar.

Successful applicants will be notified through the issuance of a Financial Assistance Award which sets forth the amount of funds awarded, the terms and conditions of the grant, the effective date of the grant, the budget period for which support is given, the non-Federal share to be provided, and the total project period for which support is provided.

E. Closing Date for Receipt of Applications

The closing date for the receipt of applications is July 26, 1991.

1. Deadlines. Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date at the ACF Grants and Contracts Management Office, or

b. Sent on or before the deadline date and received by the granting agency in time for them to be considered during the competitive review and evaluation process under Chapter 1–62 of the Health and Human Services Grants Administration Manual. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing.)

2. Applications submitted by other means. Applications which are not submitted in accordance with the above criteria shall be considered as meeting the deadline only if they are physically received before the close of business on or before the deadline date. Hand delivered applications will be accepted at the ACF Grants and Contracts Management Division during the normal working hours of 8:30 a.m. to 5 p.m., Monday through Friday.

3. Late Applications. Applications which do not meet one of these criteria are considered later applications. The Head Start Bureau will notify each late applicant that its application will not be considered in this expansion.

4. Extension of deadline. The Head Start Bureau may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc. or when there is a disruption of the mails. However, if the Head Start Bureau does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

F. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Public Law 96–511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and recordkeeping requirements in regulations, including program announcements. This program announcement does not contain information collection requirements beyond those approved for ACF grant applications under OMB Control Number 0348–0043.

G. Executive Order 12372—Notification Process

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs", and 45 CFR 4–25 part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities". Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. All States and territories except Alaska, Idaho, Kansas, Louisiana, Minnesota, Nebraska, Virginia, American Samoa, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applications from Federally recognized Indian Tribes are exempt from E.O. 12372.

Applicants from these nine areas and from Federally recognized Indian Tribes need take no action regarding E.O. 12372. All order applicants should contact their SPOC as soon as possible to alert them of the prospective application and to receive any necessary instructions. Applicants must submit any required material to the SPOC as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the SF 424, item 22a.

SPOCs have 60 days from the application deadline date to comment on applications submitted under this announcement. Therefore, the comment period for State processes will end on September 24, 1991, to allow time for ACF to review, consider, and attempt to accommodate SPOC input. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addresed to: Department of Health and Human Services, Administration for Children and Families, Grants and Contracts Division, 200 Independence Ave., SW., Hubert H. Humphrey Building, room 341F.2, Washington, DC 20201, Attn: William J. McCarron, ACF–91–Head Start/Expansion.

ACF will notify the State of any application received which has no indication that the State process has had an opportunity for review.

A list of Single Points of Contact for each State and territory is included at appendix B.

(Catalog of Federal Domestic Assistance Program Number 13.600, Project Head Start)

Dated: April 19, 1991.

Wade F. Horn,

Commissioner, Administration for Children, Youth and Families.

Approved: May 6, 1991.

Donna N. Givens,

Deputy Assistant Secretary for Children and Families.

Table A—Geographical Areas Not Served by Head Start Programs Funded by ACF Regional Offices

Alabama

The Counties of Chilton, Choctaw, Conecuh, Marion, and Shelby. All areas outside the city of Phoenix in Russell County.

Alaska

The Aleutian Islands, Bristol Bay, Dillingham, Juneau, North Slope, Sitka, Skaguay, Southeast, and Yukon-Koyukuk.

Arizona

No Unserved Counties.

Arkansas

The Counties of Grant, Lincoln, Lonoice, Prairie, and Sevier.

California

The Counties of Alpine, Inyo, Mariposa, and Mono.

Colorado

The Counites of Baca, Chaffee, Cheyenne, Custer, Dolores, Douglas, Eagle, Elbert, Grand, Gunnison, Hinsdale, Jackson, Kiowa, Kit Carson, Lincoln, Mineral, Moffat, Ouray, Phillips, Pitkin, Rio Blanco, Routt, San Juan, San Miguel, Sedgwick, Summit, Teller, Washington, and Yuma.

The cities of Golden, Wheatridge, Columbine, Morrison, Evergreen, and Mountain View in jefferson County.

The city of Brush in Morgan County.

The city of Estes Park in Larimer County.

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Connecticut

No Unserved Counties.

Delaware

No Unserved Counties.

District of Columbia

No Unserved Counties.

Florida

The Counties of Calhoun, Citrus, Dixie, Gilchrist, Glades, Gulf, Hardee, Levy, Liberty, Madison, Martin, Okeechobee, and Wakulla.

Georgia

The Counties of Atkinson, Brantley, Candler, Chattahoochee, Columbia, Echols, Fayette, Glascock, Heard, Lee, Lincoln, Miller, Oconee, Pierce, Pike, Quitman, Seminole, Talbot, Taliaferro, and Wilkes.

Hawaii

The County of Kalawao.

Idaho

The Counties of Adams, Bear Lake, Boise, Butte, Camas, Caribou, Clark, Custer, Franklin, Fremont, Jefferson, Lemhi, Lincoln, Madison, Oneida, Owyhee, Power, and Teton.

Illinois

The Counties of Boone, Ford, Grundy, Marshall, Menard, and Putnam.

Indiana

The Counties of Boone, Carroll, Cass, Clinton, Fayette, Fulton, Hamilton, Howard, Jasper, Kosciusko, Lagrange, Miami, Noble, Tipton, Union, Wabash, White, and Whitley.

Iowa

The Counties of Adair, Hancock, Madison, Mitchell, Montgomery, Page, Taylor, and Worth.

Kansas

The Counties of Anderson, Barber, Barton, Chase, Chautauqua, Cheyenne, Clark, Coffey, Comanche, Decatur, Dickinson, Edwards, Elk, Ellsworth, Gove, Graham, Gray, Greeley, Greenwood, Hamilton, Harper, Haskell, Hodgeman, Jewell, Kingman, Kiowa, Lane, Lincoln, Logan, McPherson, Marion, Meade, Mitchell, Morris, Morton, Ness, Norton, Osborne, Ottawa, Pawnee, Phillips, Pratt, Rawlins, Republic, Rice, Rooks, Rush, Russell, Seward, Sheridan, Smith, Stafford, Stanton, Stevens, Sumner, Thomas, Wabaunsee, Wallace, Wilson, and Woodson.

All areas outside Hutchinson Board of Education School District in Reno County.

All areas outside Dodge City USD #443 in Ford County.

Kentucky

The Counties of Caldwell, Livingston, Meade, Pendleton, and Scott.

Louisiana

The Counties of Assumption, Cameron, E. Feliciana, Plaquemines, and W. Feliciana.

Maine

No Unserved Counties.

Maryland

No Unserved Counties.

Massachusetts

The County of Nantucket.

The towns of Auburn, Boylston, Brookfield, Charlton, Douglas, Dudley, East Brookfield, Holden, Leicester, Millbury, North Brookfield, Oakham, Oxford, Paxton, Rutland, Southbridge, Spencer, Sturbridge, Sutton, Warren, Webster, West Brookfield, and West Boylston in Worcester County.

Michigan

No Unserved Counties.

Minnesota

No Unserved Counties.

Mississippi

No Unserved Counties.

Missouri

No Unserved Counties.

Montana

The Counties of Beaverhead, Big Horn, Blaine, Carbon, Carter, Chouteau, Custer, Daniels, Dawson, Fallon, Garfield, Glacier, Golden Valley, Lake, Liberty, McCone, Madison, Petroleum, Phillips, Pondera, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Stillwater, Sweet Grass, Teton, Toole, Treasure, Valley, Wibaux, and Yellowstone National Park.

Nebraska

The Counties of Arthur, Banner, Blaine, Boyd, Cedar, Chase, Cuming, Deuel, Dixon, Dundy, Franklin, Frontier, Furnas, Garden, Garfield, Gosper, Grant, Harlan, Hayes, Hitchcock, Hooker, Johnson, Kearney, Keith, Keya Paha, Logan, Loup, McPherson, Nance, Nuckolls, Pawnee, Perkins, Pierce, Red Willow, Rock, Sarpy, Sioux, Stanton, Thomas, Washington, Wayne, Webster, and Wheeler.

Nevada

The Counties of Douglas, Esmeralda, Eureka, Humboldt, Lander, Lincoln, Lyon, Mineral, Nye, Pershing, and Storey.

New Hampshire

No Unserved Counties.

New Jersey

No Unserved Counties.

New Mexico

The Counties of De Baca, Harding, Lincoln, and Los Alamos.

New York

The Counties of Genesee, Livingston, and Seneca.

North Carolina

The Counties of Currituck, Person, Polk, Randolph, and Rutherford.

North Dakota

The Counties of Adams, Barnes, Billings, Bowman, Burke, Cavalier, Dickey, Divide, Dunn, Eddy, Emmons, Foster, Golden Valley, Grant, Griggs, Hettinger, Kidder, La Moure, Logan, McIntosh, McKenzie, McLean, Mercer, Mountrail, Nelson, Oliver, Pembina, Ransom, Renville, Rolette, Sargent, Sheridan, Sioux, Slope, Steele, Towner, Traill, and Wells.

Ohio

No Unserved Counties.

Oklahoma

The Counties of Alfalfa, Beaver, Cimarron, Dewey, Ellis, Grant, Harper, and Major.

Oregon

The Counties of Curry, Gilliam, Harney, Jefferson, Lake, Morrow, Sherman, and Wheeler.

Pennsylvania

Pike County.

Puerto Rico

No Unserved Counties.

Rhode Island

No Unserved Counties.

South Carolina

No Unserved Counties.

South Dakota

The Counties of Bennett, Clark, Corson, Deuel, Hamlin, Harding, Hyde, Mellette, Perkins, and Shannon.

All areas outside the city of Sioux Falls in Minnehaha County.

Tennessee

Van Buren County.

Texas

The Counties of Aransas, Archer, Armstrong, Austin, Bandera, Baylor, Borden, Brewster, Briscoe, Camp, Carson, Chambers, Coke, Concho, Crane, Crockett, Culberson, Deaf Smith, Delta, De Witt, Donley, Edwards, Foard, Franklin, Glasscock, Gonzales, Hansford, Hardin, Hartley, Haskell, Hemphill, Hopkins, Hudspeth, Irion, Jack, Jackson, Jeff Davis, Jones, Kendall, Kenedy, Kent, Knox, Lavaca, Lee, Liberty, Lipscomb, Live Oak, Loving, McMullen, Menard, Montgomery, Morris, Ochiltree, Oldham, Presidio, Rains, Randall, Reagan, Refugio, Roberts, Schleicher, Shackelford, Sherman, Stephens, Sterling, Stonewall, Sutton, Swisher, Terrell, Throckmorton , Titus, Upshur, Walker, Waller, Ward, Wheeler, Winkler, Wood, and Young.

All areas outside of Tyler ISD in Smith County.

All areas outside of Beaumont ISD and Port Arthur ISD in jefferson County.

All areas outside of Midland ISD in Midland County.

All areas outside of West Orange county ISD in Orange County.

All areas outside of Detroit ISD in Red River County.

All areas outside of Plano ISD in Collin County.

All areas outside of Denton ISD in Denton County.

All areas outside of Terrell ISD in Kaufman County.

All areas outside of Paris ISD in Lamar County.

All areas outside of Sherman ISD in Gramson County.

All areas outside of Hondo ISD in Medina County.

Utah

The Counties of Beaver, Daggett, Juab, Kane, Morgan, Piute, Rich, Sanpete, Summit, Todele, Uintah, and Wayne.

Vermont

No Unserved Counties.

Virginia

The Counties of Amelia, Appomatox, Augusta, Bath, Brunswick, Campbell, Charlotte, Clarke, Culpepper, Cumberland, Dinwiddie, Essex, Frederick, Gloscester, Hanover, Henry, Highland, King George, Lancaster, Loudoun, Lunenburg, Mathews, Mecklenburg, Middlesex, Nelson, Northumberland, Nottoway, Page, Prince George, Prince William, Rappahannock, Richmond, Rockingham, Shenandoah, Spotsylvania, Warren, Westmoreland.

The cities of Colonial Heights, Harrisonburg, Hopewell, Manassas City, Manassas Park, Poquoson City, Staunton, Waynesboro, and Winchester.

Washington

The Counties of Adams, Columbia, Garfield, Lincoln, San Juan, and Wahkiakum.

West Virginia

The Counties of Jefferson and Summers.

Wisconsin

The Counties of Dodge, Kewaunee and Ozaukee.

All areas outside of the Greenbay Public School District in Brown County.

All areas outside of the Merrill Area School District of Lincoln County.

Wyoming

The Counties of Campbell, Crook, Lincoln, Sublette, Sweetwater, Teton, Uinta, Weston.

Table B—Counties Served by Migrant Head Start Programs

Alabama

The County of Baldwin.

Arizona

The Counties of Maricopa, Pinal, and Yuma.

Arkansas

The Counties of Ashley, Bradley, Chicot, Clay, Lawrence, Mississippi, and White.

California

The Counties of Butte, Contra Costa, Fresno, Glenn, Imperial, Kern, Kings, Lake, Madera, Mendocino, Merced, Monterey, Riverside, San Benito, San Joaquin, Santa Barbara, Santa Clara, Santa Cruz, Sonoma, Sutter, Stanislaus, Tulare, Venture, and Yolo.

Colorado

The Counties of Adams, Alamosa, Boulder, Conejos, Costilla, Crowley, Larimer, Otero, Saguache, San Luis, and Weld.

Connecticut

No Served Counties.

Delaware

The County of Kent.

Florida

The Counties of Collier, De Soto, Hardee, Hillsborough, Lake, Lee, Manatee, Martin, Okeechobee, Orange, Palm Beach, Pasco, Polk, St. and Luice.

Georgia

The Counties of Appling, Montgomery, Toombs, Treutlen, and Wheeler.

Idaho

The Counties of Bingham, Bonneville, Canyon, Cassia, Gooding, Jefferson, Jerome, Madison, Minidoka, Owyhee, Payette, Twin Falls, and Washington.

Illinois

The Counties of Iroquois, Jackson, Kane, Kankakee, Kendall, Mercer, Peoria, Rock Island, Stark, Union, Vermillion, Will, and Williamson.

Indiana

The Counties of Cass, Delaware, Grant, Howard, La Porte, Madison, Tipton, and Wells.

Iowa

The Counties of Butler, Calhoun, Carroll, Franklin, Greene, Guthrie, Hardin, Humboldt, Iowa, Johnson, Washington, Webster, and Wright.

Kansas

No Served Counties.

Kentucky

No Served Counties.

Louisiana

No Served Counties.

Maine

No Served Counties.

Maryland

The Counties of Caroline, Dorchester, Queen Annes, Somerset.

Massachusetts

No Served Counties.

Michigan

The Counties of Allegan, Arenac, Bay, Berries, Kent, Leelanau, Lenawee, Oceana, Ottawa, and Van Buren.

Minnesota

All Counties served.

Mississippi

No Served Counties.

Missouri

No Served Counties.

Montana

The areas of Billings and Fairview.

Nebraska

The Counties of Alliance, Bayard, and Gering.

Nevada

No Served Counties.

New Hampshire

No Served Counties.

New Jersey

The Counties of Atlantic and Cumberland.

New Mexico

The Counties of Dona Ana, Rio Arriba, and Roosevelt.

New York

The Counties of Chautauqua, Genessee, Niagra, Ontario, Orange, Orleans, Oswego, Ulster, and Wayne.

North Carolina

The Counties of Davie, Duplin, Forsyth, Greene, Harnett, Henderson, Johnston, Nash, Pitt, Sampson, Surry, Wake, Wayne, Wilkes, Wilson, and Yadkin.

North Dakota

No Served Counties.

Ohio

The Counties of Mercer, Ottawa, Putnam, Sandusky, Seneca, and Wood.

Oklahoma

No Served Counties.

Oregon

The Counties of Harney, Hood River, Jefferson, Klamath, Malheur, Marion, Umatilla, and Washington.

Pennsylvania

The County of Erie.

Rhode Island

No Served Counties.

South Carolina

The County of Charleston.

South Dakota

No Served Counties.

Tennessee

The Counties of Bledsoe, Cocke, Coffee, Franklin, Hamblen, Jefferson, Lincoln, Rhea, Sevier, Unicoi, and Warren.

Texas

The Counties of Bailey, Bexar, Brooks, Cameron, Crosby, Deaf Smith, Dimmit, Floyd, Frio, Gonzales, Hale, Hidalgo, Lynn, Maverick, Medina, Nueces, San Patricio, Starr, Uvalde, Val Verde, Webb, Willacy, and Zavala.

Utah

All Counties Served.

Vermont

No Served Counties.

Virginia

The Counties of Accomack, Clarke, Frederick, and Northampton.

Washington

The Counties of Adams, Benton, Chelan, Douglas, Franklin, Grant, Okanogen, Skagit, Whatcom, Walla Walla, and Yakima.

West Virginia

No Served Counties.

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Wisconsin

The Counties of Adams, Columbia, Dodge, Jefferson, Marquette, and Waushama.

Wyoming

The Counties of Lovell, Powell, and Worland.

Table C—State Allocations

Estimated State Funding Levels for Unserved Geographical Areas

Alabama	$229,450
Alaska	205,000
Arizona	N/A
Arkansas	65,302
California	69,349
Colorado	161,005
Connecticut	N/A
Delaware	N/A
D.C.	N/A
Florida	374,309
Georgia	327,970
Hawaii	N/A
Idaho	206,798
Illinois	66,810
Indiana	207,721
Iowa	71,916
Kansas	370,809
Kentucky	103,784
Louisiana	162,068
Maine	N/A
Maryland	N/A
Massachusetts	174,000
Michigan	N/A
Minnesota	51,114
Mississippi	N/A
Missouri	N/A
Montana	228,625
Nebraska	223,178
Nevada	137,150
New Hampshire	N/A
New Jersey	N/A
New Mexico	26,886
New York	127,853
North Carolina	194,790
North Dakota	187,754
Ohio	60,489
Oklahoma	44,275
Oregon	68,811
Pennsylvania	24,919
Puerto Rico	N/A
Rhode Island	N/A
South Carolina	N/A
South Dakota	107,227
Tennessee	7,849
Texas	1,338,953
Utah	119,425
Vermont	N/A
Virginia	385,774
Washington	82,747
West Virginia	110,324
Wisconsin	193,647
Wyoming	71,704

N/A means that in these States all geographical areas are served by Head Start and thus there will not be any competition for unserved geographical areas.

A discretionary reserve will be used to supplement the funds available in those States with unserved geographical areas where the State's available funds are not sufficient to permit an expansion. In those States, sufficient funds will be made available to fund one new class (or home-based group) should an acceptable expansion proposal be received.

Appendix A—ACF Regional Offices

Region I: (617) 565–1139—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Region II: (212) 264–2974—New Jersey, New York, Puerto Rico, Virgin Islands

Region III: (215) 596–1224—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia

Region IV: (404) 331–2396—Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee

Region V: (312) 353–4241—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Region VI: (214) 767–2976—Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Region VII: (816) 426–5401—Iowa, Kansas, Missouri, Nebraska

Region VIII: (303) 844–3106—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Region IX: (415) 556–6153—Arizona, California, Hawaii, Nevada, Outer Pacific

Region X: (206) 399–0638—Alaska, Idaho, Oregon, Washington

American Indian Programs (202) 245–0437

Migrant Programs (202) 245–0455

Appendix B—Executive Order 12372—State Single Points of Contact

Alabama

Mrs. Moncell Thornell, State Single Point of Contact, Alabama Department of Economic and Community Affairs, 3465 Norman Bridge Road, Post Office Box 250347, Montgomery, Alabama 36125–0347, Tel. (205) 284–8905

Arizona

Mrs. Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue, 14th floor, Phoenix, Arizona 85012, Tel. (602) 280–1315

Arkansas

Mr. Joseph Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Tel. (501) 371–1074

California

Loreen McMahon, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Tel. (916) 323–7480

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, room 520, Denver, Colorado 80203, Tel. (303) 866–2156

Connecticut

Under Secretary, ATTN: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Tel. (203) 566–3410

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Tel. (302) 736–3326

District of Columbia

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, room 416, District Building, 1350 Pennsylvania Avenue, NW., Washington, DC 20004, Tel. (202) 727–9111

Florida

Karen McFarland, Director, Florida State Clearinghouse, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Tel. (904) 488–8114

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, SW., Atlanta, Georgia 30334, Tel. (404) 656–3855

Hawaii

Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol, Honolulu, Hawaii 96813, Tel. (808) 548–3016 or 548–3085

Illinois

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Tel. (217) 782–8639

Indiana

Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Tel. (317) 232–5610

Iowa

Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Tel. (515) 281–3725

Kentucky

Robert Leonard, State Single Point of Contact, Kentucky State Clearinghouse, 2nd floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Tel. (502) 564–2382

Maine

State Single Point of Contact, ATTN: Joyce Benson, State Planning Office, State House Station No. 38, Augusta, Maine 04333, Tel. (207) 289–3261

Maryland

Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Tel. (301) 225–4490

Massachusetts

State Single Point of Contact, ATTN: Beverly Boyle, Executive Office of Communities and Development, 100 Cambridge Street, room 1803, Boston, Massachusetts 02202, Tel. (617) 727–7001

Michigan

Milton O. Waters, Director of Operations, Michigan Neighborhood Builders Alliance, Michigan Department of Commerce, Tel. (517) 373–7111

Please direct correspondence to: Manager, Federal Project Review, Michigan Department of Commerce, Michigan Neighborhood Builders Alliance, P.O. Box 30242, Lansing, Michigan 48909, Tel. (517) 373–6223

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, Office of Policy Development, 421 West Pascagoula Street, Jackson, Mississippi 39203, Tel. (601) 960–4280

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, room 430, Truman Building, Jefferson City, Missouri 65102, Tel. (314) 751–4834

Montana

Deborah Stanton, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Budget and Program Planning, Capitol Station, room 202—State Capitol, Helena, Montana 59620, Tel. (406) 444–5522

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Tel. (702) 687–4420, ATTN: John B. Walker, Clearinghouse Coordinator

New Hampshire

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, ATTN: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Tel. (603) 271–2155

New Jersey

Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625–0803, Tel. (609) 292–6613

Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625–0803, Tel. (609) 292–9025

New Mexico

Dorothy E. (Duffy) Rodriquez, Deputy Director, State Budget Division, Department of Finance & Administration, room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Tel. (505) 827–3640

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Tel. (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Caroline 27611, Tel. (919) 733–0499

North Dakota

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th floor, State Capitol, Bismarck, North Dakota 58505, Tel. (701) 224–2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th floor, Columbus, Ohio 43266–0411, Tel. (614) 466–0698

Oklahoma

Don Strain, State Single Point of Contact, Oklahoma Department of Commerce, Office of Federal Assistance Management, 6601 Broadway Extension, Oklahoma City, Oklahoma 73116, Tel. (405) 843–9770

Oregon

Attn: Delores Streeter, State Single Point of Contact, Intergovernmental Relations Division, State Clearinghouse, 155 Cottage Street, NE., Salem, Oregon 97310, Tel. (503) 373–1998

Pennsylvania

Sandra Kline, Project Coordinator, Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108, Tel. (717) 783–3700

Rhode Island

Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Tel. (401) 277–2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

South Carolina

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, room 477, Columbia, South Carolina 29201, Tel. (803) 734–0493

South Dakota

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Tel. (605) 773–3212

Tennessee

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Tel. (615) 741–1676

Texas

Tom Adams, Office of Budget and Planning, Office of the Governor, P.O. Box 12428, Austin, Texas 78711, Tel. (512) 463–1778

Utah

Dale Hatch, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Tel. (801) 538–1547

Vermont

Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Tel. (802) 828–3326

Washington

Marilyn Dawson, Washington Intergovernmental Review Process, Department of Community Development, 9th and Columbia Building, Mail Stop GH–51, Olympia, Washington 98504–4151, Tel. (206) 753–4976

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, room 553, Charleston, West Virginia 25305, Tel. (304) 348–4010

Wisconsin

James R. Klauser, Secretary, Wisconsin Department of Administration, 101 South Webster Street, GEF 2, P.O. Box 7864, Madison, Wisconsin 53707–7864, Tel. (608) 266–1741

Please direct correspondence and questions to: William C. Carey, Section Chief, Federal-State Relations Office, Wisconsin Department of Administration (608) 266–0267

Wyoming

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Tel. (307) 777–7574

Guam

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Tel. (671) 472–2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Patria Custodio/Israel Soto Marrero, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Tel. (809) 727–4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, No. 32 & 33 Kongens Gade, Charlotte Amalie, V.I. 00802, Tel. (809) 774–0750

BILLING CODE 4130–01–M

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OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name	Organizational Unit
Address (give city, county, state, and zip code)	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A State; B County; C Municipal; D Township; E Interstate; F Intermunicipal; G Special District; H Independent School Dist; I State Controlled Institution of Higher Learning; J Private University; K Indian Tribe; L Individual; M Profit Organization; N Other (Specify) _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es) ☐ ☐
A Increase Award; B Decrease Award; C Increase Duration; D Decrease Duration; Other (specify) _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐☐ • ☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.)

13. PROPOSED PROJECT: Start Date; Ending Date

14. CONGRESSIONAL DISTRICTS OF: a. Applicant; b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)	
21. Direct Charges:	22. Indirect Charges:
23. Remarks	

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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 - Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

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ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

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U.S. Department of Health and Human Services Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR part 76, subpart F. The regulations, published in the May 25, 1990 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code) _____

Check _____ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition,

Department of Health and Human Services, room 517–D, 200 Independence Avenue, SW., Washington, D.C. 20201.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction," provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions." without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

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Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____
Organization

_____
Authorized Signature Title Date

NOTE: If Disclosure Forms are required, please contact: Mr. William Sexton, Deputy Director, Grants and Contracts Management Division, Room 341F, HHH Building, 200 Independence Avenue, SW, Washington, D.C. 20201-0001

[FR Doc. 91-13751 Filed 6-10-91; 8:45 am]
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federal register

Tuesday
June 11, 1991

Part V

The President

Proclamation 6301—Establishment of Programs for Special Import Quotas on Upland Cotton and Modification of the Tariff-Rate Quota on Imported Sugars, Syrups, and Molasses

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Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 6301 of June 7, 1991

Establishment of Programs for Special Import Quotas on Upland Cotton and Modification of the Tariff-Rate Quota on Imported Sugars, Syrups, and Molasses

By the President of the United States of America

A Proclamation

1. Section 103B(a)(5)(F) of the Agricultural Act of 1949 (the 1949 Act), as added by section 501 of the Food, Agriculture, Conservation, and Trade Act of 1990 (the 1990 Act) (7 U.S.C. 1444–2(a)(5)(F)), requires the President to establish an import quota program which shall provide that, during the period beginning August 1, 1991, and ending July 31, 1996, whenever the Secretary of Agriculture determines and announces that for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced United States growth, as quoted for Middling (M) one and three-thirty-seconds inch cotton, delivered C.I.F. Northern Europe, adjusted for the value of marketing certificates issued to domestic users or exporters for certain documented sales, exceeds the Northern Europe price by more than 1.25 cents per pound, there shall immediately be in effect a special limited global import quota equal to 1 week's consumption of upland cotton by domestic mills at the seasonally adjusted average rate of the most recent 3 months for which data are available. Section 103B(a)(5)(F) further provides that such quota shall apply to upland cotton purchased not later than 90 days after the date of the Secretary's announcement and entered into the United States not later than 180 days after such date and that a special quota period may be established that overlaps any existing quota period, except that a special quota period may not be established under this program if a special quota period has been established under subsection (n) of section 103B.

2. Section 103B(n) of the 1949 Act, as added by section 501 of the 1990 Act (7 U.S.C. 1444–2(n)), requires the President to establish an import quota program which shall provide that whenever the Secretary of Agriculture determines and announces that the average price of the base quality of upland cotton, as determined by the Secretary, in designated spot markets for a month exceeded 130 percent of the average price of such quality of cotton in such markets for the preceding 36 months there shall immediately be in effect a special limited global import quota equal to 21 days of domestic mill consumption of upland cotton at the seasonally adjusted average rate of the most recent 3 months for which data are available; provided that if a special quota had been established under this program during the preceding 12 months, the quantity of the quota next established shall be the smaller of 21 days of domestic mill consumption or the quantity required to increase the supply to 130 percent of the demand. Section 103B(n) further provides that such a special quota shall remain in effect for a 90-day period and that a special quota period may not be established that overlaps an existing quota period or a special quota period established under subsection (a)(5)(F) of section 103B.

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3. I find that the Congress intended the special import quotas required by section 103B of the 1949 Act, as amended, to permit the importation of quantities of upland cotton in addition to any quantities permitted to be imported under any quota on imports of upland cotton established pursuant to the provisions of section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624).

4. By Proclamation No. 6179 of September 13, 1990 (55 FR 38293), the President modified, effective October 1, 1990, the rates of duty and quota limitations applicable to certain imported sugars, syrups, and molasses and, *inter alia*, provided for certain licensing programs for the importation of raw cane sugar described in subheading 1701.11.02 of the Harmonized Tariff Schedule of the United States (HTS) to be used for the production of certain polyhydric alcohols or to be refined and re-exported in refined form or in sugar-containing products.

5. Taking into account the factors cited in Proclamation No. 6179, and in order to alleviate an unintended hardship which may result to participants in the licensing programs authorized thereby with respect to the time limit for filing certain claims for the refund, as drawback, of customs duties, and in order to correct a technical error that was made in incorporating such tariff modifications in the HTS, I find it appropriate to modify further the provisions of the HTS modified by Proclamation No. 6179.

6. Section 604 of the Trade Act of 1974, as amended (19 U.S.C. 2483), requires the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions taken thereunder, including the removal, modification, continuance, or imposition of any import restriction.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to the provisions of section 103B of the 1949 Act, as added by section 501 of the 1990 Act, additional U.S. note 2 to chapter 17 of the HTS, and section 604 of the Trade Act of 1974, do hereby proclaim:

(1) In order to establish special import quota programs pursuant to the provisions of subsections (a)(5)(F) and (n) of section 103B of the 1949 Act, as amended, subchapter III of chapter 99 of the HTS is hereby modified by adding U.S. note 6 as provided for in Annex I to this proclamation.

(2) The Secretary of Agriculture and the Secretary of the Treasury may promulgate such regulations as are necessary or appropriate to carry out the special import quota programs established by paragraph (1).

(3) Subheadings 9903.52.00 through 9903.52.20 are inserted in subchapter III of chapter 99 of the HTS, as provided in Annex I to this proclamation, and shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, as of the dates and under the terms set forth in Annex I.

(4) Additional U.S. note 3 to chapter 17 of the HTS and subheading 1701.91 of the HTS are modified as provided in Annex II to this proclamation.

(5) The provisions of this proclamation shall become effective on the day following the date of signature.

(6) Those provisions of proclamation No. 6179 of September 13, 1990, which are inconsistent with the provisions of Annex II of this proclamation are hereby superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of June, in the year of our Lord nineteen hundred and ninety-one, and the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 91-14057
Filed 6-10-91; 10:49 am]
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ANNEX I

MODIFICATIONS TO THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES WITH RESPECT TO SPECIAL IMPORT QUOTAS FOR UPLAND COTTON

1. The following new U.S. note is inserted in numerical sequence in subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States:

"6. Special limited global import quotas for upland cotton.--The provisions of this note apply beginning August 1, 1991, to imports of upland cotton as provided in subheadings 9903.52.00 through 9903.52.20.

"(a) Special Upland Cotton Import Quota Based on Northern Europe Prices.--

"(i) Whenever the Secretary of Agriculture determines and announces that for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced United States growth, as quoted for Middling one and three-thirty-seconds inch cotton, delivered C.I.F. Northern Europe, adjusted for the value of any certificates issued under section 103B(a)(5)(E) of the Agricultural Act of 1949, as amended, exceeds the Friday through Thursday average price of the five lowest-priced growths of upland cotton, as quoted for Middling one and three-thirty-seconds inch cotton, delivered C.I.F. Northern Europe (Northern Europe price) by more than 1.25 cents per pound, there shall be in effect, as of the effective date of such announcement, a special limited global import quota equal to 1 week's consumption of upland cotton by domestic mills at the seasonally adjusted average rate of the most recent 3 months for which data are available. During the period when both a price quotation for cotton for shipment no later than August/September of the current calendar year (current shipment price) and a price quotation for cotton for shipment no earlier than October/November of the current calendar year (forward shipment price) are available for such growths, the current shipment price shall be used. An announcement under this clause shall be known as a Special Cotton Quota Announcement.

"(ii) Application.--The quota shall apply to upland cotton purchased not later than 90 days after the effective date of the Secretary's announcement under clause (i) and entered into the United States not later than 180 days after such date.

"(iii) Overlap.--A special quota period may be established that overlaps any existing quota period if required by clause (i), except that a special quota period may not be established under this paragraph if a special quota period has been established under paragraph (b) of this note.

"(iv) The Secretary of Agriculture shall inform the Secretary of the Treasury of the establishment of any special import quota under this paragraph and shall file a notice of such quota with the Federal Register.

"(b) Special Upland Cotton Import Quota Based on Spot Market Prices.--

"(i) Whenever the Secretary of Agriculture determines and announces that the average price of the base quality of upland cotton, as determined by the Secretary, in the designated spot markets for a month exceeded 130 percent of the average price of such quality of cotton in such markets for the preceding 36 months, there shall immediately be in effect a special limited global import quota equal to 21 days of domestic mill consumption of upland cotton at the seasonally adjusted average rate of the most recent 3 months for which data are available. An announcement under this clause shall be known as a Special Limited Global Import Quota Announcement.

"(ii) Quantity if prior quota.--If a special quota has been established under this paragraph during the preceding 12 months, the quantity of the quota next established under this paragraph shall be the smaller of 21 days of domestic mill consumption, calculated as set forth in clause (i), or the quantity required to increase the supply to 130 percent of the demand.

"(iii) Definitions.--As used in clause (ii):
(A) Supply.--The term 'supply' means, using the latest official data of the Bureau of the Census, the Department of Agriculture, and the Department of the Treasury--
(I) the carry-over of upland cotton at the beginning of the marketing year (adjusted to 480-pound bales) in which the special quota is established; plus
(II) production of the current crop; plus
(III) imports to the latest date available during the marketing year.
(B) Demand.--The term 'demand' means--
(I) the average seasonally adjusted annual rate of domestic mill consumption in the most recent 3 months for which data are available; plus
(II) the larger of--
(aa) average exports of upland cotton during the preceding 6 marketing years; or
(bb) cumulative exports of upland cotton plus outstanding export sales for the marketing year in which the special quota is established.

"(iv) Quota entry period.--When a special quota is established under this paragraph, cotton may be

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entered under the quota during the 90-day period beginning on the effective date of the Secretary of Agriculture's announcement of such quota.

"(v) No overlap.--Notwithstanding clauses (i) through (iv), a special quota period may not be established under this paragraph that overlaps an existing quota period established under this paragraph or a special quota period established under paragraph (a) of this note.

"(vi) The Secretary of Agriculture shall inform the Secretary of the Treasury of the establishment of any special import quota under this paragraph and shall file a notice of such quota with the Federal Register.".

2. The following new provisions are inserted in numerical sequence in subchapter III of chapter 99 of the HTS, with the language inserted in the columns entitled "Heading/Subheading", "Article Description", and "Quota Quantity", respectively:

	"Notwithstanding any other quantitative limitations on the importation of cotton, upland cotton, if accompanied by an original certificate of an official of a government agency of the country in which the cotton was produced attesting to the fact that the cotton is a variety of Gossypium hirsutum cotton, may be entered in conformity with the terms and conditions in U.S. note 6(b) of this subchapter in such quantities as specified in the determination and announcement by the Secretary of Agriculture in accordance with U.S. note 6(b)(i) during the 90-day period following the effective date of such determination and announcement:	
9903.52.00	Purchased and entered pursuant to the Secretary of Agriculture's Special Limited Global Import Quota Announcement	The quantity specified in such announcement
	Notwithstanding any other quantitative limitations on the importation of cotton, upland cotton, if accompanied by an original certificate of an official of a government agency of the country in which the cotton was produced attesting to the fact that the cotton is a variety of Gossypium hirsutum cotton, and a certification by the importer that such cotton was purchased not later than 90 days after the effective date of the Secretary of Agriculture's announcement of the quota, may be entered in conformity with the terms and conditions in U.S. note 6(a) of this subchapter in such quantities as specified in the determination and announcement by the Secretary of Agriculture in accordance with U.S. note 6(a)(i) during the 180-day period following the effective date of such determination and announcement:	
9903.52.01	Purchased and entered pursuant to the Secretary of Agriculture's Special Cotton Quota Announcement Number 1	The quantity specified in such announcement
9903.52.02	Purchased and entered pursuant to the Secretary of Agriculture's Special Cotton Quota Announcement Number 2	The quantity specified in such announcement
9903.52.03	Purchased and entered pursuant to the Secretary of Agriculture's Special Cotton Quota Announcement Number 3	The quantity specified in such announcement

9903.52.04	Purchased and entered pursuant to the Secretary of Agriculture's Special Cotton Quota Announcement Number 4	The quantity specified in such announcement
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ANNEX II

FURTHER MODIFICATIONS TO THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES WITH RESPECT TO THE TARIFF-RATE QUOTA FOR IMPORTED SUGARS, SYRUPS AND MOLASSES

1. The final sentence of paragraph (a)(i) of additional U.S. note 3 to chapter 17 of the HTS is modified to read as follows:

"Such total amount shall consist of (1) a base quota amount, (2) a quota adjustment amount, and (3) an amount reserved for the importation of specialty sugars as defined by the United States Trade Representative, to be allocated by the United States Trade Representative.".

2. The first sentence of paragraph (b)(iii) of additional U.S. note 3 to chapter 17 of the HTS is modified by striking "paragraph" and inserting "note".

3. The first sentence of paragraph (c)(ii) of additional U.S. note 3 to chapter 17 of the HTS is modified to read as follows:

"A drawback entry and all documents necessary to complete a drawback claim, including those issued by one Customs officer to another, with respect to the refund of any duties imposed under subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, and 2106.90.12, shall be filed or applied for, as applicable, within 90 days after the date of exportation of the articles on which drawback is claimed, except that any landing certificate required by regulations issued by the United States Customs Service shall be filed within the time limit prescribed therein.".

4. The following new superior text is inserted in chapter 17 of the HTS immediately below subheading 1701.91 in the column entitled "Article Description" (and bracketed matter is included to assist in the understanding of the proclaimed modification):

[1701	Cane . . .:]	
	[Other:]	
[1701.91	Containing . . .:]	
	"Containing added coloring but not containing added flavoring matter:".	

5. The article descriptions of subheadings 1701.91.21 and 1701.91.22 of the HTS are each stricken and are reinserted at the level of indentation immediately subordinate to the superior text inserted in the HTS by paragraph (3) above.

Billing code 3195-01-C

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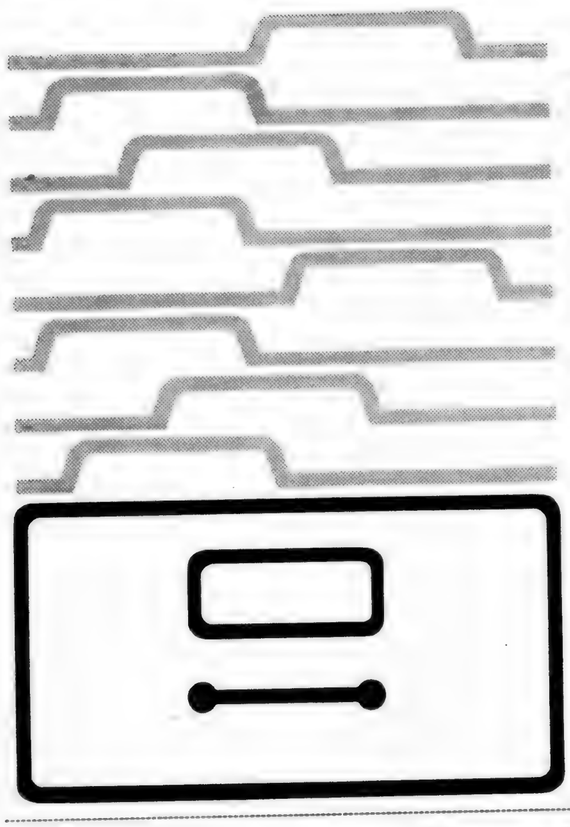

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in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1989
SUPPLEMENT: Revised January 1, 1991

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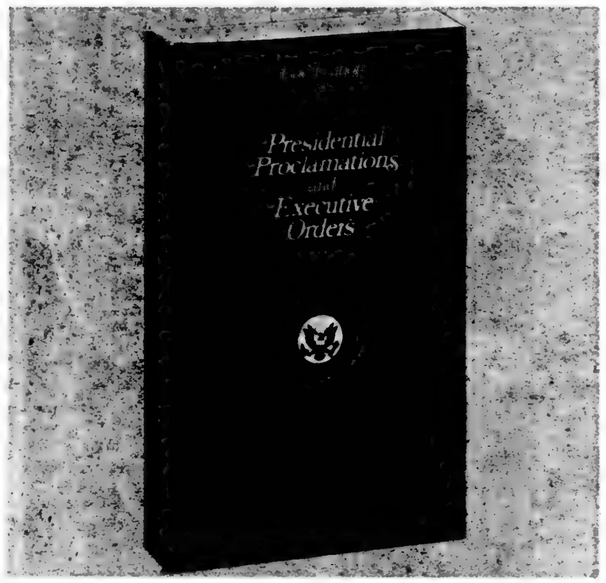

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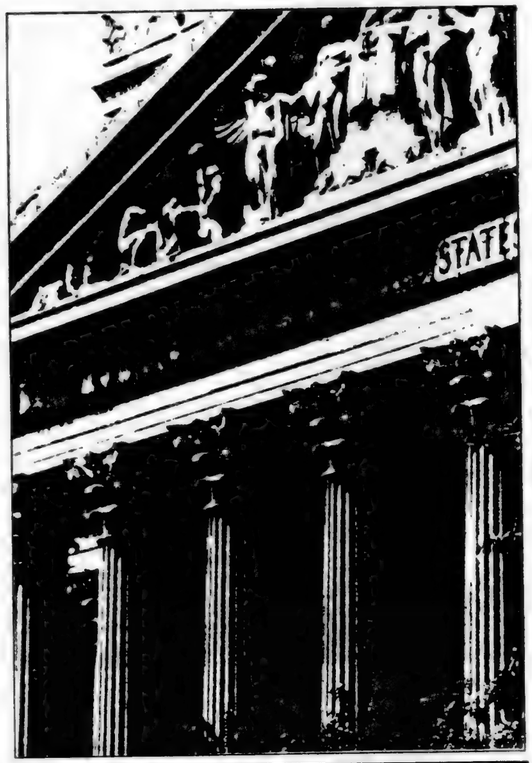

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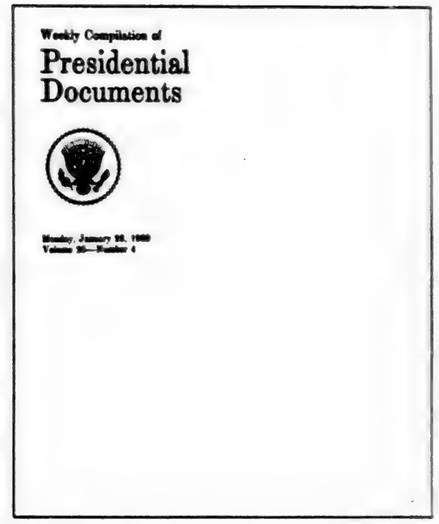

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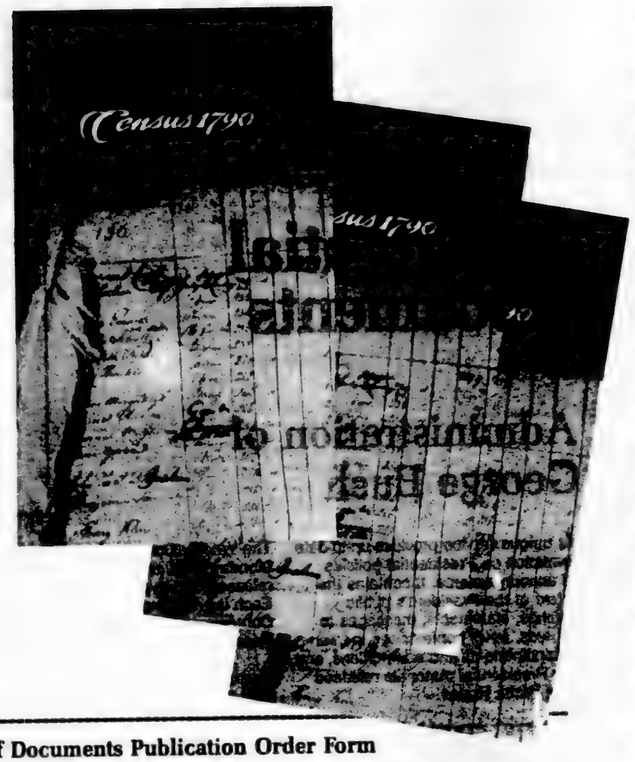

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Rules and Regulations

Federal Register
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Wednesday, June 12, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. 91-069]

Commuted Traveltime Periods, Louisiana; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Correction of final rule.

SUMMARY: We are correcting an error that appeared in a final rule published in the **Federal Register** and effective on March 18, 1991 (56 FR 11349-11350, Docket Number 90-254). The final rule amended the regulations concerning overtime services provided by employees of Plant Protection and Quarantine (PPQ) by removing and adding commuted traveltime allowances for travel between various locations in Arkansas, Kansas, Louisiana, Missouri, and Texas. In FR Doc. 91-6380, page 11350, first column, the first entry under Louisiana was inadvertently partially omitted and should be corrected to read "Barksdale AFB, Shreveport" in the "Location covered" column, "Natchitoches" in the "Served from" column, and "3½" in the "Metropolitan Area—Outside" column.

FOR FURTHER INFORMATION CONTACT: Paul R. Eggert, Director, Resource Management Support, PPQ, APHIS, USDA, room 458, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7764.

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

Accordingly, 7 CFR part 354 is corrected as follows:

1. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 2260, 49 U.S.C. 1741; 7 CFR 2.17, 2.51 and 371.2(c).

2. In the table in § 354.2, the first entry under Louisiana is corrected to read as follows:

§ 354.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

(In hours)

Location covered	Served from—	Metropolitan area	
		Within	Outside
Remove:			
Louisiana:			
Barksdale AFB, Shreveport	Natchitoches		3½

Done in Washington, DC, this 6th day of June 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-13965 Filed 6-11-91; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Parts 948, 953, and 958

[Docket No. FV-91-281]

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates under Marketing Orders 948, 953, and 958 for the 1991-92 fiscal period. Authorization of these budgets will permit the Colorado Potato Administrative Committee, Northern Colorado Office (Area 3), the Southeastern Potato Committee, and the Idaho-Eastern Oregon Onion Committee (committees) to incur expenses that are reasonable and necessary to administer the programs. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATES: June 1, 1991, through May 31, 1992 (§ 953.248) and July 1, 1991, through June 30, 1992 (§ 948.208 and § 958.235).

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone 202-447-2020.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement No. 97 and Order No. 948 (7 CFR part 948), both as amended, regulating the handling of Irish potatoes grown in Colorado, Marketing Agreement No. 104 and Order No. 953 (7 CFR part 953), both as amended, regulating the handling of Irish potatoes grown in Southeastern States (Virginia and North Carolina), and Marketing Agreement No. 130 and Order No. 958 (7 CFR part 958), both as amended, regulating the handling of onions grown in designated counties of

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Idaho and Malheur County, Oregon. The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 18 handlers of Colorado Area III potatoes under Marketing Order No. 948, and approximately 95 potato producers. There are approximately 60 handlers of Southeastern potatoes under Marketing Order No. 953, and approximately 150 potato producers. Also, there are approximately 35 handlers of Idaho-Eastern Oregon onions under Marketing Order No. 958, and approximately 450 onion producers. Small agricultural producers have been defined by the Small BusinessAdministration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the producers and handlers may be classified as small entities.

The budgets of expenses for the 1991–92 fiscal period were prepared by the Colorado Potato Administrative Committee, Northern Colorado Office (Area 3), the Southeastern Potato Committee, and the Idaho-Eastern Oregon Onion Committee, the agencies responsible for local administration of the orders, and submitted to the Department of Agriculture for approval. The members of these committees are handlers and producers of Colorado potatoes, Southeastern potatoes, and Idaho-Oregon onions. They are familiar with the committees' needs and with the costs for goods and services in their local areas and are thus in a position to formulate appropriate budgets. The budgets were formulated and discussed in public meetings. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rates recommended by the committees were derived by dividing anticipated expenses by expected shipments of potatoes and onions. Because these rates will be applied to actual shipments, they must be established at rates that will provide sufficient income to pay the committees' expenses.

The Colorado Potato Administrative committee, Northern Colorado Office (Area 3) met on April 11, 1991, and unanimously recommended a 1991–92 budget of $4,335, about the same as last year's budget. In Colorado, both a State and Federal marketing order operate simultaneously. The State order authorizes promotion, including paid advertising, which the Federal order does not. Administrative expenses that are shared are divided so that 85 percent is paid under the State and 15 percent under the Federal order. All promotion and advertising expenses are financed under the State order.

The 1991–92 recommended assessment of $0.0025 per hundredweight of potatoes is a decrease from last year's $0.005 rate. This rate, when applied to anticipated fresh market shipments of 826,500 hundredweight, will yield $2,066 in assessment revenue. Additional money to be received from the Federal-State Inspection Service for rent ($360) and income from interest ($450), plus $1,459 from the reserves, will result in total revenues of $4,335 which will be adequate to cover budgeted expenses. Funds at the beginning of the 1991–92 fiscal period, estimated at $7,276, will be within the maximum permitted by the order of two fiscal periods' expenses.

The Southeastern Potato Committee met on April 18, 1991, and unanimously recommended a 1991–92 budget of $11,000, the same as last year. Major expense items include committee staff salaries and travel expenses. The committee also unanimously recommended an assessment rate of $0.0025 per hundredweight, a decrease from last season's rate of $0.0075. Production for the 1991–92 season could not be estimated at this time. However, the $21,000 reserve will be adequate to cover the expenses incurred. Given the assessment rate decrease, funds remaining at the end of the 1991–92 fiscal period should be within the maximum permitted by the order of one fiscal period's expenses.

The Idaho-Eastern Onion Committee met on April 9, 1991, and unanimously recommended a 1991–92 budget of $891,565, $58,351 more than the previous year. Increases in office salaries, promotion and advertising, car rental, and capital improvements would be partially offset by decreases in contingency and research expenses. The committee also unanimously recommended an assessment rate of $0.12 per hundredweight, an increase from last season's rate of $0.11. This rate, when applied to anticipated fresh market shipments of 7,200,000 hundredweight, will yield $864,000. This, along with $25,000 in interest income and $2,565 from the committee's authorized reserve, will be adequate to cover budgeted expenses. Funds at the beginning of the 1991–92 fiscal period, estimated at $331,188, will be within the maximum permitted by the order of one fiscal period's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the **Federal Register** on May 20, 1991 (56 FR 23031). That document contained a proposal to add § 948.206, § 953.235, and § 958.235 to authorize expenses and establish assessment rates for the committees. That rule provided that interested persons could file comments through May 30, 1991. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rates to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis. The 1991–92 fiscal period for the Southeastern Potato Committee began on June 1, and the 1991–92 fiscal period for the Colorado Potato Administrative Committee, Northern Colorado Office (Area 3) and the Idaho-Eastern Oregon Onion Committee begins on July 1, and the marketing orders require that the rates of assessment for the fiscal period apply to all assessable potatoes and onions handled during the fiscal period. In addition, handlers are aware of these actions which were recommended by the committees at public meetings.

List of Subjects in 7 CFR Parts 948, 953, and 958

Marketing agreements, Onions, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 948, 953, and 958 are hereby amended as follows:

1. The authority citation for 7 CFR parts 948, 953, and 958 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 948—IRISH POTATOES GROWN IN COLORADO

2. A new § 948.206 is added to read as follows:

Note: This section will not appear in the code of Federal Regulations.

§ 948.206 Expenses and assessment rate.

Expenses of $4,335 by the Colorado Potato Administrative Committee, Northern Colorado office (Area 3) are authorized, and an assessment rate of $0.0025 per hundredweight of potatoes is established for the fiscal period ending June 30, 1992. Unexpended funds may be carried over as a reserve.

PART 953—IRISH POTATOES GROWN IN SOUTHEASTERN STATES

3. A new § 953.248 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 953.248 Expenses and assessment rate.

Expenses of $11,000 by the Southeastern Potato committee are authorized, and an assesament rate of $0.002s per hundredweight of potatoes is established for the fiscal period ending May 31, 1992. Unexpended funds may be carried over as a reserve.

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO; AND MALHEUR COUNTY, OREGON

4. A new § 958.235 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 958.235 Expenses and assessment rate.

Expenses of $891,565 are authorized, and an assessment rate of $0.12 per hundredweight of onions is established for the fiscal period ending June 30, 1992. Unexpended funds may be carried over as a reserve.

Dated: June 6, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–13964 Filed 6–11–91; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 209

[INS No. 1426–91]

Adjustment Procedures for Aliens Granted Asylum

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule is being published by the Immigration and Naturalization Service to implement section 104 of the Immigration Act of 1990, Public Law 101–649, (November 29, 1990), which amended procedures to be used in filing for adjustment to lawful permanent resident status under section 209(b) of the Immigration and Nationality Act, as amended by the Refugee Act of 1980. This rule establishes the availability of adjustment without numerical restriction for certain asylee adjustment applicants, the increase from 5,000 to 10,000 of the annual limitation on asylee adjustments, and that certain asylees may be able to adjust to permanent resident status even though they are no longer refugees due to a change in circumstances in their country of origin.

DATES: This interim rule is effective July 12, 1991. Written comments must be submitted on or before July 29, 1991.

ADDRESSES: Please submit comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Records Systems Division, Immigration and Naturalization Service, 425 Eye Street NW., room 5304, Washington, DC 20536. To ensure proper handling, please reference the INS No. 1426–91 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Marilyn Lee, Senior Supervisory Asylum Officer, Immigration and Naturalization Service, 425 Eye Street NW., room 1203, Washington, DC 20536, telephone (202) 514–5496.

SUPPLEMENTARY INFORMATION: Section 104 of the Immigration Act of 1990 includes a provision increasing the number of asylee adjustments to lawful permanent resident status allowed each year under section 209(b) of the Immigration and Nationality Act from 5,000 to 10,000. The law also provides for the adjustment of certain aliens who have been granted asylum, but whose country conditions have changed so that they no longer continue to be a refugee, as that term is defined in section 101(a)(42) of the Immigration and Nationality Act and who were or would be qualified for adjustment as of November 28, 1990, but for the requirements of one year of physical presence and that the alien continues to be a refugee or a spouse or child of such refugee. These aliens may be adjusted and are exempt from the numerical limitations of section 209(b) of that Act, provided they were granted asylum prior to November 29, 1990. Section 104 of the Immigration Act of 1990 also exempts from numerical limitation all asylees who filed for adjustment prior to June 1, 1990.

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the "good cause" exception found at 5 U.S.C. 553(d). The reason and the necessity for immediate implementation of this interim rule is to carry out the provisions of section 104 of the Immigration Act of 1990, Public Law 101–649, which became effective November 29, 1990. This will allow qualifying aliens who were granted asylum to be adjusted to lawful permanent resident status upon publication of the interim rule. Comments will be fully considered and required changes will be incorporated into the final rule.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612. The information collection requirements contained in this rule have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The clearance number for the information collections contained in this rule is OMB Control No. 1115–0066. Modifications to this information collection have been forwarded to the Office of Management and Budget for their review and clearance.

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List of Subjects in 8 CFR Part 209

Administrative practice and procedure, Aliens, Asylum, Immigration, Refugees, Reporting and recordkeeping requirements.

Accordingly, part 209 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 209—ADJUSTMENT OF STATUS OF REFUGEES AND ALIENS GRANTED ASYLUM

1. The authority citation for part 209 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1157, 1158, and 1159.

2. Section 209.2 is amended by:
a. Adding introductory text;
b. Revising paragraph (a);
c. Removing, in paragraph (b), in the last sentence, the term "became" and adding the term "is";
d. Removing, in paragraph (c), in the first sentence, the phrase "without fee";
e. Revising, in paragraph (c), the third and fourth sentences; and
f. Revising, in paragraph (f), the last sentence to read as follows:

§ 209.2 Adjustment of status of alien granted asylum.

The provisions of this section shall be the sole and exclusive procedure for adjustment of status by an asylee admitted under section 208 of the Act whose application is based on his or her asylee status.

(a) *Eligibility.* (1) Except as provided in paragraph (a)(2) of this section, the status of any alien who has been granted asylum in the United States may be adjusted by the district director to that of an alien lawfully admitted for permanent residence, provided the alien:

(i) Applies for such adjustment;

(ii) Has been physically present in the United States for at least one year after having been granted asylum;

(iii) Continues to be a refugee within the meaning of section 101(a)(42) of the Act, or is the spouse or child of a refugee;

(iv) Has not been firmly resettled in any foreign country; and

(v) Is admissible to the United States as an immigrant under the Act at the time of examination for adjustment without regard to paragraphs (14), (15), (20), (21), (25), and (32) of section 212(a) of the Act, and (vi) has a refugee number available under section 207(a) of the Act.

If the application for adjustment filed under this part exceeds the refugee numbers available under section 207(a) of the Act for the fiscal year, a waiting list will be established on a priority basis by the date the application was properly filed.

(2) An alien, who was granted asylum in the United States prior to November 29, 1990 (regardless of whether or not such asylum has been terminated under section 208(b) of the Act), and is no longer a refugee due to a change in circumstances in the foreign state where he or she feared persecution, may also have his or her status adjusted by the district director to that of an alien lawfully admitted for permanent residence even if he or she is no longer able to demonstrate that he or she continues to be a refugee within the meaning of section 101(a)(42) of the Act, or to be a spouse or child of such a refugee or to have been physically present in the United States for at least one year after being granted asylum, so long as he or she is able to meet the requirements noted in paragraphs (a)(1)(i), (iv), and (v) of this section. Such persons are exempt from the numerical limitations of section 209(b) of the Act. However, the number of aliens who are natives of any foreign state who may adjust status pursuant to this paragraph in any fiscal year shall not exceed the difference between the per country limitation established under section 202(a) of the Act and the number of aliens who are chargeable to that foreign state in the fiscal year under section 202 of the Act. Aliens who applied for adjustment of status under section 209(b) of the Act before June 1, 1990, are also exempt from its numerical limitation without any restrictions.

* * * * *

(c) *Application.*

* * * * *

Except as provided in paragraph (a)(2) of this section, the application must also be supported by evidence that the applicant has been physically present in the United States for at least one year. If an alien has been served with an order to show cause or placed under exclusion proceedings, the application can be filed and considered only in proceedings under section 242 or 236 of the Act.

* * * * *

(f) *Decision.*

* * * * *

If the application is approved, the district director shall record the alien's admission for lawful permanent residence as of the date one year before the date of the approval of the application, but not earlier than the date of the approval for asylum in the case of an applicant approved under paragraph (a)(2) of this section.

Dated: May 17, 1991.

Gene McNary,

Commissioner.

[FR Doc. 91-13482 Filed 6-11-91; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 166

[Docket No. 88-168]

Swine Health Protection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the swine health protection regulations by removing all references to "Deputy Administrator" and replacing them with references to "Administrator." We are also removing all references to "Veterinary Services" and replacing them with references to "Animal and Plant Health Inspection Service." These changes are warranted so the regulations will accurately reflect that the Administrator of the agency holds the primary authority and responsibility for various decisions under the regulations.

EFFECTIVE DATE: June 12, 1991.

FOR FURTHER INFORMATION CONTACT: Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301-436-8682.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 166 concern swine health protection. Before the effective date of this document, these regulations indicated that the Deputy Administrator, Veterinary Services, of the Animal and Plant Health Inspection Service was the official responsible for various decisions made according to the regulations. We are revising 9 CFR part 166 to indicate that the primary authority and responsibility for various decisions under these regulations belongs to the Administrator of the agency. We are making similar revisions in all other APHIS regulations. These revisions will be published in separate **Federal Register** documents.

We are removing all references to "Deputy Administrator" and replacing them with references to "Administrator," and removing references to "Veterinary Services" and replacing them with references to "Animal and Plant Health Inspection Service (APHIS)." We are also adding a definition of "Administrator." Further, we are removing the definitions of "Deputy Administrator" and "Veterinary Services" because those terms are no longer used in the regulations.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 533, notice of proposed rulemaking and opportunity to comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by Public Law 96-354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

These programs/activities under 9 CFR part 166 are listed in the Catalog of Federal Domestic Assistance under No. 10.025 and are subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 166

African swine fever, Animal diseases, Foot-and-mouth disease, Garbage, Hog cholera, Hogs, Swine vesicular disease, Vesicular exanthema of swine.

Accordingly, we are amending 9 CFR part 166 as follows:

PART 166—SWINE HEALTH PROTECTION

1. The authority citation for part 166 continues to read as follows:

Authority: 7 U.S.C. 3802, 3803, 3804, 3808, 3809, 3811; 7 CFR 2.17, 2.51, and 371.2(d).

§ 166.1 [Amended]

2. In § 166.1, the definitions of "Deputy Administrator" and "Veterinary Services" are removed; a definition of "Administrator" is added, in alphabetical order; and the definition of "Animal and Plant Health Inspection Service" is revised, to read as follows:

§ 166.1 Definitions in alphabetical order.

* * * * *

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

* * * * *

§ 166.1 [Amended]

3. In § 166.1, in the definition of "Area Veterinarian in Charge", remove the words "Veterinary Services" both times they appear and add, in each place, the word "APHIS".

§ 166.12 [Amended]

4. In § 166.12(b), footnote 1, remove the words "Assistant Deputy Administrator, Animal Health Programs, Veterinary Services".

§ 166.15 [Amended]

5. In § 166.15 paragraph (e) remove the words "Veterinary Services," both times they appear; and remove the words "room 870," and add, in their place, the words "Swine Diseases Staff,".

§§ 166.1, 166.10, 166.11, and 166.14 [Amended]

6. In addition to the amendments set forth above, in 9 CFR part 166, remove the word "Deputy" in the following places:

(a) Section 166.1, definition of "Area Veterinarian in Charge";

(b) Section 166.10(a) and (d);

(c) Section 166.11(b) the four times it appears and (c); and

(d) Section 166.14(b).

Done in Washington, DC, this 6th day of June 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-13966 Filed 6-11-91; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 25

[Docket No. 91-3]

Community Reinvestment Act

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its Community Reinvestment Act of 1977 (CRA) regulations found at 12 CFR part 25. This final rule implements changes to the CRA caused by the passage of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA). This final rule establishes procedures applicable to national banks governing public access to the bank's CRA Performance Evaluation and CRA rating assigned by the OCC during the examination process.

This final rule require national banks to place their CRA Performance Evaluation in their public comment file (a file they maintain under the existing regulation) within 30 business days of receipt from the OCC. National banks must make the evaluation available for public inspection and provide copies of the evaluation, upon request, to interested parties. Banks providing copies of the evaluation may charge a reasonable fee for reproduction and mailing costs. National banks also must amend their current CRA Public Notice to reflect the public availability of the evaluation. This final rule is intended to enhance public information regarding the CRA activities and performance of national banks.

EFFECTIVE DATE: July 12, 1991.

FOR FURTHER INFORMATION CONTACT: Dennis R. Deischer or Aida M. Plaza, National Bank Examiners, Compliance Management, (202) 287-4265, or Robert J. Roth, Attorney, Legal Advisory Services Division, (202) 447-1883.

SUPPLEMENTARY INFORMATION:

Background

Section 1212 of FIRREA, Public Law 101-73, 103 Stat. 183, 511 (1989) amended the CRA, title VIII, Public Law No. 95-128, 91 Stat. 1147 (12 U.S.C. 2901 *et seq.*) to provide for written evaluations of an institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods. The amendment also requires that the Federal banking agencies use a four-tier descriptive rating system in their assessment of CRA performance of the institutions they supervise in place of the five-tier rating system in use prior to the amendment. FIRREA required public disclosure of both the written evaluation and CRA rating for examinations commenced on or after July 1, 1990. In addition to these changes, the amendment requires that each written evaluation must contain findings and conclusions with respect to each assessment factor designed to measure a bank's CRA performance. Finally, the written evaluation must contain the institution's CRA rating and a statement describing the basis for the rating.

Notwithstanding the public nature of the written evaluations, FIRREA permits

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the Federal banking agencies to maintain as confidential, information provided in confidence to examiners by members of the public, officers or employees of the institution, or any other person or organization, as well as information the agencies believe is too sensitive or speculative for public disclosure. In addition, FIRREA permits the agencies to provide information solely to the examined institution when it determines that doing so will promote the objectives of the CRA.

On December 22, 1989, the Financial Institutions Examination Council (FFIEC) published for comment in the Federal Register (54 FR 52914) a proposal to implement all aspects of these amendments. The FFIEC received and reviewed 129 comments from the public, financial institutions, research organizations, governmental agencies, and members of Congress. After carefully considering the comments, the FFIEC adopted the Uniform Interagency Community Reinvestment Act Final Guidelines for Disclosure of Written Evaluations and Revised Assessment Rating System." See 55 FR 18163 (May 1, 1990).

On June 28, 1990, the OCC, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of Thrift Supervision published for comment in the Federal Register (55 FR 26624) a joint temporary rule implementing those aspects of FIRREA governing public access to CRA Performance Evaluations and CRA ratings. The comment period ended on August 27, 1990. The agencies issued a joint temporary rule to ensure that the changes became effective by July 1, 1990; the effective date mandated by FIRREA. Although the joint temporary rule was effective upon publication, each agency requested public comment prior to issuing a final rule.

Purpose

This final rule adopts the requirements in the joint temporary rule concerning the manner in which national banks must make their CRA Performance Evaluation public. The OCC intends this final rule to enhance information available to the public regarding the CRA activities and performance of national banks. Each national bank must place its most recent CRA Performance Evaluation in its CRA public comment file within 30 business days of receipt. The CRA public comment file is required by the current CRA regulation. Each national bank must also make the CRA Performance Evaluation available, at a minimum, in the public comment file at the bank's head office and, if appropriate, at a designated office located in each additional delineated community. Each national bank must revise the CRA Notice it is already required to maintain in the public lobby of each of its offices, other than off-premises electronic deposit facilities, to inform the public of the availability of the evaluation and where it can be obtained. Each national bank must make copies of the evaluation available upon request for a reasonable fee not to exceed the cost of reproduction and mailing (if applicable).

Discussion of Comment Letters

In response to the joint temporary rule, the OCC received four comment letters. Among the issues raised by the commenters was a concern that the language contained in the joint temporary rule authorizing banks to charge a "reasonable fee not to exceed the cost of reproduction and mailing (if applicable)" would result in inadvertent violations of the regulation since the term "reasonable" is subject to interpretation. One commenter sought to impose a "safe harbor" provision authorizing a $.10 per page copying charge and a $2.00 mailing fee. After evaluating this alternative, the OCC has determined that establishing a set fee schedule is unnecessary at this time and that the "reasonable fee" language provides sufficient guidance. The OCC's intent is to ensure that no national bank charges unreasonable or exorbitant fees for providing copies of the evaluations to the public. This provision is similar to the current provision regarding the CRA statement. Since the regulation was adopted in 1978, 12 CFR 25.4(f) has required that national banks provide a copy of the CRA statement to the public upon request, and allowed banks to charge a fee "not to exceed the cost of reproduction".

A commenter advocated wider availability of the CRA Performance Evaluation throughout the various communities an institution might serve. In the joint temporary rule the OCC required that each national bank, at a minimum, place the evaluation in the CRA public file at the head office and at one designated office in each local community. The OCC believes that this approach provides adequate availability. Each national bank must keep a complete CRA public file at its head office. Additionally, if the bank has more than one local community, it must keep those materials relating to each local community at a designated office in that community. This ensures that, at a minimum, a national bank's CRA written evaluation and CRA rating are available to the public at one location in each designated local community served by the bank and at the head office. The bank's head office file must contain materials relating to all local communities served by the bank.

A commenter raised technical points regarding whether a national bank's response for the public to a CRA Performance Evaluation must be placed in the CRA public file in light of the language in the temporary rule. In order to clarify the agency's intentions and eliminate any possible ambiguity in the regulatory language, the OCC is revising paragraphs 25.5(a)(3) and 25.5(c)(3).

First, paragraph 25.5(a)(3) is being revised to strike the reference to public responses to CRA Performance Evaluations. The removal of this language makes it clear that an institution that did prepare a public response to a CRA Performance Evaluation would not be required to place it in the public comment files it must maintain.

Second, paragraph 25.5(c)(3) is being revised to clarify that if an institution prepares a public response to a CRA Performance Evaluation (which it is encouraged but not required to do), it also may make the response available in the same manner as it would make the CRA Performance Evaluation available. CRA Performance Evaluations must be available in the CRA public comment file at the head office of the institution and in the public comment file maintained at a designated office in each local community. The OCC does not intend to mandate any particular availability or location requirements for these optional public responses.

A commenter suggested that requiring the CRA Performance Evaluation to be placed in the public file within 30 business days of receipt failed to provide banks with sufficient time to formulate a response. The commenter advocated extending the filing period to 90 days. The OCC believes that the 30 business day period provides banks with sufficient opportunity to respond to the issues addressed in the evaluation.

Finally, a commenter advocated exempting banks with less than $150 million in total assets from making the CRA Performance Evaluation available in a designated office in each local community as well as the head office. The CRA applies to national banks regardless of their size. Therefore, the OCC believes it is inappropriate to tailor the regulation along such lines.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Comptroller of the Currency certifies that these changes will not have a significant economic impact on a substantial number of small entities. This final rule imposes only minimal costs on national banks, regardless of size.

Executive Order 12291

The OCC has determined that this final rule will not constitute a "major rule" and therefore does not require a Regulatory Impact Analysis. This final rule will not (1) have an annual effect on the economy of $100 million or more, (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. This final rule imposes only minimal costs on national banks and lets them recover reasonable mailing and copying costs associated with public disclosure of CRA evaluations.

List of Subjects in 12 CFR Part 25

Community development, Consumer protection, Credit, Investments, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, part 25 of chapter I of title 12 of the Code of Federal Regulations is amended as set forth below:

PART 25—[AMENDED]

Accordingly, the interim rule amending 12 CFR part 25 which was published at 55 FR 28624–28628 on June 28, 1990, is adopted as a final rule with the following changes:

1. The authority citation for part 25 continues to read as follows:

Authority: 12 U.S.C. 21, 22, 26, 27, 30, 36, 161, 215, 215a, 481, 1814, 1816, 1828(c), and 2901 (as amended).

2. In § 25.5, paragraphs (a)(3) and (c)(3) are revised to read as follows:

§ 25.5 Files of public comments and recent CRA statements.

(a) * * *

(3) Any response to the comments under paragraph (a)(1) of this section that the bank wishes to make; and

* * * * * *

(c) * * *

(3) The most recent CRA Performance Evaluation shall, at a minimum, be available at the head office and at an office in each local community so designated under paragraph (c)(2) of this section. The bank may respond to the CRA Performance Evaluation and may make the response available in the same manner as the CRA Performance Evaluation.

* * * * * *

Dated: May 30, 1991.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 91-13157 Filed 6-11-91; 8:45 am]

BILLING CODE 4810-33-M

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Docket No. R-0691]

Community Reinvestment Act

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending its regulation to implement changes in the Community Reinvestment Act of 1977 (CRA) contained in Title XII of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA). This final rule establishes procedures applicable to state member banks governing public access to CRA Performance Evaluations and CRA ratings assigned by the Federal Reserve during the examination process.

This final rule requires state member banks to place their CRA Performance Evaluation and CRA rating in their public comment file (which they are already required to maintain under existing regulations) within 30 business days of receipt. State member banks must make the evaluation and rating available for public inspection and provide copies of the evaluation, upon request, to interested parties. Banks may charge a reasonable fee for reproduction of the evaluation and mailing costs, if applicable. State member banks must also amend their CRA Public Notices to reflect the public availability of the evaluation and rating.

EFFECTIVE DATE: July 11, 1991.

FOR FURTHER INFORMATION CONTACT: Janice Scandella, Review Examiner, at (202) 452-3946; for the hearing impaired *only*, contact Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background

Section 1212 of the FIRREA, Public Law 101-73, 103 Stat. 183, 511 (1989) amended the CRA, Title VIII, Public Law 95-128, 91 Stat. 1147 (12 U.S.C. 2901 *et seq.*) to provide for written evaluations of an institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods. It also requires the financial supervisory agencies to use a four-tiered descriptive rating system in their assessments of CRA performance of the institutions they supervise in place of the five-tiered numerical rating system in use prior to the amendment. FIRREA requires the public disclosure of both the written evaluation and CRA rating assigned for examinations commenced on or after July 1, 1990. In addition, it requires that each written evaluation contain findings and conclusions with respect to each of the assessment factors designed to measure CRA performance. Finally, the written evaluation must contain the institution's rating and a statement describing the basis for the rating.

Notwithstanding the public nature of the written evaluations, FIRREA stipulates that the financial supervisory agencies maintain as confidential information provided in confidence to the examiners by members of the public, officers or employees of the institution, or any other person or organization, as well as information the agencies believe is too sensitive or speculative for public disclosure. FIRREA also permits the agencies to provide information solely to the examined institution when they determine that doing so will promote the objectives of the CRA.

On December 22, 1989, the Federal Financial Institutions Examination Council (FFIEC) published for public comment proposals to implement all aspects of these amendments (54 FR 52914). The FFIEC received 129 comments from financial institutions, the public, research organizations, governmental agencies, and members of the Congress. Based on review of the comments received, the FFIEC adopted the "Uniform Interagency Community Reinvestment Act Final Guidelines for Disclosure of Written Evaluations and Revised Assessment Rating System". *See* 55 FR 18163 (May 1, 1990).

On June 28, 1990, the Board, the Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, and Office of Thrift Supervision, published for public comment a joint temporary rule implementing all aspects of the FIRREA amendments to CRA (55 FR 26624). The agencies issued the temporary rule to ensure that the changes became effective by the effective date mandated by the Act. Although the temporary rule took effect

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July 1, 1990, the agencies requested public comment prior to issuing a final rule. The comment period ended on August 27, 1990.

Purpose

This final rule adopts, with only minor modification, the requirements in the temporary rule concerning the manner in which state member banks must make their written CRA Performance Evaluation and CRA rating public. The Federal Reserve intends this final rule to enhance the information available to the public regarding the CRA activities and performance of state member banks. Each state member bank must place its most recent CRA Performance Evaluation containing its rating in its CRA public comment file, already required by existing regulation, within 30 business days of receipt. Each state member bank must also make the CRA Performance Evaluation available, at a minimum, in the public comment file at the bank's head office and, if applicable, at a designated office located in each additional delineated community. Each state member bank must revise the CRA Notice it is already required to maintain in the public lobby of each of its offices, other than off-premises electronic deposit facilities, to inform the public of the availability of the evaluation and where it can be obtained. Each state member bank must make copies of the evaluation available upon request, and may charge a fee not exceeding the cost of reproduction and mailing (if applicable).

Discussion Of Comment Letters

The Board received eight comments in response to the temporary rule. Among the issues raised by the commenters was a concern that the language contained in the temporary rule authorizing banks to charge a "reasonable fee not to exceed the cost of reproduction and mailing (if applicable)" would result in inadvertent violations of the regulation since the term "reasonable" is subject to interpretation. One commenter sought to impose a "safe harbor" provision authorizing a $.10 per page copying charge and $2.00 mailing fee. After evaluating this alternative, the Board determined that establishing a set fee schedule is unnecessary at this time and that the "reasonable fee" language provides sufficient guidance. The Board's intent is to ensure that no state member bank charges unreasonable or exorbitant fees for providing copies of the evaluations to the public. This provision is similar to the current provision regarding the CRA statement. Since the regulation was adopted in 1978, 12 CFR 228.4(f) has required that state member banks provide a copy of the CRA statement to the public upon request, and allowed banks to charge a fee "not to exceed the cost of reproduction." To the Board's knowledge this has not caused any problems of interpretation.

A commenter advocated wider availability of the evaluations throughout the various communities an institution might serve. In the temporary rule the Board required that each state member bank, at a minimum, place the evaluation in the CRA public file at the head office and at one designated office in each local community. The Board believes that this approach provides adequate availability. Each state member bank must keep a complete CRA public file at its head office. Additionally, if the bank has more than one local community, it must keep those materials relating to each local community at a designated office in that community. This ensures that, at a minimum, a state member bank's written CRA evaluation and CRA rating are available to the public at one location in each designated local community served by the bank and at the head office. The bank's head office file must contain materials relating to all local communities served by the bank.

Another commenter expressed concern that the regulation required the bank to place any prepared response to the CRA evaluation in the public file. This was not the intent of the temporary rule. The final rule has been modified to make clear that it does not require, but merely permits, the bank to respond to the CRA evaluation and place its response in the public file should it so desire. Paragraphs 228.5(a)(3) and 228.3(c)(3) of the rule have been revised to eliminate any possible ambiguity in the regulatory language. In responding to a request by the public for a copy of the CRA evaluation, the final rule also allows a bank to include its written response to the evaluation.

A commenter suggested that requiring the CRA Performance Evaluation to be placed in the public file within 30 business days of receipt failed to provide banks with sufficient time to formulate a response. The commenter advocated extending the filing period to 90 days. The Board believes that the 30 business day period provides banks with sufficient opportunity to respond to the issues addressed in the evaluation.

Finally, a commenter advocated exempting banks with less than $150 million in total assets from making the evaluation available in a designated office in each local community as well as the head office. The CRA applies to state member banks regardless of their size. Therefore, the Board believes it is inappropriate to tailor the regulation along such lines.

Regulatory Flexibility Act

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Board certifies that this final rule will have an insignificant economic impact on small entities. This final rule imposes only minimal costs on state member banks, regardless of size.

List of Subjects in 12 CFR Part 228

Community development; Consumer protection; Credit; Federal Reserve System; Investments; Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, part 228 of chapter I of title 12 of the Code of Federal Regulations is amended as set forth below:

PART 228—[AMENDED]

Accordingly, the interim rule amending 12 CFR part 228 which was published at 55 FR 26624-26628 on June 28, 1990, is adopted as a final rule with the following changes:

1. The authority citation for part 228 continues to read as follows:

Authority: Community Reinvestment Act of 1977 [title VIII, Pub. L. 95-128, 91 Stat. 1147 (12 U.S.C. 2901 et seq.)]; 12 U.S.C. 321, 325, 1814, 1816, 1828, 1842.

2. In § 228.5, paragraphs (a)(3) and (c)(3) are revised to read as follows:

§ 228.5 Files of public comments and recent CRA statements.

(a) * * *

(3) Any response to the comments under paragraph (a)(1) of this section that the bank wishes to make; and

* * * * *

(c) * * *

(3) The most recent CRA Performance Evaluation shall, at a minimum, be available at the head office and at an office in each local community so designated under paragraph (c)(2) of this section. The bank may respond to the CRA Performance Evaluation and may make the response available in the same manner as the CRA Performance Evaluation.

* * * * *

Board of Governors of the Federal Reserve System, June 4, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-13662 Filed 6-11-91; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

RIN 3064-AB09

Community Reinvestment

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is adopting, as a final rule and with only a minor modification, the temporary (interim) rule that took effect July 1, 1990 governing public access to Community Reinvestment Act (CRA) Performance Evaluations and CRA ratings assigned by the FDIC during the bank examination process.

This final rule requires, as did the temporary rule, that banks place their CRA Performance Evaluation and CRA rating in their public comment file (a file they already maintain under the existing regulation) within 30 business days of receipt from the FDIC. Banks must make the evaluation and rating available for public inspection and provide copies of the evaluation, upon request, to interested parties. Banks providing copies of the evaluation and rating may charge a reasonable fee for reproduction and mailing costs. Banks also must amend their current CRA Public Notice to reflect the public availability of the evaluation and rating. This final rule is intended to enhance public information regarding the CRA activities and performance of banks and to comply with changes to the Community Reinvestment Act resulting from enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).

EFFECTIVE DATE: July 12, 1991.

FOR FURTHER INFORMATION CONTACT: Patricia A. McCormick, Fair Lending Analyst, Office of Consumer Affairs, (202) 898-3538, or Ken A. Quincy, Chief, Compliance and Special Review Section, Division of Supervision, (202) 898-6753.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this rule has been approved by the Office of Management and Budget under control number 3064-0092, pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) The collection consists of the following elements: (1) Each insured State nonmember bank must adopt a CRA statement for each delineated local community and subject each statement to review by the institution's board of directors at least annually; (2) each insured State nonmember bank must maintain files for public inspection consisting of (a) public comments relating to any CRA statement or to the institution's performance in meeting community credit needs, (b) any of the institution's responses to the public comments, (c) any CRA statements in effect during the last two years and (d) a copy of the public section of the most recent CRA Performance Evaluation prepared by the FDIC; and (3) each insured State nonmember bank must provide, in its public lobby, a public CRA Notice. The estimated annual burden for these recordkeeping requirements is: Number of Recordkeepers: 7,919; Annual Hours per Recordkeeper: 2; Total Recordkeeping Hours: 15,838.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Assistant Executive Secretary (Administration), Room F-400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429; and to the Office of Management and Budget, Paperwork Reduction Project (3064-0092), Washington, DC 20503.

A. Background

Section 1212 of FIRREA, Public Law 73-101, 103 Stat. 183, 511 (1989) amended the CRA, title VIII, Public Law No. 95-128, 91 Stat. 1147 (12 U.S.C. 2901 *et seq.*). It provides for written evaluations of an institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods. The amendments also require that the federal financial institution supervisory agencies use a four-tier descriptive rating system in their assessments of CRA performance of the institutions they supervise in place of the five-tier rating system in use prior to the amendments. In addition, the amendments require public disclosure of the written CRA Performance Evaluation and CRA rating on and after July 1, 1990. The amendments further require that the evaluation must contain findings and conclusions with respect to each assessment factor used to measure a bank's CRA performance. Finally, the evaluation must contain the institution's CRA rating and a statement describing the basis for the rating.

FIRREA permits the federal banking agencies to maintain as confidential, information provided in confidence to examiners by members of the public, officers or employees of the institution, or any other person or organization, as well as information the agencies believe is too sensitive or speculative for public disclosure. In addition, FIRREA permits the agencies to provide information solely to the examined institution when it determines that doing so will promote the objectives of the CRA.

On December 22, 1989, the Federal Financial Institutions Examination Council ("FFIEC") published for comment in the **Federal Register** (54 FR 52914) a proposal to implement all aspects of these amendments. The FFIEC received and reviewed 129 comments from the public, financial institutions, research organizations, governmental agencies, and members of Congress. After carefully considering the comments, the FFIEC adopted the "Uniform Interagency Community Reinvestment Act Final Guidelines for Disclosure of Written Evaluations and Revised Assessment Rating System" (Refer to 55 FR 18163 (May 1, 1990)).

On June 28, 1990, the Office of the Comptroller of the Currency; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, published in the **Federal Register** (55 FR 26624) a joint temporary (interim) rule implementing those aspects of FIRREA governing public access to CFR Performance Evaluations and ratings. The agencies issued a temporary rule to ensure that the changes became effective by July 1, 1990, the effective date mandated by FIRREA. Although the temporary rule took effect on July 1, 1990, each agency requested public comment prior to issuing a final rule. The comment period ended on August 27, 1990.

This final rule adopts, with only a minor modification, the requirements in the temporary rule concerning the manner in which banks must make their written CRA Performance Evaluation and CRA rating public on and after July 1, 1990. The FDIC intends this final rule to enhance information available to the public regarding the CRA activities and performance of banks. Each bank must place its most recent CRA evaluation and rating in its CRA public comment file within 30 business days of receipt. The CRA public comment file is required by the current CRA regulation. Each bank must also make the CRA evaluation and rating available, at a minimum, in the public comment file at the bank's head office and at a designated office located in each additional delineated community. Upon placement of the first CRA evaluation in its public file, each bank must revise the CRA Notice maintained in the public lobby of each of its offices to inform the public of the availability of the CRA

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evaluation and where it can be obtained. Each bank must make copies of the evaluation available upon request for a reasonable fee not to exceed the cost of reproduction and mailing.

B. Discussion of Comments

In response to the temporary rule, the FDIC received five comment letters. Among the issues raised by the commenters was a concern that the language contained in the temporary rule authorizing banks to charge a "reasonable fee not to exceed the cost of reproduction and mailing (if applicable)" would result in inadvertent violations of the regulation since the term "reasonable" is subject to interpretation. One commenter sought to impose a "safe harbor" provision authorizing a $.10 per page copying charge and $2.00 mailing fee. After evaluating this alternative, the FDIC has determined that establishing a set fee schedule is unnecessary at this time and that the "reasonable fee" language provides sufficient guidance. The intent is to ensure that no bank charges unreasonable or exorbitant fees for providing copies of the CRA evaluations to the public. This provision is similar to the current provision regarding the CRA statement. Since the regulation was adopted in 1978, § 345.4(f) has required that banks provide a copy of the CRA statement to the public upon request, and allowed banks to charge a fee "not to exceed the cost of reproduction."

One commenter advocated wider availability of the CRA evaluations throughout the various communities an institution might serve. The temporary rule required that each bank, at a minimum, place the evaluation in the CRA public file at the head office and at one designated office in each local community. The FDIC believes that this approach provides adequate availability. Each bank must keep a complete CRA public file at its home office. Additionally, if the bank has more than one local community, it must keep those materials relating to each local community at a designated office in that community. This ensures that, at a minimum, a bank's CRA evaluation and rating are available to the public at one location in each designated local community served by the bank and at the head office. The bank's home office file must contain materials relating to all local communities served by the bank.

Another commenter expressed concern that the regulation required the bank to place any prepared response to the CRA evaluation in the public file. This was neither the intent nor the effect of the temporary rule; nor is it the result of the final rule. Rather, the rule does not require, but merely permits, the bank to respond to the CRA evaluation and place its response in the public file should it so desire. Sections 354.5 (a)(3) and 345.3(c)(3) of the rule have been revised to eliminate any possible ambiguity in the regulatory language. In responding to a request by the public for a copy of the CRA evaluation, the final rule also allows a bank to include its written response to the evaluation.

One commenter suggested that requiring the CRA evaluation to be placed in the public file within 30 business days of receipt provided banks with insufficient time to formulate a response. The commenter advocated extending the filing period to 90 days. The FDIC believes that the 30 business day period provides banks with sufficient opportunity to respond to the issues addressed in the CRA evaluation and provides an added incentive for banks to monitor closely their CRA compliance.

One commenter advocated exempting banks with less than $150 million in total assets from making the CRA evaluation available in a designated office in each local community as well as the head office. The CRA applies to all banks regardless of their size. Therefore, the FDIC believes it is inappropriate to tailor the regulation along such lines.

Finally, a commenter expressed concern that the regulation does not address the use of CRA ratings in bank advertising or other marketing activities. Since the CRA rating is publicly available, the FDIC believes it is inappropriate to place limitations on the prudent use of this information. However, the FDIC believes that an institution's use of the CRA rating must not be misleading in any way and must clearly represent that the rating reflects CRA performance, not financial condition. The regulation does stipulate that a bank's CRA Performance Evaluation, as prepared and transmitted to the bank by the FDIC, may not be altered or abridged in any manner.

Other Matters

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the FDIC certifies that these changes will not have a significant economic impact on a substantial number of small entities. This final rule imposes only minimal costs on banks, regardless of size.

List of Subjects in 12 CFR Part 345

Banks, Banking, Community development, Consumer protection, Credit, Investments, Reporting and recordkeeping requirements.

Accordingly, the temporary (interim) rule amending 12 CFR part 345 which was published at 55 FR 26624, 26627–26628 on June 26, 1990, is adopted as a final rule with the following change:

PART 345—COMMUNITY REINVESTMENT

1. The authority citation for part 345 continues to read as follows:

Authority: Community Reinvestment Act of 1977 (title VIII of the Housing Development Act of 1977, Pub. L. 95–128; 91 Stat. 1147, et seq. (12 U.S.C. 2901 note)).

2. In § 345.5, paragraphs (a)(3) and (c)(3) are revised and a parenthetical is added at the end of the section to read as follows:

§ 345.5 Files of public comments and recent CRA statements.

(a) * * *

(3) Any response to the comments under paragraph (a)(1) of this section that the bank wishes to make; and

* * * * *

(c) * * *

(3) The most recent CRA Performance Evaluation shall, at a minimum, be available at the home office and at the office in each local community so designated under paragraph (c)(2) of this section. The bank may respond to the CRA Performance Evaluation and may make the response available in the same manner as the CRA Performance Evaluation.

* * * * *

(Approved by the Office of Management and Budget under control number 3064–0092)

By order of the Board of Directors.

Dated at Washington, DC, this 26th day of March, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91–13214 Filed 6–11–91; 8:45 am]

BILLING CODE 6714–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563e

[No. 91–228]

RIN 1550–AA26

Community Reinvestment Act

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision ("OTS") is amending its Community Reinvestment Act ("CRA") regulations found at 12 CFR part 563e. This final rule implements changes to the CRA caused by the passage of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA") Public Law 101–73, 103 Stat. 183. This final rule establishes procedures applicable to savings associations governing public access to the associations' CRA Performance Evaluations and CRA ratings assigned by the OTS during the examination process.

This final rule requires savings associations to place the CRA Performance Evaluation and CRA rating in a public comment file, (a file they maintain under the existing regulation) within 30 business days of receipt from the OTS. Savings associations must make the evaluation available for public inspection and provide copies of the evaluation, upon request, to interested parties. Savings associations providing copies of the evaluation may charge a reasonable fee for reproduction and mailing costs. Savings associations also must amend their current CRA Public Notice to reflect the availability of the evaluation. This final rule is intended to enhance public information regarding the CRA activities and performance of savings associations.

EFFECTIVE DATE: July 12, 1991.

FOR FURTHER INFORMATION CONTACT: Jerauld C. Kluckman, Deputy Assistant Director for Policy, Specialized Programs, (202) 906–5775, or Timothy R. Burniston, Program Manager, Compliance, Specialized Programs, (202) 906–5629, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background

Section 1212 of FIRREA amended the CRA, title VIII, Public Law No. 95–128, 91 Stat. 1147 (12 U.S.C. 2901 et seq.) to provide for written evaluations of an institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods. The amendment also requires that the federal banking agencies use a four-tier descriptive rating system in their assessments of CRA performance of the institutions they supervise in place of the five-tier rating system in use prior to the amendment. FIRREA required public disclosure of both the written evaluation and CRA rating for examinations commenced on or after July 1, 1990. In addition to these changes, the amendment requires that each written evaluation must contain findings and conclusions with respect to each assessment factor designed to measure an association's performance. Finally, the written evaluation must contain the association's CRA rating and a statement describing the basis for the rating.

Notwithstanding the public nature of the written evaluations, FIRREA permits the agencies to maintain as confidential, information provided in confidence to the examiners by members of the public, officers or employees of the institution, or any other person or organization, as well as information the agencies believe is too sensitive or speculative for public disclosure. In addition, FIRREA permits the agencies to provide information solely to the examined institution when it determines that doing so will promote the objectives of the CRA.

On December 22, 1989, the Financial Institutions Examination Council ("FFIEC") published for public comment a proposal to implement all aspects of these amendments. 54 FR 52914 (Dec. 22, 1989). The FFIEC received and reviewed 129 comments from financial institutions, the public, research organizations, governmental agencies, and members of Congress. After carefully considering the comments, the FFIEC adopted the "Uniform Interagency Community Reinvestment Act Final Guidelines for Disclosure of Written Evaluations and Revised Assessment Rating System." See 55 FR 18163 (May 1, 1990).

On June 26, 1990, the OTS, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of the Comptroller of the Currency, Treasury, published for public comment a joint temporary rule implementing those aspects of FIRREA governing public access to CRA written evaluations and ratings. 55 FR 26624 (June 26, 1990). The comment period ended on August 27, 1990. The agencies issued a temporary rule to ensure that the changes became effective by July 1, 1990, the effective date mandated by FIRREA. Although the temporary rule was effective upon publication, each agency requested public comment prior to issuing a final rule.

Purpose

This final rule adopts the requirements in the temporary rule concerning the manner in which savings associations must make their written CRA Performance Evaluations public. The OTS intends this final rule to enhance information available to the public regarding the CRA activities and performance of savings associations. Each savings association must place its most recent CRA written evaluation in its CRA public comment file within 30 business days of receipt. The CRA public comment file is required by the current CRA regulation. Each savings association must also make the CRA written evaluation and rating available, at a minimum, in the public comment file at the savings association's home office and, if appropriate, at a designated office located in each additional delineated community. Each savings association must revise the CRA Notice it is already required to maintain in the public lobby of each of its offices, other than off-premises electronic deposit facilities, to inform the public of the availability of the evaluation and where it can be obtained. Each savings association must make copies of the evaluation available upon request for a reasonable fee not to exceed the cost of reproduction and mailing (if applicable).

Discussion of Comment Letters

In response to the temporary rule, the OTS received four comment letters. In addition to comments received by the agency, the OTS reviewed and considered comments received on the temporary rule by the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of the Comptroller of the Currency. The major comments relating to the method for making the written CRA Performance Evaluations and CRA ratings public are addressed below along with an explanation of the regulatory changes found in this final rule.

A commenter advocated wider availability of the evaluations throughout the various communities an institution might serve. In the joint temporary rule, the OTS required that savings associations place the evaluation, at a minimum, in the CRA public file at the home office and at one designated office in each local community. The OTS believes that this approach provides adequate availability. Each savings association must keep a complete CRA public file at the home office. Additionally, if the association has more than one local community, it must keep those materials relating to each local community at a designated office in that community. This ensures that, at a minimum, a savings association's CRA written evaluation and CRA rating are available to the public at one location in each designated local community served by the association and at the home office. The association's home office file must

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contain materials relating to all local communities served by the association.

A commenter raised technical points regarding whether a savings association's public response to a CRA Performance Evaluation must be placed in the CRA public file in light of the language in the temporary rule. In order to clarify the agency's intentions and eliminate any possible ambiguity in the regulatory language, the OTS is revising §§ 563e.5(a)(3) and 563e.5(c)(3).

First, § 563e.5(a)(3) is being revised to strike the reference to public responses to CRA Performance Evaluations. The removal of this language makes it clear that an association that did prepare a public response to a CRA Performance Evaluation would not be required to place it in the public comment files it must maintain.

Second, § 563e.5(c)(3) is being revised to clarify that if an association prepares a public response to a CRA Performance Evaluation (which it is encouraged but not required to do) it also may make the response available in the same manner as it would make the CRA Performance Evaluation available. CRA Performance Evaluations must be available in the CRA public comment file at the home office of the association and in the public comment file maintained at a designated office in each local community. The OTS does not intend to mandate any particular availability or location requirements for these optional public responses.

A commenter suggested that the agencies clarify the manner in which CRA ratings can be marketed by financial institutions for promotional purposes. The agencies have decided not to include any regulatory language regarding the use of CRA ratings in any marketing efforts at this time. The agencies expect, however, that financial institutions that use such ratings will do so in a prudent and professional manner that does not improperly reflect the underlying CRA Performance Evaluation.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this rule will not have a significant economic impact on a substantial number of small entities. This final rule imposes only minimal costs on savings associations, regardless of size.

Executive Order 12291

The OTS has determined that this final rule will not constitute a "major rule" and therefore does not require a Regulatory Impact Analysis. This final rule will not (1) have an annual effect on the economy of $100 million or more, (2) result in a major increase in costs of prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. This final rule imposes only minimal costs on savings associations and lets them recover reasonable mailing and copying costs.

Lists of Subjects in 12 CFR Part 563e

Community development, Credit, Investments, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the temporary rule amending 12 CFR part 563e which was published at 55 FR 26624–26628 on June 28, 1990, is adopted as a final rule with the following changes:

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

1. The authority citation for part 563e continues to read as follows:

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 802, 91 Stat. 1147, as amended (12 U.S.C. 2901 et seq).

2. Section 563e.5 is amended by revising paragraphs (a)(3) and (c)(3) to read as follows:

§ 563e.5 Files of public comments and recent CRA statements.

(a) * * *

(3) Any response to the comments under paragraph (a)(1) of this section that the association wishes to make; and

* * * * *

(c) * * *

(3) The most recent CRA Performance Evaluation shall, at a minimum, be available at the home office and at an office in each local community so designated under paragraph (c)(2) of this section. The association may respond to the CRA Performance Evaluation and may make the response available in the same manner as the CRA Performance Evaluation.

* * * * *

By the Office of Thrift Supervision.

Dated: April 18, 1991.

Timothy Ryan,

Director.

[FR Doc. 91-13205 Filed 6-11-91; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-111-AD; Amendment 39-7034; AD 91-13-03]

Airworthiness Directives; McDonnell Douglas Model DC-9-80 Series Airplanes and Model MD-88 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-9-80 series airplanes and Model MD-88 airplanes, which requires inspection of the rudder control tab crank for cracks, and replacement, if necessary. This amendment is prompted by a report of failure of the rudder control tab crank and discovery of cracks in another. This condition, if not corrected, could result in the inability to deflect the rudder manually. An undetected failure of the rudder control tab crank, in conjunction with the loss of the right-hand side hydraulic system fluid, would severely compromise airplane directional control during landing in crosswind and/or engine-out conditions.

DATES: Effective June 27, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 27, 1991.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Business Unit Manager of Publications, C1-HCO (54-60).

This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Ali Bahrami, Aerospace Engineer, Airframe Branch, ANM-120L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806; telephone (213) 988-5236.

SUPPLEMENTARY INFORMATION: An operator of McDonnell Douglas Model DC-9-80 series airplanes has reported a failure of the rudder tab control crank, P/N 3955539-1. The failure was discovered during a routine walk-around inspection. The rudder tab was found deflected to one side, with the rudder system in the hydraulically-powered mode where the rudder tab would normally be faired with the rudder. During the operator's subsequent fleet inspection, an additional cracked rudder control tab crank was discovered. The part is associated with the composite rudder installation. The cause of failure has been determined by the manufacturer to be metal fatigue. This condition, if not corrected, could result in the inability to deflect the rudder manually. An undetected failure of the rudder control tab crank, in conjunction with loss of the right-hand side hydraulic system fluid, would severely compromise airplane directional control during landing in crosswind and/or engine-out conditions.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A27-320, dated May 10, 1991, which describes procedures for visual and eddy current inspections of the rudder control tab crank assembly for cracks, and replacement of the crank assembly if cracks are found.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires one-time visual and eddy current inspections of the rudder control tab assembly for cracks, and replacement, if necessary, in accordance with the service bulletin previously described. In addition, operators are required to submit a report of their inspection findings to the FAA.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget, under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 120-0056.

This is considered interim action. The FAA may consider further rulemaking to require additional corrective action to ensure that the subject rudder control tab cranks will not fail due to fatigue cracking.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rule Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-13-03. McDonnell Douglas: Amendment 39-7034. Docket No. 91-NM-111-AD.

Applicability: Model DC-9-80 series airplanes and Model MD-88 airplanes; Fuselage Numbers 1269 and subsequent, equipped with a non-metallic, composite rudder assembly; certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent loss of rudder control, accomplish the following:

(a) Within 5 days after the accumulation of 3,000 total flight hours, or within 5 days after the effective date of this AD, whichever occurs later, visually inspect the rudder control tab crank assembly, P/N 3955539-1, for cracks, in accordance with the accomplishment instructions of McDonnell Douglas ASB 27-320, dated May 10, 1991. If the rudder control tab crank assembly is cracked, prior to further flight, remove and replace the part with a new like part. Accomplishment of the inspection requirements of paragraph (b) of this AD within 5 days after the accumulation of 3,000 total flight hours, or within 5 days after the effective date of this AD, whichever occurs later, satisfies the requirements of this paragraph.

(b) Within 60 days after accumulation of 3,000 total flight hours, or within 60 days after the effective date of this AD, whichever occurs later, inspect the rudder control tab crank assembly for cracks, using an eddy current inspection method, in accordance with the accomplishment instructions of McDonnell Douglas ASB 27-320, dated May 10, 1991. If the rudder control tab crank assembly is cracked, prior to further flight, remove and replace the part with a new like part.

(c) Within 10 calendar days after performing the inspection required by paragraphs (a) or (b) of this AD, submit a report of any discrepancies discovered, to the Manager, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425. The report must include the airplane's serial number, total flight hours, and total number of landings.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

(f) The inspection and replacement requirements shall be done in accordance with McDonnell Douglas Alert Service Bulletin A27-320, dated May 10, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Business Unit Manager of Publications, C1-HCO (54-60). Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California, or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39-7034, AD 91-13-03) becomes effective on June 27, 1991.

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Issued in Renton, Washington, on May 30, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-13902 Filed 6-11-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-106-AD; Amendment 39-7035; AD 91-13-04]

Airworthiness Directives; McDonnell Douglas Model DC-9-87 (MD-87) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all McDonnell Douglas Model DC-9-87 (MD-87) series airplanes, which requires rerouting a wire assembly located on the right side of the airplane. This amendment is prompted by a report of an electrical fire above the aft main cabin ceiling panels caused by an electrical wire bundle chafing against a ceiling panel metal retention clip and subsequently arcing. This condition, if not corrected, could result in loss of engine controls and/or the passengers becoming asphyxiated due to smoke inhalation.

DATES: Effective June 27, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 27, 1991.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, Douglas Aircraft Company, P.O. Box 1771, Long Beach, California 90801, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1-L5B (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Elvin K. Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM-132L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5344.

SUPPLEMENTARY INFORMATION: The FAA has received a report that smoke was observed coming from the ceiling in the passenger compartment forward of the aft galley on a McDonnell Douglas Model DC-9-87 airplane, while on the ground just prior to passenger loading. Subsequent investigation revealed that numerous wires contained in a wire assembly located on the right side of the airplane between stations Y=1022.00 and Y=1062.000 at longeron 3 were burned and damaged due to the wire assembly chafing against a ceiling metal retention clip and subsequently arcing. This condition, if not corrected, could result in loss of engine controls and/or the passengers becoming asphyxiated due to smoke inhalation.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A24-123, dated March 19, 1991, which describes a modification to reroute the wire assembly located on the right side of aircraft between stations Y=1022.000 and Y=1062.000 at longeron 3. Installation of this modification will preclude the subject chafing problem.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires a modification to reroute the pertinent wire assembly in accordance with the service bulletin previously described.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-13-04. McDonnell Douglas: Amendment 39-7035. Docket No. 91 NM-106-AD.

Applicability: Model DC-9-87 (MD-87) series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent chafing and subsequent arcing of wires which could cause a fire resulting in the loss of engine controls and/or passengers becoming asphyxiated due to smoke inhalation, accomplish the following:

(a) Within 30 days after the effective date of this AD, modify the airplane by rerouting the wire assembly located on the right side of the airplane between stations Y=1022.000 and Y=1062.000 at longeron 3 in accordance with McDonnell Douglas Alert Service Bulletin A24-123, dated March 19, 1991.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(d) The modification requirements shall be done in accordance with McDonnell Douglas Alert Service Bulletin A24-123, dated March 19, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, Douglas Aircraft Company, P.O. Box 1771, Long Beach, California 90801, Attention: Business Unit Manager, Service Bulletins, Service Change and Modification Kits, Product Support, Mail Code 73-30. Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California, or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39-7035, AD 91-13-04) becomes effective June 27, 1991.

Issued in Renton, Washington, on May 30, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-13901 Filed 6-11-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

RIN 1218-AA 82

Occupational Exposure to Formaldehyde

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Extension of administrative stay.

SUMMARY: On December 4, 1987, the Occupational Safety and Health Administration (OSHA) published a final rule in the **Federal Register** on occupational exposure to formaldehyde (29 CFR 1910.1048, 52 FR 46168). In response to numerous public comments which indicated confusion about the hazard warning provisions of the newly revised Formaldehyde Standard, on December 13, 1988, OSHA announced an administrative stay of paragraphs (m)(1)(i) through (m)(4)(ii) for a period of nine months. OSHA also announced its intention to revoke paragraphs (m)(1)(i) through (m)(4)(ii) and invite comments on replacing them with the Hazard Communication Standard (29 CFR 1910.1200) or another equally protective alternative which would be less confusing to the public (53 FR 50198).

The stay was subsequently extended (54 FR 35639, August 29, 1989; 55 FR 24070, June 13, 1990; 55 FR 32616, August 10, 1990; 55 FR 51698, December 17, 1990; 56 FR 10377, March 12, 1991). OSHA is completing its re-evaluation of the need to stay these paragraphs. More time is needed to complete this evaluation. Consequently the stay is being extended for an additional 60 days so that OSHA may complete this process. While this stay is in effect, affected employers must continue to comply with the provisions of OSHA's Hazard Communication Standard.

EFFECTIVE DATE: The administrative stay of 29 CFR 1910.1048 (m)(1)(i) through (m)(4)(ii) will be effective until August 8, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, U.S. Department of Labor, room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 523-8151.

Authority and Signature

This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington DC 20210.

This action is taken pursuant to section 4(b), 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1597, 1599; 29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 1-90 (55 FR 9033) and 29 CFR part 1911.

List of Subjects in 29 CFR Part 1910

Formaldehyde, Occupational safety and health, Chemicals, Cancer, Health, Risk assessment.

PART 1910—[AMENDED]

§ 1910.1048 (Stayed in part)

Therefore, 29 CFR 1910.1048 (m)(1)(i) through (m)(4)(ii) is stayed until August 8, 1991.

Signed at Washington, DC this 7th day of June 1991.

Gerard F. Scannell,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 91-14026 Filed 6-7-91; 4:21 pm]

BILLING CODE 4510-26-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD1-91-065]

Drawbridge Operation Regulations; Danvers River, MA

AGENCY: Coast Guard, DOT.

ACTION: Final temporary rule.

SUMMARY: At the request of the Massachusetts Department of Public Works (MDPW), the Coast Guard is implementing temporary regulations for 60 days from 1 July through 29 August 1991, for the Beverly-Salem SR1A Bridge, and the Massachusetts Bay Transportation Authority (MBTA)/AMTRAK Bridge both between Beverly and Salem, Massachusetts, at mile 0.0 and 0.05, respectively and the Essex County Kernwood bridge between Peabody and Beverly, Massachusetts at mile 1.0, all over the Danvers River, by permitting the draw of the SR1A Bridge to remain closed during the morning and evening rush hours, discontinuing the noon hour closure, and by revising the hours when advance notice for an opening is required during the nighttime hours at all three bridges. This temporary regulation is being implemented to examine the effect on vehicular and marine traffic during the above periods and provides for openings for public vessels of the United States, commercial vessels and vessels in distress. This action will accommodate the need of vehicular traffic, and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This temporary regulation becomes effective 1 July 1991 and terminates on 29 August 1991.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668-7170.

SUPPLEMENTARY INFORMATION: This Final Temporary Regulation is published in accordance with 33 CFR 117.43, in order to evaluate the drawbridge operating requirements during the prime recreational boating season. In accordance with 5 U.S.C. 533, a notice of proposed rulemaking was not published for these regulations and good cause exists for making them effective in less than 30 days after **Federal Register** publication. Publishing a Notice of Proposed Rulemaking and delaying its effective date would be contrary to the public interest since implementation of these regulations would not permit evaluation during the prime recreational boating season in July and August where the greatest impacts and benefits would occur.

A Notice of Proposed Rulemaking (CGD1-91-016) has been prepared and appears in the Proposed Rule Section of this **Federal Register**. Interested persons are invited to participate in that rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal.

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Drafting Information

The drafters of this proposal are John McDonald, Project Officer, and Lieutenant John Gately, project attorney.

Discussion of Final Temporary Regulations

The SR1A, the MBTA/AMTRAK and the Essex County Kernwood bridges provide a vertical clearance of 19', 12' and 17' at MHW and 10', 3' and 8' at MLW, respectively. The current regulations require that the bridges open on signal; except that from 12 a.m. to 8 a.m. the draws shall open as soon as possible after notice is given, and the SR1A bridge need not be opened between 11:30 a.m. and 1 p.m. from June 1 through October 31. The temporary regulations for these bridges are that the draws open on signal except that from 12 a.m. to 5 a.m. daily and all day December 25 and January 1 that the draws shall open as soon as possible after notice is given. Additionally, that the draw of the SR1A bridge, need not open from 7:30 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m., Monday thru Friday, except federal holidays for the passage of recreational vessels. Commercial vessels, public vessels of the United States, state and local vessels used for public safety or vessels in a distress shall be passed as soon as possible at any time.

Economic Assessment and Certification

These temporary regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact is expected to be so minimal that a full regulatory evaluation is unnecessary. This is based on the fact that the regulation will not prevent the mariners from transiting the bridges but requires scheduling of transits around the morning and evening rush hours and advance notice for openings late at night. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Federalism Implication Assessment

This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that this proposed regulation does not have sufficient federalism implications to warrant preparation of a federal assessment.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATING REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. From 1 July 1991 through 29 August 1991, § 117.595 is amended by suspending paragraphs (a) and (b) and adding paragraphs (c) through (e) and the current Danvers River entry under the State of Massachusetts in Appendix A to Part 117 is suspended and a new entry added to read as follows: Because this is a temporary rule, this paragraph will not be codified in the CFR.

§ 117.595 Danvers River.

* * * * *

(c) The following requirements apply to all bridges across the Danvers River:

(1) Public vessels of the United States, state or local vessels used for public safety, commercial vessels, and vessels in distress shall be passed through the draw of each bridge as soon as possible without delay at any time. The opening signal from these vessels is four or more short blasts of a whistle or horn or a radio request.

(2) The owners of these bridges shall provide and keep in good legible condition clearance gauges for each draw with figures not less than 12 inches high designed, installed and maintained according to the provisions of § 118.160 of this chapter.

(3) Trains and locomotives shall be controlled so that any delay in opening the draw span shall not exceed ten minutes. However, if a train moving toward the bridge has crossed the home signal for the bridge before the signal requesting opening of the bridge is given, that train may continue across the bridge and must clear the bridge interlocks before stopping.

(4) Except as provided in paragraphs (d) through (e) of this section, the draws shall open on signal.

(d) The draw of the Beverly-Salem SR1A Bridge, mile 0.0 between Salem and Beverly, MA shall operate as follows:

(1) The draw shall open on signal, except that from 12 midnight to 5 a.m. daily and all day on December 25 and January 1, the draw shall open as soon as possible after notice is given to the drawtenders either at the bridge during the time the operators are on duty or by calling the advance notice telephone number posted.

(2) Except as provided in paragraph (a)(1) of this section, the draw need not be opened Monday through Friday except federal holidays from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m.

(e) The draws of the Massachusetts Bay Transit Authority (MBTA)/ AMTRAK Bridge at mile 0.05 between Salem and Beverly and the Essex County Kernwood bridge at mile 1.0 between Peabody and Beverly, MA, shall open on signal, except that from 12 midnight to 5 a.m. daily and all day on December 25 and January 1, the draw shall open as soon as possible after notice is given to the drawtenders either at the bridge during the time the operators are on duty or by calling the advance notice telephone number posted.

APPENDIX A TO PART 117—Drawbridges Equipped with Radiotelephones

Waterway	Mile	Location	Bridge name and owner	Call sign	Calling channel	Working channel
•	•	•	•	•	•	
Massachusetts						
•	•	•	•	•	•	
Danvers River	0.0	Beverly/Salem	SR1A, MDPW	Pending	16	13
	0.05	Beverly/Salem	MBTA/AMTRAK, MBTA/AMTRAK	WRD 625	16	13
	1.0	Peabody/Beverly	Essex County Kernwood, MDPW	Pending	16	13
•	•	•	•	•	•	

Dated: May 30, 1991.

P.L. Collom,

Capt. USCG, Commander, First Coast Guard District, Acting.

[FR Doc. 91–13561 Filed 6–11–91; 8:45 a.m.]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 9F3799/R1118; FRL–3928–2]

RIN 2070–AB78

Pesticide Tolerance for Clofentezine

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the insecticide clofentezine (3,6-bis(2-chlorophenyl)-1,2,4,5-tetrazine) in or on apricots and cherries at 1.0 part per million (ppm) each. The tolerance was requested by Nor-Am Chemical Co. and establishes the maximum permissible level for residues of the insecticide in or on stone fruits.

EFFECTIVE DATE: Effective June 12, 1991.

ADDRESSES: Written objections, identified by the document control number, [PP 9F3799/R1118], must be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Product Manager (PM) 12, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-557-2386.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 9, 1990 (55 FR 19320), EPA issued a notice which announced that Nor-Am Chemical Co., P.O. Box 7495, 3509 Silverside Rd., Wilmington, DE 19803, had submitted a pesticide petition (PP 9F3799) to EPA proposing to amend 40 CFR part 180 by establishing a tolerance for residues of the insecticide clofentezine ([3,6-bis(2-chlorophenyl)-1,2,4,5-tetrazine]) in or on stone fruits at 1.0 ppm each.

There were no comments or requests for referral to an advisory committee received in response to the notice of filing.

The petition was subsequently amended on August 24, 1990, by revising the proposal for stone fruits to specify apricots and cherries only. A conditional registration for use of clofentezine on apricots and cherries is being issued concurrently. The conditional registration will automatically expire on September 30, 1993. The Agency has reviewed avian reproduction studies and found them to be deficient. The Agency is requiring that the avian reproduction be repeated. The chronic risks of clofentezine to avian species cannot be fully evaluated until new avian reproduction studies are submitted and reviewed by the Agency. However, because of the relatively low exposure rate and duration (only a single application is allowed), its low acute toxicity to birds and low acute and chronic toxicity to mammals, the Agency believes that the potential chronic effects to avian species which may occur during the conditional registration period would not be significant. The Agency has also identified two aquatic studies, an aquatic invertebrate life- cycle study and fish life-cycle study, that are needed to fully evaluate the potential chronic toxicity of clofentezine to aquatic organisms based on its ovicidal mode of action. Due to the rapid hydrolysis of the compound, the Agency does not expect chronic exposures to occur to aquatic animals. However, since transient exposures to reproducing adults, eggs, or developing embryos from clofentezine could cause some effects, the Agency is requiring the above studies.

The Agency is requiring that the restricted-use classification for clofentezine as a prudent measure in the absence of data to fully evaluate the chronic toxicity of clofentezine to aquatic and avian organisms. After the data described above have been submitted and evaluated the Agency will determine if a continued restricted-use classification is warranted for clofentezine.

The toxicological data considered in support of the tolerance include a 1-year dog feeding study with no-observed-effect level (NOEL) of 50 ppm (1.25 mg/kg/day) (effects observed at 1,000 and 20,000 ppm include elevated serum cholesterol and triglyceride levels); a mouse oncogenicity study which was negative at the doses tested, 50 ppm (7.5 mg/kg/day), 500 ppm (75 mg/kg/day), and 5,000 ppm (750 mg/kg/day); a multi-generation rat study with a NOEL of 400 ppm (20 mg/kg/day) (highest dose tested (HDT)); a rat teratology study which was negative at 3,200 mg/kg/day (HDT) and had a developmental NOEL of 3,200 mg/kg/day; a rabbit teratology study which was negative at 3,000 mg/kg/day (HDT) and also has a NOEL of 1,000 mg/kg/day for maternal toxicity (reduced body weight gain and food consumption) and developmental toxicity (reduced litter and fetal body weights); and a 2-year rat chronic feeding/oncogenicity study which showed an increase in the incidence of centrilobular hepatocyte hypertrophy and showed a statistically significant increase in thyroid follicular cell tumors in male rats at 400 ppm (20 mg/kg/day) (HDT). Gene mutation, chromosomal aberrations, and DNA damage tests were negative for genetic toxicity.

The registrant (Nor-Am) also submitted additional thyroid studies intended to show that there was an indirect mechanism for the follicular cell tumor associated with clofentezine's liver toxicity. The Agency has reviewed the data in accordance with criteria outlined in a draft document entitled, "Thyroid Follicular Cell Carcinogenesis: Mechanistic and Science Policy Consideration," prepared by the Technical Panel of the Agency's Risk Assessment Forum (December 15, 1987). While this document is still undergoing Agency review, and the assessment procedures set forth therein have not been adopted by the Agency, the draft does provide a useful framework in which to consider the issue. Although

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the additional thyroid function studies suggest the possibility of an indirect mechanism for follicular cell tumor induction that may be associated with clofentezine's liver toxicity, the Agency believes that additional data are necessary to more completely define the mechanism of clofentezine's thyroid tumor induction in terms of the criteria listed in the document cited above. Based on the rat chronic feeding/oncogenicity study, the Agency has classified clofentezine as a possible human carcinogen (Group C). The qualitative designation "C" refers to EPA's weight-of-the evidence classification, which in this case shows clofentezine to be a "possible human carcinogen." The classification is based on the Agency's "Guidelines for Carcinogenic Risk Assessment," published in the **Federal Register** of September 24, 1986 (51 FR 22992). The Agency believes a quantitative risk assessment based on the thyroid incidence is not appropriate for the following reasons:

1. The increased tumor incidence was marginally increased above the control incidence only at the highest dose tested (20 mg/kg/day) in the chronic feeding study.

2. The increased incidence was observed only in male rats.

3. The thyroid tumor incidence in the chronic feeding study's highest dose group (20 percent) was slightly greater than the historical range provided by limited-group data (7.5 to 15 percent) from two other studies.

4. The additional thyroid function studies suggest the possibility of an indirect mechanism for follicular cell tumor induction that may be associated with clofentezine's liver toxicity.

5. The mouse was negative for carcinogenic effects at all dose levels, i.e., 50, 500, and 5,000 ppm (equivalent to 7.5, 75, and 750 mg/kg/day, respectively).

6. There are no close structural analogs with carcinogenic concerns identified.

7. Clofentezine is not mutagenic in several acceptable studies.

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) also reviewed the weight-of-the-evidence consideration and classification of the oncogenic potential of clofentezine. Its review included additional thyroid studies submitted by Nor-Am that were available at that time. The SAP concluded that thyroid tumors in male rats from the chronic feeding/oncogenicity study with clofentezine did not provide adequate evidence of a potential carcinogenic hazard to humans, and that the carcinogenic potential of clofentezine belongs in Group D (not classifiable as to human carcinogenicity).

The Panel's interpretation was based on observed increases in thyroid-stimulation hormone (TSH) levels and the incidence of thyroid follicular cell hyperplasia which may be responses to decrease in blood levels of circulation thyroid hormones (triiodothyronine (T_3) and tretra-iodothyroxine (T_4)) observed in clofentezine-tested rats. This sequence of reduced circulating thyroid lead to thyroid tumors in rats, and the Panel noted, "Exposure to agents that cause this sequence in rats has not resulted in increased TSH, hyperplasia and thyroid tumors in humans." Therefore, the Panel concluded that there was inadequate data for suggesting human carcinogenicity of a quantitative risk assessment.

Nor-Am has since submitted additional thyroid studies intended to show the mechanism of clofentezine's thyroid tumor induction. The Agency has reviewed these data, but as previously stated, the Agency continues to believe that additional data are needed to more completely define the mechanism of clofentezine's thyroid tumor induction and that the available data are not sufficient to change the classification of clofentezine from Category "C" to Category "D". However, the Agency does agree with the SAP that a quantitative risk assessment is not appropriate.

Based on the 1-year dog feeding study with a NOEL of 1.25 mg/kg/day and using a safety factory of 100, the acceptable daily intake (ADI) for humans is 0.013 mg/kg of body weight/day. The theoretical maximum residue contribution (TMRC) for this chemical utilizes 4.0 percent of the ADI. The current action will contribute 1.000074 mg/kg/day of residue to human diet utilizing an additional 0.5 percent of the ADI. This results in a total utilization of 4.5 percent of the ADI.

The nature of the residue is understood. An adequate analytical method, high-performance liquid chromatography (HPLC), is avaliable for enforcement.

Because of the long lead time from establishing this tolerance to publication of the enforcement methodology in the Pesticide Analytical Manual, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: By mail: Calvin Furlow, Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Crystal Mall #2, rm. 242, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-557-4432.

There are currently no actions pending against the registration of this chemical. No secondary residues are expected to occur in meat, milk, poultry, or eggs from this use.

Based on the information cited above, the Agency has determined that the establishment of the tolerances by amending 40 CFR part 180 will protect the public health. Therefore, the tolerances are established as set forth with an expiration date of September 30, 1994. After receipt and evaluation the avian reproduction and aquatic studies, the Agency will consider establishing permanent tolerances without an expiration date for residues of this chemical.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk, at the address given above. The objections submitted must specify the provision of the regulation deemed objectionable and the other grounds for the objections. If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested and the requestor's contentions on each such issue. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements

Dated: May 23, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.446, by amending paragraph (b) by adding new entries for apricots and cherries, to read as follows:

§ 180.446 Clofentezine (3,6-bis(2-chlorophenyl)-1,2,4,5-tetrazine); tolerances for residues.

(b) * * *

Commodity	Parts per million
Apricots	1.0
Cherries	1.0

[FR Doc. 91-13523 Filed 6-11-91; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[PP 1F3942/R1113; FRL-3888-6]

RIN 2070-AB78

Exemption from the Requirement of a Tolerance for Gibberellins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the class of biochemical plant growth regulators known as gibberellins when used in or on certain raw agricultural commodities (RACs) when applied to growing crops at a rate of less than 20 grams of active ingredient per acre (20 g ai/A) per application. This regulation was requested by Abbott Laboratories.

EFFECTIVE DATE: This regulation becomes effective June 12, 1991.

ADDRESSES: Written objections, identified by the document control number, [PP 1F3942/R1113], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J.Taylor, Product Manager (PM) 25, Registration Division (H-7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1800.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of April 3, 1991 (56 FR 13642), that gave notice that Abbott Laboratories, 1401 Sheridan Rd., North Chicago, IL 60064-4000, had submitted pesticide petition (PP) 1F3942 proposing to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of the plant growth regulator GA_3 when used on the RAC mint (spearmint and peppermint).

There were no comments or requests for referral to an advisory committee received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered include an acute oral toxicity study (rats) with no deaths at 5,050 milligrams per kilogram (mg/kg); an acute dermal toxicity study (rabbit) with no deaths at 2,020 mg/kg; an acute inhalation toxicity study (rat) with no deaths at 3.82 milligrams per liter (mg/L); an acute eye irritation study (rat) showing "minimal effects clearing in less than 24 hours"; a dermal irritation study (rabbits) with a score of "mildly or slightly irritating"; and a dermal sensitization study (guinea pig) scored as "not a dermal sensitizer." All other toxicology data requirements, including subchronic and chronic feeding studies, oncogenicity, reproduction, teratology, and mutagenicity studies, are waived due not only to minimum (if any) health risks associated with gibberelins, but to proposed low-volume use patterns. Dietary exposure (residue chemistry) data requirements have also been waived because of the application rate. If the rate of application is less than 20 g ai/A/application, then dietary exposure data are not requried. In this case, the maximum single application rate is 10 g ai/A. Only one application per year is proposed. The analytical methods for enforcement purposes include high-performance liquid chromatography, spectrofluorimetry, and radioimmunoassay, which are available in the public literature, and a fluorimetric method is published in the Pesticide Analytical Manual, Vol. II.

Gibberellins, classified as a biochemical pesticide according to Pesticide Assessment Guidelines, Subdivision M, are naturally occurring compounds produced by plants and several species of fungi. Based on the low-volume use pattern, applicator exposure will be minute; therefore, adverse human effects are highly unlikely. Gibberellins are not expected to present an unacceptable hazard to humans, fish, and wildlife, or the environment.

The pesticide is considered useful for the purpose for which the exemption is sought. It is concluded that a tolerance for gibberellins is not necessary to protect the public health, and an exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk, at the address given above. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested and the requestor's contentions on each such issue. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities,

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Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 23, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.1098, an entry for mint is alphabetically added to the list of raw agricultural commodities; as revised the section reads as follows:

§ 180.1098 Gibberellins (GA_3); exemption from the requirement of tolerance.

Gibberellins (GA_3) is exempted from the requirement of a tolerance when used as a plant growth regulator at application rates less than 20 grams of active ingredient per acre (20 g ai/A) in or on the following raw agricultural commodities: Barley, beans, beets (sugar), broccoli, brussels sprouts, cabbage, cauliflower, corn (field, sweet, and popcorn), cotton, cucumber, grapefruit, lemons, lettuce, melons, mint (peppermint and spearmint), mustard greens, oats, onions, oranges, peanuts, peppers, potatoes, rice, rye, sorghum (milo), soybeans, spinach, squash, strawberries, sugarcane, tomatoes, turnips, and wheat.

[FR Doc. 91-13524 Filed 6-11-91; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[PP 0E3857, PP 0E3873, PP 0E3881/R1109;FRL-3881-8]

RIN 2070-AB78

Pesticide Tolerances for Glyphosate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes tolerances for the herbicide glyphosate and its metabolite in or on the following raw agricultural commodities: cocoa beans, genip, and cherimoya. This regulation was requested in petitions submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: This regulation becomes effective June 12, 1991.

ADDRESSES: Written objections, identified by the document control number, [PP 0E3857, PP 0E3873, PP 0E3881/R1109], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (H-7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 7, 1991 (56 FR 4960), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experimental Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted the listed pesticide petitions (PP's) to EPA on behalf of the named Agricultural Experiment Stations.

These petitions requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for combined residues of the herbicide glyphosate (N-(phosphonomethyl)glycine) and its metabolite amino-methylphosphonic acid (AMPA) in or on the raw agricultural commodities as follows:

1. *PP 0E3857.* On behalf of the Agricultural Experiment Station of Hawaii, in or on cocoa beans at 0.2 part per million (ppm).

2. *PP 0E3873.* On behalf of the Agricultural Experiment Station of Puerto Rico, in or on genip at 0.2 ppm.

3. *PP 0E3881.* On behalf of the Agricultural Experiment Station of California, in or on cherimoya at 0.2 ppm.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petitions and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk, at the address given above. The objections submitted must specify the provisions of the regulation deemed objectionable and the other grounds for the objections. If a hearing is granted, the objection must include a statement of the factual issue(s) on which a hearing is requested and the requestor's contentions on each such issue. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 10, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.364(a) is amended by adding and alphabetically inserting the raw agricultural commodities cherimoya, cocoa beans, and genip, to read as follows:

§ 180.364 Glyphosate; tolerance for residues.

(a) * * *

Commodity	Parts per million
Cherimoya	0.2
Cocoa beans	0.2
Genip	0.2

[FR Doc. 91-13525 Filed 6-11-91; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-300212A; FRL-3846-1]

Isopropalin; Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document revokes the tolerances listed in 40 CFR 180.313 for residues of the herbicide isopropalin (2,6-dinitro-*N,N*-dipropylcumidine) in or on the raw agricultural commodities peppers and tomatoes. EPA is taking this action to remove tolerances for residues of a pesticide for which the related registered food uses were voluntarily cancelled by the registrant before 1982.

EFFECTIVE DATE: This regulation becomes effective June 12, 1991.

ADDRESSES: Written objections, identified by the document control number, (OPP-300212A), may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Patricia Critchlow, Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-2226.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of May 9, 1990 (55 FR 19282), which proposed the revocation of tolerances under the Federal Food, Drug, and Cosmetic Act listed in 40 CFR 180.313 for residues of the herbicide isopropalin (2,6-dinitro-*N,N*-dinitropropylcumidine) in or on the raw agricultural commodities peppers and tomatoes.

No public comments or requests for referral to an advisory committee were received in response to the notice of proposed rulemaking.

Therefore, based on the information considered by the Agency and discussed in detail in the May 9, 1990 proposal and in this final rule, the Agency is hereby revoking the tolerances listed in 40 CFR 180.313 for residues of isopropalin in or on the raw agricultural commodities peppers and tomatoes.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk, at the address given above. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested and the requestor's contentions on each such issue. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested.

This document has been reviewed by the Office of Management and Budget as required by section 3 of Executive Order 12291.

Executive Order 12291

As explained in the proposal published May 9, 1990, the Agency has determined, pursuant to the requirements of Executive Order 12291, that the removal of these tolerances will not cause adverse economic impact on significant portions of U.S. enterprises.

Regulatory Flexibility Act

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164; 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. The reasons for this conclusion are discussed in the May 9, 1990 proposal.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 5, 1991.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.313 [Removed]

2. By removing § 180.313 *Isopropalin; tolerances for residues.*

[FR Doc. 91-13952 Filed 6-11-91; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Parts 180 and 185

[OPP-300210A and OPP 300211A; FRL-3845-2]

Oryzalin; Revocation of Tolerances and Food Additive Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule (1) revokes the tolerances listed in 40 CFR 180.304 for residues of the herbicide oryzalin (3,5-dinitro-N^4,N^4-dipropylsulfanilamide) in or on the raw agricultural commodities peppermint hay, spearmint hay, and sweet potatoes; and (2) revokes the food additive regulation listed in 40 CFR 185.4550 for residues of oryzalin in or on the processed food commodities peppermint oil and spearmint oil, resulting from carryover and concentration of residues in these processed foods when present therein as a result of application of the herbicide oryzalin to growing peppermint and spearmint. EPA is taking this action to remove tolerances, including food additive tolerances, for residues of a pesticide for which the related registered food uses were voluntarily cancelled by the registrant in 1984.

EFFECTIVE DATE: This regulation becomes effective June 12, 1991.

ADDRESSES: Written objections, identified by the document control number (OPP-300210A and OPP-300211A), may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Patricia Critchlow, Registration

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Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202 (703)-557-2226.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of May 9, 1990 (OPP-300210 at 55 FR 19281), which proposed the revocation of tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA) for residues of oryzalin in or on peppermint hay, spearmint hay, and sweet potatoes.

EPA also issued a second proposed rule, published in the same issue of the **Federal Register** (OPP-300211 at 55 FR 19283), which proposed the revocation of the food additive regulations under the FFDCA regulations listed in 40 CFR 185.4550 for residues of oryzalin in or on peppermint oil and spearmint oil, resulting from carryover and concentration of residues in these processed foods when present as a result of application to growing peppermint and spearmint crops. This final rule consolidates the two proposals into one final rule document.

No public comments on either proposal or requests for referral to an advisory committee on OPP-300210 were received in response to the notices of proposed rulemaking.

Therefore, based on the information considered by the Agency and discussed in detail in the May 9, 1990 proposal and in this final rule, the Agency is hereby (1) revoking the tolerances listed in 40 CFR 180.304 for residues of oryzalin in or on peppermint hay, spearmint hay, and sweet potatoes, and (2) revoking the food additive tolerances listed in 40 CFR 185.4550 for residues of oryzalin in or on peppermint oil and spearmint oil.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk, at the address given above. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested and the requestor's contentions on each such issue. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested.

This document has been reviewed by the Office of Management and Budget as required by section 3 of Executive Order 12291.

Executive Order 12291

As explained in the proposals published May 9, 1990 (55 FR 19281, 19283), the Agency has determined, pursuant to the requirements of Executive Order 12291, that the removal of these tolerances will not cause adverse economic impact on significant portions of U.S. enterprises.

Regulatory Flexibility Act

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. The reasons for this conclusion are discussed in the May 9, 1990 proposals.

List of Subjects in 40 CFR Parts 180 and 185

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Feed additives, Reporting and recordkeeping requirements.

Dated: June 5, 1991.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR parts 180 and 185 are amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.304 [Amended]

b. Section 180.304 *Oryzalin; tolerances for residues* is amended by removing the entries "Peppermint hay," "Spearmint hay," and "Sweet potatoes."

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346.

§ 185.4550 [Removed]

b. Section 185.4550 *Oryzalin* is removed.

[FR Doc. 91-13953 Filed 6-11-91; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 418

[BPD-691-FC]

RIN: 0938-AE82

Medicare Program; Payment for Hospice Care

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule with comment period provides for new methodology to update the hospice daily payment rates and for an updated annual payment cap amount for hospice care under the Medicare program. The new methodology for calculating the daily hospice payment rate increase is set forth in section 1814(i) of the Social Security Act as amended by sections 6005 (a) and (c) of the Omnibus Budget Reconciliation Act of 1989.

DATES: Effective Dates: July 12, 1991. These updated hospice payment rates apply to daily payments made for care and services furnished from January 1, 1990 through September 30, 1991. The updated annual hospice cap amount applies to payments made for care and services furnished from November 1, 1989 through October 31, 1990.

Comment date: Comments will be considered if we receive them at the appropriate address, as provided below, by 5 p.m. on August 12, 1991.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, attention: BPD-691-FC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC.

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

In commenting, please refer to file code BPD-691-FC. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Randal Ricktor (301) 966-4586.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1812(a)(4) of the Social Security Act (the Act) provides the conditions for Medicare coverage for hospice care of terminally ill beneficiaries. Under the authority of section 1814(i) of the Act, hospices are paid on the basis of one of four prospectively determined rates for each day in which a qualified Medicare beneficiary is under the care of the hospice. The four categories of payment rates are routine home care, continuous home care, inpatient respite care, and general inpatient care, as described in regulations at 42 CFR 418.302.

The payment rates are periodically updated as required by section 1814(i)(1)(C)(ii) of the Act, and Medicare intermediaries adjust the rates to reflect local differences in wages, as set forth in § 418.306.

Section 1814(i)(2) of the Act specifies that Medicare payment to a hospice for care furnished over the period of a year is limited by a payment cap amount. Each individual hospice's cap amount is calculated by multiplying the yearly cap amount by the number of Medicare beneficiaries who elected to receive and did receive hospice care from the hospice during the cap period (November 1 through October 31).

II. Provisions of this Final Rule With Comment Period

A. Hospice Payment Rates

Section 6005(a) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239) amended section 1814(i)(1)(C) of the Act to provide for the following two changes in methodology concerning updating the daily payment rates:

- Effective January 1, 1990, the daily payment rates for routine home care and other services included in hospice care will be 120 percent of the rates in effect on September 30, 1989.
- For Federal fiscal years beginning on or after October 1, 1990, the daily payment rate for routine home care and other services included in hospice care will be the payment rates in effect during the previous Federal fiscal year, increased by the hospital market basket percentage increase (as defined in section 1886(b)(3)(B)(iii)) otherwise applicable to discharges occurring in the fiscal year.

Hospice payment rates in effect on September 30, 1989 are as follows:

Routine home care	$63.17
Continuous home care	368.67
Inpatient respite care	65.33
General inpatient care	281.00

Thus, hospice payment rates, effective January 1, 1990 through the remainder of Federal fiscal year (FY) 1990, that is, through September 30, 1990, are as follows:

Routine home care	$75.80
Continuous home care:	
Full rate for 24 hours of care	442.40
Hourly rate	18.43
Inpatient respite care	78.40
General inpatient care	337.20

Consistent with prior rates, these rates are subject to adjustment by a wage index. The amount of each of the FY 1990 rates subject to adjustment by the wage index is as follows:

Category of payment	National rate	Wage component (subject to index)	Non-wage component
Routine home care	$75.80	$52.08	$23.72
Continuous home care	442.40	303.97	138.43
Inpatient respite care	78.40	42.43	35.97
General inpatient care	337.20	215.86	121.34

The hospital market basket percentage increase referred to above, which measures the estimated percentage by which the cost of a representative mix of inpatient hospital goods and services increases from FY 1990 to FY 1991, is 5.2 percent.

However, section 4007(a)(1) of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) established a freeze in the amount of payment for hospice care and services furnished under part A by deeming the market basket percentage increase (described in section 1886(b)(3)(B)(iii) of the Act) to be 0.0 percent for discharges occurring for the period beginning on October 21, 1990, and ending on December 31, 1990.

Therefore, the hospice payment rates for the period beginning on October 21, 1990 and ending on December 31, 1990 are the same as the FY 1990 rates set forth above.

New hospice payment rates for the remainder of FY 1991, that is, October 1, 1990 through October 20, 1990, and January 1, 1991 through September 30, 1991, are the product of the FY 1990 rates and the market basket increase of 5.2 percent. Accordingly, hospice payment rates for care and services furnished in FY 1991 are as follows:

Routine home care	$79.74
Continuous home care:	
Full rate for 24 hours of care	465.40
Hourly rate	19.39
Inpatient respite care	82.48
General inpatient care	354.73

The amount of each of the new FY 1991 rates subject to adjustment by the wage index is as follows:

Category of payment	National rate	Wage component (subject to index)	Non-wage component
Routine home care	$79.74	$54.79	$24.95
Continuous home care	465.40	319.78	145.62
Inpatient respite care	82.48	44.65	37.83
General inpatient care	354.73	227.06	127.67

The wage index used by HCFA to adjust FY 1990 and FY 1991 Medicare hospice payment rates to reflect local differences in wages remains unchanged. Any proposal to change the wage index used to adjust Medicare hospice payment rates will be published as a notice in the **Federal Register**.

We are implementing this methodology for these changes in payment rates in § 418.306. In addition, several editorial changes have been made in §§ 418.301, 418.302, and 418.405.

Since future annual hospice rate updates will merely reflect the results of the mechanical application of an inflation update required by statute and not any change to the methodology for determining the rates, beginning in FY 1992, the hospice rate update notification will be made through the HCFA Program Instructions Issuances System. Any proposal to change the methodology for determining hospice rates will be published as a notice in the **Federal Register**.

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B. Hospice Cap Amount

Section 1814(i)(2)(B) of the Act and § 418.309(a) of the regulations set the initial hospice cap amount for the period November 1, 1983 to October 31, 1984 at $6,500 and specify the manner in which the cap amount is adjusted for accounting years that end after October 1, 1984. The initial cap amount of $6,500 is adjusted for inflation or deflation for cap years that end after October 1, 1984 by using the percentage change in the medical care expenditure category of the Consumer Price Index (CPI–U) for urban consumers, which is published by the Bureau of Labor Statistics (BLS). This adjustment is made using the change in the CPI–U from March 1984 to the fifth month of the cap year. The hospice cap amount for the period November 1, 1988 through October 31, 1989 was $9,010, which reflected the original hospice cap amount of $6,500 increased for inflation from March 1984 to the fifth month of the cap year (March 1989).

For purposes of the cap year that runs from November 1, 1989 through October 31, 1990, an index is needed to measure inflation (or deflation) from March 1984 to March 1990 (the fifth month of the cap year). Since this calculation is not made until after the month of March in each cap year, we cannot, as a practical matter, publish the hospice cap amount before the beginning of the period to which the cap applies.

Consistent with the methodology used in setting last year's cap, we have calculated the increase to the hospice cap amount for the period of November 1, 1989 through October 31, 1990 by dividing the price level in the medical care expenditure category of the CPI–U for March 1990 by the level in the medical care expenditure category of the CPI–U for March 1984 and then multiplying that result by the initial cap amount.

BLS released figures that indicate a March 1990 price level in the medical care expenditure category of the CPI–U of 158.7. This figure divided by the March 1984 price level of 105.4 yields an index of 1.5057 (rounded). The new hospice cap is the product of $6,500 and 1.5057, that is, $9,787. This cap amount applies to hospices for care and services furnished from November 1, 1989 through October 31, 1990.

Beginning November 1, 1990 through October 31, 1991, the annual cap update notification will be made through the HCFA Program Instructions Issuances System.

III. Regulatory Impact Statement

A. Regulatory Impact Analysis

Executive Order (E.O.) 12291 requires us to prepare and publish a regulatory impact analysis for any final rule that meets one of the E.O. 12291 criteria for a "major rule;" that is, a final rule that will likely result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The provisions of this final rule with comment period implement statutory requirements. The provisions to increase the hospice payment rates by 20 percent for the period extending from January 1, 1990 through September 30, 1990 and to update the payment rates annually under section 1814(i)(1)(C) of the Act are self-implementing and HCFA has been making payment for hospice care under the new rates since January 1, 1990. The implementation of these provisions will result in additional program costs; however, these additional program costs will not exceed $100 million.

This final rule with comment period also announces the hospice cap amount as required by section 1814(i)(2)(B) of the Act and § 418.309(a) of the regulations and contains no change in the methodology used to formulate it. Furthermore, it does not alter any existing regulation or policy relating to the hospice cap.

Since the provisions of this final rule with comment period do not exceed any of the E.O. 12291 threshold criteria, we do not consider this rule to be a "major" rule and a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all hospices to be small entities.

We expect that the 20 percent increase in the daily payment rates for the period extending from January 1, 1990 through September 30, 1990 and updating the payment rates annually by use of the hospital market basket increase should accomplish the following—

- Ensure that hospices are receiving adequate Medicare payment for services furnished.
- Ensure that Medicare payment is adequately adjusted to keep up with the rate of inflation.
- Encourage more hospices to participate in the Medicare program, making the benefit more widely available to beneficiaries.

As mentioned above, the provisions to increase payment amounts and to raise the payment cap for hospices will be beneficial to both hospices and beneficiaries. Therefore, we have determined, and the Secretary certifies, that a regulatory flexibility analysis is not required.

C. Section 1102(b) of the Act

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final rule may have a significant impact on the operations of a substantial number of small rural hospitals. Since this rule applies only to hospices, we have determined, and the Secretary certifies, that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

IV Other Required Information

A. Waiver of Notice of Proposed Rulemaking and 30-Day Delay in the Effective Date

In adopting substantive rules, we ordinarily publish a notice of proposed rulemaking in the **Federal Register** with a 60-day period for public comment as required under section 1871(b)(1) of the Act. The notice of proposed rulemaking identifies the legal authority or the administrative necessity for the proposed rule. It also discusses the substance and the reasons for the particular provisions being proposed. Under section 1871(b)(2)(C) of the Act, this procedure can be waived when an agency finds that it is impracticable, unnecessary or contrary to the public interest, and incorporates in a final rule a finding of good cause for waiver.

In this particular case, we find that there is good cause to waive the 60-day notice of proposed rulemaking and opportunity for prior public comment as unnecessary because:

- The statutory amendment is so clear and specific as to leave no room for alternative interpretation.
- The editorial and technical revisions involve no substantive change.
- It is in the public interest not to delay updating the hospice daily payment rates and announcing the updated annual hospice payment cap amount.

In addition, we also normally provide a delay of 30 days in effective date for documents such as this. However, if adherence to this procedure would be impractical, unnecessary, or contrary to the public interest, we may waive the delay in the effective date (5 U.S.C. 553(b)). We find cause to waive the usual 30-day delay in this instance. The statutory amendment is so clear and specific as to leave no room for alternative interpretation, and the editorial revisions involve no substantive changes.

B. Paperwork Reduction Act

This final rule with comment period will not impose information collection requirements. Consequently, it need not be reviewed by OMB under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

C. Public Comments

Because of the large number of items of correspondence we normally receive concerning regulations, we cannot acknowledge or respond to the comments individually. However, we will respond to all comments received by the date and time specified in the "Dates" section of this preamble, and issue any necessary changes in a final rule.

List of Subjects in 42 CFR Part 418

Health facilities, Hospice care, Medicare, Reporting and recordkeeping requirements.

42 CFR part 418 is amended as set forth below:

PART 418—HOSPICE CARE

1. The authority citation for part 418 continues to read as follows:

Authority: Secs. 1102, 1811–1814, 1815(e), 1861–1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395c–1395f, 1395g(e), 1395x–1395cc and 1395hh).

§ 418.301 [Amended]

2. In § 418.301, the heading is changed from "Reimbursement for hospice care." to "Basic rules." and the table of contents is amended to reflect the change.

3. In § 418.302, paragraph (a) and the introductory language to paragraph (c) are revised to read as follows:

§ 418.302 Payment procedures for hospice care.

(a) HCFA establishes payment amounts for specific categories of covered hospice care.

* * * * *

(c) The payment amounts for the categories of hospice care are fixed payment rates that are established by HCFA in accordance with the procedures described in § 418.306. Payment rates are determined for the following categories:

* * * * *

4. Section 418.306 is revised to read as follows:

§ 418.306 Determination of payment rates.

(a) *Applicability.* HCFA establishes payment rates for each of the categories of hospice care described in § 418.302(b). The rates are established using the methodology described in section 1814(i)(1)(C) of the Act.

(b) *Payment rates.* The payment rates for routine home care and other services included in hospice care are as follows:

(1) The following rates, which are 120 percent of the rates in effect on September 30, 1989, are effective January 1, 1990 through September 30, 1990 and October 21, 1990 through December 31, 1990:

Routine home care	$75.80
Continuous home care:	
Full rate for 24 hours	442.40
Hourly rate	18.43
Inpatient respite care	78.40
General inpatient care	337.20

(2) Except for the period beginning October 21, 1990 through December 31, 1990, for Federal fiscal years that begin on or after October 1, 1990, the payment rates for routine home care and other services included in hospice care will be the payment rates in effect under this paragraph during the previous fiscal year increased by the market basket percentage increase as defined in section 1886(b)(3)(B)(iii) of the Act, otherwise applicable to discharges occurring in the fiscal year. The payment rates for the period beginning October 21, 1990 through December 31, 1990 will be the same as those shown in paragraph (b)(1) of this section.

(c) *Adjustment by intermediary.* The payment rates established by HCFA are adjusted by the intermediary to reflect local differences in wages.

(d) *Federal Register notices.* HCFA publishes as a notice in the **Federal Register** any proposal to change the methodology for determining the payment rates.

5. Section 418.405 is revised to read as follows:

§ 418.405 Effect of coinsurance liability on Medicare payment.

The Medicare payment rates established by HCFA in accordance with § 418.306 are not reduced when the individual is liable for coinsurance payments. Instead, when establishing the payment rates, HCFA offsets the estimated cost of services by an estimate of average coinsurance amounts hospices collect.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: November 11, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: February 6, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91–13380 Filed 6–11–91; 8:45 am]

BILLING CODE 4120–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–483; RM–5995, RM–6227 and RM–6228]

Radio Broadcasting Services; Willmar, Princeton and Olivia, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 237C2 to Willmar, Minnesota, as that community's second FM service, in response to a petition filed by Kandi Broadcasting Company (RM–5995). See 52 FR 43208, November 10, 1987. The coordinates for Channel 237C2 at Willmar are 45–01–20 and 95–18–14. There is a site restriction 22.9 kilometers (14.2 miles) southwest of the community.

In response to a counterproposal filed by PM Broadcasting Company (RM–6227), we substitute Channel 291C2 for Channel 292A at Princeton, Minnesota, and modify the license for Station WQPM to specify operation on Channel 291C2. The coordinates for Channel 291C2 are 45–22–19 and 93–51–18.

The counterproposal filed by Olivia Broadcasting Company (RM–6228) to substitute Channel 291C2 for Channel 269A at Olivia, Minnesota, is denied.

EFFECTIVE DATE: July 22, 1991. The window period for filing applications for Channel 237C2 at Willmar will open on

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July 23, 1991, and close on August 22, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 87–483, adopted May 22, 1991, and released June 7, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036 (202) 452–1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the table of FM Allotments under Minnesota, is amended by adding Channel 237C2 at Willmar and by removing Channel 292A and adding Channel 291C2 at Princeton.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–13991 Filed 6–11–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–282; RM–7169]

Radio Broadcasting Services; McComb, MS, and Kentwood, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 231C1 from McComb, Mississippi, to Kentwood, Louisiana, and modifies the license of Station WXLT(FM) to specify operation on Channel 231C1 in the new community. Channel 231C1 can be allotted to Kentwood in compliance with the Commission's minimum distance separation requirements at Station WXLT(FM)'s present transmitter site. See 5 FCC Rcd 3311 (1990). The coordinates for Channel 231C1 at Kentwood are North Latitude 30–51–18 and West Longitude 90–39–59. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 22, 1991.

FOR FURTHER INFORMATION CONTACT: Arthur Scrutchins, Mass Media Bureau (202) 632–6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–282, adopted May 23, 1991, and released June 6, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 231C1 at McComb.

3. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Channel 231C1, Kentwood.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–13846 Filed 6–11–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–602; RM–7154, RM–7447, RM–7448]

Radio Broadcasting Services; Vergennes, VT; Hague and Westport, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Thomas M. Pancoast, allots Channel 244A to Vergennes, Vermont. At the request of EFEM, Inc. the Commission allots Channel 273A to Westport, New York. In addition, at the request of Brian Dodge of Harvest Broadcasting, we allot Channel 229A to Hague, New York. See 55 FR 00885, January 10, 1990. With this action, this proceeding is terminated.

DATES: *Effective date:* July 22, 1991. The window period for filing applications will open on July 23, 1991, and close on August 22, 1991.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau (202) 632–6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–602, adopted May 22, 199. and released June 6, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

Channels 229A, 273A and 244A can be allotted to Hague, and Westport, New York, and Vergennes, Vermont, respectively, in compliance with the Commission's minimum distance separation requirements. Channel 229A can be allotted to Hague, New York, with a site restriction of 12.2 kW (7.6 miles) north of the community to avoid short-spacings to Station WSCG(FM), Channel 228A, Corinth, New York, and a construction permit for Station WNYV(FM), Channel 231A, Whitehall, New York, at coordinates 43–50–51 and 73–26–43. Canadian concurrence of this allotment has been obtained. Channel 273A can be allotted to Westport, New York, with a site restriction of 0.9 kW (0.6 miles) northwest to avoid prohibitive interference to Station CBOF(FM), Channel 273C1, Ottawa, Ontario, and the operating allotment on Channel 274C1, Sherbrook, Quebec, Canada, at coordinates 44–11–24 and 73–26–35. Channel 244A can be allotted to Vergennes, Vermont, without the imposition of a site restriction at coordinates 44–10–00 and 73–15–18. The allotment to Vergennes does not meet the required mileage separation to Station CKOI(FM), Channel 245C1, Verdun, Quebec, Canada. Therefore, since the allotments to Vergennes and Westport create short-spacings to Canadian stations, we have obtained Canadian approval for these channels as specially negotiated short-spaced allotments.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Channel 229A, Hague, and 273A, Westport.

3. Section 73.202(b), the Table of FM Allotments under Vermont, is amended by adding Channel 244A at Vergennes.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–13847 Filed 6–11–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 91–27; RM–7549]

Radio Broadcasting Services; Castle Rock, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Cowlitz Broadcasting Company, allots Channel 296C3 to Castle Rock, Washington, as the community's first local FM transmission service. See 56 FR 8313, February 28, 1991. Channel 296C3 can be allotted to Castle Rock in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.4 kilometers (6.5 miles) north to avoid short-spacing to the site specified in the construction permit for Station KMXI, Channel 294C, Lake Oswego, Oregon, as well as Station KSKD, Channel 296C1, Sweet Home, Oregon. The coordinates for Channel 296C3 at Castle Rock are North Latitude 46–22–10 and West Longitude 122–55–29. Canadian concurrence has been obtained since Castle Rock is located within 320 kilometers (220 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 22, 1991. The window period for filing applications will open on July 23, 1991, and close on August 22, 1991.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91–27, adopted May 22, 1991, and released June 7, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the table of FM Allotments under Washington, is amended by adding channel 296C3, Castle Rock.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–13992 Filed 6–11–91; 8:45 am]

BILLING CODE 6712–01–M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 519

[APD 2800.12A CHGE 24]

General Services Administration Acquisition Regulation; Subcontracting Program

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) is amended to revise § 519.705–4(d) to require that the contracting officer explain on GSA Form 3584, Checklist for Review of Subcontracting Plan, or attachment his/her determination that an option covered by the subcontracting plan offers no subcontracting opportunities; delete paragraph (e) of § 519.705–4 which repeats information in Federal Acquisition Regulation (FAR) 19.704(a)(3) and (6) and FAR 19.705–4(c); to redesignate paragraph (f) of section 519.705–4 as paragraph (e); to revise section 519.706–70 to reflect the change to section 519.705–4(e) and delete instructions that repeat FAR 19.705.5(a). GSA forms are not published in this document and do not appear in the Code of Federal Regulations. Copies may be obtained from the Director of the Office of GSA Acquisition Policy (VP), 18th and F Street NW., Washington, DC 20405. The intended effect is to improve the regulatory coverage and provide uniform procedures for contracting under the regulatory system.

EFFECTIVE DATE: June 14, 1991.

FOR FURTHER INFORMATION CONTACT: Paul Linfield, Office of GSA Acquisition Policy, (202) 501–1224.

SUPPLEMENTARY INFORMATION:

A. Public Comments

This rule was not published in the **Federal Register** for public comment because it primarily provides internal operating procedures to GSA contracting personnel regarding subcontracting programs.

B. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated September 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), GSA certifies that this rule will not have a significant impact on a substantial number of entities because it is intended to provide internal guidance to GSA contracting officers regarding options covered by the subcontracting plan and to delete language which is duplicative of the FAR.

D. Paperwork Reduction Act

This rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

List of Subjects in 48 CFR Part 519

Government procurement.

1. The authority citation for 48 CFR part 519 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 519—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 519.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

2. Section 519.705–4 is amended by revising paragraph (d), removing paragraph (e) and redesignating and revising paragraphs (f)(1), (f)(2), and (f)(3) as (e)(1), (e)(2), and (e)(3) to read as follows:

519.705–4 Reviewing the subcontracting plan.

* * * * *

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(d) The contracting officer's determination that an option offers no subcontracting opportunities must be explained either on GSA Form 3584 or as an attachment thereto, before it is forwarded to the SBTA and the SBA/PCR for review.

(e)(1) Before determining the responsibility of an offeror on a contract requiring a subcontracting plan, the contracting officer shall review the offeror's compliance with previous subcontracting plans, if any, approved by the GSA contracting activity, including the contractor's performance in submitting subcontracting reports in a timely manner. The findings must be documented on the GSA Form 3584, Checklist for Review of Subcontracting Plan, in the "Remarks" block or on an attachment to the GSA Form 3584 before forwarding it to the SBTA and the SBA/PCR for review.

(2) In addition to (e)(1) of this section, PBS contracting officers must check the quarterly list of PBS contracts with plans provided by AU and contact all other GSA contracting activities holding contracts with the same contractor concerning compliance with the previous year's plan.

(3) When an offeror has consistently failed to submit SF 294 and SF 295 reports in a timely manner or has failed to make a good faith effort to meet its subcontracting goals on previous contracts with plans, the contracting officer shall include on the GSA Form 3584 in the "Remarks" block or in an attachment to the GSA Form 3584 the basis for finding the offeror responsible including the steps the offeror proposes to take that were not included in previous subcontracting plans to ensure compliance with the subcontracting program requirements on the proposed contract.

3. Section 519.706–70 is amended by revising paragraph (e) to read as follows:

519.706–70 Monitoring contractor compliance with subcontracting plans.

* * * * *

(e) Before determining that a contractor's failure to achieve the subcontracting goals was occasioned by bad faith, the contracting officer shall analyze the explanations required by paragraph (b) above or provided pursuant to FAR 19.706.

* * * * *

Dated: May 23, 1991.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 91–13740 Filed 6–11–91; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. PS–112, Amendment 195–45]

RIN 2137– AB72

Transportation of Carbon Dioxide by Pipeline

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule establishes new safety regulations governing the transportation by pipeline of carbon dioxide in a supercritical state. The regulations for carbon dioxide are similar to the regulations for hazardous liquids. Section. 211 of the Pipeline Safety Reauthorization Act of 1988 (Pub. L. 100–561) requires that the DOT regulate carbon dioxide which is transported by pipeline facilities.

EFFECTIVE DATE: The effective date of this final rule is July 12, 1991.

FOR FURTHER INFORMATION CONTACT: Cesar De Leon (202) 366–1640, regarding the contents of this final rule; or the Dockets Unit (202) 366–5046, regarding copies of this final rule or other information in the docket.

SUPPLEMENTARY INFORMATION:

Background

Federal regulations in 49 CFR part 195 prescribe safety standards and reporting requirements for pipeline facilities used in the transportation of hazardous liquids, which are defined to include petroleum, petroleum products, or anhydrous ammonia. Section 211 of the Pipeline Safety Reauthorization Act of 1988 (Pub. L. 100–561) enacted on October 31, 1988 (49 U.S.C. 2015) requires that the Department of Transportation regulate carbon dioxide (CO_2) which is transported by pipeline facilities. On March 16, 1989, the American Petroleum Institute (API) petitioned the Department to amend part 195 to include the regulation of pipelines that transport CO_2. The recommendations contained in the petition are the product of a task force consisting of representatives of nine companies that own or operate CO_2 pipelines. The API recommended that OPS amend existing part 195 rather than write a new part for CO_2 pipelines only, and RSPA adopted this approach. On October 12, 1989, the RSPA published a notice of proposed rulemaking (NPRM) (54 FR 41912) proposing to amend these regulations to also apply to the transportation of CO_2 in the supercritical phase.

The NPRM described the physical properties of CO_2. At normal temperatures and atmospheric pressure, CO_2 is an odorless and colorless gas, not flammable, with a density 1.5 times the density of air. It will not support combustion nor will it sustain life if inhaled. Carbon dioxide may exist simultaneously as a gas, liquid, and solid at its triple point which is −69°F and 60.43 psig. Below the triple point, it may be either a solid or gas depending on temperature and pressure. Dry ice for refrigeration is a common use of CO_2 in solid form. Dry ice at a temperature of −109°F and atmospheric pressure will sublime, that is, pass to the gas phase without going through the liquid state. The critical temperature of CO_2 is 87.8°F. When pressure reaches 1200 psig, CO_2 enters what is called the supercritical phase (also referred to as a dense vapor phase).

Pipeline transportation of CO_2 in the supercritical phase is more desirable than transportation in the gaseous phase. As a dense vapor in the supercritical state, CO_2 can be transported more economically and efficiently using smaller pipelines and pumps because greater volumes of fluid can be transported as a dense vapor than as a gas. In addition, CO_2 would be difficult to transport as a gas because it would enter into two-phase flow at a lower pressure than that required for the efficient pipeline transportation of the CO_2.

Carbon dioxide has been used for many years to aid in the production of crude oil. Because of its high degree of solubility in crude oil and abundance from natural sources, CO_2 became a natural candidate for use in enhanced oil recovery (EOR) projects. Under favorable conditions of pressure, temperature, and composition, the CO_2 mixes with the crude oil. The CO_2 that dissolves in the crude oil increases the volume and decreases the viscosity making the oil more mobile. It also exerts an acidic effect on some types of reservoir rocks and vaporizes some of the oil.

There are a number of sources of CO_2. It can be produced commercially in natural gas plants, ammonia plants, and recovered from power plant stack gas. A better source is from underground reservoirs where CO_2 under pressure occurs naturally.

There are various modes of transportation for CO_2, but for the large volumes required in EOR projects, pipeline transportation is the most reliable and economical. Generally

these pipelines originate in the reservoirs of the four corners area and terminate in the Permian Basin oil field in Texas where most of the EOR projects exist. An exception is the Choctow Pipeline which originates near Jackson, Mississippi, and terminates near McComb, Mississippi. A list of CO_2 pipelines was included in the NPRM.

Pipeline Safety Reauthorization Act of 1988

There have been Congressional concerns regarding the transportation of CO_2 by pipeline over a number of years. The report on the Pipelines Safety Reauthorization Act of 1988 from the House Committee on Energy and Commerce in the 1987 session of the100th Congress points out that "* * * The Committee has for sometime recommended the safety regulation and inspection of CO_2 pipelines." The Committee further notes that:

> * * * The CO_2 pipeline industry has a good safety record and performs an essential service for enhanced oil recovery, but it is a very new industry. It is not a question of its safety record that caused the requirement for safety regulation, but rather the unique potential for disaster if there were ever a break in a CO_2 pipeline * * *.
>
> * * * A recent event demonstrated just how lethal CO_2 can be. On August 21, 1986, a catastrophic release of gas dissolved in Lake Nyos in Cameroon, Africa, killed 1,700 people. At the time, the news media characterized the gas as 'toxic,' 'poisonous' and 'lethal.' Subsequent investigation proved the gas was carbon dioxide.
>
> * * * The Committee believes that since CO_2 is deadly, CO_2 pipelines should have appropriate Federal safety regulations. (H.R. Rep. No. 100–445; 100th Congress; 1st Session (1987).)

Consequently, the requirement to issue regulations for the pipeline transportation of carbon dioxide was included in section 211 of title II of the Pipeline Safety Reauthorization Act of 1988, 49 U.S.C. 2015.

Comments to the NPRM

Five commenters responded to the notice: The Railroad Commission of Texas, Exxon Company, U.S.A., American Petroleum Institute (API), the U.S. Department of the Interior (DOI), and the Public Utility Commission of Oregon. In addition, the NPRM was presented in draft to the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) in Washington, DC, on September 14, 1989. The THLPSSC voted unanimously that the draft proposed rules were technically feasible, reasonable, and practicable. A transcript and report of the THLPSSC meeting are in the docket.

Exxon stated that the list of existing CO_2 pipelines is incomplete in that it does not include Amoco's 20-mile pipeline from Bairoil to the Lost Soldier and Wertz fields. Exxon further stated that the La Barge, Wyoming, area is a major CO_2 supply source for Wyoming and has the potential to supply EOR projects as far north as the Williston Basin (North Dakota) and Canada. The RSPA appreciates this additional data and has made these corrections to its records.

The Public Utility Commission of Oregon commented that although Oregon has no CO_2 pipelines at the present, it supported the adoption of the proposed rules for CO_2 pipelines because it believed that pipelines operating at pressures in excess of 1200 psig present a potential public hazard.

The Railroad Commission of Texas commented on the proposal under § 195.1(b)(8) to exclude CO_2 distribution lines in oil production fields. The Railroad Commission disagreed with RSPA's assumption that the CO_2 facilities exempted under § 195.1(b)(8) are typically located in rural areas. Also, the Railroad Commission stated that in Texas, many of these lines operate up to 1400 psig, and they should be covered by the regulations when in populated areas.

RSPA did not propose to regulate CO_2 distribution facilities in oil production operations because those lines were thought to be so closely involved in production as to be production facilities which are generally considered as outside of the scope of the transportation of hazardous liquids. However, a closer scrutiny of the issue shows that CO_2 distribution lines should be regulated. Although CO_2 is used in the production of hazardous liquids, it is not itself produced at those sites. Thus CO_2 lines are not "production facilities" within the meaning of the Hazardous Liquid Pipeline Safety Act. Furthermore, RSPA agrees with the Railroad Commission that those lines are sometimes in populated areas and are operating at high pressures. Therefore, the definition has been revised to more narrowly limit the exception to transportation of CO_2 "downstream from a point in the vicinity of the well site at which carbon dioxide is delivered to a production facility," rather than a "production field distribution system." A production field distribution system is not currently defined in the regulations. The Manual of Oil and Gas Terms, Williams and Myers 7th Edition (1987), defines the term "field" very broadly to include a general area underlain by one or more pools of oil and gas. The Manual further states that the term has a meaning which is usually determined from the context in which it is used. It may refer to a certain geographical area from which oil is produced, or it may be restricted to a particular reservoir. Such a broad definition would result in many CO_2 distribution lines, which could encompass more than a county in Texas, being excepted from the rules. Instead the exception in § 195.1(b)(8) is limited to lines downstream of where carbon dioxide is delivered to a production facility in the vicinity of a well site, rather than excepting all the CO_2 lines in the broad expanses of a production field.

The DOI observed that while they are unaware of the occurrence of large volumes of CO_2 in the Outer Continental Shelf (OCS) that might be developed, it may be timely to include OCS pipelines in the CO_2 rules. RSPA agrees with DOI and, in fact, under § 195.1, the scope of the NPRM covered such offshore lines. Part 195 applies to pipeline facilities on the OCS. Nothing in proposed § 195.1(b) excepted the applicability of part 195 to carbon dioxide pipeline facilities on the OCS; therefore, the final rules apply to any offshore pipeline that carries CO_2 in a supercritical phase downstream from production.

The DOI further commented that the definition that carbon dioxide is "* * * a fluid consisting predominately of carbon dioxide molecules compressed to a supercritical state" is too limiting if the rule is to apply to all pipelines carrying CO_2. RSPA agrees with DOI's observation that the Department has authority under section 211 of the Reauthorization Act to regulate all pipeline transportation of CO_2. However, RSPA has chosen to limit the regulations in part 195 to CO_2 in a supercritical state. At present, for economic reasons, CO_2 is transported by pipeline in a supercritical state, i.e., dense vapor state. In the future, if CO_2 is transported other than as a dense vapor where the part 195 regulations are inappropriate for such transportation, RSPA will issue additional regulations for such transportation.

Exxon was concerned with the definition of "carbon dioxide" in another context. Exxon thought that because "predominant" means more than half and because of the difficulty in determining the super critical point on a mixture of gases, the definition should be changed as follows: "Carbon dioxide" means a fluid consisting of more than 90 percent carbon dioxide molecules, compressed to a supercritical state. The RSPA agrees with Exxon that the definition of "carbon dioxide" needs to be more precise than the proposed

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definition in the NPRM. Exxon's definition is more precise and would preclude the problems identified by that company. Therefore, the definition of "carbon dioxide" has been revised to mean a fluid consisting of more than 90 percent carbon dioxide molecules.

The DOI also questioned the requirement in § 195.50(b) that requires an accident report for each failure in a pipeline system when there is a release of CO_2 that results in the loss of 50 or more barrels of CO_2. The DOI points out that carbon dioxide is conventionally measured in its gaseous form in which the unit of measure is thousand standard cubic feet. The DOI further points out that in the event of a pipeline rupture, the CO_2 released would flash to a solid or gaseous phase depending upon controlling conditions and an accurate estimation of the loss in barrels would be very difficult.

The DOI is correct that the throughput of CO_2 in pipelines is most often measured in thousand standard cubic feet. However, as petitioned by API, the loss of carbon dioxide due to a rupture is better reported in barrels because that results in consistent failure reporting criteria with other commodities regulated in part 195 and consistent failure statistics in the RSPA pipeline failure data base. An operator can make the conversion to barrels without difficulty knowing the characteristics of the CO_2 and the pressure and temperature of the CO_2 at the time of the failure. Therefore, RSPA did not adopt this recommendation.

Another DOI comment was that the final rule should exempt pipelines on the OCS from the "line marker" requirements in § 195.410(a) because it would be impractical to mark submerged offshore pipelines. An exemption is not required because section 195.410(b) exempts buried pipelines located offshore or at crossings of or under waterways or other bodies of water from having to place and maintain line markers. This exemption would include CO_2 lines.

Both the API and Exxon were concerned about the proposed change in § 195.102 "Design Temperature." Exxon commented that operating procedures can be implemented which avoid extremely low temperatures during filling and blowdown, making it unnecessary to consider low temperatures in selecting material for CO_2 lines. The API commented that the proposed revision to § 195.102 could be interpreted to mean that all portions of a carbon dioxide system must be made of materials suitable for low temperatures because any portion of a carbon dioxide system could develop a leak and the area around the leak would be subjected to a low temperature because of the rapid reduction of pressure. RSPA intended § 195.102 in the NPRM to apply only to locations of the pipeline that are intended to be subjected to rapid reduction of pressure during normal operation. Therefore, RSPA has revised this section to limit the selection of pipeline materials for low temperatures to apply to components of CO_2 pipelines that are subject to low temperatures during normal operation because of rapid reduction of pressure such as during blow-down, or during the initial fill of the line.

The API commented that they think it is inappropriate to require valves on carbon dioxide pipeline systems at all water crossings greater than 100 feet in width as required by § 195.206. The API argued that carbon dioxide is not polluting and the potential for an asphyxiating cloud from a pipeline at a water crossing would not be any greater for an underwater pipeline than for a buried or aboveground pipeline as asserted by RSPA. The RSPA believes that valves are needed at water crossings greater than 100 feet because of the hazards of a large vapor cloud in case of a large catastrophic failure under a stream. While the release of CO_2 (from a volcanic source) under Lake Nyos in Africa was eight times larger than a release that can be expected from a pipeline rupture, it is significant to note that it resulted in a vapor cloud that caused 1,700 deaths. The characteristics of the release of a large quantity of CO_2 from under a body of water are not yet clearly understood. Therefore, RSPA has retained this requirement in the final rule.

The API also suggested that the definition of "production facility" include "other facilities where CO_2 is produced and prepared for transportation" in addition to facilities used in the process of extracting carbon dioxide from the ground. The RSPA agrees that CO_2 is sometimes obtained from industrial facilities in addition to being produced from the ground and has amended the definition of "production facility" in § 195.2 accordingly.

The API also suggested that the proposed definition of "production facility" include piping or equipment used in gathering of CO_2 thereby excluding the CO_2 gathering lines from these regulations pursuant to the proposed § 195.1(b)(6). The RSPA has not adopted this suggestion because the definition of "production facility" was intended to be limited to production functions and was not intended to include the piping or equipment used in the gathering of carbon dioxide or hazardous liquids. The proposed rules in the NPRM applied to gathering lines used to collect and transport CO_2 from CO_2 production facilities. RSPA was not persuaded by the comments to exclude these gathering lines in the final rule. It should be noted that the definition of "gathering line" is not applicable to carbon dioxide pipelines nor is there an exception for CO_2 gathering lines under § 195.1(b)(4).

Paperwork Reduction Act

The reporting requirements in subpart B and recordkeeping requirements under sections 195.5(c), 195.266, 195.310, 195.402 and 195.404 have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The addition of CO_2 pipelines to part 195 results in approximately 2,000 miles, or about one percent of additional pipelines subject to the reporting and recordkeeping requirements in part 195. This will minimally increase current reporting and recordkeeping burdens and, therefore, RSPA has sought no further approval from OMB.

Impact Assessment

These regulations extend the part 195 pipeline safety regulations to pipelines that transport CO_2, which are few in number. Pipelines under construction before the effective date of the final rule are subject only to the accident and safety-related condition reporting and operation and maintenance requirements of these regulations. This final rule is consistent with industry safety practices; the fiscal impact of these rules is minimal. No commenters raised any cost implications. Therefore, this final rule is considered to be non-major under Executive Order 12291, and is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Since the final rule requires minimal compliance expense, it does not warrant preparation of a Draft Regulatory Evaluation. Also, based on the facts available concerning the impact of this final rule, I certify under section 605 of the Regulatory Flexibility Act that it does not have a significant economic impact on a substantial number of small entities. This action has been analyzed under the criteria of Executive Order 12612 (52 FR 41685) and found not to warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 195

Carbon dioxide, Pipe, Pipeline safety.

In consideration of the foregoing, RSPA amends 49 CFR part 195 as follows:

PART 195—[AMENDED]

1. The authority citation for part 195 continues to read as follows:

Authority: 49 App. U.S.C. 2001 *et seq.*; 49 CFR 1.53.

2. Section 195.0 is revised to read as follows:

§ 195.0 Scope.

This part prescribes safety standards and reporting requirements for pipeline facilities used in the transportation of hazardous liquids or carbon dioxide.

3. In § 195.1, paragraphs (a) and (b) (5), (6), and (7) are revised, and paragraph (b)(8) is added to read as follows:

§ 195.1 Applicability.

(a) Except as provided in paragraph (b) of this section, this part applies to pipeline facilities and the transportation of hazardous liquids or carbon dioxide associated with those facilities in or affecting interstate or foreign commerce, including pipeline facilities on the Outer Continental Shelf.

(b) * * *

(5) Transportation of a hazardous liquid or carbon dioxide in offshore pipelines which are located upstream from the outlet flange of each facility on the Outer Continental Shelf where hydrocarbons or carbon dioxide are produced or where produced hydrocarbons or carbon dioxide are first separated, dehydrated, or otherwise processed, whichever facility is farther downstream;

(6) Transportation of a hazardous liquid or carbon dioxide through onshore production (including flow lines), refining, or manufacturing facilities, or storage or in plant piping systems associated with such facilities;

(7) Transportation of a hazardous liquid or carbon dioxide by vessel, aircraft, tank truck, tank car, or other vehicle or terminal facilities used exclusively to transfer hazardous liquids or carbon dioxide between such modes of transportation.

(8) Transportation of carbon dioxide downstream from a point in the vicinity of the well site at which carbon dioxide is delivered to a production facility.

4. In § 195.2, a definition of "carbon dioxide" is added in alphabetical order and definitions of the following terms "interstate pipeline", "pipe or line pipe", "pipeline or pipeline system", "pipeline facility", "production facility" are revised to read as follows:

§ 195.2 Definition.

* * * * *

Carbon dioxide means a fluid consisting of more than 90 percent carbon dioxide molecules compressed to a supercritical state.

* * * * *

Interstate pipeline means a pipeline or that part of a pipeline that is used in the transportation of hazardous liquids or carbon dioxide in interstate or foreign commerce.

* * * * *

Pipe or *line pipe* means a tube, usually cylindrical, through which a hazardous liquid or carbon dioxide flows from one point to another.

Pipeline or *pipeline system* means all parts of a pipeline facility through which a hazardous liquid or carbon dioxide moves in transportation, including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks.

Pipeline facility means new and existing pipe, rights-of-way and any equipment, facility, or building used in the transportation of hazardous liquids or carbon dioxide.

Production facility means piping or equipment used in the production, extraction, recovery, lifting, stabilization, separation or treating of petroleum or carbon dioxide, or associated storage or measurement. (To be a production facility under this definition, piping or equipment must be used in the process of extracting petroleum or carbon dioxide from the ground or from facilities where CO_2 is produced, and preparing it for transportation by pipeline. This includes piping between treatment plants which extract carbon dioxide, and facilities utilized for the injection of carbon dioxide for recovery operations.)

* * * * *

5. Section 195.4 is revised to read as follows:

§ 195.4 Compatibility necessary for transportation of hazardous liquids or carbon dioxide.

No person may transport any hazardous liquid or carbon dioxide unless the hazardous liquid or carbon dioxide is chemically compatible with both the pipeline, including all components, and any other commodity that it may come into contact with while in the pipeline.

6. Section 195.8 is revised to read as follows:

§ 195.8 Transportation of hazardous liquid or carbon dioxide in pipelines constructed with other than steel pipe.

No person may transport any hazardous liquid or carbon dioxide through a pipe that is constructed after October 1, 1970, for hazardous liquids or after July 12, 1991 for carbon dioxide of material other than steel unless the person has notified the Secretary in writing at least 90 days before the transportation is to begin. The notice must state whether carbon dioxide or a hazardous liquid is to be transported and the chemical name, common name, properties and characteristics of the hazardous liquid to be transported and the material used in construction of the pipeline. If the Secretary determines that the transportation of the hazardous liquid or carbon dioxide in the manner proposed would be unduly hazardous, he will, within 90 days after receipt of the notice, order the person that gave the notice, in writing, not to transport the hazardous liquid or carbon dioxide in the proposed manner until further notice.

7. The introductory text and paragraph (b) of § 195.50 is revised to read as follows:

§ 195.50 Reporting accidents.

An accident report is required for each failure in a pipeline system subject to this part in which there is a release of the hazardous liquid or carbon dioxide transported resulting in any of the following:

* * * * *

(b) Loss of 50 or more barrels of hazardous liquid or carbon dioxide.

* * * * *

8. The introductory text of § 195.52(a) is revised to read as follows:

§ 195.52 Telephonic notice of certain accidents.

(a) At the earliest practicable moment following discovery of a release of the hazardous liquid or carbon dioxide transported resulting in an event described in paragraph 195.50, the operator of the system shall give notice, in accordance with paragraph (b) of this section, of any failure that:

* * * * *

9. Section 195.102 is revised to read as follows:

§ 195.102 Design temperature.

(a) Material for components of the system must be chosen for the temperature environment in which the components will be used so that the pipeline will maintain its structural integrity.

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(b) Components of carbon dioxide pipelines that are subject to low temperatures during normal operation because of rapid pressure reduction or during the initial fill of the line must be made of materials that are suitable for those low temperatures.

10. A new § 195.111 is added to read as follows:

§ 195.111 Fracture propagation.

A carbon dioxide pipeline system must be designed to mitigate the effects of fracture propagation.

11. Section 195.116(c) is revised to read as follows:

§ 195.116 Valves.

* * * * *

(c) Each part of the valve that will be in contact with the carbon dioxide or hazardous liquid stream must be made of materials that are compatible with carbon dioxide or each hazardous liquid that it is anticipated will flow through the pipeline system.

* * * * *

12. In § 195.306, paragraph (a) is revised and paragraph (c) is added to read as follows:

§ 195.306 Test medium.

(a) Except as provided in paragraphs (b) and (c) of this section, water must be used as the test medium.

* * * * *

(c) Carbon dioxide pipelines may use inert gas or carbon dioxide as the test medium if—

(1) The entire pipeline section under test is outside of cities and other populated areas;

(2) Each building within 300 feet of the test section is unoccupied while the test pressure is equal to or greater than a pressure that produces a hoop stress of 50 percent of specified minimum yield strength;

(3) The maximum hoop stress during the test does not exceed 80 percent of specified minimum yield strength;

(4) Continuous communication is maintained along entire test section; and

(5) The pipe involved is new pipe having a longitudinal joint factor of 1.00.

13. Section 195.401(c) is revised to read as follows:

§ 195.401 General requirements.

* * * * *

(c) Except as provided by § 195.5, no operator may operate any part of any of the following pipelines unless it was designed and constructed as required by this part:

(1) An interstate pipeline, on which construction was begun after March 31, 1970, that transports hazardous liquid.

(2) An interstate offshore gathering line, on which construction was begun after July 31, 1977, that transports hazardous liquid.

(3) An intrastate pipeline, on which construction was begun after October 20, 1985, that transports hazardous liquid.

(4) A pipeline, on which construction was begun after July 11, 1991 that transports carbon dioxide.

14. In § 195.402, paragraphs (c) (7), (9), and (12) and (e) (2), (4), (5), and (7) are revised to read as follows:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

* * * * *

(c) * * *

(7) Starting up and shutting down any part of the pipeline system in a manner designed to assure operation within the limits prescribed by paragraph 195.406, consider the hazardous liquid or carbon dioxide in transportation, variations in altitude along the pipeline, and pressure monitoring and control devices.

* * * * *

(9) In the case of facilities not equipped to fail safe that are identified under paragraph 195.402(c)(4) or that control receipt and delivery of the hazardous liquid or carbon dioxide, detecting abnormal operating conditions by monitoring pressure, temperature, flow or other appropriate operational data and transmitting this data to an attended location.

* * * * *

(12) Establishing and maintaining liaison with fire, police, and other appropriate public officials to learn the responsibility and resources of each government organization that may respond to a hazardous liquid or carbon dioxide pipeline emergency and acquaint the officials with the operator's ability in responding to a hazardous liquid or carbon dioxide pipeline emergency and means of communication.

* * * * *

(e) * * *

(2) Prompt and effective response to a notice of each type emergency, including fire or explosion occurring near or directly involving a pipeline facility, accidental release of hazardous liquid or carbon dioxide from a pipeline facility, operational failure causing a hazardous condition, and natural disaster affecting pipeline facilities.

* * * * *

(4) Taking necessary action, such as emergency shutdown or pressure reduction, to minimize the volume of hazardous liquid or carbon dioxide that is released from any section of a pipeline system in the event of a failure.

(5) Control of released hazardous liquid or carbon dioxide at an accident scene to minimize the hazards, including possible intentional ignition in the cases of flammable highly volatile liquid.

* * * * *

(7) Notifying fire, police, and other appropriate public officials of hazardous liquid or carbon dioxide pipeline emergencies and coordinating with them preplanned and actual responses during an emergency, including additional precautions necessary for an emergency involving a pipeline system transporting a highly volatile liquid.

* * * * *

15. In § 195.403, paragraphs (a) (2), (3), and (4) are revised to read as follows:

§ 195.403 Training.

(a) * * *

(2) Know the characteristics and hazards of the hazardous liquids or carbon dioxide transported, including, in the case of flammable HVL, flammability of mixtures with air, odorless vapors, and water reactions;

(3) Recognize conditions that are likely to cause emergencies, predict the consequences of facility malfunctions or failures and hazardous liquid or carbon dioxide spills, and to take appropriate corrective action;

(4) Take steps necessary to control any accidental release of hazardous liquid or carbon dioxide and to minimize the potential for fire, explosion, toxicity, or environmental damage;

* * * * *

16. Section 195.410(a)(2) is revised to read as follows:

§ 195.410 Line markers.

(a) * * *

(2) The marker must state at least the following: "Warning" followed by the words "Petroleum (or the name of the hazardous liquid transported) Pipeline" or "Carbon Dioxide Pipeline" (in lettering at least 1 inch high with an approximate stroke of one-quarter inch on a background of sharply contrasting color), the name of the operator and a telephone number (including area code) where the operator can be reached at all times.

* * * * *

17. Section 195.414 is revised to read as follows:

§ 195.414 Cathodic protection.

(a) No operator may operate a hazardous liquid interstate pipeline after March 31, 1973, a hazardous liquid intrastate pipeline after October 19, 1988, or a carbon dioxide pipeline after July 12, 1993 that has an effective external surface coating material, unless that pipeline is cathodically protected. This paragraph does not apply to breakout tank areas and buried pumping station piping. For the purposes of this subpart, a pipeline does not have an effective external coating, and shall be considered bare, if its cathodic protection current requirements are substantially the same as if it were bare.

(b) Each operator shall electrically inspect each bare hazardous liquid interstate pipeline before April 1, 1975, each bare hazardous liquid intrastate pipeline before October 20, 1990, and each bare carbon dioxide pipeline before July 12, 1994 to determine any areas in which active corrosion is taking place. The operator may not increase its established operating pressure on a section of bare pipeline until the section has been so electrically inspected. In any areas where active corrosion is found, the operator shall provide cathodic protection. Section 195.416 (f) and (g) apply to all corroded pipe that is found.

(c) Each operator shall electrically inspect all breakout tank areas and buried pumping station piping on hazardous liquid interstate pipelines before April 1, 1973, on hazardous liquid intrastate pipelines before October 20, 1988, and on carbon dioxide pipelines before July 12, 1994 as to the need for cathodic protection, and cathodic protection shall be provided where necessary.

18. Section 195.416(a) is revised to read as follows:

§ 195.416 Internal corrosion control.

(a) No operator may transport any hazardous liquid or carbon dioxide that would corrode the pipe or other components of its pipeline system, unless it has investigated the corrosive effect of the hazardous liquid or carbon dioxide on the system and has taken adequate steps to mitigate corrosion.

* * * * *

19. Section 195.440 is revised to read as follows:

§ 195.440 Public education.

Each operator shall establish a continuing educational program to enable the public, appropriate government organizations and persons engaged in excavation-related activities to recognize a hazardous liquid or a carbpn dioxide pipeline emergency and to report it to the operator or the fire, police, or other appropriate public officials. The program must be conducted in English and in other languages commonly understood by a significant number and concentration of non-English speaking population in the operator's operating areas.

Issued in Washington, DC, on June 7, 1991.

Douglas B. Ham,

Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 91-13830 Filed 6-11-91; 8:45 am]

BILLING CODE 4910-60-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 87-04, Notice 7]

RIN 2127-AC 73

Federal Motor Vehicle Safety Standards; Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends Standard No. 121, Air Brake Systems, to revise the timing requirements for parking brake systems, add new requirements concerning release performance and accumulation of actuation energy for parking brakes, and incorporate an earlier agency interpretation of the standard into the standard. These changes are intended to ensure the practicability and objectivity of the parking brake timing test, and clarify that a diaphragm is not considered a component of a brake chamber housing, as that term is used in Standard No. 121. The rule will make the testing procedure easier to perform and more objective, eliminate confusion about the application of the standard to single diaphragm brake systems, and improve the consistency of the regulatory language.

DATES: This amendment is effective December 9, 1991.

ADDRESSES: Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration 400 Seventh St. SW., Washington, DC 20590. It is requested, but not required, that ten copies be submitted.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Shadle, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW. Washington, DC (202-366-5273).

SUPPLEMENTARY INFORMATION:

I. Background

A. March 1988 Final Rule

In a final rule published in the Federal Register (53 FR 7931) on March 11, 1988, NHTSA amended Standard No. 121, Air Brake Systems, to clarify the standard's parking brake requirements, particularly as they relate to air-applied, mechanically held parking brake systems. The amendments required actuation of a mechanical means for parking brake application at the requisite level of retardation within three seconds after operation of the parking brake control. (For trailers, such actuation was required within three seconds after venting to the atmosphere of the front supply line connection is initiated.) In addition, vehicles were required to be capable of meeting requirements related to parking brake retardation force within the three second period. The amendments also required that the grade holding test (or alternative drawbar test) be met with only the mechanical means for parking brake application in operation.

The primary rationale for the parking brake timing requirements is NHTSA's belief that a vehicle's parking brake system should generate retardation force in as short a time as is practicable, since the parking brake system is sometimes used as an emergency braking system. The approach of the March 1988 final rule was to require that vehicles be capable of meeting parking brake retardation force requirements, specified in terms of a grade holding or draw bar test, within a specified time. For trucks and buses, the amendments required minimum parking retardation force requirements to be met at all times after three seconds from the time of actuation of the parking brake control. For trailers, the amendments required minimum parking retardation force requirements to be met at all times after three seconds from the time that venting to the atmosphere of the front supply line connection is initiated.

In responding to commenter concerns that it is not possible to safely conduct the grade holding or draw bar tests within three seconds, NHTSA stated in the March 1988 final rule that it did not believe that manufacturers must, as a practical matter, determine their compliance with the timing requirement during their grade holding or draw bar testing. The agency stated that, instead, certification could be accomplished by using an engineering analysis of the vehicle's parking brake system or, if necessary, a test measuring the air pressure in the parking brake system to determine when the pressure reaches zero. The assumption underlying this statement is that if a vehicle could comply with the grade holding or draw bar test with zero air pressure in the brake chambers, and if the air pressure

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in the brake chambers reached zero pressure within three seconds, then the vehicle would be able to comply with the trade holding or draw bar test within three seconds. It should be noted that a test to determine when the air pressure in the parking brake system reaches zero is only appropriate for vehicles equipped with spring brake parking brake systems. For an air-applied, mechanically held parking brake system, a comparable test would determine when the pressure in the parking brake chamber reaches full application pressure.

NHTSA stated in the March 1988 final rule that it believed all parking brakes currently being sold complied with the amendments being adopted. The agency also stated its belief that since any necessary certification could be accomplished by engineering analysis and simple tests, 180 days would provide sufficient leadtime for that purpose. The amendments therefore required compliance effective 180 days after publication of the final rule, while permitting manufacturers to comply prior to that time with either the new requirements or the requirements being superseded.

B. Petitions for Reconsideration

NHTSA received petitions for reconsideration from Navistar International Transportation Corporation (Navistar) and Volvo GM Heavy Truck Corporation (Volvo GM). Both of the petitions concerned the parking brake timing requirements. Navistar was concerned that their brake systems did not generate maximum torque since they required partial wheel rotation after the three seconds to reach full torque. (Most modern-day drum brakes are self-energizing and require a partial rotation to help the primary brake shoe wedge the secondary shoe against the brake drum with greater force.) Volvo GM asked that the agency rescind the application of the requirement to tandem trucks with spring brakes. The company stated that its test results indicated that some of its vehicles would not meet grade holding tests because the pressure drop in the brake system after three seconds still left a residual air pressure of less than five pounds per square inch (psi)—enough to lower the brake torque by a significant amount. Volvo GM also suggested that the 100 psi initial reservoir system pressure test condition be deleted because they claimed that use of a specific value was design restrictive. In partial response to the two petitions, NHTSA delayed the time that the amendments would become effective on a mandatory basis. See 43 FR 35075, September 9, 1988; 54 FR 25460, June 15, 1989. The purpose of the delay was to permit the agency to complete its analysis of the arguments made by the petitioners, and to provide a further response to the petitions.

C. Notice of Proposed Rulemaking and Response to Petitions for Reconsideration

In response to the above petitions for reconsideration, NHTSA published a notice of proposed rulemaking (NPRM) and response to petitions for reconsideration on February 8, 1990 (55 FR 4447). The NPRM proposed to amend Standard 121's parking brake timing requirements, add new requirements concerning release performance and accumulation of actuation energy for parking brakes, and incorporate an earlier agency interpretation of the standard in the language of the standard.

In the NPRM, NHTSA granted the Navistar petition and denied the Volvo GM petition. The agency proposed to revise the test requirements to require the vehicle to be capable of meeting the parking brake retardation force test with the amount of pressure available in the vehicle's parking brake chambers after a three second period. Any brake "wrap-up" (partial revolution of the braked wheels to enable the brake shoes to reach peak torque) time would not be required to occur during the three second test period. The agency believed that the proposed parking brake timing test would resolve Navistar's concern about "wrap-up." Volvo GM's petition to rescind the application of the requirement to tandem trucks was denied because the agency found nothing in the use or design of heavy tandem trucks that supported a need for such a rescission and determined that compliance with the requirements could be easily ensured by the addition of a quick release valve. The second Volvo GM request concerning test conditions was also denied. This request was denied because specification of an initial reservoir system pressure is necessary to insure objectivity of test results. In addition, a 100 psi pressure was selected because it is representative of the brake reservoir system pressure of actual vehicles. The request was also denied because Volvo GM did not suggest any other methods to ensure objective test results nor did it claim that the test condition is inappropriate or unrepresentative. Although the agency denied both requests, NHTSA believed that as a consequence of clarifying the agency's initial intent with respect to whether parking brake chamber air pressure must reach zero within three seconds, the proposed test would likely resolve some of Volvo GM's concerns.

The NPRM also proposed new requirements concerning release performance and accumulation of actuation energy for parking brakes. The first proposed change would add a requirement that a vehicle's parking brakes not be releasable unless adequate energy is available to make a subsequent application. The purpose of the proposed requirement was to prevent situations where parking brakes are released when the vehicle has no braking capability. The second proposed change would add a requirement that an accumulation of energy sufficient to apply the parking brakes at least once be available to the parking brake system. The two proposed requirements would together ensure that a parking brake system remains "fail-safe" in the event of a failure of another brake system on the vehicle. Thus, the parking brakes could not be released unless they were capable of being reapplied, and also under the same conditions, would be capable of at least one application.

The NPRM stated that the proposed amendments would become effective 30 days after the publication of the final rule, except for those amendments concerning release performance and accumulation of actuation energy. The NPRM proposed that mandatory compliance with the proposed new requirements would be required 180 days after publication. The proposed requirements concerning release performance and accumulation of actuation energy were also proposed to become effective 180 days after publication.

Finally, the NPRM proposed an amendment to Standard No. 121 that would incorporate a conclusion of a NHTSA letter interpreting the standard. Specifically, the amendment would make clear that a diaphragm is not a component of a brake chamber housing, as that term is used in Standard No. 121.

In response to the NPRM, 16 comments were submitted. All of these comments were considered in connection with this final rule, and the most significant are discussed below.

II. Response to Comments and Final Rule

A. Parking Brake Timing Requirements

The NPRM proposed that, instead of expressly requiring vehicles to be capable of meeting the grade holding or draw bar test within three seconds, vehicles would be required to be capable of meeting the parking brake retardation force test with the amount of pressure in the vehicle's parking brake chambers after the three second period.

General Motors Corporation (GM) supported the proposed amendment and commented that, by separating the timing aspect from the performance requirement, NHTSA removed ambiguity from the testing requirements of Standard No. 121. MGM Brakes, a division of Indian Head Industries, Inc. (MGM), believed that compliance with the three second requirement might sacrifice brake torque application. As an example, the company noted that a pressure of five psi in the parking brake chamber reduces the brake chamber output force by approximately 150 pounds, or 900 inch-pounds with a six-inch slack adjuster.

NHTSA has decided to retain the three second requirement. The agency believes that the concerns of MGM do not provide a sufficient justification to increase beyond three seconds the time within which to exhaust air from the typical brake system. Any increase in the three second time would substantially increase the risk of a vehicle running free (i.e., without any brakes) before the emergency braking system became effective. Furthermore, MGM did not submit any information on system configuration that might explain why it needed more than three seconds to fully exhaust air from the braking chambers. Finally, MGM is a component supplier, and as such, does not have to certify any vehicles. The agency received no complaints from truck or trailer manufacturers, who do have to certify vehicles, that the three second requirement is unreasonable. The agency has determined, as noted above, that compliance can be easily ensured by use of a quick release valve.

Bendix Heavy Vehicle Group, of Allied-Signal, Inc. (Bendix), suggested that section S5.6.3.4 be modified to state that the parking brake effort shall not decrease below the effort obtained within three seconds from actuation of the parking brake control. NHTSA is not persuaded that such an amendment is necessary. Section S5.6.3.3 clearly states that there should be no air pressure holding the parking brake system after three seconds. The agency has determined that if there is complete compliance with section S5.6.3.3 (which requires full mechanical actuation of the parking brakes), parking brake effort will not decrease from the effort obtained within three seconds of actuation. Thus, NHTSA has concluded that Bendix's suggested change is unnecessary.

B. Denial of Volvo GM's Petition for Reconsideration

No comments were received concerning NHTSA's denial of Volvo GM's petition to rescind application of the requirement to tandem trucks equipped with spring brakes or its suggestion that the 100 psi initial reservoir system pressure test condition be deleted.

C. Release Performance; Accumulation of Actuation Energy

The NPRM proposed a new requirement concerning release performance and accumulation of actuation energy for parking brakes. The first part of the proposed requirement was that a vehicle's parking brakes not be releasable unless adequate energy is available to make a subsequent application. The purpose of this part of the requirement was to prevent situations where parking brakes are released when the vehicle has no braking capability. The second part of the proposed requirement was that an accumulation of energy sufficient to apply the parking brakes at least once be available to the parking brake system. The proposed requirement was intended to ensure that a parking brake system remains "fail-safe" in the event of a failure of another brake system on the vehicle. Thus, as proposed, the parking brakes could not be released unless they were capable of being reapplied, and, under the same conditions, were capable of at least one reapplication.

GM commented that it did not oppose the new requirements and stated that its testing of its air-braked vehicles indicated that they meet the requirements.

International Transquip Industries (ITI) opposed the proposed requirement. ITI believed that, due to a design feature, its single diaphragm braking system could not comply with the proposed test sequence requirement of section S5.6.6, which requires actuation of the parking brake control, release actuation after thirty seconds, and then a final actuation. ITI stated that the safety-related design feature prevents release of the parking brake if even a small hole exists in the service diaphragm.

As originally proposed, the ITI system would not have been able to comply with the test sequence requirement of section S5.6.6.. However, in this final rule, the wording of section S5.6.6 has been revised from that proposed in the NPRM to be consistent with the test sequence requirement of section S5.6.3. Section S5.6.6 now requires that the supply line be vented, pressurized, and then again vented. Thus, as long as the manufacturer goes through the entire test procedure of S5.6.6 and the brake system complies with S5.6.5, full performance (final actuation with sufficient force) at the end of the testing will constitute compliance with the requirements. NHTSA believes that all current parking brake systems, including that of ITI, meet the requirements.

Bendix suggested that section S5.2.1.1, which requires a protected reservoir at 90 psi, be eliminated since the proposed sequence for trailers (S5.6.6.6) allows release of a trailer parking brake by 100 psi trailer supply line pressure. This comment concerns a section which is not within the scope of this final rule. NHTSA will consider the change suggested by this Bendix in another rulemaking which is now pending.

D. Effective Date

The NPRM stated that the proposed amendments would become effective 30 days after the publication of the final rule, except for those amendments concerning release performance and accumulation of actuation energy. From that time until 179 days after publication of the final rule, manufacturers would have been allowed to comply with either the new requirements or the pre-1988 requirements. Mandatory compliance with the proposed new requirements would have been required 180 days after publication. The NPRM also stated that the proposed requirements concerning release performance and accumulation of actuation energy would also become effective 180 days after publication.

GM stated that it was not opposed to the proposed effective date for mandatory compliance.

Volvo GM objected to the 180 day lead time, asserting that the proposal would require "significant redesign or elimination of parking brake systems that do not utilize 'conventional' spring brakes." The company said it needed 18 months to comply, including six months to "balance stocks on hand and process customer requests."

NHTSA has determined that a 180 day lead time for mandatory compliance is reasonable. As noted above, the agency believes that all current parking brake systems meet the new requirements. The agency believes, at most, that only a relatively simple and inexpensive design change (such as the inclusion of an additional quick release valve that costs $10–15) will be required for compliance if a few vehicles do not comply with the requirements.

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E. Clarification that a Diaphragm is not a Brake Chamber Housing Component

The NPRM proposed an amendment to the regulation that would incorporate the conclusion of an interpretative letter to International Transquip Industries, Inc., dated April 9, 1986, that a diaphragm within a brake chamber is not a component of a brake chamber housing for the purposes of Standard No. 121. Under S5.6.3.1 and S5.6.3.5 of Standard No. 121, parking brake systems must be capable of meeting minimum parking brake retardation requirements "with any single leakage-type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (except failure of a component of a brake chamber housing)." NHTSA notes that air-applied mechanically held parking brake systems may incorporate a single brake chamber that is common to both the service and parking brake systems. Since a failure in such a brake chamber is a failure of the service brake system (as well as the parking brake system), it is a failure "in any other brake system," in the context of S5.6.3.1 and S5.6.3.5.

Of the 12 responses by manufacturers, users, and brake system consultants, 10 were opposed to the agency's proposed amendment. Nine of the commenters expressly or implicitly stated that the amendment would eliminate from the market the ITI "Mini-Max" brake system (a single-diaphragm braking system) which is considered by those commenters to be reliable and effective. Those commenters included ITI, a vehicle user, a parts supplier, and several consultants. Bendix commented that the proposed amendment "will tend to deter the use and development of pressure applied parking systems such as the Bendix Dual Circuit Air Brake System." Midland Brake, Inc. supported the proposed amendment and GM stated that it did not oppose the new requirements.

ITI proposed that an exemption to the amendment's requirements be made for systems where the "common diaphragm is tested for proper operation on each system air charging or park brake application." Alternatively, ITI proposed that the reapplication requirements be limited to the "need not to be released unless a reapplication can be made."

NHTSA recognizes that the wording of the proposed regulatory text may have caused concern that the ITI "Mini-Max" braking system would not be allowed. This is not the case. NHTSA believes that the "Mini-Max" single diaphragm braking system made by ITI would have been allowed under the proposed amendment. ITI has submitted test results that demonstrate that, as currently designed, the system will sense a rapid pressure drop in the single chamber units and apply the mechanically held portion of the system at a fast enough rate to meet the brake force requirements. ITI has also said that, on a tandem axle vehicle with "Mini-Max" units at all four wheels, the retardation requirements can still be met with a diaphragm failure in one of the units. And as stated above, as along as the manufacturer goes through the entire test procedure of S5.6.6 and the brake system complies with S5.6.5, full performance (final actuation with sufficient force) at the end of the testing will constitute compliance with the requirements. Thus, ITI's proposal that the reapplication requirements be limited to the "need not to be released unless a reapplication can be made" have been addressed by the current language of section S5.6.6. NHTSA believes that all current parking brake systems meet the requirements.

To avoid any confusion about whether brake systems that use only one diaphragm for both operational and parking brake systems are covered by the standard and have to comply, NHTSA has revised paragraphs 5.6.3.1, 5.6.3.3, 5.6.3.4, 5.6.3.5, 5.6.5.1, 5.6.5.3, 5.6.6.1, 5.6.6.3, 5.6.6.4, and 5.6.6.6 to avoid possible confusion. In each paragraph where the words "diaphragm of a brake chamber" appeared in the proposed rule, NHTSA has replaced them with the words "brake chamber diaphragm that is part of any other brake system including a diaphragm."

The agency has made another change in the wording of the regulatory text of the final rule as compared to the proposal. The wording of S5.6.6.6 (which addresses the test sequence for trailers) has been revised to be consistent with that of S5.6.6.3 (which addresses the test sequence for trucks and buses). This change is designed to improve test consistency.

III. Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The agency has analyzed the economic and other effects of this final rule and determined that they are neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The agency has determined that the economic effects of the amendments are so minimal that a full regulatory evaluation is not required. NHTSA believes that all parking brakes currently being sold comply with the amendments. If testing should show that a few vehicles do not comply with the timing requirements in this final rule, NHTSA believes that the only necessary change would be the inclusion of an additional quick-release valve, at a cost of about $5 to $10. If testing should show that a few vehicles do not comply with this final rule's requirements related to release performance and accumulation of actuation energy for parking brakes, the agency again believes that only relatively minor changes would be needed to ensure compliance.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the amendments will not have a significant economic impact on a substantial number of small entities. As indicated above, NHTSA believes that no parking brakes currently being sold are likely to be affected by these amendments. Thus, neither manufacturers of motor vehicles, nor small businesses, small organizations, and small governmental units which purchase motor vehicles, would be significantly affected by the amendments. Accordingly, no regulatory flexibility analysis has been prepared.

Executive Order 12612 (Federalism)

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. NHTSA has determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has also analyzed this rule for the purpose of the National Environmental Policy Act. The agency has determined that the final rule would not have any significant impact on the quality of the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.121 [Amended]

2. S5.6 introductory text is revised to read as follows:

* * * * *

S5.6 *Parking brake system.* Each vehicle other than a trailer converter dolly shall have a parking brake system that under the conditions of S6.1 meets the requirements of S5.6.1 or S5.6.2, at the manufacturer's option, and the requirements of S5.6.3, S5.6.4, S5.6.5, and S5.6.6. However, the trailer portion of any agricultural commodity trailer, heavy hauler trailer, or pulpwood trailer, shall meet the requirements of this section, or, at the option of the manufacturer, the requirements of § 393.43 of this title.

* * * * *

3. S5.6.3 through S5.6.3.5 of § 571.121 are revised to read as follows:

S5.6.3 *Application and holding.* Each parking brake system shall meet the requirements of S5.6.3.1 through S5.6.3.4, except that, at the option of the manufacturer, the parking brake system in each vehicle manufactured before December 9, 1991 may meet either those requirements or the requirements specified in S5.6.3.5.

S5.6.3.1 The parking brake system shall be capable of achieving the minimum performance specified either in S5.6.1 or S5.6.2 with any single leakage-type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (excluding failure of a component of a brake chamber housing but including failure of any brake chamber diaphragm that is part of any other brake system including a diaphragm which is common to the parking brake system and any other brake system), when the pressures in the vehicle's parking brake chambers are at the levels determined in S5.6.3.4.

S5.6.3.2 A mechanical means shall be provided that, after a parking brake application is made with the pressures in the vehicle's parking brake chambers at the levels determined in S5.6.3.4, and all air and fluid pressures in the vehicle's braking systems are then bled down to zero, and without using electrical power, holds the parking brake application with sufficient parking retardation force to meet the minimum performance specified in S5.6.3.1 and in either S5.6.1 or S5.6.2.

S5.6.3.3 For trucks and buses, with an initial reservoir system pressure of 100 psi and, if designed to tow a vehicle equipped with air brakes, with a 50 cubic inch test reservoir connected to the supply line coupling, no later than three seconds from the time of actuation of the parking brake control, the mechanical means referred to in S5.6.3.2 shall be actuated. For trailers, with the supply line initially pressurized to 100 psi using the supply line portion of the trailer test rig (Figure 1) and, if designed to tow a vehicle equipped with air brakes, with a 50 cubic inch test reservoir connected to the rear supply line coupling, no later than three seconds from the time venting to the atmosphere of the front supply line coupling is initiated, the mechanical means referred to in S5.6.3.2 shall be actuated. This requirement shall be met for trucks, buses and trailers both with and without any single leakage-type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (excluding failure of a component of a brake chamber housing but including failure of any brake chamber diaphragm that is part of any other brake system including a diaphragm which is common to the parking brake system and any other brake system).

S5.6.3.4 The parking brake chamber pressures for S5.6.3.1 and S5.6.3.2 are determined as follows. For trucks and buses, with an initial reservoir system pressure of 100 psi and, if designed to tow a vehicle equipped with air brakes, with a 50 cubic inch test reservoir connected to the supply line coupling, any single leakage type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (excluding failure of a component of a brake chamber housing but including failure of any brake chamber diaphragm that is part of any other brake system including a diaphragm which is common to the parking brake system and any other brake system), is introduced in the brake system. The parking brake control is actuated and the pressures in the vehicle's parking brake chambers are measured three seconds after that actuation is initiated. For trailers, with the supply line initially pressurized to 100 psi using the supply line portion of the trailer test rig (Figure 1) and, if designed to tow a vehicle equipped with air brakes, with a 50 cubic inch test reservoir connected to the rear supply line coupling, any single leakage type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (excluding failure of a component of a brake chamber housing but including failure of any brake chamber diaphragm that is part of any other brake system including a diaphragm which is common to the parking brake system and any other brake system), is introduced in the brake system. The front supply line coupling is vented to the atmosphere and the pressures in the vehicle's parking brake chambers are measured three seconds after that venting is initiated.

S5.6.3.5 *Optional requirement for vehicles manufactured before December 9, 1991.* The parking brake system shall be capable of achieving the minimum performance specified either in S5.6.1 or S5.6.2 with any single leakage-type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (excluding failure of a component of a brake chamber housing but including failure of any brake chamber diaphragm that is part of any other brake system including a diaphragm which is common to the parking brake system and any other brake system). Once applied, the parking brakes shall be held in the applied position solely by mechanical means.

4. S5.6.5 through S5.6.5.4 are added to § 571.121 to read as follows:

S5.6.5 Release Performance. Effective December 9, 1991, each parking brake system shall meet the requirements specified in S5.6.5.1 through S5.6.5.4.

S5.6.5.1 For trucks and buses, with initial conditions as specified in S5.6.5.2, at all times after an application actuation of the parking brake control, and with any subsequent level of pressure, or combination of levels of pressure, in the reservoirs of any of the vehicle's brake systems, no reduction in parking brake retardation force shall result from a release actuation of the parking brake control unless the parking brakes are capable, after such release, of being reapplied at a level meeting the minimum performance specified either in S5.6.1 or S5.6.2. This requirement shall be met both with and without the engine on, and with and without single leakage-type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (excluding failure of a component of a brake chamber housing but including failure of any brake chamber diaphragm that is part of any other brake system including a diaphragm which is common to the parking brake system and any other brake system).

S5.6.5.2 The initial conditions for S5.6.5.1 are as follows. The reservoir system pressure is 100 psi. If the vehicle is designed to tow a vehicle equipped with air brakes, a 50 cubic inch test reservoir is connected to the supply line coupling.

S5.6.5.3 For trailers, with initial conditions as specified in S5.6.5.4, at all times after actuation of the parking brakes by venting the front supply line coupling to the atmosphere, and with any subsequent level of pressure, or

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combination of levels of pressure, in the reservoirs of any of the vehicle's brake systems, the parking brakes shall not be releasable by repressurizing the supply line using the supply line portion of the trailer test rig (Figure 1) to any pressure above 70 psi, unless the parking brakes are capable, after such release, of reapplication by subsequent venting of the front supply line coupling to the atmosphere, at a level meeting the minimum performance specified either in S5.6.1 or S5.6.2. This requirement shall be met both with and without any single leakage-type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (excluding failure of a component of a brake chamber housing but including failure of any brake chamber diaphragm that is part of any other brake system including a diaphragm which is common to the parking brake system and any other brake system).

S5.6.5.4 The initial conditions for S5.6.5.3 are as follows. The reservoir system and supply line are pressurized to 100 psi, using the supply line portion of the trailer test rig (Figure 1). If the vehicle is designed to tow a vehicle equipped with air brakes, a 50 cubic inch test reservoir is connected to the rear supply line coupling.

5. S5.6.6 through S5.6.6.6 are added to § 571.121 to read as follows:

S5.6.6 Accumulation of Actuation Energy. Effective December 9, 1991, each parking brake system shall meet the requirements specified in S5.6.6.1 through S5.6.6.6.

S5.6.6.1 For trucks and buses, with initial conditions as specified in S5.6.6.2, the parking brake system shall be capable of meeting the minimum performance specified either in S5.6.1 or S5.6.2, with any single leakage-type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (excluding failure of a component of a brake chamber housing but including failure of any brake chamber diaphragm that is part of any other brake system including a diaphragm which is common to the parking brake system and any other brake system), at the conclusion of the test sequence specified in S5.6.6.3.

S5.6.6.2 The initial conditions for S5.6.6.1 are as follows. The engine is on. The reservoir system pressure is 100 psi. If the vehicle is designed to tow a vehicle equipped with air brakes, a 50 cubic inch test reservoir is connected to the supply line coupling.

S5.6.6.3 The test sequence for S5.6.6.1 is as follows. The engine is turned off. Any single leakage type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (excluding failure of a component of a brake chamber housing but including failure of any brake chamber diaphragm that is part of any other brake system including a diaphragm which is common to the parking brake system and any other brake system), is then introduced in the brake system. An application actuation of the parking brake control is then made. Thirty seconds after such actuation, a release actuation of the parking brake control is made. Thirty seconds after the release actuation, a final application actuation of the parking brake control is made.

S5.6.6.4 For trailers, with initial conditions as specified in S5.6.6.5, the parking brake system shall be capable of meeting the minimum performance specified either in S5.6.1 or S5.6.2, with any single leakage-type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (excluding failure of a component of a brake chamber housing but including failure of any brake chamber diaphragm that is part of any other brake system including a diaphragm which is common to the parking brake system and any other brake system), at the conclusion of the test sequence specified in S5.6.6.6.

S5.6.6.5 The initial conditions for S5.6.6.4 are as follows. The reservoir system and supply line are pressurized to 100 psi, using the supply line portion of the trailer test rig (Figure 1). If the vehicle is designed to tow a vehicle equipped with air brakes, a 50 cubic inch test reservoir is connected to the rear supply line coupling.

S5.6.6.6 The test sequence for S5.6.6.4 is as follows. Any single leakage type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (excluding failure of a component of a brake chamber housing but including failure of any brake chamber diaphragm that is part of any other brake system including a diaphragm which is common to the parking brake system and any other brake system), is introduced in the brake system. The front supply line coupling is vented to the atmosphere. Thirty seconds after the initiation of such venting, the supply line is repressurized with the trailer test rig (Figure 1). Thirty seconds after the initiation of such repressurizing of the supply line, the front supply line is vented to the atmosphere. This procedure is conducted either by connection and disconnection of the supply line coupling or by use of a valve installed in the supply line portion of the trailer test rig near the supply line coupling.

Figure 1—[Amended]

6. Figure 1 is revised to read as follows:

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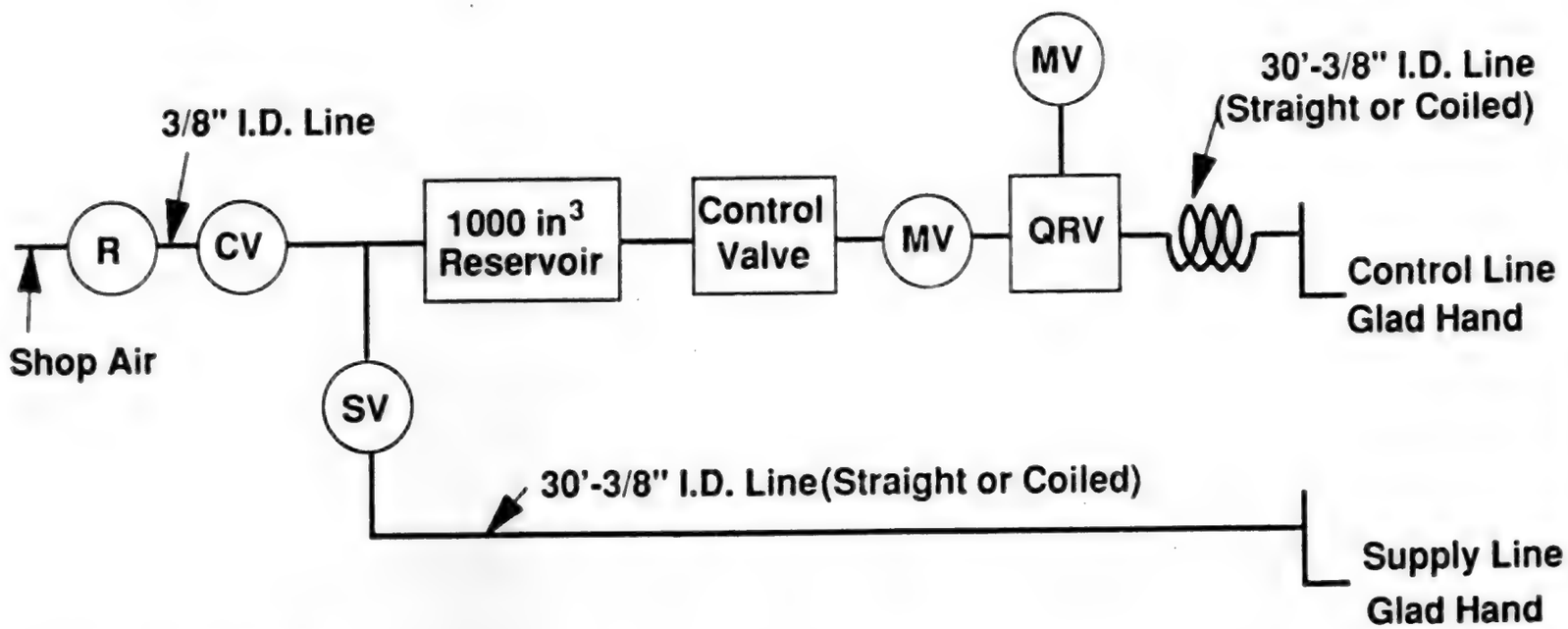

SV - Shut-off Valve
R - Regulator (set at 100 psi for service brake actuation tests;
95 psi for service brake release tests;
100 psi for parking brake tests in S5.6.3.3, S5.6.3.4, S5.6.5.4 and S5.6.6.5;
and any pressure above 70 psi for parking brake test in S5.6.5.3)
CV - Check Valve
MV - Metering Valve (Variable or Fixed)
QRV - Quick Release Valve

Figure 1. Trailer Test Rig.

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Issued on June 4, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91-13596 Filed 6-11-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 910640-1140]

Atlantic Swordfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency rule.

SUMMARY: The Secretary of Commerce (Secretary) issues this emergency rule to amend for 180 days the regulations governing the Atlantic swordfish fishery to (1) redefine the swordfish management unit to include the entire North Atlantic Ocean north of 5°N. latitude; (2) establish a minimum size limit of 31 inches (78.7 cm) carcass length for swordfish with a 15 percent allowance for undersized swordfish based on the number of swordfish landed per trip; (3) establish an annual quota for the directed swordfish fishery of 6.0 million pounds (2.73 million kilograms (kg)), dressed weight, divided equally between the periods January 1 through June 30, 1991, and July 1 through December 31, 1991; (4) further subdivide each of the 3.0-million pound (1.36 million kg) quotas into a drift gillnet quota of 30,044 pounds (13,628 kg) and a quota for other allowable commercial gear (i.e., longline and harpoon) of 2,969,956 pounds (1,347,172 kg); (5) limit the possession of swordfish after a gear-type closure to a bycatch limit of two swordfish except for vessels using or possessing harpoon gear for which no bycatch is allowed; (6) provide for NMFS-approved observers on cooperating permitted vessels; and (7) prohibit the sale of swordfish caught in the recreational fishery and restrict gear in the recreational fishery to rod and reel. The intended effect of this emergency rule is to respond to the critical condition of the swordfish resource by reducing fishing mortality on the stock to levels that will increase the probability of rebuilding the spawning stock biomass to a level that reduces the likelihood of recruitment failure.

EFFECTIVE DATES: June 12, 1991 through December 9, 1991.

ADDRESSES: Copies of documents supporting this action may be obtained from Richard B. Stone, NMFS (F/CM3), 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Richard B. Stone, 301-427-2347.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the Fishery Management Plan for Atlantic Swordfish (FMP) and its implementing regulations at 50 CFR part 630 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP was prepared by the five fishery management councils with jurisdiction over the waters off the east coast of the Atlantic, the Gulf of Mexico, and the Caribbean Sea. Subsequent to approval and implementation of the FMP, the Secretary assigned responsibility for amending the FMP to the South Atlantic Fishery Management Council (Council). The Fishery Conservation Amendments of 1990 (FCA), Public Law 101-627, transferred management authority over the Atlantic swordfish fishery to the Secretary.

Background

Status of the Stock

The status of the North Atlantic swordfish stock has been evaluated in a series of stock assessments conducted by the NMFS and the International Commission for the Conservation of Atlantic Tunas (ICCAT). The 1989 assessments were reviewed and confirmed as scientifically sound by two independent scientific panels. Results of these assessments have been consistent and indicate that the stock is severely overfished. The 1989 NMFS stock assessment indicated the following: (1) The adult spawning stock biomass in 1987 was only about 40 percent of the 1978 level and has continued to decline since; (2) the 1989 fishing mortality rate was approximately four times higher than the $F_{0.1}$ target rate; (3) the mean size of swordfish in the catch has declined continuously from 115 pounds (52.2 kg), dressed weight, in 1978, to 60 pounds (27.2 kg), dressed weight, in 1988; and (4) continuing high fishing mortality would result in further declines in spawning stock, placing the stock in jeopardy of recruitment failure. $F_{0.1}$ is a fishing mortality rate at which the increase in yield from the fishery per increased fishing effort is 10 percent of what is was when fishing mortality was very low. $F_{0.1}$ is frequently used as a target for effective fishery management. At $F_{0.1}$, the stock will produce near maximum sustainable yield.

The results of the 1990 ICCAT assessment, the most recent assessment available, were consistent with these findings. Independent stock assessment scientists have stated that fishing at current levels could put the swordfish population in danger in a short period of time and have suggested prompt, substantial reductions in fishing mortality.

Chronology of the Major Management Actions

In response to declines in the status of the stock, the Council prepared Amendment 1 to the FMP, which proposed reducing fishing mortality about 78 percent over a 3-year period to achieve the recommended target rate of $F_{0.1}$. Amendment 1 was submitted for Secretarial review on November 1, 1990.

Two subsequent events significantly altered the management process for Atlantic swordfish. First, at the November 1990 meeting of ICCAT, member nations agreed for the first time on international measures to reduce fishing mortality on swordfish—basically, (1) a prohibition on taking and landing swordfish less than 25 kg, whole weight, with provision for a 15 percent tolerance per trip for smaller swordfish, and (2) a 15 percent reduction in fishing mortality from 1988 levels on fish 25 kg and larger, whole weight. Second, on November 28, 1990, the FCA transferred authority for management of Atlantic swordfish from the fishery management councils to the Secretary. Consequently, the Council's Amendment 1 was withdrawn from Secretarial review.

NMFS, responding to the Secretary's new authority for management of Atlantic swordfish and to the ICCAT recommendations, held a public hearing in Washington, DC, on January 15, 1991, on options for swordfish management. In addition to comments received at the hearing, written public comments were accepted through February 15, 1991. After considering all public comments, NMFS prepared this Secretarial emergency rule as the initial step toward rebuilding the overfished North Atlantic swordfish resource. It is the intention of NMFS that this emergency rule will be followed immediately by permanent regulations, promulgated following public notice and comment, under the authorities of the Atlantic Tunas Convention Act (ATCA) and the Magnuson Act to implement a long-term management program to rebuild and conserve the swordfish resource.

Need for Emergency Action

The documented decline of the Atlantic swordfish resource and scientific recommendations for prompt reductions in fishing mortality are outlined in the background section above. Immediate regulatory action is necessary to avoid further delay in initiating rebuilding of the resource and to minimize the risk of recruitment failure. In addition, immediate implementation will allow the rebuilding of the resource within an acceptable period and allow the same level of rebuilding to occur with somewhat less restrictive measures than would be required if implementation were delayed. Further, it is apparent that the United States will be obliged (1) under the ATCA to implement recommendations of ICCAT for the 1991 fishing year, and (2) under the Magnuson Act to cooperate directly or through international organizations to conserve highly migratory species. NMFS has determined not to implement the ICCAT recommendations under the ATCA until they become effective on July 31, 1991. Immediate implementation under authority of section 305(c)(1) of the Magnuson Act provides the most timely mechanism for addressing the U.S. obligations. The public hearing on February 15 and the associated comment period on Secretarial management options provided the public with an opportunity to comment generally on most of the emergency measures in this rule, although not on the specific measures or on their particular combination as contained in this rule.

Management Measures

Changes in the Management Unit

The management unit is changed from the western North Atlantic swordfish stock, as specified in the current FMP and implementing regulations, to the entire North Atlantic swordfish stock, in order to facilitate this action and future implementation of ICCAT recommendations for swordfish management. This change is consistent with the majority of scientific opinion. Although there is no definitive scientific evidence to resolve the question of stock structure, the 1990 Swordfish Review Panel concluded that it is reasonable, initially, to consider all North Atlantic swordfish as a single stock for assessment purposes. ICCAT swordfish assessment scientists prefer and use the single North Atlantic stock hypothesis.

This change in the management unit is not expected to have a substantial impact on participants in the fishery during the period of effectiveness of this emergency rule. Because few U.S. vessels operate outside the western North Atlantic, few additional U.S.-harvested swordfish will be subject to regulation under this change.

Drift Gillnets

NMFS seriously considered prohibiting the use of drift gillnets in the swordfish fishery in this emergency rule. However, a policy decision was made to pursue the ban through regular rulemaking and to protect the other participants and the environment in the interim through a reduction in the gillnet sector in a manner similar to the reduction in the other commercial sectors, i.e., from 1988 landings. The calculation of the gillnet quota is explained below, under "Annual Quota."

As discussed in the background section above, Atlantic swordfish are overfished, and restrictive quotas are necessary to rebuild the resource. Although drift gillnets have been used in the fishery since 1980, most of the current driftnetters have been in the fishery for 3 years or less. In contrast, harpooning began in the late 1800s and dominated the fishery until 1962, when longlines were introduced and became the principal gear.

Participation and landings by drift gillnet vessles were very low (2 or 3 vessels and less than 100,000 pounds (45,400 kg)) until the late 1980s. Drift gillnet vessels landed 84,127 pounds (38,160 kg) in 1988. The fishery expanded significantly in 1989, when landings reached 848,355 pounds (385,153 kg), dressed weight, and, according to swordfish logbook reports, 20 vessels used drift gillnets. In 1990, a total of 25 gillnet vessels were active in the fishery. Although final 1990 landings data are not yet available, preliminary estimates indicate that 1990 landings are likely to exceed the 1989 level.

Atlantic drift gillnet landings have been confined largely to the northeastern states. Prior to 1989, drift gillnets accounted for less than 3 percent of U.S. swordfish landings north of North Carolina and about 1 percent of total U.S. Atlantic landings. In 1989, the percentages increased to 18.6 percent of landings north of North Carolina and 8.3 percent of total Atlantic landings. Preliminary 1990 data indicate drift gillnet landings comprised approximately 23 percent of landings north of North Carolina and over 9 percent of total Atlantic landings.

Given the relative efficiency of drift gillnets, if no quota were established, their share of available landings under the overall reduced quota would be expected to increase further to the detriment of the more traditional harpoon and longline sectors of the fishery. Since most drift gillnet landings occur from June through November, it is likely that a disproportionate share of the July–December quota would be taken by drift gillnet vessels. Drift gillnet landings at the 1989 level would account for 29 percent of the 1991 July–December quota. Allowing this redistribution of the available quota would adversely affect traditional participants and would not represent a fair and equitable allocation. The reductions in total allowable catch necessary to begin rebuilding the overfished swordfish resource will substantially reduce landings by traditional participants, an impact that would be compounded by allowing the small, non-traditional drift gillnet fishery to harvest a disproportionate share of the quotas.

Best available information, based on observer data, indicates that the swordfish drift gillnet fishery has the highest known rate of incidental marine mammal mortality of any U.S. fishery in the Atlantic. Observer data from 27 trips (123 sets) between August 1989 and December 1990 documented 124 marine mammal mortalities, averaging 1.01 mortalities per set. At least eight species of the suborder Odontoceti (dolphins and beaked whales) were involved. Although extrapolation of observed mortality rates to the entire drift gillnet fleet would be speculative, clearly the total marine mammal mortality associated with this gear is high. Reducing the gillnet fishery's effort from recent levels should reduce considerably marine mammal mortality. NMFS will continue to monitor the rate of marine mammal mortality.

The reduction from 1988 landings for drift gillnets will affect substantially the current 25 gillnet participants. The loss in terms of cost of gear for banning the drift gillnets was estimated at $714,150 in the Council's Amendment 1. While the cost under this emergency rule will be less, it could come close to that figure. Since development of Amendment 1, the number of participants has increased from 20 to 25. Drift gillnet landings in 1989 were 848,355 pounds (385,153 kg), dressed weight. A substantial portion of the value associated with these landings is likely to be lost to the gillnet fishermen. The amount of the loss will depend on the success of these fishermen in taking the existing quota, employing alternative gear to target swordfish, or switching to alternative fisheries, and the costs associated with these alternatives.

Minimum Size Limit

The minimum size limit of 31 inches (78.7 cm) carcass length (equivalent to 25 kg, whole weight) will decrease

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fishing mortality on 1- and 2-year-old swordfish; increase yield per recruit; and contribute to increasing the spawning stock biomass. The size limit is expected to reduce the fishing mortality rate based on number of small fish landed to about 30 percent of the 1989 rate. However, the realized 1991 mortality rates on small fish could be substantially higher, depending on discard mortality rates and fleet behavioral practices. Observer coverage on cooperating vessels will be used to assess these factors. The effectiveness of seasonal area closures in reducing discard mortality will also be evaluated as soon as possible. These closures, if warranted, may be incorporated in the ATCA regulations that are expected to be implemented prior to expiration of this emergency rule. Areas where small fish comprise a high proportion of landings are expected to be most affected by the minimum size limit. Small vessels with more limited mobility are also likely to be affected significantly, especially if located in areas where small fish predominate.

NMFS is providing a trip allowance for undersized swordfish of up to 15 percent of the total number of swordfish landed per trip to reduce waste of undersized swordfish that otherwise would have to be released dead. In addition, because some swordfish caught will be attacked by sharks, landing of shark-bit swordfish carcasses will be allowed. Any shark-bit carcass less than the minimum size limit of 31 inches (78.7 cm) carcass length will be counted against the 15 percent trip allowance for undersized swordfish.

Annual Quota

The total allowable catch (TAC) in 1991 for the U.S. fishery is 6.9 million pounds (3.14 million kg), dressed weight, which is a 35 percent reduction in harvest compared to 1988 and 1989 landings. The TAC was determined by examining the effect of the ICCAT swordfish recommendations, based on the following assumptions: (1) Single North Atlantic swordfish stock hypothesis; (2) fish greater than the minimum size (25 kg) are equivalent to ages 3 and older (these will be referred to as large fish); (3) Spain and the United States will reduce the fishing mortality rate-at-age on large fish by 15 percent from the 1988 levels while the mortality rate-at-age on large fish by all other nations combined will be maintained at 1989 levels (the last year for which we have data); and (4) all nations will adhere to the minimum size and to the trip allowance for undersized swordfish (the 15 percent tolerance for small fish was calculated for the United States, Spain, and all other nations combined). Based upon these assumptions, the status quo during the 1990 fishing year, and recruitment equal to the average of the available time-series, projections were made of the swordfish population to estimate the expected yield to the U.S. fishery in 1991. The TAC of 6.9 million pounds (3.13 million kg) represents a significant step toward the ultimate goal of reducing fishing mortality to the $F_{0.1}$ target level.

The TAC is divided into a 6.0-million pound (2.73 million kg) directed-fishery quota and a 0.9-million pound (0.41 million kg) bycatch allocation. The directed-fishery quota is divided into two 3.0-million pound (1.36 million kg) quotas for each of the 6-month periods, January–June and July–December. Each of the 3.0-million pound quotas is further subdivided into a drift gillnet quota of 30,044 pounds (13,628 kg) and a quota for other allowable commercial gear (i.e., longline and harpoon) of 2,969,956 pounds (1,347,172 kg).

The estimated gillnet catch of undersized swordfish (age 2 or less) in 1988 was 25.8 percent by number, of the total gillnet catch. The estimated yield by weight of undersized swordfish to the gillnets was estimated as 9.2 percent of the total gillnet yield by weight. The estimated proportion of gillnet landings of fish aged 3 or more is thus 90.8 percent of the gillnet total yield. The 6.9 million pound TAC was computed based on a 15 percent reduction in the fishing mortality of age 3+ swordfish relative to the 1988 level with a 15 percent by number landed bycatch tolerance for fish aged 2 or less. For consistency with the restrictions placed on the longline fishery, an allocation for the gillnet gear was computed based on the estimated 1988 gillnet level of mortality.

Assuming the same age-specific selectivity by gillnets in 1988 as estimated for 1989, the yield of age 3+ swordfish to gillnets was 76,387 lbs (34,649 kg), dressed weight (90.8% of 84,127 lbs (38,160 kg), dressed weight), with an estimated average size of 116.4 lbs (52.8 kg), dressed weight. This corresponds to an estimated 656 fish aged 3 or more taken by gillnets in 1988 and represents 0.9 percent of the US catch of fish aged 3 or more in 1988. The 1988 gillnet catch of fish aged 2 or less was 7,740 lbs (3,511 kg), dressed weight (9.2 percent of 84,127 lbs (38,160 kg), dressed weight), with an estimated average size of 32.5 lbs (14.7 kg), dressed weight. This corresponds to an estimated 230 fish aged 2 or less and represents approximately 0.3 percent of the 1988 US catch of fish aged 2 or less. The 1991 US TAC of 6.9 million pounds (3.13 million kg) corresponds to a total US projected catch of 72,044 fish aged 3+ and a catch of 12,632 fish aged 2 or less. For consistency with the US fishing pattern from the ICCAT base year of 1988, the projected catch (in numbers of fish) by gillnets in 1991 would be 648 fish aged 3+ (0.9 percent of 72,044) with a projected average size of 90.8 lbs (41.2 kg), dressed weight and a projected landed catch of 38 fish aged 2 or less, with a projected average size of 32.9 lbs (14.9 kg), dressed weight, for a total yield of 60,088 lbs (27,256 kg), dressed weight.

The seasonal availability of directed-fishery quotas will help to distribute the swordfish catches temporally and geographically; the majority of swordfish landings from January through June occur in the southern area and the majority of landings from July through December occur in the northern area. Vessels in the directed swordfish fishery may fish in any area as long as an applicable quota is available. Large, highly mobile vessels are expected to have some inherent advantages in competing for the available quotas.

The bycatch allocation is based upon an estimate of the swordfish bycatch in fisheries targeting other large pelagic species, e.g., tuna. After a directed-fishery quota is reached, or is projected to be reached, the fishery subject to that quota will be closed. Vessels subject to the closure will be restricted to the two-fish bycatch limit and all swordfish will be counted against the bycatch allocation.

The effective date of a closure is 5 days after the date the notice of closure is filed at the Office of the Federal Register. Thus, vessels at sea with swordfish aboard in excess of the bycatch trip limit will have a minimum of 5 days to return to port to offload their swordfish. Broadcasts of the closure notice over NOAA Weather Radio will be used to ensure immediate notice of this action as soon as the date of closure is known.

Bycatch Limit

A bycatch limit will apply after a closure of a directed swordfish fishery. This bycatch limit will allow an owner or operator of a vessel shoreward of the outer boundary of the EEZ to possess or land two swordfish after the applicable directed fishery closes, unless the vessel uses or has aboard harpoon gear in which case no swordfish may be possessed or landed. Two swordfish is the current estimate of the average number of swordfish larger than 25 kg taken incidentally per trip in the tuna longline fishery. The bycatch limit will reduce waste of swordfish that otherwise would have to be released dead and will ensure that landings under the bycatch trip limit are made only by vessels truly catching swordfish as bycatch. There is no bycatch allowance for a vessel with a harpoon because this gear is selective and does not involve a legitimate incidental catch. To provide effective enforcement of the bycatch limit, this rule prohibits the transfer of swordfish from one vessel to another shoreward of the outer boundary of the EEZ after the applicable directed fishery is closed.

Observers

For effective management of the swordfish fishery, additional data are needed, particularly regarding the mortality of discarded fish—either undersized or in excess of the bycatch trip limit. Better data are also needed on the average number of swordfish taken incidentally per trip in the tuna longline fishery. These data can best be provided by on-board observers. The Science and Research Director, Southeast Fisheries Science Center, NMFS, will embark NMFS-approved observers on cooperating and permitted vessels to collect the needed data. The placement of any NMFS-approved observers aboard swordfish vessels pursuant to this rule will be based upon voluntary participation of the vessel owners or operators and arranged through terms mutually agreed upon by the vessel owner or operator and the Science and Research Director. These terms will require the participating vessel owner or operator to: (1) Provide the observer free accommodations and food equivalent to that provided the crew; (2) allow the observer access to and use of the vessel's communications equipment and personnel for transmitting and receiving messages related to observer duties; (3) allow the observer access to and use of navigating equipment and personnel to determine vessel position; (4) allow the observer access to the vessel's bridge, working decks, holding bins, weight scales, holds, and other spaces used to hold, process, weigh, or store fish; and (5) allow the observer to inspect and copy the vessel's log, communications log, and any records associated with the catch and distribution of fish. The extent of observer coverage during the period these emergency regulations are effective is currently unknown, but is expected to be small.

Recreational Fishery

Annual recreational landings of swordfish are estimated to be fewer than 50 fish. Because, historically, recreational fishing mortality has been negligible, quotas on the recreational fishery are considered inappropriate at this time. However, recreational fishermen, whose catch will not be counted against the commercial quotas, will not be allowed to sell their swordfish catch. Prohibiting the sale of a recreationally caught swordfish will maintain the traditional difference between recreational and commercial swordfish fishermen. The impacts of this measure are expected to be negligible. Recreational swordfish fishermen are defined in this rule to be those possessing only rod and reel gear aboard their vessel.

Findings

The Secretary finds that the current severely overfished status of the Atlantic swordfish resource constitutes a resource emergency. Accordingly, the Secretary hereby amends the regulations implementing the FMP on an emergency basis to be effective for up to 180 days, as authorized by section 305(c) of the Magnuson Act.

To provide vessels at sea an opportunity to offload swordfish that may be smaller than the minimum size limit specified in this emergency rule, this emergency rule is not effective until 5 days after it is filed with the Office of the **Federal Register**.

Classification

The Secretary has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law. The Secretary finds for good cause (i.e., to prevent fishing that would seriously interfere with necessary protection of the Atlantic swordfish resource) that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide prior notice and opportunity for public comment on this emergency rule, or to delay for 30 days its effective date, under the provisions of sections 553(b)(B) and (d)(3) of the Administrative Procedure Act.

This emergency rule is exempt from the normal review procedures of E.O. 12291 as provided in section 8(a)(1) of that order. It is being reported to the Director of the Office of Management and Budget with an explanation of why is is not possible to follow the regular procedures of that order.

This emergency rule is exempt from the procedures of the Regulatory Flexibility Act for preparation of a regulatory flexibility analysis because no general notice of proposed rulemaking for this rule is required by law.

An environmental assessment (EA), prepared by the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), concludes that there will be no significant impact on the human environment as a result of this action. A copy of the EA is available (see **ADDRESSES**).

The Assistant Administrator determined that this emergency rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of the Atlantic, Gulf of Mexico, and Caribbean states that have approved coastal zone management programs. These determinations have been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

This emergency rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This emergency rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 7, 1991.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 630 is amended from June 12, 1991 through December 9, 1991 as follows:

PART 630—ATLANTIC SWORDFISH FISHERY

1. The authority citation for part 630 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 630.1, paragraph (b) is suspended and a new paragraph (d) is added to read as follows:

§ 630.1 Purpose and scope.

* * * * *

(d) This part governs the conservation and management of the North Atlantic swordfish stock.

* * * * *

3. In § 630.2, the definition for "Western North Atlantic swordfish stock" is suspended and new definitions for "Drift gillnet," "North Atlantic swordfish stock," "Recreational fishery," and "Trip" are added, in alphabetical order, to read as follows:

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§ 630.2 Definitions.

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Drift gillnet, sometimes called a drift entanglement net or drift net, means a flat net, unattached to the ocean bottom, whether or not it is attached to a vessel, designed to be suspended vertically in the water to entangle the head or other body parts of fish that attempt to pass through the meshes.

* * * * *

North Atlantic swordfish stock means those swordfish in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5°N. latitude. The North Atlantic swordfish stock is the management unit for these regulations.

* * * * *

Recreational fishery means the harvest of swordfish from a vessel with only rod and reel gear aboard.

* * * * *

Trip means a fishing trip, regardless of number of days duration, that begins with departures from a dock, berth, beach, seawall, or ramp and that terminates with return to a dock, berth, beach, seawall, or ramp.

* * * * *

4. In § 630.5, a new paragraph (c) is added to read as follows:

§ 630.5 Recordkeeping and reporting.

* * * * *

(c) *At-sea observer coverage.* An NMFS-approved observer may be embarked aboard a fishing vessel if arranged mutually between the Science and Research Director and the owner or operator of the vessel for which a permit has been issued under § 630.4(b). Participation by the vessel owner or operator will be on a voluntary basis.

5. In § 630.7, paragraph (e) is suspended, and new paragraphs (i) through (q) are added to read as follows:

§ 630.7 Prohibitions.

* * * * *

(i) Assault, resist, oppose, impede, harass, intimidate, or interfere with an NMFS-approved observer aboard a vessel.

(j) Land a swordfish that is smaller than the minimum size specified in § 630.26(a), except for the trip allowance for undersized swordfish, as specified in § 630.26(b).

(k) Possess or land a swordfish in other than whole or dressed form, as specified in § 630.26(c).

(l) During a closure under § 630.28(a), fish for swordfish, or possess or land swordfish in excess of the bycatch limit, as specified in § 630.28(b)(1) and (b)(2).

(m) During a closure under § 630.28(a) of the fishery with gear other than drift gillnet, fish for or possess aboard a vessel using or having aboard harpoon gear, or land from such vessel, swordfish, as specified in § 630.28(b)(3).

(n) During a closure under § 630.28(a), transfer a swordfish from a fishing vessel subject to the closure or receive a swordfish from such fishing vessel, as specified in § 630.28(c).

(o) Purchase, offer for barter, trade, or sale, or barter, trade, or sell a swordfish harvested in the recreational fishery, as specified in § 630.29.

(p) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of a swordfish.

(q) Violate any other provision of this part, any provision of or notice issued under subpart B, the Magnuson Act, or any other regulation or permit promulgated under the Magnuson Act.

6. Section 630.22 is suspended, new §§ 630.25 through 630.29 are added to subpart B, and a new figure 1 is added to the part to read as follows:

§ 630.25 Gear restrictions.

The only type of fishing gear authorized for the recreational fishery is rod and reel.

§ 630.26 Size limit.

(a) *Minimum size.* Except as specified in paragraph (b) of this section, the minimum allowable size for a swordfish landed from a fishing vessel in an Atlantic, Gulf of Mexico, or Caribbean coastal state is 31 inches (78.7 cm) carcass length, measured along the body contour (i.e., a curved measurement) from the cleithrum to the anterior portion of the caudal keel (CK measurement). The cleithrum is the semi-circular bony structure that forms the posterior edge of the gill opening. Measurement must be made at the point on the cleithrum that provides the shortest possible CK measurement. (See Figure 1.)

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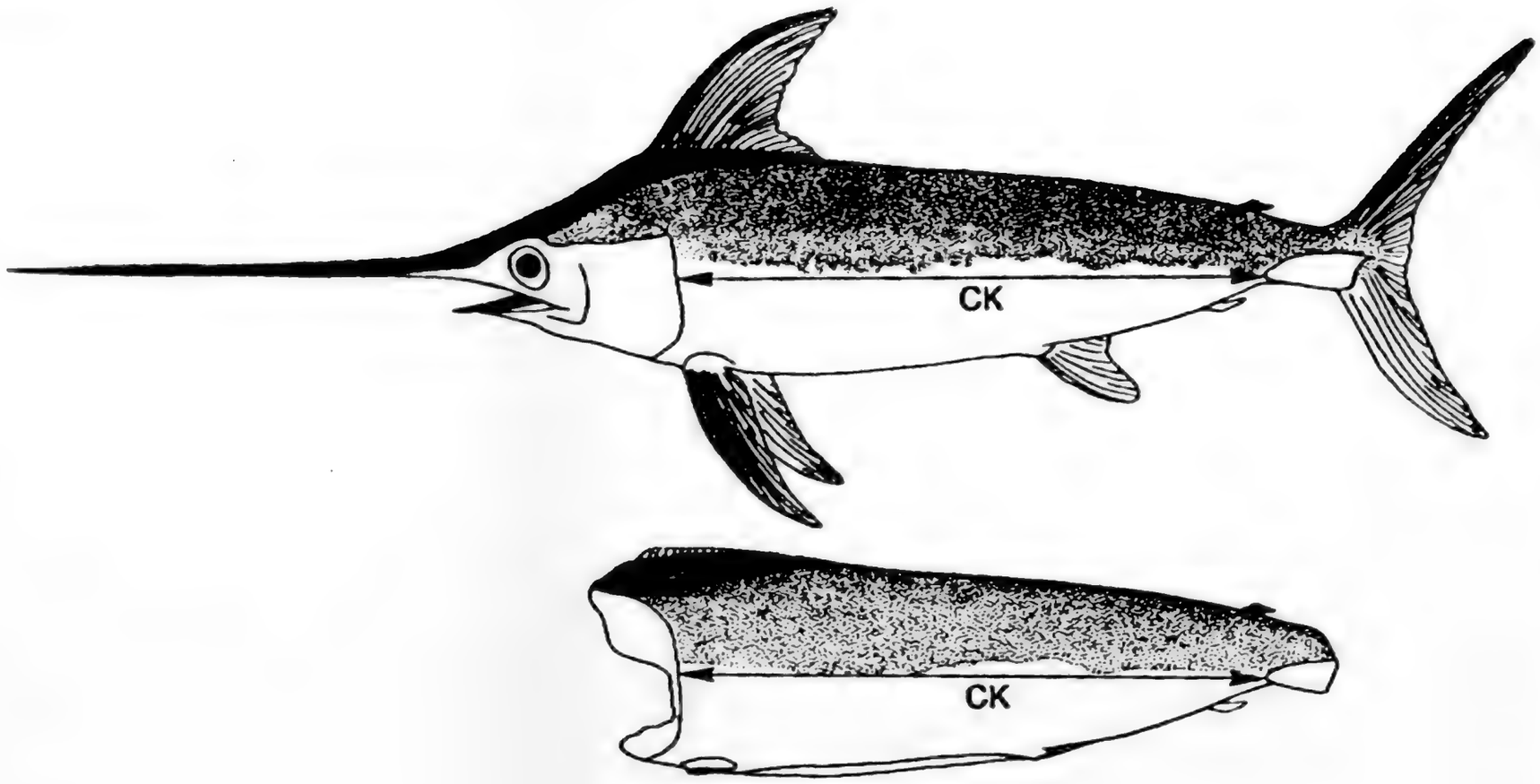

Figure 1. Cleithrum to keel (CK) measurement of swordfish.

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(b) *Trip allowance for undersized fish.* Swordfish smaller than the minimum size limit specified in paragraph (a) of this section may be landed in any trip from a fishing vessel in an Atlantic, Gulf of Mexico, or Caribbean coastal state in an amount not exceeding 15 percent of the total number of swordfish landed in any trip. If the number representing 15 percent of the total number of swordfish landed contains a fraction of 0.5 or greater, then that fraction will be rounded to the nearest larger whole number; fractions less than 0.5 will be rounded to the nearest smaller whole number (e.g., if the 15 percent equals 4.5 fish, then this will be rounded to 5 fish; 4.4 fish will be rounded to 4 fish).

(c) *Carcass condition.* A swordfish possessed shoreward of the outer boundary of the EEZ must be in whole or dressed form, and a swordfish landed from a fishing vessel in an Atlantic, Gulf of Mexico, or Caribbean coastal state must be maintained in whole or dressed form through landing, except such swordfish as are damaged by shark bites. A shark-bit swordfish for which the remainder of the carcass is less than the minimum size limit specified in paragraph (a) of this section will be counted against the 15 percent trip allowance for undersized swordfish specified in paragraph (b) of this section.

§ 630.27 Quotas and allocations.

(a) *Applicability.* A swordfish harvested during 1991 from the North Atlantic swordfish stock by a vessel of the United States in other than the recreational fishery is counted against the directed-fishery gear quota or the bycatch allocation, as appropriate at the time of landing. A swordfish landed before the effective date of a gear closure, done pursuant to § 630.28(a), is counted against the applicable directed-fishery gear quota. After a gear closure, a swordfish landed by a vessel using such gear is counted against the bycatch allocation specified in paragraph (c) of this section and is subject to the bycatch limits specified in § 630.28(b).

(b) *Directed-fishery quota.* (1) The annual quota for the directed fishery for swordfish is 6.0 million pounds (2.73 million kg), dressed weight, divided as follows:

(i) For the period January 1 through June 30, 1991—

(A) 30,044 pounds (13,628 kg), dressed weight, that may be harvested by drift gillnet; and

(B) 2,969,956 pounds (1,347,172 kg), dressed weight, that may be harvested by gear other than drift gillnet.

(ii) For the period July 1 through December 31, 1991—

(A) 30,044 pounds (13,628 kg), dressed weight, that may be harvested by drift gillnet; and

(B) 2,969,956 pounds (1,347,172 kg), dressed weight, that may be harvested by gear other than drift gillnet.

(2) A swordfish possessed shoreward of the outer boundary of the EEZ aboard a vessel using, or having aboard, a drift gillnet or landed from such vessel in an Atlantic, Gulf of Mexico, or Caribbean coastal state will be considered to have been harvested by a drift gillnet.

(c) *Bycatch allocation.* The annual bycatch allocation for swordfish is .9 million pounds (.41 million kg), dressed weight.

§ 630.28 Closure and bycatch limits.

(a) *Notice of closure.* When a directed-fishery gear quota specified in § 630.27(b)(1) (i) or (ii) is reached, or is projected to be reached, the Secretary will publish a notice in the **Federal Register** to close the drift gillnet fishery or the fishery with gear other than drift gillnet, as appropriate. The effective date of such notice will be at least 5 days after the date such notice is filed with the Office of the Federal Register. The closure will remain in effect until an additional quota for that gear becomes available.

(b) *Bycatch limits.* (1) During a closure of the drift gillnet fishery, a person aboard a vessel using or having aboard a drift gillnet—

(i) May not fish for swordfish shoreward of the outer boundary of the EEZ; and

(ii) May not possess aboard a fishing vessel shoreward of the outer boundary of the EEZ or land from a fishing vessel in an Atlantic, Gulf of Mexico, or Caribbean coastal state more than two swordfish per trip.

(2) During a closure of the fishery with gear other than drift gillnet, a person aboard a vessel using or having aboard gear other than drift gillnet—

(i) May not fish for swordfish shoreward of the outer boundary of the EEZ; and

(ii) May not possess aboard a fishing vessel shoreward of the outer boundary of the EEZ or land from a fishing vessel in an Atlantic, Gulf of Mexico, or Caribbean coastal state more than two swordfish per trip.

(3) The provisions of paragraph (b)(2) of this section notwithstanding, during a closure of the fishery with gear other than drift gillnet, a person aboard a vessel using or having aboard harpoon gear may not fish for or possess a swordfish shoreward of the outer boundary of the EEZ and may not land a swordfish in an Atlantic, Gulf of Mexico, or Caribbean coastal state.

(c) *Transfer of swordfish.* During a closure, shoreward of the outer boundary of the EEZ, a swordfish may not be transferred from a fishing vessel subject to the closure or received from such fishing vessel by another vessel, regardless of where the swordfish was harvested.

§ 630.29 Recreational sale limitations.

A swordfish harvested from the North Atlantic swordfish stock in the recreational fishery may not be sold, offered for sale, purchased, traded, or bartered shoreward of the outer boundary of the EEZ or in any state.

[FR Doc. 91-13924 Filed 6-7-91; 11:34 am]
BILLING CODE 3510-22-M

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Proposed Rules

Federal Register
Vol. 56, No. 113
Wednesday, June 12, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

52 CFR Part 930

RIN 3206-AD43

Training Requirement for the Computer Security Act

AGENCY: Office of Personnel Management.

ACTION: Proposed Regulation.

SUMMARY: This proposed regulation implements Public Law 100-235, the Computer Security Act of 1987, which requires training for all employees responsible for the management and use of Federal computer systems that process sensitive information. Under the proposed regulation agencies will be responsible for identifying the employees to be trained and providing appropriate training.

DATES: Comments will be considered if they are received on or before August 12, 1991.

ADDRESSES: Send or deliver written comments to: U.S. Office of Personnel Management, Human Resources Development Group, Office of Executive and Management Policy, PO Box 7559, Washington, DC 20044, Attn: Ms. Constance Guitian.

FOR FURTHER INFORMATION CONTACT: Ms. Constance Guitian, (202) 632-8769.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management issued interim regulations on July 13, 1988 (53 FR 26562) to comply with the legal requirement for regulations within six months of the passage of the Computer Security Act. That Act also placed a secondary requirement on the training regulations to implement the "Computer Security Training Guidelines" which had not at that time been issued by the National Institutes of Standards and Technology (NIST).

Since the, NIST has released Special Publication 500-172, "Computer Security Training Guidelines." Three additional documents have been published which are designed to meet training needs of specific audiences: "The Executive Guide to the Protection of Information Resources"; "Management Guide to the Protection of Information Resources"; and "Computer User's Guide to the Protection of Information Resources." These guidelines are consistent with the interim regulations; but in order to discharge its full responsibility under the law, the Office of Personnel Management is proposing regulations that mirror the guidelines.

The proposed regulations provide a framework for determining the training needs by subject area of employees involved with computer systems that process sensitive information. Employees are grouped into five categories and the required level of training for each subject area is described. For information about the learning objective for each group of employees, consult the "Computer Security Training Guidelines" (NIST Special Publication 500-172).

The training outlined in these proposed regulations should be incorporated as much as possible into existing training programs rather than being a new or separate training program. For example, security awareness training could be included in orientation program for new employees. All training courses involved with automated information systems equipment and software packages could include modules on computer security responsibilities. As training for managers and supervisors is redesigned, it could include modules on computer security. In addition, agencies should explore non-classroom modes of delivery of training such as computer assisted training, video tapes, workbooks, job aids, and desk guides.

Although training is of vital importance to a security program, it is only part of a large information management system. Agency management needs to foster a work environment where information security is seen as critical to accomplishing the agency's mission.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental jurisdictions, because it will affect only Federal employees.

Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, the Office of Personnel Management proposes to revise subpart to 5 CFR part 930 to read as follows:

PART 930—PROGRAMS FOR SPECIFIC POSITIONS AND EXAMINATIONS (MISCELLANEOUS)

Subpart C—Employees Responsible for the Management or Use of Federal Computer Systems

Sec.

930.301 Definitions.
930.302 Training requirement.
930.303 Initial training.
930.304 Continuing training.
930.305 Refresher training.

Subpart C—Employees Responsible for the Management or Use of Federal Computer Systems

Authority: 40 U.S.C. 759 note.

§ 930.301 Definitions.

(a) The amount and type of training different groups of employees will receive will be distinguished by the following knowledge levels identified in the Computer Security Training Guidelines developed by the National Institute of Standards and technology:

(1) *Awareness level training* creates the sensitivity to the threats and vulnerabilities and the recognition of the need to protect data, information, and the means of processing them;

(2) *Policy level training* provides the ability to understand computer security principles so that executives can make informed policy decisions about their computer and information security programs;

(3) *Implementation level training* provides the ability to recognize and assess the threats and vulnerabilities to automated information resources so that the responsible managers can set security requirements which implement agency security policies; and

(4) *Performance level training* provides the employees with the skill to design, execute, or evaluate agency computer security procedures and practices. The objective of this training is that employees will be able to apply security concepts while performing the tasks that related to their particular positions. It may require education in basic principles and training in state-of-the-art applications.

(b) Training audiences are groups of employees with similar training needs. Consistent with the Computer Security Training Guidelines, they are defined as follows:

(1) *Executives* are those senior managers who are responsible for setting agency computer security policy, assigning responsibility for implementing the policy, determining acceptable levels of risk, and providing the resources and support for the computer security program.

(2) *Program and Functional Managers* are those managers and supervisors who have a program or functional responsibility (not in the area of computer security) within the agency. They have primary responsibility for the security of their data. This means that they designate the sensitivity and criticality of data and processes, assess the risks to those data, and identify security requirements to the supporting data processing organization, physical facilities personnel, and users of their data. Functional managers are responsible for assuring the adequacy of all contingency plans relating to the safety and continuing availability of their data.

(3) *Information Resources Managers (IRM), Security, and Audit Personnel* are all involved with the daily management of the agency's information resources, including the accuracy, availability, and safety of these resources. Each agency assigns responsibility somewhat differently, but as a group these persons issue procedures, guidelines, and standards to implement the agency's policy for information security, and to monitor its effectiveness and efficiency. They provide technical assistance to users, functional managers, and to the data processing organization in such areas as risk assessment and available security products and technologies. They review and evaluate the functional and program groups' performance in information security.

(4) *Automated Data Processing (ADP) Management, Operations, and Programming Staff* are all involved with the daily management and operations of the automated data processing services. They provide for the protection of the data in their custody and identify to the data owners what those security measures are. This group includes such diverse positions as computer operators, schedulers, tape librarians, data base administrators, and systems and applications programmers. The provide the technical expertise for implementing security-related controls within the automated environment. They have primary responsibility for all aspects of contingency planning.

(5) *End Users* are any employees who have access to an agency computer system that processes sensitive information. This is the largest and most heterogeneous group of employees. It consists of everyone from the executive who has a personal computer with sensitive information to data entry clerks.

(c) The training guidelines developed by the National Institute of Standards and Technology identify five subject area. They are:

(1) *Computer security basics* is the introduction to the basic concepts behind computer security practices and the importance of the need to protect the information from vulnerabilities to known threats;

(2) *Security planning and management* is concerned with risk analysis, the determination of security requirements, security training, and internal agency organization to carry out the computer security function;

(3) *Computer security policies and procedures* looks at Governmentwide and agency-specific security practices in the areas of physical, personnel software, communications, data, and administrative security;

(4) *Contingency planning* covers the concepts of all aspects of contingency planning, including emergency response plans, backup plans and recovery plans. It identifies the roles and responsibilities of all the players involved; and

(5) *Systems life cycle management* discusses how security is addressed during each phase of a system's life cycle (e.g. system design, development, test and evaluation, implementation, and maintenance). It addresses procurement, certification, and accreditation.

(d) The statute defines the term *sensitive information* as any information, the loss, misuse, or unauthorized access to or modification of which could adversely affect the national interest or the conduct of Federal programs, or the privacy to which individuals are entitled under section 552a of title 5, United States Code (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive order or an Act of Congress to be kept secret in the interest of national defense or foreign policy.

§ 930.302 Training requirement.

The head of each agency shall identify employees responsible for the management or use of computer systems that process sensitive information and provide the following training (consult "Computer Security Training Guidelines," NIST Special Publication 500-172 for more detailed information) to each of these groups:

(a) Executives shall receive awareness training in computer security basics, computer security policy and procedures, contingency planning, and systems life cycle management; and policy level training in security planning and management.

(b) Program and functional managers shall receive awareness training in computer security basics; implementation level training in security planning and management, and computer security policy and procedures; and performance level training in contingency planning and systems life cycle management.

(c) IRM, security, and audit personnel shall receive awareness training in computer security basics; and performance level training in security planning and management, computer security policies and procedures, contingency planning, and systems life cycle management.

(d) ADP management and operations personnel shall receive awareness training in computer security basics; and performance level training in security planning and management, computer security policies and procedures, contingency planning, and systems life cycle management.

(e) End users shall receive awareness training in computer security basics, security planning and management, and systems life cycle management; and performance level training in computer security policies and procedures, and contingency planning.

§ 930.303 Initial training.

The head of each agency shall provide the training outlined in § 930.302 of this part to all such new employees within 60 days of their appointment.

§ 930.304 Continuing training.

The head of each agency shall provide training whenever there is a significant change in the agency information security environment or procedures or when an employee enters a new position which deals with sensitive information.

§ 930.305 Refresher training.

Computer security refresher training shall be given as frequently as

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determined necessary by the agency based on the sensitivity of the information that the employee uses or processes.

[FR Doc. 91-13993 Filed 6-11-91; 8:45 am]

BILLING CODE 8325-01-M

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 801

RIN 0580-AA21

Official Performance Requirements for Grain Inspection Equipment

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is proposing to revise the regulations under the United States Grain Standards Act, as amended, concerning the Official Performance Requirements for Grain Inspection Equipment. FGIS plans to incorporate by reference, the applicable sections of the Grain Moisture Meters Code and General Code of the National Institute of Standards and Technology (NIST) Handbook 44, which is entitled "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," 1991 edition (Handbook 44), into the regulations.

DATES: Comments must be submitted on or before August 12, 1991.

ADDRESSES: Comments must be submitted in writing to Allen A. Atwood, Federal Grain Inspection Service, USDA, room 0628 South Building, Box 96454, Washington, DC, 20090-6454; telemail users may respond to [IRSTAFF/FGIS/USDA] telemail; telex users may respond to Allen A. Atwood, TLX: 7607351, ANS: FGIS UC; and telecopy users may respond to the automatic telecopier machine at (202) 447-4628.

All comments received will be made available for public inspection at room 0628 South Building, 1400 Independence Avenue, SW., Washington, DC, during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Allen A. Atwood, address as above, telephone (202) 475-3428.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

John C. Foltz, Administrator, FGIS has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities because most users of the official inspection and weighing services and those entities that perform these services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

Background and Proposal

Handbook 44 is recommended by the National Institute of Standards and Technology (NIST) and the National Conference on Weights and Measures (NCWM) for use by the States in exercising their control of commercial weighing and measuring apparatus. The Grain Moisture Meters Code, contained within Handbook 44, includes design specifications, tolerances for acceptance and maintenance testing, and user requirements associated with grain moisture meter use by the commercial sector. The General Code applies to all classes of commercial devices as covered in specific codes.

Incorporation of applicable sections of the Grain Moisture Meters Code and General Code is consistent with efforts to achieve greater uniformity of specifications and technical requirements for grain moisture determinations. Those provisions of Handbook 44 that did not pertain to or were not practical for moisture meters used in the official system were not included in the proposed incorporation by reference. FGIS proposes a revision to part 801 of the regulations, Official Performance Requirements for Grain Inspection Equipment, that would incorporate by reference the applicable requirements contained in the 1991 edition of the NIST Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices." Specifically, FGIS is proposing to add the applicable sections of Handbook 44 to part 801 by adding a new section 801.12 which is entitled "Design Requirements Incorporated by Reference."

List of Subjects in 7 CFR Part 801

Administrative practice and procedure, Export, Grain, Incorporation by reference.

For reasons set forth in the preamble, 7 CFR part 801 is proposed to be amended as follows:

1. The authority citation for part 801 continues to read as follows:

Authority: Pub.L. 94-582, 90 stat. 2867, as amended, (7 U.S.C. 71 *et seq.*)

2. It is proposed that Part 801 be amended to add § 801.12 that reads as follows:

* * * * *

§ 801.12 Design requirements incorporated by reference.

(a) *Moisture meters.* All moisture meters approved for use in official grain moisture determination and certification shall meet applicable requirements contained in the FGIS Moisture Handbook and the General Code and Grain Moisture Meters Code of the 1991 edition of the National Institute of Standards and Technology's (NIST) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices." Pursuant to the provisions of 5 U.S.C. 552(a), the materials in Handbook 44 are incorporated by reference as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register**.

The NIST Handbook is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20403. It is also available for inspection at the Office of the **Federal Register**, room 8401, 1100 "L" Street, NW., Washington, DC.

The following Handbook 44 requirements are not incorporated by reference:

General Code (1.10.)

G-S.5.5. Money Values, Mathematical Agreement
G-T.1. Acceptance Tolerances
G-UR.3.3. Position of Equipment
G-UR.3.4. Responsibility, Money-Operated Devices

Grain Moisture Meters (5.56.)

N.1.1. Transfer Standards
N.1.2. Minimum Test
N.1.3. Temperature Measuring Equipment
T.2. Tolerance Values
T.3. For Test Weight Per Bushel Indications or Recorded Representations
UR.3.2. Other Devices not used for Commercial Measurement
UR.3.7. Location
UR.3.11. Posting of Meter Operating Range

(b) Reserved for future use

Dated: May 6, 1991.

David R. Galliart,

Deputy Administrator.

[FR Doc. 91-13917 Filed 6-11-91; 8:45 am]

BILLING CODE 3410-EN-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20 and 35

[Docket No. PRM-20-20]

Carol S. Marcus; Filing of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of petition for rulemaking.

SUMMARY: The Commission is publishing for public comment a notice of receipt of a petition for rulemaking dated December 26, 1990, which was filed with the Commission by Dr. Carol S. Marcus. The petition was assigned Docket No. PRM-20-20 on February 6, 1991. The petitioner requests that the Commission revise its standards for protection against radiation to raise the annual radiation dose absorbed by individual members of the public from 1 mSv to 5 mSv (500 mrems).

DATES: Submit comments by August 12, 1991. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch. For a copy of the petition, write: Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publication Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7758 or Toll Free: 800-368-5642.

SUPPLEMENTARY INFORMATION:

Background

On December 28, 1990, the Nuclear Regulatory Commission (NRC) received a petition for rulemaking submitted by Dr. Carol S. Marcus. The petitioner requested amendments to the revised 10 CFR part 20 and 10 CFR part 35. Because the final rule for 10 CFR part 20 and conforming amendments had not been published in the **Federal Register**, Dr. Marcus agreed that the NRC delay docketing and providing public notice of the petition until the revised 10 CFR part 20 had been published as a final rule.

The NRC published on May 21, 1991 (56 FR 23360) the final rule that amended the standards for protection against radiation in 10 CFR part 20 and made conforming amendments to 10 CFR chapter I.[1] In the amendment to § 20.1301, the NRC states that each licensee shall conduct operations so that the total effective dose equivalent to individual members of the public from the licensed operation does not exceed 0.1 rem (1 mSv) in a year, exclusive of the dose contribution from the licensee's disposal of radioactive material into sanitary sewerage in accordance with § 20.2003. The section further states that a licensee or license applicant may apply for prior NRC authorization to operate up to an annual dose limit for an individual member of the public of 0.5 rem (5 mSv).

Petitioner's Request

The petitioner requests the NRC to revise 10 CFR parts 20 and 35 to—

(1) Raise the annual radiation dose limit that can be absorbed by members of the public from patients receiving radiopharmaceuticals for diagnosis or therapy from 1 mSv to 5 mSv (500 mrems);

(2) Delete the requirement that licensees have to comply with provisions of EPA's applicable environmental standards in addition to complying with the requirements of Part 20.

(3) Amend § 35.75 (a)(2) to retain the 30 mCi (1110 MBq) limit for I-131, but vary the maximum activity of other radionuclides consistent with the calculations methodology employed in NCRP Report No. 37, "Precautions in the Management of Patients Who Have Received Therapeutic Amounts of Radionuclides (NCRP, 1970)."

Reasons for Petition

Raise Public Absorbed Dose Limits

The petitioner states that reducing the level of absorbed dose to 1 mSv per year would be extremely expensive for members of the public and hospitalized patients. The petitioner states that in order that members of the public who are closest to the patient not receive more than 1 mSv per year, patients who are hospitalized would require hospitalization for longer times than they are now and many outpatients would have to be made inpatients. The petitioner questions the benefit to the public in reducing the dose to 1 mSv because no one has demonstrated any risk from chronic doses of 5 mSv per year. The petitioner points out that residents of portions of Colorado, who receive 2.5 mSv per year, and those in higher background areas, have never shown any adverse effects from those low levels of radiation. The petitioner states that because the new Part 20 continues to permit the embryo/fetus of a declared pregnant woman to accrue a dose of 5 mSv per 9 months; it would be scientifically consistent to permit certain members of the general public to do the same.

Dual Requirements

The petitioner recommends the deletion of § 20.1301(d) which requires that, in addition to the requirements of part 20, a licensee subject to the provisions of EPA's generally applicable environmental radiation standards in 40 CFR part 190 comply with those standards. According to the petitioner, EPA's radionuclide National Emission Standards for Hazardous Air Pollutants (NESHAPS) [2] will become a national standard.[3] According to the petitioner, the more restrictive nature of EPA's standard would nullify the revised part 20. The petitioner states that NRC required adherence to EPA standards could cost $100,000,000 per year.

1110 MBq Limit

The petitioner states that the new § 20.1903 is scientifically inconsistent with the part 20 absorbed dose change in that it appears to have retained the concept of the 30 mCi (1110 MBq) limit expressed in § 35.75(a)(2). The petitioner further states that § 35.75(a)(2) is not scientifically sound because it refers to all radionuclides, instead of just I-131, for which the 30 mCi (1110 MBq) activity limit was originally intended. The petitioner requests that 30 mCi (1110 MBq) limit for I-131 be retained, but vary the maximum activity of other radionuclides consistent with the calculation methodology employed in NCRP No. 37.

Petitioner's Proposal

The petitioner proposes to retain the 30 mCi (1110 MBq) limit for I-131, vary the maximum activity of other radionuclides consistent with the calculation methodology employed in NCRP No. 37, and continue to permit

[1] The new standards for protection against radiation were redesignated prior to publication. The references to 10 CFR part 20 that were presented in the petition for rulemaking have been modified to reflect the section designations that appear in the final rule.

[2] The Commission notes that these are not the same standards as 40 CFR part 190.

[3] Implementation has been deferred by EPA.

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members of the public to receive up to 5 mSv from patients. The petitioner also proposes to delete § 20.1301(d) because EPA's radionuclide NESHAPS will become a national standard, and its more restrictive nature would take the place of the airborne effluent limit in the amended part 20.

Conclusion

The petitioner states if this petition is granted, there will be zero-additional cost. The petitioner has included detailed economic impact calculations to support the technical basis for the petition.

Dated at Rockville, Maryland this 6th day of June, 1991.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 91-13970 Filed 6-11-91; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201 and 331

[Docket No. 90N-0309]

Drug Labeling; Sodium Labeling for Over-the-Counter Drugs; Proposed Amendment; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to July 24, 1991, the period for submission of comments on the notice of proposed rulemaking for sodium labeling for over-the-counter (OTC) drug products. FDA is taking this action in response to a request to extend the comment period for an additional 30 days to allow more time to comment on this proposal.

DATES: Written comments by July 24, 1991.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 25, 1991 (56 FR 19222), FDA issued a notice of proposed rulemaking to amend the general labeling provisions for OTC drug products to: (1) Require that the sodium content of all orally administered OTC drug products be included in labeling when the product contains 5 milligrams (mg) or more sodium per a single recommended dose; (2) require that orally administered OTC drug products containing more than 140 mg sodium in the maximum recommended daily dose be labeled with a general warning that persons who are on a sodium-restricted diet should not take the product unless directed by a doctor; and (3) provide for the voluntary use of certain descriptive terms relating to the product's sodium content. FDA issued the notice of proposed rulemaking in order to provide uniform sodium content labeling for all orally administered OTC drug products, and to provide for the voluntary use in OTC drug labeling of the same terms used to describe sodium content in food labeling. Interested persons were given until June 24, 1991, to submit comments on the proposal.

On May 24, 1991, the Nonprescription Drug Manufacturers Association (NDMA), a trade association, requested a 30-day extension to July 24, 1991, in which to file written comments. NDMA contended that the proposal is sweeping in nature, covering virtually all therapeutic classes of OTC drugs that are administered orally. NDMA added that the proposal also raises significant questions of science and policy that merit careful review. NDMA mentioned that it has established a committee to analyze the proposal, particularly the proposed new warning requirements. NDMA noted that antacids are already required to bear sodium labeling, including a warning; that there is no public health and safety urgency to close the comment period; and that a 30-day extension of time for comment would not delay completion of the agency's OTC drug review because the proposal would apply to all orally administered OTC drugs and would be included in the general labeling requirements of 21 CFR part 201, rather than in OTC drug review monographs.

FDA has carefully considered the request and believes that additional time for comment is in the public interest. The agency notes that NDMA intends to file comments to assist the agency. The agency believes that additional time will allow for more useful comments to be developed. Thus, the agency considers a limited extension of the comment period to be appropriate.

Interested persons may, on or before July 24, 1991, submit to the Dockets Management Branch (address above) written comments regarding sodium labeling of orally administered OTC drug products. Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. Comments received may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 7, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-13985 Filed 6-11-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Supplemental Insurance Plans

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed amendment of rule.

SUMMARY: This rule proposes to amend DoD 6010.8-R (32 CFR part 199) which implements the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). The rule defines and limits the types of plans recognized as supplemental insurance coverage under CHAMPUS. The rule will also help provide guidance in identifying plans that would come under the CHAMPUS double coverage regulations.

DATES: Written public comments must be received on or before July 12, 1991.

ADDRESSES: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Aurora, Colorado 80045-6900.

FOR FURTHER INFORMATION CONTACT: Stan Regensberg, Office of Program Development, OCHAMPUS, Aurora, Colorado 80045-6900, telephone (303)-361-3572.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8-R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as part 199 of this title. DoD 6010.8-R was revised and published in the **Federal Register** on July 1, 1986 (51 FR 24008).

Background

In compliance with applicable statutory provisions [10 U.S.C. 1079(j)(1) and 10 U.S.C. 1086(d)] on double coverage, the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) pays benefits only after all other health plans have made payment, with the exception of Medicaid and certain insurance policies that are specifically designed to supplement CHAMPUS benefits.

This means that if a CHAMPUS beneficiary has another health plan, the other plan must pay whatever it covers before CHAMPUS will make any type of payment. The CHAMPUS beneficiary may have coverage through an employer, an association, or a private insurer. This also includes any coverage students may obtain through schools.

In most circumstances, when the CHAMPUS beneficiary's other plan has paid its maximum benefits, then CHAMPUS will pay for covered services up to the amount it would have paid, had there been no other health benefits plan involved.

This proposed rule defines and limits the types of plans recognized as supplemental insurance coverage under CHAMPUS. The rule will also help provide guidance in identifying plans that would come under the CHAMPUS double coverage provisions.

CHAMPUS has experienced difficulty because some other health insurance plans attempt to circumvent the statutory provision which makes them primary payer to CHAMPUS. Most often this has been through insurance policy provisions which attempt to characterize the policy as "supplemental" to CHAMPUS.

These attempts make clear a need for CHAMPUS to take some affirmative action to clarify and enforce the statutory second pay status. This proposed rule will assist CHAMPUS beneficiaries and providers and other third-party payers by stating what is recognized as a supplemental plan. The regulation provision provides that "coverage specifically designed to supplement CHAMPUS benefits" is not included as a double coverage plan. This provision lacks the specificity needed in light of the attempts by other insurance plans to put themselves into a second pay status by merely defining themselves to be supplemental to CHAMPUS even though their coverage may not be limited to CHAMPUS beneficiaries.

Provisions of the Proposed Rule

In order to implement this clarification, we propose to amend 32 CFR part 199. The proposed revisions are designed to conform the regulations to the provisions of chapter 55, title 10, U.S.C. 1079(j)(1) and to make minor clarifications. The underlying intent, in addition to preventing waste of Federal resources, is to ensure that CHAMPUS beneficiaries receive maximum benefits while ensuring that the combined payments of CHAMPUS and other health benefit and insurance plans do not exceed the total charges. Below we discuss the existing regulations and the proposed clarification:

Presently, § 199.2(b) does not include a definition of a supplemental insurance plan. Therefore, we propose the following definition:

Supplemental insurance plan. A health insurance policy or other health benefit plan that a private entity offers to a CHAMPUS beneficiary; and that is primarily designed, advertised, marketed, or otherwise held out as providing payment for expenses incurred for services and items that are not reimbursed under CHAMPUS because of deductibles, coinsurance, or other limitations under CHAMPUS. A supplemental insurance plan must meet all of the following criteria:

(i) It provides insurance coverage, regulated by state insurance agencies, which is available only to beneficiaries of CHAMPUS.

(ii) It is premium based and all premiums relate only to the CHAMPUS supplemental coverage.

(iii) Its benefits for all covered beneficiaries are predominately limited to noncovered CHAMPUS services and/or to the deductible and cost-share portions of the CHAMPUS-determined allowable charges.

(iv) It provides insurance reimbursement by making payment directly to the CHAMPUS beneficiary or participating provider.

(v) It does not operate in a manner which results in an overall reduction or waiver of CHAMPUS deductibles or cost-shares.

Currently, § 199.8(b)(3)(ii) provides as one of the exceptions to the double coverage provisions, coverage specifically designed to supplement CHAMPUS benefits. To qualify as supplemental insurance, we are proposing such insurance must meet the definition and criteria under supplemental insurance plan proposed for § 199.2(b) of this Part.

Regulatory Impact

We have determined that this amendment only involves clarification of existing CHAMPUS regulation by clarifying the types of plans considered to be supplemental plans for purpose of enforcement of the CHAMPUS statutory second pay status. Accordingly, the Secretary certifies pursuant to section 605(b) of title 5, United States Code, enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. It is not, therefore, a "major rule" under the Executive Order 12291.

This amendment is being published in the **Federal Register** for proposed rule making at the same time it is being coordinated within the Department of Defense and with other interested agencies so that consideration of both internal and external comments and publication of the final rule can be expedited.

List of Subjects in 32 CFR Part 199

Health insurance, Military personnel, Handicapped.

Accordingly, 32 CFR part 199 is proposed to be amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086; 5 U.S.C. 301.

2. Section 199.2 is proposed to be amended by adding a definition for "supplemental insurance plan" in the proper alphabetical order to paragraph (b) to read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Supplemental insurance plan. A health insurance policy or other health benefit plan that a private entity offers to a CHAMPUS beneficiary; and that is primarily designed, advertised, marketed, or otherwise held out as providing payment for expenses incurred for services and items that are not reimbursed under CHAMPUS because of deductibles, coinsurance, or other limitations under CHAMPUS. A supplemental insurance plan must meet all of the following criteria:

(i) It provides insurance coverage, regulated by state insurance agencies, which is available only to beneficiaries of CHAMPUS.

(ii) It is premium based and all premiums relate only to the CHAMPUS supplemental coverage.

(iii) Its benefits for all covered beneficiaries are predominately limited to noncovered CHAMPUS services and/or to the deductible and cost-share

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portions of the CHAMPUS-determined allowable charges.

(iv) It provides insurance reimbursement by making payment directly to the CHAMPUS beneficiary or participating provider.

(v) It does not operate in a manner which results in an overall reduction or waiver of CHAMPUS deductibles or cost-shares.

* * * * *

3. Section 199.8 is proposed to be amended by revising paragraph (b)(3)(ii) to read as follows:

§ 199.8 Double coverage.

* * * * *

(b) * * *

(3) * * *

(ii) Coverage specifically designed to supplement CHAMPUS benefits (a health insurance policy or other health benefit plan that meets the definition and criteria under supplemental insurance plan as set forth in § 199.2(b);

* * * * *

Dated: June 6, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-13903 Filed 6-11-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD1-91-016]

Drawbridge Operation Regulations; Danvers River, MA

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Massachusetts Department of Public Works (MDPW), the Coast Guard is considering a change to the regulations governing the Beverly-Salem SR1A Bridge and the Massachusetts Bay Transportation Authority (MBTA)/ AMTRAK Bridge both between Beverly and Salem, Massachusetts, at mile 0.0 and mile 0.05 respectively, and the Essex County Kernwood bridge between Peabody and Beverly, Massachusetts, at mile 1.0, all over the Danvers River, by permitting the draw of the SR1A Bridge to remain closed during the morning and evening rush hours, discontinuing the noon closure, and by revising the hours when advance notice for an opening is required at all three bridges. This proposal is being made because periods of peak vehicular traffic have changed. This action should accommodate the needs of vehicular traffic, continue to relieve the bridge owner of the burden of having a person constantly available to open the draw and should still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before 30 August 1991.

ADDRESSES: Comments should be mailed to Commander (obr), First Coast Guard District, Bldg. 135A, Governors Island, NY 10004-5073. The comments and other materials referenced in this notice will be available for inspection and copying at the above address or the John Foster Williams Building, 408 Atlantic Ave., Boston, Massachusetts 02210-2209. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to these offices.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668-7170.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped self-addressed post card or envelope.

A Notice of Final Temporary Rulemaking (CGD1-91-065) has been prepared and appears in the Final Rule Section of this **Federal Register**. The final temporary regulation is published in accordance with 33 CFR 117.43, in order to evaluate the drawbridge operating requirements during the prime recreational boating season. The Commander, First Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received or data collected.

Drafting Information

The drafters of this proposal are John McDonald, Project Officer, and Lieutenant John Gately, project attorney.

Discussion of Proposed Regulations

The SR1A, the MBTA/AMTRAK and the Essex County Kernwood bridges provides a vertical clearance of 19', 12' and 17' at MHW and 10', 3' and 8' at MLW, respectively. The current regulations require that the bridges open on signal; except that from 12 a.m. to 8 a.m. the draws shall open as soon as possible after notice is given, and the SR1A bridge need not be opened between 11:30 a.m. and 1 p.m. from June 1 through October 31. The proposed regulations for these bridges are that the draws open on signal except that from 12 a.m. to 5 a.m. daily and all day December 25 and January 1, the draws shall open as soon as possible after notice is given. Additionally, that the draw of the SR1A bridge, need not open from 7:30 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m., Monday thru Friday, except federal holidays for the passage of recreational vessels. Commercial vessels, public vessels of the United States, state and local vessels used for public safety or vessels in an distress shall be passed as soon as possible at anytime.

The number of vessel transits and bridge opening have increased from approximately 1,500 in 1978 to about 3,600 openings in 1988. A majority of these openings occur from the end of May until 31 October and range from about 350 to 650 openings per month. Vehicular traffic during the morning and evening rush hours ranges from about 1,900 to 2,600 vehicles per hour.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This opinion is based on the fact that the regulation will not prevent the mariners from transiting the bridge but require advance notice for openings and scheduling of transits. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism Implication Assessment

This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that this proposed .egulation does not have sufficient federalism implications to warrant preparation of a federal assessment.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.595 is revised and Appendix A to Part 117 is amended to revise the entries for the Danvers River under the State of Massachusetts to read as follows:

§ 117.595 Danvers River.

(a) The following requirements apply to all bridges across the Danvers River:

(1) Public vessels of the United States, state or local vessels used for public safety, commercial vessels, and vessels in distress shall be passed through the draw of each bridge as soon as possible without delay at any time. The opening signal from these vessels is four or more short blasts of a whistle or horn or a radio request.

(2) The owners of these bridges shall provide and keep in good legible condition clearance gauges for each draw with figures not less than 12 inches high designed, installed and maintained according to the provisions of paragraph 118.160 of this chapter.

(3) Trains and locomotives shall be controlled so that any delay in opening the draw span shall not exceed ten minutes. However, if a train moving toward the bridge has crossed the home signal for the bridge before the signal requesting opening of the bridge is given, that train may continue across the bridge and must clear the bridge interlocks before stopping.

(4) Except as provided in paragraph (d) through (e) of this section, the draws shall open on signal.

(b) The draw of the Beverly-Salem SR1A Bridge, mile 0.0 between Salem and Beverly, MA shall operate as follows:

(1) The draw shall open on signal, except that from 12 midnight to 5 a.m. daily and all day on December 25 and January 1, the draw shall open as soon as possible after notice is given to the drawtenders either at the bridge during the time the operators are on duty or by calling the advance notice telephone number posted.

(2) Except as provided in paragraph (a)(1) of this section, the draw need not be opened Monday through Friday, except federal holidays, from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m.

(c) The draws of the Massachusetts Bay Transit Authority (MBTA)/Amtrak Bridge at mile 0.05 between Salem and Beverly and the Essex County Kernwood bridge at mile 1.0 between Peabody and Beverly, MA, shall open on signal, except that from 12 midnight to 5 a.m. daily and all day on December 25 and January 1, the draw shall open as soon as possible after notice is given to the drawtenders either at the bridge during the time the operators are on duty or by calling the advance notice telephone number posted.

APPENDIX A TO PART 117—DRAWBRIDGES EQUIPPED WITH RADIOTELEPHONES

Waterway	Mile	Location	Bridge name and owner	Call sign	Calling channel	Working channel
•	•	•	•	•		
Massachusetts						
•	•	•	•	•		
Danvers River	0.0	Beverly/Salem	SR1A, MDPW	pending	16	13
	0.05	Beverly/Salem	MBTA/AMTRAK, MBTA/AMTRAK	WRD 625	16	13
	1.0	Peabody/Beverly	ESSEX County, Kernwood, MDPW	pending	16	13
•	•	•	•	•		

Dated: May 30, 1991.

P.L. Collom,

Capt. USCG, Commander, First Coast Guard District, Acting.

[FR Doc. 91-13562 Filed 6-11-91; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 910514-1114]

RIN 0651-AA49

Patent Interference Proceedings

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Patent and Trademark Office (PTO) proposes to amend its rules of practice in patent interference cases. The U.S. District Court for the District of Columbia recently decided *Kochler* v. Mustonen, Civil Action No. 90-1074 (D.D.C. Apr. 23, 1991). The District Court held that PTO practice regarding taking of testimony abroad was not clear. PTO rules require that a testimony period be set. The rules also require that testimony be taken during the testimony period. Rule 684 authorizes testimony to be taken abroad. However, Rule 684 requires that a motion be filed for leave to take testimony abroad and that the motion be filed before the close of a party's testimony period. The District Court suggested that a motion to take testimony abroad, filed in PTO on the last day of the testimony period, could be considered timely even though taking of the testimony might occur after the testimony period. By this notice, PTO proposes to continue to authorize the filing of a motion to take testimony abroad. However, a party would have to file the motion within a time such that the testimony could be taken during the testimony period set under PTO Rule 651.

DATES: Comments must be submitted on or before July 12, 1991. A public hearing will not be held.

ADDRESSES: Address written comments to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231, marked to the attention of Fred E. McKelvery, Solicitor. Written comments will be available for public inspection in Suite 918, on the 9th floor of Crystal Park II, located at 2121 Crystal Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Fred E. McKelvey by telephone at (703) 557-4035 or by mail marked to his attention and addressed to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The PTO conducts interference proceedings to determine who as between two or more

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applicants for patent or one or more applicants and one or more patentees is the first inventor of a patentable invention. As part of its proofs in an interference, a party may request leave to take testimony abroad. 37 CFR 1.684 (1990).

The U.S. District Court for the District of Columbia recently decided *Kochler* v. *Mustonen*, Civil Action No. 90-1074 (D.D.C. Apr. 23, 1991). The District Court held that PTO practice regarding taking of testimony abroad was not clear. PTO rule 651 (37 CFR 1.651 (1990)) requires that a testimony period be set. Rule 651 also requires that testimony be taken during the testimony period. Rule 684 (37 CFR 1.684 1990)) authorizes testimony to be taken abroad. However, Rule 684 requires that a motion be filed for leave to take testimony abroad and that the motion be filed before the close of a party's testimony period. The District Court suggested that a motion to take testimony abroad, filed in PTO on the last day of the testimony period, could be considered timely even though taking of the testimony might occur after the testimony period. By this notice, PTO proposes to continue to authorize the filing of a motion to take testimony abroad. However, a party would have to file the motion within a time such that the testimony could be taken during the testimony period set under PTO Rule 651.

If the changes proposed herein are ultimately adopted, it is anticipated that the Examiner-in-Chief assigned to an interference would specify in an order setting testimony when a motion to take testimony abroad (§ 1.684) would have to be filed. In the absence of setting of a specific time by the Examiner-in-Chief, the motion would have to be filed promptly after a testimony period is set so that it could be acted upon and testimony taken and completed within the testimony period. The rules, as proposed to be amended, would continue the policy announced in *Ziegler* v. *Baxter* v. *Natta*, 157 USPQ 432 (Comm'r Pat. 1968) (motion to take testimony abroad must be promptly filed after testimony period is set).

Section 1.651(a) is proposed to be revised by adding to the end of subsection (a) the language "(testimony includes testimony to be taken abroad under § 1.684)." This language would make clear the fact that testimony includes testimony which might be taken abroad.

Section 1.651(d) is proposed to be revised by adding (1) the language "including any testimony to be taken abroad under § 1.684," (2) the language "and completed," and (3) the sentence "a party seeking to extend the period for taking testimony must comply with § 1.635 and § 1.645(a)." This language and sentence would make clear that a party would have to complete all testimony within the testimony period and would need to move to extend the testimony period if sufficient time was not available to complete all testimony, which would include testimony to be taken abroad. The period would be extended only if the party made the showing required by § 1.645(a).

Section 1.684 is proposed to be revised by (1) deleting from paragraph (a) the language "prior to the close of the party's appropriate testimony period or within such time as may be set by an examiner-in-chief," (2) adding the language "promptly after the testimony period is set," and (3) adding to paragraph (a) the language "taking of testimony abroad must be completed within the testimony period set under § 1.651." The effect of these changes would be to require a motion to take testimony abroad to be filed within sufficient time to be acted upon and testimony taken abroad within the testimony period.

Other Considerations

The proposed rule changes are in conformity with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), Executive Orders 12291 and 12612 and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that these proposed rule changes will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The principal impact of these proposed changes is to clarify the need for taking testimony abroad during the testimony period. The proposed rule changes include no additional or increased fees. Substantive rights are not adversely affected.

The Office has determined that these proposed rule changes are not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. Because most of the proposed changes do not change burdens, there will be no major increase in costs or prices for consumers; individual industries; Federal, state or local government agencies; or geographic regions. There will be no significant productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The rule change will not impose any additional burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The Office has also determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Inventions and patents.

PART 1—RULES OF PRACTICE IN PATENT CASES

For the reasons set out in the preamble, it is proposed to amend 37 CFR part 1 wherein removals are indicated by brackets ([]) and additions by arrows (►◄):

1. The authority citation for 37 CFR part 1 would continue to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.651 is proposed to be revised as follows:

§ 1.651 Setting times for discovery and taking testimony, parties entitled to take testimony.

(a) At an appropriate stage in an interference, an examiner-in-chief shall set (1) a time for filing motions (§ 1.635) for additional discovery under § 1.687(c) and (2) testimony periods for taking any necessary testimony ►(testimony includes testimony to be taken abroad under § 1.684)◄.

(b) Where appropriate, testimony periods will be set to permit a party to:

(1) Present its case-in-chief and/or case-in-rebuttal and/or

(2) Cross-examine an opponent's case-in-chief and/or a case-in-rebuttal.

(c) A party is not entitled to take testimony to present a case-in-chief unless:

(1) The examiner-in-chief orders the taking of testimony under § 1.639(c);

(2) The party alleges in its preliminary statement a date of invention prior to the earlier of the filing date or effective filing date of the senior party;

(3) A testimony period has been set to permit an opponent to prove a date of invention prior to the earlier of the filing date or effective filing date of the party

and the party has filed a preliminary statement alleging a date of invention prior to that date; or

(4) A motion (§ 1.635) is filed showing good cause why a testimony period should be set.

(d) Testimony ►, including any testimony to be taken abroad under § 1.684,◄ shall be taken ► and completed ◄ during the testimony periods set under paragraph (a) of this section. ► A party seeking to extend the period for taking testimony mut comply with § 1.635 and § 1.645(a). ◄

3. Section 1.684 is proposed to be revised as follows:

§ 1.684 Testimony in a foreign country.

(a) An examiner-in-chief may authorize testimony of a witness to be taken in a foreign country. A party seeking to take testimony in a foreign country shall, [prior to the close of the party's appropriate testimony period or within such time as may be set by an examiner-in-chief,] ► promptly after the testimony period is set, ◄ file a motion (§ 1.635):

(1) Naming the witness.

(2) Describing the particular facts to which it is expected that the witness will testify.

(3) Stating the grounds on which the moving party believes that the witness will so testify.

(4) Demonstrating that the expected testimony is relevant.

(5) Demonstrating that the testimony cannot be taken in this country at all or cannot be taken in this country without hardship to the moving party greatly exceeding the hardship to which all opposing parties will be exposed by the taking of the testimony in a foreign country.

(6) Accompanied by an affidavit stating that the motion is made in good faith and not for the purpose of delay or harassing any party.

(7) Accompanied by written interrogatories to be asked of the witness.

(b) Any opposition under § 1.638(a) shall state any objection to the written interrogatories and shall include any cross-interrogatories to be asked of the witness. A reply under § 1.638(b) may be filed and shall be limited to stating any objection to any cross-interrogatories proposed in the opposition.

(c) If the motion is granted, ► taking of testimony abroad must be completed within the testimony period set under § 1.651. ◄ [the] ► The ◄ moving party shall be responsible for obtaining answers to the interrogatories and cross-interrogatories before an officer qualified to administer oaths in the foreign country under the laws of the United States or the foreign country. The officer shall prepare a transcript of the interrogatories, cross-interrogatories, and recorded answers to the interrogatories and cross-interrogatories and shall transmit the transcript to BOX INTERFERENCE, Commissioner of Patents and Trademarks, Washington, DC 20231, with a certificate signed and sealed by the officer and showing:

(1) The witness was duly sworn by the officer before answering the interrogatories and cross-interrogatories.

(2) The recorded answers are a true record of the answers given by the witness to the interrogatories and cross-interrogatories.

(3) The name of the person by whom the answers were recorded and, if not recorded by the officer, whether the answers were recorded in the presence of the officer.

(4) The presence or absence of any party.

(5) The place, day, and hour that the answers were recorded.

(6) A copy of the recorded answers was read by or to the witness before the witness signed the recorded answers and that the witness signed the recorded answers in the presence of the officer. The officer shall state the circumstances under which a witness refuses to read or sign recorded answers.

(7) The officer is not disqualified under § 1.674.

(d) If the parties agree in writing, the testimony may be taken before the officer on oral deposition.

(e) A party taking testimony in a foreign country shall have the burden of proving that false swearing in the giving of testimony is punishable as perjury under the laws of the foreign country. Unless false swearing in the giving of testimony before the officer shall be punishable as perjury under the laws of the foreign country where testimony is taken, the testimony shall not be entitled to the same weight as testimony taken in the United States. The weight of the testimony shall be determined in each case.

Dated: May 7, 1991.

Harry F. Manbeck, Jr.,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 91-13850 Filed 6-11-91; 8:45 am]

BILLING CODE 3510-16-M

DEPARTMENT OF DEFENSE

DEPARTMENT OF TRANSPORTATION

Coast Guard

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AD99

Reservists Education; The Veterans' Benefits Programs Improvement Act and the Montgomery GI Bill

AGENCY: Department of Veterans Affairs, Department of Defense and Coast Guard, Department of Transportation.

ACTION: Proposed regulations.

SUMMARY: The Veterans' Benefits and Programs Improvement Act of 1988 contains several provisions which affect the Montgomery GI Bill—Selected Reserve. These include liberalizing the eligibility requirements for this program; providing less than half-time training under this program and liberalizing the standards for determining extension to a reservist's basic period of eligibility. A few of the amended regulations needed to implement this law were proposed in the **Federal Register** dated November 17, 1989, on pages 47785 to 47790. This proposal will acquaint the public with the way in which the Department of Veterans Affairs (VA) will administer the remaining provisions of law.

DATES: Comments must be received on or before July 12, 1991. Comments will be available for public inspection until July 22, 1991. It is proposed to make the revisions to these regulations and the new regulations contained in this proposal effective on the same date as the provisions of law on which they are based. Consequently, it is proposed to make the revisions to 38 CFR 21.7520(b)(14) and 21.7639(b) retroactively effective on June 1, 1989. It is proposed to make the revisions to all other regulations retroactively effective on November 18, 1988.

ADDRESSES: Send written comments to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until July 22, 1991.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for

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Policy and Program Administration, Education Service, Veterans Benefits Administration (202) 233–2092.

SUPPLEMENTARY INFORMATION: The Department of Defense, the Department of Transportation and the Department of Veterans Affairs are proposing to amend various regulations in order to implement several provisions of the Veterans' Benefits and Programs Improvement Act of 1988 (Pub. L. 100–689) which affect the Montgomery GI Bill—Selected Reserve. These provisions provide for less than half-time training in this program; liberalize the eligibility requirements for this program; provide new rules for determining when VA will consider the circumstances surrounding a reservist's withdrawal from courses to be mitigating; and provide that the disabling effects of chronic alcoholism will not be considered to be the result of willful misconduct when VA determines whether or not a reservist is entitled to an extension of the period of eligibility due to a service-connected disability.

The Department of Defense, Department of Transportation and the Department of Veterans Affairs have determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Defense, the Secretary of Transportation and the Secretary of Veterans Affairs have certified that these amended regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initia1 and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulations affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by these regulations is 12.609.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 21, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Approved: May 9, 1990.

Albert V. Conte,

Deputy Assistant Secretary of Reserve Affairs (Manpower & Personnel).

Approved: October 3, 1990.

John N. Faigle,

RADM, U.S. Coast Guard Chief, Office of Readiness and Reserve.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

38 CFR Part 21 is proposed to be amended as follows:

1. In § 21.7520, paragraph (b)(14) and its authority citation are revised, and paragraph (b)(29) is added to read as follows:

* * * * *

§ 21.7520 Definitions.

* * * * *

(b) * * *

(14) *Mitigating circumstances.* (i) Mitigating circumstances are circumstances beyond the reservist's control which prevent him or her from continuously pursuing a program of education. The following circumstances are representative of those which VA considers to be mitigating. This list is not all-inclusive.

(A) An illness of the reservist,

(B) An illness or death in the reservist's family,

(C) An unavoidable change in the reservist's conditions of employment,

(D) An unavoidable geographical transfer resulting from the reservist's employment,

(E) Immediate family or financial obligations beyond the control of the reservist which require him or her to suspend pursuit of the program of education to obtain employment,

(F) Discontinuance of the course by the educational institution,

(G) Unanticipated active duty military service, including active duty for training, and

(H) Unanticipated difficulties in providing for child care for the reservist's child or children.

(ii) If a reservist withdraws from a course during a drop-add period, VA will consider the circumstances which caused the withdrawal to be mitigating.

(iii) In the first instance of a withdrawal after May 31, 1989, from a course or course for which the reservist received educational assistance under chapter 106, title 10, U.S. Code, VA will consider that mitigating circumstances exist with respect to courses totaling not more than six semester hours or the equivalent. In determining whether a withdrawal is the first instance of withdrawal, VA will not consider courses dropped during an educational institution's drop-add period as provided in paragraph (b)(14)(ii) of this section.

(Authority: 38 U.S.C. 1434, 1780(a)(1), Pub. L. 100–689) (June 1, 1989)

* * * * *

(29) *Disabling effects of chronic alcoholism.*

(i) The term "disabling effects of chronic alcoholism" means alcohol-induced physical or mental disorders or both, such as habitual intoxication, withdrawal, delirium, amnesia, dementia, and other like manifestations of chronic alcoholism which, in the particular case,—

(A) Have been medically diagnosed as manifestations of alcohol dependency or chronic alcohol abuse, and

(B) Are determined to have prevented commencement or completion of the affected individual's chosen program of education.

(ii) A diagnosis of alcoholism, chronic alcoholism, alcohol-dependency, chronic alcohol abuse, etc., in and of itself, does not satisfy the definition of this term.

(iii) Injury sustained by a reservist as a proximate and immediate result of activity undertaken by the reservist while physically or mentally unqualified to do so due to alcoholic intoxication is not considered a disabling effect of chronic alcoholism.

(Authority: 38 U.S.C. 105, 1431(d); Pub. L. 100–689) (Nov. 18, 1988)

2. In § 21.7540, paragraph (a)(2) is revised and the authority citation for paragraph (a) is revised to read as follows:

§ 21.7540 Eligibility for educational assistance.

(a) * * *

(2) Completes the requirements of a secondary school diploma (or an equivalency certificate). This must be accomplished either—

(i) Before completing the initial active duty for training, or

(ii) In the case of a reservist who establishes eligibility either through reenlistment or an extension of an enlistment, at any time before that reenlistment or extension of an enlistment;

* * * * *

(Authority: 38 U.S.C. 1433(c), 10 U.S.C. 2132; Pub. L. 98–525, Pub. L. 99–576, Pub. L. 100–689) (November 18, 1988)

* * * * *

3. In § 21.7550, paragraph (a) introductory text and the authority citation for paragraph (a) are revised, and paragraph (c) is added to read as follows:

§ 21.7550 Ending dates of eligibility.

(a) *Time limit of eligibility.* Except as provided in § 21.7551 and paragraphs (b) and (c) of this section, a reservist's period of eligibility expires effective the earlier of the following dates:

* * * * *

(Authority: 10 U.S.C. 2133; Pub. L. 100–689) (November 18, 1988)

* * * * *

(c) *Discharge for disability.* In the case of a reservist separated from the Selected Reserve because of a disability which was not the result of the individual's own willful misconduct and which was incurred on or after the date on which the reservist became entitled to educational assistance, the reservist's period of eligibility expires effective the last day of the 10-year period beginning on the date the reservist becomes eligible for educational assistance.

(Authority: 10 U.S.C. 2133(b); Pub. L. 100–689) (November 18, 1988)

4. In § 21.7551, paragraph (a)(2) and the authority citation are revised to read as follows:

§ 21.7551 Extended period of eligibility.

(a) * * *

(2) The Individual was prevented from initiating or completing the chosen program of education within the otherwise applicable eligibility period, because of a physical or mental disability, which is not the result of the reservist's own willful misconduct, and which was incurred in or aggravated by, service in the Selected Reserve. VA will not consider the disabling effects of chronic alcoholism to be the result of willful misconduct. (See § 21.7520(b)(29)). Evidence must establish that such a program of education was medically infeasible. VA will not grant a reservist an extension for a period of disability which was 30 days or less unless the evidence establishes that the reservist was prevented from enrolling or reenrolling in the chosen program, or was forced to discontinue attendance, because of the short disability,

(Authority: 10 U.S.C. 2133(b)(2), 38 U.S.C. 105, 1431(d); Pub. L. 98–525, Pub. L. 100–689) (November 18, 1988)

* * * * *

5. In § 21.7635, paragraphs (c) and (d) and their authority citations are revised to read as follows:

§ 21.7635 Discontinuance dates.

* * * * *

(c) *Reduction in the rate of pursuit of the course.* (1) If the reservist reduces training by withdrawing from part of a course with mitigating circumstance, but continues training in part of the course, VA will reduce the reservist's educational assistance at the end of the month or the end of the term in which the withdrawal occurs, whichever is earlier; except, VA will reduce educational assistance effective the first date of the term in which the reduction occurs, if the reduction occurs on that date.

(2) If the reservist reduces training by withdrawing from a part of a course, without mitigating circumstances, while continuing to train in part of the course, VA will reduce the reservist's educational assistance effective the first date of the enrollment in which the reduction occurs.

(3) A reservist, who enrolls in several subjects and reduces his or her rate of pursuit by completing one or more of them while continuing training in the others, may receive an interval payment based on the subjects completed if the requirements of § 21.7640(b) are met. If those requirements are not met, VA will reduce the reservist's educational assistance effective the date the subject or subjects were completed.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1780; Pub. L. 98–525, Pub. L. 100–689) (November 18, 1988)

(d) *Nonpunitive grade.* (1) If the reservist receives a nonpunitive grade in a particular course, for any reason other than a withdrawal from it, VA will reduce his or her educational assistance effective the first date of enrollment for the term in which the grade applies when no mitigating circumstances are found.

(2) If the reservist receives a nonpunitive grade for a particular course for any reason other than a withdrawal from it, VA will reduce the reservist's educational assistance effective the last date of attendance when mitigating circumstances are found.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1780; Pub. L. 98–525, Pub. L. 100–689) (November 18, 1988)

* * * * *

6. In § 21.7636, paragraphs (a)(2) and (a)(3) are revised, paragraph (a)(4) is added, and the authority citation appearing at the end of paragraph (a) is revised to read as follows:

§ 21.7636 Rates of payment.

(a) * * *

(2) $105 per month for each month of three-quarter-time pursuit of a program of education;

(3) $70 per month for each month of half-time pursuit of a program of education; and

(4) $35 per month for each month of less than half-time pursuit of a program of education.

(Authority: 10 U.S.C. 2131(b); Pub. L. 98–525, Pub. L. 100–689) (November 18, 1988)

* * * * *

7. In § 21.7636, paragraph (b)(1) is removed, paragraphs (b)(2) through (b)(6) are redesignated as paragraphs (b)(1) through (b)(5), and the authority citation appearing at the end of paragraph (b) is revised to read as follows:

* * * * *

(Authority: 10 U.S.C. 2131(b), 2136(b), 38 U.S.C. 1780; Pub. L. 98–525, Pub. L. 100–689) (November 18, 1988)

8. In § 21.7639, paragraph (b) and its authority citation are revised, and paragraph (c) introductory text is amended by removing the word "incarcervists" in the first sentence and adding, in its place, the word "incarcerated" to read as follows:

§ 21.7639 Conditions which result in reduced rates.

* * * * *

(b) *Withdrawals and nonpunitive grades.* (1) Withdrawal from a course or receipt of a nonpunitive grade may reduce the amount of educational assistance paid to a reservist. VA is not authorized to pay benefits to a reservist for a course from which the reservist receives a nonpunitive grade which is not used in computing the requirements for graduation or from which he or she withdraws unless—

(i) There are mitigating circumstances; and

(ii) The reservist submits a description of the circumstances in writing to VA within 1 year from the date VA notifies the reservist that he or she must submit the description of the mitigating circumstances; and

(iii) The reservist submits evidence supporting the existence of mitigating circumstances within one year of the date that evidence is requested by VA.

(2) If VA considers that mitigating circumstances exist because the reservist withdrew during a drop-add

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period or because the withdrawal constitutes the first withdrawal of no more than six credits after May 31, 1989, the reservist is not subject to the reporting requirement found in paragraph (b)(1)(ii) of this section.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1780(a)) (Jun. 1, 1989)

* * * * *

9. In § 21.7670, paragraphs (a)(2) and (a)(3) are revised, paragraph (a)(4) is added, and the authority citation appearing at the end of paragraph (a) is revised; paragraphs (b)(2)(i) and (b)(2)(ii) are revised, paragraph (b)(2)(iii) is added, and the authority citation appearing at the end of paragraph (b) is revised; paragraphs (c)(2)(i) and (c)(2)(ii) are revised, paragraph (c)(2)(iii) is added, and the authority citation appearing at the end of paragraph (c) is revised; so the revised and added text reads as follows:

§ 21.7670 Measurement of courses leading to a standard college degree.

* * * * *

(a) * * *

(2) 10 through 13 semester hours or the equivalent are three-quarter-time training;

(3) 7 through 9 semester hours or the equivalent are half-time training; and

(4) 1 through 6 semester hours or the equivalent are less than half-time training.

(Authority: 10 U.S.C. 2131(b), 38 U.S.C. 1788(a); Pub. L. 98-525, Pub. L. 100-689) (November 18, 1988)

(b) * * *

(2) * * *

(i) 10 through 12 semester hours or the equivalent are three-quarter-time training;

(ii) 7 through 9 semester hours or the equivalent are half-time training; and

(iii) 1 through 6 semester hours or the equivalent are less than half-time training.

(Authority: 10 U.S.C. 2131(b), 38 U.S.C. 1788(a); Pub. L. 98-525, Pub. L. 100-689) (November 18, 1988)

(c) * * *

(2) * * *

(i) 9 through 11 semester hours or the equivalent are three-quarter-time training;

(ii) 6 through 8 semester hours or the equivalent are half-time training; and

(iii) 1 through 5 semester hours or the equivalent are less than half-time training.

(Authority: 10 U.S.C. 2131(b), 38 U.S.C. 1788(a); Pub. L. 98-525, Pub. L. 100-689)

* * * * *

[FR Doc. 91-13787 Filed 6-11-91; 8:45 am]
BILLING CODE 6320-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Insurance Administration

44 CFR Part 67

[Docket No. FEMA-7023]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed base flood elevation modifications listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts floodplain ordinances in accord with these elevators. Even if ordinances are adapted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not prohibit development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67.

Flood Insurance, Floodplains.

The authority citation for part 67 continues to read as follows:

Authority. 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
LOUISIANA	
Minden (city), Webster Parish	
Mile Creek:	
At downstream corporate limits	*173
At State Route 3008	*209
Mile Creek Tributary:	
At confluence with Mile Creek	*195
Approximately 250 feet downstream of State Route 159	*237
Maps available for inspection at the City Hall, 520 Broadway, Minden, Webster Parish, P.O. Box 580, Minden, Louisiana 71058.	
MINNESOTA	
Duluth Township, St. Louis County	
Lake Superior:	
Within community	*605
Maps available for inspection at the Township Hall, Duluth, Minnesota.	
Send comments to The Honorable Richard Bakke, Chairperson, Township of Duluth, Township Hall, Duluth, Minnesota 55804.	
St. Louis County (unincorporated areas)	
St. Louis River:	
At confluence of East Savanna River	*1,244
About 2250 feet upstream of County Highway 8	*1,246
Floodwood River:	
At confluence with St. Louis River	*1,246
About 1.6 miles upstream of County Road 835	*1,246
East Savanna River:	
At confluence with St. Louis River	*1,244
About 1000 feet upstream of U.S. Highway 2	*1,245
Lake Superior:	
Within community	*605
Maps available for inspection at the County Zoning Office, c/o Health Department, 1001 East 1st Street, Duluth, Minnesota, and County Zoning Office, Northland Office Center, 307 South 1st Street, Virginia, Minnesota.	
Send comments to The Honorable William Kron, Chairman, Board of Commissioners, St. Louis County, 100 North 5th Avenue, West, Duluth, Minnesota 55802.	
NEW YORK	
Arcade (town), Wyoming County	
Cattaraugus Creek:	
Most downstream corporate limits (county boundary)	*1,394
Approximately 0.7 mile upstream of East Arcade Road	*1,537
Clear Creek:	
Downstream corporate limits	*1,499
Upstream corporate limits	*1,532
Clear Creek Tributary:	
Downstream corporate limits	*1,500
Upstream corporate limits	*1,582
Maps available for inspection at the Town Hall, Route 98N, Arcade, New York.	
Send comments to Mr. Howard Payne, Supervisor of the Town of Arcade, Wyoming county, 15 Liberty Street, Arcade, New York 14009.	
Arcade (village), Wyoming County	
Cattaraugus Creek:	
Approximately 100 feet downstream of the downstream corporate limits	*1,411
Approximately 820 feet upstream of the upstream corporate limits	*1,491
Clear Creek:	
At its confluence with Cattaraugus Creek	*1,479
At the upstream corporate limits	*1,499
Haskell Creek:	
At its confluence with Clear Creek	*1,484
Approximately 0.7 mile upstream of the Arcade and Attica Railroad culvert	*1,612
Maps available for inspection at the Village Hall, 17 Church Street, Arcade, New York.	
Send comments to The Honorable James J. Luscher, Mayor of the Village of Arcade, Wyoming County, 17 Church Street, Arcade, New York 14009.	
Jackson (town), Washington County	
Batten Kill:	
Approximately 1,950 feet downstream of Ray Road	*549
Approximately 3 miles upstream of County route 61	*410
Maps available for inspection at the Jackson Town Hall, R.D. 1 Cambridge, New York.	
Send comments to Mr. John Rich, Supervisor of the Town of Jackson, Washington County, Box D, Shushan, New York 12873.	
Saranac (town), Clinton County	
Saranac River:	
Approximately 750 feet downstream of Douquette Road	*735
Approximately 2.2 miles upstream of Ore Bed Road	*1,109
Maps available for inspection at the Town Hill, New York State Route 3, Saranac, New York.	
Send comments to Mr. Ken Davies, Saranac Town Supervisor, Clinton County, P.O. Box 617, Saranac, New York 12981.	
NORTH CAROLINA	
Apex (Town), Wake County	
Middle Creek (Basin 22—Stream 1):	
About 1.64 miles upstream of SR 1301	*372
About 2.35 miles upstream of SR 1301	*380
Beaver Creek (Basin 27-Stream 2):	
At confluence of Basin 27-Stream 4	*283
Just downstream of U.S. Route 64	*314
Just upstream of U.S. Route 64	*319
Just downstream of State Route 55	*320
Just upstream of State Route 55	*325
Just downstream of SR 1611	*354
Basin 27—Stream 4:	
At mouth	*283
About 2,130 feet upstream of mouth	*295
Maps available for inspection at the Town Hall, Apex, North Carolina.	
Send comments to The Honorable Steven Stewart, Town Manager, Town of Apex, P.O. Box 250, Apex, North Carolina 27502.	
Holly Springs (town), Wake County	
Middle Creek (Basin 22—Stream 1:	
Just upstream of SR 1301 (near dam)	*306
Just upstream of dam	*312
About 300 feet downstream of SR 1301	*346
Basal Creek (Basin 22—Stream 16):	
Along shoreline of Sunset Lake	*312
Maps available for inspection at the Town Hall, Holly Springs, North Carolina.	
Send comments to The Honorable Gerald Holleman, Mayor, Town of Holly Springs, P.O. Box 8, Holly Springs, North Caroline 27540.	

The proposed modified base (100-year) flood elevations for selected locations are:

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS

State	City/Town/County	Source of Flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Massachusetts	Grafton, town, Worcester County.	Quinsigamond River	At Lake Ripple Dam	*307	*308
			Approximately 100 feet downstream of Worcester Street.	*307	*308
		Axtell Brook	At confluence with Lake Ripple	None	*308
			Approximately 1,400 feet upstream of Carroll Road.	None	*361
		Miscoe Brook	At confluence with Silver Lake	None	*355
			Approximately 2.2 miles upstream of confluence with Silver Lake.	None	*402
		Silver Lake	Approximately 125 feet downstream of confluence of Miscoe Brook.	None	*355
		Cronin Brook	At confluence with Blackstone River	None	*302
			Approximately 50 feet upstream of Millbury Street.	None	*340
		Maps available for inspection at the Municipal Center, Town Engineers Office, 30 Providence Road, Grafton, Massachusetts.			
		Send comments to Ms. Sheila Ide, Chairperson of the Town of Grafton Board of Selectmen, Worcester County, Municipal Center, 30 Providence Road, Grafton, Massachusetts 01519.			
New York	Willsboro, town, Essex County.	Bouquet River	Approximately 1.4 miles upstream of the confluence with Lake Champlain.	*102	*103

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PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of Flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			At the corporate limit (approximately 7,300 feet of State Route 14A).	None	*196

Maps available for inspection at the Willsboro Town Hall, Point Road, Willsboro, New York.

Send comments to Ms. Edna Coonrod, Supervisor of the Town of Willsboro, Essex County, P.O. Box 370, Point Road, Willsboro, New York 12996.

North Carolina	Town of Cary, Wake County.	Crabtree Creek (Basin 18—Stream 9).	Just upstream of Interstate 40	None	*268
			Just downstream of SCS Dam No. 23	None	*269
			Just upstream of SCS Dam No. 23	None	*284
			Just downstream of dam near SR 1615	None	*322
			Just upstream of dam near SR 1615	None	*353
		Haleys Branch (Basin 18—Stream 10).	At mouth	None	*284
		Black Creek	At mouth	None	*284
		Tributary A (Basin 18—Stream 11)	Just downstream of SR 1652	*354	*353
		Stirrup Iron Creek	At mouth	None	*284
		(Basin 18—Stream 12)	At county boundary	None	*321
		Basin 18—Stream 13	At mouth	None	*267
		Brier Creek	At mouth	None	*284
		(Basin 18—Stream 14)	About 2260 feet upstream of dam	None	*319
		Crabtree	At mouth	None	*284
		Creek Tributary No. 6 (Basin 18—Stream 20)	About 0.98 mile upstream of mouth	*306	*311
		Turkey Creek	At mouth	None	*304
		(Basin 18—Stream 23)	Just downstream of SR 1615	*319	*319
		Coles Branch	At mouth	None	*303
		(Basin 18—Stream 24)	Just downstream of dam	None	*307
			Just upstream of dam	None	*329
		Hatchet Grove Tributary (Basin 18—Stream 25).	About 350 feet downstream of SR 1613	None	*309
			About 250 feet downstream of dam	None	*314
		Swift Creek (Basin 20—Stream 1).	Just upstream of SR 1152	None	*306
			Just downstream of U.S. Route 64	*354	*352
		Lens Branch (Basin 20—Stream 22).	At mouth	*312	*309
			Just downstream of dam	None	*316
			Just upstream of dam	None	*342
			Just downstream of U.S. Routes 1 and 64	*366	*367
		Straight Branch (Basin 20—Stream 23).	At mouth	*352	351
			Just downstream of U.S. Route 1 and 64	*376	*372
		Swift Creek Tributary No. 7 (Basin 20—Stream 24).	At mouth	*325	*326
			Just downstream of dam at Glasgow Road	*341	*342
			Just upstream of dam at Glasgow Road	*358	*356
			Just downstream of dam near Pebble Creek Drive.	None	*373
			Just upstream of dam near Pebble Creek Drive	None	*383
			Just downstream of Maynard Road	*401	*401
		Swift Creek Tributary No. 7A (Basin 20—Stream 25).	At mouth	*358	*356
			About 2800 feet upstream of mouth	*358	*358
		Panther Creek (Basin 29—Stream 1).	At county boundary	None	*245
			About 0.96 mile upstream of SR 1625	None	*282
		Morris Branch (Basin 29—Stream 5).	At county boundary	None	*250
			Just downstream of SR 1625	None	*271
		Kit Creek (Basin 29—Stream 7).	At county boundary	None	*244
			Just downstream of State Road 55	None	*254
		Kit Creek Tributary (Basin 29—Stream 8).	About 0.87 mile upstream of mouth	None	*266
			About 0.97 mile upstream of mouth	None	*268
		Walnut Creek (Basin 30—Stream 1).	Just upstream of Interstate 40	None	*286
			Just downstream of Western Boulevard Extension.	None	*406
			Just upstream of Western Boulevard Extension	None	*411
			Just downstream of Maynard Road	*437	*437

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of Flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Town Hall, Cary, North Carolina.					
Send comments to The Honorable Bill Coleman, Acting Town Manager, Town of Cary, P.O. Box 1147, Cary, North Carolina 27511.					
North Carolina	Town of Fuquay-Varina, Wake County.	Basal Creek (Basin 22—Stream 16).	About 0.82 mile upstream of dam	None	*330
			About 900 feet upstream of State Road 55	None	*360
		Terrible Creek (Basin 22—Stream 19).	About 2600 feet downstream of Sunset Lake Road (SR 1301).	None	*330
			Just Downstream of SR 1401	*387	*385
		Kenneth Creek (Basin 24—Stream 2).	About 2700 feet downstream of confluence of Bradley Creek.	None	*263
			Just downstream of U.S. Route 401	*285	*286
			Just upstream of U.S. Route 401	*291	291
			Just downstream of State Road 42	*371	375
		Bradley Creek (Basin 24—Stream 3).	At mouth	*272	*272
			Just downstream of U.S. Route 401	*263	*261
		Angier Creek (Basin 24—Stream 4).	About 200 feet upstream of mouth	None	*259
			Just downstream of dam	None	*319
			Just upstream of dam	None	*333
			Just downstream of abandoned railroad	*356	*356
		Rocky Ford Branch	At mouth	*307	*311
		(Basin 24—Stream 5)	About 1150 feet upstream of Norfolk Southern Railways.	*307	*311
			About 1150 feet upstream of Norfolk Southern Railways.	*357	*357
		Kenneth Branch (Basin 24—Stream 6).	At mouth	*367	*366
			Just downstream of Norfolk Southern Railway	377	*377
		Neil Creek (Basin 24—Stream 7).	At mouth	*308	*308
			About 500 feet upstream of Angier Road	*316	*317
			Just downstream of Holland Road	*323	*323
		Neil Branch (Basin 24—Stream 8).	At mouth	*321	*320
			Just downstream of East Spring Avenue	*342	*342
Maps available for inspection at the Town Hall, 1300 East Academy Street, Fuquay-Varina, North Carolina.					
Send comments to The Honorable William V. Lee, Town Manager, Town of Fuquay-Varina, 1300 East Academy Street, Fuquay-Varina, North Carolina 27526.					
North Carolina	Town of Garner, Wake County.	White Oak Creek (Basin 19—Stream 1).	Just downstream of confluence of Basin 19—Stream 3.	None	*243
			About 2.0 miles upstream of SR 2555	None	*288
		Unnamed Stream (Basin 19—Stream 3)	At mouth	None	*243
			Just downstream of U.S. Route 70	None	*280
			Just upstream of U.S. Route 70	None	*295
			Just downstream of Norfolk Southern Railway	None	*309
		Unnamed Stream (Basin 19—Stream 4).	At mouth	None	*262
			Just downstream of Norfolk Southern Railway	None	*267
		Swift Creek (Basin 20—Stream 1).	About 1.55 miles downstream of State Road 50.	None	*220
			Just downstream of dam	None	*227
			Just upstream of dam	None	*241
			Just downstream of SR 1006	*242	*245
		Mahlers Creek (Basin 20—Stream 6).	At mouth	None	*225
			About 2.47 miles upstream of SR 2703	None	*286
		Mahlers Creek Tributary (Basin 20—Stream 7)	At mouth	None	*232
			Just downstream of SR 2707	None	*246
		Unnamed Stream (Basin 20—Stream 8)	Just downstream of SR 2707	None	*257
		Reedy Branch Tributary (Basin 20—Stream 9).	At mouth	*246	*246
			About 3000 feet upstream of mouth	258	*260
			Just downstream of Claymore Drive	*264	*264
		Bagwell Branch (Basin 20—Stream 10)	At mouth	*292	*293
			Just downstream of State Road 50	None	*240
		Reedy Branch (Basin 20—Stream 11).	At mouth	*319	*319
			Just downstream of Seventh Avenue		

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PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of Flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		Buck Branch (Basin 20—Stream 12).	At mouth	*241	*240
			About 3950 feet upstream of Vandora Springs Road.	None	*288
		Yatee Branch (Basin 20—Stream 13).	At mouth	*246	*247
			Just downstream of Lake Wheeler Road	None	*288
		Echo Branch (Basin 20—Stream 14).	Just upstream of Old Stage Road	*265	*265
			Old Stage Road upstream of Old Stage Road	*273	*272
			Just downstream of Winterlochen Road	*302	*302
			Just upstream of Winterlochen Road	*309	*309
			Just downstream of Vesta Drive	*311	*311
		Big Branch (Basin 30—Stream 2).	Just upstream of SR 2548	None	*232
			Just downstream of dam	None	*260
		Unnamed Stream (Basin 30—Stream 3).	About 1.06 miles upstream of SR 2548	None	*262
		Big Branch Tributary No. 1 (Basin 30—Stream 6).	About 2100 feet downstream of Creech Road	None	*218
			At confluence of Adams Branch (Basin 30—Stream 9).	None	*253
		Hilliard Creek (Basin 30—Stream 7).	At mouth	*220	*220
			About 3600 feet upstream of mouth	*242	*244
		Unnamed Stream (Basin 30—Stream 8).	At mouth	None	*230
			About 2900 feet upstream of mouth	None	*260
		Adams Branch (Basin 30—Stream 9).	At mouth	*255	*253
			Just downstream of SR 2569	276	*276

Maps available for inspection at the Towwn Hall, Garner, North Carolina.

Send comments to The Honorable Peter Bine, Town Manager, Town of Garner, P.O. Box 446, Garner, North Carolina 27529.

North Carolina	Town of Knightdale, Wake County.	Mingo Creek (Basin 12—Stream 2).	Just upstream of dam (about 1.0 mile upstream of mouth.	*250	*257
			Just downstream of SR 2233	*270	*270
		Popular Creek (Basin 13—Stream 1).	About 700 feet downstream of confluence of Poplar Branch (Basin 13—Stream 2).	*212	*211
			About 500 feet upstream of SR 2233	*227	*224
			Just downstream of SR 2513	*245	*245
			Just upstream of SR 2513	*251	*251
			About 900 feet upstream of SR 2513	*251	*251
		Poplar Branch (Basin 13—Stream 2).	At mouth	*216	*215
			Just downstream of Farm Road	*240	*240
		Mango Creek (Basin 15—Stream 11).	About 1.55 miles upstream of Norfolk Southern Railway.	*226	*224
			About 2.23 miles upstream of Norfolk Southern Railway.	None	*251

Maps available for inspection at the Town Hall, Knightdale, North Carolina.

Send comments to The Honorable Paul Packens, Acting Town Manager, Town of Knightdale, P.O. Box 640, Knightdale, North Carolina 27545.

North Carolina	Town of Morrisville, Wake County.	Crabtree Creek (Basin 18—Stream 9).	At confluence of Stirrup Iron Creek (Basin 18—Stream 12).	None	*284
			About 2500 feet downstream of confluence of Coles Branch (Basin 18—Stream 24).	*298	*298
		Stirrup Iron Creek (Basin 18—Stream 12).	At mouth	None	*284
			Just downstream of Interstate 40	None	*293
		Basin 18—	At mouth	None	*287
		Stream 13	Just downstream of SR 1640	None	*291
		Coles Branch (Basin 18—Stream 24).	About 250 feet downstream of dam	None	*306
			Just downstream of dam	None	*307
			Just upstream of dam	None	*329
			About 3150 feet upstream of dam	*329	*329
		Hatchet Grove Tributary (Basin 18—Stream 25).	At mouth	*295	*293
			About 1100 feet upstream of SR 1613	None	*313
		Morrisville Tributary (Basin 18—Stream 26).	At mouth	*288	*288
			Just downstream of State Road 54	*294	*293
			Just upstream of State Road 54	*301	*300

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of Flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			About 1450 feet upstream of Norfolk Southern Railway.	None	*304
		Kit Creek (Basin 29—Stream 7).	About 1.5 miles upstream of confluence of Kit Creek Tributary No. 1 (Basin 29—Stream 11).	None	*283

Maps available for inspection at the Town Hall, Morrisville, North Carolina.

Send comments to The Honorable Phin Horton, Town Manager, Town of Morrisville, P.O. Box 166, Morrisville, North Carolina 27560.

North Carolina	City of Raleigh, Wake County.	Neuse River (Basin 15—Stream 1).	About 1300 feet upstream of confluence of Basin 15—Stream 9.	None	*171
			Just downstream of SR 2000	None	*206
		Beaverdam Creek (Basin 15—Stream 21).	At mouth	*186	*188
			Just downstream of Buffalo Road	*186	*195
			Just upstream of Buffalo Road	*186	*200
			Just downstream of Althcock Loop Road	None	*236
		Perry Creek (Basin 15—Stream 26).	At mouth	*196	*197
			Just downstream of U.S. Route 1	*233	*242
			Just upstream of SR 2179	*251	*250
			Just downstream of abandoned road (about 2200 feet upstream of CSX Railroad.	258	*259
			Just upstream of abandoned road	*264	*264
			Just downstream of dam at Hunting Ridge Road.	*287	*283
			Just upstream of dam at Hunting Ridge Road	*298	*298
			About 4.73 miles above mouth	*309	*305
			Just downstream of footbridge (about 2000 feet upstream of Rainwater Road).	*329	*329
			Just upstream of footbridge (about 2000 feet upstream of Rainwater Road).	*334	*334
			Just downstream of dam (about 5.26 miles upstream of mouth.	*339	*339
		Perry Creek East Branch (Basin 15—Stream 27).	At mouth	*196	*197
			Just downstream of Fox Road	*207	*206
			Just upstream of Fox Road	*211	*211
			About 0.93 mile upstream of Fox Road	*265	*260
		Basin 15—Stream 28	At mouth	*196	*197
			About 0.86 mile upstream of mouth	*205	*205
		Hare Snipe Creek (Basin 16—Stream 1).	At mouth	*239	*240
			Just downstream of Rembert Drive	*262	*262
			Just upstream of Rembert Drive	*267	*267
			About 2.37 miles upstream of mouth	*310	*306
			About 1950 feet upstream of Leesville Road	*312	*312
		Richland Creek (Basin 16—Stream 3).	At mouth	*253	*254
			Just downstream of dam	*290	*283
			Just upstream of dam	*320	*320
			Just downstream of Wade Avenue	*344	*344
			Just upstream of Wade Avenue	*349	*349
			About 4.36 miles upstream of mouth	*359	*356
			Just downstream of Trinity Road	*366	*366
		Basin 16—Stream 4	At mouth	*281	*281
			About 0.47 mile upstream of mouth	*297	*295
			Just downstream of U.S. Route 70	*300	*300
			Just upstream of U.S. Route 70	*305	*305
			About 2500 feet upstream of U.S. Route 70	*314	*319
		Turkey Creek (Basin 16—Stream 5).	About 0.90 mile downstream of dam	None	*280
			Just downstream of dam	*310	*310
			Just upstream of dam	*339	*339
			Just downstream of U.S. 70	*342	*342
		Sycamore Creek (Basin 16—Stream 6).	About 2050 feet downstream of confluence of Basin 16—Stream 8.	*353	*357
			About 2700 feet upstream of ACC Boulevard	None	*396
		Basin 16—Stream 8	At mouth	*359	*359
			Just downstream of U.S. Route 70	*368	*368
			Just upstream of U.S. Route 70	*376	*375
			About 1.14 miles above mouth	*394	*392
			Just downstream of Westgate Road	*400	*400
			Just upstream of Westgate Road	None	*411
			About 0.63 mile upstream of Westgate Road	None	*433
		Crabtree Creek (Basin 16—Stream 9).	At mouth	*176	*176

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/Town/County	Source of Flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			About 1.60 miles downstream of SCS Dam No. 23.	None	*261
		Little Briar Creek	Just upstream of SR 1644	*315	*319
			At county boundary	*348	*348
		Basin 18—Stream 16	At mouth	*320	*321
			Just downstream of U.S. Route 70	*348	*348
		Marsh Creek (Basin 18—Stream 17)	At mouth	*202	*213
			Just downstream of Ingram Drive	*223	*223
			Just upstream of Ingram Drive	*230	*229
			Just downstream of CSX Railroad	*269	*270
			Just upstream of CSX Railroad	*284	*284
			Just downstream of Quail Ridge Road	*287	*290
			Just upstream of Quail Ridge Road	*296	*296
			About 1800 feet upstream of Quail Ridge Road	*311	*310
		Millbrook Tributary (Basin 18—Stream 19)	At mouth	*238	*237
			Just downstream of Brockton Drive	*242	*242
			Just upstream of Brockton Drive	*252	*250
			Just downstream of Millbrook Road	*263	*263
		New Hope Tributary (Basin 18—Stream 18)	At mouth	*216	*216
			Just downstream of dam (upstream of Huntleigh Road).	*239	*240
			Just upstream of dam (upstream of Huntleigh Road).	*250	*250
			Just downstream of dam near New Hope Church Road.	*254	*254
			Just upstream of dam near New Hope Church Road.	*271	*271
			Just downstream of dam near Waterbury Drive	*281	*281
		Big Branch (Basin 18—Stream 21)	At mouth	*214	*215
			Just downstream of U.S. Routes 64 and 70 Bypass.	*221	*222
			Just upstream of U.S. Routes 64 and 70 Bypass.	*224	*227
			Just downstream of Compton Drive	*249	*249
			Just upstream of Compton Drive	*254	*254
			About 1300 feet upstream of Compton Drive	*259	*260
			Just downstream of Purdue Street	*275	*275
			Just upstream of Purdue Street	*281	*281
			Just downstream of Mill Brook Road	*281	*281
			Just upstream of Mill Brook Road	*288	*287
			About 900 feet upstream of Mill Brook Road	*297	*298
		Lakemont Tributary (Basin 18—Stream 22)	At mouth	*254	*254
			About 1000 feet upstream of mouth	*268	*269
			Just downstream of Latimer Road	*283	*283
			Just upstream of Latimer Road	*290	*290
			About 1300 feet upstream of Latimer Road	None	*314
		Pigeon House Branch (Basin 18—Stream 27)	At mouth	*204	*205
			Just downstream of CSX Railroad	*216	*219
			Just upstream of CSX Railroad	*224	*224
			Just downstream of Downtown Boulevard	*242	*243
			Just upstream of Downtown Boulevard	*248	*249
			Just downstream of Dortch Street	*258	*255
			Just upstream of Dortch Street	*261	*262
			Just downstream of Peace Street	*274	*275
		Beaverdam Creek (Basin 18—Stream 28)	At mouth	*220	*220
			About 4500 feet upstream of mouth	*230	*232
			Just downstream of Glenwood Avenue	*242	*242
			Just upstream of Glenwood Avenue	*247	*247
		Southwest	At mouth	*247	*247

Prong Beaverdam Creek (Basin 18—Stream 29)	Just downstream of Cambridge Road	*260	*260
	Just upstream of Cambridge Road	*266	*266
	Just upstream of Brooks Avenue	*280	*283
	Just downstream of Dixie Trail	*327	*328
	Just upstream of Dixie Trail	*334	*334
	Just downstream of Wade Avenue	*336	*338
	At mouth	*247	*247
Prong Beaverdam Creek (Basin 18—Stream 30)	Just downstream of Fairview Road	*265	*265
	Just upstream of Fairview Road	*271	*271
	About 500 feet downstream of Churchill Road	*282	*284
	Just downstream of Churchill Road	*290	*290
	Just upstream of Churchill Road	*296	*296
	Just downstream of Grant Avenue	*305	*305
	Just upstream of Grant Avenue	*315	*315
	Just downstream of Wade Avenue	*316	*316
Mine Creek (Basin 18—Stream 31)	At mouth	*232	*232
	Just downstream of Shelly Lake Dam	*235	*235
	Just upstream of Shelly Lake Dam	*275	*275
Lynn Road Tributary (Basin 18—Stream 32)	At mouth	*275	*275
	About 2400 feet upstream of mouth	*292	*289
	Just downstream of Lead Mine Road	*305	*305
	Just upstream of Lead Mine Road	*310	*310
West Fork Mine Creek (Basin 18—Stream 33)	At mouth	*275	*275
	About 1500 feet upstream of mouth	*281	*280
	About 2800 feet upstream of mouth	*287	*287
East Fork Mine Creek (Basin 18—Stream 34)	At mouth	*275	*275
	About 1400 feet upstream of mouth	*284	*283
	Just downstream of Long Street	*291	*291
	Just upstream of Long Street	*307	*307
	Just upstream of Six Forks Road	*313	*313
	Just downstream of Newton Road	*318	*318
	Just upstream of Newton Road	*329	*329
	About 2450 feet upstream of Newton Road	*335	*336
East Fork Mine Creek Tributary. (Basin 18—Stream 35)	At mouth	*317	*317
	Just downstream of Woodbend Drive	*336	*336
	Just upstream of Woodbend Drive	*542	*342
	About 1900 feet upstream of Woodbend Drive	None	*354
House Creek (Basin 18—Stream 36)	At mouth	*236	*236
	About 3700 feet above mouth	*243	*249
	Just downstream of Beltline	*243	*243
	Just upstream of Beltline	*248	*248
	Just downstream of Glen Eden Road	*254	*254
	Just upstream of Glen Eden Road	*260	*260
	Just downstream of Horton Street	*299	*299
	Just upstream of Horton Street	*307	*307
	About 2.46 miles above mouth	*319	*325
	Just downstream of U.S. Route 64	*334	*334
Armory Tributary (Basin 18—Stream 38)	At mouth	*343	*343
	About 2700 feet upstream of mouth	None	*367
Medfield Tributary (Basin 18—Stream 39)	At mouth	*327	*328
	Just upstream of Wade Avenue	*335	*335
	Just downstream of Trinity Road	*363	*364
	Just upstream of Trinity Road	*366	*369
	About 1600 feet upstream of Trinity Road	*381	*378
Yates Branch (Basin 20-Stream 13).	Just upstream of Lake Wheeler Road	*288	*288
	Just upstream of dam	*298	*298
	About 3.56 miles upstream of dam	None	*409
Walnut Creek (Basin 30—Stream 1)	At mouth	*174	*174
	Just downstream of Interstate 40	*195	*196
	Just upstream of Interstate 40	*196	*201
	Just downstream of Lake Raleigh Dam	*270	*270
	Just upstream of Lake Raleigh Dam	*285	*285
	Just downstream of Lake Johnson Dam	*317	*315
	Just upstream of Lake Johnson Dam	*351	*351
	Just downstream of Maynard Road	None	*437
Big Branch (Basin 30—Stream 2)	At mouth	*184	*184
	Just downstream of SR 2548	None	*226
	Just upstream of SR 2548	None	*232

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			About 300 feet upstream of SR 2548	None	*235
		Basin 30—Stream 3	At mouth	None	*199
			About 1.42 miles upstream of mouth	None	*262
		Wildcat Branch (Basin 30—Stream 4)	At mouth	*235	*232
			Just upstream of Interstate 40 offramp	*235	*238
			Just upstream of Norfolk Southern Railway	*243	*243
			Just upstream of dam	*250	*250
			About 1.27 miles upstream of mouth	None	*252
		Rocky Branch (Basin 30—Stream 5)	At mouth	*236	*234
			Just downstream of West Cabarrus Street	*273	*272
			Just upstream of West Cabarrus Street	*279	*279
			Just downstream of Western Boulevard (downstream crossing).	*263	*262
			Just upstream of Western Boulevard (downstream crossing).	*291	*291
			Just downstream of Western Boulevard (upstream crossing).	*299	*298
			Just upstream of Western Boulevard (upstream crossing).	*302	*305
			Just downstream of Pullen Road	*319	*319

Maps available for inspection at the Inspection Department, City Hall, Raleigh, North Carolina.

Send comments to The Honorable D.E. Benton, City manager, City of Raleigh, P.O. Box 590, Raleigh, North Carolina 27602.

North Carolina	Unincorporated areas, Wake County.	Little Beaverdam Creek	About 2.07 miles upstream of mouth	None	*299
		(Basin 2—Stream 2)	At county boundary	*323	*323
		Newlight Creek	At mouth	*262	*263
		(Basin 3—Stream 1)	At confluence of Basin 3—Stream 8	*279	*279
		Basin 3—	At mouth	*262	*263
		Stream 8	About 1.30 miles upstream of mouth	*306	*306
		Basin 3—	At mouth	None	*279
		Stream 8	About 1.52 miles upstream of mouth	None	*372
		Buckhorn Branch	At mouth	*262	*263
		(Basin 3—Stream 9)	About 1.35 miles upstream of mouth	*296	*299
		Horse Creek	Just upstream of State Road 98	*262	*264
		(Basin 4—Stream 1)	About 2400 feet upstream of SR 1909	None	*338
		Basin 4—	At mouth	None	*322
		Stream 3	Just downstream of dam	*357	*361
			Just upstream of dam	*357	*373
			Just downstream of SR 1909	*379	*378
		Lowery Creek (Basin 4—Stream 10).	About 3000 feet upstream of mouth	*264	*263
			Just downstream of dam	*358	*350
			Just upstream of dam	*358	*368
			Just downstream of SR 1909	*373	*371
		Basin 4—	At mouth	*284	*279
		Stream 13	About 1.08 miles upstream of mouth	None	*342
		Mud Branch	At mouth	*262	*264
		(Basin 4—Stream 15)	Just downstream of first dam upstream of mouth.	*327	*321
			Just upstream of first dam upstream of mouth	*342	*341
			Just upstream of second dam upstream of mouth.	*347	*353
			Just downstream of third dam upstream of mouth.	*410	*412
			Just upstream of third dam upstream of mouth	*410	*423
			Just downstream of dam just upstream of SR 1909.	*440	*439
			Just upstream of dam just upstream of SR 1909.	*448	*448
		Richland	At mouth	*203	*205
		Creek (Basin 5—Stream 1)	About 0.60 mile upstream of West Oak Avenue	None	*295
		Smith Creek	At mouth	*200	*200
		(Basin 6—Stream 1)	At county boundary	None	*328
		Dunn Creek	At mouth	None	*234
		(Basin 6—Stream 5)	About 0.99 mile upstream of SR 1942	None	*368
		Spring Branch	At mouth	None	*240
		(Basin 6—Stream 6)	About 830 feet upstream of mouth	None	*246
		Sanford Creek	At mouth	*216	*218
		(Basin 6—Stream 7)	About 1.23 miles upstream of SR 2049	None	*240
		Reedy Creek	At mouth	*237	*237
		(Basin 6—Stream 8)	About 1000 feet upstream of mouth	*242	*240
			Just downstream of SR 2052	*254	*254
		Basin 6—	At mouth	*238	*239
		Stream 9	Just downstream of SR 2052	*300	*301
		Austin Creek (Basin 6—Stream 10).	At 2600 feet upstream of mouth	None	*263
			Just upstream of SR 1945	None	Just downstream of SR 1945 *332

Toms Creek	At mouth	*199	*200
(Basin 7—Stream 1)	Just downstream of first dam upstream of mouth.	*224	*224
	Just upstream of first dam upstream of mouth	*235	*235
	Just downstream of second dam upstream of mouth.	*235	*235
	Just upstream of second dam upstream of mouth.	*235	*249
	About 0.87 mile upstream of SR 2049	None	*277
Hodges Creek	At mouth	*191	*191
(Basin 8—Stream 1)	About 1.14 miles upstream of mouth	*196	*196
	About 1000 feet downstream of SR 2228	*213	*214
	Just downstream of SR 2228	*216	*216
Hodges Creek	Just upstream of SR 2228	*222	*222
(Basin 8—Stream 1) (continued)	About 1100 feet upstream of SR 2228	*223	*223
Powell Creek	At mouth	*193	*194
(Basin 8—Stream 7)	Just downstream of first dam upstream of mouth.	*205	*205
	Just upstream of first dam upstream of mouth	*215	*210
	Just downstream of second dam upstream of mouth.	*221	*221
	Just upstream of second dam upstream of mouth.	*228	*228
	About 2.69 miles upstream of SR 2226	None	*261
Buffalo Creek	At county boundary	None	*247
(Basin 9—Stream 1)	Just downstream of SR 2324	*266	*266
Little River	At county boundary	*219	*219
(Basin 10—Stream 1)	Just downstream of dam at SR 2224	None	*275
	Just upstream of dam at SR 2224	None	*263
	Just downstream of State Road 96	None	*301
	Just upstream of State Road 96	None	*306
	About 0.93 mile upstream of State Road 96	None	*319
Basin 10—	At mouth	*221	*221
Stream 2	At county boundary	None	*246
Basin 10	At mouth	*221	*221
Stream 3	Just upstream of dam 1300 feet upstream of mouth.	*223	*227
	Just upstream of dam 2600 feet upstream of mouth.	*229	*231
Hominy Branch	At mouth	None	*229
(Basin 10—Stream 4)	About 1.56 miles upstream of mouth	None	*261
Basin 10—	At mouth	*245	*246
Stream 5	Just downstream of SR 2329	*274	*274
Basin 10—	At mouth	*253	*253
Stream 6	Just downstream of SR 2329	*253	*253
Hominy Creek	At mouth	*254	*254
(Basin 10—Stream 7)	Just downstream of SR 2329	*254	*254
Big Branch	At mouth	*257	*257
(Basin 10—Stream 8)	About 3000 feet upstream of mouth	*267	*264
	Just downstream of State Road 96	*282	*282
Basin 10—	At mouth	*257	*258
Stream 9	Just upstream of State Road 96	*289	*289
Basin 10—	At mouth	*260	*260
Stream 10	Just downstream of dam	*266	*266
	Just upstream of dam	*266	*271
Buffalo Branch	At mouth	None	*222
(Basin 10—Stream 22)	About 2000 feet upstream of mouth	None	*226
Moccasin Creek	At county boundary	None	*212
(Basin 11—Stream 1)	Just upstream of U.S. Route 264	None	*219
	Just downstream of State Road 39	None	*231
	Just upstream of dam at State Road 39	None	*241
	Just upstream of SR 2308	None	*284
	About 400 feet upstream of SR 2308	None	*296
	About 2850 feet upstream of SR 2308	None	*302
Little Creek	At county boundary	*216	*216
(Basin 11—Stream 2)	Just downstream of State Road 39	*223	*223
	Just upstream of State Road 39	*229	*229
	About 1.33 miles upstream of mouth	*231	*229
	About 1.23 miles upstream of State Road 39	None	*240
Beaverdam Creek	At mouth	None	*227
(Basin 11—Stream 3)	Just downstream of dam	*320	*320
Beaverdam Creek	At mouth	*185	*184
(Basin 12—Stream 1)	Just downstream of dam at SR 2217	*190	*189
	Just upstream of dam at SR 2217	*195	*195
	About 1.89 miles above mouth	*198	*201
	Just downstream of SR 2049	*207	*207
	Just upstream of SR 2049	*213	*213
	Just downstream of SR 2228	*232	*232
Basin 12—Stream 3	At mouth	*214	*214
	About 2500 feet upstream of mouth	*232	*228
	Just downstream of SR 2228	*245	*245
Poplar Creek (Basin 13—Stream 1).	At mouth	*169	*166
	About 1.55 mile upstream of SR 1007	*212	*211

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Marks Creek (Basin 14—Stream 1).	About 0.75 mile downstream of SR 2501	*209	*209
	About 7.39 miles above mouth	*217	*213
	About 8.52 miles above mouth	*231	*230
	Just downstream of SR 2500	*256	*256
Neuse River (Basin 15—Stream 1).	At county boundary	*163	*161
	Just downstream of SR 2000	*205	*206
Basin 15—Stream 7	At mouth	*173	*170
	About 1.52 miles above mouth	*182	*188
	Just downstream of SR 1007	*194	*194
	Just upstream of SR 1007	*199	*199
	About 2.84 miles above mouth	*217	*208
	Just downstream of SR 2601	*228	*228
Basin 15—Stream 8	At mouth	*176	*175
	Just downstream of SR 2511	*209	*209
Basin 15—Stream 9	At mouth	*177	*171
	Just downstream of SR 2552	*197	*197
Mango Creek (Basin 15—Stream 11).	At mouth	*185	*176
	About 1.55 miles upstream of Norfolk Southern Railway.	None	*224
Beaverdam Creek (Basin 15—Stream 21).	Just downstream of Buffalo Road	None	*195
	At mouth	None	*188
	Just upstream of Buffalo Road	None	*200
	Just downstream of Athcock Loop Road	None	*236
Basin 15—Stream 22	At mouth	*189	*189
	About 3500 feet upstream of mouth	*203	*201
	Just downstream of SR 2049	*219	*219
Basin 15—Stream 25	At mouth	*194	*194
	About 4500 feet upstream of mouth	*230	*212
	Just downstream of SR 2049	*249	*249
Honeycutt Creek (Basin 15—Stream 31).	About 2.49 miles upstream of mouth	*262	*263
	Just downstream of SR 2005	*300	*300
Basin 15—Stream 32	At mouth	*262	*263
	Just downstream of SR 2010	*279	*279
Basin 15—Stream 33	At mouth	*267	*265
	Just downstream of dam	*276	*276
	Just upstream of dam	*276	*282
	Just downstream of SR 2005	*293	*293
	Just upstream of SR 2005	*306	*306
Cedar Creek (Basin 15—Stream 34).	About 1.33 miles upstream of mouth	*262	*263
	Just downstream of dam	*311	*311
	Just upstream of dam	*311	*332
	About 1900 feet upstream of dam	*331	*336
Upper Barton Creek (Basin 16—Stream 1).	At mouth	*262	*263
	Just downstream of SR 1641	*357	*357
Basin 16—Stream 2	At mouth	*262	*263
	Just downstream of State Road 50	*324	*324
Basin 16—Stream 5	At mouth	*268	*268
	Just upstream of dam	*284	*284
	About 3000 feet upstream of mouth	*286	*284
	Just downstream of State Road 50	*286	*286
	Just upstream of State Road 50	*292	*292
	About 1250 feet upstream of State Road 50	*297	*297
Lower Barton Creek (Basin 17—Stream 1).	At mouth	*262	*263
	Just downstream of State Road 50	*315	*316
	Just upstream of State Road 50	*320	*321
	Just downstream of SR 1826	*381	*381
Basin 17—Stream 4	At mouth	*294	*294
	About 3000 feet upstream of mouth	*312	*304
	Just downstream of State Road 50	*352	*352
	Just upstream of State Road 50	*361	*361
	Just downstream of SR 1831	*361	*364
Sycamore Creek (Basin 18–Stream 6)	About 5.66 miles upstream of mouth	*347	*347
	Just downstream of unnamed road about 6.01 miles upstream of mouth.	*348	*351
(Basin 18–Stream 6)	Just upstream of unnamed road about 6.01 miles upstream of mouth.	*348	*357
Basin 18–Stream 8 Stream 8	At mouth	*359	*359
	Just downstream of U.S. Route 70	*368	*369
	Just upstream of U.S. Route 70	*376	*375
	Just downstream of Westgate Road	*400	*400
	Just upstream of Westgate Road	*410	*411
	About 3400 feet upstream of Westage Road	*439	*428
Crabtree Creek (Basin 18–Stream 9)	About 1.80 miles downstream of Interstate 40	None	*259
	About 1.10 miles upstream of SCS Dam 23	*278	*284
Haleys Branch (Basin 18–Stream 10)	At mouth	*276	*284
	About 0.6 mile upstream of Interstate 40	*292	*292
Stirrup Iron Creek	Just upstream of Interstate 40	*321	*321

(Basin 18–Stream 12)			
Brier Creek	Just downstream of dam	*300	*289
(Basin 18–Stream 14)	Just upstream of dam	*300	*319
White Oak Creek	At county boundary	*223	*223
(Basin 19–Stream 1)	About 5.30 miles above mouth	*238	*235
	About 1750 feet upstream of SR 2555	*251	*251
Basin 19–Stream 4	At mouth	*263	*262
Stream 4	Just downstream of Norfolk Southern Railway	*266	*267
Swift Creek	At county boundary	*203	*203
(Basin 20–Stream 1)	Just downstream of dam near State Road 50	*227	*227
	Just upstream of dam near State Road 50	*241	*241
	Just downstream of Old Stage Road	*241	*245
	Just downstream of Norfolk Southern Railway	*247	*251
	Just downstream of Lake Wheeler Dam	*267	*269
	Just upstream of Lake Wheeler Dam	*292	*292
	About 2000 feet downstream of SR 1300	*315	*315
Bagwell Branch (Basin 20–Stream 10)	At mouth	*241	*241
Reedy Branch (Basin 20–Stream 11).	At mouth	None	*241
Yates Branch (Basin 20–Stream 13)	At mouth	*246	*247
	Just downstream of Norfolk Southern Railway	*253	*257
	Just downstream of dam	*288	*288
	Just upstream of dam	*296	*296
	About 3.56 miles upstream of dam	None	*409
Echo Branch (Basin 20–Stream 14)	At mouth	*253	*257
	Just downstream of Old Stage Road	*264	*265
Dutchmans Branch	At mouth	*292	*292
	Just upstream of dam	*292	*296
(Basin 20–Stream 17)	About 3100 feet upstream of Dutchman Downe Road.	None	*389
Basin 20–Stream 20	At mouth	*296	*294
	About 0.83 mile upstream of mouth	None	*318
Middle Creek (Basin 22–Stream 1)	At county boundary	None	*214
	Just downstream of Norfolk Southern Railway	*260	*256
	Just upstream of Norfolk Southern Railway	*262	*261
	About 1.7 miles upstream of SR 1301	*378	*373
Panther Branch (Basin 22–Stream 2)	At mouth	None	*237
	About 2850 feet upstream of SR 2724	None	*305
Mills Branch (Basin 22–Stream 5).	At confluence with Middle Creek (Basin 22–Stream 1).	*254	*251
	Just downstream of SR 2724	*263	*262
	Just upstream of 2724	*271	*271
	Just downstream of Norfolk Southern Railway	*274	*274
Basin 22–Stream 6	At mouth	None	*271
	About 2550 feet upstream of Old Smithfield Road.	None	*348
Camp Branch (Basin 22–Stream 7).	At mouth	None	*291
	About 1.1 miles upstream of unnamed road	None	*360
Rocky Branch (Basin 22–Stream 8).	At confluence with Middle Creek (Basin 22–Stream 1).	*297	*301
	Just downstream of SR 1152	*370	*370
Basin 22—Stream 9	At mouth	*300	301
	About 3600 feet upstream of SR 1390	None	*355
Basal Creek (Basin 22–Stream 16).	At mouth	*312	*312
	Just downstream of dam	*317	*316
	Just upstream of dam	*326	*328
	About 0.75 mile upstream of State Road 55	None	*381
Terrible Creek (Basin 22–Stream 19).	At mouth	*237	*243
	Just downstream of dam	*308	*308
	Just upstream of dam	*324	*324
	Just downstream of SR 1301	None	*343
Basin 22—Stream 20	At confluence with Terrible Creek (Basin 22—Stream 19).	None	*269
	About 1.0 mile upstream of confluence with Terrible Creek (Basin 22—Stream 19).	None	*312
Rocky Ford Branch (Basin 24—Stream 5).	About 500 feet upstream of Norfolk Southern Railway.	None	*351
	About 1700 feet upstream of Norfolk Southern Railway.	None	*362
Little Beaver Creek (Basin 27—Stream 1).	At county boundary	None	*239
	About 1.0 mile upstream of SR 1141	None	*276
Beaver Creek (Basin 27–Stream 2).	At county boundary	None	*239
	Just downstream of SR 1611	*346	*354
Beaver Creek Tributary (Basin 27—Stream 3).	At mouth	None	*264
	About 0.78 mile upstream of mouth	None	*277
Basin 27—Stream 4	At mouth	*285	*283
	About 1250 feet upstream of mouth	*292	*290

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		Reedy Branch (Basin 27—Stream 5).	At mouth	None	*239
			Just upstream of confluence of Reedy Branch Tributary.	None	*266
		Reedy Branch Tributary (Basin 27—Stream 6).	At mouth	None	*268
			Just downstream of SR 1163	None	*306
		Kit Creek (Basin 29—Stream 7).	Just upstream of State Road 55	None	*256
			About 2.21 miles upstream of CSX Railroad	None	*286
		Kit Creek Tributary No. 2 (Basin 29—Stream 8).	At mouth	None	*258
			About 0.97 mile upstream of mouth	None	*268
		Kit Creek Tributary No. 1 (Basin 29—Stream 11).	At mouth	None	*260
			About 1.21 miles upstream of SR 1639	None	*280

Maps available for inspection at the Community Development Department, County Courthouse, Raleigh, North Carolina.

Send comments to The Honorable Richard Stevens, County Manager, Wake County, P.O. Box 550, Raleigh, North Carolina 27602.

North Carolina	Town of Wake Forest, Wake County.	Horse Creek (Basin 4—Stream 1).	Just upstream of SR 2916	*322	*322
			About 1600 feet upstream of confluence of Basin 4—Stream 3.	*323	*329
		Unnamed Stream (Basin 4—Stream 3).	About 2450 feet upstream of mouth	None	*335
			About 1800 feet downstream of dam	None	*352
		Richland Creek (Basin 5—Stream 1).	About 3450 feet downstream of U.S. Route 1	None	*221
			About 1650 feet upstream of U.S. Route 1	*236	*237
			About 3200 feet upstream of West Oak Avenue.	*295	*295
		Smith Creek (Basin 6—Steam 1).	At mouth	None	*200
			Just downstream of State Road 98	None	*270
			Just upstream of State Road 98	None	*275
			Just upstream of dam	None	*302
		Dunn Creek (Basin 6—Stream 5).	At mouth	*234	*234
			About 0.99 mile upstream of SR 1942	*368	*368
		Spring Branch (Basin 6—Stream 6).	At mouth	None	*240
			Just downstream of Franklin Street	None	*333
			Just upstream of Franklin Street	None	*342
		Austin Creek (Basin 6—Stream 10).	At mouth	None	*251
			About 2550 feet upstream of SR 2053	None	*267
		Neuse River (Basin 15—Stream 1).	Just downstream of confluence of Smith Creek (Basin 6—Stream 1).	None	*200

Maps available for inspection at the Town Hall, 401 East Elm Street, Wake Forest, North Carolina.

Send comments to The Honorable John Johnston, Acting Town Manager, Town of Wake Forest, 401 East Elm Street, Wake Forest, North Carolina 27587.

North Carolina	Town of Wendell, Wake County.	Buffalo Creek (Basin 9—Stream 1).	About 400 feet upstream of county boundary	None	*247
			About 2200 feet upstream of Norfolk Southern Railway.	None	*274
		Little River (Basin 10—Stream 1).	At confluence of Buffalo Branch (Basin 10—Stream 22).	*222	*222
			About 2200 feet upstream of U.S. Business Route 64.	None	*228
		Hominy Branch (Basin 10—Stream 4).	About 2700 feet downstream of SR 2329	*254	*256
			Just downstream of SR 2329	*270	*270
		Buffalo Branch (Basin 10—Stream 22).	At mouth	*222	*222
			About 1500 feet above mouth	*224	*222
			Just downstream of dam	*229	*229
			Just upstream of dam	*240	*241
			Just upstream of private road (about 4000 feet upstream of mouth).	*254	*257
			Above 6000 feet above mouth	*261	*257
			Just downstream of SR 2353	*271	*270
		Lizard Lick Creek (Basin 10—Stream 23).	At mouth	*226	*226
			About 5000 feet upstream of mouth	*244	*242
			Just downstream of SR 2359	*251	*250
			Just upstream of SR 2359	*256	*256
			Just downstream of dam	*262	*262

Maps available for inspection at the Town Hall, Wendell, North Carolina.

Send comments to The Honorable Ira C. Fuller, Town Manager, Town of Wendell, P.O. Box 828, Wendell, North Carolina 27591.

North Carolina	Town of Zebulon, Wake County.	Little River (Basin 10—Stream 1).	About 3150 feet upstream of U.S. Business Route 64.	*229	*228

			Just downstream of State Road 97	*236	*236
		Wheeles Creek (Basin 10—Stream 25).	At mouth	*233	*234
			Just downstream of Worth Hinton Road	*260	*261
		Little Creek (Basin 11—Stream 2).	About 1.16 miles downstream of Norfolk Southern Railway.	None	*240
			About 3000 feet downstream of Norfolk Southern Railway.	*247	*249
			Just downstream of State Road 97	*265	*265
			Just upstream of State Road 97	*272	*272
			Just downstream of Cemetery Street	*261	*279
		Beaverdam Creek (Basin 11—Stream 3).	About 1450 feet downstream of SR 2406	None	*275
			Just downstream of SR 1001	None	*297

Maps available for inspection at the Town Hall, 111 East Vance Street, Zebulon, North Carolina.

Send comments to The Honorable Charlie Horn, Town Manager, Town of Zebulon, 111 East Vance Street, Zebulon, North Carolina 27597.

Ohio	City of Highland Heights, Cuyahoga County.	Tributary A	About 700 feet downstream of Bishop Road	None	*865
			Just downstream of Highland Road	None	*934
		Tributary B	At mouth	None	*923
			Just downstream of Highland Road	None	*937
		Tributary C	Just upstream of Interstate 271	None	*914
			About 2100 feet upstream of Highland Road	None	*972
		Tributary D	About 2750 feet upstream of mouth	None	*882
			Just downstream of Highland Road	None	*944
		Tributary E	At mouth	None	*904
			About 800 feet upstream of Bishop Road	None	*931

Maps available for inspection at the Building Department, City Hall, 5827 Highland Road, Highland Heights, Ohio.

Send comments to The Honorable Virginia Swanson, Mayor, City of Highland Heights, 5827 Highland Road, Highland Heights, Ohio 44143.

Ohio	City of Lorain, Lorain County.	Brownhelm Creek	About 1.02 miles upstream of mouth	None	*568
			About 1.67 miles upstream of mouth	None	*596
		Quarry Creek	At U.S. Route 6	None	*579
			About 700 feet downstream of Copper Foster Park Road.	None	*646
		Unnamed Creek	Just downstream of Old Lake Road	None	*580
			About 1250 feet upstream of Old Lake Road	None	*583
		North Stem East Branch Beaver Creek.	At confluence with East Branch Beaver Creek	None	*599
			At Cooper Foster Park Road	None	*654
		East Branch Beaver Creek	At mouth	None	*592
			Just downstream of Cooper Foster Park Road	None	*620

Maps available for inspection at the Engineering Department, City Hall, 200 West Erie Avenue, Lorain, Ohio.

Send comments to The Honorable Alex Olejko, Mayor, City of Lorain, 200 West Erie Avenue, Lorain, Ohio 44052.

Oklahoma	Hydro, town, Caddo County.	Unnamed Tributary to Deer Creek.	Approximately 1,500 feet upstream of the confluence with Deer Creek.	None	*1,484
			At Main Street	None	*1,503

Maps available for inspection at the Town Hall, 505 West Fifth Street, Hydro, Oklahoma.

Send comments to The Honorable Dennison Duke, Mayor, of the Town of Hydro, Caddo County, 505 West 5th Street, Hydro, Oklahoma 73048.

C. M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

Issued: June 6, 1991.

[FR Doc. 91-13942 Filed 6-11-91; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket Nos. 91-33 and 91-34; DA 91-552]

Petitions for Rule Making Concerning Proposed Changes to the Commission's Cellular Resale Policies and Bundling of Cellular Customer Premises Equipment and Cellular Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time.

SUMMARY: On May 28, 1991, the Commission adopted an Order granting Telocator an extension of time to file reply comments in the above-referenced dockets 56 FR 16049, April 19, 1991. In light of the complexity of the factual and legal raised in the above-referenced dockets and in order to promote administrative efficiency, the Order establishes a common reply date for all parties.

DATES: Date for filing reply comments in the above-referenced dockets is extended to June 19, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 29554.

FOR FURTHER INFORMATION CONTACT: Dan Abeyta, Mobile Services Division, Common Carrier Bureau (202) 632-6450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in CC Docket No. 91-33 and CC Docket 91-34, adopted May 28, 1991 and released May 30, 1991.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC

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Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this Order may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street NW., Washington, DC 20036.

Order

Adopted May 28, 1991.
Released May 30, 1991.

By the Chief, Common Carrier Bureau:

1. On May 23, 1991, Telocator requested an extension of time to file reply comments in the above-referenced dockets.

2. Telocator states that the June 4, 1991 deadline for filing reply comments in the referenced dockets should be extended by 45 days to July 19, 1991, because the comments filed in both proceedings include economic studies, arguments and allegations concerning Telocator members that will require detailed analysis in order to formulate informed responses. With respect to CC Docket No. 91-33, Telocator further states that additional time is necessary to address comments seeking to expand the scope of the proceeding to re-examine the Commission's decision to deny the petition filed by the National Cellular Resellers Association.

3. In light of the complexity of the factual and legal issues raised in the above-referenced dockets, we agree with Telocator that additional time should be granted to prepare meaningful reply comments. Therefore, in order to promote administrative efficiency, a relatively brief extension of the common response date for all parties will be established. We cannot, however, find that Telocator has shown good cause for a 45 day extension of time. Therefore, the due date for filing reply comments is extended to June 19, 1991. Accordingly, Telocator's request is granted in part and denied in part.

Federal Communications Commission.
Richard M. Firestone,
Chief, Common Carrier Bureau.
[FR Doc. 91-13848 Filed 6-11-91; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-151, RM-7557]

Television Broadcasting Services; Victoria and New Braunfels, TX

AGENCY: Federal Communications Commission.
ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by KVCT(TV), Inc., licensee of television station KVCT, Channel 19, Victoria, Texas, requesting the Commission to reallot Channel 19 from Victoria to New Braunfels, Texas. The coordinates for the proposed reallotment are 29-19-45 and 98-20-28. Since New Braunfels is located within 320 kilometers (199 miles) of the Mexican border, we have requested the concurrence of the Mexican government in this allotment.

Although this proposal falls within the parameters of certain markets for which the Commission has imposed a "freeze" on TV allotments, or applications therefore, a waiver may be appropriate in this instance since New Braunfels is further removed from the affected markets than is the current allotment at Victoria.

DATES: Comments must be filed on or before July 29, 1991, and reply comments on or before August 13, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James A. Koerner, Esq., Baraff, Koerner, Olender & Hochberg, P.C., 2033 M Street, NW., suite 700, Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Fawn E. Wilderson, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's notice of proposed rule making, MM Docket No. 91-151, adopted May 23, 1991, and released June 6, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.
Andrew J. Rhodes,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 91-13849 Filed 6-11-91; 8:45 am]
BILLING CODE 6712-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Chapter 99

Cost Accounting Standards Board: Recodification of Cost Accounting Standards Board Rules and Regulations

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.
ACTION: Proposed rule.

SUMMARY: The Office of Federal Procurement Policy, Cost Accounting Standards Board, today proposes for recodification at 48 CFR chapter 99, the Cost Accounting Standards Rules and Regulations currently found at both 48 CFR part 30, and 4 CFR parts 331 through 420. The Board is taking this action in order to provide for a single unified set of Cost Accounting Standards (CAS) applicable to Government contractors and subcontractors. This action by the Board does not result in the promulgation, amendment or rescission of any new or existing cost accounting standards. This proposed rule represents an effort by the Board to reconcile the existing sets of cost accounting standards previously promulgated by other bodies.

The proposed rule will be a part of the Federal Acquisition Regulation System. The Board is assigned chapter 99 within title 48 for the purpose of codifying regulations that fall within its jurisdiction. Statutory authority for this regulatory assignment is provided pursuant to section 5(h)(1) of the Office of Federal Procurement Policy Act of 1988, 41 U.S.C. 422(h)(1), which provides, in part, that rules and regulations promulgated by the Board shall be incorporated into the Federal Acquisition Regulation (FAR). The proposed regulation will be published in 48 CFR chapter 99, and incorporated into 48 CFR chapter 1, and will provide the basis for application of the Cost Accounting Standards to covered Government contractors and subcontractors.

DATES: Requests for a copy of the Board's proposed rule must be in writing and must be received by August 12, 1991. Comments on the proposed rule must be in writing and must be received by August 26, 1991.

ADDRESSES: Requests for a copy of the proposed rule, or comments upon its contents, should be addressed to the Office of Federal Procurement Policy, Cost Accounting Standards Board, 725 17th Street NW., room 9001, Washington, DC 20503. ATTN: CASB Docket #91-02.

FOR FURTHER INFORMATION CONTACT: Richard C. Loeb, Executive Secretary (telephone: 202-395-3254), or Robert Lynch, Project Director (telephone: 202-395-3254), Cost Accounting Standards Board.

SUPPLEMENTARY INFORMATION: Section 5 of Public Law 100-679, the Office of Federal Procurement Policy Act Amendments of 1988, 41 U.S.C. 422, established a Cost Accounting Standards Board (CASB) within the Office of Federal Procurement Policy. The Board consists of five members, including the Administrator for Federal Procurement Policy, who serves as Chairman. The Board has the exclusive statutory authority to make, promulgate, amend, and rescind cost accounting standards and interpretations thereof designed to achieve uniformity and consistency in the cost accounting practices governing measurement, assignment and allocation of costs to contracts with the United States.

The rules and regulations that are the subject of this proposed rulemaking, were initially prescribed by the previous Cost Accounting Standards Board, established under the authority of section 719 of the Defense Production Act of 1950, 50 U.S.C., app. 2168, and are codified at 4 CFR parts 331 through 420. The previous Board was an independent agency within the Legislative Branch, and was chaired by the Comptroller General of the United States. That Board ceased operations on September 30, 1980. Nevertheless, the Cost Accounting Standards promulgated by that body, remain in full force and effect. On September 30, 1987, the signatories to the Federal Acquisition Regulation promulgated a rule recodifying, with minor editorial modifications, the rules and regulations issued by the previous Board. That rule is found at 48 CFR part 30. Since 1987, both CAS rules have been independently codified in the Code of Federal Regulations.

The proposed rule, which is the subject of today's action, is for the purpose of recodifying, into a single set of uniform regulations, those Cost Accounting Standards that are applicable to covered Government contractors and subcontractors. This single rule will replace previously issued sets of Cost Accounting Standards, and will serve to eliminate confusion over the appropriate regulatory base for issuance of the Standards. Although the Board may consider substantive future amendments to the Standards, this proposed recodification is purely administrative in nature, and serves to bring the Cost Accounting Standards into compliance with the statutory requirements of section 5(h) of the Office of Federal Procurement Policy Act of 1988, which requires that the Cost Accounting Standards be incorporated into the Federal Acquisition Regulation system. For the purpose of complying with this section of the Office of Federal Procurement Policy Act Amendments, the Office of the Federal Register has assigned to the Board, chapter 99 of title 48 of the Code of Federal Regulations. Chapter 99 is within the exclusive regulatory jurisdiction of the Board, and this recodification insures that the Board's rules and regulations are assigned to an appropriate chapter of the Code of Federal Regulations over which the Board has complete regulatory cognizance.

Because the proposed rule will be codified in a supplementary chapter of the Federal Acquisition Regulation system, the format used for codification of the Cost Accounting Standards found at 48 CFR part 30 have been retained in this recodification, whenever practicable. This has been done in order to minimize regulatory citation changes, and, because that version meets the formatting protocols of the Federal Acquisition Regulation system (including supplements thereto). However, this proposed rule is intended to be consistent with the promulgations of the previous CASB to the maximum extent practicable as prescribed by section 5(j)(1) of Public Law 100-679.

Section 5 of Public Law 100-679 also required certain changes to be made in the substance of the Cost Accounting Standards. Among these changes are an increase in the covered individual contract threshold from $100,000 to $500,000, and the extension of CAS coverage to non-defense contracts. The threshold increase to $500,000 has the effect of eliminating the triggering mechanism whereby the award of one $500,000 contract was a prerequisite to the coverage of all subsequent contract awards over $100,000. The Board continues to study the desirability of increasing this and other dollar thresholds contained in the Cost Accounting Standards, such as those relating to disclosure requirements and modified coverage. For purposes of this proposed rule, thresholds other than those mandated in the statute, or previously revised within part 30, have not been altered.

Dated: June 6, 1991.
Allan V. Burman,
Administrator for Federal Procurement Policy and Chairman, Cost Accounting Standards Board.
[FR Doc. 91-13861 Filed 6-11-91; 8:45 am]
BILLING CODE 3110-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Request for Information on the Arctic and American Peregrine Falcons

AGENCY: Fish and Wildlife Service, Interior.
ACTION: Notice of status review.

SUMMARY: The U.S. Fish and Wildlife Service (Service), Alaska Region, is reviewing the status of the Arctic peregrine falcon (*Falco peregrinus tundrius*) and American peregrine falcon (*Falco peregrinus anatum*) in northern North America. The Arctic peregrine falcon is currently listed as threatened, and the American peregrine falcon is classified as endangered. Both subspecies sustained extensive population declines in the 1960's and early 1970's. After the use or organochlorine pesticides was restricted many local populations recovered. Censuses show that the Arctic peregrine falcon throughout its range, and American peregrine falcon in Alaska and the Yukon and Northwest Territories, may no longer be endangered or threatened with extinction. The Service requests data on the status and comments on the possible reclassification of these populations. The data and comments will be used to determine if a reclassification action is warranted.

DATES: Comments from all interested parties must be received by August 12, 1991.

ADDRESSES: Comments and materials concerning this notice should be sent to Ted Swem, Alaska Regional Office, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, AK 99503. Comments and materials received will be available for public inspection, by appointment,

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during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ted Swem, at the above address (907–786–3562 or FTS 869–3562), or the Endangered Species Coordinator, at the above address (907–786–3505 or FTS 869–3505).

SUPPLEMENTARY INFORMATION:

Background

In the early 1960's the number of peregrine falcons nesting in the United States declined rapidly. Extensive use of organochlorine pesticides is considered the primary factor causing the decline. High levels of organochlorines are lethal to birds, and sublethal doses can induce reproductive failure. DDE, a metabolite of the widely used insecticide DDT, disrupts calcium metabolism in birds. Peregrine falcons accumulating sufficient DDE residues produce abnormally thin-shelled eggs that often break before hatching. Eggshell thinning, in addition to other effects of organochlorines upon reproduction, greatly reduced the nesting success of peregrine falcons. As a result, the recruitment rate of young pregrine falcons was below the number necessary to replace natural and pesticide-caused mortalities, and subsequently peregrine falcon numbers dwindled.

In response to the rapid decline, in 1970 the Service listed Arctic and American peregrine falcons under the Endangered Species Conservation Act of 1969. More extensive protection was provided upon passage of the Endangered Species Act (Act) of 1973 (U.S.C. 1531 *et seq.*). The Act requires that all activities funded, permitted or conducted by Federal agencies are reviewed to minimize impacts to endangered or threatened species. As a result, nest sites were protected and harvest by falconers was prohibited. The restriction of the use of organochlorine pesticides was the most important step taken in aiding the recovery of peregrine falcons. The use of DDT was severely restricted in Canada in 1969 and in the United States in 1973. Further regulations imposed in 1974 greatly reduced the use of the organochlorines aldrin and dieldrin in the United States.

Peregrine falcons were extirpated in parts of North America before the use of organochlorines was restricted. The population declines leveled off quickly in most surviving populations following the restrictions. As organochlorine levels in the environment decreased, breeding success improved and many local populations began to expand. An increase in the number of Arctic peregrine falcons resultyed in the Service downlisting the subspecies to threatened in 1984 (49 FR 10520, March 20, 1984).

Summary of Status

The information and data currently available to the Service show that a substantial recovery of northern peregrine falcons has taken place. Breeding census data show that peregrine falcon numbers are rapidly expanding in many areas. Pesticide residues in eggs have gradually decreased, and pesticide-caused reproductive failure now appears to be rare or absent in northern peregrine falcons. The pattern of widespread recovery is reinforced by increased numerical counts of peregrine falcons seen during autumn migration. The number seen at Assateague Island, Maryland, and Cape May, New Jersey, has increased several fold since the mid-1970's (William Seegar, U.S. Army, in litt., 1990, and Paul Kerlinger, Cape May Bird Observatory, in litt., 1991). However, data are lacking from some regions, and recovery has not progressed to the same extent in all areas studied. A brief summary, by subspecies and region, follows:

Arctic peregrine falcons (*Falco peregrinus tundrius*)—Arctic peregrine falcons breed in northern Alaska, across the tundra regions of northern Canada, and in the ice-free perimeter of Greenland. In northern Alaska, Arctic peregrine falcon numbers have increased about 3-fold since the mid-1970's. The number of pairs occupying nesting territories along the Colville River decreased from 35 in 1959 to a low of about 15 in the mid-1970's. In 1990 over 50 pairs occupied territories in this area (unpubl. Service data). Pesticide levels in Alaskan peregrine falcon eggs are decreasing, and are well below levels at which reproduction is impaired.

The only population of Arctic peregrine falcons known from the Yukon Territory, Canada originally contained about 15 pairs of falcons. By 1981 none remained, but recently one pair returned to the area (David Mossop, Dept. of Renewable Resources, Yukon Territory, in litt., 1991). Large but undetermined numbers of peregrine falcons nest in the Northwest Territories (NWT). Little was known about the peregrine falcons nesting in the NWT before the pesticide-caused decline, and even today, the vast size and remoteness of the area have precluded a complete population survey. Nonetheless, sizable numbers of peregrine falcons are known to nest in the Mackenzie River valley, in scattered locales along the north coast, in the Interior Barrens, and along the northwest coast of Hudson Bay. The density is highly variable among areas, ranging from essentially no peregrine falcons in some areas to a density of 1 pair per 17 square kilometers (11 square miles) in Rankin Inlet (Court et al. 1989). Although still contaminated with organochlorines, peregrine falcons in the NWT are reproducing well (Court et al. 1990), and the number of peregrine falcons is stable or gradually increasing in all areas surveyed in the NWT (Bromley 1988). In Quebec, breeding performance has greatly improved since 1970, and the proportion of suitable cliffs that is occupied by nesting peregrine falcons increased from 44 percent in 1975 to 82 percent in 1985 (Bird and Weaver 1988).

In Greenland, where an estimated 1000–2000 pairs of Arctic peregrine falcons nest, the occupancy rate of suitable cliffs rose from just above 50 percent in the early 1970's to about 90 percent in 1990 (William Mattox, Greenland Peregrine Falcon Survey, in litt., 1990).

American peregrine falcons (*Falco peregrinus anatum*)—This falcon breeds in the boreal forest regions of Alaska, the Yukon Territory, and south of the tree line in northern and eastern Canada to northern Mexico. Wintering birds are usually found from southern United States south into South America. The pattern of decline and subsequent recovery of American peregrine falcons nesting in northern latitudes is more similar to that of Arctic peregrine falcons than to that of other geographic populations of American peregrine falcons. Due to the remoteness of the nesting sites of northern latitude peregrine falcons, financial and logistical constraints have prevented complete population surveys of all potential breeding areas. Nonetheless, some areas have been repeatedly surveyed. In interior Alaska, American peregrine falcon numbers have increased about 3-fold since the mid-1970's. The number of pairs occupying cliffs along the upper Yukon River decreased from about 16 in 1966 to 11 in 1973, and subsequently increased to 35 pairs in 1990 (unpubl. Service data). About 118 pairs resided along the entire Yukon River in Alaska in 1990, and an additional 50 pairs were located along other rivers in interior Alaska. Pesticide levels in peregrine falcons nesting in interior Alaska are decreasing and are well below levels at which reproduction is impaired.

Researchers estimate that the total number of nesting pairs of American peregrine falcons in the Yukon Territory, Canada has expanded from 80–90 pairs in 1985 to 125–140 pairs in 1990 (Geoff Holroyd, Canadian Wildlife Service, in litt., 1990). However, American peregrine falcons are not currently occupying all regions of the Yukon Territory in which they originally bred. Recent surveys in the Mackenzie River valley in the NWT have shown an increase from 40–50 pairs in 1985 to 96 pairs in 1990 (Geoff Holroyd, in litt., 1990). Unfortunately, little is known of either current or prepesticide population levels in the boreal forest to the east of the Mackenzie valley.

Similar decreases through the early 1970's were found in the rest of North America for the American peregrine falcons. The population in eastern United States became extirpated in the 1960's. Since the mid-1970's, most of the remaining populations seem to have also started to increase. The Service seeks general information on all North American populations. Information is particularly sought on American peregrine falcons found in western North America and northern Mexico.

Request for Data and Comments

The Service requests data on the status of Arctic and American peregrine falcons from all interested parties and all affected local, State, Provincial and Federal governments. The Service needs the most recent data and information on population status and reproductive success. Data for Canada, western United States and Mexico will be used for comparative purposes to assist the Service in reaching a decision on whether to reclassify these northern peregrine falcons. Such data will also be used by other Regional Offices of the Service to assess the status of populations under their jurisdiction. There is also a need for data on the pesticide content of recently collected egg and blood samples, and current patterns of pesticide use in North, Central, and South America. The Service will use the best available scientific and commercial material to evaluate the status of these populations, and if deemed appropriate, to prepare a reclassification proposal. If reclassification is warranted, a proposed rule will be published in the **Federal Register**, including a review of materials used in its preparation.

References Cited

Bird, D.M. and J.D. Weaver. 1988. Peregrine Falcon Populations in Ungava Bay, Quebec, 1980–1985. Pages 45–50 *in* Peregrine Falcon Populations: Their Management and Recovery. Edited by T.J. Cade, C. White, J.H. Enderson, and E.G. Thelander. The Peregrine Fund, Boise.

Bromley, R.G. 1988. Status of Peregrine Falcons (*Falco peregrinus tundrius*) in Kitikmeot, Baffin, and Keewatin Regions, Northwest Territories, 1982–1985. Pages 51–58 *in* Peregrine Falcon Populations: Their Management and Recovery. Edited by T.J. Cade, C. White, J.H. Enderson, and C.G. Thelander. The Peregrine Fund, Boise.

Court, G.S., D.M. Bradley, C.C. Gates, and D.A. Boag. 1989. Turnover and Recruitment in a Tundra Population of Peregrine Falcons, *Falco peregrinus*. Ibis 131:467–486.

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Murphy, J.E. 1990. The 1985–1986 Canadian Peregrine Falcon, *Falco peregrinus*, Survey. Canadian Field Naturalist 104(2):182–192.

Author

The primary author of this notice is Ted Swem (see ADDRESSES above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 4, 1991.

Bruce Blanchard,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 91–13972 Filed 6–11–91; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Finding on Petition and Initiation of Status Review of Certain Kangaroos

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and status review.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding on a petition to remove all populations of the red kangaroo (*Marcropus rufus*), the western gray kangaroo (*M. fuliginosus*), and the eastern gray kangaroo (*M. giganteus*), except the subspecies (*M. g. tasmaniensis*), from the list of threatened species under the Endangered Species Act, and to reopen the comment period as part of the continuing status review initiated in the August 5, 1990, **Federal Register** (55 FR 32276).

DATES: The finding announced herein was made on February 28, 1991. Comment and information may be submitted until September 10, 1991.

ADDRESSES: Comments, information, and questions should be submitted to the Chief, Office of Scientific Authority; Mail Stop: Room 725, Arlington Square; U.S. Fish and Wildlife Service; Washington DC 20240. The petition finding supporting data, and comments will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, in room 750, 4401 North Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address (phone 703–358–1708 or FTS 921–1708).

SUPPLEMENTARY INFORMATION: Section 4(b)(3) of the Endangered Species Act, as amended in 1982, requires that within 90 days of receipt of a petition to list, delist, or reclassify a species, or to revise a critical habitat designation, finding be made on whether the petition presents substantial information indicating that the action may be warranted, and that such a finding be promptly published in the **Federal Register**. If the finding is positive, section 4(b)(3) also requires prompt commencement of a review of the status of the involved species. The Service now announces 90-day finding on a recently received petition.

Background

The petition was submitted by the Wildlife Legislative Fund of America. It was dated November 6, 1990, and received by the Service on the following day. It requests that all populations of the red kangaroo (*Macropus rufus*), the western gray kangaroo (*M. fuliginosus*), and the eastern gray kangaroo (*M. giganteus*), except the subspecies (*M. g. tasmaniensis*), be removed from the list of threatened species under the Endangered Species Act.

The Service had been previously petitioned on December 20, 1989, by Greenpeace USA, and others "to reinstate the ban on commercial importation of kangaroos products." The Service, in order to respond to the December 20, 1989, petition in a meaningful manner, sent three representatives to Australia in March 1990 to investigate the population status of the three kangaroos species (survey methods, number and trends), and the

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implementation of management programs. In addition, the team received comments and developed opinions as to the conservation benefit of management plans allowing the harvest of kangaroos. The Service team spent 12 days meeting with selected members of Parliament, representatives of various nongovernmental organizations, scientists, state and federal natural resource managers, enforcement personnel, grain growers, and ranchers. The team also visited parks, open range, chillers, faunal dealers, ports and exporters. The team presented their findings in a report entitled "Review of Kangaroo Management, Australia, March 1990" on June 5, 1990.

The petitioners in the November 6, 1990, document presented the June 5, 1990, report prepared by Service personnel as the principal basis for their petition. Among other things, the petitioners cite the conservative estimates of the 1987 kangaroo numbers listed in Table 2 of that report (red kangaroos—7.5 million, western gray kangaroos—1.7 million, and eastern gray kangaroos—4.7 million) and the fact that kangaroo conservation programs exist within individual range states as reasons for delisting the species.

In 1974, these three species of kangaroos were listed as threatened pursuant to the Endangered Species Act, and commercial importation of kangaroos, their parts, and products were banned. However, a special rule that would allow such importations after development of adequate State management plans accompanied the listing. In 1981, after management plans including commercial take quotas were strengthened and population survey methods reviewed, the Service accepted the management program and lifted the importation ban.

Since that time, the kangaroo populations in eastern Australia were significantly reduced during the 1982–83 drought. However, following the drought, populations have generally returned to or exceeded 1981 population levels (except for gray kangaroos in Queensland) even as harvest has continued, based on population estimates from comparable surveys of areas subject to harvest (Table 1 in "Review of Kangaroo Management, March, 1990").

The Service believes that Commonwealth government and the individual States continue to make improvements in their kangaroo management capabilities especially in developing survey techniques. The report "Review of Kangaroos Management, March 1990," discusses the adequacy of survey methods. Annual aerial surveys are conducted in New South Wales and South Australia, aerial surveys are conducted by Australian National Parks and Wildlife Service and others every 3 years in Queensland, and the Australian National Parks and Wildlife Service reports on surveys conducted every 3 years in Western Australia.

Furthermore, the Service recognizes the continued improvement in survey methodology and ongoing research to further improve visibility correction factors and takes note of ongoing research to identify indices to alert managers about the need for further harvest restrictions. In addition, the Service notes that in the recent court-mediated agreement, the State of Queensland appears committed to: (1) Maintaining kangaroo populations over their natural range; (2) improving survey procedures; (3) establishing conservative harvest quotas; (4) increasing the number of faunal districts to allow for more appropriate management actions; (5) implementing use of species specific tags; (6) extending their enforcement activity; and (7) making management information more available to the public.

The Service has examined the petition, the report it incorporates by reference, and comments on the report, and given the population status of the threatened kangaroo species, the extent of Australia's system of parks and preserves, and the reports' assessment of State management plans with federal government oversight of the commercial harvest quotas, finds that the petition presents substantial information indicating that the requested action may be warranted.

In accordance with section 4(b)(3) of the Act, the Service reopens the comment period as part of the continuing status review initiated in the August 5, 1990, **Federal Register** (55 FR 32276). During this comment period and status review, the Service will also continue to review issues presented in the petition to reimpose the importation ban kangaroos, their parts, and products as submitted by Greenpeace USA. The Service, prior to making any future finding, will further evaluate several aspects of kangaroo management plans to evaluate threats to the well-being of the species.

The Service is especially concerned that: (1) No population objectives (other than maintaining viable populations) are stated in the published kangaroo management plans; (2) no explanation is offered as how population objectives are to be achieved; (3) the mechanisms regulating and enforcing trade in kangaroo products should be strengthened; (4) the Australian Government has not yet responded to the 27 recommendations listed in the Australian Senate Committee Report; (5) the extent to which Queensland has implemented its commitment to Greenpeace (Australia) to make basic changes in its kangaroo management plan has not been determined; (6) population and habitat surveys in Western Australia have not been evaluated; and (7) the long-term threats to kangaroo populations in those states without export quotas (e.g. Tasmania) are not adequately understood.

The Service will consider the comments received, along with all other available data, in making a finding, required by section 4(b)(3) within 12 months of receipt of a petition presenting substantial information, as to whether the requested action is warranted, not warranted, or warranted but precluded by other listing activity.

This notice was prepared by Charles W. Dane, Chief, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240 (703–358–1708 or FTS 921–1708).

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

List of Subject in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation and Wildlife.

Dated: May 30, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91–13973 Filed 6–11–91; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 56, No. 113
Wednesday, June 12, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 91–073]

Availability of Environmental Assessments and Findings of No Significant Impact Relative to Issuance of Permits to Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that 20 environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The assessments provide a basis for the conclusion that the field testing of these genetically engineered organisms will not present a risk of the introduction or dissemination of a plant pest and will not have significant impact on the quality of the human environment. Based on these findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, between 8 a.m. and 4:30 p.m., Monday through Friday, except holdidays.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Petrie, Program Specialist, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hysattsville, MD, 20782, (301) 436–7612. For copies of the enviornmental assessments and findings of no significant impact, write Mr. Clayton Givens at this same address. The documents should be requestd under the permit numbers listed below.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing the permit applications, APHIS assessed the impact on the environment of releasing the organisms under the conditions described in the permit applications. APHIS concluded that the issuance of the permits listed below will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment.

The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of the following permits to allow the field testing of genetically engineered organisms:

Permit number	Applicant	Date issued	Organism	Field test location
90–332–01	U.S. Department of Agriculture, Agricultural Research Service.	04–17–91	Potato plants genetically engineered to contain a gene coding for an insect protein (Cecropin B) that has antibacterial activity.	Idaho, Maine, Minnesota, and North Dakota.
90–351–02	Calgene, Incorporated	04–18–91	Potato plants genetically engineered to express novel genes affecting carbohydrate metabolism.	Idaho.
90–353–01	Ciba-Geigy Corporation	04–18–91	Tobacco plants genetically engineered to express a delta-endo-toxin protein from *Bacillus thuringiensis* subsp. *kurstaki* strain HD1.	North Carolina.
91–035–07	Calgene, Incorported	04–19–91	Cotton plants genetically engineered to express tolerance to the herbicide bromoxynil.	Georgia and South Carolina.
91–023–06 (Courtesy Permit).	Auburn University	04–19–91	*Pseudomonas putida* strain 61.9A.3L which has been modified by the insertion of a genetically engineered transposon Tn5-Lux.	Alabama.
91–018–01	Monsanto Agricultural Company	04–24–91	Soybean plants genetically engineered to express a gene encoding a modified 5-enolypruvyl-ehikimate-3-phoephate anythase which is not inhibited by the herbicide glyphoeate.	Arkansas, Illinois, Indiana, and Maryland.
91–052–06	Pioneer Hi-Bred International, Incorporated.	04–24–91	Alfalfa plants genetically engineered to express the alfalfa mosaic virus (AMV) coat protein gene.	Iowa.
90–360–01	U.S. Department of Agriculture, Agricultural Research Service.	04–24–91	Potato plants genetically engineered to express an enzyme that confers tolerance to the herbicide bromoxynil.	Idaho.

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Permit number	Applicant	Date issued	Organism	Field test location
91-007-04	Monsanto Agricultural Company	04-26-91	Potato plants genetically engineered to express a delta-endo-toxin protetin from *Bacillus thuringiensis* subsp. *tenebrionis*.	Idaho, Maine, and Michigan.
91-042-02 renewal of Permit 89-290-91, issued on 02-16-90.	Auburn University	04-26-91	*Xanthomonas campestris* pv. *campestris* genetically engineered to contain a gene to confer bioluminescence as a marker.	Alabama.
91-052-07	Pioneer Hi-Bred International, Incorporated.	04-26-91	Alfalfa plants genetically engineered to express the alfalfa mosaic virus (AMV) coat protein gene.	Washington.
91-007-08	Biosource Genetics Corporation	05-01-91	Tobacco mosaic virus genetically engineered to express either alpha-hemoglobin, beta-hemoglobin, trichosanthin, or alpha-amylase genes, introduced into tobacco.	North Carolina.
91-016-01	DuPont Agricultural Products	05-01-91	Tobacco plants genetically engineered to contain two marker genes, the kanamycin resistance gene and the beta-glucuronidase gene.	Delaware and Texas.
91-025-01	BioTechnica Agriculture Incorporated	05-01-91	Corn plants genetically engineered to contain a chimeric marker gene and storage protein gene.	Illinois, Iowa, Minnesota, and Nebraska.
91-025-02	DuPont Agricultural Products	05-01-91	Cotton plants genetically engineered to express a tolerance to sulfonylurea herbicides.	Maryland and Mississippi.
91-007-01	Monsanto Agricultural Company	05-02-91	Cotton plants genetically engineered to express a delta-endotoxin protein from *Bacillus thuringiensis* subsp. *kurstaki*.	Alabama.
91-044-01	Campbell Institute for Research and Technology.	05-02-91	Tomato plants genetically engineered to express an anti-sense poly-galacturonase (PG) gene.	California.
90-345-01	U.S. Department of Agriculture, Agricultural Research Service.	05-02-91	Potato plants genetically engineered to contain a gene encoding for an insect protein (Cecropin B) that has anti-bacterial activity.	Idaho, Maine, Minnesota, and North Dakota.
90-345-02	Washington State University	05-02-91	Potato plants genetically engineered to contain disease resistance response genes from the pea.	Washington.
91-007-05	U.S. Department of Agriculture, Agricultural Research Service.	05-03-91	Potato plants genetically engineered to express a modified chicken lysozyme gene.	Idaho, Maine, Minnesota, and North Dakota.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 6th day of June 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–13968 Filed 6–11–91; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 91–051]

Guatemala MOSCAMED Program Environmental Analysis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared and is making available a final environmental analysis for the Guatemala MOSCAMED Program.

ADDRESSES: A copy of the final environmental analysis, the final economic analysis, and the agency's record of decision may be obtained by writing to the following individuals: Mr. Michael T. Werner, Deputy Director, Environmental Analysis and Documentation, BBEP, APHIS, USDA, room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; Mr. Robert Strong, Regional Director, International Services, APHIS, USDA, American Embassy-Mexico, Paseo De La Reforma 305, room 225, Col. Cuauhtemoc, 06500 Mexico, D.F.; and Mr. Marshall Kirby, Area Director, International Services, APHIS, USDA, American Embassy-Guatemala, Avenida La Reforma 7–01, Zona 10, Guatemala City, Guatemala.

These documents are available for review at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. They are also available for review in the commercial libraries of the American embassies in Mexico and Guatemala.

FOR FURTHER INFORMATION CONTACT: Michael T. Werner, Deputy Director, Environmental Analysis and Documentation, BBEP, APHIS, USDA, room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8892.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) has prepared and is making available a final environmental analysis for the Guatemala MOSCAMED Program. We developed the final environmental analysis with full consideration to the broad range of public comments received about the program.

Background

The Mediterranean fruit fly or Medfly ("Moscamed" in Spanish), *Ceratitis capitata* (Weidemann), is a major pest of agriculture throughout many parts of the world. Originally native to Africa, it now occurs in areas of Africa, the Mediterranean, Europe, Oceania, South America, Central America, and Hawaii. The Medfly has been introduced to the U.S. mainland intermittently since its initial introduction in 1929. However, eradication programs have prevented it from becoming established here. From 1929 to 1990, State and Federal expenditures for eradication programs on the United States mainland totaled approximately $270 million.

The Medfly became established in Costa Rica in 1955. By 1977, the Medfly had expanded its range from its original point of introduction to southern Mexico. In 1977, the Governments of the United States, Guatemala, and Mexico initiated a cooperative program known as MOSCAMED to eradicate the Medfly from Mexico and Guatemala and halt its northern spread. Beginning in Mexico in 1979, the MOSCAMED program used a combination of malathion bait spray, sterile Medflies released into the wild populations, and regulatory procedures in its eradication efforts. In 1982, Mexico declared the Medfly eradicated from its territory, and the eradication effort was extended in Guatemala.

On December 22, 1989, we published a notice in the **Federal Register** advising the public that we had prepared a draft environmental analysis for the Guatemala MOSCAMED Program, that we were seeking written comments on the draft environmental analysis, and that we would also hold a public meeting to further promote public involvement in the development of the final environmental analysis. We have considered all the comments we received during the 60-day comment period, and during the January 22, 1990, public meeting held in Washington, DC. We have made various revisions as a result of the comments, and have produced a final environmental analysis and agency record of decision. These are available by writing to the persons listed above under "**ADDRESSES**." An economic analysis of the Medfly program in Guatemala is also available from these persons.

Alternatives

The following program alternatives are discussed in the final environmental analysis: (1) No action, (2) Isthmus of Tehuantepec stable barrier zone (Mexico), and (3) eradication of the Medfly from Guatemala. Control alternatives identified and discussed in the final environmental analysis include: (1) No action; (2) sterile insect technique, (3) chemical control, (4) cultural control, (5) regulatory control, and (6) integrated control.

Our preferred program alternative is the eradication of Medfly from Guatemala. Our preferred method for accomplishing this objective is integrated control, which combines one or more of the control alternatives listed above. These preferences are reflected in the agency's record of decision.

Integrated control is a systems approach that takes into consideration anticipated economic, ecological, and sociological consequences. This systems approach will allow us to make selections in control methodologies that are environmentally sound and appropriate for existing conditions and treatment sites.

Major Issues

Following are some of the major issues discussed in the final environmental analysis:

(1) Potential impacts of the alternatives on the biological environment, including target and nontarget species.

(2) Potential impacts of the alternatives on the physical environment, including soil, water quality, and air quality.

(3) Potential impacts of the alternatives on the human environment, especially health and safety, culture, and economy.

Done in Washington, DC, this 6th day of June 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91–13967 Filed 6–11–91; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Administration.

Title: Short Supply Regulations—Unprocessed Western Red Cedar.

Form Number: Agency—EAR section 777.7; OMB Control No. 0694–0025.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 33 respondents; 17 reporting hours; Average hours per respondent is ½ hour.

Needs and Uses: This information is collected as supporting documentation for license applications to export western red cedar logs to enforce the Export Administration Act's prohibition against the export of such logs harvested from State or Federal lands.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208 New Executive Office Building, Washington, DC 20503.

Dated: June 7, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91–13975 Filed 6–11–91; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Administration.

Title: Numerical Control Units, Numerically Controlled Machine Tools, Dimensional Inspection Machines, Direct Numerical Control Systems, Specially Designed Assemblies, and Specially Designed Software.

Form Number: Agency—EAR section 776.11; OMB Control No. 0694–0024.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 58 respondents; 29 reporting hours; Average time per respondent is 30 minutes for reporting.

Needs and Uses: This information requested in this collection is needed for assurance that these commodities have no military or nuclear end-uses. It is needed for the licensing officer to make a decision on the license application.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, room 5237, 14th and Constitution Avenue, NW., Washington, DC 20230.

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Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208 New Executive Office Building, Washington, DC 20503.

Dated: June 7, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-13976 Filed 6-11-91; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Administration.

Title: Short Supply Regulations—Petroleum (Crude Oil).

Form Number: Agency—EAR Section 777.6; OMB Control No. 0694-0027.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 8 respondents; 32 reporting hours. Average hours per respondent is 4.

Needs and Uses: This information is collected as supporting documentation for license applications to export petroleum (crude oil) and used by licensing officers to determine compliance with the 5 statutes governing this collection.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: On occasion.

Respondent's of Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208 New Executive Office Building, Washington, DC 20503.

Dated: June 7, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-13977 Filed 6-11-91; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Regulations Governing Small Takes of Marine Mammals Incidental to Specified Activities.

Form Number: None; OMB-0648-0151.

Type of Request: Request for extension of the expiration date of a currently approved collection without any change in the substance or method of collection.

Burden: 21 respondents; 1,210 reporting hours; average hours per response—29.5 hours.

Needs and Uses: This information is used to determine whether to allow an incidental taking of marine mammals and to monitor any authorized taking. The affected public is U.S. citizens that incidently take marine mammals (other than in commerical fishing operations).

Affected Public: Individuals or hosueholds, state or local governments, business or other for-profit, Federal agencies or employees.

Frequency: On occasion, annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Ronald Minsk, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Ronald Minsk, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 6, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-13978 Filed 6-11-91; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

[A-427-098]

Anhydrous Sodium Metasilicate From France; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner, the Department of Commerce has conducted an administrative review of the antidumping duty order on anhydrous sodium metasilicate from France. This review covers Rhone Poulenc Chimie de Base, a manufacturer/exporter of this merchandise to the United States, and the period January 1, 1990 through December 31, 1990. We have preliminarily determined that there were no shipments during the review period.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 12, 1991.

FOR FURTHER INFORMATION CONTACT: Lisa M. Boykin or Robert J. Marenick, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On January 17, 1991, the Department of Commerce ("the Department") published a notice of "Opportunity to Request an Administrative Review" (56 FR 1793) of the antidumping duty order on anhydrous sodium metasilicate from France. On January 18, 1991, the petitioner, the PQ Corporation, requested an administrative review of Rhone Poulenc. We initiated the review, covering January 1, 1990 through December 31, 1990, on February 19, 1991 (56 FR 6621). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930 ("the Act"). The final results of the last administrative review in this case were published in the **Federal Register** on December 11, 1989 (54 FR 50788).

Scope of the Review

Imports covered by the review are shipments of anhydrous sodium metasilicate, a crystalline silicate (Na2 SiO3) which is alkaline and readily soluble in water. Applications include waste paper de-inking, ore-flotation, bleach stabilization, clay processing, medium or heavy duty cleaning, and compounding into other detergent formulations. This merchandise is classified under HTS item numbers 2839.11.00 and 2839.19.00. The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Preliminary Results of the Review

Because there were no shipments during this review, we based our determination of the cash deposit rate on the last margin found for Rhone Poulenc. We preliminarily determine that a margin of 60 percent exists for Rhone Poulenc during the period January 1, 1990 through December 31, 1990.

Parties to the proceeding may request disclosure within five days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested will be held 44 days after the date of publication of this preliminary notice or the first workday thereafter. Parties to the proceeding may submit prehearing briefs and/or writen comments not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing.

Further, as provided for by section 751(a)(1) of the Act, a cash deposit of estimated antidumping duties of 60 percent shall be required for Rhone Poulenc. The cash deposit rate for all other manufacturers/exporters shall be 60 percent. This is the highest non-best information rate from a prior review. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22 of the Department's regulations.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-13981 Filed 6-11-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-806]

Final Determination of Sales at Less Than Fair Value: Silicon Metal From Brazil

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce (the Department) has determined that silicon metal from Brazil is being, or is likely to be, sold in the United States at less than fair value. We have notified the International Trade Commission (ITC) of our determination. We have also directed the Customs Service to continue to suspend the liquidation of all entries of silicon metal from Brazil as described in the "Continuation of Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: June 12, 1991.

FOR FURTHER INFORMATION CONTACT: James Terpstra or James Meeder, Office of Antidumping Investigations, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-3695 or (202) 377-4929, respectively.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that silicon metal from Brazil is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act). The weighted-average margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since the publication of our affirmaive preliminary determination on March 29, 1991, (56 FR 13116), the following events have occurred.

On March 29, 1991, the Department sent a deficiency letter to Companhia Brasileira Carbureto de Calcio (CBCC) based on its response to Section D of the questionnaire. On April 4, 1991, Camargo Correa Metais, S.A. (CCM) submitted its response to the Department's Section D supplemental questionnaire issued on March 26, 1991. On April 4, 1991, petitioners opposed CBCC's March 28, 1991, request that the Department correct an alleged ministerial error in the preliminary determination that critical circumstances existed with respect to exports of silicon metal by CBCC (see Comment 22). Petitioners also submitted issues for the Department's verification in Brazil on April 4, 1991.

On April 5, 1991, CCM submitted revised data for its April 4, 1991, Section D response. On April 5, 1991, CBCC submitted additional data for its Section D response, in response to the Department's March 29, 1991, deficiency letter. CCM requested a public hearing for the above-referenced investigation on April 5, 1991. Petitioners also requested a public hearing on April 8, 1991. On April 9, 1991, Dow Corning Corporation, an interested party in this investigation, requested the opportunity to participate in the hearing, and CBCC requested a hearing on April 11, 1991.

On April 12, 1991, CCM submitted revised data to the Department. On April 17, 1991, petitioners opposed Dow Corning's and CBCC's requests for a public hearing on the basis of untimeliness. On May 6, 1991, CCM requested that the Department disclose its preliminary below cost and constructed value analysis for CCM. We informed CCM that, because we initiated our below cost of production investigation later than for CBCC, we did not consider CCM's cost data for the preliminary determination and, therefore, there was no analysis to disclose.

We conducted verification of the questionnaire responses between April 8 and April 19, 1991, in Brazil.

On May 7, 1991, the Department extended due date for case briefs in the above-referenced investigation to May 17, 1991. Petitioners and respondents filed case briefs on May 17, 1991, and rebuttal briefs on May 21, 1991. A public hearing was held on May 23, 1991.

Scope of Investigation

The merchandise covered by this investigation is silicon metal containing at least 96.00 but less than 99.99 percent of silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to this investigation. Given that this investigation is not limited to silicon metal used as an alloying agent or in the chemical industry, we have deleted the sentence regarding the uses for silicon metal from the scope of this investigation. The HTS numbers are provided for convenience and customs purposes. The written description remains dispositive.

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Period of Investigation

The period of investigation (POI) is March 1, 1990, through August 31, 1990.

Such or Similar Comparisons

We established one such or similar category of merchandise, consisting of silicon metal, in accordance with section 771(16) of the Act. Comparisons were made on the basis of the following grade classifications: (1) Chemical grade, having a silicon content of 98.50 through 99.98 percent and an iron content of 0.00 through 0.65 percent; (2) primary-aluminum grade, having a silicon content of 98.50 through 99.98 percent and an iron content of 0.66 through 1.00 percent; (3) secondary-aluminum grade, haveng a silicon content of 98.00 through 98.49 percent; and (4) other, with a silicon content of 96.000 through 97.99 percent.

Standing

In a letter dated January 18, 1991, the Aluminum Recycling Association (ARA), the Aluminum Smelting and Refining Company, Inc. (ASRC), and Timco, importers of silicon metal and interested parties in this investigation, challenged petitioners' standing to file on behalf of the domestic producers of the like product. In a letter dated January 23, 1991, and its case brief of May 17, 1991, CCM also challenged petitioners' standing to file on behalf of the domestic producers of the like product. These parties claim that petitioners do not regularly produce or sell silicon metal with a silicon content below 97.50 percent. Therefore, they argue that silicon metal having a silicon content of less than 97.50 percent should be excluded from this investigation because petitioners lack standing with respect to such merchandise within the meaning of 19 USC 1677(a)(2).

The ITC has preliminarily determined that there is one like product, which includes all of the merchandise defined by the scope of this investigation. Silicon metal with a silicon content between 98 and 97.50 percent is within the class or kind of merchandise defined by the scope of this investigation. An interested party is not required to produce every product within the class or kind of merchandise included in the scope of the investigation in order to have standing. ARC, ARSC, and Timco do not challenge that petitioners produce silicon metal in the higher range. Accordingly, given that petitioners, as producers of the subject merchandise, are interested parties filing on behalf of the domestic industry, we have determiend that petitioners have standing.

Critical Circumstances

Petitioners allege that "critical circumstances" exist with respect to imports of silicon metal from Brazil. We preliminarily determined that critical circumstances existed for CBCC, and that critical circumstances did not exist for CCM and all other producers/exporters/manufacturers of silicon metal from Brazil.

Section 735(a)(3) of the Act provides that critical circumstances exist if we determine that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported, knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the merchandise which is the subject of the investigation over a relatively short period.

In determining history or importer knowledge of dumping, we normally consider either an outstanding antidumping order in the United States or elsewhere on the subject merchandise or margins of 25 percent or more sufficient to impute knowledge of dumping under section 735(a)(3)(A)(ii) of the Act. See, e.g., Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China: Final Determination of Sales at Less Than Value, 56 FR 241 (January 3, 1991).

For CBCC and CCM, because the dumping margins exceed 25 percent, we determine that importer knowledge of dumping exists for silicon metal from Brazil.

Pursuant to section 735(a)(3)(B), we generally consider the following factors in determining whether imports have been massive over a short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports. If imports during the period immediately following the filing of a petition increase by at least 15 percent over imports during a comaparable period immediately preceding the filing of a petition, we consider them massive.

For CBCC and CCM, in determining whether there have been massive imports of silicon metal, we relied upon the company-specific export data submitted by the companies. Pursuant to 19 CFR 353.16(g), we compared the export volumes for June through August 1990 as the base period, and September through November 1990 as the comparison period. This was the most current period prior to the preliminary determination for which company-specific shipment data were available.

Based on our analysis of the exports of silicon metal submitted by CBCC and CCM, we find that exports of silicon metal by CBCC from the base period to the comparison period have increased by at least 15 percent. We also examined CBCC's export data to ensure that the increase in imports did not simply reflect seasonal trends. The data do not indicate seasonal increases in shipments to the extent of the increases during the comparison period. Therefore, in accordance with 19 CFR 353.16(f)(2), we find that exports by CBCC have been massive over a relatively short period of time. We find that exports of silicon metal by CCM have not increased by at least 15 percent. Therefore, we find that exports by CCM have not been massive over a relatively short period of time.

Because the dumping margin for CBCC is sufficient to impute knowledge of dumping, and because imports have been massive, in accordance with section 735(a) of the Act, we find that critical circumstances exist with respect to exports of silicon metal by CBCC.

Based on our analysis of the cumulative export data for silicon metal submitted by both CCM and CBCC, we find that cumulative exports of silicon metal by CCM and CBCC have not increased. Therefore, in accordance with 19 CFR 353.16(f)(2), we find the exports by all producers/manufacturers/exporters other than CBCC have not been massive over a relatively short period of time. As a result, we find that critical circumstances do not exist with respect to exports of silicon metal by all producers/manufacturers/exporters other than CBCC.

Fair Value Comparisons

To determine whether sales of silicon metal from Brazil to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

A. CCM

We based the USP on purchase price, in accordance with section 772(b) of the Act, both because the subject merchandise was sold to unrelated purchasers in the United States prior to importation into the United States and because exporter's sales price (ESP) methodology was not indicated by other circumstances. We calculated purchase price for CCM based on packed, C&F prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign handling, and foreign inland insurance, in accordance with section 772(d)(2) of the Act. Although the terms of sale were C&F, CCM reported and we verified that charges for ocean freight were not included in the gross unit price.

In its response, CCM converted the prices, charges, and adjustments per gross ton of silicon metal into amounts per ton of pure silicon. It did this by dividing the gross ton amounts by the percentage silicon content per gross ton of silicon metal. CCM argues that silicon metal will command a price that is directly related to its pure silicon content. The Department is not persuaded that prices, charges, and adjustments are established in accordance with the specific silicon content per gross ton of silicon metal. No other party in this or the other concurrent silicon metal investigations has indicated that prices, charges, and adjustments are established on the basis of pure silicon content. Therefore, for purposes of the final determination, we have converted all of CCM's reported prices, charges, and adjustments to amounts per gross ton of silicon metal.

B. CBCC

We based the USP on purchase price, in accordance with section 772(b) of the Act, both because the subject merchandise was sold to unrelated purchasers in the United States prior to importation into the United States and because ESP methodology was not indicated by other circumstances. We calculated purchase price for CBCC based on packed, C&F prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, ocean freight, brokerage, wharfage, handling, stevedoring, and inspection fees, in accordance with section 772(d)(2) of the Act.

Foreign Market Value

In order to determine whether there were sufficient sales of silicon metal in the home market to serve as the basis for calculating FMV, we compared the volume of home market sales of the such or similar category (*i.e.*, all silicon metal) to the aggregate volume of third country sales, in accordance with section 733(a)(1) of the Act. For both CCM and CBCC, the volume of home market sales was greater than five percent of the aggregate volume of third country sales. Therfore, for both CCM and CBCC, we determined that home market sales constituted a viable basis for calculating FMV, in accordance with 19 CFR 353.48.

As noted in the "Case History" section of this notice, petitioners alleged that home market sales were made at less than the cost of production (COP) and that constructed value (CV) should be used to compute FMV. Because we have reasonable grounds to believe or suspect that both CCM and CBCC sold in the home market at less than the COP, in accordance with section 773(b) of the Act, we initiated cost investigations on each company.

We determined Brazil's economy to be hyperinflationary. In order to eliminate the distortive effect of inflation, the Department has developed a practice of calculating separate COPs and CVs for each month. See, *e.g.*, Final Determination of Sales at Less Than Fair Value and Amended Antidumping Duty Order, Tubeless Steel Disc Wheels from Brazil, 53 FR 34566, (September 7, 1988) (*Disc Wheels*).

A. CCM

In order to determine whether home market sales were above the COP, we calculated the monthly COPs on the basis of CCM's cost of materials, labor, other fabrication costs, general expenses, and packing. We relied on the COP data submitted by CCM except in the following instances where the costs were not appropriately quantified or valued: CCM's miscellaneous material costs were adjusted to reflect replacement costs; we removed ICMS value-added taxes from the submitted costs, as they are not a cost incurred in the home market; we added IPI taxes to the submitted costs; and we recalculated inventory holding gains and losses based on information on the record.

We compared individual home market prices with the monthly COPs. We found that all sales in the home market were made at prices below the COP. Therefore, we based FMV on monthly CVs.

We calculated CV in accordance with section 773(e)(1) of the Act. The monthly CVs include materials, fabrication, general expenses, profit and packing. We used the following as the basis for calculating CV:

(1) CCM's actual general expenses because they exceed the statutory ten percent minimum of materials and fabrication, in accordance with section 773(e)(1)(B)(i) of the Act; and

(2) the statutory minimum profit of eight percent, in accordance with section 773(e)(1)(B)(ii) of the Act, as CCM's profit was less than eight percent of the sum of general expenses and the cost of manufacture.

We used CCM's submitted monthly costs except in the following instances where the costs were not appropriately quantified or valued: we adjusted CCM's miscellaneous material costs to reflect replacement costs; we added ICMS and IPI taxes paid on inputs to the submitted costs; we recalculated inventory holding gains and losses based on information on the record; we included expenses incurred by CCM's parent companies on behalf of CCM; and we added packing costs.

We made circumstance of sale adjustments, where appropriate, for differences in credit expenses, in accordance with 19 CFR 353.56(a). In addition, as described in the DOC Position to Comment 20, when the U.S. date of sale occurred in a calendar month preceding the date of shipment, we made a circumstance of sale adjustment to account for hyperinflation between the exchange rate on the date of sale and the exchange rate on the date of shipment. Because the CV is calculated as of the date of exportation (shipment), we made this adjustment to eliminate the artificial distortion of value caused by the rapid depreciation of Brazil's currency. See Disc Wheels.

B. CBCC

In order to determine whether home market sales were above the COP, we calculated the COP on the basis of CBCC's cost of materials, labor, other fabrication costs, general expenses, and packing. We relied on the COP data submitted by CBCC except in the following instances where the costs were not appropriately quantified or valued: we adjusted CBCC's material costs to reflect replacement costs; we increased chemical analysis costs to reflect allocation ratios noted at verification; we allocated G&A expenses based on cost of sales as reflected in the financial statements; we increased G&A expenses to include parent company costs; we included finance costs as reflected on the financial statements; and we recalculated inventory holding gains and losses based on information on the record.

We found that all sales in the home market were made at prices below the COP. Therefore, we based FMW on CV.

We calculated CV in accordance with section 773(e)(1) of the Act. The monthly CVs include materials, fabrication, general expenses, profit and packing. We used the following as the basis for calculating CV:

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(1) CBCC's actual general expenses because they exceed the statutory ten percent minimum of materials and fabrication, in accordance with section 773(e)(1)(B)(i) of the Act; and

(2) The statutory minimum profit of eight percent, in accordance with section 773(e)(1)(B)(ii) of the Act, as CBCC's profit was less than eight percent of the sum of general expenses and the cost of the manufacture.

We used CBCC's submitted monthly costs except in the following instances where the costs were not appropriately quantified or valued: we adjusted CBCC's material costs to reflect replacement costs; we added ICMS paid on inputs to the submitted costs; we increased chemical analysis costs to reflect allocation ratios noted at verification; we allocated G&A expenses based on cost of sales as reflected in the financial statements; we increased G&A expenses to include parent company costs; we included finance costs as reflected on the financial statements; and we recalculated inventory holding gains and losses based on information on the record.

We added packing costs based on the best information available (BIA) as described in the DOC Position to Comment 9 in the "Interested Party Comments" section of this notice. We also made circumstance of sale adjustments, where appropriate, for differences in credit expenses, in accordance with 19 CFR 353.16(a). In addition, as described above for CCM, when the U.S. date of sale occurred in a calendar month preceding the date of shipment, we made a circumstance of sale adjustment to account for hyperinflation between the exchange rate on the date of sale and the exchange rate on the date of the shipment.

Currency Conversion

No certified rates of exchange, from the Federal Reserve Bank of New York, were available for the POI. In place of those rates, we used the daily official exchange rates for Brazil published by the Bank of Brazil.

Verification

As provided in section 776(b) of the Act, we verified all information provided by the respondents by using standard verification procedures, including on-site inspection of manufacturers' facilities, the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Interested Party Comments

Comment 1. Petitioners argue that CBCC's reported U.S. sale dates are incorrect and should be revised to reflect the dates on which all major terms of sale were agreed upon. Petitioners base their argument on the Department's discovery at verification that shipment from the plant to the port of one reported U.S. sale began before the date of the Export Sale Authorization, the document CBCC used to determine date of sale. Petitioners argue that for this sale, the Department should use the date that shipment from the plant began as the date of sale. For all other export sales, petitioners argue that the Department should use as date of sale a date at least two weeks prior to the date of shipment from the plant, as best information available (BIA).

CBCC asserts that it properly determined its U.S. sale dates. CBCC maintains that it ships silicon metal to the port before it has been sold to a particular customer or designated for a particular contract. Only when the merchandise arrives at the port is it assigned to a specific export order.

DOC Position. We agree with respondent. Although merchandise may have been shipped to the port while negotiations with the U.S. customer were ongoing, we found at verification that CBCC did not recognize the sale until the director of the company issued the Export Sales Authorization, indicating that all terms of sale had been agreed to by the parties. We used the date of the Export Sales Authorization as the date of sale for all relevant CBCC U.S. sales.

Comment 2. Petitioners maintain that the Department should deduct from CBCC's U.S. price inspection fees that were required by the freight company and the licensed exporter. CBCC had reported these inspection fees as "other expenses" in its response.

DOC Position. We agree with petitioners. We found at verification that CBCC incurred these inspection fees as a condition of shipment imposed by the freight company. Because these fees area a condition for movement of the merchandise, we consider them to be a movement expense and have deducted them from U.S. price, in accordance with section 772(d)(2) of the Act.

Comment 3. Petitioners argue that the Department should convert CBCC's foreign inland freight expenses to U.S. dollars using exchange rates for the dates on which CBCC's silicon metal was shipped from its plant, not those for the dates of exportation.

CBCC maintains that the Department should convert freight expenses using the exchange rate in effect on the date of exportation because that is the date CBCC surrenders title and has the right to receive payment under its contract.

DOC Position. We agree with respondent. We found at verification that CBCC is billed by its freight company after shipment to the port is complete and often after exportation has occurred. In investigations involving hyperinflationary economies, the Department converts movement charges associated with U.S. sales on the date such charges become payable. See Industrial Nitrocellulose from Brazil, 55 FR 23120 (June 6, 1990); Disc Wheels; and Frozen Concentrated Orange Juice from Brazil, 52 FR 8327 (March 17, 1987) (FCOJ). Because movement charges become payable on or after the date of exportation, we have converted CBCC's movement charges on the reported dates of shipment, which are the dates of exportation.

Comment 4. Petitioners argue that CBCC's U.S. prices should be reduced to reflect any discount of CBCC's receivables when it borrowed against export receivables.

CBCC maintains that it did not discount its receivables. Since it receives cash for most of its sales, there are no receivables and there is nothing to discount. In cases where CBCC borrowed money through an advance on exchange contrct (ACC), the ACC loan acted as a discount on a letter of credit, which is not a receivable.

DOC Position. We agree with respondent. When CBCC borrowed through an ACC, it borrowed against a letter of credit, not against outstanding receivables. Under an ACC, the lender agrees to give the borrower the cruzerio equivalent of the U.S. dollar-denominated letter of credit using the exchange rate on the date of the issuance of the loan. The lender then receives the U.S. dollars on the maturity date of the letter of credit, or date of payment.

Comment 5. Petitioners argue that CBCC's and CCM's volume of home market sales is so small in relation to U.S. sales as to not provide an adequate basis for FMV.

CBCC and CCM argue that their respective home markets are viable and that the Department should use their home market sales for comparison to U.S. sales.

DOC Position. We agree with respondents. As described in the "Foreign Market Value" section of this notice, both CBBC's and CCM's home markets are viable within the meaning of 19 CFR 353.48(a). However, we have determined that all of CBCC's and CCM's home market sales were made at prices below the COP. Therefore, we have compared CV to CBCC's and CCM's U.S. prices.

Comment 6. Petitioners argue that the Department should not make a circumstance of sale adjustment with regard to credit expenses when CV is compared to CBCC's U.S. prices. Petitioners maintain that since CBCC sells in the home market on a cash basis and reported no credit expenses, the Department should add U.S. credit costs to CV as BIA. Petitioners further argue that if the Department does impute credit expenses for CV, it should insure that these expenses, in dollar terms, are no greater than U.S. credit based in BIA.

CBCC maintains that the Department verified that CBCC had incurred no credit expenses on its home market sales. Therefore, the Department should not add credit to CV.

DOC Position. We agree with respondent. We found at verification that CBCC's home market customers paid at sight and that there were no outstanding receivables with respect to these sales. Because we use home market selling expenses when calculating constructed value, we did not include credit expenses in the calculation, since none were incurred in the home market. However, as described in the "Foreign Market Value" section of this notice, we made a circumstance of sale adjustment to account for imputed credit expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(a)(2).

Comment 7. Petitioners contend that the credit expenses CBCC reported on three U.S. sales are actually price reductions. As such, petitioners argue that the Department should treat them as price discounts or rebates and deduct them from U.S. price. Petitioners argue further that the Department should impute credit expenses on the period between date of shipment from the plant and the date of customer payment.

CBCC maintains that it did not give its U.S. customers rebates or discounts for early payment. CBCC contends that it adjusted the amount of interest due for these three sales to reflect the actual date of payment. In addition, CBCC maintains that the Department should not impute credit expenses on letter of credit sales, since such sales involve no credit risk to the seller. However, should the Department impute credit expenses on such sales, CBCC argues that the Department should use the period between date of exportation and date of payment as the credit period.

DOC Position. We agree with petitioners with regard to the price reductions.

We found at verification that for three U.S. sales, the customer paid earlier than the agreed-upon terms of payment and requested that CBCC adjust the price because of early payment. CBCC granted this price adjustment and erroneously reported it as a credit expense in its response to the Department's questionnaire. We determined that this is an early-payment discount and have deducted it from U.S. price.

We disagree with respondent with regard to credit expenses on letter of credit sales. Regardless of how a customer pays, a company incurs an imputed cost while the payment is outstanding, regardless of who bears the risk. Therefore, we have calculated imputed credit expenses on CBCC's letter of credit sales for the period between the date of shipment and the date payment was received by CBCC.

We ascertained at verification that numerous shipments by truck can be necessary for a complete order to arrive at the port. We also found that the freight company did not bill CBCC until shipment of an order was complete, as described in the DOC Position to Comment 3. Therefore, we have determined that CBCC's payment period begins on the reported date of shipment. See Mechanical Transfer Presses from Japan, 55 FR 335 (January 4, 1990).

Comment 8. Petitioners contend that because CBCC never provided the calculations showing how it determined the interest rate it used in calculating U.S. credit expenses, the Department should recalculate U.S. credit expense using CCM's short-term borrowing rate as BIA.

DOC Position. We agree with petitioners. The Department has recalculated CBCC's imputed U.S. credit expenses using an adjusted price and CCM's U.S. dollar short-term borrowing rate as BIA and the days between the date of shipment and date of payment as the credit period.

Comment 9. Petitioners maintain that because the Department was unable to verify CBCC's claimed packing expenses, it should use CCM's packing costs as BIA, as it did for the preliminary determination. Moreover, petitioners argue that when packing costs are converted to U.S. dollars, it should use the same exchange rates used in converting FMV to U.S. dollars because any other rate would distort the calculation.

DOC Position. We agree with petitioners in part. As in the preliminary determination, we have used CCM's packing costs as BIA. However, we converted packing expenses using the exchange rate in effect on the date of shipment, as this is the best estimate of the U.S. dollar value of the packing expenses when they are incurred.

Comment 10. Petitioners argue that the Department should not make a circumstance of sale adjustment for taxes paid in the home market but not on exports. Petitioners assert that this practice is not authorized by statute.

CCM maintains that the Department should make a circumstance of sale adjustment for these taxes.

CBCC argues that the Department should deduct the ICMS tax from home market prices.

DOC Position. We made no adjustment because we have based FMV on CV, and CV does not include the ICMS tax paid by the home market customer.

Comment 11. Petitioners argue that the ICMS rate should be applied strictly to the U.S. selling price to calculate the tax to be added to U.S. price.

CCM argues that the Department should calculate the U.S. price and FMV adjustments for these taxes based on the verified tax rates. In addition, CCM argues that because the ICMS amount for home market sales is calculated by applying the ICMS rate on the "tax-inclusive" gross selling price, the tax added to U.S. sales should be calculated using a ratio that applies the same principle.

DOC Position. We made no adjustment because we have based FMV on CV, and CV does not include the ICMS tax paid by the home market customer.

Comment 12. Petitioners argue that ocean freight and other costs incurred after shipment from CCM's factory should be excluded from the tax base when calculating the addition to U.S. price of home market taxes not collected on export sales.

CCM maintains that the Department should calculate the adjustment to U.S. price for Brazilian taxes using the full invoice price, inclusive of all charges.

DOC Position. We made no adjustment because we have based FMV on CV, and CV does not include the ICMS tax paid by the home market customer.

Comment 13. Petitioners contend that CCM's reported U.S. sale dates are incorrect and should be revised to reflect the dates on which all major terms of sale are agreed upon. Petitioners note that in its response, CCM claimed that it used the date of purchase order or date of invoice as date of sale. However, the Department

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found at verification that CCM actually used the date on which the freight arrangements were finalized as date of sale. Petitioners argue that price, quantity, and product specifications were all set prior to the date that CCM selected as date of sale for reporting purposes. Therefore, petitioners assert that the Department should establish BIA sale dates.

CCM argues that the Department should consider the date on which shipping arrangements were finalized as the date of the U.S. sale.

DOC Position. We agree with CCM. CCM's terms of sale for U.S. sales were C&F, meaning that freight expenses are included in the price. We found at verification that, although other components of a sales negotiation may have been concluded before the shipping arrangements, negotiation of shipping terms continued. The customer was kept informed of the negotiation process until the time that CCM sent the shipping confirmation to the customer. Because in this investigation we consider the terms of shipment to be an important component in sales where the terms of sale are C&F, we have accepted CCM's reported sale dates.

Comment 14. Petitioners maintain that the Department should calculate CCM's home market credit expenses by applying the ANDIMA inflation-neutral interest rate to CCM's base sales price, excluding any addition for interest charged the purchaser by CCM.

CCM argues that the Department should not use the ANDIMA rate to calculate home market imputed credit expenses. CCM maintains that the ANDIMA rate is a rate that banks pay depositors for overnight deposits, and does not reflect the interest rate that a borrower would pay for short-term credit. Instead, the Department should use the most recent monthly inflation rate, plus a two percent premium. Alternatively, CCM proposes that the Department use either an interest rate that CCM used in a dispute settlement for one of its sales during the POI, or published data regarding isolated examples of lending rates by Brazilian banks to large, preferred customers.

DOC Position. We agree with petitioners. At verification, CCM provided insufficient evidence supporting the use of an inflation rate plus a premium as a surrogate for a short-term interest rate in calculating imputed credit expenses in the home market. Therefore, we have determined that the interest rates used to calculate such expenses should be based on BIA.

As an alternative, CCM suggest we use an interest rate negotiated in a dispute between CCM and one of its customers over the quantity shipped. The customer admitted that it had erred in this dispute and agreed to pay the invoice amount and interest on the withheld payment. We have determined that this agreement bears no relationship to the interest rates that may have been available commercially on the dates of sale of the sales in question. Rather, it was simply a rate that CCM negotiated with its customer and was not offered by any commercial lender to CCM.

As a second alternative, CCM suggests that the Department calculate home market credit expenses using interest rates on certain loans offered by banks to large preferred customers during the POI. However, CCM itself admits that these loans were non-market transactions and were essentially an accommodation to preferred customers. Again, we have no indication that such rates would have been available to CCM during the period in question.

Therefore, as BIA, we have used the ANDIMA rates supplied by Brazil's Banco Nacional to the Department during verification in the concurrent countervailing duty investigation of silicon metal from Brazil. The ANDIMA is a certificate of interbank operation which averages various economic indicators and the daily average cost of operations of numerous banks. The interest rates determined pursuant to the ANDIMA are monthly average interest rates, not overnight rates as asserted by CCM, although they may be applied to overnight deposits.

Comment 15. CCM maintains that the Department should calculate imputed home market credit expenses using the ICMS-inclusive home market price. In the preliminary determination, the Department calculated these expenses on an ICMS-exclusive price. CCM maintains that, between date of shipment and date of payment, CCM financed its customer for the full amount of the invoice, inclusive of the ICMS that the customer paid to CCM. CCM considers the ICMS it receives from the customer to be real revenue, because its ICMS payments on purchases always exceed its ICMS receipts, due to its small number of home market sales. CCM asserts that the ICMS collected from home market sales either contributes to the recovery of the company's total cost of producing and selling silicon metal, or represents profit to the company.

CCM also argues that the Department should use the correct payment period in calculating imputed home market credit costs.

Petitioners argue that the Department should calculate CCM's home market credit expense on the home market price net of ICMS tax. Petitioners assert that CCM incurs no credit expense with respect to the ICMS tax because: (1) It never remits the ICMS collected on home market sales to the government; and (2) CCM is not liable to pay ICMS on its sales until the end of the month following the sale date.

Petitioners maintain that if the Department calculates home market credit on an ICMS-inclusive price, credit expenses in the U.S. market should be calculated on a price that includes the theoretical tax amount.

DOC Position. We agree with respondent. The ICMS incident to a home market sale is outstanding until that time that the customer pays for its merchandise. Until the customer pays, CCM cannot use the ICMS collected on the sale to offset ICMS it has paid on purchases of materials used in the production of the subject merchandise. Accordingly, there is an inherent cost in maintaining an outstanding amount of ICMS due to CCM's receivables. Therefore, we have included the ICMS in the home market price when calculating imputed credit expenses.

In addition, we have not included the theoretical tax in the U.S. price when calculating imputed credit expenses on U.S. sales. Credit expenses can only be imputed on the actual amount of the receivable outstanding to the customer. It would, therefore, be improper to calculate imputed credit expenses on a U.S. price that includes a theoretical tax amount for which the customer is not liable.

Comment 16. Petitioners argue that the Department should define the scope of investigation to include "silicon metal" with a silicon content of less than 96 percent. Petitioners maintain that the petition and a letter supplementing the petition did not set a minimum silicon content. Petitioners assert that Census Bureau import data show that substantial quantities of silicon metal containing less than 96 percent silicon already have entered the United States. Moreover, petitioners point to additional evidence that demonstrates that silicon metal containing less than 96 percent silicon is being imported into the United States.

Petitioners urge the Department not to specify a minimum silicon content. However, should the Department set a minimum content, petitioners maintain that it should be 90 percent. If the Department declines to alter the scope, petitioners suggest that the Department recognize that imports of a product with

less than 96 percent silicon may be covered by an order issued in this proceeding as a "minor alteration" of the subject merchandise within the meaning of 19 U.S.C. 1677j(c).

CCM argues that the Department should not expand the scope of investigation because: (1) Petitioners' request to expand the investigation is untimely; (2) any commercial similarities between the merchandise subject to the preliminary determination and merchandise having less than 96.00 percent silicon are irrelevant in a case such as this where the non-investigated merchandise existed and was known to petitioner at the time the investigation began; and, (3) inclusion of merchandise with less than 96.00 percent silicon would be contrary to law, since such a product has never been the subject of an ITC preliminary injury determination.

DOC Position. We have determined to leave the description of the scope of this investigation unchanged. Prior to defining the scope of this investigation, we considered information from the petition, the Bureau of Mines, and the Customs Service. This information clearly indicates a common commercial meaning for silicon metal as a product with a silicon content between 96.00 and 99.99 percent. However, we have seen evidence that certain parties are selling or offering for sale merchandise containing less than 96 percent silicon and calling that product "silicon metal." Given the significant disparity in apparent value between the below 96 percent and above 96 percent "silicon metal," we are unable to conclude, based on the information before us, that the less than 96 percent product is of the same class or kind as the above 96 percent product.

Comment 17. CCM argues that when it made a sale to the United States during a month in which no home market sales occurred, the Department should compare the U.S. sale with the most contemporaneous home market sale, adjusted for inflation, and not with CV, as was done in Certain Iron Construction Castings from Brazil; Final Results of Antidumping Duty Administrative Review, 55 FR 26238 (June 27, 1990).

DOC Position. Because we found that CCM's home market sales were made at prices below the COP, we have not used them for comparison to U.S. sales prices. Instead, we have used CV, as described in the "Foreign Market Value" section of this notice.

Comment 18. CCM asserts that the Department should convert cruzeiro-denominated movement expenses incurred on U.S. sales into U.S. dollars using the exchange rate in effect for the dates on which those expenses were incurred, instead of the date of sale.

DOC Position. We agree with CCM and have converted all cruzeiro-denominated movement charges to U.S. dollars on the dates on which they were incurred. See DOC Position to Comment 3.

Comment 19. CBCC contends that although Brazil's economy was hyperinflationary during the POI with regard to the cruzeiro, it is not hyperinflationary if the Department uses the Bonus do Tesouro Nacional (BTNF) monetary adjustment. CBCC argues that the Department should utilize the BTNF monetary adjustment and calculate one FMV for the POI to be used for comparison to U.S. sales.

DOC Position. As described in the "Foreign Market Value" section of this notice, we found that all sales in the home market were made at prices below the COP and, therefore, we based FMV on monthly CVs.

We calculate monthly FMVs in hyperinflationary economies to eliminate the distortive effect of the rapidly changing nominal value of the currency. By isolating costs and prices within a limited time period, we control the rapid changes in the nominal currency costs and prices.

For the reasons stated in the DOC Position to Comment 36, the use of the monetary correction does not reasonably reflect production costs in Brazil. Therefore, one FMV calculation for the POI using the monetary correction would not eliminate the distortive effect of rapid changes in the nominal value of currency on costs and prices.

Comment 20. CBCC argues that the Department should make a circumstance of sale adjustment for foreign currency fluctuations when the date of exportation and the date of sale are not in the same month, as it did in Disc Wheels.

Petitioners argue that no adjustment should be made for currency fluctuations between the date of sale and date of shipment.

DOC Position. In *Disc Wheels*, the Department calculated CV as of the date of shipment, in accordance with section 773(e)(1)(A) of the Act. When shipment occurred in a month other than the month in which the merchandise was sold, the Department adjusted the CV to account for inflation between the date of sale and the date of shipment. The Department did this because it is required to make all currency conversions as of the date of the U.S. sale, pursuant to 19 CFR 353.50 and 353.60.

In this case, we followed the methodology used in Disc Wheels. We calculated CV as of the date of shipment. When shipment occurred in a month following the month in which the merchandise was sold, we adjusted the CV back to the date of sale to account for inflation between the date of sale and date of shipment.

Comment 21. CBCC maintains that its reported home market prices contain a shall-quantity surcharge that the Department should deduct when calculating FMV.

Petitioners aruge that this surcharge should not be deducted from the home market price.

DOC Position. We agree with petitioners. We have used the verified home market prices in our analysis. For sales of small quantities in the home market, the Brazilian government allows CBCC to add a surcharge to the price. Since CBCC claimed that it had a price list, we were unable to verify the addition of the surcharge to the list price and, therefore, have no basis with which to make such an adjustment. In effect, CBCC is asking for a quantity discount and has not justified it. Therefore, we must use the actual prices at which the merchandise was sold.

Comment 22. CBCC contends that the Department erred in its critical circumstances calculation in the preliminary determination by omitting a July 1990 shipment to the United States. CBCC argues that the Department should correct this error and rescind its finding of critical circumstances. Moreover, if the Department finds that critical circumstances exist for the final determination, CBCC argues that it must direct Customs to suspend liquidation only on those shipments made after 90 days before the final determination.

Petitioners argue that the Department should extend the comparison periods to August through December 1990 and March through July 1990. As an alternative, petitioners recommend that the Department use the first quarter of 1990 as the relevant comparison period.

DOC Position. We disagree with CBCC. In our preliminary determination regarding critical circumstances, we utilized the exhibit submitted by CBCC in its response outlining its 1989 and 1990 monthly shipments. CBCC created this exhibit specifically in response to the Department's questions regarding critical circumstances. In this exhibit, CBCC listed the shipments for July as zero. The Department accepted the information submitted by CBCC with regard to critical circumstances for purposes of the preliminary determination.

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Using CBCC's most recent submission, data collected at verification, and correcting CBCC's error in omitting its July shipment from its critical circumstances exhibit, we have continued to find the critical circumstances exist. See the 'Critical Circumstances" section of this notice.

Regarding the comparison period, we used the most current period prior to the priliminary determination for which company-specific shipment data was available.

Comment 23. CBCC contends that the Department erried in the preliminary determination by imputing packing expenses on several of its sales to the United States that were shipped in bulk and were not packed. CBCC argues that the Department should not include packing costs on merchandise shipped in bulk.

DOC Position. We disagree with CBCC with regard to the Department's treatment of packing expenses in the preliminary determination. The Department used BIA at the preliminary determination with regard to CBCC's reported packing expenses because of deficiencies in CBCC's response. We found at verification that CBCC had erroneously reported packing expenses for sales or portions of sales that we shipped in bulk. Furthermore, the packing expenses CBCC reported in its response to our questionnaire could not be verified.

For those sales which we found at verification to have been shipped in bulk, we have not added packing expenses. For those sales that were shipped packed, we have used CCM's reported packing expenses as BIA for CBCC's packing expenses.

Comment 24. Petitioners contend that the miscellaneous material costs CCM reported as historical costs should be adjusted to reflect replacement costs.

CCM contends that its miscellaneous material accounts are comprised of items which are not inventoried. Accordingly, CCM argues that these costs are stated at replacement cost and no adjustment is necessary.

DOC Position. We agree with petitioners. CCM did not provide any evidence at verification which indicated that all or part of the expenses were stated at replacement cost. Accordingly, we used the average difference between the historical cost and replacement cost for primary materials as BIA to adjust the reported miscellaneous material cost to replacement costs.

Comment 25. Petitioners state that in the months for which CCM did not have purchases of materials, the use of the prior month's cost adjusted by the applicable BTNF inflation factor understates the inflation. Petitioners argue that the Department should use the wholesale or consumer price index because it is a more accurate measure of inflation than the BTNF index. Petitioners further argue that the BTNF reflects the country wide index versus specific industry indexes such as the wholesale price or consumer price index.

CCM maintains the BTNF index is the appropriate inflation index. CCM also aruges that many Brazilian companies use BTNF to adjust prices for inflation.

DOC Position. We agree with CCM. There is insufficient evidence on the record demonstrating that any index other than the BTNF is a more appropriate measure of inflation for purposes of this investigation. Accordingly, we used the BTNF for our calculations.

Comment 26. Petitioners argue that the Department should disallow CCM's offset of short-term interest income against finance costs. Petitioners assert that the large amount of short-term income indicates a portion of the amount is interest income related to investments.

CCM contends that the short-term interest income was earned on interest bearing deposits of working capital. Accordingly, such income should be offset against CCM's finance expense. CCM contends that its year end financial statements demonstrate that the amount of short-term interest income was earned from its working capital assets.

DOC Position. We disagree with petitioners. The information on the record indicates that the short-term interest income was earned on working capital. Accordingly, we reduced interest expense by the amount of the short-term interest income.

Comment 27. Petitioners maintain that the Department should include ICMS, PIS, and FINSOCIAL taxes in constructed value (CV). Petitioner argues that CCM's admission that it pays more in taxes than it passes on, confirms that these costs should be included in CV.

Petitioners also argue that the Department should recalculate the amount of tax based on the tax CCM would have paid on its replacement costs rather than CCM's submitted amount based on historical costs.

CCM agrees with petitioners that ICMS taxes should be included in CV. However, CCM disagrees with petitioners' contention that it underreported the amount of ICMS taxes. CCM contends that its reported ICMS figure is the amount based on replacement costs. CCM also argues that petitioners incorrectly calculated ICMS because the CCM's methodology ignores the items which are internally produced, and ignores the rate for purchases from other states.

DOC Position. We agree with petitioners. Section 773(e)(1)(A) of the Act provides that in constructing the value of imported merchandise, the Department must include the cost of materials "exclusive of any internal tax applicable in the country of exportation directly to such materials or their disposition, but remitted or refunded upon the exportation of the article in the production of which such materials are used." The ICMS tax is paid on the material inputs of the exported product and is not remitted or refunded upon exportation. Therefore, we include ICMS taxes paid on inputs in the constructed value. We did not recalculate the amount of the tax based on replacement cost because CCM had correctly calculated the amount of tax.

Comment 28. Petitioners argue that the Department should compare CCM's COP to home market sales prices that are exclusive of ICMS tax.

Petitioners maintain that the ICMS received from a home market sale is not part of the sales proceeds realized by CCM. Petitioners also argue that tax-exclusive comparisons are consistent with the Department's prior policy and that if CCM did not pay tax on its inputs, the amount of the tax would have to be remitted to the government. Accordingly, the receipt of tax on home market sales is not revenue to CCM.

CCM contends that its ICMS tax paid on inputs exceeds the amount received in its home market sales. Therefore in aggregate, CCM pays more ICMS than it receives. CCM contends that the net ICMS tax paid represents a real cost of producing silicon metal. Accordingly, CCM contends that the amount of ICMS should be included in COP and also the home market sales price.

DOC Position. We agree with petitioners. The ICMS tax paid on inputs for home market is an indirect tax ultimately borne by the final consumer. Accordingly, the ICMS tax is not a cost incurred for producing products which are sold in the home market. Therefore, the Department compared the home market sales price (net of ICMS) to COP without ICMS.

Comment 29. Petitioners argue that the Department should disallow CCM's claimed deduction for dust collection. Petitioners maintain that the dust collector which collects silica fume is a cost to CCM which is greater than any benefit received from silica fume sales. Petitioners also argue that the fact that CCM's cost system does not separately account for silica fume costs indicates that silica fume cannot be a co-product of silicon metal.

CCM contends that silica fume has many uses and states that it receives significant revenues from sales of silica fume. CCM also argues it is irrelevant where CCM currently has separate accounting records for silica fume.

DOC Position. We agree with petitioners. CCM officials indicated that the dust collector was required for pollution control purposes in the Amazon area. Accordingly, the equipment was required in the production of silicon metal. The Department did not allow CCM's exclusion of dust collection expenses. In addition, there is no information on the record regarding sales revenues for silica fume and, therefore, we did not reduce the dust collection costs for offseting income.

Comment 30. Petitioners argue that the Department should increase CCM's G&A expenses by the parent company expenses. Petitioners maintain that these expenses relate to CCM and, accordingly, should be included in the submitted costs.

CCM contends that it is not consolidated into the financial statements of its parent company. CCM argues that this fact demonstrates it operates independently of its parent companies. Accordingly, parent company G&A expenses should not be attributable to its reported costs. CCM also argues that the parent company's expenses are merely shareholder expenses which are not attributable to CCM's production costs.

DOC Position. We agree with petitioners. While CCM does not account for these costs in its accounting system, these costs were incurred on CCM's behalf. According, we included CCM's estimated parent company expenses in G&A as BIA.

Comment 31. Petitioners argue that the Department should not use CCM's normalized costs. Petitioners contend that a year and a half of production is too long to be considered a start-up operation. Furthermore, petitioners state that other factors such as new management or changes in the number of furnaces being operated may have caused the increased efficiency realized by CCM. Petitioners also argue that these cost are not unusual or extraordinary expenses and therefore not start-up costs which should be excluded from the submitted costs.

CCM argues that its efficiency levels during the POI demonstrate that they were not at normal production levels. CCM attributes this to its new entry into silicon production. As such, the Department should normalize CCM's costs as they have done in other cases. CCM contends that the Department verified the improved efficiency levels which demonstrate CCM's normal consumption levels. CCM also contends that the number of furnaces does not affect operating efficiency. CCM also argues that two years is not an unreasonable period of time to consider start-up costs given the complexity of the product. CCM states that new management is not grounds for rejecting the adjustment.

DOC Position. We agree with petitioners. CCM did not submit any evidence that start-up operations in this industry would last as long as two years. We note that the increase in efficiencies occurred after a change in management and that a demonstrated change in efficiency is not necessarily indicative of start-up activity. Accordingly, we disallowed CCM's claim for start-up costs.

Comment 32. Petitioners argue that CCM did not calculate actual profit earned on home market sales because it substituted the CV statutory minimum ten percent SG&A for its actual SG&A expenses.

CCM argues that it is unfair to calculate profit in the home market with less than ten percent SG&A. CCM argues that using actual SG&A to calculate profit creates dumping margins unfairly.

DOC Position. We agree with petitioners. The ten percent SG&A amount is a minimum percentage for use in CV. The minimum percentage does not apply to the calculation of actual profit on home market sales. We used the statutory minimum profit for CV since it exceeded the actual profit.

Comment 33. Petitioners argue that the Department should reject CCM's calculations of inventory holding gain because of the numerous errors in its submission. Petitioners further argue that the revised calculations incorrectly value the layers of inventory. Petitioners assert that CCM should have assigned actual production costs for each month's inventory.

CCM contends that it revised the errors in its calculations and complied with the Department's requests in a good faith effort.

DOC Position. We agree with petitioners that CCM's calculated inventory holding gain did not correctly value the layers of inventory. The inventory holding gain or loss reflects the difference between the current replacement cost and the inflation adjusted cost of inventory. We calculated incremental inventory holding gains and losses for the months where sufficient data was available using actual production costs and determined the average holding gain or loss for the POI. In this case, the average holding gain or loss was applied to each month's cost of manufacturing.

Comment 34. CCM argues that the Department should reduce its labor and electricity costs by the amounts which are included in the invoice price to account for the difference between the date a bill is mailed and the date payment of the bill is received. CCM contends the adjustment is necessary in order to account for the effect of inflation on the cost between the dates on which CCM was first billed for and later paid these costs.

Petitioners maintain that CCM was required to use actual replacement cost and, therefore, the Department should ignore CCM's BTNF variation calculations.

DOC Position. We agree with CCM. CCM has indicated that the invoice price is increased by an amount of expected inflation to account for the delayed payment. CCM then has the benefit of earning income on the cash for the period of the delay in payment. The cost of production is reduced by the amount of this short-term income. CCM's contention that the Department should further reduce COP by the amount of the delay in payment would constitute double counting of the benefit from the delay in payment. Accordingly, we did not reduce CCM's costs for this adjustment.

Comment 35. CCM contends that applying the ratio of G&A expense to cost of goods sold from the financial statements to replacement costs is inconsistent. CCM contends the G&A and replacement costs are current expenses while the costs of good sold is an historical expense.

DOC Position. G&A expenses are period costs which should be based on the annual period in which they were incurred. Accordingly, we calculated G&A expenses based on the ratio of annual G&A expenses over annual cost of goods sold. The percentage of G&A expenses to cost of sales reflects the relationship of such expenses over a period of time when nominal values were changing for all inputs. Therefore, this percentage, when applied to replacement costs which reflect the nominal value of such costs for a month, would properly reflect the nominal value of G&A expenses for that month.

Comment 36. CBCC argues that the Department's request for replacement cost is inappropriate as it is not in accordance with Brazilian generally

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accepted accounting principles (GAAP). CBCC argues that the law requires the Department to use the GAAP of the exporting country if it properly reflects and captures all fixed and variable costs. CBCC contends that the Brazilian GAAP is designed to identify and fully absorb the effects of inflation through monetary correction. CBCC asserts that replacement costs are hypothetical costs versus actual costs incurred by the company.

Petitioners argue that CBCC's reported material costs are not replacement costs. Petitioners state that in a hyperinflationary economy like Brazil's, material costs should be valued using replacement costs because historical costs are not an accurate measure of the actual economic cost of merchandise being sold. Specifically, the significant difference between replacement cost and CBCC's historical cost adjusted for monetary correction is evidence that the historical cost is not fully adjusted for inflation. Petitioners further argue that the Department is not required to use the GAAP of the exporting country if it does not result in costs being appropriately valued. Petitioners contend that the Department should revise CBCC's response to reflect replacement cost or use BIA.

DOC Position. We agree with petitioners. Replacement costs are the current costs actually incurred by CBCC. The use of replacement costs eliminates the effects of hyperinflation on historical costs. Brazilian GAAP adjusts for inflation by use of the monetary correction. However, the monetary correction is an aggregate inflation adjustment to restate owner's equity and permanent assets. The monetary correction does not specifically relate to the product, nor to the POI, and thus, it would be distortive to apply this adjustment to the product. Because the Department determined that Brazilian GAAP does not reasonably reflect the costs of producing silicon metal in Brazil, the Department followed its long-standing practice to use replacement costs in hyperinflationary economies. *Ipsco, Inc., and Ipsco Steeel, Inc.* v. *United States*, 687 F. Supp. 633 (CIT 1988); see *e.g.*, Disk Wheels from Brazil and FCOJ from Brazil.

Comment 37. Petitioners argue that CBCC did not report replacement costs for secondary materials. Petitioners argue that these costs should be revised for the final determination.

DOC Position. We agree with petitioners. We used the percentage inc ease between primary material costs based on historical value and replacement value to value secondary materials on a replacement cost basis.

Comment 38. Petitioners contend that CBCC underreported its electricity costs. Petitioners asset that the rates contained in public information and CBCC's invoices reflect higher rates than that reported in the submission.

CBCC maintains that the Department verified electricity costs and found no discrepancies. CBCC states that the amounts reported on the invoices reconcile to the amounts reported in the submission.

DOC Position. We agree with CBCC. CBCC has indicated that the invoice price is increased by an amount of expected inflation to account for the delayed payment. CBCC then has the benefit of earning income on the cash for the period of the delay in payment. The COP is reduced by the amount of this short-term income. CBCC's contention that the Department should further reduce COP by the amount of the delay in payment would constitute double counting of the benefits from the delay in payment. Accordingly, we did not reduce CBCC's costs for this adjustment.

Comment 39. Petitioners argue that the Department should not adjust CBCC's submission for payment terms to reflect "at sight" costs. Petitioners contend that CBCC did not submit any data which demonstrates the accuracy of the "at sight" price. Petitioners argue that the CBCC's own accounting system does not adjust for payment terms, and therefore, the adjustments are purely speculative. Petitioners also contend that adjusting for payment terms would be double counting the benefit received from delayed payment terms because the Department already reduces COP by short term interest income.

CBCC contends that the concept of replacement cost cannot include terms of payment. CBCC argues that on many inputs, the cruzeiro invoices are inflated to adjust for inflation between the time of delivery and the time of payment. CBCC contends that by using the invoice prices, the Department would be inconsistently using cost in the unit of currency applicable for the following month. CBCC also contends that its adjustment (for payment terms) has nothing to do with financing or interest.

DOC Position. We disagree with CBCC. CBCC has indicated that the invoice price is increased by an amount of expected inflation to account for the delayed payment. CBCC then has the benefit of earning income on the cash for the period of the delay in payment. The COP is reduced by the amount of this short-term income. CBCC's contention that the Department should further reduce COP by the amount of the delay in payment would constitute double counting of the benefits from the delay in payment. Accordingly, we did not reduce CBCC's costs for this adjustment.

Comment 40. Petitioners argue that ICMS, PIS, and FINSOCIAL taxes paid on production inputs should be included in the calculation of CBCC's CV. Petitioners contend that CBCC must pay the above taxes on inputs used to produce silicon metal when it is exported. Petitioners argue that CBCC is not exempt or reimbursed for such taxes and that no tax is collected by CBCC upon the export sale. Accordingly, petitioners assert that these taxes represent a net cost to CBCC for export sales and, therefore, should be included in CV. Petitioner argues that although it may be possible to offset these taxes against domestic sales of silicon metal or other products, CBCC's records indicate that the ICMS tax paid on inputs is greater than the amount received from its home market sales.

CBCC argues that it has demonstrated that it is exempt from ICMS, PIS, and FINSOCIAL taxes for its sales.

DOC Position. We agree with petitioners. Section 773(e)(1)(A) of the Act provides that in constructing the value of imported merchandise, the Department must include the cost of materials "exclusive of any internal tax applicable in the country of exportation directly to such materials or their disposition, but remitted or refunded upon the exportation of the article in the production of which such materials are used." The ICMS tax is paid on the material inputs of the exporter product and is not remitted or refunded upon exportation. Therefore, we included ICMS taxes paid on inputs in the constructed value. We did not recalculate the amount of the tax based on replacement cost because CBCC had correctly calculated the amount of tax.

Comment 41. Petitioners contend that CBCC improperly calculated G&A expenses by using monthly costs rather than annual costs. Petitioners argue that CBCC excluded costs incurred by its parent companies on behalf of CBCC. Petitioners maintain that CBCC's estimate of these costs understates the amount of expense and, therefore, the Department should use BIA. Petitioners assert that CBCC's brief indicates that CBCC's parent provided more consulting services than estimated by CBCC. Petitioners argue that it is appropriate to calculate G&A expenses based on historical costs and apply the ratio to replacement costs. Petitioners contend that it is appropriate to calculate the inflated G&A expense to coincide with the replacement costs.

CBCC contends that it properly reported G&A expenses. CBCC states that its corporate parent company is not involved in the product of silicon metal. Therefore, the Department should not include any costs incurred by Solvay in the calculated COP/CV. CBCC contends that the cost of the internal audits provided by Solvay are nominal. CBCC also contends that the consulting services related to the loan are normal consultations between the shareholders and the company.

CBCC also argues that it is inappropriate for the Department to calculate G&A expenses based on historical costs and then apply that ratio to replacement costs. CBCC argues that the G&A is not subject to the same inflationary problems as the cost of manufacturing calculated using replacement costs.

DOC Position. We agree with petitioners. G&A expenses are period costs which should be based on the annual period in which they were incurred. Accordingly, we calculated G&A expenses based on the ratio of annual G&A expenses over annual cost of goods sold. The G&A submitted in the financial statements is the G&A which relates to the cost of sales reported in the financial statements.

Comment 42. Petitioners argue that the Department should adjust CBCC's submitted finance costs because CBCC improperly calculated finance costs based on quantity of goods produced versus cost of goods sold. Petitioners also contend that the Department should include the interest expense incurred on the loan for furnaces nine and ten from the Solvay parent company. Petitioners maintain that money is fungible and the expense related to the loan is a cost shared by all operations. Furthermore, petitioners contend that the loan for the two furnaces relates to the expansion of CBCC's silicon metal production capacity. Petitioners assert that these new furnaces are capable of producing silicon metal and, therefore, these finance costs relate to silicon metal based on the potential of future production.

Petitioners also contend that CBCC improperly reduced its finance costs by the amount of monetary correction. Petitioners state that monetary correction is designed to adjust permanent assets for the effects of inflation. Accordingly, it is not a factor that relates to finance expenses. Petitioners also argue that it is not clear whether the monetary correction is for silicon metal or the other products produced by CBCC.

CBCC contends that financial costs associated with the production of a product not subject to investigation can not be attributed to a product under investigation. CBCC states that the finance expenses relate solely to calcium carbonate because the furnaces in question did not produce silicon metal during the POI, and accordingly their costs should not be included in the cost of silicon metal.

DOC Position. We agree with petitioners. The amount of finance costs were recalcuated based on the total annual finance expense incurred by CBCC allocated over annual cost of sales. The interest expense on the loan from Solvay related to the company as a whole because money is fungible. Furthermore, the new furnaces can, in fact, be used to produce silicon metal. These new furnaces could also free up the productive assets of CBCC to produce more silicon metal. For the reasons stated in DOC Position to Comment 36, we did not apply the monetary correction to finance costs because it does not relate to finance costs.

Comment 43. Petitioners contend that CBCC's methodology for calculating inventory holding gain or loss is flawed as it assumes that inventory is only held for one month. Petitioners contend that the inventory must be layered by the month it was placed into inventory and then the holding costs should be recalculated.

DOC Position. We agree with petitioners that CBCC's calculated inventory holding gain did not correctly value the layers of inventory. The inventory holding gain or loss reflects the difference between the current replacement cost and the inflation adjusted cost of inventory. We calculated incremental inventory holding gains and losses for the months where sufficient data was available using actual production costs and determined the average holding gain or loss for the POI. In this case, the average holding gain or loss was applied to each month's cost of manufacturing.

Continuation of Suspension of Liquidation. In accordance with section 735(d)(1) of the Act, for CCM and all other producers/manufacturers/exporters, we are directing the Customs Service to continue to continue to suspend liquidation of all entries of silicon metal from Brazil, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after March 29, 1991, which is the date of the publication of our preliminary determination in the **Federal Register.**

In accordance with section 735(c)(4)(B) of the Act, we are directing the Customs service to suspend liquidation of entries of silicon metal exported from Brazil by CBCC, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after December 29, 1990, which is the date 90 days prior to the publication of the preliminary determination in the **Federal Register.**

The Customs Service shall require a cash deposit or posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Producer/manufacturer/exporter	Weighted-average margin percentage	Critical circumstances
Companhia Brasileira Carbureto de Calcio (CBCC).	87.79	Yes.
Camargo Correa Metais, S.A. (CCM).	93.20	No.
All Others	91.06	No.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will all the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will make its determination whether these import materially injure, or threaten material injury, to a U.S. industry within 45 days of publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled.

However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on silicon metal entered, or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the United States price.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Dated: June 5, 1991.

Eric T. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-13979 Filed 6-11-91; 8:45 am]

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Final Negative Countervailing Duty Determination: Silicon Metal From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We determine that no benefits which constitute countervailable subsidies are being provided to manufacturers, producers, or exporters in Brazil of silicon metal.

EFFECTIVE DATE: June 12, 1991.

FOR FURTHER INFORMATION CONTACT: Larry Sullivan or Stephanie Hager, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-0114 or (202) 377-5055, respectively.

SUPPLEMENTARY INFORMATION:

Case History

Since our preliminary determination (Preliminary Negative Countervailing Duty Determination: Silicon Metal from Brazil, 55 FR 49322 (November 27, 1990)), the following events have occurred.

We conducted verification in Brazil of the questionnaire responses of the Government of Brazil (GOB); Camargo Correia Metais (CCM); Cia Industrial Fluminense (CIF); and, Companhia Brasileira Carbureto de Calcio (CBCC), Companhia Ferroligas Minas Gerais (Minas Ligas), Electrosilla S.A., Ligas de Aluminio S.A. (LIASA), and RIMA Electrometalurgia S.A. (RIMA) (hereafter referred to as "CBCC et al.") from December 1 to December 16, 1990.

On January 8, 1991, we extended the deadline for the final determination in this case to correspond to the date of the final antidumping duty determination on the same product [see Alignment of the Final Countervailing Duty Determination With the Final Antidumping Duty Determination; Silicon Metal from Brazil, 56 FR 680 (January 8, 1991)]. At that time we announced that no hearing would be held in this case because no interested parties requested one within ten days of our preliminary determination. Petitioners and respondents filed case briefs on March 25 and rebuttal briefs on April 1, 1991.

CCM filed submissions on January 23 and March 13, 1991, requesting that the Department narrow the scope of the investigation. On January 28, 1991, petitioners filed a submission requesting the Department to expand the scope to include all imports of silicon metal, other than semiconductor grade silicon metal.

Scope of Investigation

The merchandise covered by this investigation is silicon metal containing at least 96.00 percent but less than 99.99 percent of silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to this investigation. Given that this investigation is not limited to silicon metal used as an alloying agent or in the chemical industry, we have deleted the sentence regarding the uses for silicon metal from the scope of this investigation. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Standing

In its letter dated January 23, 1991, and its case brief of March 25, 1991, CCM challenged petitioners' standing to file on behalf of the domestic producers of the like product.

CCM maintains that petitioners do not regularly produce or sell silicon metal with a silicon content of 97.49 percent and below. Therefore, CCM argues that silicon metal having a silicon content of less than 97.50 percent should be excluded from this investigation because petitioners lack standing with respect to such merchandise.

The ITC has preliminarily determined that there is one like product, which includes all of the merchandise defined by the scope of this investigation. Silicon metal with a silicon content between 96 and 97.50 percent is within the same class or kind defined by the scope of this investigation. An interested party is not required to produce every product within the class or kind of merchandise included in the scope of the investigation in order to have standing. CCM does not challenge that petitioners produce silicon metal in the higher range. Accordingly, given that petitioners, as producers of the subject merchandise, are interested parties filing on behalf of the domestic industry, we have determined that petitioners have standing.

Hyperinflationary Economies

In analyzing the date relating to the benefits received by silicon metal producers in Brazil, it was apparent that the benefits from the CACEX, SUDENE and Income Tax Reduction for Export Earnings programs were clustered in one part of the review period. In a hyperinflationary economy, such as Brazil's was during the review period, this clustering can distort the measurement of benefits received by the firms. Specifically, the value of a benefit received earlier in the year would tend to be understated while the value of a benefit received later in the year would tend to be overstated. By way of contrast, if benefits and sales were distributed evenly throughout the year, the distortion would be minimal. In this case, since the benefit from each program is clustered in the early part of the year, and sales are not clustered, a methodology which corrects for this distortion is needed.

To accomplish this, we used the OTN/BTN (Obrigacoes do Tesouro Nacional/Bonus do Tesouro Nacional) index to counteract the effects of hyperinflation and more accurately meaure the value of the benefit. The OTN/BTN index is a national treasury bond index that is widely used in the Brazilian economy for various accounting and financial purposes to convert nominal values into constant values. The OTN index was the official index until January 16, 1989, at which time it was replaced by the BTN index. On this date, the currency changed from the cruzando to the new cruzado. For purposes of this notice, we will refer to the official index as the OTN/BTN index even though only one was the official index at any particular time. As described in greater detail below, we used the OTN/BTN index to compute benefits and sales values in constant new cruzado amounts and, in turn, used these constant new cruzado amounts to culculate the *ad valorem* benefits.

Analysis of Programs

For purposes of this investigation, the period for which we are measuring subsidies ("the review period") is calendar year 1989, which corresponds to the most recently completed fiscal year for all of the respondent companies.

Based upon our analysis of the petition, responses to our questionnaires, verification, and written comments from respondents and petititoners, we determine the following:

I. Programs Determined to be Countervailable

We determine that subsidies are being provided to manufacturers, producers, or exporters in Brazil of silicon metal under the following programs:

A. Income Tax Reduction for Export Earnings

(This program was referred to in our preliminary determination as Income Tax Exemption for Export Earnings.)

Under this program, profits from export sales are taxed at a rate of three percent while profits from domestic sales are taxed at a rate of 30 percent. Because this program provides a lower income tax rate for export earnings, we determine that it is countervailable.

We calculated the benefit for each company by subtracting the tax actually paid for the tax that would have been paid by that firm absent the lower tax rate for export profits. In order to calculate the tax that would have been paid, we took profit attributable to exports, indicated on the tax forms and donominated in OTN/BTN, and applied the effective tax rate for each company. We then deducted from that figure the actual amount of tax paid on export profits, which is also indicated on the tax form and denominated in OTN/BTN.

For the denominator, we used total exports (See Comment 4) converted into OTN/BTN using the average OTN/BTN rate for 1989. We divided the tax savings by total exports to determine each company's *ad valorem* rate. We then weight-averaged the individual benefit, by each company's share of total exports of the subject merchandise to the United States. On this basis, we preliminarily determine the benefit from this program to be 0.17 percent *ad valorem* for all manufacturers, producers, and exporters of silicon metal in Brazil.

At the preliminary determination, we assigned CCM a rate based on the best information available for this program. We have since verified that CCM's taxable profit was attributable to financial operations and sales of non-subject merchandise, and, hence, it did not benefit from this program.

We also verified that, on December 28, 1989, by Law No. 7988, the tax rate on income attributable to export sales increased to 18 percent for the 1990 tax year. On April 12, 1990, by Law No. 8034, the tax rate on income attributable to export sales increased to 30 percent for the 1991 tax year. As a result of the most recent change, all income is taxed at the same rate.

B. CACEX Loans

On May 2, 1985, Resolution 1009 made CACEX working capital financing available to exporters through commercial banks at prevailing market rates. The loans have a term of one year or less, with interest due at maturity. While borrowers were to pay market interest rates, the Central Bank of Brazil was authorized to pay the lending institution an "equalization fee," or rabate, of up to 15 percentage points, which the lending institution could pass on to the borrowers. On December 1, 1988, by Resolution 1538, CACEX reduced the equalization fee to 7.5 percentage points. The equalization fee is passed on to borrowers at the time interest is paid on the loan.

In addition, CACEX short-term loans are exempt from the "Imposto Sobre Operacoes Financeiras" (IOF). The IOF is a general tax of 0.0041 percent per day (or 1.5 percent per annum) of the sum total of daily debt balances, imposed on the principal of all financial transactions in Brazil. The tax is calculated on the final day of each month and paid on the tenth day of the following month.

Because the equalization fee and the exemption from the IOF results in the provision of preferential export financing at perferential rates only to exporters, we determine that these loans are countervailable. The benefit from these loans is equal to the equalization fee plus the amount of the IOF exemption.

To calculate the level of subsidies received during the review period from the equalization fee, we multiplied the loan principal, adjusted for monetary correction, by the equalization fee rate to yield an amount denominated in cruzados. We multiplied that amount by the term of the loan divided by 365 days, as the equalization fee applies annually. The resultant cruzado benefit was divided by 1000 (to convert into new cruzados) and then converted into OTN/BTN at the rate in effect on the day the equalization fee was received.

We calculated the benefit from the IOF exemption by applying the tax rate of 0.0041 percent per day to the principal amount of the loan for the number of days of the month the loan was outstanding. The resultant cruzado exemption was devided by 1000 (to convert into new cruzados) and then converted into OTN/BTN using the rate in effect on the tenth day of the following month; this is the day that the IOF is normally paid.

For the denominator, we converted each firm's total export figure into OTN/BTN by dividing total exports by the average OTN/BTN rate for 1989. We then summed the total OTN/BTN benefit from the equalization fee and the IOF exemption for each firm and divided the benefit by each firm's OTN/BTN denominated total exports. We weight-averaged the individual benefits by each company's share of total exports of the subject merchandise to the United States. On this basis, we determine the benefit from this program to be 0.24 percent *ad valorem* for all manufacturers, producers, and exporters of silicon metal in Brazil.

We verified that, on August 30, 1990, Resolution 1744 revoked Resolution 950, thereby terminating this program.

C. SUDENE

This program was not included in the Department's preliminary determination because it was discovered during verification. Under this program, companies which locate in the Northeast of Brazil are eligible for exemption from income tax for production attributable to SUDENE-approved projects. The intent of this program is to encourage development of this region of Brazil. Because this exemption is only available to companies located in a specific region of Brazil, we find this to be a countervailable domestic subsidy.

The amount of tax exempted due to this program can be found on a company's tax returns denominated in OTN/BTN. The benefit is equal to the amount of the exemption.

Because this is a domestic subsidy, the appropriate denominator is total sales. In order to convert the verified new cruzado total sales figure into OTN/BTN, we divided total sales by the average OTN/BTN rate for 1989.

We divided the benefit received by each company by total sales of each company to calculate each company's *ad valorem* subsidy. We then weight-averaged the individual benefits by each company's share of total exports of the subject merchandise to the United States. On this basis, we determine the benefit from this program to be 0.08 percent *ad valorem* for all manufacturers, producers, and exporters of silicon metal in Brazil.

II. Programs Determined to be Not Used

We determine that the following programs were not used by manufacturers, producers or exporters of silicon metal in Brazil during the review period. For a full description of these programs, see our preliminary determination.

A. Benefits Provided by the Commission for Granting of Fiscal Benefits to Special Export Programs (BEFIEX). We verified that this program was terminated by Decree Law 8032 dated April 12, 1990.

B. Export Financing Provided by the Fundo de Financiamento a Exportacao (FINEX). We verified that this program was not reinstated within two years of the passage of the new Brazilian Constitution, as was required by law.

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C. Financing for the Storage of Merchandise Destined for Export (Resolution 330 of the Central Bank of Brazil). We verified that this program was terminated by Resolution 1744, dated August 30, 1990.

D. Export Promotion Financing Provided Under the Programa de Financiamento a Producao para a Exportacao (PROEX). We verified that the Department administering this program was abolished and found no evidence that the program currently exists.

III. Program Determined Not to Exist

We determined that the following program does not exist.

A. Provision of Electricity at Preferential Rates to Silicon Metal Producers Located in Minas Gerais. Petitioners allege that the GOB provides electricity at preferential prices to manufacturers, producers and exporters of silicon metal in Brazil. According to information gathered at verification, the silicon metal producers under investigation paid normal published rates for all electricity consumed and we found no evidence of the existence of any schedule of preferential electricity rates.

Final Determination

The total *ad valorem* benefits received by Brazilian manufacturers, producers and exporters of silicon metal equal 0.49 percent. This amount is *de minimis*, and pursuant to 19 CFR 355.7, we determine that exports of silicon metal from Brazil are not receiving benefits which constitute countervailable subsidies.

Interested Party Comments

Comment 1

Petitioners argue that the denominators used to calculate *ad valorem* benefits (*e.g.*, 1989 total exports, 1989 total sales) should be adjusted to account for inflation in Brazil. Petitioners believe that, in an inflationary economy like Brazil's, it is inappropriate to compare the benefit received in April from income tax programs to the value of a firm's exports at year-end because such a comparison results in an understatement of the benefit. Petitioners suggest that the Department either (1) convert the tax benefit into dollars if exports are already denominated in dollars and divide the benefit by total exports, (2) determine the value of respondents' exports in OTN/BTN and divide the tax benefit expressed in those same terms by exports, or (3) divide the tax benefit, converted into Brazilian currency on April 15, by the value of exports adjusted for inflation to arrive at an April 15 export value. Any of these methods, petitioners argue, would serve to negate the effects of inflation.

Petitioners maintain that a similar method should be employed in order to calculate a proper denominator for the CACEX benefits. The year-end denominator value would be adjusted for the average inflation rate for the year. Petitioners contend that these adjustments are consistent with Departmental practices in hyperinflationary economies. See Final Affirmative Countervailing Duty Determination; Steel Wheels from Brazil, 54 FR 15523, 15226 (April 18, 1989).

CBCC et al. argue that the Department did, in fact, index the tax benefits using OTN/BTN. When the liability is computed, it is converted to OTN/BTN. It is then converted into Brazilian currency at the rate effective at the time the return is filed. Since the benefit is received in Brazilian currency at the time of filing, inflation acts upon the benefit and reduces it. The Department's methodology results in a lower benefit due to inflation but, CBCC et al. argue, this reflects actual expenses. CBCC et al. suggest that petitioners' method, if carried to the extreme, would necessitate calculating a subsidy rate for each day during the review period and weight-averaging the results.

DOC Position

Under the circumstances present in this case, we agree with petitioner that the method of calculating subsidy rates needs to account for hyperinflation. We disagree with CBCC et al. that converting the OTN/BTN tax liability into new cruzados on the day of filing fully accounts for hyperinflation. See the Hyperinflationary Economies and Analysis of Programs sections of this notice for further discussion of the methodologies employed.

Comment 2

CBCC et al. argue that the Department should not countervail benefits under the SUDENE program. They state that these benefits are available to a wide range of industries and for a large area of Brazil, as well as being consistent with the GATT and the Subsidies Code. They assert that Article XVI of the GATT and Articles 11 and 14 of the Subsidies Code permit signatories to implement programs in order to encourage regional development. Citing Final Affirmative Countervailing Duty Determination: Fresh and Chilled Atlantic Salmon From Norway, 56 FR 7678, 7679 (February 25, 1991) (Salmon), CBCC et al. argue that the Department's past practice of countervailing regional development programs is in error. They contend that the Department is wrong to recognize the aims of regional development programs and, nevertheless, countervail these programs. CBCC et al. contend that any reduction in tax liability resulting from participation in the program must be reinvested in the company (*i.e.*, the funds are conditionally available) and, therefore, does not constitute a countervailable benefit.

Petitioners allege that the Department should find these benefits under the SUDENE program to be countervailable. Petitioners cite Salmon to support their contention that the SUDENE program is countervailable because benefits are given to companies located in a certain region of Brazil. Petitioners reject respondents' argument that the program should not be considered a countervailable subsidy because it covers a wide area of Brazil, contending that the Department has countervailed regional programs that covered large areas of a country (see Salmon). Petitioners again rely upon Salmon to argue that the Department has consistently rejected respondents' assertion that SUDENE is consistent with the GATT and the Subsidies Code. Petitioners finally assert that respondents' claim that because this benefit is conditioned upon it being reinvested in the company it is not countervailable, is groundless. Petitioners contend that the company can invest the benefit and will reap the rewards from such investment.

DOC Position

The Department agrees with petitioners. In Salmon, the Department addressed and rejected similar arguments regarding regional subsidies. The Department's determination that the SUDENE program is countervailable because it provides benefits only to companies located in specific regions is entirely consistent with U.S. obligations under the GATT and the Subsidies Code. Part I of the Code relates to signatories' obligations with respect to the conduct of countervailing duty investigations and the imposition of countervailing measures. None of the conditions attached to the imposition of countervailing measures in part I requires signatories to take account of the objectives noted in article 11 or to otherwise accord domestic subsidies any special treatment. Therefore, we determine that since these tax exemptions are granted on the basis of region, benefits received under the SUDENE program constitute countervailable domestic subsidies.

Comment 3

Petitioners contend that respondents' failure to provide tax returns to the Department before verification prevented the Department from identifying benefits under the SUDENE program and incorporating them into the preliminary determination. Petitioners argue that the Department should further investigate the SUDENE program to determine whether other benefits exist. They allege that the GOB's submissions for this program are incomplete, this program may be tied to exports, and evidence exists that other tax benefits may be received by participatory companies.

CBCC et al. argue that the Department had information on the SUDENE program from previous cases and did not ask for information on the program in this case. In addition, they assert that petitioners had access to information on this program at the time the petition was filed. Furthermore, CBCC et al. argued that although petitioner refers to the respondent's failure to provide tax returns to the Department before verification, Commerce has consistently taken the position that tax returns are more appropriate as verification exhibits, citing Final Affirmative Countervailing Duty Determination: Certain Textile Mill Products and Apparel from Malaysia 50 FR 9852, 9857 (March 12, 1985). CBCC et al. also argued that, as exhibited during verification, no export commitment is required for this program.

DOC Position

We reject petitioners' request that we further investigate this program in this proceeding. Upon discovering this program during verification, we requested and received information adequate to measure the benefits received.

Comment 4

Petitioners argue that the Department erroneously used total exports as the denominator to calculate the benefit from the Income Tax Reduction for Export Earnings program. Petitioners contend that since certain exports (*i.e.*, "eligible exports") qualify for the lower tax rates while other exports do not, the *ad valorem* benefit from this program should be calculated using eligible exports in the denominator unless the Department has verified that all exports in the review period qualified as eligible exports. Petitioners cite Final Affirmative Countervailing Duty Determination: Iron Ore Pellets from Brazil, 51 FR 21961, 21967 (June 17, 1986) ("Iron Ore Pellets") where the Department used only exports eligible for this benefit in the denominator. Petitioners requested before verification that the Department verify data concerning eligible exports.

CBCC et al. assert that this program is based on the allocation of profit between total sales and export sales. According to CBCC et al., Iron Ore Pellets does not refer to the same program as the income tax program in this investigation. Because iron ore pellets constitute a mining product, CBCC et al. argue that iron ore pellets were subject to tax rules different from those for silicon metal. Further, the methodology used by the Department in its preliminary determination, in which it used export sales in the denominator, is consistent with past cases.

DOC Position

We agree with CBCC et al. that the tax program discussed in Iron Ore Pellets was a different program involving different conditions for the receipt of benefits. In that case, some products were eligible for benefits while other products were not. Here, all products can potentially benefit from the export tax program. Therefore, the appropriate denominator for calculating the *ad valorem* subsidy rate is total exports.

Comment 5

Petitioners contend that the Department should not adjust for contributions of taxes due to the FINOR/FINAME funds in calculating the effective tax rates. In the preliminary determination, these adjustments had no effect on the calculation of the benefit. However, if the amount of the tax saving is greater than zero but less than the amount of contribution to the special funds, then this adjustment reduces the benefit when, in fact, the benefit is not reduced. According to petitioners, these contributions are merely tax payments made to a recipient other than the GOB and they should not be accorded special treatment results in the Department's calculations when such treatment results in an inappropriate understatement of the benefit.

CBCC et al. contest petitioners' claims. They state that the Department's methodology in its preliminary determination, in which an adjustment was made for contributions to the FINOR/FINAME funds, is correct and consistent with previous determinations. See, *e.g.*, Certain Cotton Yarn Products from Brazil; Final Results of Countervailing Duty Administrative Review, 55 FR 28269 (July 10, 1990). The Department is now able to calculate the tax savings by deriving the effective tax rate directly from the company tax returns. CBCC et al. assert that Brazilian taxpayers receive value for their contributions to these funds. Therefore, CBCC et al. contend, the Department should continue to reduce the effective tax rate to reflect contributions to these funds.

DOC Position

We agree with CBCC et al. Payments into those funds reduce the taxes owed and, hence, lead to a lower effective tax rate. Therefore, we reduced the gross tax liability by the amount of the contributions to these funds in order to calculate each firm's effective tax rate.

Comment 6

Petitioners allege that the Department used an inappropriate OTN/BTN adjustment at the preliminary determination for the Income Tax Reduction for Export Earnings program. This adjustment, submitted by respondents, is not fully explained and understates the benefits received under this program. Petitioners contend that the Department must increase the Brazilian currency value of the benefit to reflect the increased value of the tax from when it was owed (December) to when it was paid (April). Petitioners contend that the proper conversion factor, which also accounts for the change in currency from cruzado to new cruzado, should be 0.002447.

CBCC et al. argue that the Department's methodology in the preliminary determination is consistent with that used in previous cases involving Brazil. The Department considers when benefits are actually received (*i.e.*, when the tax return is filed). CBCC et al. agree with petitioners that the Department has indexed the benefit in previous investigations, but only because the value, in Brazilian currency, cannot be determined until the tax return is filed, not because the value of the benefit is eroded.

DOC Position

As explained in the Analysis of Programs section of this notice, we have taken the tax benefits expressed in OTN/BTN as the numerator for these calculations. Therefore, there is no need to convert them into new cruzados as requested by the petitioners.

Comment 7

Petitioners argue that the Department's verification indicated that the ratio of LIASA's exports to its total

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sales was erroneously reported by LIASA and the GOB. Accordingly to the petitioners, this error affects the calculation of LIASA's benefits under the Income Tax Exemption for Export Earnings program. Petitioners argue that the Department should recalculate the amount of LIASA's benefit under this program, using the verified percentage of LIASA's sales attributable to exports.

DOC Position

The Department verified actual amount of tax savings due to the SUDENE and/or the Income Tax Reduction for Export Earnings program. LIASA's actual exports to sales ratio is implicit in the calculations required on the tax returns which determine the amount of tax savings. Therefore, the verified figures have been used.

Comment 8

According to petitioners, the Department's verification revealed that CBCC's reported amount of 1988 taxable profit was understated. Petitioners argue that because the amount of taxable profit subject to the preferential tax rate on export earnings is determined by applying the ratio of export sales to total sales to total taxable profit, the understatement of taxable profit led to an understatement of the amount of benefit enjoyed by CBCC in the Department's preliminary determination. Therefore, according to petitioners, the Department should recalculate the amount of benefit received by CBCC under the Income Tax Exemption for Export Earnings Program using CBCC's verified 1988 taxable profit.

DOC Position

As noted above in Comments 6 and 7, the Department is using actual amounts of exempt taxes reported on the companies' tax returns. Therefore, CBCC's correct taxable profit has been accounted for in our calculations.

Comment 9

CBCC et al. argue that the Department verified that the Income tax Exemption for Export Earnings has been eliminated and that there are no current countervailable benefits provided to the respondents under this program. According to CBCC et al., this constitutes a program-wide change prior to the Department's preliminary determination. Therefore, this program should not be included in any final determination regarding the product under investigation.

Citing Final Affirmative Countervailing Duty Determination; Certain Forged Steel Crankshafts from Brazil, 52 FR 38254 (October 15, 1987), petitioners concede that in certain circumstances, when setting deposit rates, the Department has taken account of program-wide changes in subsidy programs that are verified and occurred prior to the preliminary determination. According to petitioners, however, in the circumstances of this case, the Department should not take into account the program-wide change. Petitioners argue that respondents have not shown that the distinction between export and domestic earnings has been eliminated from Brazilian tax law, but only for tax year 1990 (1991 returns). Citing Final Negative Countervailing Duty Determination; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from the Republic of Korea, 54 FR 15513, 15517 (April 18, 1989), petitioners also argue that the Department should not set a zero deposit rate for this program unless it verifiies from respndents' tax returns that no benefits under the program are being received.

DOC Position

Because our final determination in this investigation, based on benefits received during the review period, is negative, the issue of program-wide change and its affect on the deposit rates is moot.

Comment 10

CBCC et al. state that Commerce has historically treated the Income Tax Exemption for Export Earnings incorrectly as an export subsidy. According to CBCC et al., this tax exemption is not an export subsidy because a direct tax rebate cannot logically be an export subsidy. CBCC et al. explain that the Brazilian tax exemption applies to profits, not specific sales, derived from all sources and therefore, should not be attributed as a tax savings benefit solely to export sales. In addition, CBCC argues that should the Department conclude that this program bestows an export subsidy, it cannot include benefits on sales to third countries in its calculation. According to CBCC et al., while the Department has broad discretion in constructing the precise method of calculating the net subsidy, the law, its legislative history, and past administrative decisions clearly indicate that the focus of calculating a net subsidy should be to determine the amount by which products imported into the United States benefit from a given subsidy. Therefore, CBCC et al. maintain that attributing tax savings which benefited domestic sales or third country sales to U.S. imports is clearly beyond the authority of the Department.

CBCC et al. argue that the Department must determine that since all of the sales of the company benefit from the general reduction of corporate tax liability, that benefit must be allocated to the total sales of the corporation as opposed to exports alone.

According to petitioners, CBCC et al.'s argument has been rejected repeatedly by the Department. In particular, petitioners cite Certain Carbon Steel products from Brazil; Final Results of Countervailing Duty Administrative Review, 52 FR 829 (January 9, 1987) where the Department stated that when the amount of benefit received under a program is tied directly or indirectly to a company's level of exports, that program is an export subsidy.

DOC Position

We have consistently treated this program as an export program because the reduction in tax liability is applicable to export income only. See e.g., Certain Scissors and Shears from Brazil; Final Results of Administrative Review of Countervailing Duty Order 47 FR 10266 (March 10, 1982). It is the Department's position that when a firm must export to be eligible for benefits under a subsidy program, and when the amount of the benefit received is tied directly or indirectly to the firm's level of exports, that program is an export subsidy. Respondents have not provided any information that would merit reconsideration of the Department's methodology.

Comment 11

Petitioners allege that the Department incorrectly calculated the benefit from the CACEX working capital loan program. In the preliminary determination, the Department calculated the benefit by multiplying the principal, in Brazilian currency, by the interest differential of 15 percent. That figure was then multiplied by the term of the loan divided by 365. In its verification report, the Department stated that interest is calculated by applying a real interest rate to the principal amount which is indexed to a government bond neutral to the effects of Brazilian inflation. This amount is then converted back at the prevailing rate to Brazilian currency on the day of maturity of the loan. The different method reported in the Department's verification report would result in a greater benefit than was calculated in the preliminary determination. The Department should use a methodology consistent with its verification report if the report is accurate.

CBCC et al. state that the Department used the correct methodology in its preliminary determination for calculating benefits accuring from this program. The maximum interest differential that can be received is 15 percent. CBCC et al. argue further that since this program was eliminated by Resolution 1744 prior to the preliminary determination, and respondents currently receive no benefits from this program, this program no longer provides a subsidy and should be listed as terminated in the final determination.

DOC Position

According to our verification report, government officials did state that CACEX loans were indexed and a real interest rate was applied to the OTN/BTN denominated principal, and the resultant interest, valued in OTN/BTN, was converted into Brazilian currency upon maturity. However, upon analyzing the CACEX loan contracts of the companies which benefited from this program, we discovered that the nominal principal was adjusted by the change in the OTN/BTN index between the date of the loan and the date of maturity and an interest rate, which was freely negotiated between the bank and the company, was applied to this corrected principal amount. Therefore, we have adjusted our calculations to reflect this process.

With respect to CBCC's comment, we have stated our finding that the program was terminated.

Comment 12

CBCC et al. oppose the Department's determination concerning the exempted IOF tax on CACEX loans. In its preliminary determination, the Department found the exemption of these loans from the IOF tax to be a countervailable subsidy. However, these loans are used to purchase inputs which, according to the terms of the program, must be incorporated in a product to be exported. Therefore, CBCC et al. argue this is an indirect tax on inputs physically incorporated into exported goods, and does not constitute a countervailable subsidy under the GATT or U.S. countervailing duty law (see *Zenith Radio Corp.* v. *United States*, 437 U.S. 443 (1979)). Furthermore, they argue, the Department has verified that this exemption is available to a wide-range of loans including, for example, housing, infractructure and small business loans. As such, the Department should conclude that this exemption is generally available.

Petitioners claim that because the verification report states that interest is calculated on the principal amount indexed in OTN/BTN and converted to Brazilian currency on the day of maturity, then the IOF tax exemption must be calculated in the same way, *i.e.*, as a percentage applied to the indexed principal amount then converted into Brazilian currency at the rate prevailing on the last day of each month the loan is outstanding. The resulting exemption would be appreciably greater than that calculated by the Department in its preliminary determination. Petitioners also contest the claim of CBCC et al. that the IOF tax is an indirect tax on inputs to be incorporated in goods which are exported. They cite Certain Cotton Yarn Products From Brazil; Final Results of Countervailing Duty Administrative Review, 55 FR 3443 (February 1, 1990) to demonstrate that the Department has consistently rejected this argument.

DOC Position

We agree, in part, with petitioners. It is the Department's position that although the IOF is an indirect tax paid on financial transactions, it is not an indirect tax on a physical input of the exported product. See, e.g., Pig Iron from Brazil; Final Results of Administrative Review of Countervailing Duty Order 53 FR 9923 (March 16, 1984). It is proper to include the exemption from the IOF for CACEX loans as part of the measurement of the benefit from this program.

We reject CBCC et al.'s claim that the IOF exemption is generally available. The IOF exemption is a benefit tied to participation in the CACEX program, which is a program contingent upon exports. Had the firms obtained working capital loans outside the context of this program, they would not have received this exemption.

We reject petitioners' contention that the IOF exemption should be applied to an indexed principal amount. We verified that the IOF tax is applied to the nominal principal amount of the loan.

Comment 13

Petitioners allege that CCM received a countervailable tax benefit in addition to those previously alleged. Though the tax return on which the alleged tax benefit was claimed falls outside of the review period, petitioners state that it would be proper for the Department to use this tax return.

Citing Final Negative Countervailing Duty Determination; Certain Granite Products from Italy, 53 FR 27197, 27205 (1988), CCM rejects the petitioners' allegations as untimely. CCM states that petitioners were aware of this tax benefit before the preliminary determination but did not mention it until their case briefs. CCM cites the Department's regulations [19 CFR 355.31(c)(1)(i)] (1990) which require new subsidy allegations to be submitted not later than 40 days before the preliminary determination. In addition, CCM argues that because the tax return cited by petitioners falls outside of the period of review, it received no benefits during the time period for this investigation.

DOC Position

Because the Department collected the information on this alleged benefit (*i.e.*, the tax form) during verification, petitioners were justified in attempting to bring this alleged benefit to the attention of the Department. Therefore, petitioners' claim is not untimely. We reject petitioners' argument, however, on the basis that any alleged benefit would have been received by CCM after the review period.

Comment 14

Petitioners request that the Department expand the scope to include all imports of silicon metal, including those with less than 96 percent silicon. Petitioners allege that importers are circumventing duty deposit requirements by adding aluminum to the silicon metal to bring it below the 96 percent threshold. Aluminum is not an impurity in silicon metal, petitioners argue, when the silicon metal is used in primary or secondary aluminum production. They argue that their petition did not specify a minimum silicon content nor does the HTS category listed in the petition. Furthermore, silicon metal with less than 96 percent silicon falls within the class or kind of merchandise if the Department's five part test is used (See *Diversified Products Corporation* v. *United States* 6 CIT 155, 572 F. Supp. 883 (1983). Moreover, even if this merchandise did not fall in the same class or kind of merchandise, the Department would still have the authority to expand the scope to prevent circumvention.

CCM argues that petitioners have interpreted the tariff classification incorrectly. The HTS category lists no minimum silicon content but its predecessor category in TSUSA did state a minimum of 96 percent. Citing, for example, Certain Sulfur Chemicals from the United Kingdom, 55 FR 32119 (August 7, 1990), CCM asserts that the Department lacks the authority to expand the scope in a countervailing duty case to include merchandise which has not been accorded an ITC affirmative preliminary injury

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determination. CCM further argues that petitioners' request is untimely. Petitioners should have appealed the Department's decision to the CIT within thirty days after publication of the initiation notice in the **Federal Register**. CCM cites *Republic Steel Co.* v. *United States*, 544 F. Supp. 901 (Ct. Int'l Trade 1982). CCM states that application of the Department's five part test is irrelevant because petitioners were aware that silicon metal containing less than 96 percent silicon existed at the time the investigation commenced. CMM cites *PPG Industries, Inc.* v. *United States*, Slip Op. 91–17 (March 11, 1991), in which the CIT held that application of the five part test to determine whether merchandise falls within the scope is appropriate only for products that have been modified after the investigation commences.

CBCC et al. likewise oppose petitioners' request for an expansion of the scope. CBCC et al. assert that the document submitted by petitioners as proof of circumvention by a Peoples Republic of China entity producing or importing silicon metal is dubious. Since the names of both the sender and the receiving party have ben blocked out, there is no way for the Department to authenticate this submission. The Department either should have rejected this submission or required more evidence from petitioners. Furthermore, CBCC et al. argue, the Department cannot expand the scope of the investigation and subject the relevant merchandise to countervailing duties unless the ITC has issued a preliminary affirmative injury determination in regard to that merchandise (see *Badger-Powhatten, Div. of Figgie* v. *United States*, 608 F. Supp. 653, 656 (Ct. Int'l Trade 1985)). CBCC et al. concur with CCM that this allegation is untimely. The Department, they contend, has already issued its preliminary determination and conducted verification. See *Certain Internal Combustion, Industrial Forklift Trucks from Japan*, 53 FR 12552 (1988).

DOC Position

We have determined to leave the description of the scope of this investigation unchanged. Prior to defining the scope of this investigation, we considered information from the petition, the Bureau of Mines, and the Customs Service. This information clearly indicates a common commercial meaning for silicon metal as a product with a silicon content between 96.00 and 99.99 percent. However, we have seen evidence that certain parties are selling or offering for sale merchandise containing less than 96 percent silicon and calling that product "silicon metal." Given the significant disparity in apparent value between the below 96 percent and above 96 percent "silicon metal," we are unable to conclude, based on the information before us, that the less than 96 percent product is of the same class or kind as the above 96 percent product.

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, inspecting internal documents and ledgers, tracing information in the responses to source documents, accounting ledgers and financial statements, examination of original source documents and collecting additional information that we deemed necessary for making our final determination. Our verification results are outlined in detail in the public version of the verification report, which is on file in the Central Records Unit (room B–099) of the Main Commerce Building.

Critical Circumstances

Petitioners allege that "critical circumstances" exist with respect to imports of silicon metal from Brazil. Section 703(e)(1) of the Act provides that critical circumstances exist if there is a reasonable basis to believe or suspect that:

(A) The alleged subsidy is inconsistent with the Agreement, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

In the preliminary determination, we determined that no critical circumstances existed because no benefits which constitute countervailable subsidies were being provided to manufacturers, producers, or exporters in Brazil of silicon metal. Therefore, no subsidies existed which were inconsistent with the Agreement.

For purposes of the final determination, we likewise find no benefits which constitute countervailable subsidies. Therefore, we find critical circumstances do not exist with respect to the subject merchandise from Brazil.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

Dated: June 5, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–13980 Filed 6–11–91; 8:45 am]

BILLING CODE 3510–DS–M

[C–533–802, C–549–806]

Postponement of Final Countervailing Duty Determinations: Steel Wire Rope From India and Thailand

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we are postponing the date of the final determinations of the countervailing duty investigations of steel wire rope from India and Thailand to coincide with the date of the final determinations of the companion antidumping duty investigations of steel wire rope. The final determinations in the countervailing duty investigations of steel wire rope from India and Thailand are postponed until no later than September 4, 1991.

EFFECTIVE DATE: June 12, 1991.

FOR FURTHER INFORMATION CONTACT: Roy A. Malmrose or Vince Kane, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230, at (202) 377–5414 or (202) 377–2815, respectively.

SUPPLEMENTARY INFORMATION: On March 8, 1991, we aligned the final determination dates of the countervailing and antidumping duty investigations of steel wire rope from India and Thailand (56 FR 11406). On May 13, 1991, pursuant to requests from respondents, we published a notice informing the public of the postponement of the antidumping duty determinations and public hearings for the investigations of steel wire rope from Thailand, Taiwan, the People's Republic of China and India until no later than September 4, 1991 (56 FR 21988). Accordingly, we are also postponing the final countervailing duty determinations of steel wire rope from Thailand and India until no later than September 4, 1991.

In accordance with 19 CFR 353.38, case briefs or other written comments and rebuttal briefs in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than August 7, 1991, and August 14, 1991, respectively, in the case of India; and June 18, 1991, and June 25, 1991, respectively, in the case of Thailand. The public hearing for the final determination of the countervailing duty investigation of steel wire rope from India will be held on August 16, 1991, at 10 a.m. in room 3708 at the U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. We will not hold a public hearing for the investigation pertaining to Thailand because no parties requested a public hearing within ten days of publication of the preliminary determination. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

This notice is published pursuant to section 735(d) of the Act and 19 CFR 353.20(b)(2).

Dated: June 4, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–13982 Filed 6–11–91; 8:45 am]

BILLING CODE 3510–DS–M

Michigan State University, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Articles

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related part records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Decision: Denied. Applicants have failed to establish that domestic instruments of equivalent scientific value to the foreign instruments for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for each of the listed dockets.

Docket Number: 90–030. *Applicant:* Michigan State University, Department of Pediatrics/Human Development, East Lansing, MI 48824–1317. *Instrument:* Rapid Karyotyping Analysis System, Model Cytoscan RK 2. *Manufacturer:* Image Recognition Systems Inc., United Kingdom. *Date of Denial Without Prejudice to Resubmission:* December 6, 1990.

Docket Number: 90–107. *Applicant:* Iowa State University, Ames, IA 50011–3020. *Instrument:* Universal Rheometer, Model RHEOLAB MC10. *Manufacturer:* Physica Messtechnik, West Germany *Date of Denial Without Prejudice to Resubmission:* December 6, 1990.

Docket Number: 90–119. *Applicant:* University of Illinois at Urbana-Champaign, Urbana, IL 61801. *Instrument:* Epitaxial Growth Reactor *Manufacturer:* Thomas Swan and Co., United Kingdom. *Date of Denial Without Prejudice to Resubmission:* January 28, 1991.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91–13983 Filed 6–11–91; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

[Docket No. 901231–1134]

Taking and Importing of Marine Mammals Incidental to Commercial Fishing Operations

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice to importers.

SUMMARY: NMFS issues a notice to importers concerning intermediary nations trading in yellowfin tuna or products derived from yellowfin tuna harvested by purse seine in the eastern tropical Pacific Ocean (ETP) by Mexican vessels.

EFFECTIVE DATE: May 24, 1991.

ADDRESSES: E.C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: E.C. Fullerton, Director, Southwest Region, NMFS, 213–514–6196.

SUPPLEMENTARY INFORMATION: A U.S. embargo on imports of yellowfin tuna and products derived from yellowfin tuna caught by Mexican purse seine vessels operating in the ETP went into effect on February 22, 1991. The embargo was imposed as a result of a Federal Court order originally issued by the U.S. District Court for the Northern District of California. That embargo had been stayed on November 14, 1990, by the U.S. Court of Appeals for the Ninth Circuit, but the latter court lifted the stay on February 22, 1991.

On March 25, 1991, (56 FR 12367), NMFS published notification in the **Federal Register** of the effective dates and the scope of the intermediary nation provisions that apply under section 101(a)(2)(C) of the Marine Mammal Protection Act. That notification specified that NMFS will adhere to the terms of the court-ordered embargo with respect to any measures applied to intermediary nations and, therefore, will request the U.S. Customs Service to require declarations from importers stating that imports of yellowfin tuna and products derived from yellowfin tuna are not harvested with purse seines in the ETP by Mexican vessels. This declaration is in addition to the Yellowfin Tuna Certificate of Origin, SF 370–1, also required at the time of entry.

The declaration must be provided at the time of entry, and in substantially the following format:

Declaration of Compliance With Court Order

The undersigned declares that, having made appropriate inquiry, and based on written evidence in his possession, no yellowfin tuna or yellowfin tuna product included in this shipment were harvested with purse seines in the eastern tropical Pacific Ocean by vessels from Mexico.

Signature
Name of importer
Printed name and title of individual signing

Importations from intermediary nations without the declaration will be refused entry into the United States.

Authority: 16 U.S.C. *et seq.*

Dated: June 6, 1991.

Michael F. Tillman,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 91–13877 Filed 6–11–91; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Issuance of Scientific Research Permit No. 725.

SUMMARY: On Monday, October 22, 1990, notice was published in the **Federal Register** (55 FR 42621) that an application (P368A) had been filed by Dr. James T. Harvey, Moss Landing Marine Laboratories, P.O. Box 450, Moss Landing, CA 95039–0450, and Dr.

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Daniel P. Costa, Long Marine Laboratory, Center for Marine Studies, University of California, Santa Cruz, CA 95064. A scientific research permit was requested to obtain ten (10) rehabilitated beached/stranded California sea lions (*Zalophus californianus*) from the Naval Ocean Systems Center, rehabilitation centers, or aquaria on the west cost of California, and train them for open-water release to carry a videocamera to film underwater activities of whales and to participate in studies of sea lion diving physiology.

Notice is hereby given that on June 6, 1991, as authorized by the provisions of the Marine Mammal Protection Act and the Endangered Species Act, the National Marine Fisheries Service issued a Permit for the above activities subject to the Special Conditions set forth therein.

The Permit is available for review by appointment by interested persons in the following offices:

Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, room 7330, Silver Spring, Maryland 20910, (301) 427–2289; and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731–7415, (213) 514–6196.

Dated: June 6, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91–13879 Filed 6–11–91; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Request for Modification to Scientific Research Permit No. 598, Alaska Fisheries Science Center [P77#28].

Notice is hereby given that the Alaska Fisheries Science Center (NMML), National Marine Fisheries Service, 7600 Sand Point Way NE., Bin C15700, Seattle, Washington 98115–0070, has requested a modification to Permit No. 598 pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 598 issued on July 23, 1988 (52 FR 27897) authorized no more than a total of 32,500 northern fur seal pups (*Callorhinus ursinus*) to be taken annually for population monitoring and assessment programs. The research involved capturing, restraint to affix radio transmitters, time-depth recorders, satellite-linked instruments, swim speed recorders, and/or other environmental sensors and behavioral recorders, lavaging or enema samples taken, and release of the animal.

Three previous modifications to this permit have been requested. Modification No. 1 authorized a total of up to 80 northern fur seals per year to be incidentally killed or injured during authorized research activities. An additional 3,260 northern fur seals were authorized to be taken annually to allow continuation of essential population monitoring and assessment programs by specified methods. Modification No. 2 authorized up to 30,000 juvenile male northern fur seals to be taken annually by roundup. Up to 3,900 of the 30,000 male seals were authorized to be captured by physical restraint, marked, handled and released annually and the rates of survival monitored. A request for modification to Permit #598 was announced in the **Federal Register** on May 23, 1991 (56 FR 23684) to chemically restrain (with 1.2- 1.5 mg/kg of Telazol) rather than physically restrain large adult males too large to be handled safely during the attachment of satellite tags and the removal of entangling debris.

A new modification has now been requested to take up to 81 northern fur seals (*Callorhinus ursinus*) in the following manner: (a) Harass during attempts to encircle (an unspecified number of seals outside the groups around which nets are set may be disturbed during pelagic capture attempts); (b) capture by using a floating monofilament net, noose poles, and/or physical restraint; (c) handling to include marking (using numbered, colored plastic tags), weighing, identifying sex, measuring and obtaining blood samples; (d) attachment of radio transmitters, time-depth recorders, satellite-linked instruments, and/or other environmental sensors and behavioral recorders to up to 12 animals; (e) release of all animals; and (f) recapture of the six seals instrumented with time/depth recorders. These instruments are small, submersible computers which store data in memory chips like those used in any other computer. To obtain the stored data, they must be physically recaptured and plugged into a home computer. A release mechanism by which the computer can be recovered without recapturing the animal has not been devised. Every effort will be made to safely recapture the seals to remove the instruments. Authorization is requested for lethal take as a last resort in order to retrieve the data stored in the submersible computers attached to the animals.

Taking is requested from June-October 1991 and 1992 on the high seas and in coastal waters of Washington State.

The NMML is responsible for assessing impacts on the fur seal population from incidental take in the high seas squid driftnet fishery under the Driftnet Impact Monitoring Assessment and Control Act of 1987, and for obtaining information toward a moratorium on driftnet fishing under U.N. Resolution 44/255. The proposed study is in support of this responsibility.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this proposed modification, should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Highway, SSMC1, room 7324, Silver Spring, Maryland 20910, within 30 days of the publication date of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular proposal would be appropriate. The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this proposed modification are summaries of those of the applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above are available for review, by appointment, by interested persons in the following offices:

Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, SSMC1, room 7324, Silver Spring, Maryland 20910 (301/427–2289);

Director, Alaska Region, National Marine Fisheries Service, NOAA, 709 West 9th Street, Federal Bldg., Juneau, Alaska 99802 (907/586–7221);

Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way N.E., BIN C15700, Seattle, Washington 98115–0070 (206/526–6150);

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731–7415 (213/514–6196); and

Pacific Area Office, National Marine Fisheries Service, NOAA, 2570 Dole St., room 106, Honolulu, Hawaii 96822–2396 (808/943–1221).

Dated: June 3, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91–13878 Filed 6–11–91; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

The National Futures Association's Proposed Revisions to its Transaction Assessment Fee Levels and Procedures

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed registered futures association rule changes.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has determined pursuant to section 17(j) of the Commodity Exchange Act ("Act") to review the National Futures Association ("NFA") proposed amendments to its Bylaws 1301 and 1302. The proposed amendments to Bylaw 1301 would increase the transaction assessment fees which each NFA member futures commission merchant ("FCM") and leverage transaction merchant ("LTM") must invoice to and collect from their customers for remittance to NFA. Transaction assessment fees are the largest source of revenue for NFA to fund its operations. NFA also has proposed an amendment to its Bylaw 1302 which would revise the schedule by which NFA collects member transaction assessment fees from a quarterly to a monthly basis. The Commission has determined that publication of NFA's proposal is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Act.

DATE: Comments must be received by June 27, 1991.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–6314.

FOR FURTHER INFORMATION CONTACT: David P. Van Wagner, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

By letter dated May 29, 1991 and received by the Commission on May 30, 1991, the NFA submitted, pursuant to section 17(j) of the Act, proposed amendments to NFA Bylaws 1301 and 1302. NFA's submission indicated that it intended to make the proposed amendments effective on July 1, 1991, unless the Commission, consistent with section 17(j) of the Act, notified NFA, within ten days of the Commission's receipt of the submission, that the Commission had determined to review the amendments.

On June 7, 1991, the Commission determined to review NFA's proposed amendments to Bylaws 1301 and 1302 pursuant to section 17(j) of the Act and so informed NFA of its determination.[1]

II. Description of NFA's Proposal

A. Increase to Transaction Assessment Fee Levels—NFA Bylaw 1301

NFA Bylaw 1301 establishes a transaction assessment fee schedule whereby each NFA member FCM and LTM must collect a specified per trade fee from their customers for remittance to NFA. Transaction assessment fees, particularly those paid through FCMs, are by far the primary source of revenue for NFA to fund its operations.[2]

Under NFA's proposed amendments to Bylaw 1301, NFA would increase its transaction assessment fees for the first time since NFA began operation in 1982. The subject proposal would return NFA's assessment fees to the levels they were at immediately prior to the last assessment fee revision on July 1, 1989.[3]

Current NFA Bylaw 1301(b)(i) (A) through (D) establishes an assessment rate of $.20 per each round-turn futures contract and $.12 per each option transaction carried by an FCM for a customer on either a domestic contract market or foreign board of trade.[4] NFA's proposed amendments to Bylaw 1301(b)(i) (A) through (D) would increase these respective FCM assessment rates to $.24 per round-turn futures contract and $.14 per option contract.

NFA has proposed further to amend Bylaw 1301(b)(i)(E) to increase the transaction assessment fee for dealer options carried by members FCMs on behalf of customers from $.12 to $.14 per option trade.[5]

NFA also has proposed an amendment to its Bylaw 1301(c)(i) which would increase the member LTM transaction assessment fee rate from $.12 to $.14 per leverage contract transaction executed with a customer. At the present time, however, there are no LTMs registered under the Act.

NFA maintains that is proposed transaction assessment fee increases are necessary in order to achieve its ongoing goal of maintaining its working capital between $5 million and $6 million.[6]

NFA first informed the Commission of its goal of reaching and maintaining a working capital level of $5 million to $6 million in 1988. At the time, NFA was requesting Commission approval for a reduction of transaction assessment fees from $.28 to $.24 per round-turn futures contract and from $.16 to $.14 per option transaction to be established at the start of NFA's 1989 fiscal year on July 1, 1988.[7] At the time of that decrease, NFA

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[1] *See* June 7, 1991 letter from Lynn K. Gilbert, Deputy Secretary of the Commission, to Daniel J. Roth, NFA General Counsel.

[2] Transaction assessment fees constituted approximately 88% of NFA's total revenue for the period of July 1, 1990 through March 31, 1991, the first nine months of NFA's 1991 fiscal year. *See* NFA Monthly Status Report to the Commission (April 1991).

[3] *See* June 19, 1989 letter from Andrea M. Corcoran, Director of the Commission's Division of Trading and Markets ("Division" or "T&M"), to Daniel J. Roth, NFA General Counsel (letter allowing proposed transaction assessment fee decrease to be put into effect).

[4] For the purposes of collecting transaction assessment fees, NFA Bylaw 1301's definitions of customer are generally consistent with Commission Regulation 1.3(k), with certain exceptions. First, NFA Bylaw 1301(b)(i) states that an FCM member is not required to pay an assessment fee for any contract market transactions done for:

(1) a person having privileges of membership on a contract market where such contract is entered or (2) a business affiliate of such FCM that directly or indirectly owns 100% of or is owned 100% by or has 100% ownership in common with such FCM provided such FCM has privileges of membership on the contract market where such contract is entered or (3) an omnibus account carried for another FCM Member for which assessments are payable to NFA by the other FCM.

Second, Bylaw 1301(b)(i) also specifies that an FCM member is not required to pay an assessment fee for foreign board of trade transactions carried for a customer on an "omnibus account basis for another FCM Member for which assessments are payable to NFA by the other FCM."

[5] NFA Bylaw 1301(b)(i)(E) does not require a member FCM to collect an assessment fee for dealer options carried by such FCM for a customer which is a "business affiliate of such FCM that directly or indirectly owns 100% of or is owned 100% by or has 100% ownership in common with such FCM Member.

[6] NFA's working capital, in this context, equals the difference between its total current assets and total current liabilities, and customarily is held in the form of liquid assets such as United States treasury bills or cash deposited into insured money market accounts.

[7] *See* March 8, 1988 letter from Daniel J. Roth, NFA General Counsel, to Jean A. Webb, Secretary of the Commission (submission letter). That assessment fee reduction was approved by the Commission on June 15, 1988. *See* June 15, 1988 letter from Lynn K. Gilbert, Deputy Secretary of the Commission, to Daniel J. Roth, NFA General Counsel (Commission approval letter).

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had a working capital level of approximately $13.3 million.[8]

NFA reiterates this goal in 1999, when it further reduced its assessment rates to their current levels of $.20 per round-turn futures contract and $.12 per option transaction.[9] NFA has a working capital level of approximately $15.1 million at the time of that decrease.

During the two years since the institution of its current transaction assessment fee rates, NFA has been operating at a net income loss which has required it to draw down its level of working capital. In NFA's 1990 fiscal year of July 1, 1989 to June 30, 1990, NFA had a net income loss of approximately $3.6 million dollars and thus had to draw down its working capital from $15.1 million dollars to $11.5 million dollars.[10]

As of March 31, 1991, NFA had a net income loss of $4.9 million for the first nine months of its 1991 fiscal year.[11] NFA projects that its working capital will be approximately $6.8 million on June 30, 1991—the end of NFA's 1991 fiscal year.

Based upon the current assessment fee rates and its projected level of public participation in futures markets, NFA believes that its working capital will fall below $5 million during the third quarter of its 1992 fiscal year (*i.e.*, sometime between January 1, 1992 and March 31, 1992).

Accordingly, NFA contends that it must increase its transaction assessment fees to $.24 for each round-turn futures contract and $.14 per option transaction in order to maintain sufficient working capital to cover anticipated expenses. NFA also asserts that such a level of working capital would provide a sufficient cushion to ensure that NFA's performance of its regulatory responsibilities would not be impaired by some unforeseen drop in revenue. NFA does not anticipate reducing any of its planned administrative or capital expenditures in order to increase its working capital level.

[8] *See* NFA 1988 Annual Review.

[9] *See* June 8, 1989 letter from Daniel J. Roth, NFA General Counsel, to Jean A. Webb, Secretary of the Commission (submission letter requesting that the Commission allow NFA to put transaction assessment fee reduction into effect at the start of NFA's 1990 fiscal year on July 1, 1989). *See also* June 1989 letter from Andrea M. Corcoran, Director of T&M, to Daniel J. Roth, NFA General Counsel (letter allowing proposed transaction assessment fee decrease to go into effect).

[10] *See* NFA 1990 Annual Review.

[11] *See* NFA Monthly Status Report to the Commission (April 1991).

B. Transaction Assessment Fee Collection Procedures—NFA Bylaw 1302

NFA's proposal also includes an amendment to Bylaw 1302 which would change NFA's schedule for collecting member transaction assessments from a quarterly to a monthly collection cycle. NFA is proposing this more frequent collection cycle to address the possibility that its level of working capital, which is largely based upon assessment fees,[12] would not be sufficient to meet NFA's necessary budgetary expenditures during the three months between the current collection dates for transaction assessment fees.

II. Request for Comments

The Commission requests comments on any aspect of NFA's proposed rule amendments that members of the public believe may raise issues under the Commodity Exchange Act or the Commission's regulations.

Copies of NFA's proposed rule amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, except to the extent that the proposal may be entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 254–6314.

Any person interested in submitting written data, views or arguments on NFA's proposed rule amendments or with respect to other materials submitted by the NFA in support of the proposal should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on June 10, 1991.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 91-14071 Filed 6-11-91; 8:45 am]

BILLING CODE 6351-01-M

[12] *See supra* footnote 2 and accompanying text.

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Air Force Academy Candidate Personal Data Record; USAFA Form 146; OMB No. 0701–0064.

Type of Request: Extension.

Average Burden Hours/Minutes per Response: 30 Minutes.

Responses per Respondent: 1.

Number of Respondents: 11,400.

Annual Burden Hours: 5,700.

Annual Responses: 11,400.

Needs and Uses: This form is used to collect data on U.S. Air Force Academy candidate's family and personal background for use in determining eligibility. Information may be used to select appointees to the Academy.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: June 6, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-13885 Filed 6-11-91; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Air Force Academy Candidate Activities Record; USAFA Form 147; OMB No. 0701–0063.

Type of Request: Revision.

Average Burden Hours/Minutes per Response: 22.5 minutes.

Responses per Respondent: 1.

Number of Respondents: 21,000.

Annual Burden Hours: 7,875.

Annual Responses: 21,000.

Needs and Uses: This form is used to collect data on U.S. Air Force Academy candidate's high school athletic, nonathletic, and extracurricular activities for use in determining eligibility. Information is used to select appointees to the Academy.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DOD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, suite 1204, Arlington Virginia 22202–4302.

Dated: June 6, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-13886 Filed 6-11-91; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Defense Intelligence Agency Advisory Board; Meeting

AGENCY: Defense Intelligence Agency Advisory Board.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of a panel of the DIA Advisory Board has been scheduled as follows:

DATES: Friday, 12 July 1991 (9 a.m. to 5 p.m.).

ADDRESSES: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John G. Sutay, USAF, Chief, DIA Advisory Board, Washington, DC 20340–1328 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting will be devoted to the discussion of classified information as defined in section 552b(c)(1), title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Technologies and Applications.

Dated: June 6, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-13887 Filed 6-11-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Notice of Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates/Time of Meeting: 27–28 June 1991.

Time: 0900–1600 hours.

Place: Pentagon, Washington, DC.

Agenda: The Logistics and Sustainability Issue Group of the Army Science Board will meet to continue a study of "Logistic Support and Sustainment of Operation Desert Shield." This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91-14077 Filed 6-11-91; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Notice of Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates/Time of Meeting: 27 June 1991.

Time: 1130–1600 hours.

Place: IBM, Armonk, New York.

Agenda: The Army Science Board (ASB) Ad Hoc Subgroup on Improving the Quality of Science and Engineering in the Army will meet with IBM representatives to discuss their initiatives for measuring and furthering the vitality of their professional R&D workforce. The meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91-14079 Filed 6-11-91; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) Amendment for the Delaware River Comprehensive Navigation Study, Main Channel Deepening (Modifying the Delaware River, Philadelphia to the Sea, Federal Navigation Project)

AGENCY: Philadelphia District, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The proposed action evaluates the need for and alternative methods of improving the navigation channel to accommodate commercial vessels transiting the Delaware River between Philadelphia, Pennsylvania and the mouth of the Delaware Bay. This need is based on current shipping problems resulting from delays in intermodal transfers, insufficient channel dimensions and other physical aspects affecting waterbone commerce. Identification of water and related land resource problems in the study area has evolved from prior studies, current investigations and continuing public coordination.

FOR FURTHER INFORMATION CONTACT: Questions regarding the DEIS Amendment should be addressed to Mr. Jerry Pasquale (215) 597–6840, U.S. Army Corps of Engineers, CENAP-PL-E, U.S. Custom House, 2nd and Chestnut Streets, Philadelphia, Pennsylvania 19106–2991.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

a. The study is being conducted in response to a resolution by the Committee on Public Works of the United States Senate, dated March 1, 1954 and a resolution by the Committee on Public Works of the House of Representatives, dated December 2, 1970.

b. The proposed objective is to improve the handling of bulk commodity products, which account for the majority of ship cargoes using the existing Delaware River, Philadelphia to the Sea, Federal navigation project. These commodities, which include crude oil, coal and iron ore, are currently shipped

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in partially loaded vessels due to draft restrictions. The proposed action would provide deeper access to the major import and export facilities along the channel, including six oil refineries, the Conrail coal and iron ore facilities at Piers 122 and 124 in Philadelphia, PA and the Beckett Street Terminal in Camden, NJ. Based on economic and environmental analyses, a two-way, full-width channel with a depth of 45 feet below mean low water (mlw) was selected as the recommended plan of improvement. From the Beckett Street Terminal through Philadelphia Harbor, the 400 to 500-foot width west side channel, now at a depth of 40 feet below mlw would be deepened while the east side channel would remain at 37 feet at mlw. Between the Philadelphia Navy Yard and Delaware Bay, the existing channel would be deepened for its full 800-foot width. In the bay, the full 1,000-foot width channel would be deepened. The trapezoidal access channel to the Beckett Street Terminal's bulk berths would also be deepened. This would modify the Delaware River in the Vicinity of Camden project. The existing Marcus Hook and Mantua Creek anchorages would be partially deepened. In addition, 17 channel bends would be widened to enhance navigational safety. Provision of a deeper channel would reduce or eliminate non-structural practices such as lightering, and light loading, now in use by the restricted vessels. In addition, several users are likely to employ larger vessels if a deeper channel is provided.

c. A critical element in the planning of any navigation project is the disposal of dredged material. Approximately six million cubic yards of material are dredged annually for maintenance of the existing 40-foot Delaware River, Philadelphia to the Sea project. Eight active, upland disposal areas and one open water disposal area are currently used for maintenance of the existing project. Additional dredged material disposal sites will be required to adequately handle dredged material from the existing project in the future. Project deepening would reduce the disposal capacity of existing sites and accelerate the need for replacement sites. The proposed action includes acquisition of three previously used, upland dredged material disposal sites, the use of two active, upland disposal sites currently dedicated for maintenance of the Chesapeake and Delaware Canal, and beneficial uses of clean, sandy material in Delaware Bay. These additional sites will provide sufficient dredged material disposal capacity to handle deepening and maintenance dredging operations over the full 50-year project life (2000–2050).

d. Without the implementation of improvements for the Delaware River channel, the maximum draft of vessels using the waterway would be limited to the draft now accommodated. Existing channel dimensions reduce the economic efficiency of larger ships moving through this major commercial area. Crude and refined oil products are the highest volume commodity in United States freight trade, and account for the overwhelming majority of tonnage moved in the Delaware River. The refineries located along the Delaware River account for 10 percent of the refinery capacity of the United States and provide petroleum products throughout the mid-Atlantic states. Approximately 30 percent of all crude oil that comes to the Delaware River facilities is lightered. In addition, about 50 percent of the crude oil vessels, 60 percent of the coal vessels and 80 percent of the iron ore vessels are partially loaded.

2. Alternatives

a. Alternative measures considered to improve navigation in the study portion of the Delaware River included no action, non-structural measures and full-width or partial-width channel deepening. Partial-width channel deepening entailed deepening the inbound lane, since the majority of vessels travel upstream loaded and downstream partially or completely unloaded. The range of depths considered for deepening was 41 to 46 feet at mlw. Non-structural measures such as the use of tides to increase available channel draft and lightering are already employed and will continue to be included to the maximum extent practical. In addition, channel bend widening was considered to improve the navigational safety of larger vessels now using the waterway.

b. Additional dredged material disposal capacity will be required for maintenance of the existing project and any channel modifications for the 50-year project life. Alternative structural measures considered for increasing disposal capacity included raising dikes at existing sites, using sedimentation basins to reduce shoaling, acquisition of new upland sites, aquatic disposal in Delaware Bay or the ocean, and beneficial uses of dredged material such as beach nourishment and habitat creation. Non-structural alternatives included dewatering practices to facilitate greater consolidation of dredged material at existing sites, reusing dredged material, and reducing dredging activities.

3. Scoping

a. Numerous study reports have been published since 1954 concerning all aspects of the proposed project. Evaluation of the previously collected data has initiated both Federal interest and local support. In addition to these reports, several reconnaissance studies were conducted to determine waterway problems and the Federal interest in further study.

b. A notice of intent to prepare a DEIS for this project was published in vol. 54, No. 85 of the **Federal Register** on May 4, 1989. A notice of availability for that DEIS was published in vol. 55, No. 135 of the **Federal Register** on July 13, 1990. Based on the comments received on the DEIS, it has been determined that a DEIS amendment is necessary. Significant issues to be addressed in the amendment include the chemical characteristics of the sediments proposed for dredging, potential changes in salinity patterns of the Delaware Estuary as a result of channel deepening, potential impacts to groundwater resources in the project area, the feasibility of an oil pipeline system to limit the need for a nagivation channel within the Delaware River, the impact of rock blasting on fishery resources in the vicinity of Marcus Hook, PA, and an analysis of alternatives to the use of the existing, open water disposal site in Delaware Bay.

c. A study initiation letter for the current study was issued to the public on April 29, 1982. Since then several interim reports have been prepared and released to the public for their review and comment. In addition, public newsletters were issued in March 1984, August 1985, and September 1989. A public notice announcing the availability of the DEIS was issued to the public on July 6, 1990. A scoping meeting for preparation of the DEIS was held on June 22, 1989. Since release of the DEIS, several coordination/scoping meetings have been held with various agencies and groups. At this time, no additional scoping meetings are scheduled.

4. Availability

It is anticipated that the amendment to the DEIS will be released for public comment in August 1991.

John A. Burnes,

Asst. Chief, Planning Division.

[FR Doc. 91-13944 Filed 6-11-91; 8:45 am]

BILLING CODE 3710-GR-M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, June 19, 1991 beginning at 1:30 p.m. in the Oval Room, on the 43rd Floor, One World Trade Center, New York, New York.

An informal conference among the Commissioners and staff will be open for public observation at 10 a.m. at the same location and will include discussions of amendment of Compact Section 15.1(b) to fund the F. E. Walter Reservoir project; upper Delaware ice diversion project; golf course water use inventory; settlement of Scott Paper Company appeal; and proposed policy and regulations concerning the transfer of water and wastewater to and from the Delaware River Basin.

The subjects of the hearing will be as follows:

Proposed Amendments to Comprehensive Plan and Water Code of the Delaware River Basin Relating to Water Conservation Performance Standards for Plumbing Fixtures and Fittings. Notice was given in the May 9, 1991 issue of the **Federal Register** that the Commission would hold a public hearing on June 19, 1991 to receive comments on a proposed amendment to its Comprehensive Plan and Water Code in relation to water conservation performance standards for plumbing fixtures and fittings. The amendment would revise the effective date of Resolution No. 88–2 (Revised) from January 1, 1991 to July 1, 1991.

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact:

1. *Manetas Farms, Inc. D–81–40 RENEWAL 2.* An application for the renewal of a ground water withdrawal project to supply up to 46.5 million gallons (mg)/30 days of water to the applicant's agricultural irrigation system from Well No. 1 and Pond Nos. 1, 2, and 3. Commission approval on July 30, 1986 was limited to five years and will expire unless renewed. The applicant requests that the total withdrawal from all wells and ponds remain limited to 46.5 mg/30 days. The project is located in Fairfield Township, Cumberland County, New Jersey.

2. *Broad Run Valley, Inc. D–85–27 CP RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 24 mg/30 days of water to the Wilkinson Farm Water Supply Project to serve an existing farm operation and 150 existing and proposed residential dwelling units from Well No. W–3. Commission approval on May 28, 1986 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 24 mg/30 days. The project is located in New Garden Township, Chester County, Pennsylvania.

3. *Parkesburg Borough Authority D–89–91 CP.* An application to upgrade an existing 0.36 million gallons per day (mgd) sewage treatment plant (STP), which serves the Borough of Parkesburg. The wastewater influent will continue to be domestic sewage. The STP is located in the southeast corner of Parkesburg Borough, Chester County, Pennsylvania and will continue to discharge to Little Buck Run, a branch of Buck Run which is a tributary of the West Branch Brandywine Creek.

4. *Alco Industries D–90–109 (D).* An application for approval of a discharge of up to 0.32 mgd of ground water treated for removal of volatile organic compounds (VOC). The ground water will be treated using an air stripper and discharged to Crossmans Run, a tributary of the Schuylkill River. The treatment facility is located at the Alco Industries site (formerly Synthane-Taylor) adjacent to Crossmans Run and the Schuylkill River, in Upper Providence Township, Montgomery County, Pennsylvania.

5. *Green Hills Management Company D–91–6.* An application for approval of a ground water withdrawal project to supply up to 3.12 mg/30 days of water to the applicant's office complex from existing Well Nos. 1 and 2, and to limit the withdrawal from all wells to 3.12 mg/30 days. The project is located in Cumru Township, Berks County, Pennsylvania.

6. *Joint Municipal Authority of Wyomissing Valley D–91–9 CP.* A sewage treatment plant (STP) project to modify the applicant's existing 4.0 mgd STP which serves the Boroughs of West Reading, Wyomissing, Shillington, Mohnton, and West Lawn, portions of Wyomissing Hill; portions of Spring and Cumru Townships, and the City of Reading, all in Berks County, Pennsylvania. The STP is located adjacent to Wyomissing Creek, in the City of Reading, approximately 1,000 feet upstream of its confluence with the Schuylkill River. Treated effluent will continue to discharge via the existing outfall to Wyomissing Creek.

7. *Schuylkill County Municipal Authority D–91–16 CP.* An application for approval of wastewater treatment project that will provide primary settling facilities to treat an average of 0.17 mgd of wastewater generated at the applicant's proposed Broad Mountain Water Treatment Plant. The facilities will serve portions of the applicant's water distribution system in central Schuylkill County. The treated wastewater, to consist mainly of filter backwash, will be discharged to Wolf Creek. The facilities will be located by the north bank of Wolf Creek, just south of the Blythe Township line, in New Castle Township, Schuylkill County, Pennsylvania.

8. *Hackettstown Municipal Utilities Authority D–91–30 CP.* A sewage treatment plant (STP) upgrade and expansion project to increase the average design flow treatment capacity of the Hackettstown Water Pollution Control Plant from 1.65 mgd to 3.30 mgd. The STP will continue to serve the growing population of Hackettstown and portions of the surrounding municipalities, including Mansfield and Independence Townships in Warren County and Washington Township in Morris County. The STP is located on Esna Drive just east of the Musconetcong River and the treated effluent will continue to discharge to the Musconetcong River in Washington Township, Morris County, New Jersey.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

* * * * *

Public Information Notice

Water Quality Program

The Commission is preparing its water quality program for the fiscal year ending September 30, 1992. Notice of this action is given in accordance with the requirements of the Federal Clean Water Act, as amended. The proposed program will involve a variety of activities in the areas of planning, surveillance, compliance monitoring, regional coordination, water quality standards, wasteload allocations and public participation. While the proposed program is not subject to public hearing by the Commission, it will be available for examination and review by interested individuals at the Commission's offices upon request beginning July 1, 1991. The public review and comment period will end August 2, 1991. Please contact Seymour P. Gross for further information.

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Dated: June 4, 1991.
Susan M. Weisman,
Secretary.
[FR Doc. 91-13852 Filed 6-11-91; 8:45 am]
BILLING CODE 3510-01-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 12, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) frequency of collection; (4) the affected public; (5) reporting burden; and/or (6) recordkeeping burden; and (7) abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: June 6, 1991.
Mary P. Liggett,
Acting Director, Office of Information Resources Management.

Office of Elementary and Secondary Education

Type of Review: Revision.
Title: Application and Continuation Application for Grants under the High School Equivalency Program (HEP) and the College Assistance Migrant Program (CAMP).
Frequency: Annually.
Affected Public: Non-profit institutions.

Reporting Burden

Responses: 110, Burden Hours: 2,080.

Recordkeeping Burden

Recordkeepers: 0, Burden Hours: 0.
Abstract: This form will be used by secondary and postsecondary institutions to apply for funding under the High School Equivalency Program (HEP) and the College Assistance Migrant Program (CAMP). The Department will use the information to make grant awards.

Office of Planning, Budget and Evaluation

Type of Review: New.
Title: Even Start Evaluation In-Depth Study.
Frequency: One-time.
Affected Public: Individuals or households; State or local governments.

Reporting Burden

Responses: 2,000, Burden Hours: 854.

Recordkeeping Burden

Recordkeepers: 0, Burden Hours: 0.
Abstract: This study will collect information about ten sites implementing the Even Start Program. The Department will use this information for program evaluation and assessment.

Office of Intergovernmental and Interagency Affairs

Type of Review: New.
Title: Center For Choice in Education Hotline.
Frequency: On occasion.
Affected Public: Individuals or households, State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations.

Reporting Burden

Responses: 5,000, Burden Hours: 585.

Recordkeeping Burden

Recordkeepers: 0, Burden Hours: 0.
Abstract: The Center for Choice Hotline functions as a resource for information and assistance on parental choice in education. The Department will maintain a database of callers who call the center to provide them with information on parental choice in education.

Office of Postsecondary Education

Type of Review: Extension.
Title: Procedures for Certification of Need Analysis Servicers' Systems.
Frequency: Annually.
Affected Public: Businesses or other for-profit; Non-profit institutions.

Reporting Burden

Responses: 70, Burden Hours: 35.

Recordkeeping Burden

Recordkeepers: 0, Burden Hours: 0.
Abstract: This form will be used by institutions of higher education who enter into an agreement with the Secretary for the purpose of obtaining need analysis system certification. This information will be used by the Department to systematically determine whether each need analysis servicer meets the requirements for certification.

[FR Doc. 91-13906 Filed 6-11-91; 8:45 am]
BILLING CODE 4000-01-M

Training Programs for Educators—Innovative Alcohol Abuse Education Programs

AGENCY: Department of Education.

ACTION: Notice of final priorities for fiscal year (FY) 1991.

SUMMARY: The Secretary announces absolute priorities for a grant competition to be held in FY 1991 under section 4607(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3156-1(b)). Under this program, financial assistance is provided to public or private organizations, institutions, or agencies to train educators in strategies designed to mitigate problems associated with alcoholism in the family. The absolute priority would require that each project: (1) provide for region-wise services in one of five areas, and (2) train educators who serve children in grades 5-8.

EFFECTIVE DATES: These priorities take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Madeline Bosma, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2130, Washington, DC 20202-6439. Telephone: (202) 401-3510. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC, 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: Projects supported under section 4607(b) of the Elementary and Secondary Education Act of 1965 (ESEA) must provide training in four statutorily mandated areas. Each project must:

Increase educators' awareness of children's problems that may be caused by an alcoholic parent;

Enhance educators' ability to identify children at risk for alcohol abuse;

Inform educators concerning referral of children of alcoholics for appropriate professional treatment; and

Train educators to inform the public about the special problems of children who have an alcoholic parent.

With 1990 funds appropriated under section 4607(a) of the ESEA, the Department is currently developing the following: A handbook for educators on alcohol abuse prevention; a module on high-risk youth that will be added to Learning to Live Drug Free (the Department's recently issued drug prevention curriculum model); instructional materials on alcohol abuse education designed to assist educators of children of special populations (Hispanics, Blacks, Native Americans, and the economically disadvantaged); and materials for use by educators in classrooms where children of several cultures are represented.

These materials will be available by October 1991, and will be provided to grantees for use in training programs funded under these priorities.

By establishing an absolute priority mandating the provision of region-wide services, the Department hopes that: Training about alcohol abuse education will be available to educators in every State, providing maximum coverage of students; the funding available for this important program will be maximized through coordination and integration with other alcohol abuse prevention training efforts across the region; this competition will integrate prevention training efforts at SEAs and LEAs; and duplication of existing training efforts will be avoided.

The Department has drawn regional boundaries for the provision of training and other prevention services in its regulations for Regional Centers for Drug-Free Schools and Communities. The boundaries in the absolute priority will coincide with the regional center boundaries. The Department has encouraged States to work toward coordinated, regional responses to the provision of prevention services, and believes that this program provides another opportunity for States to share information and approaches—preferably among already developed networks about alcohol abuse prevention.

On January 29, 1991, the Secretary published a notice of proposed priorities for this program in the **Federal Register** (56 FR 3386).

Except for minor editorial revisions, there are no differences between the proposed priorities and these final priorities.

Note: This notice of final priorities does *not* solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register**.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priorities, two parties submitted comments. An analysis of the comments and of the changes in the priorities since publication of the notice of proposed priorities follows. Technical and other minor changes are not addressed. Suggested changes the Secretary is not legally authorized to make under the applicable statutory authority are listed without discussion.

Comments: One commenter requested that the Department pay particular attention to the training needs of rural educators in devising strategies that mitigate problems associated with alcoholism in the family. The other commenter recommended changes in the statutorily mandated training areas.

Discussion: The absolute priority for region-wide training for educators is intended to focus on the needs of educators from rural as well as urban and suburban communities. As long as these needs are met, the Secretary does not believe one type of training should receive particular emphasis over another.

Changes: None.

Priorities

Absolute Priority

In addition to providing training in all of the statutorily mandated areas, the Secretary gives absolute preference under 34 CFR 75.105(c)(3) to applications for projects that:

(1) Provide training to educators who serve children in grades 5-8; and

(2) Provide for region-wide training in one of the following geographic areas:

(a) Northeast:

Connecticut	New Jersey
Delaware	New York
Maine	Ohio
Maryland	Pennsylvania
Massachusetts	Rhode Island
New Hampshire	Vermont

(b) Southeast:

Alabama	Puerto Rico
District of Columbia	South Carolina
Florida	Tennessee
Georgia	Virginia
Kentucky	Virgin Islands
North Caroline	West Virginia

(c) Midwest:

Indiana	Missouri
Illinois	Nebraska
Iowa	North Dakota
Michigan	South Dakota
Minnesota	Wisconsin

(d) Southwest:

Arizona	Mississippi
Arkansas	New Mexico
Colorado	Oklahoma
Kansas	Texas
Louisiana	Utah

(e) West:

Alaska	Nevada
American Samoa	Northern Mariana Islands
California	Oregon
Guam	Republic of Palau
Hawaii	Washington
Idaho	Wyoming
Montana	

Under 34 CFR 75.105(c)(3) the Secretary funds under this competition only applications that meet the absolute priority.

Weighting for Selection Criteria

The Education Department General Administrative Regulations at 34 CFR 75.210(c) authorize the Secretary to distribute an additional 15 points among the selection criteria in 34 CFR 75.210 to bring the total possible points for those criteria to a maximum of 100. For the purpose of this competition, the Secretary will distribute the additional points as follows:

Quality of key personnel: Section 75.210(b)(4). Three (3) additional points will be added for a possible total of 10 points for this criterion.

Budget and cost effectiveness: Section 75.210(b)(5). Ten (10) additional points will be added for a possible total of 15 points for this criterion.

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Evaluation plan. Section 75.210(b)(6). Two (2) additional points will be added for a possible total of 7 points for this criterion.

Competitive Preference

Within the absolute priority, under 34 CFR 75.1905(c)(2)(i) the Secretary gives preference to applications that meet the following competitive priority. The Secretary awards up to 15 additional points to an application that meets this competitive priority in a particularly effective way. These points are in addition to any points the application earns under the selection criteria in 34 CFR 75.210 and are awarded to projects that:

(a) Demonstrate a comprehensive understanding of alcohol abuse as it relates to children of alcoholics and their families;

(b) Demonstrate the capability to establish relationships with local educational agencies, State educational agencies, and institutions of highter education that are sufficiently sound to facilitate the replication of the training to be provided under this grant; and

(c) Demonstrate the capability to contribute to increased public awareness of issues related to children of alcoholics and their families through a dissemination network.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Program Authority: 20 U.S.C. 3156–1(b).

(Catalog of Federal Domestic Assistance Number 84.238—Programs for Educators—Innovative Alcohol Abuse Education Programs)

Dated: June 6, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 91–13905 Filed 6–11–91; 8:45 am]

BILLING CODE 4000–01–M

President's Board of Advisors on Historically Black Colleges and Universities; Meeting

AGENCY: President's Board of Advisors on Historically Black Colleges and Universities, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the proposed agenda for a forthcoming meeting of the President's Board of Advisors on Historically Black Colleges and Universities. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

Date and time: June 27, 1991, 1 p.m. until 5:30 p.m., and June 28, 1991, 9 a.m. until 5:30 p.m.

Place: Quality Hotel Capitol Hill, 415 New Jersey Avenue, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Robert K. Goodwin, Executive Director, White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 400 Maryland Avenue, SW., room 3682, ROB–3, Washington, DC 20202, telephone (202) 708–8667.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Historically Black Colleges and Universities is established in accordance with Executive Order 12677, signed April 28, 1989. The Board is established to provide advice and make recommendations on developing an annual plan to increase the participation by historically Black colleges and universities in federally sponsored programs and on how to increase the private sector's role in strengthening historically Black colleges and universities. The Board is also responsible for developing alternative sources of faculty talent, particularly in the fields of science and technology; and for providing advice on how historically Black colleges and universities can achieve greater financial security through the use of improved business, accounting, management, and development techniques.

The proposed agenda includes concurrent Task Force meetings on Thursday, June 27, and a full Board meeting on Friday, June 28, 1991. The full Board meeting will include consideration of recommendations proposed by the Task Forces, an update on current activities to implement Executive Order 12677, and the continued discussion of proposed public and private sector strategies to strengthen historically Black colleges and universities.

Records are kept of all Board meetings and are available for public inspection at the White House Initiative, U.S. Department of Education, ROB–3, room 3682, Washington, DC from the hours of 8:30 a.m. to 5 p.m., Monday through Friday.

Dated: June 7, 1991.

Michael J. Farrell,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 91–13946 Filed 6–11–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award: Oregon Art Institute

AGENCY: U.S. Department of Energy (DOE), Richland Support Office.

ACTION: Notice of intent to make a noncompetitive financial assistance award.

SUMMARY: The DOE Richland Support Office, in accordance with 10 CFR 600.7(b)(2), gives notice of its plan to make a noncompetitive financial assistance award under grant No. DE–FG51–91R020036 to the Oregon Art Institute (OAI) in support of the development of an energy conscious master plan for the expansion of the OAI facility located in Portland, Oregon.

SCOPE: The OAI is providing an unique environmental whereby recent building design and construction/renovation technologies are brought together with recent advancements in energy efficiency standards for a facility that combines various functional activities in one building envelope. Detailed planning will be needed for the expansion and renovation of the OAI properties, which include challenges such as the diversity in physical layout and energy use associated with an art museum/college. By providing an emphasis on energy efficiency for such a facility, better understanding of the design and use of State-of-the-art heating, ventilating, air conditioning (HVAC) and lighting systems is expected to be achieved. The Department of Energy will to participate in the development of the master plan for this activity as it directly relates to one of the primary DOE missions.

Funding for this project is being provided by the Office of Conservation and Renewable Energy as authorized by Public Law 95–91, Department of Energy Organization Act, and specifically mandated by Congress in the FY 1991 appropriation actions. The estimated DOE share of costs for this project is $175,000.

ELIGIBILITY: In accordance with 10 CFR 600.7(b)(2)(i)(B), the DOE has determined that the award of a grant on a noncompetitive basis to the OAI is appropriate because the applicant will be conducting the activity with its own resources and that DOE support of that activity would enhance the public benefit to be derived. DOE knows of no other entity which is conducting or planning to conduct such an activity that is specific for the art museum/college building component.

FOR FURTHER INFORMATION CONTACT: Inquiries must be submitted within fourteen (14) calendar days of publication of this notice to: Julie A. Riel, U.S. Department of Energy, Richland Operations Office, Procurement Division, A7–80, P.O. Box 550, Richland, WA 99352, Telephone: (509) 376–9790.

Dated: June 5, 1991.

P.E. Rasmussen,

Acting Director, Procurement Division, Richland Operations Office.

[FR Doc. 91–13974 Filed 6–11–91; 8:45 am]

BILLING CODE 6450–01–M

[Docket Nos. ER91–453–000, et al.]

Federal Energy Regulatory Commission

Tampa Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

June 5, 1991.

Take notice that the following filings have been made with the Commission:

1. Tampa Electric Co.

[Docket No. ER91–453–000]

Take notice that on May 23, 1991, Tampa Electric Company (Tampa Electric) tendered for filing a Letter of Commitment providing for the sale by Tampa Electric to the Orlando Utilities Commission (Orlando) of up to 100 megawatts of capacity and energy. Tampa Electric states that the Letter of Commitment is submitted as a supplement to Service Schedule J (negotiated interchange service) under the existing agreement for interchange service between Tampa Electric and Orlando, designated as Tampa Electric Rate Schedule FERC No. 27.

Tampa Electric proposes an effective date of May 21, 1991 for the commitment of capacity and energy, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Orlando and the Florida Public Service Commission.

Comment date: June 19, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Union Electric Co.

Docket No. ES91–33–000]

Take notice that on May 30, 1991, Union Electric Company ("Applicant") filed an application with the Federal Energy Regulatory Commission pursuant to 204 of the Federal Power Act seeking authorization for the issuance of short-term, unsecured promissory notes in the aggregate amount of not more $600 million, of which not more than $450 million at any one time may be in the form of commercial paper.

Comment date: June 28, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Oxbow Paper of North Tonawanda, New York, Inc.

[Docket No. QF89–111–001]

On May 28, 1991, Oxbow Power of North Tonawanda, New York, Inc. (Applicant), of 1601 Forum Place, West Palm Beach, Florida 3401 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed 55.956 MW topping-cycle cogeneration facility will be located at 1070 Erie Boulevard, in the City of North Tonawanda, New York. The facility will consist of a combustion turbine generator, a heat recovery boiler (HRB) and an extraction/ condensing steam turbine generator. The facility was originally certified by Commission Order issued March 14, 1989, Oxbow Power Corporation, 46 FERC 62,264. The instant recertification is requested due to changes in ownership from Oxbow Power Corporation to Applicant, configuration, primary fuel use from coal to natural gas and installation date from February 1990 to August 1991. In addition, the thermal output of the facility will now be used in an affiliated greenhouse complex for space heating.

Comment date: July 3, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. PacifiCorp Electric Operations

[Docket No. ER91–456–000]

Take notice that PacifiCorp Electric Operations (PacifiCorp), on May 28, 1991 tendered for filing, Fifth Revised Sheet No. 5D superseding Fourth Revised Sheet No. 5D (Index of Purchasers Executing Service Agreements) under PacifiCorp's FERC Electric Tariff, Original Volume No. 3 (Tariff), and Service Agreement under Service Schedule PPL–3 of the Tariff between PacifiCorp and: (1) Turlock Irrigation District (Turlock) dated March 14, 1991, (2) Arizona Power Pooling Association (Arizona) dated April 22, 1991, (3) Utah Associated Municipal Power Systems (UAMPS) dated May 7, 1991 and (4) Utah Municipal Power Agency (UMPA) dated May 7, 1991.

The Service Agreements provide for the sale of non-form power and energy for resale in accordance with Service Schedule PPL–3 of the Tariff. PacifiCorp's filing herein is provided to add Turlock, Arizona, UAMPS and UMPA to the Index of Purchasers Executing Service Agreements under the Tariff.

PacifiCorp respectfully requests, pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations, that a waiver of prior notice be granted and that effective dates be assigned to the following Service Agreements: January 1, 1991 (Turlock), April 1, 1991 (Arizona), January 1, 1991 (UAMPS) and May 1, 1991 (UMPA). These dates are consistent with the effective dates shown on each of the Service Agreements filed herein. The waiver will have no effect upon purchasers under other rate schedules.

Copies of this filing were supplied to Turlock, Arizona, UAMPS, UMPA, Public Utilities Commission of the State of California, Arizona Corporation Commission and the Utah Public Service Commission.

Comment date: June 19, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Central Maine Power Co.

[Docket No. ER91–457–000]

Take notice that on May 28, 1991, Central Maine Power Company (CMP), tendered for filing the following power sales agreements and Termination Notices.

1. Agreement between Massachusetts Wholesale Electric Company and CMP effective May 1, 1987; Termination Notice effective October 31, 1987;
2. Agreement between Public Service Company of New Hampshire and CMP effective May 1, 1987; Termination Notice effective October 31, 1988;
3. Agreement between Public Service Company of New Hampshire and CMP effective June 1, 1988; Termination Notice effective October 31, 1988;
4. Agreement between Boston Edison Company and CMP effective August 1, 1988; Termination Notice effective September 30, 1988;

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5. Agreement between Public Service Company of New Hampshire and CMP effective October 1, 1988; Termination Notice effective October 31, 1988;

6. Agreement between New England Power Company and CMP effective October 1, 1988; Termination Notice effective October 31, 1988;

7. Agreement between New England Power Company and CMP effective October 1, 1988; Termination Notice effective October 31, 1988;

8. Agreement between Boston Edison Company and CMP effective March 1, 1989; Termination Notice effective October 31, 1989;

9. Agreement between Boston Edison Company and CMP effective May 1, 1989; Termination Notice effective October 31, 1989;

10. Agreement between Public Service Company of New Hampshire and CMP effective November 1, 1989; Termination Notice effective November 31, 1989;

11. Agreement between Boston Edison Company and CMP effective March 10, 1990; Termination Notice effective April 6, 1990;

12. Agreement between Boston Edison Company and CMP effective May 1, 1990; Termination Notice effective October 31, 1990;

13. Agreement between Canal Electric Company and CMP effective May 1, 1990; Termination Notice effective October 31, 1990;

14. Agreement between Public Service Company of New Hampshire and CMP effective May 1, 1990; Termination Notice effective June 30, 1990.

CMP has requested that the Commission waive its notice and filing requirements to permit each of these agreements and notices to become effective in accordance with their terms.

CMP has served copies of the filing on the affected customers and on the Maine Public Utilities Commission.

Comment date: June 19, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. Montaup Electric Co.

[Docket No. FA90-39-001]

Take notice that on May 22, 1991, Montaup Electric Company (Montaup) tendered for filing its refund report in the above-referenced docket.

Comment date: June 19, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. Philadelphia Electric Co.

[Docket Nos. ER91-366-000, ER91-367-000, ER91-368-000, ER91-378-000]

Take notice that on May 19, 1991, Philadelphia Electric Company submitted an amendment to the supporting material previously submitted in these dockets. The amendment provides answers to questions asked by the Commission's Staff.

Comment date: June 19, 1991, in accordance with Standard Paragraph E at the end of this notice.

8. New York State Electric & Gas

[Docket No. ER91-455-000]

Take notice that on May 24, 1991, New York State Electric & Gas Corporation (NYSEG) tendered for filing, pursuant to § 35.13 of the regulations under the Federal Power Act, a proposed rate schedule change to the borderline sales agreement between NYSEG and Pennsylvania Electric Company (Penelec) presently designated as Rate Schedule FERC No. 20. The proposed changes would increase NYSEG revenues from borderline sales to Penelec by $131,000 based on the 12 month period ending December 31, 1990. Penelec revenues from borderline sales to NYSEG would increase $11,000 for the same time period.

The proposal sets the rate for energy delivered at an effective, non-jurisdictional tariff rate of the selling company. Additionally, the supplement provides cost recovery for the construction of distribution facilities in accordance with the filed line extension policy of each company.

NYSEG has sent a copy of this filing to Penelec, to the Pennsylvania Public Utility Commission, and to the Public Service Commission of the State of New York.

Comment date: June 19, 1991, in accordance with Standard Paragraph E at the end of this notice.

9. Consumers Power Co.

[Docket No. ER91-454-000]

Take notice that Consumers Power Company (Consumers) on May 24, 1991, tendered for filing a revision to the annual charge rate for charges due Consumers from Northern Indiana Public Service Company (Northern), under the terms of the Barton Lake-Batavia Interconnection Facilities Agreement (designated Consumers Power Company Electric Rate Schedule FERC No. 44).

The revised charge is provided for in subsection 1.043 of the Agreement, which provides that the annual charge rate may be redetermined from time to time by Consumers. The annual fixed charge factor has been redetermined effective May 1, 1991 using year-end 1990 data with a new annual charge rate. As a result of the redetermination, the monthly charges to be paid by Northern were reduced from $16,235.00 to $17,349.00.

Consumers requests an effective date of May 1, 1991, and therefore requests waiver of the Commission's notice requirements.

Comment date: June 19, 1991, in accordance with Standard Paragraph E at the end of this notice.

10. Washington Water Power Co.

[Docket No. ER91-369-000]

Take notice that on May 28, 1991, The Washington Water Power Company, tendered for filing Amendment 1 to its original filing of a Firm Capacity and Energy Sales Agreement between the Washington Water Power Company and Sierra Pacific Power Company. This Amendment 1 provides additional information requested by Commission staff.

A copy of the filing was served upon Sierra Pacific Power Company.

Comment date: June 19, 1991, in accordance with Standard Paragraph E end of this notice.

11. PacifiCorp Electric Operations

[Docket No. ER91-471-000]

Take notice that PacifiCorp Electric Operations (PacifiCorp), on June 3, 1991, tendered for filing pursuant to sections 205 and 206 of the Federal Power Act and in accordance with § 35.13 of the Commission's Regulations, respectively proposed revised rates under PacifiCorp's FERC Electric Tariff, Original Volume No. 4, Service Schedules PPL-4; PacifiCorp's FERC Electric Tariff, Original Volume No. 5, Service Schedules TS-1 and TS-2; PacifiCorp's FERC Electric Tariff, Original Volume No. 6, Service Schedules RS-HV and RS-LV; and PacifiCorp's Rate Schedule Nos. 262, 280, 297 and 305. PacifiCorp's filing herein is being submitted in compliance with the Commission's Opinion Nos. 318 and 318A under Docket Nos. EC88-2-000 and EC88-2-003.

PacifiCorp requests waiver of the Commission's notice requirements, and that the filing be made effective on June 1, 1991, as provided in Opinion Nos. 318 and 318A for all services subject to section 205 of the Federal Power Act.

PacifiCorp requests that the Commission establish an effective date for all services subject to section 206 of the Federal Power Act.

Copies of the filing were served upon all parties hereto, the Wyoming Public Service Commission, the Utah Public Service Commission, the Public Utility Commission of Oregon, the Idaho Public Utilities Commission, the Colorado Public Utilities Commission, the Montana Public Service Commission, the California Public Utility Commission, the Nevada Public Service Commission and the Arizona Public Service Commission.

Comment date: June 20, 1991, in accordance with Standard Paragraph E at the end of this notice.

12. New York State Electric & Gas Corporation

[Docket No. ER91-458-000]

Take notice that New York State Electric & Gas Corporation (NYSEG), on May 28, 1991, tendered for filing Supplement No. 6 to its Agreement with Consolidated Edison Company of New York, Inc. (Con. Edison), designated Rate Schedule FERC No. 87. The proposed changes would decrease revenues by $13,213 based on the twelve month period ending March 31, 1992.

This rate filing, Supplement No. 6, is made pursuant to sections 1 (e) and (f) and 2 (e), (f) and (g) of article III of the August 23, 1963 Facilities Agreement—Rate Schedule FERC No. 87. The annual charges for routine operation and maintenance and general expenses, as well as revenue and property taxes are revised based on data taken fry NYSEG's Annual Report to the Federal Energy Regulatory Commission (FERC No. Form 1) for the twelve months ended December 31, 1990. In addition, Con Edison's pro rate share of the total annual carrying charges associated with the firm supply system is calculated based on the rate of Con Edison's one hour demand at Mohansic plus estimated NYSEG and Con Edison one hour peak input at Wood Street. The levelized annual carrying charges included in the calculation reflect a 11.70 percent return on equity which was approved by the New York State Public Service Commission's Opinion 91-1 in Cases 90-E-0138, 90-E-0139 and 90-G-0140, effective February 1, 1991.

NYSEG requests an effective date of April 1, 1991, and, therefore, requests waiver of the Commission's notice requirements.

Copies of the filing were served upon Consolidated Edison Company of New York and on the Public Service Commission of the State of New York.

Comment date: June 19, 1991, in accordance with Standard Paragraph E at the end of this notice.

13. Pacific Gas and Electric Co.

[Docket No. ER91-459-000]

Take notice that on May 24, 1991, Pacific Gas and Electric Company (PG&E) tendered for filing changes to Rate Schedule FERC No. 84. This Rate Schedule pertains to services that are rendered by PG&E under the agreement entitled the "Interconnection Agreement between PG&E and Northern California Power Agency, City of Alameda, City of Biggs, City of Gridley, City of Healdsburg, City of Lodi, City of Lompoc, City of Palo Alto, City of Roseville, City of Ukiah, and Plumas Sierra Rural Electric Cooperative" (Interconnection Agreement).

This filing tendered a revised exhibit A-4 to the Interconnection Agreement. The proposed exhibit A-4 adds Midway Substation as a point of receipt and delivery point to accommodate transmission service associated with the Transmission Agency of Northern California Transmission Rate Schedule (TANC TRS) filed by PG&E in FERC Docket No. ER91-344-000.

Copies of this filing were served upon NCPA and the California Public Utilities Commission.

Comment date: June 19, 1991, in accordance with Standard Paragraph E at the end of this notice.

14. Florida Power & Light Co.

[Docket No. ER91-460-000]

Take notice that on May 29, 1991, Florida Power & Light Company (FPL) tendered for filing a document entitled Amendment Number Two to Short Term Agreement to Provide Power and Energy by Florida Power & Light Company to Utilities Commission, City of New Smyrna Beach, Florida (New Smyrna).

FPL states that Amendment Number Two revises the capacity commitment by FPL to New Smyrna.

FPL requests that waiver of § 35.3 of the Commission's Regulations be granted and the proposed Amendment Number Two be made effective June 1, 1991. FPL states that a copy of the filing was served on New Smyrna and the Florida Public Service Commission.

Comment date: June 19, 1991 in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to interven or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13891 Filed 6-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-2114-000, et al.]

Great Lakes Gas Transmission Limited Partnership, et al.; Natural Gas Certificate Filings

June 5, 1991.

Take notice that the following filings have been made with the Commission.

1. Great Lakes Gas Transmission Limited Partnership

[Docket No. CP91-2114-000]

Take notice that on May 24, 1991, Great Lakes Gas Transmission Limited Partnership (Great Lakes), One Woodward Avenue, suite 1600, Detroit, Michigan 48226, filed in Docket No. CP91-2114-000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the interruptible transportation service performed by Great Lakes for Michigan Consolidated Gas Company (MichCon) pursuant to Great Lakes' FERC Gas Tariff, Original Volume No. 2, Rate Schedule T-14, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Great Lakes states that it provides an interruptible transportation service of up to 400 Mcf per day of natural gas for MichCon pursuant to a Transportation Service Agreement between Great Lakes and MichCon dated July 8, 1985, which is on file with the Commission as Great Lakes' Rate Schedule T-14. Great Lakes also states that it transports the natural gas for MichCon from a point of interconnection located in Summerfield Township, Clare County, Michigan (Summerfield Receipt Point) to another point of interconnection located at Belle River Mills, Michigan (Belle River Mills Delivery Point).

Great Lakes further states that under its open-access certificate in Docket No. CP89-2198-000, Great Lakes and MichCon entered into a Service Agreement dated October 23, 1990, which provides for interruptible transportation for MichCon from the Summerfield Receipt Point to the Belle River Mills Delivery Point. MichCon advised Great Lakes that because the Service Agreement provides MichCon with more flexibility than is provided under Rate Schedule T-14, the T-14 agreement is no longer needed.

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Therefore, Great Lakes and MichCon have entered into a letter agreement dated March 27, 1991 which terminates the T-14 agreement.

Comment date: June 26, 1991, in accordance with Standard Paragraph F at the end of this notice.

Columbia Gulf Transmission Co.

2. ANR Pipeline Company

South Georgia Natural Gas Co.

[Docket Nos. CP91-2154-000, CP91-2156-000, CP91-2157-000]

Take notice that Applicants filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued to Applicants pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix A. Applicants' addresses and transportation blanket certificates are shown in the attached appendix B.

Comment date: July 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

APPENDIX A—PAGE 1 OF 1

Docket Number (date filed)	Shipper name (type)	Peak day, average day, annual [2]	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up
CP91-2154-000 (5-31-91)	CNG Trading Co. (Marketer).	10,000 5,000 1,825,000	LA, OLA	LA	10-25-88, ITS-2, Interruptible.	ST91-8613, 3-23-91.
CP91-2156-000 (5-31-91)	Dekalb Energy Canada Ltd. (Marketer).	30,000 30,000 10,950,000	LA, OK, KS, TX	Various	10-1-90, ITS, Interruptible.	ST91-8283, 4-4-91.
CP91-2157-000 (5-31-91)	City of Sylvester, Ga. (Municipality).	379 379 138,335	AL	GA	5-2-90, FT, Firm	ST91-8243, 4-2-91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2] Columbia Gulf's volumes are in MMBtu, ANR's volumes are in Dth, and South Georgia's volumes are in Mcf.

APPENDIX B

Applicant's address	Blanket docket
ANR Pipeline Co., 500 Renaissance Center, Detroit, Michigan 48243	CP88-532-000.
Columbia Gulf Transmission Co., 3805 West Alabama, Houston, Texas 77027	CP86-239-000.
South Georgia Natural Gas Co., Post Office Box 2563, Birmingham, Alabama 35202-2563	CP90-2125-000.

3. Tennessee Gas Pipeline Co.

[Docket Nos. CP91-2170-000, CP91-2171-000]

Take notice that on June 4, 1991, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under its blanket certificate issued in Docket No. CP87-115-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Tennessee and is summarized in the attached appendix.

Comment date: July 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Dth	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2170-000 (6-4-91)	DeSoto Pipeline Company, Inc. (Intrastate Pipeline).	4,000 4,000 1,460,000	OLA, LA, TX	TX	4-19-91 [2] IT, Interruptible.	ST91-8611-000 5-1-91.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Dth	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2171-000 (6-4-91)	North Canadian Marketing Corporation (Marketer).	200,000 200,000 73,000,000	TN	PA	4-19-91, IT, Interruptible.	ST91-8715-000 4-20-91.

[1] Offshore Louisiana is shown as OLA.
[2] As amended.

4. Panhandle Eastern Pipe Line Co.

[Docket Nos. CP91-2143-000, CP91-2144-000, CP91-2145-000, CP91-2146-000, CP91-2145-000]

Take notice that the above referenced company (Applicant) filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicant end is included in the attached appendix.

The Applicant also states that it would provide the service for each shipper under an executed transportation agreement, and that the Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: July 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] avg. annual	Points of		Start up date rate schedule	Related [2] dockets
				Receipt	Delivery		
CP91-2143-000 5-31-91	Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, TX 77251-1642.	Two Rivers Oil & Gas Company, Inc.	150 150 54,750	KS, CO, IL, MI, OH, OK, TX, WY.	IL	4-1-91, PT-I	CP86-585-000, ST91-8543-000.
CP91-2144-000 5-31-91	Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, TX 77251-1642.	Associated Natural Gas, Inc.	20,000 20,000 7,300,000	KS, CO, IL, MI, OH, OK, TX.	OH	4-1-91, PT-I	CP86-585-000, ST91-8545-000.
CP91-2145-000 5-31-91	Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, TX 77251-1642.	Bishop Pipeline Corporation.	20,000 20,000 7,300,000	CO, IL, KS, OK, MI, OH, TX.	IN	4-1-91, PT-I	CP86-585-000, ST91-8336-000.
CP91-2146-000 5-31-91	Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, TX 77251-1642.	Amoco Energy Trading Corporation.	75,000 75,000 27,375,000	OK, CO, IL, KS, TX	KS	4-5-91, PT-I	CP86-585-000, ST91-8336-000.
CP91-2147-000 5-31-91	Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, TX 77251-1642.	Bishop Pipeline Corporation.	10,000 10,000 3,650,000	OK, CO, IL, KS, MI, OH, TX.	KS	4-1-91, PT-I	CP86-585-000, ST91-8344-000.

[1] Quantities are shown in Dt. Unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

5. Panhandle Eastern Pipe Line Co.

[Docket Nos. CP91-2148-000, CP91-2149-000, CP91-2150-000, CP91-2151-000, CP91-2152-000, CP91-2153-000]

Take notice that on May 31, 1991, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77251-1642, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day

[4] These prior notice requests are not consolidated.

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and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: July 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

APPENDIX

Docket No.[3] (date filed)	Shipper name	Peak day,[1] avg. annual	Points of[2] Receipt	Points of[2] Delivery	Start up date, rate schedule, Service type	Related docket, contract date
CP91-2148-000 (5-31-91)	Mountain Iron & Supply Co.	10,000 10,000 3,650,000	CO, IL, KS, MI, OH, OK, TX.	KS	4-16-91, PT, Interruptible.	ST91-8542-000, 4-3-91.
CP91-2149-000 (5-31-91)	Amgas, Inc	200 100 36,500	CO, IL, KS, MI, OH, OK, TX, WY.	IL	4-1-91, PT, Interruptible.	ST91-8341-000, 2-19-91.
CP91-2150-000 (5-31-91)	Amgas, Inc	150 75 27,375	CO, IL, KS, MI, OH, OK, TX, WY.	IL	4-8-91, PT, Interruptible.	ST91-8342-000, 4-4-91.
CP91-2151-000 (5-31-91)	Aquila Energy Marketing Corp.	100,000 100,000 36,500,000	CO, IL, KS, MI, OH, OK, TX.	KS	4-1-91, PT, Interruptible.	ST91-8544-000, 3-22-91.
CP91-2152-000 (5-31-91)	A.P. Green Industries, Inc.	4,188 4,188 1,528,620	CO, IL, KS, MI, OH, OK, TX, WY.	MO	4-1-91, PT, Interruptible.	ST91-8344-000, 1-3-90.
CP91-2153-000 (5-31-91)	Amgas, Inc	90 45 16,425	CO, IL, KS, MI, OH, OK, TX, WY.	IL	4-1-91, PT, Interruptible.	ST91-8345-000, 2-19-91.

[1] Quantities are shown in dekatherms.
[2] Offshore Louisiana and Offshore Texas are shown as OLA and OTX.
[3] If an ST docket is shown, 120-day transportation service was reported in it.

6. Southern Natural Gas Co. Southern Natural Gas Co. ANR Pipeline Co.

[Docket Nos. CP91-2158-000, CP91-2159-000, CP91-2161-000]

Take notice that Southern Natural Gas Coompany, P.O. Box 2563, Birmingham, Alabama 35202-2563, and ANR Pipeline Company, 500 Renaissance Center, Detroit, Michigan 48243, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP88-316-000 and Docket No. CP88-532-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[5]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Applicants and is summarized in the attached appendix.

Comment date: July 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

[5] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day average day, annual MMBtu	Receipt Points[1]	Delivery Points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2158-000 (5-31-91)	Southeastern Gas Gathering Ltd. (Marketer).	100,000 25,000 9,125,000	OTX, OLA, TX, LA, MS, AL.	GA, SC, TN	3-4-91, IT, Interruptible.	ST91-8244-000, 3-31-91.
CP91-2159-000 (5-31-91)	City of Sylvester, Georgia (LDC).	381Mcf 381Mcf 139,065Mcf	OTX, OLA, TX, LA, MS, AL.	AL	4-2-91, FT, Firm	ST91-8594-000, 4-2-91.
CP91-2161-000 (5-31-91)	Vesta Energy Company (Marketer).	10,000Dth 10,000Dth 3,650,000Dth	OTX, OLA, LA, OK, KS, TX.	MO	3-6-91, ITS, Interruptible.	ST91-8282-000, 4-6-91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

7. Panhandle Eastern Pipe Line Co.

[Docket No. CP91-2138-000]

Take notice that the above referenced company (Applicants) filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests

which are on file with the Commission and open to public inspection.[6]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicants also states that it would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: July 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

[6] These prior notice requests are not consolidated.

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Docket No. (date filed)	Applicant	Shipper name	Peak day[1] average, annual	Points of Receipt	Points of Delivery	Start up date, rate schedule	Related[2] dockets
CP91-2138-000 5-31-91	Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, TX 77251-1642.	Amgas, Inc	50 25 9,125	KS, CO, IL, OK, MI, OH, TX, WY.	IL	PT Interruptible, 4-1-91.	CP86-585-000 ST91-8343-000
CP91-2139-000 5-31-91	Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, TX 77251-1642.	Amgas, Inc	26 13 4,745	KS, CO, IL, OK, MI, OH, TX, WY.	IL	PT Interruptible, 4-8-91.	CP86-585-000 ST91-8340-000
CP91-2140-000 5-31-91	Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, TX 77251-1642.	Clinton Gas Transmission Inc.	50,000 50,000 18,250,000	IL, CO, KS, OK, MI, OH, TX.	IN	PT Interruptible, 4-1-91.	CP86-585-000 ST91-8423-000
CP91-2141-000 5-31-91	Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, TX 77251-1642.	Amgas, Inc	22 7 2,555	KS, CO, IL, KS, OK, MI, OH, TX, WY.	IL	PT Interruptible, 4-1-91.	CP86-585-000 ST91-8339-000
CP91-2142-000 5-31-91	Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, TX 77251-1642.	Amgas, Inc	70 35 12,775	CO, IL, KS, OK, MI, OH, TX, WY.	IL	PT Interruptible, 4-1-91.	CP86-585-000 ST91-8337-000

[1] Quantities are shown in Dt. unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the date after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

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authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13892 Filed 6-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-85-000]

Arkla Energy Resources, a division of Arkla, Inc.; Informal Settlement Conference

June 6, 1991.

Take notice that an informal settlement conference will be convened in this proceeding on Tuesday, June 18, 1991, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact William J. Collins (202) 208-0248 or Marsha L. Gransee (202) 208-0783.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13893 Filed 6-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-168-000]

Bayou Interstate Pipeline System; Petition for Waiver and Extension of Time

June 6, 1991.

Take notice that on May 30, 1991, Bayou Interstate Pipeline System (Bayou) filed a petition for waiver of § 154.305(e) of the Commission's Regulations that require filing an Annual PGA filing 60 days before a pipeline's proposed annual PGA effective date, as established under § 154.304(c). Bayou requests an extension of time for such filing.

Bayou states that the waiver and request for extension of time is being sought due to a pending abandonment application in Docket No. CP90-2282-000 wherein Bayou is seeking abandonment authority for its certificated facilities. Bayou states that upon receiving such authority it will commence to wind up all of its activities and cease to be a "natural gas company" as defined in Natural Gas Act.

Bayou states that a copy of the filing has been mailed to Bayou's jurisdictional customer and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13894 Filed 6-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-108-010]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 6, 1991.

Take notice that Columbia Gas Transmission Corporation (Columbia) on May 23, 1991, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1:

To be Effective November 1, 1990

Second Substitute Second Revised Sheet No. 40
Second Substitute Second Revised Sheet No. 41
Second Substitute Second Revised Sheet No. 45
Second Substitute Second Revised Sheet No. 61
Second Substitute Second Revised Sheet No. 65

To Be Effective November 3, 1990

Substitute Third Revised Sheet No. 41
Substitute Third Revised Sheet No. 61

Columbia states that the tariff sheets are being refiled for the sole purpose of correcting clerical errors to certain tariff sheet language that had already been accepted for filing but which was not incorporated in the filed tariff sheets.

Columbia states that copies of the filing were served upon Columbia's jurisdictional customers, interested state commissions, and upon each person designated on the official service lists compiled by the commission's Secretary in Docket Nos. RP90-108, MT89-3-004 and MG89-11-001.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13895 Filed 6-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-4-2-000]

East Tennessee Natural Gas Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

June 6, 1991.

Take notice that on June 3, 1991, East Tennessee Natural Gas Company (East Tennessee) filed Third Revised Sheet No. 6 to its FERC Gas Tariff, First Revised Volume No. 1, to be effective July 4, 1991.

East Tennessee states that the purpose of Third Revised Sheet No. 6 is to reflect the allocation to East Tennessee of an additional $65,873 in new transition demand costs allocated to East Tennessee by Tennessee Gas Pipeline Company in its May 31, 1991 filing in Docket No. RP91-29. East Tennessee is flowing these charges through to its customers pursuant to article 26 of its FERC Gas Tariff.

East Tennessee requests waiver of § 26.4 of the General Terms and Conditions of its FERC Gas Tariff to the extent necessary for acceptance of the instant filing on July 4, 1991, as proposed.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (§§ 385.214, 385.211). All such petitions or protests should be filed on or before June 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13896 Filed 6-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-4-7-000]

Southern Natural Gas Co.; Proposed Changes to FERC Gas Tariff

June 6, 1991.

Take notice that on June 3, 1991, Southern Natural Gas Company (Southern) tendered for filing the following revised sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1:

Eighth Revised Sheet No. 4B.1
Eighth Revised Sheet No. 4B.2
Eighth Revised Sheet No. 4B.3

Southern states that the above-referenced tariff sheets are being filed with a proposed effective date of July 1, 1991 and are filed solely to reflect the elimination from Southern's take-or-pay recovery of approximately $1.9 million of buy-out and buy-down costs allocated to Southern by Sea Robin Pipeline Company which were included in Southern's original July 30, 1990 tariff filing in this proceeding and protested by Atlanta Gas Light Company and Chattanooga Gas Company (Atlanta). This elimination has been made by Southern in order to resolve the disagreement with Atlanta over the appropriate amount of directly incurred Sea Robin costs which could be flowed through by Southern and will render any further Commission consideration of the protest filed by Atlanta unnecessary.

Southern states that copies have been served upon Southern's jurisdictional purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (§§ 385.214, 385.211). All such petitions or protests should be filed on or before June 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestant parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13897 Filed 6-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-7-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 6, 1991.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on May 31, 1991 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Fifteenth Revised Sheet No. 76
Fourteenth Revised Sheet No. 77
Thirteenth Revised Sheet No. 78
Fourteenth Revised Sheet No. 79
Third Revised Sheet No. 483C
Third Revised Sheet No. 483D
First Revised Sheet No. 483D.1

Texas Eastern states that these tariff sheets are being filed to establish the procedures by which Texas Eastern will recover the take-or-pay charges billed to Texas Eastern by Texas Gas Transmission Corporation pursuant to Texas Gas Transmission Corporation's Docket No. RP91-134-000.

The proposed effective date of the tariff sheets listed above is July 1, 1991.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers, interested state commissions and all parties in Docket Nos. RP91-72, *et al.*

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13898 Filed 6-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-68-034]

Transcontinental Gas Pipe Line Corp.; Report of Refunds

June 6, 1991.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on May 24, 1991, tendered for filing with the Federal Energy Regulatory Commission (Commission) its Interest Rate True-Up of PSP and LPSP Charges, made pursuant to sections 29 and 32 through 37 of the General Terms and Conditions of Transco's FERC Gas Tariff, Second Revised Volume No. 1.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such protests should be filed on or before June 13, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to the proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-13899 Filed 6-11-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-49-000 and RP91-169-000]

Williston Basin Interstate Pipeline Co.; Purchased Gas Cost Adjustment Filing

June 6, 1991.

Take notice that on May 31, 1991, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Roser Avenue, Bismarck, North Dakota 58501, tendered for filing its Annual Purchased Gas Cost Adjustment Filing (PGA) pursuant to 18 CFR 154.301, *et seq.* of the Commission's Regulations and section 21 of its FERC Gas Tariff (First Revised Volume No. 1).

The proposed effective date of the tariff sheets is August 1, 1991.

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Williston Basin states that Second Revised Thirty-fourth Revised Sheet No. 10 (First Revised Volume No. 1) and Second Revised Thirty-fifth Revised Sheet No. 10 (original Volume No. 2) reflect a 4.449 cents per dkt Current Gas Cost Adjustment applicable to Rate Schedules G–1, SGS–1, E–1 and X–1 and a 3.700 cents per dkt Surcharge Adjustment applicable to Rate Schedules G–1 and SGS–1. These changes result in an overall 8.293 cents per dkt increase in the Cumulative Adjustment applicable to Rate Schedules G–1 and SGS–1, as compared to that contained in the Company's April 22, 1991 PGA filing in Docket Nos. TQ90–4–49–000, RP90–113–000 and TQ91–3–49–000 which was to be effective May 1, 1991.

Williston Basin also submits for filing Second Revised Twenty-seventh Revised Sheet No. 11, Second Revised Thirty-third Revised Sheet No. 12 and First Revised Sixteenth Revised Sheet No. 97A (Original Volume No. 1–A), Second Revised Twenty-second Revised Sheet Nos. 10 and 11 (Original Volume No. 1–B), and Second Revised Thirty-fifth Revised Sheet No. 10 and Second Revised Twenty-eighth Revised Sheet No. 11B (Original Volume No. 2) which are affected by the instant change in the average cost of purchased gas. Specifically, the referenced tariff sheets reflect a 0.363 cents per dkt decrease in the fuel reimbursement charge component of the Company's relevant transportation rates as comapred to that contained in the Company's April 22, 1991 filing in Docket Nos. TQ90–4–49–000, RP90–113–000 and TQ91–3–49–000 which was to be effective May 1, 1991.

Also, as referenced in Second Revised Twenty-seventh Revised Sheet No. 11 and Second Revised Thirty-third Revised Sheet No. 12 (Original Volume No. 1–A) and Second Revised Thirty-fifth Revised Sheet No. 10 (Original Volume No. 2), Williston Basin has revised the fuel reimbursement percentage applicable to certain transportation rate schedules to 2.521%, to be effective August 1, 1991.

Consistent with the Company's filing of two sets of tariff sheets (Primary and Alternate) in its Annual Take-or-Pay Reconciliation Filing submitted the same date in Docket No. TM91–3–49–000, to be effective July 1, 1991, the instant filing also contains Alternate tariff sheets. Williston basin requests that the Commission accept the Alternate tariff sheets only in the event that the Commission makes the Company's April 30, 1991 Section 4 rate filing in Docket No. RP91–141–000 effective prior to August 1, 1991.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 20, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–13900 Filed 6–11–91; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3964–4]

Office of Research and Development

Ambient Air Monitoring Reference and Equivalent Methods; Reference Method Designation

Notice is hereby given that EPA, in accordance with 40 CFR part 53, has designated another reference method for the measurement of ambient concentrations of nitrogen dioxide. The new reference method is an automated method (analyzer) which utilizes the measurement principle (gas phase chemiluminescence) and calibration procedure specified in appendix F of 40 CFR part 50. The new designated method is identified as follows:

RFNA–0691–082, "Advanced Pollution Instrumentation, Inc. Model 200 Nitrogen Oxides Analyzer," operated on a range of either 0–0.05 ppm or 0–1.0 ppm, with a 5-micron TFE filter element installed in the rear-panel filter assembly, with either a user- or vendor-supplied vaccum pump capable of providing 5 inches mercury absolute pressure at 5 slpm, with either a user- or vendor-supplied dry air source capable of providing air at a dew point of 00 C or lower, with the following settings of the adjustable setup variables:

Dynamic Span	OFF
Dynamic Zero	OFF
Dwell Time	7 seconds
Sample Time	8 seconds
Reaction Cell Temperature	500 C
PMT Temperature Set Point	150 C
Normal Filter Size	12 samples
Rate of Change (ROC) Threshold	10%
Adaptive Filer	ON,

and with or without any of the following options:

180	Stainless Steel Valves
184	Stainless Steel Valves
280	Rack Mount With Slides
283	Internal Zero/Span With Valves (IZS)
325	RS–232/Status Output
355	Expendables
356	Level One Spares Kit
357	Level Two Spares Kit
PE5	Permeation Tube for IZS.

This method is available from Advanced Pollution Instrumentation Inc., 8815 Production Avenue, San Diego, California 92121–2219. A notice of receipt of application for this method appeared in the **Federal Register**, Volume 56, April 2, 1991, page 13472.

A test analyzer representative of this method has been tested by the applicant, in accordance with the test procedures specified in 40 CFR part 53. After reviewing the results of these tests and other information submitted by the applicant, EPA has determined, in accordance with 53, that this method should be designated as a reference method. The information submitted by the applicant will be kept on file at EPA's Atmospheric Research and Exposure Assessment Laboratory, Research Triangle Park, North Carolina 27711, and will be available for inspection to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated reference method, this method is acceptable for use by states and other air monitoring agencies under requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any limitations (e.g., dwell time) specified in the applicable designation (see description of the method above). Vendor modifications of a designated method used for purposes of part 58 are permitted only with prior approval of EPA, as provided in part 53. Provisions concerning modification of such methods by users are specified under § 2.8 of appendix C to 40 CFR part 58 (Modifications of Methods by Users).

In general, this designation applies to any analyzer which is identical to the analyzer described in the designation. In many cases, similar analyzers manufactured prior to the designation may be upgraded (e.g., by minor

modification or by substitution of a new operation or instruction manual) so as to be identical to the designated method and thus achieve designation status at a modest cost. The manufacturer should be consulted to determine the feasibility of such upgrading.

Part 53 requires that sellers of designated methods comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(1) A copy of the approved operation or instruction manual must accompany the analyzer when it is delivered to the ultimate purchaser.

(2) The analyzer must not generate any unreasonable hazard to operators or to the environment.

(3) The analyzer must function within the limits of the performance specifications given in Table B–1 of part 53 for at least one year after delivery when maintained and operated in accordance with the operation manual.

(4) Any analyzer offered for sale as a reference or equivalent method must bear a label or sticker indicating that it has been designated as a reference or equivalent method in accordance with part 53.

(5) If such an analyzer has two or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(6) An applicant who offers analyzers for sale as reference or equivalent methods is required to maintain a list of ultimate purchasers of such analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the analyzer has been canceled or if adjustment of the analyzers is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(7) An applicant who modifies an analyzer previously designated as a reference or equivalent method is not permitted to sell the analyzer (as modified) as a reference or equivalent method (although he may choose to sell it without such representation), nor to attach a label or sticker to the analyzer (as modified) under the provisions described above, until he has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified or until he has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the analyzer as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Atmospheric Research and Exposure Assessment Laboratory, Department E (MD–77), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this reference method will provide assistance to the states in establishing and operating their air quality surveillance systems under part 58. Technical questions concerning the method should be directed to the manufacturer. Additional information concerning this action may be obtained from Frank F. McElroy, Quality Assurance Division (MD–77), Atmospheric Research and Exposure Assessment Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–2822.

Erich W. Bretthauer,

Assistant Administrator for Research and Development.

[FR Doc. 91–13956 Filed 6–11–91; 8:45 am]

BILLING CODE 6560–50–M

[OPP–50728; FRL–3928–6]

Receipt of Notification of Intent to Conduct Small-Scale Field Testing; Nonindigenous Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from the U.S. Department of Agriculture, Agricultural Research Service, a notification of intent to conduct small-scale field testing of an isolate of *Puccinia carduorum* from Turkey for the control of musk thistle in the States of California and Maryland.

DATES: Written comments must be received on or before June 26, 1991.

ADDRESSES: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 246 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Susan T. Lewis, Product Manager (PM–21), Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-557-1900.

SUPPLEMENTARY INFORMATION: A notification of intent to conduct small-scale field testing pursuant to the EPA's "Statement of Policy; Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act" of June 26, 1986 (51 FR 23313), dated April 18, 1991, has been received from the U.S. Department of Agriculture, Agricultural Research Service, of Frederick, Maryland. The purpose of the proposed testing is to evaluate the efficacy of Turkish isolate of *Puccinia carduorum* as a mycoherbicide for the control of musk thistle, which primarily infests range and pasture lands. The proposed field tests would be conducted in the States of California and Maryland. The total area of the proposed test sites would be less than 10 acres.

Dated: May 28, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91–13532 Filed 6–11–91; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30314; FRL–3876–8]

Pesticide Reregistration Eligibility Document; Availability for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of Final Reregistration Eligibility Document; Opening of Public Comment Period.

SUMMARY: This notice announces the availability of the final Reregistration Eligibility Document (RED) for fosetyl-Al and the establishment of a public comment period. The RED is the Agency's formal regulatory assessment of the health and environmental data base of the subject chemical and

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presents the Agency's determination regarding which uses of fosetyl-Al are eligible for reregistration.

DATES: Written comments on the fosetyl-Al RED must be submitted by August 12, 1991.

ADDRESSES: Three copies of comments, identified with the docket number (OPP-30314), should be submitted to: By mail: Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket and docket index will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Technical questions about the RED should be directed to Ms. Judith Coombs at 703-308-8173. To request a copy of the Reregistration Eligibility Document or a RED Fact Sheet for fosetyl-Al, contact the Public Information Branch, in rm. 246 at the address given above (703-557-2805). Requests should be submitted in time to allow sufficient time for receipt before the close of the comment period.

SUPPLEMENTARY INFORMATION: The Agency has issued a final Reregistration Eligibility Document for fosetyl-Al. This RED, and one for *Heliothis zea* (NPV), notice of which is being issued elsewhere in this issue of the **Federal Register**, are the first two RED's completed by the Agency. Under the provisions of the Federal Insecticide, Fungicide and Rodenticide Act, as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate most existing pesticides to make sure they meet current scientific and regulatory standards.

Fosetyl-Al has a complete data base, and the Agency has determined that the registered uses do not cause unreasonable adverse effects to people or the environment. All registered uses of fosetyl-Al are eligible for reregistration. All registrants of fosetyl-Al have been sent the RED and must respond to the labeling requirements within 8 months of receipt. No additional data are being required. The 60-day public comment period does not affect the registrant's response due date.

The Agency's rationale for issuing the fosetyl-Al RED as a final document with a 60-day comment period is based on the Agency's experience with Registration Standards and comments received from the public at a reregistration workshop sponsored by the Agency in September 1990. Public comments on Registration Standards were very limited. Most comments were from affected registrants and involved clarification of data requirements and/or questions about the appropriateness of certain data and or labeling changes. The Agency believes registrants will have ample opportunity to raise issues with the Agency prior to the due date of their response or in the response itself. Most of the participants at the September 1990 workshop, which included several hundred registrants, State and federal agency representatives, and public interest groups, expressed a desire to have an opportunity to comment on a draft RED prior to the Agency issuing the document in final. Although the Agency is issuing the fosetyl-Al RED in final, it believes that the establishment of a 60-day comment period will provide sufficient opportunity for public input and allow a mechanism for any subsequent necessary amendments to the RED. The Agency believes this approach is necessary in order to reduce the time required to complete the assessment and issue RED's for all affected pesticides and meet the Congressionally mandated timeframes for completion of the reregistration task.

Authority: 7 U.S.C. 136.

Dated: June 1, 1991.

Allan S. Abramson,

Acting Division Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 91-13957 Filed 6-11-91; 8:45 am]

BILLING CODE 6560-50-F

[OPP-30313; FRL-3876-7]

Pesticide Reregistration Eligibility Document; Availability for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of Final Reregistration Eligibility Document; Opening of Public Comment Period.

SUMMARY: This notice announces the availability of the final Reregistration Eligibility Document (RED) for *Heliothis zea* (NPV) and the establishment of a public comment period. The RED is the Agency's formal regulatory assessment of the health and environmental data base of the subject chemical and presents the Agency's determination regarding which uses of *Heliothis zea* (NPV) are eligible for reregistration.

DATES: Written comments on the *Heliothis zea* (NPV) RED must be submitted by August 12, 1991.

ADDRESSES: Three copies of comments, identified with the docket number (OPP-30313), should be submitted to: By mail: Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket and docket index will be available for public inspection in rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Technical questions about the RED should be directed to Ms. Brigid Lowery at 703-308-8053. To request a copy of the Reregistration Eligibility Document or a RED Fact Sheet for *Heliothis zea* (NPV), contact the Public Information Branch, in rm. 246 at the address given above (703-557-2805). Requests should be submitted in time to allow sufficient time for receipt before the close of the comment period.

SUPPLEMENTARY INFORMATION: The Agency has issued a final Reregistration Eligibility Document for *Heliothis zea* (NPV). This RED, and one for fosetyl-Al, notice of which is being issued elsewhere in this issue of the **Federal Register**, are the first two RED's completed by the Agency. Under the provisions of the Federal Insecticide, Fungicide and Rodenticide Act, as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate most existing pesticides to make sure they meet current scientific and regulatory standards.

Heliothis zea (NPV) has a complete data base, and the Agency has determined that the registered uses do not cause unreasonable adverse effects to people or the environment. All registered uses of *Heliothis zea* (NPV) are eligible for reregistration. All registrants of *Heliothis zea* (NPV) have been sent the RED and must respond to the labeling requirements within 8 months of receipt. No additional data are being required. The 60-day public comment period does not affect the registrant's response due date.

The Agency's rationale for issuing the *Heliothis zea* (NPV) RED as a final document with a 60-day comment period is based on the Agency's experience with Registration Standards and comments received from the public at a reregistration workshop sponsored by the Agency in September 1990. Public comments on Registration Standards were very limited. Most comments were from effected registrants and involved clarification of data requirements and/or questions about the appropriateness of certain data and or labeling changes. The Agency believes registrants will have ample opportunity to raise issues with the Agency prior to the due date of their response or in the response itself. Most of the participants at the September 1990 workshop, which included several hundred registrants, State and federal agency representatives, and public interest groups, expressed a desire to have an opportunity to comment on a draft RED prior to the Agency issuing the document in final. Although the Agency is issuing the *Heliothis zea* (NPV) RED in final, it believes that the establishment of a 60-day comment period will provide sufficient opportunity for public input and allow a mechanism for any subsequent necessary amendments to the RED. The Agency believes this approach is necessary in order to reduce the time required to complete the assessment and issue RED's for all affected pesticides and meet the Congressionally mandated timeframes for completion of the reregistration task.

Authority: 7 U.S.C. 136.

Dated: June 1, 1991.

Allan S. Abramson,

Acting Division Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 91-13958 Filed 6-11-91; 8:45 am]

BILLING CODE 6560-50-F

[OPP-34014; FRL 3925-4]

Pesticide Reregistration Eligibility Document for Methoprene; Availability for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability for comment.

SUMMARY: This notice announces the availability of the final Reregistration Eligibility Document (RED) for methoprene and the establishment of a public comment period. The RED is the Agency's formal regulatory assessment of the health and environmental data base of the subject chemical and presents the Agency's determination regarding which uses of methoprene are eligible for reregistration.

DATES: Written comments on the methoprene RED must be submitted by August 12, 1991.

ADDRESSES: Three copies of comments identified with the docket number "OPP-34014" should be submitted to: By mail: Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 246, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment in response to this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket and docket index will be available for public inspection in rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Karen Samek at 703-308-8051.

SUPPLEMENTARY INFORMATION: The Agency has issued a final Reregistration Eligibility Document for methoprene. Under the provisions of the Federal Insecticide, Fungicide and Rodenticide Act, as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate most existing pesticides to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of methoprene is substantially complete and is sufficient to allow the Agency to conduct a reasonable risk assessment for most registered uses of methoprene. However, two generic data requirements are being levied: Octanol/water partition coefficient and an estuarine invertebrate life cycle study. Although the former study is not critical to the reregistration decision or environmental assessment of methoprene at this time, the Agency is requiring these data to satisfy this gap in the product chemistry data base for methoprene. The latter study is needed to assess the long term exposure to estuarine invertebrates. Although there is concern for the long term exposure to estuarine invertebrates, the Agency has determined that the reregistration of methoprene can proceed at this time because most of the uses for methoprene do not involve significant exposure to estuarine invertebrates. Only the use as a briquette (slow release) formulation raises a concern. The other aquatic formulations are not expected to result in significant exposure because methoprene is short lived in the aquatic environment and does not have a high potential for bioaccumulation. The estuarine invertebrate life cycle study is required to confirm whether or not the estimated exposure from the briquette formulation is sufficient to pose an adverse effect on estuarine invertebrates. EPA has determined that all products containing methoprene as an active ingredient are eligible for reregistration except the briquette formulation which will be considered for reregistration once the data requested are submitted, reviewed, and determined to cause no unreasonable risk to nontarget organisms, specifically estuarine invertebrates.

All registrants of methoprene have been sent the RED and must respond to the product specific data and labeling requirements within 8 months of receipt. The 60-day public comment period does not affect the registrant's response due date.

The Agency's rationale for issuing the methoprene RED as a final document with a 60-day comment period is based on the Agency's experience with Registration Standards and comments received from the public at a reregistration workshop sponsored by the Agency in September 1990. Public comments on Registration Standards were very limited. Most comments were from effected registrants and involved clarification of data requirements and/or questions about the appropriateness of certain data and or labeling changes. The Agency believes registrants will

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have ample opportunity to raise issues with the Agency prior to the due date of their response or in the response itself. Most of the participants at the September 1990 workshop, which included several hundred registrants, State and Federal agency representatives and public interest groups, expressed a desire to have an opportunity to comment on a draft RED prior to the Agency issuing the final document. Although the Agency is issuing the final methoprene RED, it believes that the establishment of a 60-day comment period will provide sufficient opportunity for public input and allow a mechanism for any subsequent necessary amendments to the RED. The Agency believes this approach is necessary in order to reduce the time required to complete the assessment and issue RED's for all affected pesticides and meet the Congressionally mandated time frames for completion of the reregistration task.

The docket number for methoprene is "OPP-34014". Technical questions concerning the RED should be directed to Ms.Karen Samek at the phone number listed under **FOR FURTHER INFORMATION CONTACT**. To request a copy of the Reregistration Eligibility Document or a RED Fact Sheet for methoprene, contact the Public Information Branch, in rm 246 at the address given above (703-557-2805). Requests should be submitted in time to allow sufficient time for receipt before the close of the comment period.

Dated: June 1, 1991.

Allan S. Abramson,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 91-13959 Filed 6-11-91; 8:45 am]

BILLING CODE 6560-50-F

Public Water System Supervision Program Revision for the State of West Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Public notice is hereby given in accordance with the provisions of section 1213 of the Safe Drinking Water Act as amended, 42 U.S.C. 300f *et seq.*, and 40 CFR 142.10, the National Primary Drinking Water Regulations, that the State of West Virginia has revised its approved Public Water System Supervision (PWSS) Primacy Program. West Virginia has developed: (1) Drinking water regulations for eight volatile organic chemicals that correspond to the National Primary Drinking Water Regulations for eight volatile organic chemicals promulgated by EPA on July 8, 1987 (52 FR 25690); and (2) public notice regulations that correspond to the revised EPA public notice requirements promulgated on October 28, 1987 (52 FR 41534). Edwin B. Erickson, Regional Administrator for EPA Region III, has determined that these State program revisions are no less stringent than the corresponding federal regulations and has approved these State program revisions. This determination shall become effective on July 12, 1991, and was based upon a thorough evaluation of West Virginia's PWSS program which has met the requirements stated in 40 CFR 142.10.

West Virginia's PWSS program, as presented and evaluated, has indicated that it is fully capable of carrying out all of the areas required to achieve primary enforcement capability.

Any interested parties are invited to submit written comments on this determination, and may request a public hearing on or before July 12, 1991. If a public hearing is requested and granted, this determinatioin shall not become effective until such time following the hearing that the Regional Administrator issues an order affirming or rescinding this action.

Requests for a public hearing should be addressed to: Edwin B. Erickson, Regional Administrator, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadephia, PA 19107.

Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing. (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing, and (3) the signature of the individual making the requests, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time schedule for the hearing. Such notice will be made by the Regional Administrator in the **Federal Register** and in newspapers of general circulation in the State of West Virginia. A notice will also be sent to the person(s) requesting the hearing as well as to the State of West Virginia. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

Should no timely and appropriate request for a hearing be received, and the Regional Administator does not elect to hold a hearing on his own motion, this determination shall become effective on July 12, 1991.

Please bring this notice to the attention of any persons known by you to have an interest in this determination.

All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the office of the Regional Administrator and at the following location in West Virginia: Office of Environmental Health Services, Department of Health and Human Resources, 1900 Kanawha Boulevard, East, Charleston, West Virginia 25305.

FOR FURTHER INFORMATION CONTACT: Dave Seter, EPA Region III, Drinking Water Section (3WM41) at the Philadelphia address given above, telephone (215) 597-9111, (FTS) 597-9111.

Edwin B. Erickson,

Regional Administrator EPA, Region III.

[FR Doc. 91-13980 Filed 6-11-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-909-DR]

Alaska; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alaska (FEMA-909-DR), dated May 30, 1991, and related determinations.

DATED: June 4, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that the incident period for this disaster is closed effective May 25, 1991.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-13939 Filed 6-11-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-904-DR]

Louisiana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA-904-DR), dated May 3, 1991, and related determinations.

DATED: June 3, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Louisiana, dated May 3, 1991, is hereby amended to add Public Assistance and include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 3, 1991: Jackson Parish for Individual Assistance and Public Assistance; and the parishes of Claiborne, Lincoln, Morehouse, Quachita, Richland, Union, and Webster for Public Assistance (already designated for Individual Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-13940 Filed 6-11-91; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-906-DR]

Mississippi; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Mississippi (FEMA-DR), dated May 17, 1991, and related determinations.

DATED: June 3, 1991.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Mississippi, dated May 17, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 17, 1991:

The counties of Alcorn, Calhoun, Clay, Itawamba, Lee, Lowndes, Marshall, Monroe, Tishomingo, and Webster for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91-13941 Filed 6-11-91; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL RESERVE MANAGEMENT AGENCY

State and Local Programs and Support, Board of Visitors for the Emergency Management Institute; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name: Board of Visitors (BOV) for the Emergency Management Institute (EMI).

Dates of Meeting: July 22-23, 1991.

Place: Federal Emergency Management Agency, National Emergency Training Center, Emergency Management Institute, Conference Room, Building N, Emmitsburg, Maryland 21727.

Time: July 22—8:30 a.m. to 5 p.m.; July 23—8:30 a.m. to 5 p.m.;

Proposed Agenda: The Board will meet with the National Fire Academy Board of Visitors on the morning of July 22 in the first joint session of the two Boards to discuss areas of mutual interest betwen the two schools. The remainder of the day will consist of break-out sessions with the three subcommittees established from among the Board members, and an informal evening session with the Board and students from each EMI class in session. The Board will meet at FEMA Headquarters on July 23 with staff from each of the FEMA Program Offices that EMI supports which will serve as a valuable opportunity for information exchange between these two groups.

The meeting will be open to the public with approximate 10 seats available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, Emergency Management Institute, 16825 South Seton Avenue, Emmitsburg, Maryland 21727 (telephone number, 301-447-1251) on or before July 12, 1991.

Minutes of the meeting will be prepared and will be available for public viewing in the Superintendent's Office, Emergency Management Institute, Federal Emergency Management Agency, Building N, National Emergency Training Center, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: May 17, 1991.

Grant C. Peterson,

Associate Director.

[FR Doc. 91-13943 Filed 6-11-91; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review; Correction

June 6, 1991.

This notice corrects a previous **Federal Register** document (FR Doc. No. 91-12871 Filed 5-30-91; 8:45 a.m.), published at page 24818 of the issue for Friday, May 31, 1991, (Vol. 56, No. 105). In the table in column one, the estimated hours per response for the FR 2950/2951 should read ".2 to 5 (1.00 avg.)." In addition, in the second column, the first full sentence should read "The Federal Reserve System proposes to consolidate several items now reported in the FR 2900 as separate items, largely in response to the reduction to zero of the reserve requirement on nonpersonal item deposits that became effective in December 1990, but also because of developments in deposit markets that have reduced the value of certain items."

Board of Governors of the Federal Reserve System, June 6, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-13911 Filed 6-11-91; 8:45 am]

BILLING CODE 6210-01-M

Frank Santo Cannova; Change in Bank Control Notice;Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

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The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than July 1, 1991.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Frank Santo Cannova, St. Petersburg, Florida; to acquire 52.72 percent of the voting shares of Bank of St. Petersburg, St. Petersburg, Florida.

Board of Governors of the Federal Reserve System, June 6, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-13919 Filed 6-11-91; 8:45 am]

BILLING CODE 6210-01-F

First Arkansas Bancshares, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 1, 1991.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First Arkansas Bancshares, Inc., Jacksonville, Arkansas; to engage *de novo* through its subsidiary First Arkansas Appraisal Services, Inc., Jacksonville, Arkansas, in commercial and residential real estate appraisals for the purpose of assisting area residents and lending institutions determine the value of real estate pursuant to § 225.25(b)(13) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 6, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-13916 Filed 6-11-91; 8:45 am]

BILLING CODE 6210-01-F

Stearns Financial Services, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 1, 1991.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Stearns Financial Services, Inc., Albany, Minnesota; to acquire 100 percent of the voting shares of National Bank of Canby, Canby, Minnesota.

In connection with this application, Applicant also proposes to acquire Howard W. Reiter Company, Canby, Minnesota, pursuant to § 225.25(b)(8) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 6, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-13920 Filed 6-11-91; 8:45 am]

BILLING CODE 6210-01-F

Wiregrass Bancorporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 1, 1991.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Wiregrass Bancorporation, Ashford, Alabama; to acquire 100 percent of the voting shares of Barbour County Bank, Clayton, Alabama.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Bancshares, Inc., Schaumburg, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank of Schaumburg, Schaumburg, Illinois.

2. San Jose Banco, Inc., Fremont, Indiana; to acquire 80 percent of the voting shares of The First National Bank of Fremont, Fremont, Indiana.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First National Security Company, DeQueen, Arkansas; to acquire at least 97.9 percent of the voting shares of Rodgers Family Bancshares, Inc., Waldron, Arkansas, and thereby indirectly acquire Bank of Waldron, Waldron, Arkansas.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First Bancorp., Inc., Huron, South Dakota; to merge with First Western Bancorp, Inc., Huron, South Dakota, and thereby indirectly acquire First National Bank of Atkinson, Atkinson, Nebraska.

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Western Bancshares, Inc., Alliance, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of Western Bank, N.A., Alliance, Nebraska, a *de novo* bank.

F. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Assistant Vice President) 101 Market Street, San Francisco, California 94105:

1. Security Pacific Corporation, Los Angeles, California, and Security Pacific Bancorporation Northwest, Seattle, Washington; to retain 100 percent of the voting shares of Security Pacific Bank Idaho, National Association, Coeur d'Alene, Idaho, after its conversion from a savings bank to a SAIF-insured national bank.

Board of Governors of the Federal Reserve System, June 6, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-13921 Filed 6-11-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement Number 124]

The Prevention of HIV in Women and Infants Demonstration Projects

Introduction

The Centers for Disease Control (CDC), the nation's prevention agency, announces the availability of Fiscal Year 1991 funds for Cooperative Agreements for the prevention of human immunodeficiency virus (HIV) infection in women and infants. These projects will develop, implement, and evaluate interventions to prevent HIV infection in women at high risk of infection and facilitate pregnancy planning and the prevention of unintended pregnancies among woman at high risk and women infected with HIV. Two types of projects will be supported: (A) Community-level behavioral interventions, including the creation of volunteer and peer networks to promote and reinforce risk reduction: and (B) service-level interventions, including the provision of enhanced family planning services in non-traditional settings where women at high risk and women infected with HIV may be reached.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of HIV Infection. (For ordering a copy of Healthy People 2000, see the Section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority: This program is authorized under the Public Health Service Act, section 301(a) (42 U.S.C. 241(a)), as amended; and section 317(k) (42 U.S.C. 247b(k)), as amended.

Eligible Applicants

Eligible applicants are the official public health, family planning, and substance abuse agencies of states, the District of Columbia, the Commonwealth of Puerto Rico, and local governments, non-profit organizations, and other health, family planning, and substance abuse providers with a demonstrated capacity for working with racial and ethnic minority populations. To ensure adequate sample size for statistical analyses, all proposed activities must be located within standard metropolitan areas with a population of 500,000 or more according to the 1990 census, and with an AIDS case rate in excess of 15/100,000 during calendar year 1990 as determined by reports to the CDC.

Availability of Funds

Approximately $2.6 million is available in fiscal year 1991 to fund one to five new proposals for the community-level behavioral intervention component (Component A). Awards are expected to range from $175,000 to $800,000 with an average award of $500,000.

Approximately $1.0 million is available in fiscal year 1991 to fund one to four new proposals for the service-level intervention component (Component B). Awards are expected to range from $175,000 to $500,000 with an average award of $250,000.

Separate applications and budgets for each component must be submitted. Applicants submitting proposals for more than one component will not receive preference over those applicants submitting only one proposal.

Funds are expected to be awarded on or about September 25, 1991, for a 5 year project period. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Purpose

The purpose of this program is to expand HIV prevention strategies into non-traditional settings (e.g., family planning and HIV prevention services in drug treatment centers) and target populations and to develop and test hypotheses and strategies for preventing HIV infection among women and infants.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting

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activities under A and/or B, and CDC will be responsible for conducting activities under C.

A. Component A Recipient Activities

Allowable activities include interventions such as the creation of volunteer and peer networks to promote and reinforce risk reduction in the community (on the street, in homes, in community centers, churches, etc.) through the use of small media (novellas, newsletters, etc.), interpersonal contact, and community organization. Interventions should target women under 25 years of age, when possible, and *must* target women who belong to one or more of the following risk categories: (1) Crack or other non-injecting drug users, (2) women who trade sex for drugs or money, (3) sexual partners of injecting drug users (IDU), and (4) IDU. Interventions may not be clinic-based (including drug treatment centers, family planning programs, STD clinics, hospital or other) or school-based. Outreach activities solely for the purpose of referral to medical or clinical services (including substance abuse, family planning, or STD/HIV services), case management, and other activities (including educational activities) that are primarily carried out in medical or clinical settings will not be supported under this component.

Activities to be conducted are:

1. Identify and describe structural/environmental, behavioral, and psychosocial facilitators and barriers to risk reduction including, but not limited to:

a. Sources and patterns of communication and social influence surrounding the initiation and maintenance of sexual and drug-related risk behavior in women;

b. Individual and community beliefs and attitudes regarding HIV prevention;

c. The significance of condom and contraceptive use within sexual, social, and family relationships;

d. Cultural, linguistic, and religious influences;

e. Incentives and disincentives to risk reduction and pregnancy;

f. Alcohol and drug use; and

h. Other structural, psychological, and behavioral correlates of risk reduction.

2. Develop and implement culturally and linguistically sensitive interventions to influence specific structural/environmental, behavioral and psychosocial factors thought to promote risk reduction in this population such as, but not limited to:

a. Identifying and enlisting family, peer and community networks to promote and reinforce risk reduction;

b. Creating and mobilizing new networks of communication and influence around risk reduction;

c. Providing opportunities for risk reduction skill acquisition, behavioral rehearsal, and reinforcement of behavior change;

d. Using community members as role models in locally developed media to present information and persuasive messages about risk reduction;

e. Integrating HIV risk reduction messages with women's health and social need communications;

f. Enlisting sexual partners in risk reduction through activities targeting adolescent and adult males; and

g. Changing community norms around condom and contraceptive use and other HIV risk-reduction strategies through communication, role play, and persuasion.

3. Measure the success of interventions with the target populations in comparison to a control/comparison group with outcome measures of cognitive, behavioral, clinical, and structural/environmental changes such as:

a. Social normative support for HIV risk reduction (including acceptability and use of condoms by sexual partners, promotion of condoms use by friends, family and others, and other indicators of change in community norms);

b. Readiness to use condoms, confidence in one's ability to use condoms or to prevent pregnancy, and other psychosocial measures of change;

c. Acceptability and use of condoms;

d. Decreases in unprotected sex and other HIV risk behaviors;

e. Increases in utilization of family planning services, reproductive health and STD/HIV services, and use of contraception; and

f. Decreases in unintended pregnancies and STD rates. Non-intervention groups must have access to the existing HIV prevention activities available in the community, and, at the completion of an interview, interviewers must provide all participants with information on and telephone numbers for local family planning, STD/HIV, drug treatment and psychosocial support resources.

4. Collaborate with other funded sites and with CDC in the development of a multi-site protocol to carry-out and evaluate all activities so that findings can be used to facilitate national efforts to prevent HIV in women and children. Collaboration will require modifying sampling plans, interview schedules, intervention activities, and other elements of the applicant's proposal to meet the program goals.

5. Collaborate and coordinate efforts with appropriate health (e.g., pediatric AIDS demonstration programs, substance abuse treatment, youth-service, community-based, and minority organizations who deliver services or interventions to the target populations).

6. Maintain programmatic and budgetary flexibility to test the feasibility of alternate control, evaluation, and data management strategies, or to conduct short-term studies which seek to replicate or examine the relevance of potentially important findings from other HIV prevention studies affecting the target populations.

B. Component B Recipient Activities

Interventions for Component B should be clinic-based, should target women under 25 years of age, when possible, and must target women who belong to one or more of the following risk categories: (1) Crack users or other non-IDU, (2) women who trade sex for drugs or money, (3) sexual partners, of IDU, (4) IDU, (5) women with STD, and (6) women infected with HIV. Clinic-based activities may include outreach activities for the purpose of informing and referring women to appropriate clinic-based services, at least part of which must be provided by the applicant or provided through documented collaboration (e.g., subcontracts) between the applicant and other agencies described in the applicant's proposal.

Activities to be conducted are:

1. Identify and describe barriers to family planning service utilization and effective contraceptive use and HIV risk reduction among women at high risk and women infected with HIV including, but not limited to:

a. Individual beliefs, values, and attitudes regarding use of family planning services, pregnancy, and HIV prevention;

b. Lack of accessibility and acceptability of services;

c. Clinic management issues such as waiting time;

d. Lack of transportation, money, child care;

e. Cultural, linguistic, and religious influences;

f. Incentives and disincentives to risk reduction and pregnancy;

g. Alcohol and drug use;

h. Partner characteristics and related issues; and

i. Other structural, psychological and behavioral correlates of effective use of contraceptives.

2. Develop and implement culturally and linguistically sensitive interventions to reduce barriers to the effective use of contraceptives, including condoms, and HIV risk reduction such as but not limited to: a Providing family planning services in non-traditional settings, such as drug treatment centers, shelters for the homeless, detention facilities, prisons, community health centers, STD clinics, and prenatal delivery services;

b. Developing linkages and improving mutual referral systems between family planning providers and other agencies who serve women at high risk and women infected with HIV or their sexual partners, including drug treatment centers, STD/HIV clinics, shelters for runaways and for the homeless, detention facilities, prenatal/delivery services, CDC-funded counseling and testing sites, and HRSA-funded primary care centers;

c. Integrating HIV prevention services into family planning and women's health services; and

d. Providing outreach to women not currently accessing family planning services.

3. Measure the success of interventions with the target populations in comparison to a control/comparison group with outcome measures of clinical behavioral, and structural changes such as increases in:

a. Utilization of family planning, reproductive health, STD/HIV, and drug treatment services;

b. Decreases in unintended pregnancies, STD rates, unprotected sex, and other HIV risk behaviors;

c. Acceptability and effective and consistent use of contraception;

d. Acceptability and use of condoms; and

e. Other psychosocial measures of behavior change as appropriate.

Non-intervention groups must have access to the existing HIV prevention activities available in the community, and, at the completion of an interview, interviewers must provide all participants with information on and telephone numbers for local family planning, STD/HIV, drug treatment, and psychosocial support resources.

4. Collaborate with other funded sites and with CDC in the development of a multi-site research protocol to evaluate all activities so that findings can be used to facilitate national efforts to prevent HIV in women and children. Collaboration will require modifying sampling plans, interview schedules, intervention activities and other elements of the applicant's proposal to meet the multi-site program goals.

5. Collaborate and coordinate efforts with appropriate health, family planning, substance abuse, youth-service, community-based, and minority organizations who deliver services or interventions to the target populations.

6. Maintain programmatic and budgetary flexibility to test the feasibility of alternate control, evaluation, and data management strategies, or to conduct short-term studies which seek to replicate or examine the relevance of potentially important findings from other HIV prevention research affecting the target populations.

c. *CDC Activities:*

1. Collaborate in the design of the protocol to be used in all sites for components A and B.

2. Collaborate in the design of all phases of the demonstrations. Provide consultation on data collection instruments and procedures, and provide coordination of research, evaluation, and intervention activities between and among the sites.

3. Collaborate in the data collection and analysis of information collected from these studies and other related activities.

4. Provide up-to-date scientific information regarding risk protective factors for HIV transmission and coordinate with the national HIV prevention program and family planning programs.

5. Assist in the transfer of information and methods developed in these projects to other prevention programs through the national HIV Prevention program, family planning programs, Maternal and Child Health programs, and other HIV care services authorized under the CARE Act.

Other Requirements

Recipients must comply with the document titled Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs (January 1991), a copy of which is included in the application kit. In complying with the Program Review Panel requirements contained in this document, recipients are encouraged to use an existing Program Review Panel such as the one created by the health department's HIV/AIDS Prevention Program.

Review and Evaluation Criteria

Applications for each component [(A) community-level behavioral interventions and (B) service-level interventions] will be reviewed and evaluated separately. Each application will be reviewed and evaluated individually according to the following criteria (Maximum 100 total points)

A. The extent to which the applicant demonstrates knowledge of evaluation, research methods, applied behavioral research in the area of HIV-related risk behaviors, ability to collect data on the target population, and ability to analyze both quantitative and qualitative data. (15 points)

B. The extent to which the applicant demonstrates the capacity to initiate and complete effective behavioral and evaluation research in the area of HIV pervention in women and infants. (15 points)

C. The extent to which the applicant provides evidence of collaborative relationships between service providers and researchers and between government, health, and community-based organizations who are or will be involved in the design, implementation, and evaluation of the project. (15 points)

D. The extent to which the applicant demonstrates an understanding of the community and the target population, and has experience in delivering high-quality interventions at the community-level or clinical-level to the target population. (10 points)

E. the Quality of the applicant's plan to design and evaluate interventions that will prevent HIV infection in women and infants, and that are realistic, replicable, and meet the intended purposes of the funding; and the extent to which the applicant demonstrates the interest, ability, and willingness to collaborate with CDC and other funded projects in developing a joint multi-site project protocol that may require incorporating, changing, or eliminating certain activities proposed by the applicant. (20 points)

F. The extent to which the applicant's proposed staff, equipment, and facilities meet project requirements, the extent to which the applicant can demonstrate that institutional barriers will not impede the initiation, implementation, and completion of the project (through letters of support from the head administrative office of the organization where the program will be carried out outlining specifically how the project will be supported institutionally, including endorsement of the timeline, project staff requirements, collaborative and contractual relationships, and other requirements of the project included in the proposal), and the extent to which the applicant proposes to involve appropriate researchers and HIV/STD and family planning/women's health programs in the proposed project. (25 points)

Consideration will also be given to the extent to which the budget request is clearly explained, adequately justified,

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reasonable, consistent with the intended use of cooperative agreement funds, and the extent to which the applicant is contributing its own resources to HIV/AIDS prevention activities.

Proposals with budgets larger than can reasonably be funded under this announcement may be returned to the applicant without review.

Projects involving the collection of information from 10 or more individuals are funded by Cooperative agreement will be subject to review by Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than Federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305, no later than September 24, 1991. CDC does not guarantee to accommodate or explain for state process recommendations it received after that date.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Nubmer is 93.118, Acquired Immunodeficiency Syndrome (AIDS) activities.

Application Submission and Deadline

The original and two copies of the application PHS 5161-1 must be submitted to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Raod, NE., room 300, Atlanta, Georgia 303.05, on or before July 26, 1991.

A. *Deadline:* Applications shall be considered as meeting the deadline if they are either

1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission to the independnet review group.

B. *Late Applications:* Applications which do not meet the criteria in A.1. or 2. are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, application package and business management technical assistance may be obtained from Linda Long, Grants Management Specialist, Grants Management Branch, Procurement and Grants Offices, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, (404) 842-6640 or FTS 236-6640.

Please refer to Announcement Number 124 when requesting information and submitting any application on the Request for Assistance.

Programmatic Technical assistance may be obtained from Christine Galavotti, Ph.D., Center for Prevention Services, (404) 639-0648 or FTS 236-0648 or Ann Duerr, M.D., Pd.D., Center for Chronic Disease Prevention and Health Promotion, (404) 488-5250, Centers for Disease Control, Atlanta, Georgia 30333.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone (202) 783-3238).

Dated: June 6, 1991.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 91-13915 Filed 6-11-91; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 91N-0215]

Drug Export; Lomefloxacin Hydrochloride

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that G.D. Searle & Co. has filed an application requesting approval for the export of the human drug lomefloxacin hydrochloride to Portugal.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Thomas J. Schall, Division of Drug Labeling Compliance (HFD-313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8054.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that G.D. Searle & Co., 4901 Searle Parkway, Skokie, IL 60077, has filed an application requesting approval for the export of the drug lomefloxacin hydrochloride to Portugal. This product is intended for use in the treatment of complicated and uncomplicated urinary tract infections, prophylaxis in transurethral surgery, and acute exacerbation of chronic bronchitis. The application was received and filed in the Center for Drug Evaluation and Research on May 13, 1991, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Docket Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by June 24, 1991, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44)

Dated: June 3, 1991.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 91-13968 Filed 6-11-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91N-0214]

Drug Export; Thioplex (Thiotepa) Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Lederle Laboratories has filed an application requesting approval for the export of the human drug Thioplex (thiotepa) Injection to the United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Thomas J. Schall, Division of Drug Labeling Compliance (HFD-313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8054.

SUPPLEMENTARY INFORMATION: The drug export provisons in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirement that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Lederle Laboratories, Pearl River, NY 10965, has filed an application requesting approval for the export of the drug Thioplex® (thiotepa) Injection to the United Kingdom. This drug is indicated for use in the treatment of neoplastic diseases. The application was received and filed in the Center for Drug Evaluation and Research on May 22, 1991, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Docket Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by June 24, 1991, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44)

Dated: June 3, 1991.

Daniel L. Michels,

Director Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 91-13969 Filed 6-11-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88N-0402]

Guidelines for the Assessment and Management of Iron Deficiency in Women of Childbearing Age; Report; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a report entitled "Guidelines for the Assessment and Management of Iron Deficiency in Women of Childbearing Age." The report was prepared by the Life Sciences Research Office (LSRO) of the Federation of American Societies for Experimental Biology (FASEB).

DATES: The report became available on May 17, 1991.

ADDRESSES: Submit written requests for single copies of the report to FASEB'S Special Publication Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814, along with $18 to cover the cost. In the near future, the report will be available from the National Technical Information Service, 5285 Royal Rd., Springfield, VA 22161. Send two self-addressed adhesive labels to assist these offices in processing your requests. The report is available for public examination at the LSRO, FASEB office (address above) and at the Dockets Management Branch (HFA-305), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Yetley, Center for Food Safety and Applied Nutrition (HFF-265), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202-485-0087.

SUPPLEMENTARY INFORMATION: FDA has a contract (223-88-2124) with FASEB concerning the analysis of scientific issues in food and cosmetic safety. The objective of this contract is to provide information to FDA on general and specific issues of scientific fact associated with food and cosmetic safety.

In the **Federal Register** of December 19, 1988 (53 FR 51009), FDA announced that it had asked LSRO of FASEB, as a task under the contract, to develop guidelines that FDA would make available to health care providers. The stated purpose of the guidelines is to help in: (1) Identifying impaired iron status and anemia in women, (2) determining the most appropriate methods of assessment, and (3) selecting approaches to management of anemia in these women.

FDA is now announcing that the report entitled "Guidelines for the Assessment and Management of Iron Deficiency in Women of Childbearing Age" became available to the public on May 17, 1991.

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Dated: June 7, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-13987 Filed 6-11-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91D-0179]

Warning Letters; Regulatory Procedures Manual, Chapter 8-10; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the revision of Chapter 8-10, entitled "Warning Letters," of the Regulatory Procedures Manual (RPM). Chapter 8-10 was formerly entitled "Notice of Adverse Findings and Regulatory Letters." This RPM revision describes FDA's policy and procedures governing the use of Warning Letters. The revision rescinds all use of Notice of Adverse Findings Letters, Regulatory Letters, and statements regarding these letters.

ADDRESSES: RPM, Chapter 8-10 "Warning Letters" may be ordered from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Orders must reference NTIS order number PB 91-166957 and include payment of $15.00 for each hard copy of the document or $8.00 for each microfiche copy. Payment may be made by check, money order, charge card (American Express, Mastercard, or Visa), or billing arrangements made with NTIS. Charge card orders must include the charge card account number and expiration date. For telephone orders or further information on placing an order, call NTIS at 703-487-4650.

RPM, Chapter 8-10 "Warning Letters" is available for public examination in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: William T. Lampkin, Division of Compliance Policy (HFC-230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1500.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 23, 1978 (43 FR 27498), FDA issued a proposed rule to amend part 7 (21 CFR part 7) that would have established regulations describing the policies and procedures which govern correspondence designed to achieve compliance with the laws enforced by the agency. In the **Federal Register** of September 12, 1980 (45 FR 60449), the proposed rule was withdrawn; the rulemaking proceedings begun by the proposal were terminated, and the decision was announced to incorporate the principles outlined in the proposal and subsequent revisions in chapter 8-10 of the RPM.

This revision of the RPM, chapter 8-10, entitled "Warning Letters," initiates FDA's use of one category of letters, Warning Letters, and discontinues the use of two categories of letters, Notice of Adverse Findings Letters and Regulatory Letters. This revision was made to improve the effectiveness and timeliness of such correspondence. Major considerations for use of Warning Letters are as follows:

(1) Warning Letters are issued for the purposes of achieving voluntary compliance and establishing prior notice.

(2) Warning Letters are issued directly by the district directors, although some program areas require center concurrence prior to issuance, or issuance by the centers.

(3) Warning Letters do not contain a commitment to take enforcement action, but they do contain a specific warning that failure to take prompt corrective action may result in enforcement action.

(4) Warning Letters are issued only for violations of regulatory significance.

(5) Warning Letters have a recipient response time of 15 working days, unless otherwise indicated.

(6) Warning Letters are on public display at the agency Freedom of Information Staff office.

This revision of the RPM, chapter 8-10, is intended only for FDA use as guidance when considering whether to issue a Warning Letter, and it does not limit the agency's enforcement discretion on whether to initiate regulatory action after evaluation of all relevant facts. The statements made herein are not intended to create or confer any rights, privileges, or benefits on or for any private person, but are intended merely for internal guidance.

Dated: June 7, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91-13986 Filed 6-11-91; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Office of the Assistant Secretary for Health; the Department of the Interior and Related Agencies Appropriations, Fiscal Year 1989; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority of May 9, 1991, under Public Law 100-446, "The Department of the Interior and Related Agencies Appropriations, Fiscal Year 1989," from the Secretary of Health and Human Services to the Assistant Secretary for Health, I have delegated to the Director, Indian Health Service, without authority to redelegate, all the authorities vested in the Secretary under Public Law 100-446, "The Department of the Interior and Related Agencies Appropriations, Fiscal Year 1989," as amended hereafter, to accept ownership of the buildings offered at no cost by the Gila River Indian Tribe for use solely as the Phoenix Area Regional Youth Treatment Center for Alcohol and Substance Abuse. This delegation excludes the authority to promulgate regulations, to submit reports to the Congress, to establish advisory committees or national commissions, and to appoint members to such committees or commissions.

This delegation became effective upon the date of signature. In addition, I hereby affirm and ratify any actions taken by the Director, Indian Health Service, or his subordinates which, in effect, involved the exercise of the delegated authority prior to the effective date of the delegation.

Dated: May 29, 1991.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 91-13916 Filed 6-11-91; 8:45 am]

BILLING CODE 4160-28-M

Alcohol, Drug Abuse, and Mental Health Administration; Statement of Organization, Functions, and Delegations of Authority

Part H, chapter HM, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), of the statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (39 FR 1654, January 11, 1974, as amended most recently by 55 FR 38162-63, September 17, 1990) is amended to revise the functional statement for the Division of State Assistance and establish the Division of Review within the Office for Treatment Improvement (OTI), ADAMHA.

Section HM-B, Organization and Functions, Alcohol, Drug Abuse, and Mental Health Administration (HM), is amended as follows:

Under the heading *Divisions for State Assistance (HMAB4),* delete the functional statement and substitute the following functional statement:

(1) Administers the Alcohol and Drug Abuse and Mental Health Services (ADMS) Block Grant program, including compliance reviews, management reviews, and technical assistance to States, Territories, and Indian Tribes; (2) establishes guidance for and collects, analyzes, and provides assistance to strengthen annual State Substance Abuse Services Plans; (3) establishes, coordinates, implements, and monitors data activities as they relate to ADMS Block Grant and long-term funding policy for drug abuse treatment; (4) provides for information exchange and technical assistance between ADAMHA and other Government agencies, national organizations, and State and local Governments on matters relating to alcohol, drug abuse, and mental health services programs; (5) collaborates with national organizations, States, communities, and substance abuse treatment and other related health and human services providers to upgrade the quality of drug treatment, improve the effectiveness of drug treatment programs, and expand drug treatment capacity; (6) collaborates with the Institutes in the collection of treatment data and in the application of health services research to alcohol, drug abuse, and mental health treatment programs; (7) coordinates with State and local Governments and other organizations to improve services through improved data collection, analysis, and feedback; and (8) plans, initiates, and conducts special analyses and studies on the organization and financing of services provided through the ADMS Block Grant.

After the statement for the *Division for State Assistance (HMAB4),* add the following:

Division of Review (HMAB5): (1) Provides advice to the Director on improvement of treatment practices as recommended in the review process; (2) administers peer review of the grants program in compliance with HHS, PHS, and ADAMHA policy and developments OTI review policy with respect to merit criteria, development of announcements, report of review results, and related matters; (3) administers the review of OTI contracts; (4) administers a Federal advisory committee and the Confidentiality Certificate program; (5) oversees committee management functions; (6) establishes evaluation strategies to assess the effectiveness of the Division in meeting overall program goals; (7) provides guidance to OTI staff and applicants on policies and procedures concerning peer review; and (8) participates, through membership in the Extramural Program Review Committee, in the formulation of Agency policy relating to peer review.

Dated: May 24, 1991.

Frederick K. Goodwin,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 91-13923 Filed 6-11-91; 8:45 am]

BILLING CODE 4160-20-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. D-91-951]

Acting Assistant Secretary for Fair Housing and Equal Opportunity; Designations

AGENCY: Office of Fair Housing and Equal Opportunity, HUD.

ACTION: Designation.

SUMMARY: This designation revises the designation of officials who may serve as Acting Assistant Secretary for Fair Housing and Equal Opportunity.

EFFECTIVE DATE: June 5, 1991.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Markison, Assistant General Counsel for Administrative Law, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20401, telephone (202) 708-3137 (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This designation is being revised because the positions of General Deputy Assistant Secretary for Fair Housing and Equal Opportunity and Deputy Assistant Secretary for Enforcement and Compliance have been combined into a single position designated General Deputy Assistant Secretary for Fair Housing and Equal Opportunity/Enforcement and Compliance. Under this revised designation, the official serving in this new position is first in order of succession in the case of absence or vacancy in the position of Assistant Secretary for Fair Housing and Equal Opportunity.

Designation of Acting Assistant Secretary for Fair Housing and Equal Opportunity

Section A. Designation. Each of the officials listed below is designated to act as Assistant Secretary for Fair Housing and Equal Opportunity, in the case of absence or vacancy in such position. The named officials shall serve in the order set forth.

(1) General Deputy Assistant Secretary for Fair Housing and Equal Opportunity/Enforcement and Compliance;

(2) Deputy Assistant Secretary for Operations and Management;

(3) Director, Office of Management and Field Coordination;

(4) Director, Office of Fair Housing Enforcement and Section 3 Compliance;

(5) Director, Office of HUD Program Compliance;

(6) Director, Office of Voluntary Compliance; and

(7) Director, Office of Program Standards and Evaluation.

Section B. Authorization. Each head of an organizational unit of Fair Housing and Equal Opportunity is authorized to designate an employee under his or her jurisdiction to serve as acting head during the absence of the head of the unit. An official serving in an acting position under this section does not hold that position for purposes of the order of succession set forth in section A.

Section C. Functions. The official serving in an acting capacity under this designation shall have all the powers, functions, and duties assigned to such position.

Section D. Supersedure. This designation supersedes the designation effective (54 FR 40213, September 29, 1989).

Authority: Sec. 7(d) Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 5, 1991.

Gordon Mansfield,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 91-13853 Filed 6-11-91; 8:45 am]

BILLING CODE 4210-28-M

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-91-3236; FR-2952-N-01]

Public Housing Development and Major Reconstruction of Obsolete Project Grants; Announcement of Fund Awards

AGENCY: Department of Housing and Urban Development, Office of the

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Assistant Secretary for Public and Indian Housing.

ACTION: Announcement of public housing development and Major Reconstruction of Obsolete Project awards to Public Housing Agencies.

SUMMARY: Section 102(a)(4)(C) of the Department of Housing and Urban Devleopment Reform Act of 1989 requires the Department to notify the public of all funding decisions made by the Department. With the exception of four projects reserved in September, 1990, to satisfy court orders, Fiscal Year 1990 public housing development grants and grants for the Major Reconstruction of Obsolete Projects (MROP), as provided for by the U.S. Housing Act of 1937, were reserved during late March and early April, 1991. This announcement identifies all recipients of these grants and provides the project number, number of units, and the development method (e.g., conventional, turnkey, acquisition or MROP).

FOR FURTHER INFORMATION CONTACT: Janice Rattley, Directors, Office of Construction, Rehabilitation and Maintenance, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-1800. (This is not a toll-free number.)

Background

On June 18, 1990, the Department published a NOFA advising Public Housing Agencies (PHAs) that $443,058,110 in grant appropriations and $56,512 in carryover funds were available in Federal Fiscal Year 1990 for the purpose of developing public housing units or to provide for the major reconstruction of obsolete public housing projects (MROP) under the provisons of 24 CFR Part 941. The NOFA provided application procedures and the method the Department would use to rate and rank approvable applications. On October 24, 1990, the Department issued a revised NOFA providing minor modifications to the June 18 NOFA as well as a deficiency correction process. (The capability to correct applications had been omitted from the June 18 NOFA.) The October 24 revision also allowed for the submission of new applications. It further instructed Regional Administrators to report their most highly ranked applications to Headquarters "within 100 days of the [revised] PHA application submission deadline." Of the $443,114,622 available, $443,096,228 was awarded and $18,394 was carried over. Following is a list of PHAs that were awarded grants. The development method ("Dev Met") is shown as (C)onventional, (T)urnkey, (A)cquisition, or (M)ajor reconstruction.

PHA Name	Project No.	Dev met	Units	Amount
Region I				
Boston Office:				
Boston Hsg Auth, 52 Chauncy St, Boston, MA	MA06-P002-102	M	86	5,975,965
Cambridge Hsg Auth, 270 Green St, Cambridge, MA	MA06-P003-035	A	45	4,000,500
Fall River Hsg Auth, 85 Morgan St, Fall River, MA	MA06-P006-028	M	60	3,500,000
Hartford Office:				
Stamford Hsg Auth, 22 Clinton Ave, Stamford, CT	CT26-P007-018	A	24	2,823,600
Milford Hsg Auth, PO Box 4123, Milford, CT	CT26-P030-008	C	15	1,835,900
W. Hartford Hsg Auth, 759 Farmington Ave, W. Hartford, CT	CT26-P039-002	A	17	1,869,550
Brooklyn Hsg Auth, PO Box 156, Danielson, CT	CT26-P068-001	C	27	2,844,450
Region II				
Newark Office:				
Newark Hsg Auth, 57 Sussex Ave, Newark, NJ	NJ39-P002-043	T	100	11,016,500
	NJ39-P002-044	T	94	10,357,700
	NJ39-P002-045	T	100	11,016,500
	NJ39-P002-046	T	96	10,584,700
Jersey City Hsg Auth, 400 US Hwy #1, Jersey City, NJ	NJ39-P009-023	M	54	4,390,970
Morris Co Hsg Auth, PO Box 900, Morristown, NJ	NJ39-P092-008	C	40	3,742,800
Madison Hsg Auth, 15 Chateau Thierry Ave, Madison, NJ	NJ39-P105-004	C	40	3,836,800
Gloucester Co Hsg Auth, 223 S Evergreen Ave, Woodbury, NJ	NJ39-P204-005	A	10	1,002,000
New York City Office:				
New York City, 250 Broadway, New York City, NY	NY36-P005-323	T	100	12,420,000
	NY36-P005-324	T	100	12,420,000
	NY36-P005-325	T	100	12,420,000
	NY36-P005-326	T	70	8,694,000
Region III				
Baltimore Office:				
Baltimore Hsg Auth, 417 E Fayette St, Baltimore, MD	MD06-P002-094	C	160	13,424,000
Charleston Office:				
Fairmont Hsg Auth, 527 Fairmont Ave, Fairmont, WV	WV15-P09-007	C	15	1,259,250
Keyser Hsg Auth, 440 Virginia St, Keyser, WV	WV15-P010-003	C	15	1,226,250
Buckhannon Hsg Auth, Hinkle Dr, Buckhannon, WV	WV15-P013-004	C	24	2,014,800
Washington, D.C. Office:				
Hsg Opportunities Comm, 10400 Detrick Ave, Kensington, MD	MD39-P004-042	A	40	3,529,300
Philadelphia Office:				
Dover Hsg Auth, 1266-76 Whitecak Rd, Dover, DE	DE26-P002-006	T	22	1,993,200
Philadelphia Hsg Auth, 2012-18 Chestnut St, Philadelphia, PA	PA26-P002-108	C	48	5,395,200
Reading Hsg Auth, 400 Hancock Blvd, Reading, PA	PA26-P009-013	A	10	858,200
York Hsg Auth, 31 S Broad St, York, PA	PA26-P022-033	C	15	1,302,750
Mifflin Co Hsg Auth, Lawler Pl, Lewistown, PA	PA26-P041-009	C	12	936,900
	PA26-P041-010	C	8	665,800
Carbon Co Hsg Auth, 360 Delaware Ave, Palmerton, PA	PA26-P057-007	C	25	2,421,250
Cumberland Co Hsg Auth, 114 N Hanover St, Carlisle, PA	PA26-P075-006	C	10	939,000
Pittsburgh Office				
Pittsburgh Hsg Auth, Rose St, Pittsburgh, PA	PA26-P001-052	M	84	3,603,570
	PA26-P001-054	T	10	854,500
Johnstown Hsg Auth, PO Box 419, Johnstown, PA	PA26-P019-016	C	15	1,242,000
Altoona Hsg Auth, 1100 Eleventh Ave, Altoona, PA	PA26-P031-014	C	24	2,094,900

PHA Name	Project No.	Dev met	Units	Amount
Richmond Office:				
Newport News Hsg Auth, PO Box 77, Newport, News, VA	VA36-P003-019	C	25	1,515,050
Lynchburg Hsg Auth, PO Box 1298, Lynchburg, VA	VA36-P013-010	C	12	818,400
Hampton Hsg Auth, PO Box 280, Hampton, VA	VA36-P017-012	C	20	1,570,000
Cumberland Hsg Auth, PO Box 1238, Lebenon, VA	VA36,P029-012	C	7	492,800
Lee Co Hsg Auth, PO Box 661, Jonesville, VA	VA36-P034-008	C	24	1,689,800
Region IV				
Atlanta Office:				
Atlanta Hsg Auth, 739 W Peachtree St, Atlanta, VA	GA06-P006-061	M	120	5,239,331
Macon Hsg Auth, PO Box 4928, Macon, GA	GA06-P007-020	C	30	2,265,150
Albany, PO Box 485, Albany, GA	GA06-P023-014	C	30	2,088,000
West Point, PO Box 545, West Point, GA	GA06-P065-007	C	20	1,360,000
Fitzgerald, PO Drawer 1067, Fitzgerald, GA	GA06-P070-008	C	26	1,869,800
Greensboro, PO Box 217, Greensboro, GA	GA06-P105-009	C	20	1,459,600
Cuthbert, 101 E Dawson St, Cuthbert, GA	GA06-P226-004	C	40	2,844,200
Birmingham Office:				
Sylacauga Hst Auth, Box 539, Betsey Ross Dr, Sylacauga, AL	AL09-P057-011	C	18	1,196,500
Evergreen Hsg Auth, PO Box 187, Evergreen, AL	AL09-P181-006	C	30	2,050,500
Columbia Office:				
Spartanburg Hsg Auth, 764 N Church St, Spartanburg, SC	SC16-P003-023	A	20	1,470,200
Conway Hsg Auth, 2303 Leonard Ave, Conway, SC	SC16-P025-011	A	20	1,523,500
Beaufort Hsg Auth, 1009 Prince St, Beaufort, SC	SC16-P026-008	A	30	2,194,500
Georgetown Hsg Auth, 1 Lincoln St, Georgetown, SC	SC16-P026-011	A	30	2,167,500
Greensboro Office:				
Durham Hsg Auth, 330 E Main St, Durham, NC	NC19-P013-022	C	40	2,799,000
Jackson Office:				
MS Regional Hsg V, PO Box 419, Newton, MS	MS26-P030-025	C	30	2,152,900
Grenwood Hsg Auth, 105 Jackson St, Greenwood, MS	MS26-P107-013	C	47	3,167,200
Jacksonville Office:				
Jacksonville Hsg Auth, 1300 Broad St, Jacksonville, FL	FL29-P001-034	T	170	10,947,900
Louisville Office:				
Louisville Hsg Auth, 420 S 8th St, Louisville, KY	KY36-P001-024	C	50	3,757,500
Lex-Fayette Hsg Auth, 635 Ballard St, Lexington, KY	KY36-P004-016	C	102	7,860,300
Mt. Sterling Hsg Auth, Barnard Ave, Mt Sterling, KY	KY36-020-008	A	6	450,900
Central City Hsg Auth, 509 S 9th St, Central City, KY	KY36-P070-002	C	20	1,591,000
Vanceburg Hsg Auth, 802 Fairlane Dr, Vanceburg, KY	KY36-P084-003	C	12	963,350
Beaver Dam Hsg Auth, 3030 James Ct, Beaver Dam, KY	KY36-P122-003	C	20	1,367,000
Nashville Office:				
Metro Devel & Hsg Auth, 701 S Sixth St, Nashville, TN	TN43-P005-034	C	50	3,562,500
Region V				
Chicago Office:				
Habitat Co.-Receiver, 405 N Wabash Ave, Chicago, IL	IL06-P802-147	T	175	16,100,000
Cincinnati Office:				
Dayton Hsg Auth, 400 Wayne Ave, Dayton, OH	OH10-P005-053	T	35	2,646,000
Columbus Office:				
Chillocothe Hsg Auth, 178 W Fourth St, Chillocothe, OH	OH16-P024-004	T	50	4,317,500
Perry Hsg Auth, Sr Citizens Bldg, Crookaville, OH	OH16-P034-003	T	50	4,137,500
Fairfield Hsg Auth, 1506 Amherst Pl, Lancaster, OH	OH16-P070-002	T	50	4,137,500
Cleveland Office:				
Youngstown Hsg Auth, 131 W Boardman St, Youngstown, OH	OH12-P002-018	C	10	846,500
Cuyahoga Co Hsg Auth, 1441 W 25th St, Cleveland, OH	OH12-P003-068	M	157	8,586,542
Lucas Co Hsg Auth, 435 Nebraska Ave, Toledo, OH	OH12-P006-048	M	100	4,431,823
Lorain Co Hsg Auth, 1730 Broadway, Lorain, OH	OH12-P012-020	C	50	4,794,000
Detroit Office:				
Ferndale Hsg Auth, 415 Withington, Ferndale, MI	MI28-P096-004	C	25	2,416,750
Grand Rapids Office:				
Mt. Pleasant Hsg Auth, 1 Mosher St, Mt Pleasant, MI	MI33-P074-003	C	24	2,121,600
Ionia Hsg Auth, 667 Union St, Ionia, MI	MI33-P117-005	C	16	1,288,000
Indianapolis Office:				
Anderson Hsg Auth, 528 W 11th St, Anderson, IN	IN36-P006-004	A	16	1,565,900
Milwaukee Office:				
Milwaukee Hsg Auth, 809 N Broadway St, Milwaukee, WI	WI39-P002-041	C	13	1,459,050
Wausau Hsg Auth, 407 Grant St, Wausau, WI	WI39-P031-003	C	25	2,294,700
Eau Claire Hsg Auth, PO Box 5148, Eau Claire, WI	WI39-P207-006	C	25	2,492,550
Minneapolis-St Paul Office:				
Worthington Hsg Auth, 819 Tenth St, Worthington, MN	MN46-P034-004	C	10	837,900
Faribault Hsg Auth, 208 WN 1st St, Faribault, MN	MN46-P157-003	C	25	2,247,000
Region VI				
Ft. Worth Office:				
Albuquerque Hsg Auth, 2200 University, SE, Albuquerque, NM	NM21-P001-027	C	30	2,485,900
Santa Fe City Hsg Auth, PO Box CC, Santa Fe, NM	NM21-P009-012	C	25	1,955,000
Lubbock Hsg Auth, PO Box 2568, Lubbock, TX	TX21-P018-010	C	46	2,936,000
Commanche Hsg Auth, 419 Lindsey, Commanche, TX	TX21-P169-006	A	15	1,098,000
Houston Office:				
Beaumont Hsg Auth, PO Box 1312, Beaumont, TX	TX24-P023-009	C	50	3,657,500
Woodville Hsg Auth, 803 S Pecan St, Woodville, TX	TX24-P225-003	C	30	2,289,500
Nacogdoches Hsg Auth, 804 Jordan St, Nacogdoches, TX	TX24-P486-002	C	38	2,680,900
Little Rock Office:				
Dewitt Hsg Auth, 101 Oakland, Dewitt, TX	AR37-P048-002	C	30	2,143,900

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PHA Name	Project No.	Dev met	Units	Amount
Melbourne Hsg Auth, PO Box 398, Melbourne, AR	AR37-P103-002	C	12	796,200
White River Reg HA, PO Box 2658, Batesville, AR	AR37-P197-008	A	20	1,342,000
New Orleans Office:				
Kenner Hsg Auth, 1013 31st St, Kenner, LA	LA48-P012-006	C	35	2,607,418
Oklahoma City Office:				
Broken Bow Hsg Auth, PO Box 177, Broken Bow, OK	OK56-P006-004	C	24	1,745,800
Shawnee Hsg Auth, PO Box 3427, Shawnee, OK	OK56-P095-007	C	26	1,834,300
San Antonio Office:				
Brownsville Hsg Auth, 2606 Boca Chica Blvd, PO Box 4420, Brownsville, TX	TX59-P007-016	C	30	2,167,400
Eagle Pass Hsg Auth, PO Box 844, Eagle Pass, TX	TX59-P019-011	C	25	1,768,500
Weslaco Hsg Auth, PO Box 95, Weslaco, TX	TX59-P051-005	A	50	3,563,000
San Marcos Hsg Auth, Allen Wood Homes, Thorp La, San Marcos, TX	TX59-P067-007	A	35	2,717,000
Region VII				
Kansas City Office:				
Kansas City Hsg Auth, 1124 N 9th St, Kansas City, KS	KS16-P001-025	T	5	498,500
Wichita Hsg Auth, 307 N Riverview, Wichita, KS	KS16-P004-013	C	5	345,750
	KS16-P004-014	C	4	231,750
Dodge City Hsg Auth, 407 E Bend St, Dodge City, KS	KS16-P006-003	C	15	1,063,000
Mound City Hsg Auth, PO Box 210, Mound City, KS	KS16-P033-002	C	10	720,800
Des Moines Office:				
Central Iowa Reg HA, 1111 Ninth St, suite 240, Des Moines, IA	IA05-P131-005	C	20	1,485,409
Omaha Office:				
Omaha Hsg Auth, 540 S 27th St, Omaha, NE	NE26-P001-028	A	25	1,940,700
Douglas Co Hsg Auth, 5449 N 108th St, Omaha, NE	NE26-P153-004	A	25	1,990,500
St. Louis Office:				
St Louis Co Hsg Auth, PO Box 23886, St Louis, MO	MO36-P004-019	C	10	892,000
Clarkton Hsg Auth, Box 652, Clarkton, MO	MO36-P025-005	T	25	1,958,750
Malden Hsg Auth, Box 395, Malden, MO	MO36-P026-005	T	50	2,350,500
Hayti Hgts Hsg Auth, 100 N. Martin Luther King Dr, Hayti Heights, MO	MO36-P223-006	T	25	2,043,750
Region VIII				
Denver Office:				
Denver Hsg Auth, 1100 N Colfax Ave, Denver, CO	CO06-P001-042	C	15	1,159,500
Walsenburg Hsg Auth, PO Box 312, Walsenburg, CO	CO06-P003-007	A	15	1,176,300
Colorado Spgs Hsg Auth, 30 S Nevada St, Colorado Springs, CO	CO06-P029-024	A	15	1,176,300
Jefferson Co Hsg Auth, 1445 Holland St, Lakewood, CO	CO06-P072-006	A	15	1,159,500
Salt Lake Co Hsg Auth, 1962 S 200 E, Salt Lake City, UT	UT06-P003-026	A	12	894,850
Wyoming Comm Dev Admin, PO Box 6588, Cheyenne, WY	WY06-P017-003	C	15	1,083,750
Region IX				
Los Angeles Office:				
LA Co Hsg Auth, 4800 Brooklyn Ave, Los Angeles, CA	CA16-P002-139	A	100	10,385,000
LA City Hsg Auth, 515 Columbia Ave, Los Angeles, CA	CA16-P004-185	C	30	3,019,600
	CA16-P004-186	T	23	2,261,950
	CA16-P004-187	T	9	909,950
	CA16-P004-188	T	9	909,950
	CA16-P004-189	T	9	909,950
	CA16-P004-190	T	20	1,969,500
Santa Barbara Hsg Auth, 815 W Ocean Ave, Lompoc, CA	CA16-P021-034	A	73	7,564,050
Phoenix Office:				
Phoenix Hsg Auth, 830 E. Jefferson, Phoenix, AZ	AZ20-P001-039	A	50	4,044,400
Tucson Hsg Auth, PO Box 27210, Tucson, AZ	AZ20-P004-045	A	100	8,303,800
S. Tucson Hsg Auth, 1713 S 3rd Ave, S Tucson, AZ	AZ20-025-005	C	20	1,510,000
Sacramento Office:				
Butte Co Hsg Auth, 554 Vallombrosa Ave, Chico, CA	CA30-P043-015	C	50	4,257,500
San Francisco Office:				
Fresno City Hsg Auth, PO Box 11985, Fresno, CA	CA39-P006-026	C	28	2,614,000
Merced Co Hsg Auth, 405 U St, Merced, CA	CA39-P023-022	A	24	2,187,000
	CA39-P023-023	A	25	2,261,500
Stanislaus Co Hsg Auth, PO Box 3958, Modesto, CA	CA39-P026-027	A	30	2,586,000
Alameda Co Hsg Auth, 29800 Mission Blvd, Hayward, CA	CA39-P067-016	A	18	2,068,800
Clark Co Hsg Auth, 5064 E Flamingo Rd, Las Vegas, NV	NV39-P013-018	A	50	4,552,500
Region X				
Seattle Office:				
King Co Hsg Auth, 15455 65th Ave, S, Seattle, WA	WA19-P002-061	A	18	1,643,400
Tacoma Hsg Auth, 1728 E 44th St, Tacoma, WA	WA19-P005-022	A	19	1,794,250
Whatcom Co Hsg Auth, 208 Unity, Lower Level, Bellingham, WA	WA19-P041-011	A	15	1,330,500
Pierce Co Hsg Auth, PO Box 45410, Tacoma, WA	WA19-P054-011	A	17	1,552,100
Portland Office:				
SW Idaho Coop HA, 1180 W Finch Dr, Nampa, ID	ID16-P016-003	C	12	1,052,550
Portland Hsg Auth, PO Box 13220, Portland, OR	OR16-P002-051	C	30	2,515,500
NE Oregon Hsg Auth, PO Box 3357, LaGrande, OR	OR16-P032-002	C	8	655,800
	OR16-P032-003	C	5	409,750
	OR16-P032-004	C	12	983,400
Vancouver Hsg Auth, 500 Omaha Way, Vancouver, WA	WA16-P008-021	A	14	1,173,900

Dated: June 5, 1991.

Michael B. Janis,

Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 91-13854 Filed 6-11-91; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-060-4320-09]

Environmental Impact Statement on Vegetation Treatment Program; Thirteen Western States

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Final Environmental Impact Statement on Vegetation Treatment on Bureau of Land Management Lands in Thirteen Western States.

SUMMARY: Notice is hereby given that, in accordance with the National Environmental Policy Act of 1969, as amended, the Bureau of Land Management (BLM) has prepared a final environmental impact statement (FEIS) on vegetation treatment measures proposed for use on BLM-administered lands in thirteen contiguous western states. The purpose of the vegetation treatment program is to manage the vegetation for improved rangeland and forest forage and habitat conditions for wildlife and livestock, watershed protection, and to provide guidelines for herbicide application regarding human health and safety. Potential vegetation treatment methods include biological, chemical, mechanical, manual, and thermal methods, individually and in combination. The FEIS analyzes impacts of ground and aerial application of herbicides. The BLM proposes to implement a combination of vegetation treatment programs on approximately 372,000 acres annually in Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, Oklahoma, eastern Oregon, South Dakota, Utah, Washington, and Wyoming. The impacts of BLM's program to manage vegetation in California and western Oregon, were addressed in separate EIS documents and, therefore, are not analyzed in this FEIS.

CONTACT: Written comments should be sent to: Jim Melton, Team Leader, Bureau of Land Management, Casper District Office, 1701 East "E" Street, Casper, Wyoming 82601.

SUPPLEMENTARY INFORMATION: The proposed action and alternatives incorporate a mix of vegetation treatment measures including biological, chemical, mechanical, and thermal methods to achieve the most cost effective and practical means of satisfying specific vegetation management objectives. Alternatives include various combinations of the aforementioned treatments under five basic themes consisting of: the Proposed Action, No Action, No Aerial Application of Herbicides, No Prescribed Burning, and No Herbicide Use. The proposed action represents an integrated pest management approach for the vegetation treatment program. The "Environmental Consequences" section depicts reasonably foreseeable direct, indirect, and cumulative impacts of the Proposed Action and alternatives. Impacts on the biological, physical, and social components of the human environment are also analyzed.

Dated: May 30, 1991.

Ray Brubaker,

State Director.

[FR Doc. 91-13876 Filed 6-11-91; 8:45 am]

BILLING CODE 4310-22-M

[CA-010-01-3110-10-B002; CA 28092]

Realty Action Exchange of Public and Private Lands in San Luis Obispo County, CA; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction to notice of realty action—CA 28092.

SUMMARY: The notice for this exchange published on May 17, 1991 in vol. 56, no. 96 of the **Federal Register** is hereby voided. The subject exchange will operate under the original notices published on December 3, 1987 in vol. 52, no. 232 and corrected on October 4, 1988 in vol. 53, no. 192 of the **Federal Register.** The serial number for the subject exchange will revert back to the original number of CA 20050.

Dated: June 3, 1991.

Daniel E. Vaughn,

Acting Caliente Resource Area Manager.

[FR Doc. 91-13922 Filed 6-11-91; 8:45 am]

BILLING CODE 4310-40-M

Fish and Wildlife Service

Meeting, Klamath Fishery Management Council

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss et seq.). The meeting is open to the public.

DATES: The Klamath Fishery Management Council will meet from 8:30 a.m. to 5:30 p.m. on Thursday, June 27; and from 8 a.m. to 1:15 p.m. on Friday, June 28, 1991.

Place: The meeting will be held at the North Coast Inn, 4975 Valley West Blvd., Arcata, California.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006, Yreka, California 96097-1006, telephone (916) 842-5673.

SUPPLEMENTARY INFORMATION: For background information on the Management Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639). The Council will meet principally to consider public and agency comments on the draft long term plan for management of harvests of Klamath anadromous fish stocks. The draft plan was available for comment between March 1 and April 30, 1991. The Council will also hear reports on 1991 fish harvests and regulations.

Dated: May 31, 1991.

William E. Martin,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 91-13925 Filed 6-11-91; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 30, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC

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20013–7127. Written comments should be submitted by June 27, 1991.

Carol D. Shull,

Chief of Registration, National Register.

Alabama

Mobile County

Askew, Wade, House (Spanish Revival Residences in Mobile MPS), 103 Florence Pl., Mobile, 91000858

Fearn, George, House (Spanish Revival Residences in Mobile MPS), 1806 Airport Blvd., Mobile, 91000855

Levy, George, House (Spanish Revival Residences in Mobile MPS), 107 Florence Pl., Mobile, 91000861

Megginson, Ernest, House (Spanish Revival Residences in Mobile MPS), 143 Florence Pl., Mobile, 91000860

Morrison, James Arthur, House (Spanish Revival Residences in Mobile MPS), 159 Hillwood Rd., Mobile, 91000863

Paterson, J. E., House (Spanish Revival Residences in Mobile MPS), 118 Florence Pl., Mobile, 91000859

Spotswood, Robert L., House (Spanish Revival Residences in Mobile MPS), 1 Country Club Rd., Mobile, 91000854

VanderSys, Arthur, House (Spanish Revival Residences in Mobile MPS), 119 Florence Pl., Mobile, 91000857

VanderSys, Jacob, House (Spanish Revival Residences in Mobile MPS), 129 Florence Pl., Mobile, 91000862

Walker, Joseph M., House (Spanish Revival Residences in Mobile MPS), 104 Florence Pl., Mobile, 91000856

Missouri

Jasper County

St. Peter the Apostle Catholic Church and Rectory, 612 Pearl St., Joplin, 91000851

Pettis County

Missouri State Fairgrounds Historic District, Roughly bounded by US 65, Co. Rd. Y, Clarendon Rd. and the Missouri—Kansas—Texas RR tracks, Sedalia, 91000853

South Dakota

Brookings County

Experimental Rammed Earth Wall, Medary Ave. behind Dean of Agricultural and Biological Sciences House, South Dakota State University campus, Brookings, 91000850

Woodbine Cottage Experimental Rammed Earth Wall, W of jct. of 10th St. and Medary Ave., South Dakota State University campus, Brookings, 91000849

Brown County

Werth, Gustav and Mary, House, 1502 N. Dakota St., Aberdeen, 91000846

Codington County

Florence Methodist Church, Jct. of 5th St. and Dolly Ave., Florence, 91000848

Kranzburg School District No. 5, Hasting St., Kranzburg, 91000847

Texas

Cameron County

The Gem, 400 E. 13th St., Brownsville, 91000852

[FR Doc. 91–13873 Filed 6–11–91; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget (OMB) for review.

PROPOSE OF INFORMATION COLLECTION: The proposed information collection is for use by the Commission in connection with investigation No. 332–310, Alfalfa Products: Conditions of Competition Between the U.S. and Canadian Industries, instituted under the authority of section 332 of the Tariff Act of 1930 (19 U.S.C. 1332).

SUMMARY OF PROPOSAL:

(1) *Number of forms submitted:* One.

(2) *Title of form:* Processors and Exporters Questionnaire: Alfalfa Products.

(3) *Type of request:* New.

(4) *Frequency of use:* Nonrecurring.

(5) *Description of respondents:* Firms which process or export alfalfa products.

(6) *Estimated number of respondents:* Processors: 57, based on an estimated response rate of 60 percent. Exporters: 45, based on an estimated response rate of 60 percent.

(7) *Estimated total number of hours to complete the forms:* The Commission estimates a response time of 30 hours per questionnaire.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

ADDITIONAL INFORMATION OR COMMENT: Copies of the proposed form and supporting documents may be obtained from David L. Ingersoll (USITC tel. no. (202) 252–1309). Comments about the proposal should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Attention: Marshall Mills, Desk Officer for U.S. International Trade Commission. Any comments should be specific, indicating which part of the questionnaire or study plan is objectionable, describing the problem in detail, and including specific suggested revisions or language changes.

SUBMISSION OF COMMENTS: Comments should be submitted to OMB within 2 weeks of the date this notice appears in the **Federal Register**. If you are unable to submit them promptly you should advise OMB within the 2 week period of your intent to comment on the proposal. Mr. Mill's telephone number is (202) 395–7340. Copies of any comments should be provided to Charles Ervin (United States International Trade Commission, 500 E Street SW., Washington, DC 20436).

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 252–1810.

Dated: June 6, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–13935 Filed 6–11–91; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–324]

Designation of Additional Commission Investigative Attorney

In the matter of certain acid-washed denim garments and accessories, including jeans, jackets, bags and skirts;

Notice is hereby given that, as of this date, Sarah C. Middleton, Esq., of the Office of Unfair Import Investigations is designated as the Commission investigative attorney in the above-cited investigation in addition to Kent R. Stevens, Esq.

The Secretary is requested to publish this notice in the **Federal Register**.

Dated: May 31, 1991.

Respectfully submitted,

Lynn I. Levine,

Director, Office of Unfair Import Investigations, 500 E Street, SW. Washington, DC 20436.

[FR Doc. 91–13932 Filed 6–11–91; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–515 (Preliminary)]

Portable Electric Typewriters From Singapore

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Singapore of portable electric typewriters (PETs),[2] provided for in subheadings 8469.10.00 and 8469.21.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On April 18, 1991, a petition was filed with the Commission and the Department of Commerce by Brother Industries (USA), Inc., Bartlett, TN, alleging that an industry in the United States is materially injured and is threatened with material injury by reason of LTFLV imports of portable electric typewriters from Singapore. Accordingly, effective April 18, 1991, the Commission instituted preliminary antidumping investigation No. 731–TA–515 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 25, 1991 (56 FR 19125). The conference was held in Washington, DC, on May 9, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on June 3, 1991. The views of the Commission are contained in USITC Publication 2388 (June 1991), entitled "Portable Electric Typewriters from Singapore: Determination of the Commission in Investigation No. 731–TA–515 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: June 7, 1991.

By Order of the Commission

Kenneth R. Mason,

Secretary.

[FR Doc. 91–13934 Filed 6–11–91; 8:45 am]

BILLING CODE 7020–02–M

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.1(f)).

[2] For purposes of this investigation, PETs are defined as machines that produce letters and characters in sequence directly on a piece of paper or other media from a keyboard input and meeting the following criteria: They must (1) Be easily portable, with a handle and/or carrying case, or similar mechanism to facilitate their portability; (2) Be electric, regardless of source of power; (3) Be comprised of a single, integrated unit (e.g., not in two or more pieces); (4) Have a keyboard embedded in the chassis or frame of the machine; (5) Have a built-in printer; (6) Have a platen (roller) to accommodate paper; and (7) Only accommodate their own dedicated or captive software.

PETs which meet all of the following criteria are excluded from the scope of this investigation: (1) Seven lines or more of display; (2) more than 32K text memory; (3) the ability to perform 'block moves;' and (4) a 'search and replace' function. A machine having some, but not all, of these four characteristics is included within the scope of the investigation. The PETs subject to this investigation are those provided for in HTS subheading 8469.21.00 and those with text memory (automatics or PATs) provided for in HTS subheading 8469.10.00.

[Inv. No. 731–TA–472 (Final)]

Determination; Silicon Metal From the People's Republic of China

Determination

On the basis of the record [1] developed in the subject investigation, the Commission unanimously determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act), that an industry in the United States is materially injured by reason of imports from The People's Republic of China (China) of silicon metal,[2] that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission also unanimously determines, pursuant to section 735(b)(4)(A) of the act (19 U.S.C. 1673d(b)(4)(A)), that critical circumstances do not exist with respect to imports of silicon metal from China; thus, the retroactive imposition of antidumping duties is not necessary.

Background

The Commission instituted this investigation effective February 4, 1991, following a preliminary determination by the Department of Commerce that imports of silicon metal from China were being sold at LTFV within the meaning of section 733(b) of the act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's final investigation and of a public hearing to be held in connection therewith, was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 27, 1991 (56 FR 8216). The hearing was held in Washington, DC, on April 25, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on June 3, 1991. The views of the Commission are contained in USITC Publication 2385 (June 1991), entitled "Silicon Metal From The People's Republic of China: Determination of the Commission in Investigation No. 731–TA–472 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: June 4, 1991.

Before the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–13933 Filed 6–11–91; 8:45 am]

BILLING CODE 7020–02–M

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] The merchandise covered by this investigation is silicon metal containing at least 96.00 but less than 99.99 percent of silicon by weight. Silicon metal is currently provided for in subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.000 of the HTS) is not subject to this investigation.

INTERSTATE COMMERCE COMMISSION

Motor Passenger Carrier or Water Carrier Finance Applications Under 49 U.S.C. 11343–11344

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties of, or acquire control of motor passenger carriers or water carriers pursuant to 49 U.S.C. 11343–11344. The applications are governed by 49 CFR part 1182, as revised in Pur., Merger & Cont.-Motor Passenger & Water Carriers, 5 I.C.C.2d 786 (1989). The findings for these applications are set forth at 49 CFR 1182.18. Persons wishing to oppose an application must follow the rules under 49 CFR 1182, subpart B. If no one timely opposes the application, this publication automatically will become the final action of the Commission.

No. MC–F–19632, filed April 8, 1991. Peterson Manufacturing Company—Control Exemption—Renzenberger, Inc. and Mid-American Van Pool, Inc. Petitioners' representatives: Alex

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Lewandowski, 4220 Madison Avenue, Kansas City, MO 64111. Peterson Manufacturing Company (Peterson), a noncarrier, seeks to acquire control of Renzenberger, Inc. (RI) and Mid-American Van Pool, Inc. (MAVP). Renzenberger holds authority in No. MC–170517 as a: (1) Common carrier to transport passengers, in charter and special operations, between points in the United States; and (2) contract carrier to transport train crews, between points in the United States, under continuing contract(s) with railroad companies. MAVP holds authority in No. MC–238671, as a common carrier to transport passengers, in charter and special operations, (1) between points in California, Nevada, Utah, Wyoming, Colorado, Nebraska, Kansas, Oklahoma, Texas, Iowa, Missouri, Arkansas, Louisiana, Illinois, and Tennessee; and (2) beginning and ending at points in the same 15 states and extending to points in the United States (except Alaska and Hawaii).

Don R. Armacost owns 50 percent (the largest block) of the stock of Peterson, and upon Peterson's acquisition of the stock of RI and MAVP, Mr. Armacost, a noncarrier individual will be in control of two regulated motor carriers subject to our jurisdiction.

Decided: June 4, 1991.

By the Commission, Motor Carrier Board.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–13949 Filed 6–11–91; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31889]

Burlington Northern Railroad Co., Illinois Central Railroad Co., and Union Pacific Railroad Corp.—Trackage Rights Exemption—Joppa and Eastern Railroad Co.

Joppa and Eastern Railroad Company (J&E) has agreed to grant: (i) Local trackage rights to Burlington Northern Railroad Company (BN), Illinois Central Railroad Company (ICR), and Union Pacific Railroad Corporation (UP) over approximately 2.5 miles of its line between those portions of the north and south wyes leading from the BN main line, east of Kelley, and milepost 2.52, at Neff, in Massac County, IL; (ii) local trackage rights to UP over the rail line and related properties J&E leases from Missouri Pacific Railroad Company between mileposts 359.5 and 362, north of Joppa, in Massac County (the Leased Track); and (iii) overhead trackage rights to BN and ICR over the Leased Track. The primary purpose of the transaction is to allow BN, ICR, and UP to use J&E's owned and leased track to serve the facility of Electric Energy, Inc., near Joppa. The trackage rights were to be consummated on June 3, 1991.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: John R. Molm, Troutman, Sanders, Lockerman & Ashmore, 127 Peachtree Street, suite 1400, Atlanta, GA 30303–1810.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: June 5, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–13948 Filed 6–11–91; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31884]

The Metropolitan Railway Co., Inc.—Corporate Family Transaction Exemption—the Indiana & Ohio Railway Co.

The Metropolitan Railway Company, Inc. (MRC), and The Indiana & Ohio Railway Company (IORY) filed a notice of exemption for MRC to lease to IORY its entire line of railroad, the Blue Ash Secondary, between milepost 49.5 #, at Cincinnati, OH, and milepost 50.5 #, at Norwood, OH, including the McCullough Yard track, a total distance of approximately 1 mile.

MRC and IORY are wholly-owned subsidiaries of The Indiana & Ohio Rail Corp. (I&O). The proposed transaction, which was to be consummated on or about May 28, 1991, is intended to facilitate the interchange of traffic between the I&O system and CSX Transportation, Inc., and other carriers.

Because MRC and IORY are members of the same corporate family, the lease falls within the class of transactions that are exempt from the prior review requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(3). The transaction will not result in adverse changes in service levels, significant operational changes, or a change in competitive balance with carriers operating outside the corporate family.

As a condition to use of this exemption, any employees affected by the lease will be protected by the labor conditions set forth in Mendocino Coast Ry., Inc.—Lease and Operate, 354 I.C.C. 732 (1978), and 360 I.C.C. 653 (1980).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of petitions to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on Robert L. Calhoun, Sullivan & Worcester, suite 806, 1025 Connecticut Avenue, NW., Washington, DC 20036.

Decided: June 6, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–13950 Filed 6–11–91; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Advisory Committee; Establishment

AGENCY: Mine Safety and Health Administration (MSHA).

ACTION: Notice of establishment of advisory committee.

SUMMARY: The Secretary of Labor has determined that it is in the public interest to establish an advisory committee to make recommendations concerning the conditions under which air coursed through the belt entry could be safely used in the face areas of underground coal mines. The committee will provide a collective expertise not otherwise available to the Secretary to address the complex and sensitive issues involved.

DATES: Comments must be received on or before June 27, 1991.

ADDRESSES: Send comments to the Office of Standards, Regulations, and Variances; Mine Safety and Health Administration; room 631; Ballston Tower #3; 4015 Wilson Boulevard; Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, (703) 235–1910.

SUPPLEMENTARY INFORMATION: On January 27, 1988, MSHA published in the **Federal Register** (53 FR 2382) a proposed rule to revise the Agency's existing ventilation standards for underground coal mines. Included in the proposal were provisions to allow the use of belt entry air to ventilate the face areas of underground coal mines. Public hearings were held in June 1988 and the record closed on August 19, 1988.

In 1989, the Assistant Secretary for Mine Safety and Health requested a special study to review safety and health questions surrounding the ventilation of belt conveyor entries. The report, released in August 1989, reviewed major aspects of the issues surrounding the use of air coursed through belt conveyor entries to ventilate working places in underground coal mines. As many of the findings and recommendations made in the report relate to issues in the ventilation rulemaking, MSHA reopened the rulemaking record to receive public comment on the relevant portions of the report and held a seventh public hearing in April 1990. The ventilation rulemaking record closed on May 18, 1990.

In accordance with the provisions of the Federal Advisory Committee Act and after consultation with the General Services Administration, I have determined that the establishment of an advisory committee on the use of belt entry air to ventilate the face areas of underground coal mines is in the public interest. I am therefore establishing the committee under sections 101(a) and 102(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) and the Federal Advisory Committee Act.

The committee will make recommendations to me with respect to conditions under which belt air could be safely used in the face areas of underground coal mines. These recommendations will be based on draft provisions developed by MSHA during the ventilation rulemaking, and other technical data.

As required by section 102(c) of the Mine Act, the majority of the committee will be composed of individuals who have no economic interest in the mining industry and who are not operators, miners, or officers or employees of the Federal government or any State or local government. There will be nine committee members: Two representing labor, two representing industry and five persons with no economic interest in the industry.

The committee will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act fifteen days from the date of this publication.

Interested persons are invited to submit comments regarding the establishment of the committee to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, at the address listed above.

Dated: June 6, 1991.

Lynn Martin,

Secretary of Labor.

[FR Doc. 91–13913 Filed 6–11–91; 8:45 am]

BILLING CODE 4510–43–M

LEGAL SERVICES CORPORATION

Grant Award for Provision of Civil Legal Services to Migrant Farmworkers

AGENCY: Legal Services Corporation.

ACTION: Announcement of grant award.

SUMMARY: The Legal Services Corporation hereby announces its intention to award a grant to provide civil legal assistance to LSC-eligible migrant farmworker clients in Tennessee. Pursuant to the Corporation's announcement of funding availability in Volume 56, No. 49, pages 10577 and 10578 of the **Federal Register** of March 13, 1991, a total of $12,527 will be awarded to Legal Services of Upper East Tennessee.

This one-time grant is awarded pursuant to authority conferred by sections 1006(a)(1)(B) of the Legal Services Corporation Act of 1974, as amended. This public notice is issued pursuant to section 1007(f) of this Act, with a request for comments and recommendations within a period of thirty (30) days from the date of publication of this notice. The grant award will not become effective and grant funds will not be distributed prior to expiration of this thirty-day period.

DATES: All comments and recommendations must be received on or before the close of business on July 12, 1991, at the Office of Field Services, Legal Services Corporation, 400 Virginia Avenue SW., Washington, DC 20024–2751.

FOR FURTHER INFORMATION CONTACT: Phyllis Doriot, Manager, Grants & Budget Division, Office of Field Services (202) 863–1837.

Date Issued: June 7, 1991.

Ellen J. Smead,

Director, Office of Field Services.

[FR Doc. 91–13947 Filed 6–11–91; 8:45 am]

BILLING CODE 7050–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of Opera-Musical Theater Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Opera-Musical Theater Advisory Panel (Challenge III Section) to the National Council on the Arts will be held on June 28, 1991 from 9 a.m.–5:30 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9 a.m.–10 a.m. and 4:30 p.m.–5:30 p.m. The topics will be welcoming remarks, overview of Challenge III, and policy discussion.

The remaining portion of this meeting from 10 a.m.–4:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, as amended, this section will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Robbie McEwen, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

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Dated: June 6, 1991.

Robbie McEwen,

Acting Advisory Committee Management Officer, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-13961 Filed 6-11-91; 8:45 am]

BILLING CODE 7537-01-M

President's Commission on Arts and Humanities; Meeting

Thursday, June 27 at nine o'clock in the morning has been designated by the President's Committee on the Arts and the Humanities for Meeting XXIII. This meeting has been scheduled in the President's Committee Conference Room, #527, 1100 Pennsylvania Avenue, NW., in Washington, DC. This is a regularly scheduled meeting at which The Honorable Roger Porter, Assistant to the President for Economic and Domestic Policy will address the Committee on The President's Education Agenda. In addition, presentations will be made by Ambassador Henry Catto, Director of the United States Information Agency, and The Honorable Susan Kent, Director of the Institute of Museum Services. The plenary session is expected to adjourn at 11:30 a.m.

The President's Committee on the Arts and the Humanities was created by executive order of the President in 1982. Its primary goal is to raise visibility and private support for cultural activities.

Please call 202-682-5409 or 212-512-5957, if you expect to attend, as space is limited.

Dated: June 7, 1991.

Robbie McEwen,

Acting Advisory Committee Management Officer, Council & Panel Operations National Endowment for the Arts.

[FR Doc. 91-13962 Filed 6-11-91; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from May 17, 1991 through May 31, 1991. The last biweekly notice was published on May 29, 1991 (56 FR 24204).

Notice of Consideration of Issuance of Amendment To Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity For Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, D.C. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 12, 1991 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555 and at the Local Public Document Room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner

shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (Project Director): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530 Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendment requests: April 30, 1991

Description of amendment requests: The radioactive gaseous effluent instrumentation is used to monitor and control the releases of radioactive materials in gaseous effluents. The proposed amendment would add a footnote to Technical Specification Table 4.3-8, Radioactive Gaseous Effluent Monitoring Instrumentation Surveillance Requirements, to allow the use of light emitting diodes (LED) as check sources for four noble gas activity monitors. Currently, the use of the LED check source is not permitted under the literal interpretation of the SOURCE CHECK definition (Technical Specification 1.33), which requires the channel sensor to be exposed to a source of increased radioactivity. However, the detector vendor manual states "The LED check source, when activated by an operator, makes it possible to confirm the detector's operability." Therefore, the use of LED check sources may be consistent with the vendor manual.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment permits the use of the built-in LED check sources for Technical Specification monitors RU-12 (Gaseous Radwaste System Noble Gas Activity Monitor), RU-141 (Condenser Evacuation System Noble Gas Activity Monitor), RU-143, (Plant Vent System Noble Gas Activity Monitor) and RU-145 (Fuel Building Ventilation System Noble Gas Activity Monitor). The vendor manual states, "The LED check source when activated by an operator, makes it possible to confirm the detector's operability." Use of the LED check sources provides an alternative method for the qualitative assessment of channel response for these four noble gas activity monitors and does not change the source check requirement nor surveillance interval. The credible failure mechanisms of beta scintillator detectors (i.e., failure of the photomultiplier tube, preamplifier, cabling, microcomputer, and high voltage power supply) would be detected with equal confidence by the LED or isotopic check sources. The use of LED check sources does not affect assumptions contained in plant safety analyses, nor does the use affect Technical Specifications that preserve safety analysis assumptions. Therefore, the proposed amendment does not affect the probability or consequences of accidents previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed amendment permits the use of LED check sources in lieu of isotopic check sources, but does not change the intent of the Technical Specification requirements. The LED check sources qualitatively assess the detector channel response. Use of LED check sources does not alter the design of the facility nor the operation of the detectors. There are no credible failures of the detectors that would not be detected with equal

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confidence by the LED or isotopic check sources. Therefore, failure mechanisms of the monitors remain unchanged, and hence the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed amendment, permitting the use of LEDs in lieu of isotopic check sources, makes no changes to safety limits, setpoints, or design margins at PVNGS and, therefore, does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensees' analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Attorney for licensees: Arthur C. Gehr, Esq., Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85073

NRC Project Director: James E. Dyer

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: April 1, 1991

Description of amendments request: The amendment proposed two changes to the Technical Specifications to meet the requirements of Generic Letter (GL) 88-01 regarding Intergranular Stress Corrosion Cracking (IGSCC) near weldments in Boiling Water Reactor (BWR) piping. The first is the addition of a Surveillance requirement in section 4.0.5 for the inservice inspection program of piping identified in GL 88-01 to be in accordance with NRC staff guidelines. The second is the establishment of a new Limiting Condition for Operation (LCO) and Action requirement for the reactor leakage limit. The LCO places a two gpm limit on the increase of unidentified reactor coolant leakage over a 24-hour period. The action requirement allows a 4-hour period to identify the source of the leakage before commencing an orderly shutdown of the unit. The unit must be in hot shutdown within the next 12 hours and cold shutdown within the following 24 hours.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because: [2]The proposed amendment to the applicability section of the Technical Specifications (paragraph 4.0.5) commits the station to conducting the inservice inspection program in accordance with the requirements of Generic Letter 88-01 or in accordance with alternate measures approved by the NRC staff. This revision is administrative in nature and does not affect any accident initiators or initial assumptions used in the plant accident analyses.

Leakage detections systems for the reactor coolant system are provided to alert the operator when leakage rates above normal levels are detected. The proposed amendment to the limiting conditions for operation (LCO) and action requirements for the reactor coolant system operational leakage limits provides more stringent requirements for detection of unidentified leakage within the primary containment. This additional restriction will enhance the ability for early detection of small flaws in the reactor coolant pressure boundary, thereby, reducing the potential for a significant failure of the pressure boundary. This revision does not adversely affect any of the accident initiators or initial assumptions used in the plant accident analyses.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because:

The proposed amendments do not involve any changes to the facility or the operation of the facility as described in the UFSAR. The amendments provide enhancements to the program for early detection of pressure boundary leakage and do not create the possibility of any unanalyzed event.

The proposed changes do not involve a significant reduction in a margin of safety because:

The proposed amendment to paragraph 4.0.5 of the Technical Specifications commits the station to conducting the inservice inspection program in accordance with the requirements of Generic Letter 88-01 or in accordance with alternate measures approved by the NRC staff. This revision is purely administrative in nature and has no affect on the margin of safety.

The proposed amendment to the LCO and action requirements for the reactor coolant system operational leakage limits provides more stringent requirements for detection of unidentified leakage within the primary containment. This additional restriction may help to enhance the ability for early detection of small flaws in the reactor coolant pressure boundary, thereby, reducing the potential for a significant failure of the pressure boundary. This proposed amendment will not have an adverse affect on the margin of safety. The enhanced ability for early detection of unidentified leakage may actually increase the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: April 2, 1991

Description of amendments request: The Technical Specification changes accomplish two purposes. The first is to eliminate the requirement to use the Rod Sequence Control System (RSCS) and replace it with the requirement to use the Rod Worth Minimizer (RWM) for rod pattern control. Second, it reduces the Low Power Setpoint (LPSP) for turning off the RWM from 20 percent power to 10 percent power. An additional requirement for the RWM is being added to Technical Specification 3.1.4.1 which will prevent reactor startup if the RWM is inoperable. These changes are based on the NRC staff's previous approval of Amendment 17 to the General Electric document NEDE-24011-P-A, "General Electric Standard Application for Reactor Fuel," Revision 8.

Basis for proposed no significant hazards consideration determination. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because:

1. An extensive probabilistic study performed by the NRC staff (letter and enclosure from from B.C. Rysche, NRR to R. Fraley, ACRS dated June 1, 1976, "Generic Item II A-2 Control Rod Drop Accident (BWRs)") in conjunction with the extensive use of BPWS rod patterns, and improved RWM reliability demonstrates that the RWM can be considered an acceptable system of rod pattern control in protecting against the Design Limit Rod Drop Accident (RDA). Thus, the RSCS is redundant in function to the RWM. Eliminating the RSCS does not eliminate the control rod pattern monitoring function performed by the RWM. The probability of an accident occurring is not increased, since RSCS does not affect the potential of a rod drop event and the proposed changes do not remove control rod drive coupling checks or instrument response verifications. When operation proceeds in accordance with this change, the probability or consequences of an accident is not increased.

2. Improved methodologies in the RDA analysis methods (e.g. BNL-NUREG 28109, "Thermal Hydraulic Effects on Control Drop Accident in a BWR, October 1980) have shown that when above 10 percent power no RDA can occur with the peak fuel enthalpy being greater than the RDA design limit of 280 cal/gm. The installed sensors for RWM LPSP actuation are capable of providing actuation within the revised limits. When operation proceeds in accordance with this change, the probability or consequences of an accident is not increased.

3. The RSCS duplicates the function of the RWM. While the RWM is operable, the RSCS is not needed since the RWM prevents control rod pattern error. In the event the RWM is out of service, the proposed Technical Specifications require that control rod movement and compliance with the prescribed control rod pattern be verified by a second licensed operator or technically qualified member of the technical staff. The verification process is controlled procedurally to ensure a high quality, independent review of control rod movement. All of these actions demonstrate consistency and applicability to those conclusions reached in the NRC SER, and substantiate the conclusion that there will be no increase in the consequences of an RDA as previously evaluated as a result of eliminating the RSCS and lowering the RWM LPSP.

The proposed changes do not create the possibility of a new or different kind of accident previously evaluated because:

1. The only protective function of the RSCS is preventing the Design Limit RDA. Eliminating the RSCS does not change any other plant protective functions or systems, thus the change does not create any new accident mode.

2. The only protective function of the RWM is preventing the Design Limit RDA. Lowering the setpoint of the RWM from 20 percent power to 10 percent power does not change any other plant protective functions or systems, thus the change does not create any new accident mode.

The proposed changes do not involve a significant reduction in the margin of safety because:

1. Elimination of the RSCS will not reduce the margin of safety. The RWM will protect against the peak fuel enthalpy being greater than the RDA design limit of 280 cal/gm in the event of a control rod drop. The consequences of transients or accidents are not increased by this change beyond those previously evaluated and accepted at LaSalle Station.

2. Lowering the setpoint of the RWM from 20 percent power to 10 percent power will not reduce the margin of safety. Calcuations performed by GE and BNL have shown that even with the maximum single control rod position error, and most multiple error patterns, above 10 percent power no RDA can occur with the peak fuel enthalpy being greater than the RDA design limit of 280 cal/gm in the event of a control rod drop. The consequences of transients or accidents are not increased by this change beyond those previously evaluated and accepted at LaSalle Station.

3. GE has provided technical justification for the proposed changes in Topical Report NEDE-24011-P-A and associated references which justify the acceptability of the proposed changes. The NRC has reviewed and accepted the GE analysis and provided guidelines for licensees wanting to make the changes proposed in NEDE-24011-P-A and approved in the NRC SER issued December 27, 1987 to J.S. Charnley of General Electric. The proposed changes are consistent with those approved in the NRC SER and the guidelines set forth therein. Therefore, there is no significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: April 24, 1991

Description of amendments request: The amendment to the Technical Specifications (TSs) proposes two changes. The first is to add to the specifications allowed outage times (AOT) for the scram discharge volume (SDV) drain and vent valves. AOT's for these valves are currently not included in the TSs for LaSalle, but are included in the TSs for other BWR plants of similar vintage. The second change is to remove TS 4.1.3.1.4.b which covers SDV instrumentation because the surveillances, action requirements, and AOT are adequately covered under RPS instrumentation (TS 4.3.1.1) and Control Rod Block instrumentation (TS 4.3.6).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Based on the criteria for defining a significant hazards consideration established in 10 CFR 50.92, operation of LaSalle County Station, Units 1 and 2 in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because:

The establishment of an allowed outage time (AOT) for the scram discharge volume (SDV) vent and drain valve will not significantly increase the probability of an accident previously evaluated. The proposed AOT introduces a minor increase in the risk of a loss of coolant via the SDV vent and/or drain valve pathway. However, this event can only occur if the redundant valve should fail to close after a reactor scram. The probability of such an event is reduced by the use of redundant valves in the pathway. Therefore, the proposed AOT does not involve a significant increase in the probability of an accident as previously evaluated for LaSalle Station.

The consequences of an accident previously evaluated are not significantly increased by creating the AOT for the SDV vent and drain valve. As previously mentioned, the proposed AOT for the SDV system increases the risk of a loss of coolant via the SDV vent and/or drain valve pathway. However, the volume of coolant lost via this pathway is relatively small. Also, this event can only occur following a reactor scram. The primary concern associated with a SDV vent and/or drain valve failure to close following a reactor scram is secondary containment contamination. Therefore, the consequences of an accident previously evaluated is not significantly increased.

If any of the SDV vent or drain valves fail closed the SDV will fill as a result of normal control rod drive leakage. The increasing level will cause successively an alarm, a control rod block and finally a reactor scram if action is not taken to reopen the valves and drain the SDV. The reactor scram will occur while there is still enough volume remaining in the SDV to ensure a full reactor scram. Therefore, the ability to shut the reactor down under this failure mode is not impaired.

Deletion of Specification 4.1.3.1.4.b which contains the channel functional test requirements for SDV level detector instruments does not increase the probability or consequences of a previously evaluated accident. The requirements are either obsolete or redundant to other technical specification requirements.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because:

The establishment of an AOT does not involve any changes to the facility or the operation of the facility as described in the UFSAR. Surveillance requirements for the SDV level instrumentation are covered under the RPS and control rod block instrumentation Technical Specification requirements.

3. Involve a significant reduction in the margin of safety because:

Establishment of an AOT where none currently exists may result in a small increase in risk, however it is expected that this increase will be offset by the reduction of risk to plant safety resulting from a reduced number of unnecessary plant shutdowns.

The surveillance requirements for the SDV level instruments are adequately addressed

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in the RPS and control rod block instrumentation specifications. Therefore deletion of specification 4.1.3.1.4.b will not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of application for amendments: May 15, 1991

Description of amendments request: The amendment would revise the Technical Specifications to incorporate section 4.0.5 from the Westinghouse Standard Technical Specifications relating to inservice inspection and testing of ASME components, pumps, and valves. Other conforming changes are proposed for the surveillance requirements of the applicable components, pumps, and valves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change involves the incorporation of Specification 4.0.5 requirements. The change does not result in any hardware changes. The frequency at which pump and valve surveillances are performed is not assumed in the initiation of any analyzed event. The role of these pumps and valves is in the mitigation of design basis accidents and transients. However, the acceptance criteria of the IST program, which are at least as restrictive as existing Technical Specification requirements and in most cases are more restrictive, will ensure that at least an equivalent level of operational readiness is provided by this change for the affected pumps and valves. Therefore, accident analyses assumptions reflected in the affected surveillance requirements will still be verified on a frequency sufficient to ensure that the assumptions are reliably maintained. Additionally, the relocation of surveillance details to the IST program or its implementing procedures (controlled by 10 CFR 50.59) will not increase the probability or consequences of a previously evaluated accident since adequate control of the requirements is provided by the 10 CFR 50.59 review process and ASME Section XI requirements incorporated by 10 CFR 50.55a(g). Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident previously evaluated?

The proposed change, which involves the incorporation of Specification 4.0.5 requirements does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated for the Zion Nuclear Generating Station.

Does this change involve a significant reduction in a margin of safety?

The IST program requirements and implementing procedures have been developed to ensure component degradation is detected before the component is incapable of performing its intended safety function. Therefore, modifying the applicable Technical Specification pump and valve surveillance requirements will not involve a significant reduction in a margin of safety. Any reduction in a margin of safety is insignificant since the extension of the surveillance intervals is justified by application of more restrictive surveillance criteria or the extension is justified based on accepted industry practice and compliance with ASME Section XI as mandated by 10 CFR 50.55(a)g [50.55a(g)]. Additionally, the 10 CFR 50.59 process used to control changes to the IST program and procedures (containing the relocated pump and valve surveillance details) is more stringent in that more conservative questions than those asked by the 10 CFR 50.92 process must be addressed. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of application for amendments: May 15, 1991

Description of amendments request: The proposed amendment would revise Tables 3.14-1 and 4.14-1 of Technical Specification 3/4.14 to incorporate the new radiation monitoring instrumentation associated with Zion Station's new Technical Support Center (TSC) and delete the instrumentation associated with the former TSC.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes are administrative in nature. The intent is to revise the instrument numbers for the Technical Support Center (TSC) Radiation Monitors to reflect those that were installed in the new TSC. The new monitors will perform the same functions as the ones used in the old TSC which is consistent with the requirements described in both NUREG 0737 and 0696. The purpose of these monitors is to provide sufficient information to monitor and assess TSC habitablity [habitability]. The information obtained will be assessed with appropriate actions taken to ensure proper TSC habitability is maintained. The proposed amendment does not change or alter any current operator actions or requirements for the mitigation of any accident evaluated in the Zion Final Safety Analysis Report (FSAR). The addition of the automatic initiation of air filtration reduces the dependance upon operator action to ensure TSC habitability. These changes do not have any adverse impact on any assumed margins during an evaluated accident. Plant response to previously evaluated accidents will not be altered as a result of these changes. The probability for an evaluated accident is independent of the proposed changes. The instrumentation numbers and the automatic air filtration initiation feature are not related in any fashion to the initiation or mitigation of previously evaluated accidents. As such, the probability and consequences of previously evaluated accidents has remained unchanged.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change involves administrative changes to reflect new equipment part numbers (EPNs) and addition of an automatic initiation feature for emergency air filtration equipment. No changes in parameters governing normal plant operation are involved. The new equipment which has been installed has the same capabilities as the equipment utilized in the old TSC. The automatic filtration feature does not create the possibility for a new or different kind of accident since spurious actuation will result only in unnecessary filtration and failure to automatically actuate will not preclude manual actuation.

The proposed change does not involve a significant reduction in a margin of safety.

These proposed changes do not alter the manner in which any safety related equipment is operated or maintained. There are no setpoint or operational limitations being altered as a result of these revisions. The inclusion of the corrected numbers and replacement instrumentation will provide added assurance that an adequate number of appropriate instruments are available to monitor required TSC habitability conditions in the event of an accident. The Surveillance requirements continue to establish specific actions to determine operability of the monitors. As such, these changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: April 2, 1990 and as amended September 27, 1990

Description of amendment request: The proposed license amendment would modify the Palisades Plant Technical Specifications (TS) by deleting the responsibility of industry experience review from the Plant Safety and Licensing Group, and assigning it to the Plant Review Committee. Additionally, various editorial corrections are proposed.

Specifically, the proposed amendment would correct typographical errors in TS Table 3.6.1, Containment Penetrations and Valves, TS Section 3.25.1, Alternate Shutdown System, Limiting Condition for Operation, and TS Section 6.10.2.i, Administrative Controls - Record Retention.

Also, the responsibility for the program to examine nuclear industry operating experiences has been removed from the Plant Safety and Licensing organization and has been reassigned to the Plant Review Committee under the Engineering and Maintenance Manager. This change affects TS Section 6.5.3.1, Plant Safety and Licensing - Function, TS Section 6.5.1.6.i, Plant Review Committee - Responsibilities, and TS Section 6.5.1.7.a, Plant Review Committee - Authority.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

These changes as proposed are editorial in nature. Proposed changes C & D will have no impact on the industry operating experience review or safety review functions at the plant. The changes have no effect on the probability of occurrence or consequences of an accident, nor has the possibility of an accident or malfunction of a different type been created because they do not effect the plant configuration nor the plant operating requirements.

The margin of safety as defined in the basis for the Technical Specifications will not be affected because no margin of safety is defined for the Administrative Controls Section of the Technical Specifications, and the proposed changes are editorial corrections.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: L. B. Marsh.

Duke Power Company, Docket No. 50-369, McGuire Nuclear Station, Unit 1, Mecklenburg County, North Carolina

Date of amendment request: April 18, 1991

Description of amendment request: The Technical Specification amendment request would revise TS 5.3.1 to enable the use of two demonstration assemblies during McGuire Unit 1 cycles 8, 9, and 10.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) The proposed change will not involve a significant increase [in] the probability or consequences of any accident previously evaluated in the FSAR.

The test assemblies with the zirconium-based claddings are mechanically and thermal-hydraulically similar to the remainder of the reload batch and the rest of the core, so no failure probability is increased, nor is any operational practice changed which could introduce a new initiator of an accident. The only credible event which could occur as a result of this demonstration is clad failure of the test fuel rods. The number of fuel rods involved is such a small percentage of the core inventory that even a postulated failure of all the demonstration fuel rods from a cause related to the demonstration would not result in dose consequences greater than existing limits. A failure of the fuel rods from a cause not related to the demonstration would not result in consequences greater than those which would have occurred had the assemblies not been demonstration assemblies.

2) The proposed change will not create the possibility of a new accident not previously evaluated.

The mechanical and thermal-hydraulic similarity of the test assemblies to the remainder of assemblies in the core precludes the credible possibility of creating any new failure mode or accident sequence. The use of the demonstration assemblies does not involve any alterations to plant equipment or procedures which would introduce any new or unique operational modes or accident precursors[.]

3) The proposed change will not involve a significant decrease in a margin of safety.

The demonstration assemblies meet the same design bases as the remainder of assemblies in the core. Existing reload design and safety analysis limits are maintained, and the FSAR analyses are bounding. No special setpoints or other safety settings are required as a result of the use of these two test assemblies. The assemblies will be placed in locations which will not experience limiting peak power conditions.

Conclusion

The proposed change has been shown in the accompanying [justification and Safety Analysis (see Attachment II) [of licensee's submittal] to be transparent in terms of the operation of the plant. No new operational or safety considerations will be created, and no procedures or practices will be changed. The demonstration assemblies will be mechanically, neutronically, and thermal-hydraulically similar to the rest of the assemblies in the reload batch and the remainder of the core.

Based upon the above analysis, it is concluded that the proposed change will not involve a Significant Hazards Consideration.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: April 11, 1991 as supplemented May 20, 1991

Description of amendment request: The proposed TS amendments revise the value of the required control rod drop time from 3.3 seconds to 2.2 seconds.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Duke Power Company has made the determination that this proposed amendment does not create a Significant Hazards Consideration, as defined by the criteria of 10CFR 50.92. These criteria ensure that operation of the facility in accordance with the proposed amendment would not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

There is no change in the probability of any accident. The plant is not being modified in any way, except that the rod drop time will be more restrictive. The speed of the control rod drop is not an initiator of any accident.

The consequences of any accident will still meet the applicable acceptance criteria, so the consequences are acceptable. The allowable rod drop time is more conservative, in that it results in a more rapid shutdown of the reactor, and produces less severe consequences for all transients and accidents involving a reactor trip. The Chapter 15 analyses which are being performed in support of the upcoming M1C8 reload are expected to be submitted in early June.

2) Create the possibility of a new or different kind of accident from any previously evaluated.

This TS change will not require modifications to any equipment, components, or devices in the station. There is no need to functionally revise any procedures to operate or maintain the plant other than to substitute the new acceptance criteria in the appropriate rod drop timing test procedure. As such, the plant is not being modified in any way, and since the rod drop time will be more restrictive, there is no potential for a new or different kind of accident from any previously evaluated.

3) Involve a significant reduction in a margin of safety.

The transient and accident analyses which were performed in support of Unit 1 Cycle 8, which will be submitted for Staff review shortly, show that the acceptance criteria are met in all cases. Provided that the actual rod drop time is not greater than that assumed in the transient and accident analyses, the margin of safety is maintained. It should be noted that the rod drop time assumed in the analyses can be larger than the TS value and not impact the margin of safety. TS 3.1.3.4 ensures that the scram curves used in the safety analyses are validated by rod drop test results. The design drop time of 1.8 seconds remains unaffected, and the addition of the test review criteria provides additional assurance that anomalous drop behavior is investigated. The results of the analyses continue to meet the acceptance criteria of the Standard Review Plan.

NRC staff guidance provided in the Federal Register (48 FR 14870) regarding amendments not likely to involve a Significant Hazards Consideration stated that those amendments which constitute an additional limitation or restriction were not likely to involve an SHC. This proposed amendment clearly represents a more stringent Limiting Condition for Operation for TS 3.1.3.4. Therefore, this amendment request is considered to meet the Staff's guidelines for a NSHC determination.

Based on the above discussion, it can be concluded that the proposed change will not involve a Significant Hazards Consideration.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: February 7, 1991

Description of amendment request: The proposed amendments would delete the Organization charts from Section 6 - Administrative Controls, of the Technical Specifications (TSs) and associated bases, in accordance with staff guidance provided by NRC Generic Letter (GL) 88-06. Also, as recommended by GL 88-06, the licensee has added or modified statements to Section 6 of the TSs to provide the necessary administrative controls related to the licensee's organization. The organization charts are currently located in Chapter 13 of the Final Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

The amendments are administrative in nature and do not change the design or operation of the facility. The accident analyses are unaffected by this proposal, and thus the amendments do not involve a significant increase in the probability or consequences of any accident previously evaluated.

The design and operation of the facility will not be changed by the amendments and no new modes of operation will be introduced by the changes. Therefore, the amendments do not create the possibility of a new or different type of accident from any previously evaluated.

The NRC GL 88-06 was issued to provide a greater flexibility to implement changes to the licensee organizational structure without reduction in plant safety. The licensee has addressed the particular requirements addressing administrative controls identified in GL 88-06. Therefore, the changes do not involve any reduction in margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied . Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29692

Attorney for licensee: J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: David B. Matthews

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: June 12, 1990 as supplemented by letter dated April 19, 1991. The June 12, 1990 submittal was published in the **Federal Register** on September 19, 1990 (55 FR 38600).

Description of amendment request: The proposed amendment would modify Technical Specification (TS) 3.4.9.3 relating to Overpressure Protection Systems (OPPS). Specifically, the amendment would increase the maximum setpoint specified for the power-operated relief valves (PORVs), and would increase the enable temperature below which the OPPS shall be operable. The amendment would also modify TSs 3.4.1.6, 3.5.4.1.2, 4.1.2.4.2, and 4.5.3.2 and the footnotes associated with TSs 3.1.2.4 and 3.5.3 by replacing the specified temperature with a reference to the enable temperature specified in TS 3.4.9.3 Bases Sections 3/4 1.2, 3/4 4.9 and 3/4 5.2. 3/4 5.3, and 3/4 5.4 would also be revised to reflect the changes described above.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

A. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the proposed changes merely provide a revised setpoint for the PORVs to protect the reactor coolant system from low-temperature overpressure transients. The setpoint proposed would still prevent exceeding the temperature-pressure operating limits determined in accordance with Appendix G to 10 CFR Part 50. As such, the revised setpoint affords the same protection against low temperature overpressure transients as before.

B. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because the proposed changes would still provide protection to the reactor coolant system against brittle fracture.

C. The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the proposed changes would still provide protection against brittle fracture of the reactor coolant system in accordance with Appendix G to 10 CFR Part 50.

Based on this review, it appears that the three criteria of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Project Director: John F. Stolz

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: April 9, 1991

Description of amendment request: The proposed changes to Arkansas Nuclear One, Unit 2 Technical Specification 3.1.3.1 and its associated bases would allow continued plant operation for 72 hours with more than one full length or part length Control Element Assembly (CEA) inoperable due to an electronic or electrical problem in the Control Element Drive Mechanism Control System (CEDMCS), provided that all affected CEAs remain trippable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

Allowing 72 hours for diagnosis and repair associated with electronic or electrical malfunctions of the CEDMCS is acceptable, since the primary safety function of these CEAs (reactor trip) remains unaffected. The 72 hour allowance is considered justifiable in order to provide adequate time to effect repairs without undue exposure to any operational requirement to move the affected CEA group.

The proposed changes maintain the original requirements for CEA position, insertion limits, and surveillance requirements so that power and peaking distributions used in the safety analysis will remain unaffected. The proposed changes do not affect the ability of the CEAs to perform their intended safety function when a safety system setting is reached. Therefore, the consequences of accidents related to or dependent upon CEA operation will remain unaffected.

(2) Create the possibility of a new or different kind of accident from any previously evaluated.

There are no new failure modes or mechanisms associated with the proposed changes. These changes do not involve any modification in the operational limits or physical design of the involved systems. These changes will reduce the burden on the control room staff by allowing sufficient time for system repair.

(3) Involve a significant reduction in margin of safety.

These changes do not affect any Technical Specification margin of safety. These changes allow appropriate ACTION commensurate with the significance of the CEDMCS malfunction, while not subjecting the plant to a transient in response to malfunctions that do not affect the capability of the CEAs to perform their primary safety function.

Other Technical Specification limits for reactivity related items, such as shutdown margin and CEA insertion limits, will remain in effect to ensure that the safety margins are maintained.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Theodore R. Quay

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: May 9, 1991

Description of amendment request: The proposed change revises Technical Specification (TS) 3.5.3.1 for the containment isolation valves. The proposed change deletes the requirements of TS 3.0.4 on mode changes, when the action statements that allow continued operation for an unlimited period of time are met.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The exemption of the application of Technical Specification 3.0.4 to the containment isolation valves has no effect on the probability of an accident and does not significantly increase the consequences of an accident. The containment isolation valves prevent the offsite releases of radioactive material which could be present within the containment following an accident. Current Technical Specifications identify sufficient Technical Specification actions which can be taken should the containment isolation valves become inoperable during the applicable modes of operation. This ensures an adequate level of protection until the inoperable valve can be repaired. The proposed change allows the unit to enter operational modes if the actions have been met.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The containment isolation valves are utilized to mitigate the consequences of an accident. The proposed change allows entry

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into the applicable operational mode if sufficient actions currently specified by the Technical Specifications are met. The Technical Specification actions currently allow continued operation for an inoperable valve when compliance with the Action Requirements is satisfied. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed change does not involve a significant reduction in a margin of safety since the isolation capability required by the ACTION statement of Specification 3.6.3.1 is in place, which allows continued operation if the actions are met. This...[exception] allows entry into a mode where these actions are applicable.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Theodore R. Quay

Entergy Operations Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: November 9, 1990 and March 15, 1991

Description of amendment request: The proposed amendment would revise the Technical Specifications to delete reference to the movable incore detector system (MICDS) and remove requirements for the associated containment penetration conductor over-current protective devices. The fixed incore detection system will remain and the containment penetrations will continue to be protected for overcurrent when in use.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operability of the movable incore detectors is not required for any accidents previously evaluated. All assumptions and results for previously evaluated accidents remain unchanged by the proposed amendment. Therefore, the alteration of the Technical Specification 3.3.3.2 definition for "operable incore detector" will not involve an increase in the probability or consequence of any accident previously evaluated.

The exclusion of the MICDS from the definition for "operable incore detector" means the mapping is to be accomplished by the fixed incore detector system only rather than a combination of the two. Since the fixed system provides the same information as the movable and the qualification criteria for Technical Specification 3.3.3.2 remains unchanged, the protection afforded by the limiting condition for operation remains unchanged. Consequently, the requested amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change narrows the definition in Technical Specification 3.3.3.2 of "operable incore detector" by excluding the alternate means to map a location using the MICDS. In the Bases to the Instrumentation section of the Technical Specifications, it states:

The OPERABILITY of the incore detectors with the specified minimum complement of equipment ensures that the measurements obtained from use of this system accurately represent the spatial neutron flux distribution of the reactor core.

The accurate representation of the spatial neutron flux distribution in the reactor core is best provided by the fixed incore detectors. The fixed detectors have always been used, since the MICDS is essentially unavailable. Therefore, the operability, as specified in the Bases, remains unchanged by this proposed amendment.

The limiting condition for operation has two requirements to verify incore detection system operability:

1. At least 75% of all incore detector locations shall be OPERABLE, and
2. A minimum of two quadrant symmetric incore detector locations per core quadrant.

These criteria make no distinction as to which detection system is to be employed to verify operability. The protection they provide is unchanged by the proposed amendment to the Technical Specification. Since this change does not affect any of the assumptions or results of the safety analyses, does not diminish the protection provided by the limiting condition for operation in the Technical Specifications, and does not change the bases, it does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: Ernest L. Blake, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N St., N.W., Washington, D.C. 20037

NRC Project Director: Theodore R. Quay

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: January 26, 1990, as supplemented January 15, 1991

Description of amendment request: The limiting conditions for operation and surveillance requirements for the Pressure Suppression Chamber in Hatch Unit 1 Technical Specification (TS) 3/4.7 and in Hatch Unit 2 TS 3/4.6.2.1 (and corresponding Action Statements and Bases) are being changed to clarify the method of determining the average suppression pool water temperature which is used to show compliance to TS operational temperature limits.

The original design of the Hatch pressure suppression pool included four temperature sensors installed in the lower elevation of the pool. The average of these four sensor readings was used to determine pool water temperature to ensure conformance to TS operational temperature limits.

Subsequently, 11 additional temperature sensors were installed at higher elevations in the pool to provide enhanced monitoring capability of this important plant parameter during normal, abnormal, and emergency operations.

The proposed change will modify the TS to require a more stringent method of monitoring the suppression pool water temperature. The TS will delineate that all 15 installed temperature sensors must be used to determine the average (bulk) water temperature. This bulk temperature is the numerical average of all 15 installed temperature sensors and is an assumed initial condition of many safety analyses. The TS surveillance requirements for both units will specify that the average pool temperature shall be determined using a weighted average of the suppression pool temperature sensors as described in the TS Bases. The TS Bases of both units will describe the methods used to determine the average suppression pool water temperature. Procedural changes have been implemented at Plant Hatch to require that a representative average of the 15 installed temperature sensors be used to determine the bulk pool temperature.

The proposed change will also modify the alternate methods of determining the average (bulk) suppression pool water temperature during different plant operating conditions in the event that more than two of the 15 temperature elements become inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The heat capacity of the suppression pool, the existing suppression pool temperature limits, and the heat additions to the suppression pool assumed in accident/transient analyses are not impacted by this change.

The TS [will be] modified to require a more stringent method of monitoring temperature, consistent with current Plant Hatch procedural requirements.

The proposed change does not create the possibility of a new or different type of accident from any previously analyzed, because the new TS requirement simply increases the amount of instrumentation required to monitor average (bulk) suppression pool temperature. No new modes of operation are introduced by this change, and the pool temperature sensors provide monitoring and alarm functions only. Also, no physical changes are being made to the pool temperature monitoring system.

The proposed change does not involve a significant decrease in the margin of safety. Monitoring of the suppression pool temperature will be at least as accurate as before and reflects a better method of determining conformance to TS temperature limits. This method (using all of the available pool temperature sensors) is currently being utilized in plant procedures.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: David B. Matthews

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia *Date of amendment request:* October 9, 1990

Description of amendment request: The amendments would modify the Hatch Units 1 and 2 Technical Specifications (TSs) to reduce the trip setpoint allowable value for the low reactor water level scram and isolation functions by approximately 10 inches. This change would replace the current value of greater than or equal to 10 inches with greater than or equal to 0 inches in Hatch Unit 1 TS 2.1.A.2, Figure 2.1-1, Tables 3.1-1, 3.2-1, and 3.2-4, and their associated Bases; and in Hatch Unit 2 Tables 2.2.1-1, 3.3.2-2, and 3.3.3-2, and Figure B 3/4 3-1.

Reactor vessel water level instrumentation sends signals to the reactor protection system to initiate a reactor scram at low reactor vessel water level (Level 3) to prevent the water level from decreasing. These signals also close selected safety-related valves to isolate the primary containment and provides one of the signals needed to start an emergency core cooling system (ECCS).

This change would lower the current Hatch Unit 1 and Unit 2 trip setpoint/allowable value for the low reactor vessel water level scram and containment isolation functions from its current value of greater than or equal to 10 inches above reactor vessel instrument zero reference level to greater than or equal to 0 inches. Reactor vessel instrument zero reference water level is approximately 164 inches above the top of the active fuel. This level provides sufficient water inventory to assure that the fuel remains covered. Implementation of the lower water level scram setpoint would provide several additional seconds for operator actions in the event of a feedwater transient and may avert an unnecessary reactor scram.

The impact of a reduction in this Level 3 scram setpoint on the applicable transient and accident analyses, the containment isolations occurring at Level 3, and the Level 3 permissive signal to the ECCS start logic has been evaluated by the licensee. The licensee evaluations support changing the scram setpoint to 0 inches and indicate that the change will not impact the safety analysis. The change has an insignificant impact on the containment isolation function, and will not significantly decrease safety margins.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The proposed change does not significantly increase the probability or consequences of an accident previously evaluated. The change does lower (reduce) a trip setpoint; however, affected transient and accident analyses have been evaluated and the consequences of such events are not significantly increased. Lowering the scram water level setpoint will not increase the probability of a previously evaluated accident. It will provide several additional seconds for operator actions in the event of a loss of feedwater flow transient and may avert an unnecessary reactor scram.

The proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated. Only a trip setpoint is altered. No change to system or component maintenance or testing is proposed. The safety-related systems and components whose operation may be initiated by a Level 3 low water level signal will still operate in the same manner as they do currently, and no new failure modes are created. System/component design is unaffected.

The proposed change does not significantly reduce a margin of safety. The safety analyses dependent upon the scram water level trip (i.e., transient and ECCS analyses) have been evaluated, and safety margins are either negligibly impacted or not impacted at all.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Towbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: David B. Matthews

Georgia Power Company, Oglethorpe Power Corporatfon, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: November 29, 1990; as supplemented January 29, March 6, 27, and 29, and April 19, 1991.

Description of amendment request: The proposed amendments would revise Technical Specifications (TSs) 3/4.1.2.5, 3/4.1.2.6, and 3/4.5.4 by reducing the minimum solution temperature inside the refueling water storage tank (RWST). Specifically, the minimum solution temperature for the limiting condition for operation would be reduced from 54 to 44 degrees F. The associated surveillance limit, which establishes a minimum outside air temperature at which the tank solution temperature must be verified daily, would be reduced from 50 to 40 degrees

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F. Additionally, "(break flow equal to or greater than 3.0 square feet)" would be deleted in Bases 3/4.5.4, Refueling Water Storage Tank, which states that limits on RWST minimum volume and boron concentration ensure that... 3) the reactor will remain subcritical in the cold condition following a large break LOCA (break flow equal to or greater than 3.0 square feet) assuming complete mixing of the RWST, RCS, ECCS water and other sources of water that may eventually reside in the sump, post-LOCA with all control rods assumed to be out."

Other changes in the licensee's application and supplements have been previously noticed and are outside the scope of this notice. These other changes include those associated with the planned future use of Westinghouse VANTAGE-5 fuel.

Basis for proposed no significant hazards consideration determination: The proposed TS changes would provide additional operating flexibility by increasing the range of temperature within which the RWST will be available as an operable borated water source. The licensee has had Westinghouse reanalyze those safety analyses in the Final Safety Analysis Report (FSAR) which are sensitive to minimum RWST solution temperature as part of the VANTAGE-5 fuel transition study. These analyses include Inadvertent Operation of the Emergency Core Cooling System (ECCS) During Power Operation, Small Break Loss of Coolant Accident (LOCA), and Steam Generator Tube Failure. The licensee also reconfirmed the solubility of the RWST solution at the reduced temperature for the required range of boron concentration as part of the VANTAGE-5 program.

The change to the Bases to delete "(break flow equal to or greater than 3.0 square feet)" is a correction to the TSs. The phrase erroneously implies that a large break LOCA is defined as being greater than 3 square feet, whereas it is actually defined as larger than 1.0 square foot. This error is only in the text and did not affect the associated analyses. Since the correct values are given in the FSAR, the licensee prefers deletion rather than substitution of the correct value.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The reduced RWST minimum solution temperature does not increase the probability or consequences of an accident previously evaluated in the FSAR. The RWST solution temperature is a parameter used in the analysis of the Steam Generator Tube Failure and Small Break LOCA accidents. Since RWST solution temperature is only used in the analysis of these events, it does not contribute as an initiator or affect the probability of occurrence. The Inadvertent Operation of the ECCS During Power Operation accident involves injection of borated RWST water into the RCS. Although RWST injection is part of the event, the initiator of the event is either operator error or a false electrical actuation signal, which are unaffected by RWST solution temperature. Therefore, a change in the RWST minimum solution temperature will not increase the probability of occurrence of this event.

The consequences of an accident previously evaluated in the FSAR are not increased due to the reduced RWST minimum solution temperature. Small Break LOCA and Inadvertent Operation of the ECCS During Power Operation are not evaluated for radiological consequences since they are not limiting transients with respect to prediction of offsite doses. A revised analysis has been performed for the Steam Generator Tube Failure event as part of the VANTAGE-5 submittal which documents that all doses are within the Standard Review Plan acceptance criteria. Therefore, the consequences to the public resulting from any accident previously evaluated in the FSAR have not significantly increased.

The reduced RWST minimum solution temperature does not create the possibility of a new or different kind of accident than those already evaluated in the FSAR. No new accident scenarios, failure mechanisms or limiting single failures associated with the RWST are introduced as a result of the reduced allowable solution temperature. This reduced temperature condition in the RWST has no adverse effect and does not challenge the performance or integrity of any other safety related system. Therefore, the possibility of a new or different kind of accident is not created.

The margin of safety provided by the Technical Specifications relative to the RWST as a borated water source ensures that the reactor will remain subcritical under post-accident conditions. This inherently assumes that the defined boron concentration range will remain soluble at the RWST minimum solution temperature. By confirming that solubility at the reduced temperature is maintained, it is concluded that the operating envelope defined by the Technical Specifications continues to be bounded by the revised analytical basis. Therefore, the margin of safety provided by the RWST as a source of borated water is maintained and not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suite 1400, 127 Peachtree Street, NE., Atlanta, Georgia 30043.

NRC Project Director: David B. Matthews

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: May 14, 1991

Description of amendment request: The proposed amendment would change the alarm setpoint for the offgas pretreatment noble gas activity monitor in Technical Specification (TS) Table 3.3.7.1-1, "Radiation Monitoring Instrumentation," from the current value of 2.48 x 104 millirem/hour (mr/hr) to 3410 mr/hr. The non-conservative setpoint was identified during calculation reviews and was a result of calculation methodologies that did not consider the different operational modes of the offgas system and based the total steam to main condenser mass flow rate on 105 percent power.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change would not crease the probability or consequences of a previously evaluated accident because:

The existing Technical Specification alarm setpoint is non-conservative. The proposed change will decrease the alarm setpoint, providing operations personnel with earlier detection of high radioactivity levels in the offgas system upstream of the holdup pipe.

2. The proposed change would not create the possibility of a new or different kind of accident from any previously evaluated because:

The proposed change will only reduce an alarm setpoint to a more conservative value. This change does not involve the potential for a new accident type, since plant design and alarm functions are unchanged.

3. The proposed change would not involve a significant reduction in the margin of safety because:

Margins of safety are enhanced since this change would reduce the offgas pretreatment monitor alarm setpoint to a more conservative value.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Mark Wetterhahn, Esq., Bishop, Cook, Purcell and Reynolds, 1401 L Street, N.W., Washington, D.C. 20005

NRC Project Director: George F. Dick, Jr., Acting Director

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of amendment request: July 27, 1988, as supplemented May 21, 1991

Description of amendment request: The proposed amendment would extend the duration of the Nine Mile Point Unit 1 facility operating license to forty (40) years from issuance of the facility operating license. The currently licensed term for plant operation is 40 years commencing with the issuance of the construction permit. Accounting for the time required for plant construction, this represents an effective facility operating license term of only 36 years. This amendment would change the expiration date of the license such that the effective operation license term would be 40 years. The current expiration date of April 11, 2005, would, therefore, be changed to August 22, 2009.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

This determination is based primarily on the fact that a 40-year service life was considered during the design and construction of the plant. Although this does not mean that some components will not wear out during the plant lifetime, design features were incorporated which maximize the inspectability of structures, systems and equipment. Surveillance and maintenance practices which are implemented in accordance with the ASME code and the facility Technical Specifications, provide assurance that any unexpected degradation in plant equipment will be identified and corrected. The reactor vessel and its internals were designed for forty (40) years of operation a full power with the 80% capacity factor (32 effective full power years). The reactor vessel surveillance capsules program provides a means of monitoring the radiation induced changes in the mechanical and impact properties of vessel materials in accordance with 10 CFR [Part] 50, Appendix H. This program provides additional assurance that adverse cumulative effects of power operation can be monitored and detected.

Aging analyses and Environmental Qualification have been performed for all electrical equipment important to safety in accordance with the requirements of Environmental Qualification Rule 10 CFR 50.49. This program included identification of qualified lifetimes for the required equipment and incorporation of maintenance requirements into appropriate plant procedures to maintain the qualification of the required equipment for the life of the plant. This qualification program provides assurance that electrical equipment important to safety will function as required if called upon to mitigate design basic events, regardless of the term of the license.

Safety-related mechanical equipment has been specifically addressed through the use of the Inservice Inspection Program and Inservice Testing Program. These programs, in conjunction with the above referenced programs, assure that mechanical equipment will be properly maintained throughout the life of the plant.

New programs have also been developed which will supplement our assessment of plant systems. Niagara Mohawk's new Erosion-Corrosion Review Program is one such example of how the additional measures are being taken to support plant life extension.

These interrelated programs at Nine Mile Point Unit 1 assure that the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment involves only a change in the expiration date of the Operating License. No safety analyses are affected. No new or different accident type is created. The accident analyses presented in the Updated Safety Analysis Report remain bounding.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The proposed amendment involves only a change in the expiration date of the Operating License. No safety margins are affected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC. 20005-3502.

NRC Project Director: Robert A. Capra

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: November 19, 1990 and supplements dated April 1, 1991 and May 20, 1991.

Description of amendment request: The proposed amendments would revise Technical Specifications (TS) sections 5.3.1 and 5.6.3 by removing the current maximum U-235 enrichment limit. TS 5.6.1 would be revised to allow storage of Westinghouse Standard or Vantage 5H fuel with a maximum enrichment limit of 4.55 weight percent (w/o) U-235 provided that the reference infinite multiplication factor (Kinf) for the fuel assemblies be less than or equal to 1.453 in unborated water at 68 degrees F, in core geometry. TS 5.6.1 would also be revised to refer to the updated final safety analysis report, section 9.1.2.1, in lieu of the reactivity uncertainty that is currently referenced.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed. Because of the conservative methods and assumptions used to evaluate the maximum possible assembly multiplication factor, there is more than reasonable assurance that no significant hazard based on criticality safety is involved in storing fuel assemblies with enrichments of up to 4.55 w/o U-235, with sufficient IFBAs [Integral Fuel Burnable Assembly], in the spent fuel storage racks under both normal and postulated accident conditions. The calculations used to determine the minimum number of IFBA rods required as a function of enrichment assured an assembly Kinf less than or equal to that of a fresh 4.05 w/o U-235 assembly with no IFBA under 0 ppm soluble boron conditions. The criticality accidents for 4.05 w/o U-235 fuel have been analyzed previously and there will be no increase in assembly Kinf.

Additionally, evaluations of reload core designs (using any enrichment) will be performed on a cycle by cycle basis as part of the Reload Safety Evaluation (RSE) process to ensure that the reactor operation is consistent with the current safety analysis. Therefore, there is no increase in the probability or consequences of any accident previously analyzed.

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2. Create the possibility of a new or different kind of accident. The increase in enrichment to 4.55 w/o U-235 involved the performance of evaluations to envelope the corresponding changes in reactivity. Use of the reactivity equivalencing procedures ensures that the spent fuel pool criticality limits are not exceeded. Additionally, there are no proposed changes to the spent fuel rack geometry.

3. Involve a significant reduction in a margin of safety. As discussed above, for worst case assumptions the assembly Kinf values for a maximum enrichment of 4.55 w/o U-235, with a sufficient number of IFBA rods do not exceed those for the previously analyzed 4.05 w/o U-235. Therefore there are no reductions in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C., 20005-3502

NRC Project Director: Walter R. Butler

Public Service Company of New Hampshire, Docket No. 50-443, Seabrook Station, Rockingham County, New Hampshire

Date of amendment request: January 24, 1991 as supplemented on May 10, 1991

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) to reflect the proposed removal of the residual heat removal (RHR) isolation valve autoclosure interlock (ACI). TS 4.5.2.d would also be changed to eliminate the surveillance test of the autoclosure interlock function. The proposed TS would change the RHR suction relief valve setpoint upper limit (TS Section 3.4.9.3). It would also change the surveillance frequencies for verifying that RHR suction isolation valves are open and eliminate the requirement to verify that power is removed from the valve motor operators (TS sections 4.4.9.3.2(a) and (b)).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.92(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NHY has reviewed the proposed changes in accordance with the criteria specified in 10 CFR 50.92 and has determined that:

1. The proposed change in the RHR suction relief valve setpoint upper limit does not involve a significant increase in the probability or consequences of an accident previously evaluated. The relief valve setpoint change has no effect on the probability of occurrence of a Reactor Coolant System (RCS) mass or heat addition transient which may require the RHR suction relief valves to protect the RHR system and the RCS from overpressurization. The consequences of a RCS mass or heat addition transient are not increased, as the relief valve setpoint change is intended to conservatively ensure that adequate overpressure protection is provided. The proposed change in the RHR suction relief valve setpoint is primarily attributable to the reanalysis of the RHR suction relief valve capacity by Yankee Atomic Electric Company in calculation SBC 383, "RHRS Overpressure Protection" dated June 28, 1990. NHY reviewed actual RHR suction relief valve setpoints determined during testing. The actual RHR suction relief valve setpoints were below 450 psig, thus RHR overpressurization would have been precluded in a mass or heat addition transient.

The proposed change in the surveillance frequencies for verifying that the RHR suction isolation valves RC-V22, RC-V23, RC-V87 and RC-V88 are open and eliminating the requirement to verify that power is removed from the motor operators for RC-V88 and RC-V22 does not involve a significant increase in the probability or consequences of an accident previously evaluated. The purpose of the surveillance requirement is to ensure that the RHR suction isolation valves remain open when the RHR suction relief valves RC-V24 and RC-V89 are being used for RCS cold overpressure protection. The current requirements to remove power from RC-V22 and RC-V88 ensures that a single component failure (pressure transmitter) does not result in the isolation of both RHR trains from the RCS. The disabling of the RHR Autoclosure Interlock (ACI) circuitry eliminates the mechanism for autoclosure of the RHR suction isolation valves, thus the requirement to remove power from the valve operators is unnecessary and undesirable because the ability to expeditiously isolate the RHR system from the RCS is precluded in the event of an RHR system LOCA. The proposed 72 hour surveillance frequency for verifying that RC-V22, RC-V23, RC-V87 and RC-V88 are open when the RHR suction relief valves are being utilized for RCS cold overpressure protection is identical to the surveillance frequency for verifying that the Power Operated Relief Valves (PORV) isolation valves are open when the PORV's are being utilized for RCS cold overpressure protection. As stated above, the disabling of the RHR ACI circuitry eliminates the mechanism for autoclosure of the RHR suction isolation valves, thus the 12 hour open verification surveillance for RC-V23 and RC-V87 is overly restrictive and inconsistent with the open verification surveillance requirement for the PORV isolation valves. The current 31 day open verification surveillance for RC-V22 and RC-V88 is proposed to be changed to a 72 hour surveillance which is more conservative than the 31 day open verification and consistent with the open verification surveillance requirement for the PORV isolation valves.

2. The proposed change in the RHR suction relief valve upper limit will not create the possibility of a new or different kind of accident from any previously evaluated. The RHR suction relief valve function is to protect the RHR system from overpressurization during a RCS mass or heat addition transient. Additionally, the RHR suction relief valves may be utilized to provide RCS cold overpressure protection as provided by Technical Specification 3.4.9.3. The change in RHR suction relief valve setpoint upper limit will ensure that this overpressure protection function is provided. No change to the RHR suction relief valve lower limit setpoint has been proposed, therefore the probability of an inadvertent opening of the RHR suction relief valves is not increased. No new or different types of accidents will be created by the RHR suction relief valve setpoint upper limit change.

The proposed change in the surveillance frequencies for verifying that the RHR suction isolation valves RC-V22, RC-V23, RC-V87 and RC-V88 are open and eliminating the requirement to verify that power is removed from the motor operators for RC-V88 and RC-V22 does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change in the open verification surveillance frequency and the elimination of the requirement to verify the removal of power from the motor operators does not create a new or different kind of accident because the disabling of the RHR ACI circuitry eliminates the mechanism for autoclosure of the RHR suction isolation valves and concomitant loss of RHR cooling.

3. The proposed change in the RHR suction relief valve setpoint upper limit will not significantly reduce the margin of safety associated with the overpressure protection function of these valves. The proposed revised relief setpoint will maintain the margin of safety associated with the RHR suction relief valve overpressure protection function by assuring that the maximum opening setpoint does not exceed the maximum opening setpoint which has been conservatively analyzed. The actual RHR suction relief valve setpoint is verified as part of NHY Inservice Test Program requirements for these valves.

The proposed change in the surveillance frequency for verifying that the suction isolation valves RC-V22, RC-V23, RC-V87 and RC-V88 are open and eliminating the requirement to verify that power is removed from the motor operators for RC-V88 and RC V22 does not involve a significant reduction in a margin of safety. The elimination of the requirement to verify that power is removed from the motor operators for RC-V88 and RC V22 provides an increase in the margin of safety because these isolation valves along with RC-V87 and RC-V23 will have power available allowing their expeditious closure from the control room in the event of a RHR system LOCA. The disabling of the RHR ACI circuitry eliminates the mechanism for autoclosure of these valves and concomitant loss of RHR cooling.

The NRC staff has reviewed the licensee's analysis and adds the following comments. There are no significant hazards considerations associated with lowering the relief valve setpoint pressure because the change is in the conservative direction to relieve at a lower pressure using the same relief mechanism as previously used, and the three criteria of 10 CFR 50.92 (c) are satisfied.

There are no significant hazards considerations involved in changing the RHR suction valve surveillance frequencies to 72 hours because the changes to accident probability or consequences and margin of safety are insignificant, and no new accident scenario is involved. Standard technical specifications (STS) allow up to 72 hours to provide the licensee an opportunity to repair a system and return it to service without changing operating modes or disturbing the plant's status. In the typical design, many safety systems have two redundant trains of equipment, each train being individually capable of performing the safety function. These redundant systems provide "single failure" protection—if one train fails the other train is completely capable of performing the safety function. In STS, if one of these trains is inoperable, the plant is allowed to continue in its operational mode for 72 hours. During this time, "single failure" protection has been lost for the safety system; however, the operable train still provides full capability if an accident occurs. The combined risk of an accident occurring within 72 hours and the operable train failing is very low. On the other hand, disturbing the plant operating status involves some risk of initiating a transient or challenging safety systems. The NRC concluded that the allowed limit of 72 hours provides the appropriate balance of safety.

Finally, the elimination of the autoclosure surveillance test in TS 4.5.2.d involves no significant hazards consideration because, with the elimination of the autoclosure interlock, there is no autoclosure interlock function to test. Removing the test requirement is an administrative change to make the TS consistent with the changed design, and the three standards of 10 CFR 50.92(c) are satisfied.

Based on the above review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire, 03833.

Attorney for licensee: Thomas Dignan, Esquire, Ropes & Gray, One International Place, Boston, Massachusetts 02110-2624.

NRC Project Director: Richard H. Wessman

Southern California Edison Company, et al., Docket No. 50-361, San Onofre Nuclear Generating Station, Unit No. 2, San Diego County, California

Date of amendment requests: May 22, 1991

Description of amendment requests: The licensees propose to revise Surveillance Requirement 4.8.1.1.2.d.1 in Technical Specification 3/4.8.1, "A. C. Sources," to permit up to a one month extension, on a one-time basis, for the 24-month refueling interval surveillance inspection associated with the two separate and independent diesel generators.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

RESPONSE: No.

This proposed change only involves an interval extension, on a one-time basis, for the once per refueling interval inspection of the diesel generator specified in SR 4.8.1.1.2.d.1. Extending the surveillance interval by one month will not significantly increase the probability of the DG system failing to perform its intended function. The failure history indicates AC power systems at SONGS 2 and 3 are extremely reliable. The weekly, monthly, quarterly, and the remaining refueling surveillance tests will continue to provide effective indications of system capability. In addition, this change does not alter any of the other AC power system surveillances which serve to assure continued operability of the AC power systems. Therefore, this proposed change will not constitute a significant increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

RESPONSE: No.

The proposed change only revises, on a one-time basis, the frequency of a diesel generator surveillance inspection performed every refueling outage. The proposed change does not alter either the configuration of the facility or its manner of operation. Furthermore, there are no changes in surveillance requirement acceptance criteria as a result of the proposed change. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

RESPONSE: No.

This proposed increase in the surveillance interval on a one-time basis only affects the frequency of a diesel generator surveillance performed every refueling outage, not the surveillances. The weekly, monthly, quarterly, and the remaining refueling interval surveillance frequencies and tests will not be affected by this proposed change and will continue to provide effective indications of system capability. The more frequent operability checks will assure DG operability. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensees' analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Attorney for licensee: James A. Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770

NRC Project Director: James E. Dyer

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: October 30, 1990 (TS 288)

Description of amendment request: The proposed amendment would make administrative changes to the Browns Ferry Nuclear Plant (BFN) Technical Specifications, including deletion of non-applicable notes from tables, correction of minor administrative errors from previous amendment submittals and implementation, and correction of discrepancies between the Technical Specifications Bases and the Updated Final Safety Analysis Report. Some changes apply to all three BFN units, while others apply to only one or two units.

The BFN Technical Specifications are being revised as follows:

1. Revise definition 1.0.II for Units 1, 2, and 3 to make the unit of measure for I-131 concentration be "micro-Curie per gram"

2. Delete Notes 2 and 5 from the Notes for Table 3.2.A for Units 1, 2, and 3.

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3. Revise the trip level setting for "Instrument Channel - High Radiation Main Steamline Tunnel" in Table 3.2.A for Unit 2 to add the reference to Note 13 and to delete the less than or equal to symbol.

4. Revise the unit of measure for the noble gas monitors in Table 3.2.F for Unit 2 to be "micro-Curie per cubic centimeter."

5. Revise calibration frequency for reactor pressure instruments PI-3-74A&B in Table 4.2.F for Unit 2.

6. Revise Table 4.2.L for Units 1, 2, and 3 to correct the title and instrument numbers.

7. Revise bases Section 3.2 for Units 1, 2, and 3 to delete the statement that plant flood protection is always in place.

8. Add the reference to Net Positive Suction Head (NPSH) for the High Pressure Coolant Injection system back into bases Section 3.5.E for Units 1, 2 and 3.

9. Add back into Bases Section 3.5.F the reference to NPSH for the Reactor Core Isolation Cooling System for Units 1, 2, and 3.

10. Revise Bases Section 3.6.F/4.6.F for Unit 2 to note the intention to scram the reactor if the operating recirculation pump trips when in single loop operation.

11. Correct typographical error for Unit 1 to specify the requirements for reactor depressurization when suppression pool temperature exceeds its limit.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Definition 1.0.II (Dose Equivalent I-131) is being revised to show the correct units [of measure] for I-131 concentration [micro-Curie per gram] for all three units. Notes 2 and 5 are being deleted from Table 3.2.A (Primary Containment and Reactor Building Isolation Instrumentation) for all three units. Note 2 involves functional testing of redundant instrument channels when it is determined that a channel has failed in the unsafe condition. This note was in the original technical specifications for Unit 1 but was never referenced in Table 3.2.A. Operations takes the actions pursuant to Note 1 whenever instrument channels are tripped so Note 2 is unnecessary. Note 5 applies to a reactor high water level instrument which is not required for Boiling Water Reactors similar to BFN and is not installed in the plant. The note is therefore being deleted. The trip level setting in Table 3.2.A for Instrument Channel - High Radiation Main Steam Line Tunnel is being corrected for Unit 2 to agree with the NRC approved technical specification and to reference Note 13.

Table 3.2.F (Surveillance Instrumentation) is being corrected for the instruments RM-90-306 and RM-90-360 on Unit 2. The range for these instruments is being corrected to show units of [micro-Curie per gram]. Table 4.2.F (Minimum Test and Calibration Frequency for Surveillance Instrumentation) for reactor pressure instruments PI-3-74 A & B on Unit 2 is being revised to six months. The current value of twelve months was changed to six months by Amendment 167 based on the manufacturer's recommendation. This change corrects the technical specification. Table 4.2.L (Anticipated Transient Without Scram [ATWS] - Recirculation Pump Trip [RPT] Instrumentation Surveillance) is being revised to correct the title and instrument numbers in the table for all three units.

Bases Section 3.2 for all three units is being revised to delete the statement that flood protection is always in place. The FSAR was revised in 1987 to delete a similar statement. Because of the constant surveillance and control exercised by TVA over the Tennessee River and the relatively short amount of time to close the flood doors, leaving them normally open will not degrade plant flood protection. Paragraphs in Bases Section 3.5.E (High Pressure Coolant Injection) and 3.5.F (Residual Core Isolation Cooling) regarding the net positive suction head for each system were inadvertently deleted for Units 1, 2, and 3 when TVA submitted TS 274 to NRC. These descriptive paragraphs are still applicable and are therefore being re-inserted. A statement is being added to Bases Section 3.6.F/4.6.F (Recirculation Pump Operation) for Unit 2 to note the intention to scram the reactor if the operating recirculation pump trips when in single loop operation. TVA's commitment to make this change was documented in NRC's safety evaluation supporting Unit 2 Amendment 174. These changes do not affect any of the design basis accidents. They are administrative in nature and are being made to delete non-applicable notes from tables, to correct administrative errors in previous technical specification submittals and implementation, and to make the technical specifications agree with the Final Safety Analysis Report (FSAR). They do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from an accident previously evaluated.

The proposed changes are administrative in nature. They are being made to delete non-applicable notes from tables, to correct administrative errors in previous technical specification submittals and implementation, and to make the technical specifications agree with the FSAR. No modifications to any plant equipment are involved. There are no effects on system interactions made by these changes. The changes will correct the technical specifications so that they are more accurate and more closely reflect actual plant conditions.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed changes are administrative in nature. They delete non-applicable notes from tables, correct administrative errors in previous technical specification submittals and implementation, and make the the technical specifications agree with the FSAR. No safety margins are affected by these changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: December 28, 1989, as modified February 14, 1991

Description of amendment request: The December 28, 1989 proposed change would have deleted the requirement for monthly testing of the auxiliary feedwater pumps and the monthly valve line-up check. NRC Bulletin 88-04, "Potential Safety-Related Pump Loss" identified concerns with minimum flow designs of safety-related pumps and requested licensees to investigate these concerns and correct them where applicable. As part of the response to Bulletin 88-04, the licensee committed to disassemble and inspect the auxiliary feedwater pumps at the North Anna Power Station for any signs of degradation. As a result of initial inspections performed on both units during refueling outages, all six pumps were disassembled and inspected. Numerous problems were discovered, including diffuser vane cracks, scored bearings, and tolerances out of specification. A root-cause evaluation attributed part of these problems to the ways in which the pumps are tested. The pumps were not designed to run on recirculation for long periods of time, which is the current practice. To minimize future pump wear and ensure long-term reliability of the auxiliary feedwater pumps, several courses of action were being pursued by the licensee, in order to minimize operation of the pumps at low flow. This included limiting use of the pumps for steam generator leak testing, revising procedures for the quarterly ASME test and applying for a Technical Specification (TS) change to eliminate the requirement for a monthly test on recirculation flow. The change would have deleted the surveillance requirement to demonstrate at least every 31 days that the pumps can develop at least 1250 psig at 53 gpm for the motor-driven pumps and at least 1380 psig at 35 gpm for the turbine-driven pump. The test is done by pumping through an orificed recirculation line at a flow rate far below the design parameters. The current TS test conditions (pressure and flow) require that the tests be performed in the recirculation mode of operation. Finally, the proposed change would have retained the requirement that the pumps be tested in accordance with Specification 4.0.5, which refers to Section XI of the 1980 ASME Boiler and Pressure Vessel Code which requires testing every 3 months.

Since the licensee's submittal dated December 28, 1989, the pumps have been overhauled and the licensee's quarterly ASME Section XI testing procedures have been revised to allow full-flow tests. A new full-flow recirculation line was added during the latest NA-1&2 refueling outages to permit full-flow testing at power without affecting the steam generators or normal feedwater regulation. Also, the licensee's quarterly Section XI testing is now done at flow conditions near the pump's best efficiency point. This test provides early warning of degradation and is similar to conditions when the pump is performing its safety function. If the monthly test could be done under similar conditions, safety would be enhanced because there would be less pump wear and more effective testing. Therefore, by letter dated February 14, 1991, the licensee modified its original submittal to request that monthly testing be done at conditions similar to the quarterly test.

The proposed change would delete the specific pressure and flow requirements for the monthly test and requires that the acceptance criteria be consistent with the monthly test. The specific criteria need not be in the TS because the ASME Code requires revising the criteria whenever the pump is overhauled.

The original submittal dated December 28, 1989 was published in the **Federal Register** on February 7, 1990 (55 FR 4285). The staff has determined that the modified submittal of February 14, 1991 should be evaluated with respect to 10 CFR 50.92(c).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve an increase in the probability or consequence of an accident previously evaluated. The auxiliary feedwater system provides water to the steam generators when normal feedwater is unavailable. The consequence of a pump failure will not be changed by this proposed change. The probability of failure will be reduced because there will be less wear and testing will be more effective.

2. The proposed change will not create the possibility of a new or different kind of accident. This is not an actual hardware change and does not alter any conditions or assumptions used in accident analysis or Technical Specification basis.

3. The proposed change does not involve a reduction in a margin of safety. The change will not affect the quantity or pressure of auxiliary feedwater provided.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Herbert N. Berkow

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: May 14, 1991

Description of amendment request: This proposed license amendment revises Technical Specification 5.3.2, "Control Rod Assemblies," to allow the use of silver-indium-cadmium as the neutron absorbing material in control rods. Technical Specification 5.3.2 currently specifies hafnium as the neutron absorbing material. The proposed revision would allow the use of hafnium control rods, silver-indium-cadmium control rods, or a mixture of both types.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Standard I - Involves a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

Silver-indium-cadmium (Ag-In-Cd) rod cluster control assemblies (RCCAs) are functionally equivalent to the hafnium RCCAs currently in use at Wolf Creek Generating Station (WCGS). WCGS was originally designed for the use of this type of RCCA and such use is consistent with the assumptions and conclusions of the transient and accident analyses for WCGS. On this basis it is concluded that the consequences and probabilities of previously evaluated accidents are not increased. Standard II - Create the Possibility of a New or Different Kind of Accident From any Previously Evaluated.

Ag-In-Cd RCCAs are completely interchangeable with the hafnium RCCAs currently in use at WCGS. The mechanical designs of the two types of RCCAs are equivalent and identical materials are utilized for spider assemblies and rodlet cladding. Ag-In-Cd RCCAs have demonstrated good performance in extensive use at similar facilities. Therefore, this proposed technical specification revision does not create the possibility of a new or different kind of accident from any previously evaluated.

Standard III - Involve a Significant Reduction in the Margin of Safety.

The Ag-In-Cd RCCAs will be subject to the same mechanical, nuclear, and thermal hydraulic limits as the original hafnium RCCAs and therefore, there will be no decrease in any margin of safety defined in the technical specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N. W., Washington, D. C. 20037

NRC Project Director: George F. Dick, Jr., Acting Director

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: May 14, 1991

Description of amendment request: The proposed license amendment revises Technical Specification 3.1.3.4 to increase the maximum allowed control rod drop time from 2.2 to 2.7 seconds. The purpose of this proposed change is to support the planned use of Westinghouse VANTAGE 5H fuel

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assemblies at the Wolf Creek Generating Station.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Standard I - Involves a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The increase in Rod Cluster Control Assembly (RCCA) drop time has no affect on mechanisms postulated in the Updated Safety Analysis Report (USAR) to cause design basis events. Sensitivity studies, evaluations and minimum Departure from Nucleate Boiling Ratio (DNBR) recalculations have confirmed that the transient behaviors described in the USAR are not significantly changed and that the USAR conclusions remain valid for the proposed change. On this basis it is concluded that there will be no significant increase in the probability or consequences of previously evaluated accidents.

Standard II - Create the Possibility of a New or Different Kind of Accident From any Previously Evaluated.

This proposed change involves only an increase in the maximum RCCA drop time. There are no physical modifications to the facility or changes in methods of operation. The increase in the maximum RCCA drop time will allow the use of an upgraded fuel design (Westinghouse VANTAGE 5H). However, applicable nuclear, mechanical and thermalhydraulic fuel design criteria are unchanged. Therefore, this proposed technical specification revision does not create the possibility of a new or different kind of accident from any previously evaluated.

Standard III - Involve a Significant Reduction in the Margin of Safety.

Evaluations performed to support this proposed change demonstrate that all applicable safety analysis acceptance criteria will continue to be met and, therefore, there will be no decrease in any margin of safety defined in the technical specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N. W., Washington, D. C. 20037

NRC Project Director: George F. Dick, Jr., Acting Director

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of amendment request: April 24, 1991

Description of amendment request: The proposed amendment would clarify the ECCS requirements contained in the current Technical Specification section which is applicable to both cold shutdown and hot shutdown with Main Coolant pressure less than 1000 psig. This would be accomplished by dividing the current Technical Specification into two separate Specifications. Editorial changes to clarify the Technical Specification section concerning Emergency Core Cooling System (ECCS) subsystems operability are also included. In addition, this change would incorporate administrative requirements related to ECCS valve positions and ECCS pump operability from the Safety Evaluation Reports (SERs) for Amendments 59 and 134 to the Facility Operating License. These requirements are presently controlled via plant procedures.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.92(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This Proposed Change is requested to clarify the ECCS requirements and incorporate administrative requirements from previous SERs into the Technical Specifications. It is mainly editorial in nature. As such, this proposed change would not:

1. Involve a significant increase in the probability or consequences of an accident or equipment malfunction previously analyzed. This proposed change is mainly editorial in nature. None of the present ECCS requirements, currently contained in both the Technical Specifications and plant procedures, has been altered. The requirement for a second operable Low Pressure Safety Injection (LPSI) pump during Reduced Level Operation with a cold leg opening has been evaluated for Low Temperature Overpressure (LTOP). The maximum MCS pressure is well below the Appendix G limits. Therefore, there is no increase in the probability or consequences of an accident or equipment malfunction previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously analyzed. This proposed change is mainly editorial. None of the present ECCS requirements, currently contained in both the Technical Specifications and plant procedures, have been modified. Therefore, this change will not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in a margin of safety. This proposed change is mainly editorial. It retains all of the ECCS requirements currently contained in both the Technical Specifications and plant procedures. The requirement for a second operable LPSI pump during Reduced Level Operation with a cold leg opening has been evaluated for LTOP. The maximum MCS pressure is well below the Appendix G limits. Therefore, the current margins of safety have been retained.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110-2624.

NRC Project Director: Richard H. Wessman

Previously Published Notices of Consideration of Issuance of Amendments To Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity For Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of application for amendment: April 23, 1991

Brief description of amendment request: The proposed amendment would add a footnote to the license that recognizes the transfer of Kansas Gas & Electric Company's possession-only interest in NPF-42 to a wholly owned subsidiary of Kansas Power and Light Company.

Date of individual notice in Federal Register: May 13, 1991 (56 FR 22028)

Expiration date of individual notice: June 13, 1991

Local Public Document Room Locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Notice of Issuance of Amendment To Facility Operating License

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed followin[illegible] is notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects.

Arizona Public Service Company, et al., Docket No. STN 50-530, Palo Verde Nuclear Generating Station, Unit 3, Maricopa County, Arizona

Date of application for amendment: February 21, 1991

Brief description of amendment: The amendment approves the proposed operating limits and related safety analysis for fuel cycle 3 operation.

Date of issuance: May 20, 1991

Effective date: May 20, 1991

Amendment No.: 26

Facility Operating License No. NPF-74: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 20, 1991 (56 FR 11769)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 20, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: August 29, 1990.

Brief description of amendment: The amendment revises the Technical Specifications sections 3.15 and 4.15 related to the central room air cleaning system.

Date of issuance: May 17, 1991

Effective date: May 17, 1991

Amendment No. 134

Facility Operating License No. DPR-23. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** October 3, 1990 (55 FR 40462)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 17, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: August 17, 1987, as supplemented July 9, 1990, and October 12, 1990.

Brief description of amendment: The amendment extends the expiration date for the Facility Operating License No. DPR-23 from April 13, 2007 to July 31, 2010.

Date of issuance: May 21, 1991.

Effective date: May 21, 1991.

Amendment No. 135

Facility Operating License No. DPR-23. Amendment extends the expiration date of the license.

Date of initial notice in **Federal Register:** October 3, 1990 (55 FR 40460) The July 9, 1990, and October 12, 1990, letters provided clarifying information that did not change the initial determination of no significant hazards consideration as published in the **Federal Register.** The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 21, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station Units 1 and 2, Lake County, Illinois

Date of application for amendments: March 27, 1991, as supplemented April 30, 1991

Brief description of amendments: The amendments revise the diesel generator testing requirements, allowable outage times, and failure reporting requirements in the Technical Specifications by incorportaing the recommendations of NRC Generic Letter 84-15 and the Westinghouse Standardized Technical Specification, Revision 4. In addition, these amendments transfer the diesel testing requirements of Item B.6 of the NRC Confirmatory Order dated February 29, 1980 to the Zion Technical Specifications, thus removing Item B.6 from the Confirmatory Order.

Date of issuance: May 17, 1991

Effective date: May 17, 1991

Amendment Nos.: 123 and 112

Facility Operating License Nos. DPR-39 and DPR-48. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 9, 1991 (56 FR 11492)

The April 30, 1991, submittal provided additional clarifying information and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 17, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

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Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: August 20, 1990

Brief description of amendment: The amendment revises the TS by implementing an expanded operating domain.

Date of issuance: May 15, 1991
Effective date: May 15, 1991
Amendment No.: 69
Facility Operating License No. NPF-43. The amendment revises the Technical Specifications

Date of initial notice in **Federal Register:** March 20, 1991 (56 FR 11777)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 15, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: anuary 28, 1991

Brief description of amendment: The amendment revises the Technical Specification (TS) Table 3.6.3-1, Primary Containment Isolation Valves, by modifying the numbers for two valves.

Date of issuance: May 16, 1991
Effective date: May 16, 1991
Amendment No.: 70
Facility Operating License No. NPF-43. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** March 20, 1991 (56 FR 11779)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 16, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of application for amendments: November 15, 1989, as supplemented March 28 and August 29, 1990.

Brief description of amendments: The amendments revise the Pressure/Temperature Limits and the Low Temperature Overpressure Protection system operability requirements in Section 3.1 of the TSs and revise the associated bases.

Date of issuance: May 14, 1991
Effective date: May 14, 1991
Amendment Nos.: 188, 188, 185
Facility Operating License Nos. DPR-38, DPR-47 and DPR-55. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 6, 1991 (56FR4862)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 14, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: March 15, 1991

Brief description of amendment: The amendment modified Technical Specification 4.0.2 by: (1) deleting the 3.25 limitation on extending three successive surveillance intervals; (2) utilizing the exact, suggested wording of Generic Letter 89-14 in Specification 4.0.2 for the 25-percent allowance for individual surveillance intervals; and, (3) incorporating the Generic Letter 89-14 wording in the Bases for Specification 4.0.2.

Date of issuance: May 21, 1991
Effective date: May 21, 1991
Amendment No: 77
Facility Operating License No. NPF-29. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** April 17, 1991 (56 FR 15641)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 21, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120.

Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of application for amendment: October 24, 1988, as supplemented June 1, 1989, October 19, 1989, March 27, 1990, November 8, 1990, and modified December 18, 1990

Brief description of amendment: This amendment changes the maximum allowable primary loop resistance temperature detection delay time from 8 seconds to 14 seconds.

Date of Issuance: May 23, 1991
Effective Date: May 23, 1991
Amendment No.: 50
Facility Operating License No. NPF-16: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 16, 1988 (53 FR 46146) and February 20, 1991 (56 FR 6873)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 23, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: October 3, 1990, as superseded February 21, 1991.

Brief description of amendments: These amendments revise TS Section 6.0 to reflect (a) the present organization titles for the Florida Power and Light Company Nuclear Division, and (b) change the composition of the Plant Nuclear Safety Committee (PNSC).

Date of issuance: May 20, 1991
Effective date: May 20, 1991
Amendment Nos. 142 and 137
Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 3, 1991 (56 FR 13663)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 20, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: November 21, 1990

Brief description of amendments: These amendments revise Section 3/4 5.1 of the Technical Specifications, "Accumulators, Limiting Condition for Operation," by increasing the indicated accumulator operating band from "6545 gallons and 6665 gallons" to "6520 gallons and 6820 gallons."

Date of issuance: May 29, 1991
Effective date: May 29, 1991
Amendment Nos. 143 and 136
Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** Feberuary 20, 1991 (56 FR 6874)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 29, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: March 25, 1991

Brief description of amendment: The amendment adds an allowable outage time for the turbine bypass valves.

Date of Issuance: May 20, 1991
Effective date: May 20, 1991
Amendment No.: 162
Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 17, 1991 (56 FR 15642)

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated May 20, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket No. 50-498, South Texas Project, Unit 1, Matagorda County, Texas

Date of amendment request: October 15, 1990

Brief description of amendment: The amendments change the Appendix A Technical Specifications by allowing continuation of surveillance testing for certain engineered safety features (ESF) actuation system instrumentation with one of four redundant actuation devices inoperable by bypassing the inoperable actuation device. This change is applicable to the pressurizer pressure-low safety injection, steam generator water level-high-high turbine trip and feedwater isolation, Tavg-low coincident with reactor trip feedwater isolation, steam generator water level-low-low auxiliary feedwater pump start, and 4.16 KV ESF bus undervoltage functions.

Date of issuance: May 17, 1991
Effective date: May 17, 1991
Amendment Nos.: 24 and 14
Facility Operating License No. NPF-76. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 26, 1990 (55 FR 53072)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 17, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: March 11, 1991

Brief description of amendment: The amendment changed the Technical Specifications to extend the surveillance frequency for the residual heat removal (RHR) logic system functional test from once/6 months to once/18 months in order to avoid undesirable plant configurations during power operation.

Date of issuance: May 22, 1991
Effective date: May 22, 1991
Amendment No.: 140
Facility Operating License No. DPR-46. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 17, 1991 (56 FR 15643)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 22, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: August 31, 1989, as amended on March 22, and April 19, 1991

Brief description of amendment: The amendment revised the Technical Specifications to revise the setpoint tolerance on the Low-Low Set Safety/Relief Valve pressure switches, revise the format and location of the specification, and correct typographical errors in instrument I.D. numbers.

Date of issuance: May 22, 1991
Effective date: May 22, 1991
Amendment No.: 141
Facility Operating License No. DPR-46. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 29, 1989 (54 FR 49134)

The additional information contained in the supplemented letters dated March 22, and April 19, 1991, was clarifying in nature and thus, within the scope of the initial notice and did not affect the NRC staff's proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 22, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: July 2, 1990, as supplemented by letters dated March 8, and April 19, 1991

Brief description of amendment: The amendment changed the Technical Specifications to remove cycle-specific reactor physics parameters and incorporate them into a new document called the Core Operating Limits Report. The amendment was requested in response to Generic Letter 88-16.

Date of issuance: May 22, 1991
Effective date: May 22, 1991
Amendment No.: 142
Facility Operating License No. DPR-46. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 22, 1990 (55 FR 34374)

The additional information contained in the supplemental letters dated March 8, and April 19, 1991, were clarifying in nature and thus, within the scope of the initial notice and did not affect the NRC staff's proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 22, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

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Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: November 9, 1990, supplemented April 12, 1991.

Brief description of amendment: The amendment revises Technical Specification Surveillance Requirement 4.0.2 by deleting the requirement that allows the combined time interval for any three consecutive surveillance intervals not to exceed 3.25 times the specified surveillance interval. The change is based on the guidance of the Nuclear Regulatory Commission's Generic Letter 89-14, "Line-Item Improvements in Technical Specifications - Removal of the 3.25 Limit on Extending Surveillance Intervals." The supporting Bases for Technical Specification 4.0.2 are also revised to reflect the requested changes.

Date of issuance: May 29, 1991

Effective date: May 29, 1991

Amendment No.: 152

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 26, 1990 (55 FR 53073)

The April 12, 1990 letter provided supplemental information which did not affect the staff's proposed determination of no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 29, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of application for amendments: January 30, 1991

Brief description of amendments: The amendments revise the Technical Specifications Section 6.2.B.4 requirements for Operations Committee review of maintenance procedures. The requirements for preparation, review, and approval of maintenance procedures are included in a new Section 6.2.C.

Date of issuance: May 9, 1991

Effective date: May 9, 1991

Amendment Nos.: 96/89

Facility Operating License Nos. DPR-42 and DPR-60. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 20, 1991 (56 FR 11783)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 9, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: February 7, 1991

Brief description of amendments: The amendments changed the Technical Specifications (TSs) to revise the composition of the Plant Operations Review Committee (PORC) and to make a minor editorial change to the Unit 2 TSs to remove a reference to a figure previously deleted.

Date of issuance: May 16, 1991

Effective date: May 16, 1991

Amendment Nos.: 108 and 77

Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 3, 1991 (56 FR 13668)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 16, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: November 30, 1990

Brief description of amendments: These amendments changed the Technical Specifications to revise the emergency diesel generator periodic inspection interval from once per year to once per 18 months.

Date of issuance: May 20, 1991

Effective date: May 20, 1991

Amendment Nos.: 159 and 161

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 17, 1991 (56 FR 15645)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 20, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado

Date of amendment request: November 21, 1989 as supplemented April 25, 1990, February 22, March 6, March 27, April 23, May 3, and May 10, 1991.

Brief description of amendment: This amendment addressed permanent shutdown of Fort St. Vrain (FSV). It prohibits future operation of the FSV reactor, and converts the license to one authorizing possession only.

Date of issuance: May 21, 1991

Effective date: May 21, 1991

Amendment No.: 82

Facility Operating License No. DPR-34. Amendment revised the license.

Date of initial notice in **Federal Register:** May 16, 1990 (55 FR 20364)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 21, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado 80631

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: February 15, 1991

Brief description of amendment: This amendment revises the Technical Specifications to modify the method of locking valve 856 open from removal of A. C. power to removal of D. C. control power in order to enable valve manipulation from the control room while maintaining the locked OPEN requirement.

Date of issuance: June 3, 1991

Effective date: June 3, 1991

Amendment No.: 42

Facility Operating License No. DPR-18: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 1, 1991 (56 FR 20045)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 3, 1991

No significant hazards consideration comments received: No

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: January 31, 1991

Brief description of amendments: These amendments revise the NA-1&2 TS for the visual snubber inspection program and are consistent with the guidance of the NRC Generic Letter 90-09, "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions," dated December 11, 1990.

Date of issuance: May 30, 1991

Effective date: May 30, 1991

Amendment Nos.: 144 and 128

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 6, 1991 (56 FR 9388)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 30, 1991.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: March 27, 1991

Brief description of amendments: These amendments incorporate the location of the gaseous effluent release point associated with the newly constructed Radwaste Facility into Figure 5.1-1. In addition, a station process vent is also identified as a mixed mode release point.

Date of issuance: May 20, 1991

Effective date: May 20, 1991

Amendment Nos. 157 and 156

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 17, 1991 (56 FR 15646)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 20, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Notice of Issuance of Amendment To Facility Operating License and Final Determination of No Significant Hazards Consideration and Opportunity For Hearing (Exigent or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By July 12, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility

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operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555 and at the Local Public Document Room for the particular facility involved.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to **(Project Director)**: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: May 15, 1991 as supplemented by letter dated May 22, 1991

Description of amendment request: The amendment modified ACTION statement number 82 for Technical Specification (TS) 3.3.7.5, "Accident Monitoring Instrumentation," to allow continued plant operation with the inboard Main Steam Isolation Valve, 1B21-F022D, closed position indication inoperable until the next reactor shutdown.

Date of issuance: May 30, 1991

Effective date: May 30, 1991

Amendment No.: 58

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated May 30, 1991.

Attorney for licensees: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

NRC Project Director: John N. Hannon

Dated at Rockville, Maryland, this 5th day of June 1991.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation

[Doc. 91-13802 Filed 6-11-91; 8:45 am]

BILLING CODE 7590-01-D

Application for a License to Export Nuclear Material

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following application for an export license. Copies of the application are on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, and the Executive Secretary U.S. Department of State, Washington, DC 20520.

In its review of the application for a license to export nuclear grade graphite as defined in 10 CFR part 110 and noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the material to be exported. The information concerning this application follows.

NRC EXPORT LICENSE APPLICATION

Name of applicant, Date of appl., date received, application No.	Description of items to be exported	Country of destination
MWI, Incorporated, 03/25/91, 05/23/91, XMAT0360	400,000 kgs. of Bulk Nuclear Grade Graphite for EDM electrodes and continuous casting dies. For resale to various countries for non-nuclear end use.	United Kingdom.

Dated this 31st day of May 1991 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Ronald D. Hauber,

Assistant Director for Exports, Security, and Safety Cooperation, International Programs, Office of Governmental and Public Affairs.

[FR Doc. 91-13971 Filed 6-11-91; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Columbia River Basin Fish and Wildlife Program

May 30, 1991.

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of proposed amendments to the Columbia River Basin Fish and Wildlife Program (high priority habitat and production measures for anadromous fish).

SUMMARY: On November 15, 1982, pursuant to the Pacific Electric Planning and Conservation Act (the Northwest Power Act, 16 U.S.C. 839, *et seq.*) the Pacific Northwest Electric Power and Conservation Planning Council (Council) adopted a Columbia River Basin Fish and Wildlife Program (program). The program has been amended from time to time since then.

On May 13, the Council announced three processes to consider amendments to the program:

- A fast-track process to consider high-priority habitat and production measures for salmon and steelhead;
- A comprehensive process to begin in August, 1991, for recommendations to amend other salmon and steelhead provisions of the fish and wildlife program; and
- A process to consider resident fish and wildlife amendments, to begin in September, 1992.

With this notice, the Council initiates the first process, to consider high priority production and habitat measures for salmon and steelhead. This process will evaluate certain habitat and production actions proposed by the Columbia Basin Fish and Wildlife Authority, the Bonneville Power Administration, the U.S. Forest Service, Oregon Trout, the Bureau of Land Management and the Oregon Rivers Council. Copies of further background information, or the proposals themselves, may be obtained by contacting the Public Affairs Division at the address and telephone number given below (see **"FOR FURTHER INFORMATION"**).

BACKGROUND: For several years, the region's fish and wildlife agencies and Indian tribes have been engaged in a planning effort, called "system planning," to identify habitat and production measures for all 31 of the subbasins in the Columbia River Basin, and to integrate them into a coordinated, basinwide plan. The Council will consider the result of this planning effort in an amendment process that will begin on August 9, 1991, and end not later than August 9, 1992.

Meanwhile, several salmon stocks are in critical condition, and the Council wants to proceed with recovery measures for these weak stocks as soon as possible. Accordingly, the Council asked parties who have been involved in system planning to propose habitat and production measures that would help these stocks, and which should not be delayed pending the full system planning amendment process. These are the proposals that the Council is now considering for amendment into the fish and wildlife program.

In most amendment processes, the Council identifies the specific language that is proposed to be amended or added to fish and wildlife program. In the interest of time, however, the Council has chosen in this instance not to propose specific amendment language. Instead, the Council is making the substantive proposals available to interested parties for comment on their merits. Once the Council has determined which proposals to accept or modify, the Council will make appropriate revisions to the language of the fish and wildlife program. Any proposals that the Council does not accept in this rulemaking may be deferred for consideration in the Council's more extended rulemaking beginning August 9, 1991.

PUBLIC COMMENT: Written comment on the proposed amendments is invited. All written comments must be received in the Council's central office, 851 SW. Sixth Avenue, suite 1100, Portland, Oregon, 97204, by 5 p.m. Pacific time on July 19, 1991. Comments should be submitted to Stephen Crow, Director of Public Affairs, at this address. Comments should be clearly marked "Comments on High Priority Recovery Actions."

After the close of written comment, and up to the time of the Council's final decision on the proposed amendments, the Council may hold consultations with interested parties to clarify points made in written comment.

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HEARINGS: Public hearings will be held as follows: June 20, 1991 in Boise, Idaho, June 26, 1991 in Portland, Oregon, July 8, 1991 in Pasco, Washington, July 10, 1991 in West Yellowstone, Montana.

If you wish to obtain a schedule of the hearings, including specific locations of the hearings, contact the Council's Public Affairs Division, 851 SW. Sixth Avenue, suite 1100, Portland, Oregon 97204 or (503) 222–5161, toll free 1–800–222–3355. To reserve a time period for presenting oral comments at a hearing, contact the Public Affairs Division. Requests to reserve a time period for oral comments must be received no later than two work days before the hearing.

FINAL ACTION: The Council expects to take final action on the proposed amendments at its August 1991 meeting in Lincoln City, Oregon. Notice will be announced in accordance with applicable law and the Council's practice of providing notice of its meeting agendas.

FOR FURTHER INFORMATION: Further information may be obtained by contacting the Council's Public Affairs Division at the address and telephone numbers listed above.

A document that includes synopses of the proposals is available from the Council's central office (request publication 91–11).

In addition to synopses of the proposals, the Council is preparing fact sheets on the subbasin plans. This document is available by calling the Council's central office (request publication 91–12).

The Council's central office also has copies of all subbasin plans and the full text of the proposed habitat production actions. They are available on request.

Edward W. Sheets,

Executive Director.

[FR Doc. 91–13882 Filed 6–11–91; 8:45 am]

BILLING CODE 0000–00–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–29276; File No. SR–BSE–91–5]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Amendments to its Fee Schedule.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 13, 1991, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the selfregulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE, pursuant to Rule 19b–4 of the Act, submitted a proposed rule change to amend its floor related fees, electronic access and processing fees, representative account services fees, transaction fees and listing fees. The BSE proposes to institute its amended fee schedule on June 1, 1991.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The BSE proposes several amendments to its schedule for floor related fees, electronic access and processing fees, representative account services fees, transaction fees and listing fees. The proposed rule change would amend the BSE floor related fees for technology and pass-through charges. The BSE proposes to amend its technology fee to increase its current fee of $200 per terminal to $250 per terminal for specialists and to increase its current fee of $50 per terminal to $100 per terminal for floor brokers. The BSE also proposes to add additional pass-through charges to its fee schedule. The revised pass-through charges would provide that (1) the use of board slips will cost $.025 per ticket, (2) off-hours assistance on non-BSE equipment by BSE personnel will be priced at $25 per hour and (3) members will be charged "at cost" for repairs to BSE equipment damaged by other than normal wear and tear.

The BSE proposes to establish new fees for electronic access and processing. The proposed rule change would implement a monthly fee for off-floor members who access the Boston Exchange Automated Communication Order-routing Network ("BEACON") through third-party processors (ADP). Subscribers will be charged the larger of their monthly BSE transaction fees or ADP monthly processing fee (currently $1200) to the BSE. The proposed rule change also would provide that members who have remote BEACON terminals will be charged the larger of their monthly BSE transaction fees for orders routed through the terminal or the BSE's cost to provide the link ($100). The proposal would establish a new transmission service fee for electronic file transmissions. The BSE proposes to charge a transmission service fee of $200 for open orders and $100 for trade files, P&S blotters and equity reports.

The BSE proposes the following amendments to its fees for representative account services:

	Current fee	Revised fee
DTC Facility		
Deposit Sheets	$1.50/item	$4.00/item.
Deposit Items	.50/item	$1.00/item.
Deposit Communications	$1.90	.00.
ID Activity		
ID Trades	.36/item	$1.00/item.
ID Account Set-up	$1.00/item	$1.00/item.
ID Account Deletion	$1.00/item	.00.
ID Account Maintenance	.00	.50/item.
Envelope Processing	.00	$25.00/item.
Distribution	.00	$300.00/month.
Check Issuance/Deposit	.00	$300.00/month.

	Current fee	Revised fee
Non-BSE Executed Trades	.50/trade	.00.

The BSE proposes the following amendments to its transaction fees:

	Current cap	Revised cap
A. Non-Automated Cross Orders		
maximum charge per side	$150 (both sides)	$100 (both sides).
B. Automated Cross Orders		
maximum charge per side		
Programs of 15 or more orders	$75 (one side)	$75 (one side).
Programs of 2 to 14 orders	N/A	$75 (one side).
Programs of 1 order	N/A	$75 (both sides).

C. Value Charge Rates

	Current rate	Revised rate
$500.1+ million in monthly contract value	$.03/$1,000	$.01/$1,000.

The BSE proposes the following changes to its listing fee schedule:

	Current fee	Revised fee
Additional shares ($.005 per share)	$2,500 maximum	$5,000 maximum.
Annual Maintenance		
First Issue	$750	$1,000.
Additional Issues	$500	$750.

The purpose of the amended fee schedule is to capitalize on the competitive niches that the BSE currently enjoys, to realign pricing with associated costs for certain services and to reduce inequities that exist among various member firm constituencies.

The statutory basis for the proposed rule change is section 6(b)(4) of the Act which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The BSE does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were solicited from the Fee Committee of the Board of Governors, comprised of representatives of dealer-specialist, retail, and institutional firms; from the Executive Committee, which serves as the Board of Governors of the Clearing Corporation; and from the Board of Governors of the Exchange.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–91–5 and should be submitted by July 3, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

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Dated: June 5, 1991.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 91-13936 Filed 6-11-91; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-29272; File No. SR-CBOE-91-20]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Chicago Board Options Exchange, Inc., Relating to Withdrawal of Approval of Underlying Securities

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 14, 1991, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend Exchange Rule 5.4 to allow the Exchange's Product Development Committee ("Committee") to withdraw approval of an underlying security for any reason the Committee deems necessary. This revision will conform the CBOE's rule to those of other self-regulatory organizations. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Exchange Rules 5.3 and 5.4 set forth the specific initial and on-going standards that stocks must satisfy to be eligible to underlie CBOE-traded options. If stocks fall below these standards, Exchange Rule 5.4 currently allows the Committee to withdraw approval of the underlying security for Exchange options transactions. The CBOE now proposes to amend Exchange Rule 5.4 to provide explicitly that, in addition, the Committee may withdraw approval of an underlying security for any reason the Committee deems necessary. In doing so, the Exchange is explicitly stating its policy and practice with respect to the administration of its listing standards rules that, even though a stock may satisfy the Exchange's listing standards, the CBOE may choose to withdraw approval of that stock for other reasons. The amendment will conform the CBOE's written rules to the rules of the American Stock Exchange ("Amex"), the New York Stock Exchange ("NYSE"), and the Philadelphia Stock Exchange ("PHLX"), which allow those exchanges to withdraw approval of underlying securities for reasons other than meeting the listing standards.[1]

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it promotes just and equitable principles of trade.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice or interpretation with respect to the administration of an existing CBOE rule in that it codifies the CBOE practice of delisting an option for reasons related to a *bona fide* business judgement. Accordingly, the proposal has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned selfregulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 12, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.
Dated: June 4, 1991.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 91-13937 Filed 6-11-91; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-18185; 812-7692]

Carnegie Cappiello Trust, et al.; Application

June 5, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Carnegie-Cappiello Trust, Carnegie Tax Exempt Income Trust, and Carnegie Government Securities Trust (the Government Series and Carnegie Intermediate Government Series only) (collectively, the "Funds"), Carnegie Fund Distributors, Inc. (the "Distributor"), and any future open-end investment company registered under the Act for which Carnegie Capital Management Company acts as investment adviser.

RELEVANT ACT SECTIONS: Exemption requested pursuant to section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) and Rule 22c-1.

SUMMARY OF APPLICATION: The Applicants seek an exemption under section 6(c) of the Act to permit the Funds to impose and, under certain circumstances, waive a contingent deferred sales charge on certain redemptions of its shares.

FILING DATE: The application was filed on February 28, 1991 and amended on May 30, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 2, 1991, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 1100 The Halle Building, 1228 Euclid Avenue, Cleveland, Ohio 44115-1831.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504-2263 or Max Berueffy, Branch Chief, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Carnegie-Cappiello Trust and Carnegie Tax Exempt Income Trust are Ohio trusts. Carnegie Government Securities Trust is a Massachusetts business trust. The Funds are each registered under the Act as open-end management investment companies.

2. Carnegie Fund Distributors, Inc. is the principal underwriter of each Fund. The Funds are advised by Carnegie Capital Management Company.

3. The Funds currently sell their shares at net asset value plus a sales load on transactions involving less than $4 million. The front-end sales charge is waived for certain classes of purchasers named in each Fund's prospectus.

4. The Applicants propose to eliminate the front-end sales charge on purchases of Fund shares of $1 million or more and impose a contingent deferred sales charge ("CDSC") on such shares if they are redeemed within 24 months of their purchase. The CDSC will be 1% of the lesser of the net asset value of the shares redeemed (exclusive of reinvestment dividends and capital gains distributions) or the original cost of such shares.

5. In determining whether a CDSC is payable, the Funds will assume that shares held the longest will be the first to be redeemed.

6. In accordance with Rule 11a-3 under the Act, no CDSC will be imposed on exchanges of shares offered by the Applicants for shares of other Carnegie Fund Group funds distributed by the Distributor or for any other funds in the Carnegie Funds Group which are not distributed by the Distributor. If, however, the shares acquired in an exchange are redeemed within 24 months following the original investments, the CDSC will be assessed.

7. The Applicants intend to waive the CDSC on the following redemptions: (a) distributions from retirement plans qualified under section 401(a) of the Internal Revenue Code of 1986, as amended, when such redemptions are necessary to make distributions to plan participants (such payments include, but are not limited to death, disability, retirement or separation from service); (b) distributions from a custodial account under Internal Revenue Code 403(b)(7) or an individual retirement account (an "IRA") due to death, disability or attainment of age 59½; (c) a tax-free return of an excess contribution to an IRA; and (d) distributions by other employee benefit plans to pay benefits. The CDSC will also be waived on periodic redemptions made pursuant to an automatic withdrawal plan, provided such redemptions do not exceed 10% of assets that would otherwise be subject to the CDSC.

8. The Applicants will provide a credit for any CDSC paid in connection with a redemption of shares followed by a reinvestment into the same fund within thirty days of the redemption. Such a credit will be distributed by the Distributor from its house account where the CDSC is held until such distribution becomes necessary. The Distributor's house account will maintain a sufficient balance to make such credits.

Applicants' Legal Analysis:

1. The Applicants seek an exemption from sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rule 22c-1 thereunder. They submit that the requested relief is, in keeping with the requirements of section 6(c) of the Act, necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. The Applicants submit that the CDSC, unlike a front-end sales charge, will enable covered shareholders to have their entire investment working for them from the time of their initial purchase of shares. In addition, the money that otherwise would have been paid as a front-end sales charge will benefit a Trust by increasing the Trust's asset base and reducing its expense ratio, which will have a corresponding benefit to all shareholders. The Applicants assert that the imposition of the CDSC will not restrict any affected shareholder of any Trust from receiving a proportionate share of the current net assets of such Trust, but will merely defer the deduction of a sales charge and make it contingent upon an event which may never occur.

3. The Applicants submit that the waiver of the CDSC will not harm the Trusts or their shareholders, nor will it unfairly discriminate among shareholders or purchasers. The Applicants submit that the waiver on redemptions in connection with certain distributions from retirement plans and employee benefit plans is appropriate for public policy reasons. Such a waiver is fully consistent with the provisions granting favored federal tax treatment to accumulations under such plans and imposing additional taxes on early distributions from them.

4. The Applicants further submit that the proposed credit of the CDSC applicable to a shareholder who redeems shares subject to the charge and reinvests the proceeds of the redemption within thirty days of the redemption is in the interest of shareholders. This reinvestment privilege allows investors who erroneously redeemed or otherwise had second thoughts about having redeemed their shares to reinvest the proceeds without reincurring the sales charge.

[1] See Amex Rule 916, NYSE Rule 716, and PHLX Rule 1010.

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Applicants' Condition:

If the requested exemptive relief is granted, the Applicants agree to comply with the provisions of proposed Rule 6c-10 under the Act, Investment Company Act Rel. No. 18619 (November 2, 1988), as currently proposed and as it may be re-proposed, adopted or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-13938 Filed 6-11-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Waiver Petition Docket Numbers RSOR-91-1 and 2]

Petition for Relief From the Requirements of Railroad Operating Rules Regulation

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Garden City Northern Railway, Inc. and the Garden City Western Railway Company of Garden City, Kansas, have petitioned the Federal Railroad Administration (FRA) under a single petition for permanent relief from the requirements of 49 CFR Part 217 entitled, "Railroad Operating Rules."

Part 217 requires that railroads file with FRA all operating rules, timetables and timetable instructions, and further requires the periodic instruction and compliance testing of employees on these rules. Additionally, railroads with more than 400,000 total manhours per year must file on annual report with FRA.

The Garden City Northern Railway, Inc. is 29 miles in length and the Garden City Western Railway Company is 14 miles in length. Both railroads are operated by the same personnel (five full time employees). It is their belief that because the very limited operation of the railroads, no benefit would result from compliance with part 217. Hence, the petitioner requests relief from the regulations.

Interested persons are invited to participate in this proceeding by submitting written views and comments. FRA has not scheduled an opportunity for oral comments since the facts do not appear to warrant it. If any interested party desires an opportunity for oral comment, he or she should notify FRA, in writing, before the end of the comment period and specify the basis for his or her request. Communications concerning this proceeding should identify the appropriate FRA Waiver Petition Docket Numbers RSOR-91-1 and 2 and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Nassif Building, 400 7th Street, SW., Washington, DC 20590.

Communications received before July 22, 1991 will be considered by FRA before final action is taken. Comments received after that will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours in room 8201, Nassif Building, 400 7th Street, SW., Washington, DC.

Issued in Washington, DC on June 4, 1991.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 91-13927 Filed 6-11-91; 8:45 am]

BILLING CODE 4910-06-M

Urban Mass Transportation Administration

UMTA Section 3 and 9 Grant Obligations

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 1991, Public Law 101-516, signed into law by President George Bush on November 5, 1990, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the **Federal Register** every 30 days of grants obligated pursuant to sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Janet Lynn Sahaj, Chief, Resource Management Division, Office of Capital and Formula Assistance, Department of Transportation, Urban Mass Transportation Administration, Office of Grants Management, 400 Seventh Street, SW., room 9301, Washington, DC 20590, (202) 366-2053.

SUPPLEMENTARY INFORMATION: The section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The section 9 formula program was established by the Surface Transportation Assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to the statute UMTA reports the following grant information:

SECTION 3 GRANTS

Transit property	Grant No.	Grant amount	Obligation date
Des Moines Metropolitan Transit Authority, Des Moines, IA	IA-03-0064-00	$4,500,039	04/12/91
Berkshire Regional Transit Authority, Pittsfield, MA	MA-03-0168-00	1,699,996	04/29/91
City of Philadelphia, Philadelphia, PA.-N.J	PA-03-0148-04	3,300,000	04/26/91

SECTION 9 GRANTS

Transit property	Grant No.	Grant amount	Obligation date
Waterloo Metro Transit Authority, Waterloo, IA	IA-90-X123-00	$542,573	05/13/91
Commuter Rail Division of the Regional Transportation Authority, Chicago, IL.-Northwestern IN	IL-90-X173-00	27,855,659	04/23/91

SECTION 9 GRANTS—Continued

Transit property	Grant No.	Grant amount	Obligation date
City of Laredo, Laredo, TX	TX-90-X206-00	982,000	05/01/91

Issued on June 6, 1991.

Brian W. Clymer,

Administrator.

[FR Doc. 91-13884 Filed 6-11-91; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Burleson County FSA; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Burleson County FSA, Caldwell, Texas, on May 31, 1991.

Dated: June 6, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-13855 Filed 6-11-91; 8:45 am]

BILLING CODE 6720-01-M

Enterprise Savings and Loan Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Enterprise Savings and Loan Association, Compton, California (OTS No. 6811), on May 31, 1991.

Dated: June 6, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-13856 Filed 6-11-91; 8:45 am]

BILLING CODE 6720-01-M

Goldome Federal Savings Bank; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners, Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Goldome Federal Savings Bank, St. Petersburg, Florida, on May 31, 1991.

Dated: June 6, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-13885 Filed 6-11-91; 8:45 am]

BILLING CODE 6720-01-M

Merabank Federal Savings Bank; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for MeraBank Federal Savings Bank, El Paso, Texas, on May 31, 1991.

Dated: June 6, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-13886 Filed 6-11-91; 8:45 am]

BILLING CODE 6720-01-M

United Federal Savings Bank; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for United Federal Savings Bank, Smyrna, Georgia, on May 31, 1991.

Dated: June 6, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-13857 Filed 6-11-91; 8:45 am]

BILLING CODE 6720-01-M

Westerleigh Federal Savings and Loan Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Westerleigh Federal Savings and Loan Association, Staten Island, New York, on May 31, 1991.

Dated: June 6, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-13887 Filed 6-11-91; 8:45 am]

BILLING CODE 6720-01-M

Burleson County Savings Association, a Federal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Burleson County Savings Association, A Federal Savings Bank, Caldwell, Texas, OTS No. 7880, on May 31, 1991.

Dated: June 6, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-13858 Filed 6-11-91; 8:45 am]

BILLING CODE 6720-01-M

Clyde Federal Savings Association; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Clyde Federal Savings Association, Chicago, Illinois ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on May 31, 1991.

Dated: June 6, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-13862 Filed 6-11-91; 8:45 am]

BILLING CODE 6720-01-M

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Commercial Savings and Loan Association, FA et al.; Replacement of Conservator With a Receiver

Notice is hereby given that, on May 31, 1991 pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator with the Resolution Trust Corporation as sole Receiver for each of the following savings associations:

Name	Location	OTS No
1. Commercial Savings and Loan Association, FA	Hammond, Louisiana	8612
2. Southeastern Federal Savings Bank	Laurel, Mississippi	8811
3. First Federal Savings Association of Nacogdoches	Nacogdoches, Texas	9015
4. North Texas Federal Savings Association	Wichita Falls, Texas	8891
5. Sabine Valley Federal Savings and Loan Association	Center, Texas	9027

Dated: June 6, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-13874 Filed 6-11-91; 8:45 am]

BILLING CODE 6720-01-M

Goldome Savings Bank, FSB; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Goldome Savings Bank, FSB, St. Petersburg, Florida (OTS No. 6482), on May 31, 1991.

Dated: June 6, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-13871 Filed 6-11-91; 8:45 am]

BILLING CODE 6720-01-M

Greenwood Federal Savings and Loan Association; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Greenwood Federal Savings and Loan Association, Greenwood, Mississippi ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on May 31, 1991.

Dated: June 6, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-13875 Filed 6-11-91; 8:45 am]

BILLING CODE 6720-01-M

Heritage Federal Savings Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Heritage Federal Savings Association, Lancaster, Pennsylvania ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on May 31, 1991.

Dated: June 6, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-13863 Filed 6-11-91; 8:45 am]

BILLING CODE 6720-01-M

Hometown Federal Savings Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Hometown Federal Savings Association, Winfield, Illinois ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on May 31, 1991.

Dated: June 6, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-13868 Filed 6-11-91; 8:45 am]

BILLING CODE 6720-01-M

MeraBank Texas, F.S.B.; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for MeraBank Texas, F.S.B., El Paso, Texas, OTS No. 8501, on May 31, 1991.

Dated: June 6, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-13872 Filed 6-11-91; 8:45 am]

BILLING CODE 6720-01-M

Tennessee Federal Savings Bank; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Tennessee Federal Savings Bank, Cookeville, Tennessee ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on May 31, 1991.

Dated: June 6, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-13869 Filed 6-11-91; 8:45 am]

BILLING CODE 6720-01-M

Texas Federal Savings Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Texas Federal Savings Association, San Antonio, Texas ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on May 22, 1991.

Dated: June 6, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-13870 Filed 6-11-91; 8:45 am]

BILLING CODE 6720-01-M

Tennessee FSB; Replacement of Conservator With a Receiver

Notice is hereby given that pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Tennessee FSB, Cookeville, Tennessee ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on May 31, 1991.

Dated: June 6, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-13864 Filed 6-11-91; 8:45 am]

BILLING CODE 6720-01-M

United Savings Bank, FSB; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for United Savings Bank, FSB, Smyrna, Georgia, OTS No. 6650, on May 31, 1991.

Dated: June 6, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-13859 Filed 6-11-91; 8:45 am]

BILLING CODE 6720-01-M

Westerleigh Savings, FSLA; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Westerleigh Savings, FSLA, Staten Island, New York (OTS No. 0753), on May 31, 1991.

Dated: June 6, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-13860 Filed 6-11-91; 8:45 am]

BILLING CODE 6720-01-M

UNITED STATES INFORMATION AGENCY

Advisory Commission on Public Diplomacy; Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on June 12 in room 600, 301 4th Street, SW., Washington, DC from 10:30 a.m. to 12 noon.

The Commission will meet with the Honorable Fred Bush, Commissioner General, Seville Expo 92 to discuss plans for the U.S. pavilion at the Exposition. The Commission also will meet with Mr. Robert T. Coonrod, Deputy Director, Voice of America to discuss VOA's Persian Gulf War broadcasts and plans for the diposition of RIAS assets in Germany.

EFFECTIVE DATE: June 12, 1991.

FOR FURTHER INFORMATION CONTACT: Please call Gloria Katamets, (202) 619-4468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: June 4, 1991.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 91-14000 Filed 6-10-91; 9:56 am]

BILLING CODE 8230-01-M

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Sunshine Act Meetings

Federal Register
Vol. 56, No. 113
Wednesday, June 12, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

Change in Time of Open Commission Meeting

June 7, 1991.

The Federal Communications Commission previously announced on June 6, 1991, its intention to hold an Open Meeting on Thursday, June 13, 1991, commencing at 9:30 a.m.

The Time has been changed to 10:30 a.m.

This meeting may be continued the following workday to allow the Commission to complete appropriate action.

The prompt and orderly conduct of Commission business requires this change and no earlier announcement was possible.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632-5050.

Issued: June 7, 1991.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-14040 Filed 6-10-91; 1:41 pm]

BILLING CODE 6712-01-M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Reauthorization Committee Hearing and Meeting; Notice

TIMES AND DATE: A hearing and meeting of the Board of Directors Reauthorization Committee will be held on June 24, 1991. The hearing will commence at 9:00 a.m. and will be followed immediately by the meeting. Members of the public that wish to comment at the hearing are requested to contact Kenneth Boehm, Counsel to the Board of Directors, at (202) 863-1839.

PLACE: The Marriott Suites Hotel, 801 North St. Asaph Street, Alexandria, VA. 22314, Salons I and II, (703) 836-4700

STATUS OF HEARING AND MEETING: Open.

MATTERS TO BE CONSIDERED:

A. Hearing

1. Approval of Agenda.
2. Public Comment on Reauthorization of the Legal Services Corporation.
3. The Legal Services Corporation Act.
4. The 1991 Subcommittee Bill on the Legal Services Corporation.
5. The March 7, 1991 McCollum-Stenholm Bill.

B. Meeting

1. Approval of Minutes of April 20, 1991 Meeting, Continued on April 28, 1991, and Minutes of June 3, 1991 Meeting.
2. Consideration of Public Comment and Possible Recommendation to the Board of Directors Regarding the Reauthorization of the Legal Services Corporation.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 863-1839.

Dated: June 10, 1991.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 91-14132 Filed 6-10-91; 3:36 pm]

BILLING CODE 7050-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 10, 17, 24, and July 1, 1991.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of June 10

Monday, June 10

2:00 p.m.
Briefing by Proposed Rule on Training and Qualification of Nuclear Power Plant Personnel (Public Meeting)

Tuesday, June 11

10:00 a.m.
Briefing by Agreement States on Compatibility Issues (Public Meeting)

Wednesday, June 12

10:00 a.m.
Briefing by Progress of Design Certification Review and Implementation (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Amendments to 10 CFR Parts 2 and 35 on Quality Management and Reportable Events
b. Joint Motion to Stay or Vacate License Issuance by Petitioners in Shoreham Proceeding

Week of June 17—Tentative

Wednesday, June 19

1:30 p.m.
Briefing on Shutdown Risk Status (Public Meeting)

Thursday, June 20

9:30 a.m.
Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of June 24—Tentative

Friday, June 28

8:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 1—Tentative

Wednesday, July 3

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 492-0292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

Dated: June 6, 1991.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 91-14088 Filed 6-10-91; 1:42 pm]

BILLING CODE 7590-01-M

federal register

Wednesday
June 12, 1991

Part II

Department of Housing and Urban Development

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 750 and 890

Supportive Housing for Persons With Disabilities; Interim Rule and Request for Comments; Notice of Fund Availability for FY 1991

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 750 and 890

[Docket No. R-91-1525; FR-2974-I-01]

RIN: 2502-AF20

Supportive Housing for Persons With Disabilities

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule and request for comments.

SUMMARY: This interim rule adds part 890, which establishes the new Supportive Housing for Persons with Disabilities Program and enables FY 1991 funding of supportive housing (relating to capital advances) for persons with disabilities under part 890. Requirements for the project rental assistance contracts and management of supportive housing for persons with disabilities projects selected in FY 1991 will be published in July 1991 in a proposed rule also under part 890. The Supportive Housing for Persons with Disabilities Program is authorized by section 811 of the Cranston-Gonzalez National Affordable Housing Act (the NAH Act) as amended by the Dire Emergency Supplemental Appropriations Act (Pub. L. 102-27) (April 10, 1991) and is to enable persons with disabilities to live with dignity and independence within their communities by expanding the supply of supportive housing that is designed to accommodate the special needs of such persons and provides supportive services that address the individual health, mental health, and other needs of such persons. This interim rule also adds new part 890 to list of programs covered by 24 CFR part 750 (disclosure and verification of social security numbers and employer identification numbers by applicants and participants).

DATES: Effective date: July 12, 1991. Comment due date: August 12, 1991.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of the General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours (weekdays 7:30 a.m. to 5:30 p.m.) at the above address. Hearing or speech impaired individuals may call the Rules Docket Clerk's TDD number (202) 708-3259.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708-4337. Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk at (202) 708-2084. (The telephone numbers listed in this paragraph are not toll-free.)

FOR FURTHER INFORMATION CONTACT: Robert Wilden, Director, Housing for Elderly and Handicapped People Division, Department of Housing and Urban Development, 451 Seventh Street SW., room 6116, Washington, DC 20410, telephone (202) 708-2730.

Hearing or speech impaired individuals may call HUD's TDD number (202) 708-4594. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Burden

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. Pending approval of these collections of information by OMB and the assignment of an OMB control number, no person may be subjected to a penalty for failure to comply with these information collection requirements. The OMB control number, when assigned, will be announced by separate notice in the Federal Register. The Department provided for 21 days public comment on the information collection requirements. OMB approval of those information collections, following public comment, is anticipated well in advance of the due date of applications submitted in response to today's documents.

Public reporting burden for the collection of information requirements contained in this rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing the reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, Findings and Certifications. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: HUD Desk Officer, room 3001, Washington, DC 20530.

II. Background

A. Applicability of Part 885

Part 885 provides direct Federal loans under section 202 of the Housing Act of 1959 (42 U.S.C. 1701q) to assist private, nonprofit corporations and nonprofit consumer cooperatives in the development of housing projects serving elderly or handicapped families and individuals. A loan (up to 40 years) made under part 885 is used to finance the construction or the substantial rehabilitation of projects for elderly or handicapped families, or for the acquisition with or without moderate rehabilitation of existing housing and related facilities for group homes for nonelderly handicapped individuals. The housing projects provide the necessary services for the occupants which may include, but are not limited to: Health, continuing education, welfare, informational, recreational, homemaking, meal and nutritional services, counseling, and referral services, as well as transportation where necessary to facilitate access to these services. New part 890 has the same description of services based on section 811(a). Examples of services not included in part 890 are recreational or social activities directors and medical services.

Subpart B of part 885 applies to projects for elderly or handicapped families that receive loans under section 202 of the Housing Act of 1959 and housing assistance payments under section 8 of the United States Housing Act of 1937. Subpart C of part 885 applies to projects for nonelderly handicapped families receiving loans under section 202 and project assistance payments under section 202(h) of the Housing Act of 1959. Part 885 has been amended by an interim rule published elsewhere in today's Federal Register and will apply to projects for which section 202 loan reservations were made in FY 1990 and prior years. Projects for persons with disabilities selected for

funding in FY 1991 and subsequent years will be covered by new part 890 (added by this interim rule).

B. New Part 890—An Overview

Persons familiar with the organization of 24 CFR part 885, subpart C for section 202 Projects for Nonelderly Handicapped Families and Individuals—Section 162 Assistance, will notice the many similarities part 890 has with part 885, subpart C. This organization has been adopted to foster an easy transition from the section 202 handicapped project assistance procedures to new part 890 supportive housing for disabled persons assistance procedures.

Section 811 of the NAH Act provided a new supportive housing for persons with disabilities program. The purpose of this section is to enable persons with disabilities to live with dignity and independence within their communities by expanding the supply of supportive housing that (a) is designed to accommodate the special needs of such persons; and (b) provides supportive services that address the individual health, mental health, and other needs of such persons. The Secretary is authorized to provide assistance to private, nonprofit organizations to expand the supply of supportive housing for persons with disabilities. Such assistance is provided as (a) capital advances, and (b) contracts for project rental assistance. This assistance may be used to finance the acquisition with or without rehabilitation (group homes only), construction or rehabilitation of housing, including the acquisition of property from the Resolution Trust Corporation (group homes and independent living facilities), to be used as supportive housing for persons with disabilities and may include real property acquisition, site improvement, conversion, demolition, relocation, and other expenses that the Secretary determines are necessary to expand the supply of supportive housing for persons with disabilities.

The Secretary is directed to take such actions as may be necessary to ensure that (a) assistance made available under this section will be used to meet the special needs of persons with disabilities by providing a variety of housing options, ranging from group homes and independent living facilities to dwelling units in multifamily housing developments, condominium housing, and cooperative housing; and (b) supportive housing for persons with disabilities assisted under this section shall (1) provide persons with disabilities occupying such housing with supportive services that address their individual needs; (2) provide such persons with opportunities for optimal independent living and participation in normal daily activities, and (3) facilitate access by such persons to the community at large and to suitable employment opportunities within such community.

For supportive housing for persons with disabilities, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1991, (Pub. L. 101-507, approved November 5, 1990 (Fiscal Year 1991 Appropriations Act) provides $106,709,000 for capital advances under section 811 (including 500 units for persons disabled as a result of infection with the human acquired immunodeficiency virus (HIV)) and $104,000,000 for project rental assistance (including assistance for 500 units of housing for persons disabled as a result of infection with the HIV). Of the amounts available, up to $5,000,000 shall be available for contracts for technical assistance in accordance with section 811(j)(1). The NAH Act and the Fiscal Year 1991 Appropriations Act contain differing provisions for implementing the Supportive Housing for Persons with Disabilities Program. The NAH Act defers initiation of the Program until FY 1992, while the appropriation contemplates conversion to the new Program in FY 1991. In order to permit the funding of supportive housing for persons with disabilities in FY 1991 and best effectuate the purposes of both the NAH Act and the appropriation, the Department has decided to publish this rule as interim. A companion Notice of Funding Availability (NOFA) is published elsewhere in today's Federal Register. The NOFA provides complete information regarding eligibility, submission requirements, available capital advance amounts, selection criteria and application processing (including how to apply and how selections will be made). A checklist of steps and exhibits involved in the application process appears in the application package mentioned in the NOFA. Remaining requirements of this program, which are not necessary for fund reservation (*e.g.*, capital advances, project rental assistance contracts and management requirements) will be the subject of a proposed rule (also under part 890) which will be published later this year. A NOFA for the 500 units of housing for persons disabled as a result of infection with the HIV will also be published later.

1. Forms of Assistance

(a) *General/Capital Advances.* Capital advances provided under this section shall bear no interest and their repayment shall not be required so long as the housing remains available for very low-income persons with disabilities for not less than 40 years. Such advance shall be in an amount calculated in accordance with the development cost limit established in section 811(h) of the NAH Act.

(1) Development Cost Limits. In general, the Secretary shall periodically establish development cost limits by market area for various types and sizes of supportive housing for persons with disabilities by publishing a notice of the cost limits in the Federal Register. The cost limits shall reflect:

(i) The cost of acquisition, construction, or rehabilitation of supportive housing for persons with disabilities that (A) meets applicable state and local housing and building codes; and (B) conforms with the design characteristics of the neighborhood in which it is to be located;

(ii) The cost of movables (*e.g.*, movable equipment) necessary to the basic operation of the housing, as determined by the Secretary;

(iii) The cost of special design features necessary to make the housing accessible to persons with disabilities;

(iv) The cost of special design features necessary to make individual dwelling units meet the special needs of persons with disabilities;

(v) The cost of congregate space (hereinafter referred to as community space) necessary to accommodate the provision of supportive services to persons with disabilities;

(vi) If the housing is newly constructed, the cost of meeting the energy efficiency standards promulgated by the Secretary in accordance with section 109 of the NAH Act; and

(vii) The cost of land, including necessary site improvement.

In establishing development cost limits for a given market area, the Secretary shall use data that reflect currently prevailing costs of acquisition, construction, or rehabilitation, and land acquisition in the area.

(2) RTC properties. In the case of existing housing and related facilities from the Resolution Trust Corporation under section 21A(c) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)), the cost limits shall include (i) the cost of acquiring such housing, (ii) the cost of rehabilitation, alteration, conversion, or improvement, including the moderate rehabilitation thereof, and (iii) the cost of the land on which the housing and related facilities are located.

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(3) Annual adjustments. The Secretary is required to adjust the cost limits not less than once annually to reflect changes in the general level of acquisition, construction or rehabilitation costs.

(4) Incentives for savings. The Secretary shall use the development cost limits (adjusted by locality) to calculate the initial fund reservation amount of the capital advance to be made available to individual Owners. Owners whose HUD-approved actual development costs are less than the initial fund reservation amount of the capital advance shall be entitled to retain 50 percent of the savings in their Replacement Reserve Account (referred to in section 811(h)(4)(A) as a special project account). Such percentage shall be increased to 75 percent for Owners which add energy efficiency features which (i) exceed the energy efficiency standards promulgated by the Secretary in accordance with section 109 of the NAH Act; (ii) substantially reduce the life-cycle cost of the housing; (iii) reduce gross rent requirements; and (iv) enhance tenant comfort and convenience. The Replacement Reserve Account may only be used as approved by HUD for repairs or replacements in or capital improvements of the project.

(5) Use of funds from other sources. An Owner may voluntarily provide funds from non-Federal sources for amenities and other features of appropriate design and construction suitable for supportive housing for persons with disabilities if the cost of such amenities is (1) not financed with the capital advance, and (2) is not taken into account in determining the amount of Federal assistance or tenant payment (section 811(h)(5) refers to this as rent contribution of tenants). Any funds borrowed (e.g., for services or construction) from other sources generally would not be acceptable and in any case would require HUD approval. The Department plans to issue, in July 1991, a proposed rule under part 890 covering these additional requirements regarding capital advances.

(b) *Project rental assistance contracts.* Project rental assistance contracts obligate the Secretary to make monthly payments to cover any part of the HUD-approved operating costs attributed to units occupied (or, as approved by the Secretary, held for occupancy) by very low-income persons with disabilities that are not met from project income. The annual contract amount for any project shall not exceed the HUD-approved annual operating budget for all units so occupied and any initial utility allowances for such units, as approved by the Secretary. Any contract amounts not used by a project in any year shall remain available to the project until the expiration of the contract. The Secretary may adjust the annual contract amount if the sum of the project income and the amount of assistance payments available are inadequate to provide for reasonable HUD-approved project operating costs. In the case of an intermediate care facility which is the residence of persons assisted under title XIX of the Social Security Act, project income shall include the same amount as if such person were being assisted under title XVI of the Social Security Act.

2. Tenant Payment

A very low-income person shall make a tenant payment for a dwelling unit assisted under this section the highest of the following amounts, rounded to the nearest dollar: (a) 30 percent of the person's adjusted monthly income, (b) 10 percent of the person's monthly income, or (c) if the person is receiving payments for welfare assistance from a public agency and a part of such payments, adjusted in accordance with the person's actual housing costs, is specifically designated by such agency to meet the person's housing costs, the portion of such payments which is so designated; except that the gross income of a person occupying an intermediate care facility assisted under title XIX of the Social Security Act shall be the same amount as if the person were being assisted under title XVI of the Social Security Act. If the person's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under (iii) above shall be the amount resulting from one application of the percentage.

3. Term of Commitment

All units in housing assisted under section 811 shall be made available for occupancy by very low-income persons with disabilities for not less than 40 years. The initial term of a contract entered into for project rental assistance shall be 240 months. The Secretary shall, to the extent approved in appropriations acts, extend any expiring contract for a term of not less than 60 months. In order to facilitate the orderly extension of expiring contracts, the Secretary is authorized to make commitments to extend expiring contracts during the year prior to the date of expiration.

4. Applications/Selection Criteria

(a) *Applications.* Funds made available under section 811 will be allocated by the Secretary among approvable applications submitted by private nonprofit organizations (*i.e.*, Sponsor(s)). The Sponsors whose applications are selected by HUD will form single-purpose private nonprofit corporation owners (*i.e.*, the Owner, which shall receive the section 811 assistance). A NOFA (discussed above under B) for Supportive Housing for Persons with Disabilities is published elsewhere in today's **Federal Register.** Applications for assistance under part 890 should be submitted by the applicant (Sponsor) in the form described in the NOFA. The NOFA provides complete information regarding the eligibility, available amounts, application submission requirements, selection criteria, deadline date for receipt of applications, and application processing. A checklist of steps and exhibits involved in the application process appears in the application package.

(b) *Selection Criteria.* The Secretary is required to establish selection criteria for assistance under section 811, which shall include:

(1) The ability of the applicant to develop and operate the proposed housing;

(2) The need for housing for persons with disabilities in the area to be served;

(3) The extent to which the proposed design of the housing will meet the special needs of persons with disabilities;

(4) The extent to which the applicant has demonstrated that the necessary supportive services will be provided on a consistent, long-term basis;

(5) The extent to which the proposed design of the housing will accommodate the provision of such services;

(6) The extent to which the applicant has control of the site of the proposed housing; and

(7) Such other factors as the Secretary determines to be appropriate to ensure that funds made available under section 811 are used effectively.

To this list of selection criteria, the Secretary has added subcriteria to explain the statutory criteria and also additional criteria such as the Sponsor's financial capacity and experience in housing and/or serving minorities (§ 890.300)(c)).

5. Tenant Selection

An Owner shall adopt written tenant selection procedures which ensure nondiscrimination in the selection of tenants and that are satisfactory to the Secretary as (a) consistent with the purpose of improving housing opportunities for very low-income persons with disabilities; and (b)

reasonably related to program eligibility and an applicant's (tenant's) ability to perform the obligations of the lease. Owners shall promptly notify in writing any rejected applicant of the grounds for any rejection. Notwithstanding any other provision of law, an Owner may, with the approval of the Secretary, limit occupancy within housing developed under this section to persons with disabilities who have similar disabilities and require a similar set of supportive services in a supportive housing environment.

6. Technical Assistance

The Secretary shall make available appropriate technical assistance to assure that applicants having limited resources, particularly minority applicants, are able to participate more fully in the program carried out under section 811.

7. Miscellaneous Provisions

(a) *Owner deposit (Minimum Capital Investment).* The Secretary may require an Owner to deposit an amount not to exceed $10,000 in a special escrow account to assure the Owner's commitment to the housing. If construction starts within the initial 18 months of the fund reservation, HUD will waive one-half of the Minimum Capital Investment which would be required under the aforementioned formula at the time of initial closing. If final closing occurs within six months after construction completion, HUD will approve the return of all remaining funds not used to cover operating deficits during the first three years of operation. If final closing does not occur within six months after project completion, unless extended by the Field Office for up to two months due to justifiable delay, the balance remaining at the end of three years will not be returned and shall be deposited in the Replacement Reserve Account.

(b) *Civil Rights Compliance.* Each Owner shall certify, to the satisfaction of the Secretary, that assistance made available under this section will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964, the Fair Housing Act and other Federal, state, and local laws prohibiting discrimination and promoting equal opportunity.

(c) *Notice of Cancellation and Appeal.* The Secretary will notify an Owner not less than 30 days prior to cancelling any reservation of assistance provided under section 811. During the 30-day period following the receipt of a notice under the preceding sentence, an Owner may appeal the proposed cancellation. Such appeal, including review by HUD, shall be completed not later than 45 days after the appeal is filed.

(d) *Labor Standards.* Under section 811(j)(6) of the NAH Act, all laborers and mechanics employed by contractors and subcontractors in the construction of housing assisted under this part and "designed for dwelling use by 12 or more persons with disabilities" shall be paid prevailing wage rates as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. By reason of Davis-Bacon wage rate applicability, the overtime requirements of the Contract Work Hours and Safety Standards Act also apply. HUD may waive these requirements where laborers or mechanics, not otherwise employed at any time in the construction of such housing, voluntarily donate their services without full compensation for the purposes of lowering the costs of construction and HUD determines that any amounts saved thereby are fully credited to the corporation, cooperative, or public body or agency undertaking the construction.

Section 811(k)(1) of the NAH Act defines "person with disabilities" in part as "a household of one or more persons at least one of whom is an adult who has a disability" and as also including "two or more persons with disabilities living together * * *." However, Congress's definition of "group home" in section 811(k)(1) limits (except in cases of waiver) group homes to single family structures "designed or adapted for occupancy by not more than 8 persons with disabilities." It is apparent that in the context of this provision regarding the capacity of the supportive housing facility, the term "person with disabilities" refers to the number of individuals being served, rather than the number of households composed of persons living together, since each group home contains only one group of persons with disabilities living together. Similarly, the definition of "independent living facility" in section 811(k)(4) refers to a "project designed for occupancy by not more than 24 persons with disabilities (except in cases of waiver) in separate dwelling units * * *." Accordingly, HUD concludes that in the statutory Davis-Bacon provision, the phrase "designed for dwelling use by 12 or more persons with disabilities" must be read to refer to facilities designed for 12 or more individuals. Hence, an independent living facility containing six units that are each designed for two individuals would be subject to Davis-Bacon wage rates, as would a group home for which the eight-person limit has been waived, if it is designed for dwelling use by 12 or more individuals.

(e) *Site Control.* An applicant may obtain ownership or control of a suitable site different from the site specified in the initial application. If an applicant fails to obtain ownership or control of the site within 1 year after notification of an award for assistance, the assistance shall be recaptured and reallocated. All sites are subject to HUD's environmental review to determine if acceptable/approvable.

(f) *OMB Circular A-110.* The Department requests comments regarding the use of OMB Circular No. A-110, entitled "Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations—Uniform Administrative Requirements" for this program. Grants (but not loans) to non-profit organizations are subject to A-110. Capitol advances provided under the Supportive Housing for Persons with Disabilities Program have features of both loans and grants. For example, the capital advance resembles a loan because it is subject to repayment, unless the Owner makes all units in the project available to very low-income elderly persons for the full 40-year period. Previously, the Section 202 Program provided direct loans and was not subject to A-110. Section 811 of the NAH Act and its legislative history do not give any guidance on the incidental effects (e.g., applicability to A-110) of the change in assistance to capital advances. If A-110 applied to this program, the current development team approach to construction/rehabilitation would be replaced with competitive procurement. After considering public comments, the Department intends to resolve this issue in either the final rule for this program or as a part of the common rule for A-110 (which is currently being prepared by the Office of Management and Budget).

(g) *Uniform Relocation Act.* Section 890.260(e) (Displacement, relocation and real property acquisition) contains policies necessary to conform part 890 to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) and the government-wide implementing regulations at 49 CFR part 24.

Effective April 2, 1989, the URA was amended to, among other things, expand coverage. Under the current rules (see HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition), all persons (families, individuals, businesses, nonprofit organizations and farms) displaced on or after April 2, 1989 as a direct result of rehabilitation, demolition or acquisition (publicly or privately

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undertaken) for a HUD-assisted project are entitled to relocation payments and other assistance under the URA.

The URA and the regulations at 49 CFR part 24, however, do not directly create eligibility for relocation assistance (as a "displaced person") for a tenant-occupant who is permitted to remain in the property but who moves from the property rather than pay an "excessive" rent upon completion of a project (economic displacement); who is required to relocate temporarily, but not permanently, while the project is underway; or who must move permanently to other space in the building/complex.

Therefore, to protect such tenant-occupants, and ensure consistency with other HUD-assisted programs, § 890.260(e) would, by regulation, provide that a tenant, who moves permanently because the terms and conditions of continued occupancy, temporary relocation or relocation within the building/complex are unreasonable, will qualify as a "displaced person" who is entitled to relocation assistance at levels identical to those required in 49 CFR part 24.

Paragraph § 890.260(e)(1) contains standard HUD policy directing Sponsors and Owners to take all reasonable steps to minimize displacement.

To qualify for a capital advance under part 890, the Sponsor/Owner must certify that it will comply with the URA, implementing regulations at 49 CFR part 24 and the provisions of § 890.260(e). The Sponsor/Owner must ensure such compliance notwithstanding any third party's contractual obligation to the Sponsor/Owner to carry out such requirements.

(h) Lead-based paint. Section 890.260(f) reflects the same lead-based paint requirements as 24 CFR 885.740(f). The Department is currently engaged in the re-drafting of part 35 pursuant to Secretarial direction (which will also revise § 890.260(f)). The Department anticipates completing the lead-based paint rulemaking shortly.

(i) Section 890.230 generally reflects existing site and neighborhood standards in § 885.730, with the exception of the undue concentration standard in § 885.730(d). The Department is revisiting the issue in response to a recent challenge to how the undue concentration standard has been implemented in practice. In *La Plaza Defense League* v. *Kemp*, 742 F. Supp. 792 (S.D.N.Y. 1990), it was ruled that the Department had acted contrary to its undue concentration regulations. In response to this decision, and to a report from the Office of Inspector General, the Department is studying undue concentration. When this interim rule is published as a final rule, any new language that is developed will be included.

C. Section by Section Summary of Part 890

In order to simplify program participation, part 890 reflects part 885's organization. Subpart A provides a general program description and the purpose and policy of the program. Subpart B provides application procedures and program requirements. Subpart C details selection of applications and duration of fund reservations. Subpart D provides for capital advance requirements. Subpart G provides for technical assistance. Each of these subparts is described below noting major differences from the Part 885 Program of Housing for Handicapped People. Subpart E has been reserved for project rental assistance contract requirements. Subpart F has been reserved for project management requirements.

1. Subpart A—General

Subpart A provides the purpose and policy of section 811 of NAH Act and statutory definitions (*e.g.*, group home, person with disabilities, supportive housing for persons with disabilities, independent living facility (this definition was recently amended by the Dire Emergency Supplemental Appropriations Act to cover projects designed for occupancy by not more than 24 persons with disabilities unless waived by the Secretary (811(k)(4) of the NAH Act previously covered projects designed for occupancy by not more than 20 persons), owner, private nonprofit organization and very low-income) as well as additional definitions needed to administer the program (*e.g.*, operating costs, project account, rehabilitation and start-up expenses).

2. Subpart B—Application Procedures and Program Requirements

Subpart B provides application procedures and program requirements. It includes allocation of authority in accordance with 24 CFR part 791, notice of fund availability and invitation for applications. Also covered are project standards, project size limits, design and cost standards, prohibited facilities, site and neighborhood standards, prohibited relationships, application contents, and other Federal requirements.

Of particular interest is the Department's implementation of section 105 of the NAH Act which would require that an application for this program include a certification of consistency of the proposal with an approved Comprehensive Housing Affordability Strategy ("CHAS") for the jurisdiction in which the proposed project is to be located. See the interim rule published on February 4, 1991 (56 FR 4480). This program rule provides that the CHAS certification requirement will not apply for FY 1991 funding of this program. However, beginning with the FY 1992 funding round, all applications for funding under this program must include a certification from the responsible public official that the project is consistent with an approved CHAS.

For FY 1991 applications, the CHAS certification requirement is not being applied to this program, because it is not statutorily required for this year and it is not feasible due to the amount of time required of a State or locality to develop a CHAS, including the hearing necessary to obtain citizen participation, and obtain a certification of consistency for FY 1991 funding. Therefore, to be most fair to entrants in this now significantly revised program, the Department is providing transition by delaying applicability of the CHAS certification until FY 1992.

Also of special interest, is a new statutory requirement for a certification by the appropriate State or local agency that the provision of services identified in the application is well designed to serve the needs of persons with disabilities. In order to fulfill this requirement, Sponsors must submit one copy of their application to the appropriate State or local agency identified by the Field Office in the application package simultaneously with their submission of their application to the appropriate Field Office. Also included with the application package will be a certification form that the Sponsor shall transmit to the State or local agency, along with its application, for the State or local agency to indicate that it has reviewed the supportive services plan and whether or not the provision of services is well designed to meet the needs of the proposed disabled population. Once the State or local agency completes its review of the supportive services plan, it must complete the certification form and forward it to the Field Office within 30 days of the Section 811 application deadline date. Unlike the Section 202 Program of Housing for Handicapped People where the State agency's review of the service plan description was optional, in the Section 811 program, the State or local agency's certification that the provision of services is well designed to meet the needs of the proposed residents is required for

approval of the Sponsor's application. Applications without such a certification will not be funded.

HUD has also revised its group home cost limits. The following chart provides the new group home cost limits:

Group Home Cost Limits

Number of residents	Type of disability	
	Physical or developmental disability	Chronic mental illness
3	$128,710	$124,245
4	137,730	131,980
5	146,750	139,715
6	155,760	147,450
7	162,876	153,576
8	168,126	157,731
9	170,840	160,920
10	178,000	167,000
11	185,160	173,070
12	192,320	179,150
13	199,920	185,380
14	207,510	191,610
15	215,100	197,830

The group home cost limits listed above are those which will be used for the development of group homes. A cost limit for a three (3) person group home has been added due to the Department's recent experience with requests to develop 3-person group homes based on the availability of single family homes with 3 bedrooms.

Furthermore, the seven (7) and eight (8) person group home limits have been increased for both disability categories. Previously, the cost limits for group homes with more than six residents were based on an assumption of double occupancy bedrooms, to encourage the development of group homes that retained a residential scale. Since the statutory limit on the number of residents in a group home has been set at 8 residents with larger homes of up to 15 residents approvable on a case-by-case exception basis, the Department is establishing 7 and 8 person cost limits which would support single occupancy bedrooms.

In order to accommodate areas which have high land costs, Regional Offices may approve requests by Field Offices for increases of up to 10 percent in cost limits in areas which can provide convincing documentation that high land costs limit or prohibit project feasibility. An example of acceptable documentation is evidence of at least three land sales which have actually taken place (listed prices for land are not acceptable) within the last two years in the area in which the project is to be built. The sites for which sale prices are given must be reasonably comparable to the project site. The average cost of the documented sales must exceed 7 percent of the development cost limit for which the project in question is eligible for approval of an increase to be considered.

All development cost limits under the new program provide more funds for actual construction since there will be approximately a 4 percent savings due to the elimination of construction interest as a development cost.

In addition, the percentages by which the Assistant Secretary may increase the cost limits in any geographic area where the cost levels require an increase and also on a project-by-project basis are now up to 140 percent and up to 160 percent, respectively.

Taken as a whole, the Department is confident that these measures respond to the concerns that the existing cost limits have not been adequate to fund the development of housing for persons with disabilities.

3. Subpart C—Selection of Applications and Duration of Fund Reservation

Subpart C provides for the selection of applications and duration of fund reservation. It provides guidance on the review of applications for fund reservations and approval of applications.

4. Subpart D—Capital Advances

Subpart D provides preliminary guidance on repayment of capital advance financing. Additional necessary provisions for program operation will be the subject of a proposed rule.

5. Other

Subpart E is reserved for requirements relating to project rental assistance contracts. Subpart F is reserved for requirements relating to project management. Subpart G indicates the Secretary's authority to provide technical assistance.

Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 implementing section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order on Federal Regulations issued on February 17, 1989. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b), (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule would provide capital advances to private nonprofit organizations to expand the supply of supportive housing for persons with disabilities. Although small entities will participate in the program, the rule would not have a significant impact on them.

On February 26, 1990, the Department published an interim final rule (24 CFR part 87) advising recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans of a new prohibition recently mandated by Congress. Section 319 of the Department of the Interior Appropriations Act (Pub. L. 101-121, approved October 23, 1989) generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative branches of the Federal Government in connection with a specific contract, grant, or loan. The interim final rule generally prohibits the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. In addition, the recipient must also file a disclosure if it has made or has agreed to make any payment with nonappropriated funds that would be prohibited, if paid with appropriated funds.

Family Impact

The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that the provisions of this rule will not have a significant impact on family formation, maintenance or well being.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611—Federalism, has determined that the notice does not

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involve the preemption of state law by Federal statute or regulation and does not have federalism impacts.

This interim rule was listed as item 1310 in the Department's Semiannual Agenda of Regulations published on April 22, 1991 (56 FR 17360, 17390) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Program title and number is 14.181, Supportive Housing for Persons with Disabilities.

The collection of information requirements contained in this interim rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980.

The information collection requirements in this rule are those specified in the application for a capital advance (see application contents, § 890.285). The exhibits required in the application (§ 890.265(c)) are primarily those previously required in the Section 202 Direct Loan Program, with some additional items that are mandated by the provisions of section 811 of the NAH Act (e.g., § 890.285 (b)(3), (c)(3), (c)(13) and (c)(20)). While the application requirements continue to include substantial documentation and narrative descriptions of the proposed project, and while the statute now requires more detailed site information at the application stage, the Department estimates no more than 50.7 burden hours in the new program. As described below, the burden may be less for many applicants.

Some forms previously required have been eliminated (e.g., Forms 93433 and 1732A) and certifications (e.g., § 890.265(c)(17)(25)) are substituted for some more lengthy exhibits previously required. In addition, the Department believes many applicants will be able to complete their applications in fewer hours than estimated due to Field Office workshops, previous participation in the section 202 direct loan application process and redesigned exhibits (e.g., the exhibit for § 890.265(c)(12)) is less time consuming because much of the information may be resubmitted with minor updates from previous year write-ups (application exhibits)).

The Department expects approximately 60% of the approximately 330 applications for the new Supportive Housing for People with Disabilities Program or 198 applications, to be from previous participants in the Section 202 Direct Loan Program. Sponsors who have applied in previous years will be able to submit previous write-ups (previous application exhibits) or update all or part of previously-submitted exhibits on applicant experience (§ 890.265(c)(7)), financial capacity (§ 890.265(c) (3) and (12)), and similar issues (see e.g., § 890.265(c)(4)–(9)). New applicants who are not owners or managers of HUD projects or who have few such projects to report, will be able to complete exhibits on status of their existing HUD projects without incurring the estimated burden hours associated with applicants who have numerous HUD projects (see e.g., § 890.265(c) (5), (7), and (12)(iv)). Finally, for that large portion of section 811 applicants who are currently recipients of funding under Federal, State, or local programs that underwrite supportive services, the exhibit related to provision of supportive services (§ 890.265(c)(15)) can be adapted from other similar materials submitted to those funding agencies.

Any nonprofit organization with experience in providing housing or services for people with disabilities will have readily available the information needed to complete exhibits or to serve as exhibits on community ties (§ 890.265(c)(4)), experience in providing housing or services (§ 890.265(c) (5), (7) and (8)), experience in serving minorities (§ 890.265(c)(7)(ii)), and description or residents and supportive services—a total of six exhibits as itemized in the Application Package distributed to potential applicants.

Given the substantial funding being provided to successful applicants, and the need to assure that applicants selected will be able to fulfill the 40-year obligation to provide housing for the eligible population, the Department believes it is in the public interest to require an application package with this level of documentation. Without the specific information provided by these exhibits, it would not be possible to satisfactorily evaluate the proposed projects and the capacity of the applicants.

The sections of the interim rule identified in the matrix below have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

Information Collection Matrix

TABLE1.—TABULATION OF ANNUAL REPORTING BURDEN

Description of information collection (application submission requirements)	Section of CFR affected	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Part 1, Exhibit 1, Form HUD–92013 (OMB 2502–0029)	890.265(b)	350	1	350	1.0	350
Exhibit 2, Information on Consultant	Not subject to OMB approval per OMB 5/1/84					
Exhibit 3, Evidence of Sponsor's nonprofit status	890.265(c)(2)	350	1	350	2.0	700
Exhibit 4, Evidence of Sponsor's authority to sponsor project	890.265(c)(3)	350	1	350	1.0	350
Part 2, Exhibit 5, Description of community ties	890.265(c)(4)	350	1	350	0.5	175
Exhibit 6, Form HUD–2530 (OMB 2502–0118)	890.265(c)(5)	350	1	350	0.6	210
Exhibit 7, Description of legal actions against Sponsor	890.265(c)(6)	350	1	350	0.5	175
Exhibit 8, Description of experience providing housing	890.265(c)(7)	350	1	350	3.0	1,050
Exhibit 9, Description of past involvement	890.265(c)(8)	350	1	350	3.0	1,050
Exhibit 10, Board Resolution to support project	890.265(c)(9)	350	1	350	0.4	140
Exhibit 11, Description of experience serving minorities	890.265(c)(10)	350	1	350	1.0	350
Part 3, Exhibit 12, Statement on other 811 or 202 applications submitted	890.265(c)(11)	350	1	350	2.0	700
Exhibit 13, Estimate of start-up expenses	890.265(c)(12)	350	1	350	4.0	1,400
Exhibit 14, Evidence of ability to provide funds for project, (HUD–92290 OMB 2502–0160).	890.265(c)(13)	350	1	350	4.0	1,400
Exhibit 17, Statement on relocation (OMB 2502–0433)	890.265(c)(14)(i)(A)(4)	15	1	15	4.0	60
Part 5, Exhibit 18, Description of proposed design of project	890.265(c)(14)(v)	350	1	350	4.0	1,400
Exhibit 19, Schematic drawings	890.265(c)(14)(v)	350	1	350	2.0	700
Part 6, Exhibit 20, Description of residents and supportive services (HUD–92013E OMB 2502–0232).	890.265(c)(15)&(16)	350	1	350	8.0	2,800

TABLE1.—TABULATION OF ANNUAL REPORTING BURDEN—Continued

Description of information collection (application submission requirements)	Section of CFR affected	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Part 7, Exhibit 21, Equal Opportunity certifications	Exempt per 5 CFR Part 1320					
Exhibit 22, CHAS certification from local public official	890.265(c)(19)	[1] 350	1	350	0.4	140
Exhibit 23, Certification on provision of services	890.265(c)(20)	350	1	350	0.4	140
Exhibit 24, Certification on E.O. 12372	890.265(c)(21)	350	1	350	0.4	140
Exhibits 25–29, Certifications (SF–424 OMB 0348–0043)	Exempt per 5 CFR Part 1320					
Exhibit 30, Information on Intermediate Care Facilities	890.265(c)(14)(v)	[2] 10	1	10	2.0	20
Totals		350	1	350	50.7	15,725

[1] Based on experience, no more than 5 percent of the applications will involve relocation.
[2] For Fiscal Year 1991, the certification from the local public official will not be required. The respondent will only be required to state, "Not applicable". The certification will be required beginning in Fiscal Year 1992.
[3] Based on experience, no more than 3 percent of the applications will propose ICFs.

List of Subjects

24 CFR Part 750

Grant Programs—housing and community development, Intergovernmental relations, Loan programs—housing and community development, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security.

24 CFR Part 890

Disabled, Mental health programs, Civil rights, Low and moderate income housing, Capital advance programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, the Department amends part 750 and adds a new 24 CFR part 890, as set forth below.

PART 750—DISCLOSURE AND VERIFICATION OF SOCIAL SECURITY NUMBERS AND EMPLOYER IDENTIFICATION NUMBERS BY APPLICANTS AND PARTICIPANTS IN CERTAIN HOUSING ASSISTANCE PROGRAMS

1. The authority citation for Part 750 is revised to read as follows:

Authority: Sec. 165, Housing and Community Development Act of 1987 (42 U.S.C. 3543); secs. 3, 6, 8, 17, 205, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437d, 1437f, 1437o, 1437(ee)); sec. 202, Housing Act of 1959 (12 U.S.C. 1701q); sec 7(d), sec. 811, National Affordable Housing Act (42 U.S.C. 8013), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 750.3 [Amended]

2. Section 750.3 is amended by revising paragraphs (i) through (l), and adding paragraphs (m) and (n), to read as follows:

* * * * *

(i) Part 889, Supportive Housing for the Elderly.

(j) Part 890, Supportive Housing for Persons with Disabilities.

(k) Part 900, section 23 Housing Assistance Payments Program—New Construction and Substantial Rehabilitation.

(l) Part 904, Low Rent Housing Homeownership Opportunities.

(m) Part 905, Indian Housing.

(n) Part 960, Admission to, and Occupancy of Public Housing.

3. In § 750.5, the introductory text is republished and the definitions *Assistance applicant, Entity applicant, Individual owner applicant,* and *Participant* are revised to read as follows:

§ 750.5 Definitions.

As used in this part:

Assistance applicant has the following meaning for the programs referred to in § 750.3:

(a) Parts 880, 881, 882, 883, 884, 885, 886, 887, 889, 890 and 900: A family that seeks rental assistance under the program.

(b) Part 904: A prospective homebuyer under the program.

(c) Part 905: A prospective tenant or homebuyer under the program.

(d) Part 960: A prospective tenant under the program.

* * * * *

Entity applicant means a partnership, corporation, or any other association or entity that seeks to participate as a private owner in any of the project-based assistance programs contained in 24 CFR part 880, 881, 882, 884, 885, 886, 889 or 890. Entity applicant does not include a public entity, such as a PHA or State Housing Finance Agency.

* * * * *

Individual owner applicant means an individual who seeks to participate as a private owner in any of the project-based assistance programs contained in 24 CFR part 880, 881, 882, 884, 885, 886, 889 or 890.

Participant has the following meaning for the programs referred to in § 750.3:

(a) Parts 880, 881, 882, 883, 884, 885, 886, 887, 889, 890 and 900: A family receiving rental assistance under the program.

(b) Part 904: A homebuyer under the program.

(c) Part 905: A tenant or homebuyer under the program.

(d) Part 960: A tenant under the program.

* * * * *

4. A new part 890 is added to chapter VIII, title 24 of the Code of Federal Regulations, to read as follows:

PART 890—SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES

Subpart A—General

Sec.
890.100 Purpose and policy.
890.105 Definitions.

Subpart B—Application Procedures and Program Requirements

Sec.
890.200 Allocation of authority.
890.205 Notice of fund availability and invitation for applications.
890.210 Project standards.
890.215 Project eligibility and size limits.
890.220 Design and cost standards.
890.225 Prohibited facilities.
890.230 Site and neighborhood standards.
890.235 Prohibited relationships.
890.240 Amount and terms of capital advances.
890.245 Development cost limits.
890.250 Owner deposit (Minimum Capital Investment).
890.255 Operating cost standards.
890.260 Other Federal requirements.
890.265 Application contents.

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Sec.
890.270 Disclosure and verification of Social Security and Employer Identification Numbers by Owners.

Subpart C—Selection of Applications and Duration of Fund Reservation

Sec.
890.300 Review of applications for fund reservation.
890.305 Approval of applications.
890.310 Duration of fund reservation.

Subpart D—Capital Advances

Sec.
890.400 Repayment of capital advances.

Subpart E—Project Rental Assistance Contract [Reserved]

Subpart F—Project Management [Reserved]

Subpart G—Technical Assistance

Sec.
890.700 Technical assistance.

Authority: Sec. 811 of the National Affordable Housing Act (42 U.S.C. 8013) and sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General

§ 890.100 Purpose and policy.

(a) *Purpose.* The program under this part provides Federal capital advances under section 811 of the National Affordable Housing Act (the NAH Act) for development of housing projects serving persons with disabilities. The housing projects shall provide the necessary services for the occupants which may include, but are not limited to: Health, continuing education, welfare, informational, recreational, homemaking, meal and nutritional services, counseling, and referral services, as well as transportation where necessary to facilitate access to these services.

(b) *General policy.* A capital advance made under this part shall be used to finance the acquisition with or without rehabilitation (group homes only), construction or rehabilitation of housing, including the acquisition of property from the Resolution Trust Corporation (group homes and independent living facilities), to be used as supportive housing for persons with disabilities and may include real property acquisition, site improvement, conversion, demolition, relocation, and other expenses of supportive housing for persons with disabilities.

(c) *Applicability.* This part applies to projects for persons with disabilities that receive capital advances and project rental assistance under section 811 of the National Affordable Housing Act.

§ 890.105 Definitions.

As used in this part—

Acquisition means the purchase (or otherwise obtaining title to) of existing structures to be used as group homes, including housing and related facilities from the Resolution Trust Corporation (group homes and independent living facilities). Property (other than from the RTC) is eligible for acquisition if at least 3 years have elapsed from the later of the completion of the project or the beginning of occupancy to the date of application for a section 811 fund reservation. Capital advances are not available in connection with facilities owned and operated by the Sponsor as housing for persons with disabilities.

Act means section 811 of the National Affordable Housing Act (42 U.S.C. 8013).

Affiliated entities means entities that the Field Office determines to be related to each other in such a manner that it is appropriate to treat them as a single entity. Such relationship shall include any identity of interest among such entities or their principals and the use by any otherwise unaffiliated entities of a single Sponsor or of Sponsors that have any identity of interest themselves or their principals.

Agreement to enter into project rental assistance contract (APRAC) means the agreement between the Owner and HUD which provides that, upon satisfactory completion of the project, HUD will enter into the PRAC with the Owner.

Annual income is defined in part 813 of this chapter. In the case of an individual residing in an intermediate care facility for the developmentally disabled that is assisted under title XIX of the Social Security Act and this part, the annual income of the individual shall exclude protected personal income as provided under that Act. For the purposes of determining the total tenant payment, the income of such individuals shall be imputed to be the amount that the household would receive if assisted under title XVI of the Social Security Act.

Application means the application for a fund reservation, including all required forms and exhibits submitted in response to an invitation for such applications.

Assistant Secretary means the Assistant Secretary for Housing—Federal Housing Commissioner.

Assisted unit means a dwelling unit that is eligible for assistance under a PRAC.

Congregate space (hereinafter referred to as community space) means space for multipurpose rooms, common areas and other space necessary for the provision of supportive services. Community space does not include commercial areas.

Development cost means the cost of construction, rehabilitation of housing and related facilities, and of the land on which they are located, including necessary site improvements and such other expenses as may be determined by the Assistant Secretary properly to be attributable to the capital cost of the construction, rehabilitation or development of the housing and related facilities. Development cost also means the cost of acquiring existing housing and related facilities to be used as group homes, including acquisition of property from the Resolution Trust Corporation (group homes and independent living facilities), and the cost of rehabilitation, alteration, conversion or improvement, including the cost of the land on which the housing and related facilities are located.

Disabled household means a household composed of:

(1) One or more persons at least one of whom is an adult (18 years or older) who has a disability;

(2) Two or more persons with disabilities living together, or one or more such persons living with another person who is determined by HUD, based upon a certification from an appropriate professional (e.g., a rehabilitation counselor, social worker or licensed physician) to be important to their care or well being; or

(3) The surviving member or members of any household described in paragraph (1) of this definition who were living in a unit assisted under this part, with the deceased member of the household at the time of his or her death.

Field office means any HUD Area, Service, Insuring or Regional Office which is delegated authority to process applications under the section 811 program.

Group home means a single family residential structure designed or adapted for occupancy by not more than 8 persons with disabilities. The Secretary may waive the project size limit contained in the previous sentence if the Sponsor demonstrates that local market conditions dictate the development of a larger project. Not more than one home may be located on any one site and no such home may be located on a site contiguous to another site containing such a home.

Household (eligible household) means a disabled household (as defined in § 890.105) that meets the project occupancy requirements approved by HUD and, if the household occupies an assisted unit, meets the very low-income

requirements described in § 813.102 of this chapter, as modified by the definition of annual income in this section.

Housing and related facilities means rental housing structures constructed, rehabilitated or acquired as permanent residences for use by disabled households. The term includes necessary community space. Except for intermediate care facilities for individuals with developmental disabilities, this term does not include nursing homes, hospitals, intermediate care facilities, or transitional care facilities.

Independent living facility means a project designed for occupancy by not more than 24 persons with disabilities, except for projects for the chronically mentally ill which are limited to 20 such persons. The Secretary may waive the 24-person limit if the Sponsor demonstrates that local market conditions dictate the development of a larger project, not to exceed 40 persons with disabilities. The project shall consist of separate dwelling units each of which includes a kitchen and a bath.

Independent public accountant means a certified public accountant or a licensed or registered public accountant, having no business relationship with the Owner or Sponsor except for the performance of audit, systems work and tax preparation. If not certified, the independent public accountant must have been licensed or registered by a regulatory authority of a state or other political subdivision of the United States on or before December 31, 1970. In states that do not regulate the use of the title "public accountant", only certified public accountants may be used.

Operating costs means HUD-approved expenses related to the provision of housing and excludes expenses related to administering, or managing the provision of, supportive services. Operating costs include:

(1) Administrative expenses, including salary and management expenses related to the provision of shelter.

(2) Maintenance expenses, including routine and minor repairs and groundskeeping.

(3) Security expenses.

(4) Utilities expenses, including gas, oil, electricity, water, sewer, trash removal, and extermination services. Operating costs exclude telephone services for families.

(5) Taxes and insurance.

(6) Allowances for reserves.

Owner means a private nonprofit corporation established by the Sponsor and which will receive a capital advance and project rental assistance payments to develop and operate, as its legal owner, supportive housing for persons with disabilities under this part. Private nonprofit organization means any incorporated private institution or foundation:

(1) No part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;

(2) Which has a governing board

(i) The membership of which is selected in a manner to assure that there is significant representation of the views of the community in which such housing is located (including persons with disabilities), and

(ii) Which is responsible for the operation of the housing assisted under this part; and

(3) Which is approved by the Secretary as to financial responsibility. Owner does not mean a public body or the instrumentality of any public body. The purposes of the Owner must include the promotion of the welfare of disabled persons. The Owner may not be controlled by or under the direction of persons or firms seeking to derive profit or gain therefrom. Because of the nonprofit nature of the section 811 program, no officer or director, or trustee, member, stockholder or authorized representative of the Owner is permitted to have any financial interest in any contract in connection with the rendition of services, the provision of goods or supplies, project management, procurement of furnishings and equipment, construction of the project, procurement of the site or other matters whatsoever.

Person with disabilities means a household composed of one or more persons at least one of whom is an adult who has a disability. A person shall be considered to have a disability if such person is determined to have a physical, mental, or emotional impairment which

(1) Is expected to be of long-continued and indefinite duration,

(2) Substantially impedes his or her ability to live independently, and

(3) Is of a nature that such ability could be improved by more suitable housing conditions. A person shall also be considered to have a disability if he or she has a developmental disability, as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(5) *i.e.*, if he or she has a severe chronic disability which:

(i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) Is manifested before the person attains age twenty-two;

(iii) Is likely to continue indefinitely;

(iv) Results in substantial functional limitation in three or more of the following areas of major life activity:

(A) Self-care,

(B) Receptive and expressive language,

(C) Learning,

(D) Mobility,

(E) Self-direction,

(F) Capacity for independent living,

(G) Economic self-sufficiency; and

(v) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

A person shall also be considered to be disabled if he or she has a chronic mental illness, *i.e.*, if he or she has a severe and persistent mental or emotional impairment that seriously limits his or her ability to live independently, and whose impairment could be improved by more suitable housing conditions. Persons infected with the human acquired immunodeficiency virus (HIV) who are disabled as a result of HIV are eligible for occupancy in section 811 projects designed for the physically disabled, developmentally disabled or chronically mentally ill, depending upon the nature of the person's disability. A person whose sole impairment is alcoholism or drug addiction (*i.e.*, who does not have a developmental disability, chronic mental illness or physical disability which is the disabling condition required for eligibility in an particular project) will not be considered to be disabled for the purposes of the section 811 program.

PRAC (project rental assistance contract) means the contract entered into by the Owner and HUD setting forth the rights and duties of the parties with respect to the project and the payments under the PRAC.

Project account means a specifically identified and segregated account for each project which is established out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the PRAC each year.

Project rental assistance payment means the payment made by HUD to the Owner for assisted units as provided in the PRAC. The payment is the difference between the total tenant payment and the HUD-approved per unit operating expenses except for expenses related to items not eligible under design and cost provisions. An additional payment is made to a household occupying an assisted unit in an independent living facility when the utility allowance is

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greater than the total tenant payment. A project rental assistance payment, known as a "vacancy payment", may be made to the Owner when an assisted unit (or bedroom in a group home) is vacant, in accordance with the terms of the PRAC.

Region means any one of the ten HUD Regions.

Rehabilitation means the improvement of the condition of a property from deteriorated and substandard to good condition. Rehabilitation may vary in degree from the gutting and extensive reconstruction to the cure of substantial accumulation of deferred maintenance. Cosmetic improvements alone do not qualify as rehabilitation under this definition. Rehabilitation may also include renovation, alteration or remodeling for the conversion or adaptation of structurally sound property to the design and condition required for use under this part or the repair or replacement of major building systems or components in danger of failure. Improvement of an existing structure must require 15 percent or more of the estimated development cost to rehabilitate the project to a useful life of 55 years.

Replacement Reserve Account means a project account into which specified funds are deposited and which may be used only with the approval of the Secretary for repairs, replacement and capital improvements to the project.

Secretary means the Secretary of Housing and Urban Development.

Sponsor means any private nonprofit entity:

(1) No part of the net earnings of which inures to the benefit of any private shareholder, member, founder, contributor or individual;

(2) Which entity is not controlled by, or under the direction of persons or firms seeking to derive profit or gain therefrom;

(3) Which has a governing board the membership of which is selected in a manner to assure that there is significant representation of the views of persons with disabilities; and

(4) Which is approved by the Secretary as to administrative and financial capacity and responsibility.

"Sponsor" does not mean a public body or the instrumentality of a public body. Because of the nonprofit nature of the section 811 program, no officer or director of the Sponsor is permitted to have any financial interest in any contract with the Owner in connection with the rendition of services, the provision of goods or supplies, procurement of furnishings and equipment, construction of the project, procurement of the site or other matters whatsoever. The prohibition in the preceding sentence does not apply to any management contracts (including the management fees associated therewith) entered into by the Owner with the Sponsor or its nonprofit affiliate. In the case of a Sponsor or its nonprofit affiliate managing the project where persons are in a paid capacity with either the Sponsor or nonprofit affiliate, only two such persons would be permitted to serve as directors of the nonprofit organization (Owner) and only in a non-voting capacity.

Start-up expenses mean necessary costs (to plan a section 811 project) incurred by the Sponsor or Owner prior to the initial closing.

State means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States.

Supportive housing for persons with disabilities means housing that is

(1) Designed to meet the special needs of persons with disabilities, and

(2) Provides supportive services that address the individual health, mental health or other special needs of such persons.

Tenant payment means the monthly amount payable by the household to the Owner equal to the greater of

(1) 30 percent of the household's monthly adjusted income,

(2) 10 percent of the household's monthly gross income, or

(3) If the household is receiving payments for welfare assistance from a public agency and as part of such payments, adjusted in accordance with the household's actual housing costs, is specifically designated by such agency to meet the household's housing costs, the portion of such payment which is so designated.

If the person's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under paragraph (3) of this definition shall be the amount resulting from one application of the percentage. Where all utilities (except telephone) are supplied by the Owner, tenant payment equals total tenant payment. Where some or all utilities (except telephone) are not supplied by the Owner, tenant payment equals total tenant payment less the utility allowance.

Total tenant payment means the tenant payment made by the household to the Owner to cover its housing costs, including the cost of all utilities (except telephone).

Utility allowance means an amount equal to the estimate made or approved by HUD under applicable sections of this chapter (see 24 CFR parts 880, 881, 882, 883, 884 and 886) of the monthly costs of a reasonable consumption of utilities (except telephone) for the unit by an energy-conservative household of modest circumstances, consistent with the requirements of a safe, sanitary and healthful living environment. A utility allowance shall be used in cases where the cost of utilities (except telephone) is the responsibility of the household and not included in the tenant payment.

Utility reimbursement is defined in part 813 of this chapter.

Vacancy payment means the project rental assistance payment made to the Owner by HUD for a vacant assisted unit (or bedroom in a group home) if certain conditions are fulfilled, as provided in the PRAC. The amount of the vacancy payment is 80 percent of the HUD-approved per unit operating expense prorated based on the length of the vacancy period. No payment shall be made for a vacancy period longer than 60 days.

Very low-income has the same meaning as given the term "very low-income" under section 3(b)(2) of the United States Housing Act of 1937.

Subpart B—Application Procedures and Program Requirements

§ 890.200 Allocation of authority.

In accordance with 24 CFR part 791, the Assistant Secretary will allocate the amounts available for capital advances for supportive housing for disabled households, less amounts set aside by Congress for specific types of projects, and for amendments of fund reservations made in prior years and for technical assistance.

§ 890.205 Notice of fund availability and invitation for applications.

(a) *Notice of fund availability.* Following an allocation of authority under § 890.200, HUD shall publish a Notice of Fund Availability (NOFA) in the **Federal Register** indicating:

(1) The amount of capital advance authority (and approximate number of units) made available for housing for disabled households within each allocation area;

(2) The date by which the Field Offices will publish Invitations for Applications for section 811 fund reservations;

(3) The deadline for receipt of applications; and

(4) Other appropriate guidance to prospective Sponsors.

(b) *Invitation for applications.* Each Field Office shall publish an Invitation for Applications for section 811 fund reservation in newspapers of general

circulation and any minority newspapers serving the Field Office jurisdiction. Immediately after the NOFA is published, the Field Office shall also notify minority media, organizations involved in housing and community development, and groups with special interest in housing for disabled households including the applicable state single point of contact (Executive Order 12372). Copies of the Invitation will be available in the Field Office. The Field Office will base its determination of the acceptance of each application for a fund reservation on the information provided in the application.

(c) The Invitation shall state:

(1) The area(s) where capital advance authority is being made available, the amount of such authority and the approximate number of units this amount is expected to assist.

(2) That copies of the applicable regulations, instructions, forms and other program information may be obtained at the Field Office.

(3) The time and place of the Field Office workshop.

(4) The date, time, and place applications will be accepted.

(5) The deadline date for receipt of applications.

§ 890.210 Project standards.

(a) *Property standards.* Projects under this part must comply with HUD Minimum Property Standards.

(b) *Minimum group home standards.* Each group home must provide a minimum of 290 square feet of prorated space for each resident, including a minimum area of 80 square feet for each resident in a shared bedroom (with no more than two residents occupying a shared bedroom) and a minimum area of 100 square feet for a single occupant bedroom; at least one full bathroom for every four residents; space for recreation at indoor and outdoor locations on the project site; and sufficient storage for each resident in the bedroom and other storage space necessary for the operation of the home. If the project involves acquisition (with or without rehabilitation), the structure must at least be in compliance with applicable State requirements. In the absence of such requirements, the above standards shall apply.

(c) *Accessibility requirements.* (1) Projects under this part must comply with the Uniform Federal Accessibility Standards (24 CFR part 40, appendix A), HUD's regulations implementing section 504 of the Rehabilitation Act of 1973 (24 CFR part 8), and for new construction multifamily housing projects (independent living facilities), the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100. A group home under this part is not a covered multifamily dwelling as defined by the Fair Housing Act and is therefore not subject to the design and construction requirements of the Fair Housing Act but is subject to the other requirements of the Fair Housing Act.

(2) All entrances, common areas, units to be occupied by resident staff, and amenities must be readily accessible to and usable by persons with disabilities.

(3) In projects for chronically mentally ill individuals, a minimum of ten percent of all dwelling units in an independent living facility (or ten percent of all bedrooms and bathrooms in a group home, but at least one of each such space), must be designed to be accessible or adaptable for persons with disabilities.

(4) In projects for developmentally disabled or physically disabled persons, all dwelling units in an independent living facility (or all bedrooms and bathrooms in a group home) must be designed to be accessible or adaptable for persons with physical disabilities. A project involving acquisition and/or rehabilitation may provide a lesser number if:

(i) The cost of providing full accessibility makes the project financially infeasible;

(ii) Less than one-half of the intended occupants have mobility impairments; and

(iii) The project complies with the requirements of 24 CFR 8.23.

(5) For the purposes of paragraphs (c)(2), (3) and (4) of this section, "Accessible" and "Adaptable" are defined in 24 CFR part 40, appendix A.

§ 890.215 Project eligibility and size limits.

(a) *Maximum project size.* Projects under this part are subject to the following project size limits:

(1) Group homes may be designed to serve no more than 8 persons with disabilities on one site. Not more than one home may be located on any one site and no such home may be located on a site contiguous to another site containing such a home.

(2) Independent living facilities may have no more than 24 persons with disabilities, except that projects for the chronically mentally ill are limited to 20 such persons. The project shall consist of separate dwelling units each of which includes a kitchen and a bath. Units with three or more bedrooms may be developed to serve only disabled households of one or two disabled parents with children.

(3) Other types of eligible projects include dwelling units in multifamily housing developments, condominium housing and cooperative housing.

(b) *Additional limits.* Based on the amount of capital advance authority appropriated for a fiscal year, HUD may impose additional limits on the number of units or residents that may be proposed under an application for a fund reservation. This unit limit will be published in the annual NOFA.

(c) *Exceptions.* (1) On a case-by-case basis, HUD may approve group homes that do not comply with the project size limits prescribed in paragraphs (a)(1) or (b) of this section. HUD may approve a group home of up to 15 residents if the Sponsor demonstrates:

(i) The increased number of people is necessary for the economic feasibility of the project;

(ii) A project of the size proposed is compatible with other residential development and the population density of the area in which the project is to be located;

(iii) A project of the size proposed can be successfully integrated into the community; and

(iv) A project of the size proposed is marketable in the community.

(2) On a case-by-case basis, HUD may approve an increase in the 24-person limit set forth in paragraph (a)(2) of this section and the limits set forth in paragraph (b) of this section not to exceed 40 persons with disabilities based on the same criteria set forth in paragraph (c)(1) (i) through (iv) of this section.

§ 890.220 Design and cost standards.

(a) *Restrictions on amenities.* Projects must be modest in design. Amenities not eligible for HUD funding include individual unit balconies and decks, atriums, bowling alleys, swimming pools, saunas and jacuzzis. Dishwashers, trash compactors, and washers and dryers in individual units will not be funded in independent living facilities. The use of durable materials to control or reduce maintenance, repair and replacement costs is not an excess amenity.

(b) *Unit sizes.* For independent living facilities, HUD will establish limits on the size of units and number of bathrooms, based on the number of bedrooms that are in the unit.

(c) *Community spaces.* The cost of construction of community spaces may not exceed 10 percent of the total cost of construction, except as provided in paragraph (d) of this section.

(d) *Exceptions.* HUD may approve a project that does not comply with the design and cost standards of paragraphs (a) through (c) of this section if:

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(1) The Sponsor demonstrates a willingness and ability to contribute the incremental development cost and continuing operating costs associated with the additional amenities or design features; or

(2) The proposed project involves acquisition and rehabilitation, the additional amenities or design features were incorporated into the existing structure before the submission of the application, and the total development cost of the project with the additional amenities or design features does not exceed the cost limits described in § 890.245.

§ 890.225 Prohibited facilities.

Project facilities may not include commercial spaces, infirmaries, nursing stations, spaces dedicated to the delivery of medical treatment or physical therapy, padded rooms, or space for respite care or sheltered workshops. Except for office space used by the Owner exclusively for the administration of the project, project facilities may not include office space.

§ 890.230 Site and neighborhood standards.

All sites must meet the following site and neighborhood requirements:

(a) The site must be adequate in size, exposure and contour to accommodate the number and type of units proposed, and adequate utilities (water, sewer, gas and electricity) and streets must be available to service the site.

(b) The site and neighborhood must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of title VI of the Civil Rights Act of 1964, the Fair Housing Act, Executive Order 11063 and implementing HUD regulations.

(c) New construction sites must meet the following site and neighborhood requirements:

(1) The site must not be located in an area of minority concentration except as permitted under paragraph (c)(2) of this section, and must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.

(2) A project may be located in an area of minority concentration only if:

(i) Sufficient, comparable opportunities exist for housing for minority disabled households, in the income range to be served by the proposed project, outside areas of minority concentration (see paragraph (c)(3) of this section for further guidance on this criterion); or

(ii) the project is necessary to meet overriding housing needs that cannot be met in that housing market area (see paragraph (c)(4) of this section for further guidance on this criterion).

(3)(i) *Sufficient* does not require that in every locality there be an equal number of assisted units within and outside of areas of minority concentration. Rather, application of this standard should produce a reasonable distribution of assisted units each year which over a period of several years will approach an appropriate balance of housing opportunities within and outside areas of minority concentration. An appropriate balance in any jurisdiction must be determined in light of local conditions affecting the range of housing choices available for very low-income minority disabled families and in relation to the racial mix of the locality's population.

(ii) Units may be considered to be *comparable opportunities* if they have the same household type (disabled household) and tenure type (owner/renter); require approximately the same total tenant payment; serve the same income group; are located in the same housing market; and are in standard condition.

(iii) Application of this sufficient, comparable opportunities standard involves assessing the overall impact of HUD-assisted housing on the availability of housing choices for very low-income minority disabled families in and outside areas of minority concentration, and must take into account the extent to which the following factors are present, along with any other factor relevant to housing choice:

(A) A significant number of assisted housing units are available outside areas of minority concentration.

(B) There is significant integration of assisted housing projects constructed or rehabilitated in the past ten years, relative to the racial mix of the eligible population.

(C) There are racially integrated neighborhoods in the locality.

(D) Programs are operated by the locality to assist minority disabled households who wish to find housing outside areas of minority concentration.

(E) Minority disabled households have benefitted from local activities (*e.g.*, acquisition and write-down of sites, tax relief programs for homeowners, acquisition of units for use as assisted housing units) undertaken to expand choice for minority households outside areas of minority concentration.

(F) A significant proportion of minority disabled households has been successful in finding units in non-minority areas under the Section 8 Certificate and Housing Voucher programs.

(G) Comparable housing opportunities have been made available outside areas of minority concentration through other programs.

(4) Application of the *overriding housing needs* criterion, for example, permits approval of sites that are an integral part of an overall local strategy for the preservation or restoration of the immediate neighborhood and of sites in a neighborhood experiencing significant private investment that is demonstrably changing the economic character of the area (a "revitalizing area"). An *overriding housing need*, however, may not serve as the basis for determining that a site is acceptable if the only reason the need cannot otherwise be feasibly met is that discrimination on the basis of race, color, creed, sex, or national origin renders sites outside areas of minority concentration unavailable or if the use of this standard in recent years has had the effect of circumventing the obligation to provide housing choice.

(d) The neighborhood must not be one which is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.

(e) The housing must be accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.

(f) Travel time and cost via public transportation or private automobile, from the neighborhood to places of employment providing a range of jobs for very low-income workers, must not be excessive.

(g) Projects must be located in neighborhoods where other family housing is located. Projects may not be located adjacent to the following facilities, or in areas where such facilities are concentrated: schools or day-care centers for persons with disabilities, workshops, medical facilities, or other housing primarily serving persons with disabilities. Not more than one group home may be located on any one site and no such home may be located on a site contiguous to another site containing such a home.

§ 890.235 Prohibited relationships.

(a) *Conflicts of interest.* Officers, directors, trustees, members, stockholders and authorized representatives of the Sponsor, and officers and directors of the Owner may not have any financial interest in any contract in connection with the rendition of services, the provision of goods or supplies, project management, procurement of furnishings or equipment, construction of the project, procurement of the site or other matters related to the development and operation of the project. Management contracts (including associated management fees) entered into by the Owner with the Sponsor or the Sponsor's nonprofit affiliate will not constitute a conflict of interest if no more than two persons salaried by the Sponsor or management affiliate serve as nonvoting directors on the Owner's board of directors.

(b) *Interest in earnings.* No part of the net earnings of the Owner or Sponsor may inure to the benefit of any private shareholder, contributor, or individual.

(c) *Control of Owner or Sponsor.* Neither the Owner nor the Sponsor may be controlled by, or under the direction of, persons or entities seeking to derive profit or gain as a result of activities undertaken by the Owner or Sponsor.

(d) *Identity of interest.* A person or an entity (including an affiliated entity) may not provide technical services to a project in more than one of the following capacities: attorney, architect, contractor, housing consultant, management agent, or seller of the site for the project, except that the same person or entity may serve a project as management agent and housing consultant.

§ 890.240 Amount and terms of capital advances.

(a) *Amount of financing.* The amount of capital advances approved shall be the amount stated in the notification of fund reservation, including any adjustment required by HUD before the final closing. The amount of the capital advance may not exceed the smallest of the amounts provided in § 890.245.

(b) *Estimated development cost.* The amount of the capital advance may not exceed the total estimated development cost of the project (as determined by HUD), less the incremental development cost associated with excess amenities and design features to be paid for by the Sponsor under § 890.220.

§ 890.245 Development cost limits.

(a) General. The Secretary shall periodically establish development cost limits by market area for various types and sizes of supportive housing for persons with disabilities by publishing a notice of cost limits in the **Federal Register**. The cost limits for independent living facilities shall reflect:

(1) The cost of acquisition, construction, or rehabilitation of supportive housing for persons with disabilities that:

(i) Meets applicable state and local housing and building codes and

(ii) Conforms with the design characteristics of the neighborhood in which it is to be located;

(2) The cost of movables (*e.g.*, movable equipment) necessary to the basic operation of the housing, as determined by the Secretary;

(3) The cost of special design features necessary to make the housing accessible to persons with disabilities;

(4) The cost of special design features necessary to make individual dwelling units meet the special needs of persons with disabilities;

(5) The cost of community space necessary to accommodate the provisions of supportive services to persons with disabilities;

(6) If the housing is newly constructed, the cost of meeting the energy efficiency standards promulgated by the Secretary in accordance with section 109 of the NAH Act; and

(7) The cost of land, including necessary site improvement.

(b) For independent living facilities, the total development cost of the property or project attributable to dwelling use (less the incremental development cost and capitalized operating costs described in this paragraph) may not exceed:

(1) For independent living facilities without elevators:

$28,032 per family unit without a bedroom;
$32,321 per family unit with one bedroom;
$38,979 per family unit with two bedrooms;
$49,893 per family unit with three bedrooms;
$55,583 per family unit with four or more bedrooms.

(2) For independent living facilities with elevators:

$29,500 per family unit without a bedroom;
$33,816 per family unit with one bedroom;
$41,120 per family unit with two bedrooms;
$53,195 per family unit with three bedrooms;
$58,392 per family unit with four or more bedrooms.

For group homes:

Number of residents	Type of disability	
	Physical or developmental disability	Chronic mental illness
3	$128,710	$124,245
4	137,730	131,960
5	146,750	139,715
6	155,760	147,450
7	162,676	153,576
8	168,126	157,731
9	170,840	160,920
10	178,000	167,000
11	185,160	173,070
12	192,320	179,150
13	199,920	185,380
14	207,510	191,610
15	215,100	197,830

In order to accommodate areas which have high land costs, Regional Offices may approve requests by Field Offices for increases of up to 10 percent in cost limits in areas which can provide convincing documentation that high land costs limit or prohibit project feasibility. An example of acceptable documentation is evidence of at least three land sales which have actually taken place (listed prices for land are not acceptable) within the last two years in the area in which the project is to be built. The sites for which sale prices are given must be reasonably comparable to the project site. The average cost of the documented sales must exceed 7 percent of the development cost limit for which the project in question is eligible for approval of an increase to be considered. HUD will periodically establish cost limits for various sizes of group homes by publishing a notice of the cost limits in the **Federal Register**. The cost limits will reflect those costs reasonable and necessary to develop a project of modest design that complies with HUD minimum property standards; the minimum group home requirements of § 890.210(b); the accessibility requirements of § 890.210(c); design and cost standards of § 890.220 and other design requirements applicable to group homes under this part. HUD will provide factors for adjusting the group home standard to reflect such factors as the design requirements of the specific disabled population to be served and state and local requirements. To develop the cost limit for group homes, HUD will use commercially available construction cost indices and construction cost data for recently completed comparable group homes.

(d) Increased capital advance limits. (i) The Assistant Secretary may increase the cost limits set forth in paragraphs (b)(1) and (2) and (c) of this section by up to 140 percent in any geographic area where the cost levels require, and may

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increase the cost limits by up to 160 percent on a project-by-project basis.

(ii) If the Assistant Secretary finds that high construction costs in Alaska, Guam, or Hawaii make it infeasible to construct dwellings, without the sacrifice of sound standards of construction, design, and livability, within the cost limits provided in paragraphs (b) and (c) of this section, the amount of capital advances may be increased to compensate for such costs. The increase may not exceed the limits established under this section (including any high cost area adjustment) by more than 50 percent.

(e) Rehabilitation projects—additional limits. A capital advance that involves a project to be rehabilitated is subject to the following additional limits:

(1) Property held in fee. If the Sponsor is the fee simple owner of a property unencumbered by a mortgage, the capital advance amount may not exceed 100 percent of the cost of the proposed rehabilitation.

(2) Property subject to existing mortgage. If the Sponsor owns the property subject to an outstanding indebtedness that is to be refinanced with part of the capital advance, the maximum capital advance amount may not exceed the cost of rehabilitation plus the portion of the outstanding indebtedness that does not exceed the fair market value of the land and improvements before the rehabilitation, as determined by HUD.

(f) Property to be acquired. If the property is to be acquired by the Owner from an entity other than the Sponsor, and the purchase price is to be financed with a part of the section 811 capital advance, the maximum capital advance amount may not exceed the cost of the rehabilitation plus the portion of the purchase price that does not exceed the fair market value of such land and improvements before the rehabilitation, as determined by HUD.

(g) Leaseholds. If a capital advance is secured by a leasehold estate rather than by a fee simple estate, the amount of the capital advance attributable to the cost of the property may not exceed the value of the leasehold estate.

(h) Annual Adjustments. The Secretary shall adjust the cost limits not less than once annually to reflect changes in the general level of acquisition, construction or rehabilitation costs.

(i) Prevailing cost data. In establishing development cost limits for a given market area, the Secretary shall use data that reflect currently prevailing costs of acquisition, construction, or rehabilitation, and land acquisition in the area.

(j) RTC Properties. In the case of existing housing and related facilities from the Resolution Trust Corporation under section 21A(c) of the Federal Home Loan Bank Act, the cost limits shall include:

(1) The cost of acquiring such housing,

(2) The cost of rehabilitation, alteration, conversion, or improvement, including the moderate rehabilitation thereof, and

(3) the cost of the land on which the housing and related facilities are located. In the case of existing housing and related facilities which require no rehabilitation and are to be acquired from the Resolution Trust Corporation, 85 percent of the development cost limits identified in paragraphs (b) and (c) of this section shall be used to calculate the capital advance amount to be reserved.

(k) The Secretary shall use the development cost limits established under paragraphs (a) through (d) of this section adjusted by locality to calculate the fund reservation amount of the capital advance to be made available to individual Owners. Owners which incur actual development costs that are less than the amount of the initial fund reservation shall be entitled to retain 50 percent of the savings in a Replacement Reserve Account. Such percentage shall be increased to 75 percent for Owners which add energy efficiency features which

(1) Exceed the energy efficiency standards promulgated by the Secretary in accordance with section 109 of the NAH Act;

(2) Substantially reduce the life-cycle cost of the housing;

(3) Reduce gross rent requirements; and

(4) Enhance tenant comfort and convenience.

(l) Secretary approval. The Replacement Reserve Account established under paragraph (k) of this section may only be used with the approval of the Secretary for repairs, replacements and capital improvements to the project.

(m) Funds from other sources. An Owner shall be permitted voluntarily to provide funds from non-Federal sources for amenities and other features of appropriate design and construction suitable for supportive housing for persons with disabilities if the cost of such amenities is

(1) Not financed with the capital advance, and

(2) Is not taken into account in determining the amount of Federal assistance or of the tenant payment.

§ 890.250 Owner deposit (Minimum Capital Investment).

The Owner must deposit one-half of 1 percent (0.5%) of the HUD-approved capital advance not to exceed $10,000 in a special escrow account to assure the Owner's commitment to the housing. The Minimum Capital Investment will be placed in escrow at the initial closing of the capital advance and will be held by HUD or by a HUD-approved escrow agent. If construction starts within the initial 18 months of the fund reservation, HUD will waive one-half of the Minimum Capital Investment, which would be required under the aforementioned formula, at the time of initial closing. If final closing occurs within six months after construction completion, HUD will approve the return of all remaining funds not used to cover operating deficits during the first three years of operation. If final closing does not occur within six months after project completion, unless extended by the Field Office for up to two months due to justifiable delay, the balance remaining at the end of three years will not be returned and shall be deposited in the Replacement Reserve Account.

§ 890.255 Operating cost standards.

HUD shall establish operating cost standards based on the average annual operating cost of comparable housing for persons with disabilities in each Field Office, and shall adjust the standard annually based on appropriate indices of increases in housing costs such as the Consumer Price Index. The operating cost standards shall be developed for group homes based on the number of residents, and for independent living facilities based on the number of units. HUD may adjust the operating cost standard applicable to an approved project to reflect such factors as differences in costs based on location within the Field Office jurisdiction. The operating cost standard will be used to determine the amount of the project assistance initially reserved for a project under § 890.305(a)(3). The Owner must submit estimates based on project design, maintenance and services provided at the time of issuance of conditional and firm commitment stages of processing.

§ 890.260 Other Federal requirements.

(a) *Nondiscrimination and equal opportunity.* Participation in this program requires compliance with:

(1) The requirements of the Fair Housing Act (42 U.S.C. 3601–19), and its implementing regulations at 24 CFR part 100; Executive Order No. 11063 (Equal Opportunity in Housing) and

implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1.;

(2) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against otherwise qualified individuals with handicaps under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;

(3) The requirements of Executive Order No. 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR chapter 60;

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects) and the implementing regulations at 24 CFR part 135;

(5) The requirements of Executive Order Nos. 11625, 12432, and 12138 (Minority and Women-Owned Business Enterprises);

(6) The affirmative fair housing marketing requirements of 24 CFR part 200, subpart M and the implementing regulations at 24 CFR part 108; and

(7) The fair housing advertising guidelines and poster regulations, 24 CFR parts 109 and 110.

(b) Environmental. The National Environmental Policy Act of 1969, HUD's implementing regulations at 24 CFR part 50, including the related authorities described in 24 CFR 50.4, and the Coastal Barrier Resources Act (16 U.S.C. 3601) apply to this program. For the purposes of Executive Order No. 11988, Floodplain Management, all applications for intermediate care facilities for persons with developmental disabilities (see § 890.105) shall be treated as critical actions requiring consideration of the 500-year floodplain.

(c) Flood insurance. The Flood Disaster Protection Act of 1973 (42 U.S.C. 4001) applies to this program.

(d) Labor standards. For projects that are designed for dwelling use by 12 or more individual persons with disabilities (other than projects acquired without rehabilitation), participation in this program is subject to the following requirements:

(1) Not less than the wages prevailing in the locality, as determined by the Secretary of Labor under the Davis-Bacon Act (40 U.S.C. 276a–276a–5), must be paid to all laborers and mechanics employed in the construction (including rehabilitation) of the project. HUD may waive the Davis-Bacon requirements in cases or classes of cases where laborers or mechanics, not otherwise employed at any time in the construction of such housing, voluntarily donate their services without full compensation for the purposes of lowering the costs of construction and the Secretary determines that any amounts saved thereby are fully credited to the corporation, cooperative, or public body or agency undertaking the construction.

(2) Contracts involving employment of laborers and mechanics shall be subject to the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), except with respect to volunteers for whom the Davis-Bacon requirements have been waived under subparagraph (d)(1)(i) of this section.

(3) Sponsors, Owners, contractors and subcontractors must comply with all related rules, regulations, and requirements.

(e) *Displacement, relocation, and real property acquisition*—(1) *Minimizing displacement.* Consistent with the other goals and objectives of this part, Sponsors and Owners shall assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(2) *Relocation assistance for displaced persons.* A displaced person (defined in paragraph (e)(6) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4201–4655), as implemented by 49 CFR part 24. A displaced person shall be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601–19), and, if the comparable replacement dwellings are located in areas of minority concentration, minority persons also must be given, if possible, referrals to suitable, decent, safe and sanitary replacement dwellings not located in such areas.

(3) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(4) *Appeals.* A person who disagrees with the Sponsor's/Owner's determination concerning whether the person qualifies as a "displaced person," or with the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the Sponsor/Owner. A lower-income person who is dissatisfied with the Sponsor's/Owner's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(5) *Responsibility of Sponsor/Owner.* The Sponsor/Owner shall certify that it will comply (i.e., provide assurance of compliance, as required by 49 CFR part 24) with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and shall ensure such compliance notwithstanding any third party's contractual obligation to comply with these provisions. The Sponsor/Owner shall maintain records in sufficient detail to demonstrate compliance with the provisions of this paragraph. The Sponsor/Owner shall maintain data on the race, ethnic, gender, and disability status of displaced persons.

(6) *Definition of a displaced person.* (i) For purposes of this paragraph, the term *displaced person* means a person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. This includes any permanent, involuntary move for an assisted project including any permanent move from the real property that is made:

(A) After notice by the Sponsor/Owner to move permanently from the property if the move occurs on or after (A) the date of the submission of an application to HUD that is later approved, if the Sponsor has control of an appropriate site; or (B) the date that the Sponsor obtains control of an approvable site, if such control is obtained after the submission of an application to HUD;

(B) Before the date described in (e)(6)(i)(A) of this paragraph, if the Sponsor/Owner or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project;

(C) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:

(*1*) The tenant moves after execution of the Agreement between the Sponsor/Owner and HUD and the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex upon completion of the project under

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reasonable terms and conditions. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of the tenant's monthly rent and estimated average monthly utility costs before the Agreement; or the total tenant payment, as determined under 24 CFR 813.107, if the tenant is low-income, or 30 percent of gross household income, if the tenant is not low-income; or

(*3*) The tenant is required to relocate temporarily, does not return to the building/complex, and either the tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation or other conditions of the temporary relocation are not reasonable; or

(*3*) The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(ii) Notwithstanding the provisions of paragraph (e)(6)(i) of this section, however, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance at URA levels), if:

(A) The person has been evicted for cause based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance.

(B) The person moved into the property after the submission of the application and, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., displacement, temporary relocation or a rent increase) and the fact that he or she will not qualify as a displaced person as a result of the project;

(C) The person is ineligible under 49 CFR 24.2(g)(2); or

(D) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project;

(iii) The Sponsor/Owner may request, at any time, a HUD determination of whether a displacement is or would be covered by this paragraph.

(f) *Lead-based paint.* (1) The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846) and implementing regulations at 24 CFR part 35 (except as superseded in paragraph (f)(2) of this section) apply to the dwellings (except zero-bedroom dwelling units) in housing assisted under this part which

(i) Was constructed or substantially rehabilitated before 1978 and

(ii) In which any child under seven years of age resides or is expected to reside.

(2)(i) This paragraph implements the provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822, by establishing procedures to eliminate, as far as practicable, the hazards of lead-based paint poisoning with respect to covered structures for which assistance is provided under this program. This paragraph is promulgated under 24 CFR 35.24(b)(4) and supersedes, with respect to the program, the requirements prescribed in subpart C of 24 CFR part 35.

(ii) The following definitions apply to this paragraph (f):

Applicable surface means all intact and nonintact painted interior and exterior surfaces of a residential structure.

Chewable surface means all chewable protruding painted surfaces up to five feet from the floor or ground, which are readily accessible to children under seven years of age, *e.g.*, protruding corners, windowsills and frames, doors and frames, and other protruding woodwork.

Defective paint surfaces means paint on applicable surfaces that is cracking, scaling, chipping, peeling, or loose.

Elevated blood lead level or EBL means excessive absorption of lead: that is, a confirmed concentration of lead in whole blood of 25 mg/dl (micrograms of lead per deciliter of whole blood) or greater.

Lead-based paint surface means a paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm. 2.

(iii) In the case of a structure constructed before 1978 or substantially rehabilitated prior to 1978, the Sponsor must inspect the structure for defective paint surfaces before it submits site information under § 890.400. If defective paint surfaces are found, treatment in accordance with 24 CFR 35.24(b)(2)(ii) is required. Correction of defective surfaces found during the initial inspection must be completed before initial occupancy of the project. Correction of defective paint conditions discovered at periodic inspection must be completed within 30 days of their discovery. When weather conditions prevent completion of repainting of exterior surfaces within the 30-day period, repainting may be delayed, but covering or removal of the defective paint must be completed within the prescribed period.

(iv) In the case of a structure constructed before 1978 or substantially rehabilitated prior to 1978, if the Owner is presented with test results that indicate that a child under the age of seven years occupies the structure and has an elevated blood lead level (EBL), the Owner must cause the unit to be tested for lead-based paint on chewable surfaces. Testing must be conducted by a State or local health or housing agency, by an inspector certified or regulated by a State or local health or housing agency, or an organization recognized by HUD. Lead content shall be tested by using an X-ray fluorescence analysis (XRF) or other method approved by HUD. Test readings of 1 mg/cm ^{2} or higher using an XRF shall be considered positive for presence of lead-based paint. Where lead-based paint on chewable surfaces is identified, covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii) is required.

(v) Where abatement will result from rehabilitation activities planned (*i.e.*, where all applicable surfaces will be replaced, covered or otherwise abated as described in this part), these surfaces need not be tested.

(vi) In lieu of the procedures set forth in the preceding clause, the Owner may, at its discretion, abate all interior and exterior chewable surfaces in accordance with the methods set out at 24 CFR 35.24(b)(2)(ii).

(vii) The Owner must take appropriate action to protect tenants from hazards associated with abatement procedures.

(viii) The Owner must keep a copy of each inspection report for at least three years. If a unit requires testing, or treatment of chewable surfaces based on the testing, the Owner must keep the test results, and, if applicable, the certification of treatment indefinitely. The records must indicate which chewable surfaces in the units have been tested or treated. If records establish that certain chewable surfaces were tested, or tested and treated, in accordance with the standards prescribed in this paragraph (f) of this section, these surfaces do not have to be tested or treated at any subsequent time.

(g) *Intergovernmental review.* The requirements for intergovernmental review in Executive Order No. 12372 and the implementing regulations at 24 CFR part 52 are applicable to this program.

§ 890.255 Application contents.

(a) *Application.* Each application shall include all of the information, materials,

forms, and exhibits listed in paragraph (b) of this section. The Field Office will base its determination of the eligibility of the Sponsor for a reservation of section 811 capital advance funds on the information provided in the application.

(b) Application contents. Each applicant (Sponsor) shall include:

(1) The name, address, and telephone number of the Sponsor(s);

(2) The name, title, address, and telephone number of the officer or director of the Sponsor's Board of Directors to whom communications should be addressed;

(3) The following specific information regarding the project:

(i) Number of units requested by bedroom type and number of residents (if independent living facility) or the number of bedrooms and number of residents to be housed in each group home);

(ii) Dollar amount of the capital advance requested;

(iii) Estimated land cost;

(iv) Number and type of structures;

(v) Number of stories planned and whether an elevator will be included; and

(vi) Development method (new construction, rehabilitation, or acquisition (group homes and RTC properties).

(c) Additional exhibits must include:

(1) A Housing Consultant's Resume, Contract and an Identity of Interest and Disclosure Certification (if the Sponsor has employed a project consultant).

(2) Evidence of each Sponsor's legal status as a private nonprofit organization, including the following:

(i) Articles of incorporation, constitution, or other organizational documents:

(ii) By-laws;

(iii) A typed incumbency certificate, listing all officers and directors, title, beginning date of each person's term and when that term expires. It must be certified by an officer of the Sponsor that it constitutes all duly qualified and sitting officers and directors as of the date the application is filed with HUD;

(iv) IRS tax exemption ruling (this must be submitted by all Sponsors, including churches). A nonprofit organization organized in the Commonwealth of Puerto Rico exempt from income taxation under Puerto Rico law, has never been liable for payment of Federal income taxes, and does not pay patronage dividends may be exempt from the requirement set out in the previous sentence if they are not eligible for tax exemption; and

(v) Resolution of the board, duly certified by an officer, that no officer or director of the Sponsor or the Owner has or will have any financial interest in any contract with the Owner or in any firm or corporation which has or will have a contract with the Owner.

(3) Satisfactory evidence that the Sponsor:

(i) Has the necessary legal authority to sponsor the project and to assist the Owner to finance, acquire, construct, or rehabilitate and maintain the project; and

(ii) Will form an Owner (as defined in § 890.105) after the issuance of the fund reservation, will cause the Owner to file a request for determination of eligibility and a request for a capital advance under § 890.300, and will provide sufficient resources to the Owner to ensure the development and long-term operation of the project.

(4) A description of the Sponsor's ties to the community, including the minority community, and any statements of support for the project by members of the community in which the project is to be located and the state and local organizations familiar with the needs of disabled individuals proposed to be housed.

(5) Evidence of previous participation in HUD programs, by the Sponsor, its officers or directors. If none, indicate "No previous experience."

(6) A description of any financial default, modification of terms and conditions of financing, or legal action taken or pending against the Sponsor or its officers, directors, or trustees in their corporate capacity.

(7) A description of the following:

(i) Any other rental housing projects, medical and/or other facilities sponsored, owned or operated by the Sponsor, including a description of experience in providing housing, medical and/or other facilities to persons with disabilities and/or to families; and

(ii) The Sponsor's experience in providing housing, medical or other facilities and/or services to minority persons or families and in contracting with minority and women-owned business enterprises.

(8) A description of the Sponsor's past or current involvement in any programs other than housing (including its provision of services) that demonstrates the Sponsor's management capabilities and experience in serving persons with disabilities and/or families.

(9) A certified Board Resolution, acknowledging responsibilities of sponsorship, long-term support of the project(s), willingness of Sponsor to assist the Owner to develop, own, manage and ensure the provision of appropriate services in connection with the proposed project, and that it reflects the will of its membership.

(10) A list of the applications, if any, the Sponsor has submitted or is planning to submit to any other Field Office in response to the current Invitation under this part or part 889. Indicate by Field Office, the proposed location by city and state, the number of units requested, and the financial commitments related to each application.

(11) An estimate of start-up expenses for the project and the source of funds to meet these expenses. If the Sponsor plans to use a section 106(b) seed money loan, an application for such loan must be submitted with required attachments.

(12) Evidence, in the form of a certified Board Resolution, of the Sponsor's willingness to fund the Minimum Capital Investment, estimated start-up expenses, and associated development or operating costs related to items not covered by the capital advances under § 890.240 and to ensure the development and long-term operation of the project. Also, as evidence of the Sponsor's financial ability to cover these costs, include:

(i) A brief narrative description of financial history;

(ii) Copies of balance sheets and statements of income and expenses for each of the past three years that the Sponsor has operated. The financial statements, at a minimum, must include the information contained in Form HUD–92417, and a certification pursuant to the criminal warning provided in U.S. Criminal Code, section 1001, title 18 U.S.C.;

(iii) A list of current bank and trade references; and

(iv) A list of all FY 1990 and prior year projects to which the Sponsor(s) is a party, identified by project number, Field Office, funding year and month and year of initial closing, current status, (if finally closed, indicate month and year), and financial requirements for closing.

(13) A narrative description of the proposed housing, including:

(i) Evidence of control of an approvable site, or identification of a site for which the Sponsor provides reasonable assurances that it will obtain control within 6 months from the date of fund reservation (if Sponsor is approved for funding):

(A) If the Sponsor has control of the site, it must submit the following information:

(*1*) Evidence that the Sponsor has entered into a legally binding option agreement to purchase or lease the proposed site, or has a copy of the contract of sale for the site, a deed, or

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long-term leasehold or other evidence of legal ownership of the site (including properties to be acquired from the RTC). The option agreement period should extend through the end of the current fiscal year and contain a renewal provision to guarantee site availability through the subsequent stage of processing. The Sponsor must also identify any restrictive covenants. In the case of a site to be acquired from a public body, evidence that the public body possesses clear title to the site, and has entered into a legally binding agreement to lease or convey the site to the Sponsor after it receives and accepts a notification of Section 811 fund reservation and identification of any restrictive covenants. However, in localities where HUD determines the time constraints of the funding round will not permit all of the required official actions (*e.g.*, approval of Community Planning Boards) which are necessary to convey publicly-owned sites, a letter in the application from the Mayor or Director of the appropriate local agency indicating approval of conveyance of the site contingent upon the necessary approval action is acceptable and may be approved by the Field Office if it has had satisfactory experience with timely conveyance of sites from that public body. In such cases, documentation shall also include a copy of the public body's evidence of ownership and whether there are any restrictive covenants.

(**Note:** A proposed project site may not be acquired or optioned from a general contractor (or its affiliate) which will construct the Section 811 project or from any other development team member.)

(*2*) A map showing the location of the site and the racial composition of the neighborhood, with any area of racial concentration delineated;

(*3*) Photographs of the site;

(*4*) Evidence that the project as proposed is permissible under applicable zoning ordinances or regulations, or a statement of the proposed action required to make the proposed project permissible and the basis for the belief that the proposed action will be completed successfully before the receipt of the conditional commitment application (*e.g.*, a summary of the results of any recent requests for rezoning on land in similar zoning classifications and the time required for such rezoning, preliminary indications of acceptability from zoning bodies, *etc.*);

(*5*) A statement that:

(*i*) Identifies all persons (families, individuals, businesses and nonprofit organizations (identified by race/minority group, and status as owners or tenants) occupying the property on the date of submission of the application for fund reservation (or date of initial site control, if later);

(*ii*) Indicates the estimated cost of relocation payments and other services, and

(*iii*) Identifies the staff organization that will carry out the relocation activities.

(**Note:** If any of the relocation costs will be funded from sources other than the section 811 capital advance, the Sponsor must provide evidence of a firm commitment of these funds. Due to potentially high relocation costs, Sponsors are encouraged to utilize sites which involve minimal or no relocation costs.)

(*6*) An indication whether the Sponsor is willing to seek a different site if the preferred site is unapprovable, and if so, a reasonable assurance that site control will be obtained within 6 months of fund reservation notification.

(B) If the Sponsor has identified a site, but does not have it under control, it must submit the following information:

(*1*) A description of the location of the site, neighborhood/community characteristics (to include racial and ethnic data) and amenities, and adjacent housing and/or facilities;

(*2*) A description of the activities undertaken to identify the site as well as what actions must be taken to obtain control of the site, if approved for funding;

(*3*) An indication as to whether the site is properly zoned. If it is not, an indication of the actions/time necessary for proper zoning; and

(*4*) A status of the sale of the site.

(*5*) An indication as to whether the site would involve relocation.

(ii) If and how the project will promote energy efficiency and if applicable, innovative construction or rehabilitation methods or technologies to be used that will promote efficient construction.

(iii) An identification of all community spaces, amenities or features planned for the housing. A description of how the spaces will be utilized also must be included. If these community spaces, amenities, or features would not comply with the design and cost standards of § 890.220, the Sponsor must demonstrate its ability and willingness to contribute both the incremental development cost and continuing operating cost associated with the community spaces, amenities or features.

(iv) A written description of the design of the proposed housing including any special design features and community space necessary to accommodate the physical needs of the proposed residents and the provision of supportive services. Included with the written description must also be a schematic drawing of each floor of the project noting the location of any special design features as well as a typical bedroom in a group home or a typical unit in an independent living facility with approximate dimensions, and community space for the provision of supportive services.

(v) For group homes to be licensed as intermediate care facilities (in which funding for the intermediate care is provided under title XIX of the Social Security Act) that serve persons with developmental disabilities, evidence demonstrating that the proposed project will primarily provide housing rather than medical facilities, is or will be licensed by appropriate State agencies, and will receive funding from sources other than HUD for a tenant payment and for the costs of the intermediate care, and such other information as HUD may require to determine the feasibility of the intermediate care facility.

(14) A narrative description of the anticipated occupancy. The Sponsor must limit occupancy of the proposed project to one or more of the following categories: Persons with chronic mental illness, developmental disabilities, or physical disabilities. The Sponsor may, with the approval of the Secretary, restrict occupancy of a project to persons with disabilities who have similar disabilities and who require a similar set of supportive services unique to their disabilities. The Sponsor must demonstrate a capacity to serve the proposed occupancy group(s).

(15) A supportive services plan that includes:

(i) A detailed description of whether the housing is intended to serve the physically disabled, developmentally disabled, or chronically mentally ill. Include how and from where persons will be referred and admitted to the project.

(ii) A detailed description of the needs of persons with disabilities that the housing is expected to serve.

(iii) A *detailed description of the supportive services* proposed to be provided to the anticipated occupancy, including:

(A) The name(s) of the agency(s) which will be responsible for providing supportive services and evidence of the service provider's capability and experience in providing such supportive services;

(B) The manner in which such services will be provided (i.e., how, when and how often, where (on/off-site), including assurances that the proposed residents will receive supportive services based on their individual needs.

(C) The staffing plan, including a description of the qualifications of residential staff, if any, and other staff necessary to provide the proposed services.

(iv) Identification of the extent of state and local funds available to assist in the provision of supportive services.

(v) A letter of intent from each agency that will provide the supportive services (if other than the Sponsor), indicating the source and extent of commitment to provide funding for the supportive services.

(vi) If any state or local government funds will be provided, a description of the state/local agency's philosophy/policy concerning residential facilities for the population to be served as well as a demonstration by the Sponsor that the application is consistent with state or local plans and policies governing the development and operation of facilities to serve individuals of the proposed occupancy category.

(16) Evidence demonstrating that there is effective demand for the proposed housing in the area to be served by the project and demonstrating that this demand is likely to continue throughout the life of the project.

(17) Signed certifications of the Sponsor(s)' intent to comply with title VI of the Civil Rights Act of 1964, the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Executive Orders 11063 and 11246, section 3 of the Housing and Urban Development Act of 1968, and the affirmative fair housing marketing requirements at 24 CFR part 200, subpart M.

(18) For applications submitted after October 31, 1991, a certification from the public official responsible for submitting a housing strategy for the jurisdiction to be served in accordance with section 105 of the NAH Act that the proposed activities are consistent with the approved Comprehensive Housing Affordability Strategy (CHAS) of the state or unit of general local government within which the eligible property is located.

(19) A certification from the appropriate state or local agency it has reviewed the supportive services plan in the Sponsor's application and that the provision of services identified in the application is well designed to serve the special needs of persons with disabilities to be served by the proposed project(s).

(**Note:** The certification will not be included in the Sponsor's application submission to the Field Office. The state or local agency shall complete the certification found in the Sponsor's submission to the agency and forward it to the Field Office within 30 days of the application deadline date.)

(20) A certification of the Sponsor(s) that the appropriate state agency (single point of contact) under Executive Order 12372, Intergovernmental Review, has been contacted to determine if the section 811 Program is covered under the state review process and, if applicable, the date the application was submitted to the state.

(21) A certification that the Sponsor(s) is not delinquent on the repayment of any Federal debt.

(22) A certification by the Sponsor(s) that the section 811 funds will not be used to lobby the Executive or Legislative branches of the Federal government.

(23) A certification that the Sponsor(s) will comply with the requirements of the Drug-Free Workplace Act.

(24) A certification that the project will comply with HUD's design and cost standards, the Uniform Federal Accessibility Standards and HUD's implementing regulations at 24 CFR part 40, section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8, and for new construction multifamily housing projects (independent living facilities), the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100.

(25) A certification by the Sponsor(s) that it will comply (or has complied) with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR part 24, and 24 CFR 890.260(e).

§ 890.270 Disclosure and verification of Social Security and Employer Identification Numbers by Owners.

To be eligible to become an Owner of housing assisted under this part, the Owner must meet the disclosure and verification requirements for Social Security and Employer Identification Numbers, as provided by 24 CFR part 750.

Subpart C—Selection of Applications and Duration of Fund Reservation

§ 890.300 Review of application for fund reservation.

(a) Preliminary Evaluation. To be eligible for selection, an application must be received by the Field Office within the time period specified in the Invitation and must be complete. In order to determine whether an application is complete, filed by an eligible applicant, responsive to the Invitation and acceptable for technical processing, the Field Office shall perform an initial threshold review upon receipt of the application. To make the above determination, the Field Office shall use the following initial threshold criteria at preliminary evaluation:

(1) The application was received by HUD at the appropriate address by the date specified in the NOFA and was complete or was missing no more than one complete exhibit (excluding exhibits which are certifications);

(2) Sponsor acceptably corrected deficiencies (including furnishing missing certifications) within 14 calendar days from the date of notification of deficiency letter;

(3) Sponsor, proposed facilities and proposed occupants are eligible under section 811;

(4) Sponsor has experience in the development and/or operation of housing and/or the provision of supportive services to persons with disabilities, families or minority groups;

(5) Application included a supportive services plan meeting the requirements of § 890.265(c)(15);

(6) There is reasonable expectation that the Sponsor can meet the Minimum Capital Investment requirement and start-up expenses;

(7) Application contains evidence of control of a site or the appropriate identification of a site;

(8) Sponsor is in compliance with civil rights laws and regulations;

(9) Even without a site visit, it is reasonable to expect the proposed site meets site and neighborhood standards, including minority and disabled concentration considerations, and is not in a floodway;

(10) There is sufficient market demand for the number and type of units proposed based on preliminary review; and

(11) Application was responsive to the Field Office Invitation.

(12) Action on applications found to be incomplete. If an application is determined to be incomplete, the Sponsor shall be advised in writing of any deficiencies or any inconsistencies. The missing information is to be submitted generally within 14 calendar days from the date of HUD's written notification. It is not additional time to complete or amend the application to overcome any defects in the original submission. An application with two or more complete exhibits missing is to be rejected, except that an application missing certifications will not be

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rejected, provided they are executed before the application submission deadline and submitted within the 14-day period.

(b) Technical processing. When an application is determined to be complete and responsive to the Invitation, technical processing, consisting of the following, shall be accomplished:

(1) The Field Office will evaluate the application to determine its eligibility and acceptability based on the selection criteria in paragraph (c) of this section.

(2) If, in its evaluation of all pertinent factors, the Field Office determines that the application is rejected on any technical grounds, it shall notify the Sponsor in writing that it has generally 14 calendar days from the date of the notification letter to appeal the technical rejection. The Field Office shall make a determination on an appeal prior to making its selection recommendations.

(3)(i) For applications that contain satisfactory evidence of site control, the Field Office shall, before project selection, complete an environmental review of the sites in compliance with the National Environmental Policy Act of 1969 and the related authorities in 24 CFR part 50.

(ii) No site shall be approved if it is located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless

(A)(*1*) The community in which the area is situated is participating in the National Flood Insurance Program in accordance with the regulations thereunder (44 CFR parts 59 through 79), or

(*2*) Less than a year has passed since FEMA notification regarding such hazards, and

(B) Flood insurance on the structure is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001).

(iii) Pursuant to the Coastal Barrier Resources Act (16 U.S.C. 3601), HUD will not approve properties located in the Coastal Barrier Resources System.

(iv) If a site is not approved, the application will not be rejected, provided the Sponsor indicated that it is willing to develop the proposed project on a different site.

(4) Based on the factors set forth in paragraph (b) of this section, the field office will determine the applications which, in its judgment, are approvable. Selections will be made in accordance with paragraph (d) of this section.

(c) Selection criteria. The selection criteria for assistance include:

(1) The ability of the Sponsor to develop and operate the proposed housing on a long-term basis:

(i) The scope, extent and quality of the Sponsor's experience in providing housing and/or supportive services to the proposed disabled population;

(ii) The scope, extent and quality of the Sponsor's experience in providing housing and/or supportive services to minority persons or families and opportunities for minority and women-owned business enterprises participation; and

(iii) The extent of local community support for the Sponsor and its activities, including experience in providing housing and/or supportive services in the area where the project is to be located and demonstrated ability of Sponsor to enlist volunteers and local funds for its efforts;

(2) The Sponsor's financial capacity:

(i) The financial history and the current financial outlook of the Sponsor;

(ii) The ability and willingness of the Sponsor to provide funds for start-up expenses and commit financial resources beyond the Minimum Capital Investment; and

(iii) The scope of the proposed project in relationship to the financial capacity and commitment of the Sponsor.

(Note: Consideration must also be given to the Sponsor's financial commitment to any projects in the pipeline and other applications submitted in response to Invitations issued under this part or part 889.)

(3) The need for supportive housing for persons with disabilities in the area to be served;

(4) The design of the project:

(i) The extent to which the proposed design of the housing will meet the special needs of persons with disabilities;

(ii) The extent to which the proposed design of the housing will accommodate the provision of supportive services (that are expected to be needed, either initially or over the useful life of the housing, by the category or categories of disabled persons the housing is intended to serve); and

(iii) The extent to which the proposed size and unit mix (if independent living facility) of the housing will enable the Sponsor to manage and operate the housing efficiently and ensure that the provision of supportive services will be accomplished in an economical fashion;

(5) The provision of supportive services:

(i) The extent to which the Sponsor has demonstrated that necessary supportive services will be provided on a consistent, long-term basis;

(ii) The appropriateness of the supportive services to the needs of the proposed disabled population; and

(iii) The quality of the service implementation plan;

(6) The extent to which the Sponsor has control of the site of the proposed housing:

(i) Applications with evidence of site control:

(A) The proximity or accessibility of the site to shopping, medical facilities, transportation, churches, recreational facilities, job opportunities and other necessary services to the intended occupants;

(B) Suitability of the site from the standpoint of promoting a greater choice of housing opportunities for minority disabled persons; and

(C) Freedom of the site from adverse environmental conditions and overconcentration of disabled people; and

(D) Reasonableness of the site cost per unit and suitability of the property for the intended use and adequacy of utilities and streets; or

(ii) Applications with identification of site:

(A) The proximity or accessibility of the site to shopping, medical facilities, transportation, churches, recreational facilities, job opportunities and other necessary services to the intended occupants, as well as freedom from overconcentration of disabled persons;

(B) Suitability of the site from the standpoint of promoting a greater choice of housing opportunities for minority disabled persons; and

(C) The likelihood that site control will be obtained within six months of fund reservation, if approved.

(d) The Field Office shall rate each application on the basis of its assessment of the Sponsor's application using the selection criteria. The Field Office shall also calculate the capital advance and the PRAC amounts to be reserved for each project. The Regional Office shall identify for selection the highest ranking applications in descending order which most reasonably approximate the estimated maximum number of units which can be funded within two categories. Category A shall consist of all approvable applications that contain evidence of control of an approvable site(s). Category B shall consist of all other approvable applications in which a site(s) has been identified but is not under control. An approvable application containing evidence of site control in which the site is found not approvable shall be ranked in Category B, provided the Sponsor has indicated in the application a willingness to seek a different site.

(e) Selection. (1) Based on the ranking under paragraphs (c) and (d) of this section, HUD first shall select applications in the descending order of funding priority from Category A that most closely approximate the capital advance authority allocated to the Region.

(2) If capital advance authority remains after selecting all approvable aplications from Category A, HUD shall then select applications in the descending order of funding priority from Category B that most closely approximate the capital advance authority remaining for each Field Office.

(3) If, after completing paragraph (e)(1) of this section and, if necessary, paragraph (e)(2) of this section, the amount of capital advance authority allocated to a Field Office exceeds the amount necessary to fund all approvable applications in that area, the Department shall transfer the unused capital advance authority from the area to another area or areas in which there is insufficient capital advance authority for all approvable applications.

(4) Following the selection of applications, the Field Office will notify the Sponsors of applications that are not approvable after technical review processing under paragraph (b) of this section, and the Sponsors of applications that are not selected for funding under this paragraph (e). The notification will be in writing and will explain the reasons for HUD's action.

§ 890.305 Approval of applications.

(a) *Notification of fund reservation.* A Sponsor whose application is approved will be issued a notification of section 811 fund reservation in a format prescribed by HUD. The notification of fund reservation will specify:

(1) The number and mix of units for an independent living facility or the number of residents approved for a group home, the location of the site (where the Sponsor provided satisfactory evidence of control of an approved site, or satisfactory assurances that control can be obtained within six months of fund reservation) and the project occupancy requirements approved by HUD;

(2) The amount of fund reservation based on the development cost limit computed under § 890.245;

(3) The amount of annual project rental assistance contract and budget authority reserved for the project equal to the operating cost standard developed under § 890.255;

(4) The deadline for the Sponsor to sign and return a copy of the notification indicating it will file a request for conditional commitment to HUD with an indication of its acceptance;

(5) If the Sponsor did not have control of an approvable site under § 890.400 with the application or if the Sponsor submitted the site information but HUD determined that the site was not approvable, the deadline for the Sponsor to submit such information and the reasons for the rejection of any proposed site;

(6) The deadline for the Owner to submit a request for capital advance and a request for determination of Owner eligibility under subpart D of part 890 (reserved); and

(7) Other guidance to Sponsors and Owners (including any additional evidence required under subpart D of part 890 (reserved)).

(b) *Withdrawal of approval.* If the Sponsor does not accept of the notification (indicating it will file a request for conditional commitment) by the date specified in the notice of fund reservation, the Field Office may notify the Sponsor that approval of its application is withdrawn.

(c) *Use of capital advance funds.* No part of the funds reserved may be transferred by the Sponsor, except to the Owner, caused to be formed by the Sponsor. This action must be accomplished prior to issuance of a conditional commitment.

(d) *Amendments.* Subject to the availability of funds, HUD may amend the amount of a fund reservation approved under paragraph (a)(1) of this section at any time before the final closing.

§ 890.310 Duration of fund reservation.

(a) *Extension and cancellation of fund reservation.* The duration of the initial fund reservation is 18 months from the date of issuance under § 890.305.

(1) Subject to the approval of the Assistant Secretary, immediately following the expiration of the six month period after the notification of fund reservation, the Field Office shall issue a notice of intent to cancel the fund reservation to each Owner that does not yet have control of an approvable site. The notice shall indicate that the fund reservation will be cancelled upon its one year anniversary unless the Owner submits evidence of control of an approvable site within ninety (90) days of receipt of the notification.

(2) Subject to the approval of the Assistant Secretary, the Field Office may, at any time, issue a notice of intent to cancel the fund reservation if the Field Office determines that the Owner is not making satisfactory progress toward the start of construction, rehabilitation, or acquisition.

(3) Subject to the approval of the Assistant Secretary, the Field Office shall issue a notice of intent to cancel the fund reservation if the construction, rehabilitation, or acquisition with or without rehabilitation of a project is not begun within 18 months after the notice of fund reservation under § 890.260(a) is issued or, if applicable, within an extension of the 18-month period granted under paragraph (a)(4) of this section.

(4) The Field Office may extend the period specified in paragraph (a)(3) of this section up to 24 months after the notification of section 811 fund reservation is issued, if HUD determines that the Owner is making satisfactory progress toward the start of construction, rehabilitation, or acquisition. The Regional Office may grant additional extensions of up to 36 months after the notification of fund reservation is issued, if—

(i) The delay has been for reasons beyond the Owner's control;

(ii) The Owner has done everything within its power to resolve the problems causing the delay;

(iii) All major problems have been resolved, or there is good reason to expect prompt resolution; and

(iv) There is good reason to expect the start of construction, rehabilitation, or acquisition with or without rehabilitation to begin within the extension period.

(b) *Notification procedures.* (1) If HUD determines that a fund reservation must be cancelled under paragraph (a) of this section (except paragraph (a)(1) of this section), the Field Office shall mail a notice of cancellation to the Owner by certified mail, return receipt requested. The notification of fund reservation cancellation must:

(i) Describe the reasons for the cancellation of the fund authority; and

(ii) Advise the Owner that it may file an appeal of the cancellation with the Field Office within 30 days of the receipt of the cancellation notice, and that the failure to file an appeal will result in the cancellation of the fund reservation upon the expiration of the 30-day period.

(2) If the Owner fails to file an appeal of the fund reservation cancellation within 30 days of the date of the receipt of the cancellation notice, the Field Office shall cancel the fund reservation and provide a written notice of the cancellation to the Owner.

(3) If the Owner files an appeal within 30 days of the receipt of the cancellation notice, HUD Headquarters will review the appeal and will issue a decision on the appeal within 45 days of the receipt of the appeal. HUD will approve the

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appeal if the Owner demonstrates that it is making satisfactory progress toward the start of construction, rehabilitation, or acquisition with or without rehabilitation.

(i) If HUD approves the appeal, it shall provide a written notification of the approval to the Owner. The notification shall indicate the duration of the extended fund reservation.

(ii) If HUD disapproves the appeal, it shall notify the Owner in writing of the determination, and cancel the fund reservation.

(4) At the end of the ninety (90) day period specified in paragraph (a)(1) of this section, the Field Office shall mail a notice of fund reservation cancellation to the Owner by certified mail, return receipt requested, who either did not submit evidence of site control, or submitted evidence of site control but the evidence, site, or both, were unacceptable, in response to the notification of intent to cancel the fund reservation. The notice of fund reservation cancellation must:

(i) Indicate that the fund reservation is being cancelled because the Owner does not have control of an approvable site; and

(ii) Advise the Owner that it may file an appeal of the cancellation in the form of satisfactory evidence of control of an approvable site with the Field Office within 30 days of the receipt of the cancellation notice, and that failure to file an appeal will result in the cancellation of the fund reservation upon the expiration of the 30-day period. If the Owner fails to file an appeal of the fund reservation cancellation within 30 days of the receipt of the cancellation notice, the Field Office shall cancel the fund reservation and provide a written notice of cancellation to the Owner. If the Owner files an appeal, in the form of evidence of site control, within 30 days of the receipt of the cancellation notice, HUD Headquarters will review the Field Office's recommendation after the Field Office has reviewed the evidence and evaluated the site, and issue a decision within 45 days of the receipt of the appeal.

(5) If HUD determines that the Owner has satisfactory evidence of an approval site, it shall provide a written notification of such to the Owner.

(6) If HUD determines that the Owner does not have satisfactory evidence of site control or the site is rejected, it shall provide a written notification of such to the Owner, and cancel the fund reservation.

Subpart D—Capital Advances

§ 880.405 Repayment of capital advances.

(a) Interest prohibition and repayment. A capital advance provided under this part shall bear no interest and its repayment shall not be required so long as the housing remains available for very-low-income persons with disabilities in accordance with this part. The capital advance may not be repaid to extinguish the requirements of this part. To ensure its interest in the capital advance, HUD shall require a declaration of trust, capital advance agreement and regulatory agreement from the Owner in a form to be prescribed by HUD.

(b) The transfer of physical and financial assets of any section 811 project is prohibited, unless the Assistant Secretary gives prior written approval. Approval for transfer will not be granted unless HUD determines that the transfer is a part of a transaction that will ensure the continued operation of the project for not less than 40 years (from the date of original closing) in a manner that will provide rental housing for very low-income persons on terms at least as advantageous to existing and future tenants as the terms required by the original capital advance.

Subpart E—Project Rental Assistance Contract [Reserved]

Subpart F—Project Management [Reserved]

Subpart G—Technical Assistance

§ 880.706 Technical assistance.

The Secretary shall make available appropriate technical assistance to assure that applicants having limited resources, particularly minority applicants, are able to participate more fully in the program carried out under this part.

Dated: May 31, 1991.

Ronald A. Rosenfeld,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 91-13637 Filed 6-11-91; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-91-3232; FR-2987-N-01]

Notice of Fund Availability (NOFA) for Supportive Housing for Persons with Disabilities

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of fund availability for FY91.

SUMMARY: This NOFA announces HUD's funding for supportive housing for persons with disabilities. In the body of this document is information concerning the following: (a) the purpose of the NOFA and information regarding eligibility, submission requirements, available amounts, and selection criteria and (b) application processing, including how to apply and how selections will be made. A checklist of steps and exhibits involved in the application process will be included in the application package which can be obtained from the appropriate Field Office identified in Appendix A.

DATES: The deadline date for receipt of applications in response to this NOFA is August 12, 1991.

ADDRESSES: Applications must be delivered to the HUD Field Office for your jurisdiction. A listing of HUD Field Offices, their addresses and telephone numbers (including TDD telephone numbers where available) are attached as Appendix A to this NOFA. HUD will date-stamp incoming applications to evidence timely receipt, and upon request, provide the applicant with an acknowledgement of receipt. Applications submitted by facsimile are not acceptable.

FOR FURTHER INFORMATION CONTACT: The HUD Field Office for your jurisdiction.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The Department has submitted this NOFA to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. Pending approval of these collections of information by OMB and the assignment of an OMB control number, no person may be subjected to a penalty for failure to comply with these information collection requirements. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

Public reporting burden for the collection of information requirements contained in this NOFA are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Findings and Certifications*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: HUD Desk Officer, room 3001, Washington, DC 20530.

I. Purpose and Substantive Description

A. Authority

Section 811 of the National Affordable Housing Act (the NAH Act) authorizes a new supportive housing program for persons with disabilities and replaces assistance for persons with disabilities previously covered by section 202 of the Housing Act of 1959 (section 202 continues, as amended by section 801 of the NAH Act, to authorize supportive housing for the elderly). The purpose of section 811 is to enable persons with disabilities to live with dignity and independence within their communities by expanding the supply of supportive housing that is designed to accommodate the special needs of such persons and provides supportive services that address the individual health, mental health, and other needs of such persons. The Secretary is authorized to provide assistance to private, nonprofit organizations to expand the supply of supportive housing for persons with disabilities. The assistance will be provided as capital advances and contracts for project rental assistance in accordance with the Interim Rule for part 890 published elsewhere in today's **Federal Register**. This assistance may be used to finance the construction, rehabilitation or acquisition (group homes only), including acquisition of property from the Resolution Trust Corporation (RTC) (group homes and independent living facilities), to be used as supportive housing for persons with disabilities in accordance with the Interim Rule.

For supportive housing for persons with disabilities, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1991, (Pub. L. 101-507, approved November 5, 1990 (Fiscal Year 1991 Appropriations Act)) provides $106,709,000 for capital advances under section 811 (including 500 units for persons disabled as a result of infection with the human acquired immunodeficiency virus (HIV)) and $104,000,000 for project rental assistance (including assistance for 500 units of housing for persons disabled as a result of infection with the HIV). A NOFA for the 500 units of housing for persons disabled as a result of infection within the HIV will be published later. Of the amounts available up to $5,000,000 shall be available for contracts for technical assistance in accordance with section 811(j)(1). The capital advance allocation amounts set forth in section B. below are those available after amounts have been set aside for projects for persons disabled as a result of infection with the HIV, amendments to prior year fund reservations and for technical assistance.

Of particular interest is the Department's implementation of section 105 of the NAH Act which would require that an application for this program include a certification of consistency of the proposal with an approved Comprehensive Housing Affordability Strategy ("CHAS") for the jurisdiction in which the proposed project is to be located. See the interim rule published on February 4, 1991 (56 FR 4480). The Supportive Housing for Persons with Disabilities interim rule provides that the CHAS certification requirement will not apply for FY 1991 funding of this program. However, beginning with the FY 1992 funding round, all applications for funding under this program must include a certification from the responsible public official that the project is consistent with an approved CHAS.

For FY 1991 applications, the CHAS certification requirement is not being applied to this program, because it is not statutorily required for this year and it is not feasible due to the amount of time required of a State or locality to develop a CHAS, including the hearing necessary to obtain citizen participation, and obtain a certification of consistency for FY 1991 funding. Therefore, to be most fair to entrants in this now significantly revised program, the Department is providing transition by delaying applicability of the CHAS certification until FY 1992.

Also of special interest, is a new statutory requirement for a certification by the appropriate state or local agency

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that the provisions of services identified in the application is well designed to serve the needs of persons with disabilities. In order to fulfill this requirement, Sponsors must submit one copy of their application to the appropriate state or local agency identified by the Field Office in the application package simultaneously with their submission of their application to the appropriate Field Office. Also included with the application package will be a certification form that the Sponsor shall transmit to the state or local agency, along with its application, for the state or local agency to indicate that it has reviewed the supportive services plan and whether or not the provision of services is well designed to meet the needs of the proposed disabled population. Once the state or local agency completes its review of the supportive services plan, it must complete the certification form and forward it to Field Office within 30 days of the Section 811 application deadline date. Unlike the Section 202 Program of Housing for Handicapped People where the appropriate state agency's review of the service plan description was optional, in the Section 811 program, the state or local agency's certification is required for approval of the Sponsor's application. Applications which do not contain such a certification will not be funded.

B. Allocation Amounts

In accordance with 24 CFR part 791, the Assistant Secretary will allocate the amounts available for capital advances for supportive housing for persons with disabilities, less amounts set aside for projects for persons disabled as a result of infection with the HIV, for amendments of fund reservations made in prior years and for technical assistance.

The allocation formula for section 811 funds consists of the following two data elements:

1. A measure of the number of persons identified as having a public transportation disability; and
2. A measure of the number of persons identified as having a work disability.

FISCAL YEAR 1991 ALLOCATION FOR SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES

Region	Capital advance	Units
I	$4,417,000	64
II	9,666,000	125
III	8,466,000	147
IV	15,409,000	334
V	12,508,000	227
VI	8,533,000	147
VII	2,739,000	57
VIII	1,739,000	32
IX	10,511,000	183
X	1,909,000	34
National Total	$73,030,000	1,330

C. Eligibility

The only eligible applicants under this program are private, nonprofit organizations. Neither a public body nor an instrumentality of a public body is eligible to participate in the program. A single Sponsor shall not request more units in a given Region (excluding requests for the 500 units set-aside for persons disabled as a result of infection with the HIV, which shall be the subject of a separate NOFA) than advertised for that Region in the Invitation.

D. Preliminary Evaluation and Selection Criteria

1. Preliminary Evaluation

Applications for section 811 fund reservations for housing for persons with disabilities that meet the following initial threshold requirements at preliminary evaluation will be eligible for technical processing:

(a) Application was received by HUD at the appropriate address by August 12, 1991, and was complete or was missing no more than one complete exhibit (excluding exhibits which are certifications);

(b) Sponsor acceptably corrected deficiencies (including furnishing missing certifications) within 14 calendar days from the date of the notification of deficiency letter;

(c) Sponsor, proposed facilities and proposed occupants are eligible under section 811;

(d) Sponsor has experience in developing and/or operating housing, medical or other facilities and/or providing services to the disabled, families or minority groups;

(e) There is reasonable expectation that the Sponsor can meet the Minimum Capital Investment requirement and start-up expenses;

(f) Application contains evidence of control of a site or the appropriate identification of a site;

(g) The Sponsor is in compliance with civil rights laws and regulations as follows:

(1) There are no pending civil rights suits against the Sponsor instituted by the Department of Justice;

(2) There are no outstanding findings of non-compliance with civil rights statutes, Executive Orders or regulations as a result of formal administrative proceedings, or where the Secretary has issued a charge under the Fair Housing Act, unless the Sponsor is operating under a compliance agreement designed to correct the areas of non-compliance;

(3) There has not been a deferral of the processing of applications from the Sponsor imposed by HUD under title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3), the HUD title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1), or under section 504 of the Rehabilitation Act of 1973 and the HUD section 504 regulations (24 CFR 8.57);

(h) Even without a site visit, it is reasonable to expect the proposed site meets site and neighborhood standards, including minority and disabled concentration considerations, and is not in a floodway or Coastal High Hazard Area;

(i) There is sufficient market demand for the number and type of units proposed based on preliminary review;

(j) Application included a supportive services plan meeting the requirements of § 890.265(c)(15); and

(k) Application was responsive to the Field Office Invitation.

2. Selection Criteria

Applications for section 811 fund reservations that successfully pass preliminary evaluation and technical processing will be rated using the following selection criteria:

(a) The ability of the Sponsor to develop and operate the proposed housing on a long-term basis (20 points);

(1) The scope, extent and quality of the Sponsor's experience in providing housing or supportive services to the proposed disabled population (10 points);

(2) The scope, extent and quality of the Sponsor's experience in providing housing and/or supportive services to minority persons or families and opportunities for minority and women-owned business enterprises participation (5 points); and

(3) The extent of local community support for the Sponsor and its activities, including experience in providing housing and/or supportive services in the area where the project is to be located, and Sponsor's demonstrated ability to enlist volunteers and local funds for its efforts (5 points);

(b) The Sponsor's financial capacity (25 points):

(1) The Sponsor's financial history and its current financial outlook (5 points);

(2) The Sponsor's ability and willingness to provide funds for start-up expenses and commit financial resources beyond the Minimum Capital Investment (10 points); and

(3) The scope of the proposed project in relationship to the financial capacity and commitment of the Sponsor.

Note: Consideration must also be given to the Sponsor's financial commitment to any projects in the pipeline and other applications submitted in response to Invitations under this NOFA, the NOFA for Supportive Housing for the Elderly (published elsewhere in today's Federal Register) or other Invitations under part 889 or 890 (10 points).

(c) The need for supportive housing for persons with disabilities in the area to be served (10 points).

(d) The design of the project (10 points):

(1) The extent to which the proposed design of the housing will meet the special needs of persons with disabilities (4 points);

(2) The extent to which the proposed design of the housing will accommodate the provision of supportive services (that are expected to be needed, either initially or over the useful life of the housing, by the category or categories of disabled persons the housing is intended to serve (3 points); and

(3) The extent to which the proposed size and unit mix (if independent living facility) of the housing will enable the Sponsor to manage and operate the housing efficiently and ensure that the provision of supportive services will be accomplished in an economical fashion (3 points);

(e) The provision of supportive services (20 points):

(1) The extent to which the Sponsor has demonstrated that necessary supportive services will be provided on a consistent, long-term basis (10 points);

(2) The appropriateness of the supportive services to the needs of the proposed disabled population (5 points); and

(3) The quality of the service implementation plan (5 points);

(f) The extent to which the Sponsor has control of the site of the proposed housing (15 points):

(1) Applications with evidence of site control:

(i) The proximity or accessibility of the site to shopping, medical facilities, transportation, churches, recreational facilities, job opportunities and other necessary services to the intended occupants (4 points)

(ii) Suitability of the site from the standpoint of promoting a greater choice of housing opportunities for minority and disabled persons/families (4 points);

(iii) Freedom of the site from adverse environmental conditions and overconcentration of disabled people (4 points); and

(iv) Reasonableness of the site cost per unit and suitability of the property for the intended use and adequacy of utilities and streets (3 points); or

(2) Applications with identification of site:

(i) The proximity or accessibility of the site to shopping, medical facilities, transportation, churches, recreational facilities and other necessary services to the intended occupants as well as freedom of overconcentration of disabled persons (5 points);

(ii) Suitability of the site from the standpoint of promoting a greater choice of housing opportunities for minority disabled persons/families (5 points); and

(iii) The likelihood that site control will be obtained within six months of fund reservation, if approved (5 points).

II. Application Process

All applications for section 811 fund reservations submitted by eligible Sponsors must be filed with the appropriate HUD Field Office and must contain all exhibits required by this NOFA.

Immediately upon publication of this NOFA, Field Offices shall notify minority organizations within their jurisdiction involved in housing and community development and groups with special interest in housing for disabled households.

Within three weeks of the date of this Notice, HUD Field Offices will publish a one-time Invitation as required by § 890.205(b) of the Interim Rule, in newspapers of general circulation, and in any minority newspapers serving the Field Office jurisdiction. Field Offices will accept applications after publication of the Invitation. No application will be accepted after the regular closing time of the appropriate Field Office on August 12, 1991, unless that time is extended by a Notice published in the Federal Register. Applications received after that date and time will not be accepted, even if postmarked by the deadline date. Applications submitted by facsimile are not acceptable.

Organizations interested in applying for a section 811 fund reservation should provide the appropriate Field Office with their names, addresses and telephone numbers, and advise the Field Office whether they wish to attend the workshop described below. HUD encourages minority organizations to participate in this program as Sponsors. Field Offices, at the date and time specified in the Invitations, will conduct workshops to explain the section 811 Program and the Seed Money Loan Program under section 106(b) of the Housing and Urban Development Act of 1968. Under this latter program, HUD makes direct, interest-free loans to approved nonprofit section 811 eligible Owners to cover certain start-up expenses. Section 106(b) applications should be submitted simultaneously with the section 811 application. HUD will consider section 106(b) applications with the section 811 applications.

HUD strongly recommends that prospective applicants attend the local Field Office workshop. More detailed information covering the time and place of the particular workshops will be set out in the Field Office Invitation. Interested persons with disabilities should contact the Field Office to assure that any necessary arrangements can be made for them to enable their attendance and participation in the workshop. While strongly urged to do so, if Sponsors cannot attend a workshop, application packages and handbooks can also be obtained from the Field Offices. Contact the appropriate Field Office with any questions regarding the submission of applications.

At the workshops, application packages will be distributed, application procedures and requirements (including the Department's equal opportunity, environmental, design and cost requirements and required exhibits) will be explained. Also, concerns such as local market conditions, building codes, historic preservation, floodplain management, displacement and relocation, zoning, housing costs, and states, positions on funding supportive services to group home residents will be addressed.

III. Application Submission Requirements

A. Application

Each application shall include all of the information, materials, forms, and exhibits listed in paragraph 2 of this section and must be indexed and tabbed. The Field Office will base its determination of the eligibility of the Sponsor for a reservation of section 811 capital advance funds on the information provided in the application.

In preparing applications, applicants will be able to utilize information and

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exhibits previously prepared for prior section 202 applications or for applications for other funding programs. Examples of exhibits that may be readily adapted or amended to decrease the burden of application preparation include among others those on previous participation in the section 202 program; applicant experience in housing and services; financial capacity; supportive services plan; community ties, and experience serving minorities.

1. Application Contents

(a) Each applicant (Sponsor) shall include on a Form HUD–92013, Application for Multifamily Housing Project:

(1) The name, address, and telephone number of the Sponsor(s);

(2) The name, title, address, and telephone number of the officer or director of the Sponsor's Board of Directors to whom communications should be addressed;

(3) The following specific information regarding the project:

(i) Number of units requested by bedroom type (efficiency (415 sq. ft.), one-bedroom (540 sq. ft.), two-bedroom (800 sq. ft.), three-bedroom (1050 sq. ft.), four-bedroom (1150 sq. ft.) or if five or more bedrooms are provided, increase unit sizes by up to 100 sq. ft. for each additional bedroom) and the number of residents (if independent living facility) or the number of bedrooms and number of residents to be housed in each group home;

(ii) Dollar amount of the capital advance requested;

(iii) Estimated land cost;

(iv) Number and type of structures;

(v) Number of stories planned and whether an elevator will be included; and

(vi) Development method (new construction, rehabilitation, or acquisition (group homes and RTC properties)).

(b) Additional exhibits must include:

(1) A Housing Consultant's Resume, Contract (Form HUD 92531A–EH), and an Identity of Interest and Disclosure Certification (if the Sponsor has employed a project consultant).

(2) Evidence of each Sponsor's legal status as a private nonprofit organization, including the following:

(i) Articles of incorporation, constitution, or other organizational documents;

(ii) By-laws;

(iii) A typed incumbency certificate, listing all officers and directors, title, beginning date of each person's term and when that term expires. It must be certified by an officer of the Sponsor that it constitutes all duly qualified and sitting officers and directors as of the date the application is filed with HUD;

(iv) IRS tax exemption ruling (this must be submitted by all Sponsors, including churches). A nonprofit organization organized in the Commonwealth of Puerto Rico and exempt from income taxation under Puerto Rico law, has never been liable for payment of Federal income taxes, and does not pay patronage dividends may be exempt from the requirement set out in the previous sentence if they are not eligible for tax exemption; and

(v) Resolution of the board, duly certified by an officer, that no officer or director of the Sponsor or Owner has or will have any financial interest in any contract with the Owner or in any firm or corporation which has or will have a contract with the Owner.

(3) Satisfactory evidence that the Sponsor:

(i) Has the necessary legal authority to sponsor the project and to assist the Owner to finance, acquire, construct, or rehabilitate and maintain the project; and

(ii) Will form an Owner (as defined in § 890.105) after the issuance of the fund reservation, will cause the Owner to file a request for determination of eligibility and a request for a capital advance under § 890.300, and will provide sufficient resources to the Owner to ensure the development and long-term operation of the project.

(4) A description of the Sponsor's ties to the community, including the minority community, and any statements of support for the project by members of the community in which the project is to be located and state and local organizations familiar with the needs of disabled individuals proposed to be housed.

(5) Evidence of previous participation in HUD programs, by the Sponsor, its officers or directors, on Form HUD 2530. If none, forms must be submitted indicating "No previous experience."

(6) A description of any financial default, modification of terms and conditions of financing, or legal action taken or pending against the Sponsor or its officers, directors, or trustees in their corporate capacity.

(7) A description of the following:

(i) Any other rental housing projects, medical and/or other facilities sponsored, owned or operated by the Sponsor, including a description of experience in providing housing, medical and/or other facilities to persons with disabilities and/or to families; and

(ii) The Sponsor's experience in providing housing, medical or other facilities and/or services to minority persons or families and in contracting with minority and women-owned business enterprises.

(8) A description of the Sponsor's past or current involvement in any programs other than housing (including its provision of services) that demonstrates the Sponsor's management capabilities and experience, including a description of the Sponsor's experience in serving disabled persons and/or families.

(9) A certified Board Resolution, acknowledging responsibilities of sponsorship, long-term support of the project(s), willingness of Sponsor to assist the Owner to develop, own, manage and ensure the provision of appropriate services in connection with the proposed project, and that it reflects the will of its membership.

(10) A list of the applications, if any, the Sponsor has submitted or is planning to submit to any other Field Office in response to the current Invitations under this NOFA, the NOFA for Supportive Housing for the Elderly (published elsewhere in today's **Federal Register**) or other Invitations under Part 889 or 890. Indicate by Field Office, the proposed location by city and state, the number of units requested, and the financial commitments related to each application.

(11) An estimate of start-up expenses for the project and the source of funds to meet these expenses. If the Sponsor plans to use a section 106(b) seed money loan, an application (Form HUD–92290) for such loan must be submitted with required attachments.

(12) Evidence, in the form of a certified Board Resolution, of the Sponsor's willingness to fund the Minimum Capital Investment, estimated start-up expenses, and any associated development or operating costs related to items not covered by the capital advance under § 890.240 and to ensure the development and long-term operation of the project. Also, as evidence of the Sponsor's financial ability to cover these costs, include:

(i) A brief narrative description of financial history;

(ii) Copies of balance sheets and statements of income and expenses for each of the past three years that the Sponsor has operated. The financial statements, at a minimum, must include the information contained in Form HUD–92417, and a certification pursuant to the criminal warning provided in U.S. Criminal Code, section 1001, title 18 U.S.C.;

(iii) Form HUD–2013 Supplement, Application for Project Mortgage Insurance, listing current bank and trade references; and

(iv) A list of all FY 1990 and prior year projects to which the Sponsor(s) is a party, identified by project number, Field Office, funding year and month and year of initial closing, current status, (if finally closed, indicate month and year), and financial requirements for closing.

(13) A narrative description of the proposed housing including:

(i) Evidence of control of an approvable site, or identification of a site for which the Sponsor provides reasonable assurances that it will obtain control within 6 months from the date of fund reservation (if Sponsor is approved for funding);

(A) If the Sponsor has control of the site, it must submit the following information:

(1) Evidence that the Sponsor has entered into a legally binding option agreement to purchase or lease the proposed site; or has a copy of the contract of sale for the site, a deed, long-term leasehold or other evidence of legal ownership of the site (including properties to be acquired from the RTC). The option agreement period should extend through the end of the current fiscal year and contain a renewal provision to guarantee site availability through the subsequent stage of processing. The Sponsor must also identify any restrictive covenants. In the case of a site to be acquired from a public body, evidence that the public body possesses clear title to the site, and has entered into a legally binding agreement to lease or convey the site to the Sponsor after it receives and accepts a notification of section 811 fund reservation and identification of any restrictive covenants. However, in localities where HUD determines the time constraints of the funding round will not permit all of the required official actions (*e.g.*, approval of Community Planning Boards) which are necessary to convey publicly-owned sites, a letter in the application from the Mayor or Director of the appropriate local agency indicating their approval of conveyance of the site contingent upon the necessary approval action is acceptable and may be approved by the Field Office if it has satisfactory experience with timely conveyance of sites from that public body. In such cases, documentation shall also include a copy of the public body's evidence of ownership and whether there are any restrictive covenants.

(Note: A proposed project site may not be acquired or optioned from a general contractor (or its affiliate) which will construct the section 811 project or from any other development team member.)

(2) A map showing the location of the site and the racial composition of the neighborhood, with any area of racial concentration delineated;

(3) Photographs of the site;

(4) Evidence that the project as proposed is permissible under applicable zoning ordinances or regulations, or a statement of the proposed action required to make the proposed project permissible and the basis for the belief that the proposed action will be completed successfully before the receipt of the conditional commitment application (*e.g.*, a summary of the results of any recent requests for rezoning on land in similar zoning classifications and the time required for such rezoning, preliminary indications of acceptability from zoning bodies, *etc.*);

(5) A statement that (a) identifies all persons (families, individuals, businesses and nonprofit organizations (identified by race/minority group, and status as owners or tenants) occupying the property on the date of submission of the application for fund reservation (or date of initial site control, if later); (b) indicates the estimated cost of relocation payments and other services, and (c) identifies the staff organization that will carry out the relocation activities.

(Note: IF ANY OF THE RELOCATION COSTS WILL BE FUNDED FROM SOURCES OTHER THAN THE SECTION 811 CAPITAL ADVANCE, THE SPONSOR MUST PROVIDE EVIDENCE OF A FIRM COMMITMENT OF THESE FUNDS. DUE TO POTENTIALLY HIGH RELOCATION COSTS, SPONSORS ARE ENCOURAGED TO UTILIZE SITES WHICH INVOLVE MINIMAL OR NO RELOCATION COSTS.)

(6) An indication as to whether the Sponsor is willing to seek a different site if the preferred site is unapprovable, and if so, a reasonable assurance that site control will be obtained within 6 months of fund reservation.

(B) If the Sponsor has identified a site, but does not have it under control, it must submit the following information:

(1) A description of the location of the site, neighborhood/community characteristics (to include racial and ethnic data) and amenities, and adjacent housing and/or facilities;

(2) A description of the activities undertaken to identify the site as well as what actions must be taken to obtain control of the site, if approved for funding;

(3) An indication as to whether the site is properly zoned. If it is not, an indication of the actions/time necessary for proper zoning; and

(4) A status of the sale of the site.

(5) An indication as to whether the site would involve relocation.

(ii) If and how the project will promote energy efficiency and if applicable, innovative construction or rehabilitation methods or technologies to be used that will promote efficient construction.

(iii) An identification of all community spaces, amenities or features planned for the housing. A description of how the spaces will be utilized also must be included. If these community spaces, amenities, or features would not comply with the design and cost standards of § 890.220, the Sponsor must demonstrate its ability and willingness to contribute both the incremental development cost and continuing operating cost associated with the community spaces, amenities or features.

(iv) A written description of the design of the proposed housing including any special design features and community space necessary to accommodate the physical needs of the proposed residents and the provision of supportive services. Included with the written description must also be a schematic drawing of each floor of the project noting the location of any special design features as well as a typical bedroom in a group home or a typical unit in an independent living facility with approximate dimensions, and community space for the provision of supportive services.

(v) For group homes to be licensed as intermediate care facilities (in which funding for the intermediate care is provided under Title XIX of the Social Security Act that serve persons with developmental disabilities, the following must be submitted:

(a) Evidence demonstrating that the proposed project will primarily provide housing rather than medical facilities, is or will be licensed by appropriate State agencies;

(b) Written evidence that the State Medicaid Office recognizes the need for a tenant contribution to rent and has agreed to pay the cost of the tenant contribution in the Medicaid payment to the Sponsor;

(c) Description of the medical training of the staff of the proposed facility and any nursing services that will be required by the residents on-site;

(d) Description of the services that will be funded by Medicaid for residents of the proposed project, including their nature, frequency and where the services are to be provided;

(e) Description of any special design features in the application that are not common to other section 811 group homes for the proposed population and

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the Sponsor's rationale for including them; and,

(f) Statement certifying that the Individual Program Plan for each resident will include participation in an out-of-the home activity program for at least six hours each weekday.

(14) A narrative description of the anticipated occupancy. The Sponsor must limit occupancy of the proposed project to one or more of the following categories: Persons with chronic mental illness, developmental disabilities, or physical disabilities. The Sponsor may, with the approval of the Secretary, restrict occupancy of a project to persons with disabilities who have similar disabilities and who require a similar set of supportive service unique to their disabilities. The Sponsor must demonstrate a capacity to serve the proposed occupancy group(s).

(15) A supportive services plan that includes:

(i) A detailed description of whether the housing is intended to serve the physically disabled, developmentally disabled, or chronically mentally ill. Include how and from where persons will be referred and admitted to the project.

(ii) A detailed description of the needs of persons with disabilities that the housing is expected to serve.

(iii) *A detailed description of the supportive services* proposed to be provided to the anticipated occupancy, including:

(A) The name(s) of the agency(s) which will be responsible for providing supportive services and evidence of the service provider's capability and experience in providing such supportive services;

(B) The manner in which such services will be provided (i.e., how, when and how often, where (on/off-site), including assurances that the proposed residents will receive supportive services based on their individual needs.

(C) The staffing plan, including a description of the qualifications of residential staff, if any, and other staff necessary to provide the proposed services.

(iv) Identification of the extent of state and local funds available to assist in the provision of supportive services.

(v) A letter of intent from each agency that will provide the supportive services (if other than the Sponsor), indicating the source and extent of commitment to provide funding for the supportive services.

(vi) If any state or local government funds will be provided, a description of the state/local agency's philosophy/policy concerning residential facilities for the population to be served as well as a demonstration by the Sponsor that the application is consistent with state or local plans and policies governing the development and operation of facilities to serve individuals of the proposed occupancy category.

(16) Evidence demonstrating that there is effective demand for the proposed housing in the area to be served by the project and demonstrating that this demand is likely to continue throughout the life of the project.

(17) Signed certifications of the Sponsor(s)' intent to comply with title VI of the Civil Rights Act of 1964, the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Executive Orders 11063 and 11246, section 3 of the Housing and Urban Development Act of 1968, and the affirmative fair housing marketing requirements at 24 CFR part 200, subpart M.

(18) A certification from the appropriate state or local agency that it has reviewed the supportive services plan in the Sponsor's application and that the provision of services identified in the application is well designed to serve the special needs of persons with disabilities to be served by the proposed project(s).

(Note: The certification will not be included in the Sponsor's application submission to the Field Office. The state or local agency shall complete the certification found in the Sponsor's submission to the agency and forward it to the Field Office within 30 days of the application deadline date.)

(19) A certification of the Sponsor(s) that the appropriate state agency (single point of contact) under Executive Order 12372, Intergovernmental Review, has been contacted to determine if the Section 811 Program is covered under the state review process and, if applicable, the date the application was submitted to the State.

(20) A certification on SF–424, Application for Federal Assistance, that the Sponsor(s) is not delinquent on the repayment of any Federal debt.

(21) A certification by the Sponsor(s) that the section 811 funds will not be used to lobby the Executive or Legislative branches of the Federal government.

(22) A certification that the Sponsor(s) will comply with the requirements of the Drug-Free Workplace Act.

(23) A certification that the project will comply with HUD's design and cost standards, the Uniform Federal Accessibility Standards and HUD's implementing regulations at 24 CFR part 40, section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8, and for new construction multifamily housing projects (independent living facilities), the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100.

(24) A certification by the Sponsor(s) that it will comply (or has complied) with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR part 24, and 24 CFR 890.260(e).

IV. Corrections to Deficient Applications

A. Preliminary Evaluation

During preliminary evaluation, Sponsors will be provided 14 calendar days from the date of HUD's written notification to cure technical deficiencies in their applications. However, it is not additional time to amend the application to overcome any defects in the original submission. Technical deficiencies are inadvertently omitted documents which have been executed prior to the application deadline date (such as certifications or articles of incorporation) or clarifications of previously submitted material and are not of such a nature as to improve the competitive position of the application.

Technical deficiencies do not include items which would be considered substantive defects in the original submission. For example, if a Board resolution is missing from the original submission, but it is submitted during the 14-day period, it must have been executed prior to the deadline date for receipt of applications. If it is not submitted during the 14-day period or it is submitted during this time but executed after the deadline date for receipt of applications, it is a substantive defect and the application will be rejected. Sponsors of applications that are missing two or more exhibits will not be afforded an opportunity to submit the missing exhibits and will receive written notification that their applications have been rejected. However, exhibits which are certifications are not counted as missing exhibits in this determination.

Applicants whose applications are found unacceptable during the preliminary evaluation process due to substantive defects and applications which fail to adequately respond to HUD's deficiency letter within the 14-day period, will be notified that their applications are not eligible for further processing, and are rejected.

B. Technical Processing

Applications which are found acceptable during the preliminary evaluation process, or an acceptable response to HUD's deficiency letter was received within the 14-day period, will undergo a more thorough analysis. As part of this analysis, HUD will conduct its environmental review in accordance with 24 CFR part 50 for applications that submitted satisfactory evidence of site control. Examples of reasons for technical processing rejection include a lack of commitment to fund the necessary supportive services or, based on a review of the detailed financial information, the Sponsor(s)' lack of sufficient financial resources. The Secretary will not reject an application based on technical processing without giving notice of that rejection and the basis therefor to the applicant and affording the applicant an opportunity to respond. An applicant will be afforded 10 calendar days from the date of HUD's written notice to appeal a technical rejection. The Field Office shall make a determination on an appeal prior to making its selection recommendations.

Upon completion of technical processing, all acceptable applications will be rated according to the selection criteria in § 890.300(c) (also above in I.D.2.). Applications which have a total score of 50 points or more will be eligible for selection and will be placed in rank order.

V. Additional Information

A. Project Size Limits

The following project size limits are applicable to supportive housing for persons with disabilities:

1. Group homes may house no more than eight (8) persons per home. On a case-by-case basis, however, HUD may approve a group home of up to 15 disabled people if the Sponsor can demonstrate the following:

(a) The increased number of people is necessary for the economic feasibility of the project;

(b) A project of the size proposed is compatible with other residential development and the population density of the area in which the project is to be located;

(c) A project of the size proposed can be successfully integrated into the community; and

(d) A project of the size proposed is marketable in the community.

2. Independent living facilities may house no more than 24 disabled people, except for projects for the chronically mentally ill which may not exceed 20 such persons. On a case-by-case basis, HUD may approve an exception to the 24-person limit based upon the same criteria set forth in (1) above.

B. Sites

The National Affordable Housing Act requires Sponsors submitting applications for section 811 fund reservations to provide either (a) evidence of site control, or (b) reasonable assurances that it will have control of a site within 6 months of notification of fund reservation. Accordingly, if a Sponsor has control of a site at the time it submits its application, it must include evidence of such as described in § 890.265(c)(13)(i)(A). If it does not have site control, it must provide the information required in § 890.265(c)(13)(i)(B) as a reasonable assurance that site control will be obtained within 6 months of fund reservation notification. Sponsors that do not provide satisfactory evidence of site control or the proper identification of a site will be notified that their applications are rejected.

Sponsors may select a site different from the one(s) submitted in their original applications. Selection of a different site will require HUD performance of an environmental review on the new site, which could result in rejection of that site. However, if a Sponsor does not have site control for any reason 12 months after notification of fund reservation, the assistance will be recaptured and reallocated.

Sponsors submitting satisfactory evidence of an approvable site (*i.e.*, site control) will compete against each other in Category A. Sponsors submitting proper identification of a site will compete against each other in Category B. HUD first shall select applications in the descending order of funding priority from Category A that most closely approximates the capital advance authority provided to the allocation area. If capital advance authority remains after selecting all approvable applications from Category A, HUD shall then select applications in the descending order of funding priority from Category B that most closely approximates the capital advance authority remaining in the allocation area.

Sponsors that submit evidence of site control where either the evidence or the site is not approvable will not have their applications rejected; their applications will compete in Category B, provided the application indicates their willingness to select another site and assurance that they will have site control within six months of fund reservation.

VI. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations that implement section 101(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street Southwest, Washington, DC 20410.

B. Federalism Executive Order

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA does not have substantial direct effects on States or their political subdivisions, or on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This NOFA merely notifies the public of the availability of capital advances for supportive housing for persons with disabilities.

C. Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this NOFA does not significantly affect family formation, maintenance, or general well-being, and, thus, is not subject to review under the order.

D. HUD Reform Act

Section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3531) (the Reform Act), which requires the Secretary to certify that assistance within the jurisdiction of the Department to any housing project shall not be more than is necessary to provide affordable housing after taking account of other assistance specified in section 102(b)(1) of the Reform Act, and which also requires the Secretary to adjust the amount of assistance awarded or allocated to an applicant to compensate in whole or in part, as appropriate for any changes reported under section 102(c) of the Reform Act, would apply to section 811 capital advances. These requirements will become effective after the Department publishes a final rule to implement the Reform Act.

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E. Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance Program title and number is 14.181, Supportive Housing for Persons with Disabilities.

Authority: Section 811, National Affordable Housing Act, section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: May 31, 1991.

Arthur J. Hill,

Assistant Secretary for Housing, Federal Housing Commissioner.

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Part III

Department of Housing and Urban Development

Office of the Assistant Secretary

24 CFR Parts 750, 885, and 889

Supportive Housing for the Elderly; Interim Rule and Notice of Funding Availability

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 750, 885, and 889

[Docket No. R-91-1524; FR 2956-I-01]

RIN 2502-AF19

Supportive Housing for the Elderly

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule and request for comments.

SUMMARY: This interim rule amends 24 CFR part 885 and provides for the continued applicability of part 885 to projects for which section 202 loan reservations were made in FY 1990 and prior years. This interim rule also adds Part 889 to establish the new Supportive Housing for the Elderly Program and to enable FY 1991 funding of supportive housing projects for the elderly under part 889. Requirements relating to capital advances, project rental assistance contracts, and management of supportive housing for the elderly projects selected in FY 1991 will be published in July 1991 in a proposed rule also under part 889. The Supportive Housing for the Elderly Program is authorized by section 801 of the Cranston-Gonzalez National Affordable Housing Act, 42 U.S.C. 12701 *et seq.* (the NAH Act) and is to enable elderly persons to live with dignity and independence by expanding the supply of supportive housing that is designed to accommodate the special needs of elderly persons and provides a range of services that are tailored to the needs of elderly persons occupying such housing. This interim rule also adds new part 889 to list of programs covered by 24 CFR part 750 (disclosure and verification of social security numbers and employer identification numbers by applicants and participants).

DATES: *Effective Date:* July 12, 1991. *Comment due date:* August 12, 1991.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of the General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours (weekdays 7:30 a.m. to 5:30 p.m.) at the above address. Hearing or speech impaired individuals may call the Rules Docket Clerk's TDD number (202) 708-3259.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708-4337. Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Rules Docket Clerk at (202) 708-2084. (The telephone numbers listed in this paragraph are not toll-free.)

FOR FURTHER INFORMATION CONTACT: Robert Wilden, Director, Housing for the Elderly and Handicapped People Division, Department of Housing and Urban Development, 451 Seventh Street SW., room 6116, Washington, DC 20410, telephone (202)708-2730. (This is not toll-free number).

Hearing or speech impaired individuals may call HUD's TDD number (202) 708-4594. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Paperwork Burden

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. Pending approval of these collections of information by OMB and the assignment of an OMB control number, no person may be subjected to a penalty for failure to comply with these information collection requirements. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**. The Department provided for 21 days public comment on the information collection requirements. OMB approval of those information collections, following public comment, is anticipated well in advance of the due date of applications submitted in response to today's documents.

Public reporting burden for the collection of information requirements contained in this rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, Findings and Certifications. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: HUD Desk Officer, room 3001, Washington, DC 20530.

II. Background

A. Applicability of Part 885

Part 885 provides direct Federal loans under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) to assist private, nonprofit corporations and nonprofit consumer cooperatives in the development of housing projects serving elderly or handicapped families and individuals. A loan (with up to a 40-year term) made under part 885 is used to finance the construction, or the substantial rehabilitation of projects for elderly or handicapped families, or for the acquisition with or without moderate rehabilitation of existing housing and related facilities for group homes for nonelderly handicapped individuals. The housing projects provide the necessary services for the occupants which may include, but are not limited to: Health, continuing education, welfare, informational, recreational, homemaking, meal and nutritional services, counseling, and referral services, as well as transportation where necessary to facilitate access to these services. New part 889 has the same description of services based on section 202(g)(1). Examples of services not included in parts 885 or 889 are recreational or social activities directors and medical services.

Subpart B of part 885 applies to projects for elderly or handicapped families that receive loans under section 202 of the Housing Act of 1959 and housing assistance payments under section 8 of the United States Housing Act of 1937. Subpart C of part 885 applies to projects for nonelderly handicapped families receiving loans under section 202 and project assistance payments under section 202(h) of the Housing Act of 1959. Part 885 has been amended by this interim rule and will apply to projects for which section 202 loan reservations were made in FY 1990 and prior years. Projects for the elderly selected for funding in FY 1991 and subsequent years will be covered by new part 889 (also added by this interim rule.)

B. New Part 889—An Overview

New part 889 is authorized by section 202 of the Housing Act of 1959, as amended by section 801 of the NAH Act. Under part 889, assistance will be provided to private nonprofit organizations and nonprofit consumer cooperatives to expand the supply of supportive housing for the elderly. Such assistance will be provided as (1) capital advances and (2) project rental assistance contracts. Capital advances may be used to finance the construction, or rehabilitation of a structure or a portion of a structure, or acquisition of a structure from the Resolution Trust Corporation (RTC), to be used as supportive housing for the elderly. This assistance may also cover the cost of real property acquisition, site improvement, conversion, demolition, relocation, and other expenses that the Secretary determines are necessary to expand the supply of supportive housing for the elderly.

For supportive housing for the elderly, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1991 (Pub. L. 101-507, approved November 5, 1990, Fiscal Year 1991 Appropriations Act), provides $550,115,000 for capital advances under section 202 of the Housing Act of 1959, (as amended by section 801 of the NAH Act) and $283,619,000 for project rental assistance. The NAH Act and the Fiscal Year 1991 Appropriations Act contain differing provisions for implementing the Supportive Housing for the Elderly Program. The NAH Act defers initiation of the Program until FY 1992, while the appropriation contemplates conversion to the new Program in FY 1991. In order to permit the funding of supportive housing for the elderly in FY 1991 and best effectuate the purposes of both the NAH Act and the appropriation, the Department has decided to publish this rule as interim. A companion Notice of Funding Availability (NOFA) is also published today elsewhere in this issue. The NOFA provides information regarding eligibility, submission requirements, available capital advance amounts, selection criteria and application processing (including how to apply and how selections will be made.). Remaining requirements of this program, which are not necessary for fund reservation (*e.g.*, capital advances, project rental assistance contracts and management requirements) will be the subject of a proposed rule (also under part 889) which will be published later this year.

1. Forms of Assistance

(a) *General/capital advances.* In lieu of direct loans and section 8 housing assistance payments, part 889 provides for capital advances and project rental assistance contracts. Capital advances bear no interest and their repayment is not required so long as the housing remains available for very low-income elderly persons for not less than 40 years. The capital advance fund reservation will be calculated in an amount not to exceed the development cost limits, adjusted by locality.

(1) *Development cost limits.* The Secretary will periodically establish development cost limits by market area for various types and sizes of supportive housing for the elderly by publishing a notice of the cost limits in the **Federal Register**. The development cost limits shall reflect:

(i) The cost of construction, rehabilitation of a structure or a portion of a structure, or acquisition from the RTC for supportive housing for the elderly that meets applicable State and local housing and building codes;

(ii) The cost of movables (*e.g.*, movable equipment) necessary to the basic operation of the housing, as determined by the Secretary;

(iii) The cost of special design features necessary to make the housing accessible to elderly persons;

(iv) The cost of special design features to make individual dwelling units meet the physical needs of elderly project residents;

(v) The cost of congregate space (hereinafter referred to as community space) (includes space for cafeterias or dining halls, community rooms or buildings, workshops, adult day health facilities, or other out-patient health facilities, or other essential service facilities) necessary to accommodate the provision of supportive services to elderly project residents;

(vi) If the housing is newly constructed, the cost of meeting the energy efficiency standards promulgated by the Secretary in accordance with section 109 of the NAH Act; and

(vii) The cost of land, including site improvement. In establishing development cost limits for a given market area, the Secretary will use data that reflect currently prevailing costs of construction or rehabilitation, and land acquisition in the area.

(2) *RTC properties.* In the case of existing housing and related facilities to be acquired from the RTC under section 21A(c) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)), the cost limits shall include: (1) The cost of acquiring such housing, (2) the cost of rehabilitation, alteration, conversion, or improvement, and (3) the cost of land on which the housing and related facilities are located.

(3) *Annual adjustments.* The Secretary will adjust the cost limits not less than once annually to reflect changes in the general level of construction or rehabilitation costs.

(4) *Incentives for savings.* The Secretary shall use the development cost limits (adjusted by locality) to calculate the initial fund reservation amount of the capital advance to be made available to individual owners. Owners whose HUD-approved actual development costs are less than the initial fund reservation amount of the capital advance shall be entitled to retain 50 percent of the savings in their Replacement Reserve Account (referred to in section 202(h)(4)(A) as a special housing account). Such percentage shall be increased to 75 percent for owners which add energy efficiency features which: (i) Exceed the energy efficiency standards promulgated by the Secretary in accordance with section 109 of the NAH Act; (ii) substantially reduce the life-cycle cost of the housing; (iii) reduce gross rent requirements; and (iv) enhance tenant comfort and convenience. The Replacement Reserve Account may only be used as approved by HUD for repairs or replacements in or capital improvements of the project.

(5) *Design flexibility.* The Secretary will, to the extent practicable, give owners the flexibility to design housing appropriate to their location and proposed resident population within broadly defined parameters.

(6) *Use of funds from other sources.* An owner may voluntarily provide funds from non-Federal sources for amenities and other features of appropriate design and construction suitable for supportive housing for the elderly if the cost of such amenities is: (1) Not financed with the capital advance, and (2) is not taken into account in determining the amount of Federal assistance or tenant payment (section 202(h)(6) refers to this as rent contributions of tenants). Any funds borrowed (e.g., for services or construction) from other sources generally would not be acceptable and in any case would require HUD approval. The Department plans to issue, in July 1991, a proposed rule under part 889 covering these additional requirements regarding capital advances.

(b) *Project rental assistance contracts.* Contracts for project rental assistance obligate the Secretary to make monthly payments to cover any part of the HUD-approved operating

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costs attributed to units occupied (or, as approved by the Secretary, held for occupancy) by very low-income elderly persons that is not met from project income. The annual contract amount for any project shall not exceed the HUD-approved annual operating budget for all units so occupied and any initial utility allowances for such units, as approved by the Secretary. Any contract amounts not used by a project in any year shall remain available to the project until the expiration of the contract. The Secretary may adjust the annual contract amount if the sum of the project income and the amount of assistance payments available are inadequate to provide for reasonable HUD-approved operating costs. The HUD-approved operating costs may include an allowance (not to exceed $15 per unit per month) for services limited to the frail elderly, that is, to persons determined to have limitations in at least three activities of daily living (ADLs). Other "at-risk" elderly residents may receive services supported by HUD-approved operating costs only if it can be demonstrated, on a case-by-case basis, that the receipt of these services is essential to prevent their premature institutionalization.

2. Tenant Payment

A very low-income person shall make a tenant payment for a dwelling unit assisted under Part 889, the highest of the following amounts, rounded to the nearest dollar: (1) 30 percent of the person's monthly adjusted income, (2) 10 percent of the person's monthly income, or (3) if the person is receiving payments for welfare assistance from a public agency and a part of such payments, adjusted in accordance with the person's actual housing costs, is specifically designated by such agency to meet the person's housing costs, the portion of such payments which is so designated. If the person's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under (3) above shall be the amount resulting from one application of the percentage.

3. Term of Commitment

All units in housing assisted under Part 889 shall be made available for occupancy by very low-income elderly persons for not less than 40 years. The initial term of a contract entered into for project rental assistance shall be 240 months. The Secretary will, to the extent approved in appropriations acts, extend any expiring contract for a term of not less than 60 months. In order to facilitate the orderly extension of expiring contracts, the Secretary is authorized to make commitments to extend expiring contracts during the year prior to the date of expiration.

4. Applications/Selection Criteria

(a) *Applications.* Funds made available under Part 889 will be allocated by the Secretary among approvable applications submitted by private nonprofit organizations or nonprofit consumer cooperatives (*i.e.*, the Sponsor(s)). The Sponsors whose applications are selected by HUD will form single purpose nonprofit corporation owners (*i.e.*, the Owner) which shall receive the section 202 assistance. A NOFA (discussed above under B) for Supportive Housing for the Elderly is also published today with this interim rule and appears elsewhere in this issue. Applications for assistance under part 889 should be submitted by the applicant (Sponsor) in the form described in the NOFA. The NOFA provides complete information regarding the eligibility, available amounts, application submission requirements, selection criteria, deadline date for receipt of applications, and application processing. A checklist of steps and exhibits involved in the application process appears in the application package.

(b) *Selection Criteria.* The Secretary is required by section 202(f) to establish selection criteria for assistance. These selection criteria include:

(1) The ability of the applicant to develop and operate the proposed housing;

(2) The need for supportive housing for the elderly in the area to be served;

(3) The extent to which the proposed size and unit mix of the housing will enable the applicant to manage and operate the housing efficiently and ensure that the provision of supportive services will be accomplished in an economical fashion;

(4) The extent to which the proposed design of the housing will meet the special physical needs of elderly persons;

(5) The extent to which the applicant has demonstrated that the supportive services will be provided on a consistent, long-term basis;

(6) The extent to which the proposed design of the housing will accommodate the provision of supportive services that are expected to be needed, either initially or over the useful life of the housing, by the category or categories of elderly persons the housing is intended to serve; and

(7) Such other factors as the Secretary determines to be appropriate to ensure that funds made available under section 202 are used effectively. To this list of selection criteria, the Secretary has added sub-criteria to explain the statutory criteria and also additional criteria regarding the Sponsor's financial capacity, experience in housing and/or services for minorities and the desirability of the proposed location site (§ 889.300(d)).

5. Provision of Services

(a) *General.* The Secretary is to ensure that housing assisted under this part provides a range of services tailored to the needs of the category or categories of elderly persons (including frail elderly persons) occupying such housing. Such services may include (1) meal service adequate to meet nutritional need; (2) housekeeping aid; (3) personal assistance; (4) transportation services; (5) health-related services; and (6) such other services the Secretary deems essential for maintaining independent living. The Sponsor and Owner must assure that services provided are not available elsewhere, which could adequately serve the needs of the elderly occupying the housing. The Secretary may permit the provision of services to elderly persons and persons with disabilities who are not residents if the participation of such persons will not adversely affect the cost-effectiveness or operation of the program or add significantly to the need for assistance under section 202 of the Housing Act of 1959. One of the exhibits to the section 202 application is the supportive services plan (§ 889.270(c)(17)). The supportive services plan must include a description of all supportive services, if any, to be provided to the persons occupying the housing. The supportive services plan must also describe the manner in which such services will be provided to such persons (i.e., on or off-site), including whether a service coordinator will facilitate the adequate provision of such services, and the public or private sources of assistance that may reasonably be expected to fund or provide such services.

(b) *Local Coordination of Services.* The Secretary will ensure that owners have the managerial capacity to: (1) Assess on an ongoing basis the service needs of residents; (2) coordinate the provision of supportive services and tailor such services to the individual needs of residents; and (3) seek on a continuous basis new sources of assistance to ensure the long-term provision of supportive services. Such capacity will be determined by reviewing statements in the Sponsor's application and experience, and Field Office's experience with the Sponsor, if any. Reasonable costs associated with the local coordination of services shall be an eligible cost in the contract for project rental assistance. Any cost associated with the employment of a service coordinator shall also be an eligible cost except where the project is receiving congregate housing services assistance under section 802 of the NAH Act.

6. Tenant Selection

(a) *General.* The Owner shall adopt written tenant selection procedures which ensure nondiscrimination in the selection of tenants and that are satisfactory to the Secretary as (1) consistent with the purpose of improving housing opportunities for very low-income elderly persons; and (2) reasonably related to program eligibility and a tenant applicant's ability to perform the obligations of the lease. Owners shall promptly notify in writing any rejected tenant applicant of the ground for any rejection. Tenant selection will be discussed in more detail in the proposed rule expected to be published in July 1991. If the Owner has existing tenant selection procedures which meet the above requirements, they may be used and updated as needed.

(b) *Information regarding availability of section 202 housing.* The Secretary will provide to the applicable Area Agency on the Aging or the State Agency on the Aging, as appropriate, information regarding the availability of housing assisted under section 202. Each such agency will be provided with a list of section 202 projects for the elderly in the applicable area, selected for funding annually.

7. Technical Assistance

The Department will conduct various technical assistance activities to the extent that funds are available for that fiscal year.

8. Miscellaneous Provisions

(a) *Owner deposit (minimum capital investment).* The Secretary requires an Owner to deposit one/half of one percent (0.5%) of the total HUD-approved capital advance amount not to exceed $25,000 in a special escrow account to assure the Owner's commitment to the housing. If construction starts within the initial 18 months of the final reservation, HUD will waive one-half of the Minimum Capital Investment which would be required under the aforementioned formula at the time of initial closing. If final closing occurs within six months after construction completion, HUD will approve the return of all remaining funds not used to cover operating deficits during the first three years of operation. If final closing does not occur within six months after project completion, unless extended by the Field Office for up to two months due to justifiable delay, the balance remaining at the end of three years will not be returned and shall be deposited in the Replacement Reserve Account.

(b) *Civil rights compliance.* Each Owner shall certify, to the satisfaction of the Secretary, that assistance made available under this section will be conducted and administered in conformity with Title VI of the Civil Rights Act of 1964, the Fair Housing Act and other Federal, State, and local laws prohibiting discrimination and promoting equal opportunity.

(c) *Notice of cancellation and appeal.* The Secretary will notify an Owner not less than 30 days prior to cancelling any reservation of assistance provided under this part. During the 30-day period following the receipt of the notice, an Owner may appeal the proposed cancellation of the reservation. Such appeal, including review by HUD, shall be completed not later than 45 days after the appeal is filed.

(d) *Labor standards.* Any contract for the construction (including rehabilitation) of affordable housing with 12 or more units assisted with funds covered by part 889, shall contain a provision requiring that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act, shall be paid to all laborers and mechanics employed in the development of affordable housing involved. The overtime provisions of the Contract Work Hours and Safety Standards Act apply to those contracts. Davis-Bacon prevailing wages do not apply to volunteers if the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and such persons are not otherwise employed at any time in the construction or rehabilitation work.

(e) *OMB Circular A-110.* The Department requests comments regarding the use of OMB Circular No. A-110, entitled "Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations—Uniform Administrative Requirements" for this program. Grants (but not loans) to nonprofit organizations are subject to A-110. Capital advances provided under the Supportive Housing for the Elderly Program have features of both loans and grants. For example, the capital advance resembles a loan because it is subject to repayment, unless the Owner makes all units in the project available to very low-income elderly persons for the full 40-year period. Previously, the section 202 Program provided direct loans and was not subject to A-110. Section 801 of the NAH Act and its legislative history do not give any guidance on the incidental effects (e.g., applicability to A-110) of the change in assistance to capital advances. If A-110 applied to this program, the current development team approach to construction/rehabilitation would be replaced with competitive procurement. After considering public comments, the Department intends to resolve this issue in either the final rule for this program or as a part of the common rule for A-110 (which is currently being prepared by the Office of Management and Budget).

(f) *Uniform Relocation Act.* Section 889.265(e) (Displacement, relocation and real property acquisition) contains policies necessary to conform part 889 to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) and the government-wide implementing regulations at 49 CFR part 24.

Effective April 2, 1989, the URA was amended to, among other things, expand coverage. Under the current rules (see HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition), all persons (families, individuals, businesses, nonprofit organizations and farms) displaced on or after April 2, 1989 as a direct result of rehabilitation, demolition or acquisition (public or privately undertaken) for a HUD-assisted project are entitled to relocation payments and other assistance under the URA.

The URA and the regulations at 49 CFR part 24, however, do not directly create eligibility for relocation assistance (as a "displaced person") for a tenant-occupant who is permitted to remain in the property but who moves from the property rather than pay an "excessive" rent upon completion of a project (economic displacement); who is required to relocate temporarily, but not permanently, while the project is underway; or who must move permanently to other space in the building/complex.

Therefore, to protect such tenant-occupants, and ensure consistency with other HUD-assisted Programs, § 889.265(e) would, by regulation, provide that a tenant, who moves permanently because the terms and conditions of continued occupancy, temporary relocation, relocation within

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the building/complex are unreasonable, will qualify as a "displaced person" who is entitled to relocation assistance at levels identical to those required in 49 CFR part 24.

Paragraph § 889.265(e)(1) contains standard HUD policy directing Sponsors and Owners to take all reasonable steps to minimize displacement.

To qualify for a capital advance under part 889, the Sponsor/Owner must certify that it will comply with the URA, implementing regulations at 49 CFR part 24 and the provisions of § 889.265(e). The Sponsor/Owner must ensure such compliance notwithstanding any third party's contractual obligation to the Sponsor/Owner to carry out such requirements.

This interim rule also makes corresponding changes to the existing section 202 program (see 24 CFR 885.1, 885.5, 885.9, 885.740(e) and 885.780(a)(4) herein). The Department will issue further guidance in program Handbooks on compliance with URA requirements, including the appeal process under §§ 885.9(d) and 889.265(e)(4).

(g) Section 889.230 generally reflects existing site and neighborhood standards in § 885.730, with the exception of the undue concentration standard in § 885.730(d). The Department is revisiting the issue in response to a recent challenge to how the undue concentration standard has been implemented in practice. In *La Plaza Defense League* v. *Kemp*, 742 F. Supp. 792 (S.D.N.Y. 1990), it was ruled that the Department had acted contrary to its undue concentration regulations. In response to this decision, and to a report from the Office of Inspector General, the Department is studying undue concentration. When this interim rule is published as a final rule, any new language that is developed will be included.

C. Section by Section Summary of Parts 885 and 889

1. Amendments to Part 885

Section 885.1 has been amended to apply to all fund reservation made before October 1, 1990. The labor standards at § 885.740(d) have been revised to reflect the amendments made by section 801(j)(5) and 955 of the NAH Act. Davis-Bacon requirements do not apply to any volunteer services provided before, on, or after November 28, 1990. However, this section may not be construed to require the repayment of any wages paid before November 28, 1990, for services provided before such date.

2. Part 889

In order to simplify program participation, Part 889 reflects Part 885's organization. Subpart A provides a general program description and the purpose and policy of the Program. Subpart B provides application procedures and program requirements. Subpart C details selection of applications and duration of fund reservations. Subpart D contains capital advance repayment requirements. Subpart G provides for technical assistance. Each of these subparts is described below noting major differences from the part 885 section 202 Direct Loan Program for Elderly Housing. Subpart E has been reserved for project rental assistance contract requirements. Subpart F has been reserved for project management requirements.

a. *Subpart A—General.* This Subpart provides the purpose and policy of the Program. It indicates that part 889 applies to projects for the elderly that receive capital advances and project rental assistance payments under section 202 of the Housing Act of 1959, as amended. It also contains definitions used in part 889. Major highlights of the definitions follow. Acquisition is defined to mean the purchase (or otherwise obtaining title to) of existing housing and related facilities from the RTC. Since one of the major differences from the section 202 Direct Loan Program made by this Program is the provision of services, the following terms have been defined (as defined in section 202 statute): Community space, frail elderly, service expenses and supportive housing for the elderly. Activities of daily living is also defined (its definition is derived from the HOPE for Elderly Independence Program Guidelines (56 FR 4506, February 4, 1991)).

(b) *Subpart B—Application Procedures and Program Requirements.* HUD will allocate amounts available for capital advances for supportive housing for the elderly in accordance with 24 CFR part 791. Upon determining the amount of capital advance fund authority to be allocated to each Field Office, HUD will publish a NOFA, and each Field Office receiving an allocation shall publish a single invitation in newspapers of general circulation and any minority newspapers serving the competitive areas in the Field Office jurisdiction.

Application contents are also detailed in this subpart. Of particular interest is the Department's implementation of section 105 of the NAH Act which would require that an application for this program include a certification of consistency of the proposal with an approved Comprehensive Housing Affordability Strategy ("CHAS") for the jurisdiction in which the proposed project is to be located. See the interim rule published on February 4, 1991 (56 FR 4480). This program rule provides that the CHAS certification requirement will not apply for FY 1991 funding of this program. However, beginning with the FY 1992 funding round, all applications for funding under this program must include a certification from the responsible public official that the project is consistent with an approved CHAS.

For FY 1991 applications, the CHAS certification requirement is not being applied to this program, because it is not statutorily required for this year and it is not feasible due to the amount of time required of a State or locality to develop a CHAS, including the hearing necessary to obtain citizen participation, and obtain a certification of consistency for FY 1991 funding. Therefore, to be most fair to entrants in this now significantly revised program, the Department is providing transition by delaying applicability of the CHAS certification until FY 1992.

Also of special interest is a new statutory requirement for a certification by the appropriate State or local agency (typically the Area Agency on Aging) that the services identified in the application are well designed for the category or categories of elderly persons the housing is intended to serve. Therefore, the Sponsor must develop and submit its service plan to the appropriate agency to obtain the required certification. In view of the short time frame in FY 1991 for submission of applications to HUD, this certification will be accepted even if not signed and submitted to the Field Office by the application deadline date, if it is received by the Field Office within 30 days following the application deadline date.

Subpart B also contains limits on the number of units. No organization may participate as Sponsor or Co-sponsor in the filing of an application(s) for a reservation of section 202 funds in a single region in a single fiscal year in excess of that necessary to finance the construction, rehabilitation of a structure or portion of a structure, or acquisition from the RTC of 300 units of housing and related facilities. The national limit is 10 percent of the total units allocated in all Regions. Design and cost standards, development cost limits, minimum capital investment, operating cost standards, prohibited facilities, site and neighborhood standards and other miscellaneous Federal requirements are also provided in Subpart B.

HUD will establish operating cost standards based on the average annual operating cost of comparable housing for elderly households in each field office, and will adjust the standard annually based on appropriate indices of increase in housing costs such as the Consumer Price Index. HUD may adjust the operating cost standard applicable to an approved project to reflect such factors as differences in costs based on location within the field office jurisdiction. The operating cost standard will be used to determine the amount of the project rental assistance reserved for a project. Consistent with new requirements for development cost limits in the NAH Act, limits to determine the capital advance amount to be reserved for new construction or rehabilitation projects for the elderly are provided in this interim rule.

(c) *Subpart C—Selection of Applications and Duration of Fund Reservation.* This subpart provides guidance on how applications for fund reservations will be reviewed. The threshold requirements, selection criteria and the permissible corrections after application submission are incorporated in this subpart. This subpart also explains how applications will be approved and the duration of section 202 fund reservations.

(d) *Subpart G—Technical Assistance.* This subpart provides that the Secretary shall make available appropriate technical assistance to assure that applicants (Sponsors) having limited resources, particularly minority applicants, are able to participate more fully in the Supportive Housing for the Elderly Program.

Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 implementing section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order on Federal Regulations issued on February 17, 1989. Analysis of the rule indicates that it does not:

(1) Have an annual effect on the economy of $100 million or more;

(2) Cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b), (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule would provide capital advances to private nonprofit organizations to expand the supply of supportive housing for the elderly. Although small entities will participate in the program, the rule would not have a significant impact on them.

On February 26, 1990, the Department published an interim final rule (24 CFR part 87) advising recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans of a new prohibition recently mandated by Congress. Section 319 of the Department of the Interior Appropriations Act (Pub. L. 101–121, approved October 23, 1989) generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative branches of the Federal Government in connection with a specific contract, grant, or loan. The interim final rule generally prohibits the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. In addition, the recipient must also file a disclosure if it has made or has agreed to make any payment with nonappropriated funds that would be prohibited, if paid with appropriated funds.

Family Impact

The General Counsel, as the Designated Official for Executive order 12606, the Family, has determined that the provisions of this rule will not have a significant impact on family formation, maintenance or well being.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611—Federalism, has determined that the rule does not involve the preemption of State law by Federal statute or regulation and does not have federalism impacts.

This interim rule was listed as item 1308 in the Department's Semiannual Agenda of Regulations published on April 22, 1991 (56 FR 17360, 17389) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Program title and number is 14.181, Housing for the Elderly or Handicapped.

The collection of information requirements contained in this interim rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980.

The information collection requirements in this rule are those specified in the application for a capital advance (see application contents, § 889.270). The exhibits required in the application (§ 889.270(c)) are primarily those previously required in the Section 202 Direct Loan program, with some additional items that are mandated by the provisions of section 801 of the NAH Act (e.g., § 889.270(b)(3), (c)(3), and (c)(20)). While the application requirements continue to include substantial documentation and narrative descriptions of the proposed project, the Department has reduced the burden from an estimated 63.9 hours in the previous program to an estimated 55.2 hours in the new program.

Some forms previously required have been eliminated (e.g., Forms 93433 and 1732A) and certifications (e.g., § 889.270(c)(18)–(26)) or less lengthy responses (e.g., § 889.270(c) (13) and (17)) are substituted for some more lengthy exhibits previously required. In addition, the Department believes many applicants will be able to complete their applications in fewer hours than estimated due to Field Office workshops, previous participation in the section 202 direct loan application process and redesigned exhibits (e.g., the exhibit for § 889.270(c)(12) is less time consuming because much of the information may be resubmitted with minor updates from previous year write-ups (application exhibits)).

The Department expects approximately 60% of the approximately 800 applications for the new Elderly Supportive Housing Program or 480 applications, to be from previous participants in the Section 202 Direct Loan Program. Sponsors who have applied in previous years will be able to submit previous write-ups (previous application exhibits) or update all or part of previously-submitted exhibits on applicant experience (§ 889.270(c)(7)), financial capacity (§ 889.270(c) (2) and (7)), and similar issues (see e.g.,

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§ 889.270(c)(4)–(9)). New applicants who are not owners or managers of HUD projects or who have few such projects to report, will be able to complete exhibits on status of their existing HUD projects without incurring the estimated burden hours associated with applicants who have numerous HUD projects (see e.g., § 889.270(c) (5), (7), and (12)(iv)). Finally, for that large portion of section 202 applicants who are currently recipients of funding under Federal, state or local programs that underwrite supportive services, the exhibit related to provision of supportive services (§ 889.270(c)(17)) can be adapted from other, similar materials submitted to those funding agencies.

Any nonprofit organization with experience in providing housing or services for elderly people will have readily available the information needed to complete exhibits or to serve as exhibits on community ties (§ 889.270(c)(4)), experience in providing housing or services (§ 889.270(c) (5), (7) and (8)), experience serving minorities (§ 889.270(c)(7)(ii)), and description of residents and supportive services—a total of six exhibits as itemized in the Application Package distributed to potential applicants.

Given the substantial funding being provided to successful applicants, and the need to assure that applicants selected will be able to fulfill the 40-year obligation to provide housing for the eligible population, the Department believes it is in the public interest to require an application package with this level of documentation. Without the specific information provided by these exhibits, it would not be possible to satisfactorily evaluate the proposed projects and the capacity of the applicants.

The sections of the interim rule identified in the matrix below have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows: Information Collection Matrix.

TABLE 1—TABULATION OF ANNUAL REPORTING BURDEN

Description of information collection (application submission requirements) (2502–0267)	Section of CFR affected	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Part 1, Exhibit 1, Form HUD–92013 (OMB 2502–0029)	889.270(b)(a)	600	1	600	1.0	600
Exhibit 2, Information on Consultant		Not subject of OMB approval per OMB 5/1/84				
Exhibit 3, Evidence on Sponsor's nonprofit status	889.270(c)(2)	800	1	800	2.0	1,600
Exhibit 4, Evidence of Sponsor's authority to sponsor project	889.270(c)(3)	800	1	800	1.0	800
Part 2, Exhibit 5, Description of community ties	889.270(c)(4)	800	1	800	0.5	400
Exhibit 6, Form HUD–2530 (OMB 2502–0118)	889.270(c)(5)	800	1	800	0.6	480
Exhibit 7, Description of legal actions against Sponsor	889.270(c)(6)	800	1	800	0.5	400
Exhibit 8, Description of experience providing housing	889.270(c)(7)	800	1	800	3.0	2,400
Exhibit 9, Description of past involvement	889.270(c)(8)	800	1	800	3.0	2,400
Exhibit 10, Board Resolution to support project	889.270(c)(9)	800	1	800	0.4	320
Exhibit 11, Description of experience serving minorities	889.270(c)(10)	800	1	800	1.0	800
Part 3, Exhibit 12, Statement on other 202 or 811 applications submitted	889.270(c)(11)	800	1	800	2.0	1,600
Exhibit 13, Estimate of start-up expenses	889.270(c)(12)	800	1	800	4.0	3,200
Exhibit 14, Evidence of ability to provide funds for project (HUD–92290 OMB 2502–0180).	889.270(c)(13)	800	1	800	4.0	3,200
Part 4, Exhibit 15, Need for supportive housing	889.270(c)(13)	800	1	800	3.0	2,400
Exhibit 16, Description of site and evidence of site control	889.270(c)(14)	800	1	800	7.0	5,600
Exhibit 17, Statement on relocation (OMB 2502–0433)	889.270(c)(15)	[1] 40	1	40	4.0	160
Part 5, Exhibit 18, Description of proposed design of project	889.270(c)(16)	800	1	800	8.0	6400
Exhibit 19, Floor plans	889.270(c)(17)	800	1	800	5.0	4000
Part 6, Exhibit 20, Description of residents and supportive services (HUD–92013E OMB 2502–0232).	889.270(c)(18)	800	1	800	4.0	3200
Part 7, Exhibit 21, Equal Opportunity certifications		Exempt per 5 CFR Part 1320				
Exhibit 22, CHAS certification from local public official	889.270(c)(20)	[2] 800	1	800	0.4	320
Exhibit 23, Certification on provision of services	889.270(c)(21)	800	1	800	0.4	320
Exhibit 24, Certification on E.O. 12372	889.270(c)(22)	800	1	800	0.4	320
Exhibits 25–29, Certifications (SF–424 OMB 0348–0043)		Exempt per 5 CFR Part 1320				
Totals		800	1	800	55.2	41,120

[1] Based on experience, no more than 5 percent of the proposals will involve relocation.
[2] For Fiscal Year 1991, the certification from the local public official will not be required. The respondent will only be required to state, not applicable. The certification will be required beginning in Fiscal Year 1992.

List of Subjects

24 CFR Part 750

Grant Programs—housing and community development, Intergovernmental relations, Loan programs—housing and community development, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security.

24 CFR Part 885

Aged, Handicapped, Loan programs—housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 889

Aged, Low and moderate income housing, Capital advance programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, the Department amends 24 CFR parts 750 and 885 and adds a new 24 CFR part 889, as set forth below.

PART 750—DISCLOSURE AND VERIFICATION OF SOCIAL SECURITY NUMBERS AND EMPLOYER IDENTIFICATION NUMBERS BY APPLICANTS AND PARTICIPANTS IN CERTAIN HOUSING ASSISTANCE PROGRAMS

1. The authority citation for part 750 continues to read as follows:

Authority: Sec. 105, Housing and Community Development Act of 1987 (42 U.S.C. 3543); secs. 3, 6, 8, 17, 205, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437d, 1437f, 1437o, 1437(ee)); sec. 202, Housing Act of 1959 (12 U.S.C. 1701q); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 750.3 [Amended]

2. Section 750.3 is amended by revising paragraphs (i) through (l) and adding a new paragraph (m) to read as follows:

* * * * *

(i) Part 889, Supportive Housing for the Elderly.

(j) Part 900, section 23 Housing Assistance Payments Program—New Construction and Substantial Rehabilitation.

(k) Part 904, Low Rent Housing Homeownership Opportunities.

(l) Part 905, Indian Housing.

(m) Part 960, Admission to, and Occupancy of Public Housing.

3. Section 750.5 definitions of "Assistance applicant," "Entity applicant," "Individual owner applicant," and "Participant" are amended to read as follows:

§ 750.5 Definitions.

As used in this part:

Assistance applicant has the following meaning for the programs referred to in § 750.3:

(1) Parts 880, 881, 882, 883, 884, 885, 886, 887, 889 and 900: A family that seeks rental assistance under the program.

(2) Part 904: A prospective homebuyer under the program.

(3) Part 905: A prospective tenant or homebuyer under the program.

(4) Part 960: A prospective tenant under the program.

* * * * *

Entity applicant means a partnership, corporation, or any other association or entity that seeks to participate as a private owner in any of the project-based assistance programs contained in 24 CFR part 880, 881, 882, 884, 885, 886, and 889. Entity applicant does not include a public entity, such as a PHA or State Housing Finance Agency.

* * * * *

Individual owner applicant means an individual who seeks to participate as a private owner in any of the project-based assistance programs contained in 24 CFR part 880, 881, 882, 884, 885, 886 or 889.

Participant has the following meaning for the programs referred to in § 750.3:

(1) Parts 880, 881, 882, 883, 884, 885, 886, 887, 889 and 900: A family receiving rental assistance under the program.

(2) Part 904: A homebuyer under the program.

(3) Part 905: A tenant or homebuyer under the program.

(4) Part 960: A tenant under the program.

* * * * *

PART 885—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

4. The authority citation for part 885 continues to read as follows:

Authority: Sec. 202, Housing Act of 1959 (12 U.S.C. 1701q), as amended; sec. 8, United States Housing Act of 1937 (42 U.S.C. 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

5. Section 885.1(c) is revised to read as follows:

§ 885.1 Purpose and policy.

* * * * *

(c) *Applicability.* (1) This part applies to all fund reservations made before October 1, 1990.

(2) Subpart B of this part applies to projects for elderly or handicapped families that receive reservations under section 202 of the Housing Act of 1959 and housing assistance under section 8 of the United States Housing Act of 1937. No project for handicapped (primarily nonelderly) families is eligible for loans or housing assistance payments under Part B, except under a reservation of loan and contract authority made before October 1, 1986.

(3) Subpart C of this part applies to projects for nonelderly handicapped families receiving reservations under section 202 and project assistance payments under section 202(h) of the Housing Act of 1959.

6. The definition of "Handicapped person" or individual in § 885.5 is revised to read as follows:

§ 885.5 Definitions.

* * * * *

Handicapped person or individual means any adult having a physical, mental, or emotional impairment which is expected to be of long-continued and indefinite duration, substantially impedes his or her ability to live independently, and is of a nature that such ability could be improved by more suitable housing conditions. A person shall also be considered to have a disability if he or she has a developmental disability, as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(5) *i.e.*, if he or she has a severe chronic disability which that:

(1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(2) Is manifested before the person attains age twenty-two;

(3) Is likely to continue indefinitely;

(4) Results in substantial functional limitation in three or more of the following areas of major life activity:

(i) Self-care,

(ii) Receptive and expressive language,

(iii) Learning,

(iv) Mobility,

(v) Self-direction,

(vi) Capacity for independent living,

(vii) Economic self-sufficiency; and

(5) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong, or extended duration and are individually planned and coordinated. A person shall also be considered to be disabled if he or she has a chronic mental illness, *i.e.*, if he or she has a severe and persistent mental or emotional impairment that seriously limits his or her ability to live independently, and whose impairment could be improved by more suitable housing conditions. Persons infected with the human acquired immunodeficiency virus (HIV) who are disabled as a result of infection with the HIV are eligible for occupancy in section 202 projects designed for the physically disabled, developmentally disabled or chronically mentally ill depending upon the nature of the person's disability. A person whose sole impairment is alcoholism or drug addition (*i.e.*, who does not have a developmental disability, chronic mental illness or physical disability which is the disabling condition required for eligibility in a particular project) will not be considered to be disabled for the purposes of the section 202 program.

7. A new § 885.9 is added, to read as follows:

§ 885.9 Displacement, relocation, and real property acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, Sponsors and Borrowers shall assure that they have

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taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Relocation assistance for displaced persons.* A displaced person (defined in paragraph (f) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4201–4655), as implemented by 49 CFR part 24. A displaced person shall be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601–19), and, if the comparable replacement dwellings are located in areas of minority concentration, minority persons also must be given, if possible, referrals to suitable, decent, safe and sanitary replacement dwellings not located in such areas.

(c) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(d) *Appeals.* A person who disagrees with the Sponsor's/Borrower's determination concerning whether the person qualifies as a "displaced person," or with the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the Sponsor/Borrower. A lower-income person who is dissatisfied with the Sponsor's/Borrower's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(e) *Responsibility of Sponsor/Borrower.* The Sponsor/Borrower shall certify that it will comply (i.e., provide assurance of compliance, as required by 49 CFR part 24) with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and shall ensure such compliance notwithstanding any third party's contractual obligation to comply with these provisions. The Sponsor/Borrower shall maintain records in sufficient detail to demonstrate compliance with the provisions of this section. The Sponsor/Borrower shall maintain data on the race, ethnic, gender, and handicap status of displaced persons.

(f) *Definition of a displaced person.* (1) For purposes of this section, the term "displaced person" means a person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. This includes any permanent, involuntary move for an assisted project including any permanent move from the real property that is made:

(i) After notice by the Sponsor/Borrower to move permanently from the property if the move occurs on or after (A) the date of the submission of an application to HUD that is later approved, if the Sponsor has control of an appropriate site; or (B) the date that the Sponsor obtains control of an approvable site, if such control is obtained after the submission of an application to HUD:

(ii) Before the date described in paragraph (f)(1)(i) of this section, if the Sponsor, Borrower or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project;

(iii) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs;

(A) The tenant moves after execution of the Agreement between the Sponsor/Borrower and HUD, and the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex upon completion of the project under reasonable terms and conditions. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(*1*) The tenant's monthly rent and estimated average monthly utility costs before the Agreement; or

(*2*) The total tenant payment, as determined under 24 CFR 813.107, if the tenant is lower income, or 30 percent of gross household income, if the tenant is not lower income; or

(B) The tenant is required to relocate temporarily, does not return to the building/complex, and either

(*1*) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation or

(*2*) Other conditions of the temporary relocation are not reasonable; or

(C) The tenant is required to move to another dwelling in the same building/complex but is not offered reimbursment for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (f)(1) of this section, however, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance at URA levels), if:

(i) The person has been evicted for cause based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance.

(ii) The person moved into the property after the submission of the application and, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., displacement, temporary relocation or a rent increase) and the fact that he or she will not qualify as a displaced person as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project;

(3) The Sponsor/Borrower may request, at any time, a HUD determination of whether a displacement is or would be covered by this section.

8. Section § 885.740 (e) is revised to read as follows:

§ 885.740 Other Federal requirements.

* * * * *

(e) *Displacement, relocation, and acquisition*—(1) *Minimizing displacement.* Consistent with the other goals and objectives of this part, Sponsors and Borrowers shall assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(2) *Relocation assistance for displaced persons.* A displaced person (defined in paragraph (e)(6) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4201–4655), as implemented by 49 CFR part 24. A displaced person shall be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601–19), and, if the comparable replacement dwellings are located in areas of minority concentration, minority persons also shall be given, if possible, referrals to suitable, decent, safe and sanitary replacement dwellings not located in such areas.

(3) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(4) *Appeals.* A person who disagrees with the Sponsor's/Borrower's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the Sponor/Borrower. A lower-income person who is dissatisfied with the Sponsor's/Borrower's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(5) *Responsibility of Sponsor/Borrower.* The Sponsor/Borrower shall certify that it will comply (i.e., provide assurance of compliance, as required by 49 CFR part 24) with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and shall ensure such compliance notwithstanding any third party's contractual obligation to comply with these provisions. The Sponsor/Borrower shall maintain records in sufficient detail to demonstrate compliance with the provisions of this section. The Sponsor/Borrower shall maintain data on the race, ethnic, gender, and handicap status of displaced persons.

(6) *Definition of a displaced person.* (i) For purposes of this paragraph § 885.740(e), the term "displaced person" means a person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. This includes any permanent, involuntary move for an assisted project including any permanent move from the real property that is made:

(A) After notice by the Sponsor or Borrower to move permanently from the property if the move occurs on or after:

(*1*) The date of the submission of an application to HUD that is later approved, if the Sponsor has control of an appropriate site; or

(*2*) The date that the Sponsor obtains control of an approvale site, if such control is obtained after the submission of an application to HUD;

(B) Before the date described in paragraph (6)(i)(A) of this section, if the Sponsor, Borrower or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project; or

(C) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:

(*1*) The tenant moves after execution of the agreement between the Borrower and HUD and the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex upon completion of the project under reasonable terms and conditions. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of

(*i*) The tenant's monthly rent and estimated average monthly utility costs before the agreement; or

(*ii*) The total tenant payment, as determined under 24 CFR 813.107, if the tenant is lower income, or 30 percent of gross household income, if the tenant is not lower income; or

(*2*) The tenant is required to relocate temporarily, does not return to the building/complex, and either

(*i*) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation or

(*ii*) Other conditions of the temporary relocation are not reasonable, or

(*3*) The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(ii) Notwithstanding the provisions of paragraph (e)(6)(i) of this section, however, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance at URA levels), if:

(A) The person has been evicted for cause based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance.

(B) The person moved into the property after the submission of the application and, before signing a lease and commencing occupancy, received written notice of the project, its possible impact on the person (e.g., displacement, temporary relocation, or a rent increase) and the fact that he or she will not qualify as a displaced person as a result of the project;

(C) The person is ineligible under 49 CFR 24.2(g)(2); or

(D) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project;

(iii) The Sponsor (Borrower) may request, at any time, a HUD determination of whether a displacement is or would be covered by this section.

9. In § 885.780, paragraph (a)(4) is revised to read:

(a) * * *

(4) A statement that:

(i) Identifies all persons (families, individuals, businesses and nonprofit organizations (identified by race/minority group, and status as owners or tenants) occupying the property on the date of submission of the loan application (or date of initial site control, if later);

(ii) Indicates the estimated cost of relocation payments and other services; and

(iii) Identifies the staff organization that will carry out the relocation activities. If any of the relocation costs will be funded from sources other than the section 202 loan, the Sponsor must provide evidence of a firm commitment of these funds.

* * * * *

10. A new part 889 is added to chapter VIII, title 24 of the Code of Federal Regulations, to read as follows:

PART 889—SUPPORTIVE HOUSING FOR THE ELDERLY

Subpart A—General

Sec.

889.100 Purpose and policy.
889.105 Definitions.

Subpart B—Application Procedures and Program Requirements

889.200 Allocation of authority.
889.205 Notice of fund availability and invitations for applications.
889.210 Project standards.
889.215 Limits on number of units.
889.220 Design and cost standards.
889.225 Prohibited facilities.
889.230 Site and neighborhood standards.
889.235 Prohibited relationships.
889.240 Amount and terms of capital advances.
889.245 Development cost limits.
889.250 Owner deposit (Minimum Capital Investment).
889.255 Operating cost standards.
889.260 Provision of services.
889.265 Other Federal requirements.
889.270 Application contents.
889.275 Disclosure and verification of Social Security and Employer Identification Numbers by owners.

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Subpart C—Selection of Applications and Duration of Fund Reservations

889.300 Review of applications for fund reservation.
889.305 Approval of applications.
889.310 Duration of fund reservations.

Subpart D—Capital Advance

889.400 Repayment of capital advance.

Subpart E—Project Rental Assistance Contracts [Reserved]

Subpart F—Project Management [Reserved]

Subpart G—Technical Assistance

889.700 Technical assistance.

Authority: Sec. 202, Housing Act of 1959, as amended (12 U.S.C. 1701q); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General

§ 889.100 Purpose and policy.

(a) *Purpose.* The program under this part provides Federal capital advances and project rental assistance under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) for housing projects serving elderly households. The housing projects shall provide the necessary services for the occupants which may include, but are not limited to: Health, continuing education, welfare, informational, recreational, homemaking, meal and nutritional services, counseling, and referral services, as well as transportation where necessary to facilitate access to these services.

(b) *General policy.* A capital advance made under this part shall be used to finance the construction or rehabilitation of a structure or portion thereof or the acquisition of a structure from the Resolution Trust Corporation to provide supportive housing for the elderly and may include the cost of real property acquisition, site improvement, conversion, demolition, relocation and other expenses of supportive housing for the elderly.

(c) *Applicability.* This part applies to projects for the elderly that receive capital advances and project rental assistance payments under section 202 of the Housing Act of 1959, as amended.

§ 889.105 Definitions.

As used in this part—

Acquisition means the purchase (or otherwise obtaining title to) of existing housing and related facilities from the Resolution Trust Corporation.

Act means section 202 of the Housing Act of 1959, as amended by section 801 of the National Affordable Housing Act, 12 U.S.C. 1701q.

Activities of daily living (ADL) means eating, dressing, bathing, grooming and household management activities as further described as follows:

(1) *Eating:* May need assistance with cooking, preparing or serving food, but *must* be able to feed self);

(2) *Bathing:* May need assistance in getting in and out of the shower or tub, but *Must* be able to wash self);

(3) *Grooming:* May need assistance in washing hair, but *Must* be able to take care of personal appearance;

(4) *Dressing: Must be able* to dress self, but may need occasional assistance; and

(5) *Home management activities:* May need assistance in doing housework, grocery shopping or laundry, or getting to and from activities such as going to the doctor and shopping, but *Must* be mobile. The mobility requirement does not exclude persons in wheelchairs or those requiring mobility devices.

Affiliated entities means entities that the field office determines to be related to each other in such a manner that it is appropriate to treat them as a single entity. Such relationship shall include any identity of interest among such entities or their principals and the use by any otherwise unaffiliated entities of a single Sponsor or of Sponsors that have any identity of interest themselves or their principals.

Agreement to enter into project rental assistance contract (APRAC) means the agreement between the Owner and HUD which provides that, upon satisfactory completion of the project, HUD will enter into the PRAC with the Owner.

Annual income is defined in part 813 of this chapter.

Application means the application for a fund reservation, including all required forms and exhibits submitted in response to an invitation for such applications.

Assistant Secretary means the Assistant Secretary for Housing—Federal Housing Commissioner.

Assisted unit means a dwelling unit that is eligible for assistance under a PRAC.

Congregate space (hereinafter referred to as community space) means space for cafeterias or dining halls, community rooms or buildings, workshops, adult day health facilities, or other outpatient health facilities, or other essential service facilities. Community spaces exclude offices, halls, mechanical rooms, laundry rooms, parking areas, dwelling units and lobbies.

Development cost means the cost of construction, rehabilitation of housing and related facilities, and of the land on which they are located, including necessary site improvements and such other expenses as may be determined by the Assistant Secretary properly to be attributable to the capital cost of the construction, rehabilitation or development of the housing and related facilities. Development Cost also means the cost of acquiring existing housing and related facilities from the Resolution Trust Corporation and the cost of rehabilitation, alteration, conversion or improvement, including the cost of the land on which the housing and related facilities are located.

Elderly person means a household composed of one or more persons at least one of whom is 62 years of age or more at the time of initial occupancy.

Field office means any HUD Area, Service, Insuring or Regional Office which is delegated authority to process applications under the section 202 program.

Frail elderly means an elderly person who is unable to perform at least 3 activities of daily living as defined in this section. Owners may establish additional eligibility requirements (acceptable to the Secretary) based on the standards in local supportive services programs.

Household (eligible household) means an elderly household that meets the project occupancy requirements approved by HUD and, if the household occupies an assisted unit, meets the very low-income requirements described in § 813.102 of this chapter, as modified by the definition of annual income in this section.

Housing and related facilities means rental housing structures constructed, rehabilitated or acquired from the Resolution Trust Corporation as permanent residences for use by elderly households. The term includes necessary community space. This term does not include nursing homes, hospitals, intermediate care facilities, or transitional care facilities.

Independent public accountant means a certified public accountant or a licensed or registered public accountant, having no business relationship with the Owner or Sponsor except for the performance of audit, systems work and tax preparation. If not certified, the independent public accountant must have been licensed or registered by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970. In States that do not regulate the use of the title "public accountant", only certified public accountants may be used.

Operating costs means HUD-approved expenses related to the provision of housing and includes:

(1) Administrative expenses, including salary and management expenses related to the provision of shelter and coordination of services.

(2) Maintenance expenses, including routine and minor repairs and groundskeeping.

(3) Security expenses.

(4) Utilities expenses, including gas, oil, electricity, water, sewer, trash removal, and extermination services. Operating costs exclude telephone services for households.

(5) Taxes and insurance.

(6) Allowances for reserves.

(7) Allowances for services.

Owner means a private nonprofit corporation which may be established by the Sponsor and which will receive a capital advance and project rental assistance payments to develop and operate supportive housing for the elderly as its legal owner. Private nonprofit organization means any incorporated private institution or foundation:

(1) No part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;

(2) Which has a governing board.

(i) The membership of which is selected in a manner to assure that there is significant representation of the views of the community in which such housing is located, and

(ii) Which is responsible for the operation of the housing assisted under this part; and

(3) Which is approved by the Secretary as to administrative and financial responsibility.

Owner does not mean a public body or the instrumentality of any public body. The purposes of the Owner must include the promotion of the welfare of the elderly. The Owner may not be controlled by or under the direction of persons or firms seeking to derive profit or gain therefrom. Because of the nonprofit nature of the section 202 program, no officer or director, or trustee, member, stockholder or authorized representative of the Owner is permitted to have any financial interest in any contract in connection with the rendition of services, the provision of goods or supplies, project management, procurement of furnishings and equipment, construction of the project, procurement of the site or other matters whatsoever.

PRAC (project rental assistance contract) means the contract entered into by the Owner and HUD setting forth the rights and duties of the parties with respect to the project and the payments under the PRAC.

Project account means a specifically identified and segregated account for each project which is established out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the PRAC each year.

Project rental assistance payment means the payment made by HUD to the Owner for assisted units as provided in the PRAC. The payment is the difference between the total tenant payment and the HUD-approved per unit operating expenses except for expenses related to items not eligible under design and cost provisions. An additional payment is made to a household occupying an assisted unit when the utility allowance is greater than the total tenant payment. A project rental assistance payment, known as a "vacancy payment", may be made to the Owner when an assisted unit is vacant, in accordance with the terms of the PRAC.

Region means any one of the ten HUD Regions.

Rehabilitation means the improvement of the condition of a property from deteriorated or substandard to good condition. Rehabilitation may vary in degree from the gutting and extensive reconstruction to the cure of substantial accumulation of deferred maintenance. Cosmetic improvements alone do not qualify as rehabilitation under this definition. Rehabilitation may also include renovation, alteration or remodeling for the conversion or adaptation of structurally sound property to the design and condition required for use under this part or the repair or replacement of major building systems or components in danger of failure. Improvement of an existing structure must require 15 percent or more of the estimated development cost to rehabilitate the project to a useful life of 55 years.

Replacement Reserve Account means a project account into which specified funds are deposited and which may be used only with the approval of the Secretary for repairs, replacement and capital improvements to the project.

Secretary means the Secretary of Housing and Urban Development.

Services expenses means those costs needed to provide the necessary services for the elderly tenants which may include, but are not limited to: Health related activities, continuing education, welfare, informational, recreational, homemaking, meal and nutritional services, counseling, and referral services as well as transportation where necessary to facilitate access to these services.

Sponsor means any private nonprofit entity:

(1) No part of the net earnings of which inures to the benefit of any private shareholder, member, founder, contributor or individual;

(2) Which entity is not controlled by, or under the direction of persons or firms seeking to derive profit or gain therefrom; and

(3) Which is approved by the Secretary as to administrative and financial capacity and responsibility.

"Sponsor" does not mean a public body or the instrumentality of a public body. Because of the nonprofit nature of the section 202 program, no officer or director of the Sponsor is permitted to have any financial interest in any contract with the Owner in connection with the rendition of services, the provision of goods or supplies, procurement of furnishings and equipment, construction of the project, procurement of the site or other matters whatsoever. The prohibition in the preceding sentence does not apply to any management contracts (including the management fees associated therewith) entered into by the Owner with the Sponsor or its nonprofit affiliate. In the case of a Sponsor or its nonprofit affiliate managing the project where persons are in a paid capacity with either the Sponsor or nonprofit affiliate, only two such persons would be permitted to serve as directors of the nonprofit organization (Owner) and only in a non-voting capacity.

Start-up expenses mean necessary costs (to plan a section 202 project) incurred by the Sponsor or Owner prior to initial closing.

State means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States.

Supportive housing for the elderly means housing that is designed

(1) To meet the special physical needs of elderly persons and

(2) To accommodate the provision of supportive services that are expected to be needed, either initially or over the useful life of the housing, by the category or categories of elderly persons that the housing is intended to serve.

Tenant payment to Owner equals total tenant payment less utility allowance, if any.

Total tenant payment means the monthly amount defined in, and determined in accordance with part 813 of this chapter.

Utility allowance is defined in part 813 of this chapter and is determined or approved by HUD.

Utility reimbursement is defined in part 813 of this chapter.

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Vacancy payment means the project assistance payment made to the Owner by HUD for a vacant assisted unit if certain conditions are fulfilled, as provided in the PRAC. The amount of the vacancy payment is 80 percent of the HUD-approved per unit operating cost prorated based on the length of the vacancy period. No payment shall be made for a vacancy period longer than 60 days.

Very low-income has the same meaning as given the term "very low-income" under section 3(b)(2) of the United States Housing Act of 1937 (*i.e.*, generally 50 percent or less of the median family income for the area with adjustment for smaller and larger households).

Subpart B—Application Procedures and Program Requirements

§ 889.200 Allocation of authority.

In accordance with 24 CFR part 791, the Assistant Secretary will allocate the amounts available for capital advances for supportive housing for elderly households, less any amounts made available for amendments of fund reservations made in prior years and set aside for technical assistance.

§ 889.205 Notice of fund availability and invitations for applications.

(a) Announcement of fund availability. Following an allocation of authority under § 889.200, HUD shall publish a Notice of Fund Availability (NOFA) in the **Federal Register** indicating:

(1) The amount of capital advance authority (and approximate number of units) being made available for housing for elderly households within the Field Office;

(2) The date by which the Field Offices will publish Invitations for Applications for Section 202 Fund Reservations;

(3) The deadline date for receipt of applications; and

(4) Other appropriate guidance to prospective Sponsors.

(b) Invitation for applications. Each Field Office receiving an allocation shall publish an invitation for applications for section 202 fund reservations in newspapers of general circulation and any minority newspapers serving the Field Office jurisdiction. Immediately after the NOFA is published, the Field Office shall also notify minority media, minority organizations involved in housing and community development, and groups with a special interest in housing for the elderly, including the State and area agencies on aging and the applicable state single point of contact (Executive Order 12372). Copies of the Invitation shall be available in the Field Office. The Field Office will base its determination of the acceptance of each application for a fund reservation on the information provided in the application.

(c) The Invitation shall state:

(1) The area(s) where capital advance authority is being made available, the amount of such authority and the approximate number of units this amount is expected to assist.

(2) That copies of the applicable regulations, instructions, forms and other program information may be obtained at the Field Office.

(3) The time and place of the Field Office workshop.

(4) The date, time, and place applications will be accepted.

(5) The deadline date for receipt of applications.

§ 889.210 Project standards.

(a) *Property standards.* Projects under this subpart must comply with HUD Minimum Property Standards.

(b) *Limit on number of bedrooms.* Resident units in projects under this subpart are limited to efficiencies or one-bedroom units. If a resident manager is proposed for a project, up to two-bedrooms could be provided for the resident manager unit.

(c) *Accessibility requirements.* Projects under this subpart must comply with Uniform Federal Accessibility Standards and HUD's implementing regulations at 24 CFR part 40, appendix A, section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8, and for new construction multifamily housing projects, the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100.

§ 889.215 Limits on number of units.

(a) No organization shall participate as Sponsor or Co-sponsor in the filing of an application or applications for a reservation of section 202 funds under this subpart in a single region in a single fiscal year in excess of that necessary to finance the construction or rehabilitation of a structure or portion of a structure, or acquisition from the Resolution Trust Corporation of 300 units of housing and related facilities. This limit shall apply to organizations that participate as Co-sponsors regardless of whether the Co-sponsors are affiliated or non-affiliated entities.

(b) The national limit for any one applicant is 10 percent of the total units allocated in all Regions.

(c) Affiliated entities which submit separate applications shall be deemed to be a single entity for purposes of these limits.

§ 889.220 Design and cost standards.

(a) *Restrictions on amenities.* Projects must be modest in design. Amenities not eligible for HUD funding include individual unit balconies and decks, atriums, bowling alleys, swimming pools, saunas and jacuzzis. Dishwashers, trash compactors, and washers and dryers in individual units will not be funded. The use of durable materials to control or reduce maintenance, repair and replacement costs is not an excess amenity.

(b) *Community spaces.* The costs of construction of community spaces may not exceed 10 percent of the total cost of construction, except as provided in paragraph (c) of this section.

(c) *Exceptions.* HUD may approve a project that does not comply with the design and cost standards of paragraphs (a) and (b) of this section if:

(1) The Sponsor demonstrates a willingness and ability to contribute the incremental development cost and continuing operating costs associated with the additional amenities or design features; or

(2) The proposed project involves rehabilitation or acquisition from the Resolution Trust Corporation, the additional amenities or design features were incorporated into the existing structure before the submission of the application, and the total development cost of the project with the additional amenities or design features does not exceed the cost limits described in § 889.245, unless the Sponsor indicates a willingness to pay the excess costs from other than capital advance proceeds.

§ 889.225 Prohibited facilities.

Project facilities may not include commercial spaces (this does not include areas for convenience items operated by the project), infirmaries, nursing stations, and spaces for overnight care.

§ 889.230 Site and neighborhood standards.

All sites must meet the following site and neighborhood requirements:

(a) The site must be adequate in size, exposure and contour to accommodate the number and type of units proposed, and adequate utilities (water, sewer, gas and electricity) and streets must be available to service the site.

(b) The site and neighborhood must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, the Fair Housing Act, Executive Order 11063 and implementing HUD regulations.

(c) New construction sites must meet the following site and neighborhood requirements:

(1) The site must not be located in an area of minority elderly concentration except as permitted under paragraph (c)(2) of this section, and must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority elderly to non-minority elderly residents in the area.

(2) A project may be located in an area of minority elderly concentration only if:

(i) Sufficient, comparable opportunities exist for housing for minority elderly households, in the income range to be served by the proposed project, outside areas of minority concentration (see paragraph (c)(3) of this section for further guidance on this criterion); or

(ii) The project is necessary to meet overriding housing needs that cannot be met in that housing market area (see paragraph (c)(4) of this section for further guidance on this criterion).

(3)(i) "Sufficient" does not require that in every locality there be an equal number of assisted units within and outside of areas of minority concentration. Rather, application of this standard should produce a reasonable distribution of assisted units each year which over a period of several years will approach an appropriate balance of housing opportunities within and outside areas of minority concentration. An appropriate balance in any jurisdiction must be determined in light of local conditions affecting the range of housing choices available for very low-income minority elderly households and in relation to the racial mix of the locality's population.

(ii) Units may be considered to be "comparable opportunities" if they have the same household type (elderly) and tenure type (owner/renter); require approximately the same total tenant payment; serve the same income group; are located in the same housing market; and are in standard condition.

(iii) Application of this sufficient, comparable opportunities standard involves assessing the overall impact of HUD-assisted housing on the availability of housing choices for very low-income minority elderly households in and outside areas of minority concentration, and must take into account the extent to which the following factors are present, along with any other factor relevant to housing choice:

(A) A significant number of assisted housing units are available outside areas of minority concentration.

(B) There is significant integration of assisted housing projects constructed or rehabilitated in the past ten years, relative to the racial mix of the eligible population.

(C) There are racially integrated neighborhoods in the locality.

(D) Programs are operated by the locality to assist minority elderly households who wish to find housing outside areas of minority concentration.

(E) Minority elderly households have benefitted from local activities (*e.g.*, acquisition and write-down of sites, tax relief programs for homeowners, acquisitions of units for use as assisted housing units) undertaken to expand choice for minority households outside of areas of minority concentration.

(F) A significant proportion of minority elderly households has been successful in finding units in non-minority areas under the section 8 Certificate and Housing Voucher programs.

(G) Comparable housing opportunities have been made available outside areas of minority concentration through other programs.

(4) Application of the "overriding housing needs" criterion, for example, permits approval of sites that are an integral part of an overall local strategy for the preservation or restoration of the immediate neighborhood and of sites in a neighborhood experiencing significant private investment that is demonstrably changing the economic character of the area (a "revitalizing area"). An "overriding housing need", however, may not serve as the basis for determining that a site is acceptable if the only reason the need cannot otherwise be feasibly met is that discrimination on the basis of race, color, creed, sex, or national origin renders sites outside areas of minority concentration unavailable or if the use of this standard in recent years has had the effect of circumventing the obligation to provide housing choice.

(d) The neighborhood must not be one which is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.

(e) The housing must be accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.

§ 889.235 Prohibited relationships.

(a) *Conflicts of interest.* Officers, directors, trustees, members, stockholders and authorized representatives of the Sponsor, and officers and directors of the Owner may not have any financial interest in any contract in connection with the rendition of services, the provision of goods or supplies, project management, procurement of furnishings or equipment, construction of the project, procurement of the site or other matters related to the development and operation of the project. Management contracts (including associated management fees) entered into by the Owner with the Sponsor or the Sponsor's nonprofit affiliate will not constitute a conflict of interest if no more than two persons salaries by the Sponsor or management affiliate serve as nonvoting directors on the Owner's board of directors.

(b) *Interest in earnings.* No part of the net earnings of the Owner or Sponsor may inure to the benefit of any private shareholder, contributor, or individual.

(c) *Control of owner or Sponsor.* Neither the Owner nor the Sponsor may be controlled by, or under the direction of, persons or entities seeking to derive profit or gain as a result of activities undertaken by the Owner or Sponsor.

(d) *Identity of interest.* A person or an entity may not provide services to a project in more than one of the following capacities: attorney, architect, contractor, housing consultant, management agent, or seller of the site for the project, except that the same person or entity may serve a project as management agent and housing consultant.

§ 889.240 Amount and terms of capital advances.

(a) *Amount of capital advances.* The amount of capital advances approved shall be the amount stated in the notice of fund reservation, including any adjustment approved by HUD before the final closing. The amount of capital advances may not exceed the smallest of the amounts provided in § 889.245.

(b) *Estimated development cost.* The amount of the capital advance may not exceed the total estimated development cost of the project (as determined by HUD), less the incremental development cost associated with excess amenities and design features to be paid for by the Sponsor under § 889.220.

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§ 889.245 Development cost limits.

(a) To determine the capital advance amount to be reserved for new construction or rehabilitation projects for the elderly, the following development cost limits, shall be used:

(1) *For nonelevator structures:*

$28,032 per family unit without a bedroom;
$32,321 per family unit with one bedroom;
$38,979 per family unit with two bedrooms.

(2) *For elevator type structures:*

$29,500 per family unit without a bedroom;
$33,816 per family unit with one bedroom;
$41,120 per family unit with two bedrooms.

(3) *Increased capitol advance limits.*

(i) The Assistant Secretary may increase the cost limits set forth in paragraphs (a) (1) and (2) of this section by up to 140 percent in any geographic area where the cost levels require, and may increase the cost limits by up to 100 percent on a project-by-project basis.

(ii) If the Assistant Secretary finds that high construction costs in Alaska, Guam, or Hawaii make it infeasible to construct dwellings, without the sacrifice of sound standards of construction, design, and livability, within the cost limits provided in this paragraph (a), the amount of capital advances may be increased to compensate for such costs. The increase may not exceed the limits established under this section (including any high cost area adjustment) by more than 50 percent.

(4) *Rehabilitation projects—additional limits.* A capital advance that involves a project to be rehabilitated is subject to the following additional limitations:

(i) *Property held in fee.* If the Sponsor is the fee simple owner of a property unencumbered by a mortgage, the capital advance amount may not exceed 100 percent of the cost of the proposed rehabilitation.

(ii) *Property subject to existing mortgage.* If the Sponsor owns the property subject to an outstanding indebtedness that is to be refinanced with part of the capital advance, the maximum capital advance amount may not exceed the cost of rehabilitation plus the portion of the outstanding indebtedness that does not exceed the fair market value of the land and improvements before the rehabilitation, as determined by HUD.

(5) *Property to be acquired.* If the property is to be acquired by the Owner from an entity other than the Sponsor, and the purchase price is to be financed with a part of the section 202 capital advance, the maximum capital advance amount may not exceed the cost of the rehabilitation plus the portion of the purchase price that does not exceed the fair market value of such land and improvements before the rehabilitation, as determined by HUD.

(6) *Leaseholds.* If a capital advance is secured by a leasehold estate rather than by a fee simple estate, the amount of the capital advance attributable to the cost of the property may not exceed the value of the leasehold estate.

(b) Periodically, the Secretary shall establish the development cost limits by market area for various types and sizes of supportive housing for the elderly by publishing a notice of the cost limits in the Federal Register. The cost limits shall reflect:

(1) The cost of construction or rehabilitation of supportive housing for the elderly that meets applicable State and local housing and building codes;

(2) The cost of movables (*e.g.*, movable equipment) necessary to the basic operation of the housing, as determined by the Secretary;

(3) The cost of special design features necessary to make the housing accessible to elderly persons;

(4) The cost of special design features necessary to make individual dwelling units meet the physical needs of elderly project residents;

(5) The cost of community space necessary to accommodate the provision of supportive services to elderly project residents;

(6) If the housing is newly constructed, the cost of meeting the energy efficiency standards promulgated by the Secretary in accordance with section 109 of the National Affordable Housing Act; and

(7) The cost of land, including necessary site improvement.

(c) Annual Adjustments. The Secretary shall adjust the cost limits not less than once annually to reflect changes in the general level of construction or rehabilitation costs.

(d) Prevailing cost data. In establishing development cost limits for a given market area under this section, the Secretary shall use data that reflect currently prevailing costs of construction or rehabilitation, and land acquisition in the area.

(e) RTC Properties. In the case of existing housing and related facilities to be acquired from the Resolution Trust Corporation under section 21A(c) of the Federal Home Loan Bank Act, the cost limits shall include:

(1) The cost of acquiring such housing;

(2) The cost of rehabilitation, alteration, conversion, or improvement, including the rehabilitation thereof; and

(3) The cost of the land on which the housing and related facilities are located.

In the case of existing housing and related facilities which require no rehabilitation and are to be acquired from the Resolution Trust Corporation, 85 percent of the development cost limits identified in paragraph (a) of this section shall be used to calculate the capital advance amount to be reserved.

(f) The Secretary shall use the development cost limits established under paragraphs (a) and (d) of this section adjusted by locality to calculate the fund reservation amount of the capital advance to be made available to individual Owners. Owners which incur actual development costs that are less than the amount of the initial fund reservation shall be entitled to retain 50 percent of the savings in a Replacement Reserve Account. Such percentage shall be increased to 75 percent for Owners which add energy efficiency features which:

(1) Exceed the energy efficiency standards promulgated by the Secretary in accordance with section 109 of the National Affordable Housing Act;

(2) Substantially reduce the life-cycle cost of the housing;

(3) Reduce gross rent requirements; and

(4) Enhance tenant comfort and convenience.

(g) Secretary approval. The Replacement Reserve Account established under paragraph (f) of this section may only be used with the approval of the Secretary for repairs, replacements and capital improvements to the project.

(h) Design flexibility. The Secretary shall, to the extent practicable, give Owners the flexibility to design housing appropriate to their locations and proposed resident population subject to HUD's design and cost standards.

(i) An Owner shall be permitted voluntarily to provide funds from non-Federal sources for amenities and other features of appropriate design and construction suitable for supportive housing for the elderly if the cost of such amenities is:

(1) Not financed with the capital advance, and

(2) Is not taken into account in determining the amount of Federal assistance or of the tenant payments.

§ 889.250 Owner deposit (Minimum Capital Investment).

The Owner must deposit one-half of one percent (0.5%) of the HUD-approved capital advance not to exceed $25,000 in a special escrow account to assure the Owner's commitment to the housing. The Minimum Capital Investment will be placed in escrow at the initial closing of the capital advance and will be held by HUD or by a HUD-approved escrow agent. If construction starts within the initial 18 months of the fund reservation, HUD will waive one-half of the Minimum Capital Investment, which would be required under the aforementioned formula, at the time of initial closing. If final closing occurs within six months after construction completion, HUD will approve the return of all remaining funds not used to cover operating deficits during the first three years of operation. If final closing does not occur within six months after project completion, unless extended by the Field Office for up to two months due to justifiable delay, the balance remaining at the end of three years will not be returned and shall be deposited in the Replacement Reserve Account.

§ 889.255 Operating cost standards.

HUD shall establish operating cost standards based on the average annual operating cost of comparable housing for elderly persons in each Field Office, and shall adjust the standard annually based on appropriate indices of increase in housing cost such as the Consumer Price Index. HUD may adjust the operating cost standard applicable to an approved project to reflect such factors as differences in costs based on location within the field office jurisdiction. The operating cost standard will be used to determine the amount of the project assistance initially reserved for a project under § 889.305(a)(2). The Owner must submit estimates based on project design, maintenance and services provided at the time of issuance of conditional and firm commitment stages of processing.

§ 889.260 Provision of services.

(a) In carrying out the provisions of this part, the Secretary shall ensure that housing assisted under this part provides a package of services tailored to the needs of the category or categories of elderly persons (including frail elderly persons) occupying such housing. Such services may include:

(1) Meal service adequate to meet nutritional need;

(2) Housekeeping aid;

(3) Personal assistance;

(4) Transportation services;

(5) Health-related services; and

(6) Such other services as the Secretary deems essential for maintaining independent living.

(b) The Secretary shall ensure that Owners have the managerial capacity to:

(1) Assess on the ongoing service needs of residents;

(2) Coordinate the provision of supportive services and tailor such services to the individual needs of residents; and

(3) Seek on a continuous basis new sources of assistance to ensure the long-term provision of supportive services. Any cost associated with this paragraph shall be an eligible cost under the contract for project rental assistance. Any cost associated with the employment of a service coordinator shall also be an eligible cost except where the project is receiving congregate housing services assistance under section 802 of the National Affordable Housing Act. The HUD-approved service costs will be an eligible expense to be paid from project rental assistance, not to exceed $15 per unit per month. The balance of service costs shall be provided from other sources, which may include co-payment by the tenant receiving the service. Such co-payment shall not be included in the Total Tenant Payment.

§ 889.265 Other Federal requirements.

(a) *Nondiscrimination and equal opportunity.* Participation in this program requires compliance with:

(1) The requirements of the Fair Housing Act (42 U.S.C. 3601–19) and its implementing regulations at 24 CFR part 100; Executive Order No. 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1;

(2) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against otherwise qualified individuals with handicaps under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;

(3) The requirements of Executive Order No. 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR part 60;

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects and the implementing regulations at 24 CFR part 135;

(5) The requirements of Executive Order Nos. 11625, 12432, and 12138 (Minority and Women-Owned Business Enterprises);

(6) The affirmative fair housing marketing requirements of 24 CFR part 200, subpart M and the implementing regulations at 24 CFR part 108; and

(7) The fair housing advertising guidelines and poster regulations, 24 CFR parts 109 and 110.

(b) *Environmental.* The National Environmental Policy Act of 1969, HUD's implementing regulations at 24 CFR part 50, including the related authorities described in 24 CFR 50.4, and the Coastal Barrier Resources Act (16 U.S.C. 3601) apply to this program.

(c) *Flood insurance.* The Flood Disaster Protection Act of 1973 (42 U.S.C. 4001) applies to this program.

(d) *Labor standards.* (1) Any contract for the construction (including rehabilitation) of affordable housing with 12 or more units assisted with funds made available under this part shall contain a provision requiring that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a–276a-5), shall be paid to all laborers and mechanics employed in the development of affordable housing involved, and such contracts shall also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (42 U.S.C. 327–333).

(2) The prevailing wage provisions of paragraph (d)(1) of this section shall not apply to an individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work.

(3) Sponsors, Owners, contractors and subcontractors must comply with all related rules, regulations, and requirements.

(e) *Displacement, relocation, and real property acquisition*—(1) *Minimizing displacement.* Consistent with the other goals and objectives of this part, Sponsors and Owners shall assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(2) *Relocation assistance for displaced persons.* A displaced person (defined in paragraph (e)(6) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4201–4655), as implemented by 49 CFR part 24. A displaced person shall be advised of his

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or her rights under the Fair Housing Act (42 U.S.C. 3601–19), and, if the comparable replacement dwellings are located in areas of minority concentration, minority persons also must be given, if possible, referrals to suitable, decent, safe and sanitary replacement dwellings not located in such areas.

(3) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(4) *Appeals.* A person who disagrees with the Sponsor's/Owner's determination concerning whether the person qualifies as a "displaced person," or with the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the Sponsor/Owner. A lower-income person who is dissatisfied with the Sponsor's/Owner's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(5) *Responsibility of Sponsor/Owner.* The Sponsor/Owner shall certify that it will comply (i.e., provide assurance of compliance, as required by 49 CFR part 24) with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and shall ensure such compliance notwithstanding any third party's contractual obligation to comply with these provisions. The Sponsor/Owner shall maintain records in sufficient detail to demonstrate compliance with the provisions of this paragraph. The Sponsor/Owner shall maintain data on the race, ethnic, gender, and handicap status of displaced persons.

(6) *Definition of a displaced person.* (i) For purposes of this paragraph, the term "diplaced person" means a person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. This includes any permanent, involuntary move for an assisted project including any permanent move from the real property that is made:

(A) After notice by the Sponsor/Owner to move permanently from the property if the move occurs on or after:

(*1*) The date of the submission of an application to HUD that is later approved, if the Sponsor has control of an appropriate site; or

(*2*) The date that the Sponsor obtains control of an approval site, if such control is obtained after the submission of an application to HUD;

(B) Before the date described in (e)(6)(i)(A) of this paragraph, if the Sponsor, Owner or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project;

(C) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:

(*1*) The tenant moves after execution of the Agreement between the Sponsor/Owner and HUD and the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex upon completion of the project under reasonable terms and conditions. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of the tenant's monthly rent and estimated average monthly utility costs before the Agreement; or the total tenant payment, as determined under 24 CFR 813.107, if the tenant is lower income, or 30 percent of gross household income, if the tenant is not lower income; or

(*2*) The tenant is required to relocate temporarily, does not return to the building/complex, and either the tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation or other conditions of the temporary relocation are not reasonable; or

(*3*) The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(ii) Notwithstanding the provisions of paragraph (e)(6)(i) of this section, however, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance at URA levels), if:

(A) The person has been evicted for cause based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance.

(B) The person moved into the property after the submission of the application and, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., displacement, temporary relocation on a rent increase) and the fact that he or she will not qualify as a displaced person as a result of the project;

(C) The person is ineligible under 49 CFR 24.2(g)(2); or

(D) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(iii) The Sponsor/Owner may request, at any time, a HUD determination of whether a displacement is or would be covered by this paragraph.

(f) *Intergovernmental review.* The requirements for intergovernmental review in Executive Order No. 12372 and the implementing regulations at 24 CFR part 52 are applicable to this program.

§ 889.270 Application contents.

(a) *Application.* Each application shall include all of the information, materials, forms, and exhibits listed in paragraph (b) of this section. The Field Office will base its determination of the eligibility of the Sponsor for a reservation of section 202 capital advance funds on the information provided in the application.

(b) *Application contents.* Each applicant (Sponsor) shall include:

(1) The name, address, and telephone number of the Sponsor(s):

(2) The name, title, address, and telephone number of the officer or director of the Sponsor's Board of Directors to whom communications should be addressed;

(3) The following specific information regarding the project:

(i) Number of units requested by size (efficiency, one-bedroom or two-bedroom),

(ii) Dollar amount of the capital advance requested;

(iii) Estimated land cost;

(iv) Number and types of structures;

(v) Number of stories planned and whether an elevator will be included; and

(vi) Development method (new construction, rehabilitation or acquisition from the RTC).

(c) *Additional exhibits must include*

(1) A Housing Consultant's Resume, Contract and an Identity of Interest and Disclosure Certification (if the Sponsor has employed a project consultant).

(2) Evidence of each Sponsor's legal status as a private, nonprofit organization or nonprofit consumer cooperative, including the following:

(i) Articles of Incorporation, constitution, or other organizational documents;

(ii) By-laws;

(iii) A typed incumbency certificate, listing all officers and directors, title, beginning date of each person's term and when that term expires. It must be certified by an officer of the Sponsor that it constitutes all duly qualified and sitting officers and directors as of the date the application is filed with HUD;

(iv) IRS tax exemption ruling (this must be submitted by all Sponsors, including churches). A nonprofit organization organized in the Commonwealth of Puerto Rico and exempt from income taxation under Puerto Rico law, or a consumer cooperative that is tax exempt under State law, has never been liable for payment of Federal income taxes, and does not pay patronage dividends may be exempt from the requirement set out in the previous sentence if they are not eligible for tax exemption; and

(v) Resolution of the board, duly certified by an officer, that no officer or director of the Sponsor or Owner has or will have any financial interest in any contract with the Owner or in any firm or corporation which has or will have a contract with the Owner.

(3) Satisfactory evidence that the Sponsor:

(i) Has the necessary legal authority to sponsor the project and to assist the Owner to finance, acquire, construct, reconstruct or rehabilitate and maintain the project; and

(ii) Will form an Owner (as defined in § 889.105) after the issuance of the fund reservation, will cause the Owner to file a request for determination of eligibility and a request for a capital advance under § 889.300, and will provide sufficient resources to the Owner to ensure the development and long-term operation of the project.

(4) A description of the Sponsor's ties to the community, including the minority community, and support from local community groups.

(5) Evidence of any previous participation in HUD programs by the Sponsor, its officers or directors. If none, indicate "No previous experience."

(6) A description of any financial default, modification of terms and conditions of financing, or legal action taken or pending against the Sponsor or its officers, directors, or trustees in their corporate capacity.

(7) A description of the following:

(i) Any other rental housing projects and/or medical facilities, sponsored, owned and operated by the Sponsor including a description of experience in providing housing and/or medical facilities to the elderly and/or families; and

(ii) The Sponsor's experience in providing housing, medical facilities and/or related services to minority persons or families and in contracting with minority- and women-owned business enterprises.

(8) A description of the Sponsor's past or current involvement in any programs other than housing (including its provision of services) that demonstrates the Sponsor's management capabilities and experience in serving the elderly and/or families.

(9) A certified Board Resolution, acknowledging responsibilities of sponsorship, long-term support of the project(s), willingness of Sponsor to assist the Owner to develop, own, manage and provide appropriate services in connection with the proposed project, and that it reflects the will of its membership.

(10) A list of the applications, if any, the Sponsor has submitted or is planning to submit to any other Field Office in response to the current Invitation under this Part or Part 890. Indicate by Field Office, the proposed location by city and State, and number of units requested, and the financial commitments related to each application.

(11) An estimate of start-up expenses for the project and the source of funds to meet these expenses. If the Sponsor plans to use a section 106(b) a seed money loan, an application for such loan must be submitted with required attachments.

(12) Evidence, in the form of a certified Board Resolution, of the Sponsor's willingness to fund the Minimum Capital Investment, estimated start-up expenses, and any associated development or operating costs related to items not covered by the capital advances under § 889.240 and to ensure the development and long-term operation of the project. Also, as evidence of the Sponsor's financial ability to cover these costs, include:

(i) A brief narrative description of financial history;

(ii) Copies of balance sheets and statements of income and expenses for each of the past three years that the Sponsor has operated. The financial statements, at a minimum, must include the information contained in Form HUD–92417 and a certification pursuant to the criminal warning provided in U.S. Criminal Code, section 1001, title 18 U.S.C.;

(iii) A list of current bank and trade references; and

(iv) A list of all FY 1990 and prior year projects to which the Sponsor(s) is a party, identified by project number, Field Office, funding year and month and year of initial closing, current status (if finally closed, indicate month and year) and financial requirements for closing.

(13) The following additional information with respect to the proposed project:

(i) A description of the category or categories of elderly persons the housing is intended to serve and the need for supportive housing for that population in the area to be served.

(ii) Evidence that the Sponsor has entered into a legally binding option agreement to buy or lease the proposed site; or has a copy of the contract of sale for the site, a deed, long-term leasehold or other evidence of legal ownership of the site (including properties to be acquired from the Resolution Trust Corporation). The option agreement period should extend through the end of the current fiscal year and contain a renewal provision to guarantee site availability through the subsequent stage of processing. The Sponsor must also identify any restrictive covenants. In the case of a site to be acquired from a public body, evidence that the public body possesses clear title to the site, and has entered into a legally binding agreement to lease or convey the site to the Sponsor after it receives and accepts a notice of section 202 fund reservation and identification of any restrictive covenants. However, in localities where HUD determines the time constraints of the funding round will not permit all of the required official actions (*e.g.*, approval of Community Planning Boards) which are necessary to convey publicly-owned sites, a letter in the application from the Mayor or Director of the appropriate local agency indicating approval of conveyance of the site contingent upon the necessary approval action is acceptable and may be approved by the Field Office if it has had satisfactory experience with timely conveyance of sites from that public body. In such cases, documentation shall also include a copy of the public body's evidence of ownership and identification of any restrictive covenants.

(Note: A proposed project site may not be acquired or optioned from a general contractor (or its affiliate) which will construct the section 202 project or from any other development team member.)

(iii) A map showing the location of the site and the racial composition of the neighborhood, with the area of racial concentration delineated.

(iv) A sketch of the site plan showing the general development of the site including the proposed location of the proposed building(s), streets, parking

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areas and drives, service areas, and unusual site features.

(v) Evidence that the project as proposed is permissible under applicable zoning ordinances or regulations, or a statement of the proposed action required to make the proposed project permissible and the basis for belief that the proposed action will be completed successfully before the receipt of the conditional commitment application (*e.g.*, a summary of the results of any recent requests for rezoning on land in similar zoning classifications and the time required for such rezoning, preliminary indications of acceptability from zoning bodies, *etc.*).

(14) A statement that:

(i) Identifies all persons (families, individuals, businesses and nonprofit organizations (identified by race/minority group, and status as owners or tenants) occupying the property on the date of submission of the application for fund reservation (or date of initial site control, if later);

(ii) Indicates the estimated cost of relocation payments and other services, and

(iii) Identifies the staff organization that will carry out the relocation activities.

(Note: If any of the relocation costs will be funded from sources other than the section 202 capital advance, the Sponsor must provide evidence of a firm commitment of these funds. Due to potentially high relocation costs, Sponsors are encouraged to utilize sites which involve minimal or no relocation costs.)

(15) A narrative description of the proposed housing consistent with § 889.270(c), including:

(i) If and how the project will promote energy efficiency and if applicable, innovative construction or rehabilitation methods or technologies to be used that will promote efficient construction.

(ii) Identification and description of all community spaces, special amenities or features planned for the housing. A description of how the spaces will be utilized also must be included. If these amenities, features, or community spaces would not comply with the design and cost standards, the Sponsor must demonstrate its ability and willingness to contribute both the incremental development cost and continuing operating cost associated with the community spaces, features or amenities.

(16) Typical unit plans and floor plans of all floors providing community space, indicating dimensions to be used for the provision of supportive services.

(17) A description of:

(i) All supportive services, if any, to be provided to the persons occupying such housing;

(ii) The manner in which such services will be provided to such persons (*i.e.*, on or off-site), including, whether a service coordinator will facilitate the adequate provision of such services, and

(iii) The public or private sources of assistance that may reasonably be expected to fund or provide such services.

(18) Signed certifications of the Sponsor(s)' intent to comply with title VI of the Civil Rights Act of 1964, the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Executive Orders 11063 and 11246, section 3 of the Housing and Urban Development Act of 1968, and the affirmative fair housing marketing requirements at 24 CFR part 200, subpart M.

(19) For applications submitted after October 31, 1991, a certification from the public official responsible for submitting a housing strategy for the jurisdiction to be served in accordance with section 105 of the NAH Act that the proposed activities are consistent with the approved Comprehensive Housing Affordability Strategy (CHAS) of the State or unit of general local government within which the eligible property is located.

(20) A certification from the appropriate State or local agency that the provisions of services identified in the application is well designed to serve the special needs of the category or categories of elderly persons the housing is intended to serve.

(21) A certification of the Sponsor(s) that the appropriate State agency (single point of contact) under Executive Order 12372, Intergovernmental Review, has been contacted to determine if the section 202 Program is covered under the State review process and, if applicable, the date the application was submitted to the State.

(22) A certification that the Sponsor(s) is not delinquent on the repayment of any Federal debt.

(23) A certification by the Sponsor(s) that the section 202 funds will not be used to lobby the Executive or Legislative branches of the Federal government.

(24) A certification that the Sponsor(s) will comply with the requirements of the Drug-Free Workplace Act.

(25) A certification that the project will comply with HUD's design and cost standards, the Uniform Federal Accessibility Standards and HUD's implementing regulations at 24 CFR part 40, section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8, and for new construction multifamily housing projects, the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100.

(26) A certification by the Sponsor(s) that it will comply (or has complied) with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) ,and implementing regulations at 49 CFR part 24, and 24 CFR 889.265(e).

§ 889.275 Disclosure and verification of Social Security and Employer Identification Numbers by Owners.

To be eligible to become an Owner of housing assisted under this part, the Owner must meet the disclosure and verification requirements for Social Security and Employer Identification Numbers, as provided by 24 CFR part 750.

Subpart C—Selection of Applications and Duration of Fund Reservation

§ 889.300 Review of applications for fund reservation.

(a) *Preliminary evaluation.* To be eligible for selection, an Application must be received by the Field Office within the time period specified in the Invitation and must be complete. In order to determine whether an Application was complete, filed by an eligible applicant, responsive to the Invitation and acceptable for technical processing, the Field Office shall perform an initial threshold review upon receipt of the Application. To make the above determination, the Field Office shall use the following initial threshold criteria at preliminary evaluation:

(1) The application was received by HUD at the appropriate address by the date specified in the NOFA and was complete or was missing no more than one complete exhibit (excluding exhibits which are certifications);

(2) Sponsor acceptably corrected deficiencies (including furnishing missing certifications) within 14 calendar days from the date of the notification letter;

(3) Sponsor, proposed facilities and proposed occupants are eligible under section 202;

(4) Sponsor has experience in developing and/or operating housing, medical or other facilities and/or providing services to the elderly, families or minority groups;

(5) There is reasonable expectation that the Sponsor can meet the Minimum Capital Investment requirement and start-up expenses;

(6) Sponsor provided evidence of legally-binding site control;

(7) Sponsor is in compliance with civil rights laws and regulations;

(8) Even without a site visit, it is reasonable to expect the proposed site meets site and neighborhood standards, including minority elderly concentration considerations, and is not in a floodway;

(9) There is sufficient market demand for the number of units proposed based on preliminary review; and

(10) Application was responsive to the Field Office Invitation (*i.e.*, did not request more units than advertised);

(b) *Action on applications found to be incomplete.* If an Application is determined to be incomplete, the Sponsor shall be advised in writing of any deficiencies or any inconsistencies. The missing information is to be submitted generally within 14 calendar days from the date of HUD's written notification. It is not additional time to complete or amend the application to overcome any defects in the original submission. An application with two or more complete exhibits missing is to be rejected, except that an application missing certifications will not be rejected, provided they are executed before the application submission deadline and submitted within the 14-day period.

(c) *Technical processing.* When an Application is determined to be complete and responsive to the Invitation, technical processing, consisting of the following, shall be accomplished:

(1) The Field Office will evaluate the application to determine its eligibility and acceptability based on the selection criteria in paragraph (d) of this section.

(2) If, in its evaluation of all pertinent factors, the Field Office determines that the application is rejected on any technical grounds, it shall notify the Sponsor in writing that they have generally 14 calendar days from the date of the notification letter to appeal the technical rejection. The Field Office shall make a determination on an appeal prior to making its selection recommendations.

(3)(i) Before project selection, the Field Office shall complete an environmental review in compliance with the National Environmental Policy Act of 1969 and the related authorities in 24 CFR part 50.

(ii) No financial assistance shall be approved for construction or rehabilitation of a structure or portion of a structure or acquisition from the Resolution Trust Corporation of a structure located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless:

(A)(*1*) The community in which the area is situated is participating in the National Flood Insurance Program in accordance with the regulations thereunder (44 CFR parts 59 through 79), or

(*2*) Less than a year has passed since FEMA notification regarding such hazards, and

(B) Flood insurance on the structure is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001).

(iii) Pursuant to the Coastal Barrier Resources Act (16 U.S.C. 3601), HUD will not approve Applications for properties in the Coastal Barrier Resources System.

(4) Based on the factors set forth in this paragraph (c), the field office shall determine the Applications which, in its judgment, are approvable. Selections then shall be made in accordance with paragraph (e) of this section.

(d) *Selection criteria.* The selection criteria for assistance include:

(1) The ability of the Sponsor to develop and operate the proposed housing on a long-term basis:

(i) The scope, extent and quality of the Sponsor's experience in providing housing or related services to the persons proposed to be served by the project;

(ii) The scope, extent and quality of the Sponsor's experience in providing housing or related services to minority persons or families and opportunities for minority and women-owned business enterprises participation; and

(iii) The extent of local community support for the Sponsor's activities, including previous experience in serving the area where the project is to be located, and Sponsor's demonstrated ability to enlist volunteers and local funds for its efforts;

(2) The Sponsor's financial capacity:

(i) The Sponsor's financial history and the current financial outlook;

(ii) The Sponsor's ability and willingness to provide funds for start-up expenses and commit financial resources beyond the Minimum Capital Investment; and

(iii) The scope of the proposed project in relationship to the financial capacity and commitment of the Sponsor.

(Note: Consideration must also be given to the Sponsor's financial commitment to any projects in the pipeline and other applications submitted in response to Invitations issued under this part or part 890);

(3) The need for supportive housing for the elderly in the area to be served and the desirability of the proposed site:

(i) Extent to which the Sponsor demonstrates the need for supportive housing for the elderly;

(ii) The proximity or accessibility of the site to shopping, medical facilities, transportation, churches, recreational facilities, and other necessary services to the intended occupants and freedom of the site from adverse environmental conditions;

(iii) Suitability of the site from the standpoint of promoting a greater choice of housing opportunities for minority elderly persons/families; and

(iv) Reasonableness of the estimated site cost per unit and suitability of the property for the intended use and adequacy of utilities and streets;

(4) The design of the project:

(i) The extent to which the proposed design will meet the special physical needs of elderly persons;

(ii) The extent to which the proposed size and unit mix of the housing will enable the Sponsor to manage and operate the housing efficiently and ensure that the provision of supportive services will be accomplished in an economical fashion; and

(iii) The extent to which the proposed design of the housing will accommodate the provision of supportive services that are expected to be needed, either initially or over the useful life of the housing, by the category or categories of elderly persons the housing is intended to serve; and

(5) The provision of supportive services:

(i) The extent to which the proposed supportive services meet the identified needs of the residents; and

(ii) The extent to which the Sponsor has demonstrated that the identified supportive services will be provided on a consistent long-term basis.

(e) The Field Office shall rate each Application on the basis of its assessment of the Sponsor's Application using the selection criteria set forth on the NOFA. The Field Office shall also calculate the capital advance and PRAC amounts to be reserved for each project. The Regional Office shall identify for selection the highest ranking Applications in descending order which most reasonably approximate the estimated maximum number of units which can be funded in each Field Office by metropolitan/nonmetropolitan jurisdictions, under the allocation of fund authority.

(f) Unused funds within a competitive area, if available fund authority exceeds selections, may be reallocated by

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combining metropolitan and nonmetropolitan funds in order to fund another project in either category. If there are excess funds which are not allocable to any application within the original competitive area, the funds may be reallocated from one competitive area to another within the same State. If there are excess funds which are not allocable in the above methods, the funds may be reallocated from one competitive area to another within the Region. When the Regional Office aggregates residual funds from the competitive areas, the original metro/nonmetro breakdown must be retained initially to determine whether there are any approvable applications in either category prior to making any transfers of funds. Remaining unused funds must be returned to Headquarters.

§ 889.305 Approval of applications.

(a) A Sponsor whose Application is approved shall be issued a notice of section 202 Fund Reservation in a format prescribed by the Assistant Secretary, specifying:

(1) The amount of the section 202 Fund Reservation, the number and mix of units, and the location of the proposed project.

(2) The amount of project rental assistance contract and budget authority reserved for the project.

(3) A date by which the Sponsor is required to sign and return a copy of the notification (indicating it will file a request for conditional commitment).

(b) If the Sponsor does not sign and return a copy of the notification (indicating it will file a request for conditional commitment) by the date specified, the field office may notify the Sponsor that its previous approval of the Sponsor's Application is withdrawn;

(c) No part of the funds reserved may be transferred by the Sponsor, except to the Owner, caused to be formed by the Sponsor. This action must be accomplished prior to issuance of a conditional commitment.

(d) Subject to the availability of funds, and in accordance with the HUD-approved capital advance amount, the Field Office Director may amend the amount of a fund reservation approved pursuant to paragraph (b) of this section at any time before the final closing.

§ 889.310 Duration of fund reservations.

(a) *Extension and cancellation of fund reservation.* The duration of the initial fund reservation is 18 months from the date of issuance under § 889.305:

(1) Subject to the approval of the Assistant Secretary, the Field Office may, at any time, issue a notice of intent to cancel the fund reservation if the field office determines that the Owner is not making satisfactory progress toward the start of construction, rehabilitation, or acquisition from the Resolution Trust Corporation.

(2) Subject to the approval of the Assistant Secretary, the Field Office shall issue a notice of intent to cancel the fund reservation if the construction, rehabilitation, or acquisition of Resolution Trust Corporation properties of a project is not begun within 18 months after the notice of section 202 fund reservation under § 889.305 is issued or, if applicable, within an extension of the 18-month period granted under paragraph (a)(3) of this section.

(3) The Field Office may extend the period specified in paragraph (a)(2) of this section up to 24 months after the notice of section 202 fund reservation is issued, if HUD determines that the Owner is making satisfactory progress toward the start of construction, rehabilitation, or acquisition of Resolution Trust Corporation properties. The Regional Office may grant additional extensions of up to 36 months after the notice of section 202 fund reservation is issued, if—

(i) The delay has been for reasons beyond the Owner's control;

(ii) The Owner has done everything within its power to resolve the problems causing the delay;

(iii) All major problems have been resolved, or there is good reason to expect prompt resolution; and

(iv) There is good reason to expect the start of construction, rehabilitation, or acquisition of Resolution Trust Corporation properties to begin within the extension period.

(b) *Notification procedures.* (1) If HUD determines that a fund reservation must be cancelled under paragraph (a) of this section, the Field Office shall mail a notice of cancellation to the Owner by certified mail, return receipt requested. The notice of cancellation must:

(i) Describe the reasons for the cancellation of the fund authority; and

(ii) Advise the Owner that it may file an appeal of the cancellation with the Field Office within 30 days of the receipt of the cancellation notice, and that the failure to file an appeal will result in the cancellation of the fund reservation upon the expiration of the 30-day period.

(2) If the Owner fails to file an appeal of the fund cancellation within 30 days from the date of cancellation notice, the field office shall cancel the fund reservation and provide a written notice of the cancellation to the Owner.

(3) If the Owner files an appeal within 30 days of the date of the cancellation notice, HUD Headquarters will review the appeal and will issue a decision on the appeal within 45 days of the receipt of the appeal. HUD will approve the appeal if the Owner demonstrates that it is making satisfactory progress toward the start of construction, rehabiliation, or acquisition of Resolution Trust Corporation properties.

(i) If HUD approves the appeal, it shall provide a written notification of the approval to the Owner. The notification shall indicate the duration of the extended fund reservation.

(ii) If HUD disapproves the appeal, it shall notify the Owner in writing of the determination, and cancel the fund reservation.

Subpart D—Capital Advance

§ 889.400 Repayment of capital advance.

(a) Interest prohibition and repayment. A capital advance provided under this part shall bear no interest and its repayment shall not be required so long as the housing remains available for very-low-income elderly persons in accordance with this part. The capital advance may not be repaid to extinguish the requirements of this part. To ensure its interest in the capital advance, HUD shall require a declaration of trust, capital advance agreement and regulatory agreement from the Owner in a form to be prescribed by HUD.

(b) The transfer of physical and financial assets of any section 202 project is prohibited, unless the Assistant Secretary gives prior written approval. Approval for transfer will not be granted unless HUD determines that the transfer is a part of a transaction that will ensure the continued operation of the project for not less than 40 years (from the date of original closing) in a manner that will provide rental housing for very low-income persons on terms at least as advantageous to existing and future tenants as the terms required by the original capital advance.

Subpart E—Project Rental Assistance Contracts [Reserved]

Subpart F—Project Management [Reserved]

Subpart G—Technical Assistance

§ 889.700 Technical assistance.

The Secretary shall make available appropriate technical assistance to assure that applicants having limited resources, particularly minority applicants, are able to participate more fully in the program carried out under this part.

Dated: May 31, 1991.

Ronald A. Rosenfeld,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 91-13635 Filed 6-11-91; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-91-3231; FR-2966-N-01]

Fund Availability (NOFA) for Supportive Housing for the Elderly

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of fund availability for FY 91.

SUMMARY: This NOFA announces HUD's funding for supportive housing for the elderly. In the body of this document is information concerning the following: (a) The purpose of the NOFA and information regarding eligibility, submission requirements, available amounts, and selection criteria and (b) application processing, including how to apply and how selections will be made. A checklist of steps and exhibits involved in the application process will be included in the application package which can be obtained from the appropriate Field Office identified in appendix A.

DATES: The deadline date for receipt of applications in response to this NOFA is August 12, 1991.

ADDRESSES: Applications must be delivered to the HUD Field Office for your jurisdiction. A listing of HUD Field Offices, their addresses and telephone numbers (including TDD telephone numbers where available) are attached as appendix A to this NOFA. HUD will date-stamp incoming applications to evidence timely receipt, and upon request, provide the applicant with an acknowledgement of receipt. Applications submitted by facsimile are not acceptable.

FOR FURTHER INFORMATION CONTACT: The HUD Field Office for your jurisdiction.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The Department has submitted this NOFA to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. Pending approval of these collections of information by OMB and the assignment of an OMB control number, no person may be subjected to a penalty for failure to comply with these information collection requirements. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

Public reporting burden for the collection of information requirements contained in this NOFA are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Information on the estimated public reporting burden is provided under the Preamble heading, *Findings and Certifications*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: HUD Desk Officer, room 3001, Washington, DC 20530.

I. Purpose and Substantive Description

A. Authority

Section 801 of the National Affordable Housing Act (the NAH Act) amended section 202 of the Housing Act of 1959. It authorizes the Secretary to provide assistance to private nonprofit organizations and nonprofit consumer cooperatives to expand the supply of supportive housing for the elderly. The assistance will be provided as capital advances and contracts for project rental assistance in accordance with the Interim Rule for part 889 also published elsewhere in today's **Federal Register**. This assistance may be used to finance the construction or rehabilitation of a structure, or acquisition of a structure from the Resolution Trust Corporation (RTC), to be used as supportive housing for the elderly in accordance with the Interim Rule.

For supportive housing for the elderly, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1991 (Pub. L. 101-507), approved November 5, 1990 (Fiscal Year 1991 Appropriations Act) provides $550,115,000 for capital advances under section 202 of the Housing Act of 1959 (as amended by section 801 of the NAH Act), and $283,619,000 for project rental assistance. Of these amounts, up to $5,000,000 shall be available for contracts for technical assistance in accordance with section 202(k)(1) (as amended by section 801 of the NAH Act). The capital advance allocation amounts set forth in section B. below are those available after amounts have been set aside for amendments to prior year fund reservations and for technical assistance.

Of particular interest is the Department's implementation of section 105 of the NAH Act which would require that an application for this program include a certification of consistency of the proposal with an approved Comprehensive Housing Affordability Strategy ("CHAS") for the jurisdiction in which the proposed project is to be located. See the interim rule published on February 4, 1991 (56 FR 4480). The Supportive Housing for the Elderly interim rule provides that the CHAS certification requirement will not apply for FY 1991 funding of this program. However, beginning with the FY 1992 funding round, all applications for funding under this program must include a certification from the responsible public official that the project is consistent with an approved CHAS.

For FY 1991 applications, the CHAS certification requirement is not being applied to this program, because it is not statutorily required for this year and it is not feasible due to the amount of time required of a State or locality to develop a CHAS, including the hearing necessary to obtain citizen participation, and obtain a certification of consistency for FY 1991 funding. Therefore, to be most fair to entrants in this now significantly revised program, the Department is providing transition by delaying applicability of the CHAS certification until FY 1992.

Also of special interest is a new statutory requirement for a certification by the appropriate State or local agency (typically the Area Agency on Aging) that the services identified in the application are well designed for the category or categories of elderly persons the housing is intended to serve. Therefore, the Sponsor must develop and submit its service plan to the appropriate agency to obtain the required certification. In view of the short time frame in this fiscal year for submission of applications to HUD, this certification will be accepted even if not signed and submitted to the Field Office by the application deadline date, if it is received by the Field Office within 30 days following the application deadline date.

B. Allocation Amounts

In accordance with 24 CFR part 791, the Assistant Secretary will allocate the amounts available for capital advances for supportive housing for the elderly, less any amounts made available for amendments of fund reservations made in prior years and set aside for technical assistance. The Department reserves rental assistance funds sufficient for 20-year contracts in support of the units selected for capital advances, consistent with current operating cost standards.

The allocation formula for section 202 funds consists of the following two data elements:

1. A measure of the total number of elderly renter households.

2. A measure of the number of one- and two-person elderly renter households with incomes at or below the very low income standard with housing deficiencies, consisting primarily of households paying more than 30 percent of their incomes for rent.

Based on this formula, the Department has allocated the available capital advance funds as shown on the following chart:

FISCAL YEAR 1991 ALLOCATIONS FOR SECTION 202 SUPPORTIVE HOUSING FOR THE ELDERLY

Field offices	Metropolitan		Nonmetropolitan		Totals	
	Capital advance	Units	Capital advance	Units	Capital advance	Units
Region I						
Boston	$22,920,000	308	$2,942,000	39	$25,862,000	345
Hartford	9,857,000	131	0	0	9,857,000	131
Manchester (ME, NH, VT)	2,471,000	44	5,601,000	99	8,072,000	143
Providence	3,546,000	49	0	0	3,546,000	49
Total I	38,794,000	530	8,543,000	138	47,337,000	668
Region II						
Buffalo	9,549,000	164	3,768,000	65	13,316,000	229
New York	83,124,000	778	0	0	83,124,000	778
Newark	25,832,000	345	0	0	25,832,000	345
Total II	98,305,000	1,287	3,768,000	65	102,074,000	1,352
Region III						
Baltimore	6,835,000	116	0	0	6,835,000	116
Charleston	0	0	3,765,000	74	3,765,000	74
Philadelphia (DE)	17,297,000	263	3,266,000	49	20,563,000	312
Pittsburgh	7,746,000	143	3,109,000	57	10,855,800	200
Richmond	3,580,000	72	3,518,000	71	7,098,000	143
D.C. (MD & VA)	6,983,000	110	0	0	6,983,000	110
Total III	42,441,000	704	13,648,000	251	56,089,000	955
Region IV						
Atlanta	5,811,000	120	5,841,800	120	11,652,000	240
Birmingham	3,483,000	76	3,523,080	77	6,806,800	153
Columbia	2,581,000	58	3,394,000	76	5,975,000	134
Greensboro	4,161,000	82	7,189,000	142	11,350,000	224
Jackson	0	0	6,487,000	122	6,487,000	122
Jacksonville	22,048,000	480	2,914,000	57	24,880,000	537
Louisville	2,739,800	56	4,711,000	96	7,450,000	152
Knoxville	2,778,000	62	0	0	2,778,000	62
Nashville	2,546,000	58	2,380,000	54	4,928,000	112
Caribbean	2,092,000	40	2,182,000	42	4,274,000	82
Total IV	47,820,000	1,092	36,971,000	766	84,801,000	1,818
Region V						
Chicago	25,741,000	432	6,135,000	101	31,876,000	534
Cincinnati	4,576,000	89	0	0	4,576,000	89
Cleveland	8,491,000	148	2,121,000	37	10,612,000	185
Columbus	2,797,000	55	2,339,000	46	5,136,000	101
Detroit	9,819,000	169	0	0	9,819,000	169
Grand Rapids	2,001,000	40	2,062,000	43	4,063,000	83
Indianapolis	5,160,000	96	3,360,000	65	8,480,000	161
Milwaukee	6,166,000	112	4,066,080	74	10,232,000	186
Minn-St. Paul	4,605,800	79	3,708,000	64	8,313,000	143
Total V	69,396,000	1,213	23,791,000	430	93,087,000	1,643
Region VI						
Fort Worth (NM)	8,472,200	138	3,952,800	84	10,425,000	222
Houston	3,144,800	64	1,828,100	41	4,973,000	105
Little Rock	1,709,800	41	3,993,400	96	5,703,000	137
New Orleans	3,101,000	67	2,373,000	52	5,474,000	119
Oklahoma City	1,787,000	40	2,675,000	60	4,462,000	100
San Antonio	3,130,000	71	1,600,000	36	4,730,000	107
Total VI	19,344,700	421	16,422,300	369	35,767,000	790
Region VII						
Des Moines	2,510,400	54	3,542,600	76	6,053,000	130
Kansas City	3,980,400	62	3,372,600	69	7,353,000	151
Omaha	1,890,800	41	1,014,200	22	2,905,800	63
St. Louis	4,583,800	82	2,264,200	41	6,848,000	123
Total VII	12,975,400	259	10,213,800	208	23,189,000	467
Region VIII						
Denver (ND, SD, MT, WY, UT)	5,672,000	121	5,791,000	123	11,463,000	244
Total VIII	5,672,000	121	5,791,000	123	11,463,000	244
Region IX						
Honolulu (Guam)	3,113,000	40	0	0	3,113,000	40
Los Angeles	46,572,000	697	0	0	46,572,000	697

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FISCAL YEAR 1991 ALLOCATIONS FOR SECTION 202 SUPPORTIVE HOUSING FOR THE ELDERLY—Continued

Field offices	Metropolitan		Nonmetropolitan		Totals	
	Capital advance	Units	Capital advance	Units	Capital advance	Units
Phoenix	3,755,000	79	1,285,000	27	5,040,000	106
Sacramento	4,815,000	83	0	0	4,815,000	83
San Francisco	22,435,000	297	0	0	22,435,000	297
Total IX	80,690,000	1,196	1,285,000	27	81,975,000	1,223
Region X						
Anchorage	0	0	1,562,000	20	1,562,000	20
Portland (ID)	2,048,000	40	2,972,400	58	5,020,400	98
Seattle	4,806,800	80	1,853,800	31	6,660,600	111
Total X	6,854,800	141	6,388,200	96	13,243,000	237
National Total	422,330,800	6,887	126,784,200	2,502	549,115,000	9,389

These allocations are the maximum amounts that may be reserved. The Department notes that, based upon preliminary estimates of the annual per-unit operating expenses, insufficient Project Rental Assistance funds were appropriated to fund rental assistance contracts for the maximum number of units set forth above. It is, therefore, possible that as few as 5,000 to 6,000 units can be funded under this NOFA, although capital advance authority is sufficient to cover about 9,400 units. As provided in Fiscal Year 1991 Appropriations Act, any excess capital advance funds will be used for grants for retrofitting housing for the elderly in accordance with section 802 of the NAH Act. Any funds available for that purpose will be announced in a NOFA.

If efforts to secure additional funds to make up this short-fall are not successful, making it necessary to fund fewer than 9,400 units, the Department will adjust the Fair Share allocations published here proportionately, will amend the allocations to reflect Regional rather than Field Office distribution, and will move the area of competition from the Field Offices to the Regional Offices. In the event of a reduction, the Regional Offices will receive the following percentages of available funds:

Region I	8.6
Region II	18.6
Region III	10.2
Region IV	15.5
Region V	17.0
Region VI	6.5
Region VII	4.2
Region VIII	2.1
Region IX	14.9
Region X	2.4

C. Eligibility

The only eligible applicants under this program are private, nonprofit organizations and nonprofit consumer cooperatives. Neither a public body nor an instrumentality of a public body is eligible to participate in the program. No organization shall participate as Sponsor or Co-sponsor in the filing of application(s) for fund reservation in a single region in this fiscal year in excess of that necessary to finance the construction, rehabilitation or acquisition from RTC of 300 units of housing and related facilities for the elderly. This limit shall apply to organizations that participate as Co-sponsors regardless of whether the Co-sponsors are affiliated or non-affiliated entities. No single application may propose more than the number of units advertised by a Field Office or 125 units whichever is less. In addition, the national limit for any one applicant is 10 percent of the total units allocated in all Regions. Affiliated entities which submit separate applications shall be deemed to be a single entity for the purposes of these limits.

D. Preliminary Evaluation and Selection Criteria

1. Preliminary Evaluation

Applications for section 202 Fund Reservations for housing for the elderly that meet the following initial threshold requirements at preliminary evaluation will be eligible for technical processing:

(a) Application was received by HUD at the appropriate address by August 12, 1991 and was complete or is missing no more than one complete exhibit (excluding exhibits which are certifications);

(b) Sponsor acceptably corrected deficiencies (including furnishing missing certifications) within 14 calendar days from the date of the notification letter;

(c) Sponsor, proposed facilities and proposed occupants are eligible under section 202;

(d) Sponsor has experience in developing and/or operating housing, medical or other facilities and/or providing services to the elderly, families or minority groups;

(e) There is reasonable expectation that the Sponsor can meet the Minimum Capital Investment requirement and start-up expenses;

(f) Sponsor provided evidence of legally-binding site control;

(g) The Sponsor is in compliance with civil rights laws and regulations as follows:

(i) There are no pending civil rights suits against the Sponsor instituted by the Department of Justice;

(ii) There are no outstanding findings of noncompliance with civil rights statutes, Executive Orders or regulations as a result of formal administrative proceedings, or where the Secretary has issued a charge under the Fair Housing Act, unless the Sponsor is operating under a compliance agreement designed to correct the areas of noncompliance;

(iii) There has not been a deferral of the processing of applications from the Sponsor imposed by HUD under Title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3), the HUD Title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1), or under section 504 of the Rehabilitation Act of 1973 and the HUD section 504 regulations (24 CFR 8.57);

(h) Even without a site visit, it is reasonable to expect the proposed site meets site and neighborhood standards, including minority elderly concentration considerations, and is not in a floodway or Coastal High Hazard Area;

(i) There is sufficient market demand for the number of units proposed based on preliminary review; and

(j) Application was responsive to the Field Office Invitation (*i.e.*, did not request more units than advertised).

2. Selection Criteria

Applications for section 202 fund reservations that successfully pass preliminary evaluation and technical processing will be rated using the following selection criteria:

(a) The ability of the Sponsor to develop and operate the proposed housing on a long-term basis (20 points):

(i) The scope, extent and quality of the Sponsor's experience in providing housing or related services to the persons proposed to be served by the project (10 points);

(ii) The scope, extent and quality of the Sponsor's experience in providing housing or related services to minority persons or families and opportunities for minority and women-owned business enterprises participation (5 points); and

(iii) The extent of local community support for the Sponsor's activities, including previous experience in serving the area where the project is to be located, and Sponsor's demonstrated ability to enlist volunteers and local funds for its efforts (5 points);

(b) The Sponsor's financial capacity (25 points):

(i) The Sponsor's financial history and the current financial outlook (5 points);

(ii) The Sponsor's ability and willingness to provide funds for start-up expenses and commit financial resources beyond the Minimum Capital Investment (10 points); and

(iii) The scope of the proposed project in relationship to the financial capacity and commitment of the Sponsor (NOTE: Consideration must also be given to the Sponsor's financial commitment to any projects in the pipeline and other applications submitted in response to Invitations under this NOFA, the NOFA for Supportive Housing for Persons with Disabilities (published elsewhere in today's **Federal Register**) or other Invitations under part 880 or part 890) (10 points);

(c) The need for supportive housing for the elderly in the area to be served and the desirability of the proposed site (20 points):

(i) Extent to which the Sponsor demonstrates the need for supportive housing for the elderly (10 points);

(ii) The proximity or accessibility of the site to shopping, medical facilities, transportation, churches, recreational facilities, and other necessary services to the intended occupants and freedom of the site from adverse environmental conditions (4 points);

(iii) Suitability of the site from the standpoint of promoting a greater choice of housing opportunities for minority elderly persons/families (3 points);

(iv) Reasonableness of the estimated site cost per unit and suitability of the property for the intended use and adequacy of utilities and streets (3 points);

(d) The design of the project (15 points):

(i) The extent to which the proposed design will meet the special physical needs of elderly persons (5 points);

(ii) The extent to which the proposed size and unit mix of the housing will enable the Sponsor to manage and operate the housing efficiently and ensure that the provision of supportive services will be accomplished in an economical fashion (5 points); and

(iii) The extent to which the proposed design of the housing will accommodate the provision of supportive services that are expected to be needed, either initially or over the useful life of the housing, by the category or categories of elderly persons the housing is intended to serve (5 points); and

(e) The provision of supportive services (20 points):

(i) The extent to which the proposed supportive services meet the identified needs of the residents (10 points); and

(ii) The extent to which the Sponsor has demonstrated that the identified supportive services will be provided on a consistent long-term basis (10 points).

II. Application Process

All applications for section 202 Fund Reservations submitted by eligible Sponsors must be filed with the appropriate HUD Field Office receiving an allocation and must contain all exhibits required by this Notice.

Immediately upon publication of this NOFA, Field Offices shall notify minority organizations within their jurisdiction involved in housing and community development and groups with special interest in housing for elderly households.

Within three weeks of the date of this Notice, HUD Field Offices will publish a one-time Invitation as required by § 889.205(b) of the Interim Rule, in newspapers of general circulation, and in any minority newspapers serving the Field Office jurisdiction. Field Offices will accept applications after publication of the Invitation. No application will be accepted after the regular closing time of the appropriate Field Office on August 12, 1991, unless that time is extended by a Notice published in the **Federal Register**. Applications received after that date and time will not be accepted, even if postmarked by the deadline date. Application submitted by facsimile are not acceptable.

Organizations interested in applying for a section 202 Fund Reservation should provide the appropriate Field Office with their names, addresses and telephone numbers, and advise the Field Office whether they wish to attend the workshop described below. HUD encourages minority organizations to participate in this program as Sponsors. Field Offices, at the date and time specified in the Invitations, will conduct workshops to explain the Section 202 Program and the Seed Money Loan Program under section 106(b) of the Housing and Urban Development Act of 1968. Under this latter program, HUD makes direct, interest-free loans to approved nonprofit section 202 eligible Owners to cover certain start-up expenses. Section 106(b) applications should be submitted simultaneously with the section 202 application. HUD will consider section 106(b) applications with the section 202 applications.

HUD strongly recommends that prospective applicants attend the local Field Office workshop. More detailed information covering the time and place of the particular workshops will be set out in the Field Office invitation. Interested persons with disabilities should contact the Field Office to assure that any necessary arrangements can be made for them to enable their attendance and participation in the workshop. While strongly urged to do so, if Sponsors cannot attend a workshop, Application Packages and handbooks can also be obtained from the Field Offices. Contact the appropriate Field Office with any questions regarding the submission of applications.

At the workshops, Application Packages will be distributed, application procedures and requirements (including the Department's equal opportunity, environmental, design and cost standards and required exhibits) will be explained. Also, concerns such as local market conditions, building codes, historic preservation, floodplain management, displacement and relocation, zoning and housing costs will be addressed.

III. Application Submission Requirements

1. Application

Each application shall include all of the information, materials, forms, and exhibits listed in paragraph 2 of this

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section and must be indexed and tabbed. The Field Office will base its determination of the eligibility of the Sponsor for a reservation of section 202 capital advance funds on the information provided in the application.

In preparing applications, applicants will be able to utilize information and exhibits previously prepared for prior Section 202 applications or for applications for other funding programs. Examples of exhibits that may be readily adapted or amended to decrease the burden of application preparation include among others those on previous participation in the section 202 program; applicant experience in housing and services; financial capacity; supportive services plan; community ties, and experience serving minorities.

2. Application Contents

(a) Each applicant (Sponsor) shall include on a Form HUD–92013, Application for Multifamily Housing Project:

(1) The name, address, and telephone number of the Sponsor(s);

(2) The name, title, address, and telephone number of the officer or director of the Sponsor's Board of Directors to whom communications should be addressed;

(3) The following specific information regarding the project:

(i) Number of units requested by size (efficiency (415 sq. ft.), one-bedroom (540 sq. ft.) or two-bedroom (800 sq. ft.));

(ii) Dollar amount of the capital advance requested;

(iii) Estimated land cost;

(iv) Number and types of structures;

(v) Number of stories planned and whether an elevator will be included; and

(vi) Development method (new construction, rehabilitation or acquisition from the RTC).

(b) Additional exhibits must include:

(1) A Housing Consultant's Resume, Contract (Form HUD 92531A–EH) and an Identity of Interest and Disclosure Certification (if the Sponsor has employed a project consultant).

(2) Evidence of each Sponsor's legal status as a private, nonprofit organization or nonprofit consumer cooperative, including the following:

(i) Articles of Incorporation, constitution, or other organizational documents;

(ii) By-laws;

(iii) A typed incumbency certificate, listing all officers and directors, title, beginning date of each person's term and when that term expires. It must be certified by an officer of the Sponsor that it constitutes all duly qualified and sitting officers and directors as of the date the application is filed with HUD;

(iv) IRS tax exemption ruling (this must be submitted by all Sponsors, including churches). A nonprofit organization organized in the Commonwealth of Puerto Rico and exempt from income taxation under Puerto Rico law, or a consumer cooperative that is tax exempt under State law, has never been liable for payment of Federal income taxes, and does not pay patronage dividends may be exempt from the requirement set out in the previous sentence if they are not eligible for tax exemption; and

(v) Resolution of the board, duly certified by an officer, that no officer or director of the Sponsor or Owner has or will have any financial interest in any contract with the Owner or in any firm or corporation which has or will have a contract with the Owner.

(3) Satisfactory evidence that the Sponsor:

(i) Has the necessary legal authority to sponsor the project and to assist the Owner to finance, acquire, construct, or rehabilitate and maintain the project; and

(ii) Will form an Owner (as defined in § 889.105) after the issuance of the fund reservation, will cause the Owner to file a request for determination of eligibility and a request for a capital advance under § 889.300, and will provide sufficient resources to the Owner to ensure the development and long-term operation of the project.

(4) A description of the Sponsor's ties to the community, including the minority community, and support from local community groups.

(5) Evidence of any previous participation in HUD programs by the Sponsor, its officers or directors, on Form HUD 2530. If none, forms must be submitted indicating "No previous experience."

(6) A description of any financial default, modification of terms and conditions of financing, or legal action taken or pending against the Sponsor or its officers, directors, or trustees in their corporate capacity.

(7) A description of the following:

(i) Any other rental housing projects and/or medical facilities, sponsored, owned and operated by the Sponsor including a description of experience in providing housing and/or medical facilities to the elderly and/or families; and

(ii) The Sponsor's experience in providing housing, medical facilities and/or related services to minority persons or families and in contracting with minority- and women-owned business enterprises.

(8) A description of the Sponsor's past or current involvement in any programs other than housing (including its provision of services) that demonstrates the Sponsor's management capabilities and experience, including a description of the Sponsor's experience in serving the elderly and/or families.

(9) A certified Board Resolution, acknowledging responsibilities of sponsorship, long-term support of the project(s), willingness of Sponsor to assist the Owner to develop, own, manage and provide appropriate services in connection with the proposed project, and that it reflects the will of its membership.

(10) A list of the applications, if any, the Sponsor has submitted or is planning to submit to any other Field Office in response to the current Invitations under this NOFA, the NOFA for Supportive Housing for Persons with Disabilities (published elsewhere in today's **Federal Register**) or other Invitations under part 889 or part 890. Indicate by Field Office, the proposed location by city and State, and the number of units requested, and the financial commitments related to each application.

(11) An estimate of start-up expenses for the project and the source of funds to meet these expenses. If the Sponsor plans to use a section 106(b) seed money loan, an application (Form HUD–92290) for such loan must be submitted with required attachments.

(12) Evidence, in the form of a certified Board Resolution, of the Sponsor's willingness to fund the Minimum Capital Investment, estimated start-up expenses, and any associated development or operating costs related to items not covered by the capital advances under § 889.240 and to ensure the development and long-term operation of the project. Also, as evidence of the Sponsor's financial ability to cover these costs, include:

(i) A brief narrative description of financial history;

(ii) Copies of balance sheets and statements of income and expenses for each of the past three years that the Sponsor has operated. The financial statements, at a minimum, must include the information contained in Form HUD–92417 and a certification pursuant to the criminal warning provided in U.S. Criminal Code, section 1001, title 18 U.S.C.;

(iii) Form HUD–2013 Supplement, Application for Project Mortgage Insurance, listing current bank and trade references; and

(iv) A list of all FY 1990 and prior year projects to which the Sponsor(s) is a party, identified by project number,

Field Office, funding year and month and year of initial closing, current status (if finally closed, indicate month and year) and financial requirements for closing.

(13) The following additional information with respect to the proposed project:

(i) A description of the category or categories of elderly persons the housing is intended to serve and the need for supportive housing for that population in the area to be served.

(ii) Evidence that the Sponsor has entered into a legally binding option agreement to buy or lease the proposed site; or has a copy of the contract of sale for the site, a deed, long-term leasehold or other evidence of legal ownership of the site (including properties to be acquired from the Resolution Trust Corporation). The option agreement period should extend through the end of the current fiscal year and contain a renewal provision to guarantee site availability through the subsequent stage of processing. The Sponsor must also identify any restrictive covenants. In the case of a site to be acquired from a public body, evidence that the public body possesses clear title to the site, and has entered into a legally binding agreement to lease or convey the site to the Sponsor after it receives and accepts a notice of section 202 fund reservation and identification of any restrictive covenants. However, in localities where HUD determines the time constraints of the funding round will not permit all of the required official actions (*e.g.*, approval of Community Planning Boards) which are necessary to convey publicly-owned sites, a letter in the application from the Mayor or Director of the appropriate local agency indicating approval of conveyance of the site contingent upon the necessary approval action is acceptable and may be approved by the Field Office if it has had satisfactory experience with timely conveyance of sites from that public body. In such cases, documentation shall also include a copy of the public body's evidence of ownership and identification of any restrictive covenants.

(**Note:** A proposed project site may not be acquired or optioned from a general contractor (or its affiliate) which will construct the section 202 project or from any other development team member.)

(iii) A map showing the location of the site and the racial composition of the neighborhood, with the area of racial concentration delineated.

(iv) A sketch of the site plan showing the general development of the site including the proposed location of the proposed building(s), streets, parking areas and drives, service areas, and unusual site features.

(v) Evidence that the project as proposed is permissible under applicable zoning ordinances or regulations, or a statement of the proposed action required to make the proposed project permissible and the basis for belief that the proposed action will be completed successfully before the receipt of the conditional commitment application (*e.g.*, a summary of the results of any recent requests for rezoning on land in similar zoning classifications and the time required for such rezoning, preliminary indications of acceptability from zoning bodies, *etc.*).

(14) A statement that (a) identifies all persons (families, individuals, businesses and nonprofit organizations (identified by race/minority group, and status as owners or tenants) occupying the property on the date of submission of the application for fund reservation (or date of initial site control, if later); (b) indicates the estimated cost of relocation payments and other services; and (c) identifies the staff organization that will carry out the relocation activities.

(**Note:** IF ANY OF THE RELOCATION COSTS WILL BE FUNDED FROM SOURCES OTHER THAN THE SECTION 202 CAPITAL ADVANCE, THE SPONSOR MUST PROVIDE EVIDENCE OF A FIRM COMMITMENT OF THESE FUNDS. DUE TO POTENTIALLY HIGH RELOCATION COSTS, SPONSORS ARE ENCOURAGED TO UTILIZE SITES WHICH INVOLVE MINIMAL OR NO RELOCATION COSTS.)

(15) A narrative description of the proposed housing consistent with § 889.270(c), including:

(i) If and how the project will promote energy efficiency and if applicable, innovative construction or rehabilitation methods or technologies to be used that will promote efficient construction.

(ii) Identification and description of all community spaces, special amenities or features planned for the housing. A description of how the spaces will be utilized also must be included. If these amenities, features, or community spaces would not comply with the design and cost standards, the Sponsor must demonstrate its ability and willingness to contribute both the incremental development cost and continuing operating cost associated with the community spaces, features or amenities.

(16) Typical unit plans and floor plans of all floors providing community space, indicating dimensions of spaces to be used for the provision of supportive services.

(18) Identify on a Form HUD 92013E, Supplemental Application Processing Form—Housing for the Elderly, all supportive services, if any, to be provided to the persons occupying such housing; and describe (a) the manner in which such services will be provided to such persons (*i.e.*, on or offsite), including, whether a service coordinator will facilitate the adequate provision of such services, and (b) the public or private sources of assistance that may reasonably be expected to fund or provide such services.

(18) Signed certifications of the Sponsor(s)' intent to comply with title VI of the Civil Rights Act of 1964, the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Executive Orders 11063 and 11246, section 3 of the Housing and Urban Development Act of 1968, and the affirmative fair housing marketing requirements at 24 CFR part 200, subpart M.

(19) A certification from the appropriate State or local agency that the provision of services identified in the application is well designed to serve the special needs of the category or categories of elderly persons the housing is intended to serve.

(20) A certification of the Sponsor(s) that the appropriate State agency (single point of contact) under Executive Order 12372, Intergovernmental Review, has been contacted to determine if the Section 202 Program is covered under the State review process and, if applicable, the date the application was submitted to the State.

(21) A certification on SF–424, Application for Federal Assistance, that the Sponsor(s) is not delinquent on the repayment of any Federal debt.

(22) A certification by the Sponsor(s) that the section 202 funds will not be used to lobby the Executive or Legislative branches of the Federal government.

(23) A certification that the Sponsor(s) will comply with the requirements of the Drug-Free Workplace Act.

(24) A certification that the project will comply with HUD's design and cost standards, the Uniform Federal Accessibility Standards and HUD's implementing regulations at 24 CFR part 40, section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8, and for new construction multifamily housing projects, the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100.

(25) A certification by the Sponsor(s) that it will comply (or has complied)

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with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), implemented by regulations at 49 CFR part 24, and 24 CFR 889.285(e).

IV. Corrections to Deficient Applications

A. Preliminary Evaluation

During preliminary evaluation, Sponsors will be provided 14 calendar days from the date of HUD's written notification to cure technical deficiencies in their applications. However, it is not additional time to amend the application to overcome any defects in the original submission. Technical deficiencies are inadvertently omitted documents which have been executed prior to the application deadline date (such as certifications or articles of incorporation) or clarifications of previously submitted material and are not of such a nature as to improve the competitive position of the application.

Technical deficiencies do not include items which would be considered substantive defects in the original submission. For example, if a Board resolution is missing from the original submission, but it is submitted during the 14-day period, it must have been executed prior to the deadline date for receipt of applications. If it is not submitted during the 14-day period or it is submitted during this time but executed after the deadline date for receipt of applications, it is a substantive defect and the application will be rejected. Sponsors of applications that are missing two or more exhibits will not be afforded an opportunity to submit the missing exhibits and will receive written notification that their applications have been rejected. However, exhibits which are certifications are not counted as missing exhibits in this determination.

Applicants whose applications are found unacceptable during the preliminary evaluation process due to substantive defects and applications which fail to adequately respond to HUD's deficiency letter within the 14-day period, will be notified that their applications are not eligible for further processing, and are rejected.

B. Technical Processing

Applications which are found acceptable during the preliminary evaluation process, or an acceptable response to HUD's deficiency letter was received within the 14-day period, will undergo a more thorough analysis. As part of this analysis, HUD will conduct its environmental review in accordance with 24 CFR Part 50. Examples of reasons for technical processing rejection include an unacceptable site based upon a site visit or based on a review of the detailed financial information, the Sponsor(s)' lack of sufficient financial resources. The Secretary will not reject an application based on technical processing without giving notice of that rejection and the basis therefor to the applicant and affording the applicant an opportunity to respond. An applicant will be afforded 10 calendar days from the date of HUD's written notice to appeal a technical rejection. The Field Office shall make a determination on an appeal prior to making its selection recommendations.

Upon completion of technical processing, all acceptable applications will be rated according to the selection criteria in § 889.300(d) (also above in I.D.2). Applications which have a total score of 60 points or more will be eligible for selection and will be placed in rank order.

V. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations that implement section 101(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410.

B. Federalism Executive Order

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA does not have substantial direct effects on States or their political subdivisions, or on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This NOFA merely notifies the public of the availability of capital advances and project rental assistance for supportive housing for the elderly.

C. Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this NOFA does not significantly affect family formation, maintenance, or general well-being, and, thus, is not subject to review under the order.

D. HUD Reform Act

Section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3531) (the Reform Act), which requires the Secretary to certify that assistance within the jurisdiction of the Department to any housing project shall not be more than is necessary to provide affordable housing after taking account of other assistance specified in section 102(b)(1) of the Reform Act, and which also requires the Secretary to adjust the amount of assistance awarded or allocated to an applicant to compensate in whole or in part, as appropriate for any changes reported under section 102(c) of the Reform Act, would apply to section 202 capital advances. These requirements will become effective after the Department publishes a final rule to implement the Reform Act.

E. Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance Program title and number is 14.181, Housing for the Elderly or Handicapped.

Authority: Section 202, Housing Act of 1959, as amended (12 U.S.C. 1701q), section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: May 31, 1991.

Arthur J. Hill,

Assistant Secretary for Housing, Federal Housing Commissioner.

Appendix A—HUD Field Offices

Region I

Boston, Massachusetts Regional Office (Jurisdiction: Massachusetts)

John Mastropietro
Regional Administrator—Regional Housing Commissioner
HUD—Boston Regional Office
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street, Room 375
Boston, Massachusetts 02222-1092
(617) 565-5234
(TDD) (617) 565-5453

Hartford, Connecticut Office (Jurisdiction: Connecticut)

William Hernandez, Jr.
Manager
HUD—Hartford Office
330 Main Street
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Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary

Supportive Housing for Persons With Disabilities—Set-aside for Persons Disabled as a Result of Infection With the Human Acquired Immunodeficiency Virus; Notice of Fund Availability

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Docket No. N-91-3267; FR-3065-N-01]

Notice of Fund Availability (NOFA) for Supportive Housing for Persons With Disabilities—Set-aside for Persons Disabled as a Result of Infection With the Human Acquired Immunodeficiency Virus

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of fund availability for FY91.

SUMMARY: This NOFA announces the set-aside established in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1991 (Pub. L. 101-507, approved November 5, 1990 (HUD's Fiscal Year 1991 Appropriations Act) for supportive housing for persons disabled as a result of infection with the Human Acquired Immunodeficiency Virus (HIV). In the body of this document is information concerning the following: (a) The purpose of the NOFA and information regarding eligibility, submission requirements, available amounts, and selection criteria and (b) application processing, including how to apply and how selections will be made, where that information differs from the Supportive Housing for Persons with Disabilities Program as announced in a NOFA published elsewhere in this issue. A checklist of steps and exhibits involved in the application process will be included in the application package which can be obtained from the appropriate Field Office identified in Appendix A.

DATES: The deadline date for receipt of applications in response to this NOFA is August 12, 1991.

ADDRESSES: Applications must be delivered to the HUD Field Office for your jurisdiction. A listing of HUD Field Offices, their addresses and telephone numbers (including TDD telephone numbers where available) are attached as appendix A to this NOFA. HUD will date-stamp incoming applications to evidence timely receipt, and upon request, provide the applicant with an acknowledgement of receipt. Applications submitted by facsimile are not acceptable.

FOR FURTHER INFORMATION CONTACT: The HUD Field Office for your jurisdiction.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The Department has submitted this NOFA to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. Pending approval of these collections of information by OMB and the assignment of an OMB control number, no person may be subjected to a penalty for failure to comply with these information collection requirements. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register.**

Public reporting burden for the collection of information requirements contained in this NOFA are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, Findings and Certifications. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: HUD Desk Officer, room 3001, Washington, DC 20530.

I. Purpose and Substantive Description

A. Authority

HUD's Fiscal Year 1991 Appropriations Act established a set-aside of 500 units for persons disabled as a result of infection with HIV from the amounts appropriated under section 811 of the National Affordable Housing Act (the NAH Act), which authorizes a new supportive housing program for persons with disabilities. This program replaces assistance for persons with disabilities previously covered by section 202 of the Housing Act of 1959 (section 202 continues, as amended by section 801 of the NAH Act, to authorize supportive housing for the elderly). The purpose of section 811 is to enable persons with disabilities to live with dignity and independence within their communities by expanding the supply of supportive housing that is designed to accommodate the special needs of such persons and provides supportive services that address the individual health, mental health, and other needs of such persons. The Secretary is authorized to provide assistance to private, nonprofit organizations to expand the supply of supportive housing for persons with disabilities. The assistance will be provided as capital advances and contracts for project rental assistance in accordance with the Interim Rule for part 890 published elsewhere in this issue. This assistance may be used to finance the construction, rehabilitation or acquisition (group homes only), including acquisition of property from the Resolution Trust Corporation (RTC) (group homes and independent living facilities), to be used as supportive housing for persons with disabilities in accordance with the Interim Rule.

For supportive housing for persons with disabilities, HUD's Fiscal Year 1991 Appropriations Act provides $106,709,000 for capital advances under section 811, of which 500 units are required to be used for persons disabled as a result of infection with the HIV, and $104,000,000 for project rental assistance, including project rental assistance for 500 units of housing for persons disabled as a result of infection with the HIV. Of the amounts available, up to $5,000,000 shall be available for contracts for technical assistance in accordance with section 811(j)(1).

A NOFA was also published elsewhere in this issue for the Supportive Housing for Persons with Disabilities Program and it mentions that the set-aside for the 500 units of housing for persons disabled as a result of infection with the HIV would be the subject of a separate NOFA. This NOFA provides guidance regarding the set-aside (e.g., eligibility, submission requirements, available amounts, selection criteria and application processing). Successful recipients (Sponsors) of a section 811 capital advance under this NOFA will be nonprofit entities (with section 501(c)(3) tax exemption status) with experience as health care providers, or significant housing or supportive services experience, and which have a working or service agreement with a hospital. Otherwise, submission requirements and selection criteria for the Supportive Housing for Persons with Disabilities Program apply to this set-aside.

Of particular interest is the Department's implementation of section 105 of the NAH Act which would require that an application for this program include a certification of consistency of the proposal with an approved Comprehensive Housing Affordability Strategy ("CHAS") for the jurisdiction in which the proposed project is to be located. See the interim rule published on February 4, 1991 (56 FR 4480). The Supportive Housing for Persons with Disabilities interim rule provides that

the CHAS certification requirement will not apply for FY 1991 funding of this program. However, beginning with the FY 1992 funding round, all applications for funding under this program must include a certification from the responsible public official that the project is consistent with an approved CHAS.

For FY 1991 applications, the CHAS certification requirement is not being applied to this program, because it is not statutorily required for this year and it is not feasible due to the amount of time required of a State or locality to develop a CHAS, including the hearing necessary to obtain citizen participation, and obtain a certification of consistency for FY 1991 funding. Therefore, to be most fair to entrants in this now significantly revised program, the Department is providing transition by delaying applicability of the CHAS certification until FY 1992.

Also of special interest, is a new statutory requirement for a certification by the appropriate state or local agency that the provision of services identified in the application is well designed to serve the needs of persons with disabilities. In order to fulfill this requirement, Sponsors must submit one copy of their application to the appropriate state or local agency identified by the Field Office in the application package simultaneously with their submission of their application to the appropriate Field Office. Also included with the application package will be a certification form that the Sponsor shall transmit to the state or local agency, along with its application, for the state or local agency to indicate that it has reviewed the supportive services plan and whether or not the provision of services is well designed to meet the needs of the proposed disabled population. Once the state or local agency completes its review of the supportive services plan, it must complete the certification form and forward it to the Field Office within 30 days of the Section 811 application deadline date. Unlike the Section 202 Program of Housing for Handicapped People where the appropriate state agency's review of the service plan description was optional, in the Section 811 program, the state or local agency's certification is required for approval of the Sponsor's application. Applications which do not contain such a certification will not be funded.

B. Allocation Amount

The allocation of capital advance authority for this set-aside is:

500 units	$32,679,000.

C. Eligibility

The only eligible applicants under this program are private, nonprofit organizations. Neither a public body nor an instrumentality of a public body is eligible to participate in the program.

No more than 10 percent of the 500 units will be approved for any single Sponsor unless insufficient units can be funded by applying the 10 percent limit.

D. Preliminary Evaluation and Selection Criteria

1. Preliminary Evaluation

Applications for section 811 fund reservations for Supportive Housing for Persons with Disabilities—Set-Aside for Persons Disabled as a result of Infection with the HIV that meet the following initial threshold requirements at preliminary evaluation will be eligible for technical processing (similar to section I.D.1., Preliminary Evaluation, in the Supportive Housing for Persons with Disabilities NOFA):

(a) Application was received by HUD at the appropriate address by August 12, 1991, and was complete or was missing no more than one complete exhibit (excluding exhibits which are certifications);

(b) Sponsor acceptably corrected deficiencies (including furnishing missing certifications) within 14 calendar days from the date of the notification of deficiency letter;

(c) Sponsor, proposed facilities and proposed occupants (i.e., persons disabled as a result of infection with the HIV) are eligible under section 811;

(d) Sponsor is a private nonprofit entity (with 501(c)(3) tax exemption status) with experience as a health care provider or significant housing or supportive services experience related to the disabled, families or minority groups, and has a working or services agreement with a hospital;

(e) There is reasonable expectation that the Sponsor can meet the Minimum Capital Investment requirement and start-up expenses;

(f) Application contains evidence of control of a site or the appropriate identification of a site;

(g) The Sponsor is in compliance with civil rights laws and regulations as follows:

(1) There are no pending civil rights suits against the Sponsor instituted by the Department of Justice;

(2) There are no outstanding findings of noncompliance with civil rights statutes, Executive Orders or regulations as a result of formal administrative proceedings, or where the Secretary has issued a charge under the Fair Housing Act, unless the Sponsor is operating under a compliance agreement designed to correct the areas of non-compliance;

(3) There has not been a deferral of the processing of applications from the Sponsor imposed by HUD under Title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3), the HUD Title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1), or under section 504 of the Rehabilitation Act of 1973 and the HUD section 504 regulation (24 CFR 8.57);

(h) Even without a site visit, it is reasonable to expect the proposed site meets site and neighborhood standards, including minority and disabled concentration considerations, and is not in a floodway or Coastal High Hazard Area;

(i) There is sufficient market demand for the number and type of units proposed based on preliminary review;

(j) Application included a supportive services plan meeting the requirements of § 890.265(c)(15); and

(k) Application was responsive to the Field Office Invitation.

2. Selection Criteria

Applications for section 811 fund reservations for this set-aside that successfully pass preliminary evaluation and technical processing will be rated using the following selection criteria (similar to Selection Criteria in section I.D.2., in the Supportive Housing for Persons with Disabilities NOFA):

(a) The ability of the Sponsor to develop and operate the proposed housing on a long-term basis (20 points);

(1) The scope, extent and quality of the Sponsor's experience as a health care provider or significant housing or supportive services experience related to the disabled, families or minority groups (including providing housing or supportive services to the proposed disabled population), and the Sponsor has a working or services agreement with a hospital (10 points);

(2) The scope, extent and quality of the Sponsor's experience as a health care provider or significant housing or supportive services experience related to the disabled, families or minority groups, and the Sponsor has a working or services agreement with a hospital, and opportunities for minority and women-owned business enterprises participation (5 points); and

(3) The extent of local community support for the Sponsor and its activities, including experience in providing housing and/or supportive services in the area where the project is

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to be located, and Sponsor's demonstrated ability to enlist volunteers and local funds for its efforts (5 points);

(b) The Sponsor's financial capacity (25 points):

(1) The Sponsor's financial history and its current financial outlook (5 points);

(2) The Sponsor's ability and willingness to provide funds for start-up expenses and commit financial resources beyond the Minimum Capital Investment (10 points); and

(3) The scope of the proposed project in relationship to the financial capacity and commitment of the Sponsor.

Note: Consideration must also be given to the Sponsor's financial commitment to any projects in the pipeline and other applications submitted in response to invitations under this NOFA, or under the published NOFA for Supportive Housing for the Elderly, or the NOFA for Supportive Housing for Persons with Disabilities published elsewhere in this issue (10 points).

(c) The need for supportive housing for persons with disabilities in the area to be served (10 points).

(d) The design of the project (10 points):

(1) The extent to which the proposed design of the housing will meet the special needs of persons with disabilities (4 points);

(2) The extent to which the proposed design of the housing will accommodate the provision of supportive services (that are expected to be needed, either initially or over the useful life of the housing, by the category or categories of disabled persons the housing is intended to serve) (3 points); and

(3) the extent to which the proposed size and unit mix (if independent living facility) of the housing will enable the Sponsor to manage and operate the housing efficiently and ensure that the provision of supportive services will be accomplished in an economical fashion (3 points);

(e) The provision of supportive services (20 points):

(1) The extent to which the Sponsor has demonstrated that necessary supportive services will be provided on a consistent, long-term basis (10 points);

(2) The appropriateness of the supportive services to the needs of the proposed disabled population (5 points); and

(3) The quality of the service implementation plan (5 points);

(f) The extent to which the Sponsor has control of the site of the proposed housing (15 points):

(1) Applications with evidence of site control:

(i) The proximity or accessibility of the site to shopping, medical facilities, transportation, churches, recreational facilities, job opportunities and other necessary services to the intended occupants (4 points);

(ii) Suitability of the site from the standpoint of promoting a greater choice of housing opportunities for minority disabled persons/families (4 points);

(iii) Freedom of the site from adverse environmental conditions and overconcentration of disabled people (4 points);

(iv) Reasonableness of the site cost per unit and suitability of the property for the intended use and adequacy of utilities and streets (3 points); or

(2) Applications with identification of site:

(i) The proximity or accessibility of the site to shopping, medical facilities, transportation, churches, recreational facilities and other necessary services to the intended occupants as well as freedom of overconcentration of disabled persons (5 points) ;

(ii) Suitability of the site from the standpoint of promoting a greater choice of housing opportunities for minority disabled persons/families (5 points); and

(iii) The likelihood that site control will be obtained within six months of fund reservation, if approved (5 points).

II. Application Process

All applications for section 811 fund reservations under the set aside submitted by eligible Sponsors must be filed with the appropriate HUD Field Office and must contain all exhibits required by this NOFA.

Immediately upon publication of this NOFA, Field Offices shall notify minority organizations within their jurisdiction involved in housing and community development, health care and groups with special interest in housing for persons disabled as a result of infection with HIV.

Within three weeks of the date of this Notice, HUD Field Offices will publish a one-time Invitation as required by § 890.205(b) of the Interim Rule, in newspapers of general circulation, and in any minority newspapers serving the Field Office jurisdiction. Field Offices will accept applications after publication of the Invitation. No application will be accepted after the regular closing time of the appropriate Field Office on August 12, 1991, unless that time is extended by a Notice published in the Federal Register. Applications received after that date and time will not be accepted, even if postmarked by the deadline date. Applications submitted by facsimile are not acceptable.

Organizations interested in applying for a section 811 fund reservation under the set aside should provide the appropriate Field Office with their names, addresses and telephone numbers, and advise the Field Office whether they wish to attend the workshop described below. HUD encourages minority organizations to participate in this program as Sponsors. Field Offices, at the date and time specified in the Invitations, will conduct workshops to explain the Supportive Housing for Persons with Disabilities Program and the Seed Money Loan Program under section 106(b) of the Housing and Urban Development Act of 1968. Under this latter program, HUD makes direct, interest-free loans to approved nonprofit section 811 eligible Owners to cover certain start-up expenses. Section 106(b) applications should be submitted simultaneously with the section 811 application. HUD will consider section 106(b) applications with the section 811 applications.

HUD strongly recommends that prospective applicants attend the local Field Office workshop. More detailed information covering the time and place of the particular workshops will be set out in the Field Office Invitation. Interested persons with disabilities should contact the Field Office to assure that any necessary arrangements can be made for them to enable their attendance and participation in the workshop. While strongly urged to do so, if Sponsors cannot attend a workshop, application packages and handbooks can also be obtained from the Field Offices. Contact the appropriate Field Office with any questions regarding the submission of applications.

At the workshops, application packages will be distributed, application procedures and requirements (including the Department's equal opportunity, environmental, design and cost requirements and required exhibits) will be explained. Also, concerns such as local market conditions, building codes, historic preservation, floodplain management, displacement and relocation, zoning, housing costs, and states' positions on funding supportive services to group home residents will be addressed.

III. Application Submission Requirements

A. Application

Each application shall include all of the information, materials, forms, and exhibits listed in this section (same as the Supportive Housing for Persons with Disabilities NOFA) and must be indexed and tabbed. The Field Office will base its determination of the eligibility of the Sponsor for a reservation of section 811 capital advance set aside funds on the information provided in the application.

In preparing applications, applicants will be able to utilize information and exhibits previously prepared for prior Section 202 applications or for applications for other funding programs. Examples of exhibits that may be readily adapted or amended to decrease the burden of application preparation include among others those on previous participation in the section 202 program; applicant experience in housing and services; financial capacity; supportive services plan; community ties, and experience serving minorities.

1. Application Contents

(a) Each applicant (Sponsor) shall include on a Form HUD–92013, Application for Multifamily Housing Project:

(1) The name, address, and telephone number of the Sponsor(s);

(2) The name, title, address, and telephone number of the officer or director of the Sponsor's Board of Directors to whom communications should be addressed;

(3) The following specific information regarding the project:

(i) Number of units requested by bedroom type (efficiency (415 sq. ft.), one-bedroom (540 sq. ft.) two-bedroom (800 sq. ft.), three-bedroom (1050 sq. ft.), four-bedroom (1150 sq. ft.) or if five or more bedrooms are provided, increase unit sizes by up to 100 sq. ft. for each additional bedroom) and the number of residents (if independent living facility) or the number of bedrooms and number of residents to be housed in each group home;

(ii) Dollar amount of the capital advance requested;

(iii) Estimated land cost;

(iv) Number and type of structures;

(v) Number of stories planned and whether an elevator will be included; and

(vi) Development method (new construction, rehabilitation, or acquisition (group homes and RTC properties)).

(b) Additional exhibits must include:

(1) a Housing Consultant's Resume, Contract (Form HUD 92531A–EH), and an Identity of Interest and Disclosure Certification (if the Sponsor has employed a project consultant).

(2) Evidence of each Sponsor's legal status as a private nonprofit organization, including the following:

(i) Articles of incorporation, constitution, or other organizational documents;

(ii) By-laws;

(iii) A typed incumbency certificate, listing all officers and directors, title, beginning date of each person's term and when that term expires. It must be certified by an officer of the Sponsor that it constitutes all duly qualified and sitting officers and directors as of the date the application is filed with HUD;

(iv) IRS tax exemption (501(c)(3)) ruling (this must be submitted by all Sponsors, including churches). A nonprofit organization organized in the Commonwealth of Puerto Rico and exempt from income taxation under Puerto Rico law, has never been liable for payment of Federal income taxes, and does not pay patronage dividends may be exempt from the requirement set out in the previous sentence if they are not eligible for tax exemption; and

(v) Resolution of the board, duly certified by an officer, that no officer or director of the Sponsor or Owner has or will have any financial interest in any contract with the Owner or in any firm or corporation which has or will have a contract with the Owner.

(3) Satisfactory evidence that the Sponsor:

(i) has the necessary legal authority to sponsor the project and to assist the Owner to finance, acquire, construct, or rehabilitate and maintain the project; and

(ii) will form an Owner (as defined in § 890.105) after the issuance of the fund reservation, will cause the Owner to file a request for determination of eligibility and a request for a capital advance under § 890.300, and will provide sufficient resources to the Owner to ensure the development and long-term operation of the project.

(4) A description of the Sponsor's ties to the community, including the minority community, and any statements of support for the project by members of the community in which the project is to be located and state and local organizations familiar with the needs of disabled individuals proposed to be housed.

(5) Evidence of previous participation in HUD programs, by the Sponsor, its officers or directors, on Form HUD 2530. If none, forms must be submitted indicating "No previous experience."

(6) A description of any financial default, modification of terms and conditions of financing, or legal action taken or pending against the Sponsor or its officers, directors, or trustees in their corporate capacity.

(7) A description of the following:

(i) The Sponsor's experience as a health care provider and its working or services agreements with a hospital;

(ii) Any other rental housing projects, medical and/or other facilities sponsored, owned or operated by the Sponsor, including a description of experience in providing housing, medical and/or other facilities to persons with disabilities and/or to families; and

(iii) The Sponsor's experience in providing housing, medical or other facilities and/or services to minority persons or families and in contracting with minority and women-owned business enterprises.

(8) A description of the Sponsor's past or current involvement in any programs other than housing (including its provision of services) that demonstrates the Sponsor's management capabilities and experience, including a description of the Sponsor's experience in serving disabled persons and/or families.

(9) A certified Board Resolution, acknowledging responsibilities of sponsorship, long-term support of the project(s), willingness of Sponsor to assist the Owner to develop, own, manage and ensure the provision of appropriate services in connection with the proposed project, and that it reflects the will of its membership.

(10) A list of the applications, if any, the Sponsor has submitted or is planning to submit to any other Field Office in response to the current Invitations under this NOFA, or under the NOFA for Supportive Housing for Persons with Disabilities, or the NOFA for Supportive Housing for the Elderly, both published elsewhere in this issue. Indicate by Field Office, the proposed location by city and state, the number of units requested, and the financial commitments related to each application.

(11) An estimate of start-up expenses for the project and the source of funds to meet these expenses. If the Sponsor plans to use a section 106(b) seed money loan, an application (Form HUD–92290) for such loan must be submitted with required attachments.

(12) Evidence, in the form of a certified Board Resolution, of the Sponsor's willingness to fund the Minimum Capital Investment, estimated start-up expenses, and any associated development or operating costs related to items not covered by the capital advance under § 890.240 and to ensure the development and long-term operation of the project. Also, as evidence of the Sponsor's financial ability to cover these costs, include:

(i) a brief narrative description of financial history;

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(ii) copies of balance sheets and statements of income and expenses for each of the past three years that the Sponsor has operated. The financial statements, at a minimum, must include the information contained in Form HUD–92417, and a certification pursuant to the criminal warning provided in U.S. Criminal Code, section 1001, title 18 U.S.C.;

(iii) Form HUD–2013 Supplement, Application for Project Mortgage Insurance, listing current bank and trade references; and

(iv) A list of all FY 1990 and prior year projects to which the Sponsor(s) is a party, identified by project number, Field Office, funding year and month and year of initial closing, current status, (if finally closed, indicate month and year), and financial requirements for closing.

(13) A narrative description of the proposed housing including:

(i) Evidence of control of an approvable site, or identification of a site for which the Sponsor provides reasonable assurances that it will obtain control within 6 months from the date of fund reservation (if Sponsor is approved for funding);

(A) If the Sponsor has control of the site, it must submit the following information:

(1) Evidence that the Sponsor has entered into a legally binding option agreement to purchase or lease the proposed site; or has a copy of the contract of sale for the site, a deed, long-term leasehold or other evidence of legal ownership of the site (including properties to be acquired from the RTC). The option agreement period should extend through the end of the current fiscal year and contain a renewal provision to guarantee site availability through the subsequent stage of processing. The Sponsor must also identify any restrictive covenants. In the case of a site to be acquired from a public body, evidence that the public body possesses clear title to the site, and has entered into a legally binding agreement to lease or convey the site to the Sponsor after it receives and accepts a notification of section 811 fund reservation and identification of any restrictive covenants. However, in localities where HUD determines the time constraints of the funding round will not permit all of the required official actions (*e.g.*, approval of Community Planning Boards) which are necessary to convey publicly-owned sites, a letter in the application from the Mayor or Director of the appropriate local agency indicating their approval of conveyance of the site contingent upon the necessary approval action is acceptable and may be approved by the Field Office if it has satisfactory experience with timely conveyance of sites from that public body. In such cases, documentation shall also include a copy of the public body's evidence of ownership and whether there are any restrictive covenants.

Note: A proposed project site may not be acquired or optioned from a general contractor (or its affiliate) which will construct the section 811 project or from any other development team member.

(2) A map showing the location of the site and the racial composition of the neighborhood, with any area of racial concentration delineated;

(3) Photographs of the site;

(4) Evidence that the project as proposed is permissible under applicable zoning ordinances or regulations, or a statement of the proposed action required to make the proposed project permissible and the basis for the belief that the proposed action will be completed successfully before the receipt of the conditional commitment application (*e.g.*, a summary of the results of any recent requests for rezoning on land in similar zoning classifications and the time required for such rezoning, preliminary indications of acceptability from zoning bodies, *etc.*);

(5) A statement that (a) identifies all persons (families, individuals, businesses and nonprofit organizations (identified by race/minority group, and status as owners or tenants) occupying the property on the date of submission of the application for fund reservation (or date of initial site control, if later); (b) indicates the estimated cost of relocation payments and other services, and (c) identifies the staff organization that will carry out the relocation activities.

Note: IF ANY OF THE RELOCATION COSTS WILL BE FUNDED FROM SOURCES OTHER THAN THE SECTION 811 CAPITAL ADVANCE, THE SPONSOR MUST PROVIDE EVIDENCE OF A FIRM COMMITMENT OF THESE FUNDS. DUE TO POTENTIALLY HIGH RELOCATION COSTS, SPONSORS ARE ENCOURAGED TO UTILIZE SITES WHICH INVOLVE MINIMAL OR NO RELOCATION COSTS.

(6) An indication as to whether the Sponsor is willing to seek a different site if the preferred site is unapprovable, and if so, a reasonable assurance that site control will be obtained within 6 months of fund reservation.

(B) If the Sponsor has identified a site, but does not have it under control, it must submit the following information:

(1) A description of the location of the site, neighborhood/community characteristics (to include racial and ethnic data) and amenities, and adjacent housing and/or facilities;

(2) A description of the activities undertaken to identify the site as well as what actions must be taken to obtain control of the site, if approved for funding;

(3) An indication as to whether the site is properly zoned. If it is not, an indication of the actions/time necessary for proper zoning; and

(4) A status of the sale of the site.

(5) An indication as to whether the site would involve relocation.

(ii) If and how the project will promote energy efficiency and if applicable, innovative construction or rehabilitation methods or technologies to be used that will promote efficient construction.

(iii) An identification of all community spaces, amenities or features planned for the housing. A description of how the spaces will be utilized also must be included. If these community spaces, amenities, or features would not comply with the design and cost standards of § 890.220, the Sponsor must demonstrate its ability and willingness to contribute both the incremental development cost and continuing operating cost associated with the community spaces, amenities or features.

(iv) A written description of the design of the proposed housing including any special design features and community space necessary to accommodate the physical needs of the proposed residents and the provision of supportive services. Included with the written description must also be a schematic drawing of each floor of the project noting the location of any special design features as well as a typical bedroom in a group home or a typical unit in an independent living facility with approximate dimensions, and community space for the provision of supportive services.

(v) For group homes to be licensed as intermediate care facilities (in which funding for the intermediate care is provided under Title XIX of the Social Security Act) that serve persons with developmental disabilities, the following must be submitted:

(a) Evidence demonstrating that the proposed project will primarily provide housing rather than medical facilities, is or will be licensed by appropriate State agencies;

(b) Written evidence that the State Medicaid Office recognizes the need for a tenant contribution to rent and has agreed to pay the cost of the tenant contribution in the Medicaid payment to the Sponsor;

(c) Description of the medical training of the staff of the proposed facility and any nursing services that will be required by the residents on-site;

(d) Description of the services that will be funded by Medicaid for residents of the proposed project, including their nature, frequency and where the services are to be provided;

(e) Description of any special design features in the application that are not common to other section 811 group homes for the proposed population and the Sponsor's rationale for including them; and,

(f) Statement certifying that the Individual Program Plan for each resident will include participation in an out-of-the-home activity program for at least six hours each weekday.

(14) A narrative description of the anticipated occupancy (i.e., persons disabled as a result of infection with the HIV).

Note: Persons disabled as a result of infection with the HIV are also eligible for occupancy in a project for the physically disabled, developmentally disabled or chronically mentally ill, depending upon the nature of the person's disability.

(15) A supportive services plan that includes:

(i) A detailed description of the housing intended to serve persons disabled as a result of infection with the HIV. Include how and from where persons will be referred and admitted to the project.

(ii) A detailed description of the needs of persons with disabilities that the housing is expected to serve.

(iii) A *detailed description of the supportive services* proposed to be provided to the anticipated occupancy, including:

(A) The name(s) of the agency(s) which will be responsible for providing supportive services and evidence of the service provider's capability and experience in providing such supportive services;

(B) The manner in which such services will be provided (i.e., how, when and how often, where (on/off-site), including assurances that the proposed residents will receive supportive services based on their individual needs.

(C) The staffing plan, including a description of the qualifications of residential staff, if any, and other staff necessary to provide the proposed services.

(iv) Identification of the extent of state and local funds available to assist in the provision of supportive services.

(v) A letter of intent from each agency that will provide the supportive services (if other than the Sponsor), indicating the source and extent of commitment to provide funding for the supportive services.

(vi) If any state or local government funds will be provided, a description of the state/local agency's philosophy/policy concerning residential facilities for the population to be served as well as a demonstration by the Sponsor that the application is consistent with state or local plans and policies governing the development and operation of facilities to serve individuals of the proposed occupancy category.

(16) Evidence demonstrating that there is effective demand for the proposed housing in the area to be served by the project and demonstrating that this demand is likely to continue throughout the life of the project.

(17) Signed certifications of the Sponsor(s)' intent to comply with Title VI of the Civil Rights Act of 1964, the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Executive Orders 11063 and 11246, section 3 of the Housing and Urban Development Act of 1968, and the affirmative fair housing marketing requirements at 24 CFR part 200, subpart M.

(18) A certification from the appropriate state or local agency that it has reviewed the supportive services plan in the Sponsor's application and that the provision of services identified in the application is well designed to serve the special needs of persons with disabilities to be served by the proposed project(s).

Note: The certification will not be included in the Sponsor's application submission to the Field Office. The state or local agency shall complete the certification found in the Sponsor's submission to the agency and forward it to the Field Office within 30 days of the application deadline date.

(19) A certification of the Sponsor(s) that the appropriate state agency (single point of contact) under Executive Order 12372, Intergovernmental Review, has been contacted to determine if the Section 811 Program is covered under the state review process and, if applicable, the date the application was submitted to the State.

(20) A certification on SF–424, Application for Federal Assistance, that the Sponsor(s) is not delinquent on the repayment of any Federal debt.

(21) A certification by the Sponsor(s) that the section 811 funds will not be used to lobby the Executive or Legislative branches of the Federal government.

(22) A certification that the Sponsor(s) will comply with the requirements of the Drug-Free Workplace Act.

(23) A certification that the project will comply with HUD's design and cost standards, the Uniform Federal Accessibility Standards and HUD's implementing regulations at 24 CFR part 40, section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8, and for new construction multifamily housing projects (independent living facilities), the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100.

(24) A certification by the Sponsor(s) that it will comply (or has complied) with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR part 24, and 24 CFR 890.260(e).

IV. Corrections to Deficient Applications

A. Preliminary Evaluation

During preliminary evaluation, Sponsors will be provided 14 calendar days from the date of HUD's written notification to cure technical deficiencies in their applications. However, it is not additional time to amend the application to overcome any defects in the original submission. Technical deficiencies are inadvertently omitted documents which have been executed prior to the application deadline date (such as certifications or articles of incorporation) or clarifications of previously submitted material and are not of such a nature as to improve the competitive position of the application.

Technical deficiencies do not include items which would be considered substantive defects in the original submission. For example, if a Board resolution is missing from the original submission, but it is submitted during the 14-day period, it must have been executed prior to the deadline date for receipt of applications. If it is not submitted during the 14-day period or it is submitted during this time but executed after the deadline date for receipt of applications, it is a substantive defect and the application will be rejected. Sponsors of applications that are missing two or more exhibits will not be afforded an opportunity to submit the missing exhibits and will receive written notification that their applications have been rejected. However, exhibits which are certifications are not counted as missing exhibits in this determination.

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Applicants whose applications are found unacceptable during the preliminary evaluation process due to substantive defects and applications which fail to adequately respond to HUD's deficiency letter within the 14-day period, will be notified that their applications are not eligible for further processing, and are rejected.

B. Technical Processing

Applications which are found acceptable during the preliminary evaluation process, or an acceptable response to HUD's deficiency letter was received within the 14-day period, will undergo a more thorough analysis. As part of this analysis, HUD will conduct its environmental review in accordance with 24 CFR part 50 for applications that submitted satisfactory evidence of site control. Examples of reasons for technical processing rejection include a lack of commitment to fund the necessary supportive services or, based on a review of the detailed financial information, the Sponsor(s)' lack of sufficient financial resources. The Secretary will not reject an application based on technical processing without giving notice of that rejection and the basis therefor to the applicant and affording the applicant an opportunity to respond. An applicant will be afforded 10 calendar days from the date of HUD's written notice to appeal a technical rejection. The Field Office shall make a determination on an appeal prior to making its selection recommendations.

Upon completion of technical processing, all acceptable applications will be rated according to the selection criteria in § 890.300(c) (also mentioned above in I.D.2.). Applications which have a total score of 50 points or more will be eligible for selection and will be placed in rank order.

V. Additional Information

A. Project Size Limits

The following project size limits are applicable to supportive housing for persons with disabilities:

1. Group homes may house no more than eight (8) persons per home. On a case-by-case basis, however, HUD may approve a group home of up to 15 disabled people if the Sponsor can demonstrate the following:

(a) The increased number of people is necessary for the economic feasibility of the project;

(b) A project of the size proposed is compatible with other residential development and the population density of the area in which the project is to be located;

(c) A project of the size proposed can be successfully integrated into the community; and

(d) A project of the size proposed is marketable in the community.

2. Independent living facilities may house no more than 24 disabled people, except for projects for the chronically mentally ill which may not exceed 20 such persons. On a case-by-case basis, HUD may approve an exception to the 24-person limit based upon the same criteria set forth in (1) above.

B. Procedures for Set-Aside Competition

HUD will hold this separate competition for applications proposing to serve persons disabled as a result of infection with the HIV only, simultaneously with the regular competition for section 811 capital advance funds. As noted, applications must be submitted to the local HUD field office, and should be identified on the application as intended for the set-aside. However, applications will be selected in rank order on a national basis since it is not feasible to allocate 500 units among smaller allocation areas. If there are not sufficient approvable applications to use the above described 500 units, HUD will make selections from the next approvable applications for any of the other disability categories in rank order.

For the purpose of eligibility in a section 811 project for persons disabled as the result of infection with the HIV (as in a section 811 project for persons with physical disabilities, developmental disabilities or chronic mental illness) a person infected with the HIV must meet the definition of one or more of the following: Physically disabled, developmentally disabled or chronic mental illness as found in the definition of person with disabilities (§ 890.105).

C. Sites

The National Affordable Housing Act requires Sponsors submitting applications for section 811 fund reservations to provide either (a) evidence of site control, or (b) reasonable assurances that it will have control of a site within 6 months of notification of fund reservation. Accordingly, if a Sponsor has control of a site at the time it submits its application, it must include evidence of such as described in § 890.265(c)(13)(i)(A). If it does not have site control, it must provide the information required in § 890.265(c)(13)(i)(B) as a reasonable assurance that site control will be obtained within 6 months of fund reservation notification. Sponsors that do not provide satisfactory evidence of site control or the proper identification of a site will be notified that their applications are rejected.

Sponsors may select a site different from the one(s) submitted in their original applications. Selection of a different site will require HUD performance of an environmental review on the new site, which could result in rejection of that site. However, if a Sponsor does not have site control for any reason 12 months after notification of fund reservation, the assistance will be recaptured and reallocated.

Sponsors submitting satisfactory evidence of an approvable site (*i.e.*, site control) will compete against each other in Category A. Sponsors submitting proper identification of a site will compete against each other in Category B. HUD first shall select applications in the descending order of funding priority from Category A that most closely approximates the capital advance authority provided to the allocation area. If capital advance authority remains after selecting all approvable applications from Category A, HUD shall then select applications in the descending order of funding priority from Category B that most closely approximates the capital advance authority remaining in the allocation area.

Sponsors that submit evidence of site control where either the evidence or the site is not approvable will not have their applications rejected; their applications will compete in Category B, provided the application indicates their willingness to select another site and assurance that they will have site control within six months of fund reservation.

VI. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations that implement section 101(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

B. Federalism Executive Order

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA does not have substantial direct effects on States or their political subdivisions, or on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This NOFA merely notifies the public of the availability of capital advances for supportive housing for persons disabled as a result of infection with the HIV.

C. Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this NOFA does not significantly affect family formation, maintenance, or general well-being, and, thus, is not subject to review under the order.

D. HUD Reform Act

Section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3531) (the Reform Act), which requires the Secretary to certify that assistance within the jurisdiction of the Department to any housing project shall not be more than is necessary to provide affordable housing after taking account of other assistance specified in section 102(b)(1) of the Reform Act, and which also requires the Secretary to adjust the amount of assistance awarded or allocated to an applicant to compensate in whole or in part, as appropriate for any changes reported under section 102(c) of the Reform Act, would apply to section 811 capital advances. These requirements will become effective after the Department publishes a final rule to implement the Reform Act.

E. Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance Program title and number is 14.181, Supportive Housing for Persons with Disabilities.

Authority: Section 811, National Affordable Housing Act, section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: June 5, 1991.

Arthur J. Hill,

Assistant Secretary for Housing, Federal Housing Commissioner.

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Jacksonville, Florida 32202-4303
(904) 791-2626
(TDD) (904) 791-1241

Region V

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Gertrude Jordan
Regional Administrator—Regional Housing Commissioner
HUD—Chicago Regional Office
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Chicago, Illinois 60606
(312) 353-5680

Detroit, Michigan Office (Jurisdiction: Michigan)

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Manager
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Patrick V. McNamara Federal Building
477 Michgan Avenue
Detroit, Michigan 48226-2592
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Indianapolis, Indiana Office (Jurisdiction: Indiana)

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Grand Rapids, Michigan Office (Jurisdiction: Michigan)

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Grand Rapids, Michigan 49505-3409
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MILWAUKEE, WISCONSIN OFFICE (Jurisdiction: Wisconsin)

Delbert F. Reynolds
Manager
HUD—Milwaukee Office
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310 West Wisconsin Avenue
Suite 1380
Milwaukee, Wisconsin, 53203-2289
(414) 291-3214

Region VI

FORT WORTH, TEXAS REGIONAL OFFICE (Jurisdiction: Texas)

Sam R. Moseley
Regional Administrator-Regional Housing Commissioner
HUD—Fort Worth Regional Office
1600 Throckmorton
Post Office Box 2905
Fort Worth, Texas 76113-2905
(817) 885-5401
(TDD) (817) 728-5447

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Houston, Texas 77098-4096
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SAN ANTONIO, TEXAS OFFICE (Jurisdiction: Texas)

Cynthia Leon
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LITTLE ROCK, ARKANSAS OFFICE (Jurisdiction: Arkansas)

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HUD—Little Rock Office
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Little Rock, Arkansas 72201-3523
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(TDD) (501) 378-5405

NEW ORLEANS, LOUISIANA OFFICE (Jurisdiction: New Orleans)

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Acting Manager
HUD—New Orleans Office
Fisk Federal Building
1661 Canal Street—P.O. Box 70288
New Orleans, Louisiana 70173-2887
(504) 589-7200

OKLAHOMA CITY, OKLAHOMA OFFICE (Jurisdiction: Oklahoma)

Edwin I. Gardner
Manager
HUD—Oklahoma City Office
Murrah Federal Building
200 N.W. 5th Street
Oklahoma City, Oklahoma 73102-3202
(405) 231-4181

(TDD) (405) 231-4181

Region VII

KANSAS CITY, MISSOURI REGIONAL OFFICE (Jurisdiction: Missouri)

William H. Brown
Regional Administrator-Regional Housing Commissioner
HUD—Kansas City Regional Office
Gateway Tower II
400 State Avenue
Kansas City, KS 66101-2406
(913) 236-2162
(TDD) (913) 236-3972

OMAHA, NEBRASKA OFFICE (Jurisdiction: Omaha)

Roger M. Massey
Manager
HUD—Omaha Office
Braiker/Brandeis Building
210 South 16th Street
Omaha, Nebraska 68102-1622
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ST. LOUIS, MISSOURI OFFICE (Jurisdiction: Missouri)

Kenneth G. Lange
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HUD—St. Louis Office
210 North Tucker Boulevard
St. Louis, Missouri 63101-1997
(314) 425-4761
(TDD) (314) 425-6331

DES MOINES, IOWA OFFICE (Jurisdiction: Iowa)

William McNarney
Manager
HUD—Des Moines Office
Federal Building
210 Walnut Street
Room 259
Des Moines, Iowa 50309-2155
(515) 284-4512
(TDD) (515) 284-4706

Region VIII

DENVER, COLORADO REGIONAL OFFICE (Jurisdiction: Colorado)

Michael Chitwood
Regional Administrator—Regional Housing Commissioner
HUD—Denver Regional Office
Executive Tower Building
1405 Curtis Street
Denver, Colorado 80202-2349
(303) 844-4513

Region IX

SAN FRANCISCO, CALIFORNIA REGIONAL OFFICE (Jurisdiction: California)

Robert De Monte
Regional Administrator—Regional Housing Commissioner
HUD—San Francisco Regional Office
Philip Burton Federal Building & U.S. Courthouse
450 Golden Gate Avenue
P.O. Box 36003
San Francisco, California 94102-3448
(415) 556-4752
(TDD) (415) 556-8357

HONOLULU, HAWAII OFFICE (CATEGORY A) (Jurisdiction: Hawaii)

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300 Ala Moana Boulevard
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Honolulu, Hawaii 96850-4991
(808) 546-2136
(TDD) (808) 551-1348

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(TDD) (213) 251-7038

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(TDD) (916) 551-5971

PHOENIX OFFICE (Jurisdiction: Arizona)

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Region X

SEATTLE, WASHINGTON OFFICE (Jurisdiction: Washington)

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HUD—Seattle Regional Office
Arcade Plaza Building
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Seattle, Washington 98101-2058
(206) 442-5414

PORTLAND, OREGON OFFICE (Jurisdiction: Oregon)

Richard C. Brinck
Manager
HUD—Portland Office
Cascade Building
520 SW Sixth Avenue
Portland, Oregon 97204-1596
(503) 221-2561

ANCHORAGE, ALASKA OFFICE (Jurisdiction: Alaska)

Arlene Patton
Acting Manager
HUD—Anchorage Office
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(907) 271-4170

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Wednesday
June 12, 1991

Part V

Department of the Interior

Bureau of Indian Affairs

Salt River Indian Irrigation Project, AZ; Notice

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Salt River Indian Irrigation Project, AZ

AGENCY: Bureau of Indian Affairs, Department of Interior.

ACTION: General notice.

SUMMARY: The purpose of this general notice is to give the public notice of the current assessment rates for operating and maintaining the Salt River Indian Project. The assessment rates are based on a prepared estimate of the cost of normal operations and maintenance of the irrigation project. Normal operations and maintenance is defined as the average per acre cost of all activities involved in delivering irrigation water including pumped water and maintaining the facilities. Due to the delivery of irrigation water from several sources (normal flow water, spill water, storage water, pumped water and Central Arizona Project (CAP) water), it is necessary to structure the assessment rates to reflect cost of water delivered. The assessment rates for the Salt River Indian Irrigation Project consist of a per acre rate for delivery of the first 2 acre-feet of water, a rate for delivery of the next 1.25 acre-feet, delivery rate for additional water above 3.25 acre-feet, two rates for CAP water, and a spill water rate. The per acre rate will provide funds to cover the personnel and maintenance costs while the per acre-foot delivery rate will provide funds to cover remaining costs.

EFFECTIVE DATE: The rates stated in this public notice became effective January 1, 1991, and will remain in effect until changed by action of the Area Director.

FOR FURTHER INFORMATION CONTACT: Superintendent, Salt River Agency, Route 1, Box 117, Scottsdale, Arizona 8526, telephone COM (602) 640-2842.

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583, 25 U.S.C. 385).

The current basic operation and maintenance charges were established in 1988 at $18.00 per acre for the delivery of two (2) acre-feet. In 1988 the third acre-foot was $21.65 and the rate for any water delivered beyond 3 acre-feet was $36.00. The $36.00 rate (pumped water) was raised to $38.70 in May 1990 due to increased power rates. Spill water rate was established in 1988 at $6.75 per acre-foot.

The costs of labor, materials, equipment, power and energy have continued to increase each year. Lack of stored water in the previous three years has resulted in expenditure of reserve funds to provide the promised water supplies.

Without the substantial increases contained in the announcement, the Agency will not be able to deliver water in 1991.

Agency and Area Office staff met with the water users and the Salt River Pima-Maricopa Indian Community (Community) on October 18, 1990. The water users indicated that they would not be able to farm at the rates quoted then. Agency and Area Office staff have reduced costs in response to their own research and information supplied by the Community. These are reflected in this document.

Salt River Indian Irrigation Project Annual Operations and Maintenance Assessment Rates

Basic Assessment—The basic operation and maintenance assessment rate against the assessable lands under the Salt River Indian Irrigation Project in Arizona, to which water can be delivered through the irrigation project works, is hereby fixed at the rate of $38.00 per acre for delivery of two (2) acre-feet of water. Irrigation water will not be delivered until the basic operation and assessments are paid.

Assessment Rate for the next 1.25 Acre-Foot—Water delivered above two (2) acre-feet and up to 3.25 acre-feet is hereby fixed at the rate of $43.00 per acre-foot, measured at the farm delivery point. Payment shall be made in advance of delivery of water except where arrangements have been made for payment. The cost per acre-foot of water will be adjusted as the electrical energy supplier adjusts the rate at which electrical energy is supplied to the Salt River Indian Irrigation Project (none anticipated before October 1991.) Adjustment, up or down, shall be made on the first day of the month following notification of the change in electrical rates.

The projections above are based on development of a minimum of 10,000 acre-feet of stored water. If more water becomes available, the Community will be consulted about distribution and rates.

Rates for CAP water cover the cost of the water to the Project. The first 0.7 acre-foot per acre costs $48.41, the second 0.7 acre-foot per acre costs $51.86.

In summary, the first two acre-feet will be delivered for the basic assessment rate of $38.00 per acre; the next 1.25 acre-foot will cost $43.00 per acre-foot; the next 0.7 acre-foot will cost $48.41 per acre-foot and the final 0.7 acre-foot will cost $51.86 per acre-foot, for a total of 4.65 acre-feet per acre.

Municipal and Industrial—Assessment rate for delivery of water for Municipal and Industrial purposes is hereby fixed at $85.00 per acre-foot.

Spill Water—Spill water is not charged against the apportionment, and may be delivered, when available, at the rate of $9.00 per acre-foot. Payment shall be made in advance of delivery except where arrangements have been made for payment.

Payment—The annual basic assessment charge shall be due and payable on or before February 1st of each year.

Interest and Penalty Fees—Interest and penalty fees will be assessed, where required by law, on all delinquent operation and maintenance assessment charges as prescribed in the Code of Federal Regulations, Title 4, Part 102, Federal Claims Collection Standards; and 42 BIAM Supplement 3, Part 3.8, Debt Collection Procedures.

Delivery of Water—Delivery of water shall be made to all tracts of land for which the basic assessment is paid and water delivery rates are paid as set for the year 1991 and subsequent years until further notice.

Wilson Barber, Jr.,

Phoenix Area Director.

[FR Doc. 91-13851 Filed 6-11-91; 8:45 am]

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Wednesday
June 12, 1991

Part VI

Department of Education

National Assessment of Educational Progress Data Reporting Program; Notice

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DEPARTMENT OF EDUCATION

National Assessment of Educational Progress Data Reporting Program

AGENCY: Department of Education.

ACTION: Notice of proposed priorities for fiscal year 1992.

SUMMARY: The Secretary proposes priorities for fiscal year (FY) 1992 under the National Assessment of Educational Progress (NAEP) for a Data Reporting Program. The Secretary takes this action to ensure a thorough and detailed investigation of the data from the 1990 NAEP and the 1991 NAEP High School Transcript Study. The priorities are proposed in order to expand the available information about factors related to the academic achievement of U.S. children in public and private schools.

DATES: Comments must be received on or before July 12, 1991.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Alex Sedlacek, U.S. Department of Education, 555 New Jersey Avenue, NW., room 306D, Washington, DC 20208–5653.

FOR FURTHER INFORMATION CONTACT: Alex Sedlacek, 202–219–1734. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: NAEP is a primary indicator of the level of U.S. students' academic achievement. Since 1969, NAEP has been assessing what American students know and can do in a variety of curriculum areas and plotting their progress across time. To provide context for the achievement results, NAEP also collects demographic, curricular and institutional background information from students, teachers and school administrators. The 1991 NAEP High School Transcript Study (Transcript Study) collected transcript data on a sample of the twelfth graders who participated in the 1990 NAEP. The Transcript Study collected data on the characteristics of students and the characteristics of the high school courses the students took.

The contract with the Educational Testing Service to design and administer the 1990 NAEP includes provisions for the preparation and dissemination of a series of reports on the NAEP data. Under the proposed priorities, the Secretary will encourage other educational researchers to study the NAEP and Transcript Study data and prepare reports on specific topics in order to expand the available information about the teacher background variables, instructional variables, school environment variables and student background variables that relate to academic achievement.

The Secretary plans to award analysis grants under the proposed priorities in order to encourage a broader range of educational researchers to work with the NAEP and Transcript Study data, and to foster the development of new approaches to analyzing and reporting on these data sets.

The proposed priorities are intended to ensure that competitive grant projects meet the standards required for accurate statistical analysis of the complex data produced by NAEP and the Transcript Study.

Please note that there are no program regulations for this competition; therefore, in evaluating applications, the Secretary will use the selection criteria in the Education Department General Administrative Regulations (34 CFR 75.210).

The Secretary will announce the final priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other consideration of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priorities, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

NOTE: This notice of proposed priorities does *not* solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priorities.

Priorities

Proposed Absolute Priority: Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet this absolute priority:

Analysis of Data from the 1990 NAEP and the 1991 NAEP High School Transcript Study.

Applications proposing to conduct analyses of the data from the 1990 NAEP authorized by section 406(i) of GEPA, and the 1991 NAEP High School Transcript Study. Each analysis project must be designed to increase the information available to educational policymakers in areas where student performance might be affected by institutional change. Each project must include the publication and dissemination of the results of the data analysis, after completing the National Center for Education Statistics (NCES) peer review procedure.

Each proposed analysis must—

(1) Account for the sampling error associated with the multi-stage sampling plan of NAEP when estimating the precision of all statistical parameters; and

(2) Account for the measurement error in the multiply-imputed NAEP proficiency scores when estimating statistical parameters and their standard errors.

Proposed Competitive Preference Priorities: Under 34 CFR 75.105(c)(2)(i) the Secretary proposes to give preference within the absolute priority to applications that meet one or more of the following competitive priorities. The number of points the Secretary proposes to award to an application that meets a competitive priority in a particularly effective way is indicated in parentheses next to the title of the priority. These points would be in addition to any points the application earns under the selection criteria.

Proposed Competitive Priority 1

Innovative Approaches to Analysis of the 1990 NAEP and 1991 Transcript Study Data. (Up to 8 points)

Analysis projects that develop new approaches to analyzing and reporting the information contained in the NAEP and Transcript Study data, or appropriately apply state-of-the-art statistical procedures such as loglinear modeling, covariance structure analysis, and hierarchial linear modeling.

Proposed Competitive Priority 2

Development of Analytic Software Applicable to NAEP Data. (Up to 7 points)

Analysis projects that include the development of statistical software that would allow more advanced analytic techniques to be readily applied to NAEP data.

Invitational Priorities: Within the absolute and competitive priorities specified in this notice, the Secretary plans to establish the following invitational priorities. However, applications that meet these invitational priorities will not receive absolute or competitive preference over other applications.

Projects that—

(1) Address the instructional factors, family background factors, and school and teacher characteristics that the educational research literature suggests are correlates of academic performance;

(2) Do not overlap with the data analysis projects that will be listed in the application package, that are already being done by the NAEP contractor; and

(3) Use research done on statistical effect size to ensure that inferences made about project findings have practical as well as statistical significance.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 306D, 555 New Jersey Avenue NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

(Catalog of Federal Domestic Assistance Number 84.999B, National Assessment of Educational Progress Data Reporting Program)

Authority: 20 U.S.C. 1221e-1(i)

Dated: May 22, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 91–13907 Filed 6–11–91; 8:45 am]

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Wednesday
June 12, 1991

Part VII

Department of Education

Grants, Invitation to Apply; Library Services to Indian Tribes and Hawaiian Natives Program; Notice

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DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement—Library Programs Invitation To Apply for New Awards for Fiscal Year 1992

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year 1992.

SUMMARY: The Secretary invites applications for new awards for fiscal year 1992 and announces closing dates for the transmittal of applications under the Library Services to Indian Tribes and Hawaiian Natives Program—Basic Grants, Library Career Training Program, Strengthening Research Library Resources Program, Library Literacy Program, College Library Technology and Cooperation Grants Program, Foreign Language Materials Acquisition Program, and Library Services to Indian Tribes and Hawaiian Natives Program—Special Projects Grants.

DATES: The closing dates for transmitting applications under this notice are listed in section I of this notice.

ADDRESSES: The addresses for obtaining applications for, or further information about, individual programs or competitions are in the respective announcements for those programs contained in section II of this Notice.

To contact any persons named in this announcement, deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: All programs announced in this notice, with the exception of the Library Services to Indian Tribes and Hawaiian Natives Program, including both Basic Grants and Special Projects Grants, are subject to the requirements of Executive Order 12372, Intergovernmental Review of Federal Programs. Information regarding applicable procedures under this order will be included in the application packages.

Any institution of higher education that wishes to apply for funds under one of the programs authorized by title II of the Higher Education Act (HEA) (20 U.S.C. 1021 *et seq.*) must be an eligible institution under the terms of 20 U.S.C. 1201(a). If you wish to apply to the Department of Education for a determination of institutional eligibility, you may contact: Ms. Lois Moore, U.S. Department of Education, Office of Postsecondary Education, Debt Collection and Management Assistance Service, Division of Eligibility and Certification, 400 Maryland Avenue, SW., room 3522, Washington, DC 20202–5323, (202) 708–4913.

Organization of Notice. This notice contains two sections. Section I includes a chart listing closing dates in chronological order, and other pertinent information about programs covered by this notice. Section II consists of the individual application announcements for each program.

SECTION I.—PROGRAMS AND CLOSING DATES FOR LIBRARY PROGRAMS

Title of program and CFDA number	Applications available	Application deadline date	Deadline for intergovernmental review	Tentative award date	Estimated available funds [1]	Estimated range of awards [1]	Estimated avg. size of awards [1]	Estimated number of awards [1]
Library Services to Indian Tribes and Hawaiian Natives Program-Basic Grants (84.163A)	8/15/91	10/01/91	NA	2/21/92	[2] $920,000 [3] $615,000	NA	[2] $5,300	181
Library Career Training Program-Fellowship Awards (84.036B)	8/23/91	10/10/91	12/10/91	2/12/92	851,000	10,000–64,000	14,800	30
Strengthening Research Library Resources Program (84.091A)	8/19/91	10/28/91 [4] 12/02/91	12/27/91	6/12/92	5,000,000	40,000–600,000	170,000	29
Library Literacy Program (84.167A)	9/06/91	11/06/91	1/06/92	6/30/92	8,163,000	1,000–35,000	30,000	270
College Library Technology and Cooperation Grants Program (84.197A)	11/01/91	1/17/92	3/17/92	8/14/92	5,404,000	15,000–285,000	A 48,000 B 155,000 C 57,000 D 111,000	35
Foreign Language Materials Acquisition Program (84.239A)	12/06/91	3/09/92	5/08/92	7/15/92	676,000	2,500–125,000	A 73,000 B 30,000	26
Library Services to Indian Tribes and Hawaiian Natives Program-Special Projects Grants (84.163B)	02/10/92	4/03/92	NA	8/15/92	929,000	25,000–160,000	85,000	11

[1] The Department is not bound by any estimates in this notice. The estimated available funds reflects fiscal year 1991 appropriation amounts; however, the Administration's budget request for fiscal year 1992 does not include funds for these programs, other than set-asides for Indian Tribes and Hawaiian Natives. Applications are being invited to allow sufficient time for evaluation and completion of the grant process before the end of fiscal year 1992, should the Congress appropriate funds for these programs.
[2] 10/28/91 for institutions needing to establish eligibility; 12/02/91 for all others.
[3] Indian Tribes.
[4] Hawaiian Natives.

Section II—Application Notices

CFDA No. 84.163A—Library Services to Indian Tribes and Hawaiian Natives Program—Basic Grants (Library Services and Construction Act, Title IV)

Purpose

Provides basic grants to eligible Indian tribes and to eligible Hawaiian native organizations to establish or improve public library services for Indian tribes and Hawaiian natives.

Applicable Regulations

(a) The Basic Grants to Indian Tribes and Hawaiian Natives Program Regulations in 34 CFR part 771; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74 (for grants to Hawaiian native organizations), 75, 77, 79 (for grants to Hawaiian native organizations), 80, 81, 82, and 85.

For Applications or Information Contact

Beth Fine, Program Officer, Library Development Staff, Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., room 404, Washington, DC 20208–5571. Telephone (202) 219–1315.

Authority: 20 U.S.C. 1021 *et seq.*

CFDA No. 84.036B—Library Career Training Program—Fellowships and Institutes (Higher Education Act, title II, part B)

Purpose

Provides grants to train persons in librarianship through fellowships, institutes, and traineeships.

Applicable Regulations

(a) The Library Career Training Program Regulations in 34 CFR part 778; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, and 86.

Priorities

Absolute Priority: Under 34 CFR 75.105(c)(3) and 34 CFR 776.5 the Secretary gives an absolute preference to applications for fellowships that meet one of the following priorities. The Secretary funds under this competition only applications for fellowships that meet one of these absolute priorities:

Priority 1: To train or retrain library personnel in areas of library specialization where there are currently shortages, such as school media, children's services, young adult services, science reference, and cataloging.

Priority 2: To increase excellence in library education by encouraging study in librarianship and related fields at the doctoral level.

Invitational Priority: Within absolute priority #2 specified above, the Secretary is particularly interested in applications that meet the following invitational priority. However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

To place particular emphases on library planning, evaluation, and research.

For applications or information contact

Yvonne B. Carter, Program Officer, Library Development Staff, Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., room 404, Washington, DC 20208–5571. Telephone (202) 219–1315.

Authority: 20 U.S.C. 1021 *et seq.*

CFDA No. 84.091A—Strengthening Research Library Resources Program (Higher Education Act, Title II, Part C)

Purpose

Provides grants to the Nation's major research libraries to maintain and strengthen their collections and make their holdings available to other libraries whose users have need for research materials.

Applicable Regulations

(a) The Strengthening Research Library Resources Program Regulations in 34 CFR part 778; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, and 86.

For Applications or Information Contact

Louise Sutherland or Linda Loeb, Program Officers, Library Development Staff, Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., room 404, Washington, DC 20208–5571. Telephone (202) 219–1315.

Authority: 20 U.S.C. 1021 *et seq.*

CFDA No. 84.167A—Library Literacy Program (Library Services and Construction Act, Title VI)

Purpose

Provides grants to State and local public libraries to support literacy projects. Grants may not exceed $35,000.

Applicable Regulations

(a) The Library Literacy Program Regulations in 34 CFR part 769; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, and 86.

For Applications or Information Contact

Carol Cameron Lyons or Barbara Humes, Program Officers, Library Development Staff, Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., room 404, Washington, DC 20208–5571. Telephone (202) 219–1315.

Authority: 20 U.S.C. 351 *et seq.*

CFDA No. 84.197A—College Library Technology and Cooperation Grants Program (Higher Education Act, Title II, Part D).

Purpose

To encourage resource-sharing projects among the libraries of institutions of higher education through the use of technology and networking, to improve the library and information services provided to them by public and nonprofit private organizations, and to conduct research or demonstration projects to meet special needs in using technology to enhance library and information sciences. There are four categories of awards: (A) Networking; (B) Combination; (C) Services to Institutions; and (D) Research and Demonstration.

Applicable Regulations

(a) The College Library Technology and Cooperation Grants Program Regulations in 34 CFR part 779; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, and 86.

For Applications or Information Contact

Neal Kaske, Program Officer, Library Development Staff, Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., room 404, Washington, DC 20208–5571. Telephone (202) 219–1315.

Authority: 20 U.S.C. 1021 *et seq.*

CFDA No. 84.239A—Foreign Language Materials Acquisition Program (Library Services and Construction Act, Title V)

Purpose

This program makes grants to State and local public libraries for the acquisition of foreign language materials to meet the needs of the communities they serve. By law, (A) up to 30 percent of the funds available may be used to make grants in amounts between $35,000–$125,000; (B) of the remaining funds, no grant may exceed $35,000. In addition, no recipient may receive more than one grant under this program in the same fiscal year.

Applicable Regulations

(a) The Foreign Language Materials Acquisition Program Regulations in 34 CFR part 768; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, and 86.

For Applications or Information Contact

Linda Loeb or Carol Cameron Lyons, Program Officers, Library Development Staff, Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., room 404, Washington, DC 20208–5571. Telephone (202) 219–1315.

Authority: 20 U.S.C. 351 *et seq.*

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CFDA No. 84.163B—Library Services to Indian Tribes and Hawaiian Natives Program—Special Projects Grants (Library Services and Construction Act, Title IV).

Purpose

This program makes competitive awards to eligible Indian tribes to establish or improve public library services. All available funds for library services to Hawaiian natives are awarded through the Library Services to Indian Tribes and Hawaiian Natives Program—Basic Grants (CFDA No. 84.163A).

Applicable Regulations

(a) The Special Projects Grants to Indian Tribes and Hawaiian Natives Program Regulations in 34 CFR part 772; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74 (for grants to Hawaiian native organizations), 75, 77, 79 (for grants to Hawaiian native organizations), 80, 81, 82, and 85.

For Applications or Information Contact

Beth Fine, Program Officer, Library Development Staff, Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 404, Washington, DC. 20208–5571. Telephone (202) 219–1315.

Authority: 20 U.S.C. 351 *et seq.*

Dated: May 29, 1991.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 91–1309 Filed 6–11–91; 8:45 am]

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federal register

Wednesday
June 12, 1991

Part VIII

Department of Transportation

Federal Aviation Administration

14 CFR Parts 61, 63, and 65

Relief for Participants in Operation Desert Shield/Storm; Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 63 and 65

[Docket No. 26529; Special Federal Aviation Regulation SFAR No. 63]

RIN 2120-AE00

Relief for Participants in Operation Desert Shield/Storm

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is issuing this Special Federal Aviation Regulation (SFAR) to provide certain regulatory relief to civilian and military personnel who have been or are serving in an assignment in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992. This SFAR permits Flight Standards District Offices (FSDO) to accept expired flight instructor certificates, inspection authorizations, and/or airman written test reports for meeting certain eligibility requirements under the current rules. This action is necessary because the FAA has determined that these personnel may be unable to meet the regulatory time limits of their flight instructor certificate, inspection authorization, and/or airman written test report as a result of their assignment. This action is intended to alleviate potential hardships that result from the imposition of time requirements established in the regulations on flight instructor certificates, inspection authorizations, and/or airman written test reports.

EFFECTIVE DATE: June 12, 1991.

EXPIRATION DATE: December 31, 1992.

FOR FURTHER INFORMATION CONTACT: John D. Lynch—Regulations Branch, AFS–850, General Aviation and Commercial Division, 800 Independence Ave. SW., Washington, DC 20591; Telephone: (202) 267–8150.

SUPPLEMENTARY INFORMATION

Availability of the Final Rule

Any person may obtain a copy of this SFAR by submitting a request to the FAA, Office of Public Affairs, ATTN: APA–200, 800 Independence Avenue SW., Washington, DC 20591, or by calling the Office of Public Affairs at (202) 267–3484. Persons wanting a copy of this SFAR must identify the SFAR by asking for "Docket No. 26529; Relief for Participants in Operation Desert Shield/Storm Final Rule."

Persons interested in being placed on a mailing list for future notices should request a copy of Advisory Circular 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

On August 2, 1990, when Iraq invaded Kuwait, U.S. military and civilian personnel were rushed to the Middle East/Persian Gulf area or were assigned to military installations away from their home station. For the most part, these personnel had only enough time to take care of personal, immediate affairs prior to leaving. The FAA has received numerous correspondence from some of these personnel asking how they can meet the regulatory time constraints relating to the expiration of their flight instructor certificate, inspection authorization, and airman written test report while serving on assignment in Operation Desert Shield/Storm. These personnel have stated that because of their assignment, they may not be able to meet the regulatory time constraints that relate to the expiration of their flight instructor certificate, inspection authorization, and/or airman written test report.

Statement of the Problem

In response to the numerous inquiries received from civilian and military personnel serving in support of Operation Desert Shield/Storm, the FAA has determined that it needs to provide some regulatory relief to these people who are unable to comply with the regulatory time constraints of their flight instructor certificate, inspection authorization, and/or airman written test report as a result of their assignment. There may not be any FAA examiners/inspectors or facilities readily available in the area where these people were located. Also, the FAA believes that even those civilian and military personnel who are activated for Operation Desert Shield/Storm, but remain located in the United States or at a location outside the Middle East/Persian Gulf area, may find their work schedules so demanding that it would be impossible to schedule a practical test. Most of these people were located at a military base that is away from their normal training or work environment. As a result, many of these people were unable to comply with the regulatory time limits of their flight instructor certificate, inspection authorization, and/or airman written test report, as required by the appropriate Federal Aviation Regulations (FAR). Therefore, the FAA has determined the uniqueness of the situation warrants consideration for adopting this SFAR.

History

In the past, the FAA has permitted the airline transport pilot (ATP) written test reports of § 61.39(b) to be extended beyond the 24-month expiration date. That rule allows an applicant for an ATP certificate to take the practical test for that certificate after the 24-month time period has elapsed on the written test report. However, the provisions of that rule require the applicant to (1) have been continuously employed as a pilot or as a pilot assigned to flight engineer duties since passing the written test; or (2) be participating in an approved pilot training program of a U.S. air carrier or commercial operator.

In addition, the FAA has issued grants of exemptions from § 61.39 (a)(1) and (b), when it was determined that the petitioner's situation was unique and safety would not be compromised. In every case where a grant of exemption was issued, the petition involved an extension of the expiration date of an ATP written test report for a pilot of a part 121 air carrier company and the pilot had been furloughed.

In all cases not involving the ATP written test reports, the FAA has denied all requests for exemption. The FAA has consistently stated in those denials of exemption, that, "* * * the 24-month validity period for written test reports is a reasonable one and provides some assurance that an applicant has appropriate and reasonably current aeronautical knowledge at the time of the flight test."

However, the FAA believes the situation for personnel involved in Operation Desert Shield/Storm is different. By establishing this SFAR, the FAA is not changing its past position on this issue because this SFAR is only applicable for a limited time to those civilian and military personnel serving in support of Operation Desert Shield/Storm.

In the previously issued denials of exemption on this matter, the FAA based its findings on the fact that the 24-month validity period for airman written test reports is reasonable and provide some assurance that an applicant has appropriate and reasonably current aeronautical knowledge at the time of the flight test. In the past, the FAA has received numerous inquiries from persons requesting extension of their airman written test report because they had to reschedule their practical test to a date that was after the expiration date on the written test report. While the FAA was sympathetic to the needs of

previous petitioners and realizes that there are times when practical tests have to be cancelled or rescheduled, previous petitions for extension of time were nonetheless denied for the reason cited above, and because the petitioners were free to schedule and attend practical tests on numerous occasions during the 24-month period. However, the people involved in Operation Desert Shield/Storm do not have the same opportunity to meet the time constraints of their airman written test report, because no FAA examiners/inspectors or facilities are readily available in the area and/or because their work schedules and orders may prohibit them from leaving to take the flight/practical tests.

Discussion of the Final Rule

Introduction

This final rule is based on Notice of Proposed Rulemaking (NPRM) No. 91–10 (56 FR 14292; April 8, 1991).

The FAA has determined that this SFAR is important for providing regulatory relief for those civilian and military personnel, who are required to serve in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992.

Discussion of Comments Received

Two comments favoring NPRM No. 91–10 were received from the National Business Aircraft Association, Inc. and the Air Line Pilots Association. One comment was received that questioned why the FAA had not provided similar relief in past wars. These were the only comments received in response to the NPRM.

Flight Instructor Certificate

This SFAR permits Flight Standards District Offices (FSDO) to accept an expired flight instructor certificate to show eligibility for the renewal of a person's flight instructor certificate in accordance with the provisions of § 61.197. Therefore, civilian and military personnel, who can show the kind of evidence required by this SFAR, are permitted to apply for renewal of their flight instructor certificates in accordance with § 61.197. The provisions of this SFAR apply only to those persons who complete the appropriate requirements of § 61.197 within 6 calendar months following the date of reassignment from Operation Desert Shield/Storm or by December 31, 1992, whichever date is sooner. In addition, this SFAR applies only to those personnel whose flight instructor certificates expired within the time period from 60 days prior to their assignment to 60 days after reassignment from Operation Desert Shield/Storm. These civilian or military personnel are not permitted to exercise the privileges of their flight instructor certificate if it has expired, but are permitted to renew their flight instructor certificate in accordance with the provisions of § 61.197.

Airman Written Test Reports of Parts 61, 63, and 65

Additionally, this SFAR permits an extension of the expiration date of the airman written test reports of parts 61, 63, and 65. The provisions of this SFAR applies only to those persons who complete the required flight/practical test within 6 calendar months following the date of reassignment from Operation Desert Shield/Storm or by December 31, 1992, whichever date is sooner. Furthermore, this SFAR applies only to those personnel whose airman written test reports expired within the time period from 60 days prior to their assignment to 60 days after reassignment from Operation Desert Shield/Storm.

Inspection Authorization of Part 65

This SFAR permits FSDO's to accept an expired inspection authorization and evidence of participation in Operation Desert Shield/Storm for renewal without meeting the requirements of § 65.93. The provisions of this SFAR apply only to those persons who apply for renewal within 6 calendar months following the date of reassignment from Operation Desert Shield/Storm or by December 31, 1992, whichever date is sooner. Furthermore, this SFAR applies only to those civilian or military personnel whose inspection authorization expired within the time period from 60 days prior to assignment to 60 days after reassignment from Operation Desert Shield/Storm. These civilian or military personnel are not permitted to exercise the privileges of their inspection authorization if it has expired, but are permitted to renew their inspection authorizations in accordance with the provisions of this SFAR.

Evidence of Operation Desert Shield/Storm Participation

The FAA has determined that an assignment in support of Operation Desert Shield/Storm means a person who served a tour of duty during the time period from August 2, 1990 to December 31, 1992. An assignment in support of Operation Desert Shield/Storm may be an assignment at a location in the Middle East/Persian Gulf area or at some other location, but the person's assignment must have been during the time period from August 2, 1990 to December 31, 1992. The 6 calendar month grace period in this SFAR will be calculated from the date shown on the official orders or documentation that reassigns the person from Operation Desert Shield/Storm. The person's flight instructor certificate, inspection authorization, and/or airman written test report must have expired within the time period from 60 days prior to the assignment date on the person's assignment orders/documentation to 60 days following reassignment. The evidence required to substantiate an assignment must show the dates of assignment to and reassignment from support of Operation Desert Shield/Storm, and shall be one of the following:

1. Official government documents showing the person was a civilian on official duty for the United States Government in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992;

2. Military orders showing the person was a member of the uniformed services assigned to duty in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992;

3. Military orders showing the person was an active member of the National Guard or Reserve called to active duty in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992; or

4. A letter from the unit commander providing inclusive dates during which the person served in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992.

General

The FAA has determined that the regulatory relief provided by this SFAR will not result in a derogation of safety, because the checks and balances provided by the FAA's airman certification procedures will assure that safety is maintained. This belief is based on the fact that prior to renewing a flight instructor certificate, a person will be required to comply with the appropriate requirements of § 61.197. In the case of an expired airman written test report, a person will be required to complete a flight/practical test, in accordance with the appropriate rules of parts 61, 63, or 65, as appropriate. Furthermore, the FAA has issued instructions to its Flight Standards District Offices to monitor the situation very closely to ensure that safety is

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maintained. Examiners and inspectors have been directed to give especially close attention during flight/practical tests on any showing of deficiencies in current aeronautical knowledge by those applicants qualifying under this SFAR. If a major safety problem arises, the FAA will not hesitate to take corrective action.

The FAA has determined that this SFAR will not apply to the medical certificate and pilot proficiency requirements of §§ 61.23, 61.55, 61.56, 61.57, and 61.58. The FAA has determined the requirements cited in those rules should not be waived because they involve a person's medical fitness, demonstration of piloting skills, and/or mechanic skills. The FAA does not believe requiring compliance with those rules will impose an additional hardship on our civilian and military personnel assigned to Operation Desert Shield/Storm. Upon their return to the United States, these people will be handled as any other pilot or mechanic, and compliance with these rules will not impose any additional requirement. Furthermore, the FAA believes that waiving these requirements would not be in the public interest and would have an adverse effect on safety. Therefore, those civilian and military personnel assigned to Operation Desert Shield/Storm whose medical certificate, pilot proficiency, and/or pilot recurrency requirements have lapsed will have to satisfy the normal requirements that relate to exercising the privileges of an airman certificate.

Regulatory Evaluation

Regulatory Evaluation Summary

The FAA has determined that the expected economic impact of this SFAR is so minimal that it does not warrant a full regulatory evaluation. The basis of this determination is that this SFAR imposes no costs on society because an equivalent level of safety will be maintained while providing unquantifiable benefits to certificate holders who are the subject of the rule. Since benefits exceed costs, the FAA has determined that this SFAR is consistent with the objectives of Executive Order 12291.

International Trade Impact Statement

This SFAR does not affect international trade involving aviation products or services. Therefore, the FAA certifies this SFAR will not eliminate existing or create additional barriers to the sale of foreign aviation products or services in the United States. This SFAR will not eliminate existing or create additional barriers to the sale of U.S. aviation products and services in foreign countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 was enacted by Congress to ensure that entities are not disproportionately affected by Government regulations. The RFA requires agencies to review rules which may have a "significant economic impact on a substantial number of entities." It is certified that this SFAR will neither have a significant negative or positive economic impact on a substantial number of small entities.

Federalism Implications

The provisions in this SFAR will not have substantial direct effects on the States, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this SFAR will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons previously discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this SFAR is not major under Executive Order 12291. In addition, the FAA certifies that this SFAR will not have a significant impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This SFAR is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Furthermore, the FAA has determined that a regulatory evaluation for this SFAR is not warranted.

List of Subjects

14 CFR Part 61

Aircraft, Aircraft pilots, Airmen, Airplanes, Air safety, Air transportation, Aviation safety, Balloons, Helicopters, Rotorcraft, Students.

14 CFR Part 63

Air safety, Air transportation, Airman, Aviation safety, Safety, Transportation.

14 CFR Part 65

Airman, Aviation safety, Air transportation, Aircraft.

The Rule

In consideration of the foregoing, the Federal Aviation Administration amends parts 61, 63, and 65 of the Federal Aviation Regulations (14 CFR parts 61, 63, and 65) as follows:

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

1. The authority citation for part 61 is revised to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g).

2. By adding Special Federal Aviation Regulation (SFAR) No. [63] to read as follows:

Special Federal Aviation Regulations

* * * * *

SFAR No. 63—Relief For Participants in Operation Desert Shield/Storm

Sections

1. Applicability.
2. Required documents.
3. Expiration date.

1. Applicability. Contrary provisions of part 61 notwithstanding, under the procedures prescribed herein, Flight Standards District Offices (FSDO) are authorized to accept an expired flight instructor certificate to show eligibility for the renewal of a person's flight instructor certificate in accordance with the provisions of § 61.197, or an expired written test report to show eligibility under part 61 to take a flight/ practical test, provided—

a. It is submitted by a civilian or military person who served in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992;

b. The person's flight instructor certificate and/or airman written test report expired within the time period from 60 days prior to assignment to 60 days after reassignment from support of Operation Desert Shield/Storm; and

c. The person complies with the appropriate requirements of § 61.197 or completes the required flight/practical test, as appropriate, within 6 calendar months following the date of reassignment from Operation Desert Shield/Storm or by December 31, 1992, whichever date is sooner.

2. Required documents. The FSDO and applicant shall include one of the following documents with the airman application, and the documents must show the dates of assignment to and reassignment from support of Operation Desert Shield/Storm:

a. Official government documents showing the person was a civilian on official duty for the United States Government in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992;

b. Military orders showing the person was a member of the uniformed services assigned to duty in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992;

c. Military orders showing the person was an active member of the National Guard or Reserve called to active duty in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992; or

d. A letter from the unit commander providing inclusive dates during which the person served in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992.

3. Expiration date. This SFAR expires December 31, 1992, unless sooner superseded or rescinded.

PART 63—CERTIFICATION: FLIGHT CREWMEMBERS OTHER THAN PILOTS

3. The authority citation for part 63 is revised to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g).

4. By adding Special Federal Aviation Regulation (SFAR) No. [63] to read as follows:

Special Federal Aviation Regulations

* * * * *

SFAR No. 63—Relief for Participants in Operation Desert Shield/Storm

Sections

1. Applicability.
2. Required documents.
3. Expiration date.

1. Applicability. Contrary provisions of part 63 notwithstanding, under the procedures prescribed herein, Flight Standards District Offices (FSDO) are authorized to accept an expired written test report to show eligibility under §§ 63.33 and 63.57 to take a flight/ practical test, provided—

a. It is submitted by a civilian or military person who served in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992;

b. The person's airman written test report expired within the time period from 60 days prior to assignment to 60 days after reassignment from support of Operation Desert Shield/Storm; and

c. The person completes the required flight/ practical test within 6 calendar months following the date of reassignment from Operation Desert Shield/Storm or by December 31, 1992, whichever date is sooner.

2. Required documents. The FSDO and applicant shall include one of the following documents with the airman application, and the documents must show the dates of assignment to and reassignment from support of Operation Desert Shield/Storm:

a. Official government documents showing the person was a civilian on official duty for the United States Government in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992;

b. Military orders showing the person was a member of the uniformed services assigned to duty in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992;

c. Military orders showing the person was an active member of the National Guard or Reserve called to active duty in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992; or

d. A letter from the unit commander providing inclusive dates during which the person served in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992.

3. Expiration date. This SFAR expires December 31, 1992, unless sooner superseded or rescinded.

PART 65—CERTIFICATION: AIRMAN OTHER THAN FLIGHT CREWMEMBERS

5. The authority citation for part 65 is revised to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g).

6. By adding Special Federal Aviation Regulation (SFAR) No. [63] to read as follows:

Special Federal Aviation Regulations

* * * * *

SFAR No. 63—Relief for Participants in Operation Desert Shield/Storm

Sections

1. Applicability.
2. Required documents.
3. Expiration date.

1. Applicability. Contrary provisions of part 65 notwithstanding, under the procedures prescribed herein, Flight Standards District Offices (FSDO) are authorized to accept an expired written test report to show eligibility to take a practical test required under this Part and/or renew an expired inspection authorization to show eligibility for renewal under § 65.93, provided—

a. The person is a civilian or military person who served in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992;

b. The person's airman written test report and/or inspection authorization expired within the time period from 60 days prior to assignment to 60 days after reassignment from support of Operation Desert Shield/Storm; and

c. The person completes the required practical test within 6 calendar months following the date of reassignment from Operation Desert Shield/Storm or by December 31, 1992, whichever date is sooner.

2. Required documents. The FSDO and applicant shall include one of the following documents with the airman application, and the documents must show the dates of assignment to and reassignment from support of Operation Desert Shield/Storm:

a. Official government documents showing the person was a civilian on official duty for the United States Government in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992;

b. Military orders showing the person was a member of the uniformed services assigned to duty in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992;

c. Military orders showing the person was an active member of the National Guard or Reserve called to active duty in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992; or

d. A letter from the unit commander providing inclusive dates during which the person served in support of Operation Desert Shield/Storm during the time period from August 2, 1990 to December 31, 1992.

3. Expiration date. This SFAR expires December 31, 1992, unless sooner superseded or rescinded.

Issued in Washington, DC, on June 6, 1991.

James B. Busey,

Administrator.

[FR Doc. 91-13931 Filed 6-7-91; 12:03 pm]

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Part IX

Department of Education

Training Programs for Educators—Innovative Alcohol Abuse Education Programs; Notice

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.238]

Training Programs for Educators—Innovative Alcohol Abuse Education Programs

Notice inviting applications for new awards for fiscal year (FY) 1991.

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: To provide financial assistance to train educators in strategies designed to mitigate problems associated with alcoholism in the family.

Eligible Applicants: The following are eligible for new awards under this competition: State and local educational agencies, institutions of higher education, and other public and private agencies, organizations, and institutions.

Deadline for Transmittal of Applications: July 15, 1991.

Deadline for Intergovernmental Review: September 13, 1991.

Available Funds: $1,500,000.

Estimated Range of Awards: $200,000 to $350,000.

Estimated Average Size of Awards: $300,000.

Estimated Numbers of Awards: 5.

Note: The Department is not bound by any estimates in this notice.

Project Period: 12 months, with up to 12 additional months contingent upon Congressional funding, satisfactory performance, and the government's best interest.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administrative of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), Part 81 (General Education Provisions Act—Enforcement), Part 82 (New Restrictions on Lobbying), Part 85 (Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)), and Part 86 (Drug-Free Schools and Campuses); (b) The regulations for Student Rights in Research, Experimental Programs, and Testing in 34 CFR part 98; and (c) The regulations for Family Educational Rights and Privacy in 34 CFR part 99.

Description of Program: Training Programs for Educators—Innovative Alcohol Abuse Education Programs are authorized under section 4607(b) of the Elementary and Secondary Education Act of 1965 (ESEA) (20 U.S.C. 3156–3(b)).

With 1990 funds appropriated under section 4607(a) of ESEA, the Department is currently developing the following: A handbook for educators on alcohol abuse prevention; a module on high-risk youth that will be added to Learning to Live Drug Free (the Department's recently issued drug prevention curriculum model); instructional materials on alcohol abuse education designed to assist educators of children from special populations (Hispanics, Blacks, Native Americans, the economically disadvantaged); and instructional materials for use by educators in classrooms where children of several cultures are represented. These materials will be available by October 1991 and will be provided to grantees for use in training projects funded under this program.

Projects supported under this program must provide training in four statutorily mandated areas. Each project must:

- Increase educators' awareness of children's problems that may be caused by an alcoholic parent;
- Enhance educators' ability to identify children at risk for alcohol abuse;
- Inform educators concerning referral of children of alcoholics for appropriate professional treatment; and
- Train educators to inform the public about the special problems of children who have an alcoholic parent.

Absolute Priority: Under 34 CFR 75.105(c)(3), the Secretary gives absolute preference to applications that meet the following priority:

(1) Provide training to educators who serve children in grades 5–8; and

(2) Provide for region-wide training in one of the following geographic areas:

(1) Northeast

Connecticut	New Jersey
Delaware	New York
Maine	Ohio
Maryland	Pennsylvania
Massachusetts	Rhode Island
New Hampshire	Vermont

(2) Southeast

Alabama	Puerto Rico
District of Columbia	South Carolina
Florida	Tennessee
Georgia	Virginia
Kentucky	Virgin Islands
North Carolina	West Virginia

(3) Midwest

Indiana	Missouri
Illinois	Nebraska
Iowa	North Dakota
Michigan	South Dakota
Minnesota	Wisconsin

(4) Southwest

Arizona	Mississippi
Arkansas	New Mexico
Colorado	Oklahoma
Kansas	Texas
Louisiana	Utah

(5) West

Alaska	Nevada
American Samoa	North Mariana Islands
California	Oregon
Guam	Republic of Palau
Hawaii	Washington
Idaho	Wyoming
Montana	

(3) Midwest

Indiana	Missouri
Illinois	Nebraska
Iowa	North Dakota
Michigan	South Dakota
Minnesota	Wisconsin

(4) Southwest

Arizona	Mississippi
Arkansas	New Mexico
Colorado	Oklahoma
Kansas	Texas
Louisiana	Utah

(5) West

Alaska	Nevada
American Samoa	North Mariana Islands
California	Oregon
Guam	Republic of Palau
Hawaii	Washington
Idaho	Wyoming
Montana	

Under 34 CFR 75.105(c)(3), the Secretary funds under this competition only applications that meet the absolute priority.

Competitive Preference

The Secretary gives preference to applications that meet the following competitive priority:

(a) Demonstrate a comprehensive understanding of alcohol abuse as it relates to children of alcoholics and their families;

(b) Demonstrate the capability to establish relationships with local educational agencies, State educational agencies, and institutions of higher education that are sufficiently sound to facilitate the replication of the training to be provided under this grant; and

(c) Demonstrate the capability to contribute to increased public awareness of issues related to children of alcoholics and their families through a dissemination network.

Under 34 CFR 75.105(c)(2)(i), the Secretary awards up to 15 additional points to an application that meets this competitive priority in a particularly effective way. These points are in addition to any points that the application earns under the selection criteria.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) The criteria.—(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of section 4607(b) of the (ESEA), including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of section 4607(b) of the ESEA.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in section 4607(b) of the ESEA, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(4) *Quality of key personnel.* (10 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(4)(i) (A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the projects; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (15 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (7 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee).

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive Order. If you want to know the name and address of any State Single Point of Contact, see the list published in the Federal Register on September 17, 1990, pages 38210 and 38211.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA #4.238, U.S. Department of Education, room 4161, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please Note That The Above Address Is Not The Same Address As The One To Which The Applicant Submits Its Completed Application. Do Not Send Applications To The Above Address.

Instructions For Transmittal Of Applications:

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.238), Washington, DC 20202–4725.

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.238), Room #3633, Regional

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Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708-8495.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4-88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80-0013).

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80-0014, 9/90) and instructions.

Note: ED 80-0014 is intended for the use of grantees and should not be transmitted to the Department.

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL-A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR INFORMATION CONTACT: Madeline Bosma, Division of Drug-Free Schools and Communities, U.S. Department of Education, 400 Maryland Avenue SW., room 2132, Washington, DC 20202-6439; Telephone: (202) 401-3510. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 3156-1(b).

Dated: May 30, 1991.

John T. MacDonald,

Assistant Secretary for Elementary and Secondary Education.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:
Application: ☐ Construction ☒ Non-Construction
Preapplication: ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name	Organizational Unit
Address (give city, county, state, and zip code)	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): –

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A State H Independent School Dist.
B County I State Controlled Institution of Higher Learning
C Municipal J Private University
D Township K Indian Tribe
E Interstate L Individual
F Intermunicipal M Profit Organization
G Special District N Other (Specify) _____

8. TYPE OF APPLICATION:
☒ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es) ☐ ☐
A Increase Award B Decrease Award C Increase Duration
D Decrease Duration Other (specify) _____

9. NAME OF FEDERAL AGENCY:
U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 3 8
TITLE Training Programs for Educators--Innovative Alcohol Abuse Education Programs

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (Cities, Counties, States, etc.)

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (REV 4-88)
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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1	Self-explanatory.
2	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3	State use only (if applicable).
4	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7	Enter the appropriate letter in the space provided.
8	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation
9	Name of Federal agency from which assistance is being requested with this application.
10	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12	List only the largest political entities affected (e.g., State, counties, cities).
13	Self-explanatory.
14	List the applicant's Congressional District and any District(s) affected by the program or project.
15	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)	
21. Direct Charges:	22. Indirect Charges:
23. Remarks	

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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

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INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

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Instructions for Part III—Application Narrative

Before preparing the Application Narrative an applicant should read carefully the description of the program, the information regarding priorities, and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a summary of the proposed project;
2. Indicate the regional area where the training will be provided.
3. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package;
4. If a project is being proposed for more than one year, activities and timelines must be proposed for each budget period/year (EDGAR 34 CFR 75.112). Applicants for multi-year projects must also include: (a) Information that shows why a multi-year project is needed; (b) a budget for the first budget period/year of the project; and (c) an estimate of the Federal funds needed for each budget period of the project after the first budget period (EDGAR 34 CFR 75.117).
5. Provide an assurance of compliance with the statute;
6. Include a discussion of how the training for educators who serve children in grades 5–8 will:

(a) Increase educators' awareness of children's problems that may be caused by an alcoholic parent;

(b) Enhance educators' ability to identify children at risk for alcohol abuse;

(c) Inform educators concerning referral of children of alcoholics for appropriate professional treatment; and

(d) Train educators to inform the public about the special problems of children who have an alcoholic parent.

7. Include any other pertinent information that might assist the Secretary in reviewing the application.

If the applicant wishes, include a discussion responding to the competitive preference that:

(a) Demonstrates a comprehensive understanding of alcohol abuse as it relates to children of alcoholics and their families;

(b) Demonstrates the capability to establish relationships with local educational agencies, State educational agencies, and institutions of higher education that are sufficiently sound to facilitate the replication of the training to be provided under this grant; and

(c) Demonstrates the capability to contribute to increased public awareness of issues related to children of alcoholics and their families through a dissemination network.

Please limit the Application Narrative to no more than 25 double-spaced, typed pages (on one side only).

Estimated Public Reporting Burden

Public reporting burden for this collection of information is estimated to average 48 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1810-0554, Washington, DC 20503.

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ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

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CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted–

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

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Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. **Type of Federal Action:** ☐ a. contract ☐ b. grant ☐ c. cooperative agreement ☐ d. loan ☐ e. loan guarantee ☐ f. loan insurance	2. **Status of Federal Action:** ☐ a. bid/offer/application ☐ b. initial award ☐ c. post-award	3. **Report Type:** ☐ a. initial filing ☐ b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____
4. **Name and Address of Reporting Entity:** ☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*		5. **If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:** Congressional District, *if known:*
6. **Federal Department/Agency:**		7. **Federal Program Name/Description:** CFDA Number, *if applicable:* _____
8. **Federal Action Number,** *if known:*		9. **Award Amount,** *if known:* $
10. a. **Name and Address of Lobbying Entity** *(if individual, last name, first name, MI):*		b. **Individuals Performing Services** *(including address if different from No. 10a)* *(last name, first name, MI):*
(attach Continuation Sheet(s) SF-LLL-A, if necessary)		
11. **Amount of Payment** *(check all that apply):* $ _____ ☐ actual ☐ planned		13. **Type of Payment** *(check all that apply):* ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. **Form of Payment** *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____		
14. **Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:** *(attach Continuation Sheet(s) SF-LLL-A, if necessary)*		
15. **Continuation Sheet(s) SF-LLL-A attached:** ☐ Yes ☐ No		
16. [illegible] on requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.		**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:** _____
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INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

[FR Doc. 91-13906 Filed 6-11-91; 8:45 am]
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Part X

The President

Presidential Determination No. 91-39—Determination Under Subsection 402(d)(1) of the Trade Act of 1974, as Amended—Continuation of Waiver Authority

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Presidential Documents

Title 3—

The President

Presidential Determination No. 91-39 of June 3, 1991

Determination Under Subsection 402(d)(1) of the Trade Act of 1974, as Amended—Continuation of Waiver Authority

Memorandum for the Secretary of State

Pursuant to the authority vested in me under the Trade Act of 1974, as amended, Public Law 93-618, 88 Stat. 1978 (hereinafter "the Act"), I determine, pursuant to subsection 402(d)(1) of the Act, 19 U.S.C. 2432(d)(1), that the further extension of the waiver authority granted by subsection 402(c) of the Act will substantially promote the objectives of section 402 of the Act. I further determine that the continuation of the waivers applicable to the Republic of Bulgaria, the Czech and Slovak Federal Republic, the Soviet Union, and the Mongolian People's Republic will substantially promote the objectives of section 402 of the Act.

You are authorized and directed to publish this determination in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, June 3, 1991.

[FR Doc. 91-14153
Filed 6-10-91; 4:51 pm]
Billing code 3195-01-M

Editorial note: For the President's letter to Congressional leaders and statements by Press Secretary Fitzwater on renewing the most-favored-nation trade status to these countries, see issue 23 of the *Weekly Compilation of Presidential Documents*.

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